From: CN=Catherine S. Anderson/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [UNKNOWN] <Brett M. Kavanaugh>
Sent: 1/23/2001 3:19:55 AM
Subject: : Welcome

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Catherine S. Anderson (CN=Catherine S. Anderson/OU=OA/O=EOP [OA])
CREATION DATE/TIME:23-JAN-2001 08:19:55.00
SUBJECT:: Welcome
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett:

Welcome! I understand from National Archives that you may be handling Presidential Records Act (PRA) issues for the White House Counsel's Office. Allow me to introduce myself - - I am the Deputy General Counsel in the Office of Administration (OA) and have served as the point of contact on Federal Records Act (FRA) issues, including issues related to the records management of the ARMS system, which archives e-mail for the EOP. In case you are unfamiliar with OA, we provide common administrative support to the agencies and offices of the Executive Office of the President (EOP), including records management support, and are an excellent source of corporate knowledge of the policies/practices of prior Administrations. Please let me know if I can be of any assistance to you. As soon of you are settled, it may be helpful for us to discuss how the Bush Administration would like to treat WHO records in the custody of OA, given that we are subject to the Freedom of Information Act and WHO is not. Again, welcome to the EOP and please feel free to call me at x51270 if you need anything.

Regards,

Kate Anderson

From: CN=Ann E. Anderson/OU=WHO/O=EOP [UNKNOWN]
To: Elizabeth R. Ubbens/WHO/EOP@EOP [WHO] <Elizabeth R. Ubbens>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [UNKNOWN] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [UNKNOWN] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [UNKNOWN] <Stuart W. Bowen>;Rachel R. Brand/WHO/EOP@EOP [UNKNOWN] <Rachel R. Brand>;Courtney S. Elwood/WHO /EOP@EOP [UNKNOWN] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [UNKNOWN] <Noel J. Francisco>;Brent D. Greenfield/WHO/EOP@EOP [UNKNOWN] <Brent D. Greenfield>;Brett M. Kavanaugh/WHO/EOP@EOP [UNKNOWN] <Brett M. Kavanaugh>;Helgard G. Walker/WHO/EOP@EOP [UNKNOWN] <Helgard G. Walker>
BCC: Alberto R. Gonzales (Alberto R. Gonzales/WHO/EOP [UNKNOWN]), Timothy E. Flanigan (Timothy E. Flanigan/WHO/C=EO [UNKNOWN])
Sent: 1/24/2001 4:13:29 AM
Subject: : Lexis-Nexis; Westlaw Services for Counsel's Office Legal Staff

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ann E. Anderson ( CN=Ann E. Anderson/OU=WHO/O=EOP [ UNKNOWN ] )
CREATION DATE/TIME:24-JAN-2001 09:13:29.00
SUBJECT:: Lexis-Nexis; Westlaw Services for Counsel's Office Legal Staff
TO:Elizabeth R. Ubbens ( CN=Elizabeth R. Ubbens/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ UNKNOWN
] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:Helgard G. Walker ( CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
BCC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP [ UNKNOWN ] )
READ:UNKNOWN
BCC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/O=WHO/C=EO [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

As we discussed earlier this morning, following are the names of the legal
staff and their locations in Counsel's Office for approval and set-up of
the Lexis Nexis and Westlaw systems:

Alberto Gonzales, 2nd Floor, West Wing

Tim Flanigan, 2nd Floor, West Wing

Chris Bartolmucci, OEOB, Room 132

Brad Berenson, OEOB, Room 134

Stuart Bowen, OEOB, Room 128C

Rachel Brand, OEOB, Room 123

Robert "Moose" Cobb, OEOB, Room 128B
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Libby Camp, 2nd Floor, West Wing

Courtney Elwood, OEOB, Room 142

Noel Francisco, OEOB, Room 129

Brent Greenfield, OEOB, Room 125A

Brett Kavanagh, OEOB, Room 128E

Jason Torchinsky, OEOB, Room 127B

Helgi Walker, OEOB, Room 138

Many thanks for your help.

From: CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Thomas V. McMahan/WHO/EOP@EOP [WHO] <Thomas V. McMahan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/26/2001 11:37:49 AM
Subject: : Legal counsel

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kenneth B. Mehlman ( CN=Kenneth B. Mehlman/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-JAN-2001 16:37:49.00
SUBJECT:: Legal counsel
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Thomas V. McMahan ( CN=Thomas V. McMahan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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I just met with Brett Cavanaugh, the attorney we met with along with Judge Gonzales. Brett is our point person on ethics issues. They expect to have a formal opinion, and be able to conduct a briefing, on Wenesday. They are taking a bit longer to look at ethical as well as legal considerations, and to review past Administration practices.

However, here are the outlines of the policy they expect to propose:
1. No fundraising, or discussion of fundraising, on federal property. No exceptions for RNC laptops or cell phones. Donor information should not be on government computers.

2. They will recommend separate laptops and phone lines for all staff at OPA and other staff we recommend at OPL and OSI. However, we only need to use this RNC equipment for election related activity. They seem to be interpretting election-related activity rather narrowly.

3. We can email back and forth and discuss RNC activities, provided that it is not fundraising or directly election related.

4. We can build databases but not share these with the RNC.

5. The Anti-Lobbying Act only prohibits telling others to call Congress directly. It does not include building grassroots support.

6. Polling information generated by the RNC can be shared inside the White House. However, White House generated polling can't be shared with the RNC.

ALL OF THIS IS SUBJECT TO POSSIBLE CHANGE WITH FURTHER RESEARCH.

Brett: Is this accurate?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/29/2001 11:51:50 AM
Subject: : please call Mike Shannon at 456-2921

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-JAN-2001 16:51:50.00
SUBJECT:: please call Mike Shannon at 456-2921
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

re: emails from outside entities (RNC).
```

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/30/2001 4:05:26 AM
Subject: : Re: Officer Mullen

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-JAN-2001 09:05:26.00
SUBJECT:: Re: Officer Mullen
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm not sure I know what the question is. If the sponsorship is being done at the request of the Government, there could be a coercion or misuse of office question. If they are doing something the Government should be paying for, there is an appropriation issue.

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/30/2001 4:55:20 AM
Subject: : Vacancy in Montana

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-JAN-2001 09:55:20.00
SUBJECT:: Vacancy in Montana
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brent,

Please check news reports for an annoucnement yesterday by a USDJ in
Montana that he or she was taking senior status or retiring.

Tim
```

From: CN=Helgard G. Walker/OU=WHO/O=EOP [WHO]
To: Theresa F. Granger/WHO/EOP@EOP [WHO] <Theresa F. Granger>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>
Sent: 1/30/2001 7:56:20 AM
Subject: : Re: Staff Manual

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-JAN-2001 12:56:20.00
SUBJECT:: Re: Staff Manual
TO:Theresa F. Granger (CN=Theresa F. Granger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks!

Theresa F. Granger
01/30/2001 12:34:19 PM
Record Type: Record

To: Helgard G. Walker/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Staff Manual

We will be dropping off the updated version of your section for you to proof and make any additional changes. Once we get everyone's changes to the various sections we will also provide counsel a draft copy of the entire staff manual for review so that you can review in its entirety. The current timeline we are working on is to provide Joe Hagin a draft copy sometime tomorrow afternoon - this will also be when you get a draft copy as well.

Any questions or concerns please feel free to contact me at 6-5400.

Faye Granger

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 1/31/2001 4:12:07 AM
Subject: : Re: written response to NY Times

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-JAN-2001 09:12:07.00
SUBJECT:: Re: written response to NY Times
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We have received your letter of ____ requesting ____. Pursuant to the provisions of the Presidential Records Act, all Presidential records from the previous Administration are in the possession of the National Archives. Your inquiry therefore should be directed to the National Archives. In addition, for future reference, please note that the White House Office is not subject to the provisions of the Freedom of Information Act.

Elizabeth N. Camp
01/31/2001 09:00:22 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: written response to NY Times

Brett -

Al asked that we respond in writing to this request. Can you draft something short and sweet? Just email to me the draft and I'll take it from there.

I assume it would be from Al but if you think it should be signed by someone else just let me know.

FYI - that I have brought this to the attention of the press shop and will provide to them a copy of our response.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>
Sent: 2/2/2001 9:04:30 AM
Subject: : Re: Executive privilege

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-FEB-2001 14:04:30.00
SUBJECT:: Re: Executive privilege
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes, Viet did write a book review article on that subject. For what it is worth, I also have published on the EP and related issues in a Georgetown LJ article and I obviously have litigated the issue far more than he has. Also, Tim has dealt extensively with these issues as well. And of course, OLC is involved. So I guess my preference would be to keep this issue in-house (with OLC) for now, at least until Viet signs on at a DOJ job, as I would anticipate he will soon. There will be a lot of cooks in the kitchen regardless -- and a lot of experienced cooks at that.

Stuart W. Bowen
02/02/2001 01:50:43 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Executive privilege

Brett

I will review your memo and get you comments but I believe Viet Dinh could be helpful in this area. As I recall, he has written somewhat extensively on it.

I wonder if we could consider soliciting his help to review the matter as a volunteer in our office (just on this issue)?

swb

From: CN=Thomas V. McMahan/OU=WHO/O=EOP [WHO]
To: Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/3/2001 5:25:29 AM
Subject: : Re: A Follow-Up...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Thomas V. McMahan (CN=Thomas V. McMahan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-FEB-2001 10:25:29.00
SUBJECT:: Re: A Follow-Up...
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I relayed the information to Brett Kavanaugh who is handling records issues. Thanks Kasey.

Kasey S. Pipes
02/02/2001 07:29:04 AM
Record Type: Record

To: Thomas V. McMahan/WHO/EOP@EOP
cc:
Subject: A Follow-Up...

Hey Vance,
Before I forget, I talked to my friend Richard Norton Smith last night about the issue of how the National Archives are advising us on records. He said the key question that Albert Gonzalez, et.al, should ask the Archives is: "What is a personal record?" He said unless we ask the question, they won't volunteer the answer. But if we do ask the question, they have to give us the same answer--and same standard--they gave the Clinton administration. In the Clinton administration, there was a clear distinction between important presidential documents and everything else. So there is a precedent. But we have to ask for it.
Again, thanks for your help in this. I hope this is helpful to you and that I am not doing something I shouldn't be doing. But I feel like Don Wilson and Richard Smith really have our best interests at heart.

Kasey

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/5/2001 9:05:30 AM
Subject: : Memo for Ashcroft

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-FEB-2001 14:05:30.00
SUBJECT:: Memo for Ashcroft
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Tim wants us to attach to our memo for the Attorney General this afternoon a copy of the full and up-to-date vacancies spreadsheet. Brent, please make sure the current version incorporates all the information we've received recently and print it out in a readable format to attach to the memo Brett and I are preparing. Since Brett is driving on this memo, you should give the spreadsheet to him when it's ready. Thanks. Brad.

From: CN=Rachel R. Brand/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2001 2:53:41 AM
Subject: : Re: e-mail from Rove with news-article links

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2001 07:53:41.00
SUBJECT:: Re: e-mail from Rove with news-article links
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No problem, but why were you here at midnight?

Brett M. Kavanaugh
02/06/2001 11:53:17 PM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP
cc:
bcc:
Subject: Re: e-mail from Rove with news-article links

BTW, thanks for jumping on this for me. I appreciate it and good digging.

Rachel R. Brand
02/06/2001 02:16:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@EOP
cc:
Subject: e-mail from Rove with news-article links

If the Rove staff sends e-mails with links to news articles, they may be causing a copyright infringement. This area of law is completely unsettled, but there is a lively debate among academics on this very question. Some say that providing a link is like citing an article in a footnote; hence, no copyright infringement. Many others argue that providing a link causes unauthorized copying, distribution, and display of the copyrighted material that is the subject of the link.
One of the reasons that the operator of a news website might care about such a link is that the link might access an interior webpage, rather than the site's front page, thereby by-passing advertisements that the reader would view if he entered through the front page.
We might have some protection under the fair-use doctrine, although some academics disagree.
In any event, I don't think we want to be the test case on this issue. Therefore, I would advise against providing links within e-mails without first obtaining the permission of the news source to which we want to provide a link. We could, of course, simply cite the article without

providing the link.

Who in Rove's office should I contact re this issue?

RLB

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
Sent: 2/7/2001 7:59:47 AM
Subject: : Re: Propsective Staff Assistants

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2001 12:59:47.00
SUBJECT:: Re: Propsective Staff Assistants
TO:Heather Larrison (CN=Heather Larrison/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

11:30 is ok. Is he/she at Dept of Commerce? Who is he/she?

Heather Larrison
02/07/2001 12:15:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Propsective Staff Assistants

There is one candidate I think would be good who is temporarily over at DOC who can only come over at 11:30 or 2;30 tomorrow....do either one of those times work out for you??? Please advise. Thanks.

From: CN=Helgard G. Walker/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>
Sent: 2/7/2001 10:06:08 AM
Subject: : Re: Who is workin on the "Gift Memo"?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2001 15:06:08.00
SUBJECT:: Re: Who is workin on the "Gift Memo"?
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I think it's Moose.

Elizabeth N. Camp
02/07/2001 02:42:47 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP, Helgard G. Walker/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Who is workin on the "Gift Memo"?

I have a insert for this memo from Al. It is in draft form now - Al will
likely revise another time or two then it will be ready to be inserted.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 2/7/2001 2:43:27 PM
Subject: : Records memo

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-FEB-2001 19:43:27.00
SUBJECT:: Records memo
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

From the frying pan into the fire. I let the Office of Records
Management guys here at White House (you met one of them today after our
meeting) see a draft of my memo. They have some comments that they want
to share with me tomorrow at some time after noon. So I had better hear
them out before we finalize.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John Gardner/WHO/EOP@EOP [WHO] <John Gardner>
Sent: 2/8/2001 9:32:06 AM
Subject: : question

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-FEB-2001 14:32:06.00
SUBJECT:: question
TO:John Gardner ( CN=John Gardner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I understand you have a question on stationary. I have a meeting
from 3 to 5:30, but will be back after that.
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jason B. Torchinsky/WHO /EOP@EOP [WHO] <Jason B. Torchinsky>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 2/8/2001 5:51:56 AM
Subject: : Draft text of form acknowledgement on judicial selection materials

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-FEB-2001 10:51:56.00
SUBJECT:: Draft text of form acknowledgement on judicial selection materials
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Libby, here is the draft text of a form letter I would propose to send out
to individuals submitting their views on judicial selection matters.
Please show it to the judge and Tim and let me know if it is acceptable.
We will begin sending out letters as soon as this is made final.


Dear :

On behalf of President Bush and the Counsel to the President
Alberto R. Gonzales, I acknowledge receipt of your recent submission in
connection with prospective appointments to fill judicial vacancies on the
[name of Court]. Please be assured that our office will give due
consideration to your views. In the event additional information from you
would be helpful to the judicial selection process, we will contact you
directly. In the meantime, please accept my thanks on behalf of the
President for your input.

Sincerely,


Bradford A. Berenson
Associate Counsel to the President
```

From: CN=Brooke Vosburgh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: carol j. thompson/who/eop@eop [WHO] <carol j. thompson>;josephine b. robinson/who /eop@eop [WHO] <josephine b. robinson>;israel hernandez/who/eop@eop [WHO] <israel hernandez>;heather larrison/who/eop@eop [WHO] <heather larrison>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;virginia t. gregory/who/eop@eop [WHO] <virginia t. gregory>
Sent: 2/8/2001 5:40:35 PM
Subject: : Re: Weekly WHJSC

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brooke Vosburgh ( CN=Brooke Vosburgh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-FEB-2001 22:40:35.00
SUBJECT:: Re: Weekly WHJSC
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:carol j. thompson ( CN=carol j. thompson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:josephine b. robinson ( CN=josephine b. robinson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:israel hernandez ( CN=israel hernandez/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:heather larrison ( CN=heather larrison/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:virginia t. gregory ( CN=virginia t. gregory/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Clay and Nick are scheduled to be on the Hill for a meeting with Sen. Lott
and Nickles next Thursday at 9:30. Is there a way we can avoid moving
that?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 2/10/2001 9:57:40 AM
Subject: : Re: CA10 intelligence

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-FEB-2001 14:57:40.00
SUBJECT:: Re: CA10 intelligence
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I should have known!!

Noel J. Francisco
02/10/2001 02:39:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: CA10 intelligence

already looking at him.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/12/2001 3:11:47 AM
Subject: : Re: meetings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2001 08:11:47.00
SUBJECT:: Re: meetings
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Jan E. Williams (CN=Jan E. Williams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have not separately notified Adam about my list -- by copy of this e-mail, I am request that Jan Williams forward to Adam Ciongoli the master interview schedule at the same time she circulates it to all of us today. Thanks. (Jan, if there's any problem with that, please call.)

---------- Forwarded by Bradford A. Berenson/WHO/EOP on 02/12/2001 08:10 AM ----------

Brett M. Kavanaugh
02/12/2001 08:09:41 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: bradford a. berenson/who/eop@eop
bcc:
Subject: Re: meetings

Yes, I have notified Adam Ciongoli.

We are working on a standard list; Brad and I actually were planning to meet with Tim this morning to discuss as Tim has been through this before in Bush I administration.

Elizabeth N. Camp
02/11/2001 08:48:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: meetings

Two questions from ARG--

Has Ashcrofts office been notified that these meetings are taking place so they can have the opportunity to have someone sit in?

Is there a standard list of questions or topics of discussion for each of these meetings?

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>
CC: kenneth b. mehlman/who/eop@eop [WHO] <kenneth b. mehlman>
Sent: 2/12/2001 11:33:30 AM
Subject: : Re: Political Affairs Outreach Newsletter
Attachments: P_UTRQ0004_WHO.TXT_1.doc

Begin Original ARMS Header
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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2001 16:33:30.00
SUBJECT:: Re: Political Affairs Outreach Newsletter
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:kenneth b. mehlman (CN=kenneth b. mehlman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

will get back to you this evening; thx

Leonard B. Rodriguez
02/12/2001 01:43:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Political Affairs Outreach Newsletter

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Leonard B. Rodriguez
02/12/2001 01:38:28 PM
Record Type: Record

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cc: See the distribution list at the bottom of this message
Subject: Political Affairs Outreach Newsletter

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space is tight.

In the future, please email any info you would like to see in the newsletter including photos to me. In the Subject area enter Newsletter and date.

Gracias
Leonard

Message Copied
To:_____
Jennifer M. Oschal/WHO/EOP
Collister W. Johnson/WHO/EOP
Michael J. Napolitano/WHO/EOP
Alicia W. Davis/WHO/EOP@EOP
Kelley J. McCullough/WHO/EOP
David M. Thomas/WHO/EOP
Paul B. Dyck/WHO/EOP
Sara M. Taylor/WHO/EOP
Joshua L. Ginsberg/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UTRQ0004_WHO.TXT_1>

Political Affairs

OUTREACH

Volume 1, Issue 1 February 2001

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District Showing Republican Trend

Coddy Johnson
White House Associate Political Director—Central States

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Once composed of heavily unionized industrial workforces, South Bend and Michigan City have adapted to take advantage of the smaller high-tech industries now prevalent across the border in Northern Illinois. With over 40% of its population employed by these new industries, the 3rd CD has become a swing district.

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With a Republican State Senate, the GOP can now begin to repair the damage of the last Administrations fiscal irresponsibility.

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New Economy Voters/Wired Workers

Office of Strategic Initiatives

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Washington Republicans Approve Tax Plan

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"This thing has no place to go but up."
--Rep. Jerry Kleczka (D-Wis) on President Bush's tax cut plan

See Latinos

South Carolina and Louisiana Democrats Join GOP

POTUS Reaching Across Party Lines

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∴ ∴ ∴

REV_00125106

From: CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>
Sent: 2/12/2001 8:43:31 AM
Subject: : Political Affairs Outreach Newsletter
Attachments: P_HYMQ0004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2001 13:43:31.00
SUBJECT:: Political Affairs Outreach Newsletter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
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Record Type: Record

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cc: See the distribution list at the bottom of this message
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Message Copied
To:
Jennifer M. Oschal/WHO/EOP
Collister W. Johnson/WHO/EOP
Michael J. Napolitano/WHO/EOP
Alicia W. Davis/WHO/EOP@EOP
Kelley J. McCullough/WHO/EOP
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Paul B. Dyck/WHO/EOP

Sara M. Taylor/WHO/EOP
Joshua L. Ginsberg/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
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Volume 1, Issue 1 February 2001

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∴ ∴ ∴

REV_00125110

From:	CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To:	Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Ansley C. Tillman/WHO /EOP@EOP [WHO] <Ansley C. Tillman>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC:	Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	2/12/2001 10:17:22 AM
Subject:	: Interviews

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-FEB-2001 15:17:22.00
SUBJECT:: Interviews
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ansley C. Tillman ( CN=Ansley C. Tillman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Since all of these interviews are now taking place here at WW-2nd fl. all
of the visitors should be directed to come to the 17th and Penn Street
entrance and then to the West Lobby. They will not be going to the OEOB.

Jan is going to send me the most recent master schedule. I will give this
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info so she can do the WAVES for each person.

Ansley and Heather should both be included on future emails re: time
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Thanks!
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: jan e. williams/who/eop@eop [WHO] <jan e. williams>;ansley c. tillman/who/eop@eop [WHO] <ansley c. tillman>;heather larrison/who/eop@eop [WHO] <heather larrison>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/12/2001 10:19:46 AM
Subject: : Re: Interviews

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2001 15:19:46.00
SUBJECT:: Re: Interviews
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:jan e. williams (CN=jan e. williams/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:ansley c. tillman (CN=ansley c. tillman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:heather larrison (CN=heather larrison/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

The guards at the Southwest gate need to be informed each night, probably in person, of the new arrangement, because every candidate has been given instructions to see Jan in Room 158 of the OEOB. The guards need to be able to explain that there's been a change and there's no need to see Jan.

Elizabeth N. Camp
02/12/2001 03:17:19 PM
Record Type: Record

To: Jan E. Williams/WHO/EOP@EOP, Ansley C. Tillman/WHO/EOP@EOP, Heather Larrison/WHO/EOP@EOP
cc: Kyle Sampson/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
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CC: kenneth b. mehlman/who/eop@eop [WHO] <kenneth b. mehlman>
Sent: 2/12/2001 11:33:30 AM
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Attachments: P_UTRQ0004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2001 16:33:30.00
SUBJECT:: Re: Political Affairs Outreach Newsletter
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:kenneth b. mehlman (CN=kenneth b. mehlman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

will get back to you this evening; thx

Leonard B. Rodriguez
02/12/2001 01:43:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Political Affairs Outreach Newsletter

Brett-
Tried to track you down last week to discuss legalities regarding our Political Affairs newsletter. Can you please review and let us now if there is anything we need to be aware of... We would like to distribute as soon as possible. The doc is attached below.

Thanks
Leonard
---------- Forwarded by Leonard B. Rodriguez/WHO/EOP on 02/12/2001 01:39 PM ----------

Leonard B. Rodriguez
02/12/2001 01:38:28 PM
Record Type: Record

To: Kenneth B. Mehlman/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Political Affairs Outreach Newsletter

Attached is the Outreach Newsletter. Please print a copy and review, especially if your name is associated with a blurb. If you have any changes write them on a hard copy and get back to me asap. Please note, space is tight.

In the future, please email any info you would like to see in the newsletter including photos to me. In the Subject area enter Newsletter and date.

Gracias
Leonard

Message Copied
To:_____
Jennifer M. Oschal/WHO/EOP
Collister W. Johnson/WHO/EOP
Michael J. Napolitano/WHO/EOP
Alicia W. Davis/WHO/EOP@EOP
Kelley J. McCullough/WHO/EOP
David M. Thomas/WHO/EOP
Paul B. Dyck/WHO/EOP
Sara M. Taylor/WHO/EOP
Joshua L. Ginsberg/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UTRQ0004_WHO.TXT_1>

Political Affairs

OUTREACH

Volume 1, Issue 1 February 2001

Six Term Democratic Congressman Tim Roemer not Seeking Re-election

District Showing Republican Trend

Coddy Johnson
White House Associate Political Director—Central States

Congressman Tim Roemer announced on January 26, 2001 that he would not seek re-election to Indiana's 3rd Congressional District. Roemer's retirement follows an unexpectedly close 2000 election in his Republican turning district. He faced Republican newcomer Chris Chocola and won by just 4%. His narrow 2000 victory showed the district's Republican trend.

Once composed of heavily unionized industrial workforces, South Bend and Michigan City have adapted to take advantage of the smaller high-tech industries now prevalent across the border in Northern Illinois. With over 40% of its population employed by these new industries, the 3rd CD has become a swing district.

Also, due to reapportionment, Indiana will lose a congressional seat next cycle. Population flow may require that the 3rd CD expand westward into heavily Republican LaGrange, Noble, and Kosciusko counties, and if Congressman Visclosky (D, IN-1) fights to expand his district into the most heavily Democratic sections of the 3rd CD, this District could well be Republican next cycle.

GOP Captures Missouri State Senate

GOP Makes Inroads in Missouri

Coddy Johnson
White House Associate Political Director—Central States

Due to retirements, two special elections were held Tuesday, November 24, 2000. Republicans won two of the three – in the 12th and 18th districts, respectively. With their victories, Missouri State Senator John Cauthorn and Missouri State Senator David Klindt, allowed the GOP to capture the Missouri State Senate for the first time in 52 years.

With a Republican State Senate, the GOP can now begin to repair the damage of the last Administrations fiscal irresponsibility.

New Voter Group Has Emerged

New Economy Voters/Wired Workers

Office of Strategic Initiatives

With a growing segment of the population working in technology-related jobs and 42 million workers now with Internet access, many pollsters and political pundits believe a new voter group has emerged. Referred to as both "wired workers" and "New Economy" voters, this group is an estimated 20 to 33 percent of the electorate.

According to Pew Research Center, "wired workers" are more likely to be younger, highly educated and male and work in suburban office parks. 40% describe themselves as independent, compared to 27% of all voters. *Business Week* describes these "New Economy" voters as socially moderate to liberal (pro-choice, pro-environment, anti-gun) and fiscally conservative (attracted by tax cuts, vouchers, social security reform). They generally oppose programs that guarantee outcomes, such as affirmative action and welfare.

A DLC post-election survey conducted November 11-12 by Clinton pollster Mark Penn showed that "wired workers" favored President Bush over Vice President Gore. The DLC survey revealed that "wired workers" were strongly attracted by President Bush's commitment to change Washington's tone. And by a 6 to 1 margin, these voters said that the role of government is to equip people to solve their own problems rather solving people's problems and protecting them from adversity. In his analysis, Penn posits that Gore's populist message turned off many wired workers.

VOTERS WHO USE THE INTERNET		
Bush	49	
Gore	47	*Source: VNS*

As computer and Internet access continue toward ubiquity, the group may grow so large that it simply mirrors the electorate as a whole. However, its emergence in 2000 clearly signals a workforce transformation that (i) may diminish the class-based divisions of the Old Economy and (ii) present a challenge in communicating with workers who get information from non-traditional sources.

REV_00125116

Washington Leaders Unanimously Endorse Bush Tax Plan

Washington Republicans Approve Tax Plan

Dave Thomas
White House Associate Political Director—Western States

Forty-nine House and 24 Senate Republican members of the Washington State Legislature unanimously endorsed the tax plan sent to Congress last week by President Bush.

House Co-Speaker Clyde Ballard announced, "It's about people and their right to keep more of the money they earn. The citizens of Washington have made it clear, with overwhelming approval of recent tax-cut initiatives, that government has enough of their money. The President's decision to give relief to taxpayers is in tune with the message that the people of Washington have been sending us."

Along with Ballard, Senate Minority Leader James West wrote to President Bush, "Your commitment and dedication to the quality of life of all citizens of the United States signals a welcome new form of leadership, one that embraces the American people and reaffirms our trust…America's best and brightest days do lie ahead."

Latino Families On-Board with Bush Tax Plan

POTUS Appeal Among Latinos Continues

Sara Taylor
White House Associate Political Director—Midwestern States

Last week more than 20 families around the country traveled to the White House for a tax family reunion with President Bush.

Among them, the Terrazus family of NM, the Hector, Melow and Fuller families of Florida, and the Ramos family of Pennsylvania joined the President to hear once again that he would make good on his promise to cut taxes.

"This thing has no place to go but up."
--Rep. Jerry Kleczka (D-Wis) on President Bush's tax cut plan

See Latinos

South Carolina and Louisiana Democrats Join GOP

POTUS Reaching Across Party Lines

Kelley McCullough
White House Associate Political Director—Southern States

In South Carolina, Lt. Governor Bob Peeler was a key player in bringing Senator Verne Smith of Greer to the Republican Party, thus giving the GOP control of the State Senate.

Following in the same footsteps, President Bush welcomed Louisiana Democrats, including State Representative Hunt Downer of Houma, State Senator Robert Barham of Oak Ridge, Sheriff Gregory Champaign of St. Charles Parish and New Iberia Mayor Ruth Fontenot to the White House Friday to commemorate their decision to join the GOP.

Barham's party switch is seen as a strong signal for a possible run for Congress in the 5th District, while political insiders speculate that Downer is headed for a gubernatorial run in 2003.

Louisiana Party Switchers Meet with President Bush in the Roosevelt Room of the White House

Latinos Approve Tax Plan

Paul Terrazus an Albuquerque resident and University of New Mexico computer lab manager told reporters that he and his family could use some tax relief. "That would make a very nice summer vacation each year for us witout having to cut corners," he said. Under the plan his family would save $1,400 per year.

∴ ∴ ∴

REV_00125117

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Ziad S. Ojakli/WHO /EOP@EOP [WHO] <Ziad S. Ojakli>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 2/12/2001 2:44:51 PM
Subject: : intro...

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-FEB-2001 19:44:51.00
SUBJECT:: intro...
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Alison -

Libby Camp here - I am Executive Assistant to Counsel to the President Al
Gonzales.

Z and I finally got to talk just now about a letter we need to send out as
soon as possible on Tuesday to Senators - Z and our Counsel guys will
determine exactly who gets this letter (all Republican Senators, any
Reps?)

Once that decision is made I need to work with you on the list, printing
and delivery of letters - they will be signed by Al.

Wanted to let you know this very time sensitive project is coming your way
and send you my number in case you have any questions.

Thanks!

Libby Camp
456-2632
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>
Sent: 2/13/2001 12:51:09 AM
Subject: : Mission Statements

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-FEB-2001 05:51:09.00
SUBJECT:: Mission Statements
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

As to the OPA mission statement, I have some minor questions about a few parts. Overall, much of this, of course, is classic political activity and as such is entirely permissible so long as we ensure the proper allotment of costs incurred as a result (and so long there is no fundraising or solicitation on government property).

These are prophylactic points, but I would delete "what the Bush Administration can do on these matters" on page 1. I would delete "grants and contracts" on page 2 under point 2. In the next to last bullet under point 2 on page 2, I would change "how the Administration can be helpful" to "how OPA and the RNC can be helpful."

As to the target state political plan, that looks entirely fine.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/13/2001 6:39:44 AM
Subject: : RE:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-FEB-2001 11:39:44.00
SUBJECT:: RE:
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Is there a revised master schedule or is everything as it was yesterday
morning?
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/13/2001 5:01:24 AM
Subject: : Response letters to announced judicial retirements

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-FEB-2001 10:01:24.00
SUBJECT:: Response letters to announced judicial retirements
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I assume that when a sitting judge sends the President a letter, with a
cc: to us, announcing his retirement or senior status, a response from the
President thanking the judge for his many years of excellent service etc.
etc. will be generated by the President's correspondence people and that
we are not responsible for generating those letters. Please let me know
if you believe this is incorrect.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard G. Walker/WHO/EOP@EOP [WHO] <Helgard G. Walker>
Sent: 2/14/2001 4:19:55 AM
Subject: : please forward Noel's e-mail

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-FEB-2001 09:19:55.00
SUBJECT:: please forward Noel's e-mail
TO:Helgard G. Walker ( CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/14/2001 4:52:50 AM
Subject: : Re: 11:00 with Lezlee from Public Liaison moved to 11:30...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2001 09:52:50.00
SUBJECT:: Re: 11:00 with Lezlee from Public Liaison moved to 11:30...
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What is the meeting with Lezlee Westin?

Elizabeth N. Camp
02/14/2001 09:31:55 AM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP
cc: H. Christopher Bartolomucci/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
Subject: 11:00 with Lezlee from Public Liaison moved to 11:30...

This means your meeting with Al to review binder needs to be moved to 12 noon. Please review cc list to make sure I got the other attorneys involved with the meeting to review binder.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard G. Walker/WHO/EOP@EOP [WHO] <Helgard G. Walker>
Sent: 2/14/2001 4:19:55 AM
Subject: : please forward Noel's e-mail

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-FEB-2001 09:19:55.00
SUBJECT:: please forward Noel's e-mail
TO:Helgard G. Walker ( CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel R. Brand/WHO /EOP@EOP [WHO] <Rachel R. Brand>
Sent: 2/14/2001 12:09:29 PM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-FEB-2001 17:09:29.00
SUBJECT::
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Good job!
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Helgard G. Walker/WHO/EOP@EOP [WHO] <Helgard G. Walker>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/15/2001 6:14:45 AM
Subject: : Re: More on the ABA's role in judicial selection

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2001 11:14:45.00
SUBJECT:: Re: More on the ABA's role in judicial selection
TO:Helgard G. Walker ( CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

You're right, joined by Buckley and Williams.
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2001 9:38:16 AM
Subject: : 1999 DOJ Regs on Appointing Special Counsels

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2001 14:38:16.00
SUBJECT:: 1999 DOJ Regs on Appointing Special Counsels
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

In case any of you wants to review the DOJ regs governing appointment of
Special Counsels, they can be found on-line at:
www.usdoj.gov/criminal/publications/specialcounselreg. (This is not a
link; you need to type this into your browser to pull up the regs.)
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 2/15/2001 8:29:00 PM
Subject: : Draft letter to senior Republican congressmen on judicial selection
Attachments: P_HGHS0004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-FEB-2001 01:29:00.00
SUBJECT:: Draft letter to senior Republican congressmen on judicial selection
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached is a draft letter for those states where there is no Republican
Senator. Brett is preparing the list of Representatives to whom this
should be sent. Please let me know if you have any comments. (Libby:
since the Judge may not check his e-mail on a timely basis, you may want
to print this out and put it in his hard-copy queue.) Thanks.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HGHS0004_WHO.TXT_1>
```

February 16, 2001

Dear Congressman «Last»:

President Bush has asked that we begin the process of evaluating candidates to fill existing vacancies in the federal courts. I am writing to advise you of the basic procedures the President intends to follow in states that have no Republican Senator, and to solicit your advice with respect to existing vacancies.

In states that do not have a Republican Senator, the President intends to exercise independent judgment and to make judicial selections that he deems to be in the long-term best interests of the judicial district or circuit in question and of the nation as a whole. You should be aware that presidential prerogative will be at its most robust with respect to nominations to the circuit courts of appeals. However, regardless of the court, President Bush welcomes input and suggestions from senior Republican representatives in Congress or other senior Republican elected officials in the state, and he intends to give serious consideration to all such input.

The input to which the President can be expected to accord the greatest deference is that which represents a consensus among the senior Republican officeholders in the state and/or are the result of a formal merit selection process designed to ensure uniformly excellent recommendations likely to find acceptance in the United States Senate. You may, of course, make whatever specific arrangements you wish with your colleagues and employ whatever procedures you deem appropriate, but the President will determine how much weight to give recommendations based upon a variety of factors relating to the fairness and quality of the procedures employed. Please advise my office promptly of whatever arrangements exist in your state so that my office and the Department of Justice may consult the proper parties.

President Bush has consistently said that he will appoint men and women to the federal bench who meet the highest standards of ethics and personal integrity, are recognized for their professional excellence, and believe in judicial restraint. It is essential that federal judges understand that under our system of separation of powers, judges should not legislate from the bench. These principles will guide his decisions on nominations and it is hoped that you will consider them as you make your recommendations.

President Bush requests that recommendations for judicial vacancies be forwarded to him in writing, with copies to the Attorney General and the Counsel to the President. Comments or questions concerning vacancies and the identification of suitable candidates to fill them may be directed to my office.

I look forward to working with you to ensure that upcoming appointments to the federal judiciary are of the very highest quality.

Sincerely,

Alberto R. Gonzales
Counsel to the President

Honorable «First» «Last»
United States House of Representatives
Washington, D.C. [zip]

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 2/15/2001 8:30:50 PM
Subject: : Re: Draft letter to senior Republican congressmen on judicial selection
Attachments: P_V5IS0004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-FEB-2001 01:30:50.00
SUBJECT:: Re: Draft letter to senior Republican congressmen on judicial selection
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Note that we have letters from the Democratic Senators in Wisconsin and
Washington. In figuring how to address these letters in those states, we
ought to take those communications into account. Rove's shop may also be
helpful in identifying the proper addressee, understanding that the
default is usually the senior Republican congressman, except perhaps in
large states such as California and New York or states with politically
important Republican Governors such as Michigan.




Brett M. Kavanaugh
02/15/2001 04:08:06 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: alberto r. gonzales/who/eop@eop, elizabeth n. camp/who/eop@eop,
timothy e. flanigan/who/eop@eop
bcc:
Subject: Re: Draft letter to senior Republican congressmen on
judicial selection

States are:

California
Connecticut
Delaware
Florida
Georgia
Hawaii
Louisiana
Maryland
Masschusetts
Michigan
Minnesota
New Jersey
New York
North Dakota
```

South Dakota
Washington
West Virginia
Wisconsin

Bradford A. Berenson
02/15/2001 04:03:21 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
cc:
Subject: Draft letter to senior Republican congressmen on judicial selection

Attached is a draft letter for those states where there is no Republican Senator. Brett is preparing the list of Representatives to whom this should be sent. Please let me know if you have any comments. (Libby: since the Judge may not check his e-mail on a timely basis, you may want to print this out and put it in his hard-copy queue.) Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V5IS0004_WHO.TXT_1>

February 16, 2001

Dear Congressman «Last»:

President Bush has asked that we begin the process of evaluating candidates to fill existing vacancies in the federal courts. I am writing to advise you of the basic procedures the President intends to follow in states that have no Republican Senator, and to solicit your advice with respect to existing vacancies.

In states that do not have a Republican Senator, the President intends to exercise independent judgment and to make judicial selections that he deems to be in the long-term best interests of the judicial district or circuit in question and of the nation as a whole. You should be aware that presidential prerogative will be at its most robust with respect to nominations to the circuit courts of appeals. However, regardless of the court, President Bush welcomes input and suggestions from senior Republican representatives in Congress or other senior Republican elected officials in the state, and he intends to give serious consideration to all such input.

The input to which the President can be expected to accord the greatest deference is that which represents a consensus among the senior Republican officeholders in the state and/or are the result of a formal merit selection process designed to ensure uniformly excellent recommendations likely to find acceptance in the United States Senate. You may, of course, make whatever specific arrangements you wish with your colleagues and employ whatever procedures you deem appropriate, but the President will determine how much weight to give recommendations based upon a variety of factors relating to the fairness and quality of the procedures employed. Please advise my office promptly of whatever arrangements exist in your state so that my office and the Department of Justice may consult the proper parties.

President Bush has consistently said that he will appoint men and women to the federal bench who meet the highest standards of ethics and personal integrity, are recognized for their professional excellence, and believe in judicial restraint. It is essential that federal judges understand that under our system of separation of powers, judges should not legislate from the bench. These principles will guide his decisions on nominations and it is hoped that you will consider them as you make your recommendations.

President Bush requests that recommendations for judicial vacancies be forwarded to him in writing, with copies to the Attorney General and the Counsel to the President. Comments or questions concerning vacancies and the identification of suitable candidates to fill them may be directed to my office.

I look forward to working with you to ensure that upcoming appointments to the federal judiciary are of the very highest quality.

Sincerely,

Alberto R. Gonzales
Counsel to the President

Honorable «First» «Last»
United States House of Representatives
Washington, D.C. [zip]

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/16/2001 5:02:40 AM
Subject: : Another bit of help for whenever you have a minute

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-FEB-2001 10:02:40.00
SUBJECT:: Another bit of help for whenever you have a minute
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There are a number of historical and other materials bearing upon the judicial nomination and confirmation process that we should get our hands on. If you would try to track these down and then provide copies to both me and Brett at your convenience, I would appreciate it.

1. The Code of Conduct for United States Judges.

2. Historical data on nominations and confirmations to the federal courts (especially since 1980) from the Federal Judicial Center.

3. A series of articles published from time to time in Judicature magazine by Professors Sheldon Goldman and Eliot Slotnick. If these are not available through our library or electronically, we might call Judicature or the profs, but please do not do this without checking with me and Brett first.

The library up on the 4th or 5th Floor ought to be able to help with a lot of this.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/16/2001 9:17:05 AM
Subject: : Re: Draft letter to senior Republican congressmen on judicial selection
Attachments: P_GZWS0004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-FEB-2001 14:17:05.00
SUBJECT:: Re: Draft letter to senior Republican congressmen on judicial selection
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Ditto...
```

```
Brett M. Kavanaugh
02/15/2001 04:08:06 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: alberto r. gonzales/who/eop@eop, elizabeth n. camp/who/eop@eop,
timothy e. flanigan/who/eop@eop
bcc:
Subject: Re: Draft letter to senior Republican congressmen on
judicial selection

States are:

California
Connecticut
Delaware
Florida
Georgia
Hawaii
Louisiana
Maryland
Masschusetts
Michigan
Minnesota
New Jersey
New York
North Dakota
South Dakota
Washington
West Virginia
Wisconsin
```

```
Bradford A. Berenson
02/15/2001 04:03:21 PM
```

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
cc:
Subject: Draft letter to senior Republican congressmen on judicial selection

Attached is a draft letter for those states where there is no Republican Senator. Brett is preparing the list of Representatives to whom this should be sent. Please let me know if you have any comments. (Libby: since the Judge may not check his e-mail on a timely basis, you may want to print this out and put it in his hard-copy queue.) Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GZWS0004_WHO.TXT_1>

February 16, 2001

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Sincerely,

Alberto R. Gonzales
Counsel to the President

Honorable «First» «Last»
United States House of Representatives
Washington, D.C. [zip]

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Ansley C. Tillman/WHO/EOP@EOP [WHO] <Ansley C. Tillman>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel r. brand/who/eop@eop [WHO] <rachel r. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;helgard g. walker/who/eop@eop [WHO] <helgard g. walker>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/16/2001 1:40:38 PM
Subject: : Re: U Chicago

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-FEB-2001 18:40:38.00
SUBJECT:: Re: U Chicago
TO:Ansley C. Tillman (CN=Ansley C. Tillman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel r. brand (CN=rachel r. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard g. walker (CN=helgard g. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I went to U of Chicago for both College and Law School and would be happy to go in his place, if they would be satisfied with me as a substitute.

Noel

Ansley C. Tillman
02/16/2001 06:38:30 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: U Chicago

Anyone?
---------- Forwarded by Ansley C. Tillman/WHO/EOP on 02/16/2001 06:38 PM ----------

Adrian G. Gray
02/16/2001 03:08:54 PM
Record Type: Record

To: Ansley C. Tillman/WHO/EOP@EOP
cc:
Subject: U Chicago

Karl got an invite to speak to the University of Chicago Law School Republicans. Do we have any counsels that may have gone to U of Chicago Law that may want to fo in his place?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel R. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Helgard G. Walker/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
Sent: 2/18/2001 2:35:23 PM
Subject: : Clint

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-FEB-2001 19:35:23.00
SUBJECT:: Clint
TO:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I also received his memo; I assume he sent it to everyone.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/18/2001 3:59:17 PM
Subject: : meeting with Tom Daugherty, Judge and Tim

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-FEB-2001 20:59:17.00
SUBJECT:: meeting with Tom Daugherty, Judge and Tim
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Heather - I need to schedule a meeting for Tuesday of this week with Tom,
Tim and Al to discuss WAVES issues. Can you tell me when Tim is available
on Tuesday so I can get this scheduled, please?

Brett - will you be in attending this meeting? Please let me know so I
can keep you posted on meeting date/time.

Thanks!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
Sent: 2/19/2001 8:13:23 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2001 13:13:23.00
SUBJECT::
TO:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Did you make copies of the official/political memos you returned?
```

From: CN=Rachel R. Brand/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/19/2001 8:27:06 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-FEB-2001 13:27:06.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes

Brett M. Kavanaugh
02/19/2001 01:13:22 PM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP
cc:
Subject:

Did you make copies of the official/political memos you returned?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David A. Carney/WHO/EOP@EOP [WHO] <David A. Carney>
Sent: 2/19/2001 8:52:07 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2001 13:52:07.00
SUBJECT::
TO:David A. Carney ( CN=David A. Carney/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Are you squared away; I have a note that you had a question. My
number is 6-7984.
```

From: CN=David A. Carney/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/19/2001 10:47:41 AM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David A. Carney ( CN=David A. Carney/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2001 15:47:41.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett,
We are all squared away. Thanks.
Dave
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/19/2001 1:10:57 PM
Subject: : revised subpoena memo
Attachments: P_3AAT0004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2001 18:10:57.00
SUBJECT:: revised subpoena memo
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

attached.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3AAT0004_WHO.TXT_1>
```

DRAFT 4

February __, 2001

MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

RE: Subpoenas and Document Requests

If the Executive Office of the President (EOP), or any component thereof, receives a document subpoena or document request from a congressional committee, court, or grand jury, the Counsel's Office will provide immediate notice and instructions to EOP officers and employees. The instructions will explain the appropriate steps for you to follow in preserving relevant documents and submitting them to the Counsel's office for production by the Counsel's office to the investigating authorities.

Once an EOP officer or employee learns (whether by notice from the Counsel's Office or otherwise) of such a subpoena or document request -- or learns that such a subpoena or document request is likely -- the individual should take extraordinary care to preserve any and all documents in his or her possession, custody, or control that conceivably could be encompassed by such a subpoena or document request. The consequences of knowingly failing to do so can be severe, including criminal prosecution.

It is critical to understand that you must comply with the specific requirements of any subpoena or document request. The requirements of a subpoena or document request override the provisions of the Presidential Records Act.

Finally, it is possible that an EOP officer or employee may personally receive a subpoena or request from a congressional investigating committee, court, or grand jury – that is, a subpoena or document request that is directed to him or her as an individual. In such a case, the employee must comply with that subpoena or request as required by law. To the extent the subpoena or document request calls for production of documents or testimony related to official work, however, the White House employee or his or her personal attorney should inform the Counsel's office immediately of the subpoena or document request so that appropriate procedures can be employed, and appropriate decisions made, about any governmental privileges that may apply. In that situation, the Counsel's Office will take appropriate steps, in consultation with the relevant investigating authorities, to ensure that any factual information communicated to the Counsel's Office in connection with the privilege determination is properly handled and not inappropriately shared with other EOP officers or employees (or their counsel).

From: CN=Helgard G. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>
Sent: 2/20/2001 5:33:11 AM
Subject: : Re: Meet

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2001 10:33:11.00
SUBJECT:: Re: Meet
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I can.

Brett M. Kavanaugh
02/20/2001 10:31:16 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Helgard G. Walker/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Meet

Can we meet at 11:45?

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;helgard g. walker/who /eop@eop [WHO] <helgard g. walker>
Sent: 2/20/2001 5:56:24 AM
Subject: : Re: Meet

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2001 10:56:24.00
SUBJECT:: Re: Meet
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard g. walker (CN=helgard g. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

You bet.

Brett M. Kavanaugh
02/20/2001 10:31:16 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Helgard G. Walker/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Meet

Can we meet at 11:45?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard G. Walker/WHO/EOP@EOP [WHO] <Helgard G. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 2/20/2001 5:31:19 AM
Subject: : Meet

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-FEB-2001 10:31:19.00
SUBJECT:: Meet
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard G. Walker ( CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can we meet at 11:45?
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: helgard g. walker/who/eop@eop [WHO] <helgard g. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 2/20/2001 5:41:51 AM
Subject: : Re: Meet

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2001 10:41:51.00
SUBJECT:: Re: Meet
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:helgard g. walker (CN=helgard g. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Fine.

Brett M. Kavanaugh
02/20/2001 10:31:16 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Helgard G. Walker/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Meet

Can we meet at 11:45?

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/20/2001 6:55:05 AM
Subject: : Tonight's meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-FEB-2001 11:55:05.00
SUBJECT:: Tonight's meeting
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Would there be any way for us to move this back to 5:30? My wife has to go out tonight and is hoping I can get home by 7:00. If 5:30 doesn't work, no big deal, we'll keep it at 7:00. But if it's equally convenient, let me know, and maybe I can score a point with the boss.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/20/2001 8:49:52 AM
Subject: : Re: Tonight's meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2001 13:49:52.00
SUBJECT:: Re: Tonight's meeting
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

How about 3:00 p.m. tomorrow, then? I don't know specifically what's on your mind, but if it relates to judicial selection, it may make sense to do it close to the WHJSC meeting anyway.

Brad

Kyle Sampson
02/20/2001 12:03:36 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Tonight's meeting

I have a PPO staff meeting from 5:00 p.m. to about 6:30 p.m., so we definately can move it up to 6:30 p.m. Doesn't have to be tonight either -- tomorrow anytime after 3:00 p.m. would work for me. Let me know. I'm all for scoring points with the boss.

Bradford A. Berenson
02/20/2001 11:55:02 AM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Tonight's meeting

Would there be any way for us to move this back to 5:30? My wife has to go out tonight and is hoping I can get home by 7:00. If 5:30 doesn't work, no big deal, we'll keep it at 7:00. But if it's equally convenient, let me know, and maybe I can score a point with the boss.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard G. Walker/WHO /EOP@EOP [WHO] <Helgard G. Walker>
Sent: 2/20/2001 10:05:33 AM
Subject: : 28 USC 44

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-FEB-2001 15:05:33.00
SUBJECT:: 28 USC 44
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard G. Walker ( CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/21/2001 3:05:38 PM
Subject: : Michigan judges news -- READ

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-FEB-2001 20:05:38.00
SUBJECT:: Michigan judges news -- READ
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

From Detroit paper on Sunday:

"Michigan's two Senate seats are held by Democrats -- Carl Levin and
Debbie Stabenow --
and they have a grudge to settle. Levin and Stabenow have written
President George W. Bush
asking that two hold-over appointments from the Clinton era get a hearing
before new nominees
are considered. Michigan Court of Appeals Judge Helene White and Detroit
attorney
Kathleen McCree Lewis were nominated by Clinton, but never got a Senate
hearing
because of stonewalling by former Michigan Sen. Spencer Abraham. The
senator felt
Clinton reneged on a deal he'd made with Republicans for submitting
nominees.

Paybacks are hell.

Traditionally, a judicial nominee doesn't get a hearing unless the home
state senators return
a "blue slip" indicating no objections. Levin says he'll be reluctant to
return a blue slip for any
new nominees until White and Lewis get a hearing.

So far, Republicans aren't crazy about giving up two Sixth Circuit seats
in exchange for
filling the other two with GOP-friendly judges. They hope with some
deal-making they can
capture all four seats.

But they know they must move fast and are busy compiling a list of names
to send to the
White House.

If they lose control of the Senate, the game is over.

Levin stops short of suggesting Democrats will sit on judicial
appointments if they get a
Senate majority.

But he notes that in the last Congress, only 15 of Clinton's 31 appeals
```

court nominees
were confirmed; in the previous Congress, only 11 of 20 nominees were confirmed.
That compares with a two-thirds approval rate for the nominations of Presidents Reagan
and Bush, and nearly 90 percent of President Carter's.

Meanwhile, the federal courts face a critical shortage of judges, with about 30 appeals
court openings waiting to be filled.

It's the worst sort of partisan politics and exactly why American voters are weary of
ideological differences interfering with the basic functions of government.
If Republicans and Democrats allow the judicial shortage to get much worse,
they may find their political futures looking shorter than Thurmond's.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Gian-Carlo A. Peressutti/WHO/EOP@EOP [WHO] <Gian-Carlo A. Peressutti>
CC: lezlee j. westine/who/eop@eop [WHO] <lezlee j. westine>;Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
Sent: 2/22/2001 9:21:14 AM
Subject: : Re: ABE

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-FEB-2001 14:21:14.00
SUBJECT:: Re: ABE
TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:lezlee j. westine (CN=lezlee j. westine/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We'll get on it right away.

Gian-Carlo A. Peressutti
02/22/2001 02:06:52 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Lezlee J. Westine/WHO/EOP@EOP
Subject: ABE

Brett -

As you know, the WH and the Office of Public Liaison in particular are interested in defining their role with regard to an organization now becoming known as ABE - Americans for Better Education.

ABE is being created as an independent organization dedicated to facilitating the passage of The President's No Child Left Behind education agenda. ABE would be housed, funded, and staffed as a group totally independent from the WH. It would:

Raise money
Lobby Congress
Conduct a media campaign
Work at the corporate and grassroots level to pass this agenda

With this in mind, what is the legal, and ethical role that the WH and any staffers can play with regard to ABE.

Can we:

Be present at ABE meetings (assuming they're off campus)?
Discuss the formation, organization, and mission of ABE?
Refer those interested in helping POTUS with his ed. plan to ABE and its offices/staff?
Actively recruit for ABE from among contacts we have made here at the WH?

We're at the point in the formation of this organization where many here feel that we have to be very careful. The answers to these questions will

go a long way in helping us move forward.

Many thanks for your help, Brett.

Gian-Carlo Peressutti
Associate Director, White House Office of Public Liaison
6-1611

From: CN=Vickers B. Meadows/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/22/2001 12:24:09 PM
Subject: : blue sheet

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Vickers B. Meadows ( CN=Vickers B. Meadows/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-FEB-2001 17:24:09.00
SUBJECT:: blue sheet
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Jay Banning and Michael Toner have approved blue sheet. Can we proceed
with this form? vbm
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>
Sent: 2/22/2001 12:29:45 PM
Subject: : Re: blue sheet

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-FEB-2001 17:29:45.00
SUBJECT:: Re: blue sheet
TO:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have reviewed, and I approve.

Vickers B. Meadows
02/22/2001 05:24:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: blue sheet

Jay Banning and Michael Toner have approved blue sheet. Can we proceed with this form? vbm

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/22/2001 1:44:49 PM
Subject: : Re: Outside Source Travel Form

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-FEB-2001 18:44:49.00
SUBJECT:: Re: Outside Source Travel Form
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

Moose asked me to forward this to you.

Jason
---------- Forwarded by Jason B. Torchinsky/WHO/EOP on
02/22/2001 06:44 PM ----------

Dee Dee Benkie
02/22/2001 05:59:22 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP
cc:
Subject: Re: Outside Source Travel Form

Jason
You are great!!!! I have another question
We have been assigned the duty of bringing in some of Mrs. Bush's guests
for the President's speech on Tuesday evening. We need to get them here
and have been told that the RNC could pay for their travel expense. Is
this true.
for example- we may invite some school teachers and tax relief families.
These are the people that the President refers to in the audience
during his speech

DD

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 2/22/2001 1:56:40 PM
Subject: : Re: Outside Source Travel Form

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-FEB-2001 18:56:40.00
SUBJECT:: Re: Outside Source Travel Form
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please ask Dee Dee if she knows how the travel of past
presidential guests to the State of the Union address has been paid for.

Jason B. Torchinsky
02/22/2001 06:44:46 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Outside Source Travel Form

Brett,

Moose asked me to forward this to you.

Jason
---------- Forwarded by Jason B. Torchinsky/WHO/EOP on
02/22/2001 06:44 PM ----------

Dee Dee Benkie
02/22/2001 05:59:22 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP
cc:
Subject: Re: Outside Source Travel Form

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for example- we may invite some school teachers and tax relief families.
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during his speech

DD

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Gian-Carlo A. Peressutti/WHO/EOP@EOP [WHO] <Gian-Carlo A. Peressutti>
Sent: 2/23/2001 10:51:24 AM
Subject: : Re: ABE

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-FEB-2001 15:51:24.00
SUBJECT:: Re: ABE
TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

A question: Who is creating this orgnization?

Gian-Carlo A. Peressutti
02/22/2001 02:06:52 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Lezlee J. Westine/WHO/EOP@EOP
Subject: ABE

Brett -

As you know, the WH and the Office of Public Liaison in particular are interested in defining their role with regard to an organization now becoming known as ABE - Americans for Better Education.

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Discuss the formation, organization, and mission of ABE?
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We're at the point in the formation of this organization where many here feel that we have to be very careful. The answers to these questions will go a long way in helping us move forward.

Many thanks for your help, Brett.

Gian-Carlo Peressutti
Associate Director, White House Office of Public Liaison

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
Sent: 2/26/2001 6:43:51 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-FEB-2001 11:43:51.00
SUBJECT:: Re:
TO:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

As to the former, we can say we won't share it now except in response to a judicial or congressional subpoena. It also will eventually be subject to potential disclosure under the Presidential Records Act, as you note. The e-mail address is the same analysis.

Note, moreover, that the rule in the post-12 year period is less absolute than you suggest; disclosure occurs only if disclosure otherwise would be authorized under FOIA (minus exemption 5). So the privacy exemption in FOIA may still protect some documents, particularly e-mail addresses (in the event anyone is concerned about disclosure of the address 15+ years from now). That is why I would use the "potential disclosure" language.

Rachel R. Brand
02/26/2001 11:28:54 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Prescott Caballero is looking for a sign-off on his web privacy policy as soon as possible. Basic questions are:
If someone sends an e-mail to the White House, can we say we won't share it. Seems to me the answer to that is No: it will be disclosed just like all other Presidential records 12 years following the end of the Administration.
The second question relates to e-mail addresses submitted through the website for purposes of receiving regular news updates from the WH. Is the e-mail address itself a record subject to the Act?

From: CN=Sara M. Taylor/OU=WHO/O=EOP [WHO]
To: Sara_M._Taylor@who.eop.gov@EOP [UNKNOWN] <Sara_M._Taylor@who.eop.gov@EOP>
CC: kenneth b. mehlman/who/eop@eop [WHO] <kenneth b. mehlman>;vickers b. meadows/who /eop@eop [WHO] <vickers b. meadows>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;amccord@rnchq.org @ inet [UNKNOWN] <amccord@rnchq.org>
Sent: 2/26/2001 7:15:21 AM
Subject: : Re: OMAHA EVENT

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sara M. Taylor ( CN=Sara M. Taylor/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-FEB-2001 12:15:21.00
SUBJECT:: Re: OMAHA EVENT
TO:Sara_M._Taylor@who.eop.gov@EOP ( Sara_M._Taylor@who.eop.gov@EOP [ UNKNOWN ] )
READ:UNKNOWN
CC:kenneth b. mehlman ( CN=kenneth b. mehlman/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:vickers b. meadows ( CN=vickers b. meadows/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:amccord@rnchq.org ( amccord@rnchq.org @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Discard the last message -- THEY DO WANT TO MAKE CALLS. AGAIN, SORRY FOR
THE CONFUSION. ANN, I WILL HAVE A SCRIPT FOR YOU MOMENTARILY.

SARA
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>
Sent: 2/27/2001 5:00:37 AM
Subject: : Re: Executive privilege waiver

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-FEB-2001 10:00:37.00
SUBJECT:: Re: Executive privilege waiver
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Oh, good. I wasn't aware that you had that meeting yesterday. That should cover it.

Brett M. Kavanaugh
02/27/2001 09:59:09 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: alberto r. gonzales/who/eop@eop, timothy e. flanigan/who/eop@eop
bcc:
Subject: Re: Executive privilege waiver

Agreed. Tim and I met yesterday with Jim Wilson, Chief Counsel of the Burton Committee, to discuss contingencies, and I think we are as clear as we can be for now. That is very good news that President Clinton plans not to assert privilege for those three pardons, however. That likely means that any areas of potential dispute involving our Office should be relatively minor.

Bradford A. Berenson
02/27/2001 09:37:32 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
Subject: Executive privilege waiver

The Wall Street Journal reports that the Clintons are preparing a limited waiver of executive privilege to allow Nolan, Lindsey, and Podesta to testify concerning the Vignali, Green, and Rich pardons only.

If the questioning goes beyond these pardons, privilege may be asserted,

and we may be asked to take a position on behalf of President Bush on very short notice. It may make sense to put some procedures in place, either internally or in consultation with the committee staff, for dealing with such a contingency.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Beach, Andrew <Andrew.Beach@usdoj.gov>
BCC: Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO]), Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 2/28/2001 2:55:26 AM
Subject: : RE: Wednesday's Judicial Selection Committee Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-FEB-2001 07:55:26.00
SUBJECT:: RE: Wednesday's Judicial Selection Committee Meeting
TO:"Beach, Andrew" <Andrew.Beach@usdoj.gov> ("Beach, Andrew" <Andrew.Beach@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
BCC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hey Andy,

Russell had mentioned this schedulign issue earier in the week and we discussed that if it isn't a problem for Ashcroft if we start without him it is okay by us.

Thanks!

Libby

PS- last night we gave Adam the notebooks for today.

"Beach, Andrew" <Andrew.Beach@usdoj.gov>
02/28/2001 07:21:54 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP
cc:
Subject: RE: Wednesday's Judicial Selection Committee Meeting

Libby:
the Attorney General is testifying at a Senate Intelligence Hearing on Capitol Hill which begins at 2:00 PM. It's very possible he will arrive a bit late for this meeting. Adam Ciongoli will be there.

Andy Beach
Assistant to the Attorney General for Scheduling
Tel: (202) 514-4195

-----Original Message-----
From: Elizabeth_N._Camp@who.eop.gov@inetgw
[mailto:Elizabeth_N._Camp@who.eop.gov]
Sent: Tuesday, February 27, 2001 5:00 PM
To: Ciongoli, Adam; Beach, Andrew; Brooke_Vosburgh@who.eop.gov@inetgw; Jan_E._Williams@who.eop.gov@inetgw; Heather_Larrison@who.eop.gov@inetgw; Carol_J._Thompson@who.eop.gov@inetgw;

Megan_R._Johnston@who.eop.gov@inetgw;
Israel_Hernandez@who.eop.gov@inetgw; Stacey_B._Silva@who.eop.gov@inetgw;
Alison_Jones@who.eop.gov@inetgw; Melissa_S._Bennett@who.eop.gov@inetgw;
Josephine_B._Robinson@who.eop.gov@inetgw;
Virginia_T._Gregory@who.eop.gov@inetgw;
Dee_Dee_Benkie@who.eop.gov@inetgw; Susan_B._Ralston@who.eop.gov@inetgw
Cc: Bradford_A._Berenson@who.eop.gov@inetgw;
Rachel_R._Brand@who.eop.gov@inetgw;
Noel_J._Francisco@who.eop.gov@inetgw;
Brett_M._Kavanaugh@who.eop.gov@inetgw;
Stuart_W._Bowen@who.eop.gov@inetgw;
Jason_B._Torchinsky@who.eop.gov@inetgw;
Brent_D._Greenfield@who.eop.gov@inetgw;
Courtney_S._Elwood@who.eop.gov@inetgw;
Helgard_G._Walker@who.eop.gov@inetgw;
Allison_L._Riepenhoff@who.eop.gov@inetgw
Subject: Wednesday's Judicial Selection Committee Meeting

TIME: We are still on for 4:00 pm on Wednesday.

LOCATION: The meeting will be held in Chief of Staff Andy Card's Office (West Wing, 1st floor) - not the Roosevelt Room.

Thanks and please call me if you have any questions.

Libby Camp
456-2632

Attendees:
Attorney General John Ashcroft
Andy Card - Chief of Staff
and/or Josh Bolten - Deputy Chief of Staff for Policy
Al Gonzales - Counsel to the President
Tim Flanigan - Deputy Counsel to the President
Karl Rove - Senior Advisor to the President
Chris Henick - Office of Strategic Initiatives
Clay Johnson - Presidential Personnel and Dpty. to Chief of Staff
and/or Kyle Sampson - Associate Director - Presidential Personnel
Nick Calio - Director of Legislative Affairs
and/or Ziad Ojakli - Senate/Legislative Affairs
Adam Ciongoli - Counselor to the Attorney General
Brett Kavanaugh - Associate Counsel to the President
Brad Berenson - Associate Counsel to the President
Stuart Bowen - Associate Counsel to the President
Christopher Bartolumucci - Associate Counsel to the President
Courtney Elwood, Associate Counsel to the President
Helgi Walker, Associate Counsel to the President
Noel Francisco - Assistant Counsel to the President
Rachel Brand - Assistant Counsel to the President

From: CN=Rachel R. Brand/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;rachel r. brand/who /eop@eop [WHO] <rachel r. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>
Sent: 3/2/2001 7:27:31 AM
Subject: : Re: Staff manual

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAR-2001 12:27:31.00
SUBJECT:: Re: Staff manual
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel r. brand ( CN=rachel r. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

My comments haven't been incorporated either.
```

```
Courtney S. Elwood
03/02/2001 12:07:13 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Staff manual

I reviewed it yesterday and gave extensive comments to Moose. I
understand that this new version does not incorporate my revisions.
```

Brett M. Kavanaugh
03/02/2001 10:00:41 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Staff manual

Who is and who is not reviewing the draft staff manual today? Per Judge's instructions, I think many of us independently should.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel R. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

Message Copied
To:_____
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
bradford a. berenson/who/eop@eop
helgard c. walker/who/eop@eop
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel r. brand/who/eop@eop
noel j. francisco/who/eop@eop
robert w. cobb/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 3/2/2001 5:16:16 AM
Subject: : When is the pull-down occurring?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAR-2001 10:16:16.00
SUBJECT:: When is the pull-down occurring?
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Rachel R. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 3/3/2001 12:49:10 PM
Subject: : FYI - Thurmond

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAR-2001 17:49:10.00
SUBJECT:: FYI - Thurmond
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From Novak's column today:

Inside Report: Thurmond watch continues
WASHINGTON -- Sen. Strom Thurmond, the 98-year-old president pro tem of the Senate, no longer routinely presides at the Senate's daily convening. He performed the task one day recently to show he could still handle it, but ordered the pledge of allegiance prior to the chaplain's invocation that is supposed to come first. Democratic senators are no longer content with a death watch on the frail nonagenarian Republican, whose departure would mean Democratic control of the Senate for the first time since 1994. They tell reporters (not for attribution) that Thurmond is not capable of representing South Carolina's citizens and should resign.
Waiting for Thurmond to leave is a major reason why Democrats have dragged their feet in adopting this year's Senate committee budgets. The Feb. 28 deadline came and went, and a new target of Mar. 10 has been set.

From: CN=Rachel R. Brand/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 3/3/2001 9:59:38 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAR-2001 14:59:38.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Huh?

Brett M. Kavanaugh
03/03/2001 02:57:08 PM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject:

If you guys orchestrated this, bravo.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: Ansley C. Tillman/WHO/EOP@EOP [WHO] <Ansley C. Tillman>
Sent: 3/4/2001 4:16:23 PM
Subject: : LRM IKK7 - - REVISE Justice Testimony on Money Laudering
Attachments: P_OJVY0004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-MAR-2001 21:16:23.00
SUBJECT:: LRM IKK7 - - REVISE Justice Testimony on Money Laudering
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ansley C. Tillman (CN=Ansley C. Tillman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ansley:

Helgi is doing this one Monday morning.

Brett

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
03/04/2001 09:15 PM ----------

Ansley C. Tillman
03/02/2001 05:46:26 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM IKK7 - - REVISE Justice Testimony on Money Laudering

revised version of the LRM I sent to you earlier....
---------- Forwarded by Ansley C. Tillman/WHO/EOP on
03/02/2001 05:45 PM ----------

Irene Kho
03/02/2001 05:35:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK7 - - REVISE Justice Testimony on Money Laudering

Attached is Justice REVISED testimony on money laundering before the
Senate Governmental Affairs Committee's Permanent Subcommittee on
Investigations on Tuesday, March 6th, at 9:30 AM.
Please review and provide comments by 11:00 AM Monday, March 5th. If we
do not hear from you by the deadline, we will presume that your agency has
no comment.

- moneylaundering306

Message Sent
To:_____
llr@do.treas.gov @ inet
clrm@doc.gov @ inet
statelrm@state.gov @ inet
OPBRE_E-Mail_-_EDITORS@OA.EOP.GOV @ inet
National Security Council LRM Recipients

Message Copied
To:_____
Andrew D. Hire/OMB/EOP@EOP
Edward H. Chase/OMB/EOP@EOP
Jill G. Crann/OMB/EOP@EOP
Ronald E. Jones/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Frederick M. Rosa/NSC/EOP@EOP
John R. Strachan/OMB/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Andrew Abrams/OMB/EOP@EOP
Hitesh Vyas/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Jennifer M. Baffi/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Ansley C. Tillman/WHO/EOP@EOP
Dirksen Lehman/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OJVY0004_WHO.TXT_1>

Testimony of Mary Lee Warren
Deputy Assistant Attorney General, Criminal Division
United States Department of Justice
on March 6, 2001

Before the Permanent Subcommittee on Investigations
of the
Committee on Governmental Affairs
United States Senate

Chairman Collins, Ranking Minority Senator Levin, members of the Subcommittee, I am pleased to appear before the Permanent Subcommittee on Investigations to offer the Department of Justice's views regarding the use and abuse of correspondent banking relationships in the United States. I serve as Deputy Assistant Attorney General, overseeing money laundering and asset forfeiture issues for the Criminal Division. Prior to this position, I was Chief of the Narcotic and Dangerous Drug Section, and before that, I was an Assistant U.S. Attorney in the Southern District of New York for 11 years, prosecuting drugs, money laundering and other cases.

The Criminal Division has been pleased to provide the Subcommittee with information concerning U.S. law enforcement activities related to our anti-money laundering efforts and correspondent bank relationships, and to share our views and insights on the prosecutive and investigative obstacles and hindrances presented by correspondent bank accounts. Further, we look forward to continuing our cooperative efforts with the Subcommittee to work towards the best possible statutory and

REV_00125294

regulatory framework to support our anti-money laundering enforcement efforts.

Today, you have asked the Department of Justice to focus its remarks in three main areas identified in the Subcommittee's Report: (1) the extent to which money laundering through U.S. correspondent bank accounts is a significant law enforcement concern; (2) the legal and practical challenges in seizing putative illicit funds and identifying beneficial owners of and depositors into such accounts; and (3) our views on recommended amendments of forfeiture law related to correspondent bank accounts and other Subcommittee recommendations.

Subcommittee Report on Correspondent Banking

At the outset, the Department would like to commend the Subcommittee for its fine efforts in carefully researching and producing the report on correspondent banking. As the Subcommittee members and your staff know, money laundering is an increasingly international phenomenon, involving trillions of legitimate dollars masking hundreds of millions of dollars of illicit proceeds flowing through the same international and domestic clearinghouses every day.

Access to the U.S. financial system through dollar-currency clearinghouses is fundamental to the world's legitimate financial markets, and correspondent banking is an essential service that financial institutions provide to legitimate customers around the

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globe. Unfortunately, permitting legitimate account-holders to have access to these financial services also necessarily exposes the same financial system to access by international money launderers and other criminals. Your report has correctly identified and highlighted this significant vulnerability of our financial system that has been and continues to be exploited by money launderers and other financial criminals worldwide. Infiltration of the global financial markets by substantial sums of illicit proceeds erodes the integrity of the entire system, as well as erodes the tax base of the affected countries. The Subcommittee's report on correspondent banking, as well as the previous one on private banking, make clear that without the proper monitoring and supervision, the legitimate and necessary financial mechanisms can and undoubtedly will become corrupted.

Impact of Correspondent Banking on Law Enforcement

The international movement of illicit proceeds through correspondent bank accounts servicing foreign institutions is often difficult to detect. Further, even when detected, law enforcement may encounter significant hurdles in tracing, seizing, and forfeiting such funds.

Typically, correspondent bank accounts are used in the "layering" or "integration" stages of money laundering, in which the criminal financiers attempt to mask the origin and nature of the underlying funds, after the proceeds have already been

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"placed" into the financial system. Determining the true beneficial owner of funds being transferred through a correspondent account can be a very difficult challenge for investigators in these second and third stages of money laundering.

Again and again, law enforcement investigations - despite best efforts by dedicated professionals - continue to be frustrated by the movements of criminally-derived funds into and through certain jurisdictions where our ability to identify the true beneficial owner is impaired or prevented. Most often, this frustration occurs, as noted in your report, when U.S. financial institutions offer banking relations to foreign "shell" banks, "offshore" banks, and other banks located in countries that provide unduly broad bank secrecy protections for customers and that have little or no effective anti-money laundering or forfeiture laws or regulations.

In addition, in many cases, a foreign bank may claim ownership of the entire amount in a correspondent account, thus protecting and shielding the actual identity of the underlying owner of the funds and allowing the owner to be shielded by the facade of the bank. Some foreign governments also impose legal restrictions and obstacles making it more difficult - if not impossible - to determine the true identity of the owner of the funds. In short, overly broad bank secrecy, ineffective licensing and regulatory oversight, and lack of effective anti-

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money laundering controls combine to make such cases a sometimes insurmountable challenge to financial crime investigators and regulators.

In foreign jurisdictions where "shell" banks or "offshore" banks operate with impunity, banks must be required to keep and maintain proper account and transaction records - particularly, as they relate to the true beneficial owners of funds or property - as banks are required to do in the U.S. It is important to keep such records to protect the bank against any liabilities assumed from questionable customers and to facilitate responses to the legitimate inquiries of effective law enforcement. The U.S. Government regularly works with a number of foreign governments to help establish anti-money laundering controls over their financial institutions.

Understanding that there are locations where foreign banks are not required to maintain banking records, U.S. institutions must then take all reasonable steps to ensure the bona fides of the foreign bank account-holder. U.S. institutions must understand the scope and rigor, if any, of the anti-money laundering and forfeiture regime under which the foreign institution operates - as well as the risks and consequences resulting from doing business with such entities. In addition, U.S. institutions should monitor their correspondent banking relationships on an ongoing basis, including the transaction activity and the legitimacy of the underlying account-holder(s).

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Further, law enforcement must be permitted to pierce bank secrecy laws, where appropriate, in order to obtain important financial records.

In sum, the U.S. financial institutions must be vigilant and the U.S. Government must ensure that our laws provide the necessary tools to prosecute individuals who knowingly facilitate the transfer of illicit funds through correspondent bank accounts, and to identify, seize, freeze, and forfeit criminal proceeds transacted through such accounts.

Successes in the Fight Against International Money Laundering

In the context of to the Subcommittee's focus today on correspondent bank accounts and their potential threat to the integrity of the international financial system and legitimate needs of law enforcement, I would be remiss if I did not outline the general facts of a few major successes at the Departments of Justice and the Treasury in our coordinated fight against international financial crime. As the Subcommittee is aware, the two Departments have worked hard together and scored important recent successes in the fight against money laundering.

"Operation Skymaster" was a highly successful undercover operation attacking money laundering that was taking place through the Black Market Peso Exchange (BMPE). From March 1997 through May 1999, Operation Skymaster undercover agents and informants managed to gain the trust of Colombian peso brokers

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working for Colombian narcotics traffickers. The BMPE system relies on peso brokers in Colombia who convert drug dollars collected and held in the United States into pesos for the Colombian drug suppliers in Colombia through the use of U.S. consumer goods imported into Colombia for Colombian businesses and paid for in U.S. drug dollars.

In this case, the peso brokers directed the undercover agents to pick up the proceeds from drug sales at particular locations and at particular times. The undercover agents then deposited the drug cash into government-controlled bank accounts and wire transferred such funds to bank accounts designated by the peso brokers. Using the Colombian BMPE system, the peso brokers, in turn, wire transferred the dollars to U.S. exporters as payment for goods received by the Colombian importers. Continuing the laundering cycle, the importers received confirmation that the wire transfers were sent and paid the peso brokers the equivalent amount in pesos in Colombia. Thereafter, the peso brokers delivered the pesos to the Colombian drug trafficking groups to complete the cycle.

Operation Skymaster combined the strengths of the U.S. Customs Service, U.S. Attorney's Office in Mobile, Alabama, and Department of Justice's Criminal Division, and has already resulted in 12 convictions on money laundering and drug conspiracy charges.

Similarly, in December 1999, five defendants were indicted

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in Atlanta, as part of the Organized Crime Drug Enforcement Task Force (OCDETF) anti-money laundering investigation entitled "Operation Juno," which involved a multi-million dollar money laundering scheme. Undercover agents participating in Operation Juno picked up drug proceeds at the direction of the money launderers usually ranging between $100,000 and $500,000 in U.S. currency in Dallas, Houston, New York, Newark, Providence, and Chicago, as well as Madrid and Rome. These funds were subsequently wire-transferred from the originating (collection) city to an undercover bank account in Atlanta and then distributed to various accounts in the U.S. and around the world. As in Operation Skymaster, the drug proceeds in Operation Juno were laundered through the Colombian Black Market Peso Exchange, as peso brokers "exchanged" the dollars on deposit in the undercover bank accounts for Colombian pesos obtained from Colombian importers of U.S. goods. Operation Juno combined the investigative and prosecutive efforts of the Drug Enforcement Administration (DEA), Internal Revenue Service-Criminal Investigation Division (IRS-CID) and U.S. Attorney's Office in Atlanta.

While these cases provide examples of successful investigations in terms of indictments, convictions, and forfeiture of assets, they also have revealed and highlighted some problems facing law enforcement in tracing and forfeiting criminal proceeds in foreign countries. Our money laundering

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laws, first enacted in 1986 to address a primarily domestic problem, have not kept pace with the developments in technology and international commerce since that time. The forfeiture cases spawned by Operations Skymaster and Juno investigations underscore the difficulties in forfeiting illegal proceeds transferred through correspondent bank accounts.

The problems encountered fall into three categories. First, due to the existence of offshore banks with representative offices in other foreign countries, it is difficult for U.S. law enforcement to determine the actual location of the funds and in which jurisdiction we should focus our forfeiture efforts. Even where U.S. law enforcement requests the assistance of the correct foreign jurisdiction, our ability to forfeit these funds depends upon the strength of the forfeiture laws in that jurisdiction, which, if available, are frequently incompatible with ours, and upon the cooperation of the foreign government.

The second category of problems arises from the limitations of domestic U.S. forfeiture law that can open to complex, time-consuming legal issues with respect to jurisdiction and venue for the forfeiture case. This is particularly true in cases when U.S. law enforcement does not know initially the final destination or beneficiary of the funds sent through a correspondent account and only determines this fact at a later point in time.

Finally, these problems are exacerbated by the statutory

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limitations that require the Government to bring forfeiture actions against "fungible property" - such as funds in a bank account - within one year from the date of a money laundering offense (Title 18 U.S.C. Section 984(b)). If the Government does not file its forfeiture action within that time, the Government is required to meet strict tracing requirements that can rarely be satisfied in cases involving correspondent bank accounts. Depending upon who claims a property interest in the funds seized from correspondent bank accounts, the Government may be required to prove that the respondent-bank itself was involved in the money laundering offense (18 U.S.C. Section 984(c)(1)) - often, a very difficult, if not impossible, task.

Problems presented by correspondent bank accounts in forfeiture cases have arisen not only in Operations Skymaster and Juno, but in other cases as well. For example, in Operation Casablanca, a money laundering prosecution based in Los Angeles involving foreign banks and their correspondent accounts, Criminal Division prosecutors in Washington, D.C. filed civil forfeiture complaints in the District of Columbia against the funds wire transferred to foreign accounts, pursuant to the authority granted in Title 18, U.S. Code, Sections 981(a) and 984, and Title 28 U.S. Code, Section 1355(b). Our efforts to have these funds frozen and forfeited met with a variety of results, depending upon the jurisdiction to which they were transmitted. In some cases, we received cooperation from our

REV_00125303

foreign counterparts and in others, we did not. In some cases where there was cooperation, challenges and questions were raised as to the appropriate venue and jurisdiction for the action, as well as to the actual location of the funds.

In Operation Casablanca, funds had been wire transferred to a bank account in a foreign location. After filing a civil forfeiture complaint, the Department requested assistance from the foreign government in freezing these funds, pursuant to the 1988 U.N. Vienna Convention. As a result, our foreign counterparts interviewed employees of the bank and determined that the bank, as well as the account to which the funds had been transferred, were actually located in another jurisdiction.

Pursuant to a mutual legal assistance treaty with the second country, the Department advised authorities that we had information concerning the transfer of drug proceeds to bank accounts within its jurisdiction. Because the laws of this second country only recognized criminal forfeiture and did not allow for assistance to the United States in a civil forfeiture action, the government of the second country opened its own investigation based on the information we provided, and subsequently froze the accounts. However, because the defendants were not then before that court, it was unclear whether the funds could be forfeited criminally. In addition, the bank did not appear to have any actual buildings or branches within the court's jurisdiction, and the assets securing the bank's

REV_00125304

obligations were not located in the country. Finally, having come almost full circle, it was determined that the assets we were pursuing were likely located in the foreign bank's correspondent account in a U.S. bank in New York City.

Indeed, there remains a great deal of uncertainty today as to the prospects for success in the U.S. civil forfeiture action, because there is a potential claim that the assets in question were actually "located" in the foreign bank's correspondent account in New York. This fact draws into question whether the District of Columbia is the appropriate jurisdiction for purposes of the underlying civil forfeiture action. Unfortunately, however, the Government is now precluded from filing a complaint in New York because of the one-year limitation under Section 984, discussed previously.

This scenario is one of many examples which illustrates the difficulties we face in tracing, seizing, and forfeiting assets held in correspondent accounts of foreign banks. One should further note that the above example described a situation where the foreign governments were cooperative with the U.S. requests. In many cases, such cooperation cannot be obtained, and the difficulties are further exacerbated if we are dealing with a non-cooperative bank secrecy jurisdiction.

Report Recommendations

Having described these cases, I would now like to shift my

REV_00125305

remarks to some of the recommendations in the Subcommittee's report and other suggested solutions. The Minority Staff Report includes six Recommendations "to reduce the use of U.S. correspondent banks for money laundering [purposes]." We believe that the first four of these Recommendations are primarily regulatory in nature and therefore best addressed by the bank regulators and supervisors. The final two Recommendations, however, deal with law enforcement issues; they suggest that: (1) the U.S. Government "should offer improved assistance to U.S. banks in identifying and evaluating high[-]risk foreign banks," and (2) "forfeiture protections [provisions] in U.S. law [should] be amended" to enhance our ability to seize and forfeit illicit funds flowing through correspondent bank accounts. These are valuable Recommendations, and we concur that they warrant further study and review. We would be pleased to work with the Subcommittee members and staff in revising forfeiture legislation to accomplish these worthy goals.

With respect to the part of the Recommendation relating to improving communication channels between the U.S. Government and U.S. banks, it is important to note that U.S. law enforcement currently participates with banks and other representatives from the financial community in an effort to disseminate anti-money laundering and financial crime-related information. The Departments of Justice and the Treasury are actively engaged with bank regulators and the banking community. For example, the

REV_00125306

Department participates in: (1) the Bank Secrecy Act Advisory Group with representatives from the banking and securities industry and money service businesses; (2) the Suspicious Activities Review group that recently produced the "SAR Activity Review," a series of anti-money laundering publications; and (3) outreach groups concerning the operation of the Black Market Peso Exchange system.

As to the portion of the Recommendation regarding advising banks of specific high-risk activities, the Departments of Justice, the Treasury, and State have been active participants in the Financial Action Task Force's (FATF's) initiative on "Non-Cooperative Countries and Territories." In an effort to encourage other countries to strengthen their anti-money laundering regime, the Department of Justice's Criminal Division works multilaterally to bolster coordinated worldwide enforcement efforts against financial crimes. This program endeavors to identify publicly the locations of the most prevalent money laundering activities in the world and the jurisdictions with the weakest anti-money laundering legal and regulatory framework. Indeed the FATF has identified 15 jurisdictions recently-named by the FATF as being "noncooperative" in money laundering matters. As well, the Department worked well with the Treasury Department and other federal regulators on FinCEN Advisory warnings explaining the shortcomings relating to these 15 jurisdictions.

This multilateral effort has proven to be successful in

REV_00125307

focusing the world's attention on countries that do not have adequate standards in anti-money laundering enforcement and inspiring named countries to address their shortcomings in this area. The Criminal Division also works extensively to provide assistance to countries that seek to improve their money laundering and asset forfeiture laws and enhance their enforcement programs.

While many jurisdictions do not have the proper anti-money laundering statutes and regulations in place, the U.S. Government, on its own, cannot compel the necessary changes. We need the cooperation of our foreign counterparts to disrupt the flow of criminal proceeds around the globe and deprive criminal organizations of their ill-gotten gains. We must continue to work, in concert, with our international partners to break down the obstacles and barriers that insulate, protect, and disguise the ill-gotten gains from detection in those jurisdictions where adequate anti-money laundering controls are lacking.

With respect to the last Recommendation amending our asset forfeiture laws as you suggest, we believe that such a provision would be beneficial in terms of pursuing and prosecuting forfeiture cases. A provision of this kind would eliminate the need to depend upon the enactment of foreign forfeiture law and the willingness of foreign authorities to cooperate. In addition, such a provision would disrupt criminals' attempting to shield their ill-gotten gains behind bank secrecy laws of

REV_00125308

uncooperative jurisdictions. We strongly believe, as mentioned previously, that illicit proceeds - wherever located in the world - should not be hidden from detection or immune from prosecution based upon weak anti-money laundering enforcement. There should be "no safe haven" for money that is the proceeds of crime.

Conclusion

Once again, I commend the Subcommittee and your staff for focusing attention on this important issue and preparing this report. We look forward to working with you on solutions to the problems highlighted in your report. I will be happy to respond to any questions you might have.

REV_00125309

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>
Sent: 3/5/2001 8:08:28 AM
Subject: : Re: Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2001 13:08:28.00
SUBJECT:: Re: Meeting
TO:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

cannot do it today

Terry W. Good 03/05/2001 12:19:12 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Meeting

Brett:

I am available today and tomorrow except for tomorrow 10:15-11:00 and 2:30-3:30.

All three of these matters are on hold pending Counsel's Office guidance.

Hopefully,

Terry

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>
Sent: 3/5/2001 8:08:28 AM
Subject: : Re: Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2001 13:08:28.00
SUBJECT:: Re: Meeting
TO:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

cannot do it today

Terry W. Good 03/05/2001 12:19:12 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Meeting

Brett:

I am available today and tomorrow except for tomorrow 10:15-11:00 and 2:30-3:30.

All three of these matters are on hold pending Counsel's Office guidance.

Hopefully,

Terry

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel r. brand/who/eop@eop [WHO] <rachel r. brand>
Sent: 3/6/2001 10:23:38 AM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-MAR-2001 15:23:38.00
SUBJECT:: Re:
TO:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel r. brand ( CN=rachel r. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I was cavalier in my response to Rachel's e-mail. While I think we can
attend, I think having the event at all is a question. I have calls into
the building manager about events with a fee being conducted here.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Brooke Vosburgh/WHO/EOP@EOP [WHO] <Brooke Vosburgh>;Jan E. Williams/WHO /EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Megan R. Johnston/WHO/EOP@EOP [WHO] <Megan R. Johnston>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov @ inet [UNKNOWN] <andrew.beach@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>

CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard G. Walker/WHO/EOP@EOP [UNKNOWN] <Helgard G. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 3/7/2001 6:18:53 AM

Subject: : Judicial Selection Committee Mtg.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAR-2001 11:18:53.00
SUBJECT:: Judicial Selection Committee Mtg.
TO:Brooke Vosburgh ( CN=Brooke Vosburgh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Megan R. Johnston ( CN=Megan R. Johnston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stacey B. Silva ( CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Josephine B. Robinson ( CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Virginia T. Gregory ( CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Dee Dee Benkie ( CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:andrew.beach@usdoj.gov ( andrew.beach@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov ( adam.ciongoli@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard G. Walker (CN=Helgard G. Walker/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
CC:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Today's 4:00 pm meeting will be held in the Indian Treaty Room (OEOB - rm.
474)

Thanks!

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/8/2001 7:56:54 AM
Subject: : Re: 3 days off

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-MAR-2001 12:56:54.00
SUBJECT:: Re: 3 days off
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Is that a sacramental fore?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>
Sent: 3/8/2001 9:43:56 AM
Subject: : Re: Claims Court

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAR-2001 14:43:56.00
SUBJECT:: Re: Claims Court
TO:Rachel R. Brand (CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I thought your Cooper Carvin background may have triggered an interest there. In any event, the willingness is appreciated.

Rachel R. Brand
03/08/2001 02:41:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: noel j. francisco/who/eop@eop
bcc:
Subject: Re: Claims Court

Interested? No (I have avoided that court like the plague). Willing? Yes.

Brett M. Kavanaugh
03/08/2001 02:36:14 PM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: Claims Court

We thought you guys would be interested in doing Claims Court for week after next. Thoughts?

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel r. brand/who/eop@eop [WHO] <rachel r. brand>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 3/9/2001 9:48:53 AM
Subject: : Re: WWII Memorial

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAR-2001 14:48:53.00
SUBJECT:: Re: WWII Memorial
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel r. brand ( CN=rachel r. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I think some veterans believe that the campaign for the Mall site is just
a PR stunt, that the proposed monument and its location is unattractive
and ill-suited to those it is supposedly honoring, and that the views of
the serviceman were not properly considered in making the decision. There
is actually an organized group called World War II Veterans to Save the
Mall. Rather than my restating the vets' motivations, I will simply quote
here its stated purpose:

"World War II Veterans to Save the Mall formed in Spring 2000 to represent
a voice for the millions of citizen soldiers
who actually prosecuted that war and who oppose the location of the
proposed World War II Memorial at the Rainbow
Pool site on the National Mall. The World War II Veterans to Save the Mall
does not want the destruction of the National
Mall to be its legacy.

"The historic Rainbow Pool on the National Mall is the wrong site for the
```

World War II Memorial. And the pending proposal
for the WWII Memorial unnecessarily will damage the Mall, the symbol of
what our generation fought and died to preserve.
The proposed plan fails to live up to the promise made by Congress for a
memorial and museum that will remind future
generations about the civilian and military achievements during the 1940s.
The misleading massive fund raising campaign
by the memorial's sponsors fails to tell the truth about the WWII
Memorial. Veterans have been kept in the dark. Would they
accept it if they knew about the design?"

Timothy E. Flanigan
03/09/2001 12:38:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: WWII Memorial

Help me out here: What is the argument that the WWII memorial should not
be built on the Mall? Is in merely the "don't crown the Mall" argument,
or is something more at stake here?

Tim

Brett M. Kavanaugh
03/09/2001 12:27:53 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: WWII Memorial

agreed

Courtney S. Elwood
03/09/2001 11:42:24 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: WWII Memorial

My point is not for opposing the memorial. My recommendation is to not
take a position on the location of the Memorial. While I think everyone

is in favor of honoring WWII vets (no one more than me, since my father is among that distinguished class), vets opposed to the location on the Mall may equal those in favor of that location. Therefore, we may serve our client well by not getting embroiled in the debate over whether the memorial should be on or off the Mall.

Brett M. Kavanaugh
03/09/2001 10:58:50 AM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: WWII Memorial

As Rachel notes, Bob Dole leads the commission that supports the memorial. Notwithstanding his recent commercials, Bob Dole is an American hero, and memorials to veterans sure seem like a good patriotic idea. I thus guess I would be surprised if President Bush wanted to oppose Bob Dole on an apple-pie issue like this. (Not that we will be in the loop, but my 2 cents.)

Courtney S. Elwood
03/09/2001 09:32:08 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: David S. Addington/OVP/EOP@EOP
Subject: WWII Memorial

Following up on Addington's caution about White House involvement on the WWII Memorial, I want to add that, perhaps contrary to what you may think, many WWII veterans are opposed to having the Memorial on the Mall. Further reason to tread lightly.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel R. Brand/WHO/EOP@EOP

Message Copied
To:_____
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop

noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
rachel r. brand/who/eop@eop
david s. addington/ovp/eop@eop

Message Copied
To:_____
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
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noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
rachel r. brand/who/eop@eop
david s. addington/ovp/eop@eop

Message Copied
To:_____
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
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helgard c. walker/who/eop@eop
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david s. addington/ovp/eop@eop

Message Copied
To:_____
courtney s. elwood/who/eop@eop
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
h. christopher bartolomucci/who/eop@eop
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courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
rachel r. brand/who/eop@eop
david s. addington/ovp/eop@eop

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: rachel r. brand/who/eop@eop [WHO] <rachel r. brand>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 3/12/2001 3:50:55 AM
Subject: : Re: District Court Seats -- Our Role

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAR-2001 08:50:55.00
SUBJECT:: Re: District Court Seats -- Our Role
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rachel r. brand (CN=rachel r. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I am happy to do it either way.

Noel J. Francisco
03/12/2001 08:09:58 AM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: District Court Seats -- Our Role

I tend to agree with Rachel.

Rachel R. Brand
03/12/2001 08:08:49 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message

bcc:
Subject: Re: District Court Seats -- Our Role

I think dividing by state makes sense, and I think we should consider which circuit seats we handled in deciding which states' district court seats to handle. I think this is especially important where one of us has developed a relationship with a Senate staff.

RLB

Bradford A. Berenson
03/12/2001 08:02:26 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: District Court Seats -- Our Role

The advantage of this approach is that it allows us each to develop some expertise with respect to the states for which we're responsible and to achieve some efficiencies going forward. The disadvantage is that it doesn't allow us to tailor individual workloads depending upon what else is going on in the office. I could go either way -- dividing up states from the start or dividing up vacancies as we go -- but I'd be interested to know what others think.

Brett M. Kavanaugh
03/11/2001 05:39:55 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: District Court Seats -- Our Role

I propose that the 8 of us soon divvy up -- by state -- the large number of district court vacancies. That way, someone in this Office can be responsible for coordinating with the Senate and DOJ on each district court vacancy. As I foresee it (and I know Brad feels even more strongly about this), we'll have a far less substantial role on district court nominees. Nonetheless, the Judge wants us involved, and it thus probably makes the most sense to divide up the states among the 8 of us so that there is a White House Counsel point person for each state's district court seats.

Thoughts?

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Rachel R. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP

Message Copied
To:_____
rachel r. brand/who/eop@eop
noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop

Message Copied
To:_____
brett m. kavanaugh/who/eop@eop
rachel r. brand/who/eop@eop
noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop

Message Copied
To:_____
bradford a. berenson/who/eop@eop
brett m. kavanaugh/who/eop@eop
rachel r. brand/who/eop@eop
noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jason B. Torchinsky/WHO /EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 3/12/2001 3:44:57 AM
Subject: : Reminder on agenda items for WHJSC book

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-MAR-2001 08:44:57.00
SUBJECT:: Reminder on agenda items for WHJSC book
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We're trying to put the WJHSC book into draft this afternoon for Tim's
review. Please forward any agenda items you wish to have included (old or
new business) to me as soon as possible.
```

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Rachel R. Brand/WHO/EOP@EOP [WHO] <Rachel R. Brand>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who /eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel r. brand/who /eop@eop [WHO] <rachel r. brand>
Sent: 3/12/2001 8:25:41 AM
Subject: : Re: District Court assignments by state

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-MAR-2001 13:25:41.00
SUBJECT:: Re: District Court assignments by state
TO:Rachel R. Brand ( CN=Rachel R. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel r. brand ( CN=rachel r. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I hereby claim the District of the Virgin Islands.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 3/12/2001 8:27:23 AM
Subject: : Re: District Court assignments by state

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAR-2001 13:27:23.00
SUBJECT:: Re: District Court assignments by state
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Actually, there are 5 district courts outside the 50 states; I'm
happy to take Puerto Rico.

H. Christopher Bartolomucci
03/12/2001 01:25:39 PM
Record Type: Record

To: Rachel R. Brand/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: District Court assignments by state

I hereby claim the District of the Virgin Islands.
Message Copied
To:_____
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
rachel r. brand/who/eop@eop

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Brooke Vosburgh/WHO/EOP@EOP [WHO] <Brooke Vosburgh>;Jan E. Williams/WHO /EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Megan R. Johnston/WHO/EOP@EOP [WHO] <Megan R. Johnston>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov @ inet [UNKNOWN] <andrew.beach@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>

CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>

Sent: 3/13/2001 1:27:36 PM

Subject: : Judicial Selection Committee Meeting confirmation

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAR-2001 18:27:36.00
SUBJECT:: Judicial Selection Committee Meeting confirmation
TO:Brooke Vosburgh ( CN=Brooke Vosburgh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Megan R. Johnston ( CN=Megan R. Johnston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stacey B. Silva ( CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Josephine B. Robinson ( CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Virginia T. Gregory ( CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Dee Dee Benkie ( CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:andrew.beach@usdoj.gov ( andrew.beach@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov ( adam.ciongoli@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
```

CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Laura L. Flippin (CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Heather Larrison (CN=Heather Larrison/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We are still on for 4:00 pm tomorrow (Wednesday) in the Roosevelt Room.

Thank you.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 3/14/2001 9:38:27 AM
Subject: : Courts of Appeals Workload

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-MAR-2001 14:38:27.00
SUBJECT:: Courts of Appeals Workload
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Perfect timing!

http://www.newsday.com/ap/text/washington/ap474.htm
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 3/14/2001 3:30:19 PM
Subject: : Re: Grassley

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-MAR-2001 20:30:19.00
SUBJECT:: Re: Grassley
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes

H. Christopher Bartolomucci
03/14/2001 07:18:02 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Grassley

I am correct that he has not given us his US Attorney names yet?

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/16/2001 6:29:21 AM
Subject: : Re: Presidential Advisory Commission of Holocausts

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-MAR-2001 11:29:21.00
SUBJECT:: Re: Presidential Advisory Commission of Holocausts
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It was a call from the Justice Department. Rachel is going to call them and talk to them because she is currently working on a case involving this and she will figure out why they are also involved with it.

Bradford A. Berenson
03/16/2001 11:13:29 AM
Record Type: Record

To: Allison L. Riepenhoff/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Presidential Advisory Commission of Holocausts

I don't understand the question. I also don't understand why the U.S. Attorney's office would be interested in this. And which U.S. Attorneys office are we talking about? I do know that Rachel Brand raised an issue in the staff meeting this morning relating to this Commission, so perhaps you may want to have her return whatever call it was you received. Let me know.

Allison L. Riepenhoff
03/16/2001 10:50:43 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Presidential Advisory Commission of Holocausts

The US Attorney's Office called asking if the Presidential Advisory Commission of Holocausts falls under the WH Counsel's Office. Could you please let me know so I can get back to them with an answer? Thanks.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 3/16/2001 7:27:44 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-MAR-2001 12:27:44.00
SUBJECT::
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Did anyone in this office handle the President's designation of Carolyn
Huntoon to be Acting Asst. Sec'y of Energy for Environmental Mgmt ?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 3/17/2001 7:39:50 AM
Subject: : IMPORTANT: call me re WDPa US Attorney

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-MAR-2001 12:39:50.00
SUBJECT:: IMPORTANT: call me re WDPa US Attorney
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 3/18/2001 5:45:43 PM
Subject: : reminder on Presidential e-mail

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAR-2001 22:45:43.00
SUBJECT:: reminder on Presidential e-mail
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There was a story about Presidential e-mail in NY Times on
Saturday. You had wanted to check with Harriet on what she plans to say
to the President about this issue.
```

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who /eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who /eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 3/19/2001 5:47:36 AM
Subject: : Re: WHJSC Binder

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-MAR-2001 10:47:36.00
SUBJECT:: Re: WHJSC Binder
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I am writing up four additional candidates for the CA3-Pa. seat.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 3/19/2001 4:09:48 PM
Subject: : 2 things

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-MAR-2001 21:09:48.00
SUBJECT:: 2 things
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

It is important for Ciongoli to be here for the 9:30 and 10:30
interviews on Wednesday.

The 11:30 interview was cancelled.
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 3/21/2001 4:36:01 AM
Subject: : Biden/Leahy Conservative Judicial Activism Speeches
Attachments: P_13771004_WHO.TXT_1.wpd; P_13771004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAR-2001 09:36:01.00
SUBJECT:: Biden/Leahy Conservative Judicial Activism Speeches
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI:
E-mail from Sessions staffer re conservative judicial activism...

---------- Forwarded by Rachel L. Brand/WHO/EOP on 03/21/2001 09:35 AM ----------

Ed_Haden@judiciary.senate.gov (Ed Haden)
03/20/2001 04:30:59 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP
cc:
Subject: Biden/Leahy Conservative Judicial Activism Speeches

Rachel:

As per our conversation, Senators Biden and Leahy gave the attached

speeches
on the Senate floor last year. In short, they attacked the "Imperial
Rehnquist
Court" for its "conservative judicial activism." They contend that we
conservatives are hypocrites for criticizing liberal judges for striking
down
statutes, but applauding the Rehnquist Court for striking down statutes.
[In my
view, "activism" is not the striking down or upholding of a statute or
executive
action, it is the issuance of a judgment based on the judge's own
contemporary
notions of justice instead of the text and original intent of the
Constitution.]

Senator Biden indicated that he would be making more speeches on this
subject in the future, and Senator Leahy has indicated that he might call a
hearing on this issue this year. Accordingly, I would welcome the help of
our
best and brightest at Office of White House Counsel in drafting response
speeches for Senator Sessions and other Republicans to use against the
coming
attack in Committee and on the floor. No exact time frame yet, but
Senators
Biden and Leahy could begin at any time.

Thanks,
Ed

- Biden activism speech.wpd
- Leahy activism speech.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_13771004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_13771004_WHO.TXT_2>

Mr. BIDEN. Mr. President, the Senate will soon be considering the Treasury and general government appropriations bill. This is one of the important funding bills we will have to pass this year to keep the Government open and running. In addition to the Department of the Treasury, this is the bill that provides moneys for the operation of the White House, the Executive Office of the President, and it also provides funds for the construction of new courthouses, reflecting the priorities of the administrative offices of the courts. It is this third branch of our Government that I will take a few minutes to talk about. In 1994, the Senate and the House passed the Violence Against Women Act which President Clinton then signed into law. As the author of that legislation, securing its passage had been my highest priority for three sessions of Congress. The cause of eliminating violence against women remains my highest priority. I have watched the progress of the implementation of my Violence Against Women Act. In that act we included a provision giving anyone who had been the victim of a crime of violence motivated by gender the right to bring a lawsuit seeking damages from the assailant. On May 15 of this year, in a case called United States v. Morrison, the Supreme Court struck down this provision. The Court said that addressing the problems of violence against women in this way was beyond

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the constitutional authority of the elected representatives of the United States. Flat out, they said it was an unconstitutional act we engaged in. In ruling it was beyond the constitutional authority of the Congress, the Court said that it does not matter how great an effect such acts of violence have on interstate commerce. They said gender-based violence could be crippling large segments of our national economy, but, nonetheless, even if that were proven--according to the Court--the Congress is powerless to enact a law to deter such active violence because although we have acted this way under the commerce clause of the Constitution before, the Court ruled violence in and of itself is not commerce.

I believe this is a constitutionally wrong decision. It is true that it does not strike a fatal blow against the struggle to end violence against women in this country. The other parts of the Violence Against Women Act are unaffected by this decision. I am pleased to report that these other provisions, together with changing attitudes in this country, are beginning to make a difference in this struggle in the lives of women who have been victimized. I have introduced a bill with, now, I think over 60 cosponsors, to enhance the provisions of my Violence Against Women Act so that we can continue to make progress.

Nonetheless, the decision in Morrison is a wrongheaded decision. It is not

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just an isolated error. No, it is part of a growing body of decisions in which this Supreme Court is seizing the power to make important social decisions that, under our constitutional system of government, are properly made by elected representatives who answer to the people, unlike the Court. I said at the time that the case came down, striking down the provisions of the Violence Against Women Act, that the decision does more damage to our constitutional jurisprudence than it does to the fight against gender-based violence. Since I said that, a number of people have asked me to explain what I mean by that. Today, since we have the time, I am beginning a series of speeches to do just that by placing the Morrison decision in a larger context of what an increasingly out-of-touch Supreme Court has been doing in recent years. I plan on making two additional speeches on this subject over the next several weeks and months. It is crucial, in my view, that the American people understand the larger pattern of the Supreme Court's recent decisions and, to me, the disturbing direction in which the Supreme Court is moving because the consequences of these cases may well impact upon the ability of American citizens to ask their elected representatives in Congress to help them solve national problems that have national impact.

Many of the Court's decisions are written in the name of protecting

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prerogatives of the State governments and speak in the time honored language of federalism and States rights. But as my grandmother would say, they have stood federalism on its head. Make no mistake, what is at issue here is the question of power, who wants it, who has it, and who controls it--basically, whether power will be exercised by an insulated judiciary or by the elected representatives of the people. In our separation of powers doctrine, upon which our Government rests, that power is being wrestled by the Court from the elected representatives, for in every case in which the Court has struck down a Federal statute, it has invalidated a statute that the people of the United States have wanted. As a matter of fact, in many of the cases of statutes that have been struck down, the numerous attorneys general of the various States have sided with the Federal Government in briefs filed with the Court, saying that they supported the decision taken by the Congress and the President.

Let's give the emerging pattern of Supreme Court decisions a name. In a speech I gave before the New Hampshire Supreme Court last year, I referred to this pattern as an emerging pattern of an imperial judiciary. I meant to describe the judiciary that is making decisions and seizing power in areas in which the judgment of elected branches of government ought to be the controlling

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judgment, not the Court's. With increasing frequency, the Supreme Court is taking over the role of government for itself. The imperial judging might also be called a kind of judicial activism. `Judicial activism' is an overworked expression, one that has often been used by conservatives to criticize liberal judges. Under this Supreme Court, however, the shoe is plainly on the other foot. It is now conservative judges who are supplanting the judgment of the people's representatives and substituting their own for that of the Congress and the President.

This is not just Joe Biden talking. The Violence Against Women Act case came to the Supreme Court through the Fourth Circuit Court of Appeals, where Judge J. Harvie Wilkinson is the chief judge. Judge Wilkinson has been on many so-called short lists for possible Supreme Court nominees of Governor Bush and is a well recognized conservative. In the opinion he wrote, agreeing that the civil rights remedy in the Violence Against Women Act was unconstitutional, Judge Wilkinson praised the result as an example of `this century's third and final era of judicial activism.' He, Judge Wilkinson, acknowledges that the decision represents the `third and,' he says, `final era of judicial activism.' And he said he hoped this new activism would be enduring presence in our Federal courts. That

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was in Brzonkala v. VPI, 169 F.3d 820, 892-893. Or consider Judge Douglas Ginsburg of the Court of Appeals for the District of Columbia, another well recognized conservative. Judge Ginsburg has quite explicitly criticized the interpretation of the Constitution that has prevailed through the better part of this entire century and, indeed, throughout most of our country's history, an interpretation which correctly recognizes the broad capacity and competence of the people to govern themselves through their elected officials, not through the court system. According to Judge Ginsburg, the correct interpretation of the Constitution produces results that severely restrict the power of elected government. He calls the Constitution `the Constitution in Exile.' Under that Constitution, the one that he thinks controls, unelected Federal judges would wield enormous power to second-guess legislative bodies on both the State and the Federal levels.

When Judge Ginsburg wrote about these ideas in a magazine article in 1995, he was eagerly awaiting signs that the Supreme Court would begin to embrace his notion of a Constitution in exile. Five short years later, much has changed. As Linda Greenhouse recently put it in a New York Times column, Judge Ginsburg's hopes sound decidedly less out of context today than they did

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even 5 years ago, just before the court began issuing a series of decisions reviving a limited vision of federal power. By taking a closer look at these series of decisions referred to in the New York Times, the pattern I have been referring to will become quite evident.

The first clear step toward an imperial judiciary was taken in the case called Lopez v. United States, which invalidated a Federal law making it a crime to possess a gun in a school zone. The Supreme Court held that it was not obvious `to the naked eye' that the nationwide problem of school violence has a substantial effect on the national economy and interstate commerce, the predicate we have to show to have jurisdiction under the commerce clause to pass such a law. In our desire to respond quickly to the epidemic of school violence, which we all talk about here on the floor, we in the Congress did not make findings--that is, we did not have hearings that said `we find that the following actions have the following impact on commerce'--we did not make findings to relate school violence to interstate commerce.

Subsequently, however, we did make such findings and pointed to the voluminous evidence that was before the Congress at the time we passed Senator Kohl's Gun-Free School Zone Act. Nonetheless, the Court, this new imperial

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judiciary, ignored our findings and the raft of supporting evidence, and drew its own conclusions. They concluded--the Court concluded--that the threat of school violence to national commerce is not substantial enough to justify a legislative response on the part of those of us elected to the Congress.

The Lopez case startled many people. Numerous law schools sponsored conferences to discuss the meaning of this case. Constitutional scholars debated how great a departure this case signaled from the settled approach to congressional power that has been taken over the 20th century, at least the last two-thirds of the 20th century, by all previous Supreme Courts. Immediately after the decision, no consensus emerged. Many scholars plausibly concluded that Lopez was, as one put it, just an `island in the stream,' a decision that breaks the flow of the river of cases before it, but which will have no lasting effect of any significance on those that follow it.

How wrong he was. It now turns out that if Lopez is an island, it is one the size of Australia. The Court soon followed Lopez by striking down the Religious Freedom and Restoration Act that Senator Hatch and I had worked so hard to craft and the Senate and House passed and the President signed. In Boerne v. Flores--that is the name of the case that struck down the Religious Freedom Act

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we passed--the Congress of the United States enacted the Religious Freedom Act in response to an earlier Supreme Court decision. In 1990, the Court ruled in Employment Decision v. Smith that the constitutional freedom of religion is not offended by a State law that significantly burdens the ability of members of that religion to practice their religion, so long as that law applies across the board, without singling out religious practices of any one denomination in any way.

For example, under the Smith decision, a dry county which prohibits the consumption of all alcohol could prohibit a church from using sacramental wine when they give communion, as they do in my church; I am a Roman Catholic; and they do so in other churches as well. Smith broke with the prior line of decisions holding that such laws needed to make reasonable accommodations for religion unless the Government had a very good reason for applying the law when it offended someone's sincere religious practices to do so. In other words, unless the Government had an overwhelming reason why in a Catholic Church they could not serve, when they give communion, a sip of wine with the host, prior decisions said you cannot pass a law to stop that.

The overwhelming majority of both Houses of Congress thought the Smith decision was incorrect as a matter of constitutional interpretation and as a matter

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of policy. We concluded that because section 5 of the 14th amendment authorized the Congress to protect fundamental civil liberties by appropriate legislation, we could enact a statute providing greater protection than the Smith decision did to accepted religious practices. After extensive hearings under the leadership of Senator Hatch and Senator Kennedy, the so-called RFRA, Religious Freedom and Restoration Act, was drafted to require that the application of neutral laws had to make reasonable accommodation to bona fide religious objections.

The Supreme Court struck down our effort to extend reasonable protections to religious practices. It held that the 14th amendment does not authorize the Congress to confer civil rights by statute or to give judicially recognized rights a greater scope than the Court has set forth. In the Court's view, the power of section 5 of the 14th amendment gives the Congress the power to `enforce' the rights established in that amendment, but it only amounts to a power to provide remedies for the violations of the rights that the Court has recognized--not the Congress, the Court has recognized--not to protect any broader conception of civil rights than the Court has already recognized.

In the Flores case, it was another sign that we are on the road to judicial imperialism. Recognizing the implications of the decision, the Republican

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majority on the Judiciary Committee's Subcommittee on the Constitution in the House held a hearing on the Court's refusal to defer to Congress' factual findings and the policy determinations it based on those findings.

Judicial deference to congressional findings and congressional authority to enforce civil rights are obviously important questions standing alone, but the Supreme Court raised the stakes even higher in two decisions relating to what we call State sovereign immunity. In those cases, Seminole Tribe of Florida v. Florida and Alden v. Maine, the Court declared the Congress may not use its commerce clause powers to abrogate State sovereign immunity.

What this means, translated, is that when Congress acts under its broad power to improve the national economy, a power granted to it by the Constitution, the Congress, in the Court's view, cannot authorize an individual to sue a State even if they are suing over a purely commercial transaction with that State. For example, as the Court held in the Alden case, an employee of a State now cannot sue his or her employer for failing to comply with the Fair Labor Standards Act just because the employer happens to be a State. If it is a business person, a corporation, and they violate the Fair Labor Standards Act, which we passed to protect all people who work, they can be held accountable under that act. The

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Supreme Court came along and said: But, Congress, you can't pass a law that holds a State accountable.

The Seminole Tribe and Alden cases highlight the importance of the issue of congressional power under the 14th amendment because the Court continues to recognize that Congress can authorize individuals to sue States if our legislation is authorized by the 14th amendment rather than by the commerce clause. By limiting Congress' 14th amendment powers, therefore, the Boerne decision, which is the Religious Freedom Act decision, draws into question our capacity to meaningfully protect civil rights at all whenever remedies directly against a State are being considered.

Viewed in its historical context, this is a remarkable development in and of itself. The text of the 14th amendment was drafted immediately after the Civil War, and it grants powers to only one branch of the Government, the only one named in the amendment: the Congress, not the Court. Specifically, the amendment sought to grant the Congress ample power to enforce civil rights against the States.

That is what the Civil War was about. That is why the Civil War amendments were passed: to put it in stone. Developments in these recent cases I

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have cited are in profound tension with the sentiments and concerns of the drafters of the 14th amendment. Still, after that case, some might continue to say it is not clear where the Court was really headed. It was possible to say in the Flores case that it was simply articulating the standard governing the nature of Congress' power; namely, that it was purely remedial and not substantive. Because the legislative record was designed to support an exercise of substantive power, that record did not so clearly support the exercise of the remedial power.

On this reading, the Court did not second-guess the congressional findings. It just saw them as answering the wrong question. Subsequent events, however, have confirmed that the Subcommittee on the Constitution had a right to be worried about Boerne because Boerne was much more ominous than that.

In one of the last cases decided in the 1998 term, the Court laid down yet another marker, perhaps the most bold decision yet in the trend of the Court usurping democratic authority. In that decision, the Court held unconstitutional a Federal statute, the Patent and Plant Variety Protection Remedy Clarification Act. That act provided a remedy for patent holders against any State that infringes on the patent holder's patent. That was in Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank. Before enacting this remedial

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legislation, the Congress had developed a specific legislative record detailing specific cases where States had infringed a federally conferred patent and evidence suggested the possibility of a future increase in the frequency of State infringements of patents held by individuals. Unlike Lopez, the Patent Protection Act did not lack findings or legislative record. Unlike Boerne, the legislative record demonstrated that the statute was remedial and not substantive. Nonetheless, the Supreme Court decided, independently, that the facts before the Congress, as it, the Court, interpreted them, provided, in the Court's words, `little support' for the need for a remedy.

Get this: We, up here, concluded, on the record, that States have, in fact, infringed upon the patents held by individuals. We laid out why we thought--Democrat and Republican, House, Senate, and President--we should protect individuals from that and why we thought the problem would get worse. We set that out in the record when we passed the legislation. But the Supreme Court comes along and says: We don't think there is a problem. Who are they to determine whether or not there is a problem? It is theirs to determine whether our action is constitutional, not whether or not there is a problem. But they said they found little support for our concern--the concern of 535 elected Members of the

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Congress and the President of the United States. The Court was not substituting a constitutional principle here. The Court was substituting its own policy views for those of this body that described the problem of State infringement on Federal patents as being of national import. They concluded it is not that big of a deal.

We need to be clear about what the Court did in the patent remedy case. For a long time, it has been accepted constitutional law that once a piece of legislation has been found to be designed to cover a subject over which the Constitution gives the Congress the power to act--let me say that again--this has been accepted constitutional theory and law that once a piece of legislation has been found to be designed by the Congress to cover a subject over which the Congress has constitutional authority, that it then becomes wholly within the sphere of Congress to decide whether any particular action is wise or is prudent.

This has been constitutional law going all the way back as far as M'Culloch v. Maryland, written by the then-Chief Justice John Marshall, in 1819. There Chief Justice Marshall wrote that the `government which has the right to act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means [by which to act].' In the patent remedy case, the Court quite clearly usurped the constitutional authority of

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Congress to select the means it thinks appropriate to remedy a problem that is admittedly within the authority of Congress to address. In the patent remedy case, the Court did not hold that Congress has exercised a power in an area outside its constitutional authority. Instead, it disagreed with our substantive judgment as to whether the Federal remedy was warranted. In short, the Court struck down the remedy just because it did not think the remedy was a good idea. Who are they to make that judgment? Talk about judicial activism. The cases I have reviewed today--Lopez, Boerne , Seminole Tribe, Alden, and Florida Prepaid--bring us up to this term just completed by the Supreme Court.

In the next series of speeches, I will show how the trend of judicial imperialism continued, and was extended by several cases decided this past year, including the Violence Against Women Act, which I began with today. The bottom line here is, in the opinion of many scholars and observers of the Court, we are witnessing the emergence of what I referred to a year ago as the `imperial judiciary.'

I just discussed five cases leading up to the just completed term. Now I would like to discuss two significant decisions of this term. I will also begin the task of trying to place these decisions in a broader framework of the Constitution's

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allocation of responsibility between the elected branches of Government and the judiciary. It is a framework that this `imperial judiciary' is disregarding.

Last December, the Court focused its sight on the Age Discrimination in Employment Act. That is the act that protects Americans against discrimination based on age and is amply justified under our Constitution. Not only does it protect the basic civil rights of equal protection and nondiscriminatory treatment--with bipartisan support, I might add--it also promotes the national economy, by ensuring that the labor pool is not artificially limited by mandatory requirements to retire. So the Congress had ample constitutional authority to enact the Age Discrimination Act. And the Court did not deny that. Nonetheless, the Court, this last term, gutted the enforcement of the act as the act applied to all State government employees.

Building on its earlier decisions in the Seminole Tribe and Alden cases, which I discussed a moment ago, the Court ruled that the Constitution prevents us from authorizing State employees to sue their employers for violation of the Federal Age Discrimination Act. The Court also said, however, that the Constitution does not prevent the Congress from applying the law to the States. Now, you have to listen to this carefully. In a thoroughly bizarre manner, in my

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view, the Supreme Court has now held that the Constitution allows the Age Discrimination Act to apply to State employers, but it denies the employees the right to sue the State employers when their rights under the Federal law are violated.

We learned in law school that a right without a remedy can hardly be called a right. As a result of this case, called Kimel v. Florida Board of Regents, over 27,000 State employees in my State of Delaware are left without an effective judicial remedy for a violation of a Federal law that protects them against age discrimination. Across the Nation, nearly 5 million State employees no longer have the full protection of Federal law. Recall that in the Boerne decision--the case that invalidated the Religious Freedom Restoration Act, which I discussed a moment ago--the Court had begun the process of undermining the ability of the Congress under section 5 of the 14th amendment to enact legislation protecting civil rights.

In Kimel, they continued that process. In Kimel, the Court held that Congress' 14th amendment power to enforce civil rights refers only to the enforcement of those rights that the Court itself has declared and not to rights that exist by virtue of valid statutes. Because the Court decided that the Age

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Discrimination Act goes beyond the general protection the Constitution provides when it says that all citizens are entitled to `equal protection under the law,' the Court ruled that the right to sue an employer for violations of the act was not `appropriate' and so ruled the act unconstitutional. After Kimel, the pattern of the imperial judiciary now emerges with some clarity.

First, the Court has repudiated over 175 years of nearly unanimous agreement that Congress, not the Court, will decide what constitutes `necessary and proper' legislation under any of its, Congress', enumerated powers. Then in a parallel maneuver, the Court has announced that it, not the Congress, will decide what constitutes `appropriate' remedial legislation to enforce civil rights and civil liberties.

Let me return for a moment to the Violence Against Women Act, which I began earlier in my speech. Prior to the enactment of the Violence Against Women Act, I held extensive hearings in the Judiciary Committee when I was chairman, compiling voluminous evidence on the pattern of violence against women in America.

The massive legislative record Congress generated over a 4-year period of those hearings supported Congress' explicit findings that gender-motivated

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violence does substantially and directly affect interstate commerce. How? By preventing a discrete group of Americans, i.e., women, from participating fully in the day-to-day commerce of this country. These are the types of findings, I might add, that were absent when the Congress first enacted the Gun-Free School Zone Act, struck down in the Lopez case. Let me remind you that Congress, when we enacted the civil rights provision invalidated in Morrison, found [C]rimes of violence motivated by gender have a substantial adverse impact upon interstate commerce by deterring potential victims of violence from traveling interstate, from engaging in employment in interstate business, from transacting with businesses and in places involved in interstate commerce. Crimes of violence motivated by gender have a substantial adverse effect on interstate commerce by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products . . . I cannot emphasize enough the seriousness of the toll that we found gender-motivated violence exacts on interstate commerce. Such violence denies women an equal opportunity to compete in the job market, imposing a heavy burden on our national economy.

Witness after witness at the hearing testified that as a result of rape, sexual

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assault, or domestic abuse, she was fired from, forced to quit, or abandoned her job. As a result of such interference with the ability of women to work, domestic violence was estimated to cost employers billions of dollars annually because of absenteeism in the workplace. Indeed, estimates suggested that we spend between $5 and $10 billion a year on health care, criminal justice, and other social costs merely and totally as a consequence of violence against women in America. In response to this important national problem, one to which we found the States did not or could not adequately respond, Congress enacted my Violence Against Women Act in 1994, which included provisions authorizing women to sue their attackers in Federal court. This statute reflected the legislative branch's judgment that State laws and practices had failed to provide equal and adequate protection to women victimized by domestic violence and sexual assault and that the lawsuit would provide an adequate means of remedying these deficiencies.

This was no knee-jerk response to a problem. Congress specifically found that State and Federal laws failed to `adequately provide victims of gender-motivated crimes the opportunity to vindicate their interests' and that: . . . existing bias and discrimination in the criminal justice system often deprives victims of crimes of violence motivated by gender of equal protection of the laws

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and the redress to which they are entitled. The funny thing about these explicit congressional findings and this mountain of data, as Justice Souter in his dissent called it, showing the effects of violence against women on interstate commerce--the funny thing about this is that the Supreme Court acknowledged all of it. They said: We don't challenge that. This is the new height in their imperial judicial thinking. That is right. The Court acknowledged all of the findings of my committee.

In Morrison, the Supreme Court recognized that in contrast to the lack of findings in the legislation on the Gun-Free School Zone case, Lopez, that the civil rights provisions of the Violence Against Women Act were supported by `numerous factual findings' about the impact of gender-motivated violence on interstate commerce. But the Court also acknowledged the failure of the States to address this problem--they acknowledged the States had not addressed it before we did--noting that the assertion that there was a pervasive bias in State justice systems against victims of gender-motivated violence was supported by a `voluminous congressional record.' They acknowledged that there was this great impact on interstate commerce. They acknowledged--because I had my staff, over 4 years, survey the laws and the outcomes in all 50 States--that many State courts

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had a bias against women. So they acknowledged both those predicates.

Instead of according the deference typically given to congressional factual findings, supported by, as they said, a voluminous record, and without even the pretense of applying what we lawyers call the `traditional rational basis test'--that is, if the Congress has a rational basis upon which to make its finding, then we are not going to second-guess it; that is what we mean by `rational basis'--the Court simply thought it knew better. This marks the first occasion in more than 60 years that the Supreme Court has rejected explicit factual findings by Congress that a given activity substantially affects interstate commerce.

The Court justified this abandonment of deference to Congress by declaring that whether a particular activity substantially affects interstate commerce `is ultimately a judicial rather than a legislative question.' You got this? For the first time in 60 years, since back in the days of the Lochner era, the Supreme Court has come along and said they acknowledge that the Congress has these voluminous findings that interstate commerce is affected and the States aren't doing anything to deal with this national problem of violence against women; they are not doing sufficiently enough. There is a bias in their courts. We acknowledge that. But they said, notwithstanding that, the question of

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whether a specific activity substantially affects interstate commerce `is ultimately a judicial rather than a legislative question.' Hang on, here we go back to 1925.

As Justice Souter said in his dissent, this has it exactly backwards, for `the fact of such a substantial effect is not an issue for the courts in the first instance, but for the Congress, whose institutional capacity for gathering evidence and taking testimony far exceeds ours.' In short, in a decision that reads more like one written in 1930 than in 2000, the Court held that the judicial, not the legislative, branch of the Government was better suited to making these decisions on behalf of the American people--a conclusion that certainly would have surprised Chief Justice Marshall, the author of the seminal commerce clause decision in Gibbons v. Ogden in the early 1800s. The judgments that the Congress made in enacting the Violence Against Women Act were, in my view, the correct ones. Even if you disagree with me, though, they were the Congress' judgments to make, not the Court's judgments to make. When it struck down the Violence Against Women Act, the Court left little doubt that it was acting outside its proper judicial role. They said that the commerce clause did not justify the statute because the act of inflicting violence on women is not a `commercial' act. It said that section 5 of the 14th amendment also did not justify this act because

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creating a cause of action against the private perpetrators of violence is not an `appropriate' remedy for the denial of equal protection that occurs when State law enforcement fails vigorously to enforce laws that ought to protect women against such violence.

Over the course of this speech today, I have discussed seven significant decisions since 1995: Lopez, the gun-free school zones case; Boerne against Flores, the Religious Freedom Restoration Act case; Seminole Tribe and Alden, the two decisions prohibiting us from creating judicial enforceable economic rights for State employees; Florida Prepaid, the patent remedy case; Kimel, the Age Discrimination Act case; and finally, Morrison, the Violence Against Women Act case. None of them deal fatal blows to our ability to address these significant national problems, but they each, in varying degrees, make it much more difficult for us to be able to do so. There are two even more important points to make about these cases.

First, together, these cases are establishing a pattern of decisions founded on constitutional error--an error that allocates far too much authority to the Federal courts and thereby denies to the elected branches of the Federal Government the legitimate authority vested in it by the Constitution to address

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national problems.

Second, this is a trend that is fully capable of growing until it does deal telling blows to our ability to address significant national problems. This is not only my assessment; it is shared, for example, by Justice John Paul Stevens, who was appointed to the Court by Gerald Ford. Dissenting in the Kimel case, Justice Stevens has written that `the kind of judicial activism manifested in [these cases] represents such a radical departure from the proper role of this Court that it should be opposed whenever the opportunity arises.' That is not Joe Biden speaking; that is a sitting member of the Supreme Court appointed by a Republican President. It is also shared by Justice David Souter, who was appointed by President Bush. Dissenting in the Lopez case, Justice Souter has written that `it seems fair to ask whether the step taken by the Court today does anything but portend a return to the untenable jurisprudence from which the Court extricated itself almost 60 years ago.' He was referring to the Lochner era. It is shared by Justice Breyer, a Clinton appointee. Dissenting in College Savings Bank v. Florida Prepaid, Justice Breyer has written that the Court's decisions on State sovereign immunity `threaten the Nation's ability to enact economic legislation needed for the future in much the way Lochner v. New York threatened the

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Nation's ability to enact social legislation over 90 years ago.'

Significantly, this imperialist trend can continue to grow and flower in two different places. The Supreme Court itself can continue to write more and more aggressive decisions, cutting deeper and deeper into the people's capacity to govern themselves effectively at a national level. In the short term, perhaps the odds are that this will not occur. Many of the decisions in this pattern have been decided by votes of five Justices to four Justices, and it may be that one or more of the conservative majority has gone about as far as he or she is prepared to go at this time.

In the longer term, however, we can quite reasonably expect two or three appointments to the Court in the next 4 to 8 years, and if those appointments result in replacing moderate conservatives on the Court with activist conservatives, we have every reason to expect that this trend I have outlined for the last 45 minutes would gain momentum. It can also bloom in the lower courts. This may, to some extent, be by design of the Justices who are taking the lead in the Court today. Certainly, many people have remarked on the proclivity of Justice Scalia to author opinions containing sweeping language that creates new ambiguities in the law and which then often provide a hook on which lower court

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judges can hang their judicial activism.

Already, opinions have been written by lower court judges overturning the Superfund legislation, challenging the constitutionality of the Endangered Species Act, calling into doubt Federal protection of wetlands, and eviscerating the False Claims Act, among others. Not all of these judicial exercises can be corrected by the Supreme Court, even if it were inclined to do so, because the Court decides only 80 or so cases a year from the entire Federal system.

In concluding, I wish to describe in the most basic terms why the imperialist course upon which the Court has embarked constitutes a danger to our established system of government. In case after case, the Court has strayed from its job of interpreting the Constitution and has instead begun to second guess the Congress about the wisdom or necessity of enacted laws. Its opinions declare straightforwardly its new approach: The Court determines whether legislation is `appropriate,' or whether it is proportional to the problem we have validly sought to address, or whether there is enough reason for us to enact legislation that all agree is within our constitutionally defined legislative power.

If in the Court's view legislation is not appropriate, or proportional, or grounded in a sufficient sense of urgency, it is unconstitutional--even though the

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subject matter is within Congress' power, and even though Congress made extensive findings to support the measure. More significant than the invalidation of any specific piece of legislation, this approach annexes to the judiciary vast tracts of what are properly understood as the legislative powers. If allowed to take root, this expanded version of judicial power will undermine the project of the American people, and that project is self-government, as set forth in the Constitution. To understand the alarm that Justice Stevens, Justice Souter, and others have sounded about the Court's pattern of activism, we must understand the way the Constitution structures the Federal Government and the reasons behind that structure. We must also understand the history and the practice that have made the Constitution's blueprint a reality and provide a scale to measure when the balance of power has gone dangerously awry. These considerations amply support Justice Stevens's assessment of `a radical departure from the proper role of this Court.' The Constitution (supplemented by the Declaration of Independence) sets forth the great aspirations and objects of our nation. It does not, however, achieve them. That is the great project of American politics and government: to achieve the country envisioned in those founding documents.

The way to meet our aspirations and establish our national identity and our

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character as a people is through the process of self-government. The Declaration of Independence proclaims our fundamental commitment to liberty and equality. These commitments are by no means self-executing. The history of our nation is in no small part the history of a people struggling to comprehend these commitments and to put these high ideals into practice. The Constitution itself was concerned with a more complex function. Whereas the Declaration explained the reasons for splitting from Great Britain, the Constitution was concerned with explaining why the former colonies should remain united as a single nation. It was also concerned with the task of providing a government that could fulfill the promise and purposes of union.

The Framers who arrived in Philadelphia to debate and draft the Constitution were no longer immediately animated by an overbearing and oppressive government. In fact, our first national government, under the Articles of Confederation, was the precise opposite. The emergency that brought the leading citizens of the North American continent together in Philadelphia that Summer of 1787 was the inability of the national government to act in any effective way. These framers saw the vast potential of the new nation with its unparalleled natural and human resources. They saw as well the danger posed by

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foreign powers and domestic unrest. They realized too that the Confederation could never act credibly to exploit the nation's potential or to quell domestic and foreign hostilities.

As Alexander Hamilton put it, `[w]e may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience.' Hamilton urged that the nation ratify the Constitution and throw off the ability of the states to constrain the national government: `Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquility, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity.' Indeed, Hamilton may have been understating the degree of the crisis.

Gouverneur Morris, a leading delegate from Pennsylvania, warned that `This country must be united. If persuasion does not unite it, the sword will . . . The scenes of horror attending civil commotion cannot be described . . . The stronger party will then make [traitors] of the weaker; and the Gallows & Halter will finish the word of the sword.' The words of the Constitution's preamble are

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not idle rhetoric. The founding generation ratified the Constitution in order to establish a government that could decisively and effectively act to `provide for the common defense, promote the general welfare, and secure the blessings of liberty.' This is a fundamental constitutional value that must always be brought to bear when construing the Constitution. Yet, it is precisely this constitutional value that the Supreme Court has lost sight of.

Consider, for example, Justice Kennedy's statement in the case striking down the Line Item Veto Act. `A nation cannot plunder its own treasury without putting its Constitution and its survival in peril. The statute before us then is of first importance, for it seems undeniable the Act will tend to restrain persistent excessive spending.' Who is he to make that judgment? Yet, Justice Kennedy viewed this as completely irrelevant to the statute's constitutionality. He concurred that the Line Item Veto Act violates separation of powers even though there was no obvious textual basis for this conclusion and no apparent threat to any person's liberty.

Justice Kennedy is right about one thing. His statement is premised on the view that the Court is not particularly well-suited to make policy or political judgments. This is accurate and no mere happenstance. The Constitution itself

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structures the judiciary and the political branches differently by design. The Judiciary is made independent of political forces. Judges hold life tenure and salaries that cannot be reduced.

The purpose of the entire structure of the judiciary is to leave judges free to apply the technical skills of the legal profession to construe and develop the law, within the confines of what can be fairly deemed legal reasoning. Outside this realm is the realm of policy. Here Congress and the President enjoy the superior place, again by constitutional design. The political branches are tied closely to the people, most obviously through popular elections. Between elections, the political branches are properly subject to the public in a host of ways. Moreover, the political branches have wide-ranging access to information through hearings, through studies we commission, and through the statistics and data we routinely gather.

This proximity to the people and to information makes Congress the most suitable repository of the legislative power; that is, the power to deliberate as agents of the public and to determine what laws and structures will best `promote the general welfare.' It is much easier to describe the distinction between the judicial and the legislative power in the abstract than it is to apply in practice.

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That is why so much of our constitutional history has been devoted to developing doctrines and traditions that keep the judiciary within its proper sphere. After much upheaval, the mid-twentieth century yielded a stable and harmonious approach to questions relating to the scope of Congress's powers: these questions are largely for the political branches and the political process to resolve--not the courts.

To be sure, the Court has a role in policing the outer boundaries of this power, but it is to be extremely deferential to the specific judgment of Congress that a given statute is a necessary and proper exercise of its constitutional powers. When the Court fails to defer, as it had during several periods prior to the New Deal, it inevitably finds itself making judgments that are far outside the sphere of the judicial power.

This is the point of Justice Stevens' warning. The Court is departing from its proper role in scope of power cases. What was initially uncertain, even after Lopez and Boerne , is now inescapable: This imperial Court, in case after case, is freely imposing its own view of what constitutes sound public policy. This violates a basic theory of government so carefully set forth in our Constitution. In theory, therefore, there is ample reason to expect that the Supreme Court's recent

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imperialism will undermine the fundamental value animating the Constitution, and that is the ability of the American people to govern themselves effectively and democratically. I yield the floor.

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July 27, 2000

Mr. LEAHY. Mr. President, I want to turn now to another issue. This time last year, I rose to express concern about the final decisions of the Supreme Court's 1998 Term, in which it struck down on federalism grounds three important pieces of bipartisan legislation. Another Supreme Court Term has now ended, and this Term's victims include the Violence Against Women Act and, as applied to State employees, the Age Discrimination in Employment Act. I see my distinguished friend from Delaware in the Chamber, and I know he has spoken extensively on this. I believe it bears repeating. We have seen a growing trend of judicial second-guessing of congressional policy decisions, both in the Supreme Court and in some of the lower Federal courts. Most troubling to me is the encroachment of the Federal judiciary on the legitimate functions of the Federal legislative branch in matters that are perceived by the courts to impact the States. We ought to all be concerned about this because it affects our constitutional system of checks and balances. We ought to ask ourselves how we can have a situation where an unelected group of Supreme Court Justices can over and over substitute their judgment for the judgment of the elected representatives of this country. It is not

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a question of how we feel about an individual case. Sometimes I vote for these bills and sometimes I vote against them. But when we have held hearings, when we have determined that there is a need for Federal legislation, when we have gone forward, and then in an almost cavalier and, in some cases, disdainful fashion, the Supreme Court knocks it all down, something is wrong. It is time for us to join together in taking stock of the relationship between Congress and the courts. According to a recent article by Stuart Taylor, the Rehnquist Court has struck down about two dozen congressional enactments in the last five terms. That is about five per year--a stunning pace. To put that in perspective, consider that the Supreme Court struck down a total of 128 Federal statutes during its first 200 years. That is less than one per year, and it includes the years of the so-called `activist' Warren Court. Justice Scalia recently admitted that the Rehnquist Court is `striking down as many Federal statutes from year to year as the Warren Court at its peak.' In fact, the Rehnquist Court, with its seven Republican-appointed Justices, is striking down Federal statutes almost as fast as this Republican Congress can enact them. These cases evidence a breakdown of respect between the judiciary and legislative branches, and raise serious concerns about whether the Court has embarked on a program of judicial activism under the rubric of

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protecting State sovereignty. Let me start where I left off a year ago, with the trio of 5-4 decisions that ended the Court's last Term. In the Florida Prepaid case, the Court held that the States could no longer be held liable for infringing a Federal patent. In the College Savings Bank case, the Court held that the States could no longer be held liable for violating the Federal law against false advertising. And in Alden v. Maine, the Court held that the States could no longer be held liable for violating the Federally-protected right of their employees to get paid for overtime work. These decisions were sweeping in their breadth. They allowed special immunities not just to essential organs of State government, but also to a wide-range of State-funded or State-controlled entities and commercial ventures. They tilted the playing field by leaving institutions like the University of California entitled to benefit from Federal intellectual property laws, but immune from enforcement if they violate those same laws. They were also startling in their reasoning, casting aside the text of the Constitution, inferring broad immunities from abstract generalizations about federalism, and second-guessing Congress' reasoned judgment about the need for national remedial legislation. When I discussed these decisions last year, I warned that they could endanger a wide range of other Federally-protected rights, including rights to a

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minimum wage, rights against certain forms of discrimination, and whatever rights we might one day provide to health coverage. This year's crop of 5-to-4 decisions continued the trend toward restricting individual rights and diminishing the authority of Congress to act on behalf of all Americans in favor of protecting State prerogatives. The predictions I made last year have unfortunately come to pass with this year's Supreme Court decisions. In Kimel v. Florida Board of Regents, the Court held that State employees are not protected by the Federal law banning age discrimination, notwithstanding Congress' clearly expressed intent. Five members of the Court decided that age discrimination protections applied to the States were unnecessary. The Congress and the American people had it wrong when we concluded that age discrimination by State employers was a problem that needed a solution. None of those five Justices sat in on the hearings that Congress held 30 years ago, they did not hear the victims of age discrimination describe their experiences, but they nonetheless decided they knew better than Congress did. Justice Thomas wrote separately to say that he was prepared to go even further and make it even harder for Congress to apply anti-discrimination laws to the States. The Kimel decision could spell trouble for all sorts of Federal laws, including other laws prohibiting discrimination in the workplace and

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regulating wages and hours and health and safety standards. The Supreme Court majority has now told us, after the fact, that we in Congress have to `build a record,' like an administrative agency, before they will allow us to protect State employees from discrimination, but it has not made it entirely clear just how many victims of discrimination have to come before us and testify before it will allow us to give them legislative protection. The signs, however, are ominous: the week after it decided Kimel, the Court vacated two lower court decisions holding that States must abide by the Equal Pay Act, calling into question the ability of Congress to offer State employees protection from sex discrimination. Next Term, in University of Alabama v. Garrett, the Court will decide whether States can be held liable for discriminating against employees with disabilities. That plaintiff in Garrett is a State employee--a nurse at the University of Alabama--who was diagnosed with breast cancer, and was demoted after taking sick leave to undergo surgery and chemotherapy. The second blow this Term to congressional authority was United States v. Morrison, which struck down a portion of the Violence Against Women Act that provides a Federal remedy for victims of sexual assault and violence. The Violence Against Women Act had been our measured response to the horrifying effects of violence on women's lives

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nationwide, not only on their physical well-being but also on their ability to carry on their lives and their jobs as they are driven into hiding by stalking and prevented from going out at night in some areas by fear of rape. After hearing a mountain of evidence detailing the impact of violence on women's lives and interstate commerce, I was proud to work with Senator Biden, Senator Hatch, Senator Kennedy and others in an overwhelming bipartisan consensus in 1994 to enact VAWA. But the five-Justice majority was unimpressed with the evidence, and with the common-sense point that violence affects women's lives, including their participation in commerce. Relying once again on abstract notions of federalism, the Court decided that violence against women does not affect interstate commerce enough, or rather, it affects interstate commerce, but in the wrong sort of way, so Congress has no business protecting American women from violence. One Justice said he would cut even more into Congress' power, saying we had very little business doing much of what we had done throughout the 20th century. Frankly, I do not want to see us turn back, in the 21st century, to a 19th century view. What made this latest `federalism' decision all the more remarkable is that the vast majority of the States, whose rights the Court's `federalism' decision are supposed to protect, had urged the Court to uphold the

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VAWA Federal remedy. The Kimel and Morrison decisions are troubling, both for what they do to the rights of ordinary Americans, and for what they say about the relationship between Congress and the present majority of the Supreme Court. State's rights and individual rights are both essential to our constitutional scheme, and the Court has a constitutional duty to prevent the Congress from encroaching on them. I have spoken before about the need to restrain the congressional impulse to federalize more local crimes. There are significant policy downsides to such federalization, however, that do not apply in other areas, where each American, no matter what State he or she lives in, should have the same rights and protections. The legislative judgments we make that are reflected in the laws we pass deserve more respect than the Rehnquist Court has shown. It is troubling when five unelected Justices repeatedly second-guess our collective judgments as to whether discrimination and violence against women and other major social problems are serious enough, or affect commerce in the right sort of way, to merit a legislative response. It is even more troubling when a Justice steps out of his judicial role, and beyond the judgment calls inherent in individual cases, to express a generalized disdain for the legislative branch. Yet, that is precisely what Justice Scalia did in a recent speech, in which he suggested that the oath to uphold

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the Constitution that each of us takes counts for nothing, and that Acts of Congress should be stripped of their traditional presumption of constitutionality. Justice Scalia is as free as the next citizen to express his mind, but that sort of open disrespect for Congress coming from a sitting Supreme Court Justice bodes ill for democracy, and for the delicate balance of power between the Congress, the President and the courts on which our Constitution rests. I am also fearful that Justice Scalia's remarks are becoming a rallying cry for Federal judges around the country who are hostile to Congress and to some of our efforts to protect ordinary people from discrimination, from violence, from invasions of privacy and violations of civil liberties, and from environmental and other health hazards. The Federal appeals court in Richmond, Virginia--the Fourth Circuit--has the dubious honor of leading this charge with radical new legal theories that cut back on Federal power and individual rights. In January, the Supreme Court unanimously reversed a Fourth Circuit decision invalidating a Federal law that prohibits States from disclosing personal information from motor vehicle records. The Fourth Circuit had held that this common-sense privacy law violated abstract notions of federalism. As we have seen, it takes a lot to outdo the present Supreme Court in raising abstract federalism principles over individual rights. Also in January, the

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Supreme Court overwhelmingly rejected the Fourth Circuit's reasoning in a case involving citizen `standing' in Federal court to sue polluters who violate our environmental laws. The Fourth Circuit decision had sharply limited the ability of citizens to sue polluters and win civil penalties. The Supreme Court reversed that decision by a 7-2 vote, with Justice Scalia and Justice Thomas dissenting. The Fourth Circuit is even more consistently hostile to civil rights in matters of criminal law and civil liberties. In death penalty cases, for example, it seems to have embraced a doctrine of State infallibility. An article in the American Lawyer last month reported that: [Page: S7759] GPO's PDF

While condemned inmates' rates of at least partial success in Federal habeas corpus actions run at close to 40 percent nationally, the rate in the 4th Circuit since October 1995 has been a cool 0 percent, with more than 80 consecutive convictions having been upheld. In May, a unanimous Supreme Court, a Court that itself espouses the general belief that the rights of capital defendants are best protected by the State justice system that seeks to execute them, overturned two Fourth Circuit decisions that denied habeas corpus relief to death row inmates who had been sentenced to death on the basis of grossly unfair procedures. Just last month, the Fourth Circuit lost its bid to overturn the Supreme Court's

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landmark decision in Miranda v. Arizona. The Fourth Circuit's notion that it had the right to overturn a longstanding Supreme Court precedent was unorthodox, to say the least. By a 7-2 vote, in which Justices Scalia and Thomas dissented again, the Court reaffirmed the 34-year-old precedent that requires the police to inform suspects of their right to remain silent. What we are seeing in the Fourth Circuit is unparalleled, but not unrivaled. Other Federal courts across the country are also embracing Justice Scalia's `no-deference' philosophy and busily redefining the relationship of the judiciary to the other branches of government. The D.C. Circuit departed from a half century of Supreme Court separation-of-powers jurisprudence to strike down air quality standards established by the EPA under the Clean Air Act, a crucial statute passed during the Nixon administration that has improved the air we breath for the last three decades. Meanwhile, in a striking throw-back to the Lochner era of economic libertarian `natural law' theory, the Federal Circuit has adopted an unusually expansive reading of the Takings Clause that threatens to undermine basic environmental protections that Congress has established. Likewise, Federal district courts in Texas have recently rendered radical decisions, limiting the Federal Government's authority to enforce basic food safety standards. Republican detractors of the Ninth Circuit often refer to

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that court's high reversal rate in the Supreme Court. But about half of the Ninth Circuit decisions that the Supreme Court reversed this year were written by Reagan and Bush appointees. Moreover, set against the reversal record of other circuits, the Ninth Circuit, which has the largest caseload of all the Federal appeals courts, looks about average. Courts with half or a third of the caseload of the Ninth Circuit have more than their share of reversals. The Fourth Circuit was reversed five times this year, as was the Fifth Circuit. The overwhelmingly Republican-appointed judges of the Seventh Circuit were reversed in five out of seven cases this year. I have spoken at some length about this growing trend of judicial decisions second-guessing the congressional judgments embodied in laws that apply to the States because I am deeply concerned about what they mean for the relationship between the judicial and the legislative branches and for our democracy. When a Supreme Court Justice, one held up by some of my Republican friends as a paragon of judicial restraint, declares that no deference, no respect, is owed to the democratic decisions of Congress, Americans should be concerned. We here in the Senate have a responsibility to safeguard democratic values. That does not mean that we should be strident, or disrespectful; we should always cherish judicial independence even when we dislike the results. We

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should, however, defend vigorously our democratic role as the peoples' elected representatives. When we see bipartisan policies, supported by a vast majority of the American people, being overturned time and time again on the basis of abstract notions of federalism, it is our right, and our duty, to voice our concerns. And when the rights of ordinary Americans are defeated by technicalities in the courts and by abstract notions of `State's rights' that the States themselves do not support, it is our responsibility to work together to find new ways to protect them. I have tried to do that. A year ago, I voiced my concerns about the Supreme Court's 1999 State sovereign immunity decisions, as did some of my colleagues, including Senator Biden and Senator Specter. I warned then of their potential impacts on the civil rights of American workers. As we have seen, my fears became a disturbing reality in the Kimel case. I have also tried to begin work on restoring the integrity of our national intellectual property system, in the Intellectual Property Protection Restoration Act, S. 1835, a bill I introduced last October. That bill would restore intellectual property protections while meeting all the Court's constitutional objections, however questionable they are. I am delighted that a subcommittee of the House Judiciary Committee held a hearing today to explore ways to undo the damage done to our intellectual property

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system by the Court's 1999 decisions. I hope that the Senate Judiciary Committee will consider and act on this important issue, which it has ignored all year. These are issues we should all be working on together. Republicans and Democrats can agree on the importance of protecting civil rights, intellectual property rights, privacy and other rights of ordinary Americans that recent doctrinaire judicial decisions have impaired. We can also agree on the importance of protecting Congress as an institution from repeated judicial second-guessing of policy judgments on matters that affect the States. It is important for Congress, as an institution, to focus on making our relationship with the Federal judiciary a more constructive and mutually respectful one. Here in the Senate, where the Constitution requires us to give our `advice and consent' on judicial nominations, we have a special responsibility in this regard, a responsibility to protect both democratic values and judicial independence. The disgraceful manner in which the Senate has treated judicial nominees does not help and may be a factor in the current breakdown of respect between the legislative and judicial branches. Too often, judicial nominees have been put through a litmus test by my Republican colleagues to determine whether they will engage in `liberal judicial activism.' In fact, I cannot remember a recent judicial nomination hearing in which one of my

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Republican friends has not made a speech about `liberal activist judges.' Strangely, however, hardly a mention is made of traditional judicial activism--striking down democratically-adopted laws with which one happens to disagree based on abstract principles with no basis in the Constitution, as the Supreme Court did in the age discrimination case, or overturning the long-standing precedent of a higher court, as the Fourth Circuit did in the Miranda case. Nor do my colleagues seem troubled by Justice Scalia's disdain for Congress. But I know that my Republican friends are very concerned about `liberal judicial activism.' The terms of this test change depending on the circumstances. From what I can gather, the easiest way to spot `liberal judicial activists' is by the company they keep. You might call it the `activist by association' principle. Over the last few years, several outstanding judicial nominees have come under attack simply because, as young lawyers out of law school, they clerked for Supreme Court Justice William Brennan. These nominees were tarred as potential activists not because of anything they had done, but because of their one-year association with a distinguished and respected member of the United States Supreme Court. This test is applied only to delay or oppose nominees--clerking for a conservative justice like Chief Justice Rehnquist has not helped Allen Snyder, a nominee to a

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vacancy on the D.C. Circuit who has been held up in Committee for months. Maybe someone should send a warning to the students at the Nation's top law schools that the Senate has become so partisan that clerking for the Supreme Court can damage your career. Other nominees were challenged because of their association with legal organizations such as the American Civil Liberties Union and the Woman's Legal Defense Fund or for contributing time to pro bono activities. Maybe we should publish a list of groups you cannot associate with, and of rights and liberties you cannot work to protect in your private life, if you want to be a Federal judge. How else can we tell if a nominee will be a `liberal judicial activist'? In the case of Margaret Morrow, it was unfounded allegations that she was skeptical toward California voter initiatives. With respect to Marsha Berzon we were told that she would be an activist judge because she had been an `aggressive' advocate for her client, the AFL-CIO. Maybe we should advise lawyers in private practice who would like to be judges to be less vigorous in pursuing their clients' interests. Of course, since their confirmations neither of these nominees has been cited to be anything other than an outstanding judge. Then there is the old-fashioned litmus test. As a member of the Missouri Supreme Court, Justice White had committed the heresy of voting to reverse death

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sentences in some cases for serious legal error. No matter that Justice White voted to uphold the imposition of the death penalty 41 times. No matter that other members of the Missouri Supreme Court, including members of the Court appointed by Republican governors, had similar voting records and more often than not agreed with Justice White, both when he voted to uphold the death penalty and when he joined with a majority of that Court to reverse and remand such cases for resentencing or a new trial. Maybe someone should have advised Justice White to follow the Fourth Circuit model and bat a thousand for the State in death penalty cases, regardless of the evidence. Another litmus test that has been dressed up as a sign of `liberal judicial activism': The nominee's willingness to enforce Roe v. Wade, the Supreme Court's landmark abortion decision. I confess to some confusion as to how a nominee for a lower Federal court could be faulted for promising to adhere to established Supreme Court precedent. Whether you agree with Roe or not, it is, after all, the law of the land. But maybe someone should advise lower court judges to follow the lead of the Fourth Circuit in the Miranda case and disregard Supreme Court precedent. We need to get away from rhetoric and litmus tests, and focus on rebuilding a constructive relationship between Congress and the courts. We need balance and moderation that respects

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the democratic will and the weight of precedent. We do not need partisan delays by anonymous Senators because a nominee clerked for Justice Brennan or contributed to the legal services organization. We do not need our Federal courts further packed for ideological purity. We do not need nominees put on hold for years, as this Republican Senate has done, while we screen them for their Republican sympathies and associations. Mr. President, I ask unanimous consent to have printed in the Record three recent articles about the Supreme Court's jurisprudential counterrevolution, by Professor Larry Kramer of the New York University School of Law; Professor David Cole of Georgetown University Law Center; and John Echeverria, Director of Environmental Policy Project at Georgetown University Law Center. There being no objection, the material was ordered to be printed in the Record, as follows: [Page: S7761] GPO's PDF From the Washington Post, May 23, 2000

[FROM THE WASHINGTON POST, MAY 23, 2000] The Arrogance of the Court (BY LARRY KRAMER) In 1994, after four years of very public debate, including testimony from hundreds of experts in dozens of hearings, Congress enacted the Violence Against Women Act. This month, a bare 5 to 4 majority of the Supreme Court brushed all that aside and struck the law

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down. Why? Not because Congress cannot regulate intrastate matters that `affect' interstate commerce. On the contrary, the majority agreed that this is permitted by the Constitution, reaffirming a long-standing point of law. But, the court said, whether the effects are `substantial' enough to warrant federal regulation `is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.' And the majority just was not persuaded. This is an astonishing ruling from a court that professes to care about democratic majorities and respect the political process. The justices did much more in this decision than sweep the act off the books. Under a pretense of interpreting the Constitution, they declared that they have the final say about the expediency of an important, and potentially very large, class of federal laws: not just laws under the Commerce Power, which constitute the bulk of modern federal legislation, but many other laws as well. For the limits of all Congress's powers turn eventually on judgments about the need for federal action. This is radical stuff. Previous courts have exercised aggressive judicial review, but never like this. Nothing in the Constitution's language or history supports letting the Supreme Court strike down laws just because it disagrees with Congress's assessment of how much they are needed. Except for a brief period in the 1930s when an earlier court tried to

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stop FDR's New Deal and was decisively repudiated, the court's role has always ended once it was clear that legislation was rationally related to the exercise of a constitutional power. As Alexander Hamilton observed back in 1792, rejecting the very same argument as that made by the court today, `the degree in which a measure is necessary can never be a test of the legal right to adopt it.' The Founding generation understood, in a way our generation seems to have forgotten, that judicial review must be contained or we lose the essence of self-government. They saw that, while courts have a vital role to play in protecting individuals and minorities from laws that trample their rights, Congress's decisions respecting the need to exercise its legislative power must otherwise be left to voters and elections. They foresaw that questions would arise over the limits of federal authority vis-a-vis the states. But, they said (over and over again), those battles must be waged in the political arena. And so they have been, until now. What kind of government is it when five justices of the Supreme Court, appointed for life by presidents whose mandates expired long ago, can cavalierly override the decision of a democratically elected legislature not on the ground that it acted irrationally but because they do not like its reasoning? By what right do these judges claim the authority to second-guess what Justice Souter in dissent

REV_00125512

accurately described as a `mountain of data' based on nothing more than their contrary intuitions? This is important. We have become way too complacent about letting the Supreme Court run our lives, and the current court has exploited this apathy to extend its authority to unheard of lengths. Everyone in the country should be incensed by this decision; not because the Violence Against Women Act was so wonderful or so necessary, but because deciding that it is not--and make no mistake, that is all the majority did--is none of the Supreme Court's business. Yet liberals will sit awkwardly by because they liked the judicial activism we got from the Warren court, though that court could not touch this one for activism. And, of course, conservatives will gleefully hold their tongues because they never much liked this law in the first place, and because they adore the court's new federalism (not to mention the chance to see liberals hoist by their own petard). In the meantime, only democratic government suffers. Ironies this thick would be comical were the stakes not so high. The majority opinion is animated by a sense that the Framers of our Constitution never imagined the federal government enacting laws such as the violence act. I am sure they are right; the Framers would be astounded at the changes in society that have brought us to this juncture. But nowhere near as flabbergasted as they would be at the

REV_00125513

presumptuousness of five judges in casting aside the considered judgment of the national legislature for no better reasons than these--or at the complacency of the citizenry in the face of such outrageous conduct. --

From The Nation, June 12, 2000 [FROM THE NATION, JUNE 12, 2000] Paper Federalists (BY DAVID COLE)

When conservatives attack Supreme Court decisions (admittedly an increasingly rare event these days), they inevitably charge `judicial activism.' Miranda warnings, the right to abortion, the exclusionary rule--all are condemned for having been created by judges out of whole cloth, based on `interpretations' of the Constitution that are so unconstrained as to be entirely political. When it comes to `states' rights,' however, conservatives sing a different tune. In the past few years, the conservative majority on the Supreme Court has launched a virtual revolution in constitutional jurisprudence, invalidating a host of federal laws on the ground that they violate the autonomy not of human beings but of states. The Court has revived the commerce clause as a limitation on federal power after some fifty-odd years of desuetude. It has found implicit in the Constitution a concept of `state sovereign immunity' that jeopardizes Congress's ability to require states to follow federal law. And it has divined from the `spirit' of the

REV_00125514

inscrutable Tenth Amendment a principle of state autonomy with little textual or historical basis. In doing these things, the Court's most conservative Justices--Rehnquist, Scalia, Kennedy, O'Connor and Thomas--have engaged in the very sort of open-ended, freewheeling constitutional interpretation that they excoriate liberals for indulging in on issues of individual rights. This Court's activism on federalism begins with the commerce clause, which for most of our history has been the leading barometer of judicial attitudes toward the balance between state and federal power. In the early part of the twentieth century the Court frequently invoked the clause to strike down labor laws regulating minimum wages, maximum hours and working conditions. The Court reasoned that Congress could regulate only `commerce,' not manufacturing or production, although its actual animating principle was a commitment to laissez-faire capitalism. During the New Deal, the Court abandoned this approach and acknowledged that in our increasingly national economy, the terms of production--such as wages, hours and working conditions--obviously affect interstate commerce. It ultimately interpreted the commerce clause to permit Congress to regulate any local activity that, aggregated nationally, might substantially affect interstate trade, a reading that largely took the judiciary out of the job of restraining Congress and relied on

REV_00125515

the political process to do so. That's where things stood until 1995, when the Court struck down a federal law prohibiting the possession of guns near schools. Then, on May 15, the Court invalidated the Violence Against Women Act, a federal law enabling victims of gender-motivated violence to sue their attackers. In both cases the Court held that Congress may not regulate local `noneconomic' activity. Neither gun possession nor gender-motivated violence is `economic' activity and must be left to the states to regulate. Congress's findings that violence against women reduces their ability to participate in the work force was insufficient to justify federal regulation. But if Congress has the power to regulate conduct where it `affects' interstate commerce, why should it matter whether the conduct itself is labeled `economic' or `noneconomic'? The Court seems to have created a distinction every bit as artificial as the long-rejected line between production and commerce. The Court's activism is even more pronounced in its treatment of `state sovereign immunity,' the doctrine that the sovereign--in this case a state--may not be sued. The Eleventh Amendment to the Constitution does recognize a very limited immunity that protects states from being sued by citizens of other states in federal court, at least for cases not based on federal law violations. But today's Court has ignored the explicit language of the amendment

REV_00125516

to create an expansive immunity that blocks virtually all private suites against states, in state or federal court, under state or federal law. As a result, state employees cannot sue their employer--anywhere--for blatant violations of federal laws, such as the Fair Labor Standards Act. The only exception to this state immunity is where Congress has authorized suits under the Fourteenth Amendment, but the Court has also sharply limited Congress' power to regulate states under that amendment. A third arena for the states' rights revival is the Tenth Amendment. That provision has literally no substantive meaning. It states only that all powers not assigned to the federal government are reserved to the states or the people. The Court once dismissed it as `a truism.' But in recent years, the conservative majority has found in its `spirit' the authority to strike down federal statutes for requiring state officers to carry out even very minimal tasks in furtherance of a federal program, such as the Brady Bill's requirement that local sheriffs conduct brief background checks on would-be gun purchasers. So why do states' rights issues drive conservative Justices to abandon their cherished principle of judicial restraint? There is undeniably a conservative cast to federalism in the United States. States' rights have nearly always been invoked in support of rightwing causes, from slavery to segregation to welfare devolution.

REV_00125517

But no one would seriously suggest that today's Court is using federalism as a cover to protect those who carry guns near schools or rape women. What really drives the conservative Justices toward states' rights is their antipathy to individual rights. `States' rights' is itself something of an oxymoron; rights generally describe legal claims that people assert against government, not claims of governments. Protecting states' rights nearly always directly reduces protection for individual rights. The Court's sovereign immunity decisions bar individuals from suing states for violating their federal rights. And its commerce clause and Fourteenth Amendment decisions have reduced Congress's ability to create federal statutory rights for individuals in the first place. The link between protecting the `rights' of states and disregarding those of individuals is illustrated even more clearly in the Rehnquist Court's treatment of habeas corpus and federal injunctions. The Court has consistently cited deference to the states to justify shrinking the rights of state prisoners to go to federal court for review of their constitutional claims. And it has grandly invoked `Our Federalism' to limit the ability of federal courts to oversee and enjoin police abuse against minorities. Paradoxically, then, this Court is most activist in restricting its own power. The conservative Justices eagerly engage in open-ended constitutional interpretation

REV_00125518

when the result forecloses an avenue for rights protection but assail their liberal counterparts for doing so when the result is to recognize an individual right. As a result, states receive far more solicitude than individuals. But the opposite should be the case: The Court's highest calling is not the protection of regimes but of individuals who cannot obtain protection from the political process. --

[Page: S7762] GPO's PDF It's Conservatives Now Who Are Judicial Activists: Why Environmentalists Should Be Alarmed (BY JOHN ECHEVERRIA) Recent federal court decisions concerning our environmental laws cry out for a giant reality check on the recently renewed political debate about whether federal judges should be `strict constructionists' when it comes to deciding issues of constitutional law. Governor George W. Bush last month revived a familiar GOP mantra when he declared that he would only appoint `strict constructionists' as opposed to `judicial activists' to the federal bench. This stance echoes similar statements by Bob Dole, the GOP standard bearer three years ago, as well as by paterfamilias George Bush I and the modern GOP's founding father, Ronald Reagan. Governor Bush's political declaration has a kind of through-the-looking-glass quality all too familiar in modern American political life. While Bush and others on the political right decry judicial activism,

REV_00125519

in some arenas of constitutional law, particularly those affecting our environmental laws, it is GOP-appointed judges who are actually the most activist. On the other hand, out of a habit of supporting an expansive approach to constitutional interpretation, which apparently served their ideological interests in the past befuddled democratic forces rise to the bait of defending the judiciary against charges of `judicial activism' even as their environmental protection gains, achieved through hard-fought battles in the political arena, are being taken away by GOP-appointed judicial activists. Sensible conversation about the virtues and limitations of a `strict constructionist' approach to judicial interpretation calls in the first instances for an accurate understanding of how the federal bench is actually deciding real cases today. In simplistic terms, a judge is said to be a `strict constructionist' if she resolves constitutional cases solely on the basis of the language and original understanding of the constitutional text. On the other hand, a judge who looks to other sources for interpretive assistance, such as some particular social or economic philosophy, is said to engage in judicial activism. Governor Bush left undefined the specific rulings he thinks reflects judicial activism. But similar GOP pronouncements in the past honed in on the U.S. Supreme Court's expansion of the constitutional rights of the criminally accused

REV_00125520

under the leadership of Chief Justice Earl Warren in the 1950's and 60's. Another favorite target has been the Court's decision in Roe v. Wade, which interpreted the Constitution to create a zone of privacy granting women the constitutional right to decide whether or not to terminate a pregnancy without state interference. Whether or not these (now somewhat dated) judicial innovations can fairly be characterized as the product of an activist judiciary, it is undeniably true that the charge of judicial activism can, with at least equal fairness, be lodged against more recent judicial decisions that serve a so-called `conservative' 'philosophy. This is particularly true in cases involving constitutional challenges to the authority of government to adopt and enforce environmental regulations. Consider the following examples. Over the last decade, the U.S. Supreme Court has issued an unbroken string of decisions expanding public liability under the takings clause of the Fifth Amendment for environmental and land-use regulations that impinge on private property interests, undermining the ability of the government to adopt new environmental protection standards. The takings clause states that `private property [shall not] be taken for public use, without just compensation.' According to leading scholars on all sides of the ideological spectrum, the available historical evidence unequivocally shows that the drafters

REV_00125521

of the Bill of Rights intended the clause to apply only to direct appropriations of private property, and never intended the clause to apply to regulations under any circumstances. In its recent decisions, however, the Court has established the takings clause as a significant new constraint on environmental regulatory authority. From the standpoint of a principled strict constructionist, this direction in judicial thinking would be simply indefensible. The same is true of recent Supreme Court decisions limiting citizens' right to sue to enforce federal health and environmental laws. There is a general academic consensus that the drafters of the Constitution intended Congress to have broad power to grant private citizens the right to bring suits in their own names to enforce federal laws. Nevertheless, over the last decade the U.S. Supreme Court, led by Justice Antonin Scalia, has erected new barriers which citizens must cross to establish their right to bring suit to enforce environmental laws. The Court's recent decisions for example, have severely undermined the Clean Water Act and the Endangered Species Act, and more particularly the role Congress intended for citizens in enforcing those laws, a result which principled advocate of a non-activist judiciary should supposedly abhor. Conservatives living in glass houses might start a move toward a more sensible debate by refraining from hurling rocks in the

REV_00125522

direction of the federal judiciary. Or perhaps liberals may wish to rethink a strategy based on warding off rocks tossed by others, and may wish to consider hurling a few of their own. Mr. LEAHY. Mr. President, I see my good friend from Utah on the floor. I yield the floor.

REV_00125523

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/22/2001 6:20:57 AM
Subject: : Re: divvying up next week's interviews between Tim and Judge

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-MAR-2001 11:20:57.00
SUBJECT:: Re: divvying up next week's interviews between Tim and Judge
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Question: has it been decided that we are doing all dct interviews?

Bradford A. Berenson
03/22/2001 11:18:52 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: divvying up next week's interviews between Tim and Judge

D. Mont. has already been scheduled (I can't remember with whom) so it's already down.

Brett M. Kavanaugh
03/22/2001 11:00:53 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: divvying up next week's interviews between Tim and Judge

my proposal:

CA3 PA is Tim
ED Ky is Judge
CA8 Iowa is Judge
D Montana is ??? (whoever did it last time)
D Nebraska is Tim
D SC is Judge

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
stuart w. bowen/who/eop@eop
rachel l. brand/who/eop@eop
noel j. francisco/who/eop@eop

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 3/23/2001 2:04:41 PM
Subject: : Re: District court vacancy in West Virginia

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAR-2001 19:04:41.00
SUBJECT:: Re: District court vacancy in West Virginia
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Why? We have far better candidates in VA than in WV. Plus, we hve two R
Senators in VA and two D Senators in WVA.




Noel J. Francisco
03/23/2001 07:02:20 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: District court vacancy in West Virginia

I think we should shift the Virginia seat (formerly of North Carolina) to
West Virginia.




Helgard C. Walker
03/23/2001 06:56:40 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: District court vacancy in West Virginia
```

I was assigned the State of West Virginia, but I see no district court vacancy or future district court vacancy on any of our lists. Clue, anyone?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
rachel l. brand/who/eop@eop

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jason B. Torchinsky/WHO /EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 3/23/2001 12:02:57 PM
Subject: : District court resumes

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAR-2001 17:02:57.00
SUBJECT:: District court resumes
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Brent and Jason have been maintaining files of all the recommendations and resumes we have been receiving for specific federal district courts. As we begin to interface with the state leaders of the screening committees, I recommend that we forward to them the resumes and recommendations received thus far. Although some are not terribly serious, many others are quite good.

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/25/2001 9:22:20 AM
Subject: : Re: POTUS books

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-MAR-2001 14:22:20.00
SUBJECT:: Re: POTUS books
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

To get it on one page, do you delete certain information? What sorts of
things do you delete?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 3/25/2001 11:15:38 AM
Subject: : Revised travel memo
Attachments: P_1V591004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-MAR-2001 16:15:38.00
SUBJECT:: Revised travel memo
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Same substance, but elaborates on certain aspects. I will review
again for clarity and the like.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1V591004_WHO.TXT_1>
```

March 26, 2001

MEMORANDUM FOR ANDREW CARD

FROM: ALBERTO R. GONZALES

SUBJECT: Payment for Travel on Military Aircraft

This memorandum summarizes certain principles and past practices governing travel on military aircraft, and recommends policies for this Administration to follow (assuming that the Office of Administration and White House Military Office agree).

As an initial matter, it bears emphasis that no specific laws or regulations speak to these precise issues. In adopting their policies, past Administrations have reasoned from custom, common sense, and general principles of appropriations law in devising policies to govern these issues.

Guests on Air Force One for Trips Other than Political Trips

The practice of both President Clinton and President and Bush was as follows: Unless the trip is a political trip, the President is considered to be traveling on official business and need not reimburse for his travel. Unless the trip is a political trip, individuals who travel on Air Force One at the invitation of the President travel as official guests of the President or Vice President and need not reimburse.

We recommend that you continue this policy.

First Lady's Travel on Military Aircraft

It has been the policy of the last several Administrations to provide military aircraft for travel of the First Lady. We recommend that you continue this policy.

Before the Clinton Administration, it does not appear that there was a written policy governing travel by the First Lady in those cases where she traveled without the President.

The written policy of President Clinton regarding such travel of the First Lady was as follows: If the First Lady is traveling on official business, no reimbursement is required for her or for any employees or guests traveling with her. If the First Lady is traveling for a political event, the RNC or other entity must reimburse. If the First Lady is traveling on personal business, both the First Lady and her guests must reimburse at the full commercial economy class rate, plus tax, plus one dollar. (As discussed below with respect to the President's travel, when the First Lady travels for an unofficial purpose, there nonetheless may be certain government employees who travel with her for an official purpose.)

We recommend that you follow this policy for travel by the First Lady without the President.

Travel of Those Who Accompany President on Political Travel

The practice of both President Clinton and President Bush was as follows: Government officers or employees who travel with the President or Vice President on political trips are on official duty so long as they do not engage in political activity and are traveling with the President or Vice President for an official purpose. Under the policies adopted by Presidents Clinton and Bush, certain government officers and employees are, by definition, always traveling on official business when traveling with the President. They include the Chief of Staff, Personal Aide to the President, President's secretary, doctor, photographer, National Security Advisor, Director of the White House Military Office, and Secret Service and military personnel.

We recommend that you continue this policy.

On political or mixed political/official trips, the Clinton Administration considered all officials from the Office of Political Affairs to be traveling politically. While this is the likely result in most cases, we recommend that this be only a presumption rather than a fixed rule.

Helicopter Transportation

The practice of both President Clinton and President Bush was as follows. Use of DOD helicopters by the President or Vice President is considered an official security measure and, therefore, not reimbursable. When the trip is political and the helicopter is the sole source of transportation, the RNC or other entity will reimburse for the costs associated with the helicopter travel. There may be other cases where individual billing is also appropriate, as where political guests accompany the President on the helicopter. Billing in such cases will be pro-rated based on number of passengers, flight time, and hourly operating cost.

From: CN=Matthew Yin/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/27/2001 8:42:26 AM
Subject: : Re: ARMS Requirements for Fax Server

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew Yin (CN=Matthew Yin/OU=OA/O=EOP [OA])
CREATION DATE/TIME:27-MAR-2001 13:42:26.00
SUBJECT:: Re: ARMS Requirements for Fax Server
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,
Please advise on the following issue regarding records management.
Thanks.
Matthew
---------- Forwarded by Matthew Yin/OA/EOP on 03/27/2001 01:41 PM ----------

From: Matthew Yin on 03/14/2001 11:34:42 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: ARMS Requirements for Fax Server

Brett,

Please advise on the Records Management issue described below. Please feel free to call me if you have any questions or need additional information.

Regards,

Matthew Yin
Intranet Quorum Program Manager
x56568
---------- Forwarded by Matthew Yin/OA/EOP on 03/14/2001 11:28 AM ----------

Catherine S. Anderson
03/12/2001 03:36:20 PM
Record Type: Record

To: Matthew Yin/OA/EOP@EOP
cc:
bcc:
Subject: Re: ARMS Requirements for Fax Server

Matt: The facsimiles to which you are referring would be governed solely by the Presidential Records Act, not by the Federal Records Act, or the Armstrongdecisions/orders which related to the records management of federal records. Accordingly, any records management issues regarding these faxes should be referred to White House Records Management (Terry Good), who then would coordinate any decision with White House Counsel. Sorry, I was not more helpful, but I can only advise you with regard to requirements for federal records. Kate

From: Matthew Yin on 03/12/2001 02:30:22 PM
Record Type: Record

To: Catherine S. Anderson/OA/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: ARMS Requirements for Fax Server

Kate,

The Mail Analysis (MA) of the Presidential Correspondence Office uses two facsimiles to receive faxes addressed to the President. These two facsimiles run around the clock and generate lots of paper (and burn trees too). MA likes to install a Fax Server that will allow them to receive faxes electronically. All incoming faxes will be saved as images and can be printed on demand. The question is: does the Fax Server meet the ARMS requirements? If not, what should we do to make the Fax Server ARMS compliant?

Thanks,
Matthew Yin

Message Copied
To:_____
Gertrude A. Roddick/WHO/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Robert D. Helms/OA/EOP@EOP
Kathleen E. Ohalloran/OA/EOP@EOP
Lynnae C. Roscoe/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Daniel A. Barry/OA/EOP@EOP

Message Copied
To:_____
Terry W. Good/WHO/EOP@EOP
Daniel A. Barry/OA/EOP@EOP
James B. Wright/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Gertrude A. Roddick/WHO/EOP@EOP

From: CN=Matthew Yin/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/27/2001 8:42:26 AM
Subject: : Re: ARMS Requirements for Fax Server

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Matthew Yin (CN=Matthew Yin/OU=OA/O=EOP [OA])
CREATION DATE/TIME:27-MAR-2001 13:42:26.00
SUBJECT:: Re: ARMS Requirements for Fax Server
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,
Please advise on the following issue regarding records management.
Thanks.
Matthew
---------- Forwarded by Matthew Yin/OA/EOP on 03/27/2001 01:41 PM ----------

From: Matthew Yin on 03/14/2001 11:34:42 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: ARMS Requirements for Fax Server

Brett,

Please advise on the Records Management issue described below. Please feel free to call me if you have any questions or need additional information.

Regards,

Matthew Yin
Intranet Quorum Program Manager
x56568
---------- Forwarded by Matthew Yin/OA/EOP on 03/14/2001 11:28 AM ----------

Catherine S. Anderson
03/12/2001 03:36:20 PM
Record Type: Record

To: Matthew Yin/OA/EOP@EOP
cc:
bcc:
Subject: Re: ARMS Requirements for Fax Server

Matt: The facsimiles to which you are referring would be governed solely by the Presidential Records Act, not by the Federal Records Act, or the Armstrongdecisions/orders which related to the records management of federal records. Accordingly, any records management issues regarding these faxes should be referred to White House Records Management (Terry Good), who then would coordinate any decision with White House Counsel. Sorry, I was not more helpful, but I can only advise you with regard to requirements for federal records. Kate

From: Matthew Yin on 03/12/2001 02:30:22 PM
Record Type: Record

To: Catherine S. Anderson/OA/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: ARMS Requirements for Fax Server

Kate,

The Mail Analysis (MA) of the Presidential Correspondence Office uses two facsimiles to receive faxes addressed to the President. These two facsimiles run around the clock and generate lots of paper (and burn trees too). MA likes to install a Fax Server that will allow them to receive faxes electronically. All incoming faxes will be saved as images and can be printed on demand. The question is: does the Fax Server meet the ARMS requirements? If not, what should we do to make the Fax Server ARMS compliant?

Thanks,
Matthew Yin

Message Copied
To:_____
Gertrude A. Roddick/WHO/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Robert D. Helms/OA/EOP@EOP
Kathleen E. Ohalloran/OA/EOP@EOP
Lynnae C. Roscoe/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Daniel A. Barry/OA/EOP@EOP

Message Copied
To:_____
Terry W. Good/WHO/EOP@EOP
Daniel A. Barry/OA/EOP@EOP
James B. Wright/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Gertrude A. Roddick/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Brooke Vosburgh/WHO/EOP@EOP [WHO] <Brooke Vosburgh>;Jan E. Williams/WHO /EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Megan R. Johnston/WHO/EOP@EOP [WHO] <Megan R. Johnston>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov @ inet [UNKNOWN] <andrew.beach@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>

CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>

Sent: 3/27/2001 2:28:18 PM

Subject: : confirmation - Judicial Selection Committee Meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-MAR-2001 19:28:18.00
SUBJECT:: confirmation - Judicial Selection Committee Meeting
TO:Brooke Vosburgh ( CN=Brooke Vosburgh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Megan R. Johnston ( CN=Megan R. Johnston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stacey B. Silva ( CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Josephine B. Robinson ( CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Virginia T. Gregory ( CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Dee Dee Benkie ( CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:andrew.beach@usdoj.gov ( andrew.beach@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov ( adam.ciongoli@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
```

CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Laura L. Flippin (CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Heather Larrison (CN=Heather Larrison/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Tomorrow (Wednesday) at 4-5 pm in the Roosevelt Room.

Thanks!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Brooke Vosburgh/WHO/EOP@EOP [WHO] <Brooke Vosburgh>;Jan E. Williams/WHO /EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Megan R. Johnston/WHO/EOP@EOP [WHO] <Megan R. Johnston>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov @ inet [UNKNOWN] <andrew.beach@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>

CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>

Sent: 3/27/2001 2:28:18 PM

Subject: : confirmation - Judicial Selection Committee Meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-MAR-2001 19:28:18.00
SUBJECT:: confirmation - Judicial Selection Committee Meeting
TO:Brooke Vosburgh ( CN=Brooke Vosburgh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Megan R. Johnston ( CN=Megan R. Johnston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stacey B. Silva ( CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Josephine B. Robinson ( CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Virginia T. Gregory ( CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Dee Dee Benkie ( CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:andrew.beach@usdoj.gov ( andrew.beach@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov ( adam.ciongoli@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
```

CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Laura L. Flippin (CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Heather Larrison (CN=Heather Larrison/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Tomorrow (Wednesday) at 4-5 pm in the Roosevelt Room.

Thanks!

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;kevin j. martin/opd/eop@eop [OPD] <kevin j. martin>
Sent: 3/28/2001 3:12:16 AM
Subject: : Re: President's Information Technology Advisory Committee

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-MAR-2001 08:12:16.00
SUBJECT:: Re: President's Information Technology Advisory Committee
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kevin j. martin (CN=kevin j. martin/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
End Original ARMS Header

I also worked on this preliminarily with OMB - I never got confirmation
that the reauthorization went through before April 11.

Helgard C. Walker
03/27/2001 07:38:35 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Kevin J. Martin/OPD/EOP@EOP
Subject: President's Information Technology Advisory Committee

Did somebody draw up the documents for the reauthorization of this group?
I recall this being worked on in our office. I just got a letter dated
2/7/ 01 from Calio's shop, from members of Congress advising of the
Commitee's expiration on 2/11/01.

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;kevin j. martin/opd/eop@eop [OPD] <kevin j. martin>
Sent: 3/28/2001 3:12:16 AM
Subject: : Re: President's Information Technology Advisory Committee

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-MAR-2001 08:12:16.00
SUBJECT:: Re: President's Information Technology Advisory Committee
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kevin j. martin (CN=kevin j. martin/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
End Original ARMS Header

I also worked on this preliminarily with OMB - I never got confirmation
that the reauthorization went through before April 11.

Helgard C. Walker
03/27/2001 07:38:35 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Kevin J. Martin/OPD/EOP@EOP
Subject: President's Information Technology Advisory Committee

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I recall this being worked on in our office. I just got a letter dated
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Commitee's expiration on 2/11/01.

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 3/29/2001 6:56:34 AM
Subject: : Re: FW: Call from Kohl's staff on Wisconsin judge process

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-MAR-2001 11:56:34.00
SUBJECT:: Re: FW: Call from Kohl's staff on Wisconsin judge process
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

As Judge Gonzales and others are aware, I have had meetings with staff of
Senators Kohl and Feingold regarding whether we would be using the
Wisconsin commission. The bottom line is that we have told Kohl and
Feingold that we are still reviewing the matter and will get back to
them. We promised them in the meantime that we would take no steps toward
filling the one vacancy on the Dist Ct in Wisconsin without first
concluding our discussions re the commission.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>
Sent: 3/31/2001 9:43:36 AM
Subject: : Re: RNC interns

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAR-2001 14:43:36.00
SUBJECT:: Re: RNC interns
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Is this now up and running?

Sara M. Taylor
03/16/2001 10:05:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RNC interns

Any progress on this?

Sara

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ansley C. Tillman/WHO/EOP@EOP [WHO] <Ansley C. Tillman>
Sent: 3/31/2001 7:01:09 AM
Subject: : Re: LRM OGG15 - - National Archives and Records Administration (NARA) Testimony on HR577 - Disclosure of Funds for Presidential Libraries
Attachments: P_94IC1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAR-2001 12:01:09.00
SUBJECT:: Re: LRM OGG15 - - National Archives and Records Administration (NARA) Testimony on HR577 - Disclosure of Funds for Presidential Libraries
TO:Ansley C. Tillman (CN=Ansley C. Tillman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Are the LRM's being distributed randomly, or by agency that we were assigned? No big deal, just curious.

Ansley C. Tillman
03/30/2001 04:54:36 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM OGG15 - - National Archives and Records Administration (NARA) Testimony on HR577 - Disclosure of Funds for Presidential Libraries

---------- Forwarded by Ansley C. Tillman/WHO/EOP on 03/30/2001 04:54 PM ----------

From: Oscar Gonzalez on 03/30/2001 04:50:26 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM OGG15 - - National Archives and Records Administration (NARA) Testimony on HR577 - Disclosure of Funds for Presidential Libraries

Attached for your review is NARA testimony for a hearing next Thursday, April 5th before the House Government Reform Committee's Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations on H.R. 577. Please submit your comments by no later than 4:00 P.M. Monday, April 1st.

Note to agencies: You will also receive a hard copy.

Note to EOP staff: You will not receive a hard copy of this LRM.

Total Pages: ____

==========
LRM ID: OGG15
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, March 30, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Oscar Gonzalez
E-Mail: Oscar_Gonzalez@omb.eop.gov
PHONE: (202)395-3923 FAX: (202)395-3109
SUBJECT: National Archives and Records Administration (NARA) Testimony on HR577 - Disclosure of Funds for Presidential Libraries

DEADLINE: 4:00 P.M. Monday, April 2, 2001

==========

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review is NARA testimony for a hearing next Thursday, April 5th before the House Government Reform Committee's Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations on H.R. 577. Please submit your comments by no later than 4:00 P.M. Monday, April 1st.

DISTRIBUTION LIST

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Eric W. Hunn
Steven D. Aitken
Ansley C. Tillman
LRM ID: OGG15 SUBJECT: National Archives and Records Administration (NARA) Testimony on HR577 - Disclosure of Funds for Presidential Libraries

==========

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Oscar Gonzalez Phone: 395-3923 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4607

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

- Duncanbilltestimony.doc

Message Sent
To:_____
Randolph M. Lyon/OMB/EOP@EOP
Kimberley S. Luczynski/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Lisa B. Fairhall/OMB/EOP@EOP
Douglas D. McCormick/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Eric W. Hunn/OMB/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Ansley C. Tillman/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_94IC1004_WHO.TXT_1>

Draft of 3/30/01 2:45PM

STATEMENT
By Dr. Lewis J. Bellardo
Deputy Archivist of the United States
National Archives and Records Administration
Washington, DC

To the
Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations
Of the
Committee on Government Reform
House of Representatives
Congress of the United States

April 5, 2001

Mr. Chairman, I want to begin by thanking you for holding this hearing on H.R. 577. As the Deputy Archivist of the United States and former Acting Director of the Office of Presidential Libraries of the National Archives, I am delighted to be able to join you this morning to offer some background on the Libraries system and what we think are its multiple benefits to scholarship, public policy, education, and a more complete understanding of our democracy. As I think the Chairman knows, this has been a most successful public-private partnership and we greatly appreciate the opportunity to explain why it has succeeded for 60 years and 11 presidential administrations and how the system works.

When you invite an archivist to testify, we must start with a little history.

REV_00125646

A BRIEF HISTORY OF THE PRESIDENTIAL LIBRARY SYSTEM

Sixty years ago Franklin D. Roosevelt proposed creating a Presidential Library that would be a part of an institution whose growth he had shepherded – the National Archives. Roosevelt suggested a novel and innovative approach – he would donate the land and build the library with private funding and then give the library and his papers to the National Archives. On June 30, 1941, as the war in Europe threatened democracy, Roosevelt dedicated his library at Hyde Park. His words of dedication remain important today.

> To bring together the records of the past and to house them in buildings where they will be preserved for the use of men and women in the future, a Nation must believe in three things.
>
> It must believe in the past.
>
> It must believe in the future.
>
> It must, above all, believe in the capacity of its own people so to learn from the past that they can gain judgement in creating their own future.

In the services it provided for its researchers, its extensive collection of Roosevelt materials, and the incorporation of a museum experience for hundreds of thousands of visitors a year, the Roosevelt Library became the model for the presidential library system, which soon began to grow.

President Truman, deploring the loss of presidential papers in the past, stated "such destruction should never again be permitted…because the truth behind a President's actions can be found only in his official papers, and every Presidential paper is official." Originally, Truman considered depositing his papers at the National Archives, in Washington, DC, but by 1950, he decided on a presidential library in his hometown of Independence, Missouri. Truman strongly felt that presidential libraries were not to be monuments to a president but centers for the study

REV_00125647

of the presidency. The Truman Institute, established to build and support the library, has a long history of sponsoring intellectual exchanges through conferences and the Truman Grants program for the study of the presidency.

Dwight D. Eisenhower's clear support of the development of a library at the site of the already established Eisenhower Museum in Abilene, Kansas prompted Congress to pass *The Presidential Libraries Act* of 1955 (44 U.S.C. 2108). The legislation had full bipartisan support and was hailed by scholars and educators. This Act provided continuing legal authority for the government to accept the gift of a Presidential Library.

President Hoover had originally given his papers to Stanford, but responded favorably to a request of a citizens committee from his hometown for the development of a library in West Branch, IA. His library became the third added to the system in 1962. The Eisenhower Library was also opened in 1962 and a pattern, which has remained unbroken, was established.

Over time, however, the venue for a Presidential Library shifted from the President's hometown, to larger metropolitan areas or a university campus. This often means three and even four way partnerships, as the library foundation, the university, and the local community come together to build a presidential center. The Presidential Libraries Act of 1955 presciently enabled this by authorizing the government to enter into agreements with any State or political subdivision, universities and institutions of higher learning, institute or foundation for the purposes of utilizing land, buildings, and equipment for a Presidential Archival Depository. The John F. Kennedy Library is adjacent to the University of Massachusetts; the Lyndon B. Johnson Library

REV_00125648

and Museum is on the University of Texas at Austin campus; the Gerald Ford Library is at the University of Michigan; the Jimmy Carter Library is on the campus of Emory University; the George Bush Library is part of Texas A & M University; and the William Jefferson Clinton Library will be affiliated with the University of Arkansas at Little Rock.

In 1986 Congress passed various amendments to the previous Act to reduce the costs of operating Presidential libraries. 44 U.S.C. 2112 requires that an endowment equal to 20% of the cost of the building be transferred to the government at the time the Library is turned over to the government. Libraries larger than 70,000 sq. ft. are to be accompanied by an endowment that increases geometrically in accordance with the size of the building. The Act also required the Archivist to promulgate architectural and design standards for the preservation of materials and the inclusion of adequate research facilities. The Bush Library is the first Library required to have an endowment. On the day the Bush Library was dedicated, the Bush Foundation presented a check for $4 million to the National Archives Trust Fund. A serious concern faced by those planning new libraries is the failure of the new Act to distinguish the differences in archival storage requirements for a one-term versus a two-term President.

The 1986 Act did not change the requirement that the Archivist submit a written report to Congress prior to accepting a library but it did set forth the specific information required in the report. The Archivist may not accept the Library until the expiration of a period of 60 days of continuous session of Congress beginning on the day the Archivist transmits the report. The report must include:

- A description of the proposed gift.

REV_00125649

- A statement specifying the total cost and the amount to be deposited in an endowment.
- A general description of any papers, documents, or historical materials proposed to be deposited in the library.
- An estimate of the increase in the total annual cost to the United States of maintaining, operating, and protecting the depository.
- A certification that the depository and the equipment therein will, comply with the standards promulgated by the archivist.

PRESIDENTIAL MATERIALS

Throughout the 18th, 19th, and well into the 20th century, no one questioned the private ownership of Presidential papers by the President. Former Presidents could donate them to a library or archives, or not, as they saw fit. Fortunately, many presidential papers were donated and are available for historical research today. On the other hand, many were accidentally or purposely destroyed. Biographers of George Washington snipped out pages of Washington's diaries. Chester Arthur burned his papers. Former Presidents and their families exercised considerable discretion in what they donated resulting in selective donation and selective destruction. One very powerful reason the National Archives wanted libraries built and given to the National Archives was that this donation of a library meant the National Archives would also receive the President's papers. In its time this system of donation worked very well. While there was nothing mandatory in the legislation for presidential libraries requiring that presidents systematically preserve their presidential papers, the legislation assured a president who donated his materials to the National Archives that the integrity of his papers would be preserved. The papers would be cared for by a professional archival staff and made available to all as historical records.

REV_00125650

The handling of presidential materials began to change again with President Nixon's resignation in 1974. Congress enacted the Presidential Recordings and Materials Preservation Act (PRMPA) to ensure that no evidence in President Nixon's papers, tapes, or other historical material relating to Watergate would be destroyed. The PRMPA seized the Nixon presidential materials and gave the National Archives and Records Service, now NARA, legal custody and control over them.

Historians, journalists, and Congress now raised serious questions about the ownership of Presidential materials suggesting instead they be treated as government records. *PRMPA* had established the National Study Commission on Records and Documents of Federal Officials to explore topics of ownership, control, disposition, and preservation of historic materials. The report of the Commission, completed in March 1977, made two basic recommendations:

1. All documentary materials received or made by Federal Officials in discharge of their official duties should be considered the property of the United States.
2. Federal Officials should be given the prerogative to control access to their materials up to 15 years after the end of their federal service.

In 1978, Congress acted on the report and passed the *Presidential Records Act* (44 U.S.C. chapter 22). This Act created and defined a new category of records – Presidential records and established the terms of access to these records. The Act clearly established that these records are owned by the United States. After conclusion of a president's tenure, the custody of presidential records is transferred to the Archivist of the United States.

Government archivists and curators preserve, process, and provide access to the presidential materials in their care. The process for providing access to donated historical materials and the process for providing access to presidential records vary somewhat in implementation because of the statutory and regulatory requirements. However, the mission of the government staff in each

REV_00125651

Library is the same – to preserve and process the materials and provide access as fully and promptly as the law or deed and resources permit.

Besides large collections of papers and records of the President and others associated with him, each presidential library also houses various artifacts and gifts given to the President. The latter include Head of State gifts under *The Foreign Gifts and Decorations Act, 22 U.S.C. 264,* and gifts received by the President from private citizens and accepted by him for eventual deposit in his presidential library (*44 U.S.C. 2111 and 2112).*

Many historians, educators, and other users have offered their testimonials on the value of presidential libraries and the dedicated staff that preserve, process, and assist them in using the materials. Countless forwards to well-known historical works over the past fifty years refer to the importance of these materials for exploring and understanding historical themes and issues of our time. In a recent Washington Times article (2/28/00), the reporter noted that "As far as scholars, educators and the U.S. government are concerned, the libraries are among the most important research sites in the United States." In the same article, Page Miller, former director of the National Coordinating Committee for the Promotion of History, is quoted saying, "All you have to do is check the footnotes of major prize-winning books and monographs dealing with presidents and you'll see they all reference presidential libraries." Anna Nelson, a long-time user of archives, has found that "in all these presidential libraries the archivists are splendid," a view widely shared by professionals who use the libraries.

REV_00125652

The materials in presidential libraries are among this Nation's most important documents. Presidential records are often open for research long before the records of other departments and agencies of government are even transferred to the National Archives. Political scientists study the processes used by Presidents to govern and make recommendations to new Presidents on what works and does not work. Economists study the impact of presidential decisions on economic indicators and project what will happen in the future. The media searches for examples from our past to inform the public about current events. Hundreds of thousands of children visit libraries each year to learn about how President's make decisions, how laws are passed, how wars were fought, how our civil rights have been ensured, and how people lived before they were born. And over a million visitors each year view the human drama of the presidency through the power of objects and documents displayed in the libraries.

PRESIDENTIAL LIBRARY FOUNDATIONS

Presidents have a vision for their libraries that goes beyond building a bricks and mortar building and caring for their records. This may be providing a premier institution to support educational institutions at all levels or promoting public service or providing forums for the exploration of the important issues of our day. Whatever their larger vision has been, former Presidents and their families know that a lively, exciting institution that draws a large visitorship from their community and from the nation, and an institution that provides an informative program of exhibits, public, and educational events must have an active and generous foundation. The government cannot be expected to provide appropriated funds to each presidential library for these purposes. The library foundations have evolved to meet these needs. The contributions of

REV_00125653

these support organizations to the libraries spells the difference between static repositories and lively, vital centers of scholarship and service to the public.

In 1973, James B. Rhoads, then Archivist of the United States, told an education symposium at the Lyndon Baines Johnson Library, "Presidential libraries would be fulfilling their purpose if they did nothing more than preserve and provide access to the papers they contain...but their charters are broad and their possibilities for service are unlimited." However broad their charters may be, the libraries face limitations imposed by financial reality. Taxpayers are under no obligation to fund a temporary exhibit on the Civil War, a conference on civil rights, or educational efforts aimed at high school students, admirable and useful as these undeniably are to the public. These efforts are funded by the libraries' support organizations and can constitute as much as one-third of the support in those libraries with highly active public and outreach programs.

Directly appropriated funds pay for activities mandated by law as part of NARA's mission. These include appraisal, accessioning, processing, and preserving of materials held in the libraries, as well as the promotion of their usage by researchers. NARA must also provide for security, facility maintenance, and environmental and safety controls. NARA pays salaries for administrators, archivists, archives specialists, curators, registrars, librarians, facility managers, education specialists, technicians, and clerks. The Trust Fund of each library provides admission clerks, exhibit specialists, audiovisual specialists, visitor services staff, and volunteer coordinators. Foundations in many of the libraries provide additional staff to support educational activities and Internet accesses.

REV_00125654

As existing buildings became cramped and obsolete, many Foundations have supported efforts to update and expand Library buildings by providing funds for expanding exhibit and educational programs. Public funds to expand spaces in libraries have often been contingent on the ability of the foundations to raise additional private funds to support the program functions in these expanded spaces.

In summary, the libraries and their support organizations have demonstrated a commitment to public service and have displayed an entrepreneurial willingness to rely upon financial sources other than the American taxpayer.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer any questions at the appropriate time.

REV_00125655

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 3/31/2001 8:24:43 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAR-2001 13:24:43.00
SUBJECT:: Re:
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

He will FAX me resume on Monday. I will then give to you.

David S. Addington
03/29/2001 01:27:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Brett:

Do you know how I could get a bio or resume for Bill Burke?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew Yin/OA/EOP@EOP [OA] <Matthew Yin>
Sent: 3/31/2001 9:03:28 AM
Subject: : Re: ARMS Requirements for Fax Server

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAR-2001 14:03:28.00
SUBJECT:: Re: ARMS Requirements for Fax Server
TO:Matthew Yin (CN=Matthew Yin/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

You should check with Terry Good on this in the first instance. I think he can clear this up for you.

From: Matthew Yin on 03/27/2001 01:42:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: ARMS Requirements for Fax Server

Brett,
Please advise on the following issue regarding records management.
Thanks.
Matthew
---------- Forwarded by Matthew Yin/OA/EOP on 03/27/2001 01:41 PM ----------

From: Matthew Yin on 03/14/2001 11:34:42 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: ARMS Requirements for Fax Server

Brett,

Please advise on the Records Management issue described below. Please feel free to call me if you have any questions or need additional information.

Regards,

Matthew Yin
Intranet Quorum Program Manager
x56568
---------- Forwarded by Matthew Yin/OA/EOP on 03/14/2001 11:28 AM ----------

Catherine S. Anderson
03/12/2001 03:36:20 PM
Record Type: Record

To: Matthew Yin/OA/EOP@EOP
cc:
bcc:

Subject: Re: ARMS Requirements for Fax Server

Matt: The facsimiles to which you are referring would be governed solely by the Presidential Records Act, not by the Federal Records Act, or the Armstrongdecisions/orders which related to the records management of federal records. Accordingly, any records management issues regarding these faxes should be referred to White House Records Management (Terry Good), who then would coordinate any decision with White House Counsel. Sorry, I was not more helpful, but I can only advise you with regard to requirements for federal records. Kate

From: Matthew Yin on 03/12/2001 02:30:22 PM
Record Type: Record

To: Catherine S. Anderson/OA/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: ARMS Requirements for Fax Server

Kate,

The Mail Analysis (MA) of the Presidential Correspondence Office uses two facsimiles to receive faxes addressed to the President. These two facsimiles run around the clock and generate lots of paper (and burn trees too). MA likes to install a Fax Server that will allow them to receive faxes electronically. All incoming faxes will be saved as images and can be printed on demand. The question is: does the Fax Server meet the ARMS requirements? If not, what should we do to make the Fax Server ARMS compliant?

Thanks,
Matthew Yin

Message Copied
To:_____
Gertrude A. Roddick/WHO/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Robert D. Helms/OA/EOP@EOP
Kathleen E. Ohalloran/OA/EOP@EOP
Lynnae C. Roscoe/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Daniel A. Barry/OA/EOP@EOP

Message Copied
To:_____
Terry W. Good/WHO/EOP@EOP
Daniel A. Barry/OA/EOP@EOP
James B. Wright/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Gertrude A. Roddick/WHO/EOP@EOP

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To: Matthew Yin/OA/EOP@EOP [OA] <Matthew Yin>
Sent: 3/31/2001 9:03:28 AM
Subject: : Re: ARMS Requirements for Fax Server

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAR-2001 14:03:28.00
SUBJECT:: Re: ARMS Requirements for Fax Server
TO:Matthew Yin (CN=Matthew Yin/OU=OA/O=EOP@EOP [OA])
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Matthew Yin
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x56568
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Catherine S. Anderson
03/12/2001 03:36:20 PM
Record Type: Record

To: Matthew Yin/OA/EOP@EOP
cc:
bcc:

Subject: Re: ARMS Requirements for Fax Server

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cc: See the distribution list at the bottom of this message
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Matthew Yin

Message Copied
To:_____
Gertrude A. Roddick/WHO/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
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Kathleen E. Ohalloran/OA/EOP@EOP
Lynnae C. Roscoe/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Daniel A. Barry/OA/EOP@EOP

Message Copied
To:_____
Terry W. Good/WHO/EOP@EOP
Daniel A. Barry/OA/EOP@EOP
James B. Wright/OA/EOP@EOP
Larry D. Slaughter/OA/EOP@EOP
Erna G. Beverly/OA/EOP@EOP
Leanna F. Terrell/OA/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Gertrude A. Roddick/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jeffrey E. Harris/OMB/EOP@EOP [OMB] <Jeffrey E. Harris>
Sent: 3/31/2001 9:21:53 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-MAR-2001 14:21:53.00
SUBJECT::
TO:Jeffrey E. Harris ( CN=Jeffrey E. Harris/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I am in Counsel's Office. Can you give me a call at 6-7984 re
Nolan directives issue? Thanks.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 4/2/2001 7:52:49 AM
Subject: : Re: Meeting with Judge re New Hampshire

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-APR-2001 11:52:49.00
SUBJECT:: Re: Meeting with Judge re New Hampshire
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

meeting at 12:15 with judge

Helgard C. Walker
04/02/2001 11:45:29 AM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, elizabeth n. camp/who/eop@eop,
helgard c. walker/who/eop@eop
bcc:
Subject: Re: Meeting with Judge re New Hampshire

Anytime except 2-4pm. Combined with Chris, that means 1-4pm is out.

H. Christopher Bartolomucci
04/02/2001 11:41:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: elizabeth n. camp/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Meeting with Judge re New Hampshire

Anytime except 1:00-2:00

Brett M. Kavanaugh
04/02/2001 11:40:54 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP,
H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: Meeting with Judge re New Hampshire

We need to meet with the Judge about New Hampshire CA1. What is a
good time?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 4/2/2001 10:13:17 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-APR-2001 14:13:17.00
SUBJECT::
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

big win for Greg Coleman today in Supreme Court!!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>
Sent: 4/2/2001 11:50:15 AM
Subject: : Re: WA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-APR-2001 15:50:15.00
SUBJECT:: Re: WA
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes, it was FAXed to the Senators and cc FAXed to Congresswoman
Dunn earlier this afternoon.

Kenneth A. Lisaius
04/02/2001 03:41:30 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: WA

Unfortunately - Doug is out of the office through Wednesday. Can I
confirm this letter has been sent?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
Sent: 4/3/2001 5:09:28 AM
Subject: : Re: Political Correspondence Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2001 09:09:28.00
SUBJECT:: Re: Political Correspondence Meeting
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Let me know where we stand on this meeting. Thanks

Katherine G. Marinis
03/30/2001 05:42:49 PM
Record Type: Record

To: John Gardner/WHO/EOP@EOP, Deborah K. Hair/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc: Collister W. Johnson/WHO/EOP@EOP, Michael J. Napolitano/WHO/EOP@EOP
Subject: Political Correspondence Meeting

Ken Mehlman would like to set up a meeting early next week. Would Tuesday (around 4pm) or Wednesday (around 2pm) work better? It should not take longer than 20 minutes or so. Please let me know what your schedules are like... thanks

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
Sent: 4/3/2001 5:32:19 AM
Subject: : By the Numbers - From the Office of Strategic Initiatives
Attachments: P_9XDD1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2001 09:32:19.00
SUBJECT:: By the Numbers - From the Office of Strategic Initiatives
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura L. Flippin (CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Larrison (CN=Heather Larrison/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI
---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 04/03/2001 09:32 AM ----------

Michael Shannon 04/03/2001 09:09:24 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: By the Numbers - From the Office of Strategic Initiatives

Please find attached the latest "By the Numbers," which shows the President is shaping the tax cut debate and building strong support for his plan.

As always, I would appreciate it if you would pass this on to the appropriate members of your respective offices. Hard copies were distributed to Senior Staff this morning. Thank you - and if there is now a working distribution list for your group, please let me know, and I will use it next time.

Message Sent
To:_____
marcus j. mollmann/who/eop@eop
gordon d. johndroe/who/eop@eop
stephen m. garrison/opd/eop@eop
kara g. figg/who/eop@eop
elizabeth n. camp/who/eop@eop
ashley m. snee/ovp/eop@eop
heather l. west/who/eop@eop
dee dee benkie/who/eop@eop
brooke vosburgh/who/eop@eop
OPA - Political Affairs
OPL - Public Liaison
jill l. angelo/who/eop@eop
virginia t. gregory/who/eop@eop
john m. ackerly/who/eop@eop
tracey l. schmitt/who/eop@eop
Office of Media Affairs
OSI - Strategic Initiatives
adrian g. gray/who/eop@eop
jennifer k. millerwise/who/eop@eop
krista l. ritacco/who/eop@eop
megan d. moran/ovp/eop@eop

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_9XDD1004_WHO.TXT_1>

BY THE NUMBERS
From the Office of Strategic Initiatives
456-2108
April 2, 2001

President's Tax Cut Continues to Resonate

"One thing is crystal clear in this week's…poll: Americans are thinking about tax cuts. Whether the focus is congressional agendas or…the federal budget surplus, taxes are a priority."
-Fox News Poll Analysis

SUMMARY

- **According to a new Fox News/Opinion Dynamics survey, the public believes the most important issue for the federal government to address is taxes. Since January, the tax issue has risen almost 20%, from fifth to first on the list.**
- **When asked how the surplus should be spent, the most popular response was "tax cuts."**
- **Support for the President's tax plan remains strong at 55%, unchanged from the past two Fox surveys.**
- **Americans overwhelmingly believe a reduction in long-term overall tax rates (70%) is more important than an immediate rebate (21%).**
- **8 in 10 Americans describe a tax cut as a return of their own money rather than government taking money away from other things to give to them.**

Fox News/Opinion Dynamics Poll, 3/28-29/01 *(n=905 RVs)*

What do you think are the two most important issues for the federal government to address? (Open Ended)

	Now	Jan 12
Taxes	31%	13%
Education	29	32
Economy	18	19
Health Care	15	23

…the U.S. has a budget surplus. What do you think should be done with this money? (Open Ended)

Tax Cuts	28%
Reduce national debt	19
Increase spending on education	14
Strengthen Social Security/ Medicare/Prescription drugs	13

Based on what you know about it, do you favor or oppose President Bush's proposal for a $1.6 trillion dollar tax cut over the next 10 years?

	Now	Mar 16	Feb 9
Favor	55	55	54
Oppose	33	32	29

Which of the following do you think is more important:

An immediate tax rebate for taxpayers	21%
Reductions in long-term overall tax rates	70

Which of the following do you think better describes a tax refund:

Your own money being returned to you	79%
Government taking money from other things to give to you	12

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 4/3/2001 9:46:30 AM
Subject: : NH/CA1

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-APR-2001 13:46:30.00
SUBJECT:: NH/CA1
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Do we know what happened in the phone call yesterday, or if it was made?

From: CN=Barry S. Jackson/OU=WHO/O=EOP [WHO]

To: Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO /EOP@EOP [WHO] <Joshua B. Bolten>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>;Karen Hughes/WHO/EOP@EOP [WHO] <Karen Hughes>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Margaret Tutwiler/WHO/EOP@EOP [WHO] <Margaret Tutwiler>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;John P. McConnell/OVP/EOP@EOP [OVP] <John P. McConnell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Lawrence A. Fleischer/WHO/EOP@EOP [WHO] <Lawrence A. Fleischer>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Roland N. Litterst/WHO /EOP@EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP@EOP [WHO] <Townsend L. McNitt>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;Israel Hernandez/WHO /EOP@EOP [WHO] <Israel Hernandez>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO /EOP@EOP [WHO] <Matthew A. Schlapp>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO /EOP@EOP [WHO] <Kirk Blalock>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;John Gardner/WHO/EOP@EOP [WHO] <John Gardner>;Deborah K. Hair/WHO /EOP@EOP [WHO] <Deborah K. Hair>;Hector F. Irastorza/WHO/EOP@EOP [WHO] <Hector F. Irastorza>;Mark V. Rosenker/WHO/EOP@EOP [WHO] <Mark V. Rosenker>;Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>;Clay Johnson III/WHO/EOP@EOP [WHO] <Clay Johnson III>;Ronald G. Bellamy/WHO/EOP@EOP [WHO] <Ronald G. Bellamy>;Jodey Arrington/WHO/EOP@EOP [WHO] <Jodey Arrington>;Stuart Holliday/WHO/EOP@EOP [WHO] <Stuart Holliday>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Patrick J. Rhode/WHO /EOP@EOP [WHO] <Patrick J. Rhode>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;Andrea G. Ball/WHO /EOP@EOP [WHO] <Andrea G. Ball>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Lewis Libby/OVP/EOP@EOP [OVP] <Lewis Libby>;Mary J. Matalin/OVP/EOP@EOP [OVP] <Mary J. Matalin>;Eric S. Edelman/OVP/EOP@EOP [OVP] <Eric S. Edelman>;Condoleezza Rice/NSC/EOP@EOP [NSC] <Condoleezza Rice>;Stephen J. Hadley/NSC/EOP@EOP [NSC] <Stephen J. Hadley>;Jendayi E. Frazer/NSC/EOP@EOP [NSC] <Jendayi E. Frazer>;Clare Pritchett/WHO/EOP@EOP [WHO] <Clare Pritchett>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Anthony N. Banbury/NSC/EOP@EOP [NSC] <Anthony N. Banbury>;Daniel Fried/NSC/EOP@EOP [NSC] <Daniel Fried>;Mary O. McCarthy/NSC/EOP@EOP [NSC] <Mary O. McCarthy>;Peter F. Allgeier/NSC/EOP@EOP [NSC] <Peter F. Allgeier>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bruce

O. Riedel/NSC/EOP@EOP [NSC] <Bruce O. Riedel>;Robert G. Joseph/NSC/EOP@EOP [NSC] <Robert G. Joseph>;Richard A. Clarke/NSC/EOP@EOP [NSC] <Richard A. Clarke>;John F. Maisto/NSC/EOP@EOP [NSC] <John F. Maisto>;Mitchell Daniels/OMB /EOP@EOP [OMB] <Mitchell Daniels>;Margaret M. LaMontagne/OPD/EOP@EOP [OPD] <Margaret M. LaMontagne>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Kevin J. Martin/OPD/EOP@EOP [OPD] <Kevin J. Martin>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Lorraine Nisbet/WHO/EOP@EOP [WHO] <Lorraine Nisbet>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael Shannon>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>

Sent: 4/3/2001 10:03:42 AM

Subject: : Invitation from Secretary Card

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Barry S. Jackson ( CN=Barry S. Jackson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-APR-2001 14:03:42.00
SUBJECT:: Invitation from Secretary Card
TO:Andrew H. Card ( CN=Andrew H. Card/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Joshua B. Bolten ( CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Joseph W. Hagin ( CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Linda M. Gambatesa ( CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Margaret Tutwiler ( CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Scott N. Sforza ( CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Gerson ( CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Peter H. Wehner ( CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew O. Scully ( CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David Frum ( CN=David Frum/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John P. McConnell ( CN=John P. McConnell/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lawrence A. Fleischer ( CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
```

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Hector F. Irastorza (CN=Hector F. Irastorza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ronald G. Bellamy (CN=Ronald G. Bellamy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jodey Arrington (CN=Jodey Arrington/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart Holliday (CN=Stuart Holliday/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Patrick J. Rhode (CN=Patrick J. Rhode/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Condoleezza Rice (CN=Condoleezza Rice/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Anthony N. Banbury (CN=Anthony N. Banbury/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary O. McCarthy (CN=Mary O. McCarthy/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Peter F. Allgeier (CN=Peter F. Allgeier/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Bruce O. Riedel (CN=Bruce O. Riedel/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Robert G. Joseph (CN=Robert G. Joseph/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lorraine Nisbet (CN=Lorraine Nisbet/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

OFFICE OF STRATEGIC INITIATIVES

"The ability to learn faster than your competitors may be your only sustainable competitive advantage."* Arie de Geus, former strategic planner for Royal Dutch Shell

April 3, 2001

Dear Friends,

You are invited to join me in attending the first of OSI,s new lecture series. These will be held periodically to help us to look over the horizon and anticipate change, keeping in touch with the latest insights, trends, and ideas. One way to accomplish this is talking with thinkers, writers, and scholars about what we can do to better plan for the future.

This week, a panel of presidential scholars will meet with commissioned officers yodiscuss lessons that can be learned from previous Presidents* What happens after the first 100 days? How can an administration keep the momentum going? What obstacles have presidents typically faced in their first year? It will be well worth your time. Here are the details:

WHAT: OSI presidential scholars panel

WHO: Jack Watson, former Chief of Staff to President Jimmy Carter
Stephen Skowronek, author of &The Politics Presidents Make8
Fred Greenstein, author &The Presidential Difference8
Norm Ornstein, American Enterprise Institute

WHEN: Friday, April 6, 2:45pm

WHERE: Room 472 in the EEOB

Despite its name, this is not really a lecture series. Instead, it,s more of a give-and-take information session. The format of the event will be simple, with plenty of time for questions.

And if there are any non-commissioned staff that you think might benefit from the presentation, please contact OSI at 62108 and they will make accommodations based on a first come, space-available basis.

Due to limited seating, please don,t hesitate to immediately RSVP. I hope you will join me this Friday. You won,t want to miss it.

Sincerely,

Andy Card

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 4/3/2001 11:49:36 AM
Subject: : Re: Stats to support your 4th Circuit slate

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2001 15:49:36.00
SUBJECT:: Re: Stats to support your 4th Circuit slate
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Brad is the CA4 guy, but I am pretty sure Brent/Jason have done this for him for CA4. Thx for the tip. Good stuff on the AO web site as well.

Courtney S. Elwood
04/03/2001 03:41:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Bradford A. Berenson/WHO/EOP@EOP
Subject: Stats to support your 4th Circuit slate

I know that you are working on developing facts (including caseload statistics) to support filling the slate of vacancies in the 4th Circuit, and I wondered if you had tried inquiring at the AO of the US Courts. They have an entire division devoted to statistics regarding caseload (502-1001). You may decide that you don't want to go out of the WH to find such information. But I thought I should pass along the idea, in the event you hadn't thought of it.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 4/3/2001 9:14:16 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2001 13:14:16.00
SUBJECT:: Re:
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Not that I am aware of, although I suppose it can be somewhat
delicate.

Rachel L. Brand
04/03/2001 12:37:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

any other legal restrictions on ppo providing names of job applicants to a
senator?

Brett M. Kavanaugh
04/03/2001 11:18:14 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

does not apply to White House, acc to OLC opinions

Rachel L. Brand
04/03/2001 11:14:23 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

Who's an expert (or a novice, for that matter) on the privacy act?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Leanna F. Terrell/OA/EOP@EOP [OA] <Leanna F. Terrell>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>;Daniel D. Faoro/OA/EOP@EOP [OA] <Daniel D. Faoro>
Sent: 4/3/2001 10:00:12 AM
Subject: : TAPE RECYCLING

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME: 3-APR-2001 14:00:12.00
SUBJECT:: TAPE RECYCLING
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Leanna F. Terrell (CN=Leanna F. Terrell/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Daniel D. Faoro (CN=Daniel D. Faoro/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

Brett--Any feedback on OA's proposal to begin recylcing backup tapes. We discussed this awhile back in conjunction with the memo authorizing people to delete uneeded e-mail. Let me know if you need anything to move this forward. Adam, 5-1268
---------- Forwarded by Adam F. Greenstone/OA/EOP on 04/03/2001 01:55 PM ----------

Leanna F. Terrell
04/03/2001 08:13:35 AM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: Phillip Larsen/OA/EOP@EOP
Subject: TAPE RECYCLING

Good Morning Adam,
We are beginning to rob Peter to pay Paul here in IA&T. When will the Tape Recycling memo be issued. Phil has approved, so what is holding this up?? Its costing me thousands of dollars each time I have to obligate for tape purchase!

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Leanna F. Terrell/OA/EOP@EOP [OA] <Leanna F. Terrell>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>;Daniel D. Faoro/OA/EOP@EOP [OA] <Daniel D. Faoro>
Sent: 4/3/2001 10:00:12 AM
Subject: : TAPE RECYCLING

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME: 3-APR-2001 14:00:12.00
SUBJECT:: TAPE RECYCLING
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Leanna F. Terrell (CN=Leanna F. Terrell/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Daniel D. Faoro (CN=Daniel D. Faoro/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

Brett--Any feedback on OA's proposal to begin recylcing backup tapes. We discussed this awhile back in conjunction with the memo authorizing people to delete uneeded e-mail. Let me know if you need anything to move this forward. Adam, 5-1268
---------- Forwarded by Adam F. Greenstone/OA/EOP on 04/03/2001 01:55 PM ----------

Leanna F. Terrell
04/03/2001 08:13:35 AM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: Phillip Larsen/OA/EOP@EOP
Subject: TAPE RECYCLING

Good Morning Adam,
We are beginning to rob Peter to pay Paul here in IA&T. When will the Tape Recycling memo be issued. Phil has approved, so what is holding this up?? Its costing me thousands of dollars each time I have to obligate for tape purchase!

From: French, Valerie <VFrench@nrsc.org>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/3/2001 10:22:00 AM
Subject: : FW: oge opinions
Attachments: P_JJLD1004_WHO.TXT_1.wpd; P_JJLD1004_WHO.TXT_2.wpd; P_JJLD1004_WHO.TXT_3.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"French, Valerie" <VFrench@nrsc.org> ("French, Valerie" <VFrench@nrsc.org> [UNKNOWN])
CREATION DATE/TIME: 3-APR-2001 14:22:00.00
SUBJECT:: FW: oge opinions
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett--

I've forwarded you the e-mail which was sent to me by an attorney in the Office of Government Ethics, which should include a link to 5 C.F.R. section
2635 as well as three advisory opinions in Word Perfect format. If you have
trouble accessing the documents, just e-mail me back and I'll send them to you individually as Word documents.

My question to OGE was specific to events which would not be "fundraising" per se, i.e. the attendees would not be paying to attend and money would not
be solicited from them at the event where a Cabinet official was attending or speaking.

For guidance on attendance/participation by Cabinet officials at political fundraising events, I've been using Advisory Opinion 93 X 19 (August 25, 1993).

Thanks for getting back to me.

Valerie French
NRSC
-----Original Message-----
From: Deborah Bortot [mailto:djbortot@oge.gov]
Sent: Friday, March 30, 2001 2:22 PM
To: vfrench@nrsc.org
Subject: oge opinions

In addition to the attached opinions you should also look at 5 C.F.R. section 2635 subpart H. You should be able to view the regulations using the following link:

http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html

- 90X1 - 94X14 - 98X14
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JJLD1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JJLD1004_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JJLD1004_WHO.TXT_3>

Letter to the President of an Association dated January 24, 1990

This is in reply to your letter of December 27, 1989, in which you requested guidance relating to any ethical concerns arising from the unpaid participation of Federal employees as speakers, instructors, or panelists at luncheons and symposia sponsored by an association for which you serve as President. According to your letter, [the Association] is a "non-profit association of individuals from Government and the private sector with a common interest in [a certain area of government regulation]." You indicate that [the Association] sponsors luncheons and symposia for the purpose of advancing knowledge and understanding of [a topic]. [The Association] charges registrants a fee in order to cover the association's administrative costs. You wish to confirm your view that Federal ethics laws and regulations do not preclude Federal employees from serving as uncompensated speakers, instructors, and panelists at programs sponsored by [the Association] notwithstanding the fact that a registration fee may be charged.

There is nothing in the conflict of interest statutes or in the standards of conduct that prohibits an employee from serving in his personal capacity as a member of a nonprofit organization such as [the Association]. There are, however, appearance concerns that can arise under agency standards of conduct regulations implementing 5 C.F.R. § 735.201 when an active member of an organization participates in his official Government capacity in matters affecting the financial interests of that organization. These appearance concerns may dictate that an active member disqualify himself from participating in official

REV_00125727

Government matters affecting the organization. Such a concern could arise, for example, where the organization has submitted comments on a proposed regulation that is being revised by the employee. [T]he basic conflict of interest statute, 18 U.S.C. § 208, treats the financial interests of an organization as the personal financial interests of its officers and directors [but does not do so for mere members]. Officers and directors of an organization are consequently prohibited by law from taking official Government action that would affect the organization's financial interests.

A Federal employee is free to participate in nonprofit organization programs as an uncompensated speaker, instructor, or panelist in his personal capacity, whether or not the organization is charging a fee for attendance. He must first comply with any agency-specific requirements for advance approval of outside teaching, lecturing, or writing. An employee may not use Government time, resources, or equipment to prepare his presentation in violation of 5 C.F.R. § 735.205 and may not release nonpublic information to further the interests of the organization in violation of section 735.206. Employees who participate must be careful that they do not use or permit the use of their official title, position, or authority to further the interests of the outside organization (or themselves). Thus, for example, the speaker, instructor, or panel participant at an [Association] function must make it clear that he is presenting his own views and that he is not representing his agency.

A Federal employee may also participate as an uncompensated speaker, instructor, or panelist at a luncheon or symposium when authorized to do so as a part of official duties, even though a registration fee is charged. The employee should not, however, be authorized to participate as a speaker where registration fees charged Government attendees are not in line with the actual costs of the program to the sponsor. In addition, the agency must find that it is in the interest of the agency for the employee to participate and that the event is an appropriate forum for the exchange of information relevant to the programs, operations, and responsibilities of the agency.[1] Thus,

REV_00125728

for example, an agency could reasonably find that it is in its best interests to authorize its expert on the Freedom of Information Act (FOIA) to appear before [the Association] for the purpose of explaining the agency's implementation of the Act to a group of individuals who routinely deal in FOIA matters. Neither the participating employee nor the authorizing official will be deemed to have extended preferred treatment to the sponsoring organization so long as the agency had a reasonable basis for choosing the one forum over another.

[1](Ed. note: Subsequent advice from OGE to the Association clarified that this sentence sets forth the relevant standard and, further, that in determining whether an event is an "appropriate forum" within the meaning of the standard, an agency decisionmaker may consider all relevant factors, including whether the registration fees charged Government attendees are in line with the actual costs of the program to the sponsor.)

REV_00125729

(90 x 1) Office of Government Ethics

We trust this information will be of assistance to you. Should you have additional questions in the future, please feel free to contact this Office.

Sincerely,

Donald E. Campbell
Acting Director

REV_00125730

Office of Government Ethics

94 x 14

Letter to the Inspector General of a Quasi-Official Federal Entity dated July 15, 1994

This is in response to your letter of May 27, 1994, concerning a two-day conference on [a particular program]. As described in the brochure included with your letter, the conference is sponsored by an apparently private organization. The brochure states that those attending will "[b]enefit from the experiences of 10 government departments that have implemented [a particular program]." Over half of the listed speakers appear to be Federal Government officials, and marketing of the program is directed to Government executives. The cost of the two-day program is $995 for Government officials and $1,195 for private company executives.

Your letter states that [your entity] is considering establishing a code of conduct at [the entity] and requests information regarding regulations or other directives that relate to such conferences. As we understand the status of [the entity], it is generally not considered a department, agency, or instrumentality of the Federal Government, [citation deleted], and its employees are not, therefore, subject to the conflict of interest statutes or the administrative Standards of Ethical Conduct. Accordingly, as your letter suggests, our discussion below of the

REV_00125731

effect of the statutes and standards on executive branch employees is not directly relevant to [entity] employees but could serve as guidance or provide a starting point for developing your own code of conduct.

Since all the speakers at the conference appear to be speaking officially, we assume your primary concern relates to restrictions on employees' official participation in such a conference as speakers.[1] Under the conflict of interest statutes and the Standards of Conduct, speaking at a conference in an official capacity may raise conflict of interest issues if the speaker holds a director or officer position in, or is an active participant in, the organization sponsoring the conference. A criminal statute, 18 U.S.C. § 208, prohibits employees from participating personally and substantially in an official capacity in any particular matters in which organizations they serve as

[1]The analysis is somewhat different when an employee is asked to speak in his private capacity. In such a case, for example, the employee may not use Government time or Government property in preparing or giving his speech. 5 C.F.R. §§ 2635.704 and 2635.705. He may not use his Government position or title to suggest Government sanction or endorsement of his speech. 5 C.F.R. § 2635.702. As is the case with respect to official speech, the employee could not accept compensation for his speech if it is "related to his duties." 5 C.F.R. § 2635.807. If agency regulations require prior approval for outside activities, then whether the speech were for compensation or not, the speaking engagement would be subject to the prior approval by the agency. 5 C.F.R. § 2635.803.

REV_00125732

officers or directors have a financial interest, unless they obtain a waiver as outlined in subsection 208(b). *See also* 5 C.F.R. § 2635.401 *et seq*. The administrative Standards of Conduct provide that, unless specifically authorized to participate, employees should not participate in matters to which organizations in which they are active participants are parties, if a reasonable person with knowledge of the relevant facts would question their impartiality. 5 C.F.R. § 2635.502.

Acceptance of compensation for the official speech would also present problems under the relevant statutes and standards. 18 U.S.C. § 209 prohibits employees from receiving from non-Government sources compensation for services as employees. Similarly, 5 C.F.R. § 2635.807(a)(2)(i)(A) prohibits acceptance of compensation from non-Government sources for teaching or speaking that "is undertaken as part of the employee's official duties." While "compensation," as defined in 5 C.F.R. § 2635.807(a)(2)(iii), generally includes transportation, lodgings and meals, it does not include "[m]eals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the . . . speaking takes place." 5 C.F.R. § 2635.807(a)(2)(iii)(B). It also does not include items of little value which are intended for presentation purposes, like a plaque, or item under $20 in value as, for example, a ballpoint pen, food, or inexpensive meals even if not furnished as part of the event. *See*, *e.g.*, 5 C.F.R. §§ 2635.807(a)(2)(iii)(A); 2635.203(b)(2); 2635.204(a).

Beyond issues related to individual employee conduct regulated by the conflict of interest statutes or the Standards of Conduct, your letter raises the policy question of whether agencies *should* provide speakers to privately-sponsored conferences, particularly where fees for attendance by Government employees are significant. This issue, beyond the jurisdiction of this office, is not addressed by our Standards of Conduct; nor are we aware of any statutes or regulations currently in effect that directly address the question.[2] In the

[2]In August of 1977 the Director of the Office of Management

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process of authorizing an employee to speak officially at a conference, however, an agency necessarily would have to determine that it is in the Government's interest for the employee to participate and that the event is an appropriate forum for the exchange of information relevant to the programs, operations, or responsibilities of the agency. *See The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics*, 90 x 1. In making this determination, an agency presumably would consider the cost of attendance as well as the extent of Federal participation in presentation of the program. If fees are substantial or out of proportion to costs, an agency might choose not to provide a speaker.[3]

and Budget (OMB) issued guidelines for Government-sponsored attendance at conferences, which stated: "[s]peaking engagements should not be accepted for meetings where fees for Government employees are not in line with actual costs." Based on information obtained from OMB, we understand that this guideline was revoked in the early 1980s.

[3]Regarding the question of whether Government employees may *attend* a conference conducted by a private organization charging substantial attendance fees, we assume, similarly, that, in exercising its discretion to approve or disapprove attendance, an agency would and should properly consider whether the benefit to the agency of having the employee attend is worth the cost of the attendance fee.

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If this Office can be of further assistance, please do not hesitate to contact us.

Sincerely,

Stephen D. Potts
Director

REV_00125735

OFFICE OF GOVERNMENT ETHICS

98 X 14

Letter to the Acting Deputy Director of an Agency dated August 31, 1998

This is in reply to your letter of July 9, 1998, in which you asked if there are any particular provisions in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) issued by this Office at 5 C.F.R. part 2635, or if this Office has any advisory letters or memoranda, addressing two questions you have about Federal employees who serve as speakers at conferences or similar events sponsored by non-Federal entities. Your questions, and our answers to them, are set forth in turn below.

1. What standards should be used in evaluating the appropriateness of Government employees participating, either in their official or unofficial capacities, in non-Federally sponsored conferences, meetings, or symposia where a fee is charged for attendance?

As discussed below, the conflict of interest statutes and the Standards of Conduct apply differently in the context of speaking engagements, depending on whether the employee is participating in an official or unofficial capacity.

OFFICIAL PARTICIPATION

Section 208 of title 18, United States Code, prohibits an employee from participating personally and substantially in an official capacity in any particular matter affecting the financial interests of an organization in which the employee serves as an officer, director, or employee, unless he obtains a waiver under 18 U.S.C. § 208(b). Accordingly, when an employee serves an organization in such a capacity, section 208 may preclude the employee from serving as an official speaker at an event sponsored by the organization. Similarly, "appearances" might require an employee's disqualification from a speaking engagement under section 2635.502 of the Standards of Conduct. Unless specifically authorized to participate, section 2635.502 provides that an employee should not participate in certain

assignments involving an organization in which he is an active participant, if a reasonable person with knowledge of the relevant facts would question his impartiality.

Other authorities prohibit an employee from accepting compensation for making an official speech. Section 209 of title 18, United States Code, prohibits an employee from receiving any salary or supplementation of salary "as compensation for his services as an officer or employee . . . ." Under section 209, therefore, an employee may not accept payment from a private organization for giving an official speech. Also, in this regard, the Standards of Conduct provide that an employee may not receive compensation (including travel expenses) from an outside source for speaking if the activity is undertaken as part of the employee's official duties. 5 C.F.R. § 2635.807(a)(2)(i)(A). However, an employee speaking at a conference or other similar event may accept "[m]eals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the . . . speaking takes place" as well as items of little monetary value, such as a commemorative plaque, a ballpoint pen, or an inexpensive meal even if not furnished as part of the event. 5 C.F.R. §§ 2635.807(a)(2)(iii)(A) and (B), 2635.203(b), and 2635.204(a). In addition, the Standards of Conduct would permit the employee to receive a tape of the speech or a similar item that provides a record of the activity. 5 C.F.R. § 2635.807(a)(2)(iii)(C).

The question of whether employees should be assigned to serve as speakers at conferences or similar events sponsored by non-Governmental entities, especially where the organizers are charging a significant fee, goes beyond the issues of individual employee conduct addressed in the Standards of Conduct and conflict of interest statutes.[1] Nevertheless, in

[1] The Director of the Office of Management and Budget issued guidelines in 1977 concerning Government-sponsored attendance at conferences stating that "[s]peaking engagements should not be accepted for meetings where fees for Government employees are not in line with actual costs." It is our understanding that this guidance was revoked in the early 1980s.

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an informal advisory opinion we issued a few years ago, we suggested that in determining whether to authorize an employee to make an official presentation at a conference, "an agency necessarily would have to determine that it is in the Government's interest for the employee to participate and that the event is an appropriate forum for the exchange of information relevant to the programs, operations, or responsibilities of the agency." In making this determination, we suggested that an agency might consider a number of factors, including the cost of attendance and the extent of Federal participation in the event. OGE Informal Advisory Letter 94 x 14; see also OGE Informal Advisory Letter 90 x 1.

UNOFFICIAL PARTICIPATION

An employee engaged in any outside activity must comply with any prior approval requirement his agency may have in its regulations. Many agencies have such a regulatory requirement. Although the requirement varies from agency to agency, most of the agencies that require their employees to obtain prior approval include outside speaking among the activities for which prior approval must be obtained. At some agencies, for example, an employee must obtain prior approval for any outside speaking activity, whether or not for compensation, unless the activity is to be undertaken for a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization and is to be done without compensation (other than reimbursement of expenses). See, e.g., the Supplemental Standards of Ethical Conduct for Employees of the Commodity Futures Trading Commission, at 5 C.F.R. § 5101.103(c). At other agencies, an employee must obtain prior approval only if the outside speaking activity is to be done for an entity in a certain category and is to be for compensation. See, e.g., the Supplemental Standards of Ethical Conduct for Employees of the Nuclear Regulatory Commission, at 5 C.F.R. § 5801.103. Moreover, some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches to determine whether the speech contains an appropriate disclaimer and complies with the Standards of Conduct.

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Like an employee who speaks in his official capacity, an employee who engages in speaking as an outside activity must comply with restrictions relating to his acceptance of compensation. Although the statutory honoraria ban can no longer be enforced against any employee,[2] the Standards of Conduct continue to prohibit employees from receiving compensation, including travel expenses, for outside speaking that "relates to the employee's official duties." 5 C.F.R. § 2635.807. An activity can relate to an employee's official duties within the meaning of this prohibition even though it is undertaken in an employee's personal capacity. For most employees, speaking is considered related to duties if the subject of the activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period, or any ongoing or announced policy, program or operation of the employee's agency. 5 C.F.R. § 2635.807(a)(2)(i)(E)(*1*) and (*2*).[3] Speaking is also deemed related to duties if the invitation to speak was extended to the employee primarily because of his official position, rather than his expertise in the subject; if the invitation

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[2] In National Treasury Employees Union v. United States, 413 U.S. 454 (1995), the Supreme Court found that the honoraria ban at 5 U.S.C. app. § 501(b) violated the First Amendment rights of persons on whose behalf the case was brought. The Department of Justice's Office of Legal Counsel subsequently concluded that the honoraria prohibition cannot be enforced against any employee, including employees of the legislative and judicial branches and high-level executive branch officials.

[3] Different standards apply to high-level noncareer employees and to part-time or intermittent "special Government employees" (SGEs). In the case of a high-level noncareer employee, the subject of a speech is considered related to the employee's duties if it deals in significant part with "the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency." 5 C.F.R. § 2635.807(a)(2)(i)(E)(*3*). An SGE's speech is considered related to duties only if it deals in significant part with certain of his Government assignments. 5 C.F.R. § 2635.807(a)(2)(i)(E)(*4*).

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or the offer of compensation was extended by a person or entity substantially affected by the performance of the employee's official duties; or if the speech is based substantially on nonpublic information. 5 C.F.R. §§ 2635.807(a)(2)(i)(B), (C), and (D). As already noted, the term "compensation" is defined for purposes of section 2635.807 as excluding commemorative plaques and other items or benefits of de minimis value.[4]

Some employees are subject to outside earned income limitations which may restrict the acceptance of payment for a speaking engagement, even if the speech is not related to duties within the meaning of 5 C.F.R. § 2635.807. Noncareer employees who occupy positions above GS-15 of the General Schedule are, by statute, subject to a 15-percent limitation on outside earned income. As described in 5 C.F.R. §

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[4] In Sanjour v. United States, 56 F. 3d 85 (D.C. Cir. 1995) (en banc), the United States Court of Appeals for the District of Columbia Circuit sustained a First Amendment challenge to a portion of 5 C.F.R. § 2635.807. Pending the district court's issuance of a final order in Sanjour, we have asked Designated Agency Ethics Officials not to enforce against employees (other than certain noncareer employees) the provision in the Standards of Conduct prohibiting the acceptance of travel expenses in connection with a speech that is related to the employee's duties solely because the subject of the speech deals in significant part with agency policies, programs, or operations.

Ed. Note: On remand in the Sanjour case, at 7 F. Supp.2d 14 (D.D.C. 1998), the district court ruled that the travel expenses prohibition in section 2635.807 of the Standards of Conduct is unconstitutional and cannot be enforced against employees "who work below the grade level of senior executive service." On November 25, 1998, OGE issued DAEOgram DO-98-034 that said there was not going to be any further appeal of the decision, and advised agencies to continue enforcement of the ban on travel expenses only against senior executive branch officials who are "covered noncareer employees" under 5 C.F.R. § 2636.303(a), pending the issuance of an amendment to the Standards of Conduct that would reflect this guidance.

REV_00125740

2636.304(a), an employee subject to the limitation "may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule . . . ." "Outside earned income" is defined in 5 C.F.R. § 2636.303(b) to mean "wages, salaries, honoraria, commissions, professional fees and any other form of compensation," subject to several regulatory exceptions. Separately, section 102 of Executive Order 12674 prohibits certain Presidential appointees, including all Executive Schedule officials, from receiving any outside earned income for any outside activity performed during their appointments.

Apart from observing the restrictions relating to the acceptance of compensation, an employee who speaks in his personal capacity must comply with provisions in subpart G of the Standards of Conduct requiring that he not misuse the Government's property, nonpublic information, or time (including the time of a subordinate). And, as discussed more fully below, he may not use his official title or position in connection with his outside speaking except as permitted by section 2635.807(b).[5]

2. May employees use their Government title, agency stationery or other Government resources to advertise or advocate attendance at non-Federally sponsored conferences, meetings, or symposia where a fee is charged for attendance?

Section 2635.702(b) of the Standards of Conduct prohibits any employee from using or permitting the use of his Government title or position in a manner that would

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[5] Of course, when an employee is authorized by his agency to speak in his official capacity, the provisions of the Standards of Conduct concerning an employee's use of official title and agency resources in connection with the preparation and delivery of a speech are not applicable. When an employee makes a speech in his official capacity, it is expected that he will prepare it using Government time and resources and that he will be identified by reference to his Government title. It is also expected that the sponsor of a forum may refer to an employee's Government title in connection with the promotion of the speech.

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reasonably be construed to imply that the Government or his agency endorses his personal activities or those of another. Section 2635.702(c) states that an employee may not use or permit the use of his Government title or position to endorse any product, service, or enterprise.[6] Applying these concepts in the context of unofficial speech, section 2635.807(b) prohibits an employee who engages in speaking as an outside activity from using or permitting the use of his official title or position in connection with that activity, either for purposes of identification or as a means of promoting his activity. An exception at section 2635.807(b)(1), however, provides that an employee may use or permit the use of his title or position in connection with his speaking when it is used for purposes of identification, provided it is included as one of several biographical details. His title or position may be given no more prominence than other significant biographical details. Allowing the listing of the employee's current position only as one of several biographical facts permits important information about the speaker to be revealed in a manner that does not suggest Governmental sanction of the speech or conference.

Under section 2635.704(a) of the Standards of Conduct, an employee may not use or permit the use of Government property "for other than authorized purposes." Section 2635.704(b)(2) explains that use of Federal property is "authorized" when the use is for those purposes for which Government property is made available to the public or for purposes authorized in accordance with law or regulation, such as the Federal Property Management regulations issued by the General Services Administration.[7] Notably, as recognized

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[6] There are circumstances where an employee, acting in an official capacity, may properly endorse a product, service, or enterprise. See 5 C.F.R. § 2635.702(c)(1) and (2). In example 2 following section 2635.702 of the Standards of Conduct, for example, a Foreign Commercial Service officer meeting with representatives from the Government of Spain could explain the advantages of procurement from a particular U.S. company.

[7] Section 2635.704 of the Standards of Conduct implements the principle in Executive Order 12674 that "[e]mployees

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in regulations promulgated by the Office of Personnel Management at 5 C.F.R. part 251, an agency may provide support services to certain organizations, including professional associations, when the agency determines that "such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization . . . ." 5 C.F.R. § 251.202. By way of example, the regulation suggests that an agency might authorize an employee to use agency equipment or administrative support to prepare a paper to be presented at a conference. This is an agency authority, however, and would require the agency to determine the extent of support to be extended to any particular organization.

Finally, your letter enclosed a brochure advertising a conference to be held in September (September conference). It appears that several current executive branch employees are scheduled to speak at that conference. We cannot determine from the brochure, however, whether these employees will be addressing the conference in their official or private capacities. When an employee's participation in an event comes to our attention by means of a brochure or other advertisement, we typically forward the advertisement to the cognizant Inspector General for investigation or other appropriate action. Consistent with this practice, we are forwarding a copy of the September conference brochure to the Inspector General's office (or equivalent investigatory office) at each agency employing one of the Federal employees advertised as a speaker. Once the facts are known, each agency will then be in a position to decide if its employee engaged in activity contrary to law or regulation.[8] Since we understand that the September conference is merely

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shall protect and conserve Federal property and shall not use it for other than authorized activities." OGE does not have authority to create exceptions permitting the use of Government property otherwise falling within the general prohibition in the Executive order.

[8] In the case of the September conference, some of the conduct potentially violative of the Standards of Conduct or conflict of interest laws has yet to occur and might, therefore, be prevented. We will emphasize this fact in our forwarding letters.

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representative of your concerns, we have not sought to clarify the role of the Federal participants at that particular conference for purposes of our discussion of applicable law.

I trust the foregoing summary of applicable laws and regulations will prove useful.

Sincerely,

Stephen D. Potts
Director

REV_00125744

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 4/3/2001 3:40:19 PM
Subject: : Re: who put together this week's WHJSC book?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2001 19:40:19.00
SUBJECT:: Re: who put together this week's WHJSC book?
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

call Tim

Courtney S. Elwood
04/03/2001 07:39:41 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: who put together this week's WHJSC book?

Helgi and I were responsible, nominally. Is there a problem?

Brett M. Kavanaugh
04/03/2001 07:37:25 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: who put together this week's WHJSC book?

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/4/2001 5:00:02 AM
Subject: : Re: who put together this week's WHJSC book?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-APR-2001 09:00:02.00
SUBJECT:: Re: who put together this week's WHJSC book?
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I called Heather yesterday afternoon asking for the status (around 5:00 p.m.) and she said that he hadn't had a chance to look at it yet but that I should distribute it if the attorneys had signed off on the agenda and everything matched up in the book because Tim doesn't make changes to the agenda.

Do I need to make changes?

Courtney S. Elwood
04/03/2001 07:42:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Brent D. Greenfield/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP
bcc:
Subject: Re: who put together this week's WHJSC book?

I spoke to him a second ago. He wondered if the book had been distributed to the Committee, and I told him that I believed that it had -- although if he didn't tell Brent to distribute it, I didn't know who did. Brent, who gave you the okay?

Brett M. Kavanaugh
04/03/2001 07:40:12 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
bcc:
Subject: Re: who put together this week's WHJSC book?

call Tim

Courtney S. Elwood
04/03/2001 07:39:41 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: who put together this week's WHJSC book?

Helgi and I were responsible, nominally. Is there a problem?

Brett M. Kavanaugh
04/03/2001 07:37:25 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: who put together this week's WHJSC book?

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/4/2001 6:06:12 PM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-APR-2001 22:06:12.00
SUBJECT::
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We should talk about New Hampshire again tomorrow.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 4/5/2001 6:41:29 AM
Subject: : C-Span now

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-APR-2001 10:41:29.00
SUBJECT:: C-Span now
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Senate Judiciary Committee hearing on Thompson and Olson.
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From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 4/5/2001 12:14:22 PM
Subject: : IN case you missed it

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-APR-2001 16:14:22.00
SUBJECT:: IN case you missed it
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This is from Q & A after POTUS' remarks today to the American Society of Newspaper Editors Convention:

Q I was wondering if, in the spirit of civility and conciliation you were talking about, whether you think that when it comes to appointing members to the federal bench, and especially if there are vacancies to the Supreme Court, that you should try, before appointments are made, to engage in a bipartisan conversation with Democrats in the United States Senate who have already indicated that they might be taking a very hard line if they believe you're sending up nominees that are philosophically extreme? Or do you feel that you are like any other President, and should operate on the principle of you propose and let them dispose?

THE PRESIDENT: The latter. We're going to pick the most qualified people we can find, people that share my philosophy about strict constructionism on the Court. I'll be mindful of confirmation. I don't particularly want a big fight in the Senate. And so we'll be putting out -- we'll be gathering intelligence as to whether or not a person can be confirmed or not. I made decide to send somebody up that will create a tough fight. I don't know. I haven't gotten there yet.

But of course, I pick somebody I want them to get confirmed. And so we'll be mindful of that. Obviously I've made a lot of other -- another decision about whether or not we ought to have screening agencies or screening groups, people to screen our people, and I decided not to do that. We'll get a lot of opinions, and not one opinion is more important than another, as far as my administration's concerned. And so we'll pick the people, and the Senate can hopefully confirm them.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 4/6/2001 5:27:34 AM
Subject: : CA6

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-APR-2001 09:27:34.00
SUBJECT:: CA6
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

CA6 has stayed pending appeal the Michigan district court ruling
striking down the Michigan Law School's race-based admissions program.
The panel on the stay order consisted of 2 Clinton appointees (Daughtrey
and Moore) and a Carter appointee, Boyce Martin. If this panel stays
intact for the appeal itself, that almost certainly will mean the law
school's race-based admissions program will be upheld by the CA6 panel,
although there is the possibility of en banc review, especially given that
there is another CA6 case pending on the college admissions program at
Michigan.

The panel in its stay order specifically stated that the
correctness of the district court's decision rests on the proper
interpretation of the Supreme Court's decision in Bakke.
```

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;heather larrison/who/eop@eop [WHO] <heather larrison>
Sent: 4/6/2001 7:28:05 AM
Subject: : Re: Nominations Presented to the Senate

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-APR-2001 11:28:05.00
SUBJECT:: Re: Nominations Presented to the Senate
TO:Laura L. Flippin (CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:heather larrison (CN=heather larrison/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I should add that Ted ably and quickly recovered by saying how much he enjoyed his time waiting for Senator Specter, as it was truly an interesting and fascinating experience just to be there, outside the Senate chamber, to witness the comings and goings.

Laura L. Flippin
04/05/2001 10:14:32 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Timothy E. Flanigan/WHO/EOP@EOP, Heather Larrison/WHO/EOP@EOP
Subject: Nominations Presented to the Senate

After the Congressional recess, I expect that we will be receiving requests from a number of Senate committee members to see the summaries of FBI investigations of nominees. As a result of this, most likely I will be asking you to go to the Hill much more frequently to visit Senators regarding the nominations. With that in mind, here is a brief overview of how this process works, given some questions that a couple of you have

raised with me.

Only the ranking majority and ranking minority Senator of the committee holding the nomination hearing for a candidate are entitled to see the summary of the FBI investigation for the candidate.
Only the Senator may review the summary of the FBI investigation. No staff may see the summary and it may not be copied by the Senator or his/her office. Most Senators and their staffs are aware of this rule, but occasionally they may ask you if someone else can see the file.
You should review the summary before you meet with a Senator. You may be asked questions about the summary and while you will most likely not be able to answer questions not obvious beyond the face of the document, if the Senator has questions that need to be followed up either by our office or the FBI it helps if you know the context of the question in relation to the summary so we can do appropriate further investigation.
Some summaries include the marking "(U)" after many paragraphs. Occasionally, a Senator will ask what this means. The"(U)" indicates that this portion of the summary is unclassified material. The "(U)" marking only occurs in files where classified information, such as top secret information, is contained. The "(U)" marking will not occur in most files as most do not contain top secret information.
I will let you know the Senator, the office number, and the contact person for the summary you are taking to the Hill. Often, you are asked to go to the Senator's office, and then an aide may take you to a committee room or close to the Senate floor where the Senator has a few minutes to review the summary.
The time you may need to spend with a Senator and a summary varies. It depends on the length of the summary and the Senator's depth of review. Sometimes the Senator is not immediately available at the time you are scheduled to go to his/her office, due to a vote that comes up or something else. You should expect to wait a reasonable amount of time if this occurs. However, if the delay is extensive, just ask the contact person if we can reschedule some other time with the Senator. Please also let me know if you are kept waiting repeatedly after several visits with a summary, or if the Senator or his/her office is unreasonable in any way.
Since the summaries are sensitive material, if you pick them up from me some time before going to the Hill please don't leave them alone in your office unless they are kept in a safe. Please also return the summaries to me as soon as you return from the Hill.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Adam F. Greenstone/OA/EOP@EOP [OA] <Adam F. Greenstone>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/7/2001 4:09:50 AM
Subject: : Re: Personal Use Policy

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2001 08:09:50.00
SUBJECT:: Re: Personal Use Policy
TO:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

No objection from me; it was Brett's memo. I don't know if the people covered by the memo will be the same persons who will have access to it on the intranet (or if that is important.)

Adam F. Greenstone
04/05/2001 03:23:03 PM

Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Personal Use Policy

Moose/Brett--I'm reviewing some new information our security folks will be posting on the intranet on Computer security. They have a bullet on personal use of the internet. I'd like to suggest that they arrange a link to Judge Gonzales February 21 memo on this (the policy on unofficial use of government office equipment), which they could probably scan in. Any objection? Adam

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Adam F. Greenstone/OA/EOP@EOP [OA] <Adam F. Greenstone>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/7/2001 4:09:50 AM
Subject: : Re: Personal Use Policy

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2001 08:09:50.00
SUBJECT:: Re: Personal Use Policy
TO:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

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04/05/2001 03:23:03 PM

Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Personal Use Policy

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From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>
Sent: 4/10/2001 10:49:48 AM
Subject: : Re: **IMPORTANT LAST-MINUTE CHANGE TO PRESIDENTIAL BOOK**

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-APR-2001 14:49:48.00
SUBJECT:: Re: **IMPORTANT LAST-MINUTE CHANGE TO PRESIDENTIAL BOOK**
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'll get the draft data sheet to Stuart soon.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 4/12/2001 11:44:48 AM
Subject: : National Review

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-APR-2001 15:44:48.00
SUBJECT:: National Review
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
End Original ARMS Header

HEADLINE: Speedy Gonzales: Bush's fast-rising counsel

BYLINE: By Ramesh Ponnuru

BODY:
It's widely recognized that the Bush administration has more Reaganites in it than the Reagan administration itself had. Nowhere is this more true than in the administration's legal team. Never have a Justice Department and a White House counsel's office had more lawyers committed to a conservative view of the proper role of judges. It's a talented and well-credentialed crew, too. But it is also operating under severe political constraints. So it remains in doubt whether the administration will nominate a conservative for the Supreme Court when it has a chance.
The fact that White House counsel Alberto Gonzales tops most people's lists of likely nominees does nothing to resolve the mystery.

Gonzales was raised, with seven siblings, in a two-bedroom house in Houston. His mother had a sixth-grade education, four grades better than his father. After high school, he went to the Air Force Academy. While there, he decided he wanted to be a lawyer. He finished college at Rice, then went to Harvard Law. He became a corporate lawyer at a prestigious Houston firm. In 1995, George W. Bush, just elected governor, made Gonzales his counsel. Appointing Gonzales to office seems to have become a habit for Bush: He has since served as the secretary of state for Texas, a justice on the Texas supreme court, and now White House

counsel. As
Bush has said, "In many ways, Al embodies the American dream."

When Gonzales took his latest job, conservative lawyers in Washington were wary, even
suspicious. Partly this was because he was not part of their inbred world. But Gonzales also
had more of a reputation as a Bush loyalist than as a conservative. During his short time on
the bench, he was considered a relative moderate-relative, that is, to Texas legal politics-and
some of his votes deeply angered pro-lifers.

But Gonzales has moved quickly and effectively to allay conservatives' concerns. First, he
staffed his office with highly regarded conservatives, including former clerks to Clarence
Thomas and former aides to Kenneth Starr. He picked Timothy Flanagan, a conservative
and Justice Department veteran, as his deputy. "This is the most overqualified White House
counsel's office in history," says one conservative observer, who has consequently "gone
180" about Gonzales.

The administration has appointed conservatives to the Justice Department, too. Attorney
general John Ashcroft is conversant with, and supportive of, conservative legal theories.
Ted Olson, a member of the conservative intelligentsia, will be solicitor general; John Manning,
a former Scalia clerk, will head the office of legal counsel (OLC).

A further Gonzales move has also gone a long way to dispel doubts about him: ending the
American Bar Association's official role in judicial nominations. The ABA will still weigh in
on nominations once they are sent to the Senate. But the administration has sent an important
signal that it will not kowtow to the liberal legal establishment. Gonzales won high marks for
sending the ABA a tough but civil letter informing it of the decision. And he did it even though
there were risks to him: Presumably the ABA will remember this episode if he is nominated to
the federal bench.

Gonzales's office has been working fast on judicial picks. The administration will probably
announce several nominees in late April. Conservatives are going to be elated by them.
University of Utah professor Michael McConnell, a leading critic of strict-separationist dogma
on church-state relations, may get a position on the Tenth Circuit Court of Appeals. It's been
reported that conservative congressman Chris Cox will be appointed to the Ninth Circuit.
Federalist Society favorites such as Jeff Sutton and Peter Keisler are being talked up (for
the Sixth and Fourth Circuits, respectively).

The high quality of this first round of judges reflects how much the supply of conservative
lawyers has expanded over the last two decades. But it also reflects a careful and determined
effort by the counsel's office. Early on, it gave senators the word that they would not be playing
a large role in the selection of appeals-court judges: Appointments were

going to be made
to change the judiciary, not to dispense favors.

The White House also avoided the "stealth candidate" strategy that had produced the
Supreme Court nomination of David Souter in the administration of Bush's father. Souter was
picked because he wasn't vulnerable to criticism: Nobody knew what his judicial philosophy
was. He ended up becoming one of the most liberal members of the Court. This time, the
judge-pickers are looking for evidence that the people they plan to nominate share their
general views. Being a member of the Federalist Society, or having a conservative track
record as a judge, helps. So does being a woman or a black or Hispanic person-although
philosophy and talent are considered more important. Finally, the administration is looking
for youth: It wants to nominate people in their 40s, who will be on the bench for a while.

But no matter how stellar Bush's nominees are, confirming them is going to be difficult. Bush's
administration may be more conservative than Reagan's, but the Senate he's dealing with
is less so. The southern Democrats who voted for Robert Bork and Clarence Thomas are
long gone, and their counterparts today are more prone to vote with their party. Northeastern
Republicans, meanwhile, will not necessarily vote for conservative nominees.

Most Republicans expect at least one big judicial-nomination fight this year. If Chief Justice
William Rehnquist or Justice Sandra Day O'Connor steps down-and speculation about whether
one or the other will is at a boil right now-the abortion-rights and civil-rights activists are
bound to mobilize against any replacement. As the vote on Ashcroft's nomination showed,
the activists will bring most of the Democrats with them. If there is no vacancy on the high court,
they'll find an appeals-court nomination to go ballistic over. They need an emotional battle with
the administration to keep their troops happy and their donations coming. In this charged
environment, getting a conservative with a paper trail on the Supreme Court is going to
be very hard.

Hence the appeal of nominating Gonzales, who doesn't have much of a paper trail. Clint
Bolick, a libertarian legal activist, says that his public-interest law firm, the Institute for Justice,
has "looked at his judicial record fairly carefully, as I'm sure other groups have done." He
continues, "Unfortunately, the range of issues dealt with by the Texas supreme court is very
narrow. Justice Gonzales seemed to have positions that were sympathetic to business
interests and that seemed to be relatively conservative, but there's just not a big record there."

For social conservatives, the black marks against Gonzales are his votes last year on
a series of abortion cases. After years of debate, Texas had passed a law requiring parents

to be notified if minors were procuring abortions. As in most such laws, there was a provision allowing a judge to override this requirement if, for example, it would subject the girl involved to abuse. In its first cases under the law, the Texas Supreme Court-with Gonzales in the majority-interpreted this judicial-bypass provision broadly. So broadly, according to one furious dissenting justice, that the law itself was gutted.

The dissenters made a strong case that the court's reading of the law was far-fetched. In Gonzales's defense, however, it should be noted that their predictions have not been borne out: Judicial bypasses have been rare. More important, the notification cases were so limited in their focus (and so messy) that they don't shed much light on Gonzales's views of abortion generally or of its constitutional status.

If he nominates Gonzales, Bush will be following his father's strategy on Supreme Court nominees. Like Clarence Thomas, Gonzales is a member of a minority group who climbed up from poverty. It is a melancholy fact that no principled conservative justice has been confirmed in 30 years without the benefit of affirmative action. (People often forget that Antonin Scalia was the first Italian-American nominee. Mario Cuomo endorsed him, and the Senate voted 98-0 to confirm him.)

Bush would also be following what might be called the Cheney precedent. Bush evidently concluded that a man he could trust to vet his potential running mates was trustworthy enough to be his running mate. Will he reach the same conclusion about the man he's put in charge of vetting his potential Supreme Court nominees? And then, of course, there is the precedent of Gonzales himself: He's been Bush's counsel, and then his judicial nominee, before.

Gonzales is by no means a sure thing as a nominee. Bush might decide to go with someone with more judicial experience. And Gonzales has told reporters that he's not interested in joining the Court. But a lot of people still think he's going to be Bush's first Court nominee.
The administration may have a legal dream team working for it, but conservatives have reason to be nervous.

LOAD-DATE: April 11, 2001

Source: All Sources : News : News Group File, Most Recent 60 Days
Terms: ((chris or christopher) /3 cox) and judge and date(aft 4-1-2001) (Edit Search)
View: Full
Date/Time: Thursday, April 12, 2001 - 3:29 PM EDT

From: CN=Anne M. Hughes/OU=WHO/O=EOP [WHO]

To: FFULLER@whmo.mil [UNKNOWN] <FFULLER@whmo.mil>;Alice H. Williams/CEA/EOP@EOP [CEA] <Alice H. Williams>;Mary E. Jones/CEA/EOP@EOP [CEA] <Mary E. Jones>;Rosina M. Bierbaum/OSTP/EOP@EOP [OSTP] <Rosina M. Bierbaum>;John F. Maisto/NSC/EOP@EOP [NSC] <John F. Maisto>;Diana E. Furchtgott-Roth/CEA/EOP@EOP [CEA] <Diana E. Furchtgott-Roth>;John Paliokas/NSC/EOP@EOP [NSC] <John Paliokas>;Francine P. Obermiller/CEA /EOP@EOP [CEA] <Francine P. Obermiller>;SSMITH@whmo.mil [OA] <SSMITH@whmo.mil>;Gregory L. Schulte/NSC/EOP@EOP [NSC] <Gregory L. Schulte>;Joan K. Edwards/NSC/EOP@EOP [NSC] <Joan K. Edwards>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Mary Fibich/CEA/EOP@EOP [CEA] <Mary Fibich>;Sandra F. Daigle/CEA/EOP@EOP [CEA] <Sandra F. Daigle>;Susan P. Clements/CEA/EOP@EOP [CEA] <Susan P. Clements>;Lisa D. Branch/CEA/EOP@EOP [CEA] <Lisa D. Branch>;Timothy C. Almon/NSC/EOP@EOP [NSC] <Timothy C. Almon>;SMAHON@whmo.mil [UNKNOWN] <SMAHON@whmo.mil>;Kenneth K. Hembree/OA/EOP@EOP [OA] <Kenneth K. Hembree>;Larry E. Handeland/OA/EOP@EOP [OA] <Larry E. Handeland>;Patrick J. Rhode/WHO/EOP@EOP [WHO] <Patrick J. Rhode>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Melissa S. Bennett/WHO /EOP@EOP [WHO] <Melissa S. Bennett>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>;David Frum/WHO /EOP@EOP [WHO] <David Frum>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Kevin J. Martin/OPD /EOP@EOP [OPD] <Kevin J. Martin>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Blake Gottesman/WHO /EOP@EOP [WHO] <Blake Gottesman>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Stuart Holliday/WHO/EOP@EOP [WHO] <Stuart Holliday>;Jodey Arrington/WHO/EOP@EOP [WHO] <Jodey Arrington>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Linda S. DeHart/WHO/EOP@EOP [WHO] <Linda S. DeHart>;Lynn A. Crable/WHO/EOP@EOP [WHO] <Lynn A. Crable>;Lana Dickey/WHO/EOP@EOP [WHO] <Lana Dickey>;Gertrude A. Roddick/WHO/EOP@EOP [WHO] <Gertrude A. Roddick>;Eileen M. Upperman/WHO/EOP@EOP [WHO] <Eileen M. Upperman>;David E. Kalbaugh/WHO /EOP@EOP [WHO] <David E. Kalbaugh>;William W. McCathran/WHO/EOP@EOP [WHO] <William W. McCathran>;Kathryn M. McKeown/WHO/EOP@EOP [WHO] <Kathryn M. McKeown>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Lee R. Johnson/WHO /EOP@EOP [WHO] <Lee R. Johnson>;Elizabeth R. Ubbens/WHO/EOP@EOP [WHO] <Elizabeth R. Ubbens>;Sarah Pfeifer/OPD/EOP@EOP [OPD] <Sarah Pfeifer>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Christa J. Bailey/WHO/EOP@EOP [WHO] <Christa J. Bailey>;Anne C. Crowther/WHO/EOP@EOP [WHO] <Anne C. Crowther>;Ellen W. McCathran/WHO/EOP@EOP [WHO] <Ellen W. McCathran>;Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;Terry L. Karow/OVP/EOP@EOP [OVP] <Terry L. Karow>;Elizabeth W. Kleppe/OVP/EOP@EOP [OVP] <Elizabeth W. Kleppe>;Claire M. O'Donnell/OVP/EOP@EOP [OVP] <Claire M.

O'Donnell>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Candida P. Wolff/OVP /EOP@EOP [OVP] <Candida P. Wolff>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;John P. Hannah/OVP/EOP@EOP [OVP] <John P. Hannah>;Claire E. Buchan/WHO /EOP@EOP [WHO] <Claire E. Buchan>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Carolyn F. Atkinson/WHO/EOP@EOP [WHO] <Carolyn F. Atkinson>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>

CC: Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>
Sent: 4/13/2001 6:55:18 AM
Subject: : Easter Egg Roll Parking -- State Place

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne M. Hughes ( CN=Anne M. Hughes/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-APR-2001 10:55:18.00
SUBJECT:: Easter Egg Roll Parking -- State Place
TO:FFULLER@whmo.mil ( FFULLER@whmo.mil [ UNKNOWN ] )
READ:UNKNOWN
TO:Alice H. Williams ( CN=Alice H. Williams/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Mary E. Jones ( CN=Mary E. Jones/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Rosina M. Bierbaum ( CN=Rosina M. Bierbaum/OU=OSTP/O=EOP@EOP [ OSTP ] )
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TO:John F. Maisto ( CN=John F. Maisto/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Diana E. Furchtgott-Roth ( CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP@EOP [ CEA ] )
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TO:John Paliokas ( CN=John Paliokas/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Francine P. Obermiller ( CN=Francine P. Obermiller/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:SSMITH@whmo.mil ( SSMITH@whmo.mil [ OA ] )
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TO:Gregory L. Schulte ( CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Joan K. Edwards ( CN=Joan K. Edwards/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:SMAHON@whmo.mil ( SMAHON@whmo.mil [ UNKNOWN ] )
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TO:Marcus J. Mollmann ( CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This message amends the Administrative Alert circulated yesterday regarding parking on Monday, April 16. Notwithstanding the fact that E Street will be closed beginning at 6:00AM on Monday morning, State Place permit holders will be allowed special access onto E Street for entry onto State Place until 8:00AM. After that time, please use alternate parking. Thank you.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/13/2001 6:50:21 AM
Subject: : Re: National Review

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-APR-2001 10:50:21.00
SUBJECT:: Re: National Review
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There's also a story by Kate O'Beirne on the Fed Soc.

Brett M. Kavanaugh
04/12/2001 03:44:29 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: National Review

HEADLINE: Speedy Gonzales: Bush's fast-rising counsel

BYLINE: By Ramesh Ponnuru

BODY:
It's widely recognized that the Bush administration has more Reaganites in it than the Reagan administration itself had. Nowhere is this more true than in the administration's legal team. Never have a Justice Department and a White House counsel's office had more lawyers committed to a conservative view of the proper role of judges. It's a talented and well-credentialed crew, too. But it is also operating under severe political constraints. So it remains in doubt whether the administration will nominate a conservative for the Supreme Court when it has a chance.
The fact that White House counsel Alberto Gonzales tops most people's lists of likely nominees does nothing to resolve the mystery.

Gonzales was raised, with seven siblings, in a two-bedroom house in Houston. His mother had a sixth-grade education, four grades better than his father. After high school, he went to the Air Force Academy. While there, he decided he wanted to be a lawyer. He finished college at Rice, then went to Harvard Law. He became a corporate lawyer at a prestigious Houston firm. In 1995, George W. Bush, just elected governor, made Gonzales his counsel. Appointing Gonzales to office seems to have become a habit for Bush: He has since served as the secretary of state for Texas, a justice on the Texas supreme court, and now White House counsel. As Bush has said, "In many ways, Al embodies the American dream."

When Gonzales took his latest job, conservative lawyers in Washington were wary, even suspicious. Partly this was because he was not part of their inbred world. But Gonzales also had more of a reputation as a Bush loyalist than as a conservative. During his short time on the bench, he was considered a relative moderate-relative, that is, to Texas legal politics-and some of his votes deeply angered pro-lifers.

But Gonzales has moved quickly and effectively to allay conservatives' concerns. First, he staffed his office with highly regarded conservatives, including former clerks to Clarence Thomas and former aides to Kenneth Starr. He picked Timothy Flanagan, a conservative and Justice Department veteran, as his deputy. "This is the most overqualified White House counsel's office in history," says one conservative observer, who has consequently "gone 180" about Gonzales.

The administration has appointed conservatives to the Justice Department, too. Attorney general John Ashcroft is conversant with, and supportive of, conservative legal theories. Ted Olson, a member of the conservative intelligentsia, will be solicitor general; John Manning, a former Scalia clerk, will head the office of legal counsel (OLC).

A further Gonzales move has also gone a long way to dispel doubts about him: ending the American Bar Association's official role in judicial nominations. The ABA will still weigh in on nominations once they are sent to the Senate. But the administration has sent an important signal that it will not kowtow to the liberal legal establishment. Gonzales won high marks for sending the ABA a tough but civil letter informing it of the decision. And he did it even though there were risks to him: Presumably the ABA will remember this episode if he is nominated to the federal bench.

Gonzales's office has been working fast on judicial picks. The administration will probably announce several nominees in late April. Conservatives are going to be elated by them. University of Utah professor Michael McConnell, a leading critic of strict-separationist dogma on church-state relations, may get a position on the Tenth Circuit Court of Appeals. It's been reported that conservative congressman Chris Cox will be appointed to the Ninth Circuit. Federalist Society favorites such as Jeff Sutton and Peter Keisler are being talked up (for the Sixth and Fourth Circuits, respectively).

The high quality of this first round of judges reflects how much the supply of conservative lawyers has expanded over the last two decades. But it also reflects a careful and determined effort by the counsel's office. Early on, it gave senators the word that they would not be playing a large role in the selection of appeals-court judges: Appointments were going to be made to change the judiciary, not to dispense favors.

The White House also avoided the "stealth candidate" strategy that had produced the Supreme Court nomination of David Souter in the administration of Bush's father. Souter was picked because he wasn't vulnerable to criticism: Nobody knew what his judicial philosophy was. He ended up becoming one of the most liberal members of the Court. This time, the judge-pickers are looking for evidence that the people they plan to nominate share their general views. Being a member of the Federalist Society, or having a conservative track record as a judge, helps. So does being a woman or a black or Hispanic person-although philosophy and talent are considered more important. Finally, the administration is looking for youth: It wants to nominate people in their 40s, who will be on the bench for a while.

But no matter how stellar Bush's nominees are, confirming them is going to be difficult. Bush's administration may be more conservative than Reagan's, but the Senate he's dealing with is less so. The southern Democrats who voted for Robert Bork and Clarence Thomas are long gone, and their counterparts today are more prone to vote with their party. Northeastern Republicans, meanwhile, will not necessarily vote for conservative nominees.

Most Republicans expect at least one big judicial-nomination fight this year. If Chief Justice William Rehnquist or Justice Sandra Day O'Connor steps down-and speculation about whether one or the other will is at a boil right now-the abortion-rights and civil-rights activists are bound to mobilize against any replacement. As the vote on Ashcroft's nomination showed, the activists will bring most of the Democrats with them. If there is no vacancy on the high court, they'll find an appeals-court nomination to go ballistic over. They need an emotional battle with the administration to keep their troops happy and their donations coming. In this charged environment, getting a conservative with a paper trail on the Supreme Court is going to be very hard.

Hence the appeal of nominating Gonzales, who doesn't have much of a paper trail. Clint Bolick, a libertarian legal activist, says that his public-interest law firm, the Institute for Justice, has "looked at his judicial record fairly carefully, as I'm sure other groups have done." He continues, "Unfortunately, the range of issues dealt with by the Texas supreme court is very narrow. Justice Gonzales seemed to have positions that were sympathetic to business interests and that seemed to be relatively conservative, but there's just not a big record there."

For social conservatives, the black marks against Gonzales are his votes last year on a series of abortion cases. After years of debate, Texas had passed a law requiring parents to be notified if minors were procuring abortions. As in most such laws, there was a provision

allowing a judge to override this requirement if, for example, it would subject the girl involved
to abuse. In its first cases under the law, the Texas Supreme Court-with Gonzales in the
majority-interpreted this judicial-bypass provision broadly. So broadly, according to one
furious dissenting justice, that the law itself was gutted.

The dissenters made a strong case that the court's reading of the law was far-fetched. In
Gonzales's defense, however, it should be noted that their predictions have not been borne
out: Judicial bypasses have been rare. More important, the notification cases were so limited
in their focus (and so messy) that they don't shed much light on Gonzales's views of abortion
generally or of its constitutional status.

If he nominates Gonzales, Bush will be following his father's strategy on Supreme Court
nominees. Like Clarence Thomas, Gonzales is a member of a minority group who climbed up
from poverty. It is a melancholy fact that no principled conservative justice has been confirmed
in 30 years without the benefit of affirmative action. (People often forget that Antonin Scalia
was the first Italian-American nominee. Mario Cuomo endorsed him, and the Senate voted
98-0 to confirm him.)

Bush would also be following what might be called the Cheney precedent. Bush evidently
concluded that a man he could trust to vet his potential running mates was trustworthy enough
to be his running mate. Will he reach the same conclusion about the man he's put in charge
of vetting his potential Supreme Court nominees? And then, of course, there is the precedent
of Gonzales himself: He's been Bush's counsel, and then his judicial nominee, before.

Gonzales is by no means a sure thing as a nominee. Bush might decide to go with someone
with more judicial experience. And Gonzales has told reporters that he's not interested in
joining the Court. But a lot of people still think he's going to be Bush's first Court nominee.
The administration may have a legal dream team working for it, but conservatives have
reason to be nervous.

LOAD-DATE: April 11, 2001

Source: All Sources : News : News Group File, Most Recent 60 Days
Terms: ((chris or christopher) /3 cox) and judge and date(aft 4-1-2001) (Edit Search)
View: Full
Date/Time: Thursday, April 12, 2001 - 3:29 PM EDT

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=Anne M. Hughes/OU=WHO/O=EOP [WHO]

To: FFULLER@whmo.mil [UNKNOWN] <FFULLER@whmo.mil>;Alice H. Williams/CEA/EOP@EOP [CEA] <Alice H. Williams>;Mary E. Jones/CEA/EOP@EOP [CEA] <Mary E. Jones>;Rosina M. Bierbaum/OSTP/EOP@EOP [OSTP] <Rosina M. Bierbaum>;John F. Maisto/NSC/EOP@EOP [NSC] <John F. Maisto>;Diana E. Furchtgott-Roth/CEA/EOP@EOP [CEA] <Diana E. Furchtgott-Roth>;John Paliokas/NSC/EOP@EOP [NSC] <John Paliokas>;Francine P. Obermiller/CEA /EOP@EOP [CEA] <Francine P. Obermiller>;SSMITH@whmo.mil [OA] <SSMITH@whmo.mil>;Gregory L. Schulte/NSC/EOP@EOP [NSC] <Gregory L. Schulte>;Joan K. Edwards/NSC/EOP@EOP [NSC] <Joan K. Edwards>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Mary Fibich/CEA/EOP@EOP [CEA] <Mary Fibich>;Sandra F. Daigle/CEA/EOP@EOP [CEA] <Sandra F. Daigle>;Susan P. Clements/CEA/EOP@EOP [CEA] <Susan P. Clements>;Lisa D. Branch/CEA/EOP@EOP [CEA] <Lisa D. Branch>;Timothy C. Almon/NSC/EOP@EOP [NSC] <Timothy C. Almon>;SMAHON@whmo.mil [UNKNOWN] <SMAHON@whmo.mil>;Kenneth K. Hembree/OA/EOP@EOP [OA] <Kenneth K. Hembree>;Larry E. Handeland/OA/EOP@EOP [OA] <Larry E. Handeland>;Patrick J. Rhode/WHO/EOP@EOP [WHO] <Patrick J. Rhode>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Melissa S. Bennett/WHO /EOP@EOP [WHO] <Melissa S. Bennett>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>;David Frum/WHO /EOP@EOP [WHO] <David Frum>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Kevin J. Martin/OPD /EOP@EOP [OPD] <Kevin J. Martin>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Blake Gottesman/WHO /EOP@EOP [WHO] <Blake Gottesman>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Stuart Holliday/WHO/EOP@EOP [WHO] <Stuart Holliday>;Jodey Arrington/WHO/EOP@EOP [WHO] <Jodey Arrington>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Linda S. DeHart/WHO/EOP@EOP [WHO] <Linda S. DeHart>;Lynn A. Crable/WHO/EOP@EOP [WHO] <Lynn A. Crable>;Lana Dickey/WHO/EOP@EOP [WHO] <Lana Dickey>;Gertrude A. Roddick/WHO/EOP@EOP [WHO] <Gertrude A. Roddick>;Eileen M. Upperman/WHO/EOP@EOP [WHO] <Eileen M. Upperman>;David E. Kalbaugh/WHO /EOP@EOP [WHO] <David E. Kalbaugh>;William W. McCathran/WHO/EOP@EOP [WHO] <William W. McCathran>;Kathryn M. McKeown/WHO/EOP@EOP [WHO] <Kathryn M. McKeown>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Lee R. Johnson/WHO /EOP@EOP [WHO] <Lee R. Johnson>;Elizabeth R. Ubbens/WHO/EOP@EOP [WHO] <Elizabeth R. Ubbens>;Sarah Pfeifer/OPD/EOP@EOP [OPD] <Sarah Pfeifer>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Christa J. Bailey/WHO/EOP@EOP [WHO] <Christa J. Bailey>;Anne C. Crowther/WHO/EOP@EOP [WHO] <Anne C. Crowther>;Ellen W. McCathran/WHO/EOP@EOP [WHO] <Ellen W. McCathran>;Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;Terry L. Karow/OVP/EOP@EOP [OVP] <Terry L. Karow>;Elizabeth W. Kleppe/OVP/EOP@EOP [OVP] <Elizabeth W. Kleppe>;Claire M. O'Donnell/OVP/EOP@EOP [OVP] <Claire M.

O'Donnell>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Candida P. Wolff/OVP /EOP@EOP [OVP] <Candida P. Wolff>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;John P. Hannah/OVP/EOP@EOP [OVP] <John P. Hannah>;Claire E. Buchan/WHO /EOP@EOP [WHO] <Claire E. Buchan>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Carolyn F. Atkinson/WHO/EOP@EOP [WHO] <Carolyn F. Atkinson>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>

CC: Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>
Sent: 4/13/2001 6:55:18 AM
Subject: : Easter Egg Roll Parking -- State Place

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Anne M. Hughes ( CN=Anne M. Hughes/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-APR-2001 10:55:18.00
SUBJECT:: Easter Egg Roll Parking -- State Place
TO:FFULLER@whmo.mil ( FFULLER@whmo.mil [ UNKNOWN ] )
READ:UNKNOWN
TO:Alice H. Williams ( CN=Alice H. Williams/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Mary E. Jones ( CN=Mary E. Jones/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Rosina M. Bierbaum ( CN=Rosina M. Bierbaum/OU=OSTP/O=EOP@EOP [ OSTP ] )
READ:UNKNOWN
TO:John F. Maisto ( CN=John F. Maisto/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Diana E. Furchtgott-Roth ( CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:John Paliokas ( CN=John Paliokas/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Francine P. Obermiller ( CN=Francine P. Obermiller/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:SSMITH@whmo.mil ( SSMITH@whmo.mil [ OA ] )
READ:UNKNOWN
TO:Gregory L. Schulte ( CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Joan K. Edwards ( CN=Joan K. Edwards/OU=NSC/O=EOP@EOP [ NSC ] )
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READ:UNKNOWN
TO:Mary Fibich ( CN=Mary Fibich/OU=CEA/O=EOP@EOP [ CEA ] )
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TO:Sandra F. Daigle ( CN=Sandra F. Daigle/OU=CEA/O=EOP@EOP [ CEA ] )
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TO:Susan P. Clements ( CN=Susan P. Clements/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Lisa D. Branch ( CN=Lisa D. Branch/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Timothy C. Almon ( CN=Timothy C. Almon/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:SMAHON@whmo.mil ( SMAHON@whmo.mil [ UNKNOWN ] )
READ:UNKNOWN
TO:Kenneth K. Hembree ( CN=Kenneth K. Hembree/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Larry E. Handeland ( CN=Larry E. Handeland/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Patrick J. Rhode ( CN=Patrick J. Rhode/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gregory J. Jenkins ( CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Marcus J. Mollmann ( CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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TO:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
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TO:Carrie C. Pauska (CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [WHO])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
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TO:Lynn A. Crable (CN=Lynn A. Crable/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This message amends the Administrative Alert circulated yesterday regarding parking on Monday, April 16. Notwithstanding the fact that E Street will be closed beginning at 6:00AM on Monday morning, State Place permit holders will be allowed special access onto E Street for entry onto State Place until 8:00AM. After that time, please use alternate parking. Thank you.

From: CN=Vickers B. Meadows/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/13/2001 9:03:57 AM
Subject: : Host Letters
Attachments: P_QVVI1004_WHO.TXT_1.doc; P_QVVI1004_WHO.TXT_2.doc; P_QVVI1004_WHO.TXT_3.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-APR-2001 13:03:57.00
SUBJECT:: Host Letters
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Here ya go. vbm
---------- Forwarded by Vickers B. Meadows/WHO/EOP on 04/13/2001 01:03 PM ----------

Kara G. Figg
04/13/2001 12:59:02 PM
Record Type: Record

To: Vickers B. Meadows/WHO/EOP@EOP
cc:
Subject: Host Letters

Here are our Host Letters. These two go to folks when we are invited.

This one goes to the folks when we are univited.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QVVI1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QVVI1004_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QVVI1004_WHO.TXT_3>

March 29, 2001

Dear_____:

On behalf of the President, I wish to acknowledge and thank you for your kind invitation to _____.

The President is pleased to accept. Your event has been entered on the President's schedule for (date) (time).

Enclosed, please find helpful information with regard to your event. A member of the White House Staff will contact you in the near future to work out additional details and to answer any questions you may have.

Sincerely,

Bradley A. Blakeman
Deputy Assistant to the President
for Appointments and Scheduling

3/29/2001 1:59 PM

MEMORANDUM FOR PRESIDENTIAL EVENT HOSTS

FROM BRADLEY A. BLAKEMAN
DEPUTY ASSISTANT TO THE PRESIDENT FOR
APPOINTMENTS AND SCHEDULING

SUBJECT RESPONSIBILITIES OF HOST ORGANIZATIONS FOR
PRESIDENTIAL VISITS

The President appreciates the opportunity to participate in your event and looks forward to being with you. The following represents the general responsibilities for organizations hosting the President. I know you will find this information helpful in planning your event.

It is imperative that the President's acceptance of your invitation NOT be announced to anyone until our office informs you that it is permissible to do so. Premature publicity could prevent the President's participation. Our Press Office will officially announce the President's participation at the proper time. Any public announcements regarding the President's participation by your organization must be coordinated with our Press Office.

If you should wish to make any substantive changes to the character, structure, location, timing or participants of your event, please contact my office as soon as possible as such changes will necessitate a reconsideration of the President's participation.

You should also be aware that a Presidential visit may require rather extensive staging and audio visual needs as well as certain staff office and press support requirements. The costs associated with these requirements are generally the responsibility of the host and are summarized on the attached list. If you are unable or unwilling to provide the items set forth on the annexed attachment, please contact my office within seven (7) days from the date of this letter.

As the event approaches, the White House will assign a Project Officer and an Advance Team for your event. The Advance Team will coordinate the logistics of the President's visit. The Lead Advance person will be directly responsible for all facets of the President's participation. The Lead Advance person will work with your organization on a daily basis leading up to the event day and will be present on-site with the President on the day of your event.

The White House Project Officer will be responsible for coordinating the substantive aspects of the visit, including the preparation of suitable briefing materials and remarks for the President.

3/29/2001 1:59 PM

You should be aware that a Presidential visit requires coordination with numerous law enforcement agencies, including the United States Secret Service. We must be sensitive and responsive to their needs.

Thank you so much for your hospitality. Should you have any questions regarding your invitation, please feel free to contact _____, the Project Officer for this event, at (202) 456-xxxx.

3/29/2001 1:59 PM

HOST FINANCIAL RESPONSIBILITIES FOR PRESIDENTIAL APPEARANCES

The following items are necessary to establish the proper environment and physical character for a Presidential appearance, and are the responsibility of the host organization.

While not all-inclusive, this list provides a general overview of host responsibilities. Specific physical and management requirements will be determined by the nature of the event and the place which has been selected for the visit. Understandably, costs differ from city to city.

HOST RESPONSIBILITIES:

- FACILITY (EVENT LOCATION)
- STAGING PLATFORMS
- APPROPRIATE BACKDROP
- DAIS AND/OR HEAD TABLE
- SKIRTING OF THE ABOVE
- ROPE AND STANCHION, OR OTHER APPROPRIATE CONTAINMENT BARRIERS
- PRESS PLATFORMS
- PRESS FILING CENTER ADJACENT TO EVENT SITE
- TABLES/CHAIRS FOR WRITING PRESS
- TELEVISION QUALITY LIGHTING FOR THE EVENT
- INDUSTRY STANDARD PUBLIC ADDRESS SYSTEM WITH MULT BOXES
- TICKETS AND PROGRAMS
- ADVERTISING
- USHERS AND FACILITY SET-UP PERSONNEL
- EXPENSES OF THE ADVANCE STAFF OFFICE, GENERALLY NOT TO EXCEED, $1,000.00.
- MOTORCADE VEHICLES: (3) 15 PASSENGER VANS, (2) 7 PASSENGER VANS, (1) FULL SIZE SEDAN. ALL VEHICLES MUST BE AMERICAN MADE.
- (8) MOTORCADE DRIVERS, (WILL NEED NAMES, DATES OF BIRTH, AND SOCIAL SECURITY NUMBERS).
- (6) STAFF/PRESS ASSISTANTS AND VOLUNTEERS TO ASSIST ADVANCE TEAM WITH STAFF OFFICE DUTIES, PRESS CHECK IN, ETC. (WILL NEED NAMES, DATES OF BIRTH, AND SOCIAL SECURITY NUMBERS).
- SPECIAL NEEDS:
    - ACCESSIBILITY AND HANDICAPPED VIEWING.
    - A SIGN LANGUAGE INTERPRETER IS MANDATORY FOR ALL EVENTS WITH ATTENDEES OF MORE THAN 250. FOR EVENTS WITH 250 PERSONS OR LESS, A SIGN LANGUAGE INTERPRETER IS REQUIRED UNLESS THE HOST INDICATES IN WRITING TO THE LEAD ADVANCE REPRESENTATIVE THAT NO ATTENDEES WILL REQUIRE SUCH INTERPRETER.

3/29/2001 1:59 PM

The White House will provide the Presidential Podium, and technical supervision of all staging, lighting and sound requirements.

If you have any questions or concerns, please contact the office of Presidential Appointments and Scheduling at (202) 456-2514.

4/2/01 9:04AM

April 2, 2001

Dear _____:

On behalf of the President, I wish to thank you for hosting the President on _____. Your event has been entered on the President's schedule for (date) (time).

It is imperative that the President's participation NOT be announced to anyone until our office informs you that it is permissible to do so. Our Press Office will officially announce the President's participation at the proper time.

You should be aware that a Presidential visit may require rather extensive staging and audio visual needs as well and certain staff and press support requirements. Your organization will not be billed for such expenses.

As the event approaches, the White House will assign a Project Officer and an Advance Team for your event. The Advance Team will coordinate the logisitics of the President's visit. The Lead Advance Person will be directly responsible for all facets of the President's participation. The Lead Advance Person will work with your organization on a daily basis leading up to the event day and will be present on-site with the President on the day of your event.

The White House Project Officer will be responsible for coordinating the substantive aspects of the visit, including the preparation of suitable briefing materials and remarks for the President. You should be aware that a Presidential visit requires coordination with numerous law enforcement agencies, including the United States Secret Service. We must be sensitive and responsive to their needs.

Thank you so much for your hospitality. Should you have any questions regarding your invitation, please feel free to contact my office at (202) 456-2514.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>
Sent: 4/13/2001 12:43:32 PM
Subject: : Re: Fw: FW: Email
Attachments: P_5T0J1004_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-APR-2001 16:43:32.00
SUBJECT:: Re: Fw: FW: Email
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Did not work on mine; can you send me the quote in the e-mail itself or bring me a copy? Thanks.

Alicia W. Davis
04/13/2001 04:41:45 PM
Record Type: Record

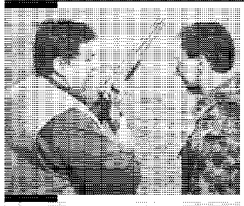
To: Kenneth B. Mehlman/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fw: FW: Email

Double click on the attached document and hit launch. The second page has a quote from the President. For your review and edits:

- shusterdirect2.qxd.pdf

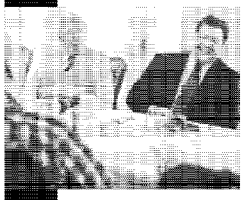
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5T0J1004_WHO.TXT_1>

What Conservative Leaders are Saying About Bill Shuster:



As a ten year member, Bill Shuster has received the highest "A" rating from the National Rifle Association on issues important to Sportsmen.

Sportsmen



"Bill Shuster is the only candidate to receive our Honorary Guardian of Seniors Award for his pro-senior positions on lowering taxes, protecting Social Security and Medicare, and providing prescription drug coverage for seniors. He is a proven friend of senior citizens"

Jim Martin,
President, 60 Plus Seniors

Seniors

"Taxpaying families across the 9th district should be comforted by the principled committment candidate Shuster has made to them. His decision to sign the pledge in opposition to future tax increases demonstrates that he will fight to lower taxes for all Americans."

Grover Norquist,
Americans for Tax Reform

Tax Reform

On May 15th, Vote Bill Shuster, The Conservative Choice for Congress.

Stamp

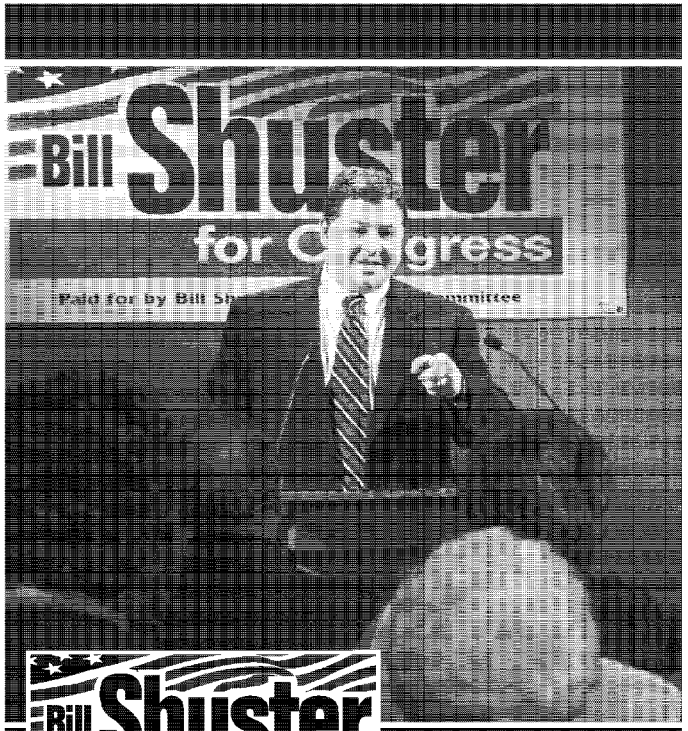
Bill Shuster for Congress Committee
P.O. Box 27
207 Allegheny Street
Hollidaysburg, PA 16648

Schiff permit
in right corner

Bill Shuster for Congress

P.O. Box 27
207 Allegheny Street
Hollidaysburg, PA 16648

Paid for by Bill Shuster for Congress Committee



Bill Shuster for Congress

Hard Work.

Real World Experience.

Conservative Values.

REV_00125883

About Bill Shuster...

- ★ Raised on a family farm in Bedford, PA
- ★ Lifelong conservative
- ★ Successful small businessman who's created jobs and balanced budgets
- ★ Bachelor's Degree from Dickinson College in History and Political Science
- ★ Master's Degree from American University in Business Administration
- ★ Married 13 years to Becky with 2 children, Ali, 12 and Garrett, 9
- ★ Member of Zion Lutheran Church
- ★ Rotary Club, Past President
- ★ Homewood Retirement and Nursing Home, Board Member
- ★ Chamber of Commerce, Board Member
- ★ National Auto Dealers Association, Board Member
- ★ Active supporter of Precious Life, New Day, the YMCA and the Child Abuse Task Force

Fighting for Lower Taxes for Families and Business

Bill Shuster strongly supports the Bush Plan to cut taxes for families and local business. And while the Democratic candidate has raised taxes on families and seniors, Bill has put his commitment to our families in writing, by **signing the Taxpayer Protection Pledge.**

Protecting Our Seniors

Because of Bill's pro-senior positions, he is the only candidate to receive the **Honorary Guardian of Seniors Award.** He will fight to strengthen Social Security and Medicare, and provide better prescription drug benefits for our seniors.

Standing Up for Conservative Values

As a lifelong conservative, Bill Shuster lives central Pennsylvania's values each day. Whether it's protecting unborn life, our 2nd Amendment right to bear arms, or pro-family values, Bill can be trusted as our conservative voice in Congress.

"Bill Shuster's experience in the community makes him the ideal candidate to stand up for Central Pennsylvania's values and support our agenda of tax relief and job creation in Congress."

President George Bush

For more information, contact Bill Shuster for Congress campaign headquarters at:

Bill Shuster for Congress Committee
P.O. Box 27, 207 Allegheny Street
Hollidaysburg, PA 16648

www.shuster2001.com
email: shuster2001@charterpa.com

We need your help as we build a strong team across the 9th District in support of Bill Shuster. Please join our team by completing this postcard and mailing back today!

____ I would like to volunteer.
____ I would like a yardsign and bumper sticker.

Name _____
Address _____
_____
City _____ State _____ Zip _____
Phone _____
Email _____

Bill Shuster for Congress

Please remember to vote on May 15th!!

REV_00125884

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 4/16/2001 10:55:12 AM
Subject: : Sutton

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-APR-2001 14:55:12.00
SUBJECT:: Sutton
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

when you have Keisler's sheet, e-mail it so I can conform. Sutton
has not called me back yet.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/16/2001 4:46:23 PM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-APR-2001 20:46:23.00
SUBJECT:: Re:
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No one disagrees with that!!! See H. Clinton, It Takes a Village.

Helgard C. Walker
04/16/2001 07:47:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

While Government has great responsibilities for public safety and public health, for civil rights and common schools, compassion is the work of a Nation. Caring requires more than Government alone can provide. Many of society's greatest problems can only be solved on a personal level, between those who care and those in need.

Government can rally a military, but it cannot put hope in our hearts or a sense of purpose in our lives. . . .

What individual Americans do is more important than anything Government does.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/16/2001 4:46:23 PM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-APR-2001 20:46:23.00
SUBJECT:: Re:
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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Helgard C. Walker
04/16/2001 07:47:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

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What individual Americans do is more important than anything Government does.

From: CN=Vickers B. Meadows/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/17/2001 6:56:35 AM
Subject: : Darft procedures
Attachments: P_QDZJ1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-APR-2001 10:56:35.00
SUBJECT:: Darft procedures
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached are draft procedures for political travel involving the President. I would like you to review before we circulate to Political Affairs, Scheduling, and RNC. The only thing it doesn't address is advance costs. The more I think about it, the more I think we can defend that advance is always official. Also, have you had a chance to discuss the separate hosting letter with Ken M.? I leave tomorrow at noon until Sunday..... and would like to get this into circulation before I leave.... Thanks. vbm

PS I think we provide a disclaimer that these guidelines may change as circumstances surrounding political events evolve.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QDZJ1004_WHO.TXT_1>

DRAFT –4-16-01

PROCEDURES FOR POLITICAL TRAVEL INVOLVING THE PRESIDENT

Costs associated with any political trips involving the President should follow the below listed guidelines:

1. The Scheduling Office issues approved Presidential Activity (APA) for political event.

2. The White House Management Office will review the following:

    a) Determine hard time or hypothetical formula.
    b) Estimate political percentage of trip for deposit purposes.

3. The Political Affairs will be responsible for the following:

    a) Separate hosting letter detailing procedures for trip deposit (including amount) with the Republican National Committee (RNC.)
    b) Check should be made payable to the Republican National Committee.
    c) Check should be sent overnight mail to the below address:

        Republican National Committee
        Attention: Jay C. Banning
        310 First Street, SE
        Washington, DC 20003
        (202) 863-8560

    d) The event host should pay for site costs directly.

4. The RNC will be responsible for the following:

    a) All deposits must be received 48 hours prior to event.
    b) The RNC will confirm with Political Affairs that check has been received.
    c) The RNC will set up separate accounts for each deposit.
    d) Only those invoices related to the candidate or party making the deposit will be paid from each account.
    e) When the RNC has the assurance that all costs associated with the event have been paid, they will return any remaining funds to the candidate or party.

5. White House Management will be responsible for the following:

    a) A Trip Summary is prepared by White House Management and circulated for approval from the General Counsel, Advance Office and Political Affairs.

b) Any outstanding expenses should be forwarded to White House Management and they will be forwarded to the RNC for reimbursement. Staff should not forward any expenses directly to the RNC.

6. A copy of approved trip memo is forwarded to the Military Office for any DOD and AF1 expenses. (100% official travelers will be denoted.)

#

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 4/17/2001 7:18:18 AM
Subject: : Re: Lunch

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-APR-2001 11:18:18.00
SUBJECT:: Re: Lunch
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Sure. Noon in the hall?

Courtney S. Elwood
04/17/2001 11:16:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Lunch

Any one interested in going out of the building to get something for lunch today?

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>
Sent: 4/17/2001 9:06:23 AM
Subject: : Re: Darft procedures
Attachments: P_WQ3K1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-APR-2001 13:06:23.00
SUBJECT:: Re: Darft procedures
TO:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

will do

Vickers B. Meadows
04/17/2001 10:56:29 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Darft procedures

Attached are draft procedures for political travel involving the President. I would like you to review before we circulate to Political Affairs, Scheduling, and RNC. The only thing it doesn't address is advance costs. The more I think about it, the more I think we can defend that advance is always official. Also, have you had a chance to discuss the separate hosting letter with Ken M.? I leave tomorrow at noon until Sunday..... and would like to get this into circulation before I leave.... Thanks. vbm

PS I think we provide a disclaimer that these guidelines may change as circumstances surrounding political events evolve.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WQ3K1004_WHO.TXT_1>

DRAFT –4-16-01

PROCEDURES FOR POLITICAL TRAVEL INVOLVING THE PRESIDENT

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6. A copy of approved trip memo is forwarded to the Military Office for any DOD and AF1 expenses. (100% official travelers will be denoted.)

#

From: Kelly McCullough <kmccullough@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/17/2001 1:51:26 PM
Subject: : Re: AR Fundraiser ?
Attachments: P_ZEDK1004_WHO.TXT_1.htm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kelly McCullough <kmccullough@georgewbush.com> (Kelly McCullough <kmccullough@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME:17-APR-2001 17:51:26.00
SUBJECT:: Re: AR Fundraiser ?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks. The Hutchinson folks have asked a question regarding the payment of their bill -- could you please give me a call to discuss -- 6-7913?

thanks,
Kelley
----- Original Message -----
From: Brett_M._Kavanaugh@who.eop.gov
To: Kelly McCullough
Sent: Tuesday, April 17, 2001 5:26 PM
Subject: Re: AR Fundraiser ?

Yes, but they should be informed that this is political activity and that they should not incur additional expenses for the government in preparing/producing the speech. The primary additional cost would be paper
used in printing out drafts, so they should borrow a ream of paper from your office for that purpose. Otherwise, however, they are free to participate in political activity, including working on the speech.

(Embedded
image moved Kelly McCullough <kmccullough@georgewbush.com>
to file: 04/17/2001 07:36:50 AM
PIC00061.PCX)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP

cc:
Subject: AR Fundraiser ?

Can speechwriting prepare the President's remarks for the Hutchinson fundraiser in Little Rock?

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZEDK1004_WHO.TXT_1>

Thanks. The Hutchinson folks have asked a question regarding the payment of their bill -- could you please give me a call to discuss -- 6-7913?

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----- Original Message -----
From: Brett_M._Kavanaugh@who.eop.gov
To: Kelly McCullough
Sent: Tuesday, April 17, 2001 5:26 PM
Subject: Re: AR Fundraiser ?

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&nbs p; ; & nbsp; &n bsp;
(Embedded &nbs p; ; & nbsp;
image moved Kelly McCullough <kmccullough@georgewbush.com>
to file: 04/17/2001 07:36:50 AM &nb sp; &nbs p;
PIC00061.PCX) & nbsp; &n bsp; &nb sp;
& nbsp; &n bsp; &nb sp; &nbs p; ;

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP

cc:
Subject: AR Fundraiser ?

Can speechwriting prepare the President's remarks for th e Hutchinson fundraiser in Little Rock?

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/18/2001 3:57:40 AM
Subject: : Re: US Attorney Interviews

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-APR-2001 07:57:40.00
SUBJECT:: Re: US Attorney Interviews
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm going to try to attend just the Michigan one, but my schedule on the memo may preclude it.

Brett M. Kavanaugh
04/17/2001 07:02:15 PM
Record Type: Record

To: Stuart W. Bowen/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, bradford a. berenson/who/eop@eop, brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: US Attorney Interviews

I am happy to do them. What time?

Stuart W. Bowen
04/17/2001 07:01:51 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: bradford a. berenson/who/eop@eop, brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: US Attorney Interviews

i defer to brett

H. Christopher Bartolomucci

04/17/2001 06:46:17 PM
Record Type: Record

To: Stuart W. Bowen/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: US Attorney Interviews

The three of you have expressed interest in doing the USA interviews this Thursday. The districts at issue are New Hampshire, Western Michigan, and Oregon. Who's still interested?

From:	CN=Vickers B. Meadows/OU=WHO/O=EOP [WHO]
To:	Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Kenneth B. Mehlman/WHO /EOP@EOP [WHO] <Kenneth B. Mehlman>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;jbanning@rnchq.org @ inet [UNKNOWN] <jbanning@rnchq.org>
CC:	Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Kara G. Figg/WHO /EOP@EOP [WHO] <Kara G. Figg>;Patrick J. Rhode/WHO/EOP@EOP [WHO] <Patrick J. Rhode>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Hector F. Irastorza/WHO/EOP@EOP [WHO] <Hector F. Irastorza>;Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>
Sent:	4/18/2001 5:54:02 AM
Subject:	: Political Events Procedures and Letter - drafts
Attachments:	F_OZKK1004_OA.TXT_1.doc; F_OZKK1004_OA.TXT_2.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Vickers B. Meadows ( CN=Vickers B. Meadows/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-APR-2001 09:54:02.00
SUBJECT:: Political Events Procedures and Letter - drafts
TO:Bradley A. Blakeman ( CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian D. Montgomery ( CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kenneth B. Mehlman ( CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:jbanning@rnchq.org ( jbanning@rnchq.org @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:Katherine G. Marinis ( CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kara G. Figg ( CN=Kara G. Figg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Patrick J. Rhode ( CN=Patrick J. Rhode/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Marcus J. Mollmann ( CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Hector F. Irastorza ( CN=Hector F. Irastorza/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Phillip Larsen ( CN=Phillip Larsen/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached please find draft procedures and letter (for Ken's signature and
drafted by Brett) regarding political events. Please review and return
your comments to my attention. Thanks. vbm




ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_OZKK1004_OA.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_OZKK1004_OA.TXT_2>
```

PROCEDURES FOR POLITICAL EVENTS INVOLVING THE PRESIDENT

These guidelines may require updating as circumstances surrounding political events evolve. Costs associated with any political trip involving the President should follow the guidelines listed below:

1. The Scheduling Office issues Approved Presidential Activity (APA) for political event.

2. The White House Management Office will review the following:

    a) Determine whether hard time or hypothetical formula (only when the President is a candidate) applies.
    b) Estimate political percentage and costs of trip for deposit purposes.

3. The Political Affairs Office will be responsible for the following:

    a) Sending a separate hosting letter detailing procedures for trip deposit (including amount) with the Republican National Committee (RNC.)
    b) Communicating that the check should be made payable to the Republican National Committee, that all deposits must be received 48 hours prior to event and the deposit should be sent overnight mail to the below address:

        Republican National Committee
        Attention: Jay C. Banning
        310 First Street, SE
        Washington, DC 20003
        (202) 863-8560

    c) Communicating that the event host should pay for site costs directly.

4. The RNC will be responsible for ensuring the following:

    a) The RNC will confirm with Political Affairs that check has been received.
    b) The RNC will set up separate accounts for each deposit.
    c) Only those invoices related to the candidate or party making the deposit will be paid from each account.
    e) When the RNC has the assurance that all costs associated with the event have been paid, they will return any remaining funds to the candidate or party.

5. The White House Management Office will be responsible for the following:

    a) A Trip Summary is prepared by White House Management and circulated for approval from the Counsel, Advance Office and Political Affairs.

b) Any outstanding expenses should be forwarded to White House Management and they will be forwarded to the RNC for reimbursement. Staff should not forward any expenses directly to the RNC.

c) A copy of approved trip memo is forwarded to the Military Office for any DOD and AF1 expenses (100% official travelers will be denoted.) The Military Office will coordinate with the White House Management Office for any expenses requiring reimbursement.

#

On behalf of the President, I want to acknowledge and thank you for your kind invitation to _____. The President is pleased to accept. Your event has been entered on the President's schedule for (date)(time).

As you know, the air travel, ground transportation, food, lodging, and other incidental activities of the President and others who attend or assist with this event will generate certain costs that must be reimbursed by [host entity]. In particular, because this is a political event, costs that are unrelated to Presidential security, communications, and the ongoing duties of the Presidency generally must be borne by the appropriate political entity and not by the Government. In order to ensure proper payment of these costs, an advance payment of $15,000 is required as a deposit. Please send a check for that amount at least 48 hours before the event to:

Republican National Committee
Attention: Jay Banning
310 First Street, SE
Washington, DC 20003
(202) 863-8560

The RNC will coordinate directly with the White House to ensure that all invoices related to the event are paid. Once the invoices have been paid, the RNC will coordinate with you and either reimburse any remaining funds or inform you of any additional amount that is owed.

Thank you again for your invitation to this event. The President looks forward to attending.

From:	CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC:	h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent:	4/18/2001 7:26:46 AM
Subject:	: Re: Mobile Register (4/18/01) re: Steele reportedly up for federal judgeship

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-APR-2001 11:26:46.00
SUBJECT:: Re: Mobile Register (4/18/01) re: Steele reportedly up for federal judgeship
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Wow - that is remarkably accurate in terms of the selection process. And largely positive for Steele.

Bradford A. Berenson
04/18/2001 10:14:43 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Mobile Register (4/18/01) re: Steele reportedly up for federal judgeship

FYI
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 04/18/2001 10:14 AM ----------

Jeanie S. Mamo
04/18/2001 08:37:47 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Mobile Register (4/18/01) re: Steele reportedly up for federal judgeship

Steele reportedly up for federal judgeship
04/18/01
By SEAN REILLY and SAM HODGES
Mobile Register
Washington Bureau

WASHINGTON - In a signal that he is the front-runner to fill a vacant seat on the federal appeals court in Atlanta, U.S. Magistrate William Steele of Mobile is undergoing the routine background investigation required before the president formally nominates him, according to staffers within the Alabama congressional delegation.

"We have heard Bill Steele is going through the background check," said Armand DeKeyser, chief of staff for U.S. Sen. Jeff Sessions, R-Mobile.

The post on the 11th Circuit Court of Appeals ranks at the top of the roster of federal appointments President Bush must fill from Alabama. In Mobile, those also include two district judgeships and the posts of U.S. attorney and U.S. marshal.

While the White House reportedly is taking the lead on filling the appellate judgeship, its decisions on the remaining appointments are expected to follow the joint suggestions of Sessions and Sen. Richard Shelby, R-Tuscaloosa.

There had been reports of friction between the two men, in part because Sessions reportedly wouldn't sign off on top Shelby aide Tom Young for the 11th Circuit judgeship.

Both men denied such speculation. Although Young, a Mobilian, also has been mentioned as a possible candidate for the U.S. attorney's position or a federal district judgeship, it is unclear whether he is interested in either job. He declined comment Tuesday.

Congress is on vacation, but Sessions and Shelby hope to send a slate of recommendations to the White House soon after lawmakers return next week, aides said Tuesday.

Among other names tossed up by Mobile attorneys, Assistant U.S. Attorney Ginny Granade still is mentioned as a strong possibility for a district judgeship, while Assistant U.S. Attorney Richard Moore and Mobile lawyer David York are considered leading candidates for the U.S. attorney's job. York ran unsuccessfully for Mobile County district attorney against incumbent Democrat John Tyson Jr. in 1998.

But the field shrank by one Tuesday as Baldwin County District Attorney David Whetstone called a news conference to announce his withdrawal from active consideration.

While saying the move could speed the search for a replacement to outgoing U.S. Attorney Don Foster, Whetstone added that he plans to be a player in coming years as Alabama confronts challenges such as education funding and a possible overhaul to the state's 1901 constitution.

"I felt my place is in Baldwin County and state service," he said.

Whetstone also acknowledged some party activists had voiced concern that Gov. Don Siegelman, a Democrat, would pick his replacement if he moved into the federal job.

A former state and federal prosecutor, Steele, 49, has been a magistrate since 1990. Before that, he worked under Sessions during the latter's tenure as U.S. attorney. Through an employee, Steele declined comment Tuesday.

Magistrates are appointed by a majority of the active district judges on a particular court. Although they can hear full civil cases with the agreement of both sides, they usually drop out of criminal cases soon after the defendants' initial court appearances.

Steele is a popular figure at the federal courthouse in downtown Mobile; several attorneys welcomed the news Tuesday of his apparent front-runner status.

While others had privately questioned whether Steele had the necessary connections for a shot at the appellate judgeship, Mobile business lawyer Matt McDonald said he understood Steele had "a lot of support" from the federal bench.

"Everybody recognizes that he is eminently fair and impartial," McDonald said. "... There's nothing really wild and crazy to say. He's a good guy."

Democrat Hank Caddell, another Mobile attorney, also praised Steele as "a terrific person" with "tremendous integrity and a lot of sensitivity to the attorneys that he's dealing and working with."

Although conservative overall, Steele is "extremely fair," Caddell said.

Outside of Mobile, however, at least one lawyer was less enthusiastic. Birmingham attorney Richard Meelheim represents three black men in a federal lawsuit alleging that they were the target of racial slurs and on-the-job harassment at Georgia-Pacific's Naheola paper mill in Choctaw County.

In response to a motion by the company, Steele threw out the suit last week. While not disputing many of the plaintiffs' charges, he wrote in his April 9 order that, under past rulings by the 11th Circuit, they did not rise to the level requiring legal action.

Meelheim strongly disagreed.

"I think the facts are so horrible," he said, "I can't conceive how anybody could determine that it was not sufficiently severe and pervasive" to allow the case to proceed. He plans to appeal to the 11th Circuit.

Alabama lawmakers also are closely watching President Bush's pick for the assistant Army secretary for civil works, who oversees the U.S. Army Corps of Engineers, which funds a host of projects in the state.

Their preferred choice is former Mississippi congressman Mike Parker, said Jo Bonner, a spokesman for U.S. Rep. Sonny Callahan, R-Mobile.

"We would certainly like to have an assistant secretary to know where we are without having to look at a map and return our phone calls," Bonner said.

Parker, a Republican funeral home director from Brookhaven, Miss., lost a run for governor against Democrat Ronnie Musgrove and has been seen little since, said Joseph Parker, a political scientist at the University of Southern Mississippi, who is not related.

"He has been about as far off the face of the earth as a person can be and still be alive since the governor's race," Joseph Parker said.

Callahan, who chairs the House subcommittee that writes the Corps of Engineers' budget, has written Bush in Parker's support, Bonner said. He believed that the delegation as a whole had sent a similar letter. As a matter of policy, the White House does not comment on possible appointees until they are officially nominated, a spokeswoman said Tuesday.

(Staff reporters Brendan Kirby and Joe Danborn contributed to this report.)

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

From: CN=Christopher J. Orr/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/18/2001 10:16:46 AM
Subject: : Letter to the Editor
Attachments: P_STTK1004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christopher J. Orr ( CN=Christopher J. Orr/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-APR-2001 14:16:46.00
SUBJECT:: Letter to the Editor
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett,

As I explained in my voice mail, this is a letter to the editor correcting
mistakes made in an article to the Federal Times. Kate Anderson has
looked and made some edits. We want to make sure White House Counsel
takes a look at it as well.

Thanks

Jimmy Orr
456 2646
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_STTK1004_WHO.TXT_1>
```

We take issue with the opinions voiced in the April 10, 2001 article: "White House Lags in Archiving Official Electronic Mail," as the White House complies fully with the high standards of the Presidential Records Act, including preserving and archiving all official email records.

In order to ensure that the activities, deliberations, decisions, and policies of the Presidency are preserved for future generations, White House staff has received thorough briefings on the requirements of the Presidential Records Act. Furthermore, the Counsel to the President has issued strict guidelines on record preservation which staff must follow.

White House employees are directed, if they have any doubt as to whether or not a document constitutes a presidential record that should be preserved, to save the document and contact the Counsel's office for guidance.

Technology designed to ensure security and proper preservation is used in order to capture email created and received by White House users that constitute presidential or federal records. The Automated Records Management System (ARMS) automatically copies internal e-mail designated by users as records in a word searchable format for preservation and eventual transfer to the National Archives and Records Administration. Although there were some technical glitches in the interface to ARMS during the prior administration that prevented certain e-mail from being captured in the system and necessitated restoration from backup tapes, these glitches have been repaired. Moreover, the White House is working with the Information Systems and Technology Division of the Office of Administration, and the National Archives to further improve the system.

The White House Office of Records Management enjoys a close relationship with the National Archives. The White House Office of Records Management has already met with the director of the National Archives' Modern Records Program in two formal meetings where a wide range of records management issues were discussed, including improvements to ARMS. White House officials have also met with representatives from the General Accounting Office to discuss how to improve management controls over the creation, use, maintenance and safeguarding of electronic records to ensure their proper preservation.

The White House and the National Archives share a common goal of ensuring that a comprehensive, complete record of this Administration is preserved for future generations. Likewise, the Bush Administration is firmly committed to adhering to the rules set forth by the Presidential Records Act.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/18/2001 6:21:10 PM
Subject: : Re: memo title?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-APR-2001 22:21:10.00
SUBJECT:: Re: memo title?
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I like that.



Helgard C. Walker
04/18/2001 10:20:28 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: memo title?

I say we go with just the name of the relevant individual on the re line.



Rachel L. Brand
04/18/2001 10:09:44 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
```

Subject: memo title?

To add to the debate about formatting arcana: How are we going to caption
or title these memos?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
rachel l. brand/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>
Sent: 4/18/2001 6:29:40 PM
Subject: : Re: Letter to the Editor
Attachments: P_K62L1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-APR-2001 22:29:40.00
SUBJECT:: Re: Letter to the Editor
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Can I see the original story?

Christopher J. Orr
04/18/2001 02:16:39 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Letter to the Editor

Brett,

As I explained in my voice mail, this is a letter to the editor correcting mistakes made in an article to the Federal Times. Kate Anderson has looked and made some edits. We want to make sure White House Counsel takes a look at it as well.

Thanks

Jimmy Orr
456 2646

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K62L1004_WHO.TXT_1>

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The White House and the National Archives share a common goal of ensuring that a comprehensive, complete record of this Administration is preserved for future generations. Likewise, the Bush Administration is firmly committed to adhering to the rules set forth by the Presidential Records Act.

From: CN=Janet P. Walker/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: Israel Hernandez (Israel Hernandez/WHO/EOP [WHO])
Sent: 4/19/2001 4:06:19 AM
Subject: : North Carolina Bankers Association

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Janet P. Walker (CN=Janet P. Walker/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:19-APR-2001 08:06:19.00
SUBJECT:: North Carolina Bankers Association
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Good morning! The North Carolina Bankers Association would like the President to tape remarks for their upcoming annual conference. Since it is a state group, the preliminary decision was to try and see if we could draft generic remarks for the President and then utilize the same tape for other banking associations for the next couple of months. This brings up two questions:

1. The North Carolina Bankers are willing to cover the cost of taping (if approved, the taping will be done in conjunction with other tapings to keep cost down). Is the re-use of the tape something we can do?

2. If it is acceptable to re-use the tape, how would we allocate costs to the North Carolina Bankers?

Your guidance would be greatly appreciated. We're on a tight turnaround so anything you can do asap would be great.

Many thanks!
Janet

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>
Sent: 4/20/2001 8:08:59 AM
Subject: : Re: USA Today today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-APR-2001 12:08:59.00
SUBJECT:: Re: USA Today today
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'd say this report is more troubling than the Drudge Report




Brett M. Kavanaugh
04/20/2001 12:06:54 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: USA Today today

identified six likely nominees

"Among the potential nominees, GOP insiders say, are two men who have the
chance to become
the first Hispanic justice: Alberto Gonzales, now White House counsel, and
Emilio Garza, a
U.S. appeals court judge in San Antonio.

Other possible choices include J. Harvie Wilkinson and J. Michael Luttig,
both veteran judges
```

on a U.S. appeals court in Richmond, Va.; Samuel Alito, a federal appeals judge in Philadelphia;
and Janice Brown, a California Supreme Court justice, who was among the first African-Americans
on that bench.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 4/20/2001 12:35:27 PM
Subject: : Re: Wall Street Journal Article on blue slip policy

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-APR-2001 16:35:27.00
SUBJECT:: Re: Wall Street Journal Article on blue slip policy
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

From Washington Wire:

JUDGMENT CALL: Senate Judiciary Committee Chairman Hatch of Utah floats a change so
that only one home-state senator, not both, need approve a judge's nomination before a
committee hearing. With Bush set to send his first judicial nominees to the Hill, Democrats complain
that they would lose leverage in 13 states.

Bradford A. Berenson
04/20/2001 04:33:09 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Wall Street Journal Article on blue slip policy

I understand the Journal ran an article today about blue slip policy. Anybody seen it?

Message Sent
To:_____

Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

From: CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/20/2001 9:33:25 AM
Subject: : Travel

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-APR-2001 13:33:25.00
SUBJECT:: Travel
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ken left for FL today for the RNC State Chairmen's meeting in Miami. He is staying and doing some political travel for the first half of next week and meeting up with the President on Wed. I have a couple of questions regarding who should pay for his travel.

Friday, 4/20- He is participating in the RNC State Chairmen's meeting. The RNC paid for his flight to Miami. He is staying Friday night, Saturday night, and Sunday night. The RNC also paid for his hotel for those 3 nights.

Monday, 4/23- He is doing a few political events in Miami that the Republican Party of Florida organized. He then flies to Tallahassee for several events there. (the RPOF paid for his flight to Tallahassee, but I booked the hotel for Monday night through the RNC)

Tuesday, 4/24- He has more events with FL Republican leadership and then flies to Jacksonville, FL to meet up with POTUS on Wednesday am. I booked the flight through the RNC.

Tuesday night- I need to get him a hotel, and I am guessing the WH travel office should pay for it. is that correct?

Wednesday, 4/25- he meets up with the President to do his events. Wednesday pm is a political event, and I believe that the RNC is paying for the staff to get down there. (it is a fundraiser for Sen. Tim Hutchinson). He drops off the trip after that event, and will need to stay overnight. I booked his flight home through the RNC.

I mainly need to know if I should book his hotel rooms for Tuesday and Wednesday night through WH office, and if you approve of all other travel payment arrangements. thanks. I am at x6-6522.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>
Sent: 4/22/2001 1:32:56 PM
Subject: : district courts

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-APR-2001 17:32:56.00
SUBJECT:: district courts
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I owe you a state for Washington for district courts. I can trade
off Delaware or Idaho; I would prefer to keep Idaho because I know people
there.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>
Sent: 4/22/2001 1:32:56 PM
Subject: : district courts

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-APR-2001 17:32:56.00
SUBJECT:: district courts
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I owe you a state for Washington for district courts. I can trade
off Delaware or Idaho; I would prefer to keep Idaho because I know people
there.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
Sent: 4/23/2001 5:38:35 AM
Subject: : Lori Lorenzi is the new Staff Assistant

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-APR-2001 09:38:35.00
SUBJECT:: Lori Lorenzi is the new Staff Assistant
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

She will be here next Monday.

Stuart - add another successful hire to your list. Are you on commission
w/ PPO?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: P. Thaddeus Messenger/OMB/EOP@EOP [OMB] <P. Thaddeus Messenger>
Sent: 4/23/2001 6:38:09 AM
Subject: : LRM PTM13 - - HOUSING & URBAN DEVELOPMENT Testimony on HUD FY 2002 Budget Testimony
Attachments: P_FSPM1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2001 10:38:09.00
SUBJECT:: LRM PTM13 - - HOUSING & URBAN DEVELOPMENT Testimony on HUD FY 2002 Budget Testimony
TO:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

I have reviewed this LRM for the Office of Counsel to the President and have no comment.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/23/2001 10:37 AM ----------

Allison L. Riepenhoff
04/23/2001 07:35:04 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM PTM13 - - HOUSING & URBAN DEVELOPMENT Testimony on HUD FY 2002 Budget Testimony

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 04/23/2001 07:35 AM ----------

From: P. Thaddeus Messenger on 04/20/2001 05:30:17 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM13 - - HOUSING & URBAN DEVELOPMENT Testimony on HUD FY 2002 Budget Testimony

Good evening,

Attached, please find the text of LRM PTM13, regarding testimony on HUD's FY 2002 Budget. An electronic version of the testimony is attached to this email. If you have any difficulties in transmission or accessing this file, please contact me immediately.

AGENCIES: To help assure you receive an accessible copy, this LRM will be followed by a transmission via facsimile.

Please provide your comments by 2:00 p.m., Monday April 23, 2001.

Regards,

Thad Messenger
OMB/LRD/LWP
(202) 395-7754

==========

LRM ID: PTM13
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 20, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
E-Mail: P._Thaddeus_Messenger@omb.eop.gov
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Testimony on HUD FY 2002 Budget Testimony

DEADLINE: 2:00 p.m. Monday, April 23, 2001

==========

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached to this LRM is the text of testimony to be presented by HUD Secretary Martinez before the Housing and Transportation Subcommittee of the Senate Banking, Housing and Urban Affairs Committee on Wednesday April 25, 2001. Please provide your comments by 2:00 p.m on Monday April 23, 2001.

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Diana L. Meredith
LRM ID: PTM13 SUBJECT: HOUSING & URBAN DEVELOPMENT Testimony on
HUD FY 2002 Budget Testimony

==========

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
lrm@os.dhhs.gov @ inet
justice.lrm@usdoj.gov @ inet
llr@do.treas.gov @ inet
CLRM@doc.gov @ inet
OPBRE_E-Mail_-_EDITORS@OA.EOP.GOV

Message Copied
To:_____
Alan B. Rhinesmith/OMB/EOP@EOP
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NEC LRM
WHGC LRM
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Douglas Pitkin/OMB/EOP@EOP
Joseph F. Lackey Jr./OMB/EOP@EOP
Diana L. Meredith/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_FSPM1004_WHO.TXT_1>

Testimony, Housing and Transportation Subcommittee
Senate Banking, Housing, and Urban Affairs Committee
April 25, 2001

Chairman Allard, Ranking Member Reed and distinguished Members of the Committee, thank you for this opportunity to discuss the Department of Housing and Urban Development's budget for fiscal year 2002.

I am both humbled and energized by the challenges that face us at this Department and this nation as we work to improve housing and expand opportunities for families seeking to move ahead. President Bush and I are committed to restoring the confidence of the Congress, the Department's constituents, and the American people in the operation of this Agency.

This budget is the first step toward restoring that confidence. This is a compassionate and responsible budget that will allow us to serve people more effectively, empowering individuals and communities across this great land.

We cannot face this challenge alone. We look forward to the support of this Congress and particularly this Subcommittee to accomplish this.

The American Taxpayer will measure our success, not by how much money we spend, or by how many new initiatives we put in place, but by how many families have a better home, by how many immigrants get the chance to buy their first house, and by how many children grow up in the kind of neighborhood we all want to live in.

Our existing programs must operate efficiently and effectively before we create additional programs. Simply adding new government programs does not necessarily improve the lives of the citizens who need the most help. Over the past two decades the number of programs at the department has exploded from fewer than 50 to more than 300.

The Administration's overall growth for federal spending of four percent is a responsible and appropriate level. Nevertheless, the President also recognizes that we have an obligation to serve those families who still wait for the chance to own a home. The Department of Housing and Urban

REV_00125958

Development's proposed budget increases nearly seven percent for fiscal year 2002.

Buying a home is the biggest investment most families ever make. By building equity in that home, families can pass on wealth from one generation to the next, can provide for child's higher education, and can be used as venture capital for small businesses. All the while, strengthening their community. Every American family should have this opportunity, no matter the color of your skin.

Nearly 70 percent of all families have come to realize the American Dream and own their own home. Despite this record number of homeownership there are still communities that lag behind. Less than half of African-American and Hispanic-American families own their homes.

We can do better.

We need to tear down the barriers to homeownership. President Bush's budget includes three new homeownership initiatives to expand opportunities for hundreds of thousands of low-income and minority families.

The "American Dream Down Payment Fund" will provide $200 million to match down payment assistance, helping more than 130,000 low-income families overcome the single greatest obstacle to homeownership.

President Bush has also proposes the "Renewing the Dream Tax Credit," which will support the rehabilitation or construction of at least 100,000 homes for low-income families over the next five years.

Furthermore, this Administration will seek authority to offer low-income families new adjustable-rate mortgages. It protects new homebuyers from dramatic changes in market rates until they can establish an economic foothold.

The American Homeownership and Economic Opportunity Act of 2000, provided low-income families the ability to use rental vouchers for down payment on a home. President Bush proposes to make this provision

REV_00125959

permanent and not subject to appropriations, enabling the Department to help more low-income families become homeowners.

Finding affordable and decent housing continues to be a problem for many Americans. Almost 5 million renter households have "worst case needs" for rental housing. This number represents an eight percent decline over last year, but is still unacceptable.

In order to expand the production of affordable housing, President Bush proposes to raise the limits for FHA multi-family insurance by 25 percent. This is the first increase in nearly 10 years, and will help spur the development of affordable housing in moderate to high cost urban areas.

We are strengthening our traditional obligations to public housing by increasing the public housing operating budget by $150 million. This money can be used by local housing authorities to fund those programs that best meet their needs, including the rising costs of utilities.

President Bush and I are also continuing our strong commitment to helping families with the costs of rental housing through Section 8 housing vouchers. This budget renews all expiring Section 8 contracts at a cost of $15.1 billion – an increase of $2.2 billion over fiscal year 2001 – and funds an additional 34,000 Section 8 housing vouchers at an additional cost of nearly $200 million.

We did not request as many new housing vouchers as in previous years for two reasons. First, we cannot continue to increase the Department's budget each year by 12 to 16 percent. At the previous year's rate of increase, our budget would surpass $100 million by 2010.

Second, there has been a serious problem with the utilization of existing Section 8 vouchers by state and local agencies. Those vouchers, provided by Congress, are not getting spent. I will work with Congress to improve the utilization of Section 8 vouchers by state and local housing agencies.

There are two issues regarding the voucher utilization problem: making vouchers easier to use and improving the management capacity of local housing agencies. First, we should take whatever steps are necessary

REV_00125960

to ensure that more families are able to use their housing vouchers. While vouchers work well in most markets, there is growing evidence that families are having difficulties using vouchers in certain markets. We should resolve that. Vouchers are more than just a piece of paper; they are the first step in the process of homeownership.

Although market conditions affect the util[HITU1]ization of vouchers in different areas, under-utilization is ultimately a management issue. Good managers can overcome difficult market conditions and ensure that all of their vouchers are used. I plan to work with housing authorities to help them become better managers so that they can serve more families. We can do this through a combination of management techniques – from the Section 8 Management Assessment Program (SEMAP), a rating system that gives substantial weight to utilization rates to giving priority in fund allocation to housing authorities with high utilization rates.

While we focus on our goal of improving housing opportunities, this budget does not neglect the Department's traditional role of supporting community and economic development. Much of our activity in this regard is carried out by the Community Development Block Grant (CDBG) Program. CDBG will receive almost $4.4 billion in funding for formula grants to meet the specific needs of local governments. CDBG funds programs that revitalize communities and help spur economic growth. This Administration is continuing the strong support of this important program.

One point I would like to bring to your attention regarding CDBG formula grants is that, while we have kept funding at historically high levels, the new Census data that is currently being released will inevitably result in changes in the funding level for each community. Some communities will get more money and some will get less. I emphasize this to explain why, even though the funding level for CDBG formula grants is kept constant for fiscal year 2002, some communities will experience a reduction in funds. Others, of course, will experience an increase.

Since we do not yet have complete population data from the 2002 Census, we cannot yet predict what these changes will be. Any estimates that we generate at this time rely on the old Census data and are subject to change.

REV_00125961

In addition to the $4.4 billion in formula funding for CDBG, we will provide $80 million in grants to help create or expand community technology centers in economically distressed communities and provide technical assistance to those centers. Through these centers, low- and moderate-income individuals will have access to computers and technology that will improve their educational opportunities and job skills. We cannot sustain homeownership without greater economic self-sufficiency. President Bush and I are committed to begin to close the digital divide so that low- and moderate-income Americans are not left further behind. Every American deserves the opportunity to succeed in the 21st century workforce.

The President's proposed budget strongly recognizes the needs of the most vulnerable people in our society – the elderly, persons with disabilities, the homeless and individuals with AIDS. All of HUD's programs that provide assistance to these vulnerable populations will receive significant levels of funding at or above current levels.

For example, Housing Opportunity for Persons with AIDS – also known as the "HOPWA" program – will see its budget increased by an additional $20 million, for a total of $277 million. These grants, provided to state and local governments, help low-income individuals stricken with AIDS find housing assistance, as well as support services.

The budget increases funding for elderly housing programs by $6 million to $783 million. The largest Department program targeted to the elderly is the Supportive Housing for Elderly Program, which provides capital advances to finance the construction and rehabilitation of supportive housing for low-income senior citizens. This program also provides the elderly with rent subsidies to help make living in these homes affordable.

To assist those with disabilities, we also fully fund the Supportive Housing for Persons with Disabilities Program, as well as providing an additional $20 million to fund the "Improving Access Initiative." This proposal will assist those non-profit groups and community organizations across the country that are exempt from the Americans with Disabilities Act, but who still want their facilities to be accessible to persons with disabilities. It would make competitive grants available to these groups and allow them to achieve this worthy goal of opening more doors for the disabled.

REV_00125962

In addition, we are funding at current levels – $1.123 billion – homeless assistance programs to aid those with the most pressing need for shelter. For those who lack adequate shelter, our goal should be to end chronic homelessness by getting people the help they need. At HUD, that means increasing the availability of permanent housing. This agency is committed to continuing its homeless programs, but in the future we see ourselves spending more of our resources on permanent housing, and less on social services. And we will work with HHS to reduce the barriers that prevent the homeless from accessing much needed social services.

This budget also recognizes the damage done by lead-based paint, especially to young children. That's why we have increased funding for lead-based paint hazard reduction by $10 million. I want to do everything I can to ensure that our children are protected from such dangers so that they can grow up in safe and healthy homes. Since the late 1970s, incidents of lead poisoning have declined from 3 million to 890,000. Yet despite this progress, lead poisoning remains one of the most common diseases our children face. And the solution lies in preventing lead-based paint hazards in housing.

The Department of Housing and Urban Development has been leading the effort to eliminate lead-based paint hazards in our Nation's housing stock. Our lead-based paint grant program, which began under the first Bush Administration, now funds lead hazard control operations in over 200 jurisdictions across the Nation.

In the President's budget request, we have increased funding for this program by $10 million. Since HUD cannot solve this problem alone, this additional money will go into a special grant program that will leverage more resources from the private sector to meet the needs of our children.

The President also increased the amount of funds available for fair housing enforcement. If this Agency is to fulfill its mission of increasing homeownership and affordable housing opportunities for all citizens, then we must pledge ourselves to the principles embodied in our fair housing laws.

REV_00125963

While most of the Department's programs are funded at last year's historically high levels, or have received a slight increase, there have been a few well-publicized reductions. Let me take a few minutes to address these specific reductions.

One such program is the Public Housing Drug Elimination Program. Though no one can argue with the good intentions behind this program, unfortunately it suffered from a large number of abuses. Not only did the Inspector General find that it was nearly impossible to measure the program's effectiveness, but she has also severely criticized it for funding such inappropriate activities as unauthorized travel, bank loans, and Christmas parties.

Some funds were used by the Department to implement a gun buy-back program, which the Comptroller General ruled was not a legal use of funds. Drug Elimination funds were also spent to provide public housing residents with "creative wellness" programs. These scientifically dubious programs – which made use of things like gemstones and incense – were not only a waste of taxpayer dollars, but also a significant diversion from this Agency's mission.

We need to restore confidence that the Department of Housing and Urban Development can carry out its core mission. We are a bricks-and-mortar agency, not a law enforcement agency or an agency with expertise in dealing with drug abuse. To the extent that there are law enforcement issues surrounding our public housing projects, we will work with the Justice Department and state and local police departments. To the extent that there are drug problems in public housing, we will work with those federal, state, and local agencies that are in a much better position to address these problems.

Although we have eliminated this $309 million program, we have taken, as I mentioned earlier, $150 million of those funds and placed them in the Public Housing Operating Fund. This extra $150 million can be used for a wide variety of purposes, including the continued funding of successful anti-drug efforts. But rather than mandating that housing authorities use this money for drug elimination programs, we trust these authorities to make those tough decisions about what programs best meet their needs.

REV_00125964

If certain housing authorities found that fences, lighting, and greater police patrols funded by the Drug Elimination Program helped reduce crime and drug use, then they will have the opportunity to continue funding these worthwhile programs from the additional $150 million in the Operating Fund. Good anti-drug programs in our public housing projects will continue to find funding, while we filter out the waste and abuse that tarnished a program that began with such noble intentions.

Another reduction in our budget occurs in the Public Housing Capital Fund. Our fiscal year 2002 budget provides nearly $2.3 billion for the fund, which is a reduction of $700 million from the previous fiscal year. This money is sufficient to cover 100 percent of the modernization needs of housing authorities that are expected to accrue next year.

The purpose of this reduction is to draw down capital funds that have already been appropriated, but not yet expended by public housing authorities. Currently, there are $5 billion in unspent capital funds from previous fiscal years, of which $3 billion have not even been obligated. These figures do not include the $3 billion that was appropriated for fiscal year 2001. Once the Department finishes distributing fiscal year 2001 capital funds and approving plans for using those funds, housing authorities will have a total of $8 billion in unspent capital funds available to meet their modernization needs.

These billions of dollars of unspent capital funds ensure that no roof at any public housing project has to go unrepaired and no severe modernization has to be neglected. Public housing authorities currently have the funds that are necessary to begin addressing the backlog of modernization needs. Our fiscal year 2002 budget encourages them to spend those funds to address their priority needs.

We are not just looking to housing authorities for solutions to the problem of unspent funds. We are also examining the Department's practices to determine whether funds are distributed and spent in a timely manner. Among other steps that we plan to take is a change in the timing of our initial allocation of funds to housing authorities, ensuring that they get funds sooner than in prior years.

REV_00125965

I look forward to working with the Congress on the many issues facing the Department of Housing and Urban Development. I know that right now Congress is conducting two important commissions – the Millennial Housing Commission and the Commission on Affordable Housing and Health Care Facility Needs in the 21st Century. The Department is eager to provide Congress with any help it may need in its work with these two commissions.

I look forward to continuing a strong relationship with Congress so that together we can make the Department of Housing and Urban Development an efficient and effective fighter on behalf of America's housing and community development needs.

Thank you.

REV_00125966

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
Sent: 4/23/2001 8:03:48 AM
Subject: : Re: Travel

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2001 12:03:48.00
SUBJECT:: Re: Travel
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have reviewed, and everything looks correct. As to Tuesday and Wednesday night, you can use RNC.

Katherine G. Marinis
04/20/2001 01:33:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Travel

Ken left for FL today for the RNC State Chairmen's meeting in Miami. He is staying and doing some political travel for the first half of next week and meeting up with the President on Wed. I have a couple of questions regarding who should pay for his travel.

Friday, 4/20- He is participating in the RNC State Chairmen's meeting. The RNC paid for his flight to Miami. He is staying Friday night, Saturday night, and Sunday night. The RNC also paid for his hotel for those 3 nights.

Monday, 4/23- He is doing a few political events in Miami that the Republican Party of Florida organized. He then flies to Tallahassee for several events there. (the RPOF paid for his flight to Tallahassee, but I booked the hotel for Monday night through the RNC)

Tuesday, 4/24- He has more events with FL Republican leadership and then flies to Jacksonville, FL to meet up with POTUS on Wednesday am. I booked the flight through the RNC.

Tuesday night- I need to get him a hotel, and I am guessing the WH travel office should pay for it. is that correct?

Wednesday, 4/25- he meets up with the President to do his events. Wednesday pm is a political event, and I believe that the RNC is paying for the staff to get down there. (it is a fundraiser for Sen. Tim Hutchinson). He drops off the trip after that event, and will need to stay overnight. I booked his flight home through the RNC.

I mainly need to know if I should book his hotel rooms for Tuesday and Wednesday night through WH office, and if you approve of all other travel payment arrangements. thanks. I am at x6-6522.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 4/23/2001 12:05:39 PM
Subject: : Re: Court of Appeals for the Armed Forces

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2001 16:05:39.00
SUBJECT:: Re: Court of Appeals for the Armed Forces
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

No one that I know of. I don't believe there are any vacancies. When there are, I'm told DOD takes the lead in the selection process, with our participation.

Helgard C. Walker
04/23/2001 04:04:52 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Court of Appeals for the Armed Forces

Who, if anyone, is handling this?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 4/23/2001 10:22:12 AM
Subject: : Re: Help needed with interviews this afternoon

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2001 14:22:12.00
SUBJECT:: Re: Help needed with interviews this afternoon
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I would be happy to take one. Tell me when.

Rachel L. Brand
04/23/2001 01:24:56 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Help needed with interviews this afternoon

Tim has a family situation and can't be in on the interviews this afternoon for the S.D. Iowa. Is anyone available to do the Tim portion of those interviews with me? (Brett is already doing the one at 4:00). There are slots at 4:30 and 5:00.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 4/23/2001 2:10:26 PM
Subject: : Re: Court of Appeals for the Armed Forces

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-APR-2001 18:10:26.00
SUBJECT:: Re: Court of Appeals for the Armed Forces
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

---------------------- Forwarded by Rachel L. Brand/WHO/EOP on 04/23/2001
06:10 PM ---------------------------
```

Rachel L. Brand
04/23/2001 06:09:55 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: Court of Appeals for the Armed Forces

There will be a vacancy in June (Judge Sullivan's 15-year term will expire). There won't be another vacancy for another five years unless there's an early retirement or death.

RLB

Bradford A. Berenson
04/23/2001 04:05:37 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Court of Appeals for the Armed Forces

No one that I know of. I don't believe there are any vacancies. When there are, I'm told DOD takes the lead in the selection process, with our participation.

Helgard C. Walker
04/23/2001 04:04:52 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Court of Appeals for the Armed Forces

Who, if anyone, is handling this?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
h. christopher bartolomucci/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 4/24/2001 6:13:31 AM
Subject: : Re: Coal Leaders Meeting
Attachments: P_L3EN1004_WHO.TXT_1.xlw

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2001 10:13:31.00
SUBJECT:: Re: Coal Leaders Meeting
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

That is correct. This is a traditional situation where government officials simply brief an affected industry on Administration policy and accept questions from and listen to concerns of the affected industry representatives. That is part of the President's constitutional duty and thus is entirely permissible.

Collister W. Johnson
04/24/2001 09:24:16 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

Thanks Brett.
We will leave the language the way it is written then.

One more question, just to confirm:
You are okay with the packet of material, talking points, and contact info for Kirk Blalock that we propose to hand out to the meeting attendees?

CJ

Brett M. Kavanaugh
04/24/2001 09:22:08 AM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

That is fine then to do it the way they want.

Collister W. Johnson

04/24/2001 09:13:35 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

leaving message on this -
the VP Office was pretty intent on including some form of language to tell the coal leaders:
"The National Energy Policy Development Group has not yet finished their study and will not yet release their work and is restricted from doing so by regulatory procedures." The worry being that we need to make it clear to these folks that this is NOT a meeting wherein they are being asked to affect/change the upcoming policy - especially considering all the open-meetings laws, etc., that are being levelled against the group now.
please let me know your thoughts at you earliest convenience -
thanks -
CJ

Brett M. Kavanaugh
04/23/2001 08:13:51 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

Left comments on your chair. Please call if you have questions.

Collister W. Johnson
04/23/2001 04:58:16 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Coal Leaders Meeting

Many apologies, but the VP Counsel's office has made a few edits and punted back to you.
The packet of materials is on your chair:
1) Talking points: Can we say the things that are listed in the talking points?
2) Packet of info: Can we distribute the "Energy Briefing" material as is to the attendees?

let us know, and thanks very much Brett -

CJ

---------- Forwarded by Collister W. Johnson/WHO/EOP on 04/23/2001 04:57 PM ----------

Collister W. Johnson
04/23/2001 04:03:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Coal Leaders Meeting

Cancel the request. The Energy Policy legal counsel is reviewing the documents now -- they've been working on this for a while so they feel comfortable telling us what to do.
Unless you want to review the documents as well, we'll leave it in their hands.
thank you Brett -

CJ

---------- Forwarded by Collister W. Johnson/WHO/EOP on 04/23/2001 04:02 PM ----------

Collister W. Johnson
04/23/2001 12:47:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Coal Leaders Meeting

Brett:
Below is a meeting that will take place on Wednesday here in the OEOB with 60-100 coal leaders from across the country.
I left a packet of material on your chair for your review -- our concern centers around what kind of information we may distribute to them.
Let us know your thoughts?
thanks very much Brett -

Coddy

COAL LEADERS MEETING: PROGRAM

Emcee: Deputy Director of White House Political Affairs Matt Schlapp - intro and welcome (2 minutes)

Program:
1) Secretary of Energy Spence Abraham: Opening Remarks (10 minutes)
- Administration sees coal as an important part of a balanced national energy policy
- this priority is reflected in the budget
- also in the Research and Development tax grant
- Clean coal is an important part of making this priority into a reality
- and ending regulatory uncertainty is a second top priority to this end

2) Energy Council Director Andrew Lunquist: Energy Council overview (10 minutes)
- the nation is facing an energy crisis due to years of neglect
- action needs to be taken now
- President Bush is providing that leadership through the principles of his energy plan (lay out principles)

3) National Economic Council Deputy Director Robert McNally : Energy Economics (8 minutes)
- the coal economy is extremely important to many regions of the country
- the President's energy plan supports that coal economy (specific examples)
- The President's plan therefore supports the American economy (broader economic themes)

4) Comments, Questions, and Answers (15 minutes)

- Lundquist/McNally to take comments/questions for 15-20 minutes

5) Deputy Director of White House Political Affairs Matt Schlapp: Energy Politics and Action Items (8 minutes)
- The President's plan will succeed with support from the leaders in this room
- here's how you can help (op-ed letters, talking to local reporters, informing constituents)

END. Total Program (approx. 55 minutes).

The White House is inviting 100-150 Energy Leaders for a briefing on Energy Policy on April 25, 2001 from 4:00pm - 5:00pm in Room 450 of the Eisenhower Executive Office Building .

The agenda is:
1) Secretary of Energy Spence Abraham: Welcome and Opening Remarks
2) Energy Council Director Andrew Lunquist: Energy Policy
3) National Economic Council Deputy Director Robert McNally : Energy Economics
4) Deputy Director of White House Political Affairs Matt Schlapp: Energy Politics and Action Items

Invitees should include leaders in the Energy field we have discussed.

Invitees should be instructed to arrive at the Pennslyvania Avenue entrance of the EEOB at 3:30pm. They will be met by White House staff stationed at that entrance to guide them to the event, where they will receive talking points and a packet of information material to be reviewed by the speakers.

Attached, please find the confirmation document you should use in inviting leaders to the event. The document should be returned to Michael Napolitano on April 23rd at michael_j._napolitano@who.eop.gov, with all information completed and including only confirmed attendees.

Thanks.

Coddy

Coddy Johnson
Associate White House Political Director

Direct Phone: 202-456-5390
Direct Fax: 202-456-6520
Cell: 202-309-1361
Email: collister_w._johnson@who.eop.gov
Pager: 1-800-SKYTEL2, pin. 1120242
Mail: The White House, Office of Political Affairs, OEOB Room 100, Washington, DC 20502

Message Copied
To:_____
Kenneth B. Mehlman/WHO/EOP@EOP
James T. Sims/OVP/EOP@EOP
Michael J. Napolitano/WHO/EOP@EOP
Douglas L. Hoelscher/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_L3EN1004_WHO.TXT_1>

Document Produced Natively

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 4/24/2001 3:49:15 AM
Subject: : Re: NPR

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2001 07:49:15.00
SUBJECT:: Re: NPR
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

....and they will block them for how many years?

Noel J. Francisco
04/24/2001 07:38:04 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: NPR

Did anyone catch NPR this morning? There was a "story" on judges, in which the Michigan senators repeated their threat to block all Republican nominees to CA6 unless the Clinton nominees get a hearing, and in which Sen. Edwards (NC) suggested that he would act similarly unless Wynn (Clinton nominee) too gets a hearing. NPR is running another segment on this issue tomorrow.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2001 4:37:56 AM
Subject: : Re: Coal Leaders Meeting
Attachments: P_WFAN1004_WHO.TXT_1.xlw

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2001 08:37:56.00
SUBJECT:: Re: Coal Leaders Meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks Brett - calling you now with one concern on your edits - hope to catch you real quick -
CJ

Brett M. Kavanaugh
04/23/2001 08:13:51 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

Left comments on your chair. Please call if you have questions.

Collister W. Johnson
04/23/2001 04:58:16 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Coal Leaders Meeting

Many apologies, but the VP Counsel's office has made a few edits and punted back to you.
The packet of materials is on your chair:
1) Talking points: Can we say the things that are listed in the talking points?
2) Packet of info: Can we distribute the "Energy Briefing" material as is to the attendees?

let us know, and thanks very much Brett -

CJ

---------- Forwarded by Collister W. Johnson/WHO/EOP on 04/23/2001 04:57 PM ----------

Collister W. Johnson

04/23/2001 04:03:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Coal Leaders Meeting

Cancel the request. The Energy Policy legal counsel is reviewing the documents now -- they've been working on this for a while so they feel comfortable telling us what to do.
Unless you want to review the documents as well, we'll leave it in their hands.
thank you Brett -

CJ

---------- Forwarded by Collister W. Johnson/WHO/EOP on 04/23/2001 04:02 PM ----------

Collister W. Johnson
04/23/2001 12:47:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Coal Leaders Meeting

Brett:
Below is a meeting that will take place on Wednesday here in the OEOB with 60-100 coal leaders from across the country.
I left a packet of material on your chair for your review -- our concern centers around what kind of information we may distribute to them.
Let us know your thoughts?
thanks very much Brett -

Coddy

COAL LEADERS MEETING: PROGRAM

Emcee: Deputy Director of White House Political Affairs Matt Schlapp - intro and welcome (2 minutes)

Program:
1) Secretary of Energy Spence Abraham: Opening Remarks (10 minutes)
- Administration sees coal as an important part of a balanced national energy policy
- this priority is reflected in the budget
- also in the Research and Development tax grant
- Clean coal is an important part of making this priority into a reality
- and ending regulatory uncertainty is a second top priority to this end

2) Energy Council Director Andrew Lunquist: Energy Council overview (10 minutes)
- the nation is facing an energy crisis due to years of neglect
- action needs to be taken now
- President Bush is providing that leadership through the principles of his energy plan (lay out principles)

3) National Economic Council Deputy Director Robert McNally : Energy Economics (8 minutes)
- the coal economy is extremely important to many regions of the country

- the President's energy plan supports that coal economy (specific examples)
- The President's plan therefore supports the American economy (broader economic themes)

4) Comments, Questions, and Answers (15 minutes)
- Lundquist/McNally to take comments/questions for 15-20 minutes

5) Deputy Director of White House Political Affairs Matt Schlapp: Energy Politics and Action Items (8 minutes)
- The President's plan will succeed with support from the leaders in this room
- here's how you can help (op-ed letters, talking to local reporters, informing constituents)

END. Total Program (approx. 55 minutes).

The White House is inviting 100-150 Energy Leaders for a briefing on Energy Policy on April 25, 2001 from 4:00pm - 5:00pm in Room 450 of the Eisenhower Executive Office Building .

The agenda is:
1) Secretary of Energy Spence Abraham: Welcome and Opening Remarks
2) Energy Council Director Andrew Lunquist: Energy Policy
3) National Economic Council Deputy Director Robert McNally : Energy Economics
4) Deputy Director of White House Political Affairs Matt Schlapp: Energy Politics and Action Items

Invitees should include leaders in the Energy field we have discussed.

Invitees should be instructed to arrive at the Pennslyvania Avenue entrance of the EEOB at 3:30pm. They will be met by White House staff stationed at that entrance to guide them to the event, where they will receive talking points and a packet of information material to be reviewed by the speakers.

Attached, please find the confirmation document you should use in inviting leaders to the event. The document should be returned to Michael Napolitano on April 23rd at michael_j._napolitano@who.eop.gov, with all information completed and including only confirmed attendees.

Thanks.

Coddy

Coddy Johnson
Associate White House Political Director

Direct Phone: 202-456-5390
Direct Fax: 202-456-6520
Cell: 202-309-1361
Email: collister_w._johnson@who.eop.gov
Pager: 1-800-SKYTEL2, pin. 1120242
Mail: The White House, Office of Political Affairs, OEOB Room 100, Washington, DC 20502

Message Copied
To:_____
Kenneth B. Mehlman/WHO/EOP@EOP
James T. Sims/OVP/EOP@EOP
Michael J. Napolitano/WHO/EOP@EOP
Douglas L. Hoelscher/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WFAN1004_WHO.TXT_1>

Document Produced Natively

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 4/24/2001 6:13:31 AM
Subject: : Re: Coal Leaders Meeting
Attachments: P_L3EN1004_WHO.TXT_1.xlw

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2001 10:13:31.00
SUBJECT:: Re: Coal Leaders Meeting
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

That is correct. This is a traditional situation where government officials simply brief an affected industry on Administration policy and accept questions from and listen to concerns of the affected industry representatives. That is part of the President's constitutional duty and thus is entirely permissible.

Collister W. Johnson
04/24/2001 09:24:16 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

Thanks Brett.
We will leave the language the way it is written then.

One more question, just to confirm:
You are okay with the packet of material, talking points, and contact info for Kirk Blalock that we propose to hand out to the meeting attendees?

CJ

Brett M. Kavanaugh
04/24/2001 09:22:08 AM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

That is fine then to do it the way they want.

Collister W. Johnson

04/24/2001 09:13:35 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

leaving message on this -
the VP Office was pretty intent on including some form of language to tell the coal leaders:
"The National Energy Policy Development Group has not yet finished their study and will not yet release their work and is restricted from doing so by regulatory procedures." The worry being that we need to make it clear to these folks that this is NOT a meeting wherein they are being asked to affect/change the upcoming policy - especially considering all the open-meetings laws, etc., that are being levelled against the group now.
please let me know your thoughts at you earliest convenience -
thanks -
CJ

Brett M. Kavanaugh
04/23/2001 08:13:51 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Coal Leaders Meeting

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Record Type: Record

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cc:
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cc:
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Collister W. Johnson
04/23/2001 12:47:10 PM
Record Type: Record

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cc: Kenneth B. Mehlman/WHO/EOP@EOP
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Thanks.

Coddy

Coddy Johnson
Associate White House Political Director

Direct Phone: 202-456-5390
Direct Fax: 202-456-6520
Cell: 202-309-1361
Email: collister_w._johnson@who.eop.gov
Pager: 1-800-SKYTEL2, pin. 1120242
Mail: The White House, Office of Political Affairs, OEOB Room 100, Washington, DC 20502

Message Copied
To:_____
Kenneth B. Mehlman/WHO/EOP@EOP
James T. Sims/OVP/EOP@EOP
Michael J. Napolitano/WHO/EOP@EOP
Douglas L. Hoelscher/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_L3EN1004_WHO.TXT_1>

Document Produced Natively

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/24/2001 12:05:24 PM
Subject: : Re: Legal meeting with Ken tomorrow

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2001 16:05:24.00
SUBJECT:: Re: Legal meeting with Ken tomorrow
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

10am is fine with me

Katherine G. Marinis
04/24/2001 04:04:26 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Adrian G. Gray/WHO/EOP@EOP
cc:
Subject: Legal meeting with Ken tomorrow

Ken has to move the 11 am meeting. can we do it earlier like at 10 am?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 4/24/2001 12:22:38 PM
Subject: : Tom Edsall (Post) working on judges story

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-APR-2001 16:22:38.00
SUBJECT:: Tom Edsall (Post) working on judges story
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Miguel got a call from Edsall asking whether he was in fact
Hispanic and "what are you known for"?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 4/24/2001 12:55:50 PM
Subject: : Re: Tom Edsall (Post) working on judges story

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2001 16:55:50.00
SUBJECT:: Re: Tom Edsall (Post) working on judges story
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

in Miguel fashion

Courtney S. Elwood
04/24/2001 04:31:12 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Tom Edsall (Post) working on judges story

How did Miguel respond?

Brett M. Kavanaugh
04/24/2001 04:22:31 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Tom Edsall (Post) working on judges story

Miguel got a call from Edsall asking whether he was in fact
Hispanic and "what are you known for"?

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]

To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>

Sent: 4/24/2001 2:37:55 PM

Subject: : NPR transcript re: judges

Attachments: P_O7WN1004_WHO.TXT_1.rtf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-APR-2001 18:37:55.00
SUBJECT:: NPR transcript re: judges
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_O7WN1004_WHO.TXT_1>
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dowctrl

3 of 10 DOCUMENTS

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National Public Radio (NPR)

SHOW: MORNING EDITION (10:00 AM ET)

April 24, 2001, Tuesday

LENGTH: 2005 words

HEADLINE: GROUND RULES FOR SENATE'S CONSIDERATION OF JUDICIAL NOMINATIONS

ANCHORS: BOB EDWARDS

REPORTERS: NINA TOTENBERG

BODY:

BOB EDWARDS, host:

This is MORNING EDITION from NPR News. I'm Bob Edwards.

The Senate Judiciary Committee meets today to determine the rules for considering President Bush's lower-court judicial nominations. It's expected to be a combative session. When President Clinton left office, the Republican-controlled Senate had failed to act on 44 judicial nominees. Many were appellate court nominees who had been waiting for confirmation for years, and there were 36 slots with no nominees. With retirements and deaths, there are now a hundred empty judicial seats nationwide, and that's nearly an eighth of the federal judiciary. NPR legal affairs correspondent Nina Totenberg has the first of two reports.

NINA TOTENBERG reporting:

In the Clinton years, the nation had to learn to live with a permanently undermanned federal judiciary. It was common to have 80 to a hundred or more unfilled seats, in part because Clinton was slow to nominate, but mainly because the Republican-controlled Senate was molasses slow to act on his nominations. In 1997, Senate Republican leader Trent Lott smile broadly when asked if the GOP was deliberately slowing down the confirmation progress.

Senator TRENT LOTT (Majority Leader): Sound like a good idea to me. I mean, you know who some of the most unpopular people in America are. I think they've got--you know, they maybe are at the top of the list. When I go home, nobody says, 'Oh, please give us some more federal **judges**.'

TOTENBERG: Now, however, the shoe is on the other foot, and the Republican White House is trying to move quickly to fill judicial slots, some of which have been vacant for more than five years.

Alberto Gonzales is President Bush's top White House lawyer, counsel to the president. He says that the difference between President Clinton and President Bush is that, for Bush, **judges** are a priority.

Mr. ALBERTO GONZALES (White House Counsel): He certainly communicated to me that filling these judgeships is a priority for him. I think that, if you think about it, how important this decision is, many of the president's programs, no matter how worthy they are or how popular they are, they can be undone by the next Congress or undone by the next president. But a federal appointment lasts a lifetime. That decision is permanent.

TOTENBERG: The trouble is that during the Clinton years, Republicans perfected a system of Senate inaction on judicial nominations. People like then-senator and now Attorney General John Ashcroft figured out that it was better to stall, often for years behind the scenes, rather than having a confrontation. The tactic worked almost too well. As one former Reagan administration official said recently, 'I warned them it would come back to haunt them.'

The Democrats, to put it bluntly, feel abused; Democrats of all regions and ideologies. Take Senator John Edwards of North Carolina.

Senator JOHN EDWARDS (Democrat, North Carolina): In our state of North Carolina, we haven't had a hearing on getting a

b judge on the United States Court of Appeals for the 4th Circuit in eight years now. North Carolina, which is the largest state in the 4th Circuit Court of Appeals' geographical area, is unrepresented; we don't have a single **judge**. **Judge** Wynn, a moderate, middle-of-the-road, African-American **judge**, highly respected, couldn't even get a hearing. And it's just an outrage that somebody that well-qualified couldn't even get a hearing. And what I'm saying is we're not now just going to flip and have the president and others just push through people who they think represent their view. There has to be balance.

TOTENBERG: Or take Senator Carl Levin of Michigan. He sponsored two highly qualified women, who were nominated to the US Court of Appeals for the 6th Circuit. One was a state court **judge**; the other, an African-American, was head of the appellate section of a major corporate law firm. But Michigan's other senator back then, Republican Spencer Abraham, blocked consideration of either women; one for a year, the other for four. Senator Levin.

Senator CARL LEVIN (Democrat, Michigan): At the time that that was done, I told my friends on the Judiciary Committee, my Republican friends, that they were setting a pattern. Now the president has a choice. He can either renominate these two women to two of the four open positions on the Court of Appeals in the 6th circuit that will be filled by Michigan nominees, or he can refuse to do so, in which case I think he'd be digging himself into a deeper hole for all of his nominees.

TOTENBERG: Said Levin if these women don't get renominated and at least get a hearing, he will see to it that no Republican choices will get one either.

How, you may wonder, can a single senator prevent a hearing, much less a vote, on a nomination? Well, in the Senate, there's a time-honored tradition called the blue slip. It stems from the constitutional provision that 'the Senate shall advise and consent on judicial nominations.' Simply put, the blue slip is the piece of paper that each senator from a nominee's home state gets. If the senator doesn't sign the paper to approve, the nomination does not go forward.

The system has continued, for good or for ill, for over a century. In the 1950s and '60s, some segregationist senators used it to keep pro-civil rights **judges** off the bench. And when Democrats Edward Kennedy and Joseph Biden became chairmen of the Judiciary Committee in the '70s and '80s, they relaxed the rule a bit to allow a nomination to go forward when a home state senator had been

genuinely consulted and gave no good reason for his opposition.

When the Republicans retook control of the Senate in 1994, however, the new Judiciary Committee chairman, Republican Orrin Hatch, wrote to President Clinton spelling out stiffer standards for how the blue-slip system would work: 'No nomination would proceed, even to a hearing, without the agreement of both home state senators.' Now, however, Hatch is suggesting that with the Republicans in the White House, the agreement of only one home state senator may be required. In other words, the opposition of the other senator wouldn't count.

Senator ORRIN HATCH (Chairman, Judiciary Committee): If it's just one senator, then it's the option of the committee to do whatever it wants to.

TOTENBERG: On the day that Senator Hatch spoke those words into our microphone, we found his Democratic counterpart, Vermont's Patrick Leahy, just off the Senate floor. His first reaction was, well, a bit scatological; the second, more usable for the radio.

Senator PATRICK LEAHY (Democrat, Vermont): The Republicans had the rule when there was a Democratic president: that either senator refused to agree to a **judge** from that state, that the **judge** didn't move forward. But we'll follow the rule the same way that Senator Hatch followed it for the last six years with a Democratic president, and we'll maintain that same rule now with a Republican president. Otherwise, of course, there's absolutely no incentive for the White House to even talk to the senators from a state about who they're going to appoint for **judges**.

TOTENBERG: An hour later, Hatch and Leahy, both viewed by colleagues as pretty stable, work-it-out kind of guys, were seen in the Senate Cloakroom shouting at each other. It's an indication of just how raw tempers are over judicial nominations.

In terms of lower-court judgeships, there really weren't all that many partisan fights until the 1980s. Until then, most senators worked out arrangements with the president of the opposite party. Typically, the senator and president would alternate in making federal district court nominations, and each had the power to veto the other's choice. But for President Reagan and fellow conservatives, judgeships were a priority, and Mr. Reagan did not generally abide by such power-sharing agreements. He could get away with it because, for most of his term, Republicans controlled the Senate. But in 1988, President Bush, faced with a Democratic Senate, returned to some of those power-sharing agreements. For him, judgeships were less of a priority.

And when President Clinton took office, it quickly became apparent that judgeships were not much of a priority for him either. Indeed, Mr. Clinton made a variety of power-sharing deals with Republicans. In Texas and Alabama, for instance, the two Republican senators gave the president lists of potential nominees, and as one White House aide put it, 'From that, we chose the lead odious people for us.'

Now with a new President Bush in office, there's a new day again and a unique situation: a 50/50, evenly divided Senate. More than ever, the majority party--in this case, the Republicans--can be hamstrung by the minority. What's more, GOP control hinges on the future good health of 98-year-old Republican Senator Strom Thurmond of South Carolina, a man who, in the last six months, has grown dramatically more frail. If he should leave the Senate prematurely, it would mean almost certainly that the Democrats would retake control, at least until the next election. It is in that setting that the battle lines are being drawn. Nina Totenberg, NPR News, Washington.

EDWARDS: Tomorrow, what's next in the battle over judgeships?

The time is 19 minutes past the hour.

In the next half-hour of MORNING EDITION, teen-age girls in state custody in Vermont who are lured into a prostitution ring.

Unidentified Teen: When I met Jose, it was just, like, 'Wow,' because he drives a truck with TVs in it and VCRs and PlayStations.

LOAD-DATE: April 24, 2001

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Sent: 4/25/2001 7:13:51 AM

Subject: : Group photos from yesterday

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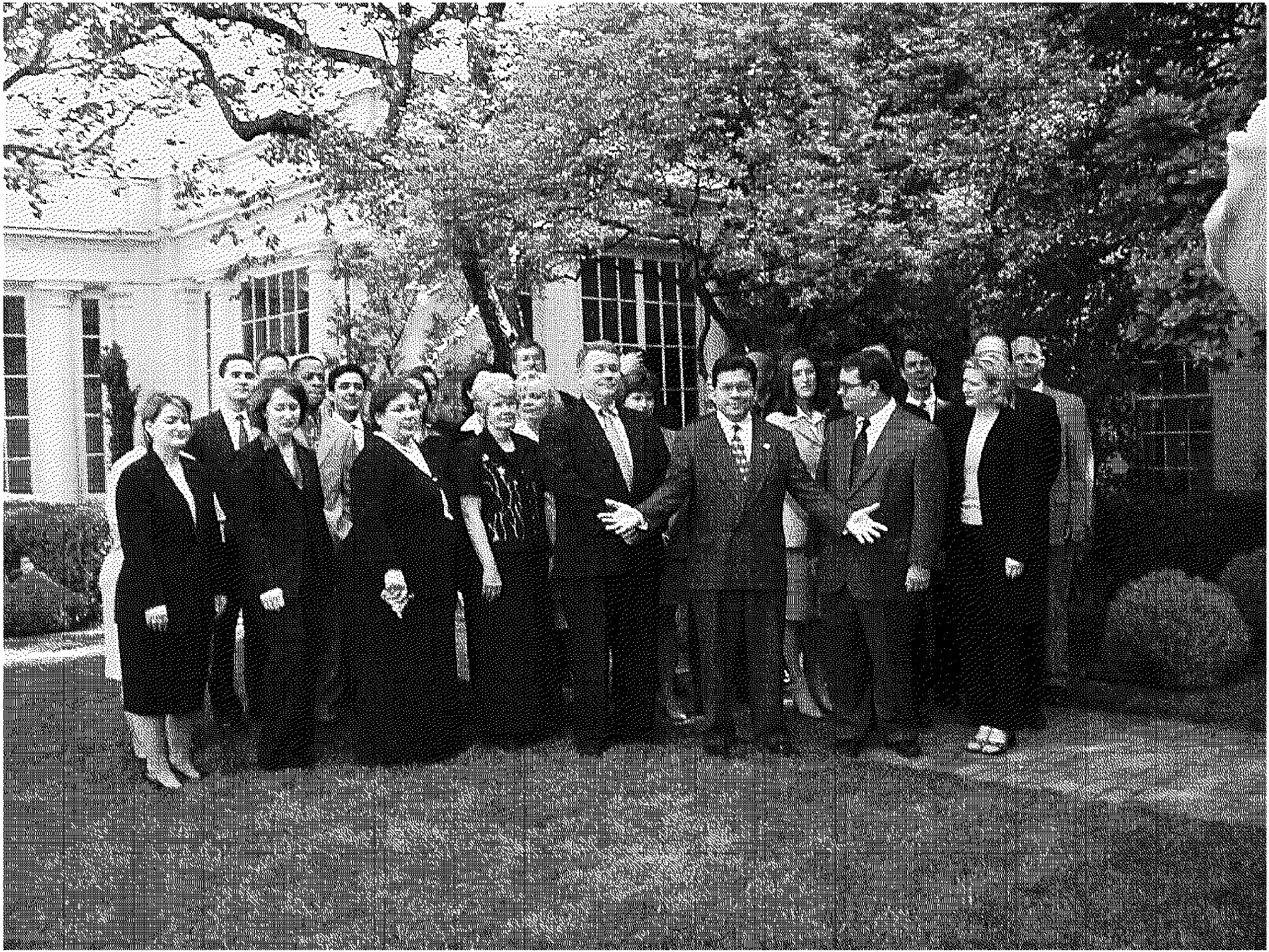

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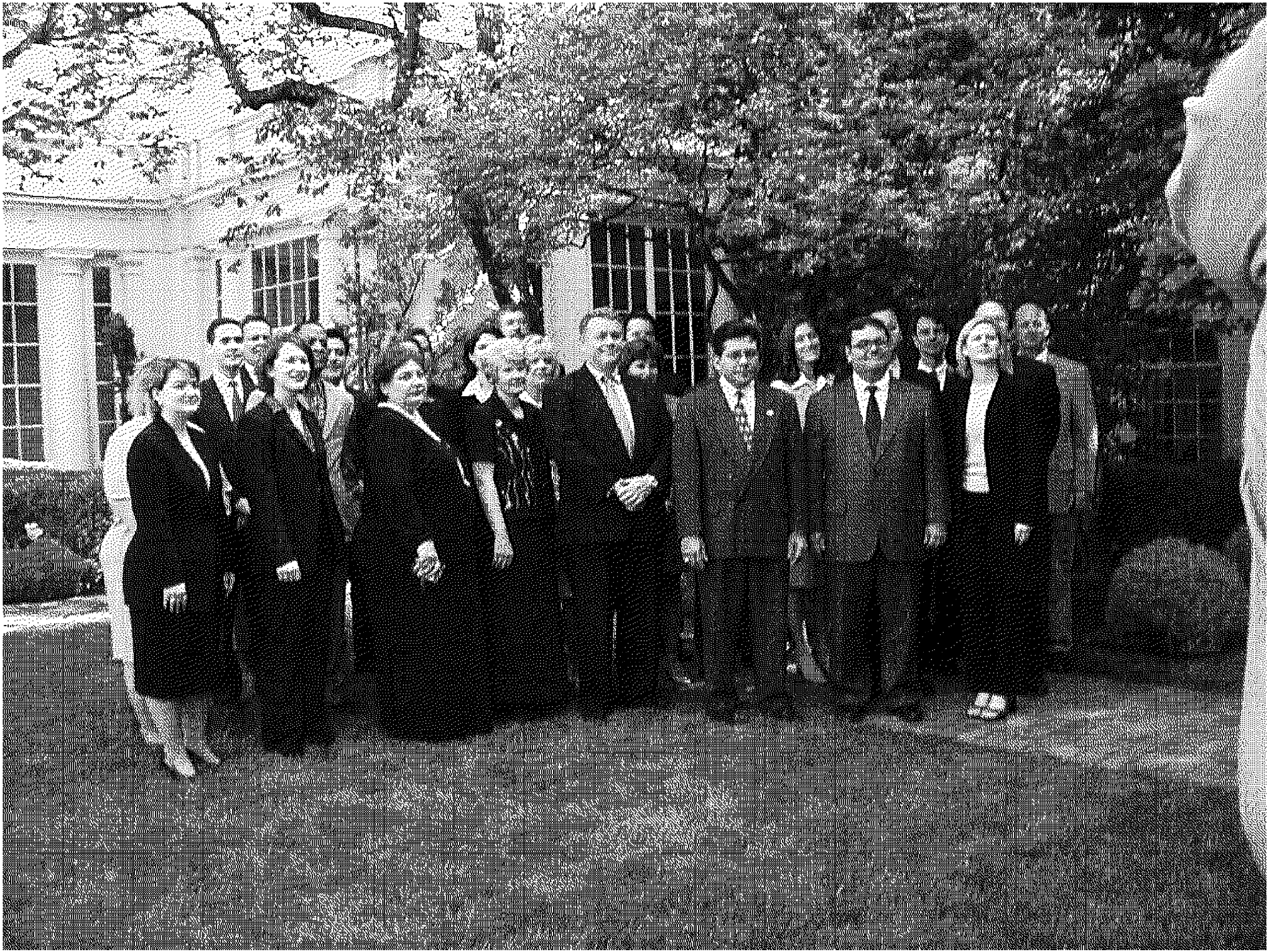

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Good morning! Wanted to see if you had any thoughts on our previous conversation about the correspondence from Christie Fox. I'll refax a copy for your review.

Many thanks!
Janet
6-5368
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Janet P. Walker
04/16/2001 02:16:07 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Christie Fox Correspondence to Larry Lindsey

Good afternoon! Just wanted to touch base regarding our conversation of last Wednesday regarding correspondence from Ms. Christie Fox to Larry Lindsey. I faxed over a copy of her letter and wanted to make sure you had received it. Any guidance you can provide regarding a response is greatly appreciated.

Regards,
Janet

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Sent: 4/26/2001 3:59:27 AM

Subject: : Part 2 of the NPR report

Attachments: P_06QO1004_WHO.TXT_1.rtf

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National Public Radio (NPR)

SHOW: MORNING EDITION (10:00 AM ET)

April 25, 2001, Wednesday

LENGTH: 2130 words

HEADLINE: WHITE HOUSE AND DEMOCRATS IN THE SENATE MAY DO BATTLE OVER BUSH ADMINISTRATION NOMINATIONS TO FEDERAL JUDGESHIPS

ANCHORS: BOB EDWARDS

REPORTERS: NINA TOTENBERG

BODY:

BOB EDWARDS, host:

This is MORNING EDITION from NPR News. I'm Bob Edwards.

In the next few weeks, President Bush is expected to send to the Senate his first slate of judicial nominees. During the Clinton administration, the Republican-controlled Senate was so successful at blocking nominations through inaction that today there are a hundred vacant federal judgeships. Unlike President Clinton, President Bush is said to be willing to expend political capital to win confirmation of his choices. NPR legal affairs correspondent Nina Totenberg has the second of two reports.

NINA TOTENBERG reporting:

The point man for judgeships in the White House is the president's counsel, Alberto Gonzales. He has picked a team of able young conservative lawyers to help him. The Gonzales staff reads like a who's who of Supreme Court law clerks who worked for Justices Scalia or Thomas, or for former independent counsel Kenneth Starr.

Even before any nominations have been submitted to the Senate, President Bush has signalled his willingness to take on tradition in this area. One of his first actions was to notify the American Bar Association that he would no longer abide by the practice first initiated by President Eisenhower in the 1950s, the practice of having the Bar Association screen potential nominees for their professional qualifications before a nomination was submitted to the Senate. During the fall campaign, Mr. Bush said his role models for a Supreme Court justice were Justices Scalia and Thomas, the high court's two most conservative members. And White House counsel Gonzales says the same holds true for lower-court judgeships as well.

Mr. ALBERTO GONZALES (White House Counsel): He agrees with the way they view their role in our system of government, the limited role of **judges**. So that's

what he would expect for lower-court **judges** as well.

TOTENBERG: Democrats in an evenly divided Senate, and some Republicans as well, have a somewhat different idea. New York's Charles Schumer is the ranking Democrat on the Senate Judiciary Committee that oversees judicial nominations.

Senator CHARLES SCHUMER (Democrat, New York): They clearly have a choice. They can work with us and get a good portion of what they want, but they will have to both consult with us and moderate their appointments. I don't expect them to pick liberal Democrats, but I also don't expect there to be an unstated litmus test where every **judge** who comes out is of the Scalia-Thomas school. Or they can try to continually nominate people who meet their hard-right ideological test and try to roll us. It seems right now their view is 'My way or no way.'

TOTENBERG: White House counsel Gonzales says that if the Democrats want a fight, this president, unlike his Democratic predecessor, will oblige.

Mr. GONZALES: It's up to the Senate. And if we have a battle, we're going to have a battle.

TOTENBERG: Gonzales says that he understands the process includes consulting with the Senate, but what he means and what the senators mean by 'consultation' may be two entirely different things. Listen, first, to the way Gonzales describes the consultation process.

Mr. GONZALES: They want to be consulted and advised. It's important for them vis-a-vis their constituents. I have been meeting periodically now for the past month and a half with members of the Judiciary Committee to introduce myself, to solicit their input, get their advice, ask for their help in getting the president's nominations.

TOTENBERG: Now listen to the way Senator Schumer describes his meetings with Gonzales.

Sen. SCHUMER: There were no negotiations. It was a listening session, and I don't think we had much input.

TOTENBERG: Indeed, even Republican Judiciary Committee Chairman Orrin Hatch describes the meetings so far this way.

Senator ORRIN HATCH (Republican, Senate Judiciary Committee): Well, between you and me, they haven't had time to consult with anybody. They're just in the process of determining who they're going to nominate.

TOTENBERG: In this process, the Democrats are not powerless if they remain unified. Senator Patrick Leahy, the ranking Democrat on Judiciary, says, for example, that the Democrats will insist that they have the so-called 'blue slip power' that Republicans had over President Clinton's judicial nominees, meaning that if both home state senators don't approve of a nominee and sign his or her blue slip, the nomination will not go forward.

Senator PATRICK LEAHY (Democrat, Senate Judiciary Committee): The Democratic caucus will follow the past practice of blue slips. If there's not a blue slip of approval, then we are not going to be supporting a **judge** moving forward.

TOTENBERG: So does that mean you filibuster?

Sen. LEAHY: Well, we'll just see what happens. They established a tradition, and I think we'll just maintain it.

TOTENBERG: Privately, Democrats concede they are not entirely comfortable with what they call the kind of ideological attacks that Republicans engaged in

against Democratic nominees. Senator Schumer points, for example, to last year's nomination of Gerard Lynch, a distinguished scholar and prosecutor, to a federal district court judgeship in New York. Thirty-six Republican senators voted against Lynch because he had clerked for the liberal Supreme Court Justice William Brennan and written a tribute to him. Democrats are anxious not to do that against similarly distinguished Republican conservatives. But they are willing to go to the mat to be a check on what they see as unfettered presidential power.

Democrat John Edwards of North Carolina notes that Republicans four times prevented appeals court appointments from his state going forward in the Clinton administration, and he's not about to lie down quitely and let the GOP profit from what he sees as that obstruction.

Senator JOHN EDWARDS (Democrat, North Carolina): There are two things that we can do. One is fight to keep the blue slip system in effect. The remaining power is either to vote against or, if necessary, to filibuster. I don't want to be an obstructionist. But I think we have to have balance. You know, we can't have eight years of nobody going on the court, and then all of a sudden they just ram through a bunch of people who have a perspective that, in some people's view, wouldn't be representative of the American people.

TOTENBERG: Not only did Republicans block many Clinton judicial appointments, they said there was no need to fill vacancies on some courts; that there were enough **judges** already. That is not, however, the view of the Bush White House now that they have the power. Counsel Gonzales.

Mr. GONZALES: I will just say that with respect to filling vacancies, there is a US statute that says the president shall, shall fill vacancies. And the truth of the matter is it is Congress that created these positions, and we're going to fill them.

TOTENBERG: Indeed, the White House informed Senator Edwards last week that it is now vetting two potential nominees from North Carolina for the appeals court that Republicans previously said had enough **judges**. One proposed Bush nominee is a district court **judge** and former staffer for Senator Jesse Helms whose nomination on the court withered on the vine when the first President Bush left office. The second is a black Republican lawyer and ally of Justice Clarence Thomas. Senator Edwards is not saying he will necessarily oppose either man. What he is saying is that for these nominations to fly, there will have to be a package deal: some Democratic appointees and some Republicans. In short, say the Democrats, there are solutions short of gridlock. Senator Schumer outlines, for example, what the solution might be in a state with two Democratic senators.

Sen. SCHUMER: Well, it seems to me that it would be fair to have one of two things: either sort of 50-50, split them; or an idea that each of us could come in and veto the other person's appointments. And that would push appointments to the middle.

TOTENBERG: At least a half dozen states have a tradition of bipartisan commissions to come up with and screen potential nominees. In Wisconsin, for over 20 years, Republican and Democrats, for example, cooperated on a screening commission even when there was one Democrat and one Republican senator. Now there are two Democratic senators, both on the Judiciary Committee, and they have asked Republican Congressman James Sensenbrenner, the chairman of the House Judiciary Committee, to name the GOP members of the screening commission. He, however, is balking unless the GOP has the controlling vote. That is something the White House has been demanding in other screening committee situations, so far to no avail.

White House counsel Gonzales points to California as the first place he succeeded in making a deal. But there he had to back off his insistence on the GOP-named chairman having the tie-breaking vote. The deal worked out with Democratic Senators Feinstein and Boxer is a screening commission with three Democratic members and three Republicans under the agreement no name will be forwarded to the White House unless he or she has a majority of the committee votes. White House counsel Gonzales.

Mr. GONZALES: Give us an opportunity. Give your president the opportunity to show what kind of people he's going to nominate to the federal bench. You know, people's minds change. Some people that may have not voted for the president may be fully supportive of the kind of people that he intends to put--or hopes to put--on the federal bench.

TOTENBERG: Alberto Gonzales, counsel to President Bush. Nina Totenberg, NPR News, Washington.

EDWARDS: The time is 19 minutes past the hour.

In the next half-hour of MORNING EDITION, international athletes who come to the US with hopes of making it in the big leagues.

Mr. UGO UDEZOWE: The world is so small right now. I guess wherever you are, in Europe, anywhere, I mean, if you think you can excel to the highest level of the sport, I mean, you want to play in the NBA.

LOAD-DATE: April 25, 2001

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 4/26/2001 6:19:55 AM
Subject: : Re: Presidential call requests

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CREATOR:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-APR-2001 10:19:55.00
SUBJECT:: Re: Presidential call requests
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brent d. greenfield (CN=brent d. greenfield/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

We just noted that one additional piece of information needs to be
included for each nominee. Please include a phone number where the
nominee can be reached in the "TO" line.

Thanks,
Jason

From: CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/26/2001 2:03:32 PM
Subject: : Piping Plover briefing paper
Attachments: P_2K9P1004_WHO.TXT_1.doc; P_2K9P1004_WHO.TXT_2.doc

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CREATION DATE/TIME:26-APR-2001 18:03:32.00
SUBJECT:: Piping Plover briefing paper
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Is this something that we can contact agencies to discuss?
---------- Forwarded by Kenneth B. Mehlman/WHO/EOP on 04/26/2001 04:52 PM ----------

"Brown, Barry" <Barry.Brown@mail.house.gov>
04/26/2001 04:48:48 PM
Record Type: Record

To: Kenneth B. Mehlman/WHO/EOP, Matthew A. Schlapp/WHO/EOP, David W. Hobbs/WHO/EOP, Kasey S. Pipes/WHO/EOP
cc:
Subject: Piping Plover briefing paper

This matter relatesdirectly to the Bush Administartion budget proposal to preclude further
citizen suits to compel FWS to designate habitat.

The attached information explains the proposed final rule regarding critical
habitat for the piping plover (bird). Specifically, we are concerned about the rule that effects the wintering population (coast of Texas). The rule is expected is be made on Monday, April 30th. This could have a devastating
impact on Texas.

Thanks,

Barry

- Barry Brown memo.doc
- San Jose No-Names memo.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2K9P1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2K9P1004_WHO.TXT_2>

The US Fish and Wildlife Service's Designation of Critical Wintering Habitat for the Piping Plover Has a Major Adverse Impact on the Texas Gulf Coast

Summary: The FWS is under a court imposed April 30, 2001 deadline to designate wintering habitat for the piping plover. (There is a parallel rulemaking for nesting habitat located in the Great Lakes area which does not affect the Gulf states and which can go forward to finalization independent of the wintering habitat rule.) If left unchanged, very large elements of the Texas Gulf Coast, including major tracts of private property, will be included in the wintering designated habitat. Such inclusion of these private properties potentially will expose the private landowners to loss of dominion over their land and to regulatory control by the FWS. Strong legal and economic reasons exist for FWS NOT to designate the critical habitat so broadly. Immediately the White House and the Interior Department should give serious consideration to the numerous strong objections and comments provided by adversely affected parties in Texas and elsewhere along the Atlantic and Gulf coasts, which thus far are being ignored by FWS and therefore make the wintering habitat rule legally flawed. The wintering habitat rulemaking should be re-opened with permission from the district court and the adversely affected Texas parties comments should be reflected in a revised plan.

Background:

On February 7, 2000 (filed February 8th) the U.S. District Court for the District of Columbia handed down a decision in Defenders of Wildlife v. Bruce Babbit, et. al. The Court ordered the defendant, the US Fish and Wildlife Service ("FWS") to publish its proposed rule designating critical habitat for the Great Lakes Plover on or before June 30, 2000 and a proposed rule designating critical habitat for the Great Plains Plover on or before May 31, 200l. The final rule for the Great Lakes Plover was to be completed by September 30, 2000; the Great Plains Plover was to be completed by September 30, 2001.

Subsequently, the defendants motioned the court to "alter or amend" the judgment. Upon consideration of the motion, the court decided to modify its February decision. The new order stated that the final rule for the critical habitat designation for the Great Lakes piping plover shall be completed by April 30, 2001; final rule for the Great Plains piping plover was changed to March 15, 2002.

In complying with the court order the Fish and Wildlife Service issued a proposed designation of critical habitat for wintering piping plovers on July 6, 2000. The listing of the species occurred on December 11, 1985. The proposed designation includes 146 areas along the coasts of North Carolina, South Carolina, Florida, Alabama, Mississippi, Louisiana, and Texas. The proposed rule would cover 1, 672 linear miles of shoreline along the Gulf and Atlantic coasts and along margins of interior bays, inlets and lagoons and include over 2,100,000 acres of private and public land. The total population of piping plover in the U.S. is approximately 5,500 birds. Of this population, only 63% (or

roughly 3,500) birds have been identified as wintering within the proposed critical habitat region.[1]

RESULT: The proposed designation allocates some 600 acres per bird despite the fact that the average plover is approximately six inches in length and weighs approximately two ounces.

I. Coalition of affected interests from North Carolina down though Texas Strongly Oppose the FWS designation.

A Coalition of various interests from the states affected by the designation, ranging from North Carolina down the Atlantic and around the Gulf Coast to Texas, have engaged the FWS proceedings in strong opposition to the proposed overly broad designation of wintering habitat. Included in this Coalition are: the Florida Shore and Beach Preservation Association; Florida Inland Navigation District; Town of Oak Island, NC; Town of Caswell Beach, NC; Town of Holden Beach, NC; Town of Ocean Isle Beach, NC; Town of Topsail Beach, NC; Brunswick Beaches Consortium; Outer Banks Preservation Association; Mid-Island Surfcasters; North Carolina Beach Buggy Association; Texas Shore and Beach Association; San Luis Development Corporation, Houston, TX; City of Port Aransas, TX; City of Corpus Christi, TX; Corpus Christi Chamber of Commerce; Nueces County, TX; Stewart Title, Corpus Christi, TX; Padre Island Homeowners Association; Padre Island Business Association; Western Geophysical, Houston, TX; and BNP Petroleum, Corpus Christi, TX.; Dunn-McCampbell Royalty Interest, Inc.; Dunn Padre Corporation; John G. and Marie Stella Kenedy Memorial Foundation; and Coastal Bend Bay and Estuaries Program, Inc.

Arguments against the designation: The Texas interests involved in the Coalition have raised numerous legal and economic arguments in thier materials filed with the FWS including:

Legal Arguments

1) The Section 7 consultation is far more onerous that the FWS concedes. The FWS asserts that "critical habitat designation is not expected to require any further project modifications beyond those required by the listing of the piping plover."

- If a project requires a federal permit, receives federal funding, or has any other federal nexus, the fact that the project includes an area that has been proposed to be designated as critical habitat triggers the ESA section 7(a) (2) consultation process.

[1] Comments made by Lee Elliott, author of the proposed rule.

- Section 7 consultation often leads to permitting delays ranging between eighteen and twenty-four months, or more, together with greatly increased costs associated with operational modification, timing uncertainties, and costs associated with analyzing and responding to environmental studies such as Environmental Impact Statements. The mere possibility of facing section 7 consultation will effectively quash many planned development projects.

2) The best scientific data available does not support the proposed rule

- The U.S. Supreme Court has cautioned that the overall goals of species preservation do not empower the FWS to forego the responsibility to utilize the "best scientific data available." This standard is to "ensure that ESA [Endangered Species Act] is not implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, it is readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives."[2]

- In light of the Supreme Court's mandate to ensure that "the ESA is not implemented haphazardly, on the basis of speculation or surmise" the FWS ought to be hesitant to undertake a designation of critical habitat that includes over 1,600 linear miles of coastline (and over 2,100,000 acres of land in eight states) on the basis of inconclusive or unavailable data.

- The proposed rule concedes that "in some areas, adequate census data are not available to provide reliable presence or absence information for the plover." Yet, the FWS still proposes to designate areas that it believes contain the physical and biological features essential to plover conservation.[3] These are overly broad designations of areas where the FWS lacks adequate census data to provide reliable accounts of plover locations or even of the nature of the coastline.

3) The description of the proposed designation areas fails to provide adequate notice to the public

- The maps provided by the FWS fail to provide the necessary "reference points and lines" that assist parties in knowing the limits of the designation. The maps included with the public notice at the public hearing lacked sufficient detail for the public to determine the exact extent of the area designated.

- The FWS has also acknowledged publicly that the coordinates published in the Federal Register are inaccurate.

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[2] Bennett, 520 U.S. at 176.
[3] 65 Fed. Reg. at 41, 785

- The FWS has also conceded that it did not conduct the detailed analysis required, admitting: "We did not map critical habitat in sufficient detail to exclude all currently developed sites consisting of buildings, marinas, paved areas, boat ramps, and similar structures. These areas do not contain primary constituent elements essential for piping plover conservation, and are not critical habitat even though they are within the mapped boundaries."[4]

4) FWS has failed to fulfill its obligations pursuant to National Environmental Policy Act of 1969 (NEPA).

- FWS has made a statement that it need not prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) pursuant to the NEPA.

- The Eighth Circuit has stated that "merely because the Service says NEPA does not apply does not make it so."[5] The ESA has not displaced NEPA, as the impact of critical habitat designation "will be immediate and the consequences could be disastrous. The preparation of an EA will enable all involved to determine what the effect will be."[6]

5) FWS has failed to adequately address and quantify the economic consequences of the proposed designation

- The designation of over 1,600 linear miles of shoreline and over 2,100,000 acres of public and private land will have significant impacts that will effect the daily activities of a substantial number of private land owners, recreational users, businesses, municipalities, and local governments. This includes impacts on land values, fiscal impacts and economic impacts in terms of lost jobs and lost economic activity.

- At a minimum, the final economic analysis must provide analysis of the economic impacts of designation of unoccupied areas, and of areas that could not conceivable serve as critical habitat such as "buildings, marinas, paved areas, boat ramps, and similar structures."

6) FWS improperly certified that the proposed rule would not exceed the thresholds of the Small Business Regulatory Enforcement Fairness Act (SBREFA)

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[4] 64 Fed. Reg. At 41, 785

[5] Catron County Board of Commissions v. U.S. Fish and Wildlife Service, 75 F.3d 1429, 1436 (10th Cir. 1996).

[6] Id.

- The FWS has concluded that the critical habitat designation will not exceed the thresholds of the SBREFA. The Draft Economic Analysis concedes that "data on small businesses and communities were not obtainable for this analysis in the given time frame."

- SBREFA requires that whenever an agency engages in public notice and comment rulemaking it must "prepare and make available for public comment an initial regulatory flexibility analysis…[that] shall describe the impact of the proposed rule on small entities, including small business, small organizations and small governmental jurisdictions." In turn, the final rule must describe "the steps taken to minimize the significant economic impact on small entities."

- In the Draft Economic Analysis, the FWS asserts that the Proposed Rule "is not expected to have a significant economic impact on a substantial number of small entities because it imposes very little, if any, additional impacts on land use activities beyond those that may be required as a result of the listing of the piping plover." Yet, the FWS admits that "data on small businesses and communities were not obtainable for this analysis in the given time frame" and that, "time did not allow a quantitative assessment of these potential impacts on small businesses and communities."

- The FWS's concession that it has not undertaken any analysis of the impact on small businesses directly contravenes Congress' intent that the agencies pay more than "lip-service" to consideration of the impact of their actions.

Economic Arguments Affecting Texas:

- Public Sector
  (1) Government revenues that depend on property values and current market transactions.
    (a) Local Governments depend heavily on the property tax and a portion of the sales tax.
    (b) Texas State government depends on royalties, severance taxes, franchise taxes and sales taxes.

---Other economic property values and income flows to the government will be affected because the public sector depends on leasing fees, as well as tax revenue from sales, franchise and property taxes.

---Because of the heavy dependency of the Texas public school system on royalties and severance taxes from oil and gas production, the State government sector will be significantly affected by the designation.

---The economic impact on the local economy will be two fold: (1) the delay of currently economically viable projects; and (2) the diversion of economic activities to competing economic regions.

- Private Sector -- Much of the economic consequences of the designation will fall solely on the private sector even though the land surface is mostly on public lands.

---Because of the conditions in the Laguna Madre Environs, it is likely that all landowners having potential habitat will need to go through the U.S. Fish and Wildlife Section 7-consultation process.

---Most landowners within the Laguna Madre Environs will incur some out-of-pocket expenses associated with a Section 7 consultation even if no plover or habitat is present. Since the final outcome of the process is uncertain, all property in the designated area will be devalued by the market place.

---The private sector will be affected because private mineral owners and the State of Texas lease to the oil and gas industry the rights to explore for oil and gas reserves underlying the designated areas.

---Other private sector property owners will be affected because real-estate developers construct and develop properties on land leased under long-term agreements with the Texas General Land Office and concession rights on state and federal lands

---Finally, private property owners of watercraft and related fishing and beach access facilities, and adjacent areas lodging, service industry and retail business establishments will be affected because of reduced business from tourism and recreational activities.

Selected Illustrations of Economic Impact:

- Natural Gas Production Impacts – Delay of a major natural gas production venture in the region will push the development and production period forward in time, resulting in significant near-term economic impacts. Six month and Two year delays are as follows:
  (1) Personal Income losses in the local economy, during the year of peak year impacts:
    (a) Six months -- $116.9 million per year
    (b) Two years -- $269.0 million
  (2) Employment impacts in the local economy
    a) Six months – 4,052 jobs
    b) Two years – 13, 285 jobs
  (3) Impacts on value-added

(a) Six months -- $274.6 million
(b) Two years -- $900.4 million

(4) State severance tax and royalty losses
(a) Six months -- $74.3 million
(b) Two years – $243.5 million

(5) Property value impact
(a) Six months -- $105.9 million
(b) Two years -- $393.7 million

- Real Estate Development and Tourism in the Corpus Christi Area: The Packery Channel Project

(1) Personal income losses in the local economy
(a) Six months -- $ 8.9 million
(b) Two years -- $27.0 million

(2) Employment impacts in the local economy
(a) Six months – 250 jobs
(b) Two years – 627 jobs

(3) Value added
(a) Six months -- $17.9 million
(b) Two years -- $71.5 million

(4) Impact on property value of real estate ventures
(a) Six months -- $30.9 million
(b) Two years -- $117.3 million

(5) Impact on Local area property tax collections due to property devaluation
(a) Six months -- $744,000
(b) Two years -- $2.8 million

Current Regulatory Status:

The FWS is currently making its final headquarters level review of the maps designating the critical habitat with the intention of meeting the court's **April 30 deadline**. OMB must approve of the final FWS action before presenting it to the court.

The Texas Coalition has urged FWS to adopt three requests designed to facilitate modification of the FWS critical habitat map: (1) request an extension of time from the District Court based on the overwhelming evidence demonstrating the procedural flaws of the FWS proposed plan for designation of the winter habitat (leaving unchanged the parallel rule for the nesting habitat in the Great Lakes; (2) allow affected parties to review the revised FWS designation plan; and (3) meet with all affected parties to discuss their concerns with regard to the substantively and procedurally flawed wintering habitat plan.

Critical Habitat Designation
Piping Plover – Wintering Range
Unit "TX-17" (San Jose Island)

The area designated as critical habitat unit "TX-17" encompasses a highly improved portion of San Jose Island that is wholly inappropriate for this designation. San Jose Island is a large working cattle ranch consisting of over 33,000 acres entirely owned by members of a Texas family that has championed the cause of wildlife conservation in Texas and throughout the nation, and particularly wildlife habitat preservation on the Texas coast for decades. Indeed the family's dedication to the preservation of migratory bird habitat on San Jose Island is legendary throughout the region.

To maintain the pristine character of the barrier island ecosystem, the owners have concentrated all of the improvements on San Jose Island (other than fences, cattle pens, and windmills) in the ranch headquarters area, the landing strip to the south of the headquarters, and the boat basin and dock area to the northeast of the headquarters. This boat basin and dock area and the northern portion of the landing strip have been included in the proposed "TX-17".

For over 60 years, the boat basin and dock area have served as the supply lifeline for all ranching operations on San Jose Island. This area includes a barge ramp, large covered boathouse, covered vehicle parking, and two 8,000-gallon aboveground fuel tanks in a concrete containment dike. A bulkhead and pilings with approximately ten channel markings extend out from the basin area. This is the sole boat dock area on the entire island and is used daily to load and unload livestock, ranch vehicles, equipment, and supplies, as well as to transport ranch employees. While "TX-17" is a very active and essential area for ranch operations, it encompasses less than 300 acres. With over 12,000 acres of other unimproved portions of San Jose Island being included in the proposed critical habitat designation, it is inappropriate to include the relatively small, highly improved area shown as "TX-17" in this designation.

REV_00126064

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 4/26/2001 2:04:17 PM
Subject: : Ashcroft testimony re tobacco

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CREATION DATE/TIME:26-APR-2001 18:04:17.00
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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http://www.newsday.com/ap/text/washington/ap828.htm
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Adrian G. Gray/WHO /EOP@EOP [WHO] <Adrian G. Gray>
Sent: 4/26/2001 4:39:25 PM
Subject: : PAS

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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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Would it pose major problems for your White House Liasions to be PAS officials? Under the law, those officials have far more room to engage in political activity. If your Liasions are non-PAS officials, they can assist with scheduling and coordinating the Secretary's schedule, but there is a question whether they should be doing anything that requires their own independent judgment about political strategy. They arguably should not make independent judgments, for example, about which political events the Secretary should attend and which he/she should not -- as opposed to acting as schedulers/administrators. As a general matter, non-PAS officials in the departments and agencies cannot engage in political activity while in their offices and on duty. They can, however, perform duties "that assist the person engaging in the political activity." That is the line we must walk with non-PASers.

From: CN=Jefferson B. Hill/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: Records Management@EOP (Records Management@EOP [UNKNOWN])
Sent: 4/27/2001 12:05:00 PM
Subject: : Plover talking points
Attachments: P_BHVP1004_WHO.TXT_1.wpd

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SUBJECT:: Plover talking points
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BCC:Records Management@EOP (Records Management@EOP [UNKNOWN])
READ:UNKNOWN
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Sorry: I sent this to you by mistake.
---------- Forwarded by Jefferson B. Hill/OMB/EOP on 04/27/2001 04:00 PM ----------

Tammy D. Croote
04/27/2001 03:55:43 PM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: Donald R. Arbuckle/OMB/EOP@EOP, Jefferson B. Hill/OMB/EOP@EOP
Subject: Plover talking points

Please let me know if you have any questions. Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BHVP1004_WHO.TXT_1>

Piping Plover Talking Points:

- In accordance with a court order issued by the DC District Court on June 22, 2000, DOI's Fish and Wildlife Service must issue a final rule designating critical habitat under the Endangered Species Act (ESA) for the Great Lakes piping plover by Monday,April 30, 2001.

- The court order does not distinguish between the breeding habitat and the winter habitat for the plover–it references only "the critical habitat designation for the Great Lakes piping plover." The Secretary of Interior could be issued a contempt citation if the court finds she did not comply with this order.

- DOJ may ask the court for more time to analyze the winter habitat and other issues related to this rule. We do not know if the court will agree to this. The court already extended the deadline for issuance of this final rule (originally ordered for September 30, 2000).

- FWS currently requires NEPA compliance for designation of critical habitat only where the critical habitat designation is located within the Tenth Circuit (the states of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming), which is not the case here. This is because the Tenth Circuit Court of Appeals *(Catron County Board of Commissioners v. United States Fish and Wildlife Service,* 1996) ruled FWS does have to comply with NEPA when issuing these rules. However, the Ninth Circuit Court ruled (*Douglas County v. Babbitt,*1995) that NEPA does not apply to the Service's designation of critical habitat.[1]

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[1] The Ninth Circuit stated that Congress intended that the ESA's critical habitat procedures displace the NEPA procedures, NEPA is inapplicable to actions which do not change the physical environment, and that the application of both NEPA and the Act's requirements would frustrate both statutes.

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/27/2001 10:11:39 AM
Subject: : Re: PAS

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-APR-2001 14:11:39.00
SUBJECT:: Re: PAS
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

did Ken answer you on this? I will discuss it with him.

any word on the memo?

Brett M. Kavanaugh
04/26/2001 08:39:14 PM
Record Type: Record

To: Kenneth B. Mehlman/WHO/EOP@EOP, Adrian G. Gray/WHO/EOP@EOP
cc:
Subject: PAS

Would it pose major problems for your White House Liasions to be PAS officials? Under the law, those officials have far more room to engage in political activity. If your Liasions are non-PAS officials, they can assist with scheduling and coordinating the Secretary's schedule, but there is a question whether they should be doing anything that requires their own independent judgment about political strategy. They arguably should not make independent judgments, for example, about which political events the Secretary should attend and which he/she should not -- as opposed to acting as schedulers/administrators. As a general matter, non-PAS officials in the departments and agencies cannot engage in political activity while in their offices and on duty. They can, however, perform duties "that assist the person engaging in the political activity." That is the line we must walk with non-PASers.

From: CN=Jefferson B. Hill/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/27/2001 12:00:20 PM
Subject: : Plover talking points
Attachments: P_VBVP1004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jefferson B. Hill (CN=Jefferson B. Hill/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:27-APR-2001 16:00:20.00
SUBJECT:: Plover talking points
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Jefferson B. Hill/OMB/EOP on 04/27/2001 04:00 PM ----------

Tammy D. Croote
04/27/2001 03:55:43 PM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: Donald R. Arbuckle/OMB/EOP@EOP, Jefferson B. Hill/OMB/EOP@EOP
Subject: Plover talking points

Please let me know if you have any questions. Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VBVP1004_WHO.TXT_1>

Piping Plover Talking Points:

- In accordance with a court order issued by the DC District Court on June 22, 2000, DOI's Fish and Wildlife Service must issue a final rule designating critical habitat under the Endangered Species Act (ESA) for the Great Lakes piping plover by Monday,April 30, 2001.

- The court order does not distinguish between the breeding habitat and the winter habitat for the plover–it references only "the critical habitat designation for the Great Lakes piping plover." The Secretary of Interior could be issued a contempt citation if the court finds she did not comply with this order.

- DOJ may ask the court for more time to analyze the winter habitat and other issues related to this rule. We do not know if the court will agree to this. The court already extended the deadline for issuance of this final rule (originally ordered for September 30, 2000).

- FWS currently requires NEPA compliance for designation of critical habitat only where the critical habitat designation is located within the Tenth Circuit (the states of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming), which is not the case here. This is because the Tenth Circuit Court of Appeals *(Catron County Board of Commissioners v. United States Fish and Wildlife Service,* 1996) ruled FWS does have to comply with NEPA when issuing these rules. However, the Ninth Circuit Court ruled (*Douglas County v. Babbitt,*1995) that NEPA does not apply to the Service's designation of critical habitat.[1]

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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 4/28/2001 5:52:51 AM
Subject: : Washington Post article - Sat. April 28

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CREATION DATE/TIME:28-APR-2001 09:52:51.00
SUBJECT:: Washington Post article - Sat. April 28
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
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Democrats Press Bush For Input On Judges
Court Nominees Concern Senators
By Thomas B. Edsall
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The Washington Post; Saturday, April 28, 2001; Page A04
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The letter, which comes as the president prepares to announce his first judicial nominations, perhaps as early as next week, is the latest sign of Democratic concern that the administration plans to stock the federal judiciary with conservatives.

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To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 4/28/2001 5:52:51 AM
Subject: : Washington Post article - Sat. April 28

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TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Court Nominees Concern Senators
By Thomas B. Edsall
The Washington Post; Saturday, April 28, 2001; Page A04

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 4/29/2001 2:00:32 PM
Subject: : help needed

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ABA ratings on Judges Abner Mikva, James Buckley, and Charles Wiggins.
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From: CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO]
To: Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>
CC: albert hawkins/who/eop@eop [WHO] <albert hawkins>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;john w. howard/who/eop@eop [WHO] <john w. howard>;edward ingle/who/eop@eop [WHO] <edward ingle>;adrian g. gray/who/eop@eop [WHO] <adrian g. gray>;matthew a. schlapp/who/eop@eop [WHO] <matthew a. schlapp>
Sent: 4/30/2001 7:02:29 AM
Subject: : Re: Draft of proposed agenda

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TO:Douglas L. Hoelscher ( CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [ WHO ] )
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per albert, we will do the moment of rememberance in the beginning.
also: ed ingle just came down and indicated comfort with the rest.
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/30/2001 7:34:10 AM
Subject: : Legal Times article today -- Harkin, etc.

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The Art of the Deal

Nominations near, Bush and senators start trading chits

Jonathan Ringel
Legal Times
April 30, 2001

As President George W. Bush gets ready to announce his first nominees to the federal bench, his judge-pickers have already realized how difficult the Senate confirmation process can be.

Squabbles have broken out over some names that have surfaced, and White House officials are hearing from senators from both parties with complaints, suggestions, and proposals that could ease the way for prospective judges.

Indeed, the president's team is negotiating territory rife with hurt feelings and long memories while pushing to take advantage of the Republicans' 51-50 edge in the Senate.

As with previous administrations, the sticking point has been the White

House's consultation with senators from a potential nominee's home state -- a practice that, if ignored or mishandled, can severely hamper a nominee's chances.

Bush's team discovered this problem when reporters began inquiring about rumors that California GOP Rep. Christopher Cox was being considered for the 9th U.S. Circuit Court of Appeals.

The White House had not informed California Sens. Dianne Feinstein and Barbara Boxer, both Democrats, of the potential nomination when it began fielding calls about Cox from newspapers. According to Feinstein and Boxer staffers, the White House delivered the news while alerting the senators of media inquiries.

Boxer, one of the Senate's staunchest liberals, opposes Cox as too conservative. Feinstein -- a member of the Judiciary Committee -- refrained from judgment and plans to meet with Cox next week.

"At this point," Feinstein says, "it's unresolved."

Senate Judiciary Chairman Orrin Hatch, R-Utah, says the White House stumbled with Cox. "That happened before they knew what to do," he says, adding that the process is now moving smoothly.

Deputy White House Counsel Timothy Flanigan responds that the president's judge-pickers have always been aware of the importance of consulting home-state senators. But now, he says, "we're adapting to the political realities" in the Senate.

The importance was driven home on April 27, when Senate Democrats, led by Patrick Leahy of Vermont and Charles Schumer of New York, sent a letter to White House Counsel Alberto Gonzales reiterating their demands that the administration consider the opinions of home-state senators.

Doing so will require the Bush team to step into turf battles that go back years.

Take, for example, attempts to fill an opening on the 8th Circuit in Iowa, represented by Sens. Tom Harkin, a Democrat, and Charles Grassley, a Republican.

Harkin says he was caught off guard when Grassley announced April 19 that he expected Bush to nominate U.S. District Judge Michael Melloy to the court.

"I wasn't consulted by Senator Grassley and I wasn't consulted by the White House," says Harkin.

Harkin is particularly galled because President Bill Clinton's choice for the 8th Circuit, former Iowa state Attorney General Bonnie Campbell, had a nomination hearing last year but never got a vote up or down at the Judiciary Committee. "I don't know what action I'm going to take yet," says Harkin.

A Grassley spokeswoman responds that neither President Clinton nor Harkin informed Grassley of the nominations of district court Judges Robert Pratt and Mark Bennett -- Harkin picks who were both confirmed with Grassley's support. Grassley learned of Campbell's nomination only hours before it was made official, the spokeswoman adds.

Grassley, a Judiciary Committee member, and Harkin have always supported each other's picks, the spokeswoman says, "and he expects this practice to continue."

The White House had no response to Harkin's claim that he wasn't consulted.

But one person familiar with the ongoing process says Bush's judge-pickers

are very aware of the ruffled feathers in the Senate and "are very anxious not to get caught in the middle."

BOYLE AND TROUBLE

It may be too late for that, especially when considering a 4th Circuit seat assigned to North Carolina.

In 1991, President George Bush nominated U.S. District Judge Terrence Boyle for the appeals court, but his nomination was never voted on in the Democrat-controlled Senate.

The seat has remained vacant, as Republican Sen. Jesse Helms blocked President Clinton's choice -- state appeals court Judge James Wynn, who would have been the court's first black member.

Now that a Republican is back in the White House, Boyle's name has resurfaced -- leaving North Carolina Democrat John Edwards on the defensive.

Edwards says the White House has contacted him asking his views, but would not elaborate. The loss of Wynn's nomination still smarting, Edwards adds, "I want to find a constructive way to resolve this."

Meanwhile, Hatch says he is working on a package of 4th Circuit nominations that he hopes will please groups on the left and the right. He would not discuss the details, but published reports of potential nominations from other 4th Circuit states suggest what a plan could look like.

The deal could center on Virginia's Roger Gregory, whom Clinton made the first black judge in the history of the circuit with a controversial recess appointment that expires this year. The state's two Republican senators, John Warner and George Allen, have urged Bush to make Gregory's seat permanent.

Meanwhile, Peter Keisler, a partner at Sidley & Austin in Washington, D.C., and a member of the conservative Federalist Society, has been recommended for the circuit by moderate Republican Rep. Connie Morella of Maryland. Maryland's two Democrat senators, Paul Sarbanes and Barbara Mikulski, could not be reached.

Also in the mix would be Boyle and perhaps another North Carolinian, U.S. Magistrate Judge William Webb, an African-American reportedly close to Supreme Court Justice Clarence Thomas.

Some Republicans hope the renomination of Gregory would soothe Democrats while several conservative figures join the circuit. It's unclear whether Bush or Senate Democrats would back such a package.

For example, Edwards, who supports Gregory, is not comfortable with that scenario because it does not give him enough of a voice on North Carolina's nominees, according to a spokesman.

REACHING OUT

There are signs, however, that the president may make some conciliatory gestures in states with two Democratic senators.

Despite the problems with Cox, Feinstein and Boxer have worked out a deal with the White House over how nominees for California's district courts will be picked. Under the deal, judicial selection committees picked equally by Republicans and either Boxer or Feinstein will forward names to the White House.

And two unsuccessful Clinton nominees to the 6th Circuit visited the White House last week, according to a spokeswoman for Sen. Carl Levin, D-Mich.

Last year, Michigan appeals court Judge Helene White and Detroit litigator Kathleen McRee Lewis watched their nominations die without a hearing. Levin has said he'd be reluctant to support any other nominee unless White -- who waited more than four years for a hearing -- and Lewis got a vote at the committee.

According to Levin's spokeswoman, Lewis and White had a meeting at the White House last week, but the spokeswoman did not know what was discussed.

White did not return a call. Lewis would neither confirm nor deny any meeting; she said she did not know what the White House's plans were. The White House also declined comment.

While White House lawyers and senators travel Pennsylvania Avenue to work out deals, members of the Senate Judiciary Committee are struggling to avoid parliamentary chaos when the nominations are presented.

The committee met in closed session last week to work out a plan for "blue slips," which traditionally must be signed by the home state senators before a nominee can have a hearing. The meeting, which was scheduled to last 30 minutes, dragged on for two hours. When Sen. Russell Feingold, D-Wis., emerged at one point, he described the talks as "going round and round."

After the meeting, the leaders of the committee offered slightly different versions. Hatch says he plans to follow the practice of former Democratic chairmen Edward Kennedy of Massachusetts and Joseph Biden of Delaware, who gave blue slips great weight but did not let them work as automatic vetoes.

Ranking Democrat Leahy took a more combative stance, saying no name should go forward if both senators from the home state disapprove. Leahy has threatened to force the Senate to debate each nominee over the course of several weeks.

"You've got to have blue slips," he says, or the White House won't consult with home-state Democrats.

After its early troubles, the White House has changed its consultation procedures, according to one person familiar with the process. At the beginning of the Bush administration, judicial advisers often waited to discuss the nominations with home-state senators until the Federal Bureau of Investigation had completed its background checks. Now, this source adds, all consultations will take place before the FBI starts its work.

Those consultations range from a simple phone call to a detailed discussion of any opposition to a certain judicial candidate. Says the source: "They don't want to send people on suicide missions."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 4/30/2001 1:24:32 PM
Subject: : O'Connor

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-APR-2001 17:24:32.00
SUBJECT:: O'Connor
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

O'Connor expected to stay on court

By Joan Biskupic, USA TODAY

Supreme Court Justice Sandra Day O'Connor, the key swing vote and
moderating force on a
conservative bench, apparently will not be retiring soon, according to
close friends of the justice
and to a court official.

O'Connor, 71, has been subject to vast media speculation about her plans,
including reports
earlier this year from family and friends who believed her to be seriously
weighing whether
to step down. Interest has intensified as summer nears and the court will
be finishing its term.
That's when retirements usually occur.

Abortion rights advocates and other liberal interest groups have worried
that an O'Connor
departure * and a new appointment to the court by President Bush * would
lead to a far
more conservative court and curtailment of individual rights.

Rumors also have swirled around Chief Justice William Rehnquist, 76, and
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White House
aides continue to prepare for the possibility that he might step down soon. Rehnquist, who
was appointed by Richard Nixon in 1972 and elevated to chief by Ronald Reagan in 1986,
has made it clear to associates that he wants to retire while a Republican president is in
office. But Rehnquist has not tipped his hand about whether he would wait until further into
Bush's tenure.

For months, court officials have declined to confirm or deny any reports about justices'
retirement plans. But on Sunday, the court's public information office confirmed that O'Connor
will not be retiring in the near future.

The comment was prompted by a question regarding an aside in a Washington Post
gossip column last week. The item noted that Random House would be publishing a
memoir by O'Connor about her childhood on a cattle ranch. The item said, with no
attribution, that O'Connor "wants the world to know that she's not, repeat not, retiring
anytime soon."

In response to a query, public information officer Kathy Arberg confirmed that the
retirement item was accurate. O'Connor does not speak directly to reporters for
publication.

Supreme Court nominees have to be approved by the Senate. Any Bush appointment
is bound to set off a confirmation battle, particularly with the Senate evenly divided
between Democrats and Republicans.

But an O'Connor retirement would be far more combustible.

Named in 1981, the court's first woman justice is generally conservative but has become
a check on efforts to move the court more radically to the right. She supports
abortion rights and is highly skeptical of most race-based government policies, such
as affirmative action.

But she recently was the swing vote to uphold a heavily black North Carolina
congressional district against charges that it was a racial gerrymander. She also
dissented from the ruling last week to allow full-scale police arrests for minor offense
such as driving without seat belts.

In recent weeks, people close to O'Connor have reported that she has been emphatically
saying she is not leaving. At an appearance in Oklahoma City last week, when she was
honored by the National Cowboy and Western Heritage Museum, she told some friends
that she would not be soon retiring. An individual close to the justice, to whom she had
earlier revealed some indecision about whether to stay, also said the justice was
forcefully making clear that she would not retire this term.

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2001 4:09:06 AM
Subject: : Re: PAS

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2001 08:09:06.00
SUBJECT:: Re: PAS
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I don't know if Ken brought this up with you at all, but Karl said he wasn't particularly enthused with making WH Liaisons as PAS positions. KM may request additional info from you on this.

Brett M. Kavanaugh
04/26/2001 08:39:14 PM
Record Type: Record

To: Kenneth B. Mehlman/WHO/EOP@EOP, Adrian G. Gray/WHO/EOP@EOP
cc:
Subject: PAS

Would it pose major problems for your White House Liasions to be PAS officials? Under the law, those officials have far more room to engage in political activity. If your Liasions are non-PAS officials, they can assist with scheduling and coordinating the Secretary's schedule, but there is a question whether they should be doing anything that requires their own independent judgment about political strategy. They arguably should not make independent judgments, for example, about which political events the Secretary should attend and which he/she should not -- as opposed to acting as schedulers/administrators. As a general matter, non-PAS officials in the departments and agencies cannot engage in political activity while in their offices and on duty. They can, however, perform duties "that assist the person engaging in the political activity." That is the line we must walk with non-PASers.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>
Sent: 5/1/2001 4:19:49 AM
Subject: : Re: PAS

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2001 08:19:49.00
SUBJECT:: Re: PAS
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, I talked to Ken, and we're ok

From: Adrian G. Gray on 05/01/2001 08:09:00 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: PAS

I don't know if Ken brought this up with you at all, but Karl said he wasn't particularly enthused with making WH Liaisons as PAS positions. KM may request additional info from you on this.

Brett M. Kavanaugh
04/26/2001 08:39:14 PM
Record Type: Record

To: Kenneth B. Mehlman/WHO/EOP@EOP, Adrian G. Gray/WHO/EOP@EOP
cc:
Subject: PAS

Would it pose major problems for your White House Liasions to be PAS officials? Under the law, those officials have far more room to engage in political activity. If your Liasions are non-PAS officials, they can assist with scheduling and coordinating the Secretary's schedule, but there is a question whether they should be doing anything that requires their own independent judgment about political strategy. They arguably should not make independent judgments, for example, about which political events the Secretary should attend and which he/she should not -- as opposed to acting as schedulers/administrators. As a general matter, non-PAS officials in the departments and agencies cannot engage in political activity while in their offices and on duty. They can, however, perform duties "that assist the person engaging in the political activity." That is the line we must walk with non-PASers.

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who /eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;robert w. cobb/who /eop@eop [WHO] <robert w. cobb>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 5/1/2001 6:45:15 AM
Subject: : Re: Next up on the chopping block. . .

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2001 10:45:15.00
SUBJECT:: Re: Next up on the chopping block. . .
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Or females?

Rachel L. Brand 05/01/2001 10:43:26 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Next up on the chopping block. . .

Are you saying we're not ladies?

Brett M. Kavanaugh
05/01/2001 10:37:02 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Next up on the chopping block. . .

women

Helgard C. Walker
05/01/2001 10:24:17 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E.
Flanigan/WHO/EOP@EOP
Subject: Next up on the chopping block. . .

First came the (predictable) attack on the Federalist Society. Next up,
the
Independent Women's Forum -- got those membership cards out for
inspection by the
thought police, ladies?

http://washingtonpost.com/wp-dyn/articles/A25123-2001Apr30.html

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
courtney s. elwood/who/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop

Message Copied
To:_____
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
robert w. cobb/who/eop@eop

stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
Sent: 5/1/2001 8:36:07 AM
Subject: : Re: Political ty from Ken
Attachments: P_TD7R1004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2001 12:36:07.00
SUBJECT:: Re: Political ty from Ken
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes, that is acceptable. Either way would be ok for this kind of letter.

Katherine G. Marinis
05/01/2001 10:59:43 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Political ty from Ken

Ken would like to write thank you notes to some of the people that he met with in FL last week. As you know, the RNC and the Republican Party of FL paid for his expenses. I wanted to run the thank you note language by you and to see if it is possible to put it on WH letterhead. thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TD7R1004_WHO.TXT_1>

April 30, 2001

Prefix First Last
Address 1
Address 2
City, State Zip

Dear Salutation,

It was a pleasure to visit with you in Fort Lauderdale, Florida last week. Listening to your concerns and discussing our plans were very helpful to me, and I look forward to working with you in the future.

President Bush is off to a great start. Thanks again.

Sincerely,

Kenneth B. Mehlman
Deputy Assistant to the President and
Director, Political Affairs

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 5/1/2001 9:24:10 AM
Subject: : Pittsburgh Post-Gazette editorial on blue slip

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-MAY-2001 13:24:10.00
SUBJECT:: Pittsburgh Post-Gazette editorial on blue slip
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

BAN THE BLUE SLIP;
ONE SENATOR SHOULDN'T VETO A JUDICIAL NOMINEE

It's not exactly news that both political parties in Congress can behave
hypocritically. The
latest example involves the confirmation of nominees to the federal
courts, a hot subject as
President Bush prepares to send his first judicial nominees to the Senate.

Under an arcane and indefensible Senate tradition, a judicial nominee can
be held hostage
because a single home-state senator sends a "blue slip" to the Judiciary
Committee objecting
to the candidate's confirmation. Now that one of their own is in the White
House, the Republicans
who control the Senate (thanks to the tie-breaking vote of Vice President
Dick Cheney) want
to modify the blue-slip tradition.

Under a proposal by Sen. Orrin Hatch, the chairman of the Judiciary
Committee, an objection
to a judicial nominee by one home-state senator could be overcome by a
statement of support
from another. Thus, in states with one senator from each party, a
Republican senator could
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trump the blue slip deployed by his Democratic colleague.

Democrats, who objected to the blue-slipping of some of Bill Clinton's judicial nominees, are suddenly discovering the virtue of the blue slip -- or, as the practice is known at college fraternities, the blackball. And they are receiving support from other quarters.

A recent editorial in The New York Times urged that "Democrats and Republican moderates use every weapon at their disposal to force Mr. Bush and his Senate allies to a position of moderation on judicial appointments. Those weapons can include insistence on judicious use of the blue-slip policy. . . ."

We disagree. What was bad for the goose is bad for the gander. The Constitution does not give individual senators any veto power over judicial nominees. The one-senator veto is a mere custom -- one that ill serves the federal bench.

This newspaper objected during the Clinton administration when Republican Sen. Rick Santorum blocked the confirmation of Pittsburgh lawyer John Bingler for a seat on U.S. District Court here. We are equally opposed to a single Democratic senator blackballing a George W. Bush nominee.

That doesn't mean the president's judicial nominees -- especially nominees to the U.S. Supreme Court -- should be rubber-stamped. We share the fear of some senators that Mr. Bush might exalt ideology over competence in naming federal judges. We are also troubled by Mr. Bush's decision to end the American Bar Association's traditional (and constructive) role in screening potential judges.

That said, no nominee should be hostage to the whims of a single senator. If Mr. Bush proposes objectionable candidates for the federal courts -- especially the Supreme Court -- Democrats (and thoughtful Republicans) should feel free to vote those nominees down in committee or on the floor, or even resort to a filibuster. Those responses are consistent with the Constitution's grant of "advise and consent" authority to the Senate as a body. The blue slip is not.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 5/1/2001 2:06:32 PM
Subject: : Blue slip dispute

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-MAY-2001 18:06:32.00
SUBJECT:: Blue slip dispute
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

http://www.newsday.com/ap/text/washington/ap978.htm
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From: CN=Christina D. Roberts/OU=WHO/O=EOP [WHO]
To: Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Tucker A. Eskew/WHO /EOP@EOP [WHO] <Tucker A. Eskew>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;mindy.tucker@usdoj.gov @ inet [UNKNOWN] <mindy.tucker@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;carl.thorsen@usdoj.gov @ inet [UNKNOWN] <carl.thorsen@usdoj.gov>;brian.d.miller@usdoj.gov @ inet [UNKNOWN] <brian.d.miller@usdoj.gov>;paul.mcnulty@usdoj.gov @ inet [UNKNOWN] <paul.mcnulty@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 5/2/2001 5:38:19 AM
Subject: : Judical Nominations Meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christina D. Roberts ( CN=Christina D. Roberts/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2001 09:38:19.00
SUBJECT:: Judical Nominations Meeting
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov ( mindy.tucker@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov ( adam.ciongoli@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:carl.thorsen@usdoj.gov ( carl.thorsen@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:brian.d.miller@usdoj.gov ( brian.d.miller@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:paul.mcnulty@usdoj.gov ( paul.mcnulty@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There will be a Judicial Nominations Communications Strategy Meeting this
Thursday, May 3 from 2:30 to 3:30 in room 22 of the EEOB. Those of you
coming from DOJ will be cleared in through the EEOB. Please let us know
if you will not be able to attend.

Christina Roberts
Dan Bartlett's Office
456-7910
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC: Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Allison L. Riepenhoff/WHO /EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 5/2/2001 10:30:25 AM
Subject: : meetings this afternoon

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2001 14:30:25.00
SUBJECT:: meetings this afternoon
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This was being discussed as this morning's meeting was breaking up so I am
emailing you all to make sure everyone is on the same page. These are all
in the Judge's office...

3:00-3:20 John Bellinger and NSC guys for weekly briefing

3:20-3:30 John Bellinger, Moose, Brett and anyone else involved
with planes and cars (Tim ? - Courtney?)
```

3:30-4:00 Regular prep for 4:00 judicial selection committee meeting

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC: Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Allison L. Riepenhoff/WHO /EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 5/2/2001 10:30:25 AM
Subject: : meetings this afternoon

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2001 14:30:25.00
SUBJECT:: meetings this afternoon
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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emailing you all to make sure everyone is on the same page. These are all
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3:20-3:30 John Bellinger, Moose, Brett and anyone else involved
with planes and cars (Tim ? - Courtney?)
```

3:30-4:00 Regular prep for 4:00 judicial selection committee meeting

From: CN=Christina D. Roberts/OU=WHO/O=EOP [WHO]
To: Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Tucker A. Eskew/WHO /EOP@EOP [WHO] <Tucker A. Eskew>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;mindy.tucker@usdoj.gov @ inet [UNKNOWN] <mindy.tucker@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;carl.thorsen@usdoj.gov @ inet [UNKNOWN] <carl.thorsen@usdoj.gov>;brian.d.miller@usdoj.gov @ inet [UNKNOWN] <brian.d.miller@usdoj.gov>;paul.mcnulty@usdoj.gov @ inet [UNKNOWN] <paul.mcnulty@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;jennifer.newstead@usdoj.gov @ inet [UNKNOWN] <jennifer.newstead@usdoj.gov>;howard.nielson@usdoj.gov @ inet [UNKNOWN] <howard.nielson@usdoj.gov>
Sent: 5/2/2001 11:21:07 AM
Subject: : Room Change for May 3 Meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christina D. Roberts ( CN=Christina D. Roberts/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2001 15:21:07.00
SUBJECT:: Room Change for May 3 Meeting
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:howard.nielson@usdoj.gov ( howard.nielson@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The May 3rd Judicial Nominations Meeting will be in the Jackson Room of
the White House Conference Center instead of room 22 of the EEOB. The
White House Conference Center is located at 726 Jackson - directly across
Pennsylvania Avenue from the West Wing and the EEOB. Call with questions.

Christina Roberts
Dan Bartlett's Office
456-7910
```

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2001 12:46:06 PM
Subject: : DC local court candidates

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2001 16:46:06.00
SUBJECT:: DC local court candidates
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Noel asked me for the files of the names submitted for the other vacancy.
Chris said you worked on the last one. Do either of your have those
files? Also, Noel wanted to know which of them you are considering as
your top choice.

Thanks,
Jason
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2001 5:26:50 PM
Subject: : Speech para.s

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2001 21:26:50.00
SUBJECT:: Speech para.s
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI: Judge called me after Sharon called to give a head's up that Al Hunt
is running a piece in tomorrow's WSJ calling for total war against us by
the Dems. We got to talking, and he asked to see the paragraphs we wrote
for the speech. I of course sent them over.
```

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/3/2001 5:36:58 AM
Subject: : IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act
Attachments: P_NJIS1004_WHO.TXT_1.doc; P_NJIS1004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2001 09:36:58.00
SUBJECT:: IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 05/03/2001 09:36 AM ----------

From: Lisa J. Macecevic on 05/03/2001 09:22:23 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: James J. Jukes/OMB/EOP@EOP, Richard E. Green/OMB/EOP@EOP
Subject: IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

The attached letter responds to a request for views on the "pay parity" provisions of H.R. 1088 from Chairman Burton of the House Government Reform Committee. The bill is currently scheduled for House floor action today.
Please respond with any comments on this letter by 11:00 A.M. TODAY - Thursday, May 2nd.
The letter and introduced bill text of H.R. 1088 are attached. Thank you.
OPM Letter: - Burtonredo.doc
Bill Text:
Total Pages: ____

==========
LRM ID: LJM9
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 3, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
E-Mail: Lisa_J._Macecevic@omb.eop.gov
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

DEADLINE: 11:00 A.M. Thursday, May 3, 2001
==========
In accordance with OMB Circular A-19, OMB requests the views of your

agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached letter responds to a request for views on the "pay parity" provisions of H.R. 1088 from Chairman Burton of the House Government Reform Committee. The bill is currently scheduled for House floor action today.
Please respond with any comments on this letter by 11:00 A.M. TODAY - Thursday, May 2nd.
The letter and introduced bill text of H.R. 1088 are attached. Thank you.

DISTRIBUTION LIST

AGENCIES:
118-TREASURY - Thomas M. McGivern - (202) 622-2317

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S. A. Noe
Alan B. Rhinesmith
James Boden
Andrew Abrams
Hitesh Vyas
Joseph F. Lackey Jr.
Jay P. Lefkowitz
Steven D. Aitken
Sarah S. Lee
Kenneth S. Kelly
Neil Lobron
Ellen J. Balis
Eric C. Pelletier
Brett S. Loper
Elizabeth L. Rossman
Danielle M. Simonetta
WHGC LRM
John W. Howard
Brian C. Conklin
Augustine T. Smythe
Jennifer J. Wood
James J. Jukes
Richard E. Green
LRM ID: LJM9 SUBJECT: Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

==========

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109

REV_00126152

Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NJIS1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NJIS1004_WHO.TXT_2>

Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your request for the views of the Office of Personnel Management (OPM) regarding the Securities and Exchange Commission (SEC) pay provisions in section 8 of H.R. 1088. I apologize for the long delay in getting this response to you. We greatly appreciate your efforts in this matter.

The Administration strongly opposes enactment of section 8 of H.R. 1088 for the following reasons. Those provisions would authorize the SEC to fix and adjust compensation for all employees of the Commission without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, governing the classification and pay of Federal white-collar employees under the General Schedule (GS). Further, they would authorize the Commission to provide additional compensation and benefits to employees as are being provided, or could be provided, to banking regulatory agencies listed in section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989. The objective of providing pay parity between the SEC and such financial regulatory agencies is to address the recruitment and retention problems currently experienced by the SEC, presumably resulting from their inability to compete with the compensation currently paid by such regulatory agencies.

SEC was not one of the agencies covered by FIRREA because it has a workforce with highly specialized expertise that performs different functions from the FIRREA agencies. Generally, SEC does not compete with FIRREA agencies more than it does with many other agencies for the same categories of employees.

Before an agency is granted an exemption from title 5, the Administration believes common sense dictates that the agency should be required to demonstrate that severe staffing problems remain after it has exhausted all pay flexibilities available under current law. Even then, there may remain a question as to whether pay is the sole difficulty. In any event, what is clear is that each time an agency is removed from title 5 provisions without making a solid case, more agencies are encouraged to come forward with requests for similar treatment.

The Administration is well aware of recruitment and retention problems faced by the SEC for the occupations of attorney, accountant, and examiner. Indeed, the SEC submitted a request to OPM for special salary rates for those occupations to address the problems. On March 2, 2001, OPM approved special salary rates for those occupations. The new payable rates exceed existing GS pay rates by significant amounts.

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At the higher ends of the rate ranges, particularly at higher grades, the new special rates are not comparable to the rates paid by the FIRREA agencies. One of the reasons for that deficiency is the ceiling on special rates of level V of the Executive Schedule, as imposed by section 5305 of title 5, United States Code. The Administration believes it would be appropriate to raise that ceiling to level IV of the Executive Schedule. Such an increase would open up more than $8,000 of additional space for the payment to SEC attorneys and accountants of special rates already authorized but currently not payable because of the level V limitation. The annual rate of basic pay for approximately 185 SEC attorneys, accountants, and examiners would rise by an average of about $6,750 each as a direct result of an increase in the ceiling on special rates. Only one General Schedule employee outside SEC would be directly affected by this change.

The Administration believes that it would be appropriate to assess the effectiveness of the new special rates before taking more radical steps.

We also understand that the General Accounting Office is currently conducting a study of the situation at the Commission to determine whether their problems are purely compensation driven or are perhaps structural in nature.

Accordingly, the Administration recommends that precipitous action the special pay rates are used for a period sufficient to judge their effectiveness, additional data on the recruitment and retention problems at SEC are developed to assess the appropriateness of special rates for other occupations, and the GAO study is completed. Any alternative actions would be premature, for the same reasons.

One additional flexibility that has not been employed by the SEC is the pay authority for critical positions under section 5377 of title 5, United States Code. Under this authority, the Office of Management and Budget (OMB) may grant an agency's request to fix the rate of basic pay for one or more positions at a higher rate than would otherwise be payable. OMB must consult with OPM, and the maximum rate payable without the written approval of the President is the rate for level I of the Executive Schedule, currently $161,200. This authority may be used only for a position that requires "expertise of an extremely high level in a scientific, technical, professional, or administrative field" and which is "critical to the agency's successful accomplishment of an important mission." Although OMB has previously considered only higher-level positions (Executive Schedule, Senior Executive Service, senior-level, etc.) for this exceptional treatment, the Administration is willing to consider the use of this flexibility for positions in the upper grades of the General Schedule.

Another important issue is what the legislation characterized as a "technical amendment" near the end of section 8 that would remove the SEC from the Senior Executive Service (SES). This is a substantive action, not a technical amendment, as it completely changes the personnel system that applies to SEC's senior executives. If this were truly a technical amendment, it would be a logical consequence of the other changes made by section 8. There is no relation between the section 8 changes and the action to remove SEC senior executives from the SES, other than to replicate what was done for FIRREA agencies. No other rationale or justification has been provided for this exemption. If the action is based on recruitment or retention problems at the senior executive level, these should be addressed initially by using flexibilities currently available to all Federal agencies, including the critical pay authority described above. The availability of this flexibility, which was designed to address senior executive recruitment and retention concerns, makes this "technical amendment" equally unacceptable.

Further, the personnel issues faced by SEC are not unique to SEC. The Administration is concerned about the increasing trend toward exemptions from all or parts of title 5, with the adverse effects on portability of Federal employees and the fragmentation of personnel systems, especially at the senior executive level. Creating another title 5 exemption, without sufficient justification, would further exacerbate the competition for talent within and across the Government.

In summary, the Administration has concluded that the special pay rates so recently granted should be given an opportunity to improve the recruitment and retention situation at SEC. Beyond that, a modest increase in the ceiling on special rates should be sufficient, along with the use of the critical pay authority, to address any exceptional needs of the SEC, including any difficulties at the senior executive level.

Thus, in the absence of a justification for the immediate adoption of the significant legislative changes proposed here, the Administration urges the Congress to strike any personnel provisions from H.R. 1088.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

Steven R. Cohen
Acting Director

REV_00126156

HR 1088 IH

107th CONGRESS

1st Session

H. R. 1088

To amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 19, 2001

Mr. FOSSELLA (for himself, Mr. OXLEY, Mr. BAKER, Mrs. KELLY, Mrs. MALONEY of New York, Mr. MENENDEZ, Mr. REYNOLDS, Mr. ROYCE, Mr. KING, Mr. OSE, Mrs. ROUKEMA, Mr. FOLEY, Mr. TOOMEY, Mr. GILLMOR, Mr. GARY MILLER of California, Mr. ROGERS of Michigan, Mr. SHADEGG, Mr. GRUCCI, Mr. WELDON of Florida, Mr. SHAYS, Mr. MANZULLO, Mr. ACKERMAN, Mr. CROWLEY, Mr. FORD, Mr. MOORE, Mr. BLAGOJEVICH, Mr. ISRAEL, Mr. BENTSEN, Mr. BACHUS, Ms. HART, Mr. JONES of North Carolina, Mr. NEY, Mr. SWEENEY, Mr. ROSS, Ms. VELAZQUEZ, and Mr. ENGEL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Investor and Capital Markets Fee Relief Act'.

SEC. 2. IMMEDIATE TRANSACTION FEE REDUCTIONS.

Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended--

(1) by striking ` 1/300 of one percent' each place it appears in subsections (b) and (d) and inserting `$12 per $1,000,000';

(2) in the first sentence of subsection (b), by striking `, except that' and all that follows through the end of such sentence;

(3) in paragraph (1) of subsection (d), by striking `, except that' and all that follows through the end of such paragraph;

(4) in subsection (e), by striking `$0.02' and inserting `$0.0072'; and

(5) by adding at the end the following new subsection:

`(i) PRO RATA APPLICATION- The rates per $1,000,000 required by this section shall be applied pro rata to amounts and balances equal to less than $1,000,000.'.

SEC. 3. REVISION OF SECURITIES TRANSACTION FEE PROVISIONS; ADDITIONAL FEE REDUCTIONS.

(a) POOLING AND ALLOCATION OF COLLECTIONS- Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is further amended--

(1) in subsection (b)--

(A) by striking `Every' and inserting `Subject to subsection (j), each'; and

(B) by striking the last sentence;

(2) by striking subsection (c);

(3) in subsection (d)--

(A) by striking paragraphs (2) and (3);

(B) by striking the following:

`(d) Off-Exchange Trades of Last-Sale-Reported Securities-

`(1) COVERED TRANSACTIONS- Each national securities'

and inserting the following:

`(c) OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED AND LAST-SALE-REPORTED SECURITIES- Subject to subsection (j), each national securities';

(C) by inserting `registered on a national securities exchange or' after `security futures products)'; and

(D) by striking `, excluding any sales for which a fee is paid under subsection (c)';

(4) in subsection (e)--

(A) by striking `except that for fiscal year 2007' and all that follows through the end of such subsection and inserting the following: `except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to $0.0042 for each such transaction.';

(5) in subsection (f), by striking `DATES FOR PAYMENT OF FEES- The fees required' and inserting `DATES FOR PAYMENTS- The fees and assessments required';

(6) by redesignating subsections (e) through (i) (as added by section 2(5)) as subsections (d) through (h), respectively;

(7) by adding at the end the following new subsection:

`(i) DEPOSIT OF FEES-

`(1) OFFSETTING COLLECTIONS- Fees collected pursuant to subsections (b), (c), and (d) for any fiscal year--

`(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

`(B) except as provided in subsection (k), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

`(2) GENERAL REVENUES PROHIBITED- No fees collected pursuant to subsections (b), (c), and (d) for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.'.

(b) ADDITIONAL REDUCTIONS OF FEES-

(1) AMENDMENT- Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is further amended by adding after subsection (i) (as added by subsection (a)(7)) the following new subsections:

`(j) RECAPTURE OF PROJECTION WINDFALLS FOR FURTHER RATE REDUCTIONS-

`(1) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d)) that are equal to the target offsetting collection amount for such fiscal year.

`(2) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding

fiscal years, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for all of such fiscal years to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this section in fiscal year 2012 (including assessments collected under subsection (d)) equal to the target offsetting collection amount for fiscal year 2011.

`(3) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. Subject to subsections (i)(1)(B) and (k)--

`(A) an adjusted rate prescribed under paragraph (1) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (2) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(k) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(l) DEFINITIONS- For purposes of this section:

`(1) TARGET OFFSETTING COLLECTION AMOUNT- The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

Target offsetting collection amount

2002 $585,720,000

2003	$679,320,000
2004	$822,240,000
2005	$976,320,000
2006	$1,148,040,000
2007	$880,880,000
2008	$892,080,000
2009	$1,023,120,000
2010	$1,161,440,000
2011	$1,321,040,000

`(2) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES- The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, and security futures products) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

(2) CONFORMING AMENDMENT- Section 31(g) of such Act (as redesignated by subsection (a)(6) of this section) is amended by inserting before the period at the end the following: `not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based.'.

SEC. 4. REDUCTION OF REGISTRATION FEES.

Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended by striking paragraphs (2) through (5) and inserting the following:

`(2) FEE PAYMENT REQUIRED- At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $125 per $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (5) or (6).

`(3) OFFSETTING COLLECTIONS- Fees collected pursuant to this subsection for any fiscal year--

`(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

`(B) except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

`(4) GENERAL REVENUES PROHIBITED- No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

`(5) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (2) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target offsetting collection amount for such fiscal year.

`(6) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (2) for all of such fiscal years to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this subsection in fiscal year 2012 equal to the target offsetting collection amount for fiscal year 2011.

`(7) PRO RATA APPLICATION- The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than $1,000,000.

`(8) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (3)(B) and (9)--

`(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(9) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(10) PUBLICATION- The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13(e) and 14(g) for each fiscal year not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

`(11) DEFINITIONS- For purposes of this subsection:

`(A) TARGET OFFSETTING COLLECTION AMOUNT- The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

	Target offsetting collection amount
2002	$512,500,000
2003	$589,380,000
2004	$650,385,000
2005	$790,075,000
2006	$949,050,000
2007	$214,200,000
2008	$233,700,000
2009	$284,115,000
2010	$333,840,000

2011 $394,110,000

`(B) BASELINE ESTIMATE OF THE AGGREGATE MAXIMUM OFFERING PRICES- The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

SEC. 5. FEES FOR STOCK REPURCHASE STATEMENTS.

Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended

(1) in paragraph (3), by striking `a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased' and inserting `a fee at a rate that, subject to paragraphs (5) and (6), is equal to $125 per $1,000,000 of the value of securities proposed to be purchased';

(2) by inserting after paragraph (3) the following new paragraphs:

`(4) OFFSETTING COLLECTIONS- Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the

Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

`(5) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

`(6) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

`(7) PRO RATA APPLICATION- The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than

$1,000,000.

`(8) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)--

`(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(9) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(10) PUBLICATION- The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.'.

SEC. 6. FEES FOR PROXY SOLICITATIONS AND STATEMENTS IN CORPORATE CONTROL TRANSACTIONS.

Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)(3)) is amended--

(1) in paragraphs (1) and (3), by striking `a fee of 1/50 of 1 per centum of' each place it appears and inserting `a fee at a rate that, subject to paragraphs (5) and (6), is equal to $125 per $1,000,000 of';

(2) by redesignating paragraph (4) as paragraph (11); and

(3) by inserting after paragraph (3) the following new paragraphs:

`(4) OFFSETTING COLLECTIONS- Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the

Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

`(5) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

`(6) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

`(7) PRO RATA APPLICATION- The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than $1,000,000.

`(8) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)--

`(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(9) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(10) PUBLICATION- The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.'.

SEC. 7. TRUST INDENTURE ACT FEE.

Section 307(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77ggg(b)) is amended by striking `Commission, but, in the case' and all that follows and inserting `Commission.'.

SEC. 8. PAY PARITY PROVISIONS.

(a) SECURITIES AND EXCHANGE COMMISSION EMPLOYEES- Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended--

(1) by striking paragraphs (1) and (2) and by inserting the following:

`(1) APPOINTMENT, COMPENSATION, AND BENEFITS-

`(A) IN GENERAL- The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out its functions under this Act.

`(B) RATES OF PAY- Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

`(C) ADDITIONAL COMPENSATION AND BENEFITS- The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any agency referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.

`(2) INFORMATION; COMPARABILITY- In establishing and adjusting schedules of compensation and additional benefits for employees of the Commission, which are to be determined solely by the Commission under this subsection, the Commission--

`(A) shall consult with and inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

`(B) shall inform the Congress of such compensation and benefits; and

`(C) shall seek to maintain comparability with such agencies regarding compensation and benefits.'.

(b) TECHNICAL AMENDMENTS-

(1) Section 3132(a)(1) of title 5, United States Code, is amended--

(A) in subparagraph (C), by striking `or' after the semicolon;

(B) in subparagraph (D), by inserting `or' after the semicolon; and

(C) by adding at the end of the following:

`(E) the Securities and Exchange Commission.'.

(2) Section 5373(a) of title 5, United States Code, is amended--

(A) in paragraph (2), by striking `or' after the semicolon;

(B) in paragraph (3), by striking the period and inserting `; or'; and

(C) by adding at the end the following:

`(4) section 4(b) of the Securities Exchange Act of 1934.'.

SEC. 9. EFFECTIVE DATES.

(a) IN GENERAL- Except as provided in subsection (b), the amendments made by this Act shall take effect on October 1, 2001.

(b) PAY PARITY-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by section 8 shall take effect on the date of enactment of this Act.

(2) EXCEPTION- The amendments made by section 8(b)(1) shall take effect as of such date as the Securities and Exchange Commission shall (by order published in the Federal Register) prescribe, but in no event later than 1 year after the date of enactment of this Act.

END

From:	CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	5/3/2001 6:25:37 AM
Subject:	: Re: IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act
Attachments:	P_0HKS1004_WHO.TXT_1.doc; P_0HKS1004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2001 10:25:37.00
SUBJECT:: Re: IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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John W. Howard
05/03/2001 10:19:14 AM
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To: Lisa J. Macecevic/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

This bill will not be on the House floor today. Accordingly White House Legislative Affairs advises not releasing it to the Hill.

From: Lisa J. Macecevic on 05/03/2001 09:22:23 AM
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To: See the distribution list at the bottom of this message
cc: James J. Jukes/OMB/EOP@EOP, Richard E. Green/OMB/EOP@EOP
Subject: IMPORTANT - 11:00 A.M. Deadline Today -- LRM LJM9 - Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

The attached letter responds to a request for views on the "pay parity" provisions of H.R. 1088 from Chairman Burton of the House Government Reform Committee. The bill is currently scheduled for House floor action today.
Please respond with any comments on this letter by 11:00 A.M. TODAY - Thursday, May 2nd.
The letter and introduced bill text of H.R. 1088 are attached. Thank you.
OPM Letter: - Burtonredo.doc
Bill Text:
Total Pages: ____

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LRM ID: LJM9
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 3, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
E-Mail: Lisa_J._Macecevic@omb.eop.gov
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

DEADLINE: 11:00 A.M. Thursday, May 3, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached letter responds to a request for views on the "pay parity" provisions of H.R. 1088 from Chairman Burton of the House Government Reform Committee. The bill is currently scheduled for House floor action today.
Please respond with any comments on this letter by 11:00 A.M. TODAY - Thursday, May 2nd.
The letter and introduced bill text of H.R. 1088 are attached. Thank you.

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LRM ID: LJM9 SUBJECT: Office of Personnel Management Report on HR1088 Investor and Capital Markets Fee Relief Act

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0HKS1004_WHO.TXT_2>

Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your request for the views of the Office of Personnel Management (OPM) regarding the Securities and Exchange Commission (SEC) pay provisions in section 8 of H.R. 1088. I apologize for the long delay in getting this response to you. We greatly appreciate your efforts in this matter.

The Administration strongly opposes enactment of section 8 of H.R. 1088 for the following reasons. Those provisions would authorize the SEC to fix and adjust compensation for all employees of the Commission without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, governing the classification and pay of Federal white-collar employees under the General Schedule (GS). Further, they would authorize the Commission to provide additional compensation and benefits to employees as are being provided, or could be provided, to banking regulatory agencies listed in section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989. The objective of providing pay parity between the SEC and such financial regulatory agencies is to address the recruitment and retention problems currently experienced by the SEC, presumably resulting from their inability to compete with the compensation currently paid by such regulatory agencies.

SEC was not one of the agencies covered by FIRREA because it has a workforce with highly specialized expertise that performs different functions from the FIRREA agencies. Generally, SEC does not compete with FIRREA agencies more than it does with many other agencies for the same categories of employees.

Before an agency is granted an exemption from title 5, the Administration believes common sense dictates that the agency should be required to demonstrate that severe staffing problems remain after it has exhausted all pay flexibilities available under current law. Even then, there may remain a question as to whether pay is the sole difficulty. In any event, what is clear is that each time an agency is removed from title 5 provisions without making a solid case, more agencies are encouraged to come forward with requests for similar treatment.

The Administration is well aware of recruitment and retention problems faced by the SEC for the occupations of attorney, accountant, and examiner. Indeed, the SEC submitted a request to OPM for special salary rates for those occupations to address the problems. On March 2, 2001, OPM approved special salary rates for those occupations. The new payable rates exceed existing GS pay rates by significant amounts.

REV_00126173

At the higher ends of the rate ranges, particularly at higher grades, the new special rates are not comparable to the rates paid by the FIRREA agencies. One of the reasons for that deficiency is the ceiling on special rates of level V of the Executive Schedule, as imposed by section 5305 of title 5, United States Code. The Administration believes it would be appropriate to raise that ceiling to level IV of the Executive Schedule. Such an increase would open up more than $8,000 of additional space for the payment to SEC attorneys and accountants of special rates already authorized but currently not payable because of the level V limitation. The annual rate of basic pay for approximately 185 SEC attorneys, accountants, and examiners would rise by an average of about $6,750 each as a direct result of an increase in the ceiling on special rates. Only one General Schedule employee outside SEC would be directly affected by this change.

The Administration believes that it would be appropriate to assess the effectiveness of the new special rates before taking more radical steps.

We also understand that the General Accounting Office is currently conducting a study of the situation at the Commission to determine whether their problems are purely compensation driven or are perhaps structural in nature.

Accordingly, the Administration recommends that precipitous action the special pay rates are used for a period sufficient to judge their effectiveness, additional data on the recruitment and retention problems at SEC are developed to assess the appropriateness of special rates for other occupations, and the GAO study is completed. Any alternative actions would be premature, for the same reasons.

One additional flexibility that has not been employed by the SEC is the pay authority for critical positions under section 5377 of title 5, United States Code. Under this authority, the Office of Management and Budget (OMB) may grant an agency's request to fix the rate of basic pay for one or more positions at a higher rate than would otherwise be payable. OMB must consult with OPM, and the maximum rate payable without the written approval of the President is the rate for level I of the Executive Schedule, currently $161,200. This authority may be used only for a position that requires "expertise of an extremely high level in a scientific, technical, professional, or administrative field" and which is "critical to the agency's successful accomplishment of an important mission." Although OMB has previously considered only higher-level positions (Executive Schedule, Senior Executive Service, senior-level, etc.) for this exceptional treatment, the Administration is willing to consider the use of this flexibility for positions in the upper grades of the General Schedule.

Another important issue is what the legislation characterized as a "technical amendment" near the end of section 8 that would remove the SEC from the Senior Executive Service (SES). This is a substantive action, not a technical amendment, as it completely changes the personnel system that applies to SEC's senior executives. If this were truly a technical amendment, it would be a logical consequence of the other changes made by section 8. There is no relation between the section 8 changes and the action to remove SEC senior executives from the SES, other than to replicate what was done for FIRREA agencies. No other rationale or justification has been provided for this exemption. If the action is based on recruitment or retention problems at the senior executive level, these should be addressed initially by using flexibilities currently available to all Federal agencies, including the critical pay authority described above. The availability of this flexibility, which was designed to address senior executive recruitment and retention concerns, makes this "technical amendment" equally unacceptable.

Further, the personnel issues faced by SEC are not unique to SEC. The Administration is concerned about the increasing trend toward exemptions from all or parts of title 5, with the adverse effects on portability of Federal employees and the fragmentation of personnel systems, especially at the senior executive level. Creating another title 5 exemption, without sufficient justification, would further exacerbate the competition for talent within and across the Government.

In summary, the Administration has concluded that the special pay rates so recently granted should be given an opportunity to improve the recruitment and retention situation at SEC. Beyond that, a modest increase in the ceiling on special rates should be sufficient, along with the use of the critical pay authority, to address any exceptional needs of the SEC, including any difficulties at the senior executive level.

Thus, in the absence of a justification for the immediate adoption of the significant legislative changes proposed here, the Administration urges the Congress to strike any personnel provisions from H.R. 1088.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

Steven R. Cohen
Acting Director

HR 1088 IH

107th CONGRESS

1st Session

H. R. 1088

To amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 19, 2001

Mr. FOSSELLA (for himself, Mr. OXLEY, Mr. BAKER, Mrs. KELLY, Mrs. MALONEY of New York, Mr. MENENDEZ, Mr. REYNOLDS, Mr. ROYCE, Mr. KING, Mr. OSE, Mrs. ROUKEMA, Mr. FOLEY, Mr. TOOMEY, Mr. GILLMOR, Mr. GARY MILLER of California, Mr. ROGERS of Michigan, Mr. SHADEGG, Mr. GRUCCI, Mr. WELDON of Florida, Mr. SHAYS, Mr. MANZULLO, Mr. ACKERMAN, Mr. CROWLEY, Mr. FORD, Mr. MOORE, Mr. BLAGOJEVICH, Mr. ISRAEL, Mr. BENTSEN, Mr. BACHUS, Ms. HART, Mr. JONES of North Carolina, Mr. NEY, Mr. SWEENEY, Mr. ROSS, Ms. VELAZQUEZ, and Mr. ENGEL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Investor and Capital Markets Fee Relief Act'.

SEC. 2. IMMEDIATE TRANSACTION FEE REDUCTIONS.

Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended--

(1) by striking ` 1/300 of one percent' each place it appears in subsections (b) and (d) and inserting `$12 per $1,000,000';

(2) in the first sentence of subsection (b), by striking `, except that' and all that follows through the end of such sentence;

(3) in paragraph (1) of subsection (d), by striking `, except that' and all that follows through the end of such paragraph;

(4) in subsection (e), by striking `$0.02' and inserting `$0.0072'; and

(5) by adding at the end the following new subsection:

`(i) PRO RATA APPLICATION- The rates per $1,000,000 required by this section shall be applied pro rata to amounts and balances equal to less than $1,000,000.'.

SEC. 3. REVISION OF SECURITIES TRANSACTION FEE PROVISIONS; ADDITIONAL FEE REDUCTIONS.

(a) POOLING AND ALLOCATION OF COLLECTIONS- Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is further amended--

(1) in subsection (b)--

(A) by striking `Every' and inserting `Subject to subsection (j), each'; and

(B) by striking the last sentence;

(2) by striking subsection (c);

(3) in subsection (d)--

(A) by striking paragraphs (2) and (3);

(B) by striking the following:

`(d) Off-Exchange Trades of Last-Sale-Reported Securities-

`(1) COVERED TRANSACTIONS- Each national securities'

and inserting the following:

`(c) OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED AND LAST-SALE-REPORTED SECURITIES- Subject to subsection (j), each national securities';

(C) by inserting `registered on a national securities exchange or' after `security futures products)'; and

(D) by striking `, excluding any sales for which a fee is paid under subsection (c)';

(4) in subsection (e)--

(A) by striking `except that for fiscal year 2007' and all that follows through the end of such subsection and inserting the following: `except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to $0.0042 for each such transaction.';

(5) in subsection (f), by striking `DATES FOR PAYMENT OF FEES- The fees required' and inserting `DATES FOR PAYMENTS- The fees and assessments required';

(6) by redesignating subsections (e) through (i) (as added by section 2(5)) as subsections (d) through (h), respectively;

(7) by adding at the end the following new subsection:

`(i) DEPOSIT OF FEES-

`(1) OFFSETTING COLLECTIONS- Fees collected pursuant to subsections (b), (c), and (d) for any fiscal year--

`(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

`(B) except as provided in subsection (k), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

`(2) GENERAL REVENUES PROHIBITED- No fees collected pursuant to subsections (b), (c), and (d) for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.'.

(b) ADDITIONAL REDUCTIONS OF FEES-

(1) AMENDMENT- Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is further amended by adding after subsection (i) (as added by subsection (a)(7)) the following new subsections:

`(j) RECAPTURE OF PROJECTION WINDFALLS FOR FURTHER RATE REDUCTIONS-

`(1) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d)) that are equal to the target offsetting collection amount for such fiscal year.

`(2) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding

fiscal years, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for all of such fiscal years to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this section in fiscal year 2012 (including assessments collected under subsection (d)) equal to the target offsetting collection amount for fiscal year 2011.

`(3) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. Subject to subsections (i)(1)(B) and (k)--

`(A) an adjusted rate prescribed under paragraph (1) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (2) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(k) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(l) DEFINITIONS- For purposes of this section:

`(1) TARGET OFFSETTING COLLECTION AMOUNT- The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

	Target offsetting collection amount
2002	$585,720,000

2003	$679,320,000
2004	$822,240,000
2005	$976,320,000
2006	$1,148,040,000
2007	$880,880,000
2008	$892,080,000
2009	$1,023,120,000
2010	$1,161,440,000
2011	$1,321,040,000

`(2) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES- The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, and security futures products) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

(2) CONFORMING AMENDMENT- Section 31(g) of such Act (as redesignated by subsection (a)(6) of this section) is amended by inserting before the period at the end the following: `not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based.'.

SEC. 4. REDUCTION OF REGISTRATION FEES.

Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended by striking paragraphs (2) through (5) and inserting the following:

`(2) FEE PAYMENT REQUIRED- At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $125 per $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (5) or (6).

`(3) OFFSETTING COLLECTIONS- Fees collected pursuant to this subsection for any fiscal year--

`(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

`(B) except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

`(4) GENERAL REVENUES PROHIBITED- No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

`(5) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (2) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target offsetting collection amount for such fiscal year.

`(6) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (2) for all of such fiscal years to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this subsection in fiscal year 2012 equal to the target offsetting collection amount for fiscal year 2011.

`(7) PRO RATA APPLICATION- The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than $1,000,000.

`(8) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (3)(B) and (9)--

`(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(9) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(10) PUBLICATION- The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13(e) and 14(g) for each fiscal year not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

`(11) DEFINITIONS- For purposes of this subsection:

`(A) TARGET OFFSETTING COLLECTION AMOUNT- The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

	Target offsetting collection amount
2002	$512,500,000
2003	$589,380,000
2004	$650,385,000
2005	$790,075,000
2006	$949,050,000
2007	$214,200,000
2008	$233,700,000
2009	$284,115,000
2010	$333,840,000

2011 $394,110,000

`(B) BASELINE ESTIMATE OF THE AGGREGATE MAXIMUM OFFERING PRICES- The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

SEC. 5. FEES FOR STOCK REPURCHASE STATEMENTS.

Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended

(1) in paragraph (3), by striking `a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased' and inserting `a fee at a rate that, subject to paragraphs (5) and (6), is equal to $125 per $1,000,000 of the value of securities proposed to be purchased';

(2) by inserting after paragraph (3) the following new paragraphs:

`(4) OFFSETTING COLLECTIONS- Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the

Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

`(5) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

`(6) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

`(7) PRO RATA APPLICATION- The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than

$1,000,000.

`(8) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)--

`(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(9) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(10) PUBLICATION- The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.'.

SEC. 6. FEES FOR PROXY SOLICITATIONS AND STATEMENTS IN CORPORATE CONTROL TRANSACTIONS.

Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)(3)) is amended--

(1) in paragraphs (1) and (3), by striking `a fee of 1/50 of 1 per centum of' each place it appears and inserting `a fee at a rate that, subject to paragraphs (5) and (6), is equal to $125 per $1,000,000 of';

(2) by redesignating paragraph (4) as paragraph (11); and

(3) by inserting after paragraph (3) the following new paragraphs:

`(4) OFFSETTING COLLECTIONS- Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the

Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

`(5) ANNUAL ADJUSTMENT- For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

`(6) FINAL RATE ADJUSTMENT- For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

`(7) PRO RATA APPLICATION- The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than $1,000,000.

`(8) REVIEW AND EFFECTIVE DATE- An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)--

`(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of--

`(i) the first day of the fiscal year to which such rate applies; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

`(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of--

`(i) the first day of fiscal year 2012; or

`(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

`(9) LAPSE OF APPROPRIATION- If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

`(10) PUBLICATION- The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.'.

SEC. 7. TRUST INDENTURE ACT FEE.

Section 307(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77ggg(b)) is amended by striking `Commission, but, in the case' and all that follows and inserting `Commission.'.

SEC. 8. PAY PARITY PROVISIONS.

(a) SECURITIES AND EXCHANGE COMMISSION EMPLOYEES- Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended--

(1) by striking paragraphs (1) and (2) and by inserting the following:

`(1) APPOINTMENT, COMPENSATION, AND BENEFITS-

`(A) IN GENERAL- The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out its functions under this Act.

`(B) RATES OF PAY- Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

`(C) ADDITIONAL COMPENSATION AND BENEFITS- The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any agency referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.

`(2) INFORMATION; COMPARABILITY- In establishing and adjusting schedules of compensation and additional benefits for employees of the Commission, which are to be determined solely by the Commission under this subsection, the Commission--

`(A) shall consult with and inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

`(B) shall inform the Congress of such compensation and benefits; and

`(C) shall seek to maintain comparability with such agencies regarding compensation and benefits.'.

(b) TECHNICAL AMENDMENTS-

(1) Section 3132(a)(1) of title 5, United States Code, is amended--

(A) in subparagraph (C), by striking `or' after the semicolon;

(B) in subparagraph (D), by inserting `or' after the semicolon; and

(C) by adding at the end of the following:

`(E) the Securities and Exchange Commission.'.

(2) Section 5373(a) of title 5, United States Code, is amended--

(A) in paragraph (2), by striking `or' after the semicolon;

(B) in paragraph (3), by striking the period and inserting `; or'; and

(C) by adding at the end the following:

`(4) section 4(b) of the Securities Exchange Act of 1934.'.

SEC. 9. EFFECTIVE DATES.

(a) IN GENERAL- Except as provided in subsection (b), the amendments made by this Act shall take effect on October 1, 2001.

(b) PAY PARITY-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by section 8 shall take effect on the date of enactment of this Act.

(2) EXCEPTION- The amendments made by section 8(b)(1) shall take effect as of such date as the Securities and Exchange Commission shall (by order published in the Federal Register) prescribe, but in no event later than 1 year after the date of enactment of this Act.

END

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/4/2001 6:21:32 AM
Subject: : Re: Meeting with NARA

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME: 4-MAY-2001 10:21:32.00
SUBJECT:: Re: Meeting with NARA
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Brad/Brett--Thanks, I've passed this on to Phil. As of last night, he wanted to proceed today anyway. If that's still the case, I'll make note of the points where I think you and Brett may have a perspective or should weigh in. I think a large part of this for Phil is to begin a face to face dialogue with NARA, so we may not get to some of the more technical aspects yet anyway.
Good luck with squaring away the nominations. Adam

Bradford A. Berenson
05/04/2001 08:12:14 AM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Meeting with NARA

Adam, I'm very sorry, but Brett and I are in charge of rolling out the President's first judicial nominations next week. We're totally frantic until that happens. I don't see us being able to do this until Thursday or Friday next week. If we were any less jammed up, we would, but the heat is really intense on us right now. Please apologize to NARA for us and ask them to bear with us a few more days. Thanks.

Adam F. Greenstone
05/03/2001 02:10:38 PM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Meeting with NARA

Brad--Phil's assistant just called to let me know that he would definitely like to have the meeting with NARA tomorrow. I had mentioned to her that next week was much better for you. She proposed 1pm--I mentioned that morning was better for you, but apparently Phil's morning is full. Is 1 pm tomorrow a possibility for you and Brett?

In the mean time, I will call NARA and see how this works for them.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>
CC: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 5/6/2001 10:27:58 AM
Subject: : moving Judicial Selection Committee on May 16th

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-MAY-2001 14:27:58.00
SUBJECT:: moving Judicial Selection Committee on May 16th
TO:Stacey B. Silva ( CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
```

CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Because of the 4:00 cabinet meeting on May 16 we need to move the meeting time for the JSC meeting.

Stacey - Is there a time earlier in the day that the Roosevelt Room is available?

Melissa - FYI that we are moving this. Please let me know if there is a time that works best for Sec. Card.

Will send notice re: new time once we have it.

From: CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: scott mcclellan/who/eop@eop [WHO] <scott mcclellan>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/7/2001 5:41:50 AM
Subject: : Re: Announcement of judicial nominations...

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachael L. Sunbarger ( CN=Rachael L. Sunbarger/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2001 09:41:50.00
SUBJECT:: Re: Announcement of judicial nominations...
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:scott mcclellan ( CN=scott mcclellan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I am told, per Gordon, that it will be announced tomorrow.

Rachael
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Scott McClellan/WHO /EOP@EOP [WHO] <Scott McClellan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2001 4:53:38 AM
Subject: : Announcement of judicial nominations...

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2001 08:53:38.00
SUBJECT:: Announcement of judicial nominations...
TO:Rachael L. Sunbarger ( CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

When will it become public that we are holding an event at 2:30 on
Wednesday re: judicial nominations?

Is the first notification to the press of this the day before (Tuesday)
for the press scheduling purposes?
```

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Christa Moyle/OA/EOP@EOP [OA] <Christa Moyle>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 5/7/2001 5:56:27 AM
Subject: : Re: Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME: 7-MAY-2001 09:56:27.00
SUBJECT:: Re: Meeting
TO:Christa Moyle (CN=Christa Moyle/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Christa--I have proposed the Friday 11 am time to NARA and will advise once they confirm. Any chance we can get the conference room in 145 again?

Brett--I'm hoping that Friday is better than Thursday for you as well. Let us know if this is a problem.
---------- Forwarded by Adam F. Greenstone/OA/EOP on 05/07/2001 09:45 AM ----------

Bradford A. Berenson
05/04/2001 06:53:14 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc:
bcc:
Subject: Re: Meeting

Ok for me. Friday much much better, though.

Adam F. Greenstone
05/04/2001 02:11:16 PM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Meeting

Here are few times from Phil's Office for the NARA meeting: Thursday (5/10), 3 to 4, or 4 to 5; and Friday (5/11) 11-12. Okay for you?

Bradford A. Berenson

05/04/2001 01:16:22 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc:
bcc:
Subject: Re: Meeting

That day looks totally clear as of now.

Adam F. Greenstone
05/04/2001 11:15:16 AM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Meeting

Phil did decide to put off the meeting. I'll give you some times shortly. Offhand, would Monday May 14th also be okay?

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2001 7:53:20 AM
Subject: : Re: Judges and Wednesday Event

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2001 11:53:20.00
SUBJECT:: Re: Judges and Wednesday Event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Bradford A. Berenson/WHO/EOP on 05/07/2001 11:53 AM ----------

James R. Wilkinson
05/07/2001 11:47:17 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Judges and Wednesday Event

Is your office talking to Legislative Affairs about the Senate invites?

Bradford A. Berenson
05/07/2001 11:44:48 AM
Record Type: Record

To: James R. Wilkinson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Judges and Wednesday Event

Brett and I have only one additional comment:

Judge Gonzales, the Attorney General, and any Senators (probably at least Hatch), should also be preset in a separate, readily-identifiable area of the seating.

James R. Wilkinson
05/07/2001 11:16:48 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judges and Wednesday Event

After the 10 a.m. meeting this morning we huddled with Gordon, the Counsel's office, Public Liaison and others to hammer out Wednesday's event and action items. We used Bartlett's guidance and other input on the event. The President's briefing is due at 3 p.m. today so please let

me know ASAP if there are serious problems with any of this. Here are details and action items:

Event:

East Room -- open press
Crowd is families and guests of nominees
Judges preset on front row (to the President's left from the podium)
Blue Goose
President enters East Room, proceeds to podium
President makes remarks (roughly 10 minutes)
After remarks President shakes hands with nominees and departs room for post-event reception.

Action Items:

1. Event logistics will be handled by Communications
2. Counsel's office will work on reception, inviting and clearing of guests with Social office, etc.
3. There will be a 1 p.m. meeting today in 196 OEOB to finalize the paper, binders, etc. It is imperative that everyone be there for this meeting.
4. DEADLINE ON ALL TALKING POINTS AND PAPERS IS COB TODAY
5. Rollout strategy needs to be set. Question is do we get binders, all our information, etc to our allies tomorrow or wait until 6. Wednesday? Do we have Counsel's office do backgrounders tomorrow for running in Wed papers?
7. Communications will craft press packet (in consultation with Counsel's office)

Let me know if I have missed anything.

Message Sent
To:_____
Daniel J. Bartlett/WHO/EOP@EOP
Tucker A. Eskew/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Jill L. Angelo/WHO/EOP@EOP
Scott N. Sforza/WHO/EOP@EOP
Erin E. Healy/WHO/EOP@EOP
Tracey L. Schmitt/WHO/EOP@EOP
Tracy Young/WHO/EOP@EOP
Scott McClellan/WHO/EOP@EOP
Lawrence A. Fleischer/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Mary J. Matalin/OVP/EOP@EOP
Michael J. Gerson/WHO/EOP@EOP
Peter H. Wehner/WHO/EOP@EOP
Gordon D. Johndroe/WHO/EOP@EOP

From:	CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	5/7/2001 8:05:53 AM
Subject:	: LRM KCT29 - - VETERANS AFFAIRS Report on S546 Expanded Applicability of the Increase in the Maximum Amount of Servicemembers' Group Life Insurance
Attachments:	P_C53U1004_WHO.TXT_1.wpd; P_C53U1004_WHO.TXT_2.txt

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2001 12:05:53.00
SUBJECT:: LRM KCT29 - - VETERANS AFFAIRS Report on S546 Expanded Applicability of the Increase in the Maximum Amount of Servicemembers' Group Life Insurance
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 05/07/2001 12:05 PM ----------

From: Kathryn C. Thompson on 05/07/2001 11:53:11 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT29 - - VETERANS AFFAIRS Report on S546 Expanded Applicability of the Increase in the Maximum Amount of Servicemembers' Group Life Insurance

The following is LRM ID: KCT29 -- Veterans Affairs Report on S546, Expanded Applicability of the Increase in the Maximum Amount of Servicemembers' Group Life Insurance. The VA letter is attached below in Wordperfect and it consists of three pages. The bill text of S546 is attached below in html format and it consists of one page.

Please comment on the VA letter by 2 p.m., Thursday, May 10th. If I do not hear from you by the deadline, I will assume that you have no objection to the letter.

Agencies: This e-mail follows the faxed version of the LRM.

LRM ID: KCT29
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 7, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Report on S546 Expanded Applicability of the Increase in the Maximum Amount of Servicemembers' Group Life Insurance

DEADLINE: 2 p.m. Thursday, May 10, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the

program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This report states VA's concerns with S546, which would extend the increase in the maximum amount of Servicemembers' Group Life Insurance (SGLI) coverage to those servicemembers who died between October 1, 2000, and March 30, 2001. VA states in its letter that covering only those servicemembers who died in the performance of duty during the same time period would represent a more financially prudent approach than S546. A similar retroactive increase to the SGLI coverage is included in H.R. 801, an omnibus veterans' benefits bill, which passed the House on March 27th under suspension of the rules.

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114-STATE - Paul Rademacher - (202) 647-1963
117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687

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James J. Jukes
LRM ID: KCT29 SUBJECT: VETERANS AFFAIRS Report on S546 Expanded Applicability of the Increase in the Maximum Amount of Servicemembers' Group Life Insurance
RESPONSE TO
LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
CLRM@doc.gov @ inet
dodlrs@osdgc.osd.mil @ inet
ola@opm.gov @ inet
statelrm@state.gov @ inet
dot.legislation@ost.dot.gov @ inet

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Stephen G. Elmore/OMB/EOP@EOP
Winifred Y. Chang/OMB/EOP@EOP
Mary L. Hildreth/OMB/EOP@EOP
Cameron M. Leuthy/OMB/EOP@EOP
Wendell H. Waites/OMB/EOP@EOP
Eugene J. Devine/OMB/EOP@EOP
Jeffrey D. Goldstein/OMB/EOP@EOP
Christopher S. Johns/OMB/EOP@EOP
Lisa B. Fairhall/OMB/EOP@EOP

Daniel LaPlaca/OMB/EOP@EOP
Joseph G. Pipan/OMB/EOP@EOP
Michael J. Cassidy/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
Arthur W. Stigile/OMB/EOP@EOP
Sarah S. Lee/OMB/EOP@EOP
Jay P. Lefkowitz/OMB/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Mary Jo Siclari/OMB/EOP@EOP
Karyn T. Carson/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
WHGC LRM
Neil S. Patel/OVP/EOP@EOP
Cesar Conda/OVP/EOP@EOP
Nancy P. Dorn/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Michael Garcia/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C53U1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C53U1004_WHO.TXT_2>

1.
The Honorable Arlen Specter

The Honorable Arlen Specter
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

This is in response to your letter of March 30, 2001, requesting the views of the Department of Veterans Affairs (VA) on S. 546, 107th Cong., a bill to expand the applicability of the increase to $250,000 of the maximum amount of Servicemembers' Group Life Insurance (SGLI) to certain servicemembers who died prior to the April 1, 2001, effective date of the increase. The Administration strongly supports providing the benefit of this increase in SGLI coverage to servicemembers who died in the performance of duty between October 1, 2000, and March 31, 2001. However, we have concerns regarding certain aspects of S. 546.

The maximum amount of SGLI available to servicemembers was increased to $250,000, effective April 1, 2001, by the Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. No. 106-419, § 312(a), (c), 114 Stat. 1822, 1854, which was enacted on November 1, 2000. S. 546 would provide $250,000 of coverage to all servicemembers insured under SGLI who died between October 1, 2000, and March 30, 2001, and had not elected to be insured for less than $200,000, the maximum amount of SGLI available prior to April 1, 2001.

We strongly endorse extending the increase in SGLI coverage to insureds who died in a series of recent incidents related to their performance of duty, including the terrorist bombing of the USS Cole on October 12, 2000. We believe this action is particularly important as a reflection of the Nation's gratitude and obligation to those who have sacrificed so much in its service.

S. 546, however, extends coverage to all servicemembers who died between October 1, 2000, and March 30, 2001, not just those who died in the performance of duty. Extending $250,000 in SGLI coverage to all servicemembers who died during this period would impose a significant additional cost on the SGLI program. We understand that approximately 627 servicemembers covered by

SGLI for the maximum amount died during this period. The cost to the SGLI program as a result of S. 546 would be a payout of some $31 million in insurance proceeds. Since these benefits would not be offset by premiums paid for thiscoverage, the SGLI program would have to absorb the cost. Although we wouldnot anticipate the need for an immediate increase in SGLI premiums to cover thispayout, one consequence of such a payout would likely be to delay any futuredecrease in SGLI or Veterans' Group Life Insurance premiums. The Veterans' Benefits Act of 1992, Pub. L. No. 102568, § 201, 106 Stat.4320, 4324, which was enacted on October 29, 1992, increased the maximumamount of SGLI coverage from $100,000 to $200,000, effective December 1,1992. There were several military fatalities as a result of aircraft crashes betweenOctober 29, 1992, and December 1, 1992. Congress responded by enactingsection 8134 of the Department of Defense Appropriations Act, 1994, Pub. L.No. 103139, 107 Stat. 1418, 1471 (1993), authorizing the payment of a deathgratuity to beneficiaries of servicemembers who died in the performance of dutybetween October 29, 1992, and December 1, 1992, generally in the amount of theSGLI coverage the member had in force at the time of his or her death. Congressappropriated funds to cover payment of this gratuity by the Department of Defense.VA believes that aspects of the 1993 legislation represent an approach thatis more financially prudent for the SGLI program. In particular, the 1993 legislationlimited compensation to deaths occurring in performance of duty and did notimpose the cost of the additional benefits on the SGLI program and SGLI insureds. The number of deaths covered by such an approach for the period October 1,2000, through March 30, 2001, would be approximately 75. A $50,000 gratuity forthe families of these deceased servicemembers would cost less than $4 million. VA considers such an approach for compensating the families of deceasedservicemembers who died prior to April 1, 2001, highly desirable and preferable tothat taken by S.546. We also note that S. 546 would only apply to insured servicemembers whodied during a period ending on March 30, 2001, rather than March 31, 2001. Webelieve that the bill's drafter may have intended to cover servicemembers who diedprior to the April 1, 2001, SGLI increase, i.e., during the period ending on March31, 2001. Since the cost of paying the insurance benefits contemplated by S. 546would be borne by the SGLI program, there would be no costs to the Governmentassociated with S. 546. As noted, the cost of the alternative approach of coveringonly servicemembers who died in the performance of duty would be less than $4million, as opposed to the $31 million dollar cost of the bill in its current form. TheSGLI program could absorb the cost of this alternative without impacting futurelevels of premiums in the SGLI and VGLI programs. The Office of Management and Budget advises that there is no objection tothe submission of this report from the standpoint of the Administration's program.

Sincerely,

Anthony J. Principi

3.
The Honorable Arlen Specter

S 546 IS

107th CONGRESS

1st Session

S. 546

To expand the applicability of the increase in the automatic maximum amount of Servicemembers' Group Life Insurance scheduled to take effect on Apr il 1, 2001, to the deaths of certain members of the uniformed services who die before that date.

IN THE SENATE OF THE UNITED STATES

March 15, 2001

Mr. WARNER (for himself, Mr. ALLEN, Mr. GRAHAM, and Mr. NELSON of Florida) i ntroduced the following bill; which was read twice and referred to the Committe e on Vetrans' Affairs

---

A BILL

To expand the applicability of the increase in the automatic maximum amount of Servicemembers' Group Life Insurance scheduled to take effect on Apr il 1, 2001, to the deaths of certain members of the uniformed services who die before that date.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. EXPANDED APPLICABILITY OF INCREASE IN AUTOMATIC MAXIMUM COVER AGE UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE.

(a) IN GENERAL- Notwithstanding section 312(c) of the Veterans Benefit s and Health Care Improvement Act of 2000 (Public Law 106-419; 114 Stat. 1854; 38 U.S.C. 1967 note) or any other provision of law, the amount of Servicemember s' Group Life Insurance in force under subchapter III of chapter 19 of title 38 , United States Code, for each individual described in subsection (b) at the ti me of such individual's death as described in that subsection shall be $250,000 .

(b) COVERED INDIVIDUALS- An individual described in this subsection is any individual insured under section 1967 of title 38, United States Code, who --

(1) during the period beginning on October 1, 2000, and ending on March 30, 2001, dies in a manner covered by such insurance; and

(2) at the time of death, had not made an election under that sect ion to be insured in an amount less than automatic maximum amount provided for in that section.

END

REV_00126245

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 5/7/2001 8:27:20 AM
Subject: : Re: meeting with Sen. Santorum on Tuesday @ 3:00

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2001 12:27:20.00
SUBJECT:: Re: meeting with Sen. Santorum on Tuesday @ 3:00
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This is in part probably re district courts, which I have been communicating about with their staff. Did they provide agenda?

Elizabeth N. Camp
05/07/2001 12:18:28 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Bradford A. Berenson/WHO/EOP@EOP
Subject: meeting with Sen. Santorum on Tuesday @ 3:00

Ramona in the Senator's office called just now to set this up....

2:40 Depart WW Basement
3:00 Meeting with Santorum - Location: Russell 120
3:30ish Depart Russell en route WW
3:45ish Arrive WW

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2001 8:36:07 AM
Subject: : Re: WHJSC agenda

Begin Original ARMS Header
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CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2001 12:36:07.00
SUBJECT:: Re: WHJSC agenda
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am not sure we are having this meeting on Wednesday. I asked ARG about this yesterday and he didn't/wouldn't commit one way or the other.

I'll ask again this afternoon.

Thanks!

Brett M. Kavanaugh
05/07/2001 12:30:51 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc: Bradford A. Berenson/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP
bcc:
Subject: Re: WHJSC agenda

Are we sure we are having a meeting this Wednesday?

Brent D. Greenfield
05/07/2001 11:12:52 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Jason B. Torchinsky/WHO/EOP@EOP
Subject: WHJSC agenda

Please email me any agenda items you will have for this week's meeting. As usual, the draft binders will go to the Judge/Tim at noon tomorrow.

Thanks!

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;jan e. williams/who/eop@eop [WHO] <jan e. williams>;heather larrison/who/eop@eop [WHO] <heather larrison>;carol j. thompson/who/eop@eop [WHO] <carol j. thompson>;megan r. johnston/who/eop@eop [WHO] <megan r. johnston>;israel hernandez/who/eop@eop [WHO] <israel hernandez>;stacey b. silva/who/eop@eop [WHO] <stacey b. silva>;alison jones/who/eop@eop [WHO] <alison jones>;melissa s. bennett/who/eop@eop [WHO] <melissa s. bennett>;josephine b. robinson/who/eop@eop [WHO] <josephine b. robinson>;virginia t. gregory/who/eop@eop [WHO] <virginia t. gregory>;dee dee benkie/who/eop@eop [WHO] <dee dee benkie>;andrew.beach@usdoj.gov @ inet [UNKNOWN] <andrew.beach@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;susan b. ralston/who/eop@eop [WHO] <susan b. ralston>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>

Sent: 5/7/2001 8:44:55 AM

Subject: : Judicial Selection Comm. Mtg. - TIME CHANGE for May 16th

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2001 12:44:55.00
SUBJECT:: Judicial Selection Comm. Mtg. - TIME CHANGE for May 16th
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:andrew.beach@usdoj.gov ( andrew.beach@usdoj.gov @ inet [ UNKNOWN ] )
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TO:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
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TO:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
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End Original ARMS Header

The JSC meeting on May 16th will be held from 3:00-4:00 pm instead of 4:00-5:00 - same location - Roosevelt Room.

Please watch your email for confirmation of the JSC meeting for this Wednesday - May 9th.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;jan e. williams/who/eop@eop [WHO] <jan e. williams>;heather larrison/who/eop@eop [WHO] <heather larrison>;carol j. thompson/who/eop@eop [WHO] <carol j. thompson>;megan r. johnston/who/eop@eop [WHO] <megan r. johnston>;israel hernandez/who/eop@eop [WHO] <israel hernandez>;stacey b. silva/who/eop@eop [WHO] <stacey b. silva>;alison jones/who/eop@eop [WHO] <alison jones>;melissa s. bennett/who/eop@eop [WHO] <melissa s. bennett>;josephine b. robinson/who/eop@eop [WHO] <josephine b. robinson>;virginia t. gregory/who/eop@eop [WHO] <virginia t. gregory>;dee dee benkie/who/eop@eop [WHO] <dee dee benkie>;andrew.beach@usdoj.gov @ inet [UNKNOWN] <andrew.beach@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;susan b. ralston/who/eop@eop [WHO] <susan b. ralston>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>

Sent: 5/7/2001 8:44:55 AM

Subject: : Judicial Selection Comm. Mtg. - TIME CHANGE for May 16th

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2001 12:44:55.00
SUBJECT:: Judicial Selection Comm. Mtg. - TIME CHANGE for May 16th
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TO:andrew.beach@usdoj.gov ( andrew.beach@usdoj.gov @ inet [ UNKNOWN ] )
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TO:john b. bellinger (CN=john b. bellinger/OU=nsc/O=eop@eop [NSC])
READ:UNKNOWN
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READ:UNKNOWN
End Original ARMS Header

The JSC meeting on May 16th will be held from 3:00-4:00 pm instead of 4:00-5:00 - same location - Roosevelt Room.

Please watch your email for confirmation of the JSC meeting for this Wednesday - May 9th.

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2001 9:30:02 AM
Subject: : Re: WHJSC agenda

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2001 13:30:02.00
SUBJECT:: Re: WHJSC agenda
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think so--Jason said Brad called him over the weekend to make sure we got the materials together for this week's meeting...

Brett M. Kavanaugh
05/07/2001 12:30:51 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc: Bradford A. Berenson/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP
bcc:
Subject: Re: WHJSC agenda

Are we sure we are having a meeting this Wednesday?

Brent D. Greenfield
05/07/2001 11:12:52 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Jason B. Torchinsky/WHO/EOP@EOP
Subject: WHJSC agenda

Please email me any agenda items you will have for this week's meeting. As usual, the draft binders will go to the Judge/Tim at noon tomorrow.

Thanks!

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]
To: Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Scott N. Sforza/WHO /EOP@EOP [WHO] <Scott N. Sforza>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 5/7/2001 2:24:00 PM
Subject: : Re: LEgislative

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2001 18:24:00.00
SUBJECT:: Re: LEgislative
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

POTUS will meet in the Blue Room before the event to meet the judges.

Jill L. Angelo
05/07/2001 06:22:04 PM
Record Type: Record

To: James R. Wilkinson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: LEgislative

No, I spoke with them, and they will have it tomorrow. We are going to
submit it as an attachment so we don't have to wait to turn our stuff in.

Will you do me a favor and figure out about the Blue Room thing? Thanks!

James R. Wilkinson
05/07/2001 06:20:27 PM
Record Type: Record

To: Jill L. Angelo/WHO/EOP@EOP
cc:
Subject: LEgislative

Did you get an email from them about the Senators for Wednesday's event on judges?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>

Sent: 5/7/2001 5:40:11 PM

Subject: : Judicial Selection Comm. Mtg. for May 9 is CANCELLED

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2001 21:40:11.00
SUBJECT:: Judicial Selection Comm. Mtg. for May 9 is CANCELLED
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks!

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>
CC: james r. wilkinson/who/eop@eop [WHO] <james r. wilkinson>;tracy young/who/eop@eop [WHO] <tracy young>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;jeanie l. figg/who/eop@eop [WHO] <jeanie l. figg>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>
Sent: 5/8/2001 5:05:17 AM
Subject: : Re: Judicial Event

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2001 09:05:17.00
SUBJECT:: Re: Judicial Event
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:james r. wilkinson (CN=james r. wilkinson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:tracy young (CN=tracy young/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jeanie l. figg (CN=jeanie l. figg/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jason b. torchinsky (CN=jason b. torchinsky/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

11 a.m. does not work for me. I can do it in the afternoon or you can go ahead with Brett if he's available.

Erin E. Healy
05/08/2001 08:52:32 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judicial Event

Can we get a final meeting on the Judicial event? How does 11 am work for everyone? We can meet in 196. Thanks.
--Erin

Message Sent
To:_____
James R. Wilkinson/WHO/EOP@EOP
Tracy Young/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jeanie L. Figg/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
CC: matthew a. schlapp/who/eop@eop [WHO] <matthew a. schlapp>;matthew e. smith/who /eop@eop [WHO] <matthew e. smith>;lezlee j. westine/who/eop@eop [WHO] <lezlee j. westine>;kenneth b. mehlman/who/eop@eop [WHO] <kenneth b. mehlman>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2001 7:57:42 AM
Subject: : Re: 100 day Cath call

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2001 11:57:42.00
SUBJECT:: Re: 100 day Cath call
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:matthew a. schlapp (CN=matthew a. schlapp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:matthew e. smith (CN=matthew e. smith/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:lezlee j. westine (CN=lezlee j. westine/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kenneth b. mehlman (CN=kenneth b. mehlman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I would suggest that we have Brett Kavanaugh (also of our office) do the

Catholic conference call.

Tim Goeglein

05/08/2001 11:43:24 AM

Record Type: Record

To: Matthew A. Schlapp/WHO/EOP@EOP, Matthew E. Smith/WHO/EOP@EOP

cc: Lezlee J. Westine/WHO/EOP@EOP, Kenneth B. Mehlman/WHO/EOP@EOP,

Timothy E. Flanigan/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP

Subject: Re: 100 day Cath call

Matthew2:

Wednesday morning at 9 am is the new time for the weekly Catholic teleconference: we want to move on this before the judicial announcement is made tomorrow afternoon. Brad Berenson, of counsel, will fill in all the details on the call to our Catholic supporters.

Also, want to remind everyone that in addition to the 1. CSE meeting yesterday, 2. the weekly conservative teleconference last night, and the 3. 4pm coalition meeting today at CSE, Tim Flannigan will speak at Norquist and Weyrich tomorrow.

One other note: there will be two special teleconferences today at 2pm and 5pm that are being arranged off campus to update key folks about the announcement.

It has shaped up to be a very good coalition week.

Warmly

tsg

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 5/9/2001 6:57:41 AM
Subject: : From LA Times

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2001 10:57:41.00
SUBJECT:: From LA Times
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Potentially decent sign: "Feinstein said the White House told her Tuesday
that Cox's name would not be on the first nomination list. Feinstein added
that she has not ruled out supporting Cox in the future."
```

From: CN=Erin E. Healy/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>
Sent: 5/9/2001 4:37:36 AM
Subject: : meeting today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2001 08:37:36.00
SUBJECT:: meeting today
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Tracy Young ( CN=Tracy Young/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

can you round up the troops for 11 am in the East Room? we will meet with
Logan and Jeanie to work this all out. thanks.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>
CC: James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>
Sent: 5/9/2001 4:58:34 AM
Subject: : 1st year statistics

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2001 08:58:34.00
SUBJECT:: 1st year statistics
TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ARTICLE III FIRST YEAR FAILED NOMINATIONS:

Reagan I First Year Failed Nominations: None
45 judges confirmed

Bush I First Year Failed Nominations: None
23 judges confirmed (1 in a later year)

Clinton I First Year Failed Nominations: 1 in Southern District of
Florida
48 judges confirmed
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Taylor S. Gross/WHO /EOP@EOP [WHO] <Taylor S. Gross>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 5/9/2001 3:24:02 PM
Subject: : radio talk show request

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2001 19:24:02.00
SUBJECT:: radio talk show request
TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Taylor S. Gross ( CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer K. Millerwise ( CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Kevin Delaney from the Laura Ingram Show called yesterday wanting the
Judge on Thursday or Friday for a 7-10 pm live show.

Ms. Ingram apparently clerked with Brett and Brad from our office at the
Supreme Court.

ARG is in Texas Thursday-Sunday so I am not inclined to add this to his
schedule.

Their number is 202-457-1770.

Do with this what you will.

Thanks!
```

From: CN=Michael J. Napolitano/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>
Sent: 5/9/2001 12:38:10 PM
Subject: : Laura Bush Scholarship at Notre Dame

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael J. Napolitano (CN=Michael J. Napolitano/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2001 16:38:10.00
SUBJECT:: Laura Bush Scholarship at Notre Dame
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett-

Notre Dame University would like to create an endowed scholarship in the name of Mrs. Bush. The Scholarship would be awarded to a student enrolled in an elementary or secondary Catholic school in Texas.

The recipient would be chosen from one of the many schools in Texas served by the ACE teachers (these are teacher who have studied at ND and have worked for two years as Catholic School teachers), and would recieve full tuition to their current school for one year.

Notre Dame would like to announce this scholarship in a ceremony to precede the Commencement on 5/20 (POTUS & FLOTUS will be there) - they hope that she can present the award to the first recipient during the ceremony.

Question: Are there any legal issues that surround this, if the First Lady accepts this and it moves forward (we have not brought this to her or her staff - but we need to ASAP)?

Let us know, and thanks

Michael

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 5/9/2001 12:45:15 PM
Subject: : Laura Bush Scholarship at Notre Dame

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2001 16:45:15.00
SUBJECT:: Laura Bush Scholarship at Notre Dame
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Is this one of you?
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/09/2001 04:44 PM ----------

Michael J. Napolitano
05/09/2001 04:38:07 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Collister W. Johnson/WHO/EOP@EOP, Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Laura Bush Scholarship at Notre Dame

Brett-

Notre Dame University would like to create an endowed scholarship in the name of Mrs. Bush. The Scholarship would be awarded to a student enrolled in an elementary or secondary Catholic school in Texas.

The recipient would be chosen from one of the many schools in Texas served by the ACE teachers (these are teacher who have studied at ND and have worked for two years as Catholic School teachers), and would recieve full tuition to their current school for one year.

Notre Dame would like to announce this scholarship in a ceremony to precede the Commencement on 5/20 (POTUS & FLOTUS will be there) - they hope that she can present the award to the first recipient during the ceremony.

Question: Are there any legal issues that surround this, if the First Lady accepts this and it moves forward (we have not brought this to her or her staff - but we need to ASAP)?

Let us know, and thanks

Michael

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO /EOP@EOP [WHO] <Lori L. Lorenzi>;Eric Hagans/WHO/EOP@EOP [WHO] <Eric Hagans>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Anne M. Hughes/WHO/EOP@EOP [WHO] <Anne M. Hughes>

Sent: 5/9/2001 3:19:11 PM

Subject: : Car Service for Brent, Eric, Jason and Lori

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2001 19:19:11.00
SUBJECT:: Car Service for Brent, Eric, Jason and Lori
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Eric Hagans ( CN=Eric Hagans/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne M. Hughes ( CN=Anne M. Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

We have obtained permission for Brent, Eric, Jason and Lori to use the car service to go to and from the Department of Justice.

They will have access to/from DOJ at all times (including 7:00PM-7:00AM unrestricted).

Thanks to Merrill Hughes in Admin for making this valuable service available to them!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO /EOP@EOP [WHO] <Lori L. Lorenzi>;Eric Hagans/WHO/EOP@EOP [WHO] <Eric Hagans>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>;Anne M. Hughes/WHO/EOP@EOP [WHO] <Anne M. Hughes>

Sent: 5/9/2001 3:19:11 PM

Subject: : Car Service for Brent, Eric, Jason and Lori

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2001 19:19:11.00
SUBJECT:: Car Service for Brent, Eric, Jason and Lori
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Eric Hagans ( CN=Eric Hagans/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
CC:Anne M. Hughes (CN=Anne M. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We have obtained permission for Brent, Eric, Jason and Lori to use the car service to go to and from the Department of Justice.

They will have access to/from DOJ at all times (including 7:00PM-7:00AM unrestricted).

Thanks to Merrill Hughes in Admin for making this valuable service available to them!

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/10/2001 7:18:06 AM
Subject: : LRM IKK46 - - TREASURY Quotation on HR ___ Child Sex Crimes Wiretapping Act of 2001
Attachments: P_1P8W1004_WHO.TXT_1.pdf; P_1P8W1004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-MAY-2001 11:18:06.00
SUBJECT:: LRM IKK46 - - TREASURY Quotation on HR ___ Child Sex Crimes Wiretapping Act of 2001
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 05/10/2001 11:17 AM ----------

From: Irene Kho on 05/10/2001 11:10:31 AM
Record Type: Record

To: justice.lrm@usdoj.gov @ inet, lrm@os.dhhs.gov @ inet, oliafcc@fcc.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK46 - - TREASURY Quotation on HR ___ Child Sex Crimes Wiretapping Act of 2001

COMMENTS: We have learned from Treasury that, at a press conference tomorrow, Friday, May 11th, Representative Nancy Johnson plans to "roll out" a bill - Child Sex Crimes Wiretapping Act of 2001- that she plans to introduce. Attached is a draft of the bill text. Treasury has also told us that Rep. Johnson has invited Customs and FBI to appear with her at the press conference. Attached is a quote that Treasury would like to include in Rep. Johnson's press release. Please review and provide comments on the quote by 2:30 PM today, Thursday, May 10th.

- CSCWA.PDF

AGENCIES: You will receive a fax copy of this material.
EOP: You will NOT receive a fax copy of this material.

LRM ID: IKK46
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 10, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution

below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Quotation on HR ___ Child Sex Crimes Wiretapping
Act of 2001

DEADLINE: 2:30 PM Thursday, May 10, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: We have learned from Treasury that, at a press conference tomorrow, Friday, May 11th, Representative Nancy Johnson plans to "roll out" a bill - Child Sex Crimes Wiretapping Act of 2001- that she plans to introduce. Attached is a draft of the bill text. Treasury has also told us that Rep. Johnson has invited Customs and FBI to appear with her at the press conference. Attached is a quote that Treasury would like to include in Rep. Johnson's press release. Please review and provide comments on the quote by 2:30 PM today, Thursday, May 10th.

DISTRIBUTION LIST

AGENCIES:
061-JUSTICE - Sheryl Walter - (202) 514-2141
052-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7773
036-Federal Communications Commission - Paul A. Jackson - (202) 418-1900

EOP:
Shannon Richter
Mark J. Schwartz
Edward H. Chase
David J. Haun
Ansley C. Tillman
Diana L. Schacht
Eric C. Pelletier
Danielle M. Simonetta
Brian C. Conklin
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Glenn R. Schlarman
Elizabeth P. Askey
Daniel J. Chenok
Thomas Reilly
Diana Espinosa
Kenneth L. Schwartz
Alan B. Rhinesmith
Richard E. Green
James J. Jukes
Brett S. Loper
LRM ID: IKK46 SUBJECT: TREASURY Quotation on HR ___ Child Sex Crimes Wiretapping Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please

call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Shannon Richter/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Edward H. Chase/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Ansley C. Tillman/OPD/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Glenn R. Schlarman/OMB/EOP@EOP
Elizabeth P. Askey/OMB/EOP@EOP
Daniel J. Chenok/OMB/EOP@EOP
Thomas Reilly/OMB/EOP@EOP
Diana Espinosa/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_1P8W1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1P8W1004_WHO.TXT_2>

NANCY L. JOHNSON
6TH DISTRICT, CONNECTICUT

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEES:
HEALTH
CHAIRMAN

HUMAN RESOURCES

WASHINGTON OFFICE:
2113 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0706
TELEPHONE: (202) 225-4476

NEW BRITAIN OFFICE:
460 MYRTLE STREET—SUITE 200
NEW BRITAIN, CT 06053-4057
TELEPHONE: (860) 223-8417

RICHARD
c: KARYN

Congress of the United States
House of Representatives
Washington, DC 20515–0706

May 1, 2001

PROTECT CHILDREN IN YOUR DISTRICT
CO-SPONSOR THE

Child Sex Crimes Wiretapping Act

Original Cosponsor Deadline: Monday May 7, 2001

Dear Colleague:

The FBI and the Customs Service have the formidable task of keeping the Internet safe for children who are often just one mouse click away from meeting a sexual predator on-line. With the development of the Internet, many crimes involving child pornography and enticing juveniles into sex with adults occur over telephone lines which are easily wiretapped for investigation purposes. We need to update the law to give our law enforcement officials the power to wiretap to protect our nation's children from new dangers posed by new technology.

Kidnappers and child molesters are no longer just lingering around playgrounds. They are in Internet chat rooms pretending to be a friend to a young person who is looking for a confidant, someone to talk to. The predators are always more than willing to accommodate and over time, earn the trust to lure young people into meetings that often result in their becoming new victims of sexual assault.

Our bill would create several new predicate offenses for which a federal agent can seek permission to wiretap a suspect. Most of the existing predicate offenses don't reflect the technological advances made in the past few years and thus the new threats to the safety of our children.

For instance, one of the most common means of abuse on the Internet is luring a child into a sexual relationship. Currently, our federal law enforcement agents cannot wiretap the lines of those they suspect of preying on children over the Internet. Our bill adds to the list of predicate offenses enticing or coercing a person to travel within a state, between states or between countries to engage in prostitution or sexual activity, traveling to engage in sex or engage someone else in prostitution and persons producing, distributing or possessing child pornography. A judge would have to approve these wiretaps just as he would those under current law.

If you have questions, or would like to co-sponsor the Child Sex Crimes Wiretapping Act, please call Jaime Cheshire at 5-4476.

Very truly yours,

Nancy L. Johnson
Member of Congress

REV_00126369

[106H3484-JD]

.....
(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mrs. JOHNSON of Connecticut introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 18, United States Code, to provide that certain sexual crimes against children are predicate crimes for the interception of communications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Sex Crimes Wiretapping Act of 2001".

REV_00126370

SEC. 2. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEXUAL CRIMES AGAINST CHILDREN.

(a) CHILD PORNOGRAPHY.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 2252A (relating to material constituting or containing child pornography)," after "2252 (sexual exploitation of children),".

(b) TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY.—Section 2516(1) of title 18, United States Code, as amended by section 3 of this Act, is amended—

(1) by striking "or" at the end of paragraph (o);

(2) by inserting after paragraph (o) the following:

"(p) a violation of section 2422 (relating to coercion and enticement) or section 2423 (relating to transportation of minors) of this title, if, in connection with that violation, the sexual activity for which a person may be charged with a criminal offense would constitute a felony offense under chapter 109A or 110, if that activity took place within the special maritime and territorial jurisdiction of the United States; or"; and

REV_00126371

(3) by redesignating paragraph (p) as paragraph (q).

SEC. 3. TECHNICAL AMENDMENT ELIMINATING DUPLICATIVE PROVISION.

Section 2516(1) of title 18, United States Code, is amended—

(1) by striking the first paragraph (p); and

(2) by inserting "or" at the end of paragraph (o).

REV_00126372

Treasury Quote to be included in Congresswoman Johnson's press release on Friday, May 11th.

> "The Child Sex Crimes Wiretapping Act is important for law enforcement. It will help the U.S. Customs Service conduct more effective international investigations against people who prey upon children for sexual purposes, particularly those who carry out these crimes over the Internet."

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/10/2001 11:39:48 AM
Subject: : Re: Judicial Openings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-MAY-2001 15:39:48.00
SUBJECT:: Re: Judicial Openings
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There is one district court vacancy (NY-ED) that opened on 02/01/01 when Judge Platt went on senior status.

Nothing else at this time...

Bradford A. Berenson
05/10/2001 03:20:47 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc: Matthew A. Schlapp/WHO/EOP@EOP
Subject: Judicial Openings

Would you please follow up on Matt's request below? Thanks.
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 05/10/2001 03:20 PM ----------

Matthew A. Schlapp
05/10/2001 02:20:50 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Judicial Openings

Can I get a list of NY openings for Pataki? I'd be appreciative.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
CC: elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;heather larrison/who/eop@eop [WHO] <heather larrison>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 5/10/2001 1:40:45 PM
Subject: : Re: schedule

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-MAY-2001 17:40:45.00
SUBJECT:: Re: schedule
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:heather larrison ( CN=heather larrison/OU=who/O=eop@eop [ WHO ] )
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CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
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CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
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READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Jason will be away because he is graduating on Sunday.

Congratulations, Jason!




Jason B. Torchinsky
05/10/2001 12:24:32 PM
Record Type: Record

To: See the distribution list at the bottom of this message
```

cc:
Subject: schedule

I just wanted to remind everyone that I'll be leaving early tomorrow afternoon and will be out of the office on Monday.

Message Sent
To:_____
Elizabeth N. Camp/WHO/EOP@EOP
Heather Larrison/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 5/11/2001 6:21:02 AM
Subject: : AP Story: Hatch links Gregory & Boyle

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-MAY-2001 10:21:02.00
SUBJECT:: AP Story: Hatch links Gregory & Boyle
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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http://www.newsday.com/ap/text/washington/ap257.htm
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From: CN=Christopher J. Orr/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/11/2001 8:01:37 AM
Subject: : Re: I'm checking on pictures

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-MAY-2001 12:01:37.00
SUBJECT:: Re: I'm checking on pictures
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks.

Brett M. Kavanaugh
05/11/2001 12:00:08 PM
Record Type: Record

To: Christopher J. Orr/WHO/EOP@EOP
cc:
Subject: I'm checking on pictures

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
Sent: 5/11/2001 7:13:02 AM
Subject: : Fournier AP story on McVeigh

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CREATION DATE/TIME:11-MAY-2001 11:13:02.00
SUBJECT:: Fournier AP story on McVeigh
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Justice lawyers recommend delay in execution

RON FOURNIER
AP White House Correspondent
WASHINGTON (AP) _ Justice Department lawyers have recommended that
Attorney General John
Ashcroft delay the execution of convicted Oklahoma City bomber Timothy
McVeigh for 30 days, two
government officials said Friday.

The officials, speaking on condition of anonymity, said Attorney General
John Ashcroft was expected to
approve the request later Friday. The recommendation came one day after
the FBI disclosed that it had
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failed to turn over documents to McVeigh's defense.

McVeigh, 33, is scheduled to die Wednesday at a federal prison in Terre Haute, Ind.

The belated uncovering of the documents embarrassed the government and angered victims and their families. But it was not immediately clear whether McVeigh _ who had waived appeals in the past few months and claimed responsibility for the bombing _ would himself now seek a delay.

``We needed this death penalty,'' said Aren Almon Kok, whose baby daughter came to symbolize the 1995 blast through a photograph of her lifeless body in the arms of a firefighter.

``For someone to make this mistake ... to find them less than a week before he dies ... is unbelievably unfair,'' she said in Oklahoma City.

The Justice Department handed McVeigh's lawyers 3,135 documents it said should have been provided during the discovery phase of his 1997 trial in Denver. The existence of the documents was disclosed Thursday by CBS.

Kathleen Treanor, who lost her 4-year-old daughter and in-laws in the April 19, 1995, bombing, criticized the FBI as bungling the case and giving McVeigh the chance to extend his life.

``I'm appalled,'' she said. ``The FBI knew from the very beginning that this was a huge case. How could they have possibly made a mistake this huge?''

In a letter to McVeigh's attorneys, the Justice Department said the documents consist of FBI reports, including interview notes known as ''302s,'' and photocopies of physical evidence such as ``photographs, written correspondence and tapes.''

The documents came from 45 FBI offices in the United States and one in Paris.

A lawyer familiar with the case told The Associated Press that the materials contain information generated by thousands of phone calls made to the FBI after the bombing. They range from identifying a composite drawing of a possible suspect known as John Doe No. 2 to claims of seeing McVeigh elsewhere on the day of the bombing.

Legal analysts said the mistake could delay what would be the first federal execution since 1963, though it was unlikely to overturn McVeigh's conviction.

An attorney for McVeigh said the materials may prompt a request for a stay.

``We're considering all our options,'' McVeigh lawyer Nathan Chambers said after the documents were delivered to his office in Denver.

Chambers spoke to McVeigh about the documents, but he declined to elaborate except to say he couldn't rule anything out yet.

Asked Friday on CBS' ``The Early Show'' whether McVeigh would seek a stay, he said: ``The honest question to that is we don't know at this point. There are a number of options that may be available to Mr. McVeigh, and we have a lot of work to do.'' He gave a similar answer when asked if McVeigh would fight if the government sought a stay.

Another McVeigh attorney, Rob Nigh, arrived Thursday night in Indiana.

In a recently published book, McVeigh claimed sole responsibility for the bombing of the Alfred P. Murrah Federal Building, which killed 168 people and injured hundreds. Since December, when he first asked to end his appeals, he had not shown any interest in fighting his conviction or death sentence.

McVeigh's trial judge, U.S. District Judge Richard Matsch of Denver, could not be reached for comment. Court clerk James Manspeaker said the defense would have to go to the 10th U.S. Circuit Court of Appeals, also in Denver, to file a motion to consider new evidence.

Matsch planned no action unless an appeal is filed. ``If something is filed he'll take a look at it,'' Manspeaker said.

The legal standard for granting such a motion requires the court to determine the verdict could have been different if the jury had been allowed to see the documents.

``The prosecution proved everything to me,'' said McVeigh juror Doug Carr, 45. ``If there was something left out that's in those files, I don't think it was that significant.''

McVeigh's former trial lawyer, Stephen Jones, said he wouldn't be surprised if the execution was stayed until the documents are reviewed.

``There could be a benign interpretation and it could all be irrelevant,'' Jones said. ``On the other hand, it could be a malignant failure to turn over.''

The Justice Department said the mistake was discovered after an FBI archivist requested bombing-related materials be sent to the Oklahoma field office.

The department asked defense attorneys to notify them if they believe the documents throw McVeigh's guilt into question.

``While the department is confident the documents do not in any way create any reasonable doubt about McVeigh's guilt and do not contradict his repeated confessions of guilt, the department is concerned that McVeigh's attorneys were not able to review them at the appropriate time,'' the agency said.

Chambers, who has worked on McVeigh's case since December 1998, said he learned about the documents Wednesday, when he received a telephone call from Sean Connelly, a prosecutor in the U.S. attorney's office in Denver.

``Here we are a full six years after the bombing and less than a week before Mr. McVeigh's scheduled execution and these reports mysteriously appear. So it's a cause for concern,'' Chambers said.

The lead prosecutor in the trial, Joseph Hartzler, told NBC News that McVeigh is ``a master of self-deception and self-worship.''

``If he wanted the death penalty, he could have stayed in the truck, or walked into the building,'' Hartzler said. ``He doesn't want to die, he's just giving into it because it's inevitable and somehow he thinks this is his way of declaring victory or something.''

The documents also were delivered Thursday to lawyers for co-defendant Terry Nichols, who was convicted of conspiracy and involuntary manslaughter and sentenced to life in prison.

Similar documents formed the basis of a previous, unsuccessful appeal by Nichols, who claimed the papers could have cleared him.

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Associated Press reporters Karen Gullo in Washington and P. Solomon Banda in Denver contributed to this report.

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On the Net:

Justice Department: http://www.usdoj.gov

Prisons Bureau: http://www.bop.gov

Bombing memorial: http://www.oklahomacitynationalmemorial.org

Death-penalty links:
http://www.clarkprosecutor.org/html/links/dplinks.htm
3rd Ld-Writethru, a0523-4

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/11/2001 12:30:48 PM
Subject: : Re:
Attachments: P_1P6X1004_WHO.TXT_1.doc

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CREATION DATE/TIME:11-MAY-2001 16:30:48.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks Brett -

CJ

Brett M. Kavanaugh
05/11/2001 04:28:59 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP, Adrian G. Gray/WHO/EOP@EOP
cc:
Subject:

Both of you guys asked for this. I would not send it to an outside non-govt group yet. The Special Counsel (the Hatch Act independent agency) has the draft of the final memo, which will be complete next week.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1P6X1004_WHO.TXT_1>

April 30, 2001

Political Activity Outline

- In general, White House and PAS (Senate-confirmed) officials may engage in political activity, *including while on duty and in the office*, but the government must be reimbursed for additional costs associated with that activity (that is, the costs beyond what the government otherwise would have incurred).

  - Travel
    (policy against use of corporate aircraft from regulated entities)
    (mixed trips; reimbursement determined by "total activity time")
    (security costs are official costs)
  - Events in government buildings
    (no fundraising on government property or using government equipment)
    (appearance issues)
  - Equipment
    (incidental costs of paper and wear and tear; check guidance memo)

- For reimbursement purposes, political activity is activity primarily related to an election, a campaign, a political party event, or a political party's operations.

- Other Executive Branch officers and employees (except those in certain investigative and national security agencies) may engage in a wide variety of political activity, *but they may do so only while off duty and not on government property.*

- The law also recognizes, however, that certain Executive Branch employees who are not themselves White House or PAS officials may be required in the performance of their official duties to accompany or assist White House or PAS officials engaging in political activity (for example, duties related to security, scheduling, or typing). Such assistance is permissible, and the government need *not* be reimbursed for the compensation and expenses associated with such assistance.

- Except for those in certain investigative and national security agencies, the permissible range of political activities includes:

  - participation in political organizations, which includes:

    - being a member of a political party;
    - serving as an officer of a political party;
    - attending and participating in nominating caucuses;
    - organizing a political party;
    - participating in a political convention or rally; and
    - serving as a delegate to a political convention.

- participation in political campaigns, which includes:

    - displaying political pictures, signs, stickers, or buttons (although employees other than White House and PAS appointees cannot do so while on duty or in their offices);
    - circulating a nominating petition;
    - canvassing for votes;
    - endorsing or opposing a candidate in an advertisement, broadcast, campaign literature, or similar material (so long as one's official title is not used, except for that of the President and Vice President);
    - addressing a convention, caucus, rally, or similar gathering of a political party or political group; and
    - actively managing the political campaign of a partisan political candidate or candidate for political party office.

- participation in elections, including:

    - voting;
    - acting as officer or watcher at a polling place;
    - serving as election judge or clerk; and
    - driving voters to polling places.

- candidacy for election in a non-partisan election, including:

    - running in a non-partisan election (but note that no Executive Branch employee other than the President and Vice President may run as a candidate in a partisan election).

- participation in fundraising:

    Other than the President or Vice President, Executive Branch officers and employees may *not* solicit, receive, or accept political contributions. However, Executive Branch officers and employees (other than those in certain investigative and national security agencies) may:

    - make political contributions;
    - attend political fundraisers;
    - manage or organize political fundraisers behind the scenes;
    - speak at political fundraisers, so long as one's official title is not used (the term of address "The Honorable" may be used);
    - be listed as a guest speaker on the invitation for a fundraiser, so long as the invitation does not use one's official title (again, the term of address "the Honorable" may be used);
    - solicit, accept, or receive uncompensated volunteer services from any individual, without using one's official title (however, a superior may not

ask his or her subordinate employee to provide such services, nor may he or she ask a company or entity with official matters pending before the agency to provide such services).

- Certain kinds of political activities are forbidden, including:
    - no soliciting, accepting, or receiving political contributions, except by President and Vice President (but officials may organize, manage, appear at, and speak at fundraisers)
    - no fundraising on government property or using government equipment
    - official's name cannot appear on an invitation as a "sponsor" of a fundraiser, but can be identified as a guest speaker
    - official's title cannot be used in connection with political events, but can use "The Honorable"
    - general misuse of official authority
        - cannot ask regulated entities or those under investigation to engage in political activities; however, one can speak to a diverse group that includes individuals within those categories
        - cannot ask subordinates to engage in political activity; however, superiors and subordinates may interact on political matters when both are involved in same political activity or organization
    - cannot run as a candidate in a partisan election

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 5/13/2001 10:31:29 AM
Subject: : Future circuit vacancies

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CREATION DATE/TIME:13-MAY-2001 14:31:29.00
SUBJECT:: Future circuit vacancies
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

After these 34 circuit vacancies are accounted for, we should divvy up the circuits for future vacancies, so that it is not a food fight among the group each time. With 12 regional circuits and 8 attorneys, I think that 4 of us should get 2 circuits each and that 4 of us (the 4 most junior) should get 1 circuit each. (In addition, there is the federal circuit, although I would treat that circuit like a district court for these purposes.) Think about how we should do this. Some kind of regularized procedure established in advance will probably make it easier and fairer, as I believe has already occurred for district court vacancies.

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/14/2001 9:21:36 AM
Subject: : LRM IKK49 - - TREASURY Qs and As on ATF Question for the Record from the House Treasuryy/General Government Appropriations Subcommittee
Attachments: P_1NRX1004_WHO.TXT_1.doc

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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 05/14/2001 01:21 PM ----------

From: Irene Kho on 05/14/2001 12:49:29 PM
Record Type: Record

To: justice.lrm@usdoj.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK49 - - TREASURY Qs and As on ATF Question for the Record from the House Treasuryy/General Government Appropriations Subcommittee

Attached is an ATF Question for the Record from the House Treasury/General Government Appropriations Subcommittee regarding additional authority (license suspensions and other civil penalties) to deal with Federal Firearms Licensees. Please review and provide comments by 12:00 PM, Wednesday, May 16th.

AGENCIES: You will receive a fax copy of this material.
EOP: You will NOT receive a fax copy of this material.

LRM ID: IKK49
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 14, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Qs and As on ATF Question for the Record from the House Treasuryy/General Government Appropriations Subcommittee

DEADLINE: 12:00 PM Wednesday, May 16, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions

of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is an ATF Question for the Record from the House Treasury/General Government Appropriations Subcommittee regarding additional authority (license suspensions and other civil penalties) to deal with Federal Firearms Licensees. Please review and provide comments directly to Joanne Chow by 12:00 PM, Wednesday, May 16th.

DISTRIBUTION LIST

AGENCIES:
061-JUSTICE - Sheryl Walter - (202) 514-2141

EOP:
Kenneth L. Schwartz
Alan B. Rhinesmith
David J. Haun
Edward H. Chase
Douglas Pitkin
Glenn R. Schlarman
Brett S. Loper
Danielle M. Simonetta
Eric C. Pelletier
Allison L. Riepenhoff
Steven D. Aitken
James J. Jukes
Richard E. Green
Diana L. Schacht
Brian C. Conklin
Ansley C. Tillman
LRM ID: IKK49 SUBJECT: TREASURY Qs and As on ATF Question for the Record from the House Treasuryy/General Government Appropriations Subcommittee
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Kenneth L. Schwartz/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Edward H. Chase/OMB/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
Glenn R. Schlarman/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Ansley C. Tillman/OPD/EOP@EOP
ronald.levy@do.treas.gov @ inet
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1NRX1004_WHO.TXT_1>

Bureau of Alcohol, Tobacco and Firearms: Questions for the Record

At page 17 of the Director's testimony, you note that, in October 1998, the ATF adopted a focused inspection policy that steers more investigative resources toward problematic Federal Firearms Licensees (FFLs). I believe that the focused inspections policy is a good one and that it is working well.

Question H331: Do you have all of the legal authority that you believe that you need to address the problems that you encounter in your interactions with these problem FFL's or do you need additional legal authority?

Answer: Generally yes, however, under current law, the only civil remedy available for licensee violations (with the limited exception of a provision specific to certain Brady Act violations) is license revocation. Revocation of a license is not necessarily appropriate for every type of licensee violation. License suspensions and civil penalties authority would allow more discretion in licensee administrative actions.

Question H332: If you need additional authority, what legislative recommendations will you be proposing to deal with problem FFL's?

Answer: As stated previously, license suspensions and civil penalties authority would allow more discretion in licensee administrative actions.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 5/14/2001 1:20:42 PM
Subject: : POTUS USA Meeting

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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
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Short prep session tomorrow at 9:45, Judge's office.
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;G. Timothy Saunders/WHO/EOP@EOP [WHO] <G. Timothy Saunders>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>
Sent: 5/15/2001 5:59:37 AM
Subject: : BNA story

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###### Begin Original ARMS Header ######
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READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:G. Timothy Saunders ( CN=G. Timothy Saunders/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Katja Bullock ( CN=Katja Bullock/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

---------------------- Forwarded by Rachel L. Brand/WHO/EOP on 05/15/2001
09:58 AM ---------------------------



Terry L Draver <DraverT@gao.gov>
05/15/2001 08:19:37 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP
cc: Victor B Goddard <GoddardV@GAO.GOV>
Subject: Fwd: BNA
```

Rachel,

Here is the BNA article reporting on your March 21 memo. Also, I will be in Chicago later today and tomorrow, so if the 210-day violation letter regarding the Museum is signed, Bruce Goddard (512-8237) will fax it to you and to the Museum's General Counsel.

Terry

Terry L. Draver
U.S. General Accounting Office
441 G Street, N.W.
Room 2908
Washington, D.C. 20548
(202) 512-5815 (Voice)
(202) 512-4516 (Fax)
E-Mail: dravert@gao.gov

Date: Tue, 15 May 2001 06:41:41 -0400
From: "Curtis W Copeland" <CopelandC@GAO.GOV>
Subject: BNA
To: "Terry L Draver" <DraverT@GAO.GOV>
MIME-version: 1.0
Content-type: text/plain; charset=ISO-8859-1
Content-disposition: inline
Content-transfer-encoding: quoted-printable

No. 94
Tuesday May 15, 2001
Page A-11
ISSN 1523-567X
Regulation, Law & Economics

Government Operations
White House Memo Sets Procedures
For Complying With Law on Vacancies

Despite early problems with filling vacancies in top-level government positions, the Bush administration is taking steps to comply with the 1998 law that limits the length of time that jobs can be filled by an "acting" official.

A White House memorandum sent in late March to the heads of all federal departments and agencies sets forth the first formal process for compliance with the 1998 Vacancies Reform Act, according to officials familiar with the law's requirements.

The memo from White House Counsel Alberto Gonzales directs that the general counsel of each agency is responsible for determining which positions are subject to the requirements of the Vacancies Act. The general counsel or agency head then is responsible for determining which covered positions are vacant, and for which of the positions acting officers have been designated or nominations have been submitted to the Senate. Standard reporting forms prepared by the General Accounting Office should be completed for all vacancies and submitted immediately to Congress and the GAO, the White House memo says.

The GAO is responsible for monitoring compliance with the Vacancies Act. The White House memo recently was provided to BNA by an official at the GAO.

The Vacancies Act was adopted by Congress to provide rules governing the designation of officials serving temporarily in nearly 500 top government jobs that require a presidential nomination and Senate confirmation. In most cases, the law limits temporary appointments to these top-level, executive branch jobs to no more than 300 days in a new presidential administration.

With the advent of the Bush administration, hundreds of top-level federal jobs have not yet been filled by presidential appointments. According to news reports, the Bush White House has moved more slowly than other recent administrations to fill positions below the Cabinet level. The administration could face a deadline of mid-November to fill these jobs under the Vacancies Act.

A February GAO letter to the Senate Governmental Affairs Committee outlined the requirements of the Vacancies Reform Act. GAO said that, if the president has made no nomination of someone to hold the job permanently by the 300-day deadline, an acting official may be legally barred from continuing in his or her post. Exceptions to this requirement include appointments to federal commissions, such as the Federal Election Commission and the Federal Communications Commission.

The law also sets specific eligibility requirements for persons filling presidentially-appointed positions on a temporary basis.

By Kenneth P. Doyle

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From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: daniel j. bartlett/who/eop@eop [WHO] <daniel j. bartlett>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 5/15/2001 10:44:25 AM
Subject: : Re: Release of names on California bipartisan selection committees

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-MAY-2001 14:44:25.00
SUBJECT:: Re: Release of names on California bipartisan selection committees
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:daniel j. bartlett ( CN=daniel j. bartlett/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I suggest we all huddle for a few minutes on this one. Seems to me
conservatives might not like to see this but I also see the merit in
promoting the President's bipartisanship. Can we huddle tomorrow sometime
or even later today?




Bradford A. Berenson
05/15/2001 02:41:52 PM
Record Type: Record

To: Daniel J. Bartlett/WHO/EOP@EOP, James R. Wilkinson/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R.
Gonzales/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
Subject: Release of names on California bipartisan selection
committees

By the end of this week, the lists of Republican and Democratic members of
the California bipartisan judicial selection committees for district
courts will be finalized. Some sort of announcement of the membership is
probably in order. We (the White House) could do some sort of a joint
press release with the Democratic Senators, we could provide the lists to
a couple favored reporters out in California, we could have Gerry Parsky
provide the information to the press either orally on in writing, or we
could do nothing and leave it to the Senators.

Would you please advise us on how, if at all, you would like this
announcement to be made when it's ready? Thanks very much.
```

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/15/2001 7:09:27 AM
Subject: : LRM AMB14 - - OMB Request for Views on HR617 To express the policy of the United States regarding the United States relationship with Native Hawaiian government and the recognition by the United States of the Native Hawaiian government.
Attachments: P_XHEY1004_WHO.TXT_1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAY-2001 11:09:27.00
SUBJECT:: LRM AMB14 - - OMB Request for Views on HR617 To express the policy of the United States regarding the United States relationship with Native Hawaiian government and the recognition by the United States of the Native Hawaiian government.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 05/15/2001 11:09 AM ----------

From: Anna M. Briatico on 05/15/2001 11:05:35 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: John D. Burnim/OMB/EOP@EOP, James J. Jukes/OMB/EOP@EOP
Subject: LRM AMB14 - - OMB Request for Views on HR617 To express the policy of the United States regarding the United States relationship with Native Hawaiian government and the recognition by the United States of the Native Hawaiian government.

Please note that H.R. 617 is scheduled for markup by the H. Resources Committee tomorrow, May 16th. (In the event that the H. Resources Committee amends the bill during the markup, I will forward the amended language promptly.)

Please forward your agency's comments on the bill. (Please note that these comments may be in the form of a draft agency views letter to the Committee if your agency would like to pursue this option.) Thanks.
---------- Forwarded by Anna M. Briatico/OMB/EOP on 05/15/2001 10:54 AM ----------
LRM ID: AMB14
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, May 15, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: John D. Burnim (for) Assistant Director for Legislative Reference
OMB CONTACT: Anna M. Briatico
PHONE: (202)395-7301 FAX: (202)395-5691
SUBJECT: OMB Request for Views on HR617 To express the policy of the United States regarding the United States relationship with Native Hawaiian government and the recognition by the United States of the Native Hawaiian government.

DEADLINE: COB Thursday, May 17, 2001
In accordance with OMB Circular A-19, OMB requests the views of your

agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please note that H.R. 617 is scheduled for markup by the H. Resources Committee tomorrow, May 16th. (In the event that the H. Resources Committee amends the bill during the markup, I will forward the amended language promptly.)

Please forward your agency's comments on the bill. (Please note that these comments may be in the form of a draft agency views letter to the Committee if your agency would like to pursue this option.) Thanks.

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Brett S. Loper
Danielle M. Simonetta
Roland N. Litterst
Jay P. Lefkowitz
Allison L. Riepenhoff
Kristine Simmons
LRM ID: AMB14 SUBJECT: OMB Request for Views on HR617 To express the policy of the United States regarding the United States relationship with Native Hawaiian government and the recognition by the United States of the Native Hawaiian government.
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Anna M. Briatico Phone: 395-7301 Fax: 395-5691
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-6194

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Marcus Peacock/OMB/EOP@EOP
Robert S. Fairweather/OMB/EOP@EOP
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valrm@mail.va.gov @ inet
James M. Kulikowski/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XHEY1004_WHO.TXT_1>

I

107TH CONGRESS
1ST SESSION

H. R. 617

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2001

Mr. ABERCROMBIE (for himself, Mrs. MINK of Hawaii, Mr. KILDEE, Mr. FALEOMAVAEGA, Mr. YOUNG of Alaska, Mr. HANSEN, and Mr. RAHALL) introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress makes the following findings:

REV_00126433

(1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is now part of the United States, are indigenous, native people of the United States.

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became

REV_00126434

the State of Hawaii to address the conditions of Native Hawaiians.

(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.

(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress established the Ceded Lands Trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to es-

REV_00126435

tablish and maintain native settlements and distinct native communities throughout the State.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

(11) Native Hawaiians have maintained other distinctly native areas in Hawaii.

(12) On November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii.

(13) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

REV_00126436

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

(15) Despite the overthrow of the Hawaiian government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

(16) Native Hawaiians also maintain a distinct Native Hawaiian community through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native lan-

REV_00126437

guage immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorga-

REV_00126438

nize a Native Hawaiian government for the purpose of giving expression to their rights as native people to self-determination and self-governance.

(20) The United States has declared that—

(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through the enactment of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86–3; 73 Stat. 4) by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust for 5 purposes, one of which is

REV_00126439

for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

(22) The United States continually has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique sta-

REV_00126440

tus as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.

SEC. 2. DEFINITIONS.

In this Act:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term ''aboriginal, indigenous, native people'' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

(2) ADULT MEMBERS.—The term ''adult members'' means those Native Hawaiians who have attained the age of 18 at the time the Secretary publishes the final roll, as provided in section 7(a)(3) of this Act.

(3) APOLOGY RESOLUTION.—The term ''Apology Resolution'' means Public Law 103–150 (107 Stat. 1510), a joint resolution offering an apology to

REV_00126441

Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893 overthrow of the Kingdom of Hawaii.

(4) CEDED LANDS.—The term ''ceded lands'' means those lands which were ceded to the United States by the Republic of Hawaii under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7, 1898 (30 Stat. 750), and which were later transferred to the State of Hawaii in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 4).

(5) COMMISSION.—The term ''Commission'' means the commission established in section 7 of this Act to certify that the adult members of the Native Hawaiian community contained on the roll developed under that section meet the definition of Native Hawaiian, as defined in paragraph (7)(A).

(6) INDIGENOUS, NATIVE PEOPLE.—The term ''indigenous, native people'' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(7) NATIVE HAWAIIAN.—

REV_00126442

(A) Prior to the recognition by the United States of a Native Hawaiian government under the authority of section 7(d)(2) of this Act, the term ''Native Hawaiian'' means the indigenous, native people of Hawaii who are the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian government under section 7(d)(2) of this Act, the term ''Native Hawaiian'' shall have the meaning given to such term in the organic governing documents of the Native Hawaiian government.

(8) NATIVE HAWAIIAN GOVERNMENT.—The term ''Native Hawaiian government'' means the citizens of the government of the Native Hawaiian peo-

REV_00126443

ple that is recognized by the United States under the authority of section 7(d)(2) of this Act.

(9) NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—The term ''Native Hawaiian Interim Governing Council'' means the interim governing council that is organized under section 7(c) of this Act.

(10) ROLL.—The term ''roll'' means the roll that is developed under the authority of section 7(a) of this Act.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(12) TASK FORCE.—The term ''Task Force'' means the Native Hawaiian Interagency Task Force established under the authority of section 6 of this Act.

SEC. 3. UNITED STATES POLICY AND PURPOSE.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;

(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution to enact legislation to address the con-

REV_00126444

ditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86–3; 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;

(C) the right to reorganize a Native Hawaiian government; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—It is the intent of Congress that the purpose of this Act is to provide a process for the reorganization of a Native Hawaiian government and for the rec-

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ognition by the United States of the Native Hawaiian government for purposes of continuing a government-to-government relationship.

SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN AFFAIRS.

(a) IN GENERAL.—There is established within the Office of the Secretary the United States Office for Native Hawaiian Affairs.

(b) DUTIES OF THE OFFICE.—The United States Office for Native Hawaiian Affairs shall—

(1) effectuate and coordinate the special trust relationship between the Native Hawaiian people and the United States through the Secretary, and with all other Federal agencies;

(2) upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, effectuate and coordinate the special trust relationship between the Native Hawaiian government and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by providing timely notice to, and consulting with the Native Hawaiian

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people prior to taking any actions that may affect traditional or current Native Hawaiian practices and matters that may have the potential to significantly or uniquely affect Native Hawaiian resources, rights, or lands, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian government by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian government prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Native Hawaiian Interagency Task Force, other Federal agencies, and with relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands;

(5) be responsible for the preparation and submittal to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives of an annual report detailing the activities of the Interagency

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Task Force established under section 6 of this Act that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian people and the Native Hawaiian government and providing recommendations for any necessary changes to existing Federal statutes or regulations promulgated under the authority of Federal law;

(6) be responsible for continuing the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, be responsible for continuing the process of reconciliation with the Native Hawaiian government; and

(7) assist the Native Hawaiian people in facilitating a process for self-determination, including but not limited to the provision of technical assistance in the development of the roll under section 7(a) of this Act, the organization of the Native Hawaiian Interim Governing Council as provided for in section 7(c) of this Act, and the recognition of the Native Hawaiian government as provided for in section 7(d) of this Act.

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(c) AUTHORITY.—The United States Office for Native Hawaiian Affairs is authorized to enter into a contract with or make grants for the purposes of the activities authorized or addressed in section 7 of this Act for a period of 3 years from the date of enactment of this Act.

SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REPRESENTATIVE.

The Attorney General shall designate an appropriate official within the Department of Justice to assist the United States Office for Native Hawaiian Affairs in the implementation and protection of the rights of Native Hawaiians and their political, legal, and trust relationship with the United States, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, in the implementation and protection of the rights of the Native Hawaiian government and its political, legal, and trust relationship with the United States.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—There is established an interagency task force to be known as the ''Native Hawaiian Interagency Task Force''.

(b) COMPOSITION.—The Task Force shall be composed of officials, to be designated by the President, from—

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(1) each Federal agency that establishes or implements policies that affect Native Hawaiians or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) the United States Office for Native Hawaiian Affairs established under section 4 of this Act; and

(3) the Executive Office of the President.

(c) LEAD AGENCIES.—The Department of the Interior and the Department of Justice shall serve as the lead agencies of the Task Force, and meetings of the Task Force shall be convened at the request of either of the lead agencies.

(d) CO-CHAIRS.—The Task Force representative of the United States Office for Native Hawaiian Affairs established under the authority of section 4 of this Act and the Attorney General's designee under the authority of section 5 of this Act shall serve as co-chairs of the Task Force.

(e) DUTIES.—The responsibilities of the Task Force shall be—

(1) the coordination of Federal policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government which may sig-

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nificantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) to assure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon recognition of the Native Hawaiian government by the United States as provided in section 7(d)(2) of this Act, consultation with the Native Hawaiian government; and

(3) to assure the participation of each Federal agency in the development of the report to Congress authorized in section 4(b)(5) of this Act.

SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL, FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL AND A NATIVE HAWAIIAN GOVERNMENT, AND FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.

(a) ROLL.—

(1) PREPARATION OF ROLL.—The United States Office for Native Hawaiian Affairs shall assist the adult members of the Native Hawaiian community who wish to participate in the reorganization of a Native Hawaiian government in preparing a roll

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for the purpose of the organization of a Native Hawaiian Interim Governing Council. The roll shall include the names of the—

(A) adult members of the Native Hawaiian community who wish to become citizens of a Native Hawaiian government and who are—

(i) the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago; or

(ii) Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or their lineal descendants; and

(B) the children of the adult members listed on the roll prepared under this subsection.

(2) CERTIFICATION AND SUBMISSION.—

(A) COMMISSION.—

(i) IN GENERAL.—There is authorized to be established a Commission to be composed of 9 members for the purpose of certifying that the adult members of the Na-

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tive Hawaiian community on the roll meet the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act.

(ii) MEMBERSHIP.—

(I) APPOINTMENT.—The Secretary shall appoint the members of the Commission in accordance with subclause (II). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(II) REQUIREMENTS.—The members of the Commission shall be Native Hawaiian, as defined in section 2(7)(A) of this Act, and shall have expertise in the certification of Native Hawaiian ancestry.

(III) CONGRESSIONAL SUBMISSION OF SUGGESTED CANDIDATES.—In appointing members of the Commission, the Secretary may choose such members from among—

(aa) five suggested candidates submitted by the Majority Leader of the Senate and the

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Minority Leader of the Senate from a list of candidates provided to such leaders by the Chairman and Vice Chairman of the Committee on Indian Affairs of the Senate; and

(bb) four suggested candidates submitted by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives from a list provided to the Speaker and the Minority Leader by the Chairman and Ranking member of the Committee on Resources of the House of Representatives.

(iii) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

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(B) CERTIFICATION.—The Commission shall certify that the individuals listed on the roll developed under the authority of this subsection are Native Hawaiians, as defined in section 2(7)(A) of this Act.

(3) SECRETARY.—

(A) CERTIFICATION.—The Secretary shall review the Commission's certification of the membership roll and determine whether it is consistent with applicable Federal law, including the special trust relationship between the United States and the indigenous, native people of the United States.

(B) PUBLICATION.—Upon making the determination authorized in subparagraph (A), the Secretary shall publish a final roll.

(C) APPEAL.—

(i) ESTABLISHMENT OF MECHANISM.—The Secretary is authorized to establish a mechanism for an appeal of the Commission's determination as it concerns—

(I) the exclusion of the name of a person who meets the definition of

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Native Hawaiian, as defined in section 2(7)(A) of this Act, from the roll; or

(II) a challenge to the inclusion of the name of a person on the roll on the grounds that the person does not meet the definition of Native Hawaiian, as so defined.

(ii) PUBLICATION; UPDATE.—The Secretary shall publish the final roll while appeals are pending, and shall update the final roll and the publication of the final roll upon the final disposition of any appeal.

(D) FAILURE TO ACT.—If the Secretary fails to make the certification authorized in subparagraph (A) within 90 days of the date that the Commission submits the membership roll to the Secretary, the certification shall be deemed to have been made, and the Commission shall publish the final roll.

(4) EFFECT OF PUBLICATION.—The publication of the final roll shall serve as the basis for the eligibility of adult members listed on the roll to participate in all referenda and elections associated with the organization of a Native Hawaiian Interim Gov-

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erning Council and the Native Hawaiian government.

(b) RECOGNITION OF RIGHTS.—The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

(c) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—

(1) ORGANIZATION.—The adult members listed on the roll developed under the authority of subsection (a) are authorized to—

(A) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;

(B) determine the structure of the Native Hawaiian Interim Governing Council; and

(C) elect members to the Native Hawaiian Interim Governing Council.

(2) ELECTION.—Upon the request of the adult members listed on the roll developed under the authority of subsection (a), the United States Office for Native Hawaiian Affairs may assist the Native Hawaiian community in holding an election by secret ballot (absentee and mail balloting permitted), to

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elect the membership of the Native Hawaiian Interim Governing Council.

(3) POWERS.—

(A) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to represent those on the roll in the implementation of this Act and shall have no powers other than those given to it in accordance with this Act.

(B) FUNDING.—The Native Hawaiian Interim Governing Council is authorized to enter into a contract or grant with any Federal agency, including but not limited to, the United States Office for Native Hawaiian Affairs within the Department of the Interior and the Administration for Native Americans within the Department of Health and Human Services, to carry out the activities set forth in subparagraph (C).

(C) ACTIVITIES.—

(i) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to conduct a referendum of the adult members listed on the roll developed under the authority of subsection (a) for the pur-

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pose of determining (but not limited to) the following:

(I) The proposed elements of the organic governing documents of a Native Hawaiian government.

(II) The proposed powers and authorities to be exercised by a Native Hawaiian government, as well as the proposed privileges and immunities of a Native Hawaiian government.

(III) The proposed civil rights and protection of such rights of the citizens of a Native Hawaiian government and all persons subject to the authority of a Native Hawaiian government.

(ii) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based upon the referendum, the Native Hawaiian Interim Governing Council is authorized to develop proposed organic governing documents for a Native Hawaiian government.

(iii) DISTRIBUTION.—The Native Hawaiian Interim Governing Council is authorized to distribute to all adult members

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of those listed on the roll, a copy of the proposed organic governing documents, as drafted by the Native Hawaiian Interim Governing Council, along with a brief impartial description of the proposed organic governing documents.

(iv) CONSULTATION.—The Native Hawaiian Interim Governing Council is authorized to freely consult with those members listed on the roll concerning the text and description of the proposed organic governing documents.

(D) ELECTIONS.—

(i) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to hold elections for the purpose of ratifying the proposed organic governing documents, and upon ratification of the organic governing documents, to hold elections for the officers of the Native Hawaiian government.

(ii) ASSISTANCE.—Upon the request of the Native Hawaiian Interim Governing Council, the United States Office of Native

REV_00126460

Hawaiian Affairs may assist the Council in conducting such elections.

(4) TERMINATION.—The Native Hawaiian Interim Governing Council shall have no power or authority under this Act after the time at which the duly elected officers of the Native Hawaiian government take office.

(d) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.—

(1) PROCESS FOR RECOGNITION.—

(A) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—The duly elected officers of the Native Hawaiian government shall submit the organic governing documents of the Native Hawaiian government to the Secretary.

(B) CERTIFICATIONS.—Within 90 days of the date that the duly elected officers of the Native Hawaiian government submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) were adopted by a majority vote of the adult members listed on the roll prepared under the authority of subsection (a);

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(ii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States;

(iii) provide for the exercise of those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the indigenous, native people of the United States;

(iv) provide for the protection of the civil rights of the citizens of the Native Hawaiian government and all persons subject to the authority of the Native Hawaiian government, and to assure that the Native Hawaiian government exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302);

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian government without the consent of the Native Hawaiian government;

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(vi) establish the criteria for citizenship in the Native Hawaiian government; and

(vii) provide authority for the Native Hawaiian government to negotiate with Federal, State, and local governments, and other entities.

(C) FAILURE TO ACT.—If the Secretary fails to act within 90 days of the date that the duly elected officers of the Native Hawaiian government submitted the organic governing documents of the Native Hawaiian government to the Secretary, the certifications authorized in subparagraph (B) shall be deemed to have been made.

(D) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH FEDERAL LAW.—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian government along with a justifica-

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tion for each of the Secretary's findings as to why the provisions are not consistent with such law.

(ii) AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNMENT.—If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian government by the Secretary under clause (i), the duly elected officers of the Native Hawaiian government shall—

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with subparagraphs (B) and (C).

(2) FEDERAL RECOGNITION.—

(A) RECOGNITION.—Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian government and the certifications (or deemed certifications) by the Secretary authorized in paragraph (1), Fed-

REV_00126464

eral recognition is hereby extended to the Native Hawaiian government as the representative governing body of the Native Hawaiian people.

(B) NO DIMINISHMENT OF RIGHTS OR PRIVILEGES.—Nothing contained in this Act shall diminish, alter, or amend any existing rights or privileges enjoyed by the Native Hawaiian people which are not inconsistent with the provisions of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the activities authorized in this Act.

SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of Native Hawaiians contained in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

(b) NEGOTIATIONS.—Upon the Federal recognition of the Native Hawaiian government pursuant to section 7(d)(2) of this Act, the United States is authorized to negotiate and enter into an agreement with the State of Ha-

REV_00126465

waii and the Native Hawaiian government regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of enactment of this Act to the Native Hawaiian government.

SEC. 10. DISCLAIMER.

Nothing in this Act is intended to serve as a settlement of any claims against the United States, or to affect the rights of the Native Hawaiian people under international law.

SEC. 11. REGULATIONS.

The Secretary is authorized to make such rules and regulations and such delegations of authority as the Secretary deems necessary to carry out the provisions of this Act.

SEC. 12. SEVERABILITY.

In the event that any section or provision of this Act, or any amendment made by this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and the amendments made by this Act, shall continue in full force and effect.

○

REV_00126466

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;alberto r. gonzales/who /eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>
Sent: 5/15/2001 8:51:08 AM
Subject: : Re: CALL YOUR NOMINEES RE ABA

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-MAY-2001 12:51:08.00
SUBJECT:: Re: CALL YOUR NOMINEES RE ABA
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The ABA already knows that they won't be getting the ABA questionnaire
back from our nominees, so they don't need to respond at all.




Noel J. Francisco
05/15/2001 12:41:02 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: CALL YOUR NOMINEES RE ABA
```

How should the candidates respond to the letters from the ABA requesting that they complete the ABA questionairre? Also, should the candidate forward the Senate questionnaire to the ABA, or will we do it, or will the ABA get it from the Senate?

Brett M. Kavanaugh
05/15/2001 10:39:18 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: CALL YOUR NOMINEES RE ABA

If you have one of the first 11 nominees, please call and tell him or her not to fill out the ABA questionnaire, as we have communicated to the ABA our view that the Senate questionnaire will suffice for the needs of the ABA or any other group. (The ABA agrees.) As to interviews by the ABA, tell the nominees that our policy is not yet decided.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

Message Copied
To:_____
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
bradford a. berenson/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jason B. Torchinsky/WHO /EOP@EOP [WHO] <Jason B. Torchinsky>
CC: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 5/15/2001 10:37:43 AM
Subject: : Next week's nominees

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-MAY-2001 14:37:43.00
SUBJECT:: Next week's nominees
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

For next week's nominees, in addition to the talking points I know you
guys are already collating, we're also going to need the contact list for
the press office and DOJ. Please add to your to-do list compiling the
same type of contact info for WHC, DOJ, and nominees that you compiled for
the last group. Thanks.
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;jason b. torchinsky/who /eop@eop [WHO] <jason b. torchinsky>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>
Sent: 5/15/2001 10:53:10 AM
Subject: : Re: Next week's nominees

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-MAY-2001 14:53:10.00
SUBJECT:: Re: Next week's nominees
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If by "contact info" you are referring to either 3d party supporters or
contact info for the nominee himself or herself, that is covered on the
spreadsheet I sent around, and Brent and Jason are aware that they need to
collect it. If you mean something else, please explain, because I am not
sure what you would be referring to.




Bradford A. Berenson
05/15/2001 02:37:38 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP, Jason B.
Torchinsky/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Next week's nominees

For next week's nominees, in addition to the talking points I know you
guys are already collating, we're also going to need the contact list for
the press office and DOJ. Please add to your to-do list compiling the
same type of contact info for WHC, DOJ, and nominees that you compiled for
the last group. Thanks.


Message Copied
```

To:_____
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2001 7:02:31 AM
Subject: : URGENT: FINAL CLEARANCE- SAP- H.R. 1836- Economic Growth and Tax Relief Reconciliation Act
Attachments: P_B35Z1004_WHO.TXT_1.rtf; P_B35Z1004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-MAY-2001 11:02:31.00
SUBJECT:: URGENT: FINAL CLEARANCE- SAP- H.R. 1836- Economic Growth and Tax Relief Reconciliation Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think this was directed to me in error. The body of the document lists you as the Counsel contact.
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 05/16/2001 11:02 AM ----------

Danielle M. Simonetta
05/16/2001 10:57:44 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: URGENT: FINAL CLEARANCE- SAP- H.R. 1836- Economic Growth and Tax Relief Reconciliation Act

Here is the SAP on H.R. 1836 for your clearance. Most of you have responded with sign off to the original version that was sent around by Lisa Macevic in LRD. However, Treasury has added a paragraph- which is really just a talking point- therefore, please respond to me ASAP, and no later than 12:30 pm, TODAY. This bill will be considered on the floor of the House today, possibly as early as 12:30-1 pm. FYI- The text of the bill is the same as the text of H.R. 3 - except that this bill is designated as a reconciliation bill. If you have any questions, please call me (54790).
Thanks,
Danielle

Message Sent
To:_____
Kristen Silverberg/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Nicholas E. Calio/WHO/EOP@EOP
John W. Howard/WHO/EOP@EOP
David W. Hobbs/WHO/EOP@EOP
Virginia T. Gregory/WHO/EOP@EOP
Christal R. West/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
Carol J. Thompson/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
John M. Ackerly/OPD/EOP@EOP
Emily Willeford/OPD/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Carlos E. Bonilla/OPD/EOP@EOP
Cesar Conda/OVP/EOP@EOP

Marie K. Fishpaw/OVP/EOP@EOP
Stephen S. Ruhlen/OVP/EOP@EOP
Lauren K. Allgood/OVP/EOP@EOP
Nancy P. Dorn/WHO/EOP@EOP
Jay P. Lefkowitz/OMB/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B35Z1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B35Z1004_WHO.TXT_2>

DRAFT – DO NOT RELEASE1

May 16, 2001
(House)

H.R. 1836 – Economic Growth and Tax Relief Reconciliation Act of 2001
(Rep. Thomas (R) California)

The Administration supports House passage of H.R. 1836 as a positive step on the way to passage of the President's tax relief plan. By reducing marginal tax rates, this bill would reduce the penalty on work, savings, and investment, begin the process of providing much needed immediate tax relief to the American people, and lay a foundation for further long-term economic growth.
par
No one should be forced to pay more than a third of what they earn in taxes. In fact, 77 percent of the tax relief associated with cutting the top rate in H.R. 1836 would go to small business owners and entrepreneurs – the engines of growth in our economy.

The Administration looks forward to working with Congress through the legislative process to achieve a result that best embodies the objectives and priorities of the President's plan.

Pay-As-You-Go Scoring

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, H.R. 1836 or any substitute amendment in lieu thereof, that would also reduce revenues, will be subject to the pay-as-you-go requirement. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

* * * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Kho), in consultation with the Department of the Treasury (Chris Smith), WH Counsel (Kavanaugh), OVP (Conda), and CEA (Furchtgott-Roth).

The following did not respond to our request for views: WH/LA, NEC, EP, BRD, EIML, and HTF.

OMB/LA Clearance:

Administration Position to Date

H.R. 1836 is identical to H.R. 3, the Economic Growth and Tax Relief Act of 2001, which was passed by the House on March 8, 2001. A Statement of Administration Policy on H.R. 3 was sent to the House on March 8, 2001, stating that the Administration supports the bill as a "very positive first step" to achieving the objectives of the President's tax relief plan.

Summary of H.R. 1836

H.R. 1836 would create a new initial income tax rate bracket and consolidate the five current income tax rates into four by 2006.

New Low Income Tax Rate Bracket. H.R. 1836 would create a new income tax bracket for a portion of taxable income that is currently taxed at 15 percent. The new initial bracket would cover taxable income up to $6,000 for single individuals, up to $10,000 for heads of households, and up to $12,000 for married couples filing joint returns. The lower rate for the new bracket would be phased in as follows:

-- for taxable years beginning in calendar years 2001 and 2002, 12 percent;
-- for taxable years beginning in calendar years 2003, 2004, and 2005, 11 percent; and
-- for taxable years beginning in calendar year 2006, 10 percent.

The taxable income levels for the new low-rate bracket would be adjusted annually for inflation for taxable years beginning after December 31, 2006.

The current 15-percent income tax bracket would be adjusted to start at the end of the new low-rate income tax bracket. The 15-percent income tax bracket would end at the same level as under current law. (Treasury estimated revenue effect for FY 2001: -$4.9 billion; FY 2002: -$36.3 billion; FYs 2001-2005: -$172.9 billion; FYs 2001-2011: -$374.9 billion.)

Reduction of Other Tax Rates and Consolidation of Rate Brackets
plain . Beginning in calendar year 2002, H.R. 1836 would begin to phase in reductions to the four highest income tax rates. H.R. 1836 would consolidate the number of rate brackets from five (15 percent, 28 percent, 31 percent, 36 percent, and 39.6 percent) to four by calendar year 2006.

H.R. 1836 would phase down the current income tax rates of 28 percent and 31 percent to 25 percent over five years. The taxable income level for the new 25-percent rate bracket would begin at the level at which the 28-percent rate bracket begins under the current law and end at the level at which the 31-percent rate bracket ends under the current law.

H.R. 1836 would phase down the current income tax rates of 36 percent and 39.6 percent to 33 percent over five years. The taxable income level for the new 33-percent rate bracket would begin at the level at which the 36-percent rate bracket begins under the current law.r
The table below shows the schedule for the income tax rate reductions.

For taxable years beginning during calendar year: 956 brdrs	The corresponding percentages would be substituted for the following percentages:			
	39.6%			
	3 6 %			
2002	27%	30%	35%	38%
2003	27%	29%	35%	37%
2004	26%	28%	34%	36%
2005	26%	27%	34%	35%
rdrs2006 and later	25%	25%	33%	33%

(Treasury estimated revenue effect for FY2002: -$11.7 billion; FYs 2002-2006: -$165.1 billion; FYs 2002-2011: -$499.8 billion.)

Other Provisions of H.R. 1836. The bill would repeal the current-law provisions that offset the refundable child credit (for families with three or more children) and the earned income credit by the amount of the alternative minimum tax (AMT) for taxpayers subject to the AMT. (Treasury estimated revenue effect for FY 2002: -$45 million; FYs 2002-2006: -$1.7 billion; FYs 2002-2011: -$7.3 billion.)

The bill would also specify that transfers of income taxes to any of the trust funds under the Social Security Act would continue as under current law. This provision of the bill would ensure that the long-term financial condition of the Social Security and Medicare trust funds would not be affected by enactment of the bill.

H.R. 1836 would require the Treasury to implement regulations revising wage withholding tables to reflect the rate reduction for calendar year 2001 such that the tables could be applied to amounts paid after the 60th day following enactment of this bill.
Pay-As-You-Go Scoring

As noted above, H.R. 1836 is identical to H.R. 3. According to BASD (Barth), H.R. 3 could

affect receipts; therefore, it would be subject to the pay-as-you-go requirements of the Omnibus Reconciliation Act of 1990. The Treasury Department estimates that H.R. 3 would have a net budget cost of $4.9 billion in FY 2001, $48.0 billion in FY 2002, $339.8 billion over six years, FY 2001-2006, and $881.9 billion over eleven years, FY 2001-2011.r

LEGISLATIVE REFERENCE DIVISION
May 16, 2001

REV_00126530

DRAFT – DO NOT RELEASE

May 16, 2001
(House)

H.R. 1836 – Economic Growth and Tax Relief Reconciliation Act of 2001

(Rep. Thomas (R) California)

The Administration supports House passage of H.R. 1836 as a positive step on the way to passage of the President's tax relief plan. By reducing marginal tax rates, this bill would reduce the penalty on work, savings, and investment, begin the process of providing much needed immediate tax relief to the American people, and lay a foundation for further long-term economic growth.

No one should be forced to pay more than a third of what they earn in taxes. In fact, 77 percent of the tax relief associated with cutting the top rate in H.R. 1836 would go to small business owners and entrepreneurs – the engines of growth in our economy.

The Administration looks forward to working with Congress through the legislative process to achieve a result that best embodies the objectives and priorities of the President's plan.

Pay-As-You-Go Scoring

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, H.R. 1836 or any substitute amendment in lieu thereof, that would also reduce revenues, will be subject to the pay-as-you-go requirement. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

* * * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Kho), in consultation with the Department of the Treasury (Chris Smith), WH Counsel (Kavanaugh), OVP (Conda), and CEA (Furchtgott-Roth).

The following did not respond to our request for views: WH/LA, NEC, EP, BRD, EIML, and HTF.

OMB/LA Clearance:

Administration Position to Date

H.R. 1836 is identical to H.R. 3, the Economic Growth and Tax Relief Act of 2001, which was passed by the House on March 8, 2001. A Statement of Administration Policy on H.R. 3 was sent to the House on March 8, 2001, stating that the Administration supports the bill as a "very positive first step" to achieving the objectives of the President's tax relief plan.

Summary of H.R. 1836

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-- for taxable years beginning in calendar years 2001 and 2002, 12 percent;
-- for taxable years beginning in calendar years 2003, 2004, and 2005, 11 percent; and
-- for taxable years beginning in calendar year 2006, 10 percent.

The taxable income levels for the new low-rate bracket would be adjusted annually for inflation for taxable years beginning after December 31, 2006.

The current 15-percent income tax bracket would be adjusted to start at the end of the new low-rate income tax bracket. The 15-percent income tax bracket would end at the same level as under current law. (Treasury estimated revenue effect for FY 2001: -$4.9 billion; FY 2002: -$36.3 billion; FYs 2001-2005: -$172.9 billion; FYs 2001-2011: -$374.9 billion.)

Reduction of Other Tax Rates and Consolidation of Rate Brackets. Beginning in calendar year 2002, H.R. 1836 would begin to phase in reductions to the four highest income tax rates. H.R. 1836 would consolidate the number of rate brackets from five (15 percent, 28 percent, 31 percent, 36 percent, and 39.6 percent) to four by calendar year 2006.

H.R. 1836 would phase down the current income tax rates of 28 percent and 31 percent to 25 percent over five years. The taxable income level for the new 25-percent rate bracket would begin at the level at which the 28-percent rate bracket begins under the current law and end at the level at which the 31-percent rate bracket ends under the current law.

H.R. 1836 would phase down the current income tax rates of 36 percent and 39.6 percent to 33 percent over five years. The taxable income level for the new 33-percent rate bracket would begin at the level at which the 36-percent rate bracket begins under the current law.

The table below shows the schedule for the income tax rate reductions.

For taxable years beginning during calendar year:	The corresponding percentages would be substituted for the following percentages:			
	28%	31%	36%	39.6%
2002	27%	30%	35%	38%
2003	27%	29%	35%	37%
2004	26%	28%	34%	36%
2005	26%	27%	34%	35%
2006 and later	25%	25%	33%	33%

(Treasury estimated revenue effect for FY2002: -$11.7 billion; FYs 2002-2006: -$165.1 billion; FYs 2002-2011: -$499.8 billion.)

Other Provisions of H.R. 1836. The bill would repeal the current-law provisions that offset the refundable child credit (for families with three or more children) and the earned income credit by the amount of the alternative minimum tax (AMT) for taxpayers subject to the AMT. (Treasury estimated revenue effect for FY 2002: -$45 million; FYs 2002-2006: -$1.7 billion; FYs 2002-2011: -$7.3 billion.)

The bill would also specify that transfers of income taxes to any of the trust funds under the Social Security Act would continue as under current law. This provision of the bill would ensure that the long-term financial condition of the Social Security and Medicare trust funds would not be affected by enactment of the bill.

H.R. 1836 would require the Treasury to implement regulations revising wage withholding tables to reflect the rate reduction for calendar year 2001 such that the tables could be applied to amounts paid after the 60th day following enactment of this bill.

Pay-As-You-Go Scoring

As noted above, H.R. 1836 is identical to H.R. 3. According to BASD (Barth), H.R. 3 could affect receipts; therefore, it would be subject to the pay-as-you-go requirements of the Omnibus Reconciliation Act of 1990. The Treasury Department estimates that H.R. 3 would have a net budget cost of $4.9 billion in FY 2001, $48.0 billion in FY 2002, $339.8 billion over six years, FY 2001-2006, and $881.9 billion over eleven years, FY 2001-2011.

LEGISLATIVE REFERENCE DIVISION
May 16, 2001

REV_00126534

From: CN=Danielle M. Simonetta/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2001 8:31:05 AM
Subject: : Re: URGENT: FINAL CLEARANCE- SAP- H.R. 1836- Economic Growth and Tax Relief Reconciliation Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Danielle M. Simonetta (CN=Danielle M. Simonetta/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:16-MAY-2001 12:31:05.00
SUBJECT:: Re: URGENT: FINAL CLEARANCE- SAP- H.R. 1836- Economic Growth and Tax Relief Reconciliation Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks Brett.

From: CN=Jayne H. Chambers/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2001 10:45:48 AM
Subject: : Autographed picture restrictions

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jayne H. Chambers ( CN=Jayne H. Chambers/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:16-MAY-2001 14:45:48.00
SUBJECT:: Autographed picture restrictions
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, Janet Walker suggested that I contact you. Larry Lindsey has had
several requests for signed photographs. In one case, the person intends
to put the photo in a museum. Are there any restrictions on sending
autographed photos for a "commercial" enterprise such as a museum?

Thanks for your help.
Jayne Chambers
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The Honorable Dan Burton
Chairman, Committee on Government Reform
House of Representatives
Washington, DC 20515-6143

DRAFT 5/16/01 2:55PM

Dear Mr. Chairman:

I am writing in order to express the views of the National Archives and Records Administration (NARA) regarding H.R. 577, the bill on the disclosure of contributions to Presidential library foundations, as amended by the House Government Reform Committee's Subcommittee on Government Efficiency on May 8, 2001. While NARA did not take a position on this legislation as introduced, for the reasons cited below, NARA opposes the substitute amendment adopted by the Subcommittee. NARA has two critical problems with the way the legislation is currently crafted and would oppose the bill as now constructed.

First, it is NARA's understanding that the bill's original intent was to address the threat posed by contributions to a Presidential library foundation as a means to curry favor with a sitting president. The bill's sponsor stated that he introduced the bill "because I felt the public should be aware of possible conflicts of interest that sitting presidents can have while raising funds for their libraries." However, the substitute amendment would require organizations that raise funds for presidential libraries of current and former Presidents to disclose the amounts and sources of those contributions to Congress and the administration every year. It also would require the National Archives and Records Administration to make that information available to the public on the Internet. Given the amount of resources, paperwork, time, and energy that the implementation of this provision would require from the National Archives and ten presidential library foundations, we strongly urge that the legislation limit the disclosure of information to contributions to the library foundation for the future library of a sitting President.

Second, the substitute amendment would require NARA to promulgate regulations to implement the bill and, as previously noted, to disclose contributions given to presidential library foundations to the public. NARA views itself as a close partner with the presidential library foundations and has virtually the same goals as these entities. Given our close working relationship with these groups, NARA is concerned that this new regulatory and oversight role might be construed as creating a conflict of interest for the agency. Therefore, we strongly urge the Committee to consider another agency (perhaps the Federal Elections Commission) to carry out these responsibilities. While it would seem odd to have such a Commission involved if the scope of the bill continued to include the library foundation for the library of a former President, it would not be so if the contributions in question were limited to the future library of a current President and handled much the same as the disclosure of campaign contributions.

NARA supports the logic of the $5,000 dollar threshold established by the substitute amendment based on the potential burden posed by any lower amount and the fact that this would create a uniformity with IRS reporting requirements for foundations. However, we repeat our concern

over including existing libraries in this disclosure requirement. Under this requirement, these institutions face the possibility of losing contributions, because many donors desire personal privacy and wish to protect their right to give money anonymously -- a right offered by every competing private museum in the country.

In summary, NARA opposes H.R. 577 in its current form and stands ready to provide the Committee any additional information or assistance required. If we may be of further assistance, please contact John Constance at (301)713-7340.

Sincerely,

JOHN W. CARLIN
Archivist of the United States

Cc: The Honorable Henry Waxman

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/17/2001 5:55:06 AM
Subject: : Re: red tag

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-MAY-2001 09:55:06.00
SUBJECT:: Re: red tag
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I gave it to Brett (because his name was mentioned in the materials).

Lori L. Lorenzi
05/17/2001 08:51:16 AM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: red tag

Courtney, please ignore red tag that I delivered this morning.

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/17/2001 8:37:05 AM
Subject: : For your files- SAP, S896- RELIEF Act
Attachments: P_WSZZ1004_WHO.TXT_1.rtf; P_WSZZ1004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-MAY-2001 12:37:05.00
SUBJECT:: For your files- SAP, S896- RELIEF Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 05/17/2001 12:36 PM ----------

Danielle M. Simonetta
05/17/2001 12:28:01 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: For your files- SAP, S896- RELIEF Act

Here is the cleared version of the SAP for S.896. It was sent to the Hill at approximately 11:00 am this morning. If you have any questions, please call me.
Thanks,
Danielle

Message Sent
To:_____
kristen silverberg/who/eop@eop
allison l. riepenhoff/who/eop@eop
brett m. kavanaugh/who/eop@eop
nicholas e. calio/who/eop@eop
john w. howard/who/eop@eop
ziad s. ojakli/who/eop@eop
dirksen lehman/who/eop@eop
david s. addington/ovp/eop@eop
cesar conda/ovp/eop@eop
nancy p. dorn/who/eop@eop
candida p. wolff/ovp/eop@eop
lauren k. allgood/ovp/eop@eop
virginia t. gregory/who/eop@eop
michael j. conway/who/eop@eop
alison jones/who/eop@eop
albert hawkins/who/eop@eop
edward ingle/who/eop@eop
neil s. patel/ovp/eop@eop
carlos e. bonilla/opd/eop@eop
d. marcus sumerlin/opd/eop@eop
john m. ackerly/opd/eop@eop
emily willeford/opd/eop@eop
sarah e. youssef/opd/eop@eop
sandy kress/opd/eop@eop
sarah pfeifer/opd/eop@eop
margaret m. lamontagne/opd/eop@eop

diana e. furchtgott-roth/cea/eop@eop
john m. bridgeland/opd/eop@eop
melissa mcknight/opd/eop@eop
amy c. smith/omb/eop@eop
jay p. lefkowitz/omb/eop@eop
augustine t. smythe/omb/eop@eop
marie k. fishpaw/ovp/eop@eop
eric c. pelletier/omb/eop@eop
christine c. mccarlie/omb/eop@eop
james c. capretta/omb/eop@eop

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WSZZ1004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WSZZ1004_WHO.TXT_2>

re 7200

May 17, 2001
(Senate)

0

S. 896 – Restoring Earnings to Lift Individuals and Empower Families (RELIEF) Act of 2001

(Sen. Grassley (R) Iowa)

x7200

The Administration supports Senate passage of S. 896 as another positive step on the way to bringing much needed tax relief to the American people. The Administration commends the authors of the RELIEF Act for their leadership.

The bill begins to lay a foundation for further long-term economic growth, through the inclusion of four key elements of the President's Tax Cut Plan: reducing current income tax rates, including a new low 10 percent rate; eliminating the death tax; increasing the child tax credit from $500 to $1,000 per child and applying the credit to the Alternative Minimum Tax (AMT); and reducing the marriage penalty. The bill also begins the process of providing much needed immediate tax relief.

However, the Administration believes more tax relief is needed for small business owners and entrepreneurs - the engines of growth in the Nation's economy - who pay the top rates. Moreover, to increase incentives for investment and encourage economic growth, the Administration believes the reductions in the marginal tax rates should be phased in more quickly.

The Administration remains committed to the core principles of providing income tax relief to Americans, reducing the tax penalty on work, saving, and investment, and putting money back into the pockets of American consumers as quickly as possible. The Administration will work together with the Congress as the legislative process continues to achieve a final result that best embodies the priorities and objectives of the President's plan.

Pay-As-You-Go Scoring

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, S. 896 or any substitute amendment in lieu thereof, that would also reduce revenues, will be subject to the pay-as-you-go requirement. The Administration will work with the Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

0* * * * * *

(Do Not Distribute Outside the Executive Office of the President)
x7200
This Statement of Administration Policy was developed by the Legislative Reference Division (Kho/Macecevic/Messenger), in consultation with the Departments of Education (Somerville), Justice (Jones), Labor (Otte), and the Treasury (Young/Fant), the Office of Government Ethics (Cook), WH Counsel (Bowen), OVP (Conda/Dorn/Wolff), DPC (Youssef), CEA (Furchtgott-Roth), NEC (Sumerlin), EP (Smith), and EIML (Stack/Menchik).

The following did not respond to our request for views: the Departments of Agriculture, Commerce, Defense, and Health and Human Services, the Small Business Administration, WH/LA, BRD, and HTF.

OMB/LA Clearance: COS (Bolton, Thompson), WHLA (Calio, Howard, Ojakli), WHC (Kavanaugh, Bowen), OVP (Addington), OVPLA (Dorn), NEC (Sumerlin, Bonilla), CEA (Furchtgott-Roth), OMBEP (Smith).

SUMMARY OF S. 896

S. 896 would reduce current income tax rates, reduce the marriage penalty, increase the child tax credit, eliminate the estate tax, and provide a number of changes to other current tax laws, including education and pension provisions.

TAX RATES

S. 896 would create a new initial tax rate bracket beginning in calendar year 2001 and phase in reductions to the four highest income tax rates over six years.

New Low Income Tax Rate Bracket. The bill would create a new 10 percent income tax bracket for a portion of taxable income that is currently taxed at 15 percent. The new initial bracket would cover taxable income up to $6,000 for single individuals, up to $10,000 for heads of households, and up to $12,000 for married couples filing joint returns. The lower rate would be effective for taxable years beginning in calendar year 2001.

The taxable income levels for the new low-rate bracket would be adjusted annually for inflation for taxable years beginning after December 31, 2006.

The current 15-percent income tax bracket would be adjusted to start at the end of the new low-rate income tax bracket. The 15-percent income tax bracket would end at the same level as under current law. (Joint Committee on Taxation estimated revenue effect for FY 2001: -$9.4 billion; FY 2002: -$ 59.2 billion; FYs 2001-2006: -$229.5 billion; FYs 2001-2011: -$438.7 billion.)
par
Reduction of Other Tax Rates. Beginning in calendar year 2002, S. 896 would begin to phase in reductions to the four highest income tax rates. The bill would phase down the current four income tax rates of 39.6 percent, 36 percent, 31 percent, and 28 percent to 36 percent, 33 percent, 28 percent, and 25 percent, respectively, over six years. The table below shows the schedule for the income tax rate reductions.

For taxable years beginning during calendar years: 722 brdrs	The corresponding percentages would be substituted for the following percentages:			
	39.6%			
	3 6 %			
2002 - 2004	27%	30%	35%	38.6%
2005 - 2006	26%	29%	34%	37.6%
rdrs2007 and thereafter	25%	28%	33%	36%

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The bill would require the Treasury to make appropriate revisions to the wage withholding tables to reflect the proposed rate reduction for calendar year 2001 as expeditiously as possible. (Joint Committee on Taxation estimated revenue effect for FY 2002: -$11.7 billion; FYs 2002-2006: -$112.6 billion; FYs 2002-2011: -$397.3 billion.)

MARRIAGE PENALTY RELIEF

S. 896 would increase, for married couples filing joint tax returns: (1) the basic standard deductions; (2) the size of the 15 percent income tax bracket; and (3) the earned income amount used to calculate the earned income credit.

Increase in Standard Deduction for Married Couples. Under current law, for taxable years beginning in 2001, the basic standard deduction amount for married couples filing joint returns is 168 percent of the basic standard deduction amount for single filers. Under the bill, the basic standard deduction for a married couple filing a joint return would be 200 percent of the basic standard deduction for an unmarried individual filing a single return. Under current law, the basic standard deduction amount for a married taxpayer filing a separate return is 84 percent of the basic standard deduction amount for single filers. Under the bill, the basic standard deduction for a married taxpayer filing separately would be equal to the basic standard deduction for an unmarried individual filing a single return. These increases would be phased-in over five years beginning in 2006 and would be fully phased-in for 2010 and thereafter. (Joint Committee on Taxation estimated revenue effect for FY 2002: $0; FYs 2002-2006: -$0.8 billion; FYs 2002-2011: -$12.8 billion.) r

Expansion of the 15-percent Rate Bracket for Married Couples Filing Joint Returns. Under current law, for taxable years beginning in 2001, the size of the 15 percent regular income tax rate bracket for a married couple filing a joint return is 167 percent the size of the 15 percent bracket for an unmarried individual filing a single return. S. 896 would increase the size of the 15 percent regular income tax rate bracket for a married couple filing a joint return to twice the size of the 15 percent bracket for an unmarried individual filing a single return. This increase would be phased in as shown in the table below.

For taxable years beginning in calendar years:	The size of the 15 percent rate bracket for a married couple filing a joint return as a percentage of the rate bracket for unmarried individuals would be:
2006	174%
2007	180%
2008	187%
2009	193%
rdrs2010 and thereafter	200%

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(Joint Committee on Taxation estimated revenue effect for FY 2002: $0; FYs 2002-2006: -$2.3 billion; FYs 2002-2011: -$24.6 billion.)

Earned Income Credit (EIC) Modification and Simplification . For married couples filing joint returns, S. 896 would increase the beginning and ending income levels of the earned income credit phase-out by $3,000. The bill would simplify the definition of earned income by excluding non-taxable earned income amounts from the definition of earned income for EIC purposes. The bill would also simplify the calculation of the EIC by replacing modified gross income with adjusted gross income. The bill would repeal the provision in current law that reduces the EIC by the amount of an individual's alternative minimum tax These provisions of the bill would be effective for taxable years beginning after December 31, 2001. (Joint Committee on Taxation estimated revenue effect for FY 2002: loss of less than $50 million; FYs 2002-2006: -$12.9 billion; FYs 2002-2011: -$59.8 billion.)

CHILD TAX CREDIT

S. 896 would increase the child tax credit from $500 to $1,000 for each qualifying child.

Increase and Expansion of the Child Tax Credit. The bill would increase the child tax credit from $500 to $1,000 for each qualifying child under the age of 17. The increase would be phased in over eleven years as shown in the table below:

For taxable years beginning in calendar years:	The credit amount per child would be:
2001- 2003	$600
2004-2006	$700
2007-2009	$800
2010	$900
rdrs2011 and thereafter	$1,000

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The bill would make this child credit refundable for up to 15 percent of the taxpayer's earned income in excess of $10,000. Consequently, in 2001, families having earned income of at least $14,000 and one child would get a refundable credit of $600. Families with three or more children would be permitted to use the present-law refundable child credit or the proposed refundable child credit.

S. 896 would also allow the child credit to be claimed against the alternative minimum tax (AMT) permanently and would repeal the AMT offset of refundable credits. This provision of the bill would be effective for taxable years beginning after December 31, 2000. (Joint Committee on Taxation estimated revenue effect for FY 2001: -$0.6 billion; FY 2002: -$10.4 billion; FYs 2001-2006: -$70.3 billion; FYs 2001-2011: -$190.4 billion.)

ESTATE TAX

S. 896 would provide for phased reductions of current estate, gift, and generation-skipping transfer taxes over ten years and repeal these taxes for estates of decedents dying and for generation-skipping transfers made after December 31, 2010.

Estate and Gift Taxes. Under current law, an estate tax is imposed on transfers of assets of a taxpayer at death, and a gift tax is imposed on transfers of assets during a taxpayer's lifetime. The estate and gift taxes are unified such that a single graduated rate schedule applies to cumulative taxable transfers made by a taxpayer during his or her lifetime and at death. The current rate schedule ranges from 18 percent on the first $10,000 in cumulative taxable transfers to 55 percent on transfers over $3 million. Current law provides, through a tax credit called the "unified credit," for the elimination of taxes on taxable gifts and taxable estates on a total of $675,000 for gifts made, and for estates of decedents dying, after 1999. This total, called the "applicable exclusion amount," increases to $700,000 in 2002 and 2003, $850,000 in 2004, $950,000 in 2005, and $1,000,000 in 2006 and subsequent years.

The bill would provide for phased reductions, over ten years, of current estate and gift taxes and repeal the estate tax for estates of decedents dying after December 31, 2010. S. 896 would reduce the top tax rate on estates and gifts from 55 percent to 50 percent in 2002. From 2003 through 2007, the top tax rate would be further reduced by one percentage point per year, until it reaches 45 percent. In 2011, when the estate tax would be repealed, the top gift tax would be reduced to 40 percent and would remain at that level thereafter.

S. 896 would increase "the applicable exclusion amount" as shown in the table below.

0Calendar Years
02002 - 2003
02004

02005 - 2007	
02008 - 2009	
02010	
rdrs2011	N/A (taxes repealed)

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(Joint Committee on Taxation estimated revenue effect (for this section on "Estate and Gift Taxes" and the section below on "Basis of Property after death") for FY 2002: $0; FYs 2002-2006: -$40 billion; FYs 2001-2011: -$144.2 billion.)

Generation-Skipping Transfer Taxes. A generation-skipping transfer (GST) tax generally is imposed on transfers, either directly or through a trust, to a "skip person" (i.e., a beneficiary in a generation more than one generation below that of the transferor). An exemption of $1 million (indexed for inflation beginning in 1999) is provided for each person making GSTs. For transfers made through 1998, the GST exemption was $1 million. For transfers made in 1999, the exemption was $1,010,000. If the value of transferred property exceeds the amount of GST exemption allocated to that property, then the GST tax generally is imposed at a flat rate equal to the highest estate tax rate (currently 55 percent) on the value of the taxable property at the time of a taxable event. s22

S. 896 would make several relatively technical amendments to the GST tax before repealing the GST tax in 2011. These amendments generally would: (1) provide for a lower asset valuation than under current law, when allocating an asset to the GST exemption, through certain automatic and retroactive allocations; and (2) allow for assets to be allocated to the GST exemption, that otherwise would not be allocated, through provisions for taxpayer relief for errors in GST allocation. This provision of the bill would apply to transfers subject to estate or gift tax made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000. (Joint Committee on Taxation estimated revenue effect for FY 2002: -$2 million; FYs 2002-2006: -$39 million; FYs 2002-2011: -$89 million.)

Basis of Property at Death. The "basis" value of property is the value for tax purposes of an individual's investment in a property. The basis is used for tax purposes to compute gains or losses on the sale or exchange of property. Under current law, the basis of property received from a decedent is its fair market value on the date of the decedent's death. This "step up" (or "step down") in basis eliminates the recognition of any income on the appreciation of property that occurred prior to the decedent's death. Under the bill, after repeal of the estate and GST taxes, the basis of assets received from a decedent generally would be the basis as it would have been in the hands of the decedent or the last preceding owner by whom it was not acquired by gift. For specified amounts, however, the beneficiary would receive a "step up" in basis, i.e., the basis would be the fair market value for up to $1.3 million of assets left to any beneficiary and an additional $3 million of assets left to a surviving spouse, thus allowing such individuals to inherit these amounts without paying accumulated capital gains taxes. The bill would provide for annual cost-of-living adjustments to these totals after December 31, 2010.

Conservation Easements. Under current law, an executor may elect to exclude from the taxable estate 40 percent of the value of any land subject to a "qualified conservation easement," i.e., a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. S. 896 would expand the availability of qualified conservation easements to any property within the United States that otherwise meets the requirements of a conservation easement by repealing the distance requirements for qualified conservation easement. The bill would also clarify that the date for determining easement compliance would be the date on which the donation was made. This provision of the bill would be effective for estates of decedents dying after December 31, 2000. (Joint Committee on Taxation estimated revenue effect for FY 2002: -$3 million; FYs 2002-2006: -$109 million; FYs 2002-2011: -$292 million.)

ALTERNATIVE MINIMUM TAX

S. 896 would increase the alternative minimum tax exemption amount for married and unmarried individuals.

Individual Alternative Minimum Tax (AMT) Relief. Under current law, an alternative minimum tax is imposed on individuals to the extent that the tentative minimum tax exceeds the regular tax. The tentative minimum tax generally is an amount equal to the sum of (1) 26 percent of the first $175,000 (or the first $87,500 in the case of a married individual filing a separate return) of alternative minimum taxable income in excess of an exemption amount and (2) 28 percent of the remaining alternative minimum taxable income. Alternative minimum

taxable income is the individual©2s taxable income adjusted to take account of specified preferences and adjustments. The AMT exemption amounts are: (1) $45,000 in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 in the case of other unmarried individuals; and (3) $22,500 in the case of married individuals filing a separate return, estates, and trusts.

The bill would increase the alternative minimum tax exemption amount for married couples filing a joint return and surviving spouses by $4,000 in 2001 through 2006. The alternative minimum tax exemption amounts for other individuals (i.e., unmarried individuals and married individuals filing a separate return) would increase by $2,000 in 2001 through 2006. This provision of the bill would be effective for taxable years beginning after December 31, 2000, and before January 1, 2007. (Joint Committee on Taxation estimated revenue effect for FY 2001: -$0.2 billion; FY 2002: -$2.2 billion; FYs 2001-2006: -$27 billion; FYs 2001-2011: ar-$33.1 billion.)

EDUCATION-RELATED TAX PROVISIONS

S. 896 would make changes to current laws allowing contributions to funds for certain future education expenses of named beneficiaries and other tax laws related to education.

Deduction for Qualified Higher Education Expenses. The bill would allow deductions of up to $3,000 annually for higher-education expenses paid by individuals with taxable income up to $65,000 or couples with incomes up to $130,000 in 2002 and 2003, and in 2004 and 2005, allow deductions of up to $5,000 for these same taxpayers and up to $2,000 for individuals with taxable income no greater than $80,000 or $160,000 for joint filers.

Exclusion for Employer-Provided Education Assistance. S. 896 would provide for a permanent extension of the tax-free treatment of employer-provided education assistance for undergraduate and graduate level courses beginning after December 31, 2001.*1*

Education IRAs. Education IRAs (Ed IRAs), which were created by the "Taxpayer Relief Act of 1997," are trusts or custodial accounts created exclusively to pay higher education expenses (i.e., tuition, fees, books) of a named beneficiary. Contributions to Ed IRAs are not tax deductible but earnings on the account generally are not taxed until they are distributed to the beneficiary. Contributions into those accounts can be made by any person or corporation, but the contribution amount is phased out for higher income taxpayers, and is capped at $500 annually per beneficiary until the beneficiary reaches age 18. S. 896 would modify Ed IRAs by: increasing the limit on annual contributions to Ed IRAs for a beneficiary from $500 to $2,000; allowing Ed IRA contributions for a "special needs beneficiary" (as defined by Treasury Department regulations) above the age of 18; clarifying that corporations, tax-exempt organizations,

and other entities may contribute to Ed IRAs, regardless of income; allowing contributions until April 15th of the following year, with the contribution counting towards the preceding taxable year; allowing taxpayers to exclude Ed IRA distributions from gross income and claim the HOPE or Lifetime Learning credit as long as they are not used for the same expenses; repealing the excise tax on contributions made to Ed IRAs when the contributions are made by anyone on behalf of the same beneficiary to a qualified State tuition program; modifying the phase-out range for married taxpayers to $190,000-$220,000 so it is twice the range for single taxpayers; and permitting tax-free withdrawals from Ed IRAs to be used for qualified expenses at a public, private, or religious elementary school (with "school" defined by State law).
par
Modifications to Student Loan Interest Deduction**in** . The bill would eliminate the 60-month limit on the deductibility of interest paid on qualified student loans and i
plain ncrease the phase-out range for those deductions to from $40,000-$55,000 for singles to $50,000-$60,000 and from $60,000-$75,000 for joint filers to $100,000-$130,000 for interest paid on loans after December 31, 2001.

Qualified Prepaid Tuition/Savings Programs
plain . Qualified State tuition programs allow individuals to purchase tuition credits for a named beneficiary or make contributions to a savings account plan for a beneficiary to cover higher education expenses. S. 896 would modify prepaid qualified tuition and savings programs to: allow tax-free distributions from
f1 State plans, allow tax-free distributions for actual living expenses, and allow private institutions to offer prepaid tuition plans, tax-deferred in tax years beginning after December 31, 2001, with tax-free distributions in tax years beginning after December 31, 2003; allow a taxpayer to exclude qualified State tuition program distributions from gross income and claim the HOPE or Lifetime Learning credits as long as they are not used for the same expenses; and expand the definition of family member to include cousins for purposes of tax-free rollovers and other benefits under the programs.

Other Education-Related Provisions. The bill would eliminate the tax on awards under the National Health Corps Scholarship program and F. Edward Hebert Armed Forces Health Professions Scholarship program. The bill would also improve local options for the construction and renovation of public schools by increasing, from $10 million to $15 million, the amount of bonds "small governmental units" may issue to finance qualified school construction before being subject to the arbitrage rebate requirement and by allowing the issuance of tax-exempt private activity bonds for privately owned public education facilities subject to annual State caps equal to the greater of $10 per resident or $5 million.

These provisions would be effective for tax years beginning after December 31, 2001, unless otherwise noted above. (JCT estimated revenue effect for FY 2002: -$2.5 billion; FYs 2002-2006: -$18.7 billion; FYs 2002-2011: -$32.8 billion.)

RETIREMENT SAVINGS AND PENSION COVERAGE

The bill would make numerous changes to pension and retirement savings laws. For example, S. 896 would modify individual retirement account (IRA) contribution limits by: (1) increasing the maximum annual dollar amount contribution limit for IRA contributions from $2,000 to $2,500 in 2002 through 2005, $3,000 in 2006 and 2007, $3,500 in 2008 and 2009, $4,000 in 2010, $5,000 in 2011, and indexed for inflation thereafter; (2) expanding the increase of the IRA maximum contribution limit for individuals who have attained age 50 before the end of the taxable year by providing for a $500 "catch-up" in 2002 through 2005, $1,000 in 2006 through 2009, $1,500 in 2010 and $2,000 in 2011 and thereafter; and (3) allowing tax-free withdrawals from IRA's for charitable purposes.

In addition, the bill would change the employer pension system by: (1) increasing contribution limits to qualified cash or deferred arrangements (section 401(k) plans), tax-sheltered annuities (section 403(b) annuities), and certain deferred compensation plans (section 457 eligible plans) up to $15,000 in 2010 and allowing employees over age 50 to make additional annual contributions to those plans and annuities; (2) increasing other contribution, benefit and deduction limits under the qualified plan rules; (3) eliminating certain rules regarding nondiscrimination and rules applying to top-heavy plans (defined benefit plans where 60 percent of the cumulative accrued benefits are for key employees); and (4) providing small businesses a non-refundable tax credit for a portion of the cost of the contributions and administrative expenses of establishing a new plan.

S. 896 also provides a temporary non-refundable tax credit for low and middle income individuals who save in IRAs or qualified plans, requires faster vesting for employer matching contributions, and affords greater portability among IRAs and the different types of employer plans.

(JCT estimated revenue effect for FY 2002: -$1.5 billion; FYs 2002-2006: -$16.0 billion; FYs 2002-2011: -$40.1 billion.)

SUNSET PROVISIONS

The provisions of S. 896 would sunset as follows. The individual income tax rate reductions, the provisions relating to the child tax credit, the marriage penalty relief provisions, and the education provisions would have no effect for taxable years beginning after September 30, 2011. The estate, gift, and generation-skipping tax provisions would have no effect for decedents dying and gifts made after September 30, 2011. The pension and individual retirement arrangement provisions would have no effect for years beginning after September 30, 2011.

PAY-AS-YOU-GO SCORING

S. 896 could affect receipts; therefore, it would be subject to the pay-as-you-go requirements of the Omnibus Reconciliation Act of 1990. The Joint Committee on Taxation estimates that S. 896 would have a net budget cost of $10.1 billion in FY 2001, $87.5 billion in FY 2002, $523.1 billion over six years, FY 2001-2006, and $1.4 trillion over 11 years, FY 2001-2011. Estimates by the Department of the Treasury are not available.

0LEGISLATIVE REFERENCE DIVISION
May 16, 2001
* * *

REV_00126652

May 17, 2001
(Senate)

S. 896 – Restoring Earnings to Lift Individuals and Empower Families (RELIEF) Act of 2001
(Sen. Grassley (R) Iowa)

The Administration supports Senate passage of S. 896 as another positive step on the way to bringing much needed tax relief to the American people. The Administration commends the authors of the RELIEF Act for their leadership.

The bill begins to lay a foundation for further long-term economic growth, through the inclusion of four key elements of the President's Tax Cut Plan: reducing current income tax rates, including a new low 10 percent rate; eliminating the death tax; increasing the child tax credit from $500 to $1,000 per child and applying the credit to the Alternative Minimum Tax (AMT); and reducing the marriage penalty. The bill also begins the process of providing much needed immediate tax relief.

However, the Administration believes more tax relief is needed for small business owners and entrepreneurs - the engines of growth in the Nation's economy - who pay the top rates. Moreover, to increase incentives for investment and encourage economic growth, the Administration believes the reductions in the marginal tax rates should be phased in more quickly.

The Administration remains committed to the core principles of providing income tax relief to Americans, reducing the tax penalty on work, saving, and investment, and putting money back into the pockets of American consumers as quickly as possible. The Administration will work together with the Congress as the legislative process continues to achieve a final result that best embodies the priorities and objectives of the President's plan.

Pay-As-You-Go Scoring

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, S. 896 or any substitute amendment in lieu thereof, that would also reduce revenues, will be subject to the pay-as-you-go requirement. The Administration will work with the Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

* * * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Kho/Macecevic/Messenger), in consultation with the Departments of Education (Somerville), Justice (Jones), Labor (Otte), and the Treasury (Young/Fant), the Office of Government Ethics (Cook), WH Counsel (Bowen), OVP (Conda/Dorn/Wolff), DPC (Youssef), CEA (Furchtgott-Roth), NEC (Sumerlin), EP (Smith), and EIML (Stack/Menchik).

The following did not respond to our request for views: the Departments of Agriculture, Commerce, Defense, and Health and Human Services, the Small Business Administration, WH/LA, BRD, and HTF.

OMB/LA Clearance: COS (Bolton, Thompson), WHLA (Calio, Howard, Ojakli), WHC (Kavanaugh, Bowen), OVP (Addington), OVPLA (Dorn), NEC (Sumerlin, Bonilla), CEA (Furchtgott-Roth), OMBEP (Smith).

SUMMARY OF S. 896

S. 896 would reduce current income tax rates, reduce the marriage penalty, increase the child tax credit, eliminate the estate tax, and provide a number of changes to other current tax laws, including education and pension provisions.

TAX RATES

S. 896 would create a new initial tax rate bracket beginning in calendar year 2001 and phase in reductions to the four highest income tax rates over six years.

New Low Income Tax Rate Bracket. The bill would create a new 10 percent income tax bracket for a portion of taxable income that is currently taxed at 15 percent. The new initial bracket would cover taxable income up to $6,000 for single individuals, up to $10,000 for heads of households, and up to $12,000 for married couples filing joint returns. The lower rate would be effective for taxable years beginning in calendar year 2001.

The taxable income levels for the new low-rate bracket would be adjusted annually for inflation for taxable years beginning after December 31, 2006.

The current 15-percent income tax bracket would be adjusted to start at the end of the new low-rate income tax bracket. The 15-percent income tax bracket would end at the same level as under current law. (Joint Committee on Taxation estimated revenue effect for FY 2001: -$9.4 billion; FY 2002: -$ 59.2 billion; FYs 2001-2006: -$229.5 billion; FYs 2001-2011: -$438.7 billion.)

Reduction of Other Tax Rates. Beginning in calendar year 2002, S. 896 would begin to phase in reductions to the four highest income tax rates. The bill would phase down the current four income tax rates of 39.6 percent, 36 percent, 31 percent, and 28 percent to 36 percent, 33 percent, 28 percent, and 25 percent, respectively, over six years. The table below shows the schedule for the income tax rate reductions.

For taxable years beginning during calendar years:	The corresponding percentages would be substituted for the following percentages:			
	28%	31%	36%	39.6%
2002 - 2004	27%	30%	35%	38.6%
2005 - 2006	26%	29%	34%	37.6%
2007 and thereafter	25%	28%	33%	36%

The bill would require the Treasury to make appropriate revisions to the wage withholding tables to reflect the proposed rate reduction for calendar year 2001 as expeditiously as possible. (Joint Committee on Taxation estimated revenue effect for FY 2002: -$11.7 billion; FYs 2002-2006: -$112.6 billion; FYs 2002-2011: -$397.3 billion.)

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Increase in Standard Deduction for Married Couples. Under current law, for taxable years beginning in 2001, the basic standard deduction amount for married couples filing joint returns is 168 percent of the basic standard deduction amount for single filers. Under the bill, the basic standard deduction for a married couple filing a joint return would be 200 percent of the basic standard deduction for an unmarried individual filing a single return. Under current law, the basic standard deduction amount for a married taxpayer filing a separate return is 84 percent of the basic standard deduction amount for single filers. Under the bill, the basic standard deduction for a married taxpayer filing separately would be equal to the basic standard deduction for an unmarried individual filing a single return. These increases would be phased-in over five years beginning in 2006 and would be fully phased-in for 2010 and thereafter. (Joint Committee on Taxation estimated revenue effect for FY 2002: $0; FYs 2002-2006: -$0.8 billion; FYs 2002-2011: -$12.8 billion.)

Expansion of the 15-percent Rate Bracket for Married Couples Filing Joint Returns. Under current law, for taxable years beginning in 2001, the size of the 15 percent regular income tax rate bracket for a married couple filing a joint return is 167 percent the size of the 15 percent bracket for an unmarried individual filing a single return. S. 896 would increase the size of the 15 percent regular income tax rate bracket for a married couple filing a joint return to twice the size of the 15 percent bracket for an unmarried individual filing a single return. This increase would be phased in as shown in the table below.

For taxable years beginning in calendar years:	The size of the 15 percent rate bracket for a married couple filing a joint return as a percentage of the rate bracket for unmarried individuals would be:
2006	174%

2007	180%
2008	187%
2009	193%
2010 and thereafter	200%

(Joint Committee on Taxation estimated revenue effect for FY 2002: $0; FYs 2002-2006: -$2.3 billion; FYs 2002-2011: -$24.6 billion.)

Earned Income Credit (EIC) Modification and Simplification. For married couples filing joint returns, S. 896 would increase the beginning and ending income levels of the earned income credit phase-out by $3,000. The bill would simplify the definition of earned income by excluding non-taxable earned income amounts from the definition of earned income for EIC purposes. The bill would also simplify the calculation of the EIC by replacing modified gross income with adjusted gross income. The bill would repeal the provision in current law that reduces the EIC by the amount of an individual's alternative minimum tax These provisions of the bill would be effective for taxable years beginning after December 31, 2001. (Joint Committee on Taxation estimated revenue effect for FY 2002: loss of less than $50 million; FYs 2002-2006: -$12.9 billion; FYs 2002-2011: -$59.8 billion.)

CHILD TAX CREDIT

S. 896 would increase the child tax credit from $500 to $1,000 for each qualifying child.

Increase and Expansion of the Child Tax Credit. The bill would increase the child tax credit from $500 to $1,000 for each qualifying child under the age of 17. The increase would be phased in over eleven years as shown in the table below:

For taxable years beginning in calendar years:	The credit amount per child would be:
2001- 2003	$600
2004-2006	$700
2007-2009	$800
2010	$900
2011 and thereafter	$1,000

The bill would make this child credit refundable for up to 15 percent of the taxpayer's earned income in excess of $10,000. Consequently, in 2001, families having earned income of at least $14,000 and one child would get a refundable credit of $600. Families with three or more children would be permitted to use the present-law refundable child credit or the proposed refundable child credit.

S. 896 would also allow the child credit to be claimed against the alternative minimum tax (AMT) permanently and would repeal the AMT offset of refundable credits. This provision of

the bill would be effective for taxable years beginning after December 31, 2000. (Joint Committee on Taxation estimated revenue effect for FY 2001: -$0.6 billion; FY 2002: -$10.4 billion; FYs 2001-2006: -$70.3 billion; FYs 2001-2011: -$190.4 billion.)

ESTATE TAX

S. 896 would provide for phased reductions of current estate, gift, and generation-skipping transfer taxes over ten years and repeal these taxes for estates of decedents dying and for generation-skipping transfers made after December 31, 2010.

Estate and Gift Taxes. Under current law, an estate tax is imposed on transfers of assets of a taxpayer at death, and a gift tax is imposed on transfers of assets during a taxpayer's lifetime. The estate and gift taxes are unified such that a single graduated rate schedule applies to cumulative taxable transfers made by a taxpayer during his or her lifetime and at death. The current rate schedule ranges from 18 percent on the first $10,000 in cumulative taxable transfers to 55 percent on transfers over $3 million. Current law provides, through a tax credit called the "unified credit," for the elimination of taxes on taxable gifts and taxable estates on a total of $675,000 for gifts made, and for estates of decedents dying, after 1999. This total, called the "applicable exclusion amount," increases to $700,000 in 2002 and 2003, $850,000 in 2004, $950,000 in 2005, and $1,000,000 in 2006 and subsequent years.

The bill would provide for phased reductions, over ten years, of current estate and gift taxes and repeal the estate tax for estates of decedents dying after December 31, 2010. S. 896 would reduce the top tax rate on estates and gifts from 55 percent to 50 percent in 2002. From 2003 through 2007, the top tax rate would be further reduced by one percentage point per year, until it reaches 45 percent. In 2011, when the estate tax would be repealed, the top gift tax would be reduced to 40 percent and would remain at that level thereafter.

S. 896 would increase "the applicable exclusion amount" as shown in the table below.

Calendar Years	"Applicable Exclusion Amount"
2002 - 2003	$1 million
2004	$2 million
2005 - 2007	$3 million
2008 - 2009	$3.5 million
2010	$4 million
2011	N/A (taxes repealed)

(Joint Committee on Taxation estimated revenue effect (for this section on "Estate and Gift Taxes" and the section below on "Basis of Property after death") for FY 2002: $0; FYs 2002-2006: -$40 billion; FYs 2001-2011: -$144.2 billion.)

Generation-Skipping Transfer Taxes. A generation-skipping transfer (GST) tax generally is imposed on transfers, either directly or through a trust, to a "skip person" (i.e., a beneficiary in a generation more than one generation below that of the transferor). An exemption of $1 million (indexed for inflation beginning in 1999) is provided for each person making GSTs. For transfers made through 1998, the GST exemption was $1 million. For transfers made in 1999, the exemption was $1,010,000. If the value of transferred property exceeds the amount of GST exemption allocated to that property, then the GST tax generally is imposed at a flat rate equal to the highest estate tax rate (currently 55 percent) on the value of the taxable property at the time of a taxable event.

S. 896 would make several relatively technical amendments to the GST tax before repealing the GST tax in 2011. These amendments generally would: (1) provide for a lower asset valuation than under current law, when allocating an asset to the GST exemption, through certain automatic and retroactive allocations; and (2) allow for assets to be allocated to the GST exemption, that otherwise would not be allocated, through provisions for taxpayer relief for errors in GST allocation. This provision of the bill would apply to transfers subject to estate or gift tax made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000. (Joint Committee on Taxation estimated revenue effect for FY 2002: -$2 million; FYs 2002-2006: -$39 million; FYs 2002-2011: -$89 million.)

Basis of Property at Death. The "basis" value of property is the value for tax purposes of an individual's investment in a property. The basis is used for tax purposes to compute gains or losses on the sale or exchange of property. Under current law, the basis of property received from a decedent is its fair market value on the date of the decedent's death. This "step up" (or "step down") in basis eliminates the recognition of any income on the appreciation of property that occurred prior to the decedent's death. Under the bill, after repeal of the estate and GST taxes, the basis of assets received from a decedent generally would be the basis as it would have been in the hands of the decedent or the last preceding owner by whom it was not acquired by gift. For specified amounts, however, the beneficiary would receive a "step up" in basis, i.e., the basis would be the fair market value for up to $1.3 million of assets left to any beneficiary and an additional $3 million of assets left to a surviving spouse, thus allowing such individuals to inherit these amounts without paying accumulated capital gains taxes. The bill would provide for annual cost-of-living adjustments to these totals after December 31, 2010.

Conservation Easements. Under current law, an executor may elect to exclude from the taxable estate 40 percent of the value of any land subject to a "qualified conservation easement," i.e., a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. S. 896 would expand the availability of qualified conservation easements to any property within the United States that otherwise meets the requirements of a conservation easement by repealing the distance requirements for qualified conservation easement. The bill would also clarify that the date for determining easement compliance would be the date on which the donation was made. This provision of the bill would be effective for estates of decedents dying after December 31, 2000. (Joint Committee on Taxation estimated revenue effect for FY 2002: -$3 million; FYs 2002-2006: -$109 million; FYs 2002-2011: -$292 million.)

ALTERNATIVE MINIMUM TAX

S. 896 would increase the alternative minimum tax exemption amount for married and unmarried individuals.

Individual Alternative Minimum Tax (AMT) Relief. Under current law, an alternative minimum tax is imposed on individuals to the extent that the tentative minimum tax exceeds the regular tax. The tentative minimum tax generally is an amount equal to the sum of (1) 26 percent of the first $175,000 (or the first $87,500 in the case of a married individual filing a separate return) of alternative minimum taxable income in excess of an exemption amount and (2) 28 percent of the remaining alternative minimum taxable income. Alternative minimum taxable income is the individual's taxable income adjusted to take account of specified preferences and adjustments. The AMT exemption amounts are: (1) $45,000 in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 in the case of other unmarried individuals; and (3) $22,500 in the case of married individuals filing a separate return, estates, and trusts.

The bill would increase the alternative minimum tax exemption amount for married couples filing a joint return and surviving spouses by $4,000 in 2001 through 2006. The alternative minimum tax exemption amounts for other individuals (i.e., unmarried individuals and married individuals filing a separate return) would increase by $2,000 in 2001 through 2006. This provision of the bill would be effective for taxable years beginning after December 31, 2000, and before January 1, 2007. (Joint Committee on Taxation estimated revenue effect for FY 2001: -$0.2 billion; FY 2002: -$2.2 billion; FYs 2001-2006: -$27 billion; FYs 2001-2011: -$33.1 billion.)

EDUCATION-RELATED TAX PROVISIONS

S. 896 would make changes to current laws allowing contributions to funds for certain future education expenses of named beneficiaries and other tax laws related to education.

Deduction for Qualified Higher Education Expenses. The bill would allow deductions of up to $3,000 annually for higher-education expenses paid by individuals with taxable income up to $65,000 or couples with incomes up to $130,000 in 2002 and 2003, and in 2004 and 2005, allow deductions of up to $5,000 for these same taxpayers and up to $2,000 for individuals with taxable income no greater than $80,000 or $160,000 for joint filers.

Exclusion for Employer-Provided Education Assistance. S. 896 would provide for a permanent extension of the tax-free treatment of employer-provided education assistance for undergraduate and graduate level courses beginning after December 31, 2001.

Education IRAs. Education IRAs (Ed IRAs), which were created by the "Taxpayer Relief Act of 1997," are trusts or custodial accounts created exclusively to pay higher education expenses (i.e., tuition, fees, books) of a named beneficiary. Contributions to

Ed IRAs are not tax deductible but earnings on the account generally are not taxed until they are distributed to the beneficiary. Contributions into those accounts can be made by any person or corporation, but the contribution amount is phased out for higher income taxpayers, and is capped at $500 annually per beneficiary until the beneficiary reaches age 18. S. 896 would modify Ed IRAs by: increasing the limit on annual contributions to Ed IRAs for a beneficiary from $500 to $2,000; allowing Ed IRA contributions for a "special needs beneficiary" (as defined by Treasury Department regulations) above the age of 18; clarifying that corporations, tax-exempt organizations, and other entities may contribute to Ed IRAs, regardless of income; allowing contributions until April 15th of the following year, with the contribution counting towards the preceding taxable year; allowing taxpayers to exclude Ed IRA distributions from gross income and claim the HOPE or Lifetime Learning credit as long as they are not used for the same expenses; repealing the excise tax on contributions made to Ed IRAs when the contributions are made by anyone on behalf of the same beneficiary to a qualified State tuition program; modifying the phase-out range for married taxpayers to $190,000-$220,000 so it is twice the range for single taxpayers; and permitting tax-free withdrawals from Ed IRAs to be used for qualified expenses at a public, private, or religious elementary school (with "school" defined by State law).

Modifications to Student Loan Interest Deduction. The bill would eliminate the 60-month limit on the deductibility of interest paid on qualified student loans and increase the phase-out range for those deductions to from $40,000-$55,000 for singles to $50,000-$60,000 and from $60,000-$75,000 for joint filers to $100,000-$130,000 for interest paid on loans after December 31, 2001.

Qualified Prepaid Tuition/Savings Programs. Qualified State tuition programs allow individuals to purchase tuition credits for a named beneficiary or make contributions to a savings account plan for a beneficiary to cover higher education expenses. S. 896 would modify prepaid qualified tuition and savings programs to: allow tax-free distributions from State plans, allow tax-free distributions for actual living expenses, and allow private institutions to offer prepaid tuition plans, tax-deferred in tax years beginning after December 31, 2001, with tax-free distributions in tax years beginning after December 31, 2003; allow a taxpayer to exclude qualified State tuition program distributions from gross income and claim the HOPE or Lifetime Learning credits as long as they are not used for the same expenses; and expand the definition of family member to include cousins for purposes of tax-free rollovers and other benefits under the programs.

Other Education-Related Provisions. The bill would eliminate the tax on awards under the National Health Corps Scholarship program and F. Edward Hebert Armed Forces

Health Professions Scholarship program. The bill would also improve local options for the construction and renovation of public schools by increasing, from $10 million to $15 million, the amount of bonds "small governmental units" may issue to finance qualified school construction before being subject to the arbitrage rebate requirement and by allowing the issuance of tax-exempt private activity bonds for privately owned public education facilities subject to annual State caps equal to the greater of $10 per resident or $5 million.

These provisions would be effective for tax years beginning after December 31, 2001, unless otherwise noted above. (JCT estimated revenue effect for FY 2002: -$2.5 billion; FYs 2002-2006: -$18.7 billion; FYs 2002-2011: -$32.8 billion.)

RETIREMENT SAVINGS AND PENSION COVERAGE

The bill would make numerous changes to pension and retirement savings laws. For example, S. 896 would modify individual retirement account (IRA) contribution limits by: (1) increasing the maximum annual dollar amount contribution limit for IRA contributions from $2,000 to $2,500 in 2002 through 2005, $3,000 in 2006 and 2007, $3,500 in 2008 and 2009, $4,000 in 2010, $5,000 in 2011, and indexed for inflation thereafter; (2) expanding the increase of the IRA maximum contribution limit for individuals who have attained age 50 before the end of the taxable year by providing for a $500 "catch-up" in 2002 through 2005, $1,000 in 2006 through 2009, $1,500 in 2010 and $2,000 in 2011 and thereafter; and (3) allowing tax-free withdrawals from IRA's for charitable purposes.

In addition, the bill would change the employer pension system by: (1) increasing contribution limits to qualified cash or deferred arrangements (section 401(k) plans), tax-sheltered annuities (section 403(b) annuities), and certain deferred compensation plans (section 457 eligible plans) up to $15,000 in 2010 and allowing employees over age 50 to make additional annual contributions to those plans and annuities; (2) increasing other contribution, benefit and deduction limits under the qualified plan rules; (3) eliminating certain rules regarding nondiscrimination and rules applying to top-heavy plans (defined benefit plans where 60 percent of the cumulative accrued benefits are for key employees); and (4) providing small businesses a non-refundable tax credit for a portion of the cost of the contributions and administrative expenses of establishing a new plan.

S. 896 also provides a temporary non-refundable tax credit for low and middle income individuals who save in IRAs or qualified plans, requires faster vesting for employer matching contributions, and affords greater portability among IRAs and the different types of employer plans.

(JCT estimated revenue effect for FY 2002: -$1.5 billion; FYs 2002-2006: -$16.0 billion; FYs 2002-
2011: -$40.1 billion.)

SUNSET PROVISIONS

The provisions of S. 896 would sunset as follows. The individual income tax rate reductions, the provisions relating to the child tax credit, the marriage penalty relief provisions, and the education provisions would have no effect for taxable years beginning after September 30, 2011. The estate, gift, and generation-skipping tax provisions would have no effect for decedents dying and gifts made after September 30, 2011. The pension and individual retirement arrangement provisions would have no effect for years beginning after September 30, 2011.

PAY-AS-YOU-GO SCORING

S. 896 could affect receipts; therefore, it would be subject to the pay-as-you-go requirements of the Omnibus Reconciliation Act of 1990. The Joint Committee on Taxation estimates that S. 896 would have a net budget cost of $10.1 billion in FY 2001, $87.5 billion in FY 2002, $523.1 billion over six years, FY 2001-2006, and $1.4 trillion over 11 years, FY 2001-2011. Estimates by the Department of the Treasury are not available.

LEGISLATIVE REFERENCE DIVISION
May 16, 2001
* * *

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;heather larrison/who/eop@eop [WHO] <heather larrison>
Sent: 5/17/2001 9:55:18 AM
Subject: : Re: quick question

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-MAY-2001 13:55:18.00
SUBJECT:: Re: quick question
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:john b. bellinger (CN=john b. bellinger/OU=nsc/O=eop@eop [NSC])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
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CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
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CC:heather larrison (CN=heather larrison/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

The NBA purports to represent the interests of African-American Lawyers.
As a group, they have been very critical of Justice Thomas.

Elizabeth N. Camp
05/17/2001 11:38:34 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:

Subject: quick question

Does anyone know of any issues that Mr. Evett L. Simmons of the President, National Bar Assoc. might have with the Administration?

Sec. Card will be participating in a ceremony with him soon so we are checking to see if there are any ABA type issues with the NBA that Card should be aware of.

Thanks!

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Heather Larrison/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 5/18/2001 7:45:38 AM
Subject: : May 23 schedule and JSC prep meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 11:45:38.00
SUBJECT:: May 23 schedule and JSC prep meeting
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Wednesday, May 23
8:30-9:00 Counsel Staff meeting
9:00-9:30 JSC Prep meeting
10:00-10:30 Senator Feinstein - per Brett
2:30-3:00 Senator Harkin - per Rachel
3:15-3:45 Senator Boxer - per Brett
5:30-6:00 Senator Leahy (FBI)
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>
Sent: 5/18/2001 6:27:26 AM
Subject: : Resumes/Bios

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 10:27:26.00
SUBJECT:: Resumes/Bios
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If you are interested in providing your resume/bio to Douglas McCollam
please email this to me by 12:00 noon on Monday.

I'll also send to him a copy of the press release(s) issued announcing the
hiring of counsel staff.

Thanks!
```

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;heather larrison/who/eop@eop [WHO] <heather larrison>
Sent: 5/18/2001 6:31:34 AM
Subject: : Re: Resumes/Bios

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-MAY-2001 10:31:34.00
SUBJECT:: Re: Resumes/Bios
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
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CC:heather larrison (CN=heather larrison/OU=who/O=eop@eop [WHO])
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End Original ARMS Header

I think we should decide as a whole whether or not to provide anything beyond the press release -- it might look odd if we provide some but not others. I vote against providing resumes.

Elizabeth N. Camp
05/18/2001 10:27:17 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:

Subject: Resumes/Bios

If you are interested in providing your resume/bio to Douglas McCollam please email this to me by 12:00 noon on Monday.

I'll also send to him a copy of the press release(s) issued announcing the hiring of counsel staff.

Thanks!

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Heather Larrison/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>

CC: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>

Sent: 5/18/2001 11:10:09 AM

Subject: : Meeting w/ POTUS at 4:00 pm on MONDAY, May 21

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 15:10:09.00
SUBJECT:: Meeting w/ POTUS at 4:00 pm on MONDAY, May 21
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is the sixth meeting re: judges. I need the list of attendees asap
please.
```

Happy decision binder building!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: mestrada@gibsondunn.com @ inet [UNKNOWN] <mestrada@gibsondunn.com>
Sent: 5/18/2001 7:38:23 AM
Subject: : Article on the first slate

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 11:38:23.00
SUBJECT:: Article on the first slate
TO:mestrada@gibsondunn.com ( mestrada@gibsondunn.com @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

> National Journal
> 05/19/2001
> Tilting the Bench Farther to the Right
> Elisabeth Frater
>
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>
> When President Bush introduced his first 11 judicial nominees on May 9,
he
> enthusiastically stressed the group's diversity in gender and race. He
> gleefully took credit for nominating the first Hispanic to the U.S. Court
> of
> Appeals for the D.C. Circuit, and for diplomatically renominating Roger
> Gregory, the Clinton recess appointee on the U.S. Court of Appeals for
the
> 4th Circuit. But what Bush left unaddressed was the most critical
> question,
> one whose answer will reveal a great deal about how far to the right the
> federal judiciary will likely tilt in the coming years and may determine
> whether the Senate's Democrats are really willing to block nominees who
> fail
> an ideological litmus test of moderation.
>
> The question is, how closely do the legal views of this set of federal
> appeals court nominees match the philosophy of the jurists whom Bush has
> depicted as his ideal: Justices Antonin Scalia and Clarence Thomas, the
> U.S.
> Supreme Court's most aggressively conservative members? Scalia and Thomas
> are also the Justices least likely to read civil rights protections into
> the
> Constitution.
>
> Before the identities of Bush's nominees were disclosed, Senate Minority
> Leader Thomas A. Daschle, D-S.D., declared that the Democrats "don't want
> right-wingers. We don't, for that matter, ... want any extreme
> left-wingers.
> I want people who come from the middle."
>
> But since learning the names of Bush's choices, Senate Democrats have
> fallen
> curiously silent about their intentions. If the Democrats hope to come up
> with a master strategy for responding to the new President's judicial
> nominees, they may have little time left.
>
> Senate Judiciary Committee Chairman Orrin G. Hatch, R- Utah, is expected
> to
> hold hearings next week on the three nominees to the 4th Circuit:
Gregory,
> Dennis W. Shedd, and Terrence W. Boyle. And Bush is expected to formally
> announce three additional nominees who are already controversial: Peter
> Keisler, Carolyn Kuhl, and Christopher Cox.
```

>
> With the exceptions of Gregory and Barrington Parker Jr., the
President's
> first 11 nominees appear to be conservatives who, to varying degrees,
> would
> rule as so-called "strict constructionists." If Bush succeeds in filling
> the
> appellate courts with young appointees who share his legal views, his
> conservative legacy will last for decades. Thomas L. Jipping of the
> conservative Free Congress Foundation says that the slate of appointees
> demonstrates that the President was hampered by "obvious political
> considerations.... He came as close to the standard [articulated during
> his
> campaign] as the Senators would permit."
>
> While a jurist's legal philosophy certainly does not come into play in
> most
> cases, "it does make a difference in the handful of appeals where the
> judges
> have the opportunity to make some new law ," observes University of
> Pittsburgh legal scholar Arthur D. Hellman. The federal Courts of
Appeals,
> the tribunals one tier below the Supreme Court, routinely wrestle with
> politically charged issues, such as affirmative action, reproductive
> rights,
> redistricting, and patients' rights.
>
> What's discernable about the legal philosophies of Bush's first 11 picks
> varies widely. The conservative views of University of Utah law professor
> Michael McConnell, who has been nominated to the 10th Circuit, appear to
> be
> among the most extreme. The University of Chicago Law School graduate is
a
> well- known First Amendment scholar who specializes in religious issues.
> McConnell contends that the government engages in "anti- religious
> discrimination [that] is blatantly unconstitutional." McConnell, 46, has
> written that the 2nd, 4th, 6th, 8th, 9th, 10th, and 11th Circuits have
all
> incorrectly decided religious- speech cases. He is also critical of the
> Supreme Court's handling of cases involving freedom of religion. Like
> Scalia
> and Thomas, McConnell thinks that jurists should narrowly interpret the
> Constitution's sweeping, but ambiguous, guarantees. In his view, the
> Constitution protects neither the right to abortion nor gay and lesbian
> civil rights.
>
> He supports school vouchers for students from low-income families. He
> opposes finding a right to assisted suicide in the Constitution, and he
> wrote a friend-of-the-court brief on the subject on behalf of Sen. Hatch
> and
> Rep. Henry J. Hyde, R-Ill., and then-Rep. Charles Canady, R-Fla.
>
> In an article for the Institute on Religion and Public Life, McConnell
> described Justices David Souter, Stephen Breyer, Ruth Bader Ginsburg, and
> John Paul Stevens-the least conservative members of a Court that no
longer
> has a true left wing-as using "extremist rhetoric." He is active in the
> Federalist Society and, with Hatch, sits on the board of the Becket Fund
> for
> Religious Liberty.
>
> Miguel A. Estrada, 39, is nominated for the prestigious D.C. Circuit,
> which
> often serves as a springboard to the Supreme Court. Estrada is a partner
> at
> Gibson, Dunn & Crutcher, and his name was forwarded to Bush by law
partner
> Theodore Olson. Acquaintances consistently describe Estrada as

> conservative.
> Ronald Klain, who clerked at the Supreme Court when Estrada was clerking
> for
> Justice Anthony Kennedy, says Estrada has "a genuine compassionate
> streak,"
> is an "independent thinker," and is "right of center." A former colleague
> of
> Estrada's, who asked not to be identified, complimented Estrada's legal
> skills and said, "If we have to have someone that conservative, I would
> prefer to have him."
>
> Otto Obermaier, Estrada's former boss at the U.S. Attorney's office in
the
> Southern District of New York, praised his intellect. Estrada spent four
> years in the Clinton Administration, arguing cases on behalf of the
> government before the Supreme Court.
>
> During Estrada's stint at the Justice Department, Paul Bender served as
> deputy Solicitor General. Bender, now an Arizona State University law
> professor, says, however, he never assigned Estrada cases involving the
> rights of women, homosexuals, or criminal defendants because "I didn't
> trust
> his judgment." Bender adds that Estrada's "ideological viewpoints are
very
> strong, similar to those of Scalia and Thomas ... and that causes his
> judgment to be unbalanced."
>
> Bender compares Estrada with John G. Roberts, another D.C Circuit
nominee.
> In Bender's view, both nominees are conservative, but Roberts is "much
> more
> balanced." Roberts, 46, is a partner at the law firm of Hogan & Hartson.
> He
> served as Kenneth Starr's deputy at the Solicitor General's office from
> 1989-93. During the Reagan Administration, Roberts counseled the
President
> on constitutional issues and executive powers.
>
> Roberts is an extremely sought-after litigator who has represented a wide
> range of clients before the Supreme Court and lower federal courts. In
> 1995,
> Roberts filed a brief in opposition to affirmative action. At issue in
the
> case of Adarand Constructors Inc. vs. Pena was whether a federal highway
> program created by Congress to benefit minority-owned companies compels
> racial discrimination. The 10th Circuit ruled that the government must
> ensure that the minority contractors were previously disadvantaged in
some
> way and that no quotas were used. The Supreme Court has agreed to hear
the
> dispute.
>
> Roberts sits on the National Legal Center for the Public Interest's Legal
> Advisory Council with Kenneth Starr, William Barr, Dick Thornburgh,
Eugene
> Meyer of the Federalist Society, and C. Boyden Gray.
>
> Edith Brown Clement, known to her friends as Joy, is nominated to the 5th
> Circuit. A U.S. district judge in Louisiana for 10 years, she has earned
a
> reputation for being earnest and tireless. Tulane professor John Kramer
> says
> that while Clement admires the jurisprudence of Scalia, she had not had
> the
> opportunity to rule on the sort of controversies that might provide a
good
> gauge of her conservatism. Last year, Clement presided over the trial of
> Louisiana Gov. Edwin Edwards, who was acquitted. Clement's command over

> her
> courtroom, including her threat to fine the governor $1,000 per word if
he
> violated a gag order for a second time, was widely reported. Kramer said
> Clement has close ties to the Bush family, and according to an August 29,
> 2000, New York Times article, Donald B. Ensenat, Bush's Yale fraternity
> brother and roommate, recommended Clement for the district court slot.
>
> Priscilla R. Owen, also nominated to the 5th Circuit, was elected to the
> Texas Supreme Court in 1994 and won re-election this past fall. She
> practiced oil and gas law in Houston for 17 years. According to Texas
> Supreme Court Justice Nathan Hecht, Owen, 46, is hardworking and
> conservative. Hecht says that they sit together on the Austin Federalist
> Society advisory board. Owen's most controversial act on the bench came
in
> March 2000 when she dissented from a 6-3 ruling nullifying the state's
> parental notification law for girls seeking abortions.
>
> For the 6th Circuit, Bush has selected Deborah L. Cook, a justice on the
> Ohio Supreme Court. Trial lawyer Nick Pittner, who has appeared before
her
> in Ohio school-funding cases, said, "If I had to rank Cook, she is by far
> the most conservative justice in her views about the role of courts on
> constitutional issues."
>
> In 1996, Cook wrote the 7-0 opinion overturning an injunction that barred
> competing demonstrations by Holocaust survivors and white supremacists in
> front of the home of former concentration camp guard John Demjanjuk. The
> same year, she also wrote the majority opinion denying a blind woman's
> request to be admitted to medical school. Cook wrote that forcing a
> university to accommodate the blind woman's disability would have placed
> an
> undue burden on the school.
>
> Jeffrey S. Sutton, a partner at Jones , Day , Reavis & Pogue , earned his
> stripes as a clerk to Supreme Court Justices Lewis F. Powell Jr. and
> Scalia.
> As Ohio state solicitor, Sutton represented the Ohio Civil Rights
> Commission
> and presented arguments on behalf of the blind woman who wanted to attend
> medical school. He has argued in support of school vouchers and on behalf
> of
> 33 states and the District of Columbia in opposition to making prisons
> accommodate the disabled. In the prisons case, he successfully argued
> before
> the Supreme Court that Congress, in mandating that states help the
> disabled,
> had exceeded its powers.
>
> Fourth Circuit nominees Dennis W. Shedd and Terrence W. Boyle have
> backgrounds that, at least on paper, are very similar. Shedd, 48, is a
> federal judge in South Carolina, a former chief counsel of the Senate
> Judiciary Committee, and a former aide to Sen. Strom Thurmond, R-S.C.
> Shedd
> has a reputation for being tough as nails when sentencing defendants and
> for
> insisting that the prosecution meet its burden, according to prominent
> defense attorney Dick Harpootlian, a Democrat. Elizabeth Van Doren Gray,
> another South Carolina lawyer , remarked, "A good many judges in this
> state
> are conservative."
>
> Boyle, 56, has been on the federal bench in North Carolina for 17 years
> and
> previously had been a legislative assistant to Sen. Jesse Helms, R-N.C.
> Earlier this year, Boyle dismissed charges against a defendant accused of
> running an $18 million fraudulent investment scheme because the
prosecutor

> missed a deadline. In 1996, Boyle invalidated a deal reached in a job
> discrimination case. In that deal, the government had agreed to recruit
> women as correctional officers and pay $5.5 million to those already
> passed
> over for employment and promotions.
>
> The U.S. Supreme Court has twice overturned Boyle rulings in a
> redistricting
> case in which he invalidated a congressional district's boundaries
because
> he thought race had played an unconstitutional role in drawing those
> lines.
> In April, when Boyle was most recently overruled, Chief Justice William
> Rehnquist and Justices Scalia, Thomas, and Kennedy dissented.
>
> The makeup of the federal courts is constantly changing as judges
retire,
> take senior status, or die, and new judges are appointed. But the
politics
> of the nomination and confirmation process during the Clinton
> Administration
> wreaked havoc on the system and left 31 appeals court slots unfilled.
> Democrats, at least theoretically, hold the cards on who will fill 14 of
> the
> 31 vacancies. The Senate's unwritten rules allow a Senator to issue a
> "blue
> slip," essentially a blackball, on any judicial nominee from his or her
> home
> state for any reason.
>
> What remains to be seen is how far Bush will try to go in turning the
> federal judiciary further to the right, and how far the Senate's
Democrats
> will go to try to stop Bush's most conservative choices from being
> confirmed
> to lifetime appointments to the federal bench.

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;heather larrison/who/eop@eop [WHO] <heather larrison>
Sent: 5/18/2001 7:42:11 AM
Subject: : Re: Resumes/Bios

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 11:42:11.00
SUBJECT:: Re: Resumes/Bios
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:heather larrison ( CN=heather larrison/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ditto
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Brett M. Kavanaugh
05/18/2001 11:26:10 AM
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Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Resumes/Bios

Agreed.

Helgard C. Walker
05/18/2001 11:21:48 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Resumes/Bios

Agreed.

Noel J. Francisco
05/18/2001 10:31:25 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Resumes/Bios

I think we should decide as a whole whether or not to provide anything beyond the press release -- it might look odd if we provide some but not others. I vote against providing resumes.

Elizabeth N. Camp
05/18/2001 10:27:17 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Resumes/Bios

If you are interested in providing your resume/bio to Douglas McCollam please email this to me by 12:00 noon on Monday.

I'll also send to him a copy of the press release(s) issued announcing the hiring of counsel staff.

Thanks!

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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Heather Larrison/WHO/EOP@EOP

Message Copied
To:_____
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
bradford a. berenson/who/eop@eop
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brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
heather larrison/who/eop@eop

Message Copied
To:_____
elizabeth n. camp/who/eop@eop
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
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brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
heather larrison/who/eop@eop

Message Copied
To:_____
noel j. francisco/who/eop@eop
elizabeth n. camp/who/eop@eop
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
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laura l. flippin/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
heather larrison/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 5/18/2001 8:25:25 AM
Subject: : Re: Update on openings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-MAY-2001 12:25:25.00
SUBJECT:: Re: Update on openings
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Current vacancies:
http://www.uscourts.gov/vacancies/judgevacancy.htm

Known future vacancies:
http://www.uscourts.gov/vacancies/futuremenu.htm

Matthew A. Schlapp
05/18/2001 12:16:47 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Update on openings

Do we have an updated list of judicial opening and anticipated vacancies?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
Sent: 5/18/2001 9:27:17 AM
Subject: : Re: Update on openings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-MAY-2001 13:27:17.00
SUBJECT:: Re: Update on openings
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We know nothing more than is what on those lists as to vacancies except in some rare situations where we hear rumors that someone may take senior status, etc.

Matthew A. Schlapp
05/18/2001 01:25:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Update on openings

got ya, so just waht is public. NRLC just wanted any "inside" we might have.

Brett M. Kavanaugh
05/18/2001 12:25:16 PM
Record Type: Record

To: Matthew A. Schlapp/WHO/EOP@EOP
cc: bradford a. berenson/who/eop@eop
bcc:
Subject: Re: Update on openings

Current vacancies:
http://www.uscourts.gov/vacancies/judgevacancy.htm

Known future vacancies:
http://www.uscourts.gov/vacancies/futuremenu.htm

Matthew A. Schlapp
05/18/2001 12:16:47 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Update on openings

Do we have an updated list of judicial opening and anticipated vacancies?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>

CC: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>

Sent: 5/18/2001 11:10:09 AM

Subject: : Meeting w/ POTUS at 4:00 pm on MONDAY, May 21

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 15:10:09.00
SUBJECT:: Meeting w/ POTUS at 4:00 pm on MONDAY, May 21
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is the sixth meeting re: judges. I need the list of attendees asap
please.
```

Happy decision binder building!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;heather larrison/who /eop@eop [WHO] <heather larrison>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>
CC: Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>
Sent: 5/18/2001 2:03:47 PM
Subject: : NEW POTUS MEETING TIME

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-MAY-2001 18:03:47.00
SUBJECT:: NEW POTUS MEETING TIME
TO:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
TO:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
TO:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:heather larrison ( CN=heather larrison/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:Stacey B. Silva ( CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Tuesday - 5:00 pm

Stacey - Can we use the Roosevelt Room?
```

Elizabeth N. Camp
05/18/2001 04:22:56 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Allison L. Riepenhoff/WHO/EOP@EOP, Jason B. Torchinsky/WHO/EOP@EOP, Brent D. Greenfield/WHO/EOP@EOP
Subject: Attempting new POTUS mtg. time

We are shooting for 5:00-5:40 on Tuesday, May 22nd.

If this 5:00 Tuesday time works out the binder needs to be in Staff Secretary's office absolutely no later than 2:00 pm on Monday.

If Judge is supposed to review/approve this then he needs the binder early on Monday as he is out of the office from 11:15am until 2:00 pm.

As soon as I get confirmation from scheduling I'll let you know.

Thanks!

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Heather Larrison/WHO/EOP@EOP

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2001 3:58:03 AM
Subject: : Re: First Lady meals while in travel status

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2001 07:58:03.00
SUBJECT:: Re: First Lady meals while in travel status
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett -- I can't recall whether you specifically looked into the question below. Unless you disagree, I am going to advise that the purpose of the trip dictates.

Vickers B. Meadows
05/18/2001 04:19:28 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: First Lady meals while in travel status

Here's another one - I have several bills from Airlift Ops for the First Lady's meals on an airplane when she is traveling separately from the POTUS. Is this considered personal - or does the purpose of the trip determine the paying entity? vbm

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 5/21/2001 6:37:30 AM
Subject: : WHJSC agenda

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-MAY-2001 10:37:30.00
SUBJECT:: WHJSC agenda
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please email me with any items you have for this week.

Thanks!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 5/21/2001 7:11:28 AM
Subject: : Re: Additional research memos

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2001 11:11:28.00
SUBJECT:: Re: Additional research memos
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

not Williams, please!!!!

Courtney S. Elwood
05/21/2001 11:07:24 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Additional research memos

I'll do one.

Bradford A. Berenson
05/21/2001 10:53:37 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Additional research memos

The Judge and Tim have requested three additional long-form memoranda of the kind we all prepared a few weeks back. They have asked me and Brett to search for volunteers to do another round. Anyone not overwhelmed in the next few weeks and willing to take this on?

Message Sent
To:_____
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

Message Copied

To:_____
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
noel j. francisco/who/eop@eop
helgard c. walker/who/eop@eop
brett m. kavanaugh/who/eop@eop

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Heather Larrison/WHO/EOP@EOP [WHO] <Heather Larrison>

CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO /EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 5/21/2001 2:17:15 PM

Subject: : Meeting time w/ POTUS moved!

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-MAY-2001 18:17:15.00
SUBJECT:: Meeting time w/ POTUS moved!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

New time is 4:20-5:00 on Tuesday (instead of 5:00-5:40).
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 5/22/2001 12:00:34 PM
Subject: : Pictures Needed

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-MAY-2001 16:00:34.00
SUBJECT:: Pictures Needed
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/22/2001 04:00 PM ----------

"Holten, Patrick" <pholten@bork.com>
05/22/2001 11:36:35 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP
cc:
Subject: Pictures Needed

Bob Bork is trying to track down photos of the Bush judicial nominees. Is it possible to send us either by e-mail or courier a set of head shot photographs for the 11 Bush court nominees? I have found 5 already on the web but if you have an entire set that would be helpful. If you can't help,
can you point me in the right direction? Thanks!

Patrick Holten
Bork & Associates
700 13th Street, N.W. Suite 575
Washington, D.C. 20005

(202) 585-2608 fax: (202) 393-5161

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [UNKNOWN] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>

Sent: 5/22/2001 1:43:22 PM

Subject: : Jud. Selection Comm. Mtg. TOMORROW

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAY-2001 17:43:22.00
SUBJECT:: Jud. Selection Comm. Mtg. TOMORROW
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI - this meeting will start at 4:30 pm and conclude by approx. 5:00 pm.
Same location - Roosevelt Room.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/22/2001 2:44:19 PM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAY-2001 18:44:19.00
SUBJECT::
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

http://www.drudgereport.com/
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 5/22/2001 2:53:10 PM
Subject: : turn on CNN now

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAY-2001 18:53:10.00
SUBJECT:: turn on CNN now
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2001 6:11:58 AM
Subject: : Cars to RNC event

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAY-2001 10:11:58.00
SUBJECT:: Cars to RNC event
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

In response to your questions on cars to the RNC event, I conferred with
Brett who confirmed that, if someone took a car pit car to the RNC event
last night, there needs to be reimbursement from the RNC. This rule would
not apply to the motorcade, however.

As a general matter, no one should take car pit cars to political events
(other than Card, Rice, or others who may need access to secure
communications); but if someone does so, there must be reimbursement.
Card, Rice, et al. likewise must reimburse for trips made to the political
events.

Brett, correct me if I have misstated anything or have oversimplified it.
```

From: CN=Hector F. Irastorza/OU=WHO/O=EOP [WHO]

To: Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Nicholas E. Calio/WHO /EOP@EOP [WHO] <Nicholas E. Calio>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>;Lawrence A. Fleischer/WHO /EOP@EOP [WHO] <Lawrence A. Fleischer>;Stephen Goldsmith/WHO/EOP@EOP [WHO] <Stephen Goldsmith>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Stephen J. Hadley/NSC/EOP@EOP [NSC] <Stephen J. Hadley>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Karen Hughes/WHO/EOP@EOP [WHO] <Karen Hughes>;Clay Johnson III/WHO/EOP@EOP [WHO] <Clay Johnson III>;Margaret M. LaMontagne/OPD/EOP@EOP [OPD] <Margaret M. LaMontagne>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Condoleezza Rice/NSC /EOP@EOP [NSC] <Condoleezza Rice>;Logan M. Walters/WHO/EOP@EOP [WHO] <Logan M. Walters>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Margaret Tutwiler/WHO /EOP@EOP [WHO] <Margaret Tutwiler>;Mary J. Matalin/OVP/EOP@EOP [OVP] <Mary J. Matalin>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Daniel J. Bartlett/WHO /EOP@EOP [WHO] <Daniel J. Bartlett>;Ronald G. Bellamy/WHO/EOP@EOP [WHO] <Ronald G. Bellamy>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>;John Gardner/WHO/EOP@EOP [WHO] <John Gardner>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Hector F. Irastorza/WHO/EOP@EOP [WHO] <Hector F. Irastorza>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Mark V. Rosenker/WHO /EOP@EOP [WHO] <Mark V. Rosenker>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Robert A. Bradtke/NSC/EOP@EOP [NSC] <Robert A. Bradtke>;Richard A. Clarke/NSC/EOP@EOP [NSC] <Richard A. Clarke>;Mary O. McCarthy/NSC/EOP@EOP [NSC] <Mary O. McCarthy>;Clare Pritchett/WHO/EOP@EOP [WHO] <Clare Pritchett>;Bruce O. Riedel/NSC/EOP@EOP [NSC] <Bruce O. Riedel>;Eric P. Schwartz/NSC/EOP@EOP [NSC] <Eric P. Schwartz>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Mary Ellen Countryman/NSC/EOP@EOP [NSC] <Mary Ellen Countryman>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Phillip Larsen/OA /EOP@EOP [OA] <Phillip Larsen>;Roland N. Litterst/WHO/EOP@EOP [WHO] <Roland N. Litterst>;Kevin J. Martin/OPD/EOP@EOP [OPD] <Kevin J. Martin>;Robert C. McNally/OPD /EOP@EOP [OPD] <Robert C. McNally>;Townsend L. McNitt/WHO/EOP@EOP [WHO] <Townsend L. McNitt>;Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Patrick J. Rhode/WHO /EOP@EOP [WHO] <Patrick J. Rhode>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;David Frum/WHO /EOP@EOP [WHO] <David Frum>;Robert G. Joseph/NSC/EOP@EOP [NSC] <Robert G. Joseph>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Daniel Fried/NSC /EOP@EOP [NSC] <Daniel Fried>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;John B. Bellinger/NSC/EOP@EOP [

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Sent: 5/23/2001 12:00:50 PM

Subject: : White House Mess Closing

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Hector F. Irastorza ( CN=Hector F. Irastorza/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAY-2001 16:00:50.00
SUBJECT:: White House Mess Closing
TO:Joshua B. Bolten ( CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nicholas E. Calio ( CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Ellen Countryman (CN=Mary Ellen Countryman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN

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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
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TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP@EOP [NSC])
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READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN
TO:June Bartlett (CN=June Bartlett/OU=NSC/O=EOP@EOP [NSC])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John M. Blackburn (CN=John M. Blackburn/OU=NSC/O=EOP@EOP [NSC])
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TO:Gary E. Bresnahan (CN=Gary E. Bresnahan/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
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READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel C. Ehrendreich (CN=Joel C. Ehrendreich/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joachim D. Fuchs (CN=Joachim D. Fuchs/OU=NSC/O=EOP@EOP [NSC])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:Theresa F. Granger (CN=Theresa F. Granger/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Janan Grissom (CN=Janan Grissom/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert C. Hargis (CN=Robert C. Hargis/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brenda I. Hilliard (CN=Brenda I. Hilliard/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@EOP [WHO])
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TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:M. Kay Joshi (CN=M. Kay Joshi/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dora Kale (CN=Dora Kale/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Clark R. Lystra (CN=Clark R. Lystra/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michael T. Manning (CN=Michael T. Manning/OU=NSC/O=EOP@EOP [NSC])
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TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
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TO:Thomas S. Marsh (CN=Thomas S. Marsh/OU=NSC/O=EOP@EOP [NSC])
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TO:Jenny McGee (CN=Jenny McGee/OU=NSC/O=EOP@EOP [NSC])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [OPD])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
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TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin S. Moran (CN=Kevin S. Moran/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP@EOP [NSC])
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TO:Raymond H. Payne (CN=Raymond H. Payne/OU=NSC/O=EOP@EOP [NSC])
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TO:Sarah Pfeifer (CN=Sarah Pfeifer/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gidell P. Porter (CN=Gidell P. Porter/OU=NSC/O=EOP@EOP [NSC])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
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TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP@EOP [OPD])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Deana R. Sutliff (CN=Deana R. Sutliff/OU=NSC/O=EOP@EOP [NSC])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Kurt F. Van der Walde (CN=Kurt F. Van der Walde/OU=NSC/O=EOP@EOP [NSC])
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TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amy Barrera (CN=Amy Barrera/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP@EOP [NSC])
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TO:Dean J. Haas (CN=Dean J. Haas/OU=NSC/O=EOP@EOP [NSC])
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TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Emily Willeford (CN=Emily Willeford/OU=OPD/O=EOP@EOP [OPD])
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TO:Elizabeth A. Selva (CN=Elizabeth A. Selva/OU=NSC/O=EOP@EOP [NSC])
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TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])
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TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP@EOP [WHO])
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TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Travis C. Good (CN=Travis C. Good/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew M. Kaver (CN=Andrew M. Kaver/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sherry J. Kuntz (CN=Sherry J. Kuntz/OU=WHO/O=EOP@EOP [WHO])
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TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP@EOP [NSC])
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TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary I. Metzger (CN=Mary I. Metzger/OU=NSC/O=EOP@EOP [NSC])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bonnie S. Broadwick (CN=Bonnie S. Broadwick/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marcia J. Caler (CN=Marcia J. Caler/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:William D. Mathews (CN=William D. Mathews/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edward J. Padinske (CN=Edward J. Padinske/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Robert E. Schubert (CN=Robert E. Schubert/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

The White House Mess will be closed Monday, May 28, 2001, in observance of Memorial Day.

Thank you.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 5/23/2001 2:45:34 PM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAY-2001 18:45:34.00
SUBJECT::
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

How many Supreme Court Justices have there been? How many and
which ones had prior service in the United States Congress before becoming
Justices? I believe it is about 20, but I need an exact list. Thx.
```

From: CN=Hector F. Irastorza/OU=WHO/O=EOP [WHO]

To: Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Nicholas E. Calio/WHO /EOP@EOP [WHO] <Nicholas E. Calio>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>;Lawrence A. Fleischer/WHO /EOP@EOP [WHO] <Lawrence A. Fleischer>;Stephen Goldsmith/WHO/EOP@EOP [WHO] <Stephen Goldsmith>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Stephen J. Hadley/NSC/EOP@EOP [NSC] <Stephen J. Hadley>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Karen Hughes/WHO/EOP@EOP [WHO] <Karen Hughes>;Clay Johnson III/WHO/EOP@EOP [WHO] <Clay Johnson III>;Margaret M. LaMontagne/OPD/EOP@EOP [OPD] <Margaret M. LaMontagne>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Condoleezza Rice/NSC /EOP@EOP [NSC] <Condoleezza Rice>;Logan M. Walters/WHO/EOP@EOP [WHO] <Logan M. Walters>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Margaret Tutwiler/WHO /EOP@EOP [WHO] <Margaret Tutwiler>;Mary J. Matalin/OVP/EOP@EOP [OVP] <Mary J. Matalin>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Daniel J. Bartlett/WHO /EOP@EOP [WHO] <Daniel J. Bartlett>;Ronald G. Bellamy/WHO/EOP@EOP [WHO] <Ronald G. Bellamy>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>;John Gardner/WHO/EOP@EOP [WHO] <John Gardner>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Hector F. Irastorza/WHO/EOP@EOP [WHO] <Hector F. Irastorza>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Mark V. Rosenker/WHO /EOP@EOP [WHO] <Mark V. Rosenker>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Robert A. Bradtke/NSC/EOP@EOP [NSC] <Robert A. Bradtke>;Richard A. Clarke/NSC/EOP@EOP [NSC] <Richard A. Clarke>;Mary O. McCarthy/NSC/EOP@EOP [NSC] <Mary O. McCarthy>;Clare Pritchett/WHO/EOP@EOP [WHO] <Clare Pritchett>;Bruce O. Riedel/NSC/EOP@EOP [NSC] <Bruce O. Riedel>;Eric P. Schwartz/NSC/EOP@EOP [NSC] <Eric P. Schwartz>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Mary Ellen Countryman/NSC/EOP@EOP [NSC] <Mary Ellen Countryman>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Phillip Larsen/OA /EOP@EOP [OA] <Phillip Larsen>;Roland N. Litterst/WHO/EOP@EOP [WHO] <Roland N. Litterst>;Kevin J. Martin/OPD/EOP@EOP [OPD] <Kevin J. Martin>;Robert C. McNally/OPD /EOP@EOP [OPD] <Robert C. McNally>;Townsend L. McNitt/WHO/EOP@EOP [WHO] <Townsend L. McNitt>;Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Patrick J. Rhode/WHO /EOP@EOP [WHO] <Patrick J. Rhode>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;David Frum/WHO /EOP@EOP [WHO] <David Frum>;Robert G. Joseph/NSC/EOP@EOP [NSC] <Robert G. Joseph>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Daniel Fried/NSC /EOP@EOP [NSC] <Daniel Fried>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;John B. Bellinger/NSC/EOP@EOP [

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Mynatt>;Richard S. Paulus/WHO/EOP@EOP [WHO] <Richard S. Paulus>;Raymond H. Payne/NSC/EOP@EOP [NSC] <Raymond H. Payne>;Sarah Pfeifer/OPD/EOP@EOP [OPD] <Sarah Pfeifer>;Gidell P. Porter/NSC/EOP@EOP [NSC] <Gidell P. Porter>;David Reyes/NSC /EOP@EOP [NSC] <David Reyes>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Christina D. Roberts/WHO/EOP@EOP [WHO] <Christina D. Roberts>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Noelia Rodriguez/WHO /EOP@EOP [WHO] <Noelia Rodriguez>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>;Daniel R. Sanborn/NSC /EOP@EOP [NSC] <Daniel R. Sanborn>;John B. Sherman/NSC/EOP@EOP [NSC] <John B. Sherman>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Deana R. Sutliff/NSC/EOP@EOP [NSC] <Deana R. Sutliff>;Barbara E. Swann/OA/EOP@EOP [OA] <Barbara E. Swann>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Julieanne H. Thomas/WHO /EOP@EOP [WHO] <Julieanne H. Thomas>;Anne Trenolone/WHO/EOP@EOP [WHO] <Anne Trenolone>;Sibyl M. Turner/WHO/EOP@EOP [WHO] <Sibyl M. Turner>;Kurt F. Van der Walde/NSC/EOP@EOP [NSC] <Kurt F. Van der Walde>;Elaine P. Wasserman/NSC/EOP@EOP [NSC] <Elaine P. Wasserman>;Robert L. Wilbon/OA/EOP@EOP [OA] <Robert L. Wilbon>;Robert S. Williams/NSC/EOP@EOP [NSC] <Robert S. Williams>;Harry W. Wolff/WHO /EOP@EOP [WHO] <Harry W. Wolff>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Christina H. Yarmchuk/NSC/EOP@EOP [NSC] <Christina H. Yarmchuk>;Ashleigh A. Adams/WHO/EOP@EOP [WHO] <Ashleigh A. Adams>;Amy Barrera/WHO/EOP@EOP [WHO] <Amy Barrera>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;Colby J. Cooper/NSC/EOP@EOP [NSC] <Colby J. Cooper>;Dean J. Haas/NSC/EOP@EOP [NSC] <Dean J. Haas>;Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>;Josephine L. Hirsch/WHO/EOP@EOP [WHO] <Josephine L. Hirsch>;Scott Jeffcoat/WHO/EOP@EOP [WHO] <Scott Jeffcoat>;Megan R. Johnston/WHO/EOP@EOP [WHO] <Megan R. Johnston>;Daniel M. McCarthy/WHO /EOP@EOP [WHO] <Daniel M. McCarthy>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Emily Willeford/OPD/EOP@EOP [OPD] <Emily Willeford>;Alexian T. Wines/NSC/EOP@EOP [NSC] <Alexian T. Wines>;Elizabeth A. Selva/NSC/EOP@EOP [NSC] <Elizabeth A. Selva>;Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>;Suzanne Primoff/WHO/EOP@EOP [WHO] <Suzanne Primoff>;David R. Bohrer/OVP/EOP@EOP [OVP] <David R. Bohrer>;Jill Davie/WHO/EOP@EOP [WHO] <Jill Davie>;Ruth E. Elliott/NSC /EOP@EOP [NSC] <Ruth E. Elliott>;Travis C. Good/NSC/EOP@EOP [NSC] <Travis C. Good>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Andrew M. Kaver/NSC/EOP@EOP [NSC] <Andrew M. Kaver>;Sherry J. Kuntz/WHO/EOP@EOP [WHO] <Sherry J. Kuntz>;Sang W. Lee/NSC/EOP@EOP [NSC] <Sang W. Lee>;Laura E. Lineberry/NSC/EOP@EOP [NSC] <Laura E. Lineberry>;Mary I. Metzger/NSC/EOP@EOP [NSC] <Mary I. Metzger>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Bonnie S. Broadwick/NSC/EOP@EOP [NSC] <Bonnie S. Broadwick>;Marcia J. Caler/NSC/EOP@EOP [NSC] <Marcia J. Caler>;Douglas M. Erdahl/NSC/EOP@EOP [NSC] <Douglas M. Erdahl>;William D. Mathews/NSC/EOP@EOP [NSC] <William D. Mathews>;Edward J. Padinske/NSC/EOP@EOP [NSC] <Edward J. Padinske>;Robert E. Schubert/NSC/EOP@EOP [NSC] <Robert E. Schubert>

Sent: 5/23/2001 12:00:50 PM

Subject: : White House Mess Closing

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Hector F. Irastorza ( CN=Hector F. Irastorza/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAY-2001 16:00:50.00
SUBJECT:: White House Mess Closing
TO:Joshua B. Bolten ( CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nicholas E. Calio ( CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Ellen Countryman (CN=Mary Ellen Countryman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Patrick J. Rhode (CN=Patrick J. Rhode/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
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TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
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TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
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READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John J. DiIulio (CN=John J. DiIulio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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TO:Stuart Holliday (CN=Stuart Holliday/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Torkel L. Patterson (CN=Torkel L. Patterson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Peter F. Allgeier (CN=Peter F. Allgeier/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Andrew D. Lundquist (CN=Andrew D. Lundquist/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP@EOP [OMB])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
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TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP@EOP [NSC])
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READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:June Bartlett (CN=June Bartlett/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Brooks L. Bash (CN=Brooks L. Bash/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John M. Blackburn (CN=John M. Blackburn/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gary E. Bresnahan (CN=Gary E. Bresnahan/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Don E. Cheramie (CN=Don E. Cheramie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley E. Davis (CN=Ashley E. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel C. Ehrendreich (CN=Joel C. Ehrendreich/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joachim D. Fuchs (CN=Joachim D. Fuchs/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Theresa F. Granger (CN=Theresa F. Granger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Janan Grissom (CN=Janan Grissom/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert C. Hargis (CN=Robert C. Hargis/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brenda I. Hilliard (CN=Brenda I. Hilliard/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela A. Jones (CN=Angela A. Jones/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:M. Kay Joshi (CN=M. Kay Joshi/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dora Kale (CN=Dora Kale/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Clark R. Lystra (CN=Clark R. Lystra/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michael T. Manning (CN=Michael T. Manning/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Thomas S. Marsh (CN=Thomas S. Marsh/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jenny McGee (CN=Jenny McGee/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cathy L. Millison (CN=Cathy L. Millison/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin S. Moran (CN=Kevin S. Moran/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Raymond H. Payne (CN=Raymond H. Payne/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sarah Pfeifer (CN=Sarah Pfeifer/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gidell P. Porter (CN=Gidell P. Porter/OU=NSC/O=EOP@EOP [NSC])
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TO:David Reyes (CN=David Reyes/OU=NSC/O=EOP@EOP [NSC])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel R. Sanborn (CN=Daniel R. Sanborn/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:John B. Sherman (CN=John B. Sherman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deana R. Sutliff (CN=Deana R. Sutliff/OU=NSC/O=EOP@EOP [NSC])
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TO:Barbara E. Swann (CN=Barbara E. Swann/OU=OA/O=EOP@EOP [OA])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Sibyl M. Turner (CN=Sibyl M. Turner/OU=WHO/O=EOP@EOP [WHO])
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TO:Kurt F. Van der Walde (CN=Kurt F. Van der Walde/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Elaine P. Wasserman (CN=Elaine P. Wasserman/OU=NSC/O=EOP@EOP [NSC])
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TO:Robert L. Wilbon (CN=Robert L. Wilbon/OU=OA/O=EOP@EOP [OA])
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TO:Robert S. Williams (CN=Robert S. Williams/OU=NSC/O=EOP@EOP [NSC])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Christina H. Yarmchuk (CN=Christina H. Yarmchuk/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amy Barrera (CN=Amy Barrera/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dean J. Haas (CN=Dean J. Haas/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Josephine L. Hirsch (CN=Josephine L. Hirsch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Megan R. Johnston (CN=Megan R. Johnston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel M. McCarthy (CN=Daniel M. McCarthy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie C. Pauska (CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Emily Willeford (CN=Emily Willeford/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Alexian T. Wines (CN=Alexian T. Wines/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Elizabeth A. Selva (CN=Elizabeth A. Selva/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Travis C. Good (CN=Travis C. Good/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew M. Kaver (CN=Andrew M. Kaver/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sherry J. Kuntz (CN=Sherry J. Kuntz/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary I. Metzger (CN=Mary I. Metzger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bonnie S. Broadwick (CN=Bonnie S. Broadwick/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marcia J. Caler (CN=Marcia J. Caler/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:William D. Mathews (CN=William D. Mathews/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edward J. Padinske (CN=Edward J. Padinske/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Robert E. Schubert (CN=Robert E. Schubert/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

The White House Mess will be closed Monday, May 28, 2001, in observance of Memorial Day.

Thank you.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 5/23/2001 12:07:06 PM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-MAY-2001 16:07:06.00
SUBJECT:: Re:
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'll do it.

Rachel L. Brand 05/23/2001 04:03:18 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

Is there anyone (other than Brett, Brad, or Courtney) who isn't writing one of the new S Ct memos who is interested in helping me on the 3rd slate of nominees?

RLB

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 5/24/2001 6:25:02 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-MAY-2001 10:25:02.00
SUBJECT:: Re:
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just wanted to make sure all of these folks had prior service in Congress at time they went on Supreme Court as opposed to subsequent service in Congress after they left SCt.

Brent D. Greenfield
05/24/2001 10:16:01 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Jason B. Torchinsky/WHO/EOP@EOP
bcc:
Subject: Re:

As of today, there have been 108 members of the United States Supreme Court. Of these, 27 justices has prior service in the United States Congress, and one was a former President of the United States.* They are as follows:

Oliver Ellsworth (U.S. Senator from 1789-1796)
John Marshall (U.S. Representative from 1799-1800)
Salmon P. Chase (U.S. Senator from 1849-1855; 1861)
Frederick M. Vinson (U.S. Representative from 1923-1929; 1931-1938)
William Paterson (U.S. Senator from 1789-1790)
Gabriel Duval (U.S. Representative from 1794-1796)
Joseph Story (U.S. Representative from 1808-1809)
John McLean (U.S. Representative from 1830-1861)
Henry Baldwin (U.S. Representative from 1817-1822)
James M. Wayne (U.S. Representative from 1829-1835)
Philip P. Barbour (U.S. Representative from 1815-1825; 1827-1830)
John McKinley (U.S. Senator from 1826-1831; U.S. Representative from 1833-1835)
Levi Woodbury (U.S. Senator from 1825-1831; 1841-1845)
Nathan Clifford (U.S. Representative from 1839-1843)
William Strong (U.S. Representative from 1847-1851)
Stanley Matthews (U.S. Senator from 1877-1881)
Lucius Q.C. Lamar (U.S. Representative from 1857-1860; 1873-1877; U.S. Senator from 1877-1885)
Howell E. Jackson (U.S. Senator from 1881-1886)
Edward D. White (U.S. Senator from 1894-1910)
Joseph McKenna (U.S. Representative from 1885-1892)
William H. Moody (U.S. Representative from 1895-1902)
Mahlon Pitney (U.S. Representative from 1895-1899)
George Sutherland (U.S. Representative from 1901-1902; U.S. Senator from 1905-1917)
Hugo L. Black (U.S. Senator from 1927-1937)

James F. Byrnes (U.S. Representative from 1911-1925; U.S. Senator from 1931-1941)
Harold H. Burton (U.S. Senator from 1941-1945)
Sherman Minton (U.S. Senator from 1935-1941)

*William H. Taft (President of the U.S. from 1909-1913)

Brett M. Kavanaugh
05/23/2001 06:45:26 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP, Brent D. Greenfield/WHO/EOP@EOP
cc:
Subject:

How many Supreme Court Justices have there been? How many and which ones had prior service in the United States Congress before becoming Justices? I believe it is about 20, but I need an exact list. Thx.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>

CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 5/24/2001 9:04:46 AM

Subject: : Red Tags - heads up

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2001 13:04:46.00
SUBJECT:: Red Tags - heads up
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We were given a heads up by Staff Secretary's office that this afternoon
and tomorrow there will some important and time sensitive for legislative
related red tags items moving through.
```

Thanks!

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>
Sent: 5/24/2001 5:45:51 AM
Subject: : Re: here is noel's e mail

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-MAY-2001 09:45:51.00
SUBJECT:: Re: here is noel's e mail
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I looked at the issue re the CDF when I was in Texas but Toner was lead on it.

I realize his message is not about the links issue. Noel's e mail spurred my faint recollection that you had looked into the internet copyright issues in answering the links question.

In any event, who wants to address the trademark question?

Rachel L. Brand 05/24/2001 09:37:04 AM

Record Type: Record

To: Stuart W. Bowen/WHO/EOP@EOP
cc: Noel J. Francisco/WHO/EOP@EOP
bcc:
Subject: Re: here is noel's e mail

The question (see below, e-mail from Mike Shannon) is whether the fact that there is a group by the name "communities of character" causes a trademark problem for us if the WH uses the same phrase in a different context.
It's the same as the question about whether we could use the No Child Left Behind phrase even though the Children's Defense Fund uses a similar motto.
Noel and I thought you had dealt with Toner (or somebody) on that issue.

As I read the question in the e-mail from Mike Shannon, the question has nothing to do with weblinks.

RLB

Stuart W. Bowen
05/24/2001 09:23:20 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP

cc:
Subject: here is noel's e mail

as you can see, the question does not involve the Ed Bill. It's more related to the question Vance brought to us a while back on use (in that case by links) of website material.
---------- Forwarded by Stuart W. Bowen/WHO/EOP on 05/24/2001 09:21 AM ----------

Stuart W. Bowen
05/24/2001 08:52:57 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: Communites of Character Question

Actually Rachel looked into this on a more general internet query from osi.

Noel J. Francisco
05/23/2001 06:57:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Communites of Character Question

I think Stuart dealt with this with respect to "No Child Left Behind." Stuart, am I right?

---------- Forwarded by Noel J. Francisco/WHO/EOP on 05/23/2001 06:56 PM ----------

Brett M. Kavanaugh
05/23/2001 06:45:57 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: Communites of Character Question

Your bailiwicks?

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/23/2001 06:45 PM ----------

Michael Shannon 05/23/2001 06:40:32 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Communites of Character Question

Brett,

Per our discussion this afternoon, we (the Office of Strategic Initiatives) are currently helping plan for a fall presidential initiative that is tentatively entitled "Communities of Character" (it would serve as an umbrella for programs/rhetoric relating to renewing America's values/civic life). During our research, I came across the web site of an

organization named Communities of Character. We need guidance from your office on any copyright/trademark issues that might arise as a result of that group's existence. The web site link is below. Please let me know if any further information would be helpful. A senior staff working group is meeting early next week on this initiative, so having an answer by the weekend would be great if possible. Thank you.

http://www.communitiesofcharacter.org/

Mike
62921

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Holten, Patrick <pholten@bork.com>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/24/2001 11:22:49 AM
Subject: : RE: Pictures Needed

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2001 15:22:49.00
SUBJECT:: RE: Pictures Needed
TO:"Holten, Patrick" <pholten@bork.com> ( "Holten, Patrick" <pholten@bork.com> [ UNKNOWN ]
)
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Patrick,

Please let me how you intend to use the photos. Depending on the use,
the WH Photo office has different proecedures for obtaining WH photos.

Jason
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>

CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 5/24/2001 9:04:46 AM

Subject: : Red Tags - heads up

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2001 13:04:46.00
SUBJECT:: Red Tags - heads up
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We were given a heads up by Staff Secretary's office that this afternoon
and tomorrow there will some important and time sensitive for legislative
related red tags items moving through.
```

Thanks!

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 5/24/2001 9:19:14 AM
Subject: : News on judicial nominees and Olson nomination

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2001 13:19:14.00
SUBJECT:: News on judicial nominees and Olson nomination
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

http://www.newsday.com/ap/text/washington/ap236.htm
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 5/24/2001 12:49:53 PM
Subject: : reminder -ARG leaving at 9:00 am on Friday for TX

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2001 16:49:53.00
SUBJECT:: reminder -ARG leaving at 9:00 am on Friday for TX
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

He will be back late Monday.

We will have staff meeting at 8:30.
```

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/25/2001 7:26:57 AM
Subject: : Executive Privilege

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone ( CN=Adam F. Greenstone/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME:25-MAY-2001 11:26:57.00
SUBJECT:: Executive Privilege
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Helgi--Thanks for your message. Any chance we can meet mid-afternoon
today, say around 3? Adam
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 5/25/2001 11:42:26 AM
Subject: : Re: D. Ariz.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-MAY-2001 15:42:26.00
SUBJECT:: Re: D. Ariz.
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am handling; do you know why they are filling out those forms?
I did not tell them to do that, and I did not think they had to.

Kyle Sampson
05/25/2001 03:34:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Gregory M. Walters/WHO/EOP@EOP
Subject: D. Ariz.

Who is handling D. Ariz. judgeships? Sen. Kyl's staff called; the candidates are having trouble entering their data into our database through the White House web page. Whoever is running point on the Arizona judgeships should get instructions from Greg Walters of Katja's shop, and then convey the instructions to the judgeship candidates. Please forward this e-mail to the appropiate attorney. Thanks. Oh, Sen. Kyl's staffer that called is Mike Thorpe at 224-6791.

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

To: james_r._wilkinson@who.eop.gov @ inet [UNKNOWN] <james_r._wilkinson@who.eop.gov>

BCC: Daniel J. Bartlett (Daniel J. Bartlett/WHO/EOP@EOP [WHO]), Karen Hughes (Karen Hughes/WHO/EOP@EOP [WHO]), Margaret Tutwiler (Margaret Tutwiler/WHO/EOP@EOP [WHO]), Noelia Rodriguez (Noelia Rodriguez/WHO/EOP@EOP [WHO]), Erin E. Healy (Erin E. Healy/WHO/EOP@EOP [WHO]), Tracey L. Schmitt (Tracey L. Schmitt/WHO/EOP@EOP [WHO]), Gail Randall (Gail Randall/WHO/EOP@EOP [WHO]), Gregory Goss (Gregory Goss/WHO/EOP@EOP [WHO]), Tracy Young (Tracy Young/WHO/EOP@EOP [WHO]), Tucker A. Eskew (Tucker A. Eskew/WHO/EOP@EOP [WHO]), Jeanie S. Mamo (Jeanie S. Mamo/WHO/EOP@EOP [WHO]), Kenneth A. Lisaius (Kenneth A. Lisaius/WHO/EOP@EOP [WHO]), Nicolle Devenish (Nicolle Devenish/WHO/EOP@EOP [WHO]), Andrew H. Card (Andrew H. Card/WHO/EOP@EOP [WHO]), Joshua B. Bolten (Joshua B. Bolten/WHO /EOP@EOP [WHO]), Joel D. Kaplan (Joel D. Kaplan/WHO/EOP@EOP [WHO]), Kristen Silverberg (Kristen Silverberg/WHO/EOP@EOP [WHO]), Joseph W. Hagin (Joseph W. Hagin/WHO/EOP@EOP [WHO]), Marcus J. Mollmann (Marcus J. Mollmann/WHO/EOP@EOP [WHO]), Katie Hong (Katie Hong/WHO/EOP@EOP [WHO]), Logan M. Walters (Logan M. Walters/WHO/EOP@EOP [WHO]), Christina D. Roberts (Christina D. Roberts/WHO /EOP@EOP [WHO]), Jill L. Angelo (Jill L. Angelo/WHO/EOP@EOP [WHO]), Scott N. Sforza (Scott N. Sforza/WHO/EOP@EOP [WHO]), Michael J. Gerson (Michael J. Gerson/WHO /EOP@EOP [WHO]), Krista L. Ritacco (Krista L. Ritacco/WHO/EOP@EOP [WHO]), Peter H. Wehner (Peter H. Wehner/WHO/EOP@EOP [WHO]), Matthew O. Scully (Matthew O. Scully/WHO/EOP@EOP [WHO]), David Frum (David Frum/WHO/EOP@EOP [WHO]), Anthony J. Gibson (Anthony J. Gibson/OSTP/EOP@EOP [OSTP]), John D. Gibson (John D. Gibson/NSC/EOP@EOP [NSC]), Edmund A. Walsh (Edmund A. Walsh/WHO/EOP@EOP [WHO]), Karl Doenges (Karl Doenges/WHO/EOP@EOP [UNKNOWN]), William T. Griffin (William T. Griffin/WHO/EOP@EOP [WHO]), Taylor S. Gross (Taylor S. Gross/WHO /EOP@EOP [WHO]), Kenneth A. Lisaius (Kenneth A. Lisaius/WHO/EOP@EOP [WHO]), Jeanie S. Mamo (Jeanie S. Mamo/WHO/EOP@EOP [WHO]), Wendy L. Nipper (Wendy L. Nipper/WHO/EOP@EOP [WHO]), Christopher J. Orr (Christopher J. Orr/WHO/EOP@EOP [WHO]), Scott Stanzel (Scott Stanzel/WHO/EOP@EOP [WHO]), Lawrence A. Fleischer (Lawrence A. Fleischer/WHO/EOP@EOP [WHO]), Vickie A. McQuade (Vickie A. McQuade/WHO/EOP@EOP [WHO]), Jennifer K. Millerwise (Jennifer K. Millerwise/WHO /EOP@EOP [WHO]), Anne Womack (Anne Womack/WHO/EOP@EOP [WHO]), Brian Bravo (Brian Bravo/WHO/EOP@EOP [WHO]), Candida P. Wolff (Candida P. Wolff/OVP/EOP@EOP [OVP]), Harry W. Wolff (Harry W. Wolff/WHO/EOP@EOP [WHO]), Scott McClellan (Scott McClellan/WHO/EOP@EOP [WHO]), Claire E. Buchan (Claire E. Buchan/WHO/EOP@EOP [WHO]), Gordon D. Johndroe (Gordon D. Johndroe/WHO/EOP@EOP [WHO]), Rachael L. Sunbarger (Rachael L. Sunbarger/WHO/EOP@EOP [WHO]), Sam Dickens (Sam Dickens/WHO/EOP@EOP [WHO]), Nicholas E. Calio (Nicholas E. Calio/WHO/EOP@EOP [WHO]), John W. Howard (John W. Howard/WHO/EOP@EOP [WHO]), Virginia T. Gregory (Virginia T. Gregory/WHO/EOP@EOP [WHO]), David W. Hobbs (David W. Hobbs/WHO /EOP@EOP [WHO]), Christal R. West (Christal R. West/WHO/EOP@EOP [WHO]), Roland N. Litterst (Roland N. Litterst/WHO/EOP@EOP [WHO]), Kirsten A. Chadwick (Kirsten A. Chadwick/WHO/EOP@EOP [WHO]), Daniel J. Keniry (Daniel J. Keniry/WHO/EOP@EOP [WHO]), Brian C. Conklin (Brian C. Conklin/WHO/EOP@EOP [WHO]), Peter M. Rowan (Peter M. Rowan/WHO/EOP@EOP [WHO]), Ziad S. Ojakli (Ziad S. Ojakli/WHO/EOP@EOP [WHO]), Christine Ciccone (Christine Ciccone/WHO/EOP@EOP [WHO]), Townsend L. McNitt (Townsend L. McNitt/WHO/EOP@EOP [WHO]), Scott Jeffcoat (Scott Jeffcoat/WHO /EOP@EOP [WHO]), Albert Hawkins (Albert Hawkins/WHO/EOP@EOP [WHO]), Cynthia R. Mendl (Cynthia R. Mendl/WHO/EOP@EOP [WHO]), Edward Ingle (Edward Ingle/WHO /EOP@EOP [WHO]), Laura C. Welborn (Laura C. Welborn/WHO/EOP@EOP [WHO]), Karl C. Rove (Karl C. Rove/WHO/EOP@EOP [WHO]), Susan B. Ralston (Susan B. Ralston/WHO /EOP@EOP [WHO]), Chris Henick (Chris Henick/WHO/EOP@EOP [WHO]), Dee Dee Benkie (Dee Dee Benkie/WHO/EOP@EOP [WHO]), Israel Hernandez (Israel Hernandez/WHO/EOP@EOP [WHO]), Thomas V. McMahan (Thomas V. McMahan/WHO /EOP@EOP [UNKNOWN]), Alicia P. Clark (Alicia P. Clark/WHO/EOP@EOP [WHO]), William S. Clark (William S. Clark/WHO/EOP@EOP [UNKNOWN]), Kasey S. Pipes (Kasey S. Pipes/WHO/EOP@EOP [WHO]), Kenneth B. Mehlman (Kenneth B. Mehlman/WHO /EOP@EOP [WHO]), Matthew A. Schlapp (Matthew A. Schlapp/WHO/EOP@EOP [WHO]), Collister W. Johnson (Collister W. Johnson/WHO/EOP@EOP [WHO]), Sara M. Taylor (Sara M. Taylor/WHO/EOP@EOP [WHO]), Kelley J. McCullough (Kelley J. McCullough/WHO

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Sent: 5/25/2001 5:05:43 PM
Subject: : Talking Points on Tax Cut Agreement
Attachments: F_EHO42004_NSC.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-MAY-2001 21:05:43.00
SUBJECT:: Talking Points on Tax Cut Agreement
TO:james_r._wilkinson@who.eop.gov ( james_r._wilkinson@who.eop.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
BCC:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Margaret Tutwiler ( CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
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BCC:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
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BCC:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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BCC:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com @ inet [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
BCC:bcomstock@rnchq.org (bcomstock@rnchq.org @ inet [UNKNOWN])
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BCC:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
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Attached are talking points on tonight's agreement on tax relief.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_EHO42004_NSC.TXT_1>

Bipartisan Results For Real, Meaningful Tax Relief

Tax relief this year, and for the next 10 years

- For the last decade the American people have seen government take an increasing share of their personal income. Today, and for the next 10 years, because Democrats and Republicans are working together, **help is on the way.**

- **Americans have overpaid their government – and they're about to get a refund.**

- This is a victory for the American people, and the credit belongs to all who helped make it happen – Democrats and Republicans alike.

- **The bipartisan agreement provides an immediate jump-start to our economy, puts money back in people's pockets this year when they need it most, and gives every American who pays taxes a tax cut.**

- Americans will get refund checks **this year**, and their tax bills will continue to go down for the next 10 years. This fall single taxpayers will get a $300 refund check, single parents will receive a $500 refund check, and married taxpayers will get a $600 refund check.

- The bipartisan agreement contains **every major element of the President's tax relief plan.** This agreement represents the largest tax cut in 20 years.

  - ✓ Cuts taxes for all taxpayers in all tax rates.
  - ✓ Repeals the death tax.
  - ✓ Provides relief from the marriage penalty.
  - ✓ Doubles the child tax credit to $1,000 to help parents with the high costs of raising children.

- **Only 125 days** into his Administration, the President and Congress have achieved together what just a few months ago seemed impossible. They said it couldn't be done. But President Bush knew it **could** be done if Republicans and Democrats would work together.

- Other key provisions:

  - ✓ Expands the earned income credit and makes the child credit refundable to put money in the hands of millions of families with children.
  - ✓ Helps Americans save more for their retirement tax-free by raising IRA contribution limits.
  - ✓ Simplifies our tax code.
  - ✓ Cuts taxes on small businessmen and women.
  - ✓ Cuts taxes to help families save for their children's education.

- **The President thanks both Democrats and Republicans in Congress for working with him in good faith to help send the American people a refund** – so that they can have more of their hard-earned dollars to save, invest and build as they choose.

- The new bipartisan consensus on tax relief should serve as the model for future bipartisan accomplishments. **This shared success is only the beginning.**

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/29/2001 12:45:11 PM
Subject: : More on the age of judicial nominees

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-MAY-2001 16:45:11.00
SUBJECT:: More on the age of judicial nominees
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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Our research indicates that, ever since the ABA was brought into the judicial appointment process during the Eisenhower administration, no person over 65 has been appointed to the Courts of Appeal. Up until the 1980s, the ABA gave an automatic "not qualified" rating to anybody over 65. The rule was abandoned when President Reagan came into office; it was thought indelicate, given Reagan's age. Nevertheless, even after the rule's formal demise, we can't find an example of a person over 65 being named to a circuit court.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [UNKNOWN] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>

Sent: 5/29/2001 4:00:53 PM

Subject: : Judicial Selection Committee - May 30th

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SUBJECT:: Judicial Selection Committee - May 30th
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TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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Just a reminder!

Day: Wednesday (May 30th)
Time: 4:00-5:00 pm
Location: Roosevelt Room

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 5/29/2001 4:01:50 PM
Subject: : JSC Prep meeting

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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
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Prep for the May 30th JSC meeting is 3:30-4:00 pm.

Thanks!
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From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:49:32 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01132_p_z4o52004_who.txt_1.doc; 01132_p_z4o52004_who.txt_2.tiff; 01132_p_z4o52004_who.txt_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:49:32.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
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TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
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READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
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READ:UNKNOWN
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
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READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
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READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
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TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
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READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

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TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
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TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

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READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
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TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

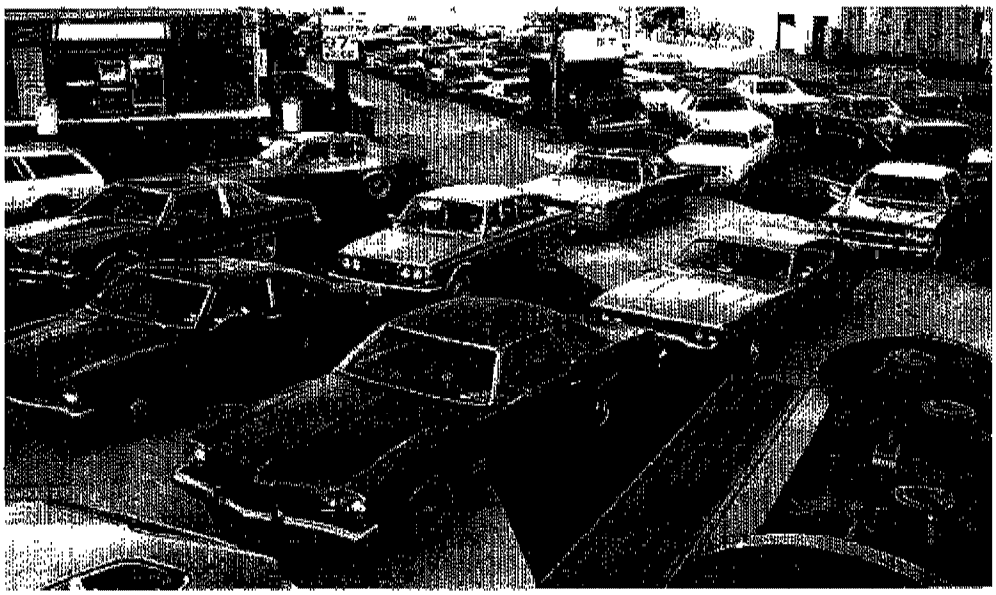
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00126910

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:50:34 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: P_17O52004_WHO.TXT_1.doc; P_17O52004_WHO.TXT_2.tiff; P_17O52004_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:50:34.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])

READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN

TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN

TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's visit, a fax copy of which is attached. john peschong helpfully got copies

to the filing center. it will also be in roll call tomorrow, and we'll start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

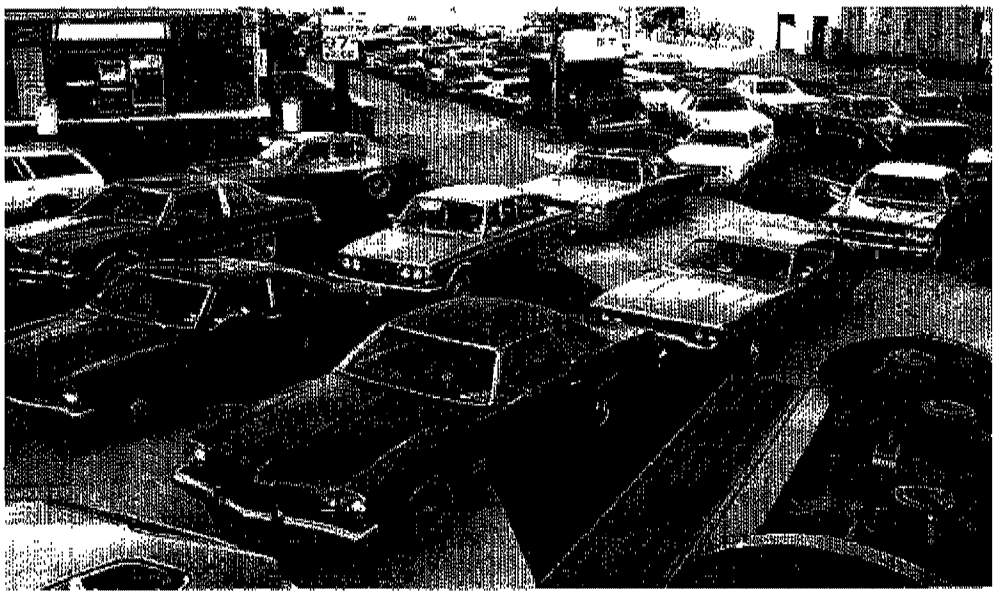
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00126928

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:50:34 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01150_p_17o52004_who.txt_1.doc; 01150_p_17o52004_who.txt_2.tiff; 01150_p_17o52004_who.txt_3.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:50:34.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

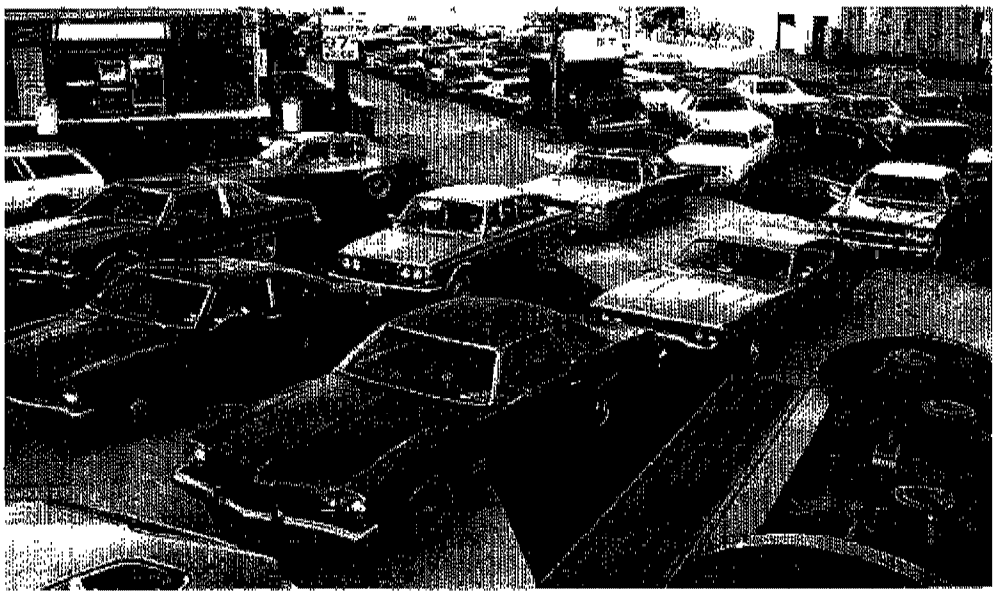
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

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Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

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To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:51:50 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: P_M9O52004_WHO.TXT_1.doc; P_M9O52004_WHO.TXT_2.tiff; P_M9O52004_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:51:50.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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David_F._Lussier@opd.eop.gov
Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

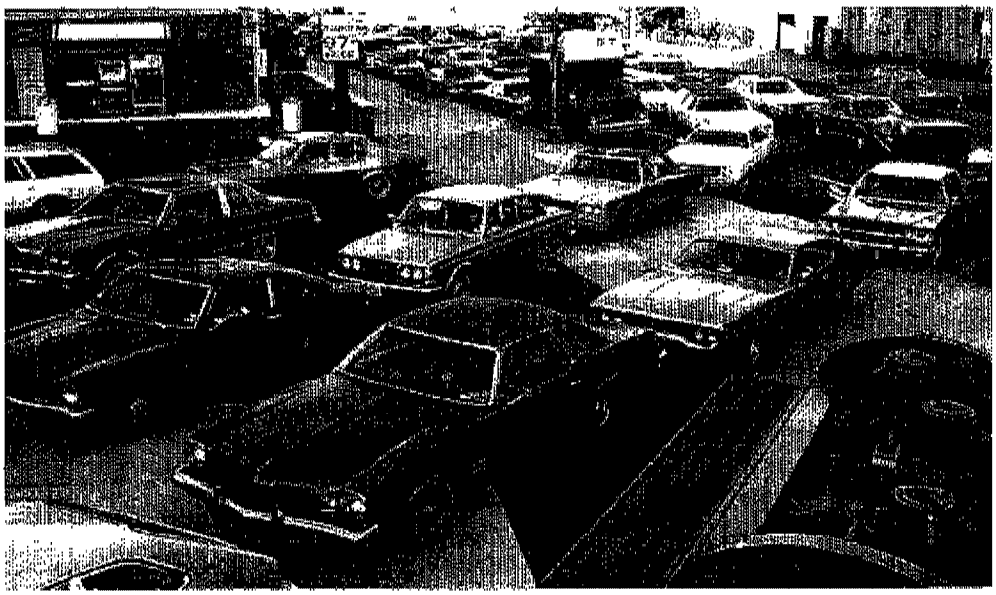
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

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Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

REV_00126983

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 5/30/2001 5:52:17 AM
Subject: : Re: DC courts

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2001 09:52:17.00
SUBJECT:: Re: DC courts
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

which DC court?

Elizabeth N. Camp
05/30/2001 08:45:52 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: DC courts

who can I pose a question to re: a potential candidate?

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

West/WHO/EOP [WHO] <Heather L. West>;Patrick J. Rhode/WHO/EOP [UNKNOWN] <Patrick J. Rhode>;Gregory J. Jenkins/WHO/EOP [WHO] <Gregory J. Jenkins>;Tobin K. Harvey/WHO/EOP [WHO] <Tobin K. Harvey>;Brooks D. Altshuler/WHO/EOP [WHO] <Brooks D. Altshuler>;Bradley A. Blakeman/WHO/EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP [WHO] <Kara G. Figg>;Amanda L. Moore/WHO/EOP [WHO] <Amanda L. Moore>;Danner R. Bethel/WHO/EOP [WHO] <Danner R. Bethel>;Mary Elizabeth Farr/WHO/EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP [WHO] <Anne Heiligenstein>;Quincy Hicks/WHO/EOP [WHO] <Quincy Hicks>;Melanie A. Jackson/WHO/EOP [WHO] <Melanie A. Jackson>;Ashley M. Snee/OVP/EOP [OVP] <Ashley M. Snee>;Debra Heiden/OVP/EOP [OVP] <Debra Heiden>;Douglas D. McCormick/OMB/EOP [OMB] <Douglas D. McCormick>;Mary J. Matalin/OVP/EOP [OVP] <Mary J. Matalin>;I._Lewis_Libby@oa.eop.gov [UNKNOWN] <I._Lewis_Libby@oa.eop.gov>;Charles D. McGrath Jr/OVP/EOP [OVP] <Charles D. McGrath Jr>;Jennifer H. Mayfield/OVP/EOP [OVP] <Jennifer H. Mayfield>;Ethan A. Hastert/OVP/EOP [OVP] <Ethan A. Hastert>;Juleanna R. Glover/OVP/EOP [OVP] <Juleanna R. Glover>;John P. McConnell/OVP/EOP [OVP] <John P. McConnell>;Megan D. Moran/OVP/EOP [OVP] <Megan D. Moran>;Michael J. Sullivan/WHO/EOP [WHO] <Michael J. Sullivan>;David S. Addington/OVP/EOP [OVP] <David S. Addington>;Cesar Conda/OVP/EOP [OVP] <Cesar Conda>;Ronald I. Christie/OVP/EOP [OVP] <Ronald I. Christie>;Nina Rees/OVP/EOP [OVP] <Nina Rees>;Margita N. Thompson/OVP/EOP [OVP] <Margita N. Thompson>;Nancy P. Dorn/WHO/EOP [WHO] <Nancy P. Dorn>;Stephen S. Ruhlen/OVP/EOP [OVP] <Stephen S. Ruhlen>;Lauren K. Allgood/OVP/EOP [OVP] <Lauren K. Allgood>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Debra R. Dunn/OVP/EOP [WHO] <Debra R. Dunn>;Jona M. Turner/OVP/EOP [OVP] <Jona M. Turner>;Dylan C. Glenn/OPD/EOP [OPD] <Dylan C. Glenn>;Donald_M._Sumerlin@oa.eop.gov [UNKNOWN] <Donald_M._Sumerlin@oa.eop.gov>;Eric C. Pelletier/OMB/EOP [OMB] <Eric C. Pelletier>;Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>;Lawrence B. Lindsey/OPD/EOP [OPD] <Lawrence B. Lindsey>;John M. Bridgeland/OPD/EOP [OPD] <John M. Bridgeland>;Margaret M. LaMontagne/OPD/EOP [OPD] <Margaret M. LaMontagne>;Stephen M. Garrison/OPD/EOP [OPD] <Stephen M. Garrison>;Melissa McKnight/OPD/EOP [OPD] <Melissa McKnight>;Eric H. Otto/OPD/EOP [OPD] <Eric H. Otto>;Ed Gillespie <EdGillespie@QuinnGillespie.com>;christine.iverson@mail.house.gov [UNKNOWN] <christine.iverson@mail.house.gov>;Josephine B. Robinson/WHO/EOP [WHO] <Josephine B. Robinson>;Melissa S. Bennett/WHO/EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO/EOP [WHO] <Carol J. Thompson>;Colleen Litkenhaus/WHO/EOP [WHO] <Colleen Litkenhaus>;Katherine G. Marinis/WHO/EOP [WHO] <Katherine G. Marinis>;Blake Gottesman/WHO/EOP [WHO] <Blake Gottesman>;charles.yoder@mail.va.gov [UNKNOWN] <charles.yoder@mail.va.gov>;lindsey_kozberg@ed.gov [UNKNOWN] <lindsey_kozberg@ed.gov>;mindy.tucker@usdoj.gov [UNKNOWN] <mindy.tucker@usdoj.gov>;terrell.halaska@hhs.gov [UNKNOWN] <terrell.halaska@hhs.gov>;nancy_i._segerdahl@hud.gov [UNKNOWN] <nancy_i._segerdahl@hud.gov>;kreisher.tina@epa.gov [UNKNOWN] <kreisher.tina@epa.gov>;cooper.mildred@epa.gov [UNKNOWN] <cooper.mildred@epa.gov>;roy-stuart@dol.gov [UNKNOWN] <roy-stuart@dol.gov>;cliff_may@ios.doi.gov [UNKNOWN] <cliff_may@ios.doi.gov>;Neil H. Zimmerman/WHO/EOP [WHO] <Neil H. Zimmerman>;Melissa_sabatine@hotmail.com [UNKNOWN] <Melissa_sabatine@hotmail.com>;brian.gunderson@mail.house.gov [UNKNOWN] <brian.gunderson@mail.house.gov>;terry.holt@mail.house.gov [UNKNOWN] <terry.holt@mail.house.gov>;kevin.schweers@mail.house.gov [UNKNOWN] <kevin.schweers@mail.house.gov>;paul.morrell@mail.house.gov [UNKNOWN] <paul.morrell@mail.house.gov>;Michael Shannon/WHO/EOP [WHO] <Michael Shannon>;Don E. Eberly/WHO/EOP [WHO] <Don E. Eberly>;Don R. Willett/WHO/EOP [WHO] <Don R. Willett>;Stanley W. Carlson-Thies/WHO/EOP [WHO] <Stanley W. Carlson-Thies>;Lisa T. Cummins/WHO/EOP [WHO] <Lisa T. Cummins>;Mark V. Scott/WHO/EOP [WHO] <Mark V. Scott>;Michele H. Tennery/WHO/EOP [WHO] <Michele H. Tennery>;Carrie W. Click/WHO/EOP [WHO] <Carrie W. Click>;Catharine A. Ryun/WHO/EOP [WHO] <Catharine A. Ryun>;sschmidt@nrcc.org [UNKNOWN] <sschmidt@nrcc.org>;Matthew E. Smith/WHO/EOP [WHO] <Matthew E. Smith>;Brian R. Besanceney/OPD/EOP [OPD] <Brian R. Besanceney>;mmckinnon@pstrategies.com [UNKNOWN] <mmckinnon@pstrategies.com>;MMiner@rnchq.org [UNKNOWN] <MMiner@rnchq.org>;BComstock@rnchq.org [UNKNOWN] <BComstock@rnchq.org>;jcram@rnchq.org [UNKNOWN]

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Sent: 5/30/2001 5:53:24 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01195_p_qco52004_who.txt_1.doc; 01195_p_qco52004_who.txt_2.tiff; 01195_p_qco52004_who.txt_3.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:53:24.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP [WHO])
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TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP [WHO])
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TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

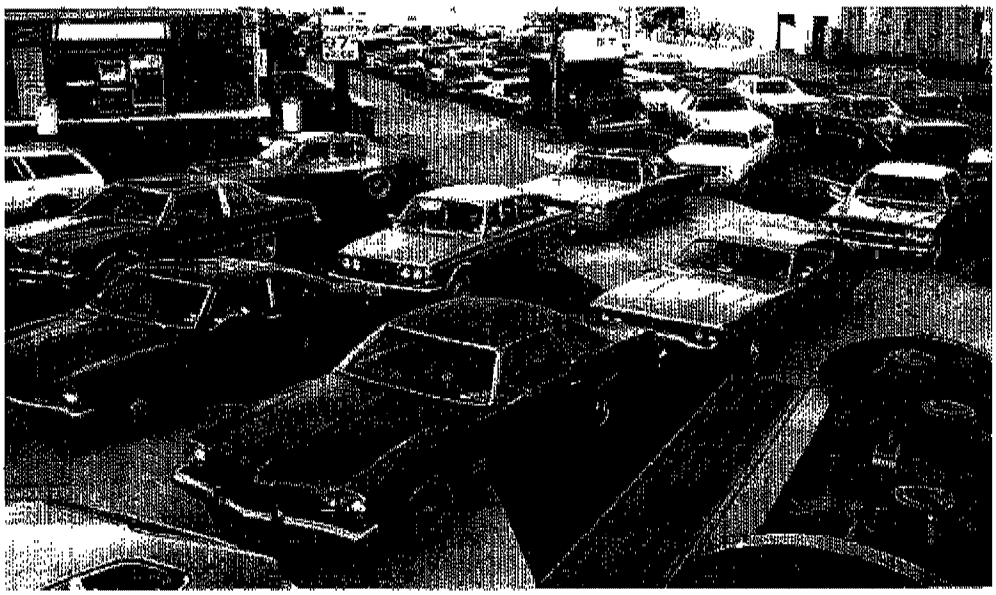
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127019

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:55:40 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01229_p_0ho52004_who.txt_1.doc; 01229_p_0ho52004_who.txt_2.tiff; 01229_p_0ho52004_who.txt_3.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:55:40.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

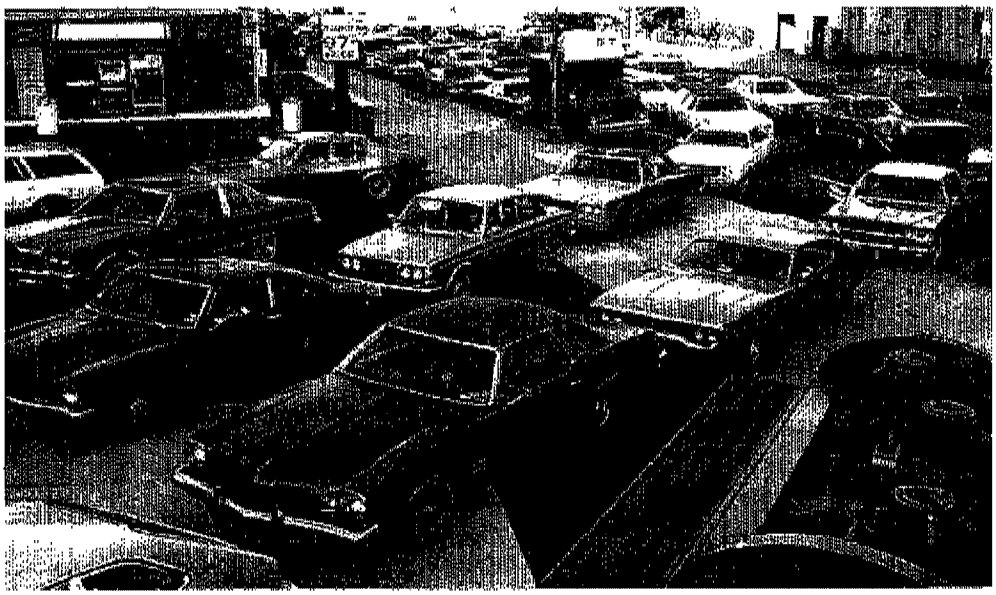
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127037

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:55:59 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: P_NHO52004_WHO.TXT_1.doc; P_NHO52004_WHO.TXT_2.tiff; P_NHO52004_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:55:59.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

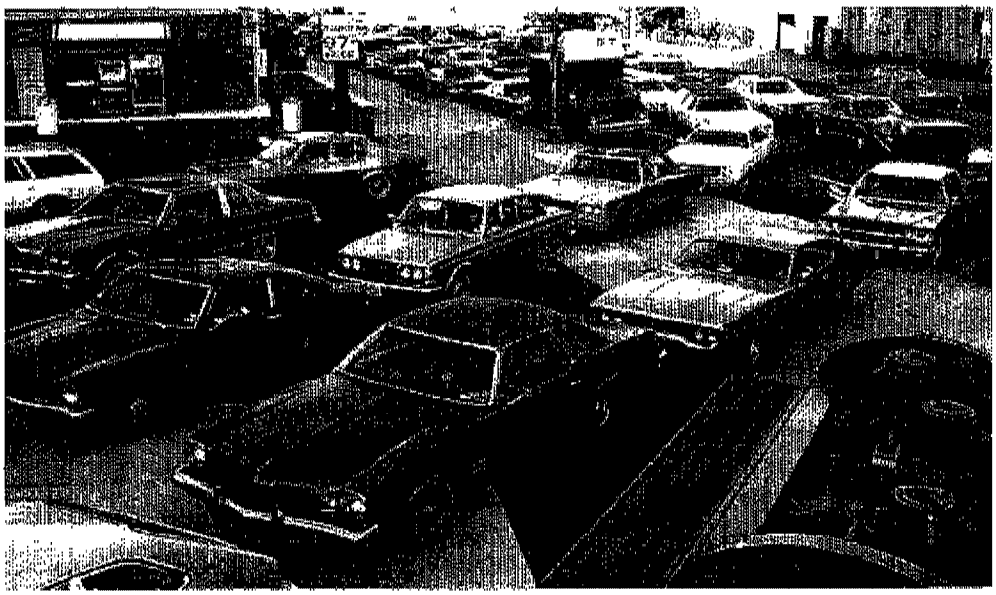
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127055

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:57:03 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: F_UJO52004_NSC.TXT_1.doc; F_UJO52004_NSC.TXT_2.tiff; F_UJO52004_NSC.TXT_3.doc

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RECORD TYPE: FEDERAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:57:03.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])

READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN

TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN

TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's visit, a fax copy of which is attached. john peschong helpfully got copies

to the filing center. it will also be in roll call tomorrow, and we'll start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

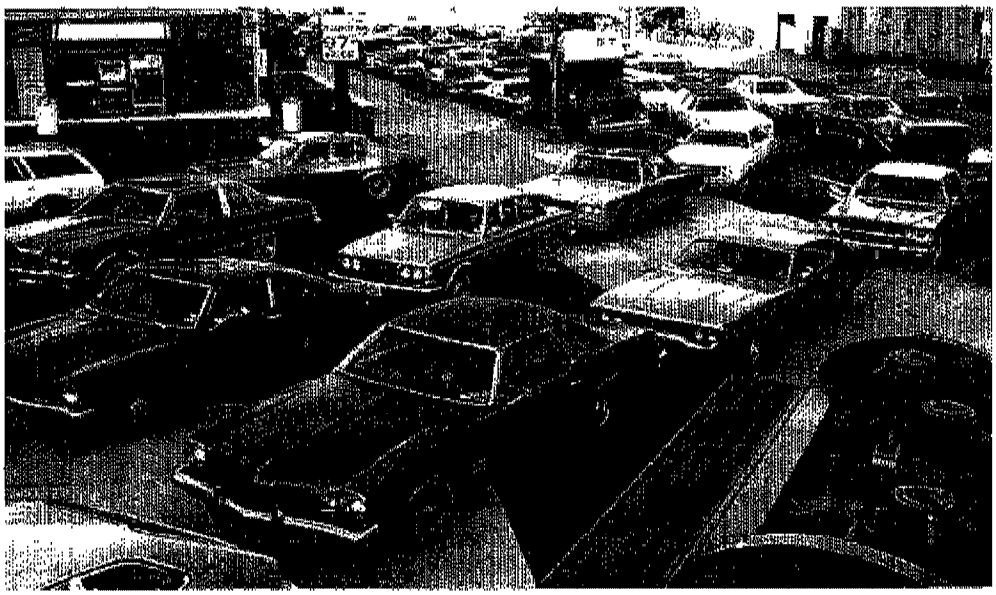
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127073

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:57:14 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01251_p_9ko52004_who.txt_1.doc; 01251_p_9ko52004_who.txt_2.tiff; 01251_p_9ko52004_who.txt_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:57:14.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

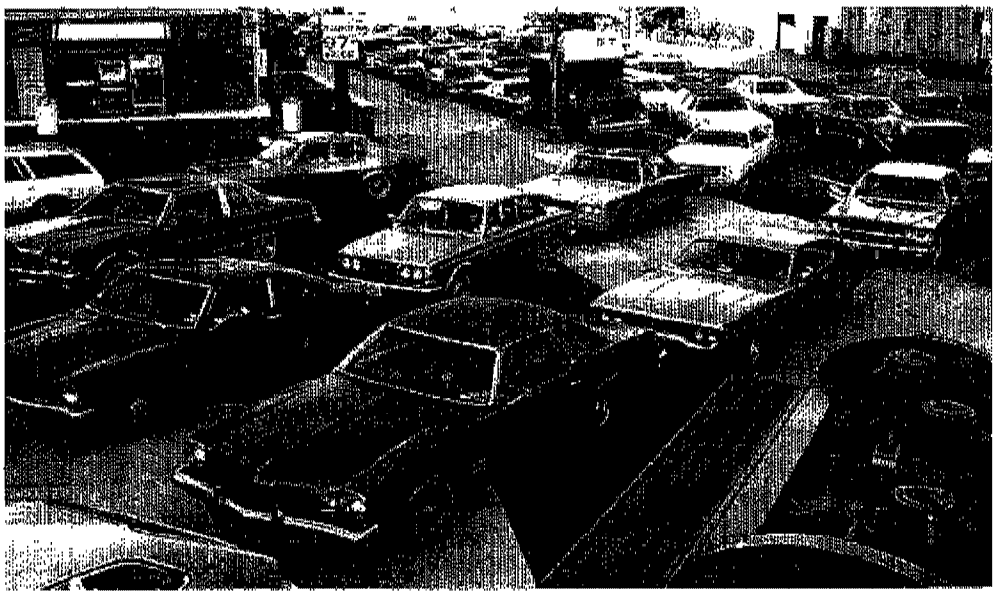
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127091

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:57:32 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: P_VKO52004_OPD.TXT_1.doc; P_VKO52004_OPD.TXT_2.tiff; P_VKO52004_OPD.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:57:32.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])

READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN

TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN

TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's visit, a fax copy of which is attached. john peschong helpfully got copies

to the filing center. it will also be in roll call tomorrow, and we'll start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

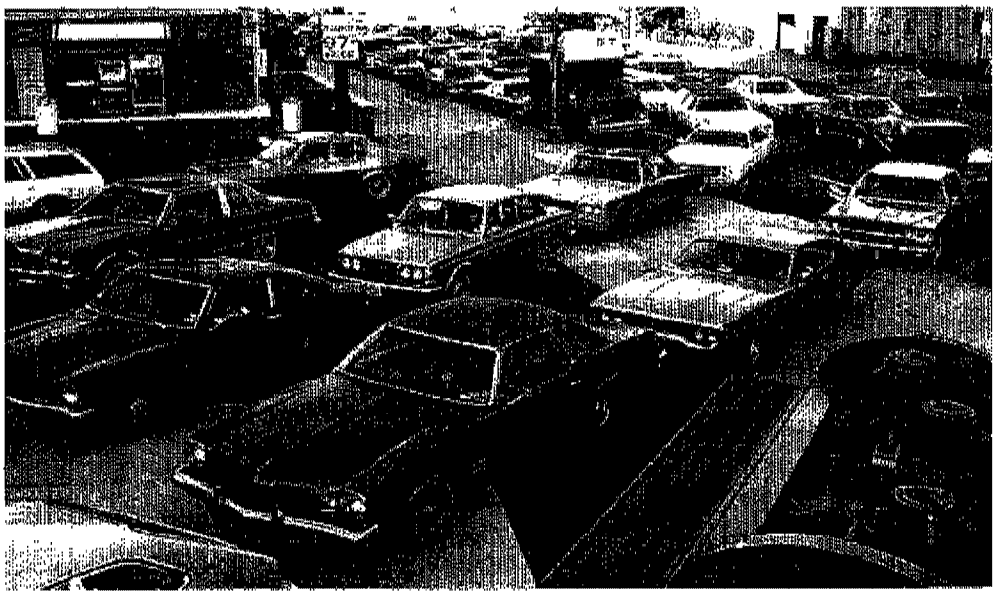
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127109

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:57:32 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: P_VKO52004_WHO.TXT_1.doc; P_VKO52004_WHO.TXT_2.tiff; P_VKO52004_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:57:32.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

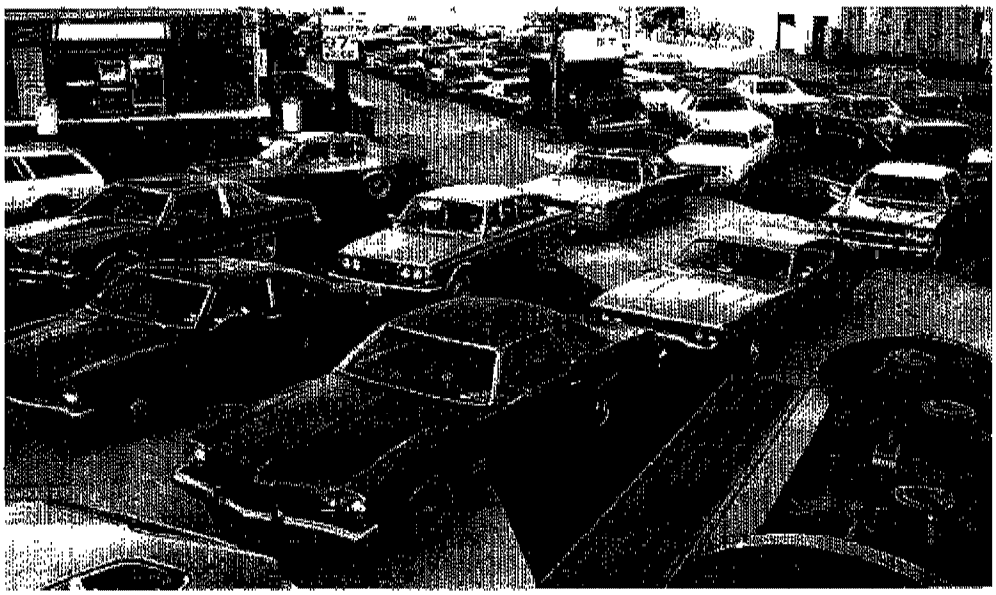
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127127

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:58:15 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01265_p_1mo52004_who.txt_1.doc; 01265_p_1mo52004_who.txt_2.tiff; 01265_p_1mo52004_who.txt_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:58:15.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

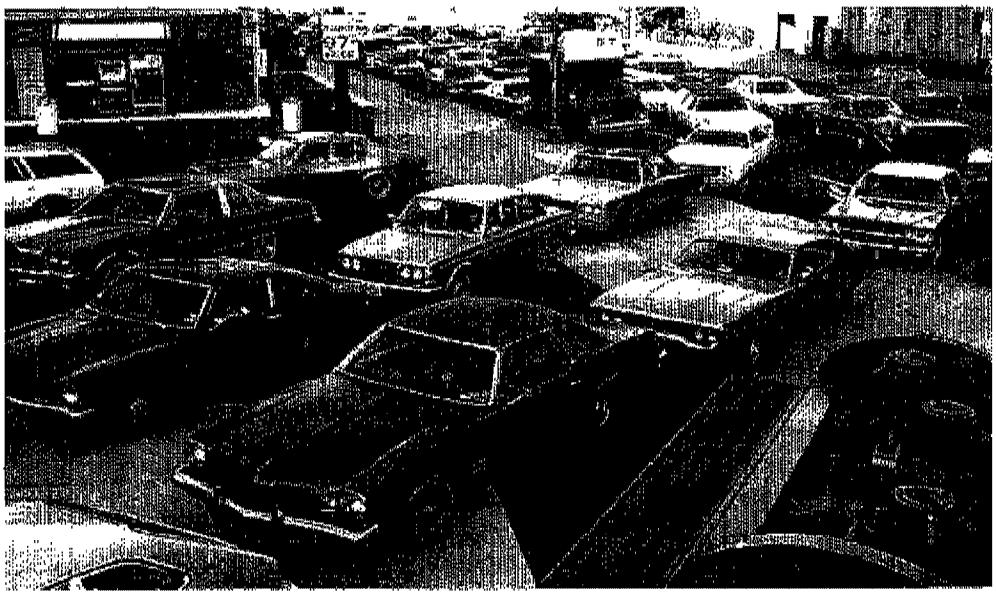
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127145

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: Ed Gillespie <EdGillespie@QuinnGillespie.com>

To: James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Margaret Tutwiler/WHO/EOP [WHO] <Margaret Tutwiler>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Katie Hong/WHO/EOP [WHO] <Katie Hong>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Sam Dickens/WHO/EOP [WHO] <Sam Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Scott Jeffcoat/WHO/EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Thomas_V._McMahan@oa.eop.gov [UNKNOWN] <Thomas_V._McMahan@oa.eop.gov>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [WHO] <Kenneth B. Mehlman>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;Kelley J. McCullough/WHO/EOP [WHO] <Kelley J. McCullough>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Gian-Carlo A. Peressutti/WHO/EOP [WHO] <Gian-Carlo A. Peressutti>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John Gardner/WHO/EOP [WHO] <John Gardner>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L.

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Sent: 5/30/2001 5:58:57 AM

Subject: : RE: The President's National Parks Legacy Project

Attachments: 01267_p_bno52004_who.txt_1.doc; 01267_p_bno52004_who.txt_2.tiff; 01267_p_bno52004_who.txt_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<EdGillespie@QuinnGillespie.com> [UNKNOWN])
CREATION DATE/TIME:30-MAY-2001 09:58:57.00
SUBJECT:: RE: The President's National Parks Legacy Project
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Ed Gillespie <EdGillespie@QuinnGillespie.com> (Ed Gillespie
<EdGillespie@QuinnGillespie.com> [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])

READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

attached find a media advisory regarding today's 1 pm press conference launching the 21st Century Energy Project, of which I am executive director.
the groups at today's event at the nat'l press club include ATR, CSE, ACU, 60+, Frontiers of Freedom and others. if you plan on attending, skip the red
meat at lunch.

we have a full page ad in the fresno bee today to support the president's

visit, a fax copy of which is attached. john peschong helpfully got copies
to the filing center. it will also be in roll call tomorrow, and we'll
start
more ads when congress returns.

my draft opening statement is also attached. it's a good example of the
tone we've been trying to change!

best, ed g.

-----Original Message-----
From: James_R._Wilkinson@who.eop.gov
[mailto:James_R._Wilkinson@who.eop.gov]
Sent: Wednesday, May 30, 2001 9:14 AM
To: Daniel_J._Bartlett@who.eop.gov; Karen_Hughes@who.eop.gov;
Margaret_Tutwiler@who.eop.gov; Noelia_Rodriguez@who.eop.gov;
Erin_E._Healy@who.eop.gov; Tracey_L._Schmitt@who.eop.gov;
Gail_Randall@who.eop.gov; Gregory_Goss@who.eop.gov;
Tracy_Young@who.eop.gov; Tucker_A._Eskew@who.eop.gov;
Jeanie_S._Mamo@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov;
Nicolle_Devenish@who.eop.gov; Andrew_H._Card@who.eop.gov;
Joshua_B._Bolten@who.eop.gov; Joel_D._Kaplan@who.eop.gov;
Kristen_Silverberg@who.eop.gov; Joseph_W._Hagin@who.eop.gov;
Marcus_J._Mollmann@who.eop.gov; Katie_Hong@who.eop.gov;
Logan_M._Walters@who.eop.gov; Christina_D._Roberts@who.eop.gov;
Jill_L._Angelo@who.eop.gov; Scott_N._Sforza@who.eop.gov;
Michael_J._Gerson@who.eop.gov; Krista_L._Ritacco@who.eop.gov;
Peter_H._Wehner@who.eop.gov; Matthew_O._Scully@who.eop.gov;
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Subject: The President's National Parks Legacy Project

Domestic Policy has drafted the attached document outlining the President's
National Parks Legacy Project that he will discuss today in California.

(See attached file: National Parks Legacy Project.doc)

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Thank you for coming.

The organizations assembled here today have agreed to work together on the 21st Century Energy Project to provide a counterbalance to the scathing, misleading assault on the first effort we have seen in this country in 20 years to enact a balanced energy policy.

Often flying under the false banner of environmental protection or conservation, groups like the Sierra Club and the National Resources Defense Council--not to mention Greenpeace--have become little more than outside resources for the Democratic National Committee. They were poised to echo the attacks of the DNC and congressional Democrats they supported in the last campaign weeks before the Bush Administration even unveiled its energy initiative. Ultimately, 40 of the plan's 105 recommendations ended up focusing on increasing conservation, but they did not let that fact change their plan.

They reflexively oppose any plan that would increase traditional forms of energy production as a means by which to restore the imbalance between our nation's demand for energy and its supply. They do so in the most cynical political fashion, branding every abundant and affordable source of energy as a threat to clean air or clean water in order to frighten policy makers by frightening suburban women swing voters.

Rarely do these groups acknowledge--nor are they asked--how they would meet the demand necessary for Americans to maintain higher standards of living over the next 20 years in the absence of greater domestic production. The answer is that they would not. They would instead reduce demand by government fiat.

Their agenda includes:

higher energy prices (which former Vice President Al Gore touted in his book and which the Democratic congress voted for in the form of a BTU tax),

excessive regulations that have prohibited construction of an oil refinery in the United States for nearly 25 years and no major new generating plant in California in a decade,

government control of existing power lines and energy plants,

and artificial price caps that can only result in government rationing of energy usage--just as it did in the '70s under Jimmy Carter.

These liberal elites chide us on the need to mandate people into smaller, less safe "more fuel-efficient cars" as Dick Gephardt railed at a press conference earlier this month--a press conference at which he arrived in his Chevy Suburban.

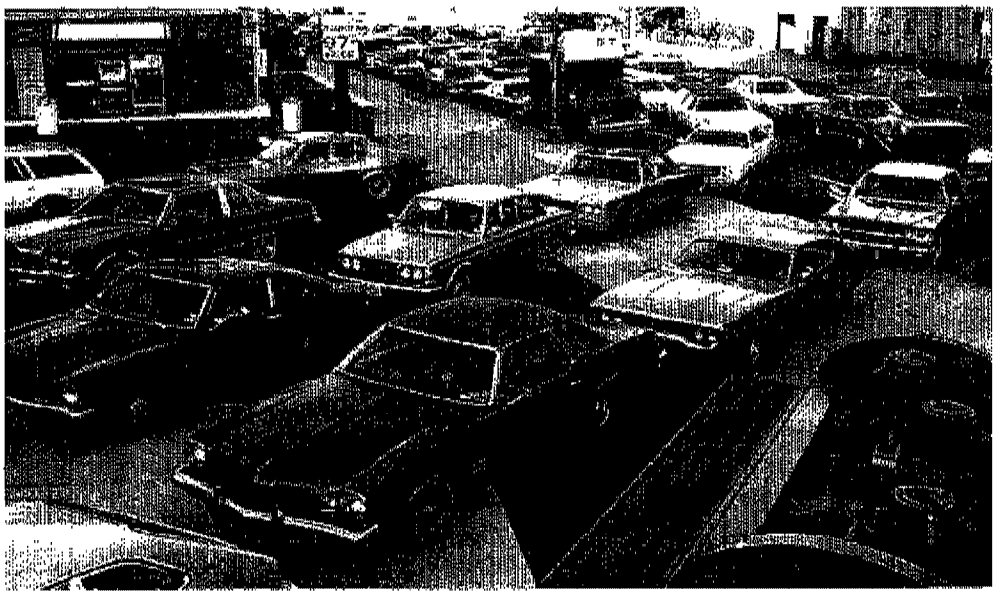
They believe oil, gas, coal and nuclear energy are inherently bad, and that working Americans are the problem here because we use too much of it. Theirs is a world view of scarcity, where innovations in clean coal technology, precision drilling and advancements in nuclear energy and safety simply never happened. They are stuck in a time warp, waiting with baited breath for Jackson Brown and Bonnie Raitt to hold their next No Nukes rally.

"That '70s Show" is entertaining on television every Tuesday night, but a little tired on the floor of the House of Representatives every weekday morning.

We believe in conservation. It makes a lot of sense. It's good economics. But conservation alone won't keep the lights on. California ranks second in the nation in energy conservation, but its consumption has risen 11.3% over the past decade while its production has declined 1.7%. Without a balanced approach, supply will drop and prices will rise. Seniors on fixed incomes will be forced to limit their energy use. Blackouts will continue to roll. And all of us will feel the decline in a quality of life that is directly tied to our quantity of energy.

In the coming months, the 21st Century Energy Project will serve as a clearinghouse for information on energy policy from a market-oriented approach and an understanding that higher levels of domestic production and environmental sensitivity are not mutually exclusive in the 21stCentury.

REMEMBER THE '70s?



Gas Lines were long, rationing was in, Jimmy Carter was President and he told us to wear a sweater.

Liberal elites think that's still the answer.

The last time we faced an energy crisis Jimmy Carter was President. Two decades ago, over-dependence on foreign oil created a shortage and drove prices up. The solution was rationing. It was a bad idea.

Today, we are again becoming too dependent on foreign oil when demand for oil and electricity consumption is increasing. This is simple Economics 101: when demand increases faster than supply, prices go up.

Liberal groups and some politicians believe rationing, price caps, higher taxes and excessive regulations will solve the problem. We disagree.

Their policies will only decrease supply and further increase prices. That hurts lower and middle class families the most. In fact, if some on the left have their way, "soccer moms" will be forced to sell their mini-vans – they'll become a luxury only the elite can afford.

Conservation alone won't keep the lights on.

California ranks as the second best state in energy conservation. If conservation alone could solve the problem, California wouldn't be facing high rates and rolling blackouts.

The 21st Century Energy Project rejects the premise that we can conserve our way out of this energy shortage. A balance between conservation and increased supply is the only solution. We support an energy policy based on sound science and a rational, balanced, market-oriented approach that will ensure affordable energy for all Americans.

That's why we applaud President Bush's approach - a balanced, comprehensive 105-point plan that includes over 40 recommendations that increase conservation, as well as a diversified proposal to reduce dependence on foreign oil while using 21st Century technology to produce clean, abundant and affordable energy.

21st Century Energy Project
Quantity of Energy = Quality of Life

60 Plus Association
American Conservative Union
Americans for Tax Reform
Citizens for a Sound Economy
Frontiers of Freedom
National Center for Policy Analysis
National Center for Public Policy Research
United Seniors Association
The Seniors Coalition

REV_00127163

Attention: Energy Reporters

EMBARGOED UNTIL EVENT

Monday, May 28, 2001

Contact: Ashley Meece
(202) 429-4009

Media Advisory

21st Century Energy Project to Launch Wednesday

New Project Will Educate Public on Domestic Energy Proposals

WASHINGTON, D.C. – In response to the national energy policy debate, a new coalition will be launched Wednesday. The 21st Century Energy Project (21CEP) will educate the public on the impact various energy policies will have on Americans' quality of life.

The 21st Century Energy Project seeks to coordinate the resources of organizations committed to striking a balance between our nation's energy supply and demand. Member organizations are devoted to finding a sensible approach to the energy policy debate that protects America's future and security, and exposing the negative impact of the liberal energy agenda.

The 21CEP will serve as a counterbalance to the liberal groups who oppose increased energy production and seek government-mandated reductions in energy consumption.

At the launch event, an ad campaign will be unveiled.

WHO:	21st Century Energy Project Founders Ed Gillespie (Director, 21CEP) 60 Plus Association American Conservative Union Americans for Tax Reform Citizens for a Sound Economy Frontiers of Freedom National Center for Policy Analysis National Center for Public Policy Research The Seniors Coalition United Seniors Association
WHAT:	**Launch event (and unveiling of new ad)**
WHEN:	1:00 – 2:00 pm, Wednesday, May 30, 2001
WHERE:	Murrow Room, National Press Club Corner of 14th and F Streets, NW
CONTACT:	Kate Cyrul (202) 429-4014 or Ashley Meece (202) 429-4009

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
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CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 5/30/2001 7:50:02 AM
Subject: : Re: Tim-Tym

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CREATION DATE/TIME:30-MAY-2001 11:50:02.00
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The use of the word "court packing" in this context is really getting old.

On that note, William Safire's column in this past Sunday's NY Times magazine (below):

Judge Fights: Is 'Borking' Needed to Stop 'Court Packing'?

'Borking' is out. 'Court packing' is in." So wrote E.J. Dionne Jr. in The Washington Post, using two of the great politico-judicial attack phrases in rapid succession. Comes now the etymology to help readers rap their gavels when slanted words joust with each other.
The notion of court packing can be traced to Lincoln, who wanted a 10th justice on the Supreme Court, and before that to John Adams, whose nominations of "midnight judges" just before he left office caused a ruckus with his successor, Thomas Jefferson, who refused to swear them in.
The phrase packing the Court -- always pejorative, imputing one-sidedness -- burst on the scene in 1936 in criticism of President Franklin Roosevelt's plan to appoint a new Supreme Court justice every time one of the "nine old men" (a phrase coined by the columnists Drew Pearson and Robert S. Allen) reached the age of 70 and refused to step down.
But the president was seen to have overreached, and his plan backfired; even on the verge of a landslide re-election, F.D.R. was put on the

defensive. "If by that phrase 'packing the Court' it is charged," he said, "that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer: that no president fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointee to the Supreme Court."
F.D.R.'s proposal, universally denounced as court packing, died in committee; however, the balance of power on the Court soon shifted to the liberals, causing one wag to note, "A switch in time saved nine."
Turnabout is fair play. The phrase is now the rallying cry of Democrats worried that Bush nominees to the federal bench at all levels will make the court system more conservative. Said Senator Pat Leahy of Vermont, ranking Democrat on the Judiciary Committee, "It sure looks like they are intent on building an ideologically driven court-packing machine." Bruce Ackerman, a professor of law at Yale, writing in The Los Angeles Times, added a note of breathlessness: "We are on the brink of a court-packing crisis."
Republicans are countering with the eponymous verb possibly first used in The Atlanta Journal-Constitution on Aug. 20, 1987: "Let's just hope something enduring results for the justice-to-be, like a new verb: Borked. Dictionaries will say it's synonymous with 'maligned."' This referred to the way Democrats savaged Ronald Reagan's nominee, the Appeals Court judge Robert H. Bork, the year before.
"A concerted effort to 'Bork' John Ashcroft would not be well received," said Senator Trent Lott, the majority leader, about George W. Bush's nomination for attorney general. The newly nonconfrontational Ashcroft was not borked. (I use the lowercase b now that the verb is established, but then I lowercase draconian and stentorian, over the objections of the strict solon Draco and the Greek herald with the booming voice, Stentor.)
The columnist Fred Barnes went to the eponym himself for a definition. "What it means is to be attacked with a series of -- not to put it too strongly -- a series of lies and mischaracterizations," Bork said. "And it is an effort at the politics of personal destruction."
Debate rages over whether the confirmation criteria should be character and merit, or whether an otherwise estimable nominee should be rejected for holding views that some activists believe are outside the ideological mainstream. It may be that senators will vote on the basis of ideology without getting personal. But in coming months, Democrats will charge Bush with court packing; returning the fire, Bush will deplore borking.

Noel J. Francisco
05/30/2001 11:42:45 AM
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To: See the distribution list at the bottom of this message
cc:
Subject: Tim-Tym

editorial
Tymkovich should serve well

Wednesday, May 30, 2001 - We hope the new Democratic majority on the U.S. Senate will set aside partisan politics when it considers Denver attorney Tim Tymkovich's nomination to serve on the 10th U.S. Circuit Court of Appeals.
But we also hope the American Bar Association will continue to voluntarily scrutinize all nominees headed to the Senate, even though the Bush administration stripped the ABA of its official role in screening judicial candidates prior to their nomination.
Tymkovich should be no exception, though he has gained a local reputation

as a thoughtful, insightful attorney who knows the law and works hard to uphold it.

He first gained real notice when, as state solicitor general, he was assigned to defend Amendment 2, a Colorado initiative that would have banned laws to protect gays.

Then-Attorney General Gale Norton was legally obliged to defend the amendment. The fact that the U.S. Supreme Court rejected this sloppily worded and unconstitutional amendment doesn't reflect on Tymkovich's legal skills or politics.

Indeed, Jean Dubofsky, a former Colorado Supreme Court justice who successfully led the legal challenge against Amendment 2, supports Tymkovich's nomination.

Tymkovich is only 44, but he has been practicing law in the public and private arenas since 1982 and is a long-time member of the American Bar Association, the American Law Institute and the International Society of Barristers.

He also is a member of the Federalist Society, which comes as no surprise considering how that group's conservative, Libertarian orientation dovetails with the conservative slant of the Bush administration.

Still, we don't expect Bush to be nominating liberal Democrats to lifelong positions on the federal bench anytime soon. And Tymkovich is far less conservative than his fellow nominee to the 10th U.S. Circuit Court.

Michael McConnell, a law professor at the University of Utah, has defended vouchers for religious schools and argued to reinterpret the Constitution's division between church and state.

The conservative Christian's experience in public law is far deeper than Tymkovich's, but his reputation as an ideologue likely will stymie his chances with the Senate.

While we cannot support McConnell, we urge the Senate to confirm Tymkovich to fill a seat that has sat vacant since 1999, when Judge John Porfilio took senior status.

We also encourage the Senate to carefully defend the judiciary from any Bush efforts at "court packing," whereby nominees are selected for their political philosophy rather than their legal expertise.

Federal judges and justices are obligated to carefully apply the law of the land, not the politics of the president in power.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 5/30/2001 1:03:12 PM
Subject: : Re: National Journal

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2001 17:03:12.00
SUBJECT:: Re: National Journal
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I also told her where I previously worked.

H. Christopher Bartolomucci
05/30/2001 03:20:04 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: National Journal

I shall follow suit.

Helgard C. Walker
05/30/2001 03:18:43 PM
Record Type: Record

To: Stuart W. Bowen/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: National Journal

ditto

Stuart W. Bowen
05/30/2001 03:00:56 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: National Journal

i will do the same.

Brett M. Kavanaugh
05/30/2001 02:36:38 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: National Journal

I followed same approach.

Courtney S. Elwood
05/30/2001 02:22:38 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: National Journal

She just called me too. I told her that I personally wasn't interested in talking, although I confirmed for her on background where I went to school and for whom I clerked.

H. Christopher Bartolomucci
05/30/2001 02:16:02 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: National Journal

She called me. What is the consensus about talking to her?

Helgard C. Walker
05/30/2001 02:13:46 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: National Journal

Have you all gotten the call from Elizabeth Frater (?)? Does anybody plan to talk with her?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

Message Copied
To:_____
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

Message Copied
To:_____
courtney s. elwood/who/eop@eop
h. christopher bartolomucci/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

Message Copied
To:_____

brett m. kavanaugh/who/eop@eop
courtney s. elwood/who/eop@eop
h. christopher bartolomucci/who/eop@eop
helgard c. walker/who/eop@eop
brett m. kavanaugh/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

Message Copied
To:_____
stuart w. bowen/who/eop@eop
brett m. kavanaugh/who/eop@eop
courtney s. elwood/who/eop@eop
robert w. cobb/who/eop@eop
stuart w. bowen/who/eop@eop
noel j. francisco/who/eop@eop
rachel l. brand/who/eop@eop

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;noel j. francisco/who /eop@eop [WHO] <noel j. francisco>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 5/30/2001 10:16:04 AM
Subject: : Re: National Journal

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2001 14:16:04.00
SUBJECT:: Re: National Journal
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

She called me. What is the consensus about talking to her?

Helgard C. Walker
05/30/2001 02:13:46 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: National Journal

Have you all gotten the call from Elizabeth Frater (?)? Does anybody plan to talk with her?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 5/30/2001 10:25:18 AM
Subject: : Bulk E-mail

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:30-MAY-2001 14:25:18.00
SUBJECT:: Bulk E-mail
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Brett--Per the attached e-mail, we are prepared to have future bulk e-mail to the President (and First Lady) sent only to the WHO bucket, as opposed to both the WHO and OA buckets, since these are not OA records. Of course we can make more changes in the future (such as a system that would allow disposal of bulk e-mail akin to its paper counterpart) if the White House would like to take that course at some later date.

Since this solution could also be applied to bulk e-mail to the Vice President and Mrs. Cheney, I thought it would be a good idea to mention this to David so we can do this at this same time (understanding that it's possible that there may be some differences). David, it would be great if you can also indicate if you would like us to proceed along the same course as the White House. Adam, 5-1268
---------- Forwarded by Adam F. Greenstone/OA/EOP on 05/30/2001 09:49 AM ----------

DANIEL A.
BARRY
05/30/2001 07:42:50 AM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: leanna f. terrell/oa/eop@eop
Subject: Re: BULK E-MAIL

Adam;

We can change the designation of the sending account in NOTES so that NOTES will indicate to ARMS that the account has no agency designation. This will then cause ARMS to place the POTUS bulk mail in the WHO bucket only and the Vpotus mail in the VPO bucket only.

Let me know when you want me to make that happen.

Later... Tony

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 5/30/2001 10:25:18 AM
Subject: : Bulk E-mail

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:30-MAY-2001 14:25:18.00
SUBJECT:: Bulk E-mail
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Brett--Per the attached e-mail, we are prepared to have future bulk e-mail to the President (and First Lady) sent only to the WHO bucket, as opposed to both the WHO and OA buckets, since these are not OA records. Of course we can make more changes in the future (such as a system that would allow disposal of bulk e-mail akin to its paper counterpart) if the White House would like to take that course at some later date.

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---------- Forwarded by Adam F. Greenstone/OA/EOP on 05/30/2001 09:49 AM ----------

DANIEL A.
BARRY
05/30/2001 07:42:50 AM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: leanna f. terrell/oa/eop@eop
Subject: Re: BULK E-MAIL

Adam;

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Let me know when you want me to make that happen.

Later... Tony

From: CN=Oscar Gonzalez/OU=OMB/O=EOP [OMB]

To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Kristine Simmons/OPD/EOP@EOP [OPD] <Kristine Simmons>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Steven D. Aitken/OMB/EOP@EOP [OMB] <Steven D. Aitken>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Brett S. Loper/OMB/EOP@EOP [OMB] <Brett S. Loper>;Randolph M. Lyon/OMB/EOP@EOP [OMB] <Randolph M. Lyon>;Kimberley S. Luczynski/OMB/EOP@EOP [OMB] <Kimberley S. Luczynski>

CC: Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>;James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Amiee L. Albertson/OMB/EOP@EOP [OMB] <Amiee L. Albertson>

BCC: LRM JUSTICE (LRM JUSTICE [UNKNOWN]), Adrien SILAS (Adrien SILAS [UNKNOWN]), LRM National Archives and Records Administration (LRM National Archives and Records Administration [UNKNOWN]), John CONSTANCE (John CONSTANCE [UNKNOWN]), LRM Office of Government Ethics (LRM Office of Government Ethics [UNKNOWN]), Melissa COOK (Melissa COOK [UNKNOWN])

Sent: 5/31/2001 1:00:41 PM

Subject: : HR 577 amendments

Attachments: P_VLT62004_OPD.TXT_1

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Oscar Gonzalez ( CN=Oscar Gonzalez/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:31-MAY-2001 17:00:41.00
SUBJECT:: HR 577 amendments
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kirsten A. Chadwick ( CN=Kirsten A. Chadwick/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristine Simmons ( CN=Kristine Simmons/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Kenneth B. Mehlman ( CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Steven D. Aitken ( CN=Steven D. Aitken/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Augustine T. Smythe ( CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Brett S. Loper ( CN=Brett S. Loper/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Randolph M. Lyon ( CN=Randolph M. Lyon/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kimberley S. Luczynski ( CN=Kimberley S. Luczynski/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Richard E. Green ( CN=Richard E. Green/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:James J. Jukes ( CN=James J. Jukes/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Amiee L. Albertson ( CN=Amiee L. Albertson/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
BCC:LRM JUSTICE ( LRM JUSTICE [ UNKNOWN ] )
READ:UNKNOWN
BCC:Adrien SILAS ( Adrien SILAS [ UNKNOWN ] )
READ:UNKNOWN
BCC:LRM National Archives and Records Administration ( LRM National Archives and Records
Administration [ UNKNOWN ] )
READ:UNKNOWN
BCC:John CONSTANCE ( John CONSTANCE [ UNKNOWN ] )
```

READ:UNKNOWN
BCC:LRM Office of Government Ethics (LRM Office of Government Ethics [UNKNOWN])
READ:UNKNOWN
BCC:Melissa COOK (Melissa COOK [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

FYI,

Attached below is a copy of the amendments that the House Government Reform Committee adopted in its mark-up of HR 577 on May 17th. The reported text is not yet available on THOMAS. As I've said in earlier e-mails, this bill could go to the floor as early as next week.

Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VLT62004_OPD.TXT_1>

F:\JAJ\GR107\PRESLIB.005 H.L.C.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 577

OFFERED BY M. Burton

Strike all after the enacting clause and insert the following:

SECTION 1. REQUIREMENT TO DISCLOSE SOURCES AND AMOUNTS OF FUNDS RAISED FOR PRESIDENTIAL ARCHIVAL DEPOSITORY.

(a) IN GENERAL.—Section 2112 of title 44, United States Code, is amended by adding at the end the following new subsection:

"(h)(1) Any organization that is established for the purpose of raising funds for creating, maintaining, expanding, or conducting activities at a Presidential archival depository or any facilities relating to a Presidential archival depository, shall submit to the Administration, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on an annual basis information with respect to every contributor who, during the year—

"(A) with respect to a Presidential archival depository of a President who currently holds the Office of President or for which the Archivist has not accepted, taken title to, or entered into an agreement to use any land or facility, gave the organiza-

REV_00127228

tion a contribution or contributions (whether monetary or in-kind) totaling $200 or more for the year; or

"(B) with respect to a Presidential archival depository of a President who no longer holds the Office of President and for which the Archivist has accepted, taken title to, or entered into an agreement to use any land or facility, gave the organization a contribution or contributions (whether monetary or in-kind) totaling $5000 or more for the year.

"(2) As used in this subsection, the term 'information' means, with respect to a contribution described in paragraph (1), the following:

"(A) The amount or value of the contribution.

"(B) The source of the contribution, and the address of the entity or individual that is the source of the contribution.

"(C) If the source of the contribution is an individual, the occupation of the individual.

"(3) The Archivist shall make available to the public through the Internet (or a successor technology readily available to the public) any information that is submitted in accordance with paragraph (1).

"(4) It shall be unlawful for any person who makes a contribution described in paragraph (1) to knowingly

REV_00127229

and willfully submit false material information or omit material information with respect to the contribution to an organization described in such paragraph, and the penalties described in section 1001 of title 18, United States Code, shall apply with respect to such a false submission or omission in the same manner as a violation described in such section.

"(5) It shall be unlawful for any organization described in paragraph (1) to knowingly and willfully submit false material information or omit material information under such paragraph, and the penalties described in section 1001 of title 18, United States Code, shall apply with respect to such a false submission or omission in the same manner as a violation described in such section.

"(6) No person shall make a contribution described in paragraph (1) in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution described in such paragraph made by one person in the name of another person. In the case of a knowing and willful violation of the preceding sentence, the penalties set forth in section 309(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(d)) shall apply to such violation in the same manner as if such violation were a violation of section 316(b)(3) of such Act.

REV_00127230

"(7) The Archivist shall promulgate regulations for the purpose of carrying out this subsection.".

(b) APPLICABILITY.—Section 2112(h) of title 44, United States Code (as added by subsection (a))—

(1) shall apply to an organization established for the purpose of raising funds for creating, maintaining, expanding, or conducting activities at a Presidential archival depository or any facilities relating to a Presidential archival depository before, on, or after the date of the enactment of this Act; and

(2) shall only apply with respect to contributions (whether monetary or in-kind) made after the date of the enactment of this Act.

REV_00127231

Amend the title so as to read: "To amend title 44, United States Code, to require any organization that is established for the purpose of raising funds for creating, maintaining, expanding, or conducting activities at a Presidential archival depository or any facilities relating to a Presidential archival depository to disclose the sources and amounts of any funds raised, and for other purposes.".

REV_00127232

AMENDMENT OFFERED BY MS. SCHAKOWSKY TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 577

Page 1, line 11, after "depository" insert ", or any organization operating under section 501(c) of the Internal Revenue Code of 1986, if such organization is named after or controlled by a Federal elected official currently holding office,".

Page 2, line 3, strike "or".

Page 2, line 10, strike the period and insert "; or".

Page 2, beginning on line 11, insert the following:

"(C) with respect to any organization operating under section 501(c) of the Internal Revenue Code of 1986, if such organization is named after or controlled by a Federal elected official currently holding office, gave the organization a contribution or contributions (whether monetary or in-kind) totaling $200 or more for the year".

Page 4, line 9, after "depository" insert ", or any organization operating under section 501(c) of the Internal Revenue Code of 1986, if such organization is named after or controlled by a Federal elected official currently holding office,".

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP@EOP [WHO])
Sent: 6/1/2001 1:04:17 PM
Subject: : OLC

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUN-2001 17:04:17.00
SUBJECT:: OLC
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

P.S. She also said they'd been "authorized" to do this, but I don't know who is overseeing the personnel decisions for OLC, if anybody, since we don't have a person over there yet. Again, FYI.

---------- Forwarded by Helgard C. Walker/WHO/EOP on 06/01/2001 05:02 PM ----------

Helgard C. Walker
06/01/2001 04:49:03 PM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc:
Subject: OLC

FYI, and OLC probably advised you of this already, but Rosemary Hart recently gave me a call to say there are looking to hire some (2-3) young line attorneys. She was looking for recommendations of "clerk types" 1-2 years out of law school, but I did not really know of any people in that age/experience range.

From: CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/1/2001 4:14:47 PM
Subject: : are you there?

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kelley J. McCullough ( CN=Kelley J. McCullough/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-JUN-2001 20:14:47.00
SUBJECT:: are you there?
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I desperately need to talk to you regarding the president's travel on
Monday. Please call me asap. 456-7913.
```

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2001 1:19:42 PM
Subject: : Re: Bulk E-mail

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME: 2-JUN-2001 17:19:42.00
SUBJECT:: Re: Bulk E-mail
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett--I just wanted to give you a heads up that I was mentioning this to David since it affects their Office as well. I will advise the technical folks to proceed. Adam

Brett M. Kavanaugh
05/31/2001 12:49:22 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc:
bcc:
Subject: Re: Bulk E-mail

I assume I need not respond to this?

Adam F. Greenstone
05/30/2001 02:25:17 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: David S. Addington/OVP/EOP@EOP
Subject: Bulk E-mail

Brett--Per the attached e-mail, we are prepared to have future bulk e-mail to the President (and First Lady) sent only to the WHO bucket, as opposed to both the WHO and OA buckets, since these are not OA records. Of course we can make more changes in the future (such as a system that would allow disposal of bulk e-mail akin to its paper counterpart) if the White House would like to take that course at some later date.

Since this solution could also be applied to bulk e-mail to the Vice President and Mrs. Cheney, I thought it would be a good idea to mention this to David so we can do this at this same time (understanding that it's possible that there may be some differences). David, it would be great if you can also indicate if you would like us to proceed along the same course as the White House. Adam, 5-1268
---------- Forwarded by Adam F. Greenstone/OA/EOP on 05/30/2001 09:49 AM ----------

DANIEL A.
BARRY
05/30/2001 07:42:50 AM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: leanna f. terrell/oa/eop@eop
Subject: Re: BULK E-MAIL

Adam;

We can change the designation of the sending account in NOTES so that NOTES will indicate to ARMS that the account has no agency designation. This will then cause ARMS to place the POTUS bulk mail in the WHO bucket only and the Vpotus mail in the VPO bucket only.

Let me know when you want me to make that happen.

Later... Tony

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2001 1:19:42 PM
Subject: : Re: Bulk E-mail

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME: 2-JUN-2001 17:19:42.00
SUBJECT:: Re: Bulk E-mail
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett--I just wanted to give you a heads up that I was mentioning this to David since it affects their Office as well. I will advise the technical folks to proceed. Adam

Brett M. Kavanaugh
05/31/2001 12:49:22 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc:
bcc:
Subject: Re: Bulk E-mail

I assume I need not respond to this?

Adam F. Greenstone
05/30/2001 02:25:17 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: David S. Addington/OVP/EOP@EOP
Subject: Bulk E-mail

Brett--Per the attached e-mail, we are prepared to have future bulk e-mail to the President (and First Lady) sent only to the WHO bucket, as opposed to both the WHO and OA buckets, since these are not OA records. Of course we can make more changes in the future (such as a system that would allow disposal of bulk e-mail akin to its paper counterpart) if the White House would like to take that course at some later date.

Since this solution could also be applied to bulk e-mail to the Vice President and Mrs. Cheney, I thought it would be a good idea to mention this to David so we can do this at this same time (understanding that it's possible that there may be some differences). David, it would be great if you can also indicate if you would like us to proceed along the same course as the White House. Adam, 5-1268
---------- Forwarded by Adam F. Greenstone/OA/EOP on 05/30/2001 09:49 AM ----------

DANIEL A.
BARRY
05/30/2001 07:42:50 AM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: leanna f. terrell/oa/eop@eop
Subject: Re: BULK E-MAIL

Adam;

We can change the designation of the sending account in NOTES so that NOTES will indicate to ARMS that the account has no agency designation. This will then cause ARMS to place the POTUS bulk mail in the WHO bucket only and the Vpotus mail in the VPO bucket only.

Let me know when you want me to make that happen.

Later... Tony

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Mitchell, Elizabeth <Elizabeth.Mitchell@usdoj.gov>
CC: Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Lee R. Johnson/WHO/EOP@EOP [WHO] <Lee R. Johnson>
Sent: 6/4/2001 6:35:22 AM
Subject: : RE: Tobacco Litigation Records

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2001 10:35:22.00
SUBJECT:: RE: Tobacco Litigation Records
TO:"Mitchell, Elizabeth" <Elizabeth.Mitchell@usdoj.gov> ("Mitchell, Elizabeth" <Elizabeth.Mitchell@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
CC:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Lee R. Johnson (CN=Lee R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Actually, just to be clear, Brett is not participating in this matter. I should not have included him on my original email. Thanks.

"Mitchell, Elizabeth" <Elizabeth.Mitchell@usdoj.gov>
06/04/2001 10:28:53 AM
Record Type: Record

To: Terry W. Good/WHO/EOP
cc: Helgard C. Walker/WHO/EOP, Brett M. Kavanaugh/WHO/EOP, Lee R. Johnson/WHO/EOP
Subject: RE: Tobacco Litigation Records

Thank you.

Elizabeth

-----Original Message-----
From: Terry_W._Good@who.eop.gov@inetgw
[mailto:Terry_W._Good@who.eop.gov]
Sent: Monday, June 04, 2001 10:26 AM
To: Mitchell, Elizabeth
Cc: Helgard_C._Walker@who.eop.gov@inetgw;
Brett_M._Kavanaugh@who.eop.gov@inetgw; Lee_R._Johnson@who.eop.gov@inetgw
Subject: Tobacco Litigation Records

Elizabeth:

At the request of Helgard Walker and with the approval of Brett Kavanaugh, I am providing you with the following information regarding files of Jerold Mande who, I understand, was detailed to OPD during the Clinton Administration but worked out of an office assigned to OSTP.

The six boxes that we received from him in December 1998 were assigned the following box numbers in our data base:

13,033, 13,034, 13,035, 13,036, 13,037, and 13,038.
We subsequently assigned them shelf location numbers when we sent them to NARA for courtesy storage. Those sequential numbers ran from 10,455 through 10,460.

This should be more than sufficient information for the archivists at the Clinton project to locate these boxes.

Terry

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/4/2001 4:27:07 AM
Subject: : Call Sheet form
Attachments: P_PVT72004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2001 08:27:07.00
SUBJECT:: Call Sheet form
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached is the call sheet form as provided by the Staff Secretary's
office. This is their standard form that they would like everyone to use
for POTUS call requests.

Thanks!
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PVT72004_WHO.TXT_1>
```

DATE (centered)

RECOMMENDED TELEPHONE CALL

TO: Name and telephone number of person you recommend be called with brief identifying information only when you suspect name will be unfamiliar to the President.

DATE: Date and time the President should make the call.

RECOMMENDED BY: Your name and if recommendation has concurrence of another staff member, so state.

PURPOSE: Preferably one sentence; two at most.

BACKGROUND: Whatever background information you feel will be helpful to the President. Usually 3-4 short sentences will suffice to set the stage and give substance to talking points. Also, make sure that no letter has been sent by Correspondence for the same purpose as the call.

TOPICS OF DISCUSSION: 1. (The specific points that you recommend be made during the conversation)

2.

3.

4.

CONTACT PERSON AND TELEPHONE NUMBER(S):

DATE OF SUBMISSION:

ACTION: _____

APPROVED BY COS YES _____

NO _____

COMMENT BY COS: _____

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/4/2001 5:56:20 AM
Subject: : Judge: ABA authorization and waiver form
Attachments: P_2VW72004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2001 09:56:20.00
SUBJECT:: Judge: ABA authorization and waiver form
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judge: Here is a draft ABA authorization and waiver that Tim and
I worked on. We would like your approval before we send the draft to
ABA. Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2VW72004_WHO.TXT_1>
```

AUTHORIZATION AND WAIVER

In consideration of the terms of the Undertakings set forth below, I _____ (the "Candidate") hereby

(1) authorize _____, a representative of the American Bar Association Standing Committee on the Federal Judiciary, to request and receive information which concerns me, including any complaint erased by law, that is known to, recorded with, on file with, or in the possession of the _____ **[insert names of relevant state bar ethics or disciplinary organizations and, if applicable, judicial conduct review body]** for the purpose of a review being conducted by such Committee in connection with my pending nomination to fill a position in the federal judiciary and

(2) waive any privilege of confidentiality I may have with respect to any such information to the extent necessary to permit such representative to obtain such information for such purpose.

_____

Date: _____

UNDERTAKINGS

The American Bar Association's Standing Committee on the Federal Judiciary, by and through its duly authorized representative, represents and agrees that

(1) all information obtained pursuant to the foregoing Authorization and Waiver and

(2) all other information provided to the Committee by the Candidate in connection with the Committee's review referred to above

will be held in strict confidence by the Committee and will not be disclosed, disseminated or used for any purpose other than such review and will be destroyed immediately upon the confirmation by the United States Senate of the Candidate to the position in the federal judiciary for which the Candidate has been nominated or the receipt by the Committee of written notice that such nomination has been withdrawn by the President or rejected by the United States Senate.

_____

Date: _____

From: CN=Terry W. Good/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
CC: Lee R. Johnson/WHO/EOP@EOP [WHO] <Lee R. Johnson>
Sent: 6/4/2001 6:33:37 AM
Subject: : Tobacco litigation

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Terry W. Good ( CN=Terry W. Good/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2001 10:33:37.00
SUBJECT:: Tobacco litigation
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lee R. Johnson ( CN=Lee R. Johnson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Elizabeth Mitchell of DOJ has asked if I would assist in preparing a
archivist from the Carter Presidential Library for a deposition regarding
the holdings of the Library relevant to the tobacco litigation. This
meeting is scheduled for this Friday. She has lead me to believe that I
need not make any significant preparations.

I will participate in this unless you suggest otherwise.

Terry
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2001 2:59:35 PM
Subject: : Neil Lewis called re: delayed release of Reagan Papers

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2001 18:59:35.00
SUBJECT:: Neil Lewis called re: delayed release of Reagan Papers
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Neil wanted to chat with someone in Counsel's office or press about the
delayed release of these papers.

Phone: 862-0318

The Judge prefers that you guys call him back.

Brett said he has already briefed you on this issue.

Thanks!
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2001 7:09:28 AM
Subject: : Re: Copy of letter
Attachments: P_WPR82004_WHO.TXT_1.doc; P_WPR82004_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2001 11:09:28.00
SUBJECT:: Re: Copy of letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I faxed the original draft- attached is what appears to be the final version - I am looking for the signed copy.

Brett M. Kavanaugh
06/05/2001 11:02:20 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Copy of letter

Do you have a copy of the letter that the Judge sent to John Carlin, the Archivist, in late March.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WPR82004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WPR82004_WHO.TXT_2>

March 23, 2001

Dear Mr. Carlin:

Section 2(b) of Executive Order 12667, issued by former President Ronald Reagan on January 16, 1989, requires the Archivist of the United States to delay release of Presidential records at the instruction of the current President.

On behalf of the President, I instruct you to extend for 90 days (until June 21, 2001) the time in which President Bush may claim a constitutionally based privilege over the Presidential records that former President Reagan, acting under Section 2204(a) of Title 44, has protected from disclosure for the 12 years since the end of his Presidency. This directive applies as well to the Vice Presidential records of former Vice President George H.W. Bush.

Sincerely,

Alberto R. Gonzales
Counsel to the President

Mr. John W. Carlin
Archivist of the United States
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740

March 19, 2001

MEMORANDUM FOR ANDREW CARD

FROM: ALBERTO R. GONZALES, COUNSEL TO THE PRESIDENT
BRETT KAVANAUGH, ASSOCIATE COUNSEL TO THE PRESIDENT

CC: KAREN HUGHES
KARL ROVE
NICHOLAS CALIO

SUBJECT: PRESIDENTIAL RECORDS ACT—
REAGAN RECORDS OPENING

As you know, the Presidential Records Act of 1978 applies to certain official documents created or received by the President and other White House officials. At the end of a President's Administration, the Archivist of the United States takes control of the Presidential records.

Under the Act, the Archivist must open many documents for public release beginning 12 years after the end of the President's term (or second term in the event of a two-term Presidency). The Act specifically provides, however, that it shall not be construed to "confirm, limit, or expand any constitutionally-based privilege which may be available to *an incumbent or former President*." 44 U.S.C. 2204(c)(2). As Senator Percy stated at the time the Presidential Records Act was enacted in 1978, moreover, "[t]o what extent the concept of 'executive privilege' protects the confidentiality of a former or incumbent President's communications with his advisers is an open question. If some future President believes that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year." Cong. Record S36844 (Oct. 13, 1978).

Many documents from President Reagan's Administration are now subject to public release because the 12-year non-disclosure period has elapsed. We have been advised by President Reagan's representatives that many extraordinarily sensitive documents may be publicly released absent a legislative fix to this statute or an Executive privilege claim by either or both President Reagan and President Bush.

As a matter of law, both the former President (or his representatives) *and* the current President may raise and support a privilege claim as to a former President's documents. **The views of the current President are considered far weightier, however, because they are believed to reflect the long-term interests of the Executive Branch**. As the Supreme Court stated in a case involving President Nixon's papers, "the fact that

neither President Ford nor President Carter supports [Nixon's] claim detracts from the weight of his contention that the Act impermissibly intrudes into the executive function and the needs of the Executive Branch. This necessarily follows, for it must be presumed that the incumbent President is vitally concerned with and in the best position to assess the present and future needs of the Executive Branch, and to support invocation of the privilege accordingly." *Nixon v. GSA*, 433 U.S. 425, 449 (1978).

Since the Act took effect in 1981, this is the first time that the 12-year period from the end of a Presidency has elapsed. Yet the constitutional questions that Senator Percy identified in 1978 remain quite unsettled today. Therefore, the decision that President Bush makes on this constitutional issue – whether to assert a privilege over some or all of the Reagan documents in question -- likely will set an important precedent for future Presidents.

Finally, it bears emphasis that there is a possibility of seeking a legislative solution to this matter. The Presidential Records Act provides that certain Freedom of Information Act exemptions (national security, personal privacy, and the like) continue to apply even after the 12-year period has expired. But Congress eliminated the most critical FOIA exemption – the so-called (b)(5) exemption that protects documents reflecting the internal deliberative processes of the Executive Branch. If exemption (b)(5) were restored to the President Records Act and applied to the potential release of documents after the 12-year period had elapsed, there likely would be no need for a constitutional privilege claim now or in the future.

Given the importance of the issue to the long-term interests of the Executive Branch, I intend to take the following course of action.

Pursuant to Executive Order 12667, which was issued by President Reagan on January 16, 1989, I intend to instruct the Archivist not to release covered Reagan documents for at least 90 days. (The executive order requires the Archivist to delay openings at the instruction of the current President.) I have attached a draft letter to the Archivist for your review. The research community and media may raise some objections to this delay and in the interim may seek to influence the President's ultimate decision. In my view, however, we can rightly say for now that it would be entirely irresponsible for the President not to conduct a careful study of the many constitutional, legal, and policy issues implicated by the proposed opening of the Reagan records.

During the 90-day period, I will consult with Nick Calio and the Legislative Affairs office as to the possibility of a legislative solution. I also will consult with the Office of Legal Counsel at the Department of Justice on the privilege issues. In addition, I will seek the views of representatives of President Reagan and (to the extent appropriate) representatives of former Presidents Bush and Clinton on these issues. Finally, in consultation with the Department of Justice, I will prepare a recommendation for the President.

If your concur with this course of action, I will convey our position to the Archivist.

REV_00127292

From: CN=Marvin Miller/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: Jennifer L. Jones/OA/EOP@EOP [OA] <Jennifer L. Jones>;Allison L. Riepenhoff/WHO /EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/5/2001 6:37:56 AM
Subject: : WH Counsel's Address Book

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Marvin Miller ( CN=Marvin Miller/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME: 5-JUN-2001 10:37:56.00
SUBJECT:: WH Counsel's Address Book
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jennifer L. Jones ( CN=Jennifer L. Jones/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Select "F5" and then click on the following link to open and add the WH
Counsel's address book to your desktop.-->.

Send me and email if you have any problems.
Marvin
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/5/2001 7:03:31 AM
Subject: : 30 minute JSC meetings

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 11:03:31.00
SUBJECT:: 30 minute JSC meetings
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The question has been posed as to whether or not these weekly meetings can
be trimmed down to 30 minutes instead of an hour.

Thoughts or objections?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 6/5/2001 10:17:46 AM
Subject: : District court nominees

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 14:17:46.00
SUBJECT:: District court nominees
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We should have approximately 40 nominees to the Senate by August
recess, as well as about 30 circuit nominees by then. Note that we
anticipate having nominees for virtually all vacancies to the Senate by
the mid-fall.
```

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;A. Morgan Middlemas/WHO /EOP@EOP [WHO] <A. Morgan Middlemas>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
Sent: 6/5/2001 11:03:27 AM
Subject: : CQ news...

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 15:03:27.00
SUBJECT:: CQ news...
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

CQ MONITOR NEWS


DASCHLE, GOP NEGOTIATORS START TALKS ON NEW SENATE POWER STRUCTURE

By Matthew Tully, CQ Staff Writer
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June 5, 2001 - As Senate Republicans prepared for negotiations Tuesday afternoon over a new organizing resolution, the first crack appeared in their ranks.

Rhode Island Republican Lincoln Chafee, one of a dwindling band of GOP moderates, said he would not support a filibuster intended to win concessions from the new Democratic majority that will control the Senate beginning Wednesday.

"If we [filibuster the resolution] we really won't get anything done" all year, Chafee said.

Republican aides have raised the possibility of a filibuster to block a Democratic-crafted organizing resolution if it does not include compromises such as a guarantee that President Bush's judicial nominees can be brought to the floor.

Five Republicans appointed by outgoing Majority Leader Trent Lott, Miss., will meet with Democratic leader Tom Daschle at 5 p.m. to discuss "real broad concepts," a senior GOP leadership aide said. In addition to judicial nominations, the group will discuss rules for subpoenas and what would occur if Republicans regain control.

One of the group, Pete V. Domenici of New Mexico, has a plan that would require committee hearings and votes on judicial nominees within a certain period. If a committee missed its deadline, Republicans could use procedural tactics to place the nomination on the Senate floor calendar. Further action, however, would be subject to a filibuster.

A Democratic leadership aide called Domenici's idea unacceptable and said the party sees no need to make concessions on the issue. At the close of business Tuesday, Democrats will take over control of the Senate floor and all committee chairmanships as a result of the switch of Vermont Sen. James M. Jeffords from the GOP to independent status. Jeffords will caucus with the Democrats, to give them operational control, and joined them at Tuesday's party luncheon for the first time.

Democrats hoped to win approval Tuesday night of a resolution naming their dean, Robert C. Byrd of West Virginia, as president pro tempore, replacing South Carolina Republican Strom Thurmond. Byrd then would recognize Daschle as majority leader when the Senate convenes Wednesday.

Source: CQ Monitor News
Round-the-clock coverage of news from Capitol Hill.
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>
Sent: 6/5/2001 11:35:00 AM
Subject: : Re: Reminder on call sheets

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 15:35:00.00
SUBJECT:: Re: Reminder on call sheets
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Yes, let's hold off for now.
```

```
Courtney S. Elwood
06/05/2001 03:22:06 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Reminder on call sheets

I don't see how it is possible to complete the call sheets if we don't
know when these people will be nominated.
```

Jason B. Torchinsky
06/05/2001 02:45:43 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Reminder on call sheets

Even though calls are hold, we're trying to have the call sheets for the next group of judicial nominees completed by tomorrow. Please send them to Brent when you finish them.

Jason

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
robert w. cobb/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
rachel l. brand/who/eop@eop
helgard c. walker/who/eop@eop
laura l. flippin/who/eop@eop

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 6/5/2001 12:57:30 PM
Subject: : Re: inquiry from Media Affairs

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 16:57:30.00
SUBJECT:: Re: inquiry from Media Affairs
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
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READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
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CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Sen. Grassley has been pushing this for years. I'm not familiar with the
particulars of any current legislation, but I'll call Scott.

RLB




Elizabeth N. Camp
06/05/2001 04:56:00 PM
Record Type: Record
```

To: See the distribution list at the bottom of this message
cc:
Subject: inquiry from Media Affairs

Do any of you have any knowledge about Senator Grassley legislation to allow camera into federal courtrooms?

Scott Stanzel from Media Affairs could use some insight on this - 456-5688.

Please let me know if you are going to respond to this....

If not no reply necessary.

Thank you.

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2001 1:07:44 PM
Subject: : Clinton District Nominees under age 40 at time of nomination

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 17:07:44.00
SUBJECT:: Clinton District Nominees under age 40 at time of nomination
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here are the Clinton nominees under age 40 through 6/5/1996. I'm working
on getting the rest of the data from DOJ. I hope to have it in the next
day or so. Let me know if you need it sooner.

David Hamilton Age 37
Kathleen O'Malley Age 37
Sean McLaughlin Age 39
Vanessa Gilmore Age 37
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/5/2001 1:48:07 PM
Subject: : JSC prep meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 17:48:07.00
SUBJECT:: JSC prep meeting
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Tomorrow's JSC pre will be held at 2:15 pm tomorrow in Judge's office.

JSC meeting at regular date/time - 4pm in the Roosevelt.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/5/2001 1:48:07 PM
Subject: : JSC prep meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2001 17:48:07.00
SUBJECT:: JSC prep meeting
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Tomorrow's JSC pre will be held at 2:15 pm tomorrow in Judge's office.

JSC meeting at regular date/time - 4pm in the Roosevelt.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [UNKNOWN] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>

Sent: 6/6/2001 11:40:05 AM

Subject: : Judicial Selection Committee Meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-JUN-2001 15:40:05.00
SUBJECT:: Judicial Selection Committee Meeting
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Reminder - today at 4:00 - Roosevelt Room.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [UNKNOWN] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>

Sent: 6/6/2001 11:40:05 AM

Subject: : Judicial Selection Committee Meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-JUN-2001 15:40:05.00
SUBJECT:: Judicial Selection Committee Meeting
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Larrison ( CN=Heather Larrison/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Reminder - today at 4:00 - Roosevelt Room.

From: CN=Jayne H. Chambers/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/7/2001 5:56:25 AM
Subject: : Re: Autographed photographs

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jayne H. Chambers ( CN=Jayne H. Chambers/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 7-JUN-2001 09:56:25.00
SUBJECT:: Re: Autographed photographs
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, thanks. That's the most direct answer I've received to any
question. Thanks.
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From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/7/2001 5:30:32 AM
Subject: : AP-US Holds Release of Reagan Papers

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-JUN-2001 09:30:32.00
SUBJECT:: AP-US Holds Release of Reagan Papers
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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FYI--this was posted by AP early this morning.

US Holds Up Release of Reagan Papers

by DEB RIECHMANN
Associated Press Writer

WASHINGTON (AP) -- The Bush administration is holding up release of 68,000 pages of presidential records that offer an insider's view of how decisions were made in the Reagan White House.

The confidential memos, letters and briefing papers passed among Ronald Reagan and his top advisers were to have come out in January -- 12 years after Reagan left office, as established by post-Watergate laws.

But the White House counsel's office asked the National Archives to delay the release until at least June 21 so government lawyers can look at the files that researchers and others are waiting to dig through.

White House officials say the Reagan documents are the first that would have been released under a presidential records law passed in 1978. They say care must be taken to make sure it's done right.

Historians, on the other hand, say they think President Bush is worried about what some of his top aides might have written when they worked for Reagan in the 1980s.

''I think what Bush is doing is protecting the people who were in the Reagan administration and his father's administration who are still around,'' said American University historian Anna Nelson. ''I think this is part of that everlasting fear that somebody did something in the past that they can't remember. I think they're trying to protect their own people.''

Secretary of State Colin Powell was on Reagan's national security team. Budget Director Mitchell Daniels Jr. was Reagan's political director. Chief White House economist Lawrence Lindsey was on Reagan's Council of Economic Advisers. Many others, including White House chief of staff Andrew Card, Interior Secretary Gale Norton and Ken Dam, nominated for the No. 2 job at Treasury, all worked for Reagan. And of course Reagan's vice president was George Herbert Walker Bush, the president's father.

''Some of these people are veterans from the Reagan administration, and they don't want the documents seen,'' said Vanderbilt University history professor Hugh Graham. ''They don't know what's in there, so they're worried.''

Anne Womack, assistant White House press secretary, denied allegations that the president is trying to protect his aides.

''We've asked for a short extension in order for the documents to undergo a legal review at the Justice Department,'' she said. ''The extension was requested to ensure that the Presidential Records Act is implemented correctly. We are setting precedent for future administrations. It's important that we address all the relevant issues.''

The Presidential Records Act of 1978 followed Watergate and former President Nixon's attempt
to hold on to his papers and tape recordings. Nixon said they were personal property. The act made presidential records government property, beginning with Reagan's. The records are stored at the Ronald Reagan Presidential Library in Simi Valley, Calif.

The law also put a 12-year hold on a category of records containing ''confidential communications requesting or submitting advice between the president and his advisers, or between such advisers.''

That 12 years is already up for these Reagan papers. And the documents can no longer be kept under wraps by provisions in either the Presidential Records Act or the Freedom of Information Act.

But before these kind of records are opened, the National Archives is required to give the incumbent president a heads-up. In late February, the National Archives gave Bush the required 30-day notification. At the end of the 30 days, the White House asked for an extension until June 21.

Most records received by the National Archives are more than 30 years old, but presidential records are retrieved from the White House right after a president leaves office, said Sharon Fawcett, a top presidential library official at the National Archives.

''So 12 years later, people are still in office, still active in government and playing significant roles,'' she said. ''But it's not only the people, it's also the issues that are still ongoing concerns -- like missile defense.''

It's unclear whether the documents will be released after June 21.

Nelson and others worry the Bush administration wants to find a way to keep the Reagan documents sealed, or it is looking for ways to put more restrictions on how and when presidential papers can be opened. The 12-year hold on similar papers from former President Bush's administration expires in 2005 -- the year Bush could be starting a second term.

From: CN=Cathy Alix/OU=WHO/O=EOP [WHO]

To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>;June Bartlett/NSC/EOP@EOP [NSC] <June Bartlett>;Daniel J. Bartlett/WHO /EOP@EOP [WHO] <Daniel J. Bartlett>;Brooks L. Bash/NSC/EOP@EOP [NSC] <Brooks L. Bash>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Debra D. Bird/WHO /EOP@EOP [WHO] <Debra D. Bird>;John M. Blackburn/NSC/EOP@EOP [NSC] <John M. Blackburn>;Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>;Gary E. Bresnahan/NSC /EOP@EOP [NSC] <Gary E. Bresnahan>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Don E. Cheramie/NSC/EOP@EOP [NSC] <Don E. Cheramie>;Carolyn E. Cleveland/WHO/EOP@EOP [WHO] <Carolyn E. Cleveland>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Ashley E. Davis/WHO/EOP@EOP [WHO] <Ashley E. Davis>;Eric A. Draper/WHO/EOP@EOP [WHO] <Eric A. Draper>;Joel C. Ehrendreich/NSC /EOP@EOP [NSC] <Joel C. Ehrendreich>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Jeanie L. Figg/WHO/EOP@EOP [WHO] <Jeanie L. Figg>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;Joachim D. Fuchs/NSC/EOP@EOP [NSC] <Joachim D. Fuchs>;Stephen M. Garrison/OPD/EOP@EOP [OPD] <Stephen M. Garrison>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;Wendy E. Gray/NSC/EOP@EOP [NSC] <Wendy E. Gray>;Janan Grissom/WHO/EOP@EOP [WHO] <Janan Grissom>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Robert C. Hargis/NSC/EOP@EOP [NSC] <Robert C. Hargis>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Quincy Hicks/WHO/EOP@EOP [WHO] <Quincy Hicks>;Brenda I. Hilliard/NSC/EOP@EOP [NSC] <Brenda I. Hilliard>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;Marilyn R. Jacanin/WHO/EOP@EOP [WHO] <Marilyn R. Jacanin>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Gordon D. Johndroe/WHO /EOP@EOP [WHO] <Gordon D. Johndroe>;Angela A. Jones/WHO/EOP@EOP [WHO] <Angela A. Jones>;M. Kay Joshi/NSC/EOP@EOP [NSC] <M. Kay Joshi>;Dora Kale/NSC /EOP@EOP [NSC] <Dora Kale>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Roland N. Litterst/WHO /EOP@EOP [WHO] <Roland N. Litterst>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Clark R. Lystra/NSC/EOP@EOP [NSC] <Clark R. Lystra>;Michael T. Manning/NSC/EOP@EOP [NSC] <Michael T. Manning>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Thomas S. Marsh/NSC/EOP@EOP [NSC] <Thomas S. Marsh>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Jenny McGee/NSC /EOP@EOP [NSC] <Jenny McGee>;Melissa McKnight/OPD/EOP@EOP [OPD] <Melissa McKnight>;Townsend L. McNitt/WHO/EOP@EOP [WHO] <Townsend L. McNitt>;Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>;Sonya E. Medina/WHO/EOP@EOP [WHO] <Sonya E. Medina>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Cathy L. Millison/NSC/EOP@EOP [NSC] <Cathy L. Millison>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Marcus J. Mollmann/WHO /EOP@EOP [WHO] <Marcus J. Mollmann>;Kevin S. Moran/NSC/EOP@EOP [NSC] <Kevin S. Moran>;Paul L. Morse/WHO/EOP@EOP [WHO] <Paul L. Morse>;Lee B. Mynatt/NSC /EOP@EOP [NSC] <Lee B. Mynatt>;Richard S. Paulus/WHO/EOP@EOP [WHO] <Richard S. Paulus>;Raymond H. Payne/NSC/EOP@EOP [NSC] <Raymond H. Payne>;Sarah Pfeifer/OPD /EOP@EOP [OPD] <Sarah Pfeifer>;David Reyes/NSC/EOP@EOP [NSC] <David Reyes>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Christina D. Roberts/WHO/EOP@EOP [WHO] <Christina D. Roberts>;Josephine B. Robinson/WHO /EOP@EOP [WHO] <Josephine B. Robinson>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>;Daniel R. Sanborn/NSC/EOP@EOP [NSC] <Daniel R. Sanborn>;John B. Sherman/NSC/EOP@EOP [NSC] <John B. Sherman>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Deana R. Sutliff/NSC/EOP@EOP [NSC] <Deana R. Sutliff>;Barbara E. Swann/OA /EOP@EOP [OA] <Barbara E. Swann>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Julieanne H. Thomas/WHO/EOP@EOP [WHO] <Julieanne H. Thomas>;Anne Trenolone/WHO/EOP@EOP [WHO] <Anne Trenolone>;Sibyl M. Turner/WHO/EOP@EOP [WHO] <Sibyl M. Turner>;Kurt F. Van der Walde/NSC/EOP@EOP [NSC] <Kurt F. Van der Walde>;Elaine P. Wasserman/NSC/EOP@EOP [NSC] <Elaine P. Wasserman>;Robert L. Wilbon/OA/EOP@EOP [OA] <Robert L. Wilbon>;Robert S. Williams/NSC/EOP@EOP [NSC] <Robert S. Williams>;Harry W. Wolff/WHO/EOP@EOP [WHO] <Harry W. Wolff>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Christina H. Yarmchuk/NSC/EOP@EOP [

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Ellen Countryman>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kevin J. Martin/OPD/EOP@EOP [OPD] <Kevin J. Martin>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Vickers B. Meadows/WHO/EOP@EOP [WHO] <Vickers B. Meadows>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Robert G. Joseph/NSC/EOP@EOP [NSC] <Robert G. Joseph>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Daniel Fried/NSC/EOP@EOP [NSC] <Daniel Fried>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Ruben S. Barrales/WHO /EOP@EOP [WHO] <Ruben S. Barrales>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>;John J. Dilulio/WHO/EOP@EOP [WHO] <John J. Dilulio>;Nancy P. Dorn/WHO /EOP@EOP [WHO] <Nancy P. Dorn>;Debra R. Dunn/OVP/EOP@EOP [WHO] <Debra R. Dunn>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Eric S. Edelman/OVP /EOP@EOP [OVP] <Eric S. Edelman>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>;Charles D. McGrath Jr/OVP/EOP@EOP [OVP] <Charles D. McGrath Jr>;Deborah K. Hair/WHO /EOP@EOP [WHO] <Deborah K. Hair>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Stuart Holliday/WHO /EOP@EOP [WHO] <Stuart Holliday>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Elizabeth W. Kleppe/OVP/EOP@EOP [OVP] <Elizabeth W. Kleppe>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;Lewis Libby/OVP/EOP@EOP [OVP] <Lewis Libby>;Claire M. O'Donnell/OVP/EOP@EOP [OVP] <Claire M. O'Donnell>;Neil S. Patel/OVP/EOP@EOP [OVP] <Neil S. Patel>;Torkel L. Patterson/NSC/EOP@EOP [NSC] <Torkel L. Patterson>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Peter F. Allgeier/NSC/EOP@EOP [NSC] <Peter F. Allgeier>;George M. Andricos/NSC/EOP@EOP [NSC] <George M. Andricos>;Jendayi E. Frazer/NSC/EOP@EOP [NSC] <Jendayi E. Frazer>;Andrew D. Lundquist/OVP/EOP@EOP [OVP] <Andrew D. Lundquist>;John F. Maisto/NSC/EOP@EOP [NSC] <John F. Maisto>;K. Philippa Malmgren/OPD /EOP@EOP [OPD] <K. Philippa Malmgren>;Kristine Simmons/OPD/EOP@EOP [OPD] <Kristine Simmons>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>;Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>;Deborah A. Loewer/NSC/EOP@EOP [NSC] <Deborah A. Loewer>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>

Sent: 6/7/2001 10:27:43 AM

Subject: : White House Mess Operating Schedule

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CREATOR:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-JUN-2001 14:27:43.00
SUBJECT:: White House Mess Operating Schedule
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READ:UNKNOWN
TO:Jill L. Angelo ( CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kevin S. Moran (CN=Kevin S. Moran/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Raymond H. Payne (CN=Raymond H. Payne/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sarah Pfeifer (CN=Sarah Pfeifer/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David Reyes (CN=David Reyes/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel R. Sanborn (CN=Daniel R. Sanborn/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:John B. Sherman (CN=John B. Sherman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Deana R. Sutliff (CN=Deana R. Sutliff/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Barbara E. Swann (CN=Barbara E. Swann/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sibyl M. Turner (CN=Sibyl M. Turner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kurt F. Van der Walde (CN=Kurt F. Van der Walde/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Elaine P. Wasserman (CN=Elaine P. Wasserman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Robert L. Wilbon (CN=Robert L. Wilbon/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina H. Yarmchuk (CN=Christina H. Yarmchuk/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amy Barrera (CN=Amy Barrera/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dean J. Haas (CN=Dean J. Haas/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Josephine L. Hirsch (CN=Josephine L. Hirsch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Megan R. Johnston (CN=Megan R. Johnston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel M. McCarthy (CN=Daniel M. McCarthy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sarah M. Moss (CN=Sarah M. Moss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie C. Pauska (CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Emily Willeford (CN=Emily Willeford/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Alexian T. Wines (CN=Alexian T. Wines/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Elizabeth A. Selva (CN=Elizabeth A. Selva/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Travis C. Good (CN=Travis C. Good/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew M. Kaver (CN=Andrew M. Kaver/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sherry J. Kuntz (CN=Sherry J. Kuntz/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary I. Metzger (CN=Mary I. Metzger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bonnie S. Broadwick (CN=Bonnie S. Broadwick/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marcia J. Caler (CN=Marcia J. Caler/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:William D. Mathews (CN=William D. Mathews/OU=NSC/O=EOP@EOP [NSC])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen Goldsmith (CN=Stephen Goldsmith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Condoleezza Rice (CN=Condoleezza Rice/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Margaret Tutwiler (CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ronald G. Bellamy (CN=Ronald G. Bellamy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Hector F. Irastorza (CN=Hector F. Irastorza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert A. Bradtke (CN=Robert A. Bradtke/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary O. McCarthy (CN=Mary O. McCarthy/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Bruce O. Riedel (CN=Bruce O. Riedel/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Eric P. Schwartz (CN=Eric P. Schwartz/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Ellen Countryman (CN=Mary Ellen Countryman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert G. Joseph (CN=Robert G. Joseph/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John J. DiIulio (CN=John J. DiIulio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart Holliday (CN=Stuart Holliday/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Torkel L. Patterson (CN=Torkel L. Patterson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Peter F. Allgeier (CN=Peter F. Allgeier/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Andrew D. Lundquist (CN=Andrew D. Lundquist/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

The White House Presidential Food Service Staff plays a critical role in the President,s overseas trips. Due to the upcoming overseas trip, June 11-16th, 2001, the White House Mess will close for business at 5:00 p.m. daily, serve all meals in dining room one only, and be closed for business on Saturday, June 16, 2001. We apologize for the inconvenience during this period.

Thank you.

From: CN=Cathy Alix/OU=WHO/O=EOP [WHO]

To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>;June Bartlett/NSC/EOP@EOP [NSC] <June Bartlett>;Daniel J. Bartlett/WHO /EOP@EOP [WHO] <Daniel J. Bartlett>;Brooks L. Bash/NSC/EOP@EOP [NSC] <Brooks L. Bash>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Debra D. Bird/WHO /EOP@EOP [WHO] <Debra D. Bird>;John M. Blackburn/NSC/EOP@EOP [NSC] <John M. Blackburn>;Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>;Gary E. Bresnahan/NSC /EOP@EOP [NSC] <Gary E. Bresnahan>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Don E. Cheramie/NSC/EOP@EOP [NSC] <Don E. Cheramie>;Carolyn E. Cleveland/WHO/EOP@EOP [WHO] <Carolyn E. Cleveland>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Ashley E. Davis/WHO/EOP@EOP [WHO] <Ashley E. Davis>;Eric A. Draper/WHO/EOP@EOP [WHO] <Eric A. Draper>;Joel C. Ehrendreich/NSC /EOP@EOP [NSC] <Joel C. Ehrendreich>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Jeanie L. Figg/WHO/EOP@EOP [WHO] <Jeanie L. Figg>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;Joachim D. Fuchs/NSC/EOP@EOP [NSC] <Joachim D. Fuchs>;Stephen M. Garrison/OPD/EOP@EOP [OPD] <Stephen M. Garrison>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;Wendy E. Gray/NSC/EOP@EOP [NSC] <Wendy E. Gray>;Janan Grissom/WHO/EOP@EOP [WHO] <Janan Grissom>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Robert C. Hargis/NSC/EOP@EOP [NSC] <Robert C. Hargis>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Quincy Hicks/WHO/EOP@EOP [WHO] <Quincy Hicks>;Brenda I. Hilliard/NSC/EOP@EOP [NSC] <Brenda I. Hilliard>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;Marilyn R. Jacanin/WHO/EOP@EOP [WHO] <Marilyn R. Jacanin>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Gordon D. Johndroe/WHO /EOP@EOP [WHO] <Gordon D. Johndroe>;Angela A. Jones/WHO/EOP@EOP [WHO] <Angela A. Jones>;M. Kay Joshi/NSC/EOP@EOP [NSC] <M. Kay Joshi>;Dora Kale/NSC /EOP@EOP [NSC] <Dora Kale>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Roland N. Litterst/WHO /EOP@EOP [WHO] <Roland N. Litterst>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Clark R. Lystra/NSC/EOP@EOP [NSC] <Clark R. Lystra>;Michael T. Manning/NSC/EOP@EOP [NSC] <Michael T. Manning>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Thomas S. Marsh/NSC/EOP@EOP [NSC] <Thomas S. Marsh>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Jenny McGee/NSC /EOP@EOP [NSC] <Jenny McGee>;Melissa McKnight/OPD/EOP@EOP [OPD] <Melissa McKnight>;Townsend L. McNitt/WHO/EOP@EOP [WHO] <Townsend L. McNitt>;Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>;Sonya E. Medina/WHO/EOP@EOP [WHO] <Sonya E. Medina>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Cathy L. Millison/NSC/EOP@EOP [NSC] <Cathy L. Millison>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Marcus J. Mollmann/WHO /EOP@EOP [WHO] <Marcus J. Mollmann>;Kevin S. Moran/NSC/EOP@EOP [NSC] <Kevin S. Moran>;Paul L. Morse/WHO/EOP@EOP [WHO] <Paul L. Morse>;Lee B. Mynatt/NSC /EOP@EOP [NSC] <Lee B. Mynatt>;Richard S. Paulus/WHO/EOP@EOP [WHO] <Richard S. Paulus>;Raymond H. Payne/NSC/EOP@EOP [NSC] <Raymond H. Payne>;Sarah Pfeifer/OPD /EOP@EOP [OPD] <Sarah Pfeifer>;David Reyes/NSC/EOP@EOP [NSC] <David Reyes>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Christina D. Roberts/WHO/EOP@EOP [WHO] <Christina D. Roberts>;Josephine B. Robinson/WHO /EOP@EOP [WHO] <Josephine B. Robinson>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>;Daniel R. Sanborn/NSC/EOP@EOP [NSC] <Daniel R. Sanborn>;John B. Sherman/NSC/EOP@EOP [NSC] <John B. Sherman>;Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Deana R. Sutliff/NSC/EOP@EOP [NSC] <Deana R. Sutliff>;Barbara E. Swann/OA /EOP@EOP [OA] <Barbara E. Swann>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Julieanne H. Thomas/WHO/EOP@EOP [WHO] <Julieanne H. Thomas>;Anne Trenolone/WHO/EOP@EOP [WHO] <Anne Trenolone>;Sibyl M. Turner/WHO/EOP@EOP [WHO] <Sibyl M. Turner>;Kurt F. Van der Walde/NSC/EOP@EOP [NSC] <Kurt F. Van der Walde>;Elaine P. Wasserman/NSC/EOP@EOP [NSC] <Elaine P. Wasserman>;Robert L. Wilbon/OA/EOP@EOP [OA] <Robert L. Wilbon>;Robert S. Williams/NSC/EOP@EOP [NSC]

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Sent: 6/7/2001 10:27:43 AM

Subject: : White House Mess Operating Schedule

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-JUN-2001 14:27:43.00
SUBJECT:: White House Mess Operating Schedule
TO:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Kevin S. Moran (CN=Kevin S. Moran/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Raymond H. Payne (CN=Raymond H. Payne/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sarah Pfeifer (CN=Sarah Pfeifer/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David Reyes (CN=David Reyes/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP@EOP [OPD])
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TO:Daniel R. Sanborn (CN=Daniel R. Sanborn/OU=NSC/O=EOP@EOP [NSC])
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TO:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
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TO:Deana R. Sutliff (CN=Deana R. Sutliff/OU=NSC/O=EOP@EOP [NSC])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sibyl M. Turner (CN=Sibyl M. Turner/OU=WHO/O=EOP@EOP [WHO])
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TO:Kurt F. Van der Walde (CN=Kurt F. Van der Walde/OU=NSC/O=EOP@EOP [NSC])
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TO:Elaine P. Wasserman (CN=Elaine P. Wasserman/OU=NSC/O=EOP@EOP [NSC])
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TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amy Barrera (CN=Amy Barrera/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN

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TO:Daniel M. McCarthy (CN=Daniel M. McCarthy/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Alexian T. Wines (CN=Alexian T. Wines/OU=NSC/O=EOP@EOP [NSC])
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READ:UNKNOWN
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Travis C. Good (CN=Travis C. Good/OU=NSC/O=EOP@EOP [NSC])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
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TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP@EOP [NSC])
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TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mary I. Metzger (CN=Mary I. Metzger/OU=NSC/O=EOP@EOP [NSC])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcia J. Caler (CN=Marcia J. Caler/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP@EOP [NSC])
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READ:UNKNOWN
TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Ronald G. Bellamy (CN=Ronald G. Bellamy/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
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TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Hector F. Irastorza (CN=Hector F. Irastorza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert A. Bradtke (CN=Robert A. Bradtke/OU=NSC/O=EOP@EOP [NSC])
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TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP@EOP [NSC])
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TO:Mary O. McCarthy (CN=Mary O. McCarthy/OU=NSC/O=EOP@EOP [NSC])
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TO:Bruce O. Riedel (CN=Bruce O. Riedel/OU=NSC/O=EOP@EOP [NSC])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Ellen Countryman (CN=Mary Ellen Countryman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [OPD])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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TO:Vickers B. Meadows (CN=Vickers B. Meadows/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Robert G. Joseph (CN=Robert G. Joseph/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP@EOP [NSC])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John J. DiIulio (CN=John J. DiIulio/OU=WHO/O=EOP@EOP [WHO])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
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TO:Stuart Holliday (CN=Stuart Holliday/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
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TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
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TO:Torkel L. Patterson (CN=Torkel L. Patterson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Peter F. Allgeier (CN=Peter F. Allgeier/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Andrew D. Lundquist (CN=Andrew D. Lundquist/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP@EOP [NSC])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
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TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

The White House Presidential Food Service Staff plays a critical role in the President,s overseas trips. Due to the upcoming overseas trip, June 11-16th, 2001, the White House Mess will close for business at 5:00 p.m. daily, serve all meals in dining room one only, and be closed for business on Saturday, June 16, 2001. We apologize for the inconvenience during this period.

Thank you.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/7/2001 1:51:23 PM
Subject: : DOJ Weekly Report
Attachments: F_05OA2004_NSC.TXT_1.wpd

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CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-JUN-2001 17:51:23.00
SUBJECT:: DOJ Weekly Report
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI
---------------------- Forwarded by Elizabeth N. Camp/WHO/EOP on
06/07/2001 05:50 PM ---------------------------




Ali H. Tulbah
06/07/2001 05:49:56 PM
Record Type: Record

To: Diana L. Schacht/OPD/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP
cc:
```

Subject: DOJ Weekly Report

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_05OA2004_NSC.TXT_1>

DEPARTMENT OF JUSTICE

For the week of

June 11, 2001

I. Key Agency News

Office of the Deputy Attorney General (DAG)

- **McVeigh Execution:** The execution of convicted Oklahoma City bomber Timothy McVeigh is scheduled for Monday, June 11th at 7am (CST) in Terre Haute, IN. On Wednesday, June 6th, in Denver, CO, Judge Richard Matsch denied McVeigh's petition for a stay of execution. The McVeigh execution is the first federal execution in 38 years.

- **Garza Execution:** Convicted drug kingpin Juan Raul Garza is scheduled to be executed on Tuesday, June 19th. Former President Clinton delayed Garza's execution, originally scheduled for the fall of 2000.

Office of the Solicitor General (OSG)

- **Solicitor to Respond to Terry Nichols Request for New Trial:** By July 4, per the Supreme Court's June 4th invitation, the Solicitor will file a response to the petition for rehearing of the order denying a writ of certiorari in *Nichols* v. *United States*. Petitioner, currently serving a life sentence for his involvement in the Oklahoma City bombing, seeks a new trial alleging that he was prejudiced by the government's improper withholding of potentially exculpatory evidence in FBI files. His original petition for a writ of certiorari was denied, and he now seeks rehearing in light of the recent discovery of several thousand documents related to the bombing investigation that were not turned over to defense counsel during discovery.

- **Supreme Court Grants Cert in Challenge to Chicago Permit Requirement:** The Department is determining whether participation in the case of *Thomas v. Chicago Park District* is warranted at this stage. The Department has not participated in the case to date. On May 29, the Court granted a petition for a writ of certiorari in this case, which involves a First Amendment challenge to a Chicago Park District ordinance that requires a permit for any event in a city park that involves more than 50 people or utilizes amplified sound.

- **Supreme Court to Review Ninth Circuit's Application of Test for Reasonable Suspicion:** On June 4, the Court granted the United States' petition for a writ of certiorari in *United States* v. *Arvizu*, No. 00-1519. The questions presented: (1) whether the court of appeals erroneously departed from the totality of the circumstances test that governs reasonable suspicion determinations under the Fourth Amendment by holding that particular facts observed by a law enforcement officer were entitled to no weight and could not be considered as a matter of law; and (2) whether, under the totality of the circumstances test, the Border Patrol agent in this case

had reasonable suspicion that justified a stop of a vehicle near the Mexican border. In the petition for a writ of certiorari, the Department contended that the Ninth Circuit's decision in this case departed fundamentally from the Supreme Court's totality-of-the-circumstances test for determining whether reasonable suspicion exists. By declaring as a matter of law that law enforcement officers may not consider certain facts when forming a suspicion of illegal activity, the court of appeals created a direct conflict with decisions of the Supreme Court and other courts of appeals and incorrectly excluded critical evidence in this case.

Office of Legislative Affairs (OLA)

- **Ira Einhorn Extradition:** The House Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources has scheduled a hearing on "Justice Delayed: Extradition and the Ira Einhorn Case" on June 7. The Department met with Subcommittee staff on May 22, and met with the family of the victim on June 6. Criminal Division Deputy Assistant Attorney General Bruce Swartz will testify.

Civil Rights Division (CRT)

- **Update on Pattern or Practice Investigation of Cincinnati Police Department:** The Division is continuing its pattern or practice investigation of the Cincinnati Police Division's use of deadly and non-deadly force by conducting additional meetings with City and police officials, as well as members of the community, and reviewing relevant documents. On May 7, the Attorney General announced that the Civil Rights division would be conducting a pattern or practice investigation of the CPD's use of deadly and non-deadly force. The Attorney General also committed to provide the City and the Police Division with expert technical assistance on how to best reform their policing practices if needed. On May 23-25, the Division conducted the initial rounds of interviews in its use of force investigation of the CPD.

Civil Division (CIV)

- **Ninth Circuit To Hear Oral Argument On June 11 In Tort Case Arising Out Of The Transborder Apprehension Of Plaintiff By The DEA:** On June 11, the Ninth Circuit will hear oral argument on whether the transborder apprehension of Humberto Alvarez-Machain supports a false arrest/false imprisonment tort claim and whether it was an actionable violation of international law under the Alien Tort Statute. Plaintiff is a Mexican doctor that U.S. officials believe was involved in the murder of Drug Enforcement Administration (DEA) Agent Enrique Camarena-Salazar. Plaintiff was abducted from Mexico by DEA-paid Mexican nationals and brought to the United States so that he could be charged with the murder. At trial, plaintiff was acquitted. He then commenced this suit against the United States, five DEA officials and one member of the Mexican abduction team. The District Court held the agents and the United States immune from plaintiff's claims. Plaintiff appealed. The issues presented on appeal include: whether plaintiff's claim that his apprehension violated international law supports a claim under the Alien Tort Statute; whether the apprehension was authorized by federal law and or CA law; and whether plaintiff's tort claims fall within the foreign country exception of the Federal Tort Claims Act.

Criminal Division (CRM)

- **U.S. Files Plea Agreement in Bush Videotape Case:** It is anticipated that a plea will be scheduled for June 8 in Austin, TX, in the case of a former office manager and receptionist for the Bush 2000 campaign's chief media consultant. On May 25, in the W.D. TX, a plea agreement was reached with the defendent, who was indicted in March on charges stemming from her release from the Bush-Cheney 2000 presidential campaign of a video tape and documents relating to then-Governor Bush's preparations for the presidential debates. The defendant has agreed to plead guilty to mail fraud and perjury counts in the pending indictments.

- **Denaturalization Trial of Accused Nazi:** The trial in the N.D. OH of the Government's denaturalization case against John Demjanjuk is expected to go into its third and final week the week of June 11th. The trial commenced on May 29th. Demjanjuk's 1988 conviction in Israel on charges of murders committed while serving as a brutal guard at the Nazis' Treblinka Death Camp known to inmates as "Ivan the Terrible" was reversed by the Israeli Supreme Court in 1993. Demjanjuk's naturalized U.S. citizenship, which had been revoked in 1981 following a denaturalization trial in federal district court in Cleveland, was restored by N.D. OH in February 1998 in the wake of judicial findings that federal prosecutors had committed fraud on the court by withholding exculpatory information from the defendant during the original denaturalization proceedings. A new denaturalization action was filed against Demjanjuk in May 1999 by the Office of Special Investigations (OSI) and the U.S. Attorney's Office in Cleveland, based on Demjanjuk's service as an armed guard at the Sobibor death camp and other Nazi camps in wartime Poland and Germany.

Executive Office for United States Attorneys (EOUSA)

- **Interim United States Attorneys to Attend Seminar:** Training will be held for interim United States Attorneys June 7-8, in Columbia, SC. The purpose of the training is to discuss their new leadership roles. Topics will include an overview of the Department's initiatives; media and legislative trends; budget and resources; and leadership and coordination as United States Attorneys. The Attorney General is expected to address the group.

Office of Justice Programs (OJP)

- From June 11-15 in Auorora, CO, the Office of Juvenile Justice and Delinquency Prevention is sponsoring, together with Fox Valley Technical College and the National Center for Missing and Exploited Children, a conference regarding "Protecting Children Online."

II. Press Activity

- Multiple media outlets will run stories on the expected execution of Timothy McVeigh, scheduled for Monday, June 11th.

- Several media outlets will run stories on the judicial nominations as the hearings start.

- The *NY Times* will run a story on National Instant Criminal (background check) System (NICS) record retention by Fox Butterfield (weekend of June 9th). They will suggest that the Justice Department is bending to the political whims of the NRA by striking down a rule implemented in the last days of the Reno administration relating to the retention of records for Brady background checks. DOJ is currently "conducting a comprehensive review" of the program and may make substantial changes to it following that review.

- *48 Hours/CBS* may be breaking a story based out of Seattle that alleges that the FBI failed to disclose documents in the case of *US v. Nickell* (No. CR87-276WD, W.D. Washington). Nickell was convicted in 1987 for murdering her husband and is serving a life sentence. All appeals have expired.

- *USA Today* is working on a story about settlement talks that are underway between the United States and the National Ass'n. of Homebuilders. The NAHB filed suit over federal wetlands protection regulations.

- *Wall Street Journal* is working on story about a legal challenge to environmental regulation of coal mining in WV, and the relationship of mining to energy supply issues.

- *NBC Nightly News* is doing a piece on border smuggling that will air on Saturday, June 9th.

- *WA Post* is working on a comprehensive story on Prince George's County police misconduct and the lack of prosecution by the United States Attorney's Office in Maryland. The story will run the week of June 11th or 18th.

III. Attorney General's Schedule

June 8 - 10. (Springfield, MO) AG personal residence.
June 12. Attend National Center for Neighborhood Enterprise Event.
June 13. Attend Justice Management Division Awards Ceremony.
June 14. Meeting with Cal Thomas, LA Times Columnist; (b) (Bristow, VA) Youth for Tomorrow Event.
June 18. (Falls Church, VA) Tour of Executive Office of Immigration Review.
June 19 - June 21. (Ottowa, CAN) TBD: Trip to Canada.
June 25. (Ft. Lauderdale, FL) Address National Sheriffs' Association Annual Conference.

IV. Grant Awards

- Nothing to report.

V. Freedom of Information Act (FOIA) Inquiries

- DOJ has received the following significant FOIA request:

An individual has requested correspondence between Attorney General John Ashcroft or any member of the Office of the Attorney General and the National Rifle Association.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO /EOP@EOP [WHO] <Lori L. Lorenzi>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 6/7/2001 2:37:57 PM

Subject: : Friday and Monday

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-JUN-2001 18:37:57.00
SUBJECT:: Friday and Monday
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Judge is out all day on Friday, June 8. Call me or email me with any
message you need to get to him.
```

Monday's staff meeting will be start at 9:00 instead of 8:30.

Thanks!

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/8/2001 4:44:36 AM
Subject: : RE: Laurel Pressler

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN]
)
CREATION DATE/TIME: 8-JUN-2001 08:44:36.00
SUBJECT:: RE: Laurel Pressler
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

B&B,

Thanks for the intro. I take everybody's call and cultivate all
relationships, but will focus on this one in particular.

best,

viet

-----Original Message-----
From: Bradford_A._Berenson@who.eop.gov@inetgw
[mailto:Bradford_A._Berenson@who.eop.gov]
Sent: Thursday, June 07, 2001 1:10 PM
To: Dinh, Viet
Cc: Brett_M._Kavanaugh@who.eop.gov@inetgw
Subject: Laurel Pressler

Brett and I just had lunch with Laurel Pressler, Mike Dewine's Chief of
Staff. She is a person who may be quite helpful to us going forward with
confirmation issues. She's eager to make your acquaintance and plans to
call you soon. Brett and I recommend you take her call and make a little
time to establish a relationship.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2001 9:45:22 AM
Subject: : POOL REPORT 6-12-01 #3 in Madrid

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 13:45:22.00
SUBJECT:: POOL REPORT 6-12-01 #3 in Madrid
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This is one of the funnier pool reports. Pooler does not know how to spell gazpacho or paella, however.
---------- Forwarded by Helgard C. Walker/WHO/EOP on 06/12/2001 01:44 PM ----------

06/12/2001 01:21 PM
Rachael L. Sunbarger
Rachael L. Sunbarger
Rachael L. Sunbarger
06/12/2001 01:21 PM
06/12/2001 01:21 PM
Record Type: Record

To:
cc:
Subject: POOL REPORT 6-12-01 #3 in Madrid

Pool Report
June 12, 2001
Madrid and Los Yebenes, Spain

The following is an excerpt from the pooler's upcoming novel, "The Longest Pool." DON'T wait for the movie. (if you are on deadline, cut immediately to the end where the pool had a very brief Q&A with Ari)

We join the POTUS at Barajas International Airport in Madrid, where is disembarks AF1 wearing a dark suit, white shirt and light blue tie that is by now familiar to all of you. Following him on the stairs are Secretary of State Colin Powell, Chief of Staff Andrew Card and National Security Adviser Condeleezza Rice, and an assortment of flaks and aides (models of which are available for purchase in the Flaks and Aides shop in the lobby).

The motorcade motored along M-40 to the Zarzuela Palace. It was most uneventful. Some of the people whose cars were stopped on highway entrance ramps to make way for the POTUS stood beside their cars and watched in a world-weary way that at 50 mph can be describe only as studied nonchalance. No one waved, but no one made obscene gestures either.

When we arrived at the palace, your pooler was diverted to a point on the grounds where he would pose a threat to no one but himself. All details of POTUS meeting with the King and Queen will come from the pre-positioned pool.

The motorcade departed the royal grounds a half-hour behind schedule owing to the longer-than-expected meeting between the POTUS, FLOTUS, King and Queen. (And, yes, a POTUS and FLOTUS do beat a King and Queen in both draw

and stud poker.)

The motorcade from the palace to the Cuatro Vientos Air Base was uneventful.

The 50-minute helicopter ride to Los Quintos de Mora (known to POTUS as "The Ranch") was uneventful. Locals say the grounds are located in the town of Los Yebenes.

(A brief aside: The Spanish do not call this place a "ranch" and seem to have a hard time understanding why POTUS does. It is actually a nature preserve. Like there's a difference, right?)

Marine 1 made its usual discreet landing next to the home of Prime Minister Jose Maria Aznar, blowing trees, small animals and two still photographers into the next county.

(A note for the stylistically uncertain: It is proper and acceptable, according to locals, for western press to refer to President Aznar as Prime Minister Aznar. He is an appointed president and head of government. The King is head of state.)

POTUS exited Marine 1 sans tie and suit jacket. His white dress shirt was open at the collar, but his french cuffs remained cinched by presidential cuff links. PM Aznar walked to Marine 1 wearing a similar get-up: Open collared white dress shirt and dark suit pants without jacket or tie. PE's shirt cuffs were rolled up slightly, however, as if to say we Spaniards have much to teach you Americans about dressy-casual attire!

POTUS introduced PE Aznar to Powell. A few minutes later, he introduced Rice and Card to PE Aznar.

As they walked the grounds in front of the PE's residence, the two men posed before a statue of a good-sized stag. (Much will be read into this image in the years to come; your pooler leaves this powerful image unadorned by his unworthy words.)

The two men, who share a conservative streak and a perchance for rural living, strolled for a few minutes so that they could watch the cameramen and photogs stumble over each other trying to keep up. It was all good fun.

As they walked, PE Aznar would occasionally take POTUS by the elbow and point out features of interest. Judging by the few words your pooler was able to hear as photogs stomped him into the ground, the two men were speaking in Spanish.

The two men strolled into the residence for their meeting. The extended bilateral included Powell, Rice, Card, Heather Hodges, deputy chief of mission here and Dan Fried (pronounced Freed) of the National Security Council. Their Spanish counterparts were also present, but White House aides on the scene did not have a complete list of names and spellings.

This just in from the ubiquitous Gordon Johndroe: After the meeting, the group adjourned to lunch, which included Gespatcho with lobster, cured ham and chesse, paellaya with local fowl, hake (a type of fish) and strawberry ice cake with berries for dessert.

After lunch, the group met again.

The helicopters departed 4:20 p.m. Trip was uneventful.

The motorcade back to the palace for press avail. was uneventful.

ARI Q&A
Ari joined us the pool briefly in our holding area.

Asked about a wire report that two bombs had been found in Madrid on Monday, Ari indicated that they posed no threat to - and may have been unrelated to - POTUS visit. The Secret Service, which normally keeps him apprised of potential threats, issued no such alert in relation the bomb.

Asked about reports of sabotage in Sweden, Ari said he would check with the Secret Service.

Asked about the protestors at the American embassy and whether they were disruptive, Ari said: "Protestors at international summits these day are a modern way of life. Hold a summit and the protestors show up. That won't keep the president from getting his work done."

Ari noted that Clinton and other presidents drew their share of protestors ofver the years. That's not necessarily a reflection on public attituide towared their policies, he said. Many are protesting on much broader issues or issues the president is not taking up directly, such as globalization.

Asked if the White House had heard any immediate reaction from Europe on its Climate Change plan, Ari called the president's plan "a very helpful affirmation of what the president stands for - addressing global warming without being alarmists and without hurting the U.S. economy."

Asked if European nations were being disingenuous in their criticisms of Bush for rejecting the Kyoto agreement since many of them are better off without it, Ari said, "None of the Eurpoean nations voted to ratify Kyoto and that speaks volumes."

Bob Kemper
Chicago Tribune
RKemper@Tribune.com
(Sorry, I don't know the number of my Euro Phone.)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 6/12/2001 9:46:54 AM
Subject: : Re: POOL REPORT 6-12-01 #3 in Madrid

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 13:46:54.00
SUBJECT:: Re: POOL REPORT 6-12-01 #3 in Madrid
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

My favorite line:
"Marine 1 made its usual discreet landing next to the home of Prime Minister Jose Maria Aznar, blowing trees, small animals and two still photographers into the next county."

Helgard C. Walker
06/12/2001 01:45:08 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: POOL REPORT 6-12-01 #3 in Madrid

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---------- Forwarded by Helgard C. Walker/WHO/EOP on 06/12/2001 01:44 PM ----------

06/12/2001 01:21 PM
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Bob Kemper
Chicago Tribune
RKemper@Tribune.com
(Sorry, I don't know the number of my Euro Phone.)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/12/2001 7:57:21 AM
Subject: : Interviews

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-JUN-2001 11:57:21.00
SUBJECT:: Interviews
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I need to schedule 9 judicial interviews with me and the Judge --
preferably for next Monday, Tuesday, and Wednesday. Can we do 5:30, 6:00,
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```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/12/2001 9:17:27 AM
Subject: : Re: Interviews

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 13:17:27.00
SUBJECT:: Re: Interviews
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ok!

Elizabeth N. Camp
06/12/2001 12:19:57 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Interviews

How about a 4:30, 5:00 and 5:30 on Tue/Wed/Th?

Brett M. Kavanaugh
06/12/2001 11:57:07 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Interviews

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preferably for next Monday, Tuesday, and Wednesday. Can we do 5:30, 6:00,
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 6/12/2001 9:46:54 AM
Subject: : Re: POOL REPORT 6-12-01 #3 in Madrid

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 13:46:54.00
SUBJECT:: Re: POOL REPORT 6-12-01 #3 in Madrid
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

My favorite line:
"Marine 1 made its usual discreet landing next to the home of Prime Minister Jose Maria Aznar, blowing trees, small animals and two still photographers into the next county."

Helgard C. Walker
06/12/2001 01:45:08 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: POOL REPORT 6-12-01 #3 in Madrid

This is one of the funnier pool reports. Pooler does not know how to spell gazpacho or paella, however.
---------- Forwarded by Helgard C. Walker/WHO/EOP on 06/12/2001 01:44 PM ----------

06/12/2001 01:21 PM
Rachael L. Sunbarger
Rachael L. Sunbarger
Rachael L. Sunbarger
06/12/2001 01:21 PM
06/12/2001 01:21 PM
Record Type: Record

To:
cc:
Subject: POOL REPORT 6-12-01 #3 in Madrid

Pool Report
June 12, 2001
Madrid and Los Yebenes, Spain

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The motorcade motored along M-40 to the Zarzuela Palace. It was most uneventful. Some of the people whose cars were stopped on highway entrance ramps to make way for the POTUS stood beside their cars and watched in a world-weary way that at 50 mph can be describe only as studied nonchalance. No one waved, but no one made obscene gestures either.

When we arrived at the palace, your pooler was diverted to a point on the grounds where he would pose a threat to no one but himself. All details of POTUS meeting with the King and Queen will come from the pre-positioned pool.

The motorcade departed the royal grounds a half-hour behind schedule owing to the longer-than-expected meeting between the POTUS, FLOTUS, King and Queen. (And, yes, a POTUS and FLOTUS do beat a King and Queen in both draw and stud poker.)

The motorcade from the palace to the Cuatro Vientos Air Base was uneventful.

The 50-minute helicopter ride to Los Quintos de Mora (known to POTUS as "The Ranch") was uneventful. Locals say the grounds are located in the town of Los Yebenes.

(A brief aside: The Spanish do not call this place a "ranch" and seem to have a hard time understanding why POTUS does. It is actually a nature preserve. Like there's a difference, right?)

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(A note for the stylistically uncertain: It is proper and acceptable, according to locals, for western press to refer to President Aznar as Prime Minister Aznar. He is an appointed president and head of government. The King is head of state.)

POTUS exited Marine 1 sans tie and suit jacket. His white dress shirt was open at the collar, but his french cuffs remained cinched by presidential cuff links. PM Aznar walked to Marine 1 wearing a similar get-up: Open collared white dress shirt and dark suit pants without jacket or tie. PE's shirt cuffs were rolled up slightly, however, as if to say we Spaniards have much to teach you Americans about dressy-casual attire!

POTUS introduced PE Aznar to Powell. A few minutes later, he introduced Rice and Card to PE Aznar.

As they walked the grounds in front of the PE's residence, the two men posed before a statue of a good-sized stag. (Much will be read into this image in the years to come; your pooler leaves this powerful image unadorned by his unworthy words.)

The two men, who share a conservative streak and a perchance for rural living, strolled for a few minutes so that they could watch the cameramen and photogs stumble over each other trying to keep up. It was all good fun.

As they walked, PE Aznar would occasionally take POTUS by the elbow and point out features of interest. Judging by the few words your pooler was able to hear as photogs stomped him into the ground, the two men were speaking in Spanish.

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This just in from the ubiquitous Gordon Johndroe: After the meeting, the group adjourned to lunch, which included Gespatcho with lobster, cured ham and chesse, paellaya with local fowl, hake (a type of fish) and strawberry ice cake with berries for dessert.

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From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2001 9:48:25 AM
Subject: : Re: POOL REPORT 6-12-01 #3 in Madrid

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 13:48:25.00
SUBJECT:: Re: POOL REPORT 6-12-01 #3 in Madrid
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

That is the one that made me laugh the hardest too.

Brett M. Kavanaugh
06/12/2001 01:46:40 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: POOL REPORT 6-12-01 #3 in Madrid

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Bob Kemper
Chicago Tribune
RKemper@Tribune.com
(Sorry, I don't know the number of my Euro Phone.)

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2001 10:18:38 AM
Subject: : LRM IKK57 - - TREASURY Testimony on the Role of Tax Incentives in Our National Energy Policy
Attachments: P_QAPC2004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 14:18:38.00
SUBJECT:: LRM IKK57 - - TREASURY Testimony on the Role of Tax Incentives in Our National Energy Policy
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 06/12/2001 02:18 PM ----------

From: Irene Kho on 06/12/2001 12:21:02 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK57 - - TREASURY Testimony on the Role of Tax Incentives in Our National Energy Policy

Attached is Treasury testimony on tax incentives to increase domestic production of oil and gas and promote energy conservation before the House Ways and Means Committee's Select Revenue Measures Subcommittee hearing on Thursday, June 14th, at 10:00 AM. This testimony, up to page 16, is similar to the one that was cleared on May 2nd under IKK45. Please note "NEPD Group Proposals" on the last two pages of the statement. Please review and provide comments by 3:00 PM tomorrow, June 13th.

AGENCIES: You will receive a fax copy of this material.
EOP: You will NOT receive a fax copy of this material.

LRM ID: IKK57
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, June 12, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on the Role of Tax Incentives in Our National Energy Policy

DEADLINE: 3:00 PM Wednesday, June 13, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on tax incentives to increase domestic production of oil and gas and promote energy conservation before the House Ways and Means Committee's Select Revenue Measures Subcommittee hearing on Thursday, June 14th, at 10:00 AM. This testimony, up to page 16, is similar to the one that was cleared on May 2nd under IKK45. Please note "NEPD Group Proposals" on the last two pages of the statement. Please review and provide comments by 3:00 PM tomorrow, June 13th.

DISTRIBUTION LIST

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John M. Ackerly
Brett S. Loper
Mark A. Weatherly
Andrew D. Lundquist
Karen Y. Knutson
Jeffrey A. Weinberg

LRM ID: IKK57 SUBJECT: TREASURY Testimony on the Role of Tax Incentives in Our National Energy Policy
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
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epalrm@epamail.epa.gov @ inet
CLRM@doc.gov @ inet
ocl@ios.doi.gov @ inet

Message Copied
To:_____
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Carlos E. Bonilla/OPD/EOP@EOP
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Andrew D. Lundquist/OVP/EOP@EOP
Karen Y. Knutson/OVP/EOP@EOP
Jeffrey A. Weinberg/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QAPC2004_WHO.TXT_1>

For Release Upon Delivery
Expected at 10:00 a.m.
June 14, 2001

STATEMENT OF
THE OFFICE OF TAX POLICY
DEPARTMENT OF THE TREASURY
BEFORE THE SUBCOMMITTEE ON SELECT REVENUE MEASURES
COMMITTEE ON WAYS AND MEANS

Mr Chairman, Mr. McNulty, and Members of the Subcommittee:

The Office of Tax Policy appreciates the opportunity to present testimony on tax incentives to increase domestic production of oil and gas and promote energy conservation. There has been renewed interest in the role of tax incentives in our national energy policy.

The fundamental principle underlying a sound energy policy is that markets should be allowed to function freely and market interventions should be avoided unless justified by compelling energy security, economic, environmental, or other concerns. For example, returns on investments that increase domestic oil and gas reserves may not reflect the contribution of those investments to ensuring stability in supply and thereby reducing our vulnerability to oil supply disruptions. It is the goal of this Administration to pursue an energy policy that protects America=s economic, security, and environmental interests.

Beyond the fundamental issue of whether a tax incentive is justified at all, a number of other, often contradictory, considerations must be taken into account in the design of any particular incentive. For example, incentives should be appropriately targeted to induce desired activities in a cost-effective manner. Thus, incentives should be designed to not reward investments that would have been made in the absence of an incentive. At the same time, however, incentives that are targeted too narrowly may reduce the cost of only some technologies and discourage investment in other promising approaches. This can result in economic inefficiency and will contribute to perceptions that the tax system is being used inappropriately to pick winners and losers among competing technologies.

In addition, incentives should also be designed to minimize complexity and avoid unnecessary increases in taxpayer compliance burdens and IRS administrative costs.

Increasing Domestic Oil and Gas Production

Before turning to a discussion of the present tax treatment of oil and gas activities, we would like to provide a brief overview of this sector.

Overview

Oil is an internationally traded commodity with its domestic price set by world supply and demand. Domestic exploration and production activity is affected by the world price of crude oil. Historically, world oil prices have fluctuated substantially. From 1970 to the early 1980s, there was a fivefold increase in real oil prices. World oil prices fell sharply in 1986 and were relatively more stable from 1986 through 1997. During that period, average refiner acquisition costs ranged from $14.91 to $23.59 in real 1992 dollars. In 1998, however, oil costs to the refiner declined to $12.52 per barrel in nominal dollars ($11.14 per barrel in 1992 dollars), their lowest level in 25 years in real terms. Since 1998, the decline has reversed with refiner acquisition costs (in nominal dollars) rising to $17.51 per barrel in 1999 and $27.69 per barrel in 2000 (the price has since dropped to $24.11 per barrel in March 2001, the latest month for which composite figures are available). The equivalent prices in 1992 dollars are $15.31 per barrel in 1999, $24.28 per barrel in 2000, and $20.39 per barrel in March 2001.

Domestic oil production has been on the decline since the mid-1980s. From 1978 to 1983 oil consumption in the United States also declined, but increasing consumption since 1983 has more than offset this decline. In 2000, domestic oil consumption was 28 percent higher than in 1970. The decline in oil production and increase in consumption have led to an increase in oil imports. Net petroleum (crude and product) imports have risen from approximately 38 percent of consumption in 1988 to 52 percent in 2000.

A similar pattern of large recent price increases and increasing dependence on imports has occurred in the natural gas market. During the second half of the 1990s, spot prices for natural gas exceeded $4.00 per million Btu (MMBtu) in only one month (February 1996). The spot price again exceeded $4.00 per MMBtu in May 2000, rose above $5.00 per MMBtu in September 2000, and exceeded $10.00 per MMBtu for several days last winter. The current spot price is approximately $3.71 per MMBtu.[1]

The United States has large natural gas reserves and was essentially self-sufficient in natural gas until the late 1980s. Since 1986, natural gas consumption has increased by more than 30 percent but natural gas production has increased by only 17 percent. Net imports as a share of consumption nearly quadrupled from 1986 to 2000, rising from 4.2 percent to 15.6 percent. Natural gas from Canada makes up nearly all of the imports into the United States.

Current law tax incentives for oil and gas production

The importance of maintaining a strong domestic energy industry has been long recognized and the Internal Revenue Code includes a variety of measures to stimulate domestic exploration and production. They are generally justified on the ground that they reduce vulnerability to an oil supply disruption through increases in domestic production, reserves,

[1] All price references are to the spot price at the Henry Hub and are in nominal dollars.

exploration activity, and production capacity. The tax incentives contained in present law address the drop in domestic exploratory drilling that has occurred since the mid-1950s and the continuing loss of production from mature fields and marginal properties.

Incentives for oil and gas production in the form of tax expenditures are estimated to total $9.8 billion for fiscal years 2002 through 2006.[2] They include the nonconventional fuels (i.e., oil produced from shale and tar sands, gas produced from geopressured brine, Devonian shale, coal seams, tight formations, or biomass, and synthetic fuel produced from coal) production credit ($2.4 billion), the enhanced oil recovery credit ($4.4 billion), the allowance of percentage depletion for independent producers and royalty owners, including increased percentage depletion for stripper wells ($2.3 billion), the exception from the passive loss limitation for working interests in oil and gas properties ($100 million), and the expensing of intangible drilling and development costs ($640 million). In addition to those tax expenditures, oil and gas activities have largely been eliminated from the alternative minimum tax. These provisions are described in detail below.

Percentage depletion

Certain costs incurred prior to drilling an oil- or gas-producing property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property, and geological and geophysical costs (in advance of actual drilling). Any taxpayer having an economic interest in a producing property may use the cost depletion method. Under this method, the basis recovery for a taxable year is proportional to the exhaustion of the property during the year. The cost depletion method does not permit cost recovery deductions that exceed the taxpayer=s basis in the property or that are allowable on an accelerated basis. Thus, the deduction for cost depletion is not generally viewed as a tax incentive.

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[2] *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2002*, U.S. Government Printing Office, Washington, DC, 2001, p. 63. These estimates are measured on an Aoutlay equivalent≅ basis. They show the amount of outlay that would be required to provide the taxpayer the same after-tax income as would be received through the tax preference. This outlay equivalent measure allows a comparison of the cost of the tax expenditure with that of a direct Federal outlay.

Independent producers and royalty owners (as contrasted to integrated oil companies)[3] may qualify for percentage depletion. A qualifying taxpayer determines the depletion deduction for each oil or gas property under both the percentage depletion method and the cost depletion method and deducts the larger of the two amounts. Under the percentage depletion method, generally 15 percent of the taxpayer=s gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year. The amount deducted may not exceed 100 percent of the net income from that property in any year (the Anet-income limitation≅).[4] Additionally, the percentage depletion deduction for all oil and gas properties may not exceed 65 percent of the taxpayer=s overall taxable income (determined before such deduction and adjusted for certain loss carrybacks and trust distributions).[5]

A taxpayer may claim percentage depletion with respect to up to 1,000 barrels of average daily production of domestic crude oil or an equivalent amount of domestic natural gas. For producers of both oil and natural gas, this limitation applies on a combined basis. All production owned by businesses under common control and members of the same family must be aggregated; each group is then treated as one producer for application of the 1,000-barrel limitation.

Special percentage depletion provisions apply to oil and gas production from marginal properties. The statutory percentage depletion rate is increased (from the general rate of 15 percent) by one percentage point for each whole dollar that the average price of crude oil (as determined under the provisions of the nonconventional fuels production credit of section 29) for

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[3] An independent producer is any producer who is not a Aretailer≅ or Arefiner.≅ A retailer is any person who directly, or through a related person, sells oil or natural gas or any product derived therefrom (1) through any retail outlet operated by the taxpayer or related person, or (2) to any person that is obligated to market or distribute such oil or natural gas (or product derived therefrom) under the name of the taxpayer or the related person, or that has the authority to occupy any retail outlet owned by the taxpayer or a related person. Bulk sales of crude oil and natural gas to commercial or industrial users, and bulk sales of aviation fuel to the Department of Defense, are not treated as retail sales for this purpose. Further, a person is not a retailer within the meaning of this provision if the combined gross receipts of that person and all related persons from the retail sale of oil, natural gas, or any product derived therefrom do not exceed $5 million for the taxable year. A refiner is any person who directly or through a related person engages in the refining of crude oil, but only if such person or related person has a refinery run in excess of 50,000 barrels per day on any day during the taxable year.

[4] By contrast, for any other mineral qualifying for the percentage depletion deduction, the deduction may not exceed 50 percent of the taxpayer=s taxable income from the depletable property.

[5] Amounts disallowed as a result of this rule may be carried forward and deducted in subsequent taxable years, subject to the 65-percent-of-taxable-income limitation for those years.

the immediately preceding calendar year is less than $20 per barrel. In no event may the rate of percentage depletion under this provision exceed 25 percent for any taxable year. The increased rate applies for the taxpayer=s taxable year which immediately follows a calendar year for which the average crude oil price falls below the $20 floor. To illustrate the application of this provision, the average price of a barrel of crude oil for calendar year 1999 was $15.56; thus, the percentage depletion rate for production from marginal wells was increased by four percent (to 19 percent) for taxable years beginning in 2000. The 100-percent-of-net-income limitation has been suspended for marginal wells for taxable years beginning after December 31, 1997, and before January 1, 2002.

Marginal production is defined for this purpose as domestic crude oil or domestic natural gas which is produced during any taxable year from a property which (1) is a stripper well property for the calendar year in which the taxable year begins, or (2) is a property substantially all of the production from which during such calendar year is heavy oil (i.e., oil that has a weighted average gravity of 20 degrees API or less corrected to 60 degrees Fahrenheit). A stripper well property is any oil or gas property for which daily average production per producing oil or gas well is not more than 15 barrel equivalents in the calendar year during which the taxpayer=s taxable year begins.[6] A property qualifies as a stripper well property for a calendar year only if the wells on such property were producing during that period at their maximum efficient rate of flow.

If a taxpayer=s property consists of a partial interest in one or more oil- or gas-producing wells, the determination of whether the property is a stripper well property or a heavy oil property is made with respect to total production from such wells, including the portion of total production attributable to ownership interests other than the taxpayer=s. If the property satisfies the requirements of a stripper well property, then each owner receives the benefits of this provision with respect to its allocable share of the production from the property for its taxable year that begins during the calendar year in which the property so qualifies.

The allowance for percentage depletion on production from marginal oil and gas properties is subject to the 1,000-barrel-per-day limitation discussed above. Unless a taxpayer elects otherwise, marginal production is given priority over other production for purposes of utilization of that limitation.

Because percentage depletion, unlike cost depletion, is computed without regard to the taxpayer=s basis in the depletable property, cumulative depletion deductions may be far greater

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[6] Equivalent barrels is computed as the sum of (1) the number of barrels of crude oil produced, and (2) the number of cubic feet of natural gas produced divided by 6,000. If a well produced 10 barrels of crude oil and 12,000 cubic feet of natural gas, its equivalent barrels produced would equal 12 (i.e., 10 + (12,000 / 6,000)).

than the amount expended by the taxpayer to acquire or develop the property. The excess of the percentage depletion deduction over the deduction for cost depletion is generally viewed as a tax expenditure.

Intangible drilling and development costs

In general, costs that benefit future periods must be capitalized and recovered over such periods for income tax purposes, rather than being expensed in the period the costs are incurred. In addition, the uniform capitalization rules require certain direct and indirect costs allocable to property to be included in inventory or capitalized as part of the basis of such property. In general, the uniform capitalization rules apply to real and tangible personal property produced by the taxpayer or acquired for resale.

Special rules apply to intangible drilling and development costs (AIDCs≅).[7] Under these special rules, an operator (i.e., a person who holds a working or operating interest in any tract or parcel of land either as a fee owner or under a lease or any other form of contract granting working or operating rights) who pays or incurs IDCs in the development of an oil or gas property located in the United States may elect either to expense or capitalize those costs. The uniform capitalization rules do not apply to otherwise deductible IDCs.

If a taxpayer elects to expense IDCs, the amount of the IDCs is deductible as an expense in the taxable year the cost is paid or incurred. Generally, IDCs that a taxpayer elects to capitalize may be recovered through depletion or depreciation, as appropriate; or in the case of a nonproductive well (Adry hole≅), the operator may elect to deduct the costs. In the case of an integrated oil company (i.e., a company that engages, either directly or through a related enterprise, in substantial retailing or refining activities) that has elected to expense IDCs, 30 percent of the IDCs on productive wells must be capitalized and amortized over a 60-month

[7] IDCs include all expenditures made by an operator for wages, fuel, repairs, hauling, supplies, etc., incident to and necessary for the drilling of wells and the preparation of wells for the production of oil and gas. In addition, IDCs include the cost to operators of any drilling or development work (excluding amounts payable only out of production or gross or net proceeds from production, if the amounts are depletable income to the recipient, and amounts properly allocable to the cost of depreciable property) done by contractors under any form of contract (including a turnkey contract). Such work includes labor, fuel, repairs, hauling, and supplies which are used in the drilling, shooting, and cleaning of wells; in such clearing of ground, draining, road making, surveying, and geological works as are necessary in preparation for the drilling of wells; and in the construction of such derricks, tanks, pipelines, and other physical structures as are necessary for the drilling of wells and the preparation of wells for the production of oil and gas. Generally, IDCs do not include expenses for items which have a salvage value (such as pipes and casings) or items which are part of the acquisition price of an interest in the property.

period.[8]

A taxpayer that has elected to deduct IDCs may, nevertheless, elect to capitalize and amortize certain IDCs over a 60-month period beginning with the month the expenditure was paid or incurred. This rule applies on an expenditure-by-expenditure basis; that is, for any particular taxable year, a taxpayer may deduct some portion of its IDCs and capitalize the rest under this provision. This allows the taxpayer to reduce or eliminate IDC adjustments or preferences under the alternative minimum tax.

[8] The IRS has ruled that if an integrated oil company ceases to be an integrated oil company, it may not immediately write off the unamortized portion of the IDCs capitalized under this rule, but instead must continue to amortize those IDCs over the 60-month amortization period.

The election to deduct IDCs applies only to those IDCs associated with domestic properties.[9] For this purpose, the United States includes certain wells drilled offshore.[10]

Intangible drilling costs are a major portion of the costs necessary to locate and develop oil and gas reserves. Because the benefits obtained from these expenditures are of value throughout the life of the project, these costs would be capitalized and recovered over the period of production under generally applicable accounting principles. The acceleration of the deduction for IDCs is viewed as a tax expenditure.

Nonconventional fuels production credit

Taxpayers that produce certain qualifying fuels from nonconventional sources are eligible for a tax credit (Athe section 29 credit≅) equal to $3 per barrel or barrel-of-oil equivalent.[11] Fuels qualifying for the credit must be produced domestically from a well drilled, or a facility treated as placed in service before January 1, 1993.[12] The section 29 credit generally is available for qualified fuels sold to unrelated persons before January 1, 2003.[13]

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[9] In the case of IDCs paid or incurred with respect to an oil or gas well located outside of the United States, the costs, at the election of the taxpayer, are either (1) included in adjusted basis for purposes of computing the amount of any deduction allowable for cost depletion or (2) capitalized and amortized ratably over a 10-year period beginning with the taxable year such costs were paid or incurred.

[10] The term AUnited States≅ for this purpose includes the seabed and subsoil of those submerged lands that are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources (i.e., the Continental Shelf area).

[11] A barrel-of-oil equivalent generally means that amount of the qualifying fuel which has a Btu (British thermal unit) content of 5.8 million.

[12] A facility that produces gas from biomass or produces liquid, gaseous, or solid synthetic fuels from coal (including lignite) generally will be treated as being placed in service before January 1, 1993, if it is placed in service by the taxpayer before July 1, 1998, pursuant to a written binding contract in effect before January 1, 1997. In the case of a facility that produces coke or coke gas, however, this provision applies only if the original use of the facility commences with the taxpayer. Also, the IRS has ruled that production from certain post-1992 Arecompletions≅ of wells that were originally drilled prior to the expiration date of the credit would qualify for the section 29 credit.

[13] If a facility that qualifies for the binding contract rule is originally placed in service after December 31, 1992, production from the facility may qualify for the credit if sold to an unrelated person before January 1, 2008.

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For purposes of the credit, qualified fuels include: (1) oil produced from shale and tar sands; (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass (i.e., any organic material other than oil, natural gas, or coal (or any product thereof); and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks. The amount of the credit is determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before 1980.

The amount of the section 29 credit generally is adjusted by an inflation adjustment factor for the calendar year in which the sale occurs.[14] There is no adjustment for inflation in the case of the credit for sales of natural gas produced from a tight formation. The credit begins to phase out if the annual average unregulated wellhead price per barrel of domestic crude oil exceeds $23.50 multiplied by the inflation adjustment factor.[15]

The amount of the section 29 credit allowable with respect to a project is reduced by any unrecaptured business energy tax credit or enhanced oil recovery credit claimed with respect to such project.

As with most other credits, the section 29 credit may not be used to offset alternative minimum tax liability. Any unused section 29 credit generally may not be carried back or forward to another taxable year; however, a taxpayer receives a credit for prior year minimum tax liability to the extent that a section 29 credit is disallowed as a result of the operation of the alternative minimum tax. The credit is limited to what would have been the regular tax liability but for the alternative minimum tax.

The provision provides a significant tax incentive (currently about $6 per barrel of oil equivalent or $1 per thousand cubic feet of natural gas). Coalbed methane and gas from tight formations currently account for most of the credit.

Enhanced oil recovery credit

Taxpayers are permitted to claim a general business credit, which consists of several different components. One component of the general business credit is the enhanced oil recovery credit. The general business credit for a taxable year may not exceed the excess (if any) of the taxpayer=s net income tax over the greater of (1) the tentative minimum tax, or (2) 25 percent of so much of the taxpayer=s net regular tax liability as exceeds $25,000. Any unused general

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[14] The inflation adjustment factor for the 2000 taxable year was 2.0454. Therefore, the inflation-adjusted amount of the credit for that year was $6.14 per barrel or barrel equivalent.

[15] For 2000, the inflation adjusted threshold for onset of the phaseout was $48.07 ($23.50 x 2.0454) and the average wellhead price for that year was $26.73.

business credit generally may be carried back one taxable year and carried forward 20 taxable years.

The enhanced oil recovery credit for a taxable year is equal to 15 percent of certain costs attributable to qualified enhanced oil recovery (AEOR≅) projects undertaken by the taxpayer in the United States during the taxable year. To the extent that a credit is allowed for such costs, the taxpayer must reduce the amount otherwise deductible or required to be capitalized and recovered through depreciation, depletion, or amortization, as appropriate, with respect to the costs. A taxpayer may elect not to have the enhanced oil recovery credit apply for a taxable year.

The amount of the enhanced oil recovery credit is reduced in a taxable year following a calendar year during which the annual average unregulated wellhead price per barrel of domestic crude oil exceeds $28 (adjusted for inflation since 1990).[16] In such a case, the credit would be reduced ratably over a $6 phaseout range.

For purposes of the credit, qualified enhanced oil recovery costs include the following costs which are paid or incurred with respect to a qualified EOR project: (1) the cost of tangible property which is an integral part of the project and with respect to which depreciation or amortization is allowable; (2) IDCs that the taxpayer may elect to deduct;[17] and (3) the cost of tertiary injectants with respect to which a deduction is allowable, whether or not chargeable to capital account.

A qualified EOR project means any project that is located within the United States and involves the application (in accordance with sound engineering principles) of one or more qualifying tertiary recovery methods which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which ultimately will be recovered. The qualifying tertiary recovery methods generally include the following nine methods: miscible fluid displacement, steam-drive injection, microemulsion flooding, in situ combustion, polymer-augmented water flooding, cyclic-steam injection, alkaline flooding, carbonated water flooding, and immiscible non-hydrocarbon gas displacement, or any other method approved by the IRS. In addition, for purposes of the enhanced oil recovery credit, immiscible non-hydrocarbon gas displacement generally is considered a qualifying tertiary recovery method, even if the gas injected is not carbon dioxide.

A project is not considered a qualified EOR project unless the project=s operator submits to the IRS a certification from a petroleum engineer that the project meets the requirements set

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[16] The average per-barrel price of crude oil for this purpose is determined in the same manner as for purposes of the section 29 credit.

[17] In the case of an integrated oil company, the credit base includes those IDCs which the taxpayer is required to capitalize.

forth in the preceding paragraph.

The enhanced oil recovery credit is effective for taxable years beginning after December 31, 1990, with respect to costs paid or incurred in EOR projects begun or significantly expanded after that date.

Conventional oil recovery methods do not recover all of a well=s oil. Some of the remaining oil can be extracted by unconventional methods, but these methods are generally more costly. At current world oil prices, a large part of the remaining oil in place is uneconomic to recover by unconventional methods. In this environment, the EOR credit can increase recoverable reserves. Although recovering oil using EOR methods is more expensive than recovering it using conventional methods, it may be less expensive than producing oil from new reservoirs. Although the credit could phase out at higher oil prices, it is fully effective at present world oil prices.

Alternative minimum tax

A taxpayer is subject to an alternative minimum tax (AAMT≅) to the extent that its tentative minimum tax exceeds its regular income tax liability. A corporate taxpayer=s tentative minimum tax generally equals 20 percent of its alternative minimum taxable income in excess of an exemption amount. (The marginal AMT rate for a noncorporate taxpayer is 26 or 28 percent, depending on the amount of its alternative minimum taxable income above an exemption amount.) Alternative minimum taxable income (AAMTI≅) is the taxpayer=s taxable income increased by certain tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items.

As a general rule, percentage depletion deductions claimed in excess of the basis of the depletable property constitute an item of tax preference in determining the AMT. In addition, the AMTI of a corporation is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (AACE≅) of the corporation exceed AMTI (as determined before this adjustment). In general, ACE means AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. As a general rule a corporation must use the cost depletion method in computing its ACE adjustment. Thus, the difference between a corporation=s percentage depletion deduction (if any) claimed for regular tax purposes and its allowable deduction determined under the cost depletion method is factored into its overall ACE adjustment.

Excess percentage depletion deductions related to crude oil and natural gas production are not items of tax preference for AMT purposes. In addition, corporations that are independent oil and gas producers and royalty owners may determine depletion deductions using the percentage depletion method in computing their ACE adjustments.

The difference between the amount of a taxpayer=s IDC deductions and the amount which would have been currently deductible had IDC=s been capitalized and recovered over a 10-year period may constitute an item of tax preference for the AMT to the extent that this amount exceeds 65 percent of the taxpayer=s net income from oil and gas properties for the taxable year (the Aexcess IDC preference≅). In addition, for purposes of computing a corporation=s ACE adjustment to the AMT, IDCs are capitalized and amortized over the 60-month period beginning with the month in which they are paid or incurred. The preference does not apply if the taxpayer elects to capitalize and amortize IDCs over a 60-month period for regular tax purposes.

IDC=s related to oil and gas wells are generally not taken into account in computing the excess IDC preference of taxpayers that are not integrated oil companies. This treatment does not apply, however, to the extent it would reduce the amount of the taxpayer=s AMTI by more than 40 percent of the amount that the taxpayer=s AMTI would have been if those IDCs had been taken into account.

In addition, for corporations other than integrated oil companies, there is no ACE adjustment for IDCs with respect to oil and gas wells. That is, such a taxpayer is permitted to use its regular tax method of writing off those IDCs for purposes of computing its adjusted current earnings.

Absent these rules, the incentive effect of the special provisions for oil and gas would be reduced for firms subject to the AMT. These rules, however, effectively eliminate AMT concerns for independent producers.

Passive activity loss and credit rules

A taxpayer=s deductions from passive trade or business activities, to the extent they exceed income from all such passive activities of the taxpayer (exclusive of portfolio income), generally may not be deducted against other income.[18] Thus, for example, an individual taxpayer may not deduct losses from a passive activity against income from wages. Losses suspended under this Apassive activity loss≅ limitation are carried forward and treated as deductions from passive activities in the following year, and thus may offset any income from passive activities generated in that later year. Losses from a passive activity may be deducted in full when the taxpayer disposes of its entire interest in that activity to an unrelated party in a transaction in which all realized gain or loss is recognized.

An activity generally is treated as passive if the taxpayer does not materially participate in it. A taxpayer is treated as materially participating in an activity only if the taxpayer is involved in

[18] This provision applies to individuals, estates, trusts, personal service corporations, and closely held C corporations.

the operations of the activity on a basis which is regular, continuous, and substantial.

A working interest in an oil or gas property generally is not treated as a passive activity, whether or not the taxpayer materially participates in the activities related to that property. This exception from the passive activity rules does not apply if the taxpayer holds the working interest through an entity which limits the liability of the taxpayer with respect to the interest. In addition, if a taxpayer has any loss for any taxable year from a working interest in an oil or gas property which is treated pursuant to this working interest exception as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year is treated as income of the taxpayer which is not from a passive activity.

Similar limitations apply to the utilization of tax credits attributable to passive activities. Thus, for example, the passive activity rules (and, consequently, the oil and gas working interest exception to those rules) apply to the nonconventional fuels production credit and the enhanced oil recovery credit. However, if a taxpayer has net income from a working interest in an oil and gas property which is treated as not arising from a passive activity, then any tax credits attributable to the interest in that property would be treated as credits not from a passive activity (and, thus, not subject to the passive activity credit limitation) to the extent that the amount of the credits does not exceed the regular tax liability which is allocable to such net income.

As a result of this exception from the passive loss limitations, owners of working interests in oil and gas properties may use losses from such interests to offset income from other sources.

Tertiary injectants

Taxpayers are allowed to deduct the cost of qualified tertiary injectant expenses for the taxable year. Qualified tertiary injectant expenses are amounts paid or incurred for any tertiary injectant (other than recoverable hydrocarbon injectants) which is used as a part of a tertiary recovery method.

The provision allowing the deduction for qualified tertiary injectant expenses resolves a disagreement between taxpayers (who considered such costs to be IDCs or operating expenses) and the IRS (which considered such costs to be subject to capitalization).

Energy Efficiency and Alternative Energy Sources

Incentives for energy efficiency and alternative energy sources are also essential elements of national energy policy. The continuing strength of our economy over the past two years, despite oil price rises, underscores the dramatic improvements in energy efficiency we have achieved over the past quarter century, as well as the changing economy. While past oil shortages have taken a significant toll on the U.S. economy, the recent increases in oil prices have not

affected the economy much. Increased energy efficiency in cars, homes, and manufacturing has helped insulate the economy from these short-term market fluctuations. In 1974, we consumed 15 barrels of oil for every $10,000 of gross domestic product. Today we consume only 8 barrels of oil for the same amount (in constant dollars) of economic output.

Current law tax incentives for energy efficiency and alternative fuels

Tax incentives currently provide an important element of support for energy-efficiency improvements and increased use of renewable and alternative fuels. Current incentives in the form of tax expenditures are estimated to total $1.2 billion for fiscal years 2002 through 2006. They include a tax credit for electric vehicles and expensing for clean-fuel vehicles ($20 million), a tax credit for the production of electricity from wind or biomass and a tax credit for certain solar energy property ($590 million), and an exclusion from gross income for certain energy conservation subsidies provided by public utilities to their customers ($580 million).[19]

Electric and clean-fuel vehicles and clean-fuel vehicle refueling property

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000. A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electric current, the original use of which commences with the taxpayer, and that is acquired for use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2002. The credit begins to phase down in 2002 and does not apply to vehicles placed in service after 2004.

Certain costs of qualified clean-fuel vehicles and clean-fuel vehicle refueling property may be deducted when such property is placed in service. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction begins to phase down in 2002 and does not apply to property placed in service after 2004.

Energy from wind or biomass

A 1.5-cent-per-kilowatt-hour tax credit is provided for electricity produced from wind, Aclosed-loop≅ biomass (organic material from a plant that is planted exclusively for purposes of being used at a qualified facility to produce electricity), and poultry waste. The electricity must be sold to an unrelated person and the credit is limited to the first 10 years of production. The credit applies only to facilities placed in service before January 1, 2002. The credit amount is indexed for inflation after 1992.

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[19] *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2002*, U.S. Government Printing Office, Washington, DC, 2001, p. 63.

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Solar energy

A 10-percent investment tax credit is provided to businesses for qualifying equipment that uses solar energy to generate electricity, to heat or cool or provide hot water for use in a structure, or to provide solar process heat.

Ethanol and renewable source methanol

An income tax credit and an excise tax exemption are provided for ethanol and renewable source methanol used as a fuel. In general, the income tax credit is 53 cents per gallon for ethanol and 60 cents per gallon for renewable source methanol. As an alternative to the income tax credit, gasohol blenders may claim an equivalent gasoline tax exemption for each ethanol and renewable source methanol that is blended into qualifying gasohol.

The income tax credit expires on December 31, 2007, and the excise tax exemption expires on September 30, 2007. In addition, the ethanol credit and exemption are each reduced by 1 cent per gallon in 2003 and by an additional 1 cent per gallon in 2005. Neither the credit nor the exemption apply during any period in which motor fuel taxes dedicated to the Highway Trust Fund are limited to 4.3 cents per gallon. Under current law, the motor fuel tax dedicated to the Highway Trust Fund will be limited to 4.3 cents per gallon beginning on October 1, 2005.

Energy conservation subsidies

Subsidies provided by public utilities to their customers for the purchase or installation of energy conservation measures are excluded from the customers= gross income. An energy conservation measure is any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit.

Administration budget proposals

The Administration=s budget proposals for fiscal year 2002 include tax incentives for renewable energy resources. The budget also contains proposals to modify the tax treatment of nuclear decommissioning funds related to electricity production and to extend the suspension of the net income limitation applicable to certain oil and gas production. The Administration=s proposals are described below.[20]

Electricity from wind and biomass

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[20] For a more detailed description, see *General Explanations of the Administration=s Fiscal Year 2002 Tax Relief Proposals*, Department of the Treasury, April 2001.

The Administration proposes to extend the credit for electricity produced from wind and biomass for three years to facilities placed in service before January 1, 2005. In addition, eligible biomass sources would be expanded to include certain biomass from forest-related resources, agricultural sources, and other specified sources. Special rules would apply to biomass facilities placed in service before January 1, 2002. Electricity produced at such facilities from newly eligible sources would be eligible for the credit only from January 1, 2002, through December 31, 2004. The credit for such electricity would be computed at a rate equal to 60 percent of the generally applicable rate. Electricity produced from newly eligible biomass co-fired in coal plants would also be eligible for the credit only from January 1, 2002, through December 31, 2004. The credit for such electricity would be computed at a rate equal to 30 percent of the generally applicable rate.

Residential solar energy systems

The Administration proposes a new tax credit for individuals that purchase solar energy equipment used to generate electricity (photovoltaic equipment) or heat water (solar water heating equipment) for use in a dwelling unit that the individual uses as a residence. The credit would be available only for equipment used exclusively for purposes other than heating swimming pools. The proposed credit would be equal to 15 percent of the cost of the equipment and its installation. The credit would be nonrefundable and an individual would be allowed a lifetime maximum credit of $2,000 per residence for photovoltaic equipment and $2,000 per residence for solar water heating equipment. The credit would apply only to solar water heating equipment placed in service after December 31, 2001, and before January 1, 2006, and to photovoltaic systems placed in service after December 31, 2001, and before January 1, 2008.

Nuclear decommissioning funds

The Administration proposes to repeal the current law provision that limits deductible contributions to a nuclear decommissioning fund to the amount included in the taxpayer=s cost of service for ratemaking purposes. Thus, unregulated taxpayers would be allowed a deduction for amounts contributed to a qualified nuclear decommissioning fund. The Administration also proposes to permit funding of all decommissioning costs (including pre-1984 costs) through qualified nuclear decommissioning funds. Contributions to fund pre-1984 costs would be deductible except to the extent a deduction (other than under the qualified fund rules) or an exclusion from income has been previously allowed with respect to those costs. The Administration=s proposal would clarify that any transfer of a qualified nuclear decommissioning fund in connection with the transfer of the power plant with which it is associated would be nontaxable and no gain or loss will be recognized by the transferor or transferee as a result of the transfer. In addition, the proposal would permit taxpayers to make deductible contributions to a qualified fund after the end of the nuclear power plant=s estimated useful life and would provide that nuclear decommissioning costs are deductible when paid.

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Net income limitation on percentage depletion from marginal wells

The Administration proposes a one-year extension of the provision suspending the 100-percent-of-net-income limitation for marginal oil and gas wells. Under the Administration proposal, marginal wells would continue to be exempt from the limitation during taxable years beginning in 2002.

NEPD Group proposals

The Report of the National Energy Policy Development (NEPD) Group issued in May also included tax incentives for renewable energy resources and for more efficient energy use. The NEPD Group proposals are described below.[21]

Fuel from landfill methane

The NEPD Group proposes to extend the section 29 credit for fuel produced from landfill methane produced at a facility (or portion of a facility) that is placed in service after December 31, 2001. Fuel produced at such facilities would be eligible for the credit through December 31, 2010. The proposal would also expand the credit by permitting the credit for fuel used by the taxpayer to produce electricity. The credit for fuel produced at landfills subject to EPA=s 1996 New Source Performance Standards/Emissions Guidelines would be limited to two-thirds of the otherwise applicable amount. In the case of landfills with facilities that currently qualify for the section 29 credit, this limitation would not apply until after 2007.

Ethanol and renewable source methanol

The NEPD Group proposes to extend the income tax credit and excise tax exemption for ethanol and renewable source methanol through December 31, 2010. The current law rule providing that neither the credit nor the exemption apply during any period in which motor fuel taxes dedicated to the Highway Trust Fund are limited to 4.3 cents per gallon would be retained.

Hybrid and fuel cell vehicles

The NEPD Group proposes to provide temporary tax credits for certain hybrid and fuel cell vehicles.

A credit of $250 to $4,000 would be available for purchases of qualifying hybrid vehicles after December 31, 2001, and before January 1, 2008. A hybrid vehicle is a vehicle that draws propulsion from both an on-board internal combustion or heat engine using combustible fuel and an on-board rechargeable energy storage system. To qualify for the minimum credit, a hybrid

[21] For a more detailed description, see the attachments to this testimony.

REV_00127483

vehicle would be required to derive at least 5 percent of its maximum available power from the rechargeable energy storage system. Larger credits would be available for vehicles that derive larger percentages of power from the rechargeable energy storage system and for vehicles that meet specified fuel economy standards.

A credit of $1,000 to $8,000 would be available for the purchase of qualifying fuel cell vehicles after December 31, 2001, and before January 1, 2008. A fuel cell vehicle is a motor vehicle propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with on-board hydrogen (including hydrogen produced from on-board fuel that requires reformation before use). To qualify for the minimum credit, a fuel cell vehicle would be required to meet a minimum fuel economy standard for its weight class. Larger credits would be available for vehicles that achieve higher fuel economy standards.

Combined heat and power systems

To encourage more efficient energy usage, the NEPD Group proposes to provide a 10-percent investment credit for qualifying combined heat and power (CHP) systems. CHP systems are used to produce electricity (and/or mechanical power) and usable heat from the same primary energy source. To qualify for the credit, a system would be required to produce at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electrical and/or mechanical power and would also be required to satisfy an energy efficiency standard. The credit would apply to CHP equipment placed in service after December 31, 2001, and before January 1, 2007.

This concludes our testimony. We would be pleased to answer any questions the Subcommittee may have.

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NEPD GROUP PROPOSALS

Extend and Modify Credit for Fuel Produced from Landfill Methane

Current Law

Taxpayers that produce gas from biomass (including landfill methane) are eligible for a tax credit (Athe section 29 credit≅) equal to $3 per barrel-of-oil equivalent. For this purpose, a barrel-of-oil equivalent is the amount of gas that has a Btu (British thermal unit) content of 5.8 million. To qualify for the credit, the gas must be produced domestically from a facility placed in service by the taxpayer before July 1, 1998, pursuant to a written binding contract in effect before January 1, 1997. In addition, the gas must be sold to an unrelated person before January 1, 2008.

The amount of the section 29 credit generally is adjusted by an inflation adjustment factor for the calendar year in which the sale occurs. The inflation adjustment factor for the 2000 taxable year was 2.0454, and the inflation-adjusted amount of the credit for that year was $6.14 per barrel or barrel equivalent. The credit begins to phase out if the annual average unregulated wellhead price per barrel of domestic crude oil exceeds $23.50 multiplied by the inflation adjustment factor. For 2000, the inflation adjusted threshold for onset of the phaseout was $48.07 ($23.50 x 2.0454) and the average wellhead price for that year was $26.73.

The amount of the section 29 credit allowable with respect to a project is reduced by any unrecaptured business energy tax credit or enhanced oil recovery credit claimed with respect to such project.

The section 29 credit may not be used to offset alternative minimum tax liability. Any unused section 29 credit generally may not be carried back or forward to another taxable year; however, a taxpayer receives a credit for prior year minimum tax liability to the extent that a section 29 credit is disallowed as a result of the operation of the alternative minimum tax. The credit is limited to what would have been the regular tax liability but for the alternative minimum tax.

Reasons for Change

The tax credit helps make fuel produced from landfill methane competitive with other fuels. Extending the credit would continue the important contribution of this renewable energy source to the Nation=s long-term energy supply.

Proposal

The credit would be allowed for fuel produced from landfill methane if the fuel is produced from a facility (or portion of a facility) placed in service after December 31, 2001, and before January 1, 2011, and is sold (or used to produce electricity that is sold) before January 1,

2011. The credit for fuel produced at landfills subject to EPA=s 1996 New Source Performance Standards/Emissions Guidelines would be limited to two-thirds of the otherwise applicable amount beginning on January 1, 2008, if any portion of the facility for producing fuel at the landfill was placed in service before July 1, 1998, and on January 1, 2002, in all other cases. The proposal would clarify, for purposes of determining the extent to which a facility is placed in service after December 31, 2001, that the facility includes the wells, pipes, and related components used to collect landfill methane and that only production attributable to wells, pipes, and related components placed in service after December 31, 2001, is treated as produced from the portion of the facility placed in service after that date.

Extension of Tax Incentives for Ethanol

Current Law

Current law provides an income tax credit and an excise tax exemption for ethanol and renewable source methanol used as a fuel. In general, the income tax credit for ethanol is 53 cents per gallon, but small ethanol producers (i.e., those producing less than 30 million gallons of ethanol per year) qualify for a credit of 63 cents per gallon on the first 15 million gallons of ethanol produced in a year. A credit of 60 cents per gallon is allowed for renewable source methanol.

As an alternative to the income tax credit, gasohol blenders may claim a gasoline tax exemption of 53 cents for each gallon of ethanol and 60 cents for each gallon of renewable source methanol that is blended into qualifying gasohol.

The income tax credit expires on December 31, 2007, and the excise tax exemption expires on September 30, 2007. In addition, the ethanol credit and exemption are each reduced by 1 cent per gallon in 2003 and by an additional 1 cent per gallon in 2005. Neither the credit nor the exemption apply during any period in which motor fuel taxes dedicated to the Highway Trust Fund are limited to 4.3 cents per gallon. Under current law, the motor fuel tax dedicated to the Highway Trust Fund will be limited to 4.3 cents per gallon beginning on October 1, 2005.

Reasons for Change

The tax credit and excise tax exemption help make ethanol and renewable source methanol competitive with other fuels. Extending the credit and exemption at their current levels would continue the important contribution of these renewable energy sources to the Nation=s long-term energy supply.

Proposal

The income tax credit and the excise tax exemption would be extended through December 31, 2010. The current law rule providing that neither the credit nor the exemption apply during

any period in which motor fuel taxes dedicated to the Highway Trust Fund are limited to 4.3 cents per gallon would be retained.

Provide Tax Credit for Certain Hybrid and Fuel Cell Vehicles

Current Law

No generally available income tax credit for purchases of hybrid vehicles is available currently. A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000. A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electric current, the original use of which commences with the taxpayer, and that is acquired for use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2002. The credit begins to phase down in 2002 and does not apply to vehicles placed in service after 2004.

Certain costs of qualified clean-fuel property, including clean-fuel vehicles, may be deducted when such property is placed in service. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction begins to phase down in 2002 and does not apply to property placed in service after 2004.

Reasons for Change

The transportation sector now accounts for 67 percent of US oil consumption. Cars, sport utility vehicles, light trucks and minivans alone account for 40 percent of US oil consumption, about 20 to 40 percent of all urban smog-forming emissions and 20 percent of greenhouse gas emissions. Almost all of these vehicles use a single gasoline-fueled engine.

Hybrid vehicles, which have more than one source of power on board the vehicle, and electric vehicles have the potential to reduce petroleum consumption, air pollution and greenhouse gas emissions. The proposed credits will encourage the purchase of highly fuel efficient vehicles that incorporate advanced automotive technologies and will help to move hybrid and fuel cell vehicles from the laboratory to the highway. These vehicles can significantly reduce oil consumption, emissions of air pollutants and carbon dioxide, the most prevalent greenhouse gas.

Proposal

The proposal would provide temporary tax credits for certain hybrid and fuel cell vehicles:

(1) Credit for qualified hybrid vehicles. A credit, of up to $4,000, would be available for purchases of qualified hybrid vehicles after December 31, 2001, and before January 1, 2008. The credit would be:

(a) $250 if the rechargeable energy storage system provides at least 5 percent but less than 10 percent of the maximum available power;
(b) $500 if the rechargeable energy storage system provides at least 10 percent and less than 20 percent of the maximum available power;
(c) $750 if the rechargeable energy storage system provides at least 20 percent and less than 30 percent of the maximum available power; and
(d) $1,000 if the rechargeable energy storage system provides 30 percent or more of the maximum available power.

If the vehicle=s fuel economy exceeds the 2000 model year city fuel economy, the amount of credit shown in (a) through (d) above would be increased by the following amounts:

(i) $500 if the vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy;
(ii) $1,000 if the vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy;
(iii) $1,500 if the vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy;
(iv) $2,000 if the vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy;
(v) $2,500 if the vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy; and
(vi) $3,000 if the vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

(2) Credit for qualified fuel cell vehicles. A credit of up to $8,000 would be available for the purchase of new qualified fuel cell vehicles after December 31, 2001 and before January 1, 2008. The credit would be $4,000, but, if the vehicle=s fuel economy exceeds the 2000 model year city fuel economy, the credit would increase by the following amounts:

(i) $1,000 if the vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy;
(ii) $1,500 if the vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy;
(iii) $2,000 if the vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy;
(iv) $2,500 if the vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy;
(v) $3,000 if the vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy;
(vi) $3,500 if the vehicle achieves at least 275 percent but less than 300 percent of the

2000 model year city fuel economy; and

(vii) $4,000 if the vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

The 2000 model year city fuel economy would be the following:

If the vehicle inertia weight class is:	The 2000 model year city fuel economy is: For a passenger automobile:	For a light truck:
1,500 or 1,750 lbs	43.7 mpg	37.6 mpg
2,000 lbs	38.3 mpg	33.7 mpg
2,250 lbs	34.1 mpg	30.6 mpg
2,500 lbs	30.7 mpg	28.0 mpg
2,750 lbs	27.9 mpg	25.9 mpg
3,000 lbs	25.6 mpg	24.1 mpg
3,500 lbs	22.0 mpg	21.3 mpg
4,000 lbs	19.3 mpg	19.0 mpg
4,500 lbs	17.2 mpg	17.3 mpg
5,000 lbs	15.5 mpg	15.8 mpg
5,500 lbs	14.1 mpg	14.6 mpg
6,000 lbs	12.9 mpg	13.6 mpg
6,500 lbs	11.9 mpg	12.8 mpg
7,000 or 8,500 lbs	11.1 mpg	12.0 mpg

The Avehicle inertia weight class≅ is defined in regulations prescribed by the Environmental Protection Agency for purposes of title II of the Clean Air Act.

A qualifying hybrid vehicle is a motor vehicle that draws propulsion energy from on-board sources of stored energy which are both: (1) an internal combustion engine or heat engine using combustible fuel, and (2) a rechargeable energy storage system. A qualifying fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle and may or may not require reformation prior to use. A qualifying vehicle must meet all applicable regulatory requirements.

Maximum available power means the maximum value available from the battery or other energy storage device, during a standard power test, divided by the sum of the battery or other energy storage device and the SAE net power of the heat engine.

These credits would be available for all qualifying light vehicles including cars, minivans, sport utility vehicles, and light trucks. Taxpayers would be able to claim only one of the credits for one vehicle and taxpayers who claim either credit would not be able to claim the qualified electric vehicle credit or the deduction for clean-fuel vehicle property for the same vehicle. Business taxpayers claiming either credit would be subject to the limitations on the general business credit and would be required to reduce the basis of the vehicle by the amount of the credit.

Investment Credit for Combined Heat and Power (CHP) Systems

Current law

Combined heat and power (CHP) systems are used to produce electricity (and/or mechanical power) and usable thermal energy from a single primary energy source. Depreciation allowances for CHP property vary by asset use and capacity. Assets employed in the production of electricity used by the taxpayer in an industrial manufacturing process or plant activity (and not ordinarily available for sale to others) have a general cost recovery period of 15 years if rated with total capacity in excess of 500 kilowatts. Electricity production assets of lesser-rated capacity generally are classified with other manufacturing assets and have cost recovery periods of five to ten years. Assets used in the production of electricity for sale have either a 15-year or 20-year recovery period. For assets that are structural components of buildings, however, the recovery period is either 39 years (if nonresidential) or 27.5 years (if residential), and the straight-line method for computing depreciation allowances must be used. For assets with recovery periods of 10 years or less, the 200 percent declining balance method may be used to compute depreciation allowances. The 150 percent declining balance method may be used for assets with recovery periods of 15 or 20 years. No income tax credit is provided currently for investment in combined heat and power property.

Reasons for change

{tc \l1 "Reasons for change}

Combined heat and power systems utilize thermal energy that is otherwise wasted in producing electricity by more conventional methods. CHP systems achieve a greater level of overall energy efficiency, and thereby lessen the consumption of primary fossil fuels, lower total energy costs, and reduce carbon emissions. An investment tax credit for CHP assets is expected to encourage increased energy efficiency by accelerating planned investments and inducing additional investments in such systems. The increased demand for CHP equipment should, in turn, reduce CHP production costs and spur additional technological innovation in improved CHP systems.

Proposal

{tc \l1 "Proposal }

The proposal would establish a 10-percent investment credit for qualified CHP systems with an electrical capacity in excess of 50 kilowatts or with a capacity to produce mechanical power in excess of 67 horsepower (or an equivalent combination of electrical and mechanical energy capacities). CHP property would be defined as property comprising a system that uses the same energy source for the simultaneous or sequential generation of (1) electricity or mechanical shaft power (or both) and (2) steam or other forms of useful thermal energy (including heating and cooling applications). A qualified CHP system would be required to produce at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof) and would also be required to satisfy an energy-efficiency standard. For CHP systems with an electrical

capacity in excess of 50 megawatts (or a mechanical energy capacity in excess of 67,000 horsepower), the total energy efficiency of the system would have to exceed 70 percent. For smaller systems, the total energy efficiency would have to exceed 60 percent. For this purpose, total energy efficiency would be calculated as the sum of the useful electrical, thermal, and mechanical power produced by the system at normal operating rates, measured on a Btu basis, divided by the lower heating value of the primary fuel source for the system supplied. The credit would be allowed with respect to qualified CHP property only if its eligibility is verified under regulations prescribed by the Secretary of the Treasury.

Investments in qualified CHP assets that are otherwise assigned cost recovery periods of less than 15 years would be eligible for the credit, provided that the taxpayer elected to treat such property as having a 22-year class life. Thus, regular tax depreciation allowances would be calculated using a 15-year recovery period and the 150 percent declining balance method.

The credit would be treated as energy property under the investment credit component of the section 38 general business credit, and would be subject to the rules and limitations governing such property. Taxpayers using the credit for CHP equipment would not be entitled to any other tax credit for the same equipment.

The credit would apply to investments in CHP equipment placed in service after December 31, 2001, but before January 1, 2007.

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2001 11:13:13 AM
Subject: : FINAL CLEARANCE- SAP- H.R. 1088, SEC FEES
Attachments: P_0KRC2004_WHO.TXT_1.wpd; P_0KRC2004_WHO.TXT_2.rtf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2001 15:13:13.00
SUBJECT:: FINAL CLEARANCE- SAP- H.R. 1088, SEC FEES
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Danielle M. Simonetta
06/12/2001 01:03:33 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FINAL CLEARANCE- SAP- H.R. 1088, SEC FEES

Here is the final version of the SAP for H.R. 1088. It has changed since the last time most of you saw it. Specifically, there is a new first sentence for the 2nd paragraph. This was changed at direction of Jim Capretta, Austin Smythe, and Director Daniels. The bill is scheduled for Rules Committee consideration at 4:30 pm, today. Accordingly, please email me with your office's comments/clearance by 4:00 pm, TODAY. If you have any questions, please call me (x54790).
Thanks,
Danielle

Message Sent
To:_____
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DRAFT – Not for Release

June 12, 2001
(House Rules)

H.R. 1088 - Investor and Capital Markets Fee Relief Act
(Rep. Fossella (R) New York and 45 cosponsors)

The Administration strongly supports efforts to provide fee relief to the Nation's growing number of investors and urges the House to pass the fee reduction provisions of H.R. 1088, which are very similar to those of its companion legislation in the Senate. Currently, fees are collected far in excess of the Securities and Exchange Commission's budget, acting as a burden on investors and discouraging investment. The bill would return those excess fees to market participants while ensuring that the Commission continues to be funded at a level that will allow it to effectively fulfill its mission. This legislation fits into the responsible budget framework agreed to by the President and Congress.

While the Administration supports fee relief for investors, the Administration strongly opposes the inclusion of the pay parity provisions in this bill. The Administration is concerned with the ability of all Federal agencies to attract and retain qualified employees for highly-skilled positions. The Administration plans to systematically address a broad range of human resource practices to improve Federal employment opportunities and reduce existing disincentives to seeking Federal employment. Pay is only one component to be considered among several factors. The Administration has concerns with any legislation that would exempt individual agencies from all or part of title 5 of the U.S. Code, adversely affecting the portability of Federal employees and fragmenting personnel systems. The Administration believes its comprehensive approach to Federal workforce issues will ultimately be a greater benefit to all agencies.

Pay-As-You-Go Scoring

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, H.R. 1088 or any substitute amendment in lieu thereof, that would also reduce revenues, will be subject to the pay-as-you-go requirement. OMB's preliminary scoring estimates indicate that the bill would result in a net loss of receipts of $1.3 billion in FY 2002 and a total of $8.2 billion during FYs 2002-2006. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

* * * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Macecevic), in consultation with the Department of the Treasury (Dorsey), the Office of Personnel Management (Wolf), NEC (Malmgren), WHGC (Bowen), BRD (Lobron/Lee/Moran), OMB/LA (Loper), EAD (Smythe), HTF (Abrams/Vyas/Boden), and EHR (Fairhall).

OMB/LA clearance:

Administration Position to Date

The bill was reported amended by the House Financial Services Committee on March 28, 2001. OPM sent a letter to the Committee on May 15, 2001, strongly urging the Congress to strike any personnel provisions from the bill and stated its concern about the increasing trend toward exemptions from Federal personnel laws. The letter stated that OPM has recently approved special salary rates for certain SEC employees and time should be allowed to evaluate the effectiveness of these special rates and to consider the results of a current GAO study of the situation at the SEC.

The Administration has not taken a position on the related Senate bill, S. 143, which passed the Senate by Unanimous Consent on March 22, 2001. While both bills would reduce securities fees, the House bill would reduce certain fees that the Senate bill does not (fees on trades of single stock futures) and would eliminate fees on Trust Indenture applications. Transaction fees would be lower and registration and merger fees would be higher in the House bill than the Senate bill. Both bills would create pay parity for SEC employees.

Major Provisions of H.R. 1088

H.R. 1088 would significantly reduce the rates of fees charged by the Securities and Exchange Commission (SEC) on brokers, mutual funds, and other intermediaries for securities transactions and would create pay parity for employees of the SEC with several other financial regulatory agencies.

Background. Section 31 of the Securities Act of 1933 (the Act) imposed fees on transactions of exchange-traded securities at a rate equal to 1/500th of a percent of the aggregate amount of sales, and these fees were all to be collected as general revenue; the rate was increased in 1965 to 1/300th of a percent. Section 6(b) of the Act imposed fees on the registration of securities at a rate equal to 1/100th of a percent of the offering price, and these fees were also collected as general revenue; this rate was increased in 1965 to 1/50th of a percent. The 1983 Securities Exchange Act Amendments imposed fees on mergers, proxy solicitations, and other activities at a rate of 1/50th of a percent of the value of the securities involved, and these fees were also collected as general revenue. In several appropriations acts in the 1990s, the registration fee rate was increased to 1/29th of a percent and all fees collected in excess of 1/50th percent were to be credited as offsetting collections for SEC appropriations. In 1996, the National Securities Markets Improvement Act of 1996 (NSMIA) reduced the fees to their current levels (see specifics below) in an effort, based on projections of securities market activities at that time that

total fee collections would fall, to allow the SEC to collect only enough fees to approximately equal the cost of running the SEC. (Due to recent surges in market activity, fee collections have risen much higher than expected.) Under NSMIA, fee rates would sharply decline in FY 2007.

Reduction in Fee Rates and Elimination of General Revenue Component. H.R. 1088 would reduce these three SEC-imposed fees and eliminate the portion of fee collections recorded as general revenues. The bill would continue to allow fees collected in excess of amounts needed to fund the SEC to offset discretionary spending under the jurisdiction of the Commerce, Justice, State Appropriations Subcommittee. Note that the estimated revenue effects below capture only the revenue lost by eliminating the general revenue component of these fees. In fact, the fees credited to the Commerce, Justice, State Appropriations Subcommittee would increase versus OMB's baseline estimates by $200 million for FY 2002, $2.3 billion for FYs 2002-2006, and $5.4 billion for FYs 2002-2011. In scoring the revenue effect of the legislation, these additional fees are not counted because their collection is triggered by subsequent appropriations action.

Transaction (Section 31) Fees. These fees are collected when securities are sold; the fees are intended to cover costs to the government of supervising and regulating securities markets and participants. Currently, the fee is $33.33 per $1 million traded through national securities exchanges (collected as general revenues), national securities associations (offsetting collections), and brokers and dealers (general revenues) through FY 2006. After FY 2006, the rate is set to decrease to $12.50 per $1 million in transactions. Under H.R. 1088, the fee would be reduced to equal $12 per $1 million in FY 2002. After FY 2002, the SEC would set the transaction fee rate (at an equal rate for all participants) at the beginning of each fiscal year so that all transaction fees collected in a given fiscal year equal a specified amount – the target offsetting amount – and be recorded as offsetting collections. The bill would set these amounts as follows: $585.72 million for FY 2002; $679.32 million for FY 2003; $822.24 million for FY 2004; $976.32 million for FY 2005; $1,148.04 million for FY 2006; $880.88 million for FY 2007; $892.08 million for FY 2008; $1,023.12 million for FY 2009; $1,161.44 million for FY 2010; and $1,321.04 million for FY 2011. These fees would equal approximately $12 per $1 million in transactions through FY 2006 and after FY 2006, they would equal approximately $7 per $1 million, and a final adjustment in FY 2012 would occur to produce roughly the target amount for FY 2011 to be applied for transactions in all subsequent years. (OMB estimated revenue effect for FY 2002: -$600 million; FYs 2002-2006: -$4.3 billion; FYs 2002-2011: -$7.6 billion.).

Registration (6(b)) Fees. These fees, paid by companies at the time of filing a registration for securities that are proposed to be offered (e.g., initial public offerings), are currently set at $200 per $1 million of the maximum aggregate price of the securities through FY 2006 with, as stated above, a certain percentage credited as offsetting collections and the remaining collected as revenues. After FY 2006, the fee is set to decrease to $67 per $1 million and, under NSMIA, the portion of the fee collections counted as offsetting collections is scheduled to be gradually phased out ending in FY 2005. Under H.R. 1088, the fee would be levied at a rate of $125 per $1 million in FY 2002. After FY 2002, the SEC would set the transaction fee rate (at an equal rate for all participants) at the beginning of each fiscal year so that all transaction fees collected in a given fiscal year equal a specified amount – the target offsetting amount – and be recorded as offsetting collections. The bill would set these amounts as follows: $512.50 million for FY

2002; $589.38 million for FY 2003; $650.39 million for FY 2004; $790.08 million for FY 2005; $949.05 million for FY 2006; $214.20 million for FY 2007; $233.70 million for FY 2008; $284.12 million for FY 2009; $333.84 million for FY 2010; and $394.11 million for FY 2011, with a final rate adjustment in FY 2012 as with transaction fees above. (OMB estimated revenue effect for FY 2002: -$1.0 billion; FYs 2002-2006: -$6.2 billion; FYs 2002-2011: -$9.7 billion)

Merger/Tender Fees. Currently, companies pay these fees at a rate equal to $200 per $1 million of the value of securities proposed to be purchased as part of a merger at the time of filing and are collected as revenues. Under H.R. 1088, the fees would be $125 per $1 million in FY 2002 and thereafter adjusted to match the registration fee rate. (OMB estimated revenue effect for FY 2002: -$75 million; FYs 2002-2006: -$375 million; FYs 2002-2011: -$750 million)

Trades of Single Stock Futures. This fee levied on security futures transactions would be reduced from $0.02 to $0.0072 through FY 2006. After FY 2006, the fee would be further reduced to equal $0.0042 per transaction. The RMO advises that this provision will produce a negligible effect.

Trust Indenture Applications. This $100 fee for qualification of certain indentures under the Trust Indenture Act of 1939 would be eliminated. The House Financial Services Committee reports this fee raised only $2,300 during FY 2000.

Pay Parity for SEC Employees. The bill would allow the SEC to adjust the base rates of pay and other benefits for all of its employees comparable to the pay and benefits provided by certain other financial regulatory agencies. These agencies are the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Board, the Farm Credit Administration, and Treasury's Office of the Comptroller of the Currency and Office of Thrift Supervision. Under current law, the SEC must follow the Civil Service's General Schedule for pay while the other institutions listed above may individually establish and adjust schedules of compensation and benefits.

Study. H.R. 1088 would require the SEC to study the extent to which benefits of fee reductions were passed along to investors and submit a report on such study to Congress within two years of the enactment of this legislation.

Pay-As-You-Go Scoring

H.R. 1088 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This Office estimates that the reduction in fees would reduce revenues by $1.3 billion in FY 2002, $8.2 billion over FYs 2002-2006, and $13.5 billion over FYs 2002-2011. (These amounts are net of estimated increased corporate income tax collections, which are assumed to be 25 percent of the lost fee revenue.) These costs are not included in the FY 2002 Budget, but they are included in the congressional budget resolution.

***

DRAFT – Not for Release

June 12, 2001
(House Rules)

H.R. 1088 - Investor and Capital Markets Fee Relief Act
par(Rep. Fossella (R) New York and 45 cosponsors)

The Administration strongly supports efforts to provide fee relief to the Nation's growing number of investors and urges the House to pass the fee reduction provisions of H.R. 1088, which are very similar to those of its companion legislation in the Senate. Currently, fees are collected far in excess of the Securities and Exchange Commission's budget, acting as a burden on investors and discouraging investment. The bill would return those excess fees to market participants while ensuring that the Commission continues to be funded at a level that will allow it to effectively fulfill its mission. This legislation fits into the responsible budget framework agreed to by the President and Congress.

While the Administration supports fee relief for investors, the Administration strongly opposes the inclusion of the pay parity provisions in this bill. The Administration is concerned with the ability of all Federal agencies to attract and retain qualified employees for highly-skilled positions. The Administration plans to systematically address a broad range of human resource practices to improve Federal employment opportunities and reduce existing disincentives to seeking Federal employment. Pay is only one component to be considered among several factors. The Administration has concerns with any legislation that would exempt individual agencies from all or part of title 5 of the U.S. Code, adversely affecting the portability of Federal employees and fragmenting personnel systems. The Administration believes its comprehensive approach to Federal workforce issues will ultimately be a greater benefit to all agencies.

Pay-As-You-Go Scoring

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, H.R. 1088 or any substitute amendment in lieu thereof, that would also reduce revenues, will be subject to the pay-as-you-go requirement. OMB's preliminary scoring estimates indicate that the bill would result in a net loss of receipts of $1.3 billion in FY 2002 and a total of $8.2 billion during FYs 2002-2006. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

* * * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Macecevic), in consultation with the Department of the Treasury (Dorsey), the Office of Personnel Management (Wolf), NEC (Malmgren), WHGC (Bowen), BRD (Lobron/Lee/Moran), OMB/LA (Loper), EAD (Smythe), HTF (Abrams/Vyas/Boden), and EHR (Fairhall).

OMB/LA clearance:

Administration Position to Date

The bill was reported amended by the House Financial Services Committee on March 28, 2001. OPM sent a letter to the Committee on May 15, 2001, strongly urging the Congress to strike any personnel provisions from the bill and stated its concern about the increasing trend toward exemptions from Federal personnel laws. The letter stated that OPM has recently approved special salary rates for certain SEC employees and time should be allowed to evaluate the effectiveness of these special rates and to consider the results of a current GAO study of the situation at the SEC.

The Administration has not taken a position on the related Senate bill, S. 143, which passed the Senate by Unanimous Consent on March 22, 2001. While both bills would reduce securities fees, the House bill would reduce certain fees that the Senate bill does not (fees on trades of single stock futures) and would eliminate fees on Trust Indenture applications. Transaction fees would be lower and registration and merger fees would be higher in the House bill than the Senate bill. Both bills would create pay parity for SEC employees.

Major Provisions of H.R. 1088

H.R. 1088 would significantly reduce the rates of fees charged by the Securities and Exchange Commission (SEC) on brokers, mutual funds, and other intermediaries for securities transactions and would create pay parity for employees of the SEC with several other financial regulatory agencies.

Background. Section 31 of the Securities Act of 1933 (the Act) imposed fees on transactions of exchange-traded securities at a rate equal to 1/500th of a percent of the aggregate amount of sales, and these fees were all to be collected as general revenue; the rate was increased in 1965 to 1/300th of a percent. Section 6(b) of the Act imposed fees on the registration of securities at a rate equal to 1/100th of a percent of the offering price, and these fees were also collected as general revenue; this rate was increased in 1965 to 1/50th of a percent. The 1983 Securities Exchange Act Amendments imposed fees on mergers, proxy solicitations, and other activities at a rate of 1/50th of a percent of the value of the securities involved, and these fees were also collected as general revenue. In several appropriations acts in the 1990s, the registration fee rate was increased to 1/29th of a percent and all fees collected in excess of 1/50th percent were to be credited as offsetting collections for SEC appropriations. In 1996, the National Securities Markets Improvement Act of 1996 (NSMIA) reduced the fees to their current levels (see specifics below) in an effort, based on projections of securities market activities at that time that

total fee collections would fall, to allow the SEC to collect only enough fees to approximately equal the cost of running the SEC. (Due to recent surges in market activity, fee collections have risen much higher than expected.) Under NSMIA, fee rates would sharply decline in FY 2007.

Reduction in Fee Rates and Elimination of General Revenue Component. H.R. 1088 would reduce these three SEC-imposed fees and eliminate the portion of fee collections recorded as general revenues. The bill would continue to allow fees collected in excess of amounts needed to fund the SEC to offset discretionary spending under the jurisdiction of the Commerce, Justice, State Appropriations Subcommittee. Note that the estimated revenue effects below capture only the revenue lost by eliminating the general revenue component of these fees. In fact, the fees credited to the Commerce, Justice, State Appropriations Subcommittee would increase versus OMB's baseline estimates by $200 million for FY 2002, $2.3 billion for FYs 2002-2006, and $5.4 billion for FYs 2002-2011. In scoring the revenue effect of the legislation, these additional fees are not counted because their collection is triggered by subsequent appropriations action.

Transaction (Section 31) Fees. These fees are collected when securities are sold; the fees are intended to cover costs to the government of supervising and regulating securities markets and participants. Currently, the fee is $33.33 per $1 million traded through national securities exchanges (collected as general revenues), national securities associations (offsetting collections), and brokers and dealers (general revenues) through FY 2006. After FY 2006, the rate is set to decrease to $12.50 per $1 million in transactions. Under H.R. 1088, the fee would be reduced to equal $12 per $1 million in FY 2002. After FY 2002, the SEC would set the transaction fee rate (at an equal rate for all participants) at the beginning of each fiscal year so that all transaction fees collected in a given fiscal year equal a specified amount – the target offsetting amount – and be recorded as offsetting collections. The bill would set these amounts as follows: $585.72 million for FY 2002; $679.32 million for FY 2003; $822.24 million for FY 2004; $976.32 million for FY 2005; $1,148.04 million for FY 2006; $880.88 million for FY 2007; $892.08 million for FY 2008; $1,023.12 million for FY 2009; $1,161.44 million for FY 2010; and $1,321.04 million for FY 2011. These fees would equal approximately $12 per $1 million in transactions through FY 2006 and after FY 2006, they would equal approximately $7 per $1 million, and a final adjustment in FY 2012 would occur to produce roughly the target amount for FY 2011 to be applied for transactions in all subsequent years. (OMB estimated revenue effect for FY 2002: -$600 million; FYs 2002-2006: -$4.3 billion; FYs 2002-2011: -$7.6 billion.).

Registration (6(b)) Fees. These fees, paid by companies at the time of filing a registration for securities that are proposed to be offered (e.g., initial public offerings), are currently set at $200 per $1 million of the maximum aggregate price of the securities through FY 2006 with, as stated above, a certain percentage credited as offsetting collections and the remaining collected as revenues. After FY 2006, the fee is set to decrease to $67 per $1 million and, under NSMIA, the portion of the fee collections counted as offsetting collections is scheduled to be gradually phased out ending in FY 2005. Under H.R. 1088, the fee would be levied at a rate of $125 per $1 million in FY 2002. After FY 2002, the SEC would set the transaction fee rate (at an equal rate for all participants) at the beginning of each fiscal year so that all transaction fees collected in a given fiscal year equal a specified amount – the target offsetting amount – and be recorded as offsetting collections. The bill would set these amounts as follows: $512.50 million for FY

2002; $589.38 million for FY 2003; $650.39 million for FY 2004; $790.08 million for FY 2005; $949.05 million for FY 2006; $214.20 million for FY 2007; $233.70 million for FY 2008; $284.12 million for FY 2009; $333.84 million for FY 2010; and $394.11 million for FY 2011, with a final rate adjustment in FY 2012 as with transaction fees above. (OMB estimated revenue effect for FY 2002: -$1.0 billion; FYs 2002-2006: -$6.2 billion; FYs 2002-2011: -$9.7 billion)

Merger/Tender Fees. Currently, companies pay these fees at a rate equal to $200 per $1 million of the value of securities proposed to be purchased as part of a merger at the time of filing and are collected as revenues. Under H.R. 1088, the fees would be $125 per $1 million in FY 2002 and thereafter adjusted to match the registration fee rate. (OMB estimated revenue effect for FY 2002: -$75 million; FYs 2002-2006: -$375 million; FYs 2002-2011: -$750 million)

Trades of Single Stock Futures. This fee levied on security futures transactions would be reduced from $0.02 to $0.0072 through FY 2006. After FY 2006, the fee would be further reduced to equal $0.0042 per transaction. The RMO advises that this provision will produce a negligible effect.

Trust Indenture Applications. This $100 fee for qualification of certain indentures under the Trust Indenture Act of 1939 would be eliminated. The House Financial Services Committee reports this fee raised only $2,300 during FY 2000.

Pay Parity for SEC Employees. The bill would allow the SEC to adjust the base rates of pay and other benefits for all of its employees comparable to the pay and benefits provided by certain other financial regulatory agencies. These agencies are the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Board, the Farm Credit Administration, and Treasury's Office of the Comptroller of the Currency and Office of Thrift Supervision. Under current law, the SEC must follow the Civil Service's General Schedule for pay while the other institutions listed above may individually establish and adjust schedules of compensation and benefits.

Study. H.R. 1088 would require the SEC to study the extent to which benefits of fee reductions were passed along to investors and submit a report on such study to Congress within two years of the enactment of this legislation.

Pay-As-You-Go Scoring

H.R. 1088 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This Office estimates that the reduction in fees would reduce revenues by $1.3 billion in FY 2002, $8.2 billion over FYs 2002-2006, and $13.5 billion over FYs 2002-2011. (These amounts are net of estimated increased corporate income tax collections, which are assumed to be 25 percent of the lost fee revenue.) These costs are not included in the FY 2002 Budget, but they are included in the congressional budget resolution.

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Ullman, Kristen <Kristen.A.Ullman@usdoj.gov>;Alex Dahl <Alex_Dahl@judiciary.senate.gov>;Brad Beronson <Bradford_A._Beronson@who.eop.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Christopher Rosche <Christopher_rosche@hatch.senate.gov>;Ed Haden <Ed_Haden@judiciary.senate.gov>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>;Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>;Rena Johnson <Rena_Johnson@judiciary.senate.gov>;Sharon Prost <Sharon_prost@judiciary.senate.gov>;Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>;Stewart Verdery <Stewart_Verdery@aml.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 6/12/2001 2:28:02 PM
Subject: : List from today's meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:12-JUN-2001 18:28:02.00
SUBJECT:: List from today's meeting
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
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TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
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<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
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TO:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [
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<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
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TO:Alex Dahl <Alex_Dahl@judiciary.senate.gov> ( Alex Dahl <Alex_Dahl@judiciary.senate.gov>
[ UNKNOWN ] )
READ:UNKNOWN
TO:Brad Beronson <Bradford_A._Beronson@who.eop.gov> ( Brad Beronson
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Christopher Rosche <Christopher_rosche@hatch.senate.gov> ( Christopher Rosche
<Christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Ed Haden <Ed_Haden@judiciary.senate.gov> ( Ed Haden <Ed_Haden@judiciary.senate.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov> ( Lincoln Oliphant
<Lincoln_Oliphant@rpc.senate.gov> [ UNKNOWN ] )
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<Makan_Delrahim@judiciary.senate.gov> [ UNKNOWN ] )
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TO:Rena Johnson <Rena_Johnson@judiciary.senate.gov> ( Rena Johnson
<Rena_Johnson@judiciary.senate.gov> [ UNKNOWN ] )
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TO:Sharon Prost <Sharon_prost@judiciary.senate.gov> ( Sharon Prost
<Sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
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TO:Stephen Higgins <Stephen_Higgins@judiciary.senate.gov> (Stephen Higgins
<Stephen_Higgins@judiciary.senate.gov> [UNKNOWN])
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<Stewart_Verdery@aml.senate.gov> [UNKNOWN])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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Note: Some recipients have been dropped due to syntax errors.Please refer to the
"$AdditionalHeaders" item for the complete headers.
Alex_Dahl@judiciary.senate.gov
Bradford_A._Beronson@who.eop.gov
Brett_M._Kavanaugh@who.eop.gov
Dan.Bryant@usdoj.gov Phone: 202-514-2141
Christopher_rosche@hatch.senate.gov
Viet.Dinh@usdoj.gov Phone: 202-514-4601
Ed_Haden@judiciary.senate.gov
Kyle_Sampson@who.eop.gov
Lincoln_Oliphant@rpc.senate.gov
Makan_Delrahim@judiciary.senate.gov
Jennifer.Newstead@usdoj.gov Phone: 616-0038
Rena_Johnson@judiciary.senate.gov
Sharon_Prost@judiciary.senate.gov
Stephen_Higgins@judiciary.senate.gov
Stewart_Verdery@aml.senate.gov
Kristen.A.Ullman@usdoj.gov Phone: 514-7473
Carl.Thorsen@usdoj.gov Phone: 202-514-3951
Ziad_Ojakli@who.eop.gov

Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/13/2001 4:05:08 AM
Subject: : updating our Counsel staff directory

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-JUN-2001 08:05:08.00
SUBJECT:: updating our Counsel staff directory
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If you have had any changes to your contact numbers please provide these
to me ASAP.

I need to provide Signal with an updated contact list this morning.

Thanks!
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/13/2001 4:05:08 AM
Subject: : updating our Counsel staff directory

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-JUN-2001 08:05:08.00
SUBJECT:: updating our Counsel staff directory
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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###### End Original ARMS Header ######

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I need to provide Signal with an updated contact list this morning.

Thanks!
```

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Ullman, Kristen <Kristen.A.Ullman@usdoj.gov>;Alex Dahl <Alex_Dahl@judiciary.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Christopher Rosche <Christopher_rosche@hatch.senate.gov>;Ed Haden <Ed_Haden@judiciary.senate.gov>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>;Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>;Rena Johnson <Rena_Johnson@judiciary.senate.gov>;Sharon Prost <Sharon_prost@judiciary.senate.gov>;Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>;Stewart Verdery <Stewart_Verdery@aml.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 6/13/2001 5:20:17 AM
Subject: : Correction -- FW: List from today's meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:13-JUN-2001 09:20:17.00
SUBJECT:: Correction -- FW: List from today's meeting
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
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<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
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<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
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[ UNKNOWN ] )
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UNKNOWN ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov> ( Lincoln Oliphant
<Lincoln_Oliphant@rpc.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Makan Delrahim <Makan_Delrahim@judiciary.senate.gov> ( Makan Delrahim
<Makan_Delrahim@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Rena Johnson <Rena_Johnson@judiciary.senate.gov> ( Rena Johnson
<Rena_Johnson@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Sharon Prost <Sharon_prost@judiciary.senate.gov> ( Sharon Prost
<Sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Stephen Higgins <Stephen_Higgins@judiciary.senate.gov> ( Stephen Higgins
```

<Stephen_Higgins@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Stewart Verdery <Stewart_Verdery@aml.senate.gov> (Stewart Verdery
<Stewart_Verdery@aml.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Correction - Brad Berenson's name was spelled wrong. It is now corrected "BERENSON". Please make change in your own list.

-----Original Message-----
From: Ullman, Kristen A
Sent: Tuesday, June 12, 2001 6:24 PM
To: Alex Dahl; Brad Berenson; Brett Kavanaugh; Bryant, Dan; Christopher Rosche; Dinh, Viet; Ed Haden; Kyle Sampson; Lincoln Oliphant; Makan Delrahim; Newstead, Jennifer; Rena Johnson; Sharon Prost; Stephen Higgins; Stewart Verdery; Thorsen, Carl; Ullman, Kristen; Ziad Ojakli
Subject: List from today's meeting

Alex_Dahl@judiciary.senate.gov
Bradford_A._Berenson@who.eop.gov
Brett_M._Kavanaugh@who.eop.gov
Dan.Bryant@usdoj.gov Phone: 202-514-2141
Christopher_rosche@hatch.senate.gov
Viet.Dinh@usdoj.gov Phone: 202-514-4601
Ed_Haden@judiciary.senate.gov
Kyle_Sampson@who.eop.gov
Lincoln_Oliphant@rpc.senate.gov
Makan_Delrahim@judiciary.senate.gov
Jennifer.Newstead@usdoj.gov Phone: 616-0038
Rena_Johnson@judiciary.senate.gov
Sharon_Prost@judiciary.senate.gov
Stephen_Higgins@judiciary.senate.gov
Stewart_Verdery@aml.senate.gov
Kristen.A.Ullman@usdoj.gov Phone: 514-7473
Carl.Thorsen@usdoj.gov Phone: 202-514-3951
Ziad_Ojakli@who.eop.gov

Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

From: CN=Laura L. Flippin/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Eric Hagans/WHO/EOP@EOP [WHO] <Eric Hagans>
Sent: 6/14/2001 9:04:43 AM
Subject: : Files to Hill, June 18th, 10:30 a.m. -- please let Eric or me know if you can take these

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-JUN-2001 13:04:43.00
SUBJECT:: Files to Hill, June 18th, 10:30 a.m. -- please let Eric or me know if you can
take these
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Eric Hagans ( CN=Eric Hagans/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Monday, June 18th @ 10:30 a.m.
Senator Akaka
141 Hart
Files: Kay James (Director, OPM), Othoniel "Tony" Armendariz (Member,
FLRA)
Contact: Patricia 224-6361
```

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 6/15/2001 12:09:43 PM
Subject: : Re: A true outrage.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JUN-2001 16:09:43.00
SUBJECT:: Re: A true outrage.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I agree. OC has a substantial faith based community.

Brett M. Kavanaugh
06/15/2001 03:53:11 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc: stuart w. bowen/who/eop@eop
bcc:
Subject: Re: A true outrage.

this will produce a backlash in that locale, I would assume

Courtney S. Elwood
06/15/2001 03:38:25 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Stuart W. Bowen/WHO/EOP@EOP
cc:
Subject: A true outrage.

The All Or Nothing Approach
School District Bans Student Clubs Rather Than Allow Christian Club
Associated Press

An Orange County high school district banned non-curriculum clubs from its campuses rather than allow the establishment of a Christian club. The action resulted from a lawsuit settlement by Saddleback Valley Unified School District, which agreed to exclude student clubs rather than allow a chapter of Fellowship of Christian Athletes on one of its campuses. The clubs will have to meet before or after school, and can no longer use campus bulletin boards or other school outlets to solicit members or publicize meetings, Bill Manahan, the school district superintendent, said Thursday.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Allison L. Riepenhoff/WHO /EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 6/16/2001 9:49:06 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-JUN-2001 13:49:06.00
SUBJECT::
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Libby and Allison:

Sen. Sessions would like to know what POTUS, ARG, and Tim have said in
public about the proper qualifications of federal judges. I asked Brent to
collec POTUS's statements. Can you help with collecting speeches or
letters by ARG or Tim (only during this Administration) on this topic?

RLB
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 6/18/2001 4:09:19 AM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-JUN-2001 08:09:19.00
SUBJECT:: Re:
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

His best and fullest statement on this topic is, I believe, his speech on
May 9 during the initial rollout.

Also, Jason has a cd copy of all of the President's statements during the
campaign, which is full-text searchable. Remind Brent of that in case he
forgot.



Rachel L. Brand 06/16/2001 01:48:47 PM

Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP, Allison L.
Riepenhoff/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject:

Libby and Allison:

Sen. Sessions would like to know what POTUS, ARG, and Tim have said in
public about the proper qualifications of federal judges. I asked Brent to
```

collec POTUS's statements. Can you help with collecting speeches or letters by ARG or Tim (only during this Administration) on this topic?

RLB

Message Copied
To:
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/18/2001 6:00:56 AM
Subject: : Re: State Dept

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME:18-JUN-2001 10:00:56.00
SUBJECT:: Re: State Dept
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Will Taft (William Howard Taft, IV) is the Legal Adviser (647-9598). You
can use my name. I talk to him daily. Or if you want to go right to the
expert (career) you can call Assistant Legal Adviser for Management Jami
Borek at 647-2318. You can use my name there too.
```

From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/18/2001 6:00:56 AM
Subject: : Re: State Dept

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME:18-JUN-2001 10:00:56.00
SUBJECT:: Re: State Dept
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Will Taft (William Howard Taft, IV) is the Legal Adviser (647-9598). You
can use my name. I talk to him daily. Or if you want to go right to the
expert (career) you can call Assistant Legal Adviser for Management Jami
Borek at 647-2318. You can use my name there too.
```

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Dryden, Susan <Susan.Dryden@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Matthew E. Smith/WHO/EOP [WHO] <Matthew E. Smith>
CC: Dinh, Viet <Viet.Dinh@usdoj.gov>
Sent: 6/18/2001 11:43:28 AM
Subject: : FW: Judicial Media Review 6-18-01.wpd
Attachments: P_DWNF2004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ("Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:18-JUN-2001 15:43:28.00
SUBJECT:: FW: Judicial Media Review 6-18-01.wpd
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Dryden, Susan" <Susan.Dryden@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dryden, Susan" <Susan.Dryden@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

All --

The latest installment of our media survey on judicial nominations is attached.

Regards,

Jennifer
- Judicial Media Review 6-18-01.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DWNF2004_WHO.TXT_1>

Media Review - Judicial Nominations

Monday, June 18, 2001

General Judicial Articles

"G.O.P. Reports an 'Impasse' Over Senate Reorganization," 2
Alison Mitchell, *The New York Times*, June 15, 2001
http://www.nytimes.com/2001/06/15/politics/15SENA.html

"Bush's Judgeships Stall in the Senate," 4
Dave Boyer, *The Washington Times*, June 15, 2001
http://www.washtimes.com/national/20010615-459994.htm

"Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate," Nina Totenburg, *National Public Radio*, June 15, 2001 6

"Republicans Seeking to Secure Votes on Judicial Nominees," 9
Jesse J. Holland, *The Associated Press*, June 15, 2001

"The Case for Borking," 10
Randall Kennedy, *The American Prospect*, July 2-July 16, Vol. 12, Issue 12
http://www.prospect.org/print/V12/12/kennedy-r.html

"Halting the Judgernaut," 13
Alexander Wohl, *The American Prospect*, July 2-July 16, Vol. 12, Issue 12
http://www.prospect.org/print/V12/12/wohl-a.html

"At High Court, a Retirement Watch," 17
Charles Lane and Amy Goldstein, *The Washington Post*, June 17, 2001
http://www.washingtonpost.com/wp-dyn/articles/A10675-2001Jun16.html

"Daschle's 'Intensive Care Unit' to Attend to Patients' Rights," 21
John Lancaster and Helen Dewar, *The Washington Post,* June 18, 2001
http://washingtonpost.com/wp-dyn/politics/fedpage/A12880-2001Jun17.html

Members of Congress

Senate Majority Leader Tom Daschle 22
Tony Snow, Juan Williams, *Fox News Sunday*, June 17, 2001

Senator Joe Biden 24
Tim Russert, *Meet the Press,* June 17, 2001

Op/Eds

"Two Superior Judges Merit Confirmation," 26
Jim Petro, Ohio State Auditor, *The Columbus Dispatch,* June 16, 2001

"Lack of News Makes Pontificating Difficult but Not Impossible," 27
Joe Hallett, *The Columbus Dispatch,* June 17, 2001

"Heat Turned Up High in Judicial Kitchen," 29
Russ Pulliam, *The Indianapolis Star*, June 17, 2001

Interest Groups/Press Releases

"Reason to Reject," 31
Elizabeth Cavendish, NARAL, *The Washington Post,* June 18, 2001

The liberal magazine "The Nation" has a page dedicated to the defeat of Bush Judicial Nominees, by sending a letter to members of the Senate Judiciary Committee. "Use the letter below to tell Senate majority leader Tom Daschle and the nine judiciary committee Democrats to take a stand against appointing Bush's conservative nominees to the circuit courts." The page is located at:
http://www.thenation.com/alert/actnow/

GENERAL JUDICIAL ARTICLES

The New York Times
June 15, 2001

G.O.P. Reports an 'Impasse' Over Senate Reorganization
Alison Mitchell

Senior Senate Republicans said today that they had hit an impasse in talks with the new Democratic majority leader over organizing the Senate because of disputes about how to handle judicial nominees. They called for the issues in contention to be brought to the full Senate floor for a vote.

After two weeks of talks with Senator Tom Daschle of South Dakota, the new majority leader, the five Republican negotiators went public with their complaints this evening as the Senate was shutting down for the week.

"We are reluctantly here to announce we are at impasse at the moment," said Senator Mitch McConnell, Republican of Kentucky.

REV_00127585

The Republican senators said they had reached agreement with the Democrats on essential details like the size and makeup of committees. But they said they wanted the resolution needed to organize the Senate under Democratic control to contain an assurance that all nominees for the Supreme Court would come before the full Senate for a vote.

They said they also wanted the resolution to require that if any senator exercised the right under Senate tradition to block a home-state judicial nominee, the action must be revealed to the public. Senator Phil Gramm, Republican of Texas, called such disclosure a "good government, sunshine provision."

The Republicans handed out a report showing that since at least the 1880's, the Judiciary Committee had sent to the floor even those Supreme Court nominations that were opposed by a committee majority.

Mr. Daschle said in a statement that he would continue to try to resolve the outstanding issues "through negotiations and discussions rather than potentially divisive votes. "He said he had "stated publicly and privately my commitment to assuring a fair process for judicial nominees."

But he has resisted setting down any formal procedure. One Democratic Senate aide said that a "subtle distinction but an important distinction" existed between a guarantee that the Judiciary Committee would send a Supreme Court nominee to the full Senate and an informal tradition of doing so. "It would be an unprecedented new grant of authority to the minority party," the aide said.

The issue of judicial candidates and the ideological direction of the federal courts is one of the most delicate areas of dispute between the parties. During the six years that the Republicans controlled the Senate and Bill Clinton was president, the Republicans offered neither of the guarantees to the Democrats that they are now seeking.

But they say they have been disturbed by vows by some Democrats to stop conservative judges. And they say they would be willing to make the two provisions they are seeking permanent no matter which party has control of the Senate.

Senator Patrick Leahy of Vermont, the new Judiciary chairman, issued a statement saying: "There is more than a little irony in the charge from some Republican quarters that the Democratic Senate will treat President Bush's judicial nominees unfairly. Some Republicans seem to be expecting in Democrats the same wiles that the G.O.P. Senate used in killing so many of President Clinton's nominees."

If the Senate held a vote on the two issues, the Republicans would probably not prevail. But the vote would put the Democrats in the politically embarrassing position of opposing public disclosure and looking like they were ready to block President Bush's Supreme Court picks.

When the Senate switched last week to Democratic control with Senator James M. Jeffords of Vermont becoming an independent, Mr. Daschle became majority leader and Democrats became

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committee chairmen. But many of the details of the changeover need to be approved by a vote.

Mr. Daschle hinted today that a long stalemate could be a problem for Mr. Bush. "What that means is action in the committees on virtually anything is unlikely," he said. "We wouldn't be able to do nominations or legislation because obviously you don't have the full complement of membership on those committees."

The Washington Times
June 15, 2001

Bush's Judgeships Stall in the Senate

Dave Boyer

Senate Republican negotiators late yesterday declared an impasse in their talks with Democrats on President Bush´s judicial nominees and said it was time to move forward with an up-or-down vote on the new Senate organization.

"We are only asking for fairness," said Sen. Mitch McConnell, Kentucky Republican. The negotiators said the next move is up to Senate Majority Leader Tom Daschle, South Dakota Democrat, on whether to call a vote.

Republicans want the resolution to reflect the three points on which both parties agree, and the two contentious matters voted on independently as amendments to the resolution.

Republicans said the full Senate should have the opportunity to make a determination and that they would not filibuster if the resolution is voted down.

"We´re simply asking for there to be a vote. When we have fundamental differences, we vote," said Sen. Arlen Specter, Pennsylvania Republican. Both parties agree Democrats will have a one-seat majority on every committee, with the exception of the Ethics Committee, which by tradition is equally divided.

All committee members will retain their assignments, and committee funding and space agreements negotiated by the chairmen and ranking members will remain in effect. Democrats do not agree with Republicans that "blue slips," or single-senator veto slips on judges from home-state senators, should be eliminated.

Democratic leaders turned up the pressure yesterday on judgeships, accusing the GOP of holding up White House nominations by not submitting to the Democrats´ proposal to reorganize the Senate.

"They´re making my life easier," said Sen. Patrick J. Leahy, Vermont Democrat and chairman of the Senate Judiciary Committee. "For the life of me, I don´t know why they keep waiting. I´m

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ready to start (confirmation hearings) within 10 days to two weeks of the time that we reorganize."

Republicans say Mr. Leahy, one of the party's most liberal lawmakers, is a prime example of why they are pressing Mr. Daschle for assurances that Mr. Bush's nominees will be treated fairly. Mr. Leahy was one of the most outspoken critics of John Ashcroft's nomination for attorney general in a bruising confirmation hearing in January.

In two weeks of talks, Mr. Daschle has resisted Republican requests to promise floor votes on appeals court candidates and Supreme Court nominees if the Judiciary Committee rejects them. Mr. Daschle says he will hold up a deal to reorganize committees with Democratic majorities until both sides agree on the issue of nominations.

Democrats say Senate Republicans are only hurting their own administration by not accepting Democrats' more vague, nonbinding assurance to be fair to nominees. "Unfortunately, what that means is that action in the committees on virtually anything is unlikely," Mr. Daschle said yesterday.

"We wouldn't be able to do nominations or legislation. We're going to ... probably be faced with a bottled-up array of , but we won't be able to do that." Asked if he is "jamming" the White House's agenda, Mr. Daschle replied, "That's not my choice. I think it would be inexcusable for us to disenfranchise elected members of the Senate who were serving on these committees just a week ago, and now to tell them they can't vote. That isn't my jamming them, that is simply a reality; that's what senators are here to do, is to make decisions."

Referring to the new majority party's power to investigate the administration, Mr. Daschle added, "In the meantime, we'll be satisfied, I suppose, with the opportunities to hold oversight hearings and other kinds of hearings. ..." For example, Sen. Joseph I. Lieberman, Connecticut Democrat, has used his new chairmanship of the Governmental Affairs Committee to hold a hearing on the administration's refusal to set energy price caps in California. Mr. Lieberman, who lost his bid for the vice presidency last year and is considered a likely presidential candidate for 2004, also plans to hold hearings on Mr. Bush's environmental policies.

National Public Radio: Morning Edition
June 15, 2001

Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate

Bob Edwards, Anchor; Nina Totenburg, Reporting

This is MORNING EDITION from NPR News. I'm Bob Edwards.

For six years, Democrats fumed when President Clinton's judicial nominees were stalled

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by the Republican-controlled Senate. But the tables have been turned. Now there's a Republican president and a Democratic Senate. NPR legal affairs correspondent Nina Totenberg reports on what this could mean for President Bush's nominees.

NINA TOTENBERG reporting:

About 1/8th of the federal judiciary is vacant. But while 70 of the 102 vacancies are in the trial courts, President Bush has made just two nominations to fill those slots. Instead, the administration is concentrating on filling the 32 appeals court vacancies. The president has already sent the Senate names for half of those slots. There's a reason for that. The appeals courts are just one step below the Supreme Court, and these are the judges that are the final word in most of the cases heard across the country. Moreover, they are widely considered training grounds for the Supreme Court.

Indeed, it was the Clinton nominees for the appellate courts who were most ferociously stalled by the GOP in years gone by. The numbers tell the tale. Although Presidents Clinton and Reagan won confirmation for roughly equal numbers of judges in their two terms, Mr. Reagan won confirmation of 87 percent of his appeals court nominees, while Mr. Clinton won confirmation of only 61 percent, leaving the rest dangling without action.

In the last two years of the Clinton presidency, 17 appeals court nominees never got a hearing. Those who were confirmed waited, on average, more than a year. Contrast that with the wait for President Reagan's nominees in his last two years when the Democrats controlled the Senate, 17 weeks, and for the first President Bush's nominees, 15 weeks. The result is that now, after eight years of a Democratic administration, Republican appointees still dominate the influential appeals courts. President Bush wants to add to that advantage, and as Democrats see it, he has front-loaded the nomination process, concentrating his early judicial nominations in the appeals court. Senator Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, having served with six presidents, has this perspective.

Senator PATRICK LEAHY (Chairman, Senate Judiciary Committee): Presidents serve for no more than eight years; judges serve for a lifetime. And I think the Senate has a real responsibility to make sure that we have an independent judiciary, one that doesn't lurch to the right or the left.

TOTENBERG: And Leahy insists he will be fair.

Sen. LEAHY: I've talked with a number of Republican senators, and some have told me very frankly they were totally unfair to President Clinton and they're wondering if I'm going to do the same thing to them. I'm not. I'm not going to go for some kind of a payback.

TOTENBERG: Not surprisingly, the Republicans aren't taking those assurances at face value. A new group has sprung up, billing itself as bipartisan, and it's running ads, so far in just one state, South Dakota, which just happens to be the home of the Democratic Senate majority leader, Tom Daschle.

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(Soundbite of advertisement)

Unidentified Woman: Our legal system affects us all. Every day courts make decisions that impact our families. That's why President Bush supports commonsense judges with character, experience and intellect.

TOTENBERG: Oklahoma Governor Frank Keating, a Republican, is chairman of the sponsoring group, Citizens for Common Sense Courts.

Governor FRANK KEATING (Republican, Oklahoma): The judiciary shouldn't be an arm of either party. Let's fairly get judges considered and confirmed.

TOTENBERG: But while Keating's group bills itself as bipartisan, the Democratic featured most prominently in its literature, former Democratic Attorney General Griffin Bell, says he is, in fact, not part of the group, that he declined to join, and yesterday the group retracted his name. That's not to say that Republican fears are unfounded. Liberal groups are already lining up to oppose a significant number of President Bush's judicial nominees. Nan Aron is director of the Alliance for Justice, an umbrella group of civil rights, environmental and consumer organizations.

Ms. NAN ARON (Alliance for Justice): We have grave doubts about most of the candidates nominated by President Bush. They were chosen by this president specifically because, while they may be very qualified and have excellent records on the law, they have shown by their actions or writings a real hostility to the gains made by women, minorities, and hostility to the role that government plays in improving the lives of Americans.

TOTENBERG: And specific groups have targeted specific nominees. Americans United for Separation of Church and State is opposing University of Utah Professor Michael McConnell, a respective conservative scholar who's long argued for greater accommodation between church and state. Also opposed to McConnell is the National Abortion Rights Action League, which cites his strong opposition to Roe vs. Wade. In addition, NARAL is also fighting the appeals court nomination of John Roberts, who, when he served as deputy solicitor general in the first Bush administration, wrote a brief that argued against federally funded clinics allowing doctors to discuss abortion with their patients. In that brief, Roberts contended that Roe vs. Wade should be reversed, a position he was quizzed about by Justice Harry Blackmun in a later case that he argued involving abortion clinics.

(Soundbite of interview)

Justice HARRY BLACKMUN: Mr. Roberts, in this case, are you asking that Roe vs. Wade by overruled?

Mr. JOHN ROBERTS: No, Your Honor. The issue doesn't even come up.

Justice BLACKMUN: Well, that hasn't prevented the solicitor general from taking that position

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in prior cases.

TOTENBERG: But Walter Dellinger, who served as solicitor general in the Clinton administration, says it's very risky to judge judicial nominees by the positions they've taken as government lawyers.

Mr. WALTER DELLINGER (Former Solicitor General, Clinton Administration): The kind of arguments that John Roberts was making in the position of deputy solicitor general were the kind that a professional lawyer's expected to make when his client, the chief executive of which is the president of the United States, has run on those positions. I'm afraid that this is a process that will lead to the rejection of the most qualified of the nominees; that is, those who, like Roberts, have been out and have had a major lifetime of accomplishment.

TOTENBERG: Elizabeth Cavendish, the legal director of NARAL, disagrees.

Ms. ELIZABETH CAVENDISH (Legal Director, NARAL): He was aligned personally with these decisions. Again, he was a political appointee, and this was a signature position of the first Bush administration.

TOTENBERG: There's an irony in NARAL's position. Liberal groups were outraged when conservatives opposed some Clinton appointees because of positions they took as lawyers. I pressed the point on Cavendish. So you would say that those who are anti-abortion would be completely correct in voting their ideas and proposing pro-choice nominees.

Ms. CAVENDISH: It doesn't work both ways. The other side wants to turn back the clock on women's rights and roll back a fundamental right.

TOTENBERG: Just what will happen to the Roberts and McConnell nominations and others is unclear. When the Republicans controlled the Senate, those nominees had been slated for quick hearings. With the Democrats in control now, though, the first hearing is likely to be for Roger Gregory, an African-American from Virginia appointed by President Clinton to sit on an interim basis for a year on the 4th Circuit Court of Appeals. President Bush reappointed Gregory. Chairman Leahy says he intends to begin confirmation hearings in less than two weeks, but by tradition only one appeals court nominee is considered at a time, and historically there's an average of about one confirmation hearing a month.

With only three months left scheduled in this legislative session this year, that would mean three or four appeals court nominees possibly confirmed this year. Even that could be in doubt. North Carolina Republican Senator Jesse Helms blocked all of President Clinton's North Carolina nominees to the 4th Circuit, and nobody's quite sure what he will do about the Gregory nomination when it gets to the Senate floor, where he could put a so-called hold on it and send it into limbo.

Moreover, all confirmation hearings are on hold for the moment, because the Senate Democrats and Republicans have not agreed to a reorganizing plan in the aftermath of the Democratic

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takeover. The Republicans are seeking something that no Senate minority has ever had before: a guarantee that all the president's nominees will get a floor vote. Few observers believe the Republicans will get such an unprecedented guarantee, because the current stalemate is perfectly acceptable to the Democrats. If the Senate organization agreement is not forthcoming, it means simply that no nominations will move at all. Nina Totenberg, NPR News, Washington.

The Associated Press
June 15, 2001

Republicans Seeking to Secure Votes on Judicial Nominees

Jesse J. Holland

Republicans backed down on Thursday from some of their demands for how the newly Democrat-controlled Senate should handle President Bush's nominees for the Supreme Court and federal judgeships.

Earlier in the week, GOP negotiators demanded guaranteed Senate votes on all Supreme Court and federal appellate court nominees, and elimination of the secret veto process for some judicial nominations.

After Democrats refused, Republicans sought to allow the full Senate - instead of negotiators - to decide whether the Supreme Court nominees should be guaranteed a vote. They also want the Senate to decide whether to make the senatorial veto process public instead of private, as it has been in the past.

Democrats say they will treat Bush's nominees fairly. Republicans fear Democrats will block Bush's judicial nominations.

"We're not asking for there to be a commitment," said Sen. Arlen Specter, R-Pa., one of the five GOP senators who have been negotiating with Majority Leader Thomas Daschle, D-S.D. "We're asking for there to be a vote."

Daschle, who is trying to reorganize the Senate to reflect the Democratic takeover, is opposed.

"I remain committed to trying to resolve the outstanding issues around the organization of the Senate through negotiations and discussions, rather than with potentially divisive votes," Daschle said.

Democratic aides said the idea of making public the secret vetoes likely would come up a meeting Tuesday of Democratic senators.

The maneuvering is the result of Vermont Sen. Jim Jeffords' decision to leave the GOP and become an independent, altering the 50-50 split in the Senate. Republicans had control by virtue of Vice President Dick Cheney's tie-breaking vote.

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The two sides agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee funding and space agreements negotiated at the beginning of the year will stay in effect as well.

Sen. Orrin Hatch of Utah, the top Republican on the Judiciary Committee, said that while filibustering the reorganization had not been discussed, GOP senators told negotiators to "go to the wall" over the judges provision.

Daschle said that if Republicans and Democrats are unable to agree on a reorganization, "action in the committees on virtually anything is unlikely."

The American Prospect
July 2-July 16, Vol. 12, Issue 12

The Case for Borking

Randall Kennedy

As the battle over the federal judiciary heats up, progressives must convince the general public of a basic proposition: The judiciary is an inescapably political branch of government whose agents, the judges, should be viewed in much the same way other politicians are.

To say that the courts are political may seem so obvious as to be banal. There is, however, a deep and widespread impulse to deny the political character of the courts. An important manifestation of this denial arises in the context of selecting, confirming, or rejecting candidates for the federal bench.

Many people bemoan, for example, what they term the "politicization" of the judiciary (as if there existed a golden age when judicial selection and judicial decision making were uncontaminated by politics). Liberals and conservatives, Democrats and Republicans have taken turns accusing each other of indulging in this unpardonable sin.

Progressives, however, should get off that unproductive rhetorical merry-go-round, accept the ineradicable presence of politics in the judicial arena, and strive to shape the judiciary in such a way that it will produce good, sound, progressive rulings. That will entail, among other things, lobbying on behalf of jurists who will advance the progressive agenda and against those who will be hostile to it.

Article II of the U.S. Constitution empowers the president exclusively to nominate federal judges, while it imposes a check on presidential authority by making the seating of a nominee dependent on the Senate's "Advice and Consent." Whereas the president is armed with veto power over legislation, the Senate, in effect, has veto power over judicial nominations.

Over the course of the nation's history, the Senate has exercised that power over Supreme Court nominees 29 times (and over district and appeals court nominees many times more). In addition to objecting to nominees on grounds of incompetence, dishonesty, or some other personal failing, senators have also voted nay for political or ideological reasons.

Opponents blocked George Washington's Supreme Court nominee Judge John Rutledge because of Rutledge's opposition to the Jay Treaty (despite the fact that the Senate had already confirmed him for a previous opening on the Court and that he had just served for an entire Supreme Court term as the interim chief justice).

Ulysses S. Grant's nominee Attorney General Ebeneezer Rockwood Hoar was not confirmed because he had opposed President Andrew Johnson's impeachment.

Herbert Hoover's nominee Judge John Parker was blocked because of Parker's perceived hostility to organized labor and the advancement of African Americans. And Ronald Reagan's nominee Judge Robert Bork didn't make it because opponents feared, among other things, that he would energetically attack abortion rights.

In principle there is nothing wrong with political blocking, even if doing so stems entirely from one particular issue. Would we now condemn a senator who, prior to the Civil War, voted against a nominee solely on the grounds that the candidate favored slavery? I would hope not.

Yet many people sneer at the notion of litmus tests for purposes of judicial selection or confirmation--even as they unknowingly conduct such tests themselves.

Litmus tests of all sorts are scattered about the judicial-selection process. When senators ask a nominee whether he or she believes that the proper role of a judge is to interpret rather than make law, or whether the Eighth Amendment should be deemed to prohibit capital punishment--all the while silently insisting upon an expected formulaic reply--they are imposing a litmus test.

Today, a candidate would not be nominated, much less confirmed, if he or she failed to genuflect convincingly to Marbury v. Madison (which established the authority of the Supreme Court to invalidate an act of Congress deemed to be in conflict with the Constitution), Brown v. Board of Education (which invalidated de jure racial segregation in public primary and secondary schools), or other once-controversial decisions that have become so thoroughly a part of the conventional wisdom that we no longer even perceive reactions to them as litmus tests of acceptability.

Since senators (and the public as a whole) should feel free to object to a nominee on political grounds, they should also feel free to demand that nominees truthfully divulge thinking that bears upon relevant judicial matters. Nominees--both liberals and conservatives--often claim that they cannot answer certain questions because to do so would be to prejudge a matter that may come before them.

But that response is typically a mere dodge to avoid controversy. Senators need not accept this.

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If a
candidate refuses to answer relevant questions, senators should take that refusal into consideration when determining whether to vote to confirm. It makes no sense to offer lifetime tenure and all the power of judicial review to candidates whose thinking about crucial matters is unknown.

A transparent process in which ideological objections to judicial candidates are candidly voiced is a much-needed antidote to the murky "politics of personal destruction. "When politicians (again, both liberal and conservative) feel disabled from objecting to candidates on ideological grounds, they search high and low for pretexts on which to object: "He made this lewd statement to a colleague a decade ago," or "She committed this technical infraction of law."

Senators should not feel that they have to reveal or attack some personal blemish in order to justify a vote against a nominee. A deep, urgent, political disagreement is sufficient. It should be possible for a senator to acknowledge that a nominee is honorable, competent, and kind while still voting against confirmation because of the way the candidate would likely act as a judge. Nothing personal. Just politics.

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July 2-July 16, Vol. 12, Issue 12

Halting the Judgernaut

Alexander Wohl

As Capitol Hill adjusts to Vermont Senator Jim Jeffords's earthshaking repudiation of the Republican Party, the Senate Judiciary Committee is bracing itself to be the center of the aftershocks. The judicial branch of government, after all, is where a president is likely to have his most far-reaching impact; the judges he appoints will last much longer than the one or two terms he serves. And the Judiciary Committee--which is a key venue for debate about potent legislative issues such as abortion, school prayer, flag burning, and civil rights--is also the primary battleground in judicial-confirmation fights. Thus, with George W. Bush's first slate of nominees for the federal bench waiting for hearings, the most resounding political clashes of the summer are likely to occur on the Judiciary Committee's turf.

When Jeffords abandoned the Republicans, he threw control of Senate committees to the Democratic Party, providing Dems on the Judiciary Committee with the power to strangulate nominations in committee. (Actually, as of this writing, Republicans--aware of how defiantly they refused to allow many of Bill Clinton's nominations to get beyond the Judiciary Committee,

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and afraid of payback--are trying to force the Democrats to permit a full Senate vote for every judiciary nominee. A politically foolish position that will likely come to a quick resolution, this could bring all Senate business to a halt.) Given a free hand to nominate and confirm judges, Bush and the Senate Republicans would no doubt populate the federal bench with an army of Antonin Scalia clones--a legion of judges who, though perhaps ethnically diverse, share the extreme views of the Court's most conservative jurist. Indeed, the first batch of nominees the president sent to the Senate for confirmation has already made this clear. One logical response to such nominees would seem to be simply to block their consideration--especially since that was the Republican response to Clinton nominees whom the GOP considered to be too liberal.

But early signs indicate that the newly Democrat-controlled Judiciary Committee, along with the Senate as a whole, is taking a less direct and more wide-ranging approach, one that makes use of several different strategies at once while trying to minimize the danger of a public backlash. This highlights an important question , Is it worth letting all but the most conservative judges onto the federal bench--where they will preside for lifetime appointments, potentially lending important appeals courts a conservative coloration for up to 30 or 40 years--in order not to appear "obstructionist"? For some Democrats concerned with winning re-election, the answer may be yes. Still, if they're smart and stick together, the Democrats on the Judiciary Committee may be able to ensure that only the more moderate of Bush's nominees come to a full Senate vote--and to demonstrate the wisdom of their case to the American public.

"Don't Mess with Vermont"

How successful the Democrats are in preventing the confirmation of conservative judges will depend heavily on the committee's new chairman. A soft-spoken, liberal Vermonter, Patrick Leahy is a 27-year Senate veteran who has distinguished himself from many of his colleagues with his integrity and lack of ego. Smart and unafraid to play political hardball when necessary, he is adept at diffusing tension with gentle humor. (The day after the Jeffords switch, for example, "Don't Mess with Vermont" bumper stickers--attributed to Leahy--appeared around Washington, D.C.)

Leahy replaces Utah Senator Orrin Hatch--a fierce conservative whose favorite topic in recent committee sessions has been his own evenhandedness--as the ranking majority member on the committee. (Transcripts of recent hearings reveal Hatch to be remarkably, repetitively taken with his own "fairness.") Though Hatch has worked with Democrats on occasion, he fights hard for conservative Republican nominees and has the battle scars from the Robert Bork and Clarence Thomas Supreme Court nominations to prove it.

Leahy and Hatch consider themselves close friends and generally work well together. During Hatch's quixotic presidential run through early 2000, Leahy offered "to speak for him or against him, whichever would help more." But beneath this geniality, both sides are girding for war. Within days of Jeffords's announcement, Hatch was warning Democrats that "nobody's going to push me around." Leahy, for his part, has shown himself unafraid to take on the Republicans: He has challenged the GOP's hypocritical statements about the "quick pace" of Clinton

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nominations during Republican control of the committee and engineered a walkout from a hearing in which he felt the Republicans were trying to strong-arm Democrats into approving Bush nominees.

But for the first time in seven years, the Democrats have the numbers--if not literally (at this writing, the Senate leadership is negotiating whether the party balance on the committee will remain evenly split or a Democrat will be added to give the Dems a one-person advantage), then at least in terms of power. Majority status gives Leahy the gavel--and with it, the power to schedule and time hearings. Democrats now control the process: They decide when (and even if) nominees are brought up, how zealously they are interrogated, and how quickly they get voted on. And Senate Democratic aides say that Leahy is ready to take a much tougher line than others have in the past.

The recent debate over Ted Olson's nomination as solicitor general suggests how potent the Democrats' new majority status on the committee can be, if only they can muster the courage to exercise it. Erstwhile Senate Majority Leader Trent Lott was forced to discharge Olson's nomination from the Judiciary Committee (he did this under the bargain struck relating to the 50–50 Senate divide) the day Jeffords announced his switch: Lott knew that if he waited, the Democrats could use their new power in the Judiciary Committee to withhold the nomination from the floor. Moreover, after seeing Olson get voted in by the Senate--albeit by a razor-thin majority--Democrats surely understand that stopping someone is easier in committee than on the Senate floor, where there is the danger that some conservative Democrats will join the Republicans in crucial votes, as Georgia's Zell Miller and Nebraska's Ben Nelson did on Olson.

But now that the Democrats possess the power in the Judiciary Committee, will they be willing to use it? After failing to block Attorney General John Ashcroft and Solicitor General Olson, some Democrats said, in effect, "Well, we got enough votes to demonstrate that we could block a nomination--but we didn't do it because these were only cabinet appointments, not Supreme Court justices, which are lifetime appointments." Fair enough. But lower-court federal judges get appointed for life, too. Do the Democrats have the will to scrutinize and oppose district and circuit court candidates?

Whom to Oppose?

Democrats are still strategizing about whom they should oppose. This requires a calculated analysis not just of the nominees' records and the courts for which the judges have been nominated, but of public opinion. Democrats have seen how the perception of obstructionism or intransigence has sometimes hurt the Republicans--most notably after the government shutdown in 1995, during Clinton's impeachment in 1998, and last month when the GOP lost Jeffords--and don't want to be perceived that way themselves.

Both Leahy and the new majority leader, South Dakota's Tom Daschle, have said that they will work to prevent an ideological court packing and that they want "good, moderate, middle-of- the-road, credible" nominees. But already a number of Bush's nominees fall outside that description. This is particularly significant right now, because--after years of Republicans stonewalling Bill

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Clinton's nominees--there are many vacancies, including 31 openings on federal appeals courts. Several circuit courts of appeal are very closely divided between liberals and conservatives. (The tiny First Circuit, for example, whose six judges cover Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico, has one opening and leans barely Republican; and the Third Circuit, which includes Delaware, New Jersey, Pennsylvania, and the Virgin Islands, is evenly divided and has two vacancies.) Just a few Bush appointees could tilt the judicial balance of the country in a decidedly conservative direction for a long time to come.

So Democrats considering circuit court nominees need to examine not just whether the prospective lifetime appointee has views so extreme as to be out of the mainstream, but whether adding that person to a court will change the ideological complexion of a particular circuit.

Given these parameters, there are several clear targets among the first group of Bush nominees. For instance, two Fourth Circuit nominees cry out for opposition. Terrence Boyle, chief judge of the U.S. District Court of the Eastern District of North Carolina, is a former aide to Senator Jesse Helms and, not surprisingly, is extremely conservative. He was already denied a spot on the court of appeals in 1991, when he was nominated by President George H.W. Bush, but the Senate did not act on his nomination. Helms retaliated by blocking all of President Clinton's nominees to fill North Carolina's Fourth Circuit vacancies. (Helms's desire to get Boyle on the court is ironic given Helms's repeated statements over the past several years that "there is no need to put more judges on that court because to do so would make it less efficient.")

The other nominee to the Fourth Circuit, South Carolina District Judge Dennis Shedd, is equally conservative; he served as chief counsel and staff director under former Judiciary Committee Chairman Strom Thurmond, who is now a senior committee member. Although Shedd has already attracted much opposition from civil rights groups, it will require coordinated strength to block him, given the tradition of deference to nominees who once worked in the Senate, even if only in a staff capacity.

But the Fourth Circuit already tilts heavily to the right. In contrast, the Sixth Circuit (which covers Michigan, Ohio, Tennessee, and Kentucky) and the D.C. Circuit are closely divided. Thus, Miguel Estrada, nominated for the D.C. Circuit, and Jeffrey Sutton, nominated for the Sixth, are judicial conservatives whom Democrats could confidently and appropriately oppose.

After the Supreme Court, the D.C Circuit is generally seen as the most powerful court in the nation, because of its role in interpreting statutes and agency decisions and because it has historically served as a springboard for potential Supreme Court nominees. Adding Estrada--who was a law partner of Ted Olson and is known for sharing the judicial philosophy of Justices Scalia and Thomas--to that court, along with another Bush nominee, the conservative John Roberts, would significantly enhance a slight conservative majority on this key bench.

The Sixth Circuit is even more closely divided. A former state solicitor from Ohio, Sutton--who has argued a number of times in the Supreme Court for expanded state power and for voiding congressional initiatives--has already been the focus of opposition. But another Sixth Circuit nominee, Ohio Supreme Court Justice Deborah Cook, also deserves a close look. In one

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representative decision, she denied a blind woman's request to be admitted to medical school because of the undue burden it would have placed on the school.

The 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, & Wyoming) also is narrowly divided. The nomination to this court of Michael McConnell, a Federalist Society conservative and a professor at the University of Utah, has already generated opposition because of his extremist interpretation of the religion clauses of the First Amendment and their potential application to a variety of social issues ranging from school vouchers to gay rights.

Democrats can prevent Bush's nominees from being confirmed in several ways. First, of course, is to vote them down, either in committee or on the floor. Second is to delay their confirmation hearings indefinitely, as the Republicans did for so many Clinton nominees. (A variation on this option is to use control of the process to lengthen investigative hearings when that would be effective.) Expect Leahy to make use of both tactics. But more important is a third approach, which is to avoid nasty committee fights and use the potential power of a unified Democratic majority--for now, the committee will follow the caucus party line and vote up or down together--to influence the White House not to nominate right-wingers in the first place. It is therefore incumbent on the Bush White House, which until now has given only lip service to the idea of consultation with the Senate, to work with Leahy and the Democrats if it wants its nominees to be confirmed in a timely fashion.

Finally, several changes in procedure will slow down the process while adding an opportunity for more information and fairness. Leahy has already promised to reinstate the use of evaluations by the American Bar Association before any hearings. (This nonpartisan analysis of candidates, which every president since Dwight D. Eisenhower has used in considering nominees, was eliminated by George W. Bush.) Leahy is also likely to hold quick hearings for less controversial nominees and for nominees who are designated for courts with the greatest need before turning to the possible challenges. In this way, he can accumulate public support that he can later use in opposing the more conservative or controversial nominees. And he will probably not hold hearings for more than one nominee at a time--something that makes abundant sense but that the Republicans failed to do.

The prevailing view has been that nominees are presumed to be confirmable, unless senators or interest groups find something "wrong" with them. Some legal scholars have proposed the idea of requiring nominees to demonstrate why they should be confirmed, and there are signs that Leahy is open to this approach.

The Senate has an important role to play in evaluating and challenging individuals who are being appointed to a lifetime job of interpreting the Constitution. While Republicans are likely to cry "Bork!" whenever a nominee is criticized (even though the same Democratically controlled Congress that rejected Bork overwhelmingly confirmed Scalia), Democrats should not shy away from opposing any (and even many) of President Bush's nominees. Nor should they be tempted to give free passes to minority candidates if those candidates are too conservative. The Constitution says that the Senate will give its advice and consent on all nominations. Most Americans don't want a judiciary slanted sharply in either direction. We will soon see whether

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the new majority in the Senate has the guts and the ability to make a credible case to the American people that President Bush should not have the unilateral authority to shape the judicial branch in his conservative image.

The Washington Post
June 17, 2001

At High Court, a Retirement Watch

Rehnquist, O'Connor Top List of Possibilities as Speculation on Replacement Grows
Charles Lane and Amy Goldstein

As the Supreme Court prepares to end its term this month, the White House, the Senate and interest groups across the ideological spectrum are preparing for the possibility that a member of the court might retire, with Chief Justice William H. Rehnquist's departure the most frequently mentioned scenario.

There is no direct evidence that Rehnquist, 76, or any other member of the court is planning to step down this year. Justice Sandra Day O'Connor, 71, recently dampened speculation about her departure, making an unusual announcement that she had "no plans" to leave. When Rehnquist was asked through the Supreme Court press office for a similar statement, he declined to comment.

Now that a Republican occupies the White House for the first time in eight years, however, court observers consider it more likely that Rehnquist or O'Connor, who were both longtime activists in Arizona Republican politics before being appointed to the court by Republican presidents, will step down sometime in the next few years.

"Make no mistake," said one longtime friend of the chief justice, Rehnquist would prefer to "return" his seat to a Republican president. But another justice recently told a friend there was no suggestion around the court that a departure is imminent.

Similarly, a lawyer who has regular contact with the White House counsel's office said, "I don't see the kind of frenzied activity by people who would be involved" in the administration if they knew a retirement were looming. In the past, many justices have directly or indirectly relayed their departure plans to the White House slightly before announcing them publicly, often at the end of the term.

Nonetheless, the thought of stepping down apparently has at least crossed Rehnquist's mind. When PBS interviewer Charlie Rose asked in February if he could imagine retiring, Rehnquist replied, "Sure."
Justice John Paul Stevens, 81, is older than Rehnquist and O'Connor, and he also was appointed by a Republican president, Gerald R. Ford, in 1975. But Stevens is not considered a likely candidate for retirement. He remains in vigorous health -- and, though still nominally a

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Republican, has moved to the left in his years on the court. He dissented vigorously from last year's court decision, spearheaded by its most conservative members, to stop the Florida recount and effectively ensure Bush's victory.

There have been no changes in membership at the Supreme Court since Stephen G. Breyer replaced Harry Blackmun in the fall of 1994, creating the second-longest period of stability in the court's history and pent-up anxiety about when the next vacancy will occur.

In such an uncertain climate, the administration, Congress and advocacy groups are keenly sensitive to the opportunity President Bush will have to shape the court -- one of the presidency's most enduring powers. The White House and the Justice Department have been working for months to define the factors that would go into choosing a nominee, as well as beginning to sift through potential candidates.

"We are working hard to be prepared," said White House Counsel Alberto R. Gonzales, who oversees the selection process and is himself a potential choice. "Even during the transition we began thinking about possible nominees to the court."

On Capitol Hill, Republicans on the Senate Judiciary Committee have already begun "informal discussions and talks" about potential candidates, said Makan Delrahim, the committee's GOP staff director.

In the meantime, conservative and liberal advocacy groups have been working aggressively to try to influence the president's eventual choice -- and public opinion. Conservatives have been urging Bush not to back down from his campaign statements that the current justices he most admires are Antonin Scalia and Clarence Thomas, the members furthest to the right.

"We are looking to him to stay as close to that standard and as consistently close to that standard as he can," said Thomas L. Jipping, director of the judicial selection monitoring project of the Free Congress Foundation.

On the left, civil rights groups and women's organizations have been trying to stoke public fears that Bush's impact on the court could have dire consequences on issues ranging from abortion to education to affirmative action.

"If George W. Bush follows through on his promise to the right wing and nominates someone in the mode of Scalia and Thomas and Rehnquist, then there is going to be an epic battle," said Ralph Neas, president of People for the American Way.

The ideological skirmish that has broken out in Congress during the last month over Bush's initial nominees to lower federal courts is widely considered a prelude to the full-scale battle that a Supreme Court opening could create.

According to aides in the administration and on Capitol Hill, the cross pressures on the president in making his selection will be intense. On the one hand, the shift of the Senate this month to

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Democratic control, analysts say, could hinder Bush's prospects for securing a replacement as conservative as Rehnquist. At the same time, the GOP's right wing is insistent that the president must not reduce conservative strength on the court by nominating anyone more liberal than Rehnquist.

"The difficulty is that the president has got to decide, 'How much political capital am I willing to bleed for a controversial Supreme Court nominee?' " said a conservative legal expert.

In such a contentious environment, names that have been considered among Judiciary Committee Republicans, sources said, include federal appeals court judges Emilio Garza, Edith H. Jones and J. Michael Luttig and the committee's ranking Republican, Sen. Orrin G. Hatch (Utah).

Other possibilities the president might favor, a variety of sources say, include conservative appeals court judges J. Harvie Wilkinson and Frank H. Easterbrook and Washington lawyers John G. Roberts and Miguel Estrada, both nominated by Bush last month to the federal appeals court here.

Bush also could look to members of Congress, such as Sen. Jon Kyl (R-Ariz.) or Rep. Christopher Cox (R-Calif.), who was being considered by the White House this spring for an appeals court seat but withdrew from consideration because of opposition from California's Democratic senators.

Administration officials declined to confirm any candidates they are contemplating. Bush has indicated he would like to nominate the first Hispanic justice, a move that might help him woo Latino voters in 2004 and improve his chances of winning confirmation in the Senate. In that context, Gonzales, a former justice on the Texas Supreme Court and a confidant of Bush's, is considered a prime candidate.

Asked whether he might accept a nomination, Gonzales said: "I am asked this question a lot. I typically say I don't intend to be a candidate. . . . My focus is working here, serving this president in this capacity."

Some conservatives consider Gonzales too moderate, and others view him as lacking the experience to become chief justice. To allay such concerns, Bush could make a double switch, nominating a current member of the court -- perhaps O'Connor --to replace the chief justice and naming Gonzales an associate justice.

"Politically, nothing beats that pair," said a lawyer who knows several of the justices personally.

Rehnquist's departure would not be as politically momentous as that of O'Connor, who is a swing vote on the closely divided court. Rehnquist is a consistent conservative, so the prospect of an equally conservative Bush-nominated successor for him would merely reinforce the existing ideological mix.

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"If O'Connor is stepping down, then there will be all these arguments . . . about the balance of the court," said Terry Eastland, publisher of the conservative Weekly Standard and a senior Justice Department official in the Reagan administration. "With Rehnquist, the Democrats might be more willing to defer to the president in terms of judicial philosophy."

By regaining control of the Senate, the Democrats now run the Judiciary Committee, which will largely determine how quickly a nomination is processed -- and how much the nominee is grilled about his or her judicial philosophy.

Some Senate Democrats have begun discussing whether they would even employ a filibuster or other procedural tactics to block a Bush appointee from being voted on by the full Senate -- a sharp departure from past practice. In 1987, Robert H. Bork was allowed a vote on the Senate floor, even after the Democratic-controlled Judiciary Committee rejected him. Bork lost the floor vote, 58 to 42.

Rehnquist has been on the court since 1972, when he became an associate justice under President Richard M. Nixon. President Ronald Reagan elevated Rehnquist to chief justice in 1986, to replace the retiring Warren E. Burger.

In a recent interview with Fox News, Rehnquist said he had thought of departing before he was tapped to be chief justice. He acknowledged he has been having trouble lately remembering names and sent this wistful message to his television audience: "I'll tell them this, that I just think I've been extraordinarily fortunate in my life, and I'm very grateful for my good fortune."

Rehnquist's health, particularly severe back pain, has been a problem in the past. Although he still must rise from the bench and stretch his back during the court's two-hour oral argument sessions, he now appears to be in good physical and mental condition.

Under Rehnquist, a five-member conservative majority on the court has moved the law in a decidedly conservative direction, trimming affirmative action, clearing legal obstacles to the application of capital punishment, and limiting federal authority over the states.

Asked during the PBS interview if it would make a difference to him that there is a Republican in the White House, Rehnquist did not answer directly but did concede that there had "traditionally" been a "slight preference" by justices to retire during administrations of the party that appointed them.

The Washington Post
June 18, 2001

Daschle's 'Intensive Care Unit' to Attend to Patients' Rights

John Lancaster and Helen Dewar

*** EXCERPT ***

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POWER PLAY: The Senate has once again gone into overtime in trying to nail down the fine points of its shifting power balance, delaying approval of a new resolution on committee organization because of an unresolved dispute over the handling of judicial nominations.

Without an agreement, freshman senators are left without committee assignments, many Democratic committee chairmen have to operate with Republican majorities -- and President Bush will have to wait awhile longer for action on his nominees.

The reason is that the power-sharing agreement negotiated when the Senate was evenly divided lapsed when Democrats took control this month, meaning that committee organization reverts to what it was at the end of the 106th Congress -- until a new agreement is reached.

After two weeks of quiet, behind-the-scenes negotiations, Republicans went public last week with demands for a guarantee that Supreme Court nominees will come to the Senate floor for a vote and for public disclosure when nominees are blocked by their home-state senators under the "blue slip" process. They said they asked Majority Leader Daschle to put the two proposals to a vote by the Senate, and he refused.

Later, Daschle issued a statement saying he has made both public and private commitments to "assuring a fair process for judicial nominees" and wants to resolve remaining organizational issues "through negotiations and discussions, rather than with potentially divisive votes."

On a party-line vote, which is customary on votes related to party powers, the GOP proposals would be defeated 51-49. But Republicans could claim a moral high ground in favor of full disclosure and fair treatment for a new president's nominees.

MEMBERS OF CONGRESS

Fox News Sunday
June 17, 2001

Senate Majority Leader Tom Daschle on Judicial Nominations
Tony Snow, Juan Williams

WILLIAMS: Senator Daschle, since Mr. Jeffords has come over, at least for caucus purposes, with the Democrats, there's been no reorganization of the Senate. So I'm wondering, how are you operating? And what pressures are there on you, as the Senate majority leader, to in fact now reach some deal with the Republicans so that you can get back to business?

DASCHLE: Well, Juan, I've told my Republican colleagues that I'm not going to jam them, I'm going to give them time to sort this out. These transitions are never easy. It took Senator Lott and I a couple of months to work out power-sharing.

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But this is nothing compared to what we had to work through with power-sharing. That was unprecedented. The circumstances now are certainly not unprecedented, and we went through a lot of the same types of questions in the 1950s. Ao this is really a matter of whether we have the one-vote majority in committees, whether or not we revert back to power-sharing if something would change, whether or not we can work (Publication page references are not available for this document.) out staff and budgets. I think we can, and I think we're getting closer.

WILLIAMS: Well, now, what about the pressure coming from the GOP to say, listen, we want some assurances, we want them written down, and, in specific, concern about judicial nominations and the fact that they not get bottled up in committee but be able to reach to the Senate floor for a full vote?

DASCHLE: Well, I have said over and over that we're going to be fair. We are determined not to engage in any payback. We're not going to do what we think in many cases was done to our nominees in the last eight years. That isn't what we're all about.

What we want to do is move forward, assure that there are votes. But we don't want to abrogate the constitutional process of advice and consent, to make sure, absolutely certain that the judiciary committee has the prerogative and has the responsibility that it's been charged to take on. And that's what this is about.

SNOW: But, Senator, the constitutional obligation is for the entire Senate, it's not the Senate Judiciary Committee. And the founders never said, well, we want the Judicial Committee to decide who gets to serve as judges.

What have you told Republicans, other than that you'd be fair? Specifically, what have you promised them?

DASCHLE: Well, what I've promised them, Tony, is that we were going to assure them that every nominee, regardless of whether it's judiciary or executive, will have a fair hearing, will have an opportunity to be considered, and I can't go any further than that.

Obviously, we don't want to see happen what happened over the last five years, where some judges were kept without even the opportunity to be heard for over four years; where some senators, because you had secret holds, were given no opportunity to have the right to be considered and to be voted on. We're not going to do that. I don't think we should do that.

But I'm not going to engage or commit to an extralegal process that says, in some cases, regardless of what the Judiciary Committee does, we're going to bypass the committee and go straight to the floor.

SNOW: Why not? That's the agreement you just had.

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DASCHLE: No, no, I don't think we've ever had an agreement of that kind.

SNOW: Did you not have an agreement that, when you had the 50-50 power-sharing agreement, that nominations would go to the Senate floor?

DASCHLE: No, what we had was an agreement that either the majority or the minority leader could make a motion to proceed to a nomination. And I obviously would be willing to look at something like that. But never did we have an automatic commitment that any nominee or any bill would come straight to the floor.

Meet the Press
June 17, 2001

Senator Joe Biden on Judicial Nominations

Tim Russert

MR. RUSSERT: You're also a member of the Senate Judiciary Committee.

SEN. BIDEN: I am.

MR. RUSSERT: Harry Reid, Democratic senator from Nevada and a colleague of yours, said the other day, talking about the Supreme Court: "We may wind up with another Scalia. Even though I disagree with the result of some of his opinions, his ability to reason is about as good as I've ever seen. I'm not looking for another Antonin Scalia, but I think that he brings with him such an intriguing background and such a brilliant ability to reason, that if we had someone like him, it would be a tougher decision for the Senate."

SEN. BIDEN: Wouldn't be tough for me at all. I've spoken to Justice Scalia. I consider us good acquaintances. So we kid each other occasionally when he--like, for example, I got a note or a call, I can't recall which, saying when the special prosecutor thing was--when we all voted against it, you know, reinstating, he called and says, "See, I was right the first time in the Morrison vs. Olson case."

I teach constitutional law--he called me and said, "I better come up and help you with those students. They're getting the wrong idea." As I've said to him, bluntly, I regret--the two most regrettable decisions I made were voting for him and voting for Reagan's tax cut.

MR. RUSSERT: Scalia was confirmed 98-to-nothing.

SEN. BIDEN: No--he was, but you--remember the context then? The context was we had a governor named Mario Cuomo saying he'd kick anybody's rear-end who didn't vote for the Italian. And, you know, remember he didn't answer any questions and no one forced him to answer any questions. Look, the fact that someone is brilliant does not qualify them to be on the Supreme Court. They can be brilliant and wrong. I would like--for example, I think it's

important there is a Scalia on the court. I'd like another Brennan on the court, as well. But if you want someone who's brilliant in his reasoning, equally as consequential, I'd take Souter. He's equally as bright as Scalia. Writes better than...

MR. RUSSERT: As chief justice.

SEN. BIDEN: As chief justice.

MR. RUSSERT: You don't believe the Democrats would ever support Scalia to be chief justice of the Supreme Court?

SEN. BIDEN: I'm not speaking to the Democrats. I'm speaking for me. His view of the Constitution, that there are no unenumerated rights in the Constitution, that there's a very--this is the most activist Supreme Court we've had in the history of the United States of America, Tim. They have--they're the only court that has ever declared unconstitutional seven national pieces of legislation. People don't know. They declared, for example, the Older Americans Act unconstitutional as it applies to states.

MR. RUSSERT: But doesn't George Bush have a right to have conservatives on the Supreme Court?

SEN. BIDEN: Sure, he does. And I have a right to have who I want. This is what they call, you know, co-equal branches of government.

MR. RUSSERT: A liberal litmus test?

SEN. BIDEN: No, no. No, no, no. You're putting words in my mouth. You said, "Does he have a right to have conservatives?" To the degree that he pushes to the right, I can push to the center or to the left. The Constitution says that the United States Senate gets to determine--he gets to pick, his is to propose, ours is to dispose. We have from Rutledge back in the turn of the century with George Washington straight on through. We've rejected people whose views we believe are out of sync with what the Senate is.

I was asked advice by President Clinton when he had a chance to put people on the court. I went down to see him. I said, "Mr. President, when there's a divided government, you should pick someone in the middle. You should understand that." And he did. My advice to the president of the United States is if he wants a holy war, he can do that and pick another Scalia. But there's a divided government. The nation is divided on these issues. He should pick someone who is a centrist. He can be center right, but to pick someone on the extreme left or right would be a serious mistake, in my opinion.

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OP/EDS

The Columbus Dispatch
June 16, 2001

Two Superior Judges Merit Confirmation

Jim Petro, Ohio State Auditor (Editorial)

During the 2000 presidential campaign, President Bush promised that he would nominate for federal judgeships only people of the highest integrity and professional competence and who possess the proper judicial temperament. Recently, Bush began delivering on that promise by nominating 11 men and women from across the country from both political parties for seats on the various federal courts of appeal.

Ohioans should be proud that for the first two of seven vacancies on the 6th U.S. Circuit Court of Appeals, which covers Ohio, Michigan, Kentucky and Tennessee, the president nominated two outstanding Ohioans to serve on that bench: Ohio Supreme Court Justice Deborah L. Cook and former state solicitor Jeffrey S. Sutton.

As former assistant prosecutor, city law director in Rocky River and lawyer in private practice for the past 28 years, it has been my pleasure and privilege to have appeared before and practiced with thousands of judges and attorneys throughout the state. Without a doubt, Cook and Sutton are among the best-qualified lawyers to serve in the federal judiciary that I have seen in my legal career.

After a distinguished 13-year career in private practice in Akron, Cook joined the Ohio Court of Appeals in 1991, where she quickly developed an excellent reputation for her hard work and for the quality of her opinions. Elected and re-elected to the Ohio Supreme Court in 1994 and 2000, Cook has been praised by The Dispatch for her "keen intellect" and "careful legal scholarship."

The newspaper noted that she applies the law "without fear or favor" in crafting rulings that are governed by the Constitution and not by popularity polls or special interests.

Sutton graduated first in his class at Ohio State University Law School and served as a law clerk for two different U.S. Supreme Court justices, a rare honor. As Ohio's state solicitor, he was responsible for arguing cases of the utmost importance to Ohioans before both the Ohio and the U.S. Supreme Courts.

A prolific legal scholar, Sutton has written more than 50 law review articles and two legal texts. While keeping his private practice in Columbus, he also is teaching constitutional law at OSU

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law school.

When Bush submitted his nominees for the federal appeals courts to the U.S. Senate for confirmation, he called upon senators of both parties to restore civility and dignity to the confirmation process, and, most importantly, he asked for a prompt vote on each nominee.

Right now the court, based in Cincinnati, is critically short of judges to handle an ever-expanding caseload. Because of their impeccable credentials, Cook and Sutton should be swiftly confirmed.

The Columbus Dispatch
June 17, 2001

Lack of News Makes Pontificating Difficult but Not Impossible

Joe Hallett, Dispatch Politics Editor

A big patch of white space, a fast-closing deadline and an empty head. Mid- June and the dog days are here already. Will loyal readers -- both of them -- notice if there is no column this week? Can't do commentary without some news. It's plain dead around here.

Speaking of death, maybe column grist could be ground from the pending U.S. Supreme Court case on whether mentally ill murderers should be executed. But what's the point now? We already killed schizophrenic Jay D. Scott.

The legal system, though, is always column fodder, and it would be timely to discuss President Bush's nomination of Columbus attorney Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals in Cincinnati.

But that has to do more with the political system, and editors are always griping that readers don't care about politics. Why waste a column on it? So what if the new Democratic majority in the U.S. Senate, for its own partisan aggrandizement, stands ready to ravage Sutton's reputation?

So what if the Democrats are salivating to tar Sutton unfairly as an uncompassionate conservative for having the audacity to argue successfully before the U.S. Supreme Court that the Constitution limits the ability of citizens to sue state governments for discrimination against the disabled?

Does anyone think for a moment that Senate Democrats will care that Sutton, at age 40, suffers from osteoarthritis, a degenerative disease that eventually would have put him in a wheelchair, if not for the miracle of hip- replacement surgery?

Will Senate Democrats give a hoot that Sutton, a brilliant attorney by virtually everyone's account, has a history of performing free legal work for social causes and groups? He has

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argued, pro bono, on behalf of the National Association for the Advancement of Colored People, the Anti-Defamation League of B'nai B'rith, the Center for the Prevention of Handgun Violence and the American Civil Liberties Union.

Not long ago, Sutton took up the cause of a Chillicothe prison inmate and won a 9-0 decision from the U.S. Supreme Court, the ninth case in five years he had argued before the high court, probably more than any other private attorney.

Senate Democrats won't care. They're bent on getting back at Republicans for confirming only 61 percent of President Clinton's judicial nominees. When and if the Democrats give Sutton a hearing, they'll be more concerned about placating the constituencies who larder their coffers than putting a fair, honest person on the federal bench.

In a hearing process that too often has turned well-meaning nominees from both parties into bitter and spiteful judges -- Supreme Court Justice Clarence Thomas comes to mind --Sutton will be put through the political wringer, used and abused, to signal Bush that his Supreme Court nominees can expect even tougher treatment.

But, heck, nobody is interested in such political shenanigans except for maybe both readers of this column.

Well, then, there is the school-funding case. The Ohio Supreme Court will hear arguments Wednesday. For a third time, the court is expected to rule 4-3 that the legislature and governor failed to ensure an adequate and equitable education for Ohio's schoolchildren.

Lawyers for the state hope to turn one of two Republican justices, Paul E. Pfeifer or Andrew Douglas, who formed the majority with two Democrats in the previous decisions. A victory for the financially insatiable coalition of schools almost certainly will mean higher taxes.

The school-funding case has been around for 10 years. Yesterday's news is boring.

Oh, yeah, there's the Big Three Republican feud at the Statehouse. But that, too, is insider politics. Speaker Larry Householder of Glenford and Senate President Richard H. Finan of Cincinnati had their way with Gov. Bob Taft on the state budget and now they are poised to embarrass the governor by overriding some of his 49 vetoes.

Obviously, Taft's re-election in 2002 is not a high priority for Republicans controlling the General Assembly. For that matter, it appears not to be a high priority for Taft. While getting pushed around by legislative Republicans, he declined to use the bully pulpit to defend his own reasonable budget proposal, one that would not have gutted higher education.

Taft may have trouble telling voters what he stands for next year. But that's then and this is now, and there is nothing going on.

Unless, of course, anyone considers the latest scandal at the Ohio Department of Job and Family

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Services worthy of comment. News flash: Department illegally withholds more child-support payments from poor children. Routine stuff.

Maybe a column could be crafted around the big-money push at the Statehouse to permit video-gambling machines at Ohio's seven horse racetracks. But thanks to Taft, that's dead for the moment. Maybe something could be written about all the wacko legislation that right-wingers in the House want to pass. But why dignify wackiness?

My gosh, look at the time! All this white space to fill and nothing to write. Will somebody please make some news around here?

Joe Hallett is politics editor of The Dispatch.

The Indianapolis Star
June 17, 2001

Heat Turned Up High in Judicial Kitchen

Russ Pulliam

He's been there, done that.

Federal Judge Daniel Manion recommends a thick skin and some experience in rough-and-tumble political battles for potentially controversial judicial nominees. President Bush already has submitted some nominations for federal court positions for U.S. Senate confirmation. But the big battle is yet to come with an anticipated opening on the U.S. Supreme Court in the next year or so.

When Manion was nominated by President Ronald Reagan for the 7th Circuit Court of Appeals in 1986, the mild-mannered former state senator from South Bend was surprised to become the center of controversy. The Manion battle was a warm-up for bigger ones over subsequent nominations of Robert Bork and Clarence Thomas for the Supreme Court.

Manion was blasted by People for the American Way and Senate Democrats for being unqualified for the court position. Sen. Edward Kennedy called him "the least-qualified" nominee he had ever seen for the federal appeals court. His critics found fault with his proof-reading because of errors in his correspondence.

Yet Manion also attracted endorsements from liberal Democrats who knew him back in Indiana. He made it to the bench after close votes in the Senate.

Manion understood that his critics weren't aiming the mud-slinging at him personally. What they really objected to was his willingness to look to the original intent of the Constitution. But

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he worries that mud-slinging campaigns that got worse under Bork and Thomas could deter qualified people from serving on the courts.

"I had a much thicker skin politically," he said in a recent interview. "I understood what was going on."

Good lawyers can make more money in private practice. "Why should I subject myself to this kind of attack?" he can hear potential candidates say. "I don't need to have my name dragged through the mud. Who knows what they'll come up with -- what kind of magazines you subscribe to. That's the kind of drivel it descends to," Manion added.

Critics might suggest that those who can't stand the heat should stay out of the judicial kitchen. But the judicial branch traditionally has been set above the partisan politics of the legislative and executive branches. Until the Bork-Thomas controversies, a long tradition was to evaluate court nominees on the basis of competence and personal character.

Manion has had the last word with the critics who attacked his alleged incompetence. "He made a liar out of them," commented a court colleague, William Bauer. "He is very bright, hard-working, thoughtful. Our job is to make sure we follow the Constitution. That's what he does very well."

Another Indiana lawyer, Peter Rusthoven, was associate counsel during the Reagan administration and gained an insider's perspective on the court nomination process. He suggests that more ideological battles over these nominations will undermine confidence in the courts as impartial decision-makers.

"Judicial nominations are no longer about, is this person smart, well-trained in the law, hard-working," he said. "Instead, you're nominating a person who is going to have one vote in a super-legislature, and that super-legislature is going to decide all kinds of things that the courts traditionally never decided."

With activist judges "writing" laws, the executive and legislative branches lose their chance to settle controversial political and social issues. Rusthoven is hoping for more strict constructionist judges who will be willing to defer issues back to the legislative branch when no clear constitutional issues are at stake.

He points to the 1857 Dred Scott decision as a notorious example of judicial activism, with the court taking over the slavery issue by ruling that blacks were not citizens. "It severely minimized the possibility of working out the slavery issue in the elected or political branches of government," he said. "It took away from the Congress the ability to regulate slavery in the territories."

The Senate ought to give Bush the green light to nominate strict-constructionist judges for the high court. A few more of them could help take the court out of some of the controversial political issues that are better left to the two elected branches of government.

INTEREST GROUPS/PRESS RELEASES

The Washington Post
June 18, 2001

Reason to Reject

Elizabeth Cavendish, Legal Director, NARAL

We take exception to the belief that it is unfair to challenge the qualifications of judicial nominee John G. Roberts Jr. based upon antiabortion briefs he filed as a government lawyer [editorial, June 7].

Mr. Roberts was a political appointee in the Reagan administration and served as principal deputy solicitor general for President Bush from 1989 to 1993. He competed for the job knowing that the administration had the goal of rescinding the constitutional right of reproductive choice.

During the Reagan and Bush era, the Justice Department argued to restrict or overturn the fundamental right to choose eight times in seven Supreme Court cases. Mr. Roberts helped author the brief in Rust v. Sullivan, defending the now-repealed "gag rule" that prohibits family planning providers from informing women of all their options when confronting an unwanted pregnancy. Saying the Roberts brief argued "in passing" for the overturn of Roe, as the editorial did, suggests it is inconsequential to urge that constitutional rights be repealed. Would The Post make the same argument about efforts to reverse Brown v. Board of Education?

In Bray v. Alexandria Women's Health Clinic, Mr. Roberts, on behalf of the Bush Justice Department, intervened as a friend of the court. The government's friendship was extended to Operation Rescue, which was terrorizing women who were trying to enter reproductive health facilities. Mr. Roberts argued that the nation's civil rights laws should be narrowly interpreted to preclude relief for women seeking constitutionally protected health services. Congress disagreed and the following year enacted the Freedom of Access to Clinic Entrances Act.

No one has an entitlement to a lifetime slot on the federal judiciary. The burden is on the nominee to demonstrate that he or she deserves Senate confirmation. This high threshold is essential to ensure that the judiciary will continue to guard our liberties against assault.

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Sent: 6/18/2001 11:48:56 AM
Subject: : FW: Judicial Media Review 6-18-01.wpd
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All --

The latest installment of our media survey on judicial nominations is attached.

Regards,

Jennifer
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The liberal magazine "The Nation" has a page dedicated to the defeat of Bush Judicial Nominees, by sending a letter to members of the Senate Judiciary Committee. "Use the letter below to tell Senate majority leader Tom Daschle and the nine judiciary committee Democrats to take a stand against appointing Bush's conservative nominees to the circuit courts." The page is located at:
http://www.thenation.com/alert/actnow/

GENERAL JUDICIAL ARTICLES

The New York Times
June 15, 2001

G.O.P. Reports an 'Impasse' Over Senate Reorganization
Alison Mitchell

Senior Senate Republicans said today that they had hit an impasse in talks with the new Democratic majority leader over organizing the Senate because of disputes about how to handle judicial nominees. They called for the issues in contention to be brought to the full Senate floor for a vote.

After two weeks of talks with Senator Tom Daschle of South Dakota, the new majority leader, the five Republican negotiators went public with their complaints this evening as the Senate was shutting down for the week.

"We are reluctantly here to announce we are at impasse at the moment," said Senator Mitch McConnell, Republican of Kentucky.

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The Republican senators said they had reached agreement with the Democrats on essential details like the size and makeup of committees. But they said they wanted the resolution needed to organize the Senate under Democratic control to contain an assurance that all nominees for the Supreme Court would come before the full Senate for a vote.

They said they also wanted the resolution to require that if any senator exercised the right under Senate tradition to block a home-state judicial nominee, the action must be revealed to the public. Senator Phil Gramm, Republican of Texas, called such disclosure a "good government, sunshine provision."

The Republicans handed out a report showing that since at least the 1880's, the Judiciary Committee had sent to the floor even those Supreme Court nominations that were opposed by a committee majority.

Mr. Daschle said in a statement that he would continue to try to resolve the outstanding issues "through negotiations and discussions rather than potentially divisive votes. "He said he had "stated publicly and privately my commitment to assuring a fair process for judicial nominees."

But he has resisted setting down any formal procedure. One Democratic Senate aide said that a "subtle distinction but an important distinction" existed between a guarantee that the Judiciary Committee would send a Supreme Court nominee to the full Senate and an informal tradition of doing so. "It would be an unprecedented new grant of authority to the minority party," the aide said.

The issue of judicial candidates and the ideological direction of the federal courts is one of the most delicate areas of dispute between the parties. During the six years that the Republicans controlled the Senate and Bill Clinton was president, the Republicans offered neither of the guarantees to the Democrats that they are now seeking.

But they say they have been disturbed by vows by some Democrats to stop conservative judges. And they say they would be willing to make the two provisions they are seeking permanent no matter which party has control of the Senate.

Senator Patrick Leahy of Vermont, the new Judiciary chairman, issued a statement saying: "There is more than a little irony in the charge from some Republican quarters that the Democratic Senate will treat President Bush's judicial nominees unfairly. Some Republicans seem to be expecting in Democrats the same wiles that the G.O.P. Senate used in killing so many of President Clinton's nominees."

If the Senate held a vote on the two issues, the Republicans would probably not prevail. But the vote would put the Democrats in the politically embarrassing position of opposing public disclosure and looking like they were ready to block President Bush's Supreme Court picks.

When the Senate switched last week to Democratic control with Senator James M. Jeffords of Vermont becoming an independent, Mr. Daschle became majority leader and Democrats became

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committee chairmen. But many of the details of the changeover need to be approved by a vote.

Mr. Daschle hinted today that a long stalemate could be a problem for Mr. Bush. "What that means is action in the committees on virtually anything is unlikely," he said. "We wouldn't be able to do nominations or legislation because obviously you don't have the full complement of membership on those committees."

The Washington Times
June 15, 2001

Bush's Judgeships Stall in the Senate

Dave Boyer

Senate Republican negotiators late yesterday declared an impasse in their talks with Democrats on President Bush´s judicial nominees and said it was time to move forward with an up-or-down vote on the new Senate organization.

"We are only asking for fairness," said Sen. Mitch McConnell, Kentucky Republican. The negotiators said the next move is up to Senate Majority Leader Tom Daschle, South Dakota Democrat, on whether to call a vote.

Republicans want the resolution to reflect the three points on which both parties agree, and the two contentious matters voted on independently as amendments to the resolution.

Republicans said the full Senate should have the opportunity to make a determination and that they would not filibuster if the resolution is voted down.

"We´re simply asking for there to be a vote. When we have fundamental differences, we vote," said Sen. Arlen Specter, Pennsylvania Republican. Both parties agree Democrats will have a one-seat majority on every committee, with the exception of the Ethics Committee, which by tradition is equally divided.

All committee members will retain their assignments, and committee funding and space agreements negotiated by the chairmen and ranking members will remain in effect. Democrats do not agree with Republicans that "blue slips," or single-senator veto slips on judges from home-state senators, should be eliminated.

Democratic leaders turned up the pressure yesterday on judgeships, accusing the GOP of holding up White House nominations by not submitting to the Democrats´ proposal to reorganize the Senate.

"They´re making my life easier," said Sen. Patrick J. Leahy, Vermont Democrat and chairman of the Senate Judiciary Committee. "For the life of me, I don´t know why they keep waiting. I´m

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ready to start (confirmation hearings) within 10 days to two weeks of the time that we reorganize."

Republicans say Mr. Leahy, one of the party's most liberal lawmakers, is a prime example of why they are pressing Mr. Daschle for assurances that Mr. Bush's nominees will be treated fairly. Mr. Leahy was one of the most outspoken critics of John Ashcroft's nomination for attorney general in a bruising confirmation hearing in January.

In two weeks of talks, Mr. Daschle has resisted Republican requests to promise floor votes on appeals court candidates and Supreme Court nominees if the Judiciary Committee rejects them. Mr. Daschle says he will hold up a deal to reorganize committees with Democratic majorities until both sides agree on the issue of nominations.

Democrats say Senate Republicans are only hurting their own administration by not accepting Democrats' more vague, nonbinding assurance to be fair to nominees. "Unfortunately, what that means is that action in the committees on virtually anything is unlikely," Mr. Daschle said yesterday.

"We wouldn't be able to do nominations or legislation. We're going to ... probably be faced with a bottled-up array of , but we won't be able to do that." Asked if he is "jamming" the White House's agenda, Mr. Daschle replied, "That's not my choice. I think it would be inexcusable for us to disenfranchise elected members of the Senate who were serving on these committees just a week ago, and now to tell them they can't vote. That isn't my jamming them, that is simply a reality; that's what senators are here to do, is to make decisions."

Referring to the new majority party's power to investigate the administration, Mr. Daschle added, "In the meantime, we'll be satisfied, I suppose, with the opportunities to hold oversight hearings and other kinds of hearings. ..." For example, Sen. Joseph I. Lieberman, Connecticut Democrat, has used his new chairmanship of the Governmental Affairs Committee to hold a hearing on the administration's refusal to set energy price caps in California. Mr. Lieberman, who lost his bid for the vice presidency last year and is considered a likely presidential candidate for 2004, also plans to hold hearings on Mr. Bush's environmental policies.

National Public Radio: Morning Edition
June 15, 2001

Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate

Bob Edwards, Anchor; Nina Totenburg, Reporting

This is MORNING EDITION from NPR News. I'm Bob Edwards.

For six years, Democrats fumed when President Clinton's judicial nominees were stalled

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by the Republican-controlled Senate. But the tables have been turned. Now there's a Republican president and a Democratic Senate. NPR legal affairs correspondent Nina Totenberg reports on what this could mean for President Bush's nominees.

NINA TOTENBERG reporting:

About 1/8th of the federal judiciary is vacant. But while 70 of the 102 vacancies are in the trial courts, President Bush has made just two nominations to fill those slots. Instead, the administration is concentrating on filling the 32 appeals court vacancies. The president has already sent the Senate names for half of those slots. There's a reason for that. The appeals courts are just one step below the Supreme Court, and these are the judges that are the final word in most of the cases heard across the country. Moreover, they are widely considered training grounds for the Supreme Court.

Indeed, it was the Clinton nominees for the appellate courts who were most ferociously stalled by the GOP in years gone by. The numbers tell the tale. Although Presidents Clinton and Reagan won confirmation for roughly equal numbers of judges in their two terms, Mr. Reagan won confirmation of 87 percent of his appeals court nominees, while Mr. Clinton won confirmation of only 61 percent, leaving the rest dangling without action.

In the last two years of the Clinton presidency, 17 appeals court nominees never got a hearing. Those who were confirmed waited, on average, more than a year. Contrast that with the wait for President Reagan's nominees in his last two years when the Democrats controlled the Senate, 17 weeks, and for the first President Bush's nominees, 15 weeks. The result is that now, after eight years of a Democratic administration, Republican appointees still dominate the influential appeals courts. President Bush wants to add to that advantage, and as Democrats see it, he has front-loaded the nomination process, concentrating his early judicial nominations in the appeals court. Senator Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, having served with six presidents, has this perspective.

Senator PATRICK LEAHY (Chairman, Senate Judiciary Committee): Presidents serve for no more than eight years; judges serve for a lifetime. And I think the Senate has a real responsibility to make sure that we have an independent judiciary, one that doesn't lurch to the right or the left.

TOTENBERG: And Leahy insists he will be fair.

Sen. LEAHY: I've talked with a number of Republican senators, and some have told me very frankly they were totally unfair to President Clinton and they're wondering if I'm going to do the same thing to them. I'm not. I'm not going to go for some kind of a payback.

TOTENBERG: Not surprisingly, the Republicans aren't taking those assurances at face value. A new group has sprung up, billing itself as bipartisan, and it's running ads, so far in just one state, South Dakota, which just happens to be the home of the Democratic Senate majority leader, Tom Daschle.

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(Soundbite of advertisement)

Unidentified Woman: Our legal system affects us all. Every day courts make decisions that impact our families. That's why President Bush supports commonsense judges with character, experience and intellect.

TOTENBERG: Oklahoma Governor Frank Keating, a Republican, is chairman of the sponsoring group, Citizens for Common Sense Courts.

Governor FRANK KEATING (Republican, Oklahoma): The judiciary shouldn't be an arm of either party. Let's fairly get judges considered and confirmed.

TOTENBERG: But while Keating's group bills itself as bipartisan, the Democratic featured most prominently in its literature, former Democratic Attorney General Griffin Bell, says he is, in fact, not part of the group, that he declined to join, and yesterday the group retracted his name. That's not to say that Republican fears are unfounded. Liberal groups are already lining up to oppose a significant number of President Bush's judicial nominees. Nan Aron is director of the Alliance for Justice, an umbrella group of civil rights, environmental and consumer organizations.

Ms. NAN ARON (Alliance for Justice): We have grave doubts about most of the candidates nominated by President Bush. They were chosen by this president specifically because, while they may be very qualified and have excellent records on the law, they have shown by their actions or writings a real hostility to the gains made by women, minorities, and hostility to the role that government plays in improving the lives of Americans.

TOTENBERG: And specific groups have targeted specific nominees. Americans United for Separation of Church and State is opposing University of Utah Professor Michael McConnell, a respective conservative scholar who's long argued for greater accommodation between church and state. Also opposed to McConnell is the National Abortion Rights Action League, which cites his strong opposition to Roe vs. Wade. In addition, NARAL is also fighting the appeals court nomination of John Roberts, who, when he served as deputy solicitor general in the first Bush administration, wrote a brief that argued against federally funded clinics allowing doctors to discuss abortion with their patients. In that brief, Roberts contended that Roe vs. Wade should be reversed, a position he was quizzed about by Justice Harry Blackmun in a later case that he argued involving abortion clinics.

(Soundbite of interview)

Justice HARRY BLACKMUN: Mr. Roberts, in this case, are you asking that Roe vs. Wade by overruled?

Mr. JOHN ROBERTS: No, Your Honor. The issue doesn't even come up.

Justice BLACKMUN: Well, that hasn't prevented the solicitor general from taking that position

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in prior cases.

TOTENBERG: But Walter Dellinger, who served as solicitor general in the Clinton administration, says it's very risky to judge judicial nominees by the positions they've taken as government lawyers.

Mr. WALTER DELLINGER (Former Solicitor General, Clinton Administration): The kind of arguments that John Roberts was making in the position of deputy solicitor general were the kind that a professional lawyer's expected to make when his client, the chief executive of which is the president of the United States, has run on those positions. I'm afraid that this is a process that will lead to the rejection of the most qualified of the nominees; that is, those who, like Roberts, have been out and have had a major lifetime of accomplishment.

TOTENBERG: Elizabeth Cavendish, the legal director of NARAL, disagrees.

Ms. ELIZABETH CAVENDISH (Legal Director, NARAL): He was aligned personally with these decisions. Again, he was a political appointee, and this was a signature position of the first Bush administration.

TOTENBERG: There's an irony in NARAL's position. Liberal groups were outraged when conservatives opposed some Clinton appointees because of positions they took as lawyers. I pressed the point on Cavendish. So you would say that those who are anti-abortion would be completely correct in voting their ideas and proposing pro-choice nominees.

Ms. CAVENDISH: It doesn't work both ways. The other side wants to turn back the clock on women's rights and roll back a fundamental right.

TOTENBERG: Just what will happen to the Roberts and McConnell nominations and others is unclear. When the Republicans controlled the Senate, those nominees had been slated for quick hearings. With the Democrats in control now, though, the first hearing is likely to be for Roger Gregory, an African-American from Virginia appointed by President Clinton to sit on an interim basis for a year on the 4th Circuit Court of Appeals. President Bush reappointed Gregory. Chairman Leahy says he intends to begin confirmation hearings in less than two weeks, but by tradition only one appeals court nominee is considered at a time, and historically there's an average of about one confirmation hearing a month.

With only three months left scheduled in this legislative session this year, that would mean three or four appeals court nominees possibly confirmed this year. Even that could be in doubt. North Carolina Republican Senator Jesse Helms blocked all of President Clinton's North Carolina nominees to the 4th Circuit, and nobody's quite sure what he will do about the Gregory nomination when it gets to the Senate floor, where he could put a so-called hold on it and send it into limbo.

Moreover, all confirmation hearings are on hold for the moment, because the Senate Democrats and Republicans have not agreed to a reorganizing plan in the aftermath of the Democratic

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takeover. The Republicans are seeking something that no Senate minority has ever had before: a guarantee that all the president's nominees will get a floor vote. Few observers believe the Republicans will get such an unprecedented guarantee, because the current stalemate is perfectly acceptable to the Democrats. If the Senate organization agreement is not forthcoming, it means simply that no nominations will move at all. Nina Totenberg, NPR News, Washington.

The Associated Press
June 15, 2001

Republicans Seeking to Secure Votes on Judicial Nominees

Jesse J. Holland

Republicans backed down on Thursday from some of their demands for how the newly Democrat-controlled Senate should handle President Bush's nominees for the Supreme Court and federal judgeships.

Earlier in the week, GOP negotiators demanded guaranteed Senate votes on all Supreme Court and federal appellate court nominees, and elimination of the secret veto process for some judicial nominations.

After Democrats refused, Republicans sought to allow the full Senate - instead of negotiators - to decide whether the Supreme Court nominees should be guaranteed a vote. They also want the Senate to decide whether to make the senatorial veto process public instead of private, as it has been in the past.

Democrats say they will treat Bush's nominees fairly. Republicans fear Democrats will block Bush's judicial nominations.

"We're not asking for there to be a commitment," said Sen. Arlen Specter, R-Pa., one of the five GOP senators who have been negotiating with Majority Leader Thomas Daschle, D-S.D. "We're asking for there to be a vote."

Daschle, who is trying to reorganize the Senate to reflect the Democratic takeover, is opposed.

"I remain committed to trying to resolve the outstanding issues around the organization of the Senate through negotiations and discussions, rather than with potentially divisive votes," Daschle said.

Democratic aides said the idea of making public the secret vetoes likely would come up a meeting Tuesday of Democratic senators.

The maneuvering is the result of Vermont Sen. Jim Jeffords' decision to leave the GOP and become an independent, altering the 50-50 split in the Senate. Republicans had control by virtue of Vice President Dick Cheney's tie-breaking vote.

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The two sides agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee funding and space agreements negotiated at the beginning of the year will stay in effect as well.

Sen. Orrin Hatch of Utah, the top Republican on the Judiciary Committee, said that while filibustering the reorganization had not been discussed, GOP senators told negotiators to "go to the wall" over the judges provision.

Daschle said that if Republicans and Democrats are unable to agree on a reorganization, "action in the committees on virtually anything is unlikely."

The American Prospect
July 2-July 16, Vol. 12, Issue 12

The Case for Borking

Randall Kennedy

As the battle over the federal judiciary heats up, progressives must convince the general public of a basic proposition: The judiciary is an inescapably political branch of government whose agents, the judges, should be viewed in much the same way other politicians are.

To say that the courts are political may seem so obvious as to be banal. There is, however, a deep and widespread impulse to deny the political character of the courts. An important manifestation of this denial arises in the context of selecting, confirming, or rejecting candidates for the federal bench.

Many people bemoan, for example, what they term the "politicization" of the judiciary (as if there existed a golden age when judicial selection and judicial decision making were uncontaminated by politics). Liberals and conservatives, Democrats and Republicans have taken turns accusing each other of indulging in this unpardonable sin.

Progressives, however, should get off that unproductive rhetorical merry-go-round, accept the ineradicable presence of politics in the judicial arena, and strive to shape the judiciary in such a way that it will produce good, sound, progressive rulings. That will entail, among other things, lobbying on behalf of jurists who will advance the progressive agenda and against those who will be hostile to it.

Article II of the U.S. Constitution empowers the president exclusively to nominate federal judges, while it imposes a check on presidential authority by making the seating of a nominee dependent on the Senate's "Advice and Consent." Whereas the president is armed with veto power over legislation, the Senate, in effect, has veto power over judicial nominations.

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Over the course of the nation's history, the Senate has exercised that power over Supreme Court nominees 29 times (and over district and appeals court nominees many times more). In addition to objecting to nominees on grounds of incompetence, dishonesty, or some other personal failing, senators have also voted nay for political or ideological reasons.

Opponents blocked George Washington's Supreme Court nominee Judge John Rutledge because of Rutledge's opposition to the Jay Treaty (despite the fact that the Senate had already confirmed him for a previous opening on the Court and that he had just served for an entire Supreme Court term as the interim chief justice).

Ulysses S. Grant's nominee Attorney General Ebeneezer Rockwood Hoar was not confirmed because he had opposed President Andrew Johnson's impeachment.

Herbert Hoover's nominee Judge John Parker was blocked because of Parker's perceived hostility to organized labor and the advancement of African Americans. And Ronald Reagan's nominee Judge Robert Bork didn't make it because opponents feared, among other things, that he would energetically attack abortion rights.

In principle there is nothing wrong with political blocking, even if doing so stems entirely from one particular issue. Would we now condemn a senator who, prior to the Civil War, voted against a nominee solely on the grounds that the candidate favored slavery? I would hope not.

Yet many people sneer at the notion of litmus tests for purposes of judicial selection or confirmation--even as they unknowingly conduct such tests themselves.

Litmus tests of all sorts are scattered about the judicial-selection process. When senators ask a nominee whether he or she believes that the proper role of a judge is to interpret rather than make law, or whether the Eighth Amendment should be deemed to prohibit capital punishment--all the while silently insisting upon an expected formulaic reply--they are imposing a litmus test.

Today, a candidate would not be nominated, much less confirmed, if he or she failed to genuflect convincingly to Marbury v. Madison (which established the authority of the Supreme Court to invalidate an act of Congress deemed to be in conflict with the Constitution), Brown v. Board of Education (which invalidated de jure racial segregation in public primary and secondary schools), or other once-controversial decisions that have become so thoroughly a part of the conventional wisdom that we no longer even perceive reactions to them as litmus tests of acceptability.

Since senators (and the public as a whole) should feel free to object to a nominee on political grounds, they should also feel free to demand that nominees truthfully divulge thinking that bears upon relevant judicial matters. Nominees--both liberals and conservatives--often claim that they cannot answer certain questions because to do so would be to prejudge a matter that may come before them.

But that response is typically a mere dodge to avoid controversy. Senators need not accept this.

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If a
candidate refuses to answer relevant questions, senators should take that refusal into consideration when determining whether to vote to confirm. It makes no sense to offer lifetime tenure and all the power of judicial review to candidates whose thinking about crucial matters is unknown.

A transparent process in which ideological objections to judicial candidates are candidly voiced is a much-needed antidote to the murky "politics of personal destruction. "When politicians (again, both liberal and conservative) feel disabled from objecting to candidates on ideological grounds, they search high and low for pretexts on which to object: "He made this lewd statement to a colleague a decade ago," or "She committed this technical infraction of law."

Senators should not feel that they have to reveal or attack some personal blemish in order to justify a vote against a nominee. A deep, urgent, political disagreement is sufficient. It should be possible for a senator to acknowledge that a nominee is honorable, competent, and kind while still voting against confirmation because of the way the candidate would likely act as a judge. Nothing personal. Just politics.

The American Prospect
July 2-July 16, Vol. 12, Issue 12

Halting the Judgernaut

Alexander Wohl

As Capitol Hill adjusts to Vermont Senator Jim Jeffords's earthshaking repudiation of the Republican Party, the Senate Judiciary Committee is bracing itself to be the center of the aftershocks. The judicial branch of government, after all, is where a president is likely to have his most far-reaching impact; the judges he appoints will last much longer than the one or two terms he serves. And the Judiciary Committee--which is a key venue for debate about potent legislative issues such as abortion, school prayer, flag burning, and civil rights--is also the primary battleground in judicial-confirmation fights. Thus, with George W. Bush's first slate of nominees for the federal bench waiting for hearings, the most resounding political clashes of the summer are likely to occur on the Judiciary Committee's turf.

When Jeffords abandoned the Republicans, he threw control of Senate committees to the Democratic Party, providing Dems on the Judiciary Committee with the power to strangulate nominations in committee. (Actually, as of this writing, Republicans--aware of how defiantly they refused to allow many of Bill Clinton's nominations to get beyond the Judiciary Committee,

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and afraid of payback--are trying to force the Democrats to permit a full Senate vote for every judiciary nominee. A politically foolish position that will likely come to a quick resolution, this could bring all Senate business to a halt.) Given a free hand to nominate and confirm judges, Bush and the Senate Republicans would no doubt populate the federal bench with an army of Antonin Scalia clones--a legion of judges who, though perhaps ethnically diverse, share the extreme views of the Court's most conservative jurist. Indeed, the first batch of nominees the president sent to the Senate for confirmation has already made this clear. One logical response to such nominees would seem to be simply to block their consideration--especially since that was the Republican response to Clinton nominees whom the GOP considered to be too liberal.

But early signs indicate that the newly Democrat-controlled Judiciary Committee, along with the Senate as a whole, is taking a less direct and more wide-ranging approach, one that makes use of several different strategies at once while trying to minimize the danger of a public backlash. This highlights an important question , Is it worth letting all but the most conservative judges onto the federal bench--where they will preside for lifetime appointments, potentially lending important appeals courts a conservative coloration for up to 30 or 40 years--in order not to appear "obstructionist"? For some Democrats concerned with winning re-election, the answer may be yes. Still, if they're smart and stick together, the Democrats on the Judiciary Committee may be able to ensure that only the more moderate of Bush's nominees come to a full Senate vote--and to demonstrate the wisdom of their case to the American public.

"Don't Mess with Vermont"

How successful the Democrats are in preventing the confirmation of conservative judges will depend heavily on the committee's new chairman. A soft-spoken, liberal Vermonter, Patrick Leahy is a 27-year Senate veteran who has distinguished himself from many of his colleagues with his integrity and lack of ego. Smart and unafraid to play political hardball when necessary, he is adept at diffusing tension with gentle humor. (The day after the Jeffords switch, for example, "Don't Mess with Vermont" bumper stickers--attributed to Leahy--appeared around Washington, D.C.)

Leahy replaces Utah Senator Orrin Hatch--a fierce conservative whose favorite topic in recent committee sessions has been his own evenhandedness--as the ranking majority member on the committee. (Transcripts of recent hearings reveal Hatch to be remarkably, repetitively taken with his own "fairness.") Though Hatch has worked with Democrats on occasion, he fights hard for conservative Republican nominees and has the battle scars from the Robert Bork and Clarence Thomas Supreme Court nominations to prove it.

Leahy and Hatch consider themselves close friends and generally work well together. During Hatch's quixotic presidential run through early 2000, Leahy offered "to speak for him or against him, whichever would help more." But beneath this geniality, both sides are girding for war. Within days of Jeffords's announcement, Hatch was warning Democrats that "nobody's going to push me around." Leahy, for his part, has shown himself unafraid to take on the Republicans: He has challenged the GOP's hypocritical statements about the "quick pace" of Clinton

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nominations during Republican control of the committee and engineered a walkout from a hearing in which he felt the Republicans were trying to strong-arm Democrats into approving Bush nominees.

But for the first time in seven years, the Democrats have the numbers--if not literally (at this writing, the Senate leadership is negotiating whether the party balance on the committee will remain evenly split or a Democrat will be added to give the Dems a one-person advantage), then at least in terms of power. Majority status gives Leahy the gavel--and with it, the power to schedule and time hearings. Democrats now control the process: They decide when (and even if) nominees are brought up, how zealously they are interrogated, and how quickly they get voted on. And Senate Democratic aides say that Leahy is ready to take a much tougher line than others have in the past.

The recent debate over Ted Olson's nomination as solicitor general suggests how potent the Democrats' new majority status on the committee can be, if only they can muster the courage to exercise it. Erstwhile Senate Majority Leader Trent Lott was forced to discharge Olson's nomination from the Judiciary Committee (he did this under the bargain struck relating to the 50–50 Senate divide) the day Jeffords announced his switch: Lott knew that if he waited, the Democrats could use their new power in the Judiciary Committee to withhold the nomination from the floor. Moreover, after seeing Olson get voted in by the Senate--albeit by a razor-thin majority--Democrats surely understand that stopping someone is easier in committee than on the Senate floor, where there is the danger that some conservative Democrats will join the Republicans in crucial votes, as Georgia's Zell Miller and Nebraska's Ben Nelson did on Olson.

But now that the Democrats possess the power in the Judiciary Committee, will they be willing to use it? After failing to block Attorney General John Ashcroft and Solicitor General Olson, some Democrats said, in effect, "Well, we got enough votes to demonstrate that we could block a nomination--but we didn't do it because these were only cabinet appointments, not Supreme Court justices, which are lifetime appointments." Fair enough. But lower-court federal judges get appointed for life, too. Do the Democrats have the will to scrutinize and oppose district and circuit court candidates?

Whom to Oppose?

Democrats are still strategizing about whom they should oppose. This requires a calculated analysis not just of the nominees' records and the courts for which the judges have been nominated, but of public opinion. Democrats have seen how the perception of obstructionism or intransigence has sometimes hurt the Republicans--most notably after the government shutdown in 1995, during Clinton's impeachment in 1998, and last month when the GOP lost Jeffords--and don't want to be perceived that way themselves.

Both Leahy and the new majority leader, South Dakota's Tom Daschle, have said that they will work to prevent an ideological court packing and that they want "good, moderate, middle-of- the-road, credible" nominees. But already a number of Bush's nominees fall outside that description. This is particularly significant right now, because--after years of Republicans stonewalling Bill

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Clinton's nominees--there are many vacancies, including 31 openings on federal appeals courts. Several circuit courts of appeal are very closely divided between liberals and conservatives. (The tiny First Circuit, for example, whose six judges cover Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico, has one opening and leans barely Republican; and the Third Circuit, which includes Delaware, New Jersey, Pennsylvania, and the Virgin Islands, is evenly divided and has two vacancies.) Just a few Bush appointees could tilt the judicial balance of the country in a decidedly conservative direction for a long time to come.

So Democrats considering circuit court nominees need to examine not just whether the prospective lifetime appointee has views so extreme as to be out of the mainstream, but whether adding that person to a court will change the ideological complexion of a particular circuit.

Given these parameters, there are several clear targets among the first group of Bush nominees. For instance, two Fourth Circuit nominees cry out for opposition. Terrence Boyle, chief judge of the U.S. District Court of the Eastern District of North Carolina, is a former aide to Senator Jesse Helms and, not surprisingly, is extremely conservative. He was already denied a spot on the court of appeals in 1991, when he was nominated by President George H.W. Bush, but the Senate did not act on his nomination. Helms retaliated by blocking all of President Clinton's nominees to fill North Carolina's Fourth Circuit vacancies. (Helms's desire to get Boyle on the court is ironic given Helms's repeated statements over the past several years that "there is no need to put more judges on that court because to do so would make it less efficient.")

The other nominee to the Fourth Circuit, South Carolina District Judge Dennis Shedd, is equally conservative; he served as chief counsel and staff director under former Judiciary Committee Chairman Strom Thurmond, who is now a senior committee member. Although Shedd has already attracted much opposition from civil rights groups, it will require coordinated strength to block him, given the tradition of deference to nominees who once worked in the Senate, even if only in a staff capacity.

But the Fourth Circuit already tilts heavily to the right. In contrast, the Sixth Circuit (which covers Michigan, Ohio, Tennessee, and Kentucky) and the D.C. Circuit are closely divided. Thus, Miguel Estrada, nominated for the D.C. Circuit, and Jeffrey Sutton, nominated for the Sixth, are judicial conservatives whom Democrats could confidently and appropriately oppose.

After the Supreme Court, the D.C Circuit is generally seen as the most powerful court in the nation, because of its role in interpreting statutes and agency decisions and because it has historically served as a springboard for potential Supreme Court nominees. Adding Estrada--who was a law partner of Ted Olson and is known for sharing the judicial philosophy of Justices Scalia and Thomas--to that court, along with another Bush nominee, the conservative John Roberts, would significantly enhance a slight conservative majority on this key bench.

The Sixth Circuit is even more closely divided. A former state solicitor from Ohio, Sutton--who has argued a number of times in the Supreme Court for expanded state power and for voiding congressional initiatives--has already been the focus of opposition. But another Sixth Circuit nominee, Ohio Supreme Court Justice Deborah Cook, also deserves a close look. In one

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representative decision, she denied a blind woman's request to be admitted to medical school because of the undue burden it would have placed on the school.

The 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, & Wyoming) also is narrowly divided. The nomination to this court of Michael McConnell, a Federalist Society conservative and a professor at the University of Utah, has already generated opposition because of his extremist interpretation of the religion clauses of the First Amendment and their potential application to a variety of social issues ranging from school vouchers to gay rights.

Democrats can prevent Bush's nominees from being confirmed in several ways. First, of course, is to vote them down, either in committee or on the floor. Second is to delay their confirmation hearings indefinitely, as the Republicans did for so many Clinton nominees. (A variation on this option is to use control of the process to lengthen investigative hearings when that would be effective.) Expect Leahy to make use of both tactics. But more important is a third approach, which is to avoid nasty committee fights and use the potential power of a unified Democratic majority--for now, the committee will follow the caucus party line and vote up or down together--to influence the White House not to nominate right-wingers in the first place. It is therefore incumbent on the Bush White House, which until now has given only lip service to the idea of consultation with the Senate, to work with Leahy and the Democrats if it wants its nominees to be confirmed in a timely fashion.

Finally, several changes in procedure will slow down the process while adding an opportunity for more information and fairness. Leahy has already promised to reinstate the use of evaluations by the American Bar Association before any hearings. (This nonpartisan analysis of candidates, which every president since Dwight D. Eisenhower has used in considering nominees, was eliminated by George W. Bush.) Leahy is also likely to hold quick hearings for less controversial nominees and for nominees who are designated for courts with the greatest need before turning to the possible challenges. In this way, he can accumulate public support that he can later use in opposing the more conservative or controversial nominees. And he will probably not hold hearings for more than one nominee at a time--something that makes abundant sense but that the Republicans failed to do.

The prevailing view has been that nominees are presumed to be confirmable, unless senators or interest groups find something "wrong" with them. Some legal scholars have proposed the idea of requiring nominees to demonstrate why they should be confirmed, and there are signs that Leahy is open to this approach.

The Senate has an important role to play in evaluating and challenging individuals who are being appointed to a lifetime job of interpreting the Constitution. While Republicans are likely to cry "Bork!" whenever a nominee is criticized (even though the same Democratically controlled Congress that rejected Bork overwhelmingly confirmed Scalia), Democrats should not shy away from opposing any (and even many) of President Bush's nominees. Nor should they be tempted to give free passes to minority candidates if those candidates are too conservative. The Constitution says that the Senate will give its advice and consent on all nominations. Most Americans don't want a judiciary slanted sharply in either direction. We will soon see whether

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the new majority in the Senate has the guts and the ability to make a credible case to the American people that President Bush should not have the unilateral authority to shape the judicial branch in his conservative image.

The Washington Post
June 17, 2001

At High Court, a Retirement Watch

Rehnquist, O'Connor Top List of Possibilities as Speculation on Replacement Grows
Charles Lane and Amy Goldstein

As the Supreme Court prepares to end its term this month, the White House, the Senate and interest groups across the ideological spectrum are preparing for the possibility that a member of the court might retire, with Chief Justice William H. Rehnquist's departure the most frequently mentioned scenario.

There is no direct evidence that Rehnquist, 76, or any other member of the court is planning to step down this year. Justice Sandra Day O'Connor, 71, recently dampened speculation about her departure, making an unusual announcement that she had "no plans" to leave. When Rehnquist was asked through the Supreme Court press office for a similar statement, he declined to comment.

Now that a Republican occupies the White House for the first time in eight years, however, court observers consider it more likely that Rehnquist or O'Connor, who were both longtime activists in Arizona Republican politics before being appointed to the court by Republican presidents, will step down sometime in the next few years.

"Make no mistake," said one longtime friend of the chief justice, Rehnquist would prefer to "return" his seat to a Republican president. But another justice recently told a friend there was no suggestion around the court that a departure is imminent.

Similarly, a lawyer who has regular contact with the White House counsel's office said, "I don't see the kind of frenzied activity by people who would be involved" in the administration if they knew a retirement were looming. In the past, many justices have directly or indirectly relayed their departure plans to the White House slightly before announcing them publicly, often at the end of the term.

Nonetheless, the thought of stepping down apparently has at least crossed Rehnquist's mind. When PBS interviewer Charlie Rose asked in February if he could imagine retiring, Rehnquist replied, "Sure."
Justice John Paul Stevens, 81, is older than Rehnquist and O'Connor, and he also was appointed by a Republican president, Gerald R. Ford, in 1975. But Stevens is not considered a likely candidate for retirement. He remains in vigorous health -- and, though still nominally a

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Republican, has moved to the left in his years on the court. He dissented vigorously from last year's court decision, spearheaded by its most conservative members, to stop the Florida recount and effectively ensure Bush's victory.

There have been no changes in membership at the Supreme Court since Stephen G. Breyer replaced Harry Blackmun in the fall of 1994, creating the second-longest period of stability in the court's history and pent-up anxiety about when the next vacancy will occur.

In such an uncertain climate, the administration, Congress and advocacy groups are keenly sensitive to the opportunity President Bush will have to shape the court -- one of the presidency's most enduring powers. The White House and the Justice Department have been working for months to define the factors that would go into choosing a nominee, as well as beginning to sift through potential candidates.

"We are working hard to be prepared," said White House Counsel Alberto R. Gonzales, who oversees the selection process and is himself a potential choice. "Even during the transition we began thinking about possible nominees to the court."

On Capitol Hill, Republicans on the Senate Judiciary Committee have already begun "informal discussions and talks" about potential candidates, said Makan Delrahim, the committee's GOP staff director.

In the meantime, conservative and liberal advocacy groups have been working aggressively to try to influence the president's eventual choice -- and public opinion. Conservatives have been urging Bush not to back down from his campaign statements that the current justices he most admires are Antonin Scalia and Clarence Thomas, the members furthest to the right.

"We are looking to him to stay as close to that standard and as consistently close to that standard as he can," said Thomas L. Jipping, director of the judicial selection monitoring project of the Free Congress Foundation.

On the left, civil rights groups and women's organizations have been trying to stoke public fears that Bush's impact on the court could have dire consequences on issues ranging from abortion to education to affirmative action.

"If George W. Bush follows through on his promise to the right wing and nominates someone in the mode of Scalia and Thomas and Rehnquist, then there is going to be an epic battle," said Ralph Neas, president of People for the American Way.

The ideological skirmish that has broken out in Congress during the last month over Bush's initial nominees to lower federal courts is widely considered a prelude to the full-scale battle that a Supreme Court opening could create.

According to aides in the administration and on Capitol Hill, the cross pressures on the president in making his selection will be intense. On the one hand, the shift of the Senate this month to

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Democratic control, analysts say, could hinder Bush's prospects for securing a replacement as conservative as Rehnquist. At the same time, the GOP's right wing is insistent that the president must not reduce conservative strength on the court by nominating anyone more liberal than Rehnquist.

"The difficulty is that the president has got to decide, 'How much political capital am I willing to bleed for a controversial Supreme Court nominee?' " said a conservative legal expert.

In such a contentious environment, names that have been considered among Judiciary Committee Republicans, sources said, include federal appeals court judges Emilio Garza, Edith H. Jones and J. Michael Luttig and the committee's ranking Republican, Sen. Orrin G. Hatch (Utah).

Other possibilities the president might favor, a variety of sources say, include conservative appeals court judges J. Harvie Wilkinson and Frank H. Easterbrook and Washington lawyers John G. Roberts and Miguel Estrada, both nominated by Bush last month to the federal appeals court here.

Bush also could look to members of Congress, such as Sen. Jon Kyl (R-Ariz.) or Rep. Christopher Cox (R-Calif.), who was being considered by the White House this spring for an appeals court seat but withdrew from consideration because of opposition from California's Democratic senators.

Administration officials declined to confirm any candidates they are contemplating. Bush has indicated he would like to nominate the first Hispanic justice, a move that might help him woo Latino voters in 2004 and improve his chances of winning confirmation in the Senate. In that context, Gonzales, a former justice on the Texas Supreme Court and a confidant of Bush's, is considered a prime candidate.

Asked whether he might accept a nomination, Gonzales said: "I am asked this question a lot. I typically say I don't intend to be a candidate. . . . My focus is working here, serving this president in this capacity."

Some conservatives consider Gonzales too moderate, and others view him as lacking the experience to become chief justice. To allay such concerns, Bush could make a double switch, nominating a current member of the court -- perhaps O'Connor --to replace the chief justice and naming Gonzales an associate justice.

"Politically, nothing beats that pair," said a lawyer who knows several of the justices personally.

Rehnquist's departure would not be as politically momentous as that of O'Connor, who is a swing vote on the closely divided court. Rehnquist is a consistent conservative, so the prospect of an equally conservative Bush-nominated successor for him would merely reinforce the existing ideological mix.

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"If O'Connor is stepping down, then there will be all these arguments . . . about the balance of the court," said Terry Eastland, publisher of the conservative Weekly Standard and a senior Justice Department official in the Reagan administration. "With Rehnquist, the Democrats might be more willing to defer to the president in terms of judicial philosophy."

By regaining control of the Senate, the Democrats now run the Judiciary Committee, which will largely determine how quickly a nomination is processed -- and how much the nominee is grilled about his or her judicial philosophy.

Some Senate Democrats have begun discussing whether they would even employ a filibuster or other procedural tactics to block a Bush appointee from being voted on by the full Senate -- a sharp departure from past practice. In 1987, Robert H. Bork was allowed a vote on the Senate floor, even after the Democratic-controlled Judiciary Committee rejected him. Bork lost the floor vote, 58 to 42.

Rehnquist has been on the court since 1972, when he became an associate justice under President Richard M. Nixon. President Ronald Reagan elevated Rehnquist to chief justice in 1986, to replace the retiring Warren E. Burger.

In a recent interview with Fox News, Rehnquist said he had thought of departing before he was tapped to be chief justice. He acknowledged he has been having trouble lately remembering names and sent this wistful message to his television audience: "I'll tell them this, that I just think I've been extraordinarily fortunate in my life, and I'm very grateful for my good fortune."

Rehnquist's health, particularly severe back pain, has been a problem in the past. Although he still must rise from the bench and stretch his back during the court's two-hour oral argument sessions, he now appears to be in good physical and mental condition.

Under Rehnquist, a five-member conservative majority on the court has moved the law in a decidedly conservative direction, trimming affirmative action, clearing legal obstacles to the application of capital punishment, and limiting federal authority over the states.

Asked during the PBS interview if it would make a difference to him that there is a Republican in the White House, Rehnquist did not answer directly but did concede that there had "traditionally" been a "slight preference" by justices to retire during administrations of the party that appointed them.

The Washington Post
June 18, 2001

Daschle's 'Intensive Care Unit' to Attend to Patients' Rights

John Lancaster and Helen Dewar

*** EXCERPT ***

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POWER PLAY: The Senate has once again gone into overtime in trying to nail down the fine points of its shifting power balance, delaying approval of a new resolution on committee organization because of an unresolved dispute over the handling of judicial nominations.

Without an agreement, freshman senators are left without committee assignments, many Democratic committee chairmen have to operate with Republican majorities -- and President Bush will have to wait awhile longer for action on his nominees.

The reason is that the power-sharing agreement negotiated when the Senate was evenly divided lapsed when Democrats took control this month, meaning that committee organization reverts to what it was at the end of the 106th Congress -- until a new agreement is reached.

After two weeks of quiet, behind-the-scenes negotiations, Republicans went public last week with demands for a guarantee that Supreme Court nominees will come to the Senate floor for a vote and for public disclosure when nominees are blocked by their home-state senators under the "blue slip" process. They said they asked Majority Leader Daschle to put the two proposals to a vote by the Senate, and he refused.

Later, Daschle issued a statement saying he has made both public and private commitments to "assuring a fair process for judicial nominees" and wants to resolve remaining organizational issues "through negotiations and discussions, rather than with potentially divisive votes."

On a party-line vote, which is customary on votes related to party powers, the GOP proposals would be defeated 51-49. But Republicans could claim a moral high ground in favor of full disclosure and fair treatment for a new president's nominees.

MEMBERS OF CONGRESS

Fox News Sunday
June 17, 2001

Senate Majority Leader Tom Daschle on Judicial Nominations
Tony Snow, Juan Williams

WILLIAMS: Senator Daschle, since Mr. Jeffords has come over, at least for caucus purposes, with the Democrats, there's been no reorganization of the Senate. So I'm wondering, how are you operating? And what pressures are there on you, as the Senate majority leader, to in fact now reach some deal with the Republicans so that you can get back to business?

DASCHLE: Well, Juan, I've told my Republican colleagues that I'm not going to jam them, I'm going to give them time to sort this out. These transitions are never easy. It took Senator Lott and I a couple of months to work out power-sharing.

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But this is nothing compared to what we had to work through with power-sharing. That was unprecedented. The circumstances now are certainly not unprecedented, and we went through a lot of the same types of questions in the 1950s. Ao this is really a matter of whether we have the one-vote majority in committees, whether or not we revert back to power-sharing if something would change, whether or not we can work (Publication page references are not available for this document.) out staff and budgets. I think we can, and I think we're getting closer.

WILLIAMS: Well, now, what about the pressure coming from the GOP to say, listen, we want some assurances, we want them written down, and, in specific, concern about judicial nominations and the fact that they not get bottled up in committee but be able to reach to the Senate floor for a full vote?

DASCHLE: Well, I have said over and over that we're going to be fair. We are determined not to engage in any payback. We're not going to do what we think in many cases was done to our nominees in the last eight years. That isn't what we're all about.

What we want to do is move forward, assure that there are votes. But we don't want to abrogate the constitutional process of advice and consent, to make sure, absolutely certain that the judiciary committee has the prerogative and has the responsibility that it's been charged to take on. And that's what this is about.

SNOW: But, Senator, the constitutional obligation is for the entire Senate, it's not the Senate Judiciary Committee. And the founders never said, well, we want the Judicial Committee to decide who gets to serve as judges.

What have you told Republicans, other than that you'd be fair? Specifically, what have you promised them?

DASCHLE: Well, what I've promised them, Tony, is that we were going to assure them that every nominee, regardless of whether it's judiciary or executive, will have a fair hearing, will have an opportunity to be considered, and I can't go any further than that.

Obviously, we don't want to see happen what happened over the last five years, where some judges were kept without even the opportunity to be heard for over four years; where some senators, because you had secret holds, were given no opportunity to have the right to be considered and to be voted on. We're not going to do that. I don't think we should do that.

But I'm not going to engage or commit to an extralegal process that says, in some cases, regardless of what the Judiciary Committee does, we're going to bypass the committee and go straight to the floor.

SNOW: Why not? That's the agreement you just had.

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DASCHLE: No, no, I don't think we've ever had an agreement of that kind.

SNOW: Did you not have an agreement that, when you had the 50-50 power-sharing agreement, that nominations would go to the Senate floor?

DASCHLE: No, what we had was an agreement that either the majority or the minority leader could make a motion to proceed to a nomination. And I obviously would be willing to look at something like that. But never did we have an automatic commitment that any nominee or any bill would come straight to the floor.

Meet the Press
June 17, 2001

Senator Joe Biden on Judicial Nominations

Tim Russert

MR. RUSSERT: You're also a member of the Senate Judiciary Committee.

SEN. BIDEN: I am.

MR. RUSSERT: Harry Reid, Democratic senator from Nevada and a colleague of yours, said the other day, talking about the Supreme Court: "We may wind up with another Scalia. Even though I disagree with the result of some of his opinions, his ability to reason is about as good as I've ever seen. I'm not looking for another Antonin Scalia, but I think that he brings with him such an intriguing background and such a brilliant ability to reason, that if we had someone like him, it would be a tougher decision for the Senate."

SEN. BIDEN: Wouldn't be tough for me at all. I've spoken to Justice Scalia. I consider us good acquaintances. So we kid each other occasionally when he--like, for example, I got a note or a call, I can't recall which, saying when the special prosecutor thing was--when we all voted against it, you know, reinstating, he called and says, "See, I was right the first time in the Morrison vs. Olson case."

I teach constitutional law--he called me and said, "I better come up and help you with those students. They're getting the wrong idea." As I've said to him, bluntly, I regret--the two most regrettable decisions I made were voting for him and voting for Reagan's tax cut.

MR. RUSSERT: Scalia was confirmed 98-to-nothing.

SEN. BIDEN: No--he was, but you--remember the context then? The context was we had a governor named Mario Cuomo saying he'd kick anybody's rear-end who didn't vote for the Italian. And, you know, remember he didn't answer any questions and no one forced him to answer any questions. Look, the fact that someone is brilliant does not qualify them to be on the Supreme Court. They can be brilliant and wrong. I would like--for example, I think it's

important there is a Scalia on the court. I'd like another Brennan on the court, as well. But if you want someone who's brilliant in his reasoning, equally as consequential, I'd take Souter. He's equally as bright as Scalia. Writes better than...

MR. RUSSERT: As chief justice.

SEN. BIDEN: As chief justice.

MR. RUSSERT: You don't believe the Democrats would ever support Scalia to be chief justice of the Supreme Court?

SEN. BIDEN: I'm not speaking to the Democrats. I'm speaking for me. His view of the Constitution, that there are no unenumerated rights in the Constitution, that there's a very--this is the most activist Supreme Court we've had in the history of the United States of America, Tim. They have--they're the only court that has ever declared unconstitutional seven national pieces of legislation. People don't know. They declared, for example, the Older Americans Act unconstitutional as it applies to states.

MR. RUSSERT: But doesn't George Bush have a right to have conservatives on the Supreme Court?

SEN. BIDEN: Sure, he does. And I have a right to have who I want. This is what they call, you know, co-equal branches of government.

MR. RUSSERT: A liberal litmus test?

SEN. BIDEN: No, no. No, no, no. You're putting words in my mouth. You said, "Does he have a right to have conservatives?" To the degree that he pushes to the right, I can push to the center or to the left. The Constitution says that the United States Senate gets to determine--he gets to pick, his is to propose, ours is to dispose. We have from Rutledge back in the turn of the century with George Washington straight on through. We've rejected people whose views we believe are out of sync with what the Senate is.

I was asked advice by President Clinton when he had a chance to put people on the court. I went down to see him. I said, "Mr. President, when there's a divided government, you should pick someone in the middle. You should understand that." And he did. My advice to the president of the United States is if he wants a holy war, he can do that and pick another Scalia. But there's a divided government. The nation is divided on these issues. He should pick someone who is a centrist. He can be center right, but to pick someone on the extreme left or right would be a serious mistake, in my opinion.

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OP/EDS

The Columbus Dispatch
June 16, 2001

Two Superior Judges Merit Confirmation

Jim Petro, Ohio State Auditor (Editorial)

During the 2000 presidential campaign, President Bush promised that he would nominate for federal judgeships only people of the highest integrity and professional competence and who possess the proper judicial temperament. Recently, Bush began delivering on that promise by nominating 11 men and women from across the country from both political parties for seats on the various federal courts of appeal.

Ohioans should be proud that for the first two of seven vacancies on the 6th U.S. Circuit Court of Appeals, which covers Ohio, Michigan, Kentucky and Tennessee, the president nominated two outstanding Ohioans to serve on that bench: Ohio Supreme Court Justice Deborah L. Cook and former state solicitor Jeffrey S. Sutton.

As former assistant prosecutor, city law director in Rocky River and lawyer in private practice for the past 28 years, it has been my pleasure and privilege to have appeared before and practiced with thousands of judges and attorneys throughout the state. Without a doubt, Cook and Sutton are among the best-qualified lawyers to serve in the federal judiciary that I have seen in my legal career.

After a distinguished 13-year career in private practice in Akron, Cook joined the Ohio Court of Appeals in 1991, where she quickly developed an excellent reputation for her hard work and for the quality of her opinions. Elected and re-elected to the Ohio Supreme Court in 1994 and 2000, Cook has been praised by The Dispatch for her "keen intellect" and "careful legal scholarship."

The newspaper noted that she applies the law "without fear or favor" in crafting rulings that are governed by the Constitution and not by popularity polls or special interests.

Sutton graduated first in his class at Ohio State University Law School and served as a law clerk for two different U.S. Supreme Court justices, a rare honor. As Ohio's state solicitor, he was responsible for arguing cases of the utmost importance to Ohioans before both the Ohio and the U.S. Supreme Courts.

A prolific legal scholar, Sutton has written more than 50 law review articles and two legal texts. While keeping his private practice in Columbus, he also is teaching constitutional law at OSU

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law school.

When Bush submitted his nominees for the federal appeals courts to the U.S. Senate for confirmation, he called upon senators of both parties to restore civility and dignity to the confirmation process, and, most importantly, he asked for a prompt vote on each nominee.

Right now the court, based in Cincinnati, is critically short of judges to handle an ever-expanding caseload. Because of their impeccable credentials, Cook and Sutton should be swiftly confirmed.

The Columbus Dispatch
June 17, 2001

Lack of News Makes Pontificating Difficult but Not Impossible

Joe Hallett, Dispatch Politics Editor

A big patch of white space, a fast-closing deadline and an empty head. Mid- June and the dog days are here already. Will loyal readers -- both of them -- notice if there is no column this week? Can't do commentary without some news. It's plain dead around here.

Speaking of death, maybe column grist could be ground from the pending U.S. Supreme Court case on whether mentally ill murderers should be executed. But what's the point now? We already killed schizophrenic Jay D. Scott.

The legal system, though, is always column fodder, and it would be timely to discuss President Bush's nomination of Columbus attorney Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals in Cincinnati.

But that has to do more with the political system, and editors are always griping that readers don't care about politics. Why waste a column on it? So what if the new Democratic majority in the U.S. Senate, for its own partisan aggrandizement, stands ready to ravage Sutton's reputation?

So what if the Democrats are salivating to tar Sutton unfairly as an uncompassionate conservative for having the audacity to argue successfully before the U.S. Supreme Court that the Constitution limits the ability of citizens to sue state governments for discrimination against the disabled?

Does anyone think for a moment that Senate Democrats will care that Sutton, at age 40, suffers from osteoarthritis, a degenerative disease that eventually would have put him in a wheelchair, if not for the miracle of hip- replacement surgery?

Will Senate Democrats give a hoot that Sutton, a brilliant attorney by virtually everyone's account, has a history of performing free legal work for social causes and groups? He has

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argued, pro bono, on behalf of the National Association for the Advancement of Colored People, the Anti-Defamation League of B'nai B'rith, the Center for the Prevention of Handgun Violence and the American Civil Liberties Union.

Not long ago, Sutton took up the cause of a Chillicothe prison inmate and won a 9-0 decision from the U.S. Supreme Court, the ninth case in five years he had argued before the high court, probably more than any other private attorney.

Senate Democrats won't care. They're bent on getting back at Republicans for confirming only 61 percent of President Clinton's judicial nominees. When and if the Democrats give Sutton a hearing, they'll be more concerned about placating the constituencies who larder their coffers than putting a fair, honest person on the federal bench.

In a hearing process that too often has turned well-meaning nominees from both parties into bitter and spiteful judges -- Supreme Court Justice Clarence Thomas comes to mind --Sutton will be put through the political wringer, used and abused, to signal Bush that his Supreme Court nominees can expect even tougher treatment.

But, heck, nobody is interested in such political shenanigans except for maybe both readers of this column.

Well, then, there is the school-funding case. The Ohio Supreme Court will hear arguments Wednesday. For a third time, the court is expected to rule 4-3 that the legislature and governor failed to ensure an adequate and equitable education for Ohio's schoolchildren.

Lawyers for the state hope to turn one of two Republican justices, Paul E. Pfeifer or Andrew Douglas, who formed the majority with two Democrats in the previous decisions. A victory for the financially insatiable coalition of schools almost certainly will mean higher taxes.

The school-funding case has been around for 10 years. Yesterday's news is boring.

Oh, yeah, there's the Big Three Republican feud at the Statehouse. But that, too, is insider politics. Speaker Larry Householder of Glenford and Senate President Richard H. Finan of Cincinnati had their way with Gov. Bob Taft on the state budget and now they are poised to embarrass the governor by overriding some of his 49 vetoes.

Obviously, Taft's re-election in 2002 is not a high priority for Republicans controlling the General Assembly. For that matter, it appears not to be a high priority for Taft. While getting pushed around by legislative Republicans, he declined to use the bully pulpit to defend his own reasonable budget proposal, one that would not have gutted higher education.

Taft may have trouble telling voters what he stands for next year. But that's then and this is now, and there is nothing going on.

Unless, of course, anyone considers the latest scandal at the Ohio Department of Job and Family

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Services worthy of comment. News flash: Department illegally withholds more child-support payments from poor children. Routine stuff.

Maybe a column could be crafted around the big-money push at the Statehouse to permit video-gambling machines at Ohio's seven horse racetracks. But thanks to Taft, that's dead for the moment. Maybe something could be written about all the wacko legislation that right-wingers in the House want to pass. But why dignify wackiness?

My gosh, look at the time! All this white space to fill and nothing to write. Will somebody please make some news around here?

Joe Hallett is politics editor of The Dispatch.

The Indianapolis Star
June 17, 2001

Heat Turned Up High in Judicial Kitchen

Russ Pulliam

He's been there, done that.

Federal Judge Daniel Manion recommends a thick skin and some experience in rough-and-tumble political battles for potentially controversial judicial nominees. President Bush already has submitted some nominations for federal court positions for U.S. Senate confirmation. But the big battle is yet to come with an anticipated opening on the U.S. Supreme Court in the next year or so.

When Manion was nominated by President Ronald Reagan for the 7th Circuit Court of Appeals in 1986, the mild-mannered former state senator from South Bend was surprised to become the center of controversy. The Manion battle was a warm-up for bigger ones over subsequent nominations of Robert Bork and Clarence Thomas for the Supreme Court.

Manion was blasted by People for the American Way and Senate Democrats for being unqualified for the court position. Sen. Edward Kennedy called him "the least-qualified" nominee he had ever seen for the federal appeals court. His critics found fault with his proof-reading because of errors in his correspondence.

Yet Manion also attracted endorsements from liberal Democrats who knew him back in Indiana. He made it to the bench after close votes in the Senate.

Manion understood that his critics weren't aiming the mud-slinging at him personally. What they really objected to was his willingness to look to the original intent of the Constitution. But

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he worries that mud-slinging campaigns that got worse under Bork and Thomas could deter qualified people from serving on the courts.

"I had a much thicker skin politically," he said in a recent interview. "I understood what was going on."

Good lawyers can make more money in private practice. "Why should I subject myself to this kind of attack?" he can hear potential candidates say. "I don't need to have my name dragged through the mud. Who knows what they'll come up with -- what kind of magazines you subscribe to. That's the kind of drivel it descends to," Manion added.

Critics might suggest that those who can't stand the heat should stay out of the judicial kitchen. But the judicial branch traditionally has been set above the partisan politics of the legislative and executive branches. Until the Bork-Thomas controversies, a long tradition was to evaluate court nominees on the basis of competence and personal character.

Manion has had the last word with the critics who attacked his alleged incompetence. "He made a liar out of them," commented a court colleague, William Bauer. "He is very bright, hard-working, thoughtful. Our job is to make sure we follow the Constitution. That's what he does very well."

Another Indiana lawyer, Peter Rusthoven, was associate counsel during the Reagan administration and gained an insider's perspective on the court nomination process. He suggests that more ideological battles over these nominations will undermine confidence in the courts as impartial decision-makers.

"Judicial nominations are no longer about, is this person smart, well-trained in the law, hard-working," he said. "Instead, you're nominating a person who is going to have one vote in a super-legislature, and that super-legislature is going to decide all kinds of things that the courts traditionally never decided."

With activist judges "writing" laws, the executive and legislative branches lose their chance to settle controversial political and social issues. Rusthoven is hoping for more strict constructionist judges who will be willing to defer issues back to the legislative branch when no clear constitutional issues are at stake.

He points to the 1857 Dred Scott decision as a notorious example of judicial activism, with the court taking over the slavery issue by ruling that blacks were not citizens. "It severely minimized the possibility of working out the slavery issue in the elected or political branches of government," he said. "It took away from the Congress the ability to regulate slavery in the territories."

The Senate ought to give Bush the green light to nominate strict-constructionist judges for the high court. A few more of them could help take the court out of some of the controversial political issues that are better left to the two elected branches of government.

INTEREST GROUPS/PRESS RELEASES

The Washington Post
June 18, 2001

Reason to Reject

Elizabeth Cavendish, Legal Director, NARAL

We take exception to the belief that it is unfair to challenge the qualifications of judicial nominee John G. Roberts Jr. based upon antiabortion briefs he filed as a government lawyer [editorial, June 7].

Mr. Roberts was a political appointee in the Reagan administration and served as principal deputy solicitor general for President Bush from 1989 to 1993. He competed for the job knowing that the administration had the goal of rescinding the constitutional right of reproductive choice.

During the Reagan and Bush era, the Justice Department argued to restrict or overturn the fundamental right to choose eight times in seven Supreme Court cases. Mr. Roberts helped author the brief in Rust v. Sullivan, defending the now-repealed "gag rule" that prohibits family planning providers from informing women of all their options when confronting an unwanted pregnancy. Saying the Roberts brief argued "in passing" for the overturn of Roe, as the editorial did, suggests it is inconsequential to urge that constitutional rights be repealed. Would The Post make the same argument about efforts to reverse Brown v. Board of Education?

In Bray v. Alexandria Women's Health Clinic, Mr. Roberts, on behalf of the Bush Justice Department, intervened as a friend of the court. The government's friendship was extended to Operation Rescue, which was terrorizing women who were trying to enter reproductive health facilities. Mr. Roberts argued that the nation's civil rights laws should be narrowly interpreted to preclude relief for women seeking constitutionally protected health services. Congress disagreed and the following year enacted the Freedom of Access to Clinic Entrances Act.

No one has an entitlement to a lifetime slot on the federal judiciary. The burden is on the nominee to demonstrate that he or she deserves Senate confirmation. This high threshold is essential to ensure that the judiciary will continue to guard our liberties against assault.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
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Ari said repeatedly today that White House Counsel's Office is
working on a response to Waxman's letter re Karl. Is that true?
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All --

The latest installment of our media survey on judicial nominations is attached.

Regards,

Jennifer
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Media Review - Judicial Nominations

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The liberal magazine "The Nation" has a page dedicated to the defeat of Bush Judicial Nominees, by sending a letter to members of the Senate Judiciary Committee. "Use the letter below to tell Senate majority leader Tom Daschle and the nine judiciary committee Democrats to take a stand against appointing Bush's conservative nominees to the circuit courts." The page is located at:
http://www.thenation.com/alert/actnow/

GENERAL JUDICIAL ARTICLES

The New York Times
June 15, 2001

G.O.P. Reports an 'Impasse' Over Senate Reorganization
Alison Mitchell

Senior Senate Republicans said today that they had hit an impasse in talks with the new Democratic majority leader over organizing the Senate because of disputes about how to handle judicial nominees. They called for the issues in contention to be brought to the full Senate floor for a vote.

After two weeks of talks with Senator Tom Daschle of South Dakota, the new majority leader, the five Republican negotiators went public with their complaints this evening as the Senate was shutting down for the week.

"We are reluctantly here to announce we are at impasse at the moment," said Senator Mitch McConnell, Republican of Kentucky.

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The Republican senators said they had reached agreement with the Democrats on essential details like the size and makeup of committees. But they said they wanted the resolution needed to organize the Senate under Democratic control to contain an assurance that all nominees for the Supreme Court would come before the full Senate for a vote.

They said they also wanted the resolution to require that if any senator exercised the right under Senate tradition to block a home-state judicial nominee, the action must be revealed to the public. Senator Phil Gramm, Republican of Texas, called such disclosure a "good government, sunshine provision."

The Republicans handed out a report showing that since at least the 1880's, the Judiciary Committee had sent to the floor even those Supreme Court nominations that were opposed by a committee majority.

Mr. Daschle said in a statement that he would continue to try to resolve the outstanding issues "through negotiations and discussions rather than potentially divisive votes. "He said he had "stated publicly and privately my commitment to assuring a fair process for judicial nominees."

But he has resisted setting down any formal procedure. One Democratic Senate aide said that a "subtle distinction but an important distinction" existed between a guarantee that the Judiciary Committee would send a Supreme Court nominee to the full Senate and an informal tradition of doing so. "It would be an unprecedented new grant of authority to the minority party," the aide said.

The issue of judicial candidates and the ideological direction of the federal courts is one of the most delicate areas of dispute between the parties. During the six years that the Republicans controlled the Senate and Bill Clinton was president, the Republicans offered neither of the guarantees to the Democrats that they are now seeking.

But they say they have been disturbed by vows by some Democrats to stop conservative judges. And they say they would be willing to make the two provisions they are seeking permanent no matter which party has control of the Senate.

Senator Patrick Leahy of Vermont, the new Judiciary chairman, issued a statement saying: "There is more than a little irony in the charge from some Republican quarters that the Democratic Senate will treat President Bush's judicial nominees unfairly. Some Republicans seem to be expecting in Democrats the same wiles that the G.O.P. Senate used in killing so many of President Clinton's nominees."

If the Senate held a vote on the two issues, the Republicans would probably not prevail. But the vote would put the Democrats in the politically embarrassing position of opposing public disclosure and looking like they were ready to block President Bush's Supreme Court picks.

When the Senate switched last week to Democratic control with Senator James M. Jeffords of Vermont becoming an independent, Mr. Daschle became majority leader and Democrats became

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committee chairmen. But many of the details of the changeover need to be approved by a vote.

Mr. Daschle hinted today that a long stalemate could be a problem for Mr. Bush. "What that means is action in the committees on virtually anything is unlikely," he said. "We wouldn't be able to do nominations or legislation because obviously you don't have the full complement of membership on those committees."

The Washington Times
June 15, 2001

Bush's Judgeships Stall in the Senate

Dave Boyer

Senate Republican negotiators late yesterday declared an impasse in their talks with Democrats on President Bush´s judicial nominees and said it was time to move forward with an up-or-down vote on the new Senate organization.

"We are only asking for fairness," said Sen. Mitch McConnell, Kentucky Republican. The negotiators said the next move is up to Senate Majority Leader Tom Daschle, South Dakota Democrat, on whether to call a vote.

Republicans want the resolution to reflect the three points on which both parties agree, and the two contentious matters voted on independently as amendments to the resolution.

Republicans said the full Senate should have the opportunity to make a determination and that they would not filibuster if the resolution is voted down.

"We´re simply asking for there to be a vote. When we have fundamental differences, we vote," said Sen. Arlen Specter, Pennsylvania Republican. Both parties agree Democrats will have a one-seat majority on every committee, with the exception of the Ethics Committee, which by tradition is equally divided.

All committee members will retain their assignments, and committee funding and space agreements negotiated by the chairmen and ranking members will remain in effect. Democrats do not agree with Republicans that "blue slips," or single-senator veto slips on judges from home-state senators, should be eliminated.

Democratic leaders turned up the pressure yesterday on judgeships, accusing the GOP of holding up White House nominations by not submitting to the Democrats´ proposal to reorganize the Senate.

"They´re making my life easier," said Sen. Patrick J. Leahy, Vermont Democrat and chairman of the Senate Judiciary Committee. "For the life of me, I don´t know why they keep waiting. I´m

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ready to start (confirmation hearings) within 10 days to two weeks of the time that we reorganize."

Republicans say Mr. Leahy, one of the party's most liberal lawmakers, is a prime example of why they are pressing Mr. Daschle for assurances that Mr. Bush's nominees will be treated fairly. Mr. Leahy was one of the most outspoken critics of John Ashcroft's nomination for attorney general in a bruising confirmation hearing in January.

In two weeks of talks, Mr. Daschle has resisted Republican requests to promise floor votes on appeals court candidates and Supreme Court nominees if the Judiciary Committee rejects them. Mr. Daschle says he will hold up a deal to reorganize committees with Democratic majorities until both sides agree on the issue of nominations.

Democrats say Senate Republicans are only hurting their own administration by not accepting Democrats' more vague, nonbinding assurance to be fair to nominees. "Unfortunately, what that means is that action in the committees on virtually anything is unlikely," Mr. Daschle said yesterday.

"We wouldn't be able to do nominations or legislation. We're going to ... probably be faced with a bottled-up array of , but we won't be able to do that." Asked if he is "jamming" the White House's agenda, Mr. Daschle replied, "That's not my choice. I think it would be inexcusable for us to disenfranchise elected members of the Senate who were serving on these committees just a week ago, and now to tell them they can't vote. That isn't my jamming them, that is simply a reality; that's what senators are here to do, is to make decisions."

Referring to the new majority party's power to investigate the administration, Mr. Daschle added, "In the meantime, we'll be satisfied, I suppose, with the opportunities to hold oversight hearings and other kinds of hearings. ..." For example, Sen. Joseph I. Lieberman, Connecticut Democrat, has used his new chairmanship of the Governmental Affairs Committee to hold a hearing on the administration's refusal to set energy price caps in California. Mr. Lieberman, who lost his bid for the vice presidency last year and is considered a likely presidential candidate for 2004, also plans to hold hearings on Mr. Bush's environmental policies.

National Public Radio: Morning Edition
June 15, 2001

Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate

Bob Edwards, Anchor; Nina Totenburg, Reporting

This is MORNING EDITION from NPR News. I'm Bob Edwards.

For six years, Democrats fumed when President Clinton's judicial nominees were stalled

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by the Republican-controlled Senate. But the tables have been turned. Now there's a Republican president and a Democratic Senate. NPR legal affairs correspondent Nina Totenberg reports on what this could mean for President Bush's nominees.

NINA TOTENBERG reporting:

About 1/8th of the federal judiciary is vacant. But while 70 of the 102 vacancies are in the trial courts, President Bush has made just two nominations to fill those slots. Instead, the administration is concentrating on filling the 32 appeals court vacancies. The president has already sent the Senate names for half of those slots. There's a reason for that. The appeals courts are just one step below the Supreme Court, and these are the judges that are the final word in most of the cases heard across the country. Moreover, they are widely considered training grounds for the Supreme Court.

Indeed, it was the Clinton nominees for the appellate courts who were most ferociously stalled by the GOP in years gone by. The numbers tell the tale. Although Presidents Clinton and Reagan won confirmation for roughly equal numbers of judges in their two terms, Mr. Reagan won confirmation of 87 percent of his appeals court nominees, while Mr. Clinton won confirmation of only 61 percent, leaving the rest dangling without action.

In the last two years of the Clinton presidency, 17 appeals court nominees never got a hearing. Those who were confirmed waited, on average, more than a year. Contrast that with the wait for President Reagan's nominees in his last two years when the Democrats controlled the Senate, 17 weeks, and for the first President Bush's nominees, 15 weeks. The result is that now, after eight years of a Democratic administration, Republican appointees still dominate the influential appeals courts. President Bush wants to add to that advantage, and as Democrats see it, he has front-loaded the nomination process, concentrating his early judicial nominations in the appeals court. Senator Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, having served with six presidents, has this perspective.

Senator PATRICK LEAHY (Chairman, Senate Judiciary Committee): Presidents serve for no more than eight years; judges serve for a lifetime. And I think the Senate has a real responsibility to make sure that we have an independent judiciary, one that doesn't lurch to the right or the left.

TOTENBERG: And Leahy insists he will be fair.

Sen. LEAHY: I've talked with a number of Republican senators, and some have told me very frankly they were totally unfair to President Clinton and they're wondering if I'm going to do the same thing to them. I'm not. I'm not going to go for some kind of a payback.

TOTENBERG: Not surprisingly, the Republicans aren't taking those assurances at face value. A new group has sprung up, billing itself as bipartisan, and it's running ads, so far in just one state, South Dakota, which just happens to be the home of the Democratic Senate majority leader, Tom Daschle.

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(Soundbite of advertisement)

Unidentified Woman: Our legal system affects us all. Every day courts make decisions that impact our families. That's why President Bush supports commonsense judges with character, experience and intellect.

TOTENBERG: Oklahoma Governor Frank Keating, a Republican, is chairman of the sponsoring group, Citizens for Common Sense Courts.

Governor FRANK KEATING (Republican, Oklahoma): The judiciary shouldn't be an arm of either party. Let's fairly get judges considered and confirmed.

TOTENBERG: But while Keating's group bills itself as bipartisan, the Democratic featured most prominently in its literature, former Democratic Attorney General Griffin Bell, says he is, in fact, not part of the group, that he declined to join, and yesterday the group retracted his name. That's not to say that Republican fears are unfounded. Liberal groups are already lining up to oppose a significant number of President Bush's judicial nominees. Nan Aron is director of the Alliance for Justice, an umbrella group of civil rights, environmental and consumer organizations.

Ms. NAN ARON (Alliance for Justice): We have grave doubts about most of the candidates nominated by President Bush. They were chosen by this president specifically because, while they may be very qualified and have excellent records on the law, they have shown by their actions or writings a real hostility to the gains made by women, minorities, and hostility to the role that government plays in improving the lives of Americans.

TOTENBERG: And specific groups have targeted specific nominees. Americans United for Separation of Church and State is opposing University of Utah Professor Michael McConnell, a respective conservative scholar who's long argued for greater accommodation between church and state. Also opposed to McConnell is the National Abortion Rights Action League, which cites his strong opposition to Roe vs. Wade. In addition, NARAL is also fighting the appeals court nomination of John Roberts, who, when he served as deputy solicitor general in the first Bush administration, wrote a brief that argued against federally funded clinics allowing doctors to discuss abortion with their patients. In that brief, Roberts contended that Roe vs. Wade should be reversed, a position he was quizzed about by Justice Harry Blackmun in a later case that he argued involving abortion clinics.

(Soundbite of interview)

Justice HARRY BLACKMUN: Mr. Roberts, in this case, are you asking that Roe vs. Wade by overruled?

Mr. JOHN ROBERTS: No, Your Honor. The issue doesn't even come up.

Justice BLACKMUN: Well, that hasn't prevented the solicitor general from taking that position

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in prior cases.

TOTENBERG: But Walter Dellinger, who served as solicitor general in the Clinton administration, says it's very risky to judge judicial nominees by the positions they've taken as government lawyers.

Mr. WALTER DELLINGER (Former Solicitor General, Clinton Administration): The kind of arguments that John Roberts was making in the position of deputy solicitor general were the kind that a professional lawyer's expected to make when his client, the chief executive of which is the president of the United States, has run on those positions. I'm afraid that this is a process that will lead to the rejection of the most qualified of the nominees; that is, those who, like Roberts, have been out and have had a major lifetime of accomplishment.

TOTENBERG: Elizabeth Cavendish, the legal director of NARAL, disagrees.

Ms. ELIZABETH CAVENDISH (Legal Director, NARAL): He was aligned personally with these decisions. Again, he was a political appointee, and this was a signature position of the first Bush administration.

TOTENBERG: There's an irony in NARAL's position. Liberal groups were outraged when conservatives opposed some Clinton appointees because of positions they took as lawyers. I pressed the point on Cavendish. So you would say that those who are anti-abortion would be completely correct in voting their ideas and proposing pro-choice nominees.

Ms. CAVENDISH: It doesn't work both ways. The other side wants to turn back the clock on women's rights and roll back a fundamental right.

TOTENBERG: Just what will happen to the Roberts and McConnell nominations and others is unclear. When the Republicans controlled the Senate, those nominees had been slated for quick hearings. With the Democrats in control now, though, the first hearing is likely to be for Roger Gregory, an African-American from Virginia appointed by President Clinton to sit on an interim basis for a year on the 4th Circuit Court of Appeals. President Bush reappointed Gregory. Chairman Leahy says he intends to begin confirmation hearings in less than two weeks, but by tradition only one appeals court nominee is considered at a time, and historically there's an average of about one confirmation hearing a month.

With only three months left scheduled in this legislative session this year, that would mean three or four appeals court nominees possibly confirmed this year. Even that could be in doubt. North Carolina Republican Senator Jesse Helms blocked all of President Clinton's North Carolina nominees to the 4th Circuit, and nobody's quite sure what he will do about the Gregory nomination when it gets to the Senate floor, where he could put a so-called hold on it and send it into limbo.

Moreover, all confirmation hearings are on hold for the moment, because the Senate Democrats and Republicans have not agreed to a reorganizing plan in the aftermath of the Democratic

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takeover. The Republicans are seeking something that no Senate minority has ever had before: a guarantee that all the president's nominees will get a floor vote. Few observers believe the Republicans will get such an unprecedented guarantee, because the current stalemate is perfectly acceptable to the Democrats. If the Senate organization agreement is not forthcoming, it means simply that no nominations will move at all. Nina Totenberg, NPR News, Washington.

The Associated Press
June 15, 2001

Republicans Seeking to Secure Votes on Judicial Nominees

Jesse J. Holland

Republicans backed down on Thursday from some of their demands for how the newly Democrat-controlled Senate should handle President Bush's nominees for the Supreme Court and federal judgeships.

Earlier in the week, GOP negotiators demanded guaranteed Senate votes on all Supreme Court and federal appellate court nominees, and elimination of the secret veto process for some judicial nominations.

After Democrats refused, Republicans sought to allow the full Senate - instead of negotiators - to decide whether the Supreme Court nominees should be guaranteed a vote. They also want the Senate to decide whether to make the senatorial veto process public instead of private, as it has been in the past.

Democrats say they will treat Bush's nominees fairly. Republicans fear Democrats will block Bush's judicial nominations.

"We're not asking for there to be a commitment," said Sen. Arlen Specter, R-Pa., one of the five GOP senators who have been negotiating with Majority Leader Thomas Daschle, D-S.D. "We're asking for there to be a vote."

Daschle, who is trying to reorganize the Senate to reflect the Democratic takeover, is opposed.

"I remain committed to trying to resolve the outstanding issues around the organization of the Senate through negotiations and discussions, rather than with potentially divisive votes," Daschle said.

Democratic aides said the idea of making public the secret vetoes likely would come up a meeting Tuesday of Democratic senators.

The maneuvering is the result of Vermont Sen. Jim Jeffords' decision to leave the GOP and become an independent, altering the 50-50 split in the Senate. Republicans had control by virtue of Vice President Dick Cheney's tie-breaking vote.

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The two sides agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee funding and space agreements negotiated at the beginning of the year will stay in effect as well.

Sen. Orrin Hatch of Utah, the top Republican on the Judiciary Committee, said that while filibustering the reorganization had not been discussed, GOP senators told negotiators to "go to the wall" over the judges provision.

Daschle said that if Republicans and Democrats are unable to agree on a reorganization, "action in the committees on virtually anything is unlikely."

The American Prospect
July 2-July 16, Vol. 12, Issue 12

The Case for Borking

Randall Kennedy

As the battle over the federal judiciary heats up, progressives must convince the general public of a basic proposition: The judiciary is an inescapably political branch of government whose agents, the judges, should be viewed in much the same way other politicians are.

To say that the courts are political may seem so obvious as to be banal. There is, however, a deep and widespread impulse to deny the political character of the courts. An important manifestation of this denial arises in the context of selecting, confirming, or rejecting candidates for the federal bench.

Many people bemoan, for example, what they term the "politicization" of the judiciary (as if there existed a golden age when judicial selection and judicial decision making were uncontaminated by politics). Liberals and conservatives, Democrats and Republicans have taken turns accusing each other of indulging in this unpardonable sin.

Progressives, however, should get off that unproductive rhetorical merry-go-round, accept the ineradicable presence of politics in the judicial arena, and strive to shape the judiciary in such a way that it will produce good, sound, progressive rulings. That will entail, among other things, lobbying on behalf of jurists who will advance the progressive agenda and against those who will be hostile to it.

Article II of the U.S. Constitution empowers the president exclusively to nominate federal judges, while it imposes a check on presidential authority by making the seating of a nominee dependent on the Senate's "Advice and Consent." Whereas the president is armed with veto power over legislation, the Senate, in effect, has veto power over judicial nominations.

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Over the course of the nation's history, the Senate has exercised that power over Supreme Court nominees 29 times (and over district and appeals court nominees many times more). In addition to objecting to nominees on grounds of incompetence, dishonesty, or some other personal failing, senators have also voted nay for political or ideological reasons.

Opponents blocked George Washington's Supreme Court nominee Judge John Rutledge because of Rutledge's opposition to the Jay Treaty (despite the fact that the Senate had already confirmed him for a previous opening on the Court and that he had just served for an entire Supreme Court term as the interim chief justice).

Ulysses S. Grant's nominee Attorney General Ebeneezer Rockwood Hoar was not confirmed because he had opposed President Andrew Johnson's impeachment.

Herbert Hoover's nominee Judge John Parker was blocked because of Parker's perceived hostility to organized labor and the advancement of African Americans. And Ronald Reagan's nominee Judge Robert Bork didn't make it because opponents feared, among other things, that he would energetically attack abortion rights.

In principle there is nothing wrong with political blocking, even if doing so stems entirely from one particular issue. Would we now condemn a senator who, prior to the Civil War, voted against a nominee solely on the grounds that the candidate favored slavery? I would hope not.

Yet many people sneer at the notion of litmus tests for purposes of judicial selection or confirmation--even as they unknowingly conduct such tests themselves.

Litmus tests of all sorts are scattered about the judicial-selection process. When senators ask a nominee whether he or she believes that the proper role of a judge is to interpret rather than make law, or whether the Eighth Amendment should be deemed to prohibit capital punishment--all the while silently insisting upon an expected formulaic reply--they are imposing a litmus test.

Today, a candidate would not be nominated, much less confirmed, if he or she failed to genuflect convincingly to Marbury v. Madison (which established the authority of the Supreme Court to invalidate an act of Congress deemed to be in conflict with the Constitution), Brown v. Board of Education (which invalidated de jure racial segregation in public primary and secondary schools), or other once-controversial decisions that have become so thoroughly a part of the conventional wisdom that we no longer even perceive reactions to them as litmus tests of acceptability.

Since senators (and the public as a whole) should feel free to object to a nominee on political grounds, they should also feel free to demand that nominees truthfully divulge thinking that bears upon relevant judicial matters. Nominees--both liberals and conservatives--often claim that they cannot answer certain questions because to do so would be to prejudge a matter that may come before them.

But that response is typically a mere dodge to avoid controversy. Senators need not accept this.

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If a
candidate refuses to answer relevant questions, senators should take that refusal into consideration when determining whether to vote to confirm. It makes no sense to offer lifetime tenure and all the power of judicial review to candidates whose thinking about crucial matters is unknown.

A transparent process in which ideological objections to judicial candidates are candidly voiced is a much-needed antidote to the murky "politics of personal destruction. "When politicians (again, both liberal and conservative) feel disabled from objecting to candidates on ideological grounds, they search high and low for pretexts on which to object: "He made this lewd statement to a colleague a decade ago," or "She committed this technical infraction of law."

Senators should not feel that they have to reveal or attack some personal blemish in order to justify a vote against a nominee. A deep, urgent, political disagreement is sufficient. It should be possible for a senator to acknowledge that a nominee is honorable, competent, and kind while still voting against confirmation because of the way the candidate would likely act as a judge. Nothing personal. Just politics.

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July 2-July 16, Vol. 12, Issue 12

Halting the Judgernaut

Alexander Wohl

As Capitol Hill adjusts to Vermont Senator Jim Jeffords's earthshaking repudiation of the Republican Party, the Senate Judiciary Committee is bracing itself to be the center of the aftershocks. The judicial branch of government, after all, is where a president is likely to have his most far-reaching impact; the judges he appoints will last much longer than the one or two terms he serves. And the Judiciary Committee--which is a key venue for debate about potent legislative issues such as abortion, school prayer, flag burning, and civil rights--is also the primary battleground in judicial-confirmation fights. Thus, with George W. Bush's first slate of nominees for the federal bench waiting for hearings, the most resounding political clashes of the summer are likely to occur on the Judiciary Committee's turf.

When Jeffords abandoned the Republicans, he threw control of Senate committees to the Democratic Party, providing Dems on the Judiciary Committee with the power to strangulate nominations in committee. (Actually, as of this writing, Republicans--aware of how defiantly they refused to allow many of Bill Clinton's nominations to get beyond the Judiciary Committee,

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and afraid of payback--are trying to force the Democrats to permit a full Senate vote for every judiciary nominee. A politically foolish position that will likely come to a quick resolution, this could bring all Senate business to a halt.) Given a free hand to nominate and confirm judges, Bush and the Senate Republicans would no doubt populate the federal bench with an army of Antonin Scalia clones--a legion of judges who, though perhaps ethnically diverse, share the extreme views of the Court's most conservative jurist. Indeed, the first batch of nominees the president sent to the Senate for confirmation has already made this clear. One logical response to such nominees would seem to be simply to block their consideration--especially since that was the Republican response to Clinton nominees whom the GOP considered to be too liberal.

But early signs indicate that the newly Democrat-controlled Judiciary Committee, along with the Senate as a whole, is taking a less direct and more wide-ranging approach, one that makes use of several different strategies at once while trying to minimize the danger of a public backlash. This highlights an important question , Is it worth letting all but the most conservative judges onto the federal bench--where they will preside for lifetime appointments, potentially lending important appeals courts a conservative coloration for up to 30 or 40 years--in order not to appear "obstructionist"? For some Democrats concerned with winning re-election, the answer may be yes. Still, if they're smart and stick together, the Democrats on the Judiciary Committee may be able to ensure that only the more moderate of Bush's nominees come to a full Senate vote--and to demonstrate the wisdom of their case to the American public.

"Don't Mess with Vermont"

How successful the Democrats are in preventing the confirmation of conservative judges will depend heavily on the committee's new chairman. A soft-spoken, liberal Vermonter, Patrick Leahy is a 27-year Senate veteran who has distinguished himself from many of his colleagues with his integrity and lack of ego. Smart and unafraid to play political hardball when necessary, he is adept at diffusing tension with gentle humor. (The day after the Jeffords switch, for example, "Don't Mess with Vermont" bumper stickers--attributed to Leahy--appeared around Washington, D.C.)

Leahy replaces Utah Senator Orrin Hatch--a fierce conservative whose favorite topic in recent committee sessions has been his own evenhandedness--as the ranking majority member on the committee. (Transcripts of recent hearings reveal Hatch to be remarkably, repetitively taken with his own "fairness.") Though Hatch has worked with Democrats on occasion, he fights hard for conservative Republican nominees and has the battle scars from the Robert Bork and Clarence Thomas Supreme Court nominations to prove it.

Leahy and Hatch consider themselves close friends and generally work well together. During Hatch's quixotic presidential run through early 2000, Leahy offered "to speak for him or against him, whichever would help more." But beneath this geniality, both sides are girding for war. Within days of Jeffords's announcement, Hatch was warning Democrats that "nobody's going to push me around." Leahy, for his part, has shown himself unafraid to take on the Republicans: He has challenged the GOP's hypocritical statements about the "quick pace" of Clinton

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nominations during Republican control of the committee and engineered a walkout from a hearing in which he felt the Republicans were trying to strong-arm Democrats into approving Bush nominees.

But for the first time in seven years, the Democrats have the numbers--if not literally (at this writing, the Senate leadership is negotiating whether the party balance on the committee will remain evenly split or a Democrat will be added to give the Dems a one-person advantage), then at least in terms of power. Majority status gives Leahy the gavel--and with it, the power to schedule and time hearings. Democrats now control the process: They decide when (and even if) nominees are brought up, how zealously they are interrogated, and how quickly they get voted on. And Senate Democratic aides say that Leahy is ready to take a much tougher line than others have in the past.

The recent debate over Ted Olson's nomination as solicitor general suggests how potent the Democrats' new majority status on the committee can be, if only they can muster the courage to exercise it. Erstwhile Senate Majority Leader Trent Lott was forced to discharge Olson's nomination from the Judiciary Committee (he did this under the bargain struck relating to the 50–50 Senate divide) the day Jeffords announced his switch: Lott knew that if he waited, the Democrats could use their new power in the Judiciary Committee to withhold the nomination from the floor. Moreover, after seeing Olson get voted in by the Senate--albeit by a razor-thin majority--Democrats surely understand that stopping someone is easier in committee than on the Senate floor, where there is the danger that some conservative Democrats will join the Republicans in crucial votes, as Georgia's Zell Miller and Nebraska's Ben Nelson did on Olson.

But now that the Democrats possess the power in the Judiciary Committee, will they be willing to use it? After failing to block Attorney General John Ashcroft and Solicitor General Olson, some Democrats said, in effect, "Well, we got enough votes to demonstrate that we could block a nomination--but we didn't do it because these were only cabinet appointments, not Supreme Court justices, which are lifetime appointments." Fair enough. But lower-court federal judges get appointed for life, too. Do the Democrats have the will to scrutinize and oppose district and circuit court candidates?

Whom to Oppose?

Democrats are still strategizing about whom they should oppose. This requires a calculated analysis not just of the nominees' records and the courts for which the judges have been nominated, but of public opinion. Democrats have seen how the perception of obstructionism or intransigence has sometimes hurt the Republicans--most notably after the government shutdown in 1995, during Clinton's impeachment in 1998, and last month when the GOP lost Jeffords--and don't want to be perceived that way themselves.

Both Leahy and the new majority leader, South Dakota's Tom Daschle, have said that they will work to prevent an ideological court packing and that they want "good, moderate, middle-of- the-road, credible" nominees. But already a number of Bush's nominees fall outside that description. This is particularly significant right now, because--after years of Republicans stonewalling Bill

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Clinton's nominees--there are many vacancies, including 31 openings on federal appeals courts. Several circuit courts of appeal are very closely divided between liberals and conservatives. (The tiny First Circuit, for example, whose six judges cover Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico, has one opening and leans barely Republican; and the Third Circuit, which includes Delaware, New Jersey, Pennsylvania, and the Virgin Islands, is evenly divided and has two vacancies.) Just a few Bush appointees could tilt the judicial balance of the country in a decidedly conservative direction for a long time to come.

So Democrats considering circuit court nominees need to examine not just whether the prospective lifetime appointee has views so extreme as to be out of the mainstream, but whether adding that person to a court will change the ideological complexion of a particular circuit.

Given these parameters, there are several clear targets among the first group of Bush nominees. For instance, two Fourth Circuit nominees cry out for opposition. Terrence Boyle, chief judge of the U.S. District Court of the Eastern District of North Carolina, is a former aide to Senator Jesse Helms and, not surprisingly, is extremely conservative. He was already denied a spot on the court of appeals in 1991, when he was nominated by President George H.W. Bush, but the Senate did not act on his nomination. Helms retaliated by blocking all of President Clinton's nominees to fill North Carolina's Fourth Circuit vacancies. (Helms's desire to get Boyle on the court is ironic given Helms's repeated statements over the past several years that "there is no need to put more judges on that court because to do so would make it less efficient.")

The other nominee to the Fourth Circuit, South Carolina District Judge Dennis Shedd, is equally conservative; he served as chief counsel and staff director under former Judiciary Committee Chairman Strom Thurmond, who is now a senior committee member. Although Shedd has already attracted much opposition from civil rights groups, it will require coordinated strength to block him, given the tradition of deference to nominees who once worked in the Senate, even if only in a staff capacity.

But the Fourth Circuit already tilts heavily to the right. In contrast, the Sixth Circuit (which covers Michigan, Ohio, Tennessee, and Kentucky) and the D.C. Circuit are closely divided. Thus, Miguel Estrada, nominated for the D.C. Circuit, and Jeffrey Sutton, nominated for the Sixth, are judicial conservatives whom Democrats could confidently and appropriately oppose.

After the Supreme Court, the D.C Circuit is generally seen as the most powerful court in the nation, because of its role in interpreting statutes and agency decisions and because it has historically served as a springboard for potential Supreme Court nominees. Adding Estrada--who was a law partner of Ted Olson and is known for sharing the judicial philosophy of Justices Scalia and Thomas--to that court, along with another Bush nominee, the conservative John Roberts, would significantly enhance a slight conservative majority on this key bench.

The Sixth Circuit is even more closely divided. A former state solicitor from Ohio, Sutton--who has argued a number of times in the Supreme Court for expanded state power and for voiding congressional initiatives--has already been the focus of opposition. But another Sixth Circuit nominee, Ohio Supreme Court Justice Deborah Cook, also deserves a close look. In one

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representative decision, she denied a blind woman's request to be admitted to medical school because of the undue burden it would have placed on the school.

The 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, & Wyoming) also is narrowly divided. The nomination to this court of Michael McConnell, a Federalist Society conservative and a professor at the University of Utah, has already generated opposition because of his extremist interpretation of the religion clauses of the First Amendment and their potential application to a variety of social issues ranging from school vouchers to gay rights.

Democrats can prevent Bush's nominees from being confirmed in several ways. First, of course, is to vote them down, either in committee or on the floor. Second is to delay their confirmation hearings indefinitely, as the Republicans did for so many Clinton nominees. (A variation on this option is to use control of the process to lengthen investigative hearings when that would be effective.) Expect Leahy to make use of both tactics. But more important is a third approach, which is to avoid nasty committee fights and use the potential power of a unified Democratic majority--for now, the committee will follow the caucus party line and vote up or down together--to influence the White House not to nominate right-wingers in the first place. It is therefore incumbent on the Bush White House, which until now has given only lip service to the idea of consultation with the Senate, to work with Leahy and the Democrats if it wants its nominees to be confirmed in a timely fashion.

Finally, several changes in procedure will slow down the process while adding an opportunity for more information and fairness. Leahy has already promised to reinstate the use of evaluations by the American Bar Association before any hearings. (This nonpartisan analysis of candidates, which every president since Dwight D. Eisenhower has used in considering nominees, was eliminated by George W. Bush.) Leahy is also likely to hold quick hearings for less controversial nominees and for nominees who are designated for courts with the greatest need before turning to the possible challenges. In this way, he can accumulate public support that he can later use in opposing the more conservative or controversial nominees. And he will probably not hold hearings for more than one nominee at a time--something that makes abundant sense but that the Republicans failed to do.

The prevailing view has been that nominees are presumed to be confirmable, unless senators or interest groups find something "wrong" with them. Some legal scholars have proposed the idea of requiring nominees to demonstrate why they should be confirmed, and there are signs that Leahy is open to this approach.

The Senate has an important role to play in evaluating and challenging individuals who are being appointed to a lifetime job of interpreting the Constitution. While Republicans are likely to cry "Bork!" whenever a nominee is criticized (even though the same Democratically controlled Congress that rejected Bork overwhelmingly confirmed Scalia), Democrats should not shy away from opposing any (and even many) of President Bush's nominees. Nor should they be tempted to give free passes to minority candidates if those candidates are too conservative. The Constitution says that the Senate will give its advice and consent on all nominations. Most Americans don't want a judiciary slanted sharply in either direction. We will soon see whether

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the new majority in the Senate has the guts and the ability to make a credible case to the American people that President Bush should not have the unilateral authority to shape the judicial branch in his conservative image.

The Washington Post
June 17, 2001

At High Court, a Retirement Watch

Rehnquist, O'Connor Top List of Possibilities as Speculation on Replacement Grows
Charles Lane and Amy Goldstein

As the Supreme Court prepares to end its term this month, the White House, the Senate and interest groups across the ideological spectrum are preparing for the possibility that a member of the court might retire, with Chief Justice William H. Rehnquist's departure the most frequently mentioned scenario.

There is no direct evidence that Rehnquist, 76, or any other member of the court is planning to step down this year. Justice Sandra Day O'Connor, 71, recently dampened speculation about her departure, making an unusual announcement that she had "no plans" to leave. When Rehnquist was asked through the Supreme Court press office for a similar statement, he declined to comment.

Now that a Republican occupies the White House for the first time in eight years, however, court observers consider it more likely that Rehnquist or O'Connor, who were both longtime activists in Arizona Republican politics before being appointed to the court by Republican presidents, will step down sometime in the next few years.

"Make no mistake," said one longtime friend of the chief justice, Rehnquist would prefer to "return" his seat to a Republican president. But another justice recently told a friend there was no suggestion around the court that a departure is imminent.

Similarly, a lawyer who has regular contact with the White House counsel's office said, "I don't see the kind of frenzied activity by people who would be involved" in the administration if they knew a retirement were looming. In the past, many justices have directly or indirectly relayed their departure plans to the White House slightly before announcing them publicly, often at the end of the term.

Nonetheless, the thought of stepping down apparently has at least crossed Rehnquist's mind. When PBS interviewer Charlie Rose asked in February if he could imagine retiring, Rehnquist replied, "Sure."
Justice John Paul Stevens, 81, is older than Rehnquist and O'Connor, and he also was appointed by a Republican president, Gerald R. Ford, in 1975. But Stevens is not considered a likely candidate for retirement. He remains in vigorous health -- and, though still nominally a

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Republican, has moved to the left in his years on the court. He dissented vigorously from last year's court decision, spearheaded by its most conservative members, to stop the Florida recount and effectively ensure Bush's victory.

There have been no changes in membership at the Supreme Court since Stephen G. Breyer replaced Harry Blackmun in the fall of 1994, creating the second-longest period of stability in the court's history and pent-up anxiety about when the next vacancy will occur.

In such an uncertain climate, the administration, Congress and advocacy groups are keenly sensitive to the opportunity President Bush will have to shape the court -- one of the presidency's most enduring powers. The White House and the Justice Department have been working for months to define the factors that would go into choosing a nominee, as well as beginning to sift through potential candidates.

"We are working hard to be prepared," said White House Counsel Alberto R. Gonzales, who oversees the selection process and is himself a potential choice. "Even during the transition we began thinking about possible nominees to the court."

On Capitol Hill, Republicans on the Senate Judiciary Committee have already begun "informal discussions and talks" about potential candidates, said Makan Delrahim, the committee's GOP staff director.

In the meantime, conservative and liberal advocacy groups have been working aggressively to try to influence the president's eventual choice -- and public opinion. Conservatives have been urging Bush not to back down from his campaign statements that the current justices he most admires are Antonin Scalia and Clarence Thomas, the members furthest to the right.

"We are looking to him to stay as close to that standard and as consistently close to that standard as he can," said Thomas L. Jipping, director of the judicial selection monitoring project of the Free Congress Foundation.

On the left, civil rights groups and women's organizations have been trying to stoke public fears that Bush's impact on the court could have dire consequences on issues ranging from abortion to education to affirmative action.

"If George W. Bush follows through on his promise to the right wing and nominates someone in the mode of Scalia and Thomas and Rehnquist, then there is going to be an epic battle," said Ralph Neas, president of People for the American Way.

The ideological skirmish that has broken out in Congress during the last month over Bush's initial nominees to lower federal courts is widely considered a prelude to the full-scale battle that a Supreme Court opening could create.

According to aides in the administration and on Capitol Hill, the cross pressures on the president in making his selection will be intense. On the one hand, the shift of the Senate this month to

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Democratic control, analysts say, could hinder Bush's prospects for securing a replacement as conservative as Rehnquist. At the same time, the GOP's right wing is insistent that the president must not reduce conservative strength on the court by nominating anyone more liberal than Rehnquist.

"The difficulty is that the president has got to decide, 'How much political capital am I willing to bleed for a controversial Supreme Court nominee?' " said a conservative legal expert.

In such a contentious environment, names that have been considered among Judiciary Committee Republicans, sources said, include federal appeals court judges Emilio Garza, Edith H. Jones and J. Michael Luttig and the committee's ranking Republican, Sen. Orrin G. Hatch (Utah).

Other possibilities the president might favor, a variety of sources say, include conservative appeals court judges J. Harvie Wilkinson and Frank H. Easterbrook and Washington lawyers John G. Roberts and Miguel Estrada, both nominated by Bush last month to the federal appeals court here.

Bush also could look to members of Congress, such as Sen. Jon Kyl (R-Ariz.) or Rep. Christopher Cox (R-Calif.), who was being considered by the White House this spring for an appeals court seat but withdrew from consideration because of opposition from California's Democratic senators.

Administration officials declined to confirm any candidates they are contemplating. Bush has indicated he would like to nominate the first Hispanic justice, a move that might help him woo Latino voters in 2004 and improve his chances of winning confirmation in the Senate. In that context, Gonzales, a former justice on the Texas Supreme Court and a confidant of Bush's, is considered a prime candidate.

Asked whether he might accept a nomination, Gonzales said: "I am asked this question a lot. I typically say I don't intend to be a candidate. . . . My focus is working here, serving this president in this capacity."

Some conservatives consider Gonzales too moderate, and others view him as lacking the experience to become chief justice. To allay such concerns, Bush could make a double switch, nominating a current member of the court -- perhaps O'Connor --to replace the chief justice and naming Gonzales an associate justice.

"Politically, nothing beats that pair," said a lawyer who knows several of the justices personally.

Rehnquist's departure would not be as politically momentous as that of O'Connor, who is a swing vote on the closely divided court. Rehnquist is a consistent conservative, so the prospect of an equally conservative Bush-nominated successor for him would merely reinforce the existing ideological mix.

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"If O'Connor is stepping down, then there will be all these arguments . . . about the balance of the court," said Terry Eastland, publisher of the conservative Weekly Standard and a senior Justice Department official in the Reagan administration. "With Rehnquist, the Democrats might be more willing to defer to the president in terms of judicial philosophy."

By regaining control of the Senate, the Democrats now run the Judiciary Committee, which will largely determine how quickly a nomination is processed -- and how much the nominee is grilled about his or her judicial philosophy.

Some Senate Democrats have begun discussing whether they would even employ a filibuster or other procedural tactics to block a Bush appointee from being voted on by the full Senate -- a sharp departure from past practice. In 1987, Robert H. Bork was allowed a vote on the Senate floor, even after the Democratic-controlled Judiciary Committee rejected him. Bork lost the floor vote, 58 to 42.

Rehnquist has been on the court since 1972, when he became an associate justice under President Richard M. Nixon. President Ronald Reagan elevated Rehnquist to chief justice in 1986, to replace the retiring Warren E. Burger.

In a recent interview with Fox News, Rehnquist said he had thought of departing before he was tapped to be chief justice. He acknowledged he has been having trouble lately remembering names and sent this wistful message to his television audience: "I'll tell them this, that I just think I've been extraordinarily fortunate in my life, and I'm very grateful for my good fortune."

Rehnquist's health, particularly severe back pain, has been a problem in the past. Although he still must rise from the bench and stretch his back during the court's two-hour oral argument sessions, he now appears to be in good physical and mental condition.

Under Rehnquist, a five-member conservative majority on the court has moved the law in a decidedly conservative direction, trimming affirmative action, clearing legal obstacles to the application of capital punishment, and limiting federal authority over the states.

Asked during the PBS interview if it would make a difference to him that there is a Republican in the White House, Rehnquist did not answer directly but did concede that there had "traditionally" been a "slight preference" by justices to retire during administrations of the party that appointed them.

The Washington Post
June 18, 2001

Daschle's 'Intensive Care Unit' to Attend to Patients' Rights

John Lancaster and Helen Dewar

*** EXCERPT ***

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POWER PLAY: The Senate has once again gone into overtime in trying to nail down the fine points of its shifting power balance, delaying approval of a new resolution on committee organization because of an unresolved dispute over the handling of judicial nominations.

Without an agreement, freshman senators are left without committee assignments, many Democratic committee chairmen have to operate with Republican majorities -- and President Bush will have to wait awhile longer for action on his nominees.

The reason is that the power-sharing agreement negotiated when the Senate was evenly divided lapsed when Democrats took control this month, meaning that committee organization reverts to what it was at the end of the 106th Congress -- until a new agreement is reached.

After two weeks of quiet, behind-the-scenes negotiations, Republicans went public last week with demands for a guarantee that Supreme Court nominees will come to the Senate floor for a vote and for public disclosure when nominees are blocked by their home-state senators under the "blue slip" process. They said they asked Majority Leader Daschle to put the two proposals to a vote by the Senate, and he refused.

Later, Daschle issued a statement saying he has made both public and private commitments to "assuring a fair process for judicial nominees" and wants to resolve remaining organizational issues "through negotiations and discussions, rather than with potentially divisive votes."

On a party-line vote, which is customary on votes related to party powers, the GOP proposals would be defeated 51-49. But Republicans could claim a moral high ground in favor of full disclosure and fair treatment for a new president's nominees.

MEMBERS OF CONGRESS

Fox News Sunday
June 17, 2001

Senate Majority Leader Tom Daschle on Judicial Nominations
Tony Snow, Juan Williams

WILLIAMS: Senator Daschle, since Mr. Jeffords has come over, at least for caucus purposes, with the Democrats, there's been no reorganization of the Senate. So I'm wondering, how are you operating? And what pressures are there on you, as the Senate majority leader, to in fact now reach some deal with the Republicans so that you can get back to business?

DASCHLE: Well, Juan, I've told my Republican colleagues that I'm not going to jam them, I'm going to give them time to sort this out. These transitions are never easy. It took Senator Lott and I a couple of months to work out power-sharing.

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But this is nothing compared to what we had to work through with power-sharing. That was unprecedented. The circumstances now are certainly not unprecedented, and we went through a lot of the same types of questions in the 1950s. Ao this is really a matter of whether we have the one-vote majority in committees, whether or not we revert back to power-sharing if something would change, whether or not we can work (Publication page references are not available for this document.) out staff and budgets. I think we can, and I think we're getting closer.

WILLIAMS: Well, now, what about the pressure coming from the GOP to say, listen, we want some assurances, we want them written down, and, in specific, concern about judicial nominations and the fact that they not get bottled up in committee but be able to reach to the Senate floor for a full vote?

DASCHLE: Well, I have said over and over that we're going to be fair. We are determined not to engage in any payback. We're not going to do what we think in many cases was done to our nominees in the last eight years. That isn't what we're all about.

What we want to do is move forward, assure that there are votes. But we don't want to abrogate the constitutional process of advice and consent, to make sure, absolutely certain that the judiciary committee has the prerogative and has the responsibility that it's been charged to take on. And that's what this is about.

SNOW: But, Senator, the constitutional obligation is for the entire Senate, it's not the Senate Judiciary Committee. And the founders never said, well, we want the Judicial Committee to decide who gets to serve as judges.

What have you told Republicans, other than that you'd be fair? Specifically, what have you promised them?

DASCHLE: Well, what I've promised them, Tony, is that we were going to assure them that every nominee, regardless of whether it's judiciary or executive, will have a fair hearing, will have an opportunity to be considered, and I can't go any further than that.

Obviously, we don't want to see happen what happened over the last five years, where some judges were kept without even the opportunity to be heard for over four years; where some senators, because you had secret holds, were given no opportunity to have the right to be considered and to be voted on. We're not going to do that. I don't think we should do that.

But I'm not going to engage or commit to an extralegal process that says, in some cases, regardless of what the Judiciary Committee does, we're going to bypass the committee and go straight to the floor.

SNOW: Why not? That's the agreement you just had.

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DASCHLE: No, no, I don't think we've ever had an agreement of that kind.

SNOW: Did you not have an agreement that, when you had the 50-50 power-sharing agreement, that nominations would go to the Senate floor?

DASCHLE: No, what we had was an agreement that either the majority or the minority leader could make a motion to proceed to a nomination. And I obviously would be willing to look at something like that. But never did we have an automatic commitment that any nominee or any bill would come straight to the floor.

Meet the Press
June 17, 2001

Senator Joe Biden on Judicial Nominations

Tim Russert

MR. RUSSERT: You're also a member of the Senate Judiciary Committee.

SEN. BIDEN: I am.

MR. RUSSERT: Harry Reid, Democratic senator from Nevada and a colleague of yours, said the other day, talking about the Supreme Court: "We may wind up with another Scalia. Even though I disagree with the result of some of his opinions, his ability to reason is about as good as I've ever seen. I'm not looking for another Antonin Scalia, but I think that he brings with him such an intriguing background and such a brilliant ability to reason, that if we had someone like him, it would be a tougher decision for the Senate."

SEN. BIDEN: Wouldn't be tough for me at all. I've spoken to Justice Scalia. I consider us good acquaintances. So we kid each other occasionally when he--like, for example, I got a note or a call, I can't recall which, saying when the special prosecutor thing was--when we all voted against it, you know, reinstating, he called and says, "See, I was right the first time in the Morrison vs. Olson case."

I teach constitutional law--he called me and said, "I better come up and help you with those students. They're getting the wrong idea." As I've said to him, bluntly, I regret--the two most regrettable decisions I made were voting for him and voting for Reagan's tax cut.

MR. RUSSERT: Scalia was confirmed 98-to-nothing.

SEN. BIDEN: No--he was, but you--remember the context then? The context was we had a governor named Mario Cuomo saying he'd kick anybody's rear-end who didn't vote for the Italian. And, you know, remember he didn't answer any questions and no one forced him to answer any questions. Look, the fact that someone is brilliant does not qualify them to be on the Supreme Court. They can be brilliant and wrong. I would like--for example, I think it's

important there is a Scalia on the court. I'd like another Brennan on the court, as well. But if you want someone who's brilliant in his reasoning, equally as consequential, I'd take Souter. He's equally as bright as Scalia. Writes better than...

MR. RUSSERT: As chief justice.

SEN. BIDEN: As chief justice.

MR. RUSSERT: You don't believe the Democrats would ever support Scalia to be chief justice of the Supreme Court?

SEN. BIDEN: I'm not speaking to the Democrats. I'm speaking for me. His view of the Constitution, that there are no unenumerated rights in the Constitution, that there's a very--this is the most activist Supreme Court we've had in the history of the United States of America, Tim. They have--they're the only court that has ever declared unconstitutional seven national pieces of legislation. People don't know. They declared, for example, the Older Americans Act unconstitutional as it applies to states.

MR. RUSSERT: But doesn't George Bush have a right to have conservatives on the Supreme Court?

SEN. BIDEN: Sure, he does. And I have a right to have who I want. This is what they call, you know, co-equal branches of government.

MR. RUSSERT: A liberal litmus test?

SEN. BIDEN: No, no. No, no, no. You're putting words in my mouth. You said, "Does he have a right to have conservatives?" To the degree that he pushes to the right, I can push to the center or to the left. The Constitution says that the United States Senate gets to determine--he gets to pick, his is to propose, ours is to dispose. We have from Rutledge back in the turn of the century with George Washington straight on through. We've rejected people whose views we believe are out of sync with what the Senate is.

I was asked advice by President Clinton when he had a chance to put people on the court. I went down to see him. I said, "Mr. President, when there's a divided government, you should pick someone in the middle. You should understand that." And he did. My advice to the president of the United States is if he wants a holy war, he can do that and pick another Scalia. But there's a divided government. The nation is divided on these issues. He should pick someone who is a centrist. He can be center right, but to pick someone on the extreme left or right would be a serious mistake, in my opinion.

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OP/EDS

The Columbus Dispatch
June 16, 2001

Two Superior Judges Merit Confirmation

Jim Petro, Ohio State Auditor (Editorial)

During the 2000 presidential campaign, President Bush promised that he would nominate for federal judgeships only people of the highest integrity and professional competence and who possess the proper judicial temperament. Recently, Bush began delivering on that promise by nominating 11 men and women from across the country from both political parties for seats on the various federal courts of appeal.

Ohioans should be proud that for the first two of seven vacancies on the 6th U.S. Circuit Court of Appeals, which covers Ohio, Michigan, Kentucky and Tennessee, the president nominated two outstanding Ohioans to serve on that bench: Ohio Supreme Court Justice Deborah L. Cook and former state solicitor Jeffrey S. Sutton.

As former assistant prosecutor, city law director in Rocky River and lawyer in private practice for the past 28 years, it has been my pleasure and privilege to have appeared before and practiced with thousands of judges and attorneys throughout the state. Without a doubt, Cook and Sutton are among the best-qualified lawyers to serve in the federal judiciary that I have seen in my legal career.

After a distinguished 13-year career in private practice in Akron, Cook joined the Ohio Court of Appeals in 1991, where she quickly developed an excellent reputation for her hard work and for the quality of her opinions. Elected and re-elected to the Ohio Supreme Court in 1994 and 2000, Cook has been praised by The Dispatch for her "keen intellect" and "careful legal scholarship."

The newspaper noted that she applies the law "without fear or favor" in crafting rulings that are governed by the Constitution and not by popularity polls or special interests.

Sutton graduated first in his class at Ohio State University Law School and served as a law clerk for two different U.S. Supreme Court justices, a rare honor. As Ohio's state solicitor, he was responsible for arguing cases of the utmost importance to Ohioans before both the Ohio and the U.S. Supreme Courts.

A prolific legal scholar, Sutton has written more than 50 law review articles and two legal texts. While keeping his private practice in Columbus, he also is teaching constitutional law at OSU

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law school.

When Bush submitted his nominees for the federal appeals courts to the U.S. Senate for confirmation, he called upon senators of both parties to restore civility and dignity to the confirmation process, and, most importantly, he asked for a prompt vote on each nominee.

Right now the court, based in Cincinnati, is critically short of judges to handle an ever-expanding caseload. Because of their impeccable credentials, Cook and Sutton should be swiftly confirmed.

The Columbus Dispatch
June 17, 2001

Lack of News Makes Pontificating Difficult but Not Impossible

Joe Hallett, Dispatch Politics Editor

A big patch of white space, a fast-closing deadline and an empty head. Mid- June and the dog days are here already. Will loyal readers -- both of them -- notice if there is no column this week? Can't do commentary without some news. It's plain dead around here.

Speaking of death, maybe column grist could be ground from the pending U.S. Supreme Court case on whether mentally ill murderers should be executed. But what's the point now? We already killed schizophrenic Jay D. Scott.

The legal system, though, is always column fodder, and it would be timely to discuss President Bush's nomination of Columbus attorney Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals in Cincinnati.

But that has to do more with the political system, and editors are always griping that readers don't care about politics. Why waste a column on it? So what if the new Democratic majority in the U.S. Senate, for its own partisan aggrandizement, stands ready to ravage Sutton's reputation?

So what if the Democrats are salivating to tar Sutton unfairly as an uncompassionate conservative for having the audacity to argue successfully before the U.S. Supreme Court that the Constitution limits the ability of citizens to sue state governments for discrimination against the disabled?

Does anyone think for a moment that Senate Democrats will care that Sutton, at age 40, suffers from osteoarthritis, a degenerative disease that eventually would have put him in a wheelchair, if not for the miracle of hip- replacement surgery?

Will Senate Democrats give a hoot that Sutton, a brilliant attorney by virtually everyone's account, has a history of performing free legal work for social causes and groups? He has

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argued, pro bono, on behalf of the National Association for the Advancement of Colored People, the Anti-Defamation League of B'nai B'rith, the Center for the Prevention of Handgun Violence and the American Civil Liberties Union.

Not long ago, Sutton took up the cause of a Chillicothe prison inmate and won a 9-0 decision from the U.S. Supreme Court, the ninth case in five years he had argued before the high court, probably more than any other private attorney.

Senate Democrats won't care. They're bent on getting back at Republicans for confirming only 61 percent of President Clinton's judicial nominees. When and if the Democrats give Sutton a hearing, they'll be more concerned about placating the constituencies who larder their coffers than putting a fair, honest person on the federal bench.

In a hearing process that too often has turned well-meaning nominees from both parties into bitter and spiteful judges -- Supreme Court Justice Clarence Thomas comes to mind --Sutton will be put through the political wringer, used and abused, to signal Bush that his Supreme Court nominees can expect even tougher treatment.

But, heck, nobody is interested in such political shenanigans except for maybe both readers of this column.

Well, then, there is the school-funding case. The Ohio Supreme Court will hear arguments Wednesday. For a third time, the court is expected to rule 4-3 that the legislature and governor failed to ensure an adequate and equitable education for Ohio's schoolchildren.

Lawyers for the state hope to turn one of two Republican justices, Paul E. Pfeifer or Andrew Douglas, who formed the majority with two Democrats in the previous decisions. A victory for the financially insatiable coalition of schools almost certainly will mean higher taxes.

The school-funding case has been around for 10 years. Yesterday's news is boring.

Oh, yeah, there's the Big Three Republican feud at the Statehouse. But that, too, is insider politics. Speaker Larry Householder of Glenford and Senate President Richard H. Finan of Cincinnati had their way with Gov. Bob Taft on the state budget and now they are poised to embarrass the governor by overriding some of his 49 vetoes.

Obviously, Taft's re-election in 2002 is not a high priority for Republicans controlling the General Assembly. For that matter, it appears not to be a high priority for Taft. While getting pushed around by legislative Republicans, he declined to use the bully pulpit to defend his own reasonable budget proposal, one that would not have gutted higher education.

Taft may have trouble telling voters what he stands for next year. But that's then and this is now, and there is nothing going on.

Unless, of course, anyone considers the latest scandal at the Ohio Department of Job and Family

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Services worthy of comment. News flash: Department illegally withholds more child-support payments from poor children. Routine stuff.

Maybe a column could be crafted around the big-money push at the Statehouse to permit video-gambling machines at Ohio's seven horse racetracks. But thanks to Taft, that's dead for the moment. Maybe something could be written about all the wacko legislation that right-wingers in the House want to pass. But why dignify wackiness?

My gosh, look at the time! All this white space to fill and nothing to write. Will somebody please make some news around here?

Joe Hallett is politics editor of The Dispatch.

The Indianapolis Star
June 17, 2001

Heat Turned Up High in Judicial Kitchen

Russ Pulliam

He's been there, done that.

Federal Judge Daniel Manion recommends a thick skin and some experience in rough-and-tumble political battles for potentially controversial judicial nominees. President Bush already has submitted some nominations for federal court positions for U.S. Senate confirmation. But the big battle is yet to come with an anticipated opening on the U.S. Supreme Court in the next year or so.

When Manion was nominated by President Ronald Reagan for the 7th Circuit Court of Appeals in 1986, the mild-mannered former state senator from South Bend was surprised to become the center of controversy. The Manion battle was a warm-up for bigger ones over subsequent nominations of Robert Bork and Clarence Thomas for the Supreme Court.

Manion was blasted by People for the American Way and Senate Democrats for being unqualified for the court position. Sen. Edward Kennedy called him "the least-qualified" nominee he had ever seen for the federal appeals court. His critics found fault with his proof-reading because of errors in his correspondence.

Yet Manion also attracted endorsements from liberal Democrats who knew him back in Indiana. He made it to the bench after close votes in the Senate.

Manion understood that his critics weren't aiming the mud-slinging at him personally. What they really objected to was his willingness to look to the original intent of the Constitution. But

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he worries that mud-slinging campaigns that got worse under Bork and Thomas could deter qualified people from serving on the courts.

"I had a much thicker skin politically," he said in a recent interview. "I understood what was going on."

Good lawyers can make more money in private practice. "Why should I subject myself to this kind of attack?" he can hear potential candidates say. "I don't need to have my name dragged through the mud. Who knows what they'll come up with -- what kind of magazines you subscribe to. That's the kind of drivel it descends to," Manion added.

Critics might suggest that those who can't stand the heat should stay out of the judicial kitchen. But the judicial branch traditionally has been set above the partisan politics of the legislative and executive branches. Until the Bork-Thomas controversies, a long tradition was to evaluate court nominees on the basis of competence and personal character.

Manion has had the last word with the critics who attacked his alleged incompetence. "He made a liar out of them," commented a court colleague, William Bauer. "He is very bright, hard-working, thoughtful. Our job is to make sure we follow the Constitution. That's what he does very well."

Another Indiana lawyer, Peter Rusthoven, was associate counsel during the Reagan administration and gained an insider's perspective on the court nomination process. He suggests that more ideological battles over these nominations will undermine confidence in the courts as impartial decision-makers.

"Judicial nominations are no longer about, is this person smart, well-trained in the law, hard-working," he said. "Instead, you're nominating a person who is going to have one vote in a super-legislature, and that super-legislature is going to decide all kinds of things that the courts traditionally never decided."

With activist judges "writing" laws, the executive and legislative branches lose their chance to settle controversial political and social issues. Rusthoven is hoping for more strict constructionist judges who will be willing to defer issues back to the legislative branch when no clear constitutional issues are at stake.

He points to the 1857 Dred Scott decision as a notorious example of judicial activism, with the court taking over the slavery issue by ruling that blacks were not citizens. "It severely minimized the possibility of working out the slavery issue in the elected or political branches of government," he said. "It took away from the Congress the ability to regulate slavery in the territories."

The Senate ought to give Bush the green light to nominate strict-constructionist judges for the high court. A few more of them could help take the court out of some of the controversial political issues that are better left to the two elected branches of government.

INTEREST GROUPS/PRESS RELEASES

The Washington Post
June 18, 2001

Reason to Reject

Elizabeth Cavendish, Legal Director, NARAL

We take exception to the belief that it is unfair to challenge the qualifications of judicial nominee John G. Roberts Jr. based upon antiabortion briefs he filed as a government lawyer [editorial, June 7].

Mr. Roberts was a political appointee in the Reagan administration and served as principal deputy solicitor general for President Bush from 1989 to 1993. He competed for the job knowing that the administration had the goal of rescinding the constitutional right of reproductive choice.

During the Reagan and Bush era, the Justice Department argued to restrict or overturn the fundamental right to choose eight times in seven Supreme Court cases. Mr. Roberts helped author the brief in Rust v. Sullivan, defending the now-repealed "gag rule" that prohibits family planning providers from informing women of all their options when confronting an unwanted pregnancy. Saying the Roberts brief argued "in passing" for the overturn of Roe, as the editorial did, suggests it is inconsequential to urge that constitutional rights be repealed. Would The Post make the same argument about efforts to reverse Brown v. Board of Education?

In Bray v. Alexandria Women's Health Clinic, Mr. Roberts, on behalf of the Bush Justice Department, intervened as a friend of the court. The government's friendship was extended to Operation Rescue, which was terrorizing women who were trying to enter reproductive health facilities. Mr. Roberts argued that the nation's civil rights laws should be narrowly interpreted to preclude relief for women seeking constitutionally protected health services. Congress disagreed and the following year enacted the Freedom of Access to Clinic Entrances Act.

No one has an entitlement to a lifetime slot on the federal judiciary. The burden is on the nominee to demonstrate that he or she deserves Senate confirmation. This high threshold is essential to ensure that the judiciary will continue to guard our liberties against assault.

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All --

The latest installment of our media survey on judicial nominations is attached.

Regards,

Jennifer
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Media Review - Judicial Nominations

Monday, June 18, 2001

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Alison Mitchell, *The New York Times*, June 15, 2001
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Dave Boyer, *The Washington Times*, June 15, 2001
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"Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate," Nina Totenburg, *National Public Radio*, June 15, 2001 6

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Jesse J. Holland, *The Associated Press*, June 15, 2001

"The Case for Borking," 10
Randall Kennedy, *The American Prospect*, July 2-July 16, Vol. 12, Issue 12
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"Halting the Judgernaut," 13
Alexander Wohl, *The American Prospect*, July 2-July 16, Vol. 12, Issue 12
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"At High Court, a Retirement Watch," 17
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http://www.washingtonpost.com/wp-dyn/articles/A10675-2001Jun16.html

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The liberal magazine "The Nation" has a page dedicated to the defeat of Bush Judicial Nominees, by sending a letter to members of the Senate Judiciary Committee. "Use the letter below to tell Senate majority leader Tom Daschle and the nine judiciary committee Democrats to take a stand against appointing Bush's conservative nominees to the circuit courts." The page is located at:
http://www.thenation.com/alert/actnow/

GENERAL JUDICIAL ARTICLES

The New York Times
June 15, 2001

G.O.P. Reports an 'Impasse' Over Senate Reorganization
Alison Mitchell

Senior Senate Republicans said today that they had hit an impasse in talks with the new Democratic majority leader over organizing the Senate because of disputes about how to handle judicial nominees. They called for the issues in contention to be brought to the full Senate floor for a vote.

After two weeks of talks with Senator Tom Daschle of South Dakota, the new majority leader, the five Republican negotiators went public with their complaints this evening as the Senate was shutting down for the week.

"We are reluctantly here to announce we are at impasse at the moment," said Senator Mitch McConnell, Republican of Kentucky.

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The Republican senators said they had reached agreement with the Democrats on essential details like the size and makeup of committees. But they said they wanted the resolution needed to organize the Senate under Democratic control to contain an assurance that all nominees for the Supreme Court would come before the full Senate for a vote.

They said they also wanted the resolution to require that if any senator exercised the right under Senate tradition to block a home-state judicial nominee, the action must be revealed to the public. Senator Phil Gramm, Republican of Texas, called such disclosure a "good government, sunshine provision."

The Republicans handed out a report showing that since at least the 1880's, the Judiciary Committee had sent to the floor even those Supreme Court nominations that were opposed by a committee majority.

Mr. Daschle said in a statement that he would continue to try to resolve the outstanding issues "through negotiations and discussions rather than potentially divisive votes. "He said he had "stated publicly and privately my commitment to assuring a fair process for judicial nominees."

But he has resisted setting down any formal procedure. One Democratic Senate aide said that a "subtle distinction but an important distinction" existed between a guarantee that the Judiciary Committee would send a Supreme Court nominee to the full Senate and an informal tradition of doing so. "It would be an unprecedented new grant of authority to the minority party," the aide said.

The issue of judicial candidates and the ideological direction of the federal courts is one of the most delicate areas of dispute between the parties. During the six years that the Republicans controlled the Senate and Bill Clinton was president, the Republicans offered neither of the guarantees to the Democrats that they are now seeking.

But they say they have been disturbed by vows by some Democrats to stop conservative judges. And they say they would be willing to make the two provisions they are seeking permanent no matter which party has control of the Senate.

Senator Patrick Leahy of Vermont, the new Judiciary chairman, issued a statement saying: "There is more than a little irony in the charge from some Republican quarters that the Democratic Senate will treat President Bush's judicial nominees unfairly. Some Republicans seem to be expecting in Democrats the same wiles that the G.O.P. Senate used in killing so many of President Clinton's nominees."

If the Senate held a vote on the two issues, the Republicans would probably not prevail. But the vote would put the Democrats in the politically embarrassing position of opposing public disclosure and looking like they were ready to block President Bush's Supreme Court picks.

When the Senate switched last week to Democratic control with Senator James M. Jeffords of Vermont becoming an independent, Mr. Daschle became majority leader and Democrats became

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committee chairmen. But many of the details of the changeover need to be approved by a vote.

Mr. Daschle hinted today that a long stalemate could be a problem for Mr. Bush. "What that means is action in the committees on virtually anything is unlikely," he said. "We wouldn't be able to do nominations or legislation because obviously you don't have the full complement of membership on those committees."

The Washington Times
June 15, 2001

Bush's Judgeships Stall in the Senate

Dave Boyer

Senate Republican negotiators late yesterday declared an impasse in their talks with Democrats on President Bush´s judicial nominees and said it was time to move forward with an up-or-down vote on the new Senate organization.

"We are only asking for fairness," said Sen. Mitch McConnell, Kentucky Republican. The negotiators said the next move is up to Senate Majority Leader Tom Daschle, South Dakota Democrat, on whether to call a vote.

Republicans want the resolution to reflect the three points on which both parties agree, and the two contentious matters voted on independently as amendments to the resolution.

Republicans said the full Senate should have the opportunity to make a determination and that they would not filibuster if the resolution is voted down.

"We´re simply asking for there to be a vote. When we have fundamental differences, we vote," said Sen. Arlen Specter, Pennsylvania Republican. Both parties agree Democrats will have a one-seat majority on every committee, with the exception of the Ethics Committee, which by tradition is equally divided.

All committee members will retain their assignments, and committee funding and space agreements negotiated by the chairmen and ranking members will remain in effect. Democrats do not agree with Republicans that "blue slips," or single-senator veto slips on judges from home-state senators, should be eliminated.

Democratic leaders turned up the pressure yesterday on judgeships, accusing the GOP of holding up White House nominations by not submitting to the Democrats´ proposal to reorganize the Senate.

"They´re making my life easier," said Sen. Patrick J. Leahy, Vermont Democrat and chairman of the Senate Judiciary Committee. "For the life of me, I don´t know why they keep waiting. I´m

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ready to start (confirmation hearings) within 10 days to two weeks of the time that we reorganize."

Republicans say Mr. Leahy, one of the party's most liberal lawmakers, is a prime example of why they are pressing Mr. Daschle for assurances that Mr. Bush's nominees will be treated fairly. Mr. Leahy was one of the most outspoken critics of John Ashcroft's nomination for attorney general in a bruising confirmation hearing in January.

In two weeks of talks, Mr. Daschle has resisted Republican requests to promise floor votes on appeals court candidates and Supreme Court nominees if the Judiciary Committee rejects them. Mr. Daschle says he will hold up a deal to reorganize committees with Democratic majorities until both sides agree on the issue of nominations.

Democrats say Senate Republicans are only hurting their own administration by not accepting Democrats' more vague, nonbinding assurance to be fair to nominees. "Unfortunately, what that means is that action in the committees on virtually anything is unlikely," Mr. Daschle said yesterday.

"We wouldn't be able to do nominations or legislation. We're going to ... probably be faced with a bottled-up array of , but we won't be able to do that." Asked if he is "jamming" the White House's agenda, Mr. Daschle replied, "That's not my choice. I think it would be inexcusable for us to disenfranchise elected members of the Senate who were serving on these committees just a week ago, and now to tell them they can't vote. That isn't my jamming them, that is simply a reality; that's what senators are here to do, is to make decisions."

Referring to the new majority party's power to investigate the administration, Mr. Daschle added, "In the meantime, we'll be satisfied, I suppose, with the opportunities to hold oversight hearings and other kinds of hearings. ..." For example, Sen. Joseph I. Lieberman, Connecticut Democrat, has used his new chairmanship of the Governmental Affairs Committee to hold a hearing on the administration's refusal to set energy price caps in California. Mr. Lieberman, who lost his bid for the vice presidency last year and is considered a likely presidential candidate for 2004, also plans to hold hearings on Mr. Bush's environmental policies.

National Public Radio: Morning Edition
June 15, 2001

Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate

Bob Edwards, Anchor; Nina Totenburg, Reporting

This is MORNING EDITION from NPR News. I'm Bob Edwards.

For six years, Democrats fumed when President Clinton's judicial nominees were stalled

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by the Republican-controlled Senate. But the tables have been turned. Now there's a Republican president and a Democratic Senate. NPR legal affairs correspondent Nina Totenberg reports on what this could mean for President Bush's nominees.

NINA TOTENBERG reporting:

About 1/8th of the federal judiciary is vacant. But while 70 of the 102 vacancies are in the trial courts, President Bush has made just two nominations to fill those slots. Instead, the administration is concentrating on filling the 32 appeals court vacancies. The president has already sent the Senate names for half of those slots. There's a reason for that. The appeals courts are just one step below the Supreme Court, and these are the judges that are the final word in most of the cases heard across the country. Moreover, they are widely considered training grounds for the Supreme Court.

Indeed, it was the Clinton nominees for the appellate courts who were most ferociously stalled by the GOP in years gone by. The numbers tell the tale. Although Presidents Clinton and Reagan won confirmation for roughly equal numbers of judges in their two terms, Mr. Reagan won confirmation of 87 percent of his appeals court nominees, while Mr. Clinton won confirmation of only 61 percent, leaving the rest dangling without action.

In the last two years of the Clinton presidency, 17 appeals court nominees never got a hearing. Those who were confirmed waited, on average, more than a year. Contrast that with the wait for President Reagan's nominees in his last two years when the Democrats controlled the Senate, 17 weeks, and for the first President Bush's nominees, 15 weeks. The result is that now, after eight years of a Democratic administration, Republican appointees still dominate the influential appeals courts. President Bush wants to add to that advantage, and as Democrats see it, he has front-loaded the nomination process, concentrating his early judicial nominations in the appeals court. Senator Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, having served with six presidents, has this perspective.

Senator PATRICK LEAHY (Chairman, Senate Judiciary Committee): Presidents serve for no more than eight years; judges serve for a lifetime. And I think the Senate has a real responsibility to make sure that we have an independent judiciary, one that doesn't lurch to the right or the left.

TOTENBERG: And Leahy insists he will be fair.

Sen. LEAHY: I've talked with a number of Republican senators, and some have told me very frankly they were totally unfair to President Clinton and they're wondering if I'm going to do the same thing to them. I'm not. I'm not going to go for some kind of a payback.

TOTENBERG: Not surprisingly, the Republicans aren't taking those assurances at face value. A new group has sprung up, billing itself as bipartisan, and it's running ads, so far in just one state, South Dakota, which just happens to be the home of the Democratic Senate majority leader, Tom Daschle.

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(Soundbite of advertisement)

Unidentified Woman: Our legal system affects us all. Every day courts make decisions that impact our families. That's why President Bush supports commonsense judges with character, experience and intellect.

TOTENBERG: Oklahoma Governor Frank Keating, a Republican, is chairman of the sponsoring group, Citizens for Common Sense Courts.

Governor FRANK KEATING (Republican, Oklahoma): The judiciary shouldn't be an arm of either party. Let's fairly get judges considered and confirmed.

TOTENBERG: But while Keating's group bills itself as bipartisan, the Democratic featured most prominently in its literature, former Democratic Attorney General Griffin Bell, says he is, in fact, not part of the group, that he declined to join, and yesterday the group retracted his name. That's not to say that Republican fears are unfounded. Liberal groups are already lining up to oppose a significant number of President Bush's judicial nominees. Nan Aron is director of the Alliance for Justice, an umbrella group of civil rights, environmental and consumer organizations.

Ms. NAN ARON (Alliance for Justice): We have grave doubts about most of the candidates nominated by President Bush. They were chosen by this president specifically because, while they may be very qualified and have excellent records on the law, they have shown by their actions or writings a real hostility to the gains made by women, minorities, and hostility to the role that government plays in improving the lives of Americans.

TOTENBERG: And specific groups have targeted specific nominees. Americans United for Separation of Church and State is opposing University of Utah Professor Michael McConnell, a respective conservative scholar who's long argued for greater accommodation between church and state. Also opposed to McConnell is the National Abortion Rights Action League, which cites his strong opposition to Roe vs. Wade. In addition, NARAL is also fighting the appeals court nomination of John Roberts, who, when he served as deputy solicitor general in the first Bush administration, wrote a brief that argued against federally funded clinics allowing doctors to discuss abortion with their patients. In that brief, Roberts contended that Roe vs. Wade should be reversed, a position he was quizzed about by Justice Harry Blackmun in a later case that he argued involving abortion clinics.

(Soundbite of interview)

Justice HARRY BLACKMUN: Mr. Roberts, in this case, are you asking that Roe vs. Wade by overruled?

Mr. JOHN ROBERTS: No, Your Honor. The issue doesn't even come up.

Justice BLACKMUN: Well, that hasn't prevented the solicitor general from taking that position

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in prior cases.

TOTENBERG: But Walter Dellinger, who served as solicitor general in the Clinton administration, says it's very risky to judge judicial nominees by the positions they've taken as government lawyers.

Mr. WALTER DELLINGER (Former Solicitor General, Clinton Administration): The kind of arguments that John Roberts was making in the position of deputy solicitor general were the kind that a professional lawyer's expected to make when his client, the chief executive of which is the president of the United States, has run on those positions. I'm afraid that this is a process that will lead to the rejection of the most qualified of the nominees; that is, those who, like Roberts, have been out and have had a major lifetime of accomplishment.

TOTENBERG: Elizabeth Cavendish, the legal director of NARAL, disagrees.

Ms. ELIZABETH CAVENDISH (Legal Director, NARAL): He was aligned personally with these decisions. Again, he was a political appointee, and this was a signature position of the first Bush administration.

TOTENBERG: There's an irony in NARAL's position. Liberal groups were outraged when conservatives opposed some Clinton appointees because of positions they took as lawyers. I pressed the point on Cavendish. So you would say that those who are anti-abortion would be completely correct in voting their ideas and proposing pro-choice nominees.

Ms. CAVENDISH: It doesn't work both ways. The other side wants to turn back the clock on women's rights and roll back a fundamental right.

TOTENBERG: Just what will happen to the Roberts and McConnell nominations and others is unclear. When the Republicans controlled the Senate, those nominees had been slated for quick hearings. With the Democrats in control now, though, the first hearing is likely to be for Roger Gregory, an African-American from Virginia appointed by President Clinton to sit on an interim basis for a year on the 4th Circuit Court of Appeals. President Bush reappointed Gregory. Chairman Leahy says he intends to begin confirmation hearings in less than two weeks, but by tradition only one appeals court nominee is considered at a time, and historically there's an average of about one confirmation hearing a month.

With only three months left scheduled in this legislative session this year, that would mean three or four appeals court nominees possibly confirmed this year. Even that could be in doubt. North Carolina Republican Senator Jesse Helms blocked all of President Clinton's North Carolina nominees to the 4th Circuit, and nobody's quite sure what he will do about the Gregory nomination when it gets to the Senate floor, where he could put a so-called hold on it and send it into limbo.

Moreover, all confirmation hearings are on hold for the moment, because the Senate Democrats and Republicans have not agreed to a reorganizing plan in the aftermath of the Democratic

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takeover. The Republicans are seeking something that no Senate minority has ever had before: a guarantee that all the president's nominees will get a floor vote. Few observers believe the Republicans will get such an unprecedented guarantee, because the current stalemate is perfectly acceptable to the Democrats. If the Senate organization agreement is not forthcoming, it means simply that no nominations will move at all. Nina Totenberg, NPR News, Washington.

The Associated Press
June 15, 2001

Republicans Seeking to Secure Votes on Judicial Nominees

Jesse J. Holland

Republicans backed down on Thursday from some of their demands for how the newly Democrat-controlled Senate should handle President Bush's nominees for the Supreme Court and federal judgeships.

Earlier in the week, GOP negotiators demanded guaranteed Senate votes on all Supreme Court and federal appellate court nominees, and elimination of the secret veto process for some judicial nominations.

After Democrats refused, Republicans sought to allow the full Senate - instead of negotiators - to decide whether the Supreme Court nominees should be guaranteed a vote. They also want the Senate to decide whether to make the senatorial veto process public instead of private, as it has been in the past.

Democrats say they will treat Bush's nominees fairly. Republicans fear Democrats will block Bush's judicial nominations.

"We're not asking for there to be a commitment," said Sen. Arlen Specter, R-Pa., one of the five GOP senators who have been negotiating with Majority Leader Thomas Daschle, D-S.D. "We're asking for there to be a vote."

Daschle, who is trying to reorganize the Senate to reflect the Democratic takeover, is opposed.

"I remain committed to trying to resolve the outstanding issues around the organization of the Senate through negotiations and discussions, rather than with potentially divisive votes," Daschle said.

Democratic aides said the idea of making public the secret vetoes likely would come up a meeting Tuesday of Democratic senators.

The maneuvering is the result of Vermont Sen. Jim Jeffords' decision to leave the GOP and become an independent, altering the 50-50 split in the Senate. Republicans had control by virtue of Vice President Dick Cheney's tie-breaking vote.

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The two sides agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee funding and space agreements negotiated at the beginning of the year will stay in effect as well.

Sen. Orrin Hatch of Utah, the top Republican on the Judiciary Committee, said that while filibustering the reorganization had not been discussed, GOP senators told negotiators to "go to the wall" over the judges provision.

Daschle said that if Republicans and Democrats are unable to agree on a reorganization, "action in the committees on virtually anything is unlikely."

The American Prospect
July 2-July 16, Vol. 12, Issue 12

The Case for Borking

Randall Kennedy

As the battle over the federal judiciary heats up, progressives must convince the general public of a basic proposition: The judiciary is an inescapably political branch of government whose agents, the judges, should be viewed in much the same way other politicians are.

To say that the courts are political may seem so obvious as to be banal. There is, however, a deep and widespread impulse to deny the political character of the courts. An important manifestation of this denial arises in the context of selecting, confirming, or rejecting candidates for the federal bench.

Many people bemoan, for example, what they term the "politicization" of the judiciary (as if there existed a golden age when judicial selection and judicial decision making were uncontaminated by politics). Liberals and conservatives, Democrats and Republicans have taken turns accusing each other of indulging in this unpardonable sin.

Progressives, however, should get off that unproductive rhetorical merry-go-round, accept the ineradicable presence of politics in the judicial arena, and strive to shape the judiciary in such a way that it will produce good, sound, progressive rulings. That will entail, among other things, lobbying on behalf of jurists who will advance the progressive agenda and against those who will be hostile to it.

Article II of the U.S. Constitution empowers the president exclusively to nominate federal judges, while it imposes a check on presidential authority by making the seating of a nominee dependent on the Senate's "Advice and Consent." Whereas the president is armed with veto power over legislation, the Senate, in effect, has veto power over judicial nominations.

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Over the course of the nation's history, the Senate has exercised that power over Supreme Court nominees 29 times (and over district and appeals court nominees many times more). In addition to objecting to nominees on grounds of incompetence, dishonesty, or some other personal failing, senators have also voted nay for political or ideological reasons.

Opponents blocked George Washington's Supreme Court nominee Judge John Rutledge because of Rutledge's opposition to the Jay Treaty (despite the fact that the Senate had already confirmed him for a previous opening on the Court and that he had just served for an entire Supreme Court term as the interim chief justice).

Ulysses S. Grant's nominee Attorney General Ebeneezer Rockwood Hoar was not confirmed because he had opposed President Andrew Johnson's impeachment.

Herbert Hoover's nominee Judge John Parker was blocked because of Parker's perceived hostility to organized labor and the advancement of African Americans. And Ronald Reagan's nominee Judge Robert Bork didn't make it because opponents feared, among other things, that he would energetically attack abortion rights.

In principle there is nothing wrong with political blocking, even if doing so stems entirely from one particular issue. Would we now condemn a senator who, prior to the Civil War, voted against a nominee solely on the grounds that the candidate favored slavery? I would hope not.

Yet many people sneer at the notion of litmus tests for purposes of judicial selection or confirmation--even as they unknowingly conduct such tests themselves.

Litmus tests of all sorts are scattered about the judicial-selection process. When senators ask a nominee whether he or she believes that the proper role of a judge is to interpret rather than make law, or whether the Eighth Amendment should be deemed to prohibit capital punishment--all the while silently insisting upon an expected formulaic reply--they are imposing a litmus test.

Today, a candidate would not be nominated, much less confirmed, if he or she failed to genuflect convincingly to Marbury v. Madison (which established the authority of the Supreme Court to invalidate an act of Congress deemed to be in conflict with the Constitution), Brown v. Board of Education (which invalidated de jure racial segregation in public primary and secondary schools), or other once-controversial decisions that have become so thoroughly a part of the conventional wisdom that we no longer even perceive reactions to them as litmus tests of acceptability.

Since senators (and the public as a whole) should feel free to object to a nominee on political grounds, they should also feel free to demand that nominees truthfully divulge thinking that bears upon relevant judicial matters. Nominees--both liberals and conservatives--often claim that they cannot answer certain questions because to do so would be to prejudge a matter that may come before them.

But that response is typically a mere dodge to avoid controversy. Senators need not accept this.

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If a
candidate refuses to answer relevant questions, senators should take that refusal into consideration when determining whether to vote to confirm. It makes no sense to offer lifetime tenure and all the power of judicial review to candidates whose thinking about crucial matters is unknown.

A transparent process in which ideological objections to judicial candidates are candidly voiced is a much-needed antidote to the murky "politics of personal destruction. "When politicians (again, both liberal and conservative) feel disabled from objecting to candidates on ideological grounds, they search high and low for pretexts on which to object: "He made this lewd statement to a colleague a decade ago," or "She committed this technical infraction of law."

Senators should not feel that they have to reveal or attack some personal blemish in order to justify a vote against a nominee. A deep, urgent, political disagreement is sufficient. It should be possible for a senator to acknowledge that a nominee is honorable, competent, and kind while still voting against confirmation because of the way the candidate would likely act as a judge. Nothing personal. Just politics.

The American Prospect
July 2-July 16, Vol. 12, Issue 12

Halting the Judgernaut

Alexander Wohl

As Capitol Hill adjusts to Vermont Senator Jim Jeffords's earthshaking repudiation of the Republican Party, the Senate Judiciary Committee is bracing itself to be the center of the aftershocks. The judicial branch of government, after all, is where a president is likely to have his most far-reaching impact; the judges he appoints will last much longer than the one or two terms he serves. And the Judiciary Committee--which is a key venue for debate about potent legislative issues such as abortion, school prayer, flag burning, and civil rights--is also the primary battleground in judicial-confirmation fights. Thus, with George W. Bush's first slate of nominees for the federal bench waiting for hearings, the most resounding political clashes of the summer are likely to occur on the Judiciary Committee's turf.

When Jeffords abandoned the Republicans, he threw control of Senate committees to the Democratic Party, providing Dems on the Judiciary Committee with the power to strangulate nominations in committee. (Actually, as of this writing, Republicans--aware of how defiantly they refused to allow many of Bill Clinton's nominations to get beyond the Judiciary Committee,

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and afraid of payback--are trying to force the Democrats to permit a full Senate vote for every judiciary nominee. A politically foolish position that will likely come to a quick resolution, this could bring all Senate business to a halt.) Given a free hand to nominate and confirm judges, Bush and the Senate Republicans would no doubt populate the federal bench with an army of Antonin Scalia clones--a legion of judges who, though perhaps ethnically diverse, share the extreme views of the Court's most conservative jurist. Indeed, the first batch of nominees the president sent to the Senate for confirmation has already made this clear. One logical response to such nominees would seem to be simply to block their consideration--especially since that was the Republican response to Clinton nominees whom the GOP considered to be too liberal.

But early signs indicate that the newly Democrat-controlled Judiciary Committee, along with the Senate as a whole, is taking a less direct and more wide-ranging approach, one that makes use of several different strategies at once while trying to minimize the danger of a public backlash. This highlights an important question , Is it worth letting all but the most conservative judges onto the federal bench--where they will preside for lifetime appointments, potentially lending important appeals courts a conservative coloration for up to 30 or 40 years--in order not to appear "obstructionist"? For some Democrats concerned with winning re-election, the answer may be yes. Still, if they're smart and stick together, the Democrats on the Judiciary Committee may be able to ensure that only the more moderate of Bush's nominees come to a full Senate vote--and to demonstrate the wisdom of their case to the American public.

"Don't Mess with Vermont"

How successful the Democrats are in preventing the confirmation of conservative judges will depend heavily on the committee's new chairman. A soft-spoken, liberal Vermonter, Patrick Leahy is a 27-year Senate veteran who has distinguished himself from many of his colleagues with his integrity and lack of ego. Smart and unafraid to play political hardball when necessary, he is adept at diffusing tension with gentle humor. (The day after the Jeffords switch, for example, "Don't Mess with Vermont" bumper stickers--attributed to Leahy--appeared around Washington, D.C.)

Leahy replaces Utah Senator Orrin Hatch--a fierce conservative whose favorite topic in recent committee sessions has been his own evenhandedness--as the ranking majority member on the committee. (Transcripts of recent hearings reveal Hatch to be remarkably, repetitively taken with his own "fairness.") Though Hatch has worked with Democrats on occasion, he fights hard for conservative Republican nominees and has the battle scars from the Robert Bork and Clarence Thomas Supreme Court nominations to prove it.

Leahy and Hatch consider themselves close friends and generally work well together. During Hatch's quixotic presidential run through early 2000, Leahy offered "to speak for him or against him, whichever would help more." But beneath this geniality, both sides are girding for war. Within days of Jeffords's announcement, Hatch was warning Democrats that "nobody's going to push me around." Leahy, for his part, has shown himself unafraid to take on the Republicans: He has challenged the GOP's hypocritical statements about the "quick pace" of Clinton

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nominations during Republican control of the committee and engineered a walkout from a hearing in which he felt the Republicans were trying to strong-arm Democrats into approving Bush nominees.

But for the first time in seven years, the Democrats have the numbers--if not literally (at this writing, the Senate leadership is negotiating whether the party balance on the committee will remain evenly split or a Democrat will be added to give the Dems a one-person advantage), then at least in terms of power. Majority status gives Leahy the gavel--and with it, the power to schedule and time hearings. Democrats now control the process: They decide when (and even if) nominees are brought up, how zealously they are interrogated, and how quickly they get voted on. And Senate Democratic aides say that Leahy is ready to take a much tougher line than others have in the past.

The recent debate over Ted Olson's nomination as solicitor general suggests how potent the Democrats' new majority status on the committee can be, if only they can muster the courage to exercise it. Erstwhile Senate Majority Leader Trent Lott was forced to discharge Olson's nomination from the Judiciary Committee (he did this under the bargain struck relating to the 50–50 Senate divide) the day Jeffords announced his switch: Lott knew that if he waited, the Democrats could use their new power in the Judiciary Committee to withhold the nomination from the floor. Moreover, after seeing Olson get voted in by the Senate--albeit by a razor-thin majority--Democrats surely understand that stopping someone is easier in committee than on the Senate floor, where there is the danger that some conservative Democrats will join the Republicans in crucial votes, as Georgia's Zell Miller and Nebraska's Ben Nelson did on Olson.

But now that the Democrats possess the power in the Judiciary Committee, will they be willing to use it? After failing to block Attorney General John Ashcroft and Solicitor General Olson, some Democrats said, in effect, "Well, we got enough votes to demonstrate that we could block a nomination--but we didn't do it because these were only cabinet appointments, not Supreme Court justices, which are lifetime appointments." Fair enough. But lower-court federal judges get appointed for life, too. Do the Democrats have the will to scrutinize and oppose district and circuit court candidates?

Whom to Oppose?

Democrats are still strategizing about whom they should oppose. This requires a calculated analysis not just of the nominees' records and the courts for which the judges have been nominated, but of public opinion. Democrats have seen how the perception of obstructionism or intransigence has sometimes hurt the Republicans--most notably after the government shutdown in 1995, during Clinton's impeachment in 1998, and last month when the GOP lost Jeffords--and don't want to be perceived that way themselves.

Both Leahy and the new majority leader, South Dakota's Tom Daschle, have said that they will work to prevent an ideological court packing and that they want "good, moderate, middle-of- the-road, credible" nominees. But already a number of Bush's nominees fall outside that description. This is particularly significant right now, because--after years of Republicans stonewalling Bill

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Clinton's nominees--there are many vacancies, including 31 openings on federal appeals courts. Several circuit courts of appeal are very closely divided between liberals and conservatives. (The tiny First Circuit, for example, whose six judges cover Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico, has one opening and leans barely Republican; and the Third Circuit, which includes Delaware, New Jersey, Pennsylvania, and the Virgin Islands, is evenly divided and has two vacancies.) Just a few Bush appointees could tilt the judicial balance of the country in a decidedly conservative direction for a long time to come.

So Democrats considering circuit court nominees need to examine not just whether the prospective lifetime appointee has views so extreme as to be out of the mainstream, but whether adding that person to a court will change the ideological complexion of a particular circuit.

Given these parameters, there are several clear targets among the first group of Bush nominees. For instance, two Fourth Circuit nominees cry out for opposition. Terrence Boyle, chief judge of the U.S. District Court of the Eastern District of North Carolina, is a former aide to Senator Jesse Helms and, not surprisingly, is extremely conservative. He was already denied a spot on the court of appeals in 1991, when he was nominated by President George H.W. Bush, but the Senate did not act on his nomination. Helms retaliated by blocking all of President Clinton's nominees to fill North Carolina's Fourth Circuit vacancies. (Helms's desire to get Boyle on the court is ironic given Helms's repeated statements over the past several years that "there is no need to put more judges on that court because to do so would make it less efficient.")

The other nominee to the Fourth Circuit, South Carolina District Judge Dennis Shedd, is equally conservative; he served as chief counsel and staff director under former Judiciary Committee Chairman Strom Thurmond, who is now a senior committee member. Although Shedd has already attracted much opposition from civil rights groups, it will require coordinated strength to block him, given the tradition of deference to nominees who once worked in the Senate, even if only in a staff capacity.

But the Fourth Circuit already tilts heavily to the right. In contrast, the Sixth Circuit (which covers Michigan, Ohio, Tennessee, and Kentucky) and the D.C. Circuit are closely divided. Thus, Miguel Estrada, nominated for the D.C. Circuit, and Jeffrey Sutton, nominated for the Sixth, are judicial conservatives whom Democrats could confidently and appropriately oppose.

After the Supreme Court, the D.C Circuit is generally seen as the most powerful court in the nation, because of its role in interpreting statutes and agency decisions and because it has historically served as a springboard for potential Supreme Court nominees. Adding Estrada--who was a law partner of Ted Olson and is known for sharing the judicial philosophy of Justices Scalia and Thomas--to that court, along with another Bush nominee, the conservative John Roberts, would significantly enhance a slight conservative majority on this key bench.

The Sixth Circuit is even more closely divided. A former state solicitor from Ohio, Sutton--who has argued a number of times in the Supreme Court for expanded state power and for voiding congressional initiatives--has already been the focus of opposition. But another Sixth Circuit nominee, Ohio Supreme Court Justice Deborah Cook, also deserves a close look. In one

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representative decision, she denied a blind woman's request to be admitted to medical school because of the undue burden it would have placed on the school.

The 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, & Wyoming) also is narrowly divided. The nomination to this court of Michael McConnell, a Federalist Society conservative and a professor at the University of Utah, has already generated opposition because of his extremist interpretation of the religion clauses of the First Amendment and their potential application to a variety of social issues ranging from school vouchers to gay rights.

Democrats can prevent Bush's nominees from being confirmed in several ways. First, of course, is to vote them down, either in committee or on the floor. Second is to delay their confirmation hearings indefinitely, as the Republicans did for so many Clinton nominees. (A variation on this option is to use control of the process to lengthen investigative hearings when that would be effective.) Expect Leahy to make use of both tactics. But more important is a third approach, which is to avoid nasty committee fights and use the potential power of a unified Democratic majority--for now, the committee will follow the caucus party line and vote up or down together--to influence the White House not to nominate right-wingers in the first place. It is therefore incumbent on the Bush White House, which until now has given only lip service to the idea of consultation with the Senate, to work with Leahy and the Democrats if it wants its nominees to be confirmed in a timely fashion.

Finally, several changes in procedure will slow down the process while adding an opportunity for more information and fairness. Leahy has already promised to reinstate the use of evaluations by the American Bar Association before any hearings. (This nonpartisan analysis of candidates, which every president since Dwight D. Eisenhower has used in considering nominees, was eliminated by George W. Bush.) Leahy is also likely to hold quick hearings for less controversial nominees and for nominees who are designated for courts with the greatest need before turning to the possible challenges. In this way, he can accumulate public support that he can later use in opposing the more conservative or controversial nominees. And he will probably not hold hearings for more than one nominee at a time--something that makes abundant sense but that the Republicans failed to do.

The prevailing view has been that nominees are presumed to be confirmable, unless senators or interest groups find something "wrong" with them. Some legal scholars have proposed the idea of requiring nominees to demonstrate why they should be confirmed, and there are signs that Leahy is open to this approach.

The Senate has an important role to play in evaluating and challenging individuals who are being appointed to a lifetime job of interpreting the Constitution. While Republicans are likely to cry "Bork!" whenever a nominee is criticized (even though the same Democratically controlled Congress that rejected Bork overwhelmingly confirmed Scalia), Democrats should not shy away from opposing any (and even many) of President Bush's nominees. Nor should they be tempted to give free passes to minority candidates if those candidates are too conservative. The Constitution says that the Senate will give its advice and consent on all nominations. Most Americans don't want a judiciary slanted sharply in either direction. We will soon see whether

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the new majority in the Senate has the guts and the ability to make a credible case to the American people that President Bush should not have the unilateral authority to shape the judicial branch in his conservative image.

The Washington Post
June 17, 2001

At High Court, a Retirement Watch

Rehnquist, O'Connor Top List of Possibilities as Speculation on Replacement Grows
Charles Lane and Amy Goldstein

As the Supreme Court prepares to end its term this month, the White House, the Senate and interest groups across the ideological spectrum are preparing for the possibility that a member of the court might retire, with Chief Justice William H. Rehnquist's departure the most frequently mentioned scenario.

There is no direct evidence that Rehnquist, 76, or any other member of the court is planning to step down this year. Justice Sandra Day O'Connor, 71, recently dampened speculation about her departure, making an unusual announcement that she had "no plans" to leave. When Rehnquist was asked through the Supreme Court press office for a similar statement, he declined to comment.

Now that a Republican occupies the White House for the first time in eight years, however, court observers consider it more likely that Rehnquist or O'Connor, who were both longtime activists in Arizona Republican politics before being appointed to the court by Republican presidents, will step down sometime in the next few years.

"Make no mistake," said one longtime friend of the chief justice, Rehnquist would prefer to "return" his seat to a Republican president. But another justice recently told a friend there was no suggestion around the court that a departure is imminent.

Similarly, a lawyer who has regular contact with the White House counsel's office said, "I don't see the kind of frenzied activity by people who would be involved" in the administration if they knew a retirement were looming. In the past, many justices have directly or indirectly relayed their departure plans to the White House slightly before announcing them publicly, often at the end of the term.

Nonetheless, the thought of stepping down apparently has at least crossed Rehnquist's mind. When PBS interviewer Charlie Rose asked in February if he could imagine retiring, Rehnquist replied, "Sure."
Justice John Paul Stevens, 81, is older than Rehnquist and O'Connor, and he also was appointed by a Republican president, Gerald R. Ford, in 1975. But Stevens is not considered a likely candidate for retirement. He remains in vigorous health -- and, though still nominally a

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Republican, has moved to the left in his years on the court. He dissented vigorously from last year's court decision, spearheaded by its most conservative members, to stop the Florida recount and effectively ensure Bush's victory.

There have been no changes in membership at the Supreme Court since Stephen G. Breyer replaced Harry Blackmun in the fall of 1994, creating the second-longest period of stability in the court's history and pent-up anxiety about when the next vacancy will occur.

In such an uncertain climate, the administration, Congress and advocacy groups are keenly sensitive to the opportunity President Bush will have to shape the court -- one of the presidency's most enduring powers. The White House and the Justice Department have been working for months to define the factors that would go into choosing a nominee, as well as beginning to sift through potential candidates.

"We are working hard to be prepared," said White House Counsel Alberto R. Gonzales, who oversees the selection process and is himself a potential choice. "Even during the transition we began thinking about possible nominees to the court."

On Capitol Hill, Republicans on the Senate Judiciary Committee have already begun "informal discussions and talks" about potential candidates, said Makan Delrahim, the committee's GOP staff director.

In the meantime, conservative and liberal advocacy groups have been working aggressively to try to influence the president's eventual choice -- and public opinion. Conservatives have been urging Bush not to back down from his campaign statements that the current justices he most admires are Antonin Scalia and Clarence Thomas, the members furthest to the right.

"We are looking to him to stay as close to that standard and as consistently close to that standard as he can," said Thomas L. Jipping, director of the judicial selection monitoring project of the Free Congress Foundation.

On the left, civil rights groups and women's organizations have been trying to stoke public fears that Bush's impact on the court could have dire consequences on issues ranging from abortion to education to affirmative action.

"If George W. Bush follows through on his promise to the right wing and nominates someone in the mode of Scalia and Thomas and Rehnquist, then there is going to be an epic battle," said Ralph Neas, president of People for the American Way.

The ideological skirmish that has broken out in Congress during the last month over Bush's initial nominees to lower federal courts is widely considered a prelude to the full-scale battle that a Supreme Court opening could create.

According to aides in the administration and on Capitol Hill, the cross pressures on the president in making his selection will be intense. On the one hand, the shift of the Senate this month to

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Democratic control, analysts say, could hinder Bush's prospects for securing a replacement as conservative as Rehnquist. At the same time, the GOP's right wing is insistent that the president must not reduce conservative strength on the court by nominating anyone more liberal than Rehnquist.

"The difficulty is that the president has got to decide, 'How much political capital am I willing to bleed for a controversial Supreme Court nominee?' " said a conservative legal expert.

In such a contentious environment, names that have been considered among Judiciary Committee Republicans, sources said, include federal appeals court judges Emilio Garza, Edith H. Jones and J. Michael Luttig and the committee's ranking Republican, Sen. Orrin G. Hatch (Utah).

Other possibilities the president might favor, a variety of sources say, include conservative appeals court judges J. Harvie Wilkinson and Frank H. Easterbrook and Washington lawyers John G. Roberts and Miguel Estrada, both nominated by Bush last month to the federal appeals court here.

Bush also could look to members of Congress, such as Sen. Jon Kyl (R-Ariz.) or Rep. Christopher Cox (R-Calif.), who was being considered by the White House this spring for an appeals court seat but withdrew from consideration because of opposition from California's Democratic senators.

Administration officials declined to confirm any candidates they are contemplating. Bush has indicated he would like to nominate the first Hispanic justice, a move that might help him woo Latino voters in 2004 and improve his chances of winning confirmation in the Senate. In that context, Gonzales, a former justice on the Texas Supreme Court and a confidant of Bush's, is considered a prime candidate.

Asked whether he might accept a nomination, Gonzales said: "I am asked this question a lot. I typically say I don't intend to be a candidate. . . . My focus is working here, serving this president in this capacity."

Some conservatives consider Gonzales too moderate, and others view him as lacking the experience to become chief justice. To allay such concerns, Bush could make a double switch, nominating a current member of the court -- perhaps O'Connor --to replace the chief justice and naming Gonzales an associate justice.

"Politically, nothing beats that pair," said a lawyer who knows several of the justices personally.

Rehnquist's departure would not be as politically momentous as that of O'Connor, who is a swing vote on the closely divided court. Rehnquist is a consistent conservative, so the prospect of an equally conservative Bush-nominated successor for him would merely reinforce the existing ideological mix.

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"If O'Connor is stepping down, then there will be all these arguments . . . about the balance of the court," said Terry Eastland, publisher of the conservative Weekly Standard and a senior Justice Department official in the Reagan administration. "With Rehnquist, the Democrats might be more willing to defer to the president in terms of judicial philosophy."

By regaining control of the Senate, the Democrats now run the Judiciary Committee, which will largely determine how quickly a nomination is processed -- and how much the nominee is grilled about his or her judicial philosophy.

Some Senate Democrats have begun discussing whether they would even employ a filibuster or other procedural tactics to block a Bush appointee from being voted on by the full Senate -- a sharp departure from past practice. In 1987, Robert H. Bork was allowed a vote on the Senate floor, even after the Democratic-controlled Judiciary Committee rejected him. Bork lost the floor vote, 58 to 42.

Rehnquist has been on the court since 1972, when he became an associate justice under President Richard M. Nixon. President Ronald Reagan elevated Rehnquist to chief justice in 1986, to replace the retiring Warren E. Burger.

In a recent interview with Fox News, Rehnquist said he had thought of departing before he was tapped to be chief justice. He acknowledged he has been having trouble lately remembering names and sent this wistful message to his television audience: "I'll tell them this, that I just think I've been extraordinarily fortunate in my life, and I'm very grateful for my good fortune."

Rehnquist's health, particularly severe back pain, has been a problem in the past. Although he still must rise from the bench and stretch his back during the court's two-hour oral argument sessions, he now appears to be in good physical and mental condition.

Under Rehnquist, a five-member conservative majority on the court has moved the law in a decidedly conservative direction, trimming affirmative action, clearing legal obstacles to the application of capital punishment, and limiting federal authority over the states.

Asked during the PBS interview if it would make a difference to him that there is a Republican in the White House, Rehnquist did not answer directly but did concede that there had "traditionally" been a "slight preference" by justices to retire during administrations of the party that appointed them.

The Washington Post
June 18, 2001

Daschle's 'Intensive Care Unit' to Attend to Patients' Rights

John Lancaster and Helen Dewar

*** EXCERPT ***

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POWER PLAY: The Senate has once again gone into overtime in trying to nail down the fine points of its shifting power balance, delaying approval of a new resolution on committee organization because of an unresolved dispute over the handling of judicial nominations.

Without an agreement, freshman senators are left without committee assignments, many Democratic committee chairmen have to operate with Republican majorities -- and President Bush will have to wait awhile longer for action on his nominees.

The reason is that the power-sharing agreement negotiated when the Senate was evenly divided lapsed when Democrats took control this month, meaning that committee organization reverts to what it was at the end of the 106th Congress -- until a new agreement is reached.

After two weeks of quiet, behind-the-scenes negotiations, Republicans went public last week with demands for a guarantee that Supreme Court nominees will come to the Senate floor for a vote and for public disclosure when nominees are blocked by their home-state senators under the "blue slip" process. They said they asked Majority Leader Daschle to put the two proposals to a vote by the Senate, and he refused.

Later, Daschle issued a statement saying he has made both public and private commitments to "assuring a fair process for judicial nominees" and wants to resolve remaining organizational issues "through negotiations and discussions, rather than with potentially divisive votes."

On a party-line vote, which is customary on votes related to party powers, the GOP proposals would be defeated 51-49. But Republicans could claim a moral high ground in favor of full disclosure and fair treatment for a new president's nominees.

MEMBERS OF CONGRESS

Fox News Sunday
June 17, 2001

Senate Majority Leader Tom Daschle on Judicial Nominations
Tony Snow, Juan Williams

WILLIAMS: Senator Daschle, since Mr. Jeffords has come over, at least for caucus purposes, with the Democrats, there's been no reorganization of the Senate. So I'm wondering, how are you operating? And what pressures are there on you, as the Senate majority leader, to in fact now reach some deal with the Republicans so that you can get back to business?

DASCHLE: Well, Juan, I've told my Republican colleagues that I'm not going to jam them, I'm going to give them time to sort this out. These transitions are never easy. It took Senator Lott and I a couple of months to work out power-sharing.

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But this is nothing compared to what we had to work through with power-sharing. That was unprecedented. The circumstances now are certainly not unprecedented, and we went through a lot of the same types of questions in the 1950s. Ao this is really a matter of whether we have the one-vote majority in committees, whether or not we revert back to power-sharing if something would change, whether or not we can work (Publication page references are not available for this document.) out staff and budgets. I think we can, and I think we're getting closer.

WILLIAMS: Well, now, what about the pressure coming from the GOP to say, listen, we want some assurances, we want them written down, and, in specific, concern about judicial nominations and the fact that they not get bottled up in committee but be able to reach to the Senate floor for a full vote?

DASCHLE: Well, I have said over and over that we're going to be fair. We are determined not to engage in any payback. We're not going to do what we think in many cases was done to our nominees in the last eight years. That isn't what we're all about.

What we want to do is move forward, assure that there are votes. But we don't want to abrogate the constitutional process of advice and consent, to make sure, absolutely certain that the judiciary committee has the prerogative and has the responsibility that it's been charged to take on. And that's what this is about.

SNOW: But, Senator, the constitutional obligation is for the entire Senate, it's not the Senate Judiciary Committee. And the founders never said, well, we want the Judicial Committee to decide who gets to serve as judges.

What have you told Republicans, other than that you'd be fair? Specifically, what have you promised them?

DASCHLE: Well, what I've promised them, Tony, is that we were going to assure them that every nominee, regardless of whether it's judiciary or executive, will have a fair hearing, will have an opportunity to be considered, and I can't go any further than that.

Obviously, we don't want to see happen what happened over the last five years, where some judges were kept without even the opportunity to be heard for over four years; where some senators, because you had secret holds, were given no opportunity to have the right to be considered and to be voted on. We're not going to do that. I don't think we should do that.

But I'm not going to engage or commit to an extralegal process that says, in some cases, regardless of what the Judiciary Committee does, we're going to bypass the committee and go straight to the floor.

SNOW: Why not? That's the agreement you just had.

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DASCHLE: No, no, I don't think we've ever had an agreement of that kind.

SNOW: Did you not have an agreement that, when you had the 50-50 power-sharing agreement, that nominations would go to the Senate floor?

DASCHLE: No, what we had was an agreement that either the majority or the minority leader could make a motion to proceed to a nomination. And I obviously would be willing to look at something like that. But never did we have an automatic commitment that any nominee or any bill would come straight to the floor.

Meet the Press
June 17, 2001

Senator Joe Biden on Judicial Nominations

Tim Russert

MR. RUSSERT: You're also a member of the Senate Judiciary Committee.

SEN. BIDEN: I am.

MR. RUSSERT: Harry Reid, Democratic senator from Nevada and a colleague of yours, said the other day, talking about the Supreme Court: "We may wind up with another Scalia. Even though I disagree with the result of some of his opinions, his ability to reason is about as good as I've ever seen. I'm not looking for another Antonin Scalia, but I think that he brings with him such an intriguing background and such a brilliant ability to reason, that if we had someone like him, it would be a tougher decision for the Senate."

SEN. BIDEN: Wouldn't be tough for me at all. I've spoken to Justice Scalia. I consider us good acquaintances. So we kid each other occasionally when he--like, for example, I got a note or a call, I can't recall which, saying when the special prosecutor thing was--when we all voted against it, you know, reinstating, he called and says, "See, I was right the first time in the Morrison vs. Olson case."

I teach constitutional law--he called me and said, "I better come up and help you with those students. They're getting the wrong idea." As I've said to him, bluntly, I regret--the two most regrettable decisions I made were voting for him and voting for Reagan's tax cut.

MR. RUSSERT: Scalia was confirmed 98-to-nothing.

SEN. BIDEN: No--he was, but you--remember the context then? The context was we had a governor named Mario Cuomo saying he'd kick anybody's rear-end who didn't vote for the Italian. And, you know, remember he didn't answer any questions and no one forced him to answer any questions. Look, the fact that someone is brilliant does not qualify them to be on the Supreme Court. They can be brilliant and wrong. I would like--for example, I think it's

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important there is a Scalia on the court. I'd like another Brennan on the court, as well. But if you want someone who's brilliant in his reasoning, equally as consequential, I'd take Souter. He's equally as bright as Scalia. Writes better than...

MR. RUSSERT: As chief justice.

SEN. BIDEN: As chief justice.

MR. RUSSERT: You don't believe the Democrats would ever support Scalia to be chief justice of the Supreme Court?

SEN. BIDEN: I'm not speaking to the Democrats. I'm speaking for me. His view of the Constitution, that there are no unenumerated rights in the Constitution, that there's a very--this is the most activist Supreme Court we've had in the history of the United States of America, Tim. They have--they're the only court that has ever declared unconstitutional seven national pieces of legislation. People don't know. They declared, for example, the Older Americans Act unconstitutional as it applies to states.

MR. RUSSERT: But doesn't George Bush have a right to have conservatives on the Supreme Court?

SEN. BIDEN: Sure, he does. And I have a right to have who I want. This is what they call, you know, co-equal branches of government.

MR. RUSSERT: A liberal litmus test?

SEN. BIDEN: No, no. No, no, no. You're putting words in my mouth. You said, "Does he have a right to have conservatives?" To the degree that he pushes to the right, I can push to the center or to the left. The Constitution says that the United States Senate gets to determine--he gets to pick, his is to propose, ours is to dispose. We have from Rutledge back in the turn of the century with George Washington straight on through. We've rejected people whose views we believe are out of sync with what the Senate is.

I was asked advice by President Clinton when he had a chance to put people on the court. I went down to see him. I said, "Mr. President, when there's a divided government, you should pick someone in the middle. You should understand that." And he did. My advice to the president of the United States is if he wants a holy war, he can do that and pick another Scalia. But there's a divided government. The nation is divided on these issues. He should pick someone who is a centrist. He can be center right, but to pick someone on the extreme left or right would be a serious mistake, in my opinion.

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OP/EDS

The Columbus Dispatch
June 16, 2001

Two Superior Judges Merit Confirmation

Jim Petro, Ohio State Auditor (Editorial)

During the 2000 presidential campaign, President Bush promised that he would nominate for federal judgeships only people of the highest integrity and professional competence and who possess the proper judicial temperament. Recently, Bush began delivering on that promise by nominating 11 men and women from across the country from both political parties for seats on the various federal courts of appeal.

Ohioans should be proud that for the first two of seven vacancies on the 6th U.S. Circuit Court of Appeals, which covers Ohio, Michigan, Kentucky and Tennessee, the president nominated two outstanding Ohioans to serve on that bench: Ohio Supreme Court Justice Deborah L. Cook and former state solicitor Jeffrey S. Sutton.

As former assistant prosecutor, city law director in Rocky River and lawyer in private practice for the past 28 years, it has been my pleasure and privilege to have appeared before and practiced with thousands of judges and attorneys throughout the state. Without a doubt, Cook and Sutton are among the best-qualified lawyers to serve in the federal judiciary that I have seen in my legal career.

After a distinguished 13-year career in private practice in Akron, Cook joined the Ohio Court of Appeals in 1991, where she quickly developed an excellent reputation for her hard work and for the quality of her opinions. Elected and re-elected to the Ohio Supreme Court in 1994 and 2000, Cook has been praised by The Dispatch for her "keen intellect" and "careful legal scholarship."

The newspaper noted that she applies the law "without fear or favor" in crafting rulings that are governed by the Constitution and not by popularity polls or special interests.

Sutton graduated first in his class at Ohio State University Law School and served as a law clerk for two different U.S. Supreme Court justices, a rare honor. As Ohio's state solicitor, he was responsible for arguing cases of the utmost importance to Ohioans before both the Ohio and the U.S. Supreme Courts.

A prolific legal scholar, Sutton has written more than 50 law review articles and two legal texts. While keeping his private practice in Columbus, he also is teaching constitutional law at OSU

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law school.

When Bush submitted his nominees for the federal appeals courts to the U.S. Senate for confirmation, he called upon senators of both parties to restore civility and dignity to the confirmation process, and, most importantly, he asked for a prompt vote on each nominee.

Right now the court, based in Cincinnati, is critically short of judges to handle an ever-expanding caseload. Because of their impeccable credentials, Cook and Sutton should be swiftly confirmed.

The Columbus Dispatch
June 17, 2001

Lack of News Makes Pontificating Difficult but Not Impossible

Joe Hallett, Dispatch Politics Editor

A big patch of white space, a fast-closing deadline and an empty head. Mid- June and the dog days are here already. Will loyal readers -- both of them -- notice if there is no column this week? Can't do commentary without some news. It's plain dead around here.

Speaking of death, maybe column grist could be ground from the pending U.S. Supreme Court case on whether mentally ill murderers should be executed. But what's the point now? We already killed schizophrenic Jay D. Scott.

The legal system, though, is always column fodder, and it would be timely to discuss President Bush's nomination of Columbus attorney Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals in Cincinnati.

But that has to do more with the political system, and editors are always griping that readers don't care about politics. Why waste a column on it? So what if the new Democratic majority in the U.S. Senate, for its own partisan aggrandizement, stands ready to ravage Sutton's reputation?

So what if the Democrats are salivating to tar Sutton unfairly as an uncompassionate conservative for having the audacity to argue successfully before the U.S. Supreme Court that the Constitution limits the ability of citizens to sue state governments for discrimination against the disabled?

Does anyone think for a moment that Senate Democrats will care that Sutton, at age 40, suffers from osteoarthritis, a degenerative disease that eventually would have put him in a wheelchair, if not for the miracle of hip- replacement surgery?

Will Senate Democrats give a hoot that Sutton, a brilliant attorney by virtually everyone's account, has a history of performing free legal work for social causes and groups? He has

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argued, pro bono, on behalf of the National Association for the Advancement of Colored People, the Anti-Defamation League of B'nai B'rith, the Center for the Prevention of Handgun Violence and the American Civil Liberties Union.

Not long ago, Sutton took up the cause of a Chillicothe prison inmate and won a 9-0 decision from the U.S. Supreme Court, the ninth case in five years he had argued before the high court, probably more than any other private attorney.

Senate Democrats won't care. They're bent on getting back at Republicans for confirming only 61 percent of President Clinton's judicial nominees. When and if the Democrats give Sutton a hearing, they'll be more concerned about placating the constituencies who larder their coffers than putting a fair, honest person on the federal bench.

In a hearing process that too often has turned well-meaning nominees from both parties into bitter and spiteful judges -- Supreme Court Justice Clarence Thomas comes to mind --Sutton will be put through the political wringer, used and abused, to signal Bush that his Supreme Court nominees can expect even tougher treatment.

But, heck, nobody is interested in such political shenanigans except for maybe both readers of this column.

Well, then, there is the school-funding case. The Ohio Supreme Court will hear arguments Wednesday. For a third time, the court is expected to rule 4-3 that the legislature and governor failed to ensure an adequate and equitable education for Ohio's schoolchildren.

Lawyers for the state hope to turn one of two Republican justices, Paul E. Pfeifer or Andrew Douglas, who formed the majority with two Democrats in the previous decisions. A victory for the financially insatiable coalition of schools almost certainly will mean higher taxes.

The school-funding case has been around for 10 years. Yesterday's news is boring.

Oh, yeah, there's the Big Three Republican feud at the Statehouse. But that, too, is insider politics. Speaker Larry Householder of Glenford and Senate President Richard H. Finan of Cincinnati had their way with Gov. Bob Taft on the state budget and now they are poised to embarrass the governor by overriding some of his 49 vetoes.

Obviously, Taft's re-election in 2002 is not a high priority for Republicans controlling the General Assembly. For that matter, it appears not to be a high priority for Taft. While getting pushed around by legislative Republicans, he declined to use the bully pulpit to defend his own reasonable budget proposal, one that would not have gutted higher education.

Taft may have trouble telling voters what he stands for next year. But that's then and this is now, and there is nothing going on.

Unless, of course, anyone considers the latest scandal at the Ohio Department of Job and Family

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Services worthy of comment. News flash: Department illegally withholds more child-support payments from poor children. Routine stuff.

Maybe a column could be crafted around the big-money push at the Statehouse to permit video-gambling machines at Ohio's seven horse racetracks. But thanks to Taft, that's dead for the moment. Maybe something could be written about all the wacko legislation that right-wingers in the House want to pass. But why dignify wackiness?

My gosh, look at the time! All this white space to fill and nothing to write. Will somebody please make some news around here?

Joe Hallett is politics editor of The Dispatch.

The Indianapolis Star
June 17, 2001

Heat Turned Up High in Judicial Kitchen

Russ Pulliam

He's been there, done that.

Federal Judge Daniel Manion recommends a thick skin and some experience in rough-and-tumble political battles for potentially controversial judicial nominees. President Bush already has submitted some nominations for federal court positions for U.S. Senate confirmation. But the big battle is yet to come with an anticipated opening on the U.S. Supreme Court in the next year or so.

When Manion was nominated by President Ronald Reagan for the 7th Circuit Court of Appeals in 1986, the mild-mannered former state senator from South Bend was surprised to become the center of controversy. The Manion battle was a warm-up for bigger ones over subsequent nominations of Robert Bork and Clarence Thomas for the Supreme Court.

Manion was blasted by People for the American Way and Senate Democrats for being unqualified for the court position. Sen. Edward Kennedy called him "the least-qualified" nominee he had ever seen for the federal appeals court. His critics found fault with his proof-reading because of errors in his correspondence.

Yet Manion also attracted endorsements from liberal Democrats who knew him back in Indiana. He made it to the bench after close votes in the Senate.

Manion understood that his critics weren't aiming the mud-slinging at him personally. What they really objected to was his willingness to look to the original intent of the Constitution. But

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he worries that mud-slinging campaigns that got worse under Bork and Thomas could deter qualified people from serving on the courts.

"I had a much thicker skin politically," he said in a recent interview. "I understood what was going on."

Good lawyers can make more money in private practice. "Why should I subject myself to this kind of attack?" he can hear potential candidates say. "I don't need to have my name dragged through the mud. Who knows what they'll come up with -- what kind of magazines you subscribe to. That's the kind of drivel it descends to," Manion added.

Critics might suggest that those who can't stand the heat should stay out of the judicial kitchen. But the judicial branch traditionally has been set above the partisan politics of the legislative and executive branches. Until the Bork-Thomas controversies, a long tradition was to evaluate court nominees on the basis of competence and personal character.

Manion has had the last word with the critics who attacked his alleged incompetence. "He made a liar out of them," commented a court colleague, William Bauer. "He is very bright, hard-working, thoughtful. Our job is to make sure we follow the Constitution. That's what he does very well."

Another Indiana lawyer, Peter Rusthoven, was associate counsel during the Reagan administration and gained an insider's perspective on the court nomination process. He suggests that more ideological battles over these nominations will undermine confidence in the courts as impartial decision-makers.

"Judicial nominations are no longer about, is this person smart, well-trained in the law, hard-working," he said. "Instead, you're nominating a person who is going to have one vote in a super-legislature, and that super-legislature is going to decide all kinds of things that the courts traditionally never decided."

With activist judges "writing" laws, the executive and legislative branches lose their chance to settle controversial political and social issues. Rusthoven is hoping for more strict constructionist judges who will be willing to defer issues back to the legislative branch when no clear constitutional issues are at stake.

He points to the 1857 Dred Scott decision as a notorious example of judicial activism, with the court taking over the slavery issue by ruling that blacks were not citizens. "It severely minimized the possibility of working out the slavery issue in the elected or political branches of government," he said. "It took away from the Congress the ability to regulate slavery in the territories."

The Senate ought to give Bush the green light to nominate strict-constructionist judges for the high court. A few more of them could help take the court out of some of the controversial political issues that are better left to the two elected branches of government.

INTEREST GROUPS/PRESS RELEASES

The Washington Post
June 18, 2001

Reason to Reject

Elizabeth Cavendish, Legal Director, NARAL

We take exception to the belief that it is unfair to challenge the qualifications of judicial nominee John G. Roberts Jr. based upon antiabortion briefs he filed as a government lawyer [editorial, June 7].

Mr. Roberts was a political appointee in the Reagan administration and served as principal deputy solicitor general for President Bush from 1989 to 1993. He competed for the job knowing that the administration had the goal of rescinding the constitutional right of reproductive choice.

During the Reagan and Bush era, the Justice Department argued to restrict or overturn the fundamental right to choose eight times in seven Supreme Court cases. Mr. Roberts helped author the brief in Rust v. Sullivan, defending the now-repealed "gag rule" that prohibits family planning providers from informing women of all their options when confronting an unwanted pregnancy. Saying the Roberts brief argued "in passing" for the overturn of Roe, as the editorial did, suggests it is inconsequential to urge that constitutional rights be repealed. Would The Post make the same argument about efforts to reverse Brown v. Board of Education?

In Bray v. Alexandria Women's Health Clinic, Mr. Roberts, on behalf of the Bush Justice Department, intervened as a friend of the court. The government's friendship was extended to Operation Rescue, which was terrorizing women who were trying to enter reproductive health facilities. Mr. Roberts argued that the nation's civil rights laws should be narrowly interpreted to preclude relief for women seeking constitutionally protected health services. Congress disagreed and the following year enacted the Freedom of Access to Clinic Entrances Act.

No one has an entitlement to a lifetime slot on the federal judiciary. The burden is on the nominee to demonstrate that he or she deserves Senate confirmation. This high threshold is essential to ensure that the judiciary will continue to guard our liberties against assault.

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Sent: 6/18/2001 12:06:03 PM
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Attachments: P_YHPF2004_WHO.TXT_1.wpd

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The latest installment of our media survey on judicial nominations is attached.

Regards,

Jennifer
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The liberal magazine "The Nation" has a page dedicated to the defeat of Bush Judicial Nominees, by sending a letter to members of the Senate Judiciary Committee. "Use the letter below to tell Senate majority leader Tom Daschle and the nine judiciary committee Democrats to take a stand against appointing Bush's conservative nominees to the circuit courts." The page is located at:
http://www.thenation.com/alert/actnow/

GENERAL JUDICIAL ARTICLES

The New York Times
June 15, 2001

G.O.P. Reports an 'Impasse' Over Senate Reorganization
Alison Mitchell

Senior Senate Republicans said today that they had hit an impasse in talks with the new Democratic majority leader over organizing the Senate because of disputes about how to handle judicial nominees. They called for the issues in contention to be brought to the full Senate floor for a vote.

After two weeks of talks with Senator Tom Daschle of South Dakota, the new majority leader, the five Republican negotiators went public with their complaints this evening as the Senate was shutting down for the week.

"We are reluctantly here to announce we are at impasse at the moment," said Senator Mitch McConnell, Republican of Kentucky.

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The Republican senators said they had reached agreement with the Democrats on essential details like the size and makeup of committees. But they said they wanted the resolution needed to organize the Senate under Democratic control to contain an assurance that all nominees for the Supreme Court would come before the full Senate for a vote.

They said they also wanted the resolution to require that if any senator exercised the right under Senate tradition to block a home-state judicial nominee, the action must be revealed to the public. Senator Phil Gramm, Republican of Texas, called such disclosure a "good government, sunshine provision."

The Republicans handed out a report showing that since at least the 1880's, the Judiciary Committee had sent to the floor even those Supreme Court nominations that were opposed by a committee majority.

Mr. Daschle said in a statement that he would continue to try to resolve the outstanding issues "through negotiations and discussions rather than potentially divisive votes. "He said he had "stated publicly and privately my commitment to assuring a fair process for judicial nominees."

But he has resisted setting down any formal procedure. One Democratic Senate aide said that a "subtle distinction but an important distinction" existed between a guarantee that the Judiciary Committee would send a Supreme Court nominee to the full Senate and an informal tradition of doing so. "It would be an unprecedented new grant of authority to the minority party," the aide said.

The issue of judicial candidates and the ideological direction of the federal courts is one of the most delicate areas of dispute between the parties. During the six years that the Republicans controlled the Senate and Bill Clinton was president, the Republicans offered neither of the guarantees to the Democrats that they are now seeking.

But they say they have been disturbed by vows by some Democrats to stop conservative judges. And they say they would be willing to make the two provisions they are seeking permanent no matter which party has control of the Senate.

Senator Patrick Leahy of Vermont, the new Judiciary chairman, issued a statement saying: "There is more than a little irony in the charge from some Republican quarters that the Democratic Senate will treat President Bush's judicial nominees unfairly. Some Republicans seem to be expecting in Democrats the same wiles that the G.O.P. Senate used in killing so many of President Clinton's nominees."

If the Senate held a vote on the two issues, the Republicans would probably not prevail. But the vote would put the Democrats in the politically embarrassing position of opposing public disclosure and looking like they were ready to block President Bush's Supreme Court picks.

When the Senate switched last week to Democratic control with Senator James M. Jeffords of Vermont becoming an independent, Mr. Daschle became majority leader and Democrats became

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committee chairmen. But many of the details of the changeover need to be approved by a vote.

Mr. Daschle hinted today that a long stalemate could be a problem for Mr. Bush. "What that means is action in the committees on virtually anything is unlikely," he said. "We wouldn't be able to do nominations or legislation because obviously you don't have the full complement of membership on those committees."

The Washington Times
June 15, 2001

Bush's Judgeships Stall in the Senate

Dave Boyer

Senate Republican negotiators late yesterday declared an impasse in their talks with Democrats on President Bush´s judicial nominees and said it was time to move forward with an up-or-down vote on the new Senate organization.

"We are only asking for fairness," said Sen. Mitch McConnell, Kentucky Republican. The negotiators said the next move is up to Senate Majority Leader Tom Daschle, South Dakota Democrat, on whether to call a vote.

Republicans want the resolution to reflect the three points on which both parties agree, and the two contentious matters voted on independently as amendments to the resolution.

Republicans said the full Senate should have the opportunity to make a determination and that they would not filibuster if the resolution is voted down.

"We´re simply asking for there to be a vote. When we have fundamental differences, we vote," said Sen. Arlen Specter, Pennsylvania Republican. Both parties agree Democrats will have a one-seat majority on every committee, with the exception of the Ethics Committee, which by tradition is equally divided.

All committee members will retain their assignments, and committee funding and space agreements negotiated by the chairmen and ranking members will remain in effect. Democrats do not agree with Republicans that "blue slips," or single-senator veto slips on judges from home-state senators, should be eliminated.

Democratic leaders turned up the pressure yesterday on judgeships, accusing the GOP of holding up White House nominations by not submitting to the Democrats´ proposal to reorganize the Senate.

"They´re making my life easier," said Sen. Patrick J. Leahy, Vermont Democrat and chairman of the Senate Judiciary Committee. "For the life of me, I don´t know why they keep waiting. I´m

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ready to start (confirmation hearings) within 10 days to two weeks of the time that we reorganize."

Republicans say Mr. Leahy, one of the party's most liberal lawmakers, is a prime example of why they are pressing Mr. Daschle for assurances that Mr. Bush's nominees will be treated fairly. Mr. Leahy was one of the most outspoken critics of John Ashcroft's nomination for attorney general in a bruising confirmation hearing in January.

In two weeks of talks, Mr. Daschle has resisted Republican requests to promise floor votes on appeals court candidates and Supreme Court nominees if the Judiciary Committee rejects them. Mr. Daschle says he will hold up a deal to reorganize committees with Democratic majorities until both sides agree on the issue of nominations.

Democrats say Senate Republicans are only hurting their own administration by not accepting Democrats' more vague, nonbinding assurance to be fair to nominees. "Unfortunately, what that means is that action in the committees on virtually anything is unlikely," Mr. Daschle said yesterday.

"We wouldn't be able to do nominations or legislation. We're going to ... probably be faced with a bottled-up array of , but we won't be able to do that." Asked if he is "jamming" the White House's agenda, Mr. Daschle replied, "That's not my choice. I think it would be inexcusable for us to disenfranchise elected members of the Senate who were serving on these committees just a week ago, and now to tell them they can't vote. That isn't my jamming them, that is simply a reality; that's what senators are here to do, is to make decisions."

Referring to the new majority party's power to investigate the administration, Mr. Daschle added, "In the meantime, we'll be satisfied, I suppose, with the opportunities to hold oversight hearings and other kinds of hearings. ..." For example, Sen. Joseph I. Lieberman, Connecticut Democrat, has used his new chairmanship of the Governmental Affairs Committee to hold a hearing on the administration's refusal to set energy price caps in California. Mr. Lieberman, who lost his bid for the vice presidency last year and is considered a likely presidential candidate for 2004, also plans to hold hearings on Mr. Bush's environmental policies.

National Public Radio: Morning Edition
June 15, 2001

Reception President Bush's Federal Judge Nominees Face From The Democratic-Controlled Senate

Bob Edwards, Anchor; Nina Totenburg, Reporting

This is MORNING EDITION from NPR News. I'm Bob Edwards.

For six years, Democrats fumed when President Clinton's judicial nominees were stalled

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by the Republican-controlled Senate. But the tables have been turned. Now there's a Republican president and a Democratic Senate. NPR legal affairs correspondent Nina Totenberg reports on what this could mean for President Bush's nominees.

NINA TOTENBERG reporting:

About 1/8th of the federal judiciary is vacant. But while 70 of the 102 vacancies are in the trial courts, President Bush has made just two nominations to fill those slots. Instead, the administration is concentrating on filling the 32 appeals court vacancies. The president has already sent the Senate names for half of those slots. There's a reason for that. The appeals courts are just one step below the Supreme Court, and these are the judges that are the final word in most of the cases heard across the country. Moreover, they are widely considered training grounds for the Supreme Court.

Indeed, it was the Clinton nominees for the appellate courts who were most ferociously stalled by the GOP in years gone by. The numbers tell the tale. Although Presidents Clinton and Reagan won confirmation for roughly equal numbers of judges in their two terms, Mr. Reagan won confirmation of 87 percent of his appeals court nominees, while Mr. Clinton won confirmation of only 61 percent, leaving the rest dangling without action.

In the last two years of the Clinton presidency, 17 appeals court nominees never got a hearing. Those who were confirmed waited, on average, more than a year. Contrast that with the wait for President Reagan's nominees in his last two years when the Democrats controlled the Senate, 17 weeks, and for the first President Bush's nominees, 15 weeks. The result is that now, after eight years of a Democratic administration, Republican appointees still dominate the influential appeals courts. President Bush wants to add to that advantage, and as Democrats see it, he has front-loaded the nomination process, concentrating his early judicial nominations in the appeals court. Senator Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, having served with six presidents, has this perspective.

Senator PATRICK LEAHY (Chairman, Senate Judiciary Committee): Presidents serve for no more than eight years; judges serve for a lifetime. And I think the Senate has a real responsibility to make sure that we have an independent judiciary, one that doesn't lurch to the right or the left.

TOTENBERG: And Leahy insists he will be fair.

Sen. LEAHY: I've talked with a number of Republican senators, and some have told me very frankly they were totally unfair to President Clinton and they're wondering if I'm going to do the same thing to them. I'm not. I'm not going to go for some kind of a payback.

TOTENBERG: Not surprisingly, the Republicans aren't taking those assurances at face value. A new group has sprung up, billing itself as bipartisan, and it's running ads, so far in just one state, South Dakota, which just happens to be the home of the Democratic Senate majority leader, Tom Daschle.

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(Soundbite of advertisement)

Unidentified Woman: Our legal system affects us all. Every day courts make decisions that impact our families. That's why President Bush supports commonsense judges with character, experience and intellect.

TOTENBERG: Oklahoma Governor Frank Keating, a Republican, is chairman of the sponsoring group, Citizens for Common Sense Courts.

Governor FRANK KEATING (Republican, Oklahoma): The judiciary shouldn't be an arm of either party. Let's fairly get judges considered and confirmed.

TOTENBERG: But while Keating's group bills itself as bipartisan, the Democratic featured most prominently in its literature, former Democratic Attorney General Griffin Bell, says he is, in fact, not part of the group, that he declined to join, and yesterday the group retracted his name. That's not to say that Republican fears are unfounded. Liberal groups are already lining up to oppose a significant number of President Bush's judicial nominees. Nan Aron is director of the Alliance for Justice, an umbrella group of civil rights, environmental and consumer organizations.

Ms. NAN ARON (Alliance for Justice): We have grave doubts about most of the candidates nominated by President Bush. They were chosen by this president specifically because, while they may be very qualified and have excellent records on the law, they have shown by their actions or writings a real hostility to the gains made by women, minorities, and hostility to the role that government plays in improving the lives of Americans.

TOTENBERG: And specific groups have targeted specific nominees. Americans United for Separation of Church and State is opposing University of Utah Professor Michael McConnell, a respective conservative scholar who's long argued for greater accommodation between church and state. Also opposed to McConnell is the National Abortion Rights Action League, which cites his strong opposition to Roe vs. Wade. In addition, NARAL is also fighting the appeals court nomination of John Roberts, who, when he served as deputy solicitor general in the first Bush administration, wrote a brief that argued against federally funded clinics allowing doctors to discuss abortion with their patients. In that brief, Roberts contended that Roe vs. Wade should be reversed, a position he was quizzed about by Justice Harry Blackmun in a later case that he argued involving abortion clinics.

(Soundbite of interview)

Justice HARRY BLACKMUN: Mr. Roberts, in this case, are you asking that Roe vs. Wade by overruled?

Mr. JOHN ROBERTS: No, Your Honor. The issue doesn't even come up.

Justice BLACKMUN: Well, that hasn't prevented the solicitor general from taking that position

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in prior cases.

TOTENBERG: But Walter Dellinger, who served as solicitor general in the Clinton administration, says it's very risky to judge judicial nominees by the positions they've taken as government lawyers.

Mr. WALTER DELLINGER (Former Solicitor General, Clinton Administration): The kind of arguments that John Roberts was making in the position of deputy solicitor general were the kind that a professional lawyer's expected to make when his client, the chief executive of which is the president of the United States, has run on those positions. I'm afraid that this is a process that will lead to the rejection of the most qualified of the nominees; that is, those who, like Roberts, have been out and have had a major lifetime of accomplishment.

TOTENBERG: Elizabeth Cavendish, the legal director of NARAL, disagrees.

Ms. ELIZABETH CAVENDISH (Legal Director, NARAL): He was aligned personally with these decisions. Again, he was a political appointee, and this was a signature position of the first Bush administration.

TOTENBERG: There's an irony in NARAL's position. Liberal groups were outraged when conservatives opposed some Clinton appointees because of positions they took as lawyers. I pressed the point on Cavendish. So you would say that those who are anti-abortion would be completely correct in voting their ideas and proposing pro-choice nominees.

Ms. CAVENDISH: It doesn't work both ways. The other side wants to turn back the clock on women's rights and roll back a fundamental right.

TOTENBERG: Just what will happen to the Roberts and McConnell nominations and others is unclear. When the Republicans controlled the Senate, those nominees had been slated for quick hearings. With the Democrats in control now, though, the first hearing is likely to be for Roger Gregory, an African-American from Virginia appointed by President Clinton to sit on an interim basis for a year on the 4th Circuit Court of Appeals. President Bush reappointed Gregory. Chairman Leahy says he intends to begin confirmation hearings in less than two weeks, but by tradition only one appeals court nominee is considered at a time, and historically there's an average of about one confirmation hearing a month.

With only three months left scheduled in this legislative session this year, that would mean three or four appeals court nominees possibly confirmed this year. Even that could be in doubt. North Carolina Republican Senator Jesse Helms blocked all of President Clinton's North Carolina nominees to the 4th Circuit, and nobody's quite sure what he will do about the Gregory nomination when it gets to the Senate floor, where he could put a so-called hold on it and send it into limbo.

Moreover, all confirmation hearings are on hold for the moment, because the Senate Democrats and Republicans have not agreed to a reorganizing plan in the aftermath of the Democratic

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takeover. The Republicans are seeking something that no Senate minority has ever had before: a guarantee that all the president's nominees will get a floor vote. Few observers believe the Republicans will get such an unprecedented guarantee, because the current stalemate is perfectly acceptable to the Democrats. If the Senate organization agreement is not forthcoming, it means simply that no nominations will move at all. Nina Totenberg, NPR News, Washington.

The Associated Press
June 15, 2001

Republicans Seeking to Secure Votes on Judicial Nominees

Jesse J. Holland

Republicans backed down on Thursday from some of their demands for how the newly Democrat-controlled Senate should handle President Bush's nominees for the Supreme Court and federal judgeships.

Earlier in the week, GOP negotiators demanded guaranteed Senate votes on all Supreme Court and federal appellate court nominees, and elimination of the secret veto process for some judicial nominations.

After Democrats refused, Republicans sought to allow the full Senate - instead of negotiators - to decide whether the Supreme Court nominees should be guaranteed a vote. They also want the Senate to decide whether to make the senatorial veto process public instead of private, as it has been in the past.

Democrats say they will treat Bush's nominees fairly. Republicans fear Democrats will block Bush's judicial nominations.

"We're not asking for there to be a commitment," said Sen. Arlen Specter, R-Pa., one of the five GOP senators who have been negotiating with Majority Leader Thomas Daschle, D-S.D. "We're asking for there to be a vote."

Daschle, who is trying to reorganize the Senate to reflect the Democratic takeover, is opposed.

"I remain committed to trying to resolve the outstanding issues around the organization of the Senate through negotiations and discussions, rather than with potentially divisive votes," Daschle said.

Democratic aides said the idea of making public the secret vetoes likely would come up a meeting Tuesday of Democratic senators.

The maneuvering is the result of Vermont Sen. Jim Jeffords' decision to leave the GOP and become an independent, altering the 50-50 split in the Senate. Republicans had control by virtue of Vice President Dick Cheney's tie-breaking vote.

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The two sides agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee funding and space agreements negotiated at the beginning of the year will stay in effect as well.

Sen. Orrin Hatch of Utah, the top Republican on the Judiciary Committee, said that while filibustering the reorganization had not been discussed, GOP senators told negotiators to "go to the wall" over the judges provision.

Daschle said that if Republicans and Democrats are unable to agree on a reorganization, "action in the committees on virtually anything is unlikely."

The American Prospect
July 2-July 16, Vol. 12, Issue 12

The Case for Borking

Randall Kennedy

As the battle over the federal judiciary heats up, progressives must convince the general public of a basic proposition: The judiciary is an inescapably political branch of government whose agents, the judges, should be viewed in much the same way other politicians are.

To say that the courts are political may seem so obvious as to be banal. There is, however, a deep and widespread impulse to deny the political character of the courts. An important manifestation of this denial arises in the context of selecting, confirming, or rejecting candidates for the federal bench.

Many people bemoan, for example, what they term the "politicization" of the judiciary (as if there existed a golden age when judicial selection and judicial decision making were uncontaminated by politics). Liberals and conservatives, Democrats and Republicans have taken turns accusing each other of indulging in this unpardonable sin.

Progressives, however, should get off that unproductive rhetorical merry-go-round, accept the ineradicable presence of politics in the judicial arena, and strive to shape the judiciary in such a way that it will produce good, sound, progressive rulings. That will entail, among other things, lobbying on behalf of jurists who will advance the progressive agenda and against those who will be hostile to it.

Article II of the U.S. Constitution empowers the president exclusively to nominate federal judges, while it imposes a check on presidential authority by making the seating of a nominee dependent on the Senate's "Advice and Consent." Whereas the president is armed with veto power over legislation, the Senate, in effect, has veto power over judicial nominations.

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Over the course of the nation's history, the Senate has exercised that power over Supreme Court nominees 29 times (and over district and appeals court nominees many times more). In addition to objecting to nominees on grounds of incompetence, dishonesty, or some other personal failing, senators have also voted nay for political or ideological reasons.

Opponents blocked George Washington's Supreme Court nominee Judge John Rutledge because of Rutledge's opposition to the Jay Treaty (despite the fact that the Senate had already confirmed him for a previous opening on the Court and that he had just served for an entire Supreme Court term as the interim chief justice).

Ulysses S. Grant's nominee Attorney General Ebeneezer Rockwood Hoar was not confirmed because he had opposed President Andrew Johnson's impeachment.

Herbert Hoover's nominee Judge John Parker was blocked because of Parker's perceived hostility to organized labor and the advancement of African Americans. And Ronald Reagan's nominee Judge Robert Bork didn't make it because opponents feared, among other things, that he would energetically attack abortion rights.

In principle there is nothing wrong with political blocking, even if doing so stems entirely from one particular issue. Would we now condemn a senator who, prior to the Civil War, voted against a nominee solely on the grounds that the candidate favored slavery? I would hope not.

Yet many people sneer at the notion of litmus tests for purposes of judicial selection or confirmation--even as they unknowingly conduct such tests themselves.

Litmus tests of all sorts are scattered about the judicial-selection process. When senators ask a nominee whether he or she believes that the proper role of a judge is to interpret rather than make law, or whether the Eighth Amendment should be deemed to prohibit capital punishment--all the while silently insisting upon an expected formulaic reply--they are imposing a litmus test.

Today, a candidate would not be nominated, much less confirmed, if he or she failed to genuflect convincingly to Marbury v. Madison (which established the authority of the Supreme Court to invalidate an act of Congress deemed to be in conflict with the Constitution), Brown v. Board of Education (which invalidated de jure racial segregation in public primary and secondary schools), or other once-controversial decisions that have become so thoroughly a part of the conventional wisdom that we no longer even perceive reactions to them as litmus tests of acceptability.

Since senators (and the public as a whole) should feel free to object to a nominee on political grounds, they should also feel free to demand that nominees truthfully divulge thinking that bears upon relevant judicial matters. Nominees--both liberals and conservatives--often claim that they cannot answer certain questions because to do so would be to prejudge a matter that may come before them.

But that response is typically a mere dodge to avoid controversy. Senators need not accept this.

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If a
candidate refuses to answer relevant questions, senators should take that refusal into consideration when determining whether to vote to confirm. It makes no sense to offer lifetime tenure and all the power of judicial review to candidates whose thinking about crucial matters is unknown.

A transparent process in which ideological objections to judicial candidates are candidly voiced is a much-needed antidote to the murky "politics of personal destruction. "When politicians (again, both liberal and conservative) feel disabled from objecting to candidates on ideological grounds, they search high and low for pretexts on which to object: "He made this lewd statement to a colleague a decade ago," or "She committed this technical infraction of law."

Senators should not feel that they have to reveal or attack some personal blemish in order to justify a vote against a nominee. A deep, urgent, political disagreement is sufficient. It should be possible for a senator to acknowledge that a nominee is honorable, competent, and kind while still voting against confirmation because of the way the candidate would likely act as a judge. Nothing personal. Just politics.

The American Prospect
July 2-July 16, Vol. 12, Issue 12

Halting the Judgernaut

Alexander Wohl

As Capitol Hill adjusts to Vermont Senator Jim Jeffords's earthshaking repudiation of the Republican Party, the Senate Judiciary Committee is bracing itself to be the center of the aftershocks. The judicial branch of government, after all, is where a president is likely to have his most far-reaching impact; the judges he appoints will last much longer than the one or two terms he serves. And the Judiciary Committee--which is a key venue for debate about potent legislative issues such as abortion, school prayer, flag burning, and civil rights--is also the primary battleground in judicial-confirmation fights. Thus, with George W. Bush's first slate of nominees for the federal bench waiting for hearings, the most resounding political clashes of the summer are likely to occur on the Judiciary Committee's turf.

When Jeffords abandoned the Republicans, he threw control of Senate committees to the Democratic Party, providing Dems on the Judiciary Committee with the power to strangulate nominations in committee. (Actually, as of this writing, Republicans--aware of how defiantly they refused to allow many of Bill Clinton's nominations to get beyond the Judiciary Committee,

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and afraid of payback--are trying to force the Democrats to permit a full Senate vote for every judiciary nominee. A politically foolish position that will likely come to a quick resolution, this could bring all Senate business to a halt.) Given a free hand to nominate and confirm judges, Bush and the Senate Republicans would no doubt populate the federal bench with an army of Antonin Scalia clones--a legion of judges who, though perhaps ethnically diverse, share the extreme views of the Court's most conservative jurist. Indeed, the first batch of nominees the president sent to the Senate for confirmation has already made this clear. One logical response to such nominees would seem to be simply to block their consideration--especially since that was the Republican response to Clinton nominees whom the GOP considered to be too liberal.

But early signs indicate that the newly Democrat-controlled Judiciary Committee, along with the Senate as a whole, is taking a less direct and more wide-ranging approach, one that makes use of several different strategies at once while trying to minimize the danger of a public backlash. This highlights an important question , Is it worth letting all but the most conservative judges onto the federal bench--where they will preside for lifetime appointments, potentially lending important appeals courts a conservative coloration for up to 30 or 40 years--in order not to appear "obstructionist"? For some Democrats concerned with winning re-election, the answer may be yes. Still, if they're smart and stick together, the Democrats on the Judiciary Committee may be able to ensure that only the more moderate of Bush's nominees come to a full Senate vote--and to demonstrate the wisdom of their case to the American public.

"Don't Mess with Vermont"

How successful the Democrats are in preventing the confirmation of conservative judges will depend heavily on the committee's new chairman. A soft-spoken, liberal Vermonter, Patrick Leahy is a 27-year Senate veteran who has distinguished himself from many of his colleagues with his integrity and lack of ego. Smart and unafraid to play political hardball when necessary, he is adept at diffusing tension with gentle humor. (The day after the Jeffords switch, for example, "Don't Mess with Vermont" bumper stickers--attributed to Leahy--appeared around Washington, D.C.)

Leahy replaces Utah Senator Orrin Hatch--a fierce conservative whose favorite topic in recent committee sessions has been his own evenhandedness--as the ranking majority member on the committee. (Transcripts of recent hearings reveal Hatch to be remarkably, repetitively taken with his own "fairness.") Though Hatch has worked with Democrats on occasion, he fights hard for conservative Republican nominees and has the battle scars from the Robert Bork and Clarence Thomas Supreme Court nominations to prove it.

Leahy and Hatch consider themselves close friends and generally work well together. During Hatch's quixotic presidential run through early 2000, Leahy offered "to speak for him or against him, whichever would help more." But beneath this geniality, both sides are girding for war. Within days of Jeffords's announcement, Hatch was warning Democrats that "nobody's going to push me around." Leahy, for his part, has shown himself unafraid to take on the Republicans: He has challenged the GOP's hypocritical statements about the "quick pace" of Clinton

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nominations during Republican control of the committee and engineered a walkout from a hearing in which he felt the Republicans were trying to strong-arm Democrats into approving Bush nominees.

But for the first time in seven years, the Democrats have the numbers--if not literally (at this writing, the Senate leadership is negotiating whether the party balance on the committee will remain evenly split or a Democrat will be added to give the Dems a one-person advantage), then at least in terms of power. Majority status gives Leahy the gavel--and with it, the power to schedule and time hearings. Democrats now control the process: They decide when (and even if) nominees are brought up, how zealously they are interrogated, and how quickly they get voted on. And Senate Democratic aides say that Leahy is ready to take a much tougher line than others have in the past.

The recent debate over Ted Olson's nomination as solicitor general suggests how potent the Democrats' new majority status on the committee can be, if only they can muster the courage to exercise it. Erstwhile Senate Majority Leader Trent Lott was forced to discharge Olson's nomination from the Judiciary Committee (he did this under the bargain struck relating to the 50–50 Senate divide) the day Jeffords announced his switch: Lott knew that if he waited, the Democrats could use their new power in the Judiciary Committee to withhold the nomination from the floor. Moreover, after seeing Olson get voted in by the Senate--albeit by a razor-thin majority--Democrats surely understand that stopping someone is easier in committee than on the Senate floor, where there is the danger that some conservative Democrats will join the Republicans in crucial votes, as Georgia's Zell Miller and Nebraska's Ben Nelson did on Olson.

But now that the Democrats possess the power in the Judiciary Committee, will they be willing to use it? After failing to block Attorney General John Ashcroft and Solicitor General Olson, some Democrats said, in effect, "Well, we got enough votes to demonstrate that we could block a nomination--but we didn't do it because these were only cabinet appointments, not Supreme Court justices, which are lifetime appointments." Fair enough. But lower-court federal judges get appointed for life, too. Do the Democrats have the will to scrutinize and oppose district and circuit court candidates?

Whom to Oppose?

Democrats are still strategizing about whom they should oppose. This requires a calculated analysis not just of the nominees' records and the courts for which the judges have been nominated, but of public opinion. Democrats have seen how the perception of obstructionism or intransigence has sometimes hurt the Republicans--most notably after the government shutdown in 1995, during Clinton's impeachment in 1998, and last month when the GOP lost Jeffords--and don't want to be perceived that way themselves.

Both Leahy and the new majority leader, South Dakota's Tom Daschle, have said that they will work to prevent an ideological court packing and that they want "good, moderate, middle-of- the-road, credible" nominees. But already a number of Bush's nominees fall outside that description. This is particularly significant right now, because--after years of Republicans stonewalling Bill

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Clinton's nominees--there are many vacancies, including 31 openings on federal appeals courts. Several circuit courts of appeal are very closely divided between liberals and conservatives. (The tiny First Circuit, for example, whose six judges cover Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico, has one opening and leans barely Republican; and the Third Circuit, which includes Delaware, New Jersey, Pennsylvania, and the Virgin Islands, is evenly divided and has two vacancies.) Just a few Bush appointees could tilt the judicial balance of the country in a decidedly conservative direction for a long time to come.

So Democrats considering circuit court nominees need to examine not just whether the prospective lifetime appointee has views so extreme as to be out of the mainstream, but whether adding that person to a court will change the ideological complexion of a particular circuit.

Given these parameters, there are several clear targets among the first group of Bush nominees. For instance, two Fourth Circuit nominees cry out for opposition. Terrence Boyle, chief judge of the U.S. District Court of the Eastern District of North Carolina, is a former aide to Senator Jesse Helms and, not surprisingly, is extremely conservative. He was already denied a spot on the court of appeals in 1991, when he was nominated by President George H.W. Bush, but the Senate did not act on his nomination. Helms retaliated by blocking all of President Clinton's nominees to fill North Carolina's Fourth Circuit vacancies. (Helms's desire to get Boyle on the court is ironic given Helms's repeated statements over the past several years that "there is no need to put more judges on that court because to do so would make it less efficient.")

The other nominee to the Fourth Circuit, South Carolina District Judge Dennis Shedd, is equally conservative; he served as chief counsel and staff director under former Judiciary Committee Chairman Strom Thurmond, who is now a senior committee member. Although Shedd has already attracted much opposition from civil rights groups, it will require coordinated strength to block him, given the tradition of deference to nominees who once worked in the Senate, even if only in a staff capacity.

But the Fourth Circuit already tilts heavily to the right. In contrast, the Sixth Circuit (which covers Michigan, Ohio, Tennessee, and Kentucky) and the D.C. Circuit are closely divided. Thus, Miguel Estrada, nominated for the D.C. Circuit, and Jeffrey Sutton, nominated for the Sixth, are judicial conservatives whom Democrats could confidently and appropriately oppose.

After the Supreme Court, the D.C Circuit is generally seen as the most powerful court in the nation, because of its role in interpreting statutes and agency decisions and because it has historically served as a springboard for potential Supreme Court nominees. Adding Estrada--who was a law partner of Ted Olson and is known for sharing the judicial philosophy of Justices Scalia and Thomas--to that court, along with another Bush nominee, the conservative John Roberts, would significantly enhance a slight conservative majority on this key bench.

The Sixth Circuit is even more closely divided. A former state solicitor from Ohio, Sutton--who has argued a number of times in the Supreme Court for expanded state power and for voiding congressional initiatives--has already been the focus of opposition. But another Sixth Circuit nominee, Ohio Supreme Court Justice Deborah Cook, also deserves a close look. In one

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representative decision, she denied a blind woman's request to be admitted to medical school because of the undue burden it would have placed on the school.

The 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, & Wyoming) also is narrowly divided. The nomination to this court of Michael McConnell, a Federalist Society conservative and a professor at the University of Utah, has already generated opposition because of his extremist interpretation of the religion clauses of the First Amendment and their potential application to a variety of social issues ranging from school vouchers to gay rights.

Democrats can prevent Bush's nominees from being confirmed in several ways. First, of course, is to vote them down, either in committee or on the floor. Second is to delay their confirmation hearings indefinitely, as the Republicans did for so many Clinton nominees. (A variation on this option is to use control of the process to lengthen investigative hearings when that would be effective.) Expect Leahy to make use of both tactics. But more important is a third approach, which is to avoid nasty committee fights and use the potential power of a unified Democratic majority--for now, the committee will follow the caucus party line and vote up or down together--to influence the White House not to nominate right-wingers in the first place. It is therefore incumbent on the Bush White House, which until now has given only lip service to the idea of consultation with the Senate, to work with Leahy and the Democrats if it wants its nominees to be confirmed in a timely fashion.

Finally, several changes in procedure will slow down the process while adding an opportunity for more information and fairness. Leahy has already promised to reinstate the use of evaluations by the American Bar Association before any hearings. (This nonpartisan analysis of candidates, which every president since Dwight D. Eisenhower has used in considering nominees, was eliminated by George W. Bush.) Leahy is also likely to hold quick hearings for less controversial nominees and for nominees who are designated for courts with the greatest need before turning to the possible challenges. In this way, he can accumulate public support that he can later use in opposing the more conservative or controversial nominees. And he will probably not hold hearings for more than one nominee at a time--something that makes abundant sense but that the Republicans failed to do.

The prevailing view has been that nominees are presumed to be confirmable, unless senators or interest groups find something "wrong" with them. Some legal scholars have proposed the idea of requiring nominees to demonstrate why they should be confirmed, and there are signs that Leahy is open to this approach.

The Senate has an important role to play in evaluating and challenging individuals who are being appointed to a lifetime job of interpreting the Constitution. While Republicans are likely to cry "Bork!" whenever a nominee is criticized (even though the same Democratically controlled Congress that rejected Bork overwhelmingly confirmed Scalia), Democrats should not shy away from opposing any (and even many) of President Bush's nominees. Nor should they be tempted to give free passes to minority candidates if those candidates are too conservative. The Constitution says that the Senate will give its advice and consent on all nominations. Most Americans don't want a judiciary slanted sharply in either direction. We will soon see whether

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the new majority in the Senate has the guts and the ability to make a credible case to the American people that President Bush should not have the unilateral authority to shape the judicial branch in his conservative image.

The Washington Post
June 17, 2001

At High Court, a Retirement Watch

Rehnquist, O'Connor Top List of Possibilities as Speculation on Replacement Grows
Charles Lane and Amy Goldstein

As the Supreme Court prepares to end its term this month, the White House, the Senate and interest groups across the ideological spectrum are preparing for the possibility that a member of the court might retire, with Chief Justice William H. Rehnquist's departure the most frequently mentioned scenario.

There is no direct evidence that Rehnquist, 76, or any other member of the court is planning to step down this year. Justice Sandra Day O'Connor, 71, recently dampened speculation about her departure, making an unusual announcement that she had "no plans" to leave. When Rehnquist was asked through the Supreme Court press office for a similar statement, he declined to comment.

Now that a Republican occupies the White House for the first time in eight years, however, court observers consider it more likely that Rehnquist or O'Connor, who were both longtime activists in Arizona Republican politics before being appointed to the court by Republican presidents, will step down sometime in the next few years.

"Make no mistake," said one longtime friend of the chief justice, Rehnquist would prefer to "return" his seat to a Republican president. But another justice recently told a friend there was no suggestion around the court that a departure is imminent.

Similarly, a lawyer who has regular contact with the White House counsel's office said, "I don't see the kind of frenzied activity by people who would be involved" in the administration if they knew a retirement were looming. In the past, many justices have directly or indirectly relayed their departure plans to the White House slightly before announcing them publicly, often at the end of the term.

Nonetheless, the thought of stepping down apparently has at least crossed Rehnquist's mind. When PBS interviewer Charlie Rose asked in February if he could imagine retiring, Rehnquist replied, "Sure."
Justice John Paul Stevens, 81, is older than Rehnquist and O'Connor, and he also was appointed by a Republican president, Gerald R. Ford, in 1975. But Stevens is not considered a likely candidate for retirement. He remains in vigorous health -- and, though still nominally a

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Republican, has moved to the left in his years on the court. He dissented vigorously from last year's court decision, spearheaded by its most conservative members, to stop the Florida recount and effectively ensure Bush's victory.

There have been no changes in membership at the Supreme Court since Stephen G. Breyer replaced Harry Blackmun in the fall of 1994, creating the second-longest period of stability in the court's history and pent-up anxiety about when the next vacancy will occur.

In such an uncertain climate, the administration, Congress and advocacy groups are keenly sensitive to the opportunity President Bush will have to shape the court -- one of the presidency's most enduring powers. The White House and the Justice Department have been working for months to define the factors that would go into choosing a nominee, as well as beginning to sift through potential candidates.

"We are working hard to be prepared," said White House Counsel Alberto R. Gonzales, who oversees the selection process and is himself a potential choice. "Even during the transition we began thinking about possible nominees to the court."

On Capitol Hill, Republicans on the Senate Judiciary Committee have already begun "informal discussions and talks" about potential candidates, said Makan Delrahim, the committee's GOP staff director.

In the meantime, conservative and liberal advocacy groups have been working aggressively to try to influence the president's eventual choice -- and public opinion. Conservatives have been urging Bush not to back down from his campaign statements that the current justices he most admires are Antonin Scalia and Clarence Thomas, the members furthest to the right.

"We are looking to him to stay as close to that standard and as consistently close to that standard as he can," said Thomas L. Jipping, director of the judicial selection monitoring project of the Free Congress Foundation.

On the left, civil rights groups and women's organizations have been trying to stoke public fears that Bush's impact on the court could have dire consequences on issues ranging from abortion to education to affirmative action.

"If George W. Bush follows through on his promise to the right wing and nominates someone in the mode of Scalia and Thomas and Rehnquist, then there is going to be an epic battle," said Ralph Neas, president of People for the American Way.

The ideological skirmish that has broken out in Congress during the last month over Bush's initial nominees to lower federal courts is widely considered a prelude to the full-scale battle that a Supreme Court opening could create.

According to aides in the administration and on Capitol Hill, the cross pressures on the president in making his selection will be intense. On the one hand, the shift of the Senate this month to

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Democratic control, analysts say, could hinder Bush's prospects for securing a replacement as conservative as Rehnquist. At the same time, the GOP's right wing is insistent that the president must not reduce conservative strength on the court by nominating anyone more liberal than Rehnquist.

"The difficulty is that the president has got to decide, 'How much political capital am I willing to bleed for a controversial Supreme Court nominee?' " said a conservative legal expert.

In such a contentious environment, names that have been considered among Judiciary Committee Republicans, sources said, include federal appeals court judges Emilio Garza, Edith H. Jones and J. Michael Luttig and the committee's ranking Republican, Sen. Orrin G. Hatch (Utah).

Other possibilities the president might favor, a variety of sources say, include conservative appeals court judges J. Harvie Wilkinson and Frank H. Easterbrook and Washington lawyers John G. Roberts and Miguel Estrada, both nominated by Bush last month to the federal appeals court here.

Bush also could look to members of Congress, such as Sen. Jon Kyl (R-Ariz.) or Rep. Christopher Cox (R-Calif.), who was being considered by the White House this spring for an appeals court seat but withdrew from consideration because of opposition from California's Democratic senators.

Administration officials declined to confirm any candidates they are contemplating. Bush has indicated he would like to nominate the first Hispanic justice, a move that might help him woo Latino voters in 2004 and improve his chances of winning confirmation in the Senate. In that context, Gonzales, a former justice on the Texas Supreme Court and a confidant of Bush's, is considered a prime candidate.

Asked whether he might accept a nomination, Gonzales said: "I am asked this question a lot. I typically say I don't intend to be a candidate. . . . My focus is working here, serving this president in this capacity."

Some conservatives consider Gonzales too moderate, and others view him as lacking the experience to become chief justice. To allay such concerns, Bush could make a double switch, nominating a current member of the court -- perhaps O'Connor --to replace the chief justice and naming Gonzales an associate justice.

"Politically, nothing beats that pair," said a lawyer who knows several of the justices personally.

Rehnquist's departure would not be as politically momentous as that of O'Connor, who is a swing vote on the closely divided court. Rehnquist is a consistent conservative, so the prospect of an equally conservative Bush-nominated successor for him would merely reinforce the existing ideological mix.

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"If O'Connor is stepping down, then there will be all these arguments . . . about the balance of the court," said Terry Eastland, publisher of the conservative Weekly Standard and a senior Justice Department official in the Reagan administration. "With Rehnquist, the Democrats might be more willing to defer to the president in terms of judicial philosophy."

By regaining control of the Senate, the Democrats now run the Judiciary Committee, which will largely determine how quickly a nomination is processed -- and how much the nominee is grilled about his or her judicial philosophy.

Some Senate Democrats have begun discussing whether they would even employ a filibuster or other procedural tactics to block a Bush appointee from being voted on by the full Senate -- a sharp departure from past practice. In 1987, Robert H. Bork was allowed a vote on the Senate floor, even after the Democratic-controlled Judiciary Committee rejected him. Bork lost the floor vote, 58 to 42.

Rehnquist has been on the court since 1972, when he became an associate justice under President Richard M. Nixon. President Ronald Reagan elevated Rehnquist to chief justice in 1986, to replace the retiring Warren E. Burger.

In a recent interview with Fox News, Rehnquist said he had thought of departing before he was tapped to be chief justice. He acknowledged he has been having trouble lately remembering names and sent this wistful message to his television audience: "I'll tell them this, that I just think I've been extraordinarily fortunate in my life, and I'm very grateful for my good fortune."

Rehnquist's health, particularly severe back pain, has been a problem in the past. Although he still must rise from the bench and stretch his back during the court's two-hour oral argument sessions, he now appears to be in good physical and mental condition.

Under Rehnquist, a five-member conservative majority on the court has moved the law in a decidedly conservative direction, trimming affirmative action, clearing legal obstacles to the application of capital punishment, and limiting federal authority over the states.

Asked during the PBS interview if it would make a difference to him that there is a Republican in the White House, Rehnquist did not answer directly but did concede that there had "traditionally" been a "slight preference" by justices to retire during administrations of the party that appointed them.

The Washington Post
June 18, 2001

Daschle's 'Intensive Care Unit' to Attend to Patients' Rights

John Lancaster and Helen Dewar

*** EXCERPT ***

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POWER PLAY: The Senate has once again gone into overtime in trying to nail down the fine points of its shifting power balance, delaying approval of a new resolution on committee organization because of an unresolved dispute over the handling of judicial nominations.

Without an agreement, freshman senators are left without committee assignments, many Democratic committee chairmen have to operate with Republican majorities -- and President Bush will have to wait awhile longer for action on his nominees.

The reason is that the power-sharing agreement negotiated when the Senate was evenly divided lapsed when Democrats took control this month, meaning that committee organization reverts to what it was at the end of the 106th Congress -- until a new agreement is reached.

After two weeks of quiet, behind-the-scenes negotiations, Republicans went public last week with demands for a guarantee that Supreme Court nominees will come to the Senate floor for a vote and for public disclosure when nominees are blocked by their home-state senators under the "blue slip" process. They said they asked Majority Leader Daschle to put the two proposals to a vote by the Senate, and he refused.

Later, Daschle issued a statement saying he has made both public and private commitments to "assuring a fair process for judicial nominees" and wants to resolve remaining organizational issues "through negotiations and discussions, rather than with potentially divisive votes."

On a party-line vote, which is customary on votes related to party powers, the GOP proposals would be defeated 51-49. But Republicans could claim a moral high ground in favor of full disclosure and fair treatment for a new president's nominees.

MEMBERS OF CONGRESS

Fox News Sunday
June 17, 2001

Senate Majority Leader Tom Daschle on Judicial Nominations
Tony Snow, Juan Williams

WILLIAMS: Senator Daschle, since Mr. Jeffords has come over, at least for caucus purposes, with the Democrats, there's been no reorganization of the Senate. So I'm wondering, how are you operating? And what pressures are there on you, as the Senate majority leader, to in fact now reach some deal with the Republicans so that you can get back to business?

DASCHLE: Well, Juan, I've told my Republican colleagues that I'm not going to jam them, I'm going to give them time to sort this out. These transitions are never easy. It took Senator Lott and I a couple of months to work out power-sharing.

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But this is nothing compared to what we had to work through with power-sharing. That was unprecedented. The circumstances now are certainly not unprecedented, and we went through a lot of the same types of questions in the 1950s. Ao this is really a matter of whether we have the one-vote majority in committees, whether or not we revert back to power-sharing if something would change, whether or not we can work (Publication page references are not available for this document.) out staff and budgets. I think we can, and I think we're getting closer.

WILLIAMS: Well, now, what about the pressure coming from the GOP to say, listen, we want some assurances, we want them written down, and, in specific, concern about judicial nominations and the fact that they not get bottled up in committee but be able to reach to the Senate floor for a full vote?

DASCHLE: Well, I have said over and over that we're going to be fair. We are determined not to engage in any payback. We're not going to do what we think in many cases was done to our nominees in the last eight years. That isn't what we're all about.

What we want to do is move forward, assure that there are votes. But we don't want to abrogate the constitutional process of advice and consent, to make sure, absolutely certain that the judiciary committee has the prerogative and has the responsibility that it's been charged to take on. And that's what this is about.

SNOW: But, Senator, the constitutional obligation is for the entire Senate, it's not the Senate Judiciary Committee. And the founders never said, well, we want the Judicial Committee to decide who gets to serve as judges.

What have you told Republicans, other than that you'd be fair? Specifically, what have you promised them?

DASCHLE: Well, what I've promised them, Tony, is that we were going to assure them that every nominee, regardless of whether it's judiciary or executive, will have a fair hearing, will have an opportunity to be considered, and I can't go any further than that.

Obviously, we don't want to see happen what happened over the last five years, where some judges were kept without even the opportunity to be heard for over four years; where some senators, because you had secret holds, were given no opportunity to have the right to be considered and to be voted on. We're not going to do that. I don't think we should do that.

But I'm not going to engage or commit to an extralegal process that says, in some cases, regardless of what the Judiciary Committee does, we're going to bypass the committee and go straight to the floor.

SNOW: Why not? That's the agreement you just had.

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DASCHLE: No, no, I don't think we've ever had an agreement of that kind.

SNOW: Did you not have an agreement that, when you had the 50-50 power-sharing agreement, that nominations would go to the Senate floor?

DASCHLE: No, what we had was an agreement that either the majority or the minority leader could make a motion to proceed to a nomination. And I obviously would be willing to look at something like that. But never did we have an automatic commitment that any nominee or any bill would come straight to the floor.

Meet the Press
June 17, 2001

Senator Joe Biden on Judicial Nominations

Tim Russert

MR. RUSSERT: You're also a member of the Senate Judiciary Committee.

SEN. BIDEN: I am.

MR. RUSSERT: Harry Reid, Democratic senator from Nevada and a colleague of yours, said the other day, talking about the Supreme Court: "We may wind up with another Scalia. Even though I disagree with the result of some of his opinions, his ability to reason is about as good as I've ever seen. I'm not looking for another Antonin Scalia, but I think that he brings with him such an intriguing background and such a brilliant ability to reason, that if we had someone like him, it would be a tougher decision for the Senate."

SEN. BIDEN: Wouldn't be tough for me at all. I've spoken to Justice Scalia. I consider us good acquaintances. So we kid each other occasionally when he--like, for example, I got a note or a call, I can't recall which, saying when the special prosecutor thing was--when we all voted against it, you know, reinstating, he called and says, "See, I was right the first time in the Morrison vs. Olson case."

I teach constitutional law--he called me and said, "I better come up and help you with those students. They're getting the wrong idea." As I've said to him, bluntly, I regret--the two most regrettable decisions I made were voting for him and voting for Reagan's tax cut.

MR. RUSSERT: Scalia was confirmed 98-to-nothing.

SEN. BIDEN: No--he was, but you--remember the context then? The context was we had a governor named Mario Cuomo saying he'd kick anybody's rear-end who didn't vote for the Italian. And, you know, remember he didn't answer any questions and no one forced him to answer any questions. Look, the fact that someone is brilliant does not qualify them to be on the Supreme Court. They can be brilliant and wrong. I would like--for example, I think it's

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important there is a Scalia on the court. I'd like another Brennan on the court, as well. But if you want someone who's brilliant in his reasoning, equally as consequential, I'd take Souter. He's equally as bright as Scalia. Writes better than...

MR. RUSSERT: As chief justice.

SEN. BIDEN: As chief justice.

MR. RUSSERT: You don't believe the Democrats would ever support Scalia to be chief justice of the Supreme Court?

SEN. BIDEN: I'm not speaking to the Democrats. I'm speaking for me. His view of the Constitution, that there are no unenumerated rights in the Constitution, that there's a very--this is the most activist Supreme Court we've had in the history of the United States of America, Tim. They have--they're the only court that has ever declared unconstitutional seven national pieces of legislation. People don't know. They declared, for example, the Older Americans Act unconstitutional as it applies to states.

MR. RUSSERT: But doesn't George Bush have a right to have conservatives on the Supreme Court?

SEN. BIDEN: Sure, he does. And I have a right to have who I want. This is what they call, you know, co-equal branches of government.

MR. RUSSERT: A liberal litmus test?

SEN. BIDEN: No, no. No, no, no. You're putting words in my mouth. You said, "Does he have a right to have conservatives?" To the degree that he pushes to the right, I can push to the center or to the left. The Constitution says that the United States Senate gets to determine--he gets to pick, his is to propose, ours is to dispose. We have from Rutledge back in the turn of the century with George Washington straight on through. We've rejected people whose views we believe are out of sync with what the Senate is.

I was asked advice by President Clinton when he had a chance to put people on the court. I went down to see him. I said, "Mr. President, when there's a divided government, you should pick someone in the middle. You should understand that." And he did. My advice to the president of the United States is if he wants a holy war, he can do that and pick another Scalia. But there's a divided government. The nation is divided on these issues. He should pick someone who is a centrist. He can be center right, but to pick someone on the extreme left or right would be a serious mistake, in my opinion.

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OP/EDS

The Columbus Dispatch
June 16, 2001

Two Superior Judges Merit Confirmation

Jim Petro, Ohio State Auditor (Editorial)

During the 2000 presidential campaign, President Bush promised that he would nominate for federal judgeships only people of the highest integrity and professional competence and who possess the proper judicial temperament. Recently, Bush began delivering on that promise by nominating 11 men and women from across the country from both political parties for seats on the various federal courts of appeal.

Ohioans should be proud that for the first two of seven vacancies on the 6th U.S. Circuit Court of Appeals, which covers Ohio, Michigan, Kentucky and Tennessee, the president nominated two outstanding Ohioans to serve on that bench: Ohio Supreme Court Justice Deborah L. Cook and former state solicitor Jeffrey S. Sutton.

As former assistant prosecutor, city law director in Rocky River and lawyer in private practice for the past 28 years, it has been my pleasure and privilege to have appeared before and practiced with thousands of judges and attorneys throughout the state. Without a doubt, Cook and Sutton are among the best-qualified lawyers to serve in the federal judiciary that I have seen in my legal career.

After a distinguished 13-year career in private practice in Akron, Cook joined the Ohio Court of Appeals in 1991, where she quickly developed an excellent reputation for her hard work and for the quality of her opinions. Elected and re-elected to the Ohio Supreme Court in 1994 and 2000, Cook has been praised by The Dispatch for her "keen intellect" and "careful legal scholarship."

The newspaper noted that she applies the law "without fear or favor" in crafting rulings that are governed by the Constitution and not by popularity polls or special interests.

Sutton graduated first in his class at Ohio State University Law School and served as a law clerk for two different U.S. Supreme Court justices, a rare honor. As Ohio's state solicitor, he was responsible for arguing cases of the utmost importance to Ohioans before both the Ohio and the U.S. Supreme Courts.

A prolific legal scholar, Sutton has written more than 50 law review articles and two legal texts. While keeping his private practice in Columbus, he also is teaching constitutional law at OSU

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law school.

When Bush submitted his nominees for the federal appeals courts to the U.S. Senate for confirmation, he called upon senators of both parties to restore civility and dignity to the confirmation process, and, most importantly, he asked for a prompt vote on each nominee.

Right now the court, based in Cincinnati, is critically short of judges to handle an ever-expanding caseload. Because of their impeccable credentials, Cook and Sutton should be swiftly confirmed.

The Columbus Dispatch
June 17, 2001

Lack of News Makes Pontificating Difficult but Not Impossible

Joe Hallett, Dispatch Politics Editor

A big patch of white space, a fast-closing deadline and an empty head. Mid- June and the dog days are here already. Will loyal readers -- both of them -- notice if there is no column this week? Can't do commentary without some news. It's plain dead around here.

Speaking of death, maybe column grist could be ground from the pending U.S. Supreme Court case on whether mentally ill murderers should be executed. But what's the point now? We already killed schizophrenic Jay D. Scott.

The legal system, though, is always column fodder, and it would be timely to discuss President Bush's nomination of Columbus attorney Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals in Cincinnati.

But that has to do more with the political system, and editors are always griping that readers don't care about politics. Why waste a column on it? So what if the new Democratic majority in the U.S. Senate, for its own partisan aggrandizement, stands ready to ravage Sutton's reputation?

So what if the Democrats are salivating to tar Sutton unfairly as an uncompassionate conservative for having the audacity to argue successfully before the U.S. Supreme Court that the Constitution limits the ability of citizens to sue state governments for discrimination against the disabled?

Does anyone think for a moment that Senate Democrats will care that Sutton, at age 40, suffers from osteoarthritis, a degenerative disease that eventually would have put him in a wheelchair, if not for the miracle of hip- replacement surgery?

Will Senate Democrats give a hoot that Sutton, a brilliant attorney by virtually everyone's account, has a history of performing free legal work for social causes and groups? He has

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argued, pro bono, on behalf of the National Association for the Advancement of Colored People, the Anti-Defamation League of B'nai B'rith, the Center for the Prevention of Handgun Violence and the American Civil Liberties Union.

Not long ago, Sutton took up the cause of a Chillicothe prison inmate and won a 9-0 decision from the U.S. Supreme Court, the ninth case in five years he had argued before the high court, probably more than any other private attorney.

Senate Democrats won't care. They're bent on getting back at Republicans for confirming only 61 percent of President Clinton's judicial nominees. When and if the Democrats give Sutton a hearing, they'll be more concerned about placating the constituencies who larder their coffers than putting a fair, honest person on the federal bench.

In a hearing process that too often has turned well-meaning nominees from both parties into bitter and spiteful judges -- Supreme Court Justice Clarence Thomas comes to mind --Sutton will be put through the political wringer, used and abused, to signal Bush that his Supreme Court nominees can expect even tougher treatment.

But, heck, nobody is interested in such political shenanigans except for maybe both readers of this column.

Well, then, there is the school-funding case. The Ohio Supreme Court will hear arguments Wednesday. For a third time, the court is expected to rule 4-3 that the legislature and governor failed to ensure an adequate and equitable education for Ohio's schoolchildren.

Lawyers for the state hope to turn one of two Republican justices, Paul E. Pfeifer or Andrew Douglas, who formed the majority with two Democrats in the previous decisions. A victory for the financially insatiable coalition of schools almost certainly will mean higher taxes.

The school-funding case has been around for 10 years. Yesterday's news is boring.

Oh, yeah, there's the Big Three Republican feud at the Statehouse. But that, too, is insider politics. Speaker Larry Householder of Glenford and Senate President Richard H. Finan of Cincinnati had their way with Gov. Bob Taft on the state budget and now they are poised to embarrass the governor by overriding some of his 49 vetoes.

Obviously, Taft's re-election in 2002 is not a high priority for Republicans controlling the General Assembly. For that matter, it appears not to be a high priority for Taft. While getting pushed around by legislative Republicans, he declined to use the bully pulpit to defend his own reasonable budget proposal, one that would not have gutted higher education.

Taft may have trouble telling voters what he stands for next year. But that's then and this is now, and there is nothing going on.

Unless, of course, anyone considers the latest scandal at the Ohio Department of Job and Family

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Services worthy of comment. News flash: Department illegally withholds more child-support payments from poor children. Routine stuff.

Maybe a column could be crafted around the big-money push at the Statehouse to permit video-gambling machines at Ohio's seven horse racetracks. But thanks to Taft, that's dead for the moment. Maybe something could be written about all the wacko legislation that right-wingers in the House want to pass. But why dignify wackiness?

My gosh, look at the time! All this white space to fill and nothing to write. Will somebody please make some news around here?

Joe Hallett is politics editor of The Dispatch.

The Indianapolis Star
June 17, 2001

Heat Turned Up High in Judicial Kitchen

Russ Pulliam

He's been there, done that.

Federal Judge Daniel Manion recommends a thick skin and some experience in rough-and-tumble political battles for potentially controversial judicial nominees. President Bush already has submitted some nominations for federal court positions for U.S. Senate confirmation. But the big battle is yet to come with an anticipated opening on the U.S. Supreme Court in the next year or so.

When Manion was nominated by President Ronald Reagan for the 7th Circuit Court of Appeals in 1986, the mild-mannered former state senator from South Bend was surprised to become the center of controversy. The Manion battle was a warm-up for bigger ones over subsequent nominations of Robert Bork and Clarence Thomas for the Supreme Court.

Manion was blasted by People for the American Way and Senate Democrats for being unqualified for the court position. Sen. Edward Kennedy called him "the least-qualified" nominee he had ever seen for the federal appeals court. His critics found fault with his proof-reading because of errors in his correspondence.

Yet Manion also attracted endorsements from liberal Democrats who knew him back in Indiana. He made it to the bench after close votes in the Senate.

Manion understood that his critics weren't aiming the mud-slinging at him personally. What they really objected to was his willingness to look to the original intent of the Constitution. But

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he worries that mud-slinging campaigns that got worse under Bork and Thomas could deter qualified people from serving on the courts.

"I had a much thicker skin politically," he said in a recent interview. "I understood what was going on."

Good lawyers can make more money in private practice. "Why should I subject myself to this kind of attack?" he can hear potential candidates say. "I don't need to have my name dragged through the mud. Who knows what they'll come up with -- what kind of magazines you subscribe to. That's the kind of drivel it descends to," Manion added.

Critics might suggest that those who can't stand the heat should stay out of the judicial kitchen. But the judicial branch traditionally has been set above the partisan politics of the legislative and executive branches. Until the Bork-Thomas controversies, a long tradition was to evaluate court nominees on the basis of competence and personal character.

Manion has had the last word with the critics who attacked his alleged incompetence. "He made a liar out of them," commented a court colleague, William Bauer. "He is very bright, hard-working, thoughtful. Our job is to make sure we follow the Constitution. That's what he does very well."

Another Indiana lawyer, Peter Rusthoven, was associate counsel during the Reagan administration and gained an insider's perspective on the court nomination process. He suggests that more ideological battles over these nominations will undermine confidence in the courts as impartial decision-makers.

"Judicial nominations are no longer about, is this person smart, well-trained in the law, hard-working," he said. "Instead, you're nominating a person who is going to have one vote in a super-legislature, and that super-legislature is going to decide all kinds of things that the courts traditionally never decided."

With activist judges "writing" laws, the executive and legislative branches lose their chance to settle controversial political and social issues. Rusthoven is hoping for more strict constructionist judges who will be willing to defer issues back to the legislative branch when no clear constitutional issues are at stake.

He points to the 1857 Dred Scott decision as a notorious example of judicial activism, with the court taking over the slavery issue by ruling that blacks were not citizens. "It severely minimized the possibility of working out the slavery issue in the elected or political branches of government," he said. "It took away from the Congress the ability to regulate slavery in the territories."

The Senate ought to give Bush the green light to nominate strict-constructionist judges for the high court. A few more of them could help take the court out of some of the controversial political issues that are better left to the two elected branches of government.

INTEREST GROUPS/PRESS RELEASES

The Washington Post
June 18, 2001

Reason to Reject

Elizabeth Cavendish, Legal Director, NARAL

We take exception to the belief that it is unfair to challenge the qualifications of judicial nominee John G. Roberts Jr. based upon antiabortion briefs he filed as a government lawyer [editorial, June 7].

Mr. Roberts was a political appointee in the Reagan administration and served as principal deputy solicitor general for President Bush from 1989 to 1993. He competed for the job knowing that the administration had the goal of rescinding the constitutional right of reproductive choice.

During the Reagan and Bush era, the Justice Department argued to restrict or overturn the fundamental right to choose eight times in seven Supreme Court cases. Mr. Roberts helped author the brief in Rust v. Sullivan, defending the now-repealed "gag rule" that prohibits family planning providers from informing women of all their options when confronting an unwanted pregnancy. Saying the Roberts brief argued "in passing" for the overturn of Roe, as the editorial did, suggests it is inconsequential to urge that constitutional rights be repealed. Would The Post make the same argument about efforts to reverse Brown v. Board of Education?

In Bray v. Alexandria Women's Health Clinic, Mr. Roberts, on behalf of the Bush Justice Department, intervened as a friend of the court. The government's friendship was extended to Operation Rescue, which was terrorizing women who were trying to enter reproductive health facilities. Mr. Roberts argued that the nation's civil rights laws should be narrowly interpreted to preclude relief for women seeking constitutionally protected health services. Congress disagreed and the following year enacted the Freedom of Access to Clinic Entrances Act.

No one has an entitlement to a lifetime slot on the federal judiciary. The burden is on the nominee to demonstrate that he or she deserves Senate confirmation. This high threshold is essential to ensure that the judiciary will continue to guard our liberties against assault.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 6/18/2001 2:41:23 PM
Subject: : Wilson

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SUBJECT:: Wilson
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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225-5074
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Heather Larrison/WHO/EOP@EOP [UNKNOWN] <Heather Larrison>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;russell.coleman@usdoj.gov [UNKNOWN] <russell.coleman@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>

CC: Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>

Sent: 6/19/2001 6:53:33 AM

Subject: : Judicial Selection Meeting Schedule

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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
CC:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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We will not have a meeting on Wednesday, June 20th (tomorrow).

We will have the meeting next Wednesday, June 27th.

We will postpone the Wednesday, July 4 (Indepdendence Day) meeting to Thursday, July 5. Same drill - 4-5pm in the Roosevelt.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>
CC: anne m. hughes/who/eop@eop [WHO] <anne m. hughes>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/20/2001 6:52:16 AM
Subject: : Re: Karl Rove's Fri, June 22 trip to Hot Springs, VA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-JUN-2001 10:52:16.00
SUBJECT:: Re: Karl Rove's Fri, June 22 trip to Hot Springs, VA
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:anne m. hughes (CN=anne m. hughes/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Susan:
I don't know whether an individual (as opposed to the PAC) can pay for the plane. You'll have to get sign-off from Moose on that.

The regulation that we normally use for political travel allows for payment to be made by PACs and campaign committees only.
Moose will know if there is some other rule that allows for this.

RLB

Susan B. Ralston
06/20/2001 10:45:17 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP, Anne M. Hughes/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Karl Rove's Fri, June 22 trip to Hot Springs, VA

I had submitted the paperwork for this Friday's trip thinking that Gilmore's PAC was going to be paying for the charter. Was just advised that they have secured an individual donor for the plane.

Here's what I know:
The King Air plane is privately owned by Cliff Harrup.
Cliff owns and operates a company called Central Virginia Aviation which is a charter plane company.
The company does not own the plane. Cliff owns the plane personally.
Cliff will be one of the two pilots flying Karl to Hot Springs.

When I get the fax confirming this information, I will send it to you. Do you want me to complete REVISED forms, or can you just change the info?

Sorry for the late scramble on this.

Susan
x 62369

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/20/2001 8:22:34 AM
Subject: : national instant criminal background check system (NICS)

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SUBJECT:: national instant criminal background check system (NICS)
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There is a meeting tomorrow at 1:45 in Jay's office (OEOB 254) with Jay
L., Diana S. and Viet Den.

If you are the NICS person please call me asap so we can discuss.

Thanks!
```

From: Makan Delrahim) (Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [UNKNOWN]

To: Townsend L. McNitt/WHO/EOP [WHO] <Townsend L. McNitt>;Stewart Verdery) (Stewart_Verdery@aml.senate.gov (Stewart Verdery) [UNKNOWN] <Stewart_Verdery@aml.senate.gov>;Christopher Rosche) (Christopher_Rosche@hatch.senate.gov (Christopher Rosche) [UNKNOWN] <Christopher_Rosche@hatch.senate.gov>;Sharon Prost) (Sharon_Prost@judiciary.senate.gov (Sharon Prost) [UNKNOWN] <Sharon_Prost@judiciary.senate.gov>;mark_rodgers@src.senate.gov [UNKNOWN] <mark_rodgers@src.senate.gov>;lincoln_oliphant@rpc.senate.gov [UNKNOWN] <lincoln_oliphant@rpc.senate.gov>;Lincoln Oliphant) (Lincoln_Oliphant@rpc.senate.gov (Lincoln Oliphant) [UNKNOWN] <Lincoln_Oliphant@rpc.senate.gov>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Rena Johnson) (Rena_Johnson@judiciary.senate.gov (Rena Johnson) [UNKNOWN] <Rena_Johnson@judiciary.senate.gov>;John Mashburn) (John_Mashburn@lott.senate.gov (John Mashburn) [UNKNOWN] <John_Mashburn@lott.senate.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>;Dave Hoppe) (Dave_Hoppe@lott.senate.gov (Dave Hoppe) [UNKNOWN] <Dave_Hoppe@lott.senate.gov>;Alex Dahl) (Alex_Dahl@judiciary.senate.gov (Alex Dahl) [UNKNOWN] <Alex_Dahl@judiciary.senate.gov>;Kent Cook) (Kent_Cook@judiciary.senate.gov (Kent Cook) [UNKNOWN] <Kent_Cook@judiciary.senate.gov>;chris_myers@src.senate.gov [UNKNOWN] <chris_myers@src.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;barbara_ledeen@src.senate.gov [UNKNOWN] <barbara_ledeen@src.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;rbork@aei.org [UNKNOWN] <rbork@aei.org>;mark_disler@bm.com [UNKNOWN] <mark_disler@bm.com>;Julie Dammann) (Julie_Dammann_at_BOND-DC@IMAEXC2.senate.gov (Julie Dammann) [UNKNOWN] <Julie_Dammann_at_BOND-DC@IMAEXC2.senate.gov>;dan.bryant@usdoj.gov [UNKNOWN] <dan.bryant@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Kristen.A.Ullman@usdoj.gov [UNKNOWN] <Kristen.A.Ullman@usdoj.gov>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>

Sent: 6/20/2001 2:34:08 PM

Subject: : Fwd:Re:Leahy Hearing on activism

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FYI: next month on Rhenquist court and "conservative Judicial Activism"

_____Forward Header_____
Subject: Re:Leahy Hearing
Author: Alex Dahl
Date: 6/20/01 5:49 PM

THanks for the heads-up. Here's the link for anyone who hasn't seen this yet:

http://www.nationalreview.com/york/york062001.shtml

_____Reply Separator_____
Subject: Leahy Hearing
Author: Hatch-Law3
Date: 6/20/01 5:47 PM

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Sent: 6/20/2001 2:38:29 PM

Subject: : Fwd:Re:Leahy Hearing on activism

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Sent: 6/20/2001 2:44:49 PM
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This article is due to appear in the June 25 edition of National Review which
will hit newsstands in a couple days.

The ?Nastiest? Democrat
Sen. Patrick Leahy, Republican nightmare.

By Jay Nordlinger, NR?s managing editor

? Back to Top

The other Vermont senator's no day at the beach. He is Patrick Leahy, and when James Jeffords pulled his big switch, Leahy landed a
big job: chairman of the Judiciary Committee. It's a job Leahy has always wanted; and a Republican nightmare has begun.

By consensus ? a consensus of Hill Republicans ? Pat Leahy is the meanest, most partisan, most ruthless Democrat in the Senate.
Ask a Republican about Leahy, and he'll shudder. Then he will say that, though Leahy can be nice and smiling on the surface, underneath he is-take your pick-"a left-wing brute," "the nastiest," "a pile of pure malice."
Republicans are not in complete agreement,

however: One says, "He's the most obnoxious [SOB] in the Senate now that Howard Metzenbaum's gone"; another says, "Nah, he was always worse than Metzenbaum, it's just that the general public didn't know it." Republicans, to a man, swear that they would take Ted Kennedy, Christopher Dodd, Joe Biden, John Kerry-any famously partisan Democrat over Leahy. They were very much hoping that Biden, for example, would resume his chairmanship of the Judiciary Committee; he was chairman, recall, during the years that included the pummeling of Robert Bork and the pummeling of Clarence Thomas. Instead, however, Biden chose the Foreign Relations post, leaving Judiciary to Leahy.

And, following the ancient rule that a staff reflects the politician at its head, the consensus is that Leahy's staff is just as partisan, just as ruthless as the senator himself. Not even Democrats much trust or like that bunch. Says one veteran GOP staffer, "You can work with Kennedy's staff, you can work with Biden's-and chances are, they won't stab you in the back. Leahy's staff, however, plays to win, whatever it takes. And they'll roll over Democrats just as fast."

So, what about this "junkyard dog in a Vermont sweater" (to quote yet another staffer)? Several different Senate-watchers cite one recent episode. It's a relatively small thing, they say, but an instance in which the underside of Leahy was revealed. Sen. Strom Thurmond is almost 100 now, and when he appears at a committee meeting, he generally reads a short statement from a card, and shuffles off. You don't try to engage him in debate, or much else, anymore, and most everyone knows it, and accepts it. At a meeting in April, Thurmond read his statement as usual ? and Leahy jumped in to question him about it. Orrin Hatch, then Judiciary chairman, intervened, saying he would handle Leahy's questions himself, trying to spare Thurmond embarrassment. But Leahy kept it up. Witnesses were appalled, seeing no purpose in it except to humiliate the old man.

The public got a little taste of what a Leahy chairmanship would be like back in January, when he conducted the confirmation hearings of attorney-general nominee John Ashcroft. (Because Dick Cheney had not yet been sworn in as vice president, and the Senate was 50-50, presided over by Al Gore, Leahy had the gavel for a little over two weeks.) Leahy threw at Ashcroft everything he had, trying to sink the nomination. There were hostile witness panels, hostile allegations ? the works. Says one person close to the Ashcroft

team, "Our reaction was, Wow! I mean, holy Moses! The guy's trying to slay us!" In the end,
Ashcroft squeaked through, but not before being tarred before the nation as a racist, reactionary nut.

Leahy was just warming up, perhaps, for the confirmation hearings of Ted Olson, to be solicitor general. Leahy did not have the gavel
then, but he led a crude assault on the nominee's integrity. Olson had been a lawyer and board member for The American Spectator magazine, which for a time ran something called "the Arkansas Project," to pursue stories in Bill Clinton's home state. Olson testified that he had nothing to do with
this "project" ? but Leahy essentially accused
him of lying, based on the tales of a couple of
left-wing journalists with a high flake quotient.
These tales had been thoroughly discredited, and were again. Yet Leahy persisted, casting aspersions on Olson and demanding records and testimony from the Spectator (which galled First Amendment defenders in particular). Olson, like Ashcroft, in the end squeaked through ? but it seems likely that Leahy as chairman could have stopped him. From now on, he will be chairman. According to Republican fears, the Leahy years (if years
they be) will make the Biden years seem like a
golden age of fair play and collegiality.

One Leahy foe puts the beef of many this way: The senator "always likes to have an ethical veneer for his purely partisan attacks. He can't
just say [for example] that he despises Ted Olson's views, that he resents his representation of [George W.] Bush in Bush v. Gore, that he's sorry there has to be a conservative solicitor general at all. No, he has to say that Olson lacks integrity, that he
lacks honesty, and that's what stinks about Patrick Leahy."

A Senator for Life
Leahy is only 61 years old, but he is one of the
most senior members of the Senate: He was 34 when he was first elected, in 1974. He was, and remains, the only Democrat ever elected to the Senate from Vermont. But times, they clearly have a-changed. Once the home of rock-ribbed Republicanism, the state is now the home of gay marriage and a remarkably left-wing congressional lineup: Leahy and Jef fords are the two senators, and Bernie Sanders, a socialist ? that is, an avowed socialist ? is the (lone) House rep. Vermont

seems to have passed Massachusetts as the American Sweden; must be something in the milk.

In his 25 years as a senator, Leahy has built a solidly left-liberal record. He has his share of fans. He likes photography and the Grateful Dead. He is said to be affable in hallways, and to be a wiz at constituent services. He styles himself "the cybersenator," because of his interest in computers and the Internet. He crusades against capital punishment, and against the use of land mines. He is a great champion of trial lawyers: For example, he led the fight (a successful one) to remove the liability cap on the tobacco industry; for the lawyers, the sky was the limit. In all, Leahy is the perfect left-liberal senator, voting for higher taxes, opposing welfare reform, vilifying Ronald Reagan, denouncing Kenneth Starr as a Constitution-destroying zealot, decrying the Supreme Court that ruled after the Florida deadlock, and so on.

Throughout the '80s, Leahy was one of those Democrats most passionately opposed to Reagan in Central America-one of those who traveled to Nicaragua and tried to block the (U.S.) president at every turn. With Chris Dodd, he sponsored a bill to cut aid to El Salvador. More recently, in 1999, he traveled to Cuba, where he dined with Fidel Castro. Cuba, of course, is a country with thousands of political prisoners, a country where oppression is pervasive and torture routine. The major issue to come out of Leahy's huddle with Castro? Ice cream. You see, Fidel had spoken up for Cuba's ice cream, and Pat had put in a word for Ben & Jerry's (Vermont's own). Said the senator in a post- huddle interview, "Now my major diplomatic effort will be to get a hold of Ben Cohen [the "Ben" of the company] and figure out how they can send down a case of Ben & Jerry's. Castro made me promise I would get Ben & Jerry's ice cream to him." Then the big concern was what the dictator's favorite flavor was. It's not clear whether Castro ever got his Ben & Jerry's; it's pretty clear, however, that Leahy is not overly troubled by the fates of the ice-cream lover's victims. The statements Leahy has made about Cuba show a profound ignorance, whether willful or not, about that battered island.

Also in the '80s, Leahy gained some notoriety as a member of the Intelligence Committee. He

was charged with revealing classified information during the Achille Lauro terrorist incident, outraging administration officials. And he leaked a draft report on the Iran-contra affair, leading to his resignation from the intelligence panel. Behavior like this earned for him the sobriquet "Leaky Leahy."

It is in the field of the judiciary, of course, that Leahy has made his main reputation. More than any of his colleagues, he has been "Senator No" for judges nominated by Republican presidents. He voted against William Rehnquist's elevation to chief justice. And he was a major tormentor of Robert Bork during those awful hearings of 1987. In fact, he was responsible for one of their moments of highest drama. He scolded Bork for doing insufficient charity work while a professor at Yale, and recited the fees he earned as an outside consultant during the years 1979 to 1981. Responded Bork, "Those are the only years I ever made any money in consulting." He continued, emotional, "There was a reason to get money, and I don't want to get into it here."
Leahy acknowledged that the judge had his reasons. Then Sen. Gordon Humphrey, a Republican, broke in, saying, "Judge Bork, this is a very personal question, and if you prefer not to answer it, by all means do not ? but were those years [ones that] coincided with heavy medical bills in your family?" Bork spoke one syllable: "Yeah." The bills to which Humphrey had referred were for Bork's first wife, Claire, who died in December 1980. This was not only a moment of high drama, but one that turned the stomachs of many of those watching.

Leahy furthered distinguished himself in 1991 as the first senator to come out against Clarence Thomas (this was even before the allegations of Anita Hill). He hammered Thomas relentlessly. At one point, in a typical Leahy flourish, he said, "You describe yourself as a conservative. Well, most Vermonters are conservative, too"-but Thomas, in Leahy's eyes, wasn't the right kind of conservative. Later, in a floor statement, Leahy said, "I cannot promise the people of Vermont that I'm sure this nominee will protect their rights." And he avowed, most richly, "The last thing I seek in a Supreme Court justice is ideology."

Preludes to Chairman

Leahy became a major player on the Judiciary Committee in 1987, when Democrats wrested control of the Senate from Republicans. Biden was chairman, but Leahy was named head of a task force to scrutinize (or harass or delay or upend) Republican nominees. At last, he vowed, Democrats would "play hardball" (and this was years before Chris Matthews became a national celebrity). "No iffy nominees are going to get through now," Leahy crowed. The result was that nominees, many of them, were pecked at and left twisting in the wind. Interesting, in light of a later event, is that Leahy, back in '87, faulted the American Bar Association for its recommendations on judicial nominees. He said, "I have often found the ABA process to be perfunctory at best. I've often found it inadequate." According to the Washington Post, "Leahy said his task force would interview more lawyers, litigants, and local citizens instead of relying on the ABA."
Leahy's entire approach in this period was: go slow, put the screws on, block.

Then when the Clinton administration came to power, and Republicans regained the Senate two years later, Leahy turned on a dime. Now the problem was "stalling tactics" (Republican), and the nation's courts suffered from a "vacancy crisis." Republicans were shirking their "constitutional duty," and mounting "nothing short of an attack on our independent judiciary." On CNN, Greta Van Susteren asked him, helpfully, "How can they get away with that? I mean, we've got all these vacancies." Answered Leahy, "Because the American public has not raised hell the way they should."

With the George W. Bush administration and the Jeffords flip, the pendulum has swung again: Leahy is back to go-slow. There is no more talk of a vacancy crisis or raising hell (at least the kind of hell Leahy intended for Senate Republicans). The ABA, whose role the current president has reduced, seems to be back in his good graces. Leahy is preparing new and intrusive questionnaires for Republican nominees, evidently designed to embarrass them and trip them up. He is promising hearings on the sins of the Rehnquist court and of conservative jurists generally. By every indication, he is gearing up for continual battle. During the Biden years, Leahy was only

Number Two, and an enthusiastic player of "hardball." Now it may be all Borking, all the time.

No matter what the era, what the year, Leahy has been consistent on one thing: the ceaseless Republican war on "women and minorities." When Republicans have occupied the White House, they haven't appointed enough women and minorities (Reagan's record, for Leahy, was "shameful" ? this despite Justice O'Connor, apparently; no word on whether Leahy counted Justice Thomas for the first George Bush). When Clinton was there, Republican senators worked diligently to thwart women and minorities. Leahy portrayed the Republicans' 1999 rejection of Judge Ronnie White as primarily a racial tragedy. The senator is utterly in keeping with his party in painting the GOP as the enemy of black Americans.

Hill Republicans say almost as one that Leahy is grossly, grossly underrated as-to quote that earlier Republican ? "a left-wing brute." In coming months and years, the country should get to know Leahy well, especially if Bush has a chance to nominate someone to the high court. On May 17, William Safire of the New York Times used his column to chide Leahy for his offenses against the First Amendment during the Ted Olson hearings. Nevertheless, he wrote, Leahy is "the best senator the Democrats have. He is my longtime friend, a stalwart on privacy [one of the columnist's chief concerns] and totally devoid of vindictiveness." It was this last clause, in particular, that made veteran Republicans choke. As they have experienced it, Leahy is vindictive ness, or certainly severe, raw partisanship, personified. Jim Jeffords wrought a big change when he pulled his switcheroo ? and nowhere will this change be felt more acutely than on the Judiciary Committee, Sen. Patrick Leahy, chairman.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/21/2001 5:23:00 AM
Subject: : Re: June 29 mtg. w/ POTUS re: judges & US Attorneys

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CREATION DATE/TIME:21-JUN-2001 09:23:00.00
SUBJECT:: Re: June 29 mtg. w/ POTUS re: judges & US Attorneys
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I doubt we need that much time; I would say 30 minutes

Elizabeth N. Camp
06/21/2001 09:18:45 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Jan E. Williams/WHO/EOP@EOP
Subject: June 29 mtg. w/ POTUS re: judges & US Attorneys

FYI that I am submitting a request for 45 minutes on June 29 to dicuss w/ POTUS judges & US Attorneys.

Will advise of time once we are notified.

Thanks!

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
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Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Kyle Sampson

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/21/2001 5:24:03 AM
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Is that enough for judges AND US attorneys?

Brett M. Kavanaugh
06/21/2001 09:22:51 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
bcc:
Subject: Re: June 29 mtg. w/ POTUS re: judges & US Attorneys

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Elizabeth N. Camp
06/21/2001 09:18:45 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Jan E. Williams/WHO/EOP@EOP
Subject: June 29 mtg. w/ POTUS re: judges & US Attorneys

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Will advise of time once we are notified.

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Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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Kyle Sampson

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To:	David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Kyle Sampson [WHO] <Kyle Sampson>
CC:	Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Susan B. Ralston/WHO /EOP@EOP [WHO] <Susan B. Ralston>;Elizabeth W. Kleppe/OVP/EOP@EOP [OVP] <Elizabeth W. Kleppe>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>
Sent:	6/21/2001 1:15:10 PM
Subject:	: Mtg. with POTUS on 6/29 - 1:35-2:05 in the Oval

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CC:Elizabeth W. Kleppe ( CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [ OVP ] )
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READ:UNKNOWN
CC:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Topic: Judges and US Attorneys

Participants include: Vice President Cheney, Andy Card, Al Gonzales, Karl Rove, Tim Flanigan, H. Christopher Bartolomucci, Brad Berenson, Brett Kavanaugh, Helgi Walker, Noel Francisco and Kyle Sampson.

Please let me know if I am missing anyone.

Thanks!

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Receipt Notification Requested) (IPM Return Requested) ('Bradford_A._Berenson@who.eop.gov' (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN] <'Bradford_A._Berenson@who.eop.gov'>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;'Matt_Smith@who.eop.gov' <Matt_Smith@who.eop.gov>
CC: Dinh, Viet <Viet.Dinh@usdoj.gov>
Sent: 6/21/2001 3:41:42 PM
Subject: : FW: Judicial Media Review 6-21-01
Attachments: P_FT7I2004_WHO.TXT_1.wpd

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CREATION DATE/TIME:21-JUN-2001 19:41:42.00
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
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Note: Some recipients have been dropped due to syntax errors.Please refer to the "$AdditionalHeaders" item for the complete headers.
All --

Here is the latest installment of the judicial media review.

Best,

Jennifer

-----Original Message-----

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Media Review - Judicial Nominations

Thursday, June 21, 2001

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The Recorder (American Lawyer Media)
June 18, 2001

Gearing up to Vote on Court Nominees

Jonathan Ringel

Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead. Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees this week, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of Utah, the ranking minority member on the Judiciary Committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who will soon have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

Leahy has already said he will enforce the "blue slip" rule, by which the Judiciary Committee will not hold hearings or votes on nominees opposed by home-state senators. Republicans argue this rule gives individual senators too much power over presidential nominations. President Bush so far has made 17 nominations -- 15 to circuit courts of appeals and two to district courts. Around the country, 104 federal judgeships are vacant -- 33 on circuit courts and 71 on district courts. None of Bush's selections has been the subject of hearings before the Judiciary Committee.

When the committee was in its final days of Republican control, three nominees -- John Roberts Jr. for the D.C. Circuit and Sixth Circuit nominees Deborah Cook and Jeffrey Sutton -- had been scheduled to appear at a May 23 hearing. But their day before the panel was scuttled after vehement opposition by Democrats, who the next day won control of the Senate when

Vermont Sen. James Jeffords announced he would defect from the GOP and become an independent. Democrats had argued that the committee should not hold hearings until the American Bar Association's standing committee on the federal judiciary had completed its reviews of nominees.

Now that things have changed, it's unlikely that Leahy would hold hearings on any nominee whose ABA rating is not completed. Leahy spokesman David Carle says the committee has received a few of the ratings so far, but is not yet prepared to make them public. While the ABA conducts an extensive background check, the reviews typically consist of only one sheet of paper describing the nominee as "well qualified," "qualified" or "not qualified." Carle also says the committee has yet to choose which of the nominees will be the first to have hearings.

The Judiciary Committee itself will undergo a change as a result of the power shift, with the likely scenario being one Democrat joining the 18-member committee to give the Democrats a one-vote majority. Leahy has spoken to former trial lawyer Sen. John Edwards of North Carolina about the slot, but no agreement has been reached. A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veterans' affairs committees.

Administration officials would not say who Bush will nominate next week, but it could be time for several previously reported candidates to have their day. Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the Eleventh Circuit; Iowa U.S. District Judge Michael Melloy for the Eighth Circuit; and University of Utah professor Paul Cassell for a district court seat in that state. In March, Tennessee Republican Sens. Fred Thompson and Bill Frist made three recommendations for a single open seat on the Sixth Circuit. They are: Robert Echols, U.S. district chief judge in Nashville; Julia Gibbons, U.S. district chief judge in Memphis; and Lin Howard of Harwell Howard Hyne Gabbert & Manner in Nashville.

Montana may not be ground zero of the political warfare over judges, but it has gotten more than its share of attention from the Bush administration. If the Senate confirms litigator Sam Haddon and U.S. Magistrate Judge Richard Cebull, it's a good bet that folks with business before the federal court there will breathe a sigh of relief. The court has only three judges, and in the past year, Judges Jack Shanstrom and Charles Lovell took senior status, meaning they had significantly reduced their caseloads. That leaves Chief Judge Donald Molloy as the court's only active judge, He has had to focus on criminal cases in order to comply with speedy trial demands, while the civil docket has taken a back seat.

Fortunately for Molloy, Montana Sens. Conrad Burns, a Republican, and Max Baucus, a Democrat, were able to agree on recommendations for the posts. Such bipartisan agreement certainly helped speed the process at the White House and could do the same in the Senate. Meanwhile, the Montana federal court has been relying on help from nearby states. Lou Aleksich, the court clerk, says four federal judges have come to Montana to preside over civil trials this month.

The Associated Press
June 19, 2001

Daschle Agrees to GOP Proposal for Vote on Supreme Court Nominees

Jesse J. Holland

Senators will decide whether President Bush's Supreme Court nominees get automatic confirmation votes from the full Senate without risking rejection by the Judiciary Committee, Senate Majority Leader Thomas Daschle said Tuesday.

Republicans asked for such treatment during negotiations over how to reorganize the newly Democrat-controlled Senate. The GOP is afraid that Democrats would block Bush's judicial nominations and has been looking for a way to ensure Bush's top nominees will at least make it to the floor. Daschle opposes any guarantees for Bush nominees. "We will provide them an opportunity for the vote, but I would hope the Senate would show its common sense and would vote against that particular proposal," said Daschle, D-S.D.

The GOP originally asked for guaranteed Senate votes on all Supreme Court and federal appellate court nominees and elimination of the secret veto process for some judicial nominations, but Daschle refused. The Republicans then modified their request to guaranteed Supreme Court votes only.

Democrats control the Senate by a 50-49 margin. Sen. Jim Jeffords of Vermont threw the chamber to the Democrats when he defected from the Republican Party to become the Senate's sole independent.

Daschle said he would ask his party to vote against the provision when the Senate votes. "I expect we will prevail," he said.

Calls to Republican senators involved in the negotiations with Daschle were not returned. A senior GOP leadership aide described Daschle's agreement to a vote on how Supreme Court nominees will be handled as a step in the right direction.

Daschle agreed to another Republican request: to make the senatorial "blue-slip" veto process public instead of private, as it has been in the past. "We certainly oppose private blue slips, and I'm prepared to incorporate the public blue-slip policy in the organizing resolution itself," Daschle said.

While the Senate Judiciary Committee has never in modern history kept a Supreme Court nominee from coming to a vote, the resolution would render the committee powerless to stop a future Supreme Court nominee no matter what the controlling party thinks.

"In essence, what their proposal would do is to create a 100-member judiciary committee, bypassing, if they wish, the Judiciary Committee itself. We're not prepared to do that," Daschle said. "We think that, for this institution, for careful consideration of the nominees themselves, we

ought to continue to maintain the Senate practice of insisting that all nominees be considered and voted upon in the Judiciary Committee."

The provisions would only be binding on Congress until January 2003. It would also be negated if Republicans were to take back control of the chamber, which would force senators to vote on a new organizing resolution.

Daschle said Democrats would insist that changes become a permanent part of the Senate process if they are approved. "This ought not be something we just do for this Congress," he said.

The Senate will vote on the Supreme Court provision, and on reorganizing the chamber, before they leave for the Independence Day holiday, Daschle said.

The two sides also agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee finances and space agreements negotiated at the beginning of the year will continue in effect as well.

The Senate will not work on any of Bush's nominees until after those votes, the majority leader said.

Bush has not nominated anyone for the Supreme Court because there are no openings. He has made several lower court nominations.

Miami Daily Business Review
June 19, 2001

Despite Appearances, Confirmation Process for Judicial Nominees Makes Progress

Jonathan Ringel

WASHINGTON -- Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead.

Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees soon, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of

Utah, the ranking minority member on the Judiciary committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who soon will have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

Leahy already has said he will enforce the "blue slip" rule, by which the Judiciary Committee will not hold hearings or votes on nominees opposed by home-state senators. Republicans argue this rule gives individual senators too much power over presidential nominations.

President Bush so far has made 17 nominations -- 15 to circuit courts of appeals and two to district courts. Around the country, 104 federal judgeships are vacant -- 33 on circuit courts and 71 on district courts.

None of Bush's selections have been the subject of hearings before the Judiciary Committee.

When the committee was in its final days of Republican control, three nominees -- John Roberts Jr. for the Washington, D.C., Circuit and 6th Circuit nominees Deborah Cook and Jeffrey Sutton -- had been scheduled to appear at a May 23 hearing. But the day before, the panel was scuttled after vehement opposition by Democrats, who the next day won control of the Senate when Vermont Sen. James Jeffords announced he would defect from the GOP and become an independent.

Democrats had argued that the committee should not hold hearings until the American Bar Association's Standing Committee on the Federal Judiciary had completed its reviews of nominees.

Now that things have changed, it's unlikely that Leahy would hold hearings on any nominee whose ABA rating is not completed. Leahy spokesman David Carle says the committee has received a few of the ratings so far, but is not yet prepared to make them public.

While the ABA conducts an extensive background check, the reviews typically consist of only one sheet of paper describing the nominee as "well-qualified," "qualified," or "not qualified."

Carle also says the committee had yet to choose which of the nominees will be the first to have hearings.

The Judiciary Committee itself will undergo a change as a result of the power shift, with the likely scenario being one Democrat joining the 18-member committee to give the Democrats a one-vote majority. Leahy has spoken to former trial lawyer Sen. John Edwards of North Carolina about the slot but no agreement has been reached.

A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press

secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veteran's affairs committees.

Administration officials would not say whom Bush will nominate, but it could be time for several previously reported candidates to have their day.

Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the 11th Circuit, which includes Florida; Iowa U.S. District Judge Michael Melloy, for the 8th Circuit; and University of Utah professor Paul Cassell, for a district court seat in that state.

In Florida, Republican leaders have 70 lawyers to choose from -- including prominent names and relative unknowns -- in deciding whom to recommend to Bush for three federal judgeships and three U.S. attorney spots in the state.

The two vacant judgeships in the southern district drew the most applicants. But an open seat in the middle district attracted 19 candidates. The U.S. attorney spots in the northern, middle and southern districts drew 10, nine and eight applicants, respectively. Many applicants hedged their bets by applying for more than one position.

Gov. Jeb Bush, Rep. E. Clay Shaw Jr., R-Fla., and Rep. C.W. Young, R-Fla., will pick the finalists to recommend to the White House.

The Recorder (American Lawyer Media)
June 19, 2001

Back in Familiar Role, ABA Rates 6 Judicial Nominees

Jonathan Ringel

Six of President George W. Bush's nominees for the federal appeals courts have received "qualified" or "well qualified" ratings from the American Bar Association's standing committee on the federal judiciary. These are the first ratings to come from the ABA committee since President George W. Bush in March kicked the group out of its 48-year role prescreening potential judicial nominees for the White House.

The ABA saw its stock rise again with the switch to Democratic control of the Senate, and Senate Judiciary Chairman Patrick Leahy, D-Vt., has promised to consider the evaluations before commencing hearings on any individual nominee. The panel has so far given the highest ratings to three sitting district judges seeking elevation to their appeals courts, according to documents released by the Senate Judiciary Committee and other sources. The committee unanimously gave a "well qualified" rating to Judge Barrington Parker Jr. of the federal trial court in New York, nominated for a seat on the Second Circuit U.S. Court of Appeals. Parker, an African-American, was nominated to the district court in 1994 by then-President Bill Clinton.

A majority of the ABA panel gave Judge Edith Brown Clement of the federal trial court in New Orleans, nominated for the Fifth Circuit, a "well qualified" rating. A minority of

the panel rated Clement "qualified," according to the documents, and one unidentified member of the panel abstained from voting. Clement was nominated to the trial court in 1991 by then-President George Bush.

A nominee to the Fourth Circuit, Judge Dennis Shedd of the federal trial court in Columbia, S.C., also received a majority "well qualified," minority " qualified" rating, according to a source. When Bush nominated him to his current seat in 1990, Shedd, a former staffer to Sen. Strom Thurmond, R-S.C., had received a mixed "qualified/not qualified" ABA rating, according to a press account from the time. Jeffrey Sutton, a Sixth Circuit nominee, received a majority "qualified," minority "well qualified" rating. Sutton, a partner in the Columbus, Ohio, office of Jones, Day, Reavis & Pogue, has successfully argued several Supreme Court cases on behalf of litigants challenging acts of Congress as overreaching, including parts of the Violence Against Women Act and the Americans With Disabilities Act.

Ohio Supreme Court Justice Deborah Cook, also named to the Sixth Circuit, was unanimously rated "qualified." Cook, on the state high court for six years, was strongly backed in her 2000 re-election race by the Ohio business community, but opposed by African-American and plaintiffs lawyer groups. The ABA panel was also unanimous in calling Fourth Circuit Judge Roger Gregory "qualified." Gregory was a Richmond litigator until late last year, when President Clinton, in a controversial move, named him to the Fourth Circuit while Congress was out of session. Bush's decision to renominate Gregory, who is the first African-American judge on the Fourth Circuit, was seen as an attempt to mollify Democrats poised to block his nominees. A senior Bush administration official said the ratings "reaffirm the choice of these candidates as ones of high competence and integrity."

The ABA is expected to issue ratings shortly on the five other judicial nominees the president announced in May, including appellate advocates Miguel Estrada and John Roberts Jr. for the D.C. Circuit; North Carolina federal Judge Terrence Boyle for the Fourth Circuit; Texas high court Justice Priscilla Owen for the Fifth Circuit; and University of Utah law professor Michael McConnell for the 10th Circuit. President Bush has since nominated five others to circuit court posts, and three to district court posts. He announced Monday that he intends to nominate Magistrate Judge Terry Wooten to the U.S. district court in South Carolina.

The ABA panel conducts dozens of interviews with lawyers, judges and others regarding each nominee, evaluates the nominees' qualifications with regard to integrity, professional competence and judicial temperament, and hands out one of three ratings: "well qualified," "qualified," and "not qualified." The committee consists of one member from each of 12 federal judicial circuits, two from the huge Ninth Circuit and a chairwoman, Patricia Hynes of Milberg, Weiss, Bershad, Hynes & Lerach. Ever since the ABA committee gave mixed ratings to Republican Supreme Court nominees Robert Bork (the majority found him "well qualified" while the minority said he was "not qualified") and Clarence Thomas (the majority said " qualified," the minority "not qualified"), the committee has come under strong criticism from conservatives.

In March, the Bush administration removed the group from its formal role. White House Counsel Alberto Gonzales said at the time that the president did not want to give the ABA a

"preferential" role above other groups that could weigh in on the judiciary. Liberal groups decried the decision for removing an important peer review from the process and said it was a sign that Bush was trying to ease the way to push the judiciary to the right. Leahy would not comment on individual nominees Monday, according to a spokesman. Leahy has said he expects to hold hearings on nominees about two weeks after the Senate leadership completes reorganization negotiations.

The Deseret News (Salt Lake City, UT)
June 20, 2001

Bush Wants Cassell as Judge

Lee Davidson

WASHINGTON -- President Bush has nominated University of Utah law professor Paul G. Cassell to become a judge in the U.S. District Court for Utah.

If confirmed by the Senate, Cassell would replace retired Judge David Sam.

Cassell, who was nominated Tuesday, is considered an expert on victims rights. He represented relatives of victims of the Oklahoma City bombing who wanted to attend the trial of Timothy McVeigh but had been excluded by a judge's order.

While he initially lost the case seeking to allow them to attend, he turned to Congress and helped push through a victims-rights bill in two weeks that forced the judge to allow their attendance.

"The judicial system would be a much better place if we had more Paul Cassells and Judge (Richard) Matschs (who refused to block McVeigh's execution)," said Marsha Kight, with the National Organization for Victims Assistance. Her daughter, Frankie Merrell, was killed in the Oklahoma City bombing.

"He'll make an excellent judge," she said, praising Cassell's representation of her and other relatives of Oklahoma City bombing victims.

Calls to Cassell and the law school for comment on his nomination were not immediately returned.

Cassell also argued but lost a high-profile case before the Supreme Court seeking to allow some confessions to stand even if police failed to give "Miranda" warnings telling those interrogated that they have the right to remain silent.

Cassell, 41, has been a professor of law at the University of Utah since 1992.

He was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and was an associate deputy U.S. attorney general from 1986-88.

Cassell was a law clerk for Warren E. Burger, former chief justice of the United States, from

1985-86. He was also a clerk for Antonin Scalia (now a U.S. Supreme Court justice) when he was a judge on the U.S. District Court of Appeals in Washington, D.C.

Cassell received his law degree from Stanford University in 1984, and received his bachelor's degree there in 1979.

He was admitted to the bar in Pennsylvania in 1986 and to the Utah bar in 1992.

Cassell is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell was nominated to the Denver-based 10th Circuit Court of Appeals. His nomination is also pending before the Senate Judiciary Committee.

The Associated Press
June 20, 2001

Utah Law Professor Nominated for Federal Bench

Paul Foy

President Bush has nominated University of Utah law professor Paul Cassell to replace U.S. District Court Judge David Sam.

Cassell, 42, is a conservative legal scholar who has criticized the aggressive federal prosecution of Salt Lake's Olympic bid leaders.

He also is a victims' rights advocate who argued before the U.S. Supreme Court last year that some criminal confessions should stand even when police fail to give suspects the Miranda warning on their right to remain silent. The court disagreed.

Cassell was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and associate deputy U.S. attorney general from 1986-88.

He was sponsored by Sen. Orrin Hatch, R-Utah, for the federal bench and nominated by President Bush on Tuesday.

"It's obviously a great opportunity to serve on the bench and I'm honored the president has put my name forward," Cassell said Wednesday in San Diego, Calif., where he was vacationing with his wife and three children.

If confirmed by the U.S. Senate, Cassell would take on the full-time vacancy opened in Utah in late 1999 when Sam went on senior, semiretired status. Sam will continue to handle some cases and has been assigned to preside over the Olympic bribery trial of Salt Lake bid chief Tom Welch and his deputy, Dave Johnson. The trial is set to begin July 16.

Cassell's nomination to the bench silenced his often provocative critique of the government's case. He was no apologist for Welch and Johnson, but Cassell argued the U.S. Justice

Department devised elaborate conspiracy, fraud and racketeering theories when simpler charges would suffice.

Welch and Johnson were indicted by a federal grand jury on charges of conspiring over a decade to bribe the International Olympic Committee by plying its members with $1 million in cash, scholarships, travel, medical care and excessive gifts. The defendants maintain they did nothing criminally wrong or different from other bid cities.

Cassell doesn't expect to handle any aspect of the Olympic case. He would take one of five full-time positions at the U.S. District Court for Utah, which has been understaffed for a year. Each judge handles about 100 criminal and 300 civil cases a year.

Sam, 67, handles about half of the usual caseload of full-time judges as a semi-retired judge.

Cassell represented families of victims of the Oklahoma City bombing who were initially barred from attending the trial of Timothy McVeigh, who was executed June 11.

He helped usher a victims' rights bill through Congress that forced the judge in the McVeigh case to make room for the victims' relatives at trial.

"He'll make an excellent judge," Marsha Kight, whose daughter was killed in the blast, told the Deseret News.

Cassell was a law clerk for former Supreme Court Chief Justice Warren E. Burger from 1985-86. He served as clerk to Antonin Scalia, now a Supreme Court justice, when Scalia was on the U.S. District Court of Appeals in Washington, D.C.

Cassell received bachelor's and law degrees from Stanford University and was admitted to the Pennsylvania bar in 1986 and the Utah bar in 1992.

He is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell's nomination to the Denver-based 10th Circuit Court of Appeals is pending before the Senate Judiciary Committee.

National Review Online
June 20, 2001

Ready to Rumble

Byron York

In coming weeks, Democrats on the Senate Judiciary Committee plan to hold a series of hearings which they say will help clarify the issues involved in the judicial-confirmation process - and which Republicans believe will serve to establish a legal and political basis for rejecting George W. Bush's nominees for federal judgeships.

Next Tuesday, New York Democrat Charles Schumer, the new chairman of the Subcommittee on Administrative Oversight and the Courts, will hold a hearing entitled, "Should Ideology Matter? Judicial Nominations 2001." Next month, according to Senate sources, committee chairman Patrick Leahy will hold hearings to discuss the Rehnquist Court, federal jurisprudence, and conservative judicial activism.

Republicans believe the hearings will amount to a one-two punch against Bush's nominees. The Schumer session will establish that it is acceptable to oppose nominees solely on ideological grounds, and the Leahy hearing will suggest that Bush's nominees hold views that are dangerously out of touch with those of most Americans. The end result will be the conclusion that Democrats are justified in voting against the president's nominees, even if they seem well-qualified to hold office.

Democrats deny that there is any overarching strategy at work. "Basically, the senator wants to take a look at how we should view the process for confirming judges," says Schumer spokesman Bradley Tusk. "What role should ideology play? I think there's some confusion on how we should deal with the issue."

Nevertheless, the witness lists for the hearings are likely to be tilted in favor of the emerging Democratic consensus that senators can legitimately vote against judges on the basis of ideology alone. In the past, senators who disagreed with a nominee's judicial philosophy have often been forced to search for a disqualifying flaw on which they could base their opposition, while steadfastly maintaining that ideology had nothing to do with it.

For example, in the 1987 fight over the Supreme Court nomination of Robert Bork, wrote the Washington Post's E.J. Dionne in an influential recent column, "Liberals couldn't simply oppose Bork. To block him, they had to trash him." Now, Dionne continued, Democrats are "no longer shilly-shallying. They're saying, right from the start, that they'll oppose judicial nominees on philosophical grounds alone."

Republicans have gotten the message. "They're laying the groundwork," one GOP aide says of the Democrats' plans. "They're trying to paint all of our judges as right-wing extremists who are here to turn back the clock on civil rights. To be mainstream and moderate, therefore, they have to stop them."

Meanwhile, as Schumer and Leahy plan their hearings, the work of actually confirming the president's nominees has ground to a halt. No hearings have been scheduled for the confirmation of any of the nearly two-dozen nominees so far announced by the White House.

National Journal's Congress Daily

June 20, 2001

Organizing Talks Go On, But Daschle Readies For Showdown

Charlie Mitchell and Geoff Earle

Senate Majority Leader Daschle could bring up a new organizational resolution for the Senate as early as this week--a move that could allow committees to function normally, while putting an end to weeks of contentious negotiations. Nevertheless, Daschle and a team of GOP negotiators continued to exchange communications Tuesday--a sign that a chance remained for the two sides to broker a final deal and avoid a partisan fight on the Senate floor.

Daschle told reporters that he would bring up a resolution this week that reflects areas on which Republicans and Democrats can agree, while allowing Republicans to offer amendments to address their concerns about moving judicial nominees. But a team of GOP negotiators met in Minority Leader Lott's office Tuesday evening to prepare yet another Republican offer for Daschle.

"I think we're sending him something that will be worthy of consideration," said Sen. Pete Domenici, R-N.M. Said Sen. Phil Gramm, R-Texas; "The whole thing might be avoided. We might have an agreement." Gramm downplayed the idea of a GOP filibuster to block an organizing resolution.

Daschle addressed reporters after meeting with his Democratic colleagues to describe an earlier offer from the GOP negotiating team on the organizing resolution. He said the Democratic Caucus was "disappointed" in the GOP offer, adding, "My five Republican colleagues have chosen to terminate the negotiations."

Daschle said he had hoped to avoid a partisan floor fight over the organizing resolution. Nevertheless, allowing a vote on the GOP proposals would give Republicans something they had been seeking in talks with Daschle last week.

Daschle rejected GOP demands for a "guarantee" that judicial nominations would come to a vote, saying such an approach "undermines" the Senate.

"What they want is a 100-member Judiciary Committee, [and] we're not prepared to do that," Daschle said.

Other Democrats echoed that sentiment at the Tuesday meeting of their Caucus.

"I don't know of a self-respecting member of a committee who would tolerate bypassing their committee," said Sen. Christopher Dodd, D-Conn. Daschle said he had asked Lott to offer specific proposals on the two issues Republicans raised, and he expected Democrats had the votes to head off the GOP proposal. "My guess is it would be pretty much a party-line vote," said a Democratic aide.

Daschle said Democrats were willing to accept a GOP proposal to make public the "blue slip" process--by which a single senator can block action on a judicial nominee. He noted that Sen. Richard Durbin, D-Ill., proposed such a move in 1997, only to draw opposition from then-Judiciary Chairman Hatch.

"I just hope they would support this for future Congresses, not just this Congress," Daschle said

of Republicans. The Democratic aide said Republicans "made clear" that they would not filibuster the
organizing resolution if they received votes on their proposals. Dodd said if Republicans decided to hold up the Senate's business over the organizing resolution, "you open yourself up to looking terribly petty."

Another Democratic aide said preparations were under way for Majority Whip Reid to move into the choice office space now occupied by Minority Whip Nickles. Republicans and Democrats have said they generally agree on issues of staff, office space and a one-seat Democratic majority on committees, all of which are also in the organizing resolution.

The negotiations over Senate organization took place behind the scenes as Daschle struggled to bring managed care legislation to the floor despite GOP objections (see related article, page 12).

The Senate reached a unanimous consent agreement late Tuesday to schedule a vote on a motion to proceed to the bill Thursday morning. Daschle had indicated earlier in the day that he would file a cloture motion on the bill if a UC could not be reached. Daschle said it was important for the Senate to complete managed care legislation before the July Fourth recess, while also mentioning an FY01
defense supplemental appropriations bill--in order to leave the rest of July available to move appropriations bills.

Senate Republicans had objected to a Democratic motion to proceed to the patients' rights bill, and Daschle indicated he was prepared to file a cloture motion Tuesday that would lead to a cloture vote Thursday.

Amid signs of GOP foot-dragging, Daschle also threatened to cut into the precious July Fourth recess to complete action on the managed care bill. "I'll see you for the fireworks on the Fourth," Daschle told reporters. Republicans warned they were in no hurry to rush through that measure.

"Washington, D.C., is a very interesting place on July Fourth," said Nickles, who added, "Whether we're in for a couple of days [during the planned break] is irrelevant." But Nickles stressed that Republicans would do battle over the substance of the bill and had "no intention of filibustering this bill."

Still, Lott has not ruled out the possibility of a filibuster to block the measure. Republicans objected to a motion to proceed to the bill, on the grounds that they had not been given a chance to review changes made to the legislation last week.

Sen. Judd Gregg, R-N.H., said Daschle had been "a bit autocratic" in his decision to bring up the bill, adding, "I think we need a couple of days to talk about what the bill is."

Daschle laughed off GOP charges that the legislation had been secretly rewritten, saying he was bringing up the same bill listed on the Senate calendar.

Daschle and Reid stressed that the Senate would work through the July Fourth recess if

necessary to complete work on the patients' rights bill. But, under those circumstances, Daschle said the chamber would be off July Fourth for the day.

OP/EDS

The Washington Post
June 19, 2001

Picking Judges: Democrats Should Stand Their Ground
Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President Bush's judicial nominations has moved to center stage. Both sides already have staked out positions on the substantive question of what standards senators should use in evaluating Bush's picks for the federal bench.

Echoing the theme of Democrats when Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees (based on their credentials) regardless of ideology. Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject ideological "extremists."

Both responses are confused and inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. On the contrary, ideology is an inevitable part of a nominee's suitability for the federal bench.

For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting the record of nominees in order to cast them as extremists is both destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her own standard for how judges should interpret the Constitution and federal law. And every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong -- even if not extremist.

Our legal culture is riven into two factions. Basically, the "liberals" would preserve Roe v. Wade and affirmative action, support a rigorous separation of church and state, are skeptical of the death penalty, and believe that the Constitution vests broad power in the federal government even at the expense of states' rights. Legal "conservatives" hold diametrically opposite views.

As a candidate, Bush promised that adherence to the conservative side of this debate – the side

embodied by Justices Antonin Scalia and Clarence Thomas -- would be an essential qualification for nomination to the federal bench. As president, Bush has redeemed this promise.

Taking the advice of very conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for placement on those appellate courts (such as the 6th, 10th and D.C. circuits) that are closely divided between liberals and conservatives. On these battleground circuits, a single new judge might tip the political balance of an appellate court to the conservative side. Meanwhile, Bush carefully assigned his more moderate nominees to circuits that are so overwhelmingly liberal or conservative that the views of one new appointee will have little impact.

This clever strategy is not inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he will nominate judges who share a certain vision of the Constitution and the proper judicial role. American history is replete with examples of presidents seeking to perpetuate their legacies by filling the judiciary with like-minded judges.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation as a whole is evenly split between the liberal and conservative approaches to constitutional law. And it thus is incumbent on Senate Democrats to ensure that the federal courts -- the independent third branch of government -- reflect the nation's profound ambivalence.

This principle should apply to even the best of Bush's ideological nominees -- at the moment, Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which presides over federal cases in Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming).

McConnell's credentials are impressive. He has distinguished himself as a constitutional law scholar and has handled numerous important constitutional law cases. Those who know him, including liberals, say his temperament is suited to being a judge.

But from a Democratic perspective, McConnell is also profoundly wrong in his approach to the Constitution. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the Framers.

As was shown in the Bork hearings, this approach is irremediably flawed. Divining the Framers' intent is usually impossible (for one thing, the various Framers were rarely of one mind). Moreover, experience with Scalia, Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

On specific issues, although McConnell may not be on record opposing Roe v. Wade, his originalist approach is antithetical to Roe and makes his opposition a foregone conclusion. McConnell is very much on record, moreover, on another hot-button issue: An avowed fundamentalist Christian, he is arguably the legal world's leading advocate for lowering the wall of separation between church and state.

None of these views -- which many conservatives share -- makes McConnell an extremist. Indeed, McConnell is more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. And that is grounds enough for rejecting him.

In short, Democratic senators have the right -- and even a duty -- to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. But in the meantime, Democrats should honestly and without apology have the courage of their convictions. They should just say no. The writer is author of "Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court."

The New York Times
June 19, 2001

Doing Business in the Senate

Editorial

The organizing process undertaken by the Senate every two years usually occurs with little fuss. But with a newly constituted Senate now in Democratic control, what used to be a routine housekeeping chore has become a focus of partisan impasse. Republicans are demanding a ban on a parliamentary tactic employed in the past to block some judicial nominations, and they are seeking guarantees that all Supreme Court nominations will be brought to the Senate floor, even if they are rejected in committee. This is a case that can be resolved with some good will. Democrats should give in on one but not both the Republican requests.

The irony, not to say audacity, of the Republican demands is striking. For the six years that Republicans controlled the Senate, they routinely obstructed President Bill Clinton's judicial nominations, often refusing even to hold hearings or a vote in the Judiciary Committee. This page deplored such tactics, so the Democrats' pledge to hold hearings and votes in committee is most welcome. Another tactic used by the Republicans was the so-called "blue slip," in which a senator from the home state of a judicial nominee could anonymously block that nominee from being considered. Despite using that tactic in the past, Republicans are now demanding that any senator using the blue slip be identified. The demand is no doubt galling to Democrats, but they should nevertheless accept it.
Senators who block a nomination from their home state should have the courage to do so publicly.

A separate demand by the Republicans is less worthy of approval. They are asking for a change in Senate rules that would require any nomination for the Supreme Court to be sent to the full Senate even if it is rejected in committee. The fact is that, except for one historical oddity when there was a nomination for a seat that was not yet vacant, neither Republicans nor Democrats can find a case in which a Supreme Court nomination was not submitted to the full Senate. The nominations for Supreme Court of Robert Bork and Clarence Thomas were both voted on by the Senate, even though Mr. Bork was rejected by a majority in committee and Judge Thomas got a tie vote.

Tom Daschle, the Senate majority leader, has promised that the Democrats will give full and fair consideration to all judicial nominations. Citing the Bork and Thomas precedents, he has indicated that he fully expects Supreme Court nominations to be treated as in the past.

Senate rules have for many decades empowered committees to vet nominations and decide whether to approve them. Changing the rules now would undermine the power of the committee at just the time when its new chairman, Patrick Leahy of Vermont, has promised to process the nominations in an evenhanded, open fashion. The Republicans should take him at his word and not try to force an artificial arrangement just because they fear the Democrats will behave as badly as the Republicans did under President Clinton. Above all, Republicans should not be trying to block the Senate from proceeding with its business by demanding arbitrary new rules of the Democrats.

National Journal
June 20, 2001

Clinton Nominee Kent Markus: Judicial Nomination Delays Are Hurting The Country

Julie Samuels

As Democrats and Republicans work out a new power-sharing deal in the Senate, the issue of judicial nominees remains a major point of contention. With Democrats controlling the agenda, will President Bush's nominees even get confirmation hearings? Will the Republicans make committee assignments if they don't?

National Journal.com's Julie Samuels spoke with Kent Markus, former counselor to Clinton Attorney General Janet Reno and a onetime judicial nominee himself, about the process, the lack of judges on today's federal bench and how this might all play out in the Democratic-led Senate.

Q. Briefly walk me through the process of your nomination and the experience you had as an example of how the process works -- or maybe doesn't always work. Well, mine was a nomination for a federal appellate court, and I think already it's worth mentioning that the process is quite radically different for the appellate courts as compared with the district courts. Because the appellate court selections are primarily managed, controlled, decided by the White House and the Justice Department, mostly the White House, whereas the district court

appointments are pretty much decided by local officials in the state in which the opening exists, usually the United States senators....And so, because we were talking about an appellate court position, mine was mostly a conversation that was taking place among Washington folk. I learned -- through a friend -- that [Judge] Dave Nelson on the 6th Circuit had sent a letter in to the Justice Department indicating an intention some months later to take senior status. That triggered the whole discussion. This was in the mid- to late summer of 1999. The friend at Justice called and said, "You know, we've got this letter, are you interested in the seat?" And I said, "Yes, I'm very interested in the seat."

That began a process of trying to persuade various critical decision makers that I was the right person to be nominated for that seat. I think to the extent that anyone suggests that this is a process -- for any of these court positions -- that you get a call one day from some official calling you to public service because they've researched the backgrounds of all conceivable candidates and determined that you
are by far the most worthy isn't telling you the truth. I mean, I don't know anybody who's been involved in any of these conversations that doesn't engage, even though it may be sort of an awkward word to use in this context, in something resembling a campaign to obtain one of these appointments. I think people like to pretend it's substantially more gentile than that, but it isn't. So, I undertook efforts to have various people communicate simultaneously with both the White House and Justice Department and especially key decision makers there that I would be a good nominee for the spot. And these were all people that knew me. I had worked as Attorney General [Janet] Reno's counselor at the Justice Department -- the highest-ranking staff-adviser to the attorney general, so I knew almost everybody who was being communicated with, and yet it still was a process you have to go through to persuade them that, among other conceivable nominees, you're the right one.

At the same time, I was also trying to make sure that, because I had two United States senators from the opposite political party here in Ohio, that were I able to persuade the White House that this was the way to go, that the United States senators were not going to be opposed to my selection. And so there was a similar effort going with Senator [George] Voinovich and even more particularly Senator [Mike] DeWine, since he was senior senator from Ohio and on the Judiciary Committee....And then... nothing happened for a while. And then there was delay and delay and delay, and I would talk to friends who were involved in the weekly meetings at the White House -- "Did the seat come up for discussion this week?"; "No, we didn't get to it, we didn't talk about it"; "Oh, it got mentioned and so-and-so said they heard from so-and-so about you" -- and I sort of would get little bits and scraps and pieces and, you know, my reaction was, "Jeez, I'm peculiarly well-connected, as compared to many people going through this, and still, I can only get little bits and scraps and pieces of information about what's going on and is there really a delay for some substantial reason, that there's a concern about whether I'm the right nominee and they're looking at others, or is it just that other matters are taking a higher priority, or what's going on?"

Just as magically, at some point it finally breaks, and that took until about December. And it was in, if I recall, the third week of December that I finally got the call from the White House saying, "We intend to proceed with your nomination, assuming that everything's OK."

At that point you then begin a much more cumbersome process where you are provided an extraordinary set of forms and questionnaires -- one for the White House, one for the FBI, one for the Justice Department, one for the Senate and Judiciary Committee and one for the administrative office of the courts.... The moment they say "go," in terms of putting together the forms and submitting them, the hurry-up-and-wait process then becomes another hurry-up process because they then, once they've made the decision, want you to get everything in as quickly as you possibly can so that it can be scrutinized and a final determination can be made as to whether you are in fact going to be nominated or whether all these materials and background checks will reveal some problem....

So, you're going nuts trying to put all of this together and get it in. Simultaneously, as soon as you get it in, not only does it trigger the White House own internal evaluation of everything and the FBI check to make sure you're not a drug dealer or you're not beating your spouse or whatever, but that the [American Bar Association] check then began. And they have their own whole process, where they not only interview you, but they interviewed a wide range of people in your legal community and others about you and your integrity and your experience and your knowledge of the law and all those kind of things, for their rating process.... So, you go through with that whole process -- and that all went on from about the third week in December -- in what in this context was considered very speedy – to a nomination on February 9....

From that point, the goal was obviously to seek and obtain a hearing and get a positive confirmation vote and then get a vote of the full Senate with respect to confirmation. One of the critical intermediary steps to be getting such a hearing was, and to this day still remains much in the news, the blue slips returned from your two home-state senators.

I had two Republican senators, and the White House had expressed some skepticism about whether I was going to be able to get two blue slips returned, and I think, in the end, I was the only court of appeals nominee in the country who had blue slips returned by two home-state Republican senators, both saying: "We have no objection to this nominee. You can go ahead and hold hearings if you chose to." But, again, that took time and persuasion and encouragement and there were editorials in the newspapers across the state encouraging the senators to not let this position remain open... and finally Senators Voinovich and DeWine both returned their blue slips to [then Senate Judiciary Committee] Chairman [Orrin] Hatch, [R-Utah], which was yet another critical hurdle covered.... Then it was a whole lobbying process of -- in the election year and in the context in which there was clearly a desire by many to simply say: " Look, we're just not going to confirm people this year, especially court of appeals nominees. Let's hold these seats open, see if we win the White House, and if we do, we get to fill those seats rather than the other guys."

And, in the end, that's exactly what happened to me and lots and lots of other people, and it wasn't even -- I think, to my knowledge -- anything that was focused on any substantial way on me personally. It was just a relatively across-the-board decision among the majority in the Senate... and the strategy paid off.

Q. What do you think about the blue-slip process? A. I don't think it's a good process, and I am one of the people who was not a victim of it. There were others like me who were awaiting

confirmation hearings, [and] that was the hurdle they couldn't get across.... I actually had hoped, and the White House had hoped, that being in the somewhat extraordinary position of having two Republican senators return blue slips for a Democratic nominee, might have been enough to break through. And it even might have been something that Hatch could have used as an excuse to say, "Look, I'm not a terrible bad guy, here's a guy who got blue slips returned by his two Republican senators and we moved and proceeded to a hearing on him." That still didn't do it for me.

Even though I wasn't the victim of the process, at least at that point, I just think that it's an inappropriate prerogative, and that's all it is. It's a prerogative that's afforded the individual senators, and I think that I'd rather have... a more deliberative process where we look at candidates, we make a decision, and vote them up or down. I think the big unfortunate part is I think the reason there's such a reluctance to give up that prerogative is that it's substantially politically easier to simply to have nothing happen than to vote against.

Q. It sounded like the longest delay you faced was from the end of September to December. I was curious as to where you think these delays tend to come from.
A. I think they come from everywhere. I think they come -- in terms of the White House decision making -- I do think they come primarily from a combination of managing competing objectives and competing interests and competing candidates and all of that playing out in the decision making. And the general state of affairs that I experienced at high levels of the Justice Department and that I saw at high levels of the White House is you never have time to do all the things you're supposed to be doing.

And so even things that are objectively reasonably important matters suddenly become not terribly important compared to other things that are much more important.... I think when you combine that bureaucratic aspect to it with the political aspect of having to decide among competing candidates, those combine in a nefarious way to result in a delay...

Q. In a broader sense, how do you think the process changed after the 1987 Robert Bork hearings, if it did change at all?

A. I think in general that was a contributor to a sense of a need for tit-for-tat paybacks for actual and perceived slights by both parties. I think it's actually consistent with changes in the Congress that have absolutely nothing to do with nominations. My perception, throughout the '90s, is that Congress became a substantially less civil place, that there was substantially less accommodation that took place among members.... It became a substantially more partisan place. It became a meaner place. I think that was just one aspect and one manifestation of it that had an impact, particularly on nominees.

Q. Do you personally think that a nominee who might be seen as too idealistic is qualified to sit on a federal bench?

A. Depends on what you mean by "too idealistic." ... I think quite clearly being idealistic alone is not disqualifying. I think the critical question in addition to standard qualifying questions... is "What is

your view of the role of a judge?" You can be as ideological as you want to be if you don't have any intent or desire to try to foist your own ideological perspective upon the system through your position as a judge. That is, whatever your privately-held views are, so what? -- if you don't seek to impose those views from the bench.... I am not particularly enamored with judges who substantially invade the purview of the legislative branch, and that's something that is loosely referred to as being activist. Unfortunately, I think that term has become very politically charged and one of those terms that's come to mean whatever anybody wants it to mean. But, I think historically, I think it's how much restraint the judge demonstrates vis-à-vis the operations of the other branches, and I think that I'm very uncomfortable with the amount of activism -- with the amount of invasion of the legislative and executive branches -- we're seeing on the judiciary right now.... If someone is highly ideological but also has a very limited and constricted view of the role of judge, I don't have a problem with that person. I have a problem with them if they are highly ideological, and they're on a mission to effectuate that ideology once they get on the bench.

Q. As far as ABA ratings go, I'd like to talk about those for a second because, especially since the power switch -- when Bush first came into office, he said "we aren't going to use them," and then the Democrats came into the majority, and they said, "well, now we are..."

A. And I think even before the power switch the Democrats had said, "you may not be going to use them, but we still want them...." And they had made pretty clear that they were going to wait for an ABA recommendation before they were going to be willing to schedule hearings with regards to candidates who had been nominated. So that, even before the power switch, the effect would have been that the White House would not have had the advantage of information about the ABA's views and ratings before finalizing the nomination decision. They would have finalized their nomination decision and then learned about what the ABA's view is, which I thought was a little risky on their behalf.

That's if they cared one wit about what the ABA said, which apparently they didn't. And so, I think that this power switch has only heightened that a little bit more, which has given Democrats the ability to say: "Look, we really mean that. We're not proceeding with the nominations until we know what the ABA says. And now we control the committee schedule, and we're going to wait for that."

Q. So the role that they're going to play has not changed?

A. I think it's only changed in... timing. It no longer is being used as an element of the White House decision making as to whether to proceed with a contemplated nomination. Instead, the recommendation will come out after the White House decides to make a nomination and will be used primarily in the context of making confirmation decisions.

Q. Right now, there's more than 100 judicial vacancies in the federal court system, which is the most since 1997. How serious of a problem is that?

A. There's a serious problem with respect to the delay, and, in the most cliché of ways, you really have a "justice delayed is justice denied" phenomenon going on. Even while my

nomination was pending for the 6th Circuit, and that's now eight, nine months ago when I was involved with these conversations still, the 6th Circuit was a great example. It had become because of the number of vacancies that
existed then, the slowest circuit in the country -- the time of argument to the time of decision, with cases averaging in excess of two years to get a decision out of the appeals court. That's crazy. And since that time, there are additional vacancies on the 6th Circuit.

So the suggestions that we can stand to have continuing delays in the fillings of these positions I think is wrong. And I think that the Democrats on the Judiciary Committee are in an awkward position.... They might like to engage in more tit-for-tat; they're angry about what was done to some of the nominees in the Clinton administration. They also full-well recognize that it is just not good for the country and for the system to continue to delay in filling these positions.

Q. As far as the power shift goes, how do you see that affecting the nominating process?

A. I think it's undeniable that it's going to slow it down. I hope that it does not go to a stall, a delay, a blockage. Again, I just think that's wrong. And maybe I'm more acutely cognizant of that having been a victim of that, but I just think it's not good for the court, it's not good for the country, it's not good for litigants, it's not good for the Congress -- it makes them look bad -- and it's terribly, terribly unfair
to the nominees....

Q. Do you think it will change the nominees that come out of the White House?

A. I think it will. [Rep.] Chris Cox, [R-Calif., who recently withdrew his name from consideration] is already an example of that. I think there was a recognition that while [Republicans] controlled the committee, they have an ability to push a little harder with respect to getting people through. Look at the Ted Olson [for solicitor general] vote -- there was a lot of reluctance and grumbling, but it went
through, and Ted was confirmed. I think that's a different dynamic now.... When the Republicans controlled the committee, they could make Democrats vote against nominees. When the Democrats are controlling the committee, they can make it so they don't have to vote against the nominees because they can make it so the nominee never comes up for a vote.

Q. How do you see the power shift changing potential Supreme Court justice nominees, should there be any?

A. Same way.... More ability on the Democrats to insist on a more moderate nominee, more ability to insist on whatever a time they need to be adequate for scrutiny. I mean, it's an agenda-controlling power, and that process impact has a substance impact.

Q. Do you expect to see a similar situation at the end of a Bush term, or a Bush administration? Do you expect to see nominees left hanging, as you were?

A. I think there will be nominees left hanging at the end of every administration. And there have been, if you look historically, some number of nominees left hanging at the end of every

administration. I think the thing that was discouraging and problematic about 2000 was that the slow-down in confirming nominees began much, much earlier than it ever had historically and the sort of line-in-the-sand decision by the majority at that time, that no more, especially no more appellate court nominees, were going to get through, came much earlier.... So that it was more and earlier and the thing I worry about -- and I worry about the Democrats doing it, too -- is saying, "fine, you did it more and earlier, we'll do it even more and even more earlier." We start slowing down after the first year in the administration? You know, the president's president for four years, and while I recognize that inevitably you are going to have political things that are going to result in some nominees being left hanging, especially those nominated late, very late, in the administration, a few months left, I actually think that President Bush's suggestion during the campaign was a pretty good one if it could be done as a practical matter. That unless there's a specific, individual reason not to do so, every nominee ought to have a hearing and a vote within 60 days.

Q. What do you think could be done to expedite the process?

A. At the nomination stage, there's cautiousness on the part of the White House as the nominating entity to do everything they can to avoid political embarrassment from nominating somebody who has some stain on their background, and they want to avoid that by finding out everything they possibly can about that nominee in advance, so that if there is something there they don't like, they can decide, "well then, we're not going to nominate that person." But that causes extraordinary delay and is highly intrusive sort of well beyond what I think anybody would think was rational or normal. And it's all about political defense on the part of the nominating entity. And the same thing that goes on with respect to the confirmation process is that -- and that's more I think on political offense -- people are attacked and are charicaturized and defined in very simplistic terms because that's politically convenient to do and may appeal to interest groups and others in a way that is terribly unfair and dangerous to nominees...

Q. Is there anything else you'd like to discuss?

A. I went back... and I pulled a column that I had read from the Washington Post on April 1 -- I think it was intended as an April Fool's Day column. Because there was a line in it that I remembered... where the guy writing the story says: "The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency." And I remember, when I read it originally, I went, "Yeah, that's right."

Newsday (New York, NY)
June 21, 2001

Democrats Must Demand Fair Split Among Judges

Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President George W. Bush's judicial nominations takes center stage. Both parties have staked out positions on the question of what standards senators should use in evaluating Bush's picks for the federal bench. Echoing the theme of Democrats when former President Bill Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees regardless of ideology.

Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject "extremists." Both responses are inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. Ideology is an inevitable part of a nominee's suitability for the federal bench. For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting nominees' records to cast them as extremists is destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her standard for how judges should interpret the Constitution and federal law. Every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong-even if not extremist. Our legal culture has two factions. Basically, the "liberals" would support nominees who would preserve Roe vs. Wade and affirmative action, support a rigorous separation of church and state, be skeptical of the death penalty and believe the Constitution vests broad power in the federal government even at the expense of states' rights.

Legal "conservatives" hold diametrically opposite views. As a candidate, Bush promised that adherence to the conservative side of this debate-the side embodied by Justices Antonin Scalia and Clarence Thomas-would be an essential qualification for nomination to the federal bench. Taking the advice of conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for appellate courts (such as the Sixth, 10th and D.C. circuits) that are closely divided between liberals and conservatives.

On these battleground circuits, a single new judge might tip the balance to the conservative side. Meanwhile, Bush assigned moderate nominees to circuits so overwhelmingly liberal or conservative that the views of one new appointee will have little impact. This strategy isn't inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he'll nominate judges who share a vision of the Constitution and the proper judicial role.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation is evenly split between the liberal and conservative approaches to constitutional law. It thus is incumbent on Senate Democrats to ensure that the federal courts-the

independent third branch of government-reflect the nation's ambivalence. This principle should apply even to the best of Bush's ideological nominees: Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming). McConnell has distinguished himself as a constitutional scholar and has handled important constitutional-law cases. Those who know him, including liberals, say his temperament is suited to the job.

From a Democratic perspective, however, McConnell is profoundly wrong in his approach. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the framers. As shown in the Bork hearings, this approach is irremediably flawed. Divining the framers' intent is usually impossible (for one thing, the various framers were rarely of one mind). Moreover,
experience with Antonin Scalia, Clarence Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

Although McConnell may not be on record opposing Roe vs. Wade, his originalist approach makes his opposition a foregone conclusion. In addition, as an avowed fundamentalist Christian, he's arguably the legal world's leading advocate for lowering the wall between church and state. None of these views makes McConnell an extremist. He's more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. That's grounds enough for rejecting him.

Democratic senators have the right-and even a duty-to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. In the meantime, Democrats should honestly and without apology have the courage of their convictions.

INTEREST GROUPS/PRESS RELEASES

The Columbus Dispatch
June 20, 2001

Sutton is Not The Saint Portrayed in 'Dispatch'

Andrew J. Imparato, President, American Association of People With Disabilities

Regarding the May 26 Dispatch editorial "Injustice," criticizing the " vexing problem" of disability advocates taking to the streets of Columbus to publicize their opposition to President Bush's nomination of former Ohio solicitor Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals, I would encourage the newspaper to consider the facts:

Sutton has been the lead attorney in a series of cases that have limited the ability of individuals to assert their civil rights in federal court.

He has not been simply a lawyer representing a client in one unpopular case, as the editorial suggested. Rather, he aggressively has pursued a prominent national role as the champion of a vocal and powerful minority of far-right legal theorists. Sutton and his allies have had increasing success in revisiting a states'-rights debate that the majority of Americans thought was decided during the Civil War and reinforced during the civil- rights struggles of the 1950s and 1960s.

Disability advocates and our allies have not sought to prevent Sutton from receiving a fair hearing before the Senate Judiciary Committee. Instead, we have sought to educate the senators and their constituents about Sutton's record.

Our ability to assert and enforce our civil rights is not simply "our favorite issue," as The Dispatch asserted.

For us, strong disability-rights enforcement is a matter of life with dignity and equal opportunity.

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Here is the latest installment of the judicial media review.

Best,

Jennifer

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"Sutton is Not The Saint Portrayed in 'Dispatch,'" 28
Andrew J. Imparato, President, American Association of People
With Disabilities, *The Columbus Dispatch*, June 20, 2001

GENERAL JUDICIAL ARTICLES

The Recorder (American Lawyer Media)
June 18, 2001

Gearing up to Vote on Court Nominees

Jonathan Ringel

Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead. Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees this week, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of Utah, the ranking minority member on the Judiciary Committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who will soon have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

Leahy has already said he will enforce the "blue slip" rule, by which the Judiciary Committee will not hold hearings or votes on nominees opposed by home-state senators. Republicans argue this rule gives individual senators too much power over presidential nominations. President Bush so far has made 17 nominations -- 15 to circuit courts of appeals and two to district courts. Around the country, 104 federal judgeships are vacant -- 33 on circuit courts and 71 on district courts. None of Bush's selections has been the subject of hearings before the Judiciary Committee.

When the committee was in its final days of Republican control, three nominees -- John Roberts Jr. for the D.C. Circuit and Sixth Circuit nominees Deborah Cook and Jeffrey Sutton -- had been scheduled to appear at a May 23 hearing. But their day before the panel was scuttled after vehement opposition by Democrats, who the next day won control of the Senate when

Vermont Sen. James Jeffords announced he would defect from the GOP and become an independent. Democrats had argued that the committee should not hold hearings until the American Bar Association's standing committee on the federal judiciary had completed its reviews of nominees.

Now that things have changed, it's unlikely that Leahy would hold hearings on any nominee whose ABA rating is not completed. Leahy spokesman David Carle says the committee has received a few of the ratings so far, but is not yet prepared to make them public. While the ABA conducts an extensive background check, the reviews typically consist of only one sheet of paper describing the nominee as "well qualified," "qualified" or "not qualified." Carle also says the committee has yet to choose which of the nominees will be the first to have hearings.

The Judiciary Committee itself will undergo a change as a result of the power shift, with the likely scenario being one Democrat joining the 18-member committee to give the Democrats a one-vote majority. Leahy has spoken to former trial lawyer Sen. John Edwards of North Carolina about the slot, but no agreement has been reached. A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veterans' affairs committees.

Administration officials would not say who Bush will nominate next week, but it could be time for several previously reported candidates to have their day. Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the Eleventh Circuit; Iowa U.S. District Judge Michael Melloy for the Eighth Circuit; and University of Utah professor Paul Cassell for a district court seat in that state. In March, Tennessee Republican Sens. Fred Thompson and Bill Frist made three recommendations for a single open seat on the Sixth Circuit. They are: Robert Echols, U.S. district chief judge in Nashville; Julia Gibbons, U.S. district chief judge in Memphis; and Lin Howard of Harwell Howard Hyne Gabbert & Manner in Nashville.

Montana may not be ground zero of the political warfare over judges, but it has gotten more than its share of attention from the Bush administration. If the Senate confirms litigator Sam Haddon and U.S. Magistrate Judge Richard Cebull, it's a good bet that folks with business before the federal court there will breathe a sigh of relief. The court has only three judges, and in the past year, Judges Jack Shanstrom and Charles Lovell took senior status, meaning they had significantly reduced their caseloads. That leaves Chief Judge Donald Molloy as the court's only active judge, He has had to focus on criminal cases in order to comply with speedy trial demands, while the civil docket has taken a back seat.

Fortunately for Molloy, Montana Sens. Conrad Burns, a Republican, and Max Baucus, a Democrat, were able to agree on recommendations for the posts. Such bipartisan agreement certainly helped speed the process at the White House and could do the same in the Senate. Meanwhile, the Montana federal court has been relying on help from nearby states. Lou Aleksich, the court clerk, says four federal judges have come to Montana to preside over civil trials this month.

The Associated Press
June 19, 2001

Daschle Agrees to GOP Proposal for Vote on Supreme Court Nominees

Jesse J. Holland

Senators will decide whether President Bush's Supreme Court nominees get automatic confirmation votes from the full Senate without risking rejection by the Judiciary Committee, Senate Majority Leader Thomas Daschle said Tuesday.

Republicans asked for such treatment during negotiations over how to reorganize the newly Democrat-controlled Senate. The GOP is afraid that Democrats would block Bush's judicial nominations and has been looking for a way to ensure Bush's top nominees will at least make it to the floor. Daschle opposes any guarantees for Bush nominees. "We will provide them an opportunity for the vote, but I would hope the Senate would show its common sense and would vote against that particular proposal," said Daschle, D-S.D.

The GOP originally asked for guaranteed Senate votes on all Supreme Court and federal appellate court nominees and elimination of the secret veto process for some judicial nominations, but Daschle refused. The Republicans then modified their request to guaranteed Supreme Court votes only.

Democrats control the Senate by a 50-49 margin. Sen. Jim Jeffords of Vermont threw the chamber to the Democrats when he defected from the Republican Party to become the Senate's sole independent.

Daschle said he would ask his party to vote against the provision when the Senate votes. "I expect we will prevail," he said.

Calls to Republican senators involved in the negotiations with Daschle were not returned. A senior GOP leadership aide described Daschle's agreement to a vote on how Supreme Court nominees will be handled as a step in the right direction.

Daschle agreed to another Republican request: to make the senatorial "blue-slip" veto process public instead of private, as it has been in the past. "We certainly oppose private blue slips, and I'm prepared to incorporate the public blue-slip policy in the organizing resolution itself," Daschle said.

While the Senate Judiciary Committee has never in modern history kept a Supreme Court nominee from coming to a vote, the resolution would render the committee powerless to stop a future Supreme Court nominee no matter what the controlling party thinks.

"In essence, what their proposal would do is to create a 100-member judiciary committee, bypassing, if they wish, the Judiciary Committee itself. We're not prepared to do that," Daschle said. "We think that, for this institution, for careful consideration of the nominees themselves, we

ought to continue to maintain the Senate practice of insisting that all nominees be considered and voted upon in the Judiciary Committee."

The provisions would only be binding on Congress until January 2003. It would also be negated if Republicans were to take back control of the chamber, which would force senators to vote on a new organizing resolution.

Daschle said Democrats would insist that changes become a permanent part of the Senate process if they are approved. "This ought not be something we just do for this Congress," he said.

The Senate will vote on the Supreme Court provision, and on reorganizing the chamber, before they leave for the Independence Day holiday, Daschle said.

The two sides also agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee finances and space agreements negotiated at the beginning of the year will continue in effect as well.

The Senate will not work on any of Bush's nominees until after those votes, the majority leader said.

Bush has not nominated anyone for the Supreme Court because there are no openings. He has made several lower court nominations.

Miami Daily Business Review
June 19, 2001

Despite Appearances, Confirmation Process for Judicial Nominees Makes Progress

Jonathan Ringel

WASHINGTON -- Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead.

Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees soon, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of

Utah, the ranking minority member on the Judiciary committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who soon will have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

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secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veteran's affairs committees.

Administration officials would not say whom Bush will nominate, but it could be time for several previously reported candidates to have their day.

Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the 11th Circuit, which includes Florida; Iowa U.S. District Judge Michael Melloy, for the 8th Circuit; and University of Utah professor Paul Cassell, for a district court seat in that state.

In Florida, Republican leaders have 70 lawyers to choose from -- including prominent names and relative unknowns -- in deciding whom to recommend to Bush for three federal judgeships and three U.S. attorney spots in the state.

The two vacant judgeships in the southern district drew the most applicants. But an open seat in the middle district attracted 19 candidates. The U.S. attorney spots in the northern, middle and southern districts drew 10, nine and eight applicants, respectively. Many applicants hedged their bets by applying for more than one position.

Gov. Jeb Bush, Rep. E. Clay Shaw Jr., R-Fla., and Rep. C.W. Young, R-Fla., will pick the finalists to recommend to the White House.

The Recorder (American Lawyer Media)
June 19, 2001

Back in Familiar Role, ABA Rates 6 Judicial Nominees

Jonathan Ringel

Six of President George W. Bush's nominees for the federal appeals courts have received "qualified" or "well qualified" ratings from the American Bar Association's standing committee on the federal judiciary. These are the first ratings to come from the ABA committee since President George W. Bush in March kicked the group out of its 48-year role prescreening potential judicial nominees for the White House.

The ABA saw its stock rise again with the switch to Democratic control of the Senate, and Senate Judiciary Chairman Patrick Leahy, D-Vt., has promised to consider the evaluations before commencing hearings on any individual nominee. The panel has so far given the highest ratings to three sitting district judges seeking elevation to their appeals courts, according to documents released by the Senate Judiciary Committee and other sources. The committee unanimously gave a "well qualified" rating to Judge Barrington Parker Jr. of the federal trial court in New York, nominated for a seat on the Second Circuit U.S. Court of Appeals. Parker, an African-American, was nominated to the district court in 1994 by then-President Bill Clinton.

A majority of the ABA panel gave Judge Edith Brown Clement of the federal trial court in New Orleans, nominated for the Fifth Circuit, a "well qualified" rating. A minority of

the panel rated Clement "qualified," according to the documents, and one unidentified member of the panel abstained from voting. Clement was nominated to the trial court in 1991 by then-President George Bush.

A nominee to the Fourth Circuit, Judge Dennis Shedd of the federal trial court in Columbia, S.C., also received a majority "well qualified," minority " qualified" rating, according to a source. When Bush nominated him to his current seat in 1990, Shedd, a former staffer to Sen. Strom Thurmond, R-S.C., had received a mixed "qualified/not qualified" ABA rating, according to a press account from the time. Jeffrey Sutton, a Sixth Circuit nominee, received a majority "qualified," minority "well qualified" rating. Sutton, a partner in the Columbus, Ohio, office of Jones, Day, Reavis & Pogue, has successfully argued several Supreme Court cases on behalf of litigants challenging acts of Congress as overreaching, including parts of the Violence Against Women Act and the Americans With Disabilities Act.

Ohio Supreme Court Justice Deborah Cook, also named to the Sixth Circuit, was unanimously rated "qualified." Cook, on the state high court for six years, was strongly backed in her 2000 re-election race by the Ohio business community, but opposed by African-American and plaintiffs lawyer groups. The ABA panel was also unanimous in calling Fourth Circuit Judge Roger Gregory "qualified." Gregory was a Richmond litigator until late last year, when President Clinton, in a controversial move, named him to the Fourth Circuit while Congress was out of session. Bush's decision to renominate Gregory, who is the first African-American judge on the Fourth Circuit, was seen as an attempt to mollify Democrats poised to block his nominees. A senior Bush administration official said the ratings "reaffirm the choice of these candidates as ones of high competence and integrity."

The ABA is expected to issue ratings shortly on the five other judicial nominees the president announced in May, including appellate advocates Miguel Estrada and John Roberts Jr. for the D.C. Circuit; North Carolina federal Judge Terrence Boyle for the Fourth Circuit; Texas high court Justice Priscilla Owen for the Fifth Circuit; and University of Utah law professor Michael McConnell for the 10th Circuit. President Bush has since nominated five others to circuit court posts, and three to district court posts. He announced Monday that he intends to nominate Magistrate Judge Terry Wooten to the U.S. district court in South Carolina.

The ABA panel conducts dozens of interviews with lawyers, judges and others regarding each nominee, evaluates the nominees' qualifications with regard to integrity, professional competence and judicial temperament, and hands out one of three ratings: "well qualified," "qualified," and "not qualified." The committee consists of one member from each of 12 federal judicial circuits, two from the huge Ninth Circuit and a chairwoman, Patricia Hynes of Milberg, Weiss, Bershad, Hynes & Lerach. Ever since the ABA committee gave mixed ratings to Republican Supreme Court nominees Robert Bork (the majority found him "well qualified" while the minority said he was "not qualified") and Clarence Thomas (the majority said " qualified," the minority "not qualified"), the committee has come under strong criticism from conservatives.

In March, the Bush administration removed the group from its formal role. White House Counsel Alberto Gonzales said at the time that the president did not want to give the ABA a

"preferential" role above other groups that could weigh in on the judiciary. Liberal groups decried the decision for removing an important peer review from the process and said it was a sign that Bush was trying to ease the way to push the judiciary to the right. Leahy would not comment on individual nominees Monday, according to a spokesman. Leahy has said he expects to hold hearings on nominees about two weeks after the Senate leadership completes reorganization negotiations.

The Deseret News (Salt Lake City, UT)
June 20, 2001

Bush Wants Cassell as Judge

Lee Davidson

WASHINGTON -- President Bush has nominated University of Utah law professor Paul G. Cassell to become a judge in the U.S. District Court for Utah.

If confirmed by the Senate, Cassell would replace retired Judge David Sam.

Cassell, who was nominated Tuesday, is considered an expert on victims rights. He represented relatives of victims of the Oklahoma City bombing who wanted to attend the trial of Timothy McVeigh but had been excluded by a judge's order.

While he initially lost the case seeking to allow them to attend, he turned to Congress and helped push through a victims-rights bill in two weeks that forced the judge to allow their attendance.

"The judicial system would be a much better place if we had more Paul Cassells and Judge (Richard) Matschs (who refused to block McVeigh's execution)," said Marsha Kight, with the National Organization for Victims Assistance. Her daughter, Frankie Merrell, was killed in the Oklahoma City bombing.

"He'll make an excellent judge," she said, praising Cassell's representation of her and other relatives of Oklahoma City bombing victims.

Calls to Cassell and the law school for comment on his nomination were not immediately returned.

Cassell also argued but lost a high-profile case before the Supreme Court seeking to allow some confessions to stand even if police failed to give "Miranda" warnings telling those interrogated that they have the right to remain silent.

Cassell, 41, has been a professor of law at the University of Utah since 1992.

He was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and was an associate deputy U.S. attorney general from 1986-88.

Cassell was a law clerk for Warren E. Burger, former chief justice of the United States, from

1985-86. He was also a clerk for Antonin Scalia (now a U.S. Supreme Court justice) when he was a judge on the U.S. District Court of Appeals in Washington, D.C.

Cassell received his law degree from Stanford University in 1984, and received his bachelor's degree there in 1979.

He was admitted to the bar in Pennsylvania in 1986 and to the Utah bar in 1992.

Cassell is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell was nominated to the Denver-based 10th Circuit Court of Appeals. His nomination is also pending before the Senate Judiciary Committee.

The Associated Press
June 20, 2001

Utah Law Professor Nominated for Federal Bench

Paul Foy

President Bush has nominated University of Utah law professor Paul Cassell to replace U.S. District Court Judge David Sam.

Cassell, 42, is a conservative legal scholar who has criticized the aggressive federal prosecution of Salt Lake's Olympic bid leaders.

He also is a victims' rights advocate who argued before the U.S. Supreme Court last year that some criminal confessions should stand even when police fail to give suspects the Miranda warning on their right to remain silent. The court disagreed.

Cassell was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and associate deputy U.S. attorney general from 1986-88.

He was sponsored by Sen. Orrin Hatch, R-Utah, for the federal bench and nominated by President Bush on Tuesday.

"It's obviously a great opportunity to serve on the bench and I'm honored the president has put my name forward," Cassell said Wednesday in San Diego, Calif., where he was vacationing with his wife and three children.

If confirmed by the U.S. Senate, Cassell would take on the full-time vacancy opened in Utah in late 1999 when Sam went on senior, semiretired status. Sam will continue to handle some cases and has been assigned to preside over the Olympic bribery trial of Salt Lake bid chief Tom Welch and his deputy, Dave Johnson. The trial is set to begin July 16.

Cassell's nomination to the bench silenced his often provocative critique of the government's case. He was no apologist for Welch and Johnson, but Cassell argued the U.S. Justice

Department devised elaborate conspiracy, fraud and racketeering theories when simpler charges would suffice.

Welch and Johnson were indicted by a federal grand jury on charges of conspiring over a decade to bribe the International Olympic Committee by plying its members with $1 million in cash, scholarships, travel, medical care and excessive gifts. The defendants maintain they did nothing criminally wrong or different from other bid cities.

Cassell doesn't expect to handle any aspect of the Olympic case. He would take one of five full-time positions at the U.S. District Court for Utah, which has been understaffed for a year. Each judge handles about 100 criminal and 300 civil cases a year.

Sam, 67, handles about half of the usual caseload of full-time judges as a semi-retired judge.

Cassell represented families of victims of the Oklahoma City bombing who were initially barred from attending the trial of Timothy McVeigh, who was executed June 11.

He helped usher a victims' rights bill through Congress that forced the judge in the McVeigh case to make room for the victims' relatives at trial.

"He'll make an excellent judge," Marsha Kight, whose daughter was killed in the blast, told the Deseret News.

Cassell was a law clerk for former Supreme Court Chief Justice Warren E. Burger from 1985-86. He served as clerk to Antonin Scalia, now a Supreme Court justice, when Scalia was on the U.S. District Court of Appeals in Washington, D.C.

Cassell received bachelor's and law degrees from Stanford University and was admitted to the Pennsylvania bar in 1986 and the Utah bar in 1992.

He is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell's nomination to the Denver-based 10th Circuit Court of Appeals is pending before the Senate Judiciary Committee.

National Review Online
June 20, 2001

Ready to Rumble

Byron York

In coming weeks, Democrats on the Senate Judiciary Committee plan to hold a series of hearings which they say will help clarify the issues involved in the judicial-confirmation process - and which Republicans believe will serve to establish a legal and political basis for rejecting George W. Bush's nominees for federal judgeships.

Next Tuesday, New York Democrat Charles Schumer, the new chairman of the Subcommittee on Administrative Oversight and the Courts, will hold a hearing entitled, "Should Ideology Matter? Judicial Nominations 2001." Next month, according to Senate sources, committee chairman Patrick Leahy will hold hearings to discuss the Rehnquist Court, federal jurisprudence, and conservative judicial activism.

Republicans believe the hearings will amount to a one-two punch against Bush's nominees. The Schumer session will establish that it is acceptable to oppose nominees solely on ideological grounds, and the Leahy hearing will suggest that Bush's nominees hold views that are dangerously out of touch with those of most Americans. The end result will be the conclusion that Democrats are justified in voting against the president's nominees, even if they seem well-qualified to hold office.

Democrats deny that there is any overarching strategy at work. "Basically, the senator wants to take a look at how we should view the process for confirming judges," says Schumer spokesman Bradley Tusk. "What role should ideology play? I think there's some confusion on how we should deal with the issue."

Nevertheless, the witness lists for the hearings are likely to be tilted in favor of the emerging Democratic consensus that senators can legitimately vote against judges on the basis of ideology alone. In the past, senators who disagreed with a nominee's judicial philosophy have often been forced to search for a disqualifying flaw on which they could base their opposition, while steadfastly maintaining that ideology had nothing to do with it.

For example, in the 1987 fight over the Supreme Court nomination of Robert Bork, wrote the Washington Post's E.J. Dionne in an influential recent column, "Liberals couldn't simply oppose Bork. To block him, they had to trash him." Now, Dionne continued, Democrats are "no longer shilly-shallying. They're saying, right from the start, that they'll oppose judicial nominees on philosophical grounds alone."

Republicans have gotten the message. "They're laying the groundwork," one GOP aide says of the Democrats' plans. "They're trying to paint all of our judges as right-wing extremists who are here to turn back the clock on civil rights. To be mainstream and moderate, therefore, they have to stop them."

Meanwhile, as Schumer and Leahy plan their hearings, the work of actually confirming the president's nominees has ground to a halt. No hearings have been scheduled for the confirmation of any of the nearly two-dozen nominees so far announced by the White House.

National Journal's Congress Daily

June 20, 2001

Organizing Talks Go On, But Daschle Readies For Showdown

Charlie Mitchell and Geoff Earle

Senate Majority Leader Daschle could bring up a new organizational resolution for the Senate as early as this week--a move that could allow committees to function normally, while putting an end to weeks of contentious negotiations. Nevertheless, Daschle and a team of GOP negotiators continued to exchange communications Tuesday--a sign that a chance remained for the two sides to broker a final deal and avoid a partisan fight on the Senate floor.

Daschle told reporters that he would bring up a resolution this week that reflects areas on which Republicans and Democrats can agree, while allowing Republicans to offer amendments to address their concerns about moving judicial nominees. But a team of GOP negotiators met in Minority Leader Lott's office Tuesday evening to prepare yet another Republican offer for Daschle.

"I think we're sending him something that will be worthy of consideration," said Sen. Pete Domenici, R-N.M. Said Sen. Phil Gramm, R-Texas; "The whole thing might be avoided. We might have an agreement." Gramm downplayed the idea of a GOP filibuster to block an organizing resolution.

Daschle addressed reporters after meeting with his Democratic colleagues to describe an earlier offer from the GOP negotiating team on the organizing resolution. He said the Democratic Caucus was "disappointed" in the GOP offer, adding, "My five Republican colleagues have chosen to terminate the negotiations."

Daschle said he had hoped to avoid a partisan floor fight over the organizing resolution. Nevertheless, allowing a vote on the GOP proposals would give Republicans something they had been seeking in talks with Daschle last week.

Daschle rejected GOP demands for a "guarantee" that judicial nominations would come to a vote, saying such an approach "undermines" the Senate.

"What they want is a 100-member Judiciary Committee, [and] we're not prepared to do that," Daschle said.

Other Democrats echoed that sentiment at the Tuesday meeting of their Caucus.

"I don't know of a self-respecting member of a committee who would tolerate bypassing their committee," said Sen. Christopher Dodd, D-Conn. Daschle said he had asked Lott to offer specific proposals on the two issues Republicans raised, and he expected Democrats had the votes to head off the GOP proposal. "My guess is it would be pretty much a party-line vote," said a Democratic aide.

Daschle said Democrats were willing to accept a GOP proposal to make public the "blue slip" process--by which a single senator can block action on a judicial nominee. He noted that Sen. Richard Durbin, D-Ill., proposed such a move in 1997, only to draw opposition from then-Judiciary Chairman Hatch.

"I just hope they would support this for future Congresses, not just this Congress," Daschle said

of Republicans. The Democratic aide said Republicans "made clear" that they would not filibuster the
organizing resolution if they received votes on their proposals. Dodd said if Republicans decided to hold up the Senate's business over the organizing resolution, "you open yourself up to looking terribly petty."

Another Democratic aide said preparations were under way for Majority Whip Reid to move into the choice office space now occupied by Minority Whip Nickles. Republicans and Democrats have said they generally agree on issues of staff, office space and a one-seat Democratic majority on committees, all of which are also in the organizing resolution.

The negotiations over Senate organization took place behind the scenes as Daschle struggled to bring managed care legislation to the floor despite GOP objections (see related article, page 12).

The Senate reached a unanimous consent agreement late Tuesday to schedule a vote on a motion to proceed to the bill Thursday morning. Daschle had indicated earlier in the day that he would file a cloture motion on the bill if a UC could not be reached. Daschle said it was important for the Senate to complete managed care legislation before the July Fourth recess, while also mentioning an FY01
defense supplemental appropriations bill--in order to leave the rest of July available to move appropriations bills.

Senate Republicans had objected to a Democratic motion to proceed to the patients' rights bill, and Daschle indicated he was prepared to file a cloture motion Tuesday that would lead to a cloture vote Thursday.

Amid signs of GOP foot-dragging, Daschle also threatened to cut into the precious July Fourth recess to complete action on the managed care bill. "I'll see you for the fireworks on the Fourth," Daschle told reporters. Republicans warned they were in no hurry to rush through that measure.

"Washington, D.C., is a very interesting place on July Fourth," said Nickles, who added, "Whether we're in for a couple of days [during the planned break] is irrelevant." But Nickles stressed that Republicans would do battle over the substance of the bill and had "no intention of filibustering this bill."

Still, Lott has not ruled out the possibility of a filibuster to block the measure. Republicans objected to a motion to proceed to the bill, on the grounds that they had not been given a chance to review changes made to the legislation last week.

Sen. Judd Gregg, R-N.H., said Daschle had been "a bit autocratic" in his decision to bring up the bill, adding, "I think we need a couple of days to talk about what the bill is."

Daschle laughed off GOP charges that the legislation had been secretly rewritten, saying he was bringing up the same bill listed on the Senate calendar.

Daschle and Reid stressed that the Senate would work through the July Fourth recess if

necessary to complete work on the patients' rights bill. But, under those circumstances, Daschle said the chamber would be off July Fourth for the day.

OP/EDS

The Washington Post
June 19, 2001

Picking Judges: Democrats Should Stand Their Ground
Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President Bush's judicial nominations has moved to center stage. Both sides already have staked out positions on the substantive question of what standards senators should use in evaluating Bush's picks for the federal bench.

Echoing the theme of Democrats when Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees (based on their credentials) regardless of ideology. Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject ideological "extremists."

Both responses are confused and inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. On the contrary, ideology is an inevitable part of a nominee's suitability for the federal bench.

For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting the record of nominees in order to cast them as extremists is both destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her own standard for how judges should interpret the Constitution and federal law. And every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong -- even if not extremist.

Our legal culture is riven into two factions. Basically, the "liberals" would preserve Roe v. Wade and affirmative action, support a rigorous separation of church and state, are skeptical of the death penalty, and believe that the Constitution vests broad power in the federal government even at the expense of states' rights. Legal "conservatives" hold diametrically opposite views.

As a candidate, Bush promised that adherence to the conservative side of this debate – the side

embodied by Justices Antonin Scalia and Clarence Thomas -- would be an essential qualification for nomination to the federal bench. As president, Bush has redeemed this promise.

Taking the advice of very conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for placement on those appellate courts (such as the 6th, 10th and D.C. circuits) that are closely divided between liberals and conservatives. On these battleground circuits, a single new judge might tip the political balance of an appellate court to the conservative side. Meanwhile, Bush carefully assigned his more moderate nominees to circuits that are so overwhelmingly liberal or conservative that the views of one new appointee will have little impact.

This clever strategy is not inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he will nominate judges who share a certain vision of the Constitution and the proper judicial role. American history is replete with examples of presidents seeking to perpetuate their legacies by filling the judiciary with like-minded judges.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation as a whole is evenly split between the liberal and conservative approaches to constitutional law. And it thus is incumbent on Senate Democrats to ensure that the federal courts -- the independent third branch of government -- reflect the nation's profound ambivalence.

This principle should apply to even the best of Bush's ideological nominees -- at the moment, Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which presides over federal cases in Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming).

McConnell's credentials are impressive. He has distinguished himself as a constitutional law scholar and has handled numerous important constitutional law cases. Those who know him, including liberals, say his temperament is suited to being a judge.

But from a Democratic perspective, McConnell is also profoundly wrong in his approach to the Constitution. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the Framers.

As was shown in the Bork hearings, this approach is irremediably flawed. Divining the Framers' intent is usually impossible (for one thing, the various Framers were rarely of one mind). Moreover, experience with Scalia, Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

On specific issues, although McConnell may not be on record opposing Roe v. Wade, his originalist approach is antithetical to Roe and makes his opposition a foregone conclusion. McConnell is very much on record, moreover, on another hot-button issue: An avowed fundamentalist Christian, he is arguably the legal world's leading advocate for lowering the wall of separation between church and state.

None of these views -- which many conservatives share -- makes McConnell an extremist. Indeed, McConnell is more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. And that is grounds enough for rejecting him.

In short, Democratic senators have the right -- and even a duty -- to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. But in the meantime, Democrats should honestly and without apology have the courage of their convictions. They should just say no. The writer is author of "Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court."

The New York Times
June 19, 2001

Doing Business in the Senate

Editorial

The organizing process undertaken by the Senate every two years usually occurs with little fuss. But with a newly constituted Senate now in Democratic control, what used to be a routine housekeeping chore has become a focus of partisan impasse. Republicans are demanding a ban on a parliamentary tactic employed in the past to block some judicial nominations, and they are seeking guarantees that all Supreme Court nominations will be brought to the Senate floor, even if they are rejected in committee. This is a case that can be resolved with some good will. Democrats should give in on one but not both the Republican requests.

The irony, not to say audacity, of the Republican demands is striking. For the six years that Republicans controlled the Senate, they routinely obstructed President Bill Clinton's judicial nominations, often refusing even to hold hearings or a vote in the Judiciary Committee. This page deplored such tactics, so the Democrats' pledge to hold hearings and votes in committee is most welcome. Another tactic used by the Republicans was the so-called "blue slip," in which a senator from the home state of a judicial nominee could anonymously block that nominee from being considered. Despite using that tactic in the past, Republicans are now demanding that any senator using the blue slip be identified. The demand is no doubt galling to Democrats, but they should nevertheless accept it.
Senators who block a nomination from their home state should have the courage to do so publicly.

A separate demand by the Republicans is less worthy of approval. They are asking for a change in Senate rules that would require any nomination for the Supreme Court to be sent to the full Senate even if it is rejected in committee. The fact is that, except for one historical oddity when there was a nomination for a seat that was not yet vacant, neither Republicans nor Democrats can find a case in which a Supreme Court nomination was not submitted to the full Senate. The nominations for Supreme Court of Robert Bork and Clarence Thomas were both voted on by the Senate, even though Mr. Bork was rejected by a majority in committee and Judge Thomas got a tie vote.

Tom Daschle, the Senate majority leader, has promised that the Democrats will give full and fair consideration to all judicial nominations. Citing the Bork and Thomas precedents, he has indicated that he fully expects Supreme Court nominations to be treated as in the past.

Senate rules have for many decades empowered committees to vet nominations and decide whether to approve them. Changing the rules now would undermine the power of the committee at just the time when its new chairman, Patrick Leahy of Vermont, has promised to process the nominations in an evenhanded, open fashion. The Republicans should take him at his word and not try to force an artificial arrangement just because they fear the Democrats will behave as badly as the Republicans did under President Clinton. Above all, Republicans should not be trying to block the Senate from proceeding with its business by demanding arbitrary new rules of the Democrats.

National Journal
June 20, 2001

Clinton Nominee Kent Markus: Judicial Nomination Delays Are Hurting The Country

Julie Samuels

As Democrats and Republicans work out a new power-sharing deal in the Senate, the issue of judicial nominees remains a major point of contention. With Democrats controlling the agenda, will President Bush's nominees even get confirmation hearings? Will the Republicans make committee assignments if they don't?

National Journal.com's Julie Samuels spoke with Kent Markus, former counselor to Clinton Attorney General Janet Reno and a onetime judicial nominee himself, about the process, the lack of judges on today's federal bench and how this might all play out in the Democratic-led Senate.

Q. Briefly walk me through the process of your nomination and the experience you had as an example of how the process works -- or maybe doesn't always work. Well, mine was a nomination for a federal appellate court, and I think already it's worth mentioning that the process is quite radically different for the appellate courts as compared with the district courts. Because the appellate court selections are primarily managed, controlled, decided by the White House and the Justice Department, mostly the White House, whereas the district court

appointments are pretty much decided by local officials in the state in which the opening exists, usually the United States senators....And so, because we were talking about an appellate court position, mine was mostly a conversation that was taking place among Washington folk. I learned -- through a friend -- that [Judge] Dave Nelson on the 6th Circuit had sent a letter in to the Justice Department indicating an intention some months later to take senior status. That triggered the whole discussion. This was in the mid- to late summer of 1999. The friend at Justice called and said, "You know, we've got this letter, are you interested in the seat?" And I said, "Yes, I'm very interested in the seat."

That began a process of trying to persuade various critical decision makers that I was the right person to be nominated for that seat. I think to the extent that anyone suggests that this is a process -- for any of these court positions -- that you get a call one day from some official calling you to public service because they've researched the backgrounds of all conceivable candidates and determined that you
are by far the most worthy isn't telling you the truth. I mean, I don't know anybody who's been involved in any of these conversations that doesn't engage, even though it may be sort of an awkward word to use in this context, in something resembling a campaign to obtain one of these appointments. I think people like to pretend it's substantially more gentile than that, but it isn't. So, I undertook efforts to have various people communicate simultaneously with both the White House and Justice Department and especially key decision makers there that I would be a good nominee for the spot. And these were all people that knew me. I had worked as Attorney General [Janet] Reno's counselor at the Justice Department -- the highest-ranking staff-adviser to the attorney general, so I knew almost everybody who was being communicated with, and yet it still was a process you have to go through to persuade them that, among other conceivable nominees, you're the right one.

At the same time, I was also trying to make sure that, because I had two United States senators from the opposite political party here in Ohio, that were I able to persuade the White House that this was the way to go, that the United States senators were not going to be opposed to my selection. And so there was a similar effort going with Senator [George] Voinovich and even more particularly Senator [Mike] DeWine, since he was senior senator from Ohio and on the Judiciary Committee....And then... nothing happened for a while. And then there was delay and delay and delay, and I would talk to friends who were involved in the weekly meetings at the White House -- "Did the seat come up for discussion this week?"; "No, we didn't get to it, we didn't talk about it"; "Oh, it got mentioned and so-and-so said they heard from so-and-so about you" -- and I sort of would get little bits and scraps and pieces and, you know, my reaction was, "Jeez, I'm peculiarly well-connected, as compared to many people going through this, and still, I can only get little bits and scraps and pieces of information about what's going on and is there really a delay for some substantial reason, that there's a concern about whether I'm the right nominee and they're looking at others, or is it just that other matters are taking a higher priority, or what's going on?"

Just as magically, at some point it finally breaks, and that took until about December. And it was in, if I recall, the third week of December that I finally got the call from the White House saying, "We intend to proceed with your nomination, assuming that everything's OK."

At that point you then begin a much more cumbersome process where you are provided an extraordinary set of forms and questionnaires -- one for the White House, one for the FBI, one for the Justice Department, one for the Senate and Judiciary Committee and one for the administrative office of the courts.... The moment they say "go," in terms of putting together the forms and submitting them, the hurry-up-and-wait process then becomes another hurry-up process because they then, once they've made the decision, want you to get everything in as quickly as you possibly can so that it can be scrutinized and a final determination can be made as to whether you are in fact going to be nominated or whether all these materials and background checks will reveal some problem....

So, you're going nuts trying to put all of this together and get it in. Simultaneously, as soon as you get it in, not only does it trigger the White House own internal evaluation of everything and the FBI check to make sure you're not a drug dealer or you're not beating your spouse or whatever, but that the [American Bar Association] check then began. And they have their own whole process, where they not only interview you, but they interviewed a wide range of people in your legal community and others about you and your integrity and your experience and your knowledge of the law and all those kind of things, for their rating process.... So, you go through with that whole process -- and that all went on from about the third week in December -- in what in this context was considered very speedy – to a nomination on February 9....

From that point, the goal was obviously to seek and obtain a hearing and get a positive confirmation vote and then get a vote of the full Senate with respect to confirmation. One of the critical intermediary steps to be getting such a hearing was, and to this day still remains much in the news, the blue slips returned from your two home-state senators.

I had two Republican senators, and the White House had expressed some skepticism about whether I was going to be able to get two blue slips returned, and I think, in the end, I was the only court of appeals nominee in the country who had blue slips returned by two home-state Republican senators, both saying: "We have no objection to this nominee. You can go ahead and hold hearings if you chose to." But, again, that took time and persuasion and encouragement and there were editorials in the newspapers across the state encouraging the senators to not let this position remain open... and finally Senators Voinovich and DeWine both returned their blue slips to [then Senate Judiciary Committee] Chairman [Orrin] Hatch, [R-Utah], which was yet another critical hurdle covered.... Then it was a whole lobbying process of -- in the election year and in the context in which there was clearly a desire by many to simply say: " Look, we're just not going to confirm people this year, especially court of appeals nominees. Let's hold these seats open, see if we win the White House, and if we do, we get to fill those seats rather than the other guys."

And, in the end, that's exactly what happened to me and lots and lots of other people, and it wasn't even -- I think, to my knowledge -- anything that was focused on any substantial way on me personally. It was just a relatively across-the-board decision among the majority in the Senate... and the strategy paid off.

Q. What do you think about the blue-slip process? A. I don't think it's a good process, and I am one of the people who was not a victim of it. There were others like me who were awaiting

confirmation hearings, [and] that was the hurdle they couldn't get across.... I actually had hoped, and the White House had hoped, that being in the somewhat extraordinary position of having two Republican senators return blue slips for a Democratic nominee, might have been enough to break through. And it even might have been something that Hatch could have used as an excuse to say, "Look, I'm not a terrible bad guy, here's a guy who got blue slips returned by his two Republican senators and we moved and proceeded to a hearing on him." That still didn't do it for me.

Even though I wasn't the victim of the process, at least at that point, I just think that it's an inappropriate prerogative, and that's all it is. It's a prerogative that's afforded the individual senators, and I think that I'd rather have... a more deliberative process where we look at candidates, we make a decision, and vote them up or down. I think the big unfortunate part is I think the reason there's such a reluctance to give up that prerogative is that it's substantially politically easier to simply to have nothing happen than to vote against.

Q. It sounded like the longest delay you faced was from the end of September to December. I was curious as to where you think these delays tend to come from.
A. I think they come from everywhere. I think they come -- in terms of the White House decision making -- I do think they come primarily from a combination of managing competing objectives and competing interests and competing candidates and all of that playing out in the decision making. And the general state of affairs that I experienced at high levels of the Justice Department and that I saw at high levels of the White House is you never have time to do all the things you're supposed to be doing.

And so even things that are objectively reasonably important matters suddenly become not terribly important compared to other things that are much more important.... I think when you combine that bureaucratic aspect to it with the political aspect of having to decide among competing candidates, those combine in a nefarious way to result in a delay...

Q. In a broader sense, how do you think the process changed after the 1987 Robert Bork hearings, if it did change at all?

A. I think in general that was a contributor to a sense of a need for tit-for-tat paybacks for actual and perceived slights by both parties. I think it's actually consistent with changes in the Congress that have absolutely nothing to do with nominations. My perception, throughout the '90s, is that Congress became a substantially less civil place, that there was substantially less accommodation that took place among members.... It became a substantially more partisan place. It became a meaner place. I think that was just one aspect and one manifestation of it that had an impact, particularly on nominees.

Q. Do you personally think that a nominee who might be seen as too idealistic is qualified to sit on a federal bench?

A. Depends on what you mean by "too idealistic." ... I think quite clearly being idealistic alone is not disqualifying. I think the critical question in addition to standard qualifying questions... is "What is

your view of the role of a judge?" You can be as ideological as you want to be if you don't have any intent or desire to try to foist your own ideological perspective upon the system through your position as a judge. That is, whatever your privately-held views are, so what? -- if you don't seek to impose those views from the bench.... I am not particularly enamored with judges who substantially invade the purview of the legislative branch, and that's something that is loosely referred to as being activist. Unfortunately, I think that term has become very politically charged and one of those terms that's come to mean whatever anybody wants it to mean. But, I think historically, I think it's how much restraint the judge demonstrates vis-à-vis the operations of the other branches, and I think that I'm very uncomfortable with the amount of activism -- with the amount of invasion of the legislative and executive branches -- we're seeing on the judiciary right now.... If someone is highly ideological but also has a very limited and constricted view of the role of judge, I don't have a problem with that person. I have a problem with them if they are highly ideological, and they're on a mission to effectuate that ideology once they get on the bench.

Q. As far as ABA ratings go, I'd like to talk about those for a second because, especially since the power switch -- when Bush first came into office, he said "we aren't going to use them," and then the Democrats came into the majority, and they said, "well, now we are..."

A. And I think even before the power switch the Democrats had said, "you may not be going to use them, but we still want them...." And they had made pretty clear that they were going to wait for an ABA recommendation before they were going to be willing to schedule hearings with regards to candidates who had been nominated. So that, even before the power switch, the effect would have been that the White House would not have had the advantage of information about the ABA's views and ratings before finalizing the nomination decision. They would have finalized their nomination decision and then learned about what the ABA's view is, which I thought was a little risky on their behalf.

That's if they cared one wit about what the ABA said, which apparently they didn't. And so, I think that this power switch has only heightened that a little bit more, which has given Democrats the ability to say: "Look, we really mean that. We're not proceeding with the nominations until we know what the ABA says. And now we control the committee schedule, and we're going to wait for that."

Q. So the role that they're going to play has not changed?

A. I think it's only changed in... timing. It no longer is being used as an element of the White House decision making as to whether to proceed with a contemplated nomination. Instead, the recommendation will come out after the White House decides to make a nomination and will be used primarily in the context of making confirmation decisions.

Q. Right now, there's more than 100 judicial vacancies in the federal court system, which is the most since 1997. How serious of a problem is that?

A. There's a serious problem with respect to the delay, and, in the most cliché of ways, you really have a "justice delayed is justice denied" phenomenon going on. Even while my

nomination was pending for the 6th Circuit, and that's now eight, nine months ago when I was involved with these conversations still, the 6th Circuit was a great example. It had become because of the number of vacancies that
existed then, the slowest circuit in the country -- the time of argument to the time of decision, with cases averaging in excess of two years to get a decision out of the appeals court. That's crazy. And since that time, there are additional vacancies on the 6th Circuit.

So the suggestions that we can stand to have continuing delays in the fillings of these positions I think is wrong. And I think that the Democrats on the Judiciary Committee are in an awkward position.... They might like to engage in more tit-for-tat; they're angry about what was done to some of the nominees in the Clinton administration. They also full-well recognize that it is just not good for the country and for the system to continue to delay in filling these positions.

Q. As far as the power shift goes, how do you see that affecting the nominating process?

A. I think it's undeniable that it's going to slow it down. I hope that it does not go to a stall, a delay, a blockage. Again, I just think that's wrong. And maybe I'm more acutely cognizant of that having been a victim of that, but I just think it's not good for the court, it's not good for the country, it's not good for litigants, it's not good for the Congress -- it makes them look bad -- and it's terribly, terribly unfair
to the nominees....

Q. Do you think it will change the nominees that come out of the White House?

A. I think it will. [Rep.] Chris Cox, [R-Calif., who recently withdrew his name from consideration] is already an example of that. I think there was a recognition that while [Republicans] controlled the committee, they have an ability to push a little harder with respect to getting people through. Look at the Ted Olson [for solicitor general] vote -- there was a lot of reluctance and grumbling, but it went
through, and Ted was confirmed. I think that's a different dynamic now.... When the Republicans controlled the committee, they could make Democrats vote against nominees. When the Democrats are controlling the committee, they can make it so they don't have to vote against the nominees because they can make it so the nominee never comes up for a vote.

Q. How do you see the power shift changing potential Supreme Court justice nominees, should there be any?

A. Same way.... More ability on the Democrats to insist on a more moderate nominee, more ability to insist on whatever a time they need to be adequate for scrutiny. I mean, it's an agenda-controlling power, and that process impact has a substance impact.

Q. Do you expect to see a similar situation at the end of a Bush term, or a Bush administration? Do you expect to see nominees left hanging, as you were?

A. I think there will be nominees left hanging at the end of every administration. And there have been, if you look historically, some number of nominees left hanging at the end of every

administration. I think the thing that was discouraging and problematic about 2000 was that the slow-down in confirming nominees began much, much earlier than it ever had historically and the sort of line-in-the-sand decision by the majority at that time, that no more, especially no more appellate court nominees, were going to get through, came much earlier.... So that it was more and earlier and the thing I worry about -- and I worry about the Democrats doing it, too -- is saying, "fine, you did it more and earlier, we'll do it even more and even more earlier." We start slowing down after the first year in the administration? You know, the president's president for four years, and while I recognize that inevitably you are going to have political things that are going to result in some nominees being left hanging, especially those nominated late, very late, in the administration, a few months left, I actually think that President Bush's suggestion during the campaign was a pretty good one if it could be done as a practical matter. That unless there's a specific, individual reason not to do so, every nominee ought to have a hearing and a vote within 60 days.

Q. What do you think could be done to expedite the process?

A. At the nomination stage, there's cautiousness on the part of the White House as the nominating entity to do everything they can to avoid political embarrassment from nominating somebody who has some stain on their background, and they want to avoid that by finding out everything they possibly can about that nominee in advance, so that if there is something there they don't like, they can decide, "well then, we're not going to nominate that person." But that causes extraordinary delay and is highly intrusive sort of well beyond what I think anybody would think was rational or normal. And it's all about political defense on the part of the nominating entity. And the same thing that goes on with respect to the confirmation process is that -- and that's more I think on political offense -- people are attacked and are charicaturized and defined in very simplistic terms because that's politically convenient to do and may appeal to interest groups and others in a way that is terribly unfair and dangerous to nominees...

Q. Is there anything else you'd like to discuss?

A. I went back... and I pulled a column that I had read from the Washington Post on April 1 -- I think it was intended as an April Fool's Day column. Because there was a line in it that I remembered... where the guy writing the story says: "The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency." And I remember, when I read it originally, I went, "Yeah, that's right."

Newsday (New York, NY)
June 21, 2001

Democrats Must Demand Fair Split Among Judges

Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President George W. Bush's judicial nominations takes center stage. Both parties have staked out positions on the question of what standards senators should use in evaluating Bush's picks for the federal bench. Echoing the theme of Democrats when former President Bill Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees regardless of ideology.

Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject "extremists." Both responses are inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. Ideology is an inevitable part of a nominee's suitability for the federal bench. For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting nominees' records to cast them as extremists is destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her standard for how judges should interpret the Constitution and federal law. Every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong-even if not extremist. Our legal culture has two factions. Basically, the "liberals" would support nominees who would preserve Roe vs. Wade and affirmative action, support a rigorous separation of church and state, be skeptical of the death penalty and believe the Constitution vests broad power in the federal government even at the expense of states' rights.

Legal "conservatives" hold diametrically opposite views. As a candidate, Bush promised that adherence to the conservative side of this debate-the side embodied by Justices Antonin Scalia and Clarence Thomas-would be an essential qualification for nomination to the federal bench. Taking the advice of conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for appellate courts (such as the Sixth, 10th and D.C. circuits) that are closely divided between liberals and conservatives.

On these battleground circuits, a single new judge might tip the balance to the conservative side. Meanwhile, Bush assigned moderate nominees to circuits so overwhelmingly liberal or conservative that the views of one new appointee will have little impact. This strategy isn't inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he'll nominate judges who share a vision of the Constitution and the proper judicial role.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation is evenly split between the liberal and conservative approaches to constitutional law. It thus is incumbent on Senate Democrats to ensure that the federal courts-the

independent third branch of government-reflect the nation's ambivalence. This principle should apply even to the best of Bush's ideological nominees: Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming). McConnell has distinguished himself as a constitutional scholar and has handled important constitutional-law cases. Those who know him, including liberals, say his temperament is suited to the job.

From a Democratic perspective, however, McConnell is profoundly wrong in his approach. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the framers. As shown in the Bork hearings, this approach is irremediably flawed. Divining the framers' intent is usually impossible (for one thing, the various framers were rarely of one mind). Moreover,
experience with Antonin Scalia, Clarence Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

Although McConnell may not be on record opposing Roe vs. Wade, his originalist approach makes his opposition a foregone conclusion. In addition, as an avowed fundamentalist Christian, he's arguably the legal world's leading advocate for lowering the wall between church and state. None of these views makes McConnell an extremist. He's more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. That's grounds enough for rejecting him.

Democratic senators have the right-and even a duty-to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. In the meantime, Democrats should honestly and without apology have the courage of their convictions.

INTEREST GROUPS/PRESS RELEASES

The Columbus Dispatch
June 20, 2001

Sutton is Not The Saint Portrayed in 'Dispatch'
Andrew J. Imparato, President, American Association of People With Disabilities

Regarding the May 26 Dispatch editorial "Injustice," criticizing the " vexing problem" of disability advocates taking to the streets of Columbus to publicize their opposition to President Bush's nomination of former Ohio solicitor Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals, I would encourage the newspaper to consider the facts:

Sutton has been the lead attorney in a series of cases that have limited the ability of individuals to assert their civil rights in federal court.

He has not been simply a lawyer representing a client in one unpopular case, as the editorial suggested. Rather, he aggressively has pursued a prominent national role as the champion of a vocal and powerful minority of far-right legal theorists. Sutton and his allies have had increasing success in revisiting a states'-rights debate that the majority of Americans thought was decided during the Civil War and reinforced during the civil- rights struggles of the 1950s and 1960s.

Disability advocates and our allies have not sought to prevent Sutton from receiving a fair hearing before the Senate Judiciary Committee. Instead, we have sought to educate the senators and their constituents about Sutton's record.

Our ability to assert and enforce our civil rights is not simply "our favorite issue," as The Dispatch asserted.

For us, strong disability-rights enforcement is a matter of life with dignity and equal opportunity.

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CC: Dinh, Viet <Viet.Dinh@usdoj.gov>
Sent: 6/21/2001 3:46:33 PM
Subject: : FW: Judicial Media Review 6-21-01
Attachments: P_UV7I2004_WHO.TXT_1.wpd

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<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
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Jennifer

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GENERAL JUDICIAL ARTICLES

The Recorder (American Lawyer Media)
June 18, 2001

Gearing up to Vote on Court Nominees

Jonathan Ringel

Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead. Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees this week, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of Utah, the ranking minority member on the Judiciary Committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who will soon have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

Leahy has already said he will enforce the "blue slip" rule, by which the Judiciary Committee will not hold hearings or votes on nominees opposed by home-state senators. Republicans argue this rule gives individual senators too much power over presidential nominations. President Bush so far has made 17 nominations -- 15 to circuit courts of appeals and two to district courts. Around the country, 104 federal judgeships are vacant -- 33 on circuit courts and 71 on district courts. None of Bush's selections has been the subject of hearings before the Judiciary Committee.

When the committee was in its final days of Republican control, three nominees -- John Roberts Jr. for the D.C. Circuit and Sixth Circuit nominees Deborah Cook and Jeffrey Sutton -- had been scheduled to appear at a May 23 hearing. But their day before the panel was scuttled after vehement opposition by Democrats, who the next day won control of the Senate when

Vermont Sen. James Jeffords announced he would defect from the GOP and become an independent. Democrats had argued that the committee should not hold hearings until the American Bar Association's standing committee on the federal judiciary had completed its reviews of nominees.

Now that things have changed, it's unlikely that Leahy would hold hearings on any nominee whose ABA rating is not completed. Leahy spokesman David Carle says the committee has received a few of the ratings so far, but is not yet prepared to make them public. While the ABA conducts an extensive background check, the reviews typically consist of only one sheet of paper describing the nominee as "well qualified," "qualified" or "not qualified." Carle also says the committee has yet to choose which of the nominees will be the first to have hearings.

The Judiciary Committee itself will undergo a change as a result of the power shift, with the likely scenario being one Democrat joining the 18-member committee to give the Democrats a one-vote majority. Leahy has spoken to former trial lawyer Sen. John Edwards of North Carolina about the slot, but no agreement has been reached. A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veterans' affairs committees.

Administration officials would not say who Bush will nominate next week, but it could be time for several previously reported candidates to have their day. Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the Eleventh Circuit; Iowa U.S. District Judge Michael Melloy for the Eighth Circuit; and University of Utah professor Paul Cassell for a district court seat in that state. In March, Tennessee Republican Sens. Fred Thompson and Bill Frist made three recommendations for a single open seat on the Sixth Circuit. They are: Robert Echols, U.S. district chief judge in Nashville; Julia Gibbons, U.S. district chief judge in Memphis; and Lin Howard of Harwell Howard Hyne Gabbert & Manner in Nashville.

Montana may not be ground zero of the political warfare over judges, but it has gotten more than its share of attention from the Bush administration. If the Senate confirms litigator Sam Haddon and U.S. Magistrate Judge Richard Cebull, it's a good bet that folks with business before the federal court there will breathe a sigh of relief. The court has only three judges, and in the past year, Judges Jack Shanstrom and Charles Lovell took senior status, meaning they had significantly reduced their caseloads. That leaves Chief Judge Donald Molloy as the court's only active judge, He has had to focus on criminal cases in order to comply with speedy trial demands, while the civil docket has taken a back seat.

Fortunately for Molloy, Montana Sens. Conrad Burns, a Republican, and Max Baucus, a Democrat, were able to agree on recommendations for the posts. Such bipartisan agreement certainly helped speed the process at the White House and could do the same in the Senate. Meanwhile, the Montana federal court has been relying on help from nearby states. Lou Aleksich, the court clerk, says four federal judges have come to Montana to preside over civil trials this month.

The Associated Press
June 19, 2001

Daschle Agrees to GOP Proposal for Vote on Supreme Court Nominees

Jesse J. Holland

Senators will decide whether President Bush's Supreme Court nominees get automatic confirmation votes from the full Senate without risking rejection by the Judiciary Committee, Senate Majority Leader Thomas Daschle said Tuesday.

Republicans asked for such treatment during negotiations over how to reorganize the newly Democrat-controlled Senate. The GOP is afraid that Democrats would block Bush's judicial nominations and has been looking for a way to ensure Bush's top nominees will at least make it to the floor. Daschle opposes any guarantees for Bush nominees. "We will provide them an opportunity for the vote, but I would hope the Senate would show its common sense and would vote against that particular proposal," said Daschle, D-S.D.

The GOP originally asked for guaranteed Senate votes on all Supreme Court and federal appellate court nominees and elimination of the secret veto process for some judicial nominations, but Daschle refused. The Republicans then modified their request to guaranteed Supreme Court votes only.

Democrats control the Senate by a 50-49 margin. Sen. Jim Jeffords of Vermont threw the chamber to the Democrats when he defected from the Republican Party to become the Senate's sole independent.

Daschle said he would ask his party to vote against the provision when the Senate votes. "I expect we will prevail," he said.

Calls to Republican senators involved in the negotiations with Daschle were not returned. A senior GOP leadership aide described Daschle's agreement to a vote on how Supreme Court nominees will be handled as a step in the right direction.

Daschle agreed to another Republican request: to make the senatorial "blue-slip" veto process public instead of private, as it has been in the past. "We certainly oppose private blue slips, and I'm prepared to incorporate the public blue-slip policy in the organizing resolution itself," Daschle said.

While the Senate Judiciary Committee has never in modern history kept a Supreme Court nominee from coming to a vote, the resolution would render the committee powerless to stop a future Supreme Court nominee no matter what the controlling party thinks.

"In essence, what their proposal would do is to create a 100-member judiciary committee, bypassing, if they wish, the Judiciary Committee itself. We're not prepared to do that," Daschle said. "We think that, for this institution, for careful consideration of the nominees themselves, we

ought to continue to maintain the Senate practice of insisting that all nominees be considered and voted upon in the Judiciary Committee."

The provisions would only be binding on Congress until January 2003. It would also be negated if Republicans were to take back control of the chamber, which would force senators to vote on a new organizing resolution.

Daschle said Democrats would insist that changes become a permanent part of the Senate process if they are approved. "This ought not be something we just do for this Congress," he said.

The Senate will vote on the Supreme Court provision, and on reorganizing the chamber, before they leave for the Independence Day holiday, Daschle said.

The two sides also agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee finances and space agreements negotiated at the beginning of the year will continue in effect as well.

The Senate will not work on any of Bush's nominees until after those votes, the majority leader said.

Bush has not nominated anyone for the Supreme Court because there are no openings. He has made several lower court nominations.

Miami Daily Business Review
June 19, 2001

Despite Appearances, Confirmation Process for Judicial Nominees Makes Progress

Jonathan Ringel

WASHINGTON -- Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead.

Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees soon, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of

Utah, the ranking minority member on the Judiciary committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who soon will have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

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A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press

secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veteran's affairs committees.

Administration officials would not say whom Bush will nominate, but it could be time for several previously reported candidates to have their day.

Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the 11th Circuit, which includes Florida; Iowa U.S. District Judge Michael Melloy, for the 8th Circuit; and University of Utah professor Paul Cassell, for a district court seat in that state.

In Florida, Republican leaders have 70 lawyers to choose from -- including prominent names and relative unknowns -- in deciding whom to recommend to Bush for three federal judgeships and three U.S. attorney spots in the state.

The two vacant judgeships in the southern district drew the most applicants. But an open seat in the middle district attracted 19 candidates. The U.S. attorney spots in the northern, middle and southern districts drew 10, nine and eight applicants, respectively. Many applicants hedged their bets by applying for more than one position.

Gov. Jeb Bush, Rep. E. Clay Shaw Jr., R-Fla., and Rep. C.W. Young, R-Fla., will pick the finalists to recommend to the White House.

The Recorder (American Lawyer Media)
June 19, 2001

Back in Familiar Role, ABA Rates 6 Judicial Nominees

Jonathan Ringel

Six of President George W. Bush's nominees for the federal appeals courts have received "qualified" or "well qualified" ratings from the American Bar Association's standing committee on the federal judiciary. These are the first ratings to come from the ABA committee since President George W. Bush in March kicked the group out of its 48-year role prescreening potential judicial nominees for the White House.

The ABA saw its stock rise again with the switch to Democratic control of the Senate, and Senate Judiciary Chairman Patrick Leahy, D-Vt., has promised to consider the evaluations before commencing hearings on any individual nominee. The panel has so far given the highest ratings to three sitting district judges seeking elevation to their appeals courts, according to documents released by the Senate Judiciary Committee and other sources. The committee unanimously gave a "well qualified" rating to Judge Barrington Parker Jr. of the federal trial court in New York, nominated for a seat on the Second Circuit U.S. Court of Appeals. Parker, an African-American, was nominated to the district court in 1994 by then-President Bill Clinton.

A majority of the ABA panel gave Judge Edith Brown Clement of the federal trial court in New Orleans, nominated for the Fifth Circuit, a "well qualified" rating. A minority of

the panel rated Clement "qualified," according to the documents, and one unidentified member of the panel abstained from voting. Clement was nominated to the trial court in 1991 by then-President George Bush.

A nominee to the Fourth Circuit, Judge Dennis Shedd of the federal trial court in Columbia, S.C., also received a majority "well qualified," minority " qualified" rating, according to a source. When Bush nominated him to his current seat in 1990, Shedd, a former staffer to Sen. Strom Thurmond, R-S.C., had received a mixed "qualified/not qualified" ABA rating, according to a press account from the time. Jeffrey Sutton, a Sixth Circuit nominee, received a majority "qualified," minority "well qualified" rating. Sutton, a partner in the Columbus, Ohio, office of Jones, Day, Reavis & Pogue, has successfully argued several Supreme Court cases on behalf of litigants challenging acts of Congress as overreaching, including parts of the Violence Against Women Act and the Americans With Disabilities Act.

Ohio Supreme Court Justice Deborah Cook, also named to the Sixth Circuit, was unanimously rated "qualified." Cook, on the state high court for six years, was strongly backed in her 2000 re-election race by the Ohio business community, but opposed by African-American and plaintiffs lawyer groups. The ABA panel was also unanimous in calling Fourth Circuit Judge Roger Gregory "qualified." Gregory was a Richmond litigator until late last year, when President Clinton, in a controversial move, named him to the Fourth Circuit while Congress was out of session. Bush's decision to renominate Gregory, who is the first African-American judge on the Fourth Circuit, was seen as an attempt to mollify Democrats poised to block his nominees. A senior Bush administration official said the ratings "reaffirm the choice of these candidates as ones of high competence and integrity."

The ABA is expected to issue ratings shortly on the five other judicial nominees the president announced in May, including appellate advocates Miguel Estrada and John Roberts Jr. for the D.C. Circuit; North Carolina federal Judge Terrence Boyle for the Fourth Circuit; Texas high court Justice Priscilla Owen for the Fifth Circuit; and University of Utah law professor Michael McConnell for the 10th Circuit. President Bush has since nominated five others to circuit court posts, and three to district court posts. He announced Monday that he intends to nominate Magistrate Judge Terry Wooten to the U.S. district court in South Carolina.

The ABA panel conducts dozens of interviews with lawyers, judges and others regarding each nominee, evaluates the nominees' qualifications with regard to integrity, professional competence and judicial temperament, and hands out one of three ratings: "well qualified," "qualified," and "not qualified." The committee consists of one member from each of 12 federal judicial circuits, two from the huge Ninth Circuit and a chairwoman, Patricia Hynes of Milberg, Weiss, Bershad, Hynes & Lerach. Ever since the ABA committee gave mixed ratings to Republican Supreme Court nominees Robert Bork (the majority found him "well qualified" while the minority said he was "not qualified") and Clarence Thomas (the majority said " qualified," the minority "not qualified"), the committee has come under strong criticism from conservatives.

In March, the Bush administration removed the group from its formal role. White House Counsel Alberto Gonzales said at the time that the president did not want to give the ABA a

"preferential" role above other groups that could weigh in on the judiciary. Liberal groups decried the decision for removing an important peer review from the process and said it was a sign that Bush was trying to ease the way to push the judiciary to the right. Leahy would not comment on individual nominees Monday, according to a spokesman. Leahy has said he expects to hold hearings on nominees about two weeks after the Senate leadership completes reorganization negotiations.

The Deseret News (Salt Lake City, UT)
June 20, 2001

Bush Wants Cassell as Judge

Lee Davidson

WASHINGTON -- President Bush has nominated University of Utah law professor Paul G. Cassell to become a judge in the U.S. District Court for Utah.

If confirmed by the Senate, Cassell would replace retired Judge David Sam.

Cassell, who was nominated Tuesday, is considered an expert on victims rights. He represented relatives of victims of the Oklahoma City bombing who wanted to attend the trial of Timothy McVeigh but had been excluded by a judge's order.

While he initially lost the case seeking to allow them to attend, he turned to Congress and helped push through a victims-rights bill in two weeks that forced the judge to allow their attendance.

"The judicial system would be a much better place if we had more Paul Cassells and Judge (Richard) Matschs (who refused to block McVeigh's execution)," said Marsha Kight, with the National Organization for Victims Assistance. Her daughter, Frankie Merrell, was killed in the Oklahoma City bombing.

"He'll make an excellent judge," she said, praising Cassell's representation of her and other relatives of Oklahoma City bombing victims.

Calls to Cassell and the law school for comment on his nomination were not immediately returned.

Cassell also argued but lost a high-profile case before the Supreme Court seeking to allow some confessions to stand even if police failed to give "Miranda" warnings telling those interrogated that they have the right to remain silent.

Cassell, 41, has been a professor of law at the University of Utah since 1992.

He was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and was an associate deputy U.S. attorney general from 1986-88.

Cassell was a law clerk for Warren E. Burger, former chief justice of the United States, from

1985-86. He was also a clerk for Antonin Scalia (now a U.S. Supreme Court justice) when he was a judge on the U.S. District Court of Appeals in Washington, D.C.

Cassell received his law degree from Stanford University in 1984, and received his bachelor's degree there in 1979.

He was admitted to the bar in Pennsylvania in 1986 and to the Utah bar in 1992.

Cassell is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell was nominated to the Denver-based 10th Circuit Court of Appeals. His nomination is also pending before the Senate Judiciary Committee.

The Associated Press
June 20, 2001

Utah Law Professor Nominated for Federal Bench

Paul Foy

President Bush has nominated University of Utah law professor Paul Cassell to replace U.S. District Court Judge David Sam.

Cassell, 42, is a conservative legal scholar who has criticized the aggressive federal prosecution of Salt Lake's Olympic bid leaders.

He also is a victims' rights advocate who argued before the U.S. Supreme Court last year that some criminal confessions should stand even when police fail to give suspects the Miranda warning on their right to remain silent. The court disagreed.

Cassell was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and associate deputy U.S. attorney general from 1986-88.

He was sponsored by Sen. Orrin Hatch, R-Utah, for the federal bench and nominated by President Bush on Tuesday.

"It's obviously a great opportunity to serve on the bench and I'm honored the president has put my name forward," Cassell said Wednesday in San Diego, Calif., where he was vacationing with his wife and three children.

If confirmed by the U.S. Senate, Cassell would take on the full-time vacancy opened in Utah in late 1999 when Sam went on senior, semiretired status. Sam will continue to handle some cases and has been assigned to preside over the Olympic bribery trial of Salt Lake bid chief Tom Welch and his deputy, Dave Johnson. The trial is set to begin July 16.

Cassell's nomination to the bench silenced his often provocative critique of the government's case. He was no apologist for Welch and Johnson, but Cassell argued the U.S. Justice

Department devised elaborate conspiracy, fraud and racketeering theories when simpler charges would suffice.

Welch and Johnson were indicted by a federal grand jury on charges of conspiring over a decade to bribe the International Olympic Committee by plying its members with $1 million in cash, scholarships, travel, medical care and excessive gifts. The defendants maintain they did nothing criminally wrong or different from other bid cities.

Cassell doesn't expect to handle any aspect of the Olympic case. He would take one of five full-time positions at the U.S. District Court for Utah, which has been understaffed for a year. Each judge handles about 100 criminal and 300 civil cases a year.

Sam, 67, handles about half of the usual caseload of full-time judges as a semi-retired judge.

Cassell represented families of victims of the Oklahoma City bombing who were initially barred from attending the trial of Timothy McVeigh, who was executed June 11.

He helped usher a victims' rights bill through Congress that forced the judge in the McVeigh case to make room for the victims' relatives at trial.

"He'll make an excellent judge," Marsha Kight, whose daughter was killed in the blast, told the Deseret News.

Cassell was a law clerk for former Supreme Court Chief Justice Warren E. Burger from 1985-86. He served as clerk to Antonin Scalia, now a Supreme Court justice, when Scalia was on the U.S. District Court of Appeals in Washington, D.C.

Cassell received bachelor's and law degrees from Stanford University and was admitted to the Pennsylvania bar in 1986 and the Utah bar in 1992.

He is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell's nomination to the Denver-based 10th Circuit Court of Appeals is pending before the Senate Judiciary Committee.

National Review Online
June 20, 2001

Ready to Rumble

Byron York

In coming weeks, Democrats on the Senate Judiciary Committee plan to hold a series of hearings which they say will help clarify the issues involved in the judicial-confirmation process - and which Republicans believe will serve to establish a legal and political basis for rejecting George W. Bush's nominees for federal judgeships.

Next Tuesday, New York Democrat Charles Schumer, the new chairman of the Subcommittee on Administrative Oversight and the Courts, will hold a hearing entitled, "Should Ideology Matter? Judicial Nominations 2001." Next month, according to Senate sources, committee chairman Patrick Leahy will hold hearings to discuss the Rehnquist Court, federal jurisprudence, and conservative judicial activism.

Republicans believe the hearings will amount to a one-two punch against Bush's nominees. The Schumer session will establish that it is acceptable to oppose nominees solely on ideological grounds, and the Leahy hearing will suggest that Bush's nominees hold views that are dangerously out of touch with those of most Americans. The end result will be the conclusion that Democrats are justified in voting against the president's nominees, even if they seem well-qualified to hold office.

Democrats deny that there is any overarching strategy at work. "Basically, the senator wants to take a look at how we should view the process for confirming judges," says Schumer spokesman Bradley Tusk. "What role should ideology play? I think there's some confusion on how we should deal with the issue."

Nevertheless, the witness lists for the hearings are likely to be tilted in favor of the emerging Democratic consensus that senators can legitimately vote against judges on the basis of ideology alone. In the past, senators who disagreed with a nominee's judicial philosophy have often been forced to search for a disqualifying flaw on which they could base their opposition, while steadfastly maintaining that ideology had nothing to do with it.

For example, in the 1987 fight over the Supreme Court nomination of Robert Bork, wrote the Washington Post's E.J. Dionne in an influential recent column, "Liberals couldn't simply oppose Bork. To block him, they had to trash him." Now, Dionne continued, Democrats are "no longer shilly-shallying. They're saying, right from the start, that they'll oppose judicial nominees on philosophical grounds alone."

Republicans have gotten the message. "They're laying the groundwork," one GOP aide says of the Democrats' plans. "They're trying to paint all of our judges as right-wing extremists who are here to turn back the clock on civil rights. To be mainstream and moderate, therefore, they have to stop them."

Meanwhile, as Schumer and Leahy plan their hearings, the work of actually confirming the president's nominees has ground to a halt. No hearings have been scheduled for the confirmation of any of the nearly two-dozen nominees so far announced by the White House.

National Journal's Congress Daily

June 20, 2001

Organizing Talks Go On, But Daschle Readies For Showdown

Charlie Mitchell and Geoff Earle

Senate Majority Leader Daschle could bring up a new organizational resolution for the Senate as early as this week--a move that could allow committees to function normally, while putting an end to weeks of contentious negotiations. Nevertheless, Daschle and a team of GOP negotiators continued to exchange communications Tuesday--a sign that a chance remained for the two sides to broker a final deal and avoid a partisan fight on the Senate floor.

Daschle told reporters that he would bring up a resolution this week that reflects areas on which Republicans and Democrats can agree, while allowing Republicans to offer amendments to address their concerns about moving judicial nominees. But a team of GOP negotiators met in Minority Leader Lott's office Tuesday evening to prepare yet another Republican offer for Daschle.

"I think we're sending him something that will be worthy of consideration," said Sen. Pete Domenici, R-N.M. Said Sen. Phil Gramm, R-Texas; "The whole thing might be avoided. We might have an agreement." Gramm downplayed the idea of a GOP filibuster to block an organizing resolution.

Daschle addressed reporters after meeting with his Democratic colleagues to describe an earlier offer from the GOP negotiating team on the organizing resolution. He said the Democratic Caucus was "disappointed" in the GOP offer, adding, "My five Republican colleagues have chosen to terminate the negotiations."

Daschle said he had hoped to avoid a partisan floor fight over the organizing resolution. Nevertheless, allowing a vote on the GOP proposals would give Republicans something they had been seeking in talks with Daschle last week.

Daschle rejected GOP demands for a "guarantee" that judicial nominations would come to a vote, saying such an approach "undermines" the Senate.

"What they want is a 100-member Judiciary Committee, [and] we're not prepared to do that," Daschle said.

Other Democrats echoed that sentiment at the Tuesday meeting of their Caucus.

"I don't know of a self-respecting member of a committee who would tolerate bypassing their committee," said Sen. Christopher Dodd, D-Conn. Daschle said he had asked Lott to offer specific proposals on the two issues Republicans raised, and he expected Democrats had the votes to head off the GOP proposal. "My guess is it would be pretty much a party-line vote," said a Democratic aide.

Daschle said Democrats were willing to accept a GOP proposal to make public the "blue slip" process--by which a single senator can block action on a judicial nominee. He noted that Sen. Richard Durbin, D-Ill., proposed such a move in 1997, only to draw opposition from then-Judiciary Chairman Hatch.

"I just hope they would support this for future Congresses, not just this Congress," Daschle said

of Republicans. The Democratic aide said Republicans "made clear" that they would not filibuster the
organizing resolution if they received votes on their proposals. Dodd said if Republicans decided to hold up the Senate's business over the organizing resolution, "you open yourself up to looking terribly petty."

Another Democratic aide said preparations were under way for Majority Whip Reid to move into the choice office space now occupied by Minority Whip Nickles. Republicans and Democrats have said they generally agree on issues of staff, office space and a one-seat Democratic majority on committees, all of which are also in the organizing resolution.

The negotiations over Senate organization took place behind the scenes as Daschle struggled to bring managed care legislation to the floor despite GOP objections (see related article, page 12).

The Senate reached a unanimous consent agreement late Tuesday to schedule a vote on a motion to proceed to the bill Thursday morning. Daschle had indicated earlier in the day that he would file a cloture motion on the bill if a UC could not be reached. Daschle said it was important for the Senate to complete managed care legislation before the July Fourth recess, while also mentioning an FY01
defense supplemental appropriations bill--in order to leave the rest of July available to move appropriations bills.

Senate Republicans had objected to a Democratic motion to proceed to the patients' rights bill, and Daschle indicated he was prepared to file a cloture motion Tuesday that would lead to a cloture vote Thursday.

Amid signs of GOP foot-dragging, Daschle also threatened to cut into the precious July Fourth recess to complete action on the managed care bill. "I'll see you for the fireworks on the Fourth," Daschle told reporters. Republicans warned they were in no hurry to rush through that measure.

"Washington, D.C., is a very interesting place on July Fourth," said Nickles, who added, "Whether we're in for a couple of days [during the planned break] is irrelevant." But Nickles stressed that Republicans would do battle over the substance of the bill and had "no intention of filibustering this bill."

Still, Lott has not ruled out the possibility of a filibuster to block the measure. Republicans objected to a motion to proceed to the bill, on the grounds that they had not been given a chance to review changes made to the legislation last week.

Sen. Judd Gregg, R-N.H., said Daschle had been "a bit autocratic" in his decision to bring up the bill, adding, "I think we need a couple of days to talk about what the bill is."

Daschle laughed off GOP charges that the legislation had been secretly rewritten, saying he was bringing up the same bill listed on the Senate calendar.

Daschle and Reid stressed that the Senate would work through the July Fourth recess if

necessary to complete work on the patients' rights bill. But, under those circumstances, Daschle said the chamber would be off July Fourth for the day.

OP/EDS

The Washington Post
June 19, 2001

Picking Judges: Democrats Should Stand Their Ground
Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President Bush's judicial nominations has moved to center stage. Both sides already have staked out positions on the substantive question of what standards senators should use in evaluating Bush's picks for the federal bench.

Echoing the theme of Democrats when Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees (based on their credentials) regardless of ideology. Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject ideological "extremists."

Both responses are confused and inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. On the contrary, ideology is an inevitable part of a nominee's suitability for the federal bench.

For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting the record of nominees in order to cast them as extremists is both destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her own standard for how judges should interpret the Constitution and federal law. And every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong -- even if not extremist.

Our legal culture is riven into two factions. Basically, the "liberals" would preserve Roe v. Wade and affirmative action, support a rigorous separation of church and state, are skeptical of the death penalty, and believe that the Constitution vests broad power in the federal government even at the expense of states' rights. Legal "conservatives" hold diametrically opposite views.

As a candidate, Bush promised that adherence to the conservative side of this debate – the side

embodied by Justices Antonin Scalia and Clarence Thomas -- would be an essential qualification for nomination to the federal bench. As president, Bush has redeemed this promise.

Taking the advice of very conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for placement on those appellate courts (such as the 6th, 10th and D.C. circuits) that are closely divided between liberals and conservatives. On these battleground circuits, a single new judge might tip the political balance of an appellate court to the conservative side. Meanwhile, Bush carefully assigned his more moderate nominees to circuits that are so overwhelmingly liberal or conservative that the views of one new appointee will have little impact.

This clever strategy is not inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he will nominate judges who share a certain vision of the Constitution and the proper judicial role. American history is replete with examples of presidents seeking to perpetuate their legacies by filling the judiciary with like-minded judges.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation as a whole is evenly split between the liberal and conservative approaches to constitutional law. And it thus is incumbent on Senate Democrats to ensure that the federal courts -- the independent third branch of government -- reflect the nation's profound ambivalence.

This principle should apply to even the best of Bush's ideological nominees -- at the moment, Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which presides over federal cases in Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming).

McConnell's credentials are impressive. He has distinguished himself as a constitutional law scholar and has handled numerous important constitutional law cases. Those who know him, including liberals, say his temperament is suited to being a judge.

But from a Democratic perspective, McConnell is also profoundly wrong in his approach to the Constitution. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the Framers.

As was shown in the Bork hearings, this approach is irremediably flawed. Divining the Framers' intent is usually impossible (for one thing, the various Framers were rarely of one mind). Moreover, experience with Scalia, Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

On specific issues, although McConnell may not be on record opposing Roe v. Wade, his originalist approach is antithetical to Roe and makes his opposition a foregone conclusion. McConnell is very much on record, moreover, on another hot-button issue: An avowed fundamentalist Christian, he is arguably the legal world's leading advocate for lowering the wall of separation between church and state.

None of these views -- which many conservatives share -- makes McConnell an extremist. Indeed, McConnell is more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. And that is grounds enough for rejecting him.

In short, Democratic senators have the right -- and even a duty -- to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. But in the meantime, Democrats should honestly and without apology have the courage of their convictions. They should just say no. The writer is author of "Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court."

The New York Times
June 19, 2001

Doing Business in the Senate

Editorial

The organizing process undertaken by the Senate every two years usually occurs with little fuss. But with a newly constituted Senate now in Democratic control, what used to be a routine housekeeping chore has become a focus of partisan impasse. Republicans are demanding a ban on a parliamentary tactic employed in the past to block some judicial nominations, and they are seeking guarantees that all Supreme Court nominations will be brought to the Senate floor, even if they are rejected in committee. This is a case that can be resolved with some good will. Democrats should give in on one but not both the Republican requests.

The irony, not to say audacity, of the Republican demands is striking. For the six years that Republicans controlled the Senate, they routinely obstructed President Bill Clinton's judicial nominations, often refusing even to hold hearings or a vote in the Judiciary Committee. This page deplored such tactics, so the Democrats' pledge to hold hearings and votes in committee is most welcome. Another tactic used by the Republicans was the so-called "blue slip," in which a senator from the home state of a judicial nominee could anonymously block that nominee from being considered. Despite using that tactic in the past, Republicans are now demanding that any senator using the blue slip be identified. The demand is no doubt galling to Democrats, but they should nevertheless accept it.
Senators who block a nomination from their home state should have the courage to do so publicly.

A separate demand by the Republicans is less worthy of approval. They are asking for a change in Senate rules that would require any nomination for the Supreme Court to be sent to the full Senate even if it is rejected in committee. The fact is that, except for one historical oddity when there was a nomination for a seat that was not yet vacant, neither Republicans nor Democrats can find a case in which a Supreme Court nomination was not submitted to the full Senate. The nominations for Supreme Court of Robert Bork and Clarence Thomas were both voted on by the Senate, even though Mr. Bork was rejected by a majority in committee and Judge Thomas got a tie vote.

Tom Daschle, the Senate majority leader, has promised that the Democrats will give full and fair consideration to all judicial nominations. Citing the Bork and Thomas precedents, he has indicated that he fully expects Supreme Court nominations to be treated as in the past.

Senate rules have for many decades empowered committees to vet nominations and decide whether to approve them. Changing the rules now would undermine the power of the committee at just the time when its new chairman, Patrick Leahy of Vermont, has promised to process the nominations in an evenhanded, open fashion. The Republicans should take him at his word and not try to force an artificial arrangement just because they fear the Democrats will behave as badly as the Republicans did under President Clinton. Above all, Republicans should not be trying to block the Senate from proceeding with its business by demanding arbitrary new rules of the Democrats.

National Journal
June 20, 2001

Clinton Nominee Kent Markus: Judicial Nomination Delays Are Hurting The Country

Julie Samuels

As Democrats and Republicans work out a new power-sharing deal in the Senate, the issue of judicial nominees remains a major point of contention. With Democrats controlling the agenda, will President Bush's nominees even get confirmation hearings? Will the Republicans make committee assignments if they don't?

National Journal.com's Julie Samuels spoke with Kent Markus, former counselor to Clinton Attorney General Janet Reno and a onetime judicial nominee himself, about the process, the lack of judges on today's federal bench and how this might all play out in the Democratic-led Senate.

Q. Briefly walk me through the process of your nomination and the experience you had as an example of how the process works -- or maybe doesn't always work. Well, mine was a nomination for a federal appellate court, and I think already it's worth mentioning that the process is quite radically different for the appellate courts as compared with the district courts. Because the appellate court selections are primarily managed, controlled, decided by the White House and the Justice Department, mostly the White House, whereas the district court

appointments are pretty much decided by local officials in the state in which the opening exists, usually the United States senators....And so, because we were talking about an appellate court position, mine was mostly a conversation that was taking place among Washington folk. I learned -- through a friend -- that [Judge] Dave Nelson on the 6th Circuit had sent a letter in to the Justice Department indicating an intention some months later to take senior status. That triggered the whole discussion. This was in the mid- to late summer of 1999. The friend at Justice called and said, "You know, we've got this letter, are you interested in the seat?" And I said, "Yes, I'm very interested in the seat."

That began a process of trying to persuade various critical decision makers that I was the right person to be nominated for that seat. I think to the extent that anyone suggests that this is a process -- for any of these court positions -- that you get a call one day from some official calling you to public service because they've researched the backgrounds of all conceivable candidates and determined that you
are by far the most worthy isn't telling you the truth. I mean, I don't know anybody who's been involved in any of these conversations that doesn't engage, even though it may be sort of an awkward word to use in this context, in something resembling a campaign to obtain one of these appointments. I think people like to pretend it's substantially more gentile than that, but it isn't. So, I undertook efforts to have various people communicate simultaneously with both the White House and Justice Department and especially key decision makers there that I would be a good nominee for the spot. And these were all people that knew me. I had worked as Attorney General [Janet] Reno's counselor at the Justice Department -- the highest-ranking staff-adviser to the attorney general, so I knew almost everybody who was being communicated with, and yet it still was a process you have to go through to persuade them that, among other conceivable nominees, you're the right one.

At the same time, I was also trying to make sure that, because I had two United States senators from the opposite political party here in Ohio, that were I able to persuade the White House that this was the way to go, that the United States senators were not going to be opposed to my selection. And so there was a similar effort going with Senator [George] Voinovich and even more particularly Senator [Mike] DeWine, since he was senior senator from Ohio and on the Judiciary Committee....And then... nothing happened for a while. And then there was delay and delay and delay, and I would talk to friends who were involved in the weekly meetings at the White House -- "Did the seat come up for discussion this week?"; "No, we didn't get to it, we didn't talk about it"; "Oh, it got mentioned and so-and-so said they heard from so-and-so about you" -- and I sort of would get little bits and scraps and pieces and, you know, my reaction was, "Jeez, I'm peculiarly well-connected, as compared to many people going through this, and still, I can only get little bits and scraps and pieces of information about what's going on and is there really a delay for some substantial reason, that there's a concern about whether I'm the right nominee and they're looking at others, or is it just that other matters are taking a higher priority, or what's going on?"

Just as magically, at some point it finally breaks, and that took until about December. And it was in, if I recall, the third week of December that I finally got the call from the White House saying, "We intend to proceed with your nomination, assuming that everything's OK."

At that point you then begin a much more cumbersome process where you are provided an extraordinary set of forms and questionnaires -- one for the White House, one for the FBI, one for the Justice Department, one for the Senate and Judiciary Committee and one for the administrative office of the courts.... The moment they say "go," in terms of putting together the forms and submitting them, the hurry-up-and-wait process then becomes another hurry-up process because they then, once they've made the decision, want you to get everything in as quickly as you possibly can so that it can be scrutinized and a final determination can be made as to whether you are in fact going to be nominated or whether all these materials and background checks will reveal some problem....

So, you're going nuts trying to put all of this together and get it in. Simultaneously, as soon as you get it in, not only does it trigger the White House own internal evaluation of everything and the FBI check to make sure you're not a drug dealer or you're not beating your spouse or whatever, but that the [American Bar Association] check then began. And they have their own whole process, where they not only interview you, but they interviewed a wide range of people in your legal community and others about you and your integrity and your experience and your knowledge of the law and all those kind of things, for their rating process.... So, you go through with that whole process -- and that all went on from about the third week in December -- in what in this context was considered very speedy – to a nomination on February 9....

From that point, the goal was obviously to seek and obtain a hearing and get a positive confirmation vote and then get a vote of the full Senate with respect to confirmation. One of the critical intermediary steps to be getting such a hearing was, and to this day still remains much in the news, the blue slips returned from your two home-state senators.

I had two Republican senators, and the White House had expressed some skepticism about whether I was going to be able to get two blue slips returned, and I think, in the end, I was the only court of appeals nominee in the country who had blue slips returned by two home-state Republican senators, both saying: "We have no objection to this nominee. You can go ahead and hold hearings if you chose to." But, again, that took time and persuasion and encouragement and there were editorials in the newspapers across the state encouraging the senators to not let this position remain open... and finally Senators Voinovich and DeWine both returned their blue slips to [then Senate Judiciary Committee] Chairman [Orrin] Hatch, [R-Utah], which was yet another critical hurdle covered.... Then it was a whole lobbying process of -- in the election year and in the context in which there was clearly a desire by many to simply say: " Look, we're just not going to confirm people this year, especially court of appeals nominees. Let's hold these seats open, see if we win the White House, and if we do, we get to fill those seats rather than the other guys."

And, in the end, that's exactly what happened to me and lots and lots of other people, and it wasn't even -- I think, to my knowledge -- anything that was focused on any substantial way on me personally. It was just a relatively across-the-board decision among the majority in the Senate... and the strategy paid off.

Q. What do you think about the blue-slip process? A. I don't think it's a good process, and I am one of the people who was not a victim of it. There were others like me who were awaiting

confirmation hearings, [and] that was the hurdle they couldn't get across.... I actually had hoped, and the White House had hoped, that being in the somewhat extraordinary position of having two Republican senators return blue slips for a Democratic nominee, might have been enough to break through. And it even might have been something that Hatch could have used as an excuse to say, "Look, I'm not a terrible bad guy, here's a guy who got blue slips returned by his two Republican senators and we moved and proceeded to a hearing on him." That still didn't do it for me.

Even though I wasn't the victim of the process, at least at that point, I just think that it's an inappropriate prerogative, and that's all it is. It's a prerogative that's afforded the individual senators, and I think that I'd rather have... a more deliberative process where we look at candidates, we make a decision, and vote them up or down. I think the big unfortunate part is I think the reason there's such a reluctance to give up that prerogative is that it's substantially politically easier to simply to have nothing happen than to vote against.

Q. It sounded like the longest delay you faced was from the end of September to December. I was curious as to where you think these delays tend to come from.
A. I think they come from everywhere. I think they come -- in terms of the White House decision making -- I do think they come primarily from a combination of managing competing objectives and competing interests and competing candidates and all of that playing out in the decision making. And the general state of affairs that I experienced at high levels of the Justice Department and that I saw at high levels of the White House is you never have time to do all the things you're supposed to be doing.

And so even things that are objectively reasonably important matters suddenly become not terribly important compared to other things that are much more important.... I think when you combine that bureaucratic aspect to it with the political aspect of having to decide among competing candidates, those combine in a nefarious way to result in a delay...

Q. In a broader sense, how do you think the process changed after the 1987 Robert Bork hearings, if it did change at all?

A. I think in general that was a contributor to a sense of a need for tit-for-tat paybacks for actual and perceived slights by both parties. I think it's actually consistent with changes in the Congress that have absolutely nothing to do with nominations. My perception, throughout the '90s, is that Congress became a substantially less civil place, that there was substantially less accommodation that took place among members.... It became a substantially more partisan place. It became a meaner place. I think that was just one aspect and one manifestation of it that had an impact, particularly on nominees.

Q. Do you personally think that a nominee who might be seen as too idealistic is qualified to sit on a federal bench?

A. Depends on what you mean by "too idealistic." ... I think quite clearly being idealistic alone is not disqualifying. I think the critical question in addition to standard qualifying questions... is "What is

your view of the role of a judge?" You can be as ideological as you want to be if you don't have any intent or desire to try to foist your own ideological perspective upon the system through your position as a judge. That is, whatever your privately-held views are, so what? -- if you don't seek to impose those views from the bench.... I am not particularly enamored with judges who substantially invade the purview of the legislative branch, and that's something that is loosely referred to as being activist. Unfortunately, I think that term has become very politically charged and one of those terms that's come to mean whatever anybody wants it to mean. But, I think historically, I think it's how much restraint the judge demonstrates vis-à-vis the operations of the other branches, and I think that I'm very uncomfortable with the amount of activism -- with the amount of invasion of the legislative and executive branches -- we're seeing on the judiciary right now.... If someone is highly ideological but also has a very limited and constricted view of the role of judge, I don't have a problem with that person. I have a problem with them if they are highly ideological, and they're on a mission to effectuate that ideology once they get on the bench.

Q. As far as ABA ratings go, I'd like to talk about those for a second because, especially since the power switch -- when Bush first came into office, he said "we aren't going to use them," and then the Democrats came into the majority, and they said, "well, now we are..."

A. And I think even before the power switch the Democrats had said, "you may not be going to use them, but we still want them...." And they had made pretty clear that they were going to wait for an ABA recommendation before they were going to be willing to schedule hearings with regards to candidates who had been nominated. So that, even before the power switch, the effect would have been that the White House would not have had the advantage of information about the ABA's views and ratings before finalizing the nomination decision. They would have finalized their nomination decision and then learned about what the ABA's view is, which I thought was a little risky on their behalf.

That's if they cared one wit about what the ABA said, which apparently they didn't. And so, I think that this power switch has only heightened that a little bit more, which has given Democrats the ability to say: "Look, we really mean that. We're not proceeding with the nominations until we know what the ABA says. And now we control the committee schedule, and we're going to wait for that."

Q. So the role that they're going to play has not changed?

A. I think it's only changed in... timing. It no longer is being used as an element of the White House decision making as to whether to proceed with a contemplated nomination. Instead, the recommendation will come out after the White House decides to make a nomination and will be used primarily in the context of making confirmation decisions.

Q. Right now, there's more than 100 judicial vacancies in the federal court system, which is the most since 1997. How serious of a problem is that?

A. There's a serious problem with respect to the delay, and, in the most cliché of ways, you really have a "justice delayed is justice denied" phenomenon going on. Even while my

nomination was pending for the 6th Circuit, and that's now eight, nine months ago when I was involved with these conversations still, the 6th Circuit was a great example. It had become because of the number of vacancies that
existed then, the slowest circuit in the country -- the time of argument to the time of decision, with cases averaging in excess of two years to get a decision out of the appeals court. That's crazy. And since that time, there are additional vacancies on the 6th Circuit.

So the suggestions that we can stand to have continuing delays in the fillings of these positions I think is wrong. And I think that the Democrats on the Judiciary Committee are in an awkward position.... They might like to engage in more tit-for-tat; they're angry about what was done to some of the nominees in the Clinton administration. They also full-well recognize that it is just not good for the country and for the system to continue to delay in filling these positions.

Q. As far as the power shift goes, how do you see that affecting the nominating process?

A. I think it's undeniable that it's going to slow it down. I hope that it does not go to a stall, a delay, a blockage. Again, I just think that's wrong. And maybe I'm more acutely cognizant of that having been a victim of that, but I just think it's not good for the court, it's not good for the country, it's not good for litigants, it's not good for the Congress -- it makes them look bad -- and it's terribly, terribly unfair
to the nominees....

Q. Do you think it will change the nominees that come out of the White House?

A. I think it will. [Rep.] Chris Cox, [R-Calif., who recently withdrew his name from consideration] is already an example of that. I think there was a recognition that while [Republicans] controlled the committee, they have an ability to push a little harder with respect to getting people through. Look at the Ted Olson [for solicitor general] vote -- there was a lot of reluctance and grumbling, but it went
through, and Ted was confirmed. I think that's a different dynamic now.... When the Republicans controlled the committee, they could make Democrats vote against nominees. When the Democrats are controlling the committee, they can make it so they don't have to vote against the nominees because they can make it so the nominee never comes up for a vote.

Q. How do you see the power shift changing potential Supreme Court justice nominees, should there be any?

A. Same way.... More ability on the Democrats to insist on a more moderate nominee, more ability to insist on whatever a time they need to be adequate for scrutiny. I mean, it's an agenda-controlling power, and that process impact has a substance impact.

Q. Do you expect to see a similar situation at the end of a Bush term, or a Bush administration? Do you expect to see nominees left hanging, as you were?

A. I think there will be nominees left hanging at the end of every administration. And there have been, if you look historically, some number of nominees left hanging at the end of every

administration. I think the thing that was discouraging and problematic about 2000 was that the slow-down in confirming nominees began much, much earlier than it ever had historically and the sort of line-in-the-sand decision by the majority at that time, that no more, especially no more appellate court nominees, were going to get through, came much earlier.... So that it was more and earlier and the thing I worry about -- and I worry about the Democrats doing it, too -- is saying, "fine, you did it more and earlier, we'll do it even more and even more earlier." We start slowing down after the first year in the administration? You know, the president's president for four years, and while I recognize that inevitably you are going to have political things that are going to result in some nominees being left hanging, especially those nominated late, very late, in the administration, a few months left, I actually think that President Bush's suggestion during the campaign was a pretty good one if it could be done as a practical matter. That unless there's a specific, individual reason not to do so, every nominee ought to have a hearing and a vote within 60 days.

Q. What do you think could be done to expedite the process?

A. At the nomination stage, there's cautiousness on the part of the White House as the nominating entity to do everything they can to avoid political embarrassment from nominating somebody who has some stain on their background, and they want to avoid that by finding out everything they possibly can about that nominee in advance, so that if there is something there they don't like, they can decide, "well then, we're not going to nominate that person." But that causes extraordinary delay and is highly intrusive sort of well beyond what I think anybody would think was rational or normal. And it's all about political defense on the part of the nominating entity. And the same thing that goes on with respect to the confirmation process is that -- and that's more I think on political offense -- people are attacked and are charicaturized and defined in very simplistic terms because that's politically convenient to do and may appeal to interest groups and others in a way that is terribly unfair and dangerous to nominees...

Q. Is there anything else you'd like to discuss?

A. I went back... and I pulled a column that I had read from the Washington Post on April 1 -- I think it was intended as an April Fool's Day column. Because there was a line in it that I remembered... where the guy writing the story says: "The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency." And I remember, when I read it originally, I went, "Yeah, that's right."

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June 21, 2001

Democrats Must Demand Fair Split Among Judges

Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President George W. Bush's judicial nominations takes center stage. Both parties have staked out positions on the question of what standards senators should use in evaluating Bush's picks for the federal bench. Echoing the theme of Democrats when former President Bill Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees regardless of ideology.

Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject "extremists." Both responses are inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. Ideology is an inevitable part of a nominee's suitability for the federal bench. For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting nominees' records to cast them as extremists is destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her standard for how judges should interpret the Constitution and federal law. Every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong-even if not extremist. Our legal culture has two factions. Basically, the "liberals" would support nominees who would preserve Roe vs. Wade and affirmative action, support a rigorous separation of church and state, be skeptical of the death penalty and believe the Constitution vests broad power in the federal government even at the expense of states' rights.

Legal "conservatives" hold diametrically opposite views. As a candidate, Bush promised that adherence to the conservative side of this debate-the side embodied by Justices Antonin Scalia and Clarence Thomas-would be an essential qualification for nomination to the federal bench. Taking the advice of conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for appellate courts (such as the Sixth, 10th and D.C. circuits) that are closely divided between liberals and conservatives.

On these battleground circuits, a single new judge might tip the balance to the conservative side. Meanwhile, Bush assigned moderate nominees to circuits so overwhelmingly liberal or conservative that the views of one new appointee will have little impact. This strategy isn't inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he'll nominate judges who share a vision of the Constitution and the proper judicial role.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation is evenly split between the liberal and conservative approaches to constitutional law. It thus is incumbent on Senate Democrats to ensure that the federal courts-the

independent third branch of government-reflect the nation's ambivalence. This principle should apply even to the best of Bush's ideological nominees: Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming). McConnell has distinguished himself as a constitutional scholar and has handled important constitutional-law cases. Those who know him, including liberals, say his temperament is suited to the job.

From a Democratic perspective, however, McConnell is profoundly wrong in his approach. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the framers. As shown in the Bork hearings, this approach is irremediably flawed. Divining the framers' intent is usually impossible (for one thing, the various framers were rarely of one mind). Moreover,
experience with Antonin Scalia, Clarence Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

Although McConnell may not be on record opposing Roe vs. Wade, his originalist approach makes his opposition a foregone conclusion. In addition, as an avowed fundamentalist Christian, he's arguably the legal world's leading advocate for lowering the wall between church and state. None of these views makes McConnell an extremist. He's more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. That's grounds enough for rejecting him.

Democratic senators have the right-and even a duty-to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. In the meantime, Democrats should honestly and without apology have the courage of their convictions.

INTEREST GROUPS/PRESS RELEASES

The Columbus Dispatch
June 20, 2001

Sutton is Not The Saint Portrayed in 'Dispatch'

Andrew J. Imparato, President, American Association of People With Disabilities

Regarding the May 26 Dispatch editorial "Injustice," criticizing the " vexing problem" of disability advocates taking to the streets of Columbus to publicize their opposition to President Bush's nomination of former Ohio solicitor Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals, I would encourage the newspaper to consider the facts:

Sutton has been the lead attorney in a series of cases that have limited the ability of individuals to assert their civil rights in federal court.

He has not been simply a lawyer representing a client in one unpopular case, as the editorial suggested. Rather, he aggressively has pursued a prominent national role as the champion of a vocal and powerful minority of far-right legal theorists. Sutton and his allies have had increasing success in revisiting a states'-rights debate that the majority of Americans thought was decided during the Civil War and reinforced during the civil- rights struggles of the 1950s and 1960s.

Disability advocates and our allies have not sought to prevent Sutton from receiving a fair hearing before the Senate Judiciary Committee. Instead, we have sought to educate the senators and their constituents about Sutton's record.

Our ability to assert and enforce our civil rights is not simply "our favorite issue," as The Dispatch asserted.

For us, strong disability-rights enforcement is a matter of life with dignity and equal opportunity.

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
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Here is the latest installment of the judicial media review.

Best,

Jennifer

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GENERAL JUDICIAL ARTICLES

The Recorder (American Lawyer Media)
June 18, 2001

Gearing up to Vote on Court Nominees

Jonathan Ringel

Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead. Sen. Patrick Leahy, D-Vt., the new chairman of the Senate Judiciary Committee, says he will hold his first confirmation hearings about two weeks after new Majority Leader Tom Daschle, D-S.D., and Republicans come to an agreement. And an administration source says Bush is expected to name six to 10 new nominees this week, including several district court choices.

The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of Utah, the ranking minority member on the Judiciary Committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who will soon have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

Leahy has already said he will enforce the "blue slip" rule, by which the Judiciary Committee will not hold hearings or votes on nominees opposed by home-state senators. Republicans argue this rule gives individual senators too much power over presidential nominations. President Bush so far has made 17 nominations -- 15 to circuit courts of appeals and two to district courts. Around the country, 104 federal judgeships are vacant -- 33 on circuit courts and 71 on district courts. None of Bush's selections has been the subject of hearings before the Judiciary Committee.

When the committee was in its final days of Republican control, three nominees -- John Roberts Jr. for the D.C. Circuit and Sixth Circuit nominees Deborah Cook and Jeffrey Sutton -- had been scheduled to appear at a May 23 hearing. But their day before the panel was scuttled after vehement opposition by Democrats, who the next day won control of the Senate when

Vermont Sen. James Jeffords announced he would defect from the GOP and become an independent. Democrats had argued that the committee should not hold hearings until the American Bar Association's standing committee on the federal judiciary had completed its reviews of nominees.

Now that things have changed, it's unlikely that Leahy would hold hearings on any nominee whose ABA rating is not completed. Leahy spokesman David Carle says the committee has received a few of the ratings so far, but is not yet prepared to make them public. While the ABA conducts an extensive background check, the reviews typically consist of only one sheet of paper describing the nominee as "well qualified," "qualified" or "not qualified." Carle also says the committee has yet to choose which of the nominees will be the first to have hearings.

The Judiciary Committee itself will undergo a change as a result of the power shift, with the likely scenario being one Democrat joining the 18-member committee to give the Democrats a one-vote majority. Leahy has spoken to former trial lawyer Sen. John Edwards of North Carolina about the slot, but no agreement has been reached. A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veterans' affairs committees.

Administration officials would not say who Bush will nominate next week, but it could be time for several previously reported candidates to have their day. Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the Eleventh Circuit; Iowa U.S. District Judge Michael Melloy for the Eighth Circuit; and University of Utah professor Paul Cassell for a district court seat in that state. In March, Tennessee Republican Sens. Fred Thompson and Bill Frist made three recommendations for a single open seat on the Sixth Circuit. They are: Robert Echols, U.S. district chief judge in Nashville; Julia Gibbons, U.S. district chief judge in Memphis; and Lin Howard of Harwell Howard Hyne Gabbert & Manner in Nashville.

Montana may not be ground zero of the political warfare over judges, but it has gotten more than its share of attention from the Bush administration. If the Senate confirms litigator Sam Haddon and U.S. Magistrate Judge Richard Cebull, it's a good bet that folks with business before the federal court there will breathe a sigh of relief. The court has only three judges, and in the past year, Judges Jack Shanstrom and Charles Lovell took senior status, meaning they had significantly reduced their caseloads. That leaves Chief Judge Donald Molloy as the court's only active judge, He has had to focus on criminal cases in order to comply with speedy trial demands, while the civil docket has taken a back seat.

Fortunately for Molloy, Montana Sens. Conrad Burns, a Republican, and Max Baucus, a Democrat, were able to agree on recommendations for the posts. Such bipartisan agreement certainly helped speed the process at the White House and could do the same in the Senate. Meanwhile, the Montana federal court has been relying on help from nearby states. Lou Aleksich, the court clerk, says four federal judges have come to Montana to preside over civil trials this month.

The Associated Press
June 19, 2001

Daschle Agrees to GOP Proposal for Vote on Supreme Court Nominees

Jesse J. Holland

Senators will decide whether President Bush's Supreme Court nominees get automatic confirmation votes from the full Senate without risking rejection by the Judiciary Committee, Senate Majority Leader Thomas Daschle said Tuesday.

Republicans asked for such treatment during negotiations over how to reorganize the newly Democrat-controlled Senate. The GOP is afraid that Democrats would block Bush's judicial nominations and has been looking for a way to ensure Bush's top nominees will at least make it to the floor. Daschle opposes any guarantees for Bush nominees. "We will provide them an opportunity for the vote, but I would hope the Senate would show its common sense and would vote against that particular proposal," said Daschle, D-S.D.

The GOP originally asked for guaranteed Senate votes on all Supreme Court and federal appellate court nominees and elimination of the secret veto process for some judicial nominations, but Daschle refused. The Republicans then modified their request to guaranteed Supreme Court votes only.

Democrats control the Senate by a 50-49 margin. Sen. Jim Jeffords of Vermont threw the chamber to the Democrats when he defected from the Republican Party to become the Senate's sole independent.

Daschle said he would ask his party to vote against the provision when the Senate votes. "I expect we will prevail," he said.

Calls to Republican senators involved in the negotiations with Daschle were not returned. A senior GOP leadership aide described Daschle's agreement to a vote on how Supreme Court nominees will be handled as a step in the right direction.

Daschle agreed to another Republican request: to make the senatorial "blue-slip" veto process public instead of private, as it has been in the past. "We certainly oppose private blue slips, and I'm prepared to incorporate the public blue-slip policy in the organizing resolution itself," Daschle said.

While the Senate Judiciary Committee has never in modern history kept a Supreme Court nominee from coming to a vote, the resolution would render the committee powerless to stop a future Supreme Court nominee no matter what the controlling party thinks.

"In essence, what their proposal would do is to create a 100-member judiciary committee, bypassing, if they wish, the Judiciary Committee itself. We're not prepared to do that," Daschle said. "We think that, for this institution, for careful consideration of the nominees themselves, we

ought to continue to maintain the Senate practice of insisting that all nominees be considered and voted upon in the Judiciary Committee."

The provisions would only be binding on Congress until January 2003. It would also be negated if Republicans were to take back control of the chamber, which would force senators to vote on a new organizing resolution.

Daschle said Democrats would insist that changes become a permanent part of the Senate process if they are approved. "This ought not be something we just do for this Congress," he said.

The Senate will vote on the Supreme Court provision, and on reorganizing the chamber, before they leave for the Independence Day holiday, Daschle said.

The two sides also agreed that Democrats will gain a one-seat majority on each Senate committee, and the size of committees will be expanded to accommodate the one-seat Democratic edge. All Republicans will keep their committee assignments, and committee finances and space agreements negotiated at the beginning of the year will continue in effect as well.

The Senate will not work on any of Bush's nominees until after those votes, the majority leader said.

Bush has not nominated anyone for the Supreme Court because there are no openings. He has made several lower court nominations.

Miami Daily Business Review
June 19, 2001

Despite Appearances, Confirmation Process for Judicial Nominees Makes Progress

Jonathan Ringel

WASHINGTON -- Officially, the confirmation process for President George W. Bush's judicial nominees was stuck in limbo last week as Senate leaders haggled over the rules of engagement under the new Democratic majority. But beyond those negotiations, the judicial nomination process is moving ahead.

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The way the Senate will treat judicial nominations is reportedly the sticking point in the secretive negotiations between Daschle and a team of five Republicans, including Sen. Orrin Hatch of

Utah, the ranking minority member on the Judiciary committee. Republicans appear to be seeking some assurances that Democrats will treat the appointees, and any potential Supreme Court nominee, with some degree of deference. Democrats, who soon will have a majority on the committee, may feel little pressure to offer anything more than their counterparts did during the Clinton administration.

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Democrats had argued that the committee should not hold hearings until the American Bar Association's Standing Committee on the Federal Judiciary had completed its reviews of nominees.

Now that things have changed, it's unlikely that Leahy would hold hearings on any nominee whose ABA rating is not completed. Leahy spokesman David Carle says the committee has received a few of the ratings so far, but is not yet prepared to make them public.

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The Judiciary Committee itself will undergo a change as a result of the power shift, with the likely scenario being one Democrat joining the 18-member committee to give the Democrats a one-vote majority. Leahy has spoken to former trial lawyer Sen. John Edwards of North Carolina about the slot but no agreement has been reached.

A spokeswoman for Sen. Zell Miller, a Georgia Democrat who has argued for Democrats to give great deference to President Bush's nominations, calls speculation that Miller was angling for a spot on judiciary "overblown." "He's perfectly happy with what he's got," said Miller press

secretary Joan Kirchner, referring to Miller's current posts on the agriculture, banking and veteran's affairs committees.

Administration officials would not say whom Bush will nominate, but it could be time for several previously reported candidates to have their day.

Among those are U.S. Magistrate Judge William Steele of Mobile, Ala., for the 11th Circuit, which includes Florida; Iowa U.S. District Judge Michael Melloy, for the 8th Circuit; and University of Utah professor Paul Cassell, for a district court seat in that state.

In Florida, Republican leaders have 70 lawyers to choose from -- including prominent names and relative unknowns -- in deciding whom to recommend to Bush for three federal judgeships and three U.S. attorney spots in the state.

The two vacant judgeships in the southern district drew the most applicants. But an open seat in the middle district attracted 19 candidates. The U.S. attorney spots in the northern, middle and southern districts drew 10, nine and eight applicants, respectively. Many applicants hedged their bets by applying for more than one position.

Gov. Jeb Bush, Rep. E. Clay Shaw Jr., R-Fla., and Rep. C.W. Young, R-Fla., will pick the finalists to recommend to the White House.

The Recorder (American Lawyer Media)
June 19, 2001

Back in Familiar Role, ABA Rates 6 Judicial Nominees

Jonathan Ringel

Six of President George W. Bush's nominees for the federal appeals courts have received "qualified" or "well qualified" ratings from the American Bar Association's standing committee on the federal judiciary. These are the first ratings to come from the ABA committee since President George W. Bush in March kicked the group out of its 48-year role prescreening potential judicial nominees for the White House.

The ABA saw its stock rise again with the switch to Democratic control of the Senate, and Senate Judiciary Chairman Patrick Leahy, D-Vt., has promised to consider the evaluations before commencing hearings on any individual nominee. The panel has so far given the highest ratings to three sitting district judges seeking elevation to their appeals courts, according to documents released by the Senate Judiciary Committee and other sources. The committee unanimously gave a "well qualified" rating to Judge Barrington Parker Jr. of the federal trial court in New York, nominated for a seat on the Second Circuit U.S. Court of Appeals. Parker, an African-American, was nominated to the district court in 1994 by then-President Bill Clinton.

A majority of the ABA panel gave Judge Edith Brown Clement of the federal trial court in New Orleans, nominated for the Fifth Circuit, a "well qualified" rating. A minority of

the panel rated Clement "qualified," according to the documents, and one unidentified member of the panel abstained from voting. Clement was nominated to the trial court in 1991 by then-President George Bush.

A nominee to the Fourth Circuit, Judge Dennis Shedd of the federal trial court in Columbia, S.C., also received a majority "well qualified," minority " qualified" rating, according to a source. When Bush nominated him to his current seat in 1990, Shedd, a former staffer to Sen. Strom Thurmond, R-S.C., had received a mixed "qualified/not qualified" ABA rating, according to a press account from the time. Jeffrey Sutton, a Sixth Circuit nominee, received a majority "qualified," minority "well qualified" rating. Sutton, a partner in the Columbus, Ohio, office of Jones, Day, Reavis & Pogue, has successfully argued several Supreme Court cases on behalf of litigants challenging acts of Congress as overreaching, including parts of the Violence Against Women Act and the Americans With Disabilities Act.

Ohio Supreme Court Justice Deborah Cook, also named to the Sixth Circuit, was unanimously rated "qualified." Cook, on the state high court for six years, was strongly backed in her 2000 re-election race by the Ohio business community, but opposed by African-American and plaintiffs lawyer groups. The ABA panel was also unanimous in calling Fourth Circuit Judge Roger Gregory "qualified." Gregory was a Richmond litigator until late last year, when President Clinton, in a controversial move, named him to the Fourth Circuit while Congress was out of session. Bush's decision to renominate Gregory, who is the first African-American judge on the Fourth Circuit, was seen as an attempt to mollify Democrats poised to block his nominees. A senior Bush administration official said the ratings "reaffirm the choice of these candidates as ones of high competence and integrity."

The ABA is expected to issue ratings shortly on the five other judicial nominees the president announced in May, including appellate advocates Miguel Estrada and John Roberts Jr. for the D.C. Circuit; North Carolina federal Judge Terrence Boyle for the Fourth Circuit; Texas high court Justice Priscilla Owen for the Fifth Circuit; and University of Utah law professor Michael McConnell for the 10th Circuit. President Bush has since nominated five others to circuit court posts, and three to district court posts. He announced Monday that he intends to nominate Magistrate Judge Terry Wooten to the U.S. district court in South Carolina.

The ABA panel conducts dozens of interviews with lawyers, judges and others regarding each nominee, evaluates the nominees' qualifications with regard to integrity, professional competence and judicial temperament, and hands out one of three ratings: "well qualified," "qualified," and "not qualified." The committee consists of one member from each of 12 federal judicial circuits, two from the huge Ninth Circuit and a chairwoman, Patricia Hynes of Milberg, Weiss, Bershad, Hynes & Lerach. Ever since the ABA committee gave mixed ratings to Republican Supreme Court nominees Robert Bork (the majority found him "well qualified" while the minority said he was "not qualified") and Clarence Thomas (the majority said " qualified," the minority "not qualified"), the committee has come under strong criticism from conservatives.

In March, the Bush administration removed the group from its formal role. White House Counsel Alberto Gonzales said at the time that the president did not want to give the ABA a

"preferential" role above other groups that could weigh in on the judiciary. Liberal groups decried the decision for removing an important peer review from the process and said it was a sign that Bush was trying to ease the way to push the judiciary to the right. Leahy would not comment on individual nominees Monday, according to a spokesman. Leahy has said he expects to hold hearings on nominees about two weeks after the Senate leadership completes reorganization negotiations.

The Deseret News (Salt Lake City, UT)
June 20, 2001

Bush Wants Cassell as Judge

Lee Davidson

WASHINGTON -- President Bush has nominated University of Utah law professor Paul G. Cassell to become a judge in the U.S. District Court for Utah.

If confirmed by the Senate, Cassell would replace retired Judge David Sam.

Cassell, who was nominated Tuesday, is considered an expert on victims rights. He represented relatives of victims of the Oklahoma City bombing who wanted to attend the trial of Timothy McVeigh but had been excluded by a judge's order.

While he initially lost the case seeking to allow them to attend, he turned to Congress and helped push through a victims-rights bill in two weeks that forced the judge to allow their attendance.

"The judicial system would be a much better place if we had more Paul Cassells and Judge (Richard) Matschs (who refused to block McVeigh's execution)," said Marsha Kight, with the National Organization for Victims Assistance. Her daughter, Frankie Merrell, was killed in the Oklahoma City bombing.

"He'll make an excellent judge," she said, praising Cassell's representation of her and other relatives of Oklahoma City bombing victims.

Calls to Cassell and the law school for comment on his nomination were not immediately returned.

Cassell also argued but lost a high-profile case before the Supreme Court seeking to allow some confessions to stand even if police failed to give "Miranda" warnings telling those interrogated that they have the right to remain silent.

Cassell, 41, has been a professor of law at the University of Utah since 1992.

He was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and was an associate deputy U.S. attorney general from 1986-88.

Cassell was a law clerk for Warren E. Burger, former chief justice of the United States, from

1985-86. He was also a clerk for Antonin Scalia (now a U.S. Supreme Court justice) when he was a judge on the U.S. District Court of Appeals in Washington, D.C.

Cassell received his law degree from Stanford University in 1984, and received his bachelor's degree there in 1979.

He was admitted to the bar in Pennsylvania in 1986 and to the Utah bar in 1992.

Cassell is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell was nominated to the Denver-based 10th Circuit Court of Appeals. His nomination is also pending before the Senate Judiciary Committee.

The Associated Press
June 20, 2001

Utah Law Professor Nominated for Federal Bench

Paul Foy

President Bush has nominated University of Utah law professor Paul Cassell to replace U.S. District Court Judge David Sam.

Cassell, 42, is a conservative legal scholar who has criticized the aggressive federal prosecution of Salt Lake's Olympic bid leaders.

He also is a victims' rights advocate who argued before the U.S. Supreme Court last year that some criminal confessions should stand even when police fail to give suspects the Miranda warning on their right to remain silent. The court disagreed.

Cassell was an assistant U.S. attorney in the Eastern District of Virginia from 1988-91, and associate deputy U.S. attorney general from 1986-88.

He was sponsored by Sen. Orrin Hatch, R-Utah, for the federal bench and nominated by President Bush on Tuesday.

"It's obviously a great opportunity to serve on the bench and I'm honored the president has put my name forward," Cassell said Wednesday in San Diego, Calif., where he was vacationing with his wife and three children.

If confirmed by the U.S. Senate, Cassell would take on the full-time vacancy opened in Utah in late 1999 when Sam went on senior, semiretired status. Sam will continue to handle some cases and has been assigned to preside over the Olympic bribery trial of Salt Lake bid chief Tom Welch and his deputy, Dave Johnson. The trial is set to begin July 16.

Cassell's nomination to the bench silenced his often provocative critique of the government's case. He was no apologist for Welch and Johnson, but Cassell argued the U.S. Justice

Department devised elaborate conspiracy, fraud and racketeering theories when simpler charges would suffice.

Welch and Johnson were indicted by a federal grand jury on charges of conspiring over a decade to bribe the International Olympic Committee by plying its members with $1 million in cash, scholarships, travel, medical care and excessive gifts. The defendants maintain they did nothing criminally wrong or different from other bid cities.

Cassell doesn't expect to handle any aspect of the Olympic case. He would take one of five full-time positions at the U.S. District Court for Utah, which has been understaffed for a year. Each judge handles about 100 criminal and 300 civil cases a year.

Sam, 67, handles about half of the usual caseload of full-time judges as a semi-retired judge.

Cassell represented families of victims of the Oklahoma City bombing who were initially barred from attending the trial of Timothy McVeigh, who was executed June 11.

He helped usher a victims' rights bill through Congress that forced the judge in the McVeigh case to make room for the victims' relatives at trial.

"He'll make an excellent judge," Marsha Kight, whose daughter was killed in the blast, told the Deseret News.

Cassell was a law clerk for former Supreme Court Chief Justice Warren E. Burger from 1985-86. He served as clerk to Antonin Scalia, now a Supreme Court justice, when Scalia was on the U.S. District Court of Appeals in Washington, D.C.

Cassell received bachelor's and law degrees from Stanford University and was admitted to the Pennsylvania bar in 1986 and the Utah bar in 1992.

He is the second University of Utah law professor to be nominated by Bush for a judgeship. Michael W. McConnell's nomination to the Denver-based 10th Circuit Court of Appeals is pending before the Senate Judiciary Committee.

National Review Online
June 20, 2001

Ready to Rumble

Byron York

In coming weeks, Democrats on the Senate Judiciary Committee plan to hold a series of hearings which they say will help clarify the issues involved in the judicial-confirmation process - and which Republicans believe will serve to establish a legal and political basis for rejecting George W. Bush's nominees for federal judgeships.

Next Tuesday, New York Democrat Charles Schumer, the new chairman of the Subcommittee on Administrative Oversight and the Courts, will hold a hearing entitled, "Should Ideology Matter? Judicial Nominations 2001." Next month, according to Senate sources, committee chairman Patrick Leahy will hold hearings to discuss the Rehnquist Court, federal jurisprudence, and conservative judicial activism.

Republicans believe the hearings will amount to a one-two punch against Bush's nominees. The Schumer session will establish that it is acceptable to oppose nominees solely on ideological grounds, and the Leahy hearing will suggest that Bush's nominees hold views that are dangerously out of touch with those of most Americans. The end result will be the conclusion that Democrats are justified in voting against the president's nominees, even if they seem well-qualified to hold office.

Democrats deny that there is any overarching strategy at work. "Basically, the senator wants to take a look at how we should view the process for confirming judges," says Schumer spokesman Bradley Tusk. "What role should ideology play? I think there's some confusion on how we should deal with the issue."

Nevertheless, the witness lists for the hearings are likely to be tilted in favor of the emerging Democratic consensus that senators can legitimately vote against judges on the basis of ideology alone. In the past, senators who disagreed with a nominee's judicial philosophy have often been forced to search for a disqualifying flaw on which they could base their opposition, while steadfastly maintaining that ideology had nothing to do with it.

For example, in the 1987 fight over the Supreme Court nomination of Robert Bork, wrote the Washington Post's E.J. Dionne in an influential recent column, "Liberals couldn't simply oppose Bork. To block him, they had to trash him." Now, Dionne continued, Democrats are "no longer shilly-shallying. They're saying, right from the start, that they'll oppose judicial nominees on philosophical grounds alone."

Republicans have gotten the message. "They're laying the groundwork," one GOP aide says of the Democrats' plans. "They're trying to paint all of our judges as right-wing extremists who are here to turn back the clock on civil rights. To be mainstream and moderate, therefore, they have to stop them."

Meanwhile, as Schumer and Leahy plan their hearings, the work of actually confirming the president's nominees has ground to a halt. No hearings have been scheduled for the confirmation of any of the nearly two-dozen nominees so far announced by the White House.

National Journal's Congress Daily

June 20, 2001

Organizing Talks Go On, But Daschle Readies For Showdown

Charlie Mitchell and Geoff Earle

Senate Majority Leader Daschle could bring up a new organizational resolution for the Senate as early as this week--a move that could allow committees to function normally, while putting an end to weeks of contentious negotiations. Nevertheless, Daschle and a team of GOP negotiators continued to exchange communications Tuesday--a sign that a chance remained for the two sides to broker a final deal and avoid a partisan fight on the Senate floor.

Daschle told reporters that he would bring up a resolution this week that reflects areas on which Republicans and Democrats can agree, while allowing Republicans to offer amendments to address their concerns about moving judicial nominees. But a team of GOP negotiators met in Minority Leader Lott's office Tuesday evening to prepare yet another Republican offer for Daschle.

"I think we're sending him something that will be worthy of consideration," said Sen. Pete Domenici, R-N.M. Said Sen. Phil Gramm, R-Texas; "The whole thing might be avoided. We might have an agreement." Gramm downplayed the idea of a GOP filibuster to block an organizing resolution.

Daschle addressed reporters after meeting with his Democratic colleagues to describe an earlier offer from the GOP negotiating team on the organizing resolution. He said the Democratic Caucus was "disappointed" in the GOP offer, adding, "My five Republican colleagues have chosen to terminate the negotiations."

Daschle said he had hoped to avoid a partisan floor fight over the organizing resolution. Nevertheless, allowing a vote on the GOP proposals would give Republicans something they had been seeking in talks with Daschle last week.

Daschle rejected GOP demands for a "guarantee" that judicial nominations would come to a vote, saying such an approach "undermines" the Senate.

"What they want is a 100-member Judiciary Committee, [and] we're not prepared to do that," Daschle said.

Other Democrats echoed that sentiment at the Tuesday meeting of their Caucus.

"I don't know of a self-respecting member of a committee who would tolerate bypassing their committee," said Sen. Christopher Dodd, D-Conn. Daschle said he had asked Lott to offer specific proposals on the two issues Republicans raised, and he expected Democrats had the votes to head off the GOP proposal. "My guess is it would be pretty much a party-line vote," said a Democratic aide.

Daschle said Democrats were willing to accept a GOP proposal to make public the "blue slip" process--by which a single senator can block action on a judicial nominee. He noted that Sen. Richard Durbin, D-Ill., proposed such a move in 1997, only to draw opposition from then-Judiciary Chairman Hatch.

"I just hope they would support this for future Congresses, not just this Congress," Daschle said

of Republicans. The Democratic aide said Republicans "made clear" that they would not filibuster the
organizing resolution if they received votes on their proposals. Dodd said if Republicans decided to hold up the Senate's business over the organizing resolution, "you open yourself up to looking terribly petty."

Another Democratic aide said preparations were under way for Majority Whip Reid to move into the choice office space now occupied by Minority Whip Nickles. Republicans and Democrats have said they generally agree on issues of staff, office space and a one-seat Democratic majority on committees, all of which are also in the organizing resolution.

The negotiations over Senate organization took place behind the scenes as Daschle struggled to bring managed care legislation to the floor despite GOP objections (see related article, page 12).

The Senate reached a unanimous consent agreement late Tuesday to schedule a vote on a motion to proceed to the bill Thursday morning. Daschle had indicated earlier in the day that he would file a cloture motion on the bill if a UC could not be reached. Daschle said it was important for the Senate to complete managed care legislation before the July Fourth recess, while also mentioning an FY01
defense supplemental appropriations bill--in order to leave the rest of July available to move appropriations bills.

Senate Republicans had objected to a Democratic motion to proceed to the patients' rights bill, and Daschle indicated he was prepared to file a cloture motion Tuesday that would lead to a cloture vote Thursday.

Amid signs of GOP foot-dragging, Daschle also threatened to cut into the precious July Fourth recess to complete action on the managed care bill. "I'll see you for the fireworks on the Fourth," Daschle told reporters. Republicans warned they were in no hurry to rush through that measure.

"Washington, D.C., is a very interesting place on July Fourth," said Nickles, who added, "Whether we're in for a couple of days [during the planned break] is irrelevant." But Nickles stressed that Republicans would do battle over the substance of the bill and had "no intention of filibustering this bill."

Still, Lott has not ruled out the possibility of a filibuster to block the measure. Republicans objected to a motion to proceed to the bill, on the grounds that they had not been given a chance to review changes made to the legislation last week.

Sen. Judd Gregg, R-N.H., said Daschle had been "a bit autocratic" in his decision to bring up the bill, adding, "I think we need a couple of days to talk about what the bill is."

Daschle laughed off GOP charges that the legislation had been secretly rewritten, saying he was bringing up the same bill listed on the Senate calendar.

Daschle and Reid stressed that the Senate would work through the July Fourth recess if

necessary to complete work on the patients' rights bill. But, under those circumstances, Daschle said the chamber would be off July Fourth for the day.

OP/EDS

The Washington Post
June 19, 2001

Picking Judges: Democrats Should Stand Their Ground
Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President Bush's judicial nominations has moved to center stage. Both sides already have staked out positions on the substantive question of what standards senators should use in evaluating Bush's picks for the federal bench.

Echoing the theme of Democrats when Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees (based on their credentials) regardless of ideology. Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject ideological "extremists."

Both responses are confused and inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. On the contrary, ideology is an inevitable part of a nominee's suitability for the federal bench.

For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting the record of nominees in order to cast them as extremists is both destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her own standard for how judges should interpret the Constitution and federal law. And every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong -- even if not extremist.

Our legal culture is riven into two factions. Basically, the "liberals" would preserve Roe v. Wade and affirmative action, support a rigorous separation of church and state, are skeptical of the death penalty, and believe that the Constitution vests broad power in the federal government even at the expense of states' rights. Legal "conservatives" hold diametrically opposite views.

As a candidate, Bush promised that adherence to the conservative side of this debate – the side

embodied by Justices Antonin Scalia and Clarence Thomas -- would be an essential qualification for nomination to the federal bench. As president, Bush has redeemed this promise.

Taking the advice of very conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for placement on those appellate courts (such as the 6th, 10th and D.C. circuits) that are closely divided between liberals and conservatives. On these battleground circuits, a single new judge might tip the political balance of an appellate court to the conservative side. Meanwhile, Bush carefully assigned his more moderate nominees to circuits that are so overwhelmingly liberal or conservative that the views of one new appointee will have little impact.

This clever strategy is not inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he will nominate judges who share a certain vision of the Constitution and the proper judicial role. American history is replete with examples of presidents seeking to perpetuate their legacies by filling the judiciary with like-minded judges.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation as a whole is evenly split between the liberal and conservative approaches to constitutional law. And it thus is incumbent on Senate Democrats to ensure that the federal courts -- the independent third branch of government -- reflect the nation's profound ambivalence.

This principle should apply to even the best of Bush's ideological nominees -- at the moment, Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which presides over federal cases in Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming).

McConnell's credentials are impressive. He has distinguished himself as a constitutional law scholar and has handled numerous important constitutional law cases. Those who know him, including liberals, say his temperament is suited to being a judge.

But from a Democratic perspective, McConnell is also profoundly wrong in his approach to the Constitution. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the Framers.

As was shown in the Bork hearings, this approach is irremediably flawed. Divining the Framers' intent is usually impossible (for one thing, the various Framers were rarely of one mind). Moreover, experience with Scalia, Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

On specific issues, although McConnell may not be on record opposing Roe v. Wade, his originalist approach is antithetical to Roe and makes his opposition a foregone conclusion. McConnell is very much on record, moreover, on another hot-button issue: An avowed fundamentalist Christian, he is arguably the legal world's leading advocate for lowering the wall of separation between church and state.

None of these views -- which many conservatives share -- makes McConnell an extremist. Indeed, McConnell is more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. And that is grounds enough for rejecting him.

In short, Democratic senators have the right -- and even a duty -- to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. But in the meantime, Democrats should honestly and without apology have the courage of their convictions. They should just say no. The writer is author of "Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court."

The New York Times
June 19, 2001

Doing Business in the Senate

Editorial

The organizing process undertaken by the Senate every two years usually occurs with little fuss. But with a newly constituted Senate now in Democratic control, what used to be a routine housekeeping chore has become a focus of partisan impasse. Republicans are demanding a ban on a parliamentary tactic employed in the past to block some judicial nominations, and they are seeking guarantees that all Supreme Court nominations will be brought to the Senate floor, even if they are rejected in committee. This is a case that can be resolved with some good will. Democrats should give in on one but not both the Republican requests.

The irony, not to say audacity, of the Republican demands is striking. For the six years that Republicans controlled the Senate, they routinely obstructed President Bill Clinton's judicial nominations, often refusing even to hold hearings or a vote in the Judiciary Committee. This page deplored such tactics, so the Democrats' pledge to hold hearings and votes in committee is most welcome. Another tactic used by the Republicans was the so-called "blue slip," in which a senator from the home state of a judicial nominee could anonymously block that nominee from being considered. Despite using that tactic in the past, Republicans are now demanding that any senator using the blue slip be identified. The demand is no doubt galling to Democrats, but they should nevertheless accept it.
Senators who block a nomination from their home state should have the courage to do so publicly.

A separate demand by the Republicans is less worthy of approval. They are asking for a change in Senate rules that would require any nomination for the Supreme Court to be sent to the full Senate even if it is rejected in committee. The fact is that, except for one historical oddity when there was a nomination for a seat that was not yet vacant, neither Republicans nor Democrats can find a case in which a Supreme Court nomination was not submitted to the full Senate. The nominations for Supreme Court of Robert Bork and Clarence Thomas were both voted on by the Senate, even though Mr. Bork was rejected by a majority in committee and Judge Thomas got a tie vote.

Tom Daschle, the Senate majority leader, has promised that the Democrats will give full and fair consideration to all judicial nominations. Citing the Bork and Thomas precedents, he has indicated that he fully expects Supreme Court nominations to be treated as in the past.

Senate rules have for many decades empowered committees to vet nominations and decide whether to approve them. Changing the rules now would undermine the power of the committee at just the time when its new chairman, Patrick Leahy of Vermont, has promised to process the nominations in an evenhanded, open fashion. The Republicans should take him at his word and not try to force an artificial arrangement just because they fear the Democrats will behave as badly as the Republicans did under President Clinton. Above all, Republicans should not be trying to block the Senate from proceeding with its business by demanding arbitrary new rules of the Democrats.

National Journal
June 20, 2001

Clinton Nominee Kent Markus: Judicial Nomination Delays Are Hurting The Country

Julie Samuels

As Democrats and Republicans work out a new power-sharing deal in the Senate, the issue of judicial nominees remains a major point of contention. With Democrats controlling the agenda, will President Bush's nominees even get confirmation hearings? Will the Republicans make committee assignments if they don't?

National Journal.com's Julie Samuels spoke with Kent Markus, former counselor to Clinton Attorney General Janet Reno and a onetime judicial nominee himself, about the process, the lack of judges on today's federal bench and how this might all play out in the Democratic-led Senate.

Q. Briefly walk me through the process of your nomination and the experience you had as an example of how the process works -- or maybe doesn't always work. Well, mine was a nomination for a federal appellate court, and I think already it's worth mentioning that the process is quite radically different for the appellate courts as compared with the district courts. Because the appellate court selections are primarily managed, controlled, decided by the White House and the Justice Department, mostly the White House, whereas the district court

appointments are pretty much decided by local officials in the state in which the opening exists, usually the United States senators....And so, because we were talking about an appellate court position, mine was mostly a conversation that was taking place among Washington folk. I learned -- through a friend -- that [Judge] Dave Nelson on the 6th Circuit had sent a letter in to the Justice Department indicating an intention some months later to take senior status. That triggered the whole discussion. This was in the mid- to late summer of 1999. The friend at Justice called and said, "You know, we've got this letter, are you interested in the seat?" And I said, "Yes, I'm very interested in the seat."

That began a process of trying to persuade various critical decision makers that I was the right person to be nominated for that seat. I think to the extent that anyone suggests that this is a process -- for any of these court positions -- that you get a call one day from some official calling you to public service because they've researched the backgrounds of all conceivable candidates and determined that you
are by far the most worthy isn't telling you the truth. I mean, I don't know anybody who's been involved in any of these conversations that doesn't engage, even though it may be sort of an awkward word to use in this context, in something resembling a campaign to obtain one of these appointments. I think people like to pretend it's substantially more gentile than that, but it isn't. So, I undertook efforts to have various people communicate simultaneously with both the White House and Justice Department and especially key decision makers there that I would be a good nominee for the spot. And these were all people that knew me. I had worked as Attorney General [Janet] Reno's counselor at the Justice Department -- the highest-ranking staff-adviser to the attorney general, so I knew almost everybody who was being communicated with, and yet it still was a process you have to go through to persuade them that, among other conceivable nominees, you're the right one.

At the same time, I was also trying to make sure that, because I had two United States senators from the opposite political party here in Ohio, that were I able to persuade the White House that this was the way to go, that the United States senators were not going to be opposed to my selection. And so there was a similar effort going with Senator [George] Voinovich and even more particularly Senator [Mike] DeWine, since he was senior senator from Ohio and on the Judiciary Committee....And then... nothing happened for a while. And then there was delay and delay and delay, and I would talk to friends who were involved in the weekly meetings at the White House -- "Did the seat come up for discussion this week?"; "No, we didn't get to it, we didn't talk about it"; "Oh, it got mentioned and so-and-so said they heard from so-and-so about you" -- and I sort of would get little bits and scraps and pieces and, you know, my reaction was, "Jeez, I'm peculiarly well-connected, as compared to many people going through this, and still, I can only get little bits and scraps and pieces of information about what's going on and is there really a delay for some substantial reason, that there's a concern about whether I'm the right nominee and they're looking at others, or is it just that other matters are taking a higher priority, or what's going on?"

Just as magically, at some point it finally breaks, and that took until about December. And it was in, if I recall, the third week of December that I finally got the call from the White House saying, "We intend to proceed with your nomination, assuming that everything's OK."

At that point you then begin a much more cumbersome process where you are provided an extraordinary set of forms and questionnaires -- one for the White House, one for the FBI, one for the Justice Department, one for the Senate and Judiciary Committee and one for the administrative office of the courts.... The moment they say "go," in terms of putting together the forms and submitting them, the hurry-up-and-wait process then becomes another hurry-up process because they then, once they've made the decision, want you to get everything in as quickly as you possibly can so that it can be scrutinized and a final determination can be made as to whether you are in fact going to be nominated or whether all these materials and background checks will reveal some problem....

So, you're going nuts trying to put all of this together and get it in. Simultaneously, as soon as you get it in, not only does it trigger the White House own internal evaluation of everything and the FBI check to make sure you're not a drug dealer or you're not beating your spouse or whatever, but that the [American Bar Association] check then began. And they have their own whole process, where they not only interview you, but they interviewed a wide range of people in your legal community and others about you and your integrity and your experience and your knowledge of the law and all those kind of things, for their rating process.... So, you go through with that whole process -- and that all went on from about the third week in December -- in what in this context was considered very speedy – to a nomination on February 9....

From that point, the goal was obviously to seek and obtain a hearing and get a positive confirmation vote and then get a vote of the full Senate with respect to confirmation. One of the critical intermediary steps to be getting such a hearing was, and to this day still remains much in the news, the blue slips returned from your two home-state senators.

I had two Republican senators, and the White House had expressed some skepticism about whether I was going to be able to get two blue slips returned, and I think, in the end, I was the only court of appeals nominee in the country who had blue slips returned by two home-state Republican senators, both saying: "We have no objection to this nominee. You can go ahead and hold hearings if you chose to." But, again, that took time and persuasion and encouragement and there were editorials in the newspapers across the state encouraging the senators to not let this position remain open... and finally Senators Voinovich and DeWine both returned their blue slips to [then Senate Judiciary Committee] Chairman [Orrin] Hatch, [R-Utah], which was yet another critical hurdle covered.... Then it was a whole lobbying process of -- in the election year and in the context in which there was clearly a desire by many to simply say: " Look, we're just not going to confirm people this year, especially court of appeals nominees. Let's hold these seats open, see if we win the White House, and if we do, we get to fill those seats rather than the other guys."

And, in the end, that's exactly what happened to me and lots and lots of other people, and it wasn't even -- I think, to my knowledge -- anything that was focused on any substantial way on me personally. It was just a relatively across-the-board decision among the majority in the Senate... and the strategy paid off.

Q. What do you think about the blue-slip process? A. I don't think it's a good process, and I am one of the people who was not a victim of it. There were others like me who were awaiting

confirmation hearings, [and] that was the hurdle they couldn't get across.... I actually had hoped, and the White House had hoped, that being in the somewhat extraordinary position of having two Republican senators return blue slips for a Democratic nominee, might have been enough to break through. And it even might have been something that Hatch could have used as an excuse to say, "Look, I'm not a terrible bad guy, here's a guy who got blue slips returned by his two Republican senators and we moved and proceeded to a hearing on him." That still didn't do it for me.

Even though I wasn't the victim of the process, at least at that point, I just think that it's an inappropriate prerogative, and that's all it is. It's a prerogative that's afforded the individual senators, and I think that I'd rather have... a more deliberative process where we look at candidates, we make a decision, and vote them up or down. I think the big unfortunate part is I think the reason there's such a reluctance to give up that prerogative is that it's substantially politically easier to simply to have nothing happen than to vote against.

Q. It sounded like the longest delay you faced was from the end of September to December. I was curious as to where you think these delays tend to come from.
A. I think they come from everywhere. I think they come -- in terms of the White House decision making -- I do think they come primarily from a combination of managing competing objectives and competing interests and competing candidates and all of that playing out in the decision making. And the general state of affairs that I experienced at high levels of the Justice Department and that I saw at high levels of the White House is you never have time to do all the things you're supposed to be doing.

And so even things that are objectively reasonably important matters suddenly become not terribly important compared to other things that are much more important.... I think when you combine that bureaucratic aspect to it with the political aspect of having to decide among competing candidates, those combine in a nefarious way to result in a delay...

Q. In a broader sense, how do you think the process changed after the 1987 Robert Bork hearings, if it did change at all?

A. I think in general that was a contributor to a sense of a need for tit-for-tat paybacks for actual and perceived slights by both parties. I think it's actually consistent with changes in the Congress that have absolutely nothing to do with nominations. My perception, throughout the '90s, is that Congress became a substantially less civil place, that there was substantially less accommodation that took place among members.... It became a substantially more partisan place. It became a meaner place. I think that was just one aspect and one manifestation of it that had an impact, particularly on nominees.

Q. Do you personally think that a nominee who might be seen as too idealistic is qualified to sit on a federal bench?

A. Depends on what you mean by "too idealistic." ... I think quite clearly being idealistic alone is not disqualifying. I think the critical question in addition to standard qualifying questions... is "What is

your view of the role of a judge?" You can be as ideological as you want to be if you don't have any intent or desire to try to foist your own ideological perspective upon the system through your position as a judge. That is, whatever your privately-held views are, so what? -- if you don't seek to impose those views from the bench.... I am not particularly enamored with judges who substantially invade the purview of the legislative branch, and that's something that is loosely referred to as being activist. Unfortunately, I think that term has become very politically charged and one of those terms that's come to mean whatever anybody wants it to mean. But, I think historically, I think it's how much restraint the judge demonstrates vis-à-vis the operations of the other branches, and I think that I'm very uncomfortable with the amount of activism -- with the amount of invasion of the legislative and executive branches -- we're seeing on the judiciary right now.... If someone is highly ideological but also has a very limited and constricted view of the role of judge, I don't have a problem with that person. I have a problem with them if they are highly ideological, and they're on a mission to effectuate that ideology once they get on the bench.

Q. As far as ABA ratings go, I'd like to talk about those for a second because, especially since the power switch -- when Bush first came into office, he said "we aren't going to use them," and then the Democrats came into the majority, and they said, "well, now we are..."

A. And I think even before the power switch the Democrats had said, "you may not be going to use them, but we still want them...." And they had made pretty clear that they were going to wait for an ABA recommendation before they were going to be willing to schedule hearings with regards to candidates who had been nominated. So that, even before the power switch, the effect would have been that the White House would not have had the advantage of information about the ABA's views and ratings before finalizing the nomination decision. They would have finalized their nomination decision and then learned about what the ABA's view is, which I thought was a little risky on their behalf.

That's if they cared one wit about what the ABA said, which apparently they didn't. And so, I think that this power switch has only heightened that a little bit more, which has given Democrats the ability to say: "Look, we really mean that. We're not proceeding with the nominations until we know what the ABA says. And now we control the committee schedule, and we're going to wait for that."

Q. So the role that they're going to play has not changed?

A. I think it's only changed in... timing. It no longer is being used as an element of the White House decision making as to whether to proceed with a contemplated nomination. Instead, the recommendation will come out after the White House decides to make a nomination and will be used primarily in the context of making confirmation decisions.

Q. Right now, there's more than 100 judicial vacancies in the federal court system, which is the most since 1997. How serious of a problem is that?

A. There's a serious problem with respect to the delay, and, in the most cliché of ways, you really have a "justice delayed is justice denied" phenomenon going on. Even while my

nomination was pending for the 6th Circuit, and that's now eight, nine months ago when I was involved with these conversations still, the 6th Circuit was a great example. It had become because of the number of vacancies that
existed then, the slowest circuit in the country -- the time of argument to the time of decision, with cases averaging in excess of two years to get a decision out of the appeals court. That's crazy. And since that time, there are additional vacancies on the 6th Circuit.

So the suggestions that we can stand to have continuing delays in the fillings of these positions I think is wrong. And I think that the Democrats on the Judiciary Committee are in an awkward position.... They might like to engage in more tit-for-tat; they're angry about what was done to some of the nominees in the Clinton administration. They also full-well recognize that it is just not good for the country and for the system to continue to delay in filling these positions.

Q. As far as the power shift goes, how do you see that affecting the nominating process?

A. I think it's undeniable that it's going to slow it down. I hope that it does not go to a stall, a delay, a blockage. Again, I just think that's wrong. And maybe I'm more acutely cognizant of that having been a victim of that, but I just think it's not good for the court, it's not good for the country, it's not good for litigants, it's not good for the Congress -- it makes them look bad -- and it's terribly, terribly unfair
to the nominees....

Q. Do you think it will change the nominees that come out of the White House?

A. I think it will. [Rep.] Chris Cox, [R-Calif., who recently withdrew his name from consideration] is already an example of that. I think there was a recognition that while [Republicans] controlled the committee, they have an ability to push a little harder with respect to getting people through. Look at the Ted Olson [for solicitor general] vote -- there was a lot of reluctance and grumbling, but it went
through, and Ted was confirmed. I think that's a different dynamic now.... When the Republicans controlled the committee, they could make Democrats vote against nominees. When the Democrats are controlling the committee, they can make it so they don't have to vote against the nominees because they can make it so the nominee never comes up for a vote.

Q. How do you see the power shift changing potential Supreme Court justice nominees, should there be any?

A. Same way.... More ability on the Democrats to insist on a more moderate nominee, more ability to insist on whatever a time they need to be adequate for scrutiny. I mean, it's an agenda-controlling power, and that process impact has a substance impact.

Q. Do you expect to see a similar situation at the end of a Bush term, or a Bush administration? Do you expect to see nominees left hanging, as you were?

A. I think there will be nominees left hanging at the end of every administration. And there have been, if you look historically, some number of nominees left hanging at the end of every

administration. I think the thing that was discouraging and problematic about 2000 was that the slow-down in confirming nominees began much, much earlier than it ever had historically and the sort of line-in-the-sand decision by the majority at that time, that no more, especially no more appellate court nominees, were going to get through, came much earlier.... So that it was more and earlier and the thing I worry about -- and I worry about the Democrats doing it, too -- is saying, "fine, you did it more and earlier, we'll do it even more and even more earlier." We start slowing down after the first year in the administration? You know, the president's president for four years, and while I recognize that inevitably you are going to have political things that are going to result in some nominees being left hanging, especially those nominated late, very late, in the administration, a few months left, I actually think that President Bush's suggestion during the campaign was a pretty good one if it could be done as a practical matter. That unless there's a specific, individual reason not to do so, every nominee ought to have a hearing and a vote within 60 days.

Q. What do you think could be done to expedite the process?

A. At the nomination stage, there's cautiousness on the part of the White House as the nominating entity to do everything they can to avoid political embarrassment from nominating somebody who has some stain on their background, and they want to avoid that by finding out everything they possibly can about that nominee in advance, so that if there is something there they don't like, they can decide, "well then, we're not going to nominate that person." But that causes extraordinary delay and is highly intrusive sort of well beyond what I think anybody would think was rational or normal. And it's all about political defense on the part of the nominating entity. And the same thing that goes on with respect to the confirmation process is that -- and that's more I think on political offense -- people are attacked and are charicaturized and defined in very simplistic terms because that's politically convenient to do and may appeal to interest groups and others in a way that is terribly unfair and dangerous to nominees...

Q. Is there anything else you'd like to discuss?

A. I went back... and I pulled a column that I had read from the Washington Post on April 1 -- I think it was intended as an April Fool's Day column. Because there was a line in it that I remembered... where the guy writing the story says: "The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency." And I remember, when I read it originally, I went, "Yeah, that's right."

Newsday (New York, NY)
June 21, 2001

Democrats Must Demand Fair Split Among Judges

Edward Lazarus

With the power shift on Capitol Hill, the issue of how the Senate should approach President George W. Bush's judicial nominations takes center stage. Both parties have staked out positions on the question of what standards senators should use in evaluating Bush's picks for the federal bench. Echoing the theme of Democrats when former President Bill Clinton's nominees were pending, Republicans now argue that the Senate should confirm all "qualified" nominees regardless of ideology.

Meanwhile, Democrats, borrowing the GOP tune of the past eight years, respond that the Senate has an obligation to reject "extremists." Both responses are inadequate. The GOP approach is wrongheaded, because a judicial nominee's ideology cannot be separated from his qualifications. Ideology is an inevitable part of a nominee's suitability for the federal bench. For their part, the Democrats are wrong to suggest that ideologically conservative nominees are "extremist." Generally speaking, Bush's nominees, even the very conservative ones, are mainstream participants in the contemporary debate over how judges should interpret the Constitution.

Twisting nominees' records to cast them as extremists is destructive and unnecessary. Every senator, Democrat and Republican alike, has a duty to assess a nominee's judicial values and methods against his or her standard for how judges should interpret the Constitution and federal law. Every senator has the right to reject a nominee for the simple reason that the senator believes the nominee's approach to legal issues to be importantly wrong-even if not extremist. Our legal culture has two factions. Basically, the "liberals" would support nominees who would preserve Roe vs. Wade and affirmative action, support a rigorous separation of church and state, be skeptical of the death penalty and believe the Constitution vests broad power in the federal government even at the expense of states' rights.

Legal "conservatives" hold diametrically opposite views. As a candidate, Bush promised that adherence to the conservative side of this debate-the side embodied by Justices Antonin Scalia and Clarence Thomas-would be an essential qualification for nomination to the federal bench. Taking the advice of conservative advisers, Bush has selected a core group of highly credentialed, conservative ideologues for appellate courts (such as the Sixth, 10th and D.C. circuits) that are closely divided between liberals and conservatives.

On these battleground circuits, a single new judge might tip the balance to the conservative side. Meanwhile, Bush assigned moderate nominees to circuits so overwhelmingly liberal or conservative that the views of one new appointee will have little impact. This strategy isn't inappropriate. In presidential elections, voters choose one candidate over another in part because they believe he'll nominate judges who share a vision of the Constitution and the proper judicial role.

By the same token, however, Democratic senators owe a duty to their constituents to refuse confirmation on the same overtly ideological grounds. If our divided government is any measure, the nation is evenly split between the liberal and conservative approaches to constitutional law. It thus is incumbent on Senate Democrats to ensure that the federal courts-the

independent third branch of government-reflect the nation's ambivalence. This principle should apply even to the best of Bush's ideological nominees: Michael McConnell, Bush's selection for the U.S. Court of Appeals for the 10th Circuit (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming). McConnell has distinguished himself as a constitutional scholar and has handled important constitutional-law cases. Those who know him, including liberals, say his temperament is suited to the job.

From a Democratic perspective, however, McConnell is profoundly wrong in his approach. First, he is (like Robert Bork) an adherent of the school of constitutional thought that asserts judges should interpret the Constitution according to the "original intent" of the framers. As shown in the Bork hearings, this approach is irremediably flawed. Divining the framers' intent is usually impossible (for one thing, the various framers were rarely of one mind). Moreover,
experience with Antonin Scalia, Clarence Thomas and other originalist practitioners shows that their search for original intent is little more than a cloak conservative judges use to dress up their value-laden decisions in the neutral garb of historical inquiry.

Although McConnell may not be on record opposing Roe vs. Wade, his originalist approach makes his opposition a foregone conclusion. In addition, as an avowed fundamentalist Christian, he's arguably the legal world's leading advocate for lowering the wall between church and state. None of these views makes McConnell an extremist. He's more moderate than most conservatives on some issues. At bottom, though, McConnell follows a deeply troubled methodology to reach deeply troubling conclusions. That's grounds enough for rejecting him.

Democratic senators have the right-and even a duty-to force the administration into a compromise on judicial nominations so that the federal courts, now evenly balanced, will continue to reflect the close division in the electorate at large. Such a compromise might involve jointly identifying judicial moderates (a rare breed) or taking turns in choosing judges for the battleground circuit courts. In the meantime, Democrats should honestly and without apology have the courage of their convictions.

INTEREST GROUPS/PRESS RELEASES

The Columbus Dispatch
June 20, 2001

Sutton is Not The Saint Portrayed in 'Dispatch'

Andrew J. Imparato, President, American Association of People With Disabilities

Regarding the May 26 Dispatch editorial "Injustice," criticizing the " vexing problem" of disability advocates taking to the streets of Columbus to publicize their opposition to President Bush's nomination of former Ohio solicitor Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals, I would encourage the newspaper to consider the facts:

Sutton has been the lead attorney in a series of cases that have limited the ability of individuals to assert their civil rights in federal court.

He has not been simply a lawyer representing a client in one unpopular case, as the editorial suggested. Rather, he aggressively has pursued a prominent national role as the champion of a vocal and powerful minority of far-right legal theorists. Sutton and his allies have had increasing success in revisiting a states'-rights debate that the majority of Americans thought was decided during the Civil War and reinforced during the civil- rights struggles of the 1950s and 1960s.

Disability advocates and our allies have not sought to prevent Sutton from receiving a fair hearing before the Senate Judiciary Committee. Instead, we have sought to educate the senators and their constituents about Sutton's record.

Our ability to assert and enforce our civil rights is not simply "our favorite issue," as The Dispatch asserted.

For us, strong disability-rights enforcement is a matter of life with dignity and equal opportunity.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 6/22/2001 7:00:14 AM
Subject: : Cool White House stuff

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-JUN-2001 11:00:14.00
SUBJECT:: Cool White House stuff
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READ:UNKNOWN
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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Sent: 6/22/2001 8:42:46 AM

Subject: : Preview and Critique the new WH website - (share with your office)

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you have comments please get them to her ASAP.
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Thanks!

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 06/22/2001 12:41 PM ----------

Tucker A. Eskew
06/19/2001 04:21:05 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Preview and Critique the new WH website - (share with your office)

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As a participant in the web team, the Office of Media Affairs has organized an internal review process and a media plan for the rollout.

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- Ease of use
- Layout
- Design
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- Grammar/spelling

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Thanks,

Tucker

P.S. The members of the web team are listed below, fyi:

Marcus Mollmann Office of the Chief of Staff
Jimmy Orr Office of Media Affairs
Neil Zimmerman Office of Strategic Initiatives
Jane Cook Student Correspondence
Prescott Caballero Volunteer
Mike Lingenfelter Information Services & Technology
John Hunter White House Military Office
Phil Larsen Office of Administration
Barry Jackson Office of Strategic Initiatives
Michael Shannon Office of Strategic Initiatives
Monty Haymes Information Services & Technology
Wendy Nipper Office of Media Affairs
Tucker Eskew Office of Media Affairs

Message Sent
To:_____
Andrew H. Card/WHO/EOP@EOP
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Andrea G. Ball/WHO/EOP@EOP
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Janet P. Walker/OPD/EOP@EOP
Wendy L. Nipper/WHO/EOP@EOP
Christopher J. Orr/WHO/EOP@EOP

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P.S. The members of the web team are listed below, fyi:

Marcus Mollmann Office of the Chief of Staff
Jimmy Orr Office of Media Affairs
Neil Zimmerman Office of Strategic Initiatives
Jane Cook Student Correspondence
Prescott Caballero Volunteer
Mike Lingenfelter Information Services & Technology
John Hunter White House Military Office
Phil Larsen Office of Administration
Barry Jackson Office of Strategic Initiatives
Michael Shannon Office of Strategic Initiatives
Monty Haymes Information Services & Technology
Wendy Nipper Office of Media Affairs
Tucker Eskew Office of Media Affairs

Message Sent
To:_____
Andrew H. Card/WHO/EOP@EOP
Joseph W. Hagin/WHO/EOP@EOP
Linda M. Gambatesa/WHO/EOP@EOP
Scott N. Sforza/WHO/EOP@EOP
James R. Wilkinson/WHO/EOP@EOP
Michael J. Gerson/WHO/EOP@EOP
Lawrence A. Fleischer/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Nicholas E. Calio/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Barry S. Jackson/WHO/EOP@EOP
Kenneth B. Mehlman/WHO/EOP@EOP
Lezlee J. Westine/WHO/EOP@EOP
Harriet Miers/WHO/EOP@EOP
Deborah K. Hair/WHO/EOP@EOP
Mark V. Rosenker/WHO/EOP@EOP
Anita B. McBride/WHO/EOP@EOP
Phillip Larsen/OA/EOP@EOP
Christa Moyle/OA/EOP@EOP
Brian D. Montgomery/WHO/EOP@EOP
Bradley A. Blakeman/WHO/EOP@EOP
Claire M. O'Donnell/OVP/EOP@EOP
Margita N. Thompson/OVP/EOP@EOP
John W. Howard/WHO/EOP@EOP
Stephen J. Hadley/NSC/EOP@EOP
Mitchell Daniels/OMB/EOP@EOP
Margaret M. LaMontagne/OPD/EOP@EOP
Lawrence B. Lindsey/OPD/EOP@EOP
Richard M. Russell/OSTP/EOP@EOP
Annabelle J. Romero/WHO/EOP@EOP
Andrea G. Ball/WHO/EOP@EOP
G. Timothy Saunders/WHO/EOP@EOP
Clay Johnson III/WHO/EOP@EOP

Message Copied
To:_____
Carol J. Thompson/WHO/EOP@EOP
Colleen Litkenhaus/WHO/EOP@EOP
Krista L. Ritacco/WHO/EOP@EOP
Vickie A. McQuade/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Virginia T. Gregory/WHO/EOP@EOP
Cynthia R. Mendl/WHO/EOP@EOP
Lorraine Nisbet/WHO/EOP@EOP
Katherine G. Marinis/WHO/EOP@EOP
Kathryn J. Hayes/WHO/EOP@EOP
Carrie C. Pauska/WHO/EOP@EOP
Karen E. Keller/OMB/EOP@EOP
Sarah Pfeifer/OPD/EOP@EOP
Janet P. Walker/OPD/EOP@EOP
Wendy L. Nipper/WHO/EOP@EOP
Christopher J. Orr/WHO/EOP@EOP

From: CN=A. Morgan Middlemas/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 6/22/2001 9:15:35 AM

Subject: : Military Death Penalty

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-JUN-2001 13:15:35.00
SUBJECT:: Military Death Penalty
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Who is responsible for this issue?
```

From: CN=A. Morgan Middlemas/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 6/22/2001 9:15:35 AM

Subject: : Military Death Penalty

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-JUN-2001 13:15:35.00
SUBJECT:: Military Death Penalty
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Who is responsible for this issue?
```

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>
Sent: 6/22/2001 10:17:02 AM
Subject: : Re: Military Death Penalty

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-JUN-2001 14:17:02.00
SUBJECT:: Re: Military Death Penalty
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:a. morgan middlemas ( CN=a. morgan middlemas/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:lori l. lorenzi ( CN=lori l. lorenzi/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Probably me, although we haven't dealt yet with the military in
particular.
```

A. Morgan Middlemas
06/22/2001 01:15:25 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Military Death Penalty

Who is responsible for this issue?

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
A. Morgan Middlemas/WHO/EOP@EOP
Lori L. Lorenzi/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Receipt Notification Requested) (IPM Return Requested) ('Matthew_E._Smith@who.eop.gov' (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN] <'Matthew_E._Smith@who.eop.gov'>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: Martinson, Wanda S <Wanda.S.Martinson@usdoj.gov>;Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>
Sent: 6/25/2001 4:21:28 AM
Subject: : Confirmation Working Group Meeting Today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:25-JUN-2001 08:21:28.00
SUBJECT:: Confirmation Working Group Meeting Today
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
```

READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:'Matthew_E._Smith@who.eop.gov' (Receipt Notification Requested) (IPM Return Requested) (
'Matthew_E._Smith@who.eop.gov' (Receipt Notification Requested) (IPM Return Requested) [
UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:"Martinson, Wanda S" <Wanda.S.Martinson@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ("Martinson, Wanda S" <Wanda.S.Martinson@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ("Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Just a reminder that the confirmation working group will meet today at
4pm, in the Associate Attorney General's conference room at DOJ (Room
4627). On the agenda, in addition to the current list of high-priority
candidates, is tomorrow's subcommittee hearing on "the role of ideology in
the judicial selection process."

Jennifer

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Receipt Notification Requested) (IPM Return Requested) ('Matthew_E._Smith@who.eop.gov' (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN] <'Matthew_E._Smith@who.eop.gov'>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: Martinson, Wanda S <Wanda.S.Martinson@usdoj.gov>;Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>
Sent: 6/25/2001 4:21:45 AM
Subject: : Confirmation Working Group Meeting Today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:25-JUN-2001 08:21:45.00
SUBJECT:: Confirmation Working Group Meeting Today
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
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(IPM Return Requested) [ UNKNOWN ] )
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TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM
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TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
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Notification Requested) (IPM Return Requested) [UNKNOWN])
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CC:"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM
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End Original ARMS Header

Just a reminder that the confirmation working group will meet today at
4pm, in the Associate Attorney General's conference room at DOJ (Room
4627). On the agenda, in addition to the current list of high-priority
candidates, is tomorrow's subcommittee hearing on "the role of ideology in
the judicial selection process."

Jennifer

From: CN=John R. Wood/OU=OA/O=EOP [OA]

To: Jodey Arrington/WHO/EOP@EOP [WHO] <Jodey Arrington>;Jeannette H. Balkum/WHO /EOP@EOP [WHO] <Jeannette H. Balkum>;Michelle N. Brawer/WHO/EOP@EOP [WHO] <Michelle N. Brawer>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Charlene E. Fern/WHO/EOP@EOP [WHO] <Charlene E. Fern>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Nancy G. Hansen/WHO/EOP@EOP [WHO] <Nancy G. Hansen>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Priscilla J. Jones/WHO/EOP@EOP [WHO] <Priscilla J. Jones>;Chad M. Kolton/WHO/EOP@EOP [WHO] <Chad M. Kolton>;Julie A. Lapeyre/WHO/EOP@EOP [WHO] <Julie A. Lapeyre>;Paul L. Morse/WHO/EOP@EOP [WHO] <Paul L. Morse>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Lorraine Nisbet/WHO/EOP@EOP [WHO] <Lorraine Nisbet>;Kendall B. Oliphant/ONDCP/EOP@EOP [ONDCP] <Kendall B. Oliphant>;Michelle K. Pannor/OMB /EOP@EOP [OMB] <Michelle K. Pannor>;DeVere R. Patton/OA/EOP@EOP [OA] <DeVere R. Patton>;Janet M. Philips/WHO/EOP@EOP [WHO] <Janet M. Philips>;Kasey S. Pipes/WHO /EOP@EOP [WHO] <Kasey S. Pipes>;Ashley E. Plaxico/WHO/EOP@EOP [WHO] <Ashley E. Plaxico>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;David T. Redlin/WHO /EOP@EOP [WHO] <David T. Redlin>;Mary M. Rose/WHO/EOP@EOP [WHO] <Mary M. Rose>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael Shannon>;Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>;Neil H. Zimmerman/WHO /EOP@EOP [WHO] <Neil H. Zimmerman>;Brooks D. Altshuler/WHO/EOP@EOP [WHO] <Brooks D. Altshuler>;James C. Anderson/WHO/EOP@EOP [WHO] <James C. Anderson>;Leandro A. Aragoncillo/OVP/EOP@EOP [OVP] <Leandro A. Aragoncillo>;Steven A. Atkiss/WHO/EOP@EOP [WHO] <Steven A. Atkiss>;James Babbitt/OVP/EOP@EOP [OVP] <James Babbitt>;Lowell Baker/WHO/EOP@EOP [WHO] <Lowell Baker>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Danner R. Bethel/WHO /EOP@EOP [WHO] <Danner R. Bethel>;Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Christopher J. Bolan/OVP /EOP@EOP [OVP] <Christopher J. Bolan>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;James Carroll/WHO/EOP@EOP [WHO] <James Carroll>;Carrie W. Click/WHO/EOP@EOP [WHO] <Carrie W. Click>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Lisa T. Cummins/WHO/EOP@EOP [WHO] <Lisa T. Cummins>;Bradford D. Dayspring/WHO /EOP@EOP [WHO] <Bradford D. Dayspring>;John J. DiIulio/WHO/EOP@EOP [WHO] <John J. DiIulio>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;John D. Estes/WHO/EOP@EOP [WHO] <John D. Estes>;Robert J. Fagan/WHO/EOP@EOP [WHO] <Robert J. Fagan>;Daniel D. Faoro/OA /EOP@EOP [OA] <Daniel D. Faoro>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Angela I. Fritz/WHO /EOP@EOP [WHO] <Angela I. Fritz>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jeffrey J. Grieco/WHO/EOP@EOP [WHO] <Jeffrey J. Grieco>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Eric Hagans/WHO/EOP@EOP [WHO] <Eric Hagans>;Tobin K. Harvey/WHO/EOP@EOP [WHO] <Tobin K. Harvey>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;Bradley E. Hester/WHO/EOP@EOP [WHO] <Bradley E. Hester>;Steedman Hinckley/OVP/EOP@EOP [OVP] <Steedman Hinckley>;Anne M. Hughes/WHO/EOP@EOP [WHO] <Anne M. Hughes>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Jeffrey T. Jezierski/WHO/EOP@EOP [WHO] <Jeffrey T. Jezierski>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Suhail A. Khan/WHO/EOP@EOP [WHO] <Suhail A. Khan>;Sharon B. Kotok/WHO/EOP@EOP [WHO] <Sharon B. Kotok>;Phillip Larsen/OA /EOP@EOP [OA] <Phillip Larsen>;Stephanie E. Linder/WHO/EOP@EOP [WHO] <Stephanie E. Linder>;Katie Loovis/WHO/EOP@EOP [WHO] <Katie Loovis>;Lori L. Lorenzi/WHO /EOP@EOP [WHO] <Lori L. Lorenzi>;William J. Luti/OVP/EOP@EOP [OVP] <William J. Luti>;Paula R. Lynch/WHO/EOP@EOP [WHO] <Paula R. Lynch>;David H. McArthur/WHO /EOP@EOP [WHO] <David H. McArthur>;Anita B. McBride/WHO/EOP@EOP [WHO] <Anita

B. McBride>;Ellen W. McCathran/WHO/EOP@EOP [WHO] <Ellen W. McCathran>;Benjamin A. Miller/OVP/EOP@EOP [OVP] <Benjamin A. Miller>;Helen R. Mobley/WHO/EOP@EOP [WHO] <Helen R. Mobley>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Amanda L. Moore/WHO/EOP@EOP [WHO] <Amanda L. Moore>;Christa Moyle/OA/EOP@EOP [OA] <Christa Moyle>;Carolyn Nelson/WHO/EOP@EOP [WHO] <Carolyn Nelson>;Gian-Carlo A. Peressutti/WHO/EOP@EOP [WHO] <Gian-Carlo A. Peressutti>;Matthew C. Rhoades/WHO/EOP@EOP [WHO] <Matthew C. Rhoades>;Annabelle J. Romero/WHO/EOP@EOP [WHO] <Annabelle J. Romero>;Nathaniel C. Ryun/WHO /EOP@EOP [WHO] <Nathaniel C. Ryun>;Angela R. Sailor/WHO/EOP@EOP [WHO] <Angela R. Sailor>;Michael A. Sanders/WHO/EOP@EOP [WHO] <Michael A. Sanders>;Marilyn L. Scott-Perez/NSC/EOP@EOP [NSC] <Marilyn L. Scott-Perez>;Alexis Sherman/WHO /EOP@EOP [WHO] <Alexis Sherman>;Leslie A. Shockley/WHO/EOP@EOP [WHO] <Leslie A. Shockley>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Karen Starr/OVP/EOP@EOP [OVP] <Karen Starr>;Gretchen P. Steen/WHO/EOP@EOP [WHO] <Gretchen P. Steen>;Daniel W. Sutherland/WHO/EOP@EOP [WHO] <Daniel W. Sutherland>;Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H. Tennery>;Meredith A. Terpeluk/WHO/EOP@EOP [WHO] <Meredith A. Terpeluk>;Travis Thomas/WHO/EOP@EOP [WHO] <Travis Thomas>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Rebekah Tosado/WHO/EOP@EOP [WHO] <Rebekah Tosado>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Charity N. Wallace/WHO/EOP@EOP [WHO] <Charity N. Wallace>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L. West>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Don R. Willett/WHO /EOP@EOP [WHO] <Don R. Willett>;Joseph R. Wood/OVP/EOP@EOP [OVP] <Joseph R. Wood>;Joan M. Work/WHO/EOP@EOP [WHO] <Joan M. Work>;Stephen J. Yates/OVP /EOP@EOP [OVP] <Stephen J. Yates>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;Thomas A. Bezas/WHO/EOP@EOP [WHO] <Thomas A. Bezas>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;Jose L. Delgado/OVP/EOP@EOP [OVP] <Jose L. Delgado>;Guy R. Kirby/WHO/EOP@EOP [WHO] <Guy R. Kirby>;Benjamin C. Krueger/WHO/EOP@EOP [WHO] <Benjamin C. Krueger>;Anthony Pereira/OA/EOP@EOP [OA] <Anthony Pereira>;Jose G. Suarez/WHO/EOP@EOP [WHO] <Jose G. Suarez>;Erin A. Vargo/OPD/EOP@EOP [OPD] <Erin A. Vargo>

Sent: 6/25/2001 4:49:07 AM

Subject: : SMS Client Upgrade

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CREATION DATE/TIME:25-JUN-2001 08:49:07.00
SUBJECT:: SMS Client Upgrade
TO:Jodey Arrington ( CN=Jodey Arrington/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jeannette H. Balkum ( CN=Jeannette H. Balkum/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Julie A. Lapeyre ( CN=Julie A. Lapeyre/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Nathaniel C. Ryun (CN=Nathaniel C. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael A. Sanders (CN=Michael A. Sanders/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marilyn L. Scott-Perez (CN=Marilyn L. Scott-Perez/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Alexis Sherman (CN=Alexis Sherman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Leslie A. Shockley (CN=Leslie A. Shockley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karen Starr (CN=Karen Starr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel W. Sutherland (CN=Daniel W. Sutherland/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Travis Thomas (CN=Travis Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rebekah Tosado (CN=Rebekah Tosado/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charity N. Wallace (CN=Charity N. Wallace/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph R. Wood (CN=Joseph R. Wood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Joan M. Work (CN=Joan M. Work/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Thomas A. Bezas (CN=Thomas A. Bezas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Guy R. Kirby (CN=Guy R. Kirby/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin C. Krueger (CN=Benjamin C. Krueger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony Pereira (CN=Anthony Pereira/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Jose G. Suarez (CN=Jose G. Suarez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin A. Vargo (CN=Erin A. Vargo/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

The SMS client software on your computer will be upgraded tonight from version 1.2 to version 2.0. The SMS client software is what allows new programs to be sent to you via the network. In order for the upgrade to take place, it is necessary that your computer be restarted. To accomplish this, please do the following, when you leave for the day.

1) Close all your programs
2) Click once on start at the lower left corner of your screen
3) Click once on shutdown (the shutdown windows screen should appear)
4) Click once on the circle next to "restart the computer?"
5) Click once on yes
6) You can now leave the computer

Thank You,
John

From: CN=John R. Wood/OU=OA/O=EOP [OA]

To: Jodey Arrington/WHO/EOP@EOP [WHO] <Jodey Arrington>;Jeannette H. Balkum/WHO /EOP@EOP [WHO] <Jeannette H. Balkum>;Michelle N. Brawer/WHO/EOP@EOP [WHO] <Michelle N. Brawer>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Charlene E. Fern/WHO/EOP@EOP [WHO] <Charlene E. Fern>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Nancy G. Hansen/WHO/EOP@EOP [WHO] <Nancy G. Hansen>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Priscilla J. Jones/WHO/EOP@EOP [WHO] <Priscilla J. Jones>;Chad M. Kolton/WHO/EOP@EOP [WHO] <Chad M. Kolton>;Julie A. Lapeyre/WHO/EOP@EOP [WHO] <Julie A. Lapeyre>;Paul L. Morse/WHO/EOP@EOP [WHO] <Paul L. Morse>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Lorraine Nisbet/WHO/EOP@EOP [WHO] <Lorraine Nisbet>;Kendall B. Oliphant/ONDCP/EOP@EOP [ONDCP] <Kendall B. Oliphant>;Michelle K. Pannor/OMB /EOP@EOP [OMB] <Michelle K. Pannor>;DeVere R. Patton/OA/EOP@EOP [OA] <DeVere R. Patton>;Janet M. Philips/WHO/EOP@EOP [WHO] <Janet M. Philips>;Kasey S. Pipes/WHO /EOP@EOP [WHO] <Kasey S. Pipes>;Ashley E. Plaxico/WHO/EOP@EOP [WHO] <Ashley E. Plaxico>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;David T. Redlin/WHO /EOP@EOP [WHO] <David T. Redlin>;Mary M. Rose/WHO/EOP@EOP [WHO] <Mary M. Rose>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael Shannon>;Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>;Neil H. Zimmerman/WHO /EOP@EOP [WHO] <Neil H. Zimmerman>;Brooks D. Altshuler/WHO/EOP@EOP [WHO] <Brooks D. Altshuler>;James C. Anderson/WHO/EOP@EOP [WHO] <James C. Anderson>;Leandro A. Aragoncillo/OVP/EOP@EOP [OVP] <Leandro A. Aragoncillo>;Steven A. Atkiss/WHO/EOP@EOP [WHO] <Steven A. Atkiss>;James Babbitt/OVP/EOP@EOP [OVP] <James Babbitt>;Lowell Baker/WHO/EOP@EOP [WHO] <Lowell Baker>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Danner R. Bethel/WHO /EOP@EOP [WHO] <Danner R. Bethel>;Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Christopher J. Bolan/OVP /EOP@EOP [OVP] <Christopher J. Bolan>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;James Carroll/WHO/EOP@EOP [WHO] <James Carroll>;Carrie W. Click/WHO/EOP@EOP [WHO] <Carrie W. Click>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Lisa T. Cummins/WHO/EOP@EOP [WHO] <Lisa T. Cummins>;Bradford D. Dayspring/WHO /EOP@EOP [WHO] <Bradford D. Dayspring>;John J. DiIulio/WHO/EOP@EOP [WHO] <John J. DiIulio>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;John D. Estes/WHO/EOP@EOP [WHO] <John D. Estes>;Robert J. Fagan/WHO/EOP@EOP [WHO] <Robert J. Fagan>;Daniel D. Faoro/OA /EOP@EOP [OA] <Daniel D. Faoro>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Angela I. Fritz/WHO /EOP@EOP [WHO] <Angela I. Fritz>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jeffrey J. Grieco/WHO/EOP@EOP [WHO] <Jeffrey J. Grieco>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Eric Hagans/WHO/EOP@EOP [WHO] <Eric Hagans>;Tobin K. Harvey/WHO/EOP@EOP [WHO] <Tobin K. Harvey>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;Bradley E. Hester/WHO/EOP@EOP [WHO] <Bradley E. Hester>;Steedman Hinckley/OVP/EOP@EOP [OVP] <Steedman Hinckley>;Anne M. Hughes/WHO/EOP@EOP [WHO] <Anne M. Hughes>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Jeffrey T. Jezierski/WHO/EOP@EOP [WHO] <Jeffrey T. Jezierski>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Suhail A. Khan/WHO/EOP@EOP [WHO] <Suhail A. Khan>;Sharon B. Kotok/WHO/EOP@EOP [WHO] <Sharon B. Kotok>;Phillip Larsen/OA /EOP@EOP [OA] <Phillip Larsen>;Stephanie E. Linder/WHO/EOP@EOP [WHO] <Stephanie E. Linder>;Katie Loovis/WHO/EOP@EOP [WHO] <Katie Loovis>;Lori L. Lorenzi/WHO /EOP@EOP [WHO] <Lori L. Lorenzi>;William J. Luti/OVP/EOP@EOP [OVP] <William J. Luti>;Paula R. Lynch/WHO/EOP@EOP [WHO] <Paula R. Lynch>;David H. McArthur/WHO /EOP@EOP [WHO] <David H. McArthur>;Anita B. McBride/WHO/EOP@EOP [WHO] <Anita

B. McBride>;Ellen W. McCathran/WHO/EOP@EOP [WHO] <Ellen W. McCathran>;Benjamin A. Miller/OVP/EOP@EOP [OVP] <Benjamin A. Miller>;Helen R. Mobley/WHO/EOP@EOP [WHO] <Helen R. Mobley>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Amanda L. Moore/WHO/EOP@EOP [WHO] <Amanda L. Moore>;Christa Moyle/OA/EOP@EOP [OA] <Christa Moyle>;Carolyn Nelson/WHO/EOP@EOP [WHO] <Carolyn Nelson>;Gian-Carlo A. Peressutti/WHO/EOP@EOP [WHO] <Gian-Carlo A. Peressutti>;Matthew C. Rhoades/WHO/EOP@EOP [WHO] <Matthew C. Rhoades>;Annabelle J. Romero/WHO/EOP@EOP [WHO] <Annabelle J. Romero>;Nathaniel C. Ryun/WHO /EOP@EOP [WHO] <Nathaniel C. Ryun>;Angela R. Sailor/WHO/EOP@EOP [WHO] <Angela R. Sailor>;Michael A. Sanders/WHO/EOP@EOP [WHO] <Michael A. Sanders>;Marilyn L. Scott-Perez/NSC/EOP@EOP [NSC] <Marilyn L. Scott-Perez>;Alexis Sherman/WHO /EOP@EOP [WHO] <Alexis Sherman>;Leslie A. Shockley/WHO/EOP@EOP [WHO] <Leslie A. Shockley>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Karen Starr/OVP/EOP@EOP [OVP] <Karen Starr>;Gretchen P. Steen/WHO/EOP@EOP [WHO] <Gretchen P. Steen>;Daniel W. Sutherland/WHO/EOP@EOP [WHO] <Daniel W. Sutherland>;Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H. Tennery>;Meredith A. Terpeluk/WHO/EOP@EOP [WHO] <Meredith A. Terpeluk>;Travis Thomas/WHO/EOP@EOP [WHO] <Travis Thomas>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>;Rebekah Tosado/WHO/EOP@EOP [WHO] <Rebekah Tosado>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Charity N. Wallace/WHO/EOP@EOP [WHO] <Charity N. Wallace>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L. West>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Don R. Willett/WHO /EOP@EOP [WHO] <Don R. Willett>;Joseph R. Wood/OVP/EOP@EOP [OVP] <Joseph R. Wood>;Joan M. Work/WHO/EOP@EOP [WHO] <Joan M. Work>;Stephen J. Yates/OVP /EOP@EOP [OVP] <Stephen J. Yates>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;Thomas A. Bezas/WHO/EOP@EOP [WHO] <Thomas A. Bezas>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;Jose L. Delgado/OVP/EOP@EOP [OVP] <Jose L. Delgado>;Guy R. Kirby/WHO/EOP@EOP [WHO] <Guy R. Kirby>;Benjamin C. Krueger/WHO/EOP@EOP [WHO] <Benjamin C. Krueger>;Anthony Pereira/OA/EOP@EOP [OA] <Anthony Pereira>;Jose G. Suarez/WHO/EOP@EOP [WHO] <Jose G. Suarez>;Erin A. Vargo/OPD/EOP@EOP [OPD] <Erin A. Vargo>

Sent: 6/25/2001 4:49:07 AM

Subject: : SMS Client Upgrade

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John R. Wood ( CN=John R. Wood/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME:25-JUN-2001 08:49:07.00
SUBJECT:: SMS Client Upgrade
TO:Jodey Arrington ( CN=Jodey Arrington/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jeannette H. Balkum ( CN=Jeannette H. Balkum/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michelle N. Brawer ( CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alicia P. Clark ( CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rebecca Contreras ( CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Charlene E. Fern ( CN=Charlene E. Fern/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David Frum ( CN=David Frum/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nancy G. Hansen ( CN=Nancy G. Hansen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Barry S. Jackson ( CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Priscilla J. Jones ( CN=Priscilla J. Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Chad M. Kolton ( CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Julie A. Lapeyre ( CN=Julie A. Lapeyre/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lorraine Nisbet (CN=Lorraine Nisbet/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kendall B. Oliphant (CN=Kendall B. Oliphant/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
TO:Michelle K. Pannor (CN=Michelle K. Pannor/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:DeVere R. Patton (CN=DeVere R. Patton/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Janet M. Philips (CN=Janet M. Philips/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley E. Plaxico (CN=Ashley E. Plaxico/OU=WHO/O=EOP@EOP [WHO])
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TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David T. Redlin (CN=David T. Redlin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary M. Rose (CN=Mary M. Rose/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])
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TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James C. Anderson (CN=James C. Anderson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Leandro A. Aragoncillo (CN=Leandro A. Aragoncillo/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Steven A. Atkiss (CN=Steven A. Atkiss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James Babbitt (CN=James Babbitt/OU=OVP/O=EOP@EOP [OVP])
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TO:Lowell Baker (CN=Lowell Baker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Todd W. Beyer (CN=Todd W. Beyer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Bolan (CN=Christopher J. Bolan/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James Carroll (CN=James Carroll/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford D. Dayspring (CN=Bradford D. Dayspring/OU=WHO/O=EOP@EOP [WHO])
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TO:John J. DiIulio (CN=John J. DiIulio/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Jeffrey T. Jezierski (CN=Jeffrey T. Jezierski/OU=WHO/O=EOP@EOP [WHO])
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TO:Sharon B. Kotok (CN=Sharon B. Kotok/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Stephanie E. Linder (CN=Stephanie E. Linder/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katie Loovis (CN=Katie Loovis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William J. Luti (CN=William J. Luti/OU=OVP/O=EOP@EOP [OVP])
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TO:Paula R. Lynch (CN=Paula R. Lynch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David H. McArthur (CN=David H. McArthur/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anita B. McBride (CN=Anita B. McBride/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christa Moyle (CN=Christa Moyle/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew C. Rhoades (CN=Matthew C. Rhoades/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Annabelle J. Romero (CN=Annabelle J. Romero/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nathaniel C. Ryun (CN=Nathaniel C. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael A. Sanders (CN=Michael A. Sanders/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marilyn L. Scott-Perez (CN=Marilyn L. Scott-Perez/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Alexis Sherman (CN=Alexis Sherman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Leslie A. Shockley (CN=Leslie A. Shockley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karen Starr (CN=Karen Starr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel W. Sutherland (CN=Daniel W. Sutherland/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Travis Thomas (CN=Travis Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rebekah Tosado (CN=Rebekah Tosado/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charity N. Wallace (CN=Charity N. Wallace/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph R. Wood (CN=Joseph R. Wood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Joan M. Work (CN=Joan M. Work/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Thomas A. Bezas (CN=Thomas A. Bezas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Guy R. Kirby (CN=Guy R. Kirby/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin C. Krueger (CN=Benjamin C. Krueger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony Pereira (CN=Anthony Pereira/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Jose G. Suarez (CN=Jose G. Suarez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin A. Vargo (CN=Erin A. Vargo/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

The SMS client software on your computer will be upgraded tonight from version 1.2 to version 2.0. The SMS client software is what allows new programs to be sent to you via the network. In order for the upgrade to take place, it is necessary that your computer be restarted. To accomplish this, please do the following, when you leave for the day.

1) Close all your programs
2) Click once on start at the lower left corner of your screen
3) Click once on shutdown (the shutdown windows screen should appear)
4) Click once on the circle next to "restart the computer?"
5) Click once on yes
6) You can now leave the computer

Thank You,
John

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/25/2001 5:36:54 AM
Subject: : Re: 06-27-01 WHJSC meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUN-2001 09:36:54.00
SUBJECT:: Re: 06-27-01 WHJSC meeting
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

new or old business?
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>
Sent: 6/25/2001 6:17:06 AM
Subject: : 06-29-01 POTUS meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUN-2001 10:17:06.00
SUBJECT:: 06-29-01 POTUS meeting
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just a reminder that I'll need final data sheets and memos by late
afternoon Wednesday...(for US Atty's, I'll use what Jan/DOJ send over)
```

From: Bell, Amber <ABell@osc.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/25/2001 6:41:10 AM
Subject: : RE: Inquiry

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Bell, Amber" <ABell@osc.gov> ("Bell, Amber" <ABell@osc.gov> [UNKNOWN])
CREATION DATE/TIME:25-JUN-2001 10:41:10.00
SUBJECT:: RE: Inquiry
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Mr. Kavanaugh,

I received your request concerning the EOP official asking
people outside the government to solicit funds for political parties and
political candidates. Ms. Marrone is out of the office until Thursday.
Please advise as to how quickly you need a response.

Sincerely,

Amber Bell

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 21, 2001 10:30 PM
To: abell@osc.gov
Subject: Inquiry

We would like a written opinion (e-mail is fine) on
the
following
question: Can an EOP official who works outside regular
work hours ask
people outside the government to solicit funds for
political
parties and
political candidates? The EOP official would not himself
solicit funds,
but would ask the others to solicit funds.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;jan e. williams/who/eop@eop [WHO] <jan e. williams>
Sent: 6/25/2001 6:41:19 AM
Subject: : Re: 06-29-01 POTUS meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-JUN-2001 10:41:19.00
SUBJECT:: Re: 06-29-01 POTUS meeting
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jan e. williams (CN=jan e. williams/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

We will have them by COB today.

Brent D. Greenfield
06/25/2001 10:17:04 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Jan E. Williams/WHO/EOP@EOP
Subject: 06-29-01 POTUS meeting

Just a reminder that I'll need final data sheets and memos by late afternoon Wednesday...(for US Atty's, I'll use what Jan/DOJ send over)

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 6/25/2001 11:08:46 AM
Subject: : FYI re: tours on July 4

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUN-2001 15:08:46.00
SUBJECT:: FYI re: tours on July 4
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We have tours on 7/4 from 9am-1pm, but they are all self-guided public.
People do not need to get a ticket ahead of time, and as long as they are
in line by 1:00, they will get in. As far as front of lines tours go,
```

staff can do those during the normal time period, 10:30am-12:00pm.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>
Sent: 6/25/2001 11:09:39 AM
Subject: : July 4th

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUN-2001 15:09:39.00
SUBJECT:: July 4th
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The invitations arrived today and will be delivered over to OEOB next time
someone goes over.

The scoop:

Staff member (with photo hard pass) + three guests
```

7:00 pm - gate opens (East Executive Ave. Visitors Entrance)
8:45 pm - gate closes
9:15 pm - Fireworks!

They will provide soft drinks, ice cream and water.
You can bring a blanket.
You cannot bring food, beverages, coolers or lawn chairs.

This information and other details are on the invitation that you will receive later today.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>
Sent: 6/25/2001 11:09:39 AM
Subject: : July 4th

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUN-2001 15:09:39.00
SUBJECT:: July 4th
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

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someone goes over.

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```

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This information and other details are on the invitation that you will receive later today.

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Ullman, Kristen <Kristen.A.Ullman@usdoj.gov>;Alex Dahl <Alex_Dahl@judiciary.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Christopher Rosche <Christopher_rosche@hatch.senate.gov>;Ed Haden <Ed_Haden@judiciary.senate.gov>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>;Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>;Rena Johnson <Rena_Johnson@judiciary.senate.gov>;Sharon Prost <Sharon_prost@judiciary.senate.gov>;Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>;Stewart Verdery <Stewart_Verdery@aml.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
CC: Schauder, Andrew <Andrew.Schauder@usdoj.gov>
Sent: 6/26/2001 4:52:16 AM
Subject: : Schumer on Nominees

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:26-JUN-2001 08:52:16.00
SUBJECT:: Schumer on Nominees
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Alex Dahl <Alex_Dahl@judiciary.senate.gov> ( Alex Dahl <Alex_Dahl@judiciary.senate.gov>
[ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
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<Christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
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TO:Ed Haden <Ed_Haden@judiciary.senate.gov> ( Ed Haden <Ed_Haden@judiciary.senate.gov> [
UNKNOWN ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov> ( Lincoln Oliphant
<Lincoln_Oliphant@rpc.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Makan Delrahim <Makan_Delrahim@judiciary.senate.gov> ( Makan Delrahim
<Makan_Delrahim@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Rena Johnson <Rena_Johnson@judiciary.senate.gov> ( Rena Johnson
<Rena_Johnson@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Sharon Prost <Sharon_prost@judiciary.senate.gov> ( Sharon Prost
<Sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
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TO:Stephen Higgins <Stephen_Higgins@judiciary.senate.gov> (Stephen Higgins
<Stephen_Higgins@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Stewart Verdery <Stewart_Verdery@aml.senate.gov> (Stewart Verdery
<Stewart_Verdery@aml.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:"Schauder, Andrew" <Andrew.Schauder@usdoj.gov> ("Schauder, Andrew"
<Andrew.Schauder@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Story filed on AP Wire at 1:43 a.m.
Schumer: Question Bush Nominees

by JESSE J. HOLLAND
Associated Press Writer

WASHINGTON (AP) -- Senators should grill President
Bush's judicial
nominees about abortion and other controversial
topics instead of tiptoeing
around the issues and then privately basing their
decisions on a candidate's
ideology, Sen. Charles Schumer says.

Schumer, D-N.Y., chairman of the Senate Judiciary
Committee's courts
panel, is expected at a hearing Tuesday to say
''it's legitimate to use
ideology'' when considering judicial nominees, a
source close to the
senator said.

The role of ideology in judicial selections, the
focus of the hearing, has
been a running theme throughout the process since
Bush took office.

First, Bush ended the American Bar Association's
role in the White
House's confidential judicial screening process.
Many conservatives see
the ABA as liberal-leaning and blamed its mixed
review of Supreme Court
nominee Robert Bork's qualifications for his
rejection by the Senate.

Democrats complained that Bush was politicizing the
process.

GOP senators now fear Democrats, who took over the
Senate this month,
will use their majority status to block Bush's
judicial choices for political
reasons, including Republicans' treatment of several
of former President
Clinton's nominees.

They point to comments like Schumer's ''we will not
have nominations of
right-wing after right-wing after right-wing
judges'' as evidence.

Democrats, including Schumer, insist they will not
use a liberal litmus test
to eliminate Bush nominees.

Skeptical Republicans have delayed reorganization of the Senate as they
try to win concessions on judges, including allowing candidates to
automatically skip a review by the Senate Judiciary Committee, chaired by
Sen. Patrick Leahy, D-Vt., and go straight to the full Senate.

At Tuesday's hearing, top judicial experts will debate ideology's place and
whether it should become a permanent part of the process.
On the Net:
Senate Judiciary Committee:
http://www.senate.gov/(tilde)judiciary/
AP-NY-06-26-01 0143EDT<

Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Ullman, Kristen <Kristen.A.Ullman@usdoj.gov>;Alex Dahl <Alex_Dahl@judiciary.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Christopher Rosche <Christopher_rosche@hatch.senate.gov>;Ed Haden <Ed_Haden@judiciary.senate.gov>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>;Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>;Rena Johnson <Rena_Johnson@judiciary.senate.gov>;Sharon Prost <Sharon_prost@judiciary.senate.gov>;Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>;Stewart Verdery <Stewart_Verdery@aml.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
CC: Schauder, Andrew <Andrew.Schauder@usdoj.gov>
Sent: 6/26/2001 4:53:35 AM
Subject: : Schumer on Nominees

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:26-JUN-2001 08:53:35.00
SUBJECT:: Schumer on Nominees
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Alex Dahl <Alex_Dahl@judiciary.senate.gov> ( Alex Dahl <Alex_Dahl@judiciary.senate.gov>
[ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Christopher Rosche <Christopher_rosche@hatch.senate.gov> ( Christopher Rosche
<Christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Ed Haden <Ed_Haden@judiciary.senate.gov> ( Ed Haden <Ed_Haden@judiciary.senate.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
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TO:Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov> ( Lincoln Oliphant
<Lincoln_Oliphant@rpc.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Makan Delrahim <Makan_Delrahim@judiciary.senate.gov> ( Makan Delrahim
<Makan_Delrahim@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Rena Johnson <Rena_Johnson@judiciary.senate.gov> ( Rena Johnson
<Rena_Johnson@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Sharon Prost <Sharon_prost@judiciary.senate.gov> ( Sharon Prost
<Sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
```

TO:Stephen Higgins <Stephen_Higgins@judiciary.senate.gov> (Stephen Higgins
<Stephen_Higgins@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Stewart Verdery <Stewart_Verdery@aml.senate.gov> (Stewart Verdery
<Stewart_Verdery@aml.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:"Schauder, Andrew" <Andrew.Schauder@usdoj.gov> ("Schauder, Andrew"
<Andrew.Schauder@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Story filed on AP Wire at 1:43 a.m.
Schumer: Question Bush Nominees

by JESSE J. HOLLAND
Associated Press Writer

WASHINGTON (AP) -- Senators should grill President
Bush's judicial
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topics instead of tiptoeing
around the issues and then privately basing their
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senator said.

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Many conservatives see
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review of Supreme Court
nominee Robert Bork's qualifications for his
rejection by the Senate.

Democrats complained that Bush was politicizing the
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GOP senators now fear Democrats, who took over the
Senate this month,
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judicial choices for political
reasons, including Republicans' treatment of several
of former President
Clinton's nominees.

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judges'' as evidence.

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to eliminate Bush nominees.

Skeptical Republicans have delayed reorganization of the Senate as they
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Sen. Patrick Leahy, D-Vt., and go straight to the full Senate.

At Tuesday's hearing, top judicial experts will debate ideology's place and
whether it should become a permanent part of the process.
On the Net:
Senate Judiciary Committee:
http://www.senate.gov/(tilde)judiciary/
AP-NY-06-26-01 0143EDT<

Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 6/26/2001 1:51:03 PM

Subject: : CNN-CH. 42 talking about judges

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-JUN-2001 17:51:03.00
SUBJECT:: CNN-CH. 42 talking about judges
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/26/2001 1:57:46 PM
Subject: : Re: CNN-CH. 42 talking about judges

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-JUN-2001 17:57:46.00
SUBJECT:: Re: CNN-CH. 42 talking about judges
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
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READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I just heard Schumer say that it is legitimate for the Senate to ask nominees about their "general views" but not about "specific cases." That statement could be useful to us . . .

Elizabeth N. Camp
06/26/2001 05:50:57 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: CNN-CH. 42 talking about judges

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>
Sent: 6/26/2001 2:20:42 PM
Subject: : Re: CNN-CH. 42 talking about judges

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-JUN-2001 18:20:42.00
SUBJECT:: Re: CNN-CH. 42 talking about judges
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
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CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Wow -- that is totally contrary to what he was saying during the hearing today.

H. Christopher Bartolomucci
06/26/2001 05:57:39 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: CNN-CH. 42 talking about judges

I just heard Schumer say that it is legitimate for the Senate to ask nominees about their "general views" but not about "specific cases." That statement could be useful to us . . .

Elizabeth N. Camp
06/26/2001 05:50:57 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: CNN-CH. 42 talking about judges

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

Message Copied
To:_____
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
rachel l. brand/who/eop@eop
courtney s. elwood/who/eop@eop
timothy e. flanigan/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
Alberto R. Gonzales/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 6/27/2001 10:55:56 AM
Subject: : Ciongoli and Ashcroft will not be at JSC today

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 14:55:56.00
SUBJECT:: Ciongoli and Ashcroft will not be at JSC today
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/27/2001 9:43:24 AM
Subject: : Please review- Irene has called requesting an answer!
Attachments: P_PQXK2004_WHO.TXT_1.doc; P_PQXK2004_WHO.TXT_2

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-JUN-2001 13:43:24.00
SUBJECT:: Please review- Irene has called requesting an answer!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 06/27/2001 01:42 PM ----------

Irene Kho
06/27/2001 01:37:15 PM
Record Type: Record

To: Allison L. Riepenhoff/WHO/EOP@EOP
cc:
Subject: LRM IKK60 - - Office of National Drug Control Policy
Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

---------- Forwarded by Irene Kho/OMB/EOP on 06/27/2001 01:38 PM ----------

Irene Kho
06/27/2001 11:21:47 AM
Record Type: Record

To: Allison L. Riepenhoff/WHO/EOP@EOP
cc:
Subject: LRM IKK60 - - Office of National Drug Control Policy
Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

Hi Allison,
Could I please get WH GC's response to this and Justice Testimony - IKK62. Thanks.

Irene Kho
06/27/2001 09:45:38 AM
Record Type: Record

To: ocl@ios.doi.gov @ znet, lrm@hhs.gov @ znet, justice.lrm@usdoj.gov @ znet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK60 - - Office of National Drug Control Policy
Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

FRIENDLY REMINDER: Comments are due today, June 27th, at 11:00 AM.

Attached is ONDCP testimony on H.R. 2291 - Reauthorization of the Drug-Free Communities Act before the House Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy, and Human Resources hearing

on Thursday, June 28th, at 10:00 AM. Please provide comments by 11:00 AM, Wednesday, June 27th
.
Please note that H.R. 2291 was introduced last Thursday, June 21st. The bill text is attached for your information.

LRM ID: IKK60
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 25, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: Office of National Drug Control Policy Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

DEADLINE: 11:00 AM Wednesday, June 27, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is ONDCP testimony on H.R. 2291 - Reauthorization of the Drug-Free Communities Act before the House Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy, and Human Resources hearing on Thursday, June 28th, at 10:00 AM. Please provide comments by 11:00 AM, Wednesday, June 27th
.
Please note that H.R. 2291 was introduced on Thursday, June 21st. The bill text is attached for your information.

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Kenneth L. Schwartz
Paul W. Baker
LRM ID: IKK60 SUBJECT: Office of National Drug Control Policy
Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PQXK2004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PQXK2004_WHO.TXT_2>

STATEMENT OF DONALD R. VEREEN, JR., M.D., M.P.H.
DEPUTY DIRECTOR
OFFICE OF NATIONAL DRUG CONTROL POLICY
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

"Reauthorization of the Drug-Free Communities Act"

June 28, 2001

Introduction

Chairman Souder, Ranking Member Cummings, distinguished members of the subcommittee, the Office of National Drug Control Policy (ONDCP) welcomes this opportunity to discuss the Drug-Free Communities Program. In 1997, Congress authorized this program and, with the support it provides, America's community coalitions continue to work hard to effectively prevent substance abuse among young people. These coalitions continue working diligently to prevent substance abuse among young people. Communities with diverse economic, social, and cultural demographics across our nation are utilizing their Drug-Free Communities grants to leverage substantial additional resources through cooperation with the private sector and state and local governments. I would like to thank Congressmen Portman and Levin and all of the leaders in the House of Representatives who have set an example with coalitions in their districts and signed on as sponsors of this important legislation.

Background

The Drug-Free Communities Act of 1997 (Section 1023 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1523)) (DFCA) enjoyed tremendous bipartisan support in both the United States House and Senate. Rob Portman and Sander Levin in the House, and Charles Grassley and Joseph Biden in the Senate led the effort to provide support for coalitions through this effective locally-controlled program. The DFCA authorizes ONDCP to award federal grants to community coalitions. Coalitions work to reduce substance abuse among youth, strengthen collaboration among organizations and agencies in both the private and public sectors, and serve as catalysts for increased citizen participation in our efforts to combat drug abuse. Coalitions use data from all available sources to effectively assess the threat substance abuse poses in their community and develop action plans to address that threat.

Grantees

We are proud that the program currently supports 307 communities located in forty-nine states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. Of this number, approximately one-third of the grants have been awarded to small towns or rural areas and twenty-five of the grants have been awarded to communities with predominately Native American and Native Alaskan populations. We anticipate awarding approximately 145 additional grants during the FY 2001 grant cycle (September, 2001).

The maximum award is $100,000 per fiscal year with each grantee required to match federal dollars with non-federal funds or in-kind support. Thus far, this program has leveraged over $56 million in non-federal matching funds. After the initial award, grantees may reapply for additional funding in as many as four subsequent years, though in declining amounts after year two. The program encourages local communities to build sustainable, effective mechanisms to devise and carry out more powerful prevention strategies in future years, relying more heavily on local resources after the initial federal assistance.

Administration of the Program

Through an interagency agreement with ONDCP, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the Department of Justice administers the program by processing grant applications, recommending awards, and monitoring the grants. The Center for Substance Abuse Prevention's (CSAP) six regional Centers for the Application of Prevention Technology provide technical assistance and training on topics related to science-based substance abuse prevention practices, evaluation, and coalition development. Because ONDCP does not have the grant management infrastructure necessary to manage all aspects of the program, the Drug Free Communities Administrator coordinates the work of these interagency partners to carry out these functions.

The Advisory Commission

Section 1041 of the DFCA established an eleven member "Advisory Commission on Drug-Free Communities" to: "advise, consult with, and make recommendations to the Director concerning matters related to the activities carried out under the Program." The Commission members have held seven meetings since their appointment in the fall of 1998 (November 1998, April 1999, July 1999, December 1999, March 2000, October 2000, and May 2001). Between meetings, Commission members provide advice and guidance through conference calls, e-mail, and individual telephone consultations with the Administrator and staff. The Advisory Commission has played an important role in the program's success.

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Collaboration to support Drug Free Communities

The Community Anti-Drug Coalitions of America (CADCA) serves as one of our most valuable private sector partners. Their annual National Leadership Forum is the premier gathering of coalition leaders from hundreds of communities. The National Guard Bureau's Counter-Drug Office provides invaluable assistance to numerous coalitions on special projects and also devotes resources for drug prevention programming.

Reauthorization of the Drug-Free Communities Act of 1997

The President's budget requests $50.6 million to expand the Drug-Free Communities Program in FY 2002, an increase of $10.7 million over the FY 2001 enacted level. It also calls for the reauthorization of the Act.

On June 21, Congressman Portman and Levin introduced H.R. 2291 along with 18 cosponsors. I am pleased to support this reauthorization proposal and offer comments on behalf of ONDCP.

Of the total $50.6 million, $46.6 million will go directly to community anti-drug coalitions. We anticipate being able to award approximately 130 new grants in FY 2002, bringing the cumulative five-year total number of grants to approximately 600. HR 2291 would continue to ensure that communities' leverage these grant dollars by matching grant funds with non-Federal support, including both monetary and in-kind contributions.

Additionally, H.R. 2291 provides for additional support to community coalitions through improved training, technical assistance, and dissemination of best practices. It authorizes the creation of a National Community Coalition Institute that will provide education, training, and technical assistance for coalitions that is vital for the program's continued growth and success as the number of grantees increases. The Institute will also develop and disseminate evaluation and testing mechanisms to assist coalitions in measuring and assessing their performance.

H.R. 2291 would also provide for supplemental grants to experienced coalitions to mentor new coalitions and provide the benefit of their experience. Coalitions that meet stringent criteria for candidacy are eligible to apply and, if accepted, provide substantial support to the coalition they mentor.

Of the total $50.6 million authorized in H.R. 2291 and requested in the President's budget, only $4 million would be allocated for purposes other than providing grants directly to communities. These funds would be allocated to the following activities:

- Grants Administration that will provide support for OJJDP to ensure continuity in its grants management function through an Interagency Agreement with ONDCP.

REV_00128108

- Training and Technical Assistance that will provide support for high-quality, low-cost training and technical assistance via each of the six regional Centers for the Application of Prevention Technology (CAPTs), managed by the Center for Substance Abuse Prevention (CSAP). This is an especially important function, considering the tremendous response ONDCP has received from coalitions in rural or other traditionally under-served areas, which do not have experience in applying for Federal grant funds. ONDCP will continue to utilize the resources of The Community Anti-Drug Coalitions of America (CADCA) to provide a wide array of technical assistance and program support to community coalitions.

- Evaluation, which has been supported Congress, DFC Advisory Commission, and ONDCP. An empirically sound evaluation is of paramount importance to maintain the integrity of this program.

- Program Administration that will provide support for the Program Administrator and the statutory Advisory Commission. The Program Administrator serves a critical function by ensuring a high level of responsiveness to the grantees and applicants, as well as enhancing interagency collaboration.

This level of administrative support, while a departure from the original plan of the Drug-Free Communities Act of 1997, reflects the experience of ONDCP, OJJDP and the Appropriations Subcommittees that provide funds for the program. While the initial authorization provided for a decreasing percentage for administrative costs each year, the requirements of grant-making law and the increasing number of grants awarded each year have required a higher resource commitment.

ONDCP conducted a comprehensive study of the administrative costs associated with the Drug-Free Communities Program and produced a report pursuant to Senate Appropriations Committee Report 106-500 (accompanying S. 2900), which was submitted for the subcommittee's consideration on January 18, 2001. The report concluded that amending the administrative cost limitation to "not more than eight percent" per fiscal year would allow compliance with grant-making laws. It would provide thorough competitive peer review of all applications, enhance grantee access to valuable technical assistance about science-based prevention practices and training in those practices, improve ONDCP's and OJJDP's ability to manage the grant program through a comprehensive evaluation, and allow for greater promotion of the program to coalitions across the United States. Such an increase ensures that the grants awarded directly to community anti-drug coalitions will be used in the most effective manner possible.

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Conclusion

We thank the committee for this opportunity to offer our support for this important legislation on behalf of the President. As you know, he has committed his administration to an all-out effort to reduce drug abuse. Community coalitions will be in the vanguard of this effort.

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F:\M7\PORTMA\PORTMA.010 H.L.C.

(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. 2291

IN THE HOUSE OF REPRESENTATIVES

Mr. PORTMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

REV_00128111

SECTION 1. FIVE-YEAR EXTENSION OF DRUG-FREE COMMUNITIES SUPPORT PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) In the next 15 years, the youth population in the United States will grow by 21 percent, adding 6,500,000 youth to the population of the United States. Even if drug use rates remain constant, there will be a huge surge in drug-related problems, such as academic failure, drug-related violence, and HIV incidence, simply due to this population increase.

(2) According to the 1994–1996 National Household Survey, 60 percent of students age 12 to 17 who frequently cut classes and who reported delinquent behavior in the past 6 months used marijuana 52 days or more in the previous year.

(3) The 2000 Washington Kids Count survey conducted by the University of Washington reported that students whose peers have little or no involvement with drinking and drugs have higher math and reading scores than students whose peers had low level drinking or drug use.

(4) Substance abuse prevention works. In 1999, only 10 percent of teens saw marijuana users as popular, compared to 17 percent in 1998 and 19

REV_00128112

percent in 1997. The rate of past-month use of any drug among 12 to 17 year olds declined 26 percent between 1997 and 1999. Marijuana use for sixth through eighth graders is at the lowest point in 5 years, as is use of cocaine, inhalants, and hallucinogens.

(5) Community Anti-Drug Coalitions throughout the United States are successfully developing and implementing comprehensive, long-term strategies to reduce substance abuse among youth on a sustained basis. For example:

(A) The Boston Coalition brought college and university presidents together to create the Cooperative Agreement on Underage Drinking. This agreement represents the first coordinated effort of Boston's many institutions of higher education to address issues such as binge drinking, underage drinking, and changing the norms surrounding alcohol abuse that exist on college and university campuses.

(B) In 2000, the Coalition for a Drug-Free Greater Cincinnati surveyed more than 47,000 local students in grades 7 through 12. The results provided evidence that the Coalition's initiatives are working. For the first time in a dec-

ade, teen drug use in Greater Cincinnati appears to be leveling off. The data collected from the survey has served as a tool to strengthen relationships between schools and communities, as well as facilitate the growth of anti-drug coalitions in communities where such coalitions had not existed.

(C) The Miami Coalition used a three-part strategy to decrease the percentage of high school seniors who reported using marijuana at least once during the most recent 30-day period. The development of a media strategy, the creation of a network of prevention agencies, and discussions with high school students about the dangers of marijuana all contributed to a decrease in the percentage of seniors who reported using marijuana from over 22 percent in 1995 to 9 percent in 1997. The Miami Coalition was able to achieve these results while national rates of marijuana use were increasing.

(D) The Nashville Prevention Partnership worked with elementary and middle school children in an attempt to influence them toward positive life goals and discourage them from using substances. The Partnership targeted an

REV_00128114

area in East Nashville and created after school programs, mentoring opportunities, attendance initiatives, and safe passages to and from school. Attendance and test scores increased as a result of the program.

(E) At a youth-led town meeting sponsored by the Bering Strait Community Partnership in Nome, Alaska, youth identified a need for a safe, substance-free space. With help from a variety of community partners, the Partnership staff and youth members created the Java Hut, a substance-free coffeehouse designed for youth. The Java Hut is helping to change norms in the community by providing a fun, youth-friendly atmosphere and activities that are not centered around alcohol or marijuana.

(F) Portland's Regional Drug Initiative (RDI) has promoted the establishment of drug-free workplaces among the city's large and small employers. Over 3,000 employers have attended an RDI training session, and of those, 92 percent have instituted drug-free workplace policies. As a result, there has been a 5.5 percent decrease in positive workplace drug tests.

REV_00128115

(G) San Antonio Fighting Back worked to increase the age at which youth first used illegal substances. Research suggests that the later the age of first use, the lower the risk that a young person will become a regular substance abuser. As a result, the age of first illegal drug use increased from 9.4 years in 1992 to 13.5 years in 1997.

(H) In 1990, multiple data sources confirmed a trend of increased alcohol use by teenagers in the Troy community. Using its "multiple strategies over multiple sectors" approach, the Troy Coalition worked with parents, physicians, students, coaches, and others to address this problem from several angles. As a result, the rate of twelfth grade students who had consumed alcohol in the past month decreased from 62.1 percent to 53.3 percent between 1991 and 1998, and the rate of eighth grade students decreased from 26.3 percent to 17.4 percent. The Troy Coalition believes that this decline represents not only a change in behavior on the part of students, but also a change in the norms of the community.

REV_00128116

(6) Despite these successes, drug use continues to be a serious problem facing communities across the United States. For example:

(A) According to the Pulse Check: Trends in Drug Abuse Mid-Year 2000 report—

(i) crack and powder cocaine remains the most serious drug problem;

(ii) marijuana remains the most widely available illicit drug, and its potency is on the rise;

(iii) treatment sources report an increase in admissions with marijuana as the primary drug of abuse—and adolescents outnumber other age groups entering treatment for marijuana;

(iv) 80 percent of Pulse Check sources reported increased availability of club drugs, with ecstasy (MDMA) and ketamine the most widely cited club drugs and seven sources reporting that powder cocaine is being used as a club drug by young adults;

(v) ecstasy abuse and trafficking is expanding, no longer confined to the "rave" scene;

(vi) the sale and use of club drugs has grown from nightclubs and raves to high schools, the streets, neighborhoods, open venues, and younger ages;

(vii) ecstasy users often are unknowingly purchasing adulterated tablets or some other substance sold as MDMA; and

(viii) along with reports of increased heroin snorting as a route of administration for initiates, there is also an increase in injecting initiates and the negative health consequences associated with injection (for example, increases in HIV/AIDS and Hepatitis C) suggesting that there is a generational forgetting of the dangers of injection of the drug.

(B) The 2000 Parent's Resource Institute for Drug Education study reported that 23.6 percent of children in the sixth through twelfth grades used illicit drugs in the past year. The same study found that monthly usage among this group was 15.3 percent.

(C) According to the 2000 Monitoring the Future study, the use of ecstasy among eighth graders increased from 1.7 percent in 1999 to

REV_00128118

3.1 percent in 2000, among tenth graders from 4.4 percent to 5.4 percent, and from 5.6 percent to 8.2 percent among twelfth graders.

(D) A 1999 Mellman Group study found that—

(i) 56 percent of the population in the United States believed that drug use was increasing in 1999;

(ii) 92 percent of the population viewed illegal drug use as a serious problem in the United States; and

(iii) 73 percent of the population viewed illegal drug use as a serious problem in their communities.

(7) According to the 2001 report of the National Center on Addiction and Substance Abuse at Columbia University entitled "Shoveling Up: The Impact of Substance Abuse on State Budgets", using the most conservative assumption, in 1998 States spent $77,900,000,000 to shovel up the wreckage of substance abuse, only $3,000,000,000 to prevent and treat the problem and $433,000,000 for alcohol and tobacco regulation and compliance. This $77,900,000,000 burden was distributed as follows:

REV_00128119

(A) $30,700,000,000 in the justice system (77 percent of justice spending).

(B) $16,500,000,000 in education costs (10 percent of education spending).

(C) $15,200,000,000 in health costs (25 percent of health spending).

(D) $7,700,000,000 in child and family assistance (32 percent of child and family assistance spending).

(E) $5,900,000,000 in mental health and developmental disabilities (31 percent of mental health spending).

(F) $1,500,000,000 in public safety (26 percent of public safety spending) and $400,000,000 for the state workforce.

(8) Intergovernmental cooperation and coordination through national, State, and local or tribal leadership and partnerships are critical to facilitate the reduction of substance abuse among youth in communities across the United States.

(9) Substance abuse is perceived as a much greater problem nationally than at the community level. According to a 2001 study sponsored by The Pew Charitable Trusts, between 1994 and 2000—

REV_00128120

(A) there was a 43 percent increase in the percentage of Americans who felt progress was being made in the war on drugs at the community level;

(B) only 9 percent of Americans say drug abuse is a "crisis" in their neighborhood, compared to 27 percent who say this about the nation; and

(C) the percentage of those who felt we lost ground in the war on drugs on a community level fell by more than a quarter, from 51 percent in 1994 to 37 percent in 2000.

(b) EXTENSION AND INCREASE OF PROGRAM.—Section 1024(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1524(a)) is amended—

(1) by striking "and" at the end of paragraph (4); and

(2) by striking paragraph (5) and inserting the following new paragraphs:

"(5) $50,600,000 for fiscal year 2002;

"(6) $60,000,000 for fiscal year 2003;

"(7) $70,000,000 for fiscal year 2004;

"(8) $70,000,000 for fiscal year 2005;

"(9) $75,000,000 for fiscal year 2006; and

"(10) $75,000,000 for fiscal year 2007.".

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(c) EXTENSION OF LIMITATION ON ADMINISTRATIVE COSTS.—Section 1024(b) of that Act (21 U.S.C. 1524(b)) is amended by striking paragraph (5) and inserting the following new paragraph (5):

"(5) 8 percent for each of fiscal years 2002 through 2007.".

(d) ADDITIONAL GRANTS.—Section 1032(b) of that Act (21 U.S.C. 1533(b)) is amended by adding at the end the following new paragraph (3):

"(3) ADDITIONAL GRANTS.—

"(A) IN GENERAL.—Subject to subparagraph (F), the Administrator may award an additional grant under this paragraph to an eligible coalition awarded a grant under paragraph (1) or (2) for any first fiscal year after the end of the 4-year period following the period of the initial grant under paragraph (1) or (2), as the case may be.

"(B) SCOPE OF GRANTS.—A coalition awarded a grant under paragraph (1) or (2), including a renewal grant under such paragraph, may not be awarded another grant under such paragraph, and is eligible for an additional grant under this section only under this paragraph.

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"(C) NO PRIORITY FOR APPLICATIONS.—The Administrator may not afford a higher priority in the award of an additional grant under this paragraph than the Administrator would afford the applicant for the grant if the applicant were submitting an application for an initial grant under paragraph (1) or (2) rather than an application for a grant under this paragraph.

"(D) RENEWAL GRANTS.—Subject to subparagraph (F), the Administrator may award a renewal grant to a grant recipient under this paragraph for each of the fiscal years of the 4-fiscal year period following the fiscal year for which the initial additional grant under subparagraph (A) is awarded in an amount not to exceed amounts as follows:

"(i) For the first and second fiscal years of that 4-fiscal year period, the amount equal to 80 percent of the non-Federal funds, including in-kind contributions, raised by the coalition for the applicable fiscal year.

"(ii) For the second, third, and fourth fiscal years of that 4-fiscal year period, the

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amount equal to 67 percent of the non-Federal funds, including in-kind contributions, raised by the coalition for the applicable fiscal year.

"(E) SUSPENSION.—If a grant recipient under this paragraph fails to continue to meet the criteria specified in subsection (a), the Administrator may suspend the grant, after providing written notice to the grant recipient and an opportunity to appeal.

"(F) LIMITATION.—The amount of a grant award under this paragraph may not exceed $100,000 for a fiscal year.".

(e) DATA COLLECTION AND DISSEMINATION.—Section 1033(b) of that Act (21 U.S.C. 1533(b)) is amended by adding at the end the following new paragraph:

"(3) CONSULTATION.—The Administrator shall carry out activities under this subsection in consultation with the Advisory Commission and the National Community Antidrug Coalition Institute.".

(f) LIMITATION ON USE OF CERTAIN FUNDS FOR EVALUATION OF PROGRAM.—Section 1033(b) of that Act, as amended by subsection (e) of this section, is further is amended by adding at the end the following new paragraph:

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"(4) LIMITATION ON USE OF CERTAIN FUNDS FOR EVALUATION OF PROGRAM.—Amounts for activities under paragraph (2)(B) may not be derived from amounts under section 1024(a) except for amounts that are available under section 1024(b) for administrative costs.".

SEC. 2. SUPPLEMENTAL GRANTS FOR COALITION MENTORING ACTIVITIES UNDER DRUG-FREE COMMUNITIES SUPPORT PROGRAM.

Subchapter I of chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1531 et seq.) is amended by adding at the end the following new section:

"SEC. 1035. SUPPLEMENTAL GRANTS FOR COALITION MENTORING ACTIVITIES.

"(a) AUTHORITY TO MAKE GRANTS.—As part of the program established under section 1031, the Director may award an initial grant under this subsection, and renewal grants under subsection (f), to any coalition awarded a grant under section 1032 that meets the criteria specified in subsection (d) in order to fund coalition mentoring activities by such coalition in support of the program.

"(b) TREATMENT WITH OTHER GRANTS.—

"(1) SUPPLEMENT.—A grant awarded to a coalition under this section is in addition to any grant awarded to the coalition under section 1032.

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"(2) REQUIREMENT FOR BASIC GRANT.—A coalition may not be awarded a grant under this section for a fiscal year unless the coalition was awarded a grant or renewal grant under section 1032(b) for that fiscal year.

"(c) APPLICATION.—A coalition seeking a grant under this section shall submit to the Administrator an application for the grant in such form and manner as the Administrator may require.

"(d) CRITERIA.—A coalition meets the criteria specified in this subsection if the coalition—

"(1) has been in existence for at least 5 years;

"(2) has achieved, by or through its own efforts, measurable results in the prevention and treatment of substance abuse among youth;

"(3) has staff or members willing to serve as mentors for persons seeking to start or expand the activities of other coalitions in the prevention and treatment of substance abuse;

"(4) has demonstrable support from some members of the community in which the coalition mentoring activities to be supported by the grant under this section are to be carried out; and

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"(5) submits to the Administrator a detailed plan for the coalition mentoring activities to be supported by the grant under this section.

"(e) USE OF GRANT FUNDS.—A coalition awarded a grant under this section shall use the grant amount for mentoring activities to support and encourage the development of new, self-supporting community coalitions that are focused on the prevention and treatment of substance abuse in such new coalitions' communities. The mentoring coalition shall encourage such development in accordance with the plan submitted by the mentoring coalition under subsection (d)(5).

"(f) RENEWAL GRANTS.—The Administrator may make a renewal grant to any coalition awarded a grant under subsection (a), or a previous renewal grant under this subsection, if the coalition, at the time of application for such renewal grant—

"(1) continues to meet the criteria specified in subsection (d); and

"(2) has made demonstrable progress in the development of one or more new, self-supporting community coalitions that are focused on the prevention and treatment of substance abuse.

"(g) GRANT AMOUNTS.—

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"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the total amount of grants awarded to a coalition under this section for a fiscal year may not exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year.

"(2) INITIAL GRANTS.—The amount of the initial grant awarded to a coalition under subsection (a) may not exceed $75,000.

"(3) RENEWAL GRANTS.—The total amount of renewal grants awarded to a coalition under subsection (f) for any fiscal year may not exceed $75,000.

"(h) FISCAL YEAR LIMITATION ON AMOUNT AVAILABLE FOR GRANTS.—The total amount available for grants under this section, including renewal grants under subsection (f), in any fiscal year may not exceed the amount equal to five percent of the amount authorized to be appropriated by section 1024(a) for that fiscal year.".

SEC. 3. FIVE-YEAR EXTENSION OF ADVISORY COMMISSION ON DRUG-FREE COMMUNITIES.

Section 1048 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1548) is amended by striking "2002" and inserting "2007".

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SEC. 4. AUTHORIZATION FOR NATIONAL COMMUNITY ANTI-DRUG COALITION INSTITUTE.

(a) IN GENERAL.—The Director of the Office of National Drug Control Policy may, using amounts authorized to be appropriated by subsection (d), make a grant to an eligible organization to provide for the establishment of a National Community Antidrug Coalition Institute.

(b) ELIGIBLE ORGANIZATIONS.—An organization eligible for the grant under subsection (a) is any national nonprofit organization that represents, provides technical assistance and training to, and has special expertise and broad, national-level experience in community antidrug coalitions under section 1032 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1532).

(c) USE OF GRANT AMOUNT.—The organization receiving the grant under subsection (a) shall establish a National Community Antidrug Coalition Institute to—

(1) provide education, training, and technical assistance for coalition leaders and community teams;

(2) develop and disseminate evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes; and

(3) bridge the gap between research and practice by translating knowledge from research into practical information.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of activities under this section, including the grant under subsection (a), amounts as follows:

(1) For each of fiscal years 2002 and 2003, $2,000,000.

(2) For each of fiscal years 2004 through 2007, such sums as may be necessary for such activities.

REV_00128130

From: CN=A. Morgan Middlemas/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 6/27/2001 10:28:54 AM

Subject: : Is it Fair Game for the Senate to Weigh Ideology when Confirming Federal Judges?

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###### Begin Original ARMS Header ######
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CREATOR:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 14:28:54.00
SUBJECT:: Is it Fair Game for the Senate to Weigh Ideology when Confirming Federal Judges?
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
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Brit Hume Special Report Last Night:
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Judges?
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;russell.coleman@usdoj.gov [UNKNOWN] <russell.coleman@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>

Sent: 6/27/2001 10:40:38 AM

Subject: : Reminder - JSC mtg. @ 4pm in Roosevelt

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 14:40:38.00
SUBJECT:: Reminder - JSC mtg. @ 4pm in Roosevelt
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
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End Original ARMS Header

Also - next weeks meeting will be on Thursday, July 5th instead of Wednesday.

Thanks!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;russell.coleman@usdoj.gov [UNKNOWN] <russell.coleman@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>

Sent: 6/27/2001 10:40:38 AM

Subject: : Reminder - JSC mtg. @ 4pm in Roosevelt

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 14:40:38.00
SUBJECT:: Reminder - JSC mtg. @ 4pm in Roosevelt
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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Thanks!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/27/2001 10:41:02 AM
Subject: : JSC Prep at 3:30 today

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CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 14:41:02.00
SUBJECT:: JSC Prep at 3:30 today
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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Sent: 6/27/2001 10:41:02 AM
Subject: : JSC Prep at 3:30 today

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CREATION DATE/TIME:27-JUN-2001 14:41:02.00
SUBJECT:: JSC Prep at 3:30 today
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Irene Kho/OMB/EOP@EOP [OMB] <Irene Kho>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 6/27/2001 10:48:29 AM
Subject: : Re: LRM IKK60 - - Office of National Drug Control Policy Testimony on HR2291 Reauthorization of the Drug-Free Communities Act
Attachments: P_C50L2004_WHO.TXT_1.doc; P_C50L2004_WHO.TXT_2

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-JUN-2001 14:48:29.00
SUBJECT:: Re: LRM IKK60 - - Office of National Drug Control Policy Testimony on HR2291 Reauthorization of the Drug-Free Communities Act
TO:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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White House Counsel's office has no comment or objection.

Allison L. Riepenhoff
06/27/2001 09:50:47 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM IKK60 - - Office of National Drug Control Policy Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 06/27/2001 09:50 AM ----------

Irene Kho
06/27/2001 09:45:38 AM
Record Type: Record

To: ocl@ios.doi.gov @ znet, lrm@hhs.gov @ znet, justice.lrm@usdoj.gov @ znet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK60 - - Office of National Drug Control Policy Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

FRIENDLY REMINDER: Comments are due today, June 27th, at 11:00 AM.

Attached is ONDCP testimony on H.R. 2291 - Reauthorization of the Drug-Free Communities Act before the House Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy, and Human Resources hearing on Thursday, June 28th, at 10:00 AM. Please provide comments by 11:00 AM, Wednesday, June 27th
.
Please note that H.R. 2291 was introduced last Thursday, June 21st. The bill text is attached for your information.

LRM ID: IKK60
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 25, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: Office of National Drug Control Policy Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

DEADLINE: 11:00 AM Wednesday, June 27, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is ONDCP testimony on H.R. 2291 - Reauthorization of the Drug-Free Communities Act before the House Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy, and Human Resources hearing on Thursday, June 28th, at 10:00 AM. Please provide comments by 11:00 AM, Wednesday, June 27th
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Please note that H.R. 2291 was introduced on Thursday, June 21st. The bill text is attached for your information.

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Richard E. Green
James J. Jukes

Kenneth L. Schwartz
Paul W. Baker
LRM ID: IKK60 SUBJECT: Office of National Drug Control Policy
Testimony on HR2291 Reauthorization of the Drug-Free Communities Act

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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File attachment <P_C50L2004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C50L2004_WHO.TXT_2>

STATEMENT OF DONALD R. VEREEN, JR., M.D., M.P.H.
DEPUTY DIRECTOR
OFFICE OF NATIONAL DRUG CONTROL POLICY
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

"Reauthorization of the Drug-Free Communities Act"

June 28, 2001

Introduction

Chairman Souder, Ranking Member Cummings, distinguished members of the subcommittee, the Office of National Drug Control Policy (ONDCP) welcomes this opportunity to discuss the Drug-Free Communities Program. In 1997, Congress authorized this program and, with the support it provides, America's community coalitions continue to work hard to effectively prevent substance abuse among young people. These coalitions continue working diligently to prevent substance abuse among young people. Communities with diverse economic, social, and cultural demographics across our nation are utilizing their Drug-Free Communities grants to leverage substantial additional resources through cooperation with the private sector and state and local governments. I would like to thank Congressmen Portman and Levin and all of the leaders in the House of Representatives who have set an example with coalitions in their districts and signed on as sponsors of this important legislation.

Background

The Drug-Free Communities Act of 1997 (Section 1023 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1523)) (DFCA) enjoyed tremendous bipartisan support in both the United States House and Senate. Rob Portman and Sander Levin in the House, and Charles Grassley and Joseph Biden in the Senate led the effort to provide support for coalitions through this effective locally-controlled program. The DFCA authorizes ONDCP to award federal grants to community coalitions. Coalitions work to reduce substance abuse among youth, strengthen collaboration among organizations and agencies in both the private and public sectors, and serve as catalysts for increased citizen participation in our efforts to combat drug abuse. Coalitions use data from all available sources to effectively assess the threat substance abuse poses in their community and develop action plans to address that threat.

Grantees

We are proud that the program currently supports 307 communities located in forty-nine states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. Of this number, approximately one-third of the grants have been awarded to small towns or rural areas and twenty-five of the grants have been awarded to communities with predominately Native American and Native Alaskan populations. We anticipate awarding approximately 145 additional grants during the FY 2001 grant cycle (September, 2001).

The maximum award is $100,000 per fiscal year with each grantee required to match federal dollars with non-federal funds or in-kind support. Thus far, this program has leveraged over $56 million in non-federal matching funds. After the initial award, grantees may reapply for additional funding in as many as four subsequent years, though in declining amounts after year two. The program encourages local communities to build sustainable, effective mechanisms to devise and carry out more powerful prevention strategies in future years, relying more heavily on local resources after the initial federal assistance.

Administration of the Program

Through an interagency agreement with ONDCP, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the Department of Justice administers the program by processing grant applications, recommending awards, and monitoring the grants. The Center for Substance Abuse Prevention's (CSAP) six regional Centers for the Application of Prevention Technology provide technical assistance and training on topics related to science-based substance abuse prevention practices, evaluation, and coalition development. Because ONDCP does not have the grant management infrastructure necessary to manage all aspects of the program, the Drug Free Communities Administrator coordinates the work of these interagency partners to carry out these functions.

The Advisory Commission

Section 1041 of the DFCA established an eleven member "Advisory Commission on Drug-Free Communities" to: "advise, consult with, and make recommendations to the Director concerning matters related to the activities carried out under the Program." The Commission members have held seven meetings since their appointment in the fall of 1998 (November 1998, April 1999, July 1999, December 1999, March 2000, October 2000, and May 2001). Between meetings, Commission members provide advice and guidance through conference calls, e-mail, and individual telephone consultations with the Administrator and staff. The Advisory Commission has played an important role in the program's success.

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Collaboration to support Drug Free Communities

The Community Anti-Drug Coalitions of America (CADCA) serves as one of our most valuable private sector partners. Their annual National Leadership Forum is the premier gathering of coalition leaders from hundreds of communities. The National Guard Bureau's Counter-Drug Office provides invaluable assistance to numerous coalitions on special projects and also devotes resources for drug prevention programming.

Reauthorization of the Drug-Free Communities Act of 1997

The President's budget requests $50.6 million to expand the Drug-Free Communities Program in FY 2002, an increase of $10.7 million over the FY 2001 enacted level. It also calls for the reauthorization of the Act.

On June 21, Congressman Portman and Levin introduced H.R. 2291 along with 18 cosponsors. I am pleased to support this reauthorization proposal and offer comments on behalf of ONDCP.

Of the total $50.6 million, $46.6 million will go directly to community anti-drug coalitions. We anticipate being able to award approximately 130 new grants in FY 2002, bringing the cumulative five-year total number of grants to approximately 600. HR 2291 would continue to ensure that communities' leverage these grant dollars by matching grant funds with non-Federal support, including both monetary and in-kind contributions.

Additionally, H.R. 2291 provides for additional support to community coalitions through improved training, technical assistance, and dissemination of best practices. It authorizes the creation of a National Community Coalition Institute that will provide education, training, and technical assistance for coalitions that is vital for the program's continued growth and success as the number of grantees increases. The Institute will also develop and disseminate evaluation and testing mechanisms to assist coalitions in measuring and assessing their performance.

H.R. 2291 would also provide for supplemental grants to experienced coalitions to mentor new coalitions and provide the benefit of their experience. Coalitions that meet stringent criteria for candidacy are eligible to apply and, if accepted, provide substantial support to the coalition they mentor.

Of the total $50.6 million authorized in H.R. 2291 and requested in the President's budget, only $4 million would be allocated for purposes other than providing grants directly to communities. These funds would be allocated to the following activities:

- Grants Administration that will provide support for OJJDP to ensure continuity in its grants management function through an Interagency Agreement with ONDCP.

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- Training and Technical Assistance that will provide support for high-quality, low-cost training and technical assistance via each of the six regional Centers for the Application of Prevention Technology (CAPTs), managed by the Center for Substance Abuse Prevention (CSAP). This is an especially important function, considering the tremendous response ONDCP has received from coalitions in rural or other traditionally under-served areas, which do not have experience in applying for Federal grant funds. ONDCP will continue to utilize the resources of The Community Anti-Drug Coalitions of America (CADCA) to provide a wide array of technical assistance and program support to community coalitions.

- Evaluation, which has been supported Congress, DFC Advisory Commission, and ONDCP. An empirically sound evaluation is of paramount importance to maintain the integrity of this program.

- Program Administration that will provide support for the Program Administrator and the statutory Advisory Commission. The Program Administrator serves a critical function by ensuring a high level of responsiveness to the grantees and applicants, as well as enhancing interagency collaboration.

This level of administrative support, while a departure from the original plan of the Drug-Free Communities Act of 1997, reflects the experience of ONDCP, OJJDP and the Appropriations Subcommittees that provide funds for the program. While the initial authorization provided for a decreasing percentage for administrative costs each year, the requirements of grant-making law and the increasing number of grants awarded each year have required a higher resource commitment.

ONDCP conducted a comprehensive study of the administrative costs associated with the Drug-Free Communities Program and produced a report pursuant to Senate Appropriations Committee Report 106-500 (accompanying S. 2900), which was submitted for the subcommittee's consideration on January 18, 2001. The report concluded that amending the administrative cost limitation to "not more than eight percent" per fiscal year would allow compliance with grant-making laws. It would provide thorough competitive peer review of all applications, enhance grantee access to valuable technical assistance about science-based prevention practices and training in those practices, improve ONDCP's and OJJDP's ability to manage the grant program through a comprehensive evaluation, and allow for greater promotion of the program to coalitions across the United States. Such an increase ensures that the grants awarded directly to community anti-drug coalitions will be used in the most effective manner possible.

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Conclusion

We thank the committee for this opportunity to offer our support for this important legislation on behalf of the President. As you know, he has committed his administration to an all-out effort to reduce drug abuse. Community coalitions will be in the vanguard of this effort.

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F:\M7\PORTMA\PORTMA.010 H.L.C.

(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. 2291

IN THE HOUSE OF REPRESENTATIVES

Mr. PORTMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

REV_00128153

SECTION 1. FIVE-YEAR EXTENSION OF DRUG-FREE COMMUNITIES SUPPORT PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) In the next 15 years, the youth population in the United States will grow by 21 percent, adding 6,500,000 youth to the population of the United States. Even if drug use rates remain constant, there will be a huge surge in drug-related problems, such as academic failure, drug-related violence, and HIV incidence, simply due to this population increase.

(2) According to the 1994–1996 National Household Survey, 60 percent of students age 12 to 17 who frequently cut classes and who reported delinquent behavior in the past 6 months used marijuana 52 days or more in the previous year.

(3) The 2000 Washington Kids Count survey conducted by the University of Washington reported that students whose peers have little or no involvement with drinking and drugs have higher math and reading scores than students whose peers had low level drinking or drug use.

(4) Substance abuse prevention works. In 1999, only 10 percent of teens saw marijuana users as popular, compared to 17 percent in 1998 and 19

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percent in 1997. The rate of past-month use of any drug among 12 to 17 year olds declined 26 percent between 1997 and 1999. Marijuana use for sixth through eighth graders is at the lowest point in 5 years, as is use of cocaine, inhalants, and hallucinogens.

(5) Community Anti-Drug Coalitions throughout the United States are successfully developing and implementing comprehensive, long-term strategies to reduce substance abuse among youth on a sustained basis. For example:

(A) The Boston Coalition brought college and university presidents together to create the Cooperative Agreement on Underage Drinking. This agreement represents the first coordinated effort of Boston's many institutions of higher education to address issues such as binge drinking, underage drinking, and changing the norms surrounding alcohol abuse that exist on college and university campuses.

(B) In 2000, the Coalition for a Drug-Free Greater Cincinnati surveyed more than 47,000 local students in grades 7 through 12. The results provided evidence that the Coalition's initiatives are working. For the first time in a dec-

REV_00128155

ade, teen drug use in Greater Cincinnati appears to be leveling off. The data collected from the survey has served as a tool to strengthen relationships between schools and communities, as well as facilitate the growth of anti-drug coalitions in communities where such coalitions had not existed.

(C) The Miami Coalition used a three-part strategy to decrease the percentage of high school seniors who reported using marijuana at least once during the most recent 30-day period. The development of a media strategy, the creation of a network of prevention agencies, and discussions with high school students about the dangers of marijuana all contributed to a decrease in the percentage of seniors who reported using marijuana from over 22 percent in 1995 to 9 percent in 1997. The Miami Coalition was able to achieve these results while national rates of marijuana use were increasing.

(D) The Nashville Prevention Partnership worked with elementary and middle school children in an attempt to influence them toward positive life goals and discourage them from using substances. The Partnership targeted an

REV_00128156

area in East Nashville and created after school programs, mentoring opportunities, attendance initiatives, and safe passages to and from school. Attendance and test scores increased as a result of the program.

(E) At a youth-led town meeting sponsored by the Bering Strait Community Partnership in Nome, Alaska, youth identified a need for a safe, substance-free space. With help from a variety of community partners, the Partnership staff and youth members created the Java Hut, a substance-free coffeehouse designed for youth. The Java Hut is helping to change norms in the community by providing a fun, youth-friendly atmosphere and activities that are not centered around alcohol or marijuana.

(F) Portland's Regional Drug Initiative (RDI) has promoted the establishment of drug-free workplaces among the city's large and small employers. Over 3,000 employers have attended an RDI training session, and of those, 92 percent have instituted drug-free workplace policies. As a result, there has been a 5.5 percent decrease in positive workplace drug tests.

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(G) San Antonio Fighting Back worked to increase the age at which youth first used illegal substances. Research suggests that the later the age of first use, the lower the risk that a young person will become a regular substance abuser. As a result, the age of first illegal drug use increased from 9.4 years in 1992 to 13.5 years in 1997.

(H) In 1990, multiple data sources confirmed a trend of increased alcohol use by teenagers in the Troy community. Using its "multiple strategies over multiple sectors" approach, the Troy Coalition worked with parents, physicians, students, coaches, and others to address this problem from several angles. As a result, the rate of twelfth grade students who had consumed alcohol in the past month decreased from 62.1 percent to 53.3 percent between 1991 and 1998, and the rate of eighth grade students decreased from 26.3 percent to 17.4 percent. The Troy Coalition believes that this decline represents not only a change in behavior on the part of students, but also a change in the norms of the community.

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(6) Despite these successes, drug use continues to be a serious problem facing communities across the United States. For example:

(A) According to the Pulse Check: Trends in Drug Abuse Mid-Year 2000 report—

(i) crack and powder cocaine remains the most serious drug problem;

(ii) marijuana remains the most widely available illicit drug, and its potency is on the rise;

(iii) treatment sources report an increase in admissions with marijuana as the primary drug of abuse—and adolescents outnumber other age groups entering treatment for marijuana;

(iv) 80 percent of Pulse Check sources reported increased availability of club drugs, with ecstasy (MDMA) and ketamine the most widely cited club drugs and seven sources reporting that powder cocaine is being used as a club drug by young adults;

(v) ecstasy abuse and trafficking is expanding, no longer confined to the "rave" scene;

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(vi) the sale and use of club drugs has grown from nightclubs and raves to high schools, the streets, neighborhoods, open venues, and younger ages;

(vii) ecstasy users often are unknowingly purchasing adulterated tablets or some other substance sold as MDMA; and

(viii) along with reports of increased heroin snorting as a route of administration for initiates, there is also an increase in injecting initiates and the negative health consequences associated with injection (for example, increases in HIV/AIDS and Hepatitis C) suggesting that there is a generational forgetting of the dangers of injection of the drug.

(B) The 2000 Parent's Resource Institute for Drug Education study reported that 23.6 percent of children in the sixth through twelfth grades used illicit drugs in the past year. The same study found that monthly usage among this group was 15.3 percent.

(C) According to the 2000 Monitoring the Future study, the use of ecstasy among eighth graders increased from 1.7 percent in 1999 to

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3.1 percent in 2000, among tenth graders from 4.4 percent to 5.4 percent, and from 5.6 percent to 8.2 percent among twelfth graders.

(D) A 1999 Mellman Group study found that—

(i) 56 percent of the population in the United States believed that drug use was increasing in 1999;

(ii) 92 percent of the population viewed illegal drug use as a serious problem in the United States; and

(iii) 73 percent of the population viewed illegal drug use as a serious problem in their communities.

(7) According to the 2001 report of the National Center on Addiction and Substance Abuse at Columbia University entitled "Shoveling Up: The Impact of Substance Abuse on State Budgets", using the most conservative assumption, in 1998 States spent $77,900,000,000 to shovel up the wreckage of substance abuse, only $3,000,000,000 to prevent and treat the problem and $433,000,000 for alcohol and tobacco regulation and compliance. This $77,900,000,000 burden was distributed as follows:

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(A) $30,700,000,000 in the justice system (77 percent of justice spending).

(B) $16,500,000,000 in education costs (10 percent of education spending).

(C) $15,200,000,000 in health costs (25 percent of health spending).

(D) $7,700,000,000 in child and family assistance (32 percent of child and family assistance spending).

(E) $5,900,000,000 in mental health and developmental disabilities (31 percent of mental health spending).

(F) $1,500,000,000 in public safety (26 percent of public safety spending) and $400,000,000 for the state workforce.

(8) Intergovernmental cooperation and coordination through national, State, and local or tribal leadership and partnerships are critical to facilitate the reduction of substance abuse among youth in communities across the United States.

(9) Substance abuse is perceived as a much greater problem nationally than at the community level. According to a 2001 study sponsored by The Pew Charitable Trusts, between 1994 and 2000—

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(A) there was a 43 percent increase in the percentage of Americans who felt progress was being made in the war on drugs at the community level;

(B) only 9 percent of Americans say drug abuse is a "crisis" in their neighborhood, compared to 27 percent who say this about the nation; and

(C) the percentage of those who felt we lost ground in the war on drugs on a community level fell by more than a quarter, from 51 percent in 1994 to 37 percent in 2000.

(b) EXTENSION AND INCREASE OF PROGRAM.—Section 1024(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1524(a)) is amended—

(1) by striking "and" at the end of paragraph (4); and

(2) by striking paragraph (5) and inserting the following new paragraphs:

"(5) $50,600,000 for fiscal year 2002;

"(6) $60,000,000 for fiscal year 2003;

"(7) $70,000,000 for fiscal year 2004;

"(8) $70,000,000 for fiscal year 2005;

"(9) $75,000,000 for fiscal year 2006; and

"(10) $75,000,000 for fiscal year 2007.".

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(c) EXTENSION OF LIMITATION ON ADMINISTRATIVE COSTS.—Section 1024(b) of that Act (21 U.S.C. 1524(b)) is amended by striking paragraph (5) and inserting the following new paragraph (5):

"(5) 8 percent for each of fiscal years 2002 through 2007.".

(d) ADDITIONAL GRANTS.—Section 1032(b) of that Act (21 U.S.C. 1533(b)) is amended by adding at the end the following new paragraph (3):

"(3) ADDITIONAL GRANTS.—

"(A) IN GENERAL.—Subject to subparagraph (F), the Administrator may award an additional grant under this paragraph to an eligible coalition awarded a grant under paragraph (1) or (2) for any first fiscal year after the end of the 4-year period following the period of the initial grant under paragraph (1) or (2), as the case may be.

"(B) SCOPE OF GRANTS.—A coalition awarded a grant under paragraph (1) or (2), including a renewal grant under such paragraph, may not be awarded another grant under such paragraph, and is eligible for an additional grant under this section only under this paragraph.

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"(C) NO PRIORITY FOR APPLICATIONS.—The Administrator may not afford a higher priority in the award of an additional grant under this paragraph than the Administrator would afford the applicant for the grant if the applicant were submitting an application for an initial grant under paragraph (1) or (2) rather than an application for a grant under this paragraph.

"(D) RENEWAL GRANTS.—Subject to subparagraph (F), the Administrator may award a renewal grant to a grant recipient under this paragraph for each of the fiscal years of the 4-fiscal year period following the fiscal year for which the initial additional grant under subparagraph (A) is awarded in an amount not to exceed amounts as follows:

"(i) For the first and second fiscal years of that 4-fiscal year period, the amount equal to 80 percent of the non-Federal funds, including in-kind contributions, raised by the coalition for the applicable fiscal year.

"(ii) For the second, third, and fourth fiscal years of that 4-fiscal year period, the

amount equal to 67 percent of the non-Federal funds, including in-kind contributions, raised by the coalition for the applicable fiscal year.

"(E) SUSPENSION.—If a grant recipient under this paragraph fails to continue to meet the criteria specified in subsection (a), the Administrator may suspend the grant, after providing written notice to the grant recipient and an opportunity to appeal.

"(F) LIMITATION.—The amount of a grant award under this paragraph may not exceed $100,000 for a fiscal year.".

(e) DATA COLLECTION AND DISSEMINATION.—Section 1033(b) of that Act (21 U.S.C. 1533(b)) is amended by adding at the end the following new paragraph:

"(3) CONSULTATION.—The Administrator shall carry out activities under this subsection in consultation with the Advisory Commission and the National Community Antidrug Coalition Institute.".

(f) LIMITATION ON USE OF CERTAIN FUNDS FOR EVALUATION OF PROGRAM.—Section 1033(b) of that Act, as amended by subsection (e) of this section, is further is amended by adding at the end the following new paragraph:

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"(4) LIMITATION ON USE OF CERTAIN FUNDS FOR EVALUATION OF PROGRAM.—Amounts for activities under paragraph (2)(B) may not be derived from amounts under section 1024(a) except for amounts that are available under section 1024(b) for administrative costs.".

SEC. 2. SUPPLEMENTAL GRANTS FOR COALITION MENTORING ACTIVITIES UNDER DRUG-FREE COMMUNITIES SUPPORT PROGRAM.

Subchapter I of chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1531 et seq.) is amended by adding at the end the following new section:

"SEC. 1035. SUPPLEMENTAL GRANTS FOR COALITION MENTORING ACTIVITIES.

"(a) AUTHORITY TO MAKE GRANTS.—As part of the program established under section 1031, the Director may award an initial grant under this subsection, and renewal grants under subsection (f), to any coalition awarded a grant under section 1032 that meets the criteria specified in subsection (d) in order to fund coalition mentoring activities by such coalition in support of the program.

"(b) TREATMENT WITH OTHER GRANTS.—

"(1) SUPPLEMENT.—A grant awarded to a coalition under this section is in addition to any grant awarded to the coalition under section 1032.

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"(2) REQUIREMENT FOR BASIC GRANT.—A coalition may not be awarded a grant under this section for a fiscal year unless the coalition was awarded a grant or renewal grant under section 1032(b) for that fiscal year.

"(c) APPLICATION.—A coalition seeking a grant under this section shall submit to the Administrator an application for the grant in such form and manner as the Administrator may require.

"(d) CRITERIA.—A coalition meets the criteria specified in this subsection if the coalition—

"(1) has been in existence for at least 5 years;

"(2) has achieved, by or through its own efforts, measurable results in the prevention and treatment of substance abuse among youth;

"(3) has staff or members willing to serve as mentors for persons seeking to start or expand the activities of other coalitions in the prevention and treatment of substance abuse;

"(4) has demonstrable support from some members of the community in which the coalition mentoring activities to be supported by the grant under this section are to be carried out; and

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"(5) submits to the Administrator a detailed plan for the coalition mentoring activities to be supported by the grant under this section.

"(e) USE OF GRANT FUNDS.—A coalition awarded a grant under this section shall use the grant amount for mentoring activities to support and encourage the development of new, self-supporting community coalitions that are focused on the prevention and treatment of substance abuse in such new coalitions' communities. The mentoring coalition shall encourage such development in accordance with the plan submitted by the mentoring coalition under subsection (d)(5).

"(f) RENEWAL GRANTS.—The Administrator may make a renewal grant to any coalition awarded a grant under subsection (a), or a previous renewal grant under this subsection, if the coalition, at the time of application for such renewal grant—

"(1) continues to meet the criteria specified in subsection (d); and

"(2) has made demonstrable progress in the development of one or more new, self-supporting community coalitions that are focused on the prevention and treatment of substance abuse.

"(g) GRANT AMOUNTS.—

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"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the total amount of grants awarded to a coalition under this section for a fiscal year may not exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year.

"(2) INITIAL GRANTS.—The amount of the initial grant awarded to a coalition under subsection (a) may not exceed $75,000.

"(3) RENEWAL GRANTS.—The total amount of renewal grants awarded to a coalition under subsection (f) for any fiscal year may not exceed $75,000.

"(h) FISCAL YEAR LIMITATION ON AMOUNT AVAILABLE FOR GRANTS.—The total amount available for grants under this section, including renewal grants under subsection (f), in any fiscal year may not exceed the amount equal to five percent of the amount authorized to be appropriated by section 1024(a) for that fiscal year.".

SEC. 3. FIVE-YEAR EXTENSION OF ADVISORY COMMISSION ON DRUG-FREE COMMUNITIES.

Section 1048 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1548) is amended by striking "2002" and inserting "2007".

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SEC. 4. AUTHORIZATION FOR NATIONAL COMMUNITY ANTI-DRUG COALITION INSTITUTE.

(a) IN GENERAL.—The Director of the Office of National Drug Control Policy may, using amounts authorized to be appropriated by subsection (d), make a grant to an eligible organization to provide for the establishment of a National Community Antidrug Coalition Institute.

(b) ELIGIBLE ORGANIZATIONS.—An organization eligible for the grant under subsection (a) is any national nonprofit organization that represents, provides technical assistance and training to, and has special expertise and broad, national-level experience in community antidrug coalitions under section 1032 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1532).

(c) USE OF GRANT AMOUNT.—The organization receiving the grant under subsection (a) shall establish a National Community Antidrug Coalition Institute to—

(1) provide education, training, and technical assistance for coalition leaders and community teams;

(2) develop and disseminate evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes; and

REV_00128171

(3) bridge the gap between research and practice by translating knowledge from research into practical information.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of activities under this section, including the grant under subsection (a), amounts as follows:

(1) For each of fiscal years 2002 and 2003, $2,000,000.

(2) For each of fiscal years 2004 through 2007, such sums as may be necessary for such activities.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>

Sent: 6/27/2001 10:55:56 AM

Subject: : Ciongoli and Ashcroft will not be at JSC today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 14:55:56.00
SUBJECT:: Ciongoli and Ashcroft will not be at JSC today
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Laura L. Flippin/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>
Sent: 6/27/2001 12:49:01 PM
Subject: : POTUS Mexico City policy

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2001 16:49:01.00
SUBJECT:: POTUS Mexico City policy
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Does anyone know who in the WH is most familiar with this?
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From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/28/2001 6:43:15 AM
Subject: : Re: URGENT Research
Attachments: P_QMHL2004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-JUN-2001 10:43:15.00
SUBJECT:: Re: URGENT Research
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached are statements made by POTUS the day of the last seven SCOTUS retirements (beginning with Reagan I). They are separated by retirement, beginning with the most recent.

Brett M. Kavanaugh
06/28/2001 09:17:52 AM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc:
Subject: URGENT Research

For the Supreme Court resignations since 1981, please get information about what statements the President issued that day. This is urgent.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QMHL2004_WHO.TXT_1>

POTUS STATEMENTS RE: SUPREME COURT RETIREMENTS

I. CLINTON STATEMENT/Q&A RE: BLACKMUN RETIREMENT

President BILL CLINTON: It's my honor, on behalf of the people of the United States of America, to thank Justice Blackmun for his lifetime of service to our nation. I have received his letter announcing his intention to step down from the Supreme Court. In so doing, he will step up into our history. During his 24 years on our highest court, Justice Blackmun has become part of the rich and evolving story of American justice and constitutional law. With majesty and reason, with scholarship and grace, he is a good man who has earned the respect and the gratitude of every one of his fellow countrymen and women.

When President Nixon nominated Harry Blackmun for service on the court, his candidacy naturally occasioned a great deal of speculation about what kind of justice he would be. Some labeled him a strict constructionist. But he rejected any attempt to tag him with a label, saying, and I quote, "I've been called liberal and conservative. Labels are deceiving. I call them as I see them." Twenty-four years later we can say that he did exactly what he said he would do 24 years ago.

It was President Woodrow Wilson who called our judiciary the balance wheel of our entire system. It is meant to maintain a nice adjustment between individual rights and government powers which constitutes political liberty. Harry Blackmun has been a steady and strong hand on that balance wheel. In cases argued before him he found the human dimension and struck the right balance. In the struggle over how we might best overcome our legacy of racism; in protecting the women's reproductive rights and providing poor people and sick people access to the lowest-priced prescription drugs; in opening the courthouse doors to the mentally ill and upholding tough sentencing guidelines that keep hardened criminals confined in prison; in averting a constitutional crisis by voting with a united court to tell the president who appointed him to obey the law.

Those of us who have studied the law can at times be lost in its abstractions. The habits, the procedures, the language of the law can separate lawyers from the people who look to the bar for justice. Justice Blackmun's identification was firmly and decisively with the ordinary people of this country, with their concerns, and his humanity was often given voice not only in majority opinions, but in his dissents. When he stood apart from the court and aligned himself with an abused son against a violent parent and an indifferent child welfare agency, he appealed to the court, 'What is required of us is moral ambition. Poor Joshua. It is a sad commentary upon American life and constitutional principles that Joshua and his mother are denied by this court the opportunity to have their rights protected.'

As he promised, his opinions defied labels. Only the word justice applies. Justice has not only been his title, it has been his guiding light. Consider the history of which he has been a part. His tenure on the court of appeals and the Supreme Court extended through the terms of nine presidents. Fewer than 110 Americans have served on the Supreme Court, and Justice Blackmun served with 17 of them. Of the Judiciary Committee members who unanimously approved his

nomination, including strong people in the Senate like John McClellan and Sam Irvin, Phil Hart, Hugh Scott, Mack Mathias, only three remain, Senators Kennedy, Byrd and Thurman. He's been part of a very lively period in American history, and he has served us well.

Let me also say on a personal note, one of the most rewarding experiences of my public life and my personal life has been the opportunity that Hillary and I have had to get to know Harry Blackmun and his wonderful wife, Dottie, who is here with us today. I have seen his passion in a private way for the people of his country, for its history, for its leaders, for its institutions, for its laws, for holding us together and moving us forward. I can only say that every one of us who serves in any capacity in public life would do very well by the people of the United States if we could bring to our work half the integrity, the passion and the love for this country that Justice Blackmun has given us on the United States Supreme Court for 24 years, and I thank him very much.

Unidentified Reporter #1: Mr. President, these are such large shoes to fill. Have you thought about the kind of person you'd want, and if you could take aback politics and the practical nature of politics, would it be possible to fill it with someone from the Senate, such as George Mitchell, without jeopardizing your programs such as health care?

Pres. CLINTON: Well, today I'd like to make just one statement about that, because I think today should be Justice Blackmun's day. We'll have a lot of time in the days ahead to discuss this. The shoes are large; the role that he has filled on this court is terribly important. I will attempt to appoint someone of genuine stature and--and largeness of ability and spirit to the court. I will try to do it in a timely fashion--in an appropriate and timely fashion--that is, within a reasonable amount of time. But I want to make sure that we have reviewed the appropriate options, and I will do that. And I think you'll--we'll have lots of time to talk about it in the days ahead. But I just don't think I should say much more today. I think this should be Justice Blackmun's day. Yes.

RITA BRAVER (White House Correspondent): Justice Blackmun has been known for his commitment to the decision of Roe vs. Wade that legalizes abortion. How important is it for the Supreme Court to keep that philosophy, toward the right to abortion? And I wondered if Justice Blackmun might say a few words about where he thinks the court might be headed on that issue?

Pres. CLINTON: Well, I don't know if he wants to talk about it. You know, of course, that--that I agree with the decision, and I think it's an important one in a very difficult and complex area of our nation's life. But again, I don't want to talk about the appointment of the new justice today.

Unidentified Reporter #2: Mr. President--Mr. President, I think you've had some advance warning that this might be coming. Could you give us how much sense of an opportunity you've had to get your process started and how far along it might be?

Pres. CLINTON: Well, I spoke a little this morning with our staff about it. We will have, I think, a good process that will involve the--Mr. Cutler, the White House counsel; the attorney general; Mr. McLarty and Mr. Leder, the two who have been overseeing our personnel decisions. I think it will proceed in a very deliberate way.

You know, Justice Blackmun referred in his letter to a conversation we had several months ago, indicating that he might--or that he intended to leave at some time during this year--or announce his intention. I frankly kept hoping he would change his mind. But I--I--I--I think we were prepared and I think we will proceed forthwith. Yes, sir. Go ahead.

Unidentified Reporter #3: Mr. President, it's for Justice Blackmun, an old friend. I thought you had taken the public position that your doctors would tell you when it was time to go. That having been so, can you say how you reached your decision to retire and would you add to that how you're going to get along without a daily fix of hate mail?

Justice BLACKMUN: I--I missed the punch line.

Pres. CLINTON: He asked how you were going to get along without your daily fix of hate mail. He offered to take some of mine.

Unidentified Reporter #4: Mr. President, do you--it took you eight months the last time. Will it take you that long this time?

Pres. CLINTON: Thank you. Thank you. Thank you. Let's go.

-CBS News Transcripts, 04/06/94

II. CLINTON STATEMENT/Q&A RE: WHITE RETIREMENT

PRESIDENT CLINTON: Let me say, as all of you know, I received a letter not long ago from Justice White expressing his intention to resign from the Court at the end of this term, and saying that he wanted to give me this much notice so that hopefully I could announce my intention to nominate someone, and all the hearings could be concluded in time to really prepare someone to serve at the beginning of the October term of the Court.

I called Justice White just a few moments ago and had a fine conversation with him. I've known him for nearly 20 years, and I thanked him for his service to our country. He has had a truly remarkable life, and I appreciate the fact that he cared enough about the Court as an institution to offer me a significant period of time to deliberate and still to have plenty of time to have a nominee considered by the Senate and then confirmed well in advance of the beginning of the Court's next term. So I will begin work on this tomorrow in earnest, and I will attempt to be faithful to my constitutional duties and appoint a truly outstanding American in a timely fashion.

Q Is -- (name inaudible) -- in the running, Mr. President?

PRESIDENT CLINTON: I don't want to get into personalities now. This is -- this is Mr. Justice White's day, and as I said, I never will forget sitting in the Supreme as a young attorney general and having had him already tell me that the quality of representation by the states was pretty poor, and then I had worked very hard with the lawyer from my state who was making the

argument, and he sent me a note which I still have in my personal files 16 years later saying that we were doing better. (Laughs.) So that's what I'm going to try to do every day.

STAFF: Thank you.

Q Do you have a long list of possible nominees, Mr. President?

PRESIDENT CLINTON: No. The list may get longer, may get shorter. They -- we -- I did not anticipate having the opportunity to make an appointment at this early stage, so we don't have a big bank of potential nominees. I'll go to work on it tomorrow. I don't want to discuss any individuals at this point. I will do my best to pick a truly outstanding person just as soon as I can.

-Federal News Service,* REMARKS OF PRESIDENT CLINTON TO REPORTERS PRIOR TO DEPARTURE FOR ANDREWS AIR FORCE BASE WHITE HOUSE SOUTH LAWN, *03/19/93

Q Mr. President -- (inaudible) -- what you'll be looking for in a replacement for Justice White?

PRESIDENT CLINTON: I already said that in Washington. I used to (take/teach ?) constitutional law, and I think that there are few decisions that the president makes which are more weighty, more significant, which can have a greater impact on more Americans than an appointment to the Supreme Court. And I'm going to try to pick a person that has a fine mind, good judgment, wide experience in the law and in the problems of real people, and someone with a big heart.

-Federal News Service,* REMARKS BY PRESIDENT BILL CLINTON AT THE DOWNTOWN CHILD DEVELOPMENT CENTER ATLANTA, GEORGIA, *03/19/93

III. BUSH STATEMENT RE: MARSHALL RETIREMENT

Justice Marshall has rendered extraordinary and distinguished service to his country as a pioneering civil rights lawyer, a judge on the US Court of Appeals for the Second Circuit, as Solicitor General, and in his tenure on the Supreme Court. His career is an inspiring example for all Americans. He grew up under segregation to achieve the highest office to which a lawyer can aspire. His accomplishments on the bench will long be remembered. We wish him the best in his retirement. I intend to nominate a successor very soon.

-Federal News Service,* STATEMENT FROM PRESIDENT BUSH RELEASED BY THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY, *06/27/91

PRESIDENT BUSH: (In progress) -- move very swiftly. And I paid my respects to Justice Marshall in a statement that we put out. He served his country with great distinction.

And, you know, it was very pleasant for Barbara and me -- I knew nothing about this, of course -- but he and Mrs. Marshall were our guests up at Camp David awhile back and we had a very warm and relaxed and entertaining visit. I say "entertaining" from him; he fired off a few jokes for us. And it was very pleasant. So, in the personal relationship we feel sad about this, but he has served with -- served his country well and we're going to -- we're going to move promptly.

-Federal News Service,* EXCERPT OF PRESS STAKEOUT WITH PRESIDENT BUSH REGARDING RETIREMENT OF JUSTICE THURGOOD MARSHALL, *06/27/91

IV. BUSH COMMENTS RE: BRENNAN RETIREMENT

President Bush said he would meet with his top aides first thing Saturday to begin the search for a nominee to replace retired Supreme Court Justice William Brennan.

Speaking to reporters aboard Air Force One Friday night, Bush would not elaborate on judicial philosophy, but said the general decision-making process will be governed by the "broad lines" of "strict constructionist," a phrase often used to describe judicial conservatism.

Bush, who received Brennan's letter of resignation aboard Air Force One just before he left Cheyenne, Wyo., for Washington, said his White House meeting will include Attorney General Dick Thornburgh, chief of staff John Sununu and legal counsel C. Boyden Gray.

"It's so sudden that I have no time frame in mind," said Bush. "The court ... is in its summer adjournment so there is some time, but I'd like to get started on this process and hopefully have a nominee very, very soon."

Bush said it was "too early to express anything" when asked to detail the judicial philosophy he wants.

"I've always said I want somebody who will be on there not to legislate from the bench, but to faithfully interpret the Constitution, so that gives me a wide latitude. But I do not plan at this point to talk about any issues or any judicial philosophy."

Bush acknowledged that his administration has thought about possible Supreme Court appointments. "It's not like we are starting from ground zero."

-United Press International, 07/20/90

President Bush, who was notified of the Brennan resignation while on Air Force One, said the development was a "complete surprise."

"Obviously his resignation is accepted," Bush said. "I also thanked him for his distinguished service to the United States."

-United Press International, 07/20/90

Bush said he would meet with top aides this morning to "start the process of finding a successor," AP reported. The president said that he wanted the best-qualified person for the post and was "not afraid of starting a nomination fight."

-Boston Globe, 07/21/90

V. REAGAN STATEMENT RE: POWELL RETIREMENT

I have been advised today that, after 16 years on the Supreme Court bench, Justice Lewis F. Powell Jr., has announced his retirement.

Throughout his career, Justice Powell has won a reputation for intellectual balance and fair-mindedness. He is known for his courtliness and courtesy and is truly a justice's justice.

These past 16 years have been among the most momentous in the court's history. Justice Powell's personal role in the court's decisions on a wide range of issues has led one commentator to say he 'has had as powerful an influence as anyone alive' in interpreting the law of the land. I speak for all Americans in saying that his has been a wise and generous influence, and one that will be greatly missed.

The president's responsibility under Article II, Section 2 of the Constitution to nominate justices of the Supreme Court is one of the most significant duties of my office. I believe that the court should enter the next term at full strength, and so I will soon be submitting to the Senate my nomination for Justice Powell's successor.

-United Press International,* STATEMENT BY PRESIDENT REAGAN, *06/26/87

VI. REAGAN STATEMENT/Q&A RE: BURGER RETIREMENT, REHNQUIST/SCALIA NOMINATIONS:

On May 27, 1986, Chief Justice Burger advised me that he wanted to devote his full energies in the coming year to the important work of the Commission on the Bicentennial of the Constitution and for that reason would be retiring as Chief Justice of the Supreme Court as of the end of the Court's current term. Today I received with regret Chief Justice Burger's letter formally notifying me of his retirement.

And immediately after my conversation with the Chief Justice, I directed my Chief of Staff, together with the Attorney General and the Counsel of the President, to develop

recommendations for a successor. And I am pleased to announce my intention to nominate William H. Rehnquist, currently an Associate Justice of the Supreme Court, as the new Chief Justice of the United States. Upon Justice Rehnquist's confirmation, I intend to nominate Antonin Scalia, currently a Judge of the United States Court of Appeals for the District of Columbia Circuit, as Justice Rehnquist's successor.

In taking this action, I am mindful of the importance of these nominations. The Supreme Court of the United States is the final arbiter of our Constitution and the meanining of our laws. The Chief Justice and the eight Associate Justices of the Court must not only be jurists of the highest competence, they must also be attentive to the rights specifically guaranteed in our Constitution and to the proper role of the courts in our democratic system. In choosing Justice Rehnquist and Judge Scalia, I have not only selected judges who are sensitive to these matters, but through their distinguished backgrounds and achievements, reflect my desire to appoint the most qualified individuals to serve in our courts.

Justice Rehnquist has been an Associate Justice of the Supreme Court since 1971, a role in which he has served with great distinction and skill. He is noted for his intellectual power, the lucidity of his opinions, and the respect he enjoys among his colleagues.

Judge Scalia has been a Judge of the United States Court of Appeals for the District of Columbia Circuit since 1982. His great personal energy, the force of his intellect, and the depth of his understanding of our constitutional jurisprudence uniquely qualify him for elevation to our highest court.

I hope the Senate will promptly consider and confirm these gifted interpreters of our laws.

And in closing, I want to say a word about Chief Justice Burger. He has led the Supreme Court for 17 years, a time of great change, and yet a period also of consolidation and stability in the decisions of the Court. Under Chief Justice Burger's guidance, the Court has remained faithful to precedent, while it sought out the principles that underlay the framers' words.

He is retiring now in order to devote his full attentions to a momentous occasion in our country's history: the observance in 1987 of the 200th Anniversary of the Constitution. This is an endeavor for which all Americans will be grateful and to which I and the members of the administration will lend our total support.

I'm proud and honored to stand here today with Chief Justice Burger, with Justice Rehnquist, and with Judge Scalia, and to discharge my constitutional responsibilities as President of the United States. Thank you all. God bless you.

Iq. Mr. President, what impact do you think this will have on the abortion issue -- perhaps the most emotional issue facing the Court?

The President. It probably won't surprise you when I tell you that I'm not going to take any questions now. Chief Justice Burger is here and available for any questions you might have of him, and I think the others of us --

Q. Are you satisfied that the Judge agrees with you on the abortion issue, though, sir?

The President. What?

Q. Are you satisfied that the Judge agrees with you on the abortion issue?

The President. I'm not going to answer any questions. If I start answering one, I'll --

Q. Mr. President, what was the process which led you to Judge Scalia? Did you know him before? Did people come to you and recommend him? What was the process?

The President. I'd previously appointed him into his present judgeship.

Q. Well, what made you think that he was the appropriate choice for this job?

Q. Well, surely you must think, sir, that he agrees with you on such issues as abortion, affirmative action, prayer in the schools?

The President. That's a question, and as you said --

Q. Why didn't you appoint Mr. Meese?

The President. I can't say no questions; I can say no answers. *[Laughter]*

Q. Mr. President, without a question, could you tell us a little bit about the new Justice -- whatever you can?

Mr. Wallison. n1 We'll have a background --

n1 *Peter J. Wallison is Counsel to the President.*

The President. There will be background material --

Q. But, I mean, for the American people, because we --

The President. -- that will be made available to you.

Q. Do you know him personally?

The President. Yes.

Q. Do you want to take questions on another subject? Have you heard from Gorbachev on the summit yet, sir?

The President. No, I think the subject today is Justice.

Q. Well, could we ask Justice Burger? Chief Justice Burger, could you --

Q. Did he recommend his successor?

The President. No, the Justice said that he would not presume to do that. He did discuss with me individuals and give me his opinion of them.

Q. Well, Mr. Chief Justice, maybe it's appropriate now to ask you to give us your thoughts after, what, since 1969 -- 17 years in the Court?

The Chief Justice. Seventeen years, yes.

Q. Sum up your tenure. What do you think you've done for this Court?

The Chief Justice. That would take me about 17 years, and you don't want to spend that much time. *[Laughter]*

Q. Why are you leaving the Court, sir? Could you explain a little bit why you're leaving the Court?

The Chief Justice. For one primary reason: that the 200th Anniversary of the Constitution got a late start -- the celebration got a late start. It is vastly underfinanced, and we're going to have the devil's own time trying to do the kind of a job that ought to be done for this great event.

John Warner, the Chairman of the '76 event, you remember, was drafted from his job as Secretary of the Navy, which he did not want to leave; and being an old friend, he told me, when this subject came up last year, that the job of Chairman was a full-time job. I already have two full-time jobs, as you know: a job as a Justice of the Court and the other job with all the vast administration problems. And it just isn't feasible to have three full-time jobs.

Q. Is it a matter of health, sir? I mean, people don't leave the Court except for matters of health, normally.

The Chief Justice. Well, you make the diagnosis. Do I look as though I'm falling apart? *[Laughter]*

Q. No, but, sir, is --

Q. Well, it's not how you look, it's how you feel. I mean, was it a matter of health, sir?

The Chief Justice. Never felt better in my life.

Q. Are you pleased with the direction that the Court has taken? How would you assess your tenure in the Court?

The Chief Justice. I wouldn't try to assess it. I leave that to other people to do it.

Q. Do you leave it with satisfaction, sir -- that you have accomplished what you set out to?

The Chief Justice. Not everything I set out to, no.

Q. Could you tell us a little bit about what you're sad not to have finished?

The Chief Justice. What I did not finish was an absolute imperative, and that's to experiment with this intermediate panel that is now pending before the Congress. It's a 5-year experiment. It won't cost any money, and that's, perhaps, why it doesn't attract much attention in Washington. It literally will cost nothing except to bring the judges from wherever they are into Washington.

Q. Did you participate in a judgment on the Gramm-Rudman ruling?

The Chief Justice. I'm going to answer this other question first.

That bill is pending. It would take about 50 cases a year off of the Supreme Court. And at the present time, if you're doing your homework -- those of you who are regulars on the Court -- you'll find that there are 50 to 100 cases denying cert, where one, two, or three Justices file a dissent and say this case ought to be taken. There are important cases that ought to be taken that aren't taken. You know, we've gone from Chief Justice Warren's first year with 65 signed opinions, and we've been running over 150 for the last 4 or 5 years. We've gone from 1,400 and some filings back in Earl Warren's day to nearly 5,000 -- nearly 100 a week. The Court's got to have some relief somewhere. I'm astonished that we haven't had some judges fall over with coronary thrombosis or some other illness of exhaustion and overwork.

But, going back specifically, the only health problem that I know I have is the one that I have had since I was 10 years old, and that's a polio back from having polio. And apart from the ordinary mental deterioration that occurs after age 40 -- *[laughter]* --

Q. Did you approve of the new appointment on the Court?

The Chief Justice. I beg your pardon?

Q. Do you approve of the appointment of Judge Scalia?

The Chief Justice. Well, the Constitution doesn't give the Chief Justice any authority on the subject.

Q. But do you have a personal --

The Chief Justice. I have known each of these men. I've known Justice Rehnquist as a colleague for now, what, 15 years?

Justice Rehnquist. Fifteen years, Chief.

The Chief Justice. And I've known Judge Scalia since the time he was an Assistant Attorney General. He's participated in extra judicial activities, like being a member of the American team visiting England to study some of their methods. We are not close friends. I have a high regard for each of them, a high regard.

Q. Sir, had you grown weary of being Chief Justice, sir?

The Chief Justice. No, I'm not weary of it. No, I would like to have stayed until we got some of this remedy that I told you about. But I think --

Q. Wyo aren't you?

The Chief Justice. I think the constitutional celebration is more important. And after all, there are some other people that can carry on this work. It's just up to the Senate.

Q. Can we talk to Judge Scalia and ask --

Q. Justice Rehnquist?

Q. Can we ask Judge Scalia about his background?

Q. Has the court ruled on Gramm-Rudman?

The Chief Justice. I don't know which question --

Q. Mr. Chief Justice --

Q. Mr. Chief Justice --

The Chief Justice. Have you had the Miranda warning yet? *[Laughter]*

Q. Mr. Chief Justice, it's suggested that you withheld the ruling on Gramm-Rudman because there was a leak, and that out of pique the court withheld the ruling. Can you enlighten us on that?

The Chief Justice. I thought that came down last week. Did you all miss it? *[Laughter]*

Q. Yes.

Q. Yes, tell us about it.

Q. And are you denying that you've ruled and affirmed the lower court finding of unconstitutionality of Gramm-Rudman?

The Chief Justice. Well, don't you go back and read those things. We came down a week ago?

Q. I missed it.

The Chief Justice. You missed it?

Q. Justice Rehnquist, could we ask you your thoughts about being nominated for the highest judicial post in this country?

Justice Rehnquist. Well, I'm deeply gratified by the confidence that the President has shown in me by making the nomination. I'll do my best to deserve that confidence.

Q. Mr. Rehnquist, how is your health? I hate to be a one track, but you've had some problems in the past. What --

Justice Rehnquist. I think I won't answer any further questions of the kind that might come up before the Senate confirmation committee.

Q. But you will have a more conservative court now, won't you?

Justice Rehnquist. I stand by what I said a moment ago. I'll defer all those answers till be Senate Judiciary Committee meets.

Q. Your health will be a matter of questioning then?

Q. Judge Scalia, can you share your thoughts with us as a new nominee -- as much as you can say about your philosophy?

Judge Scalia. Yes, on the substance of it, I think I'm with Justice Rehnquist. I know a good idea when I hear one. *[Laughter]* The --

Q. What about your personal thoughts?

Judge Scalia. My personal thoughts are -- for somebody who spent his whole professional life in the law -- getting nominated to the Supreme Court is the culmination of a dream, of course. And I'm greatly honored that the President would have such confidence in me and hope that the Senate will do so as well. And I'll certainly do whatever I can to live up to it.

Q. Did administration officials, sir, question you on your views on *Rowe* v. *Wade?*

Judge Scalia. I think I respond the way Justice Rehnquist does.

Q. No, I'm not asking your personal view --

Q. Are you a Republican?

Q. -- of that subject, sir. I'm wondering whether you were questioned before your selection was

made on that subject?

Judge Scalia. If the Senate wants to ask that, they may. But I don't want to get into --

Q. Do you expect a prime controversy in the Senate confirmation?

Judge Scalia. I have no idea. I'm not a politician.

Q. Judge Rehnquist, an administrative question: How do you feel about television coverage of the Supreme Court? *[Laughter]*

Judge Rehnquist. You can call it an administrative question if you want to, but it comes under the same rubric that I indicated a moment ago. I'll defer all questions like that.

Q. Mr. --

Q. Would you carry on in the same tradition as Chief Justice Burger? Do you consider the mandate to carry on in the same tradition as Chief Justice Burger or would you make changes?

Judge Rehnquist. Again, I will defer those questions.

Q. Mr. Chief Justice, how --

Q. Mr. Chief Justice, some people suggest that the Supreme Court has become more sharply divided under your tenure. First of all, do you agree with that, and how would you characterize the general level of comity among the Justices today?

The Chief Justice. It has not become more sharply divided. If you go back and read the opinions over 35, 40 years, you'd find there just isn't any substance to that.

The reason there are nine people up there -- and there are days when I'd like there to be just one -- *[laughter]* -- the reason you have nine is to have this interchange and interplay. It goes on all the time. In the 17 years I have been there presiding over the conferences, never once, never once has a voice been raised in any discussions. They're vigorous discussions, as they should be -- always will be, I hope. We have cordial and good relations. We can disagree in a civilized way, and we do.

Q. Mr. Chief Justice --

Q. Mr. Chief Justice, since you are not going before the Senate, perhaps you can give us your views on whether these new appointments will change the philosophy or direction of the Court in the next few years.

The Chief Justice. Well, I could if I thought about it a great deal, but I haven't thought about it, so I would not entertain it.

Q. Well, you know Judge Scalia better than anybody else in this room. Give us a little sense, if you would --

The Chief Justice. No, I wouldn't say I know Judge Scalia better than anyone else in this room.

Q. Better than anyone else on this side of the room. *[Laughter]*

The Chief Justice. Then some of you haven't been on the job, doing your homework.

Q. We cover the White House.

Q. When did you first hear that it was going to be announced?

Q. When?

Q. Justice Burger --

The Chief Justice. I don't know, a day or two ago.

Q. And --

Q. Could you tell us --

Q. Sir, what will you miss most about being Chief Justice?

The Chief Justice. Really nothing. *[Laughter]*

Mr. Speakes. n2 Your press officer reminds me you have a press conference at six if you would like to save some.

n2 *Larry M. Speakes, Principal Deputy Press Secretary to the President.*

The Chief Justice. Yes, there's going to be a conference at six up at the Court. I dare not say that we're going to serve coffee and sandwiches, because we have only prepared coffee and sandwiches for the regulars. The reason it has to be at six is that I had agreed with Mr. -- I should know all of these famous people in television --

Mr. Speakes. Moyers.

The Chief Justice. Moyers, Bill Moyers, a talk with Bill Moyers on -- *[laughter]* -- just --

Q. He's going to be mad you didn't let him announce it.

The Chief Justice. -- just one subject, and that's the Bicentennial. That's the only subject I will discuss.

Q. Mr. Meese, are you disappointed that you were not nominated?

Q. Justice Burger, was your decision to retire at this time related at all to a desire to have President Reagan appoint your successor?

The Chief Justice. Well, if that had been my desire, I had quite a bit of time to wait here.

Q. Can you tell --

Q. Attorney General Meese, could you come up and talk to us for a moment, sir?

Q. Chief Justice Burger --

The Attorney General. This is the Chief Justice's conference, not mine.

Q. Chief Justice Burger, can you tell us --

Q. Can you address --

Q. -- a title something about your tendering of the resignation with the President? Did you personally come over --

The Chief Justice. I just gave it to him 10 minutes ago.

Q. And what happened? Can you tell us a little of the conversation?

The Chief Justice. He said, "Thank you," as I remember. *[Laughter]* I think maybe he and his staff were a little relieved. All they had was a word of mouth from me before, and if I hadn't shown up with that letter today, you'd have really had a problem. *[Laughter]*

Q. Chief Justice, what was the reason --

The Chief Justice. And by the way, you'll all get copies of that letter if you'd like it.

Q. Thank you.

Q. Mr. Chief Justice, what was the reason for the timing of the announcement today of the change in the Court? The President said you decided on your resignation last month. Why was it all announced today?

The Chief Justice. You'll have to ask the President that. I don't know the timing.

Q. Mr. Chief Justice, if it were not for the Bicentennial, would you've retired? When? I mean, do you have may views --

The Chief Justice. By my letter, as you will see, the effective date is July 10th. We hope to

conclude the term before that, but there is always a certain amount of administrative debris to be cleared up and --

Q. But were it not for the Bicentennial, would you have retired? At what stage?

The Chief Justice. No. No, if it were not for the Bicentennial I would not have retired.

Q. What was your toughest case? Some people have suggested it was the Nixon tape case. After all, he appointed you to the Court, you joined the unanimous judgment which forced him to turn over those tapes, which were his undoing.

The Chief Justice. That was not the toughest.

Q. What was it?

The Chief Justice. I really don't known. I'd have to give you a list of about 25 or 30. In fact, a couple that are coming down very soon and that one last week that you fellows all missed -- *[laughter]* --

Q. No.

Q. Is that a tough one?

Q. When are we going to get --

The Chief Justice. Beg your pardon?

Q. When will we get that Gramm-Rudman opinion?

The Chief Justice. Sometime before the 10th of July, I hope.

Q. Do you think others on the Court should emulate you?

The Chief Justice. In what respect? *[Laughter]*

Q. Retiring? *[Laughter]*

Q. Judge Scalia, would you call yourself a tough Judge?

Judge Scalia. I think that's in the category of questions I think --

Q. Can you tell us when you were first approached by the administration? Just give us a sense of the timing -- when you first heard and what the feelings were?

Judge Scalia. I think if the President wants that to be known, I'm sure he'll tell you.

Q. Well, why were you picked?

Mr. Speakes. We do have a person to give you all that information if you relinquish --

Q. Well, we'd rather have it from these people, themselves.

Q. Judge Scalia, could you tell us where you want to school and what your background is?

Mr. Speakes. We have that in the bins at this very moment.

Q. But we'd love to have it on tape.

Q. Judge Scalia, many of the Judges appointed by this administration are said to have been subjected to a rigorous screening process conducted under Attorney General Meese. Were you at all -- *Roe* v. *Wade* aside -- asked any of your positions on various points of law?

Judge Scalia. I have no idea what the screening process was. And, again, you'd have to ask the Attorney General.

Q. No one spoke to you, sir?

Judge Scalia. I speak to people all the time.

Q. But I mean, there was no screening process directly with you?

Judge Scalia. I'd prefer not to answer that.

Q. Have you ever met the President of the United States before today?

Judge Scalia. Yes, I had met the President before today.

Q. On this subject of your appointment?

Q. Judge, can I ask you a question that you can answer? Can you give us the pronunciation of your name? *[Laughter]* I've heard it --

Judge Scalia. I'd be happy to do that -- Sca-*le*-a

Q. First name?

Q. Mr. Chief Justice, did you at any point consider telling the President that, you know, you just don't have time to run the Bicentennial -- the Constitution -- that, in fact, you're the Chief Justice of the United States, and you'd rather do that?

The Chief Justice. Nobody that I know of could do all three of the jobs that I spoke of that I've been trying to do for this last year. One week, recently, after I had been carrying around a

walking flu bug, one of my staff informed me that I had logged 105 hours that week. Now, 80 and 90 I can handle, but I'm getting a little too old for 105.

Q. Well, I think what has us all astounded here is the fact that you are the Chief Justice of the United States and you're putting that aside to handle a job that in fact is going to be over in a year.

The Chief Justice. No, 3 years.

Q. Well, 3 years, whatever. Did you figure perhaps you would let the President take that burden off of you so you could remain as Chief Justice, or were you simply weary of being Chief Justice?

The Chief Justice. No, I wasn't weary of being Chief Justice. It's a lot of fun. But I go back to what I said first. We have an inadeuate preparation for the Bicentennial of the Constitution. It's a remarkable story. It's one of the great, great stories in American history, and its our job to tell it. And we're just getting organized. We haven't got a main headquarters yet. We're scattered in three buildings. We've got, for Washington, a piddling appropriation of $12 million, and 10 years ago John Warner had over $200 million. If we're going to celebrate this thing in the proper way and have people get an understanding -- in this country and elsewhere -- about what freedom means and that this is the instrument that gave that freedom and how it works, there is a lot of work to be done. I expect to be working literally full time.

Q. You said this was the primary reason that you were resigning.

The Chief Justice. That's right.

Q. What would the secondary reason be, if any?

The Chief Justice. I didn't have a secondary reason.

Q. Mr. Meese, can you tell us how the court might change with these changes?

The Attorney General. No.

Q. Mr. Justice Rehnquist --

Q. Are you disappointed you weren't named?

The Attorney General. No.

Mr. Speakes. I think the growing consensus, if we took a vote, would be time to conclude. These gentlemen will be before the Senate, and this gentleman will be before the press this afternoon.

Q. Larry, just one question of Mr. Justice Rehnquist that perhaps he could answer without violating his duties to the Senate.

You, sir, have had a reputation more as a thinker and writer on the Court than as an administrator. Do you, too, consider it the culmination of a dream to be Chief Justice and thus have to take on all these administrative tasks?

Judge Rehnquist. I wouldn't call it the culmination of a dream, but it's not every day when you're 61 years old that you get a chance to have a new job. *[Laughter]* And you take on some things you don't like along with a lot of things that you do like.

The Chief Justice. In that respect, there is a perfect parallel. Bill Rehnquist is the same age I was when I was nominated back in the Garfield administration, I think it was. *[Laughter]*

Q. Ronald Reagan was 69 or 70 and he got a new job.

Q. Mr. Chief Justice, how have you seen the Court change philosophically during your tenure?

The Chief Justice. I think I got just part of that question. Has it changed philosophically?

Q. How, sir? How have you seen it change philosophically during your tenure?

The Chief Justice. Well, if you look over the history of the Supreme Court of the United States or of the country, you will find at different periods there are different needs and different problems and there are different answers. And then sometimes you find that an answer that you gave 2 years ago or 3 or 5 doesn't quite fit, and you adjust it. We have been doing some adjusting. That was done in the previous 15 years, but we haven't done a fraction of that adjusting that was done in the 15 years before my tenure began.

Q. Do you regret any of your decisions, sir? Any of the opinions you wrote? Would you like to change them?

The Chief Justice. I wish some of them were a little shorter. *[Laughter]*

Q. Just to followup on my question.

Q. Mr. Chief Justice, you've had a good relationship with the American Bar Association throughout your tenure as Chief Justice. Are you at all concerned that the ABA was not consulted, apparently, about your replacement on the Court?

The Chief Justice. I don't know anything about the procedures, not a thing. I have never understood that the appointments to the Supreme Court automatically were cleared with the American Bar. Sometimes they are consulted, and sometimes they're not.

Q. Mr. Chief Justice, if I could follow up on my question.

Mr. Speakes. Go ahead.

The Chief Justice. The last one.

Mr. Speakes. The Justice has ruled. Chief Justice has ruled -- last one.

Q. You said that there had not been nearly the changes during your tenure as in the preceding 15 years. Does that mean there was less need for change or it just did not happen?

The Chief Justice. I'll leave that to you.

Q. Okay.

The Chief Justice. Objective observers are a better judge of that than I am.

Q. Are you going to hand down Gramm-Rudman tomorrow?

The Chief Justice. I thought it was last week.

Q. Judge Scalia, can we get the pronunciation of your first name?

Judge Scalia. An-*ton*-in is what I've always --

Q. Antonin Scalia?

Judge Scalia. That's right.

Q. And so forth it shall be.

Judge Scalia. Well, all right. *[Laughter]*

Q. Does your wife know about this?

Mr. Speakes. Do you want to file?

Q. Yes.

Mr. Speakes. Okay. At 2:40 we will have the background briefing. You have the two announcements in the bins, the exchange of letters, and I believe the statement by the President all in there.

Note: The President spoke at 2 p.m. to reporters assembled in the Briefing Room at the White House.

-Public Papers of the President, 06/17/86

VII. REAGAN COMMENTS RE: STEWART RETIREMENT

The president was questioned about Stewart's retirement as he was going to the Old Executive Office building Thursday.

"There will be an announcement shortly" on a replacement, Reagan said, "We won't leave that vacant."

In a campaign speech last fall, Reagan said, "One of the first Supreme Court vacancies in my administration will be filled by one of the most qualified women I can possibly find."

But asked Thursday if his nominee would be a woman, the president said, "No decision has been made yet." Was he looking for a woman, he was asked. "Always," Reagan replied.

-United Press International, 06/18/81

"Of course," President Reagan replied today, when reporters asked whether he and his talent scouts are including women on their list of possibilities for a vacant Supreme Court seat.

Reagan was questioned about his search for a nominee to succeed retiring Justice Potter Stewart as he headed toward the Oval Office after seeing off the visiting prime minister of Singapore.

The president said he and members of his administration "have been reviewing and looking at that and gathering names" for a possible successor to Stewart, who Thursday announced his retirement, effective July 3.

Asked if women are going to be included on his list, Reagan said, "Of course."

Asked by reporters if he is going to name a woman to the bench, Reagan said, "No decision has been made on a replacement." He added that women "always" were being sought.

Reagan told reporters an announcement on a replacement would be made "shortly."

But the president also has made clear he thinks justices have overstepped their authority in several court cases. "Their function is to interpret the law and not to make it," Reagan said, declaring, "I am a constitutionalist."

-United Press International, 06/19/81

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/28/2001 9:29:56 AM
Subject: : Re: White House responses to past resignations

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-JUN-2001 13:29:56.00
SUBJECT:: Re: White House responses to past resignations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Not like my clear, level-headed, rational thinking.

Brett M. Kavanaugh
06/28/2001 01:04:58 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: White House responses to past resignations

wishful thinking clouded my prediction . . .

Helgard C. Walker
06/28/2001 12:58:53 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: White House responses to past resignations

I submit that greasy, anchovy pizzas at the A.V. Ristorante for the whole WHCO gang should be on those who predicted erroneously today's events . . .

Brett M. Kavanaugh
06/28/2001 10:03:46 AM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: White House responses to past resignations

Judge, we are almost done collecting these, and I will circulate shortly.

T minus 45 minutes or so until we know. For the Archives, I

hereby predict the Chief is resigning today.

Message Copied
To:_____
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Stuart W. Bowen/WHO/EOP@EOP
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Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
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stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
noel j. francisco/who/eop@eop
robert w. cobb/who/eop@eop

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/28/2001 11:17:58 AM
Subject: :

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SUBJECT::
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READ:UNKNOWN
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http://www.foxnews.com/story/0,2933,28285,00.html
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/28/2001 8:13:28 AM
Subject: : Microsoft Opinion
Attachments: P_E6LL2004_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-JUN-2001 12:13:28.00
SUBJECT:: Microsoft Opinion
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
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125 pages


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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued February 26 and 27, 2001

Decided June 28, 2001

No. 00-5212

UNITED STATES OF AMERICA,
APPELLEE

v.

MICROSOFT CORPORATION,
APPELLANT

Consolidated with
00-5213

Appeals from the United States District Court
for the District of Columbia
(No. 98cv01232)
(No. 98cv01233)

Richard J. Urowsky and *Steven L. Holley* argued the causes for appellant. With them on the briefs were *John L.*

REV_00128210

Warden, *Richard C. Pepperman, II*, *William H. Neukom*, *Thomas W. Burt*, *David A. Heiner, Jr.*, *Charles F. Rule*, *Robert A. Long, Jr.*, and *Carter G. Phillips*. *Christopher J. Meyers* entered an appearance.

Lars H. Liebeler, *Griffin B. Bell*, *Lloyd N. Cutler*, *Louis R. Cohen*, *C. Boyden Gray*, *William J. Kolasky*, *William F. Adkinson, Jr.*, *Jeffrey D. Ayer*, and *Jay V. Prabhu* were on the brief of *amici curiae* The Association for Competitive Technology and Computing Technology Industry Association in support of appellant.

David R. Burton was on the brief for *amicus curiae* Center for the Moral Defense of Capitalism in support of appellant.

Robert S. Getman was on the brief for *amicus curiae* Association for Objective Law in support of appellant.

Jeffrey P. Minear and *David C. Frederick*, Assistants to the Solicitor General, United States Department of Justice, and *John G. Roberts, Jr.*, argued the causes for appellees. With them on the brief were *A. Douglas Melamed*, Acting Assistant Attorney General, United States Department of Justice, *Jeffrey H. Blattner*, Deputy Assistant Attorney General, *Catherine G. O'Sullivan*, *Robert B. Nicholson*, *Adam D. Hirsh*, *Andrea Limmer*, *David Seidman*, and *Christopher Sprigman*, Attorneys, *Eliot Spitzer*, Attorney General, State of New York, *Richard L. Schwartz*, Assistant Attorney General, and *Kevin J. O'Connor*, Office of the Attorney General, State of Wisconsin.

John Rogovin, *Kenneth W. Starr*, *John F. Wood*, *Elizabeth Petrela*, *Robert H. Bork*, *Jason M. Mahler*, *Stephen M. Shapiro*, *Donald M. Falk*, *Mitchell S. Pettit*, *Kevin J. Arquit*, and *Michael C. Naughton* were on the brief for *amici curiae* America Online, Inc., et al., in support of appellee. *Paul T. Cappuccio* entered an appearance.

Lee A. Hollaar, appearing *pro se*, was on the brief for *amicus curiae* Lee A. Hollaar.

Carl Lundgren, appearing *pro se*, was on the brief for *amicus curiae* Carl Lundgren.

REV_00128211

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REV_00128213

Before: EDWARDS, *Chief Judge*, WILLIAMS, GINSBURG, SENTELLE, RANDOLPH, ROGERS and TATEL, *Circuit Judges*.

Opinion for the Court filed *Per Curiam*.

Per Curiam: Microsoft Corporation appeals from judgments of the District Court finding the company in violation of §§ 1 and 2 of the Sherman Act and ordering various remedies.

The action against Microsoft arose pursuant to a complaint filed by the United States and separate complaints filed by individual States. The District Court determined that Microsoft had maintained a monopoly in the market for Intel-compatible PC operating systems in violation of § 2; attempted to gain a monopoly in the market for internet browsers in violation of § 2; and illegally tied two purportedly separate products, Windows and Internet Explorer ("IE"), in violation of § 1. *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30 (D.D.C. 2000) ("*Conclusions of Law*"). The District Court then found that the same facts that established liability under §§ 1 and 2 of the Sherman Act mandated findings of liability under analogous state law antitrust provisions. *Id.* To remedy the Sherman Act violations, the District Court issued a Final Judgment requiring Microsoft to submit a proposed plan of divestiture, with the company to be split into an operating systems business and an applications business. *United States v. Microsoft Corp.*, 97 F. Supp. 2d 59, 64-65 (D.D.C. 2000) ("*Final Judgment*"). The District Court's remedial order also contains a number of interim restrictions on Microsoft's conduct. *Id.* at 66-69.

Microsoft's appeal contests both the legal conclusions and the resulting remedial order. There are three principal aspects of this appeal. First, Microsoft challenges the District Court's legal conclusions as to all three alleged antitrust violations and also a number of the procedural and factual foundations on which they rest. Second, Microsoft argues that the remedial order must be set aside, because the District Court failed to afford the company an evidentiary hearing on disputed facts and, also, because the substantive provisions of the order are flawed. Finally, Microsoft asserts that the trial judge committed ethical violations by engaging in impermissible *ex parte* contacts and making inappropriate

public comments on the merits of the case while it was pending. Microsoft argues that these ethical violations compromised the District Judge's appearance of impartiality, thereby necessitating his disqualification and vacatur of his Findings of Fact, Conclusions of Law, and Final Judgment.

After carefully considering the voluminous record on appeal—including the District Court's Findings of Fact and Conclusions of Law, the testimony and exhibits submitted at trial, the parties' briefs, and the oral arguments before this court—we find that some but not all of Microsoft's liability challenges have merit. Accordingly, we affirm in part and reverse in part the District Court's judgment that Microsoft violated § 2 of the Sherman Act by employing anticompetitive means to maintain a monopoly in the operating system market; we reverse the District Court's determination that Microsoft violated § 2 of the Sherman Act by illegally attempting to monopolize the internet browser market; and we remand the District Court's finding that Microsoft violated § 1 of the Sherman Act by unlawfully tying its browser to its operating system. Our judgment extends to the District Court's findings with respect to the state law counterparts of the plaintiffs' Sherman Act claims.

We also find merit in Microsoft's challenge to the Final Judgment embracing the District Court's remedial order. There are several reasons supporting this conclusion. First, the District Court's Final Judgment rests on a number of liability determinations that do not survive appellate review; therefore, the remedial order as currently fashioned cannot stand. Furthermore, we would vacate and remand the remedial order even were we to uphold the District Court's liability determinations in their entirety, because the District Court failed to hold an evidentiary hearing to address remedies-specific factual disputes.

Finally, we vacate the Final Judgment on remedies, because the trial judge engaged in impermissible *ex parte* contacts by holding secret interviews with members of the media and made numerous offensive comments about Microsoft officials in public statements outside of the courtroom, giving rise to an appearance of partiality. Although we find no evidence of actual bias, we hold that the actions of the trial

judge seriously tainted the proceedings before the District Court and called into question the integrity of the judicial process. We are therefore constrained to vacate the Final Judgment on remedies, remand the case for reconsideration of the remedial order, and require that the case be assigned to a different trial judge on remand. We believe that this disposition will be adequate to cure the cited improprieties.

In sum, for reasons more fully explained below, we affirm in part, reverse in part, and remand in part the District Court's judgment assessing liability. We vacate in full the Final Judgment embodying the remedial order and remand the case to a different trial judge for further proceedings consistent with this opinion.

I. INTRODUCTION

A. Background

In July 1994, officials at the Department of Justice ("DOJ"), on behalf of the United States, filed suit against Microsoft, charging the company with, among other things, unlawfully maintaining a monopoly in the operating system market through anticompetitive terms in its licensing and software developer agreements. The parties subsequently entered into a consent decree, thus avoiding a trial on the merits. *See United States v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995) ("*Microsoft I*"). Three years later, the Justice Department filed a civil contempt action against Microsoft for allegedly violating one of the decree's provisions. On appeal from a grant of a preliminary injunction, this court held that Microsoft's technological bundling of IE 3.0 and 4.0 with Windows 95 did not violate the relevant provision of the consent decree. *United States v. Microsoft Corp.*, 147 F.3d 935 (D.C. Cir. 1998) ("*Microsoft II*"). We expressly reserved the question whether such bundling might independently violate §§ 1 or 2 of the Sherman Act. *Id.* at 950 n.14.

On May 18, 1998, shortly before issuance of the *Microsoft II* decision, the United States and a group of State plaintiffs

filed separate (and soon thereafter consolidated) complaints, asserting antitrust violations by Microsoft and seeking preliminary and permanent injunctions against the company's allegedly unlawful conduct. The complaints also sought any "other preliminary and permanent relief as is necessary and appropriate to restore competitive conditions in the markets affected by Microsoft's unlawful conduct." Gov't's Compl. at 53, *United States v. Microsoft Corp.*, No. 98-1232 (D.D.C. 1999). Relying almost exclusively on Microsoft's varied efforts to unseat Netscape Navigator as the preeminent internet browser, plaintiffs charged four distinct violations of the Sherman Act: (1) unlawful exclusive dealing arrangements in violation of § 1; (2) unlawful tying of IE to Windows 95 and Windows 98 in violation of § 1; (3) unlawful maintenance of a monopoly in the PC operating system market in violation of § 2; and (4) unlawful attempted monopolization of the internet browser market in violation of § 2. The States also brought pendent claims charging Microsoft with violations of various State antitrust laws.

The District Court scheduled the case on a "fast track." The hearing on the preliminary injunction and the trial on the merits were consolidated pursuant to FED. R. CIV. P. 65(a)(2). The trial was then scheduled to commence on September 8, 1998, less than four months after the complaints had been filed. In a series of pretrial orders, the District Court limited each side to a maximum of 12 trial witnesses plus two rebuttal witnesses. It required that all trial witnesses' direct testimony be submitted to the court in the form of written declarations. The District Court also made allowances for the use of deposition testimony at trial to prove subordinate or predicate issues. Following the grant of three brief continuances, the trial started on October 19, 1998.

After a 76-day bench trial, the District Court issued its Findings of Fact. *United States v. Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999) ("*Findings of Fact*"). This triggered two independent courses of action. First, the District Court established a schedule for briefing on possible legal conclusions, inviting Professor Lawrence Lessig to participate as *amicus curiae*. Second, the District Court re-

ferred the case to mediation to afford the parties an opportunity to settle their differences. The Honorable Richard A. Posner, Chief Judge of the United States Court of Appeals for the Seventh Circuit, was appointed to serve as mediator. The parties concurred in the referral to mediation and in the choice of mediator.

Mediation failed after nearly four months of settlement talks between the parties. On April 3, 2000, with the parties' briefs having been submitted and considered, the District Court issued its conclusions of law. The District Court found Microsoft liable on the § 1 tying and § 2 monopoly maintenance and attempted monopolization claims, *Conclusions of Law*, at 35-51, while ruling that there was insufficient evidence to support a § 1 exclusive dealing violation, *id.* at 51-54. As to the pendent State actions, the District Court found the State antitrust laws conterminous with §§ 1 and 2 of the Sherman Act, thereby obviating the need for further State-specific analysis. *Id.* at 54-56. In those few cases where a State's law required an additional showing of *intrastate* impact on competition, the District Court found the requirement easily satisfied on the evidence at hand. *Id.* at 55.

Having found Microsoft liable on all but one count, the District Court then asked plaintiffs to submit a proposed remedy. Plaintiffs' proposal for a remedial order was subsequently filed within four weeks, along with six supplemental declarations and over 50 new exhibits. In their proposal, plaintiffs sought specific conduct remedies, plus structural relief that would split Microsoft into an applications company and an operating systems company. The District Court rejected Microsoft's request for further evidentiary proceedings and, following a single hearing on the merits of the remedy question, issued its Final Judgment on June 7, 2000. The District Court adopted plaintiffs' proposed remedy without substantive change.

Microsoft filed a notice of appeal within a week after the District Court issued its Final Judgment. This court then ordered that any proceedings before it be heard by the court sitting *en banc*. Before any substantive matters were ad-

dressed by this court, however, the District Court certified appeal of the case brought by the United States directly to the Supreme Court pursuant to 15 U.S.C. § 29(b), while staying the final judgment order in the federal and state cases pending appeal. The States thereafter petitioned the Supreme Court for a *writ of certiorari* in their case. The Supreme Court declined to hear the appeal of the Government's case and remanded the matter to this court; the Court likewise denied the States' petition for *writ of certiorari*. *Microsoft Corp. v. United States*, 530 U.S. 1301 (2000). This consolidated appeal followed.

B. Overview

Before turning to the merits of Microsoft's various arguments, we pause to reflect briefly on two matters of note, one practical and one theoretical.

The practical matter relates to the temporal dimension of this case. The litigation timeline in this case is hardly problematic. Indeed, it is noteworthy that a case of this magnitude and complexity has proceeded from the filing of complaints through trial to appellate decision in a mere three years. *See, e.g., Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1155 (1st Cir. 1994) (six years from filing of complaint to appellate decision); *Transamerica Computer Co., Inc. v. IBM*, 698 F.2d 1377, 1381 (9th Cir. 1983) (over four years from start of trial to appellate decision); *United States v. United Shoe Mach. Corp.*, 110 F. Supp. 295, 298 (D. Mass. 1953) (over five years from filing of complaint to trial court decision).

What is somewhat problematic, however, is that just over six years have passed since Microsoft engaged in the first conduct plaintiffs allege to be anticompetitive. As the record in this case indicates, six years seems like an eternity in the computer industry. By the time a court can assess liability, firms, products, and the marketplace are likely to have changed dramatically. This, in turn, threatens enormous practical difficulties for courts considering the appropriate measure of relief in equitable enforcement actions, both in crafting injunctive remedies in the first instance and review-

ing those remedies in the second. Conduct remedies may be unavailing in such cases, because innovation to a large degree has already rendered the anticompetitive conduct obsolete (although by no means harmless). And broader structural remedies present their own set of problems, including how a court goes about *restoring* competition to a dramatically changed, and constantly changing, marketplace. That is just one reason why we find the District Court's refusal in the present case to hold an evidentiary hearing on remedies—to update and flesh out the available information before seriously entertaining the possibility of dramatic structural relief—so problematic. *See infra* Section V.

We do not mean to say that enforcement actions will no longer play an important role in curbing infringements of the antitrust laws in technologically dynamic markets, nor do we assume this in assessing the merits of this case. Even in those cases where forward-looking remedies appear limited, the Government will continue to have an interest in defining the contours of the antitrust laws so that law-abiding firms will have a clear sense of what is permissible and what is not. And the threat of private damage actions will remain to deter those firms inclined to test the limits of the law.

The second matter of note is more theoretical in nature. We decide this case against a backdrop of significant debate amongst academics and practitioners over the extent to which "old economy" § 2 monopolization doctrines should apply to firms competing in dynamic technological markets characterized by network effects. In markets characterized by network effects, one product or standard tends towards dominance, because "the utility that a user derives from consumption of the good increases with the number of other agents consuming the good." Michael L. Katz & Carl Shapiro, *Network Externalities, Competition, and Compatibility*, 75 AM. ECON. REV. 424, 424 (1985). For example, "[a]n individual consumer's demand to use (and hence her benefit from) the telephone network ... increases with the number of other users on the network whom she can call or from whom she can receive calls." Howard A. Shelanski & J. Gregory Sidak, *Antitrust Divestiture in Network Industries*,

68 U. CHI. L. REV. 1, 8 (2001). Once a product or standard achieves wide acceptance, it becomes more or less entrenched. Competition in such industries is "for the field" rather than "within the field." *See* Harold Demsetz, *Why Regulate Utilities*?, 11 J.L. & ECON. 55, 57 & n.7 (1968) (emphasis omitted).

In technologically dynamic markets, however, such entrenchment may be temporary, because innovation may alter the field altogether. *See* JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 81-90 (Harper Perennial 1976) (1942). Rapid technological change leads to markets in which "firms compete through innovation for temporary market dominance, from which they may be displaced by the next wave of product advancements." Shelanski & Sidak, at 11-12 (discussing Schumpeterian competition, which proceeds "sequentially over time rather than simultaneously across a market"). Microsoft argues that the operating system market is just such a market.

Whether or not Microsoft's characterization of the operating system market is correct does not appreciably alter our mission in assessing the alleged antitrust violations in the present case. As an initial matter, we note that there is no consensus among commentators on the question of whether, and to what extent, current monopolization doctrine should be amended to account for competition in technologically dynamic markets characterized by network effects. *Compare* Steven C. Salop & R. Craig Romaine, *Preserving Monopoly: Economic Analysis, Legal Standards, and Microsoft*, 7 GEO. MASON L. REV. 617, 654-55, 663-64 (1999) (arguing that exclusionary conduct in high-tech networked industries deserves heightened antitrust scrutiny in part because it may threaten to deter innovation), *with* Ronald A. Cass & Keith N. Hylton, *Preserving Competition: Economic Analysis, Legal Standards and Microsoft*, 8 GEO. MASON L. REV. 1, 36-39 (1999) (equivocating on the antitrust implications of network effects and noting that the presence of network externalities may actually encourage innovation by guaranteeing more durable monopolies to innovating winners). Indeed, there is some suggestion that the economic consequences of network

effects and technological dynamism act to offset one another, thereby making it difficult to formulate categorical antitrust rules absent a particularized analysis of a given market. *See* Shelanski & Sidak, at 6-7 ("High profit margins might appear to be the benign and necessary recovery of legitimate investment returns in a Schumpeterian framework, but they might represent exploitation of customer lock-in and monopoly power when viewed through the lens of network economics.... The issue is particularly complex because, in network industries characterized by rapid innovation, both forces may be operating and can be difficult to isolate.").

Moreover, it should be clear that Microsoft makes no claim that anticompetitive conduct should be assessed differently in technologically dynamic markets. It claims only that the measure of monopoly power should be different. For reasons fully discussed below, we reject Microsoft's monopoly power argument. *See infra* Section II.A.

With this backdrop in mind, we turn to the specific challenges raised in Microsoft's appeal.

II. MONOPOLIZATION

Section 2 of the Sherman Act makes it unlawful for a firm to "monopolize." 15 U.S.C. § 2. The offense of monopolization has two elements: "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966). The District Court applied this test and found that Microsoft possesses monopoly power in the market for Intel-compatible PC operating systems. Focusing primarily on Microsoft's efforts to suppress Netscape Navigator's threat to its operating system monopoly, the court also found that Microsoft maintained its power not through competition on the merits, but through unlawful means. Microsoft challenges both conclusions. We defer to the District Court's findings of fact, setting them aside only if clearly erroneous. FED R. CIV. P. 52(a). We review legal

questions *de novo*. *United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co.*, 81 F.3d 240, 244 (D.C. Cir. 1996).

We begin by considering whether Microsoft possesses monopoly power, *see infra* Section II.A, and finding that it does, we turn to the question whether it maintained this power through anticompetitive means. Agreeing with the District Court that the company behaved anticompetitively, *see infra* Section II.B, and that these actions contributed to the maintenance of its monopoly power, *see infra* Section II.C, we affirm the court's finding of liability for monopolization.

A. Monopoly Power

While merely possessing monopoly power is not itself an antitrust violation, *see Northeastern Tel. Co. v. AT & T*, 651 F.2d 76, 84-85 (2d Cir. 1981), it is a necessary element of a monopolization charge, *see Grinnell*, 384 U.S. at 570. The Supreme Court defines monopoly power as "the power to control prices or exclude competition." *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956). More precisely, a firm is a monopolist if it can profitably raise prices substantially above the competitive level. 2A PHILLIP E. AREEDA ET AL., ANTITRUST LAW ¶ 501, at 85 (1995); *cf. Ball Mem'l Hosp., Inc. v. Mut. Hosp. Ins., Inc.*, 784 F.2d 1325, 1335 (7th Cir. 1986) (defining market power as "the ability to cut back the market's total output and so raise price"). Where evidence indicates that a firm has in fact profitably done so, the existence of monopoly power is clear. *See Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995); *see also FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 460-61 (1986) (using direct proof to show market power in Sherman Act § 1 unreasonable restraint of trade action). Because such direct proof is only rarely available, courts more typically examine market structure in search of circumstantial evidence of monopoly power. 2A AREEDA ET AL., ANTITRUST LAW ¶ 531a, at 156; *see also, e.g., Grinnell*, 384 U.S. at 571. Under this structural approach, monopoly power may be inferred from a firm's possession of a dominant share of a relevant market that is protected by entry barriers. *See*

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Rebel Oil, 51 F.3d at 1434. "Entry barriers" are factors (such as certain regulatory requirements) that prevent new rivals from timely responding to an increase in price above the competitive level. *See S. Pac. Communications Co. v. AT & T*, 740 F.2d 980, 1001-02 (D.C. Cir. 1984).

The District Court considered these structural factors and concluded that Microsoft possesses monopoly power in a relevant market. Defining the market as Intel-compatible PC operating systems, the District Court found that Microsoft has a greater than 95% share. It also found the company's market position protected by a substantial entry barrier. *Conclusions of Law*, at 36.

Microsoft argues that the District Court incorrectly defined the relevant market. It also claims that there is no barrier to entry in that market. Alternatively, Microsoft argues that because the software industry is uniquely dynamic, direct proof, rather than circumstantial evidence, more appropriately indicates whether it possesses monopoly power. Rejecting each argument, we uphold the District Court's finding of monopoly power in its entirety.

1. Market Structure

a. *Market definition*

"Because the ability of consumers to turn to other suppliers restrains a firm from raising prices above the competitive level," *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 218 (D.C. Cir. 1986), the relevant market must include all products "reasonably interchangeable by consumers for the same purposes." *du Pont*, 351 U.S. at 395. In this case, the District Court defined the market as "the licensing of all Intel-compatible PC operating systems worldwide," finding that there are "currently no products—and ... there are not likely to be any in the near future—that a significant percentage of computer users worldwide could substitute for [these operating systems] without incurring substantial costs." *Conclusions of Law*, at 36. Calling this market definition "far too narrow," Appellant's Opening Br. at 84, Microsoft argues that the District Court improperly

excluded three types of products: non-Intel compatible operating systems (primarily Apple's Macintosh operating system, Mac OS), operating systems for non-PC devices (such as handheld computers and portal websites), and "middleware" products, which are not operating systems at all.

We begin with Mac OS. Microsoft's argument that Mac OS should have been included in the relevant market suffers from a flaw that infects many of the company's monopoly power claims: the company fails to challenge the District Court's factual findings, or to argue that these findings do not support the court's conclusions. The District Court found that consumers would not switch from Windows to Mac OS in response to a substantial price increase because of the costs of acquiring the new hardware needed to run Mac OS (an Apple computer and peripherals) and compatible software applications, as well as because of the effort involved in learning the new system and transferring files to its format. *Findings of Fact* ¶ 20. The court also found the Apple system less appealing to consumers because it costs considerably more and supports fewer applications. *Id.* ¶ 21. Microsoft responds only by saying: "the district court's market definition is so narrow that it excludes Apple's Mac OS, which has competed with Windows for years, simply because the Mac OS runs on a different microprocessor." Appellant's Opening Br. at 84. This general, conclusory statement falls far short of what is required to challenge findings as clearly erroneous. *Pendleton v. Rumsfeld*, 628 F.2d 102, 106 (D.C. Cir. 1980); *see also Terry v. Reno*, 101 F.3d 1412, 1415 (D.C. Cir. 1996) (holding that claims made but not argued in a brief are waived). Microsoft neither points to evidence contradicting the District Court's findings nor alleges that supporting record evidence is insufficient. And since Microsoft does not argue that even if we accept these findings, they do not support the District Court's conclusion, we have no basis for upsetting the court's decision to exclude Mac OS from the relevant market.

Microsoft's challenge to the District Court's exclusion of non-PC based competitors, such as information appliances (handheld devices, etc.) and portal websites that host server-based software applications, suffers from the same defect:

the company fails to challenge the District Court's key factual findings. In particular, the District Court found that because information appliances fall far short of performing all of the functions of a PC, most consumers will buy them only as a supplement to their PCs. *Findings of Fact* ¶ 23. The District Court also found that portal websites do not presently host enough applications to induce consumers to switch, nor are they likely to do so in the near future. *Id.* ¶ 27. Again, because Microsoft does not argue that the District Court's findings do not support its conclusion that information appliances and portal websites are outside the relevant market, we adhere to that conclusion.

This brings us to Microsoft's main challenge to the District Court's market definition: the exclusion of middleware. Because of the importance of middleware to this case, we pause to explain what it is and how it relates to the issue before us.

Operating systems perform many functions, including allocating computer memory and controlling peripherals such as printers and keyboards. *See* Direct Testimony of Frederick Warren-Boulton ¶ 20, *reprinted in* 5 J.A. at 3172-73. Operating systems also function as platforms for software applications. They do this by "exposing"—*i.e.*, making available to software developers—routines or protocols that perform certain widely-used functions. These are known as Application Programming Interfaces, or "APIs." *See* Direct Testimony of James Barksdale ¶ 70, *reprinted in* 5 J.A. at 2895-96. For example, Windows contains an API that enables users to draw a box on the screen. *See* Direct Testimony of Michael T. Devlin ¶ 12, *reprinted in* 5 J.A. at 3525. Software developers wishing to include that function in an application need not duplicate it in their own code. Instead, they can "call"—*i.e.*, use—the Windows API. *See* Direct Testimony of James Barksdale ¶ ¶ 70-71, *reprinted in* 5 J.A. at 2895-97. Windows contains thousands of APIs, controlling everything from data storage to font display. *See* Direct Testimony of Michael Devlin ¶ 12, *reprinted in* 5 J.A. at 3525.

Every operating system has different APIs. Accordingly, a developer who writes an application for one operating

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system and wishes to sell the application to users of another must modify, or "port," the application to the second operating system. *Findings of Fact* ¶ 4. This process is both time-consuming and expensive. *Id.* ¶ 30.

"Middleware" refers to software products that expose their own APIs. *Id.* ¶ 28; Direct Testimony of Paul Maritz ¶ ¶ 234-36, *reprinted in* 6 J.A. at 3727-29. Because of this, a middleware product written for Windows could take over some or all of Windows's valuable platform functions—that is, developers might begin to rely upon APIs exposed by the middleware for basic routines rather than relying upon the API set included in Windows. If middleware were written for multiple operating systems, its impact could be even greater. The more developers could rely upon APIs exposed by such middleware, the less expensive porting to different operating systems would be. Ultimately, if developers could write applications relying exclusively on APIs exposed by middleware, their applications would run on any operating system on which the middleware was also present. *See* Direct Testimony of Avadis Tevanian, Jr. ¶ 45, *reprinted in* 5 J.A. at 3113. Netscape Navigator and Java—both at issue in this case—are middleware products written for multiple operating systems. *Findings of Fact* ¶ 28.

Microsoft argues that, because middleware could usurp the operating system's platform function and might eventually take over other operating system functions (for instance, by controlling peripherals), the District Court erred in excluding Navigator and Java from the relevant market. The District Court found, however, that neither Navigator, Java, nor any other middleware product could now, or would soon, expose enough APIs to serve as a platform for popular applications, much less take over all operating system functions. *Id.* ¶ ¶ 28-29. Again, Microsoft fails to challenge these findings, instead simply asserting middleware's "potential" as a competitor. Appellant's Opening Br. at 86. The test of reasonable interchangeability, however, required the District Court to consider only substitutes that constrain pricing in the reasonably foreseeable future, and only products that can enter the market in a relatively short time can perform this function. *See Rothery*, 792 F.2d at 218 ("Because the ability

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of consumers to turn to other suppliers restrains a firm from raising prices above the competitive level, the definition of the 'relevant market' rests on a determination of available substitutes."); *see also Findings of Fact* ¶ 29 ("[I]t would take several years for middleware ... to evolve" into a product that can constrain operating system pricing.). Whatever middleware's ultimate potential, the District Court found that consumers could not now abandon their operating systems and switch to middleware in response to a sustained price for Windows above the competative level. *Findings of Fact* ¶ ¶ 28, 29. Nor is middleware likely to overtake the operating system as the primary platform for software development any time in the near future. *Id.*

Alternatively, Microsoft argues that the District Court should not have excluded middleware from the relevant market because the primary focus of the plaintiffs' § 2 charge is on Microsoft's attempts to suppress middleware's threat to its operating system monopoly. According to Microsoft, it is "contradict[ory]," 2/26/2001 Ct. Appeals Tr. at 20, to define the relevant market to exclude the "very competitive threats that gave rise" to the action. Appellant's Opening Br. at 84. The purported contradiction lies between plaintiffs' § 2 theory, under which Microsoft preserved its monopoly against middleware technologies that threatened to become viable substitutes for Windows, and its theory of the relevant market, under which middleware is not presently a viable substitute for Windows. Because middleware's threat is only nascent, however, no contradiction exists. Nothing in § 2 of the Sherman Act limits its prohibition to actions taken against threats that are already well-developed enough to serve as present substitutes. *See infra* Section II.C. Because market definition is meant to identify products "reasonably interchangeable by consumers," *du Pont*, 351 U.S. at 395, and because middleware is not now interchangeable with Windows, the District Court had good reason for excluding middleware from the relevant market.

b. *Market power*

Having thus properly defined the relevant market, the District Court found that Windows accounts for a greater than 95% share. *Findings of Fact* ¶ 35. The court also

found that even if Mac OS were included, Microsoft's share would exceed 80%. *Id.* Microsoft challenges neither finding, nor does it argue that such a market share is not predominant. *Cf. Grinnell*, 384 U.S. at 571 (87% is predominant); *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 481 (1992) (80%); *du Pont*, 351 U.S. at 379, 391 (75%).

Instead, Microsoft claims that even a predominant market share does not by itself indicate monopoly power. Although the "existence of [monopoly] power ordinarily may be inferred from the predominant share of the market," *Grinnell*, 384 U.S. at 571, we agree with Microsoft that because of the possibility of competition from new entrants, *see Ball Mem'l Hosp., Inc.*, 784 F.2d at 1336, looking to current market share alone can be "misleading." *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d 919, 924 (9th Cir. 1980); *see also Ball Mem'l Hosp., Inc.*, 784 F.2d at 1336 ("Market share reflects current sales, but today's sales do not always indicate power over sales and price tomorrow.") In this case, however, the District Court was not misled. Considering the possibility of new rivals, the court focused not only on Microsoft's present market share, but also on the structural barrier that protects the company's future position. *Conclusions of Law*, at 36. That barrier—the "applications barrier to entry"—stems from two characteristics of the software market: (1) most consumers prefer operating systems for which a large number of applications have already been written; and (2) most developers prefer to write for operating systems that already have a substantial consumer base. *See Findings of Fact* ¶ ¶ 30, 36. This "chicken-and-egg" situation ensures that applications will continue to be written for the already dominant Windows, which in turn ensures that consumers will continue to prefer it over other operating systems. *Id.*

Challenging the existence of the applications barrier to entry, Microsoft observes that software developers do write applications for other operating systems, pointing out that at its peak IBM's OS/2 supported approximately 2,500 applications. *Id.* ¶ 46. This misses the point. That some developers write applications for other operating systems is not at all inconsistent with the finding that the applications barrier to entry discourages many from writing for these less popular platforms. Indeed, the District Court found that IBM's

difficulty in attracting a larger number of software developers to write for its platform seriously impeded OS/2's success. *Id.* ¶ 46.

Microsoft does not dispute that Windows supports many more applications than any other operating system. It argues instead that "[i]t defies common sense" to suggest that an operating system must support as many applications as Windows does (more than 70,000, according to the District Court, *id.* ¶ 40) to be competitive. Appellant's Opening Br. at 96. Consumers, Microsoft points out, can only use a very small percentage of these applications. *Id.* As the District Court explained, however, the applications barrier to entry gives consumers reason to prefer the dominant operating system even if they have no need to use all applications written for it:

> The consumer wants an operating system that runs not only types of applications that he knows he will want to use, but also those types in which he might develop an interest later. Also, the consumer knows that if he chooses an operating system with enough demand to support multiple applications in each product category, he will be less likely to find himself straitened later by having to use an application whose features disappoint him. Finally, the average user knows that, generally speaking, applications improve through successive versions. He thus wants an operating system for which successive generations of his favorite applications will be released—promptly at that. The fact that a vastly larger number of applications are written for Windows than for other PC operating systems attracts consumers to Windows, because it reassures them that their interests will be met as long as they use Microsoft's product.

Findings of Fact ¶ 37. Thus, despite the limited success of its rivals, Microsoft benefits from the applications barrier to entry.

Of course, were middleware to succeed, it would erode the applications barrier to entry. Because applications written for multiple operating systems could run on any operating

system on which the middleware product was present with little, if any, porting, the operating system market would become competitive. *Id.* ¶ ¶ 29, 72. But as the District Court found, middleware will not expose a sufficient number of APIs to erode the applications barrier to entry in the foreseeable future. *See id.* ¶ ¶ 28-29.

Microsoft next argues that the applications barrier to entry is not an entry barrier at all, but a reflection of Windows' popularity. It is certainly true that Windows may have gained its initial dominance in the operating system market competitively—through superior foresight or quality. But this case is not about Microsoft's initial acquisition of monopoly power. It is about Microsoft's efforts to maintain this position through means other than competition on the merits. Because the applications barrier to entry protects a dominant operating system irrespective of quality, it gives Microsoft power to stave off even superior new rivals. The barrier is thus a characteristic of the operating system market, not of Microsoft's popularity, or, as asserted by a Microsoft witness, the company's efficiency. *See* Direct Testimony of Richard Schmalensee ¶ 115, *reprinted in* 25 J.A. at 16153-14.

Finally, Microsoft argues that the District Court should not have considered the applications barrier to entry because it reflects not a cost borne disproportionately by new entrants, but one borne by all participants in the operating system market. According to Microsoft, it had to make major investments to convince software developers to write for its new operating system, and it continues to "evangelize" the Windows platform today. Whether costs borne by all market participants should be considered entry barriers is the subject of much debate. *Compare* 2A AREEDA & HOVENKAMP, ANTITRUST LAW § 420c, at 61 (arguing that these costs are entry barriers), *and* JOE S. BAIN, BARRIERS TO NEW COMPETITION: THEIR CHARACTER AND CONSEQUENCES IN MANUFACTURING INDUSTRIES 6-7 (1956) (considering these costs entry barriers), *with L.A. Land Co. v. Brunswick Corp.*, 6 F.3d 1422, 1428 (9th Cir. 1993) (evaluating cost based on "[t]he disadvantage of new entrants as compared to incumbents"), *and* GEORGE STIGLER, THE ORGANIZATION OF INDUSTRY 67 (1968) (excluding

these costs). We need not resolve this issue, however, for even under the more narrow definition it is clear that there are barriers. When Microsoft entered the operating system market with MS-DOS and the first version of Windows, it did not confront a dominant rival operating system with as massive an installed base and as vast an existing array of applications as the Windows operating systems have since enjoyed. *Findings of Fact* ¶ ¶ 6, 7, 43. Moreover, when Microsoft introduced Windows 95 and 98, it was able to bypass the applications barrier to entry that protected the incumbent Windows by including APIs from the earlier version in the new operating systems. *See id.* ¶ 44. This made porting existing Windows applications to the new version of Windows much less costly than porting them to the operating systems of other entrants who could not freely include APIs from the incumbent Windows with their own.

2. Direct Proof

Having sustained the District Court's conclusion that circumstantial evidence proves that Microsoft possesses monopoly power, we turn to Microsoft's alternative argument that it does not behave like a monopolist. Claiming that software competition is uniquely "dynamic," Appellant's Opening Br. at 84 (quoting *Findings of Fact* ¶ 59), the company suggests a new rule: that monopoly power in the software industry should be proven directly, that is, by examining a company's actual behavior to determine if it reveals the existence of monopoly power. According to Microsoft, not only does no such proof of its power exist, but record evidence demonstrates the absence of monopoly power. The company claims that it invests heavily in research and development, *id.* at 88-89 (citing Direct Testimony of Paul Maritz ¶ 155, *reprinted in* 6 J.A. at 3698 (testifying that Microsoft invests approximately 17% of its revenue in R&D)), and charges a low price for Windows (a small percentage of the price of an Intel-compatible PC system and less than the price of its rivals, *id.* at 90 (citing *Findings of Fact* ¶ ¶ 19, 21, 46)).

Microsoft's argument fails because, even assuming that the software market is uniquely dynamic in the long term, the District Court correctly applied the structural approach to determine if the company faces competition in the short term.

Structural market power analyses are meant to determine whether potential substitutes constrain a firm's ability to raise prices above the competitive level; only threats that are likely to materialize in the relatively near future perform this function to any significant degree. *Rothery*, 792 F.2d at 218 (quoting LAWRENCE SULLIVAN, ANTITRUST § 12, at 41 (1977)) (only substitutes that can enter the market "promptly" should be considered). The District Court expressly considered and rejected Microsoft's claims that innovations such as handheld devices and portal websites would soon expand the relevant market beyond Intel-compatible PC operating systems. Because the company does not challenge these findings, we have no reason to believe that prompt substitutes are available. The structural approach, as applied by the District Court, is thus capable of fulfilling its purpose even in a changing market. Microsoft cites no case, nor are we aware of one, requiring direct evidence to show monopoly power in any market. We decline to adopt such a rule now.

Even if we were to require direct proof, moreover, Microsoft's behavior may well be sufficient to show the existence of monopoly power. Certainly, none of the conduct Microsoft points to—its investment in R&D and the relatively low price of Windows—is inconsistent with the possession of such power. *Conclusions of Law*, at 37. The R&D expenditures Microsoft points to are not simply for Windows, but for its entire company, which most likely does not possess a monopoly for all of its products. Moreover, because innovation can increase an already dominant market share and further delay the emergence of competition, even monopolists have reason to invest in R&D. *Findings of Fact* ¶ 61. Microsoft's pricing behavior is similarly equivocal. The company claims only that it never charged the short-term profit-maximizing price for Windows. Faced with conflicting expert testimony, the District Court found that it could not accurately determine what this price would be. *Id.* ¶ 65. In any event, the court found, a price lower than the short-term profit-maximizing price is not inconsistent with possession or improper use of monopoly power. *Id.* ¶ ¶ 65-66. *Cf. Berkey Photo, Inc. v.*

Eastman Kodak Co., 603 F.2d 263, 274 (2d Cir. 1979) ("[I]f monopoly power has been acquired or maintained through improper means, the fact that the power has not been used to extract [a monopoly price] provides no succor to the monopolist."). Microsoft never claims that it did not charge the long-term monopoly price. Micosoft does argue that the price of Windows is a fraction of the price of an Intel-compatible PC system and lower than that of rival operating systems, but these facts are not inconsistent with the District Court's finding that Microsoft has monopoly power. *See Findings of Fact* ¶ 36 ("Intel-compatible PC operating systems other than Windows [would not] attract[ ] significant demand ... even if Micosoft held its prices substantially above the competitive level.").

More telling, the District Court found that some aspects of Microsoft's behavior are difficult to explain unless Windows is a monopoly product. For instance, according to the District Court, the company set the price of Windows without considering rivals' prices, *Findings of Fact* ¶ 62, something a firm without a monopoly would have been unable to do. The District Court also found that Microsoft's pattern of exclusionary conduct could only be rational "if the firm knew that it possessed monopoly power." *Conclusions of Law*, at 37. It is to that conduct that we now turn.

B. Anticompetitive Conduct

As discussed above, having a monopoly does not by itself violate § 2. A firm violates § 2 only when it acquires or maintains, or attempts to acquire or maintain, a monopoly by engaging in exclusionary conduct "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *Grinnell*, 384 U.S. at 571; *see also United States v. Aluminum Co. of Am.*, 148 F.2d 416, 430 (2d Cir. 1945) (Hand, J.) ("The successful competitor, having been urged to compete, must not be turned upon when he wins.").

In this case, after concluding that Microsoft had monopoly power, the District Court held that Microsoft had violated § 2 by engaging in a variety of exclusionary acts (not including predatory pricing), to maintain its monopoly by preventing the effective distribution and use of products that might threaten that monopoly. Specifically, the District Court held Microsoft liable for: (1) the way in which it integrated IE into

Windows; (2) its various dealings with Original Equipment Manufacturers ("OEMs"), Internet Access Providers ("IAPs"), Internet Content Providers ("ICPs"), Independent Software Vendors ("ISVs"), and Apple Computer; (3) its efforts to contain and to subvert Java technologies; and (4) its course of conduct as a whole. Upon appeal, Microsoft argues that it did not engage in any exclusionary conduct.

Whether any particular act of a monopolist is exclusionary, rather than merely a form of vigorous competition, can be difficult to discern: the means of illicit exclusion, like the means of legitimate competition, are myriad. The challenge for an antitrust court lies in stating a general rule for distinguishing between exclusionary acts, which reduce social welfare, and competitive acts, which increase it.

From a century of case law on monopolization under § 2, however, several principles do emerge. First, to be condemned as exclusionary, a monopolist's act must have an "anticompetitive effect." That is, it must harm the competitive *process* and thereby harm consumers. In contrast, harm to one or more *competitors* will not suffice. "The [Sherman Act] directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993); *see also Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 225 (1993) ("Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws....").

Second, the plaintiff, on whom the burden of proof of course rests, *see, e.g., Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 763 (1984); *see also United States v. Arnold, Schwinn & Co.*, 388 U.S. 365, 374 n.5 (1967), *overruled on other grounds*, *Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977), must demonstrate that the monopolist's conduct indeed has the requisite anticompetitive effect. *See generally Brooke Group*, 509 U.S. at 225-26. In a case brought by a private plaintiff, the plaintiff must show that its injury is "of 'the type that the statute was intended to

forestall,' " *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 487-88 (1977) (quoting *Wyandotte Transp. v. United States*, 389 U.S. 191, 202 (1967)); no less in a case brought by the Government, it must demonstrate that the monopolist's conduct harmed competition, not just a competitor.

Third, if a plaintiff successfully establishes a *prima facie* case under § 2 by demonstrating anticompetitive effect, then the monopolist may proffer a "procompetitive justification" for its conduct. *See Eastman Kodak,* 504 U.S. at 483. If the monopolist asserts a procompetitive justification—a nonpretextual claim that its conduct is indeed a form of competition on the merits because it involves, for example, greater efficiency or enhanced consumer appeal—then the burden shifts back to the plaintiff to rebut that claim. *Cf. Capital Imaging Assocs., P.C. v. Mohawk Valley Med. Assocs., Inc.*, 996 F.2d 537, 543 (2d Cir. 1993).

Fourth, if the monopolist's procompetitive justification stands unrebutted, then the plaintiff must demonstrate that the anticompetitive harm of the conduct outweighs the procompetitive benefit. In cases arising under § 1 of the Sherman Act, the courts routinely apply a similar balancing approach under the rubric of the "rule of reason." The source of the rule of reason is *Standard Oil Co. v. United States*, 221 U.S. 1 (1911), in which the Supreme Court used that term to describe the proper inquiry under both sections of the Act. *See id.* at 61-62 ("[W]hen the second section [of the Sherman Act] is thus harmonized with ... the first, it becomes obvious that the criteria to be resorted to in any given case for the purpose of ascertaining whether violations of the section have been committed, is the rule of reason guided by the established law...."). As the Fifth Circuit more recently explained, "[i]t is clear ... that the analysis under section 2 is similar to that under section 1 regardless whether the rule of reason label is applied...." *Mid-Texas Communications Sys., Inc. v. AT & T*, 615 F.2d 1372, 1389 n.13 (5th Cir. 1980) (citing *Byars v. Bluff City News Co.*, 609 F.2d 843, 860 (6th Cir. 1979)); *see also Cal. Computer Prods., Inc. v. IBM Corp.*, 613 F.2d 727, 737 (9th Cir. 1979).

Finally, in considering whether the monopolist's conduct on balance harms competition and is therefore condemned as exclusionary for purposes of § 2, our focus is upon the effect of that conduct, not upon the intent behind it. Evidence of the intent behind the conduct of a monopolist is relevant only to the extent it helps us understand the likely effect of the monopolist's conduct. *See, e.g., Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918) ("knowledge of intent may help the court to interpret facts and to predict consequences"); *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 603 (1985).

With these principles in mind, we now consider Microsoft's objections to the District Court's holding that Microsoft violated § 2 of the Sherman Act in a variety of ways.

1. Licenses Issued to Original Equipment Manufacturers

The District Court condemned a number of provisions in Microsoft's agreements licensing Windows to OEMs, because it found that Microsoft's imposition of those provisions (like many of Microsoft's other actions at issue in this case) serves to reduce usage share of Netscape's browser and, hence, protect Microsoft's operating system monopoly. The reason market share in the browser market affects market power in the operating system market is complex, and warrants some explanation.

Browser usage share is important because, as we explained in Section II.A above, a browser (or any middleware product, for that matter) must have a critical mass of users in order to attract software developers to write applications relying upon the APIs it exposes, and away from the APIs exposed by Windows. Applications written to a particular browser's APIs, however, would run on any computer with that browser, regardless of the underlying operating system. "The overwhelming majority of consumers will only use a PC operating system for which there already exists a large and varied set of ... applications, and for which it seems relatively certain that new types of applications and new versions of existing applications will continue to be marketed...."

Findings of Fact ¶ 30. If a consumer could have access to the applications he desired—regardless of the operating system he uses—simply by installing a particular browser on his computer, then he would no longer feel compelled to select Windows in order to have access to those applications; he could select an operating system other than Windows based solely upon its quality and price. In other words, the market for operating systems would be competitive.

Therefore, Microsoft's efforts to gain market share in one market (browsers) served to meet the threat to Microsoft's monopoly in another market (operating systems) by keeping rival browsers from gaining the critical mass of users necessary to attract developer attention away from Windows as the platform for software development. Plaintiffs also argue that Microsoft's actions injured competition in the browser market—an argument we will examine below in relation to their specific claims that Microsoft attempted to monopolize the browser market and unlawfully tied its browser to its operating system so as to foreclose competition in the browser market. In evaluating the § 2 monopoly maintenance claim, however, our immediate concern is with the anticompetitive effect of Microsoft's conduct in preserving its monopoly in the operating system market.

In evaluating the restrictions in Microsoft's agreements licensing Windows to OEMs, we first consider whether plaintiffs have made out a *prima facie* case by demonstrating that the restrictions have an anticompetitive effect. In the next subsection, we conclude that plaintiffs have met this burden as to all the restrictions. We then consider Microsoft's proffered justifications for the restrictions and, for the most part, hold those justifications insufficient.

a. *Anticompetitive effect of the license restrictions*

The restrictions Microsoft places upon Original Equipment Manufacturers are of particular importance in determining browser usage share because having an OEM pre-install a browser on a computer is one of the two most cost-effective methods by far of distributing browsing software. (The other is bundling the browser with internet access software distrib-

uted by an IAP.) *Findings of Fact* ¶ 145. The District Court found that the restrictions Microsoft imposed in licensing Windows to OEMs prevented many OEMs from distributing browsers other than IE. *Conclusions of Law*, at 39-40. In particular, the District Court condemned the license provisions prohibiting the OEMs from: (1) removing any desktop icons, folders, or "Start" menu entries; (2) altering the initial boot sequence; and (3) otherwise altering the appearance of the Windows desktop. *Findings of Fact* ¶ 213.

The District Court concluded that the first license restriction—the prohibition upon the removal of desktop icons, folders, and Start menu entries—thwarts the distribution of a rival browser by preventing OEMs from removing visible means of user access to IE. *Id.* ¶ 203. The OEMs cannot practically install a second browser in addition to IE, the court found, in part because "[p]re-installing more than one product in a given category ... can significantly increase an OEM's support costs, for the redundancy can lead to confusion among novice users." *Id.* ¶ 159; *see also id.* ¶ 217. That is, a certain number of novice computer users, seeing two browser icons, will wonder which to use when and will call the OEM's support line. Support calls are extremely expensive and, in the highly competitive original equipment market, firms have a strong incentive to minimize costs. *Id.* ¶ 210.

Microsoft denies the "consumer confusion" story; it observes that some OEMs do install multiple browsers and that executives from two OEMs that do so denied any knowledge of consumers being confused by multiple icons. *See* 11/5/98 pm Tr. at 41-42 (trial testimony of Avadis Tevanian of Apple), *reprinted in* 9 J.A. at 5493-94; 11/18/99 am Tr. at 69 (trial testimony of John Soyring of IBM), *reprinted in* 10 J.A. at 6222.

Other testimony, however, supports the District Court's finding that fear of such confusion deters many OEMs from pre-installing multiple browsers. *See, e.g.*, 01/13/99 pm Tr. at 614-15 (deposition of Microsoft's Gayle McClain played to the court) (explaining that redundancy of icons may be confusing to end users); 02/18/99 pm Tr. at 46-47 (trial testimony of

John Rose of Compaq), *reprinted in* 21 J.A. at 14237-38 (same); 11/17/98 am Tr. at 68 (deposition of John Kies of Packard Bell-NEC played to the court), *reprinted in* 9 J.A. at 6016 (same); 11/17/98 am Tr. at 67-72 (trial testimony of Glenn Weadock), *reprinted in* 9 J.A. at 6015-20 (same). Most telling, in presentations to OEMs, Microsoft itself represented that having only one icon in a particular category would be "less confusing for endusers." *See* Government's Trial Exhibit ("GX") 319 at MS98 0109453. Accordingly, we reject Microsoft's argument that we should vacate the District Court's Finding of Fact 159 as it relates to consumer confusion.

As noted above, the OEM channel is one of the two primary channels for distribution of browsers. By preventing OEMs from removing visible means of user access to IE, the license restriction prevents many OEMs from pre-installing a rival browser and, therefore, protects Microsoft's monopoly from the competition that middleware might otherwise present. Therefore, we conclude that the license restriction at issue is anticompetitive. We defer for the moment the question whether that anticompetitive effect is outweighed by Microsoft's proffered justifications.

The second license provision at issue prohibits OEMs from modifying the initial boot sequence—the process that occurs the first time a consumer turns on the computer. Prior to the imposition of that restriction, "among the programs that many OEMs inserted into the boot sequence were Internet sign-up procedures that encouraged users to choose from a list of IAPs assembled by the OEM." *Findings of Fact* ¶ 210. Microsoft's prohibition on any alteration of the boot sequence thus prevents OEMs from using that process to promote the services of IAPs, many of which—at least at the time Microsoft imposed the restriction—used Navigator rather than IE in their internet access software. *See id.* ¶ 212; GX 295, *reprinted in* 12 J.A. at 14533 (Upon learning of OEM practices including boot sequence modification, Microsoft's Chairman, Bill Gates, wrote: "Apparently a lot of OEMs are bundling non-Microsoft browsers and coming up with offerings together with [IAPs] that get displayed on their ma-

chines in a FAR more prominent way than MSN or our Internet browser."). Microsoft does not deny that the prohibition on modifying the boot sequence has the effect of decreasing competition against IE by preventing OEMs from promoting rivals' browsers. Because this prohibition has a substantial effect in protecting Microsoft's market power, and does so through a means other than competition on the merits, it is anticompetitive. Again the question whether the provision is nonetheless justified awaits later treatment.

Finally, Microsoft imposes several additional provisions that, like the prohibition on removal of icons, prevent OEMs from making various alterations to the desktop: Microsoft prohibits OEMs from causing any user interface other than the Windows desktop to launch automatically, from adding icons or folders different in size or shape from those supplied by Microsoft, and from using the "Active Desktop" feature to promote third-party brands. These restrictions impose significant costs upon the OEMs; prior to Microsoft's prohibiting the practice, many OEMs would change the appearance of the desktop in ways they found beneficial. *See, e.g., Findings of Fact* ¶ 214; GX 309, *reprinted in* 22 J.A. at 14551 (March 1997 letter from Hewlett-Packard to Microsoft: "We are responsible for the cost of technical support of our customers, including the 33% of calls we get related to the lack of quality or confusion generated by your product.... We must have more ability to decide how our system is presented to our end users. If we had a choice of another supplier, based on your actions in this area, I assure you [that you] would not be our supplier of choice.").

The dissatisfaction of the OEM customers does not, of course, mean the restrictions are anticompetitive. The anticompetitive effect of the license restrictions is, as Microsoft itself recognizes, that OEMs are not able to promote rival browsers, which keeps developers focused upon the APIs in Windows. *Findings of Fact* ¶ 212 (quoting Microsoft's Gates as writing, "[w]inning Internet browser share is a very very important goal for us," and emphasizing the need to prevent OEMs from promoting both rival browsers and IAPs that might use rivals' browsers); *see also* 01/13/99 Tr. at 305-06

(excerpts from deposition of James Von Holle of Gateway) (prior to restriction Gateway had pre-installed non-IE internet registration icon that was larger than other desktop icons). This kind of promotion is not a zero-sum game; but for the restrictions in their licenses to use Windows, OEMs could promote multiple IAPs and browsers. By preventing the OEMs from doing so, this type of license restriction, like the first two restrictions, is anticompetitive: Microsoft reduced rival browsers' usage share not by improving its own product but, rather, by preventing OEMs from taking actions that could increase rivals' share of usage.

b. *Microsoft's justifications for the license restrictions*

Microsoft argues that the license restrictions are legally justified because, in imposing them, Microsoft is simply "exercising its rights as the holder of valid copyrights." Appellant's Opening Br. at 102. Microsoft also argues that the licenses "do not unduly restrict the opportunities of Netscape to distribute Navigator in any event." *Id.*

Microsoft's primary copyright argument borders upon the frivolous. The company claims an absolute and unfettered right to use its intellectual property as it wishes: "[I]f intellectual property rights have been lawfully acquired," it says, then "their subsequent exercise cannot give rise to antitrust liability." Appellant's Opening Br. at 105. That is no more correct than the proposition that use of one's personal property, such as a baseball bat, cannot give rise to tort liability. As the Federal Circuit succinctly stated: "Intellectual property rights do not confer a privilege to violate the antitrust laws." *In re Indep. Serv. Orgs. Antitrust Litig.*, 203 F.3d 1322, 1325 (Fed. Cir. 2000).

Although Microsoft never overtly retreats from its bold and incorrect position on the law, it also makes two arguments to the effect that it is not exercising its copyright in an unreasonable manner, despite the anticompetitive consequences of the license restrictions discussed above. In the first variation upon its unqualified copyright defense, Microsoft cites two cases indicating that a copyright holder may limit a licensee's

ability to engage in significant and deleterious alterations of a copyrighted work. *See Gilliam v. ABC*, 538 F.2d 14, 21 (2d Cir. 1976); *WGN Cont'l Broad. Co. v. United Video, Inc.*, 693 F.2d 622, 625 (7th Cir. 1982). The relevance of those two cases for the present one is limited, however, both because those cases involved substantial alterations of a copyrighted work, *see Gilliam*, 538 F.2d at 18, and because in neither case was there any claim that the copyright holder was, in asserting its rights, violating the antitrust laws, *see WGN Cont'l Broad.*, 693 F.2d at 626; *see also Cmty. for Creative Non-Violence v. Reid*, 846 F.2d 1485, 1498 (D.C. Cir. 1988) (noting, again in a context free of any antitrust concern, that "an author [ ] may have rights against" a licensee that "excessively mutilated or altered" the copyrighted work).

The only license restriction Microsoft seriously defends as necessary to prevent a "substantial alteration" of its copyrighted work is the prohibition on OEMs automatically launching a substitute user interface upon completion of the boot process. *See Findings of Fact* ¶ 211 ("[A] few large OEMs developed programs that ran automatically at the conclusion of a new PC system's first boot sequence. These programs replaced the Windows desktop either with a user interface designed by the OEM or with Navigator's user interface."). We agree that a shell that automatically prevents the Windows desktop from ever being seen by the user is a drastic alteration of Microsoft's copyrighted work, and outweighs the marginal anticompetitive effect of prohibiting the OEMs from substituting a different interface automatically upon completion of the initial boot process. We therefore hold that this particular restriction is not an exclusionary practice that violates § 2 of the Sherman Act.

In a second variation upon its copyright defense, Microsoft argues that the license restrictions merely prevent OEMs from taking actions that would reduce substantially the value of Microsoft's copyrighted work: that is, Microsoft claims each license restriction in question is necessary to prevent OEMs from so altering Windows as to undermine "the principal value of Windows as a stable and consistent platform that supports a broad range of applications and that is familiar to

users." Appellant's Opening Br. at 102. Microsoft, however, never substantiates this claim, and, because an OEM's altering the appearance of the desktop or promoting programs in the boot sequence does not affect the code already in the product, the practice does not self-evidently affect either the "stability" or the "consistency" of the platform. *See Conclusions of Law*, at 41; *Findings of Fact* ¶ 227. Microsoft cites only one item of evidence in support of its claim that the OEMs' alterations were decreasing the value of Windows. Defendant's Trial Exhibit ("DX") 2395 at MSV0009378A, *reprinted in* 19 J.A. at 12575. That document, prepared by Microsoft itself, states: "there are quality issues created by OEMs who are too liberal with the pre-install process," referring to the OEMs' installation of Windows and additional software on their PCs, which the document says may result in "user concerns and confusion." To the extent the OEMs' modifications cause consumer confusion, of course, the OEMs bear the additional support costs. *See Findings of Fact* ¶ 159. Therefore, we conclude Microsoft has not shown that the OEMs' liberality reduces the value of Windows except in the sense that their promotion of rival browsers undermines Microsoft's monopoly—and that is not a permissible justification for the license restrictions.

Apart from copyright, Microsoft raises one other defense of the OEM license agreements: It argues that, despite the restrictions in the OEM license, Netscape is not completely blocked from distributing its product. That claim is insufficient to shield Microsoft from liability for those restrictions because, although Microsoft did not bar its rivals from all means of distribution, it did bar them from the cost-efficient ones.

In sum, we hold that with the exception of the one restriction prohibiting automatically launched alternative interfaces, all the OEM license restrictions at issue represent uses of Microsoft's market power to protect its monopoly, unredeemed by any legitimate justification. The restrictions therefore violate § 2 of the Sherman Act.

2. Integration of IE and Windows

Although Microsoft's license restrictions have a significant effect in closing rival browsers out of one of the two primary channels of distribution, the District Court found that "Microsoft's executives believed ... its contractual restrictions placed on OEMs would not be sufficient in themselves to reverse the direction of Navigator's usage share. Consequently, in late 1995 or early 1996, Microsoft set out to bind [IE] more tightly to Windows 95 as a technical matter." *Findings of Fact* ¶ 160.

Technologically binding IE to Windows, the District Court found, both prevented OEMs from pre-installing other browsers and deterred consumers from using them. In particular, having the IE software code as an irremovable part of Windows meant that pre-installing a second browser would "increase an OEM's product testing costs," because an OEM must test and train its support staff to answer calls related to every software product preinstalled on the machine; moreover, pre-installing a browser in addition to IE would to many OEMs be "a questionable use of the scarce and valuable space on a PC's hard drive." *Id.* ¶ 159.

Although the District Court, in its Conclusions of Law, broadly condemned Microsoft's decision to bind "Internet Explorer to Windows with ... technological shackles," *Conclusions of Law*, at 39, its findings of fact in support of that conclusion center upon three specific actions Microsoft took to weld IE to Windows: excluding IE from the "Add/Remove Programs" utility; designing Windows so as in certain circumstances to override the user's choice of a default browser other than IE; and commingling code related to browsing and other code in the same files, so that any attempt to delete the files containing IE would, at the same time, cripple the operating system. As with the license restrictions, we consider first whether the suspect actions had an anticompetitive effect, and then whether Microsoft has provided a procompetitive justification for them.

a. *Anticompetitive effect of integration*

As a general rule, courts are properly very skeptical about claims that competition has been harmed by a dominant

firm's product design changes. *See, e.g., Foremost Pro Color, Inc. v. Eastman Kodak Co.*, 703 F.2d 534, 544-45 (9th Cir. 1983). In a competitive market, firms routinely innovate in the hope of appealing to consumers, sometimes in the process making their products incompatible with those of rivals; the imposition of liability when a monopolist does the same thing will inevitably deter a certain amount of innovation. This is all the more true in a market, such as this one, in which the product itself is rapidly changing. *See Findings of Fact* ¶ 59. Judicial deference to product innovation, however, does not mean that a monopolist's product design decisions are per se lawful. *See Foremost Pro Color*, 703 F.2d at 545; *see also Cal. Computer Prods.*, 613 F.2d at 739, 744; *In re IBM Peripheral EDP Devices Antitrust Litig.*, 481 F. Supp. 965, 1007-08 (N.D. Cal. 1979).

The District Court first condemned as anticompetitive Microsoft's decision to exclude IE from the "Add/Remove Programs" utility in Windows 98. *Findings of Fact* ¶ 170. Microsoft had included IE in the Add/Remove Programs utility in Windows 95, *see id.* ¶ ¶ 175-76, but when it modified Windows 95 to produce Windows 98, it took IE out of the Add/Remove Programs utility. This change reduces the usage share of rival browsers not by making Microsoft's own browser more attractive to consumers but, rather, by discouraging OEMs from distributing rival products. *See id.* ¶ 159. Because Microsoft's conduct, through something other than competition on the merits, has the effect of significantly reducing usage of rivals' products and hence protecting its own operating system monopoly, it is anticompetitive; we defer for the moment the question whether it is nonetheless justified.

Second, the District Court found that Microsoft designed Windows 98 "so that using Navigator on Windows 98 would have unpleasant consequences for users" by, in some circumstances, overriding the user's choice of a browser other than IE as his or her default browser. *Id.* ¶ ¶ 171-72. Plaintiffs argue that this override harms the competitive process by deterring consumers from using a browser other than IE even though they might prefer to do so, thereby reducing rival browsers' usage share and, hence, the ability of rival

browsers to draw developer attention away from the APIs exposed by Windows. Microsoft does not deny, of course, that overriding the user's preference prevents some people from using other browsers. Because the override reduces rivals' usage share and protects Microsoft's monopoly, it too is anticompetitive.

Finally, the District Court condemned Microsoft's decision to bind IE to Windows 98 "by placing code specific to Web browsing in the same files as code that provided operating system functions." *Id.* ¶ 161; *see also id.* ¶ ¶ 174, 192. Putting code supplying browsing functionality into a file with code supplying operating system functionality "ensure[s] that the deletion of any file containing browsing-specific routines would also delete vital operating system routines and thus cripple Windows...." *Id.* ¶ 164. As noted above, preventing an OEM from removing IE deters it from installing a second browser because doing so increases the OEM's product testing and support costs; by contrast, had OEMs been able to remove IE, they might have chosen to pre-install Navigator alone. *See id.* ¶ 159.

Microsoft denies, as a factual matter, that it commingled browsing and non-browsing code, and it maintains the District Court's findings to the contrary are clearly erroneous. According to Microsoft, its expert "testified without contradiction that '[t]he very same code in Windows 98 that provides Web browsing functionality' also performs essential operating system functions—not code in the same files, but the very same software code." Appellant's Opening Br. at 79 (citing 5 J.A. 3291-92).

Microsoft's expert did not testify to that effect "without contradiction," however. A Government expert, Glenn Weadock, testified that Microsoft "design[ed] [IE] so that some of the code that it uses co-resides in the same library files as other code needed for Windows." Direct Testimony ¶ 30. Another Government expert likewise testified that one library file, SHDOCVW.DLL, "is really a bundle of separate functions. It contains some functions that have to do specifically with Web browsing, and it contains some general user inter-

face functions as well." 12/14/98 am Tr. at 60-61 (trial testimony of Edward Felten), *reprinted in* 11 J.A. at 6953-54. One of Microsoft's own documents suggests as much. *See* Plaintiffs' Proposed Findings of Fact ¶ 131.2.vii (citing GX 1686 (under seal) (Microsoft document indicating some functions in SHDOCVW.DLL can be described as "IE only," others can be described as "shell only" and still others can be described as providing both "IE" and "shell" functions)).

In view of the contradictory testimony in the record, some of which supports the District Court's finding that Microsoft commingled browsing and non-browsing code, we cannot conclude that the finding was clearly erroneous. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) ("If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently."). Accordingly, we reject Microsoft's argument that we should vacate Finding of Fact 159 as it relates to the commingling of code, and we conclude that such commingling has an anticompetitive effect; as noted above, the commingling deters OEMs from pre-installing rival browsers, thereby reducing the rivals' usage share and, hence, developers' interest in rivals' APIs as an alternative to the API set exposed by Microsoft's operating system.

b. *Microsoft's justifications for integration*

Microsoft proffers no justification for two of the three challenged actions that it took in integrating IE into Windows—excluding IE from the Add/Remove Programs utility and commingling browser and operating system code. Although Microsoft does make some general claims regarding the benefits of integrating the browser and the operating system, *see, e.g.*, Direct Testimony of James Allchin ¶ 94, *reprinted in* 5 J.A. at 3321 ("Our vision of deeper levels of technical integration is highly efficient and provides substantial benefits to customers and developers."), it neither specifies nor substantiates those claims. Nor does it argue that either excluding IE from the Add/Remove Programs utility or commingling code achieves any integrative benefit. Plaintiffs plainly made out a *prima facie* case of harm to competition in the operating system market by demonstrating that Microsoft's actions increased its browser usage share and thus

protected its operating system monopoly from a middleware threat and, for its part, Microsoft failed to meet its burden of showing that its conduct serves a purpose other than protecting its operating system monopoly. Accordingly, we hold that Microsoft's exclusion of IE from the Add/Remove Programs utility and its commingling of browser and operating system code constitute exclusionary conduct, in violation of § 2.

As for the other challenged act that Microsoft took in integrating IE into Windows—causing Windows to override the user's choice of a default browser in certain circumstances—Microsoft argues that it has "valid technical reasons." Specifically, Microsoft claims that it was necessary to design Windows to override the user's preferences when he or she invokes one of "a few" out "of the nearly 30 means of accessing the Internet." Appellant's Opening Br. at 82. According to Microsoft:

> The Windows 98 Help system and Windows Update feature depend on ActiveX controls not supported by Navigator, and the now-discontinued Channel Bar utilized Microsoft's Channel Definition Format, which Navigator also did not support. Lastly, Windows 98 does not invoke Navigator if a user accesses the Internet through "My Computer" or "Windows Explorer" because doing so would defeat one of the purposes of those features—enabling users to move seamlessly from local storage devices to the Web *in the same browsing window*.

Id. (internal citations omitted). The plaintiff bears the burden not only of rebutting a proffered justification but also of demonstrating that the anticompetitive effect of the challenged action outweighs it. In the District Court, plaintiffs appear to have done neither, let alone both; in any event, upon appeal, plaintiffs offer no rebuttal whatsoever. Accordingly, Microsoft may not be held liable for this aspect of its product design.

3. Agreements with Internet Access Providers

The District Court also condemned as exclusionary Microsoft's agreements with various IAPs. The IAPs include both Internet Service Providers, which offer consumers internet access, and Online Services ("OLSs") such as America Online

("AOL"), which offer proprietary content in addition to internet access and other services. *Findings of Fact* ¶ 15. The District Court deemed Microsoft's agreements with the IAPs unlawful because:

> Microsoft licensed [IE] and the [IE] Access Kit [(of which, more below)] to hundreds of IAPs for no charge. [*Findings of Fact*] ¶ ¶ 250-51. Then, Microsoft extended valuable promotional treatment to the ten most important IAPs in exchange for their commitment to promote and distribute [IE] and to exile Navigator from the desktop. *Id.* ¶ ¶ 255-58, 261, 272, 288-90, 305-06. Finally, in exchange for efforts to upgrade existing subscribers to client software that came bundled with [IE] instead of Navigator, Microsoft granted rebates—and in some cases made outright payments—to those same IAPs. *Id.* ¶ ¶ 259-60, 295.

Conclusions of Law, at 41.

The District Court condemned Microsoft's actions in (1) offering IE free of charge to IAPs and (2) offering IAPs a bounty for each customer the IAP signs up for service using the IE browser. In effect, the court concluded that Microsoft is acting to preserve its monopoly by offering IE to IAPs at an attractive price. Similarly, the District Court held Microsoft liable for (3) developing the IE Access Kit ("IEAK"), a software package that allows an IAP to "create a distinctive identity for its service in as little as a few hours by customizing the [IE] title bar, icon, start and search pages," *Findings of Fact* ¶ 249, and (4) offering the IEAK to IAPs free of charge, on the ground that those acts, too, helped Microsoft preserve its monopoly. *Conclusions of Law*, at 41-42. Finally, the District Court found that (5) Microsoft agreed to provide easy access to IAPs' services from the Windows desktop in return for the IAPs' agreement to promote IE exclusively and to keep shipments of internet access software using Navigator under a specific percentage, typically 25%. *See Conclusions of Law*, at 42 (citing *Findings of Fact* ¶ ¶ 258, 262, 289). We address the first four items—Microsoft's inducements—and then its exclusive agreements with IAPs.

Although offering a customer an attractive deal is the hallmark of competition, the Supreme Court has indicated

that in very rare circumstances a price may be unlawfully low, or "predatory." *See generally Brooke Group*, 509 U.S. at 220-27. Plaintiffs argued before the District Court that Microsoft's pricing was indeed predatory; but instead of making the usual predatory pricing argument—that the predator would drive out its rivals by pricing below cost on a particular product and then, sometime in the future, raise its prices on that product above the competitive level in order to recoup its earlier losses—plaintiffs argued that by pricing below cost on IE (indeed, even paying people to take it), Microsoft was able simultaneously to preserve its stream of monopoly profits on Windows, thereby more than recouping its investment in below-cost pricing on IE. The District Court did not assign liability for predatory pricing, however, and plaintiffs do not press this theory on appeal.

The rare case of price predation aside, the antitrust laws do not condemn even a monopolist for offering its product at an attractive price, and we therefore have no warrant to condemn Microsoft for offering either IE or the IEAK free of charge or even at a negative price. Likewise, as we said above, a monopolist does not violate the Sherman Act simply by developing an attractive product. *See Grinnell*, 384 U.S. at 571 ("[G]rowth or development as a consequence of a superior product [or] business acumen" is no violation.). Therefore, Microsoft's development of the IEAK does not violate the Sherman Act.

We turn now to Microsoft's deals with IAPs concerning desktop placement. Microsoft concluded these exclusive agreements with all "the leading IAPs," *Findings of Fact* ¶ 244, including the major OLSs. *Id.* ¶ 245; *see also id.* ¶ ¶ 305, 306. The most significant of the OLS deals is with AOL, which, when the deal was reached, "accounted for a substantial portion of all existing Internet access subscriptions and ... attracted a very large percentage of new IAP subscribers." *Id.* ¶ 272. Under that agreement Microsoft puts the AOL icon in the OLS folder on the Windows desktop and AOL does not promote any non-Microsoft browser, nor provide software using any non-Microsoft browser except at

the customer's request, and even then AOL will not supply more than 15% of its subscribers with a browser other than IE. *Id.* ¶ 289.

The Supreme Court most recently considered an antitrust challenge to an exclusive contract in *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961). That case, which involved a challenge to a requirements contract, was brought under § 3 of the Clayton Act and §§ 1 and 2 of the Sherman Act. The Court held that an exclusive contract does not violate the Clayton Act unless its probable effect is to "foreclose competition in a substantial share of the line of commerce affected." *Id.* at 327. The share of the market foreclosed is important because, for the contract to have an adverse effect upon competition, "the opportunities for other traders to enter into or remain in that market must be significantly limited." *Id.* at 328. Although "[n]either the Court of Appeals nor the District Court [had] considered in detail the question of the relevant market," *id.* at 330, the Court in *Tampa Electric* examined the record and, after defining the relevant market, determined that the contract affected less than one percent of that market. *Id.* at 333. After concluding, under the Clayton Act, that this share was "conservatively speaking, quite insubstantial," *id.*, the Court went on summarily to reject the Sherman Act claims. *Id.* at 335 ("[I]f [the contract] does not fall within the broader prescription of § 3 of the Clayton Act it follows that it is not forbidden by those of the [Sherman Act].").

Following *Tampa Electric*, courts considering antitrust challenges to exclusive contracts have taken care to identify the share of the market foreclosed. Some courts have indicated that § 3 of the Clayton Act and § 1 of the Sherman Act require an equal degree of foreclosure before prohibiting exclusive contracts. *See, e.g., Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 393 (7th Cir. 1984) (Posner, J.). Other courts, however, have held that a higher market share must be foreclosed in order to establish a violation of the Sherman Act as compared to the Clayton Act. *See, e.g., Barr Labs. v. Abbott Labs.*, 978 F.2d 98, 110 (3d Cir.1992); 11 HERBERT HOVENKAMP, ANTITRUST LAW ¶ 1800c4 (1998) ("[T]he cases are divided, with a likely majority stating that the

Clayton Act requires a smaller showing of anticompetitive effects.").

Though what is "significant" may vary depending upon the antitrust provision under which an exclusive deal is challenged, it is clear that in all cases the plaintiff must both define the relevant market and prove the degree of foreclosure. This is a prudential requirement; exclusivity provisions in contracts may serve many useful purposes. *See, e.g., Omega Envtl., Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1162 (9th Cir. 1997) ("There are, however, well-recognized economic benefits to exclusive dealing arrangements, including the enhancement of interbrand competition."); *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 236 (1st Cir. 1983) (Breyer, J.) ("[V]irtually *every* contract to buy 'forecloses' or 'excludes' alternative sellers from *some* portion of the market, namely the portion consisting of what was bought."). Permitting an antitrust action to proceed any time a firm enters into an exclusive deal would both discourage a presumptively legitimate business practice and encourage costly antitrust actions. Because an exclusive deal affecting a small fraction of a market clearly cannot have the requisite harmful effect upon competition, the requirement of a significant degree of foreclosure serves a useful screening function. *Cf.* Frank H. Easterbrook, *The Limits of Antitrust*, 63 TEX. L. REV. 1, 21-23 (1984) (discussing use of presumptions in antitrust law to screen out cases in which loss to consumers and economy is likely outweighed by cost of inquiry and risk of deterring procompetitive behavior).

In this case, plaintiffs challenged Microsoft's exclusive dealing arrangements with the IAPs under both §§ 1 and 2 of the Sherman Act. The District Court, in analyzing the § 1 claim, stated, "unless the evidence demonstrates that Microsoft's agreements excluded Netscape altogether from access to roughly forty percent of the browser market, the Court should decline to find such agreements in violation of § 1." *Conclusions of Law*, at 52. The court recognized that Microsoft had substantially excluded Netscape from "the most efficient channels for Navigator to achieve browser usage share," *id.* at 53; *see also Findings of Fact* ¶ 145 ("[N]o other

distribution channel for browsing software even approaches the efficiency of OEM pre-installation and IAP bundling."), and had relegated it to more costly and less effective methods (such as mass mailing its browser on a disk or offering it for download over the internet); but because Microsoft has not "completely excluded Netscape" from reaching any potential user by some means of distribution, however ineffective, the court concluded the agreements do not violate § 1. *Conclusions of Law*, at 53. Plaintiffs did not cross-appeal this holding.

Turning to § 2, the court stated: "the fact that Microsoft's arrangements with various [IAPs and other] firms did not foreclose enough of the relevant market to constitute a § 1 violation in no way detracts from the Court's assignment of liability for the same arrangements under § 2.... [A]ll of Microsoft's agreements, including the non-exclusive ones, severely restricted Netscape's access to those distribution channels leading most efficiently to the acquisition of browser usage share." *Conclusions of Law*, at 53.

On appeal Microsoft argues that "courts have applied the same standard to alleged exclusive dealing agreements under both Section 1 *and* Section 2," Appellant's Opening Br. at 109, and it argues that the District Court's holding of no liability under § 1 necessarily precludes holding it liable under § 2. The District Court appears to have based its holding with respect to § 1 upon a "total exclusion test" rather than the 40% standard drawn from the caselaw. Even assuming the holding is correct, however, we nonetheless reject Microsoft's contention.

The basic prudential concerns relevant to §§ 1 and 2 are admittedly the same: exclusive contracts are commonplace—particularly in the field of distribution—in our competitive, market economy, and imposing upon a firm with market power the risk of an antitrust suit every time it enters into such a contract, no matter how small the effect, would create an unacceptable and unjustified burden upon any such firm. At the same time, however, we agree with plaintiffs that a monopolist's use of exclusive contracts, in certain circum-

stances, may give rise to a § 2 violation even though the contracts foreclose less than the roughly 40% or 50% share usually required in order to establish a § 1 violation. *See generally* Dennis W. Carlton, *A General Analysis of Exclusionary Conduct and Refusal to Deal—Why* Aspen *and* Kodak *Are Misguided*, 68 ANTITRUST L.J. 659 (2001) (explaining various scenarios under which exclusive dealing, particularly by a dominant firm, may raise legitimate concerns about harm to competition).

In this case, plaintiffs allege that, by closing to rivals a substantial percentage of the available opportunities for browser distribution, Microsoft managed to preserve its monopoly in the market for operating systems. The IAPs constitute one of the two major channels by which browsers can be distributed. *Findings of Fact* ¶ 242. Microsoft has exclusive deals with "fourteen of the top fifteen access providers in North America[, which] account for a large majority of all Internet access subscriptions in this part of the world." *Id.* ¶ 308. By ensuring that the "majority" of all IAP subscribers are offered IE either as the default browser or as the only browser, Microsoft's deals with the IAPs clearly have a significant effect in preserving its monopoly; they help keep usage of Navigator below the critical level necessary for Navigator or any other rival to pose a real threat to Microsoft's monopoly. *See, e.g., id.* ¶ 143 (Microsoft sought to "divert enough browser usage from Navigator to neutralize it as a platform."); *see also* Carlton, at 670.

Plaintiffs having demonstrated a harm to competition, the burden falls upon Microsoft to defend its exclusive dealing contracts with IAPs by providing a procompetitive justification for them. Significantly, Microsoft's only explanation for its exclusive dealing is that it wants to keep developers focused upon its APIs—which is to say, it wants to preserve its power in the operating system market. 02/26/01 Ct. Appeals Tr. at 45-47. That is not an unlawful end, but neither is it a procompetitive justification for the specific means here in question, namely exclusive dealing contracts with IAPs. Accordingly, we affirm the District Court's deci-

sion holding that Microsoft's exclusive contracts with IAPs are exclusionary devices, in violation of § 2 of the Sherman Act.

4. Dealings with Internet Content Providers, Independent Software Vendors, and Apple Computer

The District Court held that Microsoft engages in exclusionary conduct in its dealings with ICPs, which develop websites; ISVs, which develop software; and Apple, which is both an OEM and a software developer. *See Conclusions of Law*, at 42-43 (deals with ICPs, ISVs, and Apple "supplemented Microsoft's efforts in the OEM and IAP channels"). The District Court condemned Microsoft's deals with ICPs and ISVs, stating: "By granting ICPs and ISVs free licenses to bundle [IE] with their offerings, and by exchanging other valuable inducements for their agreement to distribute, promote[,] and rely on [IE] rather than Navigator, Microsoft directly induced developers to focus on its own APIs rather than ones exposed by Navigator." *Id.* (citing *Findings of Fact* ¶ ¶ 334-35, 340).

With respect to the deals with ICPs, the District Court's findings do not support liability. After reviewing the ICP agreements, the District Court specifically stated that "there is not sufficient evidence to support a finding that Microsoft's promotional restrictions actually had a substantial, deleterious impact on Navigator's usage share." *Findings of Fact* ¶ 332. Because plaintiffs failed to demonstrate that Microsoft's deals with the ICPs have a substantial effect upon competition, they have not proved the violation of the Sherman Act.

As for Microsoft's ISV agreements, however, the District Court did not enter a similar finding of no substantial effect. The District Court described Microsoft's deals with ISVs as follows:

> In dozens of "First Wave" agreements signed between the fall of 1997 and the spring of 1998, Microsoft has promised to give preferential support, in the form of early Windows 98 and Windows NT betas, other technical information, and the right to use certain Microsoft

> seals of approval, to important ISVs that agree to certain conditions. One of these conditions is that the ISVs use Internet Explorer as the default browsing software for any software they develop with a hypertext-based user interface. Another condition is that the ISVs use Microsoft's "HTML Help," which is accessible only with Internet Explorer, to implement their applications' help systems.

Id. ¶ 339. The District Court further found that the effect of these deals is to "ensure [ ] that many of the most popular Web-centric applications will rely on browsing technologies found only in Windows," *id.* ¶ 340, and that Microsoft's deals with ISVs therefore "increase[ ] the likelihood that the millions of consumers using [applications designed by ISVs that entered into agreements with Microsoft] will use Internet Explorer rather than Navigator." *Id.* ¶ 340.

The District Court did not specifically identify what share of the market for browser distribution the exclusive deals with the ISVs foreclose. Although the ISVs are a relatively small channel for browser distribution, they take on greater significance because, as discussed above, Microsoft had largely foreclosed the two primary channels to its rivals. In that light, one can tell from the record that by affecting the applications used by "millions" of consumers, Microsoft's exclusive deals with the ISVs had a substantial effect in further foreclosing rival browsers from the market. (Data introduced by Microsoft, *see* Direct Testimony of Cameron Myhrvold ¶ 84, *reprinted in* 6 J.A. at 3922-23, and subsequently relied upon by the District Court in its findings, *see, e.g.*, *Findings of Fact* ¶ 270, indicate that over the two-year period 1997-98, when Microsoft entered into the First Wave agreements, there were 40 million new users of the internet.) Because, by keeping rival browsers from gaining widespread distribution (and potentially attracting the attention of developers away from the APIs in Windows), the deals have a substantial effect in preserving Microsoft's monopoly, we hold that plaintiffs have made a *prima facie* showing that the deals have an anticompetitive effect.

Of course, that Microsoft's exclusive deals have the anti-competitive effect of preserving Microsoft's monopoly does not, in itself, make them unlawful. A monopolist, like a competitive firm, may have a perfectly legitimate reason for wanting an exclusive arrangement with its distributors. Accordingly, Microsoft had an opportunity to, but did not, present the District Court with evidence demonstrating that the exclusivity provisions have some such procompetitive justification. *See Conclusions of Law*, at 43 (citing *Findings of Fact* ¶ ¶ 339-40) ("With respect to the ISV agreements, Microsoft has put forward no procompetitive business ends whatsoever to justify their exclusionary terms."). On appeal Microsoft likewise does not claim that the exclusivity required by the deals serves any legitimate purpose; instead, it states only that its ISV agreements reflect an attempt "to persuade ISVs to utilize Internet-related system services in Windows rather than Navigator." Appellant's Opening Br. at 114. As we explained before, however, keeping developers focused upon Windows—that is, preserving the Windows monopoly—is a competitively neutral goal. Microsoft having offered no procompetitive justification for its exclusive dealing arrangements with the ISVs, we hold that those arrangements violate § 2 of the Sherman Act.

Finally, the District Court held that Microsoft's dealings with Apple violated the Sherman Act. *See Conclusions of Law*, at 42-43. Apple is vertically integrated: it makes both software (including an operating system, Mac OS), and hardware (the Macintosh line of computers). Microsoft primarily makes software, including, in addition to its operating system, a number of popular applications. One, called "Office," is a suite of business productivity applications that Microsoft has ported to Mac OS. The District Court found that "ninety percent of Mac OS users running a suite of office productivity applications [use] Microsoft's Mac Office." *Findings of Fact* ¶ 344. Further, the District Court found that:

> In 1997, Apple's business was in steep decline, and many doubted that the company would survive much long-

> er.... [M]any ISVs questioned the wisdom of continuing to spend time and money developing applications for the Mac OS. Had Microsoft announced in the midst of this atmosphere that it was ceasing to develop new versions of Mac Office, a great number of ISVs, customers, developers, and investors would have interpreted the announcement as Apple's death notice.

Id. ¶ 344. Microsoft recognized the importance to Apple of its continued support of Mac Office. *See id.* ¶ 347 (quoting internal Microsoft e-mail) ("[We] need a way to push these guys[, *i.e.*, Apple] and [threatening to cancel Mac Office] is the only one that seems to make them move."); *see also id.* ("[Microsoft Chairman Bill] Gates asked whether Microsoft could conceal from Apple in the coming month the fact that Microsoft was almost finished developing Mac Office 97."); *id.* at ¶ 354 ("I think ... Apple should be using [IE] everywhere and if they don't do it, then we can use Office as a club.").

In June 1997 Microsoft Chairman Bill Gates determined that the company's negotiations with Apple " 'have not been going well at all.... Apple let us down on the browser by making Netscape the standard install.' Gates then reported that he had already called Apple's CEO ... to ask 'how we should announce the cancellation of Mac Office....' " *Id.* at ¶ 349. The District Court further found that, within a month of Gates' call, Apple and Microsoft had reached an agreement pursuant to which

> Microsoft's primary obligation is to continue releasing up-to-date versions of Mac Office for at least five years.... [and] Apple has agreed ... to "bundle the most current version of [IE] ... with [Mac OS]"... [and to] "make [IE] the default [browser]".... Navigator is not installed on the computer hard drive during the default installation, which is the type of installation most users elect to employ.... [The] Agreement further provides that ... Apple may not position icons for non-Microsoft browsing software on the desktop of new Macintosh PC systems or Mac OS upgrades.

Id. ¶ ¶ 350-52. The agreement also prohibits Apple from encouraging users to substitute another browser for IE, and states that Apple will "encourage its employees to use [IE]." *Id.* ¶ 352.

This exclusive deal between Microsoft and Apple has a substantial effect upon the distribution of rival browsers. If a browser developer ports its product to a second operating system, such as the Mac OS, it can continue to display a common set of APIs. Thus, usage share, not the underlying operating system, is the primary determinant of the platform challenge a browser may pose. Pre-installation of a browser (which can be accomplished either by including the browser with the operating system or by the OEM installing the browser) is one of the two most important methods of browser distribution, and Apple had a not insignificant share of worldwide sales of operating systems. *See id.* ¶ 35 (Microsoft has 95% of the market not counting Apple and "well above" 80% with Apple included in the relevant market). Because Microsoft's exclusive contract with Apple has a substantial effect in restricting distribution of rival browsers, and because (as we have described several times above) reducing usage share of rival browsers serves to protect Microsoft's monopoly, its deal with Apple must be regarded as anticompetitive. *See Conclusions of Law*, at 42 (citing *Findings of Fact* ¶ 356) ("By extracting from Apple terms that significantly diminished the usage of Navigator on the Mac OS, Microsoft helped to ensure that developers would not view Navigator as truly cross-platform middleware.").

Microsoft offers no procompetitive justification for the exclusive dealing arrangement. It makes only the irrelevant claim that the IE-for-Mac Office deal is part of a multifaceted set of agreements between itself and Apple, *see* Appellant's Opening Br. at 61 ("Apple's 'browsing software' obligation was [not] the quid pro quo for Microsoft's Mac Office obligation[;] ... *all* of the various obligations ... were part of one 'overall agreement' between the two companies."); that does not mean it has any procompetitive justification. Accordingly, we hold that the exclusive deal with Apple is exclusionary, in violation of § 2 of the Sherman Act.

5. Java

Java, a set of technologies developed by Sun Microsystems, is another type of middleware posing a potential threat to Windows' position as the ubiquitous platform for software development. *Findings of Fact* ¶ 28. The Java technologies include: (1) a programming language; (2) a set of programs written in that language, called the "Java class libraries," which expose APIs; (3) a compiler, which translates code written by a developer into "bytecode"; and (4) a Java Virtual Machine ("JVM"), which translates bytecode into instructions to the operating system. *Id.* ¶ 73. Programs calling upon the Java APIs will run on any machine with a "Java runtime environment," that is, Java class libraries and a JVM. *Id.* ¶ ¶ 73, 74.

In May 1995 Netscape agreed with Sun to distribute a copy of the Java runtime environment with every copy of Navigator, and "Navigator quickly became the principal vehicle by which Sun placed copies of its Java runtime environment on the PC systems of Windows users." *Id.* ¶ 76. Microsoft, too, agreed to promote the Java technologies—or so it seemed. For at the same time, Microsoft took steps "to maximize the difficulty with which applications written in Java could be ported from Windows to other platforms, and vice versa." *Conclusions of Law,* at 43. Specifically, the District Court found that Microsoft took four steps to exclude Java from developing as a viable cross-platform threat: (a) designing a JVM incompatible with the one developed by Sun; (b) entering into contracts, the so-called "First Wave Agreements," requiring major ISVs to promote Microsoft's JVM exclusively; (c) deceiving Java developers about the Windows-specific nature of the tools it distributed to them; and (d) coercing Intel to stop aiding Sun in improving the Java technologies.

a. *The incompatible JVM*

The District Court held that Microsoft engaged in exclusionary conduct by developing and promoting its own JVM. *Conclusions of Law,* at 43-44. Sun had already developed a JVM for the Windows operating system when Microsoft began work on its version. The JVM developed by Microsoft

allows Java applications to run faster on Windows than does Sun's JVM, *Findings of Fact* ¶ 389, but a Java application designed to work with Microsoft's JVM does not work with Sun's JVM and vice versa. *Id.* ¶ 390. The District Court found that Microsoft "made a large investment of engineering resources to develop a high-performance Windows JVM," *id.* ¶ 396, and, "[b]y bundling its ... JVM with every copy of [IE] ... Microsoft endowed its Java runtime environment with the unique attribute of guaranteed, enduring ubiquity across the enormous Windows installed base," *id.* ¶ 397. As explained above, however, a monopolist does not violate the antitrust laws simply by developing a product that is incompatible with those of its rivals. *See supra* Section II.B.1. In order to violate the antitrust laws, the incompatible product must have an anticompetitive effect that outweighs any procompetitive justification for the design. Microsoft's JVM is not only incompatible with Sun's, it allows Java applications to run faster on Windows than does Sun's JVM. Microsoft's faster JVM lured Java developers into using Microsoft's developer tools, and Microsoft offered those tools deceptively, as we discuss below. The JVM, however, does allow applications to run more swiftly and does not itself have any anticompetitive effect. Therefore, we reverse the District Court's imposition of liability for Microsoft's development and promotion of its JVM.

b. *The First Wave Agreements*

The District Court also found that Microsoft entered into First Wave Agreements with dozens of ISVs to use Microsoft's JVM. *See Findings of Fact* ¶ 401 ("[I]n exchange for costly technical support and other blandishments, Microsoft induced dozens of important ISVs to make their Java applications reliant on Windows-specific technologies and to refrain from distributing to Windows users JVMs that complied with Sun's standards."). Again, we reject the District Court's condemnation of low but non-predatory pricing by Microsoft.

To the extent Microsoft's First Wave Agreements with the ISVs conditioned receipt of Windows technical information upon the ISVs' agreement to promote Microsoft's JVM exclu-

sively, they raise a different competitive concern. The District Court found that, although not literally exclusive, the deals were exclusive in practice because they required developers to make Microsoft's JVM the default in the software they developed. *Id.* ¶ 401.

While the District Court did not enter precise findings as to the effect of the First Wave Agreements upon the overall distribution of rival JVMs, the record indicates that Microsoft's deals with the major ISVs had a significant effect upon JVM promotion. As discussed above, the products of First Wave ISVs reached millions of consumers. *Id.* ¶ 340. The First Wave ISVs included such prominent developers as Rational Software, *see* GX 970, *reprinted in* 15 J.A. at 9994-10000, "a world leader" in software development tools, *see* Direct Testimony of Michael Devlin ¶ 2, *reprinted in* 5 J.A. at 3520, and Symantec, *see* GX 2071, *reprinted in* 22 J.A. at 14960-66 (sealed), which, according to Microsoft itself, is "the leading supplier of utilities such as anti-virus software," Defendant's Proposed Findings of Fact ¶ 276, *reprinted in* 3 J.A. at 1689. Moreover, Microsoft's exclusive deals with the leading ISVs took place against a backdrop of foreclosure: the District Court found that "[w]hen Netscape announced in May 1995 [prior to Microsoft's execution of the First Wave Agreements] that it would include with every copy of Navigator a copy of a Windows JVM that complied with Sun's standards, it appeared that Sun's Java implementation would achieve the necessary ubiquity on Windows." *Findings of Fact* ¶ 394. As discussed above, however, Microsoft undertook a number of anticompetitive actions that seriously reduced the distribution of Navigator, and the District Court found that those actions thereby seriously impeded distribution of Sun's JVM. *Conclusions of Law*, at 43-44. Because Microsoft's agreements foreclosed a substantial portion of the field for JVM distribution and because, in so doing, they protected Microsoft's monopoly from a middleware threat, they are anticompetitive.

Microsoft offered no procompetitive justification for the default clause that made the First Wave Agreements exclusive as a practical matter. *See Findings of Fact* ¶ 401.

Because the cumulative effect of the deals is anticompetitive and because Microsoft has no procompetitive justification for them, we hold that the provisions in the First Wave Agreements requiring use of Microsoft's JVM as the default are exclusionary, in violation of the Sherman Act.

c. *Deception of Java developers*

Microsoft's "Java implementation" included, in addition to a JVM, a set of software development tools it created to assist ISVs in designing Java applications. The District Court found that, not only were these tools incompatible with Sun's cross-platform aspirations for Java—no violation, to be sure—but Microsoft deceived Java developers regarding the Windows-specific nature of the tools. Microsoft's tools included "certain 'keywords' and 'compiler directives' that could only be executed properly by Microsoft's version of the Java runtime environment for Windows." *Id.* ¶ 394; *see also* Direct Testimony of James Gosling ¶ 58, *reprinted in* 21 J.A. at 13959 (Microsoft added "programming instructions ... that alter the behavior of the code."). As a result, even Java "developers who were opting for portability over performance ... unwittingly [wrote] Java applications that [ran] only on Windows." *Conclusions of Law*, at 43. That is, developers who relied upon Microsoft's public commitment to cooperate with Sun and who used Microsoft's tools to develop what Microsoft led them to believe were cross-platform applications ended up producing applications that would run only on the Windows operating system.

When specifically accused by a *PC Week* reporter of fragmenting Java standards so as to prevent cross-platform uses, Microsoft denied the accusation and indicated it was only "adding rich platform support" to what remained a cross-platform implementation. An e-mail message internal to Microsoft, written shortly after the conversation with the reporter, shows otherwise:

> [O]k, i just did a followup call.... [The reporter] liked that i kept pointing customers to w3c standards [(commonly observed internet protocols)].... [but] he accused us of being schizo with this vs. our java approach, i said

> he misunderstood [—] that [with Java] we are merely trying to add rich platform support to an interop layer.... this plays well.... at this point its [sic] not good to create MORE noise around our win32 java classes. instead we should just quietly grow j [(Microsoft's development tools)] share and assume that people will take more advantage of our classes without ever realizing they are building win32-only java apps.

GX 1332, *reprinted in* 22 J.A. at 14922-23.

Finally, other Microsoft documents confirm that Microsoft intended to deceive Java developers, and predicted that the effect of its actions would be to generate Windows-dependent Java applications that their developers believed would be cross-platform; these documents also indicate that Microsoft's ultimate objective was to thwart Java's threat to Microsoft's monopoly in the market for operating systems. One Microsoft document, for example, states as a strategic goal: "Kill cross-platform Java by grow[ing] the polluted Java market." GX 259, *reprinted in* 22 J.A. at 14514; *see also id.* ("Cross-platform capability is by far *the* number one reason for choosing/using Java.") (emphasis in original).

Microsoft's conduct related to its Java developer tools served to protect its monopoly of the operating system in a manner not attributable either to the superiority of the operating system or to the acumen of its makers, and therefore was anticompetitive. Unsurprisingly, Microsoft offers no procompetitive explanation for its campaign to deceive developers. Accordingly, we conclude this conduct is exclusionary, in violation of § 2 of the Sherman Act.

d. *The threat to Intel*

The District Court held that Microsoft also acted unlawfully with respect to Java by using its "monopoly power to prevent firms such as Intel from aiding in the creation of cross-platform interfaces." *Conclusions of Law*, at 43. In 1995 Intel was in the process of developing a high-performance, Windows-compatible JVM. Microsoft wanted Intel to abandon that effort because a fast, cross-platform

JVM would threaten Microsoft's monopoly in the operating system market. At an August 1995 meeting, Microsoft's Gates told Intel that its "cooperation with Sun and Netscape to develop a Java runtime environment ... was one of the issues threatening to undermine cooperation between Intel and Microsoft." *Findings of Fact* ¶ 396. Three months later, "Microsoft's Paul Maritz told a senior Intel executive that Intel's [adaptation of its multimedia software to comply with] Sun's Java standards was as inimical to Microsoft as Microsoft's support for non-Intel microprocessors would be to Intel." *Id.* ¶ 405.

Intel nonetheless continued to undertake initiatives related to Java. By 1996 "Intel had developed a JVM designed to run well ... while complying with Sun's cross-platform standards." *Id.* ¶ 396. In April of that year, Microsoft again urged Intel not to help Sun by distributing Intel's fast, Sun-compliant JVM. *Id.* And Microsoft threatened Intel that if it did not stop aiding Sun on the multimedia front, then Microsoft would refuse to distribute Intel technologies bundled with Windows. *Id.* ¶ 404.

Intel finally capitulated in 1997, after Microsoft delivered the *coup de grace*.

> [O]ne of Intel's competitors, called AMD, solicited support from Microsoft for its "3DX" technology.... Microsoft's Allchin asked Gates whether Microsoft should support 3DX, despite the fact that Intel would oppose it. Gates responded: "If Intel has a real problem with us supporting this then they will have to stop supporting Java Multimedia the way they are. I would gladly give up supporting this if they would back off from their work on JAVA."

Id. ¶ 406.

Microsoft's internal documents and deposition testimony confirm both the anticompetitive effect and intent of its actions. *See, e.g.*, GX 235, *reprinted in* 22 J.A. at 14502 (Microsoft executive, Eric Engstrom, included among Microsoft's goals for Intel: "Intel to stop helping Sun create Java

Multimedia APIs, especially ones that run well ... on Windows."); Deposition of Eric Engstrom at 179 ("We were successful [in convincing Intel to stop aiding Sun] for some period of time.").

Microsoft does not deny the facts found by the District Court, nor does it offer any procompetitive justification for pressuring Intel not to support cross-platform Java. Microsoft lamely characterizes its threat to Intel as "advice." The District Court, however, found that Microsoft's "advice" to Intel to stop aiding cross-platform Java was backed by the threat of retaliation, and this conclusion is supported by the evidence cited above. Therefore we affirm the conclusion that Microsoft's threats to Intel were exclusionary, in violation of § 2 of the Sherman Act.

6. Course of Conduct

The District Court held that, apart from Microsoft's specific acts, Microsoft was liable under § 2 based upon its general "course of conduct." In reaching this conclusion the court relied upon *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962), where the Supreme Court stated, "[i]n [Sherman Act cases], plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each."

Microsoft points out that *Continental Ore* and the other cases cited by plaintiffs in support of "course of conduct" liability all involve conspiracies among multiple firms, not the conduct of a single firm; in that setting the "course of conduct" is the conspiracy itself, for which all the participants may be held liable. *See* Appellant's Opening Br. at 112-13. Plaintiffs respond that, as a policy matter, a monopolist's unilateral "campaign of [acts intended to exclude a rival] that in the aggregate has the requisite impact" warrants liability even if the acts viewed individually would be lawful for want of a significant effect upon competition. Appellees' Br. at 82-83.

We need not pass upon plaintiffs' argument, however, because the District Court did not point to any series of acts, each of which harms competition only slightly but the cumula-

tive effect of which is significant enough to form an independent basis for liability. The "course of conduct" section of the District Court's opinion contains, with one exception, only broad, summarizing conclusions. *See, e.g., Conclusions of Law*, at 44 ("Microsoft placed an oppressive thumb on the scale of competitive fortune...."). The only specific acts to which the court refers are Microsoft's expenditures in promoting its browser, *see id.* ("Microsoft has expended wealth and foresworn opportunities to realize more...."), which we have explained are not in themselves unlawful. Because the District Court identifies no other specific acts as a basis for "course of conduct" liability, we reverse its conclusion that Microsoft's course of conduct separately violates § 2 of the Sherman Act.

C. Causation

As a final parry, Microsoft urges this court to reverse on the monopoly maintenance claim, because plaintiffs never established a causal link between Microsoft's anticompetitive conduct, in particular its foreclosure of Netscape's and Java's distribution channels, and the maintenance of Microsoft's operating system monopoly. *See Findings of Fact* ¶ 411 ("There is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition in the market for Intel-compatible PC operating systems."). This is the flip side of Microsoft's earlier argument that the District Court should have included middleware in the relevant market. According to Microsoft, the District Court cannot simultaneously find that middleware is not a reasonable substitute *and* that Microsoft's exclusionary conduct contributed to the maintenance of monopoly power in the operating system market. Microsoft claims that the first finding depended on the court's view that middleware does not pose a serious threat to Windows, *see supra* Section II.A, while the second finding required the court to find that Navigator and Java would have developed into serious enough cross-platform threats to erode the applications barrier to entry. We disagree.

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Microsoft points to no case, and we can find none, standing for the proposition that, as to § 2 *liability* in an equitable enforcement action, plaintiffs must present direct proof that a defendant's continued monopoly power is precisely attributable to its anticompetitive conduct. As its lone authority, Microsoft cites the following passage from Professor Areeda's antitrust treatise: "The plaintiff has the burden of pleading, introducing evidence, and presumably proving by a preponderance of the evidence that reprehensible behavior has *contributed significantly* to the ... maintenance of the monopoly." 3 PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 650c, at 69 (1996) (emphasis added).

But, with respect to actions seeking injunctive relief, the authors of that treatise also recognize the need for courts to infer "causation" from the fact that a defendant has engaged in anticompetitive conduct that "reasonably appear[s] capable of making a significant contribution to ... maintaining monopoly power." *Id.* ¶ 651c, at 78; *see also Morgan v. Ponder*, 892 F.2d 1355, 1363 (8th Cir. 1989); *Barry Wright*, 724 F.2d at 230. To require that § 2 liability turn on a plaintiff's ability or inability to reconstruct the hypothetical marketplace absent a defendant's anticompetitive conduct would only encourage monopolists to take more and earlier anticompetitive action.

We may infer causation when exclusionary conduct is aimed at producers of nascent competitive technologies as well as when it is aimed at producers of established substitutes. Admittedly, in the former case there is added uncertainty, inasmuch as nascent threats are merely *potential* substitutes. But the underlying proof problem is the same—neither plaintiffs nor the court can confidently reconstruct a product's hypothetical technological development in a world absent the defendant's exclusionary conduct. To some degree, "the defendant is made to suffer the uncertain consequences of its own undesirable conduct." 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 651c, at 78.

Given this rather edentulous test for causation, the question in this case is not whether Java or Navigator would

actually have developed into viable platform substitutes, but (1) whether as a general matter the exclusion of nascent threats is the type of conduct that is reasonably capable of contributing significantly to a defendant's continued monopoly power and (2) whether Java and Navigator reasonably constituted nascent threats at the time Microsoft engaged in the anticompetitive conduct at issue. As to the first, suffice it to say that it would be inimical to the purpose of the Sherman Act to allow monopolists free reign to squash nascent, albeit unproven, competitors at will—particularly in industries marked by rapid technological advance and frequent paradigm shifts. *Findings of Fact* ¶ ¶ 59-60. As to the second, the District Court made ample findings that both Navigator and Java showed potential as middleware platform threats. *Findings of Fact* ¶ ¶ 68-77. Counsel for Microsoft admitted as much at oral argument. 02/26/01 Ct. Appeals Tr. at 27 ("There are no constraints on output. Marginal costs are essentially zero. And there are to some extent network effects. So a company like Netscape founded in 1994 can be by the middle of 1995 clearly a potentially lethal competitor to Windows because it can supplant its position in the market because of the characteristics of these markets.").

Microsoft's concerns over causation have more purchase in connection with the appropriate remedy issue, *i.e.*, whether the court should impose a structural remedy or merely enjoin the offensive conduct at issue. As we point out later in this opinion, divestiture is a remedy that is imposed only with great caution, in part because its long-term efficacy is rarely certain. *See infra* Section V.E. Absent some measure of confidence that there has been an actual loss to competition that needs to be restored, wisdom counsels against adopting radical structural relief. *See* 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 653b, at 91-92 ("[M]ore extensive equitable relief, particularly remedies such as divestiture designed to eliminate the monopoly altogether, raise more serious questions and require a clearer indication of a significant causal connection between the conduct and creation or maintenance of the market power."). But these queries go to questions of remedy, not liability. In short, causation affords Microsoft no

defense to liability for its unlawful actions undertaken to maintain its monopoly in the operating system market.

III. Attempted Monopolization

Microsoft further challenges the District Court's determination of liability for "attempt[ing] to monopolize ... any part of the trade or commerce among the several States." 15 U.S.C. § 2 (1997). To establish a § 2 violation for attempted monopolization, "a plaintiff must prove (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993); *see also Times-Picayune Pub. Co. v. United States*, 345 U.S. 594, 626 (1953); *Lorain Journal Co. v. United States*, 342 U.S. 143, 153-55 (1951). Because a deficiency on any one of the three will defeat plaintiffs' claim, we look no further than plaintiffs' failure to prove a dangerous probability of achieving monopoly power in the putative browser market.

The determination whether a dangerous probability of success exists is a particularly fact-intensive inquiry. Because the Sherman Act does not identify the activities that constitute the offense of attempted monopolization, the court "must examine the facts of each case, mindful that the determination of what constitutes an attempt, as Justice Holmes explained, 'is a question of proximity and degree.' " *United States v. Am. Airlines, Inc.*, 743 F.2d 1114, 1118 (5th Cir. 1984) (quoting *Swift & Co. v. United States*, 196 U.S. 375, 402 (1904)). The District Court determined that "[t]he evidence supports the conclusion that Microsoft's actions did pose such a danger." *Conclusions of Law*, at 45. Specifically, the District Court concluded that "Netscape's assent to Microsoft's market division proposal would have, *instanter*, resulted in Microsoft's attainment of monopoly power in a second market," and that "the proposal itself created a dangerous probability of that result." *Conclusions of Law*, at 46 (citation omitted). The District Court further concluded that "the predatory course of conduct Microsoft has pursued since June

of 1995 has revived the dangerous probability that Microsoft will attain monopoly power in a second market." *Id.*

At the outset we note a pervasive flaw in the District Court's and plaintiffs' discussion of attempted monopolization. Simply put, plaintiffs have made the same argument under two different headings—monopoly maintenance and attempted monopolization. They have relied upon Microsoft's § 2 liability for monopolization of the operating system market as a presumptive indicator of attempted monopolization of an entirely different market. The District Court implicitly accepted this approach: It agreed with plaintiffs that the events that formed the basis for the § 2 monopolization claim "warrant[ed] *additional* liability as an illegal attempt to amass monopoly power in 'the browser market.' " *Id.* at 45 (emphasis added). Thus, plaintiffs and the District Court failed to recognize the need for an analysis wholly independent of the conclusions and findings on monopoly maintenance.

To establish a dangerous probability of success, plaintiffs must as a threshold matter show that the browser market can be monopolized, *i.e.*, that a hypothetical monopolist in that market could enjoy market power. This, in turn, requires plaintiffs (1) to define the relevant market and (2) to demonstrate that substantial barriers to entry protect that market. Because plaintiffs have not carried their burden on either prong, we reverse without remand.

A. Relevant Market

A court's evaluation of an attempted monopolization claim must include a definition of the relevant market. *See Spectrum Sports*, 506 U.S. at 455-56. Such a definition establishes a context for evaluating the defendant's actions as well as for measuring whether the challenged conduct presented a dangerous probability of monopolization. *See id.* The District Court omitted this element of the *Spectrum Sports* inquiry.

Defining a market for an attempted monopolization claim involves the same steps as defining a market for a monopoly maintenance claim, namely a detailed description of the purpose of a browser—what functions may be included and what

are not—and an examination of the substitutes that are part of the market and those that are not. *See also supra* Section II.A. The District Court never engaged in such an analysis nor entered detailed findings defining what a browser is or what products might constitute substitutes. In the Findings of Fact, the District Court (in a section on whether IE and Windows are separate products) stated only that "a Web browser provides the ability for the end user to select, retrieve, and perceive resources on the Web." *Findings of Fact* ¶ 150. Furthermore, in discussing attempted monopolization in its Conclusions of Law, the District Court failed to demonstrate analytical rigor when it employed varying and imprecise references to the "market for browsing technology for Windows," "the browser market," and "platform-level browsing software." *Conclusions of Law*, at 45.

Because the determination of a relevant market is a factual question to be resolved by the District Court, *see, e.g., All Care Nursing Serv., Inc. v. High Tech Staffing Servs., Inc.*, 135 F.3d 740, 749 (11th Cir. 1998); *Tunis Bros. Co., Inc. v. Ford Motor Co.*, 952 F.2d 715, 722-23 (3d Cir. 1991); *Westman Comm'n Co. v. Hobart Int'l, Inc.*, 796 F.2d 1216, 1220 (10th Cir. 1986), we would normally remand the case so that the District Court could formulate an appropriate definition. *See Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 & n.22 (1982); *Janini v. Kuwait Univ.*, 43 F.3d 1534, 1537 (D.C. Cir. 1995); *Palmer v. Shultz*, 815 F.2d 84, 103 (D.C. Cir. 1987). A remand on market definition is unnecessary, however, because the District Court's imprecision is directly traceable to plaintiffs' failure to articulate and identify evidence before the District Court as to (1) what constitutes a browser (*i.e.*, what are the technological components of or functionalities provided by a browser) and (2) why certain other products are not reasonable substitutes (*e.g.*, browser shells or viewers for individual internet extensions, such as Real Audio Player or Adobe Acrobat Reader). *See* Plaintiffs' Joint Proposed Findings of Fact, at 817-19, *reprinted in* 2 J.A. at 1480-82; Plaintiffs' Joint Proposed Conclusions of Law § IV (No. 98-1232); *see also Lee v. Interstate Fire & Cas. Co.*, 86 F.3d 101,

105 (7th Cir. 1996) (stating that remand for development of a factual record is inappropriate where plaintiff failed to meet burden of persuasion and never suggested that additional evidence was necessary). Indeed, when plaintiffs in their Proposed Findings of Fact attempted to define a relevant market for the attempt claim, they pointed only to their separate products analysis for the tying claim. *See, e.g.*, Plaintiffs' Joint Proposed Findings of Fact, at 818, *reprinted in* 2 J.A. at 1481. However, the separate products analysis for tying purposes is not a substitute for the type of market definition that *Spectrum Sports* requires. *See infra* Section IV.A.

Plaintiffs' proposed findings and the District Court's actual findings on attempted monopolization pale in comparison to their counterparts on the monopoly maintenance claim. *Compare Findings of Fact* ¶ 150, *and* Plaintiffs' Joint Proposed Findings of Fact, at 817-819, *reprinted in* 2 J.A. at 1480-82, *with Findings of Fact* ¶ ¶ 18-66, *and* Plaintiffs' Joint Proposed Findings of Fact, at 20-31, *reprinted in* 1 J.A. at 658-69. Furthermore, in their brief and at oral argument before this court, plaintiffs did nothing to clarify or ameliorate this deficiency. *See, e.g.*, Appellees' Br. at 93-94.`

B. Barriers to Entry

Because a firm cannot possess monopoly power in a market unless that market is also protected by significant barriers to entry, *see supra* Section II.A, it follows that a firm cannot threaten to achieve monopoly power in a market unless that market is, or will be, similarly protected. *See Spectrum Sports*, 506 U.S. at 456 ("In order to determine whether there is a dangerous probability of monopolization, courts have found it necessary to consider ... the defendant's ability to lessen or destroy competition in that market.") (citing cases). Plaintiffs have the burden of establishing barriers to entry into a properly defined relevant market. *See* 2A PHILLIP E. AREEDA ET AL., ANTITRUST LAW ¶ 420b, at 57-59 (1995); 3A PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 807g, at 361-62 (1996); *see also Neumann v. Reinforced*

Earth Co., 786 F.2d 424, 429 (D.C. Cir. 1986). Plaintiffs must not only show that barriers to entry protect the properly defined browser market, but that those barriers are "significant." *See United States v. Baker Hughes Inc.*, 908 F.2d 981, 987 (D.C. Cir. 1990). Whether there are significant barriers to entry cannot, of course, be answered absent an appropriate market definition; thus, plaintiffs' failure on that score alone is dispositive. But even were we to assume a properly defined market, for example browsers consisting of a graphical interface plus internet protocols, plaintiffs nonetheless failed to carry their burden on barriers to entry.

Contrary to plaintiffs' contention on appeal, *see* Appellees' Br. at 91-93, none of the District Court's statements constitutes a finding of barriers to entry into the web browser market. Finding of Fact 89 states:

> At the time Microsoft presented its proposal, Navigator was the only browser product with a significant share of the market and thus the only one with the potential to weaken the applications barrier to entry. Thus, had it convinced Netscape to accept its offer of a "special relationship," Microsoft quickly would have gained such control over the extensions and standards that network-centric applications (including Web sites) employ as to make it all but impossible for any future browser rival to lure appreciable developer interest away from Microsoft's platform.

This finding is far too speculative to establish that competing browsers would be unable to enter the market, or that Microsoft would have the power to raise the price of its browser above, or reduce the quality of its browser below, the competitive level. Moreover, it is ambiguous insofar as it appears to focus on Microsoft's response to the perceived platform threat rather than the browser market. Finding of Fact 144, on which plaintiffs also rely, is part of the District Court's discussion of Microsoft's alleged anticompetitive actions to eliminate the platform threat posed by Netscape Navigator. This finding simply describes Microsoft's reliance

on studies indicating consumers' reluctance to switch browsers, a reluctance not shown to be any more than that which stops consumers from switching brands of cereal. Absent more extensive and definitive factual findings, the District Court's legal conclusions about entry barriers amount to nothing more than speculation.

In contrast to their minimal effort on market definition, plaintiffs did at least offer proposed findings of fact suggesting that the possibility of network effects could potentially create barriers to entry into the browser market. *See* Plaintiffs' Joint Proposed Findings of Fact, at 822-23, 825-27, *reprinted in* 2 J.A. at 1485-86, 1488-90. The District Court did not adopt those proposed findings. *See Findings of Fact* ¶ 89. However, the District Court did acknowledge the possibility of a different kind of entry barrier in its Conclusions of Law:

> In the time it would have taken an aspiring entrant to launch a serious effort to compete against Internet Explorer, Microsoft *could have* erected the same type of barrier that protects its existing monopoly power by adding proprietary extensions to the browsing software under its control and by extracting commitments from OEMs, IAPs and others similar to the ones discussed in [the monopoly maintenance section].

Conclusions of Law, at 46 (emphasis added).

Giving plaintiffs and the District Court the benefit of the doubt, we might remand if the *possible existence* of entry barriers resulting from the *possible creation* and *exploitation* of network effects in the browser market were the only concern. That is not enough to carry the day, however, because the District Court did not make two key findings: (1) that network effects were a necessary or even probable, rather than merely possible, consequence of high market share in the browser market and (2) that a barrier to entry resulting from network effects would be "significant" enough to confer monopoly power. Again, these deficiencies are in large part traceable to plaintiffs' own failings. As to the first point, the District Court's use of the phrase "could have"

reflects the same uncertainty articulated in testimony cited in plaintiffs' proposed findings. *See* Plaintiffs' Joint Proposed Findings of Fact, at 822 (citing testimony of Frederick Warren-Boulton), at 826 (citing testimony of Franklin Fisher), *reprinted in* 2 J.A. at 1485, 1489. As to the second point, the cited testimony in plaintiffs' proposed findings offers little more than conclusory statements. *See id.* at 822-27, *reprinted in* 2 J.A. at 1485-90. The proffered testimony contains no evidence regarding the cost of "porting" websites to different browsers or the potentially different economic incentives facing ICPs, as opposed to ISVs, in their decision to incur costs to do so. Simply invoking the phrase "network effects" without pointing to more evidence does not suffice to carry plaintiffs' burden in this respect.

Any doubt that we may have had regarding remand instead of outright reversal on the barriers to entry question was dispelled by plaintiffs' arguments on attempted monopolization before this court. Not only did plaintiffs fail to articulate a website barrier to entry *theory* in either their brief or at oral argument, they failed to point the court to evidence in the record that would support a finding that Microsoft would *likely* erect *significant* barriers to entry upon acquisition of a dominant market share.

Plaintiffs did not devote the same resources to the attempted monopolization claim as they did to the monopoly maintenance claim. But both claims require evidentiary and theoretical rigor. Because plaintiffs failed to make their case on attempted monopolization both in the District Court and before this court, there is no reason to give them a second chance to flesh out a claim that should have been fleshed out the first time around. Accordingly, we reverse the District Court's determination of § 2 liability for attempted monopolization.

IV. TYING

Microsoft also contests the District Court's determination of liability under § 1 of the Sherman Act. The District Court concluded that Microsoft's contractual and technological bun-

dling of the IE web browser (the "tied" product) with its Windows operating system ("OS") (the "tying" product) resulted in a tying arrangement that was per se unlawful. *Conclusions of Law*, at 47-51. We hold that the rule of reason, rather than per se analysis, should govern the legality of tying arrangements involving platform software products. The Supreme Court has warned that " '[i]t is only after considerable experience with certain business relationships that courts classify them as *per se* violations....' " *Broad. Music, Inc. v. CBS*, 441 U.S. 1, 9 (1979) (quoting *United States v. Topco Assocs.*, 405 U.S. 596, 607-08 (1972)). While every "business relationship" will in some sense have unique features, some represent entire, novel categories of dealings. As we shall explain, the arrangement before us is an example of the latter, offering the first up-close look at the technological integration of added functionality into software that serves as a platform for third-party applications. There being no close parallel in prior antitrust cases, simplistic application of per se tying rules carries a serious risk of harm. Accordingly, we vacate the District Court's finding of a per se tying violation and remand the case. Plaintiffs may on remand pursue their tying claim under the rule of reason.

The facts underlying the tying allegation substantially overlap with those set forth in Section II.B in connection with the § 2 monopoly maintenance claim. The key District Court findings are that (1) Microsoft required licensees of Windows 95 and 98 also to license IE as a bundle at a single price, *Findings of Fact* ¶ ¶ 137, 155, 158; (2) Microsoft refused to allow OEMs to uninstall or remove IE from the Windows desktop, *id.* ¶ ¶ 158, 203, 213; (3) Microsoft designed Windows 98 in a way that withheld from consumers the ability to remove IE by use of the Add/Remove Programs utility, *id.* ¶ 170; *cf. id.* ¶ 165 (stating that IE was subject to Add/Remove Programs utility in Windows 95); and (4) Microsoft designed Windows 98 to override the user's choice of default web browser in certain circumstances, *id.* ¶ ¶ 171, 172. The court found that these acts constituted a per se tying violation. *Conclusions of Law*, at 47-51. Although the District Court also found that Microsoft commingled operating sys-

tem-only and browser-only routines in the same library files, *Findings of Fact* ¶ ¶ 161, 164, it did not include this as a basis for tying liability despite plaintiffs' request that it do so, Plaintiffs' Proposed Findings of Fact, ¶ ¶ 131-32, *reprinted in* 2 J.A. at 941-47.

There are four elements to a per se tying violation: (1) the tying and tied goods are two separate products; (2) the defendant has market power in the tying product market; (3) the defendant affords consumers no choice but to purchase the tied product from it; and (4) the tying arrangement forecloses a substantial volume of commerce. *See Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461-62 (1992); *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12-18 (1984).

Microsoft does not dispute that it bound Windows and IE in the four ways the District Court cited. Instead it argues that Windows (the tying good) and IE browsers (the tied good) are not "separate products," Appellant's Opening Br. at 69-79, and that it did not substantially foreclose competing browsers from the tied product market, *id.* at 79-83. (Microsoft also contends that it does not have monopoly power in the tying product market, *id.* at 84-96, but, for reasons given in Section II.A, we uphold the District Court's finding to the contrary.)

We first address the separate-products inquiry, a source of much argument between the parties and of confusion in the cases. Our purpose is to highlight the poor fit between the separate-products test and the facts of this case. We then offer further reasons for carving an exception to the per se rule when the tying product is platform software. In the final section we discuss the District Court's inquiry if plaintiffs pursue a rule of reason claim on remand.

A. Separate-Products Inquiry Under the Per Se Test

The requirement that a practice involve two separate products before being condemned as an illegal tie started as a purely linguistic requirement: unless products are separate, one cannot be "tied" to the other. Indeed, the nature of the

products involved in early tying cases—intuitively distinct items such as a movie projector and a film, *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U.S. 502 (1917)—led courts either to disregard the separate-products question, *see, e.g.*, *United Shoe Mach. Corp. v. United States*, 258 U.S. 451 (1922), or to discuss it only in passing, *see, e.g.*, *Motion Picture Patents*, 243 U.S. at 508, 512, 518. It was not until *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594 (1953), that the separate-products issue became a distinct element of the test for an illegal tie. *Id.* at 614. Even that case engaged in a rather cursory inquiry into whether ads sold in the morning edition of a paper were a separate product from ads sold in the evening edition.

The first case to give content to the separate-products test was *Jefferson Parish*, 466 U.S. 2. That case addressed a tying arrangement in which a hospital conditioned surgical care at its facility on the purchase of anesthesiological services from an affiliated medical group. The facts were a challenge for casual separate-products analysis because the tied service—anesthesia—was neither intuitively distinct from nor intuitively contained within the tying service—surgical care. A further complication was that, soon after the Court enunciated the per se rule for tying liability in *International Salt Co. v. United States*, 332 U.S. 392, 396 (1947), and *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5-7 (1958), new economic research began to cast doubt on the assumption, voiced by the Court when it established the rule, that " 'tying agreements serve hardly any purpose beyond the suppression of competition,' " *id.* at 6 (quoting *Standard Oil of Cal. v. United States*, 337 U.S. 293, 305-06 (1949)); *see also Jefferson Parish*, 466 U.S. at 15 n.23 (citing materials); *Fortner Enters. v. U.S. Steel Corp.*, 394 U.S. 495, 524-25 (1969) (Fortas, J., dissenting) ("*Fortner I*").

The *Jefferson Parish* Court resolved the matter in two steps. First, it clarified that "the answer to the question whether one or two products are involved" does not turn "on the functional relation between them...." *Jefferson Parish*, 466 U.S. at 19; *see also id.* at 19 n.30. In other words, the mere fact that two items are complements, that "one ... is

useless without the other," *id.*, does not make them a single "product" for purposes of tying law. *Accord Eastman Kodak*, 504 U.S. at 463. Second, reasoning that the "definitional question [whether two distinguishable products are involved] depends on whether the arrangement may have the type of competitive consequences addressed by the rule [against tying]," *Jefferson Parish*, 466 U.S. at 21, the Court decreed that "no tying arrangement can exist unless there is a sufficient *demand* for the purchase of anesthesiological services separate from hospital services to identify a distinct product market in which it is *efficient* to offer anesthesiological services separately from hospital service," *id.* at 21-22 (emphasis added); *accord Eastman Kodak*, 504 U.S. at 462.

The Court proceeded to examine direct and indirect evidence of consumer demand for the tied product separate from the tying product. Direct evidence addresses the question whether, when given a choice, consumers purchase the tied good from the tying good maker, or from other firms. The Court took note, for example, of testimony that patients and surgeons often requested specific anesthesiologists not associated with a hospital. *Jefferson Parish*, 466 U.S. at 22. Indirect evidence includes the behavior of firms without market power in the tying good market, presumably on the notion that (competitive) supply follows demand. If competitive firms always bundle the tying and tied goods, then they are a single product. *See id.* at 22 n.36; *see also Eastman Kodak*, 504 U.S. at 462; *Fortner I*, 394 U.S. at 525 (Fortas, J., dissenting), *cited in Jefferson Parish*, 466 U.S. at 12, 22 n.35; *United States v. Jerrold Elecs. Corp.*, 187 F. Supp. 545, 559 (E.D. Pa. 1960), *aff'd per curiam*, 365 U.S. 567 (1961); 10 PHILLIP E. AREEDA ET AL., ANTITRUST LAW ¶ 1744, at 197-201 (1996). Here the Court noted that only 27% of anesthesiologists in markets other than the defendant's had financial relationships with hospitals, and that, unlike radiologists and pathologists, anesthesiologists were not usually employed by hospitals, *i.e.*, bundled with hospital services. *Jefferson Parish*, 466 U.S. at 22 n.36. With both direct and indirect

evidence concurring, the Court determined that hospital surgery and anesthesiological services were distinct goods.

To understand the logic behind the Court's consumer demand test, consider first the postulated harms from tying. The core concern is that tying prevents goods from competing directly for consumer choice on their merits, *i.e.*, being selected as a result of "buyers' independent judgment," *id.* at 13 (internal quotes omitted). With a tie, a buyer's "freedom to select the best bargain in the second market [could be] impaired by his need to purchase the tying product, and perhaps by an inability to evaluate the true cost of either product...." *Id.* at 15. Direct competition on the merits of the tied product is foreclosed when the tying product either is sold only in a bundle with the tied product or, though offered separately, is sold at a bundled price, so that the buyer pays the same price whether he takes the tied product or not. In both cases, a consumer buying the tying product becomes entitled to the tied product; he will therefore likely be unwilling to buy a competitor's version of the tied product even if, making his own price/quality assessment, that is what he would prefer.

But not all ties are bad. Bundling obviously saves distribution and consumer transaction costs. 9 PHILLIP E. AREEDA, ANTITRUST LAW ¶ 1703g2, at 51-52 (1991). This is likely to be true, to take some examples from the computer industry, with the integration of math co-processors and memory into microprocessor chips and the inclusion of spell checkers in word processors. 11/10/98 pm Tr. at 18-19 (trial testimony of Steven McGeady of Intel), *reprinted in* 9 J.A. at 5581-82 (math co-processor); *Cal. Computer Prods., Inc. v. IBM Corp.*, 613 F.2d 727, 744 & n.29 (9th Cir. 1979) (memory). Bundling can also capitalize on certain economies of scope. A possible example is the "shared" library files that perform OS and browser functions with the very same lines of code and thus may save drive space from the clutter of redundant routines and memory when consumers use both the OS and browser simultaneously. 11/16/98 pm Tr. at 44 (trial testimony of Glenn Weadock), *reprinted in* 9 J.A. at 5892; Direct Testimony of Microsoft's James Allchin ¶ ¶ 10, 97, 100, 106-

116, app. A (excluding ¶ ¶ f, g.vi), *reprinted in* 5 J.A. at 3292, 3322-30, 3412-17. Indeed, if there were no efficiencies from a tie (including economizing on consumer transaction costs such as the time and effort involved in choice), we would expect distinct consumer demand for each individual component of every good. In a competitive market with zero transaction costs, the computers on which this opinion was written would only be sold piecemeal—keyboard, monitor, mouse, central processing unit, disk drive, and memory all sold in separate transactions and likely by different manufacturers.

Recognizing the potential benefits from tying, *see Jefferson Parish*, 466 U.S. at 21 n.33, the Court in *Jefferson Parish* forged a separate-products test that, like those of market power and substantial foreclosure, attempts to screen out false positives under per se analysis. The consumer demand test is a rough proxy for whether a tying arrangement may, on balance, be welfare-enhancing, and unsuited to per se condemnation. In the abstract, of course, there is always direct separate demand for products: assuming choice is available at zero cost, consumers will prefer it to no choice. Only when the efficiencies from bundling are dominated by the benefits to choice for enough consumers, however, will we actually observe consumers making independent purchases. In other words, perceptible separate demand is inversely proportional to net efficiencies. On the supply side, firms without market power will bundle two goods only when the cost savings from joint sale outweigh the value consumers place on separate choice. So bundling by all competitive firms implies strong net efficiencies. If a court finds either that there is no noticeable separate demand for the tied product or, there being no convincing direct evidence of separate demand, that the entire "competitive fringe" engages in the same behavior as the defendant, 10 AREEDA ET AL., ANTITRUST LAW ¶ 1744c4, at 200, then the tying and tied products should be declared one product and per se liability should be rejected.

Before concluding our exegesis of *Jefferson Parish*'s separate-products test, we should clarify two things. First, *Jefferson Parish* does not endorse a direct inquiry into the

efficiencies of a bundle. Rather, it proposes easy-to-administer proxies for net efficiency. In describing the separate-products test we discuss efficiencies only to explain the rationale behind the consumer demand inquiry. To allow the separate-products test to become a detailed inquiry into possible welfare consequences would turn a screening test into the very process it is expected to render unnecessary. 10 AREEDA ET AL., ANTITRUST LAW ¶ ¶ 1741b & c, at 180-85; *see also Jefferson Parish*, 466 U.S. at 34-35 (O'Connor, J., concurring).

Second, the separate-products test is not a one-sided inquiry into the cost savings from a bundle. Although *Jefferson Parish* acknowledged that prior lower court cases looked at cost-savings to decide separate products, *see id.* at 22 n.35, the Court conspicuously did not adopt that approach in its disposition of tying arrangement before it. Instead it chose proxies that balance costs savings against reduction in consumer choice.

With this background, we now turn to the separate-products inquiry before us. The District Court found that many consumers, if given the option, would choose their browser separately from the OS. *Findings of Fact* ¶ 151 (noting that "corporate consumers ... prefer to standardize on the same browser across different [OSs]" at the workplace). Turning to industry custom, the court found that, although all major OS vendors bundled browsers with their OSs, these companies either sold versions without a browser, or allowed OEMs or end-users either not to install the bundled browser or in any event to "uninstall" it. *Id.* ¶ 153. The court did not discuss the record evidence as to whether OS vendors other than Microsoft sold at a bundled price, with no discount for a browserless OS, perhaps because the record evidence on the issue was in conflict. *Compare, e.g.*, Direct Testimony of Richard Schmalensee ¶ 241, *reprinted in* 7 J.A. at 4315 ("[A]ll major operating system vendors do in fact include Web-browsing software with the operating system at *no extra charge*.") (emphasis added), *with, e.g.*, 1/6/99 pm Tr. at 42 (trial testimony of Franklin Fisher of MIT) (suggesting all OSs but Microsoft offer discounts).

Microsoft does not dispute that many consumers demand alternative browsers. But on industry custom Microsoft contends that no other firm requires non-removal because no other firm has invested the resources to integrate web browsing as deeply into its OS as Microsoft has. Appellant's Opening Br. at 25; *cf.* Direct Testimony of James Allchin ¶ ¶ 262-72, *reprinted in* 5 J.A. at 3385-89 (Apple, IBM); 11/5/98 pm Tr. at 55-58 (trial testimony of Apple's Avadis Tevanian, Jr.), *reprinted in* 9 J.A. at 5507-10 (Apple). (We here use the term "integrate" in the rather simple sense of converting individual goods into components of a single physical object (*e.g.*, a computer as it leaves the OEM, or a disk or sets of disks), without any normative implication that such integration is desirable or achieves special advantages. *Cf. United States v. Microsoft Corp.*, 147 F.3d 935, 950 (D.C. Cir. 1998) ("*Microsoft II*").) Microsoft contends not only that its integration of IE into Windows is innovative and beneficial but also that it requires non-removal of IE. In our discussion of monopoly maintenance we find that these claims fail the efficiency balancing applicable in that context. But the separate-products analysis is supposed to perform its function as a proxy *without* embarking on any direct analysis of efficiency. Accordingly, Microsoft's implicit argument—that in this case looking to a competitive fringe is inadequate to evaluate fully its potentially innovative technological integration, that such a comparison is between apples and oranges—poses a legitimate objection to the operation of *Jefferson Parish*'s separate-products test for the per se rule.

In fact there is merit to Microsoft's broader argument that *Jefferson Parish*'s consumer demand test would "chill innovation to the detriment of consumers by preventing firms from integrating into their products new functionality previously provided by standalone products—and hence, by definition, subject to separate consumer demand." Appellant's Opening Br. at 69. The per se rule's direct consumer demand and

indirect industry custom inquiries are, as a general matter, backward-looking and therefore systematically poor proxies for overall efficiency in the presence of new and innovative integration. *See* 10 AREEDA ET AL., ANTITRUST LAW ¶ 1746, at 224-29; Amicus Brief of Lawrence Lessig at 24-25, and sources cited therein (brief submitted regarding Conclusions of Law). The direct consumer demand test focuses on historic consumer behavior, likely before integration, and the indirect industry custom test looks at firms that, unlike the defendant, may not have integrated the tying and tied goods. Both tests compare incomparables—the defendant's decision to bundle in the presence of integration, on the one hand, and consumer and competitor calculations in its absence, on the other. If integration has efficiency benefits, these may be ignored by the *Jefferson Parish* proxies. Because one cannot be sure beneficial integration will be protected by the other elements of the per se rule, simple application of that rule's separate-products test may make consumers worse off.

In light of the monopoly maintenance section, obviously, we do not find that Microsoft's integration is welfare-enhancing or that it should be absolved of tying liability. Rather, we heed Microsoft's warning that the separate-products element of the per se rule may not give newly integrated products a fair shake.

B. Per Se Analysis Inappropriate for this Case.

We now address directly the larger question as we see it: whether standard per se analysis should be applied "off the shelf" to evaluate the defendant's tying arrangement, one which involves software that serves as a platform for third-party applications. There is no doubt that "[i]t is far too late in the history of our antitrust jurisprudence to question the proposition that *certain* tying arrangements pose an unacceptable risk of stifling competition and therefore are unreasonable '*per se*.' " *Jefferson Parish*, 466 U.S. at 9 (emphasis added). But there are strong reasons to doubt that the integration of additional software functionality into an OS falls among these arrangements. Applying per se analysis to

such an amalgamation creates undue risks of error and of deterring welfare-enhancing innovation.

The Supreme Court has warned that " '[i]t is only after considerable experience with certain business relationships that courts classify them as *per se* violations....' " *Broad. Music*, 441 U.S. at 9 (quoting *Topco Assocs.*, 405 U.S. at 607-08); *accord Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 47-59 (1977); *White Motor Co. v. United States*, 372 U.S. 253, 263 (1963); *Jerrold Elecs.*, 187 F. Supp. at 555-58, 560-61; *see also* Frank H. Easterbrook, *Allocating Antitrust Decisionmaking Tasks*, 76 GEO. L.J. 305, 308 (1987). Yet the sort of tying arrangement attacked here is unlike any the Supreme Court has considered. The early Supreme Court cases on tying dealt with arrangements whereby the sale or lease of a patented product was conditioned on the purchase of certain unpatented products from the patentee. *See Motion Picture Patents*, 243 U.S. 502 (1917); *United Shoe Mach.*, 258 U.S. 451 (1922); *IBM Corp. v. United States*, 298 U.S. 131 (1936); *Int'l Salt*, 332 U.S. 392 (1947). Later Supreme Court tying cases did not involve market power derived from patents, but continued to involve contractual ties. *See Times-Picayune*, 345 U.S. 594 (1953) (defendant newspaper conditioned the purchase of ads in its evening edition on the purchase of ads in its morning edition); *N. Pac. Ry.*, 356 U.S. 1 (1958) (defendant railroad leased land only on the condition that products manufactured on the land be shipped on its railways); *United States v. Loew's Inc.*, 371 U.S. 38 (1962) (defendant distributor of copyrighted feature films conditioned the sale of desired films on the purchase of undesired films); *U.S. Steel Corp. v. Fortner Enters., Inc.*, 429 U.S. 610 (1977) ("*Fortner II*") (defendant steel company conditioned access to low interest loans on the purchase of the defendant's prefabricated homes); *Jefferson Parish*, 466 U.S. 2 (1984) (defendant hospital conditioned use of its operating rooms on the purchase of anesthesiological services from a medical group associated with the hospital); *Eastman Kodak*, 504 U.S. 451 (1992) (defendant photocopying machine manufacturer conditioned the sale of replacement parts for its machines on the use of the defendant's repair services).

In none of these cases was the tied good physically and technologically integrated with the tying good. Nor did the defendants ever argue that their tie improved the value of the tying product to users *and* to makers of complementary goods. In those cases where the defendant claimed that use of the tied good made the tying good more valuable to users, the Court ruled that the same result could be achieved via quality standards for substitutes of the tied good. *See, e.g., Int'l Salt*, 332 U.S. at 397-98; *IBM*, 298 U.S. at 138-40. Here Microsoft argues that IE and Windows are an integrated physical product and that the bundling of IE APIs with Windows makes the latter a better applications platform for third-party software. It is unclear how the benefits from IE APIs could be achieved by quality standards for different browser manufacturers. We do not pass judgment on Microsoft's claims regarding the benefits from integration of its APIs. We merely note that these and other novel, purported efficiencies suggest that judicial "experience" provides little basis for believing that, "because of their pernicious effect on competition and lack of *any* redeeming virtue," a software firm's decisions to sell multiple functionalities as a package should be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *N. Pac. Ry.*, 356 U.S. at 5 (emphasis added).

Nor have we found much insight into software integration among the decisions of lower federal courts. Most tying cases in the computer industry involve bundling with hardware. *See, e.g., Digital Equip. Corp. v. Uniq Digital Techs., Inc.*, 73 F.3d 756, 761 (7th Cir. 1996) (Easterbrook, J.) (rejecting with little discussion the notion that bundling of OS with a computer is a tie of two separate products); *Datagate, Inc. v. Hewlett-Packard Co.*, 941 F.2d 864, 870 (9th Cir. 1991) (holding that plaintiff's allegation that defendant conditioned its software on purchase of its hardware was sufficient to survive summary judgment); *Digidyne Corp. v. Data Gen. Corp.*, 734 F.2d 1336, 1341-47 (9th Cir. 1984) (holding that defendant's conditioning the sale of its OS on the purchase of its CPU constitutes a per se tying violation); *Cal. Computer*

Prods., 613 F.2d at 743-44 (holding that defendant's integration into its CPU of a disk controller designed for its own disk drives was a useful innovation and not an impermissible attempt to monopolize); *ILC Peripherals Leasing Corp. v. IBM Corp.*, 448 F. Supp. 228, 233 (N.D. Cal. 1978) (finding that defendant's integration of magnetic disks and a head/disk assembly was not an unlawful tie), *aff'd per curiam sub. nom. Memorex Corp. v. IBM Corp.*, 636 F.2d 1188 (9th Cir. 1980); *see also Transamerica Computer Co. v. IBM Corp.*, 698 F.2d 1377, 1382-83 (9th Cir. 1983) (finding lawful defendant's design changes that rendered plaintiff peripheral maker's tape drives incompatible with the defendant's CPU). The hardware case that most resembles the present one is *Telex Corp. v. IBM Corp.*, 367 F. Supp. 258 (N.D. Okla. 1973), *rev'd on other grounds*, 510 F.2d 894 (10th Cir. 1975). Just as Microsoft integrated web browsing into its OS, IBM in the 1970s integrated memory into its CPUs, a hardware platform. A peripheral manufacturer alleged a tying violation, but the District Court dismissed the claim because it thought it inappropriate to enmesh the courts in product design decisions. *Id.* at 347. The court's discussion of the tying claim was brief and did not dwell on the effects of the integration on competition or efficiencies. Nor did the court consider whether per se analysis of the alleged tie was wise.

We have found four antitrust cases involving arrangements in which a software program is tied to the purchase of a software platform—two district court cases and two appellate court cases, including one from this court. The first case, *Innovation Data Processing, Inc. v. IBM Corp.*, 585 F. Supp. 1470 (D.N.J. 1984), involved an allegation that IBM bundled with its OS a utility used to transfer data from a tape drive to a computer's disk drive. Although the court mentioned the efficiencies achieved by bundling, it ultimately dismissed the per se tying claim because IBM sold a discounted version of the OS without the utility. *Id.* at 1475-76. The second case, *A.I. Root Co. v. Computer/Dynamics, Inc.*, 806 F.2d 673 (6th Cir. 1986), was brought by a business customer who claimed that an OS manufacturer illegally conditioned the sale of its OS on the purchase of other software applications. The court

quickly disposed of the case on the ground that defendant Computer/Dynamics had no market power. *Id.* at 675-77. There was no mention of the efficiencies from the tie. The third case, *Caldera, Inc. v. Microsoft Corp.*, 72 F. Supp. 2d 1295 (D. Utah 1999), involved a complaint that the technological integration of MS-DOS and Windows 3.1 into Windows 95 constituted a per se tying violation. The court formulated the "single product" issue in terms of whether the tie constituted a technological improvement, ultimately concluding that Microsoft was not entitled to summary judgment on that issue. *Id.* at 1322-28.

The software case that bears the greatest resemblance to that at bar is, not surprisingly, *Microsoft II*, 147 F.3d 935, where we examined the bundling of IE with Windows 95. But the issue there was whether the bundle constituted an "integrated product" as the term was used in a 1994 consent decree between the Department of Justice and Microsoft. *Id.* at 939. We did not consider whether Microsoft's bundling should be condemned as per se illegal. We certainly did not make any finding that bundling IE with Windows had "no purpose except stifling of competition," *White Motor*, 372 U.S. at 263, an important consideration in defining the scope of any of antitrust law's per se rules, *see Cont'l T.V.*, 433 U.S. at 57-59. While we believed our interpretation of the term "integrated product" was consistent with the test for separate products under tying law, we made clear that the "antitrust question is of course distinct." *Microsoft II*, 147 F.3d at 950 n.14. We even cautioned that our conclusion that IE and Windows 95 were integrated was "subject to reexamination on a more complete record." *Id.* at 952. To the extent that the decision completely disclaimed judicial capacity to evaluate "high-tech product design," *id.*, it cannot be said to conform to prevailing antitrust doctrine (as opposed to resolution of the decree-interpretation issue then before us). In any case, mere review of asserted breaches of a consent decree hardly constitutes enough "experience" to warrant application of per se analysis. *See Broad. Music*, 441 U.S. at 10-16 (refusing to apply per se analysis to defendant's blanket licenses even though those licenses had been thoroughly

investigated by the Department of Justice and were the subject of a consent decree that had been reviewed by numerous courts).

While the paucity of cases examining software bundling suggests a high risk that per se analysis may produce inaccurate results, the nature of the platform software market affirmatively suggests that per se rules might stunt valuable innovation. We have in mind two reasons.

First, as we explained in the previous section, the separate-products test is a poor proxy for net efficiency from newly integrated products. Under per se analysis the first firm to merge previously distinct functionalities (*e.g.*, the inclusion of starter motors in automobiles) or to eliminate entirely the need for a second function (*e.g.*, the invention of the stain-resistant carpet) risks being condemned as having tied two separate products because at the moment of integration there will appear to be a robust "distinct" market for the tied product. *See* 10 AREEDA ET AL., ANTITRUST LAW ¶ 1746, at 224. Rule of reason analysis, however, affords the first mover an opportunity to demonstrate that an efficiency gain from its "tie" adequately offsets any distortion of consumer choice. *See Grappone, Inc. v. Subaru of New England, Inc.*, 858 F.2d 792, 799 (1st Cir. 1988) (Breyer, J.); *see also Town Sound & Custom Tops, Inc. v. Chrysler Motor Corp.*, 959 F.2d 468, 482 (3d Cir. 1992); *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1048-49 n.5 (5th Cir. 1982).

The failure of the separate-products test to screen out certain cases of productive integration is particularly troubling in platform software markets such as that in which the defendant competes. Not only is integration common in such markets, but it is common among firms without market power. We have already reviewed evidence that nearly all competitive OS vendors also bundle browsers. Moreover, plaintiffs do not dispute that OS vendors can and do incorporate basic internet plumbing and other useful functionality into their OSs. *See* Direct Testimony of Richard Schmalensee ¶ 508, *reprinted in* 7 J.A. at 4462-64 (disk defragmentation, memory management, peer-to-peer networking or file sharing); 11/19/98 am Tr. at 82-83 (trial testimony of Freder-

ick Warren-Boulton), *reprinted in* 10 J.A. at 6427-28 (TCP/IP stacks). Firms without market power have no incentive to package different pieces of software together unless there are efficiency gains from doing so. The ubiquity of bundling in competitive platform software markets should give courts reason to pause before condemning such behavior in less competitive markets.

Second, because of the pervasively innovative character of platform software markets, tying in such markets may produce efficiencies that courts have not previously encountered and thus the Supreme Court had not factored into the per se rule as originally conceived. For example, the bundling of a browser with OSs enables an independent software developer to count on the presence of the browser's APIs, if any, on consumers' machines and thus to omit them from its own package. *See* Direct Testimony of Richard Schmalensee ¶ ¶ 230-31, 234, *reprinted* in 7 J.A. at 4309-11, 4312; Direct Testimony of Michael Devlin ¶ ¶ 12-21, *reprinted in* 5 J.A. at 3525-29; *see also Findings of Fact* ¶ 2. It is true that software developers can bundle the browser APIs they need with their own products, *see id.* ¶ 193, but that may force consumers to pay twice for the same API if it is bundled with two different software programs. It is also true that OEMs can include APIs with the computers they sell, *id.*, but diffusion of uniform APIs by that route may be inferior. First, many OEMs serve special subsets of Windows consumers, such as home or corporate or academic users. If just one of these OEMs decides not to bundle an API because it does not benefit enough of its clients, ISVs that use that API might have to bundle it with every copy of their program. Second, there may be a substantial lag before all OEMs bundle the same set of APIs—a lag inevitably aggravated by the first phenomenon. In a field where programs change very rapidly, delays in the spread of a necessary element (here, the APIs) may be very costly. Of course, these arguments may not justify Microsoft's decision to bundle APIs in this case, particularly because Microsoft did not merely bundle with Windows the APIs from IE, but an entire browser application (sometimes even without APIs, *see id.*).

A justification for bundling a component of software may not be one for bundling the entire software package, especially given the malleability of software code. *See id.* ¶ ¶ 162-63; 12/9/98 am Tr. at 17 (trial testimony of David Farber); 1/6/99 am Tr. at 6-7 (trial testimony of Franklin Fisher), *reprinted in* 11 J.A. at 7192-93; Direct Testimony of Joachim Kempin ¶ 286, *reprinted in* 6 J.A. at 3749. Furthermore, the interest in efficient API diffusion obviously supplies a far stronger justification for simple price-bundling than for Microsoft's contractual or technological bars to subsequent *removal* of functionality. But our qualms about redefining the boundaries of a defendant's product and the possibility of consumer gains from simplifying the work of applications developers makes us question any hard and fast approach to tying in OS software markets.

There may also be a number of efficiencies that, although very real, have been ignored in the calculations underlying the adoption of a per se rule for tying. We fear that these efficiencies are common in technologically dynamic markets where product development is especially unlikely to follow an easily foreseen linear pattern. Take the following example from *ILC Peripherals*, 448 F. Supp. 228, a case concerning the evolution of disk drives for computers. When IBM first introduced such drives in 1956, it sold an integrated product that contained magnetic disks and disk heads that read and wrote data onto disks. *Id.* at 231. Consumers of the drives demanded two functions—to store data and to access it all at once. In the first few years consumers' demand for storage increased rapidly, outpacing the evolution of magnetic disk technology. To satisfy that demand IBM made it possible for consumers to remove the magnetic disks from drives, even though that meant consumers would not have access to data on disks removed from the drive. This componentization enabled makers of computer peripherals to sell consumers removable disks. *Id.* at 231-32. Over time, however, the technology of magnetic disks caught up with demand for capacity, so that consumers needed few removable disks to store all their data. At this point IBM reintegrated disks into their drives, enabling consumers to once again have

immediate access to all their data without a sacrifice in capacity. *Id.* A manufacturer of removable disks sued. But the District Court found the tie justified because it satisfied consumer demand for immediate access to all data, and ruled that disks and disk heads were one product. *Id.* at 233. A court hewing more closely to the truncated analysis contemplated by *Northern Pacific Railway* would perhaps have overlooked these consumer benefits.

These arguments all point to one conclusion: we cannot comfortably say that bundling in platform software markets has so little "redeeming virtue," *N. Pac. Ry.*, 356 U.S. at 5, and that there would be so "very little loss to society" from its ban, that "an inquiry into its costs in the individual case [can be] considered [ ] unnecessary." *Jefferson Parish*, 466 U.S. at 33-34 (O'Connor, J., concurring). We do not have enough empirical evidence regarding the effect of Microsoft's practice on the amount of consumer surplus created or consumer choice foreclosed by the integration of added functionality into platform software to exercise sensible judgment regarding that entire class of behavior. (For some issues we have no data.) "We need to know more than we do about the actual impact of these arrangements on competition to decide whether they ... should be classified as *per se* violations of the Sherman Act." *White Motor*, 372 U.S. at 263. Until then, we will heed the wisdom that "easy labels do not always supply ready answers," *Broad. Music*, 441 U.S. at 8, and vacate the District Court's finding of per se tying liability under Sherman Act § 1. We remand the case for evaluation of Microsoft's tying arrangements under the rule of reason. *See Pullman-Standard v. Swint*, 456 U.S. 273, 292 (1982) ("[W]here findings are infirm because of an erroneous view of the law, a remand is the proper course unless the record permits only one resolution of the factual issue."). That rule more freely permits consideration of the benefits of bundling in software markets, particularly those for OSs, and a balancing of these benefits against the costs to consumers whose ability to make direct price/quality tradeoffs in the tied market may have been impaired. *See Jefferson Parish*, 466 U.S. at 25 nn.41-42 (noting that per se rule does not broadly

permit consideration of procompetitive justifications); *id.* at 34-35 (O'Connor, J., concurring); *N. Pac. Ry.*, 356 U.S. at 5.

Our judgment regarding the comparative merits of the per se rule and the rule of reason is confined to the tying arrangement before us, where the tying product is software whose major purpose is to serve as a platform for third-party applications and the tied product is complementary software functionality. While our reasoning may at times appear to have broader force, we do not have the confidence to speak to facts outside the record, which contains scant discussion of software integration generally. Microsoft's primary justification for bundling IE APIs is that their inclusion with Windows increases the value of third-party software (and Windows) to consumers. *See* Appellant's Opening Br. at 41-43. Because this claim applies with distinct force when the tying product is *platform* software, we have no present basis for finding the per se rule inapplicable to software markets generally. Nor should we be interpreted as setting a precedent for switching to the rule of reason every time a court identifies an efficiency justification for a tying arrangement. Our reading of the record suggests merely that integration of new functionality into platform software is a common practice and that wooden application of per se rules in this litigation may cast a cloud over platform innovation in the market for PCs, network computers and information appliances.

C. On Remand

Should plaintiffs choose to pursue a tying claim under the rule of reason, we note the following for the benefit of the trial court:

First, on remand, plaintiffs must show that Microsoft's conduct unreasonably restrained competition. Meeting that burden "involves an inquiry into the actual effect" of Microsoft's conduct on competition in the tied good market, *Jefferson Parish*, 466 U.S. at 29, the putative market for browsers. To the extent that certain aspects of tying injury may depend on a careful definition of the tied good market and a showing of barriers to entry other than the tying arrangement itself,

plaintiffs would have to establish these points. *See Jefferson Parish*, 466 U.S. at 29 ("This competition [among anesthesiologists] takes place in a market that has not been defined."); *id.* at 29 n.48 ("[N]either the District Court nor the Court of Appeals made any findings concerning the contract's effect on entry barriers."). But plaintiffs were required—and had every incentive—to provide both a definition of the browser market and barriers to entry to that market as part of their § 2 attempted monopolization claim; yet they failed to do so. *See supra* Section III. Accordingly, on remand of the § 1 tying claim, plaintiffs will be precluded from arguing any theory of harm that depends on a precise definition of browsers or barriers to entry (for example, network effects from Internet protocols and extensions embedded in a browser) other than what may be implicit in Microsoft's tying arrangement.

Of the harms left, plaintiffs must show that Microsoft's conduct was, on balance, anticompetitive. Microsoft may of course offer procompetitive justifications, and it is plaintiffs' burden to show that the anticompetitive effect of the conduct outweighs its benefit.

Second, the fact that we have already considered some of the behavior plaintiffs allege to constitute tying violations in the monopoly maintenance section does not resolve the § 1 inquiry. The two practices that plaintiffs have most ardently claimed as tying violations are, indeed, a basis for liability under plaintiffs' § 2 monopoly maintenance claim. These are Microsoft's refusal to allow OEMs to uninstall IE or remove it from the Windows desktop, *Findings of Fact* ¶ ¶ 158, 203, 213, and its removal of the IE entry from the Add/Remove Programs utility in Windows 98, *id.* ¶ 170. *See supra* Section II.B. In order for the District Court to conclude these practices also constitute § 1 tying violations, plaintiffs must demonstrate that their benefits—if any, *see supra* Sections II.B.1.b and II.B.2.b; *Findings of Fact* ¶ ¶ 176, 186, 193—are outweighed by the harms in the *tied product* market. *See Jefferson Parish*, 466 U.S. at 29. If the District Court is convinced of net harm, it must then consider whether any additional remedy is necessary.

In Section II.B we also considered another alleged tying violation—the Windows 98 override of a consumer's choice of default web browser. We concluded that this behavior does not provide a distinct basis for § 2 liability because plaintiffs failed to rebut Microsoft's proffered justification by demonstrating that harms in the operating system market outweigh Microsoft's claimed benefits. *See supra* Section II.B. On remand, however, although Microsoft may offer the same procompetitive justification for the override, plaintiffs must have a new opportunity to rebut this claim, by demonstrating that the anticompetitive effect in the *browser* market is greater than these benefits.

Finally, the District Court must also consider an alleged tying violation that we did not consider under § 2 monopoly maintenance: price bundling. First, the court must determine if Microsoft indeed price bundled—that is, was Microsoft's charge for Windows and IE higher than its charge would have been for Windows alone? This will require plaintiffs to resolve the tension between *Findings of Fact* ¶ ¶ 136-37, which Microsoft interprets as saying that no part of the bundled price of Windows can be attributed to IE, and *Conclusions of Law*, at 50, which says the opposite. *Compare* Direct Testimony of Paul Maritz ¶ ¶ 37, 296, *reprinted in* 6 J.A. at 3656, 3753-54 (Microsoft did not "charge separately" for IE, but like all other major OS vendors included browsing software at "no extra charge"), *with* GX 202 at MS7 004343, esp. 004347, *reprinted in* 22 J.A. at 14459, esp. 14463 (memo from Christian Wildfeuer describing focus group test used to price Windows 98 with IE 4), *and* GX 1371 at MS7 003729-30, 003746, 003748, esp. 003750, *reprinted in* 15 J.A. at 10306-07, 10323, 10325, esp. 10327 (Windows 98 pricing and marketing memo), *and Findings of Fact* ¶ 63 (identifying GX 202 as the *basis* for Windows 98 pricing).

If there is a positive price increment in Windows associated with IE (we know there is no claim of price predation), plaintiffs must demonstrate that the anticompetitive effects of Microsoft's price bundling outweigh any procompetitive justifications the company provides for it. In striking this balance, the District Court should consider, among other things,

indirect evidence of efficiency provided by "the competitive fringe." *See supra* Section IV.A. Although this inquiry may overlap with the separate-products screen under the per se rule, that is not its role here. Because courts applying the rule of reason are free to look at both direct and indirect evidence of efficiencies from a tie, there is no need for a screening device as such; thus the separate-products inquiry serves merely to classify arrangements as subject to tying law, as opposed to, say, liability for exclusive dealing. *See Times-Picayune*, 345 U.S. at 614 (finding a single product and then turning to a general rule of reason analysis under § 1, though not using the term "tying"); *Foster v. Md. State Sav. & Loan Ass'n*, 590 F.2d 928, 931, 933 (D.C. Cir. 1978), *cited in Jefferson Parish*, 466 U.S. at 40 (O'Connor, J., concurring) (same); *see also Chawla v. Shell Oil Co.*, 75 F. Supp. 2d 626, 635, 643-44 (S.D. Tex. 1999) (considering a rule of reason tying claim after finding a single product under the per se rule); *Montgomery County Ass'n of Realtors v. Realty Photo Master Corp.*, 783 F. Supp. 952, 961 & n.26 (D. Md. 1992), *aff'd mem.* 993 F.2d 1538 (4th Cir. 1993) (same).

If OS vendors without market power also sell their software bundled with a browser, the natural inference is that sale of the items as a bundle serves consumer demand and that unbundled sale would not, for otherwise a competitor could profitably offer the two products separately and capture sales of the tying good from vendors that bundle. *See* 10 AREEDA ET AL., ANTITRUST LAW ¶ 1744b, at 197-98. It does appear that most if not all firms have sold a browser with their OSs at a bundled price, beginning with IBM and its OS/2 Warp OS in September 1994, *Findings of Fact* ¶ 140; *see also* Direct Testimony of Richard Schmalensee ¶ 212, *reprinted in* 7 J.A. at 4300-01, and running to current versions of Apple's Mac OS, Caldera and Red Hat's Linux OS, Sun's Solaris OS, Be's BeOS, Santa Cruz Operation's UnixWare, Novell's NetWare OS, and others, *see Findings of Fact* ¶ 153; Direct Testimony of Richard Schmalensee ¶ ¶ 215-23, 230, esp. table 5, *reprinted in* 7 J.A. at 4302-05,

4310; Direct Testimony of James Allchin ¶ ¶ 261-77, *reprinted in* 5 J.A. at 3384-92.

Of course price bundling by competitive OS makers would tend to exonerate Microsoft only if the sellers in question sold their browser/OS combinations *exclusively* at a bundled price. If a competitive seller offers a discount for a browserless version, then—at least as to *its* OS and browser—the gains from bundling are outweighed by those from separate choice. The evidence on discounts appears to be in conflict. *Compare* Direct Testimony of Richard Schmalensee ¶ 241, *reprinted in* 7 J.A. at 4315, *with* 1/6/99 pm Tr. at 42 (trial testimony of Franklin Fisher). If Schmalensee is correct that nearly all OS makers do not offer a discount, then the harm from tying—obstruction of direct consumer choice—would be theoretically created by virtually all sellers: a customer who would prefer an alternate browser is forced to pay the full price of that browser even though its value to him is only the increment in value over the bundled browser. (The result is similar to that from non-removal, which forces consumers who want the alternate browser to surrender disk space taken up by the unused, bundled browser.) If the failure to offer a price discount were universal, any impediment to direct consumer choice created by Microsoft's price-bundled sale of IE with Windows would be matched throughout the market; yet these OS suppliers on the competitive fringe would have evidently found this price bundling on balance efficient. If Schmalensee's assertions are ill-founded, of course, no such inference could be drawn.

V. Trial Proceedings and Remedy

Microsoft additionally challenges the District Court's procedural rulings on two fronts. First, with respect to the trial phase, Microsoft proposes that the court mismanaged its docket by adopting an expedited trial schedule and receiving evidence through summary witnesses. Second, with respect to the remedies decree, Microsoft argues that the court improperly ordered that it be divided into two separate companies. Only the latter claim will long detain us. The District Court's trial-phase procedures were comfortably within the bounds of its broad discretion to conduct trials as it sees fit. We conclude, however, that the District Court's

remedies decree must be vacated for three independent reasons: (1) the court failed to hold a remedies-specific evidentiary hearing when there were disputed facts; (2) the court failed to provide adequate reasons for its decreed remedies; and (3) this Court has revised the scope of Microsoft's liability and it is impossible to determine to what extent that should affect the remedies provisions.

A. Factual Background

On April 3, 2000, the District Court concluded the liability phase of the proceedings by the filing of its Conclusions of Law holding that Microsoft had violated §§ 1 and 2 of the Sherman Act. The court and the parties then began discussions of the procedures to be followed in the imposition of remedies. Initially, the District Court signaled that it would enter relief only after conducting a new round of proceedings. In its Conclusions of Law, the court stated that it would issue a remedies order "following proceedings to be established by further Order of the Court." *Conclusions of Law*, at 57. And, when during a post-trial conference, Microsoft's counsel asked whether the court "contemplate[d] further proceedings," the judge replied, "Yes. Yes. I assume that there would be further proceedings." 4/4/00 Tr. at 8-9, 11, *reprinted in* 4 J.A. at 2445-46, 2448. The District Court further speculated that those proceedings might "replicate the procedure at trial with testimony in written form subject to cross-examination." *Id.* at 11, *reprinted in* 4 J.A. at 2448.

On April 28, 2000, plaintiffs submitted their proposed final judgment, accompanied by six new supporting affidavits and several exhibits. In addition to a series of temporary conduct restrictions, plaintiffs proposed that Microsoft be split into two independent corporations, with one continuing Microsoft's operating systems business and the other undertaking the balance of Microsoft's operations. Plaintiffs' Proposed Final Judgment at 2-3, *reprinted in* 4 J.A. at 2473-74. Microsoft filed a "summary response" on May 10, contending both that the proposed decree was too severe and that it would be impossible to resolve certain remedies-specific factual disputes "on a highly expedited basis." Defendant's Summary

Response at 6-7, *reprinted in* 4 J.A. at 2587-88. Another May 10 submission argued that if the District Court considered imposing plaintiffs' proposed remedy, "then substantial discovery, adequate time for preparation and a full trial on relief will be required." Defendant's Position as to Future Proceedings at 2, *reprinted in* 4 J.A. at 2646.

After the District Court revealed during a May 24 hearing that it was prepared to enter a decree without conducting "any further process," 5/24/00 pm Tr. at 33, *reprinted in* 14 J.A. at 9866, Microsoft renewed its argument that the underlying factual disputes between the parties necessitated a remedies-specific evidentiary hearing. In two separate offers of proof, Microsoft offered to produce a number of pieces of evidence, including the following:

- Testimony from Dr. Robert Crandall, a Senior Fellow at the Brookings Institution, that divestiture and dissolution orders historically have "failed to improve economic welfare by reducing prices or increasing output." Defendant's Offer of Proof at 2, *reprinted in* 4 J.A. at 2743.

- Testimony from Professor Kenneth Elzinga, Professor of Economics at the University of Virginia, that plaintiffs' proposed remedies would not induce entry into the operating systems market. *Id.* at 4, *reprinted in* 4 J.A. at 2745.

- Testimony from Dean Richard Schmalensee, Dean of MIT's Sloan School of Management, that dividing Microsoft likely would "harm consumers through higher prices, lower output, reduced efficiency, and less innovation" and would "produce immediate, substantial increases in the prices of both Windows and Office." *Id.* at 8, *reprinted in* 4 J.A. at 2749. Indeed, it would cause the price of Windows to triple. *Id.*

- Testimony from Goldman, Sachs & Co. and from Morgan Stanley Dean Witter that dissolution would adversely affect shareholder value. *Id.* at 17, 19, *reprinted in* 4 J.A. at 2758, 2760.

- Testimony from Microsoft Chairman Bill Gates that dividing Microsoft "along the arbitrary lines proposed by the Government" would devastate the company's proposed Next Generation Windows Services platform, which would allow software developers to write web-based applications that users could access from a wide range of devices. *Id.* at 21-22, *reprinted in* 4 J.A. at 2762-63.

- Testimony from Steve Ballmer, Microsoft's President and CEO, that Microsoft is organized as a unified company and that "there are no natural lines along which Microsoft could be broken up without causing serious problems." *Id.* at 23, *reprinted in* 4 J.A. at 2764.

- Testimony from Michael Capellas, CEO of Compaq, that splitting Microsoft in two "will make it more difficult for OEMs to provide customers with the tightly integrated product offerings they demand" in part because "complementary products created by unrelated companies do not work as well together as products created by a single company." Defendant's Supplemental Offer of Proof at 2, *reprinted in* 4 J.A. at 2823.

Over Microsoft's objections, the District Court proceeded to consider the merits of the remedy and on June 7, 2000 entered its final judgment. The court explained that it would not conduct "extended proceedings on the form a remedy should take," because it doubted that an evidentiary hearing would "give any significantly greater assurance that it will be able to identify what might be generally regarded as an optimum remedy." *Final Judgment*, at 62. The bulk of Microsoft's proffered facts were simply conjectures about future events, and "[i]n its experience the Court has found testimonial predictions of future events generally less reliable even than testimony as to historical fact, and cross-examination to be of little use in enhancing or detracting from their accuracy." *Id.* Nor was the court swayed by Microsoft's "profession of surprise" at the possibility of structural relief. *Id.* at 61. "From the inception of this case Microsoft

knew, from well-established Supreme Court precedents dating from the beginning of the last century, that a mandated divestiture was a possibility, if not a probability, in the event of an adverse result at trial." *Id.*

The substance of the District Court's remedies order is nearly identical to plaintiffs' proposal. The decree's centerpiece is the requirement that Microsoft submit a proposed plan of divestiture, with the company to be split into an "Operating Systems Business," or "OpsCo," and an "Applications Business," or "AppsCo." *Final Judgment*, Decree §§ 1.a, l.c.i, at 64. OpsCo would receive all of Microsoft's operating systems, such as Windows 98 and Windows 2000, while AppsCo would receive the remainder of Microsoft's businesses, including IE and Office. The District Court identified four reasons for its "reluctant[ ]" conclusion that "a structural remedy has become imperative." *Id.* at 62. First, Microsoft "does not yet concede that any of its business practices violated the Sherman Act." *Id.* Second, the company consequently "continues to do business as it has in the past." *Id.* Third, Microsoft "has proved untrustworthy in the past." *Id.* And fourth, the Government, whose officials "are by reason of office obliged and expected to consider—and to act in—the public interest," won the case, "and for that reason alone have some entitlement to a remedy of their choice." *Id.* at 62-63.

The decree also contains a number of interim restrictions on Microsoft's conduct. For instance, Decree § 3.b requires Microsoft to disclose to third-party developers the APIs and other technical information necessary to ensure that software effectively interoperates with Windows. *Id.* at 67. "To facilitate compliance," § 3.b further requires that Microsoft establish "a secure facility" at which third-party representatives may "study, interrogate and interact with relevant and necessary portions of [Microsoft platform software] source code." *Id.* Section 3.e, entitled "Ban on Exclusive Dealing," forbids Microsoft from entering contracts which oblige third parties to restrict their "development, production, distribution, promotion or use of, or payment for" non-Microsoft platform-level software. *Id.* at 68. Under Decree § 3.f—"Ban on

Contractual Tying"—the company may not condition its grant of a Windows license on a party's agreement "to license, promote, or distribute any other Microsoft software product." *Id.* And § 3.g imposes a "Restriction on Binding Middleware Products to Operating System Products" unless Microsoft also offers consumers "an otherwise identical version" of the operating system without the middleware. *Id.*

B. Trial Proceedings

Microsoft's first contention—that the District Court erred by adopting an expedited trial schedule and receiving evidence through summary witnesses—is easily disposed of. Trial courts have extraordinarily broad discretion to determine the manner in which they will conduct trials. "This is particularly true in a case such as the one at bar where the proceedings are being tried to the court without a jury." *Eli Lilly & Co., Inc. v. Generix Drug Sales, Inc.*, 460 F.2d 1096, 1105 (5th Cir. 1972). In such cases, "[a]n appellate court will not interfere with the trial court's exercise of its discretion to control its docket and dispatch its business ... except upon the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant." *Id.* Microsoft fails to clear this high hurdle. Although the company claims that setting an early trial date inhibited its ability to conduct discovery, it never identified a specific deposition or document it was unable to obtain. And while Microsoft now argues that the use of summary witnesses made inevitable the improper introduction of hearsay evidence, the company actually agreed to the District Court's proposal to limit each side to 12 summary witnesses. 12/2/98 am Tr. at 11, *reprinted in* 21 J.A. at 14083 (court admonishing Microsoft's counsel to "[k]eep in mind that both sides agreed to the number of witnesses"). Even absent Microsoft's agreement, the company's challenge fails to show that this use of summary witnesses falls outside the trial court's wide latitude to receive evidence as it sees fit. *General Elec. Co. v. Joiner*, 522 U.S. 136, 141-42 (1997). This is particularly true given the presumption that a judge who conducts a bench trial has ignored any inadmissible evidence, *Harris v. Rivera*, 454 U.S. 339, 346 (1981)—a presumption that Micro-

soft makes no serious attempt to overcome. Indeed, under appropriate circumstances with appropriate instructions, we have in the past approved the use of summary witnesses even in jury trials. *See, e.g., United States v. Lemire*, 720 F.2d 1327 (D.C. Cir. 1983). Therefore, neither the use of the summary witnesses nor any other aspect of the District Court's conduct of the trial phase amounted to an abuse of discretion.

C. Failure to Hold an Evidentiary Hearing

The District Court's remedies-phase proceedings are a different matter. It is a cardinal principle of our system of justice that factual disputes must be heard in open court and resolved through trial-like evidentiary proceedings. Any other course would be contrary "to the spirit which imbues our judicial tribunals prohibiting decision without hearing." *Sims v. Greene*, 161 F.2d 87, 88 (3d Cir. 1947).

A party has the right to judicial resolution of disputed facts not just as to the liability phase, but also as to appropriate relief. "Normally, an evidentiary hearing is required before an injunction may be granted." *United States v. McGee*, 714 F.2d 607, 613 (6th Cir. 1983); *see also Charlton v. Estate of Charlton*, 841 F.2d 988, 989 (9th Cir. 1988) ("Generally the entry or continuation of an injunction requires a hearing. Only when the facts are not in dispute, or when the adverse party has waived its right to a hearing, can that significant procedural step be eliminated." (citation and internal quotation marks omitted)). Other than a temporary restraining order, no injunctive relief may be entered without a hearing. *See generally* FED. R. CIV. P. 65. A hearing on the merits—*i.e.*, a trial on liability—does not substitute for a relief-specific evidentiary hearing unless the matter of relief was part of the trial on liability, or unless there are no disputed factual issues regarding the matter of relief.

This rule is no less applicable in antitrust cases. The Supreme Court "has recognized that a 'full exploration of facts is usually necessary in order (for the District Court) properly to draw (an antitrust) decree' so as 'to prevent future violations and eradicate existing evils.' " *United States*

v. Ward Baking Co., 376 U.S. 327, 330-31 (1964) (quoting *Associated Press v. United States*, 326 U.S. 1, 22 (1945)). Hence a remedies decree must be vacated whenever there is "a bona fide disagreement concerning substantive items of relief which could be resolved only by trial." *Id.* at 334; *cf. Sims*, 161 F.2d at 89 ("It has never been supposed that a temporary injunction could issue under the Clayton Act without giving the party against whom the injunction was sought an opportunity to present evidence on his behalf.").

Despite plaintiffs' protestations, there can be no serious doubt that the parties disputed a number of facts during the remedies phase. In two separate offers of proof, Microsoft identified 23 witnesses who, had they been permitted to testify, would have challenged a wide range of plaintiffs' factual representations, including the feasibility of dividing Microsoft, the likely impact on consumers, and the effect of divestiture on shareholders. To take but two examples, where plaintiffs' economists testified that splitting Microsoft in two would be socially beneficial, the company offered to prove that the proposed remedy would "cause substantial social harm by raising software prices, lowering rates of innovation and disrupting the evolution of Windows as a software development platform." Defendant's Offer of Proof at 6, *reprinted in* 4 J.A. at 2747. And where plaintiffs' investment banking experts proposed that divestiture might actually increase shareholder value, Microsoft proffered evidence that structural relief "would inevitably result in a significant loss of shareholder value," a loss that could reach "tens—possibly hundreds—of billions of dollars." *Id.* at 19, *reprinted in* 4 J.A. at 2760.

Indeed, the District Court itself appears to have conceded the existence of acute factual disagreements between Microsoft and plaintiffs. The court acknowledged that the parties were "sharply divided" and held "divergent opinions" on the likely results of its remedies decree. *Final Judgment*, at 62. The reason the court declined to conduct an evidentiary hearing was not because of the absence of disputed facts, but because it believed that those disputes could be resolved only through "actual experience," not further proceedings. *Id.*

But a prediction about future events is not, as a prediction, any less a factual issue. Indeed, the Supreme Court has acknowledged that drafting an antitrust decree by necessity "involves predictions and assumptions concerning future economic and business events." *Ford Motor Co. v. United States*, 405 U.S. 562, 578 (1972). Trial courts are not excused from their obligation to resolve such matters through evidentiary hearings simply because they consider the bedrock procedures of our justice system to be "of little use." *Final Judgment*, at 62.

The presence of factual disputes thus distinguishes this case from the decisions plaintiffs cite for the proposition that Microsoft was not entitled to an evidentiary hearing. Indeed, far from assisting plaintiffs, these cases actually confirm the proposition that courts must hold evidentiary hearings when they are confronted with disputed facts. In *Ford Motor Co.*, the Supreme Court affirmed a divestiture order after emphasizing that the District Court had "held nine days of hearings on the remedy." 405 U.S. at 571. In *Davoll v. Webb*, 194 F.3d 1116 (10th Cir. 1999), the defendant both failed to submit any offers of proof, and waived its right to an evidentiary hearing by expressly agreeing that relief should be determined based solely on written submissions. *Id.* at 1142-43. The defendants in *American Can Co. v. Mansukhani*, 814 F.2d 421 (7th Cir. 1987), were not entitled to a hearing on remedies because they failed "to explain to the district court what new proof they would present to show" that the proposed remedy was unwarranted. *Id.* at 425. And in *Socialist Workers Party v. Illinois State Board of Elections*, 566 F.2d 586 (7th Cir. 1977), *aff'd*, 440 U.S. 173 (1979), the Seventh Circuit held that a remedies-specific hearing was unnecessary because that case involved a pure question of legal interpretation and hence "[t]here was no factual dispute as to the ground on which the injunction was ordered." *Id.* at 587.

Unlike the parties in *Davoll*, *American Can*, and *Socialist Workers Party*, Microsoft both repeatedly asserted its right to an evidentiary hearing and submitted two offers of proof. The company's "summary response" to the proposed remedy argued that it would be "impossible" to address underlying

factual issues "on a highly expedited basis," Defendant's Summary Response at 6-7, *reprinted in* 4 J.A. at 2587-88, and Microsoft further maintained that the court could not issue a decree unless it first permitted "substantial discovery, adequate time for preparation and a full trial on relief." Defendant's Position as to Future Proceedings at 2, *reprinted in* 4 J.A. at 2646. And in 53 pages of submissions, Microsoft identified the specific evidence it would introduce to challenge plaintiffs' representations.

Plaintiffs further argue—and the District Court held—that no evidentiary hearing was necessary given that Microsoft long had been on notice that structural relief was a distinct possibility. It is difficult to see why this matters. Whether Microsoft had advance notice that dissolution was in the works is immaterial to whether the District Court violated the company's procedural rights by ordering it without an evidentiary hearing. To be sure, "claimed surprise at the district court's decision to consider permanent injunctive relief does not, alone, merit reversal." *Socialist Workers*, 566 F.2d at 587. But in this case, Microsoft's professed surprise does not stand "alone." There is something more: the company's basic procedural right to have disputed facts resolved through an evidentiary hearing.

In sum, the District Court erred when it resolved the parties' remedies-phase factual disputes by consulting only the evidence introduced during trial and plaintiffs' remedies-phase submissions, without considering the evidence Microsoft sought to introduce. We therefore vacate the District Court's final judgment, and remand with instructions to conduct a remedies-specific evidentiary hearing.

D. Failure to Provide an Adequate Explanation

We vacate the District Court's remedies decree for the additional reason that the court has failed to provide an adequate explanation for the relief it ordered. The Supreme Court has explained that a remedies decree in an antitrust case must seek to "unfetter a market from anticompetitive conduct," *Ford Motor Co.*, 405 U.S. at 577, to "terminate the illegal monopoly, deny to the defendant the fruits of its

statutory violation, and ensure that there remain no practices likely to result in monopolization in the future," *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 250 (1968); *see also United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966).

The District Court has not explained how its remedies decree would accomplish those objectives. Indeed, the court devoted a mere four paragraphs of its order to explaining its reasons for the remedy. They are: (1) Microsoft "does not yet concede that any of its business practices violated the Sherman Act"; (2) Microsoft "continues to do business as it has in the past"; (3) Microsoft "has proved untrustworthy in the past"; and (4) the Government, whose officials "are by reason of office obliged and expected to consider—and to act in—the public interest," won the case, "and for that reason alone have some entitlement to a remedy of their choice." *Final Judgment*, at 62-63. Nowhere did the District Court discuss the objectives the Supreme Court deems relevant.

E. Modification of Liability

Quite apart from its procedural difficulties, we vacate the District Court's final judgment in its entirety for the additional, independent reason that we have modified the underlying bases of liability. Of the three antitrust violations originally identified by the District Court, one is no longer viable: attempted monopolization of the browser market in violation of Sherman Act § 2. One will be remanded for liability proceedings under a different legal standard: unlawful tying in violation of § 1. Only liability for the § 2 monopoly-maintenance violation has been affirmed—and even that we have revised. Ordinarily, of course, we review the grant or denial of equitable relief under the abuse of discretion standard. *See, e.g., Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931-32 (1975) ("[T]he standard of appellate review is simply whether the issuance of the injunction, in the light of the applicable standard, constituted an abuse of discretion."). For obvious reasons, the application of that standard is not sufficient to sustain the remedy in the case before us. We cannot determine whether the District Court has abused its discretion in remedying a wrong where the court did not

exercise that discretion in order to remedy the properly determined wrong. That is, the District Court determined that the conduct restrictions and the pervasive structural remedy were together appropriate to remedy the three antitrust violations set forth above. The court did not exercise its discretion to determine whether all, or for that matter, any, of those equitable remedies were required to rectify a § 2 monopoly maintenance violation taken alone. We therefore cannot sustain an exercise of discretion not yet made.

By way of comparison, in *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447 (1993), the Supreme Court reviewed a damages award in a Sherman Act case. In that case, the trial court entered judgment upon a jury verdict which did not differentiate among multiple possible theories of liability under § 2. The Supreme Court ultimately determined that the trial record could not legally support a finding that the defendant had committed an illegal attempt to monopolize, and that "the trial instructions allowed the jury to infer specific intent and dangerous probability of success from the defendants' predatory conduct, without any proof of the relevant market or of a realistic probability that the defendants could achieve monopoly power in that market." *Id.* at 459. Therefore, the High Court reversed the Ninth Circuit's judgment affirming the District Court and remanded for further proceedings, expressly because "the jury's verdict did not negate the possibility that the § 2 verdict rested on the attempt to monopolize grounds alone...." *Id.* Similarly, here, we cannot presume that a District Court would exercise its discretion to fashion the same remedy where the erroneous grounds of liability were stripped from its consideration.

The Eighth Circuit confronted a similar problem in *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir.), *cert. denied*, 121 S. Ct. 428 (2000). In that case, a group of boat builders brought an action against an engine manufacturer alleging violations of Sherman Act §§ 1 and 2, and Clayton Act § 7. After a 10-week trial, the jury found Brunswick liable on all three counts and returned a verdict for over $44 million. On appeal, the Eighth Circuit reversed the Clayton Act claim. *Id.* at 1053. That court held that, as

a consequence, it was required to vacate the jury's remedy in its entirety. Because the "verdict form did not require the jury to consider what damages resulted from each type of violation," the court could not "know what damages it found to have been caused by the acquisitions upon which the Section 7 claims were based." *Id.* at 1054. The court rejected the proposition that "the entire damage award may be upheld based on Brunswick's Sherman Act liability alone," *id.* at 1053, holding that, because "there is no way to know what damages the jury assigned to the Section 7 claims," the defendant "would be entitled at the very least to a new damages trial on the boat builders' Sherman Act claims," *id.* at 1054.

Spectrum Sports and *Concord Boat* are distinguishable from the case before us in that both involved the award of money damages rather than equitable relief. Nonetheless, their reasoning is instructive. A court in both contexts must base its relief on some clear "indication of a significant causal connection between the conduct enjoined or mandated and the violation found directed toward the remedial goal intended." 3 PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 653(b), at 91-92 (1996). In a case such as the one before us where sweeping equitable relief is employed to remedy multiple violations, and some—indeed most—of the findings of remediable violations do not withstand appellate scrutiny, it is necessary to vacate the remedy decree since the implicit findings of causal connection no longer exist to warrant our deferential affirmance.

In short, we must vacate the remedies decree in its entirety and remand the case for a new determination. This court has drastically altered the District Court's conclusions on liability. On remand, the District Court, after affording the parties a proper opportunity to be heard, can fashion an appropriate remedy for Microsoft's antitrust violations. In particular, the court should consider which of the decree's conduct restrictions remain viable in light of our modification of the original liability decision. While the task of drafting the remedies decree is for the District Court in the first instance, because

of the unusually convoluted nature of the proceedings thus far, and a desire to advance the ultimate resolution of this important controversy, we offer some further guidance for the exercise of that discretion.

F. On Remand

As a general matter, a district court is afforded broad discretion to enter that relief it calculates will best remedy the conduct it has found to be unlawful. *See, e.g., Woerner v. United States Small Bus. Admin.*, 934 F.2d 1277, 1279 (D.C. Cir. 1991) (recognizing that an appellate court reviews a trial court's decision whether or not to grant equitable relief only for an abuse of discretion). This is no less true in antitrust cases. *See, e.g., Ford Motor Co.*, 405 U.S. at 573 ("The District Court is clothed with 'large discretion' to fit the decree to the special needs of the individual case."); *Md. & Va. Milk Producers Ass'n, Inc. v. United States*, 362 U.S. 458, 473 (1960) ("The formulation of decrees is largely left to the discretion of the trial court...."). And divestiture is a common form of relief in successful antitrust prosecutions: it is indeed "the most important of antitrust remedies." *See, e.g., United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 331 (1961).

On remand, the District Court must reconsider whether the use of the structural remedy of divestiture is appropriate with respect to Microsoft, which argues that it is a unitary company. By and large, cases upon which plaintiffs rely in arguing for the split of Microsoft have involved the dissolution of entities formed by mergers and acquisitions. On the contrary, the Supreme Court has clarified that divestiture "has traditionally been the remedy for Sherman Act violations whose heart is intercorporate *combination and control*," *du Pont*, 366 U.S. at 329 (emphasis added), and that "[c]omplete divestiture is particularly appropriate where asset or stock *acquisitions* violate the antitrust laws," *Ford Motor Co.*, 405 U.S. at 573 (emphasis added).

One apparent reason why courts have not ordered the dissolution of unitary companies is logistical difficulty. As the court explained in *United States v. ALCOA*, 91 F. Supp.

333, 416 (S.D.N.Y. 1950), a "corporation, designed to operate effectively as a single entity, cannot readily be dismembered of parts of its various operations without a marked loss of efficiency." A corporation that has expanded by acquiring its competitors often has preexisting internal lines of division along which it may more easily be split than a corporation that has expanded from natural growth. Although time and corporate modifications and developments may eventually fade those lines, at least the identifiable entities preexisted to create a template for such division as the court might later decree. With reference to those corporations that are not acquired by merger and acquisition, Judge Wyzanski accurately opined in *United Shoe*:

> United conducts all machine manufacture at one plant in Beverly, with one set of jigs and tools, one foundry, one laboratory for machinery problems, one managerial staff, and one labor force. It takes no Solomon to see that this organism cannot be cut into three equal and viable parts.

United States v. United Shoe Machine Co., 110 F. Supp. 295, 348 (D. Mass. 1953).

Depending upon the evidence, the District Court may find in a remedies proceeding that it would be no easier to split Microsoft in two than United Shoe in three. Microsoft's Offer of Proof in response to the court's denial of an evidentiary hearing included proffered testimony from its President and CEO Steve Ballmer that the company "is, and always has been, a unified company without free-standing business units. Microsoft is not the result of mergers or acquisitions." Microsoft further offered evidence that it is "not organized along product lines," but rather is housed in a single corporate headquarters and that it has

> only one sales and marketing organization which is responsible for selling all of the company's products, one basic research organization, one product support organization, one operations department, one information technology department, one facilities department, one purchasing department, one human resources department,

> one finance department, one legal department and one public relations department.

Defendant's Offer of Proof at 23-26, *reprinted in* 4 J.A. at 2764-67. If indeed Microsoft is a unitary company, division might very well require Microsoft to reproduce each of these departments in each new entity rather than simply allocate the differing departments among them.

In devising an appropriate remedy, the District Court also should consider whether plaintiffs have established a sufficient causal connection between Microsoft's anticompetitive conduct and its dominant position in the OS market. "Mere existence of an exclusionary act does not itself justify full feasible relief against the monopolist to create maximum competition." 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 650a, at 67. Rather, structural relief, which is "designed to eliminate the monopoly altogether ... require[s] a clearer indication of a *significant causal connection* between the conduct and creation or maintenance of the market power." *Id.* ¶ 653b, at 91-92 (emphasis added). Absent such causation, the antitrust defendant's unlawful behavior should be remedied by "an injunction against continuation of that conduct." *Id.* ¶ 650a, at 67.

As noted above, *see supra* Section II.C, we have found a causal connection between Microsoft's exclusionary conduct and its continuing position in the operating systems market only through inference. *See* 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 653(b), at 91-92 (suggesting that "more extensive equitable relief, particularly remedies such as divestiture designed to eliminate the monopoly altogether, ... require a clearer indication of significant causal connection between the conduct and creation or maintenance of the market power"). Indeed, the District Court expressly did not adopt the position that Microsoft would have lost its position in the OS market but for its anticompetitive behavior. *Findings of Fact* ¶ 411 ("There is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition in the market for Intel-compatible PC operating systems."). If the court on remand is unconvinced of the causal connection between Microsoft's

exclusionary conduct and the company's position in the OS market, it may well conclude that divestiture is not an appropriate remedy.

While we do not undertake to dictate to the District Court the precise form that relief should take on remand, we note again that it should be tailored to fit the wrong creating the occasion for the remedy.

G. Conclusion

In sum, we vacate the District Court's remedies decree for three reasons. First, the District Court failed to hold an evidentiary hearing despite the presence of remedies-specific factual disputes. Second, the court did not provide adequate reasons for its decreed remedies. Finally, we have drastically altered the scope of Microsoft's liability, and it is for the District Court in the first instance to determine the propriety of a specific remedy for the limited ground of liability which we have upheld.

VI. Judicial Misconduct

Canon 3A(6) of the Code of Conduct for United States Judges requires federal judges to "avoid public comment on the merits of [ ] pending or impending" cases. Canon 2 tells judges to "avoid impropriety and the appearance of impropriety in all activities," on the bench and off. Canon 3A(4) forbids judges to initiate or consider *ex parte* communications on the merits of pending or impending proceedings. Section 455(a) of the Judicial Code requires judges to recuse themselves when their "impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

All indications are that the District Judge violated each of these ethical precepts by talking about the case with reporters. The violations were deliberate, repeated, egregious, and flagrant. The only serious question is what consequences should follow. Microsoft urges us to disqualify the District Judge, vacate the judgment in its entirety and toss out the

findings of fact, and remand for a new trial before a different District Judge. At the other extreme, plaintiffs ask us to do nothing. We agree with neither position.

A. The District Judge's Communications with the Press

Immediately after the District Judge entered final judgment on June 7, 2000, accounts of interviews with him began appearing in the press. Some of the interviews were held after he entered final judgment. *See* Peter Spiegel, *Microsoft Judge Defends Post-trial Comments*, FIN. TIMES (London), Oct. 7, 2000, at 4; John R. Wilke, *For Antitrust Judge, Trust, or Lack of It, Really Was the Issue—In an Interview, Jackson Says Microsoft Did the Damage to Its Credibility in Court*, WALL ST. J., June 8, 2000, at A1. The District Judge also aired his views about the case to larger audiences, giving speeches at a college and at an antitrust seminar. *See* James V. Grimaldi, *Microsoft Judge Says Ruling at Risk; Every Trial Decision Called 'Vulnerable'*, WASH. POST, Sept. 29, 2000, at E1; Alison Schmauch, *Microsoft Judge Shares Experiences*, THE DARTMOUTH ONLINE, Oct. 3, 2000.

From the published accounts, it is apparent that the Judge also had been giving secret interviews to select reporters before entering final judgment—in some instances long before. The earliest interviews we know of began in September 1999, shortly after the parties finished presenting evidence but two months before the court issued its Findings of Fact. *See* Joel Brinkley & Steve Lohr, *U.S. vs. Microsoft: Pursuing a Giant; Retracing the Missteps in the Microsoft Defense*, N.Y. TIMES, June 9, 2000, at A1. Interviews with reporters from the *New York Times* and Ken Auletta, another reporter who later wrote a book on the Microsoft case, continued throughout late 1999 and the first half of 2000, during which time the Judge issued his Findings of Fact, Conclusions of Law, and Final Judgment. *See id.*; Ken Auletta, *Final Offer*, THE NEW YORKER, Jan. 15, 2001, at 40. The Judge "embargoed" these interviews; that is, he insisted that the fact and content of the interviews remain secret until he issued the Final Judgment.

Before we recount the statements attributed to the District Judge, we need to say a few words about the state of the

record. All we have are the published accounts and what the reporters say the Judge said. Those accounts were not admitted in evidence. They may be hearsay. *See* FED. R. EVID. 801(c); *Metro. Council of NAACP Branches v. FCC*, 46 F.3d 1154, 1165 (D.C. Cir. 1995) ("We seriously question whether a New York Times article is admissible evidence of the truthfulness of its contents.").

We are of course concerned about granting a request to disqualify a federal judge when the material supporting it has not been admitted in evidence. Disqualification is never taken lightly. In the wrong hands, a disqualification motion is a procedural weapon to harass opponents and delay proceedings. If supported only by rumor, speculation, or innuendo, it is also a means to tarnish the reputation of a federal judge.

But the circumstances of this case are most unusual. By placing an embargo on the interviews, the District Judge ensured that the full extent of his actions would not be revealed until this case was on appeal. Plaintiffs, in defending the judgment, do not dispute the statements attributed to him in the press; they do not request an evidentiary hearing; and they do not argue that Microsoft should have filed a motion in the District Court before raising the matter on appeal. At oral argument, plaintiffs all but conceded that the Judge violated ethical restrictions by discussing the case in public: "On behalf of the governments, I have no brief to defend the District Judge's decision to discuss this case publicly while it was pending on appeal, and I have no brief to defend the judge's decision to discuss the case with reporters while the trial was proceeding, even given the embargo on any reporting concerning those conversations until after the trial." 02/27/01 Ct. Appeals Tr. at 326.

We must consider too that the federal disqualification provisions reflect a strong federal policy to preserve the actual and apparent impartiality of the federal judiciary. Judicial misconduct may implicate that policy regardless of the means by which it is disclosed to the public. *Cf. The Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir.

1991) (taking judicial notice of newspaper articles to ascertain whether a fact was within public knowledge). Also, in our analysis of the arguments presented by the parties, the specifics of particular conversations are less important than their cumulative effect.

For these reasons we have decided to adjudicate Microsoft's disqualification request notwithstanding the state of the record. The same reasons also warrant a departure from our usual practice of declining to address issues raised for the first time on appeal: the "matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases." *Singleton v. Wulff*, 428 U.S. 106, 121 (1976); *accord Hormel v. Helvering*, 312 U.S. 552, 556-57 (1941); *Nat'l Ass'n of Mfrs. v. Dep't of Labor*, 159 F.3d 597, 605-06 (D.C. Cir. 1998). We will assume the truth of the press accounts and not send the case back for an evidentiary hearing on this subject. We reach no judgment on whether the details of the interviews were accurately recounted.

The published accounts indicate that the District Judge discussed numerous topics relating to the case. Among them was his distaste for the defense of technological integration—one of the central issues in the lawsuit. In September 1999, two months before his Findings of Fact and six months before his Conclusions of Law, and in remarks that were kept secret until after the Final Judgment, the Judge told reporters from the *New York Times* that he questioned Microsoft's integration of a web browser into Windows. Stating that he was "not a fan of integration," he drew an analogy to a 35-millimeter camera with an integrated light meter that in his view should also be offered separately: "You like the convenience of having a light meter built in, integrated, so all you have to do is press a button to get a reading. But do you think camera makers should also serve photographers who want to use a separate light meter, so they can hold it up, move it around?" JOEL BRINKLEY & STEVE LOHR, U.S. v. MICROSOFT 263 (2001). In other remarks, the Judge commented on the integration at the heart of the case: "[I]t was

quite clear to me that the motive of Microsoft in bundling the Internet browser was not one of consumer convenience. The evidence that this was done for the consumer was not credible.... The evidence was so compelling that there was an ulterior motive." Wilke, WALL ST. J. As for tying law in general, he criticized this court's ruling in the consent decree case, saying it "was wrongheaded on several counts" and would exempt the software industry from the antitrust laws. BRINKLEY & LOHR, U.S. v. MICROSOFT 78, 295; Brinkley & Lohr, N.Y. TIMES.

Reports of the interviews have the District Judge describing Microsoft's conduct, with particular emphasis on what he regarded as the company's prevarication, hubris, and impenitence. In some of his secret meetings with reporters, the Judge offered his contemporaneous impressions of testimony. He permitted at least one reporter to see an entry concerning Bill Gates in his "oversized green notebook." KEN AULETTA, WORLD WAR 3.0, at 112 (2001). He also provided numerous after-the-fact credibility assessments. He told reporters that Bill Gates' "testimony is inherently without credibility" and "[i]f you can't believe this guy, who else can you believe?" BRINKLEY & LOHR, U.S. v. MICROSOFT 278; Brinkley & Lohr, N.Y. TIMES; *see also* Auletta, THE NEW YORKER, at 40. As for the company's other witnesses, the Judge is reported as saying that there "were times when I became impatient with Microsoft witnesses who were giving speeches." "[T]hey were telling me things I just flatly could not credit." Brinkley & Lohr, N.Y. TIMES. In an interview given the day he entered the break-up order, he summed things up: "Falsus in uno, falsus in omnibus": "Untrue in one thing, untrue in everything." "I don't subscribe to that as absolutely true. But it does lead one to suspicion. It's a universal human experience. If someone lies to you once, how much else can you credit as the truth?" Wilke, WALL ST. J.

According to reporter Auletta, the District Judge told him in private that, "I thought they [Microsoft and its executives] didn't think they were regarded as adult members of the community. I thought they would learn." AULETTA, WORLD WAR 3.0, at 14. The Judge told a college audience that "Bill

Gates is an ingenious engineer, but I don't think he is that adept at business ethics. He has not yet come to realise things he did (when Microsoft was smaller) he should not have done when he became a monopoly." Spiegel, FIN. TIMES. Characterizing Gates' and his company's "crime" as hubris, the Judge stated that "[i]f I were able to propose a remedy of my devising, I'd require Mr. Gates to write a book report" on Napoleon Bonaparte, "[b]ecause I think [Gates] has a Napoleonic concept of himself and his company, an arrogance that derives from power and unalloyed success, with no leavening hard experience, no reverses." Auletta, THE NEW YORKER, at 41; *see also* AULETTA, WORLD WAR 3.0, at 397. The Judge apparently became, in Auletta's words, "increasingly troubled by what he learned about Bill Gates and couldn't get out of his mind the group picture he had seen of Bill Gates and Paul Allen and their shaggy-haired first employees at Microsoft." The reporter wrote that the Judge said he saw in the picture "a smart-mouthed young kid who has extraordinary ability and needs a little discipline. I've often said to colleagues that Gates would be better off if he had finished Harvard." AULETTA, WORLD WAR 3.0, at 168-69; *see also* Auletta, THE NEW YORKER, at 46 (reporting the District Judge's statement that "they [Microsoft and its executives] don't act like grown-ups!" "[T]o this day they continue to deny they did anything wrong.").

The District Judge likened Microsoft's writing of incriminating documents to drug traffickers who "never figure out that they shouldn't be saying certain things on the phone." BRINKLEY & LOHR, U.S. v. MICROSOFT 6; Brinkley & Lohr, N.Y. TIMES. He invoked the drug trafficker analogy again to denounce Microsoft's protestations of innocence, this time with a reference to the notorious Newton Street Crew that terrorized parts of Washington, D.C. Reporter Auletta wrote in *The New Yorker* that the Judge

> went as far as to compare the company's declaration of innocence to the protestations of gangland killers. He was referring to five gang members in a racketeering, drug-dealing, and murder trial that he had presided over

> four years earlier. In that case, the three victims had had their heads bound with duct tape before they were riddled with bullets from semi-automatic weapons. "On the day of the sentencing, the gang members maintained that they had done nothing wrong, saying that the whole case was a conspiracy by the white power structure to destroy them," Jackson recalled. "I am now under no illusions that miscreants will realize that other parts of society will view them that way."

Auletta, THE NEW YORKER, at 40-41; AULETTA, WORLD WAR 3.0, at 369-70 (same); *see also* Auletta, THE NEW YORKER, at 46.

The District Judge also secretly divulged to reporters his views on the remedy for Microsoft's antitrust violations. On the question whether Microsoft was entitled to any process at the remedy stage, the Judge told reporters in May 2000 that he was "not aware of any case authority that says I have to give them any due process at all. The case is over. They lost." Brinkley & Lohr, N.Y. TIMES. Another reporter has the Judge asking "[w]ere the Japanese allowed to propose terms of their surrender?" Spiegel, FIN. TIMES. The District Judge also told reporters the month before he issued his break-up order that "[a]ssuming, as I think they are, [ ] the Justice Department and the states are genuinely concerned about the public interest," "I know they have carefully studied all the possible options. This isn't a bunch of amateurs. They have consulted with some of the best minds in America over a long period of time." "I am not in a position to duplicate that and re-engineer their work. There's no way I can equip myself to do a better job than they have done." Brinkley & Lohr, N.Y. TIMES; *cf. Final Judgment*, at 62-63.

In February 2000, four months before his final order splitting the company in two, the District Judge reportedly told *New York Times* reporters that he was "not at all comfortable with restructuring the company," because he was unsure whether he was "competent to do that." Brinkley & Lohr, N.Y. TIMES; *see also* BRINKLEY & LOHR, U.S. v. MICROSOFT 277-78 (same); *cf.* AULETTA, WORLD WAR 3.0, at 370 (comment by the Judge in April 2000 that he was inclining

toward behavioral rather than structural remedies). A few months later, he had a change of heart. He told the same reporters that "with what looks like Microsoft intransigence, a breakup is inevitable." Brinkley & Lohr, N.Y. TIMES; *see also* BRINKLEY & LOHR, U.S. v. MICROSOFT 315. The Judge recited a "North Carolina mule trainer" story to explain his change in thinking from "[i]f it ain't broken, don't try to fix it" and "I just don't think that [restructuring the company] is something I want to try to do on my own" to ordering Microsoft broken in two:

> He had a trained mule who could do all kinds of wonderful tricks. One day somebody asked him: "How do you do it? How do you train the mule to do all these amazing things?" "Well," he answered, "I'll show you." He took a 2-by-4 and whopped him upside the head. The mule was reeling and fell to his knees, and the trainer said: "You just have to get his attention."

BRINKLEY & LOHR, U.S. v. MICROSOFT 278. The Judge added: "I hope I've got Microsoft's attention." *Id.*; *see also* Grimaldi, WASH. POST (comments by the Judge blaming the break-up on Microsoft's intransigence and on what he perceived to be Microsoft's responsibility for the failure of settlement talks); Spiegel, FIN. TIMES (the Judge blaming break-up on Microsoft's intransigence).

B. Violations of the Code of Conduct for United States Judges

The Code of Conduct for United States Judges was adopted by the Judicial Conference of the United States in 1973. It prescribes ethical norms for federal judges as a means to preserve the actual and apparent integrity of the federal judiciary. Every federal judge receives a copy of the Code, the Commentary to the Code, the Advisory Opinions of the Judicial Conference's Committee on Codes of Conduct, and digests of the Committee's informal, unpublished opinions. *See* II GUIDE TO JUDICIARY POLICIES AND PROCEDURES (1973). The material is periodically updated. Judges who have questions about whether their conduct would be consis-

tent with the Code may write to the Codes of Conduct Committee for a written, confidential opinion. *See* Introduction, CODE OF CONDUCT. The Committee traditionally responds promptly. A judge may also seek informal advice from the Committee's circuit representative.

While some of the Code's Canons frequently generate questions about their application, others are straightforward and easily understood. Canon 3A(6) is an example of the latter. In forbidding federal judges to comment publicly "on the merits of a pending or impending action," Canon 3A(6) applies to cases pending before any court, state or federal, trial or appellate. *See* JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT AND ETHICS § 10.34, at 353 (3d ed. 2000). As "impending" indicates, the prohibition begins even before a case enters the court system, when there is reason to believe a case may be filed. *Cf.* E. WAYNE THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 54 (1973). An action remains "pending" until "completion of the appellate process." CODE OF CONDUCT Canon 3A(6) cmt.; Comm. on Codes of Conduct, Adv. Op. No. 55 (1998).

The Microsoft case was "pending" during every one of the District Judge's meetings with reporters; the case is "pending" now; and even after our decision issues, it will remain pending for some time. The District Judge breached his ethical duty under Canon 3A(6) each time he spoke to a reporter about the merits of the case. Although the reporters interviewed him in private, his comments were public. Court was not in session and his discussion of the case took place outside the presence of the parties. He provided his views not to court personnel assisting him in the case, but to members of the public. And these were not just any members of the public. Because he was talking to reporters, the Judge knew his comments would eventually receive widespread dissemination.

It is clear that the District Judge was not discussing purely procedural matters, which are a permissible subject of public comment under one of the Canon's three narrowly drawn exceptions. He disclosed his views on the factual and legal

matters at the heart of the case. His opinions about the credibility of witnesses, the validity of legal theories, the culpability of the defendant, the choice of remedy, and so forth all dealt with the merits of the action. It is no excuse that the Judge may have intended to "educate" the public about the case or to rebut "public misperceptions" purportedly caused by the parties. *See* Grimaldi, WASH. POST; *Microsoft Judge Says He May Step down from Case on Appeal*, WALL ST. J., Oct. 30, 2000. If those were his intentions, he could have addressed the factual and legal issues as he saw them—and thought the public should see them—in his Findings of Fact, Conclusions of Law, Final Judgment, or in a written opinion. Or he could have held his tongue until all appeals were concluded.

Far from mitigating his conduct, the District Judge's insistence on secrecy—his embargo—made matters worse. Concealment of the interviews suggests knowledge of their impropriety. Concealment also prevented the parties from nipping his improprieties in the bud. Without any knowledge of the interviews, neither the plaintiffs nor the defendant had a chance to object or to seek the Judge's removal before he issued his Final Judgment.

Other federal judges have been disqualified for making limited public comments about cases pending before them. *See In re Boston's Children First*, 244 F.3d 164 (1st Cir. 2001); *In re IBM Corp.*, 45 F.3d 641 (2d Cir. 1995); *United States v. Cooley*, 1 F.3d 985 (10th Cir. 1993). Given the extent of the Judge's transgressions in this case, we have little doubt that if the parties had discovered his secret liaisons with the press, he would have been disqualified, voluntarily or by court order. *Cf. In re Barry*, 946 F.2d 913 (D.C. Cir. 1991) (per curiam); *id.* at 915 (Edwards, J., dissenting).

In addition to violating the rule prohibiting public comment, the District Judge's reported conduct raises serious questions under Canon 3A(4). That Canon states that a "judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard

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according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding." CODE OF CONDUCT Canon 3A(4).

What did the reporters convey to the District Judge during their secret sessions? By one account, the Judge spent a total of ten hours giving taped interviews to one reporter. AULETTA, WORLD WAR 3.0, at 14 n.*. We do not know whether he spent even more time in untaped conversations with the same reporter, nor do we know how much time he spent with others. But we think it safe to assume that these interviews were not monologues. Interviews often become conversations. When reporters pose questions or make assertions, they may be furnishing information, information that may reflect their personal views of the case. The published accounts indicate this happened on at least one occasion. Ken Auletta reported, for example, that he told the Judge "that Microsoft employees professed shock that he thought they had violated the law and behaved unethically," at which time the Judge became "agitated" by "Microsoft's 'obstinacy'." *Id.* at 369. It is clear that Auletta had views of the case. As he wrote in a *Washington Post* editorial, "[a]nyone who sat in [the District Judge's] courtroom during the trial had seen ample evidence of Microsoft's sometimes thuggish tactics." Ken Auletta, *Maligning the Microsoft Judge*, WASH. POST, Mar. 7, 2001, at A23.

The District Judge's repeated violations of Canons 3A(6) and 3A(4) also violated Canon 2, which provides that "a judge should avoid impropriety and the appearance of impropriety in all activities." CODE OF CONDUCT Canon 2; *see also In re Charge of Judicial Misconduct*, 47 F.3d 399, 400 (10th Cir. Jud. Council 1995) ("The allegations of extra-judicial comments cause the Council substantial concern under both Canon 3A(6) and Canon 2 of the Judicial Code of Conduct."). Canon 2A requires federal judges to "respect and comply with the law" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." CODE OF CONDUCT Canon 2A. The Code of Conduct is the law with respect to the ethical obligations of

federal judges, and it is clear the District Judge violated it on multiple occasions in this case. The rampant disregard for the judiciary's ethical obligations that the public witnessed in this case undoubtedly jeopardizes "public confidence in the integrity" of the District Court proceedings.

Another point needs to be stressed. Rulings in this case have potentially huge financial consequences for one of the nation's largest publicly-traded companies and its investors. The District Judge's secret interviews during the trial provided a select few with inside information about the case, information that enabled them and anyone they shared it with to anticipate rulings before the Judge announced them to the world. Although he "embargoed" his comments, the Judge had no way of policing the reporters. For all he knew there may have been trading on the basis of the information he secretly conveyed. The public cannot be expected to maintain confidence in the integrity and impartiality of the federal judiciary in the face of such conduct.

C. Appearance of Partiality

The Code of Conduct contains no enforcement mechanism. *See* THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 43. The Canons, including the one that requires a judge to disqualify himself in certain circumstances, *see* CODE OF CONDUCT Canon 3C, are self-enforcing. There are, however, remedies extrinsic to the Code. One is an internal disciplinary proceeding, begun with the filing of a complaint with the clerk of the court of appeals pursuant to 28 U.S.C. § 372(c). Another is disqualification of the offending judge under either 28 U.S.C. § 144, which requires the filing of an affidavit while the case is in the District Court, or 28 U.S.C. § 455, which does not. Microsoft urges the District Judge's disqualification under § 455(a): a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard for disqualification under § 455(a) is an objective one. The question is whether a reasonable and informed observer would question the judge's impartiality. *See In re Barry*, 946 F.2d at 914;

see also In re Aguinda, 241 F.3d 194, 201 (2d Cir. 2001); RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION § 24.2.1 (1996).

"The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). As such, violations of the Code of Conduct may give rise to a violation of § 455(a) if doubt is cast on the integrity of the judicial process. It has been argued that any "public comment by a judge concerning the facts, applicable law, or merits of a case that is *sub judice* in his court or any comment concerning the parties or their attorneys would raise grave doubts about the judge's objectivity and his willingness to reserve judgment until the close of the proceeding." William G. Ross, *Extrajudicial Speech: Charting the Boundaries of Propriety*, 2 GEO. J. LEGAL ETHICS 589, 598 (1989). Some courts of appeals have taken a hard line on public comments, finding violations of § 455(a) for judicial commentary on pending cases that seems mild in comparison to what we are confronting in this case. *See Boston's Children First*, 244 F.3d 164 (granting writ of mandamus ordering district judge to recuse herself under § 455(a) because of public comments on class certification and standing in a pending case); *In re IBM Corp.*, 45 F.3d 641 (granting writ of mandamus ordering district judge to recuse himself based in part on the appearance of partiality caused by his giving newspaper interviews); *Cooley*, 1 F.3d 985 (vacating convictions and disqualifying district judge for appearance of partiality because he appeared on television program *Nightline* and stated that abortion protestors in a case before him were breaking the law and that his injunction would be obeyed).

While § 455(a) is concerned with actual and apparent impropriety, the statute requires disqualification only when a judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Although this court has condemned public judicial comments on pending cases, we have not gone so far as to hold that every violation of Canon 3A(6) or every impropriety under the Code of Conduct inevitably destroys the appearance of impartiality and thus violates § 455(a).

See In re Barry, 946 F.2d at 914; *see also Boston's Children First*, 244 F.3d at 168; *United States v. Fortier*, 242 F.3d 1224, 1229 (10th Cir. 2001).

In this case, however, we believe the line has been crossed. The public comments were not only improper, but also would lead a reasonable, informed observer to question the District Judge's impartiality. Public confidence in the integrity and impartiality of the judiciary is seriously jeopardized when judges secretly share their thoughts about the merits of pending cases with the press. Judges who covet publicity, or convey the appearance that they do, lead any objective observer to wonder whether their judgments are being influenced by the prospect of favorable coverage in the media. Discreet and limited public comments may not compromise a judge's apparent impartiality, but we have little doubt that the District Judge's conduct had that effect. Appearance may be all there is, but that is enough to invoke the Canons and § 455(a).

Judge Learned Hand spoke of "this America of ours where the passion for publicity is a disease, and where swarms of foolish, tawdry moths dash with rapture into its consuming fire...." LEARNED HAND, THE SPIRIT OF LIBERTY 132-33 (2d ed. 1953). Judges are obligated to resist this passion. Indulging it compromises what Edmund Burke justly regarded as the "cold neutrality of an impartial judge." Cold or not, federal judges must maintain the appearance of impartiality. What was true two centuries ago is true today: "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." CODE OF CONDUCT Canon 1 cmt. Public confidence in judicial impartiality cannot survive if judges, in disregard of their ethical obligations, pander to the press.

We recognize that it would be extraordinary to disqualify a judge for bias or appearance of partiality when his remarks arguably reflected what he learned, or what he thought he learned, during the proceedings. *See Liteky v. United States*, 510 U.S. 540, 554-55 (1994); *United States v. Barry*, 961 F.2d 260, 263 (D.C. Cir. 1992). But this "extrajudicial source" rule

has no bearing on the case before us. The problem here is not just what the District Judge said, but to whom he said it and when. His crude characterizations of Microsoft, his frequent denigrations of Bill Gates, his mule trainer analogy as a reason for his remedy—all of these remarks and others might not have given rise to a violation of the Canons or of § 455(a) had he uttered them from the bench. *See Liteky*, 510 U.S. at 555-56; CODE OF CONDUCT Canon 3A(6) (exception to prohibition on public comments for "statements made in the course of the judge's official duties"). But then Microsoft would have had an opportunity to object, perhaps even to persuade, and the Judge would have made a record for review on appeal. It is an altogether different matter when the statements are made outside the courtroom, in private meetings unknown to the parties, in anticipation that ultimately the Judge's remarks would be reported. Rather than manifesting neutrality and impartiality, the reports of the interviews with the District Judge convey the impression of a judge posturing for posterity, trying to please the reporters with colorful analogies and observations bound to wind up in the stories they write. Members of the public may reasonably question whether the District Judge's desire for press coverage influenced his judgments, indeed whether a publicity-seeking judge might consciously or subconsciously seek the publicity-maximizing outcome. We believe, therefore, that the District Judge's interviews with reporters created an appearance that he was not acting impartially, as the Code of Conduct and § 455(a) require.

D. Remedies for Judicial Misconduct and Appearance of Partiality

1. Disqualification

Disqualification is mandatory for conduct that calls a judge's impartiality into question. *See* 28 U.S.C. § 455(a); *In re School Asbestos Litig.*, 977 F.2d 764, 783 (3d Cir. 1992). Section 455 does not prescribe the scope of disqualification. Rather, Congress "delegated to the judiciary the task of fashioning the remedies that will best serve the purpose" of the disqualification statute. *Liljeberg*, 486 U.S. at 862.

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At a minimum, § 455(a) requires prospective disqualification of the offending judge, that is, disqualification from the judge's hearing any further proceedings in the case. *See United States v. Microsoft Corp.*, 56 F.3d 1448, 1463-65 (D.C. Cir. 1995) (per curiam) ("*Microsoft I*"). Microsoft urges retroactive disqualification of the District Judge, which would entail disqualification antedated to an earlier part of the proceedings and vacatur of all subsequent acts. *Cf. In re School Asbestos Litig.*, 977 F.2d at 786 (discussing remedy options).

"There need not be a draconian remedy for every violation of § 455(a)." *Liljeberg*, 486 U.S. at 862. *Liljeberg* held that a district judge could be disqualified under § 455(a) *after* entering final judgment in a case, even though the judge was not (but should have been) aware of the grounds for disqualification before final judgment. The Court identified three factors relevant to the question whether vacatur is appropriate: "in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Id.* at 864. Although the Court was discussing § 455(a) in a slightly different context (the judgment there had become final after appeal and the movant sought to have it vacated under Rule 60(b)), we believe the test it propounded applies as well to cases such as this in which the full extent of the disqualifying circumstances came to light only while the appeal was pending. *See In re School Asbestos Litig.*, 977 F.2d at 785.

Our application of *Liljeberg* leads us to conclude that the appropriate remedy for the violations of § 455(a) is disqualification of the District Judge retroactive only to the date he entered the order breaking up Microsoft. We therefore will vacate that order in its entirety and remand this case to a different District Judge, but will not set aside the existing Findings of Fact or Conclusions of Law (except insofar as specific findings are clearly erroneous or legal conclusions are incorrect).

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This partially retroactive disqualification minimizes the risk of injustice to the parties and the damage to public confidence in the judicial process. Although the violations of the Code of Conduct and § 455(a) were serious, full retroactive disqualification is unnecessary. It would unduly penalize plaintiffs, who were innocent and unaware of the misconduct, and would have only slight marginal deterrent effect.

Most important, full retroactive disqualification is unnecessary to protect Microsoft's right to an impartial adjudication. The District Judge's conduct destroyed the appearance of impartiality. Microsoft neither alleged nor demonstrated that it rose to the level of actual bias or prejudice. There is no reason to presume that everything the District Judge did is suspect. *See In re Allied-Signal Inc.*, 891 F.2d 974, 975-76 (1st Cir. 1989); *cf. Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1301-02 (D.C. Cir. 1988). Although Microsoft challenged very few of the findings as clearly erroneous, we have carefully reviewed the entire record and discern no basis to suppose that actual bias infected his factual findings.

The most serious judicial misconduct occurred near or during the remedial stage. It is therefore commensurate that our remedy focus on that stage of the case. The District Judge's impatience with what he viewed as intransigence on the part of the company; his refusal to allow an evidentiary hearing; his analogizing Microsoft to Japan at the end of World War II; his story about the mule—all of these out-of-court remarks and others, plus the Judge's evident efforts to please the press, would give a reasonable, informed observer cause to question his impartiality in ordering the company split in two.

To repeat, we disqualify the District Judge retroactive only to the imposition of the remedy, and thus vacate the remedy order for the reasons given in Section V and because of the appearance of partiality created by the District Judge's misconduct.

2. Review of Findings of Fact and Conclusions of Law

Given the limited scope of our disqualification of the District Judge, we have let stand for review his Findings of Fact and Conclusions of Law. The severity of the District Judge's misconduct and the appearance of partiality it created have led us to consider whether we can and should subject his factfindings to greater scrutiny. For a number of reasons we have rejected any such approach.

The Federal Rules require that district court findings of fact not be set aside unless they are clearly erroneous. *See* FED. R. CIV. P. 52(a). Ordinarily, there is no basis for doubting that the District Court's factual findings are entitled to the substantial deference the clearly erroneous standard entails. But of course this is no ordinary case. Deference to a district court's factfindings presumes impartiality on the lower court's part. When impartiality is called into question, how much deference is due?

The question implies that there is some middle ground, but we believe there is none. As the rules are written, district court factfindings receive either full deference under the clearly erroneous standard or they must be vacated. There is no *de novo* appellate review of factfindings and no intermediate level between *de novo* and clear error, not even for findings the court of appeals may consider sub-par. *See Amadeo v. Zant*, 486 U.S. 214, 228 (1988) ("The District Court's lack of precision, however, is no excuse for the Court of Appeals to ignore the dictates of Rule 52(a) and engage in impermissible appellate factfinding."); *Anderson v. City of Bessemer City*, 470 U.S. 564, 571-75 (1985) (criticizing district court practice of adopting a party's proposed factfindings but overturning court of appeals' application of "close scrutiny" to such findings).

Rule 52(a) mandates clearly erroneous review of all district court factfindings: "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." FED. R. CIV. P. 52(a). The rule "does not make exceptions or purport to exclude certain categories of factual findings from

the obligation of a court of appeals to accept a district court's findings unless clearly erroneous." *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982); *see also Anderson*, 470 U.S. at 574-75; *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 855-58 (1982). The Supreme Court has emphasized on multiple occasions that "[i]n applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo*." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969); *Anderson*, 470 U.S. at 573 (quoting *Zenith*).

The mandatory nature of Rule 52(a) does not compel us to accept factfindings that result from the District Court's misapplication of governing law or that otherwise do not permit meaningful appellate review. *See Pullman-Standard*, 456 U.S. at 292; *Inwood Labs.*, 456 U.S. at 855 n.15. Nor must we accept findings that are utterly deficient in other ways. In such a case, we vacate and remand for further factfinding. *See* 9 MOORE'S FEDERAL PRACTICE § 52.12[1] (Matthew Bender 3d ed. 2000); 9A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2577, at 514-22 (2d ed. 1995); *cf. Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986); *Pullman-Standard*, 456 U.S. at 291-92.

When there is fair room for argument that the District Court's factfindings should be vacated *in toto*, the court of appeals should be especially careful in determining that the findings are worthy of the deference Rule 52(a) prescribes. *See, e.g., Thermo Electron Corp. v. Schiavone Constr. Co.*, 915 F.2d 770, 773 (1st Cir. 1990); *cf. Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984). Thus, although Microsoft alleged only appearance of bias, not actual bias, we have reviewed the record with painstaking care and have discerned no evidence of actual bias. *See S. Pac. Communications Co. v. AT & T*, 740 F.2d 980, 984 (D.C. Cir. 1984); *Cooley*, 1 F.3d at 996 (disqualifying district judge for

appearance of partiality but noting that "the record of the proceedings below ... discloses no bias").

In light of this conclusion, the District Judge's factual findings both warrant deference under the clear error standard of review and, though exceedingly sparing in citations to the record, permit meaningful appellate review. In reaching these conclusions, we have not ignored the District Judge's reported intention to craft his factfindings and Conclusions of Law to minimize the breadth of our review. The Judge reportedly told Ken Auletta that "[w]hat I want to do is confront the Court of Appeals with an established factual record which is a fait accompli." AULETTA, WORLD WAR 3.0, at 230. He explained: "part of the inspiration for doing that is that I take mild offense at their reversal of my preliminary injunction in the consent-decree case, where they went ahead and made up about ninety percent of the facts on their own." *Id.* Whether the District Judge takes offense, mild or severe, is beside the point. Appellate decisions command compliance, not agreement. We do not view the District Judge's remarks as anything other than his expression of disagreement with this court's decision, and his desire to provide extensive factual findings in this case, which he did.

VII. CONCLUSION

The judgment of the District Court is affirmed in part, reversed in part, and remanded in part. We vacate in full the Final Judgment embodying the remedial order, and remand the case to the District Court for reassignment to a different trial judge for further proceedings consistent with this opinion.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued February 26 and 27, 2001

Decided June 28, 2001

No. 00-5212

UNITED STATES OF AMERICA,
APPELLEE

v.

MICROSOFT CORPORATION,
APPELLANT

Consolidated with
00-5213

Appeals from the United States District Court
for the District of Columbia
(No. 98cv01232)
(No. 98cv01233)

Richard J. Urowsky and *Steven L. Holley* argued the causes for appellant. With them on the briefs were *John L.*

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Warden, *Richard C. Pepperman, II*, *William H. Neukom*, *Thomas W. Burt*, *David A. Heiner, Jr.*, *Charles F. Rule*, *Robert A. Long, Jr.*, and *Carter G. Phillips*. *Christopher J. Meyers* entered an appearance.

Lars H. Liebeler, *Griffin B. Bell*, *Lloyd N. Cutler*, *Louis R. Cohen*, *C. Boyden Gray*, *William J. Kolasky*, *William F. Adkinson, Jr.*, *Jeffrey D. Ayer*, and *Jay V. Prabhu* were on the brief of *amici curiae* The Association for Competitive Technology and Computing Technology Industry Association in support of appellant.

David R. Burton was on the brief for *amicus curiae* Center for the Moral Defense of Capitalism in support of appellant.

Robert S. Getman was on the brief for *amicus curiae* Association for Objective Law in support of appellant.

Jeffrey P. Minear and *David C. Frederick*, Assistants to the Solicitor General, United States Department of Justice, and *John G. Roberts, Jr.*, argued the causes for appellees. With them on the brief were *A. Douglas Melamed*, Acting Assistant Attorney General, United States Department of Justice, *Jeffrey H. Blattner*, Deputy Assistant Attorney General, *Catherine G. O'Sullivan*, *Robert B. Nicholson*, *Adam D. Hirsh*, *Andrea Limmer*, *David Seidman*, and *Christopher Sprigman*, Attorneys, *Eliot Spitzer*, Attorney General, State of New York, *Richard L. Schwartz*, Assistant Attorney General, and *Kevin J. O'Connor*, Office of the Attorney General, State of Wisconsin.

John Rogovin, *Kenneth W. Starr*, *John F. Wood*, *Elizabeth Petrela*, *Robert H. Bork*, *Jason M. Mahler*, *Stephen M. Shapiro*, *Donald M. Falk*, *Mitchell S. Pettit*, *Kevin J. Arquit*, and *Michael C. Naughton* were on the brief for *amici curiae* America Online, Inc., et al., in support of appellee. *Paul T. Cappuccio* entered an appearance.

Lee A. Hollaar, appearing *pro se*, was on the brief for *amicus curiae* Lee A. Hollaar.

Carl Lundgren, appearing *pro se*, was on the brief for *amicus curiae* Carl Lundgren.

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Before: EDWARDS, *Chief Judge*, WILLIAMS, GINSBURG, SENTELLE, RANDOLPH, ROGERS and TATEL, *Circuit Judges*.

Opinion for the Court filed *Per Curiam*.

Per Curiam: Microsoft Corporation appeals from judgments of the District Court finding the company in violation of §§ 1 and 2 of the Sherman Act and ordering various remedies.

The action against Microsoft arose pursuant to a complaint filed by the United States and separate complaints filed by individual States. The District Court determined that Microsoft had maintained a monopoly in the market for Intel-compatible PC operating systems in violation of § 2; attempted to gain a monopoly in the market for internet browsers in violation of § 2; and illegally tied two purportedly separate products, Windows and Internet Explorer ("IE"), in violation of § 1. *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30 (D.D.C. 2000) ("*Conclusions of Law*"). The District Court then found that the same facts that established liability under §§ 1 and 2 of the Sherman Act mandated findings of liability under analogous state law antitrust provisions. *Id.* To remedy the Sherman Act violations, the District Court issued a Final Judgment requiring Microsoft to submit a proposed plan of divestiture, with the company to be split into an operating systems business and an applications business. *United States v. Microsoft Corp.*, 97 F. Supp. 2d 59, 64-65 (D.D.C. 2000) ("*Final Judgment*"). The District Court's remedial order also contains a number of interim restrictions on Microsoft's conduct. *Id.* at 66-69.

Microsoft's appeal contests both the legal conclusions and the resulting remedial order. There are three principal aspects of this appeal. First, Microsoft challenges the District Court's legal conclusions as to all three alleged antitrust violations and also a number of the procedural and factual foundations on which they rest. Second, Microsoft argues that the remedial order must be set aside, because the District Court failed to afford the company an evidentiary hearing on disputed facts and, also, because the substantive provisions of the order are flawed. Finally, Microsoft asserts that the trial judge committed ethical violations by engaging in impermissible *ex parte* contacts and making inappropriate

public comments on the merits of the case while it was pending. Microsoft argues that these ethical violations compromised the District Judge's appearance of impartiality, thereby necessitating his disqualification and vacatur of his Findings of Fact, Conclusions of Law, and Final Judgment.

After carefully considering the voluminous record on appeal—including the District Court's Findings of Fact and Conclusions of Law, the testimony and exhibits submitted at trial, the parties' briefs, and the oral arguments before this court—we find that some but not all of Microsoft's liability challenges have merit. Accordingly, we affirm in part and reverse in part the District Court's judgment that Microsoft violated § 2 of the Sherman Act by employing anticompetitive means to maintain a monopoly in the operating system market; we reverse the District Court's determination that Microsoft violated § 2 of the Sherman Act by illegally attempting to monopolize the internet browser market; and we remand the District Court's finding that Microsoft violated § 1 of the Sherman Act by unlawfully tying its browser to its operating system. Our judgment extends to the District Court's findings with respect to the state law counterparts of the plaintiffs' Sherman Act claims.

We also find merit in Microsoft's challenge to the Final Judgment embracing the District Court's remedial order. There are several reasons supporting this conclusion. First, the District Court's Final Judgment rests on a number of liability determinations that do not survive appellate review; therefore, the remedial order as currently fashioned cannot stand. Furthermore, we would vacate and remand the remedial order even were we to uphold the District Court's liability determinations in their entirety, because the District Court failed to hold an evidentiary hearing to address remedies-specific factual disputes.

Finally, we vacate the Final Judgment on remedies, because the trial judge engaged in impermissible *ex parte* contacts by holding secret interviews with members of the media and made numerous offensive comments about Microsoft officials in public statements outside of the courtroom, giving rise to an appearance of partiality. Although we find no evidence of actual bias, we hold that the actions of the trial

judge seriously tainted the proceedings before the District Court and called into question the integrity of the judicial process. We are therefore constrained to vacate the Final Judgment on remedies, remand the case for reconsideration of the remedial order, and require that the case be assigned to a different trial judge on remand. We believe that this disposition will be adequate to cure the cited improprieties.

In sum, for reasons more fully explained below, we affirm in part, reverse in part, and remand in part the District Court's judgment assessing liability. We vacate in full the Final Judgment embodying the remedial order and remand the case to a different trial judge for further proceedings consistent with this opinion.

I. INTRODUCTION

A. Background

In July 1994, officials at the Department of Justice ("DOJ"), on behalf of the United States, filed suit against Microsoft, charging the company with, among other things, unlawfully maintaining a monopoly in the operating system market through anticompetitive terms in its licensing and software developer agreements. The parties subsequently entered into a consent decree, thus avoiding a trial on the merits. *See United States v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995) ("*Microsoft I*"). Three years later, the Justice Department filed a civil contempt action against Microsoft for allegedly violating one of the decree's provisions. On appeal from a grant of a preliminary injunction, this court held that Microsoft's technological bundling of IE 3.0 and 4.0 with Windows 95 did not violate the relevant provision of the consent decree. *United States v. Microsoft Corp.*, 147 F.3d 935 (D.C. Cir. 1998) ("*Microsoft II*"). We expressly reserved the question whether such bundling might independently violate §§ 1 or 2 of the Sherman Act. *Id.* at 950 n.14.

On May 18, 1998, shortly before issuance of the *Microsoft II* decision, the United States and a group of State plaintiffs

filed separate (and soon thereafter consolidated) complaints, asserting antitrust violations by Microsoft and seeking preliminary and permanent injunctions against the company's allegedly unlawful conduct. The complaints also sought any "other preliminary and permanent relief as is necessary and appropriate to restore competitive conditions in the markets affected by Microsoft's unlawful conduct." Gov't's Compl. at 53, *United States v. Microsoft Corp.*, No. 98-1232 (D.D.C. 1999). Relying almost exclusively on Microsoft's varied efforts to unseat Netscape Navigator as the preeminent internet browser, plaintiffs charged four distinct violations of the Sherman Act: (1) unlawful exclusive dealing arrangements in violation of § 1; (2) unlawful tying of IE to Windows 95 and Windows 98 in violation of § 1; (3) unlawful maintenance of a monopoly in the PC operating system market in violation of § 2; and (4) unlawful attempted monopolization of the internet browser market in violation of § 2. The States also brought pendent claims charging Microsoft with violations of various State antitrust laws.

The District Court scheduled the case on a "fast track." The hearing on the preliminary injunction and the trial on the merits were consolidated pursuant to FED. R. CIV. P. 65(a)(2). The trial was then scheduled to commence on September 8, 1998, less than four months after the complaints had been filed. In a series of pretrial orders, the District Court limited each side to a maximum of 12 trial witnesses plus two rebuttal witnesses. It required that all trial witnesses' direct testimony be submitted to the court in the form of written declarations. The District Court also made allowances for the use of deposition testimony at trial to prove subordinate or predicate issues. Following the grant of three brief continuances, the trial started on October 19, 1998.

After a 76-day bench trial, the District Court issued its Findings of Fact. *United States v. Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999) ("*Findings of Fact*"). This triggered two independent courses of action. First, the District Court established a schedule for briefing on possible legal conclusions, inviting Professor Lawrence Lessig to participate as *amicus curiae*. Second, the District Court re-

ferred the case to mediation to afford the parties an opportunity to settle their differences. The Honorable Richard A. Posner, Chief Judge of the United States Court of Appeals for the Seventh Circuit, was appointed to serve as mediator. The parties concurred in the referral to mediation and in the choice of mediator.

Mediation failed after nearly four months of settlement talks between the parties. On April 3, 2000, with the parties' briefs having been submitted and considered, the District Court issued its conclusions of law. The District Court found Microsoft liable on the § 1 tying and § 2 monopoly maintenance and attempted monopolization claims, *Conclusions of Law*, at 35-51, while ruling that there was insufficient evidence to support a § 1 exclusive dealing violation, *id.* at 51-54. As to the pendent State actions, the District Court found the State antitrust laws conterminous with §§ 1 and 2 of the Sherman Act, thereby obviating the need for further State-specific analysis. *Id.* at 54-56. In those few cases where a State's law required an additional showing of *intrastate* impact on competition, the District Court found the requirement easily satisfied on the evidence at hand. *Id.* at 55.

Having found Microsoft liable on all but one count, the District Court then asked plaintiffs to submit a proposed remedy. Plaintiffs' proposal for a remedial order was subsequently filed within four weeks, along with six supplemental declarations and over 50 new exhibits. In their proposal, plaintiffs sought specific conduct remedies, plus structural relief that would split Microsoft into an applications company and an operating systems company. The District Court rejected Microsoft's request for further evidentiary proceedings and, following a single hearing on the merits of the remedy question, issued its Final Judgment on June 7, 2000. The District Court adopted plaintiffs' proposed remedy without substantive change.

Microsoft filed a notice of appeal within a week after the District Court issued its Final Judgment. This court then ordered that any proceedings before it be heard by the court sitting *en banc*. Before any substantive matters were ad-

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dressed by this court, however, the District Court certified appeal of the case brought by the United States directly to the Supreme Court pursuant to 15 U.S.C. § 29(b), while staying the final judgment order in the federal and state cases pending appeal. The States thereafter petitioned the Supreme Court for a *writ of certiorari* in their case. The Supreme Court declined to hear the appeal of the Government's case and remanded the matter to this court; the Court likewise denied the States' petition for *writ of certiorari*. *Microsoft Corp. v. United States*, 530 U.S. 1301 (2000). This consolidated appeal followed.

B. Overview

Before turning to the merits of Microsoft's various arguments, we pause to reflect briefly on two matters of note, one practical and one theoretical.

The practical matter relates to the temporal dimension of this case. The litigation timeline in this case is hardly problematic. Indeed, it is noteworthy that a case of this magnitude and complexity has proceeded from the filing of complaints through trial to appellate decision in a mere three years. *See, e.g., Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1155 (1st Cir. 1994) (six years from filing of complaint to appellate decision); *Transamerica Computer Co., Inc. v. IBM*, 698 F.2d 1377, 1381 (9th Cir. 1983) (over four years from start of trial to appellate decision); *United States v. United Shoe Mach. Corp.*, 110 F. Supp. 295, 298 (D. Mass. 1953) (over five years from filing of complaint to trial court decision).

What is somewhat problematic, however, is that just over six years have passed since Microsoft engaged in the first conduct plaintiffs allege to be anticompetitive. As the record in this case indicates, six years seems like an eternity in the computer industry. By the time a court can assess liability, firms, products, and the marketplace are likely to have changed dramatically. This, in turn, threatens enormous practical difficulties for courts considering the appropriate measure of relief in equitable enforcement actions, both in crafting injunctive remedies in the first instance and review-

ing those remedies in the second. Conduct remedies may be unavailing in such cases, because innovation to a large degree has already rendered the anticompetitive conduct obsolete (although by no means harmless). And broader structural remedies present their own set of problems, including how a court goes about *restoring* competition to a dramatically changed, and constantly changing, marketplace. That is just one reason why we find the District Court's refusal in the present case to hold an evidentiary hearing on remedies—to update and flesh out the available information before seriously entertaining the possibility of dramatic structural relief—so problematic. *See infra* Section V.

We do not mean to say that enforcement actions will no longer play an important role in curbing infringements of the antitrust laws in technologically dynamic markets, nor do we assume this in assessing the merits of this case. Even in those cases where forward-looking remedies appear limited, the Government will continue to have an interest in defining the contours of the antitrust laws so that law-abiding firms will have a clear sense of what is permissible and what is not. And the threat of private damage actions will remain to deter those firms inclined to test the limits of the law.

The second matter of note is more theoretical in nature. We decide this case against a backdrop of significant debate amongst academics and practitioners over the extent to which "old economy" § 2 monopolization doctrines should apply to firms competing in dynamic technological markets characterized by network effects. In markets characterized by network effects, one product or standard tends towards dominance, because "the utility that a user derives from consumption of the good increases with the number of other agents consuming the good." Michael L. Katz & Carl Shapiro, *Network Externalities, Competition, and Compatibility*, 75 AM. ECON. REV. 424, 424 (1985). For example, "[a]n individual consumer's demand to use (and hence her benefit from) the telephone network ... increases with the number of other users on the network whom she can call or from whom she can receive calls." Howard A. Shelanski & J. Gregory Sidak, *Antitrust Divestiture in Network Industries*,

68 U. CHI. L. REV. 1, 8 (2001). Once a product or standard achieves wide acceptance, it becomes more or less entrenched. Competition in such industries is "for the field" rather than "within the field." *See* Harold Demsetz, *Why Regulate Utilities*?, 11 J.L. & ECON. 55, 57 & n.7 (1968) (emphasis omitted).

In technologically dynamic markets, however, such entrenchment may be temporary, because innovation may alter the field altogether. *See* JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 81-90 (Harper Perennial 1976) (1942). Rapid technological change leads to markets in which "firms compete through innovation for temporary market dominance, from which they may be displaced by the next wave of product advancements." Shelanski & Sidak, at 11-12 (discussing Schumpeterian competition, which proceeds "sequentially over time rather than simultaneously across a market"). Microsoft argues that the operating system market is just such a market.

Whether or not Microsoft's characterization of the operating system market is correct does not appreciably alter our mission in assessing the alleged antitrust violations in the present case. As an initial matter, we note that there is no consensus among commentators on the question of whether, and to what extent, current monopolization doctrine should be amended to account for competition in technologically dynamic markets characterized by network effects. *Compare* Steven C. Salop & R. Craig Romaine, *Preserving Monopoly: Economic Analysis, Legal Standards, and Microsoft*, 7 GEO. MASON L. REV. 617, 654-55, 663-64 (1999) (arguing that exclusionary conduct in high-tech networked industries deserves heightened antitrust scrutiny in part because it may threaten to deter innovation), *with* Ronald A. Cass & Keith N. Hylton, *Preserving Competition: Economic Analysis, Legal Standards and Microsoft*, 8 GEO. MASON L. REV. 1, 36-39 (1999) (equivocating on the antitrust implications of network effects and noting that the presence of network externalities may actually encourage innovation by guaranteeing more durable monopolies to innovating winners). Indeed, there is some suggestion that the economic consequences of network

effects and technological dynamism act to offset one another, thereby making it difficult to formulate categorical antitrust rules absent a particularized analysis of a given market. *See* Shelanski & Sidak, at 6-7 ("High profit margins might appear to be the benign and necessary recovery of legitimate investment returns in a Schumpeterian framework, but they might represent exploitation of customer lock-in and monopoly power when viewed through the lens of network economics.... The issue is particularly complex because, in network industries characterized by rapid innovation, both forces may be operating and can be difficult to isolate.").

Moreover, it should be clear that Microsoft makes no claim that anticompetitive conduct should be assessed differently in technologically dynamic markets. It claims only that the measure of monopoly power should be different. For reasons fully discussed below, we reject Microsoft's monopoly power argument. *See infra* Section II.A.

With this backdrop in mind, we turn to the specific challenges raised in Microsoft's appeal.

II. MONOPOLIZATION

Section 2 of the Sherman Act makes it unlawful for a firm to "monopolize." 15 U.S.C. § 2. The offense of monopolization has two elements: "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966). The District Court applied this test and found that Microsoft possesses monopoly power in the market for Intel-compatible PC operating systems. Focusing primarily on Microsoft's efforts to suppress Netscape Navigator's threat to its operating system monopoly, the court also found that Microsoft maintained its power not through competition on the merits, but through unlawful means. Microsoft challenges both conclusions. We defer to the District Court's findings of fact, setting them aside only if clearly erroneous. FED R. CIV. P. 52(a). We review legal

questions *de novo*. *United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co.*, 81 F.3d 240, 244 (D.C. Cir. 1996).

We begin by considering whether Microsoft possesses monopoly power, *see infra* Section II.A, and finding that it does, we turn to the question whether it maintained this power through anticompetitive means. Agreeing with the District Court that the company behaved anticompetitively, *see infra* Section II.B, and that these actions contributed to the maintenance of its monopoly power, *see infra* Section II.C, we affirm the court's finding of liability for monopolization.

A. Monopoly Power

While merely possessing monopoly power is not itself an antitrust violation, *see Northeastern Tel. Co. v. AT & T*, 651 F.2d 76, 84-85 (2d Cir. 1981), it is a necessary element of a monopolization charge, *see Grinnell*, 384 U.S. at 570. The Supreme Court defines monopoly power as "the power to control prices or exclude competition." *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956). More precisely, a firm is a monopolist if it can profitably raise prices substantially above the competitive level. 2A PHILLIP E. AREEDA ET AL., ANTITRUST LAW ¶ 501, at 85 (1995); *cf. Ball Mem'l Hosp., Inc. v. Mut. Hosp. Ins., Inc.*, 784 F.2d 1325, 1335 (7th Cir. 1986) (defining market power as "the ability to cut back the market's total output and so raise price"). Where evidence indicates that a firm has in fact profitably done so, the existence of monopoly power is clear. *See Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995); *see also FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 460-61 (1986) (using direct proof to show market power in Sherman Act § 1 unreasonable restraint of trade action). Because such direct proof is only rarely available, courts more typically examine market structure in search of circumstantial evidence of monopoly power. 2A AREEDA ET AL., ANTITRUST LAW ¶ 531a, at 156; *see also, e.g., Grinnell*, 384 U.S. at 571. Under this structural approach, monopoly power may be inferred from a firm's possession of a dominant share of a relevant market that is protected by entry barriers. *See*

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Rebel Oil, 51 F.3d at 1434. "Entry barriers" are factors (such as certain regulatory requirements) that prevent new rivals from timely responding to an increase in price above the competitive level. *See S. Pac. Communications Co. v. AT & T*, 740 F.2d 980, 1001-02 (D.C. Cir. 1984).

The District Court considered these structural factors and concluded that Microsoft possesses monopoly power in a relevant market. Defining the market as Intel-compatible PC operating systems, the District Court found that Microsoft has a greater than 95% share. It also found the company's market position protected by a substantial entry barrier. *Conclusions of Law*, at 36.

Microsoft argues that the District Court incorrectly defined the relevant market. It also claims that there is no barrier to entry in that market. Alternatively, Microsoft argues that because the software industry is uniquely dynamic, direct proof, rather than circumstantial evidence, more appropriately indicates whether it possesses monopoly power. Rejecting each argument, we uphold the District Court's finding of monopoly power in its entirety.

1. Market Structure

a. *Market definition*

"Because the ability of consumers to turn to other suppliers restrains a firm from raising prices above the competitive level," *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 218 (D.C. Cir. 1986), the relevant market must include all products "reasonably interchangeable by consumers for the same purposes." *du Pont*, 351 U.S. at 395. In this case, the District Court defined the market as "the licensing of all Intel-compatible PC operating systems worldwide," finding that there are "currently no products—and ... there are not likely to be any in the near future—that a significant percentage of computer users worldwide could substitute for [these operating systems] without incurring substantial costs." *Conclusions of Law*, at 36. Calling this market definition "far too narrow," Appellant's Opening Br. at 84, Microsoft argues that the District Court improperly

excluded three types of products: non-Intel compatible operating systems (primarily Apple's Macintosh operating system, Mac OS), operating systems for non-PC devices (such as handheld computers and portal websites), and "middleware" products, which are not operating systems at all.

We begin with Mac OS. Microsoft's argument that Mac OS should have been included in the relevant market suffers from a flaw that infects many of the company's monopoly power claims: the company fails to challenge the District Court's factual findings, or to argue that these findings do not support the court's conclusions. The District Court found that consumers would not switch from Windows to Mac OS in response to a substantial price increase because of the costs of acquiring the new hardware needed to run Mac OS (an Apple computer and peripherals) and compatible software applications, as well as because of the effort involved in learning the new system and transferring files to its format. *Findings of Fact* ¶ 20. The court also found the Apple system less appealing to consumers because it costs considerably more and supports fewer applications. *Id.* ¶ 21. Microsoft responds only by saying: "the district court's market definition is so narrow that it excludes Apple's Mac OS, which has competed with Windows for years, simply because the Mac OS runs on a different microprocessor." Appellant's Opening Br. at 84. This general, conclusory statement falls far short of what is required to challenge findings as clearly erroneous. *Pendleton v. Rumsfeld*, 628 F.2d 102, 106 (D.C. Cir. 1980); *see also Terry v. Reno*, 101 F.3d 1412, 1415 (D.C. Cir. 1996) (holding that claims made but not argued in a brief are waived). Microsoft neither points to evidence contradicting the District Court's findings nor alleges that supporting record evidence is insufficient. And since Microsoft does not argue that even if we accept these findings, they do not support the District Court's conclusion, we have no basis for upsetting the court's decision to exclude Mac OS from the relevant market.

Microsoft's challenge to the District Court's exclusion of non-PC based competitors, such as information appliances (handheld devices, etc.) and portal websites that host server-based software applications, suffers from the same defect:

the company fails to challenge the District Court's key factual findings. In particular, the District Court found that because information appliances fall far short of performing all of the functions of a PC, most consumers will buy them only as a supplement to their PCs. *Findings of Fact* ¶ 23. The District Court also found that portal websites do not presently host enough applications to induce consumers to switch, nor are they likely to do so in the near future. *Id.* ¶ 27. Again, because Microsoft does not argue that the District Court's findings do not support its conclusion that information appliances and portal websites are outside the relevant market, we adhere to that conclusion.

This brings us to Microsoft's main challenge to the District Court's market definition: the exclusion of middleware. Because of the importance of middleware to this case, we pause to explain what it is and how it relates to the issue before us.

Operating systems perform many functions, including allocating computer memory and controlling peripherals such as printers and keyboards. *See* Direct Testimony of Frederick Warren-Boulton ¶ 20, *reprinted in* 5 J.A. at 3172-73. Operating systems also function as platforms for software applications. They do this by "exposing"—*i.e.*, making available to software developers—routines or protocols that perform certain widely-used functions. These are known as Application Programming Interfaces, or "APIs." *See* Direct Testimony of James Barksdale ¶ 70, *reprinted in* 5 J.A. at 2895-96. For example, Windows contains an API that enables users to draw a box on the screen. *See* Direct Testimony of Michael T. Devlin ¶ 12, *reprinted in* 5 J.A. at 3525. Software developers wishing to include that function in an application need not duplicate it in their own code. Instead, they can "call"—*i.e.*, use—the Windows API. *See* Direct Testimony of James Barksdale ¶ ¶ 70-71, *reprinted in* 5 J.A. at 2895-97. Windows contains thousands of APIs, controlling everything from data storage to font display. *See* Direct Testimony of Michael Devlin ¶ 12, *reprinted in* 5 J.A. at 3525.

Every operating system has different APIs. Accordingly, a developer who writes an application for one operating

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system and wishes to sell the application to users of another must modify, or "port," the application to the second operating system. *Findings of Fact* ¶ 4. This process is both time-consuming and expensive. *Id.* ¶ 30.

"Middleware" refers to software products that expose their own APIs. *Id.* ¶ 28; Direct Testimony of Paul Maritz ¶ ¶ 234-36, *reprinted in* 6 J.A. at 3727-29. Because of this, a middleware product written for Windows could take over some or all of Windows's valuable platform functions—that is, developers might begin to rely upon APIs exposed by the middleware for basic routines rather than relying upon the API set included in Windows. If middleware were written for multiple operating systems, its impact could be even greater. The more developers could rely upon APIs exposed by such middleware, the less expensive porting to different operating systems would be. Ultimately, if developers could write applications relying exclusively on APIs exposed by middleware, their applications would run on any operating system on which the middleware was also present. *See* Direct Testimony of Avadis Tevanian, Jr. ¶ 45, *reprinted in* 5 J.A. at 3113. Netscape Navigator and Java—both at issue in this case—are middleware products written for multiple operating systems. *Findings of Fact* ¶ 28.

Microsoft argues that, because middleware could usurp the operating system's platform function and might eventually take over other operating system functions (for instance, by controlling peripherals), the District Court erred in excluding Navigator and Java from the relevant market. The District Court found, however, that neither Navigator, Java, nor any other middleware product could now, or would soon, expose enough APIs to serve as a platform for popular applications, much less take over all operating system functions. *Id.* ¶ ¶ 28-29. Again, Microsoft fails to challenge these findings, instead simply asserting middleware's "potential" as a competitor. Appellant's Opening Br. at 86. The test of reasonable interchangeability, however, required the District Court to consider only substitutes that constrain pricing in the reasonably foreseeable future, and only products that can enter the market in a relatively short time can perform this function. *See Rothery*, 792 F.2d at 218 ("Because the ability

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of consumers to turn to other suppliers restrains a firm from raising prices above the competitive level, the definition of the 'relevant market' rests on a determination of available substitutes."); *see also Findings of Fact* ¶ 29 ("[I]t would take several years for middleware ... to evolve" into a product that can constrain operating system pricing.). Whatever middleware's ultimate potential, the District Court found that consumers could not now abandon their operating systems and switch to middleware in response to a sustained price for Windows above the competative level. *Findings of Fact* ¶ ¶ 28, 29. Nor is middleware likely to overtake the operating system as the primary platform for software development any time in the near future. *Id.*

Alternatively, Microsoft argues that the District Court should not have excluded middleware from the relevant market because the primary focus of the plaintiffs' § 2 charge is on Microsoft's attempts to suppress middleware's threat to its operating system monopoly. According to Microsoft, it is "contradict[ory]," 2/26/2001 Ct. Appeals Tr. at 20, to define the relevant market to exclude the "very competitive threats that gave rise" to the action. Appellant's Opening Br. at 84. The purported contradiction lies between plaintiffs' § 2 theory, under which Microsoft preserved its monopoly against middleware technologies that threatened to become viable substitutes for Windows, and its theory of the relevant market, under which middleware is not presently a viable substitute for Windows. Because middleware's threat is only nascent, however, no contradiction exists. Nothing in § 2 of the Sherman Act limits its prohibition to actions taken against threats that are already well-developed enough to serve as present substitutes. *See infra* Section II.C. Because market definition is meant to identify products "reasonably interchangeable by consumers," *du Pont*, 351 U.S. at 395, and because middleware is not now interchangeable with Windows, the District Court had good reason for excluding middleware from the relevant market.

b. *Market power*

Having thus properly defined the relevant market, the District Court found that Windows accounts for a greater than 95% share. *Findings of Fact* ¶ 35. The court also

found that even if Mac OS were included, Microsoft's share would exceed 80%. *Id.* Microsoft challenges neither finding, nor does it argue that such a market share is not predominant. *Cf. Grinnell*, 384 U.S. at 571 (87% is predominant); *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 481 (1992) (80%); *du Pont*, 351 U.S. at 379, 391 (75%).

Instead, Microsoft claims that even a predominant market share does not by itself indicate monopoly power. Although the "existence of [monopoly] power ordinarily may be inferred from the predominant share of the market," *Grinnell*, 384 U.S. at 571, we agree with Microsoft that because of the possibility of competition from new entrants, *see Ball Mem'l Hosp., Inc.*, 784 F.2d at 1336, looking to current market share alone can be "misleading." *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d 919, 924 (9th Cir. 1980); *see also Ball Mem'l Hosp., Inc.*, 784 F.2d at 1336 ("Market share reflects current sales, but today's sales do not always indicate power over sales and price tomorrow.") In this case, however, the District Court was not misled. Considering the possibility of new rivals, the court focused not only on Microsoft's present market share, but also on the structural barrier that protects the company's future position. *Conclusions of Law*, at 36. That barrier—the "applications barrier to entry"—stems from two characteristics of the software market: (1) most consumers prefer operating systems for which a large number of applications have already been written; and (2) most developers prefer to write for operating systems that already have a substantial consumer base. *See Findings of Fact* ¶ ¶ 30, 36. This "chicken-and-egg" situation ensures that applications will continue to be written for the already dominant Windows, which in turn ensures that consumers will continue to prefer it over other operating systems. *Id.*

Challenging the existence of the applications barrier to entry, Microsoft observes that software developers do write applications for other operating systems, pointing out that at its peak IBM's OS/2 supported approximately 2,500 applications. *Id.* ¶ 46. This misses the point. That some developers write applications for other operating systems is not at all inconsistent with the finding that the applications barrier to entry discourages many from writing for these less popular platforms. Indeed, the District Court found that IBM's

difficulty in attracting a larger number of software developers to write for its platform seriously impeded OS/2's success. *Id.* ¶ 46.

Microsoft does not dispute that Windows supports many more applications than any other operating system. It argues instead that "[i]t defies common sense" to suggest that an operating system must support as many applications as Windows does (more than 70,000, according to the District Court, *id.* ¶ 40) to be competitive. Appellant's Opening Br. at 96. Consumers, Microsoft points out, can only use a very small percentage of these applications. *Id.* As the District Court explained, however, the applications barrier to entry gives consumers reason to prefer the dominant operating system even if they have no need to use all applications written for it:

> The consumer wants an operating system that runs not only types of applications that he knows he will want to use, but also those types in which he might develop an interest later. Also, the consumer knows that if he chooses an operating system with enough demand to support multiple applications in each product category, he will be less likely to find himself straitened later by having to use an application whose features disappoint him. Finally, the average user knows that, generally speaking, applications improve through successive versions. He thus wants an operating system for which successive generations of his favorite applications will be released—promptly at that. The fact that a vastly larger number of applications are written for Windows than for other PC operating systems attracts consumers to Windows, because it reassures them that their interests will be met as long as they use Microsoft's product.

Findings of Fact ¶ 37. Thus, despite the limited success of its rivals, Microsoft benefits from the applications barrier to entry.

Of course, were middleware to succeed, it would erode the applications barrier to entry. Because applications written for multiple operating systems could run on any operating

system on which the middleware product was present with little, if any, porting, the operating system market would become competitive. *Id.* ¶ ¶ 29, 72. But as the District Court found, middleware will not expose a sufficient number of APIs to erode the applications barrier to entry in the foreseeable future. *See id.* ¶ ¶ 28-29.

Microsoft next argues that the applications barrier to entry is not an entry barrier at all, but a reflection of Windows' popularity. It is certainly true that Windows may have gained its initial dominance in the operating system market competitively—through superior foresight or quality. But this case is not about Microsoft's initial acquisition of monopoly power. It is about Microsoft's efforts to maintain this position through means other than competition on the merits. Because the applications barrier to entry protects a dominant operating system irrespective of quality, it gives Microsoft power to stave off even superior new rivals. The barrier is thus a characteristic of the operating system market, not of Microsoft's popularity, or, as asserted by a Microsoft witness, the company's efficiency. *See* Direct Testimony of Richard Schmalensee ¶ 115, *reprinted in* 25 J.A. at 16153-14.

Finally, Microsoft argues that the District Court should not have considered the applications barrier to entry because it reflects not a cost borne disproportionately by new entrants, but one borne by all participants in the operating system market. According to Microsoft, it had to make major investments to convince software developers to write for its new operating system, and it continues to "evangelize" the Windows platform today. Whether costs borne by all market participants should be considered entry barriers is the subject of much debate. *Compare* 2A AREEDA & HOVENKAMP, ANTITRUST LAW § 420c, at 61 (arguing that these costs are entry barriers), *and* JOE S. BAIN, BARRIERS TO NEW COMPETITION: THEIR CHARACTER AND CONSEQUENCES IN MANUFACTURING INDUSTRIES 6-7 (1956) (considering these costs entry barriers), *with L.A. Land Co. v. Brunswick Corp.*, 6 F.3d 1422, 1428 (9th Cir. 1993) (evaluating cost based on "[t]he disadvantage of new entrants as compared to incumbents"), *and* GEORGE STIGLER, THE ORGANIZATION OF INDUSTRY 67 (1968) (excluding

these costs). We need not resolve this issue, however, for even under the more narrow definition it is clear that there are barriers. When Microsoft entered the operating system market with MS-DOS and the first version of Windows, it did not confront a dominant rival operating system with as massive an installed base and as vast an existing array of applications as the Windows operating systems have since enjoyed. *Findings of Fact* ¶ ¶ 6, 7, 43. Moreover, when Microsoft introduced Windows 95 and 98, it was able to bypass the applications barrier to entry that protected the incumbent Windows by including APIs from the earlier version in the new operating systems. *See id.* ¶ 44. This made porting existing Windows applications to the new version of Windows much less costly than porting them to the operating systems of other entrants who could not freely include APIs from the incumbent Windows with their own.

2. Direct Proof

Having sustained the District Court's conclusion that circumstantial evidence proves that Microsoft possesses monopoly power, we turn to Microsoft's alternative argument that it does not behave like a monopolist. Claiming that software competition is uniquely "dynamic," Appellant's Opening Br. at 84 (quoting *Findings of Fact* ¶ 59), the company suggests a new rule: that monopoly power in the software industry should be proven directly, that is, by examining a company's actual behavior to determine if it reveals the existence of monopoly power. According to Microsoft, not only does no such proof of its power exist, but record evidence demonstrates the absence of monopoly power. The company claims that it invests heavily in research and development, *id.* at 88-89 (citing Direct Testimony of Paul Maritz ¶ 155, *reprinted in* 6 J.A. at 3698 (testifying that Microsoft invests approximately 17% of its revenue in R&D)), and charges a low price for Windows (a small percentage of the price of an Intel-compatible PC system and less than the price of its rivals, *id.* at 90 (citing *Findings of Fact* ¶ ¶ 19, 21, 46)).

Microsoft's argument fails because, even assuming that the software market is uniquely dynamic in the long term, the District Court correctly applied the structural approach to determine if the company faces competition in the short term.

Structural market power analyses are meant to determine whether potential substitutes constrain a firm's ability to raise prices above the competitive level; only threats that are likely to materialize in the relatively near future perform this function to any significant degree. *Rothery*, 792 F.2d at 218 (quoting LAWRENCE SULLIVAN, ANTITRUST § 12, at 41 (1977)) (only substitutes that can enter the market "promptly" should be considered). The District Court expressly considered and rejected Microsoft's claims that innovations such as handheld devices and portal websites would soon expand the relevant market beyond Intel-compatible PC operating systems. Because the company does not challenge these findings, we have no reason to believe that prompt substitutes are available. The structural approach, as applied by the District Court, is thus capable of fulfilling its purpose even in a changing market. Microsoft cites no case, nor are we aware of one, requiring direct evidence to show monopoly power in any market. We decline to adopt such a rule now.

Even if we were to require direct proof, moreover, Microsoft's behavior may well be sufficient to show the existence of monopoly power. Certainly, none of the conduct Microsoft points to—its investment in R&D and the relatively low price of Windows—is inconsistent with the possession of such power. *Conclusions of Law*, at 37. The R&D expenditures Microsoft points to are not simply for Windows, but for its entire company, which most likely does not possess a monopoly for all of its products. Moreover, because innovation can increase an already dominant market share and further delay the emergence of competition, even monopolists have reason to invest in R&D. *Findings of Fact* ¶ 61. Microsoft's pricing behavior is similarly equivocal. The company claims only that it never charged the short-term profit-maximizing price for Windows. Faced with conflicting expert testimony, the District Court found that it could not accurately determine what this price would be. *Id.* ¶ 65. In any event, the court found, a price lower than the short-term profit-maximizing price is not inconsistent with possession or improper use of monopoly power. *Id.* ¶ ¶ 65-66. *Cf. Berkey Photo, Inc. v.*

Eastman Kodak Co., 603 F.2d 263, 274 (2d Cir. 1979) ("[I]f monopoly power has been acquired or maintained through improper means, the fact that the power has not been used to extract [a monopoly price] provides no succor to the monopolist."). Microsoft never claims that it did not charge the long-term monopoly price. Micosoft does argue that the price of Windows is a fraction of the price of an Intel-compatible PC system and lower than that of rival operating systems, but these facts are not inconsistent with the District Court's finding that Microsoft has monopoly power. *See Findings of Fact* ¶ 36 ("Intel-compatible PC operating systems other than Windows [would not] attract[ ] significant demand ... even if Micosoft held its prices substantially above the competitive level.").

More telling, the District Court found that some aspects of Microsoft's behavior are difficult to explain unless Windows is a monopoly product. For instance, according to the District Court, the company set the price of Windows without considering rivals' prices, *Findings of Fact* ¶ 62, something a firm without a monopoly would have been unable to do. The District Court also found that Microsoft's pattern of exclusionary conduct could only be rational "if the firm knew that it possessed monopoly power." *Conclusions of Law*, at 37. It is to that conduct that we now turn.

B. Anticompetitive Conduct

As discussed above, having a monopoly does not by itself violate § 2. A firm violates § 2 only when it acquires or maintains, or attempts to acquire or maintain, a monopoly by engaging in exclusionary conduct "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *Grinnell*, 384 U.S. at 571; *see also United States v. Aluminum Co. of Am.*, 148 F.2d 416, 430 (2d Cir. 1945) (Hand, J.) ("The successful competitor, having been urged to compete, must not be turned upon when he wins.").

In this case, after concluding that Microsoft had monopoly power, the District Court held that Microsoft had violated § 2 by engaging in a variety of exclusionary acts (not including predatory pricing), to maintain its monopoly by preventing the effective distribution and use of products that might threaten that monopoly. Specifically, the District Court held Microsoft liable for: (1) the way in which it integrated IE into

Windows; (2) its various dealings with Original Equipment Manufacturers ("OEMs"), Internet Access Providers ("IAPs"), Internet Content Providers ("ICPs"), Independent Software Vendors ("ISVs"), and Apple Computer; (3) its efforts to contain and to subvert Java technologies; and (4) its course of conduct as a whole. Upon appeal, Microsoft argues that it did not engage in any exclusionary conduct.

Whether any particular act of a monopolist is exclusionary, rather than merely a form of vigorous competition, can be difficult to discern: the means of illicit exclusion, like the means of legitimate competition, are myriad. The challenge for an antitrust court lies in stating a general rule for distinguishing between exclusionary acts, which reduce social welfare, and competitive acts, which increase it.

From a century of case law on monopolization under § 2, however, several principles do emerge. First, to be condemned as exclusionary, a monopolist's act must have an "anticompetitive effect." That is, it must harm the competitive *process* and thereby harm consumers. In contrast, harm to one or more *competitors* will not suffice. "The [Sherman Act] directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993); *see also Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 225 (1993) ("Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws....").

Second, the plaintiff, on whom the burden of proof of course rests, *see, e.g., Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 763 (1984); *see also United States v. Arnold, Schwinn & Co.*, 388 U.S. 365, 374 n.5 (1967), *overruled on other grounds*, *Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977), must demonstrate that the monopolist's conduct indeed has the requisite anticompetitive effect. *See generally Brooke Group*, 509 U.S. at 225-26. In a case brought by a private plaintiff, the plaintiff must show that its injury is "of 'the type that the statute was intended to

forestall,' " *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 487-88 (1977) (quoting *Wyandotte Transp. v. United States*, 389 U.S. 191, 202 (1967)); no less in a case brought by the Government, it must demonstrate that the monopolist's conduct harmed competition, not just a competitor.

Third, if a plaintiff successfully establishes a *prima facie* case under § 2 by demonstrating anticompetitive effect, then the monopolist may proffer a "procompetitive justification" for its conduct. *See Eastman Kodak,* 504 U.S. at 483. If the monopolist asserts a procompetitive justification—a nonpretextual claim that its conduct is indeed a form of competition on the merits because it involves, for example, greater efficiency or enhanced consumer appeal—then the burden shifts back to the plaintiff to rebut that claim. *Cf. Capital Imaging Assocs., P.C. v. Mohawk Valley Med. Assocs., Inc.*, 996 F.2d 537, 543 (2d Cir. 1993).

Fourth, if the monopolist's procompetitive justification stands unrebutted, then the plaintiff must demonstrate that the anticompetitive harm of the conduct outweighs the procompetitive benefit. In cases arising under § 1 of the Sherman Act, the courts routinely apply a similar balancing approach under the rubric of the "rule of reason." The source of the rule of reason is *Standard Oil Co. v. United States*, 221 U.S. 1 (1911), in which the Supreme Court used that term to describe the proper inquiry under both sections of the Act. *See id.* at 61-62 ("[W]hen the second section [of the Sherman Act] is thus harmonized with ... the first, it becomes obvious that the criteria to be resorted to in any given case for the purpose of ascertaining whether violations of the section have been committed, is the rule of reason guided by the established law...."). As the Fifth Circuit more recently explained, "[i]t is clear ... that the analysis under section 2 is similar to that under section 1 regardless whether the rule of reason label is applied...." *Mid-Texas Communications Sys., Inc. v. AT & T*, 615 F.2d 1372, 1389 n.13 (5th Cir. 1980) (citing *Byars v. Bluff City News Co.*, 609 F.2d 843, 860 (6th Cir. 1979)); *see also Cal. Computer Prods., Inc. v. IBM Corp.*, 613 F.2d 727, 737 (9th Cir. 1979).

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Finally, in considering whether the monopolist's conduct on balance harms competition and is therefore condemned as exclusionary for purposes of § 2, our focus is upon the effect of that conduct, not upon the intent behind it. Evidence of the intent behind the conduct of a monopolist is relevant only to the extent it helps us understand the likely effect of the monopolist's conduct. *See, e.g., Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918) ("knowledge of intent may help the court to interpret facts and to predict consequences"); *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 603 (1985).

With these principles in mind, we now consider Microsoft's objections to the District Court's holding that Microsoft violated § 2 of the Sherman Act in a variety of ways.

1. Licenses Issued to Original Equipment Manufacturers

The District Court condemned a number of provisions in Microsoft's agreements licensing Windows to OEMs, because it found that Microsoft's imposition of those provisions (like many of Microsoft's other actions at issue in this case) serves to reduce usage share of Netscape's browser and, hence, protect Microsoft's operating system monopoly. The reason market share in the browser market affects market power in the operating system market is complex, and warrants some explanation.

Browser usage share is important because, as we explained in Section II.A above, a browser (or any middleware product, for that matter) must have a critical mass of users in order to attract software developers to write applications relying upon the APIs it exposes, and away from the APIs exposed by Windows. Applications written to a particular browser's APIs, however, would run on any computer with that browser, regardless of the underlying operating system. "The overwhelming majority of consumers will only use a PC operating system for which there already exists a large and varied set of ... applications, and for which it seems relatively certain that new types of applications and new versions of existing applications will continue to be marketed...."

Findings of Fact ¶ 30. If a consumer could have access to the applications he desired—regardless of the operating system he uses—simply by installing a particular browser on his computer, then he would no longer feel compelled to select Windows in order to have access to those applications; he could select an operating system other than Windows based solely upon its quality and price. In other words, the market for operating systems would be competitive.

Therefore, Microsoft's efforts to gain market share in one market (browsers) served to meet the threat to Microsoft's monopoly in another market (operating systems) by keeping rival browsers from gaining the critical mass of users necessary to attract developer attention away from Windows as the platform for software development. Plaintiffs also argue that Microsoft's actions injured competition in the browser market—an argument we will examine below in relation to their specific claims that Microsoft attempted to monopolize the browser market and unlawfully tied its browser to its operating system so as to foreclose competition in the browser market. In evaluating the § 2 monopoly maintenance claim, however, our immediate concern is with the anticompetitive effect of Microsoft's conduct in preserving its monopoly in the operating system market.

In evaluating the restrictions in Microsoft's agreements licensing Windows to OEMs, we first consider whether plaintiffs have made out a *prima facie* case by demonstrating that the restrictions have an anticompetitive effect. In the next subsection, we conclude that plaintiffs have met this burden as to all the restrictions. We then consider Microsoft's proffered justifications for the restrictions and, for the most part, hold those justifications insufficient.

a. *Anticompetitive effect of the license restrictions*

The restrictions Microsoft places upon Original Equipment Manufacturers are of particular importance in determining browser usage share because having an OEM pre-install a browser on a computer is one of the two most cost-effective methods by far of distributing browsing software. (The other is bundling the browser with internet access software distrib-

uted by an IAP.) *Findings of Fact* ¶ 145. The District Court found that the restrictions Microsoft imposed in licensing Windows to OEMs prevented many OEMs from distributing browsers other than IE. *Conclusions of Law*, at 39-40. In particular, the District Court condemned the license provisions prohibiting the OEMs from: (1) removing any desktop icons, folders, or "Start" menu entries; (2) altering the initial boot sequence; and (3) otherwise altering the appearance of the Windows desktop. *Findings of Fact* ¶ 213.

The District Court concluded that the first license restriction—the prohibition upon the removal of desktop icons, folders, and Start menu entries—thwarts the distribution of a rival browser by preventing OEMs from removing visible means of user access to IE. *Id.* ¶ 203. The OEMs cannot practically install a second browser in addition to IE, the court found, in part because "[p]re-installing more than one product in a given category ... can significantly increase an OEM's support costs, for the redundancy can lead to confusion among novice users." *Id.* ¶ 159; *see also id.* ¶ 217. That is, a certain number of novice computer users, seeing two browser icons, will wonder which to use when and will call the OEM's support line. Support calls are extremely expensive and, in the highly competitive original equipment market, firms have a strong incentive to minimize costs. *Id.* ¶ 210.

Microsoft denies the "consumer confusion" story; it observes that some OEMs do install multiple browsers and that executives from two OEMs that do so denied any knowledge of consumers being confused by multiple icons. *See* 11/5/98 pm Tr. at 41-42 (trial testimony of Avadis Tevanian of Apple), *reprinted in* 9 J.A. at 5493-94; 11/18/99 am Tr. at 69 (trial testimony of John Soyring of IBM), *reprinted in* 10 J.A. at 6222.

Other testimony, however, supports the District Court's finding that fear of such confusion deters many OEMs from pre-installing multiple browsers. *See, e.g.*, 01/13/99 pm Tr. at 614-15 (deposition of Microsoft's Gayle McClain played to the court) (explaining that redundancy of icons may be confusing to end users); 02/18/99 pm Tr. at 46-47 (trial testimony of

John Rose of Compaq), *reprinted in* 21 J.A. at 14237-38 (same); 11/17/98 am Tr. at 68 (deposition of John Kies of Packard Bell-NEC played to the court), *reprinted in* 9 J.A. at 6016 (same); 11/17/98 am Tr. at 67-72 (trial testimony of Glenn Weadock), *reprinted in* 9 J.A. at 6015-20 (same). Most telling, in presentations to OEMs, Microsoft itself represented that having only one icon in a particular category would be "less confusing for endusers." *See* Government's Trial Exhibit ("GX") 319 at MS98 0109453. Accordingly, we reject Microsoft's argument that we should vacate the District Court's Finding of Fact 159 as it relates to consumer confusion.

As noted above, the OEM channel is one of the two primary channels for distribution of browsers. By preventing OEMs from removing visible means of user access to IE, the license restriction prevents many OEMs from pre-installing a rival browser and, therefore, protects Microsoft's monopoly from the competition that middleware might otherwise present. Therefore, we conclude that the license restriction at issue is anticompetitive. We defer for the moment the question whether that anticompetitive effect is outweighed by Microsoft's proffered justifications.

The second license provision at issue prohibits OEMs from modifying the initial boot sequence—the process that occurs the first time a consumer turns on the computer. Prior to the imposition of that restriction, "among the programs that many OEMs inserted into the boot sequence were Internet sign-up procedures that encouraged users to choose from a list of IAPs assembled by the OEM." *Findings of Fact* ¶ 210. Microsoft's prohibition on any alteration of the boot sequence thus prevents OEMs from using that process to promote the services of IAPs, many of which—at least at the time Microsoft imposed the restriction—used Navigator rather than IE in their internet access software. *See id.* ¶ 212; GX 295, *reprinted in* 12 J.A. at 14533 (Upon learning of OEM practices including boot sequence modification, Microsoft's Chairman, Bill Gates, wrote: "Apparently a lot of OEMs are bundling non-Microsoft browsers and coming up with offerings together with [IAPs] that get displayed on their ma-

chines in a FAR more prominent way than MSN or our Internet browser."). Microsoft does not deny that the prohibition on modifying the boot sequence has the effect of decreasing competition against IE by preventing OEMs from promoting rivals' browsers. Because this prohibition has a substantial effect in protecting Microsoft's market power, and does so through a means other than competition on the merits, it is anticompetitive. Again the question whether the provision is nonetheless justified awaits later treatment.

Finally, Microsoft imposes several additional provisions that, like the prohibition on removal of icons, prevent OEMs from making various alterations to the desktop: Microsoft prohibits OEMs from causing any user interface other than the Windows desktop to launch automatically, from adding icons or folders different in size or shape from those supplied by Microsoft, and from using the "Active Desktop" feature to promote third-party brands. These restrictions impose significant costs upon the OEMs; prior to Microsoft's prohibiting the practice, many OEMs would change the appearance of the desktop in ways they found beneficial. *See, e.g., Findings of Fact* ¶ 214; GX 309, *reprinted in* 22 J.A. at 14551 (March 1997 letter from Hewlett-Packard to Microsoft: "We are responsible for the cost of technical support of our customers, including the 33% of calls we get related to the lack of quality or confusion generated by your product.... We must have more ability to decide how our system is presented to our end users. If we had a choice of another supplier, based on your actions in this area, I assure you [that you] would not be our supplier of choice.").

The dissatisfaction of the OEM customers does not, of course, mean the restrictions are anticompetitive. The anticompetitive effect of the license restrictions is, as Microsoft itself recognizes, that OEMs are not able to promote rival browsers, which keeps developers focused upon the APIs in Windows. *Findings of Fact* ¶ 212 (quoting Microsoft's Gates as writing, "[w]inning Internet browser share is a very very important goal for us," and emphasizing the need to prevent OEMs from promoting both rival browsers and IAPs that might use rivals' browsers); *see also* 01/13/99 Tr. at 305-06

(excerpts from deposition of James Von Holle of Gateway) (prior to restriction Gateway had pre-installed non-IE internet registration icon that was larger than other desktop icons). This kind of promotion is not a zero-sum game; but for the restrictions in their licenses to use Windows, OEMs could promote multiple IAPs and browsers. By preventing the OEMs from doing so, this type of license restriction, like the first two restrictions, is anticompetitive: Microsoft reduced rival browsers' usage share not by improving its own product but, rather, by preventing OEMs from taking actions that could increase rivals' share of usage.

b. *Microsoft's justifications for the license restrictions*

Microsoft argues that the license restrictions are legally justified because, in imposing them, Microsoft is simply "exercising its rights as the holder of valid copyrights." Appellant's Opening Br. at 102. Microsoft also argues that the licenses "do not unduly restrict the opportunities of Netscape to distribute Navigator in any event." *Id.*

Microsoft's primary copyright argument borders upon the frivolous. The company claims an absolute and unfettered right to use its intellectual property as it wishes: "[I]f intellectual property rights have been lawfully acquired," it says, then "their subsequent exercise cannot give rise to antitrust liability." Appellant's Opening Br. at 105. That is no more correct than the proposition that use of one's personal property, such as a baseball bat, cannot give rise to tort liability. As the Federal Circuit succinctly stated: "Intellectual property rights do not confer a privilege to violate the antitrust laws." *In re Indep. Serv. Orgs. Antitrust Litig.*, 203 F.3d 1322, 1325 (Fed. Cir. 2000).

Although Microsoft never overtly retreats from its bold and incorrect position on the law, it also makes two arguments to the effect that it is not exercising its copyright in an unreasonable manner, despite the anticompetitive consequences of the license restrictions discussed above. In the first variation upon its unqualified copyright defense, Microsoft cites two cases indicating that a copyright holder may limit a licensee's

ability to engage in significant and deleterious alterations of a copyrighted work. *See Gilliam v. ABC*, 538 F.2d 14, 21 (2d Cir. 1976); *WGN Cont'l Broad. Co. v. United Video, Inc.*, 693 F.2d 622, 625 (7th Cir. 1982). The relevance of those two cases for the present one is limited, however, both because those cases involved substantial alterations of a copyrighted work, *see Gilliam*, 538 F.2d at 18, and because in neither case was there any claim that the copyright holder was, in asserting its rights, violating the antitrust laws, *see WGN Cont'l Broad.*, 693 F.2d at 626; *see also Cmty. for Creative Non-Violence v. Reid*, 846 F.2d 1485, 1498 (D.C. Cir. 1988) (noting, again in a context free of any antitrust concern, that "an author [ ] may have rights against" a licensee that "excessively mutilated or altered" the copyrighted work).

The only license restriction Microsoft seriously defends as necessary to prevent a "substantial alteration" of its copyrighted work is the prohibition on OEMs automatically launching a substitute user interface upon completion of the boot process. *See Findings of Fact* ¶ 211 ("[A] few large OEMs developed programs that ran automatically at the conclusion of a new PC system's first boot sequence. These programs replaced the Windows desktop either with a user interface designed by the OEM or with Navigator's user interface."). We agree that a shell that automatically prevents the Windows desktop from ever being seen by the user is a drastic alteration of Microsoft's copyrighted work, and outweighs the marginal anticompetitive effect of prohibiting the OEMs from substituting a different interface automatically upon completion of the initial boot process. We therefore hold that this particular restriction is not an exclusionary practice that violates § 2 of the Sherman Act.

In a second variation upon its copyright defense, Microsoft argues that the license restrictions merely prevent OEMs from taking actions that would reduce substantially the value of Microsoft's copyrighted work: that is, Microsoft claims each license restriction in question is necessary to prevent OEMs from so altering Windows as to undermine "the principal value of Windows as a stable and consistent platform that supports a broad range of applications and that is familiar to

users." Appellant's Opening Br. at 102. Microsoft, however, never substantiates this claim, and, because an OEM's altering the appearance of the desktop or promoting programs in the boot sequence does not affect the code already in the product, the practice does not self-evidently affect either the "stability" or the "consistency" of the platform. *See Conclusions of Law*, at 41; *Findings of Fact* ¶ 227. Microsoft cites only one item of evidence in support of its claim that the OEMs' alterations were decreasing the value of Windows. Defendant's Trial Exhibit ("DX") 2395 at MSV0009378A, *reprinted in* 19 J.A. at 12575. That document, prepared by Microsoft itself, states: "there are quality issues created by OEMs who are too liberal with the pre-install process," referring to the OEMs' installation of Windows and additional software on their PCs, which the document says may result in "user concerns and confusion." To the extent the OEMs' modifications cause consumer confusion, of course, the OEMs bear the additional support costs. *See Findings of Fact* ¶ 159. Therefore, we conclude Microsoft has not shown that the OEMs' liberality reduces the value of Windows except in the sense that their promotion of rival browsers undermines Microsoft's monopoly—and that is not a permissible justification for the license restrictions.

Apart from copyright, Microsoft raises one other defense of the OEM license agreements: It argues that, despite the restrictions in the OEM license, Netscape is not completely blocked from distributing its product. That claim is insufficient to shield Microsoft from liability for those restrictions because, although Microsoft did not bar its rivals from all means of distribution, it did bar them from the cost-efficient ones.

In sum, we hold that with the exception of the one restriction prohibiting automatically launched alternative interfaces, all the OEM license restrictions at issue represent uses of Microsoft's market power to protect its monopoly, unredeemed by any legitimate justification. The restrictions therefore violate § 2 of the Sherman Act.

2. Integration of IE and Windows

Although Microsoft's license restrictions have a significant effect in closing rival browsers out of one of the two primary channels of distribution, the District Court found that "Microsoft's executives believed ... its contractual restrictions placed on OEMs would not be sufficient in themselves to reverse the direction of Navigator's usage share. Consequently, in late 1995 or early 1996, Microsoft set out to bind [IE] more tightly to Windows 95 as a technical matter." *Findings of Fact* ¶ 160.

Technologically binding IE to Windows, the District Court found, both prevented OEMs from pre-installing other browsers and deterred consumers from using them. In particular, having the IE software code as an irremovable part of Windows meant that pre-installing a second browser would "increase an OEM's product testing costs," because an OEM must test and train its support staff to answer calls related to every software product preinstalled on the machine; moreover, pre-installing a browser in addition to IE would to many OEMs be "a questionable use of the scarce and valuable space on a PC's hard drive." *Id.* ¶ 159.

Although the District Court, in its Conclusions of Law, broadly condemned Microsoft's decision to bind "Internet Explorer to Windows with ... technological shackles," *Conclusions of Law*, at 39, its findings of fact in support of that conclusion center upon three specific actions Microsoft took to weld IE to Windows: excluding IE from the "Add/Remove Programs" utility; designing Windows so as in certain circumstances to override the user's choice of a default browser other than IE; and commingling code related to browsing and other code in the same files, so that any attempt to delete the files containing IE would, at the same time, cripple the operating system. As with the license restrictions, we consider first whether the suspect actions had an anticompetitive effect, and then whether Microsoft has provided a procompetitive justification for them.

a. *Anticompetitive effect of integration*

As a general rule, courts are properly very skeptical about claims that competition has been harmed by a dominant

firm's product design changes. *See, e.g., Foremost Pro Color, Inc. v. Eastman Kodak Co.*, 703 F.2d 534, 544-45 (9th Cir. 1983). In a competitive market, firms routinely innovate in the hope of appealing to consumers, sometimes in the process making their products incompatible with those of rivals; the imposition of liability when a monopolist does the same thing will inevitably deter a certain amount of innovation. This is all the more true in a market, such as this one, in which the product itself is rapidly changing. *See Findings of Fact* ¶ 59. Judicial deference to product innovation, however, does not mean that a monopolist's product design decisions are per se lawful. *See Foremost Pro Color*, 703 F.2d at 545; *see also Cal. Computer Prods.*, 613 F.2d at 739, 744; *In re IBM Peripheral EDP Devices Antitrust Litig.*, 481 F. Supp. 965, 1007-08 (N.D. Cal. 1979).

The District Court first condemned as anticompetitive Microsoft's decision to exclude IE from the "Add/Remove Programs" utility in Windows 98. *Findings of Fact* ¶ 170. Microsoft had included IE in the Add/Remove Programs utility in Windows 95, *see id.* ¶ ¶ 175-76, but when it modified Windows 95 to produce Windows 98, it took IE out of the Add/Remove Programs utility. This change reduces the usage share of rival browsers not by making Microsoft's own browser more attractive to consumers but, rather, by discouraging OEMs from distributing rival products. *See id.* ¶ 159. Because Microsoft's conduct, through something other than competition on the merits, has the effect of significantly reducing usage of rivals' products and hence protecting its own operating system monopoly, it is anticompetitive; we defer for the moment the question whether it is nonetheless justified.

Second, the District Court found that Microsoft designed Windows 98 "so that using Navigator on Windows 98 would have unpleasant consequences for users" by, in some circumstances, overriding the user's choice of a browser other than IE as his or her default browser. *Id.* ¶ ¶ 171-72. Plaintiffs argue that this override harms the competitive process by deterring consumers from using a browser other than IE even though they might prefer to do so, thereby reducing rival browsers' usage share and, hence, the ability of rival

browsers to draw developer attention away from the APIs exposed by Windows. Microsoft does not deny, of course, that overriding the user's preference prevents some people from using other browsers. Because the override reduces rivals' usage share and protects Microsoft's monopoly, it too is anticompetitive.

Finally, the District Court condemned Microsoft's decision to bind IE to Windows 98 "by placing code specific to Web browsing in the same files as code that provided operating system functions." *Id.* ¶ 161; *see also id.* ¶ ¶ 174, 192. Putting code supplying browsing functionality into a file with code supplying operating system functionality "ensure[s] that the deletion of any file containing browsing-specific routines would also delete vital operating system routines and thus cripple Windows...." *Id.* ¶ 164. As noted above, preventing an OEM from removing IE deters it from installing a second browser because doing so increases the OEM's product testing and support costs; by contrast, had OEMs been able to remove IE, they might have chosen to pre-install Navigator alone. *See id.* ¶ 159.

Microsoft denies, as a factual matter, that it commingled browsing and non-browsing code, and it maintains the District Court's findings to the contrary are clearly erroneous. According to Microsoft, its expert "testified without contradiction that '[t]he very same code in Windows 98 that provides Web browsing functionality' also performs essential operating system functions—not code in the same files, but the very same software code." Appellant's Opening Br. at 79 (citing 5 J.A. 3291-92).

Microsoft's expert did not testify to that effect "without contradiction," however. A Government expert, Glenn Weadock, testified that Microsoft "design[ed] [IE] so that some of the code that it uses co-resides in the same library files as other code needed for Windows." Direct Testimony ¶ 30. Another Government expert likewise testified that one library file, SHDOCVW.DLL, "is really a bundle of separate functions. It contains some functions that have to do specifically with Web browsing, and it contains some general user inter-

face functions as well." 12/14/98 am Tr. at 60-61 (trial testimony of Edward Felten), *reprinted in* 11 J.A. at 6953-54. One of Microsoft's own documents suggests as much. *See* Plaintiffs' Proposed Findings of Fact ¶ 131.2.vii (citing GX 1686 (under seal) (Microsoft document indicating some functions in SHDOCVW.DLL can be described as "IE only," others can be described as "shell only" and still others can be described as providing both "IE" and "shell" functions)).

In view of the contradictory testimony in the record, some of which supports the District Court's finding that Microsoft commingled browsing and non-browsing code, we cannot conclude that the finding was clearly erroneous. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) ("If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently."). Accordingly, we reject Microsoft's argument that we should vacate Finding of Fact 159 as it relates to the commingling of code, and we conclude that such commingling has an anticompetitive effect; as noted above, the commingling deters OEMs from pre-installing rival browsers, thereby reducing the rivals' usage share and, hence, developers' interest in rivals' APIs as an alternative to the API set exposed by Microsoft's operating system.

b. *Microsoft's justifications for integration*

Microsoft proffers no justification for two of the three challenged actions that it took in integrating IE into Windows—excluding IE from the Add/Remove Programs utility and commingling browser and operating system code. Although Microsoft does make some general claims regarding the benefits of integrating the browser and the operating system, *see, e.g.*, Direct Testimony of James Allchin ¶ 94, *reprinted in* 5 J.A. at 3321 ("Our vision of deeper levels of technical integration is highly efficient and provides substantial benefits to customers and developers."), it neither specifies nor substantiates those claims. Nor does it argue that either excluding IE from the Add/Remove Programs utility or commingling code achieves any integrative benefit. Plaintiffs plainly made out a *prima facie* case of harm to competition in the operating system market by demonstrating that Microsoft's actions increased its browser usage share and thus

protected its operating system monopoly from a middleware threat and, for its part, Microsoft failed to meet its burden of showing that its conduct serves a purpose other than protecting its operating system monopoly. Accordingly, we hold that Microsoft's exclusion of IE from the Add/Remove Programs utility and its commingling of browser and operating system code constitute exclusionary conduct, in violation of § 2.

As for the other challenged act that Microsoft took in integrating IE into Windows—causing Windows to override the user's choice of a default browser in certain circumstances—Microsoft argues that it has "valid technical reasons." Specifically, Microsoft claims that it was necessary to design Windows to override the user's preferences when he or she invokes one of "a few" out "of the nearly 30 means of accessing the Internet." Appellant's Opening Br. at 82. According to Microsoft:

> The Windows 98 Help system and Windows Update feature depend on ActiveX controls not supported by Navigator, and the now-discontinued Channel Bar utilized Microsoft's Channel Definition Format, which Navigator also did not support. Lastly, Windows 98 does not invoke Navigator if a user accesses the Internet through "My Computer" or "Windows Explorer" because doing so would defeat one of the purposes of those features—enabling users to move seamlessly from local storage devices to the Web *in the same browsing window*.

Id. (internal citations omitted). The plaintiff bears the burden not only of rebutting a proffered justification but also of demonstrating that the anticompetitive effect of the challenged action outweighs it. In the District Court, plaintiffs appear to have done neither, let alone both; in any event, upon appeal, plaintiffs offer no rebuttal whatsoever. Accordingly, Microsoft may not be held liable for this aspect of its product design.

3. Agreements with Internet Access Providers

The District Court also condemned as exclusionary Microsoft's agreements with various IAPs. The IAPs include both Internet Service Providers, which offer consumers internet access, and Online Services ("OLSs") such as America Online

("AOL"), which offer proprietary content in addition to internet access and other services. *Findings of Fact* ¶ 15. The District Court deemed Microsoft's agreements with the IAPs unlawful because:

> Microsoft licensed [IE] and the [IE] Access Kit [(of which, more below)] to hundreds of IAPs for no charge. [*Findings of Fact*] ¶ ¶ 250-51. Then, Microsoft extended valuable promotional treatment to the ten most important IAPs in exchange for their commitment to promote and distribute [IE] and to exile Navigator from the desktop. *Id.* ¶ ¶ 255-58, 261, 272, 288-90, 305-06. Finally, in exchange for efforts to upgrade existing subscribers to client software that came bundled with [IE] instead of Navigator, Microsoft granted rebates—and in some cases made outright payments—to those same IAPs. *Id.* ¶ ¶ 259-60, 295.

Conclusions of Law, at 41.

The District Court condemned Microsoft's actions in (1) offering IE free of charge to IAPs and (2) offering IAPs a bounty for each customer the IAP signs up for service using the IE browser. In effect, the court concluded that Microsoft is acting to preserve its monopoly by offering IE to IAPs at an attractive price. Similarly, the District Court held Microsoft liable for (3) developing the IE Access Kit ("IEAK"), a software package that allows an IAP to "create a distinctive identity for its service in as little as a few hours by customizing the [IE] title bar, icon, start and search pages," *Findings of Fact* ¶ 249, and (4) offering the IEAK to IAPs free of charge, on the ground that those acts, too, helped Microsoft preserve its monopoly. *Conclusions of Law*, at 41-42. Finally, the District Court found that (5) Microsoft agreed to provide easy access to IAPs' services from the Windows desktop in return for the IAPs' agreement to promote IE exclusively and to keep shipments of internet access software using Navigator under a specific percentage, typically 25%. *See Conclusions of Law*, at 42 (citing *Findings of Fact* ¶ ¶ 258, 262, 289). We address the first four items—Microsoft's inducements—and then its exclusive agreements with IAPs.

Although offering a customer an attractive deal is the hallmark of competition, the Supreme Court has indicated

that in very rare circumstances a price may be unlawfully low, or "predatory." *See generally Brooke Group*, 509 U.S. at 220-27. Plaintiffs argued before the District Court that Microsoft's pricing was indeed predatory; but instead of making the usual predatory pricing argument—that the predator would drive out its rivals by pricing below cost on a particular product and then, sometime in the future, raise its prices on that product above the competitive level in order to recoup its earlier losses—plaintiffs argued that by pricing below cost on IE (indeed, even paying people to take it), Microsoft was able simultaneously to preserve its stream of monopoly profits on Windows, thereby more than recouping its investment in below-cost pricing on IE. The District Court did not assign liability for predatory pricing, however, and plaintiffs do not press this theory on appeal.

The rare case of price predation aside, the antitrust laws do not condemn even a monopolist for offering its product at an attractive price, and we therefore have no warrant to condemn Microsoft for offering either IE or the IEAK free of charge or even at a negative price. Likewise, as we said above, a monopolist does not violate the Sherman Act simply by developing an attractive product. *See Grinnell*, 384 U.S. at 571 ("[G]rowth or development as a consequence of a superior product [or] business acumen" is no violation.). Therefore, Microsoft's development of the IEAK does not violate the Sherman Act.

We turn now to Microsoft's deals with IAPs concerning desktop placement. Microsoft concluded these exclusive agreements with all "the leading IAPs," *Findings of Fact* ¶ 244, including the major OLSs. *Id.* ¶ 245; *see also id.* ¶ ¶ 305, 306. The most significant of the OLS deals is with AOL, which, when the deal was reached, "accounted for a substantial portion of all existing Internet access subscriptions and ... attracted a very large percentage of new IAP subscribers." *Id.* ¶ 272. Under that agreement Microsoft puts the AOL icon in the OLS folder on the Windows desktop and AOL does not promote any non-Microsoft browser, nor provide software using any non-Microsoft browser except at

the customer's request, and even then AOL will not supply more than 15% of its subscribers with a browser other than IE. *Id.* ¶ 289.

The Supreme Court most recently considered an antitrust challenge to an exclusive contract in *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961). That case, which involved a challenge to a requirements contract, was brought under § 3 of the Clayton Act and §§ 1 and 2 of the Sherman Act. The Court held that an exclusive contract does not violate the Clayton Act unless its probable effect is to "foreclose competition in a substantial share of the line of commerce affected." *Id.* at 327. The share of the market foreclosed is important because, for the contract to have an adverse effect upon competition, "the opportunities for other traders to enter into or remain in that market must be significantly limited." *Id.* at 328. Although "[n]either the Court of Appeals nor the District Court [had] considered in detail the question of the relevant market," *id.* at 330, the Court in *Tampa Electric* examined the record and, after defining the relevant market, determined that the contract affected less than one percent of that market. *Id.* at 333. After concluding, under the Clayton Act, that this share was "conservatively speaking, quite insubstantial," *id.*, the Court went on summarily to reject the Sherman Act claims. *Id.* at 335 ("[I]f [the contract] does not fall within the broader prescription of § 3 of the Clayton Act it follows that it is not forbidden by those of the [Sherman Act].").

Following *Tampa Electric*, courts considering antitrust challenges to exclusive contracts have taken care to identify the share of the market foreclosed. Some courts have indicated that § 3 of the Clayton Act and § 1 of the Sherman Act require an equal degree of foreclosure before prohibiting exclusive contracts. *See, e.g., Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 393 (7th Cir. 1984) (Posner, J.). Other courts, however, have held that a higher market share must be foreclosed in order to establish a violation of the Sherman Act as compared to the Clayton Act. *See, e.g., Barr Labs. v. Abbott Labs.*, 978 F.2d 98, 110 (3d Cir.1992); 11 HERBERT HOVENKAMP, ANTITRUST LAW ¶ 1800c4 (1998) ("[T]he cases are divided, with a likely majority stating that the

Clayton Act requires a smaller showing of anticompetitive effects.").

Though what is "significant" may vary depending upon the antitrust provision under which an exclusive deal is challenged, it is clear that in all cases the plaintiff must both define the relevant market and prove the degree of foreclosure. This is a prudential requirement; exclusivity provisions in contracts may serve many useful purposes. *See, e.g., Omega Envtl., Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1162 (9th Cir. 1997) ("There are, however, well-recognized economic benefits to exclusive dealing arrangements, including the enhancement of interbrand competition."); *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 236 (1st Cir. 1983) (Breyer, J.) ("[V]irtually *every* contract to buy 'forecloses' or 'excludes' alternative sellers from *some* portion of the market, namely the portion consisting of what was bought."). Permitting an antitrust action to proceed any time a firm enters into an exclusive deal would both discourage a presumptively legitimate business practice and encourage costly antitrust actions. Because an exclusive deal affecting a small fraction of a market clearly cannot have the requisite harmful effect upon competition, the requirement of a significant degree of foreclosure serves a useful screening function. *Cf.* Frank H. Easterbrook, *The Limits of Antitrust*, 63 TEX. L. REV. 1, 21-23 (1984) (discussing use of presumptions in antitrust law to screen out cases in which loss to consumers and economy is likely outweighed by cost of inquiry and risk of deterring procompetitive behavior).

In this case, plaintiffs challenged Microsoft's exclusive dealing arrangements with the IAPs under both §§ 1 and 2 of the Sherman Act. The District Court, in analyzing the § 1 claim, stated, "unless the evidence demonstrates that Microsoft's agreements excluded Netscape altogether from access to roughly forty percent of the browser market, the Court should decline to find such agreements in violation of § 1." *Conclusions of Law*, at 52. The court recognized that Microsoft had substantially excluded Netscape from "the most efficient channels for Navigator to achieve browser usage share," *id.* at 53; *see also Findings of Fact* ¶ 145 ("[N]o other

distribution channel for browsing software even approaches the efficiency of OEM pre-installation and IAP bundling."), and had relegated it to more costly and less effective methods (such as mass mailing its browser on a disk or offering it for download over the internet); but because Microsoft has not "completely excluded Netscape" from reaching any potential user by some means of distribution, however ineffective, the court concluded the agreements do not violate § 1. *Conclusions of Law*, at 53. Plaintiffs did not cross-appeal this holding.

Turning to § 2, the court stated: "the fact that Microsoft's arrangements with various [IAPs and other] firms did not foreclose enough of the relevant market to constitute a § 1 violation in no way detracts from the Court's assignment of liability for the same arrangements under § 2.... [A]ll of Microsoft's agreements, including the non-exclusive ones, severely restricted Netscape's access to those distribution channels leading most efficiently to the acquisition of browser usage share." *Conclusions of Law*, at 53.

On appeal Microsoft argues that "courts have applied the same standard to alleged exclusive dealing agreements under both Section 1 *and* Section 2," Appellant's Opening Br. at 109, and it argues that the District Court's holding of no liability under § 1 necessarily precludes holding it liable under § 2. The District Court appears to have based its holding with respect to § 1 upon a "total exclusion test" rather than the 40% standard drawn from the caselaw. Even assuming the holding is correct, however, we nonetheless reject Microsoft's contention.

The basic prudential concerns relevant to §§ 1 and 2 are admittedly the same: exclusive contracts are commonplace—particularly in the field of distribution—in our competitive, market economy, and imposing upon a firm with market power the risk of an antitrust suit every time it enters into such a contract, no matter how small the effect, would create an unacceptable and unjustified burden upon any such firm. At the same time, however, we agree with plaintiffs that a monopolist's use of exclusive contracts, in certain circum-

stances, may give rise to a § 2 violation even though the contracts foreclose less than the roughly 40% or 50% share usually required in order to establish a § 1 violation. *See generally* Dennis W. Carlton, *A General Analysis of Exclusionary Conduct and Refusal to Deal—Why* Aspen *and* Kodak *Are Misguided*, 68 ANTITRUST L.J. 659 (2001) (explaining various scenarios under which exclusive dealing, particularly by a dominant firm, may raise legitimate concerns about harm to competition).

In this case, plaintiffs allege that, by closing to rivals a substantial percentage of the available opportunities for browser distribution, Microsoft managed to preserve its monopoly in the market for operating systems. The IAPs constitute one of the two major channels by which browsers can be distributed. *Findings of Fact* ¶ 242. Microsoft has exclusive deals with "fourteen of the top fifteen access providers in North America[, which] account for a large majority of all Internet access subscriptions in this part of the world." *Id.* ¶ 308. By ensuring that the "majority" of all IAP subscribers are offered IE either as the default browser or as the only browser, Microsoft's deals with the IAPs clearly have a significant effect in preserving its monopoly; they help keep usage of Navigator below the critical level necessary for Navigator or any other rival to pose a real threat to Microsoft's monopoly. *See, e.g., id.* ¶ 143 (Microsoft sought to "divert enough browser usage from Navigator to neutralize it as a platform."); *see also* Carlton, at 670.

Plaintiffs having demonstrated a harm to competition, the burden falls upon Microsoft to defend its exclusive dealing contracts with IAPs by providing a procompetitive justification for them. Significantly, Microsoft's only explanation for its exclusive dealing is that it wants to keep developers focused upon its APIs—which is to say, it wants to preserve its power in the operating system market. 02/26/01 Ct. Appeals Tr. at 45-47. That is not an unlawful end, but neither is it a procompetitive justification for the specific means here in question, namely exclusive dealing contracts with IAPs. Accordingly, we affirm the District Court's deci-

sion holding that Microsoft's exclusive contracts with IAPs are exclusionary devices, in violation of § 2 of the Sherman Act.

4. Dealings with Internet Content Providers, Independent Software Vendors, and Apple Computer

The District Court held that Microsoft engages in exclusionary conduct in its dealings with ICPs, which develop websites; ISVs, which develop software; and Apple, which is both an OEM and a software developer. *See Conclusions of Law*, at 42-43 (deals with ICPs, ISVs, and Apple "supplemented Microsoft's efforts in the OEM and IAP channels"). The District Court condemned Microsoft's deals with ICPs and ISVs, stating: "By granting ICPs and ISVs free licenses to bundle [IE] with their offerings, and by exchanging other valuable inducements for their agreement to distribute, promote[,] and rely on [IE] rather than Navigator, Microsoft directly induced developers to focus on its own APIs rather than ones exposed by Navigator." *Id.* (citing *Findings of Fact* ¶ ¶ 334-35, 340).

With respect to the deals with ICPs, the District Court's findings do not support liability. After reviewing the ICP agreements, the District Court specifically stated that "there is not sufficient evidence to support a finding that Microsoft's promotional restrictions actually had a substantial, deleterious impact on Navigator's usage share." *Findings of Fact* ¶ 332. Because plaintiffs failed to demonstrate that Microsoft's deals with the ICPs have a substantial effect upon competition, they have not proved the violation of the Sherman Act.

As for Microsoft's ISV agreements, however, the District Court did not enter a similar finding of no substantial effect. The District Court described Microsoft's deals with ISVs as follows:

> In dozens of "First Wave" agreements signed between the fall of 1997 and the spring of 1998, Microsoft has promised to give preferential support, in the form of early Windows 98 and Windows NT betas, other technical information, and the right to use certain Microsoft

> seals of approval, to important ISVs that agree to certain conditions. One of these conditions is that the ISVs use Internet Explorer as the default browsing software for any software they develop with a hypertext-based user interface. Another condition is that the ISVs use Microsoft's "HTML Help," which is accessible only with Internet Explorer, to implement their applications' help systems.

Id. ¶ 339. The District Court further found that the effect of these deals is to "ensure [ ] that many of the most popular Web-centric applications will rely on browsing technologies found only in Windows," *id.* ¶ 340, and that Microsoft's deals with ISVs therefore "increase[ ] the likelihood that the millions of consumers using [applications designed by ISVs that entered into agreements with Microsoft] will use Internet Explorer rather than Navigator." *Id.* ¶ 340.

The District Court did not specifically identify what share of the market for browser distribution the exclusive deals with the ISVs foreclose. Although the ISVs are a relatively small channel for browser distribution, they take on greater significance because, as discussed above, Microsoft had largely foreclosed the two primary channels to its rivals. In that light, one can tell from the record that by affecting the applications used by "millions" of consumers, Microsoft's exclusive deals with the ISVs had a substantial effect in further foreclosing rival browsers from the market. (Data introduced by Microsoft, *see* Direct Testimony of Cameron Myhrvold ¶ 84, *reprinted in* 6 J.A. at 3922-23, and subsequently relied upon by the District Court in its findings, *see, e.g.*, *Findings of Fact* ¶ 270, indicate that over the two-year period 1997-98, when Microsoft entered into the First Wave agreements, there were 40 million new users of the internet.) Because, by keeping rival browsers from gaining widespread distribution (and potentially attracting the attention of developers away from the APIs in Windows), the deals have a substantial effect in preserving Microsoft's monopoly, we hold that plaintiffs have made a *prima facie* showing that the deals have an anticompetitive effect.

Of course, that Microsoft's exclusive deals have the anti-competitive effect of preserving Microsoft's monopoly does not, in itself, make them unlawful. A monopolist, like a competitive firm, may have a perfectly legitimate reason for wanting an exclusive arrangement with its distributors. Accordingly, Microsoft had an opportunity to, but did not, present the District Court with evidence demonstrating that the exclusivity provisions have some such procompetitive justification. *See Conclusions of Law*, at 43 (citing *Findings of Fact* ¶ ¶ 339-40) ("With respect to the ISV agreements, Microsoft has put forward no procompetitive business ends whatsoever to justify their exclusionary terms."). On appeal Microsoft likewise does not claim that the exclusivity required by the deals serves any legitimate purpose; instead, it states only that its ISV agreements reflect an attempt "to persuade ISVs to utilize Internet-related system services in Windows rather than Navigator." Appellant's Opening Br. at 114. As we explained before, however, keeping developers focused upon Windows—that is, preserving the Windows monopoly—is a competitively neutral goal. Microsoft having offered no procompetitive justification for its exclusive dealing arrangements with the ISVs, we hold that those arrangements violate § 2 of the Sherman Act.

Finally, the District Court held that Microsoft's dealings with Apple violated the Sherman Act. *See Conclusions of Law*, at 42-43. Apple is vertically integrated: it makes both software (including an operating system, Mac OS), and hardware (the Macintosh line of computers). Microsoft primarily makes software, including, in addition to its operating system, a number of popular applications. One, called "Office," is a suite of business productivity applications that Microsoft has ported to Mac OS. The District Court found that "ninety percent of Mac OS users running a suite of office productivity applications [use] Microsoft's Mac Office." *Findings of Fact* ¶ 344. Further, the District Court found that:

> In 1997, Apple's business was in steep decline, and many doubted that the company would survive much long-

> er.... [M]any ISVs questioned the wisdom of continuing to spend time and money developing applications for the Mac OS. Had Microsoft announced in the midst of this atmosphere that it was ceasing to develop new versions of Mac Office, a great number of ISVs, customers, developers, and investors would have interpreted the announcement as Apple's death notice.

Id. ¶ 344. Microsoft recognized the importance to Apple of its continued support of Mac Office. *See id.* ¶ 347 (quoting internal Microsoft e-mail) ("[We] need a way to push these guys[, *i.e.*, Apple] and [threatening to cancel Mac Office] is the only one that seems to make them move."); *see also id.* ("[Microsoft Chairman Bill] Gates asked whether Microsoft could conceal from Apple in the coming month the fact that Microsoft was almost finished developing Mac Office 97."); *id.* at ¶ 354 ("I think ... Apple should be using [IE] everywhere and if they don't do it, then we can use Office as a club.").

In June 1997 Microsoft Chairman Bill Gates determined that the company's negotiations with Apple " 'have not been going well at all.... Apple let us down on the browser by making Netscape the standard install.' Gates then reported that he had already called Apple's CEO ... to ask 'how we should announce the cancellation of Mac Office....' " *Id.* at ¶ 349. The District Court further found that, within a month of Gates' call, Apple and Microsoft had reached an agreement pursuant to which

> Microsoft's primary obligation is to continue releasing up-to-date versions of Mac Office for at least five years.... [and] Apple has agreed ... to "bundle the most current version of [IE] ... with [Mac OS]"... [and to] "make [IE] the default [browser]".... Navigator is not installed on the computer hard drive during the default installation, which is the type of installation most users elect to employ.... [The] Agreement further provides that ... Apple may not position icons for non-Microsoft browsing software on the desktop of new Macintosh PC systems or Mac OS upgrades.

Id. ¶ ¶ 350-52. The agreement also prohibits Apple from encouraging users to substitute another browser for IE, and states that Apple will "encourage its employees to use [IE]." *Id.* ¶ 352.

This exclusive deal between Microsoft and Apple has a substantial effect upon the distribution of rival browsers. If a browser developer ports its product to a second operating system, such as the Mac OS, it can continue to display a common set of APIs. Thus, usage share, not the underlying operating system, is the primary determinant of the platform challenge a browser may pose. Pre-installation of a browser (which can be accomplished either by including the browser with the operating system or by the OEM installing the browser) is one of the two most important methods of browser distribution, and Apple had a not insignificant share of worldwide sales of operating systems. *See id.* ¶ 35 (Microsoft has 95% of the market not counting Apple and "well above" 80% with Apple included in the relevant market). Because Microsoft's exclusive contract with Apple has a substantial effect in restricting distribution of rival browsers, and because (as we have described several times above) reducing usage share of rival browsers serves to protect Microsoft's monopoly, its deal with Apple must be regarded as anticompetitive. *See Conclusions of Law*, at 42 (citing *Findings of Fact* ¶ 356) ("By extracting from Apple terms that significantly diminished the usage of Navigator on the Mac OS, Microsoft helped to ensure that developers would not view Navigator as truly cross-platform middleware.").

Microsoft offers no procompetitive justification for the exclusive dealing arrangement. It makes only the irrelevant claim that the IE-for-Mac Office deal is part of a multifaceted set of agreements between itself and Apple, *see* Appellant's Opening Br. at 61 ("Apple's 'browsing software' obligation was [not] the quid pro quo for Microsoft's Mac Office obligation[;] ... *all* of the various obligations ... were part of one 'overall agreement' between the two companies."); that does not mean it has any procompetitive justification. Accordingly, we hold that the exclusive deal with Apple is exclusionary, in violation of § 2 of the Sherman Act.

5. Java

Java, a set of technologies developed by Sun Microsystems, is another type of middleware posing a potential threat to Windows' position as the ubiquitous platform for software development. *Findings of Fact* ¶ 28. The Java technologies include: (1) a programming language; (2) a set of programs written in that language, called the "Java class libraries," which expose APIs; (3) a compiler, which translates code written by a developer into "bytecode"; and (4) a Java Virtual Machine ("JVM"), which translates bytecode into instructions to the operating system. *Id.* ¶ 73. Programs calling upon the Java APIs will run on any machine with a "Java runtime environment," that is, Java class libraries and a JVM. *Id.* ¶ ¶ 73, 74.

In May 1995 Netscape agreed with Sun to distribute a copy of the Java runtime environment with every copy of Navigator, and "Navigator quickly became the principal vehicle by which Sun placed copies of its Java runtime environment on the PC systems of Windows users." *Id.* ¶ 76. Microsoft, too, agreed to promote the Java technologies—or so it seemed. For at the same time, Microsoft took steps "to maximize the difficulty with which applications written in Java could be ported from Windows to other platforms, and vice versa." *Conclusions of Law,* at 43. Specifically, the District Court found that Microsoft took four steps to exclude Java from developing as a viable cross-platform threat: (a) designing a JVM incompatible with the one developed by Sun; (b) entering into contracts, the so-called "First Wave Agreements," requiring major ISVs to promote Microsoft's JVM exclusively; (c) deceiving Java developers about the Windows-specific nature of the tools it distributed to them; and (d) coercing Intel to stop aiding Sun in improving the Java technologies.

a. *The incompatible JVM*

The District Court held that Microsoft engaged in exclusionary conduct by developing and promoting its own JVM. *Conclusions of Law,* at 43-44. Sun had already developed a JVM for the Windows operating system when Microsoft began work on its version. The JVM developed by Microsoft

allows Java applications to run faster on Windows than does Sun's JVM, *Findings of Fact* ¶ 389, but a Java application designed to work with Microsoft's JVM does not work with Sun's JVM and vice versa. *Id.* ¶ 390. The District Court found that Microsoft "made a large investment of engineering resources to develop a high-performance Windows JVM," *id.* ¶ 396, and, "[b]y bundling its ... JVM with every copy of [IE] ... Microsoft endowed its Java runtime environment with the unique attribute of guaranteed, enduring ubiquity across the enormous Windows installed base," *id.* ¶ 397. As explained above, however, a monopolist does not violate the antitrust laws simply by developing a product that is incompatible with those of its rivals. *See supra* Section II.B.1. In order to violate the antitrust laws, the incompatible product must have an anticompetitive effect that outweighs any procompetitive justification for the design. Microsoft's JVM is not only incompatible with Sun's, it allows Java applications to run faster on Windows than does Sun's JVM. Microsoft's faster JVM lured Java developers into using Microsoft's developer tools, and Microsoft offered those tools deceptively, as we discuss below. The JVM, however, does allow applications to run more swiftly and does not itself have any anticompetitive effect. Therefore, we reverse the District Court's imposition of liability for Microsoft's development and promotion of its JVM.

b. *The First Wave Agreements*

The District Court also found that Microsoft entered into First Wave Agreements with dozens of ISVs to use Microsoft's JVM. *See Findings of Fact* ¶ 401 ("[I]n exchange for costly technical support and other blandishments, Microsoft induced dozens of important ISVs to make their Java applications reliant on Windows-specific technologies and to refrain from distributing to Windows users JVMs that complied with Sun's standards."). Again, we reject the District Court's condemnation of low but non-predatory pricing by Microsoft.

To the extent Microsoft's First Wave Agreements with the ISVs conditioned receipt of Windows technical information upon the ISVs' agreement to promote Microsoft's JVM exclu-

sively, they raise a different competitive concern. The District Court found that, although not literally exclusive, the deals were exclusive in practice because they required developers to make Microsoft's JVM the default in the software they developed. *Id.* ¶ 401.

While the District Court did not enter precise findings as to the effect of the First Wave Agreements upon the overall distribution of rival JVMs, the record indicates that Microsoft's deals with the major ISVs had a significant effect upon JVM promotion. As discussed above, the products of First Wave ISVs reached millions of consumers. *Id.* ¶ 340. The First Wave ISVs included such prominent developers as Rational Software, *see* GX 970, *reprinted in* 15 J.A. at 9994-10000, "a world leader" in software development tools, *see* Direct Testimony of Michael Devlin ¶ 2, *reprinted in* 5 J.A. at 3520, and Symantec, *see* GX 2071, *reprinted in* 22 J.A. at 14960-66 (sealed), which, according to Microsoft itself, is "the leading supplier of utilities such as anti-virus software," Defendant's Proposed Findings of Fact ¶ 276, *reprinted in* 3 J.A. at 1689. Moreover, Microsoft's exclusive deals with the leading ISVs took place against a backdrop of foreclosure: the District Court found that "[w]hen Netscape announced in May 1995 [prior to Microsoft's execution of the First Wave Agreements] that it would include with every copy of Navigator a copy of a Windows JVM that complied with Sun's standards, it appeared that Sun's Java implementation would achieve the necessary ubiquity on Windows." *Findings of Fact* ¶ 394. As discussed above, however, Microsoft undertook a number of anticompetitive actions that seriously reduced the distribution of Navigator, and the District Court found that those actions thereby seriously impeded distribution of Sun's JVM. *Conclusions of Law*, at 43-44. Because Microsoft's agreements foreclosed a substantial portion of the field for JVM distribution and because, in so doing, they protected Microsoft's monopoly from a middleware threat, they are anticompetitive.

Microsoft offered no procompetitive justification for the default clause that made the First Wave Agreements exclusive as a practical matter. *See Findings of Fact* ¶ 401.

Because the cumulative effect of the deals is anticompetitive and because Microsoft has no procompetitive justification for them, we hold that the provisions in the First Wave Agreements requiring use of Microsoft's JVM as the default are exclusionary, in violation of the Sherman Act.

c. *Deception of Java developers*

Microsoft's "Java implementation" included, in addition to a JVM, a set of software development tools it created to assist ISVs in designing Java applications. The District Court found that, not only were these tools incompatible with Sun's cross-platform aspirations for Java—no violation, to be sure—but Microsoft deceived Java developers regarding the Windows-specific nature of the tools. Microsoft's tools included "certain 'keywords' and 'compiler directives' that could only be executed properly by Microsoft's version of the Java runtime environment for Windows." *Id.* ¶ 394; *see also* Direct Testimony of James Gosling ¶ 58, *reprinted in* 21 J.A. at 13959 (Microsoft added "programming instructions ... that alter the behavior of the code."). As a result, even Java "developers who were opting for portability over performance ... unwittingly [wrote] Java applications that [ran] only on Windows." *Conclusions of Law*, at 43. That is, developers who relied upon Microsoft's public commitment to cooperate with Sun and who used Microsoft's tools to develop what Microsoft led them to believe were cross-platform applications ended up producing applications that would run only on the Windows operating system.

When specifically accused by a *PC Week* reporter of fragmenting Java standards so as to prevent cross-platform uses, Microsoft denied the accusation and indicated it was only "adding rich platform support" to what remained a cross-platform implementation. An e-mail message internal to Microsoft, written shortly after the conversation with the reporter, shows otherwise:

> [O]k, i just did a followup call.... [The reporter] liked that i kept pointing customers to w3c standards [(commonly observed internet protocols)].... [but] he accused us of being schizo with this vs. our java approach, i said

> he misunderstood [—] that [with Java] we are merely trying to add rich platform support to an interop layer.... this plays well.... at this point its [sic] not good to create MORE noise around our win32 java classes. instead we should just quietly grow j [(Microsoft's development tools)] share and assume that people will take more advantage of our classes without ever realizing they are building win32-only java apps.

GX 1332, *reprinted in* 22 J.A. at 14922-23.

Finally, other Microsoft documents confirm that Microsoft intended to deceive Java developers, and predicted that the effect of its actions would be to generate Windows-dependent Java applications that their developers believed would be cross-platform; these documents also indicate that Microsoft's ultimate objective was to thwart Java's threat to Microsoft's monopoly in the market for operating systems. One Microsoft document, for example, states as a strategic goal: "Kill cross-platform Java by grow[ing] the polluted Java market." GX 259, *reprinted in* 22 J.A. at 14514; *see also id.* ("Cross-platform capability is by far *the* number one reason for choosing/using Java.") (emphasis in original).

Microsoft's conduct related to its Java developer tools served to protect its monopoly of the operating system in a manner not attributable either to the superiority of the operating system or to the acumen of its makers, and therefore was anticompetitive. Unsurprisingly, Microsoft offers no procompetitive explanation for its campaign to deceive developers. Accordingly, we conclude this conduct is exclusionary, in violation of § 2 of the Sherman Act.

d. *The threat to Intel*

The District Court held that Microsoft also acted unlawfully with respect to Java by using its "monopoly power to prevent firms such as Intel from aiding in the creation of cross-platform interfaces." *Conclusions of Law*, at 43. In 1995 Intel was in the process of developing a high-performance, Windows-compatible JVM. Microsoft wanted Intel to abandon that effort because a fast, cross-platform

JVM would threaten Microsoft's monopoly in the operating system market. At an August 1995 meeting, Microsoft's Gates told Intel that its "cooperation with Sun and Netscape to develop a Java runtime environment ... was one of the issues threatening to undermine cooperation between Intel and Microsoft." *Findings of Fact* ¶ 396. Three months later, "Microsoft's Paul Maritz told a senior Intel executive that Intel's [adaptation of its multimedia software to comply with] Sun's Java standards was as inimical to Microsoft as Microsoft's support for non-Intel microprocessors would be to Intel." *Id.* ¶ 405.

Intel nonetheless continued to undertake initiatives related to Java. By 1996 "Intel had developed a JVM designed to run well ... while complying with Sun's cross-platform standards." *Id.* ¶ 396. In April of that year, Microsoft again urged Intel not to help Sun by distributing Intel's fast, Sun-compliant JVM. *Id.* And Microsoft threatened Intel that if it did not stop aiding Sun on the multimedia front, then Microsoft would refuse to distribute Intel technologies bundled with Windows. *Id.* ¶ 404.

Intel finally capitulated in 1997, after Microsoft delivered the *coup de grace*.

> [O]ne of Intel's competitors, called AMD, solicited support from Microsoft for its "3DX" technology.... Microsoft's Allchin asked Gates whether Microsoft should support 3DX, despite the fact that Intel would oppose it. Gates responded: "If Intel has a real problem with us supporting this then they will have to stop supporting Java Multimedia the way they are. I would gladly give up supporting this if they would back off from their work on JAVA."

Id. ¶ 406.

Microsoft's internal documents and deposition testimony confirm both the anticompetitive effect and intent of its actions. *See, e.g.*, GX 235, *reprinted in* 22 J.A. at 14502 (Microsoft executive, Eric Engstrom, included among Microsoft's goals for Intel: "Intel to stop helping Sun create Java

Multimedia APIs, especially ones that run well ... on Windows."); Deposition of Eric Engstrom at 179 ("We were successful [in convincing Intel to stop aiding Sun] for some period of time.").

Microsoft does not deny the facts found by the District Court, nor does it offer any procompetitive justification for pressuring Intel not to support cross-platform Java. Microsoft lamely characterizes its threat to Intel as "advice." The District Court, however, found that Microsoft's "advice" to Intel to stop aiding cross-platform Java was backed by the threat of retaliation, and this conclusion is supported by the evidence cited above. Therefore we affirm the conclusion that Microsoft's threats to Intel were exclusionary, in violation of § 2 of the Sherman Act.

6. Course of Conduct

The District Court held that, apart from Microsoft's specific acts, Microsoft was liable under § 2 based upon its general "course of conduct." In reaching this conclusion the court relied upon *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962), where the Supreme Court stated, "[i]n [Sherman Act cases], plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each."

Microsoft points out that *Continental Ore* and the other cases cited by plaintiffs in support of "course of conduct" liability all involve conspiracies among multiple firms, not the conduct of a single firm; in that setting the "course of conduct" is the conspiracy itself, for which all the participants may be held liable. *See* Appellant's Opening Br. at 112-13. Plaintiffs respond that, as a policy matter, a monopolist's unilateral "campaign of [acts intended to exclude a rival] that in the aggregate has the requisite impact" warrants liability even if the acts viewed individually would be lawful for want of a significant effect upon competition. Appellees' Br. at 82-83.

We need not pass upon plaintiffs' argument, however, because the District Court did not point to any series of acts, each of which harms competition only slightly but the cumula-

tive effect of which is significant enough to form an independent basis for liability. The "course of conduct" section of the District Court's opinion contains, with one exception, only broad, summarizing conclusions. *See, e.g., Conclusions of Law*, at 44 ("Microsoft placed an oppressive thumb on the scale of competitive fortune...."). The only specific acts to which the court refers are Microsoft's expenditures in promoting its browser, *see id.* ("Microsoft has expended wealth and foresworn opportunities to realize more...."), which we have explained are not in themselves unlawful. Because the District Court identifies no other specific acts as a basis for "course of conduct" liability, we reverse its conclusion that Microsoft's course of conduct separately violates § 2 of the Sherman Act.

C. Causation

As a final parry, Microsoft urges this court to reverse on the monopoly maintenance claim, because plaintiffs never established a causal link between Microsoft's anticompetitive conduct, in particular its foreclosure of Netscape's and Java's distribution channels, and the maintenance of Microsoft's operating system monopoly. *See Findings of Fact* ¶ 411 ("There is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition in the market for Intel-compatible PC operating systems."). This is the flip side of Microsoft's earlier argument that the District Court should have included middleware in the relevant market. According to Microsoft, the District Court cannot simultaneously find that middleware is not a reasonable substitute *and* that Microsoft's exclusionary conduct contributed to the maintenance of monopoly power in the operating system market. Microsoft claims that the first finding depended on the court's view that middleware does not pose a serious threat to Windows, *see supra* Section II.A, while the second finding required the court to find that Navigator and Java would have developed into serious enough cross-platform threats to erode the applications barrier to entry. We disagree.

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Microsoft points to no case, and we can find none, standing for the proposition that, as to § 2 *liability* in an equitable enforcement action, plaintiffs must present direct proof that a defendant's continued monopoly power is precisely attributable to its anticompetitive conduct. As its lone authority, Microsoft cites the following passage from Professor Areeda's antitrust treatise: "The plaintiff has the burden of pleading, introducing evidence, and presumably proving by a preponderance of the evidence that reprehensible behavior has *contributed significantly* to the ... maintenance of the monopoly." 3 PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 650c, at 69 (1996) (emphasis added).

But, with respect to actions seeking injunctive relief, the authors of that treatise also recognize the need for courts to infer "causation" from the fact that a defendant has engaged in anticompetitive conduct that "reasonably appear[s] capable of making a significant contribution to ... maintaining monopoly power." *Id.* ¶ 651c, at 78; *see also Morgan v. Ponder*, 892 F.2d 1355, 1363 (8th Cir. 1989); *Barry Wright*, 724 F.2d at 230. To require that § 2 liability turn on a plaintiff's ability or inability to reconstruct the hypothetical marketplace absent a defendant's anticompetitive conduct would only encourage monopolists to take more and earlier anticompetitive action.

We may infer causation when exclusionary conduct is aimed at producers of nascent competitive technologies as well as when it is aimed at producers of established substitutes. Admittedly, in the former case there is added uncertainty, inasmuch as nascent threats are merely *potential* substitutes. But the underlying proof problem is the same—neither plaintiffs nor the court can confidently reconstruct a product's hypothetical technological development in a world absent the defendant's exclusionary conduct. To some degree, "the defendant is made to suffer the uncertain consequences of its own undesirable conduct." 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 651c, at 78.

Given this rather edentulous test for causation, the question in this case is not whether Java or Navigator would

actually have developed into viable platform substitutes, but (1) whether as a general matter the exclusion of nascent threats is the type of conduct that is reasonably capable of contributing significantly to a defendant's continued monopoly power and (2) whether Java and Navigator reasonably constituted nascent threats at the time Microsoft engaged in the anticompetitive conduct at issue. As to the first, suffice it to say that it would be inimical to the purpose of the Sherman Act to allow monopolists free reign to squash nascent, albeit unproven, competitors at will—particularly in industries marked by rapid technological advance and frequent paradigm shifts. *Findings of Fact* ¶ ¶ 59-60. As to the second, the District Court made ample findings that both Navigator and Java showed potential as middleware platform threats. *Findings of Fact* ¶ ¶ 68-77. Counsel for Microsoft admitted as much at oral argument. 02/26/01 Ct. Appeals Tr. at 27 ("There are no constraints on output. Marginal costs are essentially zero. And there are to some extent network effects. So a company like Netscape founded in 1994 can be by the middle of 1995 clearly a potentially lethal competitor to Windows because it can supplant its position in the market because of the characteristics of these markets.").

Microsoft's concerns over causation have more purchase in connection with the appropriate remedy issue, *i.e.*, whether the court should impose a structural remedy or merely enjoin the offensive conduct at issue. As we point out later in this opinion, divestiture is a remedy that is imposed only with great caution, in part because its long-term efficacy is rarely certain. *See infra* Section V.E. Absent some measure of confidence that there has been an actual loss to competition that needs to be restored, wisdom counsels against adopting radical structural relief. *See* 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 653b, at 91-92 ("[M]ore extensive equitable relief, particularly remedies such as divestiture designed to eliminate the monopoly altogether, raise more serious questions and require a clearer indication of a significant causal connection between the conduct and creation or maintenance of the market power."). But these queries go to questions of remedy, not liability. In short, causation affords Microsoft no

defense to liability for its unlawful actions undertaken to maintain its monopoly in the operating system market.

III. Attempted Monopolization

Microsoft further challenges the District Court's determination of liability for "attempt[ing] to monopolize ... any part of the trade or commerce among the several States." 15 U.S.C. § 2 (1997). To establish a § 2 violation for attempted monopolization, "a plaintiff must prove (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993); *see also Times-Picayune Pub. Co. v. United States*, 345 U.S. 594, 626 (1953); *Lorain Journal Co. v. United States*, 342 U.S. 143, 153-55 (1951). Because a deficiency on any one of the three will defeat plaintiffs' claim, we look no further than plaintiffs' failure to prove a dangerous probability of achieving monopoly power in the putative browser market.

The determination whether a dangerous probability of success exists is a particularly fact-intensive inquiry. Because the Sherman Act does not identify the activities that constitute the offense of attempted monopolization, the court "must examine the facts of each case, mindful that the determination of what constitutes an attempt, as Justice Holmes explained, 'is a question of proximity and degree.' " *United States v. Am. Airlines, Inc.*, 743 F.2d 1114, 1118 (5th Cir. 1984) (quoting *Swift & Co. v. United States*, 196 U.S. 375, 402 (1904)). The District Court determined that "[t]he evidence supports the conclusion that Microsoft's actions did pose such a danger." *Conclusions of Law*, at 45. Specifically, the District Court concluded that "Netscape's assent to Microsoft's market division proposal would have, *instanter*, resulted in Microsoft's attainment of monopoly power in a second market," and that "the proposal itself created a dangerous probability of that result." *Conclusions of Law*, at 46 (citation omitted). The District Court further concluded that "the predatory course of conduct Microsoft has pursued since June

of 1995 has revived the dangerous probability that Microsoft will attain monopoly power in a second market." *Id.*

At the outset we note a pervasive flaw in the District Court's and plaintiffs' discussion of attempted monopolization. Simply put, plaintiffs have made the same argument under two different headings—monopoly maintenance and attempted monopolization. They have relied upon Microsoft's § 2 liability for monopolization of the operating system market as a presumptive indicator of attempted monopolization of an entirely different market. The District Court implicitly accepted this approach: It agreed with plaintiffs that the events that formed the basis for the § 2 monopolization claim "warrant[ed] *additional* liability as an illegal attempt to amass monopoly power in 'the browser market.' " *Id.* at 45 (emphasis added). Thus, plaintiffs and the District Court failed to recognize the need for an analysis wholly independent of the conclusions and findings on monopoly maintenance.

To establish a dangerous probability of success, plaintiffs must as a threshold matter show that the browser market can be monopolized, *i.e.*, that a hypothetical monopolist in that market could enjoy market power. This, in turn, requires plaintiffs (1) to define the relevant market and (2) to demonstrate that substantial barriers to entry protect that market. Because plaintiffs have not carried their burden on either prong, we reverse without remand.

A. Relevant Market

A court's evaluation of an attempted monopolization claim must include a definition of the relevant market. *See Spectrum Sports*, 506 U.S. at 455-56. Such a definition establishes a context for evaluating the defendant's actions as well as for measuring whether the challenged conduct presented a dangerous probability of monopolization. *See id.* The District Court omitted this element of the *Spectrum Sports* inquiry.

Defining a market for an attempted monopolization claim involves the same steps as defining a market for a monopoly maintenance claim, namely a detailed description of the purpose of a browser—what functions may be included and what

are not—and an examination of the substitutes that are part of the market and those that are not. *See also supra* Section II.A. The District Court never engaged in such an analysis nor entered detailed findings defining what a browser is or what products might constitute substitutes. In the Findings of Fact, the District Court (in a section on whether IE and Windows are separate products) stated only that "a Web browser provides the ability for the end user to select, retrieve, and perceive resources on the Web." *Findings of Fact* ¶ 150. Furthermore, in discussing attempted monopolization in its Conclusions of Law, the District Court failed to demonstrate analytical rigor when it employed varying and imprecise references to the "market for browsing technology for Windows," "the browser market," and "platform-level browsing software." *Conclusions of Law*, at 45.

Because the determination of a relevant market is a factual question to be resolved by the District Court, *see, e.g., All Care Nursing Serv., Inc. v. High Tech Staffing Servs., Inc.*, 135 F.3d 740, 749 (11th Cir. 1998); *Tunis Bros. Co., Inc. v. Ford Motor Co.*, 952 F.2d 715, 722-23 (3d Cir. 1991); *Westman Comm'n Co. v. Hobart Int'l, Inc.*, 796 F.2d 1216, 1220 (10th Cir. 1986), we would normally remand the case so that the District Court could formulate an appropriate definition. *See Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 & n.22 (1982); *Janini v. Kuwait Univ.*, 43 F.3d 1534, 1537 (D.C. Cir. 1995); *Palmer v. Shultz*, 815 F.2d 84, 103 (D.C. Cir. 1987). A remand on market definition is unnecessary, however, because the District Court's imprecision is directly traceable to plaintiffs' failure to articulate and identify evidence before the District Court as to (1) what constitutes a browser (*i.e.*, what are the technological components of or functionalities provided by a browser) and (2) why certain other products are not reasonable substitutes (*e.g.*, browser shells or viewers for individual internet extensions, such as Real Audio Player or Adobe Acrobat Reader). *See* Plaintiffs' Joint Proposed Findings of Fact, at 817-19, *reprinted in* 2 J.A. at 1480-82; Plaintiffs' Joint Proposed Conclusions of Law § IV (No. 98-1232); *see also Lee v. Interstate Fire & Cas. Co.*, 86 F.3d 101,

105 (7th Cir. 1996) (stating that remand for development of a factual record is inappropriate where plaintiff failed to meet burden of persuasion and never suggested that additional evidence was necessary). Indeed, when plaintiffs in their Proposed Findings of Fact attempted to define a relevant market for the attempt claim, they pointed only to their separate products analysis for the tying claim. *See, e.g.*, Plaintiffs' Joint Proposed Findings of Fact, at 818, *reprinted in* 2 J.A. at 1481. However, the separate products analysis for tying purposes is not a substitute for the type of market definition that *Spectrum Sports* requires. *See infra* Section IV.A.

Plaintiffs' proposed findings and the District Court's actual findings on attempted monopolization pale in comparison to their counterparts on the monopoly maintenance claim. *Compare Findings of Fact* ¶ 150, *and* Plaintiffs' Joint Proposed Findings of Fact, at 817-819, *reprinted in* 2 J.A. at 1480-82, *with Findings of Fact* ¶ ¶ 18-66, *and* Plaintiffs' Joint Proposed Findings of Fact, at 20-31, *reprinted in* 1 J.A. at 658-69. Furthermore, in their brief and at oral argument before this court, plaintiffs did nothing to clarify or ameliorate this deficiency. *See, e.g.*, Appellees' Br. at 93-94.`

B. Barriers to Entry

Because a firm cannot possess monopoly power in a market unless that market is also protected by significant barriers to entry, *see supra* Section II.A, it follows that a firm cannot threaten to achieve monopoly power in a market unless that market is, or will be, similarly protected. *See Spectrum Sports*, 506 U.S. at 456 ("In order to determine whether there is a dangerous probability of monopolization, courts have found it necessary to consider ... the defendant's ability to lessen or destroy competition in that market.") (citing cases). Plaintiffs have the burden of establishing barriers to entry into a properly defined relevant market. *See* 2A PHILLIP E. AREEDA ET AL., ANTITRUST LAW ¶ 420b, at 57-59 (1995); 3A PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 807g, at 361-62 (1996); *see also Neumann v. Reinforced*

Earth Co., 786 F.2d 424, 429 (D.C. Cir. 1986). Plaintiffs must not only show that barriers to entry protect the properly defined browser market, but that those barriers are "significant." *See United States v. Baker Hughes Inc.*, 908 F.2d 981, 987 (D.C. Cir. 1990). Whether there are significant barriers to entry cannot, of course, be answered absent an appropriate market definition; thus, plaintiffs' failure on that score alone is dispositive. But even were we to assume a properly defined market, for example browsers consisting of a graphical interface plus internet protocols, plaintiffs nonetheless failed to carry their burden on barriers to entry.

Contrary to plaintiffs' contention on appeal, *see* Appellees' Br. at 91-93, none of the District Court's statements constitutes a finding of barriers to entry into the web browser market. Finding of Fact 89 states:

> At the time Microsoft presented its proposal, Navigator was the only browser product with a significant share of the market and thus the only one with the potential to weaken the applications barrier to entry. Thus, had it convinced Netscape to accept its offer of a "special relationship," Microsoft quickly would have gained such control over the extensions and standards that network-centric applications (including Web sites) employ as to make it all but impossible for any future browser rival to lure appreciable developer interest away from Microsoft's platform.

This finding is far too speculative to establish that competing browsers would be unable to enter the market, or that Microsoft would have the power to raise the price of its browser above, or reduce the quality of its browser below, the competitive level. Moreover, it is ambiguous insofar as it appears to focus on Microsoft's response to the perceived platform threat rather than the browser market. Finding of Fact 144, on which plaintiffs also rely, is part of the District Court's discussion of Microsoft's alleged anticompetitive actions to eliminate the platform threat posed by Netscape Navigator. This finding simply describes Microsoft's reliance

on studies indicating consumers' reluctance to switch browsers, a reluctance not shown to be any more than that which stops consumers from switching brands of cereal. Absent more extensive and definitive factual findings, the District Court's legal conclusions about entry barriers amount to nothing more than speculation.

In contrast to their minimal effort on market definition, plaintiffs did at least offer proposed findings of fact suggesting that the possibility of network effects could potentially create barriers to entry into the browser market. *See* Plaintiffs' Joint Proposed Findings of Fact, at 822-23, 825-27, *reprinted in* 2 J.A. at 1485-86, 1488-90. The District Court did not adopt those proposed findings. *See Findings of Fact* ¶ 89. However, the District Court did acknowledge the possibility of a different kind of entry barrier in its Conclusions of Law:

> In the time it would have taken an aspiring entrant to launch a serious effort to compete against Internet Explorer, Microsoft *could have* erected the same type of barrier that protects its existing monopoly power by adding proprietary extensions to the browsing software under its control and by extracting commitments from OEMs, IAPs and others similar to the ones discussed in [the monopoly maintenance section].

Conclusions of Law, at 46 (emphasis added).

Giving plaintiffs and the District Court the benefit of the doubt, we might remand if the *possible existence* of entry barriers resulting from the *possible creation* and *exploitation* of network effects in the browser market were the only concern. That is not enough to carry the day, however, because the District Court did not make two key findings: (1) that network effects were a necessary or even probable, rather than merely possible, consequence of high market share in the browser market and (2) that a barrier to entry resulting from network effects would be "significant" enough to confer monopoly power. Again, these deficiencies are in large part traceable to plaintiffs' own failings. As to the first point, the District Court's use of the phrase "could have"

reflects the same uncertainty articulated in testimony cited in plaintiffs' proposed findings. *See* Plaintiffs' Joint Proposed Findings of Fact, at 822 (citing testimony of Frederick Warren-Boulton), at 826 (citing testimony of Franklin Fisher), *reprinted in* 2 J.A. at 1485, 1489. As to the second point, the cited testimony in plaintiffs' proposed findings offers little more than conclusory statements. *See id.* at 822-27, *reprinted in* 2 J.A. at 1485-90. The proffered testimony contains no evidence regarding the cost of "porting" websites to different browsers or the potentially different economic incentives facing ICPs, as opposed to ISVs, in their decision to incur costs to do so. Simply invoking the phrase "network effects" without pointing to more evidence does not suffice to carry plaintiffs' burden in this respect.

Any doubt that we may have had regarding remand instead of outright reversal on the barriers to entry question was dispelled by plaintiffs' arguments on attempted monopolization before this court. Not only did plaintiffs fail to articulate a website barrier to entry *theory* in either their brief or at oral argument, they failed to point the court to evidence in the record that would support a finding that Microsoft would *likely* erect *significant* barriers to entry upon acquisition of a dominant market share.

Plaintiffs did not devote the same resources to the attempted monopolization claim as they did to the monopoly maintenance claim. But both claims require evidentiary and theoretical rigor. Because plaintiffs failed to make their case on attempted monopolization both in the District Court and before this court, there is no reason to give them a second chance to flesh out a claim that should have been fleshed out the first time around. Accordingly, we reverse the District Court's determination of § 2 liability for attempted monopolization.

IV. TYING

Microsoft also contests the District Court's determination of liability under § 1 of the Sherman Act. The District Court concluded that Microsoft's contractual and technological bun-

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dling of the IE web browser (the "tied" product) with its Windows operating system ("OS") (the "tying" product) resulted in a tying arrangement that was per se unlawful. *Conclusions of Law*, at 47-51. We hold that the rule of reason, rather than per se analysis, should govern the legality of tying arrangements involving platform software products. The Supreme Court has warned that " '[i]t is only after considerable experience with certain business relationships that courts classify them as *per se* violations....' " *Broad. Music, Inc. v. CBS*, 441 U.S. 1, 9 (1979) (quoting *United States v. Topco Assocs.*, 405 U.S. 596, 607-08 (1972)). While every "business relationship" will in some sense have unique features, some represent entire, novel categories of dealings. As we shall explain, the arrangement before us is an example of the latter, offering the first up-close look at the technological integration of added functionality into software that serves as a platform for third-party applications. There being no close parallel in prior antitrust cases, simplistic application of per se tying rules carries a serious risk of harm. Accordingly, we vacate the District Court's finding of a per se tying violation and remand the case. Plaintiffs may on remand pursue their tying claim under the rule of reason.

The facts underlying the tying allegation substantially overlap with those set forth in Section II.B in connection with the § 2 monopoly maintenance claim. The key District Court findings are that (1) Microsoft required licensees of Windows 95 and 98 also to license IE as a bundle at a single price, *Findings of Fact* ¶ ¶ 137, 155, 158; (2) Microsoft refused to allow OEMs to uninstall or remove IE from the Windows desktop, *id.* ¶ ¶ 158, 203, 213; (3) Microsoft designed Windows 98 in a way that withheld from consumers the ability to remove IE by use of the Add/Remove Programs utility, *id.* ¶ 170; *cf. id.* ¶ 165 (stating that IE was subject to Add/Remove Programs utility in Windows 95); and (4) Microsoft designed Windows 98 to override the user's choice of default web browser in certain circumstances, *id.* ¶ ¶ 171, 172. The court found that these acts constituted a per se tying violation. *Conclusions of Law*, at 47-51. Although the District Court also found that Microsoft commingled operating sys-

tem-only and browser-only routines in the same library files, *Findings of Fact* ¶ ¶ 161, 164, it did not include this as a basis for tying liability despite plaintiffs' request that it do so, Plaintiffs' Proposed Findings of Fact, ¶ ¶ 131-32, *reprinted in* 2 J.A. at 941-47.

There are four elements to a per se tying violation: (1) the tying and tied goods are two separate products; (2) the defendant has market power in the tying product market; (3) the defendant affords consumers no choice but to purchase the tied product from it; and (4) the tying arrangement forecloses a substantial volume of commerce. *See Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461-62 (1992); *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12-18 (1984).

Microsoft does not dispute that it bound Windows and IE in the four ways the District Court cited. Instead it argues that Windows (the tying good) and IE browsers (the tied good) are not "separate products," Appellant's Opening Br. at 69-79, and that it did not substantially foreclose competing browsers from the tied product market, *id.* at 79-83. (Microsoft also contends that it does not have monopoly power in the tying product market, *id.* at 84-96, but, for reasons given in Section II.A, we uphold the District Court's finding to the contrary.)

We first address the separate-products inquiry, a source of much argument between the parties and of confusion in the cases. Our purpose is to highlight the poor fit between the separate-products test and the facts of this case. We then offer further reasons for carving an exception to the per se rule when the tying product is platform software. In the final section we discuss the District Court's inquiry if plaintiffs pursue a rule of reason claim on remand.

A. Separate-Products Inquiry Under the Per Se Test

The requirement that a practice involve two separate products before being condemned as an illegal tie started as a purely linguistic requirement: unless products are separate, one cannot be "tied" to the other. Indeed, the nature of the

products involved in early tying cases—intuitively distinct items such as a movie projector and a film, *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U.S. 502 (1917)—led courts either to disregard the separate-products question, *see, e.g.*, *United Shoe Mach. Corp. v. United States*, 258 U.S. 451 (1922), or to discuss it only in passing, *see, e.g.*, *Motion Picture Patents*, 243 U.S. at 508, 512, 518. It was not until *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594 (1953), that the separate-products issue became a distinct element of the test for an illegal tie. *Id.* at 614. Even that case engaged in a rather cursory inquiry into whether ads sold in the morning edition of a paper were a separate product from ads sold in the evening edition.

The first case to give content to the separate-products test was *Jefferson Parish*, 466 U.S. 2. That case addressed a tying arrangement in which a hospital conditioned surgical care at its facility on the purchase of anesthesiological services from an affiliated medical group. The facts were a challenge for casual separate-products analysis because the tied service—anesthesia—was neither intuitively distinct from nor intuitively contained within the tying service—surgical care. A further complication was that, soon after the Court enunciated the per se rule for tying liability in *International Salt Co. v. United States*, 332 U.S. 392, 396 (1947), and *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5-7 (1958), new economic research began to cast doubt on the assumption, voiced by the Court when it established the rule, that " 'tying agreements serve hardly any purpose beyond the suppression of competition,' " *id.* at 6 (quoting *Standard Oil of Cal. v. United States*, 337 U.S. 293, 305-06 (1949)); *see also Jefferson Parish*, 466 U.S. at 15 n.23 (citing materials); *Fortner Enters. v. U.S. Steel Corp.*, 394 U.S. 495, 524-25 (1969) (Fortas, J., dissenting) ("*Fortner I*").

The *Jefferson Parish* Court resolved the matter in two steps. First, it clarified that "the answer to the question whether one or two products are involved" does not turn "on the functional relation between them...." *Jefferson Parish*, 466 U.S. at 19; *see also id.* at 19 n.30. In other words, the mere fact that two items are complements, that "one ... is

useless without the other," *id.*, does not make them a single "product" for purposes of tying law. *Accord Eastman Kodak*, 504 U.S. at 463. Second, reasoning that the "definitional question [whether two distinguishable products are involved] depends on whether the arrangement may have the type of competitive consequences addressed by the rule [against tying]," *Jefferson Parish*, 466 U.S. at 21, the Court decreed that "no tying arrangement can exist unless there is a sufficient *demand* for the purchase of anesthesiological services separate from hospital services to identify a distinct product market in which it is *efficient* to offer anesthesiological services separately from hospital service," *id.* at 21-22 (emphasis added); *accord Eastman Kodak*, 504 U.S. at 462.

The Court proceeded to examine direct and indirect evidence of consumer demand for the tied product separate from the tying product. Direct evidence addresses the question whether, when given a choice, consumers purchase the tied good from the tying good maker, or from other firms. The Court took note, for example, of testimony that patients and surgeons often requested specific anesthesiologists not associated with a hospital. *Jefferson Parish*, 466 U.S. at 22. Indirect evidence includes the behavior of firms without market power in the tying good market, presumably on the notion that (competitive) supply follows demand. If competitive firms always bundle the tying and tied goods, then they are a single product. *See id.* at 22 n.36; *see also Eastman Kodak*, 504 U.S. at 462; *Fortner I*, 394 U.S. at 525 (Fortas, J., dissenting), *cited in Jefferson Parish*, 466 U.S. at 12, 22 n.35; *United States v. Jerrold Elecs. Corp.*, 187 F. Supp. 545, 559 (E.D. Pa. 1960), *aff'd per curiam*, 365 U.S. 567 (1961); 10 PHILLIP E. AREEDA ET AL., ANTITRUST LAW ¶ 1744, at 197-201 (1996). Here the Court noted that only 27% of anesthesiologists in markets other than the defendant's had financial relationships with hospitals, and that, unlike radiologists and pathologists, anesthesiologists were not usually employed by hospitals, *i.e.*, bundled with hospital services. *Jefferson Parish*, 466 U.S. at 22 n.36. With both direct and indirect

evidence concurring, the Court determined that hospital surgery and anesthesiological services were distinct goods.

To understand the logic behind the Court's consumer demand test, consider first the postulated harms from tying. The core concern is that tying prevents goods from competing directly for consumer choice on their merits, *i.e.*, being selected as a result of "buyers' independent judgment," *id.* at 13 (internal quotes omitted). With a tie, a buyer's "freedom to select the best bargain in the second market [could be] impaired by his need to purchase the tying product, and perhaps by an inability to evaluate the true cost of either product...." *Id.* at 15. Direct competition on the merits of the tied product is foreclosed when the tying product either is sold only in a bundle with the tied product or, though offered separately, is sold at a bundled price, so that the buyer pays the same price whether he takes the tied product or not. In both cases, a consumer buying the tying product becomes entitled to the tied product; he will therefore likely be unwilling to buy a competitor's version of the tied product even if, making his own price/quality assessment, that is what he would prefer.

But not all ties are bad. Bundling obviously saves distribution and consumer transaction costs. 9 PHILLIP E. AREEDA, ANTITRUST LAW ¶ 1703g2, at 51-52 (1991). This is likely to be true, to take some examples from the computer industry, with the integration of math co-processors and memory into microprocessor chips and the inclusion of spell checkers in word processors. 11/10/98 pm Tr. at 18-19 (trial testimony of Steven McGeady of Intel), *reprinted in* 9 J.A. at 5581-82 (math co-processor); *Cal. Computer Prods., Inc. v. IBM Corp.*, 613 F.2d 727, 744 & n.29 (9th Cir. 1979) (memory). Bundling can also capitalize on certain economies of scope. A possible example is the "shared" library files that perform OS and browser functions with the very same lines of code and thus may save drive space from the clutter of redundant routines and memory when consumers use both the OS and browser simultaneously. 11/16/98 pm Tr. at 44 (trial testimony of Glenn Weadock), *reprinted in* 9 J.A. at 5892; Direct Testimony of Microsoft's James Allchin ¶ ¶ 10, 97, 100, 106-

116, app. A (excluding ¶ ¶ f, g.vi), *reprinted in* 5 J.A. at 3292, 3322-30, 3412-17. Indeed, if there were no efficiencies from a tie (including economizing on consumer transaction costs such as the time and effort involved in choice), we would expect distinct consumer demand for each individual component of every good. In a competitive market with zero transaction costs, the computers on which this opinion was written would only be sold piecemeal—keyboard, monitor, mouse, central processing unit, disk drive, and memory all sold in separate transactions and likely by different manufacturers.

Recognizing the potential benefits from tying, *see Jefferson Parish*, 466 U.S. at 21 n.33, the Court in *Jefferson Parish* forged a separate-products test that, like those of market power and substantial foreclosure, attempts to screen out false positives under per se analysis. The consumer demand test is a rough proxy for whether a tying arrangement may, on balance, be welfare-enhancing, and unsuited to per se condemnation. In the abstract, of course, there is always direct separate demand for products: assuming choice is available at zero cost, consumers will prefer it to no choice. Only when the efficiencies from bundling are dominated by the benefits to choice for enough consumers, however, will we actually observe consumers making independent purchases. In other words, perceptible separate demand is inversely proportional to net efficiencies. On the supply side, firms without market power will bundle two goods only when the cost savings from joint sale outweigh the value consumers place on separate choice. So bundling by all competitive firms implies strong net efficiencies. If a court finds either that there is no noticeable separate demand for the tied product or, there being no convincing direct evidence of separate demand, that the entire "competitive fringe" engages in the same behavior as the defendant, 10 AREEDA ET AL., ANTITRUST LAW ¶ 1744c4, at 200, then the tying and tied products should be declared one product and per se liability should be rejected.

Before concluding our exegesis of *Jefferson Parish*'s separate-products test, we should clarify two things. First, *Jefferson Parish* does not endorse a direct inquiry into the

efficiencies of a bundle. Rather, it proposes easy-to-administer proxies for net efficiency. In describing the separate-products test we discuss efficiencies only to explain the rationale behind the consumer demand inquiry. To allow the separate-products test to become a detailed inquiry into possible welfare consequences would turn a screening test into the very process it is expected to render unnecessary. 10 AREEDA ET AL., ANTITRUST LAW ¶ ¶ 1741b & c, at 180-85; *see also Jefferson Parish*, 466 U.S. at 34-35 (O'Connor, J., concurring).

Second, the separate-products test is not a one-sided inquiry into the cost savings from a bundle. Although *Jefferson Parish* acknowledged that prior lower court cases looked at cost-savings to decide separate products, *see id.* at 22 n.35, the Court conspicuously did not adopt that approach in its disposition of tying arrangement before it. Instead it chose proxies that balance costs savings against reduction in consumer choice.

With this background, we now turn to the separate-products inquiry before us. The District Court found that many consumers, if given the option, would choose their browser separately from the OS. *Findings of Fact* ¶ 151 (noting that "corporate consumers ... prefer to standardize on the same browser across different [OSs]" at the workplace). Turning to industry custom, the court found that, although all major OS vendors bundled browsers with their OSs, these companies either sold versions without a browser, or allowed OEMs or end-users either not to install the bundled browser or in any event to "uninstall" it. *Id.* ¶ 153. The court did not discuss the record evidence as to whether OS vendors other than Microsoft sold at a bundled price, with no discount for a browserless OS, perhaps because the record evidence on the issue was in conflict. *Compare, e.g.*, Direct Testimony of Richard Schmalensee ¶ 241, *reprinted in* 7 J.A. at 4315 ("[A]ll major operating system vendors do in fact include Web-browsing software with the operating system at *no extra charge*.") (emphasis added), *with, e.g.*, 1/6/99 pm Tr. at 42 (trial testimony of Franklin Fisher of MIT) (suggesting all OSs but Microsoft offer discounts).

Microsoft does not dispute that many consumers demand alternative browsers. But on industry custom Microsoft contends that no other firm requires non-removal because no other firm has invested the resources to integrate web browsing as deeply into its OS as Microsoft has. Appellant's Opening Br. at 25; *cf.* Direct Testimony of James Allchin ¶ ¶ 262-72, *reprinted in* 5 J.A. at 3385-89 (Apple, IBM); 11/5/98 pm Tr. at 55-58 (trial testimony of Apple's Avadis Tevanian, Jr.), *reprinted in* 9 J.A. at 5507-10 (Apple). (We here use the term "integrate" in the rather simple sense of converting individual goods into components of a single physical object (*e.g.*, a computer as it leaves the OEM, or a disk or sets of disks), without any normative implication that such integration is desirable or achieves special advantages. *Cf. United States v. Microsoft Corp.*, 147 F.3d 935, 950 (D.C. Cir. 1998) ("*Microsoft II*").) Microsoft contends not only that its integration of IE into Windows is innovative and beneficial but also that it requires non-removal of IE. In our discussion of monopoly maintenance we find that these claims fail the efficiency balancing applicable in that context. But the separate-products analysis is supposed to perform its function as a proxy *without* embarking on any direct analysis of efficiency. Accordingly, Microsoft's implicit argument—that in this case looking to a competitive fringe is inadequate to evaluate fully its potentially innovative technological integration, that such a comparison is between apples and oranges—poses a legitimate objection to the operation of *Jefferson Parish*'s separate-products test for the per se rule.

In fact there is merit to Microsoft's broader argument that *Jefferson Parish*'s consumer demand test would "chill innovation to the detriment of consumers by preventing firms from integrating into their products new functionality previously provided by standalone products—and hence, by definition, subject to separate consumer demand." Appellant's Opening Br. at 69. The per se rule's direct consumer demand and

indirect industry custom inquiries are, as a general matter, backward-looking and therefore systematically poor proxies for overall efficiency in the presence of new and innovative integration. *See* 10 AREEDA ET AL., ANTITRUST LAW ¶ 1746, at 224-29; Amicus Brief of Lawrence Lessig at 24-25, and sources cited therein (brief submitted regarding Conclusions of Law). The direct consumer demand test focuses on historic consumer behavior, likely before integration, and the indirect industry custom test looks at firms that, unlike the defendant, may not have integrated the tying and tied goods. Both tests compare incomparables—the defendant's decision to bundle in the presence of integration, on the one hand, and consumer and competitor calculations in its absence, on the other. If integration has efficiency benefits, these may be ignored by the *Jefferson Parish* proxies. Because one cannot be sure beneficial integration will be protected by the other elements of the per se rule, simple application of that rule's separate-products test may make consumers worse off.

In light of the monopoly maintenance section, obviously, we do not find that Microsoft's integration is welfare-enhancing or that it should be absolved of tying liability. Rather, we heed Microsoft's warning that the separate-products element of the per se rule may not give newly integrated products a fair shake.

B. Per Se Analysis Inappropriate for this Case.

We now address directly the larger question as we see it: whether standard per se analysis should be applied "off the shelf" to evaluate the defendant's tying arrangement, one which involves software that serves as a platform for third-party applications. There is no doubt that "[i]t is far too late in the history of our antitrust jurisprudence to question the proposition that *certain* tying arrangements pose an unacceptable risk of stifling competition and therefore are unreasonable '*per se*.' " *Jefferson Parish*, 466 U.S. at 9 (emphasis added). But there are strong reasons to doubt that the integration of additional software functionality into an OS falls among these arrangements. Applying per se analysis to

such an amalgamation creates undue risks of error and of deterring welfare-enhancing innovation.

The Supreme Court has warned that " '[i]t is only after considerable experience with certain business relationships that courts classify them as *per se* violations....' " *Broad. Music*, 441 U.S. at 9 (quoting *Topco Assocs.*, 405 U.S. at 607-08); *accord Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 47-59 (1977); *White Motor Co. v. United States*, 372 U.S. 253, 263 (1963); *Jerrold Elecs.*, 187 F. Supp. at 555-58, 560-61; *see also* Frank H. Easterbrook, *Allocating Antitrust Decisionmaking Tasks*, 76 GEO. L.J. 305, 308 (1987). Yet the sort of tying arrangement attacked here is unlike any the Supreme Court has considered. The early Supreme Court cases on tying dealt with arrangements whereby the sale or lease of a patented product was conditioned on the purchase of certain unpatented products from the patentee. *See Motion Picture Patents*, 243 U.S. 502 (1917); *United Shoe Mach.*, 258 U.S. 451 (1922); *IBM Corp. v. United States*, 298 U.S. 131 (1936); *Int'l Salt*, 332 U.S. 392 (1947). Later Supreme Court tying cases did not involve market power derived from patents, but continued to involve contractual ties. *See Times-Picayune*, 345 U.S. 594 (1953) (defendant newspaper conditioned the purchase of ads in its evening edition on the purchase of ads in its morning edition); *N. Pac. Ry.*, 356 U.S. 1 (1958) (defendant railroad leased land only on the condition that products manufactured on the land be shipped on its railways); *United States v. Loew's Inc.*, 371 U.S. 38 (1962) (defendant distributor of copyrighted feature films conditioned the sale of desired films on the purchase of undesired films); *U.S. Steel Corp. v. Fortner Enters., Inc.*, 429 U.S. 610 (1977) ("*Fortner II*") (defendant steel company conditioned access to low interest loans on the purchase of the defendant's prefabricated homes); *Jefferson Parish*, 466 U.S. 2 (1984) (defendant hospital conditioned use of its operating rooms on the purchase of anesthesiological services from a medical group associated with the hospital); *Eastman Kodak*, 504 U.S. 451 (1992) (defendant photocopying machine manufacturer conditioned the sale of replacement parts for its machines on the use of the defendant's repair services).

In none of these cases was the tied good physically and technologically integrated with the tying good. Nor did the defendants ever argue that their tie improved the value of the tying product to users *and* to makers of complementary goods. In those cases where the defendant claimed that use of the tied good made the tying good more valuable to users, the Court ruled that the same result could be achieved via quality standards for substitutes of the tied good. *See, e.g., Int'l Salt*, 332 U.S. at 397-98; *IBM*, 298 U.S. at 138-40. Here Microsoft argues that IE and Windows are an integrated physical product and that the bundling of IE APIs with Windows makes the latter a better applications platform for third-party software. It is unclear how the benefits from IE APIs could be achieved by quality standards for different browser manufacturers. We do not pass judgment on Microsoft's claims regarding the benefits from integration of its APIs. We merely note that these and other novel, purported efficiencies suggest that judicial "experience" provides little basis for believing that, "because of their pernicious effect on competition and lack of *any* redeeming virtue," a software firm's decisions to sell multiple functionalities as a package should be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *N. Pac. Ry.*, 356 U.S. at 5 (emphasis added).

Nor have we found much insight into software integration among the decisions of lower federal courts. Most tying cases in the computer industry involve bundling with hardware. *See, e.g., Digital Equip. Corp. v. Uniq Digital Techs., Inc.*, 73 F.3d 756, 761 (7th Cir. 1996) (Easterbrook, J.) (rejecting with little discussion the notion that bundling of OS with a computer is a tie of two separate products); *Datagate, Inc. v. Hewlett-Packard Co.*, 941 F.2d 864, 870 (9th Cir. 1991) (holding that plaintiff's allegation that defendant conditioned its software on purchase of its hardware was sufficient to survive summary judgment); *Digidyne Corp. v. Data Gen. Corp.*, 734 F.2d 1336, 1341-47 (9th Cir. 1984) (holding that defendant's conditioning the sale of its OS on the purchase of its CPU constitutes a per se tying violation); *Cal. Computer*

Prods., 613 F.2d at 743-44 (holding that defendant's integration into its CPU of a disk controller designed for its own disk drives was a useful innovation and not an impermissible attempt to monopolize); *ILC Peripherals Leasing Corp. v. IBM Corp.*, 448 F. Supp. 228, 233 (N.D. Cal. 1978) (finding that defendant's integration of magnetic disks and a head/disk assembly was not an unlawful tie), *aff'd per curiam sub. nom. Memorex Corp. v. IBM Corp.*, 636 F.2d 1188 (9th Cir. 1980); *see also Transamerica Computer Co. v. IBM Corp.*, 698 F.2d 1377, 1382-83 (9th Cir. 1983) (finding lawful defendant's design changes that rendered plaintiff peripheral maker's tape drives incompatible with the defendant's CPU). The hardware case that most resembles the present one is *Telex Corp. v. IBM Corp.*, 367 F. Supp. 258 (N.D. Okla. 1973), *rev'd on other grounds*, 510 F.2d 894 (10th Cir. 1975). Just as Microsoft integrated web browsing into its OS, IBM in the 1970s integrated memory into its CPUs, a hardware platform. A peripheral manufacturer alleged a tying violation, but the District Court dismissed the claim because it thought it inappropriate to enmesh the courts in product design decisions. *Id.* at 347. The court's discussion of the tying claim was brief and did not dwell on the effects of the integration on competition or efficiencies. Nor did the court consider whether per se analysis of the alleged tie was wise.

We have found four antitrust cases involving arrangements in which a software program is tied to the purchase of a software platform—two district court cases and two appellate court cases, including one from this court. The first case, *Innovation Data Processing, Inc. v. IBM Corp.*, 585 F. Supp. 1470 (D.N.J. 1984), involved an allegation that IBM bundled with its OS a utility used to transfer data from a tape drive to a computer's disk drive. Although the court mentioned the efficiencies achieved by bundling, it ultimately dismissed the per se tying claim because IBM sold a discounted version of the OS without the utility. *Id.* at 1475-76. The second case, *A.I. Root Co. v. Computer/Dynamics, Inc.*, 806 F.2d 673 (6th Cir. 1986), was brought by a business customer who claimed that an OS manufacturer illegally conditioned the sale of its OS on the purchase of other software applications. The court

quickly disposed of the case on the ground that defendant Computer/Dynamics had no market power. *Id.* at 675-77. There was no mention of the efficiencies from the tie. The third case, *Caldera, Inc. v. Microsoft Corp.*, 72 F. Supp. 2d 1295 (D. Utah 1999), involved a complaint that the technological integration of MS-DOS and Windows 3.1 into Windows 95 constituted a per se tying violation. The court formulated the "single product" issue in terms of whether the tie constituted a technological improvement, ultimately concluding that Microsoft was not entitled to summary judgment on that issue. *Id.* at 1322-28.

The software case that bears the greatest resemblance to that at bar is, not surprisingly, *Microsoft II*, 147 F.3d 935, where we examined the bundling of IE with Windows 95. But the issue there was whether the bundle constituted an "integrated product" as the term was used in a 1994 consent decree between the Department of Justice and Microsoft. *Id.* at 939. We did not consider whether Microsoft's bundling should be condemned as per se illegal. We certainly did not make any finding that bundling IE with Windows had "no purpose except stifling of competition," *White Motor*, 372 U.S. at 263, an important consideration in defining the scope of any of antitrust law's per se rules, *see Cont'l T.V.*, 433 U.S. at 57-59. While we believed our interpretation of the term "integrated product" was consistent with the test for separate products under tying law, we made clear that the "antitrust question is of course distinct." *Microsoft II*, 147 F.3d at 950 n.14. We even cautioned that our conclusion that IE and Windows 95 were integrated was "subject to reexamination on a more complete record." *Id.* at 952. To the extent that the decision completely disclaimed judicial capacity to evaluate "high-tech product design," *id.*, it cannot be said to conform to prevailing antitrust doctrine (as opposed to resolution of the decree-interpretation issue then before us). In any case, mere review of asserted breaches of a consent decree hardly constitutes enough "experience" to warrant application of per se analysis. *See Broad. Music*, 441 U.S. at 10-16 (refusing to apply per se analysis to defendant's blanket licenses even though those licenses had been thoroughly

investigated by the Department of Justice and were the subject of a consent decree that had been reviewed by numerous courts).

While the paucity of cases examining software bundling suggests a high risk that per se analysis may produce inaccurate results, the nature of the platform software market affirmatively suggests that per se rules might stunt valuable innovation. We have in mind two reasons.

First, as we explained in the previous section, the separate-products test is a poor proxy for net efficiency from newly integrated products. Under per se analysis the first firm to merge previously distinct functionalities (*e.g.*, the inclusion of starter motors in automobiles) or to eliminate entirely the need for a second function (*e.g.*, the invention of the stain-resistant carpet) risks being condemned as having tied two separate products because at the moment of integration there will appear to be a robust "distinct" market for the tied product. *See* 10 AREEDA ET AL., ANTITRUST LAW ¶ 1746, at 224. Rule of reason analysis, however, affords the first mover an opportunity to demonstrate that an efficiency gain from its "tie" adequately offsets any distortion of consumer choice. *See Grappone, Inc. v. Subaru of New England, Inc.*, 858 F.2d 792, 799 (1st Cir. 1988) (Breyer, J.); *see also Town Sound & Custom Tops, Inc. v. Chrysler Motor Corp.*, 959 F.2d 468, 482 (3d Cir. 1992); *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1048-49 n.5 (5th Cir. 1982).

The failure of the separate-products test to screen out certain cases of productive integration is particularly troubling in platform software markets such as that in which the defendant competes. Not only is integration common in such markets, but it is common among firms without market power. We have already reviewed evidence that nearly all competitive OS vendors also bundle browsers. Moreover, plaintiffs do not dispute that OS vendors can and do incorporate basic internet plumbing and other useful functionality into their OSs. *See* Direct Testimony of Richard Schmalensee ¶ 508, *reprinted in* 7 J.A. at 4462-64 (disk defragmentation, memory management, peer-to-peer networking or file sharing); 11/19/98 am Tr. at 82-83 (trial testimony of Freder-

ick Warren-Boulton), *reprinted in* 10 J.A. at 6427-28 (TCP/IP stacks). Firms without market power have no incentive to package different pieces of software together unless there are efficiency gains from doing so. The ubiquity of bundling in competitive platform software markets should give courts reason to pause before condemning such behavior in less competitive markets.

Second, because of the pervasively innovative character of platform software markets, tying in such markets may produce efficiencies that courts have not previously encountered and thus the Supreme Court had not factored into the per se rule as originally conceived. For example, the bundling of a browser with OSs enables an independent software developer to count on the presence of the browser's APIs, if any, on consumers' machines and thus to omit them from its own package. *See* Direct Testimony of Richard Schmalensee ¶ ¶ 230-31, 234, *reprinted* in 7 J.A. at 4309-11, 4312; Direct Testimony of Michael Devlin ¶ ¶ 12-21, *reprinted in* 5 J.A. at 3525-29; *see also Findings of Fact* ¶ 2. It is true that software developers can bundle the browser APIs they need with their own products, *see id.* ¶ 193, but that may force consumers to pay twice for the same API if it is bundled with two different software programs. It is also true that OEMs can include APIs with the computers they sell, *id.*, but diffusion of uniform APIs by that route may be inferior. First, many OEMs serve special subsets of Windows consumers, such as home or corporate or academic users. If just one of these OEMs decides not to bundle an API because it does not benefit enough of its clients, ISVs that use that API might have to bundle it with every copy of their program. Second, there may be a substantial lag before all OEMs bundle the same set of APIs—a lag inevitably aggravated by the first phenomenon. In a field where programs change very rapidly, delays in the spread of a necessary element (here, the APIs) may be very costly. Of course, these arguments may not justify Microsoft's decision to bundle APIs in this case, particularly because Microsoft did not merely bundle with Windows the APIs from IE, but an entire browser application (sometimes even without APIs, *see id.*).

A justification for bundling a component of software may not be one for bundling the entire software package, especially given the malleability of software code. *See id.* ¶ ¶ 162-63; 12/9/98 am Tr. at 17 (trial testimony of David Farber); 1/6/99 am Tr. at 6-7 (trial testimony of Franklin Fisher), *reprinted in* 11 J.A. at 7192-93; Direct Testimony of Joachim Kempin ¶ 286, *reprinted in* 6 J.A. at 3749. Furthermore, the interest in efficient API diffusion obviously supplies a far stronger justification for simple price-bundling than for Microsoft's contractual or technological bars to subsequent *removal* of functionality. But our qualms about redefining the boundaries of a defendant's product and the possibility of consumer gains from simplifying the work of applications developers makes us question any hard and fast approach to tying in OS software markets.

There may also be a number of efficiencies that, although very real, have been ignored in the calculations underlying the adoption of a per se rule for tying. We fear that these efficiencies are common in technologically dynamic markets where product development is especially unlikely to follow an easily foreseen linear pattern. Take the following example from *ILC Peripherals*, 448 F. Supp. 228, a case concerning the evolution of disk drives for computers. When IBM first introduced such drives in 1956, it sold an integrated product that contained magnetic disks and disk heads that read and wrote data onto disks. *Id.* at 231. Consumers of the drives demanded two functions—to store data and to access it all at once. In the first few years consumers' demand for storage increased rapidly, outpacing the evolution of magnetic disk technology. To satisfy that demand IBM made it possible for consumers to remove the magnetic disks from drives, even though that meant consumers would not have access to data on disks removed from the drive. This componentization enabled makers of computer peripherals to sell consumers removable disks. *Id.* at 231-32. Over time, however, the technology of magnetic disks caught up with demand for capacity, so that consumers needed few removable disks to store all their data. At this point IBM reintegrated disks into their drives, enabling consumers to once again have

immediate access to all their data without a sacrifice in capacity. *Id.* A manufacturer of removable disks sued. But the District Court found the tie justified because it satisfied consumer demand for immediate access to all data, and ruled that disks and disk heads were one product. *Id.* at 233. A court hewing more closely to the truncated analysis contemplated by *Northern Pacific Railway* would perhaps have overlooked these consumer benefits.

These arguments all point to one conclusion: we cannot comfortably say that bundling in platform software markets has so little "redeeming virtue," *N. Pac. Ry.*, 356 U.S. at 5, and that there would be so "very little loss to society" from its ban, that "an inquiry into its costs in the individual case [can be] considered [ ] unnecessary." *Jefferson Parish*, 466 U.S. at 33-34 (O'Connor, J., concurring). We do not have enough empirical evidence regarding the effect of Microsoft's practice on the amount of consumer surplus created or consumer choice foreclosed by the integration of added functionality into platform software to exercise sensible judgment regarding that entire class of behavior. (For some issues we have no data.) "We need to know more than we do about the actual impact of these arrangements on competition to decide whether they ... should be classified as *per se* violations of the Sherman Act." *White Motor*, 372 U.S. at 263. Until then, we will heed the wisdom that "easy labels do not always supply ready answers," *Broad. Music*, 441 U.S. at 8, and vacate the District Court's finding of per se tying liability under Sherman Act § 1. We remand the case for evaluation of Microsoft's tying arrangements under the rule of reason. *See Pullman-Standard v. Swint*, 456 U.S. 273, 292 (1982) ("[W]here findings are infirm because of an erroneous view of the law, a remand is the proper course unless the record permits only one resolution of the factual issue."). That rule more freely permits consideration of the benefits of bundling in software markets, particularly those for OSs, and a balancing of these benefits against the costs to consumers whose ability to make direct price/quality tradeoffs in the tied market may have been impaired. *See Jefferson Parish*, 466 U.S. at 25 nn.41-42 (noting that per se rule does not broadly

permit consideration of procompetitive justifications); *id.* at 34-35 (O'Connor, J., concurring); *N. Pac. Ry.*, 356 U.S. at 5.

Our judgment regarding the comparative merits of the per se rule and the rule of reason is confined to the tying arrangement before us, where the tying product is software whose major purpose is to serve as a platform for third-party applications and the tied product is complementary software functionality. While our reasoning may at times appear to have broader force, we do not have the confidence to speak to facts outside the record, which contains scant discussion of software integration generally. Microsoft's primary justification for bundling IE APIs is that their inclusion with Windows increases the value of third-party software (and Windows) to consumers. *See* Appellant's Opening Br. at 41-43. Because this claim applies with distinct force when the tying product is *platform* software, we have no present basis for finding the per se rule inapplicable to software markets generally. Nor should we be interpreted as setting a precedent for switching to the rule of reason every time a court identifies an efficiency justification for a tying arrangement. Our reading of the record suggests merely that integration of new functionality into platform software is a common practice and that wooden application of per se rules in this litigation may cast a cloud over platform innovation in the market for PCs, network computers and information appliances.

C. On Remand

Should plaintiffs choose to pursue a tying claim under the rule of reason, we note the following for the benefit of the trial court:

First, on remand, plaintiffs must show that Microsoft's conduct unreasonably restrained competition. Meeting that burden "involves an inquiry into the actual effect" of Microsoft's conduct on competition in the tied good market, *Jefferson Parish*, 466 U.S. at 29, the putative market for browsers. To the extent that certain aspects of tying injury may depend on a careful definition of the tied good market and a showing of barriers to entry other than the tying arrangement itself,

plaintiffs would have to establish these points. *See Jefferson Parish*, 466 U.S. at 29 ("This competition [among anesthesiologists] takes place in a market that has not been defined."); *id.* at 29 n.48 ("[N]either the District Court nor the Court of Appeals made any findings concerning the contract's effect on entry barriers."). But plaintiffs were required—and had every incentive—to provide both a definition of the browser market and barriers to entry to that market as part of their § 2 attempted monopolization claim; yet they failed to do so. *See supra* Section III. Accordingly, on remand of the § 1 tying claim, plaintiffs will be precluded from arguing any theory of harm that depends on a precise definition of browsers or barriers to entry (for example, network effects from Internet protocols and extensions embedded in a browser) other than what may be implicit in Microsoft's tying arrangement.

Of the harms left, plaintiffs must show that Microsoft's conduct was, on balance, anticompetitive. Microsoft may of course offer procompetitive justifications, and it is plaintiffs' burden to show that the anticompetitive effect of the conduct outweighs its benefit.

Second, the fact that we have already considered some of the behavior plaintiffs allege to constitute tying violations in the monopoly maintenance section does not resolve the § 1 inquiry. The two practices that plaintiffs have most ardently claimed as tying violations are, indeed, a basis for liability under plaintiffs' § 2 monopoly maintenance claim. These are Microsoft's refusal to allow OEMs to uninstall IE or remove it from the Windows desktop, *Findings of Fact* ¶ ¶ 158, 203, 213, and its removal of the IE entry from the Add/Remove Programs utility in Windows 98, *id.* ¶ 170. *See supra* Section II.B. In order for the District Court to conclude these practices also constitute § 1 tying violations, plaintiffs must demonstrate that their benefits—if any, *see supra* Sections II.B.1.b and II.B.2.b; *Findings of Fact* ¶ ¶ 176, 186, 193—are outweighed by the harms in the *tied product* market. *See Jefferson Parish*, 466 U.S. at 29. If the District Court is convinced of net harm, it must then consider whether any additional remedy is necessary.

In Section II.B we also considered another alleged tying violation—the Windows 98 override of a consumer's choice of default web browser. We concluded that this behavior does not provide a distinct basis for § 2 liability because plaintiffs failed to rebut Microsoft's proffered justification by demonstrating that harms in the operating system market outweigh Microsoft's claimed benefits. *See supra* Section II.B. On remand, however, although Microsoft may offer the same procompetitive justification for the override, plaintiffs must have a new opportunity to rebut this claim, by demonstrating that the anticompetitive effect in the *browser* market is greater than these benefits.

Finally, the District Court must also consider an alleged tying violation that we did not consider under § 2 monopoly maintenance: price bundling. First, the court must determine if Microsoft indeed price bundled—that is, was Microsoft's charge for Windows and IE higher than its charge would have been for Windows alone? This will require plaintiffs to resolve the tension between *Findings of Fact* ¶ ¶ 136-37, which Microsoft interprets as saying that no part of the bundled price of Windows can be attributed to IE, and *Conclusions of Law*, at 50, which says the opposite. *Compare* Direct Testimony of Paul Maritz ¶ ¶ 37, 296, *reprinted in* 6 J.A. at 3656, 3753-54 (Microsoft did not "charge separately" for IE, but like all other major OS vendors included browsing software at "no extra charge"), *with* GX 202 at MS7 004343, esp. 004347, *reprinted in* 22 J.A. at 14459, esp. 14463 (memo from Christian Wildfeuer describing focus group test used to price Windows 98 with IE 4), *and* GX 1371 at MS7 003729-30, 003746, 003748, esp. 003750, *reprinted in* 15 J.A. at 10306-07, 10323, 10325, esp. 10327 (Windows 98 pricing and marketing memo), *and Findings of Fact* ¶ 63 (identifying GX 202 as the *basis* for Windows 98 pricing).

If there is a positive price increment in Windows associated with IE (we know there is no claim of price predation), plaintiffs must demonstrate that the anticompetitive effects of Microsoft's price bundling outweigh any procompetitive justifications the company provides for it. In striking this balance, the District Court should consider, among other things,

indirect evidence of efficiency provided by "the competitive fringe." *See supra* Section IV.A. Although this inquiry may overlap with the separate-products screen under the per se rule, that is not its role here. Because courts applying the rule of reason are free to look at both direct and indirect evidence of efficiencies from a tie, there is no need for a screening device as such; thus the separate-products inquiry serves merely to classify arrangements as subject to tying law, as opposed to, say, liability for exclusive dealing. *See Times-Picayune*, 345 U.S. at 614 (finding a single product and then turning to a general rule of reason analysis under § 1, though not using the term "tying"); *Foster v. Md. State Sav. & Loan Ass'n*, 590 F.2d 928, 931, 933 (D.C. Cir. 1978), *cited in Jefferson Parish*, 466 U.S. at 40 (O'Connor, J., concurring) (same); *see also Chawla v. Shell Oil Co.*, 75 F. Supp. 2d 626, 635, 643-44 (S.D. Tex. 1999) (considering a rule of reason tying claim after finding a single product under the per se rule); *Montgomery County Ass'n of Realtors v. Realty Photo Master Corp.*, 783 F. Supp. 952, 961 & n.26 (D. Md. 1992), *aff'd mem.* 993 F.2d 1538 (4th Cir. 1993) (same).

If OS vendors without market power also sell their software bundled with a browser, the natural inference is that sale of the items as a bundle serves consumer demand and that unbundled sale would not, for otherwise a competitor could profitably offer the two products separately and capture sales of the tying good from vendors that bundle. *See* 10 AREEDA ET AL., ANTITRUST LAW ¶ 1744b, at 197-98. It does appear that most if not all firms have sold a browser with their OSs at a bundled price, beginning with IBM and its OS/2 Warp OS in September 1994, *Findings of Fact* ¶ 140; *see also* Direct Testimony of Richard Schmalensee ¶ 212, *reprinted in* 7 J.A. at 4300-01, and running to current versions of Apple's Mac OS, Caldera and Red Hat's Linux OS, Sun's Solaris OS, Be's BeOS, Santa Cruz Operation's UnixWare, Novell's NetWare OS, and others, *see Findings of Fact* ¶ 153; Direct Testimony of Richard Schmalensee ¶ ¶ 215-23, 230, esp. table 5, *reprinted in* 7 J.A. at 4302-05,

4310; Direct Testimony of James Allchin ¶ ¶ 261-77, *reprinted in* 5 J.A. at 3384-92.

Of course price bundling by competitive OS makers would tend to exonerate Microsoft only if the sellers in question sold their browser/OS combinations *exclusively* at a bundled price. If a competitive seller offers a discount for a browserless version, then—at least as to *its* OS and browser—the gains from bundling are outweighed by those from separate choice. The evidence on discounts appears to be in conflict. *Compare* Direct Testimony of Richard Schmalensee ¶ 241, *reprinted in* 7 J.A. at 4315, *with* 1/6/99 pm Tr. at 42 (trial testimony of Franklin Fisher). If Schmalensee is correct that nearly all OS makers do not offer a discount, then the harm from tying—obstruction of direct consumer choice—would be theoretically created by virtually all sellers: a customer who would prefer an alternate browser is forced to pay the full price of that browser even though its value to him is only the increment in value over the bundled browser. (The result is similar to that from non-removal, which forces consumers who want the alternate browser to surrender disk space taken up by the unused, bundled browser.) If the failure to offer a price discount were universal, any impediment to direct consumer choice created by Microsoft's price-bundled sale of IE with Windows would be matched throughout the market; yet these OS suppliers on the competitive fringe would have evidently found this price bundling on balance efficient. If Schmalensee's assertions are ill-founded, of course, no such inference could be drawn.

V. Trial Proceedings and Remedy

Microsoft additionally challenges the District Court's procedural rulings on two fronts. First, with respect to the trial phase, Microsoft proposes that the court mismanaged its docket by adopting an expedited trial schedule and receiving evidence through summary witnesses. Second, with respect to the remedies decree, Microsoft argues that the court improperly ordered that it be divided into two separate companies. Only the latter claim will long detain us. The District Court's trial-phase procedures were comfortably within the bounds of its broad discretion to conduct trials as it sees fit. We conclude, however, that the District Court's

remedies decree must be vacated for three independent reasons: (1) the court failed to hold a remedies-specific evidentiary hearing when there were disputed facts; (2) the court failed to provide adequate reasons for its decreed remedies; and (3) this Court has revised the scope of Microsoft's liability and it is impossible to determine to what extent that should affect the remedies provisions.

A. Factual Background

On April 3, 2000, the District Court concluded the liability phase of the proceedings by the filing of its Conclusions of Law holding that Microsoft had violated §§ 1 and 2 of the Sherman Act. The court and the parties then began discussions of the procedures to be followed in the imposition of remedies. Initially, the District Court signaled that it would enter relief only after conducting a new round of proceedings. In its Conclusions of Law, the court stated that it would issue a remedies order "following proceedings to be established by further Order of the Court." *Conclusions of Law*, at 57. And, when during a post-trial conference, Microsoft's counsel asked whether the court "contemplate[d] further proceedings," the judge replied, "Yes. Yes. I assume that there would be further proceedings." 4/4/00 Tr. at 8-9, 11, *reprinted in* 4 J.A. at 2445-46, 2448. The District Court further speculated that those proceedings might "replicate the procedure at trial with testimony in written form subject to cross-examination." *Id.* at 11, *reprinted in* 4 J.A. at 2448.

On April 28, 2000, plaintiffs submitted their proposed final judgment, accompanied by six new supporting affidavits and several exhibits. In addition to a series of temporary conduct restrictions, plaintiffs proposed that Microsoft be split into two independent corporations, with one continuing Microsoft's operating systems business and the other undertaking the balance of Microsoft's operations. Plaintiffs' Proposed Final Judgment at 2-3, *reprinted in* 4 J.A. at 2473-74. Microsoft filed a "summary response" on May 10, contending both that the proposed decree was too severe and that it would be impossible to resolve certain remedies-specific factual disputes "on a highly expedited basis." Defendant's Summary

Response at 6-7, *reprinted in* 4 J.A. at 2587-88. Another May 10 submission argued that if the District Court considered imposing plaintiffs' proposed remedy, "then substantial discovery, adequate time for preparation and a full trial on relief will be required." Defendant's Position as to Future Proceedings at 2, *reprinted in* 4 J.A. at 2646.

After the District Court revealed during a May 24 hearing that it was prepared to enter a decree without conducting "any further process," 5/24/00 pm Tr. at 33, *reprinted in* 14 J.A. at 9866, Microsoft renewed its argument that the underlying factual disputes between the parties necessitated a remedies-specific evidentiary hearing. In two separate offers of proof, Microsoft offered to produce a number of pieces of evidence, including the following:

- Testimony from Dr. Robert Crandall, a Senior Fellow at the Brookings Institution, that divestiture and dissolution orders historically have "failed to improve economic welfare by reducing prices or increasing output." Defendant's Offer of Proof at 2, *reprinted in* 4 J.A. at 2743.

- Testimony from Professor Kenneth Elzinga, Professor of Economics at the University of Virginia, that plaintiffs' proposed remedies would not induce entry into the operating systems market. *Id.* at 4, *reprinted in* 4 J.A. at 2745.

- Testimony from Dean Richard Schmalensee, Dean of MIT's Sloan School of Management, that dividing Microsoft likely would "harm consumers through higher prices, lower output, reduced efficiency, and less innovation" and would "produce immediate, substantial increases in the prices of both Windows and Office." *Id.* at 8, *reprinted in* 4 J.A. at 2749. Indeed, it would cause the price of Windows to triple. *Id.*

- Testimony from Goldman, Sachs & Co. and from Morgan Stanley Dean Witter that dissolution would adversely affect shareholder value. *Id.* at 17, 19, *reprinted in* 4 J.A. at 2758, 2760.

- Testimony from Microsoft Chairman Bill Gates that dividing Microsoft "along the arbitrary lines proposed by the Government" would devastate the company's proposed Next Generation Windows Services platform, which would allow software developers to write web-based applications that users could access from a wide range of devices. *Id.* at 21-22, *reprinted in* 4 J.A. at 2762-63.

- Testimony from Steve Ballmer, Microsoft's President and CEO, that Microsoft is organized as a unified company and that "there are no natural lines along which Microsoft could be broken up without causing serious problems." *Id.* at 23, *reprinted in* 4 J.A. at 2764.

- Testimony from Michael Capellas, CEO of Compaq, that splitting Microsoft in two "will make it more difficult for OEMs to provide customers with the tightly integrated product offerings they demand" in part because "complementary products created by unrelated companies do not work as well together as products created by a single company." Defendant's Supplemental Offer of Proof at 2, *reprinted in* 4 J.A. at 2823.

Over Microsoft's objections, the District Court proceeded to consider the merits of the remedy and on June 7, 2000 entered its final judgment. The court explained that it would not conduct "extended proceedings on the form a remedy should take," because it doubted that an evidentiary hearing would "give any significantly greater assurance that it will be able to identify what might be generally regarded as an optimum remedy." *Final Judgment*, at 62. The bulk of Microsoft's proffered facts were simply conjectures about future events, and "[i]n its experience the Court has found testimonial predictions of future events generally less reliable even than testimony as to historical fact, and cross-examination to be of little use in enhancing or detracting from their accuracy." *Id.* Nor was the court swayed by Microsoft's "profession of surprise" at the possibility of structural relief. *Id.* at 61. "From the inception of this case Microsoft

knew, from well-established Supreme Court precedents dating from the beginning of the last century, that a mandated divestiture was a possibility, if not a probability, in the event of an adverse result at trial." *Id.*

The substance of the District Court's remedies order is nearly identical to plaintiffs' proposal. The decree's centerpiece is the requirement that Microsoft submit a proposed plan of divestiture, with the company to be split into an "Operating Systems Business," or "OpsCo," and an "Applications Business," or "AppsCo." *Final Judgment*, Decree §§ 1.a, l.c.i, at 64. OpsCo would receive all of Microsoft's operating systems, such as Windows 98 and Windows 2000, while AppsCo would receive the remainder of Microsoft's businesses, including IE and Office. The District Court identified four reasons for its "reluctant[ ]" conclusion that "a structural remedy has become imperative." *Id.* at 62. First, Microsoft "does not yet concede that any of its business practices violated the Sherman Act." *Id.* Second, the company consequently "continues to do business as it has in the past." *Id.* Third, Microsoft "has proved untrustworthy in the past." *Id.* And fourth, the Government, whose officials "are by reason of office obliged and expected to consider—and to act in—the public interest," won the case, "and for that reason alone have some entitlement to a remedy of their choice." *Id.* at 62-63.

The decree also contains a number of interim restrictions on Microsoft's conduct. For instance, Decree § 3.b requires Microsoft to disclose to third-party developers the APIs and other technical information necessary to ensure that software effectively interoperates with Windows. *Id.* at 67. "To facilitate compliance," § 3.b further requires that Microsoft establish "a secure facility" at which third-party representatives may "study, interrogate and interact with relevant and necessary portions of [Microsoft platform software] source code." *Id.* Section 3.e, entitled "Ban on Exclusive Dealing," forbids Microsoft from entering contracts which oblige third parties to restrict their "development, production, distribution, promotion or use of, or payment for" non-Microsoft platform-level software. *Id.* at 68. Under Decree § 3.f—"Ban on

Contractual Tying"—the company may not condition its grant of a Windows license on a party's agreement "to license, promote, or distribute any other Microsoft software product." *Id.* And § 3.g imposes a "Restriction on Binding Middleware Products to Operating System Products" unless Microsoft also offers consumers "an otherwise identical version" of the operating system without the middleware. *Id.*

B. Trial Proceedings

Microsoft's first contention—that the District Court erred by adopting an expedited trial schedule and receiving evidence through summary witnesses—is easily disposed of. Trial courts have extraordinarily broad discretion to determine the manner in which they will conduct trials. "This is particularly true in a case such as the one at bar where the proceedings are being tried to the court without a jury." *Eli Lilly & Co., Inc. v. Generix Drug Sales, Inc.*, 460 F.2d 1096, 1105 (5th Cir. 1972). In such cases, "[a]n appellate court will not interfere with the trial court's exercise of its discretion to control its docket and dispatch its business ... except upon the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant." *Id.* Microsoft fails to clear this high hurdle. Although the company claims that setting an early trial date inhibited its ability to conduct discovery, it never identified a specific deposition or document it was unable to obtain. And while Microsoft now argues that the use of summary witnesses made inevitable the improper introduction of hearsay evidence, the company actually agreed to the District Court's proposal to limit each side to 12 summary witnesses. 12/2/98 am Tr. at 11, *reprinted in* 21 J.A. at 14083 (court admonishing Microsoft's counsel to "[k]eep in mind that both sides agreed to the number of witnesses"). Even absent Microsoft's agreement, the company's challenge fails to show that this use of summary witnesses falls outside the trial court's wide latitude to receive evidence as it sees fit. *General Elec. Co. v. Joiner*, 522 U.S. 136, 141-42 (1997). This is particularly true given the presumption that a judge who conducts a bench trial has ignored any inadmissible evidence, *Harris v. Rivera*, 454 U.S. 339, 346 (1981)—a presumption that Micro-

soft makes no serious attempt to overcome. Indeed, under appropriate circumstances with appropriate instructions, we have in the past approved the use of summary witnesses even in jury trials. *See, e.g., United States v. Lemire*, 720 F.2d 1327 (D.C. Cir. 1983). Therefore, neither the use of the summary witnesses nor any other aspect of the District Court's conduct of the trial phase amounted to an abuse of discretion.

C. Failure to Hold an Evidentiary Hearing

The District Court's remedies-phase proceedings are a different matter. It is a cardinal principle of our system of justice that factual disputes must be heard in open court and resolved through trial-like evidentiary proceedings. Any other course would be contrary "to the spirit which imbues our judicial tribunals prohibiting decision without hearing." *Sims v. Greene*, 161 F.2d 87, 88 (3d Cir. 1947).

A party has the right to judicial resolution of disputed facts not just as to the liability phase, but also as to appropriate relief. "Normally, an evidentiary hearing is required before an injunction may be granted." *United States v. McGee*, 714 F.2d 607, 613 (6th Cir. 1983); *see also Charlton v. Estate of Charlton*, 841 F.2d 988, 989 (9th Cir. 1988) ("Generally the entry or continuation of an injunction requires a hearing. Only when the facts are not in dispute, or when the adverse party has waived its right to a hearing, can that significant procedural step be eliminated." (citation and internal quotation marks omitted)). Other than a temporary restraining order, no injunctive relief may be entered without a hearing. *See generally* FED. R. CIV. P. 65. A hearing on the merits—*i.e.*, a trial on liability—does not substitute for a relief-specific evidentiary hearing unless the matter of relief was part of the trial on liability, or unless there are no disputed factual issues regarding the matter of relief.

This rule is no less applicable in antitrust cases. The Supreme Court "has recognized that a 'full exploration of facts is usually necessary in order (for the District Court) properly to draw (an antitrust) decree' so as 'to prevent future violations and eradicate existing evils.' " *United States*

v. Ward Baking Co., 376 U.S. 327, 330-31 (1964) (quoting *Associated Press v. United States*, 326 U.S. 1, 22 (1945)). Hence a remedies decree must be vacated whenever there is "a bona fide disagreement concerning substantive items of relief which could be resolved only by trial." *Id.* at 334; *cf. Sims*, 161 F.2d at 89 ("It has never been supposed that a temporary injunction could issue under the Clayton Act without giving the party against whom the injunction was sought an opportunity to present evidence on his behalf.").

Despite plaintiffs' protestations, there can be no serious doubt that the parties disputed a number of facts during the remedies phase. In two separate offers of proof, Microsoft identified 23 witnesses who, had they been permitted to testify, would have challenged a wide range of plaintiffs' factual representations, including the feasibility of dividing Microsoft, the likely impact on consumers, and the effect of divestiture on shareholders. To take but two examples, where plaintiffs' economists testified that splitting Microsoft in two would be socially beneficial, the company offered to prove that the proposed remedy would "cause substantial social harm by raising software prices, lowering rates of innovation and disrupting the evolution of Windows as a software development platform." Defendant's Offer of Proof at 6, *reprinted in* 4 J.A. at 2747. And where plaintiffs' investment banking experts proposed that divestiture might actually increase shareholder value, Microsoft proffered evidence that structural relief "would inevitably result in a significant loss of shareholder value," a loss that could reach "tens—possibly hundreds—of billions of dollars." *Id.* at 19, *reprinted in* 4 J.A. at 2760.

Indeed, the District Court itself appears to have conceded the existence of acute factual disagreements between Microsoft and plaintiffs. The court acknowledged that the parties were "sharply divided" and held "divergent opinions" on the likely results of its remedies decree. *Final Judgment*, at 62. The reason the court declined to conduct an evidentiary hearing was not because of the absence of disputed facts, but because it believed that those disputes could be resolved only through "actual experience," not further proceedings. *Id.*

But a prediction about future events is not, as a prediction, any less a factual issue. Indeed, the Supreme Court has acknowledged that drafting an antitrust decree by necessity "involves predictions and assumptions concerning future economic and business events." *Ford Motor Co. v. United States*, 405 U.S. 562, 578 (1972). Trial courts are not excused from their obligation to resolve such matters through evidentiary hearings simply because they consider the bedrock procedures of our justice system to be "of little use." *Final Judgment*, at 62.

The presence of factual disputes thus distinguishes this case from the decisions plaintiffs cite for the proposition that Microsoft was not entitled to an evidentiary hearing. Indeed, far from assisting plaintiffs, these cases actually confirm the proposition that courts must hold evidentiary hearings when they are confronted with disputed facts. In *Ford Motor Co.*, the Supreme Court affirmed a divestiture order after emphasizing that the District Court had "held nine days of hearings on the remedy." 405 U.S. at 571. In *Davoll v. Webb*, 194 F.3d 1116 (10th Cir. 1999), the defendant both failed to submit any offers of proof, and waived its right to an evidentiary hearing by expressly agreeing that relief should be determined based solely on written submissions. *Id.* at 1142-43. The defendants in *American Can Co. v. Mansukhani*, 814 F.2d 421 (7th Cir. 1987), were not entitled to a hearing on remedies because they failed "to explain to the district court what new proof they would present to show" that the proposed remedy was unwarranted. *Id.* at 425. And in *Socialist Workers Party v. Illinois State Board of Elections*, 566 F.2d 586 (7th Cir. 1977), *aff'd*, 440 U.S. 173 (1979), the Seventh Circuit held that a remedies-specific hearing was unnecessary because that case involved a pure question of legal interpretation and hence "[t]here was no factual dispute as to the ground on which the injunction was ordered." *Id.* at 587.

Unlike the parties in *Davoll*, *American Can*, and *Socialist Workers Party*, Microsoft both repeatedly asserted its right to an evidentiary hearing and submitted two offers of proof. The company's "summary response" to the proposed remedy argued that it would be "impossible" to address underlying

factual issues "on a highly expedited basis," Defendant's Summary Response at 6-7, *reprinted in* 4 J.A. at 2587-88, and Microsoft further maintained that the court could not issue a decree unless it first permitted "substantial discovery, adequate time for preparation and a full trial on relief." Defendant's Position as to Future Proceedings at 2, *reprinted in* 4 J.A. at 2646. And in 53 pages of submissions, Microsoft identified the specific evidence it would introduce to challenge plaintiffs' representations.

Plaintiffs further argue—and the District Court held—that no evidentiary hearing was necessary given that Microsoft long had been on notice that structural relief was a distinct possibility. It is difficult to see why this matters. Whether Microsoft had advance notice that dissolution was in the works is immaterial to whether the District Court violated the company's procedural rights by ordering it without an evidentiary hearing. To be sure, "claimed surprise at the district court's decision to consider permanent injunctive relief does not, alone, merit reversal." *Socialist Workers*, 566 F.2d at 587. But in this case, Microsoft's professed surprise does not stand "alone." There is something more: the company's basic procedural right to have disputed facts resolved through an evidentiary hearing.

In sum, the District Court erred when it resolved the parties' remedies-phase factual disputes by consulting only the evidence introduced during trial and plaintiffs' remedies-phase submissions, without considering the evidence Microsoft sought to introduce. We therefore vacate the District Court's final judgment, and remand with instructions to conduct a remedies-specific evidentiary hearing.

D. Failure to Provide an Adequate Explanation

We vacate the District Court's remedies decree for the additional reason that the court has failed to provide an adequate explanation for the relief it ordered. The Supreme Court has explained that a remedies decree in an antitrust case must seek to "unfetter a market from anticompetitive conduct," *Ford Motor Co.*, 405 U.S. at 577, to "terminate the illegal monopoly, deny to the defendant the fruits of its

statutory violation, and ensure that there remain no practices likely to result in monopolization in the future," *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 250 (1968); *see also United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966).

The District Court has not explained how its remedies decree would accomplish those objectives. Indeed, the court devoted a mere four paragraphs of its order to explaining its reasons for the remedy. They are: (1) Microsoft "does not yet concede that any of its business practices violated the Sherman Act"; (2) Microsoft "continues to do business as it has in the past"; (3) Microsoft "has proved untrustworthy in the past"; and (4) the Government, whose officials "are by reason of office obliged and expected to consider—and to act in—the public interest," won the case, "and for that reason alone have some entitlement to a remedy of their choice." *Final Judgment*, at 62-63. Nowhere did the District Court discuss the objectives the Supreme Court deems relevant.

E. Modification of Liability

Quite apart from its procedural difficulties, we vacate the District Court's final judgment in its entirety for the additional, independent reason that we have modified the underlying bases of liability. Of the three antitrust violations originally identified by the District Court, one is no longer viable: attempted monopolization of the browser market in violation of Sherman Act § 2. One will be remanded for liability proceedings under a different legal standard: unlawful tying in violation of § 1. Only liability for the § 2 monopoly-maintenance violation has been affirmed—and even that we have revised. Ordinarily, of course, we review the grant or denial of equitable relief under the abuse of discretion standard. *See, e.g., Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931-32 (1975) ("[T]he standard of appellate review is simply whether the issuance of the injunction, in the light of the applicable standard, constituted an abuse of discretion."). For obvious reasons, the application of that standard is not sufficient to sustain the remedy in the case before us. We cannot determine whether the District Court has abused its discretion in remedying a wrong where the court did not

exercise that discretion in order to remedy the properly determined wrong. That is, the District Court determined that the conduct restrictions and the pervasive structural remedy were together appropriate to remedy the three antitrust violations set forth above. The court did not exercise its discretion to determine whether all, or for that matter, any, of those equitable remedies were required to rectify a § 2 monopoly maintenance violation taken alone. We therefore cannot sustain an exercise of discretion not yet made.

By way of comparison, in *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447 (1993), the Supreme Court reviewed a damages award in a Sherman Act case. In that case, the trial court entered judgment upon a jury verdict which did not differentiate among multiple possible theories of liability under § 2. The Supreme Court ultimately determined that the trial record could not legally support a finding that the defendant had committed an illegal attempt to monopolize, and that "the trial instructions allowed the jury to infer specific intent and dangerous probability of success from the defendants' predatory conduct, without any proof of the relevant market or of a realistic probability that the defendants could achieve monopoly power in that market." *Id.* at 459. Therefore, the High Court reversed the Ninth Circuit's judgment affirming the District Court and remanded for further proceedings, expressly because "the jury's verdict did not negate the possibility that the § 2 verdict rested on the attempt to monopolize grounds alone...." *Id.* Similarly, here, we cannot presume that a District Court would exercise its discretion to fashion the same remedy where the erroneous grounds of liability were stripped from its consideration.

The Eighth Circuit confronted a similar problem in *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir.), *cert. denied*, 121 S. Ct. 428 (2000). In that case, a group of boat builders brought an action against an engine manufacturer alleging violations of Sherman Act §§ 1 and 2, and Clayton Act § 7. After a 10-week trial, the jury found Brunswick liable on all three counts and returned a verdict for over $44 million. On appeal, the Eighth Circuit reversed the Clayton Act claim. *Id.* at 1053. That court held that, as

a consequence, it was required to vacate the jury's remedy in its entirety. Because the "verdict form did not require the jury to consider what damages resulted from each type of violation," the court could not "know what damages it found to have been caused by the acquisitions upon which the Section 7 claims were based." *Id.* at 1054. The court rejected the proposition that "the entire damage award may be upheld based on Brunswick's Sherman Act liability alone," *id.* at 1053, holding that, because "there is no way to know what damages the jury assigned to the Section 7 claims," the defendant "would be entitled at the very least to a new damages trial on the boat builders' Sherman Act claims," *id.* at 1054.

Spectrum Sports and *Concord Boat* are distinguishable from the case before us in that both involved the award of money damages rather than equitable relief. Nonetheless, their reasoning is instructive. A court in both contexts must base its relief on some clear "indication of a significant causal connection between the conduct enjoined or mandated and the violation found directed toward the remedial goal intended." 3 PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 653(b), at 91-92 (1996). In a case such as the one before us where sweeping equitable relief is employed to remedy multiple violations, and some—indeed most—of the findings of remediable violations do not withstand appellate scrutiny, it is necessary to vacate the remedy decree since the implicit findings of causal connection no longer exist to warrant our deferential affirmance.

In short, we must vacate the remedies decree in its entirety and remand the case for a new determination. This court has drastically altered the District Court's conclusions on liability. On remand, the District Court, after affording the parties a proper opportunity to be heard, can fashion an appropriate remedy for Microsoft's antitrust violations. In particular, the court should consider which of the decree's conduct restrictions remain viable in light of our modification of the original liability decision. While the task of drafting the remedies decree is for the District Court in the first instance, because

of the unusually convoluted nature of the proceedings thus far, and a desire to advance the ultimate resolution of this important controversy, we offer some further guidance for the exercise of that discretion.

F. On Remand

As a general matter, a district court is afforded broad discretion to enter that relief it calculates will best remedy the conduct it has found to be unlawful. *See, e.g., Woerner v. United States Small Bus. Admin.*, 934 F.2d 1277, 1279 (D.C. Cir. 1991) (recognizing that an appellate court reviews a trial court's decision whether or not to grant equitable relief only for an abuse of discretion). This is no less true in antitrust cases. *See, e.g., Ford Motor Co.*, 405 U.S. at 573 ("The District Court is clothed with 'large discretion' to fit the decree to the special needs of the individual case."); *Md. & Va. Milk Producers Ass'n, Inc. v. United States*, 362 U.S. 458, 473 (1960) ("The formulation of decrees is largely left to the discretion of the trial court...."). And divestiture is a common form of relief in successful antitrust prosecutions: it is indeed "the most important of antitrust remedies." *See, e.g., United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 331 (1961).

On remand, the District Court must reconsider whether the use of the structural remedy of divestiture is appropriate with respect to Microsoft, which argues that it is a unitary company. By and large, cases upon which plaintiffs rely in arguing for the split of Microsoft have involved the dissolution of entities formed by mergers and acquisitions. On the contrary, the Supreme Court has clarified that divestiture "has traditionally been the remedy for Sherman Act violations whose heart is intercorporate *combination and control*," *du Pont*, 366 U.S. at 329 (emphasis added), and that "[c]omplete divestiture is particularly appropriate where asset or stock *acquisitions* violate the antitrust laws," *Ford Motor Co.*, 405 U.S. at 573 (emphasis added).

One apparent reason why courts have not ordered the dissolution of unitary companies is logistical difficulty. As the court explained in *United States v. ALCOA*, 91 F. Supp.

333, 416 (S.D.N.Y. 1950), a "corporation, designed to operate effectively as a single entity, cannot readily be dismembered of parts of its various operations without a marked loss of efficiency." A corporation that has expanded by acquiring its competitors often has preexisting internal lines of division along which it may more easily be split than a corporation that has expanded from natural growth. Although time and corporate modifications and developments may eventually fade those lines, at least the identifiable entities preexisted to create a template for such division as the court might later decree. With reference to those corporations that are not acquired by merger and acquisition, Judge Wyzanski accurately opined in *United Shoe*:

> United conducts all machine manufacture at one plant in Beverly, with one set of jigs and tools, one foundry, one laboratory for machinery problems, one managerial staff, and one labor force. It takes no Solomon to see that this organism cannot be cut into three equal and viable parts.

United States v. United Shoe Machine Co., 110 F. Supp. 295, 348 (D. Mass. 1953).

Depending upon the evidence, the District Court may find in a remedies proceeding that it would be no easier to split Microsoft in two than United Shoe in three. Microsoft's Offer of Proof in response to the court's denial of an evidentiary hearing included proffered testimony from its President and CEO Steve Ballmer that the company "is, and always has been, a unified company without free-standing business units. Microsoft is not the result of mergers or acquisitions." Microsoft further offered evidence that it is "not organized along product lines," but rather is housed in a single corporate headquarters and that it has

> only one sales and marketing organization which is responsible for selling all of the company's products, one basic research organization, one product support organization, one operations department, one information technology department, one facilities department, one purchasing department, one human resources department,

> one finance department, one legal department and one public relations department.

Defendant's Offer of Proof at 23-26, *reprinted in* 4 J.A. at 2764-67. If indeed Microsoft is a unitary company, division might very well require Microsoft to reproduce each of these departments in each new entity rather than simply allocate the differing departments among them.

In devising an appropriate remedy, the District Court also should consider whether plaintiffs have established a sufficient causal connection between Microsoft's anticompetitive conduct and its dominant position in the OS market. "Mere existence of an exclusionary act does not itself justify full feasible relief against the monopolist to create maximum competition." 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 650a, at 67. Rather, structural relief, which is "designed to eliminate the monopoly altogether ... require[s] a clearer indication of a *significant causal connection* between the conduct and creation or maintenance of the market power." *Id.* ¶ 653b, at 91-92 (emphasis added). Absent such causation, the antitrust defendant's unlawful behavior should be remedied by "an injunction against continuation of that conduct." *Id.* ¶ 650a, at 67.

As noted above, *see supra* Section II.C, we have found a causal connection between Microsoft's exclusionary conduct and its continuing position in the operating systems market only through inference. *See* 3 AREEDA & HOVENKAMP, ANTITRUST LAW ¶ 653(b), at 91-92 (suggesting that "more extensive equitable relief, particularly remedies such as divestiture designed to eliminate the monopoly altogether, ... require a clearer indication of significant causal connection between the conduct and creation or maintenance of the market power"). Indeed, the District Court expressly did not adopt the position that Microsoft would have lost its position in the OS market but for its anticompetitive behavior. *Findings of Fact* ¶ 411 ("There is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition in the market for Intel-compatible PC operating systems."). If the court on remand is unconvinced of the causal connection between Microsoft's

exclusionary conduct and the company's position in the OS market, it may well conclude that divestiture is not an appropriate remedy.

While we do not undertake to dictate to the District Court the precise form that relief should take on remand, we note again that it should be tailored to fit the wrong creating the occasion for the remedy.

G. Conclusion

In sum, we vacate the District Court's remedies decree for three reasons. First, the District Court failed to hold an evidentiary hearing despite the presence of remedies-specific factual disputes. Second, the court did not provide adequate reasons for its decreed remedies. Finally, we have drastically altered the scope of Microsoft's liability, and it is for the District Court in the first instance to determine the propriety of a specific remedy for the limited ground of liability which we have upheld.

VI. Judicial Misconduct

Canon 3A(6) of the Code of Conduct for United States Judges requires federal judges to "avoid public comment on the merits of [ ] pending or impending" cases. Canon 2 tells judges to "avoid impropriety and the appearance of impropriety in all activities," on the bench and off. Canon 3A(4) forbids judges to initiate or consider *ex parte* communications on the merits of pending or impending proceedings. Section 455(a) of the Judicial Code requires judges to recuse themselves when their "impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

All indications are that the District Judge violated each of these ethical precepts by talking about the case with reporters. The violations were deliberate, repeated, egregious, and flagrant. The only serious question is what consequences should follow. Microsoft urges us to disqualify the District Judge, vacate the judgment in its entirety and toss out the

findings of fact, and remand for a new trial before a different District Judge. At the other extreme, plaintiffs ask us to do nothing. We agree with neither position.

A. The District Judge's Communications with the Press

Immediately after the District Judge entered final judgment on June 7, 2000, accounts of interviews with him began appearing in the press. Some of the interviews were held after he entered final judgment. *See* Peter Spiegel, *Microsoft Judge Defends Post-trial Comments*, FIN. TIMES (London), Oct. 7, 2000, at 4; John R. Wilke, *For Antitrust Judge, Trust, or Lack of It, Really Was the Issue—In an Interview, Jackson Says Microsoft Did the Damage to Its Credibility in Court*, WALL ST. J., June 8, 2000, at A1. The District Judge also aired his views about the case to larger audiences, giving speeches at a college and at an antitrust seminar. *See* James V. Grimaldi, *Microsoft Judge Says Ruling at Risk; Every Trial Decision Called 'Vulnerable'*, WASH. POST, Sept. 29, 2000, at E1; Alison Schmauch, *Microsoft Judge Shares Experiences*, THE DARTMOUTH ONLINE, Oct. 3, 2000.

From the published accounts, it is apparent that the Judge also had been giving secret interviews to select reporters before entering final judgment—in some instances long before. The earliest interviews we know of began in September 1999, shortly after the parties finished presenting evidence but two months before the court issued its Findings of Fact. *See* Joel Brinkley & Steve Lohr, *U.S. vs. Microsoft: Pursuing a Giant; Retracing the Missteps in the Microsoft Defense*, N.Y. TIMES, June 9, 2000, at A1. Interviews with reporters from the *New York Times* and Ken Auletta, another reporter who later wrote a book on the Microsoft case, continued throughout late 1999 and the first half of 2000, during which time the Judge issued his Findings of Fact, Conclusions of Law, and Final Judgment. *See id.*; Ken Auletta, *Final Offer*, THE NEW YORKER, Jan. 15, 2001, at 40. The Judge "embargoed" these interviews; that is, he insisted that the fact and content of the interviews remain secret until he issued the Final Judgment.

Before we recount the statements attributed to the District Judge, we need to say a few words about the state of the

record. All we have are the published accounts and what the reporters say the Judge said. Those accounts were not admitted in evidence. They may be hearsay. *See* FED. R. EVID. 801(c); *Metro. Council of NAACP Branches v. FCC*, 46 F.3d 1154, 1165 (D.C. Cir. 1995) ("We seriously question whether a New York Times article is admissible evidence of the truthfulness of its contents.").

We are of course concerned about granting a request to disqualify a federal judge when the material supporting it has not been admitted in evidence. Disqualification is never taken lightly. In the wrong hands, a disqualification motion is a procedural weapon to harass opponents and delay proceedings. If supported only by rumor, speculation, or innuendo, it is also a means to tarnish the reputation of a federal judge.

But the circumstances of this case are most unusual. By placing an embargo on the interviews, the District Judge ensured that the full extent of his actions would not be revealed until this case was on appeal. Plaintiffs, in defending the judgment, do not dispute the statements attributed to him in the press; they do not request an evidentiary hearing; and they do not argue that Microsoft should have filed a motion in the District Court before raising the matter on appeal. At oral argument, plaintiffs all but conceded that the Judge violated ethical restrictions by discussing the case in public: "On behalf of the governments, I have no brief to defend the District Judge's decision to discuss this case publicly while it was pending on appeal, and I have no brief to defend the judge's decision to discuss the case with reporters while the trial was proceeding, even given the embargo on any reporting concerning those conversations until after the trial." 02/27/01 Ct. Appeals Tr. at 326.

We must consider too that the federal disqualification provisions reflect a strong federal policy to preserve the actual and apparent impartiality of the federal judiciary. Judicial misconduct may implicate that policy regardless of the means by which it is disclosed to the public. *Cf. The Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir.

1991) (taking judicial notice of newspaper articles to ascertain whether a fact was within public knowledge). Also, in our analysis of the arguments presented by the parties, the specifics of particular conversations are less important than their cumulative effect.

For these reasons we have decided to adjudicate Microsoft's disqualification request notwithstanding the state of the record. The same reasons also warrant a departure from our usual practice of declining to address issues raised for the first time on appeal: the "matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases." *Singleton v. Wulff*, 428 U.S. 106, 121 (1976); *accord Hormel v. Helvering*, 312 U.S. 552, 556-57 (1941); *Nat'l Ass'n of Mfrs. v. Dep't of Labor*, 159 F.3d 597, 605-06 (D.C. Cir. 1998). We will assume the truth of the press accounts and not send the case back for an evidentiary hearing on this subject. We reach no judgment on whether the details of the interviews were accurately recounted.

The published accounts indicate that the District Judge discussed numerous topics relating to the case. Among them was his distaste for the defense of technological integration—one of the central issues in the lawsuit. In September 1999, two months before his Findings of Fact and six months before his Conclusions of Law, and in remarks that were kept secret until after the Final Judgment, the Judge told reporters from the *New York Times* that he questioned Microsoft's integration of a web browser into Windows. Stating that he was "not a fan of integration," he drew an analogy to a 35-millimeter camera with an integrated light meter that in his view should also be offered separately: "You like the convenience of having a light meter built in, integrated, so all you have to do is press a button to get a reading. But do you think camera makers should also serve photographers who want to use a separate light meter, so they can hold it up, move it around?" JOEL BRINKLEY & STEVE LOHR, U.S. v. MICROSOFT 263 (2001). In other remarks, the Judge commented on the integration at the heart of the case: "[I]t was

quite clear to me that the motive of Microsoft in bundling the Internet browser was not one of consumer convenience. The evidence that this was done for the consumer was not credible.... The evidence was so compelling that there was an ulterior motive." Wilke, WALL ST. J. As for tying law in general, he criticized this court's ruling in the consent decree case, saying it "was wrongheaded on several counts" and would exempt the software industry from the antitrust laws. BRINKLEY & LOHR, U.S. v. MICROSOFT 78, 295; Brinkley & Lohr, N.Y. TIMES.

Reports of the interviews have the District Judge describing Microsoft's conduct, with particular emphasis on what he regarded as the company's prevarication, hubris, and impenitence. In some of his secret meetings with reporters, the Judge offered his contemporaneous impressions of testimony. He permitted at least one reporter to see an entry concerning Bill Gates in his "oversized green notebook." KEN AULETTA, WORLD WAR 3.0, at 112 (2001). He also provided numerous after-the-fact credibility assessments. He told reporters that Bill Gates' "testimony is inherently without credibility" and "[i]f you can't believe this guy, who else can you believe?" BRINKLEY & LOHR, U.S. v. MICROSOFT 278; Brinkley & Lohr, N.Y. TIMES; *see also* Auletta, THE NEW YORKER, at 40. As for the company's other witnesses, the Judge is reported as saying that there "were times when I became impatient with Microsoft witnesses who were giving speeches." "[T]hey were telling me things I just flatly could not credit." Brinkley & Lohr, N.Y. TIMES. In an interview given the day he entered the break-up order, he summed things up: "Falsus in uno, falsus in omnibus": "Untrue in one thing, untrue in everything." "I don't subscribe to that as absolutely true. But it does lead one to suspicion. It's a universal human experience. If someone lies to you once, how much else can you credit as the truth?" Wilke, WALL ST. J.

According to reporter Auletta, the District Judge told him in private that, "I thought they [Microsoft and its executives] didn't think they were regarded as adult members of the community. I thought they would learn." AULETTA, WORLD WAR 3.0, at 14. The Judge told a college audience that "Bill

Gates is an ingenious engineer, but I don't think he is that adept at business ethics. He has not yet come to realise things he did (when Microsoft was smaller) he should not have done when he became a monopoly." Spiegel, FIN. TIMES. Characterizing Gates' and his company's "crime" as hubris, the Judge stated that "[i]f I were able to propose a remedy of my devising, I'd require Mr. Gates to write a book report" on Napoleon Bonaparte, "[b]ecause I think [Gates] has a Napoleonic concept of himself and his company, an arrogance that derives from power and unalloyed success, with no leavening hard experience, no reverses." Auletta, THE NEW YORKER, at 41; *see also* AULETTA, WORLD WAR 3.0, at 397. The Judge apparently became, in Auletta's words, "increasingly troubled by what he learned about Bill Gates and couldn't get out of his mind the group picture he had seen of Bill Gates and Paul Allen and their shaggy-haired first employees at Microsoft." The reporter wrote that the Judge said he saw in the picture "a smart-mouthed young kid who has extraordinary ability and needs a little discipline. I've often said to colleagues that Gates would be better off if he had finished Harvard." AULETTA, WORLD WAR 3.0, at 168-69; *see also* Auletta, THE NEW YORKER, at 46 (reporting the District Judge's statement that "they [Microsoft and its executives] don't act like grown-ups!" "[T]o this day they continue to deny they did anything wrong.").

The District Judge likened Microsoft's writing of incriminating documents to drug traffickers who "never figure out that they shouldn't be saying certain things on the phone." BRINKLEY & LOHR, U.S. v. MICROSOFT 6; Brinkley & Lohr, N.Y. TIMES. He invoked the drug trafficker analogy again to denounce Microsoft's protestations of innocence, this time with a reference to the notorious Newton Street Crew that terrorized parts of Washington, D.C. Reporter Auletta wrote in *The New Yorker* that the Judge

> went as far as to compare the company's declaration of innocence to the protestations of gangland killers. He was referring to five gang members in a racketeering, drug-dealing, and murder trial that he had presided over

> four years earlier. In that case, the three victims had had their heads bound with duct tape before they were riddled with bullets from semi-automatic weapons. "On the day of the sentencing, the gang members maintained that they had done nothing wrong, saying that the whole case was a conspiracy by the white power structure to destroy them," Jackson recalled. "I am now under no illusions that miscreants will realize that other parts of society will view them that way."

Auletta, THE NEW YORKER, at 40-41; AULETTA, WORLD WAR 3.0, at 369-70 (same); *see also* Auletta, THE NEW YORKER, at 46.

The District Judge also secretly divulged to reporters his views on the remedy for Microsoft's antitrust violations. On the question whether Microsoft was entitled to any process at the remedy stage, the Judge told reporters in May 2000 that he was "not aware of any case authority that says I have to give them any due process at all. The case is over. They lost." Brinkley & Lohr, N.Y. TIMES. Another reporter has the Judge asking "[w]ere the Japanese allowed to propose terms of their surrender?" Spiegel, FIN. TIMES. The District Judge also told reporters the month before he issued his break-up order that "[a]ssuming, as I think they are, [ ] the Justice Department and the states are genuinely concerned about the public interest," "I know they have carefully studied all the possible options. This isn't a bunch of amateurs. They have consulted with some of the best minds in America over a long period of time." "I am not in a position to duplicate that and re-engineer their work. There's no way I can equip myself to do a better job than they have done." Brinkley & Lohr, N.Y. TIMES; *cf. Final Judgment*, at 62-63.

In February 2000, four months before his final order splitting the company in two, the District Judge reportedly told *New York Times* reporters that he was "not at all comfortable with restructuring the company," because he was unsure whether he was "competent to do that." Brinkley & Lohr, N.Y. TIMES; *see also* BRINKLEY & LOHR, U.S. v. MICROSOFT 277-78 (same); *cf.* AULETTA, WORLD WAR 3.0, at 370 (comment by the Judge in April 2000 that he was inclining

toward behavioral rather than structural remedies). A few months later, he had a change of heart. He told the same reporters that "with what looks like Microsoft intransigence, a breakup is inevitable." Brinkley & Lohr, N.Y. TIMES; *see also* BRINKLEY & LOHR, U.S. v. MICROSOFT 315. The Judge recited a "North Carolina mule trainer" story to explain his change in thinking from "[i]f it ain't broken, don't try to fix it" and "I just don't think that [restructuring the company] is something I want to try to do on my own" to ordering Microsoft broken in two:

> He had a trained mule who could do all kinds of wonderful tricks. One day somebody asked him: "How do you do it? How do you train the mule to do all these amazing things?" "Well," he answered, "I'll show you." He took a 2-by-4 and whopped him upside the head. The mule was reeling and fell to his knees, and the trainer said: "You just have to get his attention."

BRINKLEY & LOHR, U.S. v. MICROSOFT 278. The Judge added: "I hope I've got Microsoft's attention." *Id.*; *see also* Grimaldi, WASH. POST (comments by the Judge blaming the break-up on Microsoft's intransigence and on what he perceived to be Microsoft's responsibility for the failure of settlement talks); Spiegel, FIN. TIMES (the Judge blaming break-up on Microsoft's intransigence).

B. Violations of the Code of Conduct for United States Judges

The Code of Conduct for United States Judges was adopted by the Judicial Conference of the United States in 1973. It prescribes ethical norms for federal judges as a means to preserve the actual and apparent integrity of the federal judiciary. Every federal judge receives a copy of the Code, the Commentary to the Code, the Advisory Opinions of the Judicial Conference's Committee on Codes of Conduct, and digests of the Committee's informal, unpublished opinions. *See* II GUIDE TO JUDICIARY POLICIES AND PROCEDURES (1973). The material is periodically updated. Judges who have questions about whether their conduct would be consis-

tent with the Code may write to the Codes of Conduct Committee for a written, confidential opinion. *See* Introduction, CODE OF CONDUCT. The Committee traditionally responds promptly. A judge may also seek informal advice from the Committee's circuit representative.

While some of the Code's Canons frequently generate questions about their application, others are straightforward and easily understood. Canon 3A(6) is an example of the latter. In forbidding federal judges to comment publicly "on the merits of a pending or impending action," Canon 3A(6) applies to cases pending before any court, state or federal, trial or appellate. *See* JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT AND ETHICS § 10.34, at 353 (3d ed. 2000). As "impending" indicates, the prohibition begins even before a case enters the court system, when there is reason to believe a case may be filed. *Cf.* E. WAYNE THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 54 (1973). An action remains "pending" until "completion of the appellate process." CODE OF CONDUCT Canon 3A(6) cmt.; Comm. on Codes of Conduct, Adv. Op. No. 55 (1998).

The Microsoft case was "pending" during every one of the District Judge's meetings with reporters; the case is "pending" now; and even after our decision issues, it will remain pending for some time. The District Judge breached his ethical duty under Canon 3A(6) each time he spoke to a reporter about the merits of the case. Although the reporters interviewed him in private, his comments were public. Court was not in session and his discussion of the case took place outside the presence of the parties. He provided his views not to court personnel assisting him in the case, but to members of the public. And these were not just any members of the public. Because he was talking to reporters, the Judge knew his comments would eventually receive widespread dissemination.

It is clear that the District Judge was not discussing purely procedural matters, which are a permissible subject of public comment under one of the Canon's three narrowly drawn exceptions. He disclosed his views on the factual and legal

matters at the heart of the case. His opinions about the credibility of witnesses, the validity of legal theories, the culpability of the defendant, the choice of remedy, and so forth all dealt with the merits of the action. It is no excuse that the Judge may have intended to "educate" the public about the case or to rebut "public misperceptions" purportedly caused by the parties. *See* Grimaldi, WASH. POST; *Microsoft Judge Says He May Step down from Case on Appeal*, WALL ST. J., Oct. 30, 2000. If those were his intentions, he could have addressed the factual and legal issues as he saw them—and thought the public should see them—in his Findings of Fact, Conclusions of Law, Final Judgment, or in a written opinion. Or he could have held his tongue until all appeals were concluded.

Far from mitigating his conduct, the District Judge's insistence on secrecy—his embargo—made matters worse. Concealment of the interviews suggests knowledge of their impropriety. Concealment also prevented the parties from nipping his improprieties in the bud. Without any knowledge of the interviews, neither the plaintiffs nor the defendant had a chance to object or to seek the Judge's removal before he issued his Final Judgment.

Other federal judges have been disqualified for making limited public comments about cases pending before them. *See In re Boston's Children First*, 244 F.3d 164 (1st Cir. 2001); *In re IBM Corp.*, 45 F.3d 641 (2d Cir. 1995); *United States v. Cooley*, 1 F.3d 985 (10th Cir. 1993). Given the extent of the Judge's transgressions in this case, we have little doubt that if the parties had discovered his secret liaisons with the press, he would have been disqualified, voluntarily or by court order. *Cf. In re Barry*, 946 F.2d 913 (D.C. Cir. 1991) (per curiam); *id.* at 915 (Edwards, J., dissenting).

In addition to violating the rule prohibiting public comment, the District Judge's reported conduct raises serious questions under Canon 3A(4). That Canon states that a "judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard

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according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding." CODE OF CONDUCT Canon 3A(4).

What did the reporters convey to the District Judge during their secret sessions? By one account, the Judge spent a total of ten hours giving taped interviews to one reporter. AULETTA, WORLD WAR 3.0, at 14 n.*. We do not know whether he spent even more time in untaped conversations with the same reporter, nor do we know how much time he spent with others. But we think it safe to assume that these interviews were not monologues. Interviews often become conversations. When reporters pose questions or make assertions, they may be furnishing information, information that may reflect their personal views of the case. The published accounts indicate this happened on at least one occasion. Ken Auletta reported, for example, that he told the Judge "that Microsoft employees professed shock that he thought they had violated the law and behaved unethically," at which time the Judge became "agitated" by "Microsoft's 'obstinacy'." *Id.* at 369. It is clear that Auletta had views of the case. As he wrote in a *Washington Post* editorial, "[a]nyone who sat in [the District Judge's] courtroom during the trial had seen ample evidence of Microsoft's sometimes thuggish tactics." Ken Auletta, *Maligning the Microsoft Judge*, WASH. POST, Mar. 7, 2001, at A23.

The District Judge's repeated violations of Canons 3A(6) and 3A(4) also violated Canon 2, which provides that "a judge should avoid impropriety and the appearance of impropriety in all activities." CODE OF CONDUCT Canon 2; *see also In re Charge of Judicial Misconduct*, 47 F.3d 399, 400 (10th Cir. Jud. Council 1995) ("The allegations of extra-judicial comments cause the Council substantial concern under both Canon 3A(6) and Canon 2 of the Judicial Code of Conduct."). Canon 2A requires federal judges to "respect and comply with the law" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." CODE OF CONDUCT Canon 2A. The Code of Conduct is the law with respect to the ethical obligations of

federal judges, and it is clear the District Judge violated it on multiple occasions in this case. The rampant disregard for the judiciary's ethical obligations that the public witnessed in this case undoubtedly jeopardizes "public confidence in the integrity" of the District Court proceedings.

Another point needs to be stressed. Rulings in this case have potentially huge financial consequences for one of the nation's largest publicly-traded companies and its investors. The District Judge's secret interviews during the trial provided a select few with inside information about the case, information that enabled them and anyone they shared it with to anticipate rulings before the Judge announced them to the world. Although he "embargoed" his comments, the Judge had no way of policing the reporters. For all he knew there may have been trading on the basis of the information he secretly conveyed. The public cannot be expected to maintain confidence in the integrity and impartiality of the federal judiciary in the face of such conduct.

C. Appearance of Partiality

The Code of Conduct contains no enforcement mechanism. *See* THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 43. The Canons, including the one that requires a judge to disqualify himself in certain circumstances, *see* CODE OF CONDUCT Canon 3C, are self-enforcing. There are, however, remedies extrinsic to the Code. One is an internal disciplinary proceeding, begun with the filing of a complaint with the clerk of the court of appeals pursuant to 28 U.S.C. § 372(c). Another is disqualification of the offending judge under either 28 U.S.C. § 144, which requires the filing of an affidavit while the case is in the District Court, or 28 U.S.C. § 455, which does not. Microsoft urges the District Judge's disqualification under § 455(a): a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard for disqualification under § 455(a) is an objective one. The question is whether a reasonable and informed observer would question the judge's impartiality. *See In re Barry*, 946 F.2d at 914;

see also In re Aguinda, 241 F.3d 194, 201 (2d Cir. 2001); RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION § 24.2.1 (1996).

"The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). As such, violations of the Code of Conduct may give rise to a violation of § 455(a) if doubt is cast on the integrity of the judicial process. It has been argued that any "public comment by a judge concerning the facts, applicable law, or merits of a case that is *sub judice* in his court or any comment concerning the parties or their attorneys would raise grave doubts about the judge's objectivity and his willingness to reserve judgment until the close of the proceeding." William G. Ross, *Extrajudicial Speech: Charting the Boundaries of Propriety*, 2 GEO. J. LEGAL ETHICS 589, 598 (1989). Some courts of appeals have taken a hard line on public comments, finding violations of § 455(a) for judicial commentary on pending cases that seems mild in comparison to what we are confronting in this case. *See Boston's Children First*, 244 F.3d 164 (granting writ of mandamus ordering district judge to recuse herself under § 455(a) because of public comments on class certification and standing in a pending case); *In re IBM Corp.*, 45 F.3d 641 (granting writ of mandamus ordering district judge to recuse himself based in part on the appearance of partiality caused by his giving newspaper interviews); *Cooley*, 1 F.3d 985 (vacating convictions and disqualifying district judge for appearance of partiality because he appeared on television program *Nightline* and stated that abortion protestors in a case before him were breaking the law and that his injunction would be obeyed).

While § 455(a) is concerned with actual and apparent impropriety, the statute requires disqualification only when a judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Although this court has condemned public judicial comments on pending cases, we have not gone so far as to hold that every violation of Canon 3A(6) or every impropriety under the Code of Conduct inevitably destroys the appearance of impartiality and thus violates § 455(a).

See In re Barry, 946 F.2d at 914; *see also Boston's Children First*, 244 F.3d at 168; *United States v. Fortier*, 242 F.3d 1224, 1229 (10th Cir. 2001).

In this case, however, we believe the line has been crossed. The public comments were not only improper, but also would lead a reasonable, informed observer to question the District Judge's impartiality. Public confidence in the integrity and impartiality of the judiciary is seriously jeopardized when judges secretly share their thoughts about the merits of pending cases with the press. Judges who covet publicity, or convey the appearance that they do, lead any objective observer to wonder whether their judgments are being influenced by the prospect of favorable coverage in the media. Discreet and limited public comments may not compromise a judge's apparent impartiality, but we have little doubt that the District Judge's conduct had that effect. Appearance may be all there is, but that is enough to invoke the Canons and § 455(a).

Judge Learned Hand spoke of "this America of ours where the passion for publicity is a disease, and where swarms of foolish, tawdry moths dash with rapture into its consuming fire...." LEARNED HAND, THE SPIRIT OF LIBERTY 132-33 (2d ed. 1953). Judges are obligated to resist this passion. Indulging it compromises what Edmund Burke justly regarded as the "cold neutrality of an impartial judge." Cold or not, federal judges must maintain the appearance of impartiality. What was true two centuries ago is true today: "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." CODE OF CONDUCT Canon 1 cmt. Public confidence in judicial impartiality cannot survive if judges, in disregard of their ethical obligations, pander to the press.

We recognize that it would be extraordinary to disqualify a judge for bias or appearance of partiality when his remarks arguably reflected what he learned, or what he thought he learned, during the proceedings. *See Liteky v. United States*, 510 U.S. 540, 554-55 (1994); *United States v. Barry*, 961 F.2d 260, 263 (D.C. Cir. 1992). But this "extrajudicial source" rule

has no bearing on the case before us. The problem here is not just what the District Judge said, but to whom he said it and when. His crude characterizations of Microsoft, his frequent denigrations of Bill Gates, his mule trainer analogy as a reason for his remedy—all of these remarks and others might not have given rise to a violation of the Canons or of § 455(a) had he uttered them from the bench. *See Liteky*, 510 U.S. at 555-56; CODE OF CONDUCT Canon 3A(6) (exception to prohibition on public comments for "statements made in the course of the judge's official duties"). But then Microsoft would have had an opportunity to object, perhaps even to persuade, and the Judge would have made a record for review on appeal. It is an altogether different matter when the statements are made outside the courtroom, in private meetings unknown to the parties, in anticipation that ultimately the Judge's remarks would be reported. Rather than manifesting neutrality and impartiality, the reports of the interviews with the District Judge convey the impression of a judge posturing for posterity, trying to please the reporters with colorful analogies and observations bound to wind up in the stories they write. Members of the public may reasonably question whether the District Judge's desire for press coverage influenced his judgments, indeed whether a publicity-seeking judge might consciously or subconsciously seek the publicity-maximizing outcome. We believe, therefore, that the District Judge's interviews with reporters created an appearance that he was not acting impartially, as the Code of Conduct and § 455(a) require.

D. Remedies for Judicial Misconduct and Appearance of Partiality

1. Disqualification

Disqualification is mandatory for conduct that calls a judge's impartiality into question. *See* 28 U.S.C. § 455(a); *In re School Asbestos Litig.*, 977 F.2d 764, 783 (3d Cir. 1992). Section 455 does not prescribe the scope of disqualification. Rather, Congress "delegated to the judiciary the task of fashioning the remedies that will best serve the purpose" of the disqualification statute. *Liljeberg*, 486 U.S. at 862.

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At a minimum, § 455(a) requires prospective disqualification of the offending judge, that is, disqualification from the judge's hearing any further proceedings in the case. *See United States v. Microsoft Corp.*, 56 F.3d 1448, 1463-65 (D.C. Cir. 1995) (per curiam) ("*Microsoft I*"). Microsoft urges retroactive disqualification of the District Judge, which would entail disqualification antedated to an earlier part of the proceedings and vacatur of all subsequent acts. *Cf. In re School Asbestos Litig.*, 977 F.2d at 786 (discussing remedy options).

"There need not be a draconian remedy for every violation of § 455(a)." *Liljeberg*, 486 U.S. at 862. *Liljeberg* held that a district judge could be disqualified under § 455(a) *after* entering final judgment in a case, even though the judge was not (but should have been) aware of the grounds for disqualification before final judgment. The Court identified three factors relevant to the question whether vacatur is appropriate: "in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Id.* at 864. Although the Court was discussing § 455(a) in a slightly different context (the judgment there had become final after appeal and the movant sought to have it vacated under Rule 60(b)), we believe the test it propounded applies as well to cases such as this in which the full extent of the disqualifying circumstances came to light only while the appeal was pending. *See In re School Asbestos Litig.*, 977 F.2d at 785.

Our application of *Liljeberg* leads us to conclude that the appropriate remedy for the violations of § 455(a) is disqualification of the District Judge retroactive only to the date he entered the order breaking up Microsoft. We therefore will vacate that order in its entirety and remand this case to a different District Judge, but will not set aside the existing Findings of Fact or Conclusions of Law (except insofar as specific findings are clearly erroneous or legal conclusions are incorrect).

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This partially retroactive disqualification minimizes the risk of injustice to the parties and the damage to public confidence in the judicial process. Although the violations of the Code of Conduct and § 455(a) were serious, full retroactive disqualification is unnecessary. It would unduly penalize plaintiffs, who were innocent and unaware of the misconduct, and would have only slight marginal deterrent effect.

Most important, full retroactive disqualification is unnecessary to protect Microsoft's right to an impartial adjudication. The District Judge's conduct destroyed the appearance of impartiality. Microsoft neither alleged nor demonstrated that it rose to the level of actual bias or prejudice. There is no reason to presume that everything the District Judge did is suspect. *See In re Allied-Signal Inc.*, 891 F.2d 974, 975-76 (1st Cir. 1989); *cf. Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1301-02 (D.C. Cir. 1988). Although Microsoft challenged very few of the findings as clearly erroneous, we have carefully reviewed the entire record and discern no basis to suppose that actual bias infected his factual findings.

The most serious judicial misconduct occurred near or during the remedial stage. It is therefore commensurate that our remedy focus on that stage of the case. The District Judge's impatience with what he viewed as intransigence on the part of the company; his refusal to allow an evidentiary hearing; his analogizing Microsoft to Japan at the end of World War II; his story about the mule—all of these out-of-court remarks and others, plus the Judge's evident efforts to please the press, would give a reasonable, informed observer cause to question his impartiality in ordering the company split in two.

To repeat, we disqualify the District Judge retroactive only to the imposition of the remedy, and thus vacate the remedy order for the reasons given in Section V and because of the appearance of partiality created by the District Judge's misconduct.

2. Review of Findings of Fact and Conclusions of Law

Given the limited scope of our disqualification of the District Judge, we have let stand for review his Findings of Fact and Conclusions of Law. The severity of the District Judge's misconduct and the appearance of partiality it created have led us to consider whether we can and should subject his factfindings to greater scrutiny. For a number of reasons we have rejected any such approach.

The Federal Rules require that district court findings of fact not be set aside unless they are clearly erroneous. *See* FED. R. CIV. P. 52(a). Ordinarily, there is no basis for doubting that the District Court's factual findings are entitled to the substantial deference the clearly erroneous standard entails. But of course this is no ordinary case. Deference to a district court's factfindings presumes impartiality on the lower court's part. When impartiality is called into question, how much deference is due?

The question implies that there is some middle ground, but we believe there is none. As the rules are written, district court factfindings receive either full deference under the clearly erroneous standard or they must be vacated. There is no *de novo* appellate review of factfindings and no intermediate level between *de novo* and clear error, not even for findings the court of appeals may consider sub-par. *See Amadeo v. Zant*, 486 U.S. 214, 228 (1988) ("The District Court's lack of precision, however, is no excuse for the Court of Appeals to ignore the dictates of Rule 52(a) and engage in impermissible appellate factfinding."); *Anderson v. City of Bessemer City*, 470 U.S. 564, 571-75 (1985) (criticizing district court practice of adopting a party's proposed factfindings but overturning court of appeals' application of "close scrutiny" to such findings).

Rule 52(a) mandates clearly erroneous review of all district court factfindings: "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." FED. R. CIV. P. 52(a). The rule "does not make exceptions or purport to exclude certain categories of factual findings from

the obligation of a court of appeals to accept a district court's findings unless clearly erroneous." *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982); *see also Anderson*, 470 U.S. at 574-75; *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 855-58 (1982). The Supreme Court has emphasized on multiple occasions that "[i]n applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo*." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969); *Anderson*, 470 U.S. at 573 (quoting *Zenith*).

The mandatory nature of Rule 52(a) does not compel us to accept factfindings that result from the District Court's misapplication of governing law or that otherwise do not permit meaningful appellate review. *See Pullman-Standard*, 456 U.S. at 292; *Inwood Labs.*, 456 U.S. at 855 n.15. Nor must we accept findings that are utterly deficient in other ways. In such a case, we vacate and remand for further factfinding. *See* 9 MOORE'S FEDERAL PRACTICE § 52.12[1] (Matthew Bender 3d ed. 2000); 9A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2577, at 514-22 (2d ed. 1995); *cf. Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986); *Pullman-Standard*, 456 U.S. at 291-92.

When there is fair room for argument that the District Court's factfindings should be vacated *in toto*, the court of appeals should be especially careful in determining that the findings are worthy of the deference Rule 52(a) prescribes. *See, e.g., Thermo Electron Corp. v. Schiavone Constr. Co.*, 915 F.2d 770, 773 (1st Cir. 1990); *cf. Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984). Thus, although Microsoft alleged only appearance of bias, not actual bias, we have reviewed the record with painstaking care and have discerned no evidence of actual bias. *See S. Pac. Communications Co. v. AT & T*, 740 F.2d 980, 984 (D.C. Cir. 1984); *Cooley*, 1 F.3d at 996 (disqualifying district judge for

appearance of partiality but noting that "the record of the proceedings below ... discloses no bias").

In light of this conclusion, the District Judge's factual findings both warrant deference under the clear error standard of review and, though exceedingly sparing in citations to the record, permit meaningful appellate review. In reaching these conclusions, we have not ignored the District Judge's reported intention to craft his factfindings and Conclusions of Law to minimize the breadth of our review. The Judge reportedly told Ken Auletta that "[w]hat I want to do is confront the Court of Appeals with an established factual record which is a fait accompli." AULETTA, WORLD WAR 3.0, at 230. He explained: "part of the inspiration for doing that is that I take mild offense at their reversal of my preliminary injunction in the consent-decree case, where they went ahead and made up about ninety percent of the facts on their own." *Id.* Whether the District Judge takes offense, mild or severe, is beside the point. Appellate decisions command compliance, not agreement. We do not view the District Judge's remarks as anything other than his expression of disagreement with this court's decision, and his desire to provide extensive factual findings in this case, which he did.

VII. CONCLUSION

The judgment of the District Court is affirmed in part, reversed in part, and remanded in part. We vacate in full the Final Judgment embodying the remedial order, and remand the case to the District Court for reassignment to a different trial judge for further proceedings consistent with this opinion.

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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 6/28/2001 10:04:16 AM
Subject: : final list of Friday-2:15 POTUS mtg participants

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CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-JUN-2001 14:04:16.00
SUBJECT:: final list of Friday-2:15 POTUS mtg participants
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READ:UNKNOWN
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Vice President Dick Cheney
Andrew Card, Chief of Staff
Alberto R. Gonzales, Counsel to the President
Karl Rove, Senior Advisor to the President
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Timothy Flanigan, Deputy Counsel to the President
Brett Kavanaugh, Associate Counsel to the President
Chris Bartolomucci, Associate Counsel to the President
Brad Berenson, Associate Counsel to the President
Stuart Bowen, Associate Counsel to the President
Helgi Walker, Associate Counsel to the President
Kyle Sampson, Associate Director, Presidential Personnel

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 6/29/2001 9:02:44 AM
Subject: : Pre-POTUS Prep Mtg.-Judge's office-1:50 pm today!

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-JUN-2001 13:02:44.00
SUBJECT:: Pre-POTUS Prep Mtg.-Judge's office-1:50 pm today!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Jean M. Russell/OU=OPD/O=EOP [OPD]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Eric W. Terrell/WHO/EOP@EOP [WHO] <Eric W. Terrell>
Sent: 6/29/2001 1:19:00 PM
Subject: : travel and ethics

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jean M. Russell ( CN=Jean M. Russell/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:29-JUN-2001 17:19:00.00
SUBJECT:: travel and ethics
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Eric W. Terrell ( CN=Eric W. Terrell/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Hypothetical Sitaution--, Larry Lindsey agrees to particpate in a
business related conference. The sponsor does not pay for tickets,
lodgings and there is a conference fee. According to White House Travel
office (and stop me if I am mistaken) government rated/issued tickets
cannot be upgraded from coach. If Mr. Lindsey would like to travel first
class can he purchase the tickets using his own frequent flyer miles?

Will the government still pay for the Conference Fee and lodging? Or does
LL paying for the tickets on his own with miles take away from this trip
being business?

PLEASE let me know!

jeannie
```

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 6/30/2001 10:15:17 AM
Subject: : AP:Senate to Consider Judicial Nominees

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-JUN-2001 14:15:17.00
SUBJECT:: AP:Senate to Consider Judicial Nominees
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

http://www.newsday.com/ap/text/washington/ap179.htm
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>
Sent: 7/2/2001 2:05:55 PM
Subject: : Re:T-pts

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-JUL-2001 18:05:55.00
SUBJECT:: Re:T-pts
TO:Ed_Haden@judiciary.senate.gov (Ed Haden) ( Ed_Haden@judiciary.senate.gov (Ed Haden) [
UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Who's the new Dem on the Committee?
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov>
Sent: 7/3/2001 11:29:16 AM
Subject: : Re: speed of judicial confirmations in Clinton Admin

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JUL-2001 15:29:16.00
SUBJECT:: Re: speed of judicial confirmations in Clinton Admin
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:viet.dinh@usdoj.gov ( viet.dinh@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can we get the same information expressed as a percentage? I.e., 50% of
the Clinton nominees received a hearing in 30 days. Absolute numbers
don't really tell you as much.



Rachel L. Brand 07/03/2001 03:05:13 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: speed of judicial confirmations in Clinton Admin

Based on some information from Senate Judiciary, it appears that the
following number of judicial candidates received hearings within the
```

following time frames (each entry is cumulative). I looked only at the period Jan. 1995 to Jan. 2001, the period during which there was a Republican Senate and a Democratic President.

Within 2 days: 1

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2 weeks (14 days) or less: 8

3 weeks (21 days) or less: 12

4 weeks (28 days) or less: 15

30 days or less: 18

5 weeks (35 days) or less: 25

6 weeks (42 days) or less: 30

7 weeks (49 days) or less: 35

8 weeks (56 days) or less: 41

60 days or less: 45

90 days or less: 72

120 days or less: 94

[It goes up from there....]

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Viet.Dinh@usdoj.gov @ inet

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov>
Sent: 7/3/2001 11:46:43 AM
Subject: : Re: speed of judicial confirmations in Clinton Admin

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JUL-2001 15:46:43.00
SUBJECT:: Re: speed of judicial confirmations in Clinton Admin
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:viet.dinh@usdoj.gov ( viet.dinh@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'll check to find out whether the documentation I have includes every
single Clinton judicial nominee -- if so, I'll calculate a percentage.

RLB




Courtney S. Elwood
07/03/2001 03:29:09 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
```

bcc:
Subject: Re: speed of judicial confirmations in Clinton Admin

Can we get the same information expressed as a percentage? I.e., 50% of the Clinton nominees received a hearing in 30 days. Absolute numbers don't really tell you as much.

Rachel L. Brand 07/03/2001 03:05:13 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: speed of judicial confirmations in Clinton Admin

Based on some information from Senate Judiciary, it appears that the following number of judicial candidates received hearings within the following time frames (each entry is cumulative). I looked only at the period Jan. 1995 to Jan. 2001, the period during which there was a Republican Senate and a Democratic President.

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7 weeks (49 days) or less: 35

8 weeks (56 days) or less: 41

60 days or less: 45

90 days or less: 72

120 days or less: 94

[It goes up from there....]

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP

Alberto R. Gonzales/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Viet.Dinh@usdoj.gov @ inet

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
robert w. cobb/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
rachel l. brand/who/eop@eop
timothy e. flanigan/who/eop@eop
alberto r. gonzales/who/eop@eop
kyle sampson/who/eop@eop
viet.dinh@usdoj.gov @ inet

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 7/3/2001 10:24:42 AM
Subject: : New Dem on SJC

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JUL-2001 14:24:42.00
SUBJECT:: New Dem on SJC
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Rumor is that it will be John Edwards, but nothing official.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 7/5/2001 4:14:57 PM
Subject: : Re: OFL staff travel
Attachments: P_H1SO2004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUL-2001 20:14:57.00
SUBJECT:: Re: OFL staff travel
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This memo tried to outline the broad parameters while also giving discretion on a case by case basis to adjust where necessary. This is all policy, not law, so the food question can be done as we see fit. But if you are official for traveling, it makes sense that your food while on travel is covered one way or another. That is the standard government rule.

Courtney S. Elwood
07/05/2001 07:59:11 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: OFL staff travel

That's good to hear. All the old memos that I have from Clinton and Bush (41) don't seem to list the FL's COS, only her personal aide. And, in the case of one 1994 memo, the policy was apparently that all staff members "accompanuing the First Lady to assist in carrying out official functions travel on a non-reimburseable basis."

Did you prepare a memo on this? The only memo I have from you (dated March 22, 2001) doesn't really address employees travelling with the FL on personal travel; it mentions only "guests" who must reimburse. If another memo exists, can I get a copy for my file? Also, do I assume that, if an employee is non-reimburseable, it necessarily follows that his/her food is paid for from federal travel funds? Or should those be separate inquiries -- i.e. just because you don't have to reimburse for your flight does not mean that the gov't pays your expenses or pays you a per diem.

Sorry for having so many questions, but I'd like to get this stuff clear in my own mind.

Brett M. Kavanaugh
07/05/2001 07:47:26 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
bcc:
Subject: Re: OFL staff travel

No, COS is official as well.

Courtney S. Elwood
07/05/2001 07:46:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: OFL staff travel

I think you are the expert on this one, although I'd be interested in hearing your response. Do I recall correctly that only the First Lady's personal aide is "always official"? Does that mean that if Andi Ball goes, she needs to reimbuse for her air travel?

Brett M. Kavanaugh
07/05/2001 07:30:28 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Re: OFL staff travel

your bailiwick or mine?

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/05/2001 07:30 PM ----------

From: Anne M. Hughes on 07/05/2001 05:24:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: OFL staff travel

When staff travel with Mrs. Bush on her personal trips, I assume the Staff Travel Subsistence Fund covers Airlift Ops bills, but please confirm. Thanks--AMH

---------- Forwarded by Anne M. Hughes/WHO/EOP on 07/05/2001 05:23 PM ----------

Andrea G. Ball
07/05/2001 05:18:26 PM
Record Type: Record

To: Anne M. Hughes/WHO/EOP@EOP
cc:
Subject: Re: OFL staff travel

what about travel with Mrs. Bush on her plane (not Air Force One) on official business. And what about travel when it is not necessarily official business, but she is travelling to the ranch or elsewhere.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_H1SO2004_WHO.TXT_1>

June 8, 2001

MEMORANDUM FOR VICKERS MEADOWS

FROM: BRETT M. KAVANAUGH

SUBJECT: Official Travelers

As we have discussed, certain government officers and employees are always considered to be traveling on official business when traveling with the President. They include the Chief of Staff, the National Security Advisor, the Personal Aide to the President, the President's secretary, the doctor, the photographer, White House Military Office officials, and Secret Service and military personnel.

On a case by case basis, certain other officials may also be considered official travelers, such as the Press Secretary.

As to travel to political events, otherwise official travelers who engage in political activity during the trip (the Chief of Staff, for example) are then considered political travelers for that trip. That determination should be made on a case by case basis for political trips.

The above analysis also applies to those who travel with the First Lady.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>
Sent: 7/5/2001 3:57:19 PM
Subject: : Estrada

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUL-2001 19:57:19.00
SUBJECT:: Estrada
TO:Abel Guerra ( CN=Abel Guerra/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can you and I meet some time Friday to talk about Miguel Estrada.
I propose 3:00 p.m., and we can do it here in 128 if that time and place
work for you. Thanks. It should be a brief meeting.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 7/6/2001 8:28:51 AM
Subject: : Ignore previous e-mail about Holmstead letter

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-JUL-2001 12:28:51.00
SUBJECT:: Ignore previous e-mail about Holmstead letter
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Laura L. Flippin/OU=WHO/O=EOP [WHO]
To: Bevan A. Brooks/WHO/EOP@EOP [WHO] <Bevan A. Brooks>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;james carroll/who /eop@eop [WHO] <james carroll>;robert j. fagan/who/eop@eop [WHO] <robert j. fagan>;michael d. graham/who/eop@eop [WHO] <michael d. graham>;eric hagans/who /eop@eop [WHO] <eric hagans>;anita t. purcell/who/eop@eop [WHO] <anita t. purcell>;latour r. lafferty/who/eop@eop [WHO] <latour r. lafferty>;joan m. work/who/eop@eop [WHO] <joan m. work>
Sent: 7/9/2001 7:27:21 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-JUL-2001 11:27:21.00
SUBJECT:: Re:
TO:Bevan A. Brooks ( CN=Bevan A. Brooks/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
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CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
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CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
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CC:a. morgan middlemas ( CN=a. morgan middlemas/OU=who/O=eop@eop [ WHO ] )
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CC:james carroll (CN=james carroll/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:joan m. work (CN=joan m. work/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm not sure it's a good idea for a lot of people to be going from our office -- you might want to check with Tim on this.

Bevan A. Brooks
07/09/2001 11:25:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

Please let me know if you are interested in attending the Senate Judiciary Committee's confirmation hearing on Wednesday at 2 PM on the hill. I am arranging car service for Brad and myself and I wanted to see if anyone else was interested in going over there with us. The hearing shouldn't last much more than an hour. Please let me know when you get a chance so that I can get a head count. Thank you.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Lori L. Lorenzi/WHO/EOP@EOP
A. Morgan Middlemas/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
James Carroll/WHO/EOP@EOP
Robert J. Fagan/WHO/EOP@EOP
Michael D. Graham/WHO/EOP@EOP
Eric Hagans/WHO/EOP@EOP
Anita T. Purcell/WHO/EOP@EOP
Latour R. Lafferty/WHO/EOP@EOP
Joan M. Work/WHO/EOP@EOP

From: CN=Laura L. Flippin/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: bevan a. brooks/who/eop@eop [WHO] <bevan a. brooks>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;james carroll/who/eop@eop [WHO] <james carroll>;robert j. fagan/who/eop@eop [WHO] <robert j. fagan>;michael d. graham/who/eop@eop [WHO] <michael d. graham>;eric hagans/who/eop@eop [WHO] <eric hagans>;anita t. purcell/who/eop@eop [WHO] <anita t. purcell>;latour r. lafferty/who/eop@eop [WHO] <latour r. lafferty>;joan m. work/who/eop@eop [WHO] <joan m. work>
Sent: 7/9/2001 7:35:37 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-JUL-2001 11:35:37.00
SUBJECT:: Re:
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bevan a. brooks ( CN=bevan a. brooks/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
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CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
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CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
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CC:eric hagans (CN=eric hagans/OU=who/O=eop@eop [WHO])
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CC:anita t. purcell (CN=anita t. purcell/OU=who/O=eop@eop [WHO])
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CC:latour r. lafferty (CN=latour r. lafferty/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:joan m. work (CN=joan m. work/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I don't think there is a problem with a couple of people going, but I think it does not look good for us to be packing the hearing room.

Rachel L. Brand 07/09/2001 11:30:01 AM

Record Type: Record

To: Laura L. Flippin/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

Brad and I went last time, and there was no problem with that.

RLB

Laura L. Flippin
07/09/2001 11:27:18 AM
Record Type: Record

To: Bevan A. Brooks/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

I'm not sure it's a good idea for a lot of people to be going from our office -- you might want to check with Tim on this.

Bevan A. Brooks
07/09/2001 11:25:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

Please let me know if you are interested in attending the Senate Judiciary Committee's confirmation hearing on Wednesday at 2 PM on the hill. I am arranging car service for Brad and myself and I wanted to see if anyone

else was interested in going over there with us. The hearing shouldn't last much more than an hour. Please let me know when you get a chance so that I can get a head count. Thank you.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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Eric Hagans/WHO/EOP@EOP
Anita T. Purcell/WHO/EOP@EOP
Latour R. Lafferty/WHO/EOP@EOP
Joan M. Work/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
david s. addington/ovp/eop@eop
john b. bellinger/nsc/eop@eop
bradford a. berenson/who/eop@eop
stuart w. bowen/who/eop@eop
rachel l. brand/who/eop@eop
elizabeth n. camp/who/eop@eop
robert w. cobb/who/eop@eop
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brent d. greenfield/who/eop@eop
brett m. kavanaugh/who/eop@eop
lori l. lorenzi/who/eop@eop
a. morgan middlemas/who/eop@eop
allison l. riepenhoff/who/eop@eop
jason b. torchinsky/who/eop@eop
helgard c. walker/who/eop@eop
james carroll/who/eop@eop
robert j. fagan/who/eop@eop
michael d. graham/who/eop@eop
eric hagans/who/eop@eop
anita t. purcell/who/eop@eop
latour r. lafferty/who/eop@eop
joan m. work/who/eop@eop

Message Copied
To:_____
Bevan A. Brooks/WHO/EOP@EOP

Bradford A. Berenson/WHO/EOP@EOP
bevan a. brooks/who/eop@eop
h. christopher bartolomucci/who/eop@eop
david s. addington/ovp/eop@eop
john b. bellinger/nsc/eop@eop
bradford a. berenson/who/eop@eop
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eric hagans/who/eop@eop
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latour r. lafferty/who/eop@eop
joan m. work/who/eop@eop

From: CN=Laura L. Flippin/OU=WHO/O=EOP [WHO]
To: Bevan A. Brooks/WHO/EOP@EOP [WHO] <Bevan A. Brooks>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;james carroll/who /eop@eop [WHO] <james carroll>;robert j. fagan/who/eop@eop [WHO] <robert j. fagan>;michael d. graham/who/eop@eop [WHO] <michael d. graham>;eric hagans/who /eop@eop [WHO] <eric hagans>;anita t. purcell/who/eop@eop [WHO] <anita t. purcell>;latour r. lafferty/who/eop@eop [WHO] <latour r. lafferty>;joan m. work/who/eop@eop [WHO] <joan m. work>
Sent: 7/9/2001 7:27:21 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-JUL-2001 11:27:21.00
SUBJECT:: Re:
TO:Bevan A. Brooks ( CN=Bevan A. Brooks/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
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CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
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CC:james carroll (CN=james carroll/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert j. fagan (CN=robert j. fagan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:michael d. graham (CN=michael d. graham/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:anita t. purcell (CN=anita t. purcell/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:latour r. lafferty (CN=latour r. lafferty/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:joan m. work (CN=joan m. work/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm not sure it's a good idea for a lot of people to be going from our office -- you might want to check with Tim on this.

Bevan A. Brooks
07/09/2001 11:25:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

Please let me know if you are interested in attending the Senate Judiciary Committee's confirmation hearing on Wednesday at 2 PM on the hill. I am arranging car service for Brad and myself and I wanted to see if anyone else was interested in going over there with us. The hearing shouldn't last much more than an hour. Please let me know when you get a chance so that I can get a head count. Thank you.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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Rachel L. Brand/WHO/EOP@EOP
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Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
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A. Morgan Middlemas/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
James Carroll/WHO/EOP@EOP
Robert J. Fagan/WHO/EOP@EOP
Michael D. Graham/WHO/EOP@EOP
Eric Hagans/WHO/EOP@EOP
Anita T. Purcell/WHO/EOP@EOP
Latour R. Lafferty/WHO/EOP@EOP
Joan M. Work/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>
CC: Bevan A. Brooks/WHO/EOP@EOP [WHO] <Bevan A. Brooks>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;bevan a. brooks/who/eop@eop [WHO] <bevan a. brooks>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;james carroll/who/eop@eop [WHO] <james carroll>;robert j. fagan/who/eop@eop [WHO] <robert j. fagan>;michael d. graham/who/eop@eop [WHO] <michael d. graham>;eric hagans/who/eop@eop [WHO] <eric hagans>;anita t. purcell/who/eop@eop [WHO] <anita t. purcell>;latour r. lafferty/who/eop@eop [WHO] <latour r. lafferty>;joan m. work/who/eop@eop [WHO] <joan m. work>
Sent: 7/9/2001 7:30:03 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-JUL-2001 11:30:03.00
SUBJECT:: Re:
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bevan A. Brooks ( CN=Bevan A. Brooks/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bevan a. brooks ( CN=bevan a. brooks/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:lori l. lorenzi ( CN=lori l. lorenzi/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
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CC:a. morgan middlemas (CN=a. morgan middlemas/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
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CC:jason b. torchinsky (CN=jason b. torchinsky/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
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CC:robert j. fagan (CN=robert j. fagan/OU=who/O=eop@eop [WHO])
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CC:eric hagans (CN=eric hagans/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:anita t. purcell (CN=anita t. purcell/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:latour r. lafferty (CN=latour r. lafferty/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:joan m. work (CN=joan m. work/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Brad and I went last time, and there was no problem with that.

RLB

Laura L. Flippin
07/09/2001 11:27:18 AM
Record Type: Record

To: Bevan A. Brooks/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

I'm not sure it's a good idea for a lot of people to be going from our office -- you might want to check with Tim on this.

Bevan A. Brooks
07/09/2001 11:25:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

Please let me know if you are interested in attending the Senate Judiciary Committee's confirmation hearing on Wednesday at 2 PM on the hill. I am arranging car service for Brad and myself and I wanted to see if anyone else was interested in going over there with us. The hearing shouldn't last much more than an hour. Please let me know when you get a chance so that I can get a head count. Thank you.

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Eric Hagans/WHO/EOP@EOP
Anita T. Purcell/WHO/EOP@EOP
Latour R. Lafferty/WHO/EOP@EOP
Joan M. Work/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
david s. addington/ovp/eop@eop
john b. bellinger/nsc/eop@eop
bradford a. berenson/who/eop@eop
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eric hagans/who/eop@eop
anita t. purcell/who/eop@eop
latour r. lafferty/who/eop@eop
joan m. work/who/eop@eop

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>
CC: rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;bevan a. brooks/who/eop@eop [WHO] <bevan a. brooks>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;james carroll/who/eop@eop [WHO] <james carroll>;robert j. fagan/who/eop@eop [WHO] <robert j. fagan>;michael d. graham/who/eop@eop [WHO] <michael d. graham>;eric hagans/who/eop@eop [WHO] <eric hagans>;anita t. purcell/who/eop@eop [WHO] <anita t. purcell>;latour r. lafferty/who/eop@eop [WHO] <latour r. lafferty>;joan m. work/who/eop@eop [WHO] <joan m. work>
Sent: 7/9/2001 7:52:24 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-JUL-2001 11:52:24.00
SUBJECT:: Re:
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bevan a. brooks ( CN=bevan a. brooks/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
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CC:a. morgan middlemas ( CN=a. morgan middlemas/OU=who/O=eop@eop [ WHO ] )
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CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
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CC:joan m. work (CN=joan m. work/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I agree that we should not have more than 2-3 people go at one time.

Laura L. Flippin
07/09/2001 11:35:35 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

I don't think there is a problem with a couple of people going, but I
think it does not look good for us to be packing the hearing room.

Rachel L. Brand 07/09/2001 11:30:01 AM

Record Type: Record

To: Laura L. Flippin/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

Brad and I went last time, and there was no problem with that.

RLB

Laura L. Flippin
07/09/2001 11:27:18 AM

Record Type: Record

To: Bevan A. Brooks/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

I'm not sure it's a good idea for a lot of people to be going from our office -- you might want to check with Tim on this.

Bevan A. Brooks
07/09/2001 11:25:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

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David S. Addington/OVP/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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Anita T. Purcell/WHO/EOP@EOP
Latour R. Lafferty/WHO/EOP@EOP
Joan M. Work/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop

david s. addington/ovp/eop@eop
john b. bellinger/nsc/eop@eop
bradford a. berenson/who/eop@eop
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latour r. lafferty/who/eop@eop
joan m. work/who/eop@eop

Message Copied
To:_____
Bevan A. Brooks/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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joan m. work/who/eop@eop

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eric hagans/who/eop@eop
anita t. purcell/who/eop@eop
latour r. lafferty/who/eop@eop
joan m. work/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 7/9/2001 9:56:00 AM
Subject: : Novak

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CREATION DATE/TIME: 9-JUL-2001 13:56:00.00
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Below is a Novak column from this weekend. [I did not cc the
Judge or Tim on this e-mail, although they know about the Novak column.]

NOVAK
President Bush's aides are telling worried conservatives that moderate
White House counsel
Alberto Gonzales will not be Bush's first or second selection for the
Supreme Court, though he
may end up there after two new justices have been seated.

Gonzales, who resigned from the Texas Supreme Court to come to Washington,
has been
widely reported as Bush's likely first high court nomination. He has no
hard conservative
views sure to ignite a confirmation battle, and Democratic senators would
be loath to reject
the first Hispanic named to the U.S. Supreme Court. He served as then-Gov.
Bush's chief
counsel in Texas before being appointed to the state court.

Privately, Gonzales won't hint where he stands on contentious issues. That
might ease his
confirmation, but it plants fears among conservatives that Gonzales will
be ''another
Souter.'' As the senior George Bush's first Supreme Court nomination,
Souter shrouded
his views during confirmation, but he has become the Supreme Court's most
consistent liberal.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 7/9/2001 2:33:34 PM
Subject: : Estrada's ABA rating

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unanimous "well-qualified"
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 7/10/2001 3:57:00 AM
Subject: : Schumer Hearing July 17

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUL-2001 07:57:00.00
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TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Rachel L. Brand/WHO/EOP on 07/10/2001 07:57 AM ----------

Ed_Haden@judiciary.senate.gov (Ed Haden)
07/09/2001 07:54:54 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Schumer Hearing July 17

Friends:
Senator Schumer's staff has informed me that he plans to hold another Subcommittee hearing:
Topic -- The Role of Real World Experience in Judicial Selection
Date -- Tuesday, July 17, 2001
Time -- 10:00 a.m.
Dem Witnesses: Hon. Walter Dellinger, former Acting Solicitor General

of the U.S.
Prof. Duncan Kennedy, Harvard Law School
Professor Sheldon Goldman, Univ. of Mass. --
Poly Sci Dept.
Issues: The hearing takes its theme from the attached Linda Greenhouse article in the New York Times which supports liberals/moderates who will rule in accordance with "real life" experience as opposed to technocrats who stick to the technicalities of the law.
They want a nominee who has represented real people -- Ruth Bader Ginsburg - ACLU - who wants to help racial minorities -- or has real experience -- Stephen Breyer - chief counsel of judiciary committee who defers to congressional findings -- or has served as a politician like Earl Warren and Hugo Black.
Schumer's staff says this hearing will be bi-partisan.
It seems that Clarence Thomas might have had a real life experience or two. And Scalia's stint as AAG for OLC or Ford perhaps gave him a vantage point of the Independent Counsel law that others, save Rehnhquist, lacked.
In any event, I will be searching for witnesses and would appreciate your input and suggestions. I have contacted Frank Keating's people. [Perhaps we could bring as a special guest, but not as a witness, Detective Patrick Boyle from Philadelphia who had the real life experience of having a son shot and killed by a convict released from prison by an activist Carter appointee.]
I will be distributing the usual Sessions briefing books later this week.
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Copyright 2001 The New York Times Company
The New York Times
July 1, 2001, Sunday, Late Edition - Final
SECTION: Section 4; Page 1; Column 1; Week in Review Desk
LENGTH: 1593 words
HEADLINE: Ideas & Trends: Impolitic;
The Separation of Justice and State
BYLINE: By LINDA GREENHOUSE

DATELINE: WASHINGTON
BODY:
THERE is a paradox that the recent Supreme Court term the term that saw the court decide a presidential election -- cast into high relief: rarely has the Supreme Court been as deeply embroiled in the political life of the country and rarely, if ever, have the justices themselves been so removed from the craft of politics.
From its earliest days, the court included members of Congress, cabinet officers and others drawn from the front ranks of public life. Consider that 80 years ago, a former president, William Howard Taft, began a tenure as chief justice. But though Justice Sandra Day O'Connor is a former state legislator, no current justice has held elective federal office or even a high appointed one.
Conversely, prior judicial experience was long considered irrelevant for service on the Supreme Court. For example, the early Warren Court included three former senators, two former attorneys general and Earl Warren himself, three-time governor of California and the Republican's vice presidential nominee in 1948. But all the current justices were judges when appointed, except Chief Justice William H. Rehnquist, who was an assistant attorney general in the Nixon administration.
The result has been to transform the court from an institution that once drew on the collective experience of people who had lived both sides of the vital intersection of law and politics -- where the most important cases arise -- to one staffed by a smart, highly professional cadre of academic judges who often appear disconnected from the practical implications of the court's work.
Something has been gained, certainly: a fluidity with legal doctrine in its many nuances. But something vital has been lost -- a framework for seeing the world in all its gritty reality from inside the marble cocoon.
It is hard to imagine, for example, that justices with substantial political experience would blithely assume that defending against the Paula Corbin Jones sexual harassment suit would not be a burden for Bill Clinton.

What is the current court missing without political biographies? Some justices today see Congress as alien if not enemy territory. A former member of Congress could be a useful translator of the Congressional mind, much as Justice O'Connor, who served in the Arizona State Senate, has been for the states' interests.

To cite an example from the term just over, justices with political experience might not have declared, as the majority did in a decision limiting the states' exposure to suits under the Americans With Disabilities Act, that despite holding 12 hearings over three years Congress had failed to prove state governments had a history of discriminating against people with disabilities.

The absence of any retirement announcements as the court recessed Thursday means the bitter ideological debate certain to surround President Bush's effortto fill the next vacancy is some months or years away. So it is a good time to step back and consider the court from the perspective not of ideology but biography.

From any angle, this is a far different court from the one filled by the politicians of a generation ago, whose judicial horizons stretched as far as those of the postwar country itself. The leading members of the Warren Court were "larger than life," said Lucas A. Powe Jr., a law professor at the University of Texas and the author of the recent book, "The Warren Court and American Politics" (Belknap, 2000), and they regarded the court as a canvas on which to paint on a grand scale. Not only Warren but William O. Douglas, a key member of President Franklin D. Roosevelt's brain trust and the head of his Securities and Exchange Commission, and Hugo L. Black, the Senate floor manager for much of the New Deal, had been considered as potential presidential candidates. "It mattered a lot that these were savvy politicians," Professor Powe said.

Professor Powe said that while the Warren Court is often characterized as having been "counter-majoritarian," forcing on a reluctant public its own vision of what was right but unachievable through democratic politics, this is a misunderstanding. "It was actually very majoritarian," he said. "They removed the blocks to majority rule that were lurking within the system," like the malapportioned legislatures that fell to the Warren Court's one-person, one-vote decisions. "They knew what was majority sentiment and what wasn't."

But indisputably, the Warren era provoked a strong reaction. "The technocrats we've acquired since then are somewhat a reaction to what the Warren Court did, and to the feeling that if we can just pick very safe people, they won't do it," Professor Powe said.

THERE are more generous ways to characterize the current justices than as technocrats. No one could doubt their intelligence or legal skills. "The Warren Court needed legal craftsmen and the present court is far more adept at legal craftsmanship," said Walter E. Dellinger, a law professor now in private practice who served as acting solicitor general during the Clinton administration. He was one of several advisers who urged President Clinton to resurrect the tradition of picking justices from public life. The president did consider Mario M. Cuomo, the former New York governor; George J. Mitchell, the former Senate majority leader; and Bruce Babbitt, a former Arizona governor then in the cabinet, for the vacancies that went to Ruth Bader Ginsburg and Stephen Breyer.

"I said when Thurgood Marshall retired that the court had lost its only -- Mr. Dellinger said, "and people expected me to say 'black justice.' But what I said was 'national figure.' The present court could use one, someone with real-life experience."

Justice Lewis F. Powell Jr., who had headed the Richmond, Va., school board during the tense years of desegregation, was one example Mr. Dellinger cited.

"Powell had a real sense of the way the world works," he said. "The court needs a mix of pragmatists and of those moved by abstract principle. The biggest mistake a president can make is to name the same kind of person over and over."

Diversity in the broadest sense is a goal often cited by those who study the court. "It was great to have one Bill Douglas on the court, but you wouldn't want nine of them," said Dennis J. Hutchinson, a law professor at the University of Chicago and a former law clerk to both Justice Douglas and Justice Byron R. White. Justice Douglas's "mercurial intelligence was better suited to starting an argument," Mr. Hutchinson said, "than to

doing the tough day-to-day work of the institution."
Having veterans of high elective office on the court, he said in an interview, "would give texture to what are otherwise some rather flat and sterile academic debates" over questions like what use to make of legislative history in interpreting statutes. A former legislator "could bring a perspective on what often looks to the court like the irrational nature of legislation," Mr. Hutchinson said.
Justices with broad previous experience have often emerged as influential members of the court. Consider the great chief justice John Marshall, who served in Congress and was secretary of state under John Adams; and Charles Evans Hughes, who twice moved from electoral politics to the court. He was a two-term governor of New York when he was named to the court in 1910, left to run for president on the Republican ticket and rejoined as chief justice in 1930.
The effect of a skilled politician on the court can be powerful. Brown v.Board of Education had originally been argued in 1953, but the justices were deeply divided and could not coalesce around a decision. The case was scheduled for a second argument just as Earl Warren was named chief justice. The former governor was able to draw on his arsenal of political skills, largely reframing the argument so that other justices would agree on it, until he achieved unanimity for the decision.
PEOPLE who say the court is seriously out of touch with the real world invariably cite Clinton v. Jones, the 1997 decision in which all nine justices rejected President Clinton's request for temporary immunity from the Paula Jones lawsuit. The justices' confidence that the case could be easily managed by a sitting president now seems cavalier, even ludicrous. Even those who see it as legally correct -- and many do -- think that justices with government experience would have been less dismissive of the president's concerns.
On the other hand, times have changed in the law as in the country, and real-world experience may not be the talisman it once was. "The law has gotten so complicated that it's a more theoretical and complex job than it used to be," Mr. Hutchinson said.
Inevitably, any justice is the product of past experience, which may reveal itself in surprising ways. Before he joined the court in 1962, Byron White worked in Robert F. Kennedy's Justice Department as deputy attorney general, and he went to Alabama to deploy federal marshals to protect the Freedom Riders. It proved a formative experience for the crusty conservative, who in his 31 years on the court was never to forsake his commitment to civil rights nor his view that a strong national government was essential, positions struggling to hold their own on the current court. Justice White dissented from both Miranda v. Arizona and Roe v. Wade, but on federal authority he was with the liberals, Mr. Dellinger noted: "When he thought of states' rights, he saw George Wallace in the schoolhouse door."
http://www.nytimes.com
GRAPHIC: Photo (Yoichi R. Okamoto/Photo Researchers)
LOAD-DATE: July 1, 2001

Message Sent
To:_____
Makan_Delrahim@judiciary.senate.gov (Makan Delrahim)
viet.dinh@usdoj.gov
jennifer.newstead@usdoj.gov
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Jim_Rowland@brownback.senate.gov (Jim Rowland)
Bradford A. Berenson/WHO/EOP
Brett M. Kavanaugh/WHO/EOP
Sharon_Prost@judiciary.senate.gov (Sharon Prost)

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: 'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;'alex dahl' <alex_dahl@judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;'christopher rosche' <christopher_rosche@hatch.senate.gov>;'ed haden' <ed_haden@judiciary.senate.gov>;'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>;'makan delrahim' <makan_delrahim@judiciary.senate.gov>;'rena johnson' <rena_johnson@judiciary.senate.gov>;'sharon prost' <sharon_prost@judiciary.senate.gov>;'stephen higgins' <stephen_higgins@judiciary.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 7/10/2001 7:59:47 AM
Subject: : RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

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<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:10-JUL-2001 11:59:47.00
SUBJECT:: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J
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CC:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
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Yes, I believe we are having this meeting/ The WH folks will not all be there, but I will come back and brief them (they will be prepping Judges)

-----Original Message-----
From: Stewart Verdery [mailto:Stewart_Verdery@aml.senate.gov]
Sent: Tuesday, July 10, 2001 11:46 AM
To: Ullman, Kristen A; Bradford_A._Berenson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet; Ullman, Kristen A; alex dahl; Brett_M._Kavanaugh@who.eop.gov; christopher rosche; ed haden; lincoln oliphant; makan delrahim; rena johnson; sharon prost; stephen higgins; Ziad_S._Ojakli@who.eop.gov
Subject: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

anybody know if this meeting is actually happening today?

_____Reply Separator_____
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judi
Author: Bradford_A._Berenson@who.eop.gov
Date: 7/9/2001 3:39 PM

If I'm not mistaken, 2:00 p.m. tomorrow is the time for our prep session with the nominees. If this is a separate meeting, some folks may not be able to participate, including me.

(Embedded
image moved "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
to file: 07/09/2001 03:09:12 PM
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Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Joint Judicial Nominations Meeting hosted by Senate Judiciary Committee

Makan D. has asked that we convene at 2 p.m. tomorrow (Tuesday, July 10) in Dirksen 240 to discuss the hearing on Wednesday and any other "intelligence" that we have to share re: this process. Please let me know (via email) if you can make it -so we will know who to expect. Thanks so much.
Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

Message Sent
To:_____

"Bryant, Dan" <Dan.Bryant@usdoj.gov>
"Dinh, Viet" <Viet.Dinh@usdoj.gov>
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
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Stewart Verdery <Stewart_Verdery@aml.senate.gov>
Ziad S. Ojakli/WHO/EOP

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Date: Mon, 09 Jul 2001 15:39:19 -0400
From: Bradford_A._Berenson@who.eop.gov
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judiciary
Committee
To: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Cc: "bryant, dan" <dan.bryant@usdoj.gov>, "dinh, viet"
<viet.dinh@usdoj.gov>,
"newstead, jennifer" <jennifer.newstead@usdoj.gov>,
"ullman, kristen" <kristen.a.ullman@usdoj.gov>,
alex dahl <alex_dahl@judiciary.senate.gov>,
Brett_M._Kavanaugh@who.eop.gov,
christopher rosche <christopher_rosche@hatch.senate.gov>,
ed haden <ed_haden@judiciary.senate.gov>,
lincoln oliphant <lincoln_oliphant@rpc.senate.gov>,
makan delrahim <makan_delrahim@judiciary.senate.gov>,
rena johnson <rena_johnson@judiciary.senate.gov>,
sharon prost <sharon_prost@judiciary.senate.gov>,
stephen higgins <stephen_higgins@judiciary.senate.gov>,
stewart verdery <stewart_verdery@aml.senate.gov>,
Ziad_S._Ojakli@who.eop.gov
Message-id: <85256A84.006BE7AB.00@sgeop02.eop.gov>
MIME-version: 1.0
Content-type: MULTIPART/MIXED;

BOUNDARY="Boundary_(ID_mXXgo6wMhfX/i3BliFP1iA)"
X-Lotus-FromDomain: EOP

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 7/10/2001 5:33:20 AM
Subject: : 07-17-01 POTUS meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-JUL-2001 09:33:20.00
SUBJECT:: 07-17-01 POTUS meeting
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

In preparation for next Tuesday's meeting, please let me know if you will
be presenting candidates. As soon as I get the names, I'll begin drafting
the memos and data sheets.

Thanks!
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/10/2001 5:36:30 AM
Subject: : Re: 07-17-01 POTUS meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUL-2001 09:36:30.00
SUBJECT:: Re: 07-17-01 POTUS meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

3:30-4:00 p.m.

Brett M. Kavanaugh
07/10/2001 09:34:48 AM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc:
bcc:
Subject: Re: 07-17-01 POTUS meeting

What time is the meeting next week?

Brent D. Greenfield
07/10/2001 09:33:16 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: 07-17-01 POTUS meeting

In preparation for next Tuesday's meeting, please let me know if you will be presenting candidates. As soon as I get the names, I'll begin drafting the memos and data sheets.

Thanks!

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: 'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;'alex dahl' <alex_dahl@judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;'christopher rosche' <christopher_rosche@hatch.senate.gov>;'ed haden' <ed_haden@judiciary.senate.gov>;'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>;'makan delrahim' <makan_delrahim@judiciary.senate.gov>;'rena johnson' <rena_johnson@judiciary.senate.gov>;'sharon prost' <sharon_prost@judiciary.senate.gov>;'stephen higgins' <stephen_higgins@judiciary.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 7/10/2001 10:08:45 AM
Subject: : RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:10-JUL-2001 14:08:45.00
SUBJECT:: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J
TO:'Stewart Verdery' <Stewart_Verdery@aml.senate.gov> ( 'Stewart Verdery'
<Stewart_Verdery@aml.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'alex dahl' <alex_dahl@judiciary.senate.gov> ( 'alex dahl'
<alex_dahl@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:'christopher rosche' <christopher_rosche@hatch.senate.gov> ( 'christopher rosche'
<christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'ed haden' <ed_haden@judiciary.senate.gov> ( 'ed haden' <ed_haden@judiciary.senate.gov>
[ UNKNOWN ] )
READ:UNKNOWN
CC:'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov> ( 'lincoln oliphant'
<lincoln_oliphant@rpc.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'makan delrahim' <makan_delrahim@judiciary.senate.gov> ( 'makan delrahim'
<makan_delrahim@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'rena johnson' <rena_johnson@judiciary.senate.gov> ( 'rena johnson'
<rena_johnson@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'sharon prost' <sharon_prost@judiciary.senate.gov> ( 'sharon prost'
<sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'stephen higgins' <stephen_higgins@judiciary.senate.gov> ( 'stephen higgins'
<stephen_higgins@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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I am hung up on another matter. I will be late, if I am there at all.

-----Original Message-----
From: Stewart Verdery [mailto:Stewart_Verdery@aml.senate.gov]
Sent: Tuesday, July 10, 2001 11:46 AM
To: Ullman, Kristen A; Bradford_A._Berenson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet; Ullman, Kristen A; alex dahl; Brett_M._Kavanaugh@who.eop.gov; christopher rosche; ed haden; lincoln oliphant; makan delrahim; rena johnson; sharon prost; stephen higgins; Ziad_S._Ojakli@who.eop.gov
Subject: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

anybody know if this meeting is actually happening today?

_____Reply Separator_____
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judi
Author: Bradford_A._Berenson@who.eop.gov
Date: 7/9/2001 3:39 PM

If I'm not mistaken, 2:00 p.m. tomorrow is the time for our prep session with the nominees. If this is a separate meeting, some folks may not be able to participate, including me.

(Embedded
image moved "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
to file: 07/09/2001 03:09:12 PM
PIC24599.PCX)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Joint Judicial Nominations Meeting hosted by Senate Judiciary Committee

Makan D. has asked that we convene at 2 p.m. tomorrow (Tuesday, July 10) in Dirksen 240 to discuss the hearing on Wednesday and any other "intelligence" that we have to share re: this process. Please let me know (via email) if you can make it -so we will know who to expect. Thanks so much.
Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

Message Sent
To:_____

"Bryant, Dan" <Dan.Bryant@usdoj.gov>

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov>
Alex Dahl <Alex_Dahl@judiciary.senate.gov>
Bradford A. Berenson/WHO/EOP
Brett M. Kavanaugh/WHO/EOP
Christopher Rosche <Christopher_rosche@hatch.senate.gov>
Ed Haden <Ed_Haden@judiciary.senate.gov>
Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>
Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>
Rena Johnson <Rena_Johnson@judiciary.senate.gov>
Sharon Prost <Sharon_prost@judiciary.senate.gov>
Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>
Stewart Verdery <Stewart_Verdery@aml.senate.gov>
Ziad S. Ojakli/WHO/EOP

Received: from mailsims1.senate.gov ([156.33.203.10]) by
mailexch.senate.gov
with SMTP
(IMA Internet Exchange 3.13) id 00215E3D; Mon, 9 Jul 2001 15:43:30 -0400
Received: from eop2.eop.gov (eop253.eop.gov)
by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.1999.07.30.00.05.p8) with ESMTP id
<0GG800CB91J9KJ@mailsims1.senate.gov> for stewart_verdery@aml.senate.gov;
Mon,
9 Jul 2001 15:45:10 -0400 (EDT)
Received: from conversion.EOP2.EOP.GOV by EOP.GOV (PMDF V5.2-33 #37157)
id <01K5QDGSMFYO94J4CL@EOP.GOV> for stewart_verdery@aml.senate.gov; Mon,
09 Jul 2001 15:40:45 -0500 (EST)
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#37157)
with ESMTP id <01K5QDFXU7NS96Y0GC@EOP.GOV>; Mon,
09 Jul 2001 15:40:01 -0500 (EST)
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by mhub.eop.gov (PMDF V5.2-33 #37157)
with SMTP id <01K5QDFGAI6Q93AQ8Y@mhub.eop.gov>; Mon,
09 Jul 2001 15:39:25 -0500 (EST)
Received: by sgeop02.eop.gov(Lotus SMTP MTA SMTP v4.6 (462.2 9-3-1997))
id 85256A84.006BFA5D ; Mon, 09 Jul 2001 15:39:22 -0400
Date: Mon, 09 Jul 2001 15:39:19 -0400
From: Bradford_A._Berenson@who.eop.gov
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judiciary
Committee
To: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Cc: "bryant, dan" <dan.bryant@usdoj.gov>, "dinh, viet"
<viet.dinh@usdoj.gov>,
"newstead, jennifer" <jennifer.newstead@usdoj.gov>,
"ullman, kristen" <kristen.a.ullman@usdoj.gov>,
alex dahl <alex_dahl@judiciary.senate.gov>,
Brett_M._Kavanaugh@who.eop.gov,
christopher rosche <christopher_rosche@hatch.senate.gov>,
ed haden <ed_haden@judiciary.senate.gov>,
lincoln oliphant <lincoln_oliphant@rpc.senate.gov>,
makan delrahim <makan_delrahim@judiciary.senate.gov>,
rena johnson <rena_johnson@judiciary.senate.gov>,
sharon prost <sharon_prost@judiciary.senate.gov>,
stephen higgins <stephen_higgins@judiciary.senate.gov>,
stewart verdery <stewart_verdery@aml.senate.gov>,
Ziad_S._Ojakli@who.eop.gov
Message-id: <85256A84.006BE7AB.00@sgeop02.eop.gov>
MIME-version: 1.0
Content-type: MULTIPART/MIXED;
BOUNDARY="Boundary_(ID_mXXgo6wMhfX/i3BliFP1iA)"

X-Lotus-FromDomain: EOP

From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: 'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;'alex dahl' <alex_dahl@judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;'christopher rosche' <christopher_rosche@hatch.senate.gov>;'ed haden' <ed_haden@judiciary.senate.gov>;'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>;'makan delrahim' <makan_delrahim@judiciary.senate.gov>;'rena johnson' <rena_johnson@judiciary.senate.gov>;'sharon prost' <sharon_prost@judiciary.senate.gov>;'stephen higgins' <stephen_higgins@judiciary.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 7/10/2001 7:59:42 AM
Subject: : RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:10-JUL-2001 11:59:42.00
SUBJECT:: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J
TO:'Stewart Verdery' <Stewart_Verdery@aml.senate.gov> ( 'Stewart Verdery'
<Stewart_Verdery@aml.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'alex dahl' <alex_dahl@judiciary.senate.gov> ( 'alex dahl'
<alex_dahl@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:'christopher rosche' <christopher_rosche@hatch.senate.gov> ( 'christopher rosche'
<christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'ed haden' <ed_haden@judiciary.senate.gov> ( 'ed haden' <ed_haden@judiciary.senate.gov>
[ UNKNOWN ] )
READ:UNKNOWN
CC:'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov> ( 'lincoln oliphant'
<lincoln_oliphant@rpc.senate.gov> [ UNKNOWN ] )
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<makan_delrahim@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
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<rena_johnson@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'sharon prost' <sharon_prost@judiciary.senate.gov> ( 'sharon prost'
<sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'stephen higgins' <stephen_higgins@judiciary.senate.gov> ( 'stephen higgins'
<stephen_higgins@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Yes, I believe we are having this meeting/ The WH folks will not all be there, but I will come back and brief them (they will be prepping Judges)

-----Original Message-----
From: Stewart Verdery [mailto:Stewart_Verdery@aml.senate.gov]
Sent: Tuesday, July 10, 2001 11:46 AM
To: Ullman, Kristen A; Bradford_A._Berenson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet; Ullman, Kristen A; alex dahl; Brett_M._Kavanaugh@who.eop.gov; christopher rosche; ed haden; lincoln oliphant; makan delrahim; rena johnson; sharon prost; stephen higgins; Ziad_S._Ojakli@who.eop.gov
Subject: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

anybody know if this meeting is actually happening today?

_____Reply Separator_____
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judi
Author: Bradford_A._Berenson@who.eop.gov
Date: 7/9/2001 3:39 PM

If I'm not mistaken, 2:00 p.m. tomorrow is the time for our prep session with the nominees. If this is a separate meeting, some folks may not be able to participate, including me.

(Embedded
image moved "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
to file: 07/09/2001 03:09:12 PM
PIC24599.PCX)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Joint Judicial Nominations Meeting hosted by Senate Judiciary Committee

Makan D. has asked that we convene at 2 p.m. tomorrow (Tuesday, July 10) in Dirksen 240 to discuss the hearing on Wednesday and any other "intelligence" that we have to share re: this process. Please let me know (via email) if you can make it -so we will know who to expect. Thanks so much.
Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

Message Sent
To:_____

"Bryant, Dan" <Dan.Bryant@usdoj.gov>
"Dinh, Viet" <Viet.Dinh@usdoj.gov>
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov>
Alex Dahl <Alex_Dahl@judiciary.senate.gov>
Bradford A. Berenson/WHO/EOP
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Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>
Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>
Rena Johnson <Rena_Johnson@judiciary.senate.gov>
Sharon Prost <Sharon_prost@judiciary.senate.gov>
Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>
Stewart Verdery <Stewart_Verdery@aml.senate.gov>
Ziad S. Ojakli/WHO/EOP

Received: from mailsims1.senate.gov ([156.33.203.10]) by
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with SMTP
(IMA Internet Exchange 3.13) id 00215E3D; Mon, 9 Jul 2001 15:43:30 -0400
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by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.1999.07.30.00.05.p8) with ESMTP id
<0GG800CB91J9KJ@mailsims1.senate.gov> for stewart_verdery@aml.senate.gov;
Mon,
9 Jul 2001 15:45:10 -0400 (EDT)
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id <01K5QDGSMFYO94J4CL@EOP.GOV> for stewart_verdery@aml.senate.gov; Mon,
09 Jul 2001 15:40:45 -0500 (EST)
Received: from mhub2.eop.gov ([198.137.241.4]) by EOP.GOV (PMDF V5.2-33
#37157)
with ESMTP id <01K5QDFXU7NS96Y0GC@EOP.GOV>; Mon,
09 Jul 2001 15:40:01 -0500 (EST)
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by mhub.eop.gov (PMDF V5.2-33 #37157)
with SMTP id <01K5QDFGAI6Q93AQ8Y@mhub.eop.gov>; Mon,
09 Jul 2001 15:39:25 -0500 (EST)
Received: by sgeop02.eop.gov(Lotus SMTP MTA SMTP v4.6 (462.2 9-3-1997))
id 85256A84.006BFA5D ; Mon, 09 Jul 2001 15:39:22 -0400
Date: Mon, 09 Jul 2001 15:39:19 -0400
From: Bradford_A._Berenson@who.eop.gov
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judiciary
Committee
To: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Cc: "bryant, dan" <dan.bryant@usdoj.gov>, "dinh, viet"
<viet.dinh@usdoj.gov>,
"newstead, jennifer" <jennifer.newstead@usdoj.gov>,
"ullman, kristen" <kristen.a.ullman@usdoj.gov>,
alex dahl <alex_dahl@judiciary.senate.gov>,
Brett_M._Kavanaugh@who.eop.gov,
christopher rosche <christopher_rosche@hatch.senate.gov>,
ed haden <ed_haden@judiciary.senate.gov>,
lincoln oliphant <lincoln_oliphant@rpc.senate.gov>,
makan delrahim <makan_delrahim@judiciary.senate.gov>,
rena johnson <rena_johnson@judiciary.senate.gov>,
sharon prost <sharon_prost@judiciary.senate.gov>,
stephen higgins <stephen_higgins@judiciary.senate.gov>,
stewart verdery <stewart_verdery@aml.senate.gov>,
Ziad_S._Ojakli@who.eop.gov
Message-id: <85256A84.006BE7AB.00@sgeop02.eop.gov>
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From: Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>
To: 'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;'alex dahl' <alex_dahl@judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;'christopher rosche' <christopher_rosche@hatch.senate.gov>;'ed haden' <ed_haden@judiciary.senate.gov>;'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>;'makan delrahim' <makan_delrahim@judiciary.senate.gov>;'rena johnson' <rena_johnson@judiciary.senate.gov>;'sharon prost' <sharon_prost@judiciary.senate.gov>;'stephen higgins' <stephen_higgins@judiciary.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 7/10/2001 10:08:20 AM
Subject: : RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

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CREATOR:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman, Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:10-JUL-2001 14:08:20.00
SUBJECT:: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J
TO:'Stewart Verdery' <Stewart_Verdery@aml.senate.gov> ( 'Stewart Verdery'
<Stewart_Verdery@aml.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
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<alex_dahl@judiciary.senate.gov> [ UNKNOWN ] )
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[ UNKNOWN ] )
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<makan_delrahim@judiciary.senate.gov> [ UNKNOWN ] )
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<rena_johnson@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'sharon prost' <sharon_prost@judiciary.senate.gov> ( 'sharon prost'
<sharon_prost@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'stephen higgins' <stephen_higgins@judiciary.senate.gov> ( 'stephen higgins'
<stephen_higgins@judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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I am hung up on another matter. I will be late, if I am there at all.

-----Original Message-----
From: Stewart Verdery [mailto:Stewart_Verdery@aml.senate.gov]
Sent: Tuesday, July 10, 2001 11:46 AM
To: Ullman, Kristen A; Bradford_A._Berenson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet; Ullman, Kristen A; alex dahl; Brett_M._Kavanaugh@who.eop.gov; christopher rosche; ed haden; lincoln oliphant; makan delrahim; rena johnson; sharon prost; stephen higgins; Ziad_S._Ojakli@who.eop.gov
Subject: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

anybody know if this meeting is actually happening today?

_____Reply Separator_____
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judi
Author: Bradford_A._Berenson@who.eop.gov
Date: 7/9/2001 3:39 PM

If I'm not mistaken, 2:00 p.m. tomorrow is the time for our prep session with the nominees. If this is a separate meeting, some folks may not be able to participate, including me.

(Embedded
image moved "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
to file: 07/09/2001 03:09:12 PM
PIC24599.PCX)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Joint Judicial Nominations Meeting hosted by Senate Judiciary Committee

Makan D. has asked that we convene at 2 p.m. tomorrow (Tuesday, July 10) in Dirksen 240 to discuss the hearing on Wednesday and any other "intelligence" that we have to share re: this process. Please let me know (via email) if you can make it -so we will know who to expect. Thanks so much.
Kris Ardizzone Ullman
Office of Legal Policy
U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

Message Sent
To:_____

"Bryant, Dan" <Dan.Bryant@usdoj.gov>

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov>
Alex Dahl <Alex_Dahl@judiciary.senate.gov>
Bradford A. Berenson/WHO/EOP
Brett M. Kavanaugh/WHO/EOP
Christopher Rosche <Christopher_rosche@hatch.senate.gov>
Ed Haden <Ed_Haden@judiciary.senate.gov>
Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>
Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>
Rena Johnson <Rena_Johnson@judiciary.senate.gov>
Sharon Prost <Sharon_prost@judiciary.senate.gov>
Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>
Stewart Verdery <Stewart_Verdery@aml.senate.gov>
Ziad S. Ojakli/WHO/EOP

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with SMTP
(IMA Internet Exchange 3.13) id 00215E3D; Mon, 9 Jul 2001 15:43:30 -0400
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by mailsims1.senate.gov (Sun Internet Mail Server
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Mon,
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09 Jul 2001 15:39:25 -0500 (EST)
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id 85256A84.006BFA5D ; Mon, 09 Jul 2001 15:39:22 -0400
Date: Mon, 09 Jul 2001 15:39:19 -0400
From: Bradford_A._Berenson@who.eop.gov
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judiciary
Committee
To: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Cc: "bryant, dan" <dan.bryant@usdoj.gov>, "dinh, viet"
<viet.dinh@usdoj.gov>,
"newstead, jennifer" <jennifer.newstead@usdoj.gov>,
"ullman, kristen" <kristen.a.ullman@usdoj.gov>,
alex dahl <alex_dahl@judiciary.senate.gov>,
Brett_M._Kavanaugh@who.eop.gov,
christopher rosche <christopher_rosche@hatch.senate.gov>,
ed haden <ed_haden@judiciary.senate.gov>,
lincoln oliphant <lincoln_oliphant@rpc.senate.gov>,
makan delrahim <makan_delrahim@judiciary.senate.gov>,
rena johnson <rena_johnson@judiciary.senate.gov>,
sharon prost <sharon_prost@judiciary.senate.gov>,
stephen higgins <stephen_higgins@judiciary.senate.gov>,
stewart verdery <stewart_verdery@aml.senate.gov>,
Ziad_S._Ojakli@who.eop.gov
Message-id: <85256A84.006BE7AB.00@sgeop02.eop.gov>
MIME-version: 1.0
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X-Lotus-FromDomain: EOP

From: Makan Delrahim) (Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [UNKNOWN]
To: Ullman; Kristen A <Kristen.A.Ullman@usdoj.gov>;'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC: Alex Dahl) (Alex_Dahl@judiciary.senate.gov (Alex Dahl) [UNKNOWN] <Alex_Dahl@judiciary.senate.gov>;Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>;Rena Johnson) (Rena_Johnson@judiciary.senate.gov (Rena Johnson) [UNKNOWN] <Rena_Johnson@judiciary.senate.gov>;Sharon Prost) (Sharon_Prost@judiciary.senate.gov (Sharon Prost) [UNKNOWN] <Sharon_Prost@judiciary.senate.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Bryant; Dan <Dan.Bryant@usdoj.gov>;Newstead; Jennifer <Jennifer.Newstead@usdoj.gov>;Dinh; Viet <Viet.Dinh@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;'christopher rosche' <christopher_rosche@hatch.senate.gov>;'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 7/10/2001 11:46:31 AM
Subject: : Re:RE: Re[2]: Joint Judicial Nominations Meeting hosted by S

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) (
Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [ UNKNOWN ] )
CREATION DATE/TIME:10-JUL-2001 15:46:31.00
SUBJECT:: Re:RE: Re[2]: Joint Judicial Nominations Meeting hosted by S
TO:"Ullman; Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman; Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:'Stewart Verdery' <Stewart_Verdery@aml.senate.gov> ( 'Stewart Verdery'
<Stewart_Verdery@aml.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:Alex_Dahl@judiciary.senate.gov (Alex Dahl) ( Alex_Dahl@judiciary.senate.gov (Alex Dahl)
[ UNKNOWN ] )
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CC:Ed_Haden@judiciary.senate.gov (Ed Haden) ( Ed_Haden@judiciary.senate.gov (Ed Haden) [
UNKNOWN ] )
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(Rena Johnson) [ UNKNOWN ] )
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(Sharon Prost) [ UNKNOWN ] )
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CC:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
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READ:UNKNOWN
CC:"Bryant; Dan" <Dan.Bryant@usdoj.gov> ( "Bryant; Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Newstead; Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead; Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Dinh; Viet" <Viet.Dinh@usdoj.gov> ( "Dinh; Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:'christopher rosche' <christopher_rosche@hatch.senate.gov> ( 'christopher rosche'
<christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov> ( 'lincoln oliphant'
<lincoln_oliphant@rpc.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
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CC:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just FYI, although several people did show up, the meeting did not happen today.
We will try and reschedule. Makan

_____Reply Separator_____
Subject: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Sena
Author: "Ullman; Kristen A" <Kristen.A.Ullman@usdoj.gov>
Date: 7/10/01 1:52 PM

I am hung up on another matter. I will be late, if I am there at all.

-----Original Message-----
From: Stewart Verdery [mailto:Stewart_Verdery@aml.senate.gov]
Sent: Tuesday, July 10, 2001 11:46 AM
To: Ullman, Kristen A; Bradford_A._Berenson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet; Ullman, Kristen A; alex dahl; Brett_M._Kavanaugh@who.eop.gov; christopher rosche; ed haden; lincoln oliphant; makan delrahim; rena johnson; sharon prost; stephen higgins; Ziad_S._Ojakli@who.eop.gov
Subject: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

anybody know if this meeting is actually happening today?

_____Reply Separator_____
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judi
Author: Bradford_A._Berenson@who.eop.gov
Date: 7/9/2001 3:39 PM

If I'm not mistaken, 2:00 p.m. tomorrow is the time for our prep session with the nominees. If this is a separate meeting, some folks may not be able to participate, including me.

(Embedded
image moved "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
to file: 07/09/2001 03:09:12 PM
PIC24599.PCX)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Joint Judicial Nominations Meeting hosted by Senate Judiciary Committee

Makan D. has asked that we convene at 2 p.m. tomorrow (Tuesday, July 10) in Dirksen 240 to discuss the hearing on Wednesday and any other "intelligence" that we have to share re: this process. Please let me know (via email) if you can make it -so we will know who to expect. Thanks so much.
Kris Ardizzone Ullman
Office of Legal Policy

U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

Message Sent
To:_____

"Bryant, Dan" <Dan.Bryant@usdoj.gov>
"Dinh, Viet" <Viet.Dinh@usdoj.gov>
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov>
Alex Dahl <Alex_Dahl@judiciary.senate.gov>
Bradford A. Berenson/WHO/EOP
Brett M. Kavanaugh/WHO/EOP
Christopher Rosche <Christopher_rosche@hatch.senate.gov>
Ed Haden <Ed_Haden@judiciary.senate.gov>
Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>
Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>
Rena Johnson <Rena_Johnson@judiciary.senate.gov>
Sharon Prost <Sharon_prost@judiciary.senate.gov>
Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>
Stewart Verdery <Stewart_Verdery@aml.senate.gov>
Ziad S. Ojakli/WHO/EOP

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id 85256A84.006BFA5D ; Mon, 09 Jul 2001 15:39:22 -0400
Date: Mon, 09 Jul 2001 15:39:19 -0400
From: Bradford_A._Berenson@who.eop.gov
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judiciary
Committee
To: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Cc: "bryant, dan" <dan.bryant@usdoj.gov>, "dinh, viet"
<viet.dinh@usdoj.gov>,
"newstead, jennifer" <jennifer.newstead@usdoj.gov>,
"ullman, kristen" <kristen.a.ullman@usdoj.gov>,
alex dahl <alex_dahl@judiciary.senate.gov>,
Brett_M._Kavanaugh@who.eop.gov,

christopher rosche <christopher_rosche@hatch.senate.gov>,
ed haden <ed_haden@judiciary.senate.gov>,
lincoln oliphant <lincoln_oliphant@rpc.senate.gov>,
makan delrahim <makan_delrahim@judiciary.senate.gov>,
rena johnson <rena_johnson@judiciary.senate.gov>,
sharon prost <sharon_prost@judiciary.senate.gov>,
stephen higgins <stephen_higgins@judiciary.senate.gov>,
stewart verdery <stewart_verdery@aml.senate.gov>,
Ziad_S._Ojakli@who.eop.gov
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MIME-version: 1.0
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Received: by TELEMAIL; Tue, 10 Jul 2001 13:52:04 -0400
Date: Tue, 10 Jul 2001 13:52:04 -0400
From: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Subject: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J
To: 'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>,
"'Bradford_A._Berenson@who.eop.gov'" <Bradford_A._Berenson@who.eop.gov>
Cc: "Bryant, Dan" <Dan.Bryant@usdoj.gov>,
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>,
"Dinh, Viet" <Viet.Dinh@usdoj.gov>,
'alex dahl' <alex_dahl@judiciary.senate.gov>,
"'Brett_M._Kavanaugh@who.eop.gov'" <Brett_M._Kavanaugh@who.eop.gov>,
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'ed haden' <ed_haden@judiciary.senate.gov>,
'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>,
'makan delrahim' <makan_delrahim@judiciary.senate.gov>,
'rena johnson' <rena_johnson@judiciary.senate.gov>,
'sharon prost' <sharon_prost@judiciary.senate.gov>,
'stephen higgins' <stephen_higgins@judiciary.senate.gov>,
"'Ziad_S._Ojakli@who.eop.gov'" <Ziad_S._Ojakli@who.eop.gov>
Message-id: <"JMD0081-0107101752042-51874*/PRMD=USDOJ-JCON/ADMD=
/C=US/"@MHS>
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Importance: Normal
Original-encoded-information-types: IA5-Text
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Sensitivity: Personal
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X-Priority: 3

From:	Makan Delrahim) (Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [UNKNOWN]
To:	Ullman; Kristen A <Kristen.A.Ullman@usdoj.gov>;'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>
CC:	Alex Dahl) (Alex_Dahl@judiciary.senate.gov (Alex Dahl) [UNKNOWN] <Alex_Dahl@judiciary.senate.gov>;Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>;Rena Johnson) (Rena_Johnson@judiciary.senate.gov (Rena Johnson) [UNKNOWN] <Rena_Johnson@judiciary.senate.gov>;Sharon Prost) (Sharon_Prost@judiciary.senate.gov (Sharon Prost) [UNKNOWN] <Sharon_Prost@judiciary.senate.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Bryant; Dan <Dan.Bryant@usdoj.gov>;Newstead; Jennifer <Jennifer.Newstead@usdoj.gov>;Dinh; Viet <Viet.Dinh@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;'christopher rosche' <christopher_rosche@hatch.senate.gov>;'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent:	7/10/2001 11:47:16 AM
Subject:	: Re:RE: Re[2]: Joint Judicial Nominations Meeting hosted by S

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) (
Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [ UNKNOWN ] )
CREATION DATE/TIME:10-JUL-2001 15:47:16.00
SUBJECT:: Re:RE: Re[2]: Joint Judicial Nominations Meeting hosted by S
TO:"Ullman; Kristen A" <Kristen.A.Ullman@usdoj.gov> ( "Ullman; Kristen A"
<Kristen.A.Ullman@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:'Stewart Verdery' <Stewart_Verdery@aml.senate.gov> ( 'Stewart Verdery'
<Stewart_Verdery@aml.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:Alex_Dahl@judiciary.senate.gov (Alex Dahl) ( Alex_Dahl@judiciary.senate.gov (Alex Dahl)
[ UNKNOWN ] )
READ:UNKNOWN
CC:Ed_Haden@judiciary.senate.gov (Ed Haden) ( Ed_Haden@judiciary.senate.gov (Ed Haden) [
UNKNOWN ] )
READ:UNKNOWN
CC:Rena_Johnson@judiciary.senate.gov (Rena Johnson) ( Rena_Johnson@judiciary.senate.gov
(Rena Johnson) [ UNKNOWN ] )
READ:UNKNOWN
CC:Sharon_Prost@judiciary.senate.gov (Sharon Prost) ( Sharon_Prost@judiciary.senate.gov
(Sharon Prost) [ UNKNOWN ] )
READ:UNKNOWN
CC:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Bryant; Dan" <Dan.Bryant@usdoj.gov> ( "Bryant; Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Newstead; Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead; Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Dinh; Viet" <Viet.Dinh@usdoj.gov> ( "Dinh; Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:'christopher rosche' <christopher_rosche@hatch.senate.gov> ( 'christopher rosche'
<christopher_rosche@hatch.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov> ( 'lincoln oliphant'
<lincoln_oliphant@rpc.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
```

CC:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just FYI, although several people did show up, the meeting did not happen today.
We will try and reschedule. Makan

_____Reply Separator_____
Subject: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Sena
Author: "Ullman; Kristen A" <Kristen.A.Ullman@usdoj.gov>
Date: 7/10/01 1:52 PM

I am hung up on another matter. I will be late, if I am there at all.

-----Original Message-----
From: Stewart Verdery [mailto:Stewart_Verdery@aml.senate.gov]
Sent: Tuesday, July 10, 2001 11:46 AM
To: Ullman, Kristen A; Bradford_A._Berenson@who.eop.gov
Cc: Bryant, Dan; Newstead, Jennifer; Dinh, Viet; Ullman, Kristen A; alex dahl; Brett_M._Kavanaugh@who.eop.gov; christopher rosche; ed haden; lincoln oliphant; makan delrahim; rena johnson; sharon prost; stephen higgins; Ziad_S._Ojakli@who.eop.gov
Subject: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J

anybody know if this meeting is actually happening today?

_____Reply Separator_____
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judi
Author: Bradford_A._Berenson@who.eop.gov
Date: 7/9/2001 3:39 PM

If I'm not mistaken, 2:00 p.m. tomorrow is the time for our prep session with the nominees. If this is a separate meeting, some folks may not be able to participate, including me.

(Embedded
image moved "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
to file: 07/09/2001 03:09:12 PM
PIC24599.PCX)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Joint Judicial Nominations Meeting hosted by Senate Judiciary Committee

Makan D. has asked that we convene at 2 p.m. tomorrow (Tuesday, July 10) in Dirksen 240 to discuss the hearing on Wednesday and any other "intelligence" that we have to share re: this process. Please let me know (via email) if you can make it -so we will know who to expect. Thanks so much.
Kris Ardizzone Ullman
Office of Legal Policy

U.S. Department of Justice
Phone: 202-514-7473
Fax: 202-305-7397

Message Sent
To:_____

"Bryant, Dan" <Dan.Bryant@usdoj.gov>
"Dinh, Viet" <Viet.Dinh@usdoj.gov>
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
"Ullman, Kristen" <Kristen.A.Ullman@usdoj.gov>
Alex Dahl <Alex_Dahl@judiciary.senate.gov>
Bradford A. Berenson/WHO/EOP
Brett M. Kavanaugh/WHO/EOP
Christopher Rosche <Christopher_rosche@hatch.senate.gov>
Ed Haden <Ed_Haden@judiciary.senate.gov>
Lincoln Oliphant <Lincoln_Oliphant@rpc.senate.gov>
Makan Delrahim <Makan_Delrahim@judiciary.senate.gov>
Rena Johnson <Rena_Johnson@judiciary.senate.gov>
Sharon Prost <Sharon_prost@judiciary.senate.gov>
Stephen Higgins <Stephen_Higgins@judiciary.senate.gov>
Stewart Verdery <Stewart_Verdery@aml.senate.gov>
Ziad S. Ojakli/WHO/EOP

Received: from mailsims1.senate.gov ([156.33.203.10]) by
mailexch.senate.gov
with SMTP
(IMA Internet Exchange 3.13) id 00215E3D; Mon, 9 Jul 2001 15:43:30 -0400
Received: from eop2.eop.gov (eop253.eop.gov)
by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.1999.07.30.00.05.p8) with ESMTP id
<0GG800CB91J9KJ@mailsims1.senate.gov> for stewart_verdery@aml.senate.gov;
Mon,
9 Jul 2001 15:45:10 -0400 (EDT)
Received: from conversion.EOP2.EOP.GOV by EOP.GOV (PMDF V5.2-33 #37157)
id <01K5QDGSMFYO94J4CL@EOP.GOV> for stewart_verdery@aml.senate.gov; Mon,
09 Jul 2001 15:40:45 -0500 (EST)
Received: from mhub2.eop.gov ([198.137.241.4]) by EOP.GOV (PMDF V5.2-33
#37157)
with ESMTP id <01K5QDFXU7NS96Y0GC@EOP.GOV>; Mon,
09 Jul 2001 15:40:01 -0500 (EST)
Received: from sgeop02.eop.gov ([165.119.1.34])
by mhub.eop.gov (PMDF V5.2-33 #37157)
with SMTP id <01K5QDFGAI6Q93AQ8Y@mhub.eop.gov>; Mon,
09 Jul 2001 15:39:25 -0500 (EST)
Received: by sgeop02.eop.gov(Lotus SMTP MTA SMTP v4.6 (462.2 9-3-1997))
id 85256A84.006BFA5D ; Mon, 09 Jul 2001 15:39:22 -0400
Date: Mon, 09 Jul 2001 15:39:19 -0400
From: Bradford_A._Berenson@who.eop.gov
Subject: Re: Joint Judicial Nominations Meeting hosted by Senate Judiciary
Committee
To: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Cc: "bryant, dan" <dan.bryant@usdoj.gov>, "dinh, viet"
<viet.dinh@usdoj.gov>,
"newstead, jennifer" <jennifer.newstead@usdoj.gov>,
"ullman, kristen" <kristen.a.ullman@usdoj.gov>,
alex dahl <alex_dahl@judiciary.senate.gov>,
Brett_M._Kavanaugh@who.eop.gov,

christopher rosche <christopher_rosche@hatch.senate.gov>,
ed haden <ed_haden@judiciary.senate.gov>,
lincoln oliphant <lincoln_oliphant@rpc.senate.gov>,
makan delrahim <makan_delrahim@judiciary.senate.gov>,
rena johnson <rena_johnson@judiciary.senate.gov>,
sharon prost <sharon_prost@judiciary.senate.gov>,
stephen higgins <stephen_higgins@judiciary.senate.gov>,
stewart verdery <stewart_verdery@aml.senate.gov>,
Ziad_S._Ojakli@who.eop.gov
Message-id: <85256A84.006BE7AB.00@sgeop02.eop.gov>
MIME-version: 1.0
Content-type: MULTIPART/MIXED;
BOUNDARY="Boundary_(ID_mXXgo6wMhfX/i3BliFP1iA)"
X-Lotus-FromDomain: EOP
Received: from mailsims1.senate.gov ([156.33.203.10]) by
mailexch.senate.gov
with SMTP
(IMA Internet Exchange 3.13) id 0021B62B; Tue, 10 Jul 2001 13:55:21 -0400
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by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.1999.07.30.00.05.p8) with ESMTP id
<0GG9005IAR72EW@mailsims1.senate.gov>; Tue, 10 Jul 2001 13:58:14 -0400
(EDT)
Received: from wt1.usdoj.gov (localhost [127.0.0.1])
by wdcsun022.usdoj.gov (Netscape Messaging Server 4.15 wdcsun022 Jun 27
2001
17:52:23) with ESMTP id GG9R0902.X4M; Tue, 10 Jul 2001 13:52:57 -0400
Received: (from x400@localhost) by wt1.usdoj.gov (8.9.3 (PHNE_22672)/8.9.3)
id NAA21216; Tue, 10 Jul 2001 13:52:56 -0400 (EDT)
Received: by TELEMAIL; Tue, 10 Jul 2001 13:52:04 -0400
Date: Tue, 10 Jul 2001 13:52:04 -0400
From: "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov>
Subject: RE: Re[2]: Joint Judicial Nominations Meeting hosted by Senate J
To: 'Stewart Verdery' <Stewart_Verdery@aml.senate.gov>,
"'Bradford_A._Berenson@who.eop.gov'" <Bradford_A._Berenson@who.eop.gov>
Cc: "Bryant, Dan" <Dan.Bryant@usdoj.gov>,
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>,
"Dinh, Viet" <Viet.Dinh@usdoj.gov>,
'alex dahl' <alex_dahl@judiciary.senate.gov>,
"'Brett_M._Kavanaugh@who.eop.gov'" <Brett_M._Kavanaugh@who.eop.gov>,
'christopher rosche' <christopher_rosche@hatch.senate.gov>,
'ed haden' <ed_haden@judiciary.senate.gov>,
'lincoln oliphant' <lincoln_oliphant@rpc.senate.gov>,
'makan delrahim' <makan_delrahim@judiciary.senate.gov>,
'rena johnson' <rena_johnson@judiciary.senate.gov>,
'sharon prost' <sharon_prost@judiciary.senate.gov>,
'stephen higgins' <stephen_higgins@judiciary.senate.gov>,
"'Ziad_S._Ojakli@who.eop.gov'" <Ziad_S._Ojakli@who.eop.gov>
Message-id: <"JMD0081-0107101752042-51874*/PRMD=USDOJ-JCON/ADMD=
/C=US/"@MHS>
Autoforwarded: FALSE
Content-identifier: RE: Re[2
MIME-version: 1.0
X-Mailer: NetJunction (NetJunction 5.1-p2)/MIME
Content-type: TEXT/PLAIN; CHARSET=US-ASCII
Importance: Normal
Original-encoded-information-types: IA5-Text
Priority: 3
Sensitivity: Personal
UA-content-id: RE: Re[2
X400-MTS-identifier: [/P=USDOJ-JCON/A= /C=US/;JMD0081-0107101752042-51874]
X-Priority: 3

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 7/10/2001 6:01:06 PM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-JUL-2001 22:01:06.00
SUBJECT::
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Who in the office of National Security Advisor is employed under 3 USC
105?
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/11/2001 5:28:40 AM
Subject: : Re: Tort Reform

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUL-2001 09:28:40.00
SUBJECT:: Re: Tort Reform
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am not intimately familiar with the terms of the current legislation on class-actions and whether it incorporates the two points you mention. But I will look into it, and if it does not, I'll recommend the provisions you sugget.

Brett M. Kavanaugh
07/11/2001 09:14:15 AM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Tort Reform

A quick follow up to staff meeting. From my experience, one critical issue in class action tort reform would be to ensure that (i) the damages claims of the plaintiffs in a class action can be "aggregated" to satisfy the $75,000 amount in controversy requirement for diversity jurisdiction [under current law, an individual plaintiff's claim must surmount $75,000] and (ii) a claim for injunctive relief that would cost the defendant more than $75,000 to comply with also satisfies the $75,000 amount in controversy requirement [under current law, the value of injunctive relief is assessed from each individual plaintiff's point of view, thus rarely satisfying the amount in controversy requirement]. These are, as I understand it, the two critical legal issues for trying to prevent the kind of gross state court class action abuse that commonly occurs now.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 7/11/2001 7:37:10 AM
Subject: : POOL REPORT 07/11/01 #1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUL-2001 11:37:10.00
SUBJECT:: POOL REPORT 07/11/01 #1
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Milbank is a snide one. Read below.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/11/2001 11:36 AM ----------

07/11/2001 11:34 AM
Rachael L. Sunbarger
Rachael L. Sunbarger
Rachael L. Sunbarger
07/11/2001 11:34 AM
07/11/2001 11:34 AM
Record Type: Record

To:
cc:
Subject: POOL REPORT 07/11/01 #1

Dana Milbank
Washington Post
202 309 1378

Our protagonist departed the White House near unto 9:20 this morning, bound for the Capitol in a determined effort to find Gary Condit. Actually, he was to meet with the House Republican caucus. Your pool watched as POTUS descended into the bowels of the Capitol's west side accompanied by Speaker Hastert at 9:30. "We're going to talk about a lot of things," the president informed the pool. "We're going to get a lot of things done for America." The president and the caucus got so many things done for America so quickly that the hour-long meeting lasted only 45 minutes: a 25 minute speech by the president and 20 minutes of schmoozing. No Q&A with members.

Here, according to Lawrence A. Fleischer, is what occurred behind closed doors. The president told the members he would "focus on the American people" and informed them about "how optimistic he is" and reminded them that "we're doing incredibly positive things for America." Fleischer disclosed that our subject viewed the tax cut as "timely and necessary" and he thanked the members for passing the supplemental appropriation, which "shows the American people we can address shortfalls without loading up spending bills." He praised the GOP members as "good stewards of the people's money." On patients' rights, he said, controversially, that he favors a bill that "honors patients." "We're 90 percent there," quoth he. "I'm here to ask you to continue to work so I can be given a bill that I can sign." Bush praised the Fletcher bill as a "good compromise," which drew applause from most but not all members.

The big news of the day was made when our protagonist spoke about education. He declared that education is "a passion for me." In addition

to this startling revelation, he made a case for free trade and his faith-based initiative. "I saw it work its magic," he told the members of his faith plan. Fleischer said Bush was advised the House may act on the patients and faith bills "as soon as next week." Bush reiterated his urging that education legislation conferees "need to go to conference."

Our hero worked a rope line in the rotunda of about 150 tourists, many with cameras and in shorts. He was accompanied by Card, Calio, Bolten and Fleischer. He emerged to applause in the sunny atrium, shaking Hastert's hand at the entrance and then spending a few minutes shaking hands and signing autographs on the rope line. Nothing audible. He gave a glance at the penned-in pool and left the scene.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
BCC: Rachel L. Brand (Rachel L. Brand/WHO/EOP [WHO]), Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 7/11/2001 7:40:19 AM
Subject: : stem cell update

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUL-2001 11:40:19.00
SUBJECT:: stem cell update
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne E. Phelps ( CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Diana L. Schacht ( CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
BCC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Christopher Reeve plaintiffs will file a motion for summary judgment
today along with a proposed scheduling order that would require DOJ to
respond to the motion by Aug. 13. DOJ will ask a for a stay and oppose
the scheduling order, but it's possible that DOJ would have to make
arguments on the merits by Aug. 13.

RLB
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 7/11/2001 8:35:41 AM
Subject: : info on Gardner for notebook

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUL-2001 12:35:41.00
SUBJECT:: info on Gardner for notebook
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I told the Judge all we has was the resume. He wants the data in the
notebook to be consistent. Please have someone type up Gardners info
into our standard form and have it ready for distribution at this
afternoon's meeting.

Thanks!
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/11/2001 8:44:27 AM
Subject: : Josh will not be at JSC today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUL-2001 12:44:27.00
SUBJECT:: Josh will not be at JSC today
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/11/2001 1:06:40 PM
Subject: : Re: Didn't take long -- the incoming from Conyers
Attachments: P_BCRR2004_WHO.TXT_1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUL-2001 17:06:40.00
SUBJECT:: Re: Didn't take long -- the incoming from Conyers
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I haven't seen it. If it's on faith-based, Brett is walking point, but since there are a lot of cross-cutting issues, I'll be happy to participate in any discussions.

Jay P. Lefkowitz
07/11/2001 02:15:59 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Didn't take long -- the incoming from Conyers

have you seen this?

Let's discuss

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BCRR2004_WHO.TXT_1>

July 10, 2001

Dr. John J. DiIulio, Jr.
Director, White House Office of
Faith Based and Community Initiatives
The White House
Washington, D.C. 20502

Dear Dr. DiIulio:

We are deeply concerned about today's press reports that the Bush Administration may have agreed to issue an administrative legal action cutting back on the employment rights of minorities, including gays and lesbians, in exchange for obtaining the Salvation Army's political support for H.R. 7.

As a result, we request the White House provide us with the following information:

1. An itemization of all groups and persons that representatives of the Bush Administration have met with regarding charitable choice legislation, including representatives of the Salvation Army, along with the dates and a description of the substance and discussions of each meeting. Please include the names and titles of the Bush Administration representatives who participated in these meetings.

2. A description of any actual or potential promises or commitments the Administration or any representative within the Administration may have made to any groups or person in exchange for their support of charitable choice legislation or provisions permitting discrimination in employment.

3. A copy of any and all drafts of a reported administrative legal action or other regulation which would protect charities from state and local efforts to prevent discrimination against gays and lesbians in hiring and domestic-partner benefits, along with any legal memorandum or other material concerning such a possible action.

In addition, we would also like a copy of any and all communications within the White House or Executive Office of the President concerning charitable choice legislation or in connection with the

above-listed meetings, promises or commitments and administrative legal action, including notes, e-mails, documents, memoranda, phone records and any other types of written, audio or electronic communication.

We also request that the White House urge the House Leadership to defer floor consideration of charitable choice legislation until we are in full receipt of the above information.

We recognize how important charitable choice legislation is to you personally and to the Administration. We also believe that religious organizations can and should have a strong and active role in dealing with our nation's social ills. However, we have long been concerned that proposals such as H.R. 7 are merely tools to permit increased discrimination and which would inappropriately entangle religion in our political affairs. This is why H.R. 7 is so strongly opposed by civil rights groups such as the NAACP and the Leadership Conference on Civil Rights.

As Members with a long time interest in civil rights matters, we would never want to see a bill purportedly designed to strengthen religion be used as an excuse to weaken our civil rights laws. It would be more objectionable yet if as part of the process of pushing this legislation, additional civil rights safeguards were forfeited in a "back room deal" outside of public scrutiny.

We are sure that the White House is as interested as we are in providing a prompt and full accounting and response to today's press accounts of a potential quid pro quo. As a result, we look forward to hearing from you by the end of this week so that we can discuss the best means of disseminating the information. If you have any questions regarding this letter, please contact Mr. Conyers' Judiciary Committee staff at 225-6906.

Sincerely,

John Conyers, Jr. Ranking Member Judiciary Committee	Jerrold Nadler Ranking Member Subcommittee on the Constitution

cc: Hon. J. Dennis Hastert, Speaker of the House
Hon. Richard A. Gephardt, Minority Leader
Hon. F. James Sensenbrenner, Jr.
Chairman, House Committee on the Judiciary

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: jay p. lefkowitz/omb/eop@eop [OMB] <jay p. lefkowitz>
Sent: 7/11/2001 1:09:04 PM
Subject: : Re: Didn't take long -- the incoming from Conyers
Attachments: P_VFRR2004_WHO.TXT_1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUL-2001 17:09:04.00
SUBJECT:: Re: Didn't take long -- the incoming from Conyers
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:jay p. lefkowitz (CN=jay p. lefkowitz/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
End Original ARMS Header

I have met with Dilulio's crew and the Judge, and we have mapped out a preliminary strategy, but we should all meet, perhaps tomorrow at 9:30?

Bradford A. Berenson
07/11/2001 05:06:36 PM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: Didn't take long -- the incoming from Conyers

I haven't seen it. If it's on faith-based, Brett is walking point, but since there are a lot of cross-cutting issues, I'll be happy to participate in any discussions.

Jay P. Lefkowitz
07/11/2001 02:15:59 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Didn't take long -- the incoming from Conyers

have you seen this?

Let's discuss

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VFRR2004_WHO.TXT_1>

July 10, 2001

Dr. John J. DiIulio, Jr.
Director, White House Office of
Faith Based and Community Initiatives
The White House
Washington, D.C. 20502

Dear Dr. DiIulio:

We are deeply concerned about today's press reports that the Bush Administration may have agreed to issue an administrative legal action cutting back on the employment rights of minorities, including gays and lesbians, in exchange for obtaining the Salvation Army's political support for H.R. 7.

As a result, we request the White House provide us with the following information:

1. An itemization of all groups and persons that representatives of the Bush Administration have met with regarding charitable choice legislation, including representatives of the Salvation Army, along with the dates and a description of the substance and discussions of each meeting. Please include the names and titles of the Bush Administration representatives who participated in these meetings.

2. A description of any actual or potential promises or commitments the Administration or any representative within the Administration may have made to any groups or person in exchange for their support of charitable choice legislation or provisions permitting discrimination in employment.

3. A copy of any and all drafts of a reported administrative legal action or other regulation which would protect charities from state and local efforts to prevent discrimination against gays and lesbians in hiring and domestic-partner benefits, along with any legal memorandum or other material concerning such a possible action.

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We also request that the White House urge the House Leadership to defer floor consideration of charitable choice legislation until we are in full receipt of the above information.

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As Members with a long time interest in civil rights matters, we would never want to see a bill purportedly designed to strengthen religion be used as an excuse to weaken our civil rights laws. It would be more objectionable yet if as part of the process of pushing this legislation, additional civil rights safeguards were forfeited in a "back room deal" outside of public scrutiny.

We are sure that the White House is as interested as we are in providing a prompt and full accounting and response to today's press accounts of a potential quid pro quo. As a result, we look forward to hearing from you by the end of this week so that we can discuss the best means of disseminating the information. If you have any questions regarding this letter, please contact Mr. Conyers' Judiciary Committee staff at 225-6906.

Sincerely,

John Conyers, Jr. Ranking Member Judiciary Committee	Jerrold Nadler Ranking Member Subcommittee on the Constitution

cc: Hon. J. Dennis Hastert, Speaker of the House
Hon. Richard A. Gephardt, Minority Leader
Hon. F. James Sensenbrenner, Jr.
Chairman, House Committee on the Judiciary

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC:	bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>
Sent:	7/12/2001 7:42:13 AM
Subject:	: Re: Talking Points -- More Momentum Behind the President's Plan to Rally America's Armies of Compassion
Attachments:	P_4F6S2004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUL-2001 11:42:13.00
SUBJECT:: Re: Talking Points -- More Momentum Behind the President's Plan to Rally America's Armies of Compassion
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I would like to given my general interest and my previous religious liberty work in my pre-WH days, but this is entirely the Judge's and Tim's call, and others may also be interested.

Elizabeth N. Camp
07/12/2001 10:37:19 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Stuart W. Bowen/WHO/EOP@EOP
cc:
Subject: Talking Points -- More Momentum Behind the President's Plan to Rally America's Armies of Compassion

Who is handling Faith Based now that Stuart is leaving us?

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 07/12/2001 10:36 AM ----------

James R. Wilkinson
07/11/2001 10:15:49 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Talking Points -- More Momentum Behind the President's Plan to Rally America's Armies of Compassion

Message Sent
To:_____

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4F6S2004_WHO.TXT_1>

President's Faith-Based and Community Initiative Takes Another Step Forward

Action:

- The House Ways and Means Committee approved bipartisan legislation that includes key elements of the President's plan to rally America's armies of compassion, ensuring that the full House will have an opportunity to vote on the measure soon.

- The Committee approved a nearly $13.3 billion dollar, ten-year package of measures based on President Bush's proposals that will:

  - Allow those taxpayers who do not itemize on their taxes to get a tax deduction for charitable giving, in addition to their standard deduction.
  - Allow those aged 70 1/2 and older to make tax free withdrawals from their Individual Retirement Accounts for the purpose of giving to charities.
  - Permit an enhanced tax deduction for food donations by businesses that donate food inventory to charitable groups.
  - Double the funding for Individual Development Accounts, which are accounts designed to help low-income Americans accumulate assets.

- President Bush will continue to work with Members of Congress on a bipartisan basis to make incentives for charitable giving as robust as possible and to more effectively deliver vital social services to Americans who are most in need.

The President's Initiative to Help More Disadvantaged Americans:

The President's faith- and community-based initiative is designed to help Americans in need by:

- **Stimulating an outpouring of private giving to nonprofits, faith-based programs, and community groups by expanding tax deductions and other initiatives:**

- **Eliminating federal barriers to effective faith-based and community-serving programs through legislative, regulatory, and programmatic reforms.**

- **Expanding established Charitable Choice principles to enable private, charitable and religious organizations to compete, on a nondiscriminatory basis, for federal funds for social service programs such as:**

  - ✓ Juvenile justice
  - ✓ Crime prevention
  - ✓ Housing assistance
  - ✓ Job training
  - ✓ Elder care
  - ✓ Hunger relief
  - ✓ Domestic violence prevention
  - ✓ After-school and adult education services
  - ✓ Community Development Block Grants

- **Empowering low-income families to save and build assets through Individual Development Accounts**

For more information please contact White House Communications at (202) 456-2777

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 7/12/2001 9:44:07 AM
Subject: : Re: OSTP/NASA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUL-2001 13:44:07.00
SUBJECT:: Re: OSTP/NASA
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

all I know is "delegation of authority to NASA"

Noel J. Francisco
07/12/2001 01:41:39 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: OSTP/NASA

What's the issue?

Brett M. Kavanaugh
07/12/2001 01:40:16 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: OSTP/NASA

Who had this issue?

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

Message Copied
To:_____
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
bradford a. berenson/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
stuart w. bowen/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 7/12/2001 1:12:38 PM
Subject: : first crack at letter
Attachments: P_34JS2004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-JUL-2001 17:12:38.00
SUBJECT:: first crack at letter
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

See what you think. Any and all comments, edits, etc., are
welcome.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_34JS2004_WHO.TXT_1>
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DRAFT

July 13, 2001

Dear Congressman Conyers and Congressman Nadler:

We have received your letter of July 10 regarding the White House Office of Faith-Based and Community Initiatives. As a matter of comity and respect for your role as members of the House Judiciary Committee, we wanted to respond as promptly as possible.

At the outset, we appreciate your statement that "religious organizations can and should have a strong and active role in dealing with our nation's social ills." Your letter expresses concern, however, about "press reports" indicating that the Administration "may have agreed" to issue a regulation regarding preemption of state and local anti-discrimination laws affecting faith-based organizations. In fact, the Administration did not agree to issue any such regulation, as both the White House and the Salvation Army stated publicly on July 10. It also bears mention that this kind of regulation could not have been issued without extensive and *public* notice-and-comment rulemaking proceedings involving over 20 federal agencies (and as you know, such rulemaking proceedings never occurred). What is more, the Administration has publicly stated that it does not plan to seek a regulation of the kind referenced in your letter. In sum, the fundamental premise of your letter is inaccurate, and we therefore presume your inquiry is moot.

Your letter also indicates your apparent concern that White House officials would have met with members of the Salvation Army to discuss the Salvation Army's policy concerns and objectives. We do not understand the basis for this concern. As I am sure you agree, it is entirely appropriate for the President and his assistants, just as it is for Members of Congress, to meet with citizens and groups who have an interest in particular issues and potential legislation. Hundreds of such meetings occur every day on Capitol Hill and within the Executive Branch, and these meetings help to ensure that the federal government is responsive to the people. In that regard, it also is common, of course, for citizens and groups to express their views about particular policies or bills. This can take many forms; for example, some citizens or groups may seek new statutes or regulations, some may say that they cannot support a particular bill or proposal in its present form or at least without additional statutory or regulatory changes. For that matter, as part of the give and take of the legislative process, Members of Congress regularly engage in similar discussions with each other, with citizens and interest groups, and with the Administration. Finally, it also is proper for the Administration and the Congress to seek public support for or against particular bills, programs, or proposals; again, such activity is an everyday occurrence as part of the legislative process.

As to H.R. 7 and the President's program for faith-based and community initiatives, members of the Administration have met with and listened to the views of innumerable groups and individuals over the past several months. Those meetings have been entirely appropriate and, indeed, necessary for the Office of Faith-Based and Community Initiatives to perform its duties. Executive Order 13199, which was issued on January 29, 2001, specifically

contemplated such activity, directing the Office of Faith-Based and Community Initiatives to "to bring concerns, ideas, and policy options to the President for assisting, strengthening, and replicating successful faith-based and other community programs" and "to eliminate unnecessary legislative, regulatory, and other bureaucratic barriers that impede effective faith-based and other community efforts to solve social problems."

As to your suggestion of a "quid pro quo" involving the Salvation Army and the Administration, it bears mention that (i) the Salvation Army has publicly supported H.R.7 and (ii) the kind of regulation your letter references was not issued. This fact flatly refutes any suggestion of a quid pro quo. In any event, it is quite common for citizens and groups to indicate that they would support a particular bill or proposal only if there were certain changes to the bill or proposal (or changes to other statutes or regulations). Thus, the term "quid pro quo" is quite inapt to this situation, as opposed to a situation where a financial benefit is given to a government official explicitly in exchange for specific official action.

Although we understand that your request for specific information is moot, we also reiterate that the Administration generally will consider providing Congress access to non-public information only in response to an authorized request of either House of Congress or of one of either House's authorized committees. Individual Members generally receive the same access that members of the public are afforded under the Freedom of Information Act.

Thank your very much for your letter and for providing us with an opportunity to respond to your inquiries.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable John Conyers
The Honorable Jerrold Nadler
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

cc: The Honorable James Sensenbrenner

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 7/13/2001 4:57:13 AM
Subject: : new final paragraph

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-JUL-2001 08:57:13.00
SUBJECT:: new final paragraph
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

consider this option (Libby, please print for Judge)

Finally, in light of the above, we presume that your specific requests for internal Executive Branch information are now moot. In any event, the Executive Branch generally will consider providing Congress access to non-public information only in response to an authorized request of either House of Congress or of one of either House,s authorized committees (and even then, various protections will apply to certain categories of information). Individual Members generally receive the same access that members of the public are afforded under the Freedom of Information Act.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
CC: dee dee benkie/who/eop@eop [WHO] <dee dee benkie>
Sent: 7/13/2001 5:36:58 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-JUL-2001 09:36:58.00
SUBJECT:: Re:
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:dee dee benkie (CN=dee dee benkie/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Let me think about this some.

Robert W. Cobb
07/13/2001 09:33:47 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Dee Dee Benkie/WHO/EOP@EOP
Subject:

Dee Dee is chair of the Young Republicans; her name is among others on the letterhead. They want to use the letterhead for fundraising. Her WH title is not shown. The money goes to administration of the group, not to political campaigns. (They want to obtain a new headquarters.) What do you think?

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 7/13/2001 11:27:20 AM
Subject: : Flag SAP

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-JUL-2001 15:27:20.00
SUBJECT:: Flag SAP
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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I know you reviewed it, but has it actually issued, as far as you know?

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 7/13/2001 11:34:35 AM
Subject: : Re: Flag SAP

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-JUL-2001 15:34:35.00
SUBJECT:: Re: Flag SAP
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I believe, based on my conversation with Joel this afternoon, that it has not yet issued. It certainly had not been issued as of late yesterday.

Helgard C. Walker
07/13/2001 03:27:16 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Courtney S. Elwood/WHO/EOP@EOP
Subject: Flag SAP

I know you reviewed it, but has it actually issued, as far as you know?

From:	CN=Karen N. Blank/OU=OMB/O=EOP [OMB]
To:	Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Rosalyn J. Rettman/OMB /EOP@EOP [OMB] <Rosalyn J. Rettman>;James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>;Larry R. Matlack/OMB/EOP@EOP [OMB] <Larry R. Matlack>;Jack A. Smalligan/OMB/EOP@EOP [OMB] <Jack A. Smalligan>;Matthew D. McKearn/OMB /EOP@EOP [OMB] <Matthew D. McKearn>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Brett S. Loper/OMB/EOP@EOP [OMB] <Brett S. Loper>;John M. Bridgeland/OPD /EOP@EOP [OPD] <John M. Bridgeland>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;Mary C. Barth/OMB/EOP@EOP [OMB] <Mary C. Barth>;Ellen J. Balis/OMB /EOP@EOP [OMB] <Ellen J. Balis>;Richard B. Bavier/OMB/EOP@EOP [OMB] <Richard B. Bavier>;Kenneth S. Kelly/OMB/EOP@EOP [OMB] <Kenneth S. Kelly>;Alejandra O. Ceja/OMB /EOP@EOP [OMB] <Alejandra O. Ceja>;Mathew C. Blum/OMB/EOP@EOP [OMB] <Mathew C. Blum>;Fredrick J. Charney/OMB/EOP@EOP [OMB] <Fredrick J. Charney>;Wendy A. Taylor/OMB/EOP@EOP [OMB] <Wendy A. Taylor>;Brenda Aguilar/OMB/EOP@EOP [OMB] <Brenda Aguilar>;David J. Haun/OMB/EOP@EOP [OMB] <David J. Haun>;Douglas Pitkin/OMB /EOP@EOP [OMB] <Douglas Pitkin>;Alan B. Rhinesmith/OMB/EOP@EOP [OMB] <Alan B. Rhinesmith>;Francis S. Redburn/OMB/EOP@EOP [OMB] <Francis S. Redburn>;Reid B Cramer/OMB/EOP@EOP [OMB] <Reid B Cramer>;James Boden/OMB/EOP@EOP [OMB] <James Boden>;Yvette M. Dennis/OMB/EOP@EOP [OMB] <Yvette M. Dennis>;Andrew Abrams/OMB/EOP@EOP [OMB] <Andrew Abrams>;Lauren Larson/OMB/EOP@EOP [OMB] <Lauren Larson>;Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>;Justine F. Rodriguez/OMB/EOP@EOP [OMB] <Justine F. Rodriguez>;Michael C. Falkenheim/OMB /EOP@EOP [OMB] <Michael C. Falkenheim>;Joanne Cianci/OMB/EOP@EOP [OMB] <Joanne Cianci>;OFBCI-LRM [UNKNOWN] <OFBCI-LRM>
CC:	James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Ingrid M. Schroeder/OMB/EOP [OMB] <Ingrid M. Schroeder>;Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>;Irene Kho/OMB/EOP@EOP [OMB] <Irene Kho>
Sent:	7/15/2001 5:16:50 AM
Subject:	: FYI, (1) Judiciary Ctte Report on HR 7 (H.Rpt 107-138 Part I) and (2) three CQ stories on HR 7
Attachments:	P_PXFT2004_WHO.TXT_1

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Karen N. Blank ( CN=Karen N. Blank/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:15-JUL-2001 09:16:50.00
SUBJECT:: FYI, (1) Judiciary Ctte Report on HR 7 (H.Rpt 107-138 Part I) and (2) three CQ
stories on HR 7
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Rosalyn J. Rettman ( CN=Rosalyn J. Rettman/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:James C. Capretta ( CN=James C. Capretta/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Matthew D. McKearn ( CN=Matthew D. McKearn/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Eric C. Pelletier ( CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
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TO:Brett S. Loper (CN=Brett S. Loper/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Mary C. Barth (CN=Mary C. Barth/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Ellen J. Balis (CN=Ellen J. Balis/OU=OMB/O=EOP@EOP [OMB])
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TO:Richard B. Bavier (CN=Richard B. Bavier/OU=OMB/O=EOP@EOP [OMB])
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TO:Alejandra O. Ceja (CN=Alejandra O. Ceja/OU=OMB/O=EOP@EOP [OMB])
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TO:Mathew C. Blum (CN=Mathew C. Blum/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
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TO:Wendy A. Taylor (CN=Wendy A. Taylor/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Brenda Aguilar (CN=Brenda Aguilar/OU=OMB/O=EOP@EOP [OMB])
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TO:David J. Haun (CN=David J. Haun/OU=OMB/O=EOP@EOP [OMB])
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TO:Douglas Pitkin (CN=Douglas Pitkin/OU=OMB/O=EOP@EOP [OMB])
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TO:Alan B. Rhinesmith (CN=Alan B. Rhinesmith/OU=OMB/O=EOP@EOP [OMB])
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TO:Francis S. Redburn (CN=Francis S. Redburn/OU=OMB/O=EOP@EOP [OMB])
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TO:Yvette M. Dennis (CN=Yvette M. Dennis/OU=OMB/O=EOP@EOP [OMB])
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TO:Michael C. Falkenheim (CN=Michael C. Falkenheim/OU=OMB/O=EOP@EOP [OMB])
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CC:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
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CC:Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
CC:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

(pdf view-only format)

CHARITABLE CHOICE PLAN FACES UNFORGIVING
DEMOCRAT FOES

By Bill Swindell, CQ Staff Writer

July 13, 2001 - Supporters are confident President Bush's faith-based initiative, which has been plagued by controversy since its unveiling, will pass the House floor on Wednesday.

The bill (HR 7) allows churches, religious organizations and faith-based groups to compete for federal money in eight new social service areas that include housing, child care and aid to the elderly. The organizations still would be allowed to promote their beliefs.

Bush contends his initiative, more commonly referred to as "charitable choice,'' would provide better and more efficient help to those in need.

Opponents, mostly Democrats, have raised objections that it could violate church and state separation.

Last week, their fears were further heightened after the White House backed off a proposal by the Salvation Army to heavily lobby for the bill in exchange for an administration ruling that would weaken state and local laws against discrimination in hiring gays and lesbians. Opponents of the bill maintain it already allows religious groups to discriminate against gays in providing such services.

"The only thing this bill does is allow federal contractors to discriminate on religion for the first time in 35 years," said Rep. Robert C. Scott, D-Va., a bill opponent.

House Democrats are further upset by what they claim is a last-minute provision added to the bill before a House Judiciary Committee markup on June 28. The provision would allow Cabinet secretaries to convert more than $47 billion in social service program funds into vouchers for religious groups.

John Conyers Jr. of Michigan, the ranking Democrat on the House Judiciary Committee, wrote to Chairman F. James Sensenbrenner Jr., R-Wis., last week asking that the provision be taken out because it "represents sweeping and controversial changes to federal law." Conyers said the vouchers would allow religious groups to use federal funds to proselytize.

A Republican aide said the criticism is more a delaying tactic. "I can't believe it is of any surprise to anyone," the aide said about the voucher complaints.

Though no vote counts have been done, the aide said, Republican leaders are optimistic the vast majority of the GOP caucus would support it.

Lobbyists opposing the bill said the vote likely will break down along party lines.

"We've seen an intensification of [Republican] solidarity. I would argue it's not necessarily motivated by a commitment to the underlying bill as much as it is a partisan commitment to helping to pass the president's legislative agenda," said Terri Schroeder, a legislative Counsel for the American Civil Liberties Union.

Many members haven't given the bill much consideration as the House has been focused on other issues, including appropriations and campaign finance.

"There's still a lot of Democrats that don't understand it. They haven't focused on the bill," said Tony P. Hall, D-Ohio. Hall is a cosponsor with J.C. Watts Jr., R-Okla.

The bill also aims to help those who do not itemize their taxes by permitting deductions on charitable contributions. Bush had originally proposed that by 2006 non-itemizers would be allowed to deduct charitable donations equal to their standard deduction. That proposal was not included in the president's $1.35 trillion tax cut (HR 1836 -- PL 107-16).

House Republicans proposed a much smaller $13 billion initiative in the bill that would allow for single filers to deduct up to $25 in charitable donations next year, with a maximum of $50 deduction for those filing jointly.

Democrats have derided the tax break, noting it would give the average family a tax break of just 92 cents a week, while threatening the Social Security and Medicare surpluses.

Source: CQ Monitor News

Ways and Means Scales Back Bush Plan For Forestering Charitable Donations
By Lori Nitschke, CQ Staff

When it became clear last month that Congress would significantly revise President Bush's proposal to give faith-based charities easier access to federal funds, supporters consoled themselves by focusing on the plan's substantial tax incentives for giving to charities.

But faced with budgetary constraints and new concerns about the stability of the surplus, the House Ways and Means Committee approved just a fraction of the tax cuts Bush had wanted when it took up the legislation (HR 7) July 11. The provisions, adopted 23-16 along party lines, would cost an estimated $13.3 billion over 10 years, just 15 percent of the $91.7 billion Bush proposal. (Budget, p. 1679)

"This is a good first step," said Rep. Rob Portman, R-Ohio, adding that "there is room for this much."

The bill had already been rewritten by the House Judiciary Committee to prevent religious charities from proselytizing to recipients during treatment programs. Given the changes to both the tax and social policy provisions, the administration and the bill's chief sponsors -- J.C. Watts Jr., R-Okla., and Tony P. Hall, D-Ohio -- expressed hope that House passage would generate interest in the Democratic-controlled Senate.

That seems increasingly unlikely, however, as the measure's main Democratic supporter in the Senate, Joseph I. Lieberman of Connecticut, has expressed concern at the administration's insistence that charitable groups be allowed to hire only people who follow the same religious practices as those in the group. At the Ways and Means markup, attempts by Democrats to address those

concerns
were ruled out of the committee's jurisdiction. (Story, p. 1687)

Some Ways and Means members said the House was wasting its time on
the
measure. "This is obviously just a press release bill. It's going
over to the Senate
and into the ash can," said Jim McDermott, D-Wash.

By voice vote, the panel adopted an amendment by Chairman Bill
Thomas, R-Calif., that cut Bush's proposal
to the bone:

ú It abandoned his $84.4 billion plan to allow non-itemizers to
deduct 100 percent of their charitable
contributions by 2006, replacing it with a $6.4 billion plan to allow
a maximum deduction of $100 for individuals
and $200 for married couples filing jointly by 2010. That limit would
start at $25 for individuals and $50 for
couples in 2002. Bush would have phased in his proposal, but more
quickly and at different levels.

In addition, only monetary contributions could be deducted.
Because deductions reduce the amount of income
that is subject to tax, not the tax itself, the typical single
non-itemizer would only see $3.75 in actual tax savings in
2002 under the Thomas plan.

úIt dropped language that would have created new tax credits for
financial institutions that set up accounts for
low-income people. Instead, the committee authorized doubling, to $50
million annually, spending for a
three-year-old program (PL 105-285) that directs federal funds to
tribes, community groups, credit unions and
other organizations that set up savings accounts for low-income
people. (1998 Almanac, p. 9-19)

ú It modified a Bush plan to allow older people to give their
Individual Retirement Accounts to charities
tax-free, setting the age for eligibility at 701/2 instead of Bush's
proposed 591/2. The provision would cost $2.8
billion.

ú It included Bush's plan to boost from 10 percent to 15 percent
the amount of charitable contributions that
corporations could deduct, although the increase would be phased in
between 2002-10. The cost would be $917
million.

ú It added a number of other provisions designed to streamline
the tax treatment of certain charitable
contributions, at a cost of $3.3 billion.

Democrats said they would oppose the bill unless its cost was
offset, and they argued that additional tax cuts
are sure to force the federal surplus below the level set aside to
pay the hospital bills of Medicare beneficiaries.
The panel rejected, by a 16-23, party-line vote, an amendment by
ranking Democrat Charles B. Rangel of New
York to offset the bill's cost by increasing the top tax rates, which
have been cut under this year's tax law (PL
107-16). (CQ Weekly, p. 1304)

An amendment by Karen L. Thurman, D-Fla., to only allow the
charity-oriented tax cuts in years with budget
surpluses was rejected 17-23. All Democrats present and Amo Houghton,
R-N.Y., voted for it.

By voice vote, the panel rejected a proposal by Benjamin L. Cardin, D-Md., to authorize increased funding for the federal social programs that faith-based charities and other groups could access under the bill.

Source: CQ Weekly

Diminished 'Faith-Based Initiative' Heads Toward House Floor
By David Nather, CQ Staff

Battered by weeks of bad press, legislative compromises and mind-numbing constitutional questions, President Bush's "faith-based initiative" is about to have its day on the House floor -- but with so many bites taken out of it that some lawmakers wonder if there is any point left.

The bill (HR 7) the House is likely to take up the week of July 16 has been scaled back to walk a thin constitutional line. Faith-based groups could use federal aid for religious activities if they get it indirectly -- through vouchers, for example -- but not if they get it directly. That approach would set up hurdles for the kinds of groups religious conservatives believe are effective precisely because they use religion to change people's lives.

The tax incentives for private donations to charities, another major piece of the Bush initiative, have been gutted because of lower projected surpluses and because so much money was used for the tax cut package (PL 107-16). (CQ Weekly, p. 1304)

As approved by the House Ways and Means Committee on July 11, Bush's $84.4 billion plan to allow non-itemizers to deduct all charitable contributions by 2006 was whittled down to a deduction that would start with $25 for individuals and $50 for married couples in 2002. (Story, p. 1688)

The one area that remains undiluted, according to critics in Congress and civil rights groups, is a proposal that would allow religious groups to discriminate in their hiring practices and still receive federal funds.

That issue surfaced in an embarrassing way the week of July 9. The Washington Post reported that an internal Salvation Army document claimed that the White House -- in an effort to win the charity's support for the faith-based initiative -- had promised to issue a regulation exempting religious groups from state and local laws that ban discrimination against gay people in hiring and domestic-partner benefits.

Within hours, the White House announced it would not pursue the regulation, but the damage had been done. Democrats said the document proved that the true motive of "charitable choice" -- which is supposed to allow faith-based groups to receive funds without abandoning their religious character -- is to make discrimination legal.

"The only real purpose of this bill is to allow religious groups to discriminate on the basis of religion or sexual orientation or whatever else," Rep. Jerrold Nadler of New York, ranking Democrat on the Judiciary Subcommittee on the Constitution, said at a July 11 news conference.

"Any program that can get funded under this bill can get funded

now, except sponsors that refuse to follow federal civil rights laws," said Rep. Robert C. Scott, D-Va.

The Salvation Army acknowledged that it proposed the regulation, but said the issue was never employment discrimination and insisted it does not discriminate against gays and lesbians in its hiring. The real issue was the state and local laws requiring domestic partner benefits, which are "a direct contradiction of the Salvation Army's theology, which holds that marriage is a sacred union," said spokesman David Fuscus.

The bill's supporters dismissed the episode, saying the point of the faith-based initiative is to ensure that religious groups are not denied federal funds that are available to secular groups.

Despite the attacks, they said the initiative is very much alive. That was Bush's message when he went to the Capitol on July 11 to rally House Republican support for the measure. Republicans who attended the closed-door talk said Bush made his case with much the same fervor he used to win their support for annual testing in his education overhaul plan. (Story, p. 1710)

"I can go back over the last two months and point to stories where everybody said it was dead for one reason or another," said House Republican Conference Chairman J.C. Watts Jr. of Oklahoma, the bill's sponsor.

That does not mean the initiative is safe in the House. Republicans are nervously trying to recruit Democratic support in case they lose moderate Republican votes. With members' attention focused on managed-care and appropriations bills, many votes appear to be up for grabs; several moderate Republicans said they have not paid enough attention to the faith-based initiative to make up their minds.

Bigger Obstacles in Senate

Even if the faith-based measure passes the House, there is little guarantee it has a future in the Democratic Senate.

Majority Leader Tom Daschle, D-S.D., appears willing to give it a shot on the floor. After meeting with Bush at the White House on July 12, Daschle said he "gave the president my commitment that at some point we would have that debate in the Senate."

But Daschle's pledge goes only that far. Joseph I. Lieberman of Connecticut, the main Democratic advocate of funding for faith-based groups, has raised concerns about whether the Bush plan could lead to greater employment discrimination -- concerns he said were heightened by the Salvation Army episode.

Still, Watts' assertion that the faith-based initiative "has more lives than a cat" may prove true in the long run.

Between Bush's insistence on promoting the initiative and the die-hard commitment of supporters such as Watts and Sen. Rick Santorum, R-Pa., the bill seems likely to resurface in various forms over the next two years even if it fails at any one step. Senate Minority Leader Trent Lott, R-Miss., said Republicans can always propose it as an amendment to other bills if Democrats do not schedule it as

stand-alone legislation.

"It's going to come up," probably sometime in the fall, Lott said. "We're not going to rush it. We're going to take the time to make sure it's done right."

The discrimination charges have become a serious problem for Republicans. While none would ever use the word "discrimination" to describe the benefits of charitable choice, they do not deny that one of the main purposes of charitable choice is to make sure faith-based organizations can hire people who share their beliefs and live their lives accordingly.

The Discrimination Debate

As Bush pitched it in January, the idea of the initiative was to make sure faith-based charities could "compete for [federal] funding on an equal basis, and in a manner that does not cause them to sacrifice their mission."

To other supporters of charitable choice, the main point -- besides letting faith-based groups keep religious art and scripture on display -- is to make sure they do not have to hire people from other religions and can impose rules consistent with the teachings of their faith.

"One of the most important guarantees of institutional autonomy is a faith-based organization's ability to select its own staff in a manner that takes into account its faith," according to a House Republican document prepared by aides to explain the charitable choice provisions of HR 7.

"Many faith-based organizations believe that they cannot maintain their religious vision over a sustained time period without the ability to replenish their staff with individuals who share the tenets and doctrines of the association. This guarantee is central to each organization's freedom to define its own mission according to the dictates of its faith," the document states.

That is why the Salvation Army episode struck such a nerve with critics. Some said the Bush administration's announcement that it would cancel the regulation made no difference. They argued that the faith-based bill would allow the same kind of discrimination against gays and lesbians, and the same freedom from state and local anti-discrimination laws, that was the point of the proposed regulation.

"The fact that the regulation has been canceled is irrelevant, because the bill already does everything the regulation was supposed to do," said Rep. Barney Frank, D-Mass.

"This so-called reversal on the part of the Bush administration isn't really a reversal at all," said David Elliot, communications director for the National Gay and Lesbian Task Force.

The Salvation Army argued that its proposed regulation was not redundant because it was aimed at domestic partner benefits, not employment rules.

For supporters of the faith-based bill, the larger issue is steering it clear of constitutional challenges involving the separation of church and state. That is why the House Judiciary Committee changed the bill to create stricter tests for the use of direct aid than indirect aid. But it also means the kinds of groups that were cited as models for the

initiative would no longer qualify for direct funds.

Supporters of charitable choice have cited religious organizations, such as Teen Challenge and Victory Fellowship, which use Christian teachings to motivate drug addicts to reform, as the kinds of groups that have more success than traditional programs.

In reality, some Democratic aides say, Teen Challenge and Victory Fellowship might qualify for federal funds already. Last year's community renewal legislation (PL 106-554) included a charitable choice provision that allows federal funding of faith-based drug treatment programs. (2000 CQ Weekly, p. 2919)

This faith-based bill would extend charitable choice to nine new kinds of social services, including juvenile delinquency prevention, crime prevention and after-school programs.

But the Bush administration decided that any direct funding of religious activities could run afoul of the Supreme Court, based on previous rulings. So it recommended a change, approved by the House Judiciary Committee on June 28, that would require any new groups receiving direct aid to keep religious activities separate from social services. (CQ Weekly, p. 1586)

Groups that receive vouchers, however, could keep religion at the core of their services. Republicans believe that distinction would survive a court challenge, because if an individual takes a government-funded voucher to a faith-based organization, he or she cannot claim government coercion.

"We know we're on the edges, but it appears to be within the court definition," said Rep. Mark Souder, R-Ind., a longtime supporter of aid to faith-based groups.

Source: CQ Weekly

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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–138
1st Session } { Part 1

COMMUNITY SOLUTIONS ACT OF 2001

JULY 12, 2001.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 7]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7) to provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike section 104 and insert the following:

SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) AIRCRAFT.—The term "aircraft" has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—The term "business entity" means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT.—The term "equipment" includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY.—The term "facility" means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE.—The term "motor vehicle" has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY.—

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results

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from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION.—This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if—

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if—

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(c) EXCEPTIONS.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

(d) SUPERSEDING PROVISION.—

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(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION.—Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE.—This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act.

Strike title II and insert the following:

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes of the United States is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1991. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

"(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

"(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

"(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices. Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including

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programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

"(vii) related to hunger relief activities; or

"(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under—

"(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 105–220); or

"(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.); and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition,

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development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to—

"(A) alter its form of internal governance or provisions in its charter documents; or

"(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

"(e) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4).

"(f) EFFECT ON OTHER LAWS.—Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(g) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

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"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

"(h) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (g)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(i) ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs.

"(2) LIMITED AUDIT.—

"(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, then only the separate accounts consisting of funds from the government shall be subject to audit by the government.

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"(3) SELF AUDIT.—A religious organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

"(j) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection.

"(k) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(l) INDIRECT ASSISTANCE.—When consistent with the purpose of a program described in subsection (c)(4), the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. For purposes of this section, 'indirect assistance' constitutes assistance in which an organization receiving funds through a voucher, certificate, or other form of disbursement under this section receives such funding only as a result of the private choices of individual beneficiaries and no government endorsement of any particular religion, or of religion generally, occurs.

"(m) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate grantor'), acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization,

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shall retain all other rights of a religious organization under this section.

"(n) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

"(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—

"(1) IN GENERAL.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

"(2) TYPES OF ASSISTANCE.—Such assistance may include—

"(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

"(B) granting writing assistance which may include workshops and reasonable guidance;

"(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and a variety of other organizational areas; and

"(D) information and guidance on how to comply with Federal nondiscrimination provisions including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

"(3) RESERVATION OF FUNDS.—An amount of no less than $5,000,000 shall be reserved under this section. Small nongovernmental organizations may apply for these funds to be used for assistance in providing

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full and equal integrated access to individuals with disabilities in programs under this title.

"(4) PRIORITY.—In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.".

PURPOSE AND SUMMARY

While the First Amendment to the Constitution provides that the Government shall not "establish" religion, or any particular religion, by directing governmental support to a particular religion, or to adherents of religion to the exclusion of adherents to no religion, the First Amendment also provides that the Government shall not prohibit the "free exercise" of religion.[1] Consequently, Government must ensure that members of organizations seeking to take part in Government programs designed to meet basic and universal human needs are not discriminated against because of their religious views.

With such constitutional concerns in mind, the rules for participation in programs of Government funding through grants and cooperative agreements,[2] and through indirect forms of assistance, for the provision of social services must assess eligibility to participate without regard to the religious character of an organization, and any religious beliefs that organization might hold, or the intensity of those beliefs, should not be a basis for rejecting their participation out-of-hand. Indeed, faith-based organizations often allow their beneficiaries greater and more flexible access to the social services they offer.[3]

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[1] The First Amendment to the Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

[2] H.R. 7 refers to "grants and cooperative agreements" to avoid confusion with "Government contracts." *See* 31 U.S.C. §§6304; 6305. Title 31 U.S.C. §6305 states "Using cooperative agreements. An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Title 31 U.S.C. §6304 states: "Using grant agreements. An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Insofar as documents governing the provision of social services by religious organizations under the programs covered by title II of H.R. 7 are labeled contracts, when in fact they more closely resemble grants rather than procurement contracts, such documents should be considered grants under H.R. 7 and they should be subject to its provisions.

[3] For example, Charles Clingman, executive director of the Jireh Development Corporation in Cincinnati, Ohio, testifying before the House Subcommittee on the Constitution, stated that, "Unlike secular organizations, faith-based organizations develop immediate relationships with the clients and the people that they serve . . . They are neighborhood residents who we see on a daily basis at the grocery store, at the market and the bank, whatever . . . One thing we bring to the table is, at the grass roots level, we really do not close. If someone gets in trouble at midnight we allow them to call, based on the crisis they have. Other programs close at 5 o'clock. The Government closes at 5 o'clock. Faith-based organizations, i.e., churches, synagogues, mosques, they don't close. They are available to serve clients 24/7." Transcript of Hearings on "State and Local Implementation of Existing Charitable Choice Programs" before the House

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The so-called "charitable choice" principles, embodied in H.R. 7, allow for the public funding of faith-based organizations on the same basis as other nongovernmental organizations[4] and permit them to maintain their religious character by choosing their staff, board members, and methods. The principles also protect the rights of conscience of their clients and ensure that alternative providers that are unobjectionable to them on religious grounds are available.[5]

"Charitable choice" is not new. Examples of existing laws that include "charitable choice" provisions are the Substance Abuse and Mental Health Services Administration, Pub. L. No. 106–310, 42 U.S.C. § 300x–65; the Community Services Block Grant Act of 1998, Pub. L. No. 105–285, 42 U.S.C. § 9920; the Welfare Reform Act of 1996, Pub. L. No. 104–193, 42 U.S.C. § 604a; and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554, 42 U.S.C. § 290kk-1. Each was signed into law by President Clinton.

H.R. 7 simply seeks to apply the tested principles of charitable choice, which in the case of welfare services have been Federal law for 5 years, to cover additional Federal programs, bringing greater clarity and constitutional adherence to a wider scope of Federal funding programs. The charitable choice language in H.R. 7 has been carefully tailored to respond to discussions of earlier versions of the provision. New language emphasizes that Government funding of a religious service provider is not intended to endorse religion but rather to purchase effective assistance; makes it clearer that beneficiaries may not be coerced into religious observance, but instead inherently religious activities such as worship and proselytization must be privately funded, voluntary, and offered separately from the Government-funded services; requires religious organizations to sign a certificate acknowledging this duty of non-coercion and seperation; clearly obligates Government to inform clients of their religious liberty rights; emphasizes that the civil rights exemption that allows religious organizations to take religion into account in hiring decisions does not remove their obligation to respect the other non-discrimination requirements in Federal law from which they are not already exempt; requires religious organizations to keep direct Government funds separate from other funds to enable Government to audit the books of a religious orga-

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Subcommittee on the Constitution (107th Cong. 1st Sess.) (April 24, 2001) at 38, 60. The Reverend Donna Jones of the Cookman United Methodist Church in north Philadelphia, who runs a charitable choice welfare-to-work program also testified that, "We also found that we were offering something that was unique to our community ... We also found that we got greater information about family situations, about domestic violence, about other barriers to employment that were happening in the house than other agencies were receiving. We also were—because we were a church, there was an expectation that was different than what they would have expected to have seen in a local agency ... People expected us to go the extra mile. Also, because we were a church, we were more flexible in our ability to deliver services." *Id.* at 22–23.

[4] Subsection (c)(1) of the Charitable Choice Act of 2001 provides that "for any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution." The requirement that religious organizations shall be considered "on the same basis as other nongovernmental organizations" does not impart to religious organizations any preferential treatment in the program application and administration process. Subsection (c)(1) further provides that, "Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character."

[5] *See* subsection (g) of the Charitable Choice Act of 2001.

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nization without entangling itself in strictly religious matters; emphasizes that religious organizations that receive Federal funds are held to the same performance standards as well as the same accounting standards as other grantees; requires religious organizations to conduct an annual self audit to ensure compliance and corrective action; provides for $50 million in new Federal funding for technical assistance to novice and small nongovernmental organizations to help ensure that they have the knowledge and administrative capacity to comply with these and other Federal requirements; and clarifies how charitable choice principles apply when an organization that receives Federal funds in turn subgrants funds to other organizations.

Title II of H.R. 7, the "Charitable Choice Act of 2001," provides that its purposes are "(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner; (2) to supplement the nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of Government assistance under the Government programs described in subsection (c)(4); (3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of Government assistance under such programs; (4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and (5) to protect the religious freedom of individuals and families in need who are eligible for Government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance."[6]

Under H.R. 7, religious organizations receiving grants under covered programs may not use the provided funds for "sectarian instruction, worship, or proselytization,"[7] and a beneficiary's taking

[6] H.R. 7 would expand Federal programs governed by charitable choice to include programs related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974; related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968; related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974; under subtitle B or D of title I of the Workforce Investment Act of 1998; under the Older Americans Act of 1965; related to the intervention in and prevention of domestic violence, including programs under the Child Abuse and Prevention and Treatment Act or the Family Violence Prevention and Services Act; related to hunger relief activities; under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998; or involving activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to non-school hours programs, including programs under chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 or part I of title X of the Elementary and Secondary Education Act but not including activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965. The intent of H.R. 7 is to apply charitable choice principles to all Federal social service programs that further Federal goals in the listed subject areas, including, for example, programs to strengthen responsible fatherhood and to reduce youth risk behaviors.

[7] In addition to the sectarian practices listed in subsection (j), the Supreme Court has found the following practices to be inherently religious. The Supreme Court has found that prayer; *see Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); devotional Bible reading; *see School District of Abington Township*, 374 U.S. at 203; veneration of the Ten Commandments, *see Stone v. Graham*, 449 U.S. 39 (1980) (per curiam); classes in confessional religion; see *McCollum v. Board of Education of School District No. 71*, 333 U.S. 203 (1948); and teaching

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advantage of a social service program cannot be conditioned on taking part in such activities.[8] Existing charitable choice law, part of the Welfare Reform Act of 1996, contains an explicit protection of a beneficiary's right to "refus[e] to actively participate in a religious practice," thereby insuring a beneficiary's right to avoid any unwanted religious practices,[9] and a similar provision in H.R. 7 makes clear that participation, if any, in sectarian instruction, worship, or proselytization must be voluntary and noncompulsory.

Such a provision is consistent with Supreme Court precedent. Supreme Court Justices O'Connor and Breyer require that no Government funds be diverted to "religious indoctrination." Therefore, under H.R. 7, religious organizations receiving direct funding will have to separate their social service program from any sectarian instruction, worship, or indoctrination.[10] If the Federal assistance is utilized for social service functions without attendant sectarian instruction, worship, or proselytization, then no constitutional problems are raised. If the aid flows into the entirety of a social service program and some "religious indoctrination [is] taking place therein," then the indoctrination "would be directly attributable to the Government."[11] The Supreme Court in *Bowen v. Kendrick*,[12] in upholding a Federal program allowing funds to be distributed to faith-based organizations for teen family counseling programs, also made clear when remanding the case to the District Court, that "[t]he District Court should ... consider on remand whether in particular cases [the federal] aid has been used to fund specifically religious activities in an otherwise substantially secular setting ... Here it would be relevant to determine, for example, whether the Secretary [of Health and Human Services] has permitted [federal] grantees to use materials that have an explicitly religious content or are designed to inculcate the views of a particular religious faith." Therefore, if any part of a faith-based organization's activities involve "religious indoctrination," such activities must be set apart from the Government-funded program and, hence, privately funded.[13]

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the biblical creation story as science; *see Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); are all forms of inherently religious speech by the Government. These practices should not be part of a Government-funded program.

[8] Subsection (j) of the Charitable Choice Act of 2001 also provides that, "No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any [covered] program ... shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations and filed with the Government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection."

[9] 42 U.S.C. §604a(g) (faith-based organizations may not discriminate or otherwise turn away a beneficiary from the organization's program because the beneficiary "refus[es] to actively participate in a religious practice").

[10] *Mitchell v. Helms*, 120 S.Ct. 2530, 2568 (2000) (O'Connor, J., concurring in the judgment).

[11] *Id.*

[12] 487 U.S. 589, 621 (1988).

[13] For example, a welfare-to-work program operated by a church in Philadelphia illustrates how this can be done. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a Government grant. During a free-time period the pastor of the church holds a voluntary Bible study in her office up on the ground floor. The sectarian instruction is privately funded and separated in both time and location from the welfare-to-work classes.

On October 17, 2000, President Clinton stated his constitutional concerns regarding the implementation of the charitable choice provisions in Substance Abuse and Mental Health Services Administration ("SAMHSA") programs as follows: "This bill includes a provision making clear that religious organizations may qualify for SAMHSA's substance abuse prevention and treatment grants on the same basis as other nonprofit organizations. The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were con-

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H.R. 7 also requires a religious organization receiving funds under a covered program to sign a certificate of compliance that certifies that the organization is aware of and will comply with the provisions against the use of Government funds for inherently religious activities. This certificate, which has the purpose of impressing upon both the Government grantor and the faith-based organization the importance of both voluntariness and the need to separate sectarian instruction, worship, and proselytization, must be filed with the Government agency disbursing the funds.

Subsection (g) of the Charitable Choice Act of 2001 also protects beneficiaries of charitable choice programs by requiring the presence of an alternative that is unobjectionable to beneficiaries on religious grounds when a religious organization is providing social services.[14] Such an alternative need not be secular.[15] If, of course, a beneficiary objects to being served by any faith-based organization, such a beneficiary would be guaranteed a secular alternative. The alternative need not be a completely separate program. It also may be purchased on the open social services market. Subsection

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strued to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA aid. Accordingly, I construe the act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding." *Weekly Compilation of Presidential Documents* (Oct. 23, 2000) (Statement on Signing the Children's Health Act of 2000), p. 2504. He made an identical statement regarding the charitable choice provisions in the Community Renewal Tax Relief Act when he signed that measure into law on December 15, 2000. See White House Office of the Press Secretary, "Statement of the President Upon Signing H.R. 4577, the Consolidated Appropriations Act, FY 2001" (December 22, 2000), at 8. These concerns are the same as those addressed by the provision in subsection (j) of the Charitable Choice Act of 2001, which provides that, "No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any [covered] program ... shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4)." The required separation would not be met where the Government-funded program entails worship, sectarian instruction, or proselytizing. Under subsection (j), there are to be no practices constituting "religious indoctrination" performed by an employee while working in a Government-funded program. The same is true for volunteers. However, to say that the Government-funded program is to be devoid of sectarian practices is different from saying that the program must be entirely secular. Indeed, subsection (d) specifically guarantees that faith-based organizations may retain religious symbols, a religious name, specifically religious language in its chartering documents, and the selection of its governing board along religious lines. And, under subsection (e), the faith-based organization may staff on a religious basis and thereby retain is religious character. Most importantly, faith-based organization employees and volunteers can do their good works out of religious motive. While the task of helping the poor and needy is "secular" from the perspective of the Government, from the viewpoint of the faith-based organization and its workers it is a ministry of mercy driven by faith and guided by faith regarding how best to meet basic human needs.

[14] Subsection (g)(1) provides that, "If an individual ... has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and (B) has a value that is not less than the value of the assistance that the individual would have received from such organization." Subsection (g)(2) also provides that, "The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals [taking part in charitable choice programs] of the rights of such individuals under this section."

[15] 42 U.S.C. §604a(e), part of the 1996 Welfare Reform Act, also does not require a secular alternative unless a secular alternative is the only alternative acceptable to the beneficiary: "If an individual ... has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2) of this section, the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization."

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(g) also requires the appropriate Federal, State, or local governmental agency to give notice to beneficiaries receiving services under the covered programs of their right to an alternative that is unobjectionable to them on religious grounds.

Further, charitable choice principles prohibit faith-based organizations taking part in programs covered by title II of H.R. 7 from discriminating on the basis of religion against those who seek to be beneficiaries of such programs.[16] Subsection (m) of the Charitable Choice Act of 2001 also provides that intermediaries authorized to act under a grant or other agreement to select nongovernmental organizations to provide assistance under any program covered by title II of H.R. 7 have the same duties under title II as the Government when selecting or otherwise dealing with subgrantors, but the intermediary grantor, if it is a religious organization, shall retain all other rights of a religious organization under title II.

Misguided understandings of the Constitution have for too long deterred Federal, State, and local governments from even inviting religious organizations to participate in informational meetings designed for those willing to compete for social service funds. H.R. 7 simply makes clear to the Federal Government, states, and localities, that if they provide a grant, to or enter into a cooperative agreement with, religious organizations under charitable choice principles, they need not fear that their actions are unconstitutional.[17]

BACKGROUND AND NEED FOR THE LEGISLATION

The pervasive role of Government in providing social services, necessitating higher and higher taxes on its citizens, requires a fresh evaluation of the ways in which religious and other community organizations can best be made part of social welfare programs.

Today, because Government controls most of the resources available for the provision of social services, private funding for private sector welfare services is increasingly not a practical alternative. In 2000, for example, approximately 45 percent of the average American's income will go to pay federal, state, and local taxes, and the average American will have worked a full 167 days in order to pay

[16] Subsection (h) of the Charitable Choice Act of 2001, for example, prohibits discrimination against beneficiaries of charitable choice programs by providing that a religious organization providing assistance through a grant or cooperative agreement, "shall not discriminate, in carrying out the program, against an individual ... on the basis of religion, a religious belief, or a refusal to hold a religious belief." Beneficiaries of charitable choice programs funded through indirect forms of assistance "shall not deny an individual ... admission into [a covered] program on the basis of religion, a religious belief, or a refusal to hold a religious belief." H.R. 7 does not preempt any Federal, State, or local nondiscrimination laws pertaining to the serving of beneficiaries.

[17] H.R. 7, by prohibiting discrimination against organizations based on religion, is Congress' attempt to make clear to grant and program distributors what the rules are for allowing faith-based organizations to compete on an equal basis with nonreligious organizations for Federal social service funds. What a religious organization believes should have no bearing on its eligibility to receive a grant. Insofar as there are statutory rights in H.R. 7 that inure to the benefit of religious social service providers, and also statutory duties on the part of such religious organizations, in the rare case a definition of "religious organization" may be required. Such a definition should be articulated by the courts on a case-by-case basis, just as the courts have done under title VII and the applicability of its § 702 exempting religious organizations. *See Hall v. Baptist Memorial Health Care Corporation*, 215 F.3d 618, 624–25 (6th Cir. 2000) (hospital was religious organization); *Killinger v. Samford University*, 113 F.3d 196, 199 (11th Cir. 1997) (university was religious organization); *EEOC v. Presbyterian Ministries, Inc.* 788 F. Supp. 1154, 1156 (W.D. Wash. 1992) (retirement home was religious organization); *Fike v. United Methodist Children's Home*, 547 F. Supp. 286, 290 (E.D. Va. 1982) (residential care home for youth was no longer a religious organization).

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those taxes (until June 16).[18] The current situation leaves little left for citizens to contribute to non-governmental social service providers, as a family with two earners today pays more to the Government in taxes than the average family spends on their own food, clothing, and housing combined.[19] In contrast, in 1957, a family with two earners only paid approximately a quarter of their budget in taxes.[20]

Despite an increase in the total amount citizens give to charity, there has been a substantial decline in the percentage of both the citizenry and the portion of their income devoted to philanthropy and charity since the rise of dramatically expanded Government welfare programs in the 1960's and the Government's taking a greater share of the average American's income. This phenomenon is startling. As Robert D. Putnam reveals in his book, *Bowling Alone: The Collapse and Revival of American Community*:

> Beginning in 1961, however, philanthropy's share of Americans' income has fallen steadily for nearly four decades ... This array of evidence on declining generosity is reinforced by what Americans from all walks of life have told Roper and Yankelovich pollsters in the two longest-running surveys on philanthropy. *As recently as the first half of the 1980's [,] nearly half of all American adults reported that they had made a contribution to charity in the previous month, and more than half said that they contributed to religious groups at least "occasionally." However, both these barometers of self-reported generosity fell steadily over the next two decades. By the prosperous mid-1990's barely one American in three reported any charitable contribution in the previous month, and fewer than two in five claimed even occasional religious giving ... If we were giving, at century's end, the same fraction of our income as our parents gave in 1960 [,] U.S. religious congregations would have $20 billion more annually [to invest in good works].*[21]

The following chart compares total Federal outlays as a percentage of national income with total charitable giving by individuals as a percentage of national income between the years 1940 and 2000. The chart shows that, since the expansion of Federal welfare programs in the 1960's, total Federal outlays have increased approximately 20 percent as a percentage of national income, while charitable giving by individuals has decreased approximately 25 percent as a percentage of national income.

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[18] *See* Americans for Tax Reform Foundation, "Cost of Government Day Report: 2000" (8th ed. 2000) at 10.

[19] *See* Amity Shlaes, *The Greedy Hand: How Taxes Drive Americans Crazy and What To Do About It* (Random House, 1999) at 14.

[20] *Id.*

[21] Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000) at 123, 126 (emphasis added).

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COMPARISON OF TOTAL FEDERAL OUTLAYS AND TOTAL CHARITABLE GIVING BY INDIVIDUALS AS A PERCENTAGE OF NATIONAL INCOME (1940-2000)

Federal Outlays as a percentage of National Income	Charitable Giving as a percentage of National Income	1940	1950	1960	1970	1980	1990	2000
30	0.030							
29	0.029							
28	0.028							
27	0.027						o	
26	0.026					o		
25	0.025							o
24	0.024				o			
23	0.023							
22	0.022			o●				
21	0.021							
20	0.020				●			
19	0.019		●					
18	0.018					●	●	
17	0.017		o					
16	0.016	●						●
15	0.015							
14	0.014							
13	0.013							
12	0.012	o						
11	0.011							
10	0.010							

●—● = Charitable Giving by Individuals
o–o = Federal Outlays

Sources for Federal Outlays Figures: Bureau of the Census, *Historical Statistics of the United States: Colonial Times to 1970* (Washington: Government Printing Office, 1975), Series F-7, at 224; Office of Management and Budget, *Historical Tables, Budget of the United States Government, Fiscal Year 2001* (Washington, Government Printing Office, 2000), Table 1.1, at 19; Sources for Charitable Giving Figures: Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster, 2000), Chapter 7, at 123 and n.25 (listing various sources).

Starting around 1960, an ever-widening "charity gap" has developed as Federal outlays have increased and charitable giving by individuals has decreased. As reported in a recent article in the American Sociological Review, "In a society . . . in which the median congregation has only 75 regular participants and an annual budget of only $55,000, the substantially increased delivery of social services by congregations can occur only via increases in Government funding to congregations."[22] While the Federal Government leaves, after taxes, so little for most average citizens to contribute to charity, it too often excludes faith-based organizations from the receipt of Government funds even when such organizations can meet basic human needs most effectively and when faith-based or-

[22] Mark Chaves, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?" 64 *American Sociological Review* 836, 844 (1999).

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ganizations can carry on their programs in accordance with both the free exercise of religion and the Establishment Clause.

The lack of neutral Government funding of both nonreligious and religious social service providers hurts the needy by denying them the ability to choose the provider that will best meet their needs.

THE FIRST AMENDMENT'S RELIGION CLAUSES PROTECT INDIVIDUALS FROM AN ESTABLISHMENT OF RELIGION WHILE ALSO PROTECTING THEIR FREEDOM TO EXERCISE RELIGION

Commentators have described the First Amendment as erecting a "wall of separation between church and state." However, the phrase "wall of separation" is taken from a reply Thomas Jefferson wrote a letter by a committee of the Danbury Baptist Association dated January 1, 1802, and the Supreme Court has made clear that the phrase "wall of separation between church and state" is only a metaphor and that "[t]he metaphor itself is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state."[23] It was James Madison, not Thomas Jefferson, who was the principal drafter of the First Amendment, and in the debates concerning the wording of the First Amendment, Madison stated that he "apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."[24] Madison further stated that he "believed that the people feared one sect might obtain a preeminence, or two combine together, and establish a religion to which they would compel others to conform."[25] Charitable choice principles are in accordance with Madison's understanding of the First Amendment: charitable choice principles do not prefer religion over non-religion, or any particular religion over any other particular religion, they protect beneficiaries' rights of conscience by allowing them non-religious alternatives, and they prevent discrimination against beneficiaries on the basis of religion.

Unfortunately, too often faith-based organizations have been subject to blanket exclusionary rules applied by Government grant distributors. As described by the Congressional Research Service, "interpretations and applications of the establishment of religion clause of the First Amendment as well as of the sometimes more strict provisions of state constitutions have in the past generally required programs operated by religious organizations that receive public funding in the form of grants or contracts to be essentially secular in nature. Religious symbols and art have had to be removed from the premises ... Charitable choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character." CRS Report to Congress, RS20809: *Public Aid and Faith-Based Organizations (Charitable Choice): An Overview* (updated April 18, 2001) at 2.[26] The exclusion

[23] *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).
[24] 1 Annals of Congress 730 (1984) (August 15, 1789).
[25] *Id.* at 731.
[26] *See, e.g.*, 24 C.F.R. §570.200 ("Constitutional prohibition. In accordance with First Amendment Church/State Principles, as a general rule, CDBG [Community Development Block Grant] assistance may not be used for religious activities or provided to primarily religious entities for

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of certain faith-based social service providers from program eligibility simply because of what they believe, or because of how they practice and express what they believe, is discriminatory on the bases of religious speech and religious exercise. The charitable choice principles embodied in H.R. 7 eliminates restrictions on religious organizations that the Supreme Court no longer requires or considers constitutionally legitimate. Dr. Amy Sherman has written, "Charitable Choice's most important effect thus far is that it has made collaboration plausible for those within Government and the faith community who had previously assumed such partnering was somehow outside the bounds of constitutionality under their (misguided) interpretation of the First Amendment." [27]

EMPIRICAL AND ATTITUDINAL SURVEYS SHOW THAT EXISTING CHARITABLE CHOICE PROGRAMS HAVE BEEN SUCCESSFUL AND POPULAR

Support for increased Government aid for faith-based organizations that can best meet social service needs is strong, and particularly strong among African-Americans. Perhaps the most comprehensive survey of public attitudes toward charitable choice programs was conducted by researcher Mark Chaves and reported in the *American Sociological Review*. The study used a nationally representative sample of 1,456 religious congregations and gathered data via a 60-minute interview with one key informant—a minister, priest, rabbi, or other leader—from 1,236 congregations.[28] According to Chaves' survey, 30 percent of congregation attendees were aware of "charitable choice" legislation, and 45 percent would apply for Government funds to support social service projects.[29] Chaves concluded that

> Apparently there is room for more public education about charitable-choice opportunities, [and there is only] a small subset of congregations that will not be interested in these opportunities ... 36 percent of congregations, representing 45 percent of religious-service attenders, would be interested in applying for Government money to support human services programs. Thus, the "market" for charitable-choice implementation in American religion apparently is fairly sizable.[30]

Chaves also reported that "Informants from 64 percent of predominantly African American congregations expressed a willingness to apply for Government funds ... Controlling for other congregational features, predominantly black congregations are *five times* more likely than other congregations to seek public support for social service activities." *Id.* at 841 (emphasis in original).

Anticipating increased involvement of faith-based organizations in Federal social service programs, and in order to facilitate small

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any activities, including secular activities."); 24 C.F.R. §92.257 ("HOME funds [Home Investment Partnership Funds] may not be provided to primarily religious organizations, such as churches, for any activity including secular activities."). *See also* Carl H. Esbeck, *The Regulation of Religious Organizations as Recipients of Governmental Assistance* (Center for Public Justice 1996), at 12–19.

[27] Dr. Amy S. Sherman, "The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-Based Organizations in Nine States" ("Growing Impact"), The Center for Public Justice Charitable Choice Tracking Project (March 2000) at 9 (emphasis in original).

[28] Mark Chaves, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?" 64 *American Sociological Review* 836, 838 (1999).

[29] *Id.* at 838.

[30] *Id.* at 839 (emphasis added).

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nongovernmental organizations' participation in the programs covered by title II of H.R. 7 generally, subsection (o) of the bill authorizes, from amounts made available to carry out the purposes of the Office of Justice Programs, funds to provide training and technical assistance, in procedures relating to potential application and participation in programs covered by title II of H.R. 7 to small nongovernmental organizations, as including religious organizations, in an amount not to exceed $50 million. Subsection (o) states that such aid may include assistance in creating a 501(c)(3) organization, grant writing workshops, and informational assistance regarding accounting, legal, and tax issues, informational assistance regarding how to comply with Federal nondiscrimination provisions. Subsection (o) also provides that, in providing such assistance, priority shall be given to small nongovernmental organizations serving rural and urban communities.

EXISTING CHARITABLE CHOICE PROGRAMS HAVE MET WITH MUCH SUCCESS AND FEW LAWSUITS AND OTHER PROBLEMS

Existing charitable choice programs have had a significant impact on social welfare delivery. Dr. Amy Sherman of the Hudson Institute has conducted the most extensive survey of existing charitable choice programs. Dr. Sherman concluded that, currently, "All together, thousands of welfare recipients are benefitting from services now offered through FBOs [faith-based organizations] and congregations working in tandem with local and state welfare agencies."[31]

Dr. Sherman also found that fears of aggressive evangelism by publicly funded faith-based organizations have little basis in fact. According to Dr. Sherman:

> *[O]ut of the thousands of beneficiaries engaged in programs offered by FBOs [faith-based organizations] collaborating with Government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help.* In both cases—in accordance with Charitable Choice guidelines—the client simply opted out of the faith-based program and enrolled in a similar program operated by a secular provider. *In summary, in nearly all the examples of collaboration studied, what Charitable Choice seeks to accomplish is in fact being accomplished: the religious integrity of the FBOs working with Government is being protected and the civil liberties of program beneficiaries enrolled in faith-based programs are being respected.*[32]

Religious groups in the nine states Dr. Sherman surveyed also registered few complaints about their Government partners. According to Dr. Sherman, "The vast majority reported that the church-state question was a 'non-issue,' and that they enjoyed the trust of their Government partners and that they had been straightforward about their religious identity."[33]

The success of existing charitable choice programs has led the National Conference of State Legislatures ("NCSL") to support their expansion. According to Sheri Steisel, director of NCSL's

[31] Sherman, "Growing Impact," at 8.
[32] *Id.* at 11 (emphasis added).
[33] *Id.*

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Human Services Committee, "In many communities, the only institutions that are in a position to provide human services are faith-based organizations. Providing grants to or entering into cooperative agreements with faith-based and other community organizations to provide Government services is something that has proven effective in the states over the past 5 years. As welfare reform continues to evolve, it is important that Government at all levels continues to explore innovative ways to provide services to its constituents. We are extremely pleased that the President is joining the states in exploring these new opportunities." [34]

Only two challenges to the constitutional application and implementation of charitable choice programs have been filed. Both suits are "as applied," rather than "facial" challenges, to 42 U.S.C. § 604a. Each of these lawsuits was filed after Presidential candidate George W. Bush officially entered the race on June 12, 1999, and after then-Governor Bush delivered his first major policy address on faith-based organizations in Indianapolis, Indiana, on July 22, 1999.[35]

Charitable choice provisions provide for a variety of safeguards to prevent their unconstitutional application. In order to obtain any Government funds, faith-based organizations must demonstrate that they can effectively deliver the services they are promising, respect clients' civil liberties, and account for all public monies spent.

Subsection (i) of the Charitable Choice Act of 2001 also provides that a religious organization providing assistance under any covered program shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of the programs. Also, under subsection (i)(2)(A), religious organizations taking part in a covered program through a grant or cooperative agreement must segregate Government funds provided under such program into a separate account or accounts, and only the Government funds in the separate accounts will be subject to audit by the Government for purposes of monitoring their use in the covered Federal program. This is done, in part, to limit the scope of audits to funds from Government sources and thereby shield other accounts from Government monitoring.[36] Under subsection (i)(2)(B), religious organizations taking part in a covered program through indirect forms of assistance may, at their discretion, segregate Government funds provided under such program into a separate account or accounts. If they do so, only the Govern-

[34] News Release, "Faith Based Initiatives Nothing New to Nation's State Lawmakers" (January 30, 2001).

[35] While litigation challenging elements of charitable choice programs has been minimal, H.R. 7, in subsection (n), contains a compliance provision that provides that a party alleging that their rights under section 1994A of H.R. 7 have been violated by a State or local government may bring a civil action for injunctive relief pursuant to 42 U.S.C. § 1983 (section 1979 of the Revised Statutes) against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under section 1994A have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or Government agency that has allegedly committed such violation. This subsection limits parties alleging that their rights under section 1994A have been violated to injunctive relief, just as the 1996 Welfare Reform Act's charitable choice limited liability for violations of its provisions to injunctive relief.

[36] The separate accounts are for purposes of segregating the funds used during the course of a Federal program described in subsection (c)(4), and isolating them in the event of a Government audit of their use in a covered program, and for no other purpose.

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ment funds in the separate accounts will be subject to audit by the Government.[37]

Further, it is not uncommon for program policies to require of providers periodic compliance self-audits in which any discrepancies uncovered in such a self-audit must be promptly reported to the Government along with a plan to timely correct any deficiencies. H.R. 7, in subsection (i)(3), requires such a self-audit for faith-based organizations receiving Federal funds. This is done to further meet the monitoring requirements required by *Mitchell v. Helms* to prevent diversion of funds to religious indoctrination.[38]

A CONSTITUTIONAL ANALYSIS OF CHARITABLE CHOICE PRINCIPLES BEGINS WITH AN ASSESSMENT OF THEIR NEUTRALITY TOWARD RELIGION

In order to minimize governmental influence over individual religious choices, governmental programs should be neutral regarding the individual choices, whether religious or nonreligious, of the needy who are served by these programs. Recently, a majority of the Justices of the Supreme Court emphasized the importance of this neutrality principle in deciding cases under the Establishment Clause in *Mitchell v. Helms*.[39] The plurality opinion stated that, "In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality, upholding aid that is offered to a broad range of groups or persons without regard to their religion ... [I]f the Government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose [,] then it is fair to say that any aid going to a religious recipient only has the effect of furthering that secular purpose."[40] Justice O'Connor, in her concurring opinion in *Helms*, in which she was joined by Justice Breyer, also acknowledged that "neutrality is an important reason for upholding Government-aid programs," a reason which the Supreme Court's recent cases have "emphasized ... repeatedly."[41]

From Justice O'Connor's opinion, when combined with the numbers comprising the plurality, it can be said that: neutral, indirect aid to a religious organization does not violate the Establishment Clause,[42] and neutral, direct aid to a religious organization does not, without more, violate the Establishment Clause.[43]

Other cases decided by the Supreme Court also make clear that neutrally administered Government programs, open to all, are con-

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[37] Because indirect aid to a faith-based organization is "akin to the Government issuing a paycheck to an employee who, in turn, donates a portion of that check to a religious institution," *Mitchell v. Helms*, 530 U.S. 793, 841 (O'Connor, J., concurring in the judgment) (2000), such aid is permissible under the Establishment Clause and need not be segregated into a separate account for monitoring purposes.

[38] 120 S.Ct. 2530, 2541 (2000) (upholding constitutionality of school aid program known as chapter 2, in which the Federal Government distributes funds to State and local governmental agencies, which in turn lend educational materials and equipment to public and private schools, including religious schools, with the enrollment of each participating school determining the amount of aid that it receives).

[39] *Id.* at 2541 (2000).

[40] *Mitchell v. Helms*, 120 S.Ct. 2530, 2541 (2000) (plurality opinion).

[41] *Mitchell v. Helms*, 120 S.Ct. 2530, 2557 (2000) (O'Connor, J., concurring in the judgment).

[42] *Id.* at 2558–59 (concurring opinion).

[43] *Id.* at 2557 (concurring opinion).

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stitutional.[44] The Committee also notes that the Supreme Court has never struck down a governmental funding program—state or Federal—as violative of the Establishment Clause where the program was directed to the needs of social services or health care.[45]

DIRECT FUNDING OF FAITH-BASED ORGANIZATIONS TO HELP MEET BASIC HUMAN NEEDS, THROUGH GRANTS AND COOPERATIVE AGREEMENTS, IS CONSTITUTIONAL

Direct payments may be made to faith-based organizations for public purposes without violating the establishment clause. The Supreme Court has held that faith-based organizations providing services that meet social service needs may be federally funded. In *Bowen v. Kendrick*,[46] the Supreme Court upheld the direct Federal funding of faith-based counseling centers addressing teenage sexuality under the Adolescent Family Life Act ("AFLA"), which was passed by Congress in 1981 in response to the "severe adverse health, social, and economic consequences" that often follow pregnancy and childbirth among unmarried adolescents. The AFLA established a program for providing direct monetary grants to public or nonprofit private organizations or agencies "for services and research in the area of premarital adolescent sexual relations and pregnancy."[47]

In Bowen, the Court found that Congress had expressly recognized that Government alone could not solve the problems of adolescent premarital sexual relations, and that it intended through its legislation to encourage greater involvement from faith-based

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[44] *See Agostini v. Felton*, 521 U.S. 203, 231–32 (1997) ("[I]t is clear that title I [educational] services are allocated on the basis of criteria that neither favor nor disfavor religion ... The services are available to all children who meet the act's eligibility requirements, no matter what their religious beliefs or where they go to school ... The Board's program does not, therefore, give aid recipients any incentive to modify their religious beliefs or practices in order to obtain those services."); *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 8 (1993) (sustaining section of Federal statute providing all "disabled" children with necessary aid, stating "We have never said that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs [f]or if the Establishment Clause did bar religious groups from receiving general Government benefits, then a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair."); *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 487–88 (1986) (sustaining Washington law granting all eligible blind persons vocational assistance, including assistance at religious institutions); *Mueller v. Allen*, 463 U.S. 388, 398–99 (1983) (sustaining Minnesota statute allowing all parents to deduct actual costs of school, including religious school, tuition, textbooks, and transportation, from State tax returns); *Board of Ed. of Central School Dist. No. 1 v. Allen*, 392 U.S. 236, 243–244 (1968) (sustaining New York law loaning secular textbooks to all children, including those at religious schools); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16–18 (1947) (sustaining local ordinance authorizing all parents to deduct from their State tax returns the costs of transporting their children to schools, including religious schools, on public buses).

[45] *See Bowen v. Kendrick*, 487 U.S. 589 (1988) (upholding the direct Federal funding of faith-based counseling centers addressing teenage sexuality under the Adolescent Family Life Act); *Bradfield v. Roberts*, 175 U.S. 291 (1899) (upholding an agreement between the Commissioners of the District of Columbia and a religiously affiliated hospital whereby the Federal Government would pay for the construction of a new building on the grounds of the hospital). *Bradfield v. Roberts* was cited by the Supreme Court in Bowen, 487 U.S. at 609 ("We note in addition that this Court has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs. To the contrary, in *Bradfield v. Roberts*, the Court upheld an agreement between the Commissioners of the District of Columbia and a religiously affiliated hospital whereby the Federal Government would pay for the construction of a new building on the grounds of the hospital. In effect, the Court refused to hold that the mere fact that the hospital was 'conducted under the auspices of the Roman Catholic Church' was sufficient to alter the purely secular legal character of the corporation, particularly in the absence of any allegation that the hospital discriminated on the basis of religion or operated in any way inconsistent with its secular charter. In the Court's view, the giving of Federal aid to the hospital was entirely consistent with the Establishment Clause, and the fact that the hospital was religiously affiliated was 'wholly immaterial.'") (citations omitted).

[46] 487 U.S. 589 (1988).

[47] S.Rep. No. 97–161, at 1 (1981).

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organizations in addressing these issues.[48] The Court was satisfied that encouraging such involvement by faith-based organizations served a clear secular purpose.[49] The Court also found that there was nothing inherently religious about services funded under the AFLA.[50] The Court saw nothing troubling in the congressional recognition that religion and religious organizations play an important part in solving social ills.[51] Finally, the Court refused to countenance the notion that a faith-based organization could not receive direct Federal funds for the provision of public welfare services without impermissibly lending the imprimatur of Government on religious activity.[52]

Further, in *Committee for Public Education and Religious Liberty v. Regan*,[53] the Supreme Court explained that, "We decline to embrace a formalistic dichotomy that bears so little relationship either to common sense or the realities of school finance. None of our cases requires us to invalidate these reimbursements simply because they involve payments in cash. The Court 'has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends.'").

THE SUPREME COURT HAS REJECTED OBJECTIONS TO FUNDING FAITH-BASED ORGANIZATIONS THAT ARE PREMISED ON THE DISCRIMINATORY NOTION THAT THEIR EMPLOYEES CANNOT BE TRUSTED TO FOLLOW GUIDELINES

Arguments that employees of faith-based organizations simply cannot be trusted to follow guidelines preventing the use of Government funds for proselytizing activities have been decisively rejected by the Supreme Court. Both the plurality opinion and the opinion of Justice O'Connor in *Mitchell v. Helms* stand for the prop-

[48] *See Bowen v. Kendrick*, 487 U.S. 589, 595–96 (1988) ("Indeed, Congress expressly recognized that legislative or governmental action alone would be insufficient ... Accordingly, the AFLA expressly states that federally provided services in this area should promote the involvement of parents, and should "emphasize the provision of support by other family members, religious and charitable organizations, voluntary associations, and other groups." [42 U.S.C. §300z(a)(10)(C)].") (emphasis added).

[49] *See id.*, at 602 ("As we see it, it is clear from the face of the statute that the AFLA was motivated primarily, if not entirely, by a legitimate secular purpose—the elimination or reduction of social and economic problems caused by teenage sexuality, pregnancy, and parenthood. [42 U.S.C. §§300z(a), (b)].").

[50] *See id.*, at 594, 605 (1988) ("[T]he statute contains a listing of 'necessary services' that may be funded. These services include pregnancy testing and maternity counseling, adoption counseling and referral services, prenatal and postnatal health care, nutritional information, counseling, child care, mental health services, and perhaps most importantly for present purposes, 'educational services relating to family life and problems associated with adolescent premarital sexual relations' ... Certainly it is true that a substantial part of the services listed as "necessary services" under the act involve some sort of education or counseling, but there is nothing inherently religious about these activities and appellees do not contend that, by themselves, the AFLA's 'necessary services' somehow have the primary effect of advancing religion.").

[51] *See id.*, at 606–07 (1988) ("Putting aside for the moment the possible role of religious organizations as grantees, these provisions of the statute reflect at most Congress' considered judgment that religious organizations can help solve the problems to which the AFLA is addressed ... Nothing in our previous cases prevents Congress from making such a judgment or from recognizing the important part that religion or religious organizations may play in resolving certain secular problems.").

[52] *See id.*, at 613–14 (1988) ("The facially neutral projects authorized by the AFLA—including pregnancy testing, adoption counseling and referral services, prenatal and postnatal care, educational services, residential care, child care, consumer education, etc.—are not themselves 'specifically religious activities,' and they are not converted into such activities by the fact that they are carried out by organizations with religious affiliations.").

[53] 444 U.S. 646, 658 (1980) (upholding reimbursements to religious K-12 schools for State-required testing and rejecting a rule that direct cash payment was never permitted). The Supreme Court has been especially sensitive to Establishment Clause issues in the context of K-12 schools.

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osition that members of religious organizations should be presumed to be acting in good faith.[54]

Some critics claim that it is unconstitutional for direct grants to be awarded to "pervasively sectarian" organizations which would risk "an excessive entanglement [of Government] with religion." The so-called "pervasively sectarian" test was first articulated in *Lemon v. Kurtzman*.[55] The last case in which the Court struck down governmental aid using the "pervasively sectarian" test was *Grand Rapids School District v. Ball*,[56] but *Ball* was recently discredited and partly overruled in *Agostini v. Felton*.[57] Even Justice Blackmun, in a dissenting opinion joined by Justices Brennan, Marshall, and Stevens, described the phrase "pervasively sectarian" as "a vaguely defined term of art." *Bowen v. Kendrick*, 487 U.S. 589, 631 (1988) (Blackmun, J., dissenting). In *Mitchell v. Helms*,[58] the majority of Justices reversed an appeals court holding that providing educational materials and equipment to pervasively sectarian schools was unconstitutional. As the Congressional Research Service concluded in its December 27, 2000, Report to Congress on Charitable Choice, "In its most recent decisions [,] the Court appears to have abandoned the presumption that some religious institutions, such as sectarian elementary and secondary schools, are so pervasively sectarian that they are constitutionally ineligible to participate in direct public aid programs ... It also seems clear that for a different majority [of six] Justices (those joining in the Thomas and O'Connor opinions), the question of whether a recipient institution is pervasively sectarian is no longer a constitutionally determinative factor." CRS Report, *Charitable Choice: Constitutional Issues and Developments Through the 106th Congress* (December 27, 2000) at 29, 32. Recently, the Fourth Circuit Court of Appeals in *Columbia Union College v. Oliver*, 2001 WL 716726 (4th Cir.) (June 26, 2001), held that the Constitution allows the Government to provide direct aid to a religious organiza-

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[54] *See Mitchell v. Helms*, 120 S.Ct. 2530, 2547 (2000) (plurality opinion) ("So long as the governmental aid is not itself unsuitable for use in the public schools because of religious content, ... and eligibility for aid is determined in a constitutionally permissible manner, any use of that aid to indoctrinate cannot be attributed to the Government and is thus not of constitutional concern.") (quotations omitted); *id.*, at 2570 (O'Connor, J., concurring in the judgment) ("[T]he Court's willingness to assume that religious school instructors will inculcate religion has not caused us to presume also that such instructors will be unable to follow secular restrictions on the use of textbooks ... [I]t is entirely proper to presume that these school officials will act in good faith.").

[55] 403 U.S. 602, 613 (1971). *See also Hunt v. McNair*, 413 U.S. 734, 743 (1973) ("Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.").

[56] 473 U.S. 373 (1985).

[57] 521 U.S. 203, 219–23 (1997) ("Our more recent cases have undermined the assumptions upon which Ball [] relied ... What has changed since we decided Ball ... is our understanding of the criteria used to assess whether aid to religion has an impermissible effect."). That understanding today rejects the notion that members of faith-based organizations simply cannot be trusted to follow guidelines preventing the use of Government funds for proselytizing. Both the plurality opinion and the opinion of Justice O'Connor in *Mitchell v. Helms* stand for the proposition that members of religious organizations should always be presumed to be acting in good faith. *See Mitchell v. Helms*, 120 S.Ct. 2530, 2547 (2000) (plurality opinion) ("So long as the governmental aid is not itself unsuitable for use in the public schools because of religious content, ... and eligibility for aid is determined in a constitutionally permissible manner, any use of that aid to indoctrinate cannot be attributed to the Government and is thus not of constitutional concern.") (quotations omitted); *id.*, at 2570 (O'Connor, J., concurring) ("[T]he Court's willingness to assume that religious school instructors will inculcate religion has not caused us to presume also that such instructors will be unable to follow secular restrictions on the use of textbooks ... [I]t is entirely proper to presume that these school officials will act in good faith.").

[58] 120 S.Ct. 2530 (2000).

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tion "without resort to [a court's] examining" its "pervasively sectarian status," as long as there are protections in place prohibiting Federal funds from being used for proselytizing activities. *Id.* at * 7.[59]

Despite the abandonment of the "pervasively sectarian" test by the courts, it continues to lead to the exclusion of faith-based organizations from equal participation in application processes for Federal social service funds.[60]

INDIRECTLY FUNDED CHARITABLE CHOICE PROGRAMS ARE CONSTITUTIONAL

Subsection (l) of title II of H.R. 7 authorizes the Secretary of the department administering a covered program to direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. H.R. 7 defines "indirect assistance" as that in which assistance funds find their way to an organization "only as a result of the private choices of individual beneficiaries," in accordance with Supreme Court precedent, drawing on language from *Witters v. Washington Department of Services for the Blind*,[61] and *Mueller v.*

[59] When President Clinton signed the re-authorization measure for the Community Services Block Grants Program ("CSBG") into law on October 27, 1998, his accompanying statement regarding its charitable choice provisions relied on the "pervasively sectarian" standard that the courts have since abandoned. That statement stated that "The Department of Justice advises, however, that the provision that allows religiously affiliated organizations to be providers under CSBG would be unconstitutional if and to the extent it were construed to permit governmental funding of 'pervasively sectarian' organizations, as that term has been defined by the courts. Accordingly, I construe the act as forbidding the funding of pervasively sectarian organizations and as permitting Federal, State, and local governments involved in disbursing CSBG funds to take into account the structure and operations of a religious organization in determining whether such an organization is pervasively sectarian." 134 Weekly Compilation of Presidential Documents 2148 (Nov. 2, 1998) (Statement on Signing the Community Opportunities, Accountability, and Training and Educational Services Act of 1998). President Clinton's later statements on charitable choice provisions in October and December 2000, do not rely on the pervasively sectarian test. *See supra,* note 13.

[60] *See* CRS Report to Congress, RL30388, *Charitable Choice: Constitutional Issues and Developments Through the 106th Congress* (updated December 27, 2000) at 1 ("[T]he establishment clause has in the past generally been interpreted to bar Government from providing direct assistance to organizations that are 'pervasively sectarian.' As a consequence, Government funding agencies have often required religious social services providers, as conditions of receiving public funds, to be incorporated separately from their sponsoring religious institutions ... and to remove religious symbols from the premises in which the services are provided."); *see also* Congressional Research Service, RS20809: *Public Aid and Faith-Based Organizations (Charitable Choice): An Overview* (updated April 18, 2001) at 2–3 ("[I]nterpretations and applications of the establishment of religion clause of the First Amendment as well as of the sometimes more strict provisions of State constitutions have in the past generally required programs operated by religious organizations that receive public funding in the form of grants or contracts to be essentially secular in nature ... Moreover, religious entities that have been found to be 'pervasively sectarian,' i.e., entities in which religion is a pervasive element of all that they do, have generally been constitutionally ineligible to participate in direct funding programs, because they have been deemed unable to separate their secular functions from their religious functions so that public aid can be confined to the former. Charitable choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character."). Although the courts have now abandoned the "pervasively sectarian" test, this rule to exclude certain religious organizations is still present in Federal statutes and regulations, and too often guides decisions by federal, State, and local grant managers.

[61] 474 U.S. 481, 488 (1985) (opinion written by Justice Marshall) ("Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly to the student, who transmits it to the educational institution of his or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients.").

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Allen.[62] "Indirect" means of funding are flexible, and include more than vouchers and certificates.

Charitable choice programs administered through the use of vouchers or certificates to individuals, who may then choose to give them to nonreligious or religious organizations in return for social services, enjoy the widest constitutional berth. When voucher programs are created, and individuals are allowed to redeem their vouchers at approved sites, the latitude for religious expression and practice at those sites can be far greater. Where the design of the charitable choice program has not predetermined where the Government funding should go but has given a free choice to the immediate beneficiaries of the programs—for example, the voucher recipients—the Supreme Court has held such programs constitutional even though institutions presumed to be pervasively religious have benefitted.[63] So long as the initial beneficiaries have a choice about where to redeem the vouchers or certificates, and a range of choices are available including religious and nonreligious social service organizations, such programs do not violate the First Amendment.

In *Mueller v. Allen*,[64] the Supreme Court upheld a Minnesota statute allowing state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending elementary or secondary school, either nonreligious or religious. The Court stated that

> by channeling whatever assistance it may provide to parochial schools through individual parents, Minnesota has reduced the Establishment Clause objections to which its action is subject ... It is true, of course, that financial assistance provided to parents ultimately has an economic effect comparable to that of aid given directly to the schools attended by their children. It is also true, however, that under Minnesota's arrangement public funds become available only as a result of numerous, private choices of individual parents of school-age children ... Where, as here, aid to parochial schools is available only as a result of decisions of individual parents no imprimatur of State approval can be deemed to have been conferred on any particular religion, or on religion generally.[65]

In *Witters v. Washington Department of Services for the Blind*,[66] the Supreme Court upheld a program allowing a student who was pursuing a biblical studies degree at a Christian college to receive financial vocational assistance. The Court stated

> Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly *to the student*, who transmits it to the educational institution of his

[62] 463 U.S. 388, 399 (1983) ("Where, as here, aid to parochial schools is available only as a result of decisions of individual parents no imprimatur of State approval can be deemed to have been conferred on any particular religion, or on religion generally.").

[63] *See Mueller v. Allen*, 463 U.S. 388, 399 (1983); *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 487 (1986); *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 10 (1993).

[64] 463 U.S. 388 (1983).

[65] *Id.* at 399.

[66] 474 U.S. 481 (1985).

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> or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients. Washington's program is made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefitted, and is in no way skewed towards religion ... It creates no financial incentive for students to undertake sectarian education. It does not tend to provide greater or broader benefits for recipients who apply their aid to religious education, nor are the full benefits of the program limited, in large part or in whole, to students at sectarian institutions. On the contrary, aid recipients have full opportunity to expend vocational rehabilitation aid on wholly secular education, and as a practical matter have rather greater prospects to do so ... In this case, the fact that aid goes to individuals means that the decision to support religious education is made by the individual, not by the State ... On the facts we have set out, it does not seem appropriate to view any aid ultimately flowing to the Inland Empire School of the Bible as resulting from a state action sponsoring or subsidizing religion."[67]

In *Zobrest v. Catalina Foothills School District*,[68] the Supreme Court upheld a program allowing parents of a deaf student attending Catholic high school to require the public school district to provide interpreter for the student that would interpret classes that included religious instruction. The Court upheld the program, citing *Mueller*, as follows: "We also pointed out that under Minnesota's scheme, public funds become available to sectarian schools only as a result of numerous private choices of individual parents of school-age children, thus distinguishing Mueller from our other cases involving the direct transmission of assistance from the State to the schools themselves."[69]

H.R. 7 CONTAINS CONSTITUTIONALLY ADEQUATE SAFEGUARDS

When Government appropriates tax monies, it has a duty to reasonably account for how such funds are utilized. Regulatory controls that keep track of funds appropriated under neutral social service programs via grants or in-kind services—such as those appropriately attaching to organizations receiving support under programs following charitable choice principles—are proper to help ensure that the monies actually benefit the poor and the needy as intended.

Such controls are incorporated in H.R. 7. Subsection (i) of the Charitable Choice Act of 2001 provides that, "a religious organization providing assistance under any [specified program] shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such program." H.R. 7 also makes the creation of separate accounts, con-

[67] *Id.* at 488 (emphasis added).
[68] 509 U.S. 1 (1993).
[69] *Id.* at 9.

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taining only Federal funds received, mandatory for programs covered by title II of H.R. 7 that are directly funded.[70]

The required accounting should be evenhanded for all providers, whether religious or nonreligious. In her concurring opinion in *Mitchell v. Helms*, Justice O'Connor made clear that as long as there are safeguards for preventing and detecting diversion of funds, it is not a constitutional problem if occasional mistakes are made.[71]

In the final part of her opinion, Justice O'Connor explained why safeguards in the Federal educational program at issue in *Mitchell* reassured her that the program, as applied, was not violative of the Establishment Clause. According to Justice O'Connor, a program of aid need not be failsafe, nor does every program require pervasive monitoring.[72] The statute limited aid to "secular, neutral, and nonideological" assistance, required that the aid supplement rather than supplant private-source funds, and expressly prohibited use of the aid for "religious worship or instruction."[73] State educational authorities required religious schools to sign assurances of compliance with the above-quoted statutory spending prohibition made a term of the contract.[74] The state conducted monitoring visits, however infrequently, and did a random review of Government-purchased library books for their religious content.[75] There was also monitoring of religious schools by local public school districts, including review of required project proposals submitted by the religious schools and annual program-review visits to each recipient school.[76] The monitoring did catch instances of actual diversion, although not a substantial number, and Justice O'Connor was encouraged that when problems were detected they were corrected.[77]

The charitable choice principles embodied in H.R. 7 address Justice O'Connor's concerns. Subsection (i) of title II of H.R. 7 provides that a religious organization providing assistance under any covered program shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs. In addition, a religious organization providing assistance through a grant or cooperative agreement under a covered program shall segregate Government funds provided under such program into a separate account or accounts, and the separate accounts consisting of funds from the Government, but

[70] Subsection (k) also provides that, "If a State or local government contributes State or local funds to carry out a [specified program], the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds."

[71] *See Mitchell v. Helms*, 120 S.Ct. 2530, 2558 (2000) (O'Connor, J., concurring in the judgment). *See also Bowen v. Kendrick*, 487 U.S. 589, 615 (1988) (upholding program allowing Federal funds be given to faith-based organizations for family counseling) ("We note in addition that the [Adolescent Family Life Act] requires each grantee to undergo evaluations of the services it provides, and also requires grantees to 'make such reports concerning its use of Federal funds as the [Government] may require.' The application requirements of the act, as well, require potential grantees to disclose in detail exactly what services they intend to provide and how they will be provided. These provisions, taken together, create a mechanism whereby the [Government] can police the grants that are given out under the act to ensure that Federal funds are not used for impermissible purposes.").

[72] *Id.*, 120 S.Ct. at 2569 (O'Connor, J., concurring in the judgment).

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.* at 2569–70.

[77] *Id.* at 2571–72.

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only such separate accounts, shall be subject to audit by the Government regarding the administration of the covered program. H.R. 7 further requires a religious organization providing services under any covered program to conduct annually a self audit for compliance with its duties under this subsection and to submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit. H.R. 7 also requires that such a religious organization sign a certificate of compliance that certifies it is aware of and will comply with its duties under H.R. 7.

H.R. 7 PRESERVES EXISTING GUARANTEES OF INSTITUTIONAL AUTONOMY FOR RELIGIOUS ORGANIZATIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

One of the most important charitable choice principles is the guarantee of institutional autonomy that allows faith-based organizations to select staff on a religious basis. Faith-based organizations cannot be expected to sustain their religious drive without the ability to employ individuals who share the tenets and practices of their faith.[78] In order to preserve the religious character of faith-based organizations, subsection (d) of the Charitable Choice Act of 2001 provides that

> (1) IN GENERAL. A religious organization that provides assistance under [the specified programs] shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.
>
> (2) ADDITIONAL SAFEGUARDS. Neither the Federal Government nor a State or local government with Federal funds shall require a religious organization in order to be eligible to provide assistance under [the specified programs] to—(A) alter its form of internal governance or provisions in its charter documents; or (B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

Many faith-based organizations believe that they cannot maintain their religious vision over a sustained time period without the ability to replenish their staff with individuals who share the tenets and doctrines of the association. They prefer working with those of the same faith, not out of animus toward others, but out of a desire to surround themselves with those who reinforce their faith. This guaranteed ability is central to each organization's freedom to define its own mission according to the dictates of its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into title VII of the

[78] Many faith-based organizations do not staff on a religious basis, nor do they desire to do so. However, many others do and believe it is essential to their continued vitality that they be able to continue to do so. Further, many faith-based organizations that staff on a religious basis do so with respect to some jobs but not others. Finally, many faith-based organizations do not staff on the basis of religion in any affirmative sense, but they do require that employees not be in open defiance of the organization's creed or teachings.

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Civil Rights Act of 1964.[79] Charitable choice laws specifically provide that faith-based organizations receiving Government funds retain this limited exemption from Federal employment nondiscrimination laws. H.R. 7 does this as well, using the same language from the 1996 Welfare Reform Act,[80] with an additional clause making clear that contrary provisions in the Federal programs covered by title II of H.R. 7 have no force and effect[81] and that the duties of religious organizations not to discriminate based on race, color, sex, and national origin—from which religious organizations are not exempt under title VII—are retained.[82] While it is essential that faith-based organizations be permitted to make employment decisions based on religious considerations, along with all other providers, faith-based organizations must obey Federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, gender, age, and disability. Subsection (e) makes clear that religious organizations retain their duty to follow the title VII nondiscrimination provisions regarding race, color, sex, and national origin, from which religious organizations are not exempt under title VII.[83] H.R. 7 maintains the status quo regarding the § 702(a) exemption in title VII. Courts have held that a reli-

[79] Section 702 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-1(a)) states, "This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

[80] *See* 42 U.S.C. § 604a ("(f) Employment practices.—A religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2) of this section.").

[81] This additional clause was not necessary in the 1996 Welfare Reform Act because it codified charitable choice rules for a new program, whereas H.R. 7 covers already-existing programs that may have conflicting provisions. The 1996 Welfare Reform Act replaced the Aid to Families with Dependent Children program ("AFDC") with the Temporary Assistance to Needy Families ("TANF") program, shifting welfare responsibilities from the Federal Government to the states.

[82] Subsection (e) of the Charitable Choice Act of 2001 states: "A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4)." The latter sentence, like the provisions in subsection (f), are simply truisms, but they are included to avoid doubt about the continued applicability of these civil rights laws.

[83] Subsection (f) of the Charitable Choice Act of 2001 makes clear that, "Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any [covered program] to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1686) (prohibiting discrimination in educational institutions on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age)." title VI of the Civil Rights Act of 1964 prohibits racial discrimination by those administering a social service program with Government aid. See 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ..."). Further, section 504 of the Rehabilitation Act provides that, "No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ..." 29 U.S.C. § 794. Section 504 affords disabled individuals the opportunity to participate in and benefit from programs offered by the recipient of Federal financial assistance by providing them "meaningful access to the benefit that the grantee offers." *Alexander v. Choate*, 469 U.S. 287, 301, 304 (1985). Federal grantees need not make "'fundamental'" or "'substantial'" changes in their programs to accommodate the disabled, *id.* at 300, but "reasonable accommodations in the grantee's program or benefit may have to be made," to assure meaningful access by those with a disability. *Id.* at 301.

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gious organization does not forfeit the § 702(a) exemption just because the organization is a recipient of Government funds.[84]

Occasionally, the charge is made that charitable choice is Government-funded job discrimination. This is untrue. The purpose of charitable choice funding is not to create jobs, or to fill the coffers of faith-based organizations, but to fund social services for those in need. It is the faith-based organization, of course, that is making staffing decision on the basis of religion, not the Government.[85] Section 702(a) of the Civil Rights Act of 1964 has for decades exempted nonprofit private religious organizations, engaged in both religious and nonreligious nonprofit activities, from title VII's prohibition on discrimination in employment on the basis of religion.[86] As enacted in 1964, the section 702 exemption permitted religious employers to discriminate on religious grounds in employment only with regard to "religious activities."[87] The 1972 amendment to section 702 expanded the exemption to permit religious employment discrimination with regard to all activities conducted by the religious employer regardless of whether they were religious or nonreligious in nature.[88] The Supreme Court, including Justices Brennan and Marshall, upheld this expanded exemption in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*.[89]

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[84] *See Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000) (dismissing religious discrimination claim filed by employee against religious organization because organization was exempt from title VII and the receipt of substantial Government funding did not bring about a waiver of the exemption); *Siegel v. Truett-McConnell* College, 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd*, 73 F.3d 1108 (11th Cir. 1995) (table) (dismissing religious discrimination claim filed by faculty member against religious college because college was exempt from title VII and the receipt of substantial Government funding did not bring about a waiver of the exemption or violate the Establishment Clause); *Young v. Shawnee Mission Medical Center*, 1988 U.S. Dist. LEXIS 12248 (D. Kan. Oct. 21, 1988) (holding that religious hospital did not lose title VII exemption merely because it received Federal Medicare payments); *see Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (holding that exemption to title VII for religious staffing by a religious organization is not waivable); Ward v. Hengle, 706 N.E.2d 392, 395 (Ohio App.1997), app'l denied, 692 N.E.2d 617 (Ohio 1998) (holding that exemption to title VII for religious staffing by a religious organization is not waivable); *Arriaga v. Loma Linda University*, 13 Cal. Rptr.2d 619 (Cal. App. 1992) (holding that religious exemption in state employment nondiscrimination law was not lost merely because religious college received state funding); *Saucier v. Employment Security Dept.*, 954 P.2d 285 (Wash. App. 1998) (holding that Salvation Army's religious exemption from state unemployment compensation tax does not violate Establishment Clause merely because the job of a former employee in question, a drug abuse counselor, was funded by Federal and state grants).

[85] *See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 337 n.15 (1987) ("Undoubtedly, [the complainant's] freedom of choice in religious matters was impinged upon, but it was the Church .., and not the Government, who put him to the choice of changing his religious practices or losing his job.").

[86] Title VII exempts "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." 42 U.S.C. § 2000e-1(a).

[87] The original section 702 exemption, as enacted in 1964, read, in pertinent part: "This title shall not apply to ... a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution." Pub. L. No. 88–352, 78 Stat. 255, 42 U.S.C. § 2000e-1 (1964).

[88] *See* Pub. L. No. 92–261, 86 Stat. 103 (1972) (amending 42 U.S.C. 2000e (1964)).

[89] 483 U.S. 327 (1987). The section 702 exemption for religious organizations in title VII should not be confused with the so-called "ministerial exception," which is a legal doctrine developed by the courts, not Congress. The Free Exercise Clause, as interpreted by the courts, exempts hiring of clergy from title VII and other similar statutes and, as a consequence, precludes civil courts from adjudicating a broader range of employment discrimination suits by ministers against the church or religious institution employing them. *See, e.g., Equal Employment Opportunity Commission v. Catholic University of America*, 83 F.3d 455, 461 (D.C.Cir. 1996). However, persons are not covered by the so-called "ministerial exception" unless they perform ministerial functions. See id. at 464; *see also EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277, 283 (5th Cir.1981) (for purposes of exception, "ministers" includes non-ordained faculty at

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Section 702(a) is not waived or forfeited when a religious organization receives Federal funding. When it enacted title VII in 1964, Congress was aware that religious institutions of higher education eligible for exemption in section 703(e)(2) of title VII were receiving funds under Federal programs in the form of grants and student aid. Under the GI Bill, established in 1944, military veterans were able to attend the college or university of their choice—public or private, sectarian or non-sectarian—and the tuition costs were either offset or covered in full through a voucher payment sent to the selected school.[90] When the title VII exemption for religious organizations allowing their hiring to be based on religion was expanded to include even non-ministerial positions in 1972, "Pell" grants for students enrolling in undergraduate studies, including studies at religiously affiliated colleges, were under active discussion and became law that same year.[91] Not only does no provision in § 702(a) state that its exemption of nonprofit private religious organizations from title VII's prohibition on discrimination in employment is forfeited when a faith-based organization receives a Federal grant, but the Federal circuits that have faced the issue have also held that the protections of § 702(a) cannot be waived.[92] Further, private organizations, including faith-based organizations, do not become "state actors" and thereby lose the status they enjoy as private organizations simply because they receive Government funds.[93] This

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Baptist seminary where no course has "a strictly secular purpose "). For example, in *Weissman v. Congregation Shaare Emeth*, 38 F.3d 1038 (8th Cir.1994), the court found that the plaintiff was able to bring an age discrimination action against his temple without violating the First Amendment because he "was responsible for logistical support of activities including supervision of administrative, clerical, building maintenance, and custodial personnel. He also managed property and equipment and maintained financial records. He was not a member of the clergy and played no role in decisions relating to spiritual matters." *Id.* at 1040. *See also EEOC v. Roman Catholic Diocese of Raleigh*, 213 F.3d 795, 801 (4th Cir. 2000) ("Where no spiritual function is involved, the First Amendment does not stay the application of a generally applicable law such as title VII to the religious employer unless Congress so provides."); *Geary v. Visitation of the Blessed Virgin Mary Parish School*, 7 F.3d 324, at 331 (3d Cir. 1993) (lay teacher in elementary parochial school not covered by ministerial exemption); *DeMarco v. Holy Cross High School*, 4 F.3d 166, 171–72 (2d.Cir. 1993) (lay math teacher not covered by ministerial exemption). Consequently, volunteers and other personnel at faith-based organizations performing secular, clerical, custodial, or administrative functions would not be covered by the ministerial exception.

[90] *See* Servicemen's Readjustment Act of 1944, Pub. L. No. 78–346, 58 Stat. 284, 288–89 (1944) ("[A qualifying veteran] shall be eligible for and entitled to such course of education or training as he may elect, and at any approved educational or training institution at which he chooses to enroll ... "). The current program provides for payment to be made to the eligible serviceman directly. *See* 38 U.S.C. § 3014.

[91] Pell Grants were established by the Education Amendments of 1972, 20 U.S.C. § 1070, for the purpose of subsidizing tuition, fees, and certain costs of attendance for people pursuing an undergraduate degree.

[92] *See Hill v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000) ("[T]he statutory exemptions from religious discrimination claims under title VII cannot be waived ... The exemptions reflect a decision by Congress that religious organizations have a constitutional right to be free from Government intervention."); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (holding argument that religious organization can waive title VII exemption "incorrectly views [the exemption] as a privilege or interest granted to those organizations. Instead, those exemptions reflect a decision by Congress that the Government interest in eliminating religious discrimination by religious organizations is outweighed by the rights of those organizations to be free from Government intervention."); *Siegel v. Truett-McConnell College*, 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd*, 73 F.3d 1108 (11th Cir. 1995) (table) (dismissing religious discrimination claim filed by faculty member against religious college because college was exempt from title VII and the receipt of substantial Government funding did not bring about a waiver of the exemption or violate the Establishment Clause).

[93] *See Rendell-Baker v. Kohn*, 457 U.S. 830 (1982) (holding that nonprofit, privately operated school's receipt of public funds did not make its discharge decisions "state actions" subject to suit under Federal statute authorizing suits for deprivations of constitutional rights, notwithstanding that virtually all of school's income was derived from Government funding and that even though the private entity performed a function which served public such did not make its acts "state action "); *Blum v. Yaretsky*, 457 U.S. 991 (1982) (holding that even though the State subsidized the cost of private nursing home facilities, paid the expenses of the patients, and li-

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means that the § 702(a) exemption does not violate any nondiscrimination norms in the Constitution.

Nor is staffing on a religious basis invidious discrimination based on an immutable trait, or for a purpose other than preserving the religious character of an organization. Indeed, a religious organization favoring the employment of those of like-minded faith is comparable to an environmental organization favoring employees devoted to environmentalism or a teacher's union hiring only those opposed to school voucher initiatives.

Indeed, prohibiting religious organizations from maintaining their religious character through hiring practices would endanger Federal funding for child services and education. One survey found that 51 percent of nonprofit organizations delivering child services were religiously affiliated, and of those 82 percent received public funds. A majority of these religiously affiliated nonprofit organizations received over 40 percent of their budgets from Government sources. The survey also found that 70 percent of nonprofit colleges and universities were religiously affiliated, and of those 97 percent received public funds.[94] The same survey found that 44 percent of the religiously affiliated nonprofit organizations delivering child services only hired staff who agreed with their religious orientation, or gave preference to them, and that 56 percent of the religiously affiliated nonprofit colleges and universities only hired staff who agreed with their religious orientation, or gave preference to them.[95] In sum, roughly half of the religiously affiliated child care services and colleges and universities surveyed receive large amounts of public funds and maintain their religious character through hiring practices. A rule prohibiting Government funds from finding their way to religious organizations that make staffing decisions based on religion would pull public funding from these child care services and colleges and universities.[96]

The Supreme Court has repeatedly held that the Establishment Clause is not violated when Government refrains from imposing a burden on religion, even though that same burden is imposed on the nonreligious who are otherwise similarly situated. In *Corporation of the Presiding Bishop v. Amos*,[97] the Supreme Court upheld an exemption permitting religious organizations to discriminate on a religious basis in matters concerning employment. Finding that the exemption did not violate the Establishment Clause, the Supreme Court has made clear that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions."[98] Justice Brennan, in his concurring opinion in *Amos*, recognized that many religious organizations and associations engage in extensive social welfare and charitable activities, such as operating soup kitchens and day care centers or providing

censed the facilities, the action of the nursing homes is not thereby converted into "state action.").

[94] *See* Stephen V. Monsma, *When Sacred and Secular Mix: Religious Nonprofit Organizations and Public Money* (Rowman & Littlefield Publishers, Inc. 1996) at 68, Table 3.

[95] *See id.* at 74–75, Tables 6 and 7.

[96] Religiously motivated schools often consider religion in their hiring practices and remain viable because their students receive Federal funds. Students may use Federal veterans' benefits, Federal Pell Grants, and other Federal educational grants and loans at any accredited institution of higher learning, including religious schools and seminaries that discriminate in hiring faculty and staff based on religion.

[97] 483 U.S. 327 (1987).

[98] *Id.* at 335.

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aid to the poor and the homeless. Even where the content of such activities is nonreligious, in the sense that it does not include sectarian teaching, proselytizing, prayer or ritual, Justice Brennan recognized that the religious organization's performance of such functions is likely to be "infused with a religious purpose."[99] He also recognized that churches and other religious entities "often regard the provision of such services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster."[100] Consequently, Justice Brennan concluded that the "substantial potential for chilling religious activity makes inappropriate a case-by-case determination of the character of a nonprofit organization, and justifies a categorical exemption for nonprofit activities ... While not every nonprofit activity may be operated for religious purposes, the likelihood that many are makes a categorical rule a suitable means to avoid chilling the exercise of religion."[101]

A religious organization may have good reason for preferring that individuals similarly committed to its religiously motivated mission operate such secular programs, for such collective activity can be "a means by which a religious community defines itself."[102] Indeed, such collective activity not only can advance the organization's own religious objectives, but also can further the religious mission of the individuals that constitute the religious community:

> For many individuals, religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals.[103]

Accordingly, the selection of coreligionists in particular social service programs will ordinarily advance a religious organization's religious mission, facilitate the religiously motivated calling and conduct of the individuals who are the constituents of that organization, and fortify the organization's religious tradition. Where an organization makes such a showing, the title VII prohibition on religious discrimination would impose "significant governmental interference" with the ability of that organization "to define and carry out [its] religious mission[]," [104] even as applied to employees who are engaged in work that is secular in content. Where that is the case, the section 702(a) exemption would be a permissible religious accommodation that "alleviat[es] special burdens."[105] The title VII exemption, as applied to employees of faith-based organizations in programs that are direct recipients of Government funding, is constitutionally sound.

When the Court permits a legislature to exempt religion from regulatory burdens, it enables private religious choice. To establish a religion connotes that a Government must take some affirmative step to achieve the prohibited result. On the other hand, for Gov-

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[99] *Id.* at 342 (Brennan, J., concurring).
[100] *Id.* at 344.
[101] *Id.* at 345.
[102] *Id.* at 342.
[103] *Id.*
[104] *Id.*, at 335.
[105] *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687, 705 (1994).

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ernment to passively leave religion where it found it cannot be an act establishing a religion. Pointing out that it had previously upheld laws that helped religious groups advance their purposes, the Supreme Court explained, "A law is not unconstitutional simply because it allows churches to advance religion, which is their very purpose ... [T]he Court ... has never indicated that statutes that give special consideration to religious groups are per se invalid."[106] In other words, the state does not support or establish religion by leaving it alone.[107]

Charitable choice principles simply allow religious groups to retain their religious character while allowing them to compete for more social service funds with which to help people in need. H.R. 7 preserves religious organizations' exemption from the religion nondiscrimination provisions of title VII, and it also makes clear that religious organizations retain their duty to follow the title VII nondiscrimination provisions regarding race, color, sex, and national origin.[108]

Because H.R. 7 expands charitable choice principles to cover many new Federal programs, one uniform rule should apply to all programs and allow religious organizations to retain their autonomy over the definition, development, practice, and expression of their religious beliefs, including through hiring staff. This is so even when State or local laws provide otherwise, but only when Federal funds are used and only when such religious beliefs are sincerely held. *See* subsections (d)(1) and (k) of the Charitable Choice Act of 2001; *see also United States v. Ballard*, 322 U.S. 78 (1944) (while truth of religious beliefs may not be subjected to examination by trier of fact, the sincerity of religious claimant may to tested). This statutory right is enforceable, if need be, by the Compliance subsection. Subsection (n) gives a faith-based organization a private right of action for injunctive relief. This statutory right is very narrow in scope, and the experience to date is encouraging. Such a right has been present in existing charitable choice laws for five years and there are no known or reported instances in which faith-based organizations have asserted this narrow statutory right. Wherever federal funds go, this statutory right of religious organizations to staff on a religious basis should follow, as should, of course, their duty of nondiscrimination under federal civil rights laws, including those applicable duties to which they

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[106] *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 338 (1987).

[107] *See Walz v. Tax Commission*, 397 U.S. 664, 673 (1970) ("We cannot read [a statute exempting religious organizations from taxes] as attempting to establish religion; it is simply sparing the exercise of religion from the burden of property taxation levied on private profit institutions.").

[108] Title VII applies to employers with "fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or proceeding calendar year." 42 U.S.C. §2000e(b). Under title VII, employees of certain small organizations are not protected by title VII, and their protections against discrimination are found in state or local antidiscrimination statutes, or section 1981. *See* 42 U.S.C. §1981 ("(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (b) 'Make and enforce contracts' defined. For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. (c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."). INSERT E

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are the subject under title VII and the civil rights statutes listed in subsection (f). And, of course, subsection (h) does not permit religious discrimination against social service beneficiaries.

There is considerable benefit in having one Federal rule for all Federal funds nationwide. However, where State or local governments do not use Federal funds, or where they segregate their own funds from Federal funds, these governments are not subject to the provisions of H.R. 7. Accordingly, they may apply their own civil rights laws to their own State or local funds.

THERE IS NO CONSTITUTIONAL REQUIREMENT THAT RELIGIOUS ORGANIZATIONS FORM SEPARATE 501(C)(3) ORGANIZATIONS IN ORDER TO COMPETE FOR AND ADMINISTER FUNDS UNDER H.R. 7

There are also those who have expressed the notion that religious organizations incorporated under § 501(c)(3) of the Internal Revenue Code cannot be intensely or significantly religious, and hence should be able to receive Federal funds, while a non-501(c)(3) religious organization should not be able to do so. The notion seems to be premised on an incorrect assumption that such an organization, being separate from the "pervasively sectarian" parent, must be secular and thus constitutionally authorized to accept Government funds. However, the constitution does not bar "pervasively sectarian" organizations from accepting Government funds, under appropriate conditions, as the Supreme Court has recently emphasized. There is also nothing inherent in 501(c)(3) status that requires an organization not to be pervasively sectarian, and intensely or significantly religious organizations, including churches, can be 501(c)(3) organizations if they so choose. Under § 508(c)(1)(A), "churches" and "their integrated auxiliaries" may take advantage of tax-exempt status without filing an application for tax-exemption under § 501(c)(3), but many elect to do so anyway in order to create a separately funded organization. In any case, nothing about § 501(c)(3) status means the organization has to, for example, take down religious symbols or refrain from staffing on a religious basis, just because it receives a Federal grant. Section 501(c)(3) only imposes two restrictions on nonprofit, tax-exempt public charities, including religious social service ministries: first, a blanket prohibition on the organization's involvement in political campaigns; and second, a requirement that no substantial part of its activities be devoted to lobbying. *See* 26 U.S.C. § 501(c)(3). In sum, the provisions of § 501(c)(3) allow a church or other religious organization to create an entity that is organized, governed, and funded separately, but they do not restrict a 501(c)(3) organization's involvement in religion. Charitable choice principles, not the provisions of § 501(c)(3), define what a religious organization can and cannot do in order to lawfully compete for and administer funds under a Federal social service program, and there is no constitutional reason why a religious organization should not be able to use its existing rooms and buildings for training centers and office space. To impose such a requirement of separate incorporation by a religious organization seeking to take part in a Federal social service program would impose an unnecessary barrier to entry on the smallest faith-based organizations when H.R. 7 seeks to remove such unnecessary barriers. Under subsection (i)(2)(A) of title II of H.R. 7, a religious organization receiving funds directly through a

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grant or cooperative agreement need only create a separate account to receive the Government funds out of which charitable choice programs draw, rather than form a separate §501(c)(3) organization. This is done, in part, to limit the scope of audits to funds from Government sources and thereby shield other accounts from Government monitoring.

H.R. 7 ALSO INCLUDES PROVISIONS TO ENCOURAGE BUSINESSES TO MAKE IN-KIND CHARITABLE DONATIONS BY PROTECTING THEM FROM LIABILITY, WITH CERTAIN EXCEPTIONS FOR GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT, WHEN DONATED ITEMS CAUSE INJURY OR DEATH

Section 104 of title I of H.R. 7 includes liability reform provisions covering charitable in-kind donations by businesses. Section 104 is intended to encourage businesses to make in-kind charitable contributions of equipment, motor vehicles, and aircraft by protecting them from liability, under Federal and state law with certain exceptions for gross negligence and intentional misconduct, in the event the donated items cause injury. Subsection (b) of section 104 provides that, subject to exceptions in subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by that business entity to a nonprofit organization. Businesses donating facilities to nonprofit organizations shall not be subject to civil liability relating to any injury or death occurring at the facility if the use occurs outside of the scope of business of the business entity, such injury or death occurs during a period that such facility is used by the nonprofit organization, and the business entity authorized the use of such facility by the nonprofit organization. Businesses shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside the scope of business of the business entity, if such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization, and the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

Subsection (c) provides that the protections of subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

Subsection (d) provides that, subject to subsection (e), the laws of any State are preempted to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply. Subsection (d) also provides that nothing in this title shall be construed to supersede any Federal or State health or safety law. Subsection (e) provides that a provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute citing the authority of this section, declaring the election of such State that such provision shall not apply to such civil action in the State, and containing no other provisions.

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SUMMARY

While the First Amendment to the Constitution provides that the Government shall not "establish" religion, or any particular religion by directing governmental support to a particular religion or to adherents of religion to the exclusion of adherents to no religion, the First Amendment also provides that the Government shall not prohibit the "free exercise" of religion. Consequently, Government must ensure that members of organizations seeking to take part in Government programs designed to meet basic and universal human needs are not discriminated against because of their religious views. These "charitable choice" principles, part of H.R. 7, allow for the public funding of faith-based organizations with demonstrated abilities to meet basic needs, and they allow such organizations to choose their staff, board members, and methods, thus preserving their religious character. These principles also protect the rights of conscience of their clients by prohibiting the use of Government funds for sectarian instruction, worship, or proselytization and by ensuring that alternatives, not objectionable for religious reasons are available.

Existing charitable choice programs have benefitted thousands of persons in need without raising significant constitutional concerns in their implementation. An expansion of such principles to cover even more Federal programs likewise raise no serious constitutional concerns, while preserving citizens' rights to freely exercise their religion without being dismissed out-of-hand in their attempts to take part in cooperative efforts with the Federal Government designed to reduce poverty and fulfill basic human needs.

HEARINGS

The Committee's Subcommittee on the Constitution held 2 days of oversight hearings on charitable choice, the first of which was held on April 24, 2001. That hearing explored how States and localities have successfully implemented existing "charitable choice" provisions, governing certain Federal programs, and benefitted those in need. Testimony was received from the following witnesses: Dr. Amy Sherman, Senior Fellow, Welfare Policy Center, Hudson Institute; Reverend Donna Lawrence Jones, Cookman United Methodist Church, Philadelphia, PA; Charles Clingman, Executive Director, Jireh Development Corporation, Cincinnati, OH; and Reverend J. Brent Walker, Executive Director, Baptist Joint Committee on Public Affairs.

The second oversight hearing was held on June 7, 2001. That hearing focused on the constitutional role of faith-based organizations in competing for Federal social service funds. Testimony was received from the following witnesses: Carl Esbeck, Senior Counsel to the Deputy Attorney General, United States Department of Justice; Douglas Laycock, Associate Dean for Research and Alice McKean Young Regents Chair in Law, The University of Texas School of Law; David N. Saperstein, Adjunct Professor of Law; Director, Religious Action, Center of Reform Judaism, Georgetown University Law Center; and Ira C. Lupu, Louis Harkey Mayo Research Professor of Law, The George Washington University School of Law.

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COMMITTEE CONSIDERATION

On June 28, 2001, the Committee met in open session and ordered favorably reported the bill, H.R. 7, with amendment, by a recorded vote of 20 to 5, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment was offered by Mr. Scott (for himself, Mr. Conyers, Mr. Nadler, Mr. Frank, Ms. Jackson Lee, Ms. Waters, Ms. Balwin, and Mr. Watt) to strike from the amendment offered by Mr. Sensenbrenner its provisions preserving religious organizations' exemption from the religion nondiscrimination provisions of title VII of the Civil Rights Act of 1964. The amendment was defeated by rollcall vote of 11 to 19.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	11	19	

2. An amendment was offered by Mr. Watt to strike language in the amendment offered by Mr. Sensenbrenner overriding any provisions in programs covered under subsection (c)(4) of the Charitable Choice Act of 2001 that are inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 of

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the Civil Rights Act of 1964 or the Charitable Choice Act of 2001, and to add language to the end of subsection (e) of the Charitable Choice Act of 2001. The amendment was modified to omit its striking of language in the amendment of Mr. Sensenbrenner and to add the following language at the end of subsection (e): "Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4)." As so modified, the amendment was agreed to by unanimous consent.

3. An amendment was offered by Mr. Nadler (for himself, Mr. Conyers, and Mr. Scott) that would perfect the amendment offered by Mr. Sensenbrenner a subsection providing that a party alleging that the rights of the party under subsection (f), (g), or (i) of the amendment offered by Mr. Sensenbrenner have been violated may bring a civil action seeking any form of legal or equitable relief, including a writ of mandamus, injunctive relief, or monetary damages, in a State court of general jurisdiction or in a District Court of the United States, against a religious organization, official, or Government agency, and that in any action or proceeding to enforce the foregoing rights, the court may allow a prevailing plaintiff reasonable attorneys' fees as part of the costs and may include expert fees as part of the attorneys' fees. The amendment was defeated by voice vote.

4. An amendment was offered by Mr. Nadler that would strike subsection (h) of the Charitable Choice Act of 2001 contained in the amendment offered by Mr. Sensenbrenner and replace it with a a new subsection (h) providing that a religious organization shall be eligible for assistance under a program described in subsection (c)(4) only through an entity incorporated separately from its pervasively sectarian parent or affiliate under section 501(c)(3) of the Internal Revenue Code of 1986. The amendment was defeated by voice vote.

5. An amendment was offered by Mr. Nadler (for himself, Mr. Conyers, Mr. Frank, Ms. Jackson Lee and Mr. Watt) that would have added language to the amendment offered by Mr. Sensenbrenner prohibiting religious organization receiving funds under programs covered by subsection (c)(4) from engaging any beneficiaries of such programs in religious worship, instruction, or proselytization while they were receiving assistance under a covered program. The amendment was defeated by rollcall vote of 7 to 22.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	

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ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Sensenbrenner, Chairman		X	
Total	7	22	

6. An amendment was offered by Mr. Scott (for himself and Ms. Waters) that would have provided that nothing in the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner shall affect any programs under the Elementary and Secondary Education Act of 1965. The amendment was defeated by a rollcall vote of 10 to 17.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		

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ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	10	17	

7. An amendment was offered by Ms. Lofgren (for herself and Mr. Schiff) that would have striken section 104 of title I of H.R. 7 in the amendment offered by Mr. Sensenbrenner, which extends liability protection to businesses making in-kind donations to charitable organizations. The amendment was defeated by a rollcall vote of 7 to 13.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Barr		X	
Mr. Jenkins			
Mr. Hutchinson		X	
Mr. Cannon			
Mr. Graham		X	
Mr. Bachus			
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake			
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	

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ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Total	7	13	

8. An amendment was offered by Mr. Frank (for himself and Ms. Baldwin) that would have added language to subsection (g) of the Charitable Choice Act of 2001, in the amendment offered by Mr. Sensenbrenner, prohibiting a religious organization receiving indirect forms of assistance from discriminating, in carrying out a covered program, against an individual on the basis of a religious belief. The amendment was defeated by a rollcall vote of 7 to 15.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson			
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus			
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake			
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	7	15	

9. An amendment was offered by Mr. Frank (for himself and Mr. Scott) that would strike subsection (e)(2) of the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner and insert a new subsection (f) listing the same anti-discrimination statutes listed in subsection (e)(2) and preceding them with the language "nothing in section 1994A shall alter the duty of a religious organization receiving assistance or providing services under

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any program described in subsection (c)(4) to comply with the nondiscrimination provisions in" the listed statutes. The amendment was agreed to by voice vote.

10. An amendment was offered by Ms. Jackson Lee (for herself and Ms. Waters) that would strike from the Charitable Choice Act of 2001, in the amendment offered by Mr. Sensenbrenner, its provisions protecting the rights of a religious organization that provides assistance under a program described in subsection (c)(4) to retain its autonomy, including its control over the definition, development, practice, and expression of its religious beliefs, from State and local governments. The amendment would also have allowed State and local governments to require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to alter its form of internal governance or provisions of its charter documents, or to remove religious art, icons, scripture or other symbols, or to change its name, because such symbols or name are of a religious character. The amendment also would have striken subsection (j) of the Charitable Choice Act of 2001. The amendment was defeated by a rollcall vote of 7 to 19.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	7	19	

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11. An amendment was offered by Mr. Watt that would have inserted into the subsection of the Charitable Choice Act of 2001 titled "Effect on Other Laws," in the amendment offered by Mr. Sensenbrenner, a reference to the Fair Housing Act. The amendment was withdrawn.

12. An amendment was offered by Mr. Nadler (for himself and Mr. Frank that would have striken from subsection (f)(1)(A) of the Charitable Choice Act of 2001, in the amendment offered by Mr. Sensenbrenner, the phrase "is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds," and replaced it with "is an alternative, including a non-religious alternative, that is accessible and not objectionable to the individual." The amendment also would have added the following language at the end of that subsection: "section 1994A of this title shall not apply with respect to assistance provided under a program described in subsection (c)(4) during a fiscal year by an organization if the requirement of paragraph (1) is not met with respect to that assistance." The amendment was defeated by voice vote.

13. An amendment was offered by Mr. Scott that would have replaced the phrase "an alternative that is accessible" in subsection (f)(1)(A) of the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner, with the phrase "an alternative that is at least as accessible." The amendment was defeated by voice vote.

14. An amendment was offered by Mr. Scott that would have added at the end of subsection (c)(1)(A) of the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner the following language: "For purposes of this section, a religious organization is an organization which is pervasively sectarian, and states in the application for funding that it is a 'pervasively sectarian organization.'" The amendment was defeated by voice vote.

15. An amendment was offered by Mr. Scott that would have added the following language to subsection (m) of the amendment offered by Mr. Sensenbrenner to title II of H.R. 7: "Funding under this section shall be based on the objective merits of the applications submitted and shall not discriminate against an applicant based on the religious character of the organization." The amendment was defeated by a rollcall vote of 7 to 20.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	

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ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers	X		
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	7	20	

16. An amendment was offered by Mr. Scott to the amendment offered by Mr. Sensenbrenner relating to training and technical assistance for small nongovernmental organizations that would have struck language referring to the Office of Justice Programs. The amendment also would have increased from $25 million to $50 million the amounts the Attorney General was authorized to spend to provide training and technical assistance regarding procedures relating to potential application and participation in programs identified in subsection (c)(4), to small nongovernmental organizations, including religious organizations. The amendment also provided that such assistance shall include assistance in creating a 501(c)(3) organization, grant writing workshops, informational assistance regarding accounting, legal, and tax issues, informational assistance regarding how to comply with Federal nondiscrimination provisions. The amendment also provided that, in providing such assistance, priority shall be given to small nongovernmental organizations serving rural and urban communities. By unanimous consent, the amendment was modified to omit the striking of language and to replace the phrase "Such assistance shall include" with "Such assistance may include." The amendment, as modified, was agreed to.

17. An amendment was offered by Mr. Scott in the amendment offered by Mr. Sensenbrenner that would have added at the end of subsection (c)(3) the following language: "Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) shall apply to organizations receiving direct assistance funded under any program described in subsection (c)(4)." The amendment was agreed to by voice vote.

18. Mr. Sensenbrenner offered an amendment that would replace existing language in the employment practices provisions of H.R. 7 preserving religious organizations' current exemption from the religious nondiscrimination provisions of title VII with the same language used in the 1996 Welfare Reform Act, with an additional

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clause making clear that contrary provisions in the Federal programs covered by H.R. 7 have no force and effect. The amendment also makes clear that, when a beneficiary has an objection to the religious nature of a provider, an alternative provider is required that is unobjectionable to the beneficiary on religious grounds, but that the alternative provider need not be nonreligious. The amendment also permits review of the performance of Federal programs funded through religious organizations and not just its fiscal aspects; requires self-audits by religious organizations; makes a clearer statement that if a religious organization offers sectarian instruction, worship, or proselytization, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart; limits parties alleging that their rights under this section have been violated to injunctive relief; and authorizes the Attorney General to provide training and technical assistance regarding procedures relating to potential applications and participation in programs identified in subsection (c)(4), to small nongovernmental organizations, including religious organizations. The amendment offered by Mr. Sensenbrenner, as amended, was agreed to by voice vote.

19. Final Passage. The motion to report favorably the bill H.R. 7, as amended, was adopted. The motion was agreed to by a rollcall vote of 20 to 5.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Cannon	X		
Mr. Graham	X		
Mr. Bachus	X		
Mr. Scarborough	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake	X		
Mr. Conyers			
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			

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ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Schiff			
Mr. Sensenbrenner, Chairman	X		
Total	20	5	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Subsection (o) of title II of H.R. 7, the Charitable Choice Act of 2001, provides that, from amounts made available to carry out the purposes of the Office of Justice Programs, funds are authorized to provide training and technical assistance, directly, or through grants or other arrangements, in procedures relating to potential application and participation in covered programs to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually. An amount of no less than $5,000,000 shall be reserved under this section, and small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs covered by the Charitable Choice Act of 2001.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because the portion of this legislation referred to the Committee does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 7, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 7, the Community Solutions Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for

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Federal spending), who can be reached at 226–2860, Erin Whitaker (for revenues), who can be reached at 226–2720, and Shelley Finlayson (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 7—Community Solutions Act of 2001.

SUMMARY

H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive Federal funds for the provision of social services and would make several changes to tax law concerning deductions for charitable contributions. The Joint Committee on Taxation (JCT) estimates that the revenue loss associated with this legislation would be almost $50 billion over the 2002–2006 period and more than $120 billion over the 2002–2011 period. Because H.R. 7 would affect revenues, pay-as-you-go procedures would apply. The bill also would establish certain reporting requirements of the Secretary of the Treasury and authorize the appropriation of $1 million each year for the Secretary to comply with those requirements. Assuming the appropriation of the specified amounts, CBO estimates that implementing H.R. 7 would cost $5 million over the 2001–2006 period.

Section 104 of H.R. 7 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state liability laws. CBO estimates that complying with this mandate would result in no direct costs to state governments and thus would not exceed the threshold established in that act ($56 million in 2001, adjusted annually for inflation). Title 2 of the bill also would establish new requirements and prohibitions on state and local governments as conditions of receiving Federal assistance under numerous Federal programs. This bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 7 is shown in the following table. The cost of this legislation falls within budget function 800 (general government).

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	By Fiscal Year, in Millions of Dollars					
	2001	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	0	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1
CHANGES IN REVENUES[a]						
Deductions for charitable contributions of individuals who do not itemize deductions	0	-1,278	-8,603	-9,159	-9,748	-10,401
Tax-free distributions from individual retirement accounts for charitable purposes	0	-118	-195	-215	-284	-368
Expand and increase the charitable deduction for contributions of food	0	-78	-146	-173	-194	-208
Individual Development Accounts	0	-891	-1,750	-1,767	-1,874	-2,028
Total Changes in Revenue	0	-2,365	-10,694	-11,314	-12,100	-13,005

a. All estimates of the revenue effects of H.R. 7 were provided by JCT.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 7 will be enacted by the end of fiscal year 2001 and that the authorized amounts will be appropriated for each year.

Spending Subject to Appropriation

Title III would establish tax credits for certain financial institutions that provide individual development accounts and would set certain requirements for the administration of the accounts and for the withdrawals from those accounts by individual taxpayers. The bill would authorize the appropriation of $1 million in each year over the 2002–2008 period for the Secretary of the Treasury to monitor the cost and performance of the individual development account programs and prepare an annual report to the Congress. Assuming the appropriation of the specified amounts, CBO estimates that implementing H.R. 7 would cost $5 million over the 2002–2006 period.

H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive Federal funds for the provision of social services. It also would require that any governmental organization that contracts with a religious organization to provide social services guarantee that eligible individuals who object to a specific service provider on religious grounds be directed to a different provider of comparable services. Although in many areas the number of providers would be sufficient to ensure that alternative providers would be available, very small communities might find it difficult to comply with these requirements. Although the requirement to find an alternate provider could increase Federal costs in some cases by requiring the Federal Government to pay a portion of the costs of such alternate providers, CBO has been unable to

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obtain data to estimate any such costs. However, CBO does not anticipate that any resulting costs to the Federal Government would be substantial.

Revenues

H.R. 7 would allow taxpayers who do not itemize their deductions to deduct their charitable contributions up to the amount of the standard deduction, and continue to allow such taxpayers to take the standard deduction. The bill would allow taxpayers to exclude from their gross income otherwise taxable withdrawals from individual retirement accounts if those withdrawals were made for certain charitable distributions. The bill also would amend charitable contribution rules to enhance deductions for donations of food for all taxpayers other than certain corporations, and would limit the liability of corporate entities for certain charitable contributions of equipment.

H.R. 7 would establish tax credits for certain financial institutions that provide a program for certain accounts in which eligible individuals receive matching contributions from those institutions (individual development account program). The tax credit for these financial institutions would be equal to the amount of matching contributions made under the program plus amounts for accounts opened or maintained during the taxable year. It would set certain requirements for the administration of individual development accounts and for withdrawals from those accounts by individual taxpayers.

The Joint Committee on Taxation estimates that the revenue loss associated with this legislation would be almost $50 billion over the 2002–2006 period and more than $120 billion over the 2002–2011 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding 4 years are counted.

	By Fiscal Year, in Millions of Dollars										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	Not applicable										
Changes in receipts[a]	0	-2,365	-10,694	-11,314	-12,100	-13,005	-13,534	-14,105	-14,212	-14,455	-15,432

a. Estimate was provided by JCT.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

CBO has reviewed section 104 and title 2 of H.R. 7 for intergovernmental mandates.

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Mandates

Section 104 contains an intergovernmental mandate as defined in UMRA because it would preempt inconsistent or more stringent state liability laws that hold businesses civilly liable for injuries or death that result from the use of equipment, facilities, or vehicles donated or loaned to nonprofit organizations. This preemption would be an intergovernmental mandate as defined in UMRA, but because the preemption is narrow and state governments would not be required to take any action, CBO estimates complying with this mandate would result in no direct costs. Thus, the threshold established in UMRA ($56 million in 2001, adjusted annually for inflation) would not be exceeded.

Other Impacts

Title 2 would establish new requirements and prohibitions on how state and local governments receive and use Federal funds under numerous Federal programs. Such programs include anything related to hunger relief activities, Federal housing under the Community Development Block Grant Program, prevention of domestic violence under the Child Abuse Prevention and Treatment Act, and services for the elderly under the Older Americans Act. Specifically, title 2 would require state and local governments to consider religious organizations on the same basis as other organizations to provide assistance under programs carried out using Federal funds.

The bill also would require that the appropriate government entity notify applicants and recipients about provider options and provide, in a timely manner, an equivalent alternative from a nonreligious provider if a recipient objects to receiving services from a religious provider. In addition, state and local governments that discriminate on the basis of religion in selecting service providers could be sued for injunctive relief. All of those requirements are conditions of Federal assistance, and therefore, are not mandates under UMRA. However, those requirements could increase state and local costs to administer numerous Federal programs. In particular, some small communities could find it difficult or costly to comply with the alternate provider requirements. CBO does not have sufficient information to estimate the aggregate costs nationwide.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill contains no new private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

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Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
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ESTIMATE APPROVED BY:

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CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 1, 3 and 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 104 OF TITLE I—CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS

Subsection (a)—Definitions

This subsection defines the terms aircraft, business entity, equipment, facility, gross negligence, intentional misconduct, motor vehicle, nonprofit organization, and State, as used in section 104 of title I of H.R. 7.

Subsection (b)—Liability

Subsection (b) applies with respect to civil liability under Federal and State law. Subsection (b) provides that, subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by that business entity to a nonprofit organization. Businesses donating facilities to nonprofit organizations shall not be subject to civil liability relating to any injury or death occurring at the facility if the use occurs outside of the scope of business of the business entity, such injury or death occurs during a period that such facility is used by the nonprofit organization, and the business entity authorized the use of such facility by the nonprofit organization. Businesses shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside the scope of business of the business entity, if such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization, and the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

Subsection (c)—Exceptions

Subsection (c) provides that subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

Subsection (d)—Superceding Provision

Subsection (d) provides that, subject to subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply. Subsection (d) also provides that nothing in this title shall be construed to supersede any Federal or State health or safety law.

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Subsection (e)—Election of State Regarding Nonapplicability

Subsection (e) provides that a provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute citing the authority of this section, declaring the election of such State that such provision shall not apply to such civil action in the State, and containing no other provisions.

Subsection (f)—Effective Date

Subsection (f) provides that this section shall apply to injuries and deaths resulting therefrom and occurring on or after the date of the enactment of this act.

SECTION 201 OF TITLE II OF H.R. 7—EXPANSION OF CHARITABLE CHOICE

Subsection (a)—Short Title

Subsection (a) provides that this section may be cited as the Charitable Choice Act of 2001.

Subsection (b)—Purposes

Subsection (b) provides that the purposes of the Charitable Choice Act of 2001 are to enable assistance to be provided to individuals and families in need in the most effective and efficient manner; to supplement the nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of Government assistance under the covered Government programs; to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of Government assistance under such programs; to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and to protect the religious freedom of individuals and families in need who are eligible for Government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

Subsection (c)—Religious Organizations Included as Providers, Disclaimers

Subsection (c) provides that for any covered program that is carried out by the Federal Government, or by a State or local government with Federal funds, the Government shall consider, on the same basis as other non-governmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution. It also provides that neither the Federal Government, nor a State or local government receiving funds under a covered program, shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character. Subsection (c) also makes clear that Federal, State, or local government funds or other assist-

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ance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices, and that the receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the Government of religion or of the organization's religious beliefs or practices. Subsection (c) defines the covered programs as those that involve activities carried out using Federal funds and that are related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974; related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968; related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974; under subtitle B or D of title I of the Workforce Investment Act of 1998; under the Older Americans Act of 1965; related to the intervention in and prevention of domestic violence, including programs under the Child Abuse and Prevention and Treatment Act or the Family Violence Prevention and Services Act; related to hunger relief activities; under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998; or that involve activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to non-school hours programs, including programs under chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 or part I of title X of the Elementary and Secondary Education Act; but not if they include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965.

Subsection (d)—Organizational Character and Autonomy

Subsection (d) provides that a religious organization that provides assistance under a covered program shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs. Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a covered program, to alter its form of internal governance or provisions in its charter documents or to remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

Subsection (e)—Employment Practices

Subsection (e) provides that a religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 regarding employment practices shall not be affected by its participation in, or receipt of funds from, covered programs, and any provision

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in such programs that is inconsistent with, or would diminish, the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. The duties of religious organizations not to discriminate based on race, color, sex, and national origin, from which religious organizations are not exempt under title VII, are retained.

Subsection (f)—Effect on Other Laws

Subsection (f) provides that nothing in this section alters the duty of a religious organization receiving assistance or providing services under a covered program to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Subsection (g)—Rights of Beneficiaries of Assistance

Subsection (g) provides that if a beneficiary has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any covered program, the appropriate Federal, State, or local governmental entity shall provide to such individual within a reasonable period of time after the date of such objection, assistance that is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds and has a value that is not less than the value of the assistance that the individual would have received from such organization. The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the beneficiaries of their rights under this section.

Subsection (h)—Nondiscrimination against Beneficiaries

Subsection (h) provides that a religious organization providing assistance through a grant or cooperative agreement under a covered program shall not discriminate, in carrying out the program, against a beneficiary on the basis of religion, a religious belief, or a refusal to hold a religious belief. A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a covered program shall not deny a beneficiary admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

Subsection (i)—Accountability

Subsection (i) provides that a religious organization providing assistance under any covered program shall be subject to the same regulations as other non-governmental organizations to account, in accord with generally accepted accounting principles, for the use of such funds and its performance of such programs. A religious organization providing assistance through a grant or cooperative agreement under a covered program shall segregate Government funds provided under such program into a separate account or accounts, and only the separate accounts consisting of funds from the Government shall be subject to audit by the Government. A religious organization providing assistance through a form of indirect assistance under a covered program may segregate Government funds provided under such program into a separate account or accounts

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and, if such funds are so segregated, only the separate accounts consisting of funds from the Government shall be subject to audit by the Government. Subsection (i) further requires a religious organization providing services under any covered program to conduct annually a self audit for compliance with its duties under this section and to submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

Subsection (j)—Limitations on Use of Funds; Voluntariness

Subsection (j) provides that no funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any covered program shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the Government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection. Noncompliance with the certificate is a violation of the grant or cooperative agreement and shall be enforced in the same manner as other breaches of a grant or cooperative agreement.

Subsection (k)—Effect on State and Local Funds

Subsection (k) provides that if a State or local government contributes State or local funds to carry out a covered program, the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

Subsection (l)—Indirect Assistance

Subsection (l) provides that, when consistent with the purpose of a covered program, the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. Subsection (l) defines indirect assistance as assistance in which an organization receiving funds receives such funds only as a result of the choices of individual beneficiaries.

Subsection (m)—Treatment of Intermediate Grantors

Subsection (m) provides that if a non-governmental organization, acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select non-governmental organizations to provide assistance under a covered program, the intermediate grantor shall have the same duties under this section as the Government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious orga-

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nization, shall retain all other rights of a religious organization under this section.

Subsection (n)—Compliance

Subsection (n) provides that a party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 of the Revised Statutes against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or Government agency that has allegedly committed such violation.

Subsection (o)—Training and Technical Assistance for Small Nongovernmental Organizations

Subsection (o) provides that, from amounts made available to carry out the purposes of the Office of Justice Programs, funds are authorized to provide training and technical assistance, directly, or through grants or other arrangements, in procedures relating to potential application and participation in covered programs to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually. An amount of no less than $5,000,000 shall be reserved under this section, and small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this title. In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by that portion of the bill within the jurisdiction of the Committee on the Judiciary, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

REVISED STATUTES OF THE UNITED STATES

* * * * * * *

TITLE XXIV.—CIVIL RIGHTS.

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SEC. 1991. CHARITABLE CHOICE.

(a) SHORT TITLE.—This section may be cited as the "Charitable Choice Act of 2001".

(b) PURPOSES.—The purposes of this section are—

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(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

(1) IN GENERAL.—

(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices. Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

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(A) if it involves activities carried out using Federal funds—

(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

(vii) related to hunger relief activities; or

(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under—

(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 105–220); or

(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.); and

(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to pro-

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vide assistance under a program described in subsection (c)(4), to—

(A) alter its form of internal governance or provisions in its charter documents; or

(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

(e) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4).

(f) EFFECT ON OTHER LAWS.—Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

(g) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

(h) NONDISCRIMINATION AGAINST BENEFICIARIES.—

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(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (g)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

(i) ACCOUNTABILITY.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs.

(2) LIMITED AUDIT.—

(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, then only the separate accounts consisting of funds from the government shall be subject to audit by the government.

(3) SELF AUDIT.—A religious organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

(j) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection.

(k) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program

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described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(l) INDIRECT ASSISTANCE.—When consistent with the purpose of a program described in subsection (c)(4), the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. For purposes of this section, "indirect assistance" constitutes assistance in which an organization receiving funds through a voucher, certificate, or other form of disbursement under this section receives such funding only as a result of the private choices of individual beneficiaries and no government endorsement of any particular religion, or of religion generally, occurs.

(m) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an "intermediate grantor"), acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

(n) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—

(1) IN GENERAL.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

(2) TYPES OF ASSISTANCE.—Such assistance may include—

(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

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(B) granting writing assistance which may include workshops and reasonable guidance;

(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and a variety of other organizational areas; and

(D) information and guidance on how to comply with Federal nondiscrimination provisions including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

(3) RESERVATION OF FUNDS.—An amount of no less than $5,000,000 shall be reserved under this section. Small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this title.

(4) PRIORITY.—In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.

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July 11, 2001

The Honorable James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515
Attn: Will Moschella

Dear Chairman Sensenbrenner:

Thank you for working with me regarding H.R. 7, the Community Solutions Act of 2001, which was referred to the Committee on Ways and Means and in addition the Committee on the Judiciary. As you know, the Committee on Education and the Workforce holds a jurisdictional interest in this legislation and I appreciate your acknowledgement of that jurisdictional interest. While the bill would be sequentially referred to the Education and the Workforce Committee, I understand the desire to have this legislation considered expeditiously by the House; hence, I do not intend to hold a hearing or markup on this legislation.

In agreeing to waive consideration by our Committee, I would expect you to agree that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on this or any similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. I would also expect your support in my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my Committee should a conference with the Senate be convened on this or similar legislation.

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Again, thank you for your letter. I would appreciate your including our exchange of letters in your Committee's report to accompany H.R. 7. Again, I thank you for working with me in developing this legislation and I look forward to working with you on these issues in the future.

Sincerely,

JOHN BOEHNER
Chairman

JAB/jms

cc: The Honorable J. Dennis Hastert
The Honorable Richard K. Armey
The Honorable Tom Delay
The Honorable David Dreier
Mr. Charles Johnson, Parliamentarian

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ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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http://www.house.gov/judiciary

July 11, 2001

The Honorable John Boehner
Chairman
House Committee on Education and the Workforce
2181 Rayburn HOB
Washington, D.C. 20515

Dear John:

This letter responds to your letter dated July 11, 2001, concerning H.R. 7, the "Community Solutions Act" which was favorably reported by the House Committee on the Judiciary on June 28, 2001.

I agree that the bill contains matters within the Committee on Education and the Workforce's jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 7 so that we may proceed to the floor expeditiously. Your willingness to be discharged is not construed by the Committee on the Judiciary to prejudice the Committee on Education and the Workforce's jurisdictional interest under Rule X of the House of Representatives.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 7.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable George Miller
The Honorable Charles W. Johnson, III

REV_00129117

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July 11, 2001

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Jim:

I understand that the Committee on the Judiciary recently ordered reported H.R. 7, the Community Solutions Act of 2001. As you know, the legislation contains provisions relating to community development block grants (CDBGs) and other programs under the Nation's housing laws which fall within the jurisdiction of the Committee on Financial Services pursuant to clause 1(g) of rule X of the Rules of the House of Representatives.

Because of your willingness to consult with the Committee on Financial Services regarding this matter and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 7. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 7 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the *Congressional Record* during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

Michael G. Oxley
Chairman

MGO/hnh

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable John J. LaFalce
The Honorable Marge Roukema
The Honorable Barney Frank
The Honorable Charles W. Johnson, III, Parliamentarian

REV_00129118

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July 11, 2001

The Honorable Michael G. Oxley
Chairman
House Committee on Financial Services
2129 Rayburn HOB
Washington, D.C. 20515

Dear Mike:

This letter responds to your letter dated July 11, 2001, concerning H.R. 7, the "Community Solutions Act" which was favorably reported by the House Committee on the Judiciary on June 28, 2001.

I agree that the bill contains matters within the Committee on Financial Services' jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 7 so that we may proceed to the floor expeditiously. Your willingness to be discharged is not construed by the Committee on the Judiciary to prejudice the Committee on Financial Services' jurisdictional interest under Rule X of the House of Representatives.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 7.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable John J. LaFalce
The Honorable Charles W. Johnson, III

REV_00129119

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, JUNE 28, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:35 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., Chairman of the Committee, presiding.

Chairman SENSENBRENNER. The Committee will be in order. Without objection, the Chair has given the authority to grant or call recesses at any point in today's markup. A working quorum is present.

Pursuant to notice, I now call up the bill H.R. 7, the Charitable Choice Act of 2001 for purposes of markup, and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open to amendment at any point.

[The bill, H.R. 7, follows:]

REV_00129120

I

107TH CONGRESS
1ST SESSION

H. R. 7

To provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2001

Mr. WATTS of Oklahoma (for himself, Mr. HALL of Ohio, and Mr. HASTERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Community Solutions Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
Sec. 102. Tax-free distributions from individual retirement accounts for charitable purposes.
Sec. 103. Charitable deduction for contributions of food inventory.
Sec. 104. Charitable donations liability reform for in-kind corporate contributions.

TITLE II—EXPANSION OF CHARITABLE CHOICE

Sec. 201. Provision of assistance under government programs by religious and community organizations.

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

Sec. 301. Purposes.
Sec. 302. Definitions.
Sec. 303. Structure and administration of qualified individual development account programs.
Sec. 304. Procedures for opening and maintaining an individual development account and qualifying for matching funds.
Sec. 305. Deposits by qualified individual development account programs.
Sec. 306. Withdrawal procedures.
Sec. 307. Certification and termination of qualified individual development account programs.
Sec. 308. Reporting, monitoring, and evaluation.
Sec. 309. Authorization of appropriations.
Sec. 310. Account funds disregarded for purposes of certain means-tested Federal programs.
Sec. 311. Matching funds for individual development accounts provided through a tax credit for qualified financial institutions.

REV_00129122

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

"(1) the amount allowable under subsection (a) for the taxable year, or

"(2) the amount of the standard deduction."

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

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"(3) the direct charitable deduction."

(2) DEFINITION.—Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m)."

(3) CONFORMING AMENDMENT.—Subsection (d) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual

REV_00129124

retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution from an individual retirement account to an organization described in section 170(c).

"(B) SPECIAL RULES RELATING TO CHARITABLE REMAINDER TRUSTS, POOLED INCOME FUNDS, AND CHARITABLE GIFT ANNUITIES.—

"(i) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution from an individual retirement account—

"(I) to a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

"(II) to a pooled income fund (as defined in section 642(c)(5)), or

"(III) for the issuance of a charitable gift annuity (as defined in section 501(m)(5)).

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The preceding sentence shall apply only if no person holds an income interest in the amounts in the trust, fund, or annuity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

"(ii) DETERMINATION OF INCLUSION OF AMOUNTS DISTRIBUTED.—In determining the amount includible in the gross income of any person by reason of a payment or distribution from a trust referred to in clause (i)(I) or a charitable gift annuity (as so defined), the portion of any qualified charitable distribution to such trust or for such annuity which would (but for this subparagraph) have been includible in gross income—

"(I) shall be treated as income described in section 664(b)(1), and

"(II) shall not be treated as an investment in the contract.

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"(iii) NO INCLUSION FOR DISTRIBUTION TO POOLED INCOME FUND.—No amount shall be includible in the gross income of a pooled income fund (as so defined) by reason of a qualified charitable distribution to such fund.

"(C) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement account—

"(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 59½, and

"(ii) which is made directly from the account to—

"(I) an organization described in section 170(c), or

"(II) a trust, fund, or annuity referred to in subparagraph (B).

"(D) DENIAL OF DEDUCTION.—The amount allowable as a deduction under section 170 to the taxpayer for the taxable year shall be reduced (but not below zero) by the sum of

REV_00129127

the amounts of the qualified charitable distributions during such year which would be includible in the gross income of the taxpayer for such year but for this paragraph."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 103. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

"(7) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—For purposes of this section—

"(A) CONTRIBUTIONS BY NON-CORPORATE TAXPAYERS.—In the case of a charitable contribution of food by a taxpayer, paragraph (3)(A) shall be applied without regard to whether or not the contribution is made by a corporation.

"(B) LIMIT ON REDUCTION.—In the case of a charitable contribution of food which is a qualified contribution (within the meaning of

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paragraph (3)(A), as modified by subparagraph (A) of this paragraph)—

"(i) paragraph (3)(B) shall not apply, and

"(ii) the reduction under paragraph (1)(A) for such contribution shall be no greater than the amount (if any) by which the amount of such contribution exceeds twice the basis of such food.

"(C) DETERMINATION OF BASIS.—For purposes of this paragraph, if a taxpayer uses the cash method of accounting, the basis of any qualified contribution of such taxpayer shall be deemed to be 50 percent of the fair market value of such contribution.

"(D) DETERMINATION OF FAIR MARKET VALUE.—In the case of a charitable contribution of food which is a qualified contribution (within the meaning of paragraph (3), as modified by subparagraphs (A) and (B) of this paragraph) and which, solely by reason of internal standards of the taxpayer, lack of market, or similar circumstances, or which is produced by the taxpayer exclusively for the purposes of transferring the food to an organization de-

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scribed in paragraph (3)(A), cannot or will not be sold, the fair market value of such contribution shall be determined—

"(i) without regard to such internal standards, such lack of market, such circumstances, or such exclusive purpose, and

"(ii) if applicable, by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) AIRCRAFT.—The term "aircraft" has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—The term "business entity" means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

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(3) EQUIPMENT.—The term "equipment" includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY.—The term "facility" means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE.—The term "motor vehicle" has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY.—

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION.—This paragraph shall apply with respect to civil liability under Federal and State law.

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(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if—

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

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(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if—

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(4) LIABILITY OF BUSINESS ENTITIES PROVIDING TOURS OF FACILITIES.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to

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civil liability relating to any injury to, or death of an individual occurring at a facility of the business entity, if—

(i) such injury or death occurs during a tour of the facility in an area of the facility that is not otherwise accessible to the general public; and

(ii) the business entity authorized the tour.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether an individual pays for the tour.

(c) EXCEPTIONS.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18, United States Code) for which the defendant has been convicted in any court;

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(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION.—Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—A provision of this title shall not apply to any civil action in a State court against a business entity in

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which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE.—This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act.

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1994A. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to provide assistance to individuals and families in need in the most effective and efficient manner;

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"(2) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to allow religious organizations to assist in the administration and distribution of such assistance without impairing the religious character of such organizations; and

"(4) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of choosing to receive services from a religious organization providing such assistance.

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS NON-GOVERNMENTAL PROVIDERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, if the program is implemented in a man-

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ner that is consistent with the Establishment Clause and the Free Exercise Clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government nor a State or local government receiving funds under a program described in paragraph (4) shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program, on the basis that the organization has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not aid to the religious organization.

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not and should not be perceived as an endorsement by the government of religion or the organization's religious beliefs or practices.

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"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) under the Federal housing laws;

"(iv) under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)

"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.);

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"(vii) under the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(viii) related to the intervention in and prevention of domestic violence;

"(ix) related to hunger relief activities; or

"(x) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to non-school-hours programs; and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

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"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State or local government shall require a religious organization in order to be eligible to provide assistance under a program described in subsection (c)(4)—

"(A) to alter its form of internal governance; or

"(B) to remove religious art, icons, scripture, or other symbols because they are religious.

"(e) EMPLOYMENT PRACTICES.—

"(1) IN GENERAL.—In order to aid in the preservation of its religious character, a religious organization that provides assistance under a program described in subsection (c)(4) may, notwithstanding any other provision of law, require that its employ-

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ees adhere to the religious practices of the organization.

"(2) TITLE VII EXEMPTION.—The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1, 2000e–2(e)(2)) regarding employment practices shall not be affected by the religious organization's provision of assistance under, or receipt of funds from, a program described in subsection (c)(4).

"(3) EFFECT ON OTHER LAWS.—Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1686) (prohibiting discrimination in educational institutions on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

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"(f) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (e)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative, including a nonreligious alternative, that is accessible to the individual; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who re-

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ceives or applies for assistance under a program described in subsection (c)(4).

"(g) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND CONTRACTS.—A religious organization providing assistance through a grant or contract under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3)on the basis of religion, a religious belief, or a refusal to hold a religious belief..

"(2) INDIRECT FORMS OF DISBURSEMENT.—A religious organization providing assistance through a voucher, certificate, or other form of indirect disbursement under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(h) ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in

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accord with generally accepted accounting principles for the use of such funds provided under such program.

"(2) LIMITED AUDIT.—Such organization shall segregate government funds provided under such program into a separate account or accounts. Only the government funds shall be subject to audit by the government.

"(i) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.—No funds provided through a grant or contract to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian worship, instruction, or proselytization. A certificate shall be signed by such organizations and filed with the government agency that disbursed the funds that gives assurance the organization will comply with this subsection.

"(j) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this sec-

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tion shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(k) TREATMENT OF INTERMEDIATE CONTRACTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate contractor'), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate contractor shall have the same duties under this section as the government when selecting or otherwise dealing with subcontractors, but the intermediate contractor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

"(l) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action pursuant to section 1979 against the official or government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for appropriate relief in Federal dis-

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trict court against the official or government agency that has allegedly committed such violation.".

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 301. PURPOSES.

The purposes of this title are to provide for the establishment of individual development account programs that will—

(1) provide individuals and families with limited means an opportunity to accumulate assets and to enter the financial mainstream;

(2) promote education, homeownership, and the development of small businesses;

(3) stabilize families and build communities; and

(4) support United States economic expansion.

SEC. 302. DEFINITIONS.

As used in this title:

(1) ELIGIBLE INDIVIDUAL.—

(A) IN GENERAL.—The term "eligible individual" means an individual who—

(i) has attained the age of 18 years but not the age of 61;

(ii) is a citizen or legal resident of the United States;

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(iii) is not a student (as defined in section 151(c)(4)); and

(iv) is a taxpayer the adjusted gross income of whom for the preceding taxable year does not exceed—

(I) $20,000, in the case of a taxpayer described in section 1(c) or 1(d) of the Internal Revenue Code of 1986;

(II) $25,000, in the case of a taxpayer described in section 1(b) of such Code; and

(III) $40,000, in the case of a taxpayer described in section 1(a) of such Code.

(B) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—In the case of any taxable year beginning after 2002, each dollar amount referred to in subparagraph (A)(iv) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section (1)(f)(3) of the Internal Revenue Code of 1986

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for the calendar year in which the taxable year begins, by substituting "2001" for "1992".

(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(2) INDIVIDUAL DEVELOPMENT ACCOUNT.—The term "Individual Development Account" means an account established for an eligible individual as part of a qualified individual development account program, but only if the written governing instrument creating the account meets the following requirements:

(A) The sole owner of the account is the individual for whom the account was established.

(B) No contribution will be accepted unless it is in cash.

(C) The holder of the account is a qualified financial institution.

(D) The assets of the account will not be commingled with other property except in a common trust fund or common investment fund.

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(E) Except as provided in section 306(b), any amount in the account may be paid out only for the purpose of paying the qualified expenses of the account owner.

(3) PARALLEL ACCOUNT.—The term "parallel account" means a separate, parallel individual or pooled account for all matching funds and earnings dedicated to an Individual Development Account owner as part of a qualified individual development account program, the sole owner of which is a qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(4) QUALIFIED FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term "qualified financial institution" means any person authorized to be a trustee of any individual retirement account under section 408(a)(2).

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing a person described in subparagraph (A) from collaborating with 1 or more contractual affiliates, qualified nonprofit organizations, or Indian tribes to carry out an individual development account program established under section 303.

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(5) QUALIFIED NONPROFIT ORGANIZATION.—The term "qualified nonprofit organization" means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(B) any community development financial institution certified by the Community Development Financial Institution Fund; or

(C) any credit union chartered under Federal or State law.

(6) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe as defined in section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(12), and includes any tribal subsidiary, subdivision, or other wholly owned tribal entity.

(7) QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM.—The term "qualified individual development account program" means a program established under section 303 under which—

(A) Individual Development Accounts and parallel accounts are held by a qualified financial institution; and

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(B) additional activities determined by the Secretary as necessary to responsibly develop and administer accounts, including recruiting, providing financial education and other training to account owners, and regular program monitoring, are carried out by the qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(8) QUALIFIED EXPENSE DISTRIBUTION.—

(A) IN GENERAL.—The term "qualified expense distribution" means any amount paid (including through electronic payments) or distributed out of an Individual Development Account and a parallel account established for an eligible individual if such amount—

(i) is used exclusively to pay the qualified expenses of the Individual Development Account owner or such owner's spouse or dependents, as approved by the qualified financial institution, qualified nonprofit organization, or Indian tribe;

(ii) is paid by the qualified financial institution, qualified nonprofit organization, or Indian tribe—

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(I) except as otherwise provided in this clause, directly to the unrelated third party to whom the amount is due;

(II) in the case of distributions for working capital under a qualified business plan (as defined in subparagraph (B)(iv)(IV)), directly to the account owner;

(III) in the case of any qualified rollover, directly to another Individual Development Account and parallel account; or

(IV) in the case of a qualified final distribution, directly to the spouse, dependent, or other named beneficiary of the deceased account owner; and

(iii) is paid after the account owner has completed a financial education course as required under section 304(b).

(B) QUALIFIED EXPENSES.—

(i) IN GENERAL.—The term "qualified expenses" means any of the following:

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(I) Qualified higher education expenses.

(II) Qualified first-time homebuyer costs.

(III) Qualified business capitalization or expansion costs.

(IV) Qualified rollovers.

(V) Qualified final distribution.

(ii) QUALIFIED HIGHER EDUCATION EXPENSES.—

(I) IN GENERAL.—The term "qualified higher education expenses" has the meaning given such term by section 72(t)(7) of the Internal Revenue Code of 1986, determined by treating postsecondary vocational educational schools as eligible educational institutions.

(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL.—The term "postsecondary vocational educational school" means an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Voca-

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tional and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of the enactment of this Act.

(III) COORDINATION WITH OTHER BENEFITS.—The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2) of such Code and may not be taken into account for purposes of determining qualified higher education expenses under section 135 or 530 of the Internal Revenue Code of 1986.

(iii) QUALIFIED FIRST-TIME HOMEBUYER COSTS.—The term "qualified first-time homebuyer costs" means qualified acquisition costs (as defined in section 72(t)(8) of such Code without regard to subparagraph (B) thereof) with respect to a principal residence (within the meaning of section 121 of such Code) for a qualified

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first-time homebuyer (as defined in section 72(t)(8) of such Code).

(iv) QUALIFIED BUSINESS CAPITALIZATION OR EXPANSION COSTS.—

(I) IN GENERAL.—The term "qualified business capitalization or expansion costs" means qualified expenditures for the capitalization or expansion of a qualified business pursuant to a qualified business plan.

(II) QUALIFIED EXPENDITURES.—The term "qualified expenditures" means expenditures included in a qualified business plan, including capital, plant, equipment, working capital, inventory expenses, attorney and accounting fees, and other costs normally associated with starting or expanding a business.

(III) QUALIFIED BUSINESS.—The term "qualified business" means any business that does not contravene any law.

(IV) QUALIFIED BUSINESS PLAN.—The term "qualified business

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plan" means a business plan which has been approved by the qualified financial institution, qualified nonprofit organization, or Indian tribe and which meets such requirements as the Secretary may specify.

(v) QUALIFIED ROLLOVERS.—The term "qualified rollover" means the complete distribution of the amounts in an Individual Development Account and parallel account to another Individual Development Account and parallel account established in another qualified financial institution, qualified nonprofit organization, or Indian tribe for the benefit of the account owner.

(vi) QUALIFIED FINAL DISTRIBUTION.—The term "qualified final distribution" means, in the case of a deceased account owner, the complete distribution of the amounts in an Individual Development Account and parallel account directly to the spouse, any dependent, or other named beneficiary of the deceased.

(9) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

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SEC. 303. STRUCTURE AND ADMINISTRATION OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) ESTABLISHMENT OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.—Any qualified financial institution, qualified nonprofit organization, or Indian tribe may establish 1 or more qualified individual development account programs which meet the requirements of this title.

(b) BASIC PROGRAM STRUCTURE.—

(1) IN GENERAL.—All qualified individual development account programs shall consist of the following 2 components:

(A) An Individual Development Account to which an eligible individual may contribute cash in accordance with section 304.

(B) A parallel account to which all matching funds shall be deposited in accordance with section 305.

(2) TAILORED IDA PROGRAMS.—A qualified financial institution, a qualified nonprofit organization, or an Indian tribe may tailor its qualified individual development account program to allow matching funds to be spent on 1 or more of the categories of qualified expenses.

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(c) TAX TREATMENT OF PARALLEL ACCOUNTS.—Any account described in subparagraph (B) of subsection (b)(1) is exempt from taxation under the Internal Revenue Code of 1986.

SEC. 304. PROCEDURES FOR OPENING AND MAINTAINING AN INDIVIDUAL DEVELOPMENT ACCOUNT AND QUALIFYING FOR MATCHING FUNDS.

(a) OPENING AN ACCOUNT.—An eligible individual may open an Individual Development Account with a qualified financial institution, a qualified nonprofit organization, or an Indian tribe upon certification that such individual maintains no other Individual Development Account (other than an Individual Development Account to be terminated by a qualified rollover).

(b) REQUIRED COMPLETION OF FINANCIAL EDUCATION COURSE.—

(1) IN GENERAL.—Before becoming eligible to withdraw matching funds to pay for qualified expenses, owners of Individual Development Accounts must complete a financial education course offered by a qualified financial institution, a qualified nonprofit organization, an Indian tribe, or a government entity.

(2) STANDARD AND APPLICABILITY OF COURSE.—The Secretary, in consultation with rep-

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resentatives of qualified individual development account programs and financial educators, shall establish minimum quality standards for the contents of financial education courses and providers of such courses offered under paragraph (1) and a protocol to exempt individuals from the requirement under paragraph (1) because of hardship or lack of need.

(c) STATUS AS AN ELIGIBLE INDIVIDUAL.—Federal income tax forms from the preceding taxable year (or in the absence of such forms, such documentation as specified by the Secretary proving the eligible individual's adjusted gross income and the status of the individual as an eligible individual) shall be presented to the qualified financial institution, qualified nonprofit organization, or Indian tribe at the time of the establishment of the Individual Development Account and in any taxable year in which contributions are made to the Account to qualify for matching funds under section 305(b)(1)(A).

(d) DIRECT DEPOSITS.—The Secretary may, under regulations, provide for the direct deposit of any portion (not less than $1) of any overpayment of Federal tax of an individual as a contribution to the Individual Development Account of such individual.

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SEC. 305. DEPOSITS BY QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) PARALLEL ACCOUNTS.—The qualified financial institution, qualified nonprofit organization, or Indian tribe shall deposit all matching funds for each Individual Development Account into a parallel account at a qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(b) REGULAR DEPOSITS OF MATCHING FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), the qualified financial institution, qualified nonprofit organization, or Indian tribe shall not less than quarterly (or upon a proper withdrawal request under section 306, if necessary) deposit into the parallel account with respect to each eligible individual the following:

(A) A dollar-for-dollar match for the first $500 contributed by the eligible individual into an Individual Development Account with respect to any taxable year.

(B) Any matching funds provided by State, local, or private sources in accordance to the matching ratio set by those sources.

(2) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any taxable year beginning after 2002, the dollar

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amount referred to in paragraph (1)(A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section (1)(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, by substituting "2001" for "1992".

(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $20, such amount shall be rounded to the nearest multiple of $20.

(3) CROSS REFERENCE.—

For allowance of tax credit for Individual Development Account subsidies, including matching funds, see section 30B of the Internal Revenue Code of 1986.

(c) DEPOSIT OF MATCHING FUNDS INTO INDIVIDUAL DEVELOPMENT ACCOUNT OF INDIVIDUAL WHO HAS ATTAINED AGE 61.—In the case of an Individual Development Account owner who attains the age of 61, the qualified financial institution, qualified nonprofit organization, or Indian tribe which holds the parallel account for such individual shall deposit the funds in such parallel account into the Individual Development Account of such individual on the first day of the succeeding taxable year of such individual.

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(d) UNIFORM ACCOUNTING REGULATIONS.—To ensure proper recordkeeping and determination of the tax credit under section 30B of the Internal Revenue Code of 1986, the Secretary shall prescribe regulations with respect to accounting for matching funds in the parallel accounts.

(e) REGULAR REPORTING OF ACCOUNTS.—Any qualified financial institution, qualified nonprofit organization, or Indian tribe shall report the balances in any Individual Development Account and parallel account of an individual on not less than an annual basis to such individual.

SEC. 306. WITHDRAWAL PROCEDURES.

(a) WITHDRAWALS FOR QUALIFIED EXPENSES.—To withdraw money from an individual's Individual Development Account to pay qualified expenses of such individual or such individual's spouse or dependents, the qualified financial institution, qualified nonprofit organization, or Indian tribe shall directly transfer such funds from the Individual Development Account, and, if applicable, from the parallel account electronically to the distributees described in section 302(8)(A)(ii). If the distributee is not equipped to receive funds electronically, the qualified financial institution, qualified nonprofit organization, or In-

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dian tribe may issue such funds by paper check to the distributee.

(b) WITHDRAWALS FOR NONQUALIFIED EXPENSES.—An Individual Development Account owner may unilaterally withdraw any amount of funds from the Individual Development Account for purposes other than to pay qualified expenses, but shall forfeit a proportionate amount of matching funds from the individual's parallel account by doing so, unless such withdrawn funds are re-contributed to such Account by September 30 following the withdrawal.

(c) WITHDRAWALS FROM ACCOUNTS OF NON-ELIGIBLE INDIVIDUALS.—If the individual for whose benefit an Individual Development Account is established ceases to be an eligible individual, such account shall remain an Individual Development Account, but such individual shall not be eligible for any further matching funds under section 305(b)(1)(A) during the period—

(1) beginning on the first day of the taxable year of such individual following the beginning of such ineligibility, and

(2) ending on the last day of the taxable year of such individual in which such ineligibility ceases.

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(d) TAX TREATMENT OF MATCHING FUNDS.—Any amount withdrawn from a parallel account shall not be includible in an eligible individual's gross income.

(e) WITHDRAWAL LIABILITY RESTS ONLY WITH ELIGIBLE INDIVIDUALS.—Nothing in this title may be construed to impose liability on a qualified financial institution, a qualified nonprofit organization, or an Indian tribe for non-compliance with the requirements of this title related to withdrawals from Individual Development Accounts.

SEC. 307. CERTIFICATION AND TERMINATION OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) CERTIFICATION PROCEDURES.—Upon establishing a qualified individual development account program under section 303, a qualified financial institution, a qualified nonprofit organization, or an Indian tribe shall certify to the Secretary on forms prescribed by the Secretary and accompanied by any documentation required by the Secretary, that—

(1) the accounts described in subparagraphs (A) and (B) of section 303(b)(1) are operating pursuant to all the provisions of this title; and

(2) the qualified financial institution, qualified nonprofit organization, or Indian tribe agrees to im-

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plement an information system necessary to monitor the cost and outcomes of the qualified individual development account program.

(b) AUTHORITY TO TERMINATE QUALIFIED IDA PROGRAM.—If the Secretary determines that a qualified financial institution, a qualified nonprofit organization, or an Indian tribe under this title is not operating a qualified individual development account program in accordance with the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such institution's, nonprofit organization's, or Indian tribe's authority to conduct the program. If the Secretary is unable to identify a qualified financial institution, a qualified nonprofit organization, or an Indian tribe to assume the authority to conduct such program, then any funds in a parallel account established for the benefit of any individual under such program shall be deposited into the Individual Development Account of such individual as of the first day of such termination.

SEC. 308. REPORTING, MONITORING, AND EVALUATION.

(a) RESPONSIBILITIES OF QUALIFIED FINANCIAL INSTITUTIONS, QUALIFIED NONPROFIT ORGANIZATIONS, AND INDIAN TRIBES.—Each qualified financial institution, qualified nonprofit organization, or Indian tribe that

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operates a qualified individual development account program under section 303 shall report annually to the Secretary within 90 days after the end of each calendar year on—

(1) the number of eligible individuals making contributions into Individual Development Accounts;

(2) the amounts contributed into Individual Development Accounts and deposited into parallel accounts for matching funds;

(3) the amounts withdrawn from Individual Development Accounts and parallel accounts, and the purposes for which such amounts were withdrawn;

(4) the balances remaining in Individual Development Accounts and parallel accounts; and

(5) such other information needed to help the Secretary monitor the cost and outcomes of the qualified individual development account program (provided in a non-individually-identifiable manner).

(b) RESPONSIBILITIES OF THE SECRETARY.—

(1) MONITORING PROTOCOL.—Not later than 12 months after the date of the enactment of this Act, the Secretary shall develop and implement a protocol and process to monitor the cost and outcomes of the qualified individual development account programs established under section 303.

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(2) ANNUAL REPORTS.—In each year after the date of the enactment of this Act, the Secretary shall submit a progress report to Congress on the status of such qualified individual development account programs. Such report shall include from a representative sample of qualified individual development account programs information on—

(A) the characteristics of participants, including age, gender, race or ethnicity, marital status, number of children, employment status, and monthly income;

(B) deposits, withdrawals, balances, uses of Individual Development Accounts, and participant characteristics;

(C) the characteristics of qualified individual development account programs, including match rate, economic education requirements, permissible uses of accounts, staffing of programs in full time employees, and the total costs of programs; and

(D) information on program implementation and administration, especially on problems encountered and how problems were solved.

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SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $1,000,000 for fiscal year 2002 and for each fiscal year through 2008, for the purposes of implementing this title, including the reporting, monitoring, and evaluation required under section 308, to remain available until expended.

SEC. 310. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED FEDERAL PROGRAMS.

Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, an amount equal to the sum of—

(1) all amounts (including earnings thereon) in any Individual Development Account; plus

(2) the matching deposits made on behalf of such individual (including earnings thereon) in any parallel account,

shall be disregarded for such purposes.

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SEC. 311. MATCHING FUNDS FOR INDIVIDUAL DEVELOPMENT ACCOUNTS PROVIDED THROUGH A TAX CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to other credits) is amended by inserting after section 30A the following new section:

"SEC. 30B. INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

"(a) DETERMINATION OF AMOUNT.—There shall be allowed as a credit against the applicable tax for the taxable year an amount equal to the individual development account investment provided by an eligible entity during the taxable year under an individual development account program established under section 303 of the Community Solutions Act of 2001.

"(b) APPLICABLE TAX.—For the purposes of this section, the term 'applicable tax' means the excess (if any) of—

"(1) the tax imposed under this chapter (other than the taxes imposed under the provisions described in subparagraphs (C) through (Q) of section 26(b)(2)), over

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"(2) the credits allowable under subpart B (other than this section) and subpart D of this part.

"(c) INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT.—

"(1) IN GENERAL.—For purposes of this section, the term 'individual development account investment' means, with respect to an individual development account program of a qualified financial institution in any taxable year, an amount equal to the sum of—

"(A) the aggregate amount of dollar-for-dollar matches under such program under section 305(b)(1)(A) of the Community Solutions Act of 2001 for such taxable year, plus

"(B) an amount equal to the sum of—

"(i) with respect to each Individual Development Account opened during such taxable year, $100, plus

"(ii) with respect to each Individual Development Account maintained during such taxable year, $30.

"(2) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any taxable year beginning after 2002, each dollar

amount referred to in paragraph (1)(B) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section (1)(f)(3) for the calendar year in which the taxable year begins, by substituting '2001' for '1992'.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $5, such amount shall be rounded to the nearest multiple of $5.

"(d) ELIGIBLE ENTITY.—For purposes of this section, the term 'eligible entity' means a qualified financial institution, or 1 or more contractual affiliates of such an institution as defined by the Secretary in regulations.

"(e) OTHER DEFINITIONS.—For purposes of this section, any term used in this section and also in the Community Solutions Act shall have the meaning given such term by such Act.

"(f) DENIAL OF DOUBLE BENEFIT.—No deduction or credit (other than under this section) shall be allowed under this chapter with respect to any expense which is taken into account under subsection (c)(1)(A) in determining the credit under this section.

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"(g) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section (notwithstanding any termination date described in subsection (h)) in cases where there is a forfeiture under section 306(b) of the Community Solutions Act of 2001 in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

"(h) APPLICATION OF SECTION.—This section shall apply to any expenditure made in any taxable year beginning after December 31, 2001, and before January 1, 2009, with respect to any Individual Development Account opened before January 1, 2007.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

"Sec. 30B. Individual development account investment credit for qualified financial institutions.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

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Chairman SENSENBRENNER. The Chair recognizes the gentleman from Ohio, Mr. Chabot, the Chairman of the Subcommittee on the Constitution for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

While the First Amendment to the Constitution provides that the government shall not establish a particular religion or religion over non-religion, the First Amendment also provides that the government shall not prohibit the free exercise of religion. Consequently, government must ensure that members of organizations seeking to take part in government programs designed to meet basic and universal human needs are not discriminated against because of their religious views.

The simple principles of charitable choice, embedded in H.R. 7, the Community Solutions Act, which we're considering today, allow for the public funding of faith-based organizations that have demonstrated abilities to meet the basic needs of their neighbors in trouble, while also preserving the religious character of those organizations by allowing them to choose their staff, board members and methods. These principles also protect the rights of conscience of program beneficiaries by ensuring that alternative providers that are unobjectionable to them on religious grounds, are always available, and by prohibiting the use of Federal funds for sectarian worship, instruction of proselytizing. Charitable choice simply means equal access.

Four existing charitable choice programs have been passed by Congress and signed into law by President Clinton, the first which was part of the 1996 Welfare Reform Act. These programs have benefited thousands of persons in need without raising constitutional concerns in their implementation.

When the government takes so much from average citizens in taxes, little is left for those families to give to their local charities, including faith-based organizations. At the same time the government too often excludes out of hand faith-based organizations from the receipt of government funds, even when such organizations can help meet basic human needs most effectively, and in accordance with both the free exercise of religion and the establishment clause. Charitable choice programs seek to address this problem.

The charitable choice principles in H.R. 7 recognize that it is wrong to assume that religious people can't be trusted to follow rules against using Federal funds for proselytizing activities, and on that basis deny them equal opportunities. The Supreme Court has long recognized that, and now the Congress should too.

Charitable choice principles also recognize that people in need should have the benefit of the best social services available, whether the providers of those services are faith-based or otherwise. That is the goal, helping the tens of thousands of America's people in need. We're considering today whether the legions of faith-based organizations in the inner cities and local communities can compete for Federal funds to help pay the heating bills in shelters for women victims of domestic violence, to help them pay for training materials teaching basic work skills, to help them feed the hungry, and to provide other social service to those that are most desperate among us.

Some have tried to divert attention from the goal of helping people in need by raising the specter of federally-funded discrimina-

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tion. As the argument goes, religious organizations should not be allowed to maintain the religious character through hiring decisions if they receive Federal funds for the purpose of helping others. But the right of religious organizations to take religion into account when hiring staff has long been settled. That right is enshrined in the Civil Rights Act of 1964, and that right was upheld by unanimous Supreme Court, including Justice Brennan and Justice Marshall.

As discussions of charitable choice programs have progressed, however, some opponents have objected that Federal funds should not be allowed to find their way to organizations that maintain their religious character through hiring decisions. That is truly a radical notion. It is not a recipe for maintaining the status quo, but rather, a recipe for withdrawing Federal funds from, among other things, religiously affiliated colleges and universities, religiously affiliated hospitals, and religiously affiliated day care centers, all of which already receive Federal funds through a variety of Federal programs, and all of which are essential parts of our education, health care and child care systems.

The Constitution does not require rolling back essential services. Indeed, the Constitution and the free exercise clause allow Congress to improve essential services by letting religious organizations compete on an equal basis for Federal social service funds, which they will use to help the poor and the helpless and not to proselytize.

H.R. 7 makes clear that you can't discriminate against faith-based organizations, and that what they believe should have no bearing on how they are evaluated regarding what they can do. The Supreme Court has made clear that religious people should be trusted to follow rules against using Federal funds to proselytize, and it's time that Congress did the same.

Yield back the balance of my time.

Mr. BERMAN. Would the gentleman yield?

Mr. CHABOT. I'm out of time.

Chairman SENSENBRENNER. The time of the gentleman has expired. Who wishes to give the statement for the minority in the absence of Mr. Conyers? The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Today we wade into an area of the law which is, I think fair to say, in great flux. Certainly the split opinion by the Supreme Court in Mitchell v. Helms demonstrates just how closely divided the Justices are in the very difficult issues which surround entanglement between government and religion. While my sympathies are well known to my colleagues, the difficult issues with which the Court has been grappling, how much religious activity should be permitted in a publicly funded program? Which programs should be allowed to participate? What are the rights of program participants and employees vis-a-vis the publicly funded benefit? How much separation, if at all, should there be between the clearly sectarian and the clearly secular functions of an agency, are not trivial. We would do a disservice to the Nation if we simply wished these difficulties away and pretend that they did not exist.

I think Chairman Sensenbrenner is to be commended for standing up to what can only be described as tremendous pressure from the White House and from his own leadership, to lay aside his con-

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cerns about these important questions and simply push the bill along.

While I have many reservations about the language we have before us, indeed I think some changes made in the substitute are changes for the worse, and the risks this legislation poses to religious liberty, I do not think our disagreement should obscure the Chairman's very real efforts to begin to get this right.

I hope today's markup will be a first step. I would note that Senator Sentorum and former Senator Wolford have assembled a group from many different viewpoints on this issue to try to find some common ground. I will be joining that effort, and I would invite the Chairman to view today's markup and his efforts leading up to today as a first step, and I would hope the Chairman would join that effort also, to find common ground.

Religion should not divide this Nation. If anything, our common commitment to the freedom of conscience should be the one fundamental principle which unites all of us. I recall that when I was first elected to the Congress, one of my first efforts was to work for passage of the Religious Freedom Restoration Act, and last year for the Religious Land Use and Institutionalized Persons Act. Those efforts united everyone from the ACLU to the National Association of Evangelicals, from the Religious Action Center of Reform Judaism to the Christian Legal Society. In fact, many of the players in that legislation have been before the Constitution Subcommittee to present very differing views on this proposal.

I think certain principles are applicable. Certainly Madison's view is expressed in his memorial in remonstrance, that it is a violation of individual religious liberty to compel one citizen to support another faith is still valid, whether it applies to the hiring of teachers of religious instruction in Madison's time, or to funding other pervasively sectarian activities as Justice Thomas and three other Justices would permit today.

Mr. Chairman, under current law, pervasively sectarian institutions are perfectly free to compete for Federal grants for social programs on the same basis as non-sectarian institutions. They simply have to form a 501(c)(3) not-for-profit affiliate in today's law. That provision that they must fund a 501(c)(3) is designed to protect the sectarian organization, to protect the church from government intrusion and government audits and government regulation. This bill, unfortunately and very unwisely, would repeal that requirement and would allow the funding directly into church funds, which would lead to government audits of those funds and of the church's funds with which they are commingled unavoidably. That is a very unfortunate step which will lead to government regulation of churches and other institutions and is the first step on a very bad road.

Secondly, Mr. Chairman, this bill would extend the exemptions from the Civil Rights Act to activities involving the use of government funds, and under this bill, there would be enabled to be discrimination on the basis of religion and some other bases in the use of Federal funding, and I do not believe that if a church is running a soup kitchen for poor people, that they should be permitted to discriminate on a religious or other basis, in who can serve out the soup or who can drink the soup.

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Number three, this bill would permit the proselytization with government funds. It says the funds may not be used for proselytization, but it certainly does not preclude the church's funds from being commingled and used for proselytization in a program which is federally funded.

I think these are three fundamental breaches of the wall of separation of church and state.

Finally, on the subject of religious autonomy, religious institutions are being coaxed into a devil's bargain. There are precious few constitutional restrictions of the rules government may now apply to religious institutions. The day will come, when having permitted excessive entanglement between religious institutions and the government, there will be no protection for religion when government flexes its muscle. I do not understand why some of my conservative colleagues suddenly have so much trust in big government that they are willing to take such a phenomenal risk with freedom of religion.

I thank the Chairman and I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point, and I have an amendment at the desk.

[The statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I want to thank Chairman Sensenbrenner and Ranking Member Conyers for convening this important markup on H.R. 7, *"the Charitable Choice Act of 2001."* It is imperative that the Committee gives careful consideration to this legislation; we must evaluate its merits closely.

The basic elements of charitable choice, as found in 104 of the 1996 "welfare reform" law, provide that if a State administration Temporary Assistance for Needy Families (TANF) block granted programs, or Welfare-to-Work grants under TANF, the State may not, in the distribution of such funding or contracts discriminate against any religious organization. As a general matter, let me just say that we are confronting serious civil rights concerns with respect to government involvement in religion.

The legislation before this committee clearly raises some serious constitutional issues which must be addressed. The limited proposed changes put forward by the Bush administration do little to the constitutional and civil rights problems that exist within this proposal. The Charitable Choice provisions of this bill remain in conflict with the Establishment Clause of the First Amendment and would possibly undermine nearly sixty years of federal civil rights protections against most uses of federal money by persons engaged in employment discrimination based on religion.

Unfortunately, the charges incorporated into H.R. 7 are counterproductive or harmful and do little to change or address the issues even said he was committed to addressing. In short, the bill still allows federal funds to flow directly to religiously organizations and still in direct violation of the Establishment Clause. Although the U.S. Supreme Court has allowed religiously affiliated organizations to provide government-funded services in a secular manner, it has never allowed religious institutions to receive direct government aid. I am concerned that H.R. 7 would mandate that federal, State, and local governments award federally funded contracts to any religious organization, on the same basis as any other organization, without "impairing the religious character of the organizations." Given that no changes were proposed to this problem, H.R. 7 still limits the availability of a State to even question whether or not it will be funded a sectarian or secular program, Mr. Chairman.

Further, this bill attempts to address the employment discrimination problem in H.R. 7 by removing language that would allow religious organizations to require beneficiaries to "adhere to the religious beliefs and practices of the organization." However, the "religious practices" language does not change the fundamental civil rights problem with this provision. H.R. 7 would still put the government squarely in the business of funding discrimination. We must remember that the provision

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provides that religious organizations may retain their right under Title VII of the Civil Rights Act of 1964 to discriminate in employment by preferring members of their own religion.

Allowing federal funds to go to persons who discriminate based on religion undermines core civil rights protections that date back to the time of President Franklin Delano Roosevelt. Although current law allows religious organizations to use their own private money to prefer members of their own religion, they generally cannot use federal funds to discriminate. Congress and the Executive Branch have further extended the prohibition on federally funded religious discrimination by adding statutes and regulations affecting a wide range of federal contracts and grants programs. For sixty years, the basic principle has been that the federal government should not be financing religious discrimination against others.

Finally, while the Manager's Amendment deleted language allowing religious organizations to safeguard their "religious practices" the manager's amendment added other equally problematic new language striking out any provision (such as discrimination requirements) in any other government program which may be 'inconsistent with" or "would diminish" the religious organization's autonomy. This is all apparently quite confusing.

Mr. Chairman, we must proceed very carefully.

[The statement of Mr. Barr follows:]

PREPARED STATEMENT OF THE HONORABLE BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, the practice of engaging faith-based organizations in the delivery of social services using government funds is not new. This has been happening at the State and local level for years. Religious-oriented and faith-based programs are provided funds to do what local governments do not have the capacity to do—provide a full spectrum of successful community services. It is time the federal government follow the lead of our State legislatures and local governments, and put the best organizations to work for the betterment of our communities.

H.R. 7, the Charitable Choice Act of 2001, will significantly impact the degree to which prevention, treatment, and other social service programs reach and rehabilitate those most in need. The faith community has achieved results in ways in which other programs have not, mainly due to unique element of faith and how it impacts the structure and success of these programs. The Congress needs to support and encourage such programs that work, that is why I am pleased to be a co-sponsor of Congressman J.C. Watts' bill, H.R. 7.

Mr. Chairman, I'd like to address the concern being raised by opponents of the legislation who charge that, on enactment of H.R. 7, the federal government will begin discriminating against certain religions that aren't officially "approved" or "condoned" by government bureaucrats. Opponenets also charge this legislation will result in the federal government being in a position of supporting, or even establishing, a religion or religious preference. These charges are completely unfounded.

Charitable Choice is not a set-aside program; it is merely an opportunity to open up the system of delivery of social services, so that all *groups meeting the prescribed performance requirements* are allowed to compete fairly. If anything, under current law and practice, the government is practicing a form of discrimination by not allowing sectarian organizations to compete for government funds available to non-sectarian groups. Under this bill, any organization—religious or otherwise—would be able to compete, with the sole focus being on which groups best deliver services to the most needy in our communities. The religious affiliation or nature of an organization should not preclude it from receiving government funds, if such organizations successfully deliver needed services and so long as they meet the objective criteria the law requires.

Recently, I participated in a panel discussion on Faith-Based Initiatives, as a part of the President's Faith-Based Summit. The on-going goal of the summit is to establish networks of mutual support as we work to revitalize communities across the nation through faith-based and locally controlled initiatives.

Government must begin to view faith-based and community organizations as partners, not competitors—or worse, as some would have it, adversaries—in the fight against drug usage, poverty, teen pregnancy, and other social ills. There are millions across the country who need help. Under President Bush's initiative, as reflected in this legislation, faith-based organizations can now play a vital and needed in role in providing that help. H.R. 7 will make a significant and needed impact on improving the lives of all members of the community, and I strongly support its passage.

Chairman SENSENBRENNER. The clerk will report the——

Mr. CONYERS. Hold it, Mr. Chairman, hold it. You missed——

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The CLERK. Amendment to H.R. 7, offered by Mr. Sensenbrenner——

Mr. CONYERS. Hold it, Mr. Chairman. You missed the Ranking Member.

Chairman SENSENBRENNER. I had thought that the gentleman from New York had given the minority statement, but if the gentleman from Michigan wishes to say something, he is recognized for 5 minutes.

Mr. CONYERS. Thank you, sir. While I support the gentleman from New York entirely, I had prepared my own set of opening remark statements.

And it will only take a moment or two, because we all agree at the outset that religious organizations play a positive role in our communities, and we all want them to play a large and positive role in the lives of our children. That's a good starting point.

Now, there are some, however, that believe we can accomplish this goal by government mandate. Some believe we can have the best of both worlds, better social services, and more religion, without intruding on religious prerogatives. But what they fail to grasp is that we pass new laws—if we pass new laws requiring that our government begin funding religious—pervasively religious programs, we'll be sacrificing two of our Nation's most fundamental principles of justice and liberty. We will be saying that it's okay to use taxpayer funds to fund employment discrimination.

Now at this stage and time in the development of our Nation toward improved policies of race, do we really want to say that? By taking the religious exemption to the civil rights laws and extending it to charitable choice, as the measure before us unfortunately does, we'll be saying it's acceptable to openly discriminate against gays, or divorced persons, or unmarried pregnant women, or women who have had an abortion, or persons who use birth control, or even persons who favor reproductive rights, and against individuals married to a member of another race, or any manner of unusual personal sentiments that one may be entitled to have, but that we don't want grafted into the law.

And so that's why all the civil rights groups strongly have reservations about the measure before us. It has nothing to do with anything against religion, but they believe we do nothing to help poor and needy individuals if we indeed tolerate more discrimination. By approving the expenditure of government funds for pervasively-sectarian programs, this measure wittingly opens a very large hole in the wall separating church and state, and I say this because the safeguards included in this legislation are frankly largely illusory. The non-sectarian alternative provided in the bill, for openers, is totally unfunded. The language specifying that the religious aspects of government funded programs ought to be voluntary and offered separately will be impossible to enforce. The audit requirements will be of little or no benefit since they are self imposed and not subject to government review or any other outside review. So because our First Amendment, we have the most carefully and strongly, a very diverse Nation, maybe in the world. Our country has more religious diversity than anywhere else on the planet. Dr. Martin Luther King, Jr. once said in America, that the church is not the master of the State, nor is it the servant of the State, but it is the conscience of the State. My fear is that under

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this bill, religion may become the servant of the State rather than its conscience.

So if all of us gathered here really want to do something to help religion, you might try to include the proposed charitable tax deductions in their $2 trillion tax bill, which was so heavily slanted toward the wealthy. If you want to do something to improve social services, then we might consider increasing funding for drug treatment, for literacy, for child welfare. If you want to help our kids and our urban areas, we might try to figure a better way to rebuild our crumbling schools. And so I urge that we carefully and soberly consider the alternatives that will be presented before us during this discussion.

And I thank the Chairman very much.

Chairman SENSENBRENNER. The gentleman's time has expired.

The Chair would like to announce what the schedule will be for today. We are told that at approximately noon there will be votes on several amendments and a recommittal and passage vote on the Energy and Water Appropriations Bill currently pending on the floor. At that point in time, it is the intention of the Chair to adjourn for lunch, and we will come back either at 1:30 or 2:00 o'clock, depending upon when these votes are called.

It is also the intention of the Chair not to adjourn this Committee until we have a final vote on the motion to report the bill favorably, so I would urge the Members to be prepared to stick around because we're going to get this done today, one way or the other.

The Chair has an amendment at the desk and the clerk will report the amendment.

The CLERK. Amendment to H.R. 7 offered by Mr. Sensenbrenner.

Chairman SENSENBRENNER. Will the clerk pull the microphone closer to her?

The CLERK. Amendment to H.R. 7 offered by Mr. Sensenbrenner. Strike section 104 and insert the following.

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read and open for amendment at any point.

[The amendment follows:]

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AMENDMENT TO H.R. 7

OFFERED BY MR. SENSENBRENNER

Strike section 104 and insert the following:

SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) AIRCRAFT.—The term "aircraft" has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—The term "business entity" means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT.—The term "equipment" includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY.—The term "facility" means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE.—The term "motor vehicle" has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

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(b) LIABILITY.—

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION.—This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if—

(i) the use occurs outside of the scope of business of the business entity;

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(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if—

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

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(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(4) LIABILITY OF BUSINESS ENTITIES PROVIDING TOURS OF FACILITIES.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury to, or death of an individual occurring at a facility of the business entity, if—

(i) such injury or death occurs during a tour of the facility in an area of the facility that is not otherwise accessible to the general public; and

(ii) the business entity authorized the tour.

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(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether an individual pays for the tour.

(c) EXCEPTIONS.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION.—Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—A provision of this title shall not apply to any

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civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE.—This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act.

Strike title II and insert the following:

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1994A. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

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"(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

"(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

"(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

"(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

"(1) IN GENERAL.—

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"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4) shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for re-

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ligion or the organization's religious beliefs or practices.

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

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"(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act or the Family Violence Prevention and Services Act;

"(vii) related to hunger relief activities; or

"(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of

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secondary school diplomas and activities relating to nonschool hours programs, including programs under—

"(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998; or

"(II) part I of title X of the Elementary and Secondary Education Act; and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

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"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to—

"(A) alter its form of internal governance or provisions in its charter documents; or

"(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or name is of a religious character.

"(e) EMPLOYMENT PRACTICES.—

"(1) IN GENERAL.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect.

"(2) EFFECT ON OTHER LAWS.—Nothing in this section alters the duty of a religious organiza-

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tion to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in educational programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(f) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

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"(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (e)(4).

"(g) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (e)(4) shall not discriminate in carrying out the program against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

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"(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (f)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(h) ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and the performance of such programs.

"(2) LIMITED AUDIT.—

"(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts

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consisting of funds from the government shall be subject to audit by the government.

"(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(3) SELF AUDIT.—An organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

"(i) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytiza-

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tion. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart. A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection.

"(j) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(k) INDIRECT ASSISTANCE.—When consistent with the purpose of a program described in subsection (c)(4), the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. For purposes of this section, "indirect assistance" constitutes assistance

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in which an organization receiving funds through a voucher, certificate, or other form of indirect disbursement under this section receives such funding only as a result of the private choices of individual beneficiaries and no government endorsement of any particular religion, or of religion generally, occurs.

"(l) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate grantor'), acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

"(m) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of

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the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

"(n) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $25 million annually.

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Chairman SENSENBRENNER. And the Chair recognizes himself.

The proposed changes embodied in my amendment clarify current provisions and improve the legislation by refining the bill in ways that further protect it from constitutional challenge. I realize that some entered the room today intending to oppose reporting H.R. 7 favorably. However, I encourage all of you to consider the important changes made by this amendment, and to perhaps re-examine your position on the entire bill. I sincerely believe this amendment firms up the constitutionality of the bill and expands the options of individuals to receive government services from the type of organization they themselves are most comfortable with.

To begin with, this amendment would make it clear that when a beneficiary has an objection to the religious nature of a provider, an alternative provider is required that is unobjectionable to the beneficiary on religious grounds, that the alternative provider need not be non-religious in character. The same requirement appears charitable choice provisions of the 1996 Welfare Reform Act. If, of course, a beneficiary objects to being served by any faith-based organization, under this amendment, such a beneficiary would be guaranteed a secular alternative.

Existing charitable choice law contains an explicit protection of a beneficiary's right to refuse to actively participate in a religious practice, thereby ensuring the beneficiary's right to avoid any, and I mean any, unwanted sectarian practices. This protection is in 42 U.S.C. 204a(g), part of the Welfare Reform Act of 1996. Such a provision makes clear that participation, if any, in a sectarian practice is voluntary and noncompulsory. Further, Justices O'Connor and Breyer, in the Helms case, require that no government funds be diverted to religious indoctrination. Therefore, religious organizations receiving direct funding will have to separate their social service program from sectarian practices. If any part of a faith-based organization's activities involve religious indoctrination, such activities must be set apart from the government funded program, and hence, privately funded.

For example, a welfare-to-work program operated by a church in Philadelphia illustrates how this can be done successfully. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a government grant. During a free time period, the pastor of the church holds a voluntary Bible study in her office up on the ground floor, separate from where the social services activities take place. The sectarian instruction is privately funded and separated in both time and location from the welfare-to-work classes. And no one is required to participate in the Bible study in order to complete the readiness-to-work program.

The Department of Justice recommends that H.R. 7 be strengthened by amending Subsection (i) by including an even clearer statement of the voluntariness requirement, namely that, quote, "If the religious organization offers sectarian instruction, worship or proselytization, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart." Unquote. Also the amendment includes a requirement that a certificate shall be separately signed by religious organizations and filed with the government agency that disburses the funds, certifying that the organization is aware of and will take care to comply with this subsection.

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The amendment makes clear that a failure to comply with the terms of the certification may result in the withholding of funds and the suspension or termination of the agreement. The amendment also makes clear that volunteers cannot come in to a federally-funded program and proselytize or otherwise engage in sectarian activity. The amendment also includes Subsection (h)(1), to permit the review of the performance of the program itself and not just its fiscal aspect. This amendment is needed to prevent an unconstitutional preference for faith-based organizations as secular programs are subject to both types of review, meaning performance review and fiscal review.

I ask unanimous consent for four additional minutes.

Also, nothing in H.R. 7 prevents officials from implementing reasonable and prudent procurement regulations, and it is not uncommon for program policies to require providers to conduct periodic compliance self audits. Any discrepancies uncovered in a self audit must be promptly reported to the government along with a plan to timely correct any deficiencies. This amendment, which is a good suggestion from the Department of Justice, would codify such a self-audit requirement for faith-based organizations receiving Federal funds, and it would be prudent to add this additional provision to H.R. 7.

One of the most important guarantees of institutional autonomy is a faith-based organization's ability to select its own staff in a manner that takes into account its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into title VII of the Civil Rights Act of 1964. And charitable choice laws specifically provide that faith-based organizations retain this limited exemption from Federal employment nondiscrimination laws.

The amendment would replace existing language in H.R. 7 with the same language used in the 1996 Welfare Reform Act, which was signed into law by President Clinton, with an additional clause, making it clear that contrary provisions in Federal programs covered by H.R. 7 have no force in effect. This additional clause was not necessary in the '96 Welfare Reform Act because it codified charitable choice rules for a new program, whereas H.R. 7 covers already existing programs that may have conflicting provisions. This amendment is offered to avoid any confusion.

The language of the 1996 Welfare Reform Act did nothing, and I repeat, nothing to roll back existing civil rights laws, and that same language is used in this amendment. It is important for all of us to understand that this bill and the amendment do not change existing antidiscrimination laws one bit, either with respect to employers or beneficiaries. Faith-based organizations must comply with civil rights laws, prohibiting discrimination on the basis of race, color, national origin, gender, age and disability.

Since 1964 faith-based organizations have been entitled to the title VII exemption to hire staff that share religious beliefs. The courts, including the Supreme Court, have upheld this exemption. Do critics of these laws really want to revoke current public funding from thousands of child care centers, colleges and universities that receive Federal funds in the form of Pell grants, veteran's benefits, vocational training, et cetera, because these institutions hire faculty and staff that share religious beliefs?

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My amendment would also limit parties alleging that their rights under this section have been violated to injunctive relief, just as the 1996 Welfare Reform Act charitable choice provisions limit liability for violations of its provisions to injunctive relief.

This amendment has been requested by the National League of Cities, the National Association of Counties and the Conference of Mayors.

Finally, my amendment further solidifies the constitutionality of H.R. 7 and will assist in the practical implementation of its terms. I urge my colleagues to support it, and my time has now expired.

[The statement of Chairman Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

The proposed changes embodied in my amendment clarify H.R. 7's current provisions and improve the legislation by refining the bill in ways that further protect it from constitutional challenge. I realize that some entered the room today intending to oppose reporting H.R. 7 favorably, however, I urge you to consider the important changes made by this amendment and perhaps reexamine your position on the entire bill. I sincerely believe that the amendment firms up the constitutionality of the bill and expands the options of individuals to receive government services from the type of organization they are most comfortable with.

To begin with, this amendment would make clear that, when a beneficiary has an objection to the religious nature of a provider, an alternative provider is required that is unobjectionable to the beneficiary on religious grounds, but that the alternative provider need not be nonreligious. This same requirement appears in the charitable choice provisions of the 1996 Welfare Reform Act. If, of course, a beneficiary objects to being served by any faith-based organization, under this amendment such a beneficiary would be guaranteed a secular alternative.

Existing charitable choice law contains an explicit protection of a beneficiary's right to "refus[e] to actively participate in a religious practice," thereby insuring a beneficiary's right to avoid any unwanted sectarian practices.

This protection is in 42 U.S.C. §604a(g), part of the Welfare Reform Act of 1996. Such a provision makes clear that participation, if any, in a sectarian practice is voluntary or noncompulsory. Further, Justices O'Connor and Breyer require that no government funds be diverted to "religious indoctrination." Therefore, religious organizations receiving direct funding will have to separate their social service program from their sectarian practices. If any part of a faith-based organization's activities involve "religious indoctrination," such activities must be set apart from the government-funded program and, hence, privately funded.

For example, a welfare-to-work program operated by a church in Philadelphia illustrates how this can be done successfully. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a government grant. During a free-time period the pastor of the church holds a voluntary Bible study in her office up on the ground floor.

The sectarian instruction is privately funded and separated in both time and location from the welfare-to-work classes—and no one is required to participate in the bible study in order to complete the bible study in order to complete the readiness-to-work program.

The Department of Justice recommends that H.R. 7 be strengthened by amending subsection (i) by including an even clearer statement of the voluntariness requirement, namely that "If the religious organization offers [sectarian instruction, worship, or proselytization], it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart." Also, the amendment includes a requirement that a certificate shall be separately signed by religious organizations, and filed with the government agency that disburses funds, certifying that the organization is aware of and will take care to comply with this subsection.

The amendment makes clear that a failure to comply with the terms of the certification may result in the withholding of the funds and the suspension or termination of the agreement. The amendment also makes clear that volunteers cannot come into a federally funded program and proselytize or otherwise engage in sectarian activity.

The amendment also includes subsection (h)(1) to permit review of the performance of the program itself, not just its fiscal aspects. This amendment is needed to

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prevent an unconstitutional preference for faith-based organizations, as secular programs are subject to both types of review.

Also, nothing in H.R. 7 prevents officials from implementing reasonable and prudent procurement regulations, and it is not uncommon for program policies to require providers to conduct periodic compliance self-audits. Any discrepancies uncovered in a self-audit must be promptly reported to the government along with a plan to timely correct any deficiencies. This amendment, which is a good suggestion from the Department of Justice, would codify such a self-audit requirement for faith-based organizations receiving federal funds, and it would be prudent to add this additional provision to H.R. 7.

One of the most important guarantees of institutional autonomy is a faith-based organization's ability to select its own staff in a manner that takes into account its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into Title VII of the Civil Rights Act of 1964, and charitable choice laws specifically provide that faith-based organizations retain this limited exemption from federal employment nondiscrimination laws.

The amendment would replace existing language in H.R. 7 with the *same language used in the 1996 Welfare Reform Act*, which was signed into law by President Clinton, with an additional clause making clear that contrary provisions in the federal programs covered by H.R. 7 have no force and effect. This additional clause was not necessary in the 1996 Welfare Reform Act because it codified charitable choice rules for a new program, whereas H.R. 7 covers already-existing programs that may have conflicting provisions. This amendment is offered to avoid any confusion. The language of the 1996 Welfare Reform Act did nothing to "roll back" existing civil rights laws, and that same language is used in this amendment.

It is important for all to understand that this bill does not change the anti-discrimination laws one bit—either with respect to employees or beneficiaries.

Faith-based organizations must comply with civil rights laws prohibiting discrimination on the basis of race, color, national origin, gender, age and disability. Since 1964, Faith-based organizations have been entitled to the Title VII exemption to hire staff that share religious beliefs—courts, including the Supreme Court, have upheld this exemption. Do the critics of these laws really want to revoke current public funding from the thousands of child care centers, colleges and universities that receive federal funds—in the form of Pell Grants, veterans benefits, vocational training, etc.—because these institutions hire faculty and staff that share religious beliefs?

My amendment would also limit parties alleging that their rights under this section have been violated to injunctive relief, just as the 1996 Welfare Reform Act's charitable choice limited liability for violations of its provisions to injunctive relief.

This amendment has been requested by the National League of Cities, the National Association of Counties, and the Conference of Mayors.

This amendment further solidifies the constitutionality of H.R. 7 and will assist in the practical implementation of its terms. I urge my colleagues to support it.

Mr. CONYERS. A friendly inquiry, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman will state his friendly inquiry.

Mr. CONYERS. This sounds like a substitute amendment. It has all the earmarks of it, but it's called an amendment. So what's your response to my friendly inquiry?

Chairman SENSENBRENNER. The answer is that it was not offered as a substitute, and the Chair will stipulate that the inquiry was friendly.

Mr. CONYERS. Okay. Thank you so much.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, for what purpose do you seek recognition?

Mr. NADLER. I have two questions. I have a memo here from Americans United for Separation of Church and State, which make a couple of comments. I want to ask for your comment on their comments, whether——

Chairman SENSENBRENNER. I have not seen the memo, but go ahead.

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Mr. NADLER. I'll read it. It's only a paragraph. It says: "The new version", meaning the substitute, "leaves language intact that would allow for employment discrimination based on religious practices, tenets or teachings. The new H.R. 7 extends the title VII exemption, allowing religious-based employment discrimination to taxpayer-funded programs under charitable choice. If this exemption is extended in this way, it will result in the religious practices discrimination that is supposedly being stricken. The courts have recognized that institutions eligible for this exemption may discriminate in employment based on religious tenets and teachings in addition to simply refusing to hire someone of a certain religion."

In other words, under this—even under this changed H.R. 7, a publicly-funded program could discriminate in employment against an applicant or employee if they are, for example, unmarried and pregnant, divorced, gay or lesbian, or engaged in any other activity that violates the tenets and teachings of the group's religion.

My question is the following. A, does this correctly state what—what the bill as amended does?

Chairman SENSENBRENNER. No.

Mr. NADLER. And second—okay. And second, my understanding of the current law is that a church or other sectarian institution quite properly can discriminate on the basis of religion in its own religious officials, ministers, deacons and so forth, but that if you want to have a publicly-funded program, you cannot discriminate on the basis of religion in who maintains the soup kitchen, for example, and that this bill would allow that to happen. Is that—well, first of all, you just said, in what way is this description incorrect, and second, is my second question correct?

Chairman SENSENBRENNER. The description that you have read to me—and again, I do not have it in writing in front of me and I have not seen it—seems to indicate that the amendment that I have offered to this bill somehow either reduces civil rights protections to people who are seeking employment, or expands the exemption that was contained in title VII from the time it was initially enacted by Congress. That is not what the amendment does. The amendment keeps title VII exactly the way it is as it is applied to the organizations that would be qualified for grants under this bill.

Mr. NADLER. But does the tenets and—doesn't the tenets and teachings provision extend the exemption in title VII beyond where it was?

Chairman SENSENBRENNER. Well, you know, that would depend upon how the courts, you know, interpreted religious discrimination. You know, it is obvious that the original purpose of title VII was to protect a religious institution from a suit if they refused to hire as a clergy person someone not of their denomination, but it has been—that exemption has been expanded in further enactments by the Congress. Most recently, the 1996 Welfare Reform Law, that provided a religious institution that type of exemption from the antidiscrimination laws in hiring and employment.

Mr. NADLER. Thank you. Let me just suggest that—let me just make one comment. A lot of comment on this bill has been saying that, well, this doesn't change in certain respects what was done in the charitable choice provisions or the faith-based provisions of the Welfare Reform Act of 1996, it simply extends it into other pro-

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gram areas. I simply want to comment that at the time the Welfare Reform Bill was passed, there was a lot of debate about the Welfare Reform Bill, there was almost no debate about the charitable choice provision in the Welfare Reform Bill. It was just included, an omnibus bill, and some of us believe that that was a very wrong thing to do at that point, and it will be equally wrong to extend it. Yield back.

Mr. CHABOT. Mr. Chairman. Will you yield for a question, Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I rise in strong support of this amendment, and I'd like to commend President Bush for his leadership on this critical issue, and I applaud the President and Chairman Sensenbrenner, and Representatives J.C. Watts and Tony Hall for their good work in moving this legislation forward today.

Charitable choice proposals have received bipartisan backing in the past. I offer the words of former Vice President Al Gore, who strongly supported expanding charitable choice during his presidential campaign. In a major address to the Salvation Army, Mr. Gore couldn't have summarized the purposes of H.R. 7 and its provisions under this amendment more succinctly. In that address he stated, and I quote: "The men and women who work in faith-based organizations are driven by their spiritual commitment. They have sustained the drug addicted, the mentally ill and the homeless. They have trained them, educated them, cared for them. Most of all, they have done what government can never do, they have loved them." Unquote.

After referring to the charitable choice provisions in the 1996 Welfare Reform Act, Mr. Gore continued, quote: "As long as there is always a secular alternative for anyone who wants one, and as long as no one is required to participate in religious observances as a condition for receiving services, faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care. They can do so with public funds, and without having to alter the religious character that is so often the key to their effectiveness." Unquote.

That is precisely what H.R. 7 does. Proposed Subsection (f) guarantees a beneficiary an alternative to which they have no religious objection. Proposed Subsection (i) states clearly that if a religious organization offers religious instruction or worship, a beneficiary must engage in it voluntarily and separate and apart from the federally-funded program. And proposed Subsection (e) does just what Mr. Gore correctly prescribes, it allows churches to remain churches, even when they apply for and administer social service programs. And it does so in the same words used in the 1996 Welfare Reform Act, which Mr. Gore referred to explicitly and approvingly in his speech. Indeed, it was President Clinton who signed those same words into law.

I also offer the words of civil rights leader Rosa Parks in support of the amendment's proposed section (e). In endorsing H.R. 7 she

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stated it would reduce, quote, "discriminatory barriers currently suffered by the many grass roots churches who are unable to access funding for education and social welfare programs." Unquote. Of course for a church to be protected from discriminatory barriers that lie between it and funds for social service programs, it must be free to remain a church when it applies for such funds, and retain its current exemption from title VII.

That is precisely what this amendment does. Under this proposed amendment, H.R. 7 is constitutionally airtight. We even have a statement to that effect from the Fourth Circuit Court of Appeals, which just yesterday held that the Constitution allows the government to provide direct aid to a religious organization without having to resort to an examination of whether that organization is pervasively sectarian or not. The court held that as long as there are protections in place prohibiting Federal funds from being used for proselytizing activities, a faith-based organization must not be presumed to be incapable of following the rules against using government funds for worship activities, and on that basis, redlined from government programs. H.R. 7 explicitly prohibits the use of Federal funds for sectarian worship, instruction or proselytizing activities, just as the program upheld by the Fourth Circuit did in that case just yesterday.

This amendment will make H.R. 7 even clearer on this point by adding language stating that if the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart.

To see how the provision operates, we need only to look at how it works in the charitable choice program run by the Reverend Donna Jones of North Philadelphia, whose church runs a welfare-to-work program there. She testified before the Subcommittee on the Constitution and described how teachers in the program conduct readiness-to-work classes in the church basement week days, pursuant to a government grant. During a free time period, the pastor of the church may hold a voluntary Bible study in her office up on the ground floor. The sectarian instruction is therefore privately funded and separated in both time and location from the welfare-to-work classes.

Summing up, the amendment stands solidly within the four corners of the Constitution, and it opens wide the door to faith-based organizations wanting to apply for Federal funds to help pay the heating bills in shelters for women victims of domestic violence, to help pay for training materials teaching basic work skills, and to help them feed the hungry in soup kitchens. I urge my colleagues to join in supporting this important amendment.

Chairman SENSENBRENNER. The gentleman's time has expired. For what purpose the gentleman from California seek recognition?

Mr. BERMAN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. Mr. Chairman, as I struggle with this issue, I'd like to ask a question regarding your manager's amendment. Both Mr. Chabot and you have made reference to the protection for the recipient of assistance to, if he or she has an objection to the religious character of the referral, to obtain admission into a secular alter-

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native. But the base bill on H.R. 7, on page 15, speaks of that as an alternative that is accessible to the individual, and—I'm sorry. The base bill, H.R. 7 says that it is an alternative, including a non-religious alternative that is accessible to the individual, with the words "including a non-religious alternative." The manager's amendment says, "In an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds."

And I'm curious about why the wording was changed. It leaves at least an implication that a secular alternative, a non-religious alternative does not need to be available and——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. BERMAN. I'd be happy to.

Chairman SENSENBRENNER. The way this is worded is that if the beneficiary demands a secular alternative, they get it, you know, assuming there are no religious alternatives that are unobjectionable to the individual on religious grounds.

Mr. BERMAN. But, again, what's the purpose of deleting the phrase "including a non-religious alternative," a way of making clear that that is the case?

Chairman SENSENBRENNER. If the gentleman will further yield.

Mr. BERMAN. Yes.

Chairman SENSENBRENNER. It was tightening up the language with exactly the same effect. The determination on what type of a program is unobjectionable to the individual on religious grounds rests with the individual, and this was a tightening up of the language to further empower individuals to make their decision rather than having it being made by the government either as a matter of law or otherwise. The fact is, is that if there is no religious alternative that is unobjectionable on religious grounds, then a secular alternative must be provided.

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California has the time.

Mr. BERMAN. I'm sorry. I yield.

Chairman SENSENBRENNER. For what purpose the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

I'd like to commend the authors of the underlying legislation, but I guess more to the point for where we are, commend the Chairman for his thoughtful amendment. As the Chairman knows, over the last number of days, I am one of many who have tried to look carefully at many of the issues that are raised by H.R. 7. These are sensitive and weighty issues that are before us. And those who are concerned about the larger implications of the legislation we take up today, should be. We should tread carefully. We should tread sensitively. But, Mr. Chairman, as I take a look at your amendment, and review it carefully, I believe that you have done just that. I believe that you have done a great service to this legislation by using accepted standards and constitutionally settled principles to make sure that religious freedom is protected, and that some of the concerns which have been already expressed, are addressed fairly, honestly, and again, in a settled manner.

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I think that those of us who come from States like Wisconsin—and Wisconsin is known for its progressive tradition in the area of education reform and health care reform and welfare reform—we've seen what the community of faith can do in its delivery of services. We see the tremendous potential that is there when we utilize community leaders, when we turn to what is working, when we turn to those unsung heroes in neighborhoods all across this country. I believe that H.R. 7 will help us unleash the great potential of those community leaders, and I'm convinced that your amendment that you bring forward today will ensure that we do it in a way that is sensitive to the larger issues that have been raised. So——

Mr. GEKAS. Would the gentleman yield?

Mr. GREEN. Mr. Chairman, once again I commend you for your amendment, and encourage my colleagues to adopt the amendment.

Mr. GEKAS. Would the gentleman yield for a moment?

Mr. GREEN. Yes, I will yield.

Mr. GEKAS. The gentleman will recall that he and I had an extensive consultation on the contents of the present legislation, and the gentleman, I must say, went a long way in convincing me that some of my concerns about the accommodation to cults, which have no good purpose in most instances, and might be accommodated by this legislation. The gentleman, as I say, convinced me that the provisions here would prevent such an accommodation. Is he willing to confirm that?

Mr. GREEN. I certainly am. I believe we had that discussion as we were racing off to a vote. I believe that those who look carefully at this legislation and will look at the actual language and the protections that have been enshrined and the fact that this legislation is about opening up opportunities for groups to provide services that are currently being provided—we're not launching new services or programs here—will realize that these types of opportunities are probably not attractive to the vast majority of organizations that are out there because we have a number of accountability provisions in here, we have tough standards. Any organization which is applying here to provide services has to demonstrate that they can provide these services in a verifiable way. They have to agree to Generally Accepted Accounting Principles. I believe that there won't be that many organizations, especially early on, that will embrace these opportunities, but those that do, I think will go a long way towards shaping lives in communities and neighborhoods, so I am satisfied, particularly with the Chairman's mark, that we have addressed those concerns.

Ms. WATERS. Would the gentleman yield?

Mr. GREEN. I would be happy to yield what little time I have left.

Ms. WATERS. I was interested in the question that was raised by Mr. Gekas. He specifically asked you what would prevent cults, religious cults, from participating in this legislation. And I was listening very carefully to your answer, and your answer did not say that they could not. You suggested that maybe they won't want to do that because of accountability standards that you are alluding to that are in the bill that I don't see. Would you agree that any religious organization can participate because the bill specifically

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does not allow discrimination against any religious organization. Would you agree?

Mr. CHABOT. Will the gentleman yield?

Mr. GREEN. The gentleman would be happy to yield.

Mr. CHABOT. Thank you for yielding. You don't have much time left, but the bottom line is, is that those agencies——

Chairman SENSENBRENNER. Without objection, the gentleman from Wisconsin will be given 2 additional minutes.

Mr. CHABOT. Thank the gentleman. If you'll continue to yield.

This is one of the items that's been brought up for many of the folks that are opposed to the whole faith-based initiative. The bottom line is any of these organizations or so-called cults are free to try to get contracts to serve the public. What will ultimately be the determinative factor is what group, what organization can best provides services to the people at the most efficient cost. And so that's the bottom line answer. So anybody can try to compete for the available dollars out there, but what's going to have to be looked at is who can provide the services best. And they can look at track records, for example, of some of the organizations, what they've done in the past.

Mr. GOODLATTE. Would the gentleman yield?

Ms. WATERS. Will the gentleman yield for a question?

Mr. GOODLATTE. Would the gentleman yield?

Ms. WATERS. Would the gentleman yield for a question?

Mr. GREEN. I would yield time to Mr. Goodlatte.

Mr. GOODLATTE. I thank you, and I'll be very brief, but I would ask the gentleman from Ohio, is it not true that the same complaint that the gentlewoman from California raises exists in the secular society as well, that there are today secular organizations that compete for funds that are of extreme natures or may be offensive to people. They simply aren't of a religious sort. And they're allowed to compete for these funds today. I don't know why we should draw a discriminatory line between religious and non-religious organizations.

Ms. WATERS. Will the gentleman yield? That does not speak to my question. Would the gentleman yield?

Mr. GREEN. No. Actually, I would like to reclaim my time and try to answer the question that was first posed. First off, let's remember, as my colleague from Virginia has pointed out, that in current law, such groups could compete for dollars right now under certain programs. And there's an interesting study out that's referred to I think in some of our materials, which shows that the legitimate fear that many have raised in the past about such organizations entering into these programs has been completely unfounded.

The reason why is charitable choice is not a set-aside, it is not a pot of money which is going to enrich any group.

Chairman SENSENBRENNER. The gentleman's time has once again expired.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

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Mr. FRANK. First, the gentleman's question I think has not yet been answered. And I was struck by what seems to me an inconsistency. When the Nation of Islam was hired by many housing authorities some years ago to patrol the housing authorities—I think Baltimore was one and some others—to provide security, a number of people, some of whom are strong supporters—not necessarily on this Committee, but in the Congress—of this bill, were very upset, and indeed, political pressure was brought successfully I think on HUD to disallow the Nation of Islam from providing these services because some people thought it was a religious cult and they disagree very much with it. My guess it—I never went to any of the housing authorities to do an on-spot inspection—my guess is, judged by results, they probably did a very good job of keeping order in those housing authorities. And I think we ought to note to those who objected to the Nation of Islam being involved before, that this is the sort of legislation that will I think bring about their return, judged solely on results, and objections that people might have to various aspects of the way the Nation of Islam worships or what their theology is would be irrelevant. And I think that's just——

Mr. NADLER. Would the gentleman yield?

Mr. FRANK. Well, let me first—I want to ask—I'll yield briefly.

Mr. NADLER. Just one observation. The grounds for which the Nation of Islam was evicted, in effect, from those contracts, was that they discriminated on the basis of religion in who they hired as security guards.

Mr. FRANK. And that would now no longer be the case.

Mr. NADLER. That would no longer be——

Ms. WATERS. Will the gentleman yield?

Mr. FRANK. Let me just get to my other point here if I can, and then I'll get back to this. Because I wanted to ask the Chairman, and I appreciate his effort to try and make some improvements. On the bottom of page 17 there's a provision that may have been in the original one, that says, "No funds shall be expended for sectarian instruction, worship", or a word no one really has an easy time pronouncing—"proselytization." Now, I appreciate that, but here's my question. What if the organization that gets the money believes that a religious message is inherent in providing the service? What if people believe that you cannot get people to get off drugs or to stop violent behavior, or to stop imbibing alcohol excessively or doing other things? What if inherently in their message is, you do this by becoming a Christian, or a better Christian, or a better Muslim or a better Jew? Is that allowed under the bill?

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Yes.

Chairman SENSENBRENNER. The answer to the question is no it is not, and those organizations would not be eligible for funding under H.R. 7.

Mr. FRANK. Well, I appreciate that and I think that's a very important point to make. That is, you could not—and I'm told there are organizations that do this—so in addition to strictly trying to convert people, if in fact you sincerely believed that the way to cure the problem that had brought people to you, the way to inculcate in them better behavior, involved inherently a religious message,

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that could not be funded under this program; it would have to be done entirely separately?

Chairman SENSENBRENNER. Would the gentleman yield further? The gentleman's conclusion is correct. It is up to the religious organization to make a determination, if they can separate out their religious mission from their social services mission. If they can do that, they're eligible under H.R. 7. But if they can't do that, then they're not.

Mr. FRANK. And I appreciate the gentleman saying that, because again I want to make it clear. What we're saying is if the fact that they may believe that the social service mission cannot be accomplished in a non-religious context, that would make that ineligible for Federal funding. They're free to do that in other ways, but they could not get Federal funding to do that; is that correct?

Chairman SENSENBRENNER. If the gentleman would yield further. That is what the language of the amendment prohibits doing, and that is, is that if the program, under H.R. 7, is funded, the Federal funds cannot be used in any manner whatsoever for sectarian instruction, worship or proselytization, and those functions must be privately funded and they are voluntary, and the clients or beneficiaries have the opportunity to opt out or to seek another alternative.

Mr. FRANK. Well, let me say, I assume this would mean though that you don't kind of enroll in the program, and then when it gets to the religious part, you get out; you are entitled to a totally separate program?

Chairman SENSENBRENNER. That is correct.

Mr. FRANK. And it's not an in and out kind of——

Chairman SENSENBRENNER. That is correct, and the gentleman's time has expired. And let me find out how many votes we're going to have.

There will be two votes on amendments, recommittal after 10 minutes debate, and final passage. The Committee is recess until 1:30. Please be prompt because we'll start in right away.

[Whereupon, at 11:51 a.m., the Committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Chairman SENSENBRENNER. The Committee will be in order.

Pending at the time the Committee recessed was an amendment to the bill by the Chairman.

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. And before that, a parliamentary inquiry, Mr. Chairman.

Chairman SENSENBRENNER. State your inquiry.

Mr. SCOTT. When your amendment was introduced, was it introduced as an amendment or an amendment and unanimous consent to consider it as the original text for the purposes of amendment?

Chairman SENSENBRENNER. It was introduced as an amendment. The base bill is what is amendable.

Mr. SCOTT. And parliamentary inquiry?

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Chairman SENSENBRENNER. State your inquiry.

Mr. SCOTT. So if there are amendments to the manager's amendment, they should be introduced before it's adopted?

Chairman SENSENBRENNER. That's correct.

And with that happy note, this is a vote on a rule. Is there a vote on the previous question? Okay. I would ask the Members to come back promptly after voting, and the Committee stands in recess. The gentleman from Virginia, Mr. Scott, will be first to be recognized, so he should come back first. [Laughter.]

Chairman SENSENBRENNER. The Committee stands recessed.

[Recess]

Chairman SENSENBRENNER. The Committee will be in order.

Pending at the time of the recess was an amendment to the bill offered by the Chairman. Before recognizing the gentleman from Virginia, let me reiterate my announcement of this morning, that the Chair intends not to adjourn the Committee until we vote to report the bill one way or the other, notwithstanding the announcement that the House will suspend its work on the Agriculture Appropriations Committee between 6:00 and 7:00 p.m.

For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, for several weeks I've been asking the question about various versions of charitable choice as to whether or not under the versions that we would finally get to vote on, whether or not you can proselytize during the program or not. We heard—we read reports that Mr. DeJulio, the Director of the Faith-Based Office in the White House—we heard quotes from him that said that pervasively sectarian programs could in fact be funded. We heard from the chief sponsor of the bill, that religion is a methodology, and therefore, obviously, that's what you were paying for. We've heard references to Democratic leaders as to what their position is on this. The Democratic platform that was adopted by the Democratic Convention last summer, supported faith-based funding with the provision that no proselytization should be funded, and no funds should be used in a discriminatory manner.

Mr. Chairman, your manager's amendment finally answers the question one way or another, and says that there shall be no proselytization during the program. It is consistent with the views expressed by the Department of Justice, where they said there should be no proselytization paid for by Federal money, nor volunteers or any other way during the government sponsored program. In fact, Mr. Chairman, the manager's amendment, in terms of proselytization is a restatement of present law without charitable choice. Any program that can get funded under the manager's amendment can also be funded now with one exception. And that is organizations that do not want to comply with civil rights laws. The requirements that symbols can be there, under the manager's amendment, is a question of constitutional implications. If the Supreme Court requires them to take—them to be taken down, then the statute we're adopting can't cure that. If the Supreme Court does not allow the symbols to be taken down, then of course, you can do it under present law.

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What we have right now is a question of whether or not organizations can discriminate, and that's really all that's left in the bill. The main effect, the main effect, after we've gone through the constitutional process of which religion will get funded and which will not, the main effect is that organizations receiving Federal funds can discriminate. The sponsors of federally-funded programs under the bill can discriminate based on religion, and that's really what this debate is all about, nothing more. The extent to whether teachings and tenets are also covered by the right to discriminate is a technical question that we can consider, but after you've stripped it to its bare essentials, the only thing the bill allows not that's not allowed under present law, is the right to discriminate based on religion.

We will have amendments that will focus on this simple question as to whether the sponsor of a federally-funded program can discriminate based on religion for the first time in decades, so that we will consider that question as we consider amendments.

Thank you, Mr. Chairman. I yield back the balance of my time.

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. Are there amendments?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman's recognized for 5 minutes.

Ms. LOFGREN. I wanted to comment briefly on the discussion that was had before the lunch break, which has to do with whether or not cults could be funded under this act. And I guess in a way I'm a little bit reluctant to use the word "cult" because in some cases, one person's cult is another person's faith. But in looking at this, I think we are clearly going to be opening ourselves up to a situation that I think the proponents of this measure do not desire, and perhaps have not fully envisioned.

In thinking about religions that are not the majority religion in the United States, under this act and with the manager's—with the Chairman's amendment, we note that you cannot require a faith-based group to remove their religious scriptures, arts, icons and the like, and the only way a recipient of the services can get out of being served by the faith-based group is if they have objections to the religious character of the organization. It's not clear to me that—and maybe this is a question for the Chairman—let's say I'm receiving child care as part of the federally-funded welfare program, and in California, a large California county, it's the wickens who are providing the child care, which is actually not an improbable situation in some parts of the State. Can I require that a separate child care provider be established because I don't like the wickens? And if then I'm sent to the Catholics, can I require that still another child care be provided until I finally get to the Lutherans, which is what I am? Is that—would that be the impact of this amendment?

Chairman SENSENBRENNER. The answer to your question is no. Anybody who applies for—to receive funds under this program, either directly or indirectly, will have to adhere to all of the qualifications of the program, many of which already exist. We're not

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creating new social services programs in this bill, but what we are doing is opening up the eligibility to faith-based organizations to provide those types of social services.

Ms. LOFGREN. Well, reclaiming——

Chairman SENSENBRENNER. The opt out and choice provisions that are contained in the manager's amendment, you know, make it clear that nobody will be forced to go into a faith-based program, and while it is not stated expressly, if someone objects to all faith-based programs, there has to be a secular alternative.

Now, you know, to answer you question, if you don't like denomination 1, you can object to that, and then go to 2 or 3 or 4, until you finally get a denomination that is of your choosing. There's nothing in this legislation that requires a local government to do that. If the Lutherans don't want to put on one of these programs because somebody insists upon going to a Lutheran program, the Lutherans don't have to put on one of these programs.

Ms. LOFGREN. No, that's—if I may, that is clear. But I guess what I'm—what I'm struggling with is there are a whole—I mean I probably have more Buddhists than Baptists in my district, and there are some people who don't believe in what the Buddhists believe, and they are a likely provider of services. And it's not clear to me that we will avoid a result where people who have one faith are required to—because there's a——

Chairman SENSENBRENNER. The gentlewoman yield?

Ms. LOFGREN. Yes, I will.

Chairman SENSENBRENNER. Under this bill there is no requirement that somebody who objects to receiving secular social services in a Buddhist-owned facility and sponsored by a Buddhist congregation or Buddhist faith-based organization, or however they are organized, to have to enroll in that social services program. There has to be, under H.R. 7 and the Chairman's amendment, an alternative that is non-objectionable to the individual seeking the social services.

Ms. LOFGREN. All right. So if I am understanding the Chairman correctly, every—I was in local government for a lot longer than I've been in Congress, and we actually funded a lot of social services with faith-based groups, I mean from the Catholic Charities, the Cathedral of Faith and many, many others. We also had secular programs that we funded for the same activities. So if you're a local government, you better make sure that you have a non-faith-based organization, or else any one person can throw chaos into your program by objecting, and then you would fail to have an alternative.

I have problems with this in many respects, but I guess one of the overlying things I fail to understand is why, in practically every county of this country we're already funding services through faith-based groups, we need to do this. I mean, but I see my time has expired. And I thank the Chairman for allowing me to strike the last word.

Mr. SCHIFF. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff. For what purpose do you seek recognition?

Mr. SCHIFF. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

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Mr. SCHIFF. I'd like to speak briefly to the premise of direct government funding of churches and synagogues and other religious institutions.

The separation of church and state was designed out of a desire to avoid the excessive entanglement for two reasons. One, it was to protect the people from the government's use of its coercive power for religious purposes. And second, it was designed to protect people's free exercise of religion by guarding churches from unwarranted government intrusion. Direct funding of religious institutions, whether characterized under the beneficent sounding, wonderfully alliterative expression, charitable choice, does not serve either priority of the founders. In fact, I believe, although well meaning, it undermines both church and state, and in so doing, undermines our basic freedoms.

How does it do this? How does it undermine the State? Fundamentally, I believe it precludes real accountability in the delivery of services. The principle of greater funding with accountability that we all subscribe to is sacrificed. Would this Committee or any Committee call in the GAO to audit, investigate the performance of the Catholic Church in delivering services, or the Mormon Temple or a Jewish synagogue or any other religious institution, there would be the most natural sensitivity not to pry, a sensitivity that does not exist in the scrutiny we would so willingly permit of a doctor's billings under Medicare or a military contractor, or any other secular provision of services in exchange for Federal funds.

But how does it undermine the church? And I think this is the more serious concern. Fundamentally, I believe it would compromise the mission of a religious organization in an effort to get Federal dollars. Mr. Frank's earlier point that this would preclude a church, for example, from arguing that a belief in the Lord is essential to progress in a person's life that is being served, whereas the argument that these objectives can be met without a belief in God would be federally funded, basically tells a religious organization that as long as they do not espouse a belief in the Lord as a component of recovery, it will get Federal funding. Is this really what we wish to do? Do we wish to turn religious institutions into vendors of government programs? Do we want them competing with each other for grants and a politicalization of religious institutions that would accompany that? Would it be appropriate for Members of Congress to write in support of one church's grant application or against another? Which churches will qualify for funding? What litmus test will be given? Do they need to be conventional? Can they be unconventional?

I want to congratulate the administration and the Chair for the creative thinking in dealing with new ways of wrestling with old challenges, but sometimes, often in fact, the founders get it right. In the establishment clause it says "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." No law respecting an establishment of religion. We are talking about direct government funding of religion. Do we really believe that Jefferson or Madison would have countenanced direct government funding of churches and synagogues? Neither Jefferson nor Madison was hostile to religion. Both were protective of religion, and because protective, they would have believed this idea ill conceived. I urge a no vote.

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Chairman SENSENBRENNER. Are there amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Scott No. 1.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Scott, Mr. Conyers, Mr. Nadler, Mr. Frank, Ms. Jackson Lee, Ms. Waters, Ms. Baldwin and Mr. Watt.

Page 13, strike line 13 and all that follows through line 23 on page 13. Redesignate accordingly.

[The amendment follows:]

Scott #1

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott, Mr. Conyers, Mr. Nadler, Mr. Frank, Ms. Jackson-Lee, Ms. Waters, Ms. Baldwin, and Mr. Watt

Page 13, strike line 13 and all that follows through line 23 on page 13.

Redesignate accordingly.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes in support of his amendment.

Mr. SCOTT. Mr. Chairman, it is ironic that we would consider H.R. 7 just 2 days after marking the 60th year anniversary of President Roosevelt's signing of Executive Order 8802. Mr. Chairman, that Executive Order provides in part, "whereas there is evidence that available or needed workers have been barred from employment in industries engaged in defense production solely because of considerations of race, creed, color or national origin, to the detriment of workers' morale and of national unity", and goes on to order, "all contracting agencies of the government of the United States shall include in all defense contracts hereafter, negotiated by them, a provision obligating the contractor not to discriminate against any worker because of race, creed, color or national origin."

Mr. Chairman, today we witnessed the erosion of 60 years of civil rights law. This amendment that I'm offering strikes a provision in the bill that allows sponsors of Federal programs to discriminate on the basis of religion, and specifically overrides any contradictory statutes. Religiously-affiliated organizations, including Catholic Charities, Lutheran Services, Jewish Federations, and a vast array of smaller faith-based organizations, now sponsor government programs, and contrary to President Bush's recent assertions, I am unaware of anyone who opposes these organizations operating public programs and providing services. They are funded like all other

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private organizations are funded. They are prohibited from using taxpayer money to advance their religious beliefs, and they are subject to civil rights laws. In fact, the bill before us restates the present law with the exception of the application of civil rights laws. Any program that can get funds under the manager's amendment can get money now, except those who refuse to comply with civil rights laws.

Now, there was a time when some Americans, because of their religion, were not considered qualified for certain jobs. In fact, before 1960 it was thought that a Catholic could not be elected President. And before the civil rights laws of the 1960's, people of certain religions routinely suffered invidious discrimination when they sought employment. President Roosevelt's Executive Order 60 years ago, and the civil rights laws of the 1960's, outlawed schemes which allowed job applicants to be rejected solely because of their religious beliefs.

Now, some of us are frankly shocked that we would even have a debate as to whether sponsors of Federal programs can discriminate in hiring. But then we remember that the passage of the civil rights laws of the 1960's was not unanimous, and it is clear that we're using charitable choice to re-debate the passage of basic anti-discrimination laws. Now, I believe that publicly-funded employment discrimination was wrong in the 1940's and 1960's, and it is still wrong.

Now, some have suggested that organizations should be able to discriminate in employment, to select employees who share their vision and philosophy. Under current civil rights laws, you can discriminate against a person based on their views on the environment, views of abortion or gun control, you can select staff based on their commitment to serve the poor or whether you think they have compassion to help others kick drugs. You can discriminate based on a criminal record or credit record or educational achievement. But because of our sorry history of discrimination against certain Americans, we had to establish protected classes, and under present law you cannot discriminate against an individual based on race, sex, national origin or religion.

Now religious organizations were given an exemption to consider religion and hiring with church funds. We have not—but we have not allowed sponsors of federally-funded programs to reject applicants for jobs paid for with Federal money solely because of their religion.

Mr. Chairman, charitable choice represents an historic reversal of decades of progress and civil rights law enforcement. We established the policy years ago that we should not discriminate based on religion. The President and the supporters of charitable choice have promised to invest needed resources in our inner cities, and they can do so today under present law. But it is insulting to suggest that they will not make those investments unless we turn the clock back on our civil rights.

And I hope, Mr. Chairman, we'll adopt the amendment. Yield back the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. You're recognized for 5 minutes.

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Mr. CHABOT. Thank you. I rise in opposition to this amendment. This amendment strikes the same language used in the 1996 Welfare Reform Act. It's part of all existing charitable choice laws now. It would override the title VII exemption. All we want to do is preserve the status quo. This amendment proposed to change it. We agree withthe unanimous Supreme Court that upheld the title VII exemption as written, not as is proposed under this amendment which would change it. This is a change in existing law that would upset the balance struck over the past 30 years.

One of the most important charitable choice principles is the guarantee of institutional autonomy that allows faith-based organizations to select staff on a religious basis. H.R. 7 preserves this guarantee, and it's supported by no less a civil rights leader than Rosa Parks. As I stated before, even Al Gore, during his campaign, said that, quote, "Faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care. They can do so with public funds and without having to alter the religious character that is so often the key to their effectiveness."

And therefore, I rise in opposition to this amendment. Yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose gentleman from Michigan seek recognition? 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman. I rise in support of the amendment, which I'm proud to add my name behind Mr. Scott's.

I'll only take a few minutes, Mr. Chairman. But I notice that our colleague, the gentleman from Texas, Chet Edwards, has been sitting in the audience for many an hour, and I wonder if we could allow him to come up and take the vacant seat next to Mr. Schiff for whatever time he may remain, if there's no problem with that.

Chairman SENSENBRENNER. Without objection, provided he does not exercise undue influence upon Mr. Schiff. [Laughter.]

Mr. CONYERS. Mr. Schiff may be a hopeless case from your point of view already, Mr. Chairman. I doubt if he'll be able to do much with Mr. Schiff one way or the other.

But at any rate, ladies and gentlemen, from my perspective, the his amendment is the key to whether we ought to have a bill or not. I think we've—I think that we could see our way through—I hate to use that term that starts with a "P" because it's been mispronounced so much, and I've taken exception to everyone that has mispronounced it, so I'm not going to even try to do it. But let me point out to you that if we were to follow the recommendations of the Scott amendment, I think we would—I think we could all work this out very quickly in the very short time that's left between now and the time we go into recess. And for that reason, if not on the great substantive reasons that I would offer, I ask the generous consideration of everyone in the Committee, because this—this is troublesome, and I think this Scott amendment cures it.

And I'd like everyone to know that I've been joined in support of this by Ms. Rosa Parks, whose name has been raised more times than anybody else not a Member of the Committee. So if everybody would think carefully about the words and the meaning of the Scott amendment, quickly glance at the short letter of Rosa Parks her-

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self, which I ask unanimous consent to put in the record at this time.

Chairman SENSENBRENNER. Without objection.

[The letter of Ms. Parks follows:]

Rosa & Raymond Parks Institute for Self Development
65 Cadillac Square Suite 2200 Detroit, MI 48226 (313) 965-0606 Fax (313) 894-3566

June 26, 2001

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2142 Raybum House Office Building
Washington, DC 20515

Dear John:

As you know, I support legislative efforts to enhance the ability of religious and other faith-based groups to receive government funding in order to respond to community problems.

I believe that helping grassroots churches access this funding can be fully consistent with our civil rights laws and the First Amendment This is why I want to express my support for amendments you plan to offer when the House Judiciary Committee considers HR. 7 which would insure that government funds provided to religious organizations are not used to keep churches or other non-profits from working together for the betterment of us all. We do not want to change the 1964 Civil Rights Bill that we fought so hard to achieve.

Churches already know that they cannot use food or other services they may provide as an excuse to force people to accept their religious views, while using government funds. I am certainly in support of making sure that does not happen.

John, we have both spent our entire lives fighting against discrimination and in favor of the protections set forth in our Bill of Rights. The last thing we would want to do is permit H.R 7 to be used to narrow the civil rights laws or to intrude on the First Amendment. It is my hope that adoption of these amendments will help broaden the bipartisan support for the bill and allow the measure to be quickly passed into law so that churches can increase their role in fighting poverty and other urban ills.

God bless you and your good work,

Peace and Prosperity

Rosa Parks

Rosa Parks

Mr. CONYERS. And I will return my time.

Mr. HUTCHINSON. Mr. Chairman, Mr. Chairman, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from Arkansas seek recognition?

Mr. HUTCHINSON. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

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Mr. HUTCHINSON. I want to thank the gentleman from Michigan for introducing the letter of Rosa Parks. I think that is very helpful. I read that, and I appreciate that introduction. I also appreciate the tone of this discussion today. I think this is one of the most important and fundamental issues that we can debate in terms of the Constitution and some very important principles. I have always believed that the government should not be directing the churches as to what to do, and religious organizations. And I think to accomplish that goal, you have to make sure that there's not too much entanglement, there's not a potential for overreach by the government in terms of what the churches or religious organizations do.

I look at the amendment that's been offered by the gentleman from Virginia, and that would delete the protection of the religious organizations from the exemption that's already provided in the civil rights law. The—Mr. Chabot, the Chairman of the Constitution Committee, has referred to the fact that this exemption was included in the charitable choice provisions of the Welfare Reform Law. It was also, obviously, originally provided in the 1964 adoption of the civil rights laws. And so I see that this is simply preserving the status quo that has been recognized in our civil rights laws.

It's important to note, in my judgment, that the paragraph that the amendment designs to remove, provides that the religious organization exemption regarding employment practices shall not be affected by its participation in these programs. It only applies to employment practices, which is the exemption that was already existing under the civil rights laws.

Mr. WEINER. Will the gentleman yield?

Mr. HUTCHINSON. Let me go ahead and finish here if I might, then I'd be happy to yield.

And then there is a very important section that follows, that nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color and national origin. I think what the Chairman has done in working very hard with the administration and others, is to craft a good balance in preserving the autonomy of the religious organization, but also assuring the preservation of a status quo in regard to our civil rights protections, and part of that protection is to allow the religious exemption in regard to employment practices. Otherwise, you'll be altering the nature of the religious organization itself.

And I think that the Supreme Court's review of this is important. It's my understanding that they did review this similar type of exemption from the Welfare Reform Law and upheld that, and that it's a good balance that has been maintained. I think it is a very tough question that we're addressing, but I think that what the Chairman has done and others have done is to maintain that balance. And so I would—I believe it's appropriate that the amendment that's being offered be rejected. I'd be happy to yield.

Mr. WEINER. Mr. Hutchinson, yeah, I am deeply divided on this bill, and one of the four things I made note of that I was interested in seeing if we could have corrected is something that is—I notice in your response, and Mr. Chabot's also, there's no addressing of

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the merits of being able to discriminate based on religion. Later on in the bill it talks about—it talks about the fact that these people are not going to be doing sectarian instruction. They aren't going to be involved in worship. They aren't going to be proselytizing. A great deal of energy has been put in by the sponsors of this to say that those things will not be happening.

Can you give me a real-life example about why it would be desirable for a church to be able to run a soup kitchen, hire someone—discriminate against someone in hiring based on their religion or their race? Why would you want that? Why not take that exemption—nothing in this amendment strikes it from the law. It only strikes it from who would be the beneficiaries of the assistance.

Mr. HUTCHINSON. Reclaiming my time.

Mr. WEINER. Certainly.

Mr. HUTCHINSON. It's very important to note that what you just cited about discrimination based upon race, that is not allowed. Clearly, this provision, which is on page 13, says that nothing in this section alters the duty of a religious organization to comply with the non-discrimination provisions in title VI, which prohibits discrimination on the basis of race.

Mr. WEINER. Well, if you'll forgive me then, well, why don't you address the part about discriminating against based on their religion? Why is it desirable to allow them to do that in this context, since it's a non-religious function they're performing?

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I think the gentleman's amendment is a very important one. We are talking here, not about altering a religious organization's structure. We're not remotely suggesting that you will tell people who they can hire as members of the clergy or what conditions will be imposed there. What we are talking about is a religious organization, deciding voluntarily, in addition to its ongoing religious mission, to apply for Federal funds to provide a social service.

Now, the Chairman, in a very cogent and clear-cut way, said, that in doing that, the religious organization may not inculcate its religion. It can be motivated by its religion. Obviously, it will be. And that's to the benefit of our society, that there are people who are religiously motivated to help others. But the Chairman made it very clear, that insofar as their accepting the Federal funds—and this is what the gentleman from New York was alluding to—they will not be carrying out the religious functions. So then the question is why should they be able to discriminate, the gentleman from Arkansas says, and I think that's probably right, they won't be able to discriminate based on race, but he didn't answer the question of the gentleman from New York as to why they should be allowed to discriminate based on religion. So that's the fundamental question: why should you be allowed to take Federal money to provide a service which, as the Chairman has pointed out, will not be religious in its content, it will not be sectarian, it will not proselytize?

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Why should you then be able to say, "We're not going to hire you if you are not of our religion?" That's the question that is unanswered.

There are further questions that we have. There is also this list, the non-discrimination statutes, that must be followed. They are the Federal statutes. Some States have decided to go beyond what the Federal Government has done in preventing discrimination, and I would ask, because it's not clear to me, is this preemptive of State employment discrimination laws other than those which might track the Federal one? I would yield to anyone who could give me the answer to that. By specifying the Federal anti-discrimination laws that apply, does this mean that State anti-discrimination laws which cover subjects not covered under the Federal law, would be preempted in effect, and the religious organizations would not have to apply—follow them? I would yield to anyone who would answer that.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Yes, Mr. Chairman.

Chairman SENSENBRENNER. I'll answer the second part of your question and I'll seek my own time for the first part. The second part, relative to Federal preemption. Federal law applies where Federal funds go, and State law does not apply. If the religious organization accepted State funds, and by implication, local government funds, then State laws would apply to them as well.

Mr. FRANK. So it would preempt State laws or allow them to——

Chairman SENSENBRENNER. It would allow them to ignore State laws when Federal—only Federal funds are used, but would not allow them to ignore State laws when State funds are used.

Mr. FRANK. What if there was a mix of Federal funds and private funds?

Chairman SENSENBRENNER. Then they could ignore State laws.

Mr. FRANK. That seems to me to be a serious flaw and hardly consistent with the sporadic States' rights professions that we hear from the other side. The principle ought not to be that you can get out of following a State's enactment because you have accepted some Federal funds, and the Chairman has very straightforwardly made it clear. If you get some Federal funds and you have some of your own funds, you might—not might—you are then allowed to ignore a State law that would otherwise be binding on you. I do not think we ought to be embodying the principle that the acceptance of Federal funds somehow then cancels State law.

There are a number of things. For instance, the States get highway money from the Federal Government. Does that principal apply? Should we then say that a State highway department can ignore its State's own laws with regard—or contractors getting the State highway money? That, really, frankly, surprises me in the very radical nature of a repudiation of what the State can do. In other words, you are in the State and you have set a policy that there will not be discrimination based on this or that or the other, other than what the Federal Government does. And an organization in your State, which decides to do a program, and it's got 70 percent of its money, and it gets 30 percent of the Federal money, that Federal money now becomes a license to ignore State anti-discrimination law. If there's a conflict between the laws, then the Federal would apply, but I had not previously thought it would be

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the case that accepting Federal funds allowed you to violate State law. And I think that is a very grievous flaw which the amendment would deal with.

Let me say there's one other question that I had.

Chairman SENSENBRENNER. The gentleman's time has expired. The Chair moves to strike the last word, and recognizes himself for 5 minutes.

The gentleman from Massachusetts knows that there is no substantive change in anti-discrimination laws that is proposed by this bill. The title VII, with its exemption for religious hiring by religious institutions, is no stronger and no weaker under H.R. 7 as amended, then it is under the present law.

What the Scott amendment proposes to do is to go beyond the current law, to go beyond the 1996 Welfare Reform Act similar provisions, and to apply a test which makes it illegal to discriminate by religion in hiring.

Now, I will answer the questions from the other side on why this exemption is necessary. In many cases, the same people that are hired by the church will perform the social services activities. There is a prohibition against commingling funds. I would imagine that they would receive two paychecks based upon the time they spend in the social services sector versus the time they spend in the religious sector. Many of the very effective faith-based religious programs in the social services area will not be hiring new people, and that is why it is important that this exemption be maintained as it has been in the law since 1964, and for that reason I would hope that the amendment by the gentleman from Virginia would be rejected.

Mr. FRANK. Would the gentleman yield?

Chairman SENSENBRENNER. And I yield.

Mr. FRANK. I thank the Chairman. I would disagree that this doesn't expand the title VII exemption on this basis. The title VII exemption, as I understand it, is for religious activities. But as the Chairman himself said, money can be accepted under this program for non-religious activities. In fact, the Chairman's own language says that money——

Chairman SENSENBRENNER. Well, reclaiming my time, that issue was debated and resolved in 1996 with the Welfare Reform Act, which was signed by President Clinton. And in the last campaign, the Democratic candidate for President, Al Gore, said faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care; they can do so with public funds and without having to alter the religious character that is so often the key to their effectiveness.

Mr. FRANK. The gentleman yield?

Chairman SENSENBRENNER. Now, part of that religious character is being able to hire people of one's own religious denomination. What my amendment to this bill does is very clearly saying that with the programs that are funded through H.R. 7, you cannot proselytize or have any type of sectarian worship or instruction involved in it, but it seems to me that we don't want to put ourselves in a position of forcing the Catholic Church to hire a militant atheist for its social services program, having a Jewish faith-based organization having to hire an evangelical fundamentalist Protestant,

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or having a mainline Protestant denomination having to hire someone who worships the sun.

Mr. FRANK. Will the gentleman yield?

Mr. SCOTT. Would the gentleman yield?

Chairman SENSENBRENNER. I'm happy to yield to the gentleman from Massachusetts.

Mr. FRANK. First, I want to reject the notion of infallibility, whether it is presidential or vice presidential. Gore and Clinton can say what they want. It doesn't establish the merits. I think the gentleman——

Chairman SENSENBRENNER. If the gentleman will yield, we already established in this Committee that President Clinton was not infallible a couple of years ago.

Mr. FRANK. I said that. You've just—— [Laughter.]

Mr. FRANK. You've just resurrected him. But the point I would make is this: the gentleman has been—he says, should a Jewish organization have to hire an evangelical Christian, for example? Yeah. I think if you're taking Federal money and you're doing a non-religious function, yes, it ought not to be the case that a Jewish organization can refuse to hire an evangelical Christian or vice versa.

Chairman SENSENBRENNER. Reclaiming my time, I believe that you and I have a philosophical disagreement on whether Federal law should require the Jewish organization to hire an evangelical Christian to perform its social services program, and I yield back the balance of my time.

Mr. NADLER. Would the gentleman yield?

Mr. SCOTT. Mr. Chairman?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Just one comment. First of all——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you. It has been stated—the Chairman said a moment ago, it's been stated several times that this or that was debated and decided in the Welfare Act of 1996. My recollection is that the charitable choice provisions in the Welfare Act of 1996 were placed in that bill with no discussion whatsoever, no debate on the floor of the House as to anything to do with the charitable choice, and I don't remember this Committee debating it or having it in front of us either. Nor do I think that the Congress in 1996 was infallible, any more than I think that President Clinton or Vice President Gore were infallible.

And by the way, this Committee did not establish that the President was infallible in 1998. We made certain allegations. The Senate quite properly rejected those allegations.

But stepping that aside—— [Laughter.]

Mr. GREEN. But putting that aside, the fact is that to establish in law—and I think it was a real mistake to do so in 1996; it ought to be repealed, and it ought to be not extended now—to have the notion that a Protestant church or a Catholic church or a Jewish synagogue can discriminate in employment on the basis of religion for who's going to ladle out the soup at the soup kitchen, or who's

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going to be the doctor if they're running a medical program. Who's going to be the priest, yes, that makes sense. If the Catholic church doesn't want to have women as priests, or the Orthodox Jews don't want to have women as rabbis, that's their privilege, and certainly that was the point of the title VII exemption of the Civil Rights Act. But when it comes to non-religious functions with Federal money, if the Salvation Army wants to proselytize before you can have your soup at the soup kitchen, that's their privilege as long as they're not using Federal money. And if they want to discriminate, that's not their privilege, because it's against the Civil Rights laws, and we shouldn't be carving out an exception for churches or anybody else as long as it uses Federal money and as long as it's not for religious function.

Mr. FRANK. The gentleman yield?

Mr. NADLER. I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman. I am really astounded that apparently one of the merits of this is that we're going to validate the right of one religion to refuse to hire adherence of another religion for non-religious purposes. I mean I had not realized that the model that we were using in this was the inter-religious relationships of the Ukraine, because that seems to be what we're doing. [Laughter.]

Mr. FRANK. We are promoting religious discrimination, that the Jews shouldn't hire the Catholics, and the Catholics shouldn't hire the Protestants, I find that an appalling thing for us to be doing, and the fact that it may have been done in the welfare bill, which I voted against, and now I learned there was another reason for my voting against that foolish bill. And the notion that once having done something, Congress can never again change it, comes strangely to my ears from people who I thought were elected in 1994 precisely to undo a lot of what had been done before. But what you're doing is embodying the principle, apparently, that in totally non-religious activities—religious activities—activities in fact, whereas we've made clear, "You are prohibited from dealing with religion. In those purely secular activities, you can take Federal money, discriminate based on religion and ignore State laws to the contrary." That's a terrible idea.

Chairman SENSENBRENNER. The question is on the amendment——

Mr. GREEN. Mr. Chairman.

Chairman SENSENBRENNER. What purpose does the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. Move to strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

By way of clarification of the discussion we just had, I think in reference made to how we're saying that Catholics shouldn't hire Protestants and vice versa, I think we're saying the opposite. I think we're saying they're not forced to under this law. There's been a lot of talk about freedom of religion and free exercise of religion and the autonomy of religious organizations. That is what the key issue is here. I think this amendment would destroy autonomy of religious organizations.

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Now, as the Chairman I think has put very eloquently, we are not changing law here. We are, instead, recognizing and reinforcing existing law, law that has been on the books for a number of years. We keep hearing how this wasn't really debated in 1996 as part of Welfare Reform. There's been a bit of time since 1996 and the present. It is interesting that it isn't brought up again until this point.

If this was a mistake, if this was something that the other side didn't intend to support, if they didn't know what they were voting on, they've had a few years to talk about this, instead of bringing it up at this point.

Mr. NADLER. Would the gentleman yield——

Mr. GREEN. No, not on my dime. Let me finish my comments here. I don't have much time.

Let me suggest here, at the very best, what this amendment seeks to do is to refight a fight that was already fought and settled some years ago. At the very least what it will do is threaten the autonomy and the religious freedom of religious organizations. And at the very worst, I think it's a broadside against these organizations. It seeks to punish any of these organizations which decide that they would like to toil in the fields and get involved in the war on poverty.

What we're saying here is if an organization, if a religious organization sees a problem in its neighborhoods, in its communities, if it wants to get involved, if it wishes to take up the fight, whether it be homelessness, whether it be poverty relief, whether it be hunger relief, if it chooses to do that, if it wants to get involved in the fight, it should surrender an exemption that it enjoys now. I don't think we want to do that. I think we want to encourage these organizations to get involved in the fight, not send them away.

Mr. WEINER. Would the gentleman yield?

Mr. GREEN. This amendment—this amendment would send them away. It would tell them that they should not, they dare not get involved in the fight against poverty. I think that's a terrible message. I think that's a message that is the opposite of what we should be trying to do here today, of what this Congress tried to do a few years ago, of what we should be doing in the future to finish the war on poverty.

Mr. WEINER. Will the gentleman yield on that point?

Mr. WATT. Will the gentleman yield?

Mr. GREEN. I will yield to Mr. Weiner.

Mr. WEINER. I ask this question as a supporter of title VII, and I think that so far the responses to this amendment have presupposed that someone who supports this amendment, supports eliminating title VII. The question is simply why is it necessary to fight to protect a right to discriminate based on religion when it's a nonreligious position?

I think that much of this debate misses people like me, who fundamentally believe that title VII is the right thing to do, who want to——

Mr. GREEN. I'd be happy to answer the question.

Mr. WEINER.—who want to support this initiative, but no one has yet told me why it's desirable.

Mr. GREEN. Reclaiming my time.

Mr. WEINER. Certainly.

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Mr. GREEN. Reclaiming my time, the point is, instead, why should such an organization have to give something up just because it wants to get involved in the war on poverty?

Mr. WEINER. Would the gentleman permit me——

Mr. GREEN. What you're saying, what this amendment says is, if they dare to get involved, then they should surrender. Then they should surrender the ability to be religiously autonomous, to take control of their own organization. That's what this amendment is saying. So I don't view this as a benign amendment. I view this as an amendment that is a broadside on religious autonomy of these organizations.

I yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I, with all respect to the gentleman from Wisconsin, I think he is confusing the free exercise of religion with the free exercise of bigotry. I have absolutely no problem with the free exercise of religion, but when somebody asks me why should we not allow churches or religions to discriminate, that is the free exercise of bigotry. That is not the free exercise of religion.

Second, with all due respect to him, again, he is right. We did think we had fought this fight before. We thought we had fought it in 1964 and '65, not in 1996 or, you know. Some of us thought that we had outlawed all of this bigotry that we're talking about, and now we are here raising it again.

So I just think he's missed the point. I'll yield the balance of my time to Mr. Scott.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding.

I think we've been subjected to a bizarre suggestion that, unless we pass a new bill, we cannot preserve present law. You preserve present law by not passing a bill.

We have a question from the gentleman from New York, why should you be able to discriminate? We haven't gotten an answer to that because the answer to that would be the same answer you'd give to someone running any other secular program. Under the manager's amendment, the program you're running cannot be advancing religion. You can't have worship service, you can't proselytize during the program.

And if you have a secular program offered by a secular organization that just doesn't want to hire people of certain religions, the question is why should they have to?

Mr. HUTCHINSON. Would the gentleman yield?

Mr. SCOTT. Let me finish this. The gentleman from North Carolina said that we argued that, and we thought we'd settled it in 1965, that whether you liked to hire people of those religions or not, as a matter of policy, you have to, particularly when you're receiving Federal funds.

I'll yield the rest of my time to the gentleman from North Carolina——

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Mr. HUTCHINSON. Would the gentleman from North Carolina yield?

Mr. WATT. I'm happy to yield to the gentleman.

Mr. HUTCHINSON. I thank the gentleman.

And this is a very fair question. It gets to the heart of the issue, so I think it's fair to put us on the spot and ask us that, although I think the Chairman articulated a response. It might not be acceptable, but it is the answer. I would give another answer, that if you have a religious organization that——

Mr. WATT. Let me just respond to the Chairman quickly, though——

Mr. HUTCHINSON. It's your time.

Mr. WATT. It certainly is——

Mr. HUTCHINSON. I would like to answer.

Mr. WATT.—not as a matter of policy do I accept his explanation when it comes to the service of soup. I don't have any—nobody can justify to me why a church, a private group, anybody ought to be able to discriminate in the service of soup. We ought to be trying to find the most qualified person to serve that soup.

Mr. FRANK. Even chicken soup?

Mr. HUTCHINSON. May I respond?

Mr. WATT. We ought not be trying to find a Baptist or, you know——

Mr. HUTCHINSON. I have an answer, and I would like to provide an answer.

Mr. WATT. All right. I'll yield back to the gentleman.

Mr. HUTCHINSON. The question was originally asked to me, and I would look at this way, if you have a religious organization, even if they're engaging in the delivery of a secular service, there is certain expectation when an individual goes to that church property to receive a service; that is, what they receive and who they receive it from is consistent with the religion.

For example, if you have a Jewish soup kitchen, and they're required to hire a white supremacist, I think that when people go there to get the soup, they would be a little bit surprised to see tatoos——

Mr. WATT. White supremacy is not a protected class. It's a good cliche, but——

Mr. HUTCHINSON. I'm sorry, what?

Mr. WATT. It's not a protected class under title VII.

Mr. FRANK. Would the gentleman yield?

Mr. HUTCHINSON. I think the issue is discrimination on the basis of religion, and there is such a religion, and there is such a circumstance, and I think——

Mr. WATT. There's no—I'm not aware of any religion called white supremacy.

Mr. FRANK. Would the gentleman yield?

Mr. WATT. I'll yield to the gentleman from Massachusetts.

Mr. FRANK. The answer was backwards. We're not denying that they have a right to discriminate based on outrageous political views, but you're talking about religion. And what's interesting, this is reversed. You're now using religion as if it could be a proxy for bigotry, and if you're saying, "Well, there were these white supremacy religions," I suppose I would argue they shouldn't be al-

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lowed to come into this program, but this bill goes much further than what you're arguing for.

This says, and the Chairman said, "Well, you know, the Protestant shouldn't have to hire the Jews." I don't know. Maybe what are we saying, the Jews don't have to hire a Catholic to serve chicken soup?

Mr. GRAHAM. Mr. Chairman?

Chairman SENSENBRENNER. The time of the gentleman from North Carolina has expired.

For what purpose does the gentleman from South Carolina, Mr. Graham, seek recognition?

Mr. GRAHAM. I'd like to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GRAHAM. These are emotional, a lot of emotional things being said here that make us all wince a little bit when you talk about discrimination and religion, and is that really what we're trying to do here?

Someone suggested that the local government has been doing this for a long time. I think it was Ms. Lofgren said that local government has been engaging in using faith-based associations to help with local problems. I think that's probably true. I think that's probably a good idea. I think this is a good idea.

What motivates people to want to serve soup or take care of people with AIDS or folks that are just hurting in general? Some people are motivated to help their fellow man for a lot of reasons, and there's a group of those people who are motivated by belief in God, that their religious beliefs compel them to associate together to do good, to go out and help people who are hurting.

This bill says, "Come on in and help us, but you're going to check your proseltyzing at the door. If you want to serve soup, if you want to help people who are downtrodden, we're not going to be biased against you because you want to associate together for religious reasons because that's your motivation to help. If you've got something to bring to the table and you can do it well, you're welcome. Come on in. No more bias against you."

It's funny that one of the first things that Congress did when we organized, with many of the Founding Fathers still alive, is we bought 16,000 Bibles with public funds. I'm not advocating doing that, but I am advocating that we kind of mimic what local government has done and use some good old common sense here. Nobody supporting this bill wants to take Federal money and prop up a religion. What I want to do is allow people who are motivated because of their religious beliefs to help somebody to have a shot at doing it, if they can do it well, and take the bias that exists today against those people and throw it in the trash bin where it belongs.

We've got strict guidelines that regulate your motivation, but if you're pure at heart and you want to help people who are downtrodden, whatever problems they have, and you're willing to check your religion at the door in terms of practicing it, but taking your heart and the motivation for wanting to help, you are welcome. It is no more or no less, and the Welfare Reform Bill has the exact same language. We're allowing people to employ folks who have been on Welfare for four/five generations, who are banded together, nuns—I guess I can't be a nun for a lot of reasons, but I don't want

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to keep nuns from helping people who are motivated because of their religion to bring some caring, some comfort to people who are hurting——

Mr. WEINER. Would the gentleman yield on that point?

Mr. GRAHAM.—and not convert them to Catholicism.

Mr. WEINER. Would the gentleman yield on that point?

Mr. GRAHAM. Yes, I'll be glad to.

Mr. WEINER. You know, I think that the problem is, you know, you're talking to someone who agrees with everything you said, and someone who's predisposed——

Mr. GRAHAM. Let's vote for the bill then.

Mr. WEINER.—predisposed to be supportive of the bill, who now is asking a substantive question about an amendment, and I've yet to really get, and Mr. Hutchinson came the closest to doing it, but I hear the rhetoric in support of the bill, and I appreciate it. But for someone who's wrestling with the efficacy of the bill, when I hear such a fever pitch about defending a right that no one can really justify practicing, I agree with title VII. Sold. I'm with you 100 percent. Why would you want to, if it's purely a secular activity, if none of that is written into the law, you can't do anything sectarian at all, why is there such a fierce defense of the right to discriminate based on religion?

You know, it makes someone like me, who is sitting on the fence wavering back and forth, who's getting tugged by people on both sides, to say, "You know what, this makes me very nervous. What is it that I'm missing about this that makes it so—"

Mr. GRAHAM. I will try to answer that question.

Mr. WEINER. Thank you, sir.

Mr. GRAHAM. In the Welfare Reform Bill, we have the exact same language that we're proposing here. Here's what we're trying to say: that if you're motivated by your religious beliefs and that your association is formed around a denomination or religious belief, a set of principles, we, the Federal Government, are not asking you to change who you are to help your fellow man, we're requiring you to leave your religious practices at the door, but you, and others, are advocating to me that you can help only under our terms. This is not about fostering people who have a religious prejudice, this is about allowing people motivated, some because of their belief in God and associations——

Mr. WEINER. Would the gentleman yield?

Mr. GRAHAM. Please let me finish my thought.

You're wanting us to make these groups disband. We're wanting them to come into the—come into to——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. GRAHAM. Come in and help, that's all.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, rise?

Mr. WEINER. Wish to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. I have to say, you know, I came to this room, as some in the audience are aware, you know, seriously considering, and I still am, supporting this bill because I think that, on one

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hand, there's a great deal of great work being done, and I don't understand where, in the amendment, that we're currently considering, it says you have to abandon your religion. I don't know where in this, in this amendment it says you have to disband your organization. I don't know where it says that someone with a good heart will be driven out of the program.

I think it's a fairly simple proposition, and I've asked it several different times, whenever anyone has yielded, I am asking what is a substantive question about why it is that it's necessary to have the protections of title VII included, when title VII, let's face the facts, title VII was written under the precept that we don't want to require people of one religion who are engaging in their religion, who are participating in religious activities, from being forced to embraced, through hiring, someone who disagrees with those religious precepts. So we carved out this exemption which, for some in this body, is controversial, I support it. I believe it's the right thing to do.

But now we have a nonreligious element to that organization. It's nonreligious not because I say it is, but because, Chairman Sensenbrenner, in his very sensible alternative that I think went a long way to assuaging people like me about the true intents of this bill, wrote it in, in so many words. In a colloquy between Mr. Frank and Mr. Sensenbrenner, they made it even clearer that you can't even say you've got to find—you've got to find a spirit, you've got to find God before you get off alcohol. You can't even say that, according to the colloquy.

And now here it is an amendment to simply say, look, if you're going to do these purely secular things, these nonreligious things that just happen to be under the umbrella of a religious organization, people who want to help, they want to do the right thing, simply don't, for the purposes of hiring for those jobs, don't discriminate based on religion.

And rather than have a debate about why it's necessary to have that, there is a—there is the straw man of we're trying to tear down the program. Well, I don't know if the sponsor is or isn't, but I really do believe that this is one of the two or three things that we can fix, make this a bill that will be widely acceptable in this body, and I just don't see—I just don't see the wisdom on a political level by——

Mr. ISSA. Would the gentleman yield?

Mr. WEINER. Certainly.

Mr. ISSA. Perhaps I can give you an example that might clarify why I think that, as the law is about to be written, it has merit.

In our own congressional offices, we have a charge to represent, fairly and equally, the people who voted for us and the people who will never vote for us, some 600,000 per district, and we take that charge seriously, and we execute it, I think, diligently to a Member. But in our own organizations, on both sides of the aisle, we staff with people who believe as we believe, and we would never consider putting together a paid staff of people who didn't vote for us, voted for our opponent and still don't agree with us.

Mr. WEINER. Okay. If you'll permit me to reclaim the time, that's not what title VII says. You're not covered under title VII. You've got to be a religious organization exercising a religious, a predominantly religious function in order to qualify for title VII. We're now

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taking a nonreligious function, by the testimony of everyone, by the words of the bill, and we're extending—we're extending Federal dollars for this non-government program operating under religious umbrella. I'm with you, tentatively, for now, for the moment.

And all we're saying is, for those purposes, you can't discriminate based on religion. I'm not talking about based on your views on the world. You can probably discriminate based on that now. I'm not saying based on whether you think it's a good or bad thing to have a drug treatment program. You can discriminate on that based on now. Why do you want to discriminate based on religion? Answer that question.

Mr. FRANK. Would the gentleman yield?

Mr. WEINER. Certainly, sir, even though I'm not sure you're the best person to answer.

Mr. FRANK. No, I said—but you've the hit—— [Laughter.]

Mr. FRANK. You've hit the point that I think is so disturbing about this. The assumption against this amendment is that there is somehow something unpleasant or debilitating about asking religious people to associate with someone of another religion. My friend from South Carolina said, "Well, they're motivated by their common religion, and you don't want to take that away." What is it about associating with someone of good faith of a different religion that so drains you of your motive to be helpful? It's that very notion that somehow forcing you—forcing a Jew to associate with a Protestant or a Protestant with a Muslim or a Muslim with a Catholic that somehow this is disorienting.

Mr. WEINER. Will the gentleman yield?

Mr. FRANK. You are promoting a sense of religious exclusivity and hostility. Yeah, I do not want Jews and Protestants to treat each other as I treat people who run against me in an election. [Laughter.]

Chairman SENSENBRENNER. The time of the gentleman from New York has expired.

Ms. WATERS. Mr. Chairman?

Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Alabama, Mr. Bachus, seek recognition?

Mr. BACHUS. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Earlier in this debate, the Nation of Islam was brought up by the gentleman from Massachusetts and the gentleman from North Carolina in that agreements they had to—with certain public housing communities. And it was said earlier in this hearing that the problem with the Nation of Islam that we objected to was that they were hiring people based on their religion.

Now, in fact, that wasn't, if it was raised, it was raised only incidentally, because the Baltimore Sun and several other—I conducted those hearings, as Chairman of the Oversight Committee, some of them that we participated in. I wanted to tell you my recollection. I've gone back and read during the break what some of the news coverage of the day was. What they were accused of doing was roughing up residents, of coercing the residents, of even the word "racketeering" was used, of people that had businesses, intimidating people that had businesses in the community——

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Mr. WEINER. Would the gentleman yield——

Mr. BACHUS. And of violating people's civil rights by holding and—let me get this right, I don't want to—by strong-arming and holding people suspected of breaking laws——

Mr. WEINER. Would the gentleman yield on the point just——

Mr. BACHUS.—and interrogating them.

Mr. WEINER. Would the gentleman yield?

Ms. WATERS. Would the gentleman yield?

Mr. WEINER. I might be able to shed some light on that.

Mr. BACHUS. I will yield in——

Mr. WEINER. I was the——

Mr. BACHUS.—of disseminating anti-Semitic literature, which actually calls for—called for acts of violence and also anti——

Mr. WEINER. If the gentleman would yield, I might be able to shed some—I was, at the time, in the City Council, and I was the Subcommittee Chairman of Public Housing. The fact is that largely what got people's goat is the fact that it was the Nation of Islam and their core beliefs. That's what made it—now, there were other issues that were raised, but at the crux of the issue was because they were the Nation of Islam, a virulently anti-Semitic organization, and a lot of people were offended by that.

Ms. WATERS. Would the gentleman yield?

Mr. WEINER. I will gladly yield back.

Mr. BACHUS. But what I'm saying is what was—and the hearings were about things they were saying—they were actually advocating violence, and——

Ms. WATERS. Will the gentleman just for a moment?

Mr. BACHUS. I will yield.

Ms. WATERS. And since you bring it up, I just kind of want to set the record straight. For those of us who have the very, very serious problems in public housing of drugs and crime, et cetera, the Muslims were—were absolutely effective in helping to deal with those problems. Yes, there are other problems, and I was more interested in what people had to say about them proselytizing, but I want to tell you, they did not—there's never been any history of roughing up people, of creating harm. That's not what they were doing. They were taking very young men who didn't have a sense of themselves and helping them to stay out of jail and to go to school and keeping those projects safe for all of the residents.

Mr. BACHUS. And there was a—and there was a serious debate as to whether they were breaking the law or not, and——

Mr. FRANK. Mr. Chairman, a parliamentary inquiry.

Mr. BACHUS. But there were people with other organizations which said they were——

Chairman SENSENBRENNER. The time belongs to the gentleman from Alabama.

Mr. BACHUS. But what I'm saying, the discussion did not focus on the fact of them hiring——

Mr. FRANK. Will the gentleman yield for a parliamentary inquiry?

Mr. BACHUS. I never remember that being mentioned.

Mr. FRANK. Will the gentleman yield for a parliamentary inquiry?

Mr. BACHUS. I will yield, but I——

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Mr. FRANK. I thank the gentleman. Does the fact that none of this discussion relates to the amendment under consideration bother anybody but me?

Mr. BACHUS. Well, it does in the——

Chairman SENSENBRENNER. The Chair does not make subjective evaluations of Members' debates.

Mr. BACHUS. It was brought up——

Chairman SENSENBRENNER. You wouldn't want me to do that, would you?

Mr. FRANK. On relevance, I definitely would.

Mr. BACHUS. It was brought up——

Mr. FRANK. I would just like to make a point of order this is not germane to the amendment under debate.

Mr. BACHUS. I'll take back my time. It was brought up that the objection to the Nation of Islam and their contracts with the public housing——

Mr. FRANK. If the gentleman will yield, but not in the context of this amendment.

Mr. BACHUS.—because they were hiring people of their own religion. That's not what the newspaper accounts say, and that's not why my recollection was.

Chairman SENSENBRENNER. The gentleman yields back.

The question is on——

Ms. WATERS. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The question is on the amendment——

Ms. WATERS. Mr. Chairman? Mr. Chairman? [Laughter.]

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters, for what purpose do you seek recognition?

Ms. WATERS. Strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. So much has been said here today. I think it's going to take us a while to be able to deal with the misinformation that is being disseminated here.

First of all, I keep hearing that there are—there is some bias against religious organizations seeking Federal funds. I do not believe that to be true. As a matter of fact, I think if we take a look at the Catholic charities, many of our Jewish organizations, we will find that they do very, very well in responding to requests for proposal, and they have child care centers, they have senior citizens operations, they have all kinds of operations. In my district, we have churches, even small churches who have done quite well in competing for Government money.

So I wish, unless there is some documentation or information that somebody can bring forward to show that there's some bias that religious organizations are not able to compete, I wish we would just get that off the table because that simply is not true.

Secondly, it was said earlier that many of the cults or more bizarre religious organizations that some people have some concerns about—Mr. Gekas, for one, who was trying to figure out would they be able to get Government funding. I think we tried to make it clear that all, all religious organizations, be it cult or not, will be eligible to compete for funding under this legislation.

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Someone said, "Well, you don't have to worry about that because if they were interested, they would be doing it today, and many of those cults that you're worried about are not doing it." But I have to bring to your attention, they would not receive the kind of exemptions that we are promoting in this legislation if they competed today. If they compete, if this bill is passed, they will find it much easier, and they will want to be more involved because they will not be prohibited from discriminating in any shape, form or fashion that they would like to if they describe that as part of their religion.

What really worries me, I'm not so worried so much about even whether or not people are going to discriminate based on race. I mean, as much as we work at it, that happens today. But what I'm worried about is the expansion of the discriminations. If your religion says you do not accept women who are divorcees, you do not accept a person who's had a child out of wedlock, that it's against your religion to allow a gay person to be a part of your operation, we're just expanding the opportunities for discrimination. Where does it stop?

There are all kinds of religions. Someone just brought me this religion that is organized around Satanism and talking about what they believe in, and they would be free to exercise their beliefs under this bill. So I am supporting this amendment, and I'm hopeful that we can start to speak in ways that we can document, as we move forward, so that we can roll out the truth about what we're doing. The fact of the matter is, if we do not exclude from this legislation the ability to discriminate, we will be opening up Pandora's box to expand discrimination beyond what we know and understand about discrimination today.

So I would ask my colleagues to please support the amendment.

Mr. SCARBOROUGH. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida, Mr. Scarborough, seek recognition?

Mr. SCARBOROUGH. To strike the last word. There have been——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCARBOROUGH. There have been a lot of sort of hysterics going on here, the free exercise of bigotry and other things, people talking about that, a lot of show-boating, but I do want to talk to Mr. Weiner.

And, Mr. Weiner, you've asked the question repeatedly, and I'm not speaking for the Chairman, I'm not speaking for anybody, but let me take a crack at this thing, and maybe we can have a little back and forth here to see if you—because I understand what the gentleman from California was starting to get at, where we've heard it said over and over again that Members' offices, the culture of Members' offices reflect the Member himself or herself. Likewise, we've, you know, we've heard about the culture of IBM, the culture of Microsoft. There, I mean, there is a culture to each organization which either makes that organization effective or makes it fail.

Now, I think it's safe to say, and there may be some people that disagree with me on this Committee, but the majority of Americans do believe that, by their inherent nature, faith-based organizations can effectively deliver a service to their communities in need in a way that the Department of HHS cannot. If that were not the case,

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then obviously Al Gore, and George W. Bush, and just about every other politician wouldn't be talking about how great faith-based organizations are in delivering services to the most needy.

I do believe, although it has not been articulated well, and I'm not trying to persuade you, I'm just merely saying that there are some of us that believe this that may not be able to articulate it very well, that there is a culture in, let's say, rural Protestant Church that is separate from a culture in, let's say, an urban synagogue or in a Catholic Church that is separate from another.

And I see Ms. Waters. She's about to explode, and I'm sure I'm going to be a bigot, and this, that, and the other, but I'm just saying there is——

Chairman SENSENBRENNER. The Chair is prepared to declare a 30-second recess.

Mr. SCARBOROUGH. Why is that?

Chairman SENSENBRENNER. So that nobody explodes. We don't want that to happen.

Mr. SCARBOROUGH. I love Ms. Waters—— [Laughter.]

Mr. SCARBOROUGH. I love Ms. Waters, and Ms. Waters loves me. She hugs me on the floor every chance she gets. That's why she got up. She couldn't resist herself. [Laughter.]

Mr. SCARBOROUGH. But there is a culture, seriously, there is an inherent culture in these organizations, like, for instance, and I'll talk about my church. I'm Southern Baptist. I disagree with a lot of things they believe about people who are divorced not being able to be deacons or, or women not being able to preach, all right? But I do know that there are Southern—and if that offends me, I can, I can take a hike. But there are, even though I disagree with some of the things that people in the Southern Baptist Church believe in, they can effectively deliver services because of the culture of whether it's First Baptist Church of Pensacola or——

Mr. WEINER. Will the gentleman yield on that point?

Mr. SCARBOROUGH. Yes, sir, I will.

Mr. WEINER. Would the gentleman yield on that? And I'm convinced the Southern Baptist Church can deliver those under this bill.

Perhaps you can enlighten me, and using the example of the Southern Baptist Church or whatever you referred to, someone coming in for a job interview to work in a job training program to teach typing to someone who had been laid off——

Mr. SCARBOROUGH. Right.

Mr. WEINER. Why is it, give me an example, just so I can fully get my mind around it, why is it necessary that they be Baptist and why is it not only necessary, why is it so important to this program that it means offending 35 or 40 Members around here who might be willing to make this a bill that 300 people can vote for?

Mr. SCARBOROUGH. Yeah, well, I don't think it's—reclaiming my time—I don't think it's necessary. And, obviously, I think most of us on this panel, I would hope, would agree that it would be extraordinarily bigoted for any, any organization, be it a faith-based or secular organization, to prevent people from being hired. But I think the biggest concern is compelling, for instance, a synagogue in a certain area to hire a fundamentalist, right wing, religious, whatever, that would, after all——

Mr. WEINER. Typing teacher?

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Mr. SCARBOROUGH. Hold on a second. Hold on a second.

Mr. WEINER. What does a right-wing typing teacher do, only type with the right hand?

Mr. SCARBOROUGH. We're talking about, and again—— [Laughter.]

Mr. SCARBOROUGH. Again, if you want to get laughs, that's fine, but, for instance, delivering soup, let's say, for instance, in an area that's heavily served, let's say a synagogue in an urban part of the area, listen, they want to get their soup. They don't want to hear somebody with views that's completely different from their own views. And I understand, I understand what the bill says that they're not allowed to do that. But, again, if you compel these organizations, again, whose culture, many Americans believe, allow faith-based organizations to deliver services more effectively than, say, the Department of HHS——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCARBOROUGH.—there's a risk of changing the very culture of those organizations.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCARBOROUGH. Thank you.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Lofgren, seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I—I was fascinated by the last exchange because, apparently, even though there is a prohibition on proselytizing, the reality would be that there would be proselytizing, and therefore we need to make sure that religious institutions can discriminate against people who are not of their religion so that they can violate this statute, which I think is a very odd proposition.

But I would just, going back to my experience in local government, I would just like to say I think this bill is a, is a solution in search of a problem. I mean, we used all kinds of contracts with religious-based organizations. Catholic Charities ran the Immigration Counseling Center. The only instance in my 14 years on the Board of Supervisors that ever came to my attention that someone, a religious group felt that they might not be—having treated fairly, was an evangelical church who wondered were they being treated fairly, and I met with them, and we made sure that they were brought into the opportunity to provide food through the food service, the largest faith-based group in Santa Clara County, PAC, which has, I think now, 17 parishes and churches. They provide homework centers, the biggest homework centers for all the kids after school. They wouldn't even consider discriminating against a tutor based on their religion, and Catholic Charities wouldn't even consider discriminating against a psychologist in hiring for one of the programs, the mental health programs they run. It would be inconceivable.

So I really strongly believe that Mr. Scott's amendment is necessary and that this bill is probably not, but I would like to yield to Mr. Scott, at this point.

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Mr. SCOTT. Thank you, and I thank the gentlelady for yielding.

I just want to make a couple of points. First of all, a lot has been said about Welfare Reform. What has not been said is that when President Clinton signed the bill, he indicated that he thought that portion of the Welfare Reform Bill was unconstitutional, rules were not implemented to promulgate that portion of the legislation.

It was also suggested that this is the same old language that we have in Welfare Reform—not true. The provision in Welfare Reform has the ability to discriminate, but it specifically said that nothing in this section shall be construed to preempt any provision of a State Constitution or State statute that prohibits or restricts the expenditure of State funds in and by religious organizations. So, if you have commingled funds, and it's illegal to discriminate under State law, you can't do that. But under this, under the manager's amendment, you waive all State laws.

The gentleman from New York really hasn't been given a good answer to his question. If you have a—if you have a person of faith running a secular program, the present law in America is that they are subject to civil rights laws, whether they like it or not.

Mr. GEKAS. Mr. Chairman?

Mr. SCOTT. That has been the policy for years. If they receive Federal money, if they're running a large organization and hire people, whether they like it not, we've set the policy that they cannot discriminate against people based on their religion.

What we're doing in this bill is saying, well, maybe that was a bad idea. I think that was a good idea, and we ought not change it.

I yield back the balance of her time.

Mr. GEKAS. Mr. Chairman?

Chairman SENSENBRENNER. Let me try to put the question. The question is on the Scott amendment to the Chairman's amendment. Those in—well, I recognize somebody on the Republican side next.

For what purpose does the gentleman from Pennsylvania, Mr. Gekas, seek recognition?

Mr. GEKAS. For the excellent reason of yielding to the gentleman from South Carolina.

Chairman SENSENBRENNER. Well, you can strike the last word. You're recognized for 5 minutes.

Mr. GEKAS. And I yield to the gentleman from South Carolina.

Mr. GRAHAM. I would like to—Mr. Scott maybe can help me with this. I think the law is pretty clear, as I understand it, and maybe my understanding is wrong.

Title VII that exists today in Federal law has an exemption, as I understand it, for religious organizations, that they're not required under title VII to change their hiring practices, but they are required not to discriminate on the basis of race, color, national origin, sex, age, and disability, and that there are several cases that maintain that you do not lose that ability to hire, based on your religious principles, if you receive Federal funds.

There are several schools that—St. Francis College in Brooklyn, Mary Grove College in Detroit, the Baptist Theological Seminary in Richmond—maintain the religious character of their schools through hiring practices. They offer child care services, Pell grants and other Federal aid is provided to students attending those schools, and there's a line of cases that say that if you're a religious

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organization, you can, in fact, receive Federal support and funding and not change your religious hiring practices, but you can't discriminate otherwise.

I would argue that that logic applies here, that we're—that we're allowing people to participate in providing services in a secular way. We're requiring them to leave their religious practices at the door, but we're not going to require them to change their hiring practices because to do so would undermine the character of the organization, and there is many cases that seem to uphold that concept.

Mr. FRANK. Would the gentleman from Pennsylvania yield?

Mr. GEKAS. Yes, I will yield, but only to the gentleman of Illinois first, and then receive the rest of the time that I might yield to the gentleman from Massachusetts.

Mr. FRANK. Hope will spring eternal. [Laughter.]

Mr. HYDE. I have been listening to this with great attention all afternoon, and I—at the risk of oversimplifying, I would like to cut to the chase. What we're talking about in the, in the whole, is an army of people out there motivated by spiritual impulses who want to do good, who want to help solve poverty, disease, violence in the community, homelessness, hunger, and some of them are clergy, some of them are not. They are religiously motivated, and we've spent all afternoon finding ways to keep them out. We've got enough help. We don't need—there's too much God out there. We suffer from an excess of God, for some crazy reason.

Discrimination. If the First Baptist Church wants to do something as the First Baptist Church, take care of some homeless people, the fact that they want to retain their identity and not become another local United Fund operation, there's nothing wrong with that. There's nothing wrong with the Black Caucus saying, "You want to join us, you've got to be black."

Ms. WATERS. We don't say that.

Mr. HYDE. Oh, well, Pete Stark didn't get in, did he? Am I welcome?

Ms. WATERS. Yes.

Mr. HYDE. What are the dues?

Ms. WATERS. Huh?

Mr. HYDE. What are the dues? [Laughter.]

Ms. WATERS. Mr. Chairman——

Chairman SENSENBRENNER. Yes?

Ms. WATERS. I must correct the record. You do not have to be black to be a member of the Black Caucus.

Mr. HYDE. You mean an associate member.

Ms. WATERS. No, I do not mean an associate member.

Chairman SENSENBRENNER. The time belongs to the gentleman from Pennsylvania.

Mr. HYDE. All right. I'm sorry. Let me finish.

There is discrimination and there is invidious discrimination. I don't think it's discriminating for Baptists to want to hire Baptists to do something as the Baptist Church is going to do. I think that's fine. That's not invidious discrimination. So, as far as I'm concerned, we ought to figure out ways to facilitate the exploitation, the benign exploitation of these wonderful people who want to help us with our very human problems, instead of finding ways to say

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no because, for fear, some God might sneak in under the, under the door.

Thank you.

Mr. FRANK. Will the gentleman yield?

Chairman SENSENBRENNER. The time of the gentleman is about to expire in 5 seconds——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The question is on the amendment of the gentleman from Virginia, Mr. Scott, to the Chairman's amendment.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. Those in favor, will say aye.

Mr. WATT. Mr. Chairman, you are passing over a Member down here.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Mr. SCHIFF. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. The very narrow question that's been presented by this amendment is simply whether religious institutions should be allowed to discriminate on religious grounds in providing secular services with Federal dollars.

Now, the point has been made that this is already the law, but the fact of the matter is this is not already the law. There is no provision of the law that allows direct Federal funding of religious institutions for secular services with a provision allowing religious discrimination and the provision of those services or in hiring decisions. So this is new law.

Now, the point is also made that why should we preclude religious institutions from entering the war on poverty.

Mr. GRAHAM. Would the gentleman yield?

Mr. SCHIFF. When I'm finished, I will be glad to yield. Why should we preclude religious institutions from entering the war on poverty? Well, of course, we're not. Religious institutions are involved in the war on poverty. They've been vital in the war on poverty for all of the reasons that the gentleman from Illinois has also mentioned, and that's a good thing. The question is whether they should be able to receive Federal funds and discriminate on religious grounds. That's a very different question than whether they should be involved in the war on poverty.

I would ask can a secular organization discriminate on religious grounds? Would we allow a secular organization that's providing soup or food or other services to discriminate on religious grounds? No, we would not. Aren't we then preferring religion by allowing religious organizations to discriminate when providing secular services, where we do not allow secular organizations to do the same thing?

Now, some of the Members have made the I find astounding point, as the gentleman from California did, that, well, in our congressional offices we can choose people of like political mind. But, plainly, we cannot in our political offices decide that we will only hire people of a certain religion. Indeed, it would be inappropriate for us to ask, in our congressional offices, what the religious views are of potential job applicants. That would be completely inappro-

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priate, and I think it no more appropriate, when we're talking about the provision of purely secular services for religious organizations, to ask the same question.

The only, I believe, real objection to this amendment was made by the Chairman, and it's a very real concern and a practical one, and that is that many of these religious organizations are small, they have small staffs, and it is the same people who would be desired to provide the religious service and, in a separate context, the secular service, and that's a real problem.

But, ultimately, the question then becomes what is more important, that we allow, out of desire to accommodate those smaller institutions, that we allow the commingling of functions of that individual and the potential of commingling of dollars in support of that individual, that we allow the discrimination in the hiring of that individual as an accommodation, whether that ought to outweigh the issue of being able to discriminate on religious grounds and the use of Federal dollars.

And I must say that when you weigh the two, that very real and understandable practical concern, against the very strong desire not to discriminate on religious grounds, the practical concern must give way.

Mr. GRAHAM. Would the gentleman yield?

Mr. SCHIFF. I will in just one moment.

I think that the reasons this bill has been offered, most eloquently expressed by the gentleman from Illinois, are very well-founded and understandable, and the opposition has nothing to do with a desire to take God out of public life or charitable institutions. I think, rather, the concern is out of a desire to strengthen and keep strong those institutions, and at the same time recognize that, in circumstances where we're talking about purely secular services, there is no need, and every desire not to discriminate.

I would be happy to yield the balance of my time.

Mr. GRAHAM. Just to give you my interpretation of the law, I disagree with the gentleman's interpretation of current law. Section 702(a) of the Civil Rights Act of 1964 exempts nonprofit private religious organizations engaged in both religious and secular nonprofit activities from title VII's prohibition on discrimination of employment on the basis of religion.

The United States Supreme Court in The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints versus Amos held that no provision in 702(a) states, "By receiving Federal funds, that the prohibition—that the exemption is waived. Title VII's prohibition on discrimination in employment is not forfeited when a faith-based organization receives a Federal grant."

I believe that's the law, and this amendment would change the law.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the Scott amendment to the Chairman's amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. Record vote is ordered. Those in favor of the Scott amendment to the Chairman's amendment will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

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The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

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Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members in the room who desire to cast their vote or change their vote?
The gentleman from Arizona?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Chairman SENSENBRENNER. Further Members who wish to change or cast their votes?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 11 ayes and 19 nays.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments?
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?
Mr. WATT. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. WATT. It's the one that starts, "Page 13, line 19."
The CLERK. Amendment to the Sensenbrenner amendment to H.R. 7 offered by Mr. Watt.
Mr. WATT. Mr. Chairman, I ask unanimous consent the amendment be considered as read.
Chairman SENSENBRENNER. Without objection, so ordered.
[The amendment follows:]

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Amendment to the Sensenbrenner Amendment to H.R. 7

Offered by Mr. Watt

strike

~~Page 13, line 19 strike "and any" and all that follows through line 23 and insert instead the following:~~

insert after line 23

No "~~provided, however, that~~ nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of Title VII of the Civil Rights Act of 1964 in the receipt or use of funds from programs described in subsection (c)(4)."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I hope this doesn't set off a repeat of the same debate again that we just had on the Scott amendment.

The concerns, although I voted for the Scott amendment, that I thought were going to be raised about the Scott amendment was that his amendment was too broad, and basically wiped out the religious organizations' exemption under the Civil Rights Act of 1964, which I believe is, as Mr. Weiner has indicated, an important exemption to have for the religious activities of a church or religious organization.

Where I think we run into problems is the language on Page 13, starting on lines 19 through 23, which says, "and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy, recognized in section 702 or in this section, shall have no effect."

I think the Chairman's language walks both sides of this. It says, on one hand, that religious organizations have an exemption. It says, on the other side, that basically they can do anything that they want to do, whether it's with their own funds or with Government funds, and this amendment would simply make it clear that the religious exemption for religious activities under title VII is protected, but that nothing in this section would alter the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described under this bill.

I think it's absolutely important to be clear that religious organizations are not required to hire members of other faiths to perform their core religious functions, but I also think it is absolutely imperative that we make it crystal clear that in the use of Federal funds we will not tolerate employment discrimination, and I am hopeful that my colleagues will agree with that proposition and will support this amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I must oppose the amendment. The only reason the language of E(e) is in there is because when the 1996 Welfare Reform Act passed, it created an en-

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tirely new Federal program. It replaced AFDC with TANF, so there was no need to make sure any inconsistent Federal provisions were preempted, but H.R. 7 applies the same title VII exemption to these existing Federal programs, so we have to make sure that preservation is consistently applied. The bottom line is, is the recommended insertion is redundant. Nothing in the bill does anything to prevent the enforcement of other Federal civil rights laws. These laws already apply of their own force.

I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. Mr. Chairman, I speak in—I ask to strike the requisite number of words for the purpose of——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK.—speaking in favor of the amendment.

I must say, as a general principle, I rarely, I don't think ever, have found redundancy to be a good reason for rejecting something. If there is any ambiguity, we ought to clear it up.

I do not think there are professions in the world less opposed to redundancy than that of legislators and lawyers. And when any of us objects to something on the grounds of redundancy, I am inclined to think that it is not a full explanation. And I want to talk about the importance of the gentleman's amendment and respond to some of the things that were said before.

The gentleman from Illinois, the former Chairman, spoke with his usual eloquence, but I have to say not with his usual relevance. Of course, we welcome the religiously motivated people who want to help. I want to be very clear. I have, throughout my public career, benefitted enormously, and I'm proud of my work with them. The archdiocese of Boston has had a housing program for as long as I can remember that's extraordinarily successful, and I'm very pleased, now that I'm the ranking Democrat on the Housing Subcommittee, to be able to work with them even more. Of course, they do good work, but they have never felt that they had to discriminate in the hiring of architects. They never felt that they had to discriminate in the hiring of developers, nor did they think that having to hire architects without regard to the architect's religion somehow destroyed the cohesion of the Catholic Church, somehow undermined the ability of the archdiocese to be a faith community, and that's what I find troubling about this. There are two aspects of it.

First, this bill assumes, it seeks a significant expansion of the extent to which faith-based organizations are the vehicle for Federal funding. Let's be very clear. The notion is that they are an underutilized resource. The problem is that if you simultaneously substantially increase their role in the provision of the services and allow them to discriminate based on religion in hiring people to perform those services, you now have a significant impediment to people who may not be religious or who may be of a very minority religion to getting hired. You're no longer talking about some incidental thing. The goal of this is to make faith-based institutions a major source of service delivery, all the more reason than not to

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tell them to discriminate in the hiring for the nonreligious aspects of this.

Secondly, I'm disturbed by the implications of what we've heard. The suggestion is—the statement is that somehow it is deleterious to the very purpose of a religious organization for its members to have to hire nonbelievers in their religion to do nonreligious things. I urge my colleagues to think about this. What we are doing is encouraging a kind of religious segregation that does not serve religion well.

Yes, people of common religion ought to be able to come together undisturbed in their worship services. They ought to be able to hire people to perform these religious services undeterred by any law. They ought to be, when motivated, coming together to provide this service. But the notion that somehow, when they come together, when they use their institution as the locus with Federal funding providing, providing this service, if they are joined by people of different religions, that somehow is deleterious to them, is a very troubling thought.

Now, people have said, "Well, suppose it's someone who is hostile." That's a different story. If you came in with a tailored piece of language that said, "People need not put up with people who are going to be in total disagreement," that's a different set of circumstances. That's not this bill. This bill says, and we've heard justifications, well, you know, if you're a Baptist, you shouldn't have to associate with a Catholic or an Episcopalian in providing the social service. If you're a Jew, people have said, "Well, a Jew shouldn't have to have a right wing fundamentalist serving the soup." No, I think that's quite wrong.

Indeed, people talk about our congressional offices. Our congressional offices, of course, are different than religions, but even there I would think it wrong, when my office was hiring someone, to perform a service unrelated to my election, cleaning my office, doing these sorts of things, no, I don't believe I should be allowed to impose a political test.

Mr. HYDE. Would the gentleman yield?

Mr. FRANK. I'll yield to the gentleman.

Mr. HYDE. The gentleman is perfectly correct. In large-scale undertakings involving architects and other professional people, I certainly agree with the gentleman, but you have a small operation. The institution performing the service is entitled to its identity without being accused of being bigoted.

Mr. FRANK. No, I didn't use the word "bigoted." The gentleman from Florida did, at some point, he said he thought it would be bigoted. But this amendment, this language in the law does not say it only applies to small organizations. It applies to large ones, as well, and I do not think, and here's where I differ with my friend from Illinois, I do not think it destroys your identity——

Chairman SENSENBRENNER. The time of the gentleman——

Mr. FRANK.—to have to share your space with someone of a different religion.

Chairman SENSENBRENNER.—has expired.

Ms. HART. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Pennsylvania seek recognition?

Ms. HART. Move to strike the last word.

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Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. HART. Thank you, Mr. Chairman. This amendment really does, in my opinion, attempt to do similar damage to the legislation that the prior amendment attempted to do, and when I call it damage, I do so for a reason.

The reason this bill is being advanced in the first place is to allow churches to continue to provide these services and get some help in providing those services as a contractor, not to change the character of the church, but to allow this church to participate in something they were heretofore forbidden from participating in.

If we accept these amendments, we do one thing that I think is completely wrong, and that is we don't allow them to retain the character which makes them so attractive as a service provider to begin with. There's a lot of assumptions being made by those who support these amendments that these churches are going to go out and hire a whole bunch of people to provide these services, when, in reality, anyone who's ever worked with any of the churches that provide these kinds of services are mostly very small, small groups of congregants, some who are paid, most who are volunteer, who are driven to provide this service from their hearts, from a spiritual desire to serve. Some of them will do it as a profession. These churches are not going to be spending money wildly, hiring a whole bunch of new people just to provide a separate service. That's my first point.

My second point is that the Supreme Court, as I know Mr. Graham mentioned earlier, upheld the opportunity or the decision of these churches to hire whom they please and to make the decision to hire people of their religion in The Presiding Bishop versus Amos. But the Supreme Court also stated, in Rendell Baker versus Cohen, that just because a faith-based organization is providing a service as a contractor to the State, they do not become State actors. They do not, therefore, lose the status that they enjoy as a private religious organization simply because they're getting Government money.

So those who support this amendment are asking that we completely change the law and, in two cases, and I'm sure many more, where it was upheld by the Supreme Court that we don't need to require that change because if we did require that change, there would be no reason to have this bill.

Mr. NADLER. Mr. Chairman?

Ms. HART. Is he asking me to yield? Is that a yes?

Mr. NADLER. No.

Ms. HART. Okay. And, finally——

Mr. NADLER. Will the gentlelady yield?

Ms. HART. I'm just going to finish because I'm almost done.

If a Catholic School hires a teacher, they have every right, I think most people would agree, to hire a Catholic teacher. Many of those Catholic Schools have been also given Government money to provide services that could be provided someplace else. That has also been upheld. They are not forced, then, to hire an additional teacher and not discriminate in their hiring, that they could use the same teacher that they have or hire another Catholic teacher. There is nothing wrong with that. It's been supported over and over again, and I stand by that the bill, as it's written, I think it

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stands by the Constitution, it stands by decisions of the U.S. Supreme Court, and I would reject this amendment.

Thank you, Mr. Chairman.

Mr. NADLER. Would the gentlelady yield?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Nadler——

Mr. NADLER. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

I have listened very carefully to what Ms. Hart just said, and I'd like to make a comment on it. It really illustrates, the discussion really illustrates the basic problem with this bill.

As far as I can understand this bill, and I've been thinking about it and listening, through hearings and hearings, there are two problems, and only two problems the bill addresses. Both are perhaps valid problems. Both could be addressed by very narrow changes in the law, and the problem with the bill is that you take huge changes, way overbroad, which raise real problems, in order to deal with the narrow problem.

For example, let's take this question of religious discrimination in employment. If a church, small church, large church, whatever, gets a $20-million grant, and they're going to hire a corps of people to administer the grant for secular purposes, then those people should not be subjected to religious discrimination, and you know it's for secular purpose to run a soup kitchen or whatever, et cetera.

But we are told, what about the small church? We don't want to change the character of the church. And what it really comes down to is let's say you have a small church, and you get a small grant, and the grant is going to be used for material things, but the existing employees of the church are going to administer the grant, are going to run the soup kitchen. The minister, his wife, the assistant minister are going to run it, and what they're really saying is you should not be required by the civil rights laws, under such a condition, to say, "Well, we can't automatically use the existing employees of the church. You have to conduct a job search in accordance with title VII." And to that I would agree.

And this whole problem could be dealt with by a simple amendment or a simple law that said that, if a faith-based institution was receiving funds for a secular purpose, and if they were not going to hire new people for that to administer that, they could use their existing people, and that that wouldn't constitute an exception to—that wouldn't constitute a title VII problem, but if they hired new people, they should have to follow whatever the requirements of nondiscrimination, if it's for the secular purpose, but if it's not for a secular purpose, you shouldn't be funding it in the first place.

And so I think that this whole question of employment discrimination is way overbroad, and to the extent that there's a real problem that's raised and that still could be addressed by this, it can be dealt with simply by saying, as I said, and I'm drafting such an amendment now or I hope my staff is busy doing so, that a faith-based institution that receives a Federal grant and that is not—can use its existing, preexisting employees and that that would not constitute religious discrimination because you didn't open it up for a

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brand-new job search. But insofar as you do open it up to a new job search, you shouldn't discriminate in employment.

The second question, really, is not on this amendment, but is on the question of why we need this bill in the first place, and that is—and I'll address it more with an amendment I have coming up—but, basically, small churches don't have the resources, allegedly, or the expertise to organize 501(c)(3)s and so forth, provide the expertise, provide assistance for small searches—small churches, rather, and if you do those two things, I think you've really accomplished the entire purpose, the entire proper purpose of the bill. I don't think anybody would oppose it.

Now, if there is an improper purpose of the bill, if the real—if some people have a purpose of encouraging religious proselytization with Federal funds, that would not be served. But except for that—and it shouldn't be served—but except for that, all we need is two small changes in the law that takes care of two problems, that when you get down to it and you listen to everything, that's what they ultimately come down to: How do small churches participate with Federal grants——

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER.—and for the protection of the small church, require the 501(c)(3), but give them help in forming it, give them help in making it.

And, second of all, let the existing staff work on it without having to go through a job search. And you do those two things, you don't really need anything else.

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER. I think Mr. Hutchinson wanted—are you asking to yield?

Ms. LOFGREN. Actually——

Mr. NADLER. Maxine?

Ms. LOFGREN. I was.

Mr. NADLER. I yield to the gentlelady. I will yield to the gentlelady.

Ms. WATERS. I'm not on this one.

Chairman SENSENBRENNER. I believe that the gentlelady from California, other gentlelady from California, is trying to get your attention.

Ms. LOFGREN. I was. Just a quick point. I think that the suggestion you've made is a useful one and addresses an issue that we've not yet discussed here, at least so far as I can recall, which is where you have a small grant, and absent an ability to prevent discrimination on the basis of religion, you might have a small church that essentially is going to subsidize its religious mission with Government funds by hiring the person they could not afford to hire as pastor to run the soup kitchen to relieve the need to pay the pastor.

That is an important issue because behind all of this is our concern, I think, I hope that it's universal about not becoming involved in the establishment of religion. And if you think about the tremendous diversity of religious thought in the United States, I think it's important to all of us that we are very careful about that. For example, in my won district, I have many Hindus, Sikhs, Buddhists, Jane, the largest Jane temple in North America——

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Chairman SENSENBRENNER. The time of the gentleman from New York has expired.

Mr. HUTCHINSON. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Arkansas seek recognition?

Mr. HUTCHINSON. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HUTCHINSON. Thank you, Mr. Chairman. I was just reviewing the amendment that's offered by the gentleman from North Carolina, and the debate is being centered around the debate on the last amendment, which is the employment discrimination exemption under title VII. The amendment, it appears to me, goes to the use of funds from the programs which we acknowledge in the underlying bill is not exempted and should be offered on a nondiscriminatory basis.

It appears to me, if I'm understanding this correctly, that the amendment is consistent with the underlying bill. The problem is that you're asking to strike a portion of Subsection E that is important, and if the amendment was offered, if the language was offered at the conclusion of that whole section, that it might be fit because I don't see it as inconsistent, and I just wanted to——

Mr. WATT. Would the gentleman yield?

Mr. HUTCHINSON. I would be happy to yield to the gentleman from North Carolina to see if I have the correct understanding.

Mr. WATT. I think you do not have the correct understanding. What I'm trying to do, and maybe I didn't do it artfully, but what I'm trying to do is retain the religious exemption for core religious purposes, but prohibit discrimination in employment, which is what title VII is, title VII, not title VI, retain the prohibition against discrimination in employment with Federal funds. That's the purpose.

Mr. HUTCHINSON. Reclaiming my time, I will be voting against this amendment for the reason that it strikes a portion of the bill that is important for consistency purposes in maintaining the exemption, but I do not see a particular problem in the language itself that you have provided in there because I do not believe there should be discrimination in the use of funds from the programs——

Mr. WATT. Would the gentleman yield?

Mr. HUTCHINSON. Yes.

Mr. WATT. The gentleman is indicating he would support the language if I put it at the end?

Mr. HUTCHINSON. If I have the correct understanding, that is, I would, yes.

Mr. WATT. So what, what does the gentleman understand that the language starting with the word "and" and ending with "effect" on lines 19 through 23, what purpose does the gentleman think that that language serves?

Mr. HUTCHINSON. Reclaiming my time. That language refers to any provision in such programs, and so this would be programs that would be subject to grant application by faith-based organizations and it's making it clear that, despite the language of those specific programs, the religious organization exemption, under the Civil Rights Act, is still applicable.

Mr. WATT. Would the gentleman say that one more time.

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Mr. HUTCHINSON. When it says that any provision in such programs, those programs are the substantive programs that the faith-based organizations can make application to for grant money. And so it's, it's making it clear if there was an error in the language of those programs, that the religious organizations' exemption, under the Civil Rights law, still applies.

Mr. WATT. Okay. Would the gentleman yield further?

Mr. HUTCHINSON. I would be happy to yield further.

Mr. WATT. Would you yield to me for the purpose of a unanimous consent request?

Mr. HUTCHINSON. I would be happy to yield.

Mr. WATT. I ask unanimous consent that my amendment be revised to leave in the language on Page that it now provides be stricken and that this language, the additional language, be added at the end of line 23 instead.

Chairman SENSENBRENNER. Well, the Chair would like to have a clarification. If the language you are proposing to be added at the end of line 23, just to make sure that the bill is properly drafted and not inconsistent, wouldn't it be better to start with nothing in this section and then continue with the language; in other words, striking out "provided, however, that"?

Mr. WATT. I'm sorry. Say that again, Mr. Chairman.

Chairman SENSENBRENNER. To strike "provided, however, that," and begin—capitalize "N" for "Nothing," and then insert the rest after line 23.

There would be nothing stricken, and in addition, I would say nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions——

Mr. SCOTT. I accept the Chairman's friendly amendment.

Chairman SENSENBRENNER. Okay, without objection, the modification is agreed to. Without objection, the amendment as modified is agreed to.

Are there further amendments?

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER. Madam Clerk, the amendment that I'm offering is the amendment by Mr. Conyers, Scott, and Nadler. I'm offering it on behalf of Mr. Conyers, who is not here.

The one that starts, "On page 20 at the end add the following."

The CLERK. Amendment by Mr. Conyers, Scott, and Mr. Nadler to the amendment offered by Mr. Sensenbrenner.

On page 20 at the end add the following (o) Enforcement of individual——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

REV_00129253

Amendment by Mr. Conyers, Scott and Nadler to the Amendment Offered by Mr. Sensenbrenner

On page 20, at the end, add the following:

(o) Enforcement of Individual Rights Under the First Amendment.--A party alleging that the rights of the party under subsection (f), (g), or (i) have been violated may bring a civil action seeking any form of legal or equitable relief, including a writ of mandamus, injunctive relief, or monetary damages, in a State court of general jurisdiction or in a District Court of the United States, against the responsible party, religious organization, official or government agency. In any action or proceeding to enforce the foregoing rights specified in subsection (f), (g), or (i), the court may allow a prevailing plaintiff reasonable attorneys' fees as part of the costs, and may include expert fees as part of the attorney's fees.

Chairman SENSENBRENNER. And the gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

This amendment is—this amendment is simple and straightforward. Where the bill offers——

Chairman SENSENBRENNER. Will the Democratic staff allow Mr. Nadler to be heard?

The gentleman is recognized.

Mr. NADLER. Thank you, Mr. Chairman.

This amendment is simple and straightforward. Where the bill offers language designed to protect individual rights and liberties, those persons whose rights and liberties are supposed to be protected should be given the ability to enforce those rights in a court.

I hope this will be noncontroversial and the majority will choose to accept it in the spirit in which it is offered.

For weeks and weeks, this bill has been hung up over the issues concerning separation of church and state. The Chairman, to his credit, identified the very difficult and complex problems that emerge when government funds religious organizations. To his credit, he has insisted on critical provisions protecting beneficiaries so they have the rights to a comparable secular alternative and the right to opt out of any religious activities.

The problem is, while the bill specifically authorizes religious organizations to seek redress in court if their rights under the bill are violated, there is no comparable provision protecting the religious rights of individual beneficiaries. So we are concerned that all of the protective language added at the behest of the Chairman could turn out to be an empty promise, existing in theory but not in practice.

As a result, this amendment gives individual beneficiaries the right to seek to enforce these rights in court.

We also add the right of harmed parties to obtain reimbursement of their attorneys fees. Obviously, most individuals will have little ability to bring an expensive lawsuit if they're not able to recover their legal fees. I know of few homeless people who can afford to

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bring a lawsuit where there is no secular homeless shelter available.

Now, as will all legal rights, I'm hopeful it will not be necessary to resort to court action to obtain compliance. As the Members know, very often the knowledge that a right is legally enforceable itself guarantees its compliance.

There are few rights more important to this country than religious freedom. If the right is important enough to include in the bill, it should be important enough to be enforceable in court.

I urge my colleagues to support this common-sense amendment. And I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio, Mr. Chabot, seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I won't use all the time.

But this amounts to a lawyers' full-employment bill. We want the funds to be used to improve the lives of people who need services, whether it's for homeless people or whether it's for domestic violence, whatever it might be that the faith-based organization is providing.

We prefer the money to go to help people in need rather than to line trial lawyers' pockets. For that reason, I oppose the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Will the gentleman from Ohio yield to me?

Mr. CHABOT. I'd be happy to yield to the Chairman.

Chairman SENSENBRENNER. If you look at the amendment that has been offered by the gentleman from New York, the defendant in these cases would be the responsible party—religious organization official or government agency.

This would have a chilling effect on religious organizations signing up to provide the services that are intended to be funded in H.R. 7, because now some trial lawyer could file a lawsuit alleging a violation under the First Amendment and literally bankrupt the organization before the case even goes to trial.

I don't think we want to put in a liability section that has every faith-based organization running away from this program. The effect of this is extremely crippling, in terms of broadening the base of people who can provide social services.

And I agree with the gentleman from Ohio that this very pernicious amendment should be rejected.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Will the gentleman yield back now?

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Will the gentleman from Ohio yield back now?

Mr. CHABOT. I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank.

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Mr. FRANK. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I yield to the gentleman from New York.

Mr. NADLER. Thank you. Thank you. I thank the gentleman from Massachusetts.

Let me make two comments.

First of all, any trial lawyer recognizes who has the deep pockets. He's not going to sue the church; he's going to sue the local government.

They have the deep pockets in this situation, so I wouldn't worry terribly much about the churches being bankrupted, because they're not going bother suing the church. They're going to sue the local government or the government agency under whose aegis this was done.

Secondly, if, as Mr. Chabot says, we're worried about using the funds—the funds being used up on lawsuits and it being a trial lawyer's haven, why do we give the right to bring a lawsuit to the churches? The fact is that rights are only real if they're enforceable. And the churches, if their rights are violated, need the power to bring a lawsuit to enforce their rights.

But at the same, a beneficiary whose rights established in this bill—to an alternative, a nonreligious alternative, for example, or to various other things, not to be proselytized—if those rights are going to be enforced and not merely be worthless, needs the right to be able to go into court to enforce his rights.

So it's the same on both sides. Either the churches shouldn't have the right and neither should the beneficiaries, to bring a lawsuit. In which case, all the provisions of the bill would not be very important, because they would not enforceable in law, or the churches and the beneficiaries should have the rights to enforce their respective rights at law lest they be merely hortatory rights.

And, again, I wouldn't worry about the churches because—being defendants because the trial lawyers are going to sue the jurisdiction and the—either the Federal Government or the local government because they have the deep pockets, not the church.

Mr. CHABOT. Mr. Chairman?

Mr. NADLER. I yield back.

Mr. FRANK. Is the gentleman from New York finished?

Chairman SENSENBRENNER. The time belongs to the gentleman from Massachusetts.

Mr. FRANK. Did somebody want me to yield?

Mr. CHABOT. Will the gentleman yield?

Mr. FRANK. I'll yield to the gentleman from Ohio.

Mr. CHABOT. I thank the gentleman for yielding. The bill already provides——

Mr. NADLER. Can't hear you, sir.

Mr. CHABOT. The bill already provides for lawsuits against States and local governments for injunctive relief only. And if—and that's, in essence, if somebody is alleged to have violated the law. And that was on the request of county associations, the Conference of Mayors, and other local government entities.

And I thank the gentleman for yielding.

Mr. FRANK. Does the gentleman want to me yield further?

Mr. NADLER. Yes.

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Mr. FRANK. I'll yield further to the gentleman from New York.

Mr. NADLER. Well, the fact of the matter is that that's—I think—reading that section, it says: when the rights of the party under this section have been violated by State or local government, may bring a civil action for injunctive relief.

That's fine as far as it goes. But, in effect, the rights may have been violated by the people administering the grants, and there, in that case, agents for the State or local government. And the purpose of this amendment is to make sure that you can sue the State and that you can get relief in that section, too.

And by the way, if a church breaks the law, they should be liable, although, as a practical matter, you are going to sue the State not the church because they don't have the money.

But no one should be able to break the law and not be subject to an enforcement action.

I yield back to the gentleman.

Mr. FRANK. Mr. Chairman, having addressed what I had to say on this subject, I yield back.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Mr. Chairman, briefly, I wanted to commend you for your recent statement in opposition to this amendment. I think you put it very, very well.

This bill already provides for injunctive relief, which will protect the rights of the aggrieved.

I think that this amendment would lead merely to an operation of harassing faith-based organizations. This is an effort, I think, by some, who do not believe that they can defeat this bill, to make it as ineffective as possible by discouraging the very organizations that we hope will take this up.

This is to put fear into them, to make them cringe because of the potential wide-open liability of trial lawyers, of lawsuits. This is the last think I think we need as we're trying to make—to reach out to community organizations and have them be partners with us and take on so many of these challenges that we all agree are affecting so many neighborhoods and communities all across the country.

And, Mr. Chairman, with that, I yield back my time.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas, Ms. Jackson Lee, seek recognition?

Ms. JACKSON LEE. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, I'm going to use this time to make some general observation and comment on the basis of Mr. Nadler's and Mr. Conyer's and Mr. Scott's amendment, as I understand it.

And it is—it is interesting that what we're doing here in this room is, in essence, codifying a relationship between the State and religion that we've never done in the time of our existence as a de-

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mocracy. And so the proliferation of amendments is simply to take us back to the purity of our origins, which is the separation of church and state, and not creating an established religion.

This is not to say that our religious entities have not been coddled and nurtured and respected in this country. That is why they have proliferated.

But what we're asking to have done here in this legislation is to be able to establish religious entities as substitutes for governmental social services responsibilities. All to the best, if you will.

But as they step into the shoes a governmental entity, they are then—and that is why you have these requests from the national League of Cities and National Association of Counties, because what they're suggesting is, if you're going to place religious so-and-so to do my welfare-to-work, to do my job training, then the question has to be, if they are substituting for these broad-based social services, which I welcome the concept of the good Samaritan, but then, as well, they will be responsible, as government is responsible, in protecting the rights of anyone who walks through their doors.

When you have a Catholic school doing the business that it traditionally does, teaching children in the way that they teach them and the religious beliefs that they teach them, they are not stepping into the shoes of a governmental entity, attempting to take the responsibilities away from the public school system.

So this amendment speaks to the question of the rights that anyone has in coming under the First Amendment in any aspect of this society.

And what we're suggesting here is, because you have codified religion, because you have put forward a legislative initiative that establishes the involvement of the religious community with Federal funding, the Federal Government, and government, you now have to be subjected to the protective rights that citizens have, be it that they are poor, that they are homeless, that they need welfare-to-work training, they are addicted, whatever they might be.

We have never extended the long arm of reach of the Federal Government to the hallowed halls of sanctuaries when we have either prayed or bowed or said our prayers on Friday night or Saturday or 12 noon on Wednesday or high noon on Sunday. The Federal Government has not done that.

But when you begin to codify—and I have the greatest admiration for the spiritual, the religious community, and have fought for their existence and their survival and welcome their interest in being the new good Samaritan, if you will, in the sector that deals with secular issues, such as welfare reform and such as the addicted and HIV/AIDS. I welcome that.

But my concern is, do we realize that in the rush to make good on campaign promises, that we're literally codifying?

I think what my dear friends on the other side of the aisle are saying to me is that, "No, we're not, because we're not establishing the Muslim faith as an established religion, or the Catholic faith." No, we're not, but we're giving governmental strength, if you will, to the religious body by its utilization of Federal tax dollars.

And, therefore, even though there is sensitivity to this, you're opening yourself up to the responsibilities of adhering to the Bill

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of Rights, to the Civil Rights Act, and to the First Amendment and others, that governmental entities equally have the responsibility.

If we can understand that, maybe these amendments will bring forward the unity of purpose and we can get a resolution of H.R. 7 that would answer the concerns of those who want to be the good Samaritan, which I applaud and welcome.

But at the same time, there is a sense of acceptance that we're doing something extremely extraordinary and out of sync, if you will, with the historical and constitutional basis of this country. We have never sought to codify religion in this nation.

And I would argue——

Chairman SENSENBRENNER. The gentlewoman's time——

Ms. JACKSON LEE.—with those who say that we are not——

Chairman SENSENBRENNER.—has expired.

Ms. JACKSON LEE.—establishing religion.

Mr. WEINER. Mr. Chairman?

Ms. JACKSON LEE. I yield back.

Ms. LOFGREN. Mr. Chairman?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?

Mr. WEINER. To strike the last word.

And in particular——

Chairman SENSENBRENNER. Recognized for 5 minutes.

Mr. WEINER. And I would like to ask you, Mr. Chairman, as the author the bill—I'm inclined to vote against this amendment because I believe the compliance section is sufficient to ensure compliance.

But I believe the place where the compliance is going to be most handy is when enforcing a person's ability to opt out. And I just, for the purposes—so I can understand if I'm correct about that.

The way I read, on page 14, the rights of beneficiaries, it says that anyone who wishes to opt out, the appropriate Federal, State, or local government entity shall provide—it says "shall provide"—to such individual if otherwise eligible for such assistance, within reasonable period of time after the date of such objection, assistance that is accessible and is of the same value.

Am I correct in interpreting the compliance section as allowing an individual beneficiary, if they've been denied that right, to then sue the government agency or file a civil claim against the government agency, meaning the city or State, to enforce that right?

Chairman SENSENBRENNER. If the gentleman would yield?

Mr. WEINER. Certainly.

Chairman SENSENBRENNER. The answer to the question is yes, but the relief is limited to injunctive relief only, to obtain the same right pursuant to this section, and not for damages.

Mr. WEINER. Understood. And I think, frankly, that this is appropriate.

But it does raise the question, and just so I'm sure that I understand, if we have the following dynamic: Let's say in a corner of rural Idaho, a church sets up a job training program. Someone walks into that church, says, "I don't like this job training program because of my religious beliefs," it then requires the State of Idaho, if that person is entitled to benefits, to then set up another job training program for that individual. Is that correct, sir?

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Chairman SENSENBRENNER. If the gentleman would yield?

Mr. WEINER. Certainly.

Chairman SENSENBRENNER. The program does not have to be identical to the faith-based organization, but it is required to have a value that is not less than the value of the assistance that the individual would have received from such organization, meaning the faith-based organization. And this is page 15, lines 4 through 6.

Mr. WEINER. So if—and I appreciate that.

So if—if a State or a locality does chose to set up one of these programs, they better have allocated fundings to at least set up two, because they might be in the circumstance that—we've set up now an entitlement under this law for that person to then get a separate and distinct program at least of the same value.

Chairman SENSENBRENNER. Yes. If the gentleman would yield?

Mr. WEINER. Certainly.

Chairman SENSENBRENNER. The answer to that question is yes, but again emphasizing that it does not have to be the identical program——

Mr. WEINER. Understood.

Chairman SENSENBRENNER.—that is provided in the basement of the Baptist church in Idaho.

Mr. WEINER. Right. But it does have to be a separate and distinct program, meaning that when you agree to set up—or the State of Idaho agrees to set up one, they'd better have a few shekels in their pocket to get ready to set up the second in every case because all it takes is one objector to require the creation of a second program.

Chairman SENSENBRENNER. The answer to the gentleman's question is yes.

Mr. WEINER. Got it. Thank you very much. I yield back my time.

Ms. LOFGREN. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California——

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I am interested in the compliance section as well, and understanding that probably all of the recipients—or at least the great majority of the recipients of services funded under this initiative will be poor people, how these poor people will gather the resources to bring the action to gain the rights that are theirs under this act——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. LOFGREN. Yes, I certainly will.

Chairman SENSENBRENNER. The Legal Services Corporation is ready and eager to enforce those rights.

Ms. LOFGREN. Well, what they're——

Chairman SENSENBRENNER. The Appropriations Committee has given them an increase in their appropriation.

Ms. LOFGREN. The—reclaiming my time, the Legal Aid Society is so poorly funded that they are swamped and unable to take hardly any new cases, at least in the area where I represent.

Without the ability of attorneys fees, I think that this is a—for most recipients—an illusory remedy.

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And I think there are questions. If this bill becomes law, there will be questions that need testing.

I was thinking, who will apply in Santa Clara County for funds under this act? And I have no idea, but one of the churches—the Metropolitan Church in downtown San Jose is—it's a gay church, it's Protestant.

And if they do the daycare and a welfare mother objects, it won't be because they're Protestants; it's because the welfare mother may be biased against gay people.

Well, does that qualify for an exemption? I don't think so, because it's not about religion; it's about one's bias against gay people.

But that's going to have be tested——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. LOFGREN. Certainly.

Chairman SENSENBRENNER. The decision on where to go to get these social services rests with the individual seeking the social services, whether it is getting social services from a grant organization or one that accepts voucher funds.

So if the welfare mother that you're talking about doesn't want her kids at a daycare in the basement of a church that is predominantly gay, she just sends them someplace else.

Ms. LOFGREN. Reclaiming my time, that is certainly not the case in Santa Clara County. We have a dramatic shortage of daycare facilities and the Department of Social Services does provide a direction to the TANF program recipients on where to go and where to enroll their children.

There's a huge backlog——

Chairman SENSENBRENNER. Will the gentlewoman yield further?

I believe this bill would broaden the types of choices available to qualified people in Santa Clara County on where to go to receive social services because there would be more qualified organizations providing them.

Mr. FRANK. Would the gentlewoman yield?

Ms. LOFGREN. Certainly.

Mr. FRANK. Well, I think that points out what I think is a somewhat empty promise. Yes, if you took that part of the bill seriously, it would require a very significant expansion of Federal funding. That is true.

To make that work, anytime the Federal Government funded a faith-based program anywhere, it would have to fund equally in that same area a non-faith-based program.

In other words, we've got a new doctrine here. Instead of separate but equal, we're going to create the doctrine of secular but equal. And anytime the Federal Government funds—to make that work, what the gentleman just said, it promises a great expansion.

Anytime the Federal Government funds a faith-based program, it will, to comply with this bill, have to fund a secular and equal other program. And I am very skeptical that the money to do that is here.

But as one of the witnesses brought forward by the majority said, to make that work will require a very substantial increase in Federal funding, which I guess the biggest faith-based initiative is to think that that Federal money is coming. [Laughter.]

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Ms. LOFGREN. Well, reclaiming my time, I do believe that we are—without an opportunity for the poor to assert their rights, with either this amendment or something like it, that we are going to end up with a series of very unfortunate circumstances that will arouse the American public and their ire.

And I see that my time is about to expire, so I yield back what remains of it, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the Nadler amendment to the Chairman's amendment.

Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER. Nadler No. 1.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Nadler. On page 16, strike line 9 and all that follows through line 12 on page 17 (h) Additional protection for organizational autonomy and accountability.

Mr. NADLER. Mr. Chairman, I ask unanimous consent to waive the reading.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO H.R. 7
OFFERED BY MR. NADLER
(Nadler #1)

On page 16, strike line 9 and all that follows through line 12 on page 17

"(h) ADDITIONAL PROTECTION FOR ORGANIZATIONAL AUTONOMY AND ACCOUNTABILITY. – A religious organization shall be eligible to provide assistance under a program described in subsection (c)(4) only through an entity incorporated separately from its pervasively sectarian parent or affiliate under section 501(c)(3) of the Internal Revenue Code of 1986. Assistance provided under subsection (n) shall be available to a religious organization to carry out the requirements of this subsection."

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

A great deal has been said about protecting the autonomy of religious organizations and about ensuring that these organizations can participate in the delivery of Federal programs without giving

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up that autonomy and without undermining the delivery of those services.

The most simple way to do this and to ensure accountability in the use of the Federal funds is to do what religiously affiliated organizations have done for years: set up a separate 501(c)(3) corporation for the purposes of delivering those services.

Setting up such an organization prevents any danger that funds for distinctly religious purposes and taxpayer money that is to be used to provide needed service, needed secular services in the community, will be commingled and will be diverted to an inappropriate use.

It also ensures that the governmental agency administering the program can fully audit the activities of the grantee without the specter of government authorities combing through the church's books and quizzing the choir master or the minister over the use of funds.

I think that a committee dominated by attorneys should well understand why a separate entity is in the interest of both autonomy and accountability and certainly in the interest of the church.

Does anyone here think that an attorney who commingled trust accounts with firm accounts would stay in practice very long? We have rules against this sort of thing for very clear and understandable reasons.

Similarly, as every Member of this Committee knows, we are not allowed to use our office funds and any private funds in the same activity. This would include a community event that we may want to sponsor to promote local businesses. But once we have started using our office funds to pay for part it, we cannot use other funds to pick up the rest, even to pay for those items on which we cannot spend our office funds.

That's a very strict rule. We all live by it—at least I hope we all live by it—and for very good reason.

Does anyone here believe that setting up an additional church bank account and then forbidding government activities from looking beyond that account, as this bill does, could possibly fail to lead to mischief?

People of faith are good and honorable members of our community. But there have also been those who have abused their standing as religious leaders. And we have no right to play fast and loose with millions of dollars of the taxpayers' money by ignoring the fact that some people are tempted to abuse the trust when money is involved.

We need to legislate for the real, not the ideal, world. Already there's been a suit filed alleging that public money has been used to purchase Bibles for religious instruction. I do not think any Member of this Committee would condone that.

Separating out the publicly funded activities from the specifically religious activities has always served to protect against this sort of problem.

Religious organizations in my district and all over the country do this all time. We work with them to obtain public funds for them, and they do outstanding work for the communities that we represent.

I have heard only two arguments why we should not require a separate entity. The first came from a minister who testified before

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the Constitution Subcommittee about her community activities. She told us that they had become the process of setting up a 501(c)(3), and had even obtained legal assistance to do so, but dropped the whole thing because they felt uncomfortable with the idea.

Let me stress, her testimony was not that doing so violated a sincerely held religious belief of her congregation.

Is that a reason to change the law and risk lack of accountability in the use of public money?

No one is telling this church to stop engaging in their religiously motivated efforts to do good works. No one is telling the church that they cannot receive public money to do so. But feeling uncomfortable with requirements of accountability in the administration of public money is no reason to waive those requirements.

The other reason that has been given for opposing this requirement is that it is just too darn hard to draw up the incorporation papers and file them with the Secretary of State. Mind you, I've never heard this argument made by an actual religious organization. Indeed, many of the religious organizations that support this legislation have been setting up 501(c)(3)s for many years.

We are told that there are small congregations out there that just cannot muster the resources to do what daycare centers and newsstands and other small businesses and charities do all the time. This may be true, but my experience is that they do just fine and usually receive volunteer legal services from their community, just as they might receive free electrical work from a member of the congregation.

It also raises a red flag in my mind. If an organization cannot do the simple paperwork to set up a separate 501(c)(3), why is the Federal Government so confident that they can administer large sums of public money? I would take that as a warning sign.

I do, however, agree with the Chairman, who has added a new subsection in his mark, providing for technical assistance to those small organizations that may have trouble complying with this or other requirements necessary to administer a public program.

For that reason, my amendment makes clear that they shall be entitled to receive that assistance specifically for the purpose of complying with this new subsection. We should be encouraging people to do things the right way and people who are able to deliver needed social service should not be prevented from doing so because they lack the administrative know-how to work their ways through the rules.

My amendment addresses that problem so that simple but important requirement will not become an obstacle to participation.

Chairman SENSENBRENNER. The gentleman's time has expired. And I yield myself 5 minutes in opposition to the amendment.

This amendment is not necessary. And I believe that it is important that the religious organization have the choice on whether or not to set up a separate 501(c)(3) organization to operate its faith-based initiative activities or not. There is no requirement in the Constitution.

And let me explain what the bill does.

First of all, the bill provides for limited audits by the government agency administering the grant covered by the bill, and these are the grant recipients under that part of the faith-based initiative.

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Religious organizations receiving funds directly from the government must establish separate accounts for deposit of the government funds received pursuant to a program established by H.R. 7. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

And that addresses the gentleman from New York's concern that the IRS would be snooping around in the private funds that the church uses for its religious activities.

Secondly, religious organizations providing assistance through indirect assistance may establish a separate account for deposit of the Federal funds. If the funds are so segregated, only the separate accounts consisting of funds from the government shall be subject to audit or review by the government as a result of accepting the indirect funds.

Because indirect aid to a faith-based organization is, quote, "akin to the government issuing a paycheck to an employee who in turn donates a portion of that check to a religious institution," unquote, and that comes from Justice O'Connor's concurring opinion in *Mitchell* v. *Helms*. Such aid is permissible under the Establishment Clause and need not be segregated into a separate account.

These are the same types of audits that the government agency can conduct of nonreligious organizations receiving the funds from programs covered by H.R. 7. The purpose of the audit is to determine that the funds are being accounted for appropriately without subjecting the church accounts that do not contain Federal funds to government rummaging.

So the bill as drafted is consistent with the Constitution. It is consistent with the Supreme Court decision. There should not be a requirement that the church set up a separate 501(c)(3) in order to receive either the direct funds or the indirect funds. But if they should choose to do so, there's nothing in this legislation stopping them.

And I yield back the balance of my time.

For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I rise in support of Mr. Nadler's amendment, but I do want to applaud the Chairman for his effort to dramatically improve what was in the original bill, H.R. 7, and at least require, at a minimum, a separate account, because that was not in the original bill. And I think the Chairman certainly recognized the problems with that.

But I think we really need to go further for a couple reasons. Last week, about 50,000 Baptists descended on the city of Charlotte in my congressional district. And they had a discussion about the faith-based initiative, but unfortunately I was in Washington and not able to attend.

But I sent a letter, and this is one of the two points that I made in my letter to the ministers and other religious people who attended that conference, that commingling of taxpayer funds with church funds, instead of requiring a separate nonprofit, would be dangerous for two reasons. First of all—and I'm reading now from

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my letter, which I will ask unanimous consent to submit for the record, so that you'll have the entirety of the letter in the file.

[The letter of Mr. Watt follows:]

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

MELVIN L. WATT
12TH DISTRICT, NORTH CAROLINA

An Important Message from Congressman Mel Watt
About President Bush's Proposed "Faith-Based Initiative"

Dear Christian Friends:

With great pride I welcome you to the 12th Congressional District of North Carolina. As so many of you gather this week in my district, I thought this would be an ideal opportunity for me to clarify the concerns that I and the Congressional Black Caucus have expressed about President Bush's proposed faith-based initiative. As you carefully consider our concerns please be assured that, contrary to what some would like for you to believe, they have nothing to do with either religious bias or partisan politics.

Religious institutions have always been at the forefront of addressing our country's most pressing social problems. They provide food for the hungry and shelter for the homeless and they have a long history of fighting injustice, from slavery to racial and other forms of discrimination. Faith-based organizations continue to do these things today, not to get government grants but as part of their fundamental religious mission to help others.

Many religious organizations already sponsor federally funded programs. Many of these organizations, such as Catholic Charities and Lutheran Services of America, receive substantial amounts of federal funding without any of the controversy associated with the President's proposal. They are funded like all other organizations and are subject to the same rules: **1) they are prohibited from using taxpayer money to advance their religious beliefs because the Constitution requires the separation of church and state and 2) they must comply with civil rights laws that prohibit them from discriminating in employment.**

Unfortunately, President Bush has failed to inform the public that his proposed faith-based initiative includes new, controversial "charitable choice" provisions which would substantially change existing law. We strongly oppose two controversial features of his proposal:

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- **The President's proposal would allow co-mingling of taxpayer funds with church funds instead of requiring a separate non-profit entity.** We believe this is dangerous for two reasons. First, it will make it more difficult, if not impossible, to separate the church's religious activities from the activities being undertaken with government funds and this will severely threaten the required separation of church and state. Second, we think this co-mingling of government and church funds will lead to serious legal (perhaps criminal) problems for some churches in the future and that the most likely victims of these legal problems will be small or minority churches or churches unwilling to support the President's political agenda.
- **The President's proposal would allow sponsors of federally funded programs to discriminate in employment on the basis of religion (and possibly even race) for the first time in 60 years.** Frankly, we are shocked to be engaged in a debate today about whether basic civil rights laws should apply to sponsors of federally funded programs. We recognize that support for anti-discrimination laws was not unanimous when these laws were passed in the 1960s. But we strongly believe that publicly funded employment discrimination was wrong in the 60s and it is still wrong today. While we are confident that most churches would not discriminate, we strongly object to churches being asked to sanction religious or racial discrimination in employment as the price for federal funds.

I fully support faith-based organizations continuing to be involved in solving social problems. However, the two components of the President's faith based initiative described above are too high a price to pay for something you and your churches have been doing for years, with no government funding. I, therefore, hope you will join me, the Congressional Black Caucus and a growing list of religious organizations in telling the President to remove these controversial provisions from his faith-based proposal. If he refuses to do so, I hope you will join us in opposing the President's proposal.

Sincerely,

Mel Watt
Member of Congress
12th District of North Carolina

Mr. WATT. First, it makes it more difficult, if not impossible, to separate the church's religious activities from the activities being undertaken with government funds, and this will severely threaten the required separation of church and state.

Second—and really, this is more of a concern to me than even the first one. Second, we think this commingling of government and church funds will lead to serious legal, perhaps criminal problems for some churches in the future, and that the most likely victims of these legal problems will be small or minority churches, or churches unwilling to support a President's political agenda.

So basically, what I think we're on the verge of 5 years down the road if we allow funds to go directly into church coffers, either in

separate accounts or in commingled accounts, is a bunch of ministers and church people are going to run the risk of being indicted, and I've expressed this opinion in the hearings, and I think those indictments are more likely to be against people in smaller minority, probably churches that are not mainstream churches, because this will be used as a mechanism for—for kind of separating the good guys or the bad guys, possibly even separating the guys who support some political agenda from those who don't support a political agenda.

If we have these funds separated in a separate 501(c)(3) organization, I think we have minimized the prospect of that happening.

I'm the first to concede that there is not a legal constitutional requirement to do this, but I think the practical reasons for doing Mr. Nadler's amendment are just powerful, and I hope that my colleagues will support this amendment. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The question is on the amendment by Mr. Nadler to the Chairman's amendment. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. I have another amendment at the desk.

Chairman SENSENBRENNER. The clerk will report another amendment.

Mr. NADLER. The undesignated amendment, the one without the number.

The CLERK. Amendment to the amendment to H.R. 7. Offered by Mr. Nadler, Mr. Conyers, Mr. Frank, Ms. Jackson Lee and Mr. Watt.

On page 18, line 1, insert before the period, "or shall such organization engage beneficiaries in such worship, instruction, or proselytization while they are receiving such assistance."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered By Mr. Nadler, Mr. Conyers, Mr. Frank,
Ms. Jackson-Lee and Mr. Watt

On page 18, line 1, insert before the period, "or shall such organization engage beneficiaries in such worship, instruction, or proselytization while they are receiving such assistance."

Mr. NADLER. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5——

Mr. NADLER. Can I ask unanimous consent that the first word in the quote should read "nor" not "or?"

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, this amendment makes clear that the program cannot seek to engage participants in proselytization while they're participating in a program. Obviously, religious organizations are free to engage in any

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religious activity they wish, and participants are certainly free to participate in religious activities voluntarily. It is not enough to say that no funds may be used for this—for the proselytization. If this program will allow the program to be held in the religious institution, and allow the program to exist side by side with other religious activities, it would be easy to bring in someone to lead a prayer or proselytize who is not being paid for with the public money. We need to make clear that it simply cannot a part of the publicly-funded activity.

We also need to make clear that voluntary participation means just that, voluntary. There can be no cajoling or other forms of coaxing or coercing of participants to come to the meeting, or participate in the religious activity. If they want to, that's fine, but I can tell you that the communities I represent are not pleased by the idea that someone who comes in out of the cold for help might become the target of someone who thinks they need to be spiritually completed. I, for one, am happy to remain incomplete and so are most of my constituents.

The idea of using government programs to convert people is repugnant, and we should be clear that it is not permitted. No one should have to run a gauntlet or experience the pressure of a so-called voluntary prayer or proselytization session when they go to receive a public service or a publicly-funded service. What should they do, leave the room, leave early? Let the church do its business. Let the program, the federally-funded program do its business, and leave the participants out of it. If they want to go to a church session, they're obviously free to do it.

This language should discourage subtle coercion, because, obviously, as I said before, it would be—the legislation now prohibits the use of the Federal funds for—itself for proselytization, but it really doesn't prohibit other funds from being used to subject the subjects of the program to proselytization, and they ought to. I think it's saying that such organizations shall not engage beneficiaries in such worship, instruction or proselytization while they're receiving such assistance, is eminent common sense, and should be accepted, I hope, by the majority.

I thank you. I yield back.

Chairman SENSENBRENNER. For what purpose the gentleman from Ohio seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman, I'll be brief.

This is, again, it's an amendment which we consider to be unnecessary, and therefore I oppose it. The so-called opt-out provision allows a beneficiary to, in essence, take a pass on any parts of a social service that may include religious instruction, worship or proselytizing, and it's already clear. The opt-out language in the amendment reads, and I quote: "If the religious organization offers such an activity"—referring to religious instruction, worship or proselytizing—"it shall be voluntary for the individuals receiving services and offered separate from the program funded under Subsection (c)(4)." So it's been——

Mr. NADLER. Would the gentleman yield?

Mr. CHABOT.—I think crystal clear——

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Chairman SENSENBRENNER. Would the gentleman yield to me?

Mr. CHABOT. I'd be happy to yield to the gentleman from Wisconsin.

Chairman SENSENBRENNER. This amendment goes even further than that, because if you read the text of the gentleman's amendment, a person who is a member of the church, who seeks social services that are funded through H.R. 7, can't go to church any more, because it said, "nor shall such organization engage beneficiaries in such worship, instruction or proselytization while they are receiving such assistance." So one could be an existing member of St. Anne's Catholic Church or the First Baptist Church, qualify for social services programs that are funded through H.R. 7 at their own church, and then the church can't engage the beneficiaries, even though they happen to be a pre-existing member of the church, in worship, instruction or proselytization.

Mr. NADLER. Would the gentleman yield?

Chairman SENSENBRENNER. I would hope that this amendment would be rejected for that reason as well.

Mr. NADLER. Would the gentleman yield?

Mr. CHABOT. Reclaiming my time, I'll yield to the gentleman from New York.

Mr. NADLER. Thank you. I think Mr. Chabot is correct in thinking that my amendment was incorrect and thinking that my amendment simply says the same thing as the bill. It does go further than the bill. I want to commend the ingenious legal mind of the Chairman for conjuring up an extreme interpretation of the amendment, way beyond what I intended or anybody else would ever conceive of, and so his interpretation goes way beyond the bill and the amendment.

All the amendment says, all the bill says, I should say, the bill says you can opt out, if they're engaging in a religious proselytization in the public service, you can opt out and go to a different public service which doesn't engage in that. You can leave the room. What the amendment says is that they may not engage in proselytization or worship during the provision of the social service. Whether or not that particular proselytization is paid for—in other words, the minister can't come into the room where they're doing the drug detox and lead a prayer.

It does not say—as the Chairman implies it says—that a member of the church who wants to go to the hot lunch program or the drug detox program can't do so or can't go to church again. All it does say——

Mr. CHABOT. Reclaiming my time.

Mr. NADLER. Can I say one more——

Mr. CHABOT. Reclaiming my time. All right, go ahead.

Mr. NADLER. All it says, a member of the church certainly could go to the hot lunch program or the detox program, and he can certainly continue to go to church. All this says is that at the hot lunch program, they cannot bring in someone to say—to lead the group in prayer. They can certainly lead the group in prayer upstairs in the church. I yield back.

Mr. CHABOT. Reclaiming my time, I'll yield to the other gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I thank my colleague for yielding. I don't know who to believe here, my good friend from Ohio, or my good friend, the

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Chairman, from Wisconsin. Why not just remove all shadow of doubt and defeat the amendment, and we won't have to deal with such problems.

Mr. CHABOT. Reclaiming my time, I continue to oppose the amendment for the reasons that I stated and the reason that the Chairman—and I'm going to go with my Chairman, and I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. Well, first, Mr. Chairman, I do want to note that while I——

Chairman SENSENBRENNER. Do you want to strike the last word?

Mr. FRANK. I want to strike the last 5 minutes, Mr. Chairman. [Laughter.]

Mr. FRANK. What I——

Chairman SENSENBRENNER. Without objection, the clock is turned back and the gentleman's recognized for the next 5 minutes.

Mr. FRANK. I am aware that in our profession we give ourselves in court the privilege of what is called pleading in the alternative, in which you can submit to a judge two entirely opposite theories and hope he'll pick one of them. I want to congratulate the majority for extending that, and in the previous amendment, arguing in the alternative, and opposing the gentleman from New York with two totally contradictory and opposing arguments. I guess anything that wins.

What bothers me is—and I think the language could use some tightening. I think the gentleman from Wisconsin made a point that wasn't intended, probably isn't the interpretation, but I agree that we could tighten it up a little.

And I want to get to that, to a procedural point, Mr. Chairman. It's been my understanding that it was the intention to complete this bill today. If that is the case, I want to object very strenuously, and this is an example. We have not been filibustering. We started on this very complicated subject early. We had a break for a vote. We came back again about a quarter to 2:00. No one thinks this bill is going to be on the floor as soon as we come back. Rushing through this extraordinarily complicated subject, on which a lot of people are sort of torn, and where there are a great number of difficult issues to deal with, in a couple of more hours on a day like today, when we're going to be further interrupted for votes, really does a disservice to this concept. I think people are trying seriously to work out how we can best tap the willingness of faith-based organizations to make an even greater contribution to the service of social problems.

And if you insist on using the majority to force the pace of this today, I think you will be making it harder rather than easier. And I'll show you why I am not fully ready. We didn't see this bill until late yesterday. It's a lot to try and deal with in a day. I think people are making a serious set of good-faith efforts to improve it. There are a whole lot of problems with beneficiary discrimination that we're going to get to. I have a problem with the opt out. I understand that. And certainly we don't want to say that if you are a member of the congregation and you're getting the service, you

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can't participate. The Chairman has raised a point that I think has to be clarified. But I have problems with the opt out.

Again, I talked before about separate but equal. I mean we had a period in American history where we tried to maintain two separate sets of institutions, one for white people and one for black people. Now, nothing quite so invidious is being maintained here, but we are being told that we're going to have two separate sets of social programs. We're going to have the religious and the secular. And, again, it was a witness brought forward by the majority, Professor Laycock, who said this program will be a fraud unless we have two completely equal sets of institutions, and they have to be in each area. If you fund a program in one area, you're going to have to fund a secular program in that same area. And I think that, as I said, we learned before, separate is inherently unequal.

The opt out reminds me of what people tried to do in the cases in Oklahoma and Texas—McLoren and Sweatt are the cases—where they said, "Okay, we don't have a law school—we're not going to let black people into the white law school, but we'll send you out of State or let you go to law school in a separate place." Again, we're not talking about anything as invidious as racial discrimination, but we're talking about something that still shouldn't be part of the policy of the United States Government. We're going to set up and fund with Federal tax dollars, to which you have contributed, religious organizations, and the intent is, of the current administration, obviously, to channel much of the social service programming through them. And then we'll say, "If you don't like this, if you have a constitutionally-protected objection to it, we'll let you opt out, we'll find you another way." I am deeply skeptical that we will ever remotely approach equality. And the notion of an opt out is just offensive. It's, "Okay, well, you'll have to drop out. You'll have to go away here. You have to go there." It puts a burden on the beneficiary that shouldn't be put, particularly since many of these intended beneficiaries are not the best organized, best integrated personalities in the world.

Now, these are very difficult issues. I raise them here because I think the Chairman made a point about the advisability of redrafting the gentleman from New York's amendment, but we can't do that in a couple of hours. We can't do that if that is the intention, to just rush this bill through today. For what? So that the majority can say, "Well, we got a bill out?" Because no one thinks it's going to the floor right away. We've been making a good-faith effort. I would hope that we would continue for a little while longer, and then recess this markup, and come back, give us a chance to look at things. I have found this useful. The gentleman from New York, my colleague from Brooklyn, has been trying very seriously to grapple with some of these issues.

So I have both a substantive point, which is I think that the amendment is better than the existing bill, but I think it could be further improved.

Of course, we have this other problem, by the way, because of the parliamentary footing that the majority chose to use. If in fact, we were dealing with an original text, the gentleman from New York's amendment would be further subject to amendment. The Chairman made a point, and I think it could have been done.

Chairman SENSENBRENNER. The gentleman's time has expired.

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Mr. FRANK. That's now been preempted parliamentarily.

Mr. SCOTT. Mr. Chairman, Mr. Chairman?

Chairman SENSENBRENNER. For what purpose the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. And I'd like to inquire from the Chairman, whether or not the legislative intent of the language on page 17, line 24—or I guess beginning at line 20, says that no funds provided through a grant shall be expended for sectarian worship—sectarian instruction, worship or proselytization, and if the religious organization offers such activity, it should be voluntary for the individuals receiving the service, offered separate from the program. Whether that means that during the government-funded program there should be no worship, proselytization, sectarian instruction by volunteers or otherwise, and any religious activities would be totally separate and apart from—and voluntary—separate and apart from the government program? Is that——

Chairman SENSENBRENNER. The answer to the question is yes.

Mr. SCOTT. Thank you.

Chairman SENSENBRENNER. That's what it says. The question is on the Nadler amendment to the Chairman's amendment. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes——

Mr. NADLER. rollcall, Mr. Chairman.

Chairman SENSENBRENNER. rollcall is ordered. The question is on agreeing to the amendment offered by the gentleman from New York, Mr. Nadler, to the amendment offered by the Chairman. Those in favor will, as your names are called, answer aye, those opposed no, and the clerk will call the role.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Graham?

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Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. I'm sorry? Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

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Chairman SENSENBRENNER. Are there additional Members in the room who desire to cast or change their vote? The gentleman from Pennsylvania?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Chairman SENSENBRENNER. Gentleman from North Carolina?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. Gentleman from Georgia?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Chairman SENSENBRENNER. Gentleman from Tennessee?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. Gentleman from Alabama?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Chairman SENSENBRENNER. Gentleman from Florida?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. Gentleman from Arizona?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no.

Chairman SENSENBRENNER. Gentleman from Florida?

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler, aye.

Chairman SENSENBRENNER. Further Members who wish to cast—the gentlewoman from Texas.

Ms. JACKSON LEE. How am I recorded?

The CLERK. Ms. Jackson Lee, pass.

Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or to change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 7 ayes and 22 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments to the amendment?

Mr. SCOTT. I have an amendment at the desk, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 6.

Chairman SENSENBRENNER. The clerk will report the Scott amendment No. 6.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Scott and Ms. Waters.

On page 10, line 10 strike "paragraph-" through——

Mr. SCOTT. Mr. Chairman——

Mr. CHABOT. Mr. Chairman, reserving a point or order.

Chairman SENSENBRENNER. A point of order is reserved. The gentleman from——

Mr. SCOTT. Move that reading be waived.

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Chairman SENSENBRENNER. Without objection, the reading of the amendment will be waived and the gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott and Ms. Waters
Scott #6

On page 10, line 10 strike "paragraph-" through "(A) if" on line 11 and insert "paragraph if".

On page 11, line 23 strike "; or" and insert and insert a period.

On page 11, strike line 24 and all that follows through page 12 line 15 and insert the following "(5) Nothing in this section shall affect any programs under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)".

Mr. SCOTT. Mr. Chairman, this amendment that I'm offering with the gentlelady from California simply prevents charitable choice rules to applying to programs under the Elementary and Secondary Education Act. Both the Senate and House recently passed, by overwhelming majorities, bipartisan education bills. Charitable choice was not considered by either the House or the Senate authorizing Committees, nor was it debated on the House or Senate floors, because doing so would have jeopardized an otherwise bipartisan bill. As controversial as charitable choice is in the social service context, and even more so when applying it to elementary and secondary programs. For the first time ever, H.R. 7 would establish direct grants to pervasively sectarian institutions, including private religious schools, to run elementary and secondary programs. The courts have not even decided the constitutionality of vouchers in situations like this, an indirect aid scenario, and here we are immediately providing direct aid to these institutions.

Charitable choice is not needed for churches and other houses of worship to participate in these programs, so long as they comply with civil rights laws. But the meager protections that are in charitable choice for adults, are simply inadequate when running pro-

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grams for children. The provisions prohibiting proselytization during government services does not go far enough when we deal with children. The law has consistently differentiated between children and adults, for example, when we talk about prayers. Children are more susceptible to coercion, and so we can have city council approved prayers at official ceremonies involving adults, but we can't have school-sponsored prayers dealing with children. Here children represent a truly captured audience, and even proselytization that occurs outside of a program may cross the line, particularly when parents are not consulted or informed.

Now, I would like to add that the language providing alternatives is particularly unrealistic in a school situation, given the huge demands for these programs and the current system's inability to meet that demand. The quote, "alternatives" available to children are particularly obnoxious because all of the normal children would go to one program, while the one or two children belonging to another religion would have to be separated and relegated to another room.

I'd like to note that the original charitable choice bill introduced by then Senator Ashcroft, covered just about everything except elementary and secondary education programs. This amendment is supported by the National Education Association, the American Federation of Teachers, the American Association of School Administrators, and I'd like to submit their letters of support for the record.

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. I yield back.

[The material referred to follows:]

REV_00129277

nea
NATIONAL EDUCATION ASSOCIATION

Robert F. Chase, President
Reg Weaver, Vice President
Dennis Van Roekel, Secretary-Treasurer

John I. Wilson, Executive Director

1201 16th Street, N.W.
Washington, D.C. 20036-3290

GOVERNMENT RELATIONS
Mary Elizabeth Teasley, Director
202-822-7321 FAX: 202-822-7741

June 27, 2001

Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Dear Judiciary Committee Member:

On behalf of the National Education Association's (NEA) 2.6 million members, we would like to express our strong support for an amendment to be offered by Representative Scott (D-VA) that would strike charitable choice provisions for after-school and tutoring programs from the Community Solutions Act of 2001 (H.R. 7).

NEA believes that increasing the role of faith-based organizations in government programs raises serious issues – particularly in the areas of separation of church and state, religious discrimination, and accountability for the use of taxpayer dollars. First, constitutional provisions on the establishment and free exercise of religion prohibit the introduction of any sectarian practices into the public school system. An expanded charitable choice plan could violate this prohibition by subjecting beneficiaries of educational services to religious worship or instruction.

In addition, NEA is deeply concerned that expansion of charitable choice could open the door to federally-funded employment discrimination and the violation of the religious liberties of those receiving services. Charitable choice proposals contain no assurances against taxpayer funded religious employment discrimination. Indeed, by claiming that an employee has violated a religious tenet or doctrine of the group, a religious organization providing educational services could unfairly discriminate against an employee paid with federal funds.

Finally, charitable choice proposals undermine accountability for use of taxpayer dollars. Federal dollars flow directly to religious organizations, which could be free from reporting and monitoring requirements. In addition to academic standards, recipients of charitable choice funds could also be exempt from civil rights, certification and training, and health and safety standards. Any efforts to hold religious organizations accountable for their use of federal funds would likely result in unconstitutional excessive government entanglement.

Charitable choice is a controversial and divisive issue that will serve only to stall an important, bipartisan bill. We urge the Committee to drop charitable choice provisions from H.R. 7.

Sincerely,

Mary Elizabeth Teasley

Mary Elizabeth Teasley
Director of Government Relations

REV_00129278

AMERICAN FEDERATION OF TEACHERS
AFL•CIO

555 NEW JERSEY AVENUE, N.W.
WASHINGTON, DC 20001-2079
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SANDRA FELDMAN
President

EDWARD J. McELROY
Secretary-Treasurer

NAT LaCOUR
Executive Vice President

June 27, 2001

Members
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

On behalf of the more than one million members of the American Federation of Teachers, I strongly urge you to support an amendment offered by Representative Scott that will strike the provisions applying charitable choice to afterschool education programs from H.R. 7, the "Community Solutions Act of 2001."

Allowing federal funds to flow directly to pervasively sectarian religious organizations to provide government services such as education through charitable choice raises serious constitutional issues regarding the separation of church and state. Under charitable choice beneficiaries of government programs could be subjected to proselytization, religious worship or instruction. Although the bill does not permit the use of federal funds for proselytization, organizations could use private funds for this purpose. This could force susceptible young children in education programs to listen to religious messages that make them uncomfortable and may be contrary to their family's religious orientation.

The AFT is also extremely concerned that charitable choice in H.R. 7 would allow government-funded employment discrimination. Under H.R. 7, religious organizations receiving federal funds would be allowed to refuse to hire individuals based on their religion. This represents a dangerous step backward for civil rights in this country.

In addition, H.R. 7 would undermine accountability for the use of public funds. Religious organization providing education services, for example, could not be subjected to the same oversight and accountability for student achievement as other providers without risking excessive government entanglement with religion.

I urge you to remove the badly flawed and divisive charitable choice provisions from H.R. 7.

Sincerely,

Charlotte J. Fraas

Charlotte J. Fraas
Director, Department of Legislation

REV_00129279

American Association of School Administrators

June 26, 2001

The Honorable Bobby Scott
Attn: Theresa Tilling-Thompson
Senior Legislative Assistant
2464 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Scott:

The American Association of School Administrators, the professional organization of more than 14,000 local school leaders, wishes to express our support for your amendment to strike the provision in HR 7 that would apply "charitable choice" to after school and tutoring programs.

The section you would strike, should it remain in the bill, would establish the dangerous precedent of authorizing direct federal payments to religious institutions for elementary and secondary education programs. Congress has long held that poor children in religious schools will receive federal educational assistance provided by the local school district in a neutral setting, a program that continues to work well. Further, local schools already partner with churches in a range of after school activities, with the school district being the fiscal agent and responsible for ensuring program accountability.

In the name of "charitable choice," the bill would allow discrimination in hiring based on religion, a practice not tolerated in any public school; a practice that runs counter to the very premise of our establishment as a nation.

The Community Solutions Act, by granting churches—in the "Compliance" provisions—the right to sue local school authorities, if the church believe its "rights" to federal funding "have been violated," opens a Pandora's box that will only hurt children in local communities.

We envision a multitude of lawsuits being filed against local school districts, because any religious organization believing it has a right to federal after school funds can and likely will bring suit, at tremendous cost to local taxpayers.

We do not have sufficient resources, as it is, to educate our most disadvantaged children. Diverting scarce federal dollars to churches not only conjures constitutional issues, but also dilution of funds that would otherwise work to the benefit of all children, regardless of creed.

In closing, we thank you for moving to strike the education provisions of this misguided legislation. Congress must direct the nation's considerable resources toward education, not litigation.

Sincerely

Nicholas J. Fleming
Senior Legislative Analyst

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Chairman SENSENBRENNER. The gentleman from Ohio insist upon his point of order?

Mr. CHABOT. I'll withdraw my point of order, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman seek recognition?

Mr. CHABOT. I do. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be brief.

I oppose the amendment. The amendment in essence would eliminate adult GED and after-school programs from coverage, and these are very important programs that provide very important

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services to significant people within our Nation, and should not be excluded. The Supreme Court has upheld direct government funding to elementary schools, provided that the proper monitoring procedures are in place. So for those and other reasons, we oppose this amendment.

Mr. WEINER. Would the gentleman yield for a question? Would the gentleman yield for a question?

Mr. CHABOT. I'd yield.

Mr. WEINER. I'm predisposed to oppose the amendment as well, but the gentleman, in his explanation, offers an interesting question. What if you have an after-school program, you have a student or say two students who opt out of it? According to the bill, they have to be provided with a program, an alternative that has a value that is not less than the value of the assistance that the individual would have received from such organizations. How—how do you, as the Chairman of the Subcommittee, see that working? Part of the value of an after-school program is you are hanging out with a bunch of other children, you have different rooms to travel in, you have a basketball court in one room and arts and crafts, a tutoring program. Do you envision an after-school program being constructed of the same value, meaning you have a gym with one kid running around, you have a tutoring program where the tutor waits to see if that kid wants to stop by, a wicker workshop in the next room, seeing if maybe that fellow wants to run in there. How do you conceive of the opt-out program working in a construct of the underlying bill?

Mr. CHABOT. Will the gentleman yield?

Mr. WEINER. Sure, it's your time.

Mr. CHABOT. I thank the gentleman for yielding. The recipient clearly has the option, if they object to a religious program providing that service, to go to either another religious program, or secular program——

Mr. WEINER. Right.

Mr. CHABOT. And that will be determined on a case-by-case basis as to whether it's been appropriate and whether it's of comparable funding, and they're entitled to that under this bill.

Mr. WEINER. Will the gentleman yield further? Will the gentleman yield further?

Mr. CHABOT. It's your time.

Mr. WEINER. Actually, it's not. It's your time, but I appreciate it.

Mr. CHABOT. I'll yield.

Mr. WEINER. In Cincinnati, in your district, in Brooklyn, in mine, you can't shake a stick without hitting an after-school program. Thank goodness there are plenty of alternatives around. But the explanation for why this is needed, we've also—we've always been pointed to the parts of our community that are served by churches that are sometimes not in big cities. Let's say it's a corner of rural Idaho that has an after-school program set up in the local Baptist church in the basement. They have an after-school program. Someone in rural Idaho who's not of that faith feels uncomfortable, or a child doesn't want to go to that after-school program. What do you envision—how is this actually going to work on the ground? You say it has to be something of equal value. How do you replicate that in a community that has no other after-school programs because it also has to be accessible? I'm curious. In the real world,

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in that real world example, how would you envision the bill working?

Mr. CHABOT. Reclaiming my time.

Mr. WEINER. Certainly.

Mr. CHABOT. I think the gentleman raises a very important, very interesting point. This is something that he and I and Mr. Green had an opportunity to discuss on the floor a bit. I don't know that we're ever going to come to a conclusion which is satisfactory to the gentleman, but we're going to—you know, you have to look at it. You mentioned Idaho as an opportunity, a rural area. It may be a little bit more difficult there than it might be in a large city, to provide a comparable service, but that's something that's going to have to be worked out. And ultimately we may end up in the court in determining how this—injunctive relief—not for money damages, but for injunctive relief—but this is again something that we've had for some time.

Mr. WEINER. But what do you——

Mr. CHABOT. Under Welfare Reform—under Welfare Reform, we've had this, for example, since 1996, and this is not new law, it's an expansion of existing law, in essence, and I'd be happy to continue to yield to the gentleman.

Mr. WEINER. Well, certainly. But putting aside the litigation, what do you envision? I mean, you're a supporter of the bill. It was your Subcommittee and you're an expert in this. What do you envision in that case, and what's the dream Chabot scenario? How does it work out? Do we really—are going to have to create? Is that rural Idaho community going to have to create—I mean, what do you think is going to happen, I'm asking?

Mr. CHABOT. Reclaiming my time, I cannot, with great candor, determine exactly what the program in Idaho is going to do, nor should I be the one that should make that determination. As our former Chairman, Mr. Hyde, mentioned, there's an army of people out there that want to provide services for the right reasons. These are people of goodwill who really care about helping underprivileged children, about helping homeless children, about providing after-school care, a whole range of activities out there that our country needs in great amounts for all kinds of people for all kinds of reasons. And we're trying to provide the resources to many groups and organizations and faith-based organizations that have not, unfortunately, been able to take advantage of this and provide those services for some time. We're going to have to see in practice how this actually works, and they're going to have to work within the constraints and the confines of this law

So again, I commend the President for putting this program forward, and I commend this body for debating this issue in an intelligent manner and trying to craft good legislation, but I can't tell you exactly what it's going to look like in Idaho, and I yield back the balance of my time.

Mr. WEINER. Would the gentleman yield?

Mr. FRANK. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

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Mr. FRANK. I think we have gotten to one of the serious problems with this bill. The gentleman from Brooklyn was taking the argument seriously, and he's being told, well, we don't know how it's going to work out. I've asked to be distributed an excerpt from the transcript of the hearing that the gentleman from Ohio's Subcommittee had with Professor Laycock from the University of Texas, who was here at the request of the majority to be a strong witness in favor of this program. And Professor Laycock says, on page 48 in what's been given out, "We will not put religious conditions on the money to the provider and we will protect the beneficiary by really making available an alternate provider. You have got to really do that or this program is a fraud."

And on the next page, 64, actually my name is omitted, it begins with me. I ask him about this, and he says again—I say, "Do we have to have in place a complete alternative set of programs that meet the condition?" And Mr. Laycock says, at line 1510, "If you read my written testimony, you will see I said yes, this is where the real issue is. How do we make this happen? This is a religious liberty bill, it is not a funding bill. The higher the levels of funding the better this will work."

Well, he says you have to have a complete parallel set, but what bothers me is, I then turn to Mr. Esbeck, representing the administration, the Justice Department, and I asked him if he agreed with Mr. Laycock that you had to have the complete set of alternatives, and he said no. That's why I do not believe that this promise is going to be kept. Indeed it isn't even being made by the administration. I can't charge them with breaking a promise. They won't make it.

Here's Mr. Esbeck on page 66, lines 1527: "let's say it is a drug rehabilitation service, if they have one objector, they could simply employ a clinical psychologist to deliver the services to that one particular individual." We're now going to have the social service delivered by the one individual.

I said, well, what if there were 6 or 7 or 11? The administration has basically answered the gentleman from New York and said, no, we're not even going to try.

And I finally asked him—and this is at the bottom of page 67—"Do you agree with Professor Laycock's characterization that for this program to be fair and justifiable there needs to be a substantively equal secular alternative set of programs?"

Mr. Esbeck, representing the Justice Department, the administration witness here: "I think in my earlier answer I was showing you an example where that was not necessary. So I guess the answer is no."

The problem is that without a lot more work, given the administration's position, we are being asked to adopt a program that will work out, in the words of Professor Laycock, fraudulently.

Mr. WEINER. Will the gentleman yield?

Mr. FRANK. Yes.

Mr. WEINER. I just want to make a point. I mean, I think it's also important to know that a job training program teaching people to type, you can very easily send a typist over to a person's home or have them meet in someone's office and teach them to type. What troubles me about after-school programs is the very nature of after-

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school programs. You can't just remove a child from that environment and then surround them with people——

Mr. FRANK. Well——

Mr. WEINER. I'm sorry.

Mr. FRANK. No, I agree with the guy, when he's saying this context—but by the way, that's true of job training programs. As everyone knows, job training programs don't simply teach you the physical skill. They teach you how to get up and get there on time. They teach you how to work with other people. Whenever you are dealing—we are dealing here with problems that are often behavioral, and the notion that it's equal if you just send a clinical psychologist there, to being part of this social setting, is wrong. And again, I am disturbed because Mr. Esbeck, on behalf of the Bush administration, denies what seems to many of us to be the central principle on which we've heard. He says, no, Professor Laycock is wrong. You don't have to do it equally.

Now, the relevance of that is this: the more you allow religious content in the program, the more you generate the possibility that people are going to want a separate program which is going to cost a lot of money, which will be very difficult with our current fiscal situation, and which Mr. Esbeck says won't be there. So while we cannot control in this the funding, this is an argument, it seems to me, for diminishing the likelihood that you're going to drive people to want that alternative. That's why some of us have supported some of these amendments that try to preserve this right. But fundamentally, what this transcript shows is the witness that the majority brought forward, the professor from the University of Texas, Mr. Laycock, says, here's what you need to make this fair, and the Justice Department says basically, no, we're not going to do that.

Chairman SENSENBRENNER. The gentleman's time has expired. For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. It was mentioned that within a few weeks ago the House and Senate passed bills reauthorizing the Elementary and Secondary Education Act programs. Provisions within each bill allow community groups to compete for after-school grants and to provide tutoring assistance to pupils attending low-performing schools. These measures are intended to improve our children's education.

However, neither bill included a charitable choice amendment to establish direct grants to private religious schools and other sectarian entities, to provide educational services to elementary and secondary students. Such an amendment was not even considered on the floor or in Committee, and yet that's exactly what this bill would do. It would sneak in direct grants to religious groups through the back door.

If this is an important aspect to educational services, then why wasn't it discussed when we dealt with the education reauthorization bill? I think I know why: because the authors of the bill knew that such a provision would be very objectionable to the Education and Workforce Committee and that it would undergo far too much scrutiny on the floor.

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Well, we must not allow such underhanded tactics. Charitable choice is offensive and problematic enough without adding in provisions relating to after-school and tutoring. These provisions would again entangle the Government with religion. To allow our Government to dole out funding to private religious schools is to invite an inappropriate melding of church and state.

I would like to quote from a letter I received yesterday from the American Federation of Teachers in opposition to H.R. 7. It says in part, and I quote, "Allowing Federal funds to flow directly to pervasively sectarian religious organizations, to provide Government services such as education through charitable choice, raises serious constitutional issues regarding the separation of church and state."

The letter goes on to note that the bill could force susceptible young children in education programs to listen to religious messages that make them uncomfortable and may be contrary to their family's religious orientation.

We here on the Judiciary Committee are very consciously working within our jurisdictional guidelines. The authors of this bill should be held to the same standard. These provisions should not be in this bill, and I urge you to strike them.

Ms. LOFGREN. Would the gentlelady yield?

Ms. WATERS. I yield to the gentlelady from California.

Ms. LOFGREN. I think that your statement is wise, and I would like to make an additional observation about the amendment before us.

In the example raised by the gentleman from New York, he described an after-school program that might be located at a church or an institution, a faith-based institution. But oftentimes these after-school programs are actually located at the school, and there is very limited space, and you might have outside groups that come in and actually provide the services on the school site.

If the Wiccans actually had the lowest-cost program and they want to come on to the school site and provide the after-school care, they agree not to proselytize, but they're dressed as witches. The parents don't have another option. The kid is at school. The kid can't go anywhere else. The school can't accommodate an additional program. So you're going to end up with the Wiccans and no possibility of implementing the opt-out that is essential to even arguably making this bill constitutional. And I thank the gentlelady for yielding.

Chairman SENSENBRENNER. Would the gentlelady yield?

Ms. WATERS. Let me just——

Chairman SENSENBRENNER. Would the gentlelady yield further?

Ms. WATERS. Reclaiming my time, I would think that my friends on the opposite side of the aisle would really be afraid of what has been constructed in this bill that would allow their children to receive religious messages that do not comport or agree with where they stand religiously in the family. I think this is the greatest possible intrusion.

Let me just say, if you're an adult, you can tell somebody about what offends you, you don't like it. But what do children know? What do children know who are put in this position? We are sending them for tutoring, for after-school programs, and to have to encounter the possibility of being given religious messages by people

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you don't know and you certainly don't agree with. I think this is not a liberal issue. This is really not a conservative issue. But I have heard conservatives more than anybody else talk about protecting the right of parents to be able to infuse the values that they care about in their children rather than having other people interfere with that.

Chairman SENSENBRENNER. The gentlewoman's——

Ms. WATERS. I think this is dangerous.

Chairman SENSENBRENNER.—time has expired. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott, to the Chairman's amendment. Those in favor will say aye. Opposed, no? The noes appear to have it.

Ms. WATERS. rollcall.

Chairman SENSENBRENNER. A rollcall is requested and will be ordered. The question is on the adoption of the Scott amendment to the Chairman's amendment. Those in favor will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
[No response.]
The CLERK. Mr. Barr?
[No response.]
The CLERK. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?

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Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Additional Members in the room who wish to cast or change their vote? The gentleman from North Carolina?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Ohio?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. The gentleman from South Carolina?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Chairman SENSENBRENNER. The gentleman from Tennessee?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from Georgia?
Mr. BARR. No.

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The CLERK. Mr. Barr, no.

Chairman SENSENBRENNER. Additional Members in the room who wish to cast or——

Ms. JACKSON LEE. How am I recorded, Mr. Chairman?

The CLERK. Ms. Jackson Lee, pass.

Chairman SENSENBRENNER. The gentlewoman from Texas?

Ms. JACKSON LEE. Aye.

Chairman SENSENBRENNER. Does the gentlewoman from Texas wish to change her vote?

Ms. JACKSON LEE. I was—yes, I'd like to vote aye.

The CLERK. Ms. Jackson Lee, aye.

Chairman SENSENBRENNER. If there are no further Members who wish to cast or change their vote, the clerk will report.

The CLERK. Mr. Chairman, there are 10 ayes and 17 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

Ms. LOFGREN. Mr. Chairman, I have——

Chairman SENSENBRENNER. The gentlewoman from California—I was instructed by the Democratic staff to recognize the gentlewoman from California next. For what purpose does the gentlewoman from California seek——

Ms. LOFGREN. I have an amendment at the desk designated the Lofgren-Schiff amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, offered by Representative Lofgren and Representative Schiff, strike section 104.

[The amendment follows:]

Amendment to the Amendment to H.R. 7

Offered by Rep. Lofgren AND REP. SCHIFF

Strike Section 104.

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5 minutes.

Ms. LOFGREN. Mr. Chairman, we have had a lengthy and I think useful discussion about the role of religious and the need to protect the free exercise of religion, but there's something else in this bill that also needs to be attended to that I don't think is really about charitable choice at all, and that is section 104 that this amendment would strike.

It appears to me to be written for really no other purpose than to shield corporations from the responsibility they should continue to have for those items or services they may contribute or, if you look at the plain language, also rent or charge a fee for. This bill creates such a high standard, namely, either gross negligence or intentional misconduct, that it almost guarantees immunity from li-

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ability for injuries or death that could result from furnishing materials, vehicles, real property to nonprofit agencies.

Let me just give a couple of examples. On page 3 of the Chairman's amendment, there is a liability relief for business entities that provide use of facilities to nonprofit organizations, specifically when the use occurs outside of the scope of the business or the business entity; it's limited also that the injury or death would occur when the facility is used by the nonprofit entity and that it's authorized by the business.

Section (b)(2) indicates that the facility doesn't even have to be donated to the nonprofit. It can be rented or a profit could be made by the business for furnishing space.

Well, think about some scenarios that could be covered by this. For example, you've got a store in a city and there's extra room in back of the store that is rented, because times are tough in the commercial world, to a baby-sitter, a nonprofit baby-sitter, perhaps even a church. Now, the store owner neglects to check the smoke detectors, and the store owner neglects to make sure that the emergency exits are cleared. When the facility catches fire and the 3-year-olds are injured, the store owner would be exempt from liability for the injuries sustained by the pre-schoolers because the conduct involved would be mere negligence, not gross misconduct or intentional misconduct.

Let me give another example in the motor vehicle section on page 4. Take a corporation—it's very common. The corporations have vans that they use for their own employees. Times are tough in the corporate world, especially in Silicon Valley. If a corporation decides to lease or rent that employee van to the Girl Scouts but fails to check on the bald tires, that van flips and incinerates the Girl Scout troop, the business that has made a profit by providing that van to the Girl Scouts is immune from liability for their negligence. And I can't imagine that that's what the proponents of charitable choice wish to do.

Finally, on page 5, there's a provision eliminating liability for business entities providing tours of facilities. Now, I must confess, I have thought long and hard about why this provision would be here because this is not even limited to nonprofits. It appears to be completely extraneous to the whole issue that we've been discussing all day, which is faith-based matters. It appears that if you were a factory owner and you did a tour for salesmen, and the salesmen in the bowels of the manufacturing facility ended up being beaned by a faulty line, that you would be exempt from liability under this section, although that has absolutely nothing to do with religion. So I am just bemused by that.

I also am astonished, frankly, that in the manager's amendment, the few sections that would carve out liability when misconduct is a sexual offense, when misconduct is a hate crime, when misconduct violates a Federal or State civil rights law, when misconduct——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. LOFGREN. I'd ask unanimous consent for an additional minute.

Chairman SENSENBRENNER. Without objection.

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Ms. LOFGREN. When misconduct is a crime of violence, those have been removed in the amendment. So if you had—I know a woman who is a psychologist who specializes in counseling child molesters for a profit, she's in business. If she rents out the first floor of her building to the day care and her clients molest the children in the day care, this bill is going to preclude any finding of liability for that negligence, and I cannot believe that that is something that proponents of faith-based programs would wish to do. And I yield back the balance of my time.

Chairman SENSENBRENNER. The Chair will recognize himself for 5 minutes in opposition to the amendment.

Section 104 provides that businesses that provide in-kind charitable contributions shall not be liable for death or injury arising from the use of those contributions unless there is gross negligence or intentional misconduct. The gentlewoman spotted the fact that the original bill had a number of instances contained in there, including hate crimes and sexual assaults. Those are all intentional misconduct, and there is no exemption from liability if any of the beneficiaries under charitable choice are victims of that kind of activity.

The liability protection in the manager's amendment applies in four instances: first, when a charity uses equipment donated by a business; second, when a charity uses the facilities of a business; third, when a charity uses motor vehicles or aircraft of a business; and, fourth, when a charity takes a tour of the facilities of a business.

This provision extends to those matters the same basic concept that this Committee embraced for volunteers in the Volunteer Protection Act of 1997. That bill passed this Committee by a vote of 20 to 7. It passed the House by a vote of 390 to 95. It passed the other body by a vote of 99 to 1 and was signed into law by former President Clinton.

I am hopeful that we can have the same type of bipartisan support for this provision that we had for the Volunteer Protection Act. The basic idea is that donating something to a charity should not be a high-risk venture. You should not have to endure unlimited liability for ordinary negligence to be a good corporate citizen. That type of litigation limits the good works that charities can do.

For example, potential liability for the use of donated motor vehicles can discourage businesses from helping kids go on a field trip or to get to summer camp. We do not want these kinds of good works hindered by the threat of lawsuits.

For those of you who don't like this type of protection, we've also taken care of your concerns. All the States under the manager's amendment are free to override the provisions of this section and to reinstate liability laws should they choose. I think it is unlikely that States would reject this type of provision, but they can do so if they choose.

I yield back the balance of my time and declare the Committee in recess——

Mr. FRANK. Mr. Chairman——

Chairman SENSENBRENNER.—and come back following the votes.

[Recess.]

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Chairman SENSENBRENNER. The Committee will be in order. Pending at the time of the recess was the Lofgren amendment striking section 104——

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER.—of the Chairman's mark. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, first, I am still puzzled as to why this bill decides that any tour of a business facility, including one for which people pay, is a matter of faith-based.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Yes.

Chairman SENSENBRENNER. I would ask unanimous consent that the Sensenbrenner amendment be modified to delete that section.

Mr. FRANK. I object, Mr. Chairman—oh, delete the whole section?

Chairman SENSENBRENNER. No. To delete the section relating to tours.

Mr. FRANK. Tours. No objection.

Chairman SENSENBRENNER. Without objection, so ordered.

Mr. FRANK. Well, I thank the Chairman for that. I still—I'm a little frustrated because I am denied the explanation of how it got in here in the first place. I think that would be a more interesting tour than those for which you were going to give people liability. But the gentleman's point illustrates the absolute unreasonableness of the apparent decision by the House leadership that this Committee must finish this bill. I believe that the Chairman has played up until now a very constructive role in trying to improve this bill, and I appreciate what he did. I realize that matters of scheduling are not entirely autonomous ones for the Committee.

But precisely because the Chairman was working so hard to get some revisions, we on our side of the aisle did not see this bill until yesterday afternoon. This is a very complex bill. It has a lot of references to other statutes. It is a subject on which a number of Members feel favorably inclined in some ways, subject to some amendments. And because of the way things have turned out, we are going to be asked to pass this bill without it being given adequate consideration.

It is now a time when many Members have left on both sides. I have had Members on both sides say to me, gee, I got a plane to catch. No doubt that the majority will be able to muster a quorum, at least a working quorum, to shut down debate on the bill if they can't quite get it voted out. And those who are insisting that this be done—I don't impute this desire to the Chairman. Those who are insisting that this be done do this whole bill, this whole concept, a disservice.

Again, the Chairman just agreed, we needed an amendment here. The Chairman earlier pointed out what I thought was a flaw in the wording of the amendment offered by the gentleman from New York. I've got amendments to deal with other parts of this bill. The beneficiaries section has some serious problems.

One of the things that's clear to me, if you look at this bill, is that it is a license for people to discriminate against gay and lesbian people. Beneficiaries, for instance, are protected against dis-

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crimination based on some laws, but they are explicitly not protected against discrimination based on State laws, and that is an invitation for people to discriminate based on sexual orientation.

I'd like to be able to explore these things, but what we're going to be dealing with now—members are barely here, even after they've been asked, some Members will be leaving, Members are under pressure to get out of town. A complicated bill involving important constitutional and policy questions is being rushed through, and why? It cannot come to the floor of the House for 10 days and, indeed, will not come to the floor of the House very soon. The rational thing to do would be to resume on this bill, even on the Tuesday. Members had originally been told there would be voted on Monday. We could come back on Tuesday in July and have the 4 or 5 hours left to consider this. Instead, consideration of this bill will be truncated. Important questions will not be dealt with fairly. It will be voted out under pressure. A bill that was substantially revised, to the good—and I appreciate the revisions—but revised so late given the timing of the markup that we did not have adequate chance to prepare.

Now, that's what you do if you were trying not to resolve an important public policy issue, but if you're trying to get some political points because you think you're in trouble. Obviously, things have not been going well for the administration in their mind, and so they felt that they needed before this recess to have a success to talk about. And the sole purpose of this rushed and truncated markup on a bill which we have not had adequate chance to study is so the administration can recoup a little of what it has lost. And it does this at the expense of the effort to build a consensus behind this bill.

We were prepared to be serious about this, to debate it. We were working our way through the issues. We got through the employment issue. We were going to get into the beneficiary issue. We've made also serious progress in dealing with the question of the proselytization. But that now gets—that plug gets pulled because no one thinks between now and whatever time the deadline will come you're going to get adequate consideration given all these constraints.

I really very much regret that this has happened.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would hope that we would adopt this amendment so we could give coherent attention to the issue. This is a tort reform issue, not a charitable choice issue. As the Chairman has pointed out, we have good Samaritan laws that might achieve bipartisan consensus, but we can't do that in the middle of a charitable choice debate. There are some provisions that involve motor vehicles, for example, where we usually exempt motor vehicle liability because there's usually insurance. We don't have time to really do this, and I would hope we'd accept this amendment and try to deal with the issue on another day.

I yield back.

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Ms. LOFGREN. Would the gentleman yield?

Mr. SCOTT. I yield to the gentlelady from California.

Ms. LOFGREN. I think your point in terms of the insurance issue is a good one, and I wanted to make just two additional comments about the amendment and also the deletion of the carve-outs in the underlying bill.

The Chairman is obviously correct that a sexual offense is an intentional act and, therefore, would not be—would be covered under the underlying bill. But the point is that liability can attach to someone other than the tort feasor in the case of some sexual attacks, for example, the famous case where negligence in the lock that allowed the hotel guest to be—to have a room broken into and to be raped. And there was negligence found on the part of the hotel.

If, for example, you have—and I gave an earlier example of someone who I actually happen to know who is a psychologist, whose specialty is child molesters. If that person rents space in the bottom of her building and then hires as an attendant or a handyman a registered child molester, and the child molester molests the children in the downstairs basement, you can—sure, you can go ahead and sue the child molester, but chances are he is going to be judgment-proof. And it's the negligence of the owner of the building that really needs to be called into account, number one, so that there can be remedial funds made available to counsel the children who have been damaged; and, number two, there's a reason for tort law, which is to hold people to ordinary standards of care. And the idea isn't just to tag people once they've messed up, but to have people think and not do stupid things so that we live in a safer environment.

I think that the elimination of the sex provision and the crime of violence provision and the hate crime provision is a serious mistake. I object to the whole section, but at least we ought to have those carve-outs because I think they are serious issues.

I thank the gentleman for yielding to make those points.

Chairman SENSENBRENNER. The gentleman yields back.

The question is—the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I want to simply say that I agree with the amendment of the gentlelady from California. And having said that, I want to associate myself with the remarks of Mr. Frank. I am very disturbed by the rush job of this bill. As Mr. Frank said, we first saw this bill or the Chairman's mark late last—oh, 6, 7 o'clock yesterday, I think it was. And there's obviously not been a proper time—enough time to do a proper job of analyzing this and going through it.

Now, of course, given the way we rushed through the tax bill, that may be a pattern.

Let me say one other thing, though. There are rumors afloat today that there may be a move by the Chairman to move the previous question at some time tonight. I earnestly hope that's not the case. In the 9 years I've been on the Committee, I recall three occasions—I recall two occasions when the previous question was called. The previous question, of course, eliminating the right of the minority or, for that matter, perhaps majority Members to offer amendments. Once was during the Contract on America, I forget which bill it was, and the Chairman at that time was apologetic

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and in effect said he had no choice, he had been instructed to get the bill out that day by the Speaker or whoever. But we had had 4 or 5 days on the bill.

Earlier this year, you, sir, called the previous question. And maybe there was a reason in that one Member of the Committee was being obstreperous in offering dilatory—using many dilatory tactics. Nobody's doing—nobody's doing that today. If we simply do not have enough time to go through all the amendments today, a second day of markup on a bill of this nature is not too much to ask. It would be a gross violation of comity between the parties and of the traditions, I think, at least in the years that I've been here, of the Committee to move the previous question. And I hope that the Chairman won't do it, and I hope that it will not be necessary for the minority, if he should do it, to engage in a lot of dilatory tactics for the rest of the session.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the Lofgren amendment to the Chairman's amendment. Those in favor will signify by saying aye. Opposed, no? The noes appear to have it.

Ms. LOFGREN. rollcall, Mr. Chairman.

Chairman SENSENBRENNER. A rollcall is requested. The question is on agreeing to the Lofgren amendment to the Sensenbrenner amendment. Those in favor will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
[No response.]
The CLERK. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?

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Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members—the gentleman from California?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. Are there additional Members who desire to cast their votes or to change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 13 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?

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Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr.——

Mr. FRANK. I offer an amendment. It's the one that's headed, "Offered by Mr. Frank and Ms. Baldwin."

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Frank and Ms. Baldwin. Page 15——

Mr. FRANK. I ask unanimous consent that it be considered as read.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

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AMENDMENT TO THE AMENDMENT TO H.R. 7

OFFERED BY MR. FRANK AND MS. BALDWIN

Page 15, line 23, after "subsection (f)(3)" insert "on any basis prohibited under applicable Federal, State, or local law or".

Page 16, strike line 1 and all that follows through line 8 and insert the following:

"(2) INDIRECT FORMS OF DISBURSEMENT.—A religious organization providing assistance through a voucher, certificate, or other form of indirect disbursement under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3) on any basis prohibited under applicable Federal, State, or local law or on the basis of religion, religious belief, or a refusal to hold a religious belief."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. This goes to a section we have not previously debated. We've dealt with employment discrimination. This deals with beneficiary discrimination.

Now, on page 15, we have non-discrimination against beneficiaries. Interesting, the very fact that we are dealing with this shows the controversial nature of some aspects of this program. Or-

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dinarily, when the Federal Government is funding programs, we don't worry about discrimination against beneficiaries. But apparently there is the perception from people who know this best that some of the organizations receiving this money might be inclined to discriminate against beneficiaries. Obviously, that is impermissible with Federal funds.

But the problem is that it seems to me to be very incomplete. There is a provision on page 13—I think it's inappropriately placed, but I hope it's suppose to mean that. Under section (e), employment practices, there's subsection (1) and then subsection (2), and subsection (2) says, "Nothing in this section alters the duty of a religious organization to comply with certain laws."

Now, it's placed in the bill as if it only applied to employment. I am assuming we would clarify that it was meant to imply to beneficiaries as well as employment. If not, we'll have some problems. But even assuming that for the moment, here's what it says: You shall not, if you are a religious organization, discriminate based on title VI of the Civil Rights Act, race, color, or national origin, sex in education but not elsewhere under title IX, and then section 504 of the Rehab Act and the Age Discrimination Act.

It then says you shouldn't discriminate based on religion. Well, one of the things it clearly leaves out, I believe intended, was any State law that added to these protections. And, obviously, what we are talking about primarily here are State laws that ban discrimination against people based on their sexual orientation.

In other words, this bill licenses the recipients of these funds to discriminate against beneficiaries based on their sexual orientation, because by terms it says no discrimination based on race, on color, on national origin, on disability.

By the way, it also would allow some discrimination based on sex, because title IX deals with discrimination in educational programs or activities on the basis of sex, but other discrimination on the basis of sex would apparently be allowed.

My amendment—and it's cosponsored by the gentlewoman from Wisconsin, who had to leave—says you shall not, if you take these funds, discriminate based on any basis prohibited under Federal, State, or local law. In other words, I do not think the Federal Government ought to take this as a license—I do not think the Federal Government ought to license private organizations to violate State anti-discrimination law, but the bill does that. The bill says if you take Federal funds for this program—previously the gentlewoman from Wisconsin had said if you have both a mix of Federal and private funds, you could avoid State anti-discrimination laws in employment. Well, now that also happens with regard to the beneficiaries. And obviously it is intended to allow some organizations to say no to gay, lesbian, bisexual, or transgendered people who might otherwise be protected by State law and deny them these benefits.

Now, again, we have the mythical separate but equal alternative. Yes, if you're denied these benefits, theoretically there will be another existing set. But it is abhorrent to be told that you can't even have your choice of these.

We're not talking now about someone who says, oh, I don't want this religious instruction—or I don't want this religious organization giving me the service. We're talking about someone who wants

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the service, who is protected against discrimination by State law, but who by virtue of this bill can be turned away from a federally funded program when the State law would protect him or her against discrimination because this law allows a discrimination against not the employment—the employees, but the beneficiaries.

I think that is significantly unworthy of something that comes in the guise of trying to alleviate our social distress, and I point it also would allow sex discrimination in non-educational activities. I do not understand how people can consider this to be a great social advance.

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Ohio, Mr. Chabot, seek recognition?

Mr. CHABOT. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief.

I oppose the amendment, rise to oppose it. There is no reason to believe that either gays or lesbians would be or should be discriminated by any of the programs here. There's absolutely no intention in that or any reason to believe that that's the case, and for that reason we oppose it.

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Mr. FRANK. Well, but I would assume you would also think there was no reason to believe that people would discriminate based on race or conditions of disability, yet you put into the bill that they can't. So if we're going to go on the good-faith assumption that it wouldn't happen, it wouldn't be in the bill. In fact, you put several categories in the bill and leave out State laws, which are the only protections that now exist for gays and lesbians.

Mr. CHABOT. Well, reclaiming my time, Congress has the opportunity—has had the opportunity to act in this area, thus far at the Federal level has chosen not to do so. There's no reason for this bill to be the vehicle for that occurring. It's a debate that it's a legitimate——

Mr. FRANK. Would the gentleman yield? Because the gentleman misstates me.

Mr. CHABOT. I'm not yielding yet. So there's no—there's no reason in this specific bill to have this be the bill that deals with that particular——

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT. I'll yield.

Mr. FRANK. And neither does the amendment that we offer do that. The amendment does not name any categories. What the amendment says is we will respect State law. This is not an effort to include in Federal law any new protection.

I would also point out that the bill includes a protection that's not in Federal law, religious discrimination. So you don't confine yourself in this bill to banning only that discrimination currently banned under Federal law. You add, as you should, religious discrimination. So the question is: Why do we pre-empt State law here in this one area, or whatever area the States want to add?

Mr. CHABOT. Well, reclaiming my time, this is Federal dollars which the Federal Government has the right to essentially set the

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rules on. And thus far Congress has chosen not to act with respect to discrimination relative to gays or lesbians. There's no reason for us to——

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT. This particular—I'll be happy——

Mr. FRANK. Thank you. But neither has Congress done this with regard to religion. You added religion here. This is not simply saying only those which the Federal Government had done. And there might be State laws—State laws may offer more protection on the basis of sex discrimination, not sexual orientation but sex, than Federal law. You allow that to be overridden. You only protect sex discrimination in regard to education, and there is no general ban here on sex discrimination. Some States which have equal rights amendments, they would find these disregarded.

I understand that Congress has the power to do that. I simply don't understand why in the context of a bill that's supposed to be enhancing our sense of compassion we license people to discriminate against some categories that their States have tried to protect against discrimination.

Mr. CHABOT. Reclaiming my time, under existing law, other than based upon religion, you clearly cannot discriminate for race, color, national origin, or any other item, and this is just the determination that there's no reason to bring in sexual orientation under this particular bill. It's a legitimate debate for Congress to have at some point in time. This is not the bill to do that——

Mr. FRANK. If the gentleman would yield, that——

Mr. CHABOT. Essentially what we're trying to do here is we're trying to allow religious groups who can provide good services for people who really need the help, whether it's women who are being abused, whether it's children, whether it's—a whole range of very needy people. We want to allow religious groups to compete for those existing dollars because we realize that some of those groups can do a better job than others——

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT.—and we want to provide the best service, the most efficient service to those needy people as we possibly can. And there are, as I mentioned, race and color and national origin. Those are all protected, as we already had the religious discussion and the discrimination relative to religion, all the way back to the 1964 civil rights law. It was determined not to include religion. It's just—it's the belief that this is not the law to deal with gays or lesbians, the sexual orientation issue. I'll be happy to yield.

Mr. FRANK. If the gentleman would yield, I am appalled by that. What you're saying is because we haven't done it before, this is a new program, it's expanding it. And, yes, if you're abused and, yes, if you're in trouble, you'll get help, but if a group getting Federal funds decides that because you're a lesbian, the fact that you've been abused as a wife, they can deny you, you say that's okay. That's appalling.

Mr. CHABOT. Well, reclaiming my time, again, it's been stated this is an expansion of existing programs. In essence, much of this is not new programs. We're already doing this. We were doing this under the welfare reform bill back in 1996, which was signed by President Clinton. To my knowledge, there's nothing in there rel-

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ative to discrimination of gays and lesbians, and, again, this is not the bill to do that. And I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Frank amendment to the Chairman's amendment. Those in favor will say aye. Those opposed, no? The noes appear to have it.

Mr. FRANK. rollcall.

Chairman SENSENBRENNER. A rollcall will be ordered. All those in favor of the Frank amendment to the Sensenbrenner amendment will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
[No response.]
The CLERK. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?

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[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish to cast or to change their vote? The gentleman from North Carolina?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from South Carolina?
Mr. GRAHAM. No.
The CLERK. Mr.——
Chairman SENSENBRENNER. Graham.
The CLERK. Mr. Graham, no.
Chairman SENSENBRENNER. Further Members? The gentleman from Tennessee?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. Further Members?
[No response.]
Chairman SENSENBRENNER. The clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 15 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are there——
Mr. FRANK. Mr. Chairman?
Chairman SENSENBRENNER.—further amendments? The gentleman from Massachusetts, Mr. Frank.

REV_00129302

Mr. FRANK. Mr. Chairman, I have a second amendment here. It says, "Offered by Mr. Frank and Mr. Scott."

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to——

Mr. FRANK. I ask unanimous consent it be considered as read.

Chairman SENSENBRENNER. Well, if the amendment can be distributed, at least someone will be able to see if a point of order lies. The clerk will continue to report.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Frank and Mr. Scott. Page 3, line 24—page 13, line 24, Strike "(2) Effect on other laws"——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO H.R. 7

OFFERED BY MR. FRANK AND MR. SCOTT

Page 13, line 24,

Strike "(2) EFFECT ON OTHER LAWS. –Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (prohibiting discrimination on the basis of age)."

and insert in place thereof:

"(f) EFFECT ON OTHER LAWS. –Nothing in Section 1994A shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (prohibiting discrimination on the basis of age)."

Page 14, line 14

Strike "(f)" and replace with (g)" and re-letter subsequent subsections accordingly.

Chairman SENSENBRENNER. The gentleman from Massachusetts will be recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, unlike my previous amendment, which tried substantively to expand the protection, this one is aimed at clarifying what seemed to me possible ambiguities in the protections already included in there with 2.

On page 9 of the Chairman's mark, beginning at 20, line 20, it says, "Funds not aid to religion," and it says that the money that would, in effect, be given to the organizations, the faith-based orga-

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nizations, for the purpose of this assistance shouldn't be construed as support for religion or the organization's religious belief.

As a statement of fact and constitutional principle, that is unexceptional. I just wanted to make sure that this was not interpreted as somehow avoiding the effect of the non-discrimination statutes that are in there, that is, the non-discrimination statutes applied to the entities, and one potential interpretation was that if you hold that the money being given is not being given to the organizations, that somehow that might mean that they were not as organizations subject to the anti-discrimination statutes. If I am assured that that was not the intention, maybe we could even work that out technically. But that's the purpose.

In other words, I wanted to make sure that the anti-discrimination statutes that are listed beginning on page 13, subsection (2), that those, in fact, do apply to the organizations even if it's interpreted as not being aid to them.

Secondly, there is just a question of the way the bill is constructed, and I hope it's not intended this way, but that's the other thing I would add. On page 13 it says, "(e) Employment Practices." The provision that I assume bans discrimination against beneficiaries is listed here as subsection (2) of (e) under Employment Practices. It seemed to me that it ought to be made a separate section, that is, I just wanted to make clear that if you read this, someone might think—would think that employment practices in general effect on other laws, that there is then nothing that covers beneficiaries.

If this is read literally to apply, subsection (2)(b) line 24 only to be employment practices, then there's no language about beneficiaries. It then goes on to talk about rights of beneficiaries about their rights to withdraw.

So what I was trying to do was to get clarification that subsection (2) on lines 24 and thereafter applies to beneficiaries as well as to employees, and also that when we say that this aid is not aid to the religious organization but aid to the individuals, that that does not work also to exempt them from the effects of the statute.

I would yield——

Chairman SENSENBRENNER. Would the gentleman yield? Is it the effect of the gentleman's amendment, which to me seems to consist solely of inserting the word "receiving assistance" or "providing services" under any program described under subsection (c)(4), and the rest is identical to what is——

Mr. FRANK. Except can I make one other point, Mr. Chairman? The other thing it does is simply re-letter so that it takes that section out from under being a subsection of employment practices. You're right. It adds providing services, and then it re—it re-designates so that the anti-discrimination section is a separate—is not subsumed under (e), which is employment practices.

I don't strike anything. All I do is to re-letter it. The way this is worded, on page 13, it says, "(e) Employment Practices," and then subsection (2) is "Effect on Other Laws." I just take that out from under employment practices and make that (f). It doesn't change it. It says—you have (e) and then you have—subsection (2) becomes (f), because I assume that is not intended to apply only to

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employment practices, but to employment practices and beneficiaries.

The question is: Is subsection (2), beginning on page 24, intended to apply only to employment practices? If it does, then nothing provides anti-discrimination protection for beneficiaries.

The Chairman is right. Other than the indirect, that section is identical. But, again, it's a question of how it's placed in the bill.

Chairman SENSENBRENNER. If the gentleman would yield?

Mr. FRANK. Yes.

Chairman SENSENBRENNER. We're prepared to accept the amendment.

Mr. FRANK. I thank the Chairman.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Massachusetts, Mr. Frank. Those in favor will signify by saying aye. Opposed, no? The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments? The gentleman from—the gentlewoman from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment. Which amendment does the gentlewoman prefer to have reported?

Ms. JACKSON LEE. The Jackson Lee-Waters amendment.

Chairman SENSENBRENNER. Is the clerk clear which amendment is the one that is being called up?

The CLERK. Amendment to the amendment to H.R. 7, offered by Ms. Jackson Lee and Ms. Waters. Page 12, beginning on line 21, strike "Federal, State and local governments" and insert "Federal government."

Page 13, beginning on line 1, strike "Neither" and all that follows through the word "shall" on line 3——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

REV_00129305

Amendment to the Amendment to H.R. 7

Offered by Ms. Jackson-Lee and Ms. Waters

Page 12, beginning on line 21, strike "Federal, State and local governments" and insert "Federal government".

Page 13, beginning on line 1, strike "Neither" and all that follows through the word "shall" on line 3, and insert "The Federal Government shall not".

Page 18, strike lines 8-18.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the gentleman very much. I thank the Chairman.

Our understanding of H.R. 7 is that it pre-empts State and local contracting requirements related to religious organizations. Supporters of charitable choice argue that it would override State and local non-discrimination employment laws if those laws are contrary to sincerely held religious beliefs and have also argued it would override State and local contracting requirements with respect to contracting with diverse providers.

Now, we have indicated two things in this session today: one, that we are not doing anything extraordinary—some of us disagree with that—but that we are leaving intact basic laws of protection, whether they be civil rights, the First Amendment, and also laws of non-discrimination.

This is a simple amendment because it extends the protection of Federal, State, and local laws protecting individuals against discrimination on bases other than religion to this legislation. And, therefore, what it does is that it prohibits eliminating the protections that State and local governments provide. And that—I would say that it adds and enhances to this legislation by allowing the State laws and the local laws to stand. It doesn't change any laws.

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It simply allows those certification requirements of local governments that may require non-discrimination to be applied and not have the Federal law pre-empt such laws.

I'd ask my colleagues to consider this in the light of the fact that all of the entities that I have had represent their concern to me or interest in this legislation clearly indicate that they do not want to discriminate, and they want to be able to adhere to the laws and, as well, practice their faith. For those who would be impacted, who might be discriminated against, this would add an extra measure of protection if State and local laws have non-discrimination laws within them. This would provide the protection for it.

With that, I yield back.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

What we have in the bill right now in every single—is in every single previously passed charitable choice bill. The whole idea here is to allow new players into the game. A faith-based organization needs to be able to preserve its autonomy against infringements by any level of government, and these are Federal funds. We want a uniform rule throughout all 50 States for the use of Federal funds. There are State provisions that try to limit freedoms the U.S. Supreme Court has held are part of our religion clauses when it comes to Federal money.

If States or localities have different notions of church-state issues, all they have to do is keep their funds separate and their own provisions will apply to their own separated funds.

We don't want to overrule how States use their own State funds. We want to apply the same equal access rules when Federal funds are used. And, therefore, we respectfully oppose the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Chairman SENSENBRENNER. My reading of the section on page 18 that this amendment seeks to delete is that it leaves it up to the State or locality to make a determination on whether they want their laws to apply. If there are exclusively Federal funds going into the faith-based organization, then this is not a relevant issue. If the faith-based organization accepts Federal funds as well as either State or local funds, then the State or local government, if they wish their laws to apply, can require that their funds be segregated from the Federal funds.

So what the amendment of the gentlewoman from Texas attempts to do is to take away the choice of State or local governments to make that determination for themselves in their extension of the funds to the faith-based organization. I think that State and local governments should have that right and as a result would oppose the amendment and urge that the Committee vote it down.

Mr. FRANK. Mr. Chairman?

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Chairman SENSENBRENNER. The time belongs to the gentleman from Ohio.

Mr. CHABOT. I yield back.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. I would like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman and Members, I am going to speak out in opposition to section 201(d) of H.R. 7, the organizational character and autonomy provision, and section 201(j), the effect on State and local funds. As a result of these sections, charitable choice would pre-empt State and local laws' contracting requirements.

Under section 201(d)(1), religious organizations are given the right to retain autonomy from Federal, State, and local governments. This provision extends to the organization's control over the definition, development practice, and expression of its religious beliefs. section 201(d)(2)(A) would enable religious organizations to avoid Federal, State, or local requirements that the organization alter its internal governance and character documents. section 201(j) applies charitable choice provisions to any State or local funds that are commingled with Federal funds.

These provisions create discrimination issues. For example, State and local contracting requirements apparently would not apply beyond the extent to which they exist under charitable choice. Even supporters of charitable choice acknowledge as much. Carl Esbeck, one of the drafters of charitable choice, stated the following in an article on charitable choice: "States and municipalities often have non-discrimination laws and procurement policies enacted pursuant to governmental spending power. When these spending power laws do not permit faith-based organizations to select staff on the basis of faith commitments, the laws are not enforceable against FBOs acting pursuant to charitable choice contracts or grants."

Supporters also tell us that charitable choice would override State and local non-discrimination employment laws if those laws are contrary to sincerely held religious beliefs. We don't even know what that encompasses. The phrase is not defined in the bill and would arguably be extended to cover almost anything a person believes. We know that the courts are already reluctant to delve into the politically sticky area of deciding the merits of a religious tenet. Even worse, this provision goes further than to allow sincerely held religious beliefs. It applies to any arbitrary practice, decision, or rule that the religious organization uses. In other words, if a religious group believes that all their employees must be bald-headed men over the age of 70, this provision would make it acceptable.

We're also told, again, by supporters of charitable choice that it would override State and local contracting requirements for culturally diverse providers. Specifically, supporters have stated that a State or locality would not be able to require that the governing board of a faith-based provider reflect the ethnic, gender, or cultural diversity of the community or beneficiaries. Their response is that such matters of internal governance are under the control of the faith-based organization. Under section 201(j), any State or

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local funds that are commingled with Federal funds would be exempt from State or local laws and requirements. This is clear overreaching.

The first question we need to ask is: Why is Congress interfering with States' rights on this issue? Furthermore, how can we justify as constitutional a bill that allows religious organizations to blatantly ignore valid employment and contracting non-discrimination laws. These provisions, like many other provisions in H.R. 7, are unbalanced and unfair. Our amendment would revise them so as to prevent blatant discrimination.

I urge you to amend these problematic parts of H.R. 7 and take a step towards a bill we can truly support. It is very seldom that I witness this kind of pre-emption at the Federal Government level. To override States and their local laws is far, far reaching, and I would hope that in the interest of honoring what so many people on the opposite side of the aisle preach about, States' rights, that we would support this amendment.

I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank?

Mr. FRANK. Mr. Chairman, I am disturbed by a couple of things about this bill. One is the institution of—institutionalization of the principle that it's perfectly reasonable for religious organizations not to want to hire people of other religions for non-religious purposes, as if it was somehow an imposition on them to do so.

Secondly, though, we have this principle now that says you can take Federal funds and use the fact that you have received Federal funds to exempt you from the existence of State laws, State anti-discrimination laws and some other laws.

This notion that the Federal Government can immunize you from following State laws that otherwise fairly apply to everybody is really very troubling, it's very radical, and wholly unnecessary.

Now, Members will tell us that it was in the welfare bill. I would say a couple of things about that. First of all, I voted against the welfare bill, so I do not feel concluded by it.

Secondly, I think it is fair to say that much of what was being done in the welfare bill, the focus was on the welfare part. I don't believe this got a lot of attention.

Finally, we are not the Supreme Court of the United States. The notion that having once legislated a certain way we are, therefore, precluded from unlegislating or doing it differently is, of course, a proposition to which no one holds any adherence. It's something that may be thrown in, but it's not an argument. It's an absence—it's a substitute for an argument.

The question is: Is it good or bad public policy? And I do—and I appreciate the gentleman from Ohio making it very explicit that this is not a bill where we are going to deal with the rights of gay men and lesbians. The point, though, is that many States have. This is not in my judgment—I'm not asking—my colleagues weren't asking that we make this a vehicle to give gay and lesbian Americans more protections than they already have. I agree that should be in another bill.

What this bill does, though, is to say to some organizations that are now governed by State laws protecting gays and lesbians that,

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by the receipt of Federal funds, some entities can get an exemption from that. What this bill does is to reduce the protection that gay and lesbian citizens have. And that, it would seem to me, ought to be as inappropriate as using this as a vehicle for expansion.

The way you have this bill, you are using it as a license to cut back on rights that many States have seen fit to grant to gays and lesbians, perhaps to other categories, because right now if a religious organization or any other wants to give a purely secular service—they're not covered by the religious exemption—then they would be covered by this in some States, maybe not in others. New Jersey even has a public accommodations statute that's very broad.

So what this bill says is by taking Federal funds, a private entity previously subject to a legislated requirement not to discriminate based on sexual orientation can now do so. That seems to me terribly unfair to gay, lesbian, and bisexual Americans who will have less protection as a result of this law than before. And it's a terrible precedent and a terrible statement.

What you're saying, again, is take Federal funds an dy can be exempted from some of these State laws. You know, I think back—I see my friend from California, and I think of her extraordinary distinguished predecessor, Gus Hawkins, whom so many of us revered. I remember when we did the Civil Rights Restoration Act back in the days when we thought the Federal Government should be expanding people's rights, not being an excuse to cut them back. And when people complained about the Civil Rights Restoration Act, which made it clear that if you took Federal funds you couldn't discriminate after the Supreme Court had somewhat shortchanged that statutory interpretation, he said, you know, if you dip your fingers in the Federal till, don't complain if a little democracy rubs off on them.

Well, you're absolutely reversing this. And so both specifically by reducing the protections that now exist for gay men and lesbians and in general by setting the precedent or reaffirming it and broadening it from the welfare bill that accepting Federal funds is a license not to follow existing State law, I think this bill does terrible damage.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognize for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I, in addition to the States' rights arguments that have been asserted, really have serious reservations about what we are doing—what we are saying to State and local governments, particularly on page 13 at lines 9 through 12, because the effect of what we are saying is that if a State or local government makes an effort or is making an effort to comply with the decisions of the United States Supreme Court about what is constitutionally permissible and what is not constitutionally permissible, we are in this bill prohibiting them from doing that. And that just seems extremely counterproductive to me.

I mean, here we are a Nation of laws. We may, as I quite often do, disagree with the decisions of the United States Supreme

REV_00129310

Court, but they are the final arbiters of the Constitution in our structure. And for us to be saying to State and local governments, even though you are trying to comply with the constitutional mandates as they have been set out by the United States Supreme Court, we are directing you in this law that we are passing not to require a religious organization to remove religious icons or what have you.

And I think those are some of the cases where the Supreme Court has really said that in some cases that could be necessary to comply with the United States Constitution.

How do we look as a—I mean, I suppose we could go at it directly and try to amend the Constitution. We have. But this is an indirect way of saying to the States we can't—we can't—we don't have the votes to amend the Constitution. We've done as aggressive a job as we can do on changing the composition of the United States Supreme Court, and we've failed to revise the interpretation of the Constitution that they have come down with, even having had control of the Court for whatever period of time. Now we are going to direct you in a Federal statute not to comply with what the Supreme Court has said the law is. This is unprecedented.

And I just—it's unprecedented for us to be usurping State and local laws, first of all, those of us who give so much lip service to States' rights consistently, but then to go beyond that and say, All right, States, we are directing you not to follow the Supreme Court's decisions when we all know that that in our process is the final word on legal and constitutional issues is just—is just outrageous. I think we should support this amendment, and I yield back—I'm sorry. I was going to yield the balance of my time. I got carried away. I was going to yield to Ms. Jackson Lee.

Thank you.

Ms. JACKSON LEE. I may have to ask—thank you very much, Mr. Watt.

Mr. Chairman, let me answer the concern that you raised about the fact that this has not been done before, and to say, with Mr. Watt's commentary, this is a restatement of existing law. But in the evolution of charitable choice provisions, for example, the Community Renewal Tax Relief Act of 2000, which amended certain provisions and grant programs administered by the Substance Abuse and Mental Health Service——

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. JACKSON LEE. Can I have someone strike the last word so I can get some time to finish my point, please?

Chairman SENSENBRENNER. The gentlewoman has already been recognized in support of her amendment.

Ms. JACKSON LEE. Mr. Nadler, would you yield to me when you get through, please? Thank you.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I wish to commend the gentleladies, Ms. Jackson Lee and Ms. Waters, for their excellent amendment, and I yield to the gentlelady from Texas.

REV_00129311

Ms. JACKSON LEE. I thank the distinguished gentleman very much.

I wanted to make a point that this has occurred in previous legislation, the Community Renewal Tax Relief Act of 2000, had language in the legislation, which we supported, many of us, that nothing in this section shall be construed to modify or affect the provisions of any other Federal or State law or regulation that relates to discrimination in employment.

I think we can come together on this simply by acknowledging that all we want to do is leave existing law in place and not undermine any existing rights or enhance any existing rights. We are not trying to write legislation that would cause us to give rights, we're just trying not to take rights away.

And I don't think any religious entity, willing to be the Good Samaritan, as I have indicated, would be opposed, Mr. Chairman, to just having the present laws that they are governed by, in their particular jurisdiction, remain in place. They've lived under those laws, and I think they would rightly be willing to do so.

This amendment that myself and Ms. Waters are offering clearly just asks that we not exempt from the obligation to adhere to, not exempt these entities participating under this legislation from existing nondiscriminatory State and local laws. And I would ask my colleagues to support this amendment, as it restates and is supported by previous legislation by the Act of 2000, the Community Renewal Tax Relief Act of 2000.

With that, I yield.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Texas, Ms. Jackson Lee, to the Chairman's amendment.

Those in favor, all say aye.

Opposed, no.

The noes appear to have it.

Ms. JACKSON LEE. rollcall.

Chairman SENSENBRENNER. A rollcall is ordered.

Those in favor of the Jackson Lee amendment to the Sensenbrenner amendment will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

REV_00129312

The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?

REV_00129313

Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish or desire to cast or change their vote?
The gentleman from North Carolina?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Georgia?
Mr. BARR. No.
The CLERK. Mr. Barr, no.
Chairman SENSENBRENNER. The gentleman from Tennessee?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. If there are no further Members who desire to cast or change their vote, the clerk will report.
The CLERK. Mr. Chairman, there are 9 ayes and 19 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
The CLERK. Excuse me, Mr. Chairman. I'm sorry. There are 7 ayes and 19 nays.
Chairman SENSENBRENNER. As corrected, the rollcall will stand.
The gentleman from North Carolina, Mr. Watt?
Mr. WATT. Thank you, Mr. Chairman. I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to the Sensenbrenner amendment to H.R. 7——
Mr. WATT. I am going to ask unanimous consent the amendment be considered as read.
Chairman SENSENBRENNER. Without objection, so ordered.
[The amendment follows:]

Amendment to the Sensenbrenner Amendment to H.R. 7

Offered by Mr. Watt

Page 14, line 11, insert before "and the": "the Fair Housing Act (42 U.S.C. 3601-3631),"

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.
Mr. WATT. Thank you, Mr. Chairman.
I believe, Mr. Chairman, that this is an oversight that I am trying to correct. If you look at the bill starting on Page 10, the definition of programs includes the Federal housing statutes, including community development block grants. That's at the top of Page 11. Yet, when you get over to Page 14, and you start to itemize the impact on other laws, the Fair Housing Act is left out, and——
Chairman SENSENBRENNER. Would the gentleman yield?
Mr. WATT. Yes, I'm happy to yield.
Chairman SENSENBRENNER. The subsection that the gentleman is attempting to amend deals with employment practices. The Fair

REV_00129314

Housing Act, as amended, deals with the sale or rental of housing. It has nothing to do with employment, and consequently this was not an oversight because the Fair Housing Act is not relevant to employment practices.

Mr. WATT. Okay. I think the gentleman is right, and I withdraw the amendment.

Chairman SENSENBRENNER. Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I have one more amendment at the desk. I think it's No. 2.

Chairman SENSENBRENNER. The clerk will report one more Nadler amendment. [Laughter.]

Chairman SENSENBRENNER. This is the final Nadler amendment?

Mr. NADLER. I believe so.

Chairman SENSENBRENNER. Can we count on it?

Mr. NADLER. Unless I have further inspiration.

Chairman SENSENBRENNER. The clerk will report the amendment, and those in the room will please be uninspiring. [Laughter.]

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Nadler and Mr. Frank. Page 15, strike line 1 through line 3 and insert:

"(A) Is an alternative"——

Mr. NADLER. Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

REV_00129315

AMENDMENT TO THE AMENDMENT TO H.R. 7
OFFERED BY MR. NADLER & MR. FRANK
(NADLER #2)

Page 15, strike line 1 through line 3 and insert:

"(A) Is an alternative, including a nonreligious alternative, that is accessible and not objectionable to the individual; and"

Page 15, insert after line 15:

"(4) Section 1994A of this title shall not apply with respect to assistance provided under a program described in subsection (c)(4) during a fiscal year by an organization if the requirement of paragraph (1) is not met with respect to that assistance."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, this bill promises a nonreligious alternative to any eligible individual who does not wish to participate in a religious program or a program run by a particular religion. I think everyone believes that in order to prevent the religious coercion of the most vulnerable members of our society, those seeking help from the Government, with the burdens of poverty, drug addiction, homelessness, and the many other terrible social ills addressed by programs in this bill should not be subject to religious proselytization as the cost of getting the services they need.

I certainly agree with that view. If religious liberty has any meaning, it is that no one should have the right to use public money and the power of the State to coerce those living in the shadows of life into giving up their own religious autonomy. So profound a principle is this that even supporters of the bill have agreed that an alternative must always be made available.

In fact, Professor Douglas Laycock, a respected legal scholar who was called at the hearings before the Subcommittee as a witness by the majority went so far as to say in our hearing that the entire program would be a "fraud," if such an alternative were not made available.

But a funny thing happened on the way to protecting the religious autonomy of the poor seeking help. The budget proposed by the President and passed by this House actually cuts funding from any of these social programs. These are programs that are not now

REV_00129316

fully funded. Those of us who try to help our constituents obtain these services know that they are often not available in a reasonable period of time or in an accessible location or, in some cases, not at all. We all know that a young person who sincerely wants to kick drug addiction may be told, "Sorry. We don't have any room for you right now. Come back in 6 months." By that time, he could be dead or infected with HIV or no longer able to participate in the program.

So where is the alternative envisioned in the bill going to come from? The bill provides no new money. It pays for not one additional bed or home or bowl of soup or detox. It certainly does not pay for these alternatives. In fact, if no new money is available, those alternatives will likely lose their funding, in some cases, to religious organizations.

The alternative which everyone agrees is absolutely necessary to make this program work, to make it constitutional and certainly to make it something other than a way to foist the religious beliefs of some onto society's most vulnerable members is simply a hollow promise. This amendment is intended to give that promise meeting. If you are going to have charitable choice, you are going to have to provide an alternative choice. If you cannot or you will not, then there will be no charitable choice, and everyone has agreed that there should be no charitable choice without a real choice, without a secular choice. This amendment will require proponents of this program to put their money where their principles are.

I have also restored language from the original legislation making clear that among the alternatives that must be available are nonreligious alternatives. It does no good to tell a person to find a less objectionable religious program when all they need is a place to keep from freezing to death for the night. I have, however, obtained language from the Chairman's mark making clear that the alternative must be religiously not objectionable to the individual, in addition to being accessible and of equal value. I guess you could call this the secular, but equal amendment. I know there are weaknesses with this approach that have been discussed today, but it's better than not making real the alternative.

I strongly urge the adoption of this amendment. Without the adoption of this amendment, the entire project really is State-sponsored religious coercion. The very reason why the Framers of our Constitution were concerned that excessive entanglement between Government and religion would endanger religious liberty. Here is a clear illustration of why they are correct.

And I must say that this amendment is a time for the sponsors of the bill to show that they are sincere in their protestations that they mean for there to be a nonreligious alternative so that there's no religious coercion because this amendment says that the charitable choice provisions in a given program are eliminated if there is no charitable choice made avail—if there's no secular alternative made available in a reasonable time. This will force funding of reasonable alternatives.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

REV_00129317

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I rise to oppose the amendment.

The focus should be a case-by-case determination of what the individual beneficiary wants. The alternatives the bill currently provides for might be, for example, another faith-based organization, not objectionable to the beneficiary or an alternative purchased on the open market or provided by volunteers or a third one would be an alternative secular provider.

The bill, without the amendment, allows States and localities more flexibility in offering alternatives, and it allows beneficiaries greater choice, and for that reason, we oppose the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Nadler.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Scott No. 9.

Chairman SENSENBRENNER. The clerk will report amendment No. 9.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Scott. Page 15, line 1 after "that is" insert "at least as."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #9

Page 15, line 1 after "that is" insert "at least as".

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment will ensure that program beneficiaries would have equal access to alternative programs. Under the current language of the manager's amendment, program beneficiaries who object to the religious character of a program must be provided with an alternative program, but an alternative program needs to be at least as accessible as the designated program in order to offer a real alternative. If the alternative is located much farther away, not on a public transportation line or has other accessibility issues, then it may be technically accessible, but it is not a reasonable alternative for the beneficiary.

REV_00129318

If we're serious about offering alternative programs to those who are uncomfortable with the religious character of an organization, then we must make sure that the alternative programs are not just technically available, but at least as accessible as the original program. My amendment adds this clarifying language, and I ask that you support it.

Chairman SENSENBRENNER. The Chair recognizes himself in opposition to the amendment.

This amendment makes this safety valve unworkable. If somebody lives across the street from that Baptist Church in Idaho that we spent most of the afternoon talking about and doesn't want to go to the Baptist Church for an after-school program or social services provided under the bill, this requires that the alternative program be at least as close as the Baptist Church across the street. Now, that's unreasonable. I would hope the amendment would be voted down, as a result of that.

I yield back the balance of my time.

The question is on the adoption of the Scott amendment to the Sensenbrenner amendment.

Those in favor will signify by saying aye.

Opposed, no.

Noes appear to have it, the noes have it, and the amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCOTT. No. 12.

Chairman SENSENBRENNER. No. 12.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Scott, Page 9, line 11 after the period add, "For the purposes of this section, a religious organization is an organization which is pervasively sectarian, and states in the application for funding that it is a pervasively sectarian organization."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #12

Page 9, line 11 after the period add " For the purposes of this section, a religious organization is an organization which is pervasively sectarian, and states in the application for funding that it is a 'pervasively sectarian organization.' "

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

REV_00129319

Mr. Chairman, we've waived significant laws for religious organizations. Civil rights may not apply, there's separate alternatives that are available if the organization making an application is a religious organization, but I couldn't find a definition of what religious organization meant.

If an organization is going to be entitled to benefits under the bill, we should know it before the problem occurs. So this amendment provides a description of what a religious organization is that says it's a pervasively sectarian organization and states that it ought to say so in the application, otherwise secular programs might try to benefit from the provisions of the bill by suggesting, when they get in trouble on discrimination, that they are religious because they began reading Bible versus around the programs, and they are now a religious organization and ought to qualify.

We ought to know that up front. This defines religion and says if you're going to be a religious organization for the purposes of this bill, then you ought to say so up front.

I'd hope you'd adopt the amendment.

Mr. HYDE. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I think the word "pervasive" is a little bit pejorative. I'm surprised that the gentleman looked through a dictionary and could only come up with this. Pervasively sectarian could be an atheist, pervasively atheist, agnostic, sectarian. Why not just say sectarian? Why the pervasive? It just seems to me that's pejorative.

Mr. SCOTT. Will the gentleman yield?

Mr. HYDE. Sure.

Mr. SCOTT. I used that term because that's what the Supreme Court has used when they look at religious organizations. They generally use the term "pervasively sectarian." So, if you want to strike it—if you'll adopt the amendment if I strike it. [Laughter.]

Mr. CHABOT. Would the gentleman from Illinois yield?

Mr. HYDE. Yes.

Mr. CHABOT. I thank the gentleman for yielding.

I, as well as the Chairman, or former Chairman, oppose this particular amendment. The pervasively sectarian standard in the law is dead. As the Congressional Research Service concluded in its December 27th, 2000, report to Congress on charitable choice, "In its most recent decisions, the Court appears to have abandoned the presumption that some religious institution, such as sectarian, elementary, and secondary schools, are so pervasively sectarian that they are constitutionally ineligible to participate in direct public aid programs."

"It also seems clear that for a majority, a different majority of six justices, those joining in the Thomas and O'Connor opinions, the question of whether a recipient institution is pervasively sectarian is no longer a constitutionally determinative factor."

So, therefore, the pervasively sectarian test is dead.

Another one of its obituaries was written just yesterday by the Fourth Circuit Court of Appeals, as I had mentioned earlier in that case this morning, which held that the Constitution allows the Government to provide direct aid to a religious organization, "without resort to a Court's examining its pervasively sectarian status,

REV_00129320

as long as there are protections in place prohibiting Federal funds from being used for a proselytizing activities."

The Supreme Court has decisively rejected the idea that religious people simply can't be trusted to follow rules against using Federal funds for proselytizing activities. Both the plurality opinion and the opinion joined by Justices O'Connor and Breyer in *Mitchell* v. *Helms* stand for the proposition that members of religious organizations should always be presumed to be acting in good faith.

In *Mitchell* v. *Helms*, the controlling opinion of Justices O'Connor and Breyer states that, "The Court's willingness to assume that religious school instructors will inculcate religion has not caused us to presume also that such instructors will be unable to follow secular restrictions on the use of textbooks. It is entirely proper to presume that these school officials will act in good faith."

In *Mitchell* v. *Helms*, the majority reversed an appeals court holding that providing educational materials and equipment to pervasively sectarian schools was unconstitutional.

So, just to reiterate, the pervasively sectarian standard in the law is completely dead, and I thank the gentleman for yielding.

Chairman SENSENBRENNER. Does the gentleman from Illinois yield back?

Mr. HYDE. I yield back.

Chairman SENSENBRENNER. The question is on the Scott amendment to the Sensenbrenner amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. I have an amendment at the desk, No. 14.

Chairman SENSENBRENNER. The clerk will report Scott No. 14.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Scott. Page 19, line 20, after "COMPLIANCE," insert "Funding under this section shall be based on the objective merits of the applications submitted and shall not discriminate against an applicant based on the religious character of the organization."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #14

Page 19, line 20 after "COMPLIANCE --" insert "Funding under this section shall be based on the objective merits of the applications submitted and shall not discriminate against an applicant based on the religious character of the organization."

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

REV_00129321

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this amendment provides that decisions to fund one organization—a decision to fund one organization or another must be made on objective merits and not religious discrimination. We have heard all day that all religions will be treated fairly. This amendment protects minority religions which I think, frankly, will not be treated fairly. If a minority religion has the best program, it ought to get the contract. There should not be discrimination against a religion because it's not the religion favored by the Government officials making the decision.

So, Mr. Chairman, as we heard earlier, we're going to treat all religions fairly, well, let's put it in the bill.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I oppose the amendment. This is already provided for in Subsection (c)(1)(b), no discrimination——

Mr. SCOTT. Can you say what pages that's on——

Mr. CHABOT.—on the basis of religion——

Mr. SCOTT. Excuse me. What page is that on?

Mr. CHABOT.—no discrimination on the basis of religion for or against faith-based providers. This is already the whole purpose of the bill. Let's not get judges involved in saying what is objective or what is not. The term "applicant" doesn't fit in the context of indirectly funded programs such as vouchers, and therefore we oppose the amendment.

Yield back the balance.

Chairman SENSENBRENNER. The question is on——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER.—the adoption of the Scott amendment.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. We were just trying to find the provision that he——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. Yes.

Chairman SENSENBRENNER. It is on Page 9, (1)(b), lines 12 through 19, inclusive.

Mr. WATT. Page 9.

Mr. SCOTT. Will the gentleman yield?

Mr. WATT. Yes, I will yield to the gentleman.

Mr. SCOTT. Mr. Chairman, that says that you cannot discriminate against a religion because it has a religious character. It does not say that you can't discriminate against one religion because you don't like that religion. If you have picked one religious group over another because the Government officials prefer that religion, notwithstanding the fact that the other program had a better pro-

REV_00129322

gram by any objective standard, you ought not discriminate against an organization because you don't like their religion.

Now, this is where I think we may have a disagreement. I don't believe—I believe that the minority religions aren't going to get any funds under this because Government officials will pick their favorite religion because of politics, the one, the religion that has the most votes, not the program that has the best merits. And this amendment says that you can't discriminate against one religion or another, just because it has religious character and you pick a religious group, if it is, by any objective standard, a minority religion has a better program, then it ought to get the contract.

Now, if this amendment isn't passed, then all that discussion we had about treating religions fairly was a waste of time because this says that you have to treat religions fairly. And either you're going to do it or you're not, and if you want to treat religions fairly, you ought to adopt this amendment.

Mr. WATT. Reclaiming my time, Mr. Chairman.

We've had a lot of discussion today about religion and not discriminating against religions and not disadvantaging religions, but in the final analysis, the delivery of services of the Government is about the delivery of services, and who can deliver those services the best. That's why, I take it, this bill, this whole idea is being advanced because some people, a number of us agree that religious institutions can deliver certain social services and Government services that have been delivered by the Government in the past more effectively than the Government.

But in the final analysis, this should never be about discriminating against one religion because it's got less members or less votes or—this should always be about providing a provider of service that will do the best job, which is what we all are about as the Government here.

And while I respect your reference to the language on Page 9, it simply does not do what Mr. Scott's amendment would do, and I think we have done ourselves, and the public and taxpayers a major disservice if we are not striving to get the most efficient and best provider of services out there to deliver whatever it is we're trying to deliver, whether it's drug counseling or education or whatever we're delivering through these organizations.

And I agree with Mr. Scott. I think quite often this language is going to be used to favor mainstream religions to the advantage of other religions that might be able to deliver the services substantially better and more effectively. It's going to be used in some section of town because that section of town votes and not in the other section of town because that other section of town doesn't vote, and that's the very thing that we should not be countenancing under this legislation, and I think if we are serious about this, we've got to adopt Mr. Scott's amendment.

Chairman SENSENBRENNER. The question is on the Scott amendment to the Sensenbrenner——

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

REV_00129323

Ms. LOFGREN. I will not consume 5 minutes. I, just in favor of this amendment, I think it's important that there be a process put in place in the selection process so that we do not end up with favoring one religion over another. Frankly, if that patterns emerges, and it's quite possible it may, that's clearly violative of the First Amendment, and this whole thing is going to fall apart.

I think it is important to prevent that—that circumstance by providing a process to—where the first amendment can be sustained. And I think, you know, I don't know what is in the minds of all of the Members of the Committee, but there may be assumptions across America that it will be the predominant religion in America that is often selected. Well, I'll tell you, there are parts of the country, especially in the State I'm from, where the predominant religion of the citizens and voters is not the predominant religion of America.

And so unless there is a process for fairness, and I do not buy the argument that there cannot be objective standards. I mean, in my decades of service in local government, you have RFPs, you have standards, that is routine, and it is imposed, oftentimes, by the Federal Government, as well as State Government. So you can do objective standards, and if we don't do it, we're just going to end up with lawsuits all over the country, and I think the——

Mr. SCOTT. Would the gentlelady yield?

Ms. LOFGREN. I would yield to Mr. Scott.

Mr. SCOTT. I would also add, since you mentioned local officials having to evaluate, if you don't have objective standards by which an applicant got the contract, how does the agency that let the contract evaluate the program if it's not on objective criteria? Do we say it's a good religion—religious experience or what? You have to have some kind of objective standard to let the contract to begin with and then to follow up to see if they complied with the contract.

Ms. LOFGREN. Reclaiming my time. The lack of standards, also, will instigate, will be an incentive to litigation because people are very edgy about their religious beliefs and take those beliefs very seriously. And if you have a competition between the Sikhs, the Buddhists and the Janes in my district, and one of those is selected and the other two are not, and there is no objective criteria, the losers are going to maybe suspect that they were not selected because of their religious beliefs rather than the program they put forward. And I think that the lack of dealing with this up front is a severe problem.

I yield back the balance of my time and thank the Chairman for——

Chairman SENSENBRENNER. The question is on the Scott amendment to the Sensenbrenner amendment.

Those in favor will say aye.

Opposed, no.

Noes appear to have it. Noes have it, and the amendment is not agreed to.

Mr. SCOTT. Mr. Chairman, I'd like a recorded vote on that one.

Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of the Scott amendment to the Sensenbrenner amendment will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

REV_00129324

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
[No response.]
The CLERK. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

REV_00129325

Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Mr. BARR. Mr. Chairman?
Chairman SENSENBRENNER. Gentleman from Georgia, Mr. Barr?
Mr. BARR. No.
Chairman SENSENBRENNER. Are there any other Members in the chamber who wish to cast or change their votes?
The CLERK. Mr. Barr, no.
Chairman SENSENBRENNER. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 20 nays.
Chairman SENSENBRENNER. The amendment is not agreed to. Are there further amendments? The prolific gentleman from Virginia.
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 8. And I just have two more amendments, Mr. Chairman, this one and one more.
Chairman SENSENBRENNER. Would you like to have them considered en bloc?
Mr. SCOTT. No, Mr. Chairman. [Laughter.]
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to the amendment to H.R. 7, Offered by Mr. Scott. Page 20, line 7 strike "From" and all that follows——
Mr. SCOTT. Mr. Chairman, I'd ask unanimous consent that the amendment be considered as read.
Chairman SENSENBRENNER. Without objection. The gentleman's recognized for 5 minutes.
[The amendment follows:]

REV_00129326

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #8

~~Page 20, line 7 strike "From" and all that follows through "funds" and insert "(1) Funds".~~

Page 20, line 17 strike "$25" and insert "$50".

Page 20, line 18 after the period insert:

"(2) Such assistance ~~shall~~ may include:

(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

(B) grant writing assistance which may include workshops and reasonable guidance;

(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development and a variety of other organizational areas; and

(D) information and guidance on how to comply with federal nondiscrimination provisions including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et. seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107)."

(3) Reservation of Funds- An amount of no less than $5 million shall be reserved under this section. Small nongovernmental organizations may apply for these funds, to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this Title.

(4) Priority– In giving out such assistance described in this section, priority shall be given to small nongovernmental organizations serving urban and rural communities."

Mr. SCOTT. Mr. Chairman, this amendment doubles the technical assistance funds provided to small community and religious-based

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organizations to operate programs. Because the Department of Justice will be providing technical assistance across the multitude of agencies and departments, in addition to the level of assistance it may be required to provide—that it may be required to provide, I believe that the proposed funding level of $25 million is inadequate.

In addition to doubling the funding for technical assistance, the amendment lays out several specific kinds of technical assistance that should be provided by the Department of Justice, and these include: assistance in creating 501(c)(3)'s; grant-writing assistance, which may include workshops and reasonable guidance, information and referrals to other non-governmental organizations that provide expertise in accounting, legal issues, tax issues; information and guidance on how to comply with Federal nondiscrimination provisions. It also requires that priority be given to small non-governmental organizations serving urban and rural communities. In addition, it sets aside $5 million for technical assistance to help small non-governmental agencies, organizations make their programs accessible to the disabled.

Mr. Chairman, the critics of charitable choice have been accused of not understanding the power or faith and accused of wanting to defund programs like Habitat for Humanity and Catholic Charities. That's wrong. The fact is that there is broad bipartisan support for involving faith- and community-based organizations to help our communities. We just shouldn't have to sell off our civil rights to get those investments. By providing technical assistance to community and religious organizations, particularly those that are small, we can actually increase their participation in Federal programs without sabotaging civil rights.

I hope we would adopt the amendment, and I yield back the balance of my time.

Mr. CHABOT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Mr. Chairman, in conjunction with staff, we're trying to figure out exactly what this amendment means, and without a little more time, we just have to—have to oppose it, although Mr. Scott is a tremendously effective Member of Congress, so we would ask perhaps if we have a little more time.

Chairman SENSENBRENNER. Gentleman from Illinois, Mr. Hyde, recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, the last paragraph says, "in giving out such assistance described in this section, priority shall be given to small, non-governmental organizations serving urban and rural communities."

Previous amendments were talking about who has the best program rather than discriminating against unpopular or minority religions. Now here we're supposed to give priority to small——

Mr. WATT. Will the gentleman yield?

Mr. HYDE. Yes.

Mr. WATT. This is assistance—this is assistance to access the funds and know how to technically comply with the law. That's why it's written that way.

Mr. HYDE. Well, I understand, but you're giving a preference to small, non-governmental organizations.

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Ms. JACKSON LEE. Would the Chairman yield? Would Mr. Hyde yield?

Mr. HYDE. Yes, I'll yield.

Ms. JACKSON LEE. Mr. Hyde, I know that in the course of talking to a lot of religious groups in my community, one of the apprehensions they had was understanding the Federal system. I can't speak for Mr. Scott in terms of his provision on—the last provision, but I know the technical assistance to allow them or encourage them or provide a road map on how to access these funds to be the good samaritan, I think is very productive. It opens the doors to more applicants. It keeps them within the guidelines of the regulations that will be promulgated, and also, it will allow them to understand all aspects of receiving Federal funds, and yet being able to do the service. So I would hope that we would come to some agreement on this amendment about technical assistance. I yield back.

Mr. WATT. Will the former Chairman yield? Will Mr. Hyde yield?

Mr. HYDE. I'll yield back so the Chairman can get the time.

Chairman SENSENBRENNER. I move to strike the last word, and recognize myself for 5 minutes.

Mr. WATT. Would the Chairman yield just for——

Chairman SENSENBRENNER. Well, I'm going to make a deal you can't refuse. I'm willing to accept the amendment if on paren two you strike the word "shall" and replace it with "may." And that gives the Justice Department flexibility but not a mandate.

Mr. SCOTT. I'll agree to that. Ask unanimous consent that after paren 2, "Such assistance", "may" instead of "shall."

Chairman SENSENBRENNER. Without objection, so ordered. And——

Mr. WATT. Would the Chairman yield just briefly while he's thinking?

Chairman SENSENBRENNER. I just want to make sure that the Justice Department administers the funds. And page 20, you strike the word "from" on line 7 through "funds", which means that OJP does not have the mandate to administer this program. I would just as soon that you omit that so that the Office of Justice Programs does this, rather than something else in the Justice Department.

Mr. SCOTT. I'd ask unanimous consent that that amendment be adopted.

Chairman SENSENBRENNER. Without objection, the amendment is further modified, and without objection, the Scott amendment is agreed to.

Are there further amendments?

Mr. SCOTT. I have an amendment.

Chairman SENSENBRENNER. One more? You're not going to quit when you're ahead? [Laughter.]

Chairman SENSENBRENNER. The clerk will report the last Scott amendment.

Mr. SCOTT. No. 11.

The CLERK. Amendment to the amendment to H.R. 7, Offered by Mr. Scott. Page 10, line paren, period, end paren, add paren, "Notwithstanding the provisions of this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.)"——

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Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman will be recognized for 5 minutes.

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #11

Page 10, line "." add "Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) shall apply to organizations receiving direct assistance funded under any program described in subsection (c)(4)."

Mr. SCOTT. Thank you, Mr. Chairman. I'm not sure whether there's a—a problem with the bill or not, but it seems as though this is a clarifying amendment to make sure that title VI actually applies to direct grants. There is language in the bill that says that funds are not aid to religion. In the past that language has been used to specifically exempt the application of title VI. Without this amendment, the bill will say that title VI applies, but the provision of title VI only applies to organizations in receipt of Federal funds, and the bill seems to say that this is not direct aid to the organization, and therefore, title VI doesn't apply.

Small organizations getting Federal funds under this amendment would therefore be able to discriminate because they wouldn't be covered by title VI because they're not receiving Federal funds. In fact, they're not even covered by title VII, so they're not covered by any civil rights bills, unless this amendment is adopted saying that if you get money, notwithstanding the no-aid-to-religion language, you're still technically in receipt of Federal funds and title VI shall apply.

Yield back.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot, is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief. We opposed the amendment. It's already crystal clear, already covered. It's very unnecessary. It's already covered under section E(e), and we yield back the balance of the time.

Chairman SENSENBRENNER. The question is on——

Mr. SCOTT. Excuse me, Mr. Chairman, could you yield and say what section you're looking at again? On what page and line, if you could?

Mr. CHABOT. We'll get the page for you. It's the bottom of page 13, line 24.

Mr. SCOTT. 13, line 24.

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Mr. WATT. Will the gentleman yield?
Mr. SCOTT. Will the gentleman yield?
Mr. CHABOT. It's my time. I'll yield.
Mr. SCOTT. I would ask on page 9, line 20, you say that Federal, State or local funds or other assistance received by a religious organization constitutes aid to an individual and families and not support for the religion or the organization's religious beliefs. If that's the case, title VI, although it applies, it only applies to organizations receiving funds. You just said that they don't receive funds. And so what this amendment says is whatever you meant by—in line 20, you really mean it on page 14, where title VI applies. Now, does title VI apply or not? And if you—because you said they're not receiving funds, title VI only applies to organizations receiving funds.
Mr. CHABOT. Reclaiming my time, our contention is it does apply, and it's clear, and there's really nothing else to discuss.
Mr. SCOTT. Is it the legislative—would the gentleman yield?
Mr. CHABOT. I'll continue to yield.
Mr. SCOTT. Is it the legislative intent that the non-discrimination provisions of title VI apply to everyone getting money under this bill, whether they're technically in receipt of funds by the organization or not? Is that the legislative intent?
Mr. CHABOT. Yeah. They must be receiving funds.
Mr. SCOTT. Well, you just said on page 9 that they're not receiving funds. That means that title VI doesn't apply, and they can discriminate at will, based on race, religion, everything else.
Mr. CHABOT. Title VI only applies to institutions receiving funds from the government.
Mr. SCOTT. That's right. And does the language on page 9, which says they don't receive funds, mean that title VI doesn't apply to organizations receiving funds under this bill?
Mr. CHABOT. I'm going to have to consult with staff here.
[Pause]
Chairman SENSENBRENNER. The gentleman from Ohio.
Mr. CHABOT. Relative to paragraph 2, it says, "Federal, State or local government funds or other assistance that is received by a religious organization for the provision of services under this section, constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices." So it seems.
Mr. SCOTT. As to title VI, title VI doesn't apply.
Mr. CHABOT. I'll yield back the balance of my time. We think——
Chairman SENSENBRENNER. The question is on the adoption of Scott amendment No. 11.
Mr. WATT. Mr. Chairman, I move to strike the last word.
Chairman SENSENBRENNER. The gentleman from North Carolina's recognized for 5 minutes.
Mr. WATT. I yield to Mr. Scott.
Mr. SCOTT. Well, Mr. Chairman, based on that reading, it is obvious that no civil rights laws apply. Title VI applies to organizations receiving Federal funds, and you've conveniently—and this isn't the first time this is done. I mean I've seen memos from some organizations, say if you can get a not-state aid amendment into a bill, you have essentially exempted the organization from title VI oversight. And that's what the purpose of the language on line—page 9, line

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20. It is to say—make the fiction that the organization receiving funds really didn't receive funds. And that fiction blows away title VI of the civil rights laws and means that the organization can discriminate any kind of way it wants. It's not subject to title VII under religion, and if it's got less than 15 employees——

Mr. CHABOT. Will the gentleman yield?

Mr. SCOTT.—Title VII doesn't even kick in anyway.

Mr. CHABOT. Will the gentleman yield?

Mr. SCOTT. They can discriminate based on race, religion, any kind of thing they want to rely on with that language in there, and all my little amendment says is that title VI anti-discrimination provisions ought to apply.

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Mr. WATT. I yield to Mr. Chabot.

Mr. CHABOT. Thank you. It's clear—we've reviewed it again—it's clear that title VI, that it applies, and it's our contention—we disagree on it, but it seems to be very clear to us.

Mr. WATT. Reclaiming my time, I—for the life of me, it may be clear to you, but it certainly is not clear to us. If you've got a provision in the law that says this is not aid to the organization, this is not money that's going to the organization, it's going to individuals and families in need, the ultimate beneficiaries of such service, and not support for religion or the organization's religious beliefs or practices, then basically you've said that it doesn't apply. Unless you put some proviso at the end that says it does apply, which is what Mr. Scott is trying to do.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Mr. WATT. I yield to Mr. Nadler.

Mr. NADLER. Thank you. I've been listening to this discussion in some confusion, as I imagine some other people have. What I seem to come away from is that Mr. Scott says—and Mr. Watt—that without ameliorative language, title VI would not apply. Mr. Chabot says, "Oh, yes, title VI does apply." Everybody seems to agree that title VI should apply. The question is over the interpretation.

I'd ask Mr. Chabot, do you agree that title VI should apply in this situation?

Mr. CHABOT. I agree it should, and it does. It seems to be crystal clear.

Mr. NADLER. All right. And reclaiming my time, there's a real disagreement here as to whether it does or not. Everybody seems to agree that it should. So why not simply put in a statement that says it does? What possible harm is there to just clarify the point, Mr. Chabot?

Mr. CHABOT. You could amend anything and repeat the language redundancy upon redundancy. If it's clear already, there's no reason to——

Mr. NADLER. Well, in this case—reclaiming my time——

Mr. CHABOT.—amend something just for the purpose of amending it.

Mr. NADLER. In this case, I would suggest and I would urge that it would serve a great purpose—either you're right or wrong. If

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you're right, the amendment's superfluous but harmless. If you're wrong, the amendment is necessary. And there would seem to be a lot of pretty good legal minds that think that maybe you're wrong. So why not accept the amendment? It seems to me that if we all agree that title VI should apply, then simply saying we must oppose the amendment because, although it doesn't do anything wrong, it doesn't do anything right either, is a little over rigid. Why not satisfy everybody? Get rid of an hour debate on the floor a couple weeks from now, and say, either this language or some other language that someone can draft if you don't like this language for some reason, and say title VI applies.

Mr. WATT. Reclaiming my time, I yield to Ms. Lofgren.

Ms. LOFGREN. I would just urge the same point made by Mr. Nadler. We've had a lot of disagreements today on the merits of what should be included, what shouldn't be included, but it seems to me foolish when we agree that we can't clarify it. And if we can have, you know, six lawyers arguing the point and not agreeing here for 20 minutes, it seems to me there will be lawyers across the country disagreeing. And to make it clear is a reasonable thing to do, and I would urge that we do so.

Mr. CHABOT. Would the gentlelady yield? I'm not sure whose time it is over there.

Ms. LOFGREN. It's Mr. Watt's time.

Mr. WATT. I yield to Mr. Chabot.

Mr. CHABOT. Okay. I thank the gentleman for yielding. We continue to believe that it's clear, that it's already covered, that the language is unnecessary and redundant, but since it's redundant, it's really not harmful, and so for that reason, we will withdraw our objection to the amendment.

Chairman SENSENBRENNER. The gentleman's time is expired. The question is on Scott amendment No. 11 to the Sensenbrenner amendment. Those in favor, will signify by saying aye.

Opposed, no.

The ayes have it, and the amendment is agreed to.

There being no further amendments, the question is on adoption of the Sensenbrenner amendment as amended. Those in favor will signify by saying aye.

Those opposed, no.

The ayes appear to have it.

Mr. NADLER. Mr. Chairman——

Chairman SENSENBRENNER. This is on the Sensenbrenner amendment. This is not on reporting the bill.

Mr. NADLER. Oh, sorry.

Chairman SENSENBRENNER. The ayes appear to have it. The ayes have it.

A reporting quorum is present.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The question occurs on the motion to report the bill, H.R. 7, favorably as amended.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. All in favor will say aye.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Opposed, no.

The ayes appear to have it.

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Mr. SCOTT. I was seeking recognition before the motion. Before the vote. I sought recognition before the vote.

Chairman SENSENBRENNER. The Chair will vitiate the voice vote. For what purpose the gentleman from Virginia seek——

Mr. SCOTT. Mr. Chairman, I was just looking at the amendment that was adopted, and there seems to be—there's a technical glitch to it. Page 10, it should read "line 2" after the period. I think——

Chairman SENSENBRENNER. Without objection, the amendment is so modified.

The question now again occurs on the motion to report the bill H.R. 7 favorably, as amended. All those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. A rollcall is requested. Those in favor of the motion to favorably report will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

Mr. NADLER. I thought it was requesting a rollcall on the Sensenbrenner amendment. I don't need a rollcall on this.

Chairman SENSENBRENNER. We want one. This is final passage. The clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. Yes.
The CLERK. Mr. Hyde, yes. Mr. Gekas?
Mr. GEKAS. Yes, aye.
The CLERK. Mr. Gekas, aye. Mr. Coble?
Mr. COBLE. Yes, aye.
The CLERK. Mr. Coble, aye. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye. Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye. Mr. Barr?
Mr. BARR. Aye.
The CLERK. Mr. Barr, aye. Mr. Jenkins?
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye. Mr. Hutchinson?
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson, aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye. Mr. Graham?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?

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Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there additional Members in the chamber who desire to cast or change their vote? Gentleman from Florida?
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough, aye.
Chairman SENSENBRENNER. Are there additional Members who desire to cast or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 18 ayes and 5 nays.
Chairman SENSENBRENNER. And the motion to favorably report is agreed to. Without objection, the bill will be reported in the——
The CLERK. Excuse me. 20 ayes, and 5 nays.
Chairman SENSENBRENNER. The final rollcall is so modified. Without objection, the bill will be reported in the form of a single amendment in the nature of a—strike that.

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Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

The Chair extends his heartfelt thanks to the patience of all Members, staff and audience for sticking us—with us through this ordeal, and without objection, the Committee is adjourned.

[Whereupon, at 8:00 p.m., the Committee was adjourned.]

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DISSENTING VIEWS

We dissent from the provisions in H.R. 7 which fall within the Committee on the Judiciary's jurisdiction (sec. 201 and 104).

We strongly believe that religious organizations can and should play an important and positive role in meeting our nation's social welfare needs. However, we cannot support legislation which seeks to enlarge the role of religious institutions by sanctioning government-funded discrimination and by breaking down the historic separation between church and state. This is why the legislation is opposed by a broad range of groups, including civil rights organizations (the Leadership Conference on Civil Rights, the NAACP, the NAACP Legal Defense Fund, the ACLU, Americans United for Separation of Church and State, the National Abortion Rights Action League, People for the American Way, the National Gay and Lesbian Task Force, the National Organization for Women), religious organizations (the Interfaith Alliance, the Baptist Joint Committee, the American Jewish Committee, the Union of American Hebrew Congregations, the Unitarian Universalist Association of Congregations), education organizations (the National Education Association, the American Federation of Teachers), and organized labor (AFSCME, Service Employees International Union).[1]

Summary of Legislation and Democratic Concerns

Section 201 of H.R. 7 adds a new section 1994A to title 42 of the U.S. Code designed to expand previously enacted "charitable choice" laws[2] to include eight new categories of Federal grant programs (relating to, among other things, juvenile justice, crime, housing, job training, domestic violence, hunger relief, seniors services, and education). Under the bill, the Federal Government—or a State or local government using covered Federal funds—is prohibited from discriminating in the award of grants against religious organizations on account of their religious character.[3] This right is enforceable by a lawsuit brought by a religious organization against the local, State and/or Federal Government.[4]

The bill extends the current exemption in the civil rights law (section 702 of the Civil Rights Act of 1964) which permits religious organizations to discriminate in employment on account of religion

[1] Letter from the Coalition Against Religious Discrimination to Members of the House of Representatives (June 25, 2001) (listing 51 national organizations that oppose charitable choice) (on file with the House Judiciary Committee).

[2] The Personal Work and Work Opportunity Reconciliation Act of 1996, P.L.104–193, title I §104 (Aug. 22, 1996), 110 Stat. 2161, 42 U.S.C. 604a (hereinafter, the "Welfare Reform Act"); The Community Services Grant Program, P.L. 105–285, title II, §201 (Oct. 27, 1998), 112 Stat. 2749, 42 U.S.C. 9920; The Substance Abuse and Mental Health Services Act, P.L. 106–310, 42 U.S.C. §300x-65; and The Community Renewal Tax Relief Act of 2000 (H.R. 5662 included in Consolidated Appropriations Act of 2001, P.L. 106–554 (Dec. 12, 2000), 114 Stat. 2763).

[3] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(c)(1)(B), 107th Cong. (2001).

[4] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(n), 107th Cong. (2001).

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to allow religious organizations to use public funds to discriminate on account of religion.[5] Because the current section 702 exemption permits religious organizations to discriminate in employment on the basis of so-called "tenets and teachings," the bill therefore would permit religious groups to use taxpayer money to discriminate not just on account of a prospective employee's religion, but upon his or her failure to adhere to religious doctrine (e.g., being pregnant and unmarried, being gay or lesbian).[6] Significantly, this ability to discriminate would supercede any Federal, State, or local civil rights law or contracting requirement or condition to the contrary.[7]

In an effort to prevent the legislation from being unconstitutional under the Establishment Clause, the bill includes several purported first amendment safeguards. Thus, the legislation states that if a beneficiary objects to the religious character of a provider, the governmental entity is required to provide an alternative service that is unobjectionable on religious grounds.[8] The bill also specifies that religious organizations receiving grants may not discriminate against beneficiaries on the basis of their religion, and that religious organizations receiving indirect assistance (e.g., a voucher) may not deny admission on the basis of religion.[9] In addition, the legislation states that government funds may not be used for sectarian instruction, worship, or proselytization, and that if the religious organization offers such activity, it is to be "voluntary" and "offered separate" from the government funded program.[10]

Enforcement of these strictures is largely left to the religious organization. Thus, the religious organization is expected to file a certificate that it is aware of and will comply with the limitations on the use of its funds and the voluntary and separate require-

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[5] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(e), 107th Cong. (2001).

[6] David M. Ackerman, *Scope of the title VII Exemption Contained in title II of H.R. 7, as Approved by the House Judiciary Committee,* CRS Report prepared for Rep. John Conyers, Jr. (July 3, 2001), at 2, 3 (on file with House Judiciary Committee).

[7] Several features of H.R. 7 make it clear that the legislation will supercede State and local laws:

First, subsection (d) specifies that a religious organization receiving Federal funds "shall have the right to retain its autonomy from *Federal, State, and local governments,* including such organization's control over the definition, development, practice and expression of its religious beliefs." The same subsection operates to protect the organization's internal governance against any governmental interference. Under the Constitution's Supremacy Clause, this subsection would take precedence over a State law, for example, protecting gays and lesbians, unmarried, or pregnant individuals from employment discrimination.

Second, subsection (e) specifies that a provision in a program receiving Federal funds under a covered program—which would include State programs that receive and distribute Federal funds—that is "inconsistent with or would diminish the exercise of [a religious] organization's autonomy" as recognized in section 702 of the Civil Rights Act or the bill generally "shall have no effect." This broad language would serve to negate, for example, a condition in a State grant program specifying that entities that received funds would need to agree not to discriminate on the bases of specified protective categories in employment.

Third, H.R. 7 does not include language from the Welfare Reform Act's charitable choice law specifying that nothing in that law is to "preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations." Given that Congress has previously opted to include language deferring to State law, we can only presume that H.R. 7 was specifically designed to supercede State law.

[8] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(g), 107th Cong. (2001).

[9] *See infra* note 60.

[10] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(j), 107th Cong. (2001).

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ment.[11] Religious organizations are also supposed to conduct an annual "self audit" of their duties under the legislation.[12]

Finally, Subsection (l) of the legislation would introduce a major change to our social service programs, granting agencies the discretion to take any or all of the funds in programs covered by the legislation (e.g., for housing, hunger relief and the like) and convert it into an indirect aid program by which beneficiaries could provide "vouchers" to the religious organization, which could in turn receive Federal funds. Such "voucherized" programs would be exempt from the requirement that the religious organization not discriminate against beneficiaries on religious grounds as well as the requirement that any sectarian instruction, worship, or proselytization be "voluntary" and "offered separate" from the government funded program.

Section 104 of H.R. 7 is a "tort reform" provision. It supersedes State law to limit businesses from civil liability for donated equipment, the provision of their facilities, and the provision of their motor vehicles or aircrafts to nonprofit organizations.[13]

We cannot support the Judiciary-reported provisions of the legislation because in an effort to increase the role of religion in meeting society's needs, the legislation sacrifices two of our nation's most fundamental principles—equal protection and the separation of church and state.

In terms of equal protection, the legislation runs counter to the long held principle that it is unacceptable for any group or entity to discriminate with taxpayer funds. Given that the bill's proponents claim that government funds will only be used for wholly secular purposes, we cannot understand why it is necessary to sanction discrimination in employment on account of religion. Nor can we understand why the bill permits religious organizations to discriminate on the basis of "tenets and teachings," which sweep in employment discrimination against gays and lesbians, unmarried pregnant women, women who have had an abortion, and persons who advocate reproductive choice. Equally disturbing is the fact that the bill sets aside not only Federal civil rights protections, but also State and local laws and contracting requirements designed to protect against discriminating in employment with government funds.

With regard to the separation of church and state, we are concerned that the supposed "safeguards" included in the manager's amendment include several loopholes and are unlikely as a practical matter to insure that the Establishment Clause is respected. At the same time, the legislation is likely to serve to entangle government and religion, and in so doing, diminish the respect of our

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[11] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(j), 107th Cong. (2001).

[12] The only outside audit permitted under H.R. 7 is with regard to separate financial accounts set up to hold the government funds. Manager's admendment to H.R. 7 section 201 adding proposed section 1994A(i)(2)(A). The legislation also includes an annual authorization of $50 million (from the Office of Justice Programs and the COPS on the Beat program) to give small religious organizations training and technical assistance in seeking grants. Manager's admendment to H.R. 7, section 201 adding proposed section 1994A(o)(1).

[13] Section 104 would create an extremely high standard to prove corporate negligence, gross negligence or intentional misconduct. This means that unless the corporation knew at the time of donation that the equipment, motor vehicle or aircraft or facility would likely injure or kill the user, the corporation could not be held liable. As a result, a corporate donor would be virtually immune from responsibility for injuries it may have caused.

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citizens for each. Recent press reports indicate that such inappropriate entanglement has already begun.[14]

We also believe it is somewhat inconsistent for the Administration to be advocating this legislation as a tool to respond to poverty and other social ills, when H.R. 7 does not authorize a single dollar in additional funds for any of the social service programs covered by the bill. Even more problematic is that cuts in the Administration's budget assure that even if H.R. 7 is enacted, it will only serve to pit religious organizations, secular non-profits, and government agencies against each other for an ever declining share of Federal funds. Finally, in terms of the State liability law limits included in the bill, we fear that unilateral changes of this nature undermine federalism and expose the most vulnerable members of society to greater risk of accident and harm from faulty equipment and dangerous facilities.

We support the notion that government can and should seek increased involvement of non-profits—including religious organizations—in meeting our nation's social welfare needs. At present, tax preferences provided to non-profits by the Federal Government total an estimated $25.8 billion per year.[15] Many of us are supportive of efforts to extend these tax benefits even further (although such extension was not sufficiently important for the Administration to include in their recently passed $1.35 trillion tax legislation).

In addition, we would note that the Federal Government already provides billions upon billions of dollars of direct annual support to non-profit organizations, including religiously affiliated organizations who have set up 501(c)(3) entities and operate within constitutional boundaries not required by H.R. 7. President Bush admitted as much in a recent speech when he acknowledged that under current law, Federal funds already go to child care and Head Start programs housed in churches and pay for health care in Catholic, Baptist, or other denominational hospitals. Illustrative of this success are Catholic Charities USA—which receives $600 million per year in government funds[16] and is able to offer services through more than 1400 agencies, institutions, and organizations,[17] and Lutheran Services in America, which serves over 3 million persons annually in over 3,000 communities.[18]

In fact, when President Bush visited Habitat for Humanity and proclaimed that it was an example of the need for charitable choice, the president and founder of Habitat for Humanity said he did not need new laws, and he insisted that he was "thriving" under present laws. Contrary to President Bush's recent assertions, we are unaware of anyone who opposes these organizations operating public programs and providing services. They are funded like all other private organizations are funded: they are prohibited from using taxpayer money to advance their religious beliefs and they are subject to the civil rights laws. Any program which can be

[14] *See* discussion of alleged *quid pro quo* between Bush administration and Salvation Army, *supra.* p. 13.
[15] Staff of Joint Economic Committee, 106th Cong., Tax Expenditures: A Review and Analysis 3 (Comm. Print 1999).
[16] Catholic Charities USA, http://www.catholiccharitiesusa.org/who/stats.html.
[17] Catholic Charities USA, http://www.catholiccharitiesusa.org/who/history.html.
[18] Lutheran Services in America, http://www.lutheranservices.org/whoweare.htm.

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funded under H.R. 7, as reported, can be funded now, except that under this bill the sponsoring organizations can refuse to comply with the civil rights laws.

Charitable Choice represents a false promise to struggling communities who desperately need resources. While it is described as a plan to help faith-based organizations receive and administer government grants, Charitable Choice in practice only represents an assault on our civil rights laws. It is also more clear than ever with the recent reports from the Washington Post that a sweeping roll back in civil rights protections at all levels is at the core of charitable choice.

Certainly, government can do more in collaboration with religious and non-profit organizations. We can expend funds to help religiously affiliated groups understand and comply with the law and seek Federal funding.[19] Also, we can encourage religious leaders to serve on government task forces fighting social ills, and insure that government offices provide appropriate information on social services offered by houses of worship. Unfortunately, H.R. 7 does not focus on bipartisan common sense initiatives which would move our nation forward. Instead it divides us along lines of religion, sexual status, marital status, and race. For these and the reasons set forth herein, we dissent from the Judiciary-reported provisions in H.R. 7.

I. H.R. 7 ALLOWS RELIGIOUS ORGANIZATIONS RECEIVING TAXPAYER FUNDS TO DISCRIMINATE IN EMPLOYMENT ON ACCOUNT OF RELIGION

Our principal objection to the legislation is that it permits taxpayer funds to be used to discriminate in employment. This violates one of the most fundamental principles of civil rights, first enunciated by President Franklin D. Roosevelt by Executive Order 60 years ago that the government should not fund employers, religious or otherwise, who engaged in discrimination on account of race, religion, color or national origin.[20]

We are perplexed why the Majority has so fervently sought to extend the right to discriminate on religious grounds given that they have separately argued that the funds referenced under the bill will be used for wholly secular purposes. They cannot have it both ways—either the Federal funds will be used for religious purposes, in which case there may be a justification for tolerating religious discrimination (but would render the legislation constitutionally suspect); or the funds will be used in a non-sectarian manner, in which case there is no reason to discriminate on the basis of religion. As Democratic Members made clear at the markup, cooking soup and giving it to the poor can be done equally well by persons of all religious beliefs.

Even more problematic is the bill's sanctioning of discrimination based on religious "tenets and teachings." Under this doctrine, religious institutions are permitted to discriminate in employment

[19] "In this regard, President Bush did request that Congress place $700 million in a 'Compassion Capital Fund' to support charitable organizations providing social services, claiming it was a "noble mission" during his February 27, 2001 Address to a Joint Session of Congress. Yet, the President's budget proposal only included $89 million for the fund. Even this reduced request was ignored in the budget resolution adopted by the Majority.

[20] Exec. Order 8802 (June 25, 1941). This fundamental principle of non-discrimination subsequently was reflected in other executive orders by every future President.

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against anyone who disagrees with or conducts themselves in a manner at odds with any form of the religious institutions' doctrine or practices.[21] Thus, under the bill, an organization could use taxpayer funds to discriminate against gays and lesbians,[22] against divorced persons,[23] against unmarried pregnant women,[24] against women who have had an abortion, persons who use birth control, persons who favor reproductive rights,[25] or persons involved in interracial dating or marriage.[26] Again, while there may be some conceivable justification for this type of discrimination in the context of a religious organization employing persons associated with its religious function, there is no legitimate justification for extending such discrimination with regard to government-funded secular services for the poor and needy, as the bill does.

Notwithstanding the series of changes made to the employment discrimination language pursuant to the manager's amendment, there is no question that after all is said and done, the bill will sanction this form of tenets and teachings discrimination. In a Memorandum issued subsequent to the Committee Markup, the Congressional Research Service stated that the bill would authorize this type of discrimination, noting that "[j]udicial decisions have held the [religious] exemption to apply to discrimination based on tenets, teachings, beliefs, behavior and practices."[27] The CRS Memorandum then goes on to cite a long list of cases where persons were discriminated against by religious organizations because, among other things, they failed to have their first marriage properly annulled, they were gay, they had extramarital sex, they supported reproductive choice, or they were actively involved in a church which had gay and lesbian members.[28]

We would further note that the protections against discrimination in H.R. 7 on the basis of race are not complete. The application of the "ministerial exception" to any publicly funded positions also should be given serious consideration and review. There is a question as to how enforceable title VII's protections against racial discrimination in employment will be once publicly funded religious discrimination is allowed. Given that the eleven o'clock hour is still one of the most segregated hours in America, an all white religious organization could simply tell otherwise qualified minority candidates of the same religion, we only hire those that belong to our church.

The non-discrimination language included in the bill not only sets aside Federal civil rights laws, it goes so far as to obviate State and local laws and Federal, State, and local contracting requirements intended to safeguard against religious discrimination in employment. Thus if a State had decided that as a matter of public policy it did not want to tolerate religious discrimination by

[21] *See infra* note 6.
[22] *See Hall v. Baptist Memorial Healthcare* Corp., 215 F. 3d 618 (6th Cir. 2000).
[23] *See Little v. Wuerl,* 929 F. 2d 944 (3rd Cir. 1991).
[24] *See Cline v. Catholic Diocese of Toledo,* 206 F. 3d 651 (6th Cir. 2000).
[25] *See Maguire v. Marquette University,* 814 F. 2d 1213 (7th Cir. 1987).
[26] NAACP Legal Defense Fund Information Sheet. The report states, "under the language of [charitable choice], Bob Jones University could become a provider of services under one or more Federal programs and require that employees . . . subscribe to its religious tenets and not engage in interracial dating . . .". (On file with the House Judiciary Committee).
[27] *See infra* note 6.
[28] *Id.*

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a non-profit engaged in secular affairs, or that religious organizations who utilized State provided funds should not be permitted to discriminate, or even that they should be able to discriminate on account of religion, but not on account of "tenets and teachings," all of these laws and contracting requirements would be set aside under H.R. 7. To us, this turns the principle of federalism and respect for State prerogatives on its head.

The consequences of H.R. 7's superceding State civil rights protections are quite extreme. Under the legislation, a national religious organization could choose to accept a single Federal grant and attempt to use that as a shield to avoid laws protecting gay and lesbian employment rights in all 50 States. For example, Maryland's law on domestic partner benefits could be set aside under H.R. 7. This means that even if the Bush administration abandons its proposal to issue an administrative ruling setting such State and local civil rights protections aside,[29] opponents of such protections would be able to accomplish even greater immunity from such laws under H.R. 7.

At its core, the Majority and supporters of H.R. 7 challenge the fundamental notion of "protected class" as currently recognized by our civil rights laws. The Majority has suggested that organizations should be able to discriminate in employment to select employees who share their vision and philosophy. Under current civil rights laws, employers can discriminate against a person based on their views on the environment, abortion, gun control, or just about any other basis. Employers can also select staff based on their commitment to serve the poor or whether they think prospective applicants have compassion to help others kick drugs. But because of a sorry history of discrimination against certain Americans, we have had to establish "protected classes" and under present law employers, including religious organizations who sponsor Federal programs, cannot discriminate against an individual based on race, sex, national origin, or religion.

It is for these reasons that civil rights groups such as the NAACP, the NAACP Legal Defense Fund and the Leadership Conference on Civil Rights are so strongly opposed to the bill. They have nothing against religion, but they do believe we do nothing to help poor and needy individuals if we tolerate more discrimination. Thus, on July 8, 2001, Julian Bond, the Chairman of the NAACP, the nation's oldest and largest civil rights organization declared that "[t]he Administration's faith-based plan threatens to erase sixty years of civil rights protections."[30] The NAACP Legal Defense Fund has written that the religious discrimination provisions in charitable choice legislation are "wholly inconsistent with longstanding principle that Federal moneys should not be used to discriminate in any form."[31] Wade Henderson, the Executive Director of the Leadership Conference on Civil Rights, the nation's most broadly based civil rights organization, has testified that "charitable choice threatens to erode [the fundamental principle of non-

[29] Dana Milbank, *Bush Drops Rule On Hiring of Gays; Democrats: "Faith Based" Initiative at Risk*, WASHINGTON POST, July 11, 2001, at A10.

[30] Statement by Julian Bond, Chairman, NAACP at NAACP National Convention, July 8, 2001, at 16. (On file with House Judiciary Committee).

[31] *See infra* note 26.

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discrimination] by allowing Federal funds to go to persons who discriminate in employment based on religion."[32]

Given the obvious and real nature of our concerns regarding the bill's sanctioning of employment discrimination, we are not surprised that the legislation's supporters have resorted to a series of myths to justify H.R. 7. Of course, upon close scrutiny, none of these myths can be sustained:

Myth 1—Religious discrimination is needed so that small religious organizations can share religious employees between nonsecular and secular functions

This claim suffers from several legal deficiencies. As a threshold matter, title VII only applies to organizations which employ 15 or more persons.[33] This means that extension of the section 702 exemption is not needed to permit small religious organizations to be able to hire persons of their own religion. Second, the courts have said that under the First Amendment Free Exercise Clause, religious institutions are entitled to a "ministerial exception" permitting them to bypass title VII's prohibitions on discrimination with respect to race, gender, and national origin to hire their clergy and spiritual leaders.[34] Again, extending the reach of the section 702 employment discrimination exemption will do little to help religious groups share the costs of their clergy between their religious and secular accounts.

The 15 person threshold requirement and ministerial exception should therefore cover most of the needs of small religious organizations. To the extent there is any gap in coverage, we note that the Majority never proposed a tightening amendment. Instead, H.R. 7 appears to use the issue of small religious organization needs as an excuse to justify wide scale relief from our anti-discrimination laws.

Myth 2—We should extend the religious civil rights employment exemption because it is based on previous charitable choice laws signed by President Clinton and which have been implemented without controversy

This contention also fails for a variety of reasons. Most obvious is the notion that a previous act of Congress cannot and should not bind a future Congress, particularly with regard to a dubious legal principle. Beyond that it is important to note that there are numerous, major differences between H.R. 7 and other charitable choice laws. Among other things, H.R. 7 covers a far broader range of programs and includes a far larger pot of funds than previous charitable choice laws.[35] H.R. 7 also includes a variety of different safeguards and permits a broader range of religious discrimination with respect to beneficiaries than previous charitable choice laws.[36]

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[32] Statement by Wade Henderson, Executive Director, Leadership Conference on Civil Rights before the Committee on the Judiciary, U.S. Senate, 107th Cong. (June 6, 2001) at 3.

[33] *See infra* note 6.

[34] *Id.*

[35] Based on the Bush Budget, the funds covered by the previous charitable choice laws total approximately $21 billion ($3 billion for SAMHSA; $16 billion for TANF; $2.4 billion for Community Development Block Grants). By contrast, the social service programs covered by H.R. 7 total at least $47 billion ($.3 billion for juvenile justice; $6.5 billion for crime control and domestic violence; $28 billion for housing; $7 billion for job training; $1 billion for seniors services; $4.1 billion for hunger; $1.4 billion for GED and after school programs).

[36] *See* notes 10, 60, 61 and accompanying text.

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In addition, the legislative history of the previous charitable choice laws makes clear that these laws were never carefully considered or debated. We begin with the fact that until this Congress there has never been a hearing on charitable choice legislation in the House or the Senate. The Judiciary Committee—which has jurisdiction over the issue—has never been involved in any previous charitable choice legislation. Moreover, when charitable choice has been added to legislation in the past, it has often been done at the very end of the process, with no opportunity for Democratic input or amendment.[37]

It is also misleading to contend that prior charitable choice laws have been enacted with the endorsement of President Clinton. To the contrary, shortly after the Welfare Reform Act was enacted, the Clinton administration proposed amendments to clarify the charitable choice provisions to ensure that religiously affiliated organizations could not participate if they were "pervasively sectarian."[38] Additionally, in connection with the signing of the Community Services Block Grant law in 1998 and the Substance Abuse Mental Services Act in 2000, President Clinton specifically noted that the Department of Justice believed charitable choice was potentially unconstitutional, and as a result construed the law as forbidding the funding of pervasively sectarian organizations.[39]

Fourth, current charitable choice laws have barely been implemented, much less analyzed for effectiveness. As of September

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[37] The charitable choice provision of the Welfare Reform Act was offered in conference. It was not included in the House bill. Democrats never had a chance to strike the provision because conferees were never given an opportunity to offer amendments. Charitable choice was also added to the re-authorization of Community Services Block Grant (CSBG) in the 105th Congress as part of a larger Human Services reauthorization that included Head Start, CSBG, and Low Income Heating Energy Assistance Program (LIHEAP). It was the last item to be considered by the conferees due to the controversy. This marked the first time that Charitable Choice was debated on the House floor. The debate occurred at 1 a.m. Charitable Choice language was signed into law twice in the 106th Congress on the SAMHSA programs—as part of H.R. 4365, the Children's Health Act of 2000, P.L. 106–310, and as part of the omnibus end of year spending bill, H.R. 4577, P.L. 106–554. The language in H.R. 4577 replaced the language signed into law pursuant to H.R. 4365. In both cases, the charitable choice provisions were added without any opportunity to offer amendments.

[38] The Clinton administration filed the following comments in connection with the proposed amendments: "We recommend amending sec. 104 to clarify that it does not compel or allow States to provide TANF benefits through pervasively sectarian organizations, either directly or through vouchers redeemable with these organizations. . . . [P]rovisions of sec. 104 and its legislative history could be read inconsistent with the constitutional limits." The Administration's amendment to charitable choice failed to be included in a final package of technical amendments to the welfare laws adopted by Congress.

[39] *Statement on Signing the Children's Health Act of 2000,* 36 Weekly Comp. Pres. Doc. 2504 (October 17, 2000):

> The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were construed to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA aid. Accordingly, I construe the act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding.

President Clinton stated similarly at the 1998 signing of The Community Services Grant Program:

> The Department of Justice advises, however, that the provision that allows religiously affiliated organizations to be providers under CSBG would be unconstitutional if and to the extent it were construed to permit governmental funding of "pervasively sectarian" organizations, as that term has been defined by the courts. Accordingly, I construe the act as forbidding the funding of pervasively sectarian organizations and as permitting Federal, State, and local governments involved in disbursing CSBG funds to take into account the structure and operations of a religious organization in determining whether such an organization is pervasively sectarian.

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2000, 50 States had not implemented policies to facilitate the participation of faith-based organizations in charitable choice programs.[40] It is also incorrect to assert, as proponents have done, that prior charitable choice laws have not been subject to legal challenge. Even on the very thin implementation record before us, the legal and constitutional issues raised by charitable choice have already engendered five legal challenges.[41]

Myth 3—Even outside of charitable choice, various religiously affiliated organizations—such as hospitals and colleges—receive Federal funds and regularly discriminate on account of religion

This argument was trotted out several times during our markup. It is somewhat difficult to respond to, because to our knowledge, the Majority has not cited any specific examples. As best we can ascertain, the Majority bases their argument on the fact that religious colleges are receiving Pell Grants, and religious hospitals are receiving Medicaid and Medicare payments, at the same time they utilize the section 702 religious exemption. The principal flaw in this contention is that funds received from Pell Grants, Medicare, and Medicaid are indirect. They flow from choices made by beneficiaries, not the government. As a result, to the extent any such religiously affiliated hospital or college is engaged in discrimination, it is not with direct government funds.[42]

If a limited number of religious institutions are receiving Federal grants at the same time they are engaging in employment discrimination, it is possible the Majority does not realize the institutions may be doing so in violation of Federal law. Certainly, to the extent they are receiving Federal funds from grants concerning crime control, housing, job training, domestic violence, and education—all programs covered by H.R. 7—they would not be able to lawfully discriminate on account of religion, as those laws contain specific provisions preventing religious discrimination.[43]

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[40] Center for Public Justice, "States Fail Charitable Choice Check-Up," Press Release (Oct. 5, 2000).

[41] *See American Jewish Congress and Texas Civil Rights Project v. Bost* 00-A-CA-528-SS (W.D. Tex.)(challenging the Jobs Partnership of Washington County's use of State funding to buy Bibles and give Bible instruction for its welfare-to-work training program); *AJCongress v. Bernik,* No. 317896 (Superior Court, County of San Francisco)(alleging that the California Employment Development Department solicited proposals for $5 million to be earmarked solely for faith-based, but not secular, groups); *Freedom From Religion Foundation v. Thompson* 00-C-0617C (W.D. Wis.) (challenging the use of State funds by Faithworks, an alternative to Alcoholics Anonymous, which encourages belief in a higher power); *Lara v. Tarrant County* (Tex. Supreme Court) (challenging a prison chaplain's clear preference for Christianity when approving volunteer teachers for a prison-funded education program); *Pedreira v. Kentucky Baptist Homes,* C/A 3:00CV-210-SKY 2001 (W.D. Ky.)(challenging the firing of a lesbian worker from a State-funded residential child care run by ministries).

[42] *Siegel v. Truett-McConnell College, Inc.* confirms the important distinction between direct and indirect Federal aid. The plaintiff in Siegel argued that the college received substantial funds from Federal and State sources, such as Pell grants, and therefore was not entitled to the title VII exemption. The Court ruled that the college was entitled to the title VII exemption because there was no "direct Federal or State subsidy . . ." and that "[t]he government does not directly pay for any one teacher's salary, including Mr. Siegel's." The court went on to distinguish this case involving indirect benefit (where students choose their college) from a direct benefit (where government provides a direct contract for services). *Siegel v. Truett-McConnell College,* 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd,* 73 F.3d 1108 (11th Cir. 1995).

[43] *See* Omnibus Crime Control and Safe Streets Act of 1998, 42 U. S. C. § 3701 et seq. (includes a religious nondiscrimination provision at 42 U. S. C. § 3789d(c)); federally assisted housing programs, 42 U. S. C. § 13601 *et seq.* (includes a nondiscrimination provision requiring compliance with all civil rights laws at 42 U. S. C. § 13603(b)(2)); Workforce Investment Act of 1998, 29 U. S. C. § 2801 et seq. (includes a religious nondiscrimination provision at 29 U. S. C. § 2938); domestic violence programs, *see,* e.g., 42 U. S. C. § 10603 (includes a religious nondiscrimination provision at 42 U. S. C. § 10604(e)); the Child Care Development Block Grant Act of 1990, 42

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Myth 4—Using Federal funds to discriminate in employment has been upheld by the courts

This contention rests on the Majority's misreading of the Supreme Court's decision in *Corporation of the Presiding Bishop v. Amos.*[44] That case did uphold the religious exemption set forth in section 702 of the Civil Rights Act, however, it did not involve any use of Federal funds. As a matter of fact, the Court went out of its way to distinguish the title VII exemption from other government programs that might advance religion through financial support or active involvement of the sovereign religious activity. Specifically, the Court held the exemption was "rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of the religious organizations to define and carry out their religious missions."[45] At most, permitting such discrimination was an "accommodation" required by the First Amendment's Free Exercise Clause that minimized the burden on religious organizations to predict which of their activities a secular court might consider religious.[46] Obviously, none of these factors or justifications are present in H.R. 7, which clearly involves the use of Federal funds for wholly secular purposes and activities.[47]

Nor is it true, as proponents claim, that Justice Brennan's separate opinion in Amos would lend support to H.R. 7's extension of the religious exemption. He wrote, "the potential for coercion caused by such a provision is in serious tension with our commitment to individual freedom of conscience in matters of religious belief."[48]

If anything, the case law on this point supports the contention that it is unconstitutional to use Federal funds to engage in discrimination. This was the holding of the district court in *Dodge v. Salvation Army.*[49] That case involved a religious organization—the Salvation Army—which used public funds to exclude members of the Wiccan faith from employment. The court found that such action was unconstitutional under the Establishment Clause because it treated religious non-profits preferably to non-religious non-profits.[50]

U. S. C. 9858 *et seq.* (includes a modified religious nondiscrimination provision at 42 U. S. C. §9858L); the Community Development Block Grant Program of the Housing and Community Development Act of 1974, 42 U. S. C. §5301 *et seq.* (includes a nondiscrimination provision requiring compliance with all civil rights laws at 42 U. S. C. §5304 (b) (2)); and the Job Access and Reverse Commute grant program of the Federal Transit Act of 1998, 49 U. S. C. §5309 note (includes a religious nondiscrimination provision at 49 U. S. C. §53329(b)).

[44] *Corporation of Presiding Bishop v. Amos,* 483 U.S. 327 (1987).

[45] 483 U.S. at 339. As Justice Brennen noted in upholding the section 702 religious exemption for privately funded, religious non-profit activities: "What makes the application of a religious-secular distinction difficult is that the character of an activity is not self-evident. As a result, determining whether an activity is religious or secular requires a searching case-by-case analysis. This results in considerable ongoing government entanglement in religious affairs." 483 U.S. at 343.

[46] 483 U.S. at 334–35.

[47] Additionally, because H.R. 7 prohibits direct funds being used for sectarian instruction, worship, or proselytization, jobs used with taxpayer money would be beyond the scope of *Amos.* Therefore, none of the entanglement concerns raised by Amos would be applicable to an analysis of publicly funded secular positions.

[48] 483 U.S. 327, 340–41.

[49] *Dodge v. Salvation Army,* 1989 WL 53857 (S.D. Miss. 1989).

[50] The court concluded that such an arrangement was unconstitutional because:

> The benefits received by the Salvation Army were not indirect or incidental. The grants constituted direct financial support in the form of a substantial subsidy, and therefore to allow the Salvation Army to discriminate on the basis of religion, concerning the em-

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II. H.R. 7 BREAKS DOWN THE HISTORIC SEPARATION BETWEEN CHURCH AND STATE

With regard to the separation between church and state, we are concerned that the safeguards included in the bill may be too weak, and that the bill will pave the way for excessive entanglement between government and religion. We are also concerned that the new voucher authorizations in the bill pose severe constitutional problems. These concerns demonstrate that the bill may be unconstitutional under the Establishment Clause.

Safeguards

We are particularly concerned that the most critical Establishment Clause safeguard included in the legislation—a beneficiary's right to a secular alternative to a faith-based service—is an unfunded and unenforceable mandate. The principal problem is that there is not a single dollar appropriated to meet the requirement, which serves as the lynch pin for H.R. 7, nor has there been any indication from the Administration that they intend to fund this mandate. The Majority's own witness, Professor Douglas Laycock acknowledged that the government must "really [make] available an alternate provider . . . you have got to really do that or this program is a fraud." [51] Yet at the same hearing, the Administration's own witness would not commit to fully funding the alternative program. When asked point blank by Rep. Frank whether for the charitable choice program to be fair and justifiable there needs to be a substantively equal secular alternative set of programs, Carl H. Esbeck, Senior Counsel at the Department of Justice responded, "I think in [an] earlier answer I was showing you an example where that was not necessary. So I guess the answer is no." [52]

If the Federal Government will not find the resources to meet the requirement of a secular alternative, it is unlikely the financially strapped State and local governments will be able to make up the difference. In this regard, the National League of Cities has written: "Local governments are already hard-pressed to deliver much needed services, and they are especially vulnerable to the impact of budget cuts in social service programs. Without the financial support from the Federal Government, it will be impossible for cities to satisfy this provision of H.R. 7; thus leaving cities vulnerable to litigation." [53]

The other key religious protections included in the bill—the requirement that government funds may not be used for "sectarian instruction, worship, or proselytization," and the requirement that if the religious organization offers such activity, it is to be "voluntary" and "offered separate" from the government funded pro-

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ployment of the Victims' Assistance Coordinator, would violate the Establishment Clause of the First Amendment in that it has a primary effect of advancing religion and creating excessive government entanglement.

[51] *The Charitable Choice Act of 2001: Markup Before the House Judiciary Committee,* H. Doc. No. HJU179.000, p. 214 (June 28, 2001).

[52] *Id.* at 67.

[53] Letter from Donald J. Borut, Exec. Dir., Nat'l League of Cities to Hon. John Conyers, Jr., p. 2 (June 27, 2001) (on file with the House Judiciary Committee).

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gram—are largely left to self enforcement.[54] Of course, we do not question the good faith of our non-profit or religious organizations, but it does seem that the Majority could offer stronger safeguards for this core constitutional concern than self certifications and self audits.

Particularly questionable is whether a sectarian religious program offered in conjunction with a covered Federal program, such as after school programs for young children, can ever be truly "voluntary" to the children involved. We all know the tremendous peer pressure impressionable children can be under, and they can hardly be expected to be aware of their statutory rights to object under H.R. 7, let alone willing to assert such legal rights against a religious organization.[55] A similar concern exists for other categories of beneficiaries, such as drug addicts. As the Association for Addiction Professionals testified before the Senate Judiciary Committee, "[t]he patient presenting for addiction treatment is very vulnerable to subtle and implied coercion. As other treatment options may not exist in real time, the presenting patient may comply [with the religious coercion] in order to continue to receive services."[56]

The bill's other purported protection—the specification that religious organizations receiving grants may not discriminate against beneficiaries on the basis of their religion—is also likely to be problematic in practice. One obvious problem is that this protection is limited to religious discrimination; it offers no protection against discrimination on account of sex, pregnancy status, marital status, or sexual orientation.[57] The fact that the legislation includes a savings clause stating that specified civil rights protections are unaffected by the bill is of little import, since none of the cited laws provide any protection with regard to these categories of beneficiaries.[58]

Even the protection against religious discrimination against beneficiaries is incomplete with regard to indirect aid. The original version of the legislation required that for indirect forms of disbursement religious organizations were prohibited from discriminating based on religion in all respects.[59] The manager's amend-

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[54] It is worth noting that the bill still does not contain the most obvious safeguard with regard to separation of church and state—a simple statement that a religious organization may not proselytize at the same time and place as a government funded programs.

[55] "The bill would leave it up to the children in an after school program to ask for a non-religious alternative. But experience with 'voluntary' school prayer demonstrates that peer pressure or other factors may hinder children from exercising that right." *See Mr. Bush's "Faith Based" Agenda,* N. Y. TIMES, July 8, 2001, at A10.

[56] Statement by John L. Avery, Government Relations Director of The Association for Addiction Professionals (NAADAC) before the Committee on the Judiciary, U.S. Senate 107th Cong. (June 6, 2001).

[57] Reps. Frank and Baldwin attempted to offer an amendment to prevent discrimination on any basis prohibited under applicable Federal, State, or local laws, including sexual orientation.

[58] Letter from Laura W. Murphy, Director, ACLU and Terri Schroeder, Legislative Representative, ACLU, p. 11 (June 27, 2001) (on file with the House Judiciary Committee) ("At first glance, the paragraph may appear to provide significant protection to persons suffering employment discrimination caused by federally-funded religious organizations. However, a closer examination shows what protections are missing. Specifically, the paragraph saves absolutely no laws protecting persons against discrimination based on religion, sex, pregnancy status, marital status, or sexual orientation in any federally-funded program or activity."). *See also* Statement by Wade Henderson, *supra note* 32, at 5. ("None of the cited laws provide any protection against employment discrimination based on religion, sex, pregnancy status, marital status, or sexual orientation.").

[59] H.R. 7, section 201 adding proposed section 1994A(g)(2), 107th Cong. (2001), as introduced. "A religious organization providing assistance through a voucher, certificate, or other form of indirect disbursement under a program described in subsection (c)(4) *shall not discriminate,* in

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ment weakened the protection to merely require that a religious organization cannot deny admission based on religion.[60] This means, for example, pressure to convert can be applied once admission is granted. Also, the protections that proselytization must be voluntary and separately offered do not apply to indirect aid. Finally, like the other religious safeguards applicable to beneficiaries, this anti-discrimination protection is not enforceable in court. In contrast to the provisions protecting religious organizations against discrimination, which are enforceable in court and allow recovery of attorney's fees,[61] beneficiaries facing discrimination are given no such right.

Entanglement

We are also concerned that by unleashing the process contemplated by H.R. 7, Congress will be inviting excessive entanglement between the church and state, particularly with regard to raw political calculations. The last several months have already unleashed a flurry of such activity, as the White House has used the full weight of its office to curry political support from impacted religious groups and elected representatives.

Perhaps the most telling instance of the dangers of such entanglement can be seen in the discussed *quid pro quo* between the Bush White House and the Salvation Army relating to H.R. 7.[62] On July 10, 2001, the *Washington Post,* citing the text of a confidential Salvation Army document, stated that the Salvation Army had received a "firm commitment" from the White House to issue a regulation protecting such charities from State and city laws and regulations against discrimination in employment on the basis of sexual orientation, or requiring domestic partner benefits.

The Salvation Army document states: "We suggested the amendment to OMB Circular #A-102 to staff at the White House Office of Faith-Based and Community Initiatives as one potential solution." The document goes on to say that White House officials "first want to move the charitable choice provisions in the legislation and use the political momentum of this effort to push forward religious exemptions to domestic partnership benefit ordinances and municipal contract clauses that protect against any form of sexual orientation discrimination." The document goes on to observe, "The Salvation Army's role will be a surprise to many in the media" and urges efforts to "minimize the possibility of any 'leak' to the media."

Subsequently, on July 12, 2001, the Washington Post reported that senior White House officials, including Karl Rove, President Bush's senior advisor, were involved in discussions with the Salva-

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carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief."

[60] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(h)(2), 107th Cong. (2001) provides, "A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) *shall not deny an individual described in subsection (f)(3) admission into such program* on the basis of religion, a religious belief, or refusal to hold a religious belief." (emphasis added).

[61] The proposed section 1994A(n) authorizes the bringing of a civil action pursuant to title 43, section 1979 of the Revised Statutes of the United States, the codified version of what is commonly known as section 1983 of the United States Code. title 42, section 1988 allows for the awarding of attorney's fees in a 1979 action.

[62] *See infra* note 29.

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tion Army; contrary to the Bush Administration's earlier position that senior officials were not involved.

It is difficult to conceive of a more troubling fact pattern from the perspective of separation of church and state. We have a large religious organization—that receives more than $300 million in Federal funds per year—allegedly entering into a secret deal by which the White House agrees to use taxpayer funds and resources to weaken civil rights laws if the religious organization supports the White House's legislative agenda.

Incidents such as this clearly raise the specter that religion may see its role as an independent voice of compassion in our society diminished. This was the very concern articulated by Rev. J. Brent Walker of the Baptist Joint Committee, when he stated, "[r]eligion has historically stood outside of government's control serving as a constant critic of government. Accepting government funding creates a dependency on government that will have the effect of silencing the prophetic witness. How can a religion raise a prophet's fist against government when it has the other hand open for a handout? It simply can't do both at the same time."[63]

An equally salient concern is that in the onslaught of lobbying for government grants by religious organizations, small and minority religions may be left underfunded and under appreciated. This of course would send a very dangerous message about which religions are worthy of government support and which are not. As Rabbi David Saperstein, the Director of the Religious Action Center of Reform Judaism testified: "The prospect of intense competition for limited funding; the politicizing of church affairs to obtain funds; the impact on those made to feel they are outsiders when they fail to obtain the funds—this leads to the very kind of sectarian competition and divisiveness that have plagued so many other nations and which we have been spared because of the separation of church and state."[64]

Early activities and statements by the Administration already provide cause for concern in this area. For example, when Stephen Goldsmith, a White House special adviser and a principal architect of the faith based plan, conducted a briefing in Augusta, Georgia in February, only "churches" were sent invitations.[65] Neither Jewish congregations nor secular nonprofits were invited. Similarly, when the White House hosted a meeting with Muslim groups last month, Muslim leaders walked out after an intern from David Bonior's office attending the meeting with the group was mistakenly removed by the Secret Service.[66]

It is also noteworthy that in an interview on *Face the Nation,* when CBS correspondent Bob Schieffer asked Mr. Goldsmith whether the Nation of Islam, which runs successful inmate rehabilitation programs, would be eligible to apply for a grant under charitable choice, Mr. Goldsmith answered, "I would say, if [the

[63] Brent J. Walker, *What is Charitable Choice,* Baptist Joint Committee Information Sheet on Charitable Choice (Spring 2001) (on file with the House Judiciary Committee).

[64] Reform Action Center of Reform Judaism, "Rabbi Saperstein Testifies Before Congress in Opposition to Charitable Choice," Press Release (June 7, 2001).

[65] OMB Watch, "Analysis of Bush administration's Charitable Choice Initiatives," p. 4 (Apr. 23, 2001).

[66] Caryle Murphy, *Muslim Leaders Leave White House Briefing; Removal of Intern Leads to Walkout,* WASHINGTON POST, June 29, 2001, at A35.

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Nation of Islam] preach[es] hate, if they can't perform the terms of the contract, they shouldn't be allowed to apply." Obviously, the last thing we want to do is put the Administration in a position of deciding which faiths are acceptable and which are not under their charitable choice plan. Yet when Rep. Scott offered an amendment to insure that discrimination between religions was not tolerated, and that any funding decisions were purely merit based, it was rejected by the Majority.

Voucher Expansion and Discrimination

Another serious concern with regard to the manager's amendment is that it provides an unprecedented new authorization of the use of vouchers and other indirect aid available for use by religious organizations. It also permits religious organizations to religiously discriminate in such voucherized programs, and to avoid the safeguards preventing the use of such funds for sectarian instruction, worship, or proselytization as well as the "voluntary and offered" separate requirement. These changes, effectuated in the fine print of the manager's amendment, and inserted without the benefit of any public hearings or discussion, constitute a massive expansion of the use of vouchers, and create major new loopholes in the bill's religious safeguards.

The authorization of the new voucher program appears in proposed new subsection (l). This language was not contained in the original version of H.R. 7, nor has it appeared in any previous charitable choice law. It would grant the Administration the ability to unilaterally convert more than $47 billion in social service programs into vouchers. Amazingly, this wholesale conversion in the nature of these programs could occur without any action by Congress, or even any regulatory action subject to outside comment. The action would even include education programs, despite the fact that such measures have created considerable legal and policy controversy in other contexts. In one fell swoop, this change could dramatically alter the nature of the nation's efforts to fight hunger, homelessness, crime, juvenile delinquency, and job training in a manner never contemplated or considered by Congress. At a minimum, such a wholesale change deserves more consideration than comes from being added in the middle of the night to a manager's amendment primarily touted for its other changes.

Our concerns with the new voucher program extend beyond its authorization. Tucked away in the manager's amendment is another clause which permits religious organizations participating in these "voucherized" programs to discriminate against beneficiaries on account of their religion. This is because, as noted above, subsection (h) of the Committee-reported version of the bill deletes language from the original bill generally prohibiting religious discrimination against beneficiaries by religious organizations, and instead, merely states they "shall not deny . . . admission" on the basis of religion. Again, this language did not appear in the original version of H.R. 7 or any other charitable choice law.

This means that religious groups could use their social service programs in an effort to convert non-believers to their faith. Given the controversy which ensued when the "Teen Challenge" group admitted in a recent congressional hearing that they seek to convert

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Jewish persons in their programs to make them "completed Jews," we are surprised that language allowing such proselytization in these "voucherized programs" would be added to the manager's amendment.

Equally objectionable is the fact that such proselytization could occur with Federal funds provided under the bill. This is because, as noted earlier, the bill's safeguards do not apply to "voucherized programs." A careful reading of subsection (j) indicates that the bill's prohibitions on sectarian instruction, worship, or proselytization with Federal funds and the requirement that any religious activity be "voluntary" and "offered separate" only applies with programs receiving direct Federal funds, not indirect aid.

Constitutional Concerns

We also continue to be concerned that the Judiciary-reported version of the bill may be found unconstitutional. Contrary to the Majority's assertions, we need to do far more than consider whether the legislation is "neutral," as emphasized by the plurality opinion in *Mitchell v. Helms.*[67] The critical opinion was the concurring opinion written by Justice O'Connor and joined by Justice Breyer which represents the balance of power on the Court in terms of establishment clause doctrine.[68]

A reading of Justice O'Connor's concurrence makes clear that she specifically rejected the plurality's single-minded and exclusive focus on neutrality and disputed the plurality's contention that direct government aid to a pervasively sectarian institution is constitutionally acceptable: "we have never held that a government-aid program passes constitutional muster solely because of the neutral criteria it employs as a basis for distributing aid . . . I also disagree with the plurality's conclusion that actual diversion of government aid to religious indoctrination is consistent with the Establishment Clause."[69]

In Justice O'Connor's view, a statute raises sensitive establishment clause concerns when it involves direct funding of religion, as H.R. 7 clearly does: "In terms of public perception, a government program of direct aid to religious schools based on number of students attending each school differs meaningfully from the government distributing aid directly to individual students who, in turn, decide to use the aid at the same religious schools . . . This Court has recognized special Establishment Clause dangers where the government makes direct money grants to sectarian institutions."[70]

In cases such as this, Justice O'Connor will look at a range of factors, including, notably, the constitutional safeguards present, and the degree of entanglement between government and religion.

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[67] *Mitchell v. Helms*, 530 US 793, 809 (2000).

[68] The Justices in *Mitchell v. Helms*, 530 US 793 (2000) joined in three different opinions. Justice Thomas wrote the plurality opinion, joined by Chief Justice Rehnquist and Justices Scalia and Kennedy. *Id.*, at 801. Justice Souter, joined by Justices Stevens and Ginsburg, wrote a dissent. *Id.* at 868. Justice O'Connor, joined by Justice Breyer, wrote the determinative opinion in the case and the one that provides the most authoritative guidance on the current meaning of the establishment clause. *Id.* at 836.

[69] *Mitchell v. Helms*, 530 US 793, 840 (O'Connor, J., concurring).

[70] *Id.* at 842, 843. Even Justice Thomas, writing for the four justice plurality admitted that: "Of course, we have seen 'special Establishment Clause dangers', when money is given to religious schools or entities directly rather than . . . indirectly. But direct payments of money are not at issue in this case. . . ." *(citations omitted)*, 530 U.S. at 818–819 (Thomas, J., plurality opinion).

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In Justice O'Connor's own words, "the program [should] include adequate safeguards" [71] and the funds should not "create an excessive entanglement between government and religion." [72]

Under these tests, there is a very real concern that H.R. 7 would fail to pass constitutional muster. As previously noted, the bill's so-called "safeguards" include numerous loopholes and are largely left to the religious organization to enforce. This is in stark contrast to the safeguards included in the school aid program upheld in *Mitchell*, where the State was given the power to cut off aid upon any violation, and conducted numerous monitoring visits and random reviews of the religious school to insure compliance. Also, as noted above, significant government entanglement with religion is not only inevitable, it has already begun to occur. We are also gravely concerned about the bill's new voucher provisions. The most serious problem is that these provisions allow pervasively sectarian organizations to use Federal money for sectarian purposes, including attempting to convert beneficiaries. Even if the funding is provided indirectly, it seems likely that any bill allowing religious organizations to proselytize in federally funded programs would be suspect. Collectively, these infirmities raise serious constitutional problems with regard to H.R. 7.

III. H.R. 7 DOES NOT AUTHORIZE A SINGLE ADDITIONAL DOLLAR TO FUND A COVERED SOCIAL WELFARE PROGRAM

It is difficult to support legislation which purports to provide an enhanced ability to fight poverty when the legislation itself does not authorize a single dollar in additional funds for charitable choice programs. This fact, when combined with the severe cuts in the Administration's budget for social services will place severe constraints on the ultimate viability of charitable choice programs.

It is indeed ironic that at the same time the Administration is touting the benefit of making the various programs set forth in H.R. 7 eligible for charitable choice, it has elected to slash the budgets of those very programs.[73] For example, with regard to local crime prevention, the Bush budget cuts funds by $1 billion. This includes cutting funds for juvenile delinquency programs, such as gang-free schools and communities, incentive grants for local delinquency prevention, drug reduction program, and victims of child abuse.

The Bush budget treats public housing needs—also covered by H.R. 7—no better, cutting funds by more than $1 billion. This includes the termination of the $309 million Public Housing Drug Elimination Grant, and cutting the Public Housing Capital Fund by $700 million. The Public Housing Drug Elimination Grant Program is used for anti-crime and anti-drug law enforcement and security activities in public housing. The Public Housing Capital Fund provides critical building repairs in public housing.

Job training is cut by more than $500 million under the Administration's budget. This will translate into vastly reduced job training

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[71] *Id.* at 867.

[72] *Id.* at 845.

[73] Staff of House Comm. On The Budget, 107th Cong., Bush Budget Cuts Priority Programs (April 30, 2001) (on file with House Judiciary Committee); Materials provided by Senate Budget Committee (on file with House Judiciary Committee).

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through the Workforce Investment Act for low income workers, dislocated workers, and other unemployed or underemployed individuals. The Older Americans Act—also covered by H.R. 7—which provides funds for elderly nutrition programs, home care, and ombudsman services for residents of long-term care facilities would also be cut by more than $5 million under the Bush budget.

We shouldn't be surprised that the Administration's budget treats the programs covered under H.R. 7 so uncharitably, when it also cuts the programs subject to previously enacted charitable choice laws. For example, with regard to Temporary Assistance for Needy Families (TANF), the subject of the 1996 Welfare legislation, the Bush budget eliminates $319 million in supplemental grants as well as $2 billion in contingency fund grants. The Administration would also reduce the Community Development Block Grant program, the subject of the Community Services Block Grant law, by more than $500 million.

IV. H.R. 7 UNJUSTIFIABLY PROTECTS BUSINESS ENTITIES FROM NEGLIGENT ACTS AND UNNECESSARILY PREEMPTS TRADITIONAL STATE LAW

Finally, we object to the liability provisions included in sec. 104 of the bill. First, they were included without the benefit of support from a single witness, or any statement of justification or support. The provisions were so sloppily and hastily pasted together, that the original bill, and the manager's amendment, included provisions bearing no relationship whatsoever to non-profits.[74] The final version still contains very tenuous liability relief—for example, the exemption applies to the use of facilities and motor vehicles or aircrafts, regardless of whether a nonprofit pays for its use.[75]

We are also concerned that under the bill even if donated equipment injures or kills, the corporation would be absolved of any duty it currently owes to the charity that received the items and to the injured person who suffered because of the business's negligent act. Despite the fact that the corporations are in the best position to determine if the donated equipment is properly maintained and reasonably safe, this bill shifts the costs away from the corporation and onto the charity. If the charity is also shielded from liability, under State law, or if it is without sufficient financial resources, the injured person would have to shoulder the loss completely.

To the extent there is any problem with corporate liability for charitable in-kind donations, we would suggest that the States are fully capable of passing their own laws protecting volunteers from personal civil liability. Moreover, by mandating these provisions on the States, we may invite legal challenges to Congressional authority to legislate in this area, particularly under the Supreme Court's decision in *United States v. Lopez* and its progeny.[76]

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[74] Section 104(B)(4) of H.R. 7, as introduced, and the manager's amendment exempted business entities from civil liability relating to any injury to or death of an individual occurring at a facility of the business entity, if the injury or death occurred during a tour of the facility in an area of the facility that was not otherwise accessible to the public.

[75] H.R. 7 sections 104(B)(2) and 104(B)(3), 107th Cong. (2001).

[76] 514 S.Ct. 549 (1995). In Lopez, The Court held that the Gun-Free School Zones Act of 1990, which made illegal the knowing possession of a gun in a school zone, was beyond Congress' Commerce Clause authority. Congress acted to remedy the constitutional infirmity in the Gun-

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Proponents' arguments that the legislation protects State prerogatives because it allows the States to opt-out[77] miss the mark. It is an odd formulation of federalism which grants all power to Congress unless the States affirmatively act to protect their interests. As proponents well know, it is no easy feat to obtain approval in a state house and senate and obtain the governor's signature. Moreover, many States meet on a biennial basis and could not even consider electing to opt-out for several years.

Conclusion

We believe that the government does nothing to respond to America's social problems by sanctioning government-funded discrimination. We also do nothing to strengthen our religious freedoms by breaking down the separation between church and state.

Rather than propose legislation which opens up even greater divisions in our society, as H.R. 7 does, we urge the Administration and the Majority to work with us in a bipartisan basis in expanding the role of religion in a manner which protects both equal protection and freedom of religion.

JOHN CONYERS, JR.
BARNEY FRANK.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MAXINE WATERS.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
TAMMY BALDWIN.
ADAM B. SCHIFF.

○

Free School Zones law by limiting it to firearms that "ha[ve] moved in or that otherwise affects interstate or foreign commerce." *See* 18 U.S.C. § 922q.

[77] Manager's amendment to H.R. 7, section 104(e), 107th Cong. (2001).

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From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 7/16/2001 7:36:49 AM
Subject: : Re: Paper for Exec Priv Mtg.

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READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
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Absolutely. I'm doing a draft over the next several days; after Brett, Judge, Tim, and Paul Colborn have reviewed and commented, we'll get it to the participants. My hope is to get them a briefing memo at least two full days before the memo. Let me know if for any reason this plan is not good with the Judge.

Elizabeth N. Camp
07/16/2001 11:29:44 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Paper for Exec Priv Mtg.

Will anything be circulated to the participants prior to the meeting (e.g. briefing paper)?

Please let me know.

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
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CC: Dinh, Viet <Viet.Dinh@usdoj.gov>;Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
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Subject: : Judicial Media Review 7-16
Attachments: P_3S7U2004_WHO.TXT_1.wpd

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READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
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READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
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Here's the latest media review on judges.

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Media Review - Judicial Nominations
Monday, July 16, 2001

General Judicial Articles
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Fox News Sunday
July 15, 2001

York Times
June 26, 2001**oad to Federal Bench Gets Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis

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Senator Trent Lott & Fred Barnes
Tony Snow

York Times
June 26, 2001**oad to Federal Bench Gets Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis

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(EXCERPT)

BARNES: Will Republicans, led by you, impede Senate business if necessary to get Bush nominees on the Senate floor for a vote? Senator Kyl has already done this.

LOTT: Well, surely, Senator Kyl and Senator Larry Craig, both. Senator Craig was particularly focusing on Interior Department nominees. We had one person there.

BARNES: I'm referring to judicial nominees.

LOTT: For judicial nominations, yes, we'll do that. You know, the Democrats did that when they were in the minority during the Clinton administration. I hope it doesn't come to that.

Just this past week because of the efforts of John Kyl of Arizona and Larry Craig of Idaho, and the resulting cooperation from the Democrats when they saw that we were going to hold up the Interior appropriations bill or the energy and water appropriations bill, we confirmed 54 nominees last week. So that does work. That's fair. You know, to move forward on the bill, it takes unanimous consent.

SNOW: What about the case of Miguel Estrada, who's been nominated for judgeship here in Washington, D.C., in the First U.S. Circuit Court of Appeals?

SNOW: There seems to be some hesitancy about bringing his name forward.

LOTT: I don't know the specifics of that case, but I've looked at the nominees that President Bush has sent up and they look extraordinarily well qualified. They're young, they're well educated, they've got great experience. And I presume that one should -- is this the one from Maryland?

BARNES: He's from D.C. He's a Latino immigrant who is from Honduras, 39 years old, a conservative.

LOTT: I'd have to get into -- well, you know, he's conservative. I'm sure the Democrats won't like that, but he's sounds outstanding to me.

York Times
June 26, 2001**oad to Federal Bench Gets Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis

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SNOW: Well, let me ask you this. There was this long negotiation to get some sort deal with Patrick Leahy, who's chairman of the Senate Judiciary Committee. Are you satisfied that the president's nominees will make it through the Judiciary Committee and there won't have to be a fight?

LOTT: I'm concerned about it because of some of the comments from Senator Leahy and Senator Schumer and others. They're talking about a litmus test now based on ideology. That is a real concern. We didn't have that same kind of litmus test when we were in the majority. I mean, I voted for Justice Ginsburg even though I knew clearly she would be, you know, extremely liberal in Supreme Court. Lo and behold she has been, but she was qualified otherwise.

All right, Senate Minority Leader Trent Lott, thanks for joining us.

Op/Eds

How Should We Judge Judges?

By Gara LaMarche
Sunday, July 15, 2001
The Los Angeles Times

Gara LaMarche is director of U.S. programs for the Open Society, Institute

The confirmation process for federal judges could well become a free-for-all this year. Even before they gained control of the Senate, Democrats, empowered by the closeness of the election and fearing that the president would try to pack the courts with right-wing ideologues, had vowed to scrutinize each Bush nominee closely. And without the advance vetting of nominees traditionally done by the American Bar Assn. (ABA), no official, independent evaluation will have been performed in advance of the president announcing his selections.

The first 11 Bush judicial nominees, sent to the Senate last month, include both staunch

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conservatives and an African American judge first picked by former President Clinton. They do not as a group lend themselves to easy caricature as right-wing zealots bent on imposing their moral agenda on the nation. Still, the Senate needs to carefully consider a question that has been debated since the Robert H. Bork Supreme Court nomination battle: What is the proper standard by which senators should measure prospective judges?

It's remarkable, given the degree of contention over this issue during the last 15 years, that we still haven't come to a consenus about what qualities make a good judge and how to best assess those qualities. The Senate--and the country--would be immeasurably aided by some common, publicly articulated understanding of how prospective judges should be judged.

One question is whether independent assessment of a judicial nominee's qualifications should be an intrinsic part of the process. Since the Eisenhower administration, this has been provided by the ABA. The last eight presidents supplied the names of prospective nominees to a special bipartisan ABA committee before reaching a final decision. The committee then conducted reviews leading to a rating of "well qualified," "qualified" or "not qualified." It was only after reviewing the ABA findings that the president finalized nominations and sent them to the Senate. The Bush administration put a stop to this longstanding arrangement.

In recent years, the ABA's policymaking arm, the House of Delegates, has become more outspoken on a number of public issues, including the adequacy of representation in death penalty cases and legal services for the poor. Many on the right, led by the Federalist Society, have argued that this compromises the ABA's ability to carry out its screening role impartially, that the ABA has itself become an ideological partisan. There's no evidence that the positions of the ABA's House of Delegates would have any impact on its screening panel, but eliminating the panel's role in judicial nominations presented Bush with an excellent opportunity to shore up his conservative base.

There's virtually no possibility that this White House will restore the ABA to its previous role in judicial nominations, which leaves a gap. If the conservative Federalist Society has, in effect, stepped into the ABA's role with respect to the White House, there is nothing to stop the Senate from refusing to confirm any nominees who have not come through some kind of independent screening process. Meanwhile, the Senate majority has agreed to consult the ABA panel before taking action on any nominations.

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Even so, the ABA doesn't assess a number of critical issues pertaining to a nominee's values and judicial philosophy. A critical question remains: What is fair game to consider in these areas when assessing the suitability of a nominee for a lifetime appointment to the federal bench? Legal competence and personal integrity are prerequisites, of course, and the most-likely capacities and qualities to be examined by a screening panel. Judicial philosophy and temperament are much more subjective and therefore tougher to measure.

It's important here to revisit the debate over President Reagan's 1987 nomination of Borkto the Supreme Court, particularly since Bush, in introducing his first batch of judicial nominees, made a plea for "civility," a thinly veiled effort to preempt opposition to his choices. A split ABA panel ultimately gave Bork it's highest ranking of "well qualified." But he was rejected by the Senate over concerns about his ideological convictions and their potential impact on his judicial rulings.

Bork's personal character was never in question (unlike in the cases of later nominees who were "borked" after reports of smoking marijuana or hiring illegal nannies). Rather, the Bork fight was waged entirely on the grounds of his judicial philosophy. Bork's lifetime of writings provided ample evidence of his basic hostility to the role of the Supreme Court as a guardian of fundamental rights and a check on the excesses of temporary political majorities. His writings in the years since have reinforced the wisdom of the Senate's vote rejecting his nomination. (Bork, writing in The Wall Street Journal in May, urged President Bush to hold firm on his judicial appointments, lest a Democratic successor "complete the liberal politicization of the courts.")

Bork was an easy case. Rarely does a nominee have such a pronounced history of opposition to the role of the court he or she seeks to join. But what is to be done when, as is increasingly the case, judicial nominees don't have that kind of well-documented philosophy? I suggest two criteria that can be explored by the Senate without a need for ideological litmus tests.

The first standard involves core values. A nominee should have a firm commitment to equal justice, and it should not be just a rhetorical one. Someone about to take a lifetime seat on the federal bench should have a demonstrated commitment to civil rights and the fair administration of justice. For some, this will have been demonstrated by involvement in a legal aid society or in providing pro bono representation for the appeal of an indigent death row inmate. For others, it

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may be evident from the past provision of free legal advice to a faith-based social service organization.

The second criterion is independence of mind. The best judges are those whose decisions cannot be entirely predicted by their previous political commitments, as with the courageous Eisenhower-appointed federal judges from the South who played a critical role during the 1960s in ending racial segregation throughout the region. Many judges don't demonstrate such independence until they reach the federal bench--that's what life tenure was meant to foster. But whatever signs can be found of a propensity for independent thinking--for having disappointed a political patron or having been willing to state an unpopular but reasoned view--may indicate the kind of quality we need most on the federal bench.

The criteria I suggest will strike some as too unrestrictive--even some Federalist Society members might be considered well qualified. But I think they are the best bet for getting judges that, like the best in our history, will surprise their patrons by exercising the independence the Constitution provides.

Two-for-one-Deal

Editorial
Sunday, July 15, 2001
The Chronicle

From The Chronicle, the student newspaper at Duke University, an editorial says Sen. John Edwards' proposal on federal judges makes sense.

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President Bush nominated U.S. District Court Judge Terrence Boyle to the U.S. 4th Circuit of the Court of Appeals in May. Supported by Republican Sen. Jesse Helms but opposed by Democratic Sen. John Edwards, Boyle awaits Senate confirmation. Although Edwards has no formal power to block the nomination single-handedly, Senate tradition would allow the practice.

But Edwards has proposed a compromise that would benefit North Carolina and the 4th Circuit - pairing Boyle for approval with black N.C. Judge James Wynn.

No lifetime appointee among the 13 appellate court members has been black, a stunning fact given that the court's jurisdiction has the largest black population among the appellate circuits. Furthermore, the court, which covers Maryland, North Carolina, South Carolina, Virginia and West Virginia, does not include any North Carolinians. Although all judges should certainly remain impartial, diverse backgrounds can offer unique and needed perspectives.

Both senators would favor judges with views similar to their own, but fighting to the bitter end would be self-defeating when a mutual compromise can be made. Wynn, who was nominated by President Clinton only to be rejected by the Republican-controlled Senate, is that compromise. Pairing Boyle with Wynn would allow the state to have two qualified judges on the court. Both senators would have successfully pushed through a judge he supported, and the 4th Circuit would finally have a black person as a permanent member.

Still, even after the proposed pairing, two judicial vacancies from the appellate court would remain. Historically, the court has never seated the full 15 judges allotted, but reappointing Roger Gregory and pairing him with a conservative as well may provide another mutually beneficial compromise. Last December, Clinton gave Gregory, the first black man ever to sit on the 4th Circuit, a non-permanent, recess appointment to the court.

With an ever-aging court, judicial vacancies must be filled so that justice can be served in a timely manner. Pairing two judges from North Carolina is something the state's senators can and should agree upon.

Bush Must Stand Up To Liberals

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By Deroy Murdock
Sunday, July 15, 2001
Scripps Howard News Service

George W. Bush can do only one thing to satisfy the NAACP: Resign.

President Bush "has selected nominees from the Taliban wing of American politics," NAACP chairman Julian Bond told the civil rights group's New Orleans convention on July 8. "He has appeased the wretched appetites of the extreme right wing. And he has chosen Cabinet officials whose devotion to the Confederacy is nearly canine in its uncritical affection."

That's the thanks Bush gets for numerous decisions that should have pleased America's so-called black leaders:

He appointed America's first black secretary of state, Colin Powell.

Condoleezza Rice, also black, is national security adviser. Earth to Bond: Black people run U.S. foreign policy.

Bush's education secretary, Rod Paige, is black, too. While the president should have prevented Congress from transforming his education initiative into a spending bonanza, Bush's critics cannot realistically accuse him ofdefunding ghetto schools and defenestrating minority students.

Bush reappointed Roger Gregory -- a black, Democratic Clinton nominee -- to the federal appellate court. Conservatives complain that Bush should have embraced Gregory only after Democrats greenlighted several Bush candidates. Still, what kind of pro-Confederate president would give a black Democrat a federal judgeship?

Bush hosted the all-Democratic Congressional Black Caucus in the Cabinet Room on Jan. 31. "They had a warm meeting," White House assistant press secretary Anne Womack told me. "It was scheduled for 30 minutes and actually lasted nearly an hour."

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Bush instructed Attorney General John Ashcroft to find a way to end racial profiling (without, one hopes, preventing cops from legitimately pursuing crooks of color).

Bush acceded to the demands of the Revs. Jesse Jackson and Al Sharpton that the Navy end live-ammunition training at Puerto Rico's Vieques Island. Pro-military Republicans angrily denounced this obvious pander to black and Hispanic liberals. They, in turn, screamed more loudly than ever to stop the bombing NOW! -- not in 2003, as Bush proposed.

To promote his faith-based initiative, Bush has visited black congregations across America. He spent the Fourth of July at a church-sponsored block party in downtown Philadelphia, where he hugged gospel singers and played touch football with black children.

These actions seem rather generous for an administration supposedly plotting to resurrect Jim Crow. Alas for Bush, the only way to appease the black left is to exile himself to his Texas ranch and play horseshoes in silence.

Bond's broadside highlights the yawning gap between Bush's snarling critics and a president with a touching, if futile, commitment to cooling Washington's political rhetoric.

"I've tried to speak in a tone that brings us together and unites us in purpose," Bush told the NAACP in taped remarks. "I believe that even when disagreements arise, we should treat each other with civility and with respect." Bush addressed the NAACP last summer. It later ran TV campaign ads tying Bush to James Byrd's 1998 truck-dragging death in Jasper, Texas.

Wouldn't it be lovely if American politics adopted the gentility of high tea at Harrods? Who wouldn't hold hands with Newsweek's Eleanor Clift to secure a century of freedom and prosperity?

But today's liberals are loathe to cooperate with Bush. They want him humiliated, paralyzed and vanquished.

Where was the decency among Senate and House Democrats, the vast majority of whom snubbed an April 30 White House unity luncheon to celebrate the Bush administration's 100-day relationship with the 107th Congress?

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Where was Robert Redford's courtesy when Interior Secretary Gale Norton last May invited him to join her in releasing several endangered California condors into the wild? "You have compiled an abysmal record of capitulation to big businesses at the expense of the nation's public health, public lands and wildlife," Redford rebuffed Norton in a public RSVP.

Where was California Gov. Gray Davis' civility when he met President Bush on May 29? Even before Bush left California, Davis announced he would sue him in federal court over electricity prices.

Where is the Democrats' bipartisanship in delaying confirmations of subcabinet officers, thus leaving Cabinet secretaries "home alone" to implement Bush's agenda with little, if any, top-level assistance?

President Bush can turn the other cheek until he develops whiplash. By pleading for politeness when he and his administration get clocked, Bush may purify his soul, but he shrinks as a leader. He must push his agenda -- constantly, energetically and ubiquitously -- with a toughness that subdues his opponents. He can do so with a smile, but also with a spine.

In short: Less Gandhi. More Reagan.

New York commentator Deroy Murdock is a columnist with the Scripps Howard News Service and a senior fellow with the Atlas Economic Research Foundation in Fairfax, Va.

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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–138
1st Session } { Part 2

COMMUNITY SOLUTIONS ACT OF 2001

JULY 16, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 7]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7) to provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Community Solutions Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
Sec. 102. Tax-free distributions from individual retirement accounts for charitable purposes.
Sec. 103. Increase in cap on corporate charitable contributions.
Sec. 104. Charitable donations liability reform for in-kind corporate contributions.
Sec. 105. Charitable deduction for contributions of food inventory.
Sec. 106. Reform of excise tax on net investment income of private foundations.
Sec. 107. Excise tax on unrelated business taxable income of charitable remainder trusts.
Sec. 108. Expansion of charitable contribution allowed for scientific property used for research and for computer technology and equipment used for educational purposes.
Sec. 109. Adjustment to basis of S corporation stock for certain charitable contributions.

TITLE II—EXPANSION OF CHARITABLE CHOICE

Sec. 201. Provision of assistance under government programs by religious and community organizations.

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

Sec. 301. Additional qualified entities eligible to conduct projects under the Assets for Independence Act.
Sec. 302. Increase in limitation on net worth.
Sec. 303. Change in limitation on deposits for an individual.
Sec. 304. Elimination of limitation on deposits for a household.
Sec. 305. Extension of program.
Sec. 306. Conforming amendments.
Sec. 307. Applicability.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—

"(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

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"(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

"(B) the applicable amount.

"(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined as follows:

"For taxable years beginning in:	The applicable amount is:
2002 and 2003	$25
2004, 2005, 2006	$50
2007, 2008, 2009	$75
2010 and thereafter	$100.

In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.".

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(2) DEFINITION.—Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).".

(3) CONFORMING AMENDMENT.—Subsection (d) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement account—

"(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

"(ii) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

"(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under

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section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

"(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

"(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

"(ii) a pooled income fund (as defined in section 642(c)(5)), and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).".

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

"(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

"(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

"(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

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"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2001.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by striking "10 percent" and inserting "the applicable percentage".

(b) APPLICABLE PERCENTAGE.—Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

"(3) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	The applicable percentage is—
2002 through 2007	11
2008	12
2009	13
2010 and thereafter	15.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by striking "10 percent" each place it occurs and inserting "the applicable percentage (determined under section 170(b)(3))".

(2) Sections 545(b)(2) and 556(b)(2) of such Code are each amended by striking "10-percent limitation" and inserting "applicable percentage limitation".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) AIRCRAFT.—The term "aircraft" has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—The term "business entity" means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT.—The term "equipment" includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY.—The term "facility" means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE.—The term "motor vehicle" has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

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(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY.—

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION.—This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if—

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if—

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(4) LIABILITY OF BUSINESS ENTITIES PROVIDING TOURS OF FACILITIES.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury to, or death of an individual occurring at a facility of the business entity, if—

(i) such injury or death occurs during a tour of the facility in an area of the facility that is not otherwise accessible to the general public; and

(ii) the business entity authorized the tour.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether an individual pays for the tour.

(c) EXCEPTIONS.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18, United States Code) for which the defendant has been convicted in any court;

(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

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(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION.—Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE.—This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act.

SEC. 105. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Paragraph (3) of section 170(e) of the Internal Revenue Code of 1986 (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only for food that is apparently wholesome food.

"(ii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(iii) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 106. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by striking "2 percent" and inserting "1 percent".

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 of such Code is amended by striking subsection (e).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 107. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to exemption from income taxes) is amended to read as follows:

"(c) TAXATION OF TRUSTS.—

"(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

"(2) EXCISE TAX.—

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"(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

"(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

"(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

"(i) subsection (b),

"(ii) determining the value of trust assets under subsection (d)(2), and

"(iii) determining income under subsection (d)(3).

"(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 108. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributions) is amended by inserting "or assembled" after "constructed".

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(c) CONFORMING AMENDMENT.—Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 109. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (1) of section 1367(a) of such Code (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1994A. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to provide assistance to individuals and families in need in the most effective and efficient manner;

"(2) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to allow religious organizations to assist in the administration and distribution of such assistance without impairing the religious character of such organizations; and

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"(4) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of choosing to receive services from a religious organization providing such assistance.

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS NONGOVERNMENTAL PROVIDERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, if the program is implemented in a manner that is consistent with the Establishment Clause and the Free Exercise Clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government nor a State or local government receiving funds under a program described in paragraph (4) shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program, on the basis that the organization has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not aid to the religious organization.

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not and should not be perceived as an endorsement by the government of religion or the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) under the Federal housing laws;

"(iv) under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)

"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.);

"(vii) under the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(viii) related to the intervention in and prevention of domestic violence;

"(ix) related to hunger relief activities; or

"(x) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to non-school-hours programs; and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State or local government shall require a religious organization in order to be eligible to provide assistance under a program described in subsection (c)(4)—

"(A) to alter its form of internal governance; or

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"(B) to remove religious art, icons, scripture, or other symbols because they are religious.

"(e) EMPLOYMENT PRACTICES.—

"(1) IN GENERAL.—In order to aid in the preservation of its religious character, a religious organization that provides assistance under a program described in subsection (c)(4) may, notwithstanding any other provision of law, require that its employees adhere to the religious practices of the organization.

"(2) TITLE VII EXEMPTION.—The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1, 2000e–2(e)(2)) regarding employment practices shall not be affected by the religious organization's provision of assistance under, or receipt of funds from, a program described in subsection (c)(4).

"(3) EFFECT ON OTHER LAWS.—Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1686) (prohibiting discrimination in educational institutions on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(f) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative, including a nonreligious alternative, that is accessible to the individual; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

"(g) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND CONTRACTS.—A religious organization providing assistance through a grant or contract under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(2) INDIRECT FORMS OF DISBURSEMENT.—A religious organization providing assistance through a voucher, certificate, or other form of indirect disbursement under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(h) ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

"(2) LIMITED AUDIT.—Such organization shall segregate government funds provided under such program into a separate account or accounts. Only the government funds shall be subject to audit by the government.

"(i) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.—No funds provided through a grant or contract to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian worship, instruction, or proselytization. A certificate shall be signed by such organizations and filed with the government agency that disbursed the funds that gives assurance the organization will comply with this subsection.

"(j) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds

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with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(k) TREATMENT OF INTERMEDIATE CONTRACTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate contractor'), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate contractor shall have the same duties under this section as the government when selecting or otherwise dealing with subcontractors, but the intermediate contractor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

"(l) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action pursuant to section 1979 against the official or government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for appropriate relief in Federal district court against the official or government agency that has allegedly committed such violation.".

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 301. ADDITIONAL QUALIFIED ENTITIES ELIGIBLE TO CONDUCT PROJECTS UNDER THE ASSETS FOR INDEPENDENCE ACT.

Section 404(7)(A)(iii)(I)(aa) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(aa) a federally insured credit union; or".

SEC. 302. INCREASE IN LIMITATION ON NET WORTH.

Section 408(a)(2)(A) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "$10,000" and inserting "$20,000".

SEC. 303. CHANGE IN LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.

Section 410(b) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $500 from a grant made under section 406(b) shall be provided per year to any one individual during the project.".

SEC. 304. ELIMINATION OF LIMITATION ON DEPOSITS FOR A HOUSEHOLD.

Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

SEC. 305. EXTENSION OF PROGRAM.

Section 416 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "2001, 2002, and 2003" and inserting "and 2001, and $50,000,000 for each of fiscal years 2002 through 2008".

SEC. 306. CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TEXT.—The text of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "demonstration" each place it appears:

(1) Section 403.
(2) Section 404(2).
(3) Section 405(a).
(4) Section 405(b).
(5) Section 405(c).
(6) Section 405(d).
(7) Section 405(e).
(8) Section 405(g).
(9) Section 406(a).
(10) Section 406(b).
(11) Section 407(b)(1)(A).
(12) Section 407(c)(1)(A).
(13) Section 407(c)(1)(B).
(14) Section 407(c)(1)(C).

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(15) Section 407(c)(1)(D).
(16) Section 407(d).
(17) Section 408(a).
(18) Section 408(b).
(19) Section 409.
(20) Section 410(e).
(21) Section 411.
(22) Section 412(a).
(23) Section 412(b)(2).
(24) Section 412(c).
(25) Section 413(a).
(26) Section 413(b).
(27) Section 414(a).
(28) Section 414(b).
(29) Section 414(c).
(30) Section 414(d)(1).
(31) Section 414(d)(2).

(b) AMENDMENTS TO SUBSECTION HEADINGS.—The heading of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "DEMONSTRATION":

(1) Section 405(a).
(2) Section 406(a).
(3) Section 413(a).

(c) AMENDMENTS TO SECTION HEADINGS.—The headings of sections 406 and 411 of the Assets for Independence Act (42 U.S.C. 604 note) are amended by striking "**DEMONSTRATION**".

SEC. 307. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this title shall apply to funds provided before, on or after the date of the enactment of this Act.

(b) PRIOR AMENDMENTS.—The amendments made by title VI of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001 (as enacted into law by Public Law 106–554) shall apply to funds provided before, on or after the date of the enactment of such Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The tax and individual development account provisions of the bill, H.R. 7, as amended (the "Community Solutions Act of 2001"), facilitate charitable giving and charitable activity.

The bill provides net tax reductions of over $4.4 billion over fiscal years 2002–2006. This will bolster the nonprofit sector of the economy.

The bill provides a charitable contribution deduction for individuals taking the standard deduction, facilitates transfers to charity from individual retirement arrangements, increases the percentage limitation on corporate charitable contributions, and reforms the excise tax based on the investment income of private foundations leaving such foundations with more funds to spend on charitable activities. The bill also encourages charitable contributions of food inventory, scientific property used for research, and computer technology and equipment used for educational purposes. In addition, the bill makes charitable contributions by S corporations more attractive and provides a more appropriate remedy on charitable remainder trusts that have unrelated business income. Finally, the bill strengthens the creation and maintenance of individual development accounts.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions approved by the Committee will stimulate charitable giving and therefore provide more funds to charitable organi-

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zations, many of which will perform activities that otherwise would have to be performed by the Federal government. The estimated revenue effects of the provisions comply with the most recent Congressional Budget Office revisions of budget surplus projections.

C. Legislative History

COMMITTEE ACTION

The Committee on Ways and Means marked up the provisions of the bill on July 11, 2001, and reported the provisions, as amended, on July 11, 2001, by a roll call vote of 23 yeas and 16 nays, with a quorum present.

COMMITTEE HEARING

A joint hearing was held on June 14, 2001, before the Subcommittees on Select Revenue Measures and Human Resources of the Committee on Ways and Means on the provisions of H.R. 7.

II. EXPLANATION OF THE BILL

A. Charitable Deduction for Nonitemizers

(Sec. 101 of the Bill and Secs. 63 and 170 of the Code)

PRESENT LAW

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to a charity described in section 501(c)(3) or a Federal, State, or local governmental entity. The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[1]

A taxpayer who takes the standard deduction (i.e., who does not itemize deductions) may not take a separate deduction for charitable contributions.[2]

A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the

[1] Secs. 170(b) and (e).

[2] Sec. 170(a). The Economic Recovery Tax Act of 1981 adopted a temporary provision that permitted individual taxpayers who did not itemize income tax deductions to claim a deduction from gross income for a specified percentage of their charitable contributions. The maximum deduction was $25 for 1982 and 1983, $75 for 1984, 50 percent of the amount of the contribution for 1985, and 100 percent of the amount of the contribution for 1986. The nonitemizer deduction terminated after 1986.

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charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[3] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[4]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limit may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2001 is $132,950 ($66,475 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by 3 percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the Economic Growth and Tax Relief Reconciliation Act of 2001 phases-out the overall limitation on itemized deductions for all taxpayers. The overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006 and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however this elimination of the limitation sunsets on December 31, 2010.

REASONS FOR CHANGE

The Committee believes that allowing a charitable deduction to nonitemizers will stimulate charitable giving, thereby providing more funds for worthwhile nonprofit organizations, many of which

[3] Sec. 170(f)(8).
[4] Sec. 6115.

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provide services that otherwise might have to be provided by the Federal government.

EXPLANATION OF PROVISION

In the case of an individual taxpayer who does not itemize deductions, the provision allows a deduction from adjusted gross income for charitable contributions paid in cash. This deduction is allowed in addition to the standard deduction and is calculated as the lesser of (1) the amount allowable to itemizers as a charitable deduction for cash contributions and (2) an applicable amount. The new deduction generally is subject to the tax rules normally governing charitable deductions, such as the substantiation requirements and carryforward rules. For taxpayers taking a deduction of the applicable amount, the portion of contributions in excess of the applicable amount may not be carried forward. The deduction is allowed in computing alternative minimum taxable income.

The applicable amount is $25 ($50 in the case of a joint return) in 2002 and 2003, $50 ($100 in the case of a joint return) in 2004 through 2006, $75 ($150 in the case of a joint return) in 2007 through 2009, and $100 ($200 in the case of a joint return) in 2010 and thereafter.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

B. Tax-Free Distributions From Individual Retirement Arrangements for Charitable Purposes

(Sec. 102 of the Bill and Secs. 408 and 6034 of the Code)

PRESENT LAW

In general

If an amount withdrawn from a traditional individual retirement arrangement ("IRA") or a Roth IRA is donated to a charitable organization, the rules relating to the tax treatment of withdrawals from IRAs apply and the charitable contribution is subject to the normally applicable limitations on deductibility of such contributions.

Charitable contributions

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 170(c), including charities and Federal, State, and local governmental entities. The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[5]

[5] Secs. 170(b) and (e).

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A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[6] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[7]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limit may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2001 is $132,950 ($66,475 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by 3 percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the Economic Growth and Tax Relief Reconciliation Act of 2001 phases-out the overall limitation on itemized deductions for all taxpayers. The overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006

[6] Sec. 170(f)(8).
[7] Sec. 6115.

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and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however this elimination of the limitation sunsets on December 31, 2010.

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity (e.g., a remainder) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration.[8] Exceptions to this general rule are provided for, among other interests, remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, and present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property.[9] For such interests, a charitable deduction is allowed to the extent of the present value of the interest designated for a charitable organization.

IRA rules

Within limits, individuals may make deductible and nondeductible contributions to a traditional IRA. Amounts in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal represents a return of nondeductible contributions). Individuals also may make nondeductible contributions to a Roth IRA. Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from a Roth IRA that are not qualified withdrawals are includible in gross income to the extent attributable to earnings. Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless an exception applies.

If an individual has made nondeductible contributions to a traditional IRA, a portion of each distribution from an IRA is nontaxable, until the total amount of nondeductible contributions has been received. In general, the amount of a distribution that is nontaxable is determined by multiplying the amount of the distribution by the ratio of the remaining nondeductible contributions to the account balance. In making the calculation, all traditional IRAs of an individual are treated as a single IRA, all distributions during any taxable year are treated as a single distribution, and the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year.

In the case of a distribution from a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings, contributions and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions;[10] (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution, all regular Roth IRA contributions for a year are treated as

[8] Secs. 170(f), 2055(e)(2), and 2522(c)(2).
[9] Sec. 170(f)(2).
[10] Conversion contributions refer to conversions of amounts in a traditional IRA to a Roth IRA.

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a single contribution, and all conversion contributions during the year are treated as a single contribution.

Split-interest trust filing requirements

Split-interest trusts described in section 4947(a)(2), including charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds are required to file an annual information return under section 6034 (Form 1041A). Trusts that are not split-interest trusts but that claim a charitable deduction for amounts permanently set aside for a charitable purpose[11] also are required to file Form 1041A. The returns are required to be made publicly available by section 6104(b). A trust that is required to distribute all trust net income currently to trust beneficiaries in a taxable year is exempt from this return requirement for such taxable year. A trust's failure to file a return required by section 6034 results in a penalty on the trust of $10 a day for as long as the failure continues, up to a maximum of $5,000 per return.

In addition, split-interest trusts are required under section 6011 to file annually Form 5227.[12] Form 5227 requires disclosure of information regarding the trusts' noncharitable beneficiaries. The penalty for failure to file a return under section 6011 is calculated based on the amount of tax owed. A split-interest trust generally is not subject to tax and therefore, in general, a penalty may not be imposed for the failure to file Form 5227. Form 5227 is not required to be made publicly available.

REASONS FOR CHANGE

The Committee believes it appropriate to facilitate the making of charitable contributions from IRAs.

EXPLANATION OF PROVISION

The provision provides an exclusion from gross income for otherwise taxable IRA withdrawals from a traditional or a Roth IRA for qualified charitable distributions. The present-law rules continue to apply to distributions from an IRA that are not qualified charitable distributions. A qualified charitable distribution is defined as any distribution from an IRA that is (1) otherwise includible in gross income, (2) made on or after the date the IRA owner attains age 70½, and (3) is made directly by the IRA trustee (a) to a charitable organization to which deductible contributions can be made or (b) to a split-interest entity in which no person holds an income interest in the amounts in the split-interest entity attributable to the charitable distribution other than the IRA owner, his or her spouse, or a charitable organization. A split-interest entity means a charitable remainder annuity trust or charitable remainder unitrust, a pooled income fund, or a charitable gift annuity. Qualified charitable distributions count toward the minimum distribution requirements applicable to IRAs.

The exclusion applies to distributions made directly to a charitable organization to which deductible contributions can be made only if a charitable contribution deduction for the entire distribution otherwise is allowable, determined without regard to the per-

[11] Sec. 642(c).
[12] Treas. Reg. sec. 53.6011–1(d).

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centage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the distribution. The exclusion applies in the case of a distribution directly to a split-interest entity only if a charitable contribution deduction for the entire present value of the charitable interest (for example, a remainder interest) is allowable, determined without regard to the percentage limitations.

In determining the extent to which a distribution from an IRA is a qualified charitable distribution, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income but for the proposal if all amounts were distributed from all IRAs otherwise taken into account in determining the amount includible in income under section 72.

A qualified charitable distribution to a pooled income fund is not includible in the fund's gross income.

In determining the amount includible in gross income by reason of a payment from a charitable remainder annuity trust or charitable remainder unitrust to which a qualified charitable distribution from an IRA was made, the taxpayer is required to treat as ordinary income (as described in sec. 664(b)(1)) the total amount distributed directly from the IRA to the trust, except to the extent the taxpayer notifies the trust that a portion of the direct distribution was allocable to investment in the contract. This could occur, for example, if the entire interest in all an individual's traditional IRAs is distributed directly to a charitable remainder trust, and the IRA included nondeductible contributions. Similarly, in determining the amount includible in gross income by reason of a payment from a charitable gift annuity purchased with a qualified charitable distribution from an IRA, the portion of the distribution from the IRA used to purchase the annuity is not investment in the annuity contract.

Any amount excluded from gross income by reason of the proposal is not taken into account in determining the deduction for charitable contributions under section 170.

The provision increases the penalty on split-interest trusts described in section 4947(a)(2) for failure to file a return and for failure to include any of the information required to be shown on such return and to show the correct information. The penalty is $20 for each day the failure continues up to $10,000 for any one return. In the case of a split-interest trust with gross income in excess of $250,000, the penalty is $100 for each day the failure continues up to a maximum of $50,000. If a person (meaning any officer, director, trustee, employee, or other individual who is under a duty to file the return or include required information)[13] knowingly failed to file the return or include required information, then the person personally is liable for the penalty. Information regarding beneficiaries that are not charitable organizations as described in section 170(c) are exempt from the requirement to make information publicly available. In addition, the provision repeals the present law exception to the filing requirement for split-interest trusts that are required in a taxable year to distribute all net income currently

[13] Sec. 6652(c)(4)(C).

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to beneficiaries. Such exception remains available to nonsplit-interest trusts that are otherwise subject to the filing requirement. The Committee anticipates that the Secretary of the Treasury shall exercise authority under section 6034 to require that Form 5227 be filed pursuant to section 6034.

EFFECTIVE DATE

The provision generally is effective for taxable years beginning after December 31, 2001. The provision relating to information returns of split-interest trusts is effective for returns for taxable years beginning after December 31, 2001.

C. Increase Percentage Limitation for Corporate Charitable Contributions

(Sec. 103 of the Bill and Sec. 170 of the Code)

PRESENT LAW

Under present law, a corporation is allowed to deduct charitable contributions up to 10 percent of the corporation's modified taxable income for the year. For this purpose, taxable income is determined without regard to (1) the charitable contributions deduction, (2) any net operating loss carryback, (3) deductions for dividends received, (4) deductions for dividends paid on certain preferred stock of public utilities, and (5) any capital loss carryback for the taxable year.[14] Any charitable contribution by a corporation that is not currently deductible because of the percentage limitation may be carried forward for up to five taxable years.

A transfer of property by a business to a charity might qualify as either a charitable contribution or a deductible business expense, but not both. No deduction is allowed as a business expense under section 162 for any contribution that would be deductible as a charitable gift were it not for the percentage limitations on the charitable contributions deduction.[15] Likewise, a business transfer made with a reasonable expectation of financial return commensurate with the amount of the transfer is not deductible as a charitable contribution, but may be deductible under section 162.

REASONS FOR CHANGE

The Committee believes that increasing the annual limitation on the allowable corporate charitable contribution deduction will encourage more charitable giving by corporations.

EXPLANATION OF PROVISION

The provision increases the percentage limitation on corporate charitable deductions from 10 percent to 15 percent. The provision is phased-in over nine years, beginning in taxable years beginning after December 31, 2001. The percentage limitation on corporate charitable deductions is 11 percent in 2002 through 2007, 12 percent in 2008, 13 percent in 2009, and 15 percent in 2010 and thereafter.

[14] Sec. 170(b)(2).
[15] Sec. 162(b).

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EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

D. Enhanced Deduction for Charitable Contributions of Food Inventory

(Sec. 105 of the Bill and Sec. 170 of the Code)

PRESENT LAW

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory. However, for certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciated value (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis.[16]

To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of ongoing disputes between taxpayers and the IRS. In one case, the Tax Court held that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted.[17]

REASONS FOR CHANGE

The Committee believes that more should be done to encourage contributions of food inventory to charitable organizations that provide food for the hungry. Extending the availability of an enhanced deduction for contributions of food inventory to any taxpayer engaged in a trade or business and clarifying the determination of the value of the donated food will increase donations of food inventory and thereby help nourish more of our nation's underprivileged.

EXPLANATION OF PROVISION

Under the provision, any taxpayer engaged in a trade or business is eligible under section 170(e) to claim an enhanced deduction for donations of food inventory. The enhanced deduction is available only for food that qualifies as "apparently wholesome food," as defined by the Bill Emerson Good Samaritan Food Donation Act. "Ap-

[16] Sec. 170(e)(3).
[17] *Lucky Stores Inc.* v. *Commissioner,* 105 T.C. 420 (1995).

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parently wholesome food" is food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

In addition, the provision provides that the fair market value of donated apparently wholesome food that cannot or will not be sold solely due to internal standards of the taxpayer or lack of market, is determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution or, if not so sold at such time, in the recent past.

Consistent with present law, taxpayers who donate food inventory and receive consideration in exchange, whether such consideration is for food processing costs, including the costs of processing raw food to meet the nutritional specifications of the donee, or otherwise, shall apply the bargain sale rules[18] to determine the amount of gain from the sale and the value of the enhanced deduction.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

E. Reform Excise Tax Based on Investment Income of Private Foundations

(Sec. 106 of the Bill and Sec. 4940 of the Code)

PRESENT LAW

In general

In general, a private foundation is an organization organized and operated exclusively for charitable purposes.[19] Under section 4940(a) of the Code, private foundations that are recognized as exempt from Federal income tax under section 501(a) of the Code are subject to a two-percent excise tax on their net investment income. Private foundations that are not exempt from tax, such as certain charitable trusts,[20] also are subject to an excise tax under section 4940(b).

Net investment income is determined under the principles of Subtitle A of the Code, except to the extent those principles are inconsistent with section 4940. Net investment income is defined as the amount by which the sum of gross investment income and capital gain net income exceeds the deductions relating to the production of gross investment income.[21] Net investment income also is determined by applying section 103 (generally providing an exclusion for interest on certain State and local bonds) and section 265 (generally disallowing the deduction for interest and certain other expenses with respect to tax-exempt income).[22] Special definitions

[18] Sec. 1011(b); Treas. Reg. sec. 170A–4(c)(2).
[19] Secs. 509(a) and 501(c)(3).
[20] Sec. 4947.
[21] Sec. 4940(c)(1).
[22] Sec. 4940(c)(5).

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of gross investment income and capital gain net income are provided for purposes of the excise tax.[23]

The two-percent rate of tax is reduced to one-percent if certain requirements are met in a taxable year.[24] The requirements are that the foundation's qualifying distributions (generally, amounts paid to accomplish exempt purposes)[25] must be at least a certain amount and the foundation cannot have been subject to tax for failure to distribute a certain amount of income[26] for any of the five years preceding the taxable year (the "base period"). The required amount of qualifying distributions is the sum of two elements: (1) the amount of the foundation's assets for the taxable year multiplied by the average over the base period of the percentage of assets distributed as qualifying distributions in a year divided by the assets of the foundation for the year (the "average percentage payout for the base period") plus (2) one percent of the net investment income of the foundation for the taxable year.[27]

The tax on taxable private foundations under section 4940(b) is equal to the excess of the sum of the excise tax that would have been imposed under section 4940(a) if the foundation were tax exempt and the amount of the unrelated business income tax that would have been imposed if the foundation were tax exempt, over the income tax imposed on the foundation under subtitle A of the Code.

Private foundations (taxable and tax exempt) are required to pay estimated taxes of the section 4940 tax in quarterly installments in the same manner as corporate estimated tax payments.[28] "Exempt operating foundations" are exempt from the section 4940 tax.[29]

The amount of tax paid under section 4940 reduces a foundation's "distributable amount" under section 4942.[30] Accordingly, the minimum amount of qualified distributions a foundation has to make to avoid tax under section 4942 is reduced by the amount of section 4940 excise taxes paid.

REASONS FOR CHANGE

The Committee believes that reforming the excise tax based on the investment income of private foundations will result in increased charitable activity and simplify the tax laws. The reduction in the rate of tax will increase the required minimum charitable distributions for many private foundations, leading private foundations to increase the amount of their charitable activity. In addition, elimination of the two-tiered nature of the tax will simplify the Code and make compliance easier for private foundations.

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[23] Secs. 4940(c)(2) and 4940(c)(4).
[24] Sec. 4940(e).
[25] Sec. 4942(g).
[26] Sec. 4942.
[27] Sec. 4940(e).
[28] Treas. Reg. sec. 1.6302–1.
[29] Sec. 4940(d)(1). To be an exempt operating foundation, an organization must (1) be an operating foundation (as defined in section 4942(j)(3)), (2) be publicly supported for at least 10 taxable years, (3) have a governing body no more than 25 percent of whom are disqualified persons and that is broadly representative of the general public, and (4) have no officers who are disqualified persons. Sec. 4940(d)(2). Exempt operating foundations generally include organizations such as museums or libraries that devote their assets to operating charitable programs but have difficulty meeting the "public support" tests necessary not to be classified as a private foundation. For an organization to qualify as an exempt operating foundation it must obtain a ruling letter from the IRS. IRS Announcement 85–88.
[30] Sec. 4942(d)(2).

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EXPLANATION OF PROVISION

The provision replaces the two rates of tax under present law with a single rate of tax based on net investment income and sets such rate of tax at one percent. Thus, a tax-exempt private foundation is subject to tax on one percent of net investment income and does not have to calculate its average percentage payout for the base period to determine eligibility for a different rate of tax. A taxable private foundation is subject to tax on the excess of the sum of one percent of net investment income and the amount of the unrelated business income tax (both calculated as if the foundation were tax-exempt) over the income tax imposed on the foundation under subtitle A of the Code.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

F. Modify Tax on Unrelated Business Taxable Income of Charitable Remainder Trusts

(Sec. 107 of the Bill and Sec. 664 of the Code)

PRESENT LAW

Sections 170(f), 2055(e)(2), and 2522(c)(2) disallow a charitable deduction for income, estate or gift tax purposes, respectively, if the donor transfers an interest in property to a charity (e.g., a remainder interest) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration. One of several exceptions to this general rule is provided for remainder interests in charitable remainder annuity trusts and charitable remainder unitrusts.

A charitable remainder annuity trust is a trust that is required to pay, at least annually, a fixed dollar amount of at least five percent of the initial value of the trust to a noncharity for the life of an individual or for a period of less than 20 years, with the remainder passing to charity. A charitable remainder unitrust is a trust that generally is required to pay, at least annually, a fixed percentage of at least five percent of the fair market value of the trust's assets determined at least annually to a non-charity for the life of an individual or for a period less than 20 years, with the remainder passing to charity.[31]

A trust does not qualify as charitable remainder annuity trust if the annuity for a year is greater than 50 percent of the initial fair market value of the trust's assets. A trust does not qualify as a charitable remainder unitrust if the percentage of assets that are required to be distributed at least annually is greater than 50 percent. A trust does not qualify as a charitable remainder annuity trust or a charitable remainder unitrust unless the value of the remainder interest in the trust is at least 10 percent of the value of the assets contributed to the trust.

Distributions from a charitable remainder annuity trust or charitable remainder unitrust are treated in the following order as: (1)

[31] Sec. 664(d).

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ordinary income to the extent of the trust's current and previously undistributed ordinary income for the trust's year in which the distribution occurred, (2) capital gains to the extent of the trust's current capital gain and previously undistributed capital gain for the trust's year in which the distribution occurred, (3) other income (e.g., tax-exempt income) to the extent of the trust's current and previously undistributed other income for the trust's year in which the distribution occurred, and (4) corpus.[32]

Distributions are includible in the income of the beneficiary for the year that the annuity or unitrust amount is required to be distributed even though the annuity or unitrust amount is not distributed until after the close of the trust's taxable year.[33]

Under section 664(c), charitable remainder annuity trusts and charitable remainder unitrusts are exempt from Federal income tax unless the trust has any unrelated business taxable income. Under section 514, unrelated business taxable income includes certain debt financed income.

REASONS FOR CHANGE

The Committee believes that in years that a charitable remainder trust has unrelated business income, an excise tax of 100 percent on such income is a more appropriate remedy than loss of tax exemption for the year.

EXPLANATION OF PROVISION

In lieu of removing the income tax exemption of a charitable remainder trust for any year in which the trust has any unrelated business taxable income, the provision imposes a 100 percent excise tax on the unrelated business taxable income of the trust. Because the effect of the excise tax is the same as if the unrelated business taxable income were not incurred by the charitable remainder annuity trust or charitable remainder unitrust, the provision excludes such income from the determination of (1) the value of a charitable remainder unitrust's assets,[34] (2) the amount of charitable remainder unitrust income for purposes of determining the unitrust's required distributions, and (3) the effect on the income character of any distributions to beneficiaries by a charitable remainder annuity trust or charitable remainder unitrust.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001, regardless of when the trust was created.

[32] Sec. 664(b).
[33] Treas. Reg. sec. 1.664–1(d)(4).
[34] *See* Treas. Reg. sec. 1.664–3(a)(iv), which requires that all assets and liabilities of the trust are taken into account in determining their net fair market value.

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G. Extend "Constructed by" Requirement for Contributions of Scientific Property Used for Research and for Computer Technology and Equipment

(Sec. 108 of the Bill and Sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the deduction is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose. In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property.[35]

Under present law, a taxpayer's deduction for charitable contributions of scientific property used for research and for contributions of computer technology and equipment generally is limited to the taxpayer's basis (typically, cost) in the property. However, certain corporations may claim a deduction in excess of basis for a "qualified research contribution" or a "qualified computer contribution."[36] This enhanced deduction is equal to the lesser of (1) basis plus one-half of the item's appreciated value (i.e., basis plus one half of fair market value minus basis) or (2) two times basis.

A qualified research contribution means a charitable contribution of inventory that is tangible personal property. The contribution must be to a qualified educational or scientific organization and be made not later than two years after construction of the property is substantially completed. The original use of the property must be by the donee, and be used substantially for research or experimentation, or for research training in the U.S. in the physical or biological sciences. The property must be scientific equipment or apparatus, constructed by the taxpayer, and may not be transferred by the donee in exchange for money, other property, or services. The donee must provide the taxpayer with a written statement representing that it will use the property in accordance with the conditions for the deduction. For purposes of the enhanced deduction, property is considered constructed by the taxpayer only if the cost of the parts used in the construction of the property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in the property.

A qualified computer contribution means a charitable contribution of any computer technology or equipment, which meets standards of functionality and suitability as established by the Secretary of the Treasury. The contribution must be to certain educational organizations or public libraries and made not later than three years after the taxpayer acquired the property or, if the taxpayer constructed the property, not later than the date construction of the

[35] Sec. 170(e)(1).
[36] Secs. 170(e)(4) and 170(e)(6).

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property is substantially completed.[37] The original use of the property must be by the donor or the donee,[38] and in the case of the donee, must be used substantially for educational purposes related to the function or purpose of the donee. The property must fit productively into the donee's education plan. The donee may not transfer the property in exchange for money, other property, or services, except for shipping, installation, and transfer costs. To determine whether property is constructed by the taxpayer, the rules applicable to qualified research contributions apply. Contributions may be made to private foundations under certain conditions.[39]

REASONS FOR CHANGE

The Committee believes that extension of the enhanced deduction to include property assembled by the taxpayer will lead to increased charitable contributions of scientific property used for research and of computer technology and equipment.

EXPLANATION OF PROVISION

Under the provision, property assembled by the taxpayer, in addition to property constructed by the taxpayer, is eligible for either enhanced deduction. The Committee does not intend that old or used components assembled by the taxpayer into scientific property or computer technology or equipment are eligible for the enhanced deduction.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

H. Basis Adjustment to Stock of S Corporation Contributing Appreciated Property

(Sec. 109 of the Bill and Sec. 1367 of the Code)

PRESENT LAW

Under present law, if an S corporation contributes money or other property to a charity, each shareholder takes into account the shareholder's pro rata share of the contribution in determining its own income tax liability.[40] A shareholder of an S corporation reduces the basis in the stock of the S corporation by the amount of the charitable contribution that flows through to the shareholder.[41]

REASONS FOR CHANGE

The Committee wishes to preserve the benefit of providing a charitable contribution deduction for contributions of property by an S corporation with a fair market value in excess of its adjusted basis. Thus, the bill provides for a basis adjustment to the stock of the S corporation to prevent the later recognition of gain attrib-

[37] If the taxpayer constructed the property and reacquired such property, the contribution must be within three years of the date the original construction was substantially completed. Sec. 170(e)(6)(D)(i).

[38] This requirement does not apply if the property was reacquired by the manufacturer and contributed. Sec. 170(e)(6)(D)(ii).

[39] Sec. 170(e)(6)(C).

[40] Sec. 1366(a)(1)(A).

[41] Sec. 1367(a)(2)(B).

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utable to the contributed property on the disposition of the S corporation stock.

EXPLANATION OF PROVISION

The provision allows a shareholder in an S corporation to increase the basis of the S corporation stock by an amount equal to the excess of the charitable contribution deduction that flows through to the shareholder[42] over the shareholder's pro rata share of the adjusted basis of the property contributed.[43]

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2001.

I. INDIVIDUAL DEVELOPMENT ACCOUNTS

(Secs. 301–307 of the Bill)

PRESENT LAW

The Assets for Independence Act[44] authorizes $25 million annually for a five-year demonstration Individual Development Account ("IDA") program to evaluate the effects of savings incentives on persons of limited means. Means tested programs must disregard all funds in an IDA, including accruing interest, in determining an individual's eligibility. The demonstration program provides direct Federal funds to nonprofit organizations, States and localities, tribal governments, community-development financial institutions, and certain credit unions to match the amount of earnings deposited by eligible individuals. Grantees must provide nonFederal matching funds (one dollar per Federal grant dollar), and the maximum Federal grant is $1 million for each project year. Eligible persons are those (1) who are eligible under the Temporary Assistance for Needy Families program, or (2) whose household net worth is below $10,000 ("net worth test"), and who meet the greater of (a) the income limits of the earned income credit (taking into account the size of the household)[45] or (b) 200 percent of the poverty guideline ("income test").

Each participant is eligible to receive up to $2,000 in Federal funds plus accrued interest while they participate over the course of the project. Households may receive no more than $4,000 in Federal grant funds over the course of the project. The projects must create trust or custodial accounts that permit withdrawals of account balances only for three designated purposes: (1) first home purchase, (2) business capitalization, and (3) postsecondary education. Emergency withdrawals (from the account holder's own deposits only) are allowed for three conditions—medical expenses, prevention of eviction or mortgage foreclosure, and living expenses after job losses.

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[42] The amount of the deduction flowing through to a shareholder is to be determined after the application of any provision of section 170 limiting the amount of the deduction to less than the fair market value of the property, but without regard to any percentage limitation that may be applicable to a shareholder under section 170(b).

[43] *See* Rev. Rul. 96–11, 1996–1 C.B. 140, for a similar rule applicable to contributions made by a partnership.

[44] Title IV of Pub. L. No. 105–285 (1998).

[45] Sec. 32(b)(2).

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Each grantee is required to prepare an annual report on the progress of its project. These reports must be submitted to the Secretary of Health and Human Services, and if a tribe, State or local government committed funds to the project, to the Treasurer (or equivalent official) of the State in which the project is conducted. The Secretary of Health and Human Services is required to provide the results of these reports to Congress every 12 months until all of the demonstration projects are completed, and to submit a final report, setting forth the results and findings of all reports and evaluations, not later than 12 months after the conclusion of all demonstration projects. The Assets for Independence Act directs the Secretary of Health and Human Services to enter into a contract with an independent research organization to evaluate the projects, individually, and as a group. The Secretary of Health and Human Services may spend up to $500,000 each fiscal year for evaluation expenses.

The demonstration program expires at the end of fiscal year 2003.

REASONS FOR CHANGE

The Committee seeks to expand the availability and use of IDAs, which promote work and asset-building among low-income families, rather than dependence on cash welfare and other benefits. These goals are consistent with the Committee's extensive activities in recent years to reform welfare by promoting work and independence from government benefits, as well as the Committee's recent activities to promote savings and investment through tax policy changes.

EXPLANATION OF PROVISION

The provision eliminates references to "demonstration" projects. The provision expands the category of qualified entities that could apply for IDA projects to include any federally-insured credit union.

The provision repeals the current household cap on receipt of Federal funds. The individual lifetime cap on receipt of Federal funds is replaced with an annual cap of $500.

The provision increases the net worth test for eligible individuals from $10,000 to $20,000.

The provision extends the program for an additional five years, through fiscal year 2008. Under the provision, the annual program authorization would be doubled from $25 million to $50 million, beginning in fiscal year 2002.

The program modifications made under the provision and the "Assets for Independence Act Amendments of 2000"[46] apply to existing grants, as well as grants made on or after the date of enactment.

[46] Title IV of H.R. 5656 as enacted by Pub. L. No. 106–554 (2000). The "Assets for Independence Act Amendments of 2000" (1) made matching contributions unavailable for emergency withdrawals, (2) added low income credit unions and community financial development institutions as qualified entities; (3) modified home purchase costs; (4) increased set-aside for economic literacy training and administrative costs; (5) added the 200 percent of poverty alternative to the income test; (6) revised the annual and interim progress report deadlines; (7) increased appropriations for evaluation expenses; and (8) provided that means tested programs must disregard all funds in an IDA, including accruing interest, in determining an individual's eligibility. Id. at secs. 602–610.

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EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 7.

MOTION TO REPORT THE BILL

The bill, H.R. 7, as amended, was ordered favorably reported by a rollcall vote of 23 yeas to 16 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui		X	
Mrs. Johnson	X			Mr. Coyne			
Mr. Houghton				Mr. Levin		X	
Mr. Herger	X			Mr. Cardin		X	
Mr. McCrery	X			Mr. McDermott		X	
Mr. Camp	X			Mr. Kleczka		X	
Mr. Ramstad	X			Mr. Lewis (GA)		X	
Mr. Nussle	X			Mr. Neal		X	
Mr. Johnson	X			Mr. McNulty		X	
Ms. Dunn	X			Mr. Jefferson		X	
Mr. Collins	X			Mr. Tanner		X	
Mr. Portman	X			Mr. Becerra		X	
Mr. English	X			Mrs. Thurman		X	
Mr. Watkins	X			Mr. Doggett		X	
Mr. Hayworth	X			Mr. Pomeroy		X	
Mr. Weller	X						
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the amendment in the nature of a substitute.

An amendment by Mrs. Thurman, which would make the provisions in the bill contingent upon sufficient non-Social Security, non-Medicare surpluses, was defeated by a rollcall vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton	X			Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		

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Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Ms. Dunn		X		Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner	X		
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

An amendment by Mr. McDermott, which would add a new section relating to credits to holders of residential solar energy bonds, was defeated by a rollcall vote of 15 yeas to 24 nays, and 1 voting present. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton		X		Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		
Ms. Dunn		X		Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner			X
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

An amendment by Mr. Rangel, which would increase the top individual income tax rate by 0.2 percentage points for taxable years 2002 through 2005, and by 0.5 percentage points for taxable years 2006 through 2010, was defeated by a rollcall vote of 16 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton				Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		

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Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Ms. Dunn		X		Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner	X		
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 7 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2002–2006:

ESTIMATED BUDGET EFFECTS OF H.R. 7, THE "COMMUNITY SOLUTIONS ACT OF 2001," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2002–2006, in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
Charitable Giving Incentive Provisions							
1. Deduction for cash charitable contributions of individuals who do not itemize deductions in addition to their standard deduction; maximum deduction of $25 single/$50 joint for 2002 and 2003, $50 single/$100 joint for 2004 through 2006, $75 single/$150 joint for 2007 through 2009, and $100 single/$200 joint for 2010 and thereafter	tyba 12/31/01	−40	−269	−316	−561	−573	−1,759
2. Tax-free distributions from individual retirement accounts for charitable purposes for individuals age 70½ and above	tyba 12/31/01	−143	−233	−245	−259	−253	−1,133
3. Raise the cap on corporate charitable contributions from 10% to: 11% in 2002 through 2007, 12% in 2008, 13% in 2009, and 15% in 2010 and thereafter	cmi tyba 12/31/01	−28	−50	−52	−55	−41	−226
4. Extend present-law section 170(e)(3) deduction for food inventory to all businesses	tyba 12/31/01	−27	−46	−55	−61	−66	−255
5. Modify the section 4940(a) 2% excise tax to eliminate the 2-tier regime and impose 1% excise tax on net investment income	tyba 12/31/01	−118	−186	−195	−205	−215	−920
6. Modify the unrelated business income tax for charitable remainder trusts	tyba 12/31/01		−5	−5	−5	−6	−21
7. Modify the self-constructed property rule for certain charitable contributions	cma DOE	−1	−1	−1	−1	−1	−4

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ESTIMATED BUDGET EFFECTS OF H.R. 7, THE "COMMUNITY SOLUTIONS ACT OF 2001," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 2002–2006, in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
8. Modify the basis of S corporation stock for certain charitable contributions	tyba 12/31/01	−11	−26	−31	−35	−38	−141
Net Total		−368	−816	−900	−1,182	−1,193	−4,459

Legend for "Effective" column: cma = contributions made after; cmi = contributions made in; DOE = date of payment; tyba = taxable years beginning after.

Note.—Details may not add to totals due of rounding.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves new or increased budget authority (as detailed in the statement by the Congressional Budget Office ("CBO"); see Part IV.C., below). The Committee further states that the revenue reducing income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 16, 2001.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 7, the Community Solutions Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sheila Dacey (for federal spending), Erin Whitaker (for revenues), and Shelley Finlayson (for the state and local impact).

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 7—Community Solutions Act of 2001

Summary: H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive federal funds for the provision of social services and would make several changes to tax law concerning deductions for charitable contributions. The Joint Committee on Taxation (JCT) estimates that the revenue loss associ-

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ated with this legislation would be $4.5 billion over the 2002–2006 period and more than $13 billion over the 2002–2011 period. Because H.R. 7 would affect revenues, pay-as-you-go procedures would apply. The bill also would extend and expand the Assets for Independence Program that provides federal funds to encourage saving by low-income individuals. Assuming the appropriation of the specified amounts, CBO estimates that expansion would cost $119 million over the 2002–2006 period.

The Joint Committee on Taxation has reviewed the tax provisions (parts of title I) of H.R. 7 and determined that they contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO reviewed the remaining provisions of the bill and found that section 104 contains an intergovernmental mandate as defined in UMRA because it would preempt certain state liability laws. CBO estimates that complying with this mandate would result in no direct costs to state governments and thus, would not exceed the threshold established in that act ($56 million in 2001, adjusted annually for inflation). Title III of the bill also would establish new requirements and prohibitions on state and local governments as conditions of receiving federal assistance under numerous federal programs.

Estimated budgetary impact of H.R. 7 is shown in the following table. The cost of this legislation falls within budget function 500 (education, training, employment, and social services).

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION						
Spending for Individual Development Accounts Under Current Law:						
Authorization Level [1]	25	25	25	0	0	0
Outlays	9	17	23	24	13	4
Total Proposed Changes:						
Authorization Level	0	25	25	50	50	50
Outlays	0	1	12	23	37	46
Spending for Individual Development Accounts Under the Bill:						
Authorization Level [1]	25	50	50	50	50	50
Outlays	9	19	35	46	50	50
CHANGES IN REVENUES [2]						
Deduct some charitable contributions of individuals who do not itemize deductions	0	−40	−269	−316	−561	−573
Allow tax-free distributions from individual retirement accounts for charitable purposes	0	−143	−233	−245	−259	−253
Raise the cap on corporate charitable contributions	0	−28	−50	−52	−55	−41
Expand and increase the charitable deduction for contributions of food	0	−27	−46	−55	−61	−66
Modify excise tax to eliminate the 2-tier regime and impose 1% excise tax on net investment income	0	−118	−186	−195	−205	−215
Modify the unrelated business income tax for charitable remainder trusts	0	0	−5	−5	−5	−6
Modify the self-constructed property rule for certain charitable contributions	0	1	−1	−1	−1	−1
Modify the basis of S corporation stock for certain charitable contributions	0	−11	−26	−31	−35	−38
Total Changes in Revenues	0	−368	−816	−900	−1,182	−1,193

[1] The 2001 level is the amount appropriated for that year.
[2] All estimates of the revenue effects of H.R. 7 were provided to JCT.

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Basis of estimate: For this estimate, CBO assumes that H.R. 7 will be enacted by the end of fiscal year 2001 and that the authorized amounts will be appropriated for each year.

Spending subject to appropriations

Title II—Expansion of Charitable Choice. H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive federal funds for the provision of social services. It also would require that any governmental organization that contracts with a religious organization to provide social services guarantee that eligible individuals who object to a specific service provider on religious grounds be directed to a different provider of comparable services. Although in many areas the number of provisions would be sufficient to ensure that alternative providers would be available, very small communities might find it difficult to comply with these requirements. Although the requirement to find an alternate provider could increase federal costs in some cases by requiring the federal government to pay a portion of the costs of such alternate providers, CBO has been unable to obtain data to estimate any such costs. However, CBO does not anticipate that any resulting costs to the federal government would be substantial.

Title III—Individual Development Accounts. Title III would reauthorize the Individual Development Accounts (IDA) program, currently authorized at $25 million through 2003 under the Assets for Independence Act (Public Law 106–554). The IDA program provides matching funds to qualified low income individuals who save in order to encourage more savings. All deposits made by individuals and matching organizations in IDAs do not count toward the asset limits for federal means-tested benefits.

The bill would authorize $50 million for 2002 and extend the authorization through 2008. The program is funded at $25 million in 2001. Based on historical spending patterns, CBO estimates implementing this title would cost $119 million over the 2002–2006 period.

The bill also would increase the net worth test for an eligible household from a maximum of $10,000 to $20,000, and replace the $4,000 lifetime grant deposit limit for a household with an individual annual grant limit of $500.

It is possible that expanding the IDA program could allow certain people with assets to participate in means-tested programs who would otherwise be ineligible, but CBO estimates that would have an insignificant effect (less than $500,000 a year) on federal spending. While there are limited data on IDA participants, the available information indicates most participants would not deposit enough into their accounts to disqualify themselves from any federal means-tested program.

Revenues

H.R. 7 would allow taxpayers who do not itemize their deductions to deduct a limited amount of charitable contributions paid in cash. The deduction would phase in over time, and would be allowed in computing alternative minimum taxable income. In 2002 and 2003, a single taxpayer could deduct up to $25 and married taxpayers filing jointly could deduct up to $50, with the allowable deduction increasing to $100 for a single taxpayer or $200 for mar-

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ried taxpayers in 2010 and thereafter. The bill would allow taxpayers to exclude from their gross income otherwise-taxable withdrawals from individual retirement accounts (IRAs) if those withdrawals were made for certain charitable distributions, were made after the IRA owner attained the age 70½, and were made directly by the IRA trustee to certain entities. The bill also would increase the penalty on certain trusts for failure to file a return.

H.R. 7 would increase the percentage limitation on modified taxable income for corporate charitable deductions from 10 percent to 15 percent, and phase in that increase over time. The bill would allow all taxpayers to claim enhanced deductions for donations of food that meets certain quality standards. The bill also would replace two rates of tax based on net investment income for private foundations not exempt from tax with a single rate of tax of one percent. It also would apply a 100-percent excise tax to any unrelated business taxable income of a trust that is required to pay a certain percentage of the value of the trust to a noncharity (charitable remainder trust), make donated scientific property or computer technology and equipment that is assembled by a taxpayer eligible for either of two enhanced charitable deductions in excess of the cost of the property, and allow shareholders of certain corporations to update the basis they hold in stock to a present value amount in order to take into account the shareholders' portion of charitable contributions made by those corporations.

The Joint Committee on Taxation estimates that the revenue loss associated with this legislation would be $4.5 billion over the 2002–2006 period and more than $13 billion over the 2002–2011 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	Not applicable										
Changes in receipts [1]	0	−368	−816	−900	−1,182	−1,193	−1,281	−1,583	−1,705	−1,901	−2,367

[1] Estimate was provided by JCT.

Estimated impact on state, local, and tribal governments: The Joint Committee on Taxation (JCT) has reviewed the tax provisions of H.R. 7 and CBO has reviewed the remaining provisions of the bill for intergovernmental mandates.

MANDATES

JCT determined that the tax provisions of H.R. 7 (part of title I) contain no intergovernmental mandates as defined in UMRA. CBO has reviewed the remaining provisions of the bill and has determined that section 104 contains an intergovernmental mandate as defined in UMRA because it would preempt inconsistent or more stringent state liability laws that hold businesses civilly liable for injuries or death that result from the use of equipment, facilities, or vehicles donated or lent to nonprofit organizations or for tours of business facilities. This preemption would be an intergovern-

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mental mandate as defined in UMRA, but because the preemption is narrow and state governments could enact legislation to opt out, CBO estimates complying with this mandate would result in no direct costs. Thus, the threshold established in that act ($56 million in 2001, adjusted annually for inflation) would not be exceeded.

OTHER IMPACTS

Title II would establish new requirements and prohibitions on how state and local governments receive and use federal funds under numerous federal programs. Such programs include anything related to hunger relief activities, federal housing under the Community Development Block Grant Program, prevention of domestic violence under the Child Abuse Prevention and Treatment Act, and services for the elderly under the Older Americans Act. Specifically, title II would require state and local governments to consider religious organizations on the same basis as other organizations to provide assistance under programs carried out using federal funds.

The bill also would require that the appropriate government entity notify applicants and recipients about provider options and provide, in a timely manner, an equivalent alternative from a nonreligious provider if a recipient objects to receiving services from a religious provider. In addition, state and local governments that discriminate on the basis of religion in selecting service providers could be sued for injunctive relief. All of those requirements are conditions of federal assistance, and therefore, are not mandates under UMRA. However, those requirements could increase state and local costs to administer numerous federal programs. In particular, some small communities could find it difficult or costly to comply with the alternate provider requirements. CBO does not have sufficient information to estimate for aggregate costs nationwide.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 11, 2001, CBO transmitted a cost estimate for H.R. 7, the Community Solutions Act of 2001, as ordered reported by the House Committee on the Judiciary on June 28, 2001. That bill included somewhat different provisions related to tax changes and individual development accounts.

The House Judiciary Committee's version of H.R. 7 would allow taxpayers to deduct charitable contributions up to the amount of the standard deduction. The bill included slightly different provisions relating to tax-free distributions from individual retirement accounts and charitable deductions for contributions on food. In addition, it included a tax credit for financial institutions running individual development account programs, rather than a grant program to encourage such accounts. The Joint Committee on Taxation estimates that the revenue loss associated with those changes would be almost $50 billion over the 2002–2006 period and more than $120 billion over the 2002–2011 period.

While this version of H.R. 7 differs from the version ordered reported by the House Judiciary Committee, CBO's estimate of the costs to state and local governments is the same for both versions.

Estimate prepared by: Federal Spending: Sheila Dacey, Donna Wong, and Geoff Gerhardt; Federal Revenues: Erin Whitaker; Im-

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pact on State, Local, and Tribal Governments: Shelly Finlayson; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis Division.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on individual taxpayers and the tax rules relating to charitable giving and the impact of these rules on charitable organizations that the Committee concluded that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of that part of this legislation that authorizes funding (i.e., individual development accounts) are to encourage savings of certain lower-income individuals.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

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F. Tax Complexity Analysis

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and the Treasury Department regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

Charitable deduction for nonitemizers (sec. 101 of the bill)

Summary description of provision

The provision permits an individual taxpayer who does not itemize deductions to take a deduction for charitable contributions paid in cash. The deduction is allowed in addition to the standard deduction and is calculated as the lesser of (1) the amount allowable to itemizers as a charitable deduction for cash contributions and (2) an applicable amount. The applicable amount is $25 ($50 in the case of a joint return) in 2002 and 2003, $50 ($100 in the case of a joint return) in 2004 through 2006, $75 ($150 in the case of a joint return) in 2007 through 2009, and $100 ($200 in the case of a joint return) in 2010 and thereafter.

Number of affected taxpayers

It is estimated that the provision will affect approximately 43 million individual tax returns.

Discussion

Individuals who do not itemize their deductions will need to keep additional records (e.g., canceled checks, a receipt from the donee organization, or other reliable written records) in order to substantiate that a contribution was made to a qualified charitable organization. The information necessary to implement the provision should be readily available to taxpayers (in the form of new tax return forms and instructions). The nonitemizer charitable contribution deduction is expected to require an additional line on the individual income tax return forms. The provision might result in an increase in disputes with the IRS for taxpayers who are unable to substantiate a claimed deduction. Additional regulatory guidance will not be necessary to implement this provision. Any increase in tax preparation costs is expected be negligible.

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DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, July 13, 2001.

Ms. LINDY L. PAULL,
Chief of Staff, Joint Committee on Taxation,
Washignton, DC

DEAR MS. PAULL: Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department on the provisions from the House Committee on Ways and Means markup of the "Community Solutions Act of 2001" that you identified for complexity analysis in your letter of July 10, 2001. Our comments are based on the description of those provisions in JCX–58–01, Joint Committee on Taxation, description of an Amendment in the Nature of a Substitute to H.R. 7, July 10, 2001, and the statutory language for the substitute published in the Daily Tax Report on July 12, 2001.

Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provisions.

Sincerely,

CHARLES O. ROSSOTTI.

Enclosure.

COMPLEXITY ANALYSIS OF COMMUNITY SOLUTIONS ACT OF 2001

CHARITABLE DEDUCTION FOR NON-ITEMIZERS

Provision: Individuals who do not itemize deductions would be allowed a deduction from adjusted gross income for charitable contributions paid in cash. This deduction would be in addition to the standard deduction and would be calculated as the lesser of (i) the amount allowable to itemizers as a charitable deduction for cash contributions and (ii) an applicable amount. The applicable amount would be $25 ($50 in the case of a joint return) in 2002 and 2003, $50 ($100 in the case of a joint return) in 2004 through 2006, $75 ($150 in the case of a joint return) in 2007 through 2009, and $100 ($200 in the case of a joint return) in 2010 and thereafter. The deduction would be allowed in computing alternative minimum taxable income. The provision would be effective for taxable years beginning after December 31, 2001.

IRS and Treasury Comments

- Two lines would have to be added to Forms 1040, 1040A, 1040EZ, 1040NR, and 1040NR–EZ and to the TeleFile tax Record beginning in 2002—one for entering the new deduction, the second for subtracting the new deduction to derive the subtotal. All taxpayers, including those who itemize and those who have no charitable deductions for the year, would need to make an entry on the subtotal line. No new forms would be required.
- The deduction would have to be reflected on Forms 1040–ES and 6251 for 2002. The Form 1040–ES instruc-

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tions for 2004, 2007, and 2010 would have to be modified to reflect the phase-in of the deduction amount.

• Information necessary for taxpayers to determine their eligibility for the deduction would have to be reflected in the instructions for Forms 1040, 1040A, 1040EZ, 1040NR, and 1040NR–EZ and for TeleFile beginning in 2002. The Instructions for 2004, 2007, and 2010 forms would have to be revised to reflect the phase-in of the deduction.

• Programming changes would be required to reflect the new deduction and the phase-in of the amount of the deduction. Currently, IRS tax computation programs are updated annually to incorporate mandated inflation adjustments. Programming changes necessitated by this provision would be included during that process.

• The TeleFile script would have to be expanded to accommodate the deduction, thereby increasing the time needed to file by TeleFile.

• Ensuring compliance with the direct charitable deduction would be difficult. The only means of verifying amounts deducted would be through examination, which is not practical because of the small amounts involved.

G. Committee Correspondence

Committee on Education and the Workforce,
House of Representatives,
Washington, DC, July 12, 2001.

Hon. William M. Thomas,
Chairman, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

Dear Chairman Thomas: Thank you for working with me regarding H.R. 7, the Community Solutions Act of 2001, which was referred to the Committee on Ways and Means and in addition the Committee on the Judiciary. As you know, the Committee on Education and the Workforce holds a jurisdictional interest in this legislation and I appreciate your acknowledgement of that jurisdictional interest. While the bill would be sequentially referred to the Education and the Workforce Committee, I understand the desire to have this legislation considered expeditiously by the House; hence, I do not intend to hold a hearing or markup on this legislation.

In agreeing to waive consideration by our Committee, I would expect you to agree that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on this or any similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. I would also expect your support in my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my Committee should a conference with the Senate be convened on this or similar legislation.

Again, thank you for your letter. I would appreciate your including our exchange of letters in your Committee's report to accompany H.R. 7. Again, I thank you for working with me in developing

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this legislation and I look forward to working with you on these issues in the future.

Sincerely,

JOHN BOEHNER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 12, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OXLEY: Thank you for your letter regarding H.R. 7, the "Community Solutions Act of 2001."

As you have noted, the Committee on Ways and Means has ordered favorably reported H.R. 7, the "Community Solutions Act of 2001." I appreciate your agreement to expedite the passage of this legislation despite affecting programs within the jurisdiction of the Committee on Financial Services. I acknowledge your decision to forego further action on the bill was based on our mutual understanding that it will not prejudice the Committee on Financial Services with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

Finally, I will include in the Congressional Record a copy of our exchange of letters on this matter. Thank you for your assistance and cooperation. We look forward to working with you in the future.

Sincerely,

BILL THOMAS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, July 11, 2001.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means,
Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN, THOMAS: I understand that the Committee on Ways of Means recently ordered reported H.R. 7, the Community Solutions Act of 2001. As you know, the legislation contains provisions relating to community development block grants (CDBGs) and other programs under the Nation's housing laws which fall within the jurisdiction of the Committee on Financial Services pursuant to clause 1(g) of rule X of the Rules of the House of Representatives.

Because of your willingness to consult with the Committee on Financial Services regarding this matter and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 7. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's

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jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 7 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

MICHAEL G. OXLEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 16, 2001.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BOEHNER: Thank you for your letter regarding H.R. 7, the "Community Solutions Act of 2001."

As you have noted, the Committee on Ways and Means has ordered favorably reported H.R. 7, the "Community Solutions Act of 2001." I appreciate your agreement to expedite the passage of this legislation despite affecting programs within the jurisdiction of Committee on Education and the Workforce. I acknowledge your decision to forego further action on the bill was based on the understanding that it will not prejudice the Committee on Education and the Workforce with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

Finally, I will include in the Congressional Record a copy of our exchange of letters on this matter. Thank you for your assistance and cooperation. We look forward to working with you in the future.

Best regards,

BILL THOMAS,
Chairman.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by that portion of the bill within the jurisdiction of the Committee on the Judiciary, as reported, are shown in part 1 of this report and changes in existing law made by that portion of the bill within the jurisdiction of the Committee on Ways and Means, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

* * * * * * *

SEC. 63. TAXABLE INCOME DEFINED.

(a) * * *

(b) INDIVIDUALS WHO DO NOT ITEMIZE THEIR DEDUCTIONS.—In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus—

(1) the standard deduction, [and]

(2) the deduction for personal exemptions provided in section 151[.], *and*

(3) the direct charitable deduction.

* * * * * * *

(d) ITEMIZED DEDUCTIONS.—For purposes of this subtitle, the term "itemized deductions" means the deductions allowable under this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, [and]

(2) the deduction for personal exemptions provided by section 151[.], *and*

(3) the direct charitable deduction.

* * * * * * *

(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term "direct charitable deduction" means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).

[(g)] *(h)* MARITAL STATUS.—For purposes of this section, marital status shall be determined under section 7703.

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) * * *

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(b) PERCENTAGE LIMITATIONS.—

(1) * * *

(2) CORPORATIONS.—In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed [10 percent] *the applicable percentage* of the taxpayer's taxable income computed without regard to—

(A) * * *

* * * * * * *

(3) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

For taxable years beginning in calendar year—	***The applicable percentage is—***
2002 through 2007	*11*
2008	*12*
2009	*13*
2010 and thereafter	*15.*

* * * * * * *

(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

(A) * * *

* * * * * * *

(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

(i) GENERAL RULE.—In the case of a charitable contribution of food, this paragraph shall be applied—

(I) without regard to whether the contribution is made by a C corporation, and

(II) only for food that is apparently wholesome food.

(ii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

(iii) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term "apparently wholesome food" shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

[(C)] *(D)* This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

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(4) SPECIAL RULE FOR CONTRIBUTIONS OF SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(A) * * *

(B) QUALIFIED RESEARCH CONTRIBUTIONS.—For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) * * *

(ii) the property is constructed *or assembled* by the taxpayer,

* * * * * * *

(6) SPECIAL RULE FOR CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—

(A) * * *

(B) QUALIFIED COMPUTER CONTRIBUTION.—For purposes of this paragraph, the term "qualified computer contribution" means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) * * *

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed *or assembled* by the taxpayer, the date the construction *or assembling* of the property is substantially completed),

* * * * * * *

(D) DONATIONS OF PROPERTY REACQUIRED BY MANUFACTURER.—In the case of property which is reacquired by the person who constructed *or assembled* the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction *or assembling* of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

* * * * * * *

(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—

(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

(B) the applicable amount.

(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined as follows:

For taxable years beginning in:	***The applicable amount is:***
2002 and 2003	*$25*
2004, 2005, 2006	*$50*
2007, 2008, 2009	*$75*
2010 and thereafter	*$100.*

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In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.

[(m)] *(n)* OTHER CROSS REFERENCES.—

(1) * * *

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General Rule

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) * * *

* * * * * * *

(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement account—

(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

(ii) which is made directly by the trustee—

(I) to an organization described in section 170(c), or

(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable

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under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

(i) CHARITABLE REMAINDER TRUSTS.—Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term "split-interest entity" means—

(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

(ii) a pooled income fund (as defined in section 642(c)(5)), and

(iii) a charitable gift annuity (as defined in section 501(m)(5)).

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

* * * * * * *

SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a) are the following:

(1) * * *

* * * * * * *

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed **[**10 percent**]** *the applicable percentage (determined under section 170(b)(3))* of the unrelated business taxable income computed without the benefit of this paragraph.

* * * * * * *

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

* * * * * * *

PART II—PERSONAL HOLDING COMPANIES

* * * * * * *

SEC. 545. UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME.

(a) * * *

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) * * *

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the **[**10-percent limitation**]** *applicable percentage limitation*) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

* * * * * * *

PART III—FOREIGN PERSONAL HOLDING COMPANIES

* * * * * * *

SEC. 556. UNDISTRIBUTED FOREIGN PERSONAL HOLDING COMPANY INCOME.

(a) * * *

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

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(1) * * *

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the [10-percent limitation] *applicable percentage limitation*) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

* * * * * * *

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

* * * * * * *

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

* * * * * * *

Subpart C—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

* * * * * * *

SEC. 664. CHARITABLE REMAINDER TRUSTS.

(a) * * *

* * * * * * *

[(c) EXEMPTION FROM INCOME TAXES.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).]

(c) TAXATION OF TRUSTS.—

(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

(2) EXCISE TAX.—

(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

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(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

(i) subsection (b),

(ii) determining the value of trust assets under subsection (d)(2), and

(iii) determining income under subsection (d)(3).

(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.

* * * * * * *

Subchapter L—Insurance Companies

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PART I—LIFE INSURANCE COMPANIES

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Subpart C—Life Insurance Deductions

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SEC. 805. GENERAL DEDUCTIONS.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a)(8) are as follows:

(1) * * *

(2) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be [10 percent] *the applicable percentage (determined under section 170(b)(3))* of the life insurance company taxable income computed without regard to—

(i) * * *

* * * * * * *

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

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PART II—TAX TREATMENT OF SHAREHOLDERS

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SEC. 1367. ADJUSTMENTS TO BASIS OF STOCK OF SHAREHOLDERS, ETC.

(a) GENERAL RULE.—

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(1) INCREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), [and]

(C) the excess of the deductions for depletion over the basis of the property subject to depletion[.], *and*

(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 42—PRIVATE FOUNDATIONS AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

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Subchapter A—Private Foundations

* * * * * * *

SEC. 4940. EXCISE TAX BASED ON INVESTMENT INCOME.

(a) TAX-EXEMPT FOUNDATIONS.—There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to [2] *1* percent of the net investment income of such foundation for the taxable year.

* * * * * * *

[(e) REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—

[(1) IN GENERAL.—In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

[(2) REQUIREMENTS.—A private foundation meets the requirements of this paragraph for any taxable year if—

[(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

[(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

[(ii) 1 percent of the net investment income of such foundation for such taxable year, and

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[(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

[(3) AVERAGE PERCENTAGE PAYOUT FOR BASE PERIOD.—For purposes of this subsection—

[(A) IN GENERAL.—The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

[(B) PERCENTAGE PAYOUT.—The term "percentage payout" means, with respect to any taxable year, the percentage determined by dividing—

[(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

[(ii) the assets of the private foundation for the taxable year.

[(C) SPECIAL RULE WHERE TAX REDUCED UNDER THIS SUBSECTION.—For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

[(4) BASE PERIOD.—For purposes of this subsection—

[(A) IN GENERAL.—The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

[(B) NEW PRIVATE FOUNDATIONS, ETC.—If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

[(5) OTHER DEFINITIONS.—For purposes of this subsection—

[(A) QUALIFYING DISTRIBUTION.—The term "qualifying distribution" has the meaning given such term by section 4942(g).

[(B) ASSETS.—The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

[(6) TREATMENT OF SUCCESSOR ORGANIZATIONS, ETC.—In the case of—

[(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

[(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.]

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Subtitle F—Procedures and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

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[SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(A)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(C).

[(a) GENERAL RULE.—Every trust described in section 4947(a)(2) or claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

[(1) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

[(2) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

[(3) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

[(4) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

[(5) the total income of the trust within such year and the expenses attributable thereto, and

[(6) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

[(b) EXCEPTIONS.—This section shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. This section shall not apply in the case of a trust described in section 4947(a)(1).

[(c) CROSS REFERENCE.—

[For provisions relating to penalties for failure to file a return required by this section, see section 6652(c).]

SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

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(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

(E) the total income of the trust within such year and the expenses attributable thereto, and

(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust described in section 4947(a)(1).

* * * * * * *

Subchapter B—Miscellaneous Provisions

* * * * * * *

SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) * * *

(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—The information required to be furnished by sections 6012(a)(6), 6033, 6034, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information. In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization. *In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).*

* * * * * * *

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

* * * * * * *

Subchapter A—Additions to the Tax and Additional Amounts

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) * * *

* * * * * * *

(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

(1) * * *

(2) RETURNS UNDER SECTION 6034 OR 6043(b).—

(A) * * *

* * * * * * *

(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting "$100" for "$20", and the second sentence thereof shall be applied by substituting "$50,000" for "$10,000", and

(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.

* * * * * * *

ASSETS FOR INDEPENDENCE ACT

* * * * * * *

SEC. 403. PURPOSES.

The purposes of this title are to provide for the establishment of [demonstration] projects designed to determine—

(1) the social, civic, psychological, and economic effects of providing to individuals and families with limited means an in-

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centive to accumulate assets by saving a portion of their earned income;

(2) the extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

(3) the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

SEC. 404. DEFINITIONS.

In this title:

(1) * * *

* * * * * * *

(2) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual who is selected to participate in a [demonstration] project by a qualified entity under section 409.

* * * * * * *

(7) QUALIFIED ENTITY.—

(A) IN GENERAL.—The term "qualified entity" means—

(i) * * *

* * * * * * *

(iii) an entity that—

(I) is—

[(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or]

(aa) a federally insured credit union; or

* * * * * * *

SEC. 405. APPLICATIONS.

(a) ANNOUNCEMENT OF [DEMONSTRATION] PROJECTS.—Not later than 3 months after the date of enactment of this title, the Secretary shall publicly announce the availability of funding under this title for [demonstration] projects and shall ensure that applications to conduct the [demonstration] projects are widely available to qualified entities.

(b) SUBMISSION.—Not later than 6 months after the date of enactment of this title, a qualified entity may submit to the Secretary an application to conduct a [demonstration] project under this title.

(c) CRITERIA.—In considering whether to approve an application to conduct a [demonstration] project under this title, the Secretary shall assess the following:

(1) * * *

* * * * * * *

(d) PREFERENCES.—In considering an application to conduct a [demonstration] project under this title, the Secretary shall give preference to an application that—

(1) * * *

* * * * * * *

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(e) APPROVAL.—Not later than 9 months after the date of enactment of this title, the Secretary shall, on a competitive basis, approve such applications to conduct [demonstration] projects under this title as the Secretary considers to be appropriate, taking into account the assessments required by subsections (c) and (d). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (both rural and urban) and diverse populations.

* * * * * * *

(g) GRANDFATHERING OF EXISTING STATEWIDE PROGRAMS.—Any statewide individual asset-building program that is carried out in a manner consistent with the purposes of this title, that is established under State law as of the date of enactment of this Act, and that as of such date is operating with an annual State appropriation of not less than $1,000,000 in non-Federal funds, shall be deemed to meet the eligibility requirements of this subtitle, and the entity carrying out the program shall be deemed to be a qualified entity. The Secretary shall consider funding the statewide program as a [demonstration] project described in this subtitle. In considering the statewide program for funding, the Secretary shall review an application submitted by the entity carrying out such statewide program under this section, notwithstanding the preference requirements listed in subsection (d). Any program requirements under sections 407 through 411 that are inconsistent with State statutory requirements in effect on the date of enactment of this Act, governing such statewide program, shall not apply to the program.

SEC. 406. [DEMONSTRATION] AUTHORITY; ANNUAL GRANTS.

(a) [DEMONSTRATION] AUTHORITY.—If the Secretary approves an application to conduct a [demonstration] project under this title, the Secretary shall, not later than 10 months after the date of enactment of this title, authorize the applicant to conduct the project for 5 project years in accordance with the approved application and the requirements of this title.

(b) GRANT AUTHORITY.—For each project year of a [demonstration] project conducted under this title, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

(1) * * *

* * * * * * *

SEC. 407. RESERVE FUND.

(a) * * *

(b) AMOUNTS IN RESERVE FUND.—

(1) IN GENERAL.—As soon after receipt as is practicable, a qualified entity shall deposit in the Reserve Fund established under subsection (a)—

(A) all funds provided to the qualified entity from any public or private source in connection with the [demonstration] project; and

* * * * * * *

(c) USE OF AMOUNTS IN THE RESERVE FUND.—

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(1) IN GENERAL.—A qualified entity shall use the amounts in the Reserve Fund established under subsection (a) to—

(A) assist participants in the [demonstration] project in obtaining the skills (including economic literacy, budgeting, credit, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses;

(B) provide deposits in accordance with section 410 for individuals selected by the qualified entity to participate in the [demonstration] project;

(C) administer the [demonstration] project; and

(D) provide the research organization evaluating the [demonstration] project under section 414 with such information with respect to the [demonstration] project as may be required for the evaluation.

* * * * * * *

(d) UNUSED FEDERAL GRANT FUNDS TRANSFERRED TO THE SECRETARY WHEN PROJECT TERMINATES.—Notwithstanding subsection (c), upon the termination of any [demonstration] project authorized under this section, the qualified entity conducting the project shall transfer to the Secretary an amount equal to—

(1) * * *

* * * * * * *

SEC. 408. ELIGIBILITY FOR PARTICIPATION.

(a) IN GENERAL.—Any individual who is a member of a household that is eligible for assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or that meets each of the following requirements shall be eligible to participate in a [demonstration] project conducted under this title:

(1) * * *

(2) NET WORTH TEST.—

(A) IN GENERAL.—The net worth of the household, as of the end of the calendar year preceding the determination of eligibility, does not exceed [$10,000] *$20,000*.

* * * * * * *

(b) INDIVIDUALS UNABLE TO COMPLETE THE PROJECT.—The Secretary shall establish such regulations as are necessary to ensure compliance with this title if an individual participating in the [demonstration] project moves from the community in which the project is conducted or is otherwise unable to continue participating in that project, including regulations prohibiting future eligibility to participate in any other [demonstration] project conducted under this title.

SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.

From among the individuals eligible to participate in a [demonstration] project conducted under this title, each qualified entity shall select the individuals—

(1) that the qualified entity determines to be best suited to participate; and

(2) to whom the qualified entity will provide deposits in accordance with section 410.

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SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.

(a) * * *

* * * * * * *

[(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.

[(c) LIMITATION ON DEPOSITS FOR A HOUSEHOLD.—Not more than $4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.]

(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $500 from a grant made under section 406(b) shall be provided per year to any one individual during the project.

[(d)] *(c)* WITHDRAWAL OF FUNDS.—The Secretary shall establish such guidelines as may be necessary to ensure that funds held in an individual development account are not withdrawn, except for one or more qualified expenses, or for an emergency withdrawal. Such guidelines shall include a requirement that a responsible official of the qualified entity conducting a project approve a withdrawal from such an account in writing. The guidelines shall provide that no individual may withdraw funds from an individual development account earlier than 6 months after the date on which the individual first deposits funds in the account.

[(e)] *(d)* REIMBURSEMENT.—An individual shall reimburse an individual development account for any funds withdrawn from the account for an emergency withdrawal, not later than 12 months after the date of the withdrawal. If the individual fails to make the reimbursement, the qualified entity administering the account shall transfer the funds deposited into the account or a parallel account under this section to the Reserve Fund of the qualified entity, and use the funds to benefit other individuals participating in the [demonstration] project involved.

SEC. 411. LOCAL CONTROL OVER [DEMONSTRATION] PROJECTS.

A qualified entity under this title, other than a State or local government agency or a tribal government, shall, subject to the provisions of section 413, have sole authority over the administration of the project. The Secretary may prescribe only such regulations or guidelines with respect to [demonstration] projects conducted under this title as are necessary to ensure compliance with the approved applications and the requirements of this title.

SEC. 412. ANNUAL PROGRESS REPORTS.

(a) IN GENERAL.—Each qualified entity under this title shall prepare an annual report on the progress of the [demonstration] project. Each report shall include both program and participant information and shall specify for the period covered by the report the following information:

(1) * * *

* * * * * * *

(6) The savings account characteristics (such as threshold amounts and match rates) required to stimulate participation in the [demonstration] project, and how such characteristics vary among different populations or communities.

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(7) What service configurations of the qualified entity (such as configurations relating to peer support, structured planning exercises, mentoring, and case management) increased the rate and consistency of participation in the [demonstration] project and how such configurations varied among different populations or communities.

(8) Such other information as the Secretary may require to evaluate the [demonstration] project.

(b) SUBMISSION OF REPORTS.—The qualified entity shall submit each report required to be prepared under subsection (a) to—

(1) the Secretary; and

(2) the Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the [demonstration] project.

(c) TIMING.—The first report required by subsection (a) shall be submitted not later than 60 days after the end of the project year in which the Secretary authorized the qualified entity to conduct the [demonstration] project, and subsequent reports shall be submitted every 12 months thereafter, until the conclusion of the project.

SEC. 413. SANCTIONS.

(a) AUTHORITY TO TERMINATE [DEMONSTRATION] PROJECT.—If the Secretary determines that a qualified entity under this title is not operating a [demonstration] project in accordance with the entity's approved application under section 405 or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity's authority to conduct the [demonstration] project.

(b) ACTIONS REQUIRED UPON TERMINATION.—If the Secretary terminates the authority to conduct a [demonstration] project, the Secretary—

(1) shall suspend the [demonstration] project;

(2) shall take control of the Reserve Fund established pursuant to section 407;

(3) shall make every effort to identify another qualified entity (or entities) willing and able to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

(4) shall, if the Secretary identifies an entity (or entities) described in paragraph (3)—

(A) * * *

* * * * * * *

(C) consider, for purposes of this title—

(i) such other entity (or entities) to be the qualified entity (or entities) originally authorized to conduct the [demonstration] project; and

* * * * * * *

SEC. 414. EVALUATIONS.

(a) IN GENERAL.—Not later than 10 months after the date of enactment of this title, the Secretary shall enter into a contract with an independent research organization to evaluate the [demonstra-

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tion] projects conducted under this title, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the [demonstration] projects conducted under this title.

(b) FACTORS TO EVALUATE.—In evaluating any [demonstration] project conducted under this title, the research organization shall address the following factors:

(1) The effects of incentives and organizational or institutional support on savings behavior in the [demonstration] project.

(2) The savings rates of individuals in the [demonstration] project based on demographic characteristics including gender, age, family size, race or ethnic background, and income.

* * * * * * *

(6) The lessons to be learned from the [demonstration] projects conducted under this title and if a permanent program of individual development accounts should be established.

* * * * * * *

(c) METHODOLOGICAL REQUIREMENTS.—In evaluating any [demonstration] project conducted under this title, the research organization shall—

* * * * * * *

(d) REPORTS BY THE SECRETARY.—

(1) INTERIM REPORTS.—Not later than 90 days after the end of the project year in which the Secretary first authorizes a qualified entity to conduct a [demonstration] project under this title, and every 12 months thereafter until all [demonstration] projects conducted under this title are completed, the Secretary shall submit to Congress an interim report setting forth the results of the reports submitted pursuant to section 412(b).

(2) FINAL REPORTS.—Not later than 12 months after the conclusion of all [demonstration] projects conducted under this title, the Secretary shall submit to Congress a final report setting forth the results and findings of all reports and evaluations conducted pursuant to this title.

* * * * * * *

SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title, $25,000,000 for each of fiscal years 1999, 2000, [2001, 2002, and 2003] *and 2001, and $50,000,000 for each of fiscal years 2002 through 2008*, to remain available until expended.

* * * * * * *

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VII. DISSENTING VIEWS

We support appropriate and meaningful tax incentives for charitable giving. We regret that earlier this year the Congressional Republican Leadership and the Bush Administration decided to enact a large tax reduction that reserved no resources for bipartisan tax priorities such as charitable giving incentives, energy tax provisions, extensions of expiring provisions, minimum tax relief and other priorities of the American people. The priorities of the Congressional Republican Leadership and the Bush Administration were different. They insisted on enacting tax legislation that puts the Medicare and Social Security surpluses at risk and that disproportionately benefits the wealthiest in our society.

As a result of the Bush tax cut, Congressional supporters of provisions such as charitable giving tax incentives face a difficult choice. They can choose to offset the cost of those incentives with other provisions, or they can place the Medicare and Social Security surpluses at risk to fund those benefits.

Congressman Rangel offered an amendment during the markup that would have offset the cost of the charitable giving tax incentives contained in the Committee's bill. The amendment would have reduced slightly the recently enacted reduction in the top marginal income tax rate, a rate that applies only to the wealthiest seven-tenths of one percent of individuals. Even with that amendment, those individuals still would receive a 4.1 percentage point reduction in their marginal rate, a larger marginal rate reduction than provided to most other individuals. Committee Republican rejected the amendment because, like earlier this year, they have different priorities.

Without Congressman Rangel's amendment, we believe that there is a substantial certainty that the tax reductions contained in the Committee bill will be funded, in part by raiding the Medicare and possibly the Social Security Trust Funds. As a result, we can not support the Committee bill.

Reflecting the Republican skittishness over the issue of raiding the Medicare Trust Fund, during the markup Chairman Thomas released a letter written by Congressman Nussle, the Chairman of the Budget Committee. The letter attempts to give comfort to the Republican members of the Committee. It states "on the basis of estimates released in May on the state of the economy, I am pleased to advise you that this bill, in its present form, will not effect the Medicare Hospital Trust Fund in fiscal year 2002." It goes on to state that there will be a surplus of $12.3 billion in fiscal 2002 outside the Medicare and Social Security Trust Funds.

We would suggest that Congressman Nussle's letter should give no comfort to his Republican colleagues for the following reasons.

1. Congressman Nussle only was willing to claim that the Medicare Trust Fund would not be raided in fiscal year 2002. The fact

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that he failed to make that assertion for any other fiscal year speaks for itself.

2. Congressman Nussle's assertion that there will be a $12.3 billion surplus in fiscal year 2002 after protecting the Medicare Trust Fund is dubious for reasons discussed below. However, there would be absolutely no basis for that assertion if the Bush tax cut had not raided the Medicare Trust Fund in the current fiscal year (FY 2001) in an attempt to avoid a raid in fiscal year 2002.

The Bush tax cut contained a gimmick that shifted $32 billion in corporate estimated tax receipts from fiscal year 2001 to 2002. Without that shift in receipts, even under Congressman Nussle's analysis, there would have been a $20 billion raid on Medicare next year.

As a result of that gimmick, there will be at least a $20 billion raid on Medicare in the current fiscal year according to recent testimony of Mitchell Daniels, Director of the Office of Management and Budget. Indeed, according to his testimony, a raid on the Social Security Trust Fund in fiscal year 2001 will be avoided by only a very small amount.

Raiding Medicare in 2001 in a desperate attempt to avoid a raid in 2002 may give comfort to the Republicans, but it gives on comfort to us.

3. The assertion that there will be a $12 billion surplus next fiscal year outside of the Medicare system ignores the recent Administration request for $18.4 billion in additional defense spending for that year. Secretary Rumsfeld testified before the Senate Armed Services Committee that the extra $18.4 billion for fiscal 2002 would not be a one time request. He said that another $18 billion would be "needed" for fiscal year 2003 on top of continuing the $18.4 billion increase in fiscal 2002 just to stay even. None of those amounts would advance the defense modernization effort the Administration has promised.

4. The economic projections have deteriorated dramatically since the CBO May analysis relief on by Congressman Nussle in his letter. Lawrence B. Lindsey, the Director of the White House National Economic Council, and OMB Director Daniels both recently have indicated that there will be shortfall in tax receipts. They are not alone in suggesting the potential for unpleasant budget surprises from the current economic slowdown. William Dudley, Goldman-Sachs Research Director, has been quoted as stating that revenues would be as much as $75 billion below expectations, forcing a raid on the Medicare Trust Fund to balance this year's budget and putting next year's budget in the red if the downturn persists.

The economy has not weakened significantly since the May CBO projection, but the budget projections have. One has the impression that the tax bill was enacted with reckless haste in order to take advantage of the temporarily favorable budget projections.

Congresswoman Karen Thurman offered an amendment in Committee that would have made the Committee bill contingent on the availability of surpluses outside the Medicare and social Security systems. If the Republican members of the Committee believed Congressman Nussle's letter, they could have supported Mrs. Thurman's amendment without endangering the tax incentives for char-

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itable giving. They voted no, an action that speaks louder than Congressman Nussle's letter.

We would have opposed the Committee bill because of the potential for raiding the Medicare Trust Fund even it had provided significant and meaningful tax incentives for charitable giving. However, the Committee bill does not accomplish its intended goal increasing charitable giving. Therefore, it is very easy for us to oppose it.

The Committee contains two provisions designed to encourage charitable giving by individuals, an above-the-line charitable deduction for nonitemizers and a provision permitting individual retirement account assets to be used for charitable purposes. The second provision will provide incentives only to a very narrow class of individuals, namely individuals who are over age 70 and have accumulations in individual retirement accounts not needed for retirement income.

The bill pretends to provide incentives for charitable giving by individuals who do not itemize their deductions. It does so by providing a deduction for charitable contributions in addition to the standard deduction. However, the size of the new deduction is so small (initially $25 for single individuals, $50 for married couples) that the provision will create no significant incentive for additional charitable contributions. During the markup the staff of the Joint Committee on Taxation made it clear that the new deduction would complicate the individual tax return and that there was little prospect that the Internal Revenue Service could effectively audit the new provision. One has the strong impression that the Committee bill is equivalent to a small increase in the standard deduction and it will result in little, if any, additional charitable contributions.

During markup, Democrats asked how this new tax cut—following last month's $1.35 trillion tax cut—would fit into a budget that would protect Social Security and Medicare, accommodate the policies in the Budget Resolution, and accommodate the President's new June defense spending request. Chairman Thomas explained that the ways and Means Committee should press ahead with a new tax cut because the Congressional budget process was a race. If other Committees weren't as quickly reporting legislation to use up budget surpluses, that was their problem.

Democrats do not agree with Chairman Thomas, nor we expect, do his Republican colleagues on the Appropriations and other Committees who do not agree that their priorities should be crowded out by Mr. Thomas's rush to report more tax cuts.

The purpose of the Congressional Budget is to have a sensible plan, not a race among Committees to use up budget surpluses. Formally, the Congressional Budget makes allocations among Committees and sets targets for revenues that are separate from spending limits. However, Chairman Thomas may be correct about how the Republican majority actually will administer the congressional Budget process. If so, his remarks validate earlier criticism from Democrats that Republican Congressional budgets have been publicity documents that are not enforced. In recent years, this Committee has been used to pump out one tax-cut bill after another no matter how large the cumulative total, and the Majority has voted overwhelmingly appropriations bills that busted their own budgets.

REV_00129495

CHARLES B. RANGEL.
PETE STARK.
KAREN L. THURMAN.
WILLIAM J. COYNE.
RICHARD E. NEAL.
JIM MCDERMOTT.
XAVIER BECERRA.
WM. J. JEFFERSON.
JOHN LEWIS.
JERRY KLECZKA.
BEN CARDIN.
JOHN TANNER.
ROBERT T. MATSUI.
LLOYD DOGGETT.
MICHAEL R. MCNULTY.
SANDER M. LEVIN.
EARL POMEROY.

○

REV_00129496

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 7/17/2001 5:09:29 AM
Subject: : Mexican trucks

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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-JUL-2001 09:09:29.00
SUBJECT:: Mexican trucks
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Was one of you assigned to that issue? I have an LRM . . .

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To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/17/2001 5:15:31 AM
Subject: : Re: FINAL CLEARANCE- SAP, H.R. 1954- Iran/Libya Sanctions Extension Act

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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Thanks Brett

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/17/2001 6:01:16 AM
Subject: : Re: Mexican trucks

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CREATION DATE/TIME:17-JUL-2001 10:01:16.00
SUBJECT:: Re: Mexican trucks
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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i recall Stuart working on that

Brett M. Kavanaugh
07/17/2001 09:09:28 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Mexican trucks

Was one of you assigned to that issue? I have an LRM . . .

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H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 7/17/2001 6:04:55 AM
Subject: : Re: Mexican trucks

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CREATION DATE/TIME:17-JUL-2001 10:04:55.00
SUBJECT:: Re: Mexican trucks
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks

Rachel L. Brand 07/17/2001 10:01:15 AM

Record Type: Record

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cc:
bcc:
Subject: Re: Mexican trucks

i recall Stuart working on that

Brett M. Kavanaugh
07/17/2001 09:09:28 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Mexican trucks

Was one of you assigned to that issue? I have an LRM . . .

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=Karen N. Blank/OU=OMB/O=EOP [OMB]

To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Rosalyn J. Rettman/OMB /EOP@EOP [OMB] <Rosalyn J. Rettman>;James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>;Larry R. Matlack/OMB/EOP@EOP [OMB] <Larry R. Matlack>;Jack A. Smalligan/OMB/EOP@EOP [OMB] <Jack A. Smalligan>;Matthew D. McKearn/OMB /EOP@EOP [OMB] <Matthew D. McKearn>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Brett S. Loper/OMB/EOP@EOP [OMB] <Brett S. Loper>;John M. Bridgeland/OPD /EOP@EOP [OPD] <John M. Bridgeland>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Mary C. Barth/OMB/EOP@EOP [OMB] <Mary C. Barth>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Richard B. Bavier/OMB/EOP@EOP [OMB] <Richard B. Bavier>;Kenneth S. Kelly/OMB/EOP@EOP [OMB] <Kenneth S. Kelly>;Alejandra O. Ceja/OMB/EOP@EOP [OMB] <Alejandra O. Ceja>;Mathew C. Blum/OMB/EOP@EOP [OMB] <Mathew C. Blum>;Fredrick J. Charney/OMB/EOP@EOP [OMB] <Fredrick J. Charney>;Wendy A. Taylor/OMB/EOP@EOP [OMB] <Wendy A. Taylor>;Brenda Aguilar/OMB/EOP@EOP [OMB] <Brenda Aguilar>;David J. Haun/OMB /EOP@EOP [OMB] <David J. Haun>;Douglas Pitkin/OMB/EOP@EOP [OMB] <Douglas Pitkin>;Alan B. Rhinesmith/OMB/EOP@EOP [OMB] <Alan B. Rhinesmith>;Francis S. Redburn/OMB/EOP@EOP [OMB] <Francis S. Redburn>;Reid B Cramer/OMB/EOP@EOP [OMB] <Reid B Cramer>;James Boden/OMB/EOP@EOP [OMB] <James Boden>;Yvette M. Dennis/OMB/EOP@EOP [OMB] <Yvette M. Dennis>;Andrew Abrams/OMB/EOP@EOP [OMB] <Andrew Abrams>;Lauren Larson/OMB/EOP@EOP [OMB] <Lauren Larson>;Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>;Justine F. Rodriguez/OMB/EOP@EOP [OMB] <Justine F. Rodriguez>;Michael C. Falkenheim/OMB/EOP@EOP [OMB] <Michael C. Falkenheim>;jhanley@ofheo.gov @ znet [UNKNOWN] <jhanley@ofheo.gov>;OFBCI-LRM [UNKNOWN] <OFBCI-LRM>;Shalini M. Benson/OMB/EOP@EOP [OMB] <Shalini M. Benson>;Patrick Aylward/OMB/EOP@EOP [OMB] <Patrick Aylward>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>

CC: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Ingrid M. Schroeder/OMB/EOP [OMB] <Ingrid M. Schroeder>;Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>;Irene Kho/OMB/EOP@EOP [OMB] <Irene Kho>

Sent: 7/17/2001 6:32:53 AM

Subject: : FYI, HR 7 as reported by W&M 7/16 (H.Rpt 107-138 Part 2)

Attachments: P_NXIU2004_WHO.TXT_1

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SUBJECT:: FYI, HR 7 as reported by W&M 7/16 (H.Rpt 107-138 Part 2)
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
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READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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TO:Michael C. Falkenheim (CN=Michael C. Falkenheim/OU=OMB/O=EOP@EOP [OMB])
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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–138
1st Session } { Part 2

COMMUNITY SOLUTIONS ACT OF 2001

JULY 16, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 7]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7) to provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Community Solutions Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
Sec. 102. Tax-free distributions from individual retirement accounts for charitable purposes.
Sec. 103. Increase in cap on corporate charitable contributions.
Sec. 104. Charitable donations liability reform for in-kind corporate contributions.
Sec. 105. Charitable deduction for contributions of food inventory.
Sec. 106. Reform of excise tax on net investment income of private foundations.
Sec. 107. Excise tax on unrelated business taxable income of charitable remainder trusts.
Sec. 108. Expansion of charitable contribution allowed for scientific property used for research and for computer technology and equipment used for educational purposes.
Sec. 109. Adjustment to basis of S corporation stock for certain charitable contributions.

TITLE II—EXPANSION OF CHARITABLE CHOICE

Sec. 201. Provision of assistance under government programs by religious and community organizations.

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

Sec. 301. Additional qualified entities eligible to conduct projects under the Assets for Independence Act.
Sec. 302. Increase in limitation on net worth.
Sec. 303. Change in limitation on deposits for an individual.
Sec. 304. Elimination of limitation on deposits for a household.
Sec. 305. Extension of program.
Sec. 306. Conforming amendments.
Sec. 307. Applicability.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—

"(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

REV_00129506

"(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

"(B) the applicable amount.

"(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined as follows:

"For taxable years beginning in:	The applicable amount is:
2002 and 2003	$25
2004, 2005, 2006	$50
2007, 2008, 2009	$75
2010 and thereafter	$100.

In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.".

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(2) DEFINITION.—Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).".

(3) CONFORMING AMENDMENT.—Subsection (d) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement account—

"(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

"(ii) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

"(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under

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section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

"(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

"(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

"(ii) a pooled income fund (as defined in section 642(c)(5)), and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).".

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

"(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

"(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

"(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

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"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2001.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by striking "10 percent" and inserting "the applicable percentage".

(b) APPLICABLE PERCENTAGE.—Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

"(3) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	The applicable percentage is—
2002 through 2007	11
2008	12
2009	13
2010 and thereafter	15.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by striking "10 percent" each place it occurs and inserting "the applicable percentage (determined under section 170(b)(3))".

(2) Sections 545(b)(2) and 556(b)(2) of such Code are each amended by striking "10-percent limitation" and inserting "applicable percentage limitation".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) AIRCRAFT.—The term "aircraft" has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—The term "business entity" means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT.—The term "equipment" includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY.—The term "facility" means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE.—The term "motor vehicle" has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

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(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY.—

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION.—This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if—

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if—

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(4) LIABILITY OF BUSINESS ENTITIES PROVIDING TOURS OF FACILITIES.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury to, or death of an individual occurring at a facility of the business entity, if—

(i) such injury or death occurs during a tour of the facility in an area of the facility that is not otherwise accessible to the general public; and

(ii) the business entity authorized the tour.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether an individual pays for the tour.

(c) EXCEPTIONS.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct, including any misconduct that—

(1) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18, United States Code) for which the defendant has been convicted in any court;

(2) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

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(3) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or

(4) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION.—Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE.—This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act.

SEC. 105. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Paragraph (3) of section 170(e) of the Internal Revenue Code of 1986 (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only for food that is apparently wholesome food.

"(ii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(iii) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 106. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by striking "2 percent" and inserting "1 percent".

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 of such Code is amended by striking subsection (e).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 107. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to exemption from income taxes) is amended to read as follows:

"(c) TAXATION OF TRUSTS.—

"(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

"(2) EXCISE TAX.—

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"(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

"(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

"(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

"(i) subsection (b),

"(ii) determining the value of trust assets under subsection (d)(2), and

"(iii) determining income under subsection (d)(3).

"(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 108. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributions) is amended by inserting "or assembled" after "constructed".

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(c) CONFORMING AMENDMENT.—Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 109. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (1) of section 1367(a) of such Code (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1994A. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to provide assistance to individuals and families in need in the most effective and efficient manner;

"(2) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to allow religious organizations to assist in the administration and distribution of such assistance without impairing the religious character of such organizations; and

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"(4) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of choosing to receive services from a religious organization providing such assistance.

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS NONGOVERNMENTAL PROVIDERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, if the program is implemented in a manner that is consistent with the Establishment Clause and the Free Exercise Clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government nor a State or local government receiving funds under a program described in paragraph (4) shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program, on the basis that the organization has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not aid to the religious organization.

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not and should not be perceived as an endorsement by the government of religion or the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) under the Federal housing laws;

"(iv) under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)

"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.);

"(vii) under the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(viii) related to the intervention in and prevention of domestic violence;

"(ix) related to hunger relief activities; or

"(x) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to non-school-hours programs; and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State or local government shall require a religious organization in order to be eligible to provide assistance under a program described in subsection (c)(4)—

"(A) to alter its form of internal governance; or

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"(B) to remove religious art, icons, scripture, or other symbols because they are religious.

"(e) EMPLOYMENT PRACTICES.—

"(1) IN GENERAL.—In order to aid in the preservation of its religious character, a religious organization that provides assistance under a program described in subsection (c)(4) may, notwithstanding any other provision of law, require that its employees adhere to the religious practices of the organization.

"(2) TITLE VII EXEMPTION.—The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1, 2000e–2(e)(2)) regarding employment practices shall not be affected by the religious organization's provision of assistance under, or receipt of funds from, a program described in subsection (c)(4).

"(3) EFFECT ON OTHER LAWS.—Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1686) (prohibiting discrimination in educational institutions on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(f) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative, including a nonreligious alternative, that is accessible to the individual; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

"(g) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND CONTRACTS.—A religious organization providing assistance through a grant or contract under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(2) INDIRECT FORMS OF DISBURSEMENT.—A religious organization providing assistance through a voucher, certificate, or other form of indirect disbursement under a program described in subsection (c)(4) shall not discriminate, in carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(h) ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

"(2) LIMITED AUDIT.—Such organization shall segregate government funds provided under such program into a separate account or accounts. Only the government funds shall be subject to audit by the government.

"(i) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.—No funds provided through a grant or contract to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian worship, instruction, or proselytization. A certificate shall be signed by such organizations and filed with the government agency that disbursed the funds that gives assurance the organization will comply with this subsection.

"(j) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds

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with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(k) TREATMENT OF INTERMEDIATE CONTRACTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate contractor'), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate contractor shall have the same duties under this section as the government when selecting or otherwise dealing with subcontractors, but the intermediate contractor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

"(l) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action pursuant to section 1979 against the official or government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for appropriate relief in Federal district court against the official or government agency that has allegedly committed such violation.".

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 301. ADDITIONAL QUALIFIED ENTITIES ELIGIBLE TO CONDUCT PROJECTS UNDER THE ASSETS FOR INDEPENDENCE ACT.

Section 404(7)(A)(iii)(I)(aa) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(aa) a federally insured credit union; or".

SEC. 302. INCREASE IN LIMITATION ON NET WORTH.

Section 408(a)(2)(A) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "$10,000" and inserting "$20,000".

SEC. 303. CHANGE IN LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.

Section 410(b) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $500 from a grant made under section 406(b) shall be provided per year to any one individual during the project.".

SEC. 304. ELIMINATION OF LIMITATION ON DEPOSITS FOR A HOUSEHOLD.

Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

SEC. 305. EXTENSION OF PROGRAM.

Section 416 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "2001, 2002, and 2003" and inserting "and 2001, and $50,000,000 for each of fiscal years 2002 through 2008".

SEC. 306. CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TEXT.—The text of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "demonstration" each place it appears:

(1) Section 403.
(2) Section 404(2).
(3) Section 405(a).
(4) Section 405(b).
(5) Section 405(c).
(6) Section 405(d).
(7) Section 405(e).
(8) Section 405(g).
(9) Section 406(a).
(10) Section 406(b).
(11) Section 407(b)(1)(A).
(12) Section 407(c)(1)(A).
(13) Section 407(c)(1)(B).
(14) Section 407(c)(1)(C).

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(15) Section 407(c)(1)(D).
(16) Section 407(d).
(17) Section 408(a).
(18) Section 408(b).
(19) Section 409.
(20) Section 410(e).
(21) Section 411.
(22) Section 412(a).
(23) Section 412(b)(2).
(24) Section 412(c).
(25) Section 413(a).
(26) Section 413(b).
(27) Section 414(a).
(28) Section 414(b).
(29) Section 414(c).
(30) Section 414(d)(1).
(31) Section 414(d)(2).

(b) AMENDMENTS TO SUBSECTION HEADINGS.—The heading of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "DEMONSTRATION":

(1) Section 405(a).
(2) Section 406(a).
(3) Section 413(a).

(c) AMENDMENTS TO SECTION HEADINGS.—The headings of sections 406 and 411 of the Assets for Independence Act (42 U.S.C. 604 note) are amended by striking "**DEMONSTRATION**".

SEC. 307. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this title shall apply to funds provided before, on or after the date of the enactment of this Act.

(b) PRIOR AMENDMENTS.—The amendments made by title VI of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001 (as enacted into law by Public Law 106–554) shall apply to funds provided before, on or after the date of the enactment of such Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The tax and individual development account provisions of the bill, H.R. 7, as amended (the "Community Solutions Act of 2001"), facilitate charitable giving and charitable activity.

The bill provides net tax reductions of over $4.4 billion over fiscal years 2002–2006. This will bolster the nonprofit sector of the economy.

The bill provides a charitable contribution deduction for individuals taking the standard deduction, facilitates transfers to charity from individual retirement arrangements, increases the percentage limitation on corporate charitable contributions, and reforms the excise tax based on the investment income of private foundations leaving such foundations with more funds to spend on charitable activities. The bill also encourages charitable contributions of food inventory, scientific property used for research, and computer technology and equipment used for educational purposes. In addition, the bill makes charitable contributions by S corporations more attractive and provides a more appropriate remedy on charitable remainder trusts that have unrelated business income. Finally, the bill strengthens the creation and maintenance of individual development accounts.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions approved by the Committee will stimulate charitable giving and therefore provide more funds to charitable organi-

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zations, many of which will perform activities that otherwise would have to be performed by the Federal government. The estimated revenue effects of the provisions comply with the most recent Congressional Budget Office revisions of budget surplus projections.

C. Legislative History

COMMITTEE ACTION

The Committee on Ways and Means marked up the provisions of the bill on July 11, 2001, and reported the provisions, as amended, on July 11, 2001, by a roll call vote of 23 yeas and 16 nays, with a quorum present.

COMMITTEE HEARING

A joint hearing was held on June 14, 2001, before the Subcommittees on Select Revenue Measures and Human Resources of the Committee on Ways and Means on the provisions of H.R. 7.

II. EXPLANATION OF THE BILL

A. Charitable Deduction for Nonitemizers

(Sec. 101 of the Bill and Secs. 63 and 170 of the Code)

PRESENT LAW

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to a charity described in section 501(c)(3) or a Federal, State, or local governmental entity. The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[1]

A taxpayer who takes the standard deduction (i.e., who does not itemize deductions) may not take a separate deduction for charitable contributions.[2]

A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the

[1] Secs. 170(b) and (e).

[2] Sec. 170(a). The Economic Recovery Tax Act of 1981 adopted a temporary provision that permitted individual taxpayers who did not itemize income tax deductions to claim a deduction from gross income for a specified percentage of their charitable contributions. The maximum deduction was $25 for 1982 and 1983, $75 for 1984, 50 percent of the amount of the contribution for 1985, and 100 percent of the amount of the contribution for 1986. The nonitemizer deduction terminated after 1986.

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charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[3] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[4]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limit may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2001 is $132,950 ($66,475 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by 3 percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the Economic Growth and Tax Relief Reconciliation Act of 2001 phases-out the overall limitation on itemized deductions for all taxpayers. The overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006 and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however this elimination of the limitation sunsets on December 31, 2010.

REASONS FOR CHANGE

The Committee believes that allowing a charitable deduction to nonitemizers will stimulate charitable giving, thereby providing more funds for worthwhile nonprofit organizations, many of which

[3] Sec. 170(f)(8).
[4] Sec. 6115.

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provide services that otherwise might have to be provided by the Federal government.

EXPLANATION OF PROVISION

In the case of an individual taxpayer who does not itemize deductions, the provision allows a deduction from adjusted gross income for charitable contributions paid in cash. This deduction is allowed in addition to the standard deduction and is calculated as the lesser of (1) the amount allowable to itemizers as a charitable deduction for cash contributions and (2) an applicable amount. The new deduction generally is subject to the tax rules normally governing charitable deductions, such as the substantiation requirements and carryforward rules. For taxpayers taking a deduction of the applicable amount, the portion of contributions in excess of the applicable amount may not be carried forward. The deduction is allowed in computing alternative minimum taxable income.

The applicable amount is $25 ($50 in the case of a joint return) in 2002 and 2003, $50 ($100 in the case of a joint return) in 2004 through 2006, $75 ($150 in the case of a joint return) in 2007 through 2009, and $100 ($200 in the case of a joint return) in 2010 and thereafter.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

B. Tax-Free Distributions From Individual Retirement Arrangements for Charitable Purposes

(Sec. 102 of the Bill and Secs. 408 and 6034 of the Code)

PRESENT LAW

In general

If an amount withdrawn from a traditional individual retirement arrangement ("IRA") or a Roth IRA is donated to a charitable organization, the rules relating to the tax treatment of withdrawals from IRAs apply and the charitable contribution is subject to the normally applicable limitations on deductibility of such contributions.

Charitable contributions

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 170(c), including charities and Federal, State, and local governmental entities. The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[5]

[5] Secs. 170(b) and (e).

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A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[6] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[7]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limit may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2001 is $132,950 ($66,475 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by 3 percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the Economic Growth and Tax Relief Reconciliation Act of 2001 phases-out the overall limitation on itemized deductions for all taxpayers. The overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006

[6] Sec. 170(f)(8).
[7] Sec. 6115.

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and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however this elimination of the limitation sunsets on December 31, 2010.

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity (e.g., a remainder) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration.[8] Exceptions to this general rule are provided for, among other interests, remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, and present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property.[9] For such interests, a charitable deduction is allowed to the extent of the present value of the interest designated for a charitable organization.

IRA rules

Within limits, individuals may make deductible and nondeductible contributions to a traditional IRA. Amounts in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal represents a return of nondeductible contributions). Individuals also may make nondeductible contributions to a Roth IRA. Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from a Roth IRA that are not qualified withdrawals are includible in gross income to the extent attributable to earnings. Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless an exception applies.

If an individual has made nondeductible contributions to a traditional IRA, a portion of each distribution from an IRA is nontaxable, until the total amount of nondeductible contributions has been received. In general, the amount of a distribution that is nontaxable is determined by multiplying the amount of the distribution by the ratio of the remaining nondeductible contributions to the account balance. In making the calculation, all traditional IRAs of an individual are treated as a single IRA, all distributions during any taxable year are treated as a single distribution, and the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year.

In the case of a distribution from a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings, contributions and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions;[10] (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution, all regular Roth IRA contributions for a year are treated as

[8] Secs. 170(f), 2055(e)(2), and 2522(c)(2).
[9] Sec. 170(f)(2).
[10] Conversion contributions refer to conversions of amounts in a traditional IRA to a Roth IRA.

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a single contribution, and all conversion contributions during the year are treated as a single contribution.

Split-interest trust filing requirements

Split-interest trusts described in section 4947(a)(2), including charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds are required to file an annual information return under section 6034 (Form 1041A). Trusts that are not split-interest trusts but that claim a charitable deduction for amounts permanently set aside for a charitable purpose[11] also are required to file Form 1041A. The returns are required to be made publicly available by section 6104(b). A trust that is required to distribute all trust net income currently to trust beneficiaries in a taxable year is exempt from this return requirement for such taxable year. A trust's failure to file a return required by section 6034 results in a penalty on the trust of $10 a day for as long as the failure continues, up to a maximum of $5,000 per return.

In addition, split-interest trusts are required under section 6011 to file annually Form 5227.[12] Form 5227 requires disclosure of information regarding the trusts' noncharitable beneficiaries. The penalty for failure to file a return under section 6011 is calculated based on the amount of tax owed. A split-interest trust generally is not subject to tax and therefore, in general, a penalty may not be imposed for the failure to file Form 5227. Form 5227 is not required to be made publicly available.

REASONS FOR CHANGE

The Committee believes it appropriate to facilitate the making of charitable contributions from IRAs.

EXPLANATION OF PROVISION

The provision provides an exclusion from gross income for otherwise taxable IRA withdrawals from a traditional or a Roth IRA for qualified charitable distributions. The present-law rules continue to apply to distributions from an IRA that are not qualified charitable distributions. A qualified charitable distribution is defined as any distribution from an IRA that is (1) otherwise includible in gross income, (2) made on or after the date the IRA owner attains age 70½, and (3) is made directly by the IRA trustee (a) to a charitable organization to which deductible contributions can be made or (b) to a split-interest entity in which no person holds an income interest in the amounts in the split-interest entity attributable to the charitable distribution other than the IRA owner, his or her spouse, or a charitable organization. A split-interest entity means a charitable remainder annuity trust or charitable remainder unitrust, a pooled income fund, or a charitable gift annuity. Qualified charitable distributions count toward the minimum distribution requirements applicable to IRAs.

The exclusion applies to distributions made directly to a charitable organization to which deductible contributions can be made only if a charitable contribution deduction for the entire distribution otherwise is allowable, determined without regard to the per-

[11] Sec. 642(c).
[12] Treas. Reg. sec. 53.6011–1(d).

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centage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the distribution. The exclusion applies in the case of a distribution directly to a split-interest entity only if a charitable contribution deduction for the entire present value of the charitable interest (for example, a remainder interest) is allowable, determined without regard to the percentage limitations.

In determining the extent to which a distribution from an IRA is a qualified charitable distribution, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income but for the proposal if all amounts were distributed from all IRAs otherwise taken into account in determining the amount includible in income under section 72.

A qualified charitable distribution to a pooled income fund is not includible in the fund's gross income.

In determining the amount includible in gross income by reason of a payment from a charitable remainder annuity trust or charitable remainder unitrust to which a qualified charitable distribution from an IRA was made, the taxpayer is required to treat as ordinary income (as described in sec. 664(b)(1)) the total amount distributed directly from the IRA to the trust, except to the extent the taxpayer notifies the trust that a portion of the direct distribution was allocable to investment in the contract. This could occur, for example, if the entire interest in all an individual's traditional IRAs is distributed directly to a charitable remainder trust, and the IRA included nondeductible contributions. Similarly, in determining the amount includible in gross income by reason of a payment from a charitable gift annuity purchased with a qualified charitable distribution from an IRA, the portion of the distribution from the IRA used to purchase the annuity is not investment in the annuity contract.

Any amount excluded from gross income by reason of the proposal is not taken into account in determining the deduction for charitable contributions under section 170.

The provision increases the penalty on split-interest trusts described in section 4947(a)(2) for failure to file a return and for failure to include any of the information required to be shown on such return and to show the correct information. The penalty is $20 for each day the failure continues up to $10,000 for any one return. In the case of a split-interest trust with gross income in excess of $250,000, the penalty is $100 for each day the failure continues up to a maximum of $50,000. If a person (meaning any officer, director, trustee, employee, or other individual who is under a duty to file the return or include required information)[13] knowingly failed to file the return or include required information, then the person personally is liable for the penalty. Information regarding beneficiaries that are not charitable organizations as described in section 170(c) are exempt from the requirement to make information publicly available. In addition, the provision repeals the present law exception to the filing requirement for split-interest trusts that are required in a taxable year to distribute all net income currently

[13] Sec. 6652(c)(4)(C).

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to beneficiaries. Such exception remains available to nonsplit-interest trusts that are otherwise subject to the filing requirement. The Committee anticipates that the Secretary of the Treasury shall exercise authority under section 6034 to require that Form 5227 be filed pursuant to section 6034.

EFFECTIVE DATE

The provision generally is effective for taxable years beginning after December 31, 2001. The provision relating to information returns of split-interest trusts is effective for returns for taxable years beginning after December 31, 2001.

C. Increase Percentage Limitation for Corporate Charitable Contributions

(Sec. 103 of the Bill and Sec. 170 of the Code)

PRESENT LAW

Under present law, a corporation is allowed to deduct charitable contributions up to 10 percent of the corporation's modified taxable income for the year. For this purpose, taxable income is determined without regard to (1) the charitable contributions deduction, (2) any net operating loss carryback, (3) deductions for dividends received, (4) deductions for dividends paid on certain preferred stock of public utilities, and (5) any capital loss carryback for the taxable year.[14] Any charitable contribution by a corporation that is not currently deductible because of the percentage limitation may be carried forward for up to five taxable years.

A transfer of property by a business to a charity might qualify as either a charitable contribution or a deductible business expense, but not both. No deduction is allowed as a business expense under section 162 for any contribution that would be deductible as a charitable gift were it not for the percentage limitations on the charitable contributions deduction.[15] Likewise, a business transfer made with a reasonable expectation of financial return commensurate with the amount of the transfer is not deductible as a charitable contribution, but may be deductible under section 162.

REASONS FOR CHANGE

The Committee believes that increasing the annual limitation on the allowable corporate charitable contribution deduction will encourage more charitable giving by corporations.

EXPLANATION OF PROVISION

The provision increases the percentage limitation on corporate charitable deductions from 10 percent to 15 percent. The provision is phased-in over nine years, beginning in taxable years beginning after December 31, 2001. The percentage limitation on corporate charitable deductions is 11 percent in 2002 through 2007, 12 percent in 2008, 13 percent in 2009, and 15 percent in 2010 and thereafter.

[14] Sec. 170(b)(2).
[15] Sec. 162(b).

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EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

D. Enhanced Deduction for Charitable Contributions of Food Inventory

(Sec. 105 of the Bill and Sec. 170 of the Code)

PRESENT LAW

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory. However, for certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciated value (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis.[16]

To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of ongoing disputes between taxpayers and the IRS. In one case, the Tax Court held that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted.[17]

REASONS FOR CHANGE

The Committee believes that more should be done to encourage contributions of food inventory to charitable organizations that provide food for the hungry. Extending the availability of an enhanced deduction for contributions of food inventory to any taxpayer engaged in a trade or business and clarifying the determination of the value of the donated food will increase donations of food inventory and thereby help nourish more of our nation's underprivileged.

EXPLANATION OF PROVISION

Under the provision, any taxpayer engaged in a trade or business is eligible under section 170(e) to claim an enhanced deduction for donations of food inventory. The enhanced deduction is available only for food that qualifies as "apparently wholesome food," as defined by the Bill Emerson Good Samaritan Food Donation Act. "Ap-

[16] Sec. 170(e)(3).
[17] *Lucky Stores Inc.* v. *Commissioner,* 105 T.C. 420 (1995).

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parently wholesome food" is food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

In addition, the provision provides that the fair market value of donated apparently wholesome food that cannot or will not be sold solely due to internal standards of the taxpayer or lack of market, is determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution or, if not so sold at such time, in the recent past.

Consistent with present law, taxpayers who donate food inventory and receive consideration in exchange, whether such consideration is for food processing costs, including the costs of processing raw food to meet the nutritional specifications of the donee, or otherwise, shall apply the bargain sale rules[18] to determine the amount of gain from the sale and the value of the enhanced deduction.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

E. Reform Excise Tax Based on Investment Income of Private Foundations

(Sec. 106 of the Bill and Sec. 4940 of the Code)

PRESENT LAW

In general

In general, a private foundation is an organization organized and operated exclusively for charitable purposes.[19] Under section 4940(a) of the Code, private foundations that are recognized as exempt from Federal income tax under section 501(a) of the Code are subject to a two-percent excise tax on their net investment income. Private foundations that are not exempt from tax, such as certain charitable trusts,[20] also are subject to an excise tax under section 4940(b).

Net investment income is determined under the principles of Subtitle A of the Code, except to the extent those principles are inconsistent with section 4940. Net investment income is defined as the amount by which the sum of gross investment income and capital gain net income exceeds the deductions relating to the production of gross investment income.[21] Net investment income also is determined by applying section 103 (generally providing an exclusion for interest on certain State and local bonds) and section 265 (generally disallowing the deduction for interest and certain other expenses with respect to tax-exempt income).[22] Special definitions

[18] Sec. 1011(b); Treas. Reg. sec. 170A–4(c)(2).
[19] Secs. 509(a) and 501(c)(3).
[20] Sec. 4947.
[21] Sec. 4940(c)(1).
[22] Sec. 4940(c)(5).

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of gross investment income and capital gain net income are provided for purposes of the excise tax.[23]

The two-percent rate of tax is reduced to one-percent if certain requirements are met in a taxable year.[24] The requirements are that the foundation's qualifying distributions (generally, amounts paid to accomplish exempt purposes)[25] must be at least a certain amount and the foundation cannot have been subject to tax for failure to distribute a certain amount of income[26] for any of the five years preceding the taxable year (the "base period"). The required amount of qualifying distributions is the sum of two elements: (1) the amount of the foundation's assets for the taxable year multiplied by the average over the base period of the percentage of assets distributed as qualifying distributions in a year divided by the assets of the foundation for the year (the "average percentage payout for the base period") plus (2) one percent of the net investment income of the foundation for the taxable year.[27]

The tax on taxable private foundations under section 4940(b) is equal to the excess of the sum of the excise tax that would have been imposed under section 4940(a) if the foundation were tax exempt and the amount of the unrelated business income tax that would have been imposed if the foundation were tax exempt, over the income tax imposed on the foundation under subtitle A of the Code.

Private foundations (taxable and tax exempt) are required to pay estimated taxes of the section 4940 tax in quarterly installments in the same manner as corporate estimated tax payments.[28] "Exempt operating foundations" are exempt from the section 4940 tax.[29]

The amount of tax paid under section 4940 reduces a foundation's "distributable amount" under section 4942.[30] Accordingly, the minimum amount of qualified distributions a foundation has to make to avoid tax under section 4942 is reduced by the amount of section 4940 excise taxes paid.

REASONS FOR CHANGE

The Committee believes that reforming the excise tax based on the investment income of private foundations will result in increased charitable activity and simplify the tax laws. The reduction in the rate of tax will increase the required minimum charitable distributions for many private foundations, leading private foundations to increase the amount of their charitable activity. In addition, elimination of the two-tiered nature of the tax will simplify the Code and make compliance easier for private foundations.

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[23] Secs. 4940(c)(2) and 4940(c)(4).
[24] Sec. 4940(e).
[25] Sec. 4942(g).
[26] Sec. 4942.
[27] Sec. 4940(e).
[28] Treas. Reg. sec. 1.6302–1.
[29] Sec. 4940(d)(1). To be an exempt operating foundation, an organization must (1) be an operating foundation (as defined in section 4942(j)(3)), (2) be publicly supported for at least 10 taxable years, (3) have a governing body no more than 25 percent of whom are disqualified persons and that is broadly representative of the general public, and (4) have no officers who are disqualified persons. Sec. 4940(d)(2). Exempt operating foundations generally include organizations such as museums or libraries that devote their assets to operating charitable programs but have difficulty meeting the "public support" tests necessary not to be classified as a private foundation. For an organization to qualify as an exempt operating foundation it must obtain a ruling letter from the IRS. IRS Announcement 85–88.
[30] Sec. 4942(d)(2).

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EXPLANATION OF PROVISION

The provision replaces the two rates of tax under present law with a single rate of tax based on net investment income and sets such rate of tax at one percent. Thus, a tax-exempt private foundation is subject to tax on one percent of net investment income and does not have to calculate its average percentage payout for the base period to determine eligibility for a different rate of tax. A taxable private foundation is subject to tax on the excess of the sum of one percent of net investment income and the amount of the unrelated business income tax (both calculated as if the foundation were tax-exempt) over the income tax imposed on the foundation under subtitle A of the Code.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

F. Modify Tax on Unrelated Business Taxable Income of Charitable Remainder Trusts

(Sec. 107 of the Bill and Sec. 664 of the Code)

PRESENT LAW

Sections 170(f), 2055(e)(2), and 2522(c)(2) disallow a charitable deduction for income, estate or gift tax purposes, respectively, if the donor transfers an interest in property to a charity (e.g., a remainder interest) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration. One of several exceptions to this general rule is provided for remainder interests in charitable remainder annuity trusts and charitable remainder unitrusts.

A charitable remainder annuity trust is a trust that is required to pay, at least annually, a fixed dollar amount of at least five percent of the initial value of the trust to a noncharity for the life of an individual or for a period of less than 20 years, with the remainder passing to charity. A charitable remainder unitrust is a trust that generally is required to pay, at least annually, a fixed percentage of at least five percent of the fair market value of the trust's assets determined at least annually to a non-charity for the life of an individual or for a period less than 20 years, with the remainder passing to charity.[31]

A trust does not qualify as charitable remainder annuity trust if the annuity for a year is greater than 50 percent of the initial fair market value of the trust's assets. A trust does not qualify as a charitable remainder unitrust if the percentage of assets that are required to be distributed at least annually is greater than 50 percent. A trust does not qualify as a charitable remainder annuity trust or a charitable remainder unitrust unless the value of the remainder interest in the trust is at least 10 percent of the value of the assets contributed to the trust.

Distributions from a charitable remainder annuity trust or charitable remainder unitrust are treated in the following order as: (1)

[31] Sec. 664(d).

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ordinary income to the extent of the trust's current and previously undistributed ordinary income for the trust's year in which the distribution occurred, (2) capital gains to the extent of the trust's current capital gain and previously undistributed capital gain for the trust's year in which the distribution occurred, (3) other income (e.g., tax-exempt income) to the extent of the trust's current and previously undistributed other income for the trust's year in which the distribution occurred, and (4) corpus.[32]

Distributions are includible in the income of the beneficiary for the year that the annuity or unitrust amount is required to be distributed even though the annuity or unitrust amount is not distributed until after the close of the trust's taxable year.[33]

Under section 664(c), charitable remainder annuity trusts and charitable remainder unitrusts are exempt from Federal income tax unless the trust has any unrelated business taxable income. Under section 514, unrelated business taxable income includes certain debt financed income.

REASONS FOR CHANGE

The Committee believes that in years that a charitable remainder trust has unrelated business income, an excise tax of 100 percent on such income is a more appropriate remedy than loss of tax exemption for the year.

EXPLANATION OF PROVISION

In lieu of removing the income tax exemption of a charitable remainder trust for any year in which the trust has any unrelated business taxable income, the provision imposes a 100 percent excise tax on the unrelated business taxable income of the trust. Because the effect of the excise tax is the same as if the unrelated business taxable income were not incurred by the charitable remainder annuity trust or charitable remainder unitrust, the provision excludes such income from the determination of (1) the value of a charitable remainder unitrust's assets,[34] (2) the amount of charitable remainder unitrust income for purposes of determining the unitrust's required distributions, and (3) the effect on the income character of any distributions to beneficiaries by a charitable remainder annuity trust or charitable remainder unitrust.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001, regardless of when the trust was created.

[32] Sec. 664(b).
[33] Treas. Reg. sec. 1.664–1(d)(4).
[34] *See* Treas. Reg. sec. 1.664–3(a)(iv), which requires that all assets and liabilities of the trust are taken into account in determining their net fair market value.

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G. Extend "Constructed by" Requirement for Contributions of Scientific Property Used for Research and for Computer Technology and Equipment

(Sec. 108 of the Bill and Sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the deduction is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose. In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property.[35]

Under present law, a taxpayer's deduction for charitable contributions of scientific property used for research and for contributions of computer technology and equipment generally is limited to the taxpayer's basis (typically, cost) in the property. However, certain corporations may claim a deduction in excess of basis for a "qualified research contribution" or a "qualified computer contribution."[36] This enhanced deduction is equal to the lesser of (1) basis plus one-half of the item's appreciated value (i.e., basis plus one half of fair market value minus basis) or (2) two times basis.

A qualified research contribution means a charitable contribution of inventory that is tangible personal property. The contribution must be to a qualified educational or scientific organization and be made not later than two years after construction of the property is substantially completed. The original use of the property must be by the donee, and be used substantially for research or experimentation, or for research training in the U.S. in the physical or biological sciences. The property must be scientific equipment or apparatus, constructed by the taxpayer, and may not be transferred by the donee in exchange for money, other property, or services. The donee must provide the taxpayer with a written statement representing that it will use the property in accordance with the conditions for the deduction. For purposes of the enhanced deduction, property is considered constructed by the taxpayer only if the cost of the parts used in the construction of the property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in the property.

A qualified computer contribution means a charitable contribution of any computer technology or equipment, which meets standards of functionality and suitability as established by the Secretary of the Treasury. The contribution must be to certain educational organizations or public libraries and made not later than three years after the taxpayer acquired the property or, if the taxpayer constructed the property, not later than the date construction of the

[35] Sec. 170(e)(1).
[36] Secs. 170(e)(4) and 170(e)(6).

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property is substantially completed.[37] The original use of the property must be by the donor or the donee,[38] and in the case of the donee, must be used substantially for educational purposes related to the function or purpose of the donee. The property must fit productively into the donee's education plan. The donee may not transfer the property in exchange for money, other property, or services, except for shipping, installation, and transfer costs. To determine whether property is constructed by the taxpayer, the rules applicable to qualified research contributions apply. Contributions may be made to private foundations under certain conditions.[39]

REASONS FOR CHANGE

The Committee believes that extension of the enhanced deduction to include property assembled by the taxpayer will lead to increased charitable contributions of scientific property used for research and of computer technology and equipment.

EXPLANATION OF PROVISION

Under the provision, property assembled by the taxpayer, in addition to property constructed by the taxpayer, is eligible for either enhanced deduction. The Committee does not intend that old or used components assembled by the taxpayer into scientific property or computer technology or equipment are eligible for the enhanced deduction.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

H. Basis Adjustment to Stock of S Corporation Contributing Appreciated Property

(Sec. 109 of the Bill and Sec. 1367 of the Code)

PRESENT LAW

Under present law, if an S corporation contributes money or other property to a charity, each shareholder takes into account the shareholder's pro rata share of the contribution in determining its own income tax liability.[40] A shareholder of an S corporation reduces the basis in the stock of the S corporation by the amount of the charitable contribution that flows through to the shareholder.[41]

REASONS FOR CHANGE

The Committee wishes to preserve the benefit of providing a charitable contribution deduction for contributions of property by an S corporation with a fair market value in excess of its adjusted basis. Thus, the bill provides for a basis adjustment to the stock of the S corporation to prevent the later recognition of gain attrib-

[37] If the taxpayer constructed the property and reacquired such property, the contribution must be within three years of the date the original construction was substantially completed. Sec. 170(e)(6)(D)(i).

[38] This requirement does not apply if the property was reacquired by the manufacturer and contributed. Sec. 170(e)(6)(D)(ii).

[39] Sec. 170(e)(6)(C).

[40] Sec. 1366(a)(1)(A).

[41] Sec. 1367(a)(2)(B).

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utable to the contributed property on the disposition of the S corporation stock.

EXPLANATION OF PROVISION

The provision allows a shareholder in an S corporation to increase the basis of the S corporation stock by an amount equal to the excess of the charitable contribution deduction that flows through to the shareholder[42] over the shareholder's pro rata share of the adjusted basis of the property contributed.[43]

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2001.

I. INDIVIDUAL DEVELOPMENT ACCOUNTS

(Secs. 301–307 of the Bill)

PRESENT LAW

The Assets for Independence Act[44] authorizes $25 million annually for a five-year demonstration Individual Development Account ("IDA") program to evaluate the effects of savings incentives on persons of limited means. Means tested programs must disregard all funds in an IDA, including accruing interest, in determining an individual's eligibility. The demonstration program provides direct Federal funds to nonprofit organizations, States and localities, tribal governments, community-development financial institutions, and certain credit unions to match the amount of earnings deposited by eligible individuals. Grantees must provide nonFederal matching funds (one dollar per Federal grant dollar), and the maximum Federal grant is $1 million for each project year. Eligible persons are those (1) who are eligible under the Temporary Assistance for Needy Families program, or (2) whose household net worth is below $10,000 ("net worth test"), and who meet the greater of (a) the income limits of the earned income credit (taking into account the size of the household)[45] or (b) 200 percent of the poverty guideline ("income test").

Each participant is eligible to receive up to $2,000 in Federal funds plus accrued interest while they participate over the course of the project. Households may receive no more than $4,000 in Federal grant funds over the course of the project. The projects must create trust or custodial accounts that permit withdrawals of account balances only for three designated purposes: (1) first home purchase, (2) business capitalization, and (3) postsecondary education. Emergency withdrawals (from the account holder's own deposits only) are allowed for three conditions—medical expenses, prevention of eviction or mortgage foreclosure, and living expenses after job losses.

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[42] The amount of the deduction flowing through to a shareholder is to be determined after the application of any provision of section 170 limiting the amount of the deduction to less than the fair market value of the property, but without regard to any percentage limitation that may be applicable to a shareholder under section 170(b).

[43] *See* Rev. Rul. 96–11, 1996–1 C.B. 140, for a similar rule applicable to contributions made by a partnership.

[44] Title IV of Pub. L. No. 105–285 (1998).

[45] Sec. 32(b)(2).

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Each grantee is required to prepare an annual report on the progress of its project. These reports must be submitted to the Secretary of Health and Human Services, and if a tribe, State or local government committed funds to the project, to the Treasurer (or equivalent official) of the State in which the project is conducted. The Secretary of Health and Human Services is required to provide the results of these reports to Congress every 12 months until all of the demonstration projects are completed, and to submit a final report, setting forth the results and findings of all reports and evaluations, not later than 12 months after the conclusion of all demonstration projects. The Assets for Independence Act directs the Secretary of Health and Human Services to enter into a contract with an independent research organization to evaluate the projects, individually, and as a group. The Secretary of Health and Human Services may spend up to $500,000 each fiscal year for evaluation expenses.

The demonstration program expires at the end of fiscal year 2003.

REASONS FOR CHANGE

The Committee seeks to expand the availability and use of IDAs, which promote work and asset-building among low-income families, rather than dependence on cash welfare and other benefits. These goals are consistent with the Committee's extensive activities in recent years to reform welfare by promoting work and independence from government benefits, as well as the Committee's recent activities to promote savings and investment through tax policy changes.

EXPLANATION OF PROVISION

The provision eliminates references to "demonstration" projects. The provision expands the category of qualified entities that could apply for IDA projects to include any federally-insured credit union.

The provision repeals the current household cap on receipt of Federal funds. The individual lifetime cap on receipt of Federal funds is replaced with an annual cap of $500.

The provision increases the net worth test for eligible individuals from $10,000 to $20,000.

The provision extends the program for an additional five years, through fiscal year 2008. Under the provision, the annual program authorization would be doubled from $25 million to $50 million, beginning in fiscal year 2002.

The program modifications made under the provision and the "Assets for Independence Act Amendments of 2000"[46] apply to existing grants, as well as grants made on or after the date of enactment.

[46] Title IV of H.R. 5656 as enacted by Pub. L. No. 106–554 (2000). The "Assets for Independence Act Amendments of 2000" (1) made matching contributions unavailable for emergency withdrawals, (2) added low income credit unions and community financial development institutions as qualified entities; (3) modified home purchase costs; (4) increased set-aside for economic literacy training and administrative costs; (5) added the 200 percent of poverty alternative to the income test; (6) revised the annual and interim progress report deadlines; (7) increased appropriations for evaluation expenses; and (8) provided that means tested programs must disregard all funds in an IDA, including accruing interest, in determining an individual's eligibility. Id. at secs. 602–610.

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EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 7.

MOTION TO REPORT THE BILL

The bill, H.R. 7, as amended, was ordered favorably reported by a rollcall vote of 23 yeas to 16 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui		X	
Mrs. Johnson	X			Mr. Coyne			
Mr. Houghton				Mr. Levin		X	
Mr. Herger	X			Mr. Cardin		X	
Mr. McCrery	X			Mr. McDermott		X	
Mr. Camp	X			Mr. Kleczka		X	
Mr. Ramstad	X			Mr. Lewis (GA)		X	
Mr. Nussle	X			Mr. Neal		X	
Mr. Johnson	X			Mr. McNulty		X	
Ms. Dunn	X			Mr. Jefferson		X	
Mr. Collins	X			Mr. Tanner		X	
Mr. Portman	X			Mr. Becerra		X	
Mr. English	X			Mrs. Thurman		X	
Mr. Watkins	X			Mr. Doggett		X	
Mr. Hayworth	X			Mr. Pomeroy		X	
Mr. Weller	X						
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the amendment in the nature of a substitute.

An amendment by Mrs. Thurman, which would make the provisions in the bill contingent upon sufficient non-Social Security, non-Medicare surpluses, was defeated by a rollcall vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton	X			Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		

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Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Ms. Dunn		X		Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner	X		
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

An amendment by Mr. McDermott, which would add a new section relating to credits to holders of residential solar energy bonds, was defeated by a rollcall vote of 15 yeas to 24 nays, and 1 voting present. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton		X		Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		
Ms. Dunn		X		Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner			X
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

An amendment by Mr. Rangel, which would increase the top individual income tax rate by 0.2 percentage points for taxable years 2002 through 2005, and by 0.5 percentage points for taxable years 2006 through 2010, was defeated by a rollcall vote of 16 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton				Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		

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Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Ms. Dunn		X		Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner	X		
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 7 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2002–2006:

ESTIMATED BUDGET EFFECTS OF H.R. 7, THE "COMMUNITY SOLUTIONS ACT OF 2001," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2002–2006, in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
Charitable Giving Incentive Provisions							
1. Deduction for cash charitable contributions of individuals who do not itemize deductions in addition to their standard deduction; maximum deduction of $25 single/$50 joint for 2002 and 2003, $50 single/ $100 joint for 2004 through 2006, $75 single/$150 joint for 2007 through 2009, and $100 single/ $200 joint for 2010 and thereafter	tyba 12/31/01	−40	−269	−316	−561	−573	−1,759
2. Tax-free distributions from individual retirement accounts for charitable purposes for individuals age 70½ and above	tyba 12/31/01	−143	−233	−245	−259	−253	−1,133
3. Raise the cap on corporate charitable contributions from 10% to: 11% in 2002 through 2007, 12% in 2008, 13% in 2009, and 15% in 2010 and thereafter	cmi tyba 12/31/01	−28	−50	−52	−55	−41	−226
4. Extend present-law section 170(e)(3) deduction for food inventory to all businesses	tyba 12/31/01	−27	−46	−55	−61	−66	−255
5. Modify the section 4940(a) 2% excise tax to eliminate the 2-tier regime and impose 1% excise tax on net investment income	tyba 12/31/01	−118	−186	−195	−205	−215	−920
6. Modify the unrelated business income tax for charitable remainder trusts	tyba 12/31/01		−5	−5	−5	−6	−21
7. Modify the self-constructed property rule for certain charitable contributions	cma DOE	−1	−1	−1	−1	−1	−4

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ESTIMATED BUDGET EFFECTS OF H.R. 7, THE "COMMUNITY SOLUTIONS ACT OF 2001," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 2002–2006, in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
8. Modify the basis of S corporation stock for certain charitable contributions	tyba 12/31/01	−11	−26	−31	−35	−38	−141
Net Total		−368	−816	−900	−1,182	−1,193	−4,459

Legend for "Effective" column: cma = contributions made after; cmi = contributions made in; DOE = date of payment; tyba = taxable years beginning after.

Note.—Details may not add to totals due of rounding.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves new or increased budget authority (as detailed in the statement by the Congressional Budget Office ("CBO"); see Part IV.C., below). The Committee further states that the revenue reducing income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 16, 2001.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 7, the Community Solutions Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sheila Dacey (for federal spending), Erin Whitaker (for revenues), and Shelley Finlayson (for the state and local impact).

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 7—Community Solutions Act of 2001

Summary: H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive federal funds for the provision of social services and would make several changes to tax law concerning deductions for charitable contributions. The Joint Committee on Taxation (JCT) estimates that the revenue loss associ-

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ated with this legislation would be $4.5 billion over the 2002–2006 period and more than $13 billion over the 2002–2011 period. Because H.R. 7 would affect revenues, pay-as-you-go procedures would apply. The bill also would extend and expand the Assets for Independence Program that provides federal funds to encourage saving by low-income individuals. Assuming the appropriation of the specified amounts, CBO estimates that expansion would cost $119 million over the 2002–2006 period.

The Joint Committee on Taxation has reviewed the tax provisions (parts of title I) of H.R. 7 and determined that they contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO reviewed the remaining provisions of the bill and found that section 104 contains an intergovernmental mandate as defined in UMRA because it would preempt certain state liability laws. CBO estimates that complying with this mandate would result in no direct costs to state governments and thus, would not exceed the threshold established in that act ($56 million in 2001, adjusted annually for inflation). Title III of the bill also would establish new requirements and prohibitions on state and local governments as conditions of receiving federal assistance under numerous federal programs.

Estimated budgetary impact of H.R. 7 is shown in the following table. The cost of this legislation falls within budget function 500 (education, training, employment, and social services).

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION						
Spending for Individual Development Accounts Under Current Law:						
Authorization Level [1]	25	25	25	0	0	0
Outlays	9	17	23	24	13	4
Total Proposed Changes:						
Authorization Level	0	25	25	50	50	50
Outlays	0	1	12	23	37	46
Spending for Individual Development Accounts Under the Bill:						
Authorization Level [1]	25	50	50	50	50	50
Outlays	9	19	35	46	50	50
CHANGES IN REVENUES [2]						
Deduct some charitable contributions of individuals who do not itemize deductions	0	−40	−269	−316	−561	−573
Allow tax-free distributions from individual retirement accounts for charitable purposes	0	−143	−233	−245	−259	−253
Raise the cap on corporate charitable contributions	0	−28	−50	−52	−55	−41
Expand and increase the charitable deduction for contributions of food	0	−27	−46	−55	−61	−66
Modify excise tax to eliminate the 2-tier regime and impose 1% excise tax on net investment income	0	−118	−186	−195	−205	−215
Modify the unrelated business income tax for charitable remainder trusts	0	0	−5	−5	−5	−6
Modify the self-constructed property rule for certain charitable contributions	0	1	−1	−1	−1	−1
Modify the basis of S corporation stock for certain charitable contributions	0	−11	−26	−31	−35	−38
Total Changes in Revenues	0	−368	−816	−900	−1,182	−1,193

[1] The 2001 level is the amount appropriated for that year.
[2] All estimates of the revenue effects of H.R. 7 were provided to JCT.

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Basis of estimate: For this estimate, CBO assumes that H.R. 7 will be enacted by the end of fiscal year 2001 and that the authorized amounts will be appropriated for each year.

Spending subject to appropriations

Title II—Expansion of Charitable Choice. H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive federal funds for the provision of social services. It also would require that any governmental organization that contracts with a religious organization to provide social services guarantee that eligible individuals who object to a specific service provider on religious grounds be directed to a different provider of comparable services. Although in many areas the number of provisions would be sufficient to ensure that alternative providers would be available, very small communities might find it difficult to comply with these requirements. Although the requirement to find an alternate provider could increase federal costs in some cases by requiring the federal government to pay a portion of the costs of such alternate providers, CBO has been unable to obtain data to estimate any such costs. However, CBO does not anticipate that any resulting costs to the federal government would be substantial.

Title III—Individual Development Accounts. Title III would reauthorize the Individual Development Accounts (IDA) program, currently authorized at $25 million through 2003 under the Assets for Independence Act (Public Law 106–554). The IDA program provides matching funds to qualified low income individuals who save in order to encourage more savings. All deposits made by individuals and matching organizations in IDAs do not count toward the asset limits for federal means-tested benefits.

The bill would authorize $50 million for 2002 and extend the authorization through 2008. The program is funded at $25 million in 2001. Based on historical spending patterns, CBO estimates implementing this title would cost $119 million over the 2002–2006 period.

The bill also would increase the net worth test for an eligible household from a maximum of $10,000 to $20,000, and replace the $4,000 lifetime grant deposit limit for a household with an individual annual grant limit of $500.

It is possible that expanding the IDA program could allow certain people with assets to participate in means-tested programs who would otherwise be ineligible, but CBO estimates that would have an insignificant effect (less than $500,000 a year) on federal spending. While there are limited data on IDA participants, the available information indicates most participants would not deposit enough into their accounts to disqualify themselves from any federal means-tested program.

Revenues

H.R. 7 would allow taxpayers who do not itemize their deductions to deduct a limited amount of charitable contributions paid in cash. The deduction would phase in over time, and would be allowed in computing alternative minimum taxable income. In 2002 and 2003, a single taxpayer could deduct up to $25 and married taxpayers filing jointly could deduct up to $50, with the allowable deduction increasing to $100 for a single taxpayer or $200 for mar-

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ried taxpayers in 2010 and thereafter. The bill would allow taxpayers to exclude from their gross income otherwise-taxable withdrawals from individual retirement accounts (IRAs) if those withdrawals were made for certain charitable distributions, were made after the IRA owner attained the age 70½, and were made directly by the IRA trustee to certain entities. The bill also would increase the penalty on certain trusts for failure to file a return.

H.R. 7 would increase the percentage limitation on modified taxable income for corporate charitable deductions from 10 percent to 15 percent, and phase in that increase over time. The bill would allow all taxpayers to claim enhanced deductions for donations of food that meets certain quality standards. The bill also would replace two rates of tax based on net investment income for private foundations not exempt from tax with a single rate of tax of one percent. It also would apply a 100-percent excise tax to any unrelated business taxable income of a trust that is required to pay a certain percentage of the value of the trust to a noncharity (charitable remainder trust), make donated scientific property or computer technology and equipment that is assembled by a taxpayer eligible for either of two enhanced charitable deductions in excess of the cost of the property, and allow shareholders of certain corporations to update the basis they hold in stock to a present value amount in order to take into account the shareholders' portion of charitable contributions made by those corporations.

The Joint Committee on Taxation estimates that the revenue loss associated with this legislation would be $4.5 billion over the 2002–2006 period and more than $13 billion over the 2002–2011 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	Not applicable										
Changes in receipts [1]	0	−368	−816	−900	−1,182	−1,193	−1,281	−1,583	−1,705	−1,901	−2,367

[1] Estimate was provided by JCT.

Estimated impact on state, local, and tribal governments: The Joint Committee on Taxation (JCT) has reviewed the tax provisions of H.R. 7 and CBO has reviewed the remaining provisions of the bill for intergovernmental mandates.

MANDATES

JCT determined that the tax provisions of H.R. 7 (part of title I) contain no intergovernmental mandates as defined in UMRA. CBO has reviewed the remaining provisions of the bill and has determined that section 104 contains an intergovernmental mandate as defined in UMRA because it would preempt inconsistent or more stringent state liability laws that hold businesses civilly liable for injuries or death that result from the use of equipment, facilities, or vehicles donated or lent to nonprofit organizations or for tours of business facilities. This preemption would be an intergovern-

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mental mandate as defined in UMRA, but because the preemption is narrow and state governments could enact legislation to opt out, CBO estimates complying with this mandate would result in no direct costs. Thus, the threshold established in that act ($56 million in 2001, adjusted annually for inflation) would not be exceeded.

OTHER IMPACTS

Title II would establish new requirements and prohibitions on how state and local governments receive and use federal funds under numerous federal programs. Such programs include anything related to hunger relief activities, federal housing under the Community Development Block Grant Program, prevention of domestic violence under the Child Abuse Prevention and Treatment Act, and services for the elderly under the Older Americans Act. Specifically, title II would require state and local governments to consider religious organizations on the same basis as other organizations to provide assistance under programs carried out using federal funds.

The bill also would require that the appropriate government entity notify applicants and recipients about provider options and provide, in a timely manner, an equivalent alternative from a nonreligious provider if a recipient objects to receiving services from a religious provider. In addition, state and local governments that discriminate on the basis of religion in selecting service providers could be sued for injunctive relief. All of those requirements are conditions of federal assistance, and therefore, are not mandates under UMRA. However, those requirements could increase state and local costs to administer numerous federal programs. In particular, some small communities could find it difficult or costly to comply with the alternate provider requirements. CBO does not have sufficient information to estimate for aggregate costs nationwide.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 11, 2001, CBO transmitted a cost estimate for H.R. 7, the Community Solutions Act of 2001, as ordered reported by the House Committee on the Judiciary on June 28, 2001. That bill included somewhat different provisions related to tax changes and individual development accounts.

The House Judiciary Committee's version of H.R. 7 would allow taxpayers to deduct charitable contributions up to the amount of the standard deduction. The bill included slightly different provisions relating to tax-free distributions from individual retirement accounts and charitable deductions for contributions on food. In addition, it included a tax credit for financial institutions running individual development account programs, rather than a grant program to encourage such accounts. The Joint Committee on Taxation estimates that the revenue loss associated with those changes would be almost $50 billion over the 2002–2006 period and more than $120 billion over the 2002–2011 period.

While this version of H.R. 7 differs from the version ordered reported by the House Judiciary Committee, CBO's estimate of the costs to state and local governments is the same for both versions.

Estimate prepared by: Federal Spending: Sheila Dacey, Donna Wong, and Geoff Gerhardt; Federal Revenues: Erin Whitaker; Im-

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pact on State, Local, and Tribal Governments: Shelly Finlayson; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis Division.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on individual taxpayers and the tax rules relating to charitable giving and the impact of these rules on charitable organizations that the Committee concluded that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of that part of this legislation that authorizes funding (i.e., individual development accounts) are to encourage savings of certain lower-income individuals.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

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F. Tax Complexity Analysis

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and the Treasury Department regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

Charitable deduction for nonitemizers (sec. 101 of the bill)

Summary description of provision

The provision permits an individual taxpayer who does not itemize deductions to take a deduction for charitable contributions paid in cash. The deduction is allowed in addition to the standard deduction and is calculated as the lesser of (1) the amount allowable to itemizers as a charitable deduction for cash contributions and (2) an applicable amount. The applicable amount is $25 ($50 in the case of a joint return) in 2002 and 2003, $50 ($100 in the case of a joint return) in 2004 through 2006, $75 ($150 in the case of a joint return) in 2007 through 2009, and $100 ($200 in the case of a joint return) in 2010 and thereafter.

Number of affected taxpayers

It is estimated that the provision will affect approximately 43 million individual tax returns.

Discussion

Individuals who do not itemize their deductions will need to keep additional records (e.g., canceled checks, a receipt from the donee organization, or other reliable written records) in order to substantiate that a contribution was made to a qualified charitable organization. The information necessary to implement the provision should be readily available to taxpayers (in the form of new tax return forms and instructions). The nonitemizer charitable contribution deduction is expected to require an additional line on the individual income tax return forms. The provision might result in an increase in disputes with the IRS for taxpayers who are unable to substantiate a claimed deduction. Additional regulatory guidance will not be necessary to implement this provision. Any increase in tax preparation costs is expected be negligible.

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DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, July 13, 2001.

Ms. LINDY L. PAULL,
Chief of Staff, Joint Committee on Taxation,
Washignton, DC

DEAR MS. PAULL: Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department on the provisions from the House Committee on Ways and Means markup of the "Community Solutions Act of 2001" that you identified for complexity analysis in your letter of July 10, 2001. Our comments are based on the description of those provisions in JCX–58–01, Joint Committee on Taxation, description of an Amendment in the Nature of a Substitute to H.R. 7, July 10, 2001, and the statutory language for the substitute published in the Daily Tax Report on July 12, 2001.

Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provisions.

Sincerely,

CHARLES O. ROSSOTTI.

Enclosure.

COMPLEXITY ANALYSIS OF COMMUNITY SOLUTIONS ACT OF 2001

CHARITABLE DEDUCTION FOR NON-ITEMIZERS

Provision: Individuals who do not itemize deductions would be allowed a deduction from adjusted gross income for charitable contributions paid in cash. This deduction would be in addition to the standard deduction and would be calculated as the lesser of (i) the amount allowable to itemizers as a charitable deduction for cash contributions and (ii) an applicable amount. The applicable amount would be $25 ($50 in the case of a joint return) in 2002 and 2003, $50 ($100 in the case of a joint return) in 2004 through 2006, $75 ($150 in the case of a joint return) in 2007 through 2009, and $100 ($200 in the case of a joint return) in 2010 and thereafter. The deduction would be allowed in computing alternative minimum taxable income. The provision would be effective for taxable years beginning after December 31, 2001.

IRS and Treasury Comments

- Two lines would have to be added to Forms 1040, 1040A, 1040EZ, 1040NR, and 1040NR–EZ and to the TeleFile tax Record beginning in 2002—one for entering the new deduction, the second for subtracting the new deduction to derive the subtotal. All taxpayers, including those who itemize and those who have no charitable deductions for the year, would need to make an entry on the subtotal line. No new forms would be required.
- The deduction would have to be reflected on Forms 1040–ES and 6251 for 2002. The Form 1040–ES instruc-

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tions for 2004, 2007, and 2010 would have to be modified to reflect the phase-in of the deduction amount.

• Information necessary for taxpayers to determine their eligibility for the deduction would have to be reflected in the instructions for Forms 1040, 1040A, 1040EZ, 1040NR, and 1040NR–EZ and for TeleFile beginning in 2002. The Instructions for 2004, 2007, and 2010 forms would have to be revised to reflect the phase-in of the deduction.

• Programming changes would be required to reflect the new deduction and the phase-in of the amount of the deduction. Currently, IRS tax computation programs are updated annually to incorporate mandated inflation adjustments. Programming changes necessitated by this provision would be included during that process.

• The TeleFile script would have to be expanded to accommodate the deduction, thereby increasing the time needed to file by TeleFile.

• Ensuring compliance with the direct charitable deduction would be difficult. The only means of verifying amounts deducted would be through examination, which is not practical because of the small amounts involved.

G. Committee Correspondence

Committee on Education and the Workforce,
House of Representatives,
Washington, DC, July 12, 2001.

Hon. William M. Thomas,
Chairman, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

Dear Chairman Thomas: Thank you for working with me regarding H.R. 7, the Community Solutions Act of 2001, which was referred to the Committee on Ways and Means and in addition the Committee on the Judiciary. As you know, the Committee on Education and the Workforce holds a jurisdictional interest in this legislation and I appreciate your acknowledgement of that jurisdictional interest. While the bill would be sequentially referred to the Education and the Workforce Committee, I understand the desire to have this legislation considered expeditiously by the House; hence, I do not intend to hold a hearing or markup on this legislation.

In agreeing to waive consideration by our Committee, I would expect you to agree that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on this or any similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. I would also expect your support in my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my Committee should a conference with the Senate be convened on this or similar legislation.

Again, thank you for your letter. I would appreciate your including our exchange of letters in your Committee's report to accompany H.R. 7. Again, I thank you for working with me in developing

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this legislation and I look forward to working with you on these issues in the future.

Sincerely,

JOHN BOEHNER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 12, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OXLEY: Thank you for your letter regarding H.R. 7, the "Community Solutions Act of 2001."

As you have noted, the Committee on Ways and Means has ordered favorably reported H.R. 7, the "Community Solutions Act of 2001." I appreciate your agreement to expedite the passage of this legislation despite affecting programs within the jurisdiction of the Committee on Financial Services. I acknowledge your decision to forego further action on the bill was based on our mutual understanding that it will not prejudice the Committee on Financial Services with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

Finally, I will include in the Congressional Record a copy of our exchange of letters on this matter. Thank you for your assistance and cooperation. We look forward to working with you in the future.

Sincerely,

BILL THOMAS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, July 11, 2001.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means,
Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN, THOMAS: I understand that the Committee on Ways of Means recently ordered reported H.R. 7, the Community Solutions Act of 2001. As you know, the legislation contains provisions relating to community development block grants (CDBGs) and other programs under the Nation's housing laws which fall within the jurisdiction of the Committee on Financial Services pursuant to clause 1(g) of rule X of the Rules of the House of Representatives.

Because of your willingness to consult with the Committee on Financial Services regarding this matter and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 7. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's

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jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 7 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

MICHAEL G. OXLEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 16, 2001.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BOEHNER: Thank you for your letter regarding H.R. 7, the "Community Solutions Act of 2001."

As you have noted, the Committee on Ways and Means has ordered favorably reported H.R. 7, the "Community Solutions Act of 2001." I appreciate your agreement to expedite the passage of this legislation despite affecting programs within the jurisdiction of Committee on Education and the Workforce. I acknowledge your decision to forego further action on the bill was based on the understanding that it will not prejudice the Committee on Education and the Workforce with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

Finally, I will include in the Congressional Record a copy of our exchange of letters on this matter. Thank you for your assistance and cooperation. We look forward to working with you in the future.

Best regards,

BILL THOMAS,
Chairman.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by that portion of the bill within the jurisdiction of the Committee on the Judiciary, as reported, are shown in part 1 of this report and changes in existing law made by that portion of the bill within the jurisdiction of the Committee on Ways and Means, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

* * * * * * *

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

* * * * * * *

SEC. 63. TAXABLE INCOME DEFINED.

(a) * * *

(b) INDIVIDUALS WHO DO NOT ITEMIZE THEIR DEDUCTIONS.—In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus—

(1) the standard deduction, **[**and**]**

(2) the deduction for personal exemptions provided in section 151**[**.**]**, *and*

(3) the direct charitable deduction.

* * * * * * *

(d) ITEMIZED DEDUCTIONS.—For purposes of this subtitle, the term "itemized deductions" means the deductions allowable under this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, **[**and**]**

(2) the deduction for personal exemptions provided by section 151**[**.**]**, *and*

(3) the direct charitable deduction.

* * * * * * *

(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term "direct charitable deduction" means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).

[(g)**]** *(h)* MARITAL STATUS.—For purposes of this section, marital status shall be determined under section 7703.

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) * * *

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(b) PERCENTAGE LIMITATIONS.—

(1) * * *

(2) CORPORATIONS.—In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed [10 percent] *the applicable percentage* of the taxpayer's taxable income computed without regard to—

(A) * * *

* * * * * * *

(3) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

For taxable years beginning in calendar year—	***The applicable percentage is—***
2002 through 2007	*11*
2008	*12*
2009	*13*
2010 and thereafter	*15.*

* * * * * * *

(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

(A) * * *

* * * * * * *

(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

(i) GENERAL RULE.—In the case of a charitable contribution of food, this paragraph shall be applied—

(I) without regard to whether the contribution is made by a C corporation, and

(II) only for food that is apparently wholesome food.

(ii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

(iii) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term "apparently wholesome food" shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

[(C)] *(D)* This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

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(4) SPECIAL RULE FOR CONTRIBUTIONS OF SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(A) * * *

(B) QUALIFIED RESEARCH CONTRIBUTIONS.—For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) * * *

(ii) the property is constructed *or assembled* by the taxpayer,

* * * * * * *

(6) SPECIAL RULE FOR CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—

(A) * * *

(B) QUALIFIED COMPUTER CONTRIBUTION.—For purposes of this paragraph, the term "qualified computer contribution" means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) * * *

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed *or assembled* by the taxpayer, the date the construction *or assembling* of the property is substantially completed),

* * * * * * *

(D) DONATIONS OF PROPERTY REACQUIRED BY MANUFACTURER.—In the case of property which is reacquired by the person who constructed *or assembled* the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction *or assembling* of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

* * * * * * *

(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—

(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

(B) the applicable amount.

(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined as follows:

For taxable years beginning in:	***The applicable amount is:***
2002 and 2003	*$25*
2004, 2005, 2006	*$50*
2007, 2008, 2009	*$75*
2010 and thereafter	*$100.*

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In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.

[(m)] *(n)* OTHER CROSS REFERENCES.—

(1) * * *

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General Rule

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) * * *

* * * * * * *

(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement account—

(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

(ii) which is made directly by the trustee—

(I) to an organization described in section 170(c), or

(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable

under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

(i) CHARITABLE REMAINDER TRUSTS.—Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term "split-interest entity" means—

(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

(ii) a pooled income fund (as defined in section 642(c)(5)), and

(iii) a charitable gift annuity (as defined in section 501(m)(5)).

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

* * * * * * *

SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a) are the following:

(1) * * *

* * * * * * *

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed [10 percent] *the applicable percentage (determined under section 170(b)(3))* of the unrelated business taxable income computed without the benefit of this paragraph.

* * * * * * *

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

* * * * * * *

PART II—PERSONAL HOLDING COMPANIES

* * * * * * *

SEC. 545. UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME.

(a) * * *

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) * * *

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the [10-percent limitation] *applicable percentage limitation*) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

* * * * * * *

PART III—FOREIGN PERSONAL HOLDING COMPANIES

* * * * * * *

SEC. 556. UNDISTRIBUTED FOREIGN PERSONAL HOLDING COMPANY INCOME.

(a) * * *

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

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(1) * * *

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the [10-percent limitation] *applicable percentage limitation*) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

* * * * * * *

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

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PART I—ESTATES, TRUSTS, AND BENEFICIARIES

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Subpart C—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

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SEC. 664. CHARITABLE REMAINDER TRUSTS.

(a) * * *

* * * * * * *

[(c) EXEMPTION FROM INCOME TAXES.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).]

(c) TAXATION OF TRUSTS.—

(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

(2) EXCISE TAX.—

(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

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(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

(i) subsection (b),

(ii) determining the value of trust assets under subsection (d)(2), and

(iii) determining income under subsection (d)(3).

(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.

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Subchapter L—Insurance Companies

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PART I—LIFE INSURANCE COMPANIES

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Subpart C—Life Insurance Deductions

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SEC. 805. GENERAL DEDUCTIONS.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a)(8) are as follows:

(1) * * *

(2) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be [10 percent] *the applicable percentage (determined under section 170(b)(3))* of the life insurance company taxable income computed without regard to—

(i) * * *

* * * * * * *

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

* * * * * * *

PART II—TAX TREATMENT OF SHAREHOLDERS

* * * * * * *

SEC. 1367. ADJUSTMENTS TO BASIS OF STOCK OF SHAREHOLDERS, ETC.

(a) GENERAL RULE.—

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(1) INCREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), [and]

(C) the excess of the deductions for depletion over the basis of the property subject to depletion[.], *and*

(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 42—PRIVATE FOUNDATIONS AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

* * * * * * *

Subchapter A—Private Foundations

* * * * * * *

SEC. 4940. EXCISE TAX BASED ON INVESTMENT INCOME.

(a) TAX-EXEMPT FOUNDATIONS.—There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to [2] *1* percent of the net investment income of such foundation for the taxable year.

* * * * * * *

[(e) REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—

[(1) IN GENERAL.—In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

[(2) REQUIREMENTS.—A private foundation meets the requirements of this paragraph for any taxable year if—

[(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

[(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

[(ii) 1 percent of the net investment income of such foundation for such taxable year, and

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[(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

[(3) AVERAGE PERCENTAGE PAYOUT FOR BASE PERIOD.—For purposes of this subsection—

[(A) IN GENERAL.—The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

[(B) PERCENTAGE PAYOUT.—The term "percentage payout" means, with respect to any taxable year, the percentage determined by dividing—

[(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

[(ii) the assets of the private foundation for the taxable year.

[(C) SPECIAL RULE WHERE TAX REDUCED UNDER THIS SUBSECTION.—For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

[(4) BASE PERIOD.—For purposes of this subsection—

[(A) IN GENERAL.—The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

[(B) NEW PRIVATE FOUNDATIONS, ETC.—If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

[(5) OTHER DEFINITIONS.—For purposes of this subsection—

[(A) QUALIFYING DISTRIBUTION.—The term "qualifying distribution" has the meaning given such term by section 4942(g).

[(B) ASSETS.—The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

[(6) TREATMENT OF SUCCESSOR ORGANIZATIONS, ETC.—In the case of—

[(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

[(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.]

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Subtitle F—Procedures and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

* * * * * * *

[SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(A)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(C).

[(a) GENERAL RULE.—Every trust described in section 4947(a)(2) or claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

[(1) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

[(2) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

[(3) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

[(4) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

[(5) the total income of the trust within such year and the expenses attributable thereto, and

[(6) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

[(b) EXCEPTIONS.—This section shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. This section shall not apply in the case of a trust described in section 4947(a)(1).

[(c) CROSS REFERENCE.—

[For provisions relating to penalties for failure to file a return required by this section, see section 6652(c).]

SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

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(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

(E) the total income of the trust within such year and the expenses attributable thereto, and

(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust described in section 4947(a)(1).

* * * * * * *

Subchapter B—Miscellaneous Provisions

* * * * * * *

SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) * * *

(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—The information required to be furnished by sections 6012(a)(6), 6033, 6034, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information. In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization. *In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).*

* * * * * * *

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

* * * * * * *

Subchapter A—Additions to the Tax and Additional Amounts

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) * * *

* * * * * * *

(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

(1) * * *

(2) RETURNS UNDER SECTION 6034 OR 6043(b).—

(A) * * *

* * * * * * *

(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting "$100" for "$20", and the second sentence thereof shall be applied by substituting "$50,000" for "$10,000", and

(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.

* * * * * * *

ASSETS FOR INDEPENDENCE ACT

* * * * * * *

SEC. 403. PURPOSES.

The purposes of this title are to provide for the establishment of [demonstration] projects designed to determine—

(1) the social, civic, psychological, and economic effects of providing to individuals and families with limited means an in-

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centive to accumulate assets by saving a portion of their earned income;

(2) the extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

(3) the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

SEC. 404. DEFINITIONS.

In this title:

(1) * * *

* * * * * * *

(2) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual who is selected to participate in a [demonstration] project by a qualified entity under section 409.

* * * * * * *

(7) QUALIFIED ENTITY.—

(A) IN GENERAL.—The term "qualified entity" means—

(i) * * *

* * * * * * *

(iii) an entity that—

(I) is—

[(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or]

(aa) a federally insured credit union; or

* * * * * * *

SEC. 405. APPLICATIONS.

(a) ANNOUNCEMENT OF [DEMONSTRATION] PROJECTS.—Not later than 3 months after the date of enactment of this title, the Secretary shall publicly announce the availability of funding under this title for [demonstration] projects and shall ensure that applications to conduct the [demonstration] projects are widely available to qualified entities.

(b) SUBMISSION.—Not later than 6 months after the date of enactment of this title, a qualified entity may submit to the Secretary an application to conduct a [demonstration] project under this title.

(c) CRITERIA.—In considering whether to approve an application to conduct a [demonstration] project under this title, the Secretary shall assess the following:

(1) * * *

* * * * * * *

(d) PREFERENCES.—In considering an application to conduct a [demonstration] project under this title, the Secretary shall give preference to an application that—

(1) * * *

* * * * * * *

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(e) APPROVAL.—Not later than 9 months after the date of enactment of this title, the Secretary shall, on a competitive basis, approve such applications to conduct [demonstration] projects under this title as the Secretary considers to be appropriate, taking into account the assessments required by subsections (c) and (d). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (both rural and urban) and diverse populations.

* * * * * * *

(g) GRANDFATHERING OF EXISTING STATEWIDE PROGRAMS.—Any statewide individual asset-building program that is carried out in a manner consistent with the purposes of this title, that is established under State law as of the date of enactment of this Act, and that as of such date is operating with an annual State appropriation of not less than $1,000,000 in non-Federal funds, shall be deemed to meet the eligibility requirements of this subtitle, and the entity carrying out the program shall be deemed to be a qualified entity. The Secretary shall consider funding the statewide program as a [demonstration] project described in this subtitle. In considering the statewide program for funding, the Secretary shall review an application submitted by the entity carrying out such statewide program under this section, notwithstanding the preference requirements listed in subsection (d). Any program requirements under sections 407 through 411 that are inconsistent with State statutory requirements in effect on the date of enactment of this Act, governing such statewide program, shall not apply to the program.

SEC. 406. [DEMONSTRATION] AUTHORITY; ANNUAL GRANTS.

(a) [DEMONSTRATION] AUTHORITY.—If the Secretary approves an application to conduct a [demonstration] project under this title, the Secretary shall, not later than 10 months after the date of enactment of this title, authorize the applicant to conduct the project for 5 project years in accordance with the approved application and the requirements of this title.

(b) GRANT AUTHORITY.—For each project year of a [demonstration] project conducted under this title, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

(1) * * *

* * * * * * *

SEC. 407. RESERVE FUND.

(a) * * *

(b) AMOUNTS IN RESERVE FUND.—

(1) IN GENERAL.—As soon after receipt as is practicable, a qualified entity shall deposit in the Reserve Fund established under subsection (a)—

(A) all funds provided to the qualified entity from any public or private source in connection with the [demonstration] project; and

* * * * * * *

(c) USE OF AMOUNTS IN THE RESERVE FUND.—

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(1) IN GENERAL.—A qualified entity shall use the amounts in the Reserve Fund established under subsection (a) to—

(A) assist participants in the [demonstration] project in obtaining the skills (including economic literacy, budgeting, credit, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses;

(B) provide deposits in accordance with section 410 for individuals selected by the qualified entity to participate in the [demonstration] project;

(C) administer the [demonstration] project; and

(D) provide the research organization evaluating the [demonstration] project under section 414 with such information with respect to the [demonstration] project as may be required for the evaluation.

* * * * * * *

(d) UNUSED FEDERAL GRANT FUNDS TRANSFERRED TO THE SECRETARY WHEN PROJECT TERMINATES.—Notwithstanding subsection (c), upon the termination of any [demonstration] project authorized under this section, the qualified entity conducting the project shall transfer to the Secretary an amount equal to—

(1) * * *

* * * * * * *

SEC. 408. ELIGIBILITY FOR PARTICIPATION.

(a) IN GENERAL.—Any individual who is a member of a household that is eligible for assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or that meets each of the following requirements shall be eligible to participate in a [demonstration] project conducted under this title:

(1) * * *

(2) NET WORTH TEST.—

(A) IN GENERAL.—The net worth of the household, as of the end of the calendar year preceding the determination of eligibility, does not exceed [$10,000] *$20,000*.

* * * * * * *

(b) INDIVIDUALS UNABLE TO COMPLETE THE PROJECT.—The Secretary shall establish such regulations as are necessary to ensure compliance with this title if an individual participating in the [demonstration] project moves from the community in which the project is conducted or is otherwise unable to continue participating in that project, including regulations prohibiting future eligibility to participate in any other [demonstration] project conducted under this title.

SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.

From among the individuals eligible to participate in a [demonstration] project conducted under this title, each qualified entity shall select the individuals—

(1) that the qualified entity determines to be best suited to participate; and

(2) to whom the qualified entity will provide deposits in accordance with section 410.

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SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.

(a) * * *

* * * * * * *

[(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.

[(c) LIMITATION ON DEPOSITS FOR A HOUSEHOLD.—Not more than $4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.]

(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $500 from a grant made under section 406(b) shall be provided per year to any one individual during the project.

[(d)] *(c)* WITHDRAWAL OF FUNDS.—The Secretary shall establish such guidelines as may be necessary to ensure that funds held in an individual development account are not withdrawn, except for one or more qualified expenses, or for an emergency withdrawal. Such guidelines shall include a requirement that a responsible official of the qualified entity conducting a project approve a withdrawal from such an account in writing. The guidelines shall provide that no individual may withdraw funds from an individual development account earlier than 6 months after the date on which the individual first deposits funds in the account.

[(e)] *(d)* REIMBURSEMENT.—An individual shall reimburse an individual development account for any funds withdrawn from the account for an emergency withdrawal, not later than 12 months after the date of the withdrawal. If the individual fails to make the reimbursement, the qualified entity administering the account shall transfer the funds deposited into the account or a parallel account under this section to the Reserve Fund of the qualified entity, and use the funds to benefit other individuals participating in the [demonstration] project involved.

SEC. 411. LOCAL CONTROL OVER [DEMONSTRATION] PROJECTS.

A qualified entity under this title, other than a State or local government agency or a tribal government, shall, subject to the provisions of section 413, have sole authority over the administration of the project. The Secretary may prescribe only such regulations or guidelines with respect to [demonstration] projects conducted under this title as are necessary to ensure compliance with the approved applications and the requirements of this title.

SEC. 412. ANNUAL PROGRESS REPORTS.

(a) IN GENERAL.—Each qualified entity under this title shall prepare an annual report on the progress of the [demonstration] project. Each report shall include both program and participant information and shall specify for the period covered by the report the following information:

(1) * * *

* * * * * * *

(6) The savings account characteristics (such as threshold amounts and match rates) required to stimulate participation in the [demonstration] project, and how such characteristics vary among different populations or communities.

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(7) What service configurations of the qualified entity (such as configurations relating to peer support, structured planning exercises, mentoring, and case management) increased the rate and consistency of participation in the [demonstration] project and how such configurations varied among different populations or communities.

(8) Such other information as the Secretary may require to evaluate the [demonstration] project.

(b) SUBMISSION OF REPORTS.—The qualified entity shall submit each report required to be prepared under subsection (a) to—

(1) the Secretary; and

(2) the Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the [demonstration] project.

(c) TIMING.—The first report required by subsection (a) shall be submitted not later than 60 days after the end of the project year in which the Secretary authorized the qualified entity to conduct the [demonstration] project, and subsequent reports shall be submitted every 12 months thereafter, until the conclusion of the project.

SEC. 413. SANCTIONS.

(a) AUTHORITY TO TERMINATE [DEMONSTRATION] PROJECT.—If the Secretary determines that a qualified entity under this title is not operating a [demonstration] project in accordance with the entity's approved application under section 405 or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity's authority to conduct the [demonstration] project.

(b) ACTIONS REQUIRED UPON TERMINATION.—If the Secretary terminates the authority to conduct a [demonstration] project, the Secretary—

(1) shall suspend the [demonstration] project;

(2) shall take control of the Reserve Fund established pursuant to section 407;

(3) shall make every effort to identify another qualified entity (or entities) willing and able to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

(4) shall, if the Secretary identifies an entity (or entities) described in paragraph (3)—

(A) * * *

* * * * * * *

(C) consider, for purposes of this title—

(i) such other entity (or entities) to be the qualified entity (or entities) originally authorized to conduct the [demonstration] project; and

* * * * * * *

SEC. 414. EVALUATIONS.

(a) IN GENERAL.—Not later than 10 months after the date of enactment of this title, the Secretary shall enter into a contract with an independent research organization to evaluate the [demonstra-

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tion] projects conducted under this title, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the [demonstration] projects conducted under this title.

(b) FACTORS TO EVALUATE.—In evaluating any [demonstration] project conducted under this title, the research organization shall address the following factors:

(1) The effects of incentives and organizational or institutional support on savings behavior in the [demonstration] project.

(2) The savings rates of individuals in the [demonstration] project based on demographic characteristics including gender, age, family size, race or ethnic background, and income.

* * * * * * *

(6) The lessons to be learned from the [demonstration] projects conducted under this title and if a permanent program of individual development accounts should be established.

* * * * * * *

(c) METHODOLOGICAL REQUIREMENTS.—In evaluating any [demonstration] project conducted under this title, the research organization shall—

* * * * * * *

(d) REPORTS BY THE SECRETARY.—

(1) INTERIM REPORTS.—Not later than 90 days after the end of the project year in which the Secretary first authorizes a qualified entity to conduct a [demonstration] project under this title, and every 12 months thereafter until all [demonstration] projects conducted under this title are completed, the Secretary shall submit to Congress an interim report setting forth the results of the reports submitted pursuant to section 412(b).

(2) FINAL REPORTS.—Not later than 12 months after the conclusion of all [demonstration] projects conducted under this title, the Secretary shall submit to Congress a final report setting forth the results and findings of all reports and evaluations conducted pursuant to this title.

* * * * * * *

SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title, $25,000,000 for each of fiscal years 1999, 2000, [2001, 2002, and 2003] *and 2001, and $50,000,000 for each of fiscal years 2002 through 2008*, to remain available until expended.

* * * * * * *

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VII. DISSENTING VIEWS

We support appropriate and meaningful tax incentives for charitable giving. We regret that earlier this year the Congressional Republican Leadership and the Bush Administration decided to enact a large tax reduction that reserved no resources for bipartisan tax priorities such as charitable giving incentives, energy tax provisions, extensions of expiring provisions, minimum tax relief and other priorities of the American people. The priorities of the Congressional Republican Leadership and the Bush Administration were different. They insisted on enacting tax legislation that puts the Medicare and Social Security surpluses at risk and that disproportionately benefits the wealthiest in our society.

As a result of the Bush tax cut, Congressional supporters of provisions such as charitable giving tax incentives face a difficult choice. They can choose to offset the cost of those incentives with other provisions, or they can place the Medicare and Social Security surpluses at risk to fund those benefits.

Congressman Rangel offered an amendment during the markup that would have offset the cost of the charitable giving tax incentives contained in the Committee's bill. The amendment would have reduced slightly the recently enacted reduction in the top marginal income tax rate, a rate that applies only to the wealthiest seven-tenths of one percent of individuals. Even with that amendment, those individuals still would receive a 4.1 percentage point reduction in their marginal rate, a larger marginal rate reduction than provided to most other individuals. Committee Republican rejected the amendment because, like earlier this year, they have different priorities.

Without Congressman Rangel's amendment, we believe that there is a substantial certainty that the tax reductions contained in the Committee bill will be funded, in part by raiding the Medicare and possibly the Social Security Trust Funds. As a result, we can not support the Committee bill.

Reflecting the Republican skittishness over the issue of raiding the Medicare Trust Fund, during the markup Chairman Thomas released a letter written by Congressman Nussle, the Chairman of the Budget Committee. The letter attempts to give comfort to the Republican members of the Committee. It states "on the basis of estimates released in May on the state of the economy, I am pleased to advise you that this bill, in its present form, will not effect the Medicare Hospital Trust Fund in fiscal year 2002." It goes on to state that there will be a surplus of $12.3 billion in fiscal 2002 outside the Medicare and Social Security Trust Funds.

We would suggest that Congressman Nussle's letter should give no comfort to his Republican colleagues for the following reasons.

1. Congressman Nussle only was willing to claim that the Medicare Trust Fund would not be raided in fiscal year 2002. The fact

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that he failed to make that assertion for any other fiscal year speaks for itself.

2. Congressman Nussle's assertion that there will be a $12.3 billion surplus in fiscal year 2002 after protecting the Medicare Trust Fund is dubious for reasons discussed below. However, there would be absolutely no basis for that assertion if the Bush tax cut had not raided the Medicare Trust Fund in the current fiscal year (FY 2001) in an attempt to avoid a raid in fiscal year 2002.

The Bush tax cut contained a gimmick that shifted $32 billion in corporate estimated tax receipts from fiscal year 2001 to 2002. Without that shift in receipts, even under Congressman Nussle's analysis, there would have been a $20 billion raid on Medicare next year.

As a result of that gimmick, there will be at least a $20 billion raid on Medicare in the current fiscal year according to recent testimony of Mitchell Daniels, Director of the Office of Management and Budget. Indeed, according to his testimony, a raid on the Social Security Trust Fund in fiscal year 2001 will be avoided by only a very small amount.

Raiding Medicare in 2001 in a desperate attempt to avoid a raid in 2002 may give comfort to the Republicans, but it gives on comfort to us.

3. The assertion that there will be a $12 billion surplus next fiscal year outside of the Medicare system ignores the recent Administration request for $18.4 billion in additional defense spending for that year. Secretary Rumsfeld testified before the Senate Armed Services Committee that the extra $18.4 billion for fiscal 2002 would not be a one time request. He said that another $18 billion would be "needed" for fiscal year 2003 on top of continuing the $18.4 billion increase in fiscal 2002 just to stay even. None of those amounts would advance the defense modernization effort the Administration has promised.

4. The economic projections have deteriorated dramatically since the CBO May analysis relief on by Congressman Nussle in his letter. Lawrence B. Lindsey, the Director of the White House National Economic Council, and OMB Director Daniels both recently have indicated that there will be shortfall in tax receipts. They are not alone in suggesting the potential for unpleasant budget surprises from the current economic slowdown. William Dudley, Goldman-Sachs Research Director, has been quoted as stating that revenues would be as much as $75 billion below expectations, forcing a raid on the Medicare Trust Fund to balance this year's budget and putting next year's budget in the red if the downturn persists.

The economy has not weakened significantly since the May CBO projection, but the budget projections have. One has the impression that the tax bill was enacted with reckless haste in order to take advantage of the temporarily favorable budget projections.

Congresswoman Karen Thurman offered an amendment in Committee that would have made the Committee bill contingent on the availability of surpluses outside the Medicare and social Security systems. If the Republican members of the Committee believed Congressman Nussle's letter, they could have supported Mrs. Thurman's amendment without endangering the tax incentives for char-

REV_00129568

itable giving. They voted no, an action that speaks louder than Congressman Nussle's letter.

We would have opposed the Committee bill because of the potential for raiding the Medicare Trust Fund even it had provided significant and meaningful tax incentives for charitable giving. However, the Committee bill does not accomplish its intended goal increasing charitable giving. Therefore, it is very easy for us to oppose it.

The Committee contains two provisions designed to encourage charitable giving by individuals, an above-the-line charitable deduction for nonitemizers and a provision permitting individual retirement account assets to be used for charitable purposes. The second provision will provide incentives only to a very narrow class of individuals, namely individuals who are over age 70 and have accumulations in individual retirement accounts not needed for retirement income.

The bill pretends to provide incentives for charitable giving by individuals who do not itemize their deductions. It does so by providing a deduction for charitable contributions in addition to the standard deduction. However, the size of the new deduction is so small (initially $25 for single individuals, $50 for married couples) that the provision will create no significant incentive for additional charitable contributions. During the markup the staff of the Joint Committee on Taxation made it clear that the new deduction would complicate the individual tax return and that there was little prospect that the Internal Revenue Service could effectively audit the new provision. One has the strong impression that the Committee bill is equivalent to a small increase in the standard deduction and it will result in little, if any, additional charitable contributions.

During markup, Democrats asked how this new tax cut—following last month's $1.35 trillion tax cut—would fit into a budget that would protect Social Security and Medicare, accommodate the policies in the Budget Resolution, and accommodate the President's new June defense spending request. Chairman Thomas explained that the ways and Means Committee should press ahead with a new tax cut because the Congressional budget process was a race. If other Committees weren't as quickly reporting legislation to use up budget surpluses, that was their problem.

Democrats do not agree with Chairman Thomas, nor we expect, do his Republican colleagues on the Appropriations and other Committees who do not agree that their priorities should be crowded out by Mr. Thomas's rush to report more tax cuts.

The purpose of the Congressional Budget is to have a sensible plan, not a race among Committees to use up budget surpluses. Formally, the Congressional Budget makes allocations among Committees and sets targets for revenues that are separate from spending limits. However, Chairman Thomas may be correct about how the Republican majority actually will administer the congressional Budget process. If so, his remarks validate earlier criticism from Democrats that Republican Congressional budgets have been publicity documents that are not enforced. In recent years, this Committee has been used to pump out one tax-cut bill after another no matter how large the cumulative total, and the Majority has voted overwhelmingly appropriations bills that busted their own budgets.

REV_00129569

CHARLES B. RANGEL.
PETE STARK.
KAREN L. THURMAN.
WILLIAM J. COYNE.
RICHARD E. NEAL.
JIM MCDERMOTT.
XAVIER BECERRA.
WM. J. JEFFERSON.
JOHN LEWIS.
JERRY KLECZKA.
BEN CARDIN.
JOHN TANNER.
ROBERT T. MATSUI.
LLOYD DOGGETT.
MICHAEL R. MCNULTY.
SANDER M. LEVIN.
EARL POMEROY.

○

REV_00129570

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 7/17/2001 11:21:55 AM
Subject: : Re: Photo

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JUL-2001 15:21:55.00
SUBJECT:: Re: Photo
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thank you!

Allison L. Riepenhoff
07/17/2001 03:21:17 PM
Record Type: Record

To: Eric A. Draper/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Photo

Eric-
Sorry to bother you on this again, but what is the best way to get this picture for Brett Kavanaugh? He is in the OEOB, Room 128. Thanks.

-Allison
---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 07/17/2001 03:15 PM ----------

Allison L. Riepenhoff
06/20/2001 06:06:55 PM
Record Type: Record

To: Eric A. Draper/WHO/EOP@EOP
cc:
Subject: Photo

Eric-
Sorry to bother you again. Can I get the same picture for an Associate Counsel? Also, I was told it is possible to get these pictures in 8.5x11 size. How do I go about getting them in this size? Thanks.
-Allison
---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 06/20/2001 06:05 PM ----------

Allison L. Riepenhoff
05/30/2001 06:27:55 PM
Record Type: Record

To: Eric A. Draper/WHO/EOP@EOP
cc:
Subject: Photo

Eric-

Judge Gonzales gave me your number to call regarding the photograph of POTUS in the Oval Office seated at his desk, with his father standing beside him. Tim Flanigan (Deputy Counsel to the Pres.) would also like one of these. How can I go about arranging this? Also, are smaller copies of this picture available? Thank you for your help!

Allison x66627

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 7/17/2001 11:28:04 AM
Subject: : FYI, HR 7 text - version full House is expected to consider
Attachments: P_1NVU2004_WHO.TXT_1.txt

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JUL-2001 15:28:04.00
SUBJECT:: FYI, HR 7 text - version full House is expected to consider
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/17/2001 03:28 PM ----------

From: Karen N. Blank on 07/17/2001 02:41:17 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: James J. Jukes/OMB/EOP@EOP, Ingrid M. Schroeder/OMB/EOP, Richard E. Green/OMB/EOP@EOP, Irene Kho/OMB/EOP@EOP
Subject: FYI, HR 7 text - version full House is expected to consider

Attached, from the Cong. Record at pp. H4014 - 4019 (July 16, 2001) (pls disregard discussion of HR 2500 included at the end of the attachment), is the version of HR 7 that the full House is expected to consider.

Message Sent
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1NVU2004_WHO.TXT_1>

AMENDMENTS -- (House of Representatives - July 16, 2001)

[Page: H4014]

Under clause 8 of rule XVIII, proposed amendments were sub mitted as follows:

H.R. 7

OFFERED BY: MR. SENSENBRENNER

AMENDMENT NO. 1: Strike all after the enacting clau se and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE**.--This Act may be cited as the ``Community Solutions Act of 2001".

(b) **TABLE OF CONTENTS**.--Th e table of contents is as follows:

Sec..1..Short title; table of contents.

&nbs p;TITLE I--CHARITABLE GIVING INCENTIVES PACKAGE

Sec..101..Deduction for portion of charitable contribution s to be allowed to individuals who do not itemize deductions.

&nb sp;Sec..102..Tax-free distributions from individual retirement accounts for cha ritable purposes.

Sec..103..Increase in cap on corporate ch aritable contributions.

Sec..104..Charitable deduction for contributions of food inventory.

Sec..105..Reform of excise tax on net investment income of private foundations.

Sec.. 106..Excise tax on unrelated business taxable income of charitable remainder tr usts.

Sec..107..Expansion of charitable contribution allowe d for scientific property used for research and for computer technology and equ ipment used for educational purposes.

Sec..108..Adjustment to basis of S corporation stock for certain charitable contributions.

  TITLE II--EXPANSION OF CHARITABLE CHOICE

Sec..201..Provision of assistance under government program s by religious and community organizations.

TITLE III--INDI VIDUAL DEVELOPMENT ACCOUNTS

Sec..301..Additional qualified entities eligible to conduc t projects under the Assets for Independence Act.

Sec..302. .Increase in limitation on net worth.

Sec..303..Change in l imitation on deposits for an individual.

Sec..304..Eliminat ion of limitation on deposits for a household.

Sec..305..Ex tension of program.

Sec..306..Conforming amendments.

&nbs p; Sec..307..Applicability.

TITLE IV--CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS

Sec..401..Charitable donations liability reform for in-kin d corporate contributions.

TITLE I--CHARITABLE GIVI NG INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUT IONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

&n bsp; (a) **IN GENERAL**.--Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by rede signating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

``(m) **DEDUCTION FOR IND IVIDUALS NOT ITEMIZING DEDUCTIONS**.--

``(1) **IN GENER AL**.--In the case of an individual who does not itemize his deductions for t he taxable year, there shall be taken into account as a direct charitable deduc tion under section 63 an amount equal to the lesser of--

` `(A) the amount allowable under subsection (a) for the taxable year for cash co ntributions, or

``(B) the applicable amount.

; ``(2) **APPLICABLE AMOUNT**.--For purposes of paragraph (1), the app licable amount shall be determined as follows:

``For taxable years

&n bsp;

The applicable

&n bsp; **beginning in:**

<b>amount is:

2002 and 2003

$25

2004, 2005, 2006

$50

2007, 2008, 2009

$75

2010 and thereafter

$100.

In the case of a joint return, the applicable amount is tw ice the applicable amount determined under the preceding table.".

&nbs p; (b) **DIRECT CHARITABLE DEDUCTION**.--

(1) **IN GENERAL**.--Subsection (b) of section 63 of such Code is amended by striki ng ``and'' at the end of paragraph (1), by striking the period at the end of pa ragraph (2) and inserting ``, and'', and by adding at the end thereof the follo wing new paragraph:

``(3) the direct charitable deduction. ".

(2) **DEFINITION**.--Section 63 of such Code is ame nded by redesignating subsection (g) as subsection (h) and by inserting after s ubsection (f) the following new subsection:

``(g) **DIREC T CHARITABLE DEDUCTION**.--For purposes of this section, the term `direct cha ritable deduction' means that portion of the amount allowable under section 170 (a) which is taken as a direct charitable deduction for the taxable year under section 170(m).".

(3) **CONFORMING AMENDMENT**.--Subse ction (d) of section 63 of such Code is amended by striking ``and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and insert ing ``, and'', and by adding at the end thereof the following new paragraph:

``(3) the direct charitable deduction.".

&nbs p; (c) **EFFECTIVE DATE**.--The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

[Page: H4015]<
/pre>

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIRE MENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) **IN GENER AL**.--Subsection (d) of section 408 of the Internal Revenue Code of 1986 (re lating to individual retirement accounts) is amended by adding at the end the f ollowing new paragraph:

``(8) **DISTRIBUTIONS FOR CHARITA BLE PURPOSES**.--

``(A) **IN GENERAL**.--No amount sh all be includible in gross income by reason of a qualified charitable distribut ion.

``(B) **QUALIFIED CHARITABLE DISTRIBUTION**.--For purposes of this paragraph, the term `qualified charitable distribution' means any distribution from an individual retirement account--

` `(i) which is made on or after the date that the individual for whose benefit t he account is maintained has attained age 70 1/2 , and

``(ii) which is made directly by the trustee--

``(I) to an or ganization described in section 170(c), or

``(II) to a spl it-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gr oss income without regard to subparagraph (A) and, in the case of a distributio n to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other t han one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

``(C) **CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE**.--For purposes of this paragraph --

``(i) **DIRECT CONTRIBUTIONS**.--A distribution to a n organization described in section 170(c) shall be treated as a qualified char itable distribution only if a deduction for the entire distribution would be al lowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

``(ii) **SPLIT-INTEREST GIFTS**.-- A distribution to a split-interest entity shall be treated as a qualified chari table distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) wou ld be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

``(D) **APPLICATION OF SECTI ON 72**.--Notwithstanding section 72, in determining the extent to which a di stribution is a qualified charitable distribution, the entire amount of the dis tribution shall be treated as includible in gross income without regard to subp aragraph (A) to the extent that such amount does not exceed the aggregate amoun t which would be so includible if all amounts were distributed from all individ ual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be ma de in applying section 72 to other distributions in such taxable year and subse quent taxable years.

``(E) **SPECIAL RULES FOR SPLIT-INTE REST ENTITIES**.--

``(i) **CHARITABLE REMAINDER TRUSTS< /b>.--Distributions made from an individual retirement account to a trust descr ibed in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retireme nt account notifies the trustee of the trust of the amount which is not allocab le to income under subparagraph (D).**

``(ii) POOLED INCO ME FUNDS.--No amount shall be includible in the gross income of a pooled in come fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified cha ritable distribution to such fund.

``(iii) CHARITABLE G IFT ANNUITIES.--Qualified charitable distributions made for a charitable gi ft annuity shall not be treated as an investment in the contract.

; ``(F) DENIAL OF DEDUCTION.--Qualified charitable distributions s hall not be taken into account in determining the deduction under section 170.< p> ``(G) SPLIT-INTEREST ENTITY DEFINED.--For purposes of this paragraph, the term `split-interest entity' means--

; ``(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

``(ii) a p ooled income fund (as defined in section 642(c)(5)), and

` `(iii) a charitable gift annuity (as defined in section 501(m)(5))."

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TR USTS.--

(1) RETURNS.--Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming cha ritable deductions under section 642(c)) is amended to read as follows:

; ``SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

; ``(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).--Every trust described i n section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

; ``(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).--

``(1) IN GENERAL.--Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642 (c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, i ncluding:

``(A) the amount of the charitable, etc., deduct ion taken under section 642(c) within such year,

``(B) the amount paid out within such year which represents amounts for which charitable , etc., deductions under section 642(c) have been taken in prior years,

; ``(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

``(D) the amount paid out of principal in the curren t and prior years for charitable, etc., purposes,

``(E) th e total income of the trust within such year and the expenses attributable ther eto, and

``(F) a balance sheet showing the assets, liabili ties, and net worth of the trust as of the beginning of such year.

&nbs p; ``(2) EXCEPTIONS.--Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the appli cable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust desc ribed in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.--Paragr aph (2) of section 6652(c) of such Code (relating to returns by exempt organiza tions and by certain trusts) is amended by adding at the end the following new subparagraph:

``(C) SPLIT-INTEREST TRUSTS.--In the case of a trust which is required to file a return under section 6034(a), subpa ragraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, ex cept that--

``(i) the 5 percent limitation in the second s entence of paragraph (1)(A) shall not apply,

``(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting `$100' for `$20', and the second sentence thereof shall be applied by substituting `$50,000' for `$10,000 ', and

``(iii) the third sentence of paragraph (1)(A) shal l be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imp osed pursuant to this subparagraph.".

(3) CONFIDENTIAL ITY OF NONCHARITABLE BENEFICIARIES.--Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by addi ng at the end the following new sentence: ``In the case of a trust which is req uired to file a return under section 6034(a), this subsection shall not apply t o information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.--

(1) SUBSECTION (a).--The amendment made by subsection (a) s hall apply to taxable years beginning after December 31, 2001.

&n bsp; (2) SUBSECTION (b).--The amendments made by subsection (b) shall ap ply to returns for taxable years beginning after December 31, 2001.

&nb sp; SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.--Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by s triking ``10 percent'' and inserting ``the applicable percentage''.

&nb sp; (b) APPLICABLE PERCENTAGE.--Subsection (b) of section 170 of s uch Code is amended by adding at the end the following new paragraph:

** ``(3) APPLICABLE PERCENTAGE DEFINED.--For purposes of paragr aph (2), the applicable percentage shall be determined in accordance with the f ollowing table:**

``For taxable years beginning in calendar year--

The applicable percentage is--

20 02 through 2007

11

2008

&nbs p; 12

2009

13

&nbs p; 2010 and thereafter

15.''.

(c) CONFORMING AMENDMENTS.--

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by strik ing ``10 percent'' each place it occurs and inserting ``the applicable percenta ge (determined under section 170(b)(3))''.

(2) Sections 54 5(b)(2) and 556(b)(2) of such Code are each amended by striking ``10-percent li mitation'' and inserting ``applicable percentage limitation''.

&n bsp; (d) EFFECTIVE DATE.--The amendments made by this section shall appl y to taxable years beginning after December 31, 2001.

SE C. 104. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

  (a) IN GENERAL.--Paragraph (3) of section 170(e) of the Inte rnal Revenue Code of 1986 (relating to special rule for certain contributions o f inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new sub paragraph:

``(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.--

``(i) GENERAL RULE.--In the case of a charitable contribution of food, this paragraph shall be applied--

; ``(I) without regard to whether the contribution is made by a C c orporation, and

``(II) only for food that is apparently w holesome food.

[Page: H4016]

``(ii) DETERMINATION OF FAIR MARKET VALUE.--In the case of a qualified contribution of apparently wholesome food to which this pa ragraph applies and which, solely by reason of internal standards of the taxpay er or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (o r, if not so sold at such time, in the recent past).

``(iii) APPARENTLY WHOLESOME FOOD.--For purp oses of this subparagraph, the term `apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samarit an Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the en actment of this subparagraph.''.

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 105. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL.--Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by stri king ``2 percent'' and inserting ``1 percent''.

(b) REP EAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQ UIREMENTS.--Section 4940 of such Code is amended by striking subsection (e) .

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

&nbs p; SEC. 106. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF C HARITABLE REMAINDER TRUSTS.

(a) IN GENERAL.--Su bsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to e xemption from income taxes) is amended to read as follows:

``(c) TAXATION OF TRUSTS.--

``(1) INCOME TAX.--A charitable remainder annuity trust and a charitable remainder unitrust sh all, for any taxable year, not be subject to any tax imposed by this subtitle.< p> ``(2) EXCISE TAX.--

``(A) I N GENERAL.--In the case of a charitable remainder annuity trust or a charit able remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to su ch trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income. < p> ``(B) CERTAIN RULES TO APPLY.--The tax imposed by s ubparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

``(C) CHAR ACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.--Th e amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of --

``(i) subsection (b),

``(ii) deter mining the value of trust assets under subsection (d)(2), and

&nb sp; ``(iii) determining income under subsection (d)(3).

`` (D) TAX COURT PROCEEDINGS.--For purposes of this paragraph, the referenc es in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.".

(b) EFFECTIVE DATE.--The amen dment made by subsection (a) shall apply to taxable years beginning after Decem ber 31, 2001.

SEC. 107. EXPANSION OF CHARITABLE CONTRIBU TION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOL OGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) < b>SCIENTIFIC PROPERTY USED FOR RESEARCH.--Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributi ons) is amended by inserting ``or assembled" after ``constructed".

&n bsp; (b) **COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES**.--Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting `` or assembled" after ``constructed" and ``or assembling" after ``construction ".

(c) **CONFORMING AMENDMENT**.--Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting ``or assembled'' after ` `constructed'' and ``or assembling'' after ``construction''.

&nbs p; (d) **EFFECTIVE DATE**.--The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 108. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIB UTIONS.

(a) **IN GENERAL**.--Paragraph (1) of secti on 1367(a) of such Code (relating to adjustments to basis of stock of sharehold ers, etc.) is amended by striking ``and'' at the end of subparagraph (B), by st riking the period at the end of subparagraph (C) and inserting ``, and'', and b y adding at the end the following new subparagraph:

``(D) the excess of the amount of the shareholder's deduction for any charitable cont ribution made by the S corporation over the shareholder's proportionate share o f the adjusted basis of the property contributed.''.

(b) < b>EFFECTIVE DATE.--The amendment made by this section shall apply to taxabl e years beginning after December 31, 2001.

TITLE II --EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROG RAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title X XIV of the Revised Statutes of the United States is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

``SEC. 1991 . CHARITABLE CHOICE.

``(a) **SHORT TITLE**.--This s ection may be cited as the `Charitable Choice Act of 2001'.

; ``(b) **PURPOSES**.--The purposes of this section are--

&nbs p; ``(1) to enable assistance to be provided to individuals and families in nee d in the most effective and efficient manner;

``(2) to sup plement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organiz ations in the administration and distribution of government assistance under th e government programs described in subsection (c)(4);

``(3) to prohibit discrimination against religious organizations on the basis of re ligion in the administration and distribution of government assistance under su ch programs;

``(4) to allow religious organizations to par ticipate in the administration and distribution of such assistance without impa iring the religious character and autonomy of such organizations; and

  ``(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the pos sibility of their being able to choose to receive services from a religious org anization providing such assistance.

``(c) **RELIGIOUS OR GANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS**.--

``(1) **IN GENERAL**.--

``(A) **INCLUSION**.--For any pr ogram described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall con sider, on the same basis as other nongovernmental organizations, religious orga nizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and t he free exercise clause of the first amendment to the Constitution.

&nb sp; ``(B) **DISCRIMINATION PROHIBITED**.--Neither the Federal Governme nt, nor a State or local government receiving funds under a program described i n paragraph (4), shall discriminate against an organization that provides assis tance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

``(2) **FUNDS NOT AID TO RELIGION**.--Federal, State, or local govern ment funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals an d families in need, the ultimate beneficiaries of such services, and not suppor t for religion or the organization's religious beliefs or practices. Notwithsta nding the provisions in this paragraph, title VI of the Civil Rights Act of 196 4 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

``(3) **FUNDS NOT ENDORSEMENT OF RE LIGION**.--The receipt by a religious organization of Federal, State, or loca l government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or pr actices.

``(4) **PROGRAMS**.--For purposes of this sect ion, a program is described in this paragraph--

``(A) if i t involves activities carried out using Federal funds--

`` (i) related to the prevention and treatment of juvenile delinquency and the imp rovement of the juvenile justice system, including programs funded under the Ju venile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

``(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

``(iii) related to the provision of assistance und er Federal housing statutes, including the Community Development Block Grant Pr ogram established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

``(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

``(v) under the Older Americans Act of 1965 (42 U.S.C. 30 01 et seq.);

``(vi) related to the intervention in and pre vention of domestic violence, including programs under the Child Abuse Preventi on and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

``(vii) relat ed to hunger relief activities; or

``(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

``(B)(i) if it involves activities to assist students in obtaining the recognized e quivalents of secondary school diplomas and activities relating to nonschool ho urs programs, including programs under--

``(I) chapter 3 o f subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 10 5-220); or

[Page: H4017]

``(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.); and

``(ii) except as provided in subparagraph (A) and clause (i), does not include activities car ried out under Federal programs providing education to children eligible to att end elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

; ``(d) **ORGANIZATIONAL CHARACTER AND AUTONOMY**.--

&nb sp; ``(1) **IN GENERAL**.--A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organiz ation's control over the definition, development, practice, and expression of i ts religious beliefs.

``(2) **ADDITIONAL SAFEGUARDS**.- -Neither the Federal Government, nor a State or local government with Federal f unds, shall require a religious organization, in order to be eligible to provid e assistance under a program described in subsection (c)(4), to--

; ``(A) alter its form of internal governance or provisions in its charte r documents; or

``(B) remove religious art, icons, scriptu re, or other symbols, or to change its name, because such symbols or names are of a religious character.

``(e) **EMPLOYMENT PRACTICES**.--A religious organization's exemption provided under section 702 of the Civi l Rights Act of 1964 (42 U.S.C. 2000e-1) regarding employment practices shall n ot be affected by its participation in, or receipt of funds from, programs desc ribed in subsection (c)(4), and any provision in such programs that is inconsis tent with or would diminish the exercise of an organization's autonomy recogniz ed in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the non discrimination provisions of title VII of the Civil Rights Act of 1964 in the u se of funds from programs described in subsection (c)(4).

``(f) **EFFECT ON OTHER LAWS**.--Nothing in this section shall alter the dut y of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq .) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688) (prohibit ing discrimination in education programs or activities on the basis of sex and visual impairment), se ction 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discri mination against otherwise qualified disabled individuals), and the Age Discrim ination Act of 1975 (42 U.S.C. 6101-6107) (prohibiting discrimination on the ba sis of age).

``(g) **RIGHTS OF BENEFICIARIES OF ASSISTANC E.--**

``(1) **IN GENERAL**.--If an individual descri bed in paragraph (3) has an objection to the religious character of the organiz ation from which the individual receives, or would receive, assistance funded u nder any program described in subsection (c)(4), the appropriate Federal, State , or local governmental entity shall provide to such individual (if otherwise e ligible for such assistance) within a reasonable period of time after the date of such objection, assistance that--

``(A) is an alternati ve that is accessible to the individual and unobjectionable to the individual o n religious grounds; and

``(B) has a value that is not les s than the value of the assistance that the individual would have received from such organization.

``(2) **NOTICE**.--The appropriate Federal, State, or local governmental entity shall guarantee that notice is pro vided to the individuals described in paragraph (3) of the rights of such indiv iduals under this section.

``(3) **INDIVIDUAL DESCRIBED.--An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).**

; ``(h) NONDISCRIMINATION AGAINST BENEFICIARIES.--

** ``(1) GRANTS AND COOPERATIVE AGREEMENTS.--A religious organi zation providing assistance through a grant or cooperative agreement under a pr ogram described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of r eligion, a religious belief, or a refusal to hold a religious belief.**

  ``(2) INDIRECT FORMS OF ASSISTANCE.--A religious organizatio n providing assistance through a voucher, certificate, or other form of indirec t assistance under a program described in subsection (c)(4) shall not deny an i ndividual described in subsection (g)(3) admission into such program on the bas is of religion, a religious belief, or a refusal to hold a religious belief.

``(i) ACCOUNTABILITY.--

``(1) IN GENERAL.--Except as provided in paragraphs (2) and (3), a religious org anization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organization s to account in accord with generally accepted accounting principles for the us e of such funds and its performance of such programs.

``(2) LIMITED AUDIT.--

``(A) GRANTS AND COOPERATIVE AGREEMENTS.--A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall s egregate government funds provided under such program into a separate account o r accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

``(B) INDI RECT FORMS OF ASSISTANCE.--A religious organization providing assistance th rough a voucher, certificate, or other form of indirect assistance under a prog ram described in subsection (c)(4) may segregate government funds provided unde r such program into a separate account or accounts. If such funds are so segreg ated, then only the separate accounts consisting of funds from the government s hall be subject to audit by the government.

``(3) SELF AUDIT.--A religious organization providing services under any program descr ibed in subsection (c)(4) shall conduct annually a self audit for compliance wi th its duties under this section and submit a copy of the self audit to the app ropriate Federal, State, or local government agency, along with a plan to timel y correct variances, if any, identified in the self audit.

``(j) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.--No funds provided th rough a grant or cooperative agreement to a religious organization to provide a ssistance under any program described in subsection (c)(4) shall be expended fo r sectarian instruction, worship, or proselytization. If the religious organiza tion offers such an activity, it shall be voluntary for the individuals receivi ng services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of a nd will comply with this subsection.

``(k) EFFECT ON ST ATE AND LOCAL FUNDS.--If a State or local government contributes State or l ocal funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds wit h the Federal funds. If the State or local government commingles the State or l ocal funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

``(l) INDIRECT ASSISTANCE.--When consistent with the purpose of a program described in subsection (c)(4), the Secretary of the department administering the program may direct the disbursement of some o r all of the funds, if determined by the Secretary to be feasible and efficient , in the form of indirect assistance. For purposes of this section, `indirect a ssistance' constitutes assistance in which an organization receiving funds thro ugh a voucher, certificate, or other form of disbursement under this section receives such funding only as a result of the private choice s of individual beneficiaries and no government endorsement of any particular r eligion, or of religion generally, occurs.

``(m) TREATM ENT OF INTERMEDIATE GRANTORS.--If a nongovernmental organization (referred to in this subsection as an `intermediate grantor'), acting under a grant or ot her agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernme ntal organizations to provide assistance under the programs described in subsec tion (c)(4), the intermediate grantor shall have the same duties under this sec tion as the government when selecting or otherwise dealing with subgrantors, but the in termediate grantor, if it is a religious organization, shall retain all other r ights of a religious organization under this section.

``(n) COMPLIANCE.--A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil act ion for injunctive relief pursuant to section 1979 against the State official o r local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federa l district court against the official or government agency that has allegedly committed such violation.< p> ``(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGO VERNMENTAL ORGANIZATIONS.--

``(1) IN GENERAL.-- From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Comm unity Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in pro cedures relating to potential application and participation in programs identif ied in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

``(2) TYPES OF ASSISTANCE .--Such assistance may include--

``(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

  ``(B) granting writing assistance which may include workshops and r easonable guidance;

``(C) information and referrals to oth er nongovernmental organizations that provide

expertise in accounting, legal issues, tax issues, program development, and a v ariety of other organizational areas; and

``(D) informatio n and guidance on how to comply with Federal nondiscrimination provisions inclu ding, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2 000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et se q.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), section 504 of the Rehabil itation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107).

``(3) RESERVATION OF FUNDS.--An amount of no less than $5,000,000 shall be reserved under this section. Small nongover nmental organizations may apply for these funds to be used for assistance in pr oviding full and equal integrated access to individuals with disabilities in pr ograms under this title.

``(4) PRIORITY.--In giving out the assistance described in this subsection, priority shall be given to sm all nongovernmental organizations serving urban and rural communities.''.

&nb sp;

TITLE III--INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 301. ADDITIONAL QUALIFIED ENTITIES ELIGIBLE TO CON DUCT PROJECTS UNDER THE ASSETS FOR INDEPENDENCE ACT.

S ection 404(7)(A)(iii)(I)(aa) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

``(aa) a federally in sured credit union; or''.

SEC. 302. INCREASE IN LIMITATI ON ON NET WORTH.

Section 408(a)(2)(A) of the Assets fo r Independence Act (42 U.S.C. 604 note) is amended by striking ``$10,000'' and inserting ``$20,000''.

SEC. 303. CHANGE IN LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.

Section 410(b) of the Ass ets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

``(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.--Not more than $500 from a grant made under section 406(b) shall be provided per yea r to any one individual during the project.''.

SEC. 304. ELIMINATION OF LIMITATION ON DEPOSITS FOR A HOUSEHOLD.

; Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amende d by striking subsection (c) and redesignating subsections (d) and (e) as subse ctions (c) and (d), respectively.

SEC. 305. EXTENSION OF PROGRAM.

Section 416 of the Assets for Independence A ct (42 U.S.C. 604 note) is amended by striking ``2001, 2002, and 2003'' and ins erting ``and 2001, and $50,000,000 for each of fiscal years 2002 through 2008'' .

SEC. 306. CONFORMING AMENDMENTS.

&nb sp; (a) AMENDMENTS TO TEXT.--The text of each of the following provision s of the Assets for Independence Act (42 U.S.C. 604 note) is amended by strikin g ``demonstration'' each place it appears:

(1) Section 403 .

(2) Section 404(2).

(3) Section 405 (a).

(4) Section 405(b).

(5) Section 405(c).

(6) Section 405(d).

(7) Secti on 405(e).

(8) Section 405(g).

(9) Se ction 406(a).

(10) Section 406(b).

(1 1) Section 407(b)(1)(A).

(12) Section 407(c)(1)(A).

&nbs p; (13) Section 407(c)(1)(B).

(14) Section 407 (c)(1)(C).

(15) Section 407(c)(1)(D).

(16) Section 407(d).

(17) Section 408(a).

  (18) Section 408(b).

(19) Section 409.

; (20) Section 410(e).

(21) Section 411.

&nb sp; (22) Section 412(a).

(23) Section 412(b)(2).

  (24) Section 412(c).

(25) Section 413(a) .

(26) Section 413(b).

(27) Section 4 14(a).

(28) Section 414(b).

(29) Sect ion 414(c).

(30) Section 414(d)(1).

(31) Section 414(d)(2).

(b) AMENDMENTS TO SUBSECTION HEA DINGS.--The heading of each of the following provisions of the Assets for I ndependence Act (42 U.S.C. 604 note) is amended by striking ``DEMONSTRATION< /b>'':

(1) Section 405(a).

(2) Sectio n 406(a).

(3) Section 413(a).

(c) AMENDMENTS TO SECTION HEADINGS.--The headings of sections 406 and 411 of th e Assets for Independence Act (42 U.S.C. 604 note) are amended by striking ``

DEMONSTRATION''.

SEC. 307. APP LICABILITY.

(a) IN GENERAL.--The amendments mad e by this title shall apply to funds provided before, on or after the date of t he enactment of this Act.

(b) PRIOR AMENDMENTS.--Th e amendments made by title VI of the Departments of Labor, Health and Human Ser vices, and Education, and Related Agencies Appropriations Act, 2001 (as enacted into law by Public Law 106-554) shall apply to funds provided before, on or af ter the date of the enactment of such Act.

TITLE IV --CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS

SEC. 401. CHARITABLE DONATIONS LIABILITY REFORM FOR IN- KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.- -For purposes of this section:

(1) AIRCRAFT.--The t erm ``aircraft'' has the meaning provided that term in section 40102(6) of titl e 49, United States Code.

(2) BUSINESS ENTITY.--The term ``business entity'' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT.--The term ``equipment'' includes mechanical equipment, elec tronic equipment, and office equipment.

(4) FACILITY.--The term ``facility'' means any real property, including any building, impr ovement, or appurtenance.

(5) GROSS NEGLIGENCE.--Th e term ``gross negligence'' means voluntary and conscious conduct by a person w ith knowledge (at the time of the conduct) that the conduct is likely to be har mful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.--The term ``intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is ha rmful to the health or well-being of another person.

(7) < b>MOTOR VEHICLE.--The term ``motor vehicle'' has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.--The term ``nonprofit organization'' means--

(A) any organization described in section 501(c)(3) of th e Internal Revenue Code of 1986 and exempt from tax under section 501(a) of suc h Code; or

(B) any not-for-profit organization organized a nd conducted for public benefit and operated primarily for charitable, civic, e ducational, religious, welfare, or health purposes.

(9) STATE.--The term ``State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, America n Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or p ossession.

(b) LIABILITY.--

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZA TIONS.--

(A) IN GENERAL.--Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business e ntity to a nonprofit organization.

(B) APPLICATION. --This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.--

(A) < b>IN GENERAL.--Subject to subsection (c), a business entity shall not be su bject to civil liability relating to any injury or death occurring at a facilit y of the business entity in connection with a use of such facility by a nonprof it organization, if--

(i) the use occurs outside of the sc ope of business of the business entity;

(ii) such injury o r death occurs during a period that such facility is used by the nonprofit orga nization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) **AP PLICATION**.--This paragraph shall apply--

(i) with resp ect to civil liability under Federal and State law; and

(i i) regardless of whether a nonprofit organization pays for the use of a facilit y.

(3) **LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT**.--

(A) **IN GENERAL**.- -Subject to subsection (c), a business entity shall not be subject to civil lia bility relating to any injury or death occurring as a result of the operation o f aircraft or a motor vehicle of a business entity loaned to a nonprofit organi zation for use outside of the scope of business of the business entity, if--

(i) such injury or death occurs during a period that such mo tor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organizatio n of motor vehicle or aircraft that resulted in the injury or death.

&n bsp; (B) **APPLICATION**.--This paragraph shall apply--

(i) with respect to civil liability under Federal and State law; and

  (ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(c) **EXCEPTION S**.--Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or in tentional misconduct.

(d) **SUPERSEDING PROVISION**.--< p> (1) **IN GENERAL**.--Subject to paragraph (2) and subse ction (e), this title preempts the laws of any State to the extent that such la ws are inconsistent with this title, except that this title shall not preempt a ny State law that provides additional protection for a business entity for an i njury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) **LIMITATION**.--Nothing in this title shall be construed to supersede any Fede ral or State health or safety law.

(e) **ELECTION OF STATE REGARDING NONAPPLICABILITY**.- -A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if su ch State enacts a statute--

(1) citing the authority of th is section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

  (3) containing no other provisions.

(f) **EFF ECTIVE DATE**.--This section shall apply to injuries (and deaths resulting th erefrom) occurring on or after the date of the enactment of this Act.

H. R. 2500

OFFERED BY: MR. HERGER

AMENDMENT NO. 1: Page 63, after line 9, insert the following:

TITLE IIA--DEPARTMENT OF JUSTICE

Klamath Project Water Rights Compensation

For just compensation for private property taken for publ ic use, as required by the 5th Amendment to the Constitution of the United Stat es, for payment by the Attorney General to the water users of the Klamath Proje ct for the Federal taking of water rights pursuant to the Klamath Reclamation P roject 2001 Annual Operations Plan, which provides for the delivery of no water to most of the lands served by the Klamath Reclamation Project, and instead im plements an alternative plan developed pursuant to the Endangered Species Act of 1973; and the amount otherwise provided in thi s Act for ``National Oceanic And Atmospheric Administration--Operations, Resear ch, and Facilities'' (and the amounts specified under such heading for direct o bligations, appropriation from the General Fund, and the National Marine Fisher ies Service) are hereby reduced by; $200,000,000.

H.R. 2500

OFFERED BY: MR. HINCHEY

AMENDMENT NO. 2: In title I, in the item relating t o ``**FEDERAL PRISON SYSTEM--BUILDINGS AND FACILITIES''**, after the aggrega te dollar amount, insert the following: ``(reduced by $73,000,000)''.

In title II, in the item relating to ``**ECONOMIC DEVELO PMENT ADMINISTRATION--ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS''**, after the aggregate dollar amount, insert the following: ``(increased by $73,000,000)''.

H.R. 2500

OFFERED BY: MR. HINCHEY

AMENDMENT NO. 3: At the end of the bill (before the short title), insert the following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds made available in this Act to the Department of Justice may be used to prevent the States of Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, or Washington fro m implementing State laws authorizing the use of medical marijuana in those Sta tes.

H.R. 2500

OFFERED BY: MR. KERNS

AMENDMENT NO. 4: At the end of the bill, insert aft er the last section (preceding the short title) the following new title:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds made available in this Act may be used in connection with any system to conduct background checks on persons purchasing a firearm that does not provide for the immediate destructio n of all information submitted under the system by, or on behalf of, each perso n determined under such system not to be prohibited from receiving a firearm. < center>H.R. 2500

OFFERED BY: MR. MANZULLO

AMENDMENT NO. 5: Page 96, line 10, strike ``$4,100, 000,000'' and insert the following:

the levels established by section 20(h)(1)(C) of the Small Business Act (15 U.S.C. 631 note)

H.R. 2500

OFFERED BY: MR. PAUL

AMENDMENT NO. 6: Page 108, after line 22, insert th e following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds appropriated in this A ct may be used for any United States contribution to the United Nations or any affiliated agency of the United Nations.

H.R. 2500

OFFERED BY: MR. PAUL

AMENDMENT NO. 7: Page 108, after line 22, insert th e following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds appropriated in this A ct may be used for any United States contribution for United Nations peacekeepi ng operations.

H.R. 2500

OFFERED BY: MR. ROEMER

AMENDMENT NO. 8: Page 70, after line 7, insert the following:

SEC. 305. (a) The Federal building located at 10th Street and Constitution Avenue, NW, in Washington, DC, and known as the Depart ment of Justice Building, shall be designated and known as the ``Robert F. Kenn edy Department of Justice Building''.

(b) Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in subsection (a) shall be deemed to be a r eference to the ``Robert F. Kennedy Department of Justice Building''.

H. R. 2500

OFFERED BY: MR. WALDEN OF OREGON

AMENDMENT NO. 9: Page 108, after line 22, insert th e following new title:

TITLE VIII--LIMITATION ON USE OF FUNDS

SEC. 801. None of the funds made available in this Act may be used to implement or to plan to implement any of the recommendation s in the Phase I Report or the Phase II Report on the study that was commission ed by the United States and led by Dr. Thomas Hardy on the relationship between the Klamath River flow levels and the health of salmon and steelhead in that r iver.

H.R. 2500

OFFERED BY: MS. WATERS

AMENDMENT NO. 10: Page 108, after line 22, insert t he following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds appropriated in this A ct under the heading ``**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE--SAL ARIES AND EXPENSES**'' may be used to initiate a proceeding in the World Trad e Organization (WTO) challenging any law or policy of a developing country that promotes access to HIV/AIDS pharmaceuticals or medical technologies to the pop ulation of the country.

(b) In this section, the term ``de veloping country'' means a country that has a per capita income which does not exceed that of an upper middle income country, as defined in the World Developm ent Report published by the International Bank for Reconstruction and Developme nt.

H.R. 2500

OFFERED BY: MS. WATERS

AMENDMENT NO. 11: Page 108, after line 22, insert t he following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds appropriated in this A ct under the heading ``**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE--SAL ARIES AND EXPENSES**'' may be used to initiate a proceeding in the World Trad e Organization (WTO) pursuant to any provision of the Agreement on Trade-Relate d Aspects of Intellectual Property Rights (as described in section 101(d)(15) o f the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15))) challenging any law of a country that is not a member of the Organization for Economic Cooperation and Development (OECD) relating to HIV/AIDS pharmaceut icals.

H.R. 2500

OFFERED BY: MS. WATERS

AMENDMENT NO. 12: Page 108, after line 22, insert t he following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds appropriated in this A ct under the heading ``**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE--SAL ARIES AND EXPENSES**'' may be used to initiate a proceeding in the World Trad e Organization (WTO) pursuant to any provision of the Agreement on Trade-Relate d Aspects of Intellectual Property Rights (as described in section 101(d)(15) o f the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15))) challenging any law of a country that is not a member of the Organization for Economic Cooperation and Development (OECD).

H.R. 2500

OFFERED BY: MS. WATERS

AMENDMENT NO. 13: Page 108, after line 22, insert t he following:

TITLE VIII--ADDITIONAL GENERAL PROVISIONS

SEC. 801. None of the funds appropriated in this A ct under the heading ``**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE--SAL ARIES AND EXPENSES**'' may be used to initiate a proceeding in the World Trad e Organization (WTO) pursuant to any provision of the Agreement on Trade-Relate d Aspects of Intellectual Property Rights (as described in section 101(d)(15) o f the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15))).

END

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 7/17/2001 12:23:21 PM
Subject: : Re: Conyers and Nadler faith-based letter
Attachments: P_I4YU2004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JUL-2001 16:23:21.00
SUBJECT:: Re: Conyers and Nadler faith-based letter
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The FOIA letters say nothing more than "Please be advised that the White House Office is not subject to the Freedom of Information Act."

Bradford A. Berenson
07/17/2001 04:13:22 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Conyers and Nadler faith-based letter

Would you please shoot me an electronic copy. I want to crib some language from there, too.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_I4YU2004_WHO.TXT_1>

DRAFT

July 13, 2001

Dear Congressman Conyers and Congressman Nadler:

We have received your letters of July 10 and July 12 regarding the White House Office of Faith-Based and Community Initiatives. As you know, the Executive Branch generally will consider providing Congress access to non-public information only in response to an authorized request of either House of Congress or of one of either House's authorized committees (and in that situation, various protections continue to apply to certain categories of information). Individual Members generally receive the same access to information that members of the public receive under the Freedom of Information Act. However, out of respect for your role as members of the House Judiciary Committee, we are responding to your inquiry.

At the outset, we appreciate your statement in the July 10 letter that "religious organizations can and should have a strong and active role in dealing with our nation's social ills." Your letter expresses concern, however, about "press reports" indicating that the Administration "may have agreed" to issue a regulation regarding preemption of certain state and local anti-discrimination laws affecting faith-based organizations. In fact, the Administration did not agree to issue such a regulation, as both the White House and the Salvation Army stated publicly on July 10. It also bears mention that this kind of regulation would not have been issued without extensive and *public* notice-and-comment rulemaking proceedings involving over 20 federal agencies. As you know, such rulemaking proceedings were never initiated.

Your letters also indicate your apparent concern that White House officials may have met with members of the Salvation Army to discuss the Salvation Army's policy concerns and objectives. We do not understand the basis for this concern. As I am sure you agree, it is entirely appropriate for the President and his assistants, just as it is for Members of Congress, to meet with citizens and groups who have a concern about particular issues and potential legislation. Hundreds of such meetings occur every day on Capitol Hill and within the Executive Branch, and these meetings help to ensure that the federal government is responsive to the people. In that regard, it also is common for citizens and groups to express their views about particular policies or bills. This can take many forms: For example, some citizens or groups may seek new statutes or regulations; others may say that they cannot support a particular bill or proposal in its present form, at least without additional or other statutory or regulatory changes. For that matter, as part of the give and take of the legislative process, Members of Congress regularly engage in similar discussions with each other, with citizens and interest groups, and with the Administration. Finally, it also is proper for the Administration and the Congress to seek public support for or against particular bills, programs, or proposals; again, such activity is an everyday occurrence as part of the democratic process.

As to H.R. 7 and the President's program for faith-based and community initiatives, members of the Administration have met with and listened to the views of innumerable groups and individuals over the past several months. Those meetings have been entirely appropriate

and, indeed, necessary for the Office of Faith-Based and Community Initiatives to perform its duties. Executive Order 13199, which was issued on January 29, 2001, specifically contemplated such activity, directing the Office of Faith-Based and Community Initiatives "to bring concerns, ideas, and policy options to the President for assisting, strengthening, and replicating successful faith-based and other community programs" and "to eliminate unnecessary legislative, regulatory, and other bureaucratic barriers that impede effective faith-based and other community efforts to solve social problems."

As to your suggestion of a "quid pro quo" involving the Salvation Army and the Administration, it bears mention that (i) the Salvation Army has publicly supported H.R.7 and (ii) the kind of regulation your letter references was not issued. This fact flatly refutes any suggestion of a quid pro quo.

In summary, your concerns focus essentially on whether the Administration acted properly in meeting with representatives of the Salvation Army – an organization whose commitment to charitable work is legendary – regarding matters of importance to the Army. For the reasons stated above, those kinds of meetings are entirely appropriate legally and ethically; indeed, they are central to the President's proper exercise of his constitutional responsibilities.

Sincerely yours,

Alberto R. Gonzales
Counsel to the President

The Honorable John Conyers
The Honorable Jerrold Nadler
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

cc: The Honorable F. James Sensenbrenner, Jr.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/18/2001 5:44:57 AM
Subject: : Re: Another judicial selection process hearing . . .

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUL-2001 09:44:57.00
SUBJECT:: Re: Another judicial selection process hearing . . .
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Given the timing and my current crunch on Waxman letters and executive privilege issues, I probably will have a hard time participating in a meaningful way in the prep for this hearing. You may want to sniff around and see who might have the time and the interest.

Rachel L. Brand 07/18/2001 09:26:09 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Another judicial selection process hearing . . .

From an e-mail from Ed Haden:

Also, Leahy noticed a hearing for Schumer's Subcommittee last night -- "The Senate's Role in the Nomination and Confirmation Process: Whose Burden?" The point is to say that if a nominee answers questions in a manner that is insufficiently P.C. a Senator can vote against on ideological grounds. If a nominee refuses to answer a question, a Senator can vote against him on the grounds that he failed to meet his burden to prove his worthiness of confirmation. Sounds fun.

Ed

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 7/18/2001 5:46:46 AM
Subject: : Re: Another judicial selection process hearing . . .

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUL-2001 09:46:46.00
SUBJECT:: Re: Another judicial selection process hearing . . .
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm interested.

Bradford A. Berenson
07/18/2001 09:44:51 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: Another judicial selection process hearing . . .

Given the timing and my current crunch on Waxman letters and executive privilege issues, I probably will have a hard time participating in a meaningful way in the prep for this hearing. You may want to sniff around and see who might have the time and the interest.

Rachel L. Brand 07/18/2001 09:26:09 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Another judicial selection process hearing . . .

From an e-mail from Ed Haden:

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point is to say that if a nominee answers questions in a manner that is insufficiently P.C. a Senator can vote against on ideological grounds. If a
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Ed

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
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Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP

From: CN=Karen N. Blank/OU=OMB/O=EOP [OMB]

To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Rosalyn J. Rettman/OMB /EOP@EOP [OMB] <Rosalyn J. Rettman>;James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>;Larry R. Matlack/OMB/EOP@EOP [OMB] <Larry R. Matlack>;Jack A. Smalligan/OMB/EOP@EOP [OMB] <Jack A. Smalligan>;Matthew D. McKearn/OMB /EOP@EOP [OMB] <Matthew D. McKearn>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Brett S. Loper/OMB/EOP@EOP [OMB] <Brett S. Loper>;John M. Bridgeland/OPD /EOP@EOP [OPD] <John M. Bridgeland>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Mary C. Barth/OMB/EOP@EOP [OMB] <Mary C. Barth>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Richard B. Bavier/OMB/EOP@EOP [OMB] <Richard B. Bavier>;Kenneth S. Kelly/OMB/EOP@EOP [OMB] <Kenneth S. Kelly>;Alejandra O. Ceja/OMB/EOP@EOP [OMB] <Alejandra O. Ceja>;Mathew C. Blum/OMB/EOP@EOP [OMB] <Mathew C. Blum>;Fredrick J. Charney/OMB/EOP@EOP [OMB] <Fredrick J. Charney>;Wendy A. Taylor/OMB/EOP@EOP [OMB] <Wendy A. Taylor>;Brenda Aguilar/OMB/EOP@EOP [OMB] <Brenda Aguilar>;David J. Haun/OMB /EOP@EOP [OMB] <David J. Haun>;Douglas Pitkin/OMB/EOP@EOP [OMB] <Douglas Pitkin>;Alan B. Rhinesmith/OMB/EOP@EOP [OMB] <Alan B. Rhinesmith>;Francis S. Redburn/OMB/EOP@EOP [OMB] <Francis S. Redburn>;Reid B Cramer/OMB/EOP@EOP [OMB] <Reid B Cramer>;James Boden/OMB/EOP@EOP [OMB] <James Boden>;Yvette M. Dennis/OMB/EOP@EOP [OMB] <Yvette M. Dennis>;Andrew Abrams/OMB/EOP@EOP [OMB] <Andrew Abrams>;Lauren Larson/OMB/EOP@EOP [OMB] <Lauren Larson>;Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>;Justine F. Rodriguez/OMB/EOP@EOP [OMB] <Justine F. Rodriguez>;Michael C. Falkenheim/OMB/EOP@EOP [OMB] <Michael C. Falkenheim>;OFBCI-LRM [UNKNOWN] <OFBCI-LRM>;Shalini M. Benson/OMB/EOP@EOP [OMB] <Shalini M. Benson>;Patrick Aylward/OMB/EOP@EOP [OMB] <Patrick Aylward>;Norris W. Cochran/OMB/EOP@EOP [OMB] <Norris W. Cochran>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>

CC: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Ingrid M. Schroeder/OMB/EOP [OMB] <Ingrid M. Schroeder>;Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>;Irene Kho/OMB/EOP@EOP [OMB] <Irene Kho>

Sent: 7/18/2001 6:48:51 AM

Subject: : FYI, HR 7: (1) CQ story, (2) Rule for 7/18 floor debate, and (3) Rules Ctte Report (H Rept. 107-144)

Attachments: P_12DV2004_OPD.TXT_1.html; P_12DV2004_OPD.TXT_2

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Karen N. Blank ( CN=Karen N. Blank/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:18-JUL-2001 10:48:51.00
SUBJECT:: FYI, HR 7: (1) CQ story, (2) Rule for 7/18 floor debate, and (3) Rules Ctte
Report (H Rept. 107-144)
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Rosalyn J. Rettman ( CN=Rosalyn J. Rettman/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:James C. Capretta ( CN=James C. Capretta/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Matthew D. McKearn ( CN=Matthew D. McKearn/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Danielle M. Simonetta (CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [OMB])
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TO:Brett S. Loper (CN=Brett S. Loper/OU=OMB/O=EOP@EOP [OMB])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Mary C. Barth (CN=Mary C. Barth/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Ellen J. Balis (CN=Ellen J. Balis/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Richard B. Bavier (CN=Richard B. Bavier/OU=OMB/O=EOP@EOP [OMB])
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TO:Kenneth S. Kelly (CN=Kenneth S. Kelly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alejandra O. Ceja (CN=Alejandra O. Ceja/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mathew C. Blum (CN=Mathew C. Blum/OU=OMB/O=EOP@EOP [OMB])
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TO:Fredrick J. Charney (CN=Fredrick J. Charney/OU=OMB/O=EOP@EOP [OMB])
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TO:Wendy A. Taylor (CN=Wendy A. Taylor/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Brenda Aguilar (CN=Brenda Aguilar/OU=OMB/O=EOP@EOP [OMB])
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TO:David J. Haun (CN=David J. Haun/OU=OMB/O=EOP@EOP [OMB])
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TO:Alan B. Rhinesmith (CN=Alan B. Rhinesmith/OU=OMB/O=EOP@EOP [OMB])
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TO:Francis S. Redburn (CN=Francis S. Redburn/OU=OMB/O=EOP@EOP [OMB])
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TO:Yvette M. Dennis (CN=Yvette M. Dennis/OU=OMB/O=EOP@EOP [OMB])
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TO:Andrew Abrams (CN=Andrew Abrams/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lauren Larson (CN=Lauren Larson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Amy C. Smith (CN=Amy C. Smith/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN
TO:Michael C. Falkenheim (CN=Michael C. Falkenheim/OU=OMB/O=EOP@EOP [OMB])
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TO:Shalini M. Benson (CN=Shalini M. Benson/OU=OMB/O=EOP@EOP [OMB])
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TO:Patrick Aylward (CN=Patrick Aylward/OU=OMB/O=EOP@EOP [OMB])
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TO:Norris W. Cochran (CN=Norris W. Cochran/OU=OMB/O=EOP@EOP [OMB])
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CC:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN
CC:Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP [OMB])
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CC:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP@EOP [OMB])
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End Original ARMS Header

FAITH-BASED PLAN'S SUPPORTERS HUNT FOR DEMOCRATIC CROSSOVERS

By Bill Swindell, CQ Staff Writer

July 17, 2001 - Supporters of President Bush's faith-based initiative were trying to line up more than token Democratic support before Wednesday's floor vote, despite an onslaught of Democratic constituencies opposed to the legislation.

GOP Conference Chairman J.C. Watts Jr., Okla., cosponsor of the bill (HR 7), said he is confident the vast majority of the Republican caucus supports it.

"My first objective is to get to 218 [votes]," Watts said. "But I would also like to see Democratic support."

The Rules Committee allowed Tuesday night for one motion to recommit the bill and a Democratic substitute during the debate.

The bill would permit religious charities to compete for federal funds in several new categories of social services, such as housing and crime prevention. Bush has given the faith-based initiative a high priority in his legislative agenda in part because of the success of similar programs during his tenure as Texas governor.

Mustering bipartisan backing may be difficult as groups as diverse as civil rights organizations, educators, religious groups and organized labor are lobbying Democrats and moderate Republicans to oppose the measure. They contend it would weaken federal civil rights laws by allowing groups for the first time to use federal funds to discriminate in hiring against gays and lesbians, unwed mothers and others.

"With the passage of HR 7, we are a witness to the erosion of 60 years of civil rights law," said Robert C. Scott, D-Va.

Rules Committee Democrats rallied around a stand-alone amendment by Mark Foley, R-Fla., that would not allow the bill to supercede state and local civil rights laws, including those that give protection to gays and lesbians.

"This bill, I'm afraid, means we're giving some cover to those who would choose as they minister to the poor, homeless, gays and others in their community, that they could basically exclude under religious discrimination," Foley said.

"I think this is a fundamental issue of fairness," Foley added.

The amendment lost on 4-9 vote. A Foley aide said he is undecided on whether to vote for the bill on Wednesday, but is leaning toward supporting a motion to recommit with language instructing that the

anti-discrimination provision be included in the future.

Watts called such criticisms a "red herring," noting that such programs were created in the aftermath of the 1996 welfare overhaul (PL 104-193) and have not presented a problem so far.

Proponents said the bill allows for religious groups to maintain their beliefs and character, but they still must comply with all federal laws covering race, color, national origin, disability and age. Federal law does not cover sexual orientation.

Another major controversy pertains to how the measure effects the separation of church and state.

Supporters defend it by pointing out that Republicans on the House Judiciary Committee added language that requires faith-based groups to keep any religious instruction separate from the social services funded by the federal government.

Following Dollars

Opponents say that is not enough. They are critical of a provision that allows Cabinet secretaries to grant $47 billion to religious groups through individual vouchers, providing what they say is a loophole around any church-state protections.

"When taxpayers are asked by the state to subsidize religious institutions they may or may not believe in, it is no different from forcing them to put money into the collection plates of churches, synagogues and mosques," said the Rev. Barry Lynn of Americans United for Separation of Church and State.

Finally, Democrats are upset that the bill would provide $13 billion in tax breaks over 10 years for charitable giving. They noted that the tax cuts were not included in Bush's $1.35 trillion tax cut (HR 1836 -- PL 107-16) and could consume some Social Security and Medicare surpluses.

House tax writers had to scale back Bush's main tax break in the plan that would allow the 84 million taxpayers who do not itemize to receive a charitable deduction. Bush had originally wanted to make his proposed charitable deduction equal to a standard deduction by 2006. The bill offers much less, only allowing for a $25 deduction next year, with a $50 deduction for those filing jointly.

Democratic Angles

The Democratic substitute would specify that employment discrimination would not be tolerated with taxpayer funds and state and local civil rights laws would not be superceded. It would add an offset to pay for the tax cuts by reducing recent tax cut given to the top ratepayers.

The substitute also would guarantee that proselytization does not occur at the same time and place as a government funded program and deletes the voucher provision and those dealing with tort reform.

Bush invited some Democratic lawmakers to the White House Tuesday to lobby for passage. In addition, John DiIulio, Director of the White House Office of Faith-Based and Community Initiatives, met with moderate New

Democrats to push for the bill.

One Democratic moderate, Tim Roemer of Indiana, said he had not made up his mind. "John's a very eloquent spokesman for his cause, but the vehicle he is using has a lot of problems," Roemer said.

Supporters also are targeting black lawmakers, but apparently with little success. One group, the Community Solutions Alliance, put out a press release saying a vote against the bill would be a vote against black churches providing such charity work.

The effort appears not to be working. The National Association for the Advancement of Colored People opposes the bill. John Lewis, D-Ga., said the bill "is not right. It is not fair. It is not just."

Watts said a few black lawmakers may vote for the legislation, but only named Danny K. Davis, D-Ill., as a supporter. Davis confirmed he would vote for it.

Tony P. Hall, D-Ohio, a cosponsor of bill, said he has been frustrated that opponents have taken the bill out of context and have made misleading statements.

"I think we'll have a lot more Democrats than people are anticipating," Hall said. "This is a kind of issue that we are going to rise above."

Hall said supporters might get as many as 30 Democrats based on prior votes on the issue. Opponents contend the issue has never received as high as a profile as Wednesday's vote nor has it raised as many questions.

Source: CQ Monitor News

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FLOOR ACTION:

MANAGERS: PRYCE/HALL

107th Congress
1st Session

Tuesday July 17, 2001

H. RES. 196
[Report No. 107-144]

H.R. 7 - Community Solutions Act of 2001

1. Modified closed rule.

2. Waives all points of order against consideration of the bill.

3. Provides that, in lieu of the amendments recommended by the Committee on Way s and Means and the Committee on the Judiciary, the amendment in the nature of a substitute printed in the *Congressional Record* and numbered 1 shall b e considered as adopted.

4.Provides one hour of debate in the House equally divided and controlled by th e chairman and ranking minority member of the Committee on Ways and Means.

5. Provides for consideration of the amendment in the nature of a substitute printed in the Rules Committee report, if offered by Representative Rangel or Representative Conyers or a designee, which shall be considered as read, and shall be separately debatable for one hour equally divi ded and controlled by the proponent and an opponent.

6. Waives all points of order against consideration of the amendment printed in the report.

7. Provides one motion to recommit with or without instructions.

RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order wit hout intervention of any point of order to consider in the House the bill (H.R. 7) to provide incentives for charitable contributions by individuals and busin esses, to improve the effectiveness and efficiency of government program delive ry to individuals and families in need, and to enhance the ability of low-incom e Americans to gain financial security by building assets. The bill shall be c onsidered as read for amendment. In lieu of the amendments recommended by the Committees on Ways and Means and the Judiciary now printed in the bill, the ame ndment in the nature of a substitute printed in the *Congressional Record* and numbered 1 pursuant to clause 8 of rule XVIII shall be considered as adopt ed. The previous question shall be considered as ordered on the bill, as amend ed, and on any further amendment thereto to final passage without intervening m otion except: (1) one hour of debate on the bill, as amended, equally divided a nd controlled by the chairman and ranking minority member of the Committee on W ays and Means; (2) the further amendment in the

nature of a substitute printed in the report of the Committee on Rules accompanyi ng this resolution, if offered by Representative Rangel of New York, Representa tive Conyers of Michigan, or a designee, which shall be in order without interv ention of any point of order, shall be considered as read, and shall be separat ely debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

AMENDMENT MADE IN ORDER

Rangel/Conyers/Frank/Nadler/Edwards/Scott Amendment Summary | Text (In .PDF Format)

The latest version of Acrobat Reader can be downloaded from Adobe Systems.

107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 107–144

PROVIDING FOR CONSIDERATION OF H.R. 7, THE COMMUNITY SOLUTIONS ACT OF 2001

JULY 17, 2001.—Referred to the House Calendar and ordered to be printed

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Ms. PRYCE of Ohio, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 196]

The Committee on Rules, having had under consideration House Resolution 196, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration in the House of H.R. 7, the Community Solutions Act of 2001, under a modified closed rule. The rule provides one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule waives all points of order against consideration of the bill.

The rule provides that, in lieu of the amendments recommended by the Committee on Ways and Means and the Committee on the Judiciary now printed in the bill, the amendment in the nature of a substitute printed in the Congressional Record and numbered one shall be considered as adopted.

The rule provides for consideration of the amendment in the nature of a substitute printed in this report, if offered by Representative Rangel or Representative Conyers or a designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment. Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

89–008

REV_00129733

Rules Committee Record Vote No. 26

Date: July 17, 2001.
Measure: H.R. 7, the Community Solutions Act of 2001.
Motion By: Mr. Frost.
Summary of Motion: Make in order the Foley amendment to ensure that organizations receiving federal funds to subsidize the operation of a faith-based assistance program would not be permitted to exempt themselves from State and local civil rights laws.
Results: Defeated 4 to 9.
Vote by Member: Goss—Nay; Linder—Nay; Pryce—Yea; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Hall—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 27

Date: July 17, 2001.
Measure: H.R. 7, the Community Solutions Act of 2001.
Motion By: Mr. Frost.
Summary of Motion: Make in order the Edwards amendment to prohibit direct federal funding of pervasively sectarian organizations.
Results: Defeated 3 to 10.
Vote by Member: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Hall—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 28

Date: July 17, 2001.
Measure: H.R. 7, the Community Solutions Act of 2001.
Motion By: Mr. Hastings (FL).
Summary of Motion: Make in order the Thurman amendment to provide that the tax provisions in the bill would not apply if the Director of OMB projects that there will be a federal deficit outside the Social Security and Medicare Trust Funds.
Results: Defeated 3 to 10.
Vote by Member: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Hall—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

SUMMARY OF AMENDMENT MADE IN ORDER TO H.R. 7—COMMUNITY SOLUTIONS ACT OF 2001

Rangel/Conyers/Frank/Nadler/Edwards/Scott: Democratic Substitute. Retains all of the provisions of the bill as reported with the following changes: revises section 1991(e) in section 201 to make clear that religious organizations receiving taxpayer dollars for charitable choice programs cannot discriminate in employment on the basis of an employee's religion, religious belief, or a refusal to hold a religious belief, adds a new section (i) to section 1991 in section 201 to prohibit the charitable choice provisions in the bill from preempting or superceding state or local civil rights laws; revises sections 1991(j) of section 201 to make clear that religious programs cannot engage in sectarian instruction, worship, or pros-

REV_00129734

elytization at the same time and place as the government funded program; deletes the indirect assistance provision; deletes the tort liability reform provisions; and includes a revenue offset that reduces the recent tax cut for the top income rate by 0.2 percentage points to offset the cost of the tax benefits included in Title I.

Text of amendment made in order under the rule:

AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RANGEL OF NEW YORK, OR REPRESENTATIVE CONYERS OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Community Solutions Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
Sec. 102. Tax-free distributions from individual retirement accounts for charitable purposes.
Sec. 103. Increase in cap on corporate charitable contributions.
Sec. 104. Charitable deduction for contributions of food inventory.
Sec. 105. Reform of excise tax on net investment income of private foundations.
Sec. 106. Excise tax on unrelated business taxable income of charitable remainder trusts.
Sec. 107. Expansion of charitable contribution allowed for scientific property used for research and for computer technology and equipment used for educational purposes.
Sec. 108. Adjustment to basis of S corporation stock for certain charitable contributions.
Sec. 109. Revenue offset.

TITLE II—EXPANSION OF CHARITABLE CHOICE

Sec. 201. Provision of assistance under government programs by religious and community organizations.

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

Sec. 301. Additional qualified entities eligible to conduct projects under the Assets for Independence Act.
Sec. 302. Increase in limitation on net worth.
Sec. 303. Change in limitation on deposits for an individual.
Sec. 304. Elimination of limitation on deposits for a household.
Sec. 305. Extension of program.
Sec. 306. Conforming amendments.
Sec. 307. Applicability.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—

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"(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

"(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

"(B) the applicable amount.

"(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined as follows:

"For taxable years beginning in:	The applicable amount is:
2002 and 2003	$25
2004, 2005, 2006	$50
2007, 2008, 2009	$75
2010 and thereafter	$100.

In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.".

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(2) DEFINITION.—Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).".

(3) CONFORMING AMENDMENT.—Subsection (d) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement account—

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"(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

"(ii) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

"(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

"(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund

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(as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

"(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

"(ii) a pooled income fund (as defined in section 642(c)(5)), and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).".

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

"(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

"(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

"(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Para-

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graph (1) shall not apply in the case of a trust described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2001.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by striking "10 percent" and inserting "the applicable percentage".

(b) APPLICABLE PERCENTAGE.—Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

"(3) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	**The applicable percentage is—**
2002 through 2007	11
2008	12

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2009	13
2010 and thereafter	15.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by striking "10 percent" each place it occurs and inserting "the applicable percentage (determined under section 170(b)(3))".

(2) Sections 545(b)(2) and 556(b)(2) of such Code are each amended by striking "10-percent limitation" and inserting "applicable percentage limitation".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 104. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Paragraph (3) of section 170(e) of the Internal Revenue Code of 1986 (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only for food that is apparently wholesome food.

"(ii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(iii) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 105. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by striking "2 percent" and inserting "1 percent".

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 of such Code is amended by striking subsection (e).

REV_00129740

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 106. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to exemption from income taxes) is amended to read as follows:

"(c) TAXATION OF TRUSTS.—

"(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

"(2) EXCISE TAX.—

"(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

"(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

"(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

"(i) subsection (b),

"(ii) determining the value of trust assets under subsection (d)(2), and

"(iii) determining income under subsection (d)(3).

"(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 107. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributions) is amended by inserting "or assembled" after "constructed".

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(c) CONFORMING AMENDMENT.—Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

REV_00129741

SEC. 108. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (1) of section 1367(a) of such Code (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 109. REVENUE OFFSET.

(a) IN GENERAL.—Paragraph (2) of section 1(i) of the Internal Revenue Code of 1986 (relating to reductions in rates after June 30, 2001) is amended—

(1) by striking "38.6" and inserting "38.8",
(2) by striking "37.6" and inserting "37.8", and
(3) by striking "35" and inserting "35.5".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes of the United States is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1991. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

"(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

"(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

"(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

REV_00129742

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices. Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

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"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

"(vii) related to hunger relief activities; or

"(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under—

"(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 105–220); or

"(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6602 et seq.); and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to—

"(A) alter its form of internal governance or provisions in its charter documents; or

"(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

"(e) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect, except that no religious organization receiving funds through a grant or cooperative agreement for programs described in subsection (c)(4) shall, in expending such funds allocated under such program, discriminate in employment on the basis of an employee's religion, religious belief, or a refusal to hold a religious belief. Nothing in this section alters the duty of a religious organi-

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zation to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4).

"(f) EFFECT ON OTHER LAWS.—Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(g) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

"(h) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (g)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(i) LOCAL CIVIL RIGHTS LAWS.—Nothwithstanding anything to the contrary in this section, nothing in this section preempts or supercedes State or local civil rights laws.

"(j) ACCOUNTABILITY.—

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"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs.

"(2) LIMITED AUDIT.—

"(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, then only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(3) SELF AUDIT.—A religious organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

"(k) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection. No direct funds shall be provided under subsection (c)(4) to a religious organization that engages in sectarian instruction, worship, or proselytization at the same time and place as the government funded program.

"(l) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(m) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate grantor'), acting under a grant or other agreement with

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the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

"(n) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

"(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—

"(1) IN GENERAL.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

"(2) TYPES OF ASSISTANCE.—Such assistance may include—

"(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

"(B) granting writing assistance which may include workshops and reasonable guidance;

"(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and a variety of other organizational areas; and

"(D) information and guidance on how to comply with Federal nondiscrimination provisions including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

"(3) RESERVATION OF FUNDS.—An amount of no less than $5,000,000 shall be reserved under this section. Small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this title.

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"(4) PRIORITY.—In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.".

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 301. ADDITIONAL QUALIFIED ENTITIES ELIGIBLE TO CONDUCT PROJECTS UNDER THE ASSETS FOR INDEPENDENCE ACT.

Section 404(7)(A)(iii)(I)(aa) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(aa) a federally insured credit union; or".

SEC. 302. INCREASE IN LIMITATION ON NET WORTH.

Section 408(a)(2)(A) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "$10,000" and inserting "$20,000".

SEC. 303. CHANGE IN LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.

Section 410(b) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $500 from a grant made under section 406(b) shall be provided per year to any one individual during the project.".

SEC. 304. ELIMINATION OF LIMITATION ON DEPOSITS FOR A HOUSEHOLD.

Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

SEC. 305. EXTENSION OF PROGRAM.

Section 416 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "2001, 2002, and 2003" and inserting "and 2001, and $50,000,000 for each of fiscal years 2002 through 2008".

SEC. 306. CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TEXT.—The text of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "demonstration" each place it appears:

(1) Section 403.
(2) Section 404(2).
(3) Section 405(a).
(4) Section 405(b).
(5) Section 405(c).
(6) Section 405(d).
(7) Section 405(e).
(8) Section 405(g).
(9) Section 406(a).
(10) Section 406(b).
(11) Section 407(b)(1)(A).
(12) Section 407(c)(1)(A).
(13) Section 407(c)(1)(B).
(14) Section 407(c)(1)(C).
(15) Section 407(c)(1)(D).
(16) Section 407(d).

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(17) Section 408(a).
(18) Section 408(b).
(19) Section 409.
(20) Section 410(e).
(21) Section 411.
(22) Section 412(a).
(23) Section 412(b)(2).
(24) Section 412(c).
(25) Section 413(a).
(26) Section 413(b).
(27) Section 414(a).
(28) Section 414(b).
(29) Section 414(c).
(30) Section 414(d)(1).
(31) Section 414(d)(2).

(b) AMENDMENTS TO SUBSECTION HEADINGS.—The heading of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "DEMONSTRATION":

(1) Section 405(a).
(2) Section 406(a).
(3) Section 413(a).

(c) AMENDMENTS TO SECTION HEADINGS.—The headings of sections 406 and 411 of the Assets for Independence Act (42 U.S.C. 604 note) are amended by striking "**DEMONSTRATION**".

SEC. 307. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this title shall apply to funds provided before, on or after the date of the enactment of this Act.

(b) PRIOR AMENDMENTS.—The amendments made by title VI of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001 (as enacted into law by Public Law 106–554) shall apply to funds provided before, on or after the date of the enactment of such Act.

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From: CN=Karen N. Blank/OU=OMB/O=EOP [OMB]

To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Rosalyn J. Rettman/OMB /EOP@EOP [OMB] <Rosalyn J. Rettman>;James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>;Larry R. Matlack/OMB/EOP@EOP [OMB] <Larry R. Matlack>;Jack A. Smalligan/OMB/EOP@EOP [OMB] <Jack A. Smalligan>;Matthew D. McKearn/OMB /EOP@EOP [OMB] <Matthew D. McKearn>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Brett S. Loper/OMB/EOP@EOP [OMB] <Brett S. Loper>;John M. Bridgeland/OPD /EOP@EOP [OPD] <John M. Bridgeland>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Mary C. Barth/OMB/EOP@EOP [OMB] <Mary C. Barth>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Richard B. Bavier/OMB/EOP@EOP [OMB] <Richard B. Bavier>;Kenneth S. Kelly/OMB/EOP@EOP [OMB] <Kenneth S. Kelly>;Alejandra O. Ceja/OMB/EOP@EOP [OMB] <Alejandra O. Ceja>;Mathew C. Blum/OMB/EOP@EOP [OMB] <Mathew C. Blum>;Fredrick J. Charney/OMB/EOP@EOP [OMB] <Fredrick J. Charney>;Wendy A. Taylor/OMB/EOP@EOP [OMB] <Wendy A. Taylor>;Brenda Aguilar/OMB/EOP@EOP [OMB] <Brenda Aguilar>;David J. Haun/OMB /EOP@EOP [OMB] <David J. Haun>;Douglas Pitkin/OMB/EOP@EOP [OMB] <Douglas Pitkin>;Alan B. Rhinesmith/OMB/EOP@EOP [OMB] <Alan B. Rhinesmith>;Francis S. Redburn/OMB/EOP@EOP [OMB] <Francis S. Redburn>;Reid B Cramer/OMB/EOP@EOP [OMB] <Reid B Cramer>;James Boden/OMB/EOP@EOP [OMB] <James Boden>;Yvette M. Dennis/OMB/EOP@EOP [OMB] <Yvette M. Dennis>;Andrew Abrams/OMB/EOP@EOP [OMB] <Andrew Abrams>;Lauren Larson/OMB/EOP@EOP [OMB] <Lauren Larson>;Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>;Justine F. Rodriguez/OMB/EOP@EOP [OMB] <Justine F. Rodriguez>;Michael C. Falkenheim/OMB/EOP@EOP [OMB] <Michael C. Falkenheim>;OFBCI-LRM [UNKNOWN] <OFBCI-LRM>;Shalini M. Benson/OMB/EOP@EOP [OMB] <Shalini M. Benson>;Patrick Aylward/OMB/EOP@EOP [OMB] <Patrick Aylward>;Norris W. Cochran/OMB/EOP@EOP [OMB] <Norris W. Cochran>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>

CC: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Ingrid M. Schroeder/OMB/EOP [OMB] <Ingrid M. Schroeder>;Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>;Irene Kho/OMB/EOP@EOP [OMB] <Irene Kho>

Sent: 7/18/2001 6:48:51 AM

Subject: : FYI, HR 7: (1) CQ story, (2) Rule for 7/18 floor debate, and (3) Rules Ctte Report (H Rept. 107-144)

Attachments: P_12DV2004_WHO.TXT_1.html; P_12DV2004_WHO.TXT_2

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CREATOR:Karen N. Blank ( CN=Karen N. Blank/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:18-JUL-2001 10:48:51.00
SUBJECT:: FYI, HR 7: (1) CQ story, (2) Rule for 7/18 floor debate, and (3) Rules Ctte
Report (H Rept. 107-144)
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Rosalyn J. Rettman ( CN=Rosalyn J. Rettman/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:James C. Capretta ( CN=James C. Capretta/OU=OMB/O=EOP@EOP [ OMB ] )
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TO:Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [ OMB ] )
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READ:UNKNOWN
TO:Matthew D. McKearn ( CN=Matthew D. McKearn/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
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FAITH-BASED PLAN'S SUPPORTERS HUNT FOR DEMOCRATIC
CROSSOVERS

By Bill Swindell, CQ Staff Writer

July 17, 2001 - Supporters of President Bush's faith-based initiative were trying to line up more than token Democratic support before Wednesday's floor vote, despite an onslaught of Democratic constituencies opposed to the legislation.

GOP Conference Chairman J.C. Watts Jr., Okla., cosponsor of the bill (HR 7), said he is confident the vast majority of the Republican caucus supports it.

"My first objective is to get to 218 [votes]," Watts said. "But I would also like to see Democratic support."

The Rules Committee allowed Tuesday night for one motion to recommit the bill and a Democratic substitute during the debate.

The bill would permit religious charities to compete for federal funds in several new categories of social services, such as housing and crime prevention. Bush has given the faith-based initiative a high priority in his legislative agenda in part because of the success of similar programs during his tenure as Texas governor.

Mustering bipartisan backing may be difficult as groups as diverse as civil rights organizations, educators, religious groups and organized labor are lobbying Democrats and moderate Republicans to oppose the measure. They contend it would weaken federal civil rights laws by allowing groups for the first time to use federal funds to discriminate in hiring against gays and lesbians, unwed mothers and others.

"With the passage of HR 7, we are a witness to the erosion of 60 years of civil rights law," said Robert C. Scott, D-Va.

Rules Committee Democrats rallied around a stand-alone amendment by Mark Foley, R-Fla., that would not allow the bill to supercede state and local civil rights laws,

including those that give protection to gays and lesbians.

"This bill, I'm afraid, means we're giving some cover to those who would choose as they minister to the poor, homeless, gays and others in their community, that they could basically exclude under religious discrimination," Foley said.

"I think this is a fundamental issue of fairness," Foley added.

The amendment lost on 4-9 vote. A Foley aide said he is undecided on whether to vote for the bill on Wednesday, but is leaning toward supporting a motion to recommit with language instructing that the anti-discrimination provision be included in the future.

Watts called such criticisms a "red herring," noting that such programs were created in the aftermath of the 1996 welfare overhaul (PL 104-193) and have not presented a problem so far.

Proponents said the bill allows for religious groups to maintain their beliefs and character, but they still must comply with all federal laws covering race, color, national origin, disability and age. Federal law does not cover sexual orientation.

Another major controversy pertains to how the measure effects the separation of church and state.

Supporters defend it by pointing out that Republicans on the House Judiciary Committee added language that requires faith-based groups to keep any religious instruction separate from the social services funded by the federal government.

Following Dollars

Opponents say that is not enough. They are critical of a provision that allows Cabinet secretaries to grant $47 billion to religious groups through individual vouchers, providing what they say is a loophole around any church-state protections.

"When taxpayers are asked by the state to subsidize religious institutions they may or may not believe in, it is no different from forcing them to put money into the collection plates of churches, synagogues and mosques," said the Rev. Barry Lynn of Americans United for Separation of Church and State.

Finally, Democrats are upset that the bill would provide $13 billion in tax breaks over 10 years for charitable giving. They noted that the tax cuts were not included in Bush's $1.35 trillion tax cut (HR 1836 -- PL 107-16) and could consume some Social Security and Medicare surpluses.

House tax writers had to scale back Bush's main tax break in the plan that would allow the 84 million taxpayers who do not itemize to receive a charitable deduction. Bush had originally wanted to make his proposed charitable deduction equal to a standard deduction by 2006. The bill offers much less, only allowing for a $25 deduction

next year, with a $50 deduction for those filing jointly.

Democratic Angles

The Democratic substitute would specify that employment discrimination would not be tolerated with taxpayer funds and state and local civil rights laws would not be superceded. It would add an offset to pay for the tax cuts by reducing recent tax cut given to the top ratepayers.

The substitute also would guarantee that proselytization does not occur at the same time and place as a government funded program and deletes the voucher provision and those dealing with tort reform.

Bush invited some Democratic lawmakers to the White House Tuesday to lobby for passage. In addition, John DiIulio, Director of the White House Office of Faith-Based and Community Initiatives, met with moderate New Democrats to push for the bill.

One Democratic moderate, Tim Roemer of Indiana, said he had not made up his mind. "John's a very eloquent spokesman for his cause, but the vehicle he is using has a lot of problems," Roemer said.

Supporters also are targeting black lawmakers, but apparently with little success. One group, the Community Solutions Alliance, put out a press release saying a vote against the bill would be a vote against black churches providing such charity work.

The effort appears not to be working. The National Association for the Advancement of Colored People opposes the bill. John Lewis, D-Ga., said the bill "is not right. It is not fair. It is not just."

Watts said a few black lawmakers may vote for the legislation, but only named Danny K. Davis, D-Ill., as a supporter. Davis confirmed he would vote for it.

Tony P. Hall, D-Ohio, a cosponsor of bill, said he has been frustrated that opponents have taken the bill out of context and have made misleading statements.

"I think we'll have a lot more Democrats than people are anticipating," Hall said. "This is a kind of issue that we are going to rise above."

Hall said supporters might get as many as 30 Democrats based on prior votes on the issue. Opponents contend the issue has never received as high as a profile as Wednesday's vote nor has it raised as many questions.

Source: CQ Monitor News

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FLOOR ACTION:

MANAGERS: PRYCE/HALL

107th Congress
1st Session

Tuesday July 17, 2001

H. RES. 196
[Report No. 107-144]

H.R. 7 - Community Solutions Act of 2001

1. Modified closed rule.

2. Waives all points of order against consideration of the bill.

3. Provides that, in lieu of the amendments recommended by the Committee on Way s and Means and the Committee on the Judiciary, the amendment in the nature of a substitute printed in the *Congressional Record* and numbered 1 shall b e considered as adopted.

4.Provides one hour of debate in the House equally divided and controlled by th e chairman and ranking minority member of the Committee on Ways and Means.

5. Provides for consideration of the amendment in the nature of a substitute printed in the Rules Committee report, if offered by Representative Rangel or Representative Conyers or a designee, which shall be considered as read, and shall be separately debatable for one hour equally divi ded and controlled by the proponent and an opponent.

6. Waives all points of order against consideration of the amendment printed in the report.

7. Provides one motion to recommit with or without instructions.

RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order wit hout intervention of any point of order to consider in the House the bill (H.R. 7) to provide incentives for charitable contributions by individuals and busin esses, to improve the effectiveness and efficiency of government program delive ry to individuals and families in need, and to enhance the ability of low-incom e Americans to gain financial security by building assets. The bill shall be c onsidered as read for amendment. In lieu of the amendments recommended by the Committees on Ways and Means and the Judiciary now printed in the bill, the ame ndment in the nature of a substitute printed in the *Congressional Record* and numbered 1 pursuant to clause 8 of rule XVIII shall be considered as adopt ed. The previous question shall be considered as ordered on the bill, as amend ed, and on any further amendment thereto to final passage without intervening m otion except: (1) one hour of debate on the bill, as amended, equally divided a nd controlled by the chairman and ranking minority member of the Committee on W ays and Means; (2) the further amendment in the nature of a substitute printed in the report of the Committee on Rules accompanyi ng this resolution, if offered by Representative Rangel of New York, Representa tive Conyers of Michigan, or a designee, which shall be in order without interv ention of any point of order,

shall be considered as read, and shall be separat ely debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

AMENDMENT MADE IN ORDER

Rangel/Conyers/Frank/Nadler/Edwards/Scott Amendment Summary | Text (In .PDF Format)

The latest version of Acrobat Reader can be downloaded from Adobe Systems.

107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 107–144

PROVIDING FOR CONSIDERATION OF H.R. 7, THE COMMUNITY SOLUTIONS ACT OF 2001

JULY 17, 2001.—Referred to the House Calendar and ordered to be printed

Ms. PRYCE of Ohio, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 196]

The Committee on Rules, having had under consideration House Resolution 196, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration in the House of H.R. 7, the Community Solutions Act of 2001, under a modified closed rule. The rule provides one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule waives all points of order against consideration of the bill.

The rule provides that, in lieu of the amendments recommended by the Committee on Ways and Means and the Committee on the Judiciary now printed in the bill, the amendment in the nature of a substitute printed in the Congressional Record and numbered one shall be considered as adopted.

The rule provides for consideration of the amendment in the nature of a substitute printed in this report, if offered by Representative Rangel or Representative Conyers or a designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment. Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

89–008

REV_00129758

Rules Committee Record Vote No. 26

Date: July 17, 2001.
Measure: H.R. 7, the Community Solutions Act of 2001.
Motion By: Mr. Frost.
Summary of Motion: Make in order the Foley amendment to ensure that organizations receiving federal funds to subsidize the operation of a faith-based assistance program would not be permitted to exempt themselves from State and local civil rights laws.
Results: Defeated 4 to 9.
Vote by Member: Goss—Nay; Linder—Nay; Pryce—Yea; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Hall—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 27

Date: July 17, 2001.
Measure: H.R. 7, the Community Solutions Act of 2001.
Motion By: Mr. Frost.
Summary of Motion: Make in order the Edwards amendment to prohibit direct federal funding of pervasively sectarian organizations.
Results: Defeated 3 to 10.
Vote by Member: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Hall—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 28

Date: July 17, 2001.
Measure: H.R. 7, the Community Solutions Act of 2001.
Motion By: Mr. Hastings (FL).
Summary of Motion: Make in order the Thurman amendment to provide that the tax provisions in the bill would not apply if the Director of OMB projects that there will be a federal deficit outside the Social Security and Medicare Trust Funds.
Results: Defeated 3 to 10.
Vote by Member: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Hall—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

SUMMARY OF AMENDMENT MADE IN ORDER TO H.R. 7—COMMUNITY SOLUTIONS ACT OF 2001

Rangel/Conyers/Frank/Nadler/Edwards/Scott: Democratic Substitute. Retains all of the provisions of the bill as reported with the following changes: revises section 1991(e) in section 201 to make clear that religious organizations receiving taxpayer dollars for charitable choice programs cannot discriminate in employment on the basis of an employee's religion, religious belief, or a refusal to hold a religious belief, adds a new section (i) to section 1991 in section 201 to prohibit the charitable choice provisions in the bill from preempting or superceding state or local civil rights laws; revises sections 1991(j) of section 201 to make clear that religious programs cannot engage in sectarian instruction, worship, or pros-

REV_00129759

elytization at the same time and place as the government funded program; deletes the indirect assistance provision; deletes the tort liability reform provisions; and includes a revenue offset that reduces the recent tax cut for the top income rate by 0.2 percentage points to offset the cost of the tax benefits included in Title I.

Text of amendment made in order under the rule:

AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RANGEL OF NEW YORK, OR REPRESENTATIVE CONYERS OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Community Solutions Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
Sec. 102. Tax-free distributions from individual retirement accounts for charitable purposes.
Sec. 103. Increase in cap on corporate charitable contributions.
Sec. 104. Charitable deduction for contributions of food inventory.
Sec. 105. Reform of excise tax on net investment income of private foundations.
Sec. 106. Excise tax on unrelated business taxable income of charitable remainder trusts.
Sec. 107. Expansion of charitable contribution allowed for scientific property used for research and for computer technology and equipment used for educational purposes.
Sec. 108. Adjustment to basis of S corporation stock for certain charitable contributions.
Sec. 109. Revenue offset.

TITLE II—EXPANSION OF CHARITABLE CHOICE

Sec. 201. Provision of assistance under government programs by religious and community organizations.

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

Sec. 301. Additional qualified entities eligible to conduct projects under the Assets for Independence Act.
Sec. 302. Increase in limitation on net worth.
Sec. 303. Change in limitation on deposits for an individual.
Sec. 304. Elimination of limitation on deposits for a household.
Sec. 305. Extension of program.
Sec. 306. Conforming amendments.
Sec. 307. Applicability.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—

REV_00129760

"(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

"(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

"(B) the applicable amount.

"(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined as follows:

"For taxable years beginning in:	The applicable amount is:
2002 and 2003	$25
2004, 2005, 2006	$50
2007, 2008, 2009	$75
2010 and thereafter	$100.

In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.".

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(2) DEFINITION.—Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DIRECT CHARITABLE DEDUCTION.—For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).".

(3) CONFORMING AMENDMENT.—Subsection (d) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(3) the direct charitable deduction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement account—

REV_00129761

"(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

"(ii) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or

"(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

"(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

"(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

"(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

"(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

"(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund

(as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

"(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

"(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

"(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

"(ii) a pooled income fund (as defined in section 642(c)(5)), and

"(iii) a charitable gift annuity (as defined in section 501(m)(5)).".

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

"SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

"(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

"(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

"(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

"(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

"(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

"(E) the total income of the trust within such year and the expenses attributable thereto, and

"(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Para-

REV_00129763

graph (1) shall not apply in the case of a trust described in section 4947(a)(1).".

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

"(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

"(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

"(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.".

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2001.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by striking "10 percent" and inserting "the applicable percentage".

(b) APPLICABLE PERCENTAGE.—Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

"(3) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	**The applicable percentage is—**
2002 through 2007	11
2008	12

REV_00129764

2009	13
2010 and thereafter	15.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by striking "10 percent" each place it occurs and inserting "the applicable percentage (determined under section 170(b)(3))".

(2) Sections 545(b)(2) and 556(b)(2) of such Code are each amended by striking "10-percent limitation" and inserting "applicable percentage limitation".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 104. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Paragraph (3) of section 170(e) of the Internal Revenue Code of 1986 (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

"(i) GENERAL RULE.—In the case of a charitable contribution of food, this paragraph shall be applied—

"(I) without regard to whether the contribution is made by a C corporation, and

"(II) only for food that is apparently wholesome food.

"(ii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

"(iii) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term 'apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 105. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by striking "2 percent" and inserting "1 percent".

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 of such Code is amended by striking subsection (e).

REV_00129765

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 106. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to exemption from income taxes) is amended to read as follows:

"(c) TAXATION OF TRUSTS.—

"(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

"(2) EXCISE TAX.—

"(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

"(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

"(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

"(i) subsection (b),

"(ii) determining the value of trust assets under subsection (d)(2), and

"(iii) determining income under subsection (d)(3).

"(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 107. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributions) is amended by inserting "or assembled" after "constructed".

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(c) CONFORMING AMENDMENT.—Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting "or assembled" after "constructed" and "or assembling" after "construction".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

REV_00129766

SEC. 108. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (1) of section 1367(a) of such Code (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 109. REVENUE OFFSET.

(a) IN GENERAL.—Paragraph (2) of section 1(i) of the Internal Revenue Code of 1986 (relating to reductions in rates after June 30, 2001) is amended—

(1) by striking "38.6" and inserting "38.8",
(2) by striking "37.6" and inserting "37.8", and
(3) by striking "35" and inserting "35.5".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes of the United States is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1991. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

"(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

"(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

"(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

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"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices. Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

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"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

"(vii) related to hunger relief activities; or

"(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under—

"(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 105–220); or

"(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6602 et seq.); and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to—

"(A) alter its form of internal governance or provisions in its charter documents; or

"(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

"(e) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect, except that no religious organization receiving funds through a grant or cooperative agreement for programs described in subsection (c)(4) shall, in expending such funds allocated under such program, discriminate in employment on the basis of an employee's religion, religious belief, or a refusal to hold a religious belief. Nothing in this section alters the duty of a religious organi-

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zation to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4).

"(f) EFFECT ON OTHER LAWS.—Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(g) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

"(h) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (g)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(i) LOCAL CIVIL RIGHTS LAWS.—Nothwithstanding anything to the contrary in this section, nothing in this section preempts or supercedes State or local civil rights laws.

"(j) ACCOUNTABILITY.—

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"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs.

"(2) LIMITED AUDIT.—

"(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, then only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(3) SELF AUDIT.—A religious organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

"(k) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection. No direct funds shall be provided under subsection (c)(4) to a religious organization that engages in sectarian instruction, worship, or proselytization at the same time and place as the government funded program.

"(l) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(m) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate grantor'), acting under a grant or other agreement with

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the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

"(n) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

"(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—

"(1) IN GENERAL.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

"(2) TYPES OF ASSISTANCE.—Such assistance may include—

"(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

"(B) granting writing assistance which may include workshops and reasonable guidance;

"(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and a variety of other organizational areas; and

"(D) information and guidance on how to comply with Federal nondiscrimination provisions including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

"(3) RESERVATION OF FUNDS.—An amount of no less than $5,000,000 shall be reserved under this section. Small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this title.

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"(4) PRIORITY.—In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.".

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 301. ADDITIONAL QUALIFIED ENTITIES ELIGIBLE TO CONDUCT PROJECTS UNDER THE ASSETS FOR INDEPENDENCE ACT.

Section 404(7)(A)(iii)(I)(aa) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(aa) a federally insured credit union; or".

SEC. 302. INCREASE IN LIMITATION ON NET WORTH.

Section 408(a)(2)(A) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "$10,000" and inserting "$20,000".

SEC. 303. CHANGE IN LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.

Section 410(b) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

"(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $500 from a grant made under section 406(b) shall be provided per year to any one individual during the project.".

SEC. 304. ELIMINATION OF LIMITATION ON DEPOSITS FOR A HOUSEHOLD.

Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

SEC. 305. EXTENSION OF PROGRAM.

Section 416 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "2001, 2002, and 2003" and inserting "and 2001, and $50,000,000 for each of fiscal years 2002 through 2008".

SEC. 306. CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TEXT.—The text of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "demonstration" each place it appears:

(1) Section 403.
(2) Section 404(2).
(3) Section 405(a).
(4) Section 405(b).
(5) Section 405(c).
(6) Section 405(d).
(7) Section 405(e).
(8) Section 405(g).
(9) Section 406(a).
(10) Section 406(b).
(11) Section 407(b)(1)(A).
(12) Section 407(c)(1)(A).
(13) Section 407(c)(1)(B).
(14) Section 407(c)(1)(C).
(15) Section 407(c)(1)(D).
(16) Section 407(d).

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(17) Section 408(a).
(18) Section 408(b).
(19) Section 409.
(20) Section 410(e).
(21) Section 411.
(22) Section 412(a).
(23) Section 412(b)(2).
(24) Section 412(c).
(25) Section 413(a).
(26) Section 413(b).
(27) Section 414(a).
(28) Section 414(b).
(29) Section 414(c).
(30) Section 414(d)(1).
(31) Section 414(d)(2).

(b) AMENDMENTS TO SUBSECTION HEADINGS.—The heading of each of the following provisions of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking "DEMONSTRATION":

(1) Section 405(a).
(2) Section 406(a).
(3) Section 413(a).

(c) AMENDMENTS TO SECTION HEADINGS.—The headings of sections 406 and 411 of the Assets for Independence Act (42 U.S.C. 604 note) are amended by striking "**DEMONSTRATION**".

SEC. 307. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this title shall apply to funds provided before, on or after the date of the enactment of this Act.

(b) PRIOR AMENDMENTS.—The amendments made by title VI of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001 (as enacted into law by Public Law 106–554) shall apply to funds provided before, on or after the date of the enactment of such Act.

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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
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TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP [WHO])
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TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sam Dickens (CN=Sam Dickens/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP [WHO])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP [WHO])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP [WHO])
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TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
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TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
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TO:Gregory_J._Jenkins@oa.eop.gov (Gregory_J._Jenkins@oa.eop.gov [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas_D._McCormick@oa.eop.gov (Douglas_D._McCormick@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])

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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])

READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])

READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP [WHO])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])

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TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
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You will all remember that the President recently appointed a bipartisan Commission to Strengthen Social Security. By law, once the staff draft of the interim report goes to the full commission the staff draft becomes available for public access. Attached are (1) the report, and (2) talking points on the report. Please let me know if you have any questions.

(See attached file: SS Interim Report Final Talkers.doc)(See attached file: SS Interim Rpt Staff Draft.doc)
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Highlights from the DRAFT Interim Report of the President's Commission to Strengthen Social Security

The President's Commission to Strengthen Social Security is now reviewing staff drafts of the interim report that will be released after the Commission's meeting on July 24. The staff draft of the interim report concludes that Social Security is in trouble and the benefits of future seniors will be jeopardized without serious bipartisan action and solutions. Key findings of the draft interim report include:

- **The current system simply can't cope with the upcoming demographic changes in our country.** The ratio of workers to retirees will drop to close to 2-to-1 within a generation.

- **To provide for tomorrow's retirees, we must become a nation of owners and savers**. However, the existing Social Security program does not save or invest for future generations of seniors.

- **Strengthening Social Security is an opportunity to improve the program's treatment of women, low-income Americans, African Americans and Hispanic Americans.**

- **Social Security's cash deficits are projected to begin in 2016.**

- **Without bipartisan action to strengthen Social Security, the only options available to the government beginning in 2016 will be large tax increases, deep benefit cuts for seniors, borrowing on an unprecedented scale, or cutting other government spending.** Arguments against serious bipartisan reform are equivalent to express advocacy of these options. For example, if the government chose cutting spending to meet Social Security's shortfalls, by 2020, the required spending cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior, Commerce, and the EPA. By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs. *(Key statistics are attached)*

- **Faster economic growth will not save the existing system.** Even under the independent Social Security Trustees' faster-growth estimates, permanent Social Security cash deficits would only be delayed by one year -- to 2017. Even if every economic and demographic variable is changed to reduce costs, permanent deficits would begin in 2020.

- **Inflating the Social Security Trust Fund will not help.** The report cites several sources, including the Social Security Public Trustees, the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, and the Clinton Administration FY2000 Budget, that assert that regardless of the balance in the Social Security Trust Fund, the choices under the current system remain the same – tax increases, deep benefit cuts, unprecedented government borrowing or cutting other government spending.

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HOW NOT STRENGTHENING SOCIAL SECURITY WOULD AFFECT AMERICAN HOUSEHOLDS

Without bipartisan action to strengthen Social Security, beginning in 2016 the government would face the choices of raising taxes, cutting benefits, cutting other government spending, and increasing borrowing.

How Would Households Be Affected if the Government Chose to Raise Taxes?

If tomorrow's percentage shortfalls were faced today, the following additional taxes would be required from a two-earner couple with $50,000 in income:

- ☑ Shortfall in 2020 = $860 in today's earnings
- ☑ Shortfall in 2030 = $2,100 in today's earnings
- ☑ Shortfall in 2040 = $2,275 in today's earnings
- ☑ Shortfall in 2050 = $2,295 in today's earnings

How Would Beneficiaries be Affected if the Government Chose to Cut Benefits?

If tomorrow's percentage shortfalls were faced today, benefits would need to be reduced by the following amounts, for an average retiree and spouse:

- ☑ Shortfall in 2020 = $2,227 in today's annual benefits
- ☑ Shortfall in 2030 = $4,605 in today's annual benefits
- ☑ Shortfall in 2040 = $4,867 in today's annual benefits
- ☑ Shortfall in 2050 = $4,888 in today's annual benefits

What if the Government Cut Other Spending Instead of Raising Taxes or Cutting Benefits?

In today's dollars, the following amounts of spending would have to be cut to compensate for the Social Security deficit:

- ☑ 2020 = $99 Billion
- ☑ 2025 = $194 Billion
- ☑ 2030 = $271 Billion
- ☑ 2035 = $318 Billion

- ➢ By 2020, required cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior, Commerce, and the EPA.

- ➢ By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs.

What if the Government Chose Instead to Add to Public Debt?

- ➢ The total borrowing required to finance Social Security's cash shortfalls would equal $7 trillion by 2040, $14 trillion by 2050, and $47 trillion by 2075 (in 2001 dollars).

Social Security and Women:

- Women are more likely than men to suffer poverty in old age.
- Poverty rates are highest for widowed, divorced and never-married women.
- Women receive a higher percentage of their retirement income from Social Security than do men, and thus are particularly threatened by the benefit reductions that would occur in the absence of reform (a 27% reduction in 2038.)
- Social Security contains many quirks and inequities that hurt women who work. For example, a low-income two-earner couple experiences a lower rate of return than a high-income one-earner couple. The report presents an example of two families with identical household earnings, one of which receives 19% more in benefits than the other.

Social Security and Low-Income Americans:

- Despite popular perceptions, recent studies show that Social Security provides little, if any, systematic redistribution from rich to poor.
- Recent academic research finds that, as a result of mortality differences, African-Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.
- Because they are younger than the general population, disproportionate numbers of Hispanic Americans will enter retirement having received below market rates of return from the Social Security program.

Social Security and the Young

Without reform, Social Security will provide a bad deal for today's young workers.

Real Rates of Return
(Assumes No Change in Law, Retirement At Age 65)

Born	Single Male (Med. Wage)	Single Female (Medium)	One-Earner Couple (Medium)	Two-Earner Couple (Medium/Low)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88

America Must Become A Nation of Owners and Savers:

- The median U.S. household owned only $17,400 worth of financial assets in 1998, including retirement accounts. For African American and Hispanic households, the numbers were only $3,060 and $1,200 respectively.
- Tax payments to Social Security represent the largest contribution to retirement for most Americans. If savings and investment opportunities are not created within Social Security, these Americans will lose their best opportunity to acquire financial assets.

Background on the President's Commission to Strengthen Social Security:

President Bush demonstrated his commitment to tackle tough problems by stepping forward to provide much-needed leadership in the area of Social Security. The President signed an Executive Order creating a bipartisan, 16-member, commission to study and report back this fall with specific recommendations to preserve Social Security for seniors while building wealth for younger Americans. The commission is co-chaired by former Senator Patrick Moynihan (D-NY), and Dick Parsons (Co-Chief Operating Officer of AOL/Time Warner). The commission will make recommendations to modernize and restore fiscal soundness to Social Security, using six key principles developed by the President as a roadmap:

- Modernization must not change Social Security benefits for retirees or near-retirees.
- The entire Social Security surplus must be dedicated to Social Security only.
- Social Security payroll taxes must not be increased.
- Government must not invest Social Security funds in the stock market.
- Modernization must preserve Social Security's disability and survivors components.
- Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

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6) Analytical Criteria

Bringing Social Security into the 21st Century:
A Preface By the Co-Chairs

Social Security is one of the most important and most popular domestic programs of the United States government. For millions of retirees, it serves either as the sole or the primary source of income, the mainstay of their dignity and independence. Millions of others look to it to sustain or supplement the retirement they hope to begin within the next several years. Since its inception in the midst of the Great Depression, it has made a vital difference in the lives of generations of hardworking Americans and their families.

The road, however, hasn't always been smooth. Social Security has been beset by periodic fiscal crises, and recently by public skepticism that could reasonably be termed a crisis of confidence. In establishing a Commission to Strengthen Social Security, President Bush had both concerns in mind.

The crisis of confidence is real. Many working adults do not believe that they will ever collect retirement benefits from Social Security. Such a failure has never once happened in a program that dates well back into the last century. But Americans tend to be skeptical of government, and this is no bad thing. It would, however, be a terrible thing if the skeptics should turn out to be right this time. Part of the Commission's mandate is to prove them wrong.

Among the program's fiscal crises, the most dangerous occurred in the early 1980s, when the pay-as-you-go system was approaching the point where promised outlay would exceeded expected revenues. A bipartisan National Commission on Social Security Reform was created to work out a solution in 1982. For all its good intentions, the commission could reach no agreement for a year. It wasn't until the prospect of default – that is, the need to obtain general revenue to maintain benefit payments – that minds became sufficiently concentrated. In early 1983, in the course of eleven days, a number of commission members together with White House officials reached a comprehensive agreement that literally saved Social Security for the decades that followed.

Before long, the system was not only stabilized but running a substantial surplus. This will continue for another 15 years, when the very same crisis will recur, compounded by the mounting pressure of demographics. In brief, the problem is this: more and more of us are living healthier and longer lives. At the same time, we're having smaller families. Birth rates are now just over half what they were during the peak of the baby boom.

The relentless truth of ascending life expectancies and declining birth rates will put an intolerable squeeze on the system that now exists. Consider the facts. In 1940, when benefits were first paid, there were 42 workers per retiree. In 1960, there were five workers for every retiree. Now there are slightly more than three. Before long there will be just two. This downward trend in the ratio of workers to retirees, under the existing system, would require either painful tax increases, significant benefit cuts, or astronomical levels of borrowing.

It could be worse. There are European countries for which the United Nations projects a population decline of more than 40 percent by mid-century. By contrast, our population will experience a measure of growth, thanks not least to immigration. But the ratio of workers to retirees will never again be anything like that of the age in which Social Security was founded.

As powerful as the impact of demographics is, there are other factors at work that require the overhaul of a system conceived in the first half of the last century. The stock market and personal investing are no longer solely the prerogative of the rich and privileged. Due to a major extension of the opportunities for higher education, the gradual dismantling of the legal and social barriers to the economic advancement of minorities and women, and an explosion of new businesses and start-up enterprises, traditional job roles and life-long occupational patterns have been altered or swept away.

For our forebears, Social Security was a transforming novelty. For us, it's a system utterly devoid of options for building a net worth that reflects the dynamism of the American economy or which facilitates investments to the benefit of our children or heirs. Nowhere is this dearth of possibilities more glaring than among the growing number of single-parent families, most of whom rely on Social Security as their only tool of preparation for retirement.

At present, under the Supreme Court ruling in *Flemming v. Nestor*, workers and retirees have no legal ownership over their Social Security benefits. Instead, what they have is a political promise that can be changed at any time, by any amount, for any reason. In any retirement system a lack of legal ownership is a source of insecurity. In one that is under-financed by over 25 percent, it is a problem on its way to becoming a crisis.

Though the Social Security system has itself reached retirement age, almost no one proposes that it be dismantled or eviscerated. The Commission came to work clear about its mission. Our job is to bring the system into the 21st century, to make it more responsive to the extraordinary social and economic changes that continue to remake every facet of our lives, and to ensure its fiscal strength and fiduciary soundness.

The charge that President Bush gave us is nonpartisan and nonpolitical: *The promise of Social Security to current and future generations of Americans must and will be kept.*

We believe the diversity of views, opinions and political beliefs represented on this Commission is critical to our ability to make an objective analysis. Equally, we believe that all of the members are determined to do their very best to help "promote the general welfare" of the American people and not to serve political ends. With these intentions and principles in place, the Commission has reached several conclusions that are presented on the following pages. Here we emphasize three:

If we are to maintain a sound system of support for tomorrow's retirees, this present generation of Americans must be encouraged to save and invest more than it currently does;

The Social Security program, as it now stands, does nothing to promote individual savings or investment. Workers have little sense of proprietorship or a sense of what they are entitled to. Many have lost confidence in ever receiving anything back;

The system is broken. Unless we move boldly and quickly, the promise of Social Security to future retirees cannot be met without eventual resort to benefit cuts, tax increases, or massive borrowing. The time to act is now.

This report presents the facts and reasons behind our conclusions. It is not meant to please any one constituency or to provide a rationale for preconceived notions of what should be done. Its purpose is twofold; to identify what has to be fixed in order to modernize a program conceived and designed for a different era and a different economy; and to preserve the spirit of intelligent innovation and concern for the common good that created Social Security in the first place.

If the problems spelled out in this interim report become a topic of national debate and receive the public's focus and scrutiny, that in itself will be a positive step forward. The greatest threat is in taking the course of least resistance, ignoring the challenge and doing nothing.

We believe that the opportunity now exists to do more than analyze and debate. The moment has arrived for a fundamental restructuring of the nation's Social Security system that doesn't merely postpone the day of reckoning but guarantees adequate funding for future retirees. If we do it right – and we have every confidence that a bipartisan coalition can – Social Security may be funded by clearly earmarked money that cannot be diverted to other purposes through the political process.

For the first time, the program can become an active rather than a passive instrument of personal financial security. Rather than ending with the life of the beneficiary, it can be a means of wealth accumulation and long-range investment, giving families resources they never had before, and widening the circle of Americans fortunate enough to pass on the accumulated results of their investments and hard work.

If we have the will, we have the means to reestablish equity, maintain benefits for current retirees, and enable workers to acquire a measure of wealth in the course of their working lives.

In our final report, the Commission will make specific suggestions for concrete steps toward the reform and revitalization of Social Security. For now, we wish to reiterate our enthusiastic belief that we have an historic opportunity to make Social Security more relevant, more equitable and more effective than ever before. The ultimate beneficiary of our commitment to act promptly, impartially and decisively to resolve what is both a fiscal crisis and a crisis of confidence will be the American people.

Daniel Patrick Moynihan Richard D. Parsons

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Summary

Our Opportunity is Equal to Our Challenge

• If we have the will, we have the means to reestablish equity, maintain benefits for current retirees, and enable workers to acquire a measure of wealth in the course of their working lives.

General Findings of the Commission

• To support tomorrow's retirees, we must save and invest more.

• The existing Social Security program does not save or invest for the future.

• Arguments against reform are equivalent to express advocacy of increasing taxes, cutting benefits, reducing other government spending, or borrowing on an unprecedented scale.

The Current System is Not Designed to Cope with Demographic Changes

• The ratio of workers to retirees will drop to close to 2-to-1 within a generation.

Social Security's Cash Deficits Are Projected to Begin in 2016

• In 2016, the program's benefit obligations will exceed its annual tax revenue.

Faster Economic Growth Will Not Save the Existing System

• Under the Trustees' faster-growth estimates, permanent cash deficits would only be delayed by one year, to 2017. Even if every economic and demographic variable were changed to reduce costs, permanent deficits would begin in 2020.

Building up a Social Security Trust Fund Will Not Change Tough Choices

• The report cites several sources, including the Social Security Public Trustees, the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, and the Clinton Administration FY2000 Budget, each to the effect that the Trust Fund is not an asset of the government.

How Would Households Be Affected if Shortfalls Were Met By Raising Taxes?

• If tomorrow's shortfalls were faced today, the following additional taxes would be required from a two-earner couple with $50,000 in income:

Shortfall in 2020:	$860 in today's earnings
Shortfall in 2030:	$2,100 in today's earnings

How Would Beneficiaries be Affected if Shortfalls Were Met By Cutting Benefits?

• If tomorrow's shortfalls were faced today, benefits would be reduced by the following amounts for an average retiree and spouse:

Shortfall in 2020:	$2,227 in today's annual benefits
Shortfall in 2030:	$4,605 in today's annual benefits

What if Shortfalls Were Met By Cutting Other Spending?

• By 2020, required cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior and Commerce, and the EPA. By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs.

What if Shortfalls Were Met by Adding to Public Debt?

• The total borrowing required to finance Social Security's cash shortfalls would equal $7 trillion by 2040, $14 trillion by 2050, and $47 trillion by 2075 (in 2001 dollars).

Our Opportunity to Improve Social Security for Women

• Women are more likely than men to suffer poverty in old age.

• Poverty rates are highest for widowed, divorced and never-married women.

• Women receive a higher percentage of their retirement income from Social Security than do men, and thus are particularly threatened by the benefit reductions that would occur in the absence of reform (a 27 percent reduction in 2038).

• Social Security contains many inequities that hurt women who work. A low-income two-earner couple experiences a lower rate of return than a high-income one-earner couple.

Our Opportunity to Improve Social Security for Vulnerable Americans

• Despite popular perceptions, recent studies show that Social Security provides little, if any, systematic redistribution from rich to poor.

• Recent academic research finds that, as a result of mortality differences, African Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.

• Because they are younger than the general population, disproportionate numbers of Hispanic Americans will enter retirement having received below market rates of return from the Social Security program.

Our Opportunity to Improve Social Security for Younger Americans

• Under the existing system, Social Security will provide a bad deal for today's young workers, as seen in the charts on the following page. These charts show rates of return plummeting for individuals entering the workforce, who would have to live well past their expected lifetimes to receive back the value of their contributions.

Our Opportunity to Become A Nation of Owners and Savers

• The median U.S. household owned only $17,400 worth of financial assets in 1998, including retirement accounts. For African American and Hispanic households, the numbers were only $3,060 and $1,200 respectively.

• Tax payments to Social Security represent the largest contribution to retirement preparation for most Americans. If savings and investment opportunities are not created within Social Security, these Americans will lose their best opportunity to acquire financial assets.

What age must you reach to get back what you've paid in?			
Year of retirement	Age an average earner gets back taxes paid into the retirement portion of Social Security	Total Life Expectancy for Individual Reaching Age 65	
		Male	Female
1940	65.2	77.7	79.7
1960	66.1	78.2	82.4
1980	67.8	79.7	83.8
2001	81.8	81.3	84.6
2010	85.2	81.9	85.0
2020	89.7	82.5	85.6
2030	91.9	83.0	86.1
Source: Congressional Research Service, "Social Security: The Relationship of Taxes and Benefits for Past, Present, and Future Retirees," June 22, 2001; updated via telephone conversation with author.			
Under the intermediate assumptions of the 2001 Trustees Report and taking into account benefit increases and continued accrual of interest after retirement but not the taxation of benefits. The retiree is assumed to begin work at age 22 and attain age 65 and retire in January of the designated year. Assume contributions earn interest equal to the long-term government bond rate.			

Real Rates of Return Falling Under Social Security				
Birth Year	Single Male (Medium wages)	Single Female (Medium wages)	Single Earner Couple (Medium Wages)	Two-Earner Couple (Medium/ Low wages)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88
Source: May 27, 2001 memorandum from Social Security Office of the Actuary.				

1) Maintaining Our Commitment to Social Security

Social Security affects the life of nearly every American through its provision of retirement, survivors and disability benefits. Today Social Security faces serious challenges but must always honor its founding purpose of protecting the elderly from want and bringing dignity to retirement.

Social Security was created in a world different from our own. It was a world of large families and short life spans, a world in which markets were perceived to have failed and faith in the individual had ebbed. Social Security effectively responded to the needs of that world.

The world is different today. Americans enjoy the blessing of long life: by the year 2050 more than one-fifth of the population will be over age 65. Americans have chosen to have smaller families: birth rates today are just over half what they were during the peak of the Baby Boom. These two facts put a severe strain on our system of retirement security. In 1960, there were over five workers for every retiree. Today there are three and a half workers per retiree, and by 2030 there will be just over two. Under the existing system, this downward trend in the ratio of workers to retirees will require the government to raise taxes, cut benefits, cut other government spending, or borrow the necessary funds. Under such circumstances, rates of return for workers – already low – will fall further, and most retirees would have to live well past the average life expectancy simply to get back what they had paid into the system.

The creators of Social Security were not content to do nothing in the face of an unacceptable status quo. We who inherit their achievement must live up to their example.

Though the demographic changes since 1935 will soon strain our retirement system, other changes offer opportunities to improve it. We better understand the power of markets than Americans did during the shock of the Great Depression. We feel more urgently the importance of extending the benefits of personal asset ownership. And we are more strongly committed to equitable treatment of all our nation's people, regardless of race, income or gender.

These advances have sparked a new need for a retirement system that includes saving and ownership. Social Security must adapt to today's population of young people, the self-employed, minorities and women. And it must serve this new society as well as the existing system served a past society in which men were often the sole earners in the family.

Social Security today offers every worker a promise that will vary in value depending on the length of that worker's life and the policies of Congresses decades in the future. Simple arithmetic dictates that these promises can be honored in full only by imposing substantially higher costs on future generations of workers.

The way to alleviate this burden is to provide opportunities for individuals to save more for their retirement. The more wealth individuals can accumulate, the less they will have to rely on taxes imposed on tomorrow's workers. Just as important, higher saving rates increase the capital stock and enhance worker productivity. A more productive economy can more easily support larger populations of retirees without overburdening

workers or their families. Outlining a strategy to boost personal and national saving is one of the most important tasks of this Commission.

President Bush directed this Commission to review Social Security and recommend reforms to strengthen and sustain it. Thus far, we have reached the following conclusions:

If we are to support tomorrow's retirees without overburdening tomorrow's workers, this generation of Americans must save and invest more.

The existing Social Security program does not save or invest for the future. It was not designed to facilitate saving, and the political process cannot be relied upon to save on behalf of American families.

Under the existing system, Americans will soon face inescapable choices: cut Social Security benefits, raise taxes, cut other government spending, or borrow on an unprecedented scale.

Arguments for doing nothing are equivalent to direct advocacy of one or more of these options.

This report presents the evidence on which these conclusions rest – and the case for acting now, while there is adequate time to prepare, rather than waiting for the inevitable crisis. We must understand the nature and dimension of the challenge that we face. One aspect of that challenge is clear: *Inaction is not a solution*.

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2) The Demographic Challenge

Income Transfer system: Each generation supports the generation that came before it.

Funded system: Each generation saves and invests for its own retirement.

Many people believe that Social Security is a national pension fund in which workers make "contributions" to an investment account called the "Trust Fund." When a worker retires, dies or becomes disabled, his contributions, plus interest, are taken out of the fund to pay benefits.

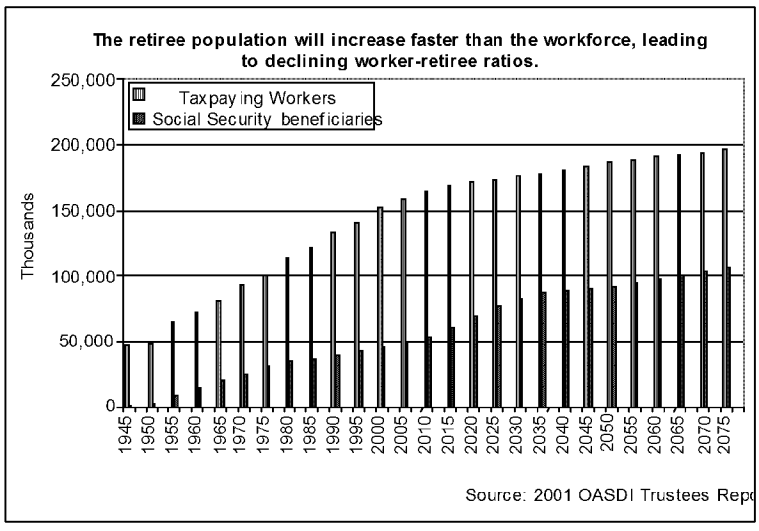
The reality is different. Our Social Security system is managed as an income transfer program. This means that every penny of benefits paid each year comes from taxes collected or money borrowed from the public in that year. Under such a system, higher taxes today do not reduce tax burdens in the future.

The present value of Social Security's currently accrued obligations exceeds $12 trillion. This means that if Social Security were a funded pension plan, it would need to hold over $12 trillion worth of real assets to pay future benefits.[1]

Today's beneficiaries are not living off financial assets accumulated in the past. Today's workers are not accumulating financial assets for the future. Workers "invest" their payroll taxes not in financial assets but in the willingness of future politicians to tax future workers to pay future benefits.

The Importance of the Worker-to-retiree Ratio

As an income transfer system, Social Security works best with a high ratio of workers to beneficiaries. When the United States had a rapidly growing workforce supporting a small elderly population, Social Security seemed sustainable. But when fewer new workers are paying into Social Security and more new retirees are collecting from it, the burden placed on individual workers must inevitably rise.

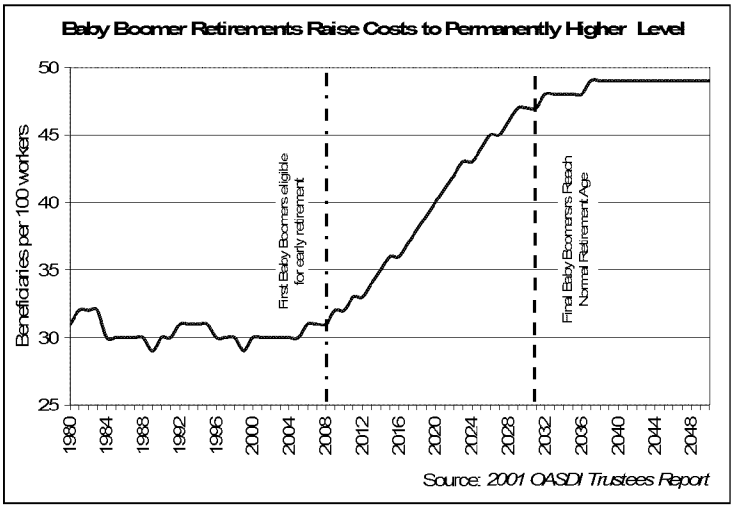


That's exactly what has been happening. In 1960 there were more than five workers paying into Social Security for every individual collecting benefits. Today, demographic

[1] This assumes that assets would be invested at the long-term government bond rate.

changes have reduced the worker-to-retiree ratio to 3.4-to-1. By 2050 it will be just 2-to-1. In other words, a future worker will bear a relative Social Security burden two-and-a-half times as large as a worker in 1960.

Problems Continue After the Baby Boomers Retire



Beginning in 2008 the first Baby Boomers will be eligible to take early retirement. The following two decades will see a rapid increase in the cost of delivering Social Security benefits, from 10.9 percent of taxable earnings in 2008 to 17.4 percent of earnings in 2031, when the final Boomers reach Normal Retirement Age.

Baby Boomer retirements mark the beginning of Social Security's financing problems. But Social Security's problems will continue – and grow worse – even after the Boomers are gone. In 2025, for instance, when the youngest Baby Boomer will be 60, the worker-to-retiree ratio will be 2.3-to-1. By 2050, when the youngest Boomer will be 85 and most of them will have passed on, the worker-to-retiree ratio will have further declined to just two workers per retiree.

Temporary stop-gap measures to keep Social Security solvent would not be effective because there is no relief from the demographic pressures bearing on the program. Baby Boomer retirements raise Social Security costs to a new and higher plateau from which there is no long-term relief under the current system.

Lagging Birthrates Mean Fewer New Workers

The "Baby Boom" generation born from the end of World War II to 1964 was originally a blessing to Social Security's finances. Returning veterans started new families by the millions, raising the total U.S. fertility rate from 2.2 children per woman in 1940 to 3.2 in 1947 and on to a high of 3.7 in 1957. For Social Security this meant millions of new workers paying taxes into the system.

But the Baby Boom didn't last. Following the Boom, birth rates fell *below* their pre-Boom level. By the mid-1970s, for instance, fertility averaged just 1.8 children per woman, half the level of the late 1950s. And while fertility rates have risen somewhat in recent years – they now stand at around two children per woman – Social Security's Trustees expect these historically low rates to continue indefinitely into the future.

The result is that over the next 75 years the U.S. working-age population is projected to grow at a rate just one-third as fast as during the 1970s. And this slowly growing work force will be expected to support a much more rapidly growing population of retirees.

Some Basic Social Security Math

For all its complexity, Social Security's underlying problems are governed by some basic math.

$$\frac{\textit{Average benefits as percent of average taxable wage}}{\textit{Worker - to - beneficiary ratio}} = \textit{program cost as percent of average wage}$$

Example: Today's average Social Security benefit is equal to around 36 percent of the average worker's wage. Since there are currently 3.4 workers per retiree, the cost to each worker to support today's retirees is around 10.5 percent of his earnings. (36/3.4 = 10.5) Since today's payroll tax rate is set at 12.4 percent, Social Security currently runs a surplus.

What happens if the ratio of workers to retirees falls?

If the worker-to-retiree ratio falls, then each worker bears the burden of more retirees.

Example: If instead of 3.4 workers per retiree there are just 2, then the cost to each worker rises from 10.5 percent to around 18 percent of earnings. (36/2 = 18)

What level of benefits is affordable?

The same equation, recast to isolate the level of benefits, tells us what level of benefits a given payroll tax rate can support:

Payroll tax rate x Worker-to-retiree ratio = Affordable benefits as percent of average wage

Example: With a 3.4-to-1 worker-to-retiree ratio, a 10.5 percent payroll tax rate can pay benefits equal to around 36 percent of the average wage (3.4 x 10.5 = 36). But when the worker-to-retiree ratio falls to 2-to-1, the same 10.5 percent tax rate can provide benefits equal to just 21 percent of average earnings.

What is "wage indexing" and what is its relationship to current projections?

Initial Social Security benefit levels are currently indexed to the growth in national wage levels. Consequently, even if there were no demographic problem, Social Security costs would grow almost as fast as the economy as a whole. Faster growth means more tax contributions in the short term, and higher benefit obligations in the long term. Though this faster growth helps, it does far less than many people believe. Mostly it creates the illusion of improvement because short-term revenue gains postpone the projected date of Trust Fund depletion, whereas increased costs would occur mostly after the projected depletion date.

Increased Life Expectancies Mean More Beneficiaries

Americans of all ages, races and incomes are living longer than ever. This is good news for them. It is not such good news for Social Security. Increased life expectancies mean more workers will survive to collect benefits and will collect for more years than in the past.

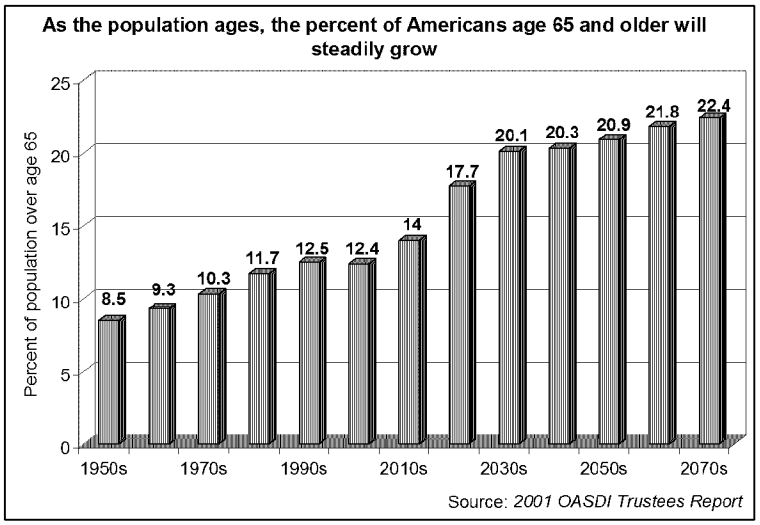
More Americans survive to age 65 and live longer in retirement

- Of the generation reaching age 65 in 1940, only 40 percent of males survived to age 65 and those who did lived for an average of 12.7 additional years.
- Of the generation reaching age 65 in 2000 (born in 1935), 69 percent of males lived to age 65 and those who did are expected to survive an average of 16.2 years.
- Of the generation reaching age 65 in 2050, 84 percent of males are expected to live to age 65 and those who do are expected to survive an average of 19.1 years.

In 1940, life expectancy for newborns was just 69 for men and 76 for women. Life expectancy for those at age 65 was 13 additional years for men and 15 for women.

By 2050, life expectancy for newborns is expected to rise to 83 for men and 88 for women, while life expectancy at 65 will rise to 19 years for men and 22 for women.

Moreover, the "oldest old" age 85 and over will more than double as a share of the total population, from 1.5 percent today to 3.7 percent of the total population in 2050. The oldest old are already the fastest growing elderly age group, increasing by 274 percent between 1960 and 1994, compared to 100 percent for the elderly population in general and 45 percent for the U.S. population as a whole. By 2050 more than 14 million Americans will be over the age of 85.



Over time, increased life expectancies and lower birthrates contribute to a gradual "aging" of the population. While in the 1940s just 7 percent of the population was age 65 or older, by the 2050s that proportion will rise to more than 20 percent. Moreover, Americans will spend more years in retirement than ever before.

3) The Consequences of Inaction

The Executive Order establishing the President's Commission to Strengthen Social Security requires that an interim report be submitted to the President describing "the challenges facing the Social Security system."

The fundamental challenge facing Social Security can be described succinctly: Inaction will result in significant tax increases, benefit reductions, cuts in other government programs, or increases in the national debt.

Social Security Cash Deficits Are Projected to Begin in 2016

Social Security's primary source of revenue is a 12.4 percent payroll tax applied to the covered earnings of wage earners. Social Security also receives money from the taxation of Social Security benefits.

In 2016, under current projections, Social Security will collect less in tax revenues than it has committed to pay out in benefits.

When that happens, the Social Security Trust Fund will still show a positive balance. But the Trust Fund holds not accumulated reserves of wealth but only promises that future taxpayers will be asked to redeem. Whether the balance in the Trust Fund is $5 trillion or zero, to keep the system in balance the nation faces identical choices: raise taxes, reduce benefits, decrease other government spending, or increase borrowing from the public.[2]

When Social Security deficits begin in 2016, cash shortfalls will be relatively small and could possibly be financed through surpluses in the rest of the government's budget. But these deficits will eventually grow very large: $194 billion in 2025, $271 billion in 2030, and $318 billion in 2035 (in 2001 dollars).[3] The cost of paying benefits will rise from about 10 percent of taxable earnings today to almost 18 percent in 2035. The effects of these pressures on beneficiaries and taxpayers will be shown on subsequent pages.

The year 2016 may seem a long way off, but it is not. For a person who is 50 years old today, Social Security will begin experiencing financial difficulties just when he or she reaches retirement age.

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[2] Adding to the public debt means that the public debt would be greater than if there were no Social Security cash shortfall. If the government maintained a deficit, this would mean that deficits and debt would be increased. During a time of surplus, this would mean that surpluses would be reduced. It is difficult to predict future government budget policy and thus not possible to say which situation would exist when Social Security faces cash deficits.

[3] In current dollars, Social Security's cash flow deficits will be $419 billion in 2025, $687 billion in 2030 and $948 billion in 2035.

Will Faster Economic Growth Avert the Problem?

No. This report relies on the Social Security Trustees' Intermediate Assumptions for economic and demographic factors affecting the current system. Some argue that the Trustees' economic forecasts are pessimistic and that faster economic growth would restore Social Security to financial health. But retirees' initial Social Security benefits are indexed to the growth of wages. Hence, while faster economic growth will raise wages and payroll tax receipts, it will also increase the benefits that Social Security promises to pay.

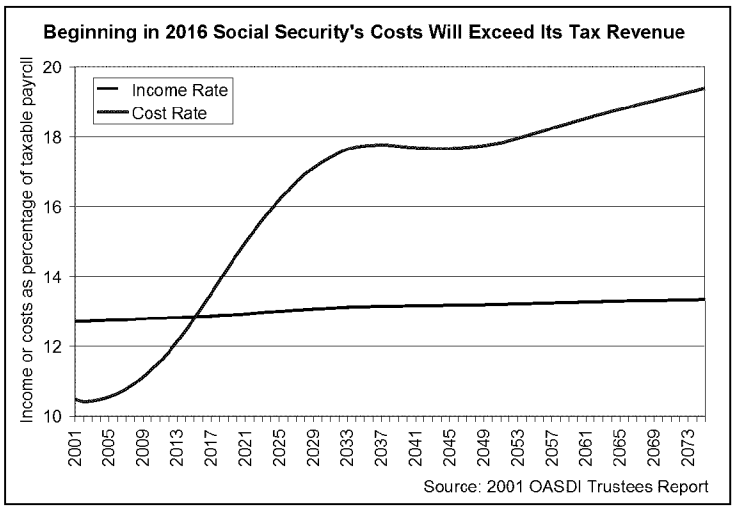
The principal boost to Social Security's finances from faster economic growth comes from the delay between higher taxes being received and higher benefits being promised. Even if wages grow at more than double the rate projected, Social Security will still become insolvent. Faster economic growth is desirable both for workers and for retirees because it enables a higher standard of living for all. But it will not solve Social Security's financial problems.

In addition to wage growth, the Trustees estimate how variations in fertility, mortality, immigration, inflation, interest rates, and incidence of disability would affect Social Security's finances. Substituting the Trustees' Low-Cost Assumption for any single variable will not change the date of cash flow deficits by more than one year.

Even if *every* single economic and demographic variable were simultaneously adjusted to reduce projected costs – that is, if the economy grows faster, wage growth rises, unemployment falls, interest rates increase, life expectancies fall, fertility rates increase, more immigrants pay taxes into the system, and fewer workers become disabled – Social Security would experience its last cash flow surplus in 2019, just four years later than currently projected.

Why the Social Security Trust Fund Doesn't Alleviate the Problem

Social Security will begin running annual cash deficits in 2016. Technically, however, the program could redeem government bonds in its Trust Fund to pay full benefits until 2038.[4] Does this mean there is nothing to worry about until 2038? Not at all. Revenue must be raised from taxpayers to redeem these bonds.



Social Security has run payroll tax surpluses since the mid-1980s and will continue to do so until 2016. But these past surpluses were "loaned" to the Treasury to cover deficits in the rest of the federal budget. These "loans" to the Treasury were not considered part of the debt held by the public, although they were in truth a public obligation.

Bonds were credited to the Trust Fund over time, resulting in a Fund balance now exceeding $1 trillion. The problem is that when Social Security begins running cash deficits in 2016 and must begin redeeming the Fund's bonds, the nation will face the same difficult choices as if there had been no Trust Fund at all.

This situation arose because past payroll taxes were not truly saved. As a result, future repayment of Trust Fund bonds will not be any less difficult. The Clinton administration's fiscal year 2000 budget made the point succinctly:

> These [Trust Fund] balances are available to finance future benefit payments and other Trust Fund expenditures – but only in a bookkeeping sense. … They do not consist of real economic assets that can be drawn down in the future to fund benefits. Instead, they are claims on the Treasury that, when redeemed, will have to be financed by raising taxes, borrowing from the public, or reducing benefits or other expenditures. The existence of large Trust Fund balances, therefore, does not, by itself, have any impact on the Government's ability to pay benefits. (FY2000 Budget, Analytic Perspectives, p. 337.)

The government could keep Social Security technically "solvent" forever simply by issuing new bonds to the fund. Alternatively, Social Security could be made technically "solvent" by requiring that a higher rate of interest be paid by the Treasury to the Trust Fund. Regardless, the need to raise taxes, cut spending or borrow would remain exactly the same. While there is an obligation to honor the bonds in the Social Security Trust

[4] There are two Trust Funds – one for Old Age and Survivors Insurance and a second for Disability Insurance. In practice, however, they are treated essentially as a single entity.

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Fund, what is important economically is not the amount of bonds in the Fund but the real resources backing those bonds.

With or without a Trust Fund, the current Social Security system will need extra resources after 2016. And with or without a Trust Fund, the steps required to obtain that money remain the same: raise taxes, cut benefits or other government spending, or add to the national debt. The Trust Fund can neither delay the need for new resources by a day nor reduce the need by a dollar.

Non-Partisan Experts Agree: Social Security Trust Fund Not an Asset

Social Security Public Trustees: "Rather than providing net revenue to the Treasury, after 2016 the combined trust funds will require rapidly growing infusions of revenues from the Treasury to pay benefits projected under current law. It is at this point--and not at the later dates when trust fund assets (i.e., the securities being redeemed) are technically exhausted--that Social Security and Medicare will begin to be in direct competition with other Federal programs for the resources of the Treasury..." (Thomas R. Saving of Texas A&M University and John L. Palmer of Syracuse University, Public Trustees to the Social Security and Medicare programs.)

Congressional Budget Office: "Although there is no money in the Treasury to pay for future obligations, the obligations to people eligible for Social Security benefits are real. And most important, those obligations are a direct result of federal law, not a consequence of whatever may or may not be credited to the Trust Funds. In particular, the size of the balances in the Social Security Trust Funds – be it $2 trillion, $10 trillion, or zero – does not affect the obligations that the federal government has to the program's beneficiaries. Nor does it affect the government's ability to pay those benefits." (CBO Director Dan L. Crippen and Deputy Director Barry B. Anderson, testimony before the House Ways and Means Committee, Feb. 23, 1999)

General Accounting Office (GAO): Social Security's "Trust Funds are not like private Trust Funds. They are simply budget accounts used to record receipts and expenditures earmarked for specific purposes. A private Trust Fund can set aside money for the future by increasing its assets. However, under current law, when the Trust Funds' receipts exceed costs, they are invested in Treasury securities and used to meet current cash needs of the government. These securities are an asset to the Trust Fund, but they are a claim on the Treasury. Any increase in assets to the Trust Funds is an equal increase in claims on the Treasury." (David M. Walker, Comptroller General of the United States, "Social Security And Surpluses: GAO's Perspective on the President's Proposals," Feb. 23, 1999)

Congressional Research Service: "What often confuses people [about the Trust Fund] is that they see these securities as assets for the government. When an individual buys a government bond, he or she has established a financial claim against the government. When the government issues a security to one of its own accounts, it hasn't purchased anything or established a claim against some other person or entity. It is simply creating an IOU from one of its accounts to another. Hence, the building up of federal securities in federal Trust Funds – like those of Social Security – is not a means in and of itself for the government to accumulate assets. It certainly establishes claims against the government for the Social Security system, but the Social Security system is part of the government. Those claims are not resources that the government has at its disposal to pay future Social Security benefits... The key point is that the Trust Funds themselves do not hold financial resources to pay benefits – rather, they provide authority for the Treasury Department to use whatever money it has on hand to pay them." (David Stuart Koitz, "Social Security Taxes: Where Do Surplus Taxes Go and How Are They Used?" Congressional Research Service, April 29, 1998)

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The Inescapable Choices Under the Status Quo

Under the current Social Security system, individuals do not withdraw benefits from savings accounts held in their names. Benefits are paid from only one ultimate source: tax dollars. If the current system's financing is left in place, future workers and retirees will experience one or more of the following: 1) large tax increases, 2) significant benefit cuts, 3) widespread reductions in other government programs, or 4) unprecedented accumulations of public debt. The only uncertainty is which steps will happen and which groups will be hit the hardest.

But these steps, however undesirable, cannot solve the current system's problems permanently. Cash deficits in one year will be followed by larger shortfalls the next year, and larger again in every year thereafter. Social Security needs structural improvement if it is to cope with the realities of an aging society. The four choices:

1) Raise Taxes

One option facing the nation is to maintain full benefit promises by raising taxes. While it is impossible to predict what taxes a future Congress might choose to raise, the chart to the right shows the effect of tax increases needed in future years if applied proportionately to wages currently subject to the Social Security payroll tax.

How much would taxes increase?

If the percentage shortfall in the following year existed today:	A couple's taxes could increase by:	Tax increase (in percent of payroll taxes)
2020	$860	14%
2030	$2,100	34%
2040	$2,275	37%
2050	$2,295	37%

Explanation: this table applies the percentage tax increases in future years to a couple earning $50,000 today. Because future incomes will increase, tax increases in real dollars would be substantially larger than shown here.

2) Cut Benefits

Another option is to cut benefits to the level that could be supported out of currently legislated Social Security tax revenues. In the long run, this would produce benefits more than one-quarter below the levels currently promised by Social Security's benefit formula. We illustrate with a medium-wage earner and spouse who retired this year at 65 receiving, under current benefit rules, a total annual benefit of $18,945. If benefit cuts required to balance the system in the future were applied proportionately to this couple today, they would receive thousands of dollars less annually from Social Security.

How much would benefits be cut?

If the percentage shortfall in the following year existed today:	A couple's annual benefits could be reduced by:	Benefit reduction in percent
2020	$2,227	12%
2030	$4,605	24%
2040	$4,867	26%
2050	$4,888	26%

Explanation: this table applies the percentage benefit reductions in future years to a retired couple receiving $18,945 annually in benefits today. Because future benefit levels will be higher, reductions in real dollar terms would be substantially larger than shown here.

3) Cut Other Government Spending

A third option to address Social Security's cash flow problems would be to cut other government spending. By freeing up enough on-budget revenues we could redeem Social Security Trust Fund debt without raising taxes, cutting benefits or borrowing. But how much would other spending have to be cut?

In 2016, the first year in which Social Security is projected to run cash deficits, the program faces a shortfall of $17.4 billion (in today's dollars). Assuming that federal spending maintained its present size relative to the rest of the economy, making up Social Security's 2016 deficit by cutting other spending would require eliminating programs the combined size of Head Start and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

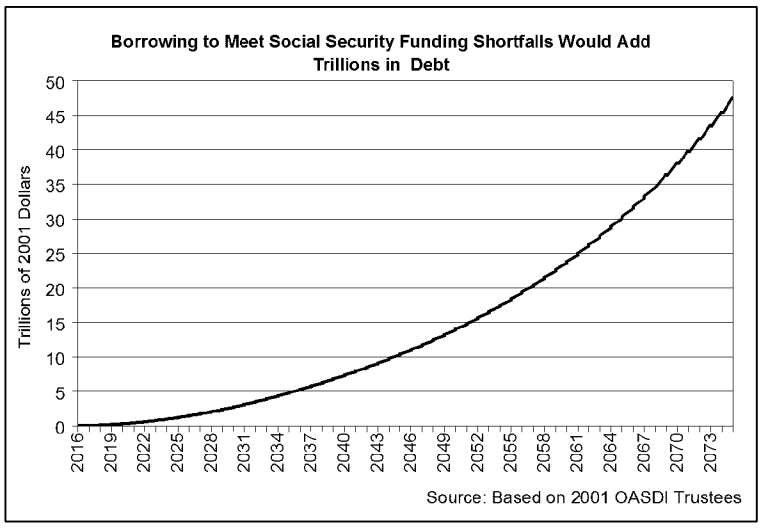
Annual Social Security cash shortfalls, in 2001 dollars	
2016	$17.4 billion
2020	$99.3 billion
2025	$194.3 billion
2030	$270.8 billion
2035	$317.6 billion

By 2020 Social Security deficits will have grown to $99.3 billion, requiring cuts – in addition to those already listed – equivalent to eliminating the Departments of Education, Interior and Commerce, as well as the Environmental Protection Agency.

By 2025, Social Security deficits will reach $194.3 billion in today's dollars, requiring cuts equal to all the programs mentioned above plus NASA and the Department of Veterans Affairs. The $270.8 billion shortfall in 2030 would require eliminating the Departments of Energy and Housing and Urban Development (HUD) as well. By 2035, when Social Security faces a $317.6 billion annual shortfall, the Department of Justice and the National Science Foundation would also have to be eliminated.

4) Increase Public Debt

The final option available to the country in 2016 is to issue additional public debt to meet Social Security shortfalls without raising taxes, cutting benefits or reducing other federal spending.



The accompanying chart shows the additional debt required to finance cash shortfalls that Social Security will begin to experience in 2016. This debt would accumulate to more than $7 trillion (in 2001 dollars) by 2040, $14 trillion by 2050, and over $47 trillion by 2075. This additional public debt would be

larger than the national debt at the end of World War II, relative to the economy. Further, the additional public debt would continue to rise indefinitely.

Social Security and Medicare Will Absorb A Growing Share of the Nation's Resources

One way to understand the consequences of inaction on Social Security reform is simply to assume that tax revenues are raised as necessary to fulfill currently legislated benefit promises.

Social Security currently consumes 4.2 percent of the nation's gross domestic product – almost $2,600 for every working-age American. If additional revenues were provided to Social Security as needed, by 2075 system costs will rise to 6.7 percent of GDP – a 60 percent increase.

Medicare will also command an increasing share of the nation's resources, leaving less room in the budget to absorb Social Security's rising costs. While Medicare costs 2.3 percent of GDP today, these costs are projected to escalate to 8.5 percent of GDP by 2075. Combined, Social Security and Medicare will absorb more than 15 percent of the nation's gross domestic product unless these programs are made sustainable. For comparison, all personal income taxes paid to the federal government today total approximately 9 percent of GDP.

This will be a direct consequence of a failure to improve the basic structure of these programs. Only through meaningful, structural improvements can Social Security and Medicare be placed on a sustainable path.

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4) An Opportunity to Improve Social Security for Vulnerable Americans

Social Security redistributes income among households based on differences in such factors as marital status, income, length of life and year of birth. For previous generations of retirees, who were on the receiving end of income transfers, the program effectively lifted many seniors out of poverty simply because most participants received substantially more than they put in. Today, when this is true for only some of those entering retirement, Social Security's haphazard distribution of benefits is becoming more apparent. When Social Security begins to experience cash deficits, the effects will not necessarily be equally shared by all segments of American society. Some examples:

Low-Income Americans

Social Security's benefit formula is intended, in part, to reduce the risk of old-age poverty among low-income workers. But accumulating evidence suggests that Social Security is not nearly as redistributive as many people believe. Also, low-income households own few assets outside of Social Security and thus are disproportionately affected by the benefit cuts that will occur under current law. Absent reforms, current law will reduce benefits by over one-quarter after the trust fund becomes insolvent in 2038, pushing many low-income households into poverty.

Three factors offset much of the intended redistribution within the current Social Security system. First, lower-income individuals tend to have shorter life expectancies. As a result, low-income workers spend a greater portion of their lives contributing to Social Security and a smaller portion collecting from it.

Second, Social Security's spousal benefit redistributes money from single individuals and two-earner couples to one-earner couples. For instance, under the current system a 30-year-old single low-income male would receive a 2.22 percent real return on his contributions to the retirement program (2.63 percent for a single low-income female). By contrast, a high-income one-earner married couple would receive a 2.75 percent return.[5] Social Security is structured, in this and many other instances, to redistribute income from single earners and working couples with less to couples in which one spouse can afford not to work. Because low-wage earners are more likely to be single or divorced, they are less likely to receive a spousal benefit. The highest risk of poverty in old age is faced by divorced, separated or never-married women.

Third, many people never become eligible for Social Security benefits because they do not have enough years of contributions to earn their own benefits. Current Social Security rules require a worker to pay into the system for roughly 10 years before gaining eligibility for retirement benefits.

Social Security's lifetime redistribution from high to low earners is haphazard at best. Numerous academic studies show little if any systematic redistribution by income

[5] Source: May 27, 2001 memorandum from Social Security Office of the Actuary.

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under the present Social Security retirement system due to the complex interactions between tax collections, benefit formulas, spousal protections and life expectancy.[6] Even without the benefit reductions that will occur under current law, Social Security may not remain an effective barrier against poverty.

Women

The current system contains spousal and survivors protections used disproportionately by women. Nevertheless, poverty rates for women age 65 and over remain more than 70 percent higher than for elderly men (11.8 percent vs. 6.9 percent.) Widowed, divorced or never-married women also face particularly high poverty rates in old age: 16.8 percent for widows over age 65, and 24.7 percent for divorced, separated or never-married women over 65.[7]

Social Security plays a particularly important role in the lives of women. Despite changes in the workplace, women on average still receive less wage income, have less non-Social Security pension coverage and are more likely to miss time from the workforce. A working spouse may receive a spousal benefit no higher than if she had not worked, reducing her incentive to enter the workforce.

Women also live an average of 5.5 years longer than men. Consequently, women are disproportionately dependent on Social Security for retirement income. Non-married women over 65 rely on Social Security for an average of 50 percent of their retirement income. Thirty-eight percent of unmarried women rely on Social Security for 90 percent or more of their retirement income.[8]

If no action is taken by 2025, current benefit promises will exceed the program's annual income by approximately 25 percent. What this means is that failure to restructure Social Security poses a disproportionate threat to the overall retirement security of women, due to the comparatively larger impact upon them of the benefit reductions inherent in current law.

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[6] Alan L. Gustman, Thomas L. Steinmeier, "How Effective is Redistribution Under the Social Security Benefit Formula?" NBER, March 2000; Julia Lynn Coronado, Don Fullerton, Thomas Glass, "The Progressivity of Social Security," NBER, February 2000; Jeffrey Liebman, "Redistribution in the Current U. S. Social Security System," Harvard University, July 2001.

[7] U.S. House of Representatives, Committee on Ways and Means, *2000 Green Book* (Washington: Government Printing Office, 2000), p. 999.

[8] Susan Grad, "Income of the Population 55 or Older, 1998," SSA no. 13-11871, 1998, p. 104.

Quirks In Benefit Structure Pose Problems For Certain Women

Spousal Benefits: Under Social Security's spousal benefit rules, the spouse with lower lifetime earnings (usually the wife) effectively receives a either benefit based on her own earnings or an amount equal to half her spouse's worker benefits, but not both. While fine for an era in which few women worked outside of the home, today Social Security's spousal benefit rules create inequities between traditional single-earner couples and dual-earner couples in which both spouses work.

Example: The Smiths and Joneses both have $3,000 total monthly earnings. Mr. Smith earns $3,000 while Mrs. Smith does not work outside the home. Mr. Jones earns $2,000 while Mrs. Jones earns $1,000. At retirement in 2001, Mr. Smith would be eligible for a monthly benefit of $1,292 and Mrs. Smith a spousal benefit of $646, for a total of $1,938. By contrast, Mr. Jones would be eligible for a monthly benefit of $984 based on his earnings and Mrs. Jones a benefit of $641 based on her own earnings, for a total of $1,625. While the two couples have identical total earnings, the single-earner couple receives benefits 19 percent higher than the dual-earner couple.

Divorce: A divorced woman must have been married for 10 years to be entitled to benefits based on her former husband's earnings. The National Center for Health Statistics reports that marriages ending in divorce have a median length of just 7 years, and fully one-third of all marriages end prior to the 10 years needed for benefit eligibility. In addition, the number of divorced elderly women is projected to increase, causing the current system's outdated divorce rules to affect more women.

Example: Mrs. Smith becomes divorced one day short of 10 years while Mrs. Jones's divorce occurs just one day past 10 years. That is the sole difference between eligibility for benefits equal to 50 percent of the former husband's benefit and no eligibility at all. Nor is remarriage a guarantee of spousal benefits. One-third of second marriages are disrupted through separation or divorce before 10 years. For women under age 25 at remarriage, 47 percent of second marriages are disrupted before 10 years. For African Americans, these percentages are higher.

Widows Benefits: A widow is eligible for the greater of her husband's worker benefit or her own, but not both. As a result, her household income may be cut by up to one-half upon his death. Since the cost of living for one person is almost as much as for two the standard of living of the surviving spouse is likely to fall. The poverty line for a single individual age 65 and over, for instance, is only about 20 percent less than that for couples.

Like the spousal benefit, the survivor benefit formula favors single-earner households over dual-earner households. Since a widow is eligible for either her own benefit or her husband's but not both, women from households with identical total incomes could find themselves with different benefits once widowed. Specifically, women who worked would receive lower widows benefits than women who did not work outside the home.

Example: Mrs. Smith, who never worked outside the home, becomes widowed and is eligible for survivors benefits based on Mr. Smith's $3,000 monthly income. By contrast, Mrs. Jones paid Social Security taxes over her lifetime. When she becomes widowed she can receive benefits based on Mr. Jones's $2,000 monthly income or her own $1,000 income, but not both. The result is that Mrs. Smith, who neither worked nor paid into the system, receives benefits more than 30 percent higher than Mrs. Jones, who is from a household with identical earnings and who worked and contributed her entire career.

Women from all incomes are affected by these aspects of Social Security's benefit formula, but low-income women, with little or no non-Social Security pension resources, suffer the most.

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African Americans

Social Security pays retirement benefits as an annuity that begins at retirement and ends at death, so those with shorter life expectancies can expect to receive less in retirement benefits. African Americans have shorter life expectancies than other groups, as shown in the accompanying table. As a result, an African American earning the same lifetime earnings and paying the same lifetime Social Security payroll taxes as someone in the general workforce is likely to receive a lower rate of return and lower lifetime benefits from the retirement system. Moreover, African Americans as a group also receive less in Social Security spousal benefits. Forty seven percent of African American marriages are disrupted before the first 10 years, and African American women are substantially less likely both to remarry after divorce and to have a second marriage last for the 10 years needed for spousal benefit eligibility.

Black and White Life Expectancy, 1999

Age	White Male	Black Male	White Female	Black Female
Birth	74.6	67.8	79.9	74.7
10	65.3	59.2	70.5	66.0
20	58.2	49.6	60.6	56.2
30	48.6	40.7	50.9	46.6
40	36.9	31.9	41.3	37.4
50	28.0	24.0	31.9	28.7
60	19.8	17.2	23.2	20.9
65	16.1	14.3	19.2	17.3
70	12.9	11.6	15.5	14.0
80	7.5	7.2	9.0	8.6

Source: National Center for Health Statistics, "Deaths: Preliminary Data for 1999," National Vital Statistics Reports 49, no. 3, June 26, 2001

Recent academic research finds that, as a result of mortality differences, African Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.[9]

African Americans are more likely to receive benefits from Social Security's disability program than are other groups. Moreover, because African Americans have higher death rates, their children are more likely to receive benefits as child survivors. In 1999, 2.8 percent of African American children under 20 were receiving a child survivor benefit, compared to 1.5 percent of white children and 1.8 percent of all children. Young African Americans are also more likely to receive disabled child benefits as survivors. This partially mitigates the fact that African Americans receive lower lifetime retirement benefits. But Social Security's survivors, disability and retirement programs have distinct purposes. If the retirement program can be improved for African Americans without offsetting reductions in the survivors and disability programs, Social Security as a whole would better serve African Americans.

It is likely that the opportunity for an inheritance would benefit African Americans relative to the general population. This is because African Americans on average have less non-Social Security retirement savings than the average worker. As a result, African Americans are disproportionately threatened by the financing shortfalls facing the current system. They are more likely, on average, to die before receiving benefits.

[9] Jeffrey Liebman, "Redistribution in the Current U. S. Social Security System," Harvard University, July 2001.

Hispanic Americans

By some measures, Hispanic Americans fare better than the population as a whole under the current Social Security system. This is the result of lower average lifetime earnings combined with higher life expectancies. Yet this makes Hispanics somewhat more vulnerable than average to inevitable changes in the current Social Security structure.

Though the program's progressive benefit may appear to help Hispanics as a group, its financing structure hits Hispanic Americans particularly hard. Hispanics tend to be younger than the American population as a whole and would consequently bear a disproportionate share of the rising cost of sustaining an income transfer system. Rates of return from Social Security are declining for younger workers, of which Hispanics are one of the fastest growing ethnic groups

Below-average private pension coverage for Hispanic workers is correlated with their below-average wage levels and job tenure rates. Moreover, fewer than half of Hispanic households were net savers in 1998. The poverty rate for Hispanics age 65 and over in 1998 was 22.5 percent, compared to 10 percent for non-Hispanics.[10] This greater reliance on Social Security creates greater vulnerability to the benefit reductions that will occur under current law.

Hispanics represented 3 percent of the elderly population in 1990, but have grown to 5.4 percent today and are projected to rise to 17.5 percent of the 65-and-older population in 2050. Comparatively few Hispanics entered retirement having received the above-market rates of return that the Social Security system provided in its early years. In 1998, Hispanics as a group paid $33 billion in OASDI payroll taxes but received only $18 billion in benefits. By the time today's Hispanic taxpayers are eligible for retirement benefits, the current Social Security system would be paying substantially lower returns than it did to earlier generations.

Younger Generations

Younger generations have more at stake than other age groups and hence should be more interested in Social Security reform. Under current rules Social Security system is able to pay benefits to current retirees until 2016, and there is a broad political consensus that current retirees should not be affected by changes to the Social Security program.

Young generations will bear the brunt of continuing exclusively with the current income transfer system. As the ratio of workers to retirees drops over time, the tax burden placed by Social Security on workers will increase. This means it is less and less likely that even average wage future workers will live long enough to recover taxes paid into the Social Security retirement system. Workers paying the maximum tax into Social Security and retiring in 2030 would have to live past age 110 simply to get back what they had paid in.

As a result, rates of return for younger workers will be substantially lower than for workers in the past. Most young workers will receive returns even lower than the

[10] Grad, Susan, op cit, p. 126.

What age must you reach to get back what you've paid in?			
Year of retirement	Age an average earner gets back taxes paid into the retirement portion of Social Security	Total Life Expectancy for Individual Reaching Age 65	
		Male	Female
1940	65.2	77.7	79.7
1960	66.1	78.2	82.4
1980	67.8	79.7	83.8
2001	81.8	81.3	84.6
2010	85.2	81.9	85.0
2020	89.7	82.5	85.6
2030	91.9	83.0	86.1
Source: Congressional Research Service, "Social Security: The Relationship of Taxes and Benefits for Past, Present, and Future Retirees," June 22, 2001; updated via telephone conversation with author.			
Under the intermediate assumptions of the 2001 Trustees Report and taking into account benefit increases and continued accrual of interest after retirement but not the taxation of benefits. The retiree is assumed to begin work at age 22 and attain age 65 and retire in January of the designated year. Assume contributions earn interest equal to the long-term government bond rate.			

Real Rates of Return Falling for All Retirees *(Assumes No Change in Law, Retirement at Age 65)*				
Birth Year	Single Male (Medium wages)	Single Female (Medium wages)	Single Earner Couple (Medium Wages)	Two-Earner Couple (Medium/ Low wages)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88
Source: May 27, 2001 memorandum from Social Security Office of the Actuary				

accompanying chart depicts, because these figures neglect the cost of meeting Social Security's cash deficits from 2016 through 2038. For example, those born in 1990 will spend most of their working careers after 2016, when Social Security will require additional tax revenues beyond those tabulated here.

Though rates of return are not the only important measure of system fairness, they nonetheless illustrate the problems inherent in continuing exclusively with an income transfer system. Under such a system, entire generations will receive rates of return below those of risk-free government bonds. In practice, they will be forced to lose money through Social Security.

Action to strengthen Social Security is more than an opportunity to restore fiscal soundness to the nation's public pension program. It is an opportunity to improve the program for all Americans, particularly those Americans who need it most.

5) An Opportunity to Become A Nation of Owners and Savers

Increasing national saving is the only sure way to improve retirement security for current workers while also lessening the burden on future generations. Increased saving leads to capital formation and higher labor productivity, which will help a relatively smaller labor force maintain the standard of living of a relatively larger group of retirees. It will expand the size of the economic pie available for everyone – both young and old – to consume. But America is not saving enough.

At a time when additional saving is needed to provide for future retirees, our national retirement program does not facilitate saving, either nationally or on behalf of individuals. In order to provide for a better retirement future, America must more truly become a nation of owners and savers.

The median African American household held only $3,060 in cash, certificates of deposit, retirement accounts, or stocks and bonds in 1998; the median Hispanic household, only $1,200.

Few Americans own much in the way of liquid assets. In 1998, the median U.S. household owned only $17,400 worth of financial assets, including sums in retirement accounts. Four out of every nine households in the United States saved nothing at all in 1998. Six out of 10 African American and Hispanic households saved nothing that year.

For these non-saving families, Social Security contributions may represent their only hope to build assets and wealth. In effect, those in the bottom half of the American population – and a larger population of the African American and Hispanic population – lack a pool of private savings to support them in old age. Meanwhile, 12.4 percent of low-income Americans' earnings are collected to support a system that offers them only uncertain promises and below-market rates of return.

Exclusion from financial markets is a serious problem for lower-income Americans. Under Social Security, their retirement income depends not on assets they possess but on the hope that politicians elected 20 and 30 years from now will raise taxes on tomorrow's workers. In fact, the Supreme Court has ruled in *Flemming vs. Nestor* (1960) that workers and retirees have no legal ownership over their benefits, even after a lifetime of paying taxes into the system.

Even modest amounts invested in real assets could produce substantial wealth. A contribution of as little as $500 per year for 40 years at only a 4 percent return would yield $50,000.

Moreover, the Social Security system may discourage individuals from saving on their own. A Congressional Budget Office study concluded "the Social Security system most likely has had a negative impact on private saving." [11]

[11] Congressional Budget Office, "Social Security And Private Saving: A Review Of The Empirical Evidence," July 1998.

The failure of Americans to save raises troubling economic questions – and profound moral concerns. The strong growth of the value of financial assets over the past century means that many Americans can look forward to a comfortable old age largely sustained by their own resources. But many others will have to depend almost entirely on payments from the government. In other words, without reform, future retirees will be divided not merely between the haves and have-nots but between those who think of themselves as independent and those regarded as dependents.

Tax payments to the Social Security program represent the largest contribution toward retirement for most Americans. The ability of those Americans to save and accumulate assets will be determined largely by whether such opportunities are created within Social Security.

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6) Analytical Criteria

The President's Executive Order establishing the Commission requires the interim report to set forth "criteria by which the Commission will evaluate reform proposals."

First and foremost, our criteria must be consistent with the President's principles for strengthening Social Security, as outlined in the Executive Order.

The President's Principles For Strengthening Social Security

(1) Modernization must not change Social Security benefits for retirees or near-retirees.

(2) The entire Social Security surplus must be dedicated to Social Security only.

(3) Social Security payroll taxes must not be increased.

(4) Government must not invest Social Security funds in the stock market.

(5) Modernization must preserve Social Security's disability and survivors components.

(6) Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

Within those principles, the Commission has been provided with flexibility to recommend measures to improve the fiscal soundness of Social Security as well as to propose the size, structure and financing of personal accounts. To develop a bipartisan consensus on these points, understanding of the Commission's criteria and standards is essential. Our eight criteria of analysis are presented on the following page.

REV_00129849

Criteria for Analysis

The Commission has established eight criteria by which to evaluate proposals for strengthening the Social Security system:

1. Encouragement of workers' and families' efforts to build personal retirement wealth, giving citizens a legal rather than merely a political right to a portion of their benefits.
2. Equity of lifetime Social Security taxes and benefits, both between and within generations.
3. Adequacy of protection against income fluctuations, such as those caused by retirement, disability, death of an earner, or unexpected longevity.
4. Encouragement of increased personal and national saving.
5. Rewarding individuals for actively participating in the workforce.
6. Movement of the Social Security system toward a fiscally sustainable course that can withstand unforeseen economic and demographic changes.
7. Practicality and suitability to successful implementation at reasonable cost.
8. Transparency: Analysis of reform plans should measure all necessary sources of tax revenue, and all benefits provided, including those from the traditional system as well as from personal accounts.

REV_00129850

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

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Sent: 7/19/2001 9:58:20 AM

Subject: : talking points for Press re: judges

Attachments: F_ZUBW2004_NSC.TXT_1.doc

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Please see the attached. If you have any questions please call Brett
Kavanaugh at 456-7984.

Thanks!

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180 Days into the Presidency: Timing and Number of Judicial Nominations (July 18, 2001)

Timing

- The President made his initial 11 circuit court nominations on May 9, 2001.
    - President Reagan's initial nominations did not occur until July 9, 1981.
    - President George H.W. Bush's initial nominations did not occur until August 4, 1989.
    - President Clinton's initial nominations did not occur until August 6, 1993.

Number of Nominations Before August Recess

- The President has already made 29 circuit and district court nominations, and the Administration anticipates that the President will make over 40 circuit and district court nominations before the Senate's August recess.
    - President Reagan made 13 circuit and district nominations before that recess.
    - President George H.W. Bush made 8 circuit and district nominations before the recess.
    - President Clinton made 13 circuit and district nominations before the recess.

Number of Nominations During First Year

- The Administration anticipates that the President will make over 100 circuit and district court nominations during his first year in office.
    - President Reagan made a total of 44 circuit and district court nominations during his first year in office.
    - President George H.W. Bush made a total of 23 circuit and district court nominations during his first year in office.
    - President Clinton made a total of 47 circuit and district court nominations during his first year in office.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
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Roger Gregory and the Montana district judges were voted out of Committee
today without objection. (FYI -- Boyd, McCallum and O'Connor also were
voted out of Committee.)
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
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TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl Doenges (CN=Karl Doenges/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
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TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])

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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [WHO])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])

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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
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TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
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TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])

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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])

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TO:sschmidt@nrcc.org (sschmidt@nrcc.org @ inet [UNKNOWN])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com @ inet [UNKNOWN])
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TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [OPD])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])

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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@EOP [WHO])
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You will all remember that the President recently appointed a bipartisan Commission to Strengthen Social Security. By law, once the staff draft of the interim report goes to the full commission the staff draft becomes available for public access. Attached are (1) the report, and (2) talking points on the report. Please let me know if you have any questions.

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Highlights from the DRAFT Interim Report of the President's Commission to Strengthen Social Security

The President's Commission to Strengthen Social Security is now reviewing staff drafts of the interim report that will be released after the Commission's meeting on July 24. The staff draft of the interim report concludes that Social Security is in trouble and the benefits of future seniors will be jeopardized without serious bipartisan action and solutions. Key findings of the draft interim report include:

- **The current system simply can't cope with the upcoming demographic changes in our country.** The ratio of workers to retirees will drop to close to 2-to-1 within a generation.

- **To provide for tomorrow's retirees, we must become a nation of owners and savers**. However, the existing Social Security program does not save or invest for future generations of seniors.

- **Strengthening Social Security is an opportunity to improve the program's treatment of women, low-income Americans, African Americans and Hispanic Americans.**

- **Social Security's cash deficits are projected to begin in 2016.**

- **Without bipartisan action to strengthen Social Security, the only options available to the government beginning in 2016 will be large tax increases, deep benefit cuts for seniors, borrowing on an unprecedented scale, or cutting other government spending.** Arguments against serious bipartisan reform are equivalent to express advocacy of these options. For example, if the government chose cutting spending to meet Social Security's shortfalls, by 2020, the required spending cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior, Commerce, and the EPA. By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs. *(Key statistics are attached)*

- **Faster economic growth will not save the existing system.** Even under the independent Social Security Trustees' faster-growth estimates, permanent Social Security cash deficits would only be delayed by one year -- to 2017. Even if every economic and demographic variable is changed to reduce costs, permanent deficits would begin in 2020.

- **Inflating the Social Security Trust Fund will not help.** The report cites several sources, including the Social Security Public Trustees, the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, and the Clinton Administration FY2000 Budget, that assert that regardless of the balance in the Social Security Trust Fund, the choices under the current system remain the same – tax increases, deep benefit cuts, unprecedented government borrowing or cutting other government spending.

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HOW NOT STRENGTHENING SOCIAL SECURITY WOULD AFFECT AMERICAN HOUSEHOLDS

Without bipartisan action to strengthen Social Security, beginning in 2016 the government would face the choices of raising taxes, cutting benefits, cutting other government spending, and increasing borrowing.

How Would Households Be Affected if the Government Chose to Raise Taxes?

If tomorrow's percentage shortfalls were faced today, the following additional taxes would be required from a two-earner couple with $50,000 in income:

- ☑ Shortfall in 2020 = $860 in today's earnings
- ☑ Shortfall in 2030 = $2,100 in today's earnings
- ☑ Shortfall in 2040 = $2,275 in today's earnings
- ☑ Shortfall in 2050 = $2,295 in today's earnings

How Would Beneficiaries be Affected if the Government Chose to Cut Benefits?

If tomorrow's percentage shortfalls were faced today, benefits would need to be reduced by the following amounts, for an average retiree and spouse:

- ☑ Shortfall in 2020 = $2,227 in today's annual benefits
- ☑ Shortfall in 2030 = $4,605 in today's annual benefits
- ☑ Shortfall in 2040 = $4,867 in today's annual benefits
- ☑ Shortfall in 2050 = $4,888 in today's annual benefits

What if the Government Cut Other Spending Instead of Raising Taxes or Cutting Benefits?

In today's dollars, the following amounts of spending would have to be cut to compensate for the Social Security deficit:

- ☑ 2020 = $99 Billion
- ☑ 2025 = $194 Billion
- ☑ 2030 = $271 Billion
- ☑ 2035 = $318 Billion

- ➢ By 2020, required cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior, Commerce, and the EPA.

- ➢ By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs.

What if the Government Chose Instead to Add to Public Debt?

- ➢ The total borrowing required to finance Social Security's cash shortfalls would equal $7 trillion by 2040, $14 trillion by 2050, and $47 trillion by 2075 (in 2001 dollars).

Social Security and Women:

- Women are more likely than men to suffer poverty in old age.
- Poverty rates are highest for widowed, divorced and never-married women.
- Women receive a higher percentage of their retirement income from Social Security than do men, and thus are particularly threatened by the benefit reductions that would occur in the absence of reform (a 27% reduction in 2038.)
- Social Security contains many quirks and inequities that hurt women who work. For example, a low-income two-earner couple experiences a lower rate of return than a high-income one-earner couple. The report presents an example of two families with identical household earnings, one of which receives 19% more in benefits than the other.

Social Security and Low-Income Americans:

- Despite popular perceptions, recent studies show that Social Security provides little, if any, systematic redistribution from rich to poor.
- Recent academic research finds that, as a result of mortality differences, African-Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.
- Because they are younger than the general population, disproportionate numbers of Hispanic Americans will enter retirement having received below market rates of return from the Social Security program.

Social Security and the Young

Without reform, Social Security will provide a bad deal for today's young workers.

Real Rates of Return
(Assumes No Change in Law, Retirement At Age 65)

Born	Single Male (Med. Wage)	Single Female (Medium)	One-Earner Couple (Medium)	Two-Earner Couple (Medium/Low)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88

America Must Become A Nation of Owners and Savers:

- The median U.S. household owned only $17,400 worth of financial assets in 1998, including retirement accounts. For African American and Hispanic households, the numbers were only $3,060 and $1,200 respectively.
- Tax payments to Social Security represent the largest contribution to retirement for most Americans. If savings and investment opportunities are not created within Social Security, these Americans will lose their best opportunity to acquire financial assets.

Background on the President's Commission to Strengthen Social Security:

President Bush demonstrated his commitment to tackle tough problems by stepping forward to provide much-needed leadership in the area of Social Security. The President signed an Executive Order creating a bipartisan, 16-member, commission to study and report back this fall with specific recommendations to preserve Social Security for seniors while building wealth for younger Americans. The commission is co-chaired by former Senator Patrick Moynihan (D-NY), and Dick Parsons (Co-Chief Operating Officer of AOL/Time Warner). The commission will make recommendations to modernize and restore fiscal soundness to Social Security, using six key principles developed by the President as a roadmap:

- Modernization must not change Social Security benefits for retirees or near-retirees.
- The entire Social Security surplus must be dedicated to Social Security only.
- Social Security payroll taxes must not be increased.
- Government must not invest Social Security funds in the stock market.
- Modernization must preserve Social Security's disability and survivors components.
- Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

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3) The Consequences of Inaction

4) An Opportunity to Improve Social Security for Vulnerable Americans

5) An Opportunity to Become a Nation of Owners and Savers

6) Analytical Criteria

Bringing Social Security into the 21st Century: A Preface By the Co-Chairs

Social Security is one of the most important and most popular domestic programs of the United States government. For millions of retirees, it serves either as the sole or the primary source of income, the mainstay of their dignity and independence. Millions of others look to it to sustain or supplement the retirement they hope to begin within the next several years. Since its inception in the midst of the Great Depression, it has made a vital difference in the lives of generations of hardworking Americans and their families.

The road, however, hasn't always been smooth. Social Security has been beset by periodic fiscal crises, and recently by public skepticism that could reasonably be termed a crisis of confidence. In establishing a Commission to Strengthen Social Security, President Bush had both concerns in mind.

The crisis of confidence is real. Many working adults do not believe that they will ever collect retirement benefits from Social Security. Such a failure has never once happened in a program that dates well back into the last century. But Americans tend to be skeptical of government, and this is no bad thing. It would, however, be a terrible thing if the skeptics should turn out to be right this time. Part of the Commission's mandate is to prove them wrong.

Among the program's fiscal crises, the most dangerous occurred in the early 1980s, when the pay-as-you-go system was approaching the point where promised outlay would exceeded expected revenues. A bipartisan National Commission on Social Security Reform was created to work out a solution in 1982. For all its good intentions, the commission could reach no agreement for a year. It wasn't until the prospect of default – that is, the need to obtain general revenue to maintain benefit payments – that minds became sufficiently concentrated. In early 1983, in the course of eleven days, a number of commission members together with White House officials reached a comprehensive agreement that literally saved Social Security for the decades that followed.

Before long, the system was not only stabilized but running a substantial surplus. This will continue for another 15 years, when the very same crisis will recur, compounded by the mounting pressure of demographics. In brief, the problem is this: more and more of us are living healthier and longer lives. At the same time, we're having smaller families. Birth rates are now just over half what they were during the peak of the baby boom.

The relentless truth of ascending life expectancies and declining birth rates will put an intolerable squeeze on the system that now exists. Consider the facts. In 1940, when benefits were first paid, there were 42 workers per retiree. In 1960, there were five workers for every retiree. Now there are slightly more than three. Before long there will be just two. This downward trend in the ratio of workers to retirees, under the existing system, would require either painful tax increases, significant benefit cuts, or astronomical levels of borrowing.

It could be worse. There are European countries for which the United Nations projects a population decline of more than 40 percent by mid-century. By contrast, our population will experience a measure of growth, thanks not least to immigration. But the ratio of workers to retirees will never again be anything like that of the age in which Social Security was founded.

As powerful as the impact of demographics is, there are other factors at work that require the overhaul of a system conceived in the first half of the last century. The stock market and personal investing are no longer solely the prerogative of the rich and privileged. Due to a major extension of the opportunities for higher education, the gradual dismantling of the legal and social barriers to the economic advancement of minorities and women, and an explosion of new businesses and start-up enterprises, traditional job roles and life-long occupational patterns have been altered or swept away.

For our forebears, Social Security was a transforming novelty. For us, it's a system utterly devoid of options for building a net worth that reflects the dynamism of the American economy or which facilitates investments to the benefit of our children or heirs. Nowhere is this dearth of possibilities more glaring than among the growing number of single-parent families, most of whom rely on Social Security as their only tool of preparation for retirement.

At present, under the Supreme Court ruling in *Flemming v. Nestor*, workers and retirees have no legal ownership over their Social Security benefits. Instead, what they have is a political promise that can be changed at any time, by any amount, for any reason. In any retirement system a lack of legal ownership is a source of insecurity. In one that is under-financed by over 25 percent, it is a problem on its way to becoming a crisis.

Though the Social Security system has itself reached retirement age, almost no one proposes that it be dismantled or eviscerated. The Commission came to work clear about its mission. Our job is to bring the system into the 21st century, to make it more responsive to the extraordinary social and economic changes that continue to remake every facet of our lives, and to ensure its fiscal strength and fiduciary soundness.

The charge that President Bush gave us is nonpartisan and nonpolitical: *The promise of Social Security to current and future generations of Americans must and will be kept.*

We believe the diversity of views, opinions and political beliefs represented on this Commission is critical to our ability to make an objective analysis. Equally, we believe that all of the members are determined to do their very best to help "promote the general welfare" of the American people and not to serve political ends. With these intentions and principles in place, the Commission has reached several conclusions that are presented on the following pages. Here we emphasize three:

If we are to maintain a sound system of support for tomorrow's retirees, this present generation of Americans must be encouraged to save and invest more than it currently does;

The Social Security program, as it now stands, does nothing to promote individual savings or investment. Workers have little sense of proprietorship or a sense of what they are entitled to. Many have lost confidence in ever receiving anything back;

The system is broken. Unless we move boldly and quickly, the promise of Social Security to future retirees cannot be met without eventual resort to benefit cuts, tax increases, or massive borrowing. The time to act is now.

This report presents the facts and reasons behind our conclusions. It is not meant to please any one constituency or to provide a rationale for preconceived notions of what should be done. Its purpose is twofold; to identify what has to be fixed in order to modernize a program conceived and designed for a different era and a different economy; and to preserve the spirit of intelligent innovation and concern for the common good that created Social Security in the first place.

If the problems spelled out in this interim report become a topic of national debate and receive the public's focus and scrutiny, that in itself will be a positive step forward. The greatest threat is in taking the course of least resistance, ignoring the challenge and doing nothing.

We believe that the opportunity now exists to do more than analyze and debate. The moment has arrived for a fundamental restructuring of the nation's Social Security system that doesn't merely postpone the day of reckoning but guarantees adequate funding for future retirees. If we do it right – and we have every confidence that a bipartisan coalition can – Social Security may be funded by clearly earmarked money that cannot be diverted to other purposes through the political process.

For the first time, the program can become an active rather than a passive instrument of personal financial security. Rather than ending with the life of the beneficiary, it can be a means of wealth accumulation and long-range investment, giving families resources they never had before, and widening the circle of Americans fortunate enough to pass on the accumulated results of their investments and hard work.

If we have the will, we have the means to reestablish equity, maintain benefits for current retirees, and enable workers to acquire a measure of wealth in the course of their working lives.

In our final report, the Commission will make specific suggestions for concrete steps toward the reform and revitalization of Social Security. For now, we wish to reiterate our enthusiastic belief that we have an historic opportunity to make Social Security more relevant, more equitable and more effective than ever before. The ultimate beneficiary of our commitment to act promptly, impartially and decisively to resolve what is both a fiscal crisis and a crisis of confidence will be the American people.

Daniel Patrick Moynihan Richard D. Parsons

Summary

Our Opportunity is Equal to Our Challenge

• If we have the will, we have the means to reestablish equity, maintain benefits for current retirees, and enable workers to acquire a measure of wealth in the course of their working lives.

General Findings of the Commission

• To support tomorrow's retirees, we must save and invest more.

• The existing Social Security program does not save or invest for the future.

• Arguments against reform are equivalent to express advocacy of increasing taxes, cutting benefits, reducing other government spending, or borrowing on an unprecedented scale.

The Current System is Not Designed to Cope with Demographic Changes

• The ratio of workers to retirees will drop to close to 2-to-1 within a generation.

Social Security's Cash Deficits Are Projected to Begin in 2016

• In 2016, the program's benefit obligations will exceed its annual tax revenue.

Faster Economic Growth Will Not Save the Existing System

• Under the Trustees' faster-growth estimates, permanent cash deficits would only be delayed by one year, to 2017. Even if every economic and demographic variable were changed to reduce costs, permanent deficits would begin in 2020.

Building up a Social Security Trust Fund Will Not Change Tough Choices

• The report cites several sources, including the Social Security Public Trustees, the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, and the Clinton Administration FY2000 Budget, each to the effect that the Trust Fund is not an asset of the government.

How Would Households Be Affected if Shortfalls Were Met By Raising Taxes?

• If tomorrow's shortfalls were faced today, the following additional taxes would be required from a two-earner couple with $50,000 in income:

Shortfall in 2020:	$860 in today's earnings
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• By 2020, required cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior and Commerce, and the EPA. By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs.

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• The total borrowing required to finance Social Security's cash shortfalls would equal $7 trillion by 2040, $14 trillion by 2050, and $47 trillion by 2075 (in 2001 dollars).

Our Opportunity to Improve Social Security for Women

• Women are more likely than men to suffer poverty in old age.

• Poverty rates are highest for widowed, divorced and never-married women.

• Women receive a higher percentage of their retirement income from Social Security than do men, and thus are particularly threatened by the benefit reductions that would occur in the absence of reform (a 27 percent reduction in 2038).

• Social Security contains many inequities that hurt women who work. A low-income two-earner couple experiences a lower rate of return than a high-income one-earner couple.

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• Despite popular perceptions, recent studies show that Social Security provides little, if any, systematic redistribution from rich to poor.

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• Because they are younger than the general population, disproportionate numbers of Hispanic Americans will enter retirement having received below market rates of return from the Social Security program.

Our Opportunity to Improve Social Security for Younger Americans

• Under the existing system, Social Security will provide a bad deal for today's young workers, as seen in the charts on the following page. These charts show rates of return plummeting for individuals entering the workforce, who would have to live well past their expected lifetimes to receive back the value of their contributions.

Our Opportunity to Become A Nation of Owners and Savers

• The median U.S. household owned only $17,400 worth of financial assets in 1998, including retirement accounts. For African American and Hispanic households, the numbers were only $3,060 and $1,200 respectively.

• Tax payments to Social Security represent the largest contribution to retirement preparation for most Americans. If savings and investment opportunities are not created within Social Security, these Americans will lose their best opportunity to acquire financial assets.

What age must you reach to get back what you've paid in?			
Year of retirement	Age an average earner gets back taxes paid into the retirement portion of Social Security	Total Life Expectancy for Individual Reaching Age 65	
		Male	Female
1940	65.2	77.7	79.7
1960	66.1	78.2	82.4
1980	67.8	79.7	83.8
2001	81.8	81.3	84.6
2010	85.2	81.9	85.0
2020	89.7	82.5	85.6
2030	91.9	83.0	86.1
Source: Congressional Research Service, "Social Security: The Relationship of Taxes and Benefits for Past, Present, and Future Retirees," June 22, 2001; updated via telephone conversation with author.			
Under the intermediate assumptions of the 2001 Trustees Report and taking into account benefit increases and continued accrual of interest after retirement but not the taxation of benefits. The retiree is assumed to begin work at age 22 and attain age 65 and retire in January of the designated year. Assume contributions earn interest equal to the long-term government bond rate.			

Real Rates of Return Falling Under Social Security				
Birth Year	Single Male (Medium wages)	Single Female (Medium wages)	Single Earner Couple (Medium Wages)	Two-Earner Couple (Medium/ Low wages)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88
Source: May 27, 2001 memorandum from Social Security Office of the Actuary.				

1) Maintaining Our Commitment to Social Security

Social Security affects the life of nearly every American through its provision of retirement, survivors and disability benefits. Today Social Security faces serious challenges but must always honor its founding purpose of protecting the elderly from want and bringing dignity to retirement.

Social Security was created in a world different from our own. It was a world of large families and short life spans, a world in which markets were perceived to have failed and faith in the individual had ebbed. Social Security effectively responded to the needs of that world.

The world is different today. Americans enjoy the blessing of long life: by the year 2050 more than one-fifth of the population will be over age 65. Americans have chosen to have smaller families: birth rates today are just over half what they were during the peak of the Baby Boom. These two facts put a severe strain on our system of retirement security. In 1960, there were over five workers for every retiree. Today there are three and a half workers per retiree, and by 2030 there will be just over two. Under the existing system, this downward trend in the ratio of workers to retirees will require the government to raise taxes, cut benefits, cut other government spending, or borrow the necessary funds. Under such circumstances, rates of return for workers – already low – will fall further, and most retirees would have to live well past the average life expectancy simply to get back what they had paid into the system.

The creators of Social Security were not content to do nothing in the face of an unacceptable status quo. We who inherit their achievement must live up to their example.

Though the demographic changes since 1935 will soon strain our retirement system, other changes offer opportunities to improve it. We better understand the power of markets than Americans did during the shock of the Great Depression. We feel more urgently the importance of extending the benefits of personal asset ownership. And we are more strongly committed to equitable treatment of all our nation's people, regardless of race, income or gender.

These advances have sparked a new need for a retirement system that includes saving and ownership. Social Security must adapt to today's population of young people, the self-employed, minorities and women. And it must serve this new society as well as the existing system served a past society in which men were often the sole earners in the family.

Social Security today offers every worker a promise that will vary in value depending on the length of that worker's life and the policies of Congresses decades in the future. Simple arithmetic dictates that these promises can be honored in full only by imposing substantially higher costs on future generations of workers.

The way to alleviate this burden is to provide opportunities for individuals to save more for their retirement. The more wealth individuals can accumulate, the less they will have to rely on taxes imposed on tomorrow's workers. Just as important, higher saving rates increase the capital stock and enhance worker productivity. A more productive economy can more easily support larger populations of retirees without overburdening

workers or their families. Outlining a strategy to boost personal and national saving is one of the most important tasks of this Commission.

President Bush directed this Commission to review Social Security and recommend reforms to strengthen and sustain it. Thus far, we have reached the following conclusions:

If we are to support tomorrow's retirees without overburdening tomorrow's workers, this generation of Americans must save and invest more.

The existing Social Security program does not save or invest for the future. It was not designed to facilitate saving, and the political process cannot be relied upon to save on behalf of American families.

Under the existing system, Americans will soon face inescapable choices: cut Social Security benefits, raise taxes, cut other government spending, or borrow on an unprecedented scale.

Arguments for doing nothing are equivalent to direct advocacy of one or more of these options.

This report presents the evidence on which these conclusions rest – and the case for acting now, while there is adequate time to prepare, rather than waiting for the inevitable crisis. We must understand the nature and dimension of the challenge that we face. One aspect of that challenge is clear: *Inaction is not a solution*.

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2) The Demographic Challenge

Income Transfer system: Each generation supports the generation that came before it.

Funded system: Each generation saves and invests for its own retirement.

Many people believe that Social Security is a national pension fund in which workers make "contributions" to an investment account called the "Trust Fund." When a worker retires, dies or becomes disabled, his contributions, plus interest, are taken out of the fund to pay benefits.

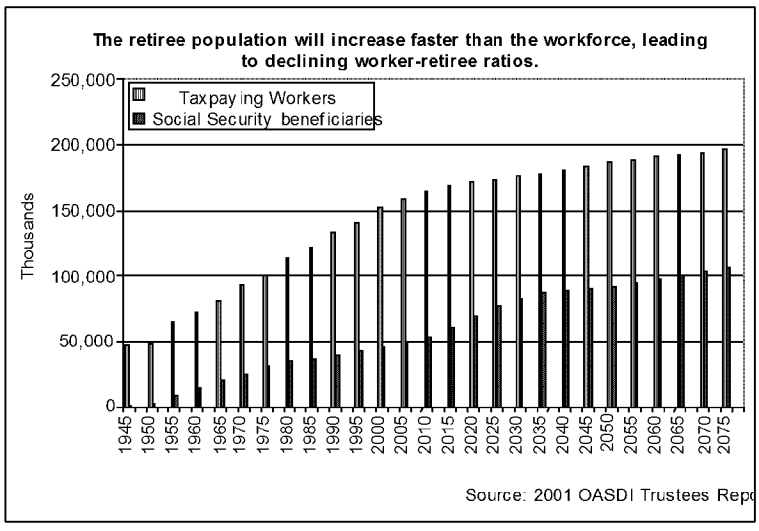
The reality is different. Our Social Security system is managed as an income transfer program. This means that every penny of benefits paid each year comes from taxes collected or money borrowed from the public in that year. Under such a system, higher taxes today do not reduce tax burdens in the future.

The present value of Social Security's currently accrued obligations exceeds $12 trillion. This means that if Social Security were a funded pension plan, it would need to hold over $12 trillion worth of real assets to pay future benefits.[1]

Today's beneficiaries are not living off financial assets accumulated in the past. Today's workers are not accumulating financial assets for the future. Workers "invest" their payroll taxes not in financial assets but in the willingness of future politicians to tax future workers to pay future benefits.

The Importance of the Worker-to-retiree Ratio

As an income transfer system, Social Security works best with a high ratio of workers to beneficiaries. When the United States had a rapidly growing workforce supporting a small elderly population, Social Security seemed sustainable. But when fewer new workers are paying into Social Security and more new retirees are collecting from it, the burden placed on individual workers must inevitably rise.

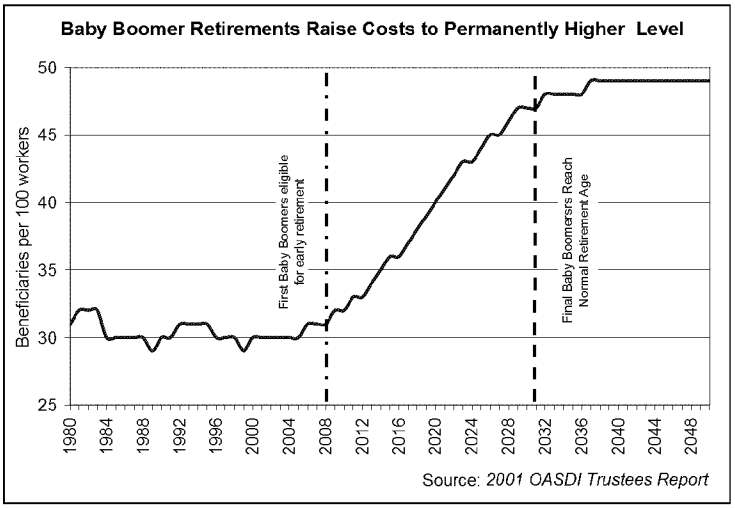


That's exactly what has been happening. In 1960 there were more than five workers paying into Social Security for every individual collecting benefits. Today, demographic

[1] This assumes that assets would be invested at the long-term government bond rate.

changes have reduced the worker-to-retiree ratio to 3.4-to-1. By 2050 it will be just 2-to-1. In other words, a future worker will bear a relative Social Security burden two-and-a-half times as large as a worker in 1960.

Problems Continue After the Baby Boomers Retire



Beginning in 2008 the first Baby Boomers will be eligible to take early retirement. The following two decades will see a rapid increase in the cost of delivering Social Security benefits, from 10.9 percent of taxable earnings in 2008 to 17.4 percent of earnings in 2031, when the final Boomers reach Normal Retirement Age.

Baby Boomer retirements mark the beginning of Social Security's financing problems. But Social Security's problems will continue – and grow worse – even after the Boomers are gone. In 2025, for instance, when the youngest Baby Boomer will be 60, the worker-to-retiree ratio will be 2.3-to-1. By 2050, when the youngest Boomer will be 85 and most of them will have passed on, the worker-to-retiree ratio will have further declined to just two workers per retiree.

Temporary stop-gap measures to keep Social Security solvent would not be effective because there is no relief from the demographic pressures bearing on the program. Baby Boomer retirements raise Social Security costs to a new and higher plateau from which there is no long-term relief under the current system.

Lagging Birthrates Mean Fewer New Workers

The "Baby Boom" generation born from the end of World War II to 1964 was originally a blessing to Social Security's finances. Returning veterans started new families by the millions, raising the total U.S. fertility rate from 2.2 children per woman in 1940 to 3.2 in 1947 and on to a high of 3.7 in 1957. For Social Security this meant millions of new workers paying taxes into the system.

But the Baby Boom didn't last. Following the Boom, birth rates fell *below* their pre-Boom level. By the mid-1970s, for instance, fertility averaged just 1.8 children per woman, half the level of the late 1950s. And while fertility rates have risen somewhat in recent years – they now stand at around two children per woman – Social Security's Trustees expect these historically low rates to continue indefinitely into the future.

The result is that over the next 75 years the U.S. working-age population is projected to grow at a rate just one-third as fast as during the 1970s. And this slowly growing work force will be expected to support a much more rapidly growing population of retirees.

Some Basic Social Security Math

For all its complexity, Social Security's underlying problems are governed by some basic math.

$$\frac{\textit{Average benefits as percent of average taxable wage}}{\textit{Worker - to - beneficiary ratio}} = \textit{program cost as percent of average wage}$$

Example: Today's average Social Security benefit is equal to around 36 percent of the average worker's wage. Since there are currently 3.4 workers per retiree, the cost to each worker to support today's retirees is around 10.5 percent of his earnings. (36/3.4 = 10.5) Since today's payroll tax rate is set at 12.4 percent, Social Security currently runs a surplus.

What happens if the ratio of workers to retirees falls?

If the worker-to-retiree ratio falls, then each worker bears the burden of more retirees.

Example: If instead of 3.4 workers per retiree there are just 2, then the cost to each worker rises from 10.5 percent to around 18 percent of earnings. (36/2 = 18)

What level of benefits is affordable?

The same equation, recast to isolate the level of benefits, tells us what level of benefits a given payroll tax rate can support:

Payroll tax rate x Worker-to-retiree ratio = Affordable benefits as percent of average wage

Example: With a 3.4-to-1 worker-to-retiree ratio, a 10.5 percent payroll tax rate can pay benefits equal to around 36 percent of the average wage (3.4 x 10.5 = 36). But when the worker-to-retiree ratio falls to 2-to-1, the same 10.5 percent tax rate can provide benefits equal to just 21 percent of average earnings.

What is "wage indexing" and what is its relationship to current projections?

Initial Social Security benefit levels are currently indexed to the growth in national wage levels. Consequently, even if there were no demographic problem, Social Security costs would grow almost as fast as the economy as a whole. Faster growth means more tax contributions in the short term, and higher benefit obligations in the long term. Though this faster growth helps, it does far less than many people believe. Mostly it creates the illusion of improvement because short-term revenue gains postpone the projected date of Trust Fund depletion, whereas increased costs would occur mostly after the projected depletion date.

Increased Life Expectancies Mean More Beneficiaries

Americans of all ages, races and incomes are living longer than ever. This is good news for them. It is not such good news for Social Security. Increased life expectancies mean more workers will survive to collect benefits and will collect for more years than in the past.

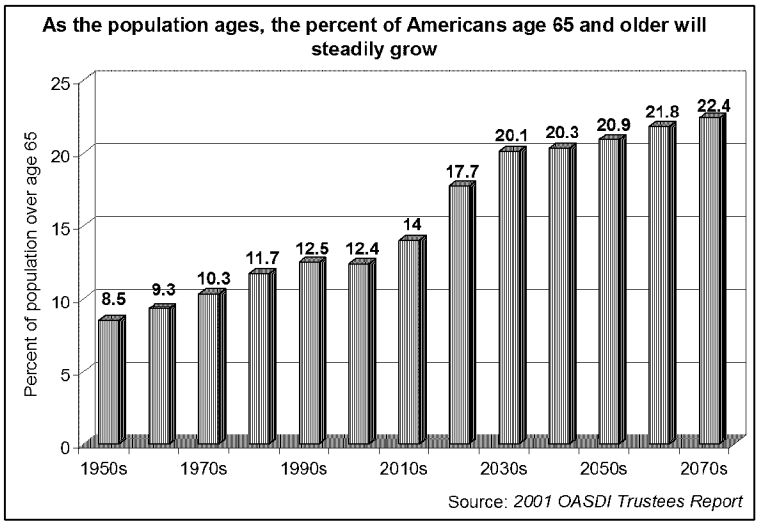
More Americans survive to age 65 and live longer in retirement

- Of the generation reaching age 65 in 1940, only 40 percent of males survived to age 65 and those who did lived for an average of 12.7 additional years.
- Of the generation reaching age 65 in 2000 (born in 1935), 69 percent of males lived to age 65 and those who did are expected to survive an average of 16.2 years.
- Of the generation reaching age 65 in 2050, 84 percent of males are expected to live to age 65 and those who do are expected to survive an average of 19.1 years.

In 1940, life expectancy for newborns was just 69 for men and 76 for women. Life expectancy for those at age 65 was 13 additional years for men and 15 for women.

By 2050, life expectancy for newborns is expected to rise to 83 for men and 88 for women, while life expectancy at 65 will rise to 19 years for men and 22 for women.

Moreover, the "oldest old" age 85 and over will more than double as a share of the total population, from 1.5 percent today to 3.7 percent of the total population in 2050. The oldest old are already the fastest growing elderly age group, increasing by 274 percent between 1960 and 1994, compared to 100 percent for the elderly population in general and 45 percent for the U.S. population as a whole. By 2050 more than 14 million Americans will be over the age of 85.



Over time, increased life expectancies and lower birthrates contribute to a gradual "aging" of the population. While in the 1940s just 7 percent of the population was age 65 or older, by the 2050s that proportion will rise to more than 20 percent. Moreover, Americans will spend more years in retirement than ever before.

3) The Consequences of Inaction

The Executive Order establishing the President's Commission to Strengthen Social Security requires that an interim report be submitted to the President describing "the challenges facing the Social Security system."

The fundamental challenge facing Social Security can be described succinctly: Inaction will result in significant tax increases, benefit reductions, cuts in other government programs, or increases in the national debt.

Social Security Cash Deficits Are Projected to Begin in 2016

Social Security's primary source of revenue is a 12.4 percent payroll tax applied to the covered earnings of wage earners. Social Security also receives money from the taxation of Social Security benefits.

In 2016, under current projections, Social Security will collect less in tax revenues than it has committed to pay out in benefits.

When that happens, the Social Security Trust Fund will still show a positive balance. But the Trust Fund holds not accumulated reserves of wealth but only promises that future taxpayers will be asked to redeem. Whether the balance in the Trust Fund is $5 trillion or zero, to keep the system in balance the nation faces identical choices: raise taxes, reduce benefits, decrease other government spending, or increase borrowing from the public.[2]

When Social Security deficits begin in 2016, cash shortfalls will be relatively small and could possibly be financed through surpluses in the rest of the government's budget. But these deficits will eventually grow very large: $194 billion in 2025, $271 billion in 2030, and $318 billion in 2035 (in 2001 dollars).[3] The cost of paying benefits will rise from about 10 percent of taxable earnings today to almost 18 percent in 2035. The effects of these pressures on beneficiaries and taxpayers will be shown on subsequent pages.

The year 2016 may seem a long way off, but it is not. For a person who is 50 years old today, Social Security will begin experiencing financial difficulties just when he or she reaches retirement age.

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[2] Adding to the public debt means that the public debt would be greater than if there were no Social Security cash shortfall. If the government maintained a deficit, this would mean that deficits and debt would be increased. During a time of surplus, this would mean that surpluses would be reduced. It is difficult to predict future government budget policy and thus not possible to say which situation would exist when Social Security faces cash deficits.

[3] In current dollars, Social Security's cash flow deficits will be $419 billion in 2025, $687 billion in 2030 and $948 billion in 2035.

Will Faster Economic Growth Avert the Problem?

No. This report relies on the Social Security Trustees' Intermediate Assumptions for economic and demographic factors affecting the current system. Some argue that the Trustees' economic forecasts are pessimistic and that faster economic growth would restore Social Security to financial health. But retirees' initial Social Security benefits are indexed to the growth of wages. Hence, while faster economic growth will raise wages and payroll tax receipts, it will also increase the benefits that Social Security promises to pay.

The principal boost to Social Security's finances from faster economic growth comes from the delay between higher taxes being received and higher benefits being promised. Even if wages grow at more than double the rate projected, Social Security will still become insolvent. Faster economic growth is desirable both for workers and for retirees because it enables a higher standard of living for all. But it will not solve Social Security's financial problems.

In addition to wage growth, the Trustees estimate how variations in fertility, mortality, immigration, inflation, interest rates, and incidence of disability would affect Social Security's finances. Substituting the Trustees' Low-Cost Assumption for any single variable will not change the date of cash flow deficits by more than one year.

Even if *every* single economic and demographic variable were simultaneously adjusted to reduce projected costs – that is, if the economy grows faster, wage growth rises, unemployment falls, interest rates increase, life expectancies fall, fertility rates increase, more immigrants pay taxes into the system, and fewer workers become disabled – Social Security would experience its last cash flow surplus in 2019, just four years later than currently projected.

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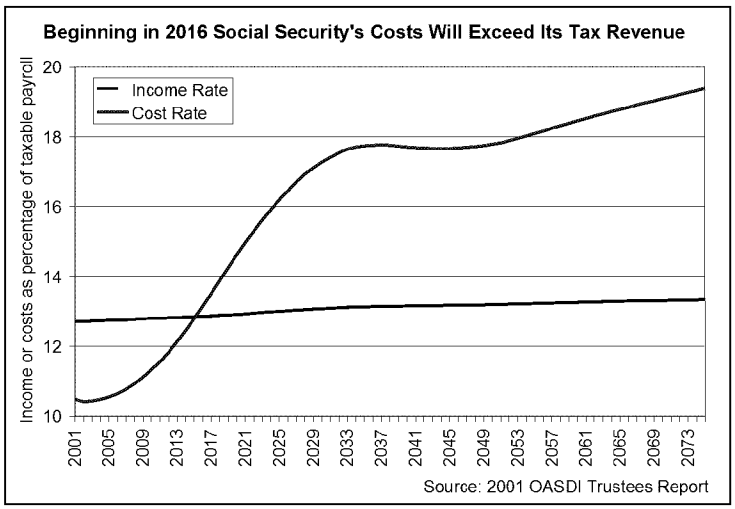
Why the Social Security Trust Fund Doesn't Alleviate the Problem

Social Security will begin running annual cash deficits in 2016. Technically, however, the program could redeem government bonds in its Trust Fund to pay full benefits until 2038.[4] Does this mean there is nothing to worry about until 2038? Not at all. Revenue must be raised from taxpayers to redeem these bonds.



Social Security has run payroll tax surpluses since the mid-1980s and will continue to do so until 2016. But these past surpluses were "loaned" to the Treasury to cover deficits in the rest of the federal budget. These "loans" to the Treasury were not considered part of the debt held by the public, although they were in truth a public obligation.

Bonds were credited to the Trust Fund over time, resulting in a Fund balance now exceeding $1 trillion. The problem is that when Social Security begins running cash deficits in 2016 and must begin redeeming the Fund's bonds, the nation will face the same difficult choices as if there had been no Trust Fund at all.

This situation arose because past payroll taxes were not truly saved. As a result, future repayment of Trust Fund bonds will not be any less difficult. The Clinton administration's fiscal year 2000 budget made the point succinctly:

> These [Trust Fund] balances are available to finance future benefit payments and other Trust Fund expenditures – but only in a bookkeeping sense. … They do not consist of real economic assets that can be drawn down in the future to fund benefits. Instead, they are claims on the Treasury that, when redeemed, will have to be financed by raising taxes, borrowing from the public, or reducing benefits or other expenditures. The existence of large Trust Fund balances, therefore, does not, by itself, have any impact on the Government's ability to pay benefits. (FY2000 Budget, Analytic Perspectives, p. 337.)

The government could keep Social Security technically "solvent" forever simply by issuing new bonds to the fund. Alternatively, Social Security could be made technically "solvent" by requiring that a higher rate of interest be paid by the Treasury to the Trust Fund. Regardless, the need to raise taxes, cut spending or borrow would remain exactly the same. While there is an obligation to honor the bonds in the Social Security Trust

[4] There are two Trust Funds – one for Old Age and Survivors Insurance and a second for Disability Insurance. In practice, however, they are treated essentially as a single entity.

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Fund, what is important economically is not the amount of bonds in the Fund but the real resources backing those bonds.

With or without a Trust Fund, the current Social Security system will need extra resources after 2016. And with or without a Trust Fund, the steps required to obtain that money remain the same: raise taxes, cut benefits or other government spending, or add to the national debt. The Trust Fund can neither delay the need for new resources by a day nor reduce the need by a dollar.

Non-Partisan Experts Agree: Social Security Trust Fund Not an Asset

Social Security Public Trustees: "Rather than providing net revenue to the Treasury, after 2016 the combined trust funds will require rapidly growing infusions of revenues from the Treasury to pay benefits projected under current law. It is at this point--and not at the later dates when trust fund assets (i.e., the securities being redeemed) are technically exhausted--that Social Security and Medicare will begin to be in direct competition with other Federal programs for the resources of the Treasury..." (Thomas R. Saving of Texas A&M University and John L. Palmer of Syracuse University, Public Trustees to the Social Security and Medicare programs.)

Congressional Budget Office: "Although there is no money in the Treasury to pay for future obligations, the obligations to people eligible for Social Security benefits are real. And most important, those obligations are a direct result of federal law, not a consequence of whatever may or may not be credited to the Trust Funds. In particular, the size of the balances in the Social Security Trust Funds – be it $2 trillion, $10 trillion, or zero – does not affect the obligations that the federal government has to the program's beneficiaries. Nor does it affect the government's ability to pay those benefits." (CBO Director Dan L. Crippen and Deputy Director Barry B. Anderson, testimony before the House Ways and Means Committee, Feb. 23, 1999)

General Accounting Office (GAO): Social Security's "Trust Funds are not like private Trust Funds. They are simply budget accounts used to record receipts and expenditures earmarked for specific purposes. A private Trust Fund can set aside money for the future by increasing its assets. However, under current law, when the Trust Funds' receipts exceed costs, they are invested in Treasury securities and used to meet current cash needs of the government. These securities are an asset to the Trust Fund, but they are a claim on the Treasury. Any increase in assets to the Trust Funds is an equal increase in claims on the Treasury." (David M. Walker, Comptroller General of the United States, "Social Security And Surpluses: GAO's Perspective on the President's Proposals," Feb. 23, 1999)

Congressional Research Service: "What often confuses people [about the Trust Fund] is that they see these securities as assets for the government. When an individual buys a government bond, he or she has established a financial claim against the government. When the government issues a security to one of its own accounts, it hasn't purchased anything or established a claim against some other person or entity. It is simply creating an IOU from one of its accounts to another. Hence, the building up of federal securities in federal Trust Funds – like those of Social Security – is not a means in and of itself for the government to accumulate assets. It certainly establishes claims against the government for the Social Security system, but the Social Security system is part of the government. Those claims are not resources that the government has at its disposal to pay future Social Security benefits... The key point is that the Trust Funds themselves do not hold financial resources to pay benefits – rather, they provide authority for the Treasury Department to use whatever money it has on hand to pay them." (David Stuart Koitz, "Social Security Taxes: Where Do Surplus Taxes Go and How Are They Used?" Congressional Research Service, April 29, 1998)

The Inescapable Choices Under the Status Quo

Under the current Social Security system, individuals do not withdraw benefits from savings accounts held in their names. Benefits are paid from only one ultimate source: tax dollars. If the current system's financing is left in place, future workers and retirees will experience one or more of the following: 1) large tax increases, 2) significant benefit cuts, 3) widespread reductions in other government programs, or 4) unprecedented accumulations of public debt. The only uncertainty is which steps will happen and which groups will be hit the hardest.

But these steps, however undesirable, cannot solve the current system's problems permanently. Cash deficits in one year will be followed by larger shortfalls the next year, and larger again in every year thereafter. Social Security needs structural improvement if it is to cope with the realities of an aging society. The four choices:

1) Raise Taxes

One option facing the nation is to maintain full benefit promises by raising taxes. While it is impossible to predict what taxes a future Congress might choose to raise, the chart to the right shows the effect of tax increases needed in future years if applied proportionately to wages currently subject to the Social Security payroll tax.

How much would taxes increase?

If the percentage shortfall in the following year existed today:	A couple's taxes could increase by:	Tax increase (in percent of payroll taxes)
2020	$860	14%
2030	$2,100	34%
2040	$2,275	37%
2050	$2,295	37%

Explanation: this table applies the percentage tax increases in future years to a couple earning $50,000 today. Because future incomes will increase, tax increases in real dollars would be substantially larger than shown here.

2) Cut Benefits

Another option is to cut benefits to the level that could be supported out of currently legislated Social Security tax revenues. In the long run, this would produce benefits more than one-quarter below the levels currently promised by Social Security's benefit formula. We illustrate with a medium-wage earner and spouse who retired this year at 65 receiving, under current benefit rules, a total annual benefit of $18,945. If benefit cuts required to balance the system in the future were applied proportionately to this couple today, they would receive thousands of dollars less annually from Social Security.

How much would benefits be cut?

If the percentage shortfall in the following year existed today:	A couple's annual benefits could be reduced by:	Benefit reduction in percent
2020	$2,227	12%
2030	$4,605	24%
2040	$4,867	26%
2050	$4,888	26%

Explanation: this table applies the percentage benefit reductions in future years to a retired couple receiving $18,945 annually in benefits today. Because future benefit levels will be higher, reductions in real dollar terms would be substantially larger than shown here.

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3) Cut Other Government Spending

A third option to address Social Security's cash flow problems would be to cut other government spending. By freeing up enough on-budget revenues we could redeem Social Security Trust Fund debt without raising taxes, cutting benefits or borrowing. But how much would other spending have to be cut?

In 2016, the first year in which Social Security is projected to run cash deficits, the program faces a shortfall of $17.4 billion (in today's dollars). Assuming that federal spending maintained its present size relative to the rest of the economy, making up Social Security's 2016 deficit by cutting other spending would require eliminating programs the combined size of Head Start and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

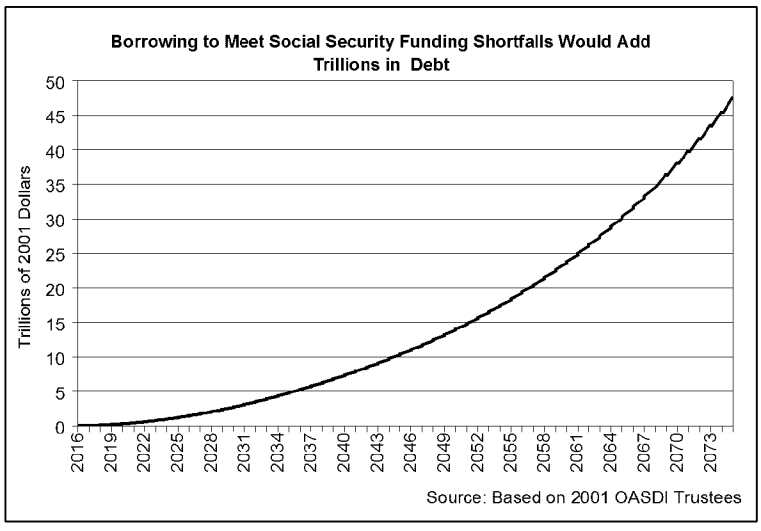
Annual Social Security cash shortfalls, in 2001 dollars	
2016	$17.4 billion
2020	$99.3 billion
2025	$194.3 billion
2030	$270.8 billion
2035	$317.6 billion

By 2020 Social Security deficits will have grown to $99.3 billion, requiring cuts – in addition to those already listed – equivalent to eliminating the Departments of Education, Interior and Commerce, as well as the Environmental Protection Agency.

By 2025, Social Security deficits will reach $194.3 billion in today's dollars, requiring cuts equal to all the programs mentioned above plus NASA and the Department of Veterans Affairs. The $270.8 billion shortfall in 2030 would require eliminating the Departments of Energy and Housing and Urban Development (HUD) as well. By 2035, when Social Security faces a $317.6 billion annual shortfall, the Department of Justice and the National Science Foundation would also have to be eliminated.

4) Increase Public Debt

The final option available to the country in 2016 is to issue additional public debt to meet Social Security shortfalls without raising taxes, cutting benefits or reducing other federal spending.



The accompanying chart shows the additional debt required to finance cash shortfalls that Social Security will begin to experience in 2016. This debt would accumulate to more than $7 trillion (in 2001 dollars) by 2040, $14 trillion by 2050, and over $47 trillion by 2075. This additional public debt would be

larger than the national debt at the end of World War II, relative to the economy. Further, the additional public debt would continue to rise indefinitely.

Social Security and Medicare Will Absorb A Growing Share of the Nation's Resources

One way to understand the consequences of inaction on Social Security reform is simply to assume that tax revenues are raised as necessary to fulfill currently legislated benefit promises.

Social Security currently consumes 4.2 percent of the nation's gross domestic product – almost $2,600 for every working-age American. If additional revenues were provided to Social Security as needed, by 2075 system costs will rise to 6.7 percent of GDP – a 60 percent increase.

Medicare will also command an increasing share of the nation's resources, leaving less room in the budget to absorb Social Security's rising costs. While Medicare costs 2.3 percent of GDP today, these costs are projected to escalate to 8.5 percent of GDP by 2075. Combined, Social Security and Medicare will absorb more than 15 percent of the nation's gross domestic product unless these programs are made sustainable. For comparison, all personal income taxes paid to the federal government today total approximately 9 percent of GDP.

This will be a direct consequence of a failure to improve the basic structure of these programs. Only through meaningful, structural improvements can Social Security and Medicare be placed on a sustainable path.

4) An Opportunity to Improve Social Security for Vulnerable Americans

Social Security redistributes income among households based on differences in such factors as marital status, income, length of life and year of birth. For previous generations of retirees, who were on the receiving end of income transfers, the program effectively lifted many seniors out of poverty simply because most participants received substantially more than they put in. Today, when this is true for only some of those entering retirement, Social Security's haphazard distribution of benefits is becoming more apparent. When Social Security begins to experience cash deficits, the effects will not necessarily be equally shared by all segments of American society. Some examples:

Low-Income Americans

Social Security's benefit formula is intended, in part, to reduce the risk of old-age poverty among low-income workers. But accumulating evidence suggests that Social Security is not nearly as redistributive as many people believe. Also, low-income households own few assets outside of Social Security and thus are disproportionately affected by the benefit cuts that will occur under current law. Absent reforms, current law will reduce benefits by over one-quarter after the trust fund becomes insolvent in 2038, pushing many low-income households into poverty.

Three factors offset much of the intended redistribution within the current Social Security system. First, lower-income individuals tend to have shorter life expectancies. As a result, low-income workers spend a greater portion of their lives contributing to Social Security and a smaller portion collecting from it.

Second, Social Security's spousal benefit redistributes money from single individuals and two-earner couples to one-earner couples. For instance, under the current system a 30-year-old single low-income male would receive a 2.22 percent real return on his contributions to the retirement program (2.63 percent for a single low-income female). By contrast, a high-income one-earner married couple would receive a 2.75 percent return.[5] Social Security is structured, in this and many other instances, to redistribute income from single earners and working couples with less to couples in which one spouse can afford not to work. Because low-wage earners are more likely to be single or divorced, they are less likely to receive a spousal benefit. The highest risk of poverty in old age is faced by divorced, separated or never-married women.

Third, many people never become eligible for Social Security benefits because they do not have enough years of contributions to earn their own benefits. Current Social Security rules require a worker to pay into the system for roughly 10 years before gaining eligibility for retirement benefits.

Social Security's lifetime redistribution from high to low earners is haphazard at best. Numerous academic studies show little if any systematic redistribution by income

[5] Source: May 27, 2001 memorandum from Social Security Office of the Actuary.

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under the present Social Security retirement system due to the complex interactions between tax collections, benefit formulas, spousal protections and life expectancy.[6] Even without the benefit reductions that will occur under current law, Social Security may not remain an effective barrier against poverty.

Women

The current system contains spousal and survivors protections used disproportionately by women. Nevertheless, poverty rates for women age 65 and over remain more than 70 percent higher than for elderly men (11.8 percent vs. 6.9 percent.) Widowed, divorced or never-married women also face particularly high poverty rates in old age: 16.8 percent for widows over age 65, and 24.7 percent for divorced, separated or never-married women over 65.[7]

Social Security plays a particularly important role in the lives of women. Despite changes in the workplace, women on average still receive less wage income, have less non-Social Security pension coverage and are more likely to miss time from the workforce. A working spouse may receive a spousal benefit no higher than if she had not worked, reducing her incentive to enter the workforce.

Women also live an average of 5.5 years longer than men. Consequently, women are disproportionately dependent on Social Security for retirement income. Non-married women over 65 rely on Social Security for an average of 50 percent of their retirement income. Thirty-eight percent of unmarried women rely on Social Security for 90 percent or more of their retirement income.[8]

If no action is taken by 2025, current benefit promises will exceed the program's annual income by approximately 25 percent. What this means is that failure to restructure Social Security poses a disproportionate threat to the overall retirement security of women, due to the comparatively larger impact upon them of the benefit reductions inherent in current law.

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[6] Alan L. Gustman, Thomas L. Steinmeier, "How Effective is Redistribution Under the Social Security Benefit Formula?" NBER, March 2000; Julia Lynn Coronado, Don Fullerton, Thomas Glass, "The Progressivity of Social Security," NBER, February 2000; Jeffrey Liebman, "Redistribution in the Current U. S. Social Security System," Harvard University, July 2001.

[7] U.S. House of Representatives, Committee on Ways and Means, *2000 Green Book* (Washington: Government Printing Office, 2000), p. 999.

[8] Susan Grad, "Income of the Population 55 or Older, 1998," SSA no. 13-11871, 1998, p. 104.

Quirks In Benefit Structure Pose Problems For Certain Women

Spousal Benefits: Under Social Security's spousal benefit rules, the spouse with lower lifetime earnings (usually the wife) effectively receives a either benefit based on her own earnings or an amount equal to half her spouse's worker benefits, but not both. While fine for an era in which few women worked outside of the home, today Social Security's spousal benefit rules create inequities between traditional single-earner couples and dual-earner couples in which both spouses work.

Example: The Smiths and Joneses both have $3,000 total monthly earnings. Mr. Smith earns $3,000 while Mrs. Smith does not work outside the home. Mr. Jones earns $2,000 while Mrs. Jones earns $1,000. At retirement in 2001, Mr. Smith would be eligible for a monthly benefit of $1,292 and Mrs. Smith a spousal benefit of $646, for a total of $1,938. By contrast, Mr. Jones would be eligible for a monthly benefit of $984 based on his earnings and Mrs. Jones a benefit of $641 based on her own earnings, for a total of $1,625. While the two couples have identical total earnings, the single-earner couple receives benefits 19 percent higher than the dual-earner couple.

Divorce: A divorced woman must have been married for 10 years to be entitled to benefits based on her former husband's earnings. The National Center for Health Statistics reports that marriages ending in divorce have a median length of just 7 years, and fully one-third of all marriages end prior to the 10 years needed for benefit eligibility. In addition, the number of divorced elderly women is projected to increase, causing the current system's outdated divorce rules to affect more women.

Example: Mrs. Smith becomes divorced one day short of 10 years while Mrs. Jones's divorce occurs just one day past 10 years. That is the sole difference between eligibility for benefits equal to 50 percent of the former husband's benefit and no eligibility at all. Nor is remarriage a guarantee of spousal benefits. One-third of second marriages are disrupted through separation or divorce before 10 years. For women under age 25 at remarriage, 47 percent of second marriages are disrupted before 10 years. For African Americans, these percentages are higher.

Widows Benefits: A widow is eligible for the greater of her husband's worker benefit or her own, but not both. As a result, her household income may be cut by up to one-half upon his death. Since the cost of living for one person is almost as much as for two the standard of living of the surviving spouse is likely to fall. The poverty line for a single individual age 65 and over, for instance, is only about 20 percent less than that for couples.

Like the spousal benefit, the survivor benefit formula favors single-earner households over dual-earner households. Since a widow is eligible for either her own benefit or her husband's but not both, women from households with identical total incomes could find themselves with different benefits once widowed. Specifically, women who worked would receive lower widows benefits than women who did not work outside the home.

Example: Mrs. Smith, who never worked outside the home, becomes widowed and is eligible for survivors benefits based on Mr. Smith's $3,000 monthly income. By contrast, Mrs. Jones paid Social Security taxes over her lifetime. When she becomes widowed she can receive benefits based on Mr. Jones's $2,000 monthly income or her own $1,000 income, but not both. The result is that Mrs. Smith, who neither worked nor paid into the system, receives benefits more than 30 percent higher than Mrs. Jones, who is from a household with identical earnings and who worked and contributed her entire career.

Women from all incomes are affected by these aspects of Social Security's benefit formula, but low-income women, with little or no non-Social Security pension resources, suffer the most.

African Americans

Social Security pays retirement benefits as an annuity that begins at retirement and ends at death, so those with shorter life expectancies can expect to receive less in retirement benefits. African Americans have shorter life expectancies than other groups, as shown in the accompanying table. As a result, an African American earning the same lifetime earnings and paying the same lifetime Social Security payroll taxes as someone in the general workforce is likely to receive a lower rate of return and lower lifetime benefits from the retirement system. Moreover, African Americans as a group also receive less in Social Security spousal benefits. Forty seven percent of African American marriages are disrupted before the first 10 years, and African American women are substantially less likely both to remarry after divorce and to have a second marriage last for the 10 years needed for spousal benefit eligibility.

Black and White Life Expectancy, 1999

Age	White Male	Black Male	White Female	Black Female
Birth	74.6	67.8	79.9	74.7
10	65.3	59.2	70.5	66.0
20	58.2	49.6	60.6	56.2
30	48.6	40.7	50.9	46.6
40	36.9	31.9	41.3	37.4
50	28.0	24.0	31.9	28.7
60	19.8	17.2	23.2	20.9
65	16.1	14.3	19.2	17.3
70	12.9	11.6	15.5	14.0
80	7.5	7.2	9.0	8.6

Source: National Center for Health Statistics, "Deaths: Preliminary Data for 1999," National Vital Statistics Reports 49, no. 3, June 26, 2001

Recent academic research finds that, as a result of mortality differences, African Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.[9]

African Americans are more likely to receive benefits from Social Security's disability program than are other groups. Moreover, because African Americans have higher death rates, their children are more likely to receive benefits as child survivors. In 1999, 2.8 percent of African American children under 20 were receiving a child survivor benefit, compared to 1.5 percent of white children and 1.8 percent of all children. Young African Americans are also more likely to receive disabled child benefits as survivors. This partially mitigates the fact that African Americans receive lower lifetime retirement benefits. But Social Security's survivors, disability and retirement programs have distinct purposes. If the retirement program can be improved for African Americans without offsetting reductions in the survivors and disability programs, Social Security as a whole would better serve African Americans.

It is likely that the opportunity for an inheritance would benefit African Americans relative to the general population. This is because African Americans on average have less non-Social Security retirement savings than the average worker. As a result, African Americans are disproportionately threatened by the financing shortfalls facing the current system. They are more likely, on average, to die before receiving benefits.

[9] Jeffrey Liebman, "Redistribution in the Current U. S. Social Security System," Harvard University, July 2001.

Hispanic Americans

By some measures, Hispanic Americans fare better than the population as a whole under the current Social Security system. This is the result of lower average lifetime earnings combined with higher life expectancies. Yet this makes Hispanics somewhat more vulnerable than average to inevitable changes in the current Social Security structure.

Though the program's progressive benefit may appear to help Hispanics as a group, its financing structure hits Hispanic Americans particularly hard. Hispanics tend to be younger than the American population as a whole and would consequently bear a disproportionate share of the rising cost of sustaining an income transfer system. Rates of return from Social Security are declining for younger workers, of which Hispanics are one of the fastest growing ethnic groups

Below-average private pension coverage for Hispanic workers is correlated with their below-average wage levels and job tenure rates. Moreover, fewer than half of Hispanic households were net savers in 1998. The poverty rate for Hispanics age 65 and over in 1998 was 22.5 percent, compared to 10 percent for non-Hispanics.[10] This greater reliance on Social Security creates greater vulnerability to the benefit reductions that will occur under current law.

Hispanics represented 3 percent of the elderly population in 1990, but have grown to 5.4 percent today and are projected to rise to 17.5 percent of the 65-and-older population in 2050. Comparatively few Hispanics entered retirement having received the above-market rates of return that the Social Security system provided in its early years. In 1998, Hispanics as a group paid $33 billion in OASDI payroll taxes but received only $18 billion in benefits. By the time today's Hispanic taxpayers are eligible for retirement benefits, the current Social Security system would be paying substantially lower returns than it did to earlier generations.

Younger Generations

Younger generations have more at stake than other age groups and hence should be more interested in Social Security reform. Under current rules Social Security system is able to pay benefits to current retirees until 2016, and there is a broad political consensus that current retirees should not be affected by changes to the Social Security program.

Young generations will bear the brunt of continuing exclusively with the current income transfer system. As the ratio of workers to retirees drops over time, the tax burden placed by Social Security on workers will increase. This means it is less and less likely that even average wage future workers will live long enough to recover taxes paid into the Social Security retirement system. Workers paying the maximum tax into Social Security and retiring in 2030 would have to live past age 110 simply to get back what they had paid in.

As a result, rates of return for younger workers will be substantially lower than for workers in the past. Most young workers will receive returns even lower than the

[10] Grad, Susan, op cit, p. 126.

What age must you reach to get back what you've paid in?			
Year of retirement	Age an average earner gets back taxes paid into the retirement portion of Social Security	Total Life Expectancy for Individual Reaching Age 65	
		Male	Female
1940	65.2	77.7	79.7
1960	66.1	78.2	82.4
1980	67.8	79.7	83.8
2001	81.8	81.3	84.6
2010	85.2	81.9	85.0
2020	89.7	82.5	85.6
2030	91.9	83.0	86.1
Source: Congressional Research Service, "Social Security: The Relationship of Taxes and Benefits for Past, Present, and Future Retirees," June 22, 2001; updated via telephone conversation with author.			
Under the intermediate assumptions of the 2001 Trustees Report and taking into account benefit increases and continued accrual of interest after retirement but not the taxation of benefits. The retiree is assumed to begin work at age 22 and attain age 65 and retire in January of the designated year. Assume contributions earn interest equal to the long-term government bond rate.			

Real Rates of Return Falling for All Retirees *(Assumes No Change in Law, Retirement at Age 65)*				
Birth Year	Single Male (Medium wages)	Single Female (Medium wages)	Single Earner Couple (Medium Wages)	Two-Earner Couple (Medium/ Low wages)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88
Source: May 27, 2001 memorandum from Social Security Office of the Actuary				

accompanying chart depicts, because these figures neglect the cost of meeting Social Security's cash deficits from 2016 through 2038. For example, those born in 1990 will spend most of their working careers after 2016, when Social Security will require additional tax revenues beyond those tabulated here.

Though rates of return are not the only important measure of system fairness, they nonetheless illustrate the problems inherent in continuing exclusively with an income transfer system. Under such a system, entire generations will receive rates of return below those of risk-free government bonds. In practice, they will be forced to lose money through Social Security.

Action to strengthen Social Security is more than an opportunity to restore fiscal soundness to the nation's public pension program. It is an opportunity to improve the program for all Americans, particularly those Americans who need it most.

5) An Opportunity to Become A Nation of Owners and Savers

Increasing national saving is the only sure way to improve retirement security for current workers while also lessening the burden on future generations. Increased saving leads to capital formation and higher labor productivity, which will help a relatively smaller labor force maintain the standard of living of a relatively larger group of retirees. It will expand the size of the economic pie available for everyone – both young and old – to consume. But America is not saving enough.

At a time when additional saving is needed to provide for future retirees, our national retirement program does not facilitate saving, either nationally or on behalf of individuals. In order to provide for a better retirement future, America must more truly become a nation of owners and savers.

The median African American household held only $3,060 in cash, certificates of deposit, retirement accounts, or stocks and bonds in 1998; the median Hispanic household, only $1,200.

Few Americans own much in the way of liquid assets. In 1998, the median U.S. household owned only $17,400 worth of financial assets, including sums in retirement accounts. Four out of every nine households in the United States saved nothing at all in 1998. Six out of 10 African American and Hispanic households saved nothing that year.

For these non-saving families, Social Security contributions may represent their only hope to build assets and wealth. In effect, those in the bottom half of the American population – and a larger population of the African American and Hispanic population – lack a pool of private savings to support them in old age. Meanwhile, 12.4 percent of low-income Americans' earnings are collected to support a system that offers them only uncertain promises and below-market rates of return.

Exclusion from financial markets is a serious problem for lower-income Americans. Under Social Security, their retirement income depends not on assets they possess but on the hope that politicians elected 20 and 30 years from now will raise taxes on tomorrow's workers. In fact, the Supreme Court has ruled in *Flemming vs. Nestor* (1960) that workers and retirees have no legal ownership over their benefits, even after a lifetime of paying taxes into the system.

Even modest amounts invested in real assets could produce substantial wealth. A contribution of as little as $500 per year for 40 years at only a 4 percent return would yield $50,000.

Moreover, the Social Security system may discourage individuals from saving on their own. A Congressional Budget Office study concluded "the Social Security system most likely has had a negative impact on private saving." [11]

[11] Congressional Budget Office, "Social Security And Private Saving: A Review Of The Empirical Evidence," July 1998.

The failure of Americans to save raises troubling economic questions – and profound moral concerns. The strong growth of the value of financial assets over the past century means that many Americans can look forward to a comfortable old age largely sustained by their own resources. But many others will have to depend almost entirely on payments from the government. In other words, without reform, future retirees will be divided not merely between the haves and have-nots but between those who think of themselves as independent and those regarded as dependents.

Tax payments to the Social Security program represent the largest contribution toward retirement for most Americans. The ability of those Americans to save and accumulate assets will be determined largely by whether such opportunities are created within Social Security.

6) Analytical Criteria

The President's Executive Order establishing the Commission requires the interim report to set forth "criteria by which the Commission will evaluate reform proposals."

First and foremost, our criteria must be consistent with the President's principles for strengthening Social Security, as outlined in the Executive Order.

The President's Principles For Strengthening Social Security

(1) Modernization must not change Social Security benefits for retirees or near-retirees.

(2) The entire Social Security surplus must be dedicated to Social Security only.

(3) Social Security payroll taxes must not be increased.

(4) Government must not invest Social Security funds in the stock market.

(5) Modernization must preserve Social Security's disability and survivors components.

(6) Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

Within those principles, the Commission has been provided with flexibility to recommend measures to improve the fiscal soundness of Social Security as well as to propose the size, structure and financing of personal accounts. To develop a bipartisan consensus on these points, understanding of the Commission's criteria and standards is essential. Our eight criteria of analysis are presented on the following page.

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Criteria for Analysis

The Commission has established eight criteria by which to evaluate proposals for strengthening the Social Security system:

1. Encouragement of workers' and families' efforts to build personal retirement wealth, giving citizens a legal rather than merely a political right to a portion of their benefits.
2. Equity of lifetime Social Security taxes and benefits, both between and within generations.
3. Adequacy of protection against income fluctuations, such as those caused by retirement, disability, death of an earner, or unexpected longevity.
4. Encouragement of increased personal and national saving.
5. Rewarding individuals for actively participating in the workforce.
6. Movement of the Social Security system toward a fiscally sustainable course that can withstand unforeseen economic and demographic changes.
7. Practicality and suitability to successful implementation at reasonable cost.
8. Transparency: Analysis of reform plans should measure all necessary sources of tax revenue, and all benefits provided, including those from the traditional system as well as from personal accounts.

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CREATION DATE/TIME:19-JUL-2001 13:37:35.00
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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
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TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP [WHO])
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TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sam Dickens (CN=Sam Dickens/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP [WHO])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP [WHO])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP [WHO])
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TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas_V._McMahan@oa.eop.gov (Thomas_V._McMahan@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP [WHO])
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TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP [WHO])
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TO:Gregory_J._Jenkins@oa.eop.gov (Gregory_J._Jenkins@oa.eop.gov [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP [WHO])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Douglas_D._McCormick@oa.eop.gov (Douglas_D._McCormick@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])

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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])

READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])

READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
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TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP [WHO])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])

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TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
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You will all remember that the President recently appointed a bipartisan Commission to Strengthen Social Security. By law, once the staff draft of the interim report goes to the full commission the staff draft becomes available for public access. Attached are (1) the report, and (2) talking points on the report. Please let me know if you have any questions.

(See attached file: SS Interim Report Final Talkers.doc)(See attached file: SS Interim Rpt Staff Draft.doc)
- SS Interim Report Final Talkers.doc - SS Interim Rpt Staff Draft.doc
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Highlights from the DRAFT Interim Report of the President's Commission to Strengthen Social Security

The President's Commission to Strengthen Social Security is now reviewing staff drafts of the interim report that will be released after the Commission's meeting on July 24. The staff draft of the interim report concludes that Social Security is in trouble and the benefits of future seniors will be jeopardized without serious bipartisan action and solutions. Key findings of the draft interim report include:

- **The current system simply can't cope with the upcoming demographic changes in our country.** The ratio of workers to retirees will drop to close to 2-to-1 within a generation.

- **To provide for tomorrow's retirees, we must become a nation of owners and savers**. However, the existing Social Security program does not save or invest for future generations of seniors.

- **Strengthening Social Security is an opportunity to improve the program's treatment of women, low-income Americans, African Americans and Hispanic Americans.**

- **Social Security's cash deficits are projected to begin in 2016.**

- **Without bipartisan action to strengthen Social Security, the only options available to the government beginning in 2016 will be large tax increases, deep benefit cuts for seniors, borrowing on an unprecedented scale, or cutting other government spending.** Arguments against serious bipartisan reform are equivalent to express advocacy of these options. For example, if the government chose cutting spending to meet Social Security's shortfalls, by 2020, the required spending cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior, Commerce, and the EPA. By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs. *(Key statistics are attached)*

- **Faster economic growth will not save the existing system.** Even under the independent Social Security Trustees' faster-growth estimates, permanent Social Security cash deficits would only be delayed by one year -- to 2017. Even if every economic and demographic variable is changed to reduce costs, permanent deficits would begin in 2020.

- **Inflating the Social Security Trust Fund will not help.** The report cites several sources, including the Social Security Public Trustees, the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, and the Clinton Administration FY2000 Budget, that assert that regardless of the balance in the Social Security Trust Fund, the choices under the current system remain the same – tax increases, deep benefit cuts, unprecedented government borrowing or cutting other government spending.

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HOW NOT STRENGTHENING SOCIAL SECURITY WOULD AFFECT AMERICAN HOUSEHOLDS

Without bipartisan action to strengthen Social Security, beginning in 2016 the government would face the choices of raising taxes, cutting benefits, cutting other government spending, and increasing borrowing.

How Would Households Be Affected if the Government Chose to Raise Taxes?

If tomorrow's percentage shortfalls were faced today, the following additional taxes would be required from a two-earner couple with $50,000 in income:

- ☑ Shortfall in 2020 = $860 in today's earnings
- ☑ Shortfall in 2030 = $2,100 in today's earnings
- ☑ Shortfall in 2040 = $2,275 in today's earnings
- ☑ Shortfall in 2050 = $2,295 in today's earnings

How Would Beneficiaries be Affected if the Government Chose to Cut Benefits?

If tomorrow's percentage shortfalls were faced today, benefits would need to be reduced by the following amounts, for an average retiree and spouse:

- ☑ Shortfall in 2020 = $2,227 in today's annual benefits
- ☑ Shortfall in 2030 = $4,605 in today's annual benefits
- ☑ Shortfall in 2040 = $4,867 in today's annual benefits
- ☑ Shortfall in 2050 = $4,888 in today's annual benefits

What if the Government Cut Other Spending Instead of Raising Taxes or Cutting Benefits?

In today's dollars, the following amounts of spending would have to be cut to compensate for the Social Security deficit:

- ☑ 2020 = $99 Billion
- ☑ 2025 = $194 Billion
- ☑ 2030 = $271 Billion
- ☑ 2035 = $318 Billion

- ➢ By 2020, required cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior, Commerce, and the EPA.

- ➢ By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs.

What if the Government Chose Instead to Add to Public Debt?

- ➢ The total borrowing required to finance Social Security's cash shortfalls would equal $7 trillion by 2040, $14 trillion by 2050, and $47 trillion by 2075 (in 2001 dollars).

Social Security and Women:

- Women are more likely than men to suffer poverty in old age.
- Poverty rates are highest for widowed, divorced and never-married women.
- Women receive a higher percentage of their retirement income from Social Security than do men, and thus are particularly threatened by the benefit reductions that would occur in the absence of reform (a 27% reduction in 2038.)
- Social Security contains many quirks and inequities that hurt women who work. For example, a low-income two-earner couple experiences a lower rate of return than a high-income one-earner couple. The report presents an example of two families with identical household earnings, one of which receives 19% more in benefits than the other.

Social Security and Low-Income Americans:

- Despite popular perceptions, recent studies show that Social Security provides little, if any, systematic redistribution from rich to poor.
- Recent academic research finds that, as a result of mortality differences, African-Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.
- Because they are younger than the general population, disproportionate numbers of Hispanic Americans will enter retirement having received below market rates of return from the Social Security program.

Social Security and the Young

Without reform, Social Security will provide a bad deal for today's young workers.

Real Rates of Return
(Assumes No Change in Law, Retirement At Age 65)

Born	Single Male (Med. Wage)	Single Female (Medium)	One-Earner Couple (Medium)	Two-Earner Couple (Medium/Low)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88

America Must Become A Nation of Owners and Savers:

- The median U.S. household owned only $17,400 worth of financial assets in 1998, including retirement accounts. For African American and Hispanic households, the numbers were only $3,060 and $1,200 respectively.
- Tax payments to Social Security represent the largest contribution to retirement for most Americans. If savings and investment opportunities are not created within Social Security, these Americans will lose their best opportunity to acquire financial assets.

Background on the President's Commission to Strengthen Social Security:

President Bush demonstrated his commitment to tackle tough problems by stepping forward to provide much-needed leadership in the area of Social Security. The President signed an Executive Order creating a bipartisan, 16-member, commission to study and report back this fall with specific recommendations to preserve Social Security for seniors while building wealth for younger Americans. The commission is co-chaired by former Senator Patrick Moynihan (D-NY), and Dick Parsons (Co-Chief Operating Officer of AOL/Time Warner). The commission will make recommendations to modernize and restore fiscal soundness to Social Security, using six key principles developed by the President as a roadmap:

- Modernization must not change Social Security benefits for retirees or near-retirees.
- The entire Social Security surplus must be dedicated to Social Security only.
- Social Security payroll taxes must not be increased.
- Government must not invest Social Security funds in the stock market.
- Modernization must preserve Social Security's disability and survivors components.
- Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

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Bringing Social Security into the 21st Century:
A Preface By the Co-Chairs

Social Security is one of the most important and most popular domestic programs of the United States government. For millions of retirees, it serves either as the sole or the primary source of income, the mainstay of their dignity and independence. Millions of others look to it to sustain or supplement the retirement they hope to begin within the next several years. Since its inception in the midst of the Great Depression, it has made a vital difference in the lives of generations of hardworking Americans and their families.

The road, however, hasn't always been smooth. Social Security has been beset by periodic fiscal crises, and recently by public skepticism that could reasonably be termed a crisis of confidence. In establishing a Commission to Strengthen Social Security, President Bush had both concerns in mind.

The crisis of confidence is real. Many working adults do not believe that they will ever collect retirement benefits from Social Security. Such a failure has never once happened in a program that dates well back into the last century. But Americans tend to be skeptical of government, and this is no bad thing. It would, however, be a terrible thing if the skeptics should turn out to be right this time. Part of the Commission's mandate is to prove them wrong.

Among the program's fiscal crises, the most dangerous occurred in the early 1980s, when the pay-as-you-go system was approaching the point where promised outlay would exceeded expected revenues. A bipartisan National Commission on Social Security Reform was created to work out a solution in 1982. For all its good intentions, the commission could reach no agreement for a year. It wasn't until the prospect of default – that is, the need to obtain general revenue to maintain benefit payments – that minds became sufficiently concentrated. In early 1983, in the course of eleven days, a number of commission members together with White House officials reached a comprehensive agreement that literally saved Social Security for the decades that followed.

Before long, the system was not only stabilized but running a substantial surplus. This will continue for another 15 years, when the very same crisis will recur, compounded by the mounting pressure of demographics. In brief, the problem is this: more and more of us are living healthier and longer lives. At the same time, we're having smaller families. Birth rates are now just over half what they were during the peak of the baby boom.

The relentless truth of ascending life expectancies and declining birth rates will put an intolerable squeeze on the system that now exists. Consider the facts. In 1940, when benefits were first paid, there were 42 workers per retiree. In 1960, there were five workers for every retiree. Now there are slightly more than three. Before long there will be just two. This downward trend in the ratio of workers to retirees, under the existing system, would require either painful tax increases, significant benefit cuts, or astronomical levels of borrowing.

It could be worse. There are European countries for which the United Nations projects a population decline of more than 40 percent by mid-century. By contrast, our population will experience a measure of growth, thanks not least to immigration. But the ratio of workers to retirees will never again be anything like that of the age in which Social Security was founded.

As powerful as the impact of demographics is, there are other factors at work that require the overhaul of a system conceived in the first half of the last century. The stock market and personal investing are no longer solely the prerogative of the rich and privileged. Due to a major extension of the opportunities for higher education, the gradual dismantling of the legal and social barriers to the economic advancement of minorities and women, and an explosion of new businesses and start-up enterprises, traditional job roles and life-long occupational patterns have been altered or swept away.

For our forebears, Social Security was a transforming novelty. For us, it's a system utterly devoid of options for building a net worth that reflects the dynamism of the American economy or which facilitates investments to the benefit of our children or heirs. Nowhere is this dearth of possibilities more glaring than among the growing number of single-parent families, most of whom rely on Social Security as their only tool of preparation for retirement.

At present, under the Supreme Court ruling in *Flemming v. Nestor*, workers and retirees have no legal ownership over their Social Security benefits. Instead, what they have is a political promise that can be changed at any time, by any amount, for any reason. In any retirement system a lack of legal ownership is a source of insecurity. In one that is under-financed by over 25 percent, it is a problem on its way to becoming a crisis.

Though the Social Security system has itself reached retirement age, almost no one proposes that it be dismantled or eviscerated. The Commission came to work clear about its mission. Our job is to bring the system into the 21st century, to make it more responsive to the extraordinary social and economic changes that continue to remake every facet of our lives, and to ensure its fiscal strength and fiduciary soundness.

The charge that President Bush gave us is nonpartisan and nonpolitical: *The promise of Social Security to current and future generations of Americans must and will be kept.*

We believe the diversity of views, opinions and political beliefs represented on this Commission is critical to our ability to make an objective analysis. Equally, we believe that all of the members are determined to do their very best to help "promote the general welfare" of the American people and not to serve political ends. With these intentions and principles in place, the Commission has reached several conclusions that are presented on the following pages. Here we emphasize three:

If we are to maintain a sound system of support for tomorrow's retirees, this present generation of Americans must be encouraged to save and invest more than it currently does;

The Social Security program, as it now stands, does nothing to promote individual savings or investment. Workers have little sense of proprietorship or a sense of what they are entitled to. Many have lost confidence in ever receiving anything back;

The system is broken. Unless we move boldly and quickly, the promise of Social Security to future retirees cannot be met without eventual resort to benefit cuts, tax increases, or massive borrowing. The time to act is now.

This report presents the facts and reasons behind our conclusions. It is not meant to please any one constituency or to provide a rationale for preconceived notions of what should be done. Its purpose is twofold; to identify what has to be fixed in order to modernize a program conceived and designed for a different era and a different economy; and to preserve the spirit of intelligent innovation and concern for the common good that created Social Security in the first place.

If the problems spelled out in this interim report become a topic of national debate and receive the public's focus and scrutiny, that in itself will be a positive step forward. The greatest threat is in taking the course of least resistance, ignoring the challenge and doing nothing.

We believe that the opportunity now exists to do more than analyze and debate. The moment has arrived for a fundamental restructuring of the nation's Social Security system that doesn't merely postpone the day of reckoning but guarantees adequate funding for future retirees. If we do it right – and we have every confidence that a bipartisan coalition can – Social Security may be funded by clearly earmarked money that cannot be diverted to other purposes through the political process.

For the first time, the program can become an active rather than a passive instrument of personal financial security. Rather than ending with the life of the beneficiary, it can be a means of wealth accumulation and long-range investment, giving families resources they never had before, and widening the circle of Americans fortunate enough to pass on the accumulated results of their investments and hard work.

If we have the will, we have the means to reestablish equity, maintain benefits for current retirees, and enable workers to acquire a measure of wealth in the course of their working lives.

In our final report, the Commission will make specific suggestions for concrete steps toward the reform and revitalization of Social Security. For now, we wish to reiterate our enthusiastic belief that we have an historic opportunity to make Social Security more relevant, more equitable and more effective than ever before. The ultimate beneficiary of our commitment to act promptly, impartially and decisively to resolve what is both a fiscal crisis and a crisis of confidence will be the American people.

Daniel Patrick Moynihan Richard D. Parsons

Summary

Our Opportunity is Equal to Our Challenge

• If we have the will, we have the means to reestablish equity, maintain benefits for current retirees, and enable workers to acquire a measure of wealth in the course of their working lives.

General Findings of the Commission

• To support tomorrow's retirees, we must save and invest more.

• The existing Social Security program does not save or invest for the future.

• Arguments against reform are equivalent to express advocacy of increasing taxes, cutting benefits, reducing other government spending, or borrowing on an unprecedented scale.

The Current System is Not Designed to Cope with Demographic Changes

• The ratio of workers to retirees will drop to close to 2-to-1 within a generation.

Social Security's Cash Deficits Are Projected to Begin in 2016

• In 2016, the program's benefit obligations will exceed its annual tax revenue.

Faster Economic Growth Will Not Save the Existing System

• Under the Trustees' faster-growth estimates, permanent cash deficits would only be delayed by one year, to 2017. Even if every economic and demographic variable were changed to reduce costs, permanent deficits would begin in 2020.

Building up a Social Security Trust Fund Will Not Change Tough Choices

• The report cites several sources, including the Social Security Public Trustees, the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, and the Clinton Administration FY2000 Budget, each to the effect that the Trust Fund is not an asset of the government.

How Would Households Be Affected if Shortfalls Were Met By Raising Taxes?

• If tomorrow's shortfalls were faced today, the following additional taxes would be required from a two-earner couple with $50,000 in income:

Shortfall in 2020:	$860 in today's earnings
Shortfall in 2030:	$2,100 in today's earnings

How Would Beneficiaries be Affected if Shortfalls Were Met By Cutting Benefits?

• If tomorrow's shortfalls were faced today, benefits would be reduced by the following amounts for an average retiree and spouse:

Shortfall in 2020:	$2,227 in today's annual benefits
Shortfall in 2030:	$4,605 in today's annual benefits

What if Shortfalls Were Met By Cutting Other Spending?

• By 2020, required cuts would equal the combined size of Head Start, WIC, the Departments of Education, Interior and Commerce, and the EPA. By 2025, the combined cuts would equal all of the above plus NASA and the Department of Veterans Affairs.

What if Shortfalls Were Met by Adding to Public Debt?

• The total borrowing required to finance Social Security's cash shortfalls would equal $7 trillion by 2040, $14 trillion by 2050, and $47 trillion by 2075 (in 2001 dollars).

Our Opportunity to Improve Social Security for Women

• Women are more likely than men to suffer poverty in old age.

• Poverty rates are highest for widowed, divorced and never-married women.

• Women receive a higher percentage of their retirement income from Social Security than do men, and thus are particularly threatened by the benefit reductions that would occur in the absence of reform (a 27 percent reduction in 2038).

• Social Security contains many inequities that hurt women who work. A low-income two-earner couple experiences a lower rate of return than a high-income one-earner couple.

Our Opportunity to Improve Social Security for Vulnerable Americans

• Despite popular perceptions, recent studies show that Social Security provides little, if any, systematic redistribution from rich to poor.

• Recent academic research finds that, as a result of mortality differences, African Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.

• Because they are younger than the general population, disproportionate numbers of Hispanic Americans will enter retirement having received below market rates of return from the Social Security program.

Our Opportunity to Improve Social Security for Younger Americans

• Under the existing system, Social Security will provide a bad deal for today's young workers, as seen in the charts on the following page. These charts show rates of return plummeting for individuals entering the workforce, who would have to live well past their expected lifetimes to receive back the value of their contributions.

Our Opportunity to Become A Nation of Owners and Savers

• The median U.S. household owned only $17,400 worth of financial assets in 1998, including retirement accounts. For African American and Hispanic households, the numbers were only $3,060 and $1,200 respectively.

• Tax payments to Social Security represent the largest contribution to retirement preparation for most Americans. If savings and investment opportunities are not created within Social Security, these Americans will lose their best opportunity to acquire financial assets.

What age must you reach to get back what you've paid in?			
Year of retirement	Age an average earner gets back taxes paid into the retirement portion of Social Security	Total Life Expectancy for Individual Reaching Age 65	
		Male	Female
1940	65.2	77.7	79.7
1960	66.1	78.2	82.4
1980	67.8	79.7	83.8
2001	81.8	81.3	84.6
2010	85.2	81.9	85.0
2020	89.7	82.5	85.6
2030	91.9	83.0	86.1
Source: Congressional Research Service, "Social Security: The Relationship of Taxes and Benefits for Past, Present, and Future Retirees," June 22, 2001; updated via telephone conversation with author.			
Under the intermediate assumptions of the 2001 Trustees Report and taking into account benefit increases and continued accrual of interest after retirement but not the taxation of benefits. The retiree is assumed to begin work at age 22 and attain age 65 and retire in January of the designated year. Assume contributions earn interest equal to the long-term government bond rate.			

Real Rates of Return Falling Under Social Security				
Birth Year	Single Male (Medium wages)	Single Female (Medium wages)	Single Earner Couple (Medium Wages)	Two-Earner Couple (Medium/ Low wages)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88
Source: May 27, 2001 memorandum from Social Security Office of the Actuary.				

1) Maintaining Our Commitment to Social Security

Social Security affects the life of nearly every American through its provision of retirement, survivors and disability benefits. Today Social Security faces serious challenges but must always honor its founding purpose of protecting the elderly from want and bringing dignity to retirement.

Social Security was created in a world different from our own. It was a world of large families and short life spans, a world in which markets were perceived to have failed and faith in the individual had ebbed. Social Security effectively responded to the needs of that world.

The world is different today. Americans enjoy the blessing of long life: by the year 2050 more than one-fifth of the population will be over age 65. Americans have chosen to have smaller families: birth rates today are just over half what they were during the peak of the Baby Boom. These two facts put a severe strain on our system of retirement security. In 1960, there were over five workers for every retiree. Today there are three and a half workers per retiree, and by 2030 there will be just over two. Under the existing system, this downward trend in the ratio of workers to retirees will require the government to raise taxes, cut benefits, cut other government spending, or borrow the necessary funds. Under such circumstances, rates of return for workers – already low – will fall further, and most retirees would have to live well past the average life expectancy simply to get back what they had paid into the system.

The creators of Social Security were not content to do nothing in the face of an unacceptable status quo. We who inherit their achievement must live up to their example.

Though the demographic changes since 1935 will soon strain our retirement system, other changes offer opportunities to improve it. We better understand the power of markets than Americans did during the shock of the Great Depression. We feel more urgently the importance of extending the benefits of personal asset ownership. And we are more strongly committed to equitable treatment of all our nation's people, regardless of race, income or gender.

These advances have sparked a new need for a retirement system that includes saving and ownership. Social Security must adapt to today's population of young people, the self-employed, minorities and women. And it must serve this new society as well as the existing system served a past society in which men were often the sole earners in the family.

Social Security today offers every worker a promise that will vary in value depending on the length of that worker's life and the policies of Congresses decades in the future. Simple arithmetic dictates that these promises can be honored in full only by imposing substantially higher costs on future generations of workers.

The way to alleviate this burden is to provide opportunities for individuals to save more for their retirement. The more wealth individuals can accumulate, the less they will have to rely on taxes imposed on tomorrow's workers. Just as important, higher saving rates increase the capital stock and enhance worker productivity. A more productive economy can more easily support larger populations of retirees without overburdening

workers or their families. Outlining a strategy to boost personal and national saving is one of the most important tasks of this Commission.

President Bush directed this Commission to review Social Security and recommend reforms to strengthen and sustain it. Thus far, we have reached the following conclusions:

If we are to support tomorrow's retirees without overburdening tomorrow's workers, this generation of Americans must save and invest more.

The existing Social Security program does not save or invest for the future. It was not designed to facilitate saving, and the political process cannot be relied upon to save on behalf of American families.

Under the existing system, Americans will soon face inescapable choices: cut Social Security benefits, raise taxes, cut other government spending, or borrow on an unprecedented scale.

Arguments for doing nothing are equivalent to direct advocacy of one or more of these options.

This report presents the evidence on which these conclusions rest – and the case for acting now, while there is adequate time to prepare, rather than waiting for the inevitable crisis. We must understand the nature and dimension of the challenge that we face. One aspect of that challenge is clear: *Inaction is not a solution*.

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2) The Demographic Challenge

Income Transfer system: Each generation supports the generation that came before it.

Funded system: Each generation saves and invests for its own retirement.

Many people believe that Social Security is a national pension fund in which workers make "contributions" to an investment account called the "Trust Fund." When a worker retires, dies or becomes disabled, his contributions, plus interest, are taken out of the fund to pay benefits.

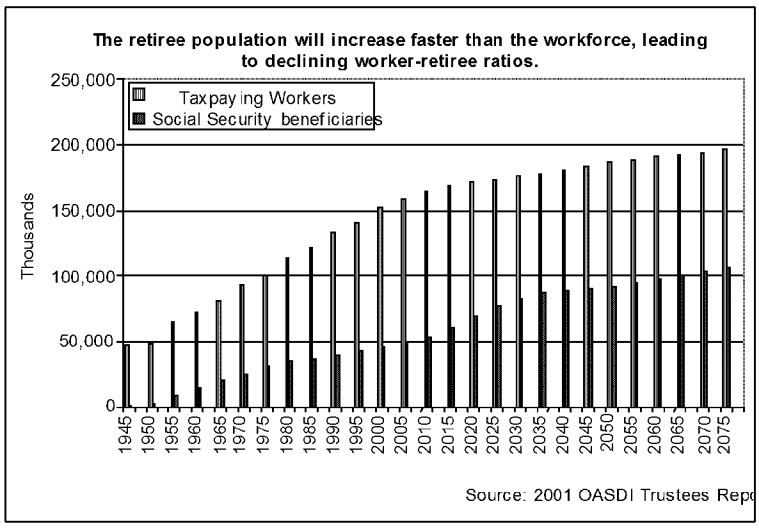
The reality is different. Our Social Security system is managed as an income transfer program. This means that every penny of benefits paid each year comes from taxes collected or money borrowed from the public in that year. Under such a system, higher taxes today do not reduce tax burdens in the future.

The present value of Social Security's currently accrued obligations exceeds $12 trillion. This means that if Social Security were a funded pension plan, it would need to hold over $12 trillion worth of real assets to pay future benefits.[1]

Today's beneficiaries are not living off financial assets accumulated in the past. Today's workers are not accumulating financial assets for the future. Workers "invest" their payroll taxes not in financial assets but in the willingness of future politicians to tax future workers to pay future benefits.

The Importance of the Worker-to-retiree Ratio

As an income transfer system, Social Security works best with a high ratio of workers to beneficiaries. When the United States had a rapidly growing workforce supporting a small elderly population, Social Security seemed sustainable. But when fewer new workers are paying into Social Security and more new retirees are collecting from it, the burden placed on individual workers must inevitably rise.

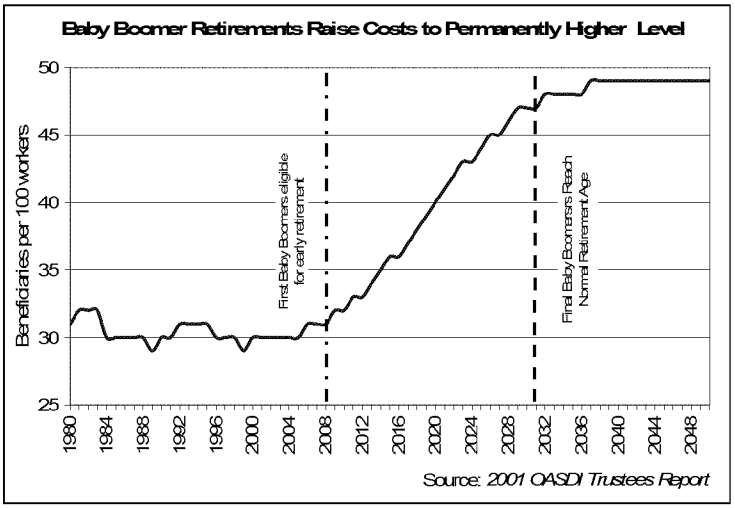


That's exactly what has been happening. In 1960 there were more than five workers paying into Social Security for every individual collecting benefits. Today, demographic

[1] This assumes that assets would be invested at the long-term government bond rate.

changes have reduced the worker-to-retiree ratio to 3.4-to-1. By 2050 it will be just 2-to-1. In other words, a future worker will bear a relative Social Security burden two-and-a-half times as large as a worker in 1960.

Problems Continue After the Baby Boomers Retire



Beginning in 2008 the first Baby Boomers will be eligible to take early retirement. The following two decades will see a rapid increase in the cost of delivering Social Security benefits, from 10.9 percent of taxable earnings in 2008 to 17.4 percent of earnings in 2031, when the final Boomers reach Normal Retirement Age.

Baby Boomer retirements mark the beginning of Social Security's financing problems. But Social Security's problems will continue – and grow worse – even after the Boomers are gone. In 2025, for instance, when the youngest Baby Boomer will be 60, the worker-to-retiree ratio will be 2.3-to-1. By 2050, when the youngest Boomer will be 85 and most of them will have passed on, the worker-to-retiree ratio will have further declined to just two workers per retiree.

Temporary stop-gap measures to keep Social Security solvent would not be effective because there is no relief from the demographic pressures bearing on the program. Baby Boomer retirements raise Social Security costs to a new and higher plateau from which there is no long-term relief under the current system.

Lagging Birthrates Mean Fewer New Workers

The "Baby Boom" generation born from the end of World War II to 1964 was originally a blessing to Social Security's finances. Returning veterans started new families by the millions, raising the total U.S. fertility rate from 2.2 children per woman in 1940 to 3.2 in 1947 and on to a high of 3.7 in 1957. For Social Security this meant millions of new workers paying taxes into the system.

But the Baby Boom didn't last. Following the Boom, birth rates fell *below* their pre-Boom level. By the mid-1970s, for instance, fertility averaged just 1.8 children per woman, half the level of the late 1950s. And while fertility rates have risen somewhat in recent years – they now stand at around two children per woman – Social Security's Trustees expect these historically low rates to continue indefinitely into the future.

The result is that over the next 75 years the U.S. working-age population is projected to grow at a rate just one-third as fast as during the 1970s. And this slowly growing work force will be expected to support a much more rapidly growing population of retirees.

Some Basic Social Security Math

For all its complexity, Social Security's underlying problems are governed by some basic math.

$$\frac{\textit{Average benefits as percent of average taxable wage}}{\textit{Worker - to - beneficiary ratio}} = \textit{program cost as percent of average wage}$$

Example: Today's average Social Security benefit is equal to around 36 percent of the average worker's wage. Since there are currently 3.4 workers per retiree, the cost to each worker to support today's retirees is around 10.5 percent of his earnings. (36/3.4 = 10.5) Since today's payroll tax rate is set at 12.4 percent, Social Security currently runs a surplus.

What happens if the ratio of workers to retirees falls?

If the worker-to-retiree ratio falls, then each worker bears the burden of more retirees.

Example: If instead of 3.4 workers per retiree there are just 2, then the cost to each worker rises from 10.5 percent to around 18 percent of earnings. (36/2 = 18)

What level of benefits is affordable?

The same equation, recast to isolate the level of benefits, tells us what level of benefits a given payroll tax rate can support:

Payroll tax rate x Worker-to-retiree ratio = Affordable benefits as percent of average wage

Example: With a 3.4-to-1 worker-to-retiree ratio, a 10.5 percent payroll tax rate can pay benefits equal to around 36 percent of the average wage (3.4 x 10.5 = 36). But when the worker-to-retiree ratio falls to 2-to-1, the same 10.5 percent tax rate can provide benefits equal to just 21 percent of average earnings.

What is "wage indexing" and what is its relationship to current projections?

Initial Social Security benefit levels are currently indexed to the growth in national wage levels. Consequently, even if there were no demographic problem, Social Security costs would grow almost as fast as the economy as a whole. Faster growth means more tax contributions in the short term, and higher benefit obligations in the long term. Though this faster growth helps, it does far less than many people believe. Mostly it creates the illusion of improvement because short-term revenue gains postpone the projected date of Trust Fund depletion, whereas increased costs would occur mostly after the projected depletion date.

Increased Life Expectancies Mean More Beneficiaries

Americans of all ages, races and incomes are living longer than ever. This is good news for them. It is not such good news for Social Security. Increased life expectancies mean more workers will survive to collect benefits and will collect for more years than in the past.

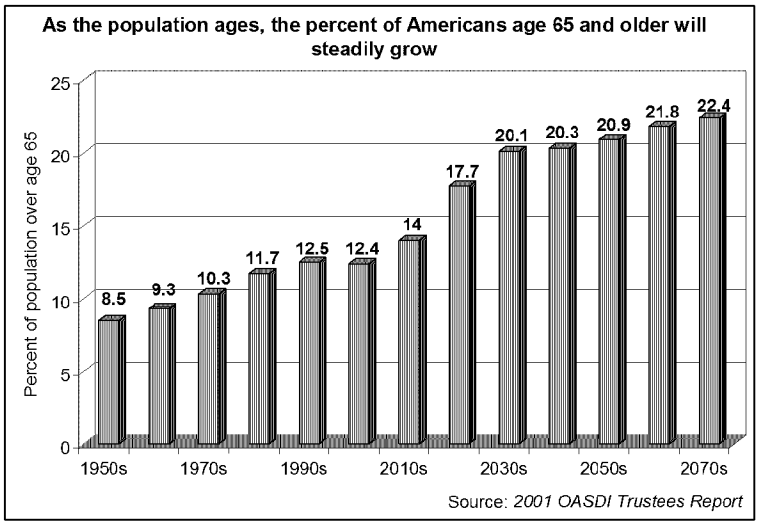
More Americans survive to age 65 and live longer in retirement

- Of the generation reaching age 65 in 1940, only 40 percent of males survived to age 65 and those who did lived for an average of 12.7 additional years.
- Of the generation reaching age 65 in 2000 (born in 1935), 69 percent of males lived to age 65 and those who did are expected to survive an average of 16.2 years.
- Of the generation reaching age 65 in 2050, 84 percent of males are expected to live to age 65 and those who do are expected to survive an average of 19.1 years.

In 1940, life expectancy for newborns was just 69 for men and 76 for women. Life expectancy for those at age 65 was 13 additional years for men and 15 for women.

By 2050, life expectancy for newborns is expected to rise to 83 for men and 88 for women, while life expectancy at 65 will rise to 19 years for men and 22 for women.

Moreover, the "oldest old" age 85 and over will more than double as a share of the total population, from 1.5 percent today to 3.7 percent of the total population in 2050. The oldest old are already the fastest growing elderly age group, increasing by 274 percent between 1960 and 1994, compared to 100 percent for the elderly population in general and 45 percent for the U.S. population as a whole. By 2050 more than 14 million Americans will be over the age of 85.



Over time, increased life expectancies and lower birthrates contribute to a gradual "aging" of the population. While in the 1940s just 7 percent of the population was age 65 or older, by the 2050s that proportion will rise to more than 20 percent. Moreover, Americans will spend more years in retirement than ever before.

3) The Consequences of Inaction

The Executive Order establishing the President's Commission to Strengthen Social Security requires that an interim report be submitted to the President describing "the challenges facing the Social Security system."

The fundamental challenge facing Social Security can be described succinctly: Inaction will result in significant tax increases, benefit reductions, cuts in other government programs, or increases in the national debt.

Social Security Cash Deficits Are Projected to Begin in 2016

Social Security's primary source of revenue is a 12.4 percent payroll tax applied to the covered earnings of wage earners. Social Security also receives money from the taxation of Social Security benefits.

In 2016, under current projections, Social Security will collect less in tax revenues than it has committed to pay out in benefits.

When that happens, the Social Security Trust Fund will still show a positive balance. But the Trust Fund holds not accumulated reserves of wealth but only promises that future taxpayers will be asked to redeem. Whether the balance in the Trust Fund is $5 trillion or zero, to keep the system in balance the nation faces identical choices: raise taxes, reduce benefits, decrease other government spending, or increase borrowing from the public.[2]

When Social Security deficits begin in 2016, cash shortfalls will be relatively small and could possibly be financed through surpluses in the rest of the government's budget. But these deficits will eventually grow very large: $194 billion in 2025, $271 billion in 2030, and $318 billion in 2035 (in 2001 dollars).[3] The cost of paying benefits will rise from about 10 percent of taxable earnings today to almost 18 percent in 2035. The effects of these pressures on beneficiaries and taxpayers will be shown on subsequent pages.

The year 2016 may seem a long way off, but it is not. For a person who is 50 years old today, Social Security will begin experiencing financial difficulties just when he or she reaches retirement age.

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[2] Adding to the public debt means that the public debt would be greater than if there were no Social Security cash shortfall. If the government maintained a deficit, this would mean that deficits and debt would be increased. During a time of surplus, this would mean that surpluses would be reduced. It is difficult to predict future government budget policy and thus not possible to say which situation would exist when Social Security faces cash deficits.

[3] In current dollars, Social Security's cash flow deficits will be $419 billion in 2025, $687 billion in 2030 and $948 billion in 2035.

Will Faster Economic Growth Avert the Problem?

No. This report relies on the Social Security Trustees' Intermediate Assumptions for economic and demographic factors affecting the current system. Some argue that the Trustees' economic forecasts are pessimistic and that faster economic growth would restore Social Security to financial health. But retirees' initial Social Security benefits are indexed to the growth of wages. Hence, while faster economic growth will raise wages and payroll tax receipts, it will also increase the benefits that Social Security promises to pay.

The principal boost to Social Security's finances from faster economic growth comes from the delay between higher taxes being received and higher benefits being promised. Even if wages grow at more than double the rate projected, Social Security will still become insolvent. Faster economic growth is desirable both for workers and for retirees because it enables a higher standard of living for all. But it will not solve Social Security's financial problems.

In addition to wage growth, the Trustees estimate how variations in fertility, mortality, immigration, inflation, interest rates, and incidence of disability would affect Social Security's finances. Substituting the Trustees' Low-Cost Assumption for any single variable will not change the date of cash flow deficits by more than one year.

Even if *every* single economic and demographic variable were simultaneously adjusted to reduce projected costs – that is, if the economy grows faster, wage growth rises, unemployment falls, interest rates increase, life expectancies fall, fertility rates increase, more immigrants pay taxes into the system, and fewer workers become disabled – Social Security would experience its last cash flow surplus in 2019, just four years later than currently projected.

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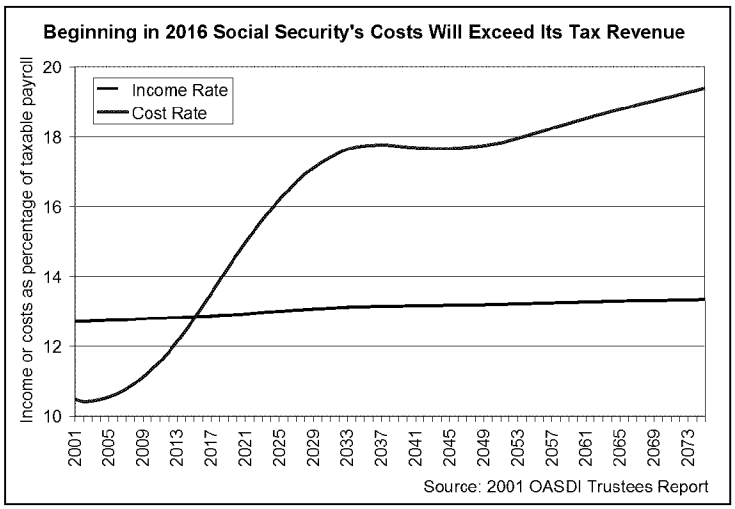
Why the Social Security Trust Fund Doesn't Alleviate the Problem

Social Security will begin running annual cash deficits in 2016. Technically, however, the program could redeem government bonds in its Trust Fund to pay full benefits until 2038.[4] Does this mean there is nothing to worry about until 2038? Not at all. Revenue must be raised from taxpayers to redeem these bonds.



Social Security has run payroll tax surpluses since the mid-1980s and will continue to do so until 2016. But these past surpluses were "loaned" to the Treasury to cover deficits in the rest of the federal budget. These "loans" to the Treasury were not considered part of the debt held by the public, although they were in truth a public obligation.

Bonds were credited to the Trust Fund over time, resulting in a Fund balance now exceeding $1 trillion. The problem is that when Social Security begins running cash deficits in 2016 and must begin redeeming the Fund's bonds, the nation will face the same difficult choices as if there had been no Trust Fund at all.

This situation arose because past payroll taxes were not truly saved. As a result, future repayment of Trust Fund bonds will not be any less difficult. The Clinton administration's fiscal year 2000 budget made the point succinctly:

> These [Trust Fund] balances are available to finance future benefit payments and other Trust Fund expenditures – but only in a bookkeeping sense. … They do not consist of real economic assets that can be drawn down in the future to fund benefits. Instead, they are claims on the Treasury that, when redeemed, will have to be financed by raising taxes, borrowing from the public, or reducing benefits or other expenditures. The existence of large Trust Fund balances, therefore, does not, by itself, have any impact on the Government's ability to pay benefits. (FY2000 Budget, Analytic Perspectives, p. 337.)

The government could keep Social Security technically "solvent" forever simply by issuing new bonds to the fund. Alternatively, Social Security could be made technically "solvent" by requiring that a higher rate of interest be paid by the Treasury to the Trust Fund. Regardless, the need to raise taxes, cut spending or borrow would remain exactly the same. While there is an obligation to honor the bonds in the Social Security Trust

[4] There are two Trust Funds – one for Old Age and Survivors Insurance and a second for Disability Insurance. In practice, however, they are treated essentially as a single entity.

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Fund, what is important economically is not the amount of bonds in the Fund but the real resources backing those bonds.

With or without a Trust Fund, the current Social Security system will need extra resources after 2016. And with or without a Trust Fund, the steps required to obtain that money remain the same: raise taxes, cut benefits or other government spending, or add to the national debt. The Trust Fund can neither delay the need for new resources by a day nor reduce the need by a dollar.

Non-Partisan Experts Agree: Social Security Trust Fund Not an Asset

Social Security Public Trustees: "Rather than providing net revenue to the Treasury, after 2016 the combined trust funds will require rapidly growing infusions of revenues from the Treasury to pay benefits projected under current law. It is at this point--and not at the later dates when trust fund assets (i.e., the securities being redeemed) are technically exhausted--that Social Security and Medicare will begin to be in direct competition with other Federal programs for the resources of the Treasury..." (Thomas R. Saving of Texas A&M University and John L. Palmer of Syracuse University, Public Trustees to the Social Security and Medicare programs.)

Congressional Budget Office: "Although there is no money in the Treasury to pay for future obligations, the obligations to people eligible for Social Security benefits are real. And most important, those obligations are a direct result of federal law, not a consequence of whatever may or may not be credited to the Trust Funds. In particular, the size of the balances in the Social Security Trust Funds – be it $2 trillion, $10 trillion, or zero – does not affect the obligations that the federal government has to the program's beneficiaries. Nor does it affect the government's ability to pay those benefits." (CBO Director Dan L. Crippen and Deputy Director Barry B. Anderson, testimony before the House Ways and Means Committee, Feb. 23, 1999)

General Accounting Office (GAO): Social Security's "Trust Funds are not like private Trust Funds. They are simply budget accounts used to record receipts and expenditures earmarked for specific purposes. A private Trust Fund can set aside money for the future by increasing its assets. However, under current law, when the Trust Funds' receipts exceed costs, they are invested in Treasury securities and used to meet current cash needs of the government. These securities are an asset to the Trust Fund, but they are a claim on the Treasury. Any increase in assets to the Trust Funds is an equal increase in claims on the Treasury." (David M. Walker, Comptroller General of the United States, "Social Security And Surpluses: GAO's Perspective on the President's Proposals," Feb. 23, 1999)

Congressional Research Service: "What often confuses people [about the Trust Fund] is that they see these securities as assets for the government. When an individual buys a government bond, he or she has established a financial claim against the government. When the government issues a security to one of its own accounts, it hasn't purchased anything or established a claim against some other person or entity. It is simply creating an IOU from one of its accounts to another. Hence, the building up of federal securities in federal Trust Funds – like those of Social Security – is not a means in and of itself for the government to accumulate assets. It certainly establishes claims against the government for the Social Security system, but the Social Security system is part of the government. Those claims are not resources that the government has at its disposal to pay future Social Security benefits... The key point is that the Trust Funds themselves do not hold financial resources to pay benefits – rather, they provide authority for the Treasury Department to use whatever money it has on hand to pay them." (David Stuart Koitz, "Social Security Taxes: Where Do Surplus Taxes Go and How Are They Used?" Congressional Research Service, April 29, 1998)

The Inescapable Choices Under the Status Quo

Under the current Social Security system, individuals do not withdraw benefits from savings accounts held in their names. Benefits are paid from only one ultimate source: tax dollars. If the current system's financing is left in place, future workers and retirees will experience one or more of the following: 1) large tax increases, 2) significant benefit cuts, 3) widespread reductions in other government programs, or 4) unprecedented accumulations of public debt. The only uncertainty is which steps will happen and which groups will be hit the hardest.

But these steps, however undesirable, cannot solve the current system's problems permanently. Cash deficits in one year will be followed by larger shortfalls the next year, and larger again in every year thereafter. Social Security needs structural improvement if it is to cope with the realities of an aging society. The four choices:

1) Raise Taxes

One option facing the nation is to maintain full benefit promises by raising taxes. While it is impossible to predict what taxes a future Congress might choose to raise, the chart to the right shows the effect of tax increases needed in future years if applied proportionately to wages currently subject to the Social Security payroll tax.

How much would taxes increase?

If the percentage shortfall in the following year existed today:	A couple's taxes could increase by:	Tax increase (in percent of payroll taxes)
2020	$860	14%
2030	$2,100	34%
2040	$2,275	37%
2050	$2,295	37%

Explanation: this table applies the percentage tax increases in future years to a couple earning $50,000 today. Because future incomes will increase, tax increases in real dollars would be substantially larger than shown here.

2) Cut Benefits

Another option is to cut benefits to the level that could be supported out of currently legislated Social Security tax revenues. In the long run, this would produce benefits more than one-quarter below the levels currently promised by Social Security's benefit formula. We illustrate with a medium-wage earner and spouse who retired this year at 65 receiving, under current benefit rules, a total annual benefit of $18,945. If benefit cuts required to balance the system in the future were applied proportionately to this couple today, they would receive thousands of dollars less annually from Social Security.

How much would benefits be cut?

If the percentage shortfall in the following year existed today:	A couple's annual benefits could be reduced by:	Benefit reduction in percent
2020	$2,227	12%
2030	$4,605	24%
2040	$4,867	26%
2050	$4,888	26%

Explanation: this table applies the percentage benefit reductions in future years to a retired couple receiving $18,945 annually in benefits today. Because future benefit levels will be higher, reductions in real dollar terms would be substantially larger than shown here.

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3) Cut Other Government Spending

A third option to address Social Security's cash flow problems would be to cut other government spending. By freeing up enough on-budget revenues we could redeem Social Security Trust Fund debt without raising taxes, cutting benefits or borrowing. But how much would other spending have to be cut?

In 2016, the first year in which Social Security is projected to run cash deficits, the program faces a shortfall of $17.4 billion (in today's dollars). Assuming that federal spending maintained its present size relative to the rest of the economy, making up Social Security's 2016 deficit by cutting other spending would require eliminating programs the combined size of Head Start and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

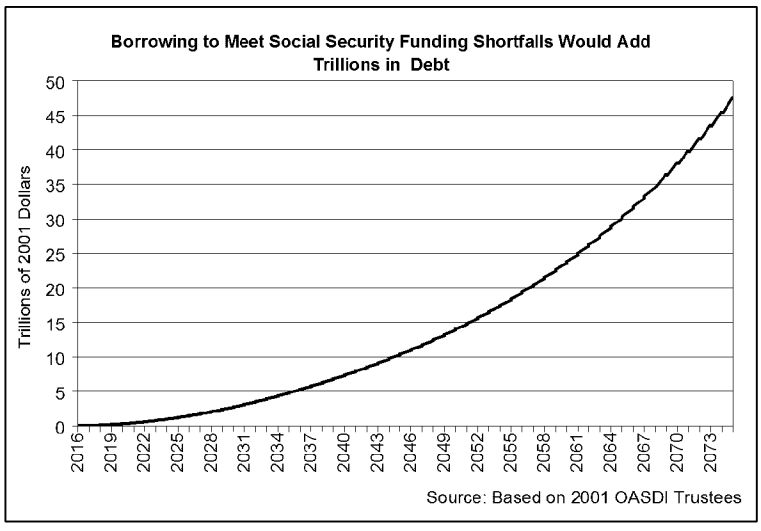
Annual Social Security cash shortfalls, in 2001 dollars	
2016	$17.4 billion
2020	$99.3 billion
2025	$194.3 billion
2030	$270.8 billion
2035	$317.6 billion

By 2020 Social Security deficits will have grown to $99.3 billion, requiring cuts – in addition to those already listed – equivalent to eliminating the Departments of Education, Interior and Commerce, as well as the Environmental Protection Agency.

By 2025, Social Security deficits will reach $194.3 billion in today's dollars, requiring cuts equal to all the programs mentioned above plus NASA and the Department of Veterans Affairs. The $270.8 billion shortfall in 2030 would require eliminating the Departments of Energy and Housing and Urban Development (HUD) as well. By 2035, when Social Security faces a $317.6 billion annual shortfall, the Department of Justice and the National Science Foundation would also have to be eliminated.

4) Increase Public Debt

The final option available to the country in 2016 is to issue additional public debt to meet Social Security shortfalls without raising taxes, cutting benefits or reducing other federal spending.



The accompanying chart shows the additional debt required to finance cash shortfalls that Social Security will begin to experience in 2016. This debt would accumulate to more than $7 trillion (in 2001 dollars) by 2040, $14 trillion by 2050, and over $47 trillion by 2075. This additional public debt would be

larger than the national debt at the end of World War II, relative to the economy. Further, the additional public debt would continue to rise indefinitely.

Social Security and Medicare Will Absorb A Growing Share of the Nation's Resources

One way to understand the consequences of inaction on Social Security reform is simply to assume that tax revenues are raised as necessary to fulfill currently legislated benefit promises.

Social Security currently consumes 4.2 percent of the nation's gross domestic product – almost $2,600 for every working-age American. If additional revenues were provided to Social Security as needed, by 2075 system costs will rise to 6.7 percent of GDP – a 60 percent increase.

Medicare will also command an increasing share of the nation's resources, leaving less room in the budget to absorb Social Security's rising costs. While Medicare costs 2.3 percent of GDP today, these costs are projected to escalate to 8.5 percent of GDP by 2075. Combined, Social Security and Medicare will absorb more than 15 percent of the nation's gross domestic product unless these programs are made sustainable. For comparison, all personal income taxes paid to the federal government today total approximately 9 percent of GDP.

This will be a direct consequence of a failure to improve the basic structure of these programs. Only through meaningful, structural improvements can Social Security and Medicare be placed on a sustainable path.

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4) An Opportunity to Improve Social Security for Vulnerable Americans

Social Security redistributes income among households based on differences in such factors as marital status, income, length of life and year of birth. For previous generations of retirees, who were on the receiving end of income transfers, the program effectively lifted many seniors out of poverty simply because most participants received substantially more than they put in. Today, when this is true for only some of those entering retirement, Social Security's haphazard distribution of benefits is becoming more apparent. When Social Security begins to experience cash deficits, the effects will not necessarily be equally shared by all segments of American society. Some examples:

Low-Income Americans

Social Security's benefit formula is intended, in part, to reduce the risk of old-age poverty among low-income workers. But accumulating evidence suggests that Social Security is not nearly as redistributive as many people believe. Also, low-income households own few assets outside of Social Security and thus are disproportionately affected by the benefit cuts that will occur under current law. Absent reforms, current law will reduce benefits by over one-quarter after the trust fund becomes insolvent in 2038, pushing many low-income households into poverty.

Three factors offset much of the intended redistribution within the current Social Security system. First, lower-income individuals tend to have shorter life expectancies. As a result, low-income workers spend a greater portion of their lives contributing to Social Security and a smaller portion collecting from it.

Second, Social Security's spousal benefit redistributes money from single individuals and two-earner couples to one-earner couples. For instance, under the current system a 30-year-old single low-income male would receive a 2.22 percent real return on his contributions to the retirement program (2.63 percent for a single low-income female). By contrast, a high-income one-earner married couple would receive a 2.75 percent return.[5] Social Security is structured, in this and many other instances, to redistribute income from single earners and working couples with less to couples in which one spouse can afford not to work. Because low-wage earners are more likely to be single or divorced, they are less likely to receive a spousal benefit. The highest risk of poverty in old age is faced by divorced, separated or never-married women.

Third, many people never become eligible for Social Security benefits because they do not have enough years of contributions to earn their own benefits. Current Social Security rules require a worker to pay into the system for roughly 10 years before gaining eligibility for retirement benefits.

Social Security's lifetime redistribution from high to low earners is haphazard at best. Numerous academic studies show little if any systematic redistribution by income

[5] Source: May 27, 2001 memorandum from Social Security Office of the Actuary.

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under the present Social Security retirement system due to the complex interactions between tax collections, benefit formulas, spousal protections and life expectancy.[6] Even without the benefit reductions that will occur under current law, Social Security may not remain an effective barrier against poverty.

Women

The current system contains spousal and survivors protections used disproportionately by women. Nevertheless, poverty rates for women age 65 and over remain more than 70 percent higher than for elderly men (11.8 percent vs. 6.9 percent.) Widowed, divorced or never-married women also face particularly high poverty rates in old age: 16.8 percent for widows over age 65, and 24.7 percent for divorced, separated or never-married women over 65.[7]

Social Security plays a particularly important role in the lives of women. Despite changes in the workplace, women on average still receive less wage income, have less non-Social Security pension coverage and are more likely to miss time from the workforce. A working spouse may receive a spousal benefit no higher than if she had not worked, reducing her incentive to enter the workforce.

Women also live an average of 5.5 years longer than men. Consequently, women are disproportionately dependent on Social Security for retirement income. Non-married women over 65 rely on Social Security for an average of 50 percent of their retirement income. Thirty-eight percent of unmarried women rely on Social Security for 90 percent or more of their retirement income.[8]

If no action is taken by 2025, current benefit promises will exceed the program's annual income by approximately 25 percent. What this means is that failure to restructure Social Security poses a disproportionate threat to the overall retirement security of women, due to the comparatively larger impact upon them of the benefit reductions inherent in current law.

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[6] Alan L. Gustman, Thomas L. Steinmeier, "How Effective is Redistribution Under the Social Security Benefit Formula?" NBER, March 2000; Julia Lynn Coronado, Don Fullerton, Thomas Glass, "The Progressivity of Social Security," NBER, February 2000; Jeffrey Liebman, "Redistribution in the Current U. S. Social Security System," Harvard University, July 2001.

[7] U.S. House of Representatives, Committee on Ways and Means, *2000 Green Book* (Washington: Government Printing Office, 2000), p. 999.

[8] Susan Grad, "Income of the Population 55 or Older, 1998," SSA no. 13-11871, 1998, p. 104.

Quirks In Benefit Structure Pose Problems For Certain Women

Spousal Benefits: Under Social Security's spousal benefit rules, the spouse with lower lifetime earnings (usually the wife) effectively receives a either benefit based on her own earnings or an amount equal to half her spouse's worker benefits, but not both. While fine for an era in which few women worked outside of the home, today Social Security's spousal benefit rules create inequities between traditional single-earner couples and dual-earner couples in which both spouses work.

Example: The Smiths and Joneses both have $3,000 total monthly earnings. Mr. Smith earns $3,000 while Mrs. Smith does not work outside the home. Mr. Jones earns $2,000 while Mrs. Jones earns $1,000. At retirement in 2001, Mr. Smith would be eligible for a monthly benefit of $1,292 and Mrs. Smith a spousal benefit of $646, for a total of $1,938. By contrast, Mr. Jones would be eligible for a monthly benefit of $984 based on his earnings and Mrs. Jones a benefit of $641 based on her own earnings, for a total of $1,625. While the two couples have identical total earnings, the single-earner couple receives benefits 19 percent higher than the dual-earner couple.

Divorce: A divorced woman must have been married for 10 years to be entitled to benefits based on her former husband's earnings. The National Center for Health Statistics reports that marriages ending in divorce have a median length of just 7 years, and fully one-third of all marriages end prior to the 10 years needed for benefit eligibility. In addition, the number of divorced elderly women is projected to increase, causing the current system's outdated divorce rules to affect more women.

Example: Mrs. Smith becomes divorced one day short of 10 years while Mrs. Jones's divorce occurs just one day past 10 years. That is the sole difference between eligibility for benefits equal to 50 percent of the former husband's benefit and no eligibility at all. Nor is remarriage a guarantee of spousal benefits. One-third of second marriages are disrupted through separation or divorce before 10 years. For women under age 25 at remarriage, 47 percent of second marriages are disrupted before 10 years. For African Americans, these percentages are higher.

Widows Benefits: A widow is eligible for the greater of her husband's worker benefit or her own, but not both. As a result, her household income may be cut by up to one-half upon his death. Since the cost of living for one person is almost as much as for two the standard of living of the surviving spouse is likely to fall. The poverty line for a single individual age 65 and over, for instance, is only about 20 percent less than that for couples.

Like the spousal benefit, the survivor benefit formula favors single-earner households over dual-earner households. Since a widow is eligible for either her own benefit or her husband's but not both, women from households with identical total incomes could find themselves with different benefits once widowed. Specifically, women who worked would receive lower widows benefits than women who did not work outside the home.

Example: Mrs. Smith, who never worked outside the home, becomes widowed and is eligible for survivors benefits based on Mr. Smith's $3,000 monthly income. By contrast, Mrs. Jones paid Social Security taxes over her lifetime. When she becomes widowed she can receive benefits based on Mr. Jones's $2,000 monthly income or her own $1,000 income, but not both. The result is that Mrs. Smith, who neither worked nor paid into the system, receives benefits more than 30 percent higher than Mrs. Jones, who is from a household with identical earnings and who worked and contributed her entire career.

Women from all incomes are affected by these aspects of Social Security's benefit formula, but low-income women, with little or no non-Social Security pension resources, suffer the most.

African Americans

Social Security pays retirement benefits as an annuity that begins at retirement and ends at death, so those with shorter life expectancies can expect to receive less in retirement benefits. African Americans have shorter life expectancies than other groups, as shown in the accompanying table. As a result, an African American earning the same lifetime earnings and paying the same lifetime Social Security payroll taxes as someone in the general workforce is likely to receive a lower rate of return and lower lifetime benefits from the retirement system. Moreover, African Americans as a group also receive less in Social Security spousal benefits. Forty seven percent of African American marriages are disrupted before the first 10 years, and African American women are substantially less likely both to remarry after divorce and to have a second marriage last for the 10 years needed for spousal benefit eligibility.

Black and White Life Expectancy, 1999

Age	White Male	Black Male	White Female	Black Female
Birth	74.6	67.8	79.9	74.7
10	65.3	59.2	70.5	66.0
20	58.2	49.6	60.6	56.2
30	48.6	40.7	50.9	46.6
40	36.9	31.9	41.3	37.4
50	28.0	24.0	31.9	28.7
60	19.8	17.2	23.2	20.9
65	16.1	14.3	19.2	17.3
70	12.9	11.6	15.5	14.0
80	7.5	7.2	9.0	8.6

Source: National Center for Health Statistics, "Deaths: Preliminary Data for 1999," National Vital Statistics Reports 49, no. 3, June 26, 2001

Recent academic research finds that, as a result of mortality differences, African Americans receive nearly $21,000 less on a lifetime basis from Social Security's retirement program than whites with similar income and marital status.[9]

African Americans are more likely to receive benefits from Social Security's disability program than are other groups. Moreover, because African Americans have higher death rates, their children are more likely to receive benefits as child survivors. In 1999, 2.8 percent of African American children under 20 were receiving a child survivor benefit, compared to 1.5 percent of white children and 1.8 percent of all children. Young African Americans are also more likely to receive disabled child benefits as survivors. This partially mitigates the fact that African Americans receive lower lifetime retirement benefits. But Social Security's survivors, disability and retirement programs have distinct purposes. If the retirement program can be improved for African Americans without offsetting reductions in the survivors and disability programs, Social Security as a whole would better serve African Americans.

It is likely that the opportunity for an inheritance would benefit African Americans relative to the general population. This is because African Americans on average have less non-Social Security retirement savings than the average worker. As a result, African Americans are disproportionately threatened by the financing shortfalls facing the current system. They are more likely, on average, to die before receiving benefits.

[9] Jeffrey Liebman, "Redistribution in the Current U. S. Social Security System," Harvard University, July 2001.

Hispanic Americans

By some measures, Hispanic Americans fare better than the population as a whole under the current Social Security system. This is the result of lower average lifetime earnings combined with higher life expectancies. Yet this makes Hispanics somewhat more vulnerable than average to inevitable changes in the current Social Security structure.

Though the program's progressive benefit may appear to help Hispanics as a group, its financing structure hits Hispanic Americans particularly hard. Hispanics tend to be younger than the American population as a whole and would consequently bear a disproportionate share of the rising cost of sustaining an income transfer system. Rates of return from Social Security are declining for younger workers, of which Hispanics are one of the fastest growing ethnic groups

Below-average private pension coverage for Hispanic workers is correlated with their below-average wage levels and job tenure rates. Moreover, fewer than half of Hispanic households were net savers in 1998. The poverty rate for Hispanics age 65 and over in 1998 was 22.5 percent, compared to 10 percent for non-Hispanics.[10] This greater reliance on Social Security creates greater vulnerability to the benefit reductions that will occur under current law.

Hispanics represented 3 percent of the elderly population in 1990, but have grown to 5.4 percent today and are projected to rise to 17.5 percent of the 65-and-older population in 2050. Comparatively few Hispanics entered retirement having received the above-market rates of return that the Social Security system provided in its early years. In 1998, Hispanics as a group paid $33 billion in OASDI payroll taxes but received only $18 billion in benefits. By the time today's Hispanic taxpayers are eligible for retirement benefits, the current Social Security system would be paying substantially lower returns than it did to earlier generations.

Younger Generations

Younger generations have more at stake than other age groups and hence should be more interested in Social Security reform. Under current rules Social Security system is able to pay benefits to current retirees until 2016, and there is a broad political consensus that current retirees should not be affected by changes to the Social Security program.

Young generations will bear the brunt of continuing exclusively with the current income transfer system. As the ratio of workers to retirees drops over time, the tax burden placed by Social Security on workers will increase. This means it is less and less likely that even average wage future workers will live long enough to recover taxes paid into the Social Security retirement system. Workers paying the maximum tax into Social Security and retiring in 2030 would have to live past age 110 simply to get back what they had paid in.

As a result, rates of return for younger workers will be substantially lower than for workers in the past. Most young workers will receive returns even lower than the

[10] Grad, Susan, op cit, p. 126.

What age must you reach to get back what you've paid in?			
Year of retirement	Age an average earner gets back taxes paid into the retirement portion of Social Security	Total Life Expectancy for Individual Reaching Age 65	
		Male	Female
1940	65.2	77.7	79.7
1960	66.1	78.2	82.4
1980	67.8	79.7	83.8
2001	81.8	81.3	84.6
2010	85.2	81.9	85.0
2020	89.7	82.5	85.6
2030	91.9	83.0	86.1
Source: Congressional Research Service, "Social Security: The Relationship of Taxes and Benefits for Past, Present, and Future Retirees," June 22, 2001; updated via telephone conversation with author.			
Under the intermediate assumptions of the 2001 Trustees Report and taking into account benefit increases and continued accrual of interest after retirement but not the taxation of benefits. The retiree is assumed to begin work at age 22 and attain age 65 and retire in January of the designated year. Assume contributions earn interest equal to the long-term government bond rate.			

Real Rates of Return Falling for All Retirees *(Assumes No Change in Law, Retirement at Age 65)*				
Birth Year	Single Male (Medium wages)	Single Female (Medium wages)	Single Earner Couple (Medium Wages)	Two-Earner Couple (Medium/ Low wages)
1970	1.13	1.59	3.42	2.24
1980	0.91	1.36	3.31	2.08
1990	0.88	1.29	3.14	1.97
2000	0.86	1.25	3.02	1.88
Source: May 27, 2001 memorandum from Social Security Office of the Actuary				

accompanying chart depicts, because these figures neglect the cost of meeting Social Security's cash deficits from 2016 through 2038. For example, those born in 1990 will spend most of their working careers after 2016, when Social Security will require additional tax revenues beyond those tabulated here.

Though rates of return are not the only important measure of system fairness, they nonetheless illustrate the problems inherent in continuing exclusively with an income transfer system. Under such a system, entire generations will receive rates of return below those of risk-free government bonds. In practice, they will be forced to lose money through Social Security.

Action to strengthen Social Security is more than an opportunity to restore fiscal soundness to the nation's public pension program. It is an opportunity to improve the program for all Americans, particularly those Americans who need it most.

5) An Opportunity to Become A Nation of Owners and Savers

Increasing national saving is the only sure way to improve retirement security for current workers while also lessening the burden on future generations. Increased saving leads to capital formation and higher labor productivity, which will help a relatively smaller labor force maintain the standard of living of a relatively larger group of retirees. It will expand the size of the economic pie available for everyone – both young and old – to consume. But America is not saving enough.

At a time when additional saving is needed to provide for future retirees, our national retirement program does not facilitate saving, either nationally or on behalf of individuals. In order to provide for a better retirement future, America must more truly become a nation of owners and savers.

The median African American household held only $3,060 in cash, certificates of deposit, retirement accounts, or stocks and bonds in 1998; the median Hispanic household, only $1,200.

Few Americans own much in the way of liquid assets. In 1998, the median U.S. household owned only $17,400 worth of financial assets, including sums in retirement accounts. Four out of every nine households in the United States saved nothing at all in 1998. Six out of 10 African American and Hispanic households saved nothing that year.

For these non-saving families, Social Security contributions may represent their only hope to build assets and wealth. In effect, those in the bottom half of the American population – and a larger population of the African American and Hispanic population – lack a pool of private savings to support them in old age. Meanwhile, 12.4 percent of low-income Americans' earnings are collected to support a system that offers them only uncertain promises and below-market rates of return.

Exclusion from financial markets is a serious problem for lower-income Americans. Under Social Security, their retirement income depends not on assets they possess but on the hope that politicians elected 20 and 30 years from now will raise taxes on tomorrow's workers. In fact, the Supreme Court has ruled in *Flemming vs. Nestor* (1960) that workers and retirees have no legal ownership over their benefits, even after a lifetime of paying taxes into the system.

Even modest amounts invested in real assets could produce substantial wealth. A contribution of as little as $500 per year for 40 years at only a 4 percent return would yield $50,000.

Moreover, the Social Security system may discourage individuals from saving on their own. A Congressional Budget Office study concluded "the Social Security system most likely has had a negative impact on private saving." [11]

[11] Congressional Budget Office, "Social Security And Private Saving: A Review Of The Empirical Evidence," July 1998.

The failure of Americans to save raises troubling economic questions – and profound moral concerns. The strong growth of the value of financial assets over the past century means that many Americans can look forward to a comfortable old age largely sustained by their own resources. But many others will have to depend almost entirely on payments from the government. In other words, without reform, future retirees will be divided not merely between the haves and have-nots but between those who think of themselves as independent and those regarded as dependents.

Tax payments to the Social Security program represent the largest contribution toward retirement for most Americans. The ability of those Americans to save and accumulate assets will be determined largely by whether such opportunities are created within Social Security.

REV_00129956

6) Analytical Criteria

The President's Executive Order establishing the Commission requires the interim report to set forth "criteria by which the Commission will evaluate reform proposals."

First and foremost, our criteria must be consistent with the President's principles for strengthening Social Security, as outlined in the Executive Order.

The President's Principles For Strengthening Social Security

(1) Modernization must not change Social Security benefits for retirees or near-retirees.

(2) The entire Social Security surplus must be dedicated to Social Security only.

(3) Social Security payroll taxes must not be increased.

(4) Government must not invest Social Security funds in the stock market.

(5) Modernization must preserve Social Security's disability and survivors components.

(6) Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

Within those principles, the Commission has been provided with flexibility to recommend measures to improve the fiscal soundness of Social Security as well as to propose the size, structure and financing of personal accounts. To develop a bipartisan consensus on these points, understanding of the Commission's criteria and standards is essential. Our eight criteria of analysis are presented on the following page.

REV_00129957

Criteria for Analysis

The Commission has established eight criteria by which to evaluate proposals for strengthening the Social Security system:

1. Encouragement of workers' and families' efforts to build personal retirement wealth, giving citizens a legal rather than merely a political right to a portion of their benefits.
2. Equity of lifetime Social Security taxes and benefits, both between and within generations.
3. Adequacy of protection against income fluctuations, such as those caused by retirement, disability, death of an earner, or unexpected longevity.
4. Encouragement of increased personal and national saving.
5. Rewarding individuals for actively participating in the workforce.
6. Movement of the Social Security system toward a fiscally sustainable course that can withstand unforeseen economic and demographic changes.
7. Practicality and suitability to successful implementation at reasonable cost.
8. Transparency: Analysis of reform plans should measure all necessary sources of tax revenue, and all benefits provided, including those from the traditional system as well as from personal accounts.

REV_00129958

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To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
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07/20/2001 10:45:12 AM
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bcc:
Subject: Re: Senate Votes

Who was the one? Helms?




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cc:
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Subject: Senate Votes

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Sam Haddon: 95-0
Richard Cebull: 93-0

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Sent: 7/20/2001 5:43:21 AM

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BUSH WINS AGAIN IN HOUSE WITH PASSAGE OF
FAITH-BASED PLAN

By Bill Swindell, CQ Staff Writer

July 19, 2001 - The House handed President Bush a victory on Thursday in approving his plan to funnel more money to religious charities in a 233-198 vote.

Four Republicans voted against the plan, which was a signature issue for the president during his campaign, and 15 Democrats voted for it.

The vote came a day after GOP leaders faced a rebellion among moderates, who complained that the bill (HR 7) would sanction anti-gay discrimination because it would supercede state and local civil rights laws.

Republicans voted unanimously along with 40 Democrats to defeat, 168-261, a Democratic alternative that would have prohibited religious-based programs receiving government programs from discriminating against employees.

Offered by Ways and Means Committee ranking Democrat Charles B. Rangel, N.Y., the amendment also would prohibit religious organizations from proselytizing in government-funded programs.

In addition to allowing religious charities to compete for federal money in several new categories of social services, the measure would provide $13 billion in tax breaks. Single taxpayers who do not itemize could deduct $25 a year in charitable donations a year, and married couples filing jointly could deduct $50.

"While the tax provisions may not be unconstitutional, in my view they are unrealistic," Rangel said. He criticized them for being too little to provide realistic aid for charities.

Ways and Means Committee Chairman Bill Thomas, R-Calif., defended them. "It may be called modest, but it's a step in the right direction," he said.

House Republican Conference Chairman J.C. Watts Jr., Okla., argued against passage of the substitute. "Faith-based organizations should have the ability to compete. Give them the opportunity to do what they do best. They just love the people who have the same zip code they have."

Moderates relented after GOP leaders agreed to allow a short colloquy, or floor debate, on the anti-discrimination aspects of the bill.

Some Republican moderates had wanted to attach language in a motion to recommit the bill that would ensure that it would not supercede state and local anti-discrimination laws. They agreed not to criticize the measure on the floor and left that to Democrats. The motion was rejected 195-234.

"I didn't want us to get rolled," said Mark Foley, R-Fla., who led the moderates' protest. "We think the Senate is going to fix this anyway."

The legislation has encountered criticism from the left and the right since its introduction, with liberals concerned about church and state separation. Christian conservatives were initially worried that fringe religious groups could receive federal funding.

House Judiciary Chairman F. James Sensenbrenner Jr., R-Wis., added language to the bill that would require those receiving direct federal aid to keep sectarian instruction separate from the social services they provide with federal money.

"Charitable choice neither inhibits free exercise of religion nor does it involve the government establishment of religion," Sensenbrenner said. "It simply allows all organizations, religious or non-religious, to be considered equally by the government for what they can do to help alleviate our nation's social ills."

Opponents disagreed. They noted the bill would permit a charity to have autonomy from local laws in the "definition, development, practice and expression of its religious belief."

"We should never allow commingling of government and religious dollars in the collection plate," said Maxine Waters, D-Calif.

The bill goes to the Democratic-controlled Senate, where it faces more obstacles. Majority Leader Tom Daschle, S.D., said the exemption for state and local anti-discrimination laws would be taken out in the Senate version.

"We can't move backwards on the progress we've made on discrimination in this country," Daschle said.

FAITH-BASED INITIATIVE PASSES HOUSE, FACES TROUBLE IN SENATE

By Bill Swindell, CQ Staff Writer

July 19, 2001 - The House passed a scaled-back version of President Bush's plan to funnel more money to religious charities on Thursday and sent it to the Senate, where it will likely be stripped down even further.

Four Republicans opposed it and 15 Democrats backed the bill (HR 7), also known as charitable choice, in a 233-198 vote. It is a signature issue of Bush that would allow religious charities to compete for federal funds to provide social services such as juvenile justice and housing.

A Democratic substitute failed 168-261, with 40 Democrats voting against it. The alternative would have prohibited religious-based programs receiving government money from discriminating against employees. It also would have prohibited religious organizations from proselytizing in government-funded programs.

The vote occurred a day later than scheduled after Republican

moderates raised objections the legislation could lead to anti-gay discrimination.

Those moderates relented after GOP leadership agreed to allow for a short colloquy, or floor debate, to stress that the bill does not discriminate.

"We don't discriminate one iota," said House GOP Conference Chairman J.C. Watts Jr., cosponsor of the bill.

Mark Steven Kirk, R-Ill., asked Watts to craft language in the future that would ensure that religious charities comply with state and local civil rights laws. Watts replied he was "willing to make a commitment that we clearly address this issue in conference."

Mark Foley, R-Fla., who led the moderates' protest, ended up voting for the bill. Hesaid he wished an amendment on local and state laws could have been put to a floor vote. "Our proposals have not fallen on deaf ears, and we are confident we can work to include many of the provisions we have advocated in aconference report on this bill," Foley said.

Some Republican moderates sought to attach language in a motion to recommit the bill that would ensure that it would not supercede state and local anti-discrimination laws. They agreed not to criticize the measure on the floor and left that to Democrats. The motion was rejected 195-234.

The legislation has encountered criticism from the left and the right since its introduction, with liberals concerned about church and state separation. Christian conservatives initially worried that fringe religious groups could receive federal funding.

House Judiciary Chairman F. James Sensenbrenner Jr., R-Wis., added language that would require those receiving direct federal aid to keep the sectarian instruction separate from the social services they provide with federal money.

"Charitable choice neither inhibits free exercise of religion nor does it involve the government establishment of religion," Sensenbrenner said. "It simply allows all organizations, religious or non-religious, to be considered equally by the government for what they can do to help alleviate our nation's social ills."

Opponents disagreed. They noted that the bill gave charities autonomy over local laws in the "definition, development, practice and expression of its religious belief."

Twelve states and many cities have anti-discrimination laws protecting gays and lesbians in areas such as hiring and domestic partner benefits. Detractors, especially education groups, also were upset that $47 billion in federal funds in the bill could be distributed in individual vouchers that could potentially be used for proselytizing.

"We should never allow co-mingling of government and religious dollars in the collection plate," said Maxine Waters, D-Calif.

The bill goes to the Democratic-controlled Senate facing more obstacles. Majority Leader Tom Daschle, S.D., said the exemption for state and local anti-discrimination laws would be taken out in the Senate version.

"We can't move backwards on the progress we've made on discrimination in this country," Daschle said.

The bill also includes more than $13 billion in charitable tax breaks. The most important tax cut is a $6.3 billion proposal that would allow those who do not itemize their taxes to receive charitable deductions. Bush originally had sought tax cuts of more than $80 billion to allow those who do not itemize to be able to deduct charitable deductions. By 2006, Bush wanted that charitable deduction for non-itemizers to be equal to a standard deduction.

It was not included in Bush's $1.35 trillion tax cut (HR 1836 -- PL 107-16).

Republican tax writers instead proposed a $6 billion measure that would allow those who do not itemize to have a maximum charitable deduction next year of $25. Those filing jointly would be eligible for a $50 maximum deduction.

"It may be called modest, but it's a step in the right direction," Ways and Means Chairman Bill Thomas, R-Calif., said.

House Democrats derided the tax provision and noted it could raid Social Security and Medicare surpluses. They also complained the tax break would not spur any new giving.

"If you're in the 15 percent [tax] bracket you will be able to get a return up to $3.75. So much for a realistic incentive," said Charles B. Rangel, the ranking Democrat on Ways and Means.

The charitable tax breaks face long odds in the Senate. Finance Committee Chairman Max Baucus, D-Mont., has not considered them a priority and said that any future tax cuts must have a revenue offset, a tough political hurdle to clear.

Republicans who voted against the bill were Donald Manzullo, Ill., Constance A. Morella, Md.; Ron Paul, Texas, and Bob Stump, Ariz.

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 7/20/2001 5:43:47 AM
Subject: : Re: Who is the "over"/"more than" guru?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-JUL-2001 09:43:47.00
SUBJECT:: Re: Who is the "over"/"more than" guru?
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Or alternatively, just "no life."




Helgard C. Walker
07/20/2001 09:34:03 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Who is the "over"/"more than" guru?

And, worse, some people say they have "no life outside grammar and law"
when they really should say "no life other than grammar and law". . .




Noel J. Francisco
```

07/19/2001 06:01:45 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Who is the "over"/"more than" guru?

Others also improperly use "greater than" when they should say "morer."

H. Christopher Bartolomucci
07/19/2001 05:55:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Who is the "over"/"more than" guru?

On a related note, I'd like to point out that many people improperly use "less than" when they should say "fewer."

Brett M. Kavanaugh
07/19/2001 04:39:38 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Who is the "over"/"more than" guru?

For inquiring minds, I had used "over" instead of "more than" in a set of talking points and this usage was questioned by a then-anonymous guru, who turned out to be Courtney. My independent, post hoc examination of Garner's manuals reveals that Mrs. Elwood, as always, has a good point. The Manual states that the use of "over" for "more than" is "to be avoided in formal writing." The Manual (a different edition) does also state, however, that "over" for "more than" is "acceptable as a casualism e.g., 'Reagan won the election by over a million votes.'"

So the question comes down to whether a set of talking points is a "casualism" or "formal writing"? [No need to answer!!!]

Helgard C. Walker
07/19/2001 03:44:35 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Who is the "over"/"more than" guru?

I think that guru is you, Brett.

Noel J. Francisco
07/19/2001 03:38:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Who is the "over"/"more than" guru?

What the #?! are you talking about?

Brett M. Kavanaugh
07/19/2001 03:25:19 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Who is the "over"/"more than" guru?

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

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To:_____
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop

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bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop

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brett m. kavanaugh/who/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
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To:_____
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rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop

Message Copied
To:_____
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helgard c. walker/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
noel j. francisco/who/eop@eop
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h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 7/20/2001 6:47:36 AM
Subject: : Re: Senate Votes

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-JUL-2001 10:47:36.00
SUBJECT:: Re: Senate Votes
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brent d. greenfield (CN=brent d. greenfield/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Lott, I believe. No one knows why.

Noel J. Francisco
07/20/2001 10:45:12 AM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Senate Votes

Who was the one? Helms?

Brent D. Greenfield
07/20/2001 10:41:31 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Senate Votes

Roger Gregory: 93-1
Sam Haddon: 95-0
Richard Cebull: 93-0

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP

Message Copied
To:_____
rachel l. brand/who/eop@eop
brett m. kavanaugh/who/eop@eop
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
elizabeth n. camp/who/eop@eop
timothy e. flanigan/who/eop@eop

From: CN=Douglas L. Hoelscher/OU=WHO/O=EOP [WHO]
To: Anne M. Hughes/WHO/EOP@EOP [WHO] <Anne M. Hughes>
CC: brian d. montgomery/who/eop@eop [WHO] <brian d. montgomery>;matthew a. schlapp/who /eop@eop [WHO] <matthew a. schlapp>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;anita b. mcbride/who/eop@eop [WHO] <anita b. mcbride>;heather l. west/who /eop@eop [WHO] <heather l. west>
Sent: 7/23/2001 11:56:54 AM
Subject: : Re: Political expenses

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-JUL-2001 15:56:54.00
SUBJECT:: Re: Political expenses
TO:Anne M. Hughes (CN=Anne M. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brian d. montgomery (CN=brian d. montgomery/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:matthew a. schlapp (CN=matthew a. schlapp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:anita b. mcbride (CN=anita b. mcbride/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:heather l. west (CN=heather l. west/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Matt Schlapp's schedule is open during the following times on Wed.: 3:00 to 4:00 and 5:00 to 6:00. And he is open during the following times on Thursday: 10:00 to 11:00, 3:00 to 3:30, 5:30 to 6:30.

From: Anne M. Hughes on 07/23/2001 03:17:51 PM
Record Type: Record

To: Brian D. Montgomery/WHO/EOP@EOP, Matthew A. Schlapp/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc: Anita B. McBride/WHO/EOP@EOP, Heather L. West/WHO/EOP@EOP, Douglas L. Hoelscher/WHO/EOP@EOP
Subject: Political expenses

When you are all in town and have some free time, Anita has suggested that we meet to discuss expenses on the road which may be paid by the RNC. Specific topics to include how payments are arranged in advance and the coordination of billing with vendors. Anita is out on Friday, so please let me know if/when you might be available on Wed. or Thurs.

Many thanks,
Merrill

From: CN=Danielle M. Simonetta/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/24/2001 8:03:12 AM
Subject: : Re: Revision to T/PO SAP-Additional Paragraph

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:24-JUL-2001 12:03:12.00
SUBJECT:: Re: Revision to T/PO SAP-Additional Paragraph
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thank you
```

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Irene Kho/OMB/EOP@EOP [OMB] <Irene Kho>
Sent:	7/24/2001 11:00:10 AM
Subject:	: Re: LRM IKK76 - - Office of National Drug Control Policy Report on HR2291 Reauthorization of the Drug-Free Communities Act of 2001
Attachments:	P_AHRY2004_WHO.TXT_1.doc; P_AHRY2004_WHO.TXT_2

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-JUL-2001 15:00:10.00
SUBJECT:: Re: LRM IKK76 - - Office of National Drug Control Policy Report on HR2291 Reauthorization of the Drug-Free Communities Act of 2001
TO:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel's office has no objection.

Allison L. Riepenhoff
07/24/2001 02:13:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM IKK76 - - Office of National Drug Control Policy Report on HR2291 Reauthorization of the Drug-Free Communities Act of 2001

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 07/24/2001 02:13 PM ----------

From: Irene Kho on 07/24/2001 02:10:21 PM
Record Type: Record

To: justice.lrm@usdoj.gov @ znet, gregory.m.jones@usdoj.gov @ znet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK76 - - Office of National Drug Control Policy Report on HR2291 Reauthorization of the Drug-Free Communities Act of 2001

H.R. 2291 is scheduled to be marked up on this Wednesday, July 25th by the House Government Reform Committee. Please review and provide comments on the attached letter by 4:00 PM, today, July 24th. The bill text is attached for your information.

LRM ID: IKK76
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, July 24, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: Office of National Drug Control Policy Report on HR2291 Reauthorization of the Drug-Free Communities Act of 2001

DEADLINE: 4:00 PM Tuesday, July 24, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: H.R. 2291 is scheduled to be marked up on this Wednesday, July 25th by the House Government Reform Committee. Please review and provide comments on the attached letter by 4:00 PM, today, July 24th. The bill text is attached for your information.

DISTRIBUTION LIST

AGENCIES:
061-JUSTICE - Daniel Bryant - (202) 514-2141

EOP:
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Douglas Pitkin
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Diana L. Schacht
Steven D. Aitken
WHGC LRM
Kirsten A. Chadwick
Brett S. Loper
Danielle M. Simonetta
Richard E. Green
James J. Jukes
LRM ID: IKK76 SUBJECT: Office of National Drug Control Policy Report on HR2291 Reauthorization of the Drug-Free Communities Act of 2001

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Ronald E. Jones/OMB/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Christopher M. Marston/ONDCP/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
WHGC LRM
Kirsten A. Chadwick/WHO/EOP@EOP
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AHRY2004_WHO.TXT_2>

July 24, 2001

The Honorable Dan Burton, Chairman
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The Office of National Drug Control Policy appreciates the speed with which you have scheduled action on H.R. 2291, reauthorizing the Drug-Free Communities Support Program. The President has made this critical drug prevention effort a priority of his comprehensive anti-drug program.

We are deeply concerned, however, with the amendment proposed by the Subcommittee on Criminal Justice, Drug Policy, and Human Resources as it pertains to the administrative cost provision. The original authorization (the Drug-Free Communities Act of 1997) set a cap on administrative costs on a downward sliding scale from not more than ten percent to not more than three percent. As ONDCP and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) have worked over the last five years to implement the program, we have found the cap to be insufficient. Working closely with the Committees on Appropriation, we have been able to implement and manage the program each year, but only by utilizing funds from ONDCP's Salaries and Expenses account that were made available for the necessary expenses of the evaluation of the Drug-Free Communities Program as well as other available funds from OJJDP to manage the grants within their area of responsibility. Unfortunately, neither ONDCP's Salaries and Expenses Account nor OJJJDP will be able to allocate those additional funds for these purposes in Fiscal Year 2002 and beyond.

As you know, ONDCP and OJJDP conducted a comprehensive study of the administrative costs associated with the Drug-Free Communities Support Program and produced a report on the findings. The report concluded that amending the administrative cost limitation from "not more than three percent" to "not more than eight percent" per fiscal year would maintain thorough competitive peer review process of all applications, ensure all aspects of grants management are fulfilled, enhance grantee access to valuable technical assistance about science-based prevention practices and training in those practices, improve ONDCP's and OJJDP's ability to maintain an outcome-focused program through a comprehensive evaluation, and allow for greater promotion of the program to coalitions across the United States. This increase will enable us to award the maximum number of grants directly to community anti-drug coalitions while maintaining requisite fiscal and programmatic oversight to ensure that the grants are used in the most effective and efficient manner possible. Pursuant to Senate Appropriations Committee Report 106-500 (accompanying S. 2900), ONDCP submitted the ONDCP-OJJDP report for the Appropriation Subcommittees' consideration on January 18, 2001.

The sponsors of H.R. 2291 recognized the difficulty set forth in the report and included a constant cap on administrative costs of eight percent in the bill. ONDCP and OJJDP believe that this level is necessary to ensure the integrity of the program. The Drug-Free Communities Advisory Commission, established in the original 1997 authorization, reached the same conclusion. Additionally, at the Subcommittee's June 28 hearing on the Drug-Free Communities Support Program, all three of the non-government witnesses, when asked by Chairman Souder, supported a cap of "not more than eight percent" on administrative costs. The witnesses indicated that they preferred an administrative cost structure that would permit awarding grants to high quality programs while maintaining sufficient oversight – as opposed to merely awarding the maximum number of grants possible without necessary oversight to ensure accountability.

Furthermore, the Administration's request for a cap on administrative costs of "not more than eight percent" is consistent with that approved by Congress for other programs. For example, appropriation language for the DOJ's At-Risk Children's program consistently includes a provision limiting costs for research, evaluation, and statistics activities to ten percent. Furthermore, appropriation language for the DOJ's Drug Court program permits up to fifteen percent for training and technical assistance alone, with other, more typical administrative costs coming out of program costs. Finally, the Safe and Drug-Free Schools and Communities Program places the administrative burden on the states, as the funds are provided via a block grant. States are permitted to use up to four percent of the funds for direct administration and up to an additional five percent for other state-wide efforts that include training, technical assistance, and evaluation, for a total of nine percent.

Clearly, the Congress is supportive of the President's laudable intention to award even more grants to increase grassroots drug prevention efforts in our communities. ONDCP has worked diligently with the OJJDP, our grant-making agent, to minimize the administrative costs while maintaining our ability to provide the requisite level of fiscal and programmatic oversight to ensure program effectiveness and efficiency. However, neither ONDCP nor OJJDP believe that we can adequately support the President's program with a cap on administrative costs of "five percent."

ONDCP understands and values the principle of ensuring the maximum amount possible of Drug-Free Communities funds go directly to support and enhance community anti-drug coalitions. We look forward to working collaboratively with your Committee, and indeed the entire Congress, to develop H.R. 2291 into a bill that will enable us to achieve our shared goal of awarding grants directly to local community anti-drug coalitions to support their efforts to prevent substance abuse among children and youth, in the most responsible fashion possible.

Respectfully,

Edward H. Jurith
Acting Director

F:\M7\PORTMA\PORTMA.010 H.L.C.

(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. 2291

IN THE HOUSE OF REPRESENTATIVES

Mr. PORTMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

REV_00130175

SECTION 1. FIVE-YEAR EXTENSION OF DRUG-FREE COMMUNITIES SUPPORT PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) In the next 15 years, the youth population in the United States will grow by 21 percent, adding 6,500,000 youth to the population of the United States. Even if drug use rates remain constant, there will be a huge surge in drug-related problems, such as academic failure, drug-related violence, and HIV incidence, simply due to this population increase.

(2) According to the 1994–1996 National Household Survey, 60 percent of students age 12 to 17 who frequently cut classes and who reported delinquent behavior in the past 6 months used marijuana 52 days or more in the previous year.

(3) The 2000 Washington Kids Count survey conducted by the University of Washington reported that students whose peers have little or no involvement with drinking and drugs have higher math and reading scores than students whose peers had low level drinking or drug use.

(4) Substance abuse prevention works. In 1999, only 10 percent of teens saw marijuana users as popular, compared to 17 percent in 1998 and 19

REV_00130176

percent in 1997. The rate of past-month use of any drug among 12 to 17 year olds declined 26 percent between 1997 and 1999. Marijuana use for sixth through eighth graders is at the lowest point in 5 years, as is use of cocaine, inhalants, and hallucinogens.

(5) Community Anti-Drug Coalitions throughout the United States are successfully developing and implementing comprehensive, long-term strategies to reduce substance abuse among youth on a sustained basis. For example:

(A) The Boston Coalition brought college and university presidents together to create the Cooperative Agreement on Underage Drinking. This agreement represents the first coordinated effort of Boston's many institutions of higher education to address issues such as binge drinking, underage drinking, and changing the norms surrounding alcohol abuse that exist on college and university campuses.

(B) In 2000, the Coalition for a Drug-Free Greater Cincinnati surveyed more than 47,000 local students in grades 7 through 12. The results provided evidence that the Coalition's initiatives are working. For the first time in a dec-

ade, teen drug use in Greater Cincinnati appears to be leveling off. The data collected from the survey has served as a tool to strengthen relationships between schools and communities, as well as facilitate the growth of anti-drug coalitions in communities where such coalitions had not existed.

(C) The Miami Coalition used a three-part strategy to decrease the percentage of high school seniors who reported using marijuana at least once during the most recent 30-day period. The development of a media strategy, the creation of a network of prevention agencies, and discussions with high school students about the dangers of marijuana all contributed to a decrease in the percentage of seniors who reported using marijuana from over 22 percent in 1995 to 9 percent in 1997. The Miami Coalition was able to achieve these results while national rates of marijuana use were increasing.

(D) The Nashville Prevention Partnership worked with elementary and middle school children in an attempt to influence them toward positive life goals and discourage them from using substances. The Partnership targeted an

REV_00130178

area in East Nashville and created after school programs, mentoring opportunities, attendance initiatives, and safe passages to and from school. Attendance and test scores increased as a result of the program.

(E) At a youth-led town meeting sponsored by the Bering Strait Community Partnership in Nome, Alaska, youth identified a need for a safe, substance-free space. With help from a variety of community partners, the Partnership staff and youth members created the Java Hut, a substance-free coffeehouse designed for youth. The Java Hut is helping to change norms in the community by providing a fun, youth-friendly atmosphere and activities that are not centered around alcohol or marijuana.

(F) Portland's Regional Drug Initiative (RDI) has promoted the establishment of drug-free workplaces among the city's large and small employers. Over 3,000 employers have attended an RDI training session, and of those, 92 percent have instituted drug-free workplace policies. As a result, there has been a 5.5 percent decrease in positive workplace drug tests.

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(G) San Antonio Fighting Back worked to increase the age at which youth first used illegal substances. Research suggests that the later the age of first use, the lower the risk that a young person will become a regular substance abuser. As a result, the age of first illegal drug use increased from 9.4 years in 1992 to 13.5 years in 1997.

(H) In 1990, multiple data sources confirmed a trend of increased alcohol use by teenagers in the Troy community. Using its "multiple strategies over multiple sectors" approach, the Troy Coalition worked with parents, physicians, students, coaches, and others to address this problem from several angles. As a result, the rate of twelfth grade students who had consumed alcohol in the past month decreased from 62.1 percent to 53.3 percent between 1991 and 1998, and the rate of eighth grade students decreased from 26.3 percent to 17.4 percent. The Troy Coalition believes that this decline represents not only a change in behavior on the part of students, but also a change in the norms of the community.

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(6) Despite these successes, drug use continues to be a serious problem facing communities across the United States. For example:

(A) According to the Pulse Check: Trends in Drug Abuse Mid-Year 2000 report—

(i) crack and powder cocaine remains the most serious drug problem;

(ii) marijuana remains the most widely available illicit drug, and its potency is on the rise;

(iii) treatment sources report an increase in admissions with marijuana as the primary drug of abuse—and adolescents outnumber other age groups entering treatment for marijuana;

(iv) 80 percent of Pulse Check sources reported increased availability of club drugs, with ecstasy (MDMA) and ketamine the most widely cited club drugs and seven sources reporting that powder cocaine is being used as a club drug by young adults;

(v) ecstasy abuse and trafficking is expanding, no longer confined to the "rave" scene;

REV_00130181

(vi) the sale and use of club drugs has grown from nightclubs and raves to high schools, the streets, neighborhoods, open venues, and younger ages;

(vii) ecstasy users often are unknowingly purchasing adulterated tablets or some other substance sold as MDMA; and

(viii) along with reports of increased heroin snorting as a route of administration for initiates, there is also an increase in injecting initiates and the negative health consequences associated with injection (for example, increases in HIV/AIDS and Hepatitis C) suggesting that there is a generational forgetting of the dangers of injection of the drug.

(B) The 2000 Parent's Resource Institute for Drug Education study reported that 23.6 percent of children in the sixth through twelfth grades used illicit drugs in the past year. The same study found that monthly usage among this group was 15.3 percent.

(C) According to the 2000 Monitoring the Future study, the use of ecstasy among eighth graders increased from 1.7 percent in 1999 to

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3.1 percent in 2000, among tenth graders from 4.4 percent to 5.4 percent, and from 5.6 percent to 8.2 percent among twelfth graders.

(D) A 1999 Mellman Group study found that—

(i) 56 percent of the population in the United States believed that drug use was increasing in 1999;

(ii) 92 percent of the population viewed illegal drug use as a serious problem in the United States; and

(iii) 73 percent of the population viewed illegal drug use as a serious problem in their communities.

(7) According to the 2001 report of the National Center on Addiction and Substance Abuse at Columbia University entitled "Shoveling Up: The Impact of Substance Abuse on State Budgets", using the most conservative assumption, in 1998 States spent $77,900,000,000 to shovel up the wreckage of substance abuse, only $3,000,000,000 to prevent and treat the problem and $433,000,000 for alcohol and tobacco regulation and compliance. This $77,900,000,000 burden was distributed as follows:

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(A) $30,700,000,000 in the justice system (77 percent of justice spending).

(B) $16,500,000,000 in education costs (10 percent of education spending).

(C) $15,200,000,000 in health costs (25 percent of health spending).

(D) $7,700,000,000 in child and family assistance (32 percent of child and family assistance spending).

(E) $5,900,000,000 in mental health and developmental disabilities (31 percent of mental health spending).

(F) $1,500,000,000 in public safety (26 percent of public safety spending) and $400,000,000 for the state workforce.

(8) Intergovernmental cooperation and coordination through national, State, and local or tribal leadership and partnerships are critical to facilitate the reduction of substance abuse among youth in communities across the United States.

(9) Substance abuse is perceived as a much greater problem nationally than at the community level. According to a 2001 study sponsored by The Pew Charitable Trusts, between 1994 and 2000—

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(A) there was a 43 percent increase in the percentage of Americans who felt progress was being made in the war on drugs at the community level;

(B) only 9 percent of Americans say drug abuse is a "crisis" in their neighborhood, compared to 27 percent who say this about the nation; and

(C) the percentage of those who felt we lost ground in the war on drugs on a community level fell by more than a quarter, from 51 percent in 1994 to 37 percent in 2000.

(b) EXTENSION AND INCREASE OF PROGRAM.—Section 1024(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1524(a)) is amended—

(1) by striking "and" at the end of paragraph (4); and

(2) by striking paragraph (5) and inserting the following new paragraphs:

"(5) $50,600,000 for fiscal year 2002;

"(6) $60,000,000 for fiscal year 2003;

"(7) $70,000,000 for fiscal year 2004;

"(8) $70,000,000 for fiscal year 2005;

"(9) $75,000,000 for fiscal year 2006; and

"(10) $75,000,000 for fiscal year 2007.".

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(c) EXTENSION OF LIMITATION ON ADMINISTRATIVE COSTS.—Section 1024(b) of that Act (21 U.S.C. 1524(b)) is amended by striking paragraph (5) and inserting the following new paragraph (5):

"(5) 8 percent for each of fiscal years 2002 through 2007.".

(d) ADDITIONAL GRANTS.—Section 1032(b) of that Act (21 U.S.C. 1533(b)) is amended by adding at the end the following new paragraph (3):

"(3) ADDITIONAL GRANTS.—

"(A) IN GENERAL.—Subject to subparagraph (F), the Administrator may award an additional grant under this paragraph to an eligible coalition awarded a grant under paragraph (1) or (2) for any first fiscal year after the end of the 4-year period following the period of the initial grant under paragraph (1) or (2), as the case may be.

"(B) SCOPE OF GRANTS.—A coalition awarded a grant under paragraph (1) or (2), including a renewal grant under such paragraph, may not be awarded another grant under such paragraph, and is eligible for an additional grant under this section only under this paragraph.

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"(C) NO PRIORITY FOR APPLICATIONS.—The Administrator may not afford a higher priority in the award of an additional grant under this paragraph than the Administrator would afford the applicant for the grant if the applicant were submitting an application for an initial grant under paragraph (1) or (2) rather than an application for a grant under this paragraph.

"(D) RENEWAL GRANTS.—Subject to subparagraph (F), the Administrator may award a renewal grant to a grant recipient under this paragraph for each of the fiscal years of the 4-fiscal year period following the fiscal year for which the initial additional grant under subparagraph (A) is awarded in an amount not to exceed amounts as follows:

"(i) For the first and second fiscal years of that 4-fiscal year period, the amount equal to 80 percent of the non-Federal funds, including in-kind contributions, raised by the coalition for the applicable fiscal year.

"(ii) For the second, third, and fourth fiscal years of that 4-fiscal year period, the

amount equal to 67 percent of the non-Federal funds, including in-kind contributions, raised by the coalition for the applicable fiscal year.

"(E) SUSPENSION.—If a grant recipient under this paragraph fails to continue to meet the criteria specified in subsection (a), the Administrator may suspend the grant, after providing written notice to the grant recipient and an opportunity to appeal.

"(F) LIMITATION.—The amount of a grant award under this paragraph may not exceed $100,000 for a fiscal year.".

(e) DATA COLLECTION AND DISSEMINATION.—Section 1033(b) of that Act (21 U.S.C. 1533(b)) is amended by adding at the end the following new paragraph:

"(3) CONSULTATION.—The Administrator shall carry out activities under this subsection in consultation with the Advisory Commission and the National Community Antidrug Coalition Institute.".

(f) LIMITATION ON USE OF CERTAIN FUNDS FOR EVALUATION OF PROGRAM.—Section 1033(b) of that Act, as amended by subsection (e) of this section, is further is amended by adding at the end the following new paragraph:

REV_00130188

"(4) LIMITATION ON USE OF CERTAIN FUNDS FOR EVALUATION OF PROGRAM.—Amounts for activities under paragraph (2)(B) may not be derived from amounts under section 1024(a) except for amounts that are available under section 1024(b) for administrative costs.".

SEC. 2. SUPPLEMENTAL GRANTS FOR COALITION MENTORING ACTIVITIES UNDER DRUG-FREE COMMUNITIES SUPPORT PROGRAM.

Subchapter I of chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1531 et seq.) is amended by adding at the end the following new section:

"SEC. 1035. SUPPLEMENTAL GRANTS FOR COALITION MENTORING ACTIVITIES.

"(a) AUTHORITY TO MAKE GRANTS.—As part of the program established under section 1031, the Director may award an initial grant under this subsection, and renewal grants under subsection (f), to any coalition awarded a grant under section 1032 that meets the criteria specified in subsection (d) in order to fund coalition mentoring activities by such coalition in support of the program.

"(b) TREATMENT WITH OTHER GRANTS.—

"(1) SUPPLEMENT.—A grant awarded to a coalition under this section is in addition to any grant awarded to the coalition under section 1032.

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"(2) REQUIREMENT FOR BASIC GRANT.—A coalition may not be awarded a grant under this section for a fiscal year unless the coalition was awarded a grant or renewal grant under section 1032(b) for that fiscal year.

"(c) APPLICATION.—A coalition seeking a grant under this section shall submit to the Administrator an application for the grant in such form and manner as the Administrator may require.

"(d) CRITERIA.—A coalition meets the criteria specified in this subsection if the coalition—

"(1) has been in existence for at least 5 years;

"(2) has achieved, by or through its own efforts, measurable results in the prevention and treatment of substance abuse among youth;

"(3) has staff or members willing to serve as mentors for persons seeking to start or expand the activities of other coalitions in the prevention and treatment of substance abuse;

"(4) has demonstrable support from some members of the community in which the coalition mentoring activities to be supported by the grant under this section are to be carried out; and

REV_00130190

"(5) submits to the Administrator a detailed plan for the coalition mentoring activities to be supported by the grant under this section.

"(e) USE OF GRANT FUNDS.—A coalition awarded a grant under this section shall use the grant amount for mentoring activities to support and encourage the development of new, self-supporting community coalitions that are focused on the prevention and treatment of substance abuse in such new coalitions' communities. The mentoring coalition shall encourage such development in accordance with the plan submitted by the mentoring coalition under subsection (d)(5).

"(f) RENEWAL GRANTS.—The Administrator may make a renewal grant to any coalition awarded a grant under subsection (a), or a previous renewal grant under this subsection, if the coalition, at the time of application for such renewal grant—

"(1) continues to meet the criteria specified in subsection (d); and

"(2) has made demonstrable progress in the development of one or more new, self-supporting community coalitions that are focused on the prevention and treatment of substance abuse.

"(g) GRANT AMOUNTS.—

REV_00130191

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the total amount of grants awarded to a coalition under this section for a fiscal year may not exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year.

"(2) INITIAL GRANTS.—The amount of the initial grant awarded to a coalition under subsection (a) may not exceed $75,000.

"(3) RENEWAL GRANTS.—The total amount of renewal grants awarded to a coalition under subsection (f) for any fiscal year may not exceed $75,000.

"(h) FISCAL YEAR LIMITATION ON AMOUNT AVAILABLE FOR GRANTS.—The total amount available for grants under this section, including renewal grants under subsection (f), in any fiscal year may not exceed the amount equal to five percent of the amount authorized to be appropriated by section 1024(a) for that fiscal year.".

SEC. 3. FIVE-YEAR EXTENSION OF ADVISORY COMMISSION ON DRUG-FREE COMMUNITIES.

Section 1048 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1548) is amended by striking "2002" and inserting "2007".

SEC. 4. AUTHORIZATION FOR NATIONAL COMMUNITY ANTI-DRUG COALITION INSTITUTE.

(a) IN GENERAL.—The Director of the Office of National Drug Control Policy may, using amounts authorized to be appropriated by subsection (d), make a grant to an eligible organization to provide for the establishment of a National Community Antidrug Coalition Institute.

(b) ELIGIBLE ORGANIZATIONS.—An organization eligible for the grant under subsection (a) is any national nonprofit organization that represents, provides technical assistance and training to, and has special expertise and broad, national-level experience in community antidrug coalitions under section 1032 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1532).

(c) USE OF GRANT AMOUNT.—The organization receiving the grant under subsection (a) shall establish a National Community Antidrug Coalition Institute to—

(1) provide education, training, and technical assistance for coalition leaders and community teams;

(2) develop and disseminate evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes; and

(3) bridge the gap between research and practice by translating knowledge from research into practical information.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of activities under this section, including the grant under subsection (a), amounts as follows:

(1) For each of fiscal years 2002 and 2003, $2,000,000.

(2) For each of fiscal years 2004 through 2007, such sums as may be necessary for such activities.

REV_00130194

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/25/2001 12:41:00 PM
Subject: : LRM ALA11 - - Request for Views on HR2540 Veterans Benefits Act
Attachments: P_6TOZ2004_WHO.TXT_1.wpd

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From: Kathryn C. Thompson on 07/25/2001 04:25:39 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM ALA11 - - Request for Views on HR2540 Veterans Benefits Act

The following is LRM ID: ALA11 -- Request for Views on H.R. 2540, Veterans Benefits Act. The bill text of H.R. 2540 as reported amended is attached below in Wordperfect format. The document consists of 17 pages.

Please comment on H.R. 2540 by 3 p.m., Friday, July 27th. If I do not hear from you by the deadline, I will assume that you have no objection to the bill as reported amended.

Agencies: This e-mail follows the faxed version of the LRM.

LRM ID: ALA11
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, July 25, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: Request for Views on HR2540 Veterans Benefits Act

DEADLINE: 3 p.m. Friday, July 27, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: H.R. 2540 is an omnibus veterans' benefits bill that

incorporates provisions from H.R. 862, H.R. 1406, H.R. 1435, H.R. 1746, H.R. 2359, and H.R. 2361. VA testified on those bills before a House Veterans' Affairs subcommittee on July 10th (LRM ID: KCT55). H.R. 2540 was reported amended by the House Veterans' Affairs Committee on July 24th. The bill text of H.R. 2540 as reported amended is attached.

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James J. Jukes
LRM ID: ALA11 SUBJECT: Request for Views on HR2540 Veterans Benefits Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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Changes to introduced bill text as amended by House Veterans' Affairs Committee – deletions in strikethrough and additions in bold (reported amended by cmte. on 7/24/01)

HR 2540

107th CONGRESS

1st Session

H. R. 2540

To amend title 38, United States Code, to make various improvements to veterans benefits programs under laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 18, 2001

Mr. SMITH of New Jersey (for himself, Mr. EVANS, Mr. SIMPSON, Mr. REYES, Mr. STUMP, Mr. FILNER, Mr. BILIRAKIS, Ms. BROWN of Florida, Mr. BUYER, Mr. RODRIGUEZ, Mr. BAKER, Mr. SHOWS, Mr. SIMMONS, Mr. UDALL of New Mexico, Mr. BROWN of South Carolina, and Mrs. CAPPS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make various improvements to veterans benefits programs under laws administered by the Secretary of Veterans Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Veterans Benefits Act of 2001'.

(b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

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TITLE I--ANNUAL COST-OF-LIVING ADJUSTMENT IN COMPENSATION AND DIC RATES

Sec. 101. Increase in rates of disability compensation and dependency and indemnity compensation.

Sec. 102. Publication of adjusted rates.

TITLE II--COMPENSATION PROVISIONS

Sec. 201. Presumption that diabetes mellitus (type 2) is service-connected.

Sec. 202. Inclusion of illnesses that cannot be clearly defined in presumption of service connection for Gulf War veterans.

Sec. 203. Preservation of service connection for undiagnosed illnesses to provide for participation in research projects by Gulf War veterans.

TITLE III--ADMINISTRATION OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Sec. 301. Registration fees.

Sec. 302. Administrative authorities.

TITLE IV--OTHER MATTERS

Sec. 401. Payment of insurance proceeds to an alternate beneficiary when first beneficiary cannot be identified.

Sec. 402. Extension of copayment requirement for outpatient prescription medications.

Sec. 403. ~~Repeal of Department of Veterans Affairs Health Services Improvement Fund.~~ **Department of Veterans Affairs Health Services Improvement Fund Made Subject to Appropriations.**

Sec. 404. Native American veteran housing loan pilot program.

Sec. 405. Modification of loan assumption notice requirement.

Sec. 406. Elimination of requirement for providing a copy of notice of appeal to the Secretary.

Sec. 407. Pilot program for expansion of toll-free telephone access to veterans service
representatives.

Sec. 408. Technical and clerical amendments.

Sec. 409. Codification of recurring provisions in annual Department of Veterans Affairs appropriations Acts.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I--ANNUAL COST-OF-LIVING ADJUSTMENT IN COMPENSATION AND DIC RATES

SEC. 101. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT- The Secretary of Veterans Affairs shall, effective on December 1, 2001, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED- The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION- Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS- Each of the dollar amounts in effect under sections 1115(1) of such title.

(3) CLOTHING ALLOWANCE- The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES- The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES- Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN- The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY- The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN- The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE- (1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2001.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2001, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE- The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 102. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2002, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section ~~2~~ **101**, as increased pursuant to that section.

TITLE II--COMPENSATION PROVISIONS

SEC. 201. PRESUMPTION THAT DIABETES MELLITUS (TYPE 2) IS SERVICE-CONNECTED.

Section 1116(a)(2) is amended by adding at the end the following new subparagraph:

`(H) Diabetes Mellitus (Type 2).'.

SEC. 202. INCLUSION OF ILLNESSES THAT CANNOT BE CLEARLY

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DEFINED IN PRESUMPTION OF SERVICE CONNECTION.

(a) ILLNESSES THAT CANNOT BE CLEARLY DEFINED- (1) Subsection (a) of section 1117 is amended by inserting `or fibromyalgia, chronic fatigue syndrome, a chronic multisymptom illness, or any other illness that cannot be clearly defined (or combination of illnesses that cannot be clearly defined)' after `illnesses)'.

(2) Subsection (c) of such section is amended by inserting `or fibromyalgia, chronic fatigue syndrome, a chronic multisymptom illness, or any other illness that cannot be clearly defined (or combination of illnesses that cannot be clearly defined)' after `illnesses)'.

(b) SIGNS OR SYMPTOMS THAT MAY INDICATE UNDIAGNOSED ILLNESSES- (1) Section 1117 is further amended by adding at the end the following new subsection:

`(g) For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness include the following:

`(1) Fatigue.

`(2) Unexplained rashes or other dermatological signs or symptoms.

`(3) Headache.

`(4) Muscle pain.

`(5) Joint pain.

`(6) Neurologic signs or symptoms.

`(7) Neuropsychological signs or symptoms.

`(8) Signs or symptoms involving the respiratory system (upper or lower).

`(9) Sleep disturbances.

`(10) Gastrointestinal signs or symptoms.

`(11) Cardiovascular signs or symptoms.

`(12) Abnormal weight loss.

`(13) Menstrual disorders.'.

(2) Section 1118(a) of such title is amended by adding at the end the following new

paragraph:

`(4) For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness include the signs and symptoms listed in section 1117(g) of this title.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on April 1, 2002.

SEC. 203. PRESERVATION OF SERVICE CONNECTION FOR UNDIAGNOSED ILLNESSES TO PROVIDE FOR PARTICIPATION IN RESEARCH PROJECTS BY GULF WAR VETERANS.

(a) AUTHORITY FOR SECRETARY TO PROVIDE FOR PARTICIPATION WITHOUT LOSS OF BENEFITS- Section 1117 is amended by adding after subsection (g), as added by section 202(b), the following new subsection:

`(h)(1) If the Secretary determines with respect to a medical research project sponsored by the Department that it is necessary for the conduct of the project that Persian Gulf veterans in receipt of compensation under this section or section 1118 of this title participate in the project without the possibility of loss of service connection under either
such section, the Secretary shall provide that service connection granted under either such section for disability of a veteran who participated in the research project may not be terminated.

`(2) Paragraph (1) does not apply in a case in which--

`(A) the original award of compensation or service connection was based on fraud; or

`(B) it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.

`(3) The Secretary shall publish in the Federal Register a notice of each determination made by the Secretary under paragraph (1) with respect to a medical research project.'.

(b) EFFECTIVE DATE- The authority provided by subsection (h) of section 1117 of title 38, United States Code, as added by subsection (a), may be used by the Secretary of Veterans Affairs with respect to any medical research project of the Department of Veterans Affairs, whether commenced before, on, or after the date of the enactment of this Act.

TITLE III--ADMINISTRATION OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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SEC. 301. REGISTRATION FEES.

(a) FEES FOR COURT-SPONSORED ACTIVITIES- Subsection (a) of section 7285 is amended by adding at the end the following new sentence: `The Court may also impose registration fees on persons participating in a judicial conference convened pursuant to section 7286 of this title or any other court-sponsored activity.'.

(b) USE OF FEES- Subsection (b) of such section is amended by striking `for the purposes of (1)' and all that follows through the period and inserting `for the following purposes:

`(1) Conducting investigations and proceedings, including employing independent counsel, to pursue disciplinary matters.

`(2) Defraying the expenses of--

`(A) judicial conferences convened pursuant to section 7286 of this title; and

`(B) other activities and programs that are designed to support and foster bench and bar communication and relationships or the study, understanding, public commemoration, or improvement of veterans law or of the work of the Court.'.

(c) CLERICAL AMENDMENTS- (1) The heading for such section is amended to read as follows:

`Sec. 7285. Practice and registration fees'.

(2) The item relating to such section in the table of sections at the beginning of chapter 72 is amended to read as follows:

`7285. Practice and registration fees.'.

SEC. 302. ADMINISTRATIVE AUTHORITIES.

(a) IN GENERAL- Subchapter III of chapter 72 is amended by adding at the end the following new section:

`Sec. 7287. Administration

`Notwithstanding any other provision of law, the Court of Appeals for Veterans Claims may exercise, for purposes of management, administration, and expenditure of funds, the authorities provided for such purposes by any provision of law (including any limitation with respect to such provision) applicable to a court of the United States as defined in section 451 of title 28, except to the extent that such provision of law is inconsistent with

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a provision of this chapter.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item related to section 7286 the following new item:

7287. Administration.'.

TITLE IV--OTHER MATTERS

SEC. 401. PAYMENT OF INSURANCE PROCEEDS TO AN ALTERNATE BENEFICIARY WHEN FIRST BENEFICIARY CANNOT BE IDENTIFIED.

(a) NSLI- Section 1917 is amended by adding at the end the following new subsection:

`(f)(1) Following the death of the insured--

`(A) if the first beneficiary otherwise entitled to payment of the insurance proceeds does not make a claim for such payment within three years after the death of the insured, payment of the proceeds may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and

`(B) if within five years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment of the insurance proceeds may (notwithstanding any other provision of law) be made to such person as
may in the judgment of the Secretary be equitably entitled to the proceeds of the policy.

`(2) Payment of insurance proceeds under paragraph (1) shall be a bar to recovery by any other person.'.

(b) USGLI- Section 1951 is amended--

(1) by inserting `(a)' before `United States Government'; and

(2) by adding at the end the following new subsection:

`(b)(1) Following the death of the insured--

`(A) if the first beneficiary otherwise entitled to payment of the insurance proceeds does not make a claim for such payment within three years after the death of the insured, payment of the proceeds may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first

beneficiary had predeceased the insured; and

`(B) if within five years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment of the insurance proceeds may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled to the proceeds of the policy.

`(2) Payment of insurance proceeds under paragraph (1) shall be a bar to recovery by any other person.'.

(c) TRANSITION PROVISION- In the case of a person insured under subchapter I or II of chapter 19 of title 38, United States Code, who dies before the date of the enactment of this Act, the three-year and five-year periods specified in subsection (f)(1) of section 1917 of title 38, United States Code, as added by subsection (a), and subsection (b)(1) of section 1951 of such title, as added by subsection (b), shall for purposes of the applicable subsection be treated as being the three-year and five-year periods, respectively, beginning on the date of the enactment of this Act.

SEC. 402. EXTENSION OF COPAYMENT REQUIREMENT FOR OUTPATIENT PRESCRIPTION MEDICATIONS.

Section 1722A(c) is amended by striking `September 30, 2002' and inserting `September 30, 2006'.

~~SEC. 403. REPEAL OF DEPARTMENT OF VETERANS AFFAIRS HEALTH SERVICES IMPROVEMENT FUND.~~

~~(a) REPEAL- (1) Section 1729B is repealed. Any balance as of the date of the enactment of this Act in the Department of Veterans Affairs Health Services Improvement Fund established under such section shall be transferred to the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of title 38, United States Code.~~

~~(2) The table of sections at the beginning of chapter 17 is amended by striking the item relating to section 1729B.~~

~~(b) ADDITIONAL DEPOSITS FOR MEDICAL CARE COLLECTIONS FUND- Section 1729A(b) is amended--~~

~~(1) by redesignating paragraph (7) as paragraph (9); and~~

~~(2) by inserting after paragraph (6) the following new paragraphs:~~

~~`(7) Section 8165(a) of this title.~~

~~`(8) Section 113 of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117; 38 U.S.C. 8111 note).'.~~

~~(c) CONFORMING AMENDMENTS-~~

~~(1) Section 1722A(c) is amended--~~

~~(A) in the first sentence, by striking `under subsection (a)' and inserting `under this section'; and~~

~~(B) by striking the second sentence.~~

~~(2) Section 8165 is amended by striking `Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of this title' and inserting `Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title'.~~

~~(3) Section 113(b) of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117; 38 U.S.C. 8111 note) is amended by striking `Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of title 38 United States Code, as added by section 202' and inserting `Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of title 38, United States Code'.~~

SEC. 403. DEPARTMENT OF VETERANS AFFAIRS HEALTH SERVICES IMPROVEMENT FUND MADE SUBJECT TO APPROPRIATIONS.

(a) AMOUNTS TO BE SUBJECT TO APPROPRIATIONS.--Effective October 1, 2002, subsection (c) of section 1729B is amended by striking "Amounts in the fund are hereby made available," and inserting "Subject to the provisions of appropriations Acts, amounts in the fund shall be available,".

(b) TECHNICAL AMENDMENT.--Subsection (b) of such section is amended by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

SEC. 404. NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM.

(a) EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM- Section 3761(c) is amended by striking `December 31, 2001' and inserting `December 31, 2005'.

(b) AUTHORIZATION OF THE USE OF CERTAIN FEDERAL MEMORANDUMS OF UNDERSTANDING- Section 3762(a)(1) is amended--

(1) by inserting `(A)' after `(1)';

(2) by striking `and' after the semicolon and inserting `or'; and

(3) by adding at the end the following:

`(B) the tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to direct housing loans to Native Americans that the Secretary determines substantially complies with the requirements of subsection (b); and'.

SEC. 405. MODIFICATION OF LOAN ASSUMPTION NOTICE REQUIREMENT.

Section 3714(d) is amended to read as follows:

`(d) With respect to a loan guaranteed, insured, or made under this chapter, the Secretary shall provide, by regulation, that at least one instrument evidencing either the loan or the mortgage or deed of trust therefor, shall conspicuously contain, in such form as the Secretary shall specify, a notice in substantially the following form: `This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent'.'.

SEC. 406. ELIMINATION OF REQUIREMENT FOR PROVIDING A COPY OF NOTICE OF APPEAL TO THE SECRETARY.

(a) REPEAL- Section 7266 is amended by striking subsection (b).

(b) CONFORMING AMENDMENTS- Such section is further amended--

(1) by striking `(1)' after `(a)';

(2) by redesignating paragraph (2) as subsection (b);

(3) by redesignating paragraph (3) as subsection (c) and redesignating subparagraphs (A) and (B) thereof as paragraphs (1) and (2); and

(4) by redesignating paragraph (4) as subsection (d) and by striking `paragraph (3)(B)'
therein and inserting `subsection (c)(2)'.

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SEC. 407. PILOT PROGRAM FOR EXPANSION OF TOLL-FREE TELEPHONE ACCESS TO VETERANS SERVICE REPRESENTATIVES.

(a) PILOT PROGRAM- The Secretary of Veterans Affairs shall conduct a pilot program to test the benefits and cost-effectiveness of expanding access to veterans service representatives of the Department of Veterans Affairs through a toll-free (so-called `1-800') telephone number. Under the pilot program, the Secretary shall expand the available hours of such access to veterans service representatives to not less than 12 hours on each regular business day and not less than six hours on Saturday.

(b) INFORMATION TO BE PROVIDED- The Secretary shall ensure, as part of the pilot program, that veterans service representatives of the Department of Veterans Affairs have available to them (in addition to information about benefits provided under laws administered by the Secretary) information about veterans benefits provided by--

(1) all other departments and agencies of the United States; and

(2) State governments.

(c) CONSULTATION- The Secretary shall establish the pilot program in consultation with the heads of other departments and agencies of the United States that provide veterans benefits.

(d) VETERANS BENEFITS DEFINED- For purposes of this section, the term `veterans benefits' means benefits provided to a person based upon the person's own service, or the service of someone else, in the Armed Forces.

(e) PERIOD OF PILOT PROGRAM- The pilot program shall--

(1) begin not later than six months after the date of the enactment of this Act; and

(2) end at the end of the two-year period beginning on the date on which the program begins.

(f) REPORT- Not later than 120 days after the end of the pilot program, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pilot program. The report shall provide the Secretary's assessment of the benefits and cost-effectiveness of continuing or making permanent the pilot program, including an assessment of the extent to which there is a demand for access to veterans service representatives during the period of expanded access to such representatives provided under the pilot program.

SEC. 408. TECHNICAL AND CLERICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 38, UNITED STATES CODE- Title 38, United States

Code, is amended as follows:

(1)(A) Section 712 is repealed.

(B) The table of sections at the beginning of chapter 7 is amended by striking the item

relating to section 712.

(2) Section 1710B(c)(2)(B) is amended by inserting `on' before `November 30, 1999'.

(3) Section 3695(a)(5) is amended by striking `1610' and inserting `1611'.

(4) Section 4303(13) is amended by striking the second period at the end.

(b) OTHER AMENDMENTS-

(1) Section 1001(a)(2) of the Veterans' Benefits Improvements Act of 1994 (38 U.S.C. 7721 note) is amended by striking `and' at the end of subparagraph (C).

(2) Section 12 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. 7721 note) is amended in the first sentence by striking `to carry out this Act' and all that follows in that sentence and inserting `to carry out this Act $50,000,000 for fiscal year 2001.'.

SEC. 409. CODIFICATION OF RECURRING PROVISIONS IN ANNUAL DEPARTMENT OF VETERANS AFFAIRS APPROPRIATIONS ACTS.

(a) CODIFICATION OF RECURRING PROVISIONS- Section 313 is amended by adding at the end the following new subsections:

`(c) COMPENSATION AND PENSION- Funds appropriated for Compensation and Pensions are available for the following purposes:

`(1) The payment of compensation benefits to or on behalf of veterans as authorized by section 107 and chapters 11, 13, 51, 53, 55, and 61 of this title.

`(2) Pension benefits to or on behalf of veterans as authorized by chapters 15, 51, 53, 55, and 61 of this title and section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

`(3) The payment of benefits as authorized under chapter 18 of this title.

`(4) Burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payments of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors'

Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.), and other benefits as authorized by sections 107, 1312, 1977, and 2106 and chapters 23, 51, 53, 55, and 61 of this title and the World War Adjusted Compensation Act (43 Stat. 122, 123), the Act of May 24, 1928 (Public Law No. 506 of the 70th Congress; 45 Stat. 735), and Public Law 87-875 (76 Stat. 1198).

`(d) MEDICAL CARE- Funds appropriated for Medical Care are available for the following purposes:

`(1) The maintenance and operation of hospitals, nursing homes, and domiciliary facilities.

`(2) Furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department, including care and treatment in facilities not under the jurisdiction of the Department.

`(3) Furnishing recreational facilities, supplies, and equipment.

`(4) Funeral and burial expenses and other expenses incidental to funeral and burial expenses for beneficiaries receiving care from the Department.

`(5) Administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department.

`(6) Oversight, engineering, and architectural activities not charged to project cost.

`(7) Repairing, altering, improving, or providing facilities in the medical facilities and homes under the jurisdiction of the Department, not otherwise provided for, either by contact or by the hire of temporary employees and purchase of materials.

`(8) Uniforms or uniform allowances, as authorized by sections 5901 and 5902 of title 5.

`(9) Aid to State homes, as authorized by section 1741 of this title.

`(10) Administrative and legal expenses of the Department for collecting and recovering amounts owed the Department as authorized under chapter 17 of this title and Public Law 87-693, popularly known as the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.).

`(e) MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES- Funds appropriated for Medical Administration and Miscellaneous Operating Expenses are available for the following purposes:

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`(1) The administration of medical, hospital, nursing home, domiciliary, construction, supply, and research activities authorized by law.

`(2) Administrative expenses in support of planning, design, project management, architectural work, engineering, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department, including site acquisition.

`(3) Engineering and architectural activities not charged to project costs.

`(4) Research and development in building construction technology.

`(f) GENERAL OPERATING EXPENSES- Funds appropriated for General Operating Expenses are available for the following purposes:

`(1) Uniforms or allowances therefor.

`(2) Hire of passenger motor vehicles.

`(3) Reimbursement of the General Services Administration for security guard services.

`(4) Reimbursement of the Department of Defense for the cost of overseas employee mail.

`(5) Administration of the Service Members Occupational Conversion and Training Act of 1992 (10 U.S.C. 1143 note).

`(g) CONSTRUCTION- Funds appropriated for Construction, Major Projects, and for Construction, Minor Projects, are available, with respect to a project, for the following purposes:

`(1) Planning.

`(2) Architectural and engineering services.

`(3) Maintenance or guarantee period services costs associated with equipment guarantees provided under the project.

`(4) Services of claims analysts.

`(5) Offsite utility and storm drainage system construction costs.

`(6) Site acquisition.

`(h) CONSTRUCTION, MINOR PROJECTS- In addition to the purposes specified in subsection (g), funds appropriated for Construction, Minor Projects, are available for--

`(1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Department which are necessary because of loss or damage caused by a natural disaster or catastrophe; and

`(2) temporary measures necessary to prevent or to minimize further loss by such causes.'.

(b) DEFINITION- (1) Chapter 1 is amended by adding at the end the following new section:

`Sec. 117. Definition of cost of direct and guaranteed loans

`For the purpose of any provision of law appropriating funds to the Department for the cost of direct or guaranteed loans, the cost of any such loan, including the cost of modifying any such loan, shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).'.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

`117. Definition of cost of direct and guaranteed loans.'.

(c) EFFECTIVE DATE- Subsections (c) through (h) of section 313 of title 38, United States Code, as added by subsection (a), and section 117 of such title, as added by subsection (b), shall take effect with respect to funds appropriated for fiscal year 2003.

END

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 7/25/2001 9:08:37 AM
Subject: : Reminder

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUL-2001 13:08:37.00
SUBJECT:: Reminder
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Tim, today you should call Bruce Cohen and Sharon Prost about next
week's potential judicial nominees.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>
Sent: 7/25/2001 1:27:17 PM
Subject: : SAP

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JUL-2001 17:27:17.00
SUBJECT:: SAP
TO:Harriet Miers ( CN=Harriet Miers/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I just checked; we had no comments on that SAP. I had sent an
earlier e-mail to OMB with that information. Thanks.
```

From: CN=Anne M. Hughes/OU=WHO/O=EOP [WHO]
To: Jacquelyn D Hayes-Byrd/WHO/EOP@EOP [WHO] <Jacquelyn D Hayes-Byrd>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anita B. McBride/WHO /EOP@EOP [WHO] <Anita B. McBride>
Sent: 7/26/2001 4:22:32 AM
Subject: : Cell phones

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne M. Hughes (CN=Anne M. Hughes/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-JUL-2001 08:22:32.00
SUBJECT:: Cell phones
TO:Jacquelyn D Hayes-Byrd (CN=Jacquelyn D Hayes-Byrd/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Anita B. McBride (CN=Anita B. McBride/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Jacquie-- Will you please help Brett with this question? Thanks--AMH

---------- Forwarded by Anne M. Hughes/WHO/EOP on 07/26/2001 08:20 AM ----------

Brett M. Kavanaugh
07/25/2001 07:17:17 PM
Record Type: Record

To: Anne M. Hughes/WHO/EOP@EOP
cc:
Subject: Cell phones

Are the government-issued cell phones now flat-fee or are there still per-call charges?

From: CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [WHO]
To: Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H. Tennery>
CC: john m. bridgeland/opd/eop@eop [OPD] <john m. bridgeland>;john j. diiulio/who/eop@eop [WHO] <john j. diiulio>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;don r. willett/who/eop@eop [WHO] <don r. willett>;eseale@osaspe.dhhs.gov @ inet [UNKNOWN] <eseale@osaspe.dhhs.gov>
Sent: 7/27/2001 6:07:47 AM
Subject: : Re: GAO Inquiry re:Cabinet Center Audit Reports

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stanley W. Carlson-Thies ( CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUL-2001 10:07:47.00
SUBJECT:: Re: GAO Inquiry re:Cabinet Center Audit Reports
TO:Michele H. Tennery ( CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:john m. bridgeland ( CN=john m. bridgeland/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:john j. diiulio ( CN=john j. diiulio/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:don r. willett ( CN=don r. willett/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:eseale@osaspe.dhhs.gov ( eseale@osaspe.dhhs.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We need to get a statement, ASAP, to each of the cabinet centers, to the
respective departments' press offices, to everyone in OFBCI, and to the
WH press office about how these reports will be handled/released.

Can we say that the reports to the WH are expected at OFBCI no later than
Saturday, the 180th day from the EO, and that OFBCI will prepare a
statement to be released to the press in response to the reports?




Michele H. Tennery
07/27/2001 09:12:19 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: GAO Inquiry re:Cabinet Center Audit Reports


We received a call this morning from Katie Somers of the GAO regarding the
Cabinet Center audit/implementation reports. She says that she is looking
to obtain the reports as she is submitting a report to the Congress. She
specifically wants to obtain the HHS report as soon as it has been issued.
She says that the request from the Congress was generated by Senator Joe
Lieberman and Congressman Elijah Cummings.

Can you please let me know how you would like us to repond to the GAO
inquiry? Ms. Somers can be reached at 202.512.6578.

Many thanks,
Michele
x6-6701
```

Message Sent
To:_____
John M. Bridgeland/OPD/EOP@EOP
John J. DiIulio/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Don R. Willett/WHO/EOP@EOP
eseale@osaspe.dhhs.gov @ inet
Stanley W. Carlson-Thies/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kathryn C. Thompson/OMB/EOP@EOP [OMB] <Kathryn C. Thompson>
Sent: 7/29/2001 11:54:34 AM
Subject: : LRM ALA11 - - Request for Views on HR2540 Veterans Benefits Act
Attachments: P_W6H13004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-JUL-2001 15:54:34.00
SUBJECT:: LRM ALA11 - - Request for Views on HR2540 Veterans Benefits Act
TO:Kathryn C. Thompson (CN=Kathryn C. Thompson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objections.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
07/29/2001 03:52 PM ----------

Allison L. Riepenhoff
07/25/2001 04:34:18 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM ALA11 - - Request for Views on HR2540 Veterans
Benefits Act

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on
07/25/2001 04:34 PM ----------

From: Kathryn C. Thompson on 07/25/2001 04:25:39 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM ALA11 - - Request for Views on HR2540 Veterans
Benefits Act

The following is LRM ID: ALA11 -- Request for Views on H.R. 2540, Veterans Benefits Act. The bill text of H.R. 2540 as reported amended is attached below in Wordperfect format. The document consists of 17 pages.

Please comment on H.R. 2540 by 3 p.m., Friday, July 27th. If I do not hear from you by the deadline, I will assume that you have no objection to the bill as reported amended.

Agencies: This e-mail follows the faxed version of the LRM.

LRM ID: ALA11
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, July 25, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: Request for Views on HR2540 Veterans Benefits Act

DEADLINE: 3 p.m. Friday, July 27, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: H.R. 2540 is an omnibus veterans' benefits bill that incorporates provisions from H.R. 862, H.R. 1406, H.R. 1435, H.R. 1746, H.R. 2359, and H.R. 2361. VA testified on those bills before a House Veterans' Affairs subcommittee on July 10th (LRM ID: KCT55). H.R. 2540 was reported amended by the House Veterans' Affairs Committee on July 24th. The bill text of H.R. 2540 as reported amended is attached.

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Marisa K. Medrano
Robert Marsh
WHGC LRM
OVP LRM
Ingrid M. Schroeder
James J. Jukes
LRM ID: ALA11 SUBJECT: Request for Views on HR2540 Veterans Benefits Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
valrm@mail.va.gov @ znet
dodlrs@osdgc.osd.mil @ znet
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lrm@hhs.gov @ znet
HUD_LRM@hud.gov @ znet
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hq.oc.lrm.ssa@ssa.gov @ znet
llr@do.treas.gov @ znet

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
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Marisa K. Medrano/OPD/EOP@EOP
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WHGC LRM
OVP LRM
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_W6H13004_WHO.TXT_1>

Changes to introduced bill text as amended by House Veterans' Affairs Committee – deletions in strikethrough and additions in bold (reported amended by cmte. on 7/24/01)

HR 2540

107th CONGRESS

1st Session

H. R. 2540

To amend title 38, United States Code, to make various improvements to veterans benefits programs under laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 18, 2001

Mr. SMITH of New Jersey (for himself, Mr. EVANS, Mr. SIMPSON, Mr. REYES, Mr. STUMP, Mr. FILNER, Mr. BILIRAKIS, Ms. BROWN of Florida, Mr. BUYER, Mr. RODRIGUEZ, Mr. BAKER, Mr. SHOWS, Mr. SIMMONS, Mr. UDALL of New Mexico, Mr. BROWN of South Carolina, and Mrs. CAPPS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make various improvements to veterans benefits programs under laws administered by the Secretary of Veterans Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Veterans Benefits Act of 2001'.

(b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

REV_00130259

TITLE I--ANNUAL COST-OF-LIVING ADJUSTMENT IN COMPENSATION AND DIC RATES

Sec. 101. Increase in rates of disability compensation and dependency and indemnity compensation.

Sec. 102. Publication of adjusted rates.

TITLE II--COMPENSATION PROVISIONS

Sec. 201. Presumption that diabetes mellitus (type 2) is service-connected.

Sec. 202. Inclusion of illnesses that cannot be clearly defined in presumption of service connection for Gulf War veterans.

Sec. 203. Preservation of service connection for undiagnosed illnesses to provide for participation in research projects by Gulf War veterans.

TITLE III--ADMINISTRATION OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Sec. 301. Registration fees.

Sec. 302. Administrative authorities.

TITLE IV--OTHER MATTERS

Sec. 401. Payment of insurance proceeds to an alternate beneficiary when first beneficiary cannot be identified.

Sec. 402. Extension of copayment requirement for outpatient prescription medications.

Sec. 403. ~~Repeal of Department of Veterans Affairs Health Services Improvement Fund.~~ **Department of Veterans Affairs Health Services Improvement Fund Made Subject to Appropriations.**

Sec. 404. Native American veteran housing loan pilot program.

Sec. 405. Modification of loan assumption notice requirement.

Sec. 406. Elimination of requirement for providing a copy of notice of appeal to the Secretary.

Sec. 407. Pilot program for expansion of toll-free telephone access to veterans service
representatives.

Sec. 408. Technical and clerical amendments.

Sec. 409. Codification of recurring provisions in annual Department of Veterans Affairs appropriations Acts.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I--ANNUAL COST-OF-LIVING ADJUSTMENT IN COMPENSATION AND DIC RATES

SEC. 101. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT- The Secretary of Veterans Affairs shall, effective on December 1, 2001, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED- The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION- Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS- Each of the dollar amounts in effect under sections 1115(1) of such title.

(3) CLOTHING ALLOWANCE- The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES- The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES- Each of the dollar amounts in effect under section 1311(a)(3) of such title.

REV_00130261

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN- The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY- The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN- The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE- (1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2001.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2001, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE- The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 102. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2002, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section ~~2~~ **101**, as increased pursuant to that section.

TITLE II--COMPENSATION PROVISIONS

SEC. 201. PRESUMPTION THAT DIABETES MELLITUS (TYPE 2) IS SERVICE-CONNECTED.

Section 1116(a)(2) is amended by adding at the end the following new subparagraph:

`(H) Diabetes Mellitus (Type 2).'.

SEC. 202. INCLUSION OF ILLNESSES THAT CANNOT BE CLEARLY

REV_00130262

DEFINED IN PRESUMPTION OF SERVICE CONNECTION.

(a) ILLNESSES THAT CANNOT BE CLEARLY DEFINED- (1) Subsection (a) of section 1117 is amended by inserting `or fibromyalgia, chronic fatigue syndrome, a chronic multisymptom illness, or any other illness that cannot be clearly defined (or combination of illnesses that cannot be clearly defined)' after `illnesses)'.

(2) Subsection (c) of such section is amended by inserting `or fibromyalgia, chronic fatigue syndrome, a chronic multisymptom illness, or any other illness that cannot be clearly defined (or combination of illnesses that cannot be clearly defined)' after `illnesses)'.

(b) SIGNS OR SYMPTOMS THAT MAY INDICATE UNDIAGNOSED ILLNESSES- (1) Section 1117 is further amended by adding at the end the following new subsection:

`(g) For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness include the following:

`(1) Fatigue.

`(2) Unexplained rashes or other dermatological signs or symptoms.

`(3) Headache.

`(4) Muscle pain.

`(5) Joint pain.

`(6) Neurologic signs or symptoms.

`(7) Neuropsychological signs or symptoms.

`(8) Signs or symptoms involving the respiratory system (upper or lower).

`(9) Sleep disturbances.

`(10) Gastrointestinal signs or symptoms.

`(11) Cardiovascular signs or symptoms.

`(12) Abnormal weight loss.

`(13) Menstrual disorders.'.

(2) Section 1118(a) of such title is amended by adding at the end the following new

REV_00130263

paragraph:

`(4) For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness include the signs and symptoms listed in section 1117(g) of this title.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on April 1, 2002.

SEC. 203. PRESERVATION OF SERVICE CONNECTION FOR UNDIAGNOSED ILLNESSES TO PROVIDE FOR PARTICIPATION IN RESEARCH PROJECTS BY GULF WAR VETERANS.

(a) AUTHORITY FOR SECRETARY TO PROVIDE FOR PARTICIPATION WITHOUT LOSS OF BENEFITS- Section 1117 is amended by adding after subsection (g), as added by section 202(b), the following new subsection:

`(h)(1) If the Secretary determines with respect to a medical research project sponsored by the Department that it is necessary for the conduct of the project that Persian Gulf veterans in receipt of compensation under this section or section 1118 of this title participate in the project without the possibility of loss of service connection under either
such section, the Secretary shall provide that service connection granted under either such section for disability of a veteran who participated in the research project may not be terminated.

`(2) Paragraph (1) does not apply in a case in which--

`(A) the original award of compensation or service connection was based on fraud; or

`(B) it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.

`(3) The Secretary shall publish in the Federal Register a notice of each determination made by the Secretary under paragraph (1) with respect to a medical research project.'.

(b) EFFECTIVE DATE- The authority provided by subsection (h) of section 1117 of title 38, United States Code, as added by subsection (a), may be used by the Secretary of Veterans Affairs with respect to any medical research project of the Department of Veterans Affairs, whether commenced before, on, or after the date of the enactment of this Act.

TITLE III--ADMINISTRATION OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

REV_00130264

SEC. 301. REGISTRATION FEES.

(a) FEES FOR COURT-SPONSORED ACTIVITIES- Subsection (a) of section 7285 is amended by adding at the end the following new sentence: `The Court may also impose registration fees on persons participating in a judicial conference convened pursuant to section 7286 of this title or any other court-sponsored activity.'.

(b) USE OF FEES- Subsection (b) of such section is amended by striking `for the purposes of (1)' and all that follows through the period and inserting `for the following purposes:

`(1) Conducting investigations and proceedings, including employing independent counsel, to pursue disciplinary matters.

`(2) Defraying the expenses of--

`(A) judicial conferences convened pursuant to section 7286 of this title; and

`(B) other activities and programs that are designed to support and foster bench and bar communication and relationships or the study, understanding, public commemoration, or improvement of veterans law or of the work of the Court.'.

(c) CLERICAL AMENDMENTS- (1) The heading for such section is amended to read as follows:

`Sec. 7285. Practice and registration fees'.

(2) The item relating to such section in the table of sections at the beginning of chapter 72 is amended to read as follows:

`7285. Practice and registration fees.'.

SEC. 302. ADMINISTRATIVE AUTHORITIES.

(a) IN GENERAL- Subchapter III of chapter 72 is amended by adding at the end the following new section:

`Sec. 7287. Administration

`Notwithstanding any other provision of law, the Court of Appeals for Veterans Claims may exercise, for purposes of management, administration, and expenditure of funds, the authorities provided for such purposes by any provision of law (including any limitation with respect to such provision) applicable to a court of the United States as defined in section 451 of title 28, except to the extent that such provision of law is inconsistent with

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a provision of this chapter.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item related to section 7286 the following new item:

7287. Administration.'.

TITLE IV--OTHER MATTERS

SEC. 401. PAYMENT OF INSURANCE PROCEEDS TO AN ALTERNATE BENEFICIARY WHEN FIRST BENEFICIARY CANNOT BE IDENTIFIED.

(a) NSLI- Section 1917 is amended by adding at the end the following new subsection:

`(f)(1) Following the death of the insured--

`(A) if the first beneficiary otherwise entitled to payment of the insurance proceeds does not make a claim for such payment within three years after the death of the insured, payment of the proceeds may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and

`(B) if within five years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment of the insurance proceeds may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled to the proceeds of the policy.

`(2) Payment of insurance proceeds under paragraph (1) shall be a bar to recovery by any other person.'.

(b) USGLI- Section 1951 is amended--

(1) by inserting `(a)' before `United States Government'; and

(2) by adding at the end the following new subsection:

`(b)(1) Following the death of the insured--

`(A) if the first beneficiary otherwise entitled to payment of the insurance proceeds does not make a claim for such payment within three years after the death of the insured, payment of the proceeds may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first

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beneficiary had predeceased the insured; and

`(B) if within five years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment of the insurance proceeds may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled to the proceeds of the policy.

`(2) Payment of insurance proceeds under paragraph (1) shall be a bar to recovery by any other person.'.

(c) TRANSITION PROVISION- In the case of a person insured under subchapter I or II of chapter 19 of title 38, United States Code, who dies before the date of the enactment of this Act, the three-year and five-year periods specified in subsection (f)(1) of section 1917 of title 38, United States Code, as added by subsection (a), and subsection (b)(1) of section 1951 of such title, as added by subsection (b), shall for purposes of the applicable subsection be treated as being the three-year and five-year periods, respectively, beginning on the date of the enactment of this Act.

SEC. 402. EXTENSION OF COPAYMENT REQUIREMENT FOR OUTPATIENT PRESCRIPTION MEDICATIONS.

Section 1722A(c) is amended by striking `September 30, 2002' and inserting `September 30, 2006'.

~~SEC. 403. REPEAL OF DEPARTMENT OF VETERANS AFFAIRS HEALTH SERVICES IMPROVEMENT FUND.~~

~~(a) REPEAL- (1) Section 1729B is repealed. Any balance as of the date of the enactment of this Act in the Department of Veterans Affairs Health Services Improvement Fund established under such section shall be transferred to the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of title 38, United States Code.~~

~~(2) The table of sections at the beginning of chapter 17 is amended by striking the item relating to section 1729B.~~

~~(b) ADDITIONAL DEPOSITS FOR MEDICAL CARE COLLECTIONS FUND- Section 1729A(b) is amended--~~

~~(1) by redesignating paragraph (7) as paragraph (9); and~~

~~(2) by inserting after paragraph (6) the following new paragraphs:~~

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~~`(7) Section 8165(a) of this title.~~

~~`(8) Section 113 of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117; 38 U.S.C. 8111 note).'.~~

~~(c) CONFORMING AMENDMENTS-~~

~~(1) Section 1722A(c) is amended--~~

~~(A) in the first sentence, by striking `under subsection (a)' and inserting `under this section'; and~~

~~(B) by striking the second sentence.~~

~~(2) Section 8165 is amended by striking `Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of this title' and inserting `Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title'.~~

~~(3) Section 113(b) of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117; 38 U.S.C. 8111 note) is amended by striking `Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of title 38 United States Code, as added by section 202' and inserting `Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of title 38, United States Code'.~~

SEC. 403. DEPARTMENT OF VETERANS AFFAIRS HEALTH SERVICES IMPROVEMENT FUND MADE SUBJECT TO APPROPRIATIONS.

(a) AMOUNTS TO BE SUBJECT TO APPROPRIATIONS.--Effective October 1, 2002, subsection (c) of section 1729B is amended by striking "Amounts in the fund are hereby made available," and inserting "Subject to the provisions of appropriations Acts, amounts in the fund shall be available,".

(b) TECHNICAL AMENDMENT.--Subsection (b) of such section is amended by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

SEC. 404. NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM.

(a) EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM- Section 3761(c) is amended by striking `December 31, 2001' and inserting `December 31, 2005'.

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(b) AUTHORIZATION OF THE USE OF CERTAIN FEDERAL MEMORANDUMS OF UNDERSTANDING- Section 3762(a)(1) is amended--

(1) by inserting `(A)' after `(1)';

(2) by striking `and' after the semicolon and inserting `or'; and

(3) by adding at the end the following:

`(B) the tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to direct housing loans to Native Americans that the Secretary determines substantially complies with the requirements of subsection (b); and'.

SEC. 405. MODIFICATION OF LOAN ASSUMPTION NOTICE REQUIREMENT.

Section 3714(d) is amended to read as follows:

`(d) With respect to a loan guaranteed, insured, or made under this chapter, the Secretary shall provide, by regulation, that at least one instrument evidencing either the loan or the mortgage or deed of trust therefor, shall conspicuously contain, in such form as the Secretary shall specify, a notice in substantially the following form: `This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent'.'.

SEC. 406. ELIMINATION OF REQUIREMENT FOR PROVIDING A COPY OF NOTICE OF APPEAL TO THE SECRETARY.

(a) REPEAL- Section 7266 is amended by striking subsection (b).

(b) CONFORMING AMENDMENTS- Such section is further amended--

(1) by striking `(1)' after `(a)';

(2) by redesignating paragraph (2) as subsection (b);

(3) by redesignating paragraph (3) as subsection (c) and redesignating subparagraphs (A) and (B) thereof as paragraphs (1) and (2); and

(4) by redesignating paragraph (4) as subsection (d) and by striking `paragraph (3)(B)'
therein and inserting `subsection (c)(2)'.

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SEC. 407. PILOT PROGRAM FOR EXPANSION OF TOLL-FREE TELEPHONE ACCESS TO VETERANS SERVICE REPRESENTATIVES.

(a) PILOT PROGRAM- The Secretary of Veterans Affairs shall conduct a pilot program to test the benefits and cost-effectiveness of expanding access to veterans service representatives of the Department of Veterans Affairs through a toll-free (so-called `1-800') telephone number. Under the pilot program, the Secretary shall expand the available hours of such access to veterans service representatives to not less than 12 hours on each regular business day and not less than six hours on Saturday.

(b) INFORMATION TO BE PROVIDED- The Secretary shall ensure, as part of the pilot program, that veterans service representatives of the Department of Veterans Affairs have available to them (in addition to information about benefits provided under laws administered by the Secretary) information about veterans benefits provided by--

(1) all other departments and agencies of the United States; and

(2) State governments.

(c) CONSULTATION- The Secretary shall establish the pilot program in consultation with the heads of other departments and agencies of the United States that provide veterans benefits.

(d) VETERANS BENEFITS DEFINED- For purposes of this section, the term `veterans benefits' means benefits provided to a person based upon the person's own service, or the service of someone else, in the Armed Forces.

(e) PERIOD OF PILOT PROGRAM- The pilot program shall--

(1) begin not later than six months after the date of the enactment of this Act; and

(2) end at the end of the two-year period beginning on the date on which the program begins.

(f) REPORT- Not later than 120 days after the end of the pilot program, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pilot program. The report shall provide the Secretary's assessment of the benefits and cost-effectiveness of continuing or making permanent the pilot program, including an assessment of the extent to which there is a demand for access to veterans service representatives during the period of expanded access to such representatives provided under the pilot program.

SEC. 408. TECHNICAL AND CLERICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 38, UNITED STATES CODE- Title 38, United States

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Code, is amended as follows:

(1)(A) Section 712 is repealed.

(B) The table of sections at the beginning of chapter 7 is amended by striking the item

relating to section 712.

(2) Section 1710B(c)(2)(B) is amended by inserting `on' before `November 30, 1999'.

(3) Section 3695(a)(5) is amended by striking `1610' and inserting `1611'.

(4) Section 4303(13) is amended by striking the second period at the end.

(b) OTHER AMENDMENTS-

(1) Section 1001(a)(2) of the Veterans' Benefits Improvements Act of 1994 (38 U.S.C. 7721 note) is amended by striking `and' at the end of subparagraph (C).

(2) Section 12 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. 7721 note) is amended in the first sentence by striking `to carry out this Act' and all that follows in that sentence and inserting `to carry out this Act $50,000,000 for fiscal year 2001.'.

SEC. 409. CODIFICATION OF RECURRING PROVISIONS IN ANNUAL DEPARTMENT OF VETERANS AFFAIRS APPROPRIATIONS ACTS.

(a) CODIFICATION OF RECURRING PROVISIONS- Section 313 is amended by adding at the end the following new subsections:

`(c) COMPENSATION AND PENSION- Funds appropriated for Compensation and Pensions are available for the following purposes:

`(1) The payment of compensation benefits to or on behalf of veterans as authorized by section 107 and chapters 11, 13, 51, 53, 55, and 61 of this title.

`(2) Pension benefits to or on behalf of veterans as authorized by chapters 15, 51, 53, 55, and 61 of this title and section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

`(3) The payment of benefits as authorized under chapter 18 of this title.

`(4) Burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payments of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors'

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Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.), and other benefits as authorized by sections 107, 1312, 1977, and 2106 and chapters 23, 51, 53, 55, and 61 of this title and the World War Adjusted Compensation Act (43 Stat. 122, 123), the Act of May 24, 1928 (Public Law No. 506 of the 70th Congress; 45 Stat. 735), and Public Law 87-875 (76 Stat. 1198).

`(d) MEDICAL CARE- Funds appropriated for Medical Care are available for the following purposes:

`(1) The maintenance and operation of hospitals, nursing homes, and domiciliary facilities.

`(2) Furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department, including care and treatment in facilities not under the jurisdiction of the Department.

`(3) Furnishing recreational facilities, supplies, and equipment.

`(4) Funeral and burial expenses and other expenses incidental to funeral and burial expenses for beneficiaries receiving care from the Department.

`(5) Administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department.

`(6) Oversight, engineering, and architectural activities not charged to project cost.

`(7) Repairing, altering, improving, or providing facilities in the medical facilities and
homes under the jurisdiction of the Department, not otherwise provided for, either by contact or by the hire of temporary employees and purchase of materials.

`(8) Uniforms or uniform allowances, as authorized by sections 5901 and 5902 of title 5.

`(9) Aid to State homes, as authorized by section 1741 of this title.

`(10) Administrative and legal expenses of the Department for collecting and recovering amounts owed the Department as authorized under chapter 17 of this title and Public Law 87-693, popularly known as the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.).

`(e) MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES- Funds appropriated for Medical Administration and Miscellaneous Operating Expenses are available for the following purposes:

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`(1) The administration of medical, hospital, nursing home, domiciliary, construction, supply, and research activities authorized by law.

`(2) Administrative expenses in support of planning, design, project management, architectural work, engineering, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department, including site acquisition.

`(3) Engineering and architectural activities not charged to project costs.

`(4) Research and development in building construction technology.

`(f) GENERAL OPERATING EXPENSES- Funds appropriated for General Operating Expenses are available for the following purposes:

`(1) Uniforms or allowances therefor.

`(2) Hire of passenger motor vehicles.

`(3) Reimbursement of the General Services Administration for security guard services.

`(4) Reimbursement of the Department of Defense for the cost of overseas employee mail.

`(5) Administration of the Service Members Occupational Conversion and Training Act of 1992 (10 U.S.C. 1143 note).

`(g) CONSTRUCTION- Funds appropriated for Construction, Major Projects, and for Construction, Minor Projects, are available, with respect to a project, for the following purposes:

`(1) Planning.

`(2) Architectural and engineering services.

`(3) Maintenance or guarantee period services costs associated with equipment guarantees provided under the project.

`(4) Services of claims analysts.

`(5) Offsite utility and storm drainage system construction costs.

`(6) Site acquisition.

REV_00130273

`(h) CONSTRUCTION, MINOR PROJECTS- In addition to the purposes specified in subsection (g), funds appropriated for Construction, Minor Projects, are available for--

`(1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Department which are necessary because of loss or damage caused by a natural disaster or catastrophe; and

`(2) temporary measures necessary to prevent or to minimize further loss by such causes.'.

(b) DEFINITION- (1) Chapter 1 is amended by adding at the end the following new section:

`Sec. 117. Definition of cost of direct and guaranteed loans

`For the purpose of any provision of law appropriating funds to the Department for the cost of direct or guaranteed loans, the cost of any such loan, including the cost of modifying any such loan, shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).'.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

`117. Definition of cost of direct and guaranteed loans.'.

(c) EFFECTIVE DATE- Subsections (c) through (h) of section 313 of title 38, United States Code, as added by subsection (a), and section 117 of such title, as added by subsection (b), shall take effect with respect to funds appropriated for fiscal year 2003.

END

REV_00130274

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Amiee L. Albertson/OMB/EOP@EOP [OMB] <Amiee L. Albertson>
Sent: 7/29/2001 12:05:05 PM
Subject: : LRM ALA10 - - VETERANS AFFAIRS Report on HR442 To increase the maximum amount of a home loan guarantee available to a veteran.
Attachments: P_P7H13004_WHO.TXT_1; P_P7H13004_WHO.TXT_2

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-JUL-2001 16:05:05.00
SUBJECT:: LRM ALA10 - - VETERANS AFFAIRS Report on HR442 To increase the maximum amount of a home loan guarantee available to a veteran.
TO:Amiee L. Albertson (CN=Amiee L. Albertson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/29/2001 04:04 PM ----------

Allison L. Riepenhoff
07/23/2001 11:34:34 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM ALA10 - - VETERANS AFFAIRS Report on HR442 To increase the maximum amount of a home loan guarantee available to a veteran.

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 07/23/2001 11:34 AM ----------

From: Amiee L. Albertson on 07/23/2001 11:29:59 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM ALA10 - - VETERANS AFFAIRS Report on HR442 To increase the maximum amount of a home loan guarantee available to a veteran.

Attached please find a VA report on H.R. 442, which would increase the maximum VA housing loan guarantee. A copy of the bill is also attached.

Please respond by 2:00 p.m., Friday, July 27.

Note to agencies: hard copy to follow.

LRM ID: ALA10
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, July 23, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: Amiee L. Albertson
PHONE: (202)395-3265 FAX: (202)395-6148
SUBJECT: VETERANS AFFAIRS Report on HR442 To increase the maximum amount of a home loan guarantee available to a veteran.

DEADLINE: 2:00 p.m. Friday, July 27, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This report states VA support for H.R. 442, which would increase the maximum VA housing loan guarantee from $50,750 to $63,175. VA states that the guarantee has not been increased since October 1994 and that housing prices have increased significantly in past six and a half years. The guarantee increase proposed by H.R. 442 would have the effect of increasing the maximum amount lenders are willing to finance from the current $203,000 to $252,700. VA argues that this is consistent with recent increases in loan limits established by FHA, HUD, Fannie Mae, and Freddie Mac. A copy of the bill is attached.

DISTRIBUTION LIST

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LRM ID: ALA10 SUBJECT: VETERANS AFFAIRS Report on HR442 To increase the maximum amount of a home loan guarantee available to a veteran.
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this

response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Amiee L. Albertson Phone: 395-3265 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4864

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Robin Cleveland/OMB/EOP@EOP
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Danielle M. Simonetta/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP

James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_P7H13004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_P7H13004_WHO.TXT_2>

THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON

The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Evans:

We are pleased to respond to your request for the views of the Department of Veterans Affairs (VA) on H.R. 442, 107th Congress, a bill "To amend title 38, United States Code, to increase the maximum amount of a home loan guarantee available to a veteran."

This bill would increase the maximum VA housing loan guaranty from $50,750 to $63,175. For the reasons discussed below, VA believes this increase in the guaranty is justified. Accordingly, VA favors the enactment of this measure.

Neither the law nor regulations set a maximum principal amount for a VA guaranteed home loan, so long as the total loan amount does not exceed the reasonable value of the property securing the loan, and the veteran's present and anticipated income is sufficient to afford the loan payments. As a practical matter, requirements set by secondary market institutions limit the maximum VA loan to four times the guaranty. The guaranty increase proposed by H.R. 442 would have the effect of increasing the maximum amount lenders are willing to finance from the current $203,000 to $252,700.

The VA guaranty has not been increased since October 1994. Housing prices have increased significantly during the past six-and-a-half years. Today, in a number of higher-cost areas, such as Atlanta, Anaheim/Santa Ana, Boston, Denver, Honolulu, Los Angeles, New York City, San Diego, San Francisco, and Seattle, the median home purchase price exceeds the effective VA maximum loan.

Increasing the effective maximum VA home loan to $252,700 is consistent with recent increases in the loan limits for other housing programs. For example, the limit for a loan insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) was increased this year to $239,250. The conventional conforming loan limit for the Federal National Mortgage Association (FNMA or "Fannie Mae") and the Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac") was increased effective January 1, 2001, to $275,000.

2.

The Honorable Lane Evans

VA estimates that, under the provisions of current law, enactment of H.R. 442 would increase the loan subsidy costs to the Veterans Housing Benefit Program Fund by $4.3 million in FY 2002, and have a 10-year subsidy cost of approximately $140.9 million. The year-by-year cost is as follows:

FISCAL YEAR	INCREASED SUBSIDY OUTLAYS ($ MILLION)
2002	$ 4.3
2003	6.2
2004	6.4
2005	7.1
2006	7.9
2007	8.8
2008	9.7
2009	27.3
2010	31.3
2011	31.9
Total	**$ $140.90**

It is important to note that the above cost estimate is based, in part, on the fact that certain cost-saving provisions, originally enacted as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA), sunset on September 30, 2008. We fully expect that those items, *i.e.*, increased VA loan fees and including resale losses in computing "net value" for purposes of the VA "no-bid" formula, will be extended prior to their scheduled expiration. Assuming that those OBRA provisions are extended until at least September 30, 2011, the costs for fiscal years 2009 – 2011 would be as follows:

FISCAL YEAR	INCREASED SUBSIDY OUTLAYS ($ MILLION)
2009	10.5
2010	11.1
2011	11.5

The revised 10-year subsidy cost of the guaranty increase would be $83.5 million.

A similar letter is being sent to the Honorable Christopher H. Smith, Chairman, Committee on Veterans Affairs.

We have been advised by the Office of Management and Budget . . . .

REV_00130280

I

107TH CONGRESS
1ST SESSION

H. R. 442

To amend title 38, United States Code, to increase the maximum amount of a home loan guarantee available to a veteran.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2001

Mr. FILNER (for himself and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

---

A BILL

To amend title 38, United States Code, to increase the maximum amount of a home loan guarantee available to a veteran.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN MAXIMUM AMOUNT OF HOUSING LOAN GUARANTEE.

(a) IN GENERAL.—Subparagraph (A)(i)(IV) of section 3703(a)(1) of title 38, United States Code, is amended by striking "$50,750" and inserting "$63,175".

REV_00130281

(b) CONFORMING AMENDMENT.—Subparagraph (B) of that section is amended by striking ''$50,750'' and inserting ''$63,175''.

○

REV_00130282

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
Sent: 7/29/2001 4:05:41 PM
Subject: : Reminder

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-JUL-2001 20:05:41.00
SUBJECT:: Reminder
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

. . . to add Heather Wingate (Leg Affairs) to the e-mail list for the
Wednesday WHJSC meetings.
```

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 7/30/2001 11:14:48 AM
Subject: : Please call Anne Womack

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-JUL-2001 15:14:48.00
SUBJECT:: Please call Anne Womack
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett-

Please call Anne. A reporter has been asking about POTUS's reasons for
not using e-mail, and wanted to know if it was advised by the Counsel's
Office. Thanks.

-ALR
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne M. Hughes/WHO/EOP@EOP [WHO] <Anne M. Hughes>
Sent: 7/30/2001 11:02:15 AM
Subject: : In case you do not have
Attachments: P_KO023004_WHO.TXT_1.doc; P_KO023004_WHO.TXT_2.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-JUL-2001 15:02:15.00
SUBJECT:: In case you do not have
TO:Anne M. Hughes ( CN=Anne M. Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KO023004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KO023004_WHO.TXT_2>
```

June 8, 2001

MEMORANDUM FOR VICKERS MEADOWS

FROM: BRETT M. KAVANAUGH

SUBJECT: Official Travelers

As we have discussed, certain government officers and employees are always considered to be traveling on official business when traveling with the President. They include the Chief of Staff, the National Security Advisor, the Personal Aide to the President, the President's secretary, the doctor, the photographer, White House Military Office officials, and Secret Service and military personnel.

On a case by case basis, certain other officials may also be considered official travelers, such as the Press Secretary.

As to travel to political events, otherwise official travelers who engage in political activity during the trip (the Chief of Staff, for example) are then considered political travelers for that trip. That determination should be made on a case by case basis for political trips.

The above analysis also applies to those who travel with the First Lady.

Recommended Travel Policies

Travel on Air Force One with President for all trips other than political trips	No reimbursement for President or guests
Travel on Air Force One with President for political trips	Appropriate political entity pays costs; however, certain employees are always considered official, including Personal Aide, secretary, doctor, photographer, National Security Advisor, Director of White House Military Office, and Secret Service and military personnel
Travel on Air Force One with President for mixed official/political trips	Costs are allocated by formula between government and political entity
Travel on Military Aircraft with First Lady for official trips	No reimbursement for First Lady or guests
Travel on Military Aircraft with First Lady for political trips	Appropriate political entity pays costs; however, certain employees are always considered official, including Personal Aide, secretary, and Chief of Staff
Travel on Military Aircraft with First Lady for personal trips	First Lady and unofficial guests reimburse at commercial economy class rate, plus tax, plus one dollar; certain employees are always considered official, including Personal Aide, secretary, and Chief of Staff
Travel on Military Helicopter	No reimbursement except when helicopter travels directly to a political event or a political party guest travels on the helicopter

From:	CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	adrien.silas@usdoj.gov @ znet [UNKNOWN] <adrien.silas@usdoj.gov>
Sent:	7/31/2001 10:40:54 AM
Subject:	: Re: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection of Inbound and Outbound Mail

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic ( CN=Lisa J. Macecevic/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:31-JUL-2001 14:40:54.00
SUBJECT:: Re: Bringing More Information
Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and
Inspection of Inbound and Outbound Mail
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:adrien.silas@usdoj.gov ( adrien.silas@usdoj.gov @ znet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

My contact is Adrien Silas...
Adrien - do you have a name for someone at OLC or anyone else at DoJ who
is handling this issue to give to WH Counsel's Office?
```

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/31/2001 10:51:20 AM
Subject: : FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:31-JUL-2001 14:51:20.00
SUBJECT:: FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

DoJ contact appears to be Dyone Mitchell.
---------- Forwarded by Lisa J. Macecevic/OMB/EOP on 07/31/2001 02:51 PM ----------

"Silas, Adrien" <Adrien.Silas@usdoj.gov>
07/31/2001 02:47:41 PM
Record Type: Record

To: "Mitchell, Dyone" <Dyone.Mitchell@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
cc: Lisa J. Macecevic/OMB/EOP
Subject: FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

The message we discussed.

-----Original Message-----
From: Lisa_J._Macecevic@omb.eop.gov [mailto:Lisa_J._Macecevic@omb.eop.gov]
Sent: Tuesday, July 31, 2001 2:41 PM
To: Brett_M._Kavanaugh@who.eop.gov
Cc: Silas, Adrien
Subject: Re: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

My contact is Adrien Silas...
Adrien - do you have a name for someone at OLC or anyone else at DoJ who is handling this issue to give to WH Counsel's Office?

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/31/2001 11:07:36 AM
Subject: : FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:31-JUL-2001 15:07:36.00
SUBJECT:: FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you want me to get you a phone number for this person?

---------- Forwarded by Lisa J. Macecevic/OMB/EOP on 07/31/2001 03:07 PM ----------

From: Lisa J. Macecevic on 07/31/2001 02:50:00 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

DoJ contact appears to be Dyone Mitchell.
---------- Forwarded by Lisa J. Macecevic/OMB/EOP on 07/31/2001 02:51 PM ----------

"Silas, Adrien" <Adrien.Silas@usdoj.gov>
07/31/2001 02:47:41 PM
Record Type: Record

To: "Mitchell, Dyone" <Dyone.Mitchell@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
cc: Lisa J. Macecevic/OMB/EOP
Subject: FW: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

The message we discussed.

-----Original Message-----
From: Lisa_J._Macecevic@omb.eop.gov [mailto:Lisa_J._Macecevic@omb.eop.gov]
Sent: Tuesday, July 31, 2001 2:41 PM
To: Brett_M._Kavanaugh@who.eop.gov
Cc: Silas, Adrien
Subject: Re: Bringing More Information Re: LRM LJM32 - - TREASURY (Customs); US Postal Service Study on the Handling and Inspection o...

My contact is Adrien Silas...
Adrien - do you have a name for someone at OLC or anyone else at DoJ who is handling this issue to give to WH Counsel's Office?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lisa J. Macecevic/OMB/EOP@EOP [OMB] <Lisa J. Macecevic>
Sent: 7/31/2001 1:46:15 PM
Subject: : REMINDER -- COMMENTS DUE AT 5:00 P.M. TODAY Re: LRM LJM33 - - TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury
Attachments: P_UX033004_WHO.TXT_1.doc; P_UX033004_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-JUL-2001 17:46:15.00
SUBJECT:: REMINDER -- COMMENTS DUE AT 5:00 P.M. TODAY
Re: LRM LJM33 - - TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury
TO:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/31/2001 05:45 PM ----------

Allison L. Riepenhoff
07/31/2001 05:23:47 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: REMINDER -- COMMENTS DUE AT 5:00 P.M. TODAY
Re: LRM LJM33 - - TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 07/31/2001 05:23 PM ----------

From: Lisa J. Macecevic on 07/31/2001 05:07:27 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
bcc:
Subject: REMINDER -- COMMENTS DUE AT 5:00 P.M. TODAY
Re: LRM LJM33 - - TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury

Comments are due on this LRM at 5:00 today.
We are planning on clearing this draft bill this evening; please let me know whether or not you have any comments.
Thank you very much!!

From: Lisa J. Macecevic on 07/30/2001 06:38:05 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:

Subject: LRM LJM33 - - TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury

In appropriations legislation in 1995, the Community Development Financial Institutions (CDFI) Fund was merged into the Department of the Treasury and the Fund Administrator's powers were delegated to the Treasury Secretary. The attached language is intended to clarify Congress' intent to make this arrangement permanent. It amends the Community Development Banking and Financial Institutions Act of 1994. We understand this concept has been cleared informally by Treasury with the Senate Banking Committee, the House Financial Services Committee, and the House VA/HUD Appropriations Subcommittee.

Please return any comments on the attached draft bill and sectional analysis
by tomorrow, Tuesday, July 31st by 5:00 P.M. Thank you.

Draft Bill --> - treas29aamd.doc
Sectional Analysis --> - treas29asec.wpd

LRM ID: LJM33
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, July 30, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury

DEADLINE: 5:00 P.M. Tomorrow Tuesday, July 31, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: In appropriations legislation in 1995, the Community Development Financial Institutions (CDFI) Fund was merged into the Department of the Treasury and the Fund Administrator's powers were delegated to the Treasury Secretary. The attached language is intended to clarify Congress' intent to make this arrangement permanent. It amends the Community Development Banking and Financial Institutions Act of 1994. We understand this concept has been cleared informally by Treasury with the Senate Banking Committee, the House Financial Services Committee, and the House VA/HUD Appropriations Subcommittee.

Please return any comments on the attached draft bill and sectional analysis
by tomorrow, Tuesday, July 31st by 5:00 P.M. Thank you.

DISTRIBUTION LIST

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James J. Jukes
LRM ID: LJM33 SUBJECT: TREASURY Draft Bill to Make Technical Corrections to Reflect Status of the CDFI Fund Within Treasury

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

REV_00130357

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Andrew Abrams/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Lloyd A. Blanchard/OMB/EOP@EOP
Michael K. Berkholtz/OMB/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Rosalyn J. Rettman/OMB/EOP@EOP
Jay P. Lefkowitz/OMB/EOP@EOP
WHGC LRM
Alberto R. Gonzales/WHO/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Alexander T. Hunt/OMB/EOP@EOP
Jefferson B. Hill/OMB/EOP@EOP
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Rosemarie W. Dale/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Elizabeth L. Rossman/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
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Kirsten A. Chadwick/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Dylan C. Glenn/OPD/EOP@EOP
Clay Johnson III/WHO/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

Message Sent
To:_____
andrew abrams/omb/eop@eop
james boden/omb/eop@eop
alan b. rhinesmith/omb/eop@eop
lloyd a. blanchard/omb/eop@eop
michael k. berkholtz/omb/eop@eop
steven d. aitken/omb/eop@eop
rosalyn j. rettman/omb/eop@eop
jay p. lefkowitz/omb/eop@eop
WHGC LRM
alberto r. gonzales/who/eop@eop
k. philippa malmgren/opd/eop@eop
alexander t. hunt/omb/eop@eop
jefferson b. hill/omb/eop@eop
eric c. pelletier/omb/eop@eop
elizabeth l. rossman/omb/eop@eop
christine c. mccarlie/omb/eop@eop
brett s. loper/omb/eop@eop
danielle m. simonetta/omb/eop@eop

brian c. conklin/who/eop@eop
dirksen lehman/who/eop@eop
augustine t. smythe/omb/eop@eop
rebecca e. davis/omb/eop@eop
kirsten a. chadwick/who/eop@eop
kristen silverberg/who/eop@eop
dylan c. glenn/opd/eop@eop
clay johnson iii/who/eop@eop
richard e. green/omb/eop@eop
james j. jukes/omb/eop@eop

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UX033004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UX033004_WHO.TXT_2>

SEC. _ _. TECHNICAL CORRECTIONS TO REFLECT STATUS OF THE FUND WITHIN TREASURY DEPARTMENT; MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) (1) Section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702) is amended--

"(A) by striking paragraph (1);

"(B) by redesignating paragraphs (2) through (17) as paragraphs (1) through (16), respectively; and

"(C) by inserting after paragraph (16), as so redesignated, the following new paragraph:

"(17) SECRETARY – Except in the case of section 104(d)(2), the term 'Secretary' means the Secretary of the Treasury.".

(2) The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) is amended (other than in section 118) by striking "Administrator" each place such term appears and inserting "Secretary".

(b) (1) Section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)) is amended to read as follows:

"(a) ESTABLISHMENT --

"(1) IN GENERAL.--There is established in the Department of the Treasury a Community Development Financial Institutions Fund that shall have the functions specified by this subtitle and subtitle B of Title II. The offices of the Fund shall be in Washington, D.C.

"(2) WHOLLY OWNED GOVERNMENT CORPORATION.--The Fund shall be a wholly owned government corporation within the Department of the Treasury and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subtitle.".

(2) Section 104(b) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(b)) is amended to read as follows:

"(b) MANAGEMENT OF FUND.--

"(1) AUTHORITY OF SECRETARY OF THE TREASURY.--All functions of the Fund shall be performed by or under the supervision of the Secretary.

"(2) APPOINTMENT OF OFFICERS AND EMPLOYEES.--The Secretary may appoint such officers and employees of the Fund, including a Director, as the Secretary deems necessary or appropriate.".

(3) (A) Section 118 of the Community Development Banking and Financial Institutions Act of 1994 is amended to read as follows:

"SEC. 118. INSPECTOR GENERAL.--

"The Inspector General of the Department of the Treasury shall be the Inspector General of the Fund.".

(B) Section 11 of the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended--

(i) in paragraph (1), by striking "; the Administrator of the Community Development Financial Institutions Fund;" and

(ii) in paragraph (2), by striking "the Community Development Financial Institutions Fund,".

(4) Section 119(a)(1) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4717(a)(1)) is amended to read as follows:

"(1) IN GENERAL.--The Secretary of the Treasury may promulgate such rules, regulations and procedures as may be necessary to carry out this subtitle.".

SECTION-BY-SECTION ANALYSIS

to accompany Sec. _ _. Technical Corrections to the Community Development Banking and Financial Institutions Act of 1994 to reflect status of the CDFI Fund within the Treasury Department.

Section _ _ is a technical amendment to the Community Development Banking and Financial Institutions Act of 1994 to reflect the intent of subsequent appropriations provisions that placed the Community Development Financial Institutions Fund ("the Fund") in the Department of the Treasury, and gave all powers and rights of the Administrator to the Secretary of the Treasury.

Subsection (a) eliminates the concept of a Presidentially appointed Administrator of the Fund and substitutes the term "Secretary" for the term "Administrator" throughout the Act.

Subsection (b) clarifies that the Fund is established within the Department of the Treasury and that all functions of the Fund are performed by or under the supervision of the Secretary of the Treasury. Subsection (b) also makes technical corrections to clarify that the Inspector General of the Treasury Department is the Inspector General of the Fund.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
CC: dinh, viet <viet.dinh@usdoj.gov>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rabjohns, lori <lori.rabjohns@usdoj.gov>;newstead, jennifer <jennifer.newstead@usdoj.gov>
Sent: 8/2/2001 4:18:28 AM
Subject: : RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-AUG-2001 08:18:28.00
SUBJECT:: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"dinh, viet" <viet.dinh@usdoj.gov> ("dinh, viet" <viet.dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:"rabjohns, lori" <lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return requested) ("rabjohns, lori" <lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])
READ:UNKNOWN
CC:"newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt notification requested) (ipm return requested) ("newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I'm there

Heather Wingate
08/01/2001 09:19:28 PM
Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov>
cc: brett m. kavanaugh/who/eop@eop, "rabjohns, lori" <lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return requested), "newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt notification requested) (ipm return requested)
bcc:
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Brett, would you confirm with me that you'll be there tomorrow? We really need some one from your office at this. Thanks, HW

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
08/01/2001 06:31:41 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc: "Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Newstead, Jennifer"

<Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Heather,

Would it be moving mountains to change the meeting time to either 2:00 or 4:30 tomorrow? The reason is that I want to schedule a press backgrounder with me and Brett here at DoJ at 3:00, right after Ari's press conference, and Jennifer has a conflicting meeting on Hill. If that would put out our friends terribly, then perhaps we can have the press backgrounder at 4:00, but then we are pressing close to filing deadline time. One other alternative is to do the press backgrounder on Friday morning, but that would not link it to the slew of nominations stories for tomorrow. COllective thoughts, everyone? Thanks,

Viet

-----Original Message-----
From: Heather_Wingate@who.eop.gov [mailto:Heather_Wingate@who.eop.gov]
Sent: Wednesday, August 01, 2001 12:54 PM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Viet, this is just to follow-up on our conversation yesterday re: meeting with a small group of Republican Senate staff on Judicial Nominations. I spoke with John Mashburn and Makan this morning (and your scheduler). And 3:00 tomorrow (Thurs.) works for everyone. Makan would like to host it in his office. 242 Dirksen.

Makan, as you know, would like to keep this meeting separate from the Tues. morning meetings that hopefully we will get underway next week. He would prefer that we not raise the Tues morning meetings at the meeting tomorrow, as he'd like to keep those small, as you know. For tomorrow, Brett, can you make it?
Also, Makan mentioned that it might be helpful to have Jennifer Newstead and Kyle Sampson at the meeting as well. Viet would you like to include Jennifer?

Also, can we bring a list of all the judicial noms that we've sent up to the Hill? I think we should use this meeting to simply cover where we are right now with sending Judicial noms up, and where we hope to be following the Aug recess.
Viet, do you think we're ready to talk to them about a couple of the key communications points that we discussed yesterday?

Thanks, Heather

From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: dinh, viet <viet.dinh@usdoj.gov>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rabjohns, lori <lori.rabjohns@usdoj.gov>;newstead, jennifer <jennifer.newstead@usdoj.gov>
Sent: 8/2/2001 6:17:00 AM
Subject: : RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-AUG-2001 10:17:00.00
SUBJECT:: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"dinh, viet" <viet.dinh@usdoj.gov> ("dinh, viet" <viet.dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:"rabjohns, lori" <lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return requested) ("rabjohns, lori" <lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])
READ:UNKNOWN
CC:"newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt notification requested) (ipm return requested) ("newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Thank you, Brett.
Viet is confirmed to be there, as well.

See you both at 3:00 today in 242 Dirksen.

Brett M. Kavanaugh
08/02/2001 08:18:22 AM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc: "dinh, viet" <viet.dinh@usdoj.gov>, brett m. kavanaugh/who/eop@eop, "rabjohns, lori" <lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return requested), "newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt notification requested) (ipm return requested)
bcc:
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican Leadership staff on Judicial Noms

I'm there

Heather Wingate
08/01/2001 09:19:28 PM
Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov>
cc: brett m. kavanaugh/who/eop@eop, "rabjohns, lori"
<lori.rabjohns@usdoj.gov> (receipt notification requested) (ipm return
requested), "newstead, jennifer" <jennifer.newstead@usdoj.gov> (receipt
notification requested) (ipm return requested)
bcc:
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen.
Republican Leadership staff on Judicial Noms

Brett, would you confirm with me that you'll be there tomorrow? We really
need some one from your office at this. Thanks, HW

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
08/01/2001 06:31:41 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc: "Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested), "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested)
Subject: RE: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican
Leadership staff on Judicial Noms

Heather,

Would it be moving mountains to change the meeting time to either 2:00 or
4:30 tomorrow? The reason is that I want to schedule a press backgrounder
with me and Brett here at DoJ at 3:00, right after Ari's press conference,
and Jennifer has a conflicting meeting on Hill. If that would put out our
friends terribly, then perhaps we can have the press backgrounder at 4:00,
but then we are pressing close to filing deadline time. One other
alternative is to do the press backgrounder on Friday morning, but that
would not link it to the slew of nominations stories for tomorrow.
COllective thoughts, everyone? Thanks,

Viet

-----Original Message-----
From: Heather_Wingate@who.eop.gov [mailto:Heather_Wingate@who.eop.gov]
Sent: Wednesday, August 01, 2001 12:54 PM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Meeting in 242 Dirksen tomorrow at 3:00 w/Sen. Republican
Leadership staff on Judicial Noms

Viet, this is just to follow-up on our conversation yesterday re: meeting
with a
small group of Republican Senate staff on Judicial Nominations. I spoke
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with sending Judicial noms up, and where we hope to be following the Aug recess.
Viet, do you think we're ready to talk to them about a couple of the key communications points that we discussed yesterday?

Thanks, Heather

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;john b. bellinger/nsc /eop@eop [NSC] <john b. bellinger>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 8/2/2001 1:31:30 PM
Subject: : Re: Linda Tripp v. EOP, et al., No. 99-2554 (D.D.C.)

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-AUG-2001 17:31:30.00
SUBJECT:: Re: Linda Tripp v. EOP, et al., No. 99-2554 (D.D.C.)
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:john b. bellinger (CN=john b. bellinger/OU=nsc/O=eop@eop [NSC])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
End Original ARMS Header

Not I.

H. Christopher Bartolomucci
08/02/2001 05:18:01 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Linda Tripp v. EOP, et al., No. 99-2554 (D.D.C.)

DOJ has faxed me a copy of two subpoenas they received in the above-captioned case addressed to the White House and EOP. DOJ wants to know if anyone at the White House Office or EOP accepted service of these subpoenas. Anyone do so?

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP

Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
David S. Addington/OVP/EOP@EOP

From: CN=David M. Thomas/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/3/2001 6:35:53 AM
Subject: : Hawaii Trip

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-AUG-2001 10:35:53.00
SUBJECT:: Hawaii Trip
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, have you had a chance to complete the letter?

Thanks

DT

As you know we are having a meeting today at 3pm.
---------- Forwarded by David M. Thomas/WHO/EOP on 08/03/2001
09:03 AM ----------

David M. Thomas
07/30/2001 01:33:41 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Hawaii Trip

Brett, as per our conversation, Joe Hagin would like a letter from you outlining your guidelines on the POTUS Political event in Hawaii. (Costs, Who pays for what, ethic guidelines, etc...)

As you know the plan is to do a Fund-raiser for the Hawaii Republican Party on October 25(TBD)

Please call me if you have any questions. I would like to hand my proposal in by Thursday if possible. Please let me know if that is OK with you.

Thanks

David Thomas
67944

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 8/3/2001 9:40:02 AM

Subject: : Lance Armstrong event at 3:30 today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-AUG-2001 13:40:02.00
SUBJECT:: Lance Armstrong event at 3:30 today
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The first six people to respond to this email by replying to me get to
go. Here are the details.
```

Each division can send as many as six people to an event with Lance Armstrong today at 3:30 in Room 450 of OEOB. You would have to arrive at 3:00 pm - the event will last about 30 minutes so you won't be out until around 4:00.

Lance is doing another event in the East Room at 2:30 but this is not open to the staff - it is for kids only.

If you don't know who Lance is you don't get to go...

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 8/3/2001 9:40:02 AM

Subject: : Lance Armstrong event at 3:30 today

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-AUG-2001 13:40:02.00
SUBJECT:: Lance Armstrong event at 3:30 today
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
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To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>
Sent: 8/6/2001 4:14:45 AM
Subject: : WHJSC Meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-AUG-2001 08:14:45.00
SUBJECT:: WHJSC Meeting
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Since Brent is on vacation, I'll be handling the WHJSC binder this week.
Please let me know what you'd like included.
```

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/6/2001 10:56:09 AM
Subject: : LRM KCT61 - - VETERANS AFFAIRS Report on HR1280 Veterans' Higher Education Opportunities Act
Attachments: P_8PX53004_WHO.TXT_1.wpd; P_8PX53004_WHO.TXT_2.txt

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-AUG-2001 14:56:09.00
SUBJECT:: LRM KCT61 - - VETERANS AFFAIRS Report on HR1280 Veterans' Higher Education Opportunities Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/06/2001 02:56 PM ----------

From: Kathryn C. Thompson on 08/06/2001 01:42:30 PM
Record Type: Record

To: dodlrs@osdgc.osd.mil , ogc_legislation@ed.gov , dot.legislation@ost.dot.gov
cc: See the distribution list at the bottom of this message
Subject: LRM KCT61 - - VETERANS AFFAIRS Report on HR1280 Veterans' Higher Education Opportunities Act

The following is LRM ID: KCT61 -- Veterans Affairs Report on H.R. 1280, Veterans' Higher Education Opportunities Act. The VA report is attached below in Wordperfect format and it consists of four pages. The bill text of H.R. 1280 is attached in html format and it consists of two pages.

Please comment on the VA report by 3 p.m., Thursday, August 9th. If I do not hear from you by the deadline, I will assume that you have no objection to the VA report.

Agencies: This e-mail follows the faxed version of the LRM.

LRM ID: KCT61
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, August 6, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Report on HR1280 Veterans' Higher Education Opportunities Act

DEADLINE: 3 p.m. Thursday, August 9, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the

program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The VA report on H.R. 1280 states that VA supports, if it can be accomodated within the overall budget limits agreed to by the President and Congress, the increases to the Montgomery GI Bill (MGIB) benefit that are included in H.R. 1291. VA states that H.R. 1280, which would link the amount of the basic MGIB monthly benefit to the average monthly costs of tuition and expenses for commuter students at public universities, has a procedural requirement that would be infeasible to implement.

DISTRIBUTION LIST

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WHGC LRM
OVP LRM
Ingrid M. Schroeder
James J. Jukes
LRM ID: KCT61 SUBJECT: VETERANS AFFAIRS Report on HR1280 Veterans' Higher Education Opportunities Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget

Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
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Wendell H. Waites/OMB/EOP@EOP
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Robert Marsh/WHO/EOP@EOP
WHGC LRM
OVP LRM
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8PX53004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8PX53004_WHO.TXT_2>

The Honorable Bob Stump
Chairman, Committee on
Armed Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to provide the Committee the views, including cost estimate, of the Department of Veterans Affairs (VA) on H.R. 1280, 107th Congress, a bill "to provide for the annual determination of the rate of the basic benefit of active duty educational assistance under the Montgomery GI Bill, and for other purposes."

H.R. 1280, the proposed "Veterans' Higher Education Opportunities Act of 2001," would link the amount of the Montgomery GI Bill (MGIB) basic monthly education benefit for individuals with three or more years of active duty service to the average monthly costs of tuition and expenses for commuter students at public institutions of higher education that award baccalaureate degrees. For individuals whose obligated period of active duty is 2 years, the monthly MGIB benefit would equal 75 percent of such average monthly educational costs.

The President's FY 2002 Budget includes the annual cost-of-living increase for education benefits for veterans and service members, but does not include an additional MGIB benefit increase. However, the President would support MGIB program improvements, to include a reasonable increase in rates, if they can be accommodated within the overall budget limits agreed to by the President and Congress. In this regard, as mentioned in my June 7, 2001, testimony before the House Committee on Veterans' Affairs Subcommittee on Benefits, VA does support, within the framework of those spending limits, the stepped MGIB rate increases contained in H.R. 1291. Under that measure, the full-time monthly benefit rate for individuals whose active duty obligation is three or more years would increase to $800 for FY 2002, $950 for FY 2003, and $1100 for FY 2004. At the $1100 level, the MGIB benefit would be brought significantly closer to covering the educational costs described in H.R. 1280.

We also note H.R. 1280 contains a procedural requirement that likely would be infeasible to implement. The bill requires that the Secretary, not later than September 30 of each year, determine the relevant average monthly educational costs using information from the College Board provided in its annual survey of institutions ofhigher education. Those costs would be used to calculate the MGIB basic monthly rates for the following fiscal year. However, our experience has been that the

College Board information generally is not available until early October. Therefore, it would not be possible for VA to make the annual cost determination by September 30 each year.

Since H.R. 1280 would affect direct spending and receipts, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act of 1990. VA estimates that enactment of H.R. 1280 would result in benefit costs of $855 million in FY 2002 and a total of $13.9 billion over the period FYs 2002 – 2011. A detailed cost estimate, together with our assumptions and methodology, is enclosed.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Anthony J. Principi

Enclosure

Methodology

Identification – H.R. 1280, the "Veterans' Higher Education Opportunities Act of 2001"

Highlights - This proposal provides for increases to the Montgomery GI Bill (MGIB) monthly educational benefit payments based on the average monthly costs of tuition and expenses for commuter students at public institutions of higher education that award baccalaureate degrees. MGIB participants with three or more years of service would receive the full monthly benefit payment and for those participants with a two-year obligated period, the monthly rate would be 75 percent of such amount. The full-time rate, for a participant whose initial obligated period is three years or more years, would increase from $650 to $1,066 in 2002. For participants with an initial obligated period of less than three years of service, the full-time rate increases from $528 to $800 in 2002. Proportionally lesser amounts would be payable for less than full-time training. Also, monthly rates would be indexed using the College Board costs.

Estimated Benefit Costs and Trainee Estimate -

	ADDITIONAL TRAINEES	OBLIGATIONS ($'S IN 000)
2002	14,900	$ 855,100
2003	29,800	1,006,200
2004	59,500	1,265,500
2005	60,000	1,325,500
2006	60,700	1,386,500
2007	61,500	1,452,500
2008	61,400	1,535,500
2009	60,900	1,614,500
2010	62,300	1,729,500
2011	60,000	1,761,500
Five-Year Obligations		**$5,838,800**
Ten-Year Obligations		**$13,932,300**

Administrative Costs – We assume that any additional employment requirements or administrative costs will be absorbed with current resources.

Benefits Methodology – In costing this proposal, we increased the 2001 annual average rate shown in the 2002 Congressional Budget submission by the proposed 57.7 percent rate increase for participants with three years of service (rounded to the nearest dollar) to compute the revised annual average benefit payment in 2002, in lieu of automatic CPI adjustments. Participants with a two-year obligated period would receive 75 percent of the revised annual average benefit payment of a three-year participant. Commencing in Fiscal Year 2003, educational rate increases would again be indexed, however the increase would reflect the College Board rates. We assumed this rate to be four percent each year. To compute the cost, we multiplied the revised annual average benefit payments by the number of chapter 30 trainees included in the 2002 Congressional Budget submission. The costs generated from this calculation were subtracted from the costs that were already included in the 2002 budget submission for the annual CPI increase, to arrive at the additional monthly benefit payments. To compute the additional trainees, we assumed that the trainees from the 2002 Congressional Budget submission would gradually increase as the monthly benefit rose to make attending a four-year in-state public institution of higher learning more affordable. In the first year, we estimate that trainees would increase by five percent with incremental increases reaching 20 percent by 2004. The reporting fee payments were increased to reflect the cost of these additional trainees.

Other Assumptions – Enactment date October 1, 2001

HR 1280 IH

107th CONGRESS

1st Session

H. R. 1280

To amend title 38, United States Code, to provide for the annual det ermination of the rate of the basic benefit of active duty educational assistan ce under the Montgomery GI Bill, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 28, 2001

Mr. SHOWS (for himself, Mr. BALDACCI, Mr. FILNER, and Mr. BISHOP) introduced the following bill; which was referred to the Committee on Vetarans' Affairs, and in addition to the Committee on Armed Services, for a period to be subseque ntly determined by the Speaker, in each case for consideration of such provisio ns as fall within the jurisdiction of the committee concerned

---

A BILL

To amend title 38, United States Code, to provide for the annual det ermination of the rate of the basic benefit of active duty educational assistan ce under the Montgomery GI Bill, and for other purposes.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Veterans' Higher Education Opportunities Act of 2001'.

SEC. 2. ANNUAL DETERMINATION OF BASIC BENEFIT OF ACTIVE DUTY EDUCATIONAL ASSISTANCE UNDER THE MONTGOMERY GI BILL.

(a) BASIC BENEFIT- Section 3015 of title 38, United States Code, is am ended--

(1) in subsection (a)(1), by striking `of $650 (as increased from time to time under)' and inserting `equal to the average monthly costs of tuiti on and expenses for commuter students at public institutions of higher educatio n that award baccalaureate degrees (as determined under subsection (h))'; and

(2) in subsection (b)(1) by striking `of $528 (as increased from t ime to time under)' and inserting `equal to 75 percent of the average monthly c osts of tuition and expenses for commuter students at public institutions of hi gher education that award baccalaureate degrees (as determined under subsection (h))'.

(b) DETERMINATION OF AVERAGE MONTHLY COSTS- Subsection (h) of that sec tion is amended to read as follows:

`(h)(1) Not later than September 30 each year, the Secretary shall det ermine the average monthly costs of tuition and expenses for commuter students at public institutions of higher education that award baccalaureate degrees for purposes of subsections (a)(1) and (b)(1) for the succeeding fiscal year. The Secretary shall determine such costs utilizing information obtained from the Co llege Board or information provided annually by the College Board in its annual survey of institutions of higher education.

`(2) In determining the costs of tuition and expenses under paragraph (1), the Secretary shall take into account the following:

`(A) Tuition and fees.

`(B) The cost of books and supplies.

`(C) The cost of board.

`(D) Transportation costs.

`(E) Other nonfixed educational expenses.

`(3) A determination made under paragraph (1) in a year shall take eff ect on October 1 of that year and apply with respect to basic educational assis tance allowances payable under this section for the fiscal year beginning in th at year.

`(4) Not later than September 30 each year, the Secretary shall publis h in the Federal Register the average monthly costs of tuition and expenses as determined under paragraph (1) in that year.

`(5) For purposes of this section, the term `institution of higher edu cation' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).'.

(c) STYLISTIC AMENDMENT- Subsection (b) of that section is further ame nded in the matter preceding paragraph (1) by striking `as provided in the succ eeding subsections of this section' and inserting `as otherwise provided in thi s section'.

END

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/7/2001 7:30:48 AM
Subject: : LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001
Attachments: P_DHF63004_WHO.TXT_1; P_DHF63004_WHO.TXT_2

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-AUG-2001 11:30:48.00
SUBJECT:: LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/07/2001 11:30 AM ----------

From: Amiee L. Albertson on 08/07/2001 11:13:12 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001

Attached please find a revised VA report in which VA defers to DoD on H.R. 1724. The bill would recognize the service of members of the U.S. Cadet Nurse Corps as active military service for the purpose of laws administered by VA. A previous version of this report in which VA stated that they "do not support" the bill was circulated on July 27 (LRM #ALA9). A copy of the bill is also attached. Please respond by 5:00 p.m., Wednesday, August 8. Thank you.

Note to Agencies: Hard copy to follow.

LRM ID: ALA15
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, August 7, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Amiee L. Albertson
PHONE: (202)395-3265 FAX: (202)395-6148
SUBJECT: REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001

DEADLINE: 5:00 p.m. Wednesday, August 8, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This VA letter has been revised to state that VA defers to DoD on H.R. 1724. An earlier version of this letter was circulated on July 23 (LRM #ALA9), in which VA stated that they "do not support" the legislation. Please respond by 5:00 p.m., Wednesday, August 8.

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AGENCIES:
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Steven D. Aitken
Eric W. Hunn
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James J. Jukes
LRM ID: ALA15 SUBJECT: REVISED VETERANS AFFAIRS Report on HR1724
United States Cadet Nurse Corps Equity Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Amiee L. Albertson Phone: 395-3265 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4864

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

REV_00130614

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DHF63004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DHF63004_WHO.TXT_2>

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

The Honorable Bob Stump
Chairman
House Committee on Armed Services
United States House of Representatives
Washington, D.C. 20515-6035

Dear Mr. Chairman:

As requested, I am writing to express the views of the Department of Veterans Affairs (VA) on H.R. 1724, the "United States Cadet Nurse Corps Equity Act of 2001." This legislation would provide that service of the members of the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by VA. For the reasons discussed below, we defer to the views of the Secretary of Defense.

Congress has already provided an opportunity for organizations like the United States Cadet Nurse Corps to seek recognition of their service as active military service. Under Public Law No. 95-202, §401, 91 Stat. 1433, 1449 (1977), the Department of Defense (DoD) has authority to determine whether service rendered by a civilian or a group of civilians may be considered active duty for purposes of all laws administered by VA. In order to receive recognition by DoD, the members of such a group must have rendered service to the United States Armed Forces in a capacity considered civilian employment or contractual service at the time such service was rendered. Moreover, the Secretary of Defense acting through the Secretary of the Air Force must determine, after consideration of various factors and a thorough review of all available evidence pertaining to the service of any such group, that the service of such group should be considered active military service. Applications for recognition of the service of particular groups are considered by DoD's Civilian/Military Service Review Board under procedures found in title 32, Code of Federal Regulations, Part 47. Those regulations explain the application process and where to file a completed application.

In consideration of these facts, VA defers to the views of the Secretary of Defense concerning enactment of H.R. 1724.

REV_00130616

I

107TH CONGRESS
1ST SESSION

H. R. 1724

To provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mrs. LOWEY (for herself and Mr. OBERSTAR) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Cadet Nurse Corps Equity Act of 2001".

REV_00130617

SEC. 2. SERVICE DEEMED TO BE ACTIVE MILITARY SERVICE.

(a) IN GENERAL.—For purposes of section 401(a)(1)(A) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note), the Secretary of Defense is deemed to have determined that qualified service of a person constituted active military service.

(b) DETERMINATION OF DISCHARGE STATUS.—(1) The Secretary of Defense shall issue an honorable discharge under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 to each person whose qualified service warrants an honorable discharge.

(2) Such discharge shall be issued before the end of the one-year period beginning on the date of the enactment of this Act.

SEC. 3. PROHIBITION OF RETROACTIVE BENEFITS.

No benefits may be paid to any person as a result of the enactment of this Act for any period before the date of the enactment of this Act.

SEC. 4. DEFINITION.

For purposes of this Act, the term "qualified service" means service of a person as a member of the organization known as the United States Cadet Nurse Corps during the period beginning on July 1, 1943, and ending on December 15, 1945.

○

REV_00130618

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>
Sent: 8/7/2001 7:42:57 AM
Subject: : candidates for presentation to the President

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-AUG-2001 11:42:57.00
SUBJECT:: candidates for presentation to the President
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura L. Flippin (CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We're holding a book of US Marshall candidates until Friday.

The Judge has indicated that we can hold the book until Friday in the event there are any more US Marshal, US Attorney or judicial candidates to submit to the President.

Please let me know if you'll have any additions.

Thanks,
Jason

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 8/7/2001 10:11:54 AM
Subject: : Re: Microsoft Briefing

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-AUG-2001 14:11:54.00
SUBJECT:: Re: Microsoft Briefing
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This is mine. I recommend against anyone in the White House meeting directly with Microsoft while this litigation is pending, as it would create the appearance of White House interference with this ongoing litigation. The ultimate decision on this, however, should probably be made by Judge Gonzales.

Elizabeth N. Camp
08/07/2001 02:07:04 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Microsoft Briefing

Who gets this one?

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 08/07/2001 02:06 PM ----------

Emily Willeford
08/07/2001 01:09:20 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Microsoft Briefing

Libby - Could you give me some direction on who to ask about this?

Microsoft would like to brief Larry and Marc on their new software. Can they do this?

Thanks much,
Emily
---------- Forwarded by Emily Willeford/OPD/EOP on 08/07/2001 01:07 PM ----------

D. Marcus Sumerlin
08/06/2001 07:38:09 PM
Record Type: Record

To: Tim Morrison <tjmorrison@cwdc.com>
cc: Emily Willeford/OPD/EOP@EOP
bcc:
Subject:

Tim:

I'll need to check with Counsel, given the current Justice court case.

Marc

Tim Morrison <tjmorrison@cwdc.com>
08/06/2001 05:39:00 PM
Please respond to Tim Morrison <tjmorrison@cwdc.com>
Record Type: Record

To: D. Marcus Sumerlin/OPD/EOP@EOP
cc:
Subject:

Marc: Good to see you on Saturday.

I've been asked to follow -up on a Microsoft question. Forgive me if you've been badgered about this from other directions, I haven't worked with them much since the energy project came up, but here it is:

Will it be possible for them to brief Larry and/or you (and anyone else you think should be there) on their new operating system "Windows XP"?

I think they have formally offered, but I don't know that they've gotten a reply. Let me know if you can, and I'll get the answer to them. Obviously, they would appreciate the opportunity to do it. -- TJ.M

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Carroll, James W (OLP) <James.W.Carroll@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;O'Brien, Patrick <Patrick.O'Brien2@usdoj.gov>;Coniglio, Peter J <Peter.J.Coniglio@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
Sent: 8/7/2001 6:35:30 PM
Subject: : FW: AG REMARKS 8/7 AT THE ABA

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME: 7-AUG-2001 22:35:30.00
SUBJECT:: FW: AG REMARKS 8/7 AT THE ABA
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
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(IPM Return Requested) [ UNKNOWN ] )
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READ:UNKNOWN
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TO:"O'Brien, Patrick" <Patrick.O'Brien2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("O'Brien, Patrick" <Patrick.O'Brien2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:"Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----
From: Pfeifle, Lauren
Sent: Tuesday, August 07, 2001 12:34 PM
To: Pfeifle, Lauren
Subject: AG REMARKS 8/7 AT THE ABA

Attorney General Prepared Remarks
to the American Bar Association
[NOTE: THE ATTORNEY GENERAL OFTEN DEVIATES FROM PREPARED REMARKS]
August 7, 2001

Today I'd like to speak with you about federal judges. Judges are an important topic to the ABA, and they are a subject of great importance and great significance to the American people.

In fact, judges have been a topic of growing discussion and debate in recent years. The reason for this growing interest in judges is almost certainly the special role that federal judges play in our democracy.

Before this great American enterprise in freedom was formalized in our Constitution there were numerous experiments in the colonies. Among the most novel was that of Governor Oglethorpe of the Georgia colony who believed in William Shakespeare enough to abolish all the lawyers. Without lawyers the citizens soon found themselves absent the capacity to resolve disputes. And, in order that commerce flourish lawyers were re-welcomed with open arms. Necessity, the mother of invention, demonstrated that judges, and lawyers for that matter, are

indispensable. Judges are Essential.

This recognition ultimately was enshrined in Article III of our Constitution, creating the basis of our federal courts to hear the new cases and controversies in our fledgling union.

This duty involves weighty, complex and sometimes politically unpopular choices. Federal judges hear suits brought by citizens challenging acts of government that impinge on individual rights. Federal judges decide disputes between and within the Executive and Legislative branches. In some cases, they declare unconstitutional acts of Congress that have garnered high levels of public support.
In an attempt to address this unpopular component of the role of federal judges, James Madison is credited with the idea of an independent judiciary - making federal judges appointed, not elected and life-tenured. This independence makes federal judges and the judiciary not only essential, but unique insulated and independent in a democracy of political winds, influences and pressures.

Madison recognized that insulation -- the quality of the independent judiciary -- would facilitate the ability of federal judges to make the hard decisions based on the law and not in response to the pressure of electoral politics.
Of course this insulation also invests judges with a power almost unparalleled in our constitutional system, a power necessary for the job, but a power that has potential for great mischief.

So we know that judges are essential - the Georgia principle, and judges are uniquely independent, the Madisonian mandate.

Given the great responsibilities and powers of federal judges, the American people deserve judicial nominees of the highest quality. We need individuals who are of the highest intellect, who have great experience in the law, and who have impeccable character and integrity. We need men and women from diverse backgrounds, who reflect the many faces, opportunities and challenges of America. Most importantly, in light of the great power wielded by federal judges, we need federal judges who understand the limits of that power.

Justice Felix Frankfurter wisely said, "The highest exercise of judicial duty is to subordinate one's personal will and one's private views to the Law." This is the idea of "judicial restraint" - the self-imposed rule under which judges interpret the text of the law and apply it neutrally. Judicial restraint is contrasted with "judicial activism," the practice of judges imposing an alternative view to that expressed in the law, the practice of usurping the legislative function to make policy decisions leaving voters without the political recourse the founders expected. In effect, this expands the unique character of the judicial world to the universe of policy and legislation. Such an expansion would have alarmed Madison indeed.

Academic discussions of judicial activism and restraint have done little to enlighten the American public. The decisions we will ask our federal judges to make -- the issues we will expect them to weigh -- will effect each and every one of us in ways large and small. It is important that we know we have a right to expect these decisions to be made with respect for the law. It is crucial that we understand that "judicial restraint" isn't the stuff of academic ivory towers but the respect for the rule of law that honors and protects families and schools and businesses.

Judicial restraint means that if the Constitution says you have a right to compensation when the government takes your property, then a judge cannot create exceptions for property that the government really doesn't want to pay for, by letting the government so heavily regulate the property as to make it worthless.

Judicial restraint means that if a judge rules that certain

changes need to be made to a school system to fulfill the constitutional guarantee of equal protection, it is the citizens and their representatives who will decide how to fund those changes, not a judge developing tax policy and resource allocations by ordering a tax increase.

Judicial restraint means judges refusing to create on their own a criminal justice system that lets clearly guilty criminals "off on a technicality." That particular idiom "off on a technicality" came into more widespread use in American culture in the late 1960's and 70's, when Americans started to see the impact of unrestrained judges who used clearly written precise protections for criminal defendants in the Constitution to justify new protections that were not in the Constitution. Judges thought these manufactured "rights" were "fair," and that "fairness" provided all the necessary authority for the change. Americans were not consulted on these new protections, they just had to deal with the increased crime when these criminals were released back onto the streets and back into their neighborhoods.

These decisions -- decisions made without respect for the law, decisions made without the consent of the people -- affect Americans.

President Bush understands this. He knows how important talented and restrained federal judges are to the business of the American people. We need only look at the extraordinary caliber and character of his nominees, 44 of them currently, to see what a high priority the President has placed on judicial nominees.

For example, Miguel Estrada, who the President has nominated to the United States Court of Appeals for the District of Columbia Circuit. Born in Tegucigalpa, Honduras, Miguel immigrated with his family to the United States as a teenager. Speaking virtually no English, Miguel went on to graduate Phi Beta Kappa from Columbia College and at the top of his Harvard Law School class. Miguel then began a distinguished career in public service. He was a law clerk to Judge Amalya Kearse in New York, and then to Supreme Court Justice Anthony Kennedy. He went on to serve as a federal prosecutor in New York. He served as an attorney in the Solicitor General's Office at the Department of Justice in both the Bush and Clinton Administrations. Miguel is a brilliant and talented attorney, a dedicated husband, and man of the utmost integrity and compassion. He understands the proper role of a judge is to subordinate his personal preferences-- to apply, rather than amend,-- the law. If confirmed, he would be the first Hispanic American to ever sit on the D.C. Circuit. He is a shining example of the promise of America.

Miguel is representative of the individuals President Bush has nominated to the federal bench. The President has sought, and will continue to seek the most talented, intelligent, and upstanding candidates he can find for the federal bench. The President will continue to look for candidates from diverse backgrounds, with different experiences and different perspectives. The President has unequivocally rejected any notion of an issue-specific or political litmus test, insisting that the only value that his nominees share is a dedication to the rule of law and an understanding of the proper role of a federal judge, a role that leaves policy-making to the American people and their elected representatives.

The ABA has helped to ensure that the President's nominees are qualified to serve the American people as federal judges. You have promptly reviewed the qualifications of 17 of the 44 pending nominees, and have rated every one of them qualified for the post to which they are nominated. In fact, you have rated 70% of these candidates "well-qualified" to be judges, the ABA's highest rating.

As you may know, there are some who have called into doubt the impartiality of the ABA's judicial ratings. An analysis of previous ABA ratings under the first Bush and the Clinton administrations was the subject of a discussion in yesterday's Wall Street Journal by Professor James Lindgren of Northwestern University. Professor Lindgren argues that his analysis demonstrates that, "Clinton nominees had more than 10 times

better odds of getting the ABA's highest rating than similarly credentialed former-President Bush appointees." Professor Lindgren attributes this disparity to a political bias in favor of liberal judges. Undoubtedly, there are others who argue that no such bias exists. In any event, I think we can agree that no political bias should exist. I am heartened by the ABA's ratings thus far, and am confident that - judged by the same standards used to rate the last administration - the vast majority of President Bush's nominees will continue to receive "well qualified" ratings.

And as you go about weighing the qualifications of President Bush's nominees for the federal bench, there is another way in which you could use your considerable clout to help serve the American people: by making sure that these nominees whom you have found so qualified have an opportunity to be reviewed and voted upon by the United States Senate. Currently there is a serious number of vacancies on the federal courts - 108 vacancies out of 862 positions, more than 12%. President Bush has recognized the urgency of this problem, and has made it one of his top priorities. He has nominated judges at a record pace - 44 judicial candidates so far this year.

By comparison, President Reagan made 13 circuit and district nominations before the end of the August recess in1981; President George H.W. Bush made 8 before the August recess in 1989; and President Clinton made 13 before the August recess in 1993.

President Bush submitted his first 11 nominations on May 9, two months before Presidents Reagan or Clinton made their first nominations. Given the large numbers of vacancies I described before, President Bush's pace is particularly important. I know I don't need to tell you that judicial vacancies mean delays in the time it takes to have one's case heard, raising the specter of the old adage "Justice delayed is Justice denied."

You can help minimize this delay by continuing to review the President's nominees thoroughly, but quickly, and by urging the Senate to continue the non-partisan, historical practice of holding hearings and votes on judicial nominees. By way of example, in the first years of the past three Administrations -- Reagan, Bush, and Clinton -- all but one of the nominees who were nominated before the end of the August recess were confirmed in the first year of the presidency. The one judge who was not confirmed was rated "not qualified" by the ABA. Consistent with that history, the Senate should move forward and act on all 44 of President Bush's nominations this year.

So far, the confirmation process has moved slowly. As you will recall, the President announced the nomination of 11 circuit judges on May 9 at an event in the East Room of the White House. Eight of those 11 individuals were nominated to judicial vacancies that have been classified as "judicial emergencies" by the Administrative Office of the United States Courts. You have reviewed these nominees, and found all to be either qualified or well qualified for judicial office. Yet only 1 of those 11 nominees has received a hearing in the Senate Judiciary Committee. I know that the Senate has been very busy. In fact, I want to commend the Senate for acting so quickly on some important non-judicial appointments. In the last two weeks, they have confirmed a new Commissioner of the Immigration and Naturalization Service, a new Administrator of the Drug Enforcement Administration, and a new director of the Federal Bureau of Investigation. Among these three positions, these new appointees oversee more than 72,000 employees. But these judicial nominations are also a high priority. I know that Senator Leahy, as Chairman of the Judiciary Committee, understands this urgency. I'd ask you to help him in ensuring that the rest of the Senate places as high a priority on these nominations as does the President.

The American people deserve a federal judiciary operating at full strength and peak efficiency, providing equal access to speedy justice. The Administration is doing its part. Now the Senate and those

organizations involved in the process, including the ABA, must join us in working for the prompt confirmation of the outstanding men and women the President has nominated to be federal judges.

In 1847, at a gathering of lawmakers in Charleston, South Carolina, Daniel Webster raised his glass in a toast. "To the law," Webster said. " It has honored us; may we honor it." As we look forward to working together on this and other issues of critical importance to the administration of the nation's laws, let us offer a similar tribute to the citizens who look to us to help protect their rights and freedoms. They have honored us with their trust. May we honor them with justice.

Thank you very much.

###

REV_00130661

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/9/2001 11:56:38 AM
Subject: : LRM PTM42 - - Report on S. 1144 - Amending the McKinney Homeless Assistance Act to reauthorize the Federal Emergency Management Food and Shelter program
Attachments: P_TM183004_WHO.TXT_1

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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CREATION DATE/TIME: 9-AUG-2001 15:56:38.00
SUBJECT:: LRM PTM42 - - Report on S. 1144 - Amending the McKinney Homeless Assistance Act to reauthorize the Federal Emergency Management Food and Shelter program
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/09/2001 03:56 PM ----------

From: Erin P. Hassing on 08/09/2001 11:14:40 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM42 - - Report on S. 1144 - Amending the McKinney Homeless Assistance Act to reauthorize the Federal Emergency Management Food and Shelter program

LRM ID: PTM42
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, August 8, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: Report on S. 1144 - Amending the McKinney Homeless Assistance Act to reauthorize the Federal Emergency Management Food and Shelter program

DEADLINE: 5:00 p.m. Wednesday, August 15, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: On August 3, 2001, the Senate passed by unanimous consent S. 1144. The bill would amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 et seq.) to reauthorize the Federal Emergency Management Food and Shelter program, among other purposes. For your convenience, a copy of the bill is included as an attachment to this LRM.

Please provide your comments by close of business on Wednesday, August 15, 2001. If you experience difficulty with this LRM or its attachment, please contact me immediately. Agencies will receive a duplicate copy of this LRM via facsimile.

Thank you.

DISTRIBUTION LIST

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054-HOUSING & URBAN DEVELOPMENT - Mike Moran - (202) 708-1793
039-Federal Emergency Management Agency - Michael D. Brown - (202) 646-4105
061-JUSTICE - Daniel Bryant - (202) 514-2141
025-COMMERCE - Michael A. Levitt - (202) 482-3151
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
076-National Economic Council - John Ackerly - (202) 690-7773

EOP:
Francis S. Redburn
Lauren E. Bloomquist
Aquiles F. Suarez
James Boden
Michael F. Crowley
David J. Haun
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John F. Morrall III
Joseph F. Lackey Jr.
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WHGC LRM
NEC LRM
Steven D. Aitken
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM42 SUBJECT: Report on S. 1144 - Amending the McKinney Homeless Assistance Act to reauthorize the Federal Emergency Management Food and Shelter program
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
lrm@hhs.gov
HUD_LRM@hud.gov
legis@fema.gov
justice.lrm@usdoj.gov
CLRM@doc.gov
usdaocrleg@obpa.usda.gov

Message Copied
To:_____
Francis S. Redburn/OMB/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
James Boden/OMB/EOP@EOP
Michael F. Crowley/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
John F. Morrall III/OMB/EOP@EOP
Joseph F. Lackey Jr./OMB/EOP@EOP
Arthur W. Stigile/OMB/EOP@EOP
Jack A. Smalligan/OMB/EOP@EOP
Michele Ahern/OMB/EOP@EOP
WHGC LRM
NEC LRM
Steven D. Aitken/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TM183004_WHO.TXT_1>

107TH CONGRESS
1ST SESSION

S. 1144

AN ACT

To amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 et seq.) to reauthorize the Federal Emergency Management Food and Shelter Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

REV_00130675

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 322 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11352) is amended to read as follows:

"SEC. 322. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title $150,000,000 for fiscal year 2002, $160,000,000 for fiscal year 2003, and $170,000,000 for fiscal year 2004.".

SEC. 2. NAME CHANGE TO NOMINATING ORGANIZATION.

Section 301(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331(b)) is amended by striking paragraph (5) and inserting the following:

"(5) United Jewish Communities.".

SEC. 3. PARTICIPATION OF HOMELESS INDIVIDUALS ON LOCAL BOARDS.

Section 316(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11346(a)) is amended by striking paragraph (6) and inserting the following:

"(6) guidelines requiring each local board to include in their membership not less than 1 homeless individual, former homeless individual, homeless advocate, or recipient of food or shelter services, except that such guidelines may waive such requirement for any board unable to meet such requirement if the board otherwise consults with homeless individuals,

REV_00130676

former homeless individuals, homeless advocates, or recipients of food or shelter services.''.

Passed the Senate August 3, 2001.

Attest:

Secretary.

REV_00130677

107TH CONGRESS
1ST SESSION

S. 1144

AN ACT

To amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 et seq.) to reauthorize the Federal Emergency Management Food and Shelter Program, and for other purposes.

REV_00130679

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

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TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Margaret Tutwiler (CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl Doenges (CN=Karl Doenges/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN

TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
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TO:Sam Dickens (CN=Sam Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
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TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Laura C. Welborn (CN=Laura C. Welborn/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Thomas V. McMahan (CN=Thomas V. McMahan/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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TO:William S. Clark (CN=William S. Clark/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
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TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
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TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov @ inet [UNKNOWN])
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TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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EMBRYONIC STEM CELL RESEARCH

"As a result of private research, more than 60 genetically diverse stem cell lines already exist.. . I have concluded that we should allow federal funds to be used for research on these existing stem cell lines – where the life and death decision has already been made.. . This allows us to explore the promise and potential of stem cell research – without crossing a fundamental moral line by providing taxpayer funding that would sanction or encourage further destruction of human embryos that have at least the potential for life."
-- George W. Bush

% **Federal funding of research using existing embryonic stem cell lines is consistent with the President's belief in the fundamental value and sanctity of human life.** The President's decision reflects his fundamental commitment to preserving the value and sanctity of human life and his desire to promote vital medical research. The President's decision will permit federal funding of research using the more than 60 existing stem cell lines that have already been derived, but will not sanction or encourage the destruction of additional human embryos. The embryos from which the existing stem cell lines were created have already been destroyed and no longer have the possibility of further development as human beings. Federal funding of medical research on these existing stem cell lines will promote the sanctity of life – without undermining it – and will allow scientists to explore the potential of this research to benefit the lives of millions of people who suffer from life destroying diseases.

% **Federal funds will only be used for research on existing stem cell lines that were derived: (1) with the informed consent of the donors; (2) from excess embryos created solely for reproductive purposes; and (3) without any financial inducements to the donors.** In order to ensure that federal funds are used to support only stem cell research that is scientifically sound, legal, and ethical, the NIH will examine the derivation of all existing stem cell lines and create a registry of those lines that satisfy this criteria. More than 60 existing stem cell lines from genetically diverse populations around the world are expected to be available for federally-funded research.

% **No federal funds will be used for: (1) the derivation or use of stem cell lines derived from newly destroyed embryos ; (2) the creation of any human embryos for research purposes; or (3) the cloning of human embryos for any purpose.** Today's decision relates only to the use of federal funds for research on existing stem cell lines derived in accordance with the criteria set forth above.

% **The President will create a new President's Council on Bioethics, chaired by Dr. Leon Kass, an expert in biomedical ethics and a professor at the University of Chicago, to study the human and moral ramifications of developments in biomedical and behaviorial science and technology.** The Council will study such issues as embryo and stem cell research, assisted reproduction, cloning, genetic screening, gene therapy, euthanasia, psychoactive drugs, and brain implants.

BACKGROUND

% **Embryonic stem cells.** Embryonic stem cells, which come from the inner cell mass of a human embryo, have the potential to develop into all or nearly all of the tissues in the body. The scientific term for this characteristic is "pluripotentiality."

% **Adult stem cells.** Adult stem cells are unspecialized, can renew themselves, and can become specialized to yield all of the cell types of the tissue from which they originate. Although scientists believe that some adult stem cells from one tissue can develop into cells of another tissue, no adult stem cell has been shown in culture to be pluripotent.

% **The potential of embryonic stem cell research.** Many scientists believe that embryonic stem cell research may eventually lead to therapies that could be used to treat diseases that afflict approximately 128 million Americans. Treatments may include replacing destroyed dopamine-secreting neurons in a Parkinson's patient's brain; transplanting insulin-producing pancreatic beta cells in diabetic patients; and infusing cardiac muscle cells in a heart damaged by myocardial infarction. Embryonic stem cells may also be used to understand basic biology and to evaluate the safety and efficacy of new medicines.

% **The creation of embryonic stem cells.** To create embryonic stem cells for research, a "stem cell line" must be created from the inner cell mass of a week-old embryo. If they are cultured properly, embryonic stem cells can grow and divide indefinitely. A stem cell line is a mass of cells descended from the original, sharing its genetic characteristics. Batches of cells can then be separated from the cell line and distributed to researchers.

% **The origin of embryonic stem cells.** Embryonic stem cells are derived from excess embryos created in the course of infertility treatment. As a result of standard *in vitro* fertilization practices, many excess human embryos are created. Participants in IVF treatment must ultimately decide the disposition of these excess embryos, and many individuals have donated their excess embryos for research purposes.

% **Existing stem cell lines**. There are currently more than 60 existing different human embryonic stem cell lines that have been developed from excess embryos created for *in vitro* fertilization with the consent of the donors and without financial inducement. These existing lines are used in approximately one dozen laboratories around the world (in the United States, Australia, India, Israel, and Sweden).

% **Therapies from adult and embryonic stem cell research.** To date, adult stem cell research, which is federally-funded, has resulted in the development of a variety of therapeutic treatments for diseases. Although embryonic stem cell research has not yet produced similar results, many scientists believe embryonic stem cell research holds promise over time because of the capacity of embryonic stem cells to develop into any tissue in the human body.

Questions and Answers

Stem Cell Q&A

1. Isn't this a reversal of the position President Bush took in his campaign and in a letter as recently as May 18? Didn't he say unequivocally that he "oppose[s] Federal funding for stem-cell research that involves destroying living human embryos"?

The President has always believed that human life is sacred. He has never retreated from that position, either as governor of Texas, during his campaign for President, or as President. And he does not retreat from that position today with his decision to permit federal funding of research using the more than 60 existing stem cell lines, where the life and death decision has already been made. At the same time, he is unwilling to direct taxpayer funds for research on stem cell lines that have not yet been derived, because that might encourage the destruction of additional embryos.

Embryonic stem cell research raises profound medical and ethical questions, questions about which the President has thought deeply. After long reflection, he has come to the conclusion that supporting this research using existing stem cell lines, which has the potential to save millions and millions of lives, is consistent with his personal pro-life beliefs.

2. The President said that he would name a Presidential Council to study this issue. What will the Commission's mandate be?

The President's Council on Bioethics, which will be chaired by Dr. Leon Kass of the University of Chicago will monitor embryonic stem cell research and study the human and moral meaning of developments in biomedical and behavioral science and technology.

3. Does this mean that the federal government will start regulating fertility clinics?

Additional federal oversight of the embryo donation process may be necessary. Since the NIH will need to ensure that fertility clinics obtain consent from embryo donors and carry out embryo donors' decisions, some federal supervision of these facilities may be appropriate.

4. How soon will scientists receive money for research on embryonic stem cells?

The NIH will begin working immediately on the creation of a registry of existing stem cell lines that meet three essential criteria:

- The embryos' donors' consent must be fully informed;
- The stem cell lines must be derived from excess embryos created for *in vitro* fertilization, not for research purposes.
- The embryo donation must have been made without any financial inducement.

5. The Dickey amendment says that federal funds cannot be spent on "research in which a human embryo or embryos are destroyed [or] discarded." Does this law permit the funding of stem cell research?

The Dickey appropriations rider prohibits the use of federal funds for "research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury

or death greater than that allowed for research on fetuses *in utero*." The research that the President has agreed to fund (using existing stem cell lines where the life and death decisions have already been made) does not violate the Dickey amendment. No Federal funds will be used for the destruction of human embryos or the derivation of stem cells, and no Federal funds will be used for research on stem cell lines created from human embryos that are alive as of this date.

6. *Couldn't excess embryos created for in vitro fertilization be donated to a woman who would have them implanted, so that they may become babies?*

The disposition of excess embryos created in the course of *in vitro* treatment is a private decision for the participants in that treatment. The participants may choose to donate their excess embryos to another woman or couple, to have them destroyed, or to donate them to research.

9. *How are embryonic stem cells derived?*

To derive embryonic stem cells for research, a researcher removes the inner cell mass from a week-old embryo. The embryo at this stage is about 100 cells in size and is barely visible to the naked eye. The removal of the inner cell mass destroys the embryo. The stem cells are then cultured, or grown, under special conditions in the laboratory. If they are cultured properly, embryonic stem cells will grow and divide (perhaps) indefinitely. These potentially immortal cultures are known as "stem cell lines."

10. *Why can't the government simply fund adult stem cell research?*

Although stem cells can also be derived from adult tissues, many scientists believe that, unlike embryonic stem cells, adult stem cells are not pluripotent (meaning they do not have the ability to develop into all the different types of human tissue). Thus, most scientists believe that adult stem cells are not as promising an avenue for treating and preventing disease as embryonic stem cells.

12. *Won't this approach bless the destruction of human life by allowing us to profit from morally disturbing research?*

There are several important medical therapies, including the chicken pox vaccine, the rabies vaccine, and the Hepatitis A vaccine, that have been derived from fetal tissue, including in some instances aborted fetuses. Although many people have very strong moral objections to abortions, most people do not shun these important vaccines.

13. *What is the President's response to the disease sufferers who might have benefited from additional research?*

While there is certainly great hope for successful cures and therapies from embryonic stem cell research, the reality is that medical realities often do not live up to their expectations. Eight years ago, there was great enthusiasm over fetal tissue research, yet to date, the promise of such research has not fulfilled its expectations. . By funding research on more than 60 genetically diverse stem cell lines, the President believes, based on conversations with some of the nation's leading scientists, that we will be able to fully explore the promise and potential of embryonic stem cell research.

14. *How do we know there are 60? Where do they come from? Who owns patents?*

    The NIH has been reviewing the state of stem cell science and they have reported that there are now more than 60 identifiable stem cell lines that have been created from excess embryos produced for *in vitro* fertilization and without any financial inducements to the donors. The NIH is looking into the patents and will obviously be engaged in negotiating material transfer agreements with the holders of the relevant patents.

15. *Won't these embryos be destroyed anyway?*

    Although many of these embryos may well be destroyed, the fact that a life is going to end does not justify actively terminating it. We should not value life so casually that we use the seeds of the next generation simply as tools for the benefit of the current generation.

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TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Margaret Tutwiler (CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl Doenges (CN=Karl Doenges/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN

TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Sam Dickens (CN=Sam Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Laura C. Welborn (CN=Laura C. Welborn/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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TO:William S. Clark (CN=William S. Clark/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
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TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP@EOP [WHO])
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TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
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TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
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TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov @ inet [UNKNOWN])
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TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [WHO])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov @ inet [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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EMBRYONIC STEM CELL RESEARCH

"As a result of private research, more than 60 genetically diverse stem cell lines already exist.. . I have concluded that we should allow federal funds to be used for research on these existing stem cell lines – where the life and death decision has already been made.. . This allows us to explore the promise and potential of stem cell research – without crossing a fundamental moral line by providing taxpayer funding that would sanction or encourage further destruction of human embryos that have at least the potential for life."
-- George W. Bush

% **Federal funding of research using existing embryonic stem cell lines is consistent with the President's belief in the fundamental value and sanctity of human life.** The President's decision reflects his fundamental commitment to preserving the value and sanctity of human life and his desire to promote vital medical research. The President's decision will permit federal funding of research using the more than 60 existing stem cell lines that have already been derived, but will not sanction or encourage the destruction of additional human embryos. The embryos from which the existing stem cell lines were created have already been destroyed and no longer have the possibility of further development as human beings. Federal funding of medical research on these existing stem cell lines will promote the sanctity of life – without undermining it – and will allow scientists to explore the potential of this research to benefit the lives of millions of people who suffer from life destroying diseases.

% **Federal funds will only be used for research on existing stem cell lines that were derived: (1) with the informed consent of the donors; (2) from excess embryos created solely for reproductive purposes; and (3) without any financial inducements to the donors.** In order to ensure that federal funds are used to support only stem cell research that is scientifically sound, legal, and ethical, the NIH will examine the derivation of all existing stem cell lines and create a registry of those lines that satisfy this criteria. More than 60 existing stem cell lines from genetically diverse populations around the world are expected to be available for federally-funded research.

% **No federal funds will be used for: (1) the derivation or use of stem cell lines derived from newly destroyed embryos ; (2) the creation of any human embryos for research purposes; or (3) the cloning of human embryos for any purpose.** Today's decision relates only to the use of federal funds for research on existing stem cell lines derived in accordance with the criteria set forth above.

% **The President will create a new President's Council on Bioethics, chaired by Dr. Leon Kass, an expert in biomedical ethics and a professor at the University of Chicago, to study the human and moral ramifications of developments in biomedical and behaviorial science and technology.** The Council will study such issues as embryo and stem cell research, assisted reproduction, cloning, genetic screening, gene therapy, euthanasia, psychoactive drugs, and brain implants.

BACKGROUND

% **Embryonic stem cells.** Embryonic stem cells, which come from the inner cell mass of a human embryo, have the potential to develop into all or nearly all of the tissues in the body. The scientific term for this characteristic is "pluripotentiality."

% **Adult stem cells.** Adult stem cells are unspecialized, can renew themselves, and can become specialized to yield all of the cell types of the tissue from which they originate. Although scientists believe that some adult stem cells from one tissue can develop into cells of another tissue, no adult stem cell has been shown in culture to be pluripotent.

% **The potential of embryonic stem cell research.** Many scientists believe that embryonic stem cell research may eventually lead to therapies that could be used to treat diseases that afflict approximately 128 million Americans. Treatments may include replacing destroyed dopamine-secreting neurons in a Parkinson's patient's brain; transplanting insulin-producing pancreatic beta cells in diabetic patients; and infusing cardiac muscle cells in a heart damaged by myocardial infarction. Embryonic stem cells may also be used to understand basic biology and to evaluate the safety and efficacy of new medicines.

% **The creation of embryonic stem cells.** To create embryonic stem cells for research, a "stem cell line" must be created from the inner cell mass of a week-old embryo. If they are cultured properly, embryonic stem cells can grow and divide indefinitely. A stem cell line is a mass of cells descended from the original, sharing its genetic characteristics. Batches of cells can then be separated from the cell line and distributed to researchers.

% **The origin of embryonic stem cells.** Embryonic stem cells are derived from excess embryos created in the course of infertility treatment. As a result of standard *in vitro* fertilization practices, many excess human embryos are created. Participants in IVF treatment must ultimately decide the disposition of these excess embryos, and many individuals have donated their excess embryos for research purposes.

% **Existing stem cell lines**. There are currently more than 60 existing different human embryonic stem cell lines that have been developed from excess embryos created for *in vitro* fertilization with the consent of the donors and without financial inducement. These existing lines are used in approximately one dozen laboratories around the world (in the United States, Australia, India, Israel, and Sweden).

% **Therapies from adult and embryonic stem cell research.** To date, adult stem cell research, which is federally-funded, has resulted in the development of a variety of therapeutic treatments for diseases. Although embryonic stem cell research has not yet produced similar results, many scientists believe embryonic stem cell research holds promise over time because of the capacity of embryonic stem cells to develop into any tissue in the human body.

Questions and Answers

Stem Cell Q&A

1. Isn't this a reversal of the position President Bush took in his campaign and in a letter as recently as May 18? Didn't he say unequivocally that he "oppose[s] Federal funding for stem-cell research that involves destroying living human embryos"?

The President has always believed that human life is sacred. He has never retreated from that position, either as governor of Texas, during his campaign for President, or as President. And he does not retreat from that position today with his decision to permit federal funding of research using the more than 60 existing stem cell lines, where the life and death decision has already been made. At the same time, he is unwilling to direct taxpayer funds for research on stem cell lines that have not yet been derived, because that might encourage the destruction of additional embryos.

Embryonic stem cell research raises profound medical and ethical questions, questions about which the President has thought deeply. After long reflection, he has come to the conclusion that supporting this research using existing stem cell lines, which has the potential to save millions and millions of lives, is consistent with his personal pro-life beliefs.

2. *The President said that he would name a Presidential Council to study this issue. What will the Commission's mandate be?*

The President's Council on Bioethics, which will be chaired by Dr. Leon Kass of the University of Chicago will monitor embryonic stem cell research and study the human and moral meaning of developments in biomedical and behavioral science and technology.

3. *Does this mean that the federal government will start regulating fertility clinics?*

Additional federal oversight of the embryo donation process may be necessary. Since the NIH will need to ensure that fertility clinics obtain consent from embryo donors and carry out embryo donors' decisions, some federal supervision of these facilities may be appropriate.

4. *How soon will scientists receive money for research on embryonic stem cells?*

The NIH will begin working immediately on the creation of a registry of existing stem cell lines that meet three essential criteria:

- The embryos' donors' consent must be fully informed;
- The stem cell lines must be derived from excess embryos created for *in vitro* fertilization, not for research purposes.
- The embryo donation must have been made without any financial inducement.

5. *The Dickey amendment says that federal funds cannot be spent on "research in which a human embryo or embryos are destroyed [or] discarded." Does this law permit the funding of stem cell research?*

The Dickey appropriations rider prohibits the use of federal funds for "research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury

or death greater than that allowed for research on fetuses *in utero*." The research that the President has agreed to fund (using existing stem cell lines where the life and death decisions have already been made) does not violate the Dickey amendment. No Federal funds will be used for the destruction of human embryos or the derivation of stem cells, and no Federal funds will be used for research on stem cell lines created from human embryos that are alive as of this date.

6. *Couldn't excess embryos created for in vitro fertilization be donated to a woman who would have them implanted, so that they may become babies?*

The disposition of excess embryos created in the course of *in vitro* treatment is a private decision for the participants in that treatment. The participants may choose to donate their excess embryos to another woman or couple, to have them destroyed, or to donate them to research.

9. *How are embryonic stem cells derived?*

To derive embryonic stem cells for research, a researcher removes the inner cell mass from a week-old embryo. The embryo at this stage is about 100 cells in size and is barely visible to the naked eye. The removal of the inner cell mass destroys the embryo. The stem cells are then cultured, or grown, under special conditions in the laboratory. If they are cultured properly, embryonic stem cells will grow and divide (perhaps) indefinitely. These potentially immortal cultures are known as "stem cell lines."

10. *Why can't the government simply fund adult stem cell research?*

Although stem cells can also be derived from adult tissues, many scientists believe that, unlike embryonic stem cells, adult stem cells are not pluripotent (meaning they do not have the ability to develop into all the different types of human tissue). Thus, most scientists believe that adult stem cells are not as promising an avenue for treating and preventing disease as embryonic stem cells.

12. *Won't this approach bless the destruction of human life by allowing us to profit from morally disturbing research?*

There are several important medical therapies, including the chicken pox vaccine, the rabies vaccine, and the Hepatitis A vaccine, that have been derived from fetal tissue, including in some instances aborted fetuses. Although many people have very strong moral objections to abortions, most people do not shun these important vaccines.

13. *What is the President's response to the disease sufferers who might have benefited from additional research?*

While there is certainly great hope for successful cures and therapies from embryonic stem cell research, the reality is that medical realities often do not live up to their expectations. Eight years ago, there was great enthusiasm over fetal tissue research, yet to date, the promise of such research has not fulfilled its expectations. . By funding research on more than 60 genetically diverse stem cell lines, the President believes, based on conversations with some of the nation's leading scientists, that we will be able to fully explore the promise and potential of embryonic stem cell research.

14. *How do we know there are 60? Where do they come from? Who owns patents?*

    The NIH has been reviewing the state of stem cell science and they have reported that there are now more than 60 identifiable stem cell lines that have been created from excess embryos produced for *in vitro* fertilization and without any financial inducements to the donors. The NIH is looking into the patents and will obviously be engaged in negotiating material transfer agreements with the holders of the relevant patents.

15. *Won't these embryos be destroyed anyway?*

    Although many of these embryos may well be destroyed, the fact that a life is going to end does not justify actively terminating it. We should not value life so casually that we use the seeds of the next generation simply as tools for the benefit of the current generation.

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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])

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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
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TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
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TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:paige.ralston@mail.house.gov (paige.ralston@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Joshua L. Ginsberg (CN=Joshua L. Ginsberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
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TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:ekertz@doc.gov (ekertz@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:jdyke@doc.gov (jdyke@doc.gov [UNKNOWN])
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TO:melliott@doc.gov (melliott@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Chesenterp@aol.com (Chesenterp@aol.com [UNKNOWN])
READ:UNKNOWN
TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

(See attached file: Stem Cell Fact Sheet.doc)
- Stem Cell Fact Sheet.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KL783004_CEA.TXT_1>

EMBRYONIC STEM CELL RESEARCH

"As a result of private research, more than 60 genetically diverse stem cell lines already exist.. . I have concluded that we should allow federal funds to be used for research on these existing stem cell lines – where the life and death decision has already been made.. . This allows us to explore the promise and potential of stem cell research – without crossing a fundamental moral line by providing taxpayer funding that would sanction or encourage further destruction of human embryos that have at least the potential for life."
-- George W. Bush

% **Federal funding of research using existing embryonic stem cell lines is consistent with the President's belief in the fundamental value and sanctity of human life.** The President's decision reflects his fundamental commitment to preserving the value and sanctity of human life and his desire to promote vital medical research. The President's decision will permit federal funding of research using the more than 60 existing stem cell lines that have already been derived, but will not sanction or encourage the destruction of additional human embryos. The embryos from which the existing stem cell lines were created have already been destroyed and no longer have the possibility of further development as human beings. Federal funding of medical research on these existing stem cell lines will promote the sanctity of life – without undermining it – and will allow scientists to explore the potential of this research to benefit the lives of millions of people who suffer from life destroying diseases.

% **Federal funds will only be used for research on existing stem cell lines that were derived: (1) with the informed consent of the donors; (2) from excess embryos created solely for reproductive purposes; and (3) without any financial inducements to the donors.** In order to ensure that federal funds are used to support only stem cell research that is scientifically sound, legal, and ethical, the NIH will examine the derivation of all existing stem cell lines and create a registry of those lines that satisfy this criteria. More than 60 existing stem cell lines from genetically diverse populations around the world are expected to be available for federally-funded research.

% **No federal funds will be used for: (1) the derivation or use of stem cell lines derived from newly destroyed embryos ; (2) the creation of any human embryos for research purposes; or (3) the cloning of human embryos for any purpose.** Today's decision relates only to the use of federal funds for research on existing stem cell lines derived in accordance with the criteria set forth above.

% **The President will create a new President's Council on Bioethics, chaired by Dr. Leon Kass, an expert in biomedical ethics and a professor at the University of Chicago, to study the human and moral ramifications of developments in biomedical and behaviorial science and technology.** The Council will study such issues as embryo and stem cell research, assisted reproduction, cloning, genetic screening, gene therapy, euthanasia, psychoactive drugs, and brain implants.

BACKGROUND

% **Embryonic stem cells.** Embryonic stem cells, which come from the inner cell mass of a human embryo, have the potential to develop into all or nearly all of the tissues in the body. The scientific term for this characteristic is "pluripotentiality."

% **Adult stem cells.** Adult stem cells are unspecialized, can renew themselves, and can become specialized to yield all of the cell types of the tissue from which they originate. Although scientists believe that some adult stem cells from one tissue can develop into cells of another tissue, no adult stem cell has been shown in culture to be pluripotent.

% **The potential of embryonic stem cell research.** Many scientists believe that embryonic stem cell research may eventually lead to therapies that could be used to treat diseases that afflict approximately 128 million Americans. Treatments may include replacing destroyed dopamine-secreting neurons in a Parkinson's patient's brain; transplanting insulin-producing pancreatic beta cells in diabetic patients; and infusing cardiac muscle cells in a heart damaged by myocardial infarction. Embryonic stem cells may also be used to understand basic biology and to evaluate the safety and efficacy of new medicines.

% **The creation of embryonic stem cells.** To create embryonic stem cells for research, a "stem cell line" must be created from the inner cell mass of a week-old embryo. If they are cultured properly, embryonic stem cells can grow and divide indefinitely. A stem cell line is a mass of cells descended from the original, sharing its genetic characteristics. Batches of cells can then be separated from the cell line and distributed to researchers.

% **The origin of embryonic stem cells.** Embryonic stem cells are derived from excess embryos created in the course of infertility treatment. As a result of standard *in vitro* fertilization practices, many excess human embryos are created. Participants in IVF treatment must ultimately decide the disposition of these excess embryos, and many individuals have donated their excess embryos for research purposes.

% **Existing stem cell lines**. There are currently more than 60 existing different human embryonic stem cell lines that have been developed from excess embryos created for *in vitro* fertilization with the consent of the donors and without financial inducement. These existing lines are used in approximately one dozen laboratories around the world (in the United States, Australia, India, Israel, and Sweden).

% **Therapies from adult and embryonic stem cell research.** To date, adult stem cell research, which is federally-funded, has resulted in the development of a variety of therapeutic treatments for diseases. Although embryonic stem cell research has not yet produced similar results, many scientists believe embryonic stem cell research holds promise over time because of the capacity of embryonic stem cells to develop into any tissue in the human body.

Questions and Answers

Stem Cell Q&A

1. Isn't this a reversal of the position President Bush took in his campaign and in a letter as recently as May 18? Didn't he say unequivocally that he "oppose[s] Federal funding for stem-cell research that involves destroying living human embryos"?

The President has always believed that human life is sacred. He has never retreated from that position, either as governor of Texas, during his campaign for President, or as President. And he does not retreat from that position today with his decision to permit federal funding of research using the more than 60 existing stem cell lines, where the life and death decision has already been made. At the same time, he is unwilling to direct taxpayer funds for research on stem cell lines that have not yet been derived, because that might encourage the destruction of additional embryos.

Embryonic stem cell research raises profound medical and ethical questions, questions about which the President has thought deeply. After long reflection, he has come to the conclusion that supporting this research using existing stem cell lines, which has the potential to save millions and millions of lives, is consistent with his personal pro-life beliefs.

2. *The President said that he would name a Presidential Council to study this issue. What will the Commission's mandate be?*

The President's Council on Bioethics, which will be chaired by Dr. Leon Kass of the University of Chicago will monitor embryonic stem cell research and study the human and moral meaning of developments in biomedical and behavioral science and technology.

3. *Does this mean that the federal government will start regulating fertility clinics?*

Additional federal oversight of the embryo donation process may be necessary. Since the NIH will need to ensure that fertility clinics obtain consent from embryo donors and carry out embryo donors' decisions, some federal supervision of these facilities may be appropriate.

4. *How soon will scientists receive money for research on embryonic stem cells?*

The NIH will begin working immediately on the creation of a registry of existing stem cell lines that meet three essential criteria:

- The embryos' donors' consent must be fully informed;
- The stem cell lines must be derived from excess embryos created for *in vitro* fertilization, not for research purposes.
- The embryo donation must have been made without any financial inducement.

5. *The Dickey amendment says that federal funds cannot be spent on "research in which a human embryo or embryos are destroyed [or] discarded." Does this law permit the funding of stem cell research?*

The Dickey appropriations rider prohibits the use of federal funds for "research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury

or death greater than that allowed for research on fetuses *in utero*." The research that the President has agreed to fund (using existing stem cell lines where the life and death decisions have already been made) does not violate the Dickey amendment. No Federal funds will be used for the destruction of human embryos or the derivation of stem cells, and no Federal funds will be used for research on stem cell lines created from human embryos that are alive as of this date.

6. *Couldn't excess embryos created for in vitro fertilization be donated to a woman who would have them implanted, so that they may become babies?*

The disposition of excess embryos created in the course of *in vitro* treatment is a private decision for the participants in that treatment. The participants may choose to donate their excess embryos to another woman or couple, to have them destroyed, or to donate them to research.

9. *How are embryonic stem cells derived?*

To derive embryonic stem cells for research, a researcher removes the inner cell mass from a week-old embryo. The embryo at this stage is about 100 cells in size and is barely visible to the naked eye. The removal of the inner cell mass destroys the embryo. The stem cells are then cultured, or grown, under special conditions in the laboratory. If they are cultured properly, embryonic stem cells will grow and divide (perhaps) indefinitely. These potentially immortal cultures are known as "stem cell lines."

10. *Why can't the government simply fund adult stem cell research?*

Although stem cells can also be derived from adult tissues, many scientists believe that, unlike embryonic stem cells, adult stem cells are not pluripotent (meaning they do not have the ability to develop into all the different types of human tissue). Thus, most scientists believe that adult stem cells are not as promising an avenue for treating and preventing disease as embryonic stem cells.

12. *Won't this approach bless the destruction of human life by allowing us to profit from morally disturbing research?*

There are several important medical therapies, including the chicken pox vaccine, the rabies vaccine, and the Hepatitis A vaccine, that have been derived from fetal tissue, including in some instances aborted fetuses. Although many people have very strong moral objections to abortions, most people do not shun these important vaccines.

13. *What is the President's response to the disease sufferers who might have benefited from additional research?*

While there is certainly great hope for successful cures and therapies from embryonic stem cell research, the reality is that medical realities often do not live up to their expectations. Eight years ago, there was great enthusiasm over fetal tissue research, yet to date, the promise of such research has not fulfilled its expectations. . By funding research on more than 60 genetically diverse stem cell lines, the President believes, based on conversations with some of the nation's leading scientists, that we will be able to fully explore the promise and potential of embryonic stem cell research.

14. *How do we know there are 60? Where do they come from? Who owns patents?*

    The NIH has been reviewing the state of stem cell science and they have reported that there are now more than 60 identifiable stem cell lines that have been created from excess embryos produced for *in vitro* fertilization and without any financial inducements to the donors. The NIH is looking into the patents and will obviously be engaged in negotiating material transfer agreements with the holders of the relevant patents.

15. *Won't these embryos be destroyed anyway?*

    Although many of these embryos may well be destroyed, the fact that a life is going to end does not justify actively terminating it. We should not value life so casually that we use the seeds of the next generation simply as tools for the benefit of the current generation.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David Kuo/WHO/EOP@EOP [WHO] <David Kuo>
Sent: 8/10/2001 5:47:15 AM
Subject: : Re: actually... one more...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-AUG-2001 09:47:15.00
SUBJECT:: Re: actually... one more...
TO:David Kuo (CN=David Kuo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

These are appropriate to refer to OLC. Please let me know if you
want me to proceed and do so. Thanks.

David Kuo
08/07/2001 09:49:35 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: actually... one more...

and this:

Include an appendix to the memo with a chart or table showing which state
and local jurisdictions have anti-discrimination laws broader than federal
law and whether and what kind of religious exemption is provided in those
broader laws.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Amiee L. Albertson/OMB/EOP@EOP [OMB] <Amiee L. Albertson>
Sent: 8/10/2001 5:29:15 AM
Subject: : LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001
Attachments: P_89C83004_WHO.TXT_1; P_89C83004_WHO.TXT_2

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-AUG-2001 09:29:15.00
SUBJECT:: LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001
TO:Amiee L. Albertson (CN=Amiee L. Albertson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection.
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 08/10/2001 09:29 AM ----------

Allison L. Riepenhoff
08/07/2001 11:30:45 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/07/2001 11:30 AM ----------

From: Amiee L. Albertson on 08/07/2001 11:13:12 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM ALA15 - - REVISED VETERANS AFFAIRS Report on HR1724 United States Cadet Nurse Corps Equity Act of 2001

Attached please find a revised VA report in which VA defers to DoD on H.R. 1724. The bill would recognize the service of members of the U.S. Cadet Nurse Corps as active military service for the purpose of laws administered by VA. A previous version of this report in which VA stated that they "do not support" the bill was circulated on July 27 (LRM #ALA9). A copy of the bill is also attached. Please respond by 5:00 p.m., Wednesday, August 8. Thank you.

Note to Agencies: Hard copy to follow.

LRM ID: ALA15
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, August 7, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: Amiee L. Albertson
PHONE: (202)395-3265 FAX: (202)395-6148
SUBJECT: REVISED VETERANS AFFAIRS Report on HR1724 United States
Cadet Nurse Corps Equity Act of 2001

DEADLINE: 5:00 p.m. Wednesday, August 8, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This VA letter has been revised to state that VA defers to DoD on H.R. 1724. An earlier version of this letter was circulated on July 23 (LRM #ALA9), in which VA stated that they "do not support" the legislation. Please respond by 5:00 p.m., Wednesday, August 8.

DISTRIBUTION LIST

AGENCIES:
029-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
052-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7773
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James J. Jukes
LRM ID: ALA15 SUBJECT: REVISED VETERANS AFFAIRS Report on HR1724
United States Cadet Nurse Corps Equity Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be

connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Amiee L. Albertson Phone: 395-3265 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4864

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Lynn C. Ross/OMB/EOP@EOP
Narahari Sastry/OMB/EOP@EOP
Cameron M. Leuthy/OMB/EOP@EOP
Wendell H. Waites/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP
Marisa K. Medrano/OPD/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
Daniel J. Keniry/WHO/EOP@EOP
Sarah S. Lee/OMB/EOP@EOP
Mathew C. Blum/OMB/EOP@EOP
WHGC LRM
Steven D. Aitken/OMB/EOP@EOP
Eric W. Hunn/OMB/EOP@EOP
Jennifer M. Forshey/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_89C83004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_89C83004_WHO.TXT_2>

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

The Honorable Bob Stump
Chairman
House Committee on Armed Services
United States House of Representatives
Washington, D.C. 20515-6035

Dear Mr. Chairman:

As requested, I am writing to express the views of the Department of Veterans Affairs (VA) on H.R. 1724, the "United States Cadet Nurse Corps Equity Act of 2001." This legislation would provide that service of the members of the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by VA. For the reasons discussed below, we defer to the views of the Secretary of Defense.

Congress has already provided an opportunity for organizations like the United States Cadet Nurse Corps to seek recognition of their service as active military service. Under Public Law No. 95-202, §401, 91 Stat. 1433, 1449 (1977), the Department of Defense (DoD) has authority to determine whether service rendered by a civilian or a group of civilians may be considered active duty for purposes of all laws administered by VA. In order to receive recognition by DoD, the members of such a group must have rendered service to the United States Armed Forces in a capacity considered civilian employment or contractual service at the time such service was rendered. Moreover, the Secretary of Defense acting through the Secretary of the Air Force must determine, after consideration of various factors and a thorough review of all available evidence pertaining to the service of any such group, that the service of such group should be considered active military service. Applications for recognition of the service of particular groups are considered by DoD's Civilian/Military Service Review Board under procedures found in title 32, Code of Federal Regulations, Part 47. Those regulations explain the application process and where to file a completed application.

In consideration of these facts, VA defers to the views of the Secretary of Defense concerning enactment of H.R. 1724.

REV_00130789

I

107TH CONGRESS
1ST SESSION

H. R. 1724

To provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mrs. LOWEY (for herself and Mr. OBERSTAR) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Cadet Nurse Corps Equity Act of 2001".

REV_00130790

SEC. 2. SERVICE DEEMED TO BE ACTIVE MILITARY SERVICE.

(a) IN GENERAL.—For purposes of section 401(a)(1)(A) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note), the Secretary of Defense is deemed to have determined that qualified service of a person constituted active military service.

(b) DETERMINATION OF DISCHARGE STATUS.—(1) The Secretary of Defense shall issue an honorable discharge under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 to each person whose qualified service warrants an honorable discharge.

(2) Such discharge shall be issued before the end of the one-year period beginning on the date of the enactment of this Act.

SEC. 3. PROHIBITION OF RETROACTIVE BENEFITS.

No benefits may be paid to any person as a result of the enactment of this Act for any period before the date of the enactment of this Act.

SEC. 4. DEFINITION.

For purposes of this Act, the term "qualified service" means service of a person as a member of the organization known as the United States Cadet Nurse Corps during the period beginning on July 1, 1943, and ending on December 15, 1945.

○

REV_00130791

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/10/2001 8:20:49 AM
Subject: : LRM OGG111 - - General Services Administration Report on Lafayette Building Renovation Plan and Financial Options
Attachments: P_G5I83004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-AUG-2001 12:20:49.00
SUBJECT:: LRM OGG111 - - General Services Administration Report on Lafayette Building Renovation Plan and Financial Options
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/10/2001 12:20 PM ----------

From: Oscar Gonzalez on 08/10/2001 12:13:29 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM OGG111 - - General Services Administration Report on Lafayette Building Renovation Plan and Financial Options

This GSA report to Congress contains recommendations for renovating the Lafayette Federal Building in Washington, D.C. Please provide comments by no later than 1:00 P.M. Monday, August 20th.

LRM ID: OGG111
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, August 10, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Oscar Gonzalez
PHONE: (202)395-3923 FAX: (202)395-3109
SUBJECT: General Services Administration Report on Lafayette Building Renovation Plan and Financial Options

DEADLINE: 1:00 P.M. Monday, August 20, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This GSA report to Congress contains recommendations for renovating the Lafayette Federal Building in Washington, D.C. Please provide comments by no later than 1:00 P.M. Monday, August 20th.

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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_____ Concur

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JOINT AGENCY REPORT TO CONGRESS

LAFAYETTE BUILDING RENOVATION PLAN AND FINANCIAL OPTIONS

JUNE 1, 2001

Revised August 6, 2001

REV_00130799

JOINT AGENCY REPORT TO CONGRESS REGARDING THE PROSPECTIVE RENOVATION OF THE LAFAYETTE BUILDING, WASHINGTON D.C.

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I. EXECUTIVE SUMMARY

BACKGROUND

The following report to Congress incorporates and synthesizes the findings of a separately commissioned Building Evaluation Report and Feasibility study for the renovation of the Lafayette Building. Congress has directed the General Services Administration (GSA) to work with the Department of Veterans Affairs (VA) and the Export-Import Bank of the United States (Export-Import Bank) to develop a renovation plan considering all alternatives authorized by law for the Lafayette Building.

The 12-story, 559,875 gross square foot Lafayette Building was constructed in 1940 in a unique, angled shape that creates irregular and inefficient areas. A top-tier location in the heart of Washington's vibrant central business district makes the building a premier federally owned facility. The building is under the control and jurisdiction of GSA. The VA Occupies 60% of the building and the Export-Import Bank occupies 40%. After 60 years in use, the building needs a complete renovation to provide modern, efficient office space for the federal workforce and to maintain the building's competitive position within the marketplace. A recent study by an outside consultant recommends a single-phase renovation project, estimated to cost $70 million (in 2001 dollars). The renovation study states that the building exhibits a pressing need of general upgrading and refurbishment, including more efficient heating, ventilating, and air conditioning systems, new lighting, an up-to-date system of power and telecommunications distribution, energy-efficient fenestration, and restoration and/or replacement of interior finishes.

FUNDING OPTIONS

This report considers three methods of funding the proposed renovation of the building. The first funding option is through traditional congressional appropriation. The second funding option is through the use of a Public/Private Partnership between the government and a private entity. GSA does not have this authority at this time, so the Public/Private analysis is modeled in accordance with what GSA believes would be required to induce private sector participation in this venture under current market conditions. The third funding alternative is enhanced-use leasing, authorized for the Department of Veterans Affairs to use for its own properties.

RECOMMENDATION

After completing an analysis of the three funding alternatives, GSA recommends proceeding with the Lafayette Building renovation through direct congressional appropriation. This funding option returns the highest Net Present Value (NPV) to the Government among all the alternatives studied. Net Present Value is defined as the cumulative present value of all future cash inflows and outflows. The NPV, excluding costs associated with swing space,[1] is $168 million for traditional funding compared to a 30-year Public/Private Partnership NPV of $51 million. One

[1] Swing space is interim tenant housing utilized during renovation.

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of the primary reasons that congressional funding provides the highest NPV to the government is that in a Public/Private Partnership, GSA would be required to share the cash flow with a private partner, while in direct congressional appropriation GSA retains all excess cash flow. However, since GSA renovation projects must compete for scarce funding and the so many of GSA's buildings need extensive renovations, alternative funding via some kind of Public/Private Partnership presents the next best alternative.

PUBLIC/PRIVATE PARTNERSHIP OPTION

Public/Private Partnerships for this renovation are defined by having a private entity fund the renovation and the government leasing back the asset to compensate for the private funds expended. After a negotiated period or set rate of return, GSA shares in the revenue. Public/Private Partnerships can be structured in many forms. For analysis purposees, GSA has selected a generic partnership form with the following elements:

(1) GSA retains ownership,

(2) the partner brings all the money necessary to modernize the building,

(3) GSA has 49% equity in the project,

(4) GSA occupies the building in entirety and

(5) the developer receives a market rate of return on its investment.

We have selected this form because it is appropriate for the situation and GSA receives a return on its 49% equity position.

The Public/Private Partnership will yield the government a lower overall NPV, but reduces the overall risk the government has towards the renovation. In this case, the economics show that a Public/Private Partnership is more expensive than direct federal funding, but cheaper than leasing space for the tenants. The private partner would bear all risk associated with completing and financing the renovation and would then share in the profits over the period of the master property lease. The master property least would typically last from 30 to 75 years. At the end of the master property lease, the government would retain 100% ownership of the land and building. Public/Private Partnership legislation has yet to be approved; thus this option was modeled based on assumptions and not actual guidelines.

Generally, Public/Private Partnerships as a vehicle for obtaining private financing of Federal construction and repair projects are not recommended because private financing is more expensive to the Federal taxpayer than Government-finance. Still, with so many federal buildings in need of modernization, Public/Private Partnerships can make business sense when PBS is unable to get timely funding for a federal building modernization project. Although PBS has no authority now to do a Public/Private Partnership, a Public/Private Partnership would be useful if money continues to be scarce.

ADDITIONAL FUNDING OPTION – ENHANCED-USE LEASING

This option is not authorized, as VA does not own the building. Also, the VA authority is for underutilized facilities (an example is excess land adjoining a VA facility), so the renovation of the Lafayette building does not meet this criterion. Finally, the scope of this renovation is much larger than all previous projects the VA has completed with its enhanced-use leasing authority. As a footnote to enhanced-use leasing, the size and scale of the renovation requires an experienced entity with the expertise to deal with the complexity of the project, such as GSA's Public Buildings Service.

APPENDICES

The appendices to this report present key findings including: financial results for direct congressional appropriation and private equity joint venture scenarios, benefits and drawbacks to each method, occupancy costs to the tenants, and an analysis to determine the least costly alternative to the government over a 30-year period among leasing, building and renovation.

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II. APPENDIX A - DISCUSSION OF BUILDING DEVELOPMENT PLAN, MARKET, AND MODELING ASSUMPTIONS:

EXISTING BUILDING AND PROPOSED REDEVELOPMENT PLAN:

The Lafayette Building was completed in 1940 and enjoys a premier location in Washington's central business district. It is listed on the National Register of Historic Places. The building has primary northwest frontage along Vermont Avenue. Eye Street borders to the north, 15th Street to the east and H Street to the south. The Department of Veterans Affairs and the Export-Import Bank currently occupy the building, along with a small GSA-PBS field office. Many of the original systems and construction remain, making the building obsolete by today's standards.

The building consists of basement and ground floors, as well as floors one through twelve. The building is 559,875 gross square feet and approximately 313,112 rentable square feet. The proposed renovation assumes two concepts:

- The first renovation concept maintains the building in its current configuration and preserving all of the historically significant interior corridors and other interior spaces. There is no gain in square footage, with both tenants maintaining the same space allocation.

- The second renovation concept will add substantial useable square footage (47,500 square feet) due to removal of historic corridors in some areas. The rentable to useable ratio will improve to a level of 1.24. The total renovation cost is estimated at $69.2 million (2001 dollars) or $124 per gross square foot for concept one and $69.1 million (2001 dollars) or $123 per gross square foot for concept two. The improvements will bring the building up to modern office building standards.

DESIGN OF THE BUILDING:

The Lafayette Building is of a unique shape and features massive walls and partitions. Its bay sizes are narrow and the overall configuration has sharply angled floors that create irregular, inefficient areas.

The Lafayette Building requires substantial renovation to bring the building up to current modern office building standards. New and efficient mechanical systems should be installed, along with replacing the current electrical system. The building also needs to be brought into compliance with disability access requirements, asbestos needs to be removed, and finishes require refurbishment. Replacement of the single-glazed windows will improve the building's energy efficiency. Because of its historical significance, the renovation will preserve the original design to the maximum extent feasible.[2]

[2] Note – some GSA initiatives, such as Sustainability ("Building Green"), Design Excellence and Construction Excellence measures, and level-4 security measures such as Blast-proofing and Glass Fragmentation were not included in the MAP feasibility report.

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The first renovation concept will maintain the building in its current configuration and preserve all of the historically significant interior corridors and spaces. Restrooms and stairs would be rehabilitated, and only areas designated as renovation zones would be altered in more substantial ways to meet the needs of the two tenants. The second concept allows greater flexibility with respect to space planning within the office interiors by removing corridors in some areas even though they are considered historically significant. This will create more efficient layouts of workspace and offices. This concept also proposes some changes to the existing interiors to recapture space to use for mechanical equipment, utility closets and office space.

The models assume concept two and that zoning and historic preservation approval enabling the renovation of space noted above is obtained.

SUBMARKET OVERVIEW:

According to AEW Research, the Washington, D.C. metropolitan area is in its tenth year of a real estate cycle upswing. The regional market encompasses approximately 275 million square feet of space, making it the second largest office market in the country. The metro area's direct vacancy rate at the end of 2000 was 3.6%. The only other major U.S. markets that rival Washington's vacancy rate are Boston and San Francisco. Over 100 million square feet of office space is located within the District of Columbia, and demand for both Class A and Class B/C space has been strong, causing rental rates to increase significantly. Over the next five years, office employment is predicted to increase at close to 1.7% per year, which should support continued (albeit slower) absorption.

The Lafayette Building is located in the Central Business District (CBD) submarket, the largest of the seven submarkets within the District of Columbia. The area includes 36 million square feet of space, 85% of which is considered Class B/C space. Strong demand and moderate new construction in the area led to a sharp decline in vacancy rates, which fell from 10.6% in 1995 to 2.6% at the end of 2000. Rents rose 10% in 2000 to $42.50 per square foot for Class A space and $31.75 per square foot for Class B space, reflecting the tightening market conditions.

New supply is continuing to enter the market, prompted by a lack of large contiguous blocks of available space, robust absorption, rising rental rates and relatively low vacancy rates. Construction in the submarket is occurring at a fairly robust pace, although at considerably lower levels than one year ago. As of year-end 2000, there was 1.2 million square feet of space under construction or renovation according to Delta Associates. The recent economic slowdown is causing some planned developments to remain on hold.

Still, absorption has been equally strong. In 2000, 1.4 million square feet of space was absorbed. Anticipated absorption is expected to slow, but will continue to outpace deliveries of new space to the market, providing continued rate pressure through the next year. Beyond 2001, steady absorption and low vacancy rate should draw further new construction into the market, but not at levels that will push the market below strong/equilibrium conditions.

The factors affecting the District's ability to absorb space are expected to support continued positive market conditions. These factors include: the consistent performance of the business services sector; the continuation of a general turnaround and related ebb in the loss of population

and increase in optimism in the city; and demand for office space supported by a plethora of policy organizations, trade associations and lobbying firms. The Lafayette Building is well located to benefit from these factors.

SPECIFIC PROPERTY MODELING ASSUMPTIONS:

Construction Costs:	$69,181,936 – concept one; $69,121,367 – concept two
Government Equity:	$26,587,568
Private Partner Equity:	$27,672,775
Anticipated Construction Loan:	$41,500,000,7.5%,interest deferral, no amortization
Permanent Loan:	75% LTV, 7.0% interest, 25 year amortization
Refinanced Loans:	65% LTV, 7.0% interest,25 year amortization
Annual Ground Rent:	$1,329,378
Government Share:	49%, based on imputed value of capital account
Private Partner Share:	51%
Capital Improvements:	In the 50-year model, we assume a standard charge of $50 per gross square feet is applied to the buildings for the purpose of additional building renovation in the sixth month of year 31. Another $50 per square foot is applied to complete the renovation at the beginning of year 32. The amounts for capital improvements are in 2001 dollars.

KEY GENERAL MODELING ASSUMPTIONS:

The Lafayette Building has been modeled by Bolan Smart Associates according to the following general real estate assumptions.

Renovation Method:	Design/Bid/Build – the most lengthy of all renovation scenarios, but substantially reduces risk with respect to construction and cost overruns.
Construction Start Date:	2005
Construction Completion:	36 months
Tenancy:	It is assumed the Department of Veterans Affairs and the Export-Import Bank will relocate to swing space until the

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	renovation is complete and will return immediately thereafter.
Swing Space Rent:	$46.20 per rentable square foot
Moving Costs:	$15.00 per useable square foot
Re-occupancy Rent:	$41.07 per rentable square foot under concept one and $46.38 per rentable square foot under concept two.
Rental Growth Rate:	1.75% per year
Operating Expense Growth:	2.0% per year
Tenant Improvements:	During renovation, tenant improvement allowances are assumed at $37.50 per square foot.
Parking Income:	129 spaces at $200 per month per space.

III. APPENDIX B - DISCUSSION AND SUPPORTING ANALYSIS

OWNER AND TENANT RESULTS UNDER THE CAPITAL FUNDING OPTIONS

The Lafayette Building benefits from its excellent location on Lafayette Square with views of the White House. The property's premier location and strength of the local real estate market should serve to make the renovation financially successful through direct funding, and would attract significant interest from the private sector if a Public/Private Partnership funding option were to be considered. A complete renovation would substantially increase the appeal and long-term viability of the Lafayette Building.

The financial models included in this report analyze the following scenarios: (1) the government as sole holder under traditional prospectus funding and (2) the government as minority partner to a private sector developer/partner. This analysis assumes that a separate scenario modeled under enhanced-use lease authority will result in no difference from the Public/Private model results. All discussion about the Public/Private scenario applies to the enhanced-use scenario as well.

The identical results are due to the fact that enhanced-use leasing shares many of the same characteristics with public/private financing in that both scenarios involve accessing private sector equity capital, either equity or bond financing. Neither alternative will have an economic advantage over the other for purposes of renovating the Lafayette Building. Risk levels and required rates of return in the private capital markets are similar under both scenarios, consequently, no other scenario will be able to obtain a lower capital cost structure in the private capital markets.

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SUMMARY OF OWNER'S FINANCIAL RETURNS

The following tables present the projected internal rates of return (IRR) for the building renovation of the Lafayette building under the two capital funding options. The Prospectus-level funding models are presented in two scenarios: one includes swing space expenses and the other model omits swing space expenses. Excluding swing space costs most accurately reflects a private sector equity partner deal and thus provides a more accurate comparison to a true market deal. The privately financed models are for both 30 and 50 years.

Return (IRR) Summary – Traditional Funding and Public/Private*

Partner	Traditional with Swing Space Expense	Traditional – No Swing Space Expense	Public / Private 30 Year	Public / Private 50 Year
Government	13.95%	19.81%	19.61%	19.92%
Private Partner	N/A	N/A	23.37%	23.50%

* Prospectus-level funding models assume no leverage.

The following tables present the projected net present values for the government and private equity partner over a 30 and 50-year master property lease assumption:

Net Present Value (NPV) Summary – Traditional Funding and Public/Private*

Partner	Traditional with Swing Space Expense	Traditional – No Swing Space Expense	Public / Private 30 Year	Public / Private 50 Year
Government @ 6.3%	$127,200,479	$168,035,353	$50,817,192	$68,975,447
Private Partner @ 6.3%	N/A	N/A	$56,698,479	$69,157,435
Private Partner @ 12.0%	N/A	N/A	$22,586,216	$24,716,755

* Prospectus-level funding models assume no leverage.

The overall returns and net present value to the government vary between the two funding scenarios, due to varying equity contributions and a debt provider in the private scenario that receives annual payments. Both the traditional and private scenarios offer benefits and drawbacks. In the traditional funding method, the government will be responsible for the entire renovation cash outlay and will assume all development and construction risk. Positive benefits to this scenario include the government having total control over all decisions affecting the building, along with GSA receiving 100% of the net cash flow generated and any upside associated with the operation of the building. A private equity partner focused solely on real estate management could potentially offer an additional financial benefit to the government by way of efficient management and thorough real estate operating knowledge. However, as GSA also has experience, our benefit from utilizing a private partner in this area would be marginal.

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The Public/Private Partnership alternative can be constructed for the Lafayette Building so as to respond to scoring rules under capital lease or lease-purchase definitions. Should GSA be given congressional authority to enter into Public/Private Partnerships, the authority would specify how the scoring issue is resolved. A Public/Private Partnership would be the higher cost alternative in Present Value terms compared to the direct funding model. The higher cost is attributable to the lower costs of federal funds for construction. Nonetheless, a Public/Private Partnership alternative can be a valuable resource to leverage scarce capital investment dollars to allow more renovations of federal buildings in strong real estate markets.

GSA also considers total overall cost to the government according to three different scenarios: leasing, building and renovation. The results differ from the models in this analysis because they are totally expense driven and not return driven. The following table summarizes the results from the cost analysis, and indicates that renovation would be the least costly alternative to the government when compared to building new or leasing. Total present value cost represents the total overall cost to the government over a 30-year period, including operating expenses.

Total Present Value Cost Analysis

Scenario	Total Present Value Cost *
Lease	$261,801,000
Build	$206,661,000
Renovate	$196,462,000

* Assumes a government discount rate of 5.3%

Joint venture private financing also provides benefits and drawbacks for the government. Benefits include no initial cash outlay, only an imputed value of the government's partnership capital is contributed. Additionally, the government bears none of the risk associated with the renovation. The developer partner will obtain construction financing and will be responsible for payment of the loan upon stabilization. Lastly, the government will retain 100% ownership of the Lafayette Building upon expiration of the master property lease. Drawbacks include a possible disproportionate share of net cash flows based upon the ultimate structure of the transaction, along with the lack of total control over renovation, construction and ultimate operation of the building.

Prior models assumed that a market rental rate will be paid by the tenants of the building. For comparison purposes, the following analysis considers the rent levels needed to reflect the cost of modernizing the space under direct federal funding and Public/Private Partnership. The imputed land and building values were removed from the analysis. Under the Private/Public Partnership option the private entity is limited to a maximum 20% return. The analysis seeks the rent needed to be in equilibrium to attain the desired hurdle rate and where the Net Present Value equals 0. The imputed federal rate is 6.3% for the analysis.

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Stripped Comparison Rent Cost w/o Imputed Land And Building Values

	Base Rent (RSF)	Operating Expenses	Total
Direct Federal Funding	$11.19	$8.79	$19.98
Public/Private Partnership	$26.60	$8.79	$35.39

The direct federal funding method requires a full service rent of $19.33 to cover the expenses of renovating the Lafayette building. The Public/Private Partnership option requires a full service rent of $35.39 per RSF to provide a 20% IRR to the private sector partner.

The following analysis considers only the present value of the modernization costs for the two options. There are no imputed land or building values or operating expenses used in the analysis. It shows that Direct Federal Funding is the low cost alternative to acquire modernized space for the tenants.

Stripped PV cost w/o operating expense costs.

	Present Value [1]
Direct Federal Funding	$83,291,000
Public/Private Partnership	$91,833,430

[1] Present Value based on 6.3%.

The following table summarizes benefits and drawbacks to the government under both scenarios:

Capital Funding Options Benefits and Drawbacks – Owner/Equity Partner

	Traditional Funding	Public/Private Partnership
Development/Construction Risk	Neutral[2]	Benefit
Capital Investment	Neutral[3]	Benefit
Operating Control	Benefit	Drawback
Ownership	—	—
Cost of Financing	Benefit	Drawback
Total Capital Investment (Budget Authority)[1]	$69 million	$0

[1]Excludes move and relocation costs of $12.2 million.

[2]Depending on the construction contracting method, the government can reduce risk. For example, construction risk can be minimized by the design-bid-build method.

[3]The Public/Private Partnership would allow GSA to leverage its limited capital investment dollars to modernize a larger number of federal buildings.

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SUMMARY OF TENANT EXPENSES

The two primary tenants of the Lafayette Building [the Department of Veterans Affairs and the Export-Import Bank] will face increased occupancy costs following renovation of the building that will bring it up to Class A-/B+ standards. Whether GSA or a private equity partner renovates the building, the rents will be marked-to-market.

The following table presents the current rent, net of expenses, paid by the Department of Veterans Affairs and the Export-Import Bank, and what they can expect to pay in market rent (2001 dollars) after renovation is complete.

Tenant Occupancy Cost Analysis

Tenant	Current Rent per Useable Square Foot[1]	Rent per Useable Square Foot after Renovation[2]	Difference
VA	$30.00	$57.40	$27.40
Ex-Im Bank	$30.00	$57.40	$27.40

[1]Equivalent rate per RSF = $20.98
[2]Equivalent rate per RSF = $46.38

Total rental payments over a five-year period are presented in the table below. The figures are presented as a status quo scenario, in which the current tenants remain in the building, and as a renovation scenario in which the tenants return to the building after renovation is complete. During the three years the Lafayette Building is being renovated, the tenants will move into comparable office space in a different building, known as swing space. Swing space rent will be more expensive than current rent paid today, as the tenants will be charged market rent plus a premium for the short lease duration.

The following table presents total occupancy costs over a five-year period. The costs are presented in two scenarios: (1) assuming no renovation is undertaken and (2) assuming the renovation is completed. For comparison purposes, the occupancy costs for the renovation scenario are presented with 2001 rental rates and with the same square footage assumptions as the status quo scenario.

Total Five Year Occupancy Cost Analysis

Tenant	5-Year Rent Expense under Status Quo Scenario (1)	5-Year Rent Expense under Concept Two Scenario (2)	Difference (In dollars and percent)	
VA	$27,078,811	$50,217,289	$23,138,478	85.4%
Ex-Im Bank	$18,782,952	$34,832,731	$16,049,779	85.4%

Note: Useable square footage is based on Lafayette Renovation feasibility report (dated 5/17/01) of approximately 169,000 usf for VA and 117,000 usf for Ex-Im Bank. Rental rates are based on the Bolan Smart financial analysis (see MAP feasibility report, dated 5/17/01). For comparison

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purposes, we have assumed the same square footage and rental rates in 2001 dollars.

The average annual difference is $4.6 million for the VA and $3.2 million for the Ex-Im Bank, with average annual percentage increases of 17.1%. The market rate presented in this report is indicative of current Class A-/B+ rates for a building with a location similar to the Lafayette Building. Current economic conditions are affecting the real estate market, causing increased vacancies in some submarkets and easing upward pressure on rents. Thus, the rental rates presented may not be indicative of market rates at the time of occupancy, but are best estimates given recent market performance.

The renovation of the Lafayette Building will have a direct impact on certain relocation and moving expenses. The following table presents all move and relocation costs associated with the renovation and the party, or parties, responsible for these costs under the scenario presented in this report.

Move and Relocation Costs[1]

Expense	Amount[1]	Date Incurred	Responsibility
Initial Move Cost	$4,795,916	2005	Agency[2]
Swing Space Costs	$46.20 per sf	2005-2007	Agency –
Move Back Costs	$7,516,453	2008	Agency
Tenant Improvements	$13,528,218	2007	GSA/Private Partner

[1]Costs are based on Concept Two scenario (from MAP feasibility study dated 5/17/01).
[2]See Appendix A - General Modeling Assumptions, move costs.

Under GSA pricing policy, the tenant is responsible for move and swing space costs. GSA provides a base general allowance of $31.92 per useable square foot for tenant improvements and assigns each agency a "tier" level for additional tenant improvements. The VA and Export-Import are both assigned a Level 2 tier for improvements, representing a 20% premium above base levels. Upon returning to the Lafayette Building, the tenants will face higher occupancy costs, but will benefit from vastly improved space. The following table presents benefits and drawbacks to the tenants given a renovation of the Lafayette Building.

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Tenant Benefits and Drawbacks of Renovation

Improved space	Benefit
More efficient space	Benefit
More overall space	Benefit
Complete systems upgrades	Benefit
Less expensive than permanently relocating to comparable building	Benefit
Short term move	Drawback

Note: The increase in leasing costs is not included as a benefit or drawback for the tenant, as it is a function of receiving higher quality space.

Both funding options present benefits and drawbacks to the government. As the owner, the best financial return from a net present value standpoint is to fund the renovation through direct federal funding. However, this requires a substantial capital outlay that must compete with other urgent federal modernization projects. The Public/Private Partnership program would allow the government to leverage its capital dollars to renovate its buildings. The Public/Private Partnership program is not necessarily a benefit to the government since it is a more expensive option than direct federal funding. However, PBS has so many buildings in dire need of modernization that the Public/Private Partnership program could at times be worth the additional cost to get and prevent further deterioration or solve an emergency problem. Both methods result in similar overall investment (IRR) returns of 19.8% for the federally funded project and 19.6% for the Public/Private Partnership.

From a tenant's standpoint, the benefits and drawbacks remain the same under either funding option. The tenants' occupancy costs (rent) will be marked to market for both direct and public/private funding so there is no net gain or loss to the tenants under either scenario.

IV. APPENDIX C - PARTNERSHIP FINANCIAL MODELS

CONSIDERATIONS TO PUBLIC/PRIVATE PARTNERSHIP

The privately financed transaction presented in this report assumes the following capital structure, in order of priority:

- The government contributes an imputed capital account, equal to 49% of the overall equity required for renovation. The government then receives a 5% return on its imputed value. This return is most senior in the capital structure.

- Construction financing is obtained for 60% of the total cost of renovation. The loan is assumed to accrue interest at 7.5% annually, and will provide for full interest deferral and no amortization. Payoff of the loan is subordinate only to the government's return.

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- A private equity partner is assumed to contribute the equity required to complete the renovation after construction debt is placed, which in this model is 40% of the total cost of renovation. The private partner will be due a preferred return of 11%, which is subordinate to payment of the debt and payment to the government.

- In the event of a capital event such as a refinancing, excess proceeds will be used to first pay any unpaid returns due to the above capital sources. After that, excess proceeds will be used to pay off the private equity partner's equity contribution. Assuming refinancing proceeds will fully retire the equity partner's contribution, the remaining excess proceeds will be split in accordance with the partners' overall interest.

- When the equity partner's contribution is fully retired, the preferred return will stop being paid.

- Any excess cash flow remaining after all of the above distributions are paid will be split in accordance with the corresponding equity contribution percentages.

This public/private analysis is similar to previous analysis prepared under a separate study for the GAO. The partnership analysis presented in this report also solves for the projected IRR and NPV for both the government and the private equity interests over the prescribed hold period.

If a public/private project were to be considered for the Lafayette Building, we believe the following conclusions represent an accurate indication of how the private sector would react:

- The private sector will base return thresholds on the probability of the current tenancy to execute commitments that they will sign a lease of at least 10 years and return to the Lafayette Building as soon as renovation is complete. We have assumed this scenario for the models in this report. If a commitment is obtained, the private sector will partner for returns in the upper teens. If a commitment is not obtained, private sector partners will require a higher return.

- A 30-year scenario for the private financing scenario is shorter than the private sector at large is accustomed to underwriting. Many private ground lease transactions involve terms of 75 to 99 years. However, the Lafayette Building's prominent location in the heart of Washington's central business district along with the implied safety of partnering with the government (and guaranteed return of current tenancy) will attract interest from the private sector. The structure of the transaction could be executed in a multitude of ways, and a shorter master property lease may be mitigated through increased private sector returns, for example. We believe the ability to flexibly structure a Public/Private Partnership will serve to attract interest from the private sector, though even higher interest could be generated with a longer term.

- A longer master property lease term enables a private equity partner to refinance the permanent debt multiple times, allowing them to recapture significant additional proceeds that boost overall returns. Longer terms would also serve to lower the private sector's focus on exit strategies, since typical private equity deals usually are for a maximum of ten years. Again, the overall deal could be structured in many ways that would alleviate much of the

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concern over master lease term since there are private equity participants that could underwrite a 'redevelop and hold' scenario.

- The recent slowdown in the national economy is affecting commercial real estate transactions. High yield equity participants have raised capital for investment, but are very selectively investing due to the economic uncertainty. The reduced amount of private equity participants could have an impact on the demand for this type of project. The high profile nature of the project and the attraction of partnering with the government will draw interest, although possibly at a somewhat lower level if current economic conditions persist.

- Favorable conditions in the debt market serve to enhance the return structure, and the private sector will attempt to obtain maximum leverage on the property. However, more conservative underwriting due to the economy has led many commercial banks and insurance companies to lend approximately 60-70% on a loan to value basis. We believe the quality of the tenancy within the Lafayette Building and premier location should help to secure permanent financing of approximately 75% loan to value.

- The private financing models presented in this report may not accurately reflect a true private equity market scenario. We believe that under real market conditions, a developer would renovate the property, stabilize and then sell its partnership interest. A private equity source would most likely take the developer out, hold for a period of five to ten years, and then sell its partnership interest. Again, with numerous structuring scenarios, the ultimate outcome could be done in a way that is favorable to both the government and private sector.

- In typical private sector transactions where there is a shorter master property lease term than is desirable, a "put right" or some other extension instrument would likely be structured. The government will likely not option a put right, thus the private sector will price this into the deal, which could be done through higher return requirements, lower master property lease payments or disproportionate splits in excess cash flow.

THE PUBLIC/PRIVATE PARTNERSHIP PROGRAM

Public/Private Partnerships are not normally used in the renovation of buildings. In government real estate transactions, they primarily have been used in trades in kind. This is where the government receives a benefit in exchange for land. Public/Private Partnerships for this renovation would have the private entity fund the renovation and the government leases back the asset to compensate for the private funds expended. Because private financing is more expensive to the Federal taxpayer than Government-finance, public-private partnerships as a vehicle for obtaining private financing for major federal construction and repair projects are only recommended when direct federal funding is not available, nor likely to be available in a timely manner. The use of an outlease with a leaseback should only be used when such a transaction is less expensive than simple renovation or construction.

The General Accounting Office (GAO) supported the use of partnerships with the private sector only when they reflect the best economic value available for the federal government in its April 2001 report, "Funding Repairs and Alterations Has Been a Challenge – Expanded Financing Tools Needed" (GAO-01-452).

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If they were used for a renovation project, the partnership would be structured in the following manner:

- the government contributes a leasehold interest to the partnership as its equity contribution;
- the private sector provides equity in the form of contributed funds and expertise in the financial and strategic aspects of property improvement.

Partnerships with the private sector have the greatest potential for success in situations where properties are located in markets with a healthy demand; there exists corresponding private sector investment potential; and there is a continued need for agency space that is not adequately satisfied with existing government facilities.

Leases for agency tenants would be subject to the same budgetary scoring procedures currently used for leasing space in privately owned buildings. The government will benefit by retaining the long-term ownership interest in the improved property, receiving a preferential option to lease the modernized space, and sharing in cash flow generated.

GENERAL ASSUMPTIONS:

- Two models are considered: direct congressional funding and a Public/Private Partnership. Within the public/private scenario we have assumed that the government will enter into a master property lease to a new partnership for two terms – 30 and 50 years.
- The overall return to the private sector would likely be higher in a true market analysis, in which the developer would likely renovate and then sell its partnership interest upon stabilization, or nearly full occupancy, of the property.
- The developer/equity partner is assumed to take a disproportionate share of excess proceeds from retiring the construction debt and obtaining permanent financing, because of the construction risk the developer is undertaking. The split is assumed to be 80% to the private partner and 20% to the government. Any excess proceeds from additional refinancing are split according to contribution percentages.
- Swing space and moving cost expenses in this report are assumed to be the responsibility of the tenants, except for the traditional funding model showing the government paying for swing space costs for return comparison purposes. A true market deal may have different characteristics as to the responsibility of moving and swing space costs, since responsibility for these expenses can be negotiated.
- Financial information for all models was obtained from the Lafayette Bldg. feasibility study submitted by Metropolitan Architects & Planners and Bolan Smart Associates (dated 5/17/01). That study presented three scenarios – (1) do nothing, (2) complete renovation with no additional space added and (3) a complete renovation with additional space added as a result of some corridor demolition. To be consistent with what the private market will demand, we have used the financial information only from concept two - full renovation with additional space added through demolition of some corridors.

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- Three construction methods are considered in the feasibility study: design/bid/build, which is the most conventional method; design/build, where the control of the design is given to the contractor; and fast track, where the time of construction is not reduced and design is developed alongside actual construction. Both design/build and fast track offer faster renovation schedules but are much more risky. The feasibility study assumes a design/bid/build schedule, as do the models in this report.

- In the private sector-financing model, the government will hold a 49% equity share in the new partnership based on a portion of the value of the property.

- In the privately financed model, the private sector partner will contribute equity based on the total cost of the renovation less a construction loan of 60% loan-to-cost, and will receive a preferred return on its investment. The government will not guarantee the construction loan, or any subsequent loan. The construction loan is assumed to accrue interest at 7.5% annually, which equates to 325 basis points over 6-month LIBOR rates, and will provide for full interest deferral and no amortization. The private partner will pay off the entire construction loan along with interest accrued before securing permanent financing and will keep 80% of any additional proceeds for bearing the risk of development.

- Once the construction loan is paid, permanent debt will be obtained with leverage of approximately 75% loan to value. Debt is assumed to be for a 10-year term with a 25-year amortization and at a cost of 7.0% annually, which equates to 175 basis points over the then-current 10-year Treasury rate. In cases where the 10-year term expires and 10 or less years remain in the analysis, it is assumed the entity will seek to extend the debt for the remaining length of the hold period, as financing will be difficult to obtain. In scenarios where there is greater than 10 years remaining in the analysis, it is assumed the entity will refinance. Refinancing proceeds will be determined by capping that year's income with leverage at 65% of the value. Proceeds will be used to pay off the existing loan, with additional proceeds split between the government and the private partner based on share of equity.

- The private sector will be due a preferred return of 11.0%. This disbursement will be due before any excess cash flow is split and will accrue annually at the preferred rate if there is not enough cash flow to cover the entire preference in a given year.

- In the privately financed model, the government will receive income through preferential master property lease payments as well as a share of cash flow from the operations of the building. The master lease payment will be paid before the preferred return due the private equity partner and before any excess cash flow is split. The annual lease payment is calculated at 5% of the imputed value of the government's capital account in the venture. The 5% annual payment provides for a reasonable return to the government and risk-adjusted rate of return to the private sector partner.

- The building will be leased to current tenants at market rates existing at time of delivery. Return requirements to the private sector will escalate if the current tenants do not occupy the building upon completion of renovation.

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- The 50-year model is an extension of the 30-year model. All financial information from year 30 was extended to year 50, with no escalation in revenue or expenses, as corresponding increases in both categories would end up canceling out any gains.

- The first year of this analysis is when renovation is projected to commence on the Lafayette Building, in this case 2005. The government's return is calculated for the period from the commencement of the property development through 2035 for the 30-year scenario and 2055 for the 50-year scenario. The government will receive cash flow and will retain 100% unencumbered ownership of the property at the end of the master property lease term.

- The internal rate of return (IRR) for the private partner is the rate of return for the series of cash flows starting with the initial cash contribution (the year redevelopment starts) through the end of the master lease term. For the government, the initial cash "outlay" is the implied value of the master property lease.

SUMMARY OF PARTNERSHIP INVESTMENT MODEL:

Due to its excellent location in the Central Business District (CBD) and the significant planned improvements of the building's space, the property is expected to reach stabilization within two years of completion at market lease rates.

As noted in the general assumptions, the government will contribute a leasehold interest to the partnership and will retain a 49% equity interest in the partnership. Its equity interest in the partnership will be appraised at $26.6 million. The private partner will obtain a construction loan of 60% loan-to-cost and will contribute an equal amount of equity to the project.

The government will receive income through annual lease payments of $1,329,378 (5% of the contributed value of its leasehold interest) as well as a 49% share of cash flow profit from the operations of the building. The government is projected to receive a 19.61% internal rate of return over the 30-year period, and a 19.92% internal rate of return over the 50-year period. Projected net present values for the government over the 30 and 50-year scenarios are $50,817,192 and $68,975,447, respectively.

The private partner will receive an 11% preferred return on its cash investment, prior to division of the remaining available cash flow, and will receive a projected internal rate of 23.37% over the 30-year period, and a 23.50% IRR over the 50-year period. Projected net present values for the private partner over the 30 and 50-year scenarios at the government discount rate are $56,698,479 and $69,157,435, respectively. At a 12.0% discount rate, the projected NPVs over the same time periods are $22,586,216 and $24,716,755.

V. APPENDIX D - MARKET ANALYSIS

Note: The following market analysis is included only as informational support for the market rental rates previously mentioned. The overall health of the Washington, D.C. metropolitan real estate market will support rental rates in the range of those mentioned throughout the report.

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BOTTOM LINE

A long-running constraint on the Washington, DC economy, federal employment and spending cutbacks, is diminishing in light of the improved fiscal health of the federal government. Meanwhile, the growing high-tech industries are reducing Washington, DC's reliance on the government. A turnaround in the District's economy, brought about by the new mayor and the federal commitment toward revitalization, represents an upside risk for the metro area. Washington, DC will be an above-average performer over the long term.

The Washington, DC market for office space finished 2000 in strong to booming condition. The market will end 2001 in somewhat weaker condition, though still very stable. Between 2001 and 2003, demand will rise an average of 3.2% per year, a decline from the 4.4% pace seen from 1995 through 1999.

ECONOMIC OVERVIEW

The Washington, D.C. metropolitan area consists of the nation's capital as well as 18 counties and six independent cities in Maryland, Virginia, and West Virginia. These counties and cities are often aggregated into three larger submarkets: Northern Virginia, Suburban Maryland, and the District of Columbia itself. With more than one million jobs, Northern Virginia represents 42% of the metropolitan area's employment base, while Suburban Maryland represents 34% and the District the remaining 24%.

The Washington metropolitan area is the healthiest it has been in a number of years due to the improved financial condition of the federal government and strength in high tech, construction, tourism and business services. Income and consumption growth remains solid; office markets are booming, and home prices are appreciating rapidly. Northern Virginia continues to be the fastest-growing portion of the metro area, followed by Suburban Maryland and the District.

High-tech hub. The Washington, DC metro area continues to solidify its position as a high-tech hub. The area's high-tech presence earned it a third place national ranking in software employment density by the Software Information and Industry Association and in absolute numbers by Economy.com. The metro area supports three times the national average of programming, engineering, systems analyst and tech support jobs. A significant portion of the high-tech employment is directly within federal government agencies. Moreover, several area universities with large high-tech research activities rely heavily on federal government grants and contracts. The high-tech agglomeration continues to attract new firms, such as U.S. Dataport's two million square foot data warehouse campus in Northern Virginia. Such expansions will result in more spillover effects for the area as tech firms choose to locate close to Washington, DC's Internet infrastructure.

Affirming Washington, DC's status as a high-tech hub and boding well for future growth is the amount of venture capital funding that is pouring into the area. According to PricewaterhouseCoopers, during the second quarter the District received $188 million in funding. Virginia received an astounding $560 million, with the majority of this going into Northern Virginia, and Maryland received a record-breaking $398 million. Three-quarters of all the venture capital is going toward telecommunications, software, and business services.

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House prices. The diminishing supply of available homes is fueling strong growth in single-family existing home prices. After experiencing sub-national appreciation rates of around 2% in 1999, home prices are now 7% higher than one year ago, according to the Freddie Mac/Fannie Mae repeat-purchase index. House price appreciation in Washington, DC is expected to exceed the national pace throughout the forecast horizon. Despite median house prices that are more than 20% above the national average, the high incomes of Washington, DC households have also maintained above-average housing affordability.

Construction. The tremendous expansion of the metro area is driving up construction costs, while the tight labor market and work backlogs for contractors are making it more difficult to complete projects. Earlier this construction season, the Department of Public Works was forced to couple road resurfacing projects with other bigger, construction projects due to the lack of bids for resurfacing work.. Construction costs are rising more rapidly in the Maryland suburbs, where hourly wages are increasing at a rate of 5.3% while all private-sector wages are increasing at a rate of 3.6%.

ECONOMIC OUTLOOK

Indicators	2000	2001	2002	2003	2004
Gross Metro Product, C$B	221.5	229.4	238.6	248.2	257.9
% Change	5.1	3.5	4.0	4.0	3.9
Total Employment (000)	2,702.4	2,754.6	2,811.3	2,868.9	2,928.8
% Change	2.8	1.9	2.1	2.1	2.1
Unemployment Rate	2.3	2.4	2.6	2.6	2.7
Personal Income Growth	6.4	6.5	6.4	5.9	5.6
Population (000)	4,815.0	4,872.1	4,927.0	4,985.7	5,039.9
Single-Family Permits	26,221	20,825	20,078	19,522	19,837
Existing Home Price ($Ths)	174.1	177.9	187.0	195.5	204.2
Mortgage Originations ($Mil)	30,392	29,542	31,031	30,346	30,011
Net Migration (000)	34.6	16.9	15.0	18.8	14.2
Personal Bankruptcies	20,711	20,120	22,107	22,766	23,054

Source: Economy.com

As in many US cities, labor markets in Washington D.C. continue to tighten, suggesting slower job creation in the coming years. Over the next four years, job growth will slip to an average of 2% per year from 2.7% over the past four years. Even with this slowdown, however, job growth in Washington will continue to outpace growth in the U.S. as a whole.

The tremendous expansion of the metro area is driving up construction costs, while the tight labor market and work backlogs for contractors are making it more difficult to complete projects. Bid escalation has not been severe yet, but continued strong demand for new construction projects will increase this likelihood.

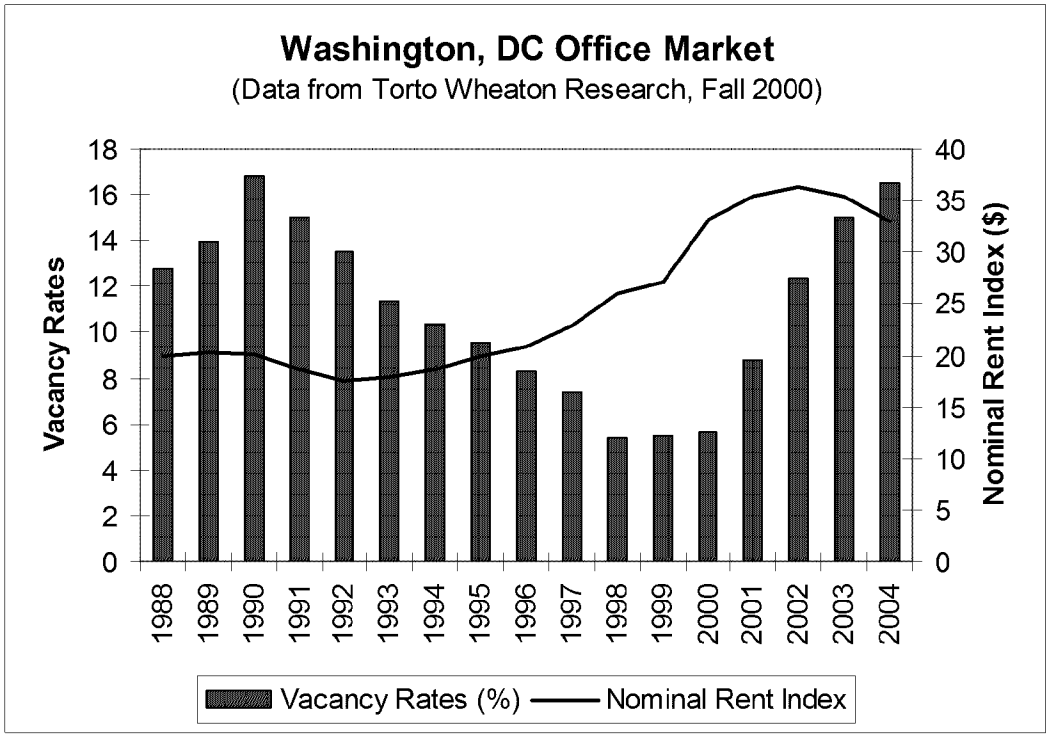
THE WASHINGTON METROPOLITAN AREA OFFICE MARKET

The Washington, D.C. office market is one of the hottest in the nation. The area ranks as one of the top office investment spots in the nation during 2001, according to a study by PricewaterhouseCoopers and the Lend Lease Real Estate. Moreover, according to Delta Associates, strong investment and development opportunities will continue over the next few years. While the metro economy is home to many struggling telecom firms, it also supports tech industries that will benefit from increased military expenditures and government business services. Additionally, expected federal surpluses will provide the economic stimulus to maintain strong real estate markets even as the national economy slows.

At 3.6%, the office vacancy rate in Washington, D.C. is among the lowest on record. Northern Virginia had the tightest market with a vacancy rate of only 2.8%, while Suburban Maryland recorded a higher vacancy rate of 5.5%, and the District itself had a rate of only 3.3%.

Meanwhile, net absorption through year-end 2000 was more than in any full year since the 1980s. Nearly two-thirds of the absorption occurred in Northern Virginia, reflecting this region's emergence as one of the top US "New Economy" locations. In the District, revitalization and a more proactive government have fueled increased office demand, making the District one of the top-performing center cities in the nation, while Suburban Maryland has benefited from strong demand from high tech and biotech companies.

That strong demand, in turn, pushed rents up by an estimated 20% in 2000 to their highest level on record. Top rents in the District are above $50 per square foot, while rents are reaching $43 per square foot in some of Northern Virginia's hottest submarkets such as Reston/Herndon, Tysons Corner and Loudoun County.



More than 3 million square feet of space was delivered in the third quarter 2000, 50% more than in the second quarter and a trend indicative of the large volume of new construction soon to be delivered into the market. Indeed, at the end of the third quarter, 22 million square feet of space was under construction. Of this space, however, more than half was pre-leased, suggesting some discipline in the market. Nevertheless, we expect vacancy rates to move toward 9% this year before climbing to 12.4% in 2002 as supply outpaces demand. As the market loosens, rent pressures will gradually begin to ease.

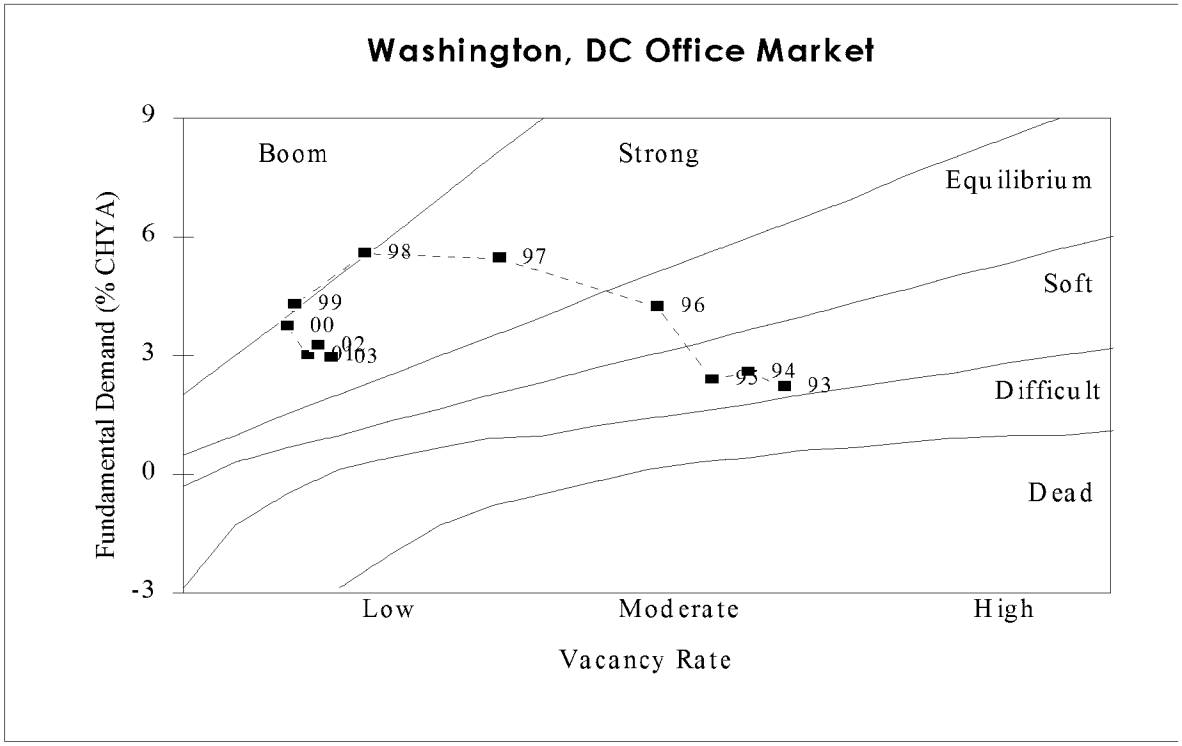
WASHINGTON, DC OFFICE MARKET CONDITIONS

Through year-end 2000, the Washington, DC office market had seen contract awards of approximately 17.0 million square feet, an increase of 6% over the 1999 total of 16.2 million square feet. Awards will average approximately 16.0 million square feet annually from 2001 through 2003, a 73% gain over the 9.3 million square feet averaged from 1995 through 1999. During the last 18 years, office construction reached its peak in 1987, when 23.3 million square feet were awarded. Awards bottomed out at 3.8 million square feet in 1992.

Between 2000 and 2003, office demand will rise an average of 3.2% per year, a decline from the 4.4% pace seen from 1995 through 1999, however still above national averages.

The Washington, DC market for office space finished 2000 in a strong to booming condition. The market will end 2001 in a slightly weaker condition, although still very stable. Conditions should remain strong through the end of 2003.

Office Market Contour for Winter 2001



VI. APPENDIX E - REPORT DEVELOPMENT AND PARTICIPANTS

A Joint Task Force was created to respond to the Conference Report request. In response to the Conference Report request, a joint task force including GSA, VA and Export-Import Bank, met regularly to develop a report outlining the need to renovate the Lafayette Building. The joint task force was initiated in January, 2001 and jointly developed the agency program requirements and identified the project parameters. All joint task force participants reviewed all stages of the report up to the final draft.

GSA hired Metropolitan Architects and Planners in February to develop the feasibility study to renovate the Lafayette Building. Concurrently, GSA hired AEW Capital Management Inc in March to aid in the preparation of the analysis for the joint report. The following personnel and consultants were instrumental in developing this report.

The following personnel and consultants were instrumental in developing this report.

U.S. General Services Administration

Paul R. Gosselin
Thomas E. James
Diane Stolz
Randy Zalis

Department of Veterans Affairs

Carolyn Boswell
Brian McDaniels
Deno Verenes

Export-Import Bank of the United States

George J. Sabo
Michael J. Discenza, Jr.
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Consultants

AEW Capital Management, L.P.
Metropolitan Architects & Planners, Inc
- Bolan Smart Associates
- Charron Construction Consulting, Inc
- META Engineers

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CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 8/10/2001 1:33:35 PM
Subject: : Re: do we need to have JSC on Aug. 15th?

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CREATION DATE/TIME:10-AUG-2001 17:33:35.00
SUBJECT:: Re: do we need to have JSC on Aug. 15th?
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
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CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
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I may have on small discussion item relating to U.S. Attorneys in San
Diego, but I have no formal candidates to present.




Elizabeth N. Camp
08/10/2001 05:22:50 PM
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Subject: do we need to have JSC on Aug. 15th?
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From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 8/10/2001 1:33:35 PM
Subject: : Re: do we need to have JSC on Aug. 15th?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-AUG-2001 17:33:35.00
SUBJECT:: Re: do we need to have JSC on Aug. 15th?
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I may have on small discussion item relating to U.S. Attorneys in San
Diego, but I have no formal candidates to present.




Elizabeth N. Camp
08/10/2001 05:22:50 PM
```

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: do we need to have JSC on Aug. 15th?

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 8/10/2001 1:35:36 PM
Subject: : Re: do we need to have JSC on Aug. 15th?

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-AUG-2001 17:35:36.00
SUBJECT:: Re: do we need to have JSC on Aug. 15th?
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I think that Tim and I may have a recommendation to make to the Commitee
on the district court vacancy in the EDVA. But it is nothing that could
not be held over until the next week, frankly.




Bradford A. Berenson
08/10/2001 05:33:24 PM
Record Type: Record
```

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: do we need to have JSC on Aug. 15th?

I may have on small discussion item relating to U.S. Attorneys in San Diego, but I have no formal candidates to present.

Elizabeth N. Camp
08/10/2001 05:22:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: do we need to have JSC on Aug. 15th?

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

Message Copied
To:_____
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
stuart w. bowen/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
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laura l. flippin/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
allison l. riepenhoff/who/eop@eop

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 8/10/2001 1:40:25 PM
Subject: : Re: do we need to have JSC on Aug. 15th?

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-AUG-2001 17:40:25.00
SUBJECT:: Re: do we need to have JSC on Aug. 15th?
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Same is true with the EDMO and WDMO.




Helgard C. Walker
08/10/2001 05:35:24 PM
```

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: do we need to have JSC on Aug. 15th?

I think that Tim and I may have a recommendation to make to the Commitee on the district court vacancy in the EDVA. But it is nothing that could not be held over until the next week, frankly.

Bradford A. Berenson
08/10/2001 05:33:24 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: do we need to have JSC on Aug. 15th?

I may have on small discussion item relating to U.S. Attorneys in San Diego, but I have no formal candidates to present.

Elizabeth N. Camp
08/10/2001 05:22:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: do we need to have JSC on Aug. 15th?

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

Message Copied
To:_____
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
stuart w. bowen/who/eop@eop

rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
timothy e. flanigan/who/eop@eop
laura l. flippin/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
allison l. riepenhoff/who/eop@eop

Message Copied
To:_____
elizabeth n. camp/who/eop@eop
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
stuart w. bowen/who/eop@eop
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noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
allison l. riepenhoff/who/eop@eop

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who /eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 8/10/2001 1:40:25 PM
Subject: : Re: do we need to have JSC on Aug. 15th?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-AUG-2001 17:40:25.00
SUBJECT:: Re: do we need to have JSC on Aug. 15th?
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
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CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
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CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
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CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Same is true with the EDMO and WDMO.
```

Helgard C. Walker
08/10/2001 05:35:24 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: do we need to have JSC on Aug. 15th?

I think that Tim and I may have a recommendation to make to the Commitee on the district court vacancy in the EDVA. But it is nothing that could not be held over until the next week, frankly.

Bradford A. Berenson
08/10/2001 05:33:24 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: do we need to have JSC on Aug. 15th?

I may have on small discussion item relating to U.S. Attorneys in San Diego, but I have no formal candidates to present.

Elizabeth N. Camp
08/10/2001 05:22:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: do we need to have JSC on Aug. 15th?

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

Message Copied
To:_____
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
stuart w. bowen/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
timothy e. flanigan/who/eop@eop
laura l. flippin/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
allison l. riepenhoff/who/eop@eop

Message Copied
To:_____
elizabeth n. camp/who/eop@eop
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
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rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
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timothy e. flanigan/who/eop@eop
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brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
allison l. riepenhoff/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 8/12/2001 1:22:53 PM
Subject: : Re: OIRA Disclosure Policy
Attachments: P_DOW83004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-AUG-2001 17:22:53.00
SUBJECT:: Re: OIRA Disclosure Policy
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I gather that this proposal is already standard practice for proposed rules after they are submitted to OIRA, so I do not see any particular problem with following the same practice for proposed rules before they are submitted to OIRA. I also do not see any particular legal problem with putting publicly available FOIA-able information on the Internet.

I have questions about how OIRA ensures that those individuals who contact OIRA realize that the fact of their communications will be made public. Also, I assume from the description in the memo that the substance of communications from outside sources will remain confidential.

Timothy E. Flanigan
08/10/2001 03:21:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: OIRA Disclosure Policy

Please give me your thoughts re the attached.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DOW83004_WHO.TXT_1>

DRAFT DRAFT

MEMORANDUM FOR OIRA STAFF

FROM: John Graham
Administrator

SUBJECT: Expanded Disclosure by OIRA of Communications from, and Meetings with, Outside Parties on Regulatory Matters

Having recently started my service as the Administrator of the Office of Information and Regulatory Affairs, and with the strong support of Director Daniels, I want to take this opportunity to express to OIRA staff my commitment to ensuring that OIRA carries out its regulatory review responsibilities in a transparent manner. This means, of course, complying fully with the disclosure requirements in Section 6(b)(4) of Executive Order (EO) 12866, which provide for "openness, accessibility, and accountability in the regulatory review process."

In addition, I have decided that OIRA will expand the information that it makes available to the public regarding communications that OIRA receives from "any person not employed by the executive branch of the Federal Government" (or, more simply, "outside communications"). Since its issuance in 1993, E.O. 12866 has required OIRA to include in its public docket library only those outside communications that it receives while a draft proposed or final rule is pending at OIRA for E.O. 12866 review. OIRA's review period begins when the rulemaking agency formally submits the draft rule for review, and ends when OIRA notifies the agency that it has concluded its review.

As I noted during my confirmation process, I believe that the Executive Branch's development of rules would be improved if the rulemaking agencies consulted with OIRA throughout their development of rules, rather than having OIRA's review focused at the end of the process. Earlier and more continuous consultations would better enable issues to be identified, discussed, and addressed in a timely and orderly way. In the coming weeks, I will begin a dialogue with the agencies on how these earlier consultations can be conducted.

The initiation of these earlier interagency consultations may result in OIRA receiving additional outside communications on regulatory matters. For example, OIRA might receive outside communications before a draft proposed rule is formally submitted to OIRA for review, as well as during the period between the publication of the proposed rule and the submission of the draft final rule for review. Under the disclosure procedures under E.O. 12866, these outside

communications are not required to be disclosed under Section 6(b)(4)(C). In the interests of transparency, I have decided that OIRA will make publicly available the outside communications that it receives, at whatever time, on any regulatory action that is listed in the semiannual *Regulatory Agenda* (which is the comprehensive compilation of the regulatory matters that are under development in the Executive Branch) and that is given a priority of "economically significant"or "other significant." OIRA would disclose, for these outside communications, the same information that OIRA is required to disclose under E.O. 12866.

In addition to expanding the scope of OIRA's disclosure procedures, I have also decided that OIRA should make it easier for the public to obtain information about these outside communications. OIRA's practice under E.O. 12866 has been to make this information available in its public docket library in the New Executive Office Building. This has required interested members of the public either to visit the docket library or to submit a Freedom of Information Act request for the file and await OMB's response to the request.

In the interests of transparency, I have decided that OIRA will take advantage of the Internet to enable the public to easily obtain the information about outside communications that is required to be disclosed under Section 6(b)(4)(C) of E.O. 12866 and under the new disclosure procedures that I am announcing. OIRA will post on OMB's Internet website –

- information on meetings, phone calls and other oral communications with outside parties that is required to be disclosed under Section 6(b)(4)(C)(iii) of E.O. 12866 (i.e., the dates and names of the participants, their organizational affiliation, and a plain-language description of the subject matter of the discussion), and

- a listing of the written outside communications, which would include the date of the communication (whether paper or electronic), the sender and his or her organizational affiliation, and a plain-language description of its subject matter (or, in the case of a large volume of outside communications on the same rulemaking activity, a categorization and description of such outside communications), in accordance with Section 6(b)(4)(C)(ii) of E.O. 12866.

In the case of meetings, OIRA will work with OMB's Administration Office to have the information posted on OMB's website (and OIRA will place the information in the docket library) as soon as possible after the meeting has been scheduled, and will update the information to the extent necessary no later than five business days after the meeting has occurred. With respect to phone calls, other oral communications and written communications, OIRA shall provide the information to OMB's Administration Office for posting on OMB's website (and OIRA shall place this information in the docket library), no later than five business days after the phone call or oral communication occurs or the written communication is received by OIRA.

These new disclosure procedures will take effect on October 1, 2001, and will apply to meetings, phone calls, and other oral outside communications to OIRA that occur on or after October 1 and to written outside communications that OIRA receives on or after October 1.

It is also my intention that OIRA develop the capability to post on OMB's website, at the earliest practicable opportunity, the actual text of the written outside communications (in addition to their being available in the OIRA docket library). OIRA's Deputy Administrator shall work to implement a process for posting the text of these written communications.

The OIRA Deputy Administrator and OIRA's Branch Chiefs are responsible for implementing these new disclosure procedures and for ensuring that OIRA complies fully with the existing disclosure procedures under Section 6(b)(4) of E.O. 12866.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 8/13/2001 6:11:32 AM
Subject: : Re: adtl guidance for agencies re: executive privilege

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-AUG-2001 10:11:32.00
SUBJECT:: Re: adtl guidance for agencies re: executive privilege
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

You guys would know more about this than I would....

Bradford A. Berenson
08/13/2001 10:10:21 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: adtl guidance for agencies re: executive privilege

Who is this lady, and what does OSC have to do with executive privilege?
They do Hatch Act guidance and whistleblower stuff, don't they?

Elizabeth N. Camp
08/12/2001 07:12:21 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M.
Kavanaugh/WHO/EOP@EOP
cc:
Subject: adtl guidance for agencies re: executive privilege

Erin McDonald from Office of Special Counsel called on Thursday to find
out if additional guidance memos were issued to agencies re: executive
privilege. All she has is the Jan. 25 memo that indicated more info is
coming.

Would one of you call her back at 202-653-8971 or fax to her the
additional info at 202-653-5761.

If additional guidance is not yet available please let me know.

Thanks!

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/13/2001 6:29:43 AM
Subject: : Re: My phone's been ringin' off the hook on this one...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-AUG-2001 10:29:43.00
SUBJECT:: Re: My phone's been ringin' off the hook on this one...
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett Kavanaugh has a call in to Paul Clement. He'll get you a copy of the amicus brief and let you know our thoughts on it as well.

Diana L. Schacht
08/13/2001 09:51:27 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: My phone's been ringin' off the hook on this one...

can we find out more about this case? It sounds as though DOJ filed an amicus brief -- did you know about it by any chance?
---------- Forwarded by Diana L. Schacht/OPD/EOP on 08/13/2001 09:50 AM ----------

Gian-Carlo A. Peressutti
08/08/2001 10:00 AM
Record Type: Record

To: Diana L. Schacht/OPD/EOP@EOP, John M. Ackerly/OPD/EOP@EOP, Daniel W. Sutherland/WHO/EOP@EOP, Katie Hong/WHO/EOP@EOP
cc: Jennifer C. Sheehy/OPD/EOP@EOP
Subject: My phone's been ringin' off the hook on this one...

Case Leaves Disabilities Activists Wary Of Bush Policy

By Sarah Schafer
Washington Post Staff Writer
Wednesday, August 8, 2001; Page E01

The Justice Department has filed a Supreme Court brief supporting a company that is being sued for allegedly discriminating against a woman

with a disability, worrying some activists about the Bush administration's willingness to defend the rights of the disabled.

In the brief, the solicitor general argues that a lower court used flawed reasoning to classify the woman as disabled. The brief further argues that the high court should send the case back to the lower court so it can reconsider its ruling.

Advocates for the disabled said that the Justice Department made good legal points. But they question why the administration took sides, filing a brief that favors the employer, Toyota Motor Manufacturing Kentucky Inc.

"They could have done it because they were being hyper-technical, or they could have done it because they were trying to pander in some way to the business community," said Chai Feldblum, a professor at the Georgetown University Law Center who helped draft the Americans With Disabilities Act of 1990.

Many activists said they fear the latter. They are watching closely for how the Justice Department behaves in several upcoming cases. "This is one step in the wrong direction," Feldblum said.

Dan Nelson, a Justice Department spokesman, said that "the brief speaks for itself" and would not comment further.

The White House said it is committed to supporting the rights of disabled Americans.

"As you know, President Bush is a strong supporter of the Americans With Disabilities Act," said White House spokesman Scott Stanzel, adding that the president introduced an initiative early in his presidency to fund transportation for disabled workers and encourage companies to create technology to assist them at work, among other things. "President Bush will remain vigilant in protecting the rights of individuals with disabilities, and he is proud to support the ADA. His father signed that act into law."

But groups of advocates for the disabled, seniors, labor and others are closely watching the Bush administration for signs of how supportive it will be of their various causes. And many of the more liberal groups do not like what they see so far.

As a result, they are bracing for battle. They are recruiting more people to work at the grass-roots level, creating or beefing up lobbying arms, and -- like the disability rights groups -- becoming involved in lawsuits that could set precedents.

"I think you'll see battles royale in court," said one former Clinton Justice Department lawyer who is now in private practice and asked that his name not be used. "When the advocacy group and the administration basically agree, all of the fighting is within the family. . . . When [they disagree], all of the real action is in court."

For example, earlier this year, the AARP Foundation Litigation, an affiliate of AARP, a nonprofit advocacy group for people over 50, joined the legal battle against companies that force employees to sign agreements waiving their right to sue for employment discrimination. The group worried that these agreements would hurt older workers in particular. Until a recent Supreme Court ruling, the lower courts had not been consistent in deciding the legality of these agreements.

The liberal Alliance for Justice, a national association of environmental, civil rights, mental health, women's and other advocacy organizations, is trying to boost its grass-roots efforts. It's also creating a spinoff organization "that will give us a lot more leverage to lobby and really bring our issues full force to [Capitol] Hill," said Julie Bernstein, spokeswoman for the Alliance.

Already, several groups -- including the AFL-CIO, an umbrella group for more than 60 unions -- are preparing briefs to submit in favor of the worker in the Toyota case.

That case, which the Supreme Court will address this fall, deals with the scope of the Americans With Disabilities Act, which protects people with disabilities from various forms of discrimination, including on the job. Ella Williams, an assembly-line worker at a Toyota plant in Kentucky, claims in the lawsuit that she developed carpal tunnel syndrome from her job. She alleged that the company fired her in violation of the ADA when she refused a different job that would still require her to perform some manual labor.

Toyota claimed that it tried to accommodate Williams and that she should not be considered legally disabled anyway because she was unable to perform only some tasks. An appeals court sided with Williams, and the company appealed to the Supreme Court. The brief filed by the Justice Department does not address whether Williams is disabled. It simply contends that the lower court erred in the way it decided that she was.

Andrew Imparato of the American Association of People With Disabilities said his organization does not dispute the facts of the brief. But he called the administration's overt support of Toyota "unusual" and a departure from the Clinton era. "We want to make sure they go to bat for the ADA in the same way that the Clinton administration . . . went to bat for the ADA," he said, adding that Clinton had a far-from-perfect record on supporting the law.

To that end, the association has stepped up its activism efforts and become more litigious. Two months ago, it launched a project to protect the voting rights of the disabled. It has since sued several jurisdictions that have purchased voting equipment that is ill-equipped to handle, for example, the needs of blind voters.

"If the Justice Department were more active on that issue, we wouldn't have to do that," Imparato said.

Imparato's group has also been active in opposing several of Bush's federal court nominees who they claim take too narrow a view of who should receive protection under federal disability laws.

Imparato said he hasn't lost hope, however. He and others point out that the Justice Department has filed at least one other brief that supported the disabled party in a lawsuit. In addition, a few people were recently surprised to be invited into the White House to talk about their concerns with administration officials during a march on the White House by several hundred activists.

"There's a mixed message. . . . This administration has demonstrated support," said Marcie Roth, director of advocacy and public policy for the National Council on Independent Living, an Arlington-based organization for the disabled. "We remain ever vigilant."

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From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 8/13/2001 6:10:23 AM
Subject: : Re: adtl guidance for agencies re: executive privilege

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-AUG-2001 10:10:23.00
SUBJECT:: Re: adtl guidance for agencies re: executive privilege
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Who is this lady, and what does OSC have to do with executive privilege?
They do Hatch Act guidance and whistleblower stuff, don't they?

Elizabeth N. Camp
08/12/2001 07:12:21 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M.
Kavanaugh/WHO/EOP@EOP
cc:
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Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 8/13/2001 6:15:24 AM
Subject: : Re: adtl guidance for agencies re: executive privilege

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-AUG-2001 10:15:24.00
SUBJECT:: Re: adtl guidance for agencies re: executive privilege
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, that is what they do

Bradford A. Berenson
08/13/2001 10:10:21 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
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To: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/13/2001 6:29:43 AM
Subject: : Re: My phone's been ringin' off the hook on this one...

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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To: Diana L. Schacht/OPD/EOP@EOP, John M. Ackerly/OPD/EOP@EOP, Daniel W. Sutherland/WHO/EOP@EOP, Katie Hong/WHO/EOP@EOP
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Washington Post Staff Writer
Wednesday, August 8, 2001; Page E01

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, 2001 The Washington Post Company

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/14/2001 9:01:18 AM
Subject: : LRM OGG112 - - General Services Administration Report on HR2407 Federal Photovoltaic Utilization Act
Attachments: P_5ZW93004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-AUG-2001 13:01:18.00
SUBJECT:: LRM OGG112 - - General Services Administration Report on HR2407 Federal Photovoltaic Utilization Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think this belongs to you.
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 08/14/2001 01:01 PM ----------

Allison L. Riepenhoff
08/14/2001 11:49:24 AM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: LRM OGG112 - - General Services Administration Report on HR2407 Federal Photovoltaic Utilization Act

Courtney-
If this isn't you, can you please pass to the appropriate Counsel member?
Thanks!
---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/14/2001 11:48 AM ----------

From: Oscar Gonzalez on 08/14/2001 11:36:42 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM OGG112 - - General Services Administration Report on HR2407 Federal Photovoltaic Utilization Act

**Please see comments below. Comments are due by no later than 11:00 A.M. Friday, August 17th.

LRM ID: OGG112

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, August 14, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Oscar Gonzalez
PHONE: (202)395-3923 FAX: (202)395-3109
SUBJECT: General Services Administration Report on HR2407 Federal Photovoltaic Utilization Act

DEADLINE: 11:00 A.M. Friday, August 17, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This letter provides information on sustainable design features or energy conservation measures included in the Department of Transportation (DOT) headquarters procurement that GSA currently has underway. It is in response to an inquiry during an August 1st hearing on HR 2407, the Federal Photovoltaic Utilization Act. Please provide comments by no later than 11:00 A.M. Friday, August 17th.

DISTRIBUTION LIST

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095-Office of Science and Technology Policy - Jeffrey Smith - (202) 456-6047
033-Environmental Protection Agency - John Reeder - (202) 564-5200

EOP:
Augustine T. Smythe
Karen E. Keller
Lloyd A. Blanchard
Kenneth L. Schwartz
David J. Haun
Lisa A. Harris
Mark A. Weatherly
Gary L. Bennethum
Cynthia A. Vallina
Lori A. Krauss
Michael J. Holland
Kevin Carroll
David P. Radzanowski
Steven J. Isakowitz
Robert S. Fairweather
Tad S. Gallion
Arthur G. Fraas
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OVP LRM
Steven M. Mertens
Lin Liu
Howard Dendurent
Ellen J. Balis
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Brett S. Loper
Jay P. Lefkowitz
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Michael D. Gerich
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Daniel J. Chenok
Lewis W. Oleinick
Edward C. Springer
Marisa K. Medrano
Elizabeth S. Dougherty
WHGC LRM

Carlos E. Bonilla
NEC LRM
CEQ LRM
Richard E. Green
James J. Jukes
LRM ID: OGG112 SUBJECT: General Services Administration Report on
HR2407 Federal Photovoltaic Utilization Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Oscar Gonzalez Phone: 395-3923 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4607

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet
- B.Siegal - Energy Ltr..doc

Message Sent
To:_____
Augustine T. Smythe/OMB/EOP@EOP
Karen E. Keller/OMB/EOP@EOP
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Kenneth L. Schwartz/OMB/EOP@EOP
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NEC LRM
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Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5ZW93004_WHO.TXT_1>

The Honorable Jerry F. Costello
Ranking Minority Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Representative Costello:

At the August 1, 2001, hearing on H.R. 2407, the "Federal Photovoltaic Utilization Act," you requested information on sustainable design features or energy conservation measures included in the Department of Transportation (DOT) headquarters procurement that the General Services Administration (GSA) currently has underway. Since negotiations on specific items remain to be completed, I will provide as much specificity in my response as possible.

In Federal construction, GSA budgets about 2.5 percent above normal construction costs for energy conservation and sustainable design features. If this were a Federal construction project, this would equate to approximately $8 million. This amount was included in the scoring analysis.

The private sector responded to the solicitation for offers, which included a project vision to minimize the impact on the environment and the utilization of energy and other scarce and non-renewable resources. Those responding to this solicitation made a priority commitment to construct a facility that demonstrated sustainability in the broadest terms through their design methodology and analysis of energy and life cycle costs. In addition, the solicitation provides that the Government will directly pay its utility expenses for the DOT headquarters. This provides further incentive for GSA and DOT to ensure that the building design incorporates sustainable design and energy conservation measures.

A variety of measures will be considered during the design phase of the project. For instance, a construction waste management plan can be developed in order to divert as much construction and demolition debris as possible from landfills. Large amounts of natural lighting will be available in the building to reduce energy consumption. High efficiency glazing may be used to reduce solar gain in the summer and heat loss in the winter. All electrical fixtures may use energy efficient ballasts and lamps and may work in concert with lighting level devices which combine the effects of natural daylight with area lighting. Variable air volume units may be used and the system zoned in a manner as to optimize performance, minimizing energy consumption. The cooling system may have high efficiency chillers and variable speed pumping to further reduce energy consumption. These and other measures will be considered to optimize the efficiency of the building.

During the actual design phase, materials will be chosen based on their environmentally preferable attributes. These will include the types of flooring materials, paints to be used and low maintenance materials. It is also at this phase of the project where the specific items, such as photovoltaic units and green power, will be evaluated on the basis of life cycle cost efficiencies.

I hope this addresses your concerns to your satisfaction. If I can provide additional information, please do not hesitate to contact me at (202) 501-1100.

Sincerely,

F. Joseph Moravec
Commissioner

REV_00130921

From:	CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To:	H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	8/15/2001 8:22:49 AM
Subject:	: LRM KCT64 - - Defense and Veterans Affairs Report on HR2586 National Defense Authorization Act, FY2002
Attachments:	P_YVIA3004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-AUG-2001 12:22:49.00
SUBJECT:: LRM KCT64 - - Defense and Veterans Affairs Report on HR2586 National Defense Authorization Act, FY2002
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/15/2001 12:22 PM ----------

From: Kathryn C. Thompson on 08/15/2001 12:18:57 PM
Record Type: Record

To: dodlrs@osdgc.osd.mil , lrm@hhs.gov , valrm@mail.va.gov
cc: See the distribution list at the bottom of this message
Subject: LRM KCT64 - - Defense and Veterans Affairs Report on HR2586 National Defense Authorization Act, FY2002

The following is LRM ID: KCT64 -- Defense and Veterans Affairs Report on H.R. 2586, National Defense Authorization Act, FY 2002. The joint report is attached below in Word format and it consists of two pages.

Please comment on the DoD and VA joint report by Noon, Friday, August 17th . If I do not hear from you by the deadline, I will assume that you have no objection to the joint report.

LRM ID: KCT64
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, August 15, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder/OMB/EOP (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: Defense and Veterans Affairs Report on HR2586 National Defense Authorization Act, FY2002

DEADLINE: Noon Friday, August 17, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect

direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This joint Defense (DoD) and Veterans Affairs (VA) letter states their support of the Administration's objective to avoid duplication of benefits and provide better continuity of care by allowing dual-eligible beneficiaries to choose, on an annual basis, to receive their healthcare through either DoD or VA's system. Contrary to the President's FY 2002 Budget, provisions are included in H.R. 2586, the Defense Authorization Bill, and H.R. 2620, the Defense Appropriations Bill, that would not require dual-eligible beneficiaries to choose between the DoD and VA healthcare systems.

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Robert Marsh
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OVP LRM
Albert Hawkins
Edward Ingle
Michael Garcia
Ingrid M. Schroeder
LRM ID: KCT64 SUBJECT: Defense and Veterans Affairs Report on HR2586 National Defense Authorization Act, FY2002
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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(1) calling the analyst/attorney's direct line (you will be

connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
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WHGC LRM
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Albert Hawkins/WHO/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Michael Garcia/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_YVIA3004_WHO.TXT_1>

The Honorable Christopher H. Smith,
Chairman, Committee on Veterans Affairs
House of Representatives
Washington, DC 20515

Dear Chairman Smith:

On behalf of the Secretary of Defense and the Secretary of Veterans Affairs, thank you for your recent letter expressing concern with the President's budget proposal which recommends Congressional action to require dual-eligible beneficiaries to select enrollment in either the Department of Defense (DoD) or Department of Veterans Affairs' (VA) healthcare system. Eight million active and retired military personnel and their families are eligible for benefits under the Military Health System, and about 700,000 of these beneficiaries are eligible to use both the DoD and VA systems. The DoD and VA have historically encountered problems in allocating the necessary resources due to the difficulties in estimating the number of people who will obtain healthcare services in each of the two systems. The Administration's intent in this enrollment proposal is to provide better coordination of care for dual-eligible retirees, and to provide more predictability in assessing the costs and planning the budgets of each Department. We support the Administration's objective of avoiding duplication of benefits and providing better continuity of care by allowing beneficiaries to choose, on an annual basis, to receive their healthcare through one of the two systems.

The many issues you cited are valid and they are matters that the VA, DoD and the Office of Management and Budget will consider as we plan the details of implementation, consistent with Congressional action on this proposal. The DoD and the VA have a long-standing history of reciprocal agreements, joint ventures, resources sharing, joint procurement efforts, and significant clinical and research collaboration, and will be able to address these implementation issues.

We trust that this information will be helpful, and thank you for your continued support of excellence in our health care systems.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

David S. C. Chu
Under Secretary of Defense
(Personnel & Readiness)

VA Determined Official
Title

The Honorable Lane Evans
Committee on Veterans Affairs
House of Representatives
Washington, DC 20515

Dear Congressman Evans:

On behalf of the Secretary of Defense and the Secretary of Veterans Affairs, thank you for your recent letter expressing concern with the President's budget proposal which recommends Congressional action to require dual-eligible beneficiaries to select enrollment in either the Department of Defense (DoD) or Department of Veterans Affairs' (VA) healthcare system. Eight million active and retired military personnel and their families are eligible for benefits under the Military Health System, and about 700,000 of these beneficiaries are eligible to use both the DoD and VA systems. The DoD and VA have historically encountered problems in allocating the necessary resources due to the difficulties in estimating the number of people who will obtain healthcare services in each of the two systems. The Administration's intent in this enrollment proposal is to provide better coordination of care for dual-eligible retirees, and to provide more predictability in assessing the costs and planning the budgets of each Department. We support the Administration's objective of avoiding duplication of benefits and providing better continuity of care by allowing beneficiaries to choose, on an annual basis, to receive their healthcare through one of the two systems.

The many issues you cited are valid and they are matters that the VA, DoD and the Office of Management and Budget will consider as we plan the details of implementation, consistent with Congressional action on this proposal. The DoD and the VA have a long-standing history of reciprocal agreements, joint ventures, resources sharing, joint procurement efforts, and significant clinical and research collaboration, and will be able to address these implementation issues.

We trust that this information will be helpful, and thank you for your continued support of excellence in our health care systems.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

David S. C. Chu
Under Secretary of Defense
(Personnel & Readiness)

VA Determined Official
Title

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Jennifer C. Sheehy/OPD/EOP@EOP [OPD] <Jennifer C. Sheehy>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;alex.acosta@usdoj.gov @ inet [UNKNOWN] <alex.acosta@usdoj.gov>;gian-carlo a. peressutti/who/eop@eop [WHO] <gian-carlo a. peressutti>
Sent: 8/15/2001 4:34:16 AM
Subject: : Re: White House counsel meeting with disability leaders

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-AUG-2001 08:34:16.00
SUBJECT:: Re: White House counsel meeting with disability leaders
TO:Jennifer C. Sheehy (CN=Jennifer C. Sheehy/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alex.acosta@usdoj.gov (alex.acosta@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
CC:gian-carlo a. peressutti (CN=gian-carlo a. peressutti/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

That plan sounds fine with me. The Counsel's Office folks will plan to attend from 3 to 4.

Jennifer C. Sheehy
08/14/2001 07:36:04 PM
Record Type: Record

To: alex.acosta@usdoj.Gov @ inet, Bradford A. Berenson/WHO/EOP@EOP, Gian-Carlo A. Peressutti/WHO/EOP@EOP
cc:
Subject: White House counsel meeting with disability leaders

Alan Reich and Andy Imparato are available on Thursday, Aug. 23rd from 3 PM to 5 PM. (Michael Deland is on vacation) As we discussed, the first hour will be spent discussing President Bush's judicial nominees and the second hour Gian-Carlo and I will be available to discuss other issues. Unless I hear of any conflicts from you guys, I will proceed with inviting other disability leaders.

Thanks!
Jennifer

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>
Sent: 8/15/2001 4:42:16 AM
Subject: : From yesterday's Raleigh N&O
Attachments: P_P4BA3004_WHO.TXT_1.html

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith ( CN=Matthew E. Smith/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-AUG-2001 08:42:16.00
SUBJECT:: From yesterday's Raleigh N&O
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Judge on hold once more
Politics again thwarts move to appeals court
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By MATTHEW EISLEY, Staff Writer ELIZABETH CITY -- Federal Judge Terrence Boyle knows he's a lucky man. He just can't tell whether his luck is good or bad. Boyle, the chief U.S. District Court judge in Eastern North Carolina, recently got a second chance to climb the judicial ranks to the 4th U.S. Circuit Court of Appeals. Politics thwarted his ascent in 1991 when Senate Democrats denied him a confirmation hearing after the elder President George Bush nominated Boyle, a conservative Republican.Then, after voters last fall put George W. Bush in the White House and Republicans in charge of the Senate, Boyle got a second chance to move up to the 4th Circuit, based in Richmond, Va. In May, he was among Bush's first 11 nominees to federal appellate courts.But two weeks later, Sen. Jim Jeffords of Vermont switched from Republican to independent, giving Democrats control of the Senate, and thus judicial appointments.Now Boyle, 55, by most accounts a bright and brusque courtroom boss, is again at the mercy of Washington politics, and he can only bide his time. "It's not fair for him to be caught up in this political thing; he was a victim before," said Bill Cobey, chairman of North Carolina's Republican Party. "They shouldn't expect a Republican president to nominate a liberal judge. They should look at his qualifications. He's a very distinguished jurist."Lawyers who work in Boyle's court generally agree that he is a good choice for the 4th Circuit. "I think he's really one of the best trial judges I've ever appeared before," said Elizabeth City lawyer Everett Thompson, a Democrat. "He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political at all about anything."Boyle won't talk publicly about his nomination. "Ethical considerations for judicial nominees preclude my participating in a press interview while the nomination is pending," he said.Actually, there are no rules requiring judicial nominees to stay mum, though many do, partly out of fear of offending the senators who will decide their fate. Out of courtesy to senators, White House nominees are asked not to comment to the public until

after their hearings, White House spokeswoman Jeanie Mamo said.Since Jeffords' switch, John Edwards has joined the Senate committee that screens judicial nominees. That might give him enough clout to insist that Bush also nominate a Democratic judge, such as James Wynn of the state appeals court, to let Boyle's nomination move forward.Meanwhile, the Senate is being lobbied by conservative and liberal political groups that have taken an interest in Boyle and his 17-year record as a judge.Critics perceive Boyle's conservative ideology in rulings ordering congressional redistricting, barring lawsuits against the state under a federal disability law and refusing to approve a settlement in a lawsuit over employment of female guards in state prisons."There are many aspects of Judge Boyle's record that are extremely troubling from a civil rights perspective," said Elliot Mincberg, legal director for the liberal political group People for the American Way.But Boyle also has upheld federal protection of red wolves over the objection of livestock farmers, halted an execution to allow psychiatric testing of a death-row inmate, allowed the production of generic forms of the antacid drug Zantac, and refused to block the moving of the Cape Hatteras Lighthouse. In the redistricting case, Boyle headed a three-judge panel that ruled 2-1 last year that North Carolina's 12th Congressional District, winding from Charlotte to Greensboro, was unconstitutionally drawn based on the race of voters. At the same time, the panel concluded that the 1st Congressional District in the state's northeast corner, which has a higher population of black voters, was not designed on a racial basis.In April, the U.S. Supreme Court overturned the panel's ruling, saying the 12th District was OK on the new grounds that race can affect a district's shape as long as something else -- in this case, partisan politics -- is a bigger factor.Boyle's handling of that case could come in for criticism during a Senate confirmation hearing. For example, at first the panel unanimously agreed to skip a trial on the facts, but then the Supreme Court ordered a trial. But some legal scholars say Boyle and the judge who agreed with him reached a reasonable conclusion based on shifting Supreme Court rulings.Criminal defense lawyers, some Democrats, say they like Boyle because he holds prosecutors to high standards and rewards defendants who help convict other offenders."He is a great friend of the Constitution," said Raleigh defense lawyer Wade Smith, a former chairman of the state Democratic Party who supports Boyle. "He rules fairly and impartially."Life as a lawyerBoyle was born and reared outside the 4th Circuit in Passaic, N.J., just north of Newark and west of New York City. He graduated from Brown University, where he played football, and earned his law degree at American University.From 1970 to 1973, he was counsel to the Republican minority on the U.S. House Subcommittee on Housing, Banking and Currency. Also in 1973, he worked as one of U.S. Sen. Jesse Helms' legislative assistants.While in Washington, one day he walked into a congressional office elevator and met his future bride: Debbie Ellis, the daughter of Raleigh lawyer Tom Ellis, then Helms' political strategist.They would marry and move in 1974 to a quaint northeastern North Carolina town about as unlike Washington as possible: the historic village of Edenton on the north shore of the Albemarle Sound, where they had friends.Boyle went to work with a prominent law firm 25 miles northeast in Elizabeth City, the unofficial capital of the Albemarle region. Three years later, Boyle became a partner in LeRoy, Wells, Shaw, Hornthal & Riley, where he had a wide-ranging law practice."He has always been a very pragmatic guy," said firm partner Tony Hornthal, past president of the N.C. Bar Association. "He had a way of

cutting through the chaff and getting down to the heart of the matter."But Boyle had such conservative fiscal views, Hornthal recalled, that his partners joked that he must bury his money in his yard."When we made money decisions about the firm," Hornthal said, "we ignored what Boyle said."A demanding judgeHis brother-in-law, Hood Ellis, a lawyer in Boyle's old firm, said Boyle is shy and private and doesn't talk much about himself, even with family. "There's not too many people who crawl inside his inner ring," he said.But Boyle also is competitive and loves tennis, football and jokes."He likes to win, but he's a good sport," Ellis said. "He has a very good sense of humor. And he has the greatest laugh of all time. Once you've heard him guffaw, you'll never forget it."In 1984, President Reagan nominated Boyle as a federal trial judge at Helms' urging, and he was confirmed. His home office and court are in Elizabeth City, but he also hears cases in Greenville, New Bern, Wilmington and Raleigh.In his courtroom, Boyle can be curt, combative, even insulting, some lawyers say. Others appreciate his direct style and firm courtroom command.He can be hard on either side.In a 1993 drug case against former Wake Forest Mayor Jimmy Ray, Boyle chewed out a federal prosecutor for negotiating a plea bargain he doubted was justified."Was the indictment not factually grounded?" he demanded to know. "What right do you have to make him resign?"But Boyle doesn't seem mean so much as given to intense intellectual and verbal sparring, like a tough college professor. Boyle displays an intelligent, dry wit and can be very funny. But he can quickly shift from joking with lawyers in court to grilling them.Professor Boyle's lectures During recent criminal sentencing hearings in New Bern, Boyle lectured defense lawyers and prosecutors on their jobs and gave a pointed speech on bank robbery and its proper punishment.He criticized a prosecutor for failing to bring victims to a hearing and chided a defense lawyer for requesting a lighter sentence than normal. Then Boyle paused and asked the defense lawyer whether he wanted to ask for anything else. The lawyer politely said he did not."You don't want to provoke another speech like that, do you?" Boyle asked, and then smiled. "All right."Later, just before sending a man to prison for six months for an air-rage scuffle, Boyle warned him to straighten out soon."Do you know why you're getting an active sentence?" he asked. "Give me some of the reasons. ..."But then before the man could answer, Boyle veered off on a tangent about the foolishness of airlines serving alcohol.He then recounted the man's considerable criminal history and told him: "You haven't been an Eagle Scout. This thing's been coming. You keep this up, and you're going to be back in front of me, catching more time. We'll be doing this forever. That's the bad news."Unless, that is, Boyle goes to the 4th Circuit. Then he'll be reviewing the decisions of other trial judges, correcting their mistakes or applying their rulings to the circuit's five states: North Carolina, South Carolina, Virginia, West Virginia and Maryland.The American Bar Association has given Boyle a "qualified" rating for the job, its middle ranking. Roger Gregory, a Democrat whom the Senate confirmed to the court last month, had the same rating.Now it is up to Edwards, Helms, and 98 other senators to decide whether Boyle will make the cut."I don't want politics to stop us from having a judge on the 4th Circuit from North Carolina," said Smith, the Raleigh lawyer. "I think he would happily rule against me and happily rule for me whether I'm a Republican or a Democrat. I think he makes his decisions on the facts, and that's the best we

could ever hope. Give me judges like that." Staff writer Matthew Eisley can be reached at 829-4538 or <A HREF="mailto:meisley@newsobserver.com ">meisley@newsobserver.com</A>

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Judge on hold once more <FONT COLOR="#000000" SIZE=3 FAMILY="SANSSERIF" FACE="Arial" LANG="0">

Politics again thwarts move to appeals court

By MATTHEW EISLEY, Staff Writer ELIZABETH CITY -- Federal Judge Terrence Boyle knows he's a lucky man. He just can't tell whether his luck is good o r bad. Boyle, the chief U.S. District Court judge in Eastern North Carolina, recently got a second chance to climb the judicial ranks to the 4th U.S. Circuit Court of Appeals. Politics thwarted his ascent in 1991 when Senate Democrats denied him a confirmation hearing after the elder President Georg e Bush nominated Boyle, a conservative Republican.Then, after voters last fal l put George W. Bush in the White House and Republicans in charge of the Senate, Boyle got a second chance to move up to the 4th Circuit, based in Richmond, Va. In May, he was among Bush's first 11 nominees to federal appellate courts.But two weeks later, Sen. Jim Jeffords of Vermont switched from Republican to independent, giving Democrats control of the Senate, and thus judicial appointments.Now Boyle, 55, by most accounts a bright and brusque courtroom boss, is again at the mercy of Washington politics, and h e can only bide his time. "It's not fair for him to be caught up in this political thing; he was a victim before," said Bill Cobey, chairman of Nort h Carolina's Republican Party. "They shouldn't expect a Republican president to nominate a liberal judge. They should look at his qualifications. He's a ve ry distinguished jurist."Lawyers who work in Boyle's court generally agree tha t he is a good choice for the 4th Circuit. "I think he's really one of the be st trial judges I've ever appeared before," said Elizabeth City lawyer Everett Thompson, a Democrat. "He's a student of the law, he works hard, he's brigh t, he's fair. And I never saw him be political at all about anything."Boyle won't talk publicly about his nomination. "Ethical considerations for judicial nominees preclude my participating in a press interview while the nomination is pending," he said.Actually, there are no rules requiring judicial nominees to stay mum, though many do, partly out of fear of offending the senators who will decide their fate. Out of courtesy to senators, White House nominees are asked not to comment to the public until after their hearings, White House spokeswoman Jeanie Mamo said.Since Jeffords' switch, John Edwards has joined the Senate committee that screens judicial nominees. That might give him enough clout to insist that Bush als o nominate a Democratic judge, such as James Wynn of the state appeals court, to let Boyle's nomination move forward.Meanwhile, the Senate is being lobbi ed by conservative and liberal political groups that have taken an interest in Boyle and his 17-year record as a judge.Critics perceive Boyle's conservati ve ideology in rulings ordering congressional redistricting, barring lawsuits against the state under a federal disability law and refusing to approve a settlement in a lawsuit over employment of female guards in state prisons."There are many aspects of Judge Boyle's record that are extremely troubling from a civil rights perspective," said Elliot Mincberg, legal director for the liberal political group People for the American Way.But Boyle also has upheld federal protection of red wolves over the objection o f livestock farmers, halted an execution to allow psychiatric testing of a death-row inmate, allowed the production of generic forms of the antacid dr ug Zantac, and refused to block the moving of the Cape Hatteras Lighthouse. In the redistricting case, Boyle headed a three-judge panel that ruled 2-1 las t year that North Carolina's 12th Congressional District, winding from Charlotte to Greensboro, was unconstitutionally drawn based on the race of voters. At the same time, the panel concluded that the 1st Congressional District in the state's northeast corner, which has a higher population of black voters, was not designed on a racial basis.In April, the U.S. Supreme Court overturned the panel's ruling, saying the 12th District was OK on the new grounds that race can affect a district's shape as long as something el se

-- in this case, partisan politics -- is a bigger factor.Boyle's handling o f that case could come in for criticism during a Senate confirmation hearing. For example, at first the panel unanimously agreed to skip a trial on the facts, but then the Supreme Court ordered a trial. But some legal scholars say Boyle and the judge who agreed with him reached a reasonable conclusion based on shifting Supreme Court rulings.Criminal defense lawyers, some Democrats, say they like Boyle because he holds prosecutors to high standar ds and rewards defendants who help convict other offenders."He is a great frie nd of the Constitution," said Raleigh defense lawyer Wade Smith, a former chairman of the state Democratic Party who supports Boyle. "He rules fairly and impartially."**Life as a lawyer**Boyle was born and reared outside t he 4th Circuit in Passaic, N.J., just north of Newark and west of New York City. H e graduated from Brown University, where he played football, and earned his l aw degree at American University.From 1970 to 1973, he was counsel to the Republican minority on the U.S. House Subcommittee on Housing, Banking and Currency. Also in 1973, he worked as one of U.S. Sen. Jesse Helms' legislative assistants.While in Washington, one day he walked into a congressional office elevator and met his future bride: Debbie Ellis, the daughter of Raleigh lawyer Tom Ellis, then Helms' political strategist.They would marry and move in 1974 to a quaint northeastern North Carolina town about as unlike Washington as possible: the historic village of Edenton on the north shore of the Albemarle Sound, where they had friends.Boyle went t o work with a prominent law firm 25 miles northeast in Elizabeth City, the unofficial capital of the Albemarle region. Three years later, Boyle became a partner in LeRoy, Wells, Shaw, Hornthal & Riley, where he had a wide-ra nging law practice."He has always been a very pragmatic guy," said firm partner Tony Hornthal, past president of the N.C. Bar Association. "He had a way of cutting through the chaff and getting down to the heart of the matter."But Boyle had such conservative fiscal views, Hornthal recalled, that his partners joked that he must bury his money in his yard."When we made money decisions about the firm," Hornthal said, "we ignored what Boyle said."**A demanding judge**His brother-in-law, Hood Ellis, a lawyer in Boyle's old firm, said Boyle is shy and private and doesn't talk much about himself, even wit h family. "There's not too many people who crawl inside his inner ring," he said.But Boyle also is competitive and loves tennis, football and jokes."He likes to win, but he's a good sport," Ellis said. "He has a very good sense of humor. And he has the greatest laugh of all time. Once you've heard him guffaw, you'll never forget it."In 1984, President Reagan nominated Boyle a s a federal trial judge at Helms' urging, and he was confirmed. His home offi ce and court are in Elizabeth City, but he also hears cases in Greenville, New Bern, Wilmington and Raleigh.In his courtroom, Boyle can be curt, combative , even insulting, some lawyers say. Others appreciate his direct style and fi rm courtroom command.He can be hard on either side.In a 1993 drug case against former Wake Forest Mayor Jimmy Ray, Boyle chewed out a federal prosecutor f or negotiating a plea bargain he doubted was justified."Was the indictment not factually grounded?" he demanded to know. "What right do you have to make h im resign?"But Boyle doesn't seem mean so much as given to intense intellectua l and verbal sparring, like a tough college professor. Boyle displays an intelligent, dry wit and can be very funny. But he can quickly shift from joking with lawyers in court to grilling them.**Professor Boyle's lectures** During recent criminal sentencing hearings in New Bern, Boyle lectured defense lawyers and prosecutors on their jobs and gave a pointed speech on bank robbery and its proper punishment.He criticized a prosecutor for faili ng to bring victims to a hearing and chided a defense lawyer for requesting a lighter sentence than normal. Then Boyle paused and asked the defense lawye r whether he wanted to ask for anything else. The lawyer politely said he did not."You don't want to provoke another speech like that, do you?" Boyle asked, and then smiled. "All right."Later, just before sending a man to prison for six months for an air-rage scuffle, Boyle warned him to straight en

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From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/15/2001 9:50:54 AM
Subject: : LRM KCT63 - - VETERANS AFFAIRS Report on HR2222 Veterans Life Insurance Improvement Act
Attachments: P_8CLA3004_WHO.TXT_1.wpd; P_8CLA3004_WHO.TXT_2.txt

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From: Kathryn C. Thompson on 08/15/2001 01:47:38 PM
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To: dodlrs@osdgc.osd.mil , HUD_LRM@hud.gov , ola@opm.gov
cc: See the distribution list at the bottom of this message
Subject: LRM KCT63 - - VETERANS AFFAIRS Report on HR2222 Veterans Life Insurance Improvement Act

The following is LRM ID: KCT63 -- Veterans Affairs Report on H.R. 2222, Veterans Life Insurance Improvement Act. The VA report is attached below in Wordperfect format and it consists of five pages. The bill text of H.R. 2222 is attached below in html format and it consists of three pages.

Please comment on the VA report by Close of Business, Tuesday, August 21st . If I do not hear from you by the deadline, I will assume that you have no objection to the VA report.

LRM ID: KCT63
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, August 15, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Report on HR2222 Veterans Life Insurance Improvement Act

DEADLINE: COB Tuesday, August 21, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: VA states that it supports H.R. 2222, which provides for the payment of insurance proceeds after two years to an alternate beneficiary when the first beneficiary cannot be located, reduces the premium rates for Service-Disabled Veterans Insurance by prospectively changing the mortality table upon which premiums are based, increases the maximum coverage under the Veterans' Mortgage Life Insurance (VMLI) program from $90,000 to $200,000, and provides that VMLI can be carried by the insured beyond age 70.

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Ingrid M. Schroeder
LRM ID: KCT63 SUBJECT: VETERANS AFFAIRS Report on HR2222 Veterans Life Insurance Improvement Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

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File attachment <P_8CLA3004_WHO.TXT_2>

1.

The Honorable Christopher H. Smith
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As requested by the Honorable Lane Evans, I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on the "Veterans Life Insurance Improvement Act of 2001," H.R. 2222, 107th Cong., a bill "[t]o amend title 38, United States Code, to make certain improvements to the Servicemembers' Group Life Insurance life insurance program for members of the Armed Forces, and for other purposes." A consulting team of Systems Flow, Economic Systems, Macro International, and Hay Group recently completed a *Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities* and many of the provisions of the proposed bill are consistent with the recommendations of that evaluation. For the reasons specified below, VA supports the enactment of H.R. 2222.

Section 2 of H.R. 2222 would amend sections 1917 and 1952 of title 38, United States Code, to authorize the payment of unclaimed National Service Life Insurance (NSLI) and United States Government Life Insurance (USGLI) proceeds to an alternate beneficiary.

Under current law, there is no time limitation under which a named beneficiary of an NSLI or USGLI policy is required to file a claim for proceeds. Consequently, when the insured dies and the beneficiary does not file a claim for the proceeds, VA is required to hold the unclaimed funds indefinitely in order to honor any possible future claims by the beneficiary. VA holds the proceeds as a liability. While extensive efforts are made to locate and pay these individuals, there are cases where the beneficiary simply cannot be found. Under current law, we are not permitted to pay the proceeds to a contingent or alternate beneficiary unless we can determine that the principal beneficiary predeceased the policyholder. Consequently, payment of the proceeds to other beneficiaries is withheld.

A majority of the existing liabilities of unclaimed proceeds were established over ten years ago. As time passes, the likelihood of locating and paying the principal beneficiary becomes more remote. In fact, the older the liability becomes,

the more unlikely it is that it will ever be paid even though other legitimate heirs of the insured have been located.

Section 2 of H.R. 2222 would grant the Secretary authority to authorize payment of NSLI and USGLI proceeds to an alternate beneficiary when the proceeds have not been claimed by the named beneficiary within two years following the death of the policyholder or within two years of this bill's enactment, whichever is later. The principal beneficiary would have two years following the death of the insured to file a claim. Afterwards, a contingent beneficiary would then have two years to file a claim. Payment would be made as if the principal beneficiary had predeceased the insured. If there is no contingent beneficiary to receive the proceeds, payment would be made to those equitably entitled, as determined by the Secretary. As occurs under current law, no payment would be made if payment would escheat to a State. Such payment would be a bar to recovery of the proceeds by any other individual.

Section 2 of the bill would apply retroactively as well as prospectively, and is similar to the time-limitation provisions of the Servicemembers' and Veterans' Group Life Insurance programs and the Federal Employees Group Life Insurance program.

Insofar as payment to beneficiaries is made from the insurance trust funds, there are no direct appropriated benefit costs associated with this section of the bill. The liabilities are already set aside and would eventually be paid, either as payment to beneficiaries that eventually claim the proceeds, or released from liability reserves and paid as dividends.

There are approximately 4,000 existing policies in which payment has not been made due to the fact that we cannot locate the primary beneficiary, despite extensive efforts. Over the years, the sum of moneys held has aggregated to approximately $23 million. On a yearly basis, about 200 additional policies (with an average face value of $9600, or approximately $1.9 million annually) are placed into this liability because the law prohibits payment to a contingent beneficiary or to the veteran's heirs. It is estimated that approximately two-thirds of the 4,000 policies will eventually be paid as a result of this legislation. Additionally, in anticipation of the fact that about one-third of these policies will not be able to be paid, nearly $7 million has already been released to surplus and available for dividend distribution.

This section is subject to the PAYGO requirements of the Omnibus Budget Reconciliation Act of 1990, and, if enacted, it would increase direct spending. The

3.

Administration estimates that its enactment would result in PAYGO costs of $15 million during Fiscal Years 2002-2006 and a total of $25 million during Fiscal Years 2002-2011.

Adjudication of these 4,000 policies would entail administrative costs of approximately $154,000, representing two full-time employee equivalence (FTE) in claims processing and support. Approximately 94 percent of this cost would be reimbursed to the Veterans Benefits Administration's General Operating Expense (GOE) account from the surplus of the trust funds, leaving about $9,000 in government costs (which assumes that about six percent of the policies are Service-Disabled Veterans Insurance, which has no surplus and for which appropriated funds are used to cover administrative costs).

As a technical matter, section 2(c) of the bill, Transition Provision, should identify a person insured under subchapter I or II of chapter 19, title 38, United States Code.

Section 3 of H.R. 2222 would amend section 1922(a) of title 38, United States Code, by reducing the premium rates for Service-Disabled Veterans Insurance (S-DVI) by prospectively changing the mortality table upon which premiums are based. The S-DVI program was intended to provide service-disabled veterans with the ability to purchase insurance coverage at "standard" premium rates. S-DVI premiums are currently based on an old mortality table, i.e., the 1941 Commissioners Standard Ordinary (CSO) Mortality Table with 2.25 percent interest. In 1951, when this program began, these premium rates were competitive with commercial insurance policy rates. Insofar as life expectancy has significantly improved over the past sixty years, a more recent mortality table would reflect lower mortality and, hence, lower premium rates. Section 3 would provide that S-DVI premiums be based on the 1980 CSO Mortality Table with an interest rate of five percent. While just changing to a more recent mortality table would assist new entrants into the program, it would not render any assistance to those already insured under the program unless the new mortality table, with its inherent lower premiums, was made available to them also.

Section 3 of this bill would provide service-connected disabled veterans with full parity with other Americans' ability to purchase life insurance at competitive rates. This section of H.R. 2222 would ensure that service-connected disabled veterans have the ability to obtain life insurance at standard premium rates without regard to their physical disabilities. Currently, S-DVI policyholders are in effect paying a "rated" (higher) premium solely because of their service-connected disabilities. In other words, these veterans are subsidizing their own

4.
service-connected disabilities. We believe it is the responsibility of the government to subsidize these disabilities. The provisions of this section are consistent with the recommendations of the program evaluation.

The enactment of section 3 of H.R. 2222 would result in an additional subsidy of $11 million for FY 2002 and $143 million for the ten-year period from FY 2002 through FY 2011.

Section 4 of H.R. 2222 would amend section 2106(b) of title 38, United States Code, by increasing the maximum coverage under the Veterans' Mortgage Life Insurance (VMLI) program to $200,000. VMLI provides mortgage life insurance coverage to certain severely disabled veterans who have received specially-adapted housing grants from VA. The insurance is intended to pay off the outstanding balance of the mortgage in the event of the veteran's death. The current maximum amount of VMLI allowed an eligible veteran is $90,000.

The maximum amount of mortgage life insurance was last increased on December 1, 1992, when it was raised from $40,000 to $90,000. This resulted in the VMLI program covering a high percentage (91 percent) of the total mortgage balances that these severely disabled veterans held. With the increase in housing costs over the past nine years, the percentage of total mortgage balances covered has decreased significantly.

As of the start of this fiscal year, the VMLI program was providing $201 million of coverage while the outstanding mortgage balances for these veterans totaled $255 million. The coverage percentage has declined from 91 percent to 79 percent. This points to the inadequacy of the VMLI current maximum of $90,000. If the maximum coverage amount were increased to $200,000, the program would cover 98 percent of the mortgage balances outstanding. The need for the increase is even more compelling if viewed from the perspective of the number of veterans in the VMLI program who have their entire mortgage balances insured. At the current level of $90,000, only 62 percent of participants have their entire mortgage balance covered. This means that in 38 percent of the cases, if the veteran died, the survivors would still have mortgages remaining on their homes. If the maximum were raised to $200,000, 98 percent of participants would be able to have their mortgages fully covered.

The VMLI program is subsidized with appropriated funds since these veterans are charged standard premium rates. An increase in the maximum coverage amount to $200,000 would affect 1,286 of the 3,385 veterans covered by the program. While the premiums charged these veterans would increase, the

5.

subsidy required from the government would also rise. The provisions of this section are consistent with the recommendations of the program evaluation. The enactment of section 4 of H.R. 2222 would result in an additional subsidy of $1.5 million for FY 2002 and $22.6 million for the 10-year period from FY 2002 through FY 2011.

Section 5 of H.R. 2222 would amend section 2106 of title 38, United States Code, to provide that Veterans' Mortgage Life Insurance (VMLI) may be carried by the insured beyond age 70 but limiting new issues to ages 69 and below. The policy provisions of VMLI are fairly comparable to those of commercial life insurance policies, except for the VMLI provision that coverage terminates at age 70. On the one hand, like VMLI, commercial mortgage life insurance will not be issued after age 69. On the other hand, commercial life insurance companies do not terminate coverage at age 70. As part of a study of "Benefits for Survivors of Veterans with Service-Connected Disabilities", the contracting company, Systems Flow, Inc., compiled a report "VA Insurance and DIC Programs - Profile of Users and Non-Users and Beneficiaries" of the VA insurance and DIC programs. In this report, it was found that 12 percent of users whose VMLI insurance was terminated was due to their reaching age 70. Because of such terminations, VA is not providing financial security to the veterans' families.

Insofar as premium income for the VMLI program only covers about 25 percent of claims costs, this is a relatively heavily subsidized program. However, since it is only open to a limited class (those eligible for specially-adapted housing), the increase in the subsidy to allow coverage past age 70 is relatively nominal. The provisions of this section are consistent with the recommendations of the program evaluation. The enactment of section 5 of H.R. 2222 would result in an additional subsidy of $400,000 for FY 2002 and $5.8 million for the ten-year period from FY 2002 through FY 2011.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,
Anthony J. Principi

HR 2222 IH

107th CONGRESS

1st Session

H. R. 2222

To amend title 38, United States Code, to make certain improvements to the Servicemembers' Group Life Insurance life insurance program for members of the Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 19, 2001

Mr. FILNER introduced the following bill; which was referred to the Committe e on Veterans' Affairs

---

A BILL

To amend title 38, United States Code, to make certain improvements to the Servicemembers' Group Life Insurance life insurance program for members of the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Veterans Life Insurance Improvement Act of 2001'.

SEC. 2. PAYMENT OF INSURANCE PROCEEDS TO AN ALTERNATE BENEFICIARY WHEN F IRST BENEFICIARY CANNOT BE IDENTIFIED.

(a) NSLI--Section 1917 of title 38, United States Code, is amended by adding at the end the following new subsection:

`(f)(1) Following the death of the insured and in a case not covered b y subsection (d)--

`(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the de ath of the insured, payment may be made to another beneficiary designated by th e insured, in the order of precedence as designated by the insured, as if the f irst beneficiary had predeceased the insured; and

`(B) if within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be ma de, payment may (notwithstanding any other provision of law) be made to such pe rson as may in the judgment of the Secretary be equitably entitled thereto.

`(2) Payment of insurance under paragraph (1) shall be a bar to recove ry by any other person.'.

(b) USGLI- Section 1952 of such title is amended by adding at the end the following new subsection:

`(c)(1) Following the death of the insured and in a case not covered b y section 1950 of this title--

`(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the de ath of the insured, payment may be made to another beneficiary designated by th e insured, in the order of precedence as designated by the insured, as if the f irst beneficiary had predeceased the insured; and

`(B) if within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be ma de, payment may (notwithstanding any other provision of law) be made to such pe rson as may in the judgment of the Secretary be equitably entitled thereto.

`(2) Payment of insurance under paragraph (1) shall be a bar to recove ry by any other person.'.

(c) TRANSITION PROVISION- In the case of a person insured under subcha pter I or II of title 38, United States Code, who dies before the date of the e nactment of this Act, the two-year and four-year periods specified in subsectio n (f)(1) of section 1917 of title 38, United States Code, as added by subsectio n (a), and subsection (c)(1) of section 1952 of such title, as added by subsect ion (b), as applicable, shall for purposes of the applicable subsection be trea ted as being the two-year and four-year periods, respectively, beginning on the date of the enactment of this Act.

SEC. 3. REDUCTION IN SERVICE-DISABLED VETERANS INSURANCE PREMIUMS.

Section 1922(a) of title 38, United States Code, is amended--

(1) by inserting `(1)' after `(a)'; and

(2) by striking the fourth sentence and all that follows and inser ting the following:

`(2) Insurance granted under this section shall be issued upon the sam e terms and conditions as are contained in the standard policies of National Se rvice Life Insurance, except that--

`(A) the premium rates for such insurance--

`(i) for premiums for months beginning before the date of the enactment of the Veterans Life Insurance Improvement Act of 2001 shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2 1/4 percent per year; and

`(ii) for premiums for months beginning on or after that date shall be based upon the 1980 Commissioners Standard Ordinary Basic Table of Mor tality and interest at the rate of 5 percent per year;

`(B) all cash, loan, paid-up, and extended values--

`(i) for a policy issued under this section before the date of the enactment of the Veterans Life Insurance Improvement Act of 2001 shall be based upon the Commissioners 1941 Standard ordinary Table of Mortality and inte rest at the rate of 2 1/4 percent per year; and

`(ii) for a policy issued under this section on or after that date shall be based upon the 1980 Commissioners Standard Ordinary Basic Table o f Mortality and interest at the rate of 5 percent per year;

`(C) all settlements on policies involving annuities shall be calc ulated on the basis of The Annuity Table for 1949, and interest at the rate of 2 1/4 percent per year;

`(D) insurance granted under this section shall be on a nonpartici pating basis;

`(E) all premiums and other collections for insurance under this s ection shall be credited directly to a revolving fund in the Treasury of the Un ited States; and

`(F) any payments on such insurance shall be made directly from su ch fund.

`(3) Appropriations to the fund referred to in subparagraphs (E) and (F) of paragraph (2) are hereby authorized.

`(4) As to insurance issued under this section, waiver of premiums pur suant to section 602(n) of the National Service Life Insurance Act of 1940 and section 1912 of this title shall not be denied on the ground that the service-c onnected disability became total before the effective date of such insurance.'.

SEC. 4. INCREASE OF VETERANS' MORTGAGE LIFE INSURANCE COVERAGE TO $200,0 00.

(a) INCREASE- Section 2106(b) of title 38, United States Code, is amen ded by striking `$90,000' and inserting `$200,000'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply w ith respect to insurance payable under section 2106 of title 38, United States Code, in the case of a veteran insured under that section who dies on or after the date of enactment of this Act.

SEC. 5. AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BE YOND AGE 70.

Section 2106 of title 38, United States Code, is amended--

(1) in subsection (a), by inserting `age 69 or younger' after `any eligible veteran'; and

(2) in subsection (i), by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

END

From: CN=Sara M. Taylor/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/16/2001 4:16:30 AM
Subject: : MI Eastern District US Attorney

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sara M. Taylor ( CN=Sara M. Taylor/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-AUG-2001 08:16:30.00
SUBJECT:: MI Eastern District US Attorney
TO:Matthew A. Schlapp ( CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Jeff Collins, the President's pick for US Attny. in Detroit is looking for
guidance on the timing for the nomination and confirmation process. Who
can I direct him to? Thanks.
```

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Making the Grade: How the ABA Rates Judicial Nominee

By Jonathan Groner
Fulton County Daily Report
Tuesday, August 14, 2001

For the past several months, and as recently as last week, the American Bar Association has been caught in heavy political gunplay for its role in grading would-be federal judges.

Conservatives say the group exhibits a liberal bias, while Democrats who control the Senate and pass ultimate judgment on nominees say they can't do their job without the ABA's input.

But for all the noise over the ABA's role in shaping the federal bench, very little attention is paid to how the group's mysterious Standing Committee on the Federal Judiciary actually conducts its reviews of candidates.

The 15-member committee almost always is made up of law firm partners, working alone as they conduct at least 40 interviews of lawyers, judges and community leaders, sometimes even including Supreme Court justices. Each of their projects takes dozens of hours-time that the lawyers otherwise could devote to clients.

The products of these efforts are detailed reports on nominees, often stretching as long as 50 pages. The highly sensitive documents are distributed through the mail to avoid computer or e-mail security breaches. They are not released even to the Senate or the White House, which are informed only of the bottom line-that any given judicial candidate has been rated "well-qualified," "qualified" or "unqualified" for the job.

And at the end of the process, all of the copies of the reports are destroyed, save one.

Conservatives long have accused the ABA, which has taken liberal stands on other issues, of viewing its judicial task force's work through a liberal lens, resulting in bias in the judiciary panel's evaluations. Earlier this year, the Bush administration stripped the committee of a special status as adviser to the White House it had enjoyed for 50 years.

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Neil Lewis **New York Times**
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The ABA always has denied the allegations. Several people who have been involved in the ratings process, from members of the ABA committee to judicial candidates under review, say they never saw evidence that politics played a role.

"They did a very thorough job, focusing particularly on the question of judicial temperament," says one judicial nominee who went through the process within the last three years. "We had a sit-down (with the ABA committee's circuit representative). It was decent and cordial. None of the questions was political in any way."

Despite the administration's decision to treat the ABA no differently from any other interest group, the committee's assessments of prospective judges still matter a good deal. Senate Judiciary Chairman Patrick Leahy, D-Vt., has said that he will continue to rely on the ratings of the blue-ribbon committee.

And the committee has plenty of work to do. President George W. Bush quickly has cranked out 48 nominations for the federal trial and appeals courts, 44 of which are pending before the Senate Judiciary Committee.

The new chairman of the ABA committee, Roscoe Trimmier Jr. of Boston's Ropes & Gray, says his group has had to scramble to keep from falling behind in its investigations. Trimmier was appointed chairman of the panel at last week's ABA convention in Chicago, replacing Patricia Hynes of New York's Milberg Weiss Bershad Hynes & Lerach, whose one-year term ended.

Trimmier says the rating process places an extremely heavy burden on the committee members.

"It's incredibly time-consuming," he says. "Now that we are getting batches of nominees, we'll have to call upon former members to help out." Trimmier says he's aware of fewer than 20 former panelists nationwide who might be available to fill in.

Covert Activity

Though the process is much the same as it has been for decades, there is one key difference this year. Because the committee's long-standing relationship with the White House has been

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Neil Lewis **New York Times**
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severed, the committee no longer receives advance word of projected nominees. As a result, it is no longer able to vet them for possibly disqualifying problems and warn the White House before the nomination is made.

Judicial candidates, of course, still undergo background checks conducted by the FBI before their names are submitted.

Normally, the ABA investigations are parceled out among committee members according to the federal circuits. Each of the committee's 14 members, other than the chairman, represents one of the 11 numbered circuits, the D.C. Circuit, and the Federal Circuit. Two committee members cover the sprawling 9th Circuit. All members are limited to no more than two three-year terms.

Work performed for the ABA committee is uncompensated and confidentiality rules prohibit members from farming out any of the legwork to associates or paralegals.

Trimmier says about 60 hours of interviews are conducted for each inquiry. The committee requires that a minimum of 40 people-federal, state and local judges, U.S. Attorneys, public defenders, community leaders of all sorts, and opposing counsel-weigh in with their views about a nominee, and members often talk to many more than that in compiling their reports.

The nominee is informed of the start of the process, but usually is interviewed last, after any problems have arisen, so that he or she can explain any difficulties and suggest additional people to contact.

The reports, which form the basis of the ratings, are circulated among the committee members.

The other members then vote on the ratings-by telephone or U.S. mail, never by fax or e-mail. A member who has questions about a proposed rating may ask the chairman to convene a conference call of all members. (The committee normally meets in person only twice a year, at the ABA's two major annual meetings.)

Once all members have voted, the chairman tabulates the votes and forwards the result to the White House counsel, the Department of Justice, and all members of the Senate Judiciary Committee. Trimmier says the candidate is informed of his or her rating at the same time.

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After that, the rating becomes public, including the existence of a minority view among the members, if any.

Looking for Litigators

If there are several simultaneous nominees for the bench in one circuit, the committee member won't be able to keep up with the pace of investigations-especially since the panel wants each report finished within 30 days after the nominee returns a completed questionnaire.

Trimmier says he can ask a member from a different region to fill in for an overburdened member, but that won't work if everyone is busy. The only other people the committee may rely upon, for reasons of confidentiality, are former members.

"It's a very broad inquiry," Trimmier says. "We look for knowledge of the law, intellectual capacity, writing ability, judicial temperament, integrity, general reputation in the community, and more." Another key aspect of any probe centers on the nominee's trial experience. "Most of the people on the committee are litigators," says a lawyer familiar with the process. "There have been ratings of not qualified on the basis of lack of experience alone. There have been minority votes on that basis. These issues do come up, and there are those who feel very strongly about it."

While committee members declined to address specific cases, a lack of trial experience is widely believed to be the reason that a minority of the panel rated current Federal Circuit nominee Sharon Prost "not qualified" earlier this month. The majority voted Prost, chief counsel to the Republicans on the Senate Judiciary Committee and a legal aide to Sen. Orrin Hatch, R-Utah, for 12 years, "qualified."

Prost, 50, obviously has not been a litigator while on the Hill, though she had served as an attorney at the National Labor Relations Board.

David Carle, a spokesman for Sen. Leahy, announced last week that Leahy had scheduled a rare hearing during a congressional recess for Prost and for a district court nominee from South Carolina, Terry Wooten. That hearing is set for Aug. 27.

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Pauline Schneider, a partner at the Washington office of Hunton & Williams, is the Federal Circuit representative on the ABA committee who would have done the inquiry on Prost. She declines comment, referring questions to Trimmier.

Fred Fielding of Washington's Wiley, Rein & Fielding is the designated D.C. Circuit representative on the panel. He is responsible for evaluating nominees to both the D.C. Circuit and the U.S. District Court for the District of Columbia. Like Schneider, he refers questions about the committee's work to Trimmier.

Fielding apparently is working to wrap up his reports on Miller & Chevalier partner John Bates and D.C. Superior Court Judge Reggie Walton, both nominated June 20 for the District Court.

"I was contacted this week by Fred Fielding regarding Bates and Walton," says Mark Tuohey III, a former District of Columbia Bar president and partner in the Washington office of Vinson & Elkins. "In fact, I have been contacted by members of the committee from the Carter era through Bush II."

Tuohey says he has always been impressed with the "professionalism" of the ABA panel.

"They've always taken their job very seriously," Tuohey says. "It's never just a wink and a nod. And it's always been nonpartisan and objective."

But not all reports about the committee's work are so rosy. Two people who have been through the process as nominees say that although the investigators are thorough and show no political bias, they should keep the nominees better informed of their status.

"They never told me what my rating was. I never got an official letter that said it," says one.

"My overall impression was that this was just not a user-friendly process. I don't just mean the ABA, but the ABA did not communicate anything to me, even the rating," says another.

Judge On Hold Once More

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Neil Lewis **New York Times**
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By Matthew Eisley
The News and Observer
Tuesday, August 14, 2001

Federal Judge Terrence Boyle knows he's a lucky man. He just can't tell whether his luck is good or bad.

Boyle, the chief U.S. District Court judge in Eastern North Carolina, recently got a second chance to climb the judicial ranks to the 4th U.S. Circuit Court of Appeals. Politics thwarted his ascent in 1991 when Senate Democrats denied him a confirmation hearing after the elder President George Bush nominated Boyle, a conservative Republican.

Then, after voters last fall put George W. Bush in the White House and Republicans in charge of the Senate, Boyle got a second chance to move up to the 4th Circuit, based in Richmond, Va. In May, he was among Bush's first 11 nominees to federal appellate courts.

But two weeks later, Sen. Jim Jeffords of Vermont switched from Republican to independent, giving Democrats control of the Senate, and thus judicial appointments.

Now Boyle, 55, by most accounts a bright and brusque courtroom boss, is again at the mercy of Washington politics, and he can only bide his time.

"It's not fair for him to be caught up in this political thing; he was a victim before," said Bill Cobey, chairman of North Carolina's Republican Party. "They shouldn't expect a Republican president to nominate a liberal judge. They should look at his qualifications. He's a very distinguished jurist."

Lawyers who work in Boyle's court generally agree that he is a good choice for the 4th Circuit. "I think he's really one of the best trial judges I've ever appeared before," said Elizabeth City lawyer Everett Thompson, a Democrat. "He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political at all about anything."

Boyle won't talk publicly about his nomination. "Ethical considerations for judicial nominees preclude my participating in a press interview while the nomination is pending," he said.

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Actually, there are no rules requiring judicial nominees to stay mum, though many do, partly out of fear of offending the senators who will decide their fate. Out of courtesy to senators, White House nominees are asked not to comment to the public until after their hearings, White House spokeswoman Jeanie Mamo said.

Since Jeffords' switch, John Edwards has joined the Senate committee that screens judicial nominees. That might give him enough clout to insist that Bush also nominate a Democratic judge, such as James Wynn of the state appeals court, to let Boyle's nomination move forward.

Meanwhile, the Senate is being lobbied by conservative and liberal political groups that have taken an interest in Boyle and his 17-year record as a judge.

Critics perceive Boyle's conservative ideology in rulings ordering congressional redistricting, barring lawsuits against the state under a federal disability law and refusing to approve a settlement in a lawsuit over employment of female guards in state prisons.

"There are many aspects of Judge Boyle's record that are extremely troubling from a civil rights perspective," said Elliot Mincberg, legal director for the liberal political group People for the American Way.

But Boyle also has upheld federal protection of red wolves over the objection of livestock farmers, halted an execution to allow psychiatric testing of a death-row inmate, allowed the production of generic forms of the antacid drug Zantac, and refused to block the moving of the Cape Hatteras Lighthouse. In the redistricting case, Boyle headed a three-judge panel that ruled 2-1 last year that North Carolina's 12th Congressional District, winding from Charlotte to Greensboro, was unconstitutionally drawn based on the race of voters. At the same time, the panel concluded that the 1st Congressional District in the state's northeast corner, which has a higher population of black voters, was not designed on a racial basis.

In April, the U.S. Supreme Court overturned the panel's ruling, saying the 12th District was OK on the new grounds that race can affect a district's shape as long as something else - in this case, partisan politics - is a bigger factor.

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Boyle's handling of that case could come in for criticism during a Senate confirmation hearing. For example, at first the panel unanimously agreed to skip a trial on the facts, but then the Supreme Court ordered a trial. But some legal scholars say Boyle and the judge who agreed with him reached a reasonable conclusion based on shifting Supreme Court rulings.

Criminal defense lawyers, some Democrats, say they like Boyle because he holds prosecutors to high standards and rewards defendants who help convict other offenders.

"He is a great friend of the Constitution," said Raleigh defense lawyer Wade Smith, a former chairman of the state Democratic Party who supports Boyle. "He rules fairly and impartially."

###

Life as a lawyer:

Boyle was born and reared outside the 4th Circuit in Passaic, N.J., just north of Newark and west of New York City. He graduated from Brown University, where he played football, and earned his law degree at American University.

From 1970 to 1973, he was counsel to the Republican minority on the U.S. House Subcommittee on Housing, Banking and Currency. Also in 1973, he worked as one of U.S. Sen. Jesse Helms' legislative assistants.

While in Washington, one day he walked into a congressional office elevator and met his future bride: Debbie Ellis, the daughter of Raleigh lawyer Tom Ellis, then Helms' political strategist.

They would marry and move in 1974 to a quaint northeastern North Carolina town about as unlike Washington as possible: the historic village of Edenton on the north shore of the Albemarle Sound, where they had friends.

Boyle went to work with a prominent law firm 25 miles northeast in Elizabeth City, the unofficial capital of the Albemarle region. Three years later, Boyle became a partner in LeRoy, Wells, Shaw, Hornthal & Riley, where he had a wide-ranging law practice.

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"He has always been a very pragmatic guy," said firm partner Tony Hornthal, past president of the N.C. Bar Association. "He had a way of cutting through the chaff and getting down to the heart of the matter."

But Boyle had such conservative fiscal views, Hornthal recalled, that his partners joked that he must bury his money in his yard.

"When we made money decisions about the firm," Hornthal said, "we ignored what Boyle said."

###

A demanding judge:

His brother-in-law, Hood Ellis, a lawyer in Boyle's old firm, said Boyle is shy and private and doesn't talk much about himself, even with family. "There's not too many people who crawl inside his inner ring," he said.

But Boyle also is competitive and loves tennis, football and jokes.

"He likes to win, but he's a good sport," Ellis said. "He has a very good sense of humor. And he has the greatest laugh of all time. Once you've heard him guffaw, you'll never forget it."

In 1984, President Reagan nominated Boyle as a federal trial judge at Helms' urging, and he was confirmed. His home office and court are in Elizabeth City, but he also hears cases in Greenville, New Bern, Wilmington and Raleigh.

In his courtroom, Boyle can be curt, combative, even insulting, some lawyers say. Others appreciate his direct style and firm courtroom command.

He can be hard on either side.

In a 1993 drug case against former Wake Forest Mayor Jimmy Ray, Boyle chewed out a federal prosecutor for negotiating a plea bargain he doubted was justified.

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"Was the indictment not factually grounded?" he demanded to know. "What right do you have to make him resign?"

But Boyle doesn't seem mean so much as given to intense intellectual and verbal sparring, like a tough college professor.

Boyle displays an intelligent, dry wit and can be very funny. But he can quickly shift from joking with lawyers in court to grilling them.

###

Professor Boyle's lectures:

During recent criminal sentencing hearings in New Bern, Boyle lectured defense lawyers and prosecutors on their jobs and gave a pointed speech on bank robbery and its proper punishment.

He criticized a prosecutor for failing to bring victims to a hearing and chided a defense lawyer for requesting a lighter sentence than normal. Then Boyle paused and asked the defense lawyer whether he wanted to ask for anything else. The lawyer politely said he did not.

"You don't want to provoke another speech like that, do you?" Boyle asked, and then smiled. "All right."

Later, just before sending a man to prison for six months for an air-rage scuffle, Boyle warned him to straighten out soon.

"Do you know why you're getting an active sentence?" he asked. "Give me some of the reasons.

But then before the man could answer, Boyle veered off on a tangent about the foolishness of airlines serving alcohol.

He then recounted the man's considerable criminal history and told him: "You haven't been an Eagle Scout. This thing's been coming. You keep this up, and you're going to be back in front of me, catching more time. We'll be doing this forever. That's the bad news."

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Unless, that is, Boyle goes to the 4th Circuit. Then he'll be reviewing the decisions of other trial judges, correcting their mistakes or applying their rulings to the circuit's five states: North Carolina, South Carolina, Virginia, West Virginia and Maryland.

The American Bar Association has given Boyle a "qualified" rating for the job, its middle ranking. Roger Gregory, a Democrat whom the Senate confirmed to the court last month, had the same rating.

Now it is up to Edwards, Helms, and 98 other senators to decide whether Boyle will make the cut.

"I don't want politics to stop us from having a judge on the 4th Circuit from North Carolina," said Smith, the Raleigh lawyer.

"I think he would happily rule against me and happily rule for me whether I'm a Republican or a Democrat. I think he makes his decisions on the facts, and that's the best we could ever hope. Give me judges like that."

White House Gloomy Over Judiciary Prospects

By Major Garrett
CNN
Tuesday, August 14, 2001

"Improper" delays engineered by Senate Republicans to thwart President Clinton's judicial nominees so poisoned relations with Democrats that President Bush may see only five of his own choices for the federal bench confirmed this year, White House Counsel Alberto Gonzalez said Tuesday.

"We are trying to work through some of the logjams, but there is a lot of bitterness," Gonzales told CNN. "This is a bit of a payback. I can't argue with some of their [the Democrats'] perceptions."

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Gonzales noted that some Republican senators placed "holds" on Clinton judicial nominees, denying them a Judiciary Committee hearing or a floor vote for as long as four years.

"That was wrong," he said. "That's not right. Part of this is based on the conduct of the Republican senators in the past. We had nothing to do with this problem. But it does affect us."

Gonzales was exceedingly gloomy about the prospects of winning approval for Bush judicial nominees, predicting Bush would win no more than five judicial confirmations this year.

Gonzales said each of the three previous presidents won confirmation for more than 40 judicial nominees in their first year in office.

"It's a major problem and it's going to get worse," he said. "Our best argument is that the partisanship over judicial nominations has historically been saved for the end of an administration and not at the beginning. We would expect the same kind of deference given to Reagan, Bush and Clinton."

Gonzales said Democrats are reluctant to do so, however, because they fear Bush will "stack the federal judiciary with conservatives."

Gonzales said those fears are overwrought and pointed to Bush's renomination of Roger Gregory, an African-American lawyer from Richmond, Virginia.
Clinton nominated Gregory to the U.S. 4th Circuit Court of Appeals, but Senate Republicans stalled the nomination. Frustrated, Clinton gave Gregory a recess appointment to the bench, one that would have expired after one year unless Bush renominated him.

"We asked Roger Gregory the same questions and he gave us the answers we expected," Gonzales said.

"The answers were what you would expect from a good, solid, conservative judge. We don't ask potential nominees about abortion or affirmative action. We ask how you would render a decision."

Gregory is one of four federal judicial nominees to have won Senate confirmation. Overall, Bush

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has nominated 44 judges to the federal courts. Of those 22 are for the circuit court of appeals and 22 are for district court positions. Forty nominees await confirmation.

Interest Groups/Press Releases

The Federalist Society, From Obscurity To Power; The Right-Wing Lawyers Who Are Shaping The Bush Administration's Decisions On Legal Policies And Judicial Nominations

People For The American Way
August, 2001

http://www.pfaw.org/issues/democracy/federalist.pdf

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Neil Lewis **New York Times**
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Neil Lewis **New York Times**
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REV_00131042

Making the Grade: How the ABA Rates Judicial Nominee

By Jonathan Groner
Fulton County Daily Report
Tuesday, August 14, 2001

For the past several months, and as recently as last week, the American Bar Association has been caught in heavy political gunplay for its role in grading would-be federal judges.

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But for all the noise over the ABA's role in shaping the federal bench, very little attention is paid to how the group's mysterious Standing Committee on the Federal Judiciary actually conducts its reviews of candidates.

The 15-member committee almost always is made up of law firm partners, working alone as they conduct at least 40 interviews of lawyers, judges and community leaders, sometimes even including Supreme Court justices. Each of their projects takes dozens of hours-time that the lawyers otherwise could devote to clients.

The products of these efforts are detailed reports on nominees, often stretching as long as 50 pages. The highly sensitive documents are distributed through the mail to avoid computer or e-mail security breaches. They are not released even to the Senate or the White House, which are informed only of the bottom line-that any given judicial candidate has been rated "well-qualified," "qualified" or "unqualified" for the job.

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Conservatives long have accused the ABA, which has taken liberal stands on other issues, of viewing its judicial task force's work through a liberal lens, resulting in bias in the judiciary panel's evaluations. Earlier this year, the Bush administration stripped the committee of a special status as adviser to the White House it had enjoyed for 50 years.

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The ABA always has denied the allegations. Several people who have been involved in the ratings process, from members of the ABA committee to judicial candidates under review, say they never saw evidence that politics played a role.

"They did a very thorough job, focusing particularly on the question of judicial temperament," says one judicial nominee who went through the process within the last three years. "We had a sit-down (with the ABA committee's circuit representative). It was decent and cordial. None of the questions was political in any way."

Despite the administration's decision to treat the ABA no differently from any other interest group, the committee's assessments of prospective judges still matter a good deal. Senate Judiciary Chairman Patrick Leahy, D-Vt., has said that he will continue to rely on the ratings of the blue-ribbon committee.

And the committee has plenty of work to do. President George W. Bush quickly has cranked out 48 nominations for the federal trial and appeals courts, 44 of which are pending before the Senate Judiciary Committee.

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After that, the rating becomes public, including the existence of a minority view among the members, if any.

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If there are several simultaneous nominees for the bench in one circuit, the committee member won't be able to keep up with the pace of investigations-especially since the panel wants each report finished within 30 days after the nominee returns a completed questionnaire.

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While committee members declined to address specific cases, a lack of trial experience is widely believed to be the reason that a minority of the panel rated current Federal Circuit nominee Sharon Prost "not qualified" earlier this month. The majority voted Prost, chief counsel to the Republicans on the Senate Judiciary Committee and a legal aide to Sen. Orrin Hatch, R-Utah, for 12 years, "qualified."

Prost, 50, obviously has not been a litigator while on the Hill, though she had served as an attorney at the National Labor Relations Board.

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Fielding apparently is working to wrap up his reports on Miller & Chevalier partner John Bates and D.C. Superior Court Judge Reggie Walton, both nominated June 20 for the District Court.

"I was contacted this week by Fred Fielding regarding Bates and Walton," says Mark Tuohey III, a former District of Columbia Bar president and partner in the Washington office of Vinson & Elkins. "In fact, I have been contacted by members of the committee from the Carter era through Bush II."

Tuohey says he has always been impressed with the "professionalism" of the ABA panel.

"They've always taken their job very seriously," Tuohey says. "It's never just a wink and a nod. And it's always been nonpartisan and objective."

But not all reports about the committee's work are so rosy. Two people who have been through the process as nominees say that although the investigators are thorough and show no political bias, they should keep the nominees better informed of their status.

"They never told me what my rating was. I never got an official letter that said it," says one.

"My overall impression was that this was just not a user-friendly process. I don't just mean the ABA, but the ABA did not communicate anything to me, even the rating," says another.

Judge On Hold Once More

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By Matthew Eisley
The News and Observer
Tuesday, August 14, 2001

Federal Judge Terrence Boyle knows he's a lucky man. He just can't tell whether his luck is good or bad.

Boyle, the chief U.S. District Court judge in Eastern North Carolina, recently got a second chance to climb the judicial ranks to the 4th U.S. Circuit Court of Appeals. Politics thwarted his ascent in 1991 when Senate Democrats denied him a confirmation hearing after the elder President George Bush nominated Boyle, a conservative Republican.

Then, after voters last fall put George W. Bush in the White House and Republicans in charge of the Senate, Boyle got a second chance to move up to the 4th Circuit, based in Richmond, Va. In May, he was among Bush's first 11 nominees to federal appellate courts.

But two weeks later, Sen. Jim Jeffords of Vermont switched from Republican to independent, giving Democrats control of the Senate, and thus judicial appointments.

Now Boyle, 55, by most accounts a bright and brusque courtroom boss, is again at the mercy of Washington politics, and he can only bide his time.

"It's not fair for him to be caught up in this political thing; he was a victim before," said Bill Cobey, chairman of North Carolina's Republican Party. "They shouldn't expect a Republican president to nominate a liberal judge. They should look at his qualifications. He's a very distinguished jurist."

Lawyers who work in Boyle's court generally agree that he is a good choice for the 4th Circuit. "I think he's really one of the best trial judges I've ever appeared before," said Elizabeth City lawyer Everett Thompson, a Democrat. "He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political at all about anything."

Boyle won't talk publicly about his nomination. "Ethical considerations for judicial nominees preclude my participating in a press interview while the nomination is pending," he said.

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Actually, there are no rules requiring judicial nominees to stay mum, though many do, partly out of fear of offending the senators who will decide their fate. Out of courtesy to senators, White House nominees are asked not to comment to the public until after their hearings, White House spokeswoman Jeanie Mamo said.

Since Jeffords' switch, John Edwards has joined the Senate committee that screens judicial nominees. That might give him enough clout to insist that Bush also nominate a Democratic judge, such as James Wynn of the state appeals court, to let Boyle's nomination move forward.

Meanwhile, the Senate is being lobbied by conservative and liberal political groups that have taken an interest in Boyle and his 17-year record as a judge.

Critics perceive Boyle's conservative ideology in rulings ordering congressional redistricting, barring lawsuits against the state under a federal disability law and refusing to approve a settlement in a lawsuit over employment of female guards in state prisons.

"There are many aspects of Judge Boyle's record that are extremely troubling from a civil rights perspective," said Elliot Mincberg, legal director for the liberal political group People for the American Way.

But Boyle also has upheld federal protection of red wolves over the objection of livestock farmers, halted an execution to allow psychiatric testing of a death-row inmate, allowed the production of generic forms of the antacid drug Zantac, and refused to block the moving of the Cape Hatteras Lighthouse. In the redistricting case, Boyle headed a three-judge panel that ruled 2-1 last year that North Carolina's 12th Congressional District, winding from Charlotte to Greensboro, was unconstitutionally drawn based on the race of voters. At the same time, the panel concluded that the 1st Congressional District in the state's northeast corner, which has a higher population of black voters, was not designed on a racial basis.

In April, the U.S. Supreme Court overturned the panel's ruling, saying the 12th District was OK on the new grounds that race can affect a district's shape as long as something else - in this case, partisan politics - is a bigger factor.

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Boyle's handling of that case could come in for criticism during a Senate confirmation hearing. For example, at first the panel unanimously agreed to skip a trial on the facts, but then the Supreme Court ordered a trial. But some legal scholars say Boyle and the judge who agreed with him reached a reasonable conclusion based on shifting Supreme Court rulings.

Criminal defense lawyers, some Democrats, say they like Boyle because he holds prosecutors to high standards and rewards defendants who help convict other offenders.

"He is a great friend of the Constitution," said Raleigh defense lawyer Wade Smith, a former chairman of the state Democratic Party who supports Boyle. "He rules fairly and impartially."

###

Life as a lawyer:

Boyle was born and reared outside the 4th Circuit in Passaic, N.J., just north of Newark and west of New York City. He graduated from Brown University, where he played football, and earned his law degree at American University.

From 1970 to 1973, he was counsel to the Republican minority on the U.S. House Subcommittee on Housing, Banking and Currency. Also in 1973, he worked as one of U.S. Sen. Jesse Helms' legislative assistants.

While in Washington, one day he walked into a congressional office elevator and met his future bride: Debbie Ellis, the daughter of Raleigh lawyer Tom Ellis, then Helms' political strategist.

They would marry and move in 1974 to a quaint northeastern North Carolina town about as unlike Washington as possible: the historic village of Edenton on the north shore of the Albemarle Sound, where they had friends.

Boyle went to work with a prominent law firm 25 miles northeast in Elizabeth City, the unofficial capital of the Albemarle region. Three years later, Boyle became a partner in LeRoy, Wells, Shaw, Hornthal & Riley, where he had a wide-ranging law practice.

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"He has always been a very pragmatic guy," said firm partner Tony Hornthal, past president of the N.C. Bar Association. "He had a way of cutting through the chaff and getting down to the heart of the matter."

But Boyle had such conservative fiscal views, Hornthal recalled, that his partners joked that he must bury his money in his yard.

"When we made money decisions about the firm," Hornthal said, "we ignored what Boyle said."

###

A demanding judge:

His brother-in-law, Hood Ellis, a lawyer in Boyle's old firm, said Boyle is shy and private and doesn't talk much about himself, even with family. "There's not too many people who crawl inside his inner ring," he said.

But Boyle also is competitive and loves tennis, football and jokes.

"He likes to win, but he's a good sport," Ellis said. "He has a very good sense of humor. And he has the greatest laugh of all time. Once you've heard him guffaw, you'll never forget it."

In 1984, President Reagan nominated Boyle as a federal trial judge at Helms' urging, and he was confirmed. His home office and court are in Elizabeth City, but he also hears cases in Greenville, New Bern, Wilmington and Raleigh.

In his courtroom, Boyle can be curt, combative, even insulting, some lawyers say. Others appreciate his direct style and firm courtroom command.

He can be hard on either side.

In a 1993 drug case against former Wake Forest Mayor Jimmy Ray, Boyle chewed out a federal prosecutor for negotiating a plea bargain he doubted was justified.

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"Was the indictment not factually grounded?" he demanded to know. "What right do you have to make him resign?"

But Boyle doesn't seem mean so much as given to intense intellectual and verbal sparring, like a tough college professor.

Boyle displays an intelligent, dry wit and can be very funny. But he can quickly shift from joking with lawyers in court to grilling them.

###

Professor Boyle's lectures:

During recent criminal sentencing hearings in New Bern, Boyle lectured defense lawyers and prosecutors on their jobs and gave a pointed speech on bank robbery and its proper punishment.

He criticized a prosecutor for failing to bring victims to a hearing and chided a defense lawyer for requesting a lighter sentence than normal. Then Boyle paused and asked the defense lawyer whether he wanted to ask for anything else. The lawyer politely said he did not.

"You don't want to provoke another speech like that, do you?" Boyle asked, and then smiled. "All right."

Later, just before sending a man to prison for six months for an air-rage scuffle, Boyle warned him to straighten out soon.

"Do you know why you're getting an active sentence?" he asked. "Give me some of the reasons.

But then before the man could answer, Boyle veered off on a tangent about the foolishness of airlines serving alcohol.

He then recounted the man's considerable criminal history and told him: "You haven't been an Eagle Scout. This thing's been coming. You keep this up, and you're going to be back in front of me, catching more time. We'll be doing this forever. That's the bad news."

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Unless, that is, Boyle goes to the 4th Circuit. Then he'll be reviewing the decisions of other trial judges, correcting their mistakes or applying their rulings to the circuit's five states: North Carolina, South Carolina, Virginia, West Virginia and Maryland.

The American Bar Association has given Boyle a "qualified" rating for the job, its middle ranking. Roger Gregory, a Democrat whom the Senate confirmed to the court last month, had the same rating.

Now it is up to Edwards, Helms, and 98 other senators to decide whether Boyle will make the cut.

"I don't want politics to stop us from having a judge on the 4th Circuit from North Carolina," said Smith, the Raleigh lawyer.

"I think he would happily rule against me and happily rule for me whether I'm a Republican or a Democrat. I think he makes his decisions on the facts, and that's the best we could ever hope. Give me judges like that."

White House Gloomy Over Judiciary Prospects

By Major Garrett
CNN
Tuesday, August 14, 2001

"Improper" delays engineered by Senate Republicans to thwart President Clinton's judicial nominees so poisoned relations with Democrats that President Bush may see only five of his own choices for the federal bench confirmed this year, White House Counsel Alberto Gonzalez said Tuesday.

"We are trying to work through some of the logjams, but there is a lot of bitterness," Gonzales told CNN. "This is a bit of a payback. I can't argue with some of their [the Democrats'] perceptions."

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Gonzales noted that some Republican senators placed "holds" on Clinton judicial nominees, denying them a Judiciary Committee hearing or a floor vote for as long as four years.

"That was wrong," he said. "That's not right. Part of this is based on the conduct of the Republican senators in the past. We had nothing to do with this problem. But it does affect us."

Gonzales was exceedingly gloomy about the prospects of winning approval for Bush judicial nominees, predicting Bush would win no more than five judicial confirmations this year.

Gonzales said each of the three previous presidents won confirmation for more than 40 judicial nominees in their first year in office.

"It's a major problem and it's going to get worse," he said. "Our best argument is that the partisanship over judicial nominations has historically been saved for the end of an administration and not at the beginning. We would expect the same kind of deference given to Reagan, Bush and Clinton."

Gonzales said Democrats are reluctant to do so, however, because they fear Bush will "stack the federal judiciary with conservatives."

Gonzales said those fears are overwrought and pointed to Bush's renomination of Roger Gregory, an African-American lawyer from Richmond, Virginia.
Clinton nominated Gregory to the U.S. 4th Circuit Court of Appeals, but Senate Republicans stalled the nomination. Frustrated, Clinton gave Gregory a recess appointment to the bench, one that would have expired after one year unless Bush renominated him.

"We asked Roger Gregory the same questions and he gave us the answers we expected," Gonzales said.

"The answers were what you would expect from a good, solid, conservative judge. We don't ask potential nominees about abortion or affirmative action. We ask how you would render a decision."

Gregory is one of four federal judicial nominees to have won Senate confirmation. Overall, Bush

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has nominated 44 judges to the federal courts. Of those 22 are for the circuit court of appeals and 22 are for district court positions. Forty nominees await confirmation.

Interest Groups/Press Releases

The Federalist Society, From Obscurity To Power; The Right-Wing Lawyers Who Are Shaping The Bush Administration's Decisions On Legal Policies And Judicial Nominations

People For The American Way
August, 2001

http://www.pfaw.org/issues/democracy/federalist.pdf

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Making the Grade: How the ABA Rates Judicial Nominee

By Jonathan Groner
Fulton County Daily Report
Tuesday, August 14, 2001

For the past several months, and as recently as last week, the American Bar Association has been caught in heavy political gunplay for its role in grading would-be federal judges.

Conservatives say the group exhibits a liberal bias, while Democrats who control the Senate and pass ultimate judgment on nominees say they can't do their job without the ABA's input.

But for all the noise over the ABA's role in shaping the federal bench, very little attention is paid to how the group's mysterious Standing Committee on the Federal Judiciary actually conducts its reviews of candidates.

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"I was contacted this week by Fred Fielding regarding Bates and Walton," says Mark Tuohey III, a former District of Columbia Bar president and partner in the Washington office of Vinson & Elkins. "In fact, I have been contacted by members of the committee from the Carter era through Bush II."

Tuohey says he has always been impressed with the "professionalism" of the ABA panel.

"They've always taken their job very seriously," Tuohey says. "It's never just a wink and a nod. And it's always been nonpartisan and objective."

But not all reports about the committee's work are so rosy. Two people who have been through the process as nominees say that although the investigators are thorough and show no political bias, they should keep the nominees better informed of their status.

"They never told me what my rating was. I never got an official letter that said it," says one.

"My overall impression was that this was just not a user-friendly process. I don't just mean the ABA, but the ABA did not communicate anything to me, even the rating," says another.

Judge On Hold Once More

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Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis

REV_00131063

By Matthew Eisley
The News and Observer
Tuesday, August 14, 2001

Federal Judge Terrence Boyle knows he's a lucky man. He just can't tell whether his luck is good or bad.

Boyle, the chief U.S. District Court judge in Eastern North Carolina, recently got a second chance to climb the judicial ranks to the 4th U.S. Circuit Court of Appeals. Politics thwarted his ascent in 1991 when Senate Democrats denied him a confirmation hearing after the elder President George Bush nominated Boyle, a conservative Republican.

Then, after voters last fall put George W. Bush in the White House and Republicans in charge of the Senate, Boyle got a second chance to move up to the 4th Circuit, based in Richmond, Va. In May, he was among Bush's first 11 nominees to federal appellate courts.

But two weeks later, Sen. Jim Jeffords of Vermont switched from Republican to independent, giving Democrats control of the Senate, and thus judicial appointments.

Now Boyle, 55, by most accounts a bright and brusque courtroom boss, is again at the mercy of Washington politics, and he can only bide his time.

"It's not fair for him to be caught up in this political thing; he was a victim before," said Bill Cobey, chairman of North Carolina's Republican Party. "They shouldn't expect a Republican president to nominate a liberal judge. They should look at his qualifications. He's a very distinguished jurist."

Lawyers who work in Boyle's court generally agree that he is a good choice for the 4th Circuit. "I think he's really one of the best trial judges I've ever appeared before," said Elizabeth City lawyer Everett Thompson, a Democrat. "He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political at all about anything."

Boyle won't talk publicly about his nomination. "Ethical considerations for judicial nominees preclude my participating in a press interview while the nomination is pending," he said.

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Actually, there are no rules requiring judicial nominees to stay mum, though many do, partly out of fear of offending the senators who will decide their fate. Out of courtesy to senators, White House nominees are asked not to comment to the public until after their hearings, White House spokeswoman Jeanie Mamo said.

Since Jeffords' switch, John Edwards has joined the Senate committee that screens judicial nominees. That might give him enough clout to insist that Bush also nominate a Democratic judge, such as James Wynn of the state appeals court, to let Boyle's nomination move forward.

Meanwhile, the Senate is being lobbied by conservative and liberal political groups that have taken an interest in Boyle and his 17-year record as a judge.

Critics perceive Boyle's conservative ideology in rulings ordering congressional redistricting, barring lawsuits against the state under a federal disability law and refusing to approve a settlement in a lawsuit over employment of female guards in state prisons.

"There are many aspects of Judge Boyle's record that are extremely troubling from a civil rights perspective," said Elliot Mincberg, legal director for the liberal political group People for the American Way.

But Boyle also has upheld federal protection of red wolves over the objection of livestock farmers, halted an execution to allow psychiatric testing of a death-row inmate, allowed the production of generic forms of the antacid drug Zantac, and refused to block the moving of the Cape Hatteras Lighthouse. In the redistricting case, Boyle headed a three-judge panel that ruled 2-1 last year that North Carolina's 12th Congressional District, winding from Charlotte to Greensboro, was unconstitutionally drawn based on the race of voters. At the same time, the panel concluded that the 1st Congressional District in the state's northeast corner, which has a higher population of black voters, was not designed on a racial basis.

In April, the U.S. Supreme Court overturned the panel's ruling, saying the 12th District was OK on the new grounds that race can affect a district's shape as long as something else - in this case, partisan politics - is a bigger factor.

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Boyle's handling of that case could come in for criticism during a Senate confirmation hearing. For example, at first the panel unanimously agreed to skip a trial on the facts, but then the Supreme Court ordered a trial. But some legal scholars say Boyle and the judge who agreed with him reached a reasonable conclusion based on shifting Supreme Court rulings.

Criminal defense lawyers, some Democrats, say they like Boyle because he holds prosecutors to high standards and rewards defendants who help convict other offenders.

"He is a great friend of the Constitution," said Raleigh defense lawyer Wade Smith, a former chairman of the state Democratic Party who supports Boyle. "He rules fairly and impartially."

###

Life as a lawyer:

Boyle was born and reared outside the 4th Circuit in Passaic, N.J., just north of Newark and west of New York City. He graduated from Brown University, where he played football, and earned his law degree at American University.

From 1970 to 1973, he was counsel to the Republican minority on the U.S. House Subcommittee on Housing, Banking and Currency. Also in 1973, he worked as one of U.S. Sen. Jesse Helms' legislative assistants.

While in Washington, one day he walked into a congressional office elevator and met his future bride: Debbie Ellis, the daughter of Raleigh lawyer Tom Ellis, then Helms' political strategist.

They would marry and move in 1974 to a quaint northeastern North Carolina town about as unlike Washington as possible: the historic village of Edenton on the north shore of the Albemarle Sound, where they had friends.

Boyle went to work with a prominent law firm 25 miles northeast in Elizabeth City, the unofficial capital of the Albemarle region. Three years later, Boyle became a partner in LeRoy, Wells, Shaw, Hornthal & Riley, where he had a wide-ranging law practice.

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"He has always been a very pragmatic guy," said firm partner Tony Hornthal, past president of the N.C. Bar Association. "He had a way of cutting through the chaff and getting down to the heart of the matter."

But Boyle had such conservative fiscal views, Hornthal recalled, that his partners joked that he must bury his money in his yard.

"When we made money decisions about the firm," Hornthal said, "we ignored what Boyle said."

###

A demanding judge:

His brother-in-law, Hood Ellis, a lawyer in Boyle's old firm, said Boyle is shy and private and doesn't talk much about himself, even with family. "There's not too many people who crawl inside his inner ring," he said.

But Boyle also is competitive and loves tennis, football and jokes.

"He likes to win, but he's a good sport," Ellis said. "He has a very good sense of humor. And he has the greatest laugh of all time. Once you've heard him guffaw, you'll never forget it."

In 1984, President Reagan nominated Boyle as a federal trial judge at Helms' urging, and he was confirmed. His home office and court are in Elizabeth City, but he also hears cases in Greenville, New Bern, Wilmington and Raleigh.

In his courtroom, Boyle can be curt, combative, even insulting, some lawyers say. Others appreciate his direct style and firm courtroom command.

He can be hard on either side.

In a 1993 drug case against former Wake Forest Mayor Jimmy Ray, Boyle chewed out a federal prosecutor for negotiating a plea bargain he doubted was justified.

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"Was the indictment not factually grounded?" he demanded to know. "What right do you have to make him resign?"

But Boyle doesn't seem mean so much as given to intense intellectual and verbal sparring, like a tough college professor.

Boyle displays an intelligent, dry wit and can be very funny. But he can quickly shift from joking with lawyers in court to grilling them.

###

Professor Boyle's lectures:

During recent criminal sentencing hearings in New Bern, Boyle lectured defense lawyers and prosecutors on their jobs and gave a pointed speech on bank robbery and its proper punishment.

He criticized a prosecutor for failing to bring victims to a hearing and chided a defense lawyer for requesting a lighter sentence than normal. Then Boyle paused and asked the defense lawyer whether he wanted to ask for anything else. The lawyer politely said he did not.

"You don't want to provoke another speech like that, do you?" Boyle asked, and then smiled. "All right."

Later, just before sending a man to prison for six months for an air-rage scuffle, Boyle warned him to straighten out soon.

"Do you know why you're getting an active sentence?" he asked. "Give me some of the reasons.

But then before the man could answer, Boyle veered off on a tangent about the foolishness of airlines serving alcohol.

He then recounted the man's considerable criminal history and told him: "You haven't been an Eagle Scout. This thing's been coming. You keep this up, and you're going to be back in front of me, catching more time. We'll be doing this forever. That's the bad news."

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Unless, that is, Boyle goes to the 4th Circuit. Then he'll be reviewing the decisions of other trial judges, correcting their mistakes or applying their rulings to the circuit's five states: North Carolina, South Carolina, Virginia, West Virginia and Maryland.

The American Bar Association has given Boyle a "qualified" rating for the job, its middle ranking. Roger Gregory, a Democrat whom the Senate confirmed to the court last month, had the same rating.

Now it is up to Edwards, Helms, and 98 other senators to decide whether Boyle will make the cut.

"I don't want politics to stop us from having a judge on the 4th Circuit from North Carolina," said Smith, the Raleigh lawyer.

"I think he would happily rule against me and happily rule for me whether I'm a Republican or a Democrat. I think he makes his decisions on the facts, and that's the best we could ever hope. Give me judges like that."

White House Gloomy Over Judiciary Prospects

By Major Garrett
CNN
Tuesday, August 14, 2001

"Improper" delays engineered by Senate Republicans to thwart President Clinton's judicial nominees so poisoned relations with Democrats that President Bush may see only five of his own choices for the federal bench confirmed this year, White House Counsel Alberto Gonzalez said Tuesday.

"We are trying to work through some of the logjams, but there is a lot of bitterness," Gonzales told CNN. "This is a bit of a payback. I can't argue with some of their [the Democrats'] perceptions."

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Gonzales noted that some Republican senators placed "holds" on Clinton judicial nominees, denying them a Judiciary Committee hearing or a floor vote for as long as four years.

"That was wrong," he said. "That's not right. Part of this is based on the conduct of the Republican senators in the past. We had nothing to do with this problem. But it does affect us."

Gonzales was exceedingly gloomy about the prospects of winning approval for Bush judicial nominees, predicting Bush would win no more than five judicial confirmations this year.

Gonzales said each of the three previous presidents won confirmation for more than 40 judicial nominees in their first year in office.

"It's a major problem and it's going to get worse," he said. "Our best argument is that the partisanship over judicial nominations has historically been saved for the end of an administration and not at the beginning. We would expect the same kind of deference given to Reagan, Bush and Clinton."

Gonzales said Democrats are reluctant to do so, however, because they fear Bush will "stack the federal judiciary with conservatives."

Gonzales said those fears are overwrought and pointed to Bush's renomination of Roger Gregory, an African-American lawyer from Richmond, Virginia.
Clinton nominated Gregory to the U.S. 4th Circuit Court of Appeals, but Senate Republicans stalled the nomination. Frustrated, Clinton gave Gregory a recess appointment to the bench, one that would have expired after one year unless Bush renominated him.

"We asked Roger Gregory the same questions and he gave us the answers we expected," Gonzales said.

"The answers were what you would expect from a good, solid, conservative judge. We don't ask potential nominees about abortion or affirmative action. We ask how you would render a decision."

Gregory is one of four federal judicial nominees to have won Senate confirmation. Overall, Bush

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has nominated 44 judges to the federal courts. Of those 22 are for the circuit court of appeals and 22 are for district court positions. Forty nominees await confirmation.

Interest Groups/Press Releases

The Federalist Society, From Obscurity To Power; The Right-Wing Lawyers Who Are Shaping The Bush Administration's Decisions On Legal Policies And Judicial Nominations

People For The American Way
August, 2001

http://www.pfaw.org/issues/democracy/federalist.pdf

York Times
June 26, 2001**oad to Federal ts Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

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REV_00131071

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>
Sent: 8/17/2001 8:34:14 AM
Subject: : Re: reuqest from Lionel Sosa and Frank Guerra

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-AUG-2001 12:34:14.00
SUBJECT:: Re: reuqest from Lionel Sosa and Frank Guerra
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Agree. When its on the road, it is different in kind from that question we had about use of the Oval for what would ultimately be a political commercial.

Brett M. Kavanaugh
08/17/2001 09:53:35 AM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: robert w. cobb/who/eop@eop
bcc:
Subject: Re: reuqest from Lionel Sosa and Frank Guerra

My thoughts: If an outside political or other group wants to film the President while he is on his trip and then use it for its purposes, that is fine (putting aside commercialization questions). If official White House film/pictures are taken on the trip (as is done on all trips), that also is fine. There obviously should be a defined official purpose for any film/pictures, however. If down the road, an outside political or campaign group wants to purchase official WH photos, there is a mechanism to do that through the WH Photo Office.

Timothy E. Flanigan
08/17/2001 09:00:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: reuqest from Lionel Sosa and Frank Guerra

Comments?
---------- Forwarded by Timothy E. Flanigan/WHO/EOP on 08/17/2001 09:00 AM ----------

Leonard B. Rodriguez
08/16/2001 06:21:05 PM
Record Type: Record

To: Kenneth B. Mehlman/WHO/EOP@EOP
cc: Timothy E. Flanigan/WHO/EOP@EOP, Mercedes M. Viana/WHO/EOP@EOP
Subject: reuqest from Lionel Sosa and Frank Guerra

Ken--
Below is from Lionel Sosa and Frank Guerra. Is this doable (see bold):

On the media question (see bold), I am sure Mercy will plug in Telemundo and Univision, but for what it is worth, we should explore the possibility of having Mexico press cover the San Jose event. There is an interesting dynamic with Mexican press at the border--news reported in Mexico always trickles back across the border via word of mouth.

Thanks
lbr

Leonard,

It was an honor to be invited to the White House to participate in discussions regarding one of the most important political issues facing our president and our party) that of the Hispanic vote. Clearly, Lionel, Cesar and I are eager to assist you and your office in any way necessary to advance the President,s agenda and the cause in general.

As recently discussed, we believe it is very important to document President Bush,s outreach efforts towards our community, beginning with this month,s pending visit to San Antonio. As such, we propose that the visit be captured on film, just as his Latino-focused activities were documented during the campaign. Doing so will allow you to begin building an archive for future communications needs.

Also, should your communications department need or want assistance in pitching the visit internationally, we are available to help coordinate interviews (one on ones if possible) with the National Univison and Telemundo reporters based in Texas, as well as with Mexico,s Televisa correspondent. We have solid relationships with all of these entities through Cesar,s contacts.

I will follow up with a phone call on both of these matters.

Finally, thanks for including me in your efforts. Know that I am always at the ready to do whatever it takes to further the cause, right along with Lionel and Cesar.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: kate@georgewbush.com [WHO] <kate@georgewbush.com>
Sent: 8/17/2001 5:30:13 PM
Subject: : Re: FW: team 100 fotos
Attachments: P_9Y0C3004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-AUG-2001 21:30:13.00
SUBJECT:: Re: FW: team 100 fotos
TO:kate@georgewbush.com (kate@georgewbush.com [WHO])
READ:UNKNOWN
End Original ARMS Header

Why are you back from vacation?????

Kate Marinis <kate@georgewbush.com>
08/17/2001 07:09:50 PM
Please respond to kate@georgewbush.com
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: team 100 fotos

Ken is going to ask Karl, but wanted to check with you first. is this
legal? (the pictures are from the campaign)

-----Original Message-----
From: Mark Acton - Legal [mailto:macton@rnchq.org]
Sent: Thursday, August 16, 2001 5:30 PM
To: Kate Marinis (E-mail)
Subject: team 100 fotos

<<Mehlman (photo) letter.doc>> hello kate, as referenced in the attached,
rnc team 100 has fotos from an event that they want to post for
availability
on a secure access rnc team 100 website. toner's take is thats its ok at
this end if the white house approves and expects its a combo white house
political/counsel assessment. can you please advise me regarding how best
to route this proposal for consideration by the white house?

many thanks and hope all is going well with you.

Mark Acton
Staff Director
Counsel's Office
Republican National Committee
310 First Street SE
WDC 20003
phone 202/863/8638
FAX 202/863/8654
www.rnc.org

- Mehlman (photo) letter.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_9Y0C3004_WHO.TXT_1>

August 16, 2001

Mr. Ken Mehlman

Dear Ken,

TEAM 100 has recently acquired a set of photographs from a June 8, 2000, event for the Ridge Leadership Fund. Many of these photographs contain TEAM 100 and Regents members interacting with President Bush in a relaxed, intimate setting. We are planning to place these photographs on the TEAM 100 website, but prior to doing so would appreciate your reviewing the photos to ensure your agreement that they are suitable for this purpose. To be specific, the website they would be displayed on is password protected, and only TEAM 100 members can obtain a username and password. As an additional security element, members must first call the TEAM 100 office to be issued a username and password.

TEAM 100 would like members to have access to these photographs online so they may order copies of these memorable prints through our office. Copies of these photographs are included with this letter for your approval.

Thank you for your consideration of this matter, and I look forward to hearing from your office regarding this matter.

Sincerely,

Victoria Maxwell
TEAM 100
Republican National Committee

Display of photographs on TEAM 100 website is:

_____ Approved _____Denied

_____Need Additional Information

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Karen Hughes/WHO /EOP@EOP [WHO] <Karen Hughes>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO /EOP@EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP@EOP [WHO] <Gregory Goss>;Tracy Young/WHO /EOP@EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Logan M. Walters/WHO/EOP@EOP [WHO] <Logan M. Walters>;Christina D. Roberts/WHO/EOP@EOP [WHO] <Christina D. Roberts>;Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP@EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP@EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO /EOP@EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Lawrence A. Fleischer/WHO/EOP@EOP [WHO] <Lawrence A. Fleischer>;Vickie A. McQuade/WHO /EOP@EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP@EOP [WHO] <Harry W. Wolff>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO /EOP@EOP [WHO] <Nicholas E. Calio>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP@EOP [WHO] <Christal R. West>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott Jeffcoat/WHO/EOP@EOP [WHO] <Scott Jeffcoat>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO /EOP@EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L.

West>;Gregory_J._Jenkins@oa.eop.gov [UNKNOWN]
<Gregory_J._Jenkins@oa.eop.gov>;Tobin K. Harvey/WHO/EOP@EOP [UNKNOWN] <Tobin K. Harvey>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Amanda L. Moore/WHO/EOP@EOP [WHO] <Amanda L. Moore>;Danner R. Bethel/WHO/EOP@EOP [WHO] <Danner R. Bethel>;Mary Elizabeth Farr/WHO/EOP@EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO /EOP@EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;Douglas_D._McCormick@oa.eop.gov [UNKNOWN]
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Sent: 8/20/2001 9:24:22 AM

Subject: : Talking Points -- Today's Presidential Visit to Milwaukee

Attachments: P_EUEC3004_OPD.TXT_1.doc

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CREATION DATE/TIME:20-AUG-2001 13:24:22.00
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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Domestic Policy has crafted the attached talking points on the President's speech today.

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- Veterans Milwaukee.doc
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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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CREATION DATE/TIME:20-AUG-2001 13:24:22.00
SUBJECT:: Talking Points -- Today's Presidential Visit to Milwaukee
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Domestic Policy has crafted the attached talking points on the President's speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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Sent: 8/20/2001 9:24:22 AM
Subject: : Talking Points -- Today's Presidential Visit to Milwaukee
Attachments: F_EUEC3004_NSC.TXT_1.doc

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CREATION DATE/TIME:20-AUG-2001 13:24:22.00
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Domestic Policy has crafted the attached talking points on the President's speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
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TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
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Domestic Policy has crafted the attached talking points on the President's speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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Sent: 8/20/2001 9:24:22 AM

Subject: : Talking Points -- Today's Presidential Visit to Milwaukee

Attachments: 02649_p_euec3004_who.txt_1.doc

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CREATION DATE/TIME:20-AUG-2001 13:24:22.00
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Domestic Policy has crafted the attached talking points on the President's speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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TO:Margaret Tutwiler (CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl Doenges (CN=Karl Doenges/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
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TO:Sam Dickens (CN=Sam Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura C. Welborn (CN=Laura C. Welborn/OU=WHO/O=EOP@EOP [WHO])

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TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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TO:William S. Clark (CN=William S. Clark/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
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TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
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TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov @ inet [UNKNOWN])
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TO:roy-stuart@dol.gov (roy-stuart@dol.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov @ inet [UNKNOWN])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov @ inet [UNKNOWN])
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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com @ inet [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov @ inet [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com @ inet [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Domestic Policy has crafted the attached talking points on the President's
speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
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TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Domestic Policy has crafted the attached talking points on the President's
speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
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TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Domestic Policy has crafted the attached talking points on the President's
speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
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TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Domestic Policy has crafted the attached talking points on the President's
speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
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TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Domestic Policy has crafted the attached talking points on the President's
speech today.

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The President's Commitment to Veterans

Today's Presidential Action:

- Continuing his "Home to the Heartland" tour, President Bush today stressed his personal commitment to veterans at the Veterans of Foreign Wars (VFW) National Convention in Milwaukee, Wisconsin.

- The President announced today that he has directed the Department of Veterans Affairs (VA) to resolve 53,000 claims that have been pending for more than one year.

- President Bush's action will cut through the red tape and ensure that America's oldest veterans receive the benefits they have earned as quickly as possible.

Background: The Administration's Effort to Reduce the Veterans Claims Backlog:

- In January, the Bush Administration inherited a large and growing backlog of claims for veterans' disability benefits. **Currently, there are about 600,000 claims pending in the Veterans Benefits Administration (VBA) of VA.**

- This bureaucratic backlog hurts the men and women who have served our country in uniform, as well as their loved ones. For example, more than 1,000 World War II veterans pass away every day. In too many cases, these veterans die before VA reaches a decision on their claims.

- **Earlier this year, President Bush directed Secretary Principi to conduct a top-to-bottom review of VA claims processing to identify weaknesses and areas for improvement.** This review, expected to be released in late September, reflects President Bush's commitment to make the processing of applications for benefits faster, easier and more accurate for all veterans.

- **Today, the President announced a special initiative to resolve the languishing claims of America's oldest veterans.** At the President's directive, Secretary Principi and the VA will:

  - Establish a special unit, known as a "Tiger Team," in VBA's regional office in Cleveland, Ohio. This team of experienced employees and managers will develop and adjudicate many of the longest-pending claims from older veterans around the country.
  - Direct staff located in VBA's nine regional Service Delivery Area Network Resource Centers to focus their efforts on the balance of old pending claims.
  - Give a high priority to the remaining claims of older veterans and ensure that these claims are adjudicated in a timely manner.

- As a result of this process, VA expects that 53,000 cases that have been pending for more than one year can be resolved, in addition to those being completed through VA's normal decision process. This will help to speed benefits to those older veterans who have earned them through their service to our nation.

Ensuring Quality Health Care for Our Nation's Veterans:

- **Earlier this year, President Bush issued an executive order creating a Presidential Task Force to improve health care for veterans and military retirees.** This high-level task force will be led by former Congressman Gerald Solomon and Dr. Gail Wilensky, the former Administrator of the Health Care Financing Administration. Veterans and military retirees have made tremendous sacrifices for our nation. They deserve the best quality of health care our nation can provide. The Task Force will recommend specific actions to improve the way that the Department of Veterans Affairs and the Department of Defense work together to provide quality health care for those who have served in uniform who are eligible for VA benefits.

- The Bush Administration has made considerable progress on implementing the vital Veterans Millennium Health Care Act. This action will make significant improvements to the medical programs for veterans, particularly long-term care. Because of President Bush's action:

  - ✓ More veterans with disabilities connected to their service to our country will get priority for nursing home care;
  - ✓ More veterans who were injured in combat and received the Purple Heart will receive priority eligibility for care;
  - ✓ More veterans will be able to enroll in post-traumatic stress disorder and substance abuse treatment programs; and
  - ✓ Some veterans will be able to enroll in new pilot programs for long-term care and assisted living.

- The Administration is also continuing to implement parts of the Veterans Millennium Health Care Act that would allow VA to pay for enrolled veterans' emergency care in community hospitals and expand eligibility for home and community-based long-term care services.

- Secretary Principi recently announced several new health care facilities for veterans; the creation of six new centers for Parkinson's Disease research; and the formation of 25 new outpatient care clinics in 17 states.

President Bush: Honoring Our Nation's Veterans:

- **President Bush has taken a number of steps to honor the men and women who have served in uniform**.

  - On Memorial Day, President Bush signed bipartisan legislation that will end the needless delays and ensure that the planned World War II Memorial will be located where it belongs – between the Washington Monument and Lincoln Memorial on the National Mall – to honor America's "Greatest Generation." Signing the World War II Memorial legislation reflects the President's commitment to honor the dedication and sacrifice of the 16 million Americans who served in uniform during the war, their families, and all those who contributed to the war effort.

- On June 6, President Bush also helped to dedicate the National D-Day Memorial in Bedford, Virginia. The Memorial is located in the town that lost the highest number of soldiers, per capita, of any American community during the invasion of Normandy.
- One June 5, the President signed bipartisan legislation that increased financial assistance to families who have recently lost military service members. This includes the terrorist bombing of the USS Cole in Yemen that killed 17 sailors; the accidental bomb dropping by a Navy Hornet in a U.S.-Kuwaiti air exercise that resulted in five deaths; and a Georgia plane crash that killed 21 National Guardsmen.

The President's Budget and Veterans:

- **The President's Budget increases net discretionary budget authority for the Veterans Health Administration by nearly $1 billion** over the FY01 level. It focuses VA's health care system on its core mission of providing high-quality health care to veterans with service-connected disabilities or low incomes, and it supports the President's new task force to study ways of improving health care access and quality.

- The Budget provides a $133 million increase for the Veterans Benefit Administration (VBA) to improve claims processing. These funds will allow VBA to hire 890 new employees, make information technology investments, and identify best practices as it strives to improve the service and delivery of benefits to veterans and their families. Although the estimated average number of days to process a claim is 273 in 2002, VA is aggressively pursuing a goal of 100 days by the summer of 2003.

- The President's Budget also increases funding for National Cemeteries by $12 million to ensure that current cemeteries are properly maintained. It also increases construction funding for cemeteries in Florida, Michigan, Georgia, California, Pennsylvania, and Oklahoma. The funding will also allow for expansion of existing cemeteries in Massachusetts and Washington.

- The President's Budget provides $441 million, a $78 million increase, for construction to improve VA medical centers; plan, develop, or expand national cemeteries; and launch VA's multi-year health care infrastructure realignment initiative.

For more information, contact White House Communications at 202-456-2777

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READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])

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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
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TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])

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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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READ:UNKNOWN

TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])
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READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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TO:Margaret Tutwiler (CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
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TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
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READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
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TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
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TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
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TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
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TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
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TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])

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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
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TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])

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READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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Sent: 8/21/2001 5:49:56 AM

Subject: : Presidential Action -- Today's Presidential Speech on the Budget

Attachments: P_ELWC3004_OPD.TXT_1.doc

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TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend L. McNitt (CN=Townsend L. McNitt/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura C. Welborn (CN=Laura C. Welborn/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Thomas V. McMahan (CN=Thomas V. McMahan/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William S. Clark (CN=William S. Clark/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov @ inet [UNKNOWN])
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TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov @ inet [UNKNOWN])
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TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net @ inet [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org @ inet [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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TO:Margaret Tutwiler (CN=Margaret Tutwiler/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katie Hong (CN=Katie Hong/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl Doenges (CN=Karl Doenges/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
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TO:Sam Dickens (CN=Sam Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura C. Welborn (CN=Laura C. Welborn/OU=WHO/O=EOP@EOP [WHO])

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TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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TO:William S. Clark (CN=William S. Clark/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
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TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
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TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
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TO:John Gardner (CN=John Gardner/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov @ inet [UNKNOWN])
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TO:roy-stuart@dol.gov (roy-stuart@dol.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov @ inet [UNKNOWN])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
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TO:Stanley W. Carlson-Thies (CN=Stanley W. Carlson-Thies/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov @ inet [UNKNOWN])
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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com @ inet [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov @ inet [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com @ inet [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])

READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])

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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Brooks D. Altshuler (CN=Brooks D. Altshuler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
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TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas D. McCormick (CN=Douglas D. McCormick/OU=OMB/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
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TO:I. Lewis Libby (CN=I. Lewis Libby/OU=OVP/O=EOP@EOP [UNKNOWN])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
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TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Michael J. Sullivan (CN=Michael J. Sullivan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Jona M. Turner (CN=Jona M. Turner/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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TO:Donald M. Sumerlin (CN=Donald M. Sumerlin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Margaret M. LaMontagne (CN=Margaret M. LaMontagne/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa McKnight (CN=Melissa McKnight/OU=OPD/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])

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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:james_r._wilkinson@who.eop.gov (james_r._wilkinson@who.eop.gov @ inet [UNKNOWN])
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READ:UNKNOWN

TO:John M. Ackerly (CN=John M. Ackerly/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Kevin J. Martin (CN=Kevin J. Martin/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])
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READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

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Sent: 8/21/2001 5:52:51 AM

Subject: : Presidential Action -- Today's Presidential Speech on the Budget

Attachments: P_HPWC3004_OPD.TXT_1.doc

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CREATION DATE/TIME:21-AUG-2001 09:52:51.00
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
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TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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Sent: 8/21/2001 5:52:51 AM

Subject: : Presidential Action -- Today's Presidential Speech on the Budget

Attachments: F_HPWC3004_NSC.TXT_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:21-AUG-2001 09:52:51.00
SUBJECT:: Presidential Action -- Today's Presidential Speech on the Budget
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READ:UNKNOWN
TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noelia Rodriguez ( CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Tracey L. Schmitt ( CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Gail Randall ( CN=Gail Randall/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Gregory Goss ( CN=Gregory Goss/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tracy Young ( CN=Tracy Young/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

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READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
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TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Tobin K. Harvey (CN=Tobin K. Harvey/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
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TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
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TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
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TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
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TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Scott (CN=Mark V. Scott/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])

READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
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TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
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TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
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TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])

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TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
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TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:paige.ralston@mail.house.gov (paige.ralston@mail.house.gov [UNKNOWN])
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TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
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TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:jdyke@doc.gov (jdyke@doc.gov [UNKNOWN])

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READ:UNKNOWN
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READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
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TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
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- Budget Missouri.doc
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Presidential Action – August 3

White House Office of Communications

Message

The President will call on Congress to change the old ways of doing business in Washington by joining him to protect taxpayers from irresponsible spending, budget games and policies that will jeopardize our economy, hurt working Americans and return us to the days of deficits.

Presidential Action

Today in Missouri the President will:

- ☑ Outline key priorities he hopes to accomplish this fall – education reform, strengthening our military, protecting Social Security and Medicare, paying off debt, stopping irresponsible spending, and finishing the job on patient protection legislation and his agenda to encourage the work of our nation's faith-based charities.
- ☑ Discuss the upcoming OMB mid-session budget review which will show that the President's budget has fully funded America's priorities, preserved and protected the Social Security surplus, spent every dime of Medicare on Medicare and Medicare alone, and paid off record amounts of debt.
- ☑ Demonstrate his commitment to protecting taxpayers by outlining commitments that he will accept as the final stages of the budget debate begin.
- ☑ Outline key spending and budget temptations facing Congress when they return.
- ☑ Call on Congress to send him legislation as soon as possible to fund our public schools and improve the quality of life for our men and women in uniform.

The Budget & Spending Temptations Facing Congress

- ✓ The temptation of the false emergency – cloaking risky spending as "emergencies" to hide their true costs.
- ✓ The temptation to complain that the budget has been cut, when in fact, it has increased.
- ✓ The temptation of the last-minute budget raid for irresponsible spending.
- ✓ The temptation to tap into the Social Security surplus.
- ✓ The temptation to treat spending limits in the budget agreement as an option, instead of a binding commitment.
- ✓ The temptation to play games with the budget process by holding hostage key appropriations on vital needs like education and defense.

The President's Commitments

- ✓ The President will oppose tax increases that will hurt Americans and depress our economy
- ✓ The President will not allow new spending to cut into essential programs or to slow repayment of our debt
- ✓ The President will not accept wasteful new spending at the expense of our men and women in uniform who need better housing, more pay and better training.
- ✓ The President will preserve and protect the integrity of Social Security and Medicare.

From: CN=Terry W. Good/OU=WHO/O=EOP [WHO]
To: Catherine S. Anderson/OA/EOP@EOP [OA] <Catherine S. Anderson>;Sharon Whitt/OA /EOP@EOP [OA] <Sharon Whitt>;Daniel A. Barry/OA/EOP@EOP [OA] <Daniel A. Barry>;Michael P. Lingenfelter/OA/EOP@EOP [OA] <Michael P. Lingenfelter>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Jane M. Cook/WHO/EOP@EOP [WHO] <Jane M. Cook>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Markus Most/WHO /EOP@EOP [WHO] <Markus Most>
Sent: 8/22/2001 10:58:02 AM
Subject: : Listserv

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CREATION DATE/TIME:22-AUG-2001 14:58:02.00
SUBJECT:: Listserv
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READ:UNKNOWN
TO:Sharon Whitt ( CN=Sharon Whitt/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Daniel A. Barry ( CN=Daniel A. Barry/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Michael P. Lingenfelter ( CN=Michael P. Lingenfelter/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Neil H. Zimmerman ( CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Jane M. Cook ( CN=Jane M. Cook/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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READ:UNKNOWN
CC:Markus Most ( CN=Markus Most/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Please note the insertions in italics.

"Since the staffs of theWhite House Office of Records Management, the
IS&T, and the National Archivesare discussing the larger question of
deleting electronic mail, . . . .
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From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Lynden R. Steele/WHO/EOP@EOP [WHO] <Lynden R. Steele>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/23/2001 7:41:04 AM
Subject: : Re: Political Photo question

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CREATION DATE/TIME:23-AUG-2001 11:41:04.00
SUBJECT:: Re: Political Photo question
TO:Lynden R. Steele (CN=Lynden R. Steele/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I need to discuss this with Brett Kavanaugh, who handles this type of issue. He is out of the office until Monday, so I will get back with you next week. Thanks.

Lynden R. Steele
08/23/2001 09:51:27 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: Political Photo question

Noel:

The President attended the President's Dinner June 27, which, I believe, was a fund-raiser for the RNC. The film is restricted, but we have a request from the office of Management and Administration for a personal photo an attendee who met the President. They would like to send it to the President for signing and then send it to the person.

This is their second request for photos from this event. We ordered two photos for them previously.

My understanding is that if it's a political event, no photos can be ordered either for media or personal use.

questions:

Did we make a mistake when we initially ordered the photos?
Should we fulfill their second order for another photo?
Do I have a correct understanding of the policy?

thank you,
Lynden

Media Review - Judicial Nominations
Thursday, August 23, 2001

General Judicial Articles

"At Senate Hearing, Two Nominees, One Senator, Many Empty Chairs," 1
Brook Donald, *The Associated Press*, August 22, 2001

Op/Eds

"Avoiding A Political Deadend On Judges," 3
Lloyd Cutler and Mickey Edwards, *Scripps Howard News Service*,
August 22, 2001

Transcripts/Members of Congress

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FDCH Political Transcripts, August 22, 2001

Interest Groups/Press Releases

NONE

General Judicial Articles

At Senate Hearing, Two Nominees, One Senator, Many Empty Chairs

By Brook Donald
The Associated Press

York Times
June 26, 2001**oad to Federal ts Bumpier in Senate**
Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis 1

Wednesday, August 22, 2001

The Democratic chairman of the Senate Judiciary Committee held a one-man hearing Wednesday on two of President Bush's judicial nominees. The session during Congress' August vacation came amid Republicans complaints that Democrats are delaying action on President Bush's appointments.

"I want to get the process moving," said Sen. Patrick Leahy, D-Vt. "I'm trying to go the extra mile by coming back for hearings today." He looked at the empty chairs next to him and said: "I hope that at least some of the Republicans who complained why don't we have more hearings will also get on an airplane and join us."

The rare midvacation hearing did not impress Republicans.

"While we welcome any efforts to finally move the process along, we're far behind where we should be at this point in President Bush's term," said Matt Latimer, spokesman for one GOP committee member, Arizona's Jon Kyl.

Under consideration Wednesday were Reggie Walton, a District of Columbia judge nominated for the federal bench, and Richard Nedelkoff, Bush's pick to be director of the Bureau of Justice Assistance at the Justice Department.

Only four of Bush's 44 judicial nominees have been confirmed.

"A lot of us are trying to restore dignity and regularity to the nominations process. ... We're trying to make the process move smoothly," Leahy said.

The White House said it would work with Leahy to move the nominations along.

"There really is a national interest in filling the vacancies that are in the judiciary, and the administration is hopeful that the Senate will take that interest seriously," Bush's spokesman Ari Fleischer said.

Just before the August recess all of president's 164 unconfirmed nominees were sent back to the

York Times
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Neil Lewis **New York Times**
June 26, 2001

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Neil Lewis

White House by Senate Democrats because of a political tiff over two contentious nominees.

The move was procedural and senators in both parties expect Bush to renominate all of his candidates.

Senators not present Wednesday can submit questions to Walton and Nedelkoff until Aug. 31. Following the Senate's return after Labor Day, the committee will decide if the nominations will be sent to the full Senate for a vote.

Leahy has scheduled a hearing Aug. 27 to consider two more nominees.

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Neil Lewis **New York Times**
June 26, 2001

Road to Federal Bench Gets Bumpier in Senate
Neil Lewis

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Op/Eds

Avoiding A Political Deadend On Judges

By Lloyd Cutler and Mickey Edwards
Scripps Howard News Service
Wednesday, August 22, 2001

Long before the President's first list of nominees to the federal courts arrived in the Senate, Senate Republicans and Democrats, and liberal and conservative organizations, were already at their battle stations. And it appears they remain there for the foreseeable future.

What used to be a fairly straightforward process - the nomination and confirmation of federal judges - has become more contested, acrimonious and time-consuming in recent years. According to research by the Constitution Project, the length of time from vacancy to confirmation has increased in every administration since President Ford's. It took the 105th Congress (1997-98) an average of 201 days to act on Clinton nominees. Consider that in 1922, when President Harding nominated George Sutherland, the Senate confirmed him within hours. In 1953, the Senate confirmed Earl Warren as Chief Justice without even questioning him.

The reasons for the change are not that complex. The number of federal judges has increased. The federal courts have been called upon to decide controversial social issues in such areas as school prayer, abortion, and affirmative action. This has, in turn, brought about increasing political pressure from interest groups that have proliferated dramatically in the last 20 years.

Two recent developments have further roiled partisan waters swirling around nominations. The first is the feeling of Democrats that Senate Republicans kept Clinton's court nominees bottled up in committee, sometimes for years, for ideological reasons. Republicans reply that Clinton was slow in getting nominations to the Senate. Both are right. It is also true that when a Republican holds the White House and the Democrats hold the Senate majority, the Democrats hold up judicial confirmations in presidential election years.

If Democratic senators hold to the principle of "an eye for an eye" and the Republicans hold to

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Neil Lewis **New York Times**
June 26, 2001

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an absolute and exclusive presidential right to choose federal judges, the result will be an accelerating cycle of stalemate and polarization. In this scenario, the courts themselves cannot avoid being painted with accusations of partisanship. That would corrode popular belief in impartial justice and hence respect for the law.

Options are open to both sides to defuse the situation. First, they could agree upon a few principles based upon the recommendations of the Constitution Project:

One, candidates for judgeships should be committed to deciding cases based upon law and the facts of the case and should renounce ideological commitments.

Two, candidates should be nominated and confirmed based upon experience, qualifications, temperament, character and general views of the law and the judicial role.

Three, the president and the Senate must not ask for, and the candidate not offer or consent to give, any pre-commitments about unresolved cases or issues that may come before them as judges.

Four, all parties to the nomination and confirmation process should conduct themselves only in ways that reinforce the principle of judicial independence.

Fifth, diversity on the federal bench is consistent with judicial independence and should be a goal of the appointment process.

Sixth, the country is entitled to a viable and efficient federal court system. Candidates therefore should move through nomination, Senate hearings and floor vote expeditiously and fairly.

For the good of the country and the integrity of the courts, the president should seek the meaningful counsel of all parties before deciding on nominees. This he can certainly do without relinquishing his exclusive constitutional authority to nominate judicial candidates. For their part, Democrats should participate in such consultations with the sole condition that the nominee satisfy the broad judicial criteria enumerated above.

Finally, we would call upon various interest groups not to decide in advance that they will

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Neil Lewis **New York Times**
June 26, 2001

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oppose or support all nominees that come from the White House. We should not demand pro-life or pro-choice judges but independent judges. We should not demand judges who are friendly to labor or business, but judges who are manifestly unbiased in either direction. We should not demand pro-environment or pro-development judges, but those who will look at the facts of the case, and decide in favor of the law, the Constitution and thus all the people of the United States.

Above all, we should seek agreement on nominees who can win confirmation under the existing political conditions. Unwavering dedication to the principle of judicial independence should be the legacy of the Bush administration and the 107th Congress. The public interest demands no less.

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Neil Lewis **New York Times**
June 26, 2001

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Neil Lewis

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Transcripts/Members of Congress

Ari Fleischer Holds White House Briefing

By Lloyd Cutler and Mickey Edwards
FDCH Political Transcripts
Wednesday, August 22, 2001

QUESTION: Senator Leahy today held a hearing attended only by himself, I think, on...

FLEISCHER: Then I'm sure there were no debates.

QUESTION: ... one of the president's judicial nominees. What does the White House feel about the pace of the Judicial Committee hearings on the president's nominees? And why did the president not request a holdover before the August break occurred, which would have then made it unnecessary for Senator Leahy to hold this hearing today?

FLEISCHER: Well, as far as the pace of the nominees go, this administration, even with a shortened transition, is way ahead of the pace of previous presidents in their first years -- President Clinton, President Bush or President Reagan -- in making nominations, including that to the federal courts.

The administration is going to work very hard and diligently with Senator Leahy to move forward on Senate confirmation of those nominees.

You know, that's really not a partisan issue, that's an issue about how to serve people who have a legitimate claim and need to go to court and don't want to wait in line for courtrooms to open up because there are no judges sitting in judgment. And that's why, whether you're a Democrat or you're a Republican, there really is a national interest in filling the vacancies that are in the judiciary, and the administration is hopeful that the Senate will take that interest seriously and will serve the public.

QUESTION: I mean you're comfortable with the pace, then, that the Senate has maintained?

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Neil Lewis **New York Times**
June 26, 2001

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FLEISCHER: I think we'll know more by the end of the year. In fairness, many of the nominations the administration made came in late July, and so the Senate's just taking a look at those now, and the Senate has every right for advice and consent, they're going to exercise their prerogatives.

I think it will be an interesting question to take a look at come October and November when Congress is ready to recess for the year. At that point, there'll be a serious burden on the Congress and on the United States Senate particularly to have taken action and passed the nominees so that the judiciary is not clogged and so there aren't vacancies when people expect to have their fair day in court.

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Neil Lewis **New York Times**
June 26, 2001

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Neil Lewis

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CREATION DATE/TIME:24-AUG-2001 12:55:20.00
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
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TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov @ inet [UNKNOWN])
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TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN
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READ:UNKNOWN
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov @ inet [UNKNOWN])
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TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov @ inet [UNKNOWN])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [WHO])

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TO:Mark_V._Scott@oa.eop.gov (Mark_V._Scott@oa.eop.gov @ inet [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
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TO:MMiner@rnchq.org (MMiner@rnchq.org @ inet [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org @ inet [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
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TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [WHO])
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TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
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TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
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TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])
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TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil @ inet [UNKNOWN])
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TO:rgeorge@nypost.com (rgeorge@nypost.com @ inet [UNKNOWN])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov @ inet [UNKNOWN])
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TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov @ inet [UNKNOWN])
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TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov @ inet [UNKNOWN])
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TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov @ inet [UNKNOWN])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
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TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
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TO:kfedewa@rnchq.org (kfedewa@rnchq.org @ inet [UNKNOWN])
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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
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TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:cz@greenerandhook.com (cz@greenerandhook.com @ inet [UNKNOWN])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
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TO:RGustafson@rnchq.org (RGustafson@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
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TO:cmay@bsmg.com (cmay@bsmg.com @ inet [UNKNOWN])
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TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com @ inet [UNKNOWN])
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TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov @ inet [UNKNOWN])
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End Original ARMS Header

When you are asked about the budget debate, the new budget numbers, and the President, keep the following in mind:

1. Talk about the President's priorities, not about arcane budget process. The President's priorities like education and health care will trump partisan process every time.

2. Always talk about the IMMEDIATE ACTION that President Bush has taken to address the issues that are important to Americans. Be sure to use the words "immediate action" to describe the steps the President has taken on the issue you are being asked about. For example, the President took immediate action to jump start our economy by cutting taxes to put money in people's pockets when the need it most, paying off historic levels of debt, and pursuing trade policies to open foreign markets to American goods and services. While other's played Medicare politics the President took immediate action to get seniors help with their skyrocketing prescription drug bills by getting them a prescription drug discount card. The President took immediate action to help our men and women in

uniform by signing into law important pay raise and housing and training money. etc, etc, etc. The President has taken immediate action to help those who suffer from high energy bills by.....

First talk about the immediate steps the President has taken to help and then talk about his vision for the future on the issue.

Attached are some suggested responses if you get asked about the new budget numbers and (1) prescription drug benefits for seniors, (2) military spending increases, and (3) the President's commitment to health care for the uninsured.

Now, take IMMEDIATE ACTION and read these now.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0CYE3004_CEA.TXT_1>

Questions & Answers

Q1: Many say that the new budget numbers will prevent the President from funding a prescription drug benefit for seniors. Is this true?

President Bush wants to give seniors a Medicare prescription drug benefit as soon as possible. That's why his budget includes $190 billion to improve Medicare and get seniors a long-overdue drug benefit.

While many have chosen to play politics on Medicare, the President has already taken **immediate action** to get help to seniors who face skyrocketing drug bills. He introduced a prescription drug discount card to help seniors save money on their prescription drug bills. AARP praised the President for his new card. The President unveiled the new card because he thinks it is important to get seniors help as soon as possible.

The new budget numbers show the President has actually increased from earlier this year the amount of money available for a prescription drug benefit and improvements to Medicare – From $153 billion over 10 years to $190 billion over 10 years.

Q2: Many assert that the new budget numbers will prevent President Bush from funding his increases in military spending. Is this true?

The President is committed to funding his long-overdue increases in spending on our men and women in uniform.

He has already taken immediate action to send money to our troops who need important improvements in their quality of life. Earlier this year the President signed into law $5.6 million in money to address urgent defense needs, including pay raises and training and housing improvements.

Q3: Will the new budget numbers prevent the President from helping those who need health care?

The President is committed to improving health insurance and bringing health care to those who currently are uninsured or have no access to it.

- ☑ The President is working to improve Medicaid and the State Children's Health Insurance Programs to increase access for the 42 million Americans who are today uninsured.
- ☑ The President has proposed $71 billion in health insurance tax credits to help low-income Americans purchase health insurance.
- ☑ The President has provided $190 billion over 10 years to improve Medicare and give seniors better health care and a prescription drug benefit. The President also took immediate action to help seniors with a new prescription drug discount card.
- ☑ His budget includes a $124 million increase for community health centers which help get care to 11 million people in inner cities and rural areas. The President's budget includes the first installment of a five-year plan to double the number of people served by the health centers.
- ☑ Budget includes $2.75 billion increase for the National Institutes of Health to help double spending in the coming years on important health care research. The increase will help support a record 34,000 research project grants to help improve the health of all Americans.

- ☑ The President forged a compromise to break six years of gridlock and get important new patient protections to Americans.

- ☑ $100 million to increase access to drug treatment.

- ☑ $ 22 million for childhood immunization.

(More specific details on the SCHIP program)

The Administration has not agreed that the best use of these funds is to expand the SCHIP program. This is because most states have not yet used their full SCHIP allocation allowed under current law, and because most of the neediest uninsured - with incomes below 200% of poverty line - would not be helped by proposals to expand the income eligibility to a higher level.

Instead, the Administration has taken steps endorsed by governors of both parties to streamline the process of approving innovative state approaches to covering the uninsured, particularly those with lower incomes. These administrative steps, including the recently-announced Health Insurance Flexibility and Accountability Initiative, reflect the Administration's focus on results for reducing the uninsured and will accomplish right now many of the goals of legislation to expand SCHIP that is now being debated in Congress - including covering parents and covering additional "optional" populations. The Administration believes that we should move forward now on covering more people through Medicaid and SCHIP, and that this can be done through current law. In fact, Secretary Thompson has worked through a backlog of state applications for additional coverage quickly - resulting in expansions of coverage to over 800,000 lower-income Americans at already this year, with more expansions expected.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
Sent: 8/27/2001 6:26:28 AM
Subject: : Re: Time Sensitive

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-AUG-2001 10:26:28.00
SUBJECT:: Re: Time Sensitive
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Did you get this resolved last week when I was gone?

Matthew A. Schlapp
08/21/2001 04:11:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Rebecca Contreras/WHO/EOP@EOP, Eric L. Motley/WHO/EOP@EOP, Paul B. Dyck/WHO/EOP@EOP
Subject: Time Sensitive

Brett, quick question. We are putting togther a part time Presidential board, and our potential chairman would like the board to use on expert he knows as a policy staffer. Is it ethical for a presidiential board to use the services of an expert who is not paid by either an agency or the WH? We need to get this resolved for a deadline early Thursday.

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From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/28/2001 5:08:23 AM
Subject: : LRM KCT69 - - OMB Request for Views on S739 Heather French Henry Homeless Veterans Assistance Act
Attachments: P_HB2G3004_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-AUG-2001 09:08:23.00
SUBJECT:: LRM KCT69 - - OMB Request for Views on S739 Heather French Henry Homeless Veterans Assistance Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/28/2001 09:08 AM ----------

From: Kathryn C. Thompson on 08/27/2001 05:32:45 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT69 - - OMB Request for Views on S739 Heather French Henry Homeless Veterans Assistance Act

The following is LRM ID: KCT69 -- Request for Views on S739, Heather French Henry Homeless Veterans Assistance Act. The text of S739 as ordered reported is attached below in pdf format and it consists of 21 pages.

Please comment on S739 as ordered reported by Close of Business, Friday, August 31st. If you do not respond by the deadline, I will assume that you have no objection to S739 as ordered reported.

LRM ID: KCT69
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, August 27, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: OMB Request for Views on S739 Heather French Henry Homeless Veterans Assistance Act

DEADLINE: COB Friday, August 31, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: S. 739 was amended in the nature of a substitute when it was ordered reported by the Senate Veterans' Affairs Committee on August 2nd. VA testified on the introduced bill text of S. 739 before the Senate Veterans' Affairs Committee on July 19th. Please comment on S. 739 as ordered reported.

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WHGC LRM
OFBCI-LRM
OVP LRM
Ingrid M. Schroeder
LRM ID: KCT69 SUBJECT: OMB Request for Views on S739 Heather French Henry Homeless Veterans Assistance Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148

Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
dodlrs@osdgc.osd.mil
lrm@hhs.gov
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legteam@oge.gov
valrm@mail.va.gov

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
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File attachment <P_HB2G3004_WHO.TXT_1>

[COMMITTEE PRINT]

Calendar No. _____

107TH CONGRESS
1ST SESSION

S. 739

[Report No. 107–____]

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2001

Mr. WELLSTONE (for himself, Mrs. MURRAY, Mr. DAYTON, Ms. STABENOW, Mr. DORGAN, Mr. KENNEDY, Mr. DURBIN, Ms. LANDRIEU, Mr. DASCHLE, Mr. REID, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

____ (legislative day, _____), 2001

Reported by Mr. ROCKEFELLER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 38, United States Code, to improve programs for homeless veterans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

REV_00131557

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Heather French Henry Homeless Veterans Assistance Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; definition.
Sec. 3. National goal to end homelessness among veterans.
Sec. 4. Advisory Committee on Homeless Veterans.
Sec. 5. Meetings of Interagency Council on the Homeless.
Sec. 6. Evaluation of programs and activities regarding homeless veterans.
Sec. 7. Per diem payments for furnishing services to homeless veterans.
Sec. 8. Dental care for homeless veterans.
Sec. 9. Programmatic expansions.
Sec. 10. Various authorities.
Sec. 11. Life safety code for grant and per diem providers.
Sec. 12. Assistance for grant applications.
Sec. 13. Extension of homeless veterans reintegration program.

SEC. 2. FINDINGS; DEFINITION.

(a) FINDINGS.—Congress makes the following findings:

(1) On the field of battle, the members of the Armed Forces who defend the Nation are honor-bound to leave no one behind and, likewise, the Nation is honor-bound to leave no veteran behind.

(2) The Department of Veterans Affairs report known as the Community Homeless Assessment, Local Education, and Networking Groups for Veterans (CHALENG) assessment, issued in May 2000, reports that during 1999 there were an estimated 344,983 homeless veterans, an increase of 34

REV_00131558

percent above the 1998 estimate of 256,872 homeless veterans.

(3) The 1996 National Survey of Homeless Assistance Providers and Clients found that, although veterans constitute only 13 percent of the adult population, veterans comprise 23 percent of homeless clients.

(4) Homelessness among veterans is persistent despite unprecedented economic growth and job creation and general prosperity.

(5) While there are many effective programs that assist homeless veterans to again become productive and self-sufficient members of society, current resources provided to such programs and other activities that assist homeless veterans are inadequate to provide all needed essential services, assistance, and support to homeless veterans.

(6) The CHALENG assessment referred to in paragraph (2) reports—

(A) that Department of Veterans Affairs and community providers were responsible for establishing almost 500 beds for homeless veterans during 2000, including emergency, transitional, and permanent beds; and

REV_00131559

(B) that there is a need for about 45,724 additional beds to meet current needs of homeless veterans.

(7) Nearly four decades ago, the Nation established a goal of sending a man to the moon and returning him safely to earth within a decade and accomplished that goal, and the Nation can do no less to end homelessness among the Nation's veterans.

(b) HOMELESS VETERAN DEFINED.—In this Act, the term ''homeless veteran'' means a veteran who is homeless (as that term is defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)).

SEC. 3. NATIONAL GOAL TO END HOMELESSNESS AMONG VETERANS.

(a) NATIONAL GOAL.—Congress hereby declares it to be a national goal to end homelessness among veterans within a decade.

(b) COOPERATIVE EFFORTS ENCOURAGED.—Congress hereby encourages all departments and agencies of Federal, State, and local governments, quasi-governmental organizations, private and public sector entities, including community-based organizations, and individuals to work cooperatively to end homelessness among veterans within a decade.

REV_00131560

SEC. 4. ADVISORY COMMITTEE ON HOMELESS VETERANS.

(a) IN GENERAL.—Chapter 5 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 546. Advisory Committee on Homeless Veterans

"(a)(1) There is established in the Department the Advisory Committee on Homeless Veterans (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall consist of not more than 15 members appointed by the Secretary from among the following:

"(A) Veterans service organizations.

"(B) Advocates of homeless veterans and other homeless individuals.

"(C) Community-based providers of services to homeless individuals.

"(D) Previously homeless veterans.

"(E) State veterans affairs officials.

"(F) Experts in the treatment of individuals with mental illness.

"(G) Experts in the treatment of substance use disorders.

"(H) Experts in the development of permanent housing alternatives for lower income populations.

"(I) Experts in vocational rehabilitation.

REV_00131561

"(J) Such other organizations or groups as the Secretary considers appropriate.

"(3) The Committee shall include, as ex officio members—

"(A) the Secretary of Labor (or a representative of the Secretary selected after consultation with the Assistant Secretary of Labor for Veterans' Employment and Training);

"(B) the Secretary of Defense (or a representative of the Secretary);

"(C) the Secretary of Health and Human Services (or a representative of the Secretary); and

"(D) the Secretary of Housing and Urban Development (or a representative of the Secretary).

"(4) The Secretary shall determine the terms of service and pay and allowances of the members of the Committee, except that a term of service may not exceed three years. The Secretary may reappoint any member for additional terms of service.

"(b)(1) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the provision by the Department of benefits and services to homeless veterans.

"(2)(A) In providing advice to the Secretary under this subsection, the Committee shall—

REV_00131562

"(i) assemble and review information relating to the needs of homeless veterans;

"(ii) provide an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans; and

"(iii) provide on-going advice on the most appropriate means of providing assistance to homeless veterans.

"(3) The Committee shall—

"(A) review the continuum of services provided by the Department, whether directly or by contract, in order to define cross-cutting issues and to improve coordination of all services in the Department that address the special needs of homeless veterans;

"(B) identify (through annual assessments under section 1774 of this title and other available resources) gaps in programs of the Department in serving homeless veterans, including identification of geographic areas with unmet needs, and provide recommendations to address those gaps;

"(C) identify gaps in existing information systems on homeless veterans, both within and outside the Department, and provide recommendations about redressing problems in data collection;

REV_00131563

"(D) identify barriers under existing laws and policies to effective coordination by the Department with other Federal agencies and with State and local agencies addressing homeless populations;

"(E) identify opportunities for enhanced liaison by the Department with nongovernmental organizations and individual groups addressing homeless populations;

"(F) with appropriate officials of the Department designated by the Secretary, participate with the Interagency Council on the Homeless under title II of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11311 et seq.);

"(G) recommend appropriate funding levels for specialized programs for homeless veterans provided or funded by the Department;

"(H) recommend appropriate placement options for veterans who, because of advanced age, frailty, or severe mental illness, may not be appropriate candidates for vocational rehabilitation or independent living; and

"(I) perform such other functions as the Secretary may direct.

"(c)(1) Not later than March 31 of each year, the Committee shall submit to the Secretary a report on the

REV_00131564

programs and activities of the Department that relate to homeless veterans during the preceding year. Each such report shall include—

"(A) an assessment of the needs of homeless veterans;

"(B) a review of the programs and activities of the Department designed to meet such needs, including the evaluation of outreach activities required under paragraph (2);

"(C) a review of the activities of the Committee; and

"(D) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

"(2)(A) The Committee shall include in each report under paragraph (1) an evaluation of the outreach activities of the Department with respect to homeless veterans, including outreach regarding clinical issues and outreach regarding other benefits.

"(B) The Committee shall conduct each evaluation under this paragraph in consultation with the Under Secretary for Benefits, the Under Secretary for Health, the Readjustment Counseling Service, the Director of Homeless Veterans Programs, and the Mental Health Strategic Health Care Group.

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"(C) In including an evaluation under this paragraph in a report under paragraph (1), the Committee shall set forth in the report the following:

"(i) The results of the evaluation.

"(ii) Any recommendations that the Committee considers appropriate to improve the outreach activities of the Department with respect to homeless veterans, including recommendations for enhanced interagency cooperation and enhanced cooperation between the Department and appropriate community organizations and recommendations for additional activities to complement, supplement, or otherwise eliminate deficiencies in the outreach activities.

"(3) Not later than 90 days after the receipt of a report under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

"(4) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

"(5) The Secretary shall include with each annual report submitted to Congress pursuant to section 529 of this title a summary of all reports and recommendations of the

REV_00131566

Committee submitted to the Secretary since the previous annual report of the Secretary submitted pursuant to that section.

"(d)(1) Except as provided in paragraph (2), the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the activities of the Committee under this section.

"(2) Section 14 of such Act shall not apply to the Committee.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"546. Advisory Committee on Homeless Veterans.".

SEC. 5. MEETINGS OF INTERAGENCY COUNCIL ON THE HOMELESS.

Section 202(c) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11312(c)) is amended to read as follows:

"(c) MEETINGS.—The Council shall meet at the call of its Chairperson or a majority of its members, but not less often than annually.".

SEC. 6. EVALUATION OF PROGRAMS AND ACTIVITIES REGARDING HOMELESS VETERANS.

(a) EVALUATION CENTERS.—The Secretary of Veterans Affairs shall support the continuation within the Department of Veterans Affairs of at least one center for

REV_00131567

evaluation to monitor the structure, process, and outcome of programs of the Department that address homeless veterans.

(b) ANNUAL REPORT ON PROCESSING OF BENEFITS CLAIMS.—The Secretary shall submit to Congress on an annual basis a report on the programs and activities of the Veterans Benefits Administration in processing of claims for benefits of homeless veterans during the preceding year. Each report shall include, for the year covered by such report, the following:

(1) Information on costs, expenditures, and workload of Veterans Benefits Administration claims evaluators in processing claims for benefits of homeless veterans.

(2) Information on the filing of claims for benefits by homeless veterans.

(3) Information on efforts undertaken to expedite the processing of claims for benefits of homeless veterans.

(4) Any other information that the Secretary considers appropriate.

(c) ANNUAL REPORT ON HEALTH CARE.—The Secretary shall submit to Congress on an annual basis a report on programs of the Department addressing health

REV_00131568

care needs of homeless veterans. The Secretary shall include in each such report the following:

(1) Information about expenditures, costs, and workload under the Department of Veterans Affairs program known as the Health Care for Homeless Veterans program (HCHV).

(2) Information about the veterans contacted through the program.

(3) Information about processes under the program.

(4) Information about program treatment outcomes under the program.

(5) Other information the Secretary considers relevant in assessing the program.

(6) Information about supported housing programs.

(7) Information about the grant and per diem provider program of the Department.

(d) ANNUAL PROGRAM ASSESSMENT.—Section 1774(b) of title 38, United States Code, is amended—

(1) in paragraph (1), by inserting ''annual'' after ''to make an''; and

(2) by adding at the end the following new paragraph:

REV_00131569

"(6) The Secretary shall review each annual assessment under this subsection, and shall consolidate the findings and conclusions of such assessments into an annual report which the Secretary shall submit to Congress.".

SEC. 7. PER DIEM PAYMENTS FOR FURNISHING SERVICES TO HOMELESS VETERANS.

(a) INCREASE IN RATE OF PER DIEM PAYMENTS.—Section 4(a) of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. 7721 note) is amended by striking "at such rates" and all that follows through "homeless veteran—" and inserting the following: "at the same rates as the rates authorized for State homes for domiciliary care provided under section 1741 of title 38, United States Code, for services furnished to homeless veterans—".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act.

SEC. 8. DENTAL CARE FOR HOMELESS VETERANS.

Section 1712(a)(1)(H)(ii) of title 38, United States Code, is amended by inserting "(including a homeless veteran)" after "for a veteran".

REV_00131570

SEC. 9. PROGRAMMATIC EXPANSIONS.

(a) TRANSITIONAL HOUSING.—Effective October 1, 2001, section 12 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. 7721 note) is amended to read as follows:

"SEC. 12. FUNDING.

"(a) AMOUNTS FOR GRANT AND PER DIEM PROGRAMS.—From amounts appropriated for 'Medical Care' for any fiscal year, the Secretary may expend not more than $55,000,000 (as adjusted from time to time under subsection (b)) to carry out the transitional housing grant and per diem provider programs under sections 3 and 4 of this Act.

"(b) PERIODIC INCREASES.—The amount in effect under subsection (a) shall be increased for any fiscal year by the overall percentage increase in the Medical Care account for that fiscal year over the preceding fiscal year.".

(b) COMPREHENSIVE HOMELESS SERVICES PROGRAM.—(1)(A) The Secretary of Veterans Affairs shall provide for the establishment of not less than five additional centers for the provision of comprehensive services to homeless veterans under section 1773(b) of title 38, United States Code.

(B) In establishing additional centers under this paragraph, the Secretary shall take into account the par-

REV_00131571

ticular needs of homeless veterans in each metropolitan area in which the Secretary proposes to establish a center.

(C) The Secretary shall ensure that the services provided to homeless veterans at each center established under this paragraph are tailored to the needs of homeless veterans in the metropolitan area in which such center is established.

(2) Section 1773(b) of title 38, United States Code, is amended by striking "not fewer than eight".

(c) PROGRAM EXPIRATION EXTENSION.—Sections 1771(b) and 1773(d) of title 38, United States Code, are amended by striking "December 31, 2001" and inserting "December 31, 2006".

SEC. 10. VARIOUS AUTHORITIES.

(a) EMPLOYMENT PROGRAMS.—The Secretary of Veterans Affairs may authorize homeless veterans receiving care through vocational rehabilitation programs to participate in the compensated work therapy program.

(b) SUPPORTED HOUSING FOR VETERANS PARTICIPATING IN COMPENSATED WORK THERAPIES.—(1) The Secretary may authorize homeless veterans in the compensated work therapy program to be provided housing through the therapeutic residence program under section 1772 of title 38, United States Code, or through grant and per diem providers.

REV_00131572

(2) As used in this subsection, the term ''grant and per diem provider'' means an entity in receipt of a grant under section 3 or 4 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. 7721 note).

(c) REPORT ON ASSIGNMENT OF HOMELESS COORDINATORS AT VBA REGIONAL OFFICES.—(1) Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the assignment of Homeless Coordinators at the Regional Offices of the Veterans Benefits Administration.

(2) The report shall include the following:

(A) A list of the Regional Offices of the Veterans Benefits Administration for which Homeless Coordinators have been assigned.

(B) A description of the manner in which each Regional Office listed under subparagraph (A) staffs the assignment, whether as a collateral hire, by rotation of staff, or by a full-time employee, including the caseload of the position and the amount of time spent on the caseload by each employee assigned to fulfill the duties of the position.

(C) In the case of any Regional Offices for which no Homeless Coordinator has been assigned,

REV_00131573

a description of the manner in which such Regional Office addresses matters relating to homeless veterans.

(D) An evaluation of the demand for services of Homeless Coordinators in the various Regional Offices, including a statement of the Regional Offices which have the greatest demand for such services.

(d) COORDINATION OF EMPLOYMENT SERVICES.—(1) Section 4103A(c) of title 38, United States Code, is amended by adding at the end the following new paragraph:

"(11) Coordination of services provided to veterans with training assistance provided to veterans by entities receiving financial assistance under section 738 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11448).".

(2) Section 4104(b) of such title is amended—

(A) by striking "and" at the end of paragraph (11);

(B) by striking the period at the end of paragraph (12) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(13) coordinate services provided to veterans with training assistance for veterans provided by en-

REV_00131574

tities receiving financial assistance under section 738 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11448).".

SEC. 11. LIFE SAFETY CODE FOR GRANT AND PER DIEM PROVIDERS.

(a) NEW GRANTS.—Section 3(b)(5) of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. 7721 note) is amended by striking ", but fire and safety" and all that follows through "in carrying out the grant" and inserting "and the fire and safety requirements applicable under the Life Safety Code of the National Fire Protection Association".

(b) PREVIOUS GRANTEES.—Section 4 of such Act is amended by adding at the end the following new subsection:

"(e) LIFE SAFETY CODE.—(1) Except as provided in paragraph (2), a per diem payment (or in-kind assistance in lieu of per diem payments) may not be provided under this section to a grant recipient unless the facilities of the grant recipient meet the fire and safety requirements applicable under the Life Safety Code of the National Fire Protection Association.

"(2) During the five-year period beginning on the date of the enactment of the Heather French Henry Homeless Veterans Assistance Act, paragraph (1) shall

REV_00131575

not apply to an entity that received a grant under section 3 before that date if the entity meets fire and safety requirements established by the Secretary.

"(3) From amounts available for purposes of this section pursuant to section 12, not less than $5,000,000 shall be used only for grants to assist entities covered by paragraph (2) in meeting the Life Safety Code of the National Fire Protection Association.".

SEC. 12. ASSISTANCE FOR GRANT APPLICATIONS.

(a) GRANT PROGRAM.—The Secretary of Veterans Affairs shall carry out a program to make technical assistance grants to nonprofit community-based groups with experience in providing assistance to homeless veterans in order to assist such groups in applying for grants relating to addressing problems of homeless veterans.

(b) FUNDING.—There is authorized to be appropriated to the Secretary of Veterans Affairs for each of fiscal years 2002 through 2006, $750,000 to carry out the program under this section.

SEC. 13. EXTENSION OF HOMELESS VETERANS REINTEGRATION PROGRAM.

Section 4111(d)(1) of title 38, United States Code, is amended by striking subparagraphs (C) and (D) and inserting the following:

"(C) $50,000,000 for fiscal year 2002.

REV_00131576

"(D) $50,000,000 for fiscal year 2003.

"(E) $50,000,000 for fiscal year 2004.

"(F) $50,000,000 for fiscal year 2005.

"(G) $50,000,000 for fiscal year 2006.".

REV_00131577

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/29/2001 11:18:24 AM
Subject: : LRM IKK90 - - OMB Request for Views on HR1933 To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.
Attachments: P_KMXG3004_WHO.TXT_1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-AUG-2001 15:18:24.00
SUBJECT:: LRM IKK90 - - OMB Request for Views on HR1933 To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/29/2001 03:01 PM ----------

Irene Kho
08/29/2001 11:25:29 AM
Record Type: Record

To: lrm@hhs.gov @ inet, OSTP LRM, llr@do.treas.gov @ inet, justice.lrm@usdoj.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK90 - - OMB Request for Views on HR1933 To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

Friendly reminder: comments are due by 5:00 PM, today, Wednesday, August 29th.
---------- Forwarded by Irene Kho/OMB/EOP on 08/29/2001 11:24 AM ----------

From: Irene Kho on 08/22/2001 05:09:55 PM
Record Type: Record

To: lrm@hhs.gov @ inet, OSTP LRM, llr@do.treas.gov @ inet, justice.lrm@usdoj.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: LRM IKK90 - - OMB Request for Views on HR1933 To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

Attached is the text of H.R. 1933. Please review and provide comments by 5:00 PM, Wednesday, August 29th.

LRM ID: IKK90
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, August 22, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR1933 To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

DEADLINE: 5:00 Wednesday, August 29, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is the text of H.R. 1933. Please review and provide comments by 5:00 PM, Wednesday, August 29th.

DISTRIBUTION LIST

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Ingrid M. Schroeder

Steven D. Aitken
WHGC LRM
Alexander T. Hunt
K. Philippa Malmgren
LRM ID: IKK90 SUBJECT: OMB Request for Views on HR1933 To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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To:_____
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WHGC LRM
Alexander T. Hunt/OMB/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KMXG3004_WHO.TXT_1>

I

107TH CONGRESS
1ST SESSION

H. R. 1933

To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2001

Mr. BONILLA (for himself, Mr. COMBEST, Mr. STENHOLM, Mr. REYES, Mr. SKEEN, Mr. THORNBERRY, and Mr. UDALL of New Mexico) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

REV_00131596

SECTION 1. QUALIFIED DISPOSITION OF DAIRY PROPERTY TREATED AS INVOLUNTARY CONVERSION.

(a) IN GENERAL.—Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions) is amended by designating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

"(k) QUALIFIED DISPOSITION TO IMPLEMENT BOVINE TUBERCULOSIS ERADICATION PROGRAM.—

"(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified disposition:

"(A) TREATMENT AS INVOLUNTARY CONVERSION.—Such disposition shall be treated as an involuntary conversion to which this section applies.

"(B) MODIFICATION OF SIMILAR PROPERTY REQUIREMENT.—Property to be held by the taxpayer either for productive use in a trade or business or for investment shall be treated as property similar or related in service or use to the property disposed of.

"(C) EXTENSION OF PERIOD FOR REPLACING PROPERTY.—Subsection (a)(2)(B)(i) shall be applied by substituting '4 years' for '2 years'.

REV_00131597

"(D) WAIVER OF UNRELATED PERSON REQUIREMENT.—Subsection (i) (relating to replacement property must be acquired from unrelated person in certain cases) shall not apply.

"(E) EXPANDED CAPITAL GAIN FOR CATTLE AND HORSES.—Section 1231(b)(3)(A) shall be applied by substituting '1 month' for '24 months'.

"(2) QUALIFIED DISPOSITION.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified disposition' means the disposition of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, as implemented pursuant to the Declaration of Emergency Because of Bovine Tuberculosis (65 Federal Register 63,227 (2000)).

"(B) PAYMENTS RECEIVED IN CONNECTION WITH THE BOVINE TUBERCULOSIS ERADICATION PROGRAM.—For purposes of this subsection, any amount received by a taxpayer in connection with an agreement under such bovine tuberculosis eradication program shall be treated as received in a qualified disposition.

REV_00131598

"(C) TRANSMITTAL OF CERTIFICATIONS.—The Secretary of Agriculture shall transmit copies of certifications under this paragraph to the Secretary.

"(3) ALLOWANCE OF THE ADJUSTED BASIS OF CERTIFIED DAIRY PROPERTY AS A DEPRECIATION DEDUCTION.—The adjusted basis of any property certified under paragraph (2)(A) shall be allowed as a depreciation deduction under section 167 for the taxable year which includes the date of the certification described in paragraph (2)(A).

"(4) DAIRY PROPERTY.—For purposes of this subsection, the term 'dairy property' means all tangible property used in connection with a dairy business or a dairy processing plant.

"(5) SPECIAL RULES FOR CERTAIN BUSINESS ORGANIZATIONS.—

"(A) S CORPORATIONS.—In the case of an S corporation, gain on a qualified disposition shall not be treated as recognized for the purposes of section 1374 (relating to tax imposed on certain built-in gains).

"(B) PARTNERSHIPS.—In the case of a partnership which dissolves in anticipation of a qualified disposition (including in anticipation

REV_00131599

of receiving the amount described in paragraph (2)(B)), the dairy property owned by the partners of such partnership at the time of such disposition shall be treated, for the purposes of this section and notwithstanding any regulation or rule of law, as owned by such partners at the time of such disposition.

"(6) TERMINATION.—This subsection shall not apply to dispositions made after December 31, 2005.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions made and amounts received in taxable years ending after May 22, 2001.

SEC. 2. DEDUCTION OF QUALIFIED RECLAMATION EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

"SEC. 199. EXPENSING OF DAIRY PROPERTY RECLAMATION COSTS.

"(a) IN GENERAL.—Notwithstanding section 280B (relating to demolition of structures), a taxpayer may elect to treat any qualified reclamation expenditure which is paid or incurred by the taxpayer as an expense which is

REV_00131600

not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

"(b) QUALIFIED RECLAMATION EXPENDITURE.—

"(1) IN GENERAL.—For purposes of this subparagraph, the term 'qualified reclamation expenditure' means amounts otherwise chargeable to capital account and paid or incurred to convert any real property certified under section 1033(k)(2) (relating to qualified disposition) into unimproved land.

"(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—A rule similar to the rule of section 198(b)(2) (relating to special rule for expenditures for depreciable property) shall apply for purposes of paragraph (1).

"(c) DEDUCTION RECAPTURED AS ORDINARY INCOME.—Rules similar to the rules of section 198(e) (relating to deduction recaptured as ordinary income on sale, etc.) shall apply with respect to any qualified reclamation expenditure.

"(d) TERMINATION.—This section shall not apply to expenditures paid or incurred after December 31, 2005.".

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 of the Internal

REV_00131601

Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 199. Expensing of dairy property reclamation costs.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred in taxable years ending after May 22, 2001.

○

REV_00131602

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

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Subject: : Morning Budget Update

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READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])

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READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
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TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark_V._Scott@oa.eop.gov (Mark_V._Scott@oa.eop.gov @ inet [UNKNOWN])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil @ inet [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:paige.ralston@mail.house.gov (paige.ralston@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO:cforti@nrcc.org (cforti@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:jdyke@doc.gov (jdyke@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:melliott@doc.gov (melliott@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Chesenterp@aol.com (Chesenterp@aol.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:cz@greenerandhook.com (cz@greenerandhook.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org @ inet [UNKNOWN])
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TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Good morning.

Every major paper this morning has quotes from economic experts and analysts extolling the virtues of the tax cut for economic growth. And Democrats continue to come forward to defend the tax cut, saying just how important it is for the economy.

Remember to make this point to everyone you talk to today -- The President has taken immediate action on his strong economic recovery plan to cut taxes to get working families immediate help, to pay off historic levels of debt, and to increase trade to create American jobs and sell more goods and services to the world. The President's partisan opponents have no economic recovery plan whatsover. They have done nothing to help the economy while the President has sided with working families and acted immmediately.

If you read the papers today you will see that conventional wisdom is beginning to cement out there that President Bush is in touch with working families who are suffering because of the economy while his partisan opponents are in touch with their consultants on how to best play partisan budget games. Conventional wisdom among the economic experts has also cemented that the tax cut is going to help spur economic recovery.

And once again yesterday, you had the President talking about his priorities while his partisan opponents were talking about the old way of doing business in Washington with partisan budget games.

Here's a few news bites you should know about this morning regarding the budget, the economy and tax relief.

In a front page piece, the USA Today writes, "Economists predicted the combination of tax rebates, lower interest rates and lower energy costs would boost consumer spending and spur growth."

In the NY Times today, Bruce Steinberg -- chief economist at Merrill Lynch -- says, "We have $40 billion in tax rebate checks to support the consumer in the coming weeks" -- making the point that consumer spending is going to help boost our economy.

Following on Dem Senator Zell Miller's piece on the Washington Post this

week excoriating Democrats for their tax cut attacks, Democrats today in the Washington Times are defending their tax cut votes, arguing the President's point that the tax cut is the best medicine for the economy. Sen. Baucus, Senator Carnahan, Senator Blanche Lincoln, Senator Ben Nelson and Rep. Rick Larsen all defend the tax cut. Sen. Nelson's office says the tax cut is, "probably the best step we've taken to get the economy moving again." Nelson's office also says that the surplus has declined because, "the economy is faltering."

The WSJ has an editorial this morning discussing France and tax increases. According to the editorial, "It strikes us that if even a French Socialist can realize that reversing tax cuts would be deadly to his chances in next year's elections, surely there's hope for the DNC. Anyone know if Terry McAuliffe reads French?" The President yesterday made it clear that he opposes tax increases because they would hurt our economy. Dick Gephardt and Senator Conrad have said in recent days that tax increases are an option. Be sure to remind people that their economic recovery plan is to take more money out of the pockets of the American people.

The LA Times reports, "Consumer spending over the next year is receiving a powerful boost from three sources, according to a Merrill Lynch analysis: $40 billion in federal tax rebates, $50 billion in reduced interest payments...."

Yesterday Commerce Secretary Evans received great news coverage with his arguments that increased trade is important to getting our economy moving again. Evans' emphasis on how trade can help our economy gives the President's trade agenda new momentum as Congress returns and gets ready to consider it.

Have a great day.

From: CN=Don R. Willett/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>
Sent: 8/30/2001 10:21:01 AM
Subject: : quick question

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Don R. Willett ( CN=Don R. Willett/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-AUG-2001 14:21:01.00
SUBJECT:: quick question
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Carl Esbeck @ DOJ is putting final touches on some testimny to Senate
Judiciary re. charitable choice, and in one response he quotes liberally
from an OLC opinion.

These opinions aren't generally public documents, are they?

Should Esbeck instead delete the specific reference to the OLC opinion
while rephrasing the rationale?

Thanks.

DRW
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>
Sent: 8/30/2001 10:22:41 AM
Subject: : Re: quick question

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-AUG-2001 14:22:41.00
SUBJECT:: Re: quick question
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Many OLC opinions are in fact public. He should just be sure that
he is quoting from public opinions.

Don R. Willett
08/30/2001 02:21:00 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: quick question

Carl Esbeck @ DOJ is putting final touches on some testimny to Senate
Judiciary re. charitable choice, and in one response he quotes liberally
from an OLC opinion.

These opinions aren't generally public documents, are they?

Should Esbeck instead delete the specific reference to the OLC opinion
while rephrasing the rationale?

Thanks.

DRW

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 8/31/2001 7:03:34 AM
Subject: : Talking points for Ari
Attachments: P_0Q3I3004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-AUG-2001 11:03:34.00
SUBJECT:: Talking points for Ari
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

These are the long talking points for Ari that Anne Womack
requested. Please review ASAP, as I need to send to Ari by 11:30.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0Q3I3004_WHO.TXT_1>
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Presidential Records Act Talking Points (August 31, 2001)

- The Presidential Records Act authorizes release of certain Presidential records beginning 12 years from the end of a Presidency, but also makes clear that the various Executive privileges (presidential communications, state secrets, deliberative process, attorney-client, and attorney work product privileges) still attach to Presidential records after the 12-year period has elapsed.

- The Act, which was enacted in 1978, is phrased is very general terms, however, and thus leaves open numerous questions about the appropriate legal framework and process under which the current and former President are to review Presidential records in the post-12-year period and to make decisions whether to withhold or disclose those records.

- This is the first time since the Act went into effect that the 12-year period has elapsed, so the Administration has had to carefully study and analyze the many substantive and procedural questions left open by the Act. Because the decision here likely will set a precedent for numerous Presidents to follow, it was especially important to study the issues closely.

- Judge Gonzales previously instructed the Archivist to extend until August 31, 2001, the time for release of the relevant Reagan records in order for the Administration to undertake this review of the many constitutional and legal questions raised by the potential release of sensitive and confidential Presidential records and to decide upon the proper legal framework and process to employ in reviewing such records on an ongoing basis.

- This legal review revealed a variety of available options. We were fully prepared, however, to make a decision by August 31 about the proper legal framework and process for ongoing review of Presidential records. But the Archivist recently suggested to Judge Gonzales that, before making a final decision, we would benefit from some additional consultation with the representatives of all three former Presidents subject to this Act, as well as review of a small sample of Presidential records. We accepted the Archivist's suggestion. Because this process of additional consultation and review necessarily will require several additional weeks, Judge Gonzales has instructed the Archivist to extend until October 19, 2001, the time in which the Administration will decide upon the proper legal framework and process for review of these Presidential records.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>
Sent: 8/31/2001 8:11:53 AM
Subject: : RESEND -- Talking points on Presidential Records
Attachments: P_YT5I3004_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-AUG-2001 12:11:53.00
SUBJECT:: RESEND -- Talking points on Presidential Records
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
08/31/2001 12:11 PM ----------

Brett M. Kavanaugh
08/31/2001 11:18:42 AM
Record Type: Record

To: Lawrence A. Fleischer/WHO/EOP@EOP, Claire E.
Buchan/WHO/EOP@EOP, Anne Womack/WHO/EOP@EOP, Vickie A. McQuade/WHO/EOP@EOP
cc:
Subject: Talking points on Presidential Records

Attached are background and talking points on the Presidential
Records Act decision.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_YT5I3004_WHO.TXT_1>

Presidential Records Act Talking Points (August 31, 2001)

- The Presidential Records Act authorizes release of certain Presidential records beginning 12 years from the end of a Presidency, but also makes clear that the various Executive privileges (presidential communications, state secrets, deliberative process, attorney-client, and attorney work product privileges) still attach to Presidential records after the 12-year period has elapsed.

- The Act, which was enacted in 1978, is phrased is very general terms, however, and thus leaves open numerous questions about the appropriate legal framework and process under which the current and former President are to review Presidential records in the post-12-year period and to make decisions whether to withhold or disclose those records.

- This is the first time since the Act went into effect that the 12-year period has elapsed, so the Administration has had to carefully study and analyze the many substantive and procedural questions left open by the Act. Because the decision here likely will set a precedent for numerous Presidents to follow, it was especially important to study the issues closely.

- Judge Gonzales previously instructed the Archivist to extend until August 31, 2001, the time for release of the relevant Reagan records in order for the Administration to undertake this review of the many constitutional and legal questions raised by the potential release of sensitive and confidential Presidential records and to decide upon the proper legal framework and process to employ in reviewing such records on an ongoing basis.

- This legal review revealed a variety of available options. We were fully prepared, however, to make a decision by August 31 about the proper legal framework and process for ongoing review of Presidential records. But the Archivist recently suggested to Judge Gonzales that, before making a final decision, we would benefit from additional consultation with the representatives of all three former Presidents subject to this Act, as well as review of a small sample of Presidential records. We accepted the Archivist's suggestion. Because this process of additional consultation and review necessarily will require several additional weeks, Judge Gonzales has instructed the Archivist to extend the date in which the Administration will decide upon the proper legal framework and process for review of these Presidential records.

- The Administration and the National Archives and Records Administration have worked, and will continue to work, cooperatively and collaboratively on these issues.

From:	CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	8/31/2001 6:24:30 AM
Subject:	: LRM KCT71 - - VETERANS AFFAIRS Testimony on HR2792 Disabled Veterans Service Dog and Health Care Improvement Act
Attachments:	P_96ZH3004_WHO.TXT_1.doc; P_96ZH3004_WHO.TXT_2.txt

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-AUG-2001 10:24:30.00
SUBJECT:: LRM KCT71 - - VETERANS AFFAIRS Testimony on HR2792 Disabled Veterans Service Dog and Health Care Improvement Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 08/31/2001 08:06 AM ----------

From: Kathryn C. Thompson on 08/30/2001 06:25:32 PM
Record Type: Record

To: dodlrs@osdgc.osd.mil , lrm@hhs.gov , HUD_LRM@hud.gov , llr@do.treas.gov
cc: See the distribution list at the bottom of this message
Subject: LRM KCT71 - - VETERANS AFFAIRS Testimony on HR2792 Disabled Veterans Service Dog and Health Care Improvement Act

The following is LRM ID: KCT71 -- Veterans Affairs Testimony on H.R. 2792, Disabled Veterans Service Dog and Health Care Improvement Act. The testimony is attached below in Word format and it consists of 13 pages. The bill text of H.R 2792 is attached below in html format and it consists of 10 pages.

Please comment on the VA testimony by 2 p.m., Tomorrow, Friday, August 31st. If you do not respond by the deadline, I will assume that you have no objection to the VA testimony.

LRM ID: KCT71
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, August 30, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Testimony on HR2792 Disabled Veterans Service Dog and Health Care Improvement Act

DEADLINE: 2 p.m. Friday, August 31, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect

direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The testimony states VA's position on H.R. 2792, the Disabled Veterans Service Dog and Health Care Improvement Act. VA will testify on H.R. 2792 before a House Veterans' Affairs subcommittee on September 6th.

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Robert J. Pellicci
Ingrid M. Schroeder
Richard E. Green
LRM ID: KCT71 SUBJECT: VETERANS AFFAIRS Testimony on HR2792
Disabled Veterans Service Dog and Health Care Improvement Act

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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To:_____
Robin Cleveland/OMB/EOP@EOP
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Marisa K. Medrano/OPD/EOP@EOP
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OVP LRM
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Ingrid M. Schroeder/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
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File attachment <P_96ZH3004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_96ZH3004_WHO.TXT_2>

STATEMENT OF
ANTHONY J. PRINCIPI
SECRETARY
DEPARTMENT OF VETERANS AFFAIRS
ON
PROPOSED LEGISLATION
BEFORE THE
SUBCOMMITEE ON HEALTH
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

September 6, 2001

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this morning to comment on H. R. 2792, the "Disabled Veterans Service Dog and Health Care Improvement Act of 2001." If enacted, this bill would authorize the Secretary of Veterans Affairs to make service dogs available to disabled veterans and to make various other changes in health care benefits provided by the Department of Veterans Affairs. This morning I would like to briefly summarize the various sections of the bill, and provide VA's views of these sections.

Section 2 - Service Dogs

The bill would amend the existing law to expand VA's authority to provide guide dogs to blind veterans. Current law limits the provision of guide dogs to blind veterans who are entitled to disability compensation. The bill removes that limitation and would authorize VA to provide service dogs to veterans who are hearing impaired or who have spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility. Service dogs can assist a disabled

person in his or her daily life and can assist that person during medical emergencies. They can be trained in many tasks, including, but not limited to, pulling a wheelchair, carrying a back-pack, opening and closing doors, helping with dressing and undressing, retrieving dropped items, picking up the telephone, and hitting a distress button on the telephone. Some service dogs can perceive when the disabled individual is in distress and can find help. Dogs can also assist the hearing impaired by alerting them to doorbells, ringing phones, smoke detectors, crying babies, and emergency sirens on vehicles.

The existing statutory authority allows VA to pay for certain travel and incidental expenses incurred by veterans while adjusting to seeing-eye or guide dogs. The bill would amend the language to allow VA to pay these expenses for all guide dogs or service dogs covered by this legislation.

Mr. Chairman, the benefit of guide dogs for the blind is well known, and we support having authority to also provide service dogs for veterans who are hearing impaired and who have spinal cord injuries or other chronic impairments, and to pay for certain costs associated with adjusting to the dogs. However, we believe the provision of guide dogs and service dogs should continue to be limited to veterans who are entitled to service-connected compensation. If this provision becomes law, we would promulgate prescription criteria and guidelines to insure that we provide dogs only to those veterans who can most benefit from them.

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Section 3 - Maintaining Capacity

Section 3 of the bill addresses VA's statutory obligation to maintain the capacity to provide for the specialized treatment and rehabilitative needs of disabled veterans, including veterans with spinal cord dysfunction, blindness, amputations, and mental illness. As you know, Mr. Chairman, Congress imposed this requirement with the enactment of the Veterans' Health Care Eligibility Reform Act of 1996, Public Law 104-262. The law requires that capacity be maintained at its 1996 level. The bill would amend the statute to require that VA maintain this capacity not only in the Department as a whole, but within each geographic service area, or VISN, of the Veterans Health Administration. Additionally, the bill adds new language stating that the capacity to provide specialized treatment and rehabilitative needs of disabled veterans within distinct programs or facilities must be measured by the annual amount spent for the care of such veterans in dedicated programs that provide these services through specialized staff. VA's obligation to report on compliance with this requirement is extended through 2004.

Mr. Chairman, we do not object to the provision which would require maintenance of capacity within each geographic service area. This provision is consistent with our desire to ensure that there is equality of access to quality specialized services. However, in order to accomplish this, we propose that the capacity be based on the enrolled veteran population in each geographic service area. In addition, we oppose the provision that would measure capacity by

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dollars expended. The cost of care is not an adequate measure, by itself, to demonstrate whether VA is maintaining the quality of and access to specialized care. Cost alone is not a valid and reliable measure of capacity. Limiting the capacity report to measurement of dollars expended will neither indicate nor ensure that VA is upholding its commitment to these high priority patients. Capacity must be measured by the actual number of patients receiving care in the specialized programs, the quality of the care provided, patients' health outcomes, and patients' access to that care, including waiting times for appointments.

Furthermore, Mr. Chairman, it is currently not possible to know whether the amount of care and the dollars expended in 1996 were optimal for measuring capacity in the targeted special programs. The care provided in 1996 provides only a snapshot of what was then a rapidly changing VA health care delivery system. It is not clear that 1996 can or should serve as a baseline out to 2004, as proposed by this bill.

We understand that the staff of the Senate Veterans Affairs' Committee is developing a different position with regard to VA's obligation to maintain capacity. We would be happy to work with both the Senate and House staff on this issue to develop amendments that would allow us to provide the best possible information on VA's capacity for treating veterans with specialized treatment and rehabilitative needs.

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Section 4 - Means Test Threshold

Mr. Chairman, section 4 would establish new geographically based income thresholds for VA to use in determining a non-service-connected veteran's priority for receiving VA care and whether the veteran must agree to pay copayments in order to receive that care. This would be an alternative to the threshold presently set by statute. As you know, Mr. Chairman, the law now requires that most veterans enroll in our health care system in order to receive care. Enrollees are placed in an enrollment priority group that is based, in many instances, on their level of income and net worth. Although we currently provide care to veterans in all enrollment priority groups, if there were medical care funding shortages in the future, it might be necessary to determine that those non-service connected veterans with relatively higher incomes must be disenrolled, meaning they could no longer receive VA care. Current law establishes, on a National basis, the specific income thresholds that we must use to determine the priority group of any given enrollee with no service-connected disability or other special status. We place higher income veterans in priority group 7 and lower income veterans in priority group 5.

This provision would establish a new, geographically based income threshold that VA could use for placing veterans in priority groups. It would utilize a poverty index developed by the Department of Housing and Urban Development (HUD) to establish this alternative income threshold. The income threshold for

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the veteran would be either the specific income thresholds set forth on a National basis, or the amount set forth by the HUD index - whichever is greater. In most instances, this new income threshold would be greater than the current statutory income threshold used for determining whether a veteran should be placed in priority group 5.

We are very interested in examining the use of geographically based income thresholds for placing nonservice-connected veterans in different enrollment priority groups. We recognize that the cost of living in large urban areas is much greater than in many more rural parts of the country. What might be considered a reasonably high income in some locations may be totally inadequate in other higher cost locations. However, at this time we cannot support the specific methodology proposed in this bill. There are many poverty indexes that are established in various ways, and there are serious issues about what these indexes really measure. We believe further study is needed to determine the most appropriate method for tackling this problem.

We are currently reviewing the various poverty indexes in order to identify the best way to proceed. We expect to have this work completed in September. We are also currently reviewing other changes to the means test, such as having only liquid assets counted and excluding dependent children's income from the process. We would be happy to work with staff members from the Congressional Committees to consider the alternative indexes and other

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changes to ensure that the means test for VA health care is equitable and affords reasonable access to VA health care services.

Section 5 - Pilot Program for Coordination of Ambulatory Community Hospital Care

Section 5 is a provision that is essentially the same as a measure passed by the House of Representatives last year despite the strong opposition of VA. The provision would establish a pilot program entitled "Coordination of Hospital Benefits Program." The program would authorize special benefits for some veterans receiving care in a VA outpatient clinic who need hospital care. Under the program, veterans with third-party health plan coverage (including Medicare and Medicaid) may receive different hospital care benefits from those without third-party coverage. Veterans with no third-party coverage of any sort would be offered hospital care in the nearest VA hospital with the ability to provide care. That facility may not be particularly close to where the veteran resides. On the other hand, veterans with third-party coverage would be offered a choice. First, they could choose to use the nearest VA hospital. Alternatively, they could choose to use a private facility, with VA paying for certain costs, such as the health plan deductible, coinsurance, or the cost of inpatient care or medical services that are not covered by the health plan.

The pilot program would be open only to veterans to whom VA "shall" furnish care, essentially all enrollees except those in enrollment priority group 7. To be

eligible, the veterans must also meet certain additional conditions. Specifically, participants must be enrolled to receive medical services from a VA outpatient clinic, require hospital care for a non service-connected condition that could not be provided by a clinic operated by VA and elect to receive such care under the non-VA health care plan. The program would be limited to veterans who have received VA care during the 24-month period preceding the veteran's application to enroll in the pilot program. In designating the geographic areas in which to establish the program, VA must ensure that at least 70 percent of the veterans who reside in a designated area reside at least two hours' driving distance from the closest VA medical center.

The provision also limits expenditures for the pilot program to $50 million in any fiscal year. Moreover, funds from the proposal must come from the Medical Care Collections Fund and no funds may be used that are otherwise available for treating veterans requiring specialized care.

We strongly oppose this proposed pilot program. The proposal would create a disparate eligibility status based on a veteran's third-party coverage and priority group. We are also concerned that the program would undermine our ability to maintain existing services, especially specialized medical services and programs for veterans. Limiting care to general medical and surgical services would mean that veterans needing specialty health services would still need to come to VA for care. The health care covered by this proposal would be inpatient care for

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non-service-connected conditions. A veteran currently receiving care for a service-connected condition, for which VA does not or cannot contract locally, would also be forced to receive care in multiple locations. These types of disparities are not consistent with our goals and strategies of improving access, convenience, and timeliness of VA health care to all eligible veterans.

Funding for the program would be drawn from the Medical Care Collections Fund (MCCF). The Fund's collections, which are available to VA facilities to support current VA-provided medical care, would be reduced by this provision. MCCF collections supplement the dollars appropriated for medical care and are a necessary component of VHA's budget. Use of MCCF funds for this pilot would negatively impact care for veterans not enrolled in the pilot.

The bill would also require that not less that 15 percent of the veterans participating in the pilot program are veterans who *do not* have a health-care plan. This requirement is confusing, as the purpose of the pilot program is to allow VA to pay for the out of pocket costs that veterans incur through non-VA health plans. It is not clear how VA would achieve this goal for veterans who have no other health care plan. The 15 percent limit might be a false floor or ceiling, depending on the actual number of veterans at a particular pilot site that have no insurance. This could affect the potential outcomes of the pilot. If there are a large number of insured veterans, the out-of-pocket expense covered by VA would be less that the expense of covering the full care provided to an

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uninsured veteran. This could make the pilot look financially successful. On the other hand, if the number of non-insured veterans is high, the expenses could make the pilot program less financially viable.

The bill also defines the term "health-care plan" by cross-reference to section 1725(f). The bill states that the term "health-care plan" has the meaning given that term in section 1725(f)(3). However, the referenced section does not define the term health plan or health-care plan, but rather defines the term "third party" for purposes of reimbursement for emergency treatment. We believe that this reference might be an error, and that the intended reference was to section 1725(f)(2). Section 1725(f)(2) defines the term "health-plan contract" which includes, among other things, Medicare and Medicaid plans.

Section 6 - Pilot Program for Contract Hospitalization and Fee Basis Ambulatory Care

This section of the bill would require the Secretary to conduct a three-year pilot program in which veterans receiving fee basis and contract hospitalization would be provided such care through a contractor who acts as a managed care coordinator. The provision states that the program shall be conducted in four selected geographical areas that have mature managed care markets. To the extent practicable all fee basis and contract hospitalization provided by VA in the selected geographical service areas would be provided through the contractor. The contractor must be an experienced managed care coordinator with an in-

place network of credentialed providers. All enrolled veterans in a selected geographical service area who are authorized to use non-VA care services through fee basis programs of the Department, or who are eligible for contract hospitalization, would be automatically enrolled for participation in the pilot program. Once approved to receive non-VA fee basis care, or when they seek care for a health emergency, participants would be given a directory of health care providers from which to choose.

In conducting the pilot program, VA would be required to use standards (commercial-industry or, in their absence, Department standards) for measuring access, timeliness, patient satisfaction, and utilization management. The contractor must establish a toll-free telephone system staffed by registered nurses to provide advice and health care referral information to veterans enrolled in the pilot program on a 24-hour a day, seven-day a week basis, and a veterans service telephone line for the provision of information on eligibility, enrollment, and provider locations. The program also must provide concurrent review, demand management, disease management and health and wellness programs.

Each medical center participating in the program must have a primary care manager. The primary care manager at each VA facility would be responsible for the coordination and case management of each enrolled veteran who is participating in the pilot program to ensure that such veterans receive the

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appropriate care, and that veterans are brought back into the VA system for follow-up whenever possible and appropriate. The pilot program includes extensive reporting requirements by VA, and a mandatory review by the Comptroller General.

We view the proposed pilot program as an opportunity to examine the costs and benefits of operating our fee basis care program in a new manner. We support the proposal.

Section 7 - Recodification of Bereavement Counseling and other Authorities

Mr. Chairman, section 7 of the bill would consolidate, in a new subchapter of title 38, United States Code, all of the various legal authorities under which VA provides services to non-veterans. The new subchapter would include a section on VA's provision of counseling, training and mental health services for family members of veterans who are receiving treatment. It would also include a section on bereavement counseling following the death of certain veterans. Both types of counseling are currently authorized in the definition of outpatient medical services. This change will make the authority much clearer.

The authority under which we provide CHAMPVA benefits, presently section 1713 of title 38, would be transferred to this new subchapter. A new provision in the bill provides that a dependent or survivor receiving CHAMPVA care would

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also be eligible for the bereavement counseling and the other counseling, training and mental health services provided to family members under this new subchapter. Finally, the existing authority to provide hospital care or medical services as a humanitarian service in emergency cases would be moved to this new subchapter.

The proposed changes would recodify the currently existing provisions. We support this change, as it would consolidate and clarify the existing statutory authority to provide care to non-veterans.

Section 8 – Extension of Expiring Collections Authorities

Mr. Chairman, this final provision would amend title 38 to extend VA's authority to collect per diem nursing home and hospital co-payments from certain veterans, and to collect third-party payments for the treatment of the nonservice-connected disabilities of veterans with service-connected disabilities. We strongly support and welcome the extensions proposed in this section. These collections constitute an important and necessary supplement to our annual appropriations.

Mr. Chairman, this ends my statement. I will be pleased to answer any questions you may have.

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HR 2792 IH

107th CONGRESS

1st Session

H. R. 2792

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to make service dogs available to disabled veterans and to ma ke various other improvements in health care benefits provided by the Departmen t of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

August 2, 2001

Mr. MORAN of Kansas (for himself, Mr. SMITH of New Jersey, and Mr. SIMMONS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to make service dogs available to disabled veterans and to ma ke various other improvements in health care benefits provided by the Departmen t of Veterans Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Disabled Veterans Service Dog and Health Care Improvement Act of 2001'.

SEC. 2. AUTHORIZATION FOR SECRETARY OF VETERANS AFFAIRS TO PROVIDE SERVI CE DOGS FOR DISABLED VETERANS.

(a) AUTHORITY- Section 1714 of title 38, United States Code, is amende d--

(1) in subsection (b)--

(A) by striking `seeing-eye or' the first place it appears;

(B) by striking `who are entitled to disability compensation' and inserting `who are enrolled under section 1705 of this title';

(C) by striking `, and may pay' and all that follows through ` such seeing-eye or guide dogs'; and

(D) by striking `handicap' and inserting `disability'; and

(2) by adding at the end the following new subsections:

`(c) The Secretary may provide--

`(1) service dogs trained for the aid of the hearing impaired to v eterans who are hearing impaired and are enrolled under section 1705 of this ti tle; and

`(2) service dogs trained for the aid of persons with spinal cord injury or dysfunction or other chronic impairment that substantially limits mob ility to veterans with such injury, dysfunction, or impairment who are enrolled under section 1705 of this title.

`(d) In the case of a veteran provided a dog under subsection (b) or (c), the Secretary may pay travel and incidental expenses for that veteran under the terms and conditions set forth in section 111 of this title to and from th e veteran's home for expenses incurred in becoming adjusted to the dog.'.

(b) CLERICAL AMENDMENTS-

(1) The heading for such section is amended to read as follows:

`Sec. 1714. Fitting and training in use of prosthetic appliances; guide dogs; service dogs'.

(2) The item relating to such section in the table of sections at the beginning of chapter 17 of such title is amended to read as follows:

`1714. Fitting and training in use of prosthetic appliances; guide d ogs; service dogs.'.

SEC. 3. MAINTENANCE OF CAPACITY FOR SPECIALIZED TREATMENT AND REHABILITA TIVE NEEDS OF DISABLED VETERANS.

(a) MAINTENANCE OF CAPACITY ON A SERVICE-NETWORK BASIS- Paragraph (1) of section 1706(b) of title 38, United States Code, is amended--

(1) in the first sentence, by inserting `(and each geographic serv ice area of the Veterans Health Administration)' after `ensure that the Departm ent';

(2) in clause (B), by inserting `(and each geographic service area of the Veterans Health Administration)' after `overall capacity of the Departm ent'; and

(3) by inserting after the first sentence the following new senten ce: `The capacity of the Department (and each geographic service area of the Ve terans Health Administration) to provide for the specialized treatment and reha bilitative needs of disabled veterans (including veterans with spinal cord dysf unction, blindness, amputations, and mental illness) within distinct programs o r facilities shall be measured by the annual amount (adjusted for inflation) ex pended for care of such veterans in dedicated programs which provide such speci alized treatment and rehabilitative services through specialized staff.'.

(b) EXTENSION OF ANNUAL REPORT REQUIREMENT- Paragraph (2) of such sect ion is amended by striking `April 1, 1999, April 1, 2000, and April 1, 2001' an d inserting `April 1 of each year through 2004'.

SEC. 4. THRESHOLD FOR VETERANS HEALTH CARE ELIGIBILITY MEANS TEST TO REF LECT LOCALITY COST-OF-LIVING VARIATIONS.

(a) REVISED THRESHOLD- Subsection (b) of section 1722 is amended to re ad as follows:

`(b) For purposes of subsection (a)(3), the income threshold applicabl e to a veteran is the greater of the following:

`(1) For any calendar year after 2000--

`(A) in the case of a veteran with no dependents, $23,688, as adjusted pursuant to subsection (c); or

`(B) in the case of a veteran with one or more dependents, $28 ,429, as so adjusted, plus $1,586, as so adjusted, for each dependent in excess of one.

`(2) The amount in effect under the HUD Low Income Index that is a pplicable in the area in which the veteran resides.'.

(b) HUD LOW INCOME INDEX- Subsection (b) of such section is further am ended by adding at the end the following new paragraph:

`(3) For purposes of paragraph (1)(B), the term `HUD Low Income Index' means the family income ceiling amounts determined by the Secretary of Housing and Urban Development under section 3(b)(2) of the United

States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) for purposes of the dete rmination of `low-income families' under that section.'.

(c) CONFORMING AMENDMENTS- Such section is further amended--

(1) in subsection (b)(2), by striking `December 31, 1990' and inse rting `December 31, 2001'; and

(2) in subsection (c), by striking `subsection (b)' and inserting `subsection (b)(1)'.

(d) EFFECTIVE DATE- The amendments made by this section shall take eff ect on April 1, 2002.

SEC. 5. PILOT PROGRAM FOR COORDINATION OF AMBULATORY COMMUNITY HOSPITAL CARE.

(a) IN GENERAL- Chapter 17 of title 38, United States Code, is amended by inserting after section 1725 the following new section:

`Sec. 1725A. Coordination of hospital benefits: pilot program

`(a) PILOT PROGRAM- Subject to the availability of funds specified in subsection (g), the Secretary shall carry out a pilot program in not more than four geographic areas of the United States to improve access to, and coordinat ion of, inpatient care of eligible veterans. Under the pilot program, the Secre tary, subject to subsection (b), shall pay certain costs described in subsectio n (b) for which an eligible veteran would otherwise be personally liable. The a uthority to carry out the pilot program shall expire on September 30, 2006.

`(b) PAYMENT OF COSTS- In carrying out the program described in subsec tion (a), the Secretary may pay the costs authorized under this section for hos pital care and medical services furnished on an inpatient basis in a non-Depart ment hospital to an eligible veteran participating in the program. Such payment may cover the costs for applicable plan deductibles and coinsurance and the re asonable costs of such inpatient care and medical services not covered by any a pplicable health-care plan of the veteran, but only to the extent such care and services are of the kind authorized under this chapter. The Secretary shall li mit the care and services for which payment may be made under the program to ge neral medical and surgical services and shall require that such services may be provided only upon preauthorization by the Secretary.

`(c) ELIGIBLE VETERANS- (1) A veteran described in paragraph (1) or (2) of section 1710(a) of this title is eligible to participate in the pilot prog ram if the veteran--

`(A) is enrolled to receive medical services from an outpatient cl inic operated by the Secretary which is (i) within reasonable proximity to the principal residence of the veteran, and (ii) located within the geographic area in which the Secretary is carrying out the program described in subsection (a) ;

`(B) has received care under this chapter within the 24-month peri od preceding the veteran's application for enrollment in the pilot program;

`(C) as determined by the Secretary before the hospitalization of the veteran (i) requires such hospital care and services for a non-service-conn ected condition, and (ii) could not receive such services from a clinic operate d by the Secretary; and

`(D) elects to receive such care under a health-care plan (other t han under this title) under which the veteran is entitled to receive such care.

`(2) Nothing in this section shall be construed to reduce the authorit y of the Secretary to contract with non-Department facilities for care of a ser vice-connected disability of a veteran.

`(3) Notwithstanding subparagraph (D) of paragraph (1), the Secretary shall ensure that not less than 15 percent of the veterans participating in the program are veterans who do not have a health-care plan.

`(d) CASE MANAGEMENT- As part of the program under this section, the S ecretary shall, through provision of case-management, coordinate the care being furnished directly by the Secretary and care furnished under the program in no n-Department hospitals to veterans participating in the program.

`(e) DESIGNATION OF PARTICIPATING SITES- (1) In designating geographic areas in which to establish the program under subsection (a), the Secretary sh all ensure that--

> `(A) the areas designated are geographically dispersed;
>
> `(B) at least 70 percent of the veterans who reside in a designate d area reside at least two hours driving distance from the closest medical cent er operated by the Secretary which provides medical and surgical hospital care; and
>
> `(C) the establishment of the program in any such area would not r esult in jeopardizing the critical mass of patients needed to maintain a Depart ment medical center that serves that area.

`(2) Notwithstanding paragraph (1)(B), the Secretary may designate for participation in the program at least one area which is in proximity to a Depa rtment medical center which, as a result of a change in mission of that center, does not provide hospital care.

`(f) REPORTS- (1) Not later than September 30, 2003, the Secretary sha ll submit to the Committees on Veterans' Affairs of the Senate and House of Rep resentatives a report on the experience in implementing the pilot program under subsection (a).

`(2) Not later than September 30, 2005, the Secretary shall submit to those committees a report on the experience in operating the pilot program duri ng the first two full fiscal years during which the pilot program is conducted. That report shall include--

> `(A) a comparison of the costs incurred by the Secretary under the program and the cost experience for the calendar year preceding establishment of the program at each site at which the program is operated;
>
> `(B) an assessment of the satisfaction of the participants in the program; and

`(C) an analysis of the effect of the program on access and qualit y of care for veterans.

`(g) FUNDING LIMITATIONS- (1) The total amount expended for the pilot program in any fiscal year (including amounts for administrative costs) may not exceed $50,000,000.

`(2) Any expenditure of funds for the pilot program shall be made from amounts in the Medical Care Collections Fund attributable to collections under section 1729 of this title. No funds may be expended to support the

purposes of this section from any other funds available to the Secretary fo r the delivery of health care services to veterans, including funds appropriate d or otherwise available for the care and treatment of veterans who require spe cialized care and resources.

`(h) HEALTH-CARE PLAN DEFINED- For purposes of this section, the term `health-care plan' has the meaning given that term in section 1725(f)(3) of thi s title.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1725 the fo llowing new item:

`1725A. Coordination of hospital benefits: pilot program.'.

SEC. 6. PILOT PROGRAM FOR CONTRACT HOSPITALIZATION AND FEE BASIS AMBULAT ORY CARE.

(a) ESTABLISHMENT OF PROGRAM- The Secretary of Veterans Affairs shall conduct a pilot program under which veterans receiving fee basis and contract h ospitalization under sections 1703 and 1728 of title 38, United States Code, in selected service areas of the Veterans Health Administration shall be provided such hospitalization through a contractor that is a managed care coordinator. The program shall be conducted during the three-year period beginning on July 1 , 2002.

(b) SITES FOR PROGRAM- The Secretary shall conduct the pilot program i n not less than four geographic service areas of the Veterans Health Administra tion that are selected by the Secretary for participation in the program from a mong such service areas that are located in areas that the Secretary determines exhibit mature managed care markets. Under the program, to the extent practica ble all fee basis and contract hospitalization provided by the Secretary in a s elected geographic service area shall be provided through a managed care coordi nator contractor.

(c) SELECTION OF CONTRACTOR- The Secretary shall select a contractor f or the pilot program not later than six months after the date of the enactment of this Act. The contractor shall be an experienced managed care coordinator wi th an in-place network of credentialed providers.

(d) AUTOMATIC ENROLLMENT- Each veteran who is enrolled under section 1 705 of title 38, United States Code, who resides in a geographic service area s elected for participation in the pilot program, and who as of the commencement of the pilot program is authorized use of non-VA care services through fee basi s programs of the Department, or who is eligible for contract hospitalization u nder section 1703 or 1728 of title 38, United States Code, shall be automatical ly enrolled for participation in the pilot program. Each such veteran shall be provided a directory of credentialed health care providers from which to choose when approved by the Secretary to receive non-VA care or to use in health emer gencies in the case of contract hospitalization.

(e) PROGRAM FEATURES- As part of the program, the Secretary shall prov ide for the following:

(1) Use of commercial-industry standards (or in their absence, Dep artment standards) for access, timeliness, patient satisfaction measures, and u tilization management.

(2) Assignment of a primary care manager at each department medica l center participating in the program.

(3) Establishment by the contractor of a toll-free telephone syste m staffed by registered nurses to provide advice and health care referral infor mation to veterans enrolled in the pilot program on a 24-hour a day, seven-day a week basis.

(4) Establishment by the contractor of a veterans service telephon e line for the provision of information on eligibility, enrollment, and provide r locations.

(5) Concurrent review.

(6) Demand management.

(7) Disease management.

(8) Health and wellness programs.

(f) PRIMARY CARE MANAGER FUNCTIONS- Each primary care manager provided for pursuant to subsection (e)(2) shall have responsibility for the coordinati on and case management of each veteran enrolled under section 1705 of title 38, United States Code, through that medical center who is enrolled in the pilot p rogram pursuant to subsection (d), to ensure that such veterans receive the app ropriate care, and that the veteran is brought back into the VA system for foll owup whenever possible and appropriate.

(g) REPORTS- (1) Not later than October 1, 2003, the Secretary shall s ubmit to Congress a report on the operation of the pilot program through June 3 0, 2003. That report shall include the Secretary's assessment of--

(A) the adequacy of the managed care networks;

(B) patient satisfaction surveys completed by veterans participati ng in the program;

(C) cost savings to the Department as a result of care provided th rough the program; and

(D) proposed uses for savings if the pilot program were implemente d on a permanent basis throughout the Department for the management of non-VA c are.

(2) Not later than October 1, 2004, the Secretary shall submit a repor t to Congress on the program through June 30, 2004. The Secretary shall include in that report the matters specified in paragraph (1) and the Secretary's reco mmendation for implementing on a nationwide basis the management system tested in the pilot program.

(h) GAO REVIEW- Not later than June 30, 2005, the Comptroller General of the United States shall conduct a review of the pilot program and shall prov ide to Congress the Comptroller General's findings and recommendations concerni ng the program.

(i) NON-VA CARE DEFINED- For purposes of this section, the term `non-V A care' means care provided in a facility other than a facility of the Veterans Health Administration or by a health care provider who is not an employee of t he Veterans Health Administration.

SEC. 7. RECODIFICATION OF BEREAVEMENT COUNSELING AUTHORITY AND CERTAIN O THER HEALTH-RELATED AUTHORITIES.

(a) STATUTORY REORGANIZATION- Subchapter I of chapter 17 of title 38, United States Code, is amended--

(1) in section 1701(6)--

(A) by striking subparagraph (B) and the sentence following th at subparagraph;

(B) by striking `services--' in the matter preceding subparagr aph (A) and inserting `services, the following:'; and

(C) by striking subparagraph (A) and inserting the following:< /ul>

`(A) Surgical services.

`(B) Dental services and appliances as described in sections 1710 and 1712 of this title.

`(C) Optometric and podiatric services.

`(D) Preventive health services.

`(E) In the case of a person otherwise receiving care or services under this chapter--

`(i) wheelchairs, artificial limbs, trusses, and similar appli ances;

`(ii) special clothing made necessary by the wearing of prosth etic appliances; and

`(iii) such other supplies or services as the Secretary determ ines to be reasonable and necessary.

`(F) Travel and incidental expenses pursuant to section 111 of thi s title.'; and

(2) in section 1707--

(A) by inserting `(a)' at the beginning of the text of the sec tion; and

(B) by adding at the end the following:

`(b) The Secretary may furnish sensori-neural aids only in accordance with guidelines prescribed by the Secretary.'.

(b) CONSOLIDATION OF PROVISIONS RELATING TO PERSONS OTHER THAN VETERAN S- Such chapter is further amended by adding at the end the following new subch apter:

`SUBCHAPTER VIII--HEALTH CARE OF PERSONS OTHER THAN VETERANS

`Sec. 1782. Counseling, training, and mental health services for immedia te family members

`(a) COUNSELING FOR FAMILY MEMBERS OF VETERANS RECEIVING SERVICE-CONNE CTED TREATMENT- In the case of a veteran who is receiving treatment for a servi ce-connected disability pursuant to paragraph (1) or (2) of section 1710(a) of this title, the Secretary shall provide to individuals described in subsection (c) such consultation, professional counseling, training, and mental health ser vices as are necessary in connection with that treatment.

`(b) COUNSELING FOR FAMILY MEMBERS OF VETERANS RECEIVING NON-SERVICE-C ONNECTED TREATMENT- In the case of a veteran who is eligible to receive treatme nt for a non-service-connected disability under the conditions described in par agraph (1), (2), or (3) of section 1710(a) of this title, the Secretary may, in the discretion

of the Secretary, provide to individuals described in subsectio n (c) such consultation, professional counseling, training, and mental health s ervices as are necessary in connection with that treatment if--

`(1) those services were initiated during the veteran's hospitaliz ation; and

`(2) the continued provision of those services on an outpatient ba sis is essential to permit the discharge of the veteran from the hospital.

`(c) ELIGIBLE INDIVIDUALS- Individuals who may be provided services un der this subsection are--

`(1) the members of the immediate family or the legal guardian of a veteran; or

`(2) the individual in whose household such veteran certifies an i ntention to live.

`(d) TRAVEL AND TRANSPORTATION AUTHORIZED- Services provided under sub sections (a) and (b) may include, under the terms and conditions set forth in s ection 111 of this title, travel and incidental expenses of individuals describ ed in subsection (c) in the case of--

`(1) a veteran who is receiving care for a service-connected disab ility; and

`(2) a dependent or survivor receiving care under the last sentenc e of section 1783(b) of this title.

`Sec. 1783. Bereavement counseling

`(a) DEATHS OF VETERANS- In the case of an individual who was a recipi ent of services under section 1782 of this title at the time of the death of th e veteran, the Secretary may provide bereavement counseling to that individual in the case of a death--

`(1) that was unexpected; or

`(2) that occurred while the veteran was participating in a hospic e program (or a similar program) conducted by the Secretary.

`(b) DEATHS IN ACTIVE SERVICE- The Secretary may provide bereavement c ounseling to an individual who is a member of the immediate family of a member of the Armed Forces who dies in the active military, naval, or air service in t he line of duty and under circumstances not due to the person's own misconduct.

`(c) BEREAVEMENT COUNSELING DEFINED- For purposes of this section, the term `bereavement counseling' means such counseling services, for a limited pe riod, as the Secretary determines to be reasonable and necessary to assist an i ndividual with the emotional and psychological stress accompanying the death of another individual.

`Sec. 1784. Humanitarian care

`The Secretary may furnish hospital care or medical services as a huma nitarian service in emergency cases, but the Secretary shall charge for such ca re and services at rates prescribed by the Secretary.'.

(c) TRANSFER OF CHAMPVA SECTION- Section 1713 of such title is--

(1) transferred to subchapter VIII of chapter 17 of such title, as added by subsection (b), and inserted after the subchapter heading;

(2) redesignated as section 1781; and

(3) amended by adding at the end of subsection (b) the following n ew sentence: `A dependent or survivor receiving care under the preceding senten ce shall be eligible for the same medical services as a veteran, including serv ices under sections 1782 and 1783 of this title.'.

(d) REPEAL OF RECODIFIED AUTHORITY- Section 1711 of such title is amen ded by striking subsection (b).

(e) CROSS REFERENCE AMENDMENTS- Such title is further amended as follo ws:

(1) Section 103(d)(5)(B) is amended by striking `1713' and inserti ng `1781'.

(2) Sections 1701(5) is amended by striking `1713(b)' in subparagr aphs (B) and (C)(i) and inserting `1781(b)'.

(3) Section 1712A(b) is amended--

(A) in the last sentence of paragraph (1), by striking `sectio n 1711(b)' and inserting `section 1784'; and

(A) in paragraph (2), by striking `section 1701(6)(B)' and ins erting `sections 1782 and 1783'.

(4) Section 1729(f) is amended by striking `section 1711(b)' and i nserting `section 1784'.

(5) Section 1729A(b) is amended--

(A) by redesignating paragraph (7) as paragraph (8); and
< /ul>

(B) by inserting after paragraph (6) the following new paragra ph (7):

`(7) Section 1784 of this title.'.

(6) Section 8111(g) is amended--

(A) in paragraph (4), by inserting `services under sections 17 82 and 1783 of this title' after `of this title,'; and

(B) in paragraph (5), by striking `section 1711(b) or 1713' an d inserting `section 1782, 1783, or 1784'.

(7) Section 8111A(a)(2) is amended by inserting `, and the term `m edical services' includes services under sections 1782 and 1783 of this title' before the period at the end.

(8) Section 8152(3) is amended by inserting `services under sectio ns 1782 and 1783 of this title' after `of this title),'.

(9) Sections 8502(b), 8520(a), and 8521 are amended by striking `t he last sentence of section 1713(b)' and inserting `the penultimate sentence of section 1781(b)'.

(f) CLERICAL AMENDMENTS-

(1) The table of sections at the beginning of such chapter is amen ded--

(A) by striking the item relating to section 1707 and insertin g the following:

`1707. Limitations.';

(B) by striking the item relating to section 1713; and

(C) by adding at the end the following:

`subchapter viii--health care of persons other than veterans

`1781. Medical care for survivors and dependents of certain veterans .

`1782. Counseling, training, and mental health services for immediat e family members.

`1783. Bereavement counseling.

`1784. Humanitarian care.'.

(2) The heading for section 1707 is amended to read as follows:

`Sec. 1707. Limitations'.

SEC. 8. EXTENSION OF EXPIRING COLLECTIONS AUTHORITIES.

Sections 1710(f)(2)(B) and 1729(a)(2)(E) of title 38, United States Co de, are each amended by striking `September 30, 2002' and inserting `September 30, 2007'.

END

From: CN=David Kuo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/31/2001 6:29:24 AM
Subject: : Re: OLC

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David Kuo (CN=David Kuo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-AUG-2001 10:29:24.00
SUBJECT:: Re: OLC
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

great, many thanks.

Brett M. Kavanaugh
08/31/2001 10:16:24 AM
Record Type: Record

To: David Kuo/WHO/EOP@EOP
cc:
Subject: OLC

I am told that it should be ready next week.

From: CN=Catherine S. Anderson/OU=OA/O=EOP [OA]
To: Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 8/31/2001 9:51:58 AM
Subject: : Re: Travel Support
Attachments: F_BT7I3004_OA.TXT_1.doc; F_BT7I3004_OA.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Catherine S. Anderson (CN=Catherine S. Anderson/OU=OA/O=EOP [OA])
CREATION DATE/TIME:31-AUG-2001 13:51:58.00
SUBJECT:: Re: Travel Support
TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Phil: I am waiting for comments from Counsel's Office on the draft letter, but in the meantime, as per your instructions, I have prepared a yellow folder that includes WHO signoff. As I prepared it, the yellow folder is from you to Hector, with a cover memorandum from you to Hector, recommending that he sign the attached memorandum on Presidential Travel Support. I will hand carry this over to you, but I am also attaching electronic copies of both documents in the event that Hector determines that the signature authority should be at a higher level, or if you wish to make any changes. I am out on Tuesday, but feel free to page me or contact me at home (703) 392-9209 if you need anything further on this.

Brett: If you wish to make any changes, let me know and I can make them, or the electronic copies are attached below.

Phillip Larsen
08/30/2001 10:40:49 AM
Record Type: Record

To: Catherine S. Anderson/OA/EOP@EOP
cc:
bcc:
Subject: Re: Travel Support

Thanks. Looks good to me. I will run it by Hector to see if he wants to sign or whether he wants to kick it up to Joe or Andy's level. In the mean while please initiate a yellow folder that includes WHO sign off.

Catherine S. Anderson
08/30/2001 08:56:04 AM
Record Type: Record

To: Phillip Larsen/OA/EOP@EOP
cc:
Subject: Travel Support

Phil: I just faxed you a draft memorandum from WHO to you requesting trip

support. I thought it might be helpful if we gave them a draft that they can utilize to expand upon. I am also working on your response to the request, and I will vet both through Brett Kavanaugh in Counsel's Office. We met yesterday and he seemed comfortable with our proposed approach. Let me know if this is what you had in mind. Kate

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_BT7I3004_OA.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_BT7I3004_OA.TXT_2>

August 31, 2001

MEMORANDUM FOR HECTOR F. IRASTORZA, JR.
DEPUTY ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: PHILLIP D. LARSEN
SPECIAL ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF THE OFFICE OF ADMINISTRATION

SUBJECT: PRESIDENTIAL TRAVEL SUPPORT

The White House Office (WHO) has identified a critical need for the Office of Administration's (OA) assistance in providing information technology and financial management services in direct support of presidential travel. In order to meet this critical need, the WHO has requested the OA to provide information technology support on all trips, regardless of the nature of the travel, and financial management support on all official trips and for the official legs/events on mixed trips.

To memorialize this request, I recommend that you sign the attached memorandum. The memorandum serves three important purposes. First, the memorandum establishes that the services will be provided on behalf of the WHO, in direct support of the President as contemplated by Executive Order 12028 (Dec. 1977), as amended. Second, the memorandum determines that OA staff will be considered to be official travelers, necessary for the comfort and security of the President, consistent with the staffs of the Secret Service, the White House Communications Agency, and the Travel Office. Third, the memorandum confirms the intent of the WHO to maintain exclusive control over any White House materials generated by OA providing the services.

August 31, 2001

MEMORANDUM FOR PHILLIP D. LARSEN
SPECIAL ASSISTANT TO THE PRESIDENT AND
DIRECTOR, OFFICE OF ADMINISTRATION

FROM: HECTOR F. IRASTORZA, JR.
DEPUTY ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

SUBJECT: PRESIDENTIAL TRAVEL SUPPORT

In order to effect the maximum utilization of existing services in accordance with Executive Order 12028 (Dec. 4, 1977), as amended, the Office of Administration (OA) shall, upon request, assist the White House Office (WHO) in providing those administrative services which are primarily in direct support of the President.

WHO staff has identified a critical need for OA's assistance in providing information technology and financial management services in direct support of presidential travel. In order to meet this critical need, OA is requested to provide, on behalf of WHO, information technology support on all trips, regardless of the nature of the travel, and financial management support on all official trips and for the official legs/events on mixed trips. OA personnel providing this support shall be considered official travelers on all trips. This is consistent with the 1997 advice from the Department of Justice which determined that staff considered necessary to provide fully for the comfort and safety of the President and Vice President are always official travelers, regardless of the nature of the trip.

It is understood that WHO is and shall remain the exclusive owner of all White House materials, including any materials generated by OA in the normal course in providing this support. Such materials are available to OA personnel only for such time and for such purposes as are necessary to render the requested services. OA shall not exercise any proprietary interest in White House materials that is inconsistent with this exclusive ownership. Once the services in question have been rendered, White House materials shall be promptly delivered to the White House Office of Records Management for proper disposition. In the event that OA determines it is necessary to retain these materials for a longer period to comply with statutory or regulatory requirements, OA is authorized to retain a duplicate, convenience copy for this purpose, which shall be destroyed when no longer needed.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 9/4/2001 3:58:55 AM
Subject: : FOIAs

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-SEP-2001 07:58:55.00
SUBJECT:: FOIAs
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thoughts?
---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 09/04/2001 07:58 AM ----------

Laura S. Lawlor
08/23/2001 04:00:56 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: FOIAs

As part of Cabinet report submissions, we are receiving information on key or significant FOIA requests received by the agencies. The staff secretary does not want to include these in the official cabinet report to the President - but is this information that you all would find useful? We could cut this into a separate FOIA report and send it to your shop - if there is an interest. Please let me know - thanks

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 9/4/2001 3:38:27 PM
Subject: : Interview Request Re: Alberto Gonzales

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-SEP-2001 19:38:27.00
SUBJECT:: Interview Request Re: Alberto Gonzales
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI that ARG will likely do this. Any comments?

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 09/04/2001 07:36 PM ----------

William T. Griffin
09/04/2001 12:18:43 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Interview Request Re: Alberto Gonzales

Libby,

I think I forwarded you this request last week. Is this something ya'll are interested in doing? He e-mailed asking for an update.

---------- Forwarded by William T. Griffin/WHO/EOP on 09/04/2001 12:18 PM ----------

"Davis, Jenny" <DavisJB@staff.abanet.org>
08/28/2001 03:54:43 PM
Record Type: Record

To: William T. Griffin/WHO/EOP@EOP
cc:
Subject: Interview Request Re: Alberto Gonzales

Mr. Griffin:
Thank you for getting back to me today regarding my request for an interview with White House Counsel Alberto Gonzales. The topic is "why this moment in time is important in legal history." I am collecting responses from 10 legal luminaries including Stanford professor Deborah Rhode, Texas litigator Joe Jamail and NPR legal commentator Nina Totenberg for the ABA Journal's January, 2002 issue, a special edition featuring a cover story on legal history and the perception of justice. The issue will also mark the debut of the magazine's stem-to-stern redesign.
I am collecting comments one of two ways, according to the preference of the interviewees: Some are submitting written comments of 300-500 words,

others are speaking with me directly and approving my paraphrasing of their comments.
Please let me know as soon as possible whether Mr. Gonzales would like to participate in this article, but no later than Friday, August 31. My deadline for collecting all comments is Monday, September 17. If he participates, the ABA would also like to have its photographers in Washington, D.C. take a photo of Mr. Gonzales at his convenience. Thank you for your time and attention.
Jenny B. Davis

P.S. I went to law school in Texas, practiced there and spent two years as a
reporter for Texas Lawyer newspaper. I don't know if he misses Texas, but I sure do. I guess we've both gone national now ...

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 9/4/2001 4:23:32 PM
Subject: : Re: Interview Request Re: Alberto Gonzales

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-SEP-2001 20:23:32.00
SUBJECT:: Re: Interview Request Re: Alberto Gonzales
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Just that, as always, he should be very careful. They will be looking to pin Judge down on the close division on Supreme Court re racial preferences, right to privacy, etc.

Elizabeth N. Camp
09/04/2001 07:38:25 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Interview Request Re: Alberto Gonzales

FYI that ARG will likely do this. Any comments?

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 09/04/2001 07:36 PM ----------

William T. Griffin
09/04/2001 12:18:43 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Interview Request Re: Alberto Gonzales

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I think I forwarded you this request last week. Is this something ya'll are interested in doing? He e-mailed asking for an update.

---------- Forwarded by William T. Griffin/WHO/EOP on 09/04/2001 12:18 PM ----------

"Davis, Jenny" <DavisJB@staff.abanet.org>
08/28/2001 03:54:43 PM
Record Type: Record

To: William T. Griffin/WHO/EOP@EOP
cc:
Subject: Interview Request Re: Alberto Gonzales

Mr. Griffin:
Thank you for getting back to me today regarding my request for an interview with White House Counsel Alberto Gonzales. The topic is "why this moment in time is important in legal history." I am collecting responses from 10 legal luminaries including Stanford professor Deborah Rhode, Texas litigator Joe Jamail and NPR legal commentator Nina Totenberg for the ABA Journal's January, 2002 issue, a special edition featuring a cover story on legal history and the perception of justice. The issue will also mark the debut of the magazine's stem-to-stern redesign.
I am collecting comments one of two ways, according to the preference of the interviewees: Some are submitting written comments of 300-500 words, others are speaking with me directly and approving my paraphrasing of their comments.
Please let me know as soon as possible whether Mr. Gonzales would like to participate in this article, but no later than Friday, August 31. My deadline for collecting all comments is Monday, September 17. If he participates, the ABA would also like to have its photographers in Washington, D.C. take a photo of Mr. Gonzales at his convenience. Thank you for your time and attention.
Jenny B. Davis

P.S. I went to law school in Texas, practiced there and spent two years as a
reporter for Texas Lawyer newspaper. I don't know if he misses Texas, but I sure do. I guess we've both gone national now ...

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>
Sent: 9/4/2001 6:06:20 PM
Subject: : Re: Search for 1999 documents index

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-SEP-2001 22:06:20.00
SUBJECT:: Re: Search for 1999 documents index
TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
End Original ARMS Header

Please send me a precise description, and I will contact
Archives. Thanks.

Edward A. Boling
08/31/2001 10:58:27 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Search for 1999 documents index

We need to close the loop on this documents search. Any thoughts on
how/where I can find this index? (documents start at bates number FR
00907 and contain gaps - so we need the index to see if we're missing CEQ
documents)
---------- Forwarded by Edward A. Boling/CEQ/EOP on 08/31/2001
11:01 AM ----------

Rachel L. Brand 08/27/2001 01:01:25 PM

Record Type: Record

To: Edward A. Boling/CEQ/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: Search for 1999 documents index

We would not have access to records from the previous Administration. I'm
ccing Brett Kavanagh on this message - he's our resident expert on the
Presidential Records Act.

RLB

Edward A. Boling
08/27/2001 12:03:32 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc:
Subject: Search for 1999 documents index

We're looking for an index of documents that were sent, pursuant to 10/18/99 and 10/28/99 requests by the House Resource Committee, in November or December of 1999. Are there any records from then in the White House Counsel's office, or would we have to go to NARA or the Clinton Library?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>
Sent: 9/5/2001 5:00:53 AM
Subject: : Re: Archived Materials

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-SEP-2001 09:00:53.00
SUBJECT:: Re: Archived Materials
TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

The independent commission does not fall under the Presidential Records Act. Thus, less onerous rules would apply to that body. I am not sure precisely what they are, however, but I can inquire if the commission does not have its own legal advisor.

Marty P. Smith
09/05/2001 08:25:59 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Archived Materials

Thanks! Just checking since I'm new to OPD and don't like loose ends. I'll call if questions arise. I am assuming that the same rules as for the WH and NEC (OPD) apply also to the President's Commission to Strengthen Social Security of which Chuck is Executive Director even though it's an independent commission. Please let me know if I am mistaken in this assumption. Thanks again.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 9/5/2001 9:28:28 AM
Subject: : Bates

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-SEP-2001 13:28:28.00
SUBJECT:: Bates
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Should I be telling him he needs to get EHN on board, or at least
meet with her?
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 9/6/2001 4:14:40 AM
Subject: : Re: INS Ceremonies

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-SEP-2001 08:14:40.00
SUBJECT:: Re: INS Ceremonies
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I've been handling immigration stuff. I'll take care of it.

Elizabeth N. Camp
09/05/2001 07:49:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: INS Ceremonies

Can one of you talk with Leonard about this?

Thanks!
---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 09/05/2001 07:49 PM ----------

Leonard B. Rodriguez
09/05/2001 07:41:57 PM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: INS Ceremonies

We have some thoughts we would like to introduce/share for INS naturalization ceremonies. How can facilitate this with DOJ\INS in a legal manner

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 9/6/2001 4:13:25 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-SEP-2001 08:13:25.00
SUBJECT::
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

what time is Ari's briefing on Friday? Also, am I right that, as usual, the briefing will be the time for the public announcement of the judicial nominations? I ask because Senator Kyl wants to issue a release re the Arizona nominees, but does not want to do so before Ari's announcement.

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Susan B. Ralston/WHO /EOP@EOP [WHO] <Susan B. Ralston>
Sent: 9/6/2001 2:23:20 PM
Subject: : Re: Mackinaw conference

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-SEP-2001 18:23:20.00
SUBJECT:: Re: Mackinaw conference
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I spoke to Jennifer, and, after talking to her, agreed with her suggestion that first class commercial would be the way to go.

Sara M. Taylor
09/06/2001 04:41:08 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Mackinaw conference

Jennifer Bertram - 517-487-5413

Robert W. Cobb
09/06/2001 04:38:56 PM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Mackinaw conference

I'd be happy to call. Do you have a contact person and number?

Sara M. Taylor
09/06/2001 04:37:17 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, Susan B. Ralston/WHO/EOP@EOP
bcc:

Subject: Re: Mackinaw conference

My understanding is that they are going to reimburse CMS for the use of their plane, which CMS charters. I agree this sounds a little fishy. It may be worthwhile for one of you to call the Michigan Party to determine exactly what they are paying for and how it's being reported. Thanks. I would be happy to facilitate the call.

Sara

Robert W. Cobb
09/06/2001 04:32:05 PM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: Mackinaw conference

This does not sound right to me. CMS Energy has an air charter business? Why doesn't the Michigan GOP charter a plane from an air charter business instead?

Sara M. Taylor
09/06/2001 04:14:50 PM
Record Type: Record

To: Susan B. Ralston/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Mackinaw conference

The Michigan GOP will charter a plane from CMS Energy in Michigan. They will pay for the charter outright, but they were planning on having Norm Saari, Director of Govt. Affairs ride along (how convenient and nice of them to ask first??).

Moose, can you give us direction on this one? Thanks.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 9/7/2001 5:44:57 AM
Subject: : ABA Meeting on Monday

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-SEP-2001 09:44:57.00
SUBJECT:: ABA Meeting on Monday
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI that the Judge and Tim will be meeting with the new Pres of ABA on
Monday at 2:00 pm. Participants from ABA are: ABA Pres. Robert Hirshon,
Federal Judiciary Committee Chair Roscoe Trimmier & Dir. of Govt. Rel.
Robert Evans

ABA indicated their topics of discussion will include their role in
judicial selection and Legal Services Corp.

Courtney - can you provide some talking points for Judge and Tim on
issue(s) you think the ABA may raise re: LSC? Reminder that our LSC
Meeting is set for 9/26 at 3:00 pm.

Thanks!
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;brent d. greenfield/who /eop@eop [WHO] <brent d. greenfield>;anne womack/who/eop@eop [WHO] <anne womack>;lawrence a. fleischer/who/eop@eop [WHO] <lawrence a. fleischer>;scott mcclellan/who/eop@eop [WHO] <scott mcclellan>;heather wingate/who/eop@eop [WHO] <heather wingate>;james r. wilkinson/who/eop@eop [WHO] <james r. wilkinson>;matthew e. smith/who/eop@eop [WHO] <matthew e. smith>;tim goeglein/who/eop@eop [WHO] <tim goeglein>
Sent: 9/7/2001 6:38:10 AM
Subject: : Re: Judicial Nominations

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-SEP-2001 10:38:10.00
SUBJECT:: Re: Judicial Nominations
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:a. morgan middlemas ( CN=a. morgan middlemas/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:lori l. lorenzi ( CN=lori l. lorenzi/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
```

CC:anne womack (CN=anne womack/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:lawrence a. fleischer (CN=lawrence a. fleischer/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:scott mcclellan (CN=scott mcclellan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:heather wingate (CN=heather wingate/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:james r. wilkinson (CN=james r. wilkinson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:matthew e. smith (CN=matthew e. smith/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:tim goeglein (CN=tim goeglein/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

No.

H. Christopher Bartolomucci
09/07/2001 09:49:19 AM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Judicial Nominations

Will we be announcing intent to nominate today?

Jason B. Torchinsky
09/07/2001 09:48:08 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judicial Nominations

Because the Senate is out of session until Monday, the judicial nominations intended to go up today (9/7) will go up on Monday (9/10) instead.

Message Sent
To:_____
Kyle Sampson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP

A. Morgan Middlemas/WHO/EOP@EOP
Lori L. Lorenzi/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Anne Womack/WHO/EOP@EOP
Lawrence A. Fleischer/WHO/EOP@EOP
Scott McClellan/WHO/EOP@EOP
Heather Wingate/WHO/EOP@EOP
James R. Wilkinson/WHO/EOP@EOP
Matthew E. Smith/WHO/EOP@EOP
Tim Goeglein/WHO/EOP@EOP

Message Copied
To:_____
kyle sampson/who/eop@eop
bradford a. berenson/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
rachel l. brand/who/eop@eop
helgard c. walker/who/eop@eop
laura l. flippin/who/eop@eop
alberto r. gonzales/who/eop@eop
timothy e. flanigan/who/eop@eop
allison l. riepenhoff/who/eop@eop
elizabeth n. camp/who/eop@eop
a. morgan middlemas/who/eop@eop
lori l. lorenzi/who/eop@eop
brent d. greenfield/who/eop@eop
anne womack/who/eop@eop
lawrence a. fleischer/who/eop@eop
scott mcclellan/who/eop@eop
heather wingate/who/eop@eop
james r. wilkinson/who/eop@eop
matthew e. smith/who/eop@eop
tim goeglein/who/eop@eop

From: CN=Barry S. Jackson/OU=WHO/O=EOP [WHO]
To: Senior Advisor Offices [UNKNOWN] <Senior Advisor Offices>
BCC: Albert Hawkins (Albert Hawkins/WHO/EOP [WHO]), Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO]), Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO]), Brian D. Montgomery (Brian D. Montgomery/WHO/EOP [WHO]), Chris Henick (Chris Henick/WHO/EOP [WHO]), Claire E. Buchan (Claire E. Buchan/WHO/EOP [WHO]), Clay Johnson III (Clay Johnson III/WHO/EOP [WHO]), David W. Hobbs (David W. Hobbs/WHO/EOP [WHO]), Don E. Eberly (Don E. Eberly/WHO/EOP [WHO]), Don R. Willett (Don R. Willett/WHO/EOP [WHO]), Dylan C. Glenn (Dylan C. Glenn/OPD/EOP [OPD]), Edward Ingle (Edward Ingle/WHO/EOP [WHO]), Edmund C. Moy (Edmund C. Moy/WHO/EOP [WHO]), Harriet Miers (Harriet Miers/WHO/EOP [WHO]), Hector F. Irastorza (Hector F. Irastorza/WHO/EOP [WHO]), Israel Hernandez (Israel Hernandez/WHO/EOP [WHO]), James R. Wilkinson (James R. Wilkinson/WHO/EOP [WHO]), Joseph W. Hagin (Joseph W. Hagin/WHO/EOP [WHO]), John M. Bridgeland (John M. Bridgeland/OPD/EOP [OPD]), Mary J. Matalin (Mary J. Matalin/OVP/EOP [OVP]), Matthew A. Schlapp (Matthew A. Schlapp/WHO/EOP [WHO]), Michael J. Gerson (Michael J. Gerson/WHO/EOP [WHO]), Robert W. Cobb (Robert W. Cobb/WHO/EOP [WHO]), Peter H. Wehner (Peter H. Wehner/WHO/EOP [WHO]), Tim Goeglein (Tim Goeglein/WHO/EOP [WHO]), Tucker A. Eskew (Tucker A. Eskew/WHO/EOP [WHO])
Sent: 9/7/2001 7:03:58 AM
Subject: : Remember:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Barry S. Jackson ( CN=Barry S. Jackson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-SEP-2001 11:03:58.00
SUBJECT:: Remember:
TO:Senior Advisor Offices ( Senior Advisor Offices [ UNKNOWN ] )
READ:UNKNOWN
BCC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Brian D. Montgomery ( CN=Brian D. Montgomery/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Chris Henick ( CN=Chris Henick/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Clay Johnson III ( CN=Clay Johnson III/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Don E. Eberly ( CN=Don E. Eberly/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Don R. Willett ( CN=Don R. Willett/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Dylan C. Glenn ( CN=Dylan C. Glenn/OU=OPD/O=EOP [ OPD ] )
READ:UNKNOWN
BCC:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Edmund C. Moy ( CN=Edmund C. Moy/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Harriet Miers ( CN=Harriet Miers/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Hector F. Irastorza ( CN=Hector F. Irastorza/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
```

BCC:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
BCC:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
BCC:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

David McCullough

Room 308, EEOB

Today, at 2:00pm.

From: CN=Abel Guerra/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>
Sent: 9/7/2001 1:08:33 PM
Subject: : Re: Sept 16 mexican Independence Day at the White House

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-SEP-2001 17:08:33.00
SUBJECT:: Re: Sept 16 mexican Independence Day at the White House
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

POTUS is speaking,

we do have several political types coming...

hispanic community leaders from across the country, some appointees, and some celbs will be in attendance.

ag

Brett M. Kavanaugh
09/07/2001 05:06:40 PM
Record Type: Record

To: Abel Guerra/WHO/EOP@EOP, Leonard B. Rodriguez/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP
bcc:
Subject: Re: Sept 16 mexican Independence Day at the White House

Conceptually, yes, the RNC can pay for this. A few questions:
Who is coming? If we have some political invitees, then that would be helpful if the political entity is paying. Also, is the President speaking?

Abel Guerra
09/05/2001 07:55:54 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Sept 16 mexican Independence Day at the White House

Brett,

It came out of our (WHO) general budget...but I was told to find an outside source for future events.(i.e. ---the RNC)

Abel

Brett M. Kavanaugh
09/04/2001 08:50:41 PM
Record Type: Record

To: Leonard B. Rodriguez/WHO/EOP@EOP
cc: Abel Guerra/WHO/EOP@EOP, Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Sept 16 mexican Independence Day at the White House

Tim assigned this to me. Initial question: How did we pay for Cinco de Mayo?

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 09/04/2001 08:49 PM ----------

Timothy E. Flanigan
09/04/2001 10:03:07 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP
cc:
Subject: Sept 16 mexican Independence Day at the White House

Brett,

Would you handle this?

Tim
---------- Forwarded by Timothy E. Flanigan/WHO/EOP on 09/04/2001 10:02 AM ----------

Leonard B. Rodriguez
08/29/2001 10:56:23 AM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP, Abel Guerra/WHO/EOP@EOP
Subject: Sept 16 mexican Independence Day at the White House

Karl is suggesting we hold our Mexican Independence Day celebration at the White House similar to the one we held for Cinco de Mayo. We will need to fund 10K for stage, entertainment and lighting. What are the legalities involved in either raising this money by donations or asking the RNC?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>
CC: leonard b. rodriguez/who/eop@eop [WHO] <leonard b. rodriguez>
Sent: 9/7/2001 1:14:38 PM
Subject: : Re: Sept 16 mexican Independence Day at the White House

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-SEP-2001 17:14:38.00
SUBJECT:: Re: Sept 16 mexican Independence Day at the White House
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:leonard b. rodriguez (CN=leonard b. rodriguez/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Good. You should go ahead and initiate the admin processes to
have the RNC pay; I believe Merrill Hughes and Anita McBride can help with
that.

Abel Guerra
09/07/2001 05:08:25 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Leonard B. Rodriguez/WHO/EOP@EOP
bcc:
Subject: Re: Sept 16 mexican Independence Day at the White House

POTUS is speaking,

we do have several political types coming...

hispanic community leaders from across the country, some appointees, and
some celbs will be in attendance.

ag

Brett M. Kavanaugh
09/07/2001 05:06:40 PM
Record Type: Record

To: Abel Guerra/WHO/EOP@EOP, Leonard B. Rodriguez/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP
bcc:
Subject: Re: Sept 16 mexican Independence Day at the White House

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speaking?

Abel Guerra
09/05/2001 07:55:54 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Sept 16 mexican Independence Day at the White House

Brett,

It came out of our (WHO) general budget...but I was told to find an outside source for future events.(i.e. ---the RNC)

Abel

Brett M. Kavanaugh
09/04/2001 08:50:41 PM
Record Type: Record

To: Leonard B. Rodriguez/WHO/EOP@EOP
cc: Abel Guerra/WHO/EOP@EOP, Kenneth B. Mehlman/WHO/EOP@EOP
Subject: Sept 16 mexican Independence Day at the White House

Tim assigned this to me. Initial question: How did we pay for Cinco de Mayo?

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 09/04/2001 08:49 PM ----------

Timothy E. Flanigan
09/04/2001 10:03:07 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP
cc:
Subject: Sept 16 mexican Independence Day at the White House

Brett,

Would you handle this?

Tim
---------- Forwarded by Timothy E. Flanigan/WHO/EOP on 09/04/2001 10:02 AM ----------

Leonard B. Rodriguez
08/29/2001 10:56:23 AM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: Kenneth B. Mehlman/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP, Abel Guerra/WHO/EOP@EOP
Subject: Sept 16 mexican Independence Day at the White House

Karl is suggesting we hold our Mexican Independence Day celebration at the White House similar to the one we held for Cinco de Mayo. We will need to

fund 10K for stage, entertainment and lighting. What are the legalities involved in either raising this money by donations or asking the RNC?

From: Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>
To: Adam Ciongoli <Adam.Ciongoli@usdoj.gov>;Dan Bryant <Dan.Bryant@usdoj.gov>;James Carroll <James.W.Carroll@usdoj.gov>;Jennifer Newstead <Jennifer.Newstead@usdoj.gov>;Kristen Ullman <Kristen.A.Ullman@usdoj.gov>;Linda Long <Linda.E.Long@usdoj.gov>;Lizette Benedi <Lizette.D.Benedi@usdoj.gov>;Lori Rabjohns <Lori.Rabjohns@usdoj.gov>;Lori SharpeDay <Lori.SharpeDay@usdoj.gov>;Mindy Tucker <Mindy.Tucker@usdoj.gov>;Neal Suit <Neal.Suit@usdoj.gov>;Patrick O'Brien <Patrick.O'Brien2@usdoj.gov>;Peter Coniglio <Peter.J.Coniglio@usdoj.gov>;Sheila Joy <Sheila.Joy@usdoj.gov>;Viet Dinh <Viet.Dinh@usdoj.gov>;Winnie Brinkley <Winnie.Brinkley@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
CC: Muhammad, Raushanah Q <Raushanah.Q.Muhammad@usdoj.gov>
Sent: 9/10/2001 5:44:28 AM
Subject: : Judicial Confirmation Working Group - Change in Meeting Time for Monday, September 10, 2001

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> ( "Brinkley, Winnie"
<Winnie.Brinkley@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:10-SEP-2001 09:44:28.00
SUBJECT:: Judicial Confirmation Working Group - Change in Meeting Time for Monday,
September 10, 2001
TO:Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM
```

Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
(Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [
UNKNOWN])
READ:UNKNOWN
TO:Patrick O'Brien <Patrick.O'Brien2@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) (Patrick O'Brien <Patrick.O'Brien2@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Peter Coniglio <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) (Peter Coniglio <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) (Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) [UNKNOWN])
READ:UNKNOWN
TO:Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
(Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [
UNKNOWN])
READ:UNKNOWN
TO:Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) (Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Muhammad, Raushanah Q" <Raushanah.Q.Muhammad@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) ("Muhammad, Raushanah Q"
<Raushanah.Q.Muhammad@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [
UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

We apologize for the short notice; however, due to a scheduling conflict
we need to move the Judicial Confirmation Working Group meeting up to 3pm
today. The meeting will be held in room 4646, Main Justice Bldg.

If you are unable to attend please let me know or send a designee. Again,
sorry for the short notice.

Winnie

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Philbin, Patrick <Patrick.Philbin@usdoj.gov>
Sent: 9/12/2001 8:22:49 AM
Subject: : Re: more relevant

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-SEP-2001 12:22:49.00
SUBJECT:: Re: more relevant
TO:"Philbin, Patrick" <Patrick.Philbin@usdoj.gov> ("Philbin, Patrick"
<Patrick.Philbin@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

The State reward provision looks like a $5 million max

"Philbin, Patrick" <Patrick.Philbin@usdoj.gov>
09/12/2001 12:06:50 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "Yoo, John C" <John.C.Yoo@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)
Subject: more relevant

Finally, I think this is the key.

Pub. L. 106-553, Dec. 21, 2000, 114 Stat. 2762 provided that
"Notwithstanding any other provision of law, not to exceed $10,000,000 of
the funds made available in this Act . . . may be used to extablish and
publicize a program under which publicly advertised, extraordinary rewards
may be paid, which shall not be subject to spending limiations contained
in sections 3059 and 3072 of title 18 . . . ." but any reward of $100,000
up to a max of $2 million may not be made w/o personal approval of AG or
POTUS (non- delegable).

Sorry for piecemeal e-mails. I'm still looking further.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
Sent: 9/12/2001 1:04:51 PM
Subject: : FAA Transponder Issue

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-SEP-2001 17:04:51.00
SUBJECT:: FAA Transponder Issue
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

What I've learned from the FAA is that transponders generally are turned
on only between take-off and landing and are turned off while an airplane
is on the ground. The option to turn the transponder off is needed
because at the airport while the planes are on the ground there are too
many planes in too small an area, and the signals sent out by the
transponders interfere with ground systems. Also, I'm told that in-flight
transponder malfunctions sometimes have to be addressed by turning the
transponder off and then back on again.
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 9/12/2001 2:30:49 PM
Subject: : Re: gov't planes

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-SEP-2001 18:30:49.00
SUBJECT:: Re: gov't planes
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

No one called this woman back. Would one of you please follow up? Since she's with FEMA, you'll probably only get her voice mail.

Robert W. Cobb
09/10/2001 02:25:37 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Courtney S. Elwood/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
Subject: gov't planes

call Virginia at FEMA at 646-2608. If this is not your issue, explain why not. I could take this over, but would like the background.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;robert w. cobb/who /eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>
Sent: 9/12/2001 3:03:41 PM
Subject: : Re: Faith-Based Memo from DOL

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-SEP-2001 19:03:41.00
SUBJECT:: Re: Faith-Based Memo from DOL
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I just left a message for him. I have been dealing with OLC on
this (as has Noel), although I know and knew nothing about this DOL memo.
I will check with Willett as well.

Rachel L. Brand 09/12/2001 06:53:20 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Faith-Based Memo from DOL

I have a feeling that this issue wasn't assigned to anyone over here,
because I got the same inquiry from Howard a couple weeks ago and sent out
a similar e-mail to everyone in this office, and obviously no one has
called Howard about it yet.

RLB

Helgard C. Walker
09/12/2001 06:41:37 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Stuart W. Bowen/WHO/EOP@EOP
Subject: Faith-Based Memo from DOL

The Solicitor's Office at DOL called to see what ever happened with the memo they sent over on the constitutionality of certain faith-based programs. They said Stuart was the original recipient. Could whoever is handling this now call Howard Radzley's assistant 202-693-5271. Thanks.

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
courtney s. elwood/who/eop@eop
brett m. kavanaugh/who/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
robert w. cobb/who/eop@eop
noel j. francisco/who/eop@eop
stuart w. bowen/who/eop@eop

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: elizabeth s. dougherty/opd/eop@eop [OPD] <elizabeth s. dougherty>;carlos e. bonilla/opd /eop@eop [OPD] <carlos e. bonilla>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 9/13/2001 11:14:06 AM
Subject: : Re: liability

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-SEP-2001 15:14:06.00
SUBJECT:: Re: liability
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:elizabeth s. dougherty (CN=elizabeth s. dougherty/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:carlos e. bonilla (CN=carlos e. bonilla/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Counsel's Office has a 3:30 staff meeting, so why don't we reschedule this for 4:30 in Brett's office?

Noel J. Francisco
09/13/2001 02:58:10 PM
Record Type: Record

To: Elizabeth S. Dougherty/OPD/EOP@EOP
cc: carlos e. bonilla/opd/eop@eop, brett m. kavanaugh/who/eop@eop, Courtney S. Elwood/WHO/EOP@EOP
bcc: Records Management@EOP
Subject: Re: liability

I am. If you want to discuss insurance issues, you should also invite Courtney.

Elizabeth S. Dougherty
09/13/2001 02:57:13 PM
Record Type: Record

To: Carlos E. Bonilla/OPD/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: liability

Hi Gentlemen

Are you all available to meet in Brett's office (128??) at 3:15 to discuss airline liability issues?

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 9/13/2001 10:29:33 AM
Subject: : Re: Counsel Meeting this afternoon - exact time TBD - around 5 or 6pm - will advise

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-SEP-2001 14:29:33.00
SUBJECT:: Re: Counsel Meeting this afternoon - exact time TBD - around 5 or 6pm - will
advise
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'm in a 4:30 meeting on our executive order. Please page me when you
know time and place.




Elizabeth N. Camp
09/13/2001 02:03:22 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
```

Subject: Counsel Meeting this afternoon - exact time TBD - around 5 or 6pm - will advise

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 9/13/2001 10:29:33 AM
Subject: : Re: Counsel Meeting this afternoon - exact time TBD - around 5 or 6pm - will advise

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-SEP-2001 14:29:33.00
SUBJECT:: Re: Counsel Meeting this afternoon - exact time TBD - around 5 or 6pm - will
advise
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:stuart w. bowen ( CN=stuart w. bowen/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'm in a 4:30 meeting on our executive order. Please page me when you
know time and place.




Elizabeth N. Camp
09/13/2001 02:03:22 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
```

Subject: Counsel Meeting this afternoon - exact time TBD - around 5 or 6pm - will advise

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 9/13/2001 11:07:06 AM
Subject: : Re: WH-Agency Coordination

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-SEP-2001 15:07:06.00
SUBJECT:: Re: WH-Agency Coordination
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If a legislative request involving one of your agencies comes up, Ingrid
Schroeder (53925) or Jim Jukes (53458) in the leg division of OMB are
contact points.
```

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/13/2001 2:54:11 PM
Subject: : Reports

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-SEP-2001 18:54:11.00
SUBJECT:: Reports
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

Here are the US Code required reports I found with this search: "terrorism w/50 report" (there's a possibility that there are more out there):

Jason

---

1. 10 usc 229 - DOD reports on terrorism preparedness
2. 10 usc 2011 - DOD report on counter terrorist training
3. 10 usc 2249a - report by POTUS to give financial assistance to countries that harbor terrorists
4. 22 usc 2349aa-7 - SecState report on anti-terrorism assistance to foreign countries
5. 22 usc 2349aa-9 - POTUS report when banning importation of goods or services from any country supporting terrorism
6. 22 usc 2371 - SecState terrorism country designation cannot be removed without report from POTUS
7. 22 usc 2551 - periodic reports to congress on international arms sales to countries that engage in supporting terrorism
8. 22 usc 2656f - SecState to send Speaker and Senate Foreign Relations Committee annual country report on terrorism
9. 22 usc 2656g - SecTreas and AG to send Congress annual report on terrorist assets in the US
10. 22 usc 2751 - SecDef study on DOD efforts to respond to terrorism
11. 22 usc 2753 - report by POTUS to Speaker and Senate Foreign Relations to continue arms sales to countries granting sanctuary to international terrorists
12. 22 usc 2780 - POTUS must submit report to Speaker and Senate Foreign Relations Committee to rescind prohibition on dealings with countries which support terrorism
13. 22 usc 3244 - report by POTUS on actiosn to combat international nuclear terrorism
14. 22 usc 7205 - quarterly and biennial reports on exports of commodities to countries supporting international terrorism
15. 42 usc 10603 - report on compensation of victims of terrorism
16. 46 usc app. 1802 - SecTrans report on terrorist threat to vessels and ports in the US
17. 46 USC app 1803 - SecTrans report on security at foreign ports on threats to passenger vessels
18. 49 usc 44938 - SecTrans report on transportation security
19. 50 usc 2405 - POTUS report to rescind terrorism related export restrictions

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 9/14/2001 11:43:47 AM
Subject: : Re: **Important Team Meeting**

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-SEP-2001 15:43:47.00
SUBJECT:: Re: **Important Team Meeting**
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

briefing memo on what?

Courtney S. Elwood
09/14/2001 03:42:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Bradford A. Berenson/WHO/EOP@EOP
Subject: **Important Team Meeting**

Have I been drummed out of the international team?
---------- Forwarded by Courtney S. Elwood/WHO/EOP on
09/14/2001 03:42 PM ----------

Bradford A. Berenson
09/14/2001 02:42:08 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP, H. Christopher
Bartolomucci/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP, Jason B.
Torchinsky/WHO/EOP@EOP
cc:
bcc:
Subject: **Important Team Meeting**

Some new issues have arisen, and there is talk of trying to provide a
briefing memo to Andy Card by Sunday evening. Please let me know if you
can attend a meeting in my office at 5:00 to discuss. Thanks.

Courtney S. Elwood
09/14/2001 02:16:13 PM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP, Alberto R.
Gonzales/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: OLC Assignments

Tim,

I understand that you asked OLC (John Yoo) to look at the two issues that you asked me to address: insurance coverage and forbearance on payments. I coincidentally called John to discuss one of the two issues, and he said that you had already spoken with him. We are coordinating our efforts.

John mentioned that it is useful for him to know who in the Counsel's Office is working on a matter, so that he knows to whom to talk for further information and to whom to send any final product.

So if anyone is working on a legal question, you might touch base with John Yoo to see who at OLC is addressing the question.

--Courtney

Message Copied
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 9/14/2001 11:53:26 AM
Subject: : Auto-pen question

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-SEP-2001 15:53:26.00
SUBJECT:: Auto-pen question
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There is no need for an auto-pen for the President's signature, as
opposed to Harriet's signing for him, in light of principles articulated
in long-standing OLC opinions. As such, the auto-pen operator is not
essential personnel.
```

From: CN=James J. Jukes/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/15/2001 6:50:08 AM
Subject: : Bill Received

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:15-SEP-2001 10:50:08.00
SUBJECT:: Bill Received
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached is FYI. If you have any news on timing or on status of signing statement, I'd appreciate hearing from you. Justice is asking me when they will see a draft of the signing statement. (I am covering this today for John Burnim and Mike Garcia.)
---------- Forwarded by James J. Jukes/OMB/EOP on 09/15/2001 10:48 AM ----------

Sherman A. Williams
09/15/2001 10:43 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Bill Received

On Saturday, September 15th, 2001, the White House has received:

S.J.Res. 23 - Authorization for Use of Military Force

Last Day for the President's Action - 9/27/2001

Message Sent
To:_____
Dianne M. Wells/OMB/EOP@EOP
Julia E. Yuille/OMB/EOP@EOP
David E. Kalbaugh/WHO/EOP@EOP
G. Timothy Saunders/WHO/EOP@EOP
William W. McCathran/WHO/EOP@EOP
Edwin R. Thomas III/WHO/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Nancy J. Duykers/OMB/EOP@EOP
Carolyn E. Cleveland/WHO/EOP@EOP
Wanda M. Evans/WHO/EOP@EOP
Harriet Miers/WHO/EOP@EOP
Nicholas E. Calio/WHO/EOP@EOP
Virginia T. Gregory/WHO/EOP@EOP
Rachael L. Sunbarger/WHO/EOP@EOP
Scott Jeffcoat/WHO/EOP@EOP
Delphine C. Motley/OMB/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Anne Womack/WHO/EOP@EOP
Nancy S. Ridenour/OMB/EOP@EOP
Elizabeth M. Robinson/OMB/EOP@EOP
Elizabeth L. Rossman/OMB/EOP@EOP
Ardy D. Scott/OMB/EOP@EOP

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 9/15/2001 6:55:50 AM
Subject: : Re: Please let me know when you get in. Thanks.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-SEP-2001 10:55:50.00
SUBJECT:: Re: Please let me know when you get in. Thanks.
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm in.

Allison L. Riepenhoff
09/15/2001 09:59:24 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Please let me know when you get in. Thanks.

Message Sent
To:_____
Rachel Brand
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 9/15/2001 10:56:16 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-SEP-2001 14:56:16.00
SUBJECT::
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI: I have not received the new version of the signing statement
yet
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: James J. Jukes/OMB/EOP [OMB] <James J. Jukes>
Sent: 9/16/2001 7:39:36 AM
Subject: RECEIVED: Revised draft signing statement for S.J.Res.23 - Use of Force Resolution

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-SEP-2001 11:39:36.00
SUBJECT:RECEIVED: Revised draft signing statement for S.J.Res.23 - Use of Force Resolution
TO:James J. Jukes ( CN=James J. Jukes/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

RETURN RECEIPT

Your Document:
Revised draft signing statement for S.J.Res.23 - Use of Force Resolution
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
09/16/2001 11:39:21 AM
```

From: CN=Harriet Miers/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/16/2001 8:23:33 AM
Subject: : Re: Draft signing statement for S.J.Res. 23

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Harriet Miers ( CN=Harriet Miers/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-SEP-2001 12:23:33.00
SUBJECT:: Re: Draft signing statement for S.J.Res. 23
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thanks so much. Do you think that the current draft will change very
much?
```

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 9/16/2001 8:56:38 AM
Subject: : Re: Issue briefing memo for Andy Card

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-SEP-2001 12:56:38.00
SUBJECT:: Re: Issue briefing memo for Andy Card
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'm in the office, so please let me know if I can be of assistance to any
of you.
```

From: Sutton, Jason <Jason.J.Sutton@usdoj.gov>
To: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Coniglio, Peter <Peter.Coniglio@usdoj.gov>;Carroll, James W (OLP) <James.W.Carroll@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;O'Brien, Patrick <Patrick.O'Brien2@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;'Matthew_E._Smith@who.gov' <Matthew_E._Smith@who.gov>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 9/17/2001 5:01:54 AM
Subject: : 9/17 4:00 pm Jud. Conf. Working Group cancelled

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Sutton, Jason" <Jason.J.Sutton@usdoj.gov> ("Sutton, Jason" <Jason.J.Sutton@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:17-SEP-2001 09:01:54.00
SUBJECT:: 9/17 4:00 pm Jud. Conf. Working Group cancelled
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Coniglio, Peter" <Peter.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Coniglio, Peter" <Peter.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"O'Brien, Patrick" <Patrick.O'Brien2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("O'Brien, Patrick" <Patrick.O'Brien2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return

Requested) ("Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"'Matthew_E._Smith@who.gov'" <Matthew_E._Smith@who.gov> (Receipt Notification Requested) (IPM Return Requested) ("'Matthew_E._Smith@who.gov'" <Matthew_E._Smith@who.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From: Thomas, Ginni <ginni.thomas@heritage.org>

To: Alan Gilbert <alan.gilbert@hhs.gov>;Andrew Marshall <marshala@mail.policy.osd.mil>;Andrew McKenna <Andrew.J.McKenna@usda.gov>;Angela Antonelli <angela_m._antonelli@hud.gov>;Ann Combs <combs-ann@dol.gov>;Ann Ilten <ilten-ann@dol.gov>;Anthony Principi <charles.yoder@mail.va.gov>;April Lehman <april.lehman@do.treas.gov>;Autumn VandeHei <Autumn.VandeHei@hhs.gov>;Bennett Raley <bennett_raley@ios.doi.gov>;Bill Hansen <william.hansen@ed.gov>;Bill Hawks <bill.hawks@usda.gov>;Bill Lucia <bill.Lucia@ed.gov>;Bob Bostock <Bostock.Bob@epamail.epa.gov>;Bob Wood <robert.wood@hhs.gov>;Bobby Jindal <bjindal@osaspe.dhhs.gov>;Brenda Becker <bbecker@doc.gov>;Brian Jackson <BrianAllanJackson@yahoo.com>;Brian Jones <brian.jones@ed.gov>;Brian Roseboro <brian.roseboro@do.treas.gov>;Brian Waidmann <brian.waidmann@os.doi.gov>;Bruce Mehlman <Bruce.Mehlman@ta.doc.gov>;Cameron Findlay <findlay-cameron@dol.gov>;Carl Esbeck <carl.esbeck@usdoj.gov>;Cathy Martin <CMartin@doc.gov>;Cheri Nolan <CNolan9947@aol.com>;Chris Bowlin <bowlin-christopher@dol.gov>;Chris Spear <spear-chris@dol.gov>;Christina Rocca <RoccaCB@state.gov>;Claude \"Mic\" Kicklighter <MIC_BET_KICKLIGHTER@msn.com>;Dale Moore <dwm@usda.gov>;Dan Brouillette <dan.brouillette@hq.doe.gov>;Dan Bryant <dan.bryant@usdoj.gov>;Dan Levinson <daniel.levinson@gsa.gov>;Dan McCardell <dan.mccardell@do.treas.gov>;Dan Nichols <nicholsda@state.gov>;Dan Schneider <schneider-daniel@dol.gov>;Dan Sullivan <daniel_j._sullivan@hud.gov>;Dave Boyer <dave.boyer@hhs.gov>;Dave Lauriski <lauriski-david@msha.gov>;David Aufhauser <david.aufhauser@do.treas.gov>;David Israelite <David.Israelite@usdoj.gov>;David Weintraub <dweintraub@doc.gov>;Dennis Teti <dennis.E.teti@hud.gov>;Dina Ellis <dina.ellis@do.treas.gov>;Don Trigg <DTrigg@doc.gov>;Donald Burnham Ensenat <ensenatdb@state.gov>;Donald Evans <DEvans@doc.gov>;Doug Faulkner <doug.faulkner@hq.doe.gov>;Douglas Feith <dfeith@mail.policy.osd.mil>;Ed Fox <edfox@usaid.gov>;Elizabeth Seale <eseale@osaspe.dhhs.gov>;Eric Bost <eric.bost@usda.gov>;Eric Ruff <eric_ruff@ios.doi.gov>;Erica Yamat <erica.yamat@hhs.gov>;Erik Lokkesmoe <lokkesmoe-erik@dol.gov>;Eugene Hickok <gene.hickok@ed.gov>;Eugene Scalia <scalia-eugene@dol.gov>;Ev Chasen <ev.chasen@mail.va.gov>;Faryar Shirzad <faryar_shirzad@ita.doc.gov>;Frederico Juarbe, Jr. <juarbe-fred@dol.gov>;Gale Arden <garden@hcfa.gov>;Gale Norton <exsec@ios.doi.gov>;George Tracey Mehan III <mehan.gtracy@epa.gov>;Gordon Mansfield <gordon.mansfield@mail.va.gov>;Grant Green <greengs@state.gov>;Greg Hampton <greg.hampton@hhs.gov>;Harold Heilsnis <harold.heilsnis@osd.mil>;Hew Pate <hew.pate@usdoj.gov>;J. David Bethel <DBethel@doc.gov>;Jacob Lozada <jacob.lozada@mail.va.gov>;James Andrew Kelly <silvama@state.gov>;James Jochum <JJOCHUM@bxa.doc.gov>;Jamie Burke <jamie_burke@ed.gov>;Janet Hale <janet.hale@hhs.gov>;Jeanne Lopatto <jeanne.lopatto@hq.doe.gov>;Jeff Salmon <jeffrey.salmon@hq.doe.gov>;Jennifer Newstead <jennifer.newstead@usdoj.gov>;Jessica Gavora <jessica.gavora@doj.gov>;Jim Dyke <JDyke@doc.gov>;Jim Moore <jim.moore@mail.va.gov>;Jim O'Neil <james.o'neill@ed.gov>;Jimmy Gurule <jimmy.gurule@do.treas.gov>;Joe Engelhard <Joe.Engelhard@do.treas.gov>;John Bolton <j.bolton@state.gov>;John Charles Weicher <john_c._weicher@hud.gov>;John Duncan <john.duncan@do.treas.gov>;John Henshaw <Henshaw-John@dol.gov>;John Oxford <john.oxford@hhs.gov>;John Taylor <john.taylor@do.treas.gov>;Joseph Jen <joseph.jen@usda.gov>;Kevin Keane <kevin.keane@hhs.gov>;Kevin Kolevar <kevin.kolevar@hq.doe.gov>;Kris Ardizzone Ullman <Kristen.A.Ullman@usdoj.gov>;Kristine Iverson <iverson-kristine@dol.gov>;Kyle McSlarrow <Kyle.McSlarrow@hq.doe.gov>;Laurie Fenton <LFenton@doc.gov>;Leo MacKay, Jr. <leo.mackay@mail.va.gov>;Lindsey Kozberg <lindsey_kozberg@ed.gov>;Lori Forman <lforman@usaid.gov>;Lori Jones <LJones@osec.doc.gov>;Lorne Craner <cranerlw@state.gov>;Marc Katz <katz-marc@dol.gov>;Margaret Wilson <MWilson@doc.gov>;Maria Cino <Maria.Cino@mail.doc.gov>;Mark Pfeifle <mark_pfeifle@ios.doi.gov>;Mark Weinberger <Mark.Weinberger@do.treas.gov>;Mary Crawford <mcrawford@osec.doc.gov>;Mary Diamond <mdiamond@doc.gov>;Mary Kay Mantho <carrie.loy@hhs.gov>;Mary Ryan <glazerossjd2@state.gov>;Matthew Becker <becker-matthew@dol.gov>;Maureen Cragin <maureen.cragin@mail.va.gov>;Max Schulz <Max.Schulz@hq.doe.gov>;Mel Martinez <terry_s._couch@hud.gov>;Michael Dominguez <Michael.Dominguez@pentagon.af.mil>;Michele Davis <Michele.Davis@do.treas.gov>;Michelle Larson <larson-michelle@dol.gov>;Mindy Tucker <mindy.tucker@usdoj.gov>;Nancy Segerdahl

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<Dirksen Lehman>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Elizabeth Gianini <EGIANINI@ustr.gov>;Eric H. Otto/OPD/EOP@EOP [OPD] <Eric H. Otto>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;Garrett D. Soden/OPD/EOP@EOP [OPD] <Garrett D. Soden>;Gregory Goss/WHO /EOP@EOP [WHO] <Gregory Goss>;Harry W. Wolff/WHO/EOP@EOP [WHO] <Harry W. Wolff>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Israel Hernandez/WHO /EOP@EOP [WHO] <Israel Hernandez>;John W. Howard/WHO/EOP@EOP [WHO] <John W. Howard>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Jendayi E. Frazer/NSC /EOP@EOP [NSC] <Jendayi E. Frazer>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;James E. Carter/OPD/EOP@EOP [OPD] <James E. Carter>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;John M. Ackerly/OPD/EOP@EOP [OPD] <John M. Ackerly>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;John D. Estes/WHO/EOP@EOP [WHO] <John D. Estes>;John D. Gibson/NSC/EOP@EOP [NSC] <John D. Gibson>;John Graham/OMB/EOP@EOP [OMB] <John Graham>;John Veroneau <jveroneau@ustr.gov>;Jonathan W. Burks/OVP/EOP@EOP [OVP] <Jonathan W. Burks>;Josette Shiner <jshiner@ustr.gov>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Judson L. Jaffe/CEA/EOP@EOP [CEA] <Judson L. Jaffe>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Kristine Simmons/OPD/EOP@EOP [OPD] <Kristine Simmons>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Jennifer H. Mayfield/OVP /EOP@EOP [OVP] <Jennifer H. Mayfield>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Lisa T. Cummins/WHO/EOP@EOP [UNKNOWN] <Lisa T. Cummins>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Margita N. Thompson/OVP/EOP@EOP [OVP] <Margita N. Thompson>;Francine P. Obermiller/CEA /EOP@EOP [CEA] <Francine P. Obermiller>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Mark Scott <Mark_V._Scott@oa.eop.gov>;Mary M. Rose/WHO/EOP@EOP [WHO] <Mary M. Rose>;Matthew Rees <mrees@ustr.gov>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Mercedes M. Viana/WHO/EOP@EOP [WHO] <Mercedes M. Viana>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael Shannon>;Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H. Tennery>;Michelle N. Brawer/WHO/EOP@EOP [WHO] <Michelle N. Brawer>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Nicholas E. Calio/WHO /EOP@EOP [WHO] <Nicholas E. Calio>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Nina Rees/OVP/EOP@EOP [OVP] <Nina Rees>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Paul B. Dyck/WHO/EOP@EOP [WHO] <Paul B. Dyck>;Peter H. Wehner/WHO /EOP@EOP [WHO] <Peter H. Wehner>;Peter M. Feather/CEA/EOP@EOP [CEA] <Peter M. Feather>;K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Ronald I. Christie/OVP/EOP@EOP [OVP] <Ronald I. Christie>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>;Sarah E. Youssef/OPD/EOP@EOP [OPD] <Sarah E. Youssef>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Stephen S. Ruhlen/OVP/EOP@EOP [OVP] <Stephen S. Ruhlen>;Stephen J. Yates/OVP/EOP@EOP [OVP] <Stephen J. Yates>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Terry C. Miller/WHO /EOP@EOP [WHO] <Terry C. Miller>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>

Sent: 9/17/2001 7:55:48 AM

Subject: : Heritage Publications, Upcoming Events, and Expected Publications- weekly update

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<ginni.thomas@heritage.org> [ UNKNOWN ] )
CREATION DATE/TIME:17-SEP-2001 11:55:48.00
SUBJECT:: Heritage Publications, Upcoming Events, and Expected Publications - weekly update
TO:Alan Gilbert <alan.gilbert@hhs.gov> ( Alan Gilbert <alan.gilbert@hhs.gov> [ UNKNOWN ] )
READ:UNKNOWN
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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Our prayers and support are heightened for each of you in the Bush Administration. It is my perrsonal belief that God has you here for a reason
and to paraphrase Churchill, "It was as if your whole life is mere

preparation for this moment." Heritage can and will help as much as you
all
allow us to -- please feel free to call us as our web site is experiencing
overwhelming numbers of hits. Warmly, Ginni

Upcoming Events

The National Security Crisis Featuring The Honorable Bob Livingston
Thursday, September 20, 2001 11:00 AM
<<Zakheim.doc>>
The Price of Security: The Bush Administartion's Case for Increasing
Defense
Spending Featuring The Honorable Dov Zakheim, Under Secretary of Defense
(Comptroller) and CFO, U.S. Department of Defense
Monday, September 24, 2001 10:00 AM
<<UN-Kirkpatrick.doc>>
In Tenuous Accord: Assessing the United States' Relationship with the
United
Nations Featuring The Honorable Jeane Kirkpatrick. Monday, September 24,
2001 2:00 PM
<<US-Russia-China.doc>>
The Delicate Trio: The U.S./Russia/China Power Balance
Tuesday, September 25, 2001 10:00 AM
<<Sudan.doc>>
The Forgotten War: Can the United States bring an end to the Crisis in
Sudan?
Tuesday, September 18, 2001 12:00 PM
<<Livingston Flyer.doc>>

The Terrorist Attack on America

Facts and Figures about Terrorism, by the CDA:
http://www.heritage.org/shorts/20010914terror.htm

The Terrorist Attack on America: Implications for Foreign Policy
http://www.heritage.org/library/execmemo/em775.html

A History of Bin Laden, the Taliban, and U.S. Policy toward Afghanistan
(July, 2000)
http://www.heritage.org/library/backgrounder/bg1383es.html

"Declare War"
http://www.heritage.org/views/2001/ejf01-21.html

"More than a 'Warning Shot'"
http://www.heritage.org/views/2001/ed091201.html

At Issue: The Aftermath of the Terrorist Attacks on U.S.
http://www.heritage.org/shorts/20010912talkingpoints.html

Foreign Policy

How to Increase Transparency at the International Financial Institutions
http://www.heritage.org/library/execmemo/em774.html

Nicaraguan Elections Demand More Effective U.S. Support
http://www.heritage.org/library/backgrounder/bg1472.html

Needed: A Strong Response to Beijing's Boycott of Foreign Businesses
Dealing
with Taiwan
http://www.heritage.org/library/execmemo/em773.html

Slamming the Brakes on Mexican Trucks
http://www.heritage.org/views/2001/ejf01-20.html

Setting the Tone for America's Relationship with the United Nations

http://www.heritage.org/library/execmemo/em772.html

How the Bush Administration Should Handle China and South China Sea Maritime
Territorial Disputes
http://www.heritage.org/library/backgrounder/bg1470.html

Domestic Policy

Dust off that Veto Pen
http://www.heritage.org/views/2001/ed090501.html

The New Kolbe-Stenholm Plan: A Solid Framework for Reforming Social Security
http://www.heritage.org/library/backgrounder/bg1471.html

Publications Expected This Week

Uprooting Bin Laden's Terrorist Network, 9/18

U.S. Needs No Approval From the UN to Fight Its War with Terrorism, 9/20

U.S.-Russian Anti-Terrorism Cooperation, 9/20

Why the Terrorist Attack Makes the Case for Missile Defense, 9/19

How Members of Congress Practice School Choice, 9/18

How Congress Can Help the Uninsured Get Healthcare Coverage, 9/18

Virginia (Ginni) Thomas, Director
Executive Branch Relations, The Heritage Foundation
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phone: (202) 608-6240 or 546-4400
fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org

- Livingston Flyer.doc - Zakheim.doc - UN-Kirkpatrick.doc - US-Russia-China.doc - Sudan.doc - Livingston Flyer.doc
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE NATIONAL SECURITY CRISIS

Featuring

THE HONORABLE BOB LIVINGSTON

Former Chairman of the House Appropriations Committee

HOSTED BY:

MIKE FRANC

Vice President, Government Relations, The Heritage Foundation

In early August, The Heritage Foundation asked Chairman Livingston to share his thoughts on the coming crisis in U.S. defense spending. In the light of last Tuesday's tragic events it has become clear that the real crisis is not just one of dollars, but of how those dollars are spent. If America's armed forces are going to both eradicate the terrorists who perpetrated last week's violent acts, and at the same time ensure the safety of the nation, there must be a comprehensive reconfiguration of the military's offensive and defensive capabilities. Please join us this Thursday as we examine the budgetary and strategic implications the devastation of September 11, 2001 will have on our country's military.

THURSDAY, SEPTEMBER 20, 2001
11:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
214 MASSACHUSETTS AVENUE, NE
PLEASE RSVP TO (202) 675-1752
OR SEND YOUR EMAIL TO lectures.seminars@heritage.org
www.heritage.org

The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE PRICE OF SECURITY:
THE BUSH ADMINISTRATION'S CASE FOR INCREASING DEFENSE SPENDING

FEATURING:

DOV ZAKHEIM

Under Secretary of Defense (Comptroller) and
Chief Financial Officer for the Department of Defense

HOSTED BY:

KIM HOLMES

Vice President and Director, Kathryn and Shelby Cullom Davis
Institute for International Studies

Ten years after the end of the Cold War, the U.S. military is in a condition that eerily resembles its condition in 1980. It suffers from underfunding and low morale, with years of fiscal neglect resulting in aging equipment and substandard living conditions for personnel. Hoping to reverse these dangerous trends, Congress approved a $14 billion increase in defense spending for FY 2002. The Pentagon and the Bush White House, however, assert that $14 billion can't even come close to meeting the overwhelming needs of the U.S. military. Just to stop the decline of the U.S. armed forces the Administration has requested an additional $18 billion in defense spending, bringing the total increase to $32 billion. In the wake of the shrinking budget surplus will Congress agree to the Administration's request? Please join us on September 24, as Undersecretary of Defense Dov Zakheim argues the Administration's case.

MONDAY, SEPTEMBER 24, 2001
10:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
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YOU ARE CORDIALLY INVITED TO A LECTURE

ON

IN TENUOUS ACCORD:

ASSESSING THE UNITED STATES' RELATIONSHIP WITH THE UNITED NATIONS

FEATURING:

HON. JEANE KIRKPATRICK
Former U.S. Ambassador to the United Nations

HOSTED BY:

DAN FISK
Deputy Director,
Kathryn and Shelby Cullom Davis Institute for International Studies,
The Heritage Foundation

President Bush delivers his first address at the United Nations on September 24, during the 56th session of the General Assembly. His remarks will establish the framework for the Administration's involvement in the UN at a time of turbulence in the US-UN relationship. To offer insights and perspectives on how the United States can effectively promote its interests in the UN system, we are pleased to present the Honorable Jeane Kirkpatrick, the U.S. Ambassador to the United Nations during the Reagan Administration, on September 24. Please join us for this timely discussion with Ambassador Kirkpatrick - the US Ambassador who took the "kick me" sign off the United States during another troubled time in the US-UN relationship.

MONDAY, SEPTEMBER 24, 2001
2:00 PM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
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YOU ARE CORDIALLY INVITED TO A PANEL DISCUSSION

ON

THE DELICATE TRIO:
THE U.S./RUSSIA/CHINA POWER BALANCE

Panel One: Sino-Russian Relations

JOHN TKACIK
Research Fellow in China Policy, The Heritage Foundation

KEVIN NEALOR
Principle & Partner, The Scowcroft Group

DR. ROBERT SUTTER
Visiting Professor in the School of Foreign Service, Georgetown University, former National Intelligence Officer for East Asia and the Pacific, US Government's National Intelligence Council.

Panel Two: U.S.-Russian

KIM HOLMES
Vice President and Director, Kathryn and Shelby Cullom Davis Institute for International Studies, The Heritage Foundation

COL. JEFFREY MCCAUSLAND
Former Director for Defense Policy and Arms Control, National Security Council

DR. STEPHEN BLANK
Douglas McArthur Professor of Research, Strategic Studies Institute, U.S. Army War College

HOSTED BY:

LARRY WORTZEL
Director, Asian Studies Center

On July 16 2001, the presidents of Russia and China signed the Treaty for Good Neighborliness, Friendship and Cooperation in Moscow. This treaty is the first such agreement between these two Eurasian powers since Mao Tse-tung signed a treaty with Joseph Stalin of the U.S.S.R. in 1950. Six days later, on July 22 2001 in Genoa, Italy, Russian President Vladimir Putin and U.S. President George Bush agreed that a U.S. missile defense could proceed, accompanied by large nuclear arms cuts by both nations. This announcement effectively meant the end of the Anti-Ballistic Missile Treaty. The signing of one treaty and the abrogation of the other should signal to the Western world that a major geopolitical shift may be taking place in the Eurasian balance of power, with serious implications for the United States and its alliances. Please join us on September 25th as we examine just what those implications may be.

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10:00 AM
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ON

THE FORGOTTEN WAR:

CAN THE UNITED STATES BRING AN END TO THE CRISIS IN SUDAN?

Featuring

FRANCIS BOL BOK
Escaped Sudanese Slave; Associate, American Anti-Slavery Group

ROGER ROBINSON
Chairman, William J. Casey Institute, Center for Security Policy

NINA SHEA
Director, Center for Religious Freedom, Freedom House

HOSTED BY:

JIM PHILLIPS
Research Fellow, The Heritage Foundation

Sudan's 18-year-old civil war has claimed the lives of more than 2 million people, displaced about 5 million people inside the country, and sent another half-million into exile. In recent years, Sudan's radical Islamic regime, dominated by Muslim Arabs from northern Sudan, has escalated the onslaught against an opposition coalition composed predominantly of black Christians and animists living in the south to genocidal proportions. It has resorted to systematic bombing of civilians, starvation, slavery, ethnic cleansing, religious persecution, and other human rights abuses to break the will of the opposition. Furthermore, the Sudanese dictatorship is on the State Department's list of state sponsors of terrorism and hosted Osama bin Laden, the prime suspect in the recent New York and Washington terrorist attacks, until 1996. What role can the United States play in stopping these atrocities and bringing a stable peace to Sudan?

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ON

THE NATIONAL SECURITY CRISIS

Featuring

THE HONORABLE BOB LIVINGSTON

Former Chairman of the House Appropriations Committee

HOSTED BY:

MIKE FRANC

Vice President, Government Relations, The Heritage Foundation

In early August, The Heritage Foundation asked Chairman Livingston to share his thoughts on the coming crisis in U.S. defense spending. In the light of last Tuesday's tragic events it has become clear that the real crisis is not just one of dollars, but of how those dollars are spent. If America's armed forces are going to both eradicate the terrorists who perpetrated last week's violent acts, and at the same time ensure the safety of the nation, there must be a comprehensive reconfiguration of the military's offensive and defensive capabilities. Please join us this Thursday as we examine the budgetary and strategic implications the devastation of September 11, 2001 will have on our country's military.

THURSDAY, SEPTEMBER 20, 2001
11:00 AM
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SUBJECT:: Heritage Publications, Upcoming Events, and Expected Publications - weekly update
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
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TO:Mark Scott <Mark_V._Scott@oa.eop.gov> (Mark Scott <Mark_V._Scott@oa.eop.gov> [UNKNOWN
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Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Our prayers and support are heightened for each of you in the Bush Administration. It is my perrsonal belief that God has you here for a reason
and to paraphrase Churchill, "It was as if your whole life is mere preparation for this moment." Heritage can and will help as much as you all
allow us to -- please feel free to call us as our web site is experiencing overwhelming numbers of hits. Warmly, Ginni

Upcoming Events

The National Security Crisis Featuring The Honorable Bob Livingston
Thursday, September 20, 2001 11:00 AM
<<Zakheim.doc>>
The Price of Security: The Bush Administartion's Case for Increasing Defense
Spending Featuring The Honorable Dov Zakheim, Under Secretary of Defense (Comptroller) and CFO, U.S. Department of Defense
Monday, September 24, 2001 10:00 AM
<<UN-Kirkpatrick.doc>>
In Tenuous Accord: Assessing the United States' Relationship with the United
Nations Featuring The Honorable Jeane Kirkpatrick. Monday, September 24, 2001 2:00 PM
<<US-Russia-China.doc>>
The Delicate Trio: The U.S./Russia/China Power Balance
Tuesday, September 25, 2001 10:00 AM
<<Sudan.doc>>
The Forgotten War: Can the United States bring an end to the Crisis in Sudan?
Tuesday, September 18, 2001 12:00 PM
<<Livingston Flyer.doc>>

The Terrorist Attack on America

Facts and Figures about Terrorism, by the CDA:
http://www.heritage.org/shorts/20010914terror.htm

The Terrorist Attack on America: Implications for Foreign Policy
http://www.heritage.org/library/execmemo/em775.html

A History of Bin Laden, the Taliban, and U.S. Policy toward Afghanistan (July, 2000)
http://www.heritage.org/library/backgrounder/bg1383es.html

"Declare War"
http://www.heritage.org/views/2001/ejf01-21.html

"More than a 'Warning Shot'"
http://www.heritage.org/views/2001/ed091201.html

At Issue: The Aftermath of the Terrorist Attacks on U.S.
http://www.heritage.org/shorts/20010912talkingpoints.html

Foreign Policy

How to Increase Transparency at the International Financial Institutions
http://www.heritage.org/library/execmemo/em774.html

Nicaraguan Elections Demand More Effective U.S. Support
http://www.heritage.org/library/backgrounder/bg1472.html

Needed: A Strong Response to Beijing's Boycott of Foreign Businesses Dealing
with Taiwan

http://www.heritage.org/library/execmemo/em773.html

Slamming the Brakes on Mexican Trucks
http://www.heritage.org/views/2001/ejf01-20.html

Setting the Tone for America's Relationship with the United Nations
http://www.heritage.org/library/execmemo/em772.html

How the Bush Administration Should Handle China and South China Sea
Maritime
Territorial Disputes
http://www.heritage.org/library/backgrounder/bg1470.html

Domestic Policy

Dust off that Veto Pen
http://www.heritage.org/views/2001/ed090501.html

The New Kolbe-Stenholm Plan: A Solid Framework for Reforming Social
Security
http://www.heritage.org/library/backgrounder/bg1471.html

Publications Expected This Week

Uprooting Bin Laden's Terrorist Network, 9/18

U.S. Needs No Approval From the UN to Fight Its War with Terrorism, 9/20

U.S.-Russian Anti-Terrorism Cooperation, 9/20

Why the Terrorist Attack Makes the Case for Missile Defense, 9/19

How Members of Congress Practice School Choice, 9/18

How Congress Can Help the Uninsured Get Healthcare Coverage, 9/18

Virginia (Ginni) Thomas, Director
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phone: (202) 608-6240 or 546-4400
fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org

- Livingston Flyer.doc - Zakheim.doc - UN-Kirkpatrick.doc - US-Russia-China.doc - Sudan.doc
- Livingston Flyer.doc
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE NATIONAL SECURITY CRISIS

Featuring

THE HONORABLE BOB LIVINGSTON

Former Chairman of the House Appropriations Committee

HOSTED BY:

MIKE FRANC

Vice President, Government Relations, The Heritage Foundation

In early August, The Heritage Foundation asked Chairman Livingston to share his thoughts on the coming crisis in U.S. defense spending. In the light of last Tuesday's tragic events it has become clear that the real crisis is not just one of dollars, but of how those dollars are spent. If America's armed forces are going to both eradicate the terrorists who perpetrated last week's violent acts, and at the same time ensure the safety of the nation, there must be a comprehensive reconfiguration of the military's offensive and defensive capabilities. Please join us this Thursday as we examine the budgetary and strategic implications the devastation of September 11, 2001 will have on our country's military.

THURSDAY, SEPTEMBER 20, 2001
11:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
214 MASSACHUSETTS AVENUE, NE
PLEASE RSVP TO (202) 675-1752
OR SEND YOUR EMAIL TO lectures.seminars@heritage.org
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE PRICE OF SECURITY:
THE BUSH ADMINISTRATION'S CASE FOR INCREASING DEFENSE SPENDING

FEATURING:

DOV ZAKHEIM

Under Secretary of Defense (Comptroller) and
Chief Financial Officer for the Department of Defense

HOSTED BY:

KIM HOLMES

Vice President and Director, Kathryn and Shelby Cullom Davis
Institute for International Studies

Ten years after the end of the Cold War, the U.S. military is in a condition that eerily resembles its condition in 1980. It suffers from underfunding and low morale, with years of fiscal neglect resulting in aging equipment and substandard living conditions for personnel. Hoping to reverse these dangerous trends, Congress approved a $14 billion increase in defense spending for FY 2002. The Pentagon and the Bush White House, however, assert that $14 billion can't even come close to meeting the overwhelming needs of the U.S. military. Just to stop the decline of the U.S. armed forces the Administration has requested an additional $18 billion in defense spending, bringing the total increase to $32 billion. In the wake of the shrinking budget surplus will Congress agree to the Administration's request? Please join us on September 24, as Undersecretary of Defense Dov Zakheim argues the Administration's case.

MONDAY, SEPTEMBER 24, 2001
10:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

IN TENUOUS ACCORD:

ASSESSING THE UNITED STATES' RELATIONSHIP WITH THE UNITED NATIONS

FEATURING:

HON. JEANE KIRKPATRICK

Former U.S. Ambassador to the United Nations

HOSTED BY:

DAN FISK

Deputy Director,
Kathryn and Shelby Cullom Davis Institute for International Studies,
The Heritage Foundation

President Bush delivers his first address at the United Nations on September 24, during the 56th session of the General Assembly. His remarks will establish the framework for the Administration's involvement in the UN at a time of turbulence in the US-UN relationship. To offer insights and perspectives on how the United States can effectively promote its interests in the UN system, we are pleased to present the Honorable Jeane Kirkpatrick, the U.S. Ambassador to the United Nations during the Reagan Administration, on September 24. Please join us for this timely discussion with Ambassador Kirkpatrick - the US Ambassador who took the "kick me" sign off the United States during another troubled time in the US-UN relationship.

MONDAY, SEPTEMBER 24, 2001
2:00 PM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
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YOU ARE CORDIALLY INVITED TO A PANEL DISCUSSION

ON

THE DELICATE TRIO:
THE U.S./RUSSIA/CHINA POWER BALANCE

Panel One: Sino-Russian Relations

JOHN TKACIK
Research Fellow in China Policy, The Heritage Foundation

KEVIN NEALOR
Principle & Partner, The Scowcroft Group

DR. ROBERT SUTTER
Visiting Professor in the School of Foreign Service, Georgetown University, former National Intelligence Officer for East Asia and the Pacific, US Government's National Intelligence Council.

Panel Two: U.S.-Russian

KIM HOLMES
Vice President and Director, Kathryn and Shelby Cullom Davis Institute for International Studies, The Heritage Foundation

COL. JEFFREY MCCAUSLAND
Former Director for Defense Policy and Arms Control, National Security Council

DR. STEPHEN BLANK
Douglas McArthur Professor of Research, Strategic Studies Institute, U.S. Army War College

HOSTED BY:

LARRY WORTZEL
Director, Asian Studies Center

On July 16 2001, the presidents of Russia and China signed the Treaty for Good Neighborliness, Friendship and Cooperation in Moscow. This treaty is the first such agreement between these two Eurasian powers since Mao Tse-tung signed a treaty with Joseph Stalin of the U.S.S.R. in 1950. Six days later, on July 22 2001 in Genoa, Italy, Russian President Vladimir Putin and U.S. President George Bush agreed that a U.S. missile defense could proceed, accompanied by large nuclear arms cuts by both nations. This announcement effectively meant the end of the Anti-Ballistic Missile Treaty. The signing of one treaty and the abrogation of the other should signal to the Western world that a major geopolitical shift may be taking place in the Eurasian balance of power, with serious implications for the United States and its alliances. Please join us on September 25th as we examine just what those implications may be.

TUESDAY, SEPTEMBER 25, 2001
10:00 AM
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A PANEL DISCUSSION

ON

THE FORGOTTEN WAR:

CAN THE UNITED STATES BRING AN END TO THE CRISIS IN SUDAN?

Featuring

FRANCIS BOL BOK
Escaped Sudanese Slave; Associate, American Anti-Slavery Group

ROGER ROBINSON
Chairman, William J. Casey Institute, Center for Security Policy

NINA SHEA
Director, Center for Religious Freedom, Freedom House

HOSTED BY:

JIM PHILLIPS
Research Fellow, The Heritage Foundation

Sudan's 18-year-old civil war has claimed the lives of more than 2 million people, displaced about 5 million people inside the country, and sent another half-million into exile. In recent years, Sudan's radical Islamic regime, dominated by Muslim Arabs from northern Sudan, has escalated the onslaught against an opposition coalition composed predominantly of black Christians and animists living in the south to genocidal proportions. It has resorted to systematic bombing of civilians, starvation, slavery, ethnic cleansing, religious persecution, and other human rights abuses to break the will of the opposition. Furthermore, the Sudanese dictatorship is on the State Department's list of state sponsors of terrorism and hosted Osama bin Laden, the prime suspect in the recent New York and Washington terrorist attacks, until 1996. What role can the United States play in stopping these atrocities and bringing a stable peace to Sudan?

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ON

THE NATIONAL SECURITY CRISIS

Featuring

THE HONORABLE BOB LIVINGSTON

Former Chairman of the House Appropriations Committee

HOSTED BY:

MIKE FRANC

Vice President, Government Relations, The Heritage Foundation

In early August, The Heritage Foundation asked Chairman Livingston to share his thoughts on the coming crisis in U.S. defense spending. In the light of last Tuesday's tragic events it has become clear that the real crisis is not just one of dollars, but of how those dollars are spent. If America's armed forces are going to both eradicate the terrorists who perpetrated last week's violent acts, and at the same time ensure the safety of the nation, there must be a comprehensive reconfiguration of the military's offensive and defensive capabilities. Please join us this Thursday as we examine the budgetary and strategic implications the devastation of September 11, 2001 will have on our country's military.

THURSDAY, SEPTEMBER 20, 2001
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TO:Brett S. Loper (CN=Brett S. Loper/OU=OMB/O=EOP@EOP [OMB])
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Our prayers and support are heightened for each of you in the Bush Administration. It is my perrsonal belief that God has you here for a reason
and to paraphrase Churchill, "It was as if your whole life is mere preparation for this moment." Heritage can and will help as much as you all
allow us to -- please feel free to call us as our web site is experiencing overwhelming numbers of hits. Warmly, Ginni

Upcoming Events

The National Security Crisis Featuring The Honorable Bob Livingston
Thursday, September 20, 2001 11:00 AM
<<Zakheim.doc>>
The Price of Security: The Bush Administartion's Case for Increasing Defense
Spending Featuring The Honorable Dov Zakheim, Under Secretary of Defense (Comptroller) and CFO, U.S. Department of Defense
Monday, September 24, 2001 10:00 AM
<<UN-Kirkpatrick.doc>>
In Tenuous Accord: Assessing the United States' Relationship with the United
Nations Featuring The Honorable Jeane Kirkpatrick. Monday, September 24, 2001 2:00 PM
<<US-Russia-China.doc>>
The Delicate Trio: The U.S./Russia/China Power Balance
Tuesday, September 25, 2001 10:00 AM
<<Sudan.doc>>
The Forgotten War: Can the United States bring an end to the Crisis in Sudan?
Tuesday, September 18, 2001 12:00 PM
<<Livingston Flyer.doc>>

The Terrorist Attack on America

Facts and Figures about Terrorism, by the CDA:
http://www.heritage.org/shorts/20010914terror.htm

The Terrorist Attack on America: Implications for Foreign Policy
http://www.heritage.org/library/execmemo/em775.html

A History of Bin Laden, the Taliban, and U.S. Policy toward Afghanistan (July, 2000)
http://www.heritage.org/library/backgrounder/bg1383es.html

"Declare War"
http://www.heritage.org/views/2001/ejf01-21.html

"More than a 'Warning Shot'"
http://www.heritage.org/views/2001/ed091201.html

At Issue: The Aftermath of the Terrorist Attacks on U.S.
http://www.heritage.org/shorts/20010912talkingpoints.html

Foreign Policy

How to Increase Transparency at the International Financial Institutions
http://www.heritage.org/library/execmemo/em774.html

Nicaraguan Elections Demand More Effective U.S. Support
http://www.heritage.org/library/backgrounder/bg1472.html

Needed: A Strong Response to Beijing's Boycott of Foreign Businesses

Dealing
with Taiwan
http://www.heritage.org/library/execmemo/em773.html

Slamming the Brakes on Mexican Trucks
http://www.heritage.org/views/2001/ejf01-20.html

Setting the Tone for America's Relationship with the United Nations
http://www.heritage.org/library/execmemo/em772.html

How the Bush Administration Should Handle China and South China Sea
Maritime
Territorial Disputes
http://www.heritage.org/library/backgrounder/bg1470.html

Domestic Policy

Dust off that Veto Pen
http://www.heritage.org/views/2001/ed090501.html

The New Kolbe-Stenholm Plan: A Solid Framework for Reforming Social
Security
http://www.heritage.org/library/backgrounder/bg1471.html

Publications Expected This Week

Uprooting Bin Laden's Terrorist Network, 9/18

U.S. Needs No Approval From the UN to Fight Its War with Terrorism, 9/20

U.S.-Russian Anti-Terrorism Cooperation, 9/20

Why the Terrorist Attack Makes the Case for Missile Defense, 9/19

How Members of Congress Practice School Choice, 9/18

How Congress Can Help the Uninsured Get Healthcare Coverage, 9/18

Virginia (Ginni) Thomas, Director
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fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org

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- Livingston Flyer.doc
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE NATIONAL SECURITY CRISIS

Featuring

THE HONORABLE BOB LIVINGSTON

Former Chairman of the House Appropriations Committee

HOSTED BY:

MIKE FRANC

Vice President, Government Relations, The Heritage Foundation

In early August, The Heritage Foundation asked Chairman Livingston to share his thoughts on the coming crisis in U.S. defense spending. In the light of last Tuesday's tragic events it has become clear that the real crisis is not just one of dollars, but of how those dollars are spent. If America's armed forces are going to both eradicate the terrorists who perpetrated last week's violent acts, and at the same time ensure the safety of the nation, there must be a comprehensive reconfiguration of the military's offensive and defensive capabilities. Please join us this Thursday as we examine the budgetary and strategic implications the devastation of September 11, 2001 will have on our country's military.

THURSDAY, SEPTEMBER 20, 2001
11:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
214 MASSACHUSETTS AVENUE, NE
PLEASE RSVP TO (202) 675-1752
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE PRICE OF SECURITY:
THE BUSH ADMINISTRATION'S CASE FOR INCREASING DEFENSE SPENDING

FEATURING:

DOV ZAKHEIM

Under Secretary of Defense (Comptroller) and
Chief Financial Officer for the Department of Defense

HOSTED BY:

KIM HOLMES

Vice President and Director, Kathryn and Shelby Cullom Davis
Institute for International Studies

Ten years after the end of the Cold War, the U.S. military is in a condition that eerily resembles its condition in 1980. It suffers from underfunding and low morale, with years of fiscal neglect resulting in aging equipment and substandard living conditions for personnel. Hoping to reverse these dangerous trends, Congress approved a $14 billion increase in defense spending for FY 2002. The Pentagon and the Bush White House, however, assert that $14 billion can't even come close to meeting the overwhelming needs of the U.S. military. Just to stop the decline of the U.S. armed forces the Administration has requested an additional $18 billion in defense spending, bringing the total increase to $32 billion. In the wake of the shrinking budget surplus will Congress agree to the Administration's request? Please join us on September 24, as Undersecretary of Defense Dov Zakheim argues the Administration's case.

MONDAY, SEPTEMBER 24, 2001
10:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

IN TENUOUS ACCORD:

ASSESSING THE UNITED STATES' RELATIONSHIP WITH THE UNITED NATIONS

FEATURING:

HON. JEANE KIRKPATRICK

Former U.S. Ambassador to the United Nations

HOSTED BY:

DAN FISK

Deputy Director,
Kathryn and Shelby Cullom Davis Institute for International Studies,
The Heritage Foundation

President Bush delivers his first address at the United Nations on September 24, during the 56th session of the General Assembly. His remarks will establish the framework for the Administration's involvement in the UN at a time of turbulence in the US-UN relationship. To offer insights and perspectives on how the United States can effectively promote its interests in the UN system, we are pleased to present the Honorable Jeane Kirkpatrick, the U.S. Ambassador to the United Nations during the Reagan Administration, on September 24. Please join us for this timely discussion with Ambassador Kirkpatrick - the US Ambassador who took the "kick me" sign off the United States during another troubled time in the US-UN relationship.

MONDAY, SEPTEMBER 24, 2001
2:00 PM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
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YOU ARE CORDIALLY INVITED TO A PANEL DISCUSSION

ON

THE DELICATE TRIO:
THE U.S./RUSSIA/CHINA POWER BALANCE

Panel One: Sino-Russian Relations

JOHN TKACIK
Research Fellow in China Policy, The Heritage Foundation

KEVIN NEALOR
Principle & Partner, The Scowcroft Group

DR. ROBERT SUTTER
Visiting Professor in the School of Foreign Service, Georgetown University, former National Intelligence Officer for East Asia and the Pacific, US Government's National Intelligence Council.

Panel Two: U.S.-Russian

KIM HOLMES
Vice President and Director, Kathryn and Shelby Cullom Davis Institute for International Studies, The Heritage Foundation

COL. JEFFREY MCCAUSLAND
Former Director for Defense Policy and Arms Control, National Security Council

DR. STEPHEN BLANK
Douglas McArthur Professor of Research, Strategic Studies Institute, U.S. Army War College

HOSTED BY:

LARRY WORTZEL
Director, Asian Studies Center

On July 16 2001, the presidents of Russia and China signed the Treaty for Good Neighborliness, Friendship and Cooperation in Moscow. This treaty is the first such agreement between these two Eurasian powers since Mao Tse-tung signed a treaty with Joseph Stalin of the U.S.S.R. in 1950. Six days later, on July 22 2001 in Genoa, Italy, Russian President Vladimir Putin and U.S. President George Bush agreed that a U.S. missile defense could proceed, accompanied by large nuclear arms cuts by both nations. This announcement effectively meant the end of the Anti-Ballistic Missile Treaty. The signing of one treaty and the abrogation of the other should signal to the Western world that a major geopolitical shift may be taking place in the Eurasian balance of power, with serious implications for the United States and its alliances. Please join us on September 25th as we examine just what those implications may be.

TUESDAY, SEPTEMBER 25, 2001
10:00 AM
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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A PANEL DISCUSSION

ON

THE FORGOTTEN WAR:

CAN THE UNITED STATES BRING AN END TO THE CRISIS IN SUDAN?

Featuring

FRANCIS BOL BOK
Escaped Sudanese Slave; Associate, American Anti-Slavery Group

ROGER ROBINSON
Chairman, William J. Casey Institute, Center for Security Policy

NINA SHEA
Director, Center for Religious Freedom, Freedom House

HOSTED BY:

JIM PHILLIPS
Research Fellow, The Heritage Foundation

Sudan's 18-year-old civil war has claimed the lives of more than 2 million people, displaced about 5 million people inside the country, and sent another half-million into exile. In recent years, Sudan's radical Islamic regime, dominated by Muslim Arabs from northern Sudan, has escalated the onslaught against an opposition coalition composed predominantly of black Christians and animists living in the south to genocidal proportions. It has resorted to systematic bombing of civilians, starvation, slavery, ethnic cleansing, religious persecution, and other human rights abuses to break the will of the opposition. Furthermore, the Sudanese dictatorship is on the State Department's list of state sponsors of terrorism and hosted Osama bin Laden, the prime suspect in the recent New York and Washington terrorist attacks, until 1996. What role can the United States play in stopping these atrocities and bringing a stable peace to Sudan?

TUESDAY, SEPTEMBER 18, 2001
12:00 PM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
214 MASSACHUSETTS AVENUE, NE
PLEASE RSVP TO (202) 675-1752

REV_00131954

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The Heritage Foundation

YOU ARE CORDIALLY INVITED TO A LECTURE

ON

THE NATIONAL SECURITY CRISIS

Featuring

THE HONORABLE BOB LIVINGSTON

Former Chairman of the House Appropriations Committee

HOSTED BY:

MIKE FRANC

Vice President, Government Relations, The Heritage Foundation

In early August, The Heritage Foundation asked Chairman Livingston to share his thoughts on the coming crisis in U.S. defense spending. In the light of last Tuesday's tragic events it has become clear that the real crisis is not just one of dollars, but of how those dollars are spent. If America's armed forces are going to both eradicate the terrorists who perpetrated last week's violent acts, and at the same time ensure the safety of the nation, there must be a comprehensive reconfiguration of the military's offensive and defensive capabilities. Please join us this Thursday as we examine the budgetary and strategic implications the devastation of September 11, 2001 will have on our country's military.

THURSDAY, SEPTEMBER 20, 2001
11:00 AM
THE HERITAGE FOUNDATION'S LEHRMAN AUDITORIUM
214 MASSACHUSETTS AVENUE, NE
PLEASE RSVP TO (202) 675-1752
OR SEND YOUR EMAIL TO lectures.seminars@heritage.org
www.heritage.org

From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>
Sent: 9/17/2001 12:49:03 PM
Subject: : Re: DOJ package

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-SEP-2001 16:49:03.00
SUBJECT:: Re: DOJ package
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:diana l. schacht (CN=diana l. schacht/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:joel d. kaplan (CN=joel d. kaplan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm available. HW

Kristen Silverberg
09/17/2001 04:38:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: DOJ package

Are you available to meet at 7:00pm in Room 211 to discuss the DOJ draft legislation? Judge Gonzales will chair a DCPC discussion on the legislation tomorrow morning at 10:30am. Can we try to reach internal consensus on a recommended approach tonight so that we can advise our principals before tomorrow's discussion?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Heather Wingate/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;heather wingate/who/eop@eop [WHO] <heather wingate>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>
Sent: 9/17/2001 1:54:02 PM
Subject: : Re: DOJ package

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-SEP-2001 17:54:02.00
SUBJECT:: Re: DOJ package
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:diana l. schacht (CN=diana l. schacht/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:heather wingate (CN=heather wingate/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:joel d. kaplan (CN=joel d. kaplan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Jay would like Sai to attend this meeting tonight on Jay's behalf. Let me know if you think that's a problem.

Kristen Silverberg
09/17/2001 04:38:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: DOJ package

Are you available to meet at 7:00pm in Room 211 to discuss the DOJ draft legislation? Judge Gonzales will chair a DCPC discussion on the legislation tomorrow morning at 10:30am. Can we try to reach internal consensus on a recommended approach tonight so that we can advise our principals before tomorrow's discussion?

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Heather Wingate/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/17/2001 11:53:52 AM
Subject: : Re: antiterrorism package -- some thoughts from Hill Judiciary committee

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-SEP-2001 15:53:52.00
SUBJECT:: Re: antiterrorism package -- some thoughts from Hill Judiciary committee
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Kristen Silverberg/WHO/EOP on 09/17/2001 03:53 PM ----------

Candida P. Wolff

09/17/2001 03:42:01 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: antiterrorism package -- some thoughts from Hill Judiciary committee

On Craig. He will likely be the one possible lead on opposition on the GOP side. Jade West thought that the members would take a wait and see attitude untill more details were available, but that at some point Members would oppose. She expressed concern that we would look opportunistic and hurt chances to get out of town quickly. Kyl included some language in the CJS bill on Thursday, which raised some problems with GOP members, but was taken by voice vote to avoid any confrontation.

Nickles. Stewart Verdery attended the meeting with Nickles. He believes Hatch, Kyl, McConnell and possibly Sessions will be supportive of moving a package and thinks we need to bring in Ashcroft to talk to Members and take on those that might be opposed by fingering them publicly. Craig is likely to be the opponent to provisions in this legislation. On the Dem. side, Stewart thought Leahy, Feingold would be opposed to some of the provisions, while Feinstien would support.
Message Copied
To:_____
nicholas e. calio/who/eop@eop
john w. howard/who/eop@eop
ziad s. ojakli/who/eop@eop
matthew kirk/who/eop@eop
christine ciccone/who/eop@eop
dirksen lehman/who/eop@eop
diana l. schacht/opd/eop@eop
kristen silverberg/who/eop@eop
robert marsh/who/eop@eop
Nancy P. Dorn/WHO/EOP@EOP

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 9/18/2001 6:00:08 AM
Subject: : Re: NEW INS Regulations

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-SEP-2001 10:00:08.00
SUBJECT:: Re: NEW INS Regulations
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Not I.




Courtney S. Elwood
09/18/2001 09:43:24 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: NEW INS Regulations

Did anyone from our office clear a set of new INS regulations yesterday?
They relate to detention.



Message Sent
To:_____
Robert W. Cobb/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
```

Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Allison L. Riepenhoff/WHO /EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/18/2001 7:14:14 AM
Subject: : Please

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-SEP-2001 11:14:14.00
SUBJECT:: Please
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

check with Tim and the Judge to see of they are hosting a meeting on
airline liability or insurance. Carlos Bonilla got wind of something. I
told him I was clueless but would check around.
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/18/2001 11:03:52 AM
Subject: : Memo for the President

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-SEP-2001 15:03:52.00
SUBJECT:: Memo for the President
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Kristen has asked that we prepare a memo from the Judge to the President
to be attached to his briefing memo on tomorrow's meeting on the DOJ
Legislation. She asked that it be short (no more than 2 pages) and
include a summary and highlight the key provisions and most likely
controversies. Brett and I will put something together. Kristen said it
can be "slipped" into the briefing tomorrow morning. We'll try to get you
a draft before going into our 7 o'clock meeting tonight.
```

From:	CN=Irene Kho/OU=OMB/O=EOP [OMB]
To:	viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>;gregory.m.jones @ usdoj.gov [UNKNOWN] <gregory.m.jones>
Sent:	9/18/2001 12:27:13 PM
Subject:	: LRM IKK101 - - JUSTICE Draft Bill on Mobilization Against Terrorim Act

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Irene Kho ( CN=Irene Kho/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:18-SEP-2001 16:27:13.00
SUBJECT:: LRM IKK101 - - JUSTICE Draft Bill on Mobilization Against Terrorim Act
TO:viet.dinh@usdoj.gov ( viet.dinh@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Richard E. Green ( CN=Richard E. Green/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:gregory.m.jones ( gregory.m.jones @ usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here is two of two comments from Glenn (OMB/OIRA)


Section 103 also redefines the scope of applicability for a pen register
and trap and trace device
by adding "or other dialing, routing, addressing, and signaling
information relevant to identifying
the source of a wire or electronic communication;".

The significant language is underlined above and would in effect allow the
collection of content
without a full wiretap court order. This is the very essence of the
Carnivore controversy.

Adding "electronic" means e-mail and other computer-based communications.
So, Pen/Traps are
no longer just telephone caller ID. They also become collectors of e-mail
header information which
includes the "to and from" and the subject, etc. Anything more than "to
and from" is content and
currently requires a probable cause court order v. the pen/trap's lesser
"relevant to an ongoing
investigation" standard.

To clear this provision, Justice should have to demonstrate an explicit
need. Their sectional
analysis speaks in terms of equalizing telephone and Internet
communications. They are not
equal. Caller ID on Internet comms includes content and they already have
ample authority to
get a probable cause court order for that.
```

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/19/2001 9:16:21 AM
Subject: : Update

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN]
)
CREATION DATE/TIME:19-SEP-2001 13:16:21.00
SUBJECT:: Update
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I realize that you must be overwhelmed with far more urgent and important matters, and will be for some time to come, and hope you are able to cope with it all.

However, I did want to check on whether you are likely to get back to the PRA EO issue any time soon, particularly in light of Chairman Horn's hearing currently scheduled for Oct. 5. If you think the issue will now be delayed for some time, then should you, or we, recommend that Horn postpone the hearing? (Otherwise, we will begin to work on draft testimony for the Archivist.)

We will do our best to minimize our burden on your time for the near future, but we will still need to clear special access openings through you in response to SDNY, Chairman Burton, and some DOJ litigation. (Brad and I have exchanged calls on a separate case.)

Please let me know if we can be of assistance on any matters. Thanks and good luck.

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/20/2001 3:28:25 AM
Subject: : Re: Update from our anti-terrorism meeting tonight

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-SEP-2001 07:28:25.00
SUBJECT:: Re: Update from our anti-terrorism meeting tonight
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I left shortly after sending that message. I checked your office, and no Brett. Now I know why. Let's talk this morning.

Brett M. Kavanaugh
09/19/2001 11:18:36 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Update from our anti-terrorism meeting tonight

where are you; I just got back from Hill

Courtney S. Elwood
09/19/2001 11:13:59 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Timothy E. Flanigan/WHO/EOP@EOP
Subject: Update from our anti-terrorism meeting tonight

FYI
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 09/19/2001 11:13 PM ----------

Heather Wingate
09/19/2001 09:52:15 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Robert Marsh/WHO/EOP@EOP, Candida P. Wolff/OVP/EOP@EOP, Nancy P. Dorn/WHO/EOP@EOP, Kristen Silverberg/WHO/EOP@EOP
Subject: Update from our anti-terrorism meeting tonight

We met with bi-cam Judiciary Committee Republican staff (Sensenbrenner and Hatch's folks) and Senate Republican Staff (Stewart Verdery and Sharon Soderstrom) tonight re: proceeding on anti-terrorism package. Other participants included: WH Counsel, OMB, WH Domestic Policy, WH Leg, DOJ Leg and VP Leg.

Here's a summary of how we agreed to proceed, as well as some issues that were discussed:

Dan Bryant made the point that Leahy's principals (he hasn't provided us with legislative language) include a lot of surveillance provisions that are in our package, or provisions that were in our original package that we could add back in, giving Leahy credit. However, we can't support Leahy's provisions title "Strengthening Our Domestic Security Against Terrorist Acts" because we don't have time right now to be dealing with organizational/restructuring initiatives in the FBI -- we need to be focusing on the current investigation. We want a narrow/targeted package.

Biden may want to "strengthen" our package by adding back in some of the provisions that we dropped in our internal package. May be a good way to get his buy in and active support.

***The President needs to make clear in his speech tomorrow night that he wants to move this package quickly! This will be the best way to put the pressure on Leahy as well as Armey.

Sensenbrenner's staff says Sensenbrenner is committed to building bi-partisan support for this bill and moving very quickly: They are planning on a Monday hearing next week and a Tuesday markup (tentative). We have a short week next week, so no chance for House floor action, but it could then be ready for floor action the week after next. This fast movement in the House will keep positive pressure on Leahy.

Leahy is scheduled to have a hearing on Tuesday. Ashcroft will testify according to DoJ.

A House briefing is set up for relevant House staff tomorrow at 1:30am. It's a bi-partisan briefing.

We will also hold a Senate relevant committee staff, bi-partisan, briefing tomorrow. Tentative time is 4:00pm.

Separately, we will meet with Leahy's staff and Daschle's staff, prior to the broader bi-part briefing. With Leahy, our message is "what can't you live with in our package"; with Daschle our message is "we may need your help moving this if Leahy drags his feet; be assured we will do everything we can to proceed in a bi-part manner".

If Leahy bolts, Makan believes we can get Schumer, Feinstein and Biden to push through alternative process. Leahy, Feingold and Durbin will be our problems. Schumer and Hillary will want to be all over this.

We will need to decide internally and with Republican leadership what our deadline is for having a Senate bill introduced. We need to communicate this deadline to Leahy, and have Schumer lined up for "Plan B".

Specter will need special attention on the FISA provisions; Kennedy will control where Leahy comes down on the immigration provisions (Sharon Prost to talk to Kennedy's staff tomorrow).

Grover Norquist -- Karl Rove is supposedly addressing Grover's opposition to the package. Grover certainly can't know yet what's in the package; maybe we should arrange a briefing for him here?

NRA has no interest in opposing the bill; they will let us know tomorrow if they have any constructive changes/suggestions.

Message Sent
To:_____
Nicholas E. Calio/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
John W. Howard/WHO/EOP@EOP

Diana Schacht
Courtney S. Elwood/WHO/EOP@EOP

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kristen silverberg/who /eop@eop [WHO] <kristen silverberg>;k. philippa malmgren/opd/eop@eop [OPD] <k. philippa malmgren>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;stephen w. devine/nsc /eop@eop [NSC] <stephen w. devine>;james j. jukes/omb/eop@eop [OMB] <james j. jukes>;irene kho/omb/eop@eop [OMB] <irene kho>
Sent: 9/21/2001 6:26:21 PM
Subject: : Re: FYI -- The Attorney General

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-SEP-2001 22:26:21.00
SUBJECT:: Re: FYI -- The Attorney General
TO:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kristen silverberg (CN=kristen silverberg/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:k. philippa malmgren (CN=k. philippa malmgren/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:diana l. schacht (CN=diana l. schacht/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:stephen w. devine (CN=stephen w. devine/OU=nsc/O=eop@eop [NSC])
READ:UNKNOWN
CC:james j. jukes (CN=james j. jukes/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:irene kho (CN=irene kho/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
End Original ARMS Header

I'll speak to Dan Bryant about this.

Richard E. Green
09/21/2001 07:51:51 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: James J. Jukes/OMB/EOP@EOP, Irene Kho/OMB/EOP@EOP
Subject: FYI -- The Attorney General

is scheduled to testify before the House and Senate Judiciary Committees on Monday, September 24th, and Tuesday, September 25th, respectively. The hearings reportedly will be on legislative proposals designed to combat terrorism. We have not received the Attorney General's testimony for clearance for either the hearing on Monday afternoon or the hearing on Tuesday. Our contact in Justice's Office of Legislative Affairs tells us that he hasn't seen any testimony either and does not know if he will. He says that "if it shows up he will pass it along." He guesses that it will explain what is in the legislative package that has been given to the Hill. The House Judiciary Committee is tentatively scheduled to mark up legislative proposals on Tuesday.

Message Sent
To:_____
Courtney S. Elwood/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Stephen W. Devine/NSC/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
CC: diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>
Sent: 9/24/2001 7:22:41 AM
Subject: : Re: Here is the FOIA letter
Attachments: P_KRXT3004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-SEP-2001 11:22:41.00
SUBJECT:: Re: Here is the FOIA letter
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:diana l. schacht (CN=diana l. schacht/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
End Original ARMS Header

Viet left me a message today. I will call him. Judge is fine
with this.

Kristen Silverberg
09/24/2001 11:14:19 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Diana L. Schacht/OPD/EOP@EOP
cc:
Subject: Here is the FOIA letter

When does Viet need to hear back on this? Do you have a view? Have the
Judge and Margaret signed off?

---------------------- Forwarded by Kristen Silverberg/WHO/EOP on
09/24/2001 11:13 AM ----------------------------

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
09/24/2001 09:56:58 AM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP
cc:
Subject: Here is the FOIA letter

- foialetter.draft.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_KRXT3004_WHO.TXT_1>

Office of the Attorney General
Washington, D.C. 20530

MEMORANDUM TO HEADS OF ALL DEPARTMENTS AND AGENCIES
Re: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000), and to maintaining an open and accountable government. The FOIA embodies the importance of disseminating government information in a democracy -- a core value of our society. Indeed, it is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy. The right to privacy, in particular, must not be unduly infringed, especially in this time of rapidly advancing technology.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that these deliberations will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), recognizes these privileges and the sound policy reasons underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. While your agency's FOIA officers may continue to make discretionary disclosures of exempt information, solely as a matter of administrative discretion, they should do so only with full regard for the institutional, commercial, and personal privacy interests that can be implicated in sensitive information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA policy issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, please be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes former Attorney General Janet Reno's FOIA memorandum dated October 4, 1993, and likewise creates no substantive or procedural right enforceable at law.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
CC: diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>
Sent: 9/24/2001 8:58:16 AM
Subject: : Re: Here is the FOIA letter
Attachments: P_K42U3004_OPD.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-SEP-2001 12:58:16.00
SUBJECT:: Re: Here is the FOIA letter
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:diana l. schacht (CN=diana l. schacht/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
End Original ARMS Header

Note that we are suggesting an edited version to DOJ that avoids some of the rhetorical flourishes in their draft that are unnecessary and could be used against us in this and other contexts. I have communicated with Brian Miller on this and will keep you posted.

Kristen Silverberg
09/24/2001 11:14:19 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Diana L. Schacht/OPD/EOP@EOP
cc:
Subject: Here is the FOIA letter

When does Viet need to hear back on this? Do you have a view? Have the Judge and Margaret signed off?

---------- Forwarded by Kristen Silverberg/WHO/EOP on 09/24/2001 11:13 AM ----------

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
09/24/2001 09:56:58 AM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP
cc:
Subject: Here is the FOIA letter

- foialetter.draft.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K42U3004_OPD.TXT_1>

Office of the Attorney General
Washington, D.C. 20530

MEMORANDUM TO HEADS OF ALL DEPARTMENTS AND AGENCIES
Re: The Freedom of Information Act

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I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. While your agency's FOIA officers may continue to make discretionary disclosures of exempt information, solely as a matter of administrative discretion, they should do so only with full regard for the institutional, commercial, and personal privacy interests that can be implicated in sensitive information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA policy issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, please be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes former Attorney General Janet Reno's FOIA memorandum dated October 4, 1993, and likewise creates no substantive or procedural right enforceable at law.

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/24/2001 1:10:37 PM
Subject: : Re: Update

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN]
)
CREATION DATE/TIME:24-SEP-2001 17:10:37.00
SUBJECT:: Re: Update
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Our Congressional Affairs Director, John Constance, passed onto George
this morning the essence of your message, and then got a message back this
afternoon that the hearing is still on. It wasn't clear to us whether
George had talked to you. If he hasn't, then you might want to give him a
call. Otherwise, we will have to start preparing testimony. Let me know
what you can do or have done. Thanks.

>>> <Brett_M._Kavanaugh@who.eop.gov> 9/24/01 9:38:40 AM >>>
We still hope to stay at least somewhat close to the decision
schedule I
outlined to you before Sept 11, and I hope to be in touch this week with
you
about where we are. That said, it seems quite unlikely that we will be
closed
before October 5, and I would suggest to George that he think about
postponing
for a few weeks. Let me know if that creates any problems.

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 09/19/2001 01:12:05 PM
pic15993.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Update

I realize that you must be overwhelmed with far more urgent and important
matters, and will be for some time to come, and hope you are able to cope
with
it all.

However, I did want to check on whether you are likely to get back to the
PRA EO
issue any time soon, particularly in light of Chairman Horn's hearing
currently

scheduled for Oct. 5. If you think the issue will now be delayed for some time,
then should you, or we, recommend that Horn postpone the hearing? (Otherwise,
we will begin to work on draft testimony for the Archivist.)

We will do our best to minimize our burden on your time for the near future, but
we will still need to clear special access openings through you in response to
SDNY, Chairman Burton, and some DOJ litigation. (Brad and I have exchanged
calls on a separate case.)

Please let me know if we can be of assistance on any matters. Thanks and good
luck.

From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/25/2001 4:17:16 AM
Subject: : Re: please e-mail me that letter
Attachments: P_VSJU3004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-SEP-2001 08:17:16.00
SUBJECT:: Re: please e-mail me that letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VSJU3004_WHO.TXT_1>
```

DRAFT
September 24, 2001

Dear Tom:

We have received your question about the intended scope of Section 408 (b) of the Airline Transportation Safety and System Stabilization Act. The plain language of Section 408 (b) of the Act provides that all legal claims and cases encompassed by that section – against any defendant, including, but not limited to air carriers – must be brought in the United States District Court for the Southern District of New York. That court shall have original and exclusive jurisdiction over all such actions. The plain language conforms to the agreement reached by the House leadership, the Senate leadership and the Administration, and to the intent of the parties in drafting this section. Section 408 (a), by contrast, which speaks to limitations on liability, applies only to air carriers as defined.

We appreciate and understand your desire for additional legislation with respect to any litigation arising out of the September 11, 2001, terrorist attacks. The Administration will be working closely with Congress to assess the need for additional legislative action following the initial legislation.

Sincerely,

Brett Kavanaugh
Associate Counsel to the President

Name
Address
CSZ

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 9/25/2001 6:04:49 AM
Subject: : Re: Stabilization Board

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 10:04:49.00
SUBJECT:: Re: Stabilization Board
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have no desire for make work, which is what this would be for me. The Act is not complicated, but I can try to answer any questions you have. (I am not sure why Rebecca, who was Jay's lawyer on this, is not doing this in the first place.)

Helgard C. Walker
09/25/2001 10:01:03 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

you know the statute, though. let's do it together -- it'll be fun.

Brett M. Kavanaugh
09/25/2001 10:00:21 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

no, like most things that get multiple staffing, this only needs one person

Helgard C. Walker
09/25/2001 09:58:33 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

Tim brought it up with me this morning, on his own motion, because it presumably raises regulatory issues in the implemenation process, and I am regulatory gal. But I think you all should work on it too, because you have the substantive expertise, and I have no desire to tread on that ground of yours. That makes the most sense, don't you think?

Brett M. Kavanaugh
09/25/2001 09:56:18 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

. . . did not realize this had been assigned to you. Anyway, I'll skip it unless it's necessary, which I doubt. (FYI: Courtney was not involved in this.)

Helgard C. Walker
09/25/2001 09:47:47 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Re: Stabilization Board

Meant to cc you all.
---------- Forwarded by Helgard C. Walker/WHO/EOP on 09/25/2001 09:47 AM ----------

Helgard C. Walker
09/25/2001 09:47:27 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: timothy e. flanigan/who/eop@eop, helgard c. walker/who/eop@eop
bcc: Records Management@EOP
Subject: Re: Stabilization Board

I'll be there. Tim has tasked me with handling the regulatory side of this, and that's what I will do. Would it also be a good idea to have the lawyers who worked on the substance of the bill and who understand the drafters' intent (Kavanaugh/Elwood) there?

Jay P. Lefkowitz
09/25/2001 09:14:37 AM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: helgard c. walker/who/eop@eop
bcc:
Subject: Re: Stabilization Board

Thanks, Tim:

Helgi, as you probably know, OMB has 14 days from the signing of the airline bill to issue regulations for the airline stabilization board, which is comprised of the Fed, DOT and Treasury (and GAO as a non-voting member).

We're having a meeting at 3:00 PM today with all relevant parties
in room 9104 of the NEOB and you are invited to attend and participate.
If you are unavailable, I'll keep you informed and let you know of future
meetings and share drafts of the regs with you as they are developed.
Because we're on such a tight schedule, we will probably be working on
this and having meetings almost every day this week.

Timothy E. Flanigan
09/25/2001 09:09:23 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: Helgard C. Walker/WHO/EOP@EOP
Subject: Stabilization Board

Helgi is available to work with you on this matter.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;michael d. graham/who/eop@eop [WHO] <michael d. graham>;hale w. hawbecker/who/eop@eop [WHO] <hale w. hawbecker>;julius rothstein/who/eop@eop [WHO] <julius rothstein>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;ann l. loughlin/who/eop@eop [WHO] <ann l. loughlin>
Sent: 9/25/2001 9:41:05 AM
Subject: : Re: Admin Mtg.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-SEP-2001 13:41:05.00
SUBJECT:: Re: Admin Mtg.
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:lori l. lorenzi ( CN=lori l. lorenzi/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:a. morgan middlemas ( CN=a. morgan middlemas/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:michael d. graham ( CN=michael d. graham/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:hale w. hawbecker ( CN=hale w. hawbecker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:julius rothstein ( CN=julius rothstein/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:ann l. loughlin ( CN=ann l. loughlin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Ed Moy told me he tried for 6 months to get GSA to do it, including by talking to the new GSA Administrator. It never happened. I doubt we'll have any more success than he did.

Helgard C. Walker
09/25/2001 01:31:24 PM
Record Type: Record

To: Lori L. Lorenzi/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Admin Mtg.

Lori, when it comes time, I would love to have all these extra wires in my office removed, and I know others would as well.

Lori L. Lorenzi
09/25/2001 01:12:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Admin Mtg.

In today's admin meeting we discussed the recent move. Our team leader, Brent will be contacted to do a walk through of all of the offices and figure out what needs still have not been met. We are to remember to be patient about trash, burn bag and newspaper services. In the next few weeks we will be receiving a draft of the updated telephone directories.

Everyone should have received the Admin Alert that went out today regarding the use of Signal and the White House Operator. All boards have been very busy lately and we are encouraged to use our division staff directories as well as the telephone directory to help out. Unless you are a commissioned officer or calling on behalf of one, you should use the White House Operator (456-1414) for assistance instead of Signal. Some of the individuals that Signal was designed to assist have not been able to get through. Thanks in advance for your cooperation.

Message Sent
To:_____
A. Morgan Middlemas/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Michael D. Graham/WHO/EOP@EOP
Hale W. Hawbecker/WHO/EOP@EOP
Julius Rothstein/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

Helgard C. Walker/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Ann L. Loughlin/WHO/EOP@EOP

Message Copied
To:_____
a. morgan middlemas/who/eop@eop
allison l. riepenhoff/who/eop@eop
michael d. graham/who/eop@eop
hale w. hawbecker/who/eop@eop
julius rothstein/who/eop@eop
elizabeth n. camp/who/eop@eop
robert w. cobb/who/eop@eop
brett m. kavanaugh/who/eop@eop
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
laura l. flippin/who/eop@eop
courtney s. elwood/who/eop@eop
rachel l. brand/who/eop@eop
noel j. francisco/who/eop@eop
brent d. greenfield/who/eop@eop
ann l. loughlin/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 9/25/2001 9:44:41 AM
Subject: : Re: Emergency Staffings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 13:44:41.00
SUBJECT:: Re: Emergency Staffings
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

will let you know later today

Helgard C. Walker
09/25/2001 01:42:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Emergency Staffings

I can do this if you need me to cover.

Brett M. Kavanaugh
09/25/2001 01:30:11 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
Subject: Emergency Staffings

do you want this? I may be on Hill.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
09/25/2001 01:29 PM ----------

Alberto R. Gonzales
09/25/2001 01:29:11 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Emergency Staffings

Please handle.
---------- Forwarded by Alberto R. Gonzales/WHO/EOP on
09/25/2001 01:29 PM ----------

Harriet Miers
09/25/2001 12:33:07 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: G. Timothy Saunders/WHO/EOP@EOP
Subject: Emergency Staffings

Most likely, later today, we are going to be staffing a Presidential emergency designation for $5 Billion in grants to compensate air carriers for direct losses resulting from the September 11, 2001 attacks, specifically,, from the order by the Secretary of Transportation to ground all aircraft immediately. We also will most likely be staffing a Presidential Delegation of Authority delegating the authority to administer the funds to the Secretary of Transportation. Please be looking for these or have someone on your staff looking for them. We would appreciate an immediate response to both. Thanks.

Message Sent
To:_____
richard b. cheney/ovp/eop@eop
andrew h. card/who/eop@eop
joshua b. bolten/who/eop@eop
karen hughes/who/eop@eop
karl c. rove/who/eop@eop
mitchell daniels/omb/eop@eop
nicholas e. calio/who/eop@eop
lawrence a. fleischer/who/eop@eop
alberto r. gonzales/who/eop@eop
albert hawkins/who/eop@eop
glenn hubbard/cea/eop@eop
lawrence b. lindsey/opd/eop@eop
margaret m. lamontagne/opd/eop@eop
condoleezza rice/nsc/eop@eop
james connaughton/ceq/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 9/25/2001 6:04:49 AM
Subject: : Re: Stabilization Board

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 10:04:49.00
SUBJECT:: Re: Stabilization Board
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have no desire for make work, which is what this would be for me. The Act is not complicated, but I can try to answer any questions you have. (I am not sure why Rebecca, who was Jay's lawyer on this, is not doing this in the first place.)

Helgard C. Walker
09/25/2001 10:01:03 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

you know the statute, though. let's do it together -- it'll be fun.

Brett M. Kavanaugh
09/25/2001 10:00:21 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

no, like most things that get multiple staffing, this only needs one person

Helgard C. Walker
09/25/2001 09:58:33 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

Tim brought it up with me this morning, on his own motion, because it presumably raises regulatory issues in the implemenation process, and I am regulatory gal. But I think you all should work on it too, because you have the substantive expertise, and I have no desire to tread on that ground of yours. That makes the most sense, don't you think?

Brett M. Kavanaugh
09/25/2001 09:56:18 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Stabilization Board

. . . did not realize this had been assigned to you. Anyway, I'll skip it unless it's necessary, which I doubt. (FYI: Courtney was not involved in this.)

Helgard C. Walker
09/25/2001 09:47:47 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Re: Stabilization Board

Meant to cc you all.
---------- Forwarded by Helgard C. Walker/WHO/EOP on 09/25/2001 09:47 AM ----------

Helgard C. Walker
09/25/2001 09:47:27 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: timothy e. flanigan/who/eop@eop, helgard c. walker/who/eop@eop
bcc: Records Management@EOP
Subject: Re: Stabilization Board

I'll be there. Tim has tasked me with handling the regulatory side of this, and that's what I will do. Would it also be a good idea to have the lawyers who worked on the substance of the bill and who understand the drafters' intent (Kavanaugh/Elwood) there?

Jay P. Lefkowitz
09/25/2001 09:14:37 AM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: helgard c. walker/who/eop@eop
bcc:
Subject: Re: Stabilization Board

Thanks, Tim:

Helgi, as you probably know, OMB has 14 days from the signing of the airline bill to issue regulations for the airline stabilization board, which is comprised of the Fed, DOT and Treasury (and GAO as a non-voting member).

We're having a meeting at 3:00 PM today with all relevant parties
in room 9104 of the NEOB and you are invited to attend and participate.
If you are unavailable, I'll keep you informed and let you know of future
meetings and share drafts of the regs with you as they are developed.
Because we're on such a tight schedule, we will probably be working on
this and having meetings almost every day this week.

Timothy E. Flanigan
09/25/2001 09:09:23 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: Helgard C. Walker/WHO/EOP@EOP
Subject: Stabilization Board

Helgi is available to work with you on this matter.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>
Sent: 9/25/2001 6:56:37 AM
Subject: : Re: Stabilization Board

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 10:56:37.00
SUBJECT:: Re: Stabilization Board
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'd like to get Brett's input on this.

Jay P. Lefkowitz
09/25/2001 10:36:12 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: timothy e. flanigan/who/eop@eop
bcc:
Subject: Re: Stabilization Board

I think on the loan gurantee side, the only real question in terms of drafters' intent is whether the loans should be short term relief accross the board, or short term relief directed to those who can survive and sustain the industry longer term. And Mitch feels strongly it should lean in the latter direction.

We are reaching out to all the key members on this question as well.

The meeting today will focus more on the various types of terms and conditions for the loans and the process for applications.

Helgard C. Walker
09/25/2001 09:47:27 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: timothy e. flanigan/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Stabilization Board

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09/25/2001 09:14:37 AM
Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc: helgard c. walker/who/eop@eop
bcc:
Subject: Re: Stabilization Board

Thanks, Tim:

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Timothy E. Flanigan
09/25/2001 09:09:23 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: Helgard C. Walker/WHO/EOP@EOP
Subject: Stabilization Board

Helgi is available to work with you on this matter.

From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;jennifer.newstead@usdoj.gov @ inet [UNKNOWN] <jennifer.newstead@usdoj.gov>;viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov>
Sent:	9/25/2001 7:04:31 AM
Subject:	: Interesting documentation from PFAW
Attachments:	P_XZQU3004_WHO.TXT_1.html; P_XZQU3004_WHO.TXT_2.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 11:04:31.00
SUBJECT:: Interesting documentation from PFAW
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jennifer.newstead@usdoj.gov (jennifer.newstead@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

FYI
---------- Forwarded by Bradford A. Berenson/WHO/EOP on
09/25/2001 11:03 AM ----------

Matthew E. Smith

09/24/2001 05:08:24 PM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Interesting documentation from PFAW

---------- Forwarded by Matthew E. Smith/WHO/EOP on 09/24/2001
05:08 PM ----------

KRdaly@aol.com
09/24/2001 04:57:39 PM
Record Type: Record

To: sreynolds@signatureagency.com, Barbara_Ledeen@src.senate.gov, Tim
Goeglein/WHO/EOP@EOP, Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: Interesting documentation from PFAW

From our friends at People for the American Way. (Attached in Microsoft
Word.)

Apparently, in 1996, it was a bad thing to have a litmus test on judicial
nominees. Hmmm. Wonder why?

Well, attached is a lengthy dissertation that I think may come in handy in
the coming weeks and months.

KRD

- att1.htm
- PFAW -- Clear And Present Danger.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XZQU3004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XZQU3004_WHO.TXT_2>

From our friends at People for the American Way. (Attached in Microsoft Word.)

Apparently, in 1996, it was a bad thing to have a litmus test on judicial n ominees. Hmmm. Wonder why?

Well, attached is a lengthy dissertation that I think may come in handy in the coming weeks and months.

KRD

Clear And Present Danger:
The New Far Right Judicial Litmus Test

August, 1996

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- The Development of the New Far Right Judicial Litmus Test
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  - Crime and Gun Control
  - Freedom of Religion
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  - Abortion and Reproductive Freedom
- End Notes

Clear and Present Danger:
The New Far Right Judicial Litmus Test

On April 19, in a speech before the American Society of Newspaper Editors (ASNE), Senator Bob Dole aimed a full-scale political attack at President Clinton's federal judicial appointments.[1] Several months earlier, spurred by a ruling excluding evidence in a major narcotics case by a judge nominated by President Clinton (and approved without objection by Senator Dole and his colleagues), Senator Dole and others had initiated the attack, claiming that the President's nominations proved that he was "soft on crime."[2] The attacks have continued after the ASNE speech, and are likely to be a key part of Dole's campaign strategy in the 1996 campaign.

One significant aspect of the recent attacks on judicial nominees, however, has gone largely unnoticed. An important stimulus and source of ammunition for the attack has been far right

political groups and operatives, ranging from Paul Weyrich's Free Congress Foundation to Gary Bauer's Family Research Council. This includes individuals and organizations that have formed close connections with Senator Dole and other Republicans, worked with the Reagan and Bush administrations on judicial selection, and played an important role in the conservative "litmus test" philosophy used in picking judges in the 1980s. In 1996, the evidence from their articles, direct mail, and other pronouncements makes clear that their objectives go far beyond simply using judicial nominations as an issue in the election, or even returning to the Reagan-Bush litmus test. Instead, the agenda of these advocates is to impose a new far right litmus test on judicial nominations, avoiding what they perceive as the imperfections of the Reagan-Bush era and ensuring that new Supreme Court justices and other federal judges have "an established commitment to the conservative legal movement."[3]

This report will trace the development of the new far right judicial litmus test, beginning with its origins in the Reagan Administration and continuing with recent efforts to press it on lawmakers (including Senator Dole and the Clinton Administration). It will also examine some of the serious potential consequences of this campaign. Even on the issue of crime control, the facts demonstrate that the right-wing attacks are without basis and that the imposition of a far right judicial litmus test would actually harm crime control efforts. In addition, it would seriously harm the fundamental rights of all Americans in such areas as religious freedom, civil rights, and reproductive rights.

For example, as a result of the right-wing litmus test used under the Reagan and Bush administrations, we have already seen:

- Court decisions striking down federal crime control efforts, such as the Gun Free School Zones Act, the Child Support Recovery Act, and parts of the federal arson law
- Virtual exclusion of African-Americans from nomination as federal judges under Reagan and Bush
- A court ruling that the Violence Against Women Act, enacted by a bipartisan congressional majority in 1994, is unconstitutional
- A Supreme Court decision authorizing significant burdens on religion, overturned by an act of Congress which itself has been challenged as unconstitutional
- A state ban on all abortions at public facilities, including even at private hospitals or clinics which lease space from public agencies
- A Supreme Court ruling that even outright lies by an employer can rebut a case of job discrimination unless the victim can provide direct evidence of bias

With numerous vacancies expected in the near future on the federal courts, including the Supreme Court, imposition of a new right wing judicial litmus test threatens to cause even more harm in the future.

The Development of the New Far Right Judicial Litmust Test

At least since the Supreme Court's 1973 decision in Roe v. Wade, religious right and other conservatives have focused on the federal courts as both an important source of and a potential solution to their complaints on such issues as abortion, religion, and federal authority. While Presidents throughout history have sought to put their stamp on

the federal judiciary, the Reagan and Bush administrations took this to a new level, imposing a "litmus test" selection philosophy that itself already has produced substantial harm and has set the stage for today's new far right litmus test.

The Reagan-Bush Litmus Test

The history of judicial selection under Presidents Reagan and Bush begins at least as early as the 1980 Republican Party platform. The platform called for the President to appoint:

> women and men who respect and reflect the values of the American people, and whose judicial philosophy is characterized by the highest regard for protecting the rights of law-abiding citizens . . . [and] who respect traditional values and the sanctity of innocent human life.

Candidate Reagan embraced this philosophy, whether discussing abortion ("the sanctity of innocent human life") or other issues. "There must be new Justices on the Court," Reagan proclaimed, "who respect and reflect the values of the American majority. I pledge to make such appointments."

Once elected, President Reagan systematically sought to fulfill his pledge. Both the Reagan and Bush administrations took a concerted approach of selecting judges to seek to ensure a particular ideological bent. These administrations pre-screened candidates for ideology, appointed youthful conservative judges, looked for academics with proven conservative track records, and rejected insufficiently "pure" nominees.

The Reagan administration subjected every candidate for the bench to a series of interviews with a battery of Justice Department lawyers. Those that survived this winnowing process went on to meet with the Attorney General and undergo scrutiny by a special White House standing committee. While the content of these interviews is a matter of some dispute, Reagan administration officials acknowledged that specific legal precedents were discussed. In particular, administration officials commonly asked candidates their views on Roe v. Wade, which established a woman's constitutional right to reproductive privacy. Although Reagan Attorney General Ed Meese claimed no interest in how prospective judges would rule in specific cases,[4] several judicial

nominees stated they were asked directly about their views on abortion.[5] One rejected candidate stated: "I guess most of us have accepted that we're not going to get these judgeships unless we're willing to commit to a particular position, which we think would be improper."[6]

The second element of the Reagan appointment strategy was to select young nominees. According to the ABA Journal:

> Since the enactment of the Circuit Courts of Appeals Act of 1891, no other president, starting with Benjamin Harrison, appointed appeals court judges with a younger average age than has Ronald Reagan during his second term. And no other president has appointed such a high proportion of appeals court judges under the age of 45 (more than one-third during the second term).[7]

This emphasis on youth contributed to the ideological makeup of the federal judiciary in two ways. First, it gave judges time to build a proven track record for a possible nomination to the Supreme Court, which could also occur at a relatively early age. Second, even those judges who were not elevated to the Supreme Court could be expected to serve lengthy terms, preserving a conservative judiciary for future decades.

A third prong of the Reagan judicial selection strategy was the reliance on law professors. At least until the rejection of Robert Bork's Supreme Court nomination, Reagan judge-pickers regarded academic careers as a means of predicting likely performance on the bench. Since most professors must publish or perish, they often have a long paper trail demonstrating their ideological preferences.

Finally, and perhaps most important, the Reagan administration consistently rejected even mainstream Republicans who failed to tow the ideological line. One nominee, first in her law school class and highly rated by the ABA, was rejected because she had supported the Equal Rights Amendment (as had the Republican party itself until 1980) and several conservative groups had falsely charged her as being a closet Democrat. Another candidate, a former Deputy Solicitor General, was rejected by Administration supporters for having made small donations to Planned Parenthood and the National Coalition to Ban Handguns; thirteen senators demanded his withdrawal, and the

President obliged. Prominent Republican Philip Lacovara, who had been appointed twice by Reagan to serve on the District of Columbia Nominating Commission, was rejected on the grounds that he was "too liberal" and "not politically reliable,"[8] based on his membership in two decidedly establishment organizations, the Washington Lawyers Committee for Civil Rights Under Law and the ABA Section on Individual Rights and Responsibilities. Lacovara wrote in the New York Times that in the past:

> political affiliation has provided a source of recognition, not a litmus test for philosophical orthodoxy. Over time, this pattern has created a Federal judiciary rich in diversity and perspective. Today the message is quite different: ideology is the primary qualification, and it is a candidate's demonstrated orthodoxy that brings his name before the President and ultimately before the Senate. Unique in our nation's history, the current Justice Department has been processing any judicial candidate through a series of officials whose primary duty is to assess the candidate's ideological purity.[9]

The Bush administration continued the demand for ideological purity in judicial nominations. Just four days after Bush's inauguration, White House Counsel C. Boyden Gray declared that Bush "will continue to appoint judges in the Reagan manner."[10] The editorial pages of the Wall Street Journal praised the young conservative lawyers from the Federalist Society and elsewhere chosen to staff the process,[11] and conservative commentators lauded President Bush's appointments. Clint Bolick, Vice President of the right-wing Institute for Justice, described the Bush appointment record as "a tour de force . . . . He has been even better than Reagan. Bush has made the judiciary more solidly conservative without spending a lot of political capital on the issue."[12] Former Reagan Attorney General Ed Meese stated that his successors "have done an excellent job . . . . The results are the same as in the Reagan administration."[13]

In large measure, the Reagan-Bush litmus test proved quite successful. During the 1980s and into the 1990s, the country witnessed a major retreat by the federal courts from their traditional role of defenders of liberty in such areas as civil rights, religious freedom, and reproductive choice.[14] As the late Justice Thurgood Marshall wrote in his final dissent on the Supreme Court, the Court majority was sending a "clear signal that scores of established constitutional liberties are now ripe for

reconsideration" as a result of changes in the Court's "personnel." Marshall concluded that "[p]ower, not reason, is the new currency of the Court's decision-making."[15] Notwithstanding their victories, however, far right conservatives clearly were not satisfied.

The Justices That Got Away: Souter and Kennedy

Despite the efforts of right-wing activists, implementation of the conservative judicial litmus test was by no means perfect. Even though they had the backing of conservative groups at the time of their nominations, Justices David Souter and Anthony Kennedy have exhibited much more moderate tendencies than anticipated. It is precisely these Justices' more moderate positions that have raised the ire of the far right.

Following on the heels of the rejection of the highly controversial Robert Bork and the subsequent withdrawal of nominee Douglas Ginsburg, the Reagan administration opted for the less controversial Anthony Kennedy in 1987. Despite this clear attempt to avoid the furor surrounding the two previous nominees, Justice Kennedy's nomination still had strong conservative backing. Richard Willard, a "strong conservative" who served as an assistant attorney general under Reagan Attorney General Edwin Meese, "lobbied strenuously" for Kennedy's nomination, and Grover Joseph Rees, a former Reagan judge picker, "predicted confidently that Kennedy would not disappoint conservatives on prayer, abortion, and other social and moral issues."[16] But in the 1990s, both Kennedy and Bush appointee David Souter refused to join efforts led by Justice Scalia and Chief Justice Rehnquist that could have overruled Roe v. Wade, as well as key precedents in such areas as church-state separation, and joined with or wrote opinions in cases overturning a Colorado anti-gay initiative and single-sex education at VMI. As a result, the right wing now calls Justice Kennedy "Reagan's Biggest Disappointment" and accuses him of having "gone with the flow of elite liberal opinion."[17]

Writing about Justice Souter, Gary Bauer, head of the right-wing activist Family Research Council, stated that "you may remember that some of these nominees were stealth nominees . . . The idea was that they were secretly much more conservative than anybody thought but they were being nominated so they could get through the Senate more easily. It ends up they were stealth nominees but the stealth was in the other direction."[18]

The failure of Justices Kennedy and Souter to live up to conservative expectations has clearly disappointed and outraged right-wing activists. At the same time, activists have lavished praise on justices like Clarence Thomas and Antonin Scalia, whose predicted right-wing views have been right on the mark. Even before this year's Presidential campaign began, these activists have demanded an even stricter ideological litmus test for federal judicial appointments.

The Call for a New Right-Wing Litmus Test: "in the mold of [Clarence] Thomas"

Writing primarily in publications and direct mail addressed to their allies and believers, particularly as the 1996 election has approached, the right wing has been calling for the implementation of an ideological litmus test that would be even more severe than under Presidents Reagan and Bush. For instance, after lambasting Justice Kennedy's decisions on separation of church and state, reproductive freedom, and civil rights, one conservative publication advised that "[t]here is a crucial lesson in this for conservatives--and for Bob Dole should he become President: It is not enough for a potential judicial nominee to have a record on key issues that accords with the proper role of the courts. The potential nominee must also give some evidence of having the courage of his or her convictions--ideally, a record of sustained consistency."[19]

A more specific blueprint for a new right-wing litmus test was spelled out in 1995 in the Heritage Foundation magazine Policy Review, written by a former Reagan-Bush Justice Department official in one of the offices with major responsibility for judicial nominations during the 1980s. Impelled by the "prospects in 1996 for a new president inclined to appoint conservative justices," the article set out criteria and guidelines to help ensure that future nominees be "in the mold of [Justice] Thomas rather than [Justice] Souter."[20] Future nominees "should show an established commitment to the conservative legal movement," evidenced by active participation in and "associations" with the conservative legal movement and "contribution to conservative legal thought" as in the case of Clarence Thomas.[21] A nominee "should have been tested in Washington at some point in his career," as Thomas had been tested and "challenged by the liberal legal establishment."[22] Based on such reliable indicators of commitment to conservatism, individuals could be nominated who would be "committed to seeking the original meaning of the Constitution"[23] and would join "the pantheon of truly great Supreme Court justices," including Justices Scalia and Thomas.[24]

As right-wing columnist and activist Don Feder more bluntly put it in a pointed "[m]emo to the next Republican president," be "damned sure you're putting a Scalia clone on the bench, and not another Kennedy."[25]

The FRC's Gary Bauer has related the judicial litmus test issue directly to the subject closest to the hearts of religious right activists in the Republican party this summer: the party's platform plank on abortion. In a letter to supporters last December, Bauer turned to history in defending against anticipated efforts to water down the anti-abortion plank. He noted specifically that beginning in 1980, the platform called for "the appointment of judges at all levels who respect traditional family values and the sanctity of human life," and that this "language has been part of the Republican platform ever since." Bauer exhorted his supporters to help retain the platform language because it will "help ensure that the next Republican President will appoint pro-life judges."[26] Interestingly, while tolerance clauses and other possible changes have been discussed as genuine possibilities by Senator Dole and others in the party, neither Dole nor any other official has even hinted at any change in the provisions concerning appointment of judges.[27]

Bauer's ambitions for the new far right litmus test go even further, however. As he told a radio audience this May, the "pro-family movement needs to become so strong that whoever is President, they will get the clear strong unambiguous message that they better put more traditional judges on the Court or they're going to face a major battle with us in any confirmation proceedings."[28] In fact, right-wing activists have already had a serious effect on judicial nominations during the Clinton Administration, and presidential candidate Dole so far appears to be following their wishes on judicial selection.

The Far Right Flexes its Muscles and Influence

Conservative activists have already begun to fulfill Bauer's prescription, particularly after Republicans took control of the Senate in 1994. Reports indicate that a number of candidates for Clinton judgeship nominations were dropped by the Administration itself because of conservative ideological objections, such as a state judge who had committed the unpardonable right-wing sin of awarding child custody to a male partner in one case. A Clinton Justice Department official has admitted that the Administration "steered clear of a few people who might have been fabulous judges, but who would have provoked a fight that we were likely to lose."[29]

The influence of far right activists' views on Senator Dole so far has been even more pronounced. Although Dole claimed in April that he would not employ a litmus test, and observers have noted that judges he recommended to Presidents Reagan and Bush were relatively moderate, his specific actions and campaign pronouncements clearly signal a willingness to comply with far right demands in this area. "When I am president," Dole proclaimed in May, "only conservative judges need apply."[30] Dole identified Chief Justice Rehnquist, who is in many ways the leader of the Court's right wing, as his own judicial "ideal."[31] He has pledged to fulfill the far right's often-expressed crusade[32] to eliminate the role of the American Bar Association in reviewing the qualifications of judicial nominees.[33] Almost a year before his ASNE speech, Dole signed a fund-raising letter for the most active right-wing group on judicial nominations -- the Judicial Selection Monitoring Project of the right-wing Free Congress Foundation -- endorsing JSMP and attacking many of the very same judges he criticized in his speech and others as "handpicked liberal activists" seeking to "subvert the will of the voters."[34] And Dole's rhetoric in discussing how he would appoint judges -- which refers to the need for judges who are "faithful to the text of the Constitution" and to conduct a "thorough screening" of candidates' "associations and past decision-making"[35] -- echoes the advice of last year's Heritage article on avoiding nominees like Justice Souter.

In fact, during the same Larry King interview in July in which he announced that a pro-choice Republican would deliver the convention keynote speech, Dole reassured the far right on judges. Notwithstanding his earlier disavowal of litmus tests, Dole proclaimed that he would have "litmus tests for all judges" to ensure that they are "tough on crime" and "interpret the Constitution, not try to amend it." Asked specifically about whether his judicial nominees would have to be anti-abortion, Dole stated, "that's going to be probably part of our platform -- they want us to consider that, it ought to be a consideration."[36]

If actions speak louder than words in this area, moreover, Dole's actions speak loudly indeed. During the first six months of 1996, including all of Dole's time as majority leader, not a single Clinton judicial nominee was approved by the Senate.[37] As Attorney General Reno pointed out, this not only delayed court cases and hurt the administration of justice across the country, but was also completely different than the situation in past election years such as 1992, when 66 Republican-nominated judges were confirmed by a Democratic-controlled Senate. In the weeks

before Senator Dole resigned as majority leader, rumors suggested that he might be willing to break the logjam. Groups like JSMP howled in protest[38]. The result: not a single confirmation until July, when minority leader Tom Daschle negotiated a partial confirmation resumption with Dole's successor Trent Lott, after Dole left the Senate.[39] Lott has been criticized harshly for that compromise by Tom Jipping of the JSMP, who declared that "Mr. Lott and Mr. Hatch make Mr. Dole look positively principled."[40]

The most recent example of far right influence in this area is found in the draft Republican Party platform, released on August 5. The draft platform includes the traditional litmus test language supported by activists like Gary Bauer, as well as a repeat of Dole's pledge that upon his election, "only conservative judges need apply."[41] But the draft platform goes even further. It specifically incorporates the radical proposals of Pat Buchanan and others that the federal courts should be stripped of jurisdiction over selected subjects and that the Constitution should be amended to eliminate life tenure for federal judges and require their "periodic reconfirmation."[42] These platform provisions would seriously undermine the fundamental principle of judicial independence, which Chief Justice Rehnquist himself has characterized as "one of the crown jewels of our system of government"[43] which should not be changed by threatening judges with removal because of their rulings.

Not surprisingly, religious right and other activists have rewarded Dole's fealty on this issue by implicitly (if not explicitly) endorsing him and opposing Clinton, and urging their followers to do the same, for the sake of the courts. For example, in June, Christian Coalition founder Pat Robertson exhorted "Christian voters" to become involved in the presidential election in order to get "conservative Supreme Court judges put on the Court, which could indeed reverse Roe v. Wade" as well as decisions on school prayer and other subjects.[44] An article by the Institute for Justice's Clint Bolick warned that "if Clinton wins again, one appointment could topple [the] highest court's conservative tilt."[45] Jipping told his TV audience that "President Reagan gave us Justice Antonin Scalia and President Bush gave us Justice Clarence Thomas", but "President Clinton will never give us anything that comes close."[46]

Right-wing activists are clearly correct in at least one respect: the stakes are high indeed. Numerous vacancies are expected on the federal courts over the next several years, including on the Supreme Court.

Imposition of a new far right judicial litmus test, no matter who is President, risks serious damage to the rights and the safety of all Americans.

Dangers of the New Far Right Judicial Litmus Test

Right-wing activists, echoed by Senator Dole and other conservative political leaders, claim that their recipe for judicial selection is necessary to reverse the harm to crime control efforts allegedly caused by President Clinton's judicial nominations. In fact, the real danger comes from the critics themselves. Not only do the facts belie their attacks, but the record shows that in the area of crime control, as well as with respect to such areas as religious freedom, reproductive choice, and civil rights, the new far right judicial litmus test threatens all Americans.

CRIME AND GUN CONTROL

A central theme of recent attacks on federal judges nominated by President Clinton, both by far right advocacy groups and by Senator Dole and other Republican spokesmen, has been the charge that they are "soft on crime" compared with Reagan-Bush judges. In fact, almost precisely the opposite is true. The record of court decisions demonstrates that the "soft on crime" charge is fallacious. In addition, Reagan-Bush appointees to the Supreme Court and the lower courts have seriously hurt efforts to combat crime and gun-related violence by striking down important federal anti-crime laws. Imposition of a new far right judicial litmus test threatens to make the problem even worse in the future.

The Far Right "Crime Control" Attack on Clinton Judges

In his speech before the American Society of Newspaper Editors on April 19, 1996, Senator Dole spelled out in detail his attack on President Clinton's judicial nominees as allegedly soft on crime. Describing Americans' confidence in their courts and trust in the rule of law as perhaps the most important issue of the presidential campaign, Dole identified a number of Clinton's appointees, including New York Judge Harold Baer, Virginia Judge Leonie Brinkema, Third Circuit Judge H. Lee Sarokin, and Eleventh Circuit Judge Rosemary Barkett, as forming

a judicial "Hall of Shame" characterized by a willingness "to use technicalities to overturn death sentences for brutal murderers" and by an "outright hostility to law enforcement."[47] Senator Dole's assault has been followed by similar accusations by other conservative political figures, including no less than three floor speeches by Senate Judiciary Committee Chairman Orrin Hatch.

As discussed previously, these political attacks were, at the very least, clearly inspired by similar attacks from far right advocacy groups. For example, the fund-raising letter signed by Dole almost a year before his 1996 speech for the Judicial Selection Monitoring Project of the far right Free Congress Foundation specifically criticized Judges Barkett and Sarokin as well as other Clinton "activist judges," attacking their "liberal bias" on issues like "crime prevention."[48] The same letter contained strong endorsements of JSMP by both Senator Dole and Senator Hatch.

These attacks generally follow a common pattern. They begin with a gruesome description of the facts in individual criminal cases, leaving no room for doubt as to the guilt of the criminal defendants. They then proceed to describe in extremely derogatory terms how Clinton-appointed judges have either reversed defendants' convictions or reduced their sentences. On the basis of a very small number of such anecdotal cases, it is concluded that Clinton's judicial appointees are liberal activists who regularly set free murderers, drug dealers, and other criminals, in contrast to Republican-appointed judges.

The facts, however, belie these attacks on Clinton's judicial nominees. The attacks are contradicted by the voting record of Senator Dole and his colleagues. The entire Senate, including Senators Dole and Hatch, has approved unanimously 182 of Clinton's 185 appointments to the federal Courts of Appeals and District Courts. Included in the group of unanimously approved appointees are Judges Baer and Brinkema, both of whom Dole personally singled out for criticism, and North Carolina Judge James Beaty, whom Orrin Hatch and a number of far right advocacy groups have criticized.[49] Indeed, Republican Senator Jesse Helms "lavishly praised" Judge Beaty during his nomination as "the kind of judge who applies the law as it is written and rules on the facts as they are presented."[50] As for Judge Barkett, another member of Dole's judicial "Hall of Shame" and a frequent target for extremist conservatives, six of the seven criminal opinions for which she has been criticized during her tenure on the Eleventh Circuit were unanimous

decisions, with one or more Reagan-Bush appointees joining Barkett in all but one of those cases.[51] Furthermore, as a member of the Florida Supreme Court, Barkett voted to affirm the death penalty in over 200 cases, and she voted to uphold a state contraband forfeiture law for drug traffickers which a lower court had declared unconstitutional.[52] Judge Barkett received praise and support at her nomination hearing from conservative Senator Connie Mack.[53] Even Judge Sarokin, whose recent resignation was cited as a triumph by the Dole campaign,[54] received the approval of a number of conservative senators, such as Senator Alan Simpson.[55]

This discrepancy between rhetoric and reality highlights an even deeper methodological flaw in conservative attacks on the Clinton judiciary: the anecdotal approach of choosing a few criminal law cases with grisly facts and criticizing a judge who reversed a conviction or a death sentence due to legal error by police or prosecutors. Using that approach, any President in the history of the United States could be characterized as soft on crime, and even the most hard-line judge could end up in a judicial "Hall of Shame." Consider the following cases:

- In Quartararo v. Fogg and Quartararo v. Mantello, two brothers were convicted of the brutal murder of a thirteen year old boy. The victim caught the brothers and two other men stealing a bicycle. They proceeded to stomp the child to death and stifle his screams by pushing stones down his throat. Even though all four men were convicted in state court, and all their appeals were rejected, the U.S. District Court for the Eastern District of New York granted habeas corpus and freed them on $3,000 bail on the basis of so-called "troubling inconsistencies" in the story told by law enforcement officials. Were these decisions issued by "liberal" Clinton appointees? No; the decision in both cases was written by Judge Richard Korman, a Reagan appointee.[56]
- In Joubert v. Hopkins, the death sentence of a three-time confessed child murderer was overturned. One of the victims was bound, gagged, and placed in the trunk of the defendant's car. He was later removed from the trunk, stripped to his underwear and pinned to the ground with a knife when he tried to roll away. The boy was then slashed and stabbed to death even as he begged for his life. Another of the victims suffered a similar fate, and his corpse was found with a drawing of a plant cut into the torso. The defendant confessed to both of these murders, as well as a third.

He also said that he would kill again if he were ever set free. Nevertheless, the U.S. District Court for the District of Nebraska vacated the defendant's death sentence based on the legal technicality that the phrase "exceptional depravity" as used in the death penalty statute was too vague. This decision was issued by Judge William Cambridge, a Reagan appointee.[57] Judge Cambridge was reversed and the death sentence was reinstated on appeal. The deciding vote to do so was cast by Eighth Circuit Judge Diane Murphy, a Clinton appointee.[58]

- In Reeves v. Hopkins, a double murderer's death sentence was overturned. The defendant in this case was convicted of stabbing to death his cousin and her houseguest while he was trying to rape them. Even though the Nebraska Supreme Court twice rejected appeals in this case, the U.S. District Court for the District of Nebraska granted a petition for habeas corpus on the basis of a conclusion that the Nebraska Supreme Court had improperly weighed the aggravating and mitigating circumstances involved in the case. Judge Richard Kopf, a Bush appointee, wrote the decision.[59]
- In United States v. Chen, the defendants were being prosecuted for crimes related to the seizure of 1,000 pounds of heroin, the largest heroin bust of all time. The trial court judge suppressed key pieces of evidence and released two defendants on bail. Was this another example of Clinton's Judge Harold Baer at work? No; the trial judge was Vaughn Walker, nominated by President Bush.[60]
- In Hitchcock v. Dugger, an appellate judge wrote an opinion reversing the death sentence of a Florida man convicted of strangling his 13-year-old niece. The slayer had confessed that he killed the girl to prevent her from telling her parents that the defendant had statutorily raped her. Although the jury sentenced him to death and the judge agreed, the sentence was reversed because the appellate court found that several excuses offered by the killer were not satisfactorily considered, including even the claim that the murderer was allegedly a fond and affectionate uncle. Was this another case where Judge Barkett overruled a Florida death sentence? No; it was a decision reversing the Florida Supreme Court by Reagan-appointed Supreme Court Justice Antonin Scalia, joined by Reagan appointees Sandra Day O'Connor and Chief Justice Rehnquist.[61]

What lessons can be derived from these examples? Should Judges Korman, Cambridge, Kopf, and Walker, as well as Justices Scalia, O'Connor, and Rehnquist, all be inducted into Dole's judicial "Hall of Shame?" Of course not. The true lesson of these examples is that individual cases cast in a negative light provide absolutely no legitimate basis from which to draw general conclusions about a judge's record. Any conscientious judge, regardless of which President appointed him or her, will eventually be confronted with a situation where the law requires that evidence be thrown out or a death sentence be overturned. Picking out a minute sample of such cases which happen to have fallen to Clinton appointees cannot provide an effective basis to measure their record. As Sentor Patrick Leahy explained, "no one should be making such statements or demagoging judges based on isolated decisions. We disserve our system of justice, our system of government, and the American people when we engage in such rhetoric."[62]

Instead of focusing on a handful of sensationalist-sounding cases, academic observers have utilized broader measuring tools and concluded that Clinton's judicial appointees have been middle-of-the-road, not liberal or "soft on crime." University of Houston political science professor Robert Carp and his colleagues have cataloged 36,500 judicial decisions since the Nixon administration. On the basis of this comprehensive study, Carp has described as "a bunch of nonsense" Dole's characterization of the Clinton judiciary.[63] Professor Donald R. Songer, one of Carp's co-authors, has characterized Clinton's judicial appointees as "decidedly less liberal than [those of] other modern Democratic presidents" and as most resembling the appointees of President Ford.[64] Along the spectrum of judicial decisions, Clinton judges have issued liberal decisions in criminal cases 33% of the time, about the same as Ford appointees (32%) and Nixon appointees (30%), and well below Carter appointees (38%).[65] Additionally, forty percent of Clinton nominees in 1995 were former prosecutors, and 62% were deemed well qualified by the American Bar Association, compared to 52% in the Bush administration.[66] These statistics demonstrate clearly the fallacy of the "soft on crime" charges by conservative critics of Clinton's nominees. Indeed, as the *Washington Post* has observed, most pre-election year complaints about Clinton's judges have come from liberals, including an appellate court judge appointed by President Carter, who believe that the President's nominees have been too

moderate in light of the conservative Reagan-Bush judges who preceded them.[67]

Federal Crime Control Laws and the Reagan-Bush Courts

Although a review of the facts concerning individual criminal cases thus shows little basis for "soft on crime" attacks on Clinton judges, the record does reveal a little-known fact about Reagan-Bush judges and crime control. A significant part of the ideological framework of jurists like Scalia, Thomas, and Rehnquist is their extremely narrow view of federal authority.[68] In the area of crime control, that ideology threatens to significantly impair national anti-crime efforts. Perhaps the clearest example is the 1995 case of United States v. Lopez.[69] In Lopez, the Supreme Court dramatically transformed the interpretation of the Constitution's Commerce Clause by striking down as unconstitutional the Gun Free School Zones Act of 1990, which forbade "any individual knowingly to possess a firearm at a place that [he or she] knows . . . is a school zone."[70] The 5-4 decision in the case was written by Chief Justice Rehnquist, with all four of the other justices in the majority appointed by either President Reagan or President Bush. Lopez represents an extreme departure from decades of Supreme Court precedent, and poses a substantial threat to past and future anti-crime initiatives.

The Supreme Court has recognized for decades that Congress has the power "to regulate those activities having a substantial relation to interstate commerce. . . i.e. those activities that substantially affect interstate commerce."[71] In a series of decisions prior to Lopez, the Court found this power sufficiently broad to authorize a number of laws with far less connection to interstate commerce than the Gun Free School Zones Act, including a federal statute making it a crime to engage in local loan sharking, a federal statute prohibiting racial discrimination at local restaurants, and the application of a federal agricultural statute to prohibit the growth and consumption of wheat locally on one's own land.[72] In finding the Gun Free School Zones Act unconstitutional, the Reagan-Bush majority chose to fly in the face of established law in order to establish a regime more in line with their conservative views. By choosing the conservative activist path, the Lopez Court has not only overruled one specific law aimed at combating violence in our nation's schools, but it has also called into question the validity of more than 100 sections of the United States Code, including at least 25 criminal statutes whose validity had previously seemed well settled.[73] As Justice

Breyer explained in dissent, the endangered statutes include federal laws prohibiting arson of buildings used in activity affecting interstate commerce and forbidding possession of machine guns.[74]

Even though Lopez was issued only last year, it has already severely harmed anti-crime efforts. As a direct result of Chief Justice Rehnquist's decision in Lopez:

- Two appellate courts have ruled the federal arson law unconstitutional as applied to intentional burning of homes or other residences, reversing the conviction of one arsonist who maliciously burned down his neighbors' home and freeing another arsonist who conspired in the burning down of her own home to collect over $4 million in fraudulent insurance claims.[75]
- The Child Support Recovery Act, which calls for criminal penalties for deadbeat parents who willfully fail to pay past due child support for children residing in other states, has been declared unconstitutional by a number of federal courts.[76]
- One court has specifically suggested that the federal law banning machine gun possession may be invalid under Lopez.[77]
- Another court has stated that Lopez may make unconstitutional the dual sovereignty doctrine, under which Rodney King's assailants were successfully prosecuted for federal criminal civil rights violations even though they were acquitted under state law.[78]

A recent ruling by Reagan-appointed Judge Jackson Kiser of the U.S. District Court for the Western District of Virginia in July provides a chilling omen of things to come under a far right judicial litmus test. In Brzonkala v. Virginia Polytechnic and State University[79] Judge Kiser seized on the Supreme Court's holding in Lopez to declare unconstitutional the Violence Against Women Act (VAWA), which gives female victims of gender-motivated violent crime a federal cause of action against their attackers.[80] Though technically a civil statute, VAWA "is criminal in nature . . . [It] was designed to address problems in the state criminal justice system, and, in attempting to supplement deficiencies in the state criminal system, it creates a civil cause of action that seeks to vindicate a criminal act."[81] In Brzonkala, the plaintiff was raped by two adult male members of Virginia Polytechnic Institute's (VPI) football team. Despite twice audibly saying "no" to requests for sexual intercourse, she was pinned to her bed by her elbows and legs and forced to submit to vaginal intercourse three times. Even though

one of the attackers confessed to the sexual contact and that he had been told "no" twice, neither attacker was ever prosecuted by the state. One was found guilty of sexual assault by the school's judicial committee and suspended from school for two semesters; this penalty was later set aside when the charge was reduced to "using abusive language," and the attacker was allowed to return to VPI without notice to the plaintiff. The net result was that the plaintiff, out of fear for her own safety, was forced to cancel her plans to return to VPI for the fall semester.[82] Notwithstanding these facts, Judge Kiser dismissed the plaintiff's VAWA claim on the grounds that VAWA exceeded Congress' authority under the Commerce Clause. Disregarding Congressional findings that "[g]ender-based crimes and fear of gender-based crimes restricts movement, reduces employment opportunities, increases health expenditures, and reduces consumer spending, all of which affect interstate commerce and the national economy" and that "studies report that almost 50 percent of rape victims lose their jobs or are forced to quit in the aftermath of the crime,"[83] Judge Kiser relied on Lopez to declare VAWA unconstitutional.[84] Judge Kiser is the same lower court judge who found constitutional the Virginia Military Institute's exclusion of female cadets, only to be reversed five years later by the Supreme Court.[85] The ultimate result in Brzonkala is unclear.

As these examples suggest, the conservative judicial activism that led to Lopez may well produce further harm to important federal anti-crime efforts, particularly if far right advocates are successful in imposing their version of the right-wing judicial litmus test on future nominations.

Gun Control: The Brady Bill

A similar problem is posed with respect to gun control efforts. In 1993, Congress enacted the Brady Handgun Violence Prevention Act as an amendment to the Gun Control Act of 1968. The Brady Act requires the Department of Justice within five years to establish and maintain an instant national criminal background check system for handgun purchasers. In the interim, the Brady Act imposes a waiting period of up to five days, and requires the chief law enforcement officer of the prospective purchaser's place of residence to perform a reasonable background check during that waiting period. According to the Bureau of Alcohol, Tobacco and Firearms, 44,274 felons have been prevented from illegally obtaining handguns under this procedure.[86] Despite such reports of the Brady Act's significant success in keeping handguns out of the possession of convicted felons, it has regularly drawn criticism

from extremist conservatives who label it a violation of handgun owners' rights.[87]

Across the country, federal judges appointed by Presidents Reagan and Bush repeatedly have voted to invalidate the Brady Act on constitutional grounds. In Printz v. U.S., Reagan-appointed Judge Charles Lovell struck down the Brady Act on Tenth Amendment grounds, finding it to have "substantially commandeered state executive officers and indirectly commandeered the legislative processes of the states to administer a federal program."[88] In Mack v. U.S., Bush-appointed Judge John Roll struck down the Brady Act on similar Tenth Amendment grounds, as well as Fifth Amendment Due Process grounds because of the Brady Act's allegedly "imprecise and indefinite" statutory duty.[89] These two decisions were reversed in Mack v. U.S., with Bush-appointed Circuit Judge Ferdinand Fernandez dissenting.[90] The majority looked to established law and observed that "[t]he obligation imposed on state officers by the Brady Act is no more remarkable than, say, the federally-imposed duties of state officers to report missing children . . . or traffic fatalities."[91] Such reasoning, however, did not prevent Bush-appointed Judges Charles Pickering and Rebecca Doherty individually from striking down the Brady Act on Tenth Amendment grounds in McGee v. U.S.[92] and Romero v. U.S.[93] In Frank v. U.S. Bush-appointed Judge Fred Parker also found the Brady Act unconstitutional on Tenth Amendment grounds.[94] Like Judges Lovell and Roll, but unlike Judges Pickering and Doherty, Judge Parker was reversed on appeal. A unanimous Second Circuit held that the Brady Act imposes neither "a structural burden inconsistent with the plan established by the Constitution," nor "an onerous quantitative burden on state or local officials."[95]

As of this summer, two federal courts of appeals have thus sustained the validity of the Brady Act, but one appellate court has ruled that the law is unconstitutional in an opinion by Reagan appointee E. Grady Jolly.[96] The Supreme Court has decided to consider the issue in 1996-97, and will review the Ninth Circuit decision upholding the law in Mack v. U.S. At stake in this decision will be not only the Brady Act itself, but also the broader question of whether any such federal anti-crime and anti-gun violence laws can stand. Although it is unclear whether conservative judicial activists will prevail in Mack as in Lopez, there is no question that Reagan-Bush judges have already damaged federal

crime control efforts and that imposition of a far right judicial litmus test threatens to cause even more harm in the future.

FREEDOM OF RELIGION

Religious freedom has long been a fundamental American value. The protections for religion embodied in the Establishment and Free Exercise Clauses of the Constitution, as interpreted by the Supreme Court over the years, have preserved and fostered a breadth and depth of religious expression and practice unrivaled in the modern world.[97]

But despite lip service to the principles of religious freedom, Reagan-Bush judges have in fact harmed religious freedom over the past fifteen years and threaten to do more harm in the future. Several years ago, the Supreme Court decided that government could pass laws which substantially interfere with an individual's ability to worship as he or she sees fit. It also, for the first time, allowed and in one case required direct government funding of religious activities, blurring the separation of church and state. And the more conservative members of the Court have expressly advocated a weak reading of the Establishment Clause that would permit a wide range of government-sponsored religious activities and allow religious majorities to use government to advance their religion at the expense of religious minorities and non-believers. The addition of several Justices to the Court based on a far right judicial litmus test could seriously threaten constitutional protection for freedom of religion.

Free Exercise of Religion

The Free Exercise Clause of the First Amendment was designed to protect individuals against government activity that interferes with their ability to practice their religion. In the 1963 case of Sherbert v. Verner,[98] the Supreme Court ruled that a state law could not burden the free exercise of religion unless the law was narrowly tailored to achieve a compelling government interest. This rule subjected even laws of general application to the most exacting level of judicial scrutiny if the law burdened a free exercise right. For example, a local law prohibiting all consumption of alcoholic beverages would have to exempt the use of wine for religious ceremonies such as communion, unless the government could demonstrate a compelling justification for an absolute ban.

But the Supreme Court reversed course and dealt a severe blow to religious liberty in 1990 with Employment Division v. Smith.[99] In an opinion authored by Justice Scalia, a 5-4 majority of the Court ruled that the Free Exercise Clause does not prevent government from enforcing generally applicable criminal laws even when such enforcement effectively prevents individuals from practicing their religious beliefs or holding religious ceremonies. This new standard not only departed from the Court's settled First Amendment doctrine, but also, as Justice O'Connor pointed out, was an example of judicial activism because the Court could have reached the same result without declaring a new constitutional rule.[100]

The new constitutional rule announced in Smith left people of all faiths vulnerable to restrictive laws. For instance, courts have relied on Smith in authorizing government agencies to:

- Force families of accident victims and others to endure intrusive government autopsies of family members, even though the autopsies were directly contrary to their religious beliefs and there was no finding that the autopsies were necessary for government purposes;[101]
- Dismiss the challenges of Catholic and Quaker groups to employer sanction provisions of the Immigration Reform and Control Act that they contended interfered with the operation of their religious facilities;[102]
- Enforce boarding house rules that violated the religious practices of the Salvation Army;[103]
- Require a religious student at a state veterinary school to perform fatal surgical operations on healthy animals, without even considering the student's religious objections.[104]

Disturbed by the result in Smith, Congress effectively reinstated the law as it existed prior to Smith by passing the Religious Freedom Restoration Act ("RFRA"), creating a statutory right to religious freedom equivalent to the constitutional protection that existed before Smith.[105] But even this legislation may not be sufficient to safeguard religious freedom. Federal judges have disagreed on RFRA's constitutionality.[106] Parties in one case have recently asked the Supreme Court to determine whether RFRA is constitutional.[107] Since four of the five Justices from the Smith majority are still on the Court, any Supreme Court challenge to RFRA in the near future would likely be heard by these same

Justices, along with one of the current Court's most conservative Justices, Clarence Thomas. Indeed, some right-wing commentators who have praised Justices Thomas and Scalia have criticized RFRA,[108] suggesting possible danger to this statutory protection for religious freedom, particularly if a new right-wing judicial litmus test is used in selecting future Justices.

Establishment Clause

A. Vouchers and Government Funding of Religion

From the time of the Framers of the Constitution, prohibition of government funding of religion has been at the heart of our nation's concept of religious liberty. James Madison vehemently opposed a tax assessment bill in Virginia which would have collected public funds for religious purposes. He wrote: "Who does not see that . . . the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?"[109] After the defeat of the bill, Thomas Jefferson wrote the Virginia Bill for Establishing Religious Freedom. The bill's preamble declared that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical," and its text provided "[t]hat no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever."[110]

Supreme Court precedent has followed the lead of Madison and Jefferson by interpreting the Establishment Clause as prohibiting government funding of religion. When religious organizations received government funding as a part of a more general funding program, the Supreme Court traditionally examined whether the organization's religious activities could be separated from its secular activities, and whether the program ensured that the government funds would flow only to the secular ones.[111] For instance, in Committee for Public Education v. Nyquist, the Court struck down a state tax credit for parents who sent their children to private schools; since many of these schools would have been sectarian, the program would have impermissibly used public funds for sectarian as well as secular purposes.[112] By requiring that government funds be used only for secular activities, the Court safeguarded religious liberty by protecting religion from

government fiscal influence and protecting taxpayers from mandatory funding of religious beliefs and practices.

But this basic principle of church-state separation has been thrown into doubt by two recent religious funding cases where the conservative members of the Supreme Court allowed government funding of religious activities. Both of these cases were decided by 5-4 votes. These decisions could have grave implications for more widespread government funding of religion, including government-funded school voucher programs that would appropriate public funds for sectarian education and which are opposed by most Americans.[113]

In Zobrest v. Catalina Foothills School District,[114] parents enrolled their deaf child in a religious high school and claimed that federal law required the State of Arizona to provide a sign-language interpreter for the child. The State refused on the ground that providing a government employee to promote religious instruction would violate the Establishment Clause. The Court's conservative majority of Chief Justice Rehnquist, Justice White, and Reagan-Bush appointees Scalia, Kennedy, and Thomas rejected this argument and held that the Establishment Clause did not bar a State from providing an interpreter to advance the child's sectarian education.[115] The Court relied in part on the theory that filtering of government funds through "private choices" of individual parents negated the government's role in supporting religious schools, despite the fact that such "choice" is made possible only through public financial assistance provided by the government and so is not truly private. Such reliance on "private choice"[116] could open the floodgates to massive government funding of religion so long as the funds are first funneled through individual citizens.

Zobrest has already had an important effect with respect to church-state separation. In Walker v. San Francisco Unified School District,[117] the Ninth Circuit Court of Appeals relied on Zobrest as well as other Supreme Court cases in allowing the use of federal funds to provide certain materials and equipment to parochial schools--in spite of the court's recognition that prior Supreme Court precedent squarely prohibited such uses of government funds.[118] According to the Walker court, Zobrest implied that the Supreme Court's prior prohibition on such funding

had been implicitly overruled, even though the Court had not yet done so itself.[119]

In Rosenberger v. Rector and Visitors of the University of Virginia,[120] the conservative bloc of the Court in another 5-4 decision again eroded the wall of separation between church and state by actually requiring government funding of a student religious publication. Although the University of Virginia reimbursed expenditures by some student groups through a Student Activities Fund, it refused to reimburse the expenses of a student newspaper dedicated to discussing and promoting Christian perspectives and beliefs on the ground that such funding would violate the Establishment Clause. Chief Justice Rehnquist and Reagan-Bush appointees Kennedy, O'Connor, Scalia, and Thomas struck down the school's refusal to fund religious student publications as unconstitutional. While the Court focused on free speech concerns, the Court's decision may not only allow but require government funding of religion in some circumstances. The potential consequences of Rosenberger were recognized by Justice Souter in dissent, who stated that the Court's reasoning "would commit the Court to approving direct religious aid beyond anything justifiable for the sake of access to speaking forums."[121]

Chief Justice Rehnquist, Justice Scalia, and Justice Thomas have already made clear that they would allow virtually any government funding of religious activities, regardless of the potentially substantial benefits received by religious groups, so long as the grants are made without explicit reference to religion. Justice Kennedy's decision to join the majority in Zobrest and his authorship of the opinion in Rosenberger cast considerable doubt on his willingness to protect the independence of religion and the consciences of taxpayers by prohibiting government funding of religious activities. Justice O'Connor's emphasis on a case-by-case analysis[122] makes it difficult to evaluate what her position would be concerning a voucher program including sectarian schools, but voucher advocates clearly hope to win her vote based on her concurring opinion in Rosenberger.

Consequently, there are at least three votes on the Court, and possibly four or five, that would support a voucher program including sectarian schools. Several voucher cases are already winding their way through the judicial system, including an Ohio

case in which a lower court judge has approved a voucher plan, and may very well be heard by the Supreme Court in the near future. Imposing a new right-wing litmus test for judicial appointments would almost certainly lock in a Supreme Court majority that would authorize vouchers and other significant government funding of religion, dismantling the historic separation of church and state and eroding religious liberty.

B. Weakening the Establishment Clause: The Coercion Test

For the past generation, federal courts have required government neutrality in religious matters by applying a three-part test enunciated in the 1971 Supreme Court decision of Lemon v. Kurtzman, written by Chief Justice Burger.[124] Under the Lemon test, government violates religious freedom and neutrality when its action has a primarily religious reason, has the primary effect of advancing or inhibiting religion, or results in excessive government entanglement with religion.[125] Although Lemon itself has been applied inconsistently by the Supreme Court and criticized by a number of Justices and commentators, a majority of Justices have continued to rely on key principles underlying the decision, such as the principle that government should not endorse religion.[126]

If the conservative wing of the Court had its way, however, such principles would be disregarded entirely and replaced by a much more permissive "coercion" test which would allow government involvement in and promotion of all but the most invasive religious activities. In Lee v. Weisman, Justice Scalia wrote for four dissenters (three of whom remain on the Court) that the Establishment Clause should not apply whatsoever to state promotion of religion unless the state threatens to impose a penalty on nonparticipants. Under this view, the Constitution would permit a wide range of government-sponsored religious activities. In the public schools, officials could require that the school day begin with sectarian devotionals, teachers could proselytize to their students, and student religious majorities could determine what religious service or which religious leader to have at school events regardless of the beliefs of religious minorities, so long as objecting students faced no formal punishment. In other contexts, a coercion test would allow government-erected symbols of a single faith to the exclusion of others on public

buildings and in public space, and judges, military officers, and government employers could proselytize to those under their supervision.

The support for such an interpretation of the Establishment Clause by three present members of the Court raises serious concerns about the future of religious liberty in America. If right-wing groups are successful in establishing their litmus test for judicial appointments, this coercion test could command a majority on the Court, allowing public officials and whoever can effectively pressure those pubic officials to use the machinery of government to advance their beliefs at the expense of those with other beliefs. In a nation with such a variety of religious beliefs and practices, where shifting populations can cause today's religious majority to become tomorrow's religious minority, it is more important than ever for our federal judges to ensure that our basic religious freedoms do not become subject to the popular whims of the moment. This protection for religious liberty would clearly be endangered by a new right-wing judicial litmus test for federal judges.

FREEDOM FROM DISCRIMINATION[128]

The far right's objective of imposing right-wing litmus tests on future judicial appointments poses great danger to Americans' freedom from arbitrary discrimination. Even putting aside the issue of affirmative action, and focusing only on decisions since 1992, in a wide variety of cases the Reagan-Bush federal courts have demonstrated a startling inclination to overturn or otherwise erode long-settled protections of individual liberties.[129] Reagan-Bush appointees to the federal courts have emasculated both statutory and constitutional protection of minority voting power, called into question the very basis for the nation's civil rights laws, and sanctioned significant encroachments on statutory and constitutional protections against discrimination and against arbitrary interference in Americans' private affairs. Just as important, dissenting views in civil rights cases that now command only three or four votes on the Supreme Court offer a chilling forecast of the future damage that could be done by one or two additional appointments to the Court based on a far-right judicial litmus test, which would also threaten civil rights and diversity on the courts themselves.

Voting Rights and Racial Discrimination

Nowhere is the retreat from the Supreme Court's traditional commitment to equality more evident than when considering the voting rights of minority citizens. Since 1992, the Supreme Court has rendered virtually meaningless some of the protections afforded by the Voting Rights Act. In Holder v. Hall,[130] the Supreme Court ruled that the Voting Rights Act could not be used to challenge a single-commissioner form of government. In that case, the Court rejected the complaint of African-American voters of Bleckley County, Georgia, who comprise 22 percent of the county's population, that its single-commissioner form of county government illegally diluted their voting power. Bleckley County's county commissioner, who always has been white, controls all county property, levies taxes, spends public money, builds and repairs roads and bridges and makes the legal rules governing county government operations. The oppressiveness of such a system on the articulation of minority interests has deterred many of the African-American voters in that county from running for office because of their relatively weak voting strength and even from voting because all poll watchers in the county are white. Nonetheless, the five-member Reagan-Bush majority of the Court failed to recognize, much less advance, the statute's primary purpose of augmenting minority representation to remedy past discrimination.

The Court has also systematically invalidated so-called "majority-minority" districts drawn by state legislatures to remedy past discrimination by boosting minority representation. In a series of cases since 1992, the Reagan-Bush appointees on the Supreme Court have imposed the most rigorous standards on these districts and, consequently, left such attempts at increasing minority representation highly vulnerable to constitutional attack. Prior to these decisions, the federal courts intervened in voting district cases only to enforce the one-person-one-vote requirement and to prevent dilution of a minority group's voting strength.[132] The Reagan-Bush majority, though, has added a third category to the list of when federal courts may intervene in these cases: whenever white voters feel disenfranchised by the creation of majority-minority districts, even if they are intended to remedy proven discrimination and even if such voters cannot show a dilution of their voting strength. In Shaw v. Reno,[133] the Court held that if white plaintiffs could show that a voting district scheme was so irrational on its face or so bizarre in geographical contour that it can only be understood as an

effort to segregate voters into separate voting districts because of their race, such districts would be invalidated unless it was shown to be narrowly tailored to further a compelling governmental interest. The Court further sharpened that standard, however, in Miller v. Johnson,[134] when it determined that white voters need not show that a voting district is bizarrely shaped, but only that race was the dominant and controlling rationale in drawing voting district lines. Although the Court acknowledged that eradicating the effects of past racial discrimination was a "significant" state interest, the Court rejected the notion that it rose to the level of a "compelling" state interest. On this basis, the Court invalidated the majority-minority voting district at issue.

In its most recent term, the 5-4 Court majority solidified its work in Bush v. Vera[135] and Shaw v. Hunt.[136] In those cases, the majority struck down four congressional districts designed to augment Hispanic and Black representation. The Bush opinion seems to indicate that even when other traditional political and geographical factors influence state officials' district line drawing, the presence of race as a major factor will trigger strict judicial investigation into the plan. In dissent, Justice Stevens aptly stated that "I [do not] see how our constitutional tradition can countenance the suggestion that a State may draw unsightly lines to favor farmers or city dwellers, but not to create districts that benefit the very group whose history inspired the Amendment that the Voting Rights Act was designed to implement."[137] Particularly if a new far-right litmus test is used to select future Supreme Court justices, the protections of the Voting Rights Act are likely to be even further eviscerated.

Similar problems are evident in other recent Supreme Court decisions on racial discrimination. In Purkett v. Elem,[138] the Court eroded the protections afforded by a decade-old precedent which forbids the use of race in peremptory challenge settings. Under Batson v. Kentucky,[139] once the opponent of a peremptory challenge has made out a case of racial discrimination, the proponent of the challenge may counter with a race-neutral explanation for such challenge. In Purkett, the Court undermined Batson's protections by ruling that a race-neutral explanation tendered by a proponent of a peremptory challenge need not be persuasive. Indeed, any race-neutral explanation, no matter how "implausible or fantastic" or "silly or superstitious" is sufficient to rebut a case of racial discrimination![140]

In United States v. Armstrong,[141] Chief Justice Rehnquist wrote for the Supreme Court that African-American criminal defendants who presented evidence that only minorities were being prosecuted on crack charges in federal court were not even entitled to discovery on their claim of selective prosecution unless they could show the existence of similarly situated white criminal defendants who could have been prosecuted but were not. In dissent, Justice Stevens noted that "it is undisputed that the brunt of the elevated federal penalties [for trafficking crack cocaine as opposed to powder cocaine] falls heavily on blacks. While 65% of the persons who have used crack are white, in 1993 they represented only 4% of the federal offenders convicted of trafficking in crack. Eighty-eight percent of such defendants were black."[142] Justice Stevens countered the Rehnquist-led majority in asserting that the stark disparity of such statistics raises an inference of racial discrimination for which the trial judge properly ordered discovery but which the Supreme Court disregarded.

In another area of deep and divisive concern over racial equality, the Supreme Court recently ordered that a federal district judge exceeded his authority in trying to desegregate the Kansas City public schools. In Missouri v. Jenkins,[143] the Court vacated the district court's orders designed to attract, not coerce, white students back into the inner city school district. In writing for the majority, Chief Justice Rehnquist equated the goal of returning local control of the schools to the goal of remedying the effects of past racial segregation in public schools. As the dissent pointed out, the majority's opinion will seriously harm efforts to remedy the vestiges of racial segregation.

Employment Discrimination

The Constitution does not protect against arbitrary discrimination in most private sector employment decisions. Rather, workers unfairly treated because of their religion, race, or gender must resort to statutory remedies adopted by Congress, the states, and localities. However, even though Congress adopted the 1964 Civil Rights Act as a broad remedial measure for such injustices, the Supreme Court has appeared intent on narrowing the Act's protections and forcing workers to meet seemingly insurmountable burdens of proof in support of their claims. Recently, in St. Mary's Honor Center v. Hicks,[144] the Supreme Court, in an opinion written by Justice Antonin Scalia, determined that a fired worker does not automatically win his case even if he proves that his former employer is lying in its defense of a job discrimination claim.

Beyond evidence that the former employer's excuse for the firing is merely a ruse, a worker alleging arbitrary discrimination now needs direct evidence of impermissible bias.

Hicks, an African-American supervisor at a Missouri prison, had a satisfactory work record until a new boss, who was white, took over. Thereafter, Hicks was frequently disciplined, then demoted. After a confrontation with his supervisor, Hicks was fired and replaced with a white worker. Hicks proved in a lower court that his employer's case was based on outright falsehoods. The prison administration asserted that the severity and frequency of Hicks' rulebreaking was the reason for his termination. But Hicks proved that similar or more serious infractions were often ignored when committed by white workers. He also proved his white supervisor manufactured a confrontation in order to fire him. The Supreme Court nevertheless ruled that Hicks failed to prove that the discrimination was racially motivated and that the fact that his employer lied in court yielded nothing.

As a result of Hicks, in such a case the fired employee must now produce more, direct evidence of discrimination. This not only contradicts two decades of established precedent, but it also has the effect of sanctioning lying as a defense in bias suits and of requiring fired workers to produce concrete evidence of a typically subtle and difficult to prove occurrence. Justice Souter, in dissent, lamented that the Court's decision placed fired workers in an impossible position "for the simple reason that employers . . . are not likely to announce their discriminatory motive."[145]

The Validity of Anti-Discrimination Statutes

In United States v. Lopez,[146] Chief Justice Rehnquist, writing for a five-member Reagan-Bush majority, struck down the federal Gun-Free School Zones Act on the basis that Congress exceeded its authority under the Commerce Clause of the Constitution in enacting the legislation. Lopez marks the first time since 1936 that the Court has relied on the Commerce Clause to invalidate federal legislation. Although Congress presumably believed that gun violence interjected in a school environment interfered with the quality of education which, in turn, is intimately tied to the future economic viability of individuals, the Supreme Court struck down the statute because such concerns do not "substantially" affect interstate commerce.

The troubling aspects of the Lopez decision lie not only in the Court's evident reversal of 60 years of settled Commerce Clause jurisprudence, but also in the fact that Congress has passed major pieces of civil rights legislation upheld by prior Supreme Court opinions on the basis of Congress' power to regulate interstate commerce. For instance, Title II of the 1964 Civil Rights Act bans discrimination in places of public accommodation by covering any establishment which serves interstate commerce. In Heart of Atlanta Motel v. United States,[147] and Katzenbach v. McClung,[148] the Supreme Court upheld the 1964 Civil Rights Act against a commerce clause attack. While Lopez itself does not speak to this issue, the addition of right-wing justices to the Court could well threaten Congress' authority to enact anti-discrimination statutes.

Very recently, this threat has proven much more than hypothetical. In 1994, Congress passed the Violence Against Women Act, a measure intended to create federal crimes for those who attack women. Congress enacted this piece of legislation based in part on its power to regulate interstate commerce, postulating that violence against women affected their job performance and therefore had a substantial effect on interstate commerce. However, in a July 29, 1996 decision, Reagan-appointed district court judge Jackson L. Kiser invalidated the Violence Against Women Act, citing Lopez as the authority to conclude that Congress exceeded its authority in enacting the Act because violence against women bears no rational relationship to interstate commerce.[149] Imposition of a far right judicial litmus test threatens to produce many more such decisions.

Gender and Sexual Orientation Discrimination

In J.E.B. v. Alabama,[150] the Supreme Court held that intentional discrimination on the basis of gender in the use of peremptory strikes in jury selection violates the constitutional guarantee of equal protection. Like race-based exclusions in jury selections, the Court determined that gender is "an unconstitutional proxy for juror competence and impartiality."[151] But the Court's three most conservative justices dissented from this seemingly uncontroversial proposition. Chief Justice Rehnquist and Justices Scalia and Thomas charged sarcastically that "[t]oday's opinion is an inspiring demonstration of how thoroughly up-to-date and right-thinking we Justices are in matters pertaining to the sexes (or as the Court would have it, the genders), and how sternly we disapprove the male chauvinist attitudes of our predecessors."[152]

The complaints of Justice Scalia and his colleagues about compelling a state to treat equally its women and its men are the same complaints that have been used to deny opportunities to women seeking admission to the bar, access to legal and medical educations, entrance to the federal military service academies or to police academies. Although the Supreme Court majority ruled favorably on this issue of gender discrimination, the dissent's venomous attacks on the legal basis for such conclusions illustrate the potential consequences if as few as two new justices are added using a right-wing judicial litmus test.

So, too, does the dissent in the landmark case of Romer v. Evans,[153] in which a 6-3 majority of the Supreme Court invalidated an amendment to the Colorado state constitution which attempted to forbid any component of state government from extending civil rights protections on the basis of sexual orientation. Writing for the majority, Justice Anthony Kennedy quoted the dissent in Plessy v. Ferguson, the case in which the Supreme Court articulated its infamous "separate but equal" principle of racial "equality," asserting that "the Constitution 'neither knows nor tolerates classes among citizens.'"[154] The opinion in Romer upheld the basic principle that "[a] State cannot so deem a class of persons a stranger to its laws."[155]

However basic the principle laid down in Romer may appear, however, the dissent joined by Chief Justice Rehnquist and Justices Scalia and Thomas found much with which to disagree. Eeringly noting that the majority "has mistaken a Kulturkampf for a fit of spite," Justice Scalia characterized Colorado's attempt at excluding gays and lesbians as simply a "modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws."[156] Justice Scalia appeared to criticize gays and lesbians for having high disposable income, political power in disproportionate measure to their numbers, and enjoying enormous influence in American media and politics. Besides the fact that these points in the dissent have little or no relevance to the equality principle at hand in the case, they are astonishing because of their conformity to the rhetoric of some of the far right's worst gay-baiters.[157]

In light of its decision in Romer, the Supreme Court ordered the U.S. Court of Appeals for the Sixth Circuit to reconsider its decision in Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati.[158] In Equality Foundation, Reagan appointee Robert Krupansky, writing for

the three-judge panel, rejected an equal protection claim out of hand in circumstances closely similar to those in Romer, finding that the Constitution affords no protection to gays, lesbians, and bisexuals and that a gay person's interest in participating in the political process like any other citizen was not sufficiently "fundamental" to warrant heightened constitutional protection. Acting in part on the advice of rejected Reagan Supreme Court nominee Robert Bork, who authored a "friend of the court" brief in Equality Foundation, the Sixth Circuit relied extensively on the Supreme Court's decision in Bowers v. Hardwick,[159] in which the Court dismissed a gay man's claim that the Georgia sodomy statute unconstitutionally infringed on his right to privacy as against arbitrary governmental intrusions. Although the Bowers Court expressly declined to consider equal protection arguments, the Equality Foundation Court nonetheless equated sodomy with sexual orientation and rejected the claim that gays deserve constitutional protection against electoral majorities which ride roughshod over rights non-gay Americans take for granted.

The federal courts have similarly used Bowers to reject the claim that the wholesale exclusion of gays from the military and the "Don't Ask, Don't Tell" exclusion of gays from the military violates the constitutional guarantee of equal protection.[160] To the extent that the far right succeeds in imposing a new judicial litmus test on future judicial appointments, these decisions merely signal the beginning of what will no doubt be a long line of cases curtailing even the most fundamental civil liberties of gay and lesbian Americans.

Disability Rights

The disabled have similarly seen their statutory and constitutional rights damaged by Reagan-Bush judges. In **Lane v. Pena**,[161] the Supreme Court rejected a plaintiff's claim that he was entitled to compensatory damages from the federal government under the Rehabilitation Act for an unlawful separation from the Merchant Marine Academy. The Court ruled that because the text of the statute does not expressly waive the federal government's routine exemption from the payment of such damages, the disabled plaintiff could not recover damages. In dissent, Justice Stevens pointed out that the Court failed to credit the clear purpose of Congress in enacting and amending the Rehabilitation Act to authorize an award of damages against a federal agency that violates the Act's provisions.

In Heller v. Doe,[162] the Supreme Court decided against the rights of mentally retarded citizens, upholding a Kentucky statute which set forth a dubious distinction between mentally ill individuals and mentally retarded individuals. In Heller, the Court approved the statute's scheme by which a mentally retarded individual could be involuntarily committed to a state facility upon a showing of "convincing" evidence that such citizen presented a danger to himself or others but a mentally ill individual could be involuntarily committed to a state facility only upon a much higher standard of showing evidence "beyond a reasonable doubt" that such citizen presented a danger to himself or others. The Court further approved the statute's scheme by which the family and guardians of a mentally retarded individual could team up with the state as a "second prosecutor" in prosecuting an involuntary commitment motion but the family and guardians of a mentally ill individual could not. Essentially, the Court refused to entertain the notion that a mentally retarded individual's interest in avoiding involuntary commitment did not rise to the level of a "fundamental right" subject to heightened constitutional protection.

In dissent, Justice Souter contended that no rational justification supported the distinction between mentally ill and mentally retarded individuals. He argued that a statute's allocation of burdens of proof reflected not the ease with which some fact may be proved (a contention Kentucky used to support the distinction at issue), but that a statute's allocation of burdens of proof reflected the relative importance of the interests asserted in different cases. Justice Souter referred to the "more likely than not" burden of proof in civil cases to the "beyond a reasonable doubt" burden of proof in criminal cases. He explained that our legal system assigns the much more stringent "beyond a reasonable doubt" standard to criminal cases because a criminal case is relatively harder to prove than a civil case. Rather, our legal system does not assign the much more stringent "beyond a reasonable doubt" standard to criminal cases because an erroneous criminal case verdict routinely results in the deprivation of liberty to the convicted defendant. In civil cases, on the other hand, an erroneous verdict routinely results merely in the payment of damages. Justice Souter convincingly argued that because there existed no distinction between the involuntary commitment of a mentally ill individual and the involuntary commitment of a mentally retarded individual, the burdens of proof should likewise reflect no distinction.

Civil Rights and Diversity On the Federal Courts

Another important consequence of the Reagan-Bush judicial litmus test was that Reagan-Bush nominees were overwhelmingly white and male, with women and minorities largely excluded from nomination. The statistics are striking. Out of more than 600 judges nominated by Presidents Reagan and Bush, less than one in every twenty was African-American and less than one in every eight was a woman. In fact, after twelve years of Reagan-Bush appointments, there were actually less African-American judges on the federal courts of appeals than in 1981. As then-Senior Judge Leon Higginbotham wrote in July, 1992:

> I am forced to conclude that the record of appointments of African-Americans to the Courts of Appeals during the past 12 years demonstrates that, by intentional Presidential action, African-American judges have been turned into an endangered species, soon to become extinct.[163]

This dire prediction did not come true, however, because of the significant increase in diversity on the federal bench under President Clinton. In his first year in office, President Clinton nominated more African-American judges than President Reagan did in eight years. Overall, as of July, 1996, Clinton had made 231 judicial nominations, of whom more than one in four were minorities and more than three in ten were women. At the same time, more than 65% of Clinton's nominees were rated "well qualified" by the ABA, a higher rating than under Presidents Bush, Reagan, or Carter.[164] Neutral observers such as Professor Sheldon Goldman have praised Clinton's efforts.[165]

Yet proponents of a new far right judicial litmus test have specifically criticized Clinton's nominations because of the increased number of women and minorities. JSMP's Tom Jipping has actually accused President Clinton of "race and sex discrimination," and conservative activists are urging that efforts to promote diversity on the federal bench should be ended.[166]

As Judge Higginbotham has written, diversity in the federal judiciary is important to ensure that litigants "benefit from the experience of those whose backgrounds reflect the breadth of the American experience" and to help build a judiciary "that is both substantively excellent and respected by the general population."[167] Both the Reagan-Bush record

and the rhetoric of right-wing activists indicate, however, that imposition of a new far right judicial litmus test threatens to re-transform America's courts into an overwhelmingly white male province, with minorities again becoming, in Judge Higginbotham's words, an endangered species.

ABORTION AND REPRODUCTIVE FREEDOM

The issue of reproductive privacy and freedom of choice has been a central one for right-wing activists seeking to influence the Supreme Court. Although judicial nominations efforts during the Reagan-Bush administrations did not succeed in actually overturning Roe v. Wade, freedom of reproductive choice has been severely cut back as a result of Reagan-Bush appointments to the Court, and further erosion of reproductive freedom is threatened in the future. In addition, right-wing activists have made clear that Roe v. Wade remains high on their judicial hit list, and if they are able to succeed in implementing a new far right judicial litmus test, constitutional protection for reproductive privacy is likely to disappear altogether.

Restrictions on Reproductive Choice

When the Supreme Court decided Planned Parenthood v. Casey in 1992, headlines proclaimed that despite Reagan-Bush appointments, the Court did not overturn Roe v. Wade. While these headlines were correct, they told only half the story. Although declining to overturn Roe, the majority in Casey approved severe restrictions on reproductive choice, overturning a previous Supreme Court ruling as recent as 1986.[168] As a result of Casey, as well as several other Court rulings before and since that decision, the High Court has specifically approved a number of significant restrictions on reproductive freedom, including laws and regulations which:

- Ban all abortions at public facilities, including even at private hospitals or clinics which lease space from public agencies, foreclosing the availability of abortions to many women;[169]
- Impose requirements on abortion providers which, according to a federal district court, would likely produce increased harassment of providers, unjustifiably interfere with the exercise of proper medical judgment, and make it more difficult for poor women to obtain abortions;[170]
- Require that doctors performing abortions effectively try to discourage them by informing patients about details of fetal

development, alternatives to abortion, and entitlement to public aid and child support if a pregnancy is carried to term, despite a federal judge's finding that such a practice may mislead or confuse patients and is generally inappropriate;[171]
- Prohibit abortions after 20 weeks even in cases of rape or incest, or for any reason other than significant threats to maternal life or health and grave fetal abnormalities.[172]

Perhaps the most serious damage done by the majority in Casey was its proclamation that government restrictions on a woman's right of choice are permissible, even during the first trimester of pregnancy, as long as no "undue burden" is imposed upon her. As a result of Casey, restrictions on the availability of abortions are no longer subject to strict scrutiny as originally prescribed by Roe, and thus no longer need to be "narrowly drawn" to promote a "compelling state interest."[173] Based on this standard, the lower courts have upheld a variety of abortion restrictions, such as:

- State regulation of abortions for the purpose of persuading women not to have them;[174]
- A requirement that a woman be counseled at least 24 hours in advance of her abortion to allow for the state's expression of its preference for childbirth, despite the fact that plaintiffs complained that the result was "demeaning and patronizing" and was "at best useless" given evidence that no patient has ever canceled her plans or changed her decision because of the mandated information.[175]
- Informed consent and waiting period provisions that provide no exceptions for cases of rape or for women upon whom the requirement would have serious adverse effects,[176] such as women battered by their husbands.

Another way in which reproductive freedom is threatened concerns action by abortion opponents to block access to medical facilities, threaten or injure patients and staff, far beyond legitimate First Amendment protest activities. In one of the most extreme cases to date, antiabortionist Paul Jennings Hill shot a physician and his two escorts outside a Florida clinic. Hill tried to raise the legal defense of necessity, involving necessary action to prevent imminent harm to another. Although Reagan-appointed Judge Roger Vinson rejected the defense in Hill itself, he specifically ruled that Hill or any other such defendant could raise a necessity defense to a charge of shooting clinic personnel,

and potentially be acquitted of all charges, if he could prove that he had exhausted all available legal alternatives to preventing abortions over a long period and that abortions were about to be performed by his victims.[177] Particularly if followed by other judges, this decision threatens not only reproductive freedom, but also the very health and lives of doctors, nurses, and other clinic personnel.

Even if Roe v. Wade is not overruled, therefore, Reagan-Bush judges and justices have already severely restricted reproductive freedom, and are likely to continue to do so in the future. This trend can only be accelerated if additional judges are added to the federal courts based on a far right litmus test.

Overturning Roe v. Wade

Beyond simply restricting reproductive choice, right-wing activists seeking to impose a new far-right judicial litmus test have made clear that Roe v. Wade is a primary target of their efforts. A key reason for their praise of Reagan-Bush Supreme Court nominees like Clarence Thomas, as well as their criticism of justices such as David Souter, has been the justices' voting records on abortion. In advocating that the Republican Party platform plank on abortion remain precisely as is for 1996, right-wing advocates have specifically pointed to the plank's call for the "appointment of judges at all levels who respect traditional family values and the sanctity of innocent human life."[178] Earlier this summer, religious right leader Pat Robertson specifically urged "Christian voters" to get involved in the presidential election because "we have a chance right now in this coming election to see three Supreme Court [justices], conservative Supreme Court judges put on the Court, which could indeed reverse Roe v. Wade...."[179]

In fact, only two additional conservative Supreme Court justices like those on the current Court right wing would result in overturning Roe v. Wade, since Chief Justice Rehnquist and Justices Scalia and Thomas have already voted for that result in Casey. The consequences of such a decision would be devastating to women and families. Women could literally be considered criminals by state legislatures for deciding to have an abortion, even in the case of rape or incest. A doctor could be put in jail for performing an abortion, even if necessary to preserve a woman's health. Imposition of a far-right judicial litmus test clearly risks such results in the area of reproductive freedom.

End Notes

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[5] Transcript of "All Things Considered" broadcast, National Public Radio report, August 28, 1985.
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[16] "Justice Anthony Kennedy: Surely Reagan's Biggest Disappointment," *Human Events*, May 31 & June 7, 1996, at 3.
[17] Id. at 3-4.
[18] "Family News in Focus" (radio program), May 21, 1996.
[19] "Justice Anthony Kennedy: Surely Reagan's Biggest Disappointment," supra note 16, at 4.
[20] McGinnis, supra note 3, at 24.
[21] Id. at 28.
[22] Id. at 28-29.
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[26] Gary Bauer, "A Message from Gary L. Bauer" (letter), December 8, 1995.
[27] "Abortion: Dole Tries to Get It Right," *The Hotline,* July 15, 1996.
[28] Gary Bauer, "Focus on the Family" (radio program), May 30, 1996.
[29] Gest, supra note 2, at 40.
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[34] See JSMP fund-raising letter (June, 1995) (available in PFAW files).
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[57] See Joubert v. Hopkins, District of Nebraska Dist. No. 8: CV 91-00350.
[58] See Joubert v. Hopkins, 75 F.3d 1232 (8th Cir. 1996).
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[60] See United States v. Chen, Northern District of California D.C. No. CR-91-00296-VRW, rev'd., 979 F.2d 714 (9th Cir. 1992).
[61] See Hitchcock v. Dugger, 481 U.S. 393 (1987).
[62] *Congressional Record,* April 19, 1996, at S. 3725 (statement of Sen. Patrick Leahy).
[63] Tony Mauro, "Experts Warn that Ranking Jurists is Risky," *USA Today,* May 7, 1996, at 1A.
[64] Neil Lewis, "In Selecting Federal Judges, Clinton Has Not Tried to Be the Anti-Reagan," *New York Times*, August 1, 1996, at 1.
[65] Id.; See also Robert Carp, Donald Songer, and Ronald Stidham, The Voting Behavior of Judges Appointed By President Clinton, March 21, 1996.
[66] Mauro, supra note 63.
[67] "Senator Dole and the Judges," *Washington Post,* April 23, 1996, at A16.
[68] See, e.g., City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365 (1991) (Scalia, J.) (rejecting any application of the Sherman Antitrust Act to anticompetitive restraints imposed by the states, even where those restraints are imposed as part of a conspiracy with a private corporation); Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc., 452 U.S. 264, 311 (1981) (Rehnquist, J. concurring) ("[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so."); Morrison v. Olson, 108 S. Ct. 2597, 2622 (1988) (Scalia, J., dissenting) (arguing that Congress does not have

the authority to appoint a special prosecutor); Clarence Thomas, speech to the Pacific Research Institute, August 4, 1988, at 13 (praising Scalia's dissent in Morrison); Clarence Thomas, speech to University of Virginia Federalist Society, March 5, 1988, at 13 (referring to Congress as "out of control").
[69] 115 S. Ct. 1624 (1995).
[70] 18 U.S.C. § 922(q)(2)(A) (1990).
[71] Lopez, supra note 69, at 1630.
[72] Id. at 1662-63 (Breyer, J., dissenting).
[73] Id. at 1664.
[74] Id.
[75] See U.S. v. Denalli, 73 F.3d 328 (11th Cir. 1996); U.S. v. Pappadopoulos, 64 F.3d 522 (9th Cir. 1995).
[76] Three of the opinions ruling the Act unconstitutional under Lopez were by Reagan appointee Paul Rosenblatt. See U.S. v. Schroeder, 894 F. Supp. 360, 364 (D. Ariz. 1995); U.S. v. Mussari, 894 F. Supp. 1360, 1368 (D. Ariz. 1995); U.S. v. Schroeder (II), 912 F. Supp. 1240, 1244 (D. Ariz. 1995). See also U.S. v. Parker, 911 F. Supp. 830, 835 (E.D. Pa. 1995); U.S. v. Bailey, 902 F. Supp. 727, 730 (W.D. Tex. 1995). Despite these holdings, several courts have nevertheless found the Child Support Recovery Act constitutional under Lopez. See, e.g., U.S. v. Hampshire, 892 F. Supp. 1327 (D. Kan. 1995); U.S. v. Murphy, 893 F. Supp. 614 (W.D. Va. 1995); U.S. v. Hopper, 899 F. Supp. 389 (S.D. Ind. 1995).
[77] U.S. v. Gambill, 912 F.Supp. 287, 290 n. 4 (S.D. Ohio 1996).
[78] U.S. v. All Assets of G.P.S. Automotive Corp., 66 F.3d 483, 499 (9th Cir. 1995).
[79] Civ. A. No. 95-1358-R (W.D. Va. July 29, 1996).
[80] See 42 U.S.C. § 13981(c) (1994).
[81] Brzonkala, supra note 79.
[82] Id.
[83] Id. (quoting S. Rep. 138, 103d Cong., 1st Sess. 54 (1993)).
[84] Id. Judge Kiser's decision runs directly contrary to an earlier decision by Judge Janet Arterton of the U.S. District Court for the District of Connecticut, which held VAWA constitutional under the Commerce Clause. Doe v. Doe, 1996 U.S. Dist. LEXIS 8601 (D. Conn. 1996). Judge Kiser also rejected VAWA's constitutionality under the enforcement clause of the Fourteenth Amendment. The validity of this conclusion is equally suspect given the Supreme Court's holding in Katzenbach v. Morgan, 384 U.S. 641 (1966) (declaring constitutional under the enforcement clause Section 4(e) of the Voting Rights Act of 1965).
[85] Virginia v. United States, 766 F. Supp. 1407 (W.D. Va. 1991), rev'd. 64 U.S.L.W. 4638 (1996).
[86] John Farrell, "Clinton's Record: A Reality Check," Boston Globe, March 10, 1996, at 1.
[87] See, e.g., Jeffrey Snyder, "A Nation of Cowards," *American Civilization*, April, 1995.
[88] 854 F. Supp. 1503, 1519 (D. Mont. 1994), rev'd. 66 F.3d 1025 (9th Cir. 1995).
[89] 856 F. Supp. 1372, 1381-82 (D. Ariz. 1994), rev'd. 66 F.3d 1025 (9th Cir. 1995).
[90] 66 F.3d 1025, 1034 (9th Cir. 1995).
[91] Id. at 1029-31.
[92] 863 F. Supp. 321, 327 (S.D. Miss. 1994), aff'd. 79 F.3d 452 (5th Cir. 1996).
[93] 883 F. Supp. 1076, 1082-83 (W.D. La. 1994).
[94] 860 F. Supp. 1030, 1042 (D. Vt. 1994), rev'd. 78 F.3d 815 (2nd Cir. 1996).
[95] Frank v. U.S., 78 F.3d 815, 827 (2nd Cir. 1996).
[96] Koog v. U.S., 79 F.3d 452, 461 (5th Cir. 1996).
[97] The Establishment and Free Exercise Clauses state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I.
[98] 374 U.S. 398 (1963).
[99] 494 U.S. 872 (1990).
[100] Id. at 903 (O'Connor, J., concurring) ("The Court's holding today not only misreads settled First Amendment precedent; it appears to be unnecessary to this case.").
[101] See Montgomery v. County of Clinton, 743 F. Supp. 1253 (W.D. Mich. 1990), aff'd, 940 F.2d 661 (6th Cir. 1991); Yang v. Sturner, 750 F. Supp. 558 (D.R.I. 1990).
[102] See Intercommunity Center for Justice and Peace v. I.N.S., 910 F.2d 42 (2d Cir. 1990); American Friends Serv. Comm. v. Thornburgh, 951 F.2d 957 (9th Cir. 1991).

[103] See Salvation Army v. Department of Community Affairs, 919 F.2d 183 (3d Cir. 1990).
[104] See Kissinger v. Board of Trustees of the Ohio State University, College of Veterinary Medicine, 5 F.3d 177 (6th Cir. 1993).
[105] RFRA is codified at 42 U.S.C. § 2000bb et seq. (1993).
[106] See, e.g., Flores v. City of Boerne, Texas, 73 F.3d 1352 (5th Cir. 1996) (RFRA constitutional); Abordo v. State of Hawaii, 902 F. Supp 1220, 1229-34 (D. Hawaii 1995); Sasnett v. Department of Corrections, 891 F. Supp. 1305, 1315-21 (W.D. Wis. 1995) (same); Belgard v. Hawaii, 883 F. Supp. 510, 512-17 (D. Hawaii 1995) (same). But see Keeler v. Mayor & City Council of Cumberland, Civ. A. No. S-96-167, 1996 WL 311701 (D. Md. June 10, 1996) (decision by Reagan appointee Frederic Smalkin finding RFRA unconstitutional).
[107] Flores v. City of Boerne, Texas, 73 F.3d 1352 (5th Cir. 1996), petition for cert. filed, __ U.S.L.W. __ (June 25, 1996).
[108] See, e.g., "Court Protects 'Religious' Marijuana Use," *Human Events,* February 23, 1996, at 5.
[109] James Madison, Memorial and Remonstrance Against Religious Assessments ¶ 3, reprinted in Everson v. Board of Ed. of Ewing, 330 U.S. 1, 65-66 (appendix to dissent of Rutledge, J.).
[110] Jefferson, A Bill for Establishing Religious Freedom, reprinted in 5 The Founder's Constitution, 84-85 (P. Kurland & R. Lerner, eds. 1987). See generally Everson, 330 U.S. at 13.
[111] See Rosenberger v. Rector & Visitors of the University of Virginia, 115 S. Ct. 2510, 2543-44 (1995) (Souter, J., dissenting).
[112] 413 U.S. 756, 780 (1973).
[113] See Stanley Elam, "Phi Delta Kappa's Young Leaders of 1980 Tackle Today's Issues," *Phi Delta Kappan,* May, 1996, at 610 (poll result showing 65% of the public opposes allowing students and parents to choose a private school to attend at public expense).
[114] 113 S. Ct. 2462 (1993).
[115] Zobrest is another example of conservative judicial activism because the Court did not need to reach the Establishment Clause issue at all. As an alternative to the Establishment Clause rationale, the State argued that the federal law at issue, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., did not even require it to provide an interpreter at any private school if special education services were available at the local public school. If true, this contention would have eliminated the Establishment Clause problem. Although the State had neglected to raise this argument in the lower courts, the Supreme Court could have adhered to the general rule against deciding constitutional issues except where absolutely necessary by remanding the case for a determination of the statutory question. Instead, the Court reached out to decide a constitutional question that could have been avoided entirely. Existing federal precedent uniformly holds that the IDEA does not requires a state to provide an interpreter under such circumstances. See K.R. v. Anderson Community Sch. Corp., 81 F.3d 673 (7th Cir. 1996); Goodall v. Stafford County Sch. Bd., 930 F.2d 363 (4th Cir.), cert. denied, 112 S. Ct. 188 (1991); McNair v. Cardimone, 676 F. Supp. 1361 (S.D. Ohio 1987), aff'd on other grounds, 872 F.2d 153 (6th Cir. 1989); Work v. McKenzie, 661 F. Supp. 225 (D.D.C. 1987). Justice O'Connor criticized the majority for reaching the constitutional issue and refused to reach it herself. 113 S. Ct. at 2475 (O'Connor, J. dissenting).
[116]The Court's reliance on "private" choice ignores the fact that such "choice" is made possible only through public financial assistance provided by the government and so is not truly private.
[117] 46 F.3d 1449 (9th Cir. 1995).
[118] Id. at 1464-65.
[119] In their dissent from the Ninth Circuit's refusal to rehear the case, three judges recited the controlling Supreme Court precedent and stated that "the Court has squarely held that the state may not do what it is doing here. We are simply not free to ignore that ruling." Walker v. San Francisco Unified School District, 62 F.3d 300, 302 (9th Cir. 1995) (Reinhardt, J., dissenting from denial of petition for rehearing en banc, joined by Pregerson, C.J., and Hawkins, J.).
[120] Rosenberger, supra note 111.
[121] Id. at 2534 (Souter, J., dissenting).
[122] See, e.g., Id. at 2525-26 (O'Connor, J., concurring).
[123] See Gatton v. Goff, No. 96CVH-01-193 (Ct. of Common Pleas, Franklin Co. Ohio) (July 31, 1996), app. pending (upholding Ohio state voucher program in Cleveland). See also Jackson v. Benson, No. 95cv1982 (Cir. Ct. Dane County, Wis.) (Wisconsin State voucher program in

Milwaukee).
[124] 403 U.S. 602 (1971).
[125] Id. at 612-13 (1971).
[126] See, e.g., Wallace v Jaffree, 472 U.S. 38, 69 (O'Connor, J., concurring).
[127] 112 S. Ct. 2649, 2684 (1992) (Scalia, J., dissenting, joined by Rehnquist, C.J., Thomas, J., and White, J.).
[128] This section was drafted by David M. Pierce, Esq. The views expressed herein are solely those of the author and People For the American Way, and do not necessarily reflect the views of his firm or other attorneys with the firm. People For the American Way also gratefully acknowledges the work of attorney Daniel Simon and law students Gregory Ostfeld and Melissa Kopff on this report.
[129] For a discussion of pre-1992 decisions in the area of civil rights, see People for the American Way, Assault on Liberty: The Record of the Reagan-Bush Courts (1992).
[130] 114 S. Ct. 2581 (1994).
[131] See, e.g., Reynolds v. Sims, 84 S. Ct. 1362 (1964).
[132] See, e.g., Gomillion v. Lightfoot, 81 S. Ct. 125 (1960).
[133] 113 S. Ct. 2816 (1993).
[134] 115 S. Ct. 2475 (1995).
[135] 1996 U.S. LEXIS 3882, 64 U.S.L.W. 4452 (1996).
[136] 1996 U.S. LEXIS 3880, 64 U.S.L.W. 4437 (1996).
[137] Id. at *89 (Stevens, J., dissenting).
[138] 115 S. Ct. 1769 (1995).
[139] 106 S. Ct. 1712 (1986).
[140] 115 S. Ct. at 1771.
[141] 116 S. Ct. 1480 (1996).
[142] Id. at 1493.
[143] 115 S. Ct. 2038 (1995).
[144] 113 S. Ct. 2742 (1993).
[145] Id. at 2762 (Souter, J., dissenting).
[146] Supra note 69.
[147] 379 U.S. 241 (1964).
[148] 379 U.S. 294 (1964).
[149] See notes 79-85 and accompanying text for a more complete discussion of this case.
[150] 114 S. Ct. 1419 (1994).
[151] Id. at 1421.
[152] Id. at 1436 (Scalia, J., dissenting).
[153] 116 S. Ct. 1620 (1996).
[154] Id. at 1623 (quoting Plessy v. Ferguson, 163 U.S. 537, 559 (1896)).
[155] Id. at 1629.
[156] Id. (Scalia, J., dissenting).
[157] See, e.g., St. George Crosse, "Perspective: A Disaster for American People; Homosexuals Aren't Disadvantaged; The Supreme Court and Gay Rights," *Baltimore Sun*, June 2, 1996, at 6F.
[158] 54 F.3d 261 (6th Cir. 1995).
[159] 106 S. Ct. 2841 (1986).
[160] See, e.g., Steffan v. Perry, 41 F.3d 677, 684 n. 3 (D.C. Cir. 1994) (en banc) (following Padula v. Webster, 822 F.2d 97, 103 (D.C. Cir. 1987) ("It would be quite anomalous, on its face, to declare status defined by conduct that states may constitutionally criminalize as deserving of strict scrutiny under the equal protection clause.")).
[161] 135 L.Ed.2d 486 (1996).
[162] 113 S. Ct. 2637 (1993).
[163] A. Leon Higginbotham, "The Case of the Missing Black Judges," New York Times, July 29, 1992, at A21. See also PFAW Action Fund, Federal Judicial Nominees in the 102d Congress and the Bush Administration (October, 1992), at 1-2; PFAW, The First Year of Federal Judicial Nominees by President Clinton (December, 1993), at 1-2.
[164] Id. See also White House, Clinton Administration Judicial Record (July 25, 1996).
[165] See, e.g., Sheldon Goldman, "Judicial Selection Under Clinton," *Judicature,* May-June, 1995.

[166] Thomas Jipping, "The Case Against Stack," supra note 46. See also Thomas Jipping, The Clinton Judicial Legacy (July, 1996), at 7; James Kilpatrick, "Clinton Busy Trying to Remake Courts," *Human Events,* September 22, 1995, at 10.
[167] Higginbotham, supra note 163.
[160] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 882 (1992) (opinion of O'Connor, Kennedy, and Souter, JJ., with the Chief Justice and three Justices concurring in the judgment) (discussing the overturning of Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 762 (1986) and Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 450 (1983) in which the Court had found rigid informational requirements and a 24-hour waiting period to be unconstitutional).
[169] Webster v. Reproductive Health Services, 492 U.S. 490, 508-511, 539-540 (1989).
[170] Casey, 505 U.S. at 886-887. See also Casey, 744 F. Supp. at 1367-68, 1370-72, 1392.
[171] See Casey, 505 U.S. at 883; 947 F.2d 682; 744 F. Supp. at 1350, 1353-55.
[172] Leavitt v. Jane L., 1996 U.S. LEXIS 3885, 64 U.S.L.W. 3834 (1996). As the four non Reagan-Bush justices who dissented in Leavitt explained, the majority's decision reversed a lower court ruling on state law severability in a manner which violated a Supreme Court practice of judicial restraint on such issues followed consistently for almost fifty years. 64 U.S.L.W. at 3836.
[173] Roe v. Wade, 410 U.S. 113, 155 (1973).
[174] A Woman's Choice - East Side Women's Clinic v. Newman, 904 F. Supp. 1434 (S.D. Ind. 1995).
[175] Id. at 1450.
[176] Planned Parenthood, Sioux Falls Clinic v. Miller, 860 F. Supp. 1409 (D.S.D. 1994).
[177] United States v. Hill, 893 F. Supp. 1044, 1047-48 (N.D. Fla. 1994).
[178] "Party Stresses Family Values, Decentralized Authority," *Congressional Quarterly,* August 22, 1992, at 2567.
[179] "The 700 Club," Christian Broadcasting Network, June 21, 1996.

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/25/2001 9:29:20 AM
Subject: : Emergency Staffings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 13:29:20.00
SUBJECT:: Emergency Staffings
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please handle.
---------- Forwarded by Alberto R. Gonzales/WHO/EOP on
09/25/2001 01:29 PM ----------

Harriet Miers
09/25/2001 12:33:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: G. Timothy Saunders/WHO/EOP@EOP
Subject: Emergency Staffings

Most likely, later today, we are going to be staffing a Presidential emergency designation for $5 Billion in grants to compensate air carriers for direct losses resulting from the September 11, 2001 attacks, specifically,, from the order by the Secretary of Transportation to ground all aircraft immediately. We also will most likely be staffing a Presidential Delegation of Authority delegating the authority to administer the funds to the Secretary of Transportation. Please be looking for these or have someone on your staff looking for them. We would appreciate an immediate response to both. Thanks.

Message Sent
To:_____
richard b. cheney/ovp/eop@eop
andrew h. card/who/eop@eop
joshua b. bolten/who/eop@eop
karen hughes/who/eop@eop
karl c. rove/who/eop@eop
mitchell daniels/omb/eop@eop
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lawrence a. fleischer/who/eop@eop
alberto r. gonzales/who/eop@eop
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margaret m. lamontagne/opd/eop@eop
condoleezza rice/nsc/eop@eop
james connaughton/ceq/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 9/25/2001 9:30:20 AM
Subject: : Emergency Staffings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-SEP-2001 13:30:20.00
SUBJECT:: Emergency Staffings
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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do you want this? I may be on Hill.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 09/25/2001 01:29 PM ----------

Alberto R. Gonzales
09/25/2001 01:29:11 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Emergency Staffings

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---------- Forwarded by Alberto R. Gonzales/WHO/EOP on 09/25/2001 01:29 PM ----------

Harriet Miers
09/25/2001 12:33:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: G. Timothy Saunders/WHO/EOP@EOP
Subject: Emergency Staffings

Most likely, later today, we are going to be staffing a Presidential emergency designation for $5 Billion in grants to compensate air carriers for direct losses resulting from the September 11, 2001 attacks, specifically,, from the order by the Secretary of Transportation to ground all aircraft immediately. We also will most likely be staffing a Presidential Delegation of Authority delegating the authority to administer the funds to the Secretary of Transportation. Please be looking for these or have someone on your staff looking for them. We would appreciate an immediate response to both. Thanks.

Message Sent
To:_____
richard b. cheney/ovp/eop@eop
andrew h. card/who/eop@eop
joshua b. bolten/who/eop@eop
karen hughes/who/eop@eop
karl c. rove/who/eop@eop
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lawrence a. fleischer/who/eop@eop
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lawrence b. lindsey/opd/eop@eop
margaret m. lamontagne/opd/eop@eop
condoleezza rice/nsc/eop@eop
james connaughton/ceq/eop@eop

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/26/2001 5:04:06 AM
Subject: : OLC opinion on substitute compensation scheme

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:26-SEP-2001 09:04:06.00
SUBJECT:: OLC opinion on substitute compensation scheme
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm assuming there's no need now to formalize (and recast) the draft
opinion I had been working on. If I'm mistaken, let me know.

From: Neil MacBride) (Neil_MacBride@judiciary.senate.gov (Neil MacBride) [UNKNOWN]
To: Makan Delrahim) (Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [UNKNOWN] <Makan_Delrahim@judiciary.senate.gov>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Jeff Taylor) (Jeff_Taylor@judiciary.senate.gov (Jeff Taylor) [UNKNOWN] <Jeff_Taylor@judiciary.senate.gov>;dan.bryant@usdoj.gov [UNKNOWN] <dan.bryant@usdoj.gov>;jennifer.newstead@usdoj.gov [UNKNOWN] <jennifer.newstead@usdoj.gov>;Stuart Nash) (Stuart_Nash@judiciary.senate.gov (Stuart Nash) [UNKNOWN] <Stuart_Nash@judiciary.senate.gov>;Jeff Berman) (Jeff_Berman@judiciary.senate.gov (Jeff Berman) [UNKNOWN] <Jeff_Berman@judiciary.senate.gov>;David Hantman) (David_Hantman@judiciary.senate.gov (David Hantman) [UNKNOWN] <David_Hantman@judiciary.senate.gov>;Leah Belaire) (Leah_Belaire@judiciary.senate.gov (Leah Belaire) [UNKNOWN] <Leah_Belaire@judiciary.senate.gov>
CC: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Nancy P. Dorn/WHO /EOP@EOP [WHO] <Nancy P. Dorn>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/26/2001 9:44:43 AM
Subject: : Re:Emails from mtg
Attachments: P_PHSV3004_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Neil_MacBride@judiciary.senate.gov (Neil MacBride) (
Neil_MacBride@judiciary.senate.gov (Neil MacBride) [ UNKNOWN ] )
CREATION DATE/TIME:26-SEP-2001 13:44:43.00
SUBJECT:: Re:Emails from mtg
TO:Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) (
Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [ UNKNOWN ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jeff_Taylor@judiciary.senate.gov (Jeff Taylor) ( Jeff_Taylor@judiciary.senate.gov (Jeff
Taylor) [ UNKNOWN ] )
READ:UNKNOWN
TO:dan.bryant@usdoj.gov ( dan.bryant@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:jennifer.newstead@usdoj.gov ( jennifer.newstead@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Stuart_Nash@judiciary.senate.gov (Stuart Nash) ( Stuart_Nash@judiciary.senate.gov
(Stuart Nash) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jeff_Berman@judiciary.senate.gov (Jeff Berman) ( Jeff_Berman@judiciary.senate.gov (Jeff
Berman) [ UNKNOWN ] )
READ:UNKNOWN
TO:David_Hantman@judiciary.senate.gov (David Hantman) ( David_Hantman@judiciary.senate.gov
(David Hantman) [ UNKNOWN ] )
READ:UNKNOWN
TO:Leah_Belaire@judiciary.senate.gov (Leah Belaire) ( Leah_Belaire@judiciary.senate.gov
(Leah Belaire) [ UNKNOWN ] )
READ:UNKNOWN
CC:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nancy P. Dorn ( CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

- achcroft terrorism legislation.wpdfyi, the release i mentioned.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PHSV3004_WHO.TXT_1>
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Joseph R. Biden, Jr.

UNITED STATES SENATOR - DELAWARE

http://www.senate.gov/~biden

FOR RELEASE: September 25, 2001 **CONTACT: Norm Kurz, 202-224-8895**

Biden Urges New Tools For Law Enforcement, Stresses Practical Measure to Combat Bioterrorism Threat

Emphasizing the importance of the threat of bioterrorism and our need to take practical measures to combat such concerns, U.S. Senator Joseph R. Biden, Jr. today indicated his support for strengthening counter-terrorism measures to enhance the safety and national security interests of the nation.

"The September 11 attacks have focused our collective minds and energies on the need to take steps to prevent such atrocities from ever occurring again," Biden said. "I'm pleased the President has submitted proposed legislation to enact many of the needed measures I first offered in the 1995 terrorism bill, though I think we ought to consider some further steps as well. We've also got to get ahead of the curve on taking practical steps to reduce the risk of biological weapons."

Quoting from a letter he received in his capacity as Chairman of the Senate Foreign Relations Committee, Biden shared the views of Nobel Laureate and noted expert on infectious diseases Dr. Joshua Lederberg, who wrote that biological warfare constitutes a serious and complex threat to national security because it is available even to "rank amateurs."

Dr. Lederberg said at least a dozen countries are thought to be developing biological weapons. "In the current world where major states sustain some equilibrium through mutual deterrence," he wrote, biological warfare "offers opportunity for grave harm on the part of lesser actors," making it "probably the most perplexing and gravest security challenge we face." Lederberg's letter was entered into the record during a Foreign Relations Committee hearing Biden chaired September 5 on the Homeland Threat and Biological Weapons.

Following today's Judiciary Committee hearing with Attorney General John Aschroft, Biden spoke of his backing for the Administration's efforts to enact a terrorism bill while pointing out measures he has long supported and that ought to be included to strengthen the legislation.

In 1995, Biden authored the Omnibus Counter-Terrorism Bill that would have enabled law enforcement to pursue leads pursuant to credible terrorist threats.

"My standard has long been 'what's good for the mafia is good for the terrorists'," Biden said. "There is no sensible reason why we should treat terrorists more leniently. It's been obvious to me for many years that we need to give law enforcement authorities investigating and prosecuting international terrorists the same tools they have to fight drug kingpins and organized crime."

The President's bill, like the Biden proposal several years ago, would extend current wiretap authority to include terrorist crimes, thereby giving law enforcement the same tools to pursue terrorists they have long had

in narcotics and racketeering cases. However, two other Biden proposals have not been included in the Administration's bill.

"I think most Americans would agree an identical standard should apply to terrorists and the mob. We should provide emergency 48 hour wiretap authority without prior judicial authorization," Biden said. "This is exactly what law enforcement can do today in cases involving organized crime, so long as the court makes an after-the-fact determination that there was probable cause to get the emergency wiretap in the first place.

"I also think the 'good faith' standard the Supreme Court has long recognized in the criminal law field should be applied to wiretaps," Biden added. Terrorists and other criminals should not go free when the police make an honest mistake, if they were otherwise acting reasonably and in 'good faith.' The Court already has held that this sensible policy is constitutional.

"Finally, we need to use roving wiretaps to follow a suspect anywhere and everywhere rather than just on a telephone," Biden argued. I strongly supported this tool in 1995 and am pleased Congress has since enacted into law a roving wiretap provision. However, while law enforcement gained the right to use this technique in 1998, cops continue to be hobbled by a higher burden than that required to obtain a 'bug.' This disparity should be corrected. "

Biden also indicated his concern regarding two potential provisions - concerning the Foreign Intelligence Surveillance Act (FISA) and measures relating to immigration - included in the Administration's terrorism bill.

"I agree the fight against international terrorism requires us to rethink whether the high wall we've erected separating the intelligence and law enforcement communities should be lowered," Biden said. "But historically we've been well-served by the bright line that divides our cops and spies. I have real concerns about ensuring that whatever we do in his area strikes the right balance between fighting terrorism and maintaining our civil liberties. There are genuine constitutional questions we must review.

"Similarly, tightening restrictions on non-citizens is one thing, but efforts to expand detentions should not cross the line and violate the rights of due process," Biden argued. "Legitimate and justified detentions, on a limited basis, will gain the approval of Americans. But law enforcement officials have the responsibility to act quickly to charge suspects with a crime, deport them, or release them.

"And all us must be vigilant in guarding the rights of fellow Americans who are in danger of discrimination on the basis of their name or skin color. Especially in a time of crisis, we cannot jettison our fundamental values and beliefs," Biden concluded.

###

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 9/26/2001 7:30:10 AM
Subject: : Re: JSC meeting will be in the Judge's office tomorrow - not the Roosevelt.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-SEP-2001 11:30:10.00
SUBJECT:: Re: JSC meeting will be in the Judge's office tomorrow - not the Roosevelt.
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI in case you were hoping for dialogue with Henick or Rove this
afternoon.

---------------------- Forwarded by Elizabeth N. Camp/WHO/EOP on
09/26/2001 11:29 AM ---------------------------



Dee Dee Benkie
09/26/2001 11:28:52 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
```

cc:
bcc:
Subject: Re: JSC meeting will be in the Judge's office tomorrow -
not the Roosevelt.

Libby
Karl and Chris can't attend. Chris had to be in New York
Matt Schlapp will go in their absence
thank you !

Elizabeth N. Camp
09/25/2001 06:02:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: JSC meeting will be in the Judge's office tomorrow - not
the Roosevelt.

Thanks!

Message Sent
To:_____
Melissa S. Bennett/WHO/EOP@EOP
Carol J. Thompson/WHO/EOP@EOP
Susan B. Ralston/WHO/EOP@EOP
Carrie C. Pauska/WHO/EOP@EOP
Alison Jones/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Dee Dee Benkie/WHO/EOP@EOP
andrew.beach@usdoj.gov
amy.petersen@usdoj.gov
adam.ciongoli@usdoj.gov @ inet
Brent D. Greenfield/WHO/EOP@EOP
evelyn.v.long@usdoj.gov
Jennifer.Newstead@usdoj.gov
Viet.Dinh@usdoj.gov
Heather Wingate/WHO/EOP@EOP
Lori L. Lorenzi/WHO/EOP@EOP
Jason.J.Sutton@usdoj.gov

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>
Sent: 9/26/2001 9:27:22 AM
Subject: : Re: Meetings

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-SEP-2001 13:27:22.00
SUBJECT:: Re: Meetings
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

That's just today. We are using an aggregation test.

H. Christopher Bartolomucci
09/26/2001 12:58:17 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Meetings

Let the record reflect that everyone except Brad was in the room before me.

Helgard C. Walker
09/26/2001 12:51:29 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Meetings

I second the motion.

Brett M. Kavanaugh
09/26/2001 12:51:01 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Meetings

As to those who are getting a little soft on me (Rachel), this is tough business, so I vote that we identify those who need some mild "encouragement," as the State Dept might phrase it. In that vein, there has been a secret motion to add one "H. Christopher Bartolomucci" to the bill.

Noel J. Francisco
09/26/2001 12:30:58 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Meetings

Aye.

Brett M. Kavanaugh
09/26/2001 12:08:20 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: Meetings

I tried general regulations. A bill of attainder appears necessary after today's outcry and allegations of sandbagging. Please vote if you so desire on the following bill: "Absent emergency or peculiar circumstances, Courtney S. Elwood is hereby prohibited from entering the second floor West Wing Counsel's Office before 8:13:50 each morning."

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

Robert W. Cobb/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

Message Copied
To:_____
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
rachel l. brand/who/eop@eop
elizabeth n. camp/who/eop@eop

Message Copied
To:_____
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
rachel l. brand/who/eop@eop
elizabeth n. camp/who/eop@eop

Message Copied
To:_____
noel j. francisco/who/eop@eop
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h. christopher bartolomucci/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
rachel l. brand/who/eop@eop
elizabeth n. camp/who/eop@eop

Message Copied
To:_____
brett m. kavanaugh/who/eop@eop
noel j. francisco/who/eop@eop
bradford a. berenson/who/eop@eop
courtney s. elwood/who/eop@eop
helgard c. walker/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
rachel l. brand/who/eop@eop
elizabeth n. camp/who/eop@eop

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/27/2001 3:45:38 AM
Subject: : antiterrrorism
Attachments: P_SI8W3004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-SEP-2001 07:45:38.00
SUBJECT:: antiterrrorism
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Heather describes below where we are in the Senate.
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 09/27/2001 07:44 AM ----------

Heather Wingate
09/26/2001 08:41:21 PM
Record Type: Record

To: John W. Howard/WHO/EOP@EOP, Nicholas E. Calio/WHO/EOP@EOP, George M. Andricos/NSC/EOP@EOP, Ziad S. Ojakli/WHO/EOP@EOP
cc: Courtney S. Elwood/WHO/EOP@EOP, Nancy P. Dorn/WHO/EOP@EOP, Candida P. Wolff/OVP/EOP@EOP
Subject: antiterrrorism

Attached is a copy of our sec.-by-sec. status document from our Leahy discussions.

We are exchanging language on a number of these sections. If we can reach agreement on the definition of the federal crime of terrorism (which we will), a number of these provisions will fall in the "agreed to/settled" category.

I met with Bruce Cohen late today, and based on that meeting, I believe we're on track with positive negotiations with Hatch and Leahy. We agreed to:

Meet again on Friday at 11:00. (they will all be out for the Jewish holiday tomorrow). Prior to that meeting we will provide them with any language or feedback that we owe them. We will also be prepared on Friday to provide some more detailed feedback on some provisions that they have in their bill. We would hope to have the framework of a consensus package defined by Monday of next week. We will focus on Friday and Saturday on reaching some agreement on some of the most controversial provisions (FISA-related, mostly).

Bruce does not believe that we can reach the VP's deadline of next Friday (and neither to our Republicans), but he does believe that we can get it done by the end of the next week. He's for cutting a deal and taking it straight to leadership. He believes we'll need the rest of next week to

finalize language and do all the vetting of other committee members (which we've already started on our end.)

In the meantime:

We will continue our parallel discussions with Feinstein, Schumer and Biden's staff (keeps positive pressure on Leahy and they can agitate with Daschle to keep pressure on Leahy)
We are also continuing, w/DoJ leg affairs and Senate Repub. Leadership, to run the traps on any Members who have particular concerns with specific provisions

Quick request/questions:

Nick, can you please send out an email to all Asst. Secs. tomorrow morning, informing them that they do not have authorization to be lobbying for the inclusion of their particular pet provisions on the anti-terrorism bill. As you know, many Departments have now moved ahead with sending their own mini terrorism packages up to the Hill, or are getting ready to do so, and these bills are majorly complicating this negotiation process (State, Treas, Interior, DoJ, all of them have a laundry list of stuff that didn't make it into the admin anti-terrorism package, and now they are "workin' it" up there.)

We can play this process out with Leahy and I believe we can get a bill out of this process that gets us 70-80% of what we want, but it will take longer (according to Bruce's calendar, 2 weeks --- and this schedule surely will only hold with significant pressure brought to bear on Leahy though our press operation, Daschle and other supportive law enforcement Dems). Does a longer time table trouble you? If so, we need to apply some major pressure on the Leadership. I'm not sure that gets us anywhere right now, but I wanted to let you know that the timetable looks longer than we had desired.

Can the Radio Address this weekend be on this issue? This would be VERY helpful!!!

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SI8W3004_WHO.TXT_1>

STATUS OF LEAHY NEGOTIATIONS ON ADMINISTRATION'S BILL
(9/26/01, 5 p.m.)

SETTLED PROVISIONS	PROVISIONS STILL OUTSTANDING/STATUS
	101 – Administration firm, with "no content" amendment
102 (as amended)	
	103 – Leahy to propose language
104	
	105 – case law provided to Leahy
	106 – Leahy/DOJ coordinating on definition of "computer tresp."
107	
108	
	109 (as amended) – Leahy to propose language
111	
112	
110	
	151 – Administration reviewing Leahy proposal
	152 – Administration reviewing Leahy § 207
	153 – Administration firm
	154 – Administration firm
	155 – Administration reviewing Leahy proposal
	156 – Leahy reviewing Administration proposed amendment
	157 – Administration reviewing Leahy proposal
	158 – Leahy/Kennedy to propose language
	159 – Need Leahy feedback
	201 – Administration owes Leahy definition of terrorism
	202 – under Administration review
	203 – Administration owes Leahy view on whether AG's certification will be reviewable
	204 – Leahy views contingent on definition of terrorist org.
205 (as amended)	
	206 – Administration concerned about penalty provisions
	207 – Administration accepts in part
	301 – contingent on definition of terrorism offense
	302 – contingent on definition of terrorism offense
	303 – contingent on definition of terrorism offense
304	
305 – w/ possible addt'ns from Biden bill	
	306 – contingent on definition of terrorism offense
	307 – Administration reviewing Leahy proposal (new harboring provision modeled on § 792, but omitting "suspects"), and checking with State on extraterritoriality clause
	308 – contingent on definition of terrorism offense
	309 – Administration and Leahy each to propose new language
	351 – Need feedback from Leahy
	352 – Administration reviewing Leahy proposal
	353 – Hatch and Leahy working on language; and subject to

STATUS OF LEAHY NEGOTIATIONS ON ADMINISTRATION'S BILL
(9/26/01, 5 p.m.)

	definition of terrorist organization
	354 – Leahy to propose alternative language
	355 – under Administration review
356	
357	
401	
402	
403	
404	
	405 – Leahy to propose language
	406 – under Administration review
	407 – Need feedback from Leahy
	408 – under Administration review
409	
501	
	502 – Administration reviewing Leahy language
503	
	504 – Administration reviewing Leahy language
505 (dropped)	
506	

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
Sent: 9/27/2001 9:17:56 AM
Subject: : FOIA
Attachments: P_GCLW3004_OPD.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-SEP-2001 13:17:56.00
SUBJECT:: FOIA
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

new version; I am not sure which ones you have, but this is latest

- foialetter.fin2.fin.f.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GCLW3004_OPD.TXT_1>

Office of the Attorney General
Washington, D.C. 20530

MEMORANDUM FOR HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES

FROM: John Ashcroft
Attorney General

SUBJECT: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), incorporates these privileges and the sound policies underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA policy issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes the Department of Justice's FOIA Memorandum of October 4, 1993, and it likewise creates no substantive or procedural right enforceable at law.

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 9/27/2001 12:29:36 PM
Subject: : POTUS binder memos

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-SEP-2001 16:29:36.00
SUBJECT:: POTUS binder memos
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just a reminder that we'll need memos on your candidates by noon
tomorrow...

Thanks.
```

From: Garry Malphrus) (Garry_Malphrus@judiciary.senate.gov (Garry Malphrus) [UNKNOWN]

To: Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>;Christine Morden) (Christine_Morden@judiciary.senate.gov (Christine Morden) [UNKNOWN] <Christine_Morden@judiciary.senate.gov>;Jim Rowland) (Jim_Rowland@judiciary.senate.gov (Jim Rowland) [UNKNOWN] <Jim_Rowland@judiciary.senate.gov>;Peter Levitas) (Peter_Levitas@judiciary.senate.gov (Peter Levitas) [UNKNOWN] <Peter_Levitas@judiciary.senate.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Bryant; Dan <Dan.Bryant@usdoj.gov>;Ciongoli; Adam <Adam.Ciongoli@usdoj.gov>;Acosta; Alex <Alex.Acosta@usdoj.gov>;Thorsen; Carl <Carl.Thorsen@usdoj.gov>;Sutton; Johnny K <Johnny.K.Sutton@usdoj.gov>;Clement; Paul D <Paul.D.Clement@usdoj.gov>;DeHart; Rhett <Rhett.DeHart@usdoj.gov>;Dinh; Viet <Viet.Dinh@usdoj.gov>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;'lleo@fed-soc.org' <lleo@fed-soc.org>;'Lee.Otis@hq.doe.gov' <Lee.Otis@hq.doe.gov>;'stewart_verdery@aml.senate.gov' <stewart_verdery@aml.senate.gov>;'john_mashburn@lott.senate.gov' <john_mashburn@lott.senate.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Receipt Notification Requested) (John_Abegg_at_MCCONNELL-DC@IMAEXC2.senate.gov (Receipt Notification Requested) [UNKNOWN] <John_Abegg_at_MCCONNELL-DC@IMAEXC2.senate.gov>

CC: Jeff Taylor) (Jeff_Taylor@judiciary.senate.gov (Jeff Taylor) [UNKNOWN] <Jeff_Taylor@judiciary.senate.gov>;Stuart Nash) (Stuart_Nash@judiciary.senate.gov (Stuart Nash) [UNKNOWN] <Stuart_Nash@judiciary.senate.gov>;Makan Delrahim) (Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [UNKNOWN] <Makan_Delrahim@judiciary.senate.gov>

Sent: 9/27/2001 4:14:19 PM

Subject: : Re[2]:RE: Judiciary Comm. hearing

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Garry_Malphrus@judiciary.senate.gov (Garry Malphrus) (
Garry_Malphrus@judiciary.senate.gov (Garry Malphrus) [ UNKNOWN ] )
CREATION DATE/TIME:27-SEP-2001 20:14:19.00
SUBJECT:: Re[2]:RE: Judiciary Comm. hearing
TO:Ed_Haden@judiciary.senate.gov (Ed Haden) ( Ed_Haden@judiciary.senate.gov (Ed Haden) [
UNKNOWN ] )
READ:UNKNOWN
TO:Christine_Morden@judiciary.senate.gov (Christine Morden) (
Christine_Morden@judiciary.senate.gov (Christine Morden) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jim_Rowland@judiciary.senate.gov (Jim Rowland) ( Jim_Rowland@judiciary.senate.gov (Jim
Rowland) [ UNKNOWN ] )
READ:UNKNOWN
TO:Peter_Levitas@judiciary.senate.gov (Peter Levitas) ( Peter_Levitas@judiciary.senate.gov
(Peter Levitas) [ UNKNOWN ] )
READ:UNKNOWN
TO:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant; Dan" <Dan.Bryant@usdoj.gov> ( "Bryant; Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
TO:"Ciongoli; Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) ( "Ciongoli;
Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Acosta; Alex" <Alex.Acosta@usdoj.gov> (Receipt Notification Requested) ( "Acosta; Alex"
<Alex.Acosta@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Thorsen; Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) ( "Thorsen;
Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Sutton; Johnny K" <Johnny.K.Sutton@usdoj.gov> (Receipt Notification Requested) (
```

"Sutton; Johnny K" <Johnny.K.Sutton@usdoj.gov> (Receipt Notification Requested) [UNKNOWN]
)
READ:UNKNOWN
TO:"Clement; Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (
"Clement; Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"DeHart; Rhett" <Rhett.DeHart@usdoj.gov> (Receipt Notification Requested) ("DeHart;
Rhett" <Rhett.DeHart@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Dinh; Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) ("Dinh; Viet"
<Viet.Dinh@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:"'lleo@fed-soc.org'" <lleo@fed-soc.org> (Receipt Notification Requested) ("'lleo@fed-
soc.org'" <lleo@fed-soc.org> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"'Lee.Otis@hq.doe.gov'" <Lee.Otis@hq.doe.gov> (Receipt Notification Requested) (
"'Lee.Otis@hq.doe.gov'" <Lee.Otis@hq.doe.gov> (Receipt Notification Requested) [UNKNOWN]
)
READ:UNKNOWN
TO:"'stewart_verdery@aml.senate.gov'" <stewart_verdery@aml.senate.gov> (Receipt
Notification Requested) ("'stewart_verdery@aml.senate.gov'"
<stewart_verdery@aml.senate.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"'john_mashburn@lott.senate.gov'" <john_mashburn@lott.senate.gov> (Receipt Notification
Requested) ("'john_mashburn@lott.senate.gov'" <john_mashburn@lott.senate.gov> (Receipt
Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Abegg_at_MCCONNELL-DC@IMAEXC2.senate.gov (Receipt Notification Requested) (
John_Abegg_at_MCCONNELL-DC@IMAEXC2.senate.gov (Receipt Notification Requested) [UNKNOWN]
)
READ:UNKNOWN
CC:Jeff_Taylor@judiciary.senate.gov (Jeff Taylor) (Jeff_Taylor@judiciary.senate.gov (Jeff
Taylor) [UNKNOWN])
READ:UNKNOWN
CC:Stuart_Nash@judiciary.senate.gov (Stuart Nash) (Stuart_Nash@judiciary.senate.gov
(Stuart Nash) [UNKNOWN])
READ:UNKNOWN
CC:Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) (
Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I am certain he would be excellent. I recommended that to DoJ first thing
this
morning, and I hope we can work it out.

_____Reply Separator_____
Subject: Re:RE: Judiciary Comm. hearing
Author: Ed_Haden@judiciary.senate.gov (Ed Haden)
Date: 9/27/01 5:03 PM

Ted would be the greatest witness we could get if he is willing. He is
the man!

_____Reply Separator_____
Subject: RE: Judiciary Comm. hearing
Author: "Bryant; Dan" <Dan.Bryant@usdoj.gov>
Date: 9/27/01 4:48 PM

How about Ted Olson? He knows the bill, supports it enthusiastically, and

knows
it to be constitutional from top to bottom. He's also got a unique
perspective
on September 11, 2001.

-----Original Message-----
From: Garry Malphrus [mailto:Garry_Malphrus@judiciary.senate.gov]
Sent: Thursday, September 27, 2001 9:17 AM
To: Ciongoli, Adam; Acosta, Alex; Thorsen, Carl; Bryant, Dan; Sutton,
Johnny K; Clement, Paul D; DeHart, Rhett; Dinh, Viet;
Diana_L._Schacht@opd.eop.gov; lleo@fed-soc.org; Lee.Otis@hq.doe.gov;
stewart_verdery@aml.senate.gov; john_mashburn@lott.senate.gov;
bradford_a._berenson@who.eop.gov; brett_m._kavanaugh@who.eop.gov;
ksampson@who.eop.gov; John Abegg; Peter Levitas; Jim Rowland; Christine
Morden; Stephen Higgins
Cc: Jeff Taylor; Stuart Nash; Makan Delrahim; Ed Haden
Subject: Judiciary Comm. hearing

The Constitution Subcommittee, chaired by Senator Feingold, announced last
night
that it will hold a hearing next Wednesday, October 3, at 10:00 am entitled
"Protecting Constitutional Freedoms in the Face of Terrorism." They have
given
us as Ranking Member very few details yet, but we can expect the focus to
be on
the constitutional and privacy issues surrounding the Administration's
legislation to fight terrorism.

For witnesses, I am contacting possible professors, such as John Manning.
Also,
we need to decide if we want to have someone other than a legal expert to
appear, such as a victim or broader terrorism expert. If you have any
suggestions for witnesses we should call to defend the Administration or
other
thoughts about the hearing, please contact me. Thanks.
Received: from mailsims1.senate.gov ([156.33.203.10]) by
IMAEXC2.senate.gov with
SMTP
(IMA Internet Exchange 3.13) id 003E7034; Thu, 27 Sep 2001 16:54:51 -0400
Received: from wdcsun022.usdoj.gov (wdcsun2.usdoj.gov)
by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.1999.07.30.00.05.p8) with SMTP id
<0GKC00D029UOKS@mailsims1.senate.gov>; Thu, 27 Sep 2001 16:49:50 -0400
(EDT)
Received: from wt4.usdoj.gov (localhost [127.0.0.1])
by wdcsun022.usdoj.gov (Netscape Messaging Server 4.15)
with ESMTP id GKC9UI01.P5L; Thu, 27 Sep 2001 16:49:30 -0400
Received: (from x400@localhost) by wt4.usdoj.gov (8.9.3 (PHNE_18546)/8.9.3)
id QAA02489; Thu, 27 Sep 2001 16:49:28 -0400 (EDT)
Received: by TELEMAIL; Thu, 27 Sep 2001 16:48:39 -0400
Date: Thu, 27 Sep 2001 16:48:40 -0400
From: "Bryant, Dan" <Dan.Bryant@usdoj.gov>
Subject: RE: Judiciary Comm. hearing
To: "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification
Requested)
, "Acosta, Alex" <Alex.Acosta@usdoj.gov> (Receipt Notification Requested),
"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested),
"Sutton, Johnny K" <Johnny.K.Sutton@usdoj.gov>
(Receipt Notification Requested), "Clement, Paul D"
<Paul.D.Clement@usdoj.gov>
(Receipt Notification Requested), "DeHart, Rhett" <Rhett.DeHart@usdoj.gov>
(Receipt Notification Requested),
"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested),
'Garry Malphrus' <Garry_Malphrus@judiciary.senate.gov>
(Receipt Notification Requested) (IPM Return Requested),
"'Diana_L._Schacht@opd.eop.gov'" <Diana_L._Schacht@opd.eop.gov>

(Receipt Notification Requested), "'lleo@fed-soc.org'" <lleo@fed-soc.org>
(Receipt Notification Requested),
"'Lee.Otis@hq.doe.gov'" <Lee.Otis@hq.doe.gov> (Receipt Notification
Requested)
, "'stewart_verdery@aml.senate.gov'" <stewart_verdery@aml.senate.gov>
(Receipt Notification Requested),
"'john_mashburn@lott.senate.gov'" <john_mashburn@lott.senate.gov>
(Receipt Notification Requested),
"'bradford_a._berenson@who.eop.gov'" <bradford_a._berenson@who.eop.gov>
(Receipt Notification Requested),
"'brett_m._kavanaugh@who.eop.gov'" <brett_m._kavanaugh@who.eop.gov>
(Receipt Notification Requested),
"'ksampson@who.eop.gov'" <ksampson@who.eop.gov>
(Receipt Notification Requested),
John_Abegg_at_MCCONNELL-DC@IMAEXC2.senate.gov (Receipt Notification
Requested)
, 'Peter Levitas' <Peter_Levitas@judiciary.senate.gov>
(Receipt Notification Requested),
'Jim Rowland' <Jim_Rowland@judiciary.senate.gov>
(Receipt Notification Requested),
Christine_Morden@judiciary.senate.gov (Receipt Notification Requested),
'Stephen Higgins' <Stephen_Higgins@judiciary.senate.gov>
(Receipt Notification Requested)
Cc: 'Jeff Taylor' <Jeff_Taylor@judiciary.senate.gov>
(Receipt Notification Requested),
'Stuart Nash' <Stuart_Nash@judiciary.senate.gov>
(Receipt Notification Requested),
'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov>
(Receipt Notification Requested), 'Ed Haden'
<Ed_Haden@judiciary.senate.gov>
(Receipt Notification Requested)
Message-id: <"JMD0081-010927204839Z-32603*/PRMD=USDOJ-JCON/ADMD=
/C=US/"@MHS>
Autoforwarded: FALSE
Content-identifier: RE: Judiciary Co
MIME-version: 1.0
X-Mailer: NetJunction (NetJunction 5.1.1-g5)/MIME
Content-type: TEXT/PLAIN; CHARSET=US-ASCII
Importance: Normal
Original-encoded-information-types: IA5-Text
Priority: Normal
Precedence: first-class
UA-content-id: RE: Judiciary Co
X400-MTS-identifier: [/P=USDOJ-JCON/A= /C=US/;JMD0081-010927204839Z-32603]
X-Priority: 3 (Normal)
Received: from mailsims1.senate.gov ([156.33.203.10]) by
IMAEXC2.senate.gov with
SMTP
(IMA Internet Exchange 3.13) id 003E76D5; Thu, 27 Sep 2001 17:16:04 -0400
Received: from IMAEXC2.senate.gov ([156.33.203.15])
by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.1999.07.30.00.05.p8) with ESMTP id
<0GKC00D0JATVKS@mailsims1.senate.gov>; Thu, 27 Sep 2001 17:11:22 -0400
(EDT)
Received: from ccMail by IMAEXC2.senate.gov (IMA Internet Exchange 3.13)
id 003E7530; Thu, 27 Sep 2001 17:08:38 -0400
Date: Thu, 27 Sep 2001 17:03:36 -0400
From: Ed_Haden@judiciary.senate.gov (Ed Haden)
Subject: Re:RE: Judiciary Comm. hearing
To: "Bryant; Dan" <Dan.Bryant@usdoj.gov>,
"Ciongoli; Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification
Requested),
"Acosta; Alex" <Alex.Acosta@usdoj.gov> (Receipt Notification Requested),
"Thorsen; Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested),
"Sutton; Johnny K" <Johnny.K.Sutton@usdoj.gov>
(Receipt Notification Requested), "Clement; Paul D"
<Paul.D.Clement@usdoj.gov>
(Receipt Notification Requested), "DeHart; Rhett" <Rhett.DeHart@usdoj.gov>

(Receipt Notification Requested),
"Dinh; Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested),
'Garry Malphrus' <Garry_Malphrus@judiciary.senate.gov> (IPM Return
Requested),
"'Diana_L._Schacht@opd.eop.gov'" <Diana_L._Schacht@opd.eop.gov>
(Receipt Notification Requested), "'lleo@fed-soc.org'" <lleo@fed-soc.org>
(Receipt Notification Requested),
"'Lee.Otis@hq.doe.gov'" <Lee.Otis@hq.doe.gov> (Receipt Notification
Requested)
, "'stewart_verdery@aml.senate.gov'" <stewart_verdery@aml.senate.gov>
(Receipt Notification Requested),
"'john_mashburn@lott.senate.gov'" <john_mashburn@lott.senate.gov>
(Receipt Notification Requested),
"'bradford_a._berenson@who.eop.gov'" <bradford_a._berenson@who.eop.gov>
(Receipt Notification Requested),
"'brett_m._kavanaugh@who.eop.gov'" <brett_m._kavanaugh@who.eop.gov>
(Receipt Notification Requested),
"'ksampson@who.eop.gov'" <ksampson@who.eop.gov>
(Receipt Notification Requested),
John_Abegg_at_MCCONNELL-DC@IMAEXC2.senate.gov (Receipt Notification
Requested)
, 'Peter Levitas' <Peter_Levitas@judiciary.senate.gov>
(Receipt Notification Requested),
'Jim Rowland' <Jim_Rowland@judiciary.senate.gov>
(Receipt Notification Requested),
Christine_Morden@judiciary.senate.gov (Receipt Notification Requested),
'Stephen Higgins' <Stephen_Higgins@judiciary.senate.gov>
(Receipt Notification Requested)
Cc: Makan_Delrahim@judiciary.senate.gov (Makan Delrahim),
'Jeff Taylor' <Jeff_Taylor@judiciary.senate.gov>
(Receipt Notification Requested),
'Stuart Nash' <Stuart_Nash@judiciary.senate.gov>
(Receipt Notification Requested)
Message-id: <003E7530.C22124@judiciary.senate.gov>
MIME-version: 1.0
Content-type: text/plain; charset=US-ASCII
Content-description: cc:Mail note part
Content-transfer-encoding: 7bit

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Karp, David J <David.J.Karp@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Elwood, John <John.Elwood@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 9/28/2001 5:04:11 AM
Subject: : RE: New Death Penalties

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:28-SEP-2001 09:04:11.00
SUBJECT:: RE: New Death Penalties
TO:"Karp, David J" <David.J.Karp@usdoj.gov> (Receipt Notification Requested) ("Karp, David J" <David.J.Karp@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) ("Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I agree with you, John. Please note that, given COnyers blanket objection ot the DP, House Jud. will probably have to carve out death from these extensions of the conspiracy penalties.

-----Original Message-----
From: John Elwood
Sent: Friday, September 28, 2001 8:45 AM
To: Brett_M._Kavanaugh@who.eop.gov; Courtney_S._Elwood@who.eop.gov; Karp, David J; Newstead, Jennifer; Dinh, Viet
Subject: New Death Penalties

Date: 09/28/2001 08:54 am -0400 (Friday)
From: John Elwood
To: Brett_M._Kavanaugh@who.eop.gov; Courtney_s._elwood@who.eop.gov; David Karp; Jennifer Newstead; Viet Dinh
Subject: New Death Penalties

All:

Yesterday I received via someone in OLA questions from Sampak Garg of the House Judiciary Committee staff. One of Garg's questions was "are there any new death penalties, in any sense of the word." I suppose that what he's getting at with that strange locution "in any sense of the word," is our provision that extends the same penalties for conspiracy and attempt as for the underlying offense, Section 303. Unless Section 303 provision is modified, the death penalty would be available, where it was not before, for the following offenses:

conspiracy to commit violence at international airports where that violence results in death (18 USC 37); conspiracy to maliciously destroy property used in interstate or foreign commerce by fire or explosive where it results in death (844(i)); conspiracy to murder an official of the United States (1114); and conspiracy to murder a national of the United

States who is outside the United States (if first-degree) (2332).

We might want to get someone to double-check my work, but I believe that for all the other offenses in our list that had the death penalty, provision was already made for the death penalty for attempt or conspiracy.

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/28/2001 6:09:09 AM
Subject: : 12pm deadline

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-SEP-2001 10:09:09.00
SUBJECT:: 12pm deadline
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

We can wait until Monday to get them if you need the extra time. The meeting with POTUS can be as early as Wednesday, so we may need to turn the book in by COB Monday. Today's deadline was set when we thought the POTUS meeting was going to be Monday.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

CC: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Jason B. Torchinsky/WHO /EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 9/28/2001 8:58:57 AM

Subject: : Thurdsay, Oct. 4 - 11:35-11:55 am for Judges Mtg. w/ POTUS

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-SEP-2001 12:58:57.00
SUBJECT:: Thurdsay, Oct. 4 - 11:35-11:55 am for Judges Mtg. w/ POTUS
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 9/28/2001 12:47:16 PM
Subject: : LRM MJR64 - - VETERANS AFFAIRS Testimony on Implementation of the Debt Collection Improvement Act of 1996
Attachments: P_4RMX3004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-SEP-2001 16:47:16.00
SUBJECT:: LRM MJR64 - - VETERANS AFFAIRS Testimony on Implementation of the Debt Collection Improvement Act of 1996
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 09/28/2001 04:47 PM ----------

From: Marshall J. Rodgers on 09/28/2001 04:45:01 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM MJR64 - - VETERANS AFFAIRS Testimony on Implementation of the Debt Collection Improvement Act of 1996

Attached for your review is VA testimony for an October 10th (originally scheduled for September 19th) hearing before the House Government Reform's Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations. HHS, Treasury (circulated under LRM MJR 61), USDA (LRM MJR 62), and Education (LRM MJR 63) have also been asked to testify.

LRM ID: MJR64
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, September 28, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: VETERANS AFFAIRS Testimony on Implementation of the Debt Collection Improvement Act of 1996

DEADLINE: 5:00 PM Wednesday, October 3, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review is VA testimony for an October 10th (originally scheduled for September 19th) hearing before the House Government Reform's Subcommittee on Government Efficiency, Financial

Management, and Intergovernmental Relations. HHS, Treasury (circulated under LRM MJR 61), USDA (LRM MJR 62), and Education (LRM MJR 63) have also been asked to testify.

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John W. Howard

Jay P. Lefkowitz
Steven D. Aitken
Bradford A. Berenson
WHGC LRM
NEC LRM
Richard E. Green
James J. Jukes
LRM ID: MJR64 SUBJECT: VETERANS AFFAIRS Testimony on
Implementation of the Debt Collection Improvement Act of 1996

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Marshall J. Rodgers Phone: 395-7813 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Susan E. Alesi/OMB/EOP@EOP
Karen M. Shaffer/OMB/EOP@EOP
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Kathryn C. Thompson/OMB/EOP@EOP

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ca.legislation@gsa.gov
lrm@hhs.gov
HUD_LRM@hud.gov
ocl@ios.doi.gov
justice.lrm@usdoj.gov
dol-sol-leg@dol.gov
NASA_LRM@hq.nasa.gov
lrm@nsf.gov
ola@opm.gov
cla@sba.gov @ inet
ODCLCA.LRM.SSA@ssa.gov
statelrm@state.gov
dot.legislation@ost.dot.gov
GC.OMB@usaid.gov
llo@nrc.gov
llr@do.treas.gov
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4RMX3004_WHO.TXT_1>

STATEMENT BY
THE HONORABLE LEO MACKAY, JR.
DEPUTY SECRETARY
DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY,
FINANCIAL MANAGEMENT, AND INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

October 10, 2001

INTRODUCTION

Mr. Chairman, and members of the Subcommittee, it is my pleasure to testify on behalf of the Department of Veterans Affairs (VA) concerning our implementation of the Debt Collection Improvement Act (DCIA) of 1996.

The VA Chief Financial Officer's (CFO) staff has worked with VA's three administrations—the Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), and National Cemetery Administration (NCA), as well as other VA elements to take the steps necessary to ensure our compliance with the requirements of the DCIA. VA personnel continue to work closely with Department of the Treasury's Financial Management Service (FMS) to implement the provisions of the DCIA.

In our previous appearance before this Subcommittee on June 8, 2000, we testified that VA was making progress in referring eligible debt to the Treasury Offset Program (TOP) and for cross-servicing. I am delighted to inform you

REV_00132406

today that VA will meet its goal of referring over 90% of eligible debt to TOP and the cross-servicing program by the end of this fiscal year.

SUMMARY OF VA DEBT COLLECTION STATUS

VA has made extensive efforts to reduce the establishment of debts and to collect those that have been established. At the end of FY 1996, the year in which the DCIA was enacted, VA had $4.2 billion in total receivables, with $2.4 billion delinquent. As of September 30, 2000, VA had $3.8 billion in total receivables, with $1.4 billion delinquent.

Of the $1.4 billion in delinquent debt at the end of FY 2000, $341.3 million was attributable to Direct Home Loan mortgages held by VA; $328 million to Compensation & Pension overpayments, $139.5 million to defaulted guaranteed home loans, $46.7 million to Readjustment benefit (Education benefit) overpayments, and $545.4 million to charges for the provision of medical care and services. The bulk of the last-mentioned amount, owed to VA's Medical Care Collection Fund, is comprised of claims filed with third-party health insurers and represents the gross amounts billed. These "claims" are not referable to Treasury for cross-servicing or administrative offset because they are not sum-certain amounts owed. Rather, the existence and amount of such third-party liability, if any, for the charges billed is determined pursuant to an administrative process that frequently involves extensive negotiations and appeals. This process requires determinations concerning the health plan coverage applicable

in the individual case, to include resolution of both medical and legal issues, comparable to the process performed by private sector health care providers.

IMPLEMENTATION OF ADMINISTRATIVE OFFSET REQUIREMENT

At the end of FY 2000, VA had $328.7 million in delinquent debt eligible for TOP referral, and referred $220.5 million, or 67%. By the end of the 3rd quarter of FY 2001, VA referred $324.7 million, or 93%, of the $349.3 million eligible for referral to TOP. VA began participation in TOP in 2000 and has collected $40 million overall, $24 million of which has been collected this year. VA also participated in the Tax Refund Offset Program beginning in 1987 and collected $335 million from 1987 through 1999. The Tax Refund Offset Program became part of the TOP program in 2000. In addition, VA has been performing inter-agency matches over the last 10 years in order to offset VA debts from the pay of Federal employees or annuity payments of Federal retirees. VA will participate in centralized salary offset once it is completely incorporated into TOP.

In February of 2001, the Veterans Health Administration (VHA) began referring debts, through the Debt Management Center (DMC), to TOP. The types of debt included in these referrals are 1st party medical debts, ex-employee debts, and vendor/contractor debts. Through August, VHA referred $93.5 million and collected $19.2 million through TOP.

REV_00132408

IMPLEMENTATION OF CROSS-SERVICING REQUIREMENT

For the cross-servicing program, VA had $263.4 million in delinquent debt eligible for referral at the end of FY 2000, and referred $45.5 million, or 17%. By the end of the 3rd quarter of FY 2001, VA referred $230.8 million, or 87%, of the $266.7 million eligible for referral for cross-servicing. VA implemented cross-servicing in the 4th quarter of FY 2000 after working with Treasury for an extended period to resolve differences in automated processes needed to update each other's databases. At Treasury's request, VA referrals have been limited to groups of 5,000 accounts per submission. Treasury has collected $5 million as of August. Over 90% of eligible debt will be referred by the end of FY 2001.

The referral of our debts to Treasury for cross-servicing took longer than anticipated. However, while we worked with Treasury to resolve our systems differences, we continued to refer our debts to the Treasury Offset Program, and also used Federal Salary Offset. Both of these programs have been highly effective external sources of collection for VA debt.

VA and Treasury continue to explore the efficacy of referring VA's 1st party medical debts for cross-servicing. These debts resemble a "revolving credit" account in that debtors incur additional charges on a periodic basis as medical services are provided. The nature of these debts makes the cross-servicing process especially problematic and expensive. Since such referral does not now

appear to be cost effective, it must be determined whether VA should incur the expense of developing the automated processes necessary to refer all eligible 1st party debt. We should mention that VA executed a pilot project with Treasury in which we referred $1.1 million of VA's first party medical debts. However, Treasury has only collected approximately 1% of this amount. Treasury continues to review the results of this pilot project. A final determination on whether to refer 1st party medical debts for cross-servicing should be reached in FY 2002.

The remaining $36 million of eligible debt at the end of the 3rd quarter of FY 2001 is made up of a few smaller benefit programs and miscellaneous VHA debt such as vendor debt, employee debt, and non-federal sharing agreement debt. We continue to work toward referring most of this remaining debt for cross-servicing during FY 2002.

OTHER DCIA REQUIREMENTS

VA is in the process of amending its regulations to comply with the revised Federal Claims Collection Standards (FCCS). The amended regulations proposed will include a new regulation to authorize VA's use of administrative wage garnishment, which allows garnishment, without prior judicial action, of up to 15% of any disposable pay of an indebted individual. We will use this new debt collection tool in conjunction with the Treasury cross-servicing program.

REV_00132410

VA DEBT MANAGEMENT CENTER

VA has had an automated collection system in place since 1975. Since 1991, VA has operated the Debt Management Center (DMC) in St. Paul, Minnesota, which controls and maintains this automated collection system. The DMC utilizes every collection tool available to Federal agencies in an operation that emphasizes the collection of debt. It also remains a highly efficient and effective operation that executes all requirements of a cross-servicing center. The DMC has for many years used automated payment processing and collections systems; benefit and salary offset; credit bureau reporting and private collection agency referrals; compromises and litigation; write-offs; and referrals to Treasury's administrative offset and cross-servicing programs. Beginning in 1987, all eligible VA debt has been consolidated and referred for the Tax Refund Offset Program. DMC also began referring benefit debts in 1997 and facilitated the referral of first-party medical billings to Treasury in December 1998 using the format originally intended for the Tax Refund Offset Program.

This concludes my statement. I certainly appreciate the opportunity to discuss VA's progress in implementing the DCIA. I will be happy to answer any questions the Subcommittee may have.

REV_00132411

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>
Sent: 9/28/2001 1:48:07 PM
Subject: : Re: Kyle Bowen

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CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-SEP-2001 17:48:07.00
SUBJECT:: Re: Kyle Bowen
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
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CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

You all have way too much time on your hands

H. Christopher Bartolomucci
09/28/2001 05:44:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle Bowen

Nice try. Those states have 13 vacancies.

Brett M. Kavanaugh
09/28/2001 05:41:05 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle Bowen

the agreement of you 2 resolves it for me (note as an aside that PA is 6th and AZ is only 20th in population)

H. Christopher Bartolomucci
09/28/2001 05:37:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle Bowen

And you are one to talk, Mr. PA & AZ

Brett M. Kavanaugh
09/28/2001 05:26:43 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle Bowen

We might have to get a rule from the chair on Bart having 2 (Texas and Florida) of the 4 largest states in the nation?? As an aside, I think Kyle already had Utah.

H. Christopher Bartolomucci
09/28/2001 05:17:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle Bowen

I would like to keep Texas (5th Cir. + District Courts), which I inherited from Stuart. In return, I will give Kyle Utah.

Brett M. Kavanaugh
09/28/2001 05:01:19 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Kyle Bowen

I propose that Kyle take over on the district court states and other seats that had been assigned to Stuart. Any objection?

Message Sent

To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
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Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

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To:_____
bradford a. berenson/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
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To:_____
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helgard c. walker/who/eop@eop
courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 10/1/2001 4:54:16 AM
Subject: : Memos for POTUS book

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-OCT-2001 08:54:16.00
SUBJECT:: Memos for POTUS book
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Do you guys have your memos ready yet? Brent is hoping to get them by
this afternoon so a draft can go to the Judge and Tim. The books need to
be into the staff sec by COB tomorrow.
```

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Carroll, James W (OLP) <James.W.Carroll@usdoj.gov>;Sutton, Jason <Jason.J.Sutton@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Coniglio, Peter J <Peter.J.Coniglio@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO /EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
Sent: 10/1/2001 8:46:06 AM
Subject: : RE: Judicial Confirmation Working Group: Rescheduled

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###### Begin Original ARMS Header ######
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CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 1-OCT-2001 12:46:06.00
SUBJECT:: RE: Judicial Confirmation Working Group: Rescheduled
TO:"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Sutton, Jason" <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Sutton, Jason" <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
```

READ:UNKNOWN
TO:"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

All:

With apologies for the short notice, due to a scheduling conflict today with the AG's office, we need to move this meeting tomorrow, Tuesday, at 4 pm. Same location. Thank you.

Jennifer

-----Original Message-----
From: Brinkley, Winnie
Sent: Monday, October 01, 2001 11:20 AM
To: Adam Ciongoli; Allison_L._Riepenhoff@who.eop.gov@inetgw; Bradford_A._Berenson@who.eop.gov%inetgw; Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant; Heather_Wingate@who.eop.gov; James Carroll; Jason Sutton; Jennifer Newstead; Kristen Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay; Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick O'Brien; Peter Coniglio; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw; Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh; Winnie Brinkley; Ziad_S._Ojakli@who.eop.gov%inetgw
Subject: Judicial Confirmation Working Group
Importance: High

Reminder: Today's meeting will be held at 4pm in room 4646 Main Justice Building.

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/1/2001 5:02:22 AM
Subject: : Re: Memos for POTUS book

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-OCT-2001 09:02:22.00
SUBJECT:: Re: Memos for POTUS book
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can I help you with them? Maybe do some sort of draft for you?
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/1/2001 9:12:55 AM
Subject: : Terrorist Org definition, Admin Sec. 201
Attachments: P_W8CY3004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-OCT-2001 13:12:55.00
SUBJECT:: Terrorist Org definition, Admin Sec. 201
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Could you verify that this is, in fact, language that Apperson has agreed to?
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 10/01/2001 01:12 PM ----------

Beryl_Howell@judiciary.senate.gov (Beryl Howell)
10/01/2001 12:42:00 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP, Jennifer.Newstead@usdoj.gov, Courtney S. Elwood/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Terrorist Org definition, Admin Sec. 201

Attached is a revised version of your 201. The immigration experts tell me that
the DOJ proposal on the definition of terrorist organization appears overly vague and broad. The grounds on which the Secretary of State would designate
groups outside of the section 219 process is undefined, and no limits to the
definition of ?terrorist organization? are supplied. The proposal also appears
to grant the Attorney General the power to order the Secretary of State to list
a group as a terrorist organization without offering any criteria for such a
designation.

The proposal attached is supported by House Republicans and Democrats and is
included in the Sensenbrenner-Conyers legislation to be introduced today. It
offers the Justice Department the flexibility to treat non-listed organizations
as terrorist organizations but provides some outer boundary to that flexibility
to prevent problems of overbreadth and vagueness. It also treats differently
for purposes of the ?terrorist activity? definition the solicitation of funds,
individuals, and acts affording material support depending on whether the aid is
given to a group that has been certified under section 219. We agree that all
such support should be treated as terrorist activity where the acts are

made in
relation to a certified organization, but believe that when applied to
noncertified groups, only conduct in furtherance of terrorist activity
should be
included. This avoids notice problems. This language has also been
agreed to
by House Republicans and Democrats.

Finally, we revise the retroactivity clause along similar lines, also
adopting
language agreed to in the House. Our retroactivity clause makes the new
definition in the bill fully retroactive as applied to people associated
with
section 219 organizations that were so listed at the time, but not to those
associated with groups that were not at that time section 219
organizations,
unless the conduct was in furtherance of terrorist activity. Let us know
if
this revision is acceptable so we can get closure on this. I have also
pasted
in the amendment below. Beryl
Alternative Language for Sec. 201:

Amend ?Engage in Terrorist Activity Defined? as follows:

(IV) to solicit funds or other things of value for ?

(a) a terrorist activity;

(b) an organization designated as a foreign terrorist organization under
section
219; or

(c) a terrorist organization described in clause (v) (II), but only if the
solicitor knows, or reasonably should know, that the solicitation would
further
a terrorist activity;

(V) to solicit any individual?

(a) to engage in conduct otherwise described in this clause;

(b) for membership in a terrorist government;

(c) for membership in an organization designated as a foreign terrorist
organization under section 219; or

(d) for membership in a terrorist organization described in clause (v)
(II), but
only if the solicitor knows, or reasonably should know, that the
solicitation
would further a terrorist activity; or

(VI) to commit an act that the actor knows, or reasonably should know,
affords
material support, including a safe house, transportation, communications,
funds,
transfer of funds or other material financial benefit, false documentation
or
identification, weapons (including chemical, biological, and radiological
weapons), explosives, or training ?

(a) for the commission of a terrorist activity;

(b) to any individual who the actor knows, or reasonably should know, has
committed or plans to commit a terrorist activity;

(c) to an organization designated as a foreign terrorist organization under

section 219; or

(d) to a terrorist organization described in clause (v) (II), but only if the
actor knows, or reasonably should know, that the act would further a terrorist
activity.?

Replace ?Terrorist Organization Defined? section with the following:

(V) Terrorist Organization Defined

?As used in this subparagraph, the term ?terrorist organization? means?
(I) an organization designated as a foreign terrorist organization under section
219; or

(II) with regard to a group that is not an organization described in subclause
(I), a group of 2 or more individuals, whether organized or not, which engages
in, or which has a sizable subgroup which engages in, the activities described
in subclause (I), (II), or (III) of clause (iii).?

Add the following section in place of Section 204:

Retroactive Application of Amendments.--

(1) In General. ? The amendments made by this section shall take effect on the
date of the enactment of this Act and shall apply to ?

(A) actions taken by an alien before such date, as well as actions taken on
or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into
the United States?

(i) in removal proceedings on or after such date (except for proceedings
in which there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) Special Rule for Aliens in Exclusion or Deportation Proceedings. ?
Notwithstanding any other provision of law, the amendments made by this section
shall apply to all aliens in exclusion or deportation proceedings on or after
the date of the enactment of this Act (except for proceedings in which there has
been a final administrative decision before such date) as if such proceedings
were removal proceedings.

(3) Special Rule for Section 219 Organizations. ?

(A) In General. ? Notwithstanding paragraphs (1) and (2), no alien shall be
considered inadmissible under section 212(a)(3) of the Immigration and
Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B)
of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by
subsection (a), on the ground that the alien engaged in a terrorist

activity
described in subclause (IV)(b), (V)(c), or (VI)(c) of section
212(a)(3)(B)(iii)
of such Act (as so amended) with respect to a group at any time when the
group
was not a foreign terrorist organization designated by the Secretary of
State
under section 219 of such Act (8 U.S.C. 1189).

(B) Construction. ? Subparagraph (A) shall not be construed to prevent
an
alien from being considered inadmissible or deportable for having engaged
in a
terrorist activity ?

(i) described in subclause (IV)(b), (V)(c), or (VI)(c) of section
212(a)(3)(B)(iii) of such Act (as so amended) with respect to a foreign
terrorist organization at any time when such organization was designated
by the
Secretary of State under section 219 of such Act; or

(ii) described in subclause (IV)(c), (V)(d), or (VI)(d) of section
212(a)(3)(B)(iii) of such Act (as so amended) with respect to any group
described in any of such subclauses.

Additional Technical Changes required:

Strike references to paragraph (v)(ii) in subclauses (i) and (ii) on page
1 of
DOJ section 201 proposal.

- sec201_alternative.wpd

Message Copied
To:_____
Bruce_Cohen@judiciary.senate.gov (Bruce Cohen)
Julie_Katzman@judiciary.senate.gov (Julie Katzman)
Tim_Lynch@judiciary.senate.gov (Tim Lynch)
David_James@judiciary.senate.gov (David James)
Melody_Barnes@judiciary.senate.gov (Melody Barnes)
Esther_Olavarria@judiciary.senate.gov (Esther Olavarria)
Makan_Delrahim@judiciary.senate.gov (Makan Delrahim)
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_W8CY3004_WHO.TXT_1>

Alternative Language for Sec. 201:

Amend "Engage in Terrorist Activity Defined" as follows:

(IV) to solicit funds or other things of value for –

(a) a terrorist activity;

(b) an organization designated as a foreign terrorist organization under section 219; or

(c) a terrorist organization described in clause (v) (II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity;

(V) to solicit any individual–

(a) to engage in conduct otherwise described in this clause;

(b) for membership in a terrorist government;

(c) for membership in an organization designated as a foreign terrorist organization under section 219; or

(d) for membership in a terrorist organization described in clause (v) (II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training –

(a) for the commission of a terrorist activity;

(b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(c) to an organization designated as a foreign terrorist organization under section 219; or

(d) to a terrorist organization described in clause (v) (II), but only if the actor knows, or reasonably should know, that the act would further a terrorist activity."

Replace "Terrorist Organization Defined" section with the following:

(V) Terrorist Organization Defined

"As used in this subparagraph, the term 'terrorist organization' means–

(I) an organization designated as a foreign terrorist organization under section 219; or

(II) with regard to a group that is not an organization described in subclause (I), a group of 2 or more individuals, whether organized or not, which engages in, or which has a sizable subgroup which engages in, the activities described in subclause (I), (II), or (III) of clause (iii)."

Add the following section in place of Section 204:

Retroactive Application of Amendments.--

(1) In General. – The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to –

(A) actions taken by an alien before such date, as well as actions taken on or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States–

(i) in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) Special Rule for Aliens in Exclusion or Deportation Proceedings. – Notwithstanding any other provision of law, the amendments made by this section shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) Special Rule for Section 219 Organizations. –

(A) In General. – Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a group at any time when the group was not a foreign terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189).

(B) Construction. – Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity –

(i) described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a foreign terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act; or

(ii) described in subclause (IV)(c), (V)(d), or (VI)(d) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to any group described in any of such subclauses.

Additional Technical Changes required:

Strike references to paragraph (v)(ii) in subclauses (i) and (ii) on page 1 of DOJ section 201 proposal.

From: CN=David Kuo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/1/2001 7:07:54 AM
Subject: : olc opinion

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David Kuo ( CN=David Kuo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-OCT-2001 11:07:54.00
SUBJECT:: olc opinion
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

did we ever get that?
```

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/1/2001 7:10:30 AM
Subject: : Re: US Supreme Court disbars Clinton

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-OCT-2001 11:10:30.00
SUBJECT:: Re: US Supreme Court disbars Clinton
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

on whose motion? or sua sponte?

Brett M. Kavanaugh
10/01/2001 10:36:12 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: US Supreme Court disbars Clinton

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 10/1/2001 7:39:51 AM
Subject: : Re: Judicial Confirmation Working Group

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-OCT-2001 11:39:51.00
SUBJECT:: Re: Judicial Confirmation Working Group
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I am intended to go as of now.

Bradford A. Berenson
10/01/2001 11:39:21 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Kyle Sampson/WHO/EOP@EOP
Subject: Judicial Confirmation Working Group

Are you able to attend today? I can't. If you can't, we should maybe see if Kyle's available.
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 10/01/2001 11:38 AM ----------

"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov>
10/01/2001 11:20:16 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judicial Confirmation Working Group

Reminder: Today's meeting will be held at 4pm in room 4646 Main Justice Building.

Message Sent
To:_____
Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification

Requested) (IPM Return Requested)
Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested)
Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)
Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)
Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)
Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested)
Patrick O'Brien <Patrick.O'Brien2@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Peter Coniglio <Peter.J.Coniglio@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested)
Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested)
Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Allison L. Riepenhoff/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Heather Wingate/WHO/EOP@EOP
Matthew E. Smith/WHO/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP

From: Esbeck, Carl <Carl.Esbeck@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: David Kuo/WHO/EOP@EOP [WHO] <David Kuo>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>
Sent: 10/1/2001 11:11:35 AM
Subject: : OLC Opinion Letter

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Esbeck, Carl" <Carl.Esbeck@usdoj.gov> ( "Esbeck, Carl" <Carl.Esbeck@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME: 1-OCT-2001 15:11:35.00
SUBJECT:: OLC Opinion Letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David Kuo ( CN=David Kuo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John M. Bridgeland ( CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett,

Just got off the phone with Pat Philben, one of the Deputies in
OLC, and he said he spoke with you this morning. He says told you he
hopes to have the answers to your Aug. 15 request by the end of this
week. The answers may affect what we do with implementation of Charitable
Choice Act of 1996, CSBGA of 1998, and SAMHSA I and II of 2000. More
immediately, the letter may affect H.R. 7 in the Senate.

Carl H. Esbeck
```

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: 'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov>;'neil macbride' <neil_macbride@judiciary.senate.gov>;'jeff taylor' <jeff_taylor@judiciary.senate.gov>;'stuart nash' <stuart_nash@judiciary.senate.gov>;'jeff berman' <jeff_berman@judiciary.senate.gov>;'david hantman' <david_hantman@judiciary.senate.gov>;'leah belaire' <leah_belaire@judiciary.senate.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Candida P. Wolff/OVP /EOP@EOP [OVP] <Candida P. Wolff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/1/2001 6:01:10 PM
Subject: : RE: Sen. Biden's position on 154 and 159
Attachments: P_5FSY3004_WHO.TXT_1.wpd; P_5FSY3004_WHO.TXT_2.wpd

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 1-OCT-2001 22:01:10.00
SUBJECT:: RE: Sen. Biden's position on 154 and 159
TO:'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov> (Receipt Notification Requested)
( 'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov> (Receipt Notification Requested) [
UNKNOWN ] )
READ:UNKNOWN
TO:'neil macbride' <neil_macbride@judiciary.senate.gov> (Receipt Notification Requested) (
'neil macbride' <neil_macbride@judiciary.senate.gov> (Receipt Notification Requested) [
UNKNOWN ] )
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'jeff taylor' <jeff_taylor@judiciary.senate.gov> (Receipt Notification Requested) [ UNKNOWN
] )
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'david hantman' <david_hantman@judiciary.senate.gov> (Receipt Notification Requested) [
UNKNOWN ] )
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TO:'leah belaire' <leah_belaire@judiciary.senate.gov> (Receipt Notification Requested) (
'leah belaire' <leah_belaire@judiciary.senate.gov> (Receipt Notification Requested) [
UNKNOWN ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nancy P. Dorn ( CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

All --

Here is a new draft of the Admin. bill and a blackline against an old
draft. This was sent to Leahy staff a few minutes ago. Please note that
it is a working draft, and we have not yet compared it to the draft from
Sen. Leahy that we received at 8 pm tonight.
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Jennifer

- terror.cons.wpd - terror.cons.101.red.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5FSY3004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5FSY3004_WHO.TXT_2>

107TH CONGRESS

1ST SESSION

H.R. _____

To combat terrorism and defend the Nation against terrorist acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September ___, 2001

A BILL

To combat terrorism and defend the Nation against terrorist acts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This act may be cited as the "Anti-Terrorism Act of 2001."

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Construction; severability.
Sec. 4 Sense of Congress condemning discrimination against Arab and Muslim Americans.

Title I--INTELLIGENCE GATHERING

Subtitle A--Electronic Surveillance

Sec. 101. Modification of authorities relating to use of pen registers and trap and trace devices.
Sec. 102. Seizure of voice-mail messages pursuant to warrants.
Sec. 103. Authorized disclosure.
Sec. 104. Savings provision.
Sec. 106. Interception of computer trespasser communications.
Sec. 107. Scope of subpoenas for records of electronic communications.
Sec. 108. Nationwide service of search warrants for electronic evidence.
Sec. 109. Clarification of scope.
Sec. 110. Emergency disclosure of electronic communications to protect life and limb.
Sec. 111. Terrorism as a predicate act for authorization of wiretaps.
Sec. 112. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse.

Subtitle B--Foreign Intelligence Surveillance and Other Information

Sec. 151. Period of orders of electronic surveillance of non-United States persons under foreign intelligence surveillance.
Sec. 152. Multi-point authority.
Sec. 153. Foreign intelligence information.

Sec. 154. Foreign intelligence information sharing.
Sec. 155. Pen register and trap and trace authority.
Sec. 156. Business records.
Sec. 157. Miscellaneous national-security authorities.
Sec. 158. Disclosure of educational records.
Sec. 159. Presidential authority.
Sec. 160. Employment of translators by the federal bureau of investigation.
Sec. 161. Judges

Title II--IMMIGRATION

Sec. 201. Definitions relating to terrorism.
Sec. 204. Applicability.
Sec. 205. Multilateral co-operation against terrorists.
Sec. 206. Inter-agency data sharing.

Title III--CRIMINAL JUSTICE

Subtitle A–Substantive Criminal Law

Sec. 301. No statute of limitation for prosecuting terrorism offenses.
Sec. 302. Alternative maximum penalties for terrorism crimes.
Sec. 303. Penalties for terrorist conspiracies.
Sec. 304. Terrorism crimes as RICO predicates.
Sec. 305. Biological weapons.
Sec. 306. Support of terrorism through expert advice or assistance.
Sec. 307. Prohibition against harboring terrorists.
Sec. 308. Post-release supervision of terrorists.
Sec. 309. Definitions.
Sec. 310. Requests for military assistance to enforce prohibition in certain emergencies.
Sec. 311. Terrorist attacks and other acts of violence against mass transportation systems.

Subtitle B–Criminal Procedure

Sec. 351. Single-jurisdiction search warrants for terrorism.
Sec. 352. Notice.
Sec. 353. DNA identification of terrorists.
Sec. 354. Grand jury matters.
Sec. 356. Jurisdiction over crimes committed at U.S. facilities abroad.
Sec. 357. Professional standards for government attorneys.
Sec. 358. Extension of Secret Service Jurisdiction.

Title IV--FINANCIAL INFRASTRUCTURE

Sec. 401. Laundering the proceeds of terrorism.
Sec. 402. Material support for terrorism.
Sec. 403. Assets of terrorist organizations.
Sec. 404. Technical clarification relating to provision of material support to terrorism.
Sec. 405. Disclosure of tax information in terrorism and national-security investigations.
Sec. 407. Trade sanctions.
Sec. 408. Extraterritorial jurisdiction.

TITLE V--EMERGENCY AUTHORIZATIONS

Subtitle A - General

Sec. 501. Office of Justice Programs.
Sec. 502. Attorney General's authority to pay rewards.
Sec. 503. Limited authority to pay overtime.
Sec. 504. Secretary of State's authority to pay rewards.
Sec. 505. Public safety officer benefits.
Sec. 506. Payment increase.
Sec. 507. Increased funding for the technical support center at the Federal Bureau of Investigation.
Sec. 508. Counterterrism Fund.
Sec. 509. Expedited payment for public safety officers involved in the prevention, investigation, rescue or recovery efforts related to a terrorist attack.
Sec. 510. Technical correction with respect to expedited payments for heroic public safety officers.

Subtitle B – Amendments to the Crime Victims Act of 1984

Sec. 551. Crime Victims Fund.
Sec. 552. Crime Victim Compensation.
Sec. 553. Crime Victim Assistance.
Sec. 554. Victims of Terrorism.

Title VI–PROTECTING THE NORTHERN BORDER

Sec. 601. Ensuring adequate personnel on the Northern Border.
Sec. 602. Northern Border personnel.
Sec. 603. Access by the Department of State and the INS to certain identifying information in the criminal history records of visa applicants and applicants for admission to the United States.
Sec. 604. Limited authority to pay overtime.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. SENSE OF CONGRESS CONDEMNING DISCRIMINATION AGAINST ARAB AND MUSLIM AMERICANS.

(a) FINDINGS.–Congress finds the following:

(1) Arab Americans, Muslim Americans, and Americans from South Asia play a vital role in our Nation and are entitled to nothing less than the full rights of every American.

(2) The acts of violence that have been taken against Arab and Muslim Americans since the September 11, 2001, attacks against the United States should be and are condemned by all Americans who value freedom.

(3) The concept of individual responsibility for wrongdoing is sacrosanct in American society, and applies equally to all religious, racial, and ethnic groups.

(4) When American citizens commit acts of violence against those who are, or are perceived to be, of Arab or Muslim descent, they should be punished to the full extent of the law.

(5) Muslim Americans have become so fearful of harassment that many Muslim women are changing the way they dress to avoid becoming targets.

(6) Many Arab Americans and Muslim Americans have acted heroically during the attacks on the United States, including Mohammed Salman Hamdani, a 23-year-old New Yorker of Pakistani descent, who is believed to have gone to the World Trade Center to offer rescue assistance and is now missing.

(b) SENSE OF CONGRESS.-- It is the sense of Congress that--

(1) the civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans, and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety;

(2) any acts of violence or discrimination against any Americans be condemned; and

(3) the Nation is called upon to recognize the patriotism of fellow citizens from all ethnic, racial, and religious backgrounds.

TITLE I--INTELLIGENCE GATHERING

Subtitle A--Electronic Surveillance

SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

(a) General Limitation on Use by Governmental Agencies.-Section 3121(c) of title 18, United States Code, is amended-

(1) by inserting "or trap and trace device" after ``pen register";

(2) by inserting ``, routing, addressing," after ``dialing"; and

(3) by striking ``call processing" and inserting ``the processing and transmitting of wire and electronic communications".

(b) Issuance of Orders.-

(1) In general.-Subsection (a) of section 3123 of title 18, United States Code, is amended to read as follows:

"(a) In General.-

(1)Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order.

``(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

(2) Contents of order.-Subsection (b)(1) of section 3123 of title 18, United States Code, is amended-

(A) in subparagraph (A)-

(i) by inserting ``or other facility" after ``telephone line"; and

(ii) by inserting before the semicolon at the end ``or applied"; and

(B) by striking subparagraph (C) and inserting the following new subparagraph

(C):

"(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and".

(3) Non-disclosure requirements.-Subsection (d)(2) of section 3123 of title 18, United States Code, is amended-

(A) by inserting ``or other facility'' after ``the line''; and

(B) by striking ``, or who has been ordered by the court'' and inserting ``or applied, or who is obligated by the order''.

(c) Definitions.-

(1) Court of competent jurisdiction.-Paragraph (2) of section 3127 of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following new subparagraph (A):

"(A) any district court of the United States (including a magistrate judge of such a court) or any United States Court of Appeals having jurisdiction over the offense being investigated; or".

(2) Pen register.-Paragraph (3) of section 3127 of title 18, United States Code, is amended-

(A) by striking ``electronic or other impulses'' and all that follows through ``is attached'' and inserting ``dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided however, that such information shall not include the contents of any communication''; and

(B) by inserting ``or process'' after ``device'' each place it appears.

(3) Trap and trace device.-Paragraph (4) of section 3127 of title 18, United States Code, is amended-

(A) by inserting ``or process'' after ``a device''; and

(B) by striking ``of an instrument'' and all that follows through the end and inserting ``or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication provided however, that such information shall not include the contents of any communication;".

(4) Paragraph (1) of section 3127 of title 18, United States Code, is amended by striking "and" before "electronic communications service" and inserting ", and 'contents'" after "electronic communications service."

SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.

Title 18, United States Code, is amended–

(1) in section 2510 –

(A) in subsection (1), by striking all the words after "commerce"; and

(B) in subsection (14), by inserting "wire or" after "transmission of"; and

(2) in section 2703(a) and (b)--

(A) by replacing "Contents of electronic" with "Contents of wire or electronic" every place it occurs;

(B) by replacing "contents of an electronic" with "contents of a wire or electronic" every place it occurs; and

(C) by replacing "any electronic" with "any wire or electronic" every place it occurs.

SEC. 103. AUTHORIZED DISCLOSURE.

Section 2510(7) of title 18, United States Code, is amended by adding ", and (for purposes only of section 2517), any federal law-enforcement, intelligence, national security, national defense, protective, or immigration personnel, and the President and Vice President of the United States" after "such offenses."

SEC. 104. SAVINGS PROVISION.

Section 2511(2)(f) of title 18, United States Code, is amended–

(1) by replacing "or chapter 121" with ", chapter 121, or chapter 206"; and

(2) by replacing "wire and oral" with "wire, oral, and electronic".

SEC. 106. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.

Chapter 119 of title 18, United States Code, is amended-

(1) in section 2510-

(A) in subsection (17), by striking ``and" at the end;

(B) in subsection (18), by replacing the period with a semicolon; and

(C) by adding after subsection (18), two new subsections as follows:

"(19) `protected computer' has the meaning set forth in section 1030; and

"(20) `computer trespasser' means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer. A person shall not be considered a computer trespasser if the person is known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer."; and

(2) in section 2511(2), by adding after paragraph (h) the following new paragraph:

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if-

"(i) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

"(ii) the person acting under color of law is lawfully engaged in an investigation;

"(iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

"(iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser.".

SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.

Section 2703(c)(1)(C) of title 18, United States Code, is amended--

(1) by replacing "name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service" with the following:

"(i) name;

"(ii) address;

"(iii) local and long distance telephone connection records, or records of session times and durations;

"(iv) length of service (including start date) and types of service utilized;

"(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(vi) means and source of payment (including any credit card or bank account number)"; and

(2) by striking "and the types of services the subscriber or customer utilized," after "of a subscriber to or customer of such service,".

SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.

Chapter 121 of title 18, United States Code, is amended–

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" every place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711--

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by replacing the period with "; and"; and

(C) by adding the following new paragraph at the end:

"(3) the term 'court of competent jurisdiction' has the meaning assigned by section 3127, and includes any federal court within that definition, without geographic limitation.".

SEC. 109. CLARIFICATION OF SCOPE.

Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended--

(1) in subsection (c)(2)--

(A) in subparagraph (B) by striking "or";

(B) in subparagraph (C) by striking the period at the end and inserting "; or"; and

(C) by adding the following subparagraph after subparagraph (C):

"(D) authorized under chapters 119, 121, or 206 of title 18, United States Code. Such disclosure shall not include records revealing customer cable television viewing activity."; and

(2) in subsection (h) by striking "A governmental entity" and inserting "Except as provided in subsection (c)(2)(D), a governmental entity".

SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.

(a) Section 2702 of title 18, United States Code, is amended–

(1) by amending the heading to read, "Voluntary disclosure of customer communications or records";

(2) in subsection (a)(2)(B) by replacing the period with "; and";

(3) by adding after subsection (a)(2) a new paragraph as follows:

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2)) to any governmental entity.";

(4) in subsection (b) by striking "Exceptions.–A person or entity" and inserting "Exceptions for disclosure of communications.–A provider described in subsection (a)";

(5) in subsection (b)(6)--

(A) in subparagraph (A)(ii), by striking "or";

(B) in subparagraph (B), by replacing the period with "; or"; and

(C) by inserting after subparagraph (B) a new subparagraph as follows:

"(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay."; and

(6) by adding after subsection (b) a new subsection as follows:

"(c) Exceptions for disclosure of customer records.–A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))--

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

(5) to any person other than a governmental entity.".

(b) Section 2703 of title 18, United States Code, is amended--

(1) by amending the section heading to read, "Required disclosure of customer communications or records";

(2) by redesignating subsection (c)(2) as (c)(3);

(3) in subsection (c)(1)--

(A) by striking "(A) Except as provided in subparagraph (B), a provider of electronic communication service may" and inserting "A governmental entity may require a provider of electronic communication service or remote computing service to";

(B) by striking "covered by subsection (a) or (b) of this section) to any person other than a governmental entity." and inserting a close parenthesis;

(C) by striking "(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity";

(D) by redesignating subparagraph (C) as subsection (c)(2);

(E) by redesignating subparagraph (B)(i) as (A), (B)(ii) as (B), (B)(iii) as (C), and (B)(iv) as (D);

(F) in subparagraph (D) (formerly (B)(iv)) by striking the final period and inserting "; or"; and

(G) by inserting after subparagraph (D) (formerly (B)(iv)) the following subparagraph:

"(E) seeks information pursuant to paragraph (2).''; and

4) in subsection (c)(2), as redesignated, by striking "subparagraph (B)" and inserting "paragraph (1)".

SEC. 111. TERRORISM AS A PREDICATE ACT FOR AUTHORIZATION OF WIRETAPS.

Section 2516(1) of title 18, United States Code is amended-

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-565), the following new paragraph:

``(q) any violation of section 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); or".

SEC. 112. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO COMPUTER FRAUD AND ABUSE.

Section 2516(1)(c) of title 18, United States Code, is amended by striking ``and section 1341 (relating to mail fraud)," and inserting ``section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse),".

Subtitle B--Foreign Intelligence Surveillance and Other Information

SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE.

[(a) The Foreign Intelligence Surveillance Act of 1978 is amended by adding "or an agent of a foreign power, as defined in section 101(b)(1)(A),"–

(1) in section 105(e)(1) (50 U.S.C. 1805(e)(1)), after "or (3),"; and

(2) in section 304(d)(1) (50 U.S.C. 1824(d)(1)), after "101(a),".

(b) Section 304(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(1)) is amended by replacing "forty-five" with "ninety."]

[Language to be revised pending Leahy proposal]

SEC. 152. MULTI-POINT AUTHORITY.

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting ", or, in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons," after "specified person".

SEC. 153. FOREIGN INTELLIGENCE INFORMATION.

(a) The Foreign Intelligence Surveillance Act of 1978 is amended by replacing "that the" with "that a significant"--

(1) in section 104(a)(7)(B) (50 U.S.C. 1804(a)(7)(B)); and

(2) in section 303(a)(7)(B) (50 U.S.C. 1823(a)(7)(B)).

(b) Section 1806 of title 50, United States Code, is amended to add the following subsection:

"(k)(i) Federal officers who conduct electronic surveillance to acquire foreign

intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against–

(1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(2) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

"(ii) Coordination authorized under paragraph (i) of this subsection shall not preclude the certification required by section 1804(a)(7)(B) or the entry of an order under section 1805.".

(c) Section 1825 of title 50, United States Code is amended to add the following subsection:

"(k)(ii) Federal officers who conduct physical searches to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against–

"(1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(2) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

"(3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

"(ii) Coordination authorized under paragraph (i) of this subsection shall not preclude the certification required by section 1823(a)(7) or the entry of an order under Section 1824."

(d) Title of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) Is amended by adding at the end the following new section:

"Construction with interception authority under Chapter 119 of title 18, United States Code.

"Sec. 112. Nothing in this title shall be construed to alter, affect, or prohibit the authority to intercept communications under chapter 119 of title 18, United States Code, with respect to any wire, oral or electronic communication that is subject to electronic surveillance under provisions of this title."

SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHARING.

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence information obtained as part of a criminal investigation (including, without limitation, information subject to Rule 6(e) of the Federal Rules of Criminal Procedure and information obtained pursuant to chapter 119 of title 18, United States Code) to be provided to any federal law enforcement, intelligence, national security, national defense, protective or immigration personnel, and to the President and Vice President of the United States.

SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHORITY.

(a) Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended –

(1) in subsection (a)(1), by striking "for any investigation to gather foreign intelligence information or information concerning international terrorism" and inserting "for any investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the

basis of activities protected by the First Amendment of the Constitution of the United States."

(2) by amending subsection (c)(2) to read as follows:

"(2) a certification by the applicant that the information likely to be obtained from the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States.;

(3) by striking paragraph (c)(3); and

(4) by amending subsection (d)(2)(A) to read as follows:

"(A) shall specify—

"(i) the identity, if known, of the person who is the subject of the investigation;

"(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

"(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order."

(b) Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a), by striking "foreign intelligence information or information concerning international terrorism" and inserting "information concerning international terrorism or clandestine intelligence activities, provided that such information of a United States person is not being gathered solely upon the basis of activities protected by the First Amendment of the Constitution of the United States";

(2) in subsection (b)(1), by striking "foreign intelligence information or information concerning international terrorism" and inserting "information concerning international terrorism or clandestine intelligence activities, provided that such information of a United States person is not being gathered solely upon the basis of activities protected by the First Amendment of the Constitution of the United States".

SEC. 156. BUSINESS RECORDS.

The Foreign Intelligence Surveillance Act of 1978 is amended–

(1) in section 501 (50 U.S.C. 1861), by amending the same to read as follows:

"§ 501. Administrative subpoenas.

"(a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General may approve pursuant to Executive Order 12333 (or a successor order), the Attorney General may, by administrative subpoena, require the production of any tangible things (including books, records, papers, documents, and other items) that are relevant to the investigation.

"(b) A person who, in good faith, produces tangible things under a subpoena issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context."; and

(2) by striking section 502 (50 U.S.C. 1862).

SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.

(a) Section 2709(b) of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting "at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "Assistant Director";

(2) in paragraph (1)—

(A) by striking "in a position not lower than Deputy Assistant Director"; and

(B) by striking "made that" and all that follows and inserting the following: "made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States"; and

(3) in paragraph (2)—

(A) by striking "in a position not lower than Deputy Assistant Director"; and

(B) by striking "made that" and all that follows and inserting the following: "made that the information sought is relevant to an authorized foreign counterintelligence investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States"; and

(b) Section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A) is amended—

(1) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "designee"; and

(2) by striking "certifies in writing" and all that follows through the end and inserting the following: "certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States."

(c) Section 624 of the Fair Credit and Reporting Act (15 U.S.C. 1681u) is amended—

(1) in subsection (a)—

(A) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "designee" the first place that it appears; and

(B) by striking "in writing that" and all that follows through the end and inserting the following: "in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of

the United States."

(3) In subsection (b)—

(A) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "designee" the first place that it appears; and

(B) by striking "in writing that" and all that follows through the end and inserting the following: "in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States."

(4) in subsection (c)—

(A) by inserting "in a position not lower that Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "designee of the Director"; and

(B) by striking "in camera that" and all that follows through "States." and inserting the following: "in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States.".

SEC. 158. DISCLOSURE OF EDUCATIONAL RECORDS.

(a) Section 408 of the National Education Statistics Act of 1994 (20 U.S.C. 9007) is amended by adding after subsection (b) a new subsection as follows:

"(c) Notwithstanding subsections (a) and (b), the Attorney General or the Secretary of Education or a designated Federal officer or employee, in a position not lower than an Assistant Attorney General or Assistant Secretary, may, upon determining that there are specific and articulable facts giving reason to believe that the information sought is relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B), United States Code, or domestic terrorism or international terrorism as defined in section 2331 of that title–

"(1) collect, through legal process or as otherwise authorized by law, reports, records, and information (including individually-identifiable information), in the Center's possession; and

(2) for official purposes, retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such reports, records, or information as otherwise authorized by law, consistent with such guidelines as the Attorney General, after consultation with the Secretary of Education, may issue to protect confidentiality.

(b) Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), is amended by adding after subsection (i) a new subsection as follows:

"(j) Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General or the Secretary of Education or a designated Federal officer or employee, in a position not lower than an Assistant Attorney General or Assistant Secretary may, after certifying to the educational agency or institution that there are specific and articulable facts giving reason to believe that the information sought is relevant to an authorized investigation or

prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, or domestic terrorism or international terrorism as defined in section 2331 of that title–

"(1) collect education records and other information in the possession of an educational agency or institution; and

(2) for official purposes, retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records or other information as otherwise authorized by law, consistent with such guidelines as the Attorney General, after consultation with the Secretary of Education, may issue to protect confidentiality.

SEC. 159. PRESIDENTIAL AUTHORITY.

Section 203 of Public Law 95-223 (50 U.S.C. 1702) is amended–

(1) at the end of subparagraph (a)(1)(A), by replacing "; and" with a comma and adding thereafter the following (flush to that subparagraph):

"by any person, or with respect to any property, subject to the jurisdiction of the United States;"

(2) in subparagraph (a)(1)(B)--

(A) by striking "by any person, or with respect to any property, subject to the jurisdiction of the United States.";

(B) by replacing "interest;" with "interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and"; and

(C) by inserting ", block during the pendency of an investigation" after "investigate";

(3) at the end of paragraph (a)(1), by adding a new subparagraph as follows:

"(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes."; and

(4) by adding at the end a new subsection (c) as follows:

"(c) Classified information.--In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera.".

SEC. 160. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators.

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

SEC. 161. JUDGES.

Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended by striking "seven district court judges" and inserting "eleven district court judges," and by adding "at least three of whom shall reside within 20 miles of the District of Columbia" immediately after "seven of the United States judicial circuits".

TITLE II–IMMIGRATION

SEC. 201. DEFINITIONS RELATING TO TERRORISM.

The Immigration and Nationality Act of 1952 is amended–

(a) in Section 212(a)(3) (8 U.S.C. 1182)--

(1) in paragraph (B) –

(A) in clause (i) –

(i) by amending paragraph (IV) to read as follows:

"(IV) is a representative (as defined in clause (iv)) of : (a) a terrorist organization as designated by the Secretary under section 219 or paragraph (v)(ii), or (b) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary has determined undermines U.S. efforts to reduce or eliminate terrorist activities, or";

(ii) by amending paragraph (V) to read as follows:

"(V) is a member of a terrorist organization as designated by the Secretary under section 219 or paragraph (v)(ii) paragraph, which the alien knows or should have known is a terrorist organization, or" ; and

(iii) by adding new paragraphs (VI) and (VII) to read as follows:

"(VI) has used his or her position of prominence within any country to endorse or espouse terrorist activity, or persuade others to support terrorist activity or a foreign terrorist organization, in a way that the Secretary of State has determined undermines U.S. efforts to reduce or eliminate terrorist activities; or

(VII) (a) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years,"

(B) Exceptions for certain spouses and children. Clause (VII)(a) shall not apply to a spouse or child :

(i) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or
(ii) whom the consular officer or the Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section";

(B) in clause (ii)--

(i) by inserting "it had been" before "committed in the United States"; and

(ii) by replacing "or firearm" with ", firearm, or other weapon or dangerous device";

(C) by amending clause (iii) to read as follows:

"(iii) Engage in terrorist activity defined

"As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization--

"(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, an act of terrorist activity;

"(II) to prepare or plan a terrorist activity;

"(III) to gather information on potential targets for terrorist activity;

"(IV) to solicit funds or other things of value for terrorist activity or for any terrorist organization;

"(V) to solicit any individual for membership in a terrorist organization, a government that supports terrorism, or to engage in a terrorist activity; or

"(VI) otherwise to commit an act that the actor knows, or reasonably should know, affords material support (including, without limitation, a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including, without limitation, chemical, biological, and radiological weapons), explosives, or training), to any organization that the actor knows, or reasonably should know, is a terrorist organization, or to any individual whom the actor knows, or reasonably should know, has committed or plans to commit any terrorist activity.

"Provided, however, that this clause shall not apply to any material support the alien afforded to an organization or individual who has committed terrorist activity if the Secretary, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary, concludes in his sole unreviewable discretion, that this clause should not apply."; and

(D) by adding a new clause after clause (iv) to read as follows:

"(v) Terrorist organization defined

"As used in clause i(VI) and clause (iii), the term "terrorist organization" includes but is not limited to an organization—

(i) designated under Section 219; or

(ii) otherwise designated by the Secretary of State, in consultation with or upon the request of the Attorney General, as a terrorist organization for purposes of this section.

Any such designation shall be controlling in all administrative and judicial proceedings, including actions under 28 U.S.C. 2241, and shall be conclusive evidence that the organization is a terrorist organization. With respect to an alien who was present in the United States at the time the act was committed, such designation shall also be conclusive evidence that the alien should have known that the organization was a terrorist organization unless the alien demonstrates that he acted prior to the designation and that he should not have known that it was a terrorist organization. With respect to other aliens, such designation shall be conclusive evidence that the alien should have known that the organization was a terrorist organization unless the alien demonstrates that he acted prior to the enactment of this clause and that he should not have known that he was supporting terrorist activity. In determining whether an organization is a terrorist organization in cases where no designation has been made, it shall not be considered that the organization also engages in nonterrorist activity."; and

(2) by adding a new subparagraph (F) as follows:

"(F) Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.";

(b) in Section 219(a) (8 U.S.C. 1189(a))--

(A) in paragraph (1)(B), by inserting "or terrorism (as defined in section 140(d)(2) of the State Department Authorization Act, Public Law 100-204 (22 U.S.C. 2656f(d)(2)) or retains the capability and intent to engage in terrorist activity or terrorism)" after "212(a)(3)(B))";

(B) in paragraph (1)(C), by inserting "or terrorism" after "terrorist activity";

(C) by amending paragraph (2)(A) to read as follows:

"(A) NOTICE.—

"(i) Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and

Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

"(ii) The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).";

(D) in paragraph (2)(B)(i), by replacing "subparagraph (A)" with "subparagraph (A)(ii)";

(E) in paragraph (2)(C), by replacing "paragraph (2)" with "paragraph (2)(A)(i)";

(F) in paragraph (3)(B), by replacing "subsection (c)" with "subsection (b)";

(G) in paragraph (4)(B), by inserting after the first sentence the following:

"The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.";

(H) in paragraph (6)(A),

(i) by inserting "or a redesignation made under paragraph (4)(B)" after "paragraph (1)";

(ii) in clause (i), by

(I) inserting "or redesignation" after "designation" the first time it appears; and

(II) striking "of the designation"; and

(iii) in clause (ii), by striking "of the designation";

(I) in paragraph (6)(B), by

(i) replacing "through (4)" with "and (3)"; and

(ii) inserting the following new sentence at the end:

"Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.";

(J) in paragraph (7), by inserting ", or the revocation of a redesignation under paragraph (6)," after "paragraph (5) or (6)"; and

(K) in paragraph (8), by

(i) replacing "paragraph (1)(B)" with "paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)";

(ii) inserting "or an alien in a removal proceeding" after "criminal action"; and

(iii) inserting "or redesignation" before "as a defense".

SEC. 204. APPLICABILITY.

Notwithstanding any other provision of law, the amendments made by this title shall apply to all aliens, regardless of whether any such aliens entered the United States before or after the date of the enactment of this Act, or whether any relevant activity by any such aliens occurred before or after such date, and shall apply to all past, pending, or future deportation,

exclusion, removal, or other immigration proceedings.

SEC. 205. MULTILATERAL CO-OPERATION AGAINST TERRORISTS.

Section 222(f) of the Immigration and Nationality Act of 1952 is amended–

(A) by inserting ": (1)" after "except that"; and

(B) by inserting the following before the period at the end:

"and (2) the Secretary of State in his discretion and on the basis of reciprocity may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database:

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating or punishing, acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as he shall establish in an agreement with another government in which that government agrees to use such information and records for the purposes described in paragraph (A) or to deny visas to persons who would be inadmissible to the United States.".

SEC. 206. INTER-AGENCY DATA SHARING.

(a) Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended–

(1) in the caption by adding "and Data Exchange" after "Officers";

(2) by designating all of section 105 as subsection (a);

(3) in subsection (a) as so designated, by inserting the words "and border" after the word "internal" in the second place that it appears; and

(4) by adding new subsections (b), (c) and (d) as follows:

"(b) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service with access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency to be provided access for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge. The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon. Upon receipt of such updated extracts, the reviewing agency shall make corresponding updates to its database and destroy previously provided extracts. Such access to any extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) The provision of the extracts mentioned in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) For purposes of administering this Section, the Department of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations to establish the conditions for the use of the information received from the Federal Bureau of

Investigation, in order-

"(1) to limit the redissemination of such information;

"(2) to ensure that such information is used solely to determine whether to issue a visa to an individual;

"(3) to ensure the security, confidentiality and destruction of such information; and

"(4) to protect any privacy rights of individuals who are subjects of such information.".

(b) Nothing in this section shall be construed to limit such authority as the Attorney General or the Director of the Federal Bureau of Investigation may have pursuant to other law (and procedures thereunder) to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States for the purpose of such enforcement or administration, upon terms that are consistent with such other law.

Title III--CRIMINAL JUSTICE

Subtitle A–Substantive Criminal Law

SEC. 301. NO STATUTE OF LIMITATION FOR PROSECUTING TERRORISM OFFENSES.

(a) In general.– Section 3286 of title 18, United States Code, is amended to read as follows:

"§ 3286. Terrorism offenses

"(a) Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any non-capital offense involving a violation of section 351(e), 1361, or 1751(e) of this title, or of any provision listed in section 2332b(g)(5)(B) of this title other than a provision listed in section 3295, unless the indictment is found or the information is instituted within 8 years after the offense was committed.

(b) Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense listed in section 2332(b)(G)(5)(B) of this title, the commission of which resulted in, or created a forseeable risk of, death or serious bodily injury to another person.".

(b) Application.--The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.

(a) Arson.– Section 81 of title 18, United States Code, is amended in the last paragraph by striking "not more than 20 years" and inserting "for any term of years or for life".

(b) Destruction of energy facility –Section 1366 of title 18, United States Code, is amended–

(1) in subsection (a), by striking "ten" and inserting "twenty"; and

(2) by adding at the end the following:

"(d) Whoever commits a violation of subsection (a) or (b) that results in the death of any person shall be subject to imprisonment for any term of years or for life.".

(c) Destruction of national defense materials.– Section 2155(a) of title 18, United States Code, is amended–

(1) by striking "ten" and inserting "twenty"; and

(2) by striking the period after "or both" and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(d) Sabotage of nuclear facilities or fuel.– Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended–

(1) by striking "ten" each place it occurs and inserting "twenty"; and

(2) in subsection (a), by striking the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life."; and

(3) in subsection (b), by striking the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(e) Special aircraft jurisdiction of the United States.– Section 46505(c) of title 18, United States Code, is amended --

(1) by striking "15" and inserting "20"; and

(2) by deleting the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(f) Damaging or destroying an interstate gas or hazardous liquid pipeline facility.– Section 60123(b) of title 18, United States Code, is amended–

(1) by striking "15" and inserting "20"; and

(2) by striking the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(g) Provision of material support to terrorists.– Section 2339A(a) of title 18, United States Code, is amended–

(1) by striking "10" and inserting "20"; and

(2) by striking the period after "or both" and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(h) Provision of material support to designated foreign terrorist organizations.– Section 2339B(a) of title 18, United States Code, is amended–

(1) by striking "10" and inserting "20"; and

(2) by striking the period after "or both" and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.

(a) Arson.-- Section 81 of title 18, United States Code, is amended–

(1) by striking ", or attempts to set fire to or burn"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be imprisoned".

(b) Killings in Federal facilities.--

(1) Section 930(c) of title 18, United States Code, is amended–

(A) by striking "or attempts to kill";

(B) by inserting "or attempts or conspires to do such an act," before "shall be punished"; and

(C) by striking "and 1113" and inserting "1113, and 1117".

(2) Section 1117 of title 18, United States Code, is amended by inserting "930(c)," after "section".

(c) Government property or contracts.–Section 1361 of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(d) Communications lines, stations, or systems.–Section 1362 of title 18, United States Code, is amended–

(1) by striking "or attempts willfully or maliciously to injure or destroy"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be fined".

(e) Buildings or property within special maritime and territorial jurisdiction.–Section 1363 of title 18, United States Code, is amended–

(1) by striking "or attempts to destroy or injure"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be fined".

(f) Wrecking trains.--Section 1992 of title 18, United States Code, is amended by adding at the end the following:

"(c) A person who conspires to commit any offense defined in this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.".

(g) Fortifications, harbor defenses, or defensive sea areas.–Section 2152 of title 18, United States Code, is amended-

(1) by inserting "(a) "before "Whoever" the first time it appears; and

(2) by adding at the end the following:

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.".

(h) Torture.--Section 2340A of title 18, United States Codes, is amended by adding at the end the following:

"(c) Conspiracy.–A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.".

(i) Sabotage of nuclear facilities or fuel.–Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended–

(1) in subsection (a)--

(A) by striking ", or who intentionally and willfully attempts to destroy or cause physical damage to";

(B) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(C) by inserting "or attempts or conspires to do such an act," before "shall be fined"; and

(2) in subsection (b)--

(A) by striking "or attempts to cause"; and

(B) by inserting"or attempts or conspires to do such an act," before"shall be fined"; and

(j) Interference with flight crew members and attendants.–Section 46504 of title 49, United States Code, is amended by inserting "or attempts or conspires to do such an act," before "shall be fined".

(k) Special aircraft jurisdiction of the United States.–Section 46505 of title 49, United States Code, is amended by adding at the end the following:

"(c) Conspiracy.–If two or more persons conspire to violate subsection (b) of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in that subsection.".

(l) Damaging or destroying an interstate gas or hazardous liquid pipeline facility.–Section

60123 of title 49, United States Code, is amended-

(1) by striking ", or attempting to damage or destroy,"; and

(2) by inserting ", or attempting or conspiring to damage or destroy.".

(m) Provision of material support to terrorists.– Section 2339A(a) of title 18, United States Code, is amended–

(1) by inserting "or attempts or conspires to do such an act" after "any such violation".

SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended–

(1) by striking "or (F)" and inserting "(F)"; and

(2) by replacing "financial gain;" with "financial gain, or (G) any act that is indictable as an offense listed in section 2332b(G)(5)(B) of title 18, United States Code;"

SEC. 305. BIOLOGICAL WEAPONS.

(a) Chapter 10 of title 18, United States Code is amended–

(1) in section 175–

(A) in subsection (b)–

(i) by striking, "section, the"and inserting "section – (1) the";

(ii) by striking "does not include" and inserting "includes";

(iii) by inserting "other than" after "system for"; and

(iv) by striking "purposes." and inserting the following: "purposes, and (2) the terms 'biological agent' and 'toxin' do not encompass any biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.";

(B) by redesignating subsection (b) as (c); and

(C) after subsection (a), by adding a new subsection as follows:

"(b) Additional offense.–Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. Knowledge of whether the type or quantity of any biological agent, toxin, or delivery system is reasonably justified by a peaceful purpose is not an element of the offense.";

(2) after section 175a, by adding a new section as follows:

"**§ 175b. Possession by restricted persons**

"(a) No restricted person described in subsection (b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a 'select agent' in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of such title; except that the term "select agent" does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

"(b) the term 'restricted person' means an individual who–

"(1) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

"(2) has been convicted in any court of a crime punishable by imprisonment for a

term exceeding 1 year;

"(3) is a fugitive from justice;

"(4) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(5) is an alien illegally or unlawfully in the United States;

"(6) has been adjudicated as a mental defective or has been committed to any mental institution;

"(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination that remains in effect that such country has repeatedly provided support for acts of international terrorism.

(c) As used in this section,

(1) the term 'alien' has the same meaning as in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(2) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

"(d) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947."; and

(3) in the chapter analysis, by inserting after the item relating to section 175a the following:

"175b. Possession by restricted persons.".

(b) The Anti-Terrorism and Effective Death Penalty Act of 1996 is amended by adding a new subsection after subsection 511 (42 U.S.C. 262 note) as follows:

"**§ 511A. Regulation of biological agents posing national-security threat**

"(a) IN GENERAL.--

"(1) LIST OF AGENTS POSING SECURITY THREAT.--The Secretary shall, through regulations promulgated under subsection (d), establish and maintain a list of those biological agents listed pursuant to section 511(d)(1) that he determines to be a national-security threat.

"(2.) CRITERIA.--In determining whether to include an agent on the list under paragraph (1), the Secretary shall–

"(A) consider the criteria specified in section 511(d)(1)(B)(i), and any other criteria that he determines to be appropriate; and

"(B) consult with scientific, intelligence, and military experts representing appropriate professional groups.

"(b) REGULATION OF BIOLOGICAL AGENTS POSING SECURITY THREAT.--The Secretary shall, through regulations promulgated under subsection (d), provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of agents listed under subsection (a)(1) designed to protect public safety and national security, including safeguards to prevent access to such agents for use in domestic terrorism or international terrorism or for any other criminal purpose.

"(c) CIVIL MONEY PENALTIES.--A violation of a requirement imposed by regulation

promulgated under this section shall be subject to a civil money penalty of up to $250,000.

"(d) REGULATIONS.--The Secretary shall promulgate regulations to carry out this section. The initial regulations implementing this section shall be issued as interim final regulations.

SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT ADVICE OR ASSISTANCE.

Section 2339A of title 18, United States Code, is amended–

(1) in subsection (a)--

(A) by striking "a violaton" and all that follows through "49" and inserting "any Federal terrorism offense"; and

(B) by replacing "violation," with "offense,"; and

(2) in subsection (b), by inserting "advice or assistance, including expert advice or assistance," after "training,".

SEC. 307. PROHIBITION AGAINST HARBORING TERRORISTS.

(a) Chapter 113B of title 18, United States Code, is amended by adding after section 2338 the following new section:

"Sec. 2339. Harboring or concealing terrorists.

"Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or is about to commit, an offense under section 32 (relating to destruction of aircraft or aircraft facilities), 175 (relating to biological weapons), 229 (relating to chemical weapons), 831 (relating to nuclear materials), 844(f)(2), (3) (relating to arson and bombing of government property risking or causing injury or death), 2280 (relating to violence against maritime navigation), 1366(a) (relating to destruction of energy facilities), 2332a (relating to weapons of mass destruction), or 2332b (relating to acts of terrorism transcending national boundaries) of this title, section 236(a) (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)), or section 46502 (relating to aircraft piracy) of title 49, shall be fined under this title or imprisoned not more than ten years, or both."

(b) The chapter analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item for section 2338 the following:

"Sec. 2339. Harboring or concealing terrorists."

SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(j) Supervised release terms for terrorism offenses. – Notwithstanding subsection (b), the authorized terms of supervised release for any offense listed in section 2332b(g)(5)(B) of this title, the commission of which resulted in, or created a forseeable risk of, death or serious bodily injury to another person, are any term of years or life.".

SEC. 309. DEFINITIONS.

(a) Section 2332b(g)(5)(B) of title 18, United States Code, is amended to read as follows:

"(B) is a violation of

"(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)-(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 2339 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f)(2)-(3) (relating to arson and bombing of government property risking or causing injury or death) or 844(i) (relating to arson and bombing of property used in

interstate commerce), 930(c) (killing or attempted killing during attack on federal facility with dangerous weapon), 956(a)(1) (conspiracy to muder, kidnap, maim in special maritime and territorial jurisdiction of the United States), 1030(a)(1), (a)(5)(A) involving damage as defined by 1030(e)(8)(B)-(D), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a)-(d) (relating to Presidential and Presidential staff assassination, and kidnaping), 1992 (relating to wrecking trains), 2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332c, 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

"(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(iii) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 (if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility)"; and."; and

(b) Section 2331 of title 18, United States Code, is amended –

(1) in paragraph (1)(B)--

(i) by inserting "(or to have the effect)" after "intended"; and

(ii) in clause (iii), by replacing "by assassination or kidnapping" with "(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)";

(2) in paragraph (3), by striking "and";

(3) in paragraph (4), by replacing the period with "; and"; and

(4) by inserting the following after paragraph (4):

"(5) the term 'domestic terrorism' means activities that –

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and

"(B) appear to be intended (or to have the effect) --

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof).."; and

(C) Section 2332b(f) is amended by inserting after "for" the following "a violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1751(e), 2152, or 2156 of this title, and".

SEC. 310. REQUESTS FOR MILITARY ASSISTANCE TO ENFORCE PROHIBITION IN CERTAIN EMERGENCIES.

Section 2332e of Title 18, United States Code, is amended (a) by striking "2332c" and

inserting "2332a", and (b) by striking "chemical".

SECTION 311. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST MASS TRANSPORTATION SYSTEMS.

Chapter 97 of title 18, United States Code, is amended by adding at the end therof the following new section:

"§1993. Terrorist attacks and other acts of violence against mass transportation systems

"(a) GENERAL PROHIBITIONS.–Whoever willfully--

"(1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry;

"(2) places or causes to be placed any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

"(3) sets fire to, or places any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and knowing or having reason to know such activity would likely derail, disable, or wreck a mass transportation vehicle or ferry used, operated, or employed by the mass transportation provider;

"(4) removes appurtenances from, damages, or otherwise impairs the operation of a mass transportation signal system, including a train control system, centralized dispatching system, or rail grade crossing warning signal;

"(5) interferes with, disables, or incapacitates any dispatcher, driver, captain, or person while they are employed in dispatching, operating, or maintaining a mass transportation vehicle or ferry, with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

"(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider or any other person while any of the foregoing are on the property of a mass transportation provider;

"(7) conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection; or

"(8) attempts, threatens, or conspires to do any of the aforesaid acts,

shall be fined under this title or imprisoned not more than twenty years, or both, if such act is committed, or in the case of a threat or conspiracy such act would be committed, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, that person travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act. Whoever violates this subsection under the following circumstances shall be guilty of an aggravated form of the offense: if the mass transportation vehicle or ferry was carrying a passenger at the time of the offense or if the offense has resulted in the death of any person, then whoever committed that offense shall be fined under this title or imprisoned for a term of years or for life, or both.

(b) DEFINITIONS.-- In this section--

"(1) the term 'biological agent' has the meaning given to that term in section 178(1) of

this title;

"(2) the term 'dangerous weapon' has the meaning given to that term in section 930 of this title;

"(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4) of this title;

"(4) the term 'destructive substance' has the meaning given to that term in section 31 of this title, except that–

"(A) the term 'radioactive device' does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes; and

"(B) 'destructive substance' includes any radioactive device or material that can be used to cause a harm listed in subsection (a) and that is not in use solely for medical, industrial, research, or other peaceful purposes;

"(5) the term 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, United States Code, except that the term shall include schoolbus, charter, and sightseeing transportation;

"(6) the term 'serious bodily injury' has the meaning given to that term in section 1365 of this title;

"(7) the term 'State' has the meaning given to that term in section 2266 of this title, and

"(8) the term 'toxin' has the meaning given to that term in section 178(2) of this title.".

(f) CONFORMING AMENDMENT.–The analysis of chapter 97 of title 18, United States Code, is amended by adding at the end:

"1993. Terrorist attacks and other acts of violence against mass transportation systems.".

Subtitle B–Criminal Procedure

SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district".

SEC. 352. NOTICE.

Section 3103a of title 18, United States Code, is amended by adding at the end the following: "With respect to any issuance of a warrant or court order under this section, or any other law or rule, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed pursuant to the standards, terms, and conditions set forth in section 2705, unless otherwise expressly provided by statute.".

SEC. 353. DNA IDENTIFICATION OF TERRORISTS.

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(1)) is amended–

(1) by redesignating subparagraph (G) as subparagraph (I); and

(2) by inserting after subparagraph (F) new subparagraphs as follows:

"(G) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code.

"(H) Any crime of violence (as defined in Section 16 of title 18, United States Code).".

SEC. 354. GRAND JURY MATTERS.

Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended –

(1) by striking "and" at the end of subdivision (i);
(2) by replacing the period at the end of subdivision (ii) with "; and"' and
(3) by inserting after subdivision (ii) the following:

"(iii) federal law enforcement, intelligence, protective, national security, or national defense personnel, any federal personnel responsible for administering the immigration laws of the United States, and to the President and Vice President of the United States, where the matters pertain to international terrorism or domestic terrorism (as defined in section 2331 of title 18, United States Code), or a matter of national security.".

SEC. 356. JURISDICTION OVER CRIMES COMMITTED AT U.S. FACILITIES ABROAD.

Section 7 of title 18, United States Code, is amended by adding the following at the end thereof:

"(9) With respect to offenses committed by or against a United States national, as defined in Section 1203(c) of this title, (A) the premises of United States diplomatic, consular, military or other U.S. government missions or entities in foreign states, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership, and (B) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, provided that nothing in this subsection shall be deemed to supercede any treaty or international agreement in force on the date of enactment of this subsection with which this subsection conflicts. This paragraph does not apply with respect to an offense committed by a person described in Section 3261(a) of this title. Nothing in this paragraph shall be deemed to supercede any treaty or international agreement in force with which this paragraph conflicts.

SEC. 357. PROFESSIONAL STANDARDS FOR GOVERNMENT ATTORNEYS.

(a) Professional Standards for Government Attorneys.-Section 530B of title 28, United States Code, is amended to read as follows:

``§530B. Professional Standards for Government Attorneys

``(a) Definitions.-In this section:

``(1) Government attorney.-The term `Government attorney'-

``(A) means the Attorney General; the Deputy Attorney General; the Solicitor General; the Associate Attorney General; the head of, and any attorney employed in, any division, office, board, bureau, component, or agency of the Department of Justice; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney appointed under section 515; any Special Assistant United States Attorney appointed under section 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States; any independent counsel, or employee of such counsel, appointed under chapter 40; and any outside special counsel, or employee of such counsel, as may be duly appointed by the Attorney General; and

``(B) does not include any attorney employed as an investigator or other law enforcement agent by the Department of Justice who is not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

``(2) State.-The term `State' includes a Territory and the District of Columbia.
``(b) Choice of Law.-Subject to any uniform national rule prescribed by the Supreme Court under chapter 131, the standards of professional responsibility that apply to a Government attorney with respect to the attorney's work for the Government shall be-
``(1) for conduct in connection with a proceeding in or before a court, or conduct reasonably intended to lead to a proceeding in or before a court, the standards of professional responsibility established by the rules and decisions of the court in or before which the proceeding is brought or is intended to be brought;
"(2) for conduct in connection with a grand jury proceeding, or conduct reasonably intended to lead to a grand jury proceeding, the standards of professional responsibility established by the rules and decisions of the court under whose authority the grand jury was or will be empaneled; and
``(3) for all other conduct, the standards of professional responsibility established by the rules and decisions of the Federal district court for the judicial district in which the attorney principally performs his or her official duties.
``(c) Licensure.-A Government attorney (except foreign counsel employed in special cases)-
``(1) shall be duly licensed and authorized to practice as an attorney under the laws of a State; and
``(2) shall not be required to be a member of the bar of any particular State.
``(d) Covert Activities.-Notwithstanding any provision of State law, including disciplinary rules, statutes, regulations, constitutional provisions, or case law, a Government attorney may, for the purpose of enforcing Federal law, provide legal advice, authorization, concurrence, direction, or supervision on conducting covert activities, and participate in such activities, even though such activities may require the use of deceit or misrepresentation.
``(e) Admissibility of Evidence.-No violation of any disciplinary, ethical, or professional conduct rule shall be construed to permit the exclusion of otherwise admissible evidence in any Federal criminal proceedings.
``(f) Rulemaking Authority.-The Attorney General shall make and amend rules of the Department of Justice to ensure compliance with this section.".
(b) Technical and Conforming Amendment.-The analysis for chapter 31 of title 28, United States Code, is amended, in the item relating to section 530B, by striking ``Ethical standards for attorneys for the Government'' and inserting ``Professional standards for Government attorneys''.
(c) Reports.-
(1) Uniform rule.-In order to encourage the Supreme Court to prescribe, under chapter 131 of title 28, United States Code, a uniform national rule for Government attorneys with respect to communications with represented persons and parties, not later than 1 year after the date of enactment of this Act, the Judicial Conference of the United States shall submit to the Chief Justice of the United States a report, which shall include recommendations with respect to amending the Federal Rules of Practice and Procedure to provide for such a uniform national rule.
(2) Actual or potential conflicts.-Not later than 2 years after the date of enactment of this Act, the Judicial Conference of the United States shall submit to the Chairmen and Ranking Members of the Committees on the Judiciary of the House of Representatives and the Senate a report, which shall include-
(A) a review of any areas of actual or potential conflict between specific Federal duties related

to the investigation and prosecution of violations of Federal law and the regulation of Government attorneys (as that term is defined in section 530B of title 28, United States Code, as amended by this Act) by existing standards of professional responsibility; and

(B) recommendations with respect to amending the Federal Rules of Practice and Procedure to provide for additional rules governing attorney conduct to address any areas of actual or potential conflict identified pursuant to the review under subparagraph (A).

(3) Report considerations.-In carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall take into consideration-

(A) the needs and circumstances of multiforum and multijurisdictional litigation;

(B) the special needs and interests of the United States in investigating and prosecuting violations of Federal criminal and civil law; and

(C) practices that are approved under Federal statutory or case law or that are otherwise consistent with traditional Federal law enforcement techniques.

SEC. 358. EXTENSION OF SECRET SERVICE JURISDICTION.

(a) Concurrent Jurisdiction Under 18 U.S.C. 1030.–Section 1030(d) of title 18, United States Code, is amended to read as follows:

"(d)(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

"(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056(a) of this title.

"(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.".

(b) Reauthorization of Jurisdiction under 18 U.S.C. 1344.–Section 3056(b)(3) of title 18, United States Code, is amended by striking "credit and debit card frauds, and false identification documents or devices" and inserting "access devices frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution".

Title IV--FINANCIAL INFRASTRUCTURE

SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

SEC. 402. MATERIAL SUPPORT FOR TERRORISM.

Section 2339A of title 18, United States Code, is amended–

(1) in subsection (a), by inserting "A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law." at the end;

(2) in subsection (b), by replacing "or other financial securities" with "or monetary instruments or financial securities"; and

(3) in subsection (a), by striking ", within the United States,".

SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.

Section 981(a)(1) of title 18, United States Code, is amended after paragraph (F) by adding the following new paragraph:

"(G) All assets, foreign or domestic--

"(i) of any individual, entity or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

"(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.

No provision of title IX of Public Law 106-387 shall be understood to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

SEC. 405. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL-SECURITY INVESTIGATIONS.

Section 6103 of title 26, United States Code, is amended –

(1) in paragraph (i)(3), by adding a new subparagraph after subparagraph (B) as follows:

"(C) Response to Terrorist Incidents and Threats.– The Secretary may disclose returns or return information to the extent necessary to assist officers or employees of any Federal agency in the conduct of their duties on behalf of such agency and who are involved in the investigation of terrorist incidents, threats, or activities; the Federal agency may redisclose relevant information received pursuant to this paragraph to State or local law-enforcement officials who are part of a joint investigative team with the Federal agency.";

(2) in subsection (i), by adding a new paragraph after paragraph (6), as follows:

"(7) Information Concerning Terrorist Activities.–(a) The Secretary may disclose returns and return information, upon a particularized request indicating that there is a reasonable basis to believe that the return or return information is or may be relevant to terrorist activity, signed personally by (i) an Assistant Attorney General or person of higher rank in the Department of Justice, or (ii) a person who is responsible for the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations and activities and who is also an official of the Department of Treasury who is appointed by the President with the advice and consent of the Senate. Information disclosed under this paragraph may be disclosed only to employees of the Department of Justice and the Department of the Treasury personally and directly engaged in (and solely for their use in) the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations or activities.

(b) The Secretary may disclose returns and return information, upon a particularized request indicating that there is a reasonable basis to believe that the return or return information is or may be relevant to terrorist activity, signed personally by (i) an Assistant Attorney General or person of higher rank in the Department of Justice, or (ii) a person who is responsible for the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations and activities and who is also an official of the Department of Treasury who is appointed by the President with the advice and consent of the Senate. Information disclosed

under this paragraph may be disclosed only to other United States intelligence agencies when relevant to their analysis of intelligence and counterintelligence information concerning terrorist organizations and activities, and thereafter the information so disclosed may be used by such agencies only in accordance with Executive Order 12333 (or successor order)."; and

(3) by adding a new paragraph (a)(11) as follows:

"The term 'terrorism' means international terrorism or domestic terrorism as those terms are defined in section 2331 of Title 18, United States Code."–

SECTION 407. TRADE SANCTIONS.

The Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of H.R. 5426, as enacted by section 1(a) of Public Law 106-387) is amended–

(1) in section 902(6)--

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) a statute, executive order, or regulation imposing such a prohibition, restriction, or condition with respect to a foreign entity designated by the United States in connection with terrorism, narcotics trafficking, or the proliferation of missiles or weapons of mass destruction.";

(2) in section 902(7)--

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) a statute, executive order, or regulation imposing such a prohibition, restriction, or condition with respect to a foreign entity designated by the United States in connection with terrorism, narcotics trafficking, or the proliferation of missiles or weapons of mass destruction.";

(3) by amending section 904(2)(C) to read as follows:

"(C) used to facilitate the design, development, or production of missiles or weapons of mass destruction.";

(4) in section 906(a)(1)--

(A) by inserting ", the Taliban or the territory of Afghanistan controlled by the Taliban," after "Cuba"; and

(B) by inserting ", or in the territory of Afghanistan controlled by the Taliban," after "within such country"; and

(5) in section 906(a)(2), by inserting ", or to any other entity in Syria or North Korea" after "Korea".

SECTION 408. EXTRATERRITORIAL JURISDICTION.

Section 1029 of Title 18, United States Code, is amended by adding at the end a new paragraph (g) as follows:

"(g) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsections (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment and forfeiture enumerated in this title if–

(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secretes,

or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.".

Title V--EMERGENCY AUTHORIZATIONS

SUBTITLE A - GENERAL

SEC. 501. OFFICE OF JUSTICE PROGRAMS.

(a) Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, shall not be subject to (and shall not be taken into account in carrying out) any limitation on obligations from amounts deposited to or available in the Fund, notwithstanding section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, and any similar limitation on Fund obligations in such Act for Fiscal Year 2002, and notwithstanding section 1402(d)(5)(A) of the Victims of Crime Act of 1984.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105-277 and section 108(a) of appendix A of Public Law 106-113 (113 Stat. 1501A-20) are amended– (1) after "that Office", each place it occurs, by inserting "(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90-351)"; and (2) by inserting "functions, including any" after "all".

SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS.

(a) Funds available to the Attorney General may be used for the payment of rewards pursuant to public advertisements for assistance to the Department of Justice to combat terrorism and defend the Nation against terrorist attacks, in accordance with the procedures and regulations established or issued by the Attorney General.

(b) In making rewards under this section –

(1) no such reward of $250,000 or more may be made or offered without the personal approval of the Attorney General or the President;

(2) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under paragraph (1);

(3) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) may provide the Attorney General with funds for the payment of rewards;

(4) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review; and

(5) no such reward shall be subject to any per- or aggregate reward spending limitation established by law, unless the same should expressly refer to this sectino, and no reward paid pursuant to any such offer shall count toward any such aggregate reward spending limitation."

SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs" and "Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration And Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106-553 (114 Stat. 2762A-58 to 2762A-59)) is amended by striking the following each place it occurs: "*Provided,* That none of the funds available to the Immigration and

Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

SEC. 504. SECRETARY OF STATE'S AUTHORITY TO PAY REWARDS.

Section 36 of the State Department Basic Authorities Act of 1956 (Public Law 885, August 1, 1956; 22 U.S.C. 2708) is amended--

(1) in subsection (b)--

(A) in paragraph (4), by striking "or" at the end;

(B) in paragraph (5), by striking the period at the end and inserting ",including by dismantling an organization in whole or significant part; or"; and

(C) by adding at the end the following new paragraph:

"(6) The identification or location of an individual who holds a key leadership position in a terrorist organization.".

(2) in subsection (d), by striking paragraphs (2) and (3) and renumbering paragraph (4) accordingly; and

(3) in subsection (e)(1), by inserting ",except as personally authorized by the Secretary of State if he determines that offer or payment of an award of a larger amount is necessary to combat terrorism or defend the Nation against terrorist acts." after "$5,000,000".

SEC. 505. PUBLIC SAFETY OFFICER BENEFITS.

(a) Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

SEC. 506. PAYMENT INCREASE.

(a) Payments.–Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) Applicability.–The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

SEC. 507. 07. INCREASED FUNDING FOR THE TECHNICAL SUPPORT CENTER AT THE FEDERAL BUREAU OF INVESTIGATION.

There are authorized to be appropriated for the Technical Support Center established in section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) to help meet the demands for activities to combat terrorism and support and enhance the technical support and tactical operations of the FBI, $200,000,000 for fiscal years 2002, 2003, and 2004.

SEC. 508. COUNTERTERRORISM FUND.

(a) Establishment; Availability.—There is hereby established in the Treasury of the United States a separate fund to be known as the "Counterterrorism Fund", amounts in which shall remain available without fiscal year limitation—

(1) to reimburse any Department of Justice component for any costs incurred in connection with—

(A) reestablishing the operational capability of an office or facility that has been damaged or destroyed as a result of any domestic or international terrorist incident;

(B) providing support to counter, investigate, or prosecute domestic or international terrorism, including, without limitation, paying rewards in connection with these activities; and

(C) conducting terrorism threat assessments of Federal agencies and their facilities; and their facilities; and

(2) to reimburse any department or agency of the Federal Government for any costs incurred in connection with detaining in foreign countries individuals accused of acts of terrorism that violate the laws of the United States.

(b) No effect on appropriations. —The amendment made by subsection (a) shall not affect the amount or availability of any appropriation to the Counterterrorism Fund made before the date of enactment of this Act.

SEC. 509. EXPEDITED PAYMENT FOR PUBLIC SAFETY OFFICERS INVOLVED IN THE PREVENTION, INVESTIGATION, RESCUE, OR RECOVERY EFFORTS RELATED TO A TERRORIST ATTACK.

(a) In general.–Notwithstanding the limitations of subsection (b) of section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 2796, 2896a), upon certification (containing identification of all eligible payees of benefits pursuant to section 1201 of such Act) by a public agency that a public safety officer employed by such agency was killed or suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty as described in section 1201 of such Act in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

(b) Definitions.–For purposes of this section , the terms "catastrophic injury", "public agency", and "public safety officer" have the same meanings given such terms in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796l6b).

Sec. 510. TECHNICAL CORRECTION WITH RESPECT TO EXPEDITED PAYMENTS FOR HEROIC PUBLIC SAFETY OFFICERS.

Section 1 of Public Law 107-37 (an Act to provide for the expedited payment of certain benefits for a public safety officer who was killed or suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty in connection with the terrorist attacks of September 11, 2001) is amended by--

(1) inserting before "by a" the following: "(containing identification of all eligible payees of benefits pursuant to section 1201)";

(2) inserting " producing permanent and total disability" after "suffered a catastrophic injury"; and

(3) striking "1201(a)" and inserting "1201".

Subtitle B–Amendments to the Victims of Crime Act of 1984

SEC. 551. CRIME VICTIMS FUND.

(a) Deposit of gifts in the fund.–SECTION 1402(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(b)) is amended--

(1) in paragraph (3), by striking "and' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ";and"; and

(3) by adding at the end the following:

"(5) any gifts, bequests, or donations to the Fund from private entities or individuals.".

(b) Formula for Fund Distributions.–Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) is amended to read as follows:

"(c) Fund distribution; retention of sums of fund; availability of exptenditure without fiscal year limitation. –

"(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the Previous fiscal year.

"(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d). All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation.".

(c) Allocation of funds for costs and grants.–Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended--

(1) by striking "deposited in" and inserting "to be distributed from";

(2) in subparagraph (A), by striking "48.5" and inserting "47.5"; and

(3) in subparagraph (B), by striking "48.5" and inserting 47.5"; and

(4) in subparagraph (C), by striking "3" and inserting "5".

SEC. 552. CRIME VICTIM COMPENSATION.

(a) Allocation of funds for compensation and assistance.–Section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) is amended--

in each of paragraphs (1) and (2), by striking "40" and inserting "60".

(b) Location of compensable crime.–Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(6)(B)) is amended by striking "are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or".

(c) Relationship of crime victim compensation to means-tested federal benefit programs. –Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking subsection (c) and inserting the following:

"(c) Exclusion from income resources, and assets for purposes of means tests. – Notwithstanding any other law, for the purpose of any maximum allowed income, resource, or asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives

through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall that amount reduce the amount of assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.".

(d) Definitions of "compensable crime" and "state". –Section 1403(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)) is amended--

(1) in paragraph (3), by striking "crimes involving terrorism,"; and

(2) in paragraph (4), by inserting "the United States Virgin Islands," after "the Commonwealth of Puerto Rico,".

(e) Relationship of eligible crime victim compensation programs to the September 11th victim compensation fund.–Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602(e)) is amended by inserting "including the September 11th Victim Compensation Fund (established under title IV of Public Law 107-42)," after "Federal program,".

SEC. 553. CRIME VICTIM ASSISTANCE.

(a) ASSISTANCE FOR VICTIMS OF THE DISTRICT OF COLUMBIA, PUERTO RICO, AND OTHER TERRITORIES AND POSSESSIONS.–Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

"(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1).".

(b) PROHIBITION ON DISCRIMINATION AGAINST CERTAIN.–Section 1404(b)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(b)(1)) is amended--

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ";and"; and

(3) by adding at the end the following:

"(F) does not discriminate against victims because they oppose the death penalty of disagree with the way the State is prosecuting the criminal case.".

(c) GRANTS FOR PROGRAM EVALUATION AND COMPLIANCE EFFORTS.–Section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A)0 is amended by inserting ",program evaluation, compliance efforts," after "demonstration projects".

(d) ALLOCATION OF DISCRETIONARY GRANTS.–Section 1404(c)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(2)) is amended--

(1) in subparagraph (A), by striking "not more than" and inserting "not less than"; and

(2) in subparagraph (B), by striking "not less than" and inserting "not more than".

(e) FELLOWSHIPS AND CLINICAL INTERNSHIP.–Section 1404(c)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(3)) is amended--

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the and inserting ";and"; and

(3) by adding at the end the following:

"(E) use funds made available to the Director under this subsection--

(i) for fellowships and clinical internships; and

(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting in demonstrations, surveys, and special projects.".

SEC. 554. VICTIMS OF TERRORISM.

(a) COMPENSATION AND ASSISTANCE TO VICTIMS OF DOMESTIC TERRORISM.–Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(b)) is amended to read as follows:

"(b) VICTIMS OF TERRORISM WITHIN THE UNITED STATES.–The Director may make supplemental grants as provided in section 1402(d)(5) to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies

(including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring within the United States.".

(b) ASSISTANCE TO VICTIMS OF INTERNATIONAL TERRORISM.–Section 1404B(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(a)(1)) is amended by striking "who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986".

(c) COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM.–Section 1404C(b) of the Victims of Crime 0 1984 (42 U.S.C. 10603c(b)) is amended by adding at the end the following: "The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.".

Title VI–PROTECTING THE NORTHERN BORDER

SEC. 601. ENSURING ADEQUATE PERSONNEL ON THE NORTHERN BORDER.

The Attorney General is authorized to waive any FTE cap on personnel assigned to the Immigration and Naturalization Service to address the national security needs of the United States on the Northern border.

SEC. 602. NORTHERN BORDER PERSONNEL.

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (form the number authorized under current law) in each State along the Northern Border;

(2) such sums as may be necessary to triple the number of Customs Service personnel (from the number authorized under current law) at ports of entry in each State along the Northern Border;

(3) such sums as may be necessary to triple the number of INS inspectors (from the number authorized on the date of enactment of this Act) at ports of entry in each State along the Northern Border; and

(4) an additional $50,000,000 each to the Immigration and Naturalization Service and the United States Customs Service for purposes of making improvements in technology for monitoring the Northern Border and acquiring additional equipment at the Northern Border.

SEC. 603. ACCESS BY THE DEPARTMENT OF STATE AND THE INS TO CERTAIN IDENTIFYING INFORMATION IN THE CRIMINAL HISTORY RECORDS OF VISA APPLICANTS AND APPLICANTS FOR ADMISSION TO THE UNITED STATES.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105) is amended—

(1) in the section heading, by inserting ";DATA EXCHANGE" after "SECURITY OFFICERS";

(2) by inserting "(a)" after "SEC. 105."'

(3) in subsection (a), by inserting "and border" after "internal" the second place it appears; and

(4) by adding at the end the following:

"(b)(1) Upon the promulgation of final regulations under subsection (d), the Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center tha may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purposes of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

"(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

"(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

"(4) Access to an extract does not entitle the Department of State or the Service to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State or the Service shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of an more cost-effective and efficient means of sharing information.

"(d) For purposes of administering this section, the Department of State and the Service shall, prior to receiving access to the NCIC data but not later than 18 months after the date of enactment of this subsection, promulgate final regulations—

"(1) to implement procedures for the taking of fingerprints; and

"(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

"(A) to limit the redissemination of such information;

"(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;

"(C) to ensure the security, confidentiality, and destruction of such information; and

"(D) to protect any privacy rights of individuals who are subjects of such information.".

(b) REPORTING REQUIREMENT.—Not later than 2 years after the date of enactment of this Act, the Attorney General and the Secretary of State jointly shall report to Congress on the implementation of the amendments made by this section.

(c) STATUTORY CONSTRUCTION.—Nothing in this section, or ain any other law, shall be construed to limit the authority of the Attorney General or Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such

enforcement or administration, upon terms that are consistent with the National Crime Prevention and Privacy Compact Act of 1998 (subtitle A of title II of Public Law 105–251; 42 U.S.C. 14611–16) and section 552a of title 5, United States Code.

SEC. 604. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement and Border Affairs" and "Immigration and Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration and Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106–553 (114 Stat. 2762A–58 to 2762A–59)) is amended by striking the following each place it occurs: "*Provided*, That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

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Deletions are shown with the following attributes and color:
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107TH CONGRESS

1ST SESSION

H.R. _____

To combat terrorism and defend the Nation against terrorist acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September ___, 2001

A BILL

To combat terrorism and defend the Nation against terrorist acts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This act may be cited as the "Anti-Terrorism Act of 2001."

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Construction; severability.
Sec. 4 Sense of Congress condemning discrimination against Arab and Muslim Americans.

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Subtitle A--Electronic Surveillance

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Sec. 102. Seizure of voice-mail messages pursuant to warrants.
Sec. 103. Authorized disclosure.
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Sec. 107. Scope of subpoenas for records of electronic communications.
Sec. 108. Nationwide service of search warrants for electronic evidence.
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Title II--IMMIGRATION

Sec. 201. Definitions relating to terrorism.
Sec. ~~202. Mandatory detention of suspected terrorists.~~
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Title III--CRIMINAL JUSTICE

Subtitle A–Substantive Criminal Law

Sec. 301. No statute of limitation for prosecuting terrorism offenses.
Sec. 302. Alternative maximum penalties for terrorism crimes.
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Sec. 305. Biological weapons.
Sec. 306. Support of terrorism through expert advice or assistance.
Sec. 307. Prohibition against harboring terrorists.
Sec. 308. Post-release supervision of terrorists.
Sec. 309. Definitions.
Sec. 310. Requests for military assistance to enforce prohibition in certain emergencies.
Sec. 311. Terrorist attacks and other acts of violence against mass transportation systems.

Subtitle B–Criminal Procedure

Sec. 351. Single-jurisdiction search warrants for terrorism.
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Sec. 354. Grand jury matters.
Sec. ~~355. Extraterritoriality.~~
~~Sec.~~ 356. ~~Jurisdiction Oover Ccrimes Ccommitted at U.S. Facilities Abroad.~~

facilities abroad.
Sec. 357. Professional standards for government attorneys.
Sec. 358. Extension of Secret Service Jurisdiction.

Title IV--FINANCIAL INFRASTRUCTURE

Sec. 401. Laundering the proceeds of terrorism.
Sec. 402. Material support for terrorism.
Sec. 403. Assets of terrorist organizations.

Sec. 404. Technical clarification relating to provision of material support to terrorism.
Sec. 405. Disclosure of tax information in terrorism and national-security investigations.
Sec. 406. Restraint of property subject to criminal forfeiture.
Sec. 407. Trade sanctions.
Sec. 408. Extraterritorial jurisdiction.

TITLE V--EMERGENCY AUTHORIZATIONS

Subtitle A - General

Sec. 501. Office of Justice Programs.
Sec. 502. Attorney General's authority to pay rewards.
Sec. 503. Limited authority to pay overtime.
Sec. 504. Secretary of State's authority to pay rewards.
Sec. 505. Assistance to countries cooperating against international terrorism.

Public safety officer benefits.
Sec. 506. Payment increase.
Sec. 507. Increased funding for the technical support center at the Federal Bureau of Investigation.
Sec. 508. Counterterrism Fund.
Sec. 509. Expedited payment for public safety officers involved in the prevention, investigation, rescue or recovery efforts related to a terrorist attack.
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Subtitle B – Amendments to the Crime Victims Act of 1984

Sec. 551. Crime Victims Fund.
Sec. 552. Crime Victim Compensation.
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Title VI–PROTECTING THE NORTHERN BORDER

Sec. 601. Ensuring adequate personnel on the Northern Border.
Sec. 602. Northern Border personnel.
Sec. 603. Access by the Department of State and the INS to certain identifying information in the criminal history records of visa applicants and applicants for admission to the United States.
Sec. 604. Limited authority to pay overtime.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. SENSE OF CONGRESS CONDEMNING DISCRIMINATION AGAINST ARAB

AND MUSLIM AMERICANS.

(a) FINDINGS.–Congress finds the following:

(1) Arab Americans, Muslim Americans, and Americans from South Asia play a vital role in our Nation and are entitled to nothing less than the full rights of every American.

(2) The acts of violence that have been taken against Arab and Muslim Americans since the September 11, 2001, attacks against the United States should be and are condemned by all Americans who value freedom.

(3) The concept of individual responsibility for wrongdoing is sacrosanct in American society, and applies equally to all religious, racial, and ethnic groups.

(4) When American citizens commit acts of violence against those who are, or are perceived to be, of Arab or Muslim descent, they should be punished to the full extent of the law.

(5) Muslim Americans have become so fearful of harassment that many Muslim women are changing the way they dress to avoid becoming targets.

(6) Many Arab Americans and Muslim Americans have acted heroically during the attacks on the United States, including Mohammed Salman Hamdani, a 23-year-old New Yorker of Pakistani descent, who is believed to have gone to the World Trade Center to offer rescue assistance and is now missing.

(b) SENSE OF CONGRESS.-- It is the sense of Congress that--

(1) the civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans, and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety;

(2) any acts of violence or discrimination against any Americans be condemned; and

(3) the Nation is called upon to recognize the patriotism of fellow citizens from all ethnic, racial, and religious backgrounds.

TITLE I--INTELLIGENCE GATHERING

Subtitle A--Electronic Surveillance

SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

(a) ~~GENERAL LIMITATION ON~~General Limitation on ~~USE BY GOVERNMENTAL AGENCIES- Section~~se by Governmental Agencies.-Section 3121(c) of title 18, United States Code, is amended—

(1) by inserting "or trap and trace device" after ~~"pen~~``pen register~~"~~";

(2) by inserting ~~"~~``, routing, addressing,~~"~~" after ~~"dialing"~~``dialing"; ~~and~~ and

(3) by striking ~~"call~~``call processing~~"~~" and inserting ~~"the~~``the processing and transmitting of wire and electronic communications~~"~~".

(b) ~~ISSUANCE OF ORDERS-~~ Issuance of Orders.-

(1) ~~IN GENERAL- Subsection~~n general.-Subsection (a) of section 3123 of title 18, United States Code, is amended to read as follows:

"(a) ~~IN GENERAL.-~~n General.-

(1) Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order.

" ``(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

(2) CONTENTS OF ORDER- Subsection Contents of order.-Subsection (b)(1) of section 3123 of title 18, United States Code, is amended–

(A) in subparagraph (A)--

(i) by inserting "or ``or other facility"" after "telephone ``telephone line""; and

and

(ii) by inserting before the semicolon at the end "or ``or applied""; and

and

(B) by striking subparagraph (C) and inserting the following new subparagraph (C):

"(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and".

(3) NON-DISCLOSURE REQUIREMENTS- Subsection Non-disclosure requirements.-

Subsection (d)(2) of section 3123 of title 18, United States Code, is amended–

(A) by inserting "or ``or other facility"" after "the ``the line""; and

and

(B) by striking "``, or who has been ordered by the court"" and inserting "or ``or applied, or who is obligated by the order"".

(c) DEFINITIONS–

Definitions.-

(1) ~~COURT OF COMPETENT JURISDICTION.- Paragraph~~Court of competent jurisdiction.-Paragraph (2) of section 3127 of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following new subparagraph (A):

"(A) any district court of the United States (including a magistrate judge of such a court) or any United States Court of Appeals having jurisdiction over the offense being investigated; or~~"~~".

(2) P~~EN REGISTER.- Paragraph~~en register.-Paragraph (3) of section 3127 of title 18, United States Code, is amended–

-

(A) by striking ~~"electronic~~``electronic or other impulses~~"~~" and all that follows through ~~"is~~``is attached~~"~~" and inserting ~~"dialing~~``dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is ~~transmitted"; and~~
transmitted, provided however, that such information shall not include the contents of any communication"; and

(B) by inserting ~~"or~~``or process~~"~~" after ~~"device"~~``device" each place it appears.

(3) ~~TRAP AND TRACE DEVICE.- Paragraph~~Trap and trace device.-Paragraph (4) of section 3127 of title 18, United States Code, is amended–

-

(A) by inserting ~~"or~~``or process~~"~~" after ~~"a~~``a device~~"~~"; and

(B) by striking ~~"of~~``of an instrument~~"~~" and all that follows through the end and inserting ~~"or~~``or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication~~;"~~.
provided however, that such information shall not include the contents of any communication;".

(4) Paragraph (1) of section 3127 of title 18, United States Code, is amended by striking "and" before "electronic communications service" and inserting ", and 'contents'" after "electronic communications service."

SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.

Title 18, United States Code, is amended–

(1) in section 2510 –

(A) in subsection (1), by striking all the words after "commerce"; and

(B) in subsection (14), by inserting "wire or" after "transmission of"; and

(2) in section 2703(a) and (b)--

(A) by replacing "Contents of electronic" with "Contents of wire or electronic" every place it occurs;

(B) by replacing "contents of an electronic" with "contents of a wire or electronic" every place it occurs; and

(C) by replacing "any electronic" with "any wire or electronic" every place it occurs~~; and~~

~~(D) by replacing "communication," with "communication (including any electronic storage of such wire communication),".~~

.

SEC. 103. AUTHORIZED DISCLOSURE.

~~Section 2510~~Section 2510(7) of ~~title 18~~title 18, United States Code, is amended by adding ", and (for purposes only of ~~section 2517) any officer or employee of the executive branch of the federal government~~"section 2517), any federal law-enforcement, intelligence, national security, national defense, protective, or immigration personnel, and the President and Vice President of the United States" after "such ~~offenses".~~offenses."

SEC. 104. SAVINGS PROVISION.

Section 2511(2)(f) of title 18, United States Code, is amended–

(1) by replacing "or chapter 121" with ", chapter 121, or chapter 206"; and

(2) by replacing "wire and oral" with "wire, oral, and electronic".

~~SEC. 105. USE OF WIRETAP INFORMATION FROM FOREIGN GOVERNMENTS.~~

~~Chapter 119 of title 18, United States Code, is amended–~~

~~(1) by adding a new section 2514, as follows:~~

~~"2514. Use of extraterritorial interceptions by foreign governments.~~

~~"(1) Information lawfully received under United States law from the interception of wire, oral or electronic communications outside the United States by a foreign government or a person acting at the direction thereof–~~

~~"(a) without the knowing participation of any officer or employee of the United States or person acting at the direction thereof; or~~

~~"(b) with such participation, but under circumstances in which such interception was lawful under the laws of the nation in which occurred,~~

~~shall be admissible, and the United States may disclose the information (or derivative information therefrom) in any proceeding held under the authority of the United States or any state or political subdivision thereof.~~

~~"(2) Information described in subsection (1) the government alleges could affect the national security shall have no less protection than that afforded by law to confidential informants."~~

~~"(3) Nothing in this section shall be construed to impair or otherwise affect the authority of the Director of Central Intelligence under the National Security Act of 1947 to protect intelligence sources and methods from unauthorized disclosure."~~

~~(2) in the chapter analysis, by inserting before the item relating to section 2515 the following: "2514. Use of extraterritorial interceptions by foreign governments.".~~

~~SEC.~~ 106. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.

~~Chapter~~ Chapter 119 of title 18, United States Code, is amended–

(1) in section 2510–

(A) in subsection~~-~~ (17), by striking ~~"and"~~``and" at the end;

(B) in subsection~~-~~ (18), by replacing the period with a semi-colon; and

(C) by adding after subsection~~-~~ (18), two new subsections as follows:

"(19) ~~'protected`~~protected computer~~'~~" has the meaning set forth in section 1030; and

"(20) ~~'computer`~~computer trespasser~~'~~" means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer.~~"; and~~

~~-~~ A person shall not be considered a computer trespasser if the person is known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer."; and

(2) in section 2511(2), by adding after paragraph~~-~~ (h) ~~a~~the following new paragraph ~~as follows:~~

~~:~~

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if—

~~-~~

"(~~A~~i) the owner or operator of the protected computer authorizes the interception of the computer trespasser~~'~~s communications on the protected computer;

"(~~B~~ii) the person acting under color of law is lawfully engaged in an investigation;

"(~~C~~iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser~~'~~s communications will be relevant to the investigation; and

"(~~D~~iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser.~~"~~".

SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.

Section 2703(c)(1)(C) of title 18, United States Code, is amended--

(1) by replacing "name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service" with the following:

"(i) name;

"(ii) address;

"(iii) local and long distance telephone connection records, or records of session times and durations;

"(iv) length of service (including start date) and types of service utilized;

"(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(vi) means and source of payment (including any credit card or bank account number)"; and

(2) by striking "and the types of services the subscriber or customer utilized," after "of a subscriber to or customer of such service,".

SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.

Chapter 121 of title 18, United States Code, is amended–

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" every place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711--

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by replacing the period with "; and"; and

(C) by adding the following new paragraph at the end:

"(3) the term 'court of competent jurisdiction' has the meaning assigned by section 3127, and includes any federal court within that definition, without geographic limitation.".

SEC. 109. CLARIFICATION OF SCOPE.

~~Section 2511(2)~~ Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended--

(1) in subsection (c)(2)--

(A) in subparagraph (B) by striking "or";

(B) in subparagraph (C) by striking the period at the end and inserting "; or"; and

(C) by adding the following subparagraph after subparagraph (C):

"(D) authorized under chapters 119, 121, or 206 of title 18, United States Code~~, as amended by section 106(2) of this Act, is further amended by adding at the end a new paragraph as follows:~~

~~"(j) Nothing contained in section 631 of the Act of June 19, 1934 (47 U.S.C. 551) shall be deemed to restrict voluntary or obligatory disclosures of information pursuant to the provisions of this chapter, chapter 121, or chapter 206, except that such disclosures~~. Such disclosure shall not include records revealing customer cable television viewing activity.~~"~~"; and

(2) in subsection (h) by striking "A governmental entity" and inserting "Except as provided in subsection (c)(2)(D), a governmental entity".

SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.

(a) Section 2702 of title 18, United States Code, is amended–

(1) by amending the heading to read, "Voluntary disclosure of customer communications or records";

(2) in subsection (a)(2)(B) by replacing the period with "; and";

(3) by adding after subsection (a)(2) a new paragraph as follows:

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2)) to any governmental entity.";

(4) in subsection (b) by striking "Exceptions.–A person or entity" and inserting

"Exceptions for disclosure of communications.–A provider described in subsection (a)";

(5) in subsection (b)(6)--

(A) in subparagraph (A)(ii), by striking "or";

(B) in subparagraph (B), by replacing the period with "; or"; and

(C) by inserting after subparagraph (B) a new subparagraph as follows:

"(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay."; and

(6) by adding after subsection (b) a new subsection as follows:

"(c) Exceptions for disclosure of customer records.–A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))--

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

(5) to any person other than a governmental entity.".

(b) Section 2703 of title 18, United States Code, is amended--

(1) by amending the section heading to read, "Required disclosure of customer communications or records"~~.~~;

(2) by redesignating subsection (c)(2) as (c)(3);

(3) in subsection (c)(1)--

(A) by striking "(A) Except as provided in subparagraph (B), a provider of electronic communication service may" and inserting "A governmental entity may require a provider of electronic communication service or remote computing service to";

(B) by striking "covered by subsection (a) or (b) of this section) to any person other than a governmental entity." and inserting a close parenthesis;

(C) by striking "(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity";

(D) by redesignating subparagraph (C) as subsection (c)(2);

(E) by redesignating subparagraph (B)(i) as (A), (B)(ii) as (B), (B)(iii) as (C), and (B)(iv) as (D);

(F) in subparagraph (D) (formerly (B)(iv)) by striking the final period and inserting "; or"; and

(G) by inserting after subparagraph (D) (formerly (B)(iv)) the following subparagraph:

"(~~F~~E) seeks information pursuant to paragraph (2)."~~.~~

; and

4) in subsection (c)(2), as redesignated, by striking "subparagraph (B)" and inserting "paragraph (1)".

SEC. 111. TERRORISM AS A PREDICATE ACT FOR AUTHORIZATION OF WIRETAPS.

Section 2516(1) of title 18, United States Code is amended-

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-565), the following new paragraph:

``(q) any violation of section 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); or".

SEC. 112. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO COMPUTER FRAUD AND ABUSE.

Section 2516(1)(c) of title 18, United States Code, is amended by striking ``and section 1341 (relating to mail fraud)," and inserting ``section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse),".

Subtitle B--Foreign Intelligence Surveillance and Other Information

SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE.

[(a) The Foreign Intelligence Surveillance Act of 1978 is amended by adding "or an agent of a foreign power, as defined in section 101(b)(1)(A),"–

(1) in section 105(e)(1) (50 U.S.C. 1805(e)(1)), after "or (3),"; and

(2) in section 304(d)(1) (50 U.S.C. 1824(d)(1)), after "101(a),".

(b) Section 304(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(1)) is amended by replacing "forty-five" with "ninety."]

[Language to be revised pending Leahy proposal]

SEC. 152. MULTI-POINT AUTHORITY.

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting ", or, in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons," after "specified person".

SEC. 153. FOREIGN INTELLIGENCE INFORMATION.

(a) The Foreign Intelligence Surveillance Act of 1978 is amended by replacing "that the" with "that ~~a"--~~a significant"--

(1) in section 104(a)(7)(B) (50 U.S.C. 1804(a)(7)(B)); and

(2) in section 303(a)(7)(B) (50 U.S.C. 1823(a)(7)(B)).

(b) Section 1806 of title 50, United States Code, is amended to add the following subsection:

"(k)(i) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against–

(1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(2) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

"(ii) Coordination authorized under paragraph (i) of this subsection shall not preclude the certification required by section 1804(a)(7)(B) or the entry of an order under section 1805.".

(c) Section 1825 of title 50, United States Code is amended to add the following subsection:

"(k)(ii) Federal officers who conduct physical searches to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against–

"(1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(2) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

"(3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

"(ii) Coordination authorized under paragraph (i) of this subsection shall not preclude the certification required by section 1823(a)(7) or the entry of an order under Section 1824."

(d) Title of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) Is amended by adding at the end the following new section:

"Construction with interception authority under Chapter 119 of title 18, United States Code.

"Sec. 112. Nothing in this title shall be construed to alter, affect, or prohibit the authority to intercept communications under chapter 119 of title 18, United States Code, with respect to any wire, oral or electronic communication that is subject to electronic surveillance under provisions of this title."

SEC. ~~154~~ 154. FOREIGN INTELLIGENCE INFORMATION SHARING.

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence information obtained as part of a criminal investigation (including, without limitation, information subject to ~~Rule 6~~Rule 6(e) of the Federal Rules of Criminal Procedure and information obtained pursuant to ~~chapter 119~~chapter 119 of ~~title 18~~title 18, United States Code) to be provided to any federal ~~law enforcement~~law enforcement, intelligence, ~~protective, or national defense personnel, to any federal personnel responsible for administering the immigration laws~~national security, national defense, protective or immigration personnel, and to the President and Vice President of the United States~~, or to any officer named in section 19 of title 3 of the United States Code~~.

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SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHORITY.

~~Section~~ (a) Section 402~~(c)~~ of the Foreign Intelligence Surveillance Act of 1978 (~~50 U~~50 U.S.C. ~~1842(c)~~ 1842) is ~~amended~~ amended –

(1) ~~at the end of paragraph (1), by adding "and";~~

~~(2) in paragraph (2)--~~

~~(A) by inserting "from~~in subsection (a)(1), by striking "for any investigation to gather foreign intelligence information or information concerning international terrorism" and inserting "for any investigation to protect against international terrorism or clandestine intelligence

activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States."

(2) by amending subsection (c)(2) to read as follows:

"(2) a certification by the applicant that the information likely to be obtained from the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace ~~device" after "obtained"; and~~

~~(B) by replacing all the matter after "General" with a period; and~~

~~(3)~~ device is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States.;

(3) by striking ~~paragraph (3).~~
paragraph (c)(3); and

(4) by amending subsection (d)(2)(A) to read as follows:

"(A) shall specify—

"(i) the identity, if known, of the person who is the subject of the investigation;

"(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

"(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order."

(b) Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a), by striking "foreign intelligence information or information concerning international terrorism" and inserting "information concerning international terrorism or clandestine intelligence activities, provided that such information of a United States person is not being gathered solely upon the basis of activities protected by the First Amendment of the Constitution of the United States";

(2) in subsection (b)(1), by striking "foreign intelligence information or information concerning international terrorism" and inserting "information concerning international terrorism or clandestine intelligence activities, provided that such information of a United States person is not being gathered solely upon the basis of activities protected by the First Amendment of the Constitution of the United States".

SEC. 156. BUSINESS RECORDS.

The Foreign Intelligence Surveillance Act of 1978 is amended–

(1) in section 501 (50 U.S.C. 1861), by amending the same to read as follows:

"§ 501. Administrative subpoenas.

"(a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General may approve pursuant to Executive Order 12333 (or a successor order), the Attorney General may, by administrative subpoena, require the production of any tangible things (including books, records, papers,

documents, and other items) that are relevant to the investigation.

"(b) A person who, in good faith, produces tangible things under a subpoena issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context."; and

(2) by striking section 502 (50 U.S.C. 1862).

SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.

(a) ~~Section 2709~~ Section 2709(b) of ~~title 18~~title 18, United States Code, is amended--

—

(1) in the matter preceding paragraph (1), by inserting "at Bureau headquarters or a Special Agent in Charge in a Bureau field ~~offices" before ", may" the first place it occurs;~~

~~(2) in paragraph (1)--~~

~~(A) by replacing "the Director" and all that follows through "Director)" with "he";~~

~~(B) by inserting ", or electronic communication transactional records" after "toll billing records"; and~~

~~(C) by replacing~~office designated by the Director" after "Assistant Director";

(2) in paragraph (1)—

(A) by striking "in a position not lower than Deputy Assistant Director"; and

(B) by striking "made that" and all that follows ~~through~~and inserting the ~~end with~~following: "made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation~~; and"; and~~

~~(3) in paragraph (2)--~~

~~(A) by replacing "the Director" and all that follows through "Director)" with "he"; and~~

~~(B) by replacing~~ to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States"; and

(3) in paragraph (2)—

(A) by striking "in a position not lower than Deputy Assistant Director"; and

(B) by striking "made that" and all that follows ~~through~~and inserting the ~~end with~~following: "made that the information sought is relevant to an authorized foreign counterintelligence investigation.~~".~~

~~(b) Section 1114~~ to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States"; and

(b) Section 1114(a)(5)(A) of ~~Public Law 95-630~~the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A)~~)~~ is ~~amended--~~ amended—

(1)– by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field ~~offices"~~office designated by the Director" after "designee"; and

~~(2) by striking all the matter following "purposes" up to the period; and~~

~~(c) Section 624 of Public Law 90-321~~

(2) by striking "certifies in writing" and all that follows through the end and inserting the following: "certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States."

(c) Section 624 of the Fair Credit and Reporting Act (15 U.S.C. 1681u) is ~~amended--~~ amended—

(1)– in subsection- (a)~~--~~

—

(A)– by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field ~~offices"~~office designated by the Director" after "designee" the first place that it appears; and

(B)– by ~~replacing "writing~~striking "in writing that" and all that follows through the end ~~with "writing~~and inserting the following: "in writing that such information is ~~necessary~~sought for the conduct of an authorized ~~foreign counterintelligence investigation.";~~

~~(2) in subsection (b)--~~

~~(A) by inserting "(in~~investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States."

(3) In subsection (b)—

(A) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field ~~offices)"~~office designated by the Director" after "designee" the first place that it appears; and

(B)– by ~~replacing "writing~~striking "in writing that" and all that follows through the end ~~with "writing~~and inserting the following: "in writing that such information is ~~necessary~~sought for the conduct of an authorized ~~foreign counterintelligence investigation."; and~~

~~(3) in subsection (c)--~~

~~(A) by inserting "(in~~investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States."

(4) in subsection (c)—

(A) by inserting "in a position not lower than~~t~~ Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field ~~offices)"~~office designated by the Director" after ~~"designee"~~"designee of the Director"; and

(B)– by ~~replacing "camera~~striking "in camera that" and all that follows through "States." ~~with "camera~~and inserting the following: "in camera that the consumer report is ~~necessary~~sought for the conduct of an authorized ~~foreign counterintelligence investigation.".~~

investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment of the Constitution of the United States.".

SEC. 158. DISCLOSURE OF EDUCATIONAL RECORDS.

(a) Section 408 of the National Education Statistics Act of 1994 (20 U.S.C. 9007) is amended by adding after subsection (b) a new subsection as follows:

"(c) ~~Without regard to~~Notwithstanding subsections (a) and (b), the Attorney General or the Secretary of Education ~~(~~or ~~any~~a designated Federal officer or employee~~ designated by either of them)~~, in a position not lower than an Assistant Attorney General or Assistant Secretary, may, upon determining that ~~so doing can reasonably be expected to assist in investigating or preventing a Federal terrorism offense as defined in section 25 of title 18~~there are specific and articulable facts giving reason to believe that the information sought is relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B), United States Code, or domestic terrorism or international terrorism as defined in section 2331 of that title–

"(1) collect, through legal process or as otherwise authorized by law, reports, records, and information (including individually-identifiable information), in the Center's possession; and

(2) for official purposes, retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such reports, records, or information as otherwise authorized by law, consistent with such guidelines as the Attorney General, after consultation with the Secretary of Education, may issue to protect confidentiality.

~~No person furnishing reports, records, or information pursuant to this subsection shall be liable to any other person for furnishing such information.".~~

(b) Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), is amended by adding after subsection (i) a new subsection as follows:

"(j) ~~Without regard to~~Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General ~~(~~or the Secretary of Education or ~~any~~a designated Federal officer or employee~~ designated by him) may, upon determining that so doing can reasonably be expected to assist in investigating or preventing a Federal terrorism offense as defined in section 25~~, in a position not lower than an Assistant Attorney General or Assistant Secretary may, after certifying to the educational agency or institution that there are specific and articulable facts giving reason to believe that the information sought is relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, or domestic terrorism or international terrorism as defined in section 2331 of that title–

"(1) collect education records and other information in the possession of an educational agency or institution; and

(2) for official purposes, retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records or other information as otherwise authorized by law, consistent with such guidelines as the Attorney General, after consultation with the Secretary of Education, may issue to protect confidentiality.

~~No person furnishing records or information pursuant to this subsection shall be liable to any other person for furnishing such information.".~~

SEC. 159. PRESIDENTIAL AUTHORITY.

Section 203 of Public Law 95-223 (50 U.S.C. 1702) is amended–

(1) at the end of subparagraph (a)(1)(A), by replacing "; and" with a comma and adding thereafter the following (flush to that subparagraph):

"by any person, or with respect to any property, subject to the jurisdiction of the United States;"

(2) in subparagraph (a)(1)(B)--

(A) by striking "by any person, or with respect to any property, subject to the jurisdiction of the United States.";

(B) by replacing "interest;" with "interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and"; and

(C) by inserting ", block during the pendency of an investigation" after "investigate";

(3) at the end of paragraph (a)(1), by adding a new subparagraph as follows:

"(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes."; and

(4) by adding at the end a new subsection (c) as follows:

"(c) Classified information.--In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera."

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SEC. 160. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators.

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators

employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

SEC. 161. JUDGES.

Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended by striking "seven district court judges" and inserting "eleven district court judges," and by adding "at least three of whom shall reside within 20 miles of the District of Columbia" immediately after "seven of the United States judicial circuits".

TITLE II–IMMIGRATION

SEC. 201. DEFINITIONS RELATING TO TERRORISM.

The Immigration and Nationality Act of 1952 is amended–

(a) in Section 212(a)(3) (8 U.S.C. 1182)--

--

(1) in paragraph (B) –

(A) in clause (i) –

(i) by amending paragraph (IV) to read as follows:

"(IV) is a representative (as defined in clause (iv)) of : (a) a ~~foreign~~ terrorist organization~~,~~ as designated by the Secretary under section 219 or paragraph (v)(ii), or (b) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary has determined undermines U.S. efforts to reduce or eliminate terrorist activities, or";

~~(ii) in paragraph (V) by inserting "or" after the comma following "…should~~

(ii) by amending paragraph (V) to read as follows:

"(V) is a member of a terrorist organization as designated by the Secretary under section 219 or paragraph (v)(ii) paragraph, which the alien knows or should have known is a terrorist ~~organization"~~organization, or" ; and

(iii) by adding new paragraphs (VI) and (VII) to read as follows:

"(VI) has used his or her position of prominence within any country to endorse or espouse terrorist activity, or ~~to~~ persuade others to support terrorist activity or a foreign terrorist organization, in a way that the Secretary of State has determined undermines U.S. efforts to reduce or eliminate terrorist activities; or

(VII) (a) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the

alien to be found inadmissible occurred within the last 5 years,";

(B) Exceptions for certain spouses and children. Clause (VII)(a) shall not apply to a spouse or child :

(i) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(ii) whom the consular officer or the Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section";

(B) in clause (ii)--

(i) by inserting "it had been" before "committed in the United States"; and

(ii) by replacing "or firearm" with ", firearm, or other weapon or dangerous device";

(C) by amending clause (iii) to read as follows:

"(iii) Engage in terrorist activity defined

"As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization--

"(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, an act of terrorist activity;

"(II) to prepare or plan a terrorist activity;

"(III) to gather information on potential targets for terrorist activity;

"(IIIV) to solicit funds or other things of value for terrorist activity or for any terrorist organization;

"(IVV) to solicit any individual for membership in a terrorist organization, a government that supports terrorism, or to engage in a terrorist activity; or

"(VI) otherwise to commit an act that the actor knows, or reasonably should know, affords material support (including, without limitation, a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false

documentation or identification, weapons (including, without limitation, chemical, biological, and radiological weapons), explosives, or training), to any organization that the actor knows, or reasonably should know, is a terrorist organization, or to any individual whom the actor knows, or reasonably should know, has committed or plans to commit any terrorist activity.

~~"This~~ "Provided, however, that this clause shall not ~~be construed~~apply to ~~encompass~~ any material support the alien afford~~s~~ed to an organization or individual who ~~had previously~~has committed terrorist activity if the ~~alien establishes by clear and convincing evidence that such support was afforded only after that individual had permanently and publicly renounced and rejected the use of, and had ceased to commit or support, any terrorist~~ Secretary, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary, concludes in his sole unreviewable discretion, that this clause should not apply."; and

(D) by adding a new clause after clause (iv) to read as follows:

"(v) Terrorist organization defined

"As used in clause i(VI) and clause (iii), the term "terrorist organization" includes but is not limited to an organization—

(i) designated under Section 219; or

(ii) otherwise designated by the Secretary of State, in consultation with or upon the request of the Attorney General, as a terrorist organization for purposes of this section.

Any such designation shall be controlling in all administrative and judicial proceedings, including actions under 28 U.S.C. 2241, and shall be conclusive evidence that the organization is a terrorist organization. With respect to an alien who was present in the United States at the time the act was committed, such designation shall also be conclusive evidence that the alien should have known that the organization was a terrorist organization unless the alien demonstrates that he acted prior to the designation and that he should not have known that it was a terrorist organization. With respect to other aliens, such designation shall be conclusive evidence that the alien should have known that the organization was a terrorist organization unless the alien demonstrates that he acted prior to the

enactment of this clause and that he should not have known that he was supporting terrorist activity. In determining whether an organization is a terrorist organization in cases where no designation has been made, it shall not be considered that the organization also engages in nonterrorist activity."; and

(2) by adding a new subparagraph (F) as follows:

~~"Any~~

"(F) Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.";

(b) in Section 219(a) (8 U.S.C. 1189(a))--

(A) in ~~subparagraph~~ paragraph (1)(B), by inserting "or terrorism (as defined in section 140(d)(2) of the State Department Authorization Act, Public Law 100-204 (22 U.S.C. 2656f(d)(2)) or retains the capability and intent to engage in ~~terrorist~~terrorist activity or terrorism)" after "212(a)(3)(B))";

(B) in ~~subparagraph~~ paragraph (1)(C), by inserting "or terrorism" after "terrorist activity";

(C) by amending ~~subparagraph~~ paragraph (2)(A) to read as follows:

"(A) NOTICE.—

"(i) Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

"(ii) The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).";

(D) in ~~clause~~ paragraph (2)(B)(i), by replacing "subparagraph (A)" with "subparagraph (A)(ii)";

(E) in ~~subparagraph~~ paragraph (2)(C), by replacing "paragraph (2)" with "paragraph (2)(A)(i)";

(F) in ~~subparagraph~~ paragraph (3)(B), by replacing "subsection (c)" with "subsection (b)";

(G) in ~~subparagraph~~ paragraph (4)(B), by inserting after the first sentence the following:

"The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in

paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.";

(H) in ~~subparagraph~~ paragraph (6)(A),

(i) by inserting "or a redesignation made under paragraph (4)(B)" after "paragraph (1)";

(ii) in clause (i), by

(I) inserting "or redesignation" after "designation" the first time it appears; and

(II) striking "of the designation"; and

(iii) in clause (ii), by striking "of the designation";

(I) in ~~subparagraph~~ paragraph (6)(B), by

(i) replacing "through (4)" with "and (3)"; and

(ii) inserting the following new sentence at the end: "Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.";

(J) in paragraph (7), by inserting ", or the revocation of a redesignation under paragraph (6)," after "paragraph (5) or (6)"; and

(K) in paragraph (8), by

(i) replacing "paragraph (1)(B)" with "paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)";

(ii) inserting "or an alien in a removal proceeding" after "criminal action"; and

(iii) inserting "or redesignation" before "as a defense".

~~**SEC. 202. MANDATORY DETENTION OF SUSPECTED TERRORISTS.**~~

~~Section 236 of the Immigration and Nationality Act is amended~~

~~(1) by redesignating subsection (e) as (f) and by inserting before the same the following new subsection:~~

~~"(e) Detention of Terrorist Aliens.--~~

~~"(1) Custody.--The Attorney General shall take into custody any alien who is certified under paragraph (3).~~

~~"(2) Release.--The Attorney General shall maintain custody of any such alien until such alien is removed from the United States. Such custody shall be maintained irrespective of any relief from removal the alien may be eligible for or granted until the Attorney General deems such alien is no longer an alien who may be certified pursuant to paragraph (3).~~

~~"(3) Certification.--The Attorney General may certify an alien to be an alien he has reason to believe may commit, further, or facilitate acts described in section 237(a)(4)(A)(i), (A)(iii), or (B), or engage in any other activity that endangers the national security of the United States.".~~

~~**SEC. 203. HABEAS CORPUS AND JUDICIAL REVIEW**~~.

~~Section 236 of the Immigration and Nationality Act is amended by adding the following new subsection (g):~~

~~"(g) Habeas corpus. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, judicial review of any issue arising out of the detention of any alien under section 236(e) of this Act may be had only by petition for~~

~~writ of habeas corpus in the United States District Court for the District of Columbia, without regard to where the alien is detained.".~~

SEC. 204. APPLICABILITY.

Notwithstanding any other provision of law, the amendments made by this title shall apply to all aliens, regardless of whether any such aliens entered the United States before or after the date of the enactment of this Act, or whether any relevant activity by any such aliens occurred before or after such date, and shall apply to all past, pending, or future deportation, exclusion, removal, or other immigration proceedings.

SEC. 205. MULTILATERAL CO-OPERATION AGAINST TERRORISTS.

Section 222(f) of the Immigration and Nationality Act of 1952 is amended–

(A) by inserting ": (1)" after "except that"; and

(B) by inserting the following before the period at the end:

"and (2) the Secretary of State in his discretion and on the basis of reciprocity may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database:

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating or punishing, acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as he shall establish in an agreement with another government in which that government agrees to use such information and records for the purposes described in paragraph (A) or to deny visas to persons who would be inadmissible to the United States.".

SEC. 206. INTER-AGENCY DATA SHARING.

(a) Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended–

(1) in the caption by adding "and Data Exchange" after "~~**Officers**~~"Officers";

(2) by designating all of section 105 as subsection (a);

(3) in subsection (a) as so designated, by inserting the words "and border" after the word "internal" in the second place that it appears; and

(4) by adding new subsections (b), (c) and (d) as follows:

"(b) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service with access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency to be provided access for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge. The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon. Upon receipt of such updated extracts, the reviewing agency shall make corresponding updates to its database and destroy previously provided extracts. Such access to any extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of

Investigation.

"(c) The provision of the extracts mentioned in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) For purposes of administering this Section, the Department of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order-

"(1) to limit the redissemination of such information;

"(2) to ensure that such information is used solely to determine whether to issue a visa to an individual;

"(3) to ensure the security, confidentiality and destruction of such information; and

"(4) to protect any privacy rights of individuals who are subjects of such information.".

(b) Nothing in this section shall be construed to limit such authority as the Attorney General or the Director of the Federal Bureau of Investigation may have pursuant to other law (and procedures thereunder) to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States for the purpose of such enforcement or administration, upon terms that are consistent with such other law.

Title III--CRIMINAL JUSTICE

Subtitle A–Substantive Criminal Law

SEC. 301. NO STATUTE OF LIMITATION FOR PROSECUTING TERRORISM OFFENSES.

(a) ~~IN GENERAL~~In general.– Section 3286 of title 18, United States Code, is amended to read as follows:

"§ 3286. Terrorism offenses

~~"~~**~~Notwithstanding~~**"(a) Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any non-capital offense involving a violation of section 351(e), 1361, or 1751(e) of this title, or of any provision listed in section 2332b(g)(5)(B) of this title other than a provision listed in section 3295, unless the indictment is found or the information is instituted within 8 years after the offense was committed.

(b) Notwithstanding any other ~~provision of~~ law, an indictment may be found or an information instituted ~~for any Federal terrorism offense~~ at any time without limitation.~~".~~

~~(b) CONFORMING AMENDMENT. The analysis for chapter 213 of title 18, United States Code, is amended by amending the item relating to section 3286 to read as follows: "3286. Terrorism offenses.".~~

~~(c) APPLICATION~~ for any offense listed in section 2332(b)(G)(5)(B) of this title, the commission of which resulted in, or created a forseeable risk of, death or serious bodily injury to another person.".

(b) Application.--The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.

(a) Arson.– Section ~~355~~981 of title 18, United States Code, is amended in the last

paragraph by striking "not more than 20 years" and inserting "for any term of years or for life".

(b) Destruction of energy facility –Section 1366 of title 18, United States Code, is amended–

(1) in subsection (a), by striking "ten" and inserting "twenty"; and

(2) by adding ~~after subsection (d) the following new subsection:~~

~~"(e) Authorized terms of imprisonment for terrorism crimes. A person convicted of any Federal terrorism offense may be sentenced~~at the end the following:

"(d) Whoever commits a violation of subsection (a) or (b) that results in the death of any person shall be subject to imprisonment for any term of years or for life.".

(c) Destruction of national defense materials.– Section 2155(a) of title 18, ~~notwithstanding any maximum term of imprisonment specified in the law describing the offense. The authorization of imprisonment under this subsection is supplementary to, and does not limit, the availability of any other penalty authorized by the law describing the offense, including the death penalty, and does not limit the applicability of any mandatory minimum term of imprisonment, including any mandatory life term, provided by the law describing the offense.".~~ United States Code, is amended–

(1) by striking "ten" and inserting "twenty"; and

(2) by striking the period after "or both" and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(d) Sabotage of nuclear facilities or fuel.– Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended–

(1) by striking "ten" each place it occurs and inserting "twenty"; and

(2) in subsection (a), by striking the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life."; and

(3) in subsection (b), by striking the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(e) Special aircraft jurisdiction of the United States.– Section 46505(c) of title 18, United States Code, is amended --

(1) by striking "15" and inserting "20"; and

(2) by deleting the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(f) Damaging or destroying an interstate gas or hazardous liquid pipeline facility.– Section 60123(b) of title 18, United States Code, is amended–

(1) by striking "15" and inserting "20"; and

(2) by striking the period at the end and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(g) Provision of material support to terrorists.– Section 2339A(a) of title 18, United States Code, is amended–

(1) by striking "10" and inserting "20"; and

(2) by striking the period after "or both" and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(h) Provision of material support to designated foreign terrorist organizations.– Section 2339B(a) of title 18, United States Code, is amended–

(1) by striking "10" and inserting "20"; and

(2) by striking the period after "or both" and inserting ", and, if the death of any person results, shall be imprisoned for any term of years or for life.".

SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.

- ~~Chapter 113B~~ (a) Arson.-- Section 81 of title 18, United States Code, is amended–

~~(1) by inserting after section 2332b the following:~~

~~"§ 2332c. Attempts and conspiracies~~

~~"Any person who~~

(1) by striking ", or attempts to set fire to or burn"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be imprisoned".

(b) Killings in Federal facilities.--

(1) Section 930(c) of title 18, United States Code, is amended–

(A) by striking "or attempts to kill";

(B) by inserting "or attempts or conspires to do such an act," before "shall be punished"; and

(C) by striking "and 1113" and inserting "1113, and 1117".

(2) Section 1117 of title 18, United States Code, is amended by inserting "930(c)," after "section".

(c) Government property or contracts.–Section 1361 of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(d) Communications lines, stations, or systems.–Section 1362 of title 18, United States Code, is amended–

(1) by striking "or attempts willfully or maliciously to injure or destroy"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be fined".

(e) Buildings or property within special maritime and territorial jurisdiction.–Section 1363 of title 18, United States Code, is amended–

(1) by striking "or attempts to destroy or injure"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be fined".

(f) Wrecking trains.--Section 1992 of title 18, United States Code, is amended by adding at the end the following:

"(c) A person who conspires to commit any ~~Federal terrorism~~ offense defined in this section shall be subject to the same penalties (other than the penalty of death) as ~~those~~the penalties prescribed for the offense, the commission of which was the object of the ~~attempt or conspiracy."; and~~

~~(2) in the analysis for the chapter, by inserting after the item relating to section 2332b the following:~~

~~"2332c. Attempts and conspiracies.".~~

conspiracy.".

(g) Fortifications, harbor defenses, or defensive sea areas.–Section 2152 of title 18, United States Code, is amended-

(1) by inserting "(a) "before "Whoever" the first time it appears; and

(2) by adding at the end the following:

"(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.".

(h) Torture.--Section 2340A of title 18, United States Codes, is amended by adding at the end the following:

"(c) Conspiracy.–A person who conspires to commit an offense under this section

shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.".

(i) Sabotage of nuclear facilities or fuel.–Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended–

(1) in subsection (a)--

(A) by striking ", or who intentionally and willfully attempts to destroy or cause physical damage to";

(B) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(C) by inserting "or attempts or conspires to do such an act," before "shall be fined"; and

(2) in subsection (b)--

(A) by striking "or attempts to cause"; and

(B) by inserting"or attempts or conspires to do such an act," before"shall be fined"; and

(j) Interference with flight crew members and attendants.–Section 46504 of title 49, United States Code, is amended by inserting "or attempts or conspires to do such an act," before "shall be fined".

(k) Special aircraft jurisdiction of the United States.–Section 46505 of title 49, United States Code, is amended by adding at the end the following:

"(c) Conspiracy.–If two or more persons conspire to violate subsection (b) of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in that subsection.".

(l) Damaging or destroying an interstate gas or hazardous liquid pipeline facility.–Section 60123 of title 49, United States Code, is amended-

(1) by striking ", or attempting to damage or destroy,"; and

(2) by inserting ", or attempting or conspiring to damage or destroy.".

(m) Provision of material support to terrorists.– Section 2339A(a) of title 18, United States Code, is amended–

(1) by inserting "or attempts or conspires to do such an act" after "any such violation".

SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended–

(1) by striking "or (F)" and inserting "(F)"; and

(2) by replacing "financial gain;" with "financial gain, or (G) any act that is indictable as ~~a Federal terrorism~~an offense listed in section 2332b(G)(5)(B) of title 18, United States Code;"~~.~~

SEC. 305. BIOLOGICAL WEAPONS.

(a) Chapter 10 of title 18, United States Code is amended–

(1) in section 175–

(A) in subsection (b)–

(i) by striking, "section, the"and inserting "section – (1) the";

(ii) by striking "does not include" and inserting "includes";

(iii) by inserting "other than" after "system for"; and

(iv) by striking "purposes." and inserting the following: "purposes, and (2) the terms 'biological agent' and 'toxin' do not encompass any biological agent or toxin that is in its

naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.";

(B) by redesignating subsection (b) as (c); and

(C) after subsection (a), by adding a new subsection as follows:

"(b) Additional offense.–Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. Knowledge of whether the type or quantity of any biological agent, toxin, or delivery system is reasonably justified by a peaceful purpose is not an element of the offense.";

(2) after section 175a, by adding a new section as follows:

"**§ 175b. Possession by restricted persons**

"(a) No restricted person described in ~~section 922~~subsection (~~g~~b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a 'select agent' in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of such title; except that the term "select agent" does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source. ~~The prohibition of this section shall also apply to~~

"(b) the term 'restricted person' means an individual who–

"(1) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

"(3) is a fugitive from justice;

"(4) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(5) is an alien illegally or unlawfully in the United States;

"(6) has been adjudicated as a mental defective or has been committed to any mental institution;

"(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination ~~(~~that remains in effect~~)~~ that such country has repeatedly provided support for acts of international terrorism.———

~~"(b~~

(c) As used in this section,

(1) the term 'alien' has the same meaning as in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(2) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

"(d) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947."; and

(3) in the chapter analysis, by inserting after the item relating to section 175a the following:

"175b. Possession by restricted persons.".

(b) The Anti-Terrorism and Effective Death Penalty Act of 1996 is amended by adding a new subsection after subsection 511 (42 U.S.C. 262 note) as follows:

"§ 511A. Regulation of biological agents posing national-security threat

"(a) IN GENERAL.--

"(1) LIST OF AGENTS POSING SECURITY THREAT.--The Secretary shall, through regulations promulgated under subsection (d), establish and maintain a list of those biological agents listed pursuant to section 511(d)(1) that he determines to be a national-security threat.

"(2.) CRITERIA.--In determining whether to include an agent on the list under paragraph (1), the Secretary shall–

"(A) consider the criteria specified in section 511(d)(1)(B)(i), and any other criteria that he determines to be appropriate; and

"(B) consult with scientific, intelligence, and military experts representing appropriate professional groups.

"(b) REGULATION OF BIOLOGICAL AGENTS POSING SECURITY THREAT.--The Secretary shall, through regulations promulgated under subsection (d), provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of agents listed under subsection (a)(1) designed to protect public safety and national security, including safeguards to prevent access to such agents for use in domestic terrorism or international terrorism or for any other criminal purpose.

"(c) CIVIL MONEY PENALTIES.--A violation of a requirement imposed by regulation promulgated under this section shall be subject to a civil money penalty of up to $250,000.

"(d) REGULATIONS.--The Secretary shall promulgate regulations to carry out this section. The initial regulations implementing this section shall be issued as interim final regulations.

SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT ADVICE OR ASSISTANCE.

Section 2339A of title 18, United States Code, is amended–

(1) in subsection (a)--

(A) by striking "a violaton" and all that follows through "49" and inserting "any Federal terrorism offense"; and

(B) by replacing "violation," with "offense,"; and

(2) in subsection (b), by inserting ~~"expert"~~"advice or assistance, including expert advice or assistance," after "training,".

SEC. 307. PROHIBITION AGAINST HARBORING TERRORISTS.

~~Section 792~~(a) Chapter 113B of title 18, United States Code, is ~~amended~~

~~(1) by inserting "or a Federal terrorism offense," before "shall be fined"; and~~

~~(2) by inserting at the end: "There is extraterritorial Federal jurisdiction over any violation (including, without limitation, conspiracy or attempt) of this section. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense~~

~~was~~amended by adding after section 2338 the following new section:

"Sec. 2339. Harboring or concealing terrorists.

"Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or ~~in any other Federal judicial district as provided by law.".~~is about to commit, an offense under section 32 (relating to destruction of aircraft or aircraft facilities), 175 (relating to biological weapons), 229 (relating to chemical weapons), 831 (relating to nuclear materials), 844(f)(2), (3) (relating to arson and bombing of government property risking or causing injury or death), 2280 (relating to violence against maritime navigation), 1366(a) (relating to destruction of energy facilities), 2332a (relating to weapons of mass destruction), or 2332b (relating to acts of terrorism transcending national boundaries) of this title, section 236(a) (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)), or section 46502 (relating to aircraft piracy) of title 49, shall be fined under this title or imprisoned not more than ten years, or both."

(b) The chapter analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item for section 2338 the following:

"Sec. 2339. Harboring or concealing terrorists."

SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(j) Supervised release terms for terrorism offenses. – Notwithstanding subsection (b), the authorized terms of supervised release for any ~~Federal terrorism offense~~offense listed in section 2332b(g)(5)(B) of this title, the commission of which resulted in, or created a forseeable risk of, death or serious bodily injury to another person, are any term of years or life.".

SEC. 309. DEFINITIONS.

(a) ~~Chapter 1~~Section 2332b(g)(5)(B) of title 18, United States Code, is ~~amended~~

~~(1) by adding after section 24 a new section as follows:~~

~~"§ 25. Federal terrorism offense defined~~

~~"As used in this title, the term 'Federal terrorism offense' means~~amended to read as follows:

"(B) is a violation of~~, or an attempt or conspiracy to violate~~

"(~~a~~i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)-(d) (relating to congressional, cabinet, and Supreme Court assassination~~, kidnapping, and assault~~ and kidnaping), ~~792~~2339 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(ef)(2)-(3) (relating to ~~certain bombings), 844(f) or~~ arson and bombing of government property risking or causing injury or death) or 844(i) (relating to arson and bombing of ~~certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), (a)(4), (a)(5)(A), or (a)(7) (relating to protection of computers),~~property used in interstate commerce), 930(c) (killing or attempted killing during attack on federal facility with dangerous weapon), 956(a)(1) (conspiracy to muder, kidnap, maim in special maritime and territorial jurisdiction of the United States), 1030(a)(1), (a)(5)(A) involving damage as defined by 1030(e)(8)(B)-(D), 1114 (relating to ~~protection~~killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking)~~, 1361 (relating to injury of Government property or contracts),~~ 1362 (relating to destruction of communication lines, stations, or

systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a)-(d) (relating to Presidential and Presidential staff assassination, ~~kidnapping, and assault~~ and kidnaping), 1992~~, 2152~~ (relating to ~~injury of fortifications, harbor defenses, or defensive sea areas~~wrecking trains), 2155 (relating to destruction of national defense materials, premises, or utilities), ~~2156 (relating to production of defective national defense materials, premises, or utilities)~~, 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332c, 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

~~"~~"(~~b~~ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

~~"(c) section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421); or~~

~~"(d) section~~

"(iii) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to ~~interference with~~assault on a flight crew with a dangerous weapon), section 46505 ~~(relating to carrying a weapon or explosive~~(b)(3), (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 (~~relating to application of certain criminal laws to acts on aircraft~~)if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) ~~of title 49."; and~~

~~(2) in the chapter analysis, by inserting after the item relating to section 24 the following: "25. Federal terrorism offense defined.".~~

~~(b) Section 2332b(g)(5)(B) of title 18, United States Code, is amended by striking "is a violation" and all that follows through "title 49" and inserting "is a Federal terrorism offense".~~

~~(c~~"; and."; and

(b) Section 2331 of title 18, United States Code, is amended –

(1) in paragraph (1)(B)--

(i) by inserting "(or to have the effect)" after "intended"; and

(ii) in clause (iii), by replacing "by assassination or kidnapping" with "(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)";

(2) in paragraph (3), by striking "and";

(3) in paragraph (4), by replacing the period with "; and"; and

(4) by inserting the following after paragraph (4):

"(5) the term 'domestic terrorism' means activities that –

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and

"(B) appear to be intended (or to have the effect) --

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)."~~.~~

; and

(C) Section 2332b(f) is amended by inserting after "for" the following "a violation of

section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1751(e), 2152, or 2156 of this title, and".

SEC. 310. REQUESTS FOR MILITARY ASSISTANCE TO ENFORCE PROHIBITION IN CERTAIN EMERGENCIES.

Section 2332e of Title 18, United States Code, is amended (a) by striking "2332c" and inserting "2332a", and (b) by striking "chemical".

SECTION 311. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST MASS TRANSPORTATION SYSTEMS.

Chapter 97 of title 18, United States Code, is amended by adding at the end therof the following new section:

"§1993. Terrorist attacks and other acts of violence against mass transportation systems

"(a) GENERAL PROHIBITIONS.–Whoever willfully--

"(1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry;

"(2) places or causes to be placed any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

"(3) sets fire to, or places any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and knowing or having reason to know such activity would likely derail, disable, or wreck a mass transportation vehicle or ferry used, operated, or employed by the mass transportation provider;

"(4) removes appurtenances from, damages, or otherwise impairs the operation of a mass transportation signal system, including a train control system, centralized dispatching system, or rail grade crossing warning signal;

"(5) interferes with, disables, or incapacitates any dispatcher, driver, captain, or person while they are employed in dispatching, operating, or maintaining a mass transportation vehicle or ferry, with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

"(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider or any other person while any of the foregoing are on the property of a mass transportation provider;

"(7) conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection; or

"(8) attempts, threatens, or conspires to do any of the aforesaid acts,

shall be fined under this title or imprisoned not more than twenty years, or both, if such act is committed, or in the case of a threat or conspiracy such act would be committed, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, that person travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act. Whoever violates this subsection under the following circumstances shall be guilty of an aggravated form of the offense: if the mass transportation vehicle or ferry was carrying a

passenger at the time of the offense or if the offense has resulted in the death of any person, then whoever committed that offense shall be fined under this title or imprisoned for a term of years or for life, or both.

(b) DEFINITIONS.-- In this section--

"(1) the term 'biological agent' has the meaning given to that term in section 178(1) of this title;

"(2) the term 'dangerous weapon' has the meaning given to that term in section 930 of this title;

"(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4) of this title;

"(4) the term 'destructive substance' has the meaning given to that term in section 31 of this title, except that–

"(A) the term 'radioactive device' does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes; and

"(B) 'destructive substance' includes any radioactive device or material that can be used to cause a harm listed in subsection (a) and that is not in use solely for medical, industrial, research, or other peaceful purposes;

"(5) the term 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, United States Code, except that the term shall include schoolbus, charter, and sightseeing transportation;

"(6) the term 'serious bodily injury' has the meaning given to that term in section 1365 of this title;

"(7) the term 'State' has the meaning given to that term in section 2266 of this title, and

"(8) the term 'toxin' has the meaning given to that term in section 178(2) of this title.".

(f) CONFORMING AMENDMENT.–The analysis of chapter 97 of title 18, United States Code, is amended by adding at the end:

"1993. Terrorist attacks and other acts of violence against mass transportation systems.".

Subtitle B–Criminal Procedure

SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district".

SEC. 352. NOTICE.

Section 3103a of title 18, United States Code, is amended by adding at the end the following: "With respect to any issuance of a warrant or court order under this section, or any other law or rule, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed pursuant to the standards, terms, and conditions set forth in section 2705, unless otherwise expressly provided by statute.".

SEC. 353. DNA IDENTIFICATION OF TERRORISTS.

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(1)) is amended–

(1) by redesignating subparagraph (G) as subparagraph (~~H~~I); and

(2) by inserting after subparagraph (F) ~~a~~ new subparagraphs as follows:

"(G) Any ~~Federal terrorism offense~~offense listed in section 2332b(g)(5)(B) of title 18, United States Code.

"(H) Any crime of violence (as defined in ~~section 25~~Section 16 of ~~title 18~~title 18, United States Code).".

SEC. 354. GRAND JURY MATTERS.

~~Rule~~ Rule 6(e)(3)(~~A~~C) of the Federal Rules of Criminal Procedure is ~~amended~~ amended –

(1)~~-~~ by striking "and" at the end of subdivision (i);

(2)~~-~~ by replacing the period at the end of subdivision (ii) with "; and"~~;~~' and

(3)~~-~~ by inserting after subdivision (ii) the following:

~~"~~"(iii) federal ~~law-enforcement~~law enforcement, intelligence, protective, national security, or ~~national-defense~~national defense personnel,~~-or~~ any federal personnel responsible for administering the immigration laws of the United States, ~~or~~and to the President an~~y officer named in section 19 of title 3~~d Vice President of the United States ~~Code~~, where the matters pertain to international terrorism or domestic terrorism (as defined in section 2331 of title 18, United States Code), or a matter of national security.~~"~~".

~~**SEC. 355. EXTRATERRITORIALITY.**~~

~~Chapter 113B of title 18, United States Code, is amended~~

~~(1) in the heading, by striking "Exclusive";~~

~~(2) by inserting "There is extraterritorial Federal jurisdiction over any Federal terrorism offense and any offense under this chapter." at the beginning; and~~

~~(3) in the chapter analysis, by striking "Exclusive" in the item relating to section 2338.~~

~~**SEC. 356.**~~

SEC. 356. JURISDICTION OVER CRIMES COMMITTED AT U.S. FACILITIES ABROAD.

Section 7 of title 18, United States Code, is amended by adding the following at the end thereof:

"(9)~~-~~ With respect to offenses committed by or against a United States national, as defined in Section 1203(c) of this title, (A) the premises of United States diplomatic, consular, military or other U.S. ~~G~~government ~~-~~missions or entities in foreign states, including the buildings, parts of buildings, and~~-~~ land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership, and (B) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, provided that nothing in this subsection shall be deemed to supercede any treaty or international agreement in force on the date of enactment of this subsection with which this subsection conflicts.

This paragraph does not apply with respect to an offense committed by a person

described in Section 3261(a) of this title. Nothing in this paragraph shall be deemed to supercede any treaty or international agreement in force with which this paragraph conflicts.

SEC. 357. PROFESSIONAL STANDARDS FOR GOVERNMENT ATTORNEYS.

(a) Professional Standards for Government Attorneys.-Section 530B of title 28, United States Code, is amended to read as follows:

``§530B. Professional Standards for Government Attorneys

``(a) Definitions.-In this section:

``(1) Government attorney.-The term `Government attorney'-

``(A) means the Attorney General; the Deputy Attorney General; the Solicitor General; the Associate Attorney General; the head of, and any attorney employed in, any division, office, board, bureau, component, or agency of the Department of Justice; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney appointed under section 515; any Special Assistant United States Attorney appointed under section 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States; any independent counsel, or employee of such counsel, appointed under chapter 40; and any outside special counsel, or employee of such counsel, as may be duly appointed by the Attorney General; and

``(B) does not include any attorney employed as an investigator or other law enforcement agent by the Department of Justice who is not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

``(2) State.-The term `State' includes a Territory and the District of Columbia.

``(b) Choice of Law.-Subject to any uniform national rule prescribed by the Supreme Court under chapter 131, the standards of professional responsibility that apply to a Government attorney with respect to the attorney's work for the Government shall be-

``(1) for conduct in connection with a proceeding in or before a court, or conduct reasonably intended to lead to a proceeding in or before a court, the standards of professional responsibility established by the rules and decisions of the court in or before which the proceeding is brought or is intended to be brought;

"(2) for conduct in connection with a grand jury proceeding, or conduct reasonably intended to lead to a grand jury proceeding, the standards of professional responsibility established by the rules and decisions of the court under whose authority the grand jury was or will be empaneled; and

``(3) for all other conduct, the standards of professional responsibility established by the rules and decisions of the Federal district court for the judicial district in which the attorney principally performs his or her official duties.

``(c) Licensure.-A Government attorney (except foreign counsel employed in special cases)-

``(1) shall be duly licensed and authorized to practice as an attorney under the laws of a State; and

``(2) shall not be required to be a member of the bar of any particular State.

``(d) Covert Activities.-Notwithstanding any provision of State law, including disciplinary rules, statutes, regulations, constitutional provisions, or case law, a Government attorney may, for the purpose of enforcing Federal law, provide legal advice, authorization,

concurrence, direction, or supervision on conducting covert activities, and participate in such activities, even though such activities may require the use of deceit or misrepresentation.

``(e) Admissibility of Evidence.-No violation of any disciplinary, ethical, or professional conduct rule shall be construed to permit the exclusion of otherwise admissible evidence in any Federal criminal proceedings.

``(f) Rulemaking Authority.-The Attorney General shall make and amend rules of the Department of Justice to ensure compliance with this section.".

(b) Technical and Conforming Amendment.-The analysis for chapter 31 of title 28, United States Code, is amended, in the item relating to section 530B, by striking ``Ethical standards for attorneys for the Government" and inserting ``Professional standards for Government attorneys".

(c) Reports.-

(1) Uniform rule.-In order to encourage the Supreme Court to prescribe, under chapter 131 of title 28, United States Code, a uniform national rule for Government attorneys with respect to communications with represented persons and parties, not later than 1 year after the date of enactment of this Act, the Judicial Conference of the United States shall submit to the Chief Justice of the United States a report, which shall include recommendations with respect to amending the Federal Rules of Practice and Procedure to provide for such a uniform national rule.

(2) Actual or potential conflicts.-Not later than 2 years after the date of enactment of this Act, the Judicial Conference of the United States shall submit to the Chairmen and Ranking Members of the Committees on the Judiciary of the House of Representatives and the Senate a report, which shall include-

(A) a review of any areas of actual or potential conflict between specific Federal duties related to the investigation and prosecution of violations of Federal law and the regulation of Government attorneys (as that term is defined in section 530B of title 28, United States Code, as amended by this Act) by existing standards of professional responsibility; and

(B) recommendations with respect to amending the Federal Rules of Practice and Procedure to provide for additional rules governing attorney conduct to address any areas of actual or potential conflict identified pursuant to the review under subparagraph (A).

(3) Report considerations.-In carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall take into consideration-

(A) the needs and circumstances of multiforum and multijurisdictional litigation;

(B) the special needs and interests of the United States in investigating and prosecuting violations of Federal criminal and civil law; and

(C) practices that are approved under Federal statutory or case law or that are otherwise consistent with traditional Federal law enforcement techniques.

SEC. 358. EXTENSION OF SECRET SERVICE JURISDICTION.

(a) Concurrent Jurisdiction Under 18 U.S.C. 1030.–Section 1030(d) of title 18, United States Code, is amended to read as follows:

"(d)(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

"(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section

11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056(a) of this title.

"(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.".

(b) Reauthorization of Jurisdiction under 18 U.S.C. 1344.–Section 3056(b)(3) of title 18, United States Code, is amended by striking "credit and debit card frauds, and false identification documents or devices" and inserting "access devices frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution".

Title IV--FINANCIAL INFRASTRUCTURE

SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

SEC. 402. MATERIAL SUPPORT FOR TERRORISM.

Section 2339A of title 18, United States Code, is amended–

(1) in subsection (a), by inserting "A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law." at the end; ~~and~~

(2) in subsection (b), by replacing "or other financial securities" with "or monetary instruments or financial securities"~~.~~; and

(3) in subsection (a), by striking ", within the United States,".

SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.

Section 981(a)(1) of title 18, United States Code, is amended after paragraph (F) by adding the following new paragraph:

"(G) All assets, foreign or domestic--

"(i) of any ~~person~~individual, entity or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

"(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.

No provision of title IX of Public Law 106-387 shall be understood to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

SEC. 405. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL-SECURITY INVESTIGATIONS.

Section 6103 of title 26, United States Code, is amended –

(1) in paragraph (i)(3), by adding a new subparagraph after subparagraph (B) as follows:

"(C) Response to Terrorist Incidents and Threats.– The Secretary may disclose returns or return information to the extent necessary to assist officers or employees of any Federal agency in the conduct of their duties on behalf of such agency and who are involved in ~~the response to or~~ the investigation of terrorist incidents, threats, or activities; the Federal agency may redisclose relevant information received pursuant to this paragraph to State or local law-enforcement officials who are part of a joint investigative team with the Federal agency.";

(2) in subsection (i), by adding a new paragraph after paragraph (6), as follows:

"(7) Information Concerning Terrorist Activities.~~ The~~ (a) The Secretary may disclose returns and return information, upon a particularized request indicating that there is a reasonable basis to believe that the return or return information is or may be relevant to terrorist activity, signed personally by (i) an Assistant Attorney General or person of higher rank in the Department of Justice, or (ii) a person who is responsible for the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations and activities and who is also an official of the Department of Treasury who is appointed by the President with the advice and consent of the Senate ~~or a member of the Senior Executive Service~~. Information disclosed under this paragraph may be disclosed only to employees of the Department of Justice and the Department of the Treasury personally and directly engaged in (and solely for their use in) the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations or activities.

(b) The Secretary may disclose returns and return information, upon a particularized request indicating that there is a reasonable basis to believe that the return or return information is or may be relevant to terrorist activity, signed personally by (i) an Assistant Attorney General or person of higher rank in the Department of Justice, or (ii) a person who is responsible for the collection or analysis of intelligence and counterintelligence information concerning terrorist organizations and activities and who is also an official of the Department of Treasury who is appointed by the President with the advice and consent of the Senate. Information disclosed under this paragraph may be disclosed only to other United States intelligence agencies when relevant to their analysis of intelligence and counterintelligence information concerning terrorist organizations and activities, and thereafter the information so disclosed may be used by such agencies only in accordance with Executive Order 12333 (or successor order).";

(3) by adding a new paragraph (a)(11) as follows:

"The term 'terrorism' means international terrorism or domestic terrorism as those terms are defined in section 2331 of Title 18, United States Code.".

~~**SECTION 406. RESTRAINT OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE.**~~

~~Section 413(e)(1) of the Controlled Substances Act (21 U.S.C. § 853(e)(1)) is amended by inserting "or (p)" after "(a)".~~

SECTION 407. TRADE SANCTIONS.

The Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of H.R. 5426, as enacted by section 1(a) of Public Law 106-387) is amended–

(1) in section 902(6)--

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) a statute, executive order, or regulation imposing such a prohibition, restriction, or condition with respect to a foreign entity designated by the United States in connection with terrorism, narcotics trafficking, or the proliferation of missiles or weapons of mass destruction.";

(2) in section 902(7)--

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) a statute, executive order, or regulation imposing such a prohibition, restriction, or condition with respect to a foreign entity designated by the United States in connection with terrorism, narcotics trafficking, or the proliferation of missiles or weapons of mass destruction.";

(3) by amending section 904(2)(C) to read as follows:

"(C) used to facilitate the design, development, or production of missiles or weapons of mass destruction.";

(4) in section 906(a)(1)--

(A) by inserting ", the Taliban or the territory of Afghanistan controlled by the Taliban," after "Cuba"; and

(B) by inserting ", or in the territory of Afghanistan controlled by the Taliban," after "within such country"; and

(5) in section 906(a)(2), by inserting ", or to any other entity in Syria or North Korea" after "Korea".

SECTION 408. EXTRATERRITORIAL JURISDICTION.

Section 1029 of Title 18, United States Code, is amended by adding at the end a new paragraph (g) as follows:

"(g) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsections (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment and forfeiture enumerated in this title if–

(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secretes, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.".

Title V--EMERGENCY AUTHORIZATIONS

SUBTITLE A - GENERAL

SEC. 501. OFFICE OF JUSTICE PROGRAMS.

(a) ~~In connection with~~ Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activities) that occurred on ~~September 11, 2001, in the United States, amounts transferred to the Crime Victims Fund from the Executive Office of the President or funds appropriated to the President~~September 11, 2001, shall not be subject to (and shall not be taken into account in carrying out) any limitation on obligations from amounts deposited to or available in the Fund, notwithstanding section 619 of the Departments

of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, and any similar limitation on Fund obligations in such Act for Fiscal Year 2002, and notwithstanding section 1402(d)(5)(A) of the Victims of Crime Act of 1984.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105-277 and section 108(a) of appendix A of Public Law 106-113 (113 Stat. 1501A-20) are amended– (1) after "that Office", each place it occurs, by inserting "(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90-351)"; and (2) by inserting "functions, including any" after "all".

~~(c) Section 1404B(b) of the Victim Compensation and Assistance Act is amended after "programs" by inserting ", to victim service organizations, to public agencies (including Federal, State, or local governments), and to non-governmental organizations that provide assistance to victims of crime,".~~

~~(d) Section 1 of H.R. 2882 of the 107th Congress as enacted is amended in section 1(a) by striking ", (d),", by inserting "(containing sufficient information to permit a proper distribution pursuant to such section 1201(a), where relevant)" before "by a", and by replacing all the matter after "certification," with "benefits under such section 1201(a) and the first year's benefits under such section 1201(b).".~~

SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS.

~~**No reward offered**~~

(a) Funds available to the Attorney General may be used for the payment of rewards pursuant to public advertisements for assistance to the Department of Justice to combat terrorism and defend the Nation against terrorist attacks, in accordance with the procedures and regulations established or issued by the Attorney General ~~in connection with hijackings or terrorist acts~~.

(b) In making rewards under this section –

(1) no such reward of $250,000 or more may be made or offered without the personal approval of the Attorney General or the President;

(2) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under paragraph (1);

(3) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) may provide the Attorney General with funds for the payment of rewards;

(4) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review; and

(5) no such reward shall be subject to any per-- or aggregate reward spending limitation established by law, unless the same should expressly refer to this ~~section~~sectino, and no reward paid pursuant to any such offer shall count toward any such aggregate reward spending limitation."

SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs" and "Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration And Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106-553 (114 Stat. 2762A-58 to 2762A-59)) is amended by striking the following

each place it occurs: "*Provided,* That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

SEC. 504. SECRETARY OF STATE'S AUTHORITY TO PAY REWARDS.

Section 36 of the State Department Basic Authorities Act of 1956 (~~P.~~Public L~~.~~aw 885, August 1, 1956; 22 ~~USC~~U.S.C. 2708) is amended~~—~~--

(1) in ~~section~~subsection (b)~~—~~

--

(~~a~~A) in paragraph (4), by ~~deleting~~striking "or" at the end ~~of~~;

(B) in paragraph (4~~5~~)~~;~~

~~(b)~~, by ~~adding~~striking the ~~following~~period at the end ~~of subsection (5) "including~~and inserting ",including

by dismantling an organization in whole or significant part; or"; and

(e~~C~~) by adding ~~a~~at the end the following new paragraph ~~(6) as follows~~:

~~"the~~ "(6) The identification or location of an individual who holds a key leadership position in a terrorist organization."–

.

(2) in ~~section~~subsection (d), by striking paragraphs (2) and (3) and renumbering paragraph (4) accordingly; and

(3) in ~~section~~subsection (e)(1), by ~~striking "$5,000,000" and~~ inserting ~~in lieu thereof "$10",000,000,~~ except as personally authorized by the Secretary of State if he determines that offer or payment of an award of a larger amount is ~~important to the national interests~~necessary to combat terrorism or defend the Nation against terrorist acts." after "$5,000,000".

SEC. 505. PUBLIC SAFETY OFFICER BENEFITS.

(a) Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

SEC. 506. PAYMENT INCREASE.

(a) Payments.–Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) Applicability.–The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

SEC. 507. 07. INCREASED FUNDING FOR THE TECHNICAL SUPPORT CENTER AT THE FEDERAL BUREAU OF INVESTIGATION.

There are authorized to be appropriated for the Technical Support Center established in section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) to help meet the demands for activities to combat terrorism and support and enhance the technical support and tactical operations of the FBI, $200,000,000 for fiscal years 2002, 2003, and 2004.

SEC. 508. COUNTERTERRORISM FUND.

(a) Establishment; Availability.—There is hereby established in the Treasury of the United States~~.".~~

~~**SEC. 505. ASSISTANCE TO COUNTRIES CO-OPERATING AGAINST INTERNATIONAL TERRORISM.**~~

~~(a) The President may provide assistance or take any other action, sell or authorize the export of defense articles or defense services, or issue credit, credit guarantees or extend other financial assistance, under the Foreign Assistance Act of 1961, the Arms Export Control Act, the Export-Import Bank Act of 1945, or other provisions of law, notwithstanding any other provision of law, if to do so is important to United States efforts to respond to, deter or prevent acts of~~ a separate fund to be known as the "Counterterrorism Fund", amounts in which shall remain available without fiscal year limitation—

(1) to reimburse any Department of Justice component for any costs incurred in connection with—

(A) reestablishing the operational capability of an office or facility that has been damaged or destroyed as a result of any domestic or international terrorist incident;

(B) providing support to counter, investigate, or prosecute domestic or international terrorism ~~or other actions threatening international peace and security. The authority of this paragraph may be used in Fiscal Years 2002 through 2007.~~

~~(b) Section 571 of the Foreign Assistance Act of 1961 is amended as follows:~~

~~(1) after "law," strike "that restricts assistance to~~, including, without limitation, paying rewards in connection with these activities; and

(C) conducting terrorism threat assessments of Federal agencies and their facilities; and their facilities; and

(2) to reimburse any department or agency of the Federal Government for any costs incurred in connection with detaining in foreign countries~~, other than sections 502B and 620A of this Act,";~~

~~(2) after "assistance", strike "to foreign countries"; and~~

~~(3) after "ability of", strike "their".~~

~~(c) Section 582 of the Foreign Assistance Act of 1961 is amended as follows: after "law", delete "other than section 502B or 620A of this Act,".~~

individuals accused of acts of terrorism that violate the laws of the United States.

(b) No effect on appropriations. —The amendment made by subsection (a) shall not affect the amount or availability of any appropriation to the Counterterrorism Fund made before the date of enactment of this Act.

SEC. 509. EXPEDITED PAYMENT FOR PUBLIC SAFETY OFFICERS INVOLVED IN THE PREVENTION, INVESTIGATION, RESCUE, OR RECOVERY EFFORTS RELATED TO A TERRORIST ATTACK.

(a) In general.–Notwithstanding the limitations of subsection (b) of section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 2796, 2896a), upon certification (containing identification of all eligible payees of benefits pursuant to section 1201 of such Act) by a public agency that a public safety officer employed by such agency was killed or suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty as described in section 1201 of such Act in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

(b) Definitions.–For purposes of this section , the terms "catastrophic injury", "public agency", and "public safety officer" have the same meanings given such terms in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b).

Sec. 510. TECHNICAL CORRECTION WITH RESPECT TO EXPEDITED PAYMENTS FOR HEROIC PUBLIC SAFETY OFFICERS.

Section 1 of Public Law 107-37 (an Act to provide for the expedited payment of certain benefits for a public safety officer who was killed or suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty in connection with the terrorist attacks of September 11, 2001) is amended by--

(1) inserting before "by a" the following: "(containing identification of all eligible payees of benefits pursuant to section 1201)";

(2) inserting " producing permanent and total disability" after "suffered a catastrophic injury"; and

(3) striking "1201(a)" and inserting "1201".

Subtitle B–Amendments to the Victims of Crime Act of 1984

SEC. 551. CRIME VICTIMS FUND.

(a) Deposit of gifts in the fund.–SECTION 1402(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(b)) is amended--

(1) in paragraph (3), by striking "and' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ";and"; and

(3) by adding at the end the following:

"(5) any gifts, bequests, or donations to the Fund from private entities or individuals.".

(b) Formula for Fund Distributions.–Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) is amended to read as follows:

"(c) Fund distribution; retention of sums of fund; availability of exptenditure without fiscal year limitation. –

"(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the Previous fiscal year.

"(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d). All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation.".

(c) Allocation of funds for costs and grants.–Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended--

(1) by striking "deposited in" and inserting "to be distributed from";

(2) in subparagraph (A), by striking "48.5" and inserting "47.5"; and

(3) in subparagraph (B), by striking "48.5" and inserting 47.5"; and

(4) in subparagraph (C), by striking "3" and inserting "5".

SEC. 552. CRIME VICTIM COMPENSATION.

(a) Allocation of funds for compensation and assistance.–Section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) is amended--

in each of paragraphs (1) and (2), by striking "40" and inserting "60".

(b) Location of compensable crime.–Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(6)(B)) is amended by striking "are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or".

(c) Relationship of crime victim compensation to means-tested federal benefit programs. –Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking subsection (c) and inserting the following:

"(c) Exclusion from income resources, and assets for purposes of means tests. – Notwithstanding any other law, for the purpose of any maximum allowed income, resource, or asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives

through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall that amount reduce the amount of assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.".

(d) Definitions of "compensable crime" and "state". –Section 1403(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)) is amended--

(1) in paragraph (3), by striking "crimes involving terrorism,"; and

(2) in paragraph (4), by inserting "the United States Virgin Islands," after "the Commonwealth of Puerto Rico,".

(e) Relationship of eligible crime victim compensation programs to the September 11th victim compensation fund.–Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602(e)) is amended by inserting "including the September 11th Victim Compensation Fund (established under title IV of Public Law 107-42)," after "Federal program,".

SEC. 553. CRIME VICTIM ASSISTANCE.

(a) ASSISTANCE FOR VICTIMS OF THE DISTRICT OF COLUMBIA, PUERTO RICO, AND OTHER TERRITORIES AND POSSESSIONS.–Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

"(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1).".

(b) PROHIBITION ON DISCRIMINATION AGAINST CERTAIN.–Section 1404(b)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(b)(1)) is amended--

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ";and"; and

(3) by adding at the end the following:

"(F) does not discriminate against victims because they oppose the death penalty of disagree with the way the State is prosecuting the criminal case.".

(c) GRANTS FOR PROGRAM EVALUATION AND COMPLIANCE EFFORTS.–Section

1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A)0 is amended by inserting ",program evaluation, compliance efforts," after "demonstration projects".

(d) ALLOCATION OF DISCRETIONARY GRANTS.–Section 1404(c)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(2)) is amended--

(1) in subparagraph (A), by striking "not more than" and inserting "not less than"; and

(2) in subparagraph (B), by striking "not less than" and inserting "not more than".

(e) FELLOWSHIPS AND CLINICAL INTERNSHIP.–Section 1404(c)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(3)) is amended--

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the and inserting ";and"; and

(3) by adding at the end the following:

"(E) use funds made available to the Director under this subsection--

(i) for fellowships and clinical internships; and

(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting in demonstrations, surveys, and special projects.".

SEC. 554. VICTIMS OF TERRORISM.

(a) COMPENSATION AND ASSISTANCE TO VICTIMS OF DOMESTIC TERRORISM.–Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(b)) is amended to read as follows:

"(b) VICTIMS OF TERRORISM WITHIN THE UNITED STATES.–The Director may make supplemental grants as provided in section 1402(d)(5) to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring within the United States.".

(b) ASSISTANCE TO VICTIMS OF INTERNATIONAL TERRORISM.–Section 1404B(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(a)(1)) is amended by striking "who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986".

(c) COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM.–Section 1404C(b) of the Victims of Crime 0 1984 (42 U.S.C. 10603c(b)) is amended by adding at the end the following: "The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.".

Title VI–PROTECTING THE NORTHERN BORDER

SEC. 601. ENSURING ADEQUATE PERSONNEL ON THE NORTHERN BORDER.

The Attorney General is authorized to waive any FTE cap on personnel assigned to the Immigration and Naturalization Service to address the national security needs of the United States on the Northern border.

SEC. 602. NORTHERN BORDER PERSONNEL.

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (form the number authorized under current law) in each State along the Northern Border;

(2) such sums as may be necessary to triple the number of Customs Service personnel (from the number authorized under current law) at ports of entry in each State along the Northern Border;

(3) such sums as may be necessary to triple the number of INS inspectors (from the number authorized on the date of enactment of this Act) at ports of entry in each State along the Northern Border; and

(4) an additional $50,000,000 each to the Immigration and Naturalization Service and the United States Customs Service for purposes of making improvements in technology for monitoring the Northern Border and acquiring additional equipment at the Northern Border.

SEC. 603. ACCESS BY THE DEPARTMENT OF STATE AND THE INS TO CERTAIN IDENTIFYING INFORMATION IN THE CRIMINAL HISTORY RECORDS OF VISA APPLICANTS AND APPLICANTS FOR ADMISSION TO THE UNITED STATES.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105) is amended—

(1) in the section heading, by inserting ";DATA EXCHANGE" after "SECURITY OFFICERS";

(2) by inserting "(a)" after "SEC. 105."'

(3) in subsection (a), by inserting "and border" after "internal" the second place it appears; and

(4) by adding at the end the following:

"(b)(1) Upon the promulgation of final regulations under subsection (d), the Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center tha may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purposes of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

"(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

"(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

"(4) Access to an extract does not entitle the Department of State or the Service to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State or the Service shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) The provision of the extracts described in subsection (b) may be reconsidered by the

Attorney General and the receiving agency upon the development and deployment of an more cost-effective and efficient means of sharing information.

"(d) For purposes of administering this section, the Department of State and the Service shall, prior to receiving access to the NCIC data but not later than 18 months after the date of enactment of this subsection, promulgate final regulations—

"(1) to implement procedures for the taking of fingerprints; and

"(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

"(A) to limit the redissemination of such information;

"(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;

"(C) to ensure the security, confidentiality, and destruction of such information; and

"(D) to protect any privacy rights of individuals who are subjects of such information.".

(b) REPORTING REQUIREMENT.—Not later than 2 years after the date of enactment of this Act, the Attorney General and the Secretary of State jointly shall report to Congress on the implementation of the amendments made by this section.

(c) STATUTORY CONSTRUCTION.—Nothing in this section, or ain any other law, shall be construed to limit the authority of the Attorney General or Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with the National Crime Prevention and Privacy Compact Act of 1998 (subtitle A of title II of Public Law 105–251; 42 U.S.C. 14611–16) and section 552a of title 5, United States Code.

SEC. 604. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement and Border Affairs" and "Immigration and Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration and Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106–553 (114 Stat. 2762A–58 to 2762A–59)) is amended by striking the following each place it occurs: "*Provided*, That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

From:	CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To:	Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
CC:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson [WHO] <Kyle Sampson>
Sent:	10/2/2001 9:59:27 AM
Subject:	: JSC Binder - add senate judiciary committee questionnaire

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-OCT-2001 13:59:27.00
SUBJECT:: JSC Binder - add senate judiciary committee questionnaire
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( Kyle Sampson [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Judge wants this added as section B under New Business.

You can get a copy of this from Brad, Brett or Kyle.

That is the only change to the binder.

Thanks!
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

Sent: 10/2/2001 10:46:03 AM

Subject: : JSC meeting this week at usual time and place

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-OCT-2001 14:46:03.00
SUBJECT:: JSC meeting this week at usual time and place
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
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TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
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TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
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TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Date: Wednesday, October 3
Time: 4:00-5:00 pm
Location: Roosevelt Room

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

Sent: 10/2/2001 10:46:03 AM

Subject: : JSC meeting this week at usual time and place

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###### Begin Original ARMS Header ######
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
End Original ARMS Header

Date: Wednesday, October 3
Time: 4:00-5:00 pm
Location: Roosevelt Room

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 10/2/2001 10:54:22 AM

Subject: : JSC Prep on Wed from 3:30-4:00 in Judge's office

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-OCT-2001 14:54:22.00
SUBJECT:: JSC Prep on Wed from 3:30-4:00 in Judge's office
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 10/2/2001 10:54:22 AM

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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
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From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Lisa J. Macecevic/OMB/EOP@EOP [OMB] <Lisa J. Macecevic>
CC:	Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent:	10/2/2001 3:09:59 PM
Subject:	: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting
Attachments:	P_J4OZ3004_WHO.TXT_1.doc; P_J4OZ3004_WHO.TXT_2.tiff

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CREATION DATE/TIME: 2-OCT-2001 19:09:59.00
SUBJECT:: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting
TO:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection to this letter.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/02/2001 07:08 PM ----------

Allison L. Riepenhoff
10/02/2001 05:32:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Lisa J. Macecevic/OMB/EOP@EOP
Subject: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting

Brett-
If you can, please look at this asap. Lisa needs Counsel's Office sign off. Thanks.

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 10/02/2001 05:31 PM ----------

From: Lisa J. Macecevic on 10/02/2001 05:29:39 PM
Record Type: Record

To: Allison L. Riepenhoff/WHO/EOP@EOP
cc:
Subject: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting

---------- Forwarded by Lisa J. Macecevic/OMB/EOP on 10/02/2001 05:30 PM ----------

From: Lisa J. Macecevic on 09/28/2001 05:21:37 PM
Record Type: Record

To: usdaobpaleg@obpa.usda.gov @ inet, usdaocrleg@obpa.usda.gov @ inet, justice.lrm@usdoj.gov @ inet, CLRM@doc.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on

Financial Contract Netting

Attached is a draft letter from the Secretary of the Treasury and the Chairman of the Federal Reserve for your review. Please return any comments by 2:00 PM Tuesday, October 2nd. (Also attached is the request for the letter from several members of the House Financial Services Committee.) Thank you.

- treas0033a.tif

LRM ID: LJM38
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, September 28, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting

DEADLINE: 2:00 P.M. Tuesday, October 2, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a draft letter from the Secretary of the Treasury and the Chairman of the Federal Reserve for your review. Please return any comments by 2:00 PM Tuesday, October 2nd. Thank you.

DISTRIBUTION LIST

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Michael K. Berkholtz
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K. Philippa Malmgren
Sarah S. Lee
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Alexander T. Hunt
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Oscar Gonzalez
Danielle M. Simonetta
Eric C. Pelletier
Brett S. Loper
Brian C. Conklin
LRM ID: LJM38 SUBJECT: TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Andrew Abrams/OMB/EOP@EOP
Hitesh Vyas/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Lloyd A. Blanchard/OMB/EOP@EOP
Michael K. Berkholtz/OMB/EOP@EOP
Eric W. Hunn/OMB/EOP@EOP

David J. Haun/OMB/EOP@EOP
Stuart R. Kasdin/OMB/EOP@EOP
Jennifer Wagner Bell/OMB/EOP@EOP
WHGC LRM
NEC LRM
K. Philippa Malmgren/OPD/EOP@EOP
Sarah S. Lee/OMB/EOP@EOP
Kenneth S. Kelly/OMB/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Diana E. Furchtgott-Roth/CEA/EOP@EOP
Douglas J. Holtz-Eakin/CEA/EOP@EOP
Alexander T. Hunt/OMB/EOP@EOP
Anne R. Stauffer/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Oscar Gonzalez/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Brett S. Loper/OMB/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_J4OZ3004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_J4OZ3004_WHO.TXT_2>

[DRAFT] Date-

The Honorable John J. LaFalce
Ranking Member
Committee on Financial Services
U.S. House of Representative
Washington, D.C. 20515

Dear Mr. LaFalce:

We are responding to your request for our views as to whether it is appropriate to enact legislation to revise the bankruptcy and bank insolvency laws to facilitate the termination and netting of financial contracts.

Such legislation would reduce the impact of the failure of any one institution on the stability of the financial system. As a consequence, we support its prompt enactment. Such strengthening of the legal framework for financial contracts is perhaps the most important legislative recommendation contained in the April 1999 report of the President's Working Group on Financial Markets entitled *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management*.

Whether as part of comprehensive bankruptcy reform legislation or as a stand-alone bill, Congress should not fail to enact netting legislation this year. Further delays would unnecessarily place the financial system at greater risk.

Sincerely,

Alan Greenspan
Chairman
Federal Reserve Board

Paul O'Neill
Secretary
Department of the Treasury

MICHAEL G. OXLEY, OH, CHAIRMAN
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WALTER B. JONES, NC
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PATRICK J. TOOMEY, PA
CHRISTOPHER SHAYS, CT
JOHN B. SHADEGG, AZ
VITO FOSSELLA, NY
GARY G. MILLER, CA
ERIC CANTOR, VA
FELIX J. GRUCCI, JR., NY
MELISSA A. HART, PA
SHELLEY MOORE CAPITO, WV
MIKE FERGUSON, NJ
MIKE ROGERS, MI
PATRICK J. TIBERI, OH

TERRY HAINES
CHIEF COUNSEL AND STAFF DIRECTOR

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

JOHN J. LaFALCE, NY, RANKING MEMBER
BARNEY FRANK, MA
PAUL E. KANJORSKI, PA
MAXINE WATERS, CA
CAROLYN B. MALONEY, NY
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NYDIA M. VELAZQUEZ, NY
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JANICE D. SCHAKOWSKY, IL
DENNIS MOORE, KS
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MICHAEL E. CAPUANO, MA
HAROLD E. FORD, JR., TN
RUBÉN HINOJOSA, TX
KEN LUCAS, KY
RONNIE SHOWS, MS
JOSEPH CROWLEY, NY
WILLIAM LACY CLAY, MO
STEVE ISRAEL, NY
MIKE ROSS, AR

BERNARD SANDERS, VT

September 25, 2001

The Honorable Alan Greenspan
Chairman
Board of Governors of the Federal Reserve System
Washington, DC 20220

The Honorable Paul O'Neill
Secretary
Department of the Treasury
Washington, DC 20551

Dear Chairman Greenspan and Secretary O'Neill:

We are writing to request your views on the need for the immediate consideration of legislation to revise the bankruptcy and bank insolvency laws with respect to the termination and netting of financial contracts. This legislation has been passed by both the Senate and the House for two years in a row as a non-controversial part of the bankruptcy bills to update our bank insolvency and bankruptcy laws to ensure the enforceability of financial contract close-out and netting in the event of a counterparty failure. The legislation was developed by the President's Working Group on the Financial Markets to provide certainty to the swap markets and other financial markets in order to prevent market destabilization in the event of the failure of a participant.

The language on netting needed to update the insolvency laws currently is included in the bankruptcy bills that have passed each house and are currently being considered by a Conference Committee. That Committee has not yet begun its reconciliation of the bills. Indeed, the Committee's first meeting was canceled as a result of the tragic events of September 11th. Given the many serious issues that remain to be resolved between the two houses, it will be some time before a final bill emerges.

As our economy and markets continue to recover from the events of September 11, we are concerned about the potential impact of delaying the amendment of our insolvency laws to provide certainty to the financial markets. Even in the absence of a major bankruptcy or insolvency, we are concerned that the increased risk of counterparty failure may lead to market instability, reducing the ability of firms to use these markets to manage their risks. We would like your views as to whether enactment of netting legislation would be a useful step that we could take to reduce the heightened systemic risk our financial system now faces.

We would appreciate your views on this matter at the earliest possible time.

Sincerely,

JOHN J. LaFALCE
Ranking Member
Committee on Financial Services

PAUL E. KANJORSKI
Ranking Member, Subcommittee on
Capital Markets, Insurance and
Government Sponsored Enterprises

RICHARD H. BAKER
Chairman, Subcommittee on
Capital Markets, Insurance and
Government Sponsored Enterprises

REV_00132666

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 10/2/2001 3:23:44 PM
Subject: : Re: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 2-OCT-2001 19:23:44.00
SUBJECT:: Re: LRM LJM38 - - TREASURY; FEDERAL RESERVE BOARD Report on Financial Contract Netting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

thank you!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 10/2/2001 8:20:20 PM
Subject: : Couch on Insurance

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 00:20:20.00
SUBJECT:: Couch on Insurance
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

need all volumes from this treatise on the insurance market for
acts of war and terrorism; also if there is a single volume treatise on
insurance by another author, I need it
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: garym stern <garym.stern@nara.gov>
Sent: 10/3/2001 6:35:06 AM
Subject: : information

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 10:35:06.00
SUBJECT:: information
TO:garym stern <garym.stern@nara.gov> ( garym stern <garym.stern@nara.gov> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

information on records issues only, but broadly defined; namely,
if a family member or representative essentially delegated or deeded
authority to the Archives re Presidential records, who was that family
member or representative? Or if the Presidents themselves deeded, did
they name a representative to coordinate release issues with Archives?
```

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/3/2001 7:44:35 AM
Subject: : FW: Sen. Biden/Bioterrorism

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN]
)
CREATION DATE/TIME: 3-OCT-2001 11:44:35.00
SUBJECT:: FW: Sen. Biden/Bioterrorism
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----
From: Newstead, Jennifer
Sent: Wednesday, October 03, 2001 11:05 AM
To: Dinh, Viet
Subject: FW: Sen. Biden/Bioterrorism
Importance: High

Should we fight to keep this? I think we should.

-----Original Message-----
From: Daley, Cybele K
Sent: Wednesday, October 03, 2001 11:02 AM
To: Elwood, John; Reynolds, James; Corken, Cathleen; Weglian,
Stephen; Newstead, Jennifer; Dinh, Viet
Cc: Milkman, Louise; O'Brien, Pat; Bryant, Dan
Subject: Sen. Biden/Bioterrorism
Importance: High

All -- I am advised by the Biden staff that Bioterrorim is about to be
dropped by Leahy due to opposition from the groups. I am also told that
the suggestion has been made that our proposal was not fully vetted within
the Adm. (HHS, etc). I don't know what we can do to preserve what we
currently have but pass this on.

Please let me know if there is something I can do!!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 10/3/2001 12:54:03 PM
Subject: : ABA Rating on Jeffrey R. Howard, US COA, 1st Circuit

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 16:54:03.00
SUBJECT:: ABA Rating on Jeffrey R. Howard, US COA, 1st Circuit
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Majority = Qualified
Minority = Not Qualified
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/3/2001 11:29:26 AM
Subject: : reminder - JSC prep starts in one minute!

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 15:29:26.00
SUBJECT:: reminder - JSC prep starts in one minute!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/3/2001 11:29:26 AM
Subject: : reminder - JSC prep starts in one minute!

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 15:29:26.00
SUBJECT:: reminder - JSC prep starts in one minute!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/3/2001 11:33:47 AM
Subject: : Re: update on nominations

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 15:33:47.00
SUBJECT:: Re: update on nominations
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The total number is 55:

20 circuit nominations pending
3 confirmed
29 district nominations pending
3 confirmed
----
55 total nominations
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 10/3/2001 12:03:58 PM

Subject: : POTUS Judges meeting now set for 5:10-5:30 pm on Thur., Oct. 4th

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 16:03:58.00
SUBJECT:: POTUS Judges meeting now set for 5:10-5:30 pm on Thur., Oct. 4th
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: Collins, Dan <Dan.Collins@usdoj.gov>
To: Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Painter, Christopher <Christopher.Painter@usdoj.gov>;Eckenwiler, Mark <Mark.Eckenwiler@usdoj.gov>;Elwood, John <John.Elwood@usdoj.gov>
CC: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Daley, Cybele K <Cybele.K.Daley@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Stansell-Gamm, Martha <Martha.Stansell-Gamm@usdoj.gov>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/3/2001 3:06:52 PM
Subject: : RE: Armey Amendment to the ATA
Attachments: P_XIJ04004_WHO.TXT_1.wpd

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Collins, Dan" <Dan.Collins@usdoj.gov> ( "Collins, Dan" <Dan.Collins@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME: 3-OCT-2001 19:06:52.00
SUBJECT:: RE: Armey Amendment to the ATA
TO:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov>
[ UNKNOWN ] )
READ:UNKNOWN
TO:"Painter, Christopher" <Christopher.Painter@usdoj.gov> ( "Painter, Christopher"
<Christopher.Painter@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Eckenwiler, Mark" <Mark.Eckenwiler@usdoj.gov> ( "Eckenwiler, Mark"
<Mark.Eckenwiler@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Elwood, John" <John.Elwood@usdoj.gov> ( "Elwood, John" <John.Elwood@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
CC:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer"
<Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Daley, Cybele K" <Cybele.K.Daley@usdoj.gov> ( "Daley, Cybele K"
<Cybele.K.Daley@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov>
[ UNKNOWN ] )
READ:UNKNOWN
CC:"Stansell-Gamm, Martha" <Martha.Stansell-Gamm@usdoj.gov> ( "Stansell-Gamm, Martha"
<Martha.Stansell-Gamm@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Robert Marsh ( CN=Robert Marsh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Daniel J. Keniry ( CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I received one further technical correction, which I've fixed. I think we
are good to go. The final version is attached.

--Dan
```

- snifferrecordkeeping.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XIJ04004_WHO.TXT_1>

Under Section 101 (b)(1):
"(a)In General.--
(1)...
(2)...
(3) (A) Where the law enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained which will identify:

(i) Any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network;

(ii) The date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information;

(iii) The configuration of the device at the time of its installation and any subsequent modification thereof; and

(iv) Any information which has been collected by the device.

To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device.

(B) The record maintained under subparagraph (A) shall be provided ex parte and under seal to the court which entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order (including any extensions thereof).

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 10/3/2001 6:53:36 PM
Subject: : Re: update on nominations

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-OCT-2001 22:53:36.00
SUBJECT:: Re: update on nominations
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

has Barrington Parker been confirmed?
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/4/2001 6:59:31 AM
Subject: : New date/time for POTUS Judicial Decision Mtg.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-OCT-2001 10:59:31.00
SUBJECT:: New date/time for POTUS Judicial Decision Mtg.
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Friday, Oct. 5th - 3:20-3:40 pm
```

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
CC: Lindemann, Michael <Michael.Lindemann@usdoj.gov>;Levey, Stuart <Stuart.Levey@usdoj.gov>
Sent: 10/4/2001 7:58:20 AM
Subject: : RE: Draft Compromise USA Act

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME: 4-OCT-2001 11:58:20.00
SUBJECT:: RE: Draft Compromise USA Act
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) ( "Bryant, Dan"
<Dan.Bryant@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) [
UNKNOWN ] )
READ:UNKNOWN
TO:'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov> (Receipt Notification Requested)
(IPM Return Requested) ( 'Makan Delrahim' <Makan_Delrahim@judiciary.senate.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nancy P. Dorn ( CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Lindemann, Michael" <Michael.Lindemann@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Lindemann, Michael" <Michael.Lindemann@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Levey, Stuart" <Stuart.Levey@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Levey, Stuart" <Stuart.Levey@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please note that Title IV.B, relating to immigration, is not inthe current
draft. I assume that language we agreed to last night is being added?

-----Original Message-----
From: Makan Delrahim [mailto:Makan_Delrahim@judiciary.senate.gov]
Sent: Thursday, October 04, 2001 11:03 AM
To: Bryant, Dan; Newstead, Jennifer; Dinh, Viet;
Bradford_A._Berenson@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Courtney_S._Elwood@who.eop.gov; heather_wingate@who.eop.gov;
Nancy_P._Dorn@who.eop.gov; Timothy_E._Flanigan@who.eop.gov;
```

Ziad_S._Ojakli@who.eop.gov
Subject: Fwd: Draft Compromise USA Act

_____Forward Header_____
Subject: Draft Compromise USA Act
Author: Beryl Howell
Date: 10/4/2001 8:54 AM

Attached is the latest working draft of the antiterrorism bill that we
will be
scrubbing this morning. Beryl

_____Forward Header_____
Subject: Fwd[2]:Final Draft
Author: Ayoud, Laura
Date: 10/4/2001 12:19 AM

Final draft does not include immigration. Material is set but needs
substantial
work. Our counsel
will start in on it at 7:30 am.

Bill

William F. Jensen, Senior Counsel
Office of the Senate Legislative Counsel
Phone: 202-224-6461
Email: Bill Jensen at Legislative_Counsel (within Senate)
bill_jensen@slc.senate.gov (outside Senate)

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 10/4/2001 10:33:17 AM
Subject: : FW: Approved at Senate Judiciary Cmte markup today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME: 4-OCT-2001 14:33:17.00
SUBJECT:: FW: Approved at Senate Judiciary Cmte markup today
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) [
UNKNOWN ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Congratulations on holding firm on questionnaire.

-----Original Message-----
```

From: Williams, Paula
Sent: Thursday, October 04, 2001 12:49 PM
To: Bryant, Dan; Thorsen, Carl; O'Brien, Pat; Joy, Sheila; Newstead, Jennifer; Dinh, Viet; Ayres, David; Israelite, David; Bertucci, Theresa; Meckley, Tammy; Coughlin, Robert; McNulty, John; Thompson, Larry D
Cc: Scottfinan, Nancy
Subject: Approved at Senate Judiciary Cmte markup today
Importance: High

The following was just provided by Nancy Scott-Finan.

Parker 19-0
Mills 19-0

By voice vote:

Jay Stephens - Associate AG
Benigno Reyna - USMS

USA

Brooks
Brownlee
Burgess
Colloton
Graves
Harris
Iglesias
Larson
Lockhart
Mattice
McCampbell
Mead
Mosman
Suthers

From:	Michael Payne <Michael.Payne2@usdoj.gov>
To:	Receipt Notification Requested) (Jack.Geise@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Jack.Geise@usdoj.gov>;Receipt Notification Requested) (Stefan.Cassella@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Stefan.Cassella@usdoj.gov>;Receipt Notification Requested) (John.Elwood@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <John.Elwood@usdoj.gov>;Receipt Notification Requested) (David.J.Karp@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <David.J.Karp@usdoj.gov>;Receipt Notification Requested) (David.Kris@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <David.Kris@usdoj.gov>;Receipt Notification Requested) (Michael.Lindemann@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Michael.Lindemann@usdoj.gov>;Receipt Notification Requested) (Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Receipt Notification Requested) (Rafael.Madan2@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Rafael.Madan2@usdoj.gov>
CC:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Receipt Notification Requested) (Viet.Dinh@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Viet.Dinh@usdoj.gov>
Sent:	10/4/2001 11:45:24 AM
Subject:	: Re: URGENT: Senate and House bill comparison
Attachments:	P_1J714004_WHO.TXT_1.wpd

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael Payne <Michael.Payne2@usdoj.gov> ( Michael Payne <Michael.Payne2@usdoj.gov>
[ UNKNOWN ] )
CREATION DATE/TIME: 4-OCT-2001 15:45:24.00
SUBJECT:: Re: URGENT: Senate and House bill comparison
TO:Jack.Geise@usdoj.gov (Receipt Notification Requested) ( Jack.Geise@usdoj.gov (Receipt
Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Stefan.Cassella@usdoj.gov (Receipt Notification Requested) ( Stefan.Cassella@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:John.Elwood@usdoj.gov (Receipt Notification Requested) ( John.Elwood@usdoj.gov (Receipt
Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:David.J.Karp@usdoj.gov (Receipt Notification Requested) ( David.J.Karp@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:David.Kris@usdoj.gov (Receipt Notification Requested) ( David.Kris@usdoj.gov (Receipt
Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Michael.Lindemann@usdoj.gov (Receipt Notification Requested) (
Michael.Lindemann@usdoj.gov (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) (
Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Rafael.Madan2@usdoj.gov (Receipt Notification Requested) ( Rafael.Madan2@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Viet.Dinh@usdoj.gov (Receipt Notification Requested) ( Viet.Dinh@usdoj.gov (Receipt
Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Date: 10/04/2001 03:41 pm -0400 (Thursday)
From: Michael Payne
To: "DKarp".WTGATE2.CRMGW; "DKris2".WTGATE2.CRMGW;
"MLindema".WTGATE2.CRMGW; "wJNewstea".WTGATE2.CRMGW;
```

"wRMadan3".WTGATE2.CRMGW; Cassella, Stefan; Elwood, John;
Geise, Jack
CC: "brett_m._kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;
"courtney_s._elwood@who.eop.gov@inetgw".WTGATE2.CRMGW;
"wVDinh".WTGATE2.CRMGW
Subject: Re: URGENT: Senate and House bill comparison

Jennifer:

Draft side-by-side for sections 401-404 is attached .

Mike Payne

>>> Newstead, Jennifer 10/04/01 11:31AM >>>
All -- as you know we're in the home stretch of the legislative process on the terrorism bill. Now that Senate and House text have been separately "agreed", we are about to become embroiled in negotiations over what the final bill should look like.

To that end, we need to develop ASAP a side-by-side comparison of the new Senate and House bills (the Senate version is attached: I will forward the House version as soon as I have it). Viet requests that each of you take responsibility for producing the section of the side by side in your areas of expertise as follows (please delegate this if needed, but we ask that you or your designee set aside as much of the day today as possible to get this done). We ask that you start immediately and provide us with a preliminary draft by 3:30, and a final text no later than 7 pm. We will use the preliminary draft for the first round of pre-conference discussions which start at 4.

Please use the attached format (5 columns as marked) to assist me in generating one document at the end of the process.

Thanks very much for your help.

Title I Wiretap: Jack Geise
Title I FISA: David Kris
Title II: Mike Lindemann
Title III (substantive crim. law): David Karp
Title III (crim. procedure): John Elwood
Title IV: Stef Casella
Title V and VI: Rafe Madan

- terrorte.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1J714004_WHO.TXT_1>

Senate Bill Provision No.	Senate Bill Description	Corresponding House Bill No.	Differences from Senate Bill	Preference
	(Please provide a brief description of what the Senate provision does)		(Please explain how the House provision differs from the Senate provision, if at all)	(Please state here which provision you would prefer to see in the final bill)
810 and 815	section 810 adds 18 U.S.C. § 2339B to 18 U.S.C. §2332b(g)(5)(B) which section 815 incorporates into 18 U.S.C. § 1961(1) all of whose offenses are specified unlawful activities (SUAs) for money laundering pursuant to 18 U.S.C. § 1956(c)(7)(A)	401	House bill specifically adds 18 U.S.C.§2339B (material support to foreign terrorist organizations) as a new specified unlawful activity (SUA) for money laundering offenses at 18 U.S.C. § 1956(c)(7)(D)	same result; no preference.
806	Amends 18 U.S.C. §2339A (material support for terrorism)	402	Senate version includes House amendments plus additional amendments.	{under consideration)
807	amends 18 U.S.C. §981(a)(1) to provide civil forfeiture of assets involved with terrorism	403	no differences	no preference; identical provisions .
808	technical clarification relating to provision of material support to terrorism under 18 U.S.C.	404	no differences	no preference; identical provisions .

	§§ 2339A and 2339B			

From: Nober, Roger <Roger.Nober@ost.dot.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>
Sent: 10/4/2001 12:44:33 PM
Subject: : Materials forwarded to Senate
Attachments: P_28A14004_WHO.TXT_1.doc; P_28A14004_WHO.TXT_2.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Nober, Roger" <Roger.Nober@ost.dot.gov> ( "Nober, Roger" <Roger.Nober@ost.dot.gov>
[ UNKNOWN ] )
CREATION DATE/TIME: 4-OCT-2001 16:44:33.00
SUBJECT:: Materials forwarded to Senate
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Christine Ciccone ( CN=Christine Ciccone/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached are the draft technical amendments we forwarded (in vain) to the
Senate this morning.

<<S1447DOTamend.doc>> <<technica.pdf>>
- S1447DOTamend.doc - technica.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_28A14004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_28A14004_WHO.TXT_2>
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Amendments Offered to S. 1447 (10/03/01 2:17 PM version)

(1) On page 3, strike line 18 and all that follows through page 5, line 13, and substitute the following:

==========

[NOTE: throughout, parentheses only surround the additions/changes to title 49 (and title 5), not the entirety of each amendment]

==========

(a) IN GENERAL.--(1) Chapter 1 of title 49, United States Code, is amended by adding at the end the following:

"Sec. 114. Transportation Security Administration

"(a) IN GENERAL.--The Transportation Security Administration shall be an administration of the Department of Transportation.

"(b) HEAD OF ADMINISTRATION.--The head of the Administration shall be the Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall report directly to the Secretary of Transportation.

"(c) DEPUTY ADMINISTRATOR FOR SECURITY.--The Administration shall have a Deputy Administrator for Security appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out transportation security duties and powers prescribed by the Administrator.

"(d) DEPUTY ADMINISTRATOR FOR INTELLIGENCE.--The Administration shall have a Deputy Administrator for Intelligence appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out transportation security intelligence duties and powers prescribed by the Administrator.

"(e) POWERS AND DUTIES.--The Administrator shall carry out--

"(1) duties and powers related to transportation security as proscribed by the Secretary; and

"(2) additional duties and powers prescribed by the Secretary.

"(f) EFFECT OF CERTAIN DECISIONS.--A decision of the Administrator involving a duty or power specified in subsection (e) and involving notice and hearing required by law is administratively final.

"(g) CONSULTATION.--The Administrator shall consult with the Administrators of Department of Transportation Administrations and the Commandant of the United States Coast Guard on matters related to transportation security.

"(h) MANAGEMENT INCENTIVES.--In addition to the annual rates of basic pay authorized for the Administrator and the Deputy Administrators of the Administration, there may be paid a bonus for any calendar year of not to exceed 20 percent of the annual rate of basic pay, based on a performance evaluation of the individual by the Secretary of Transportation.

(2) CONFORMING AMENDMENT.--The analysis for chapter 1 is amended by adding at the end the following:

"114. Transportation Security Administration.".

(3) POSITIONS IN EXECUTIVE SERVICE; OTHER--

(A) Section 5313 of title 5, United States Code, is amended by inserting after--

" Administrator, Federal Aviation Administration."

the following:

"Administrator, Transportation Security Administration.'.

(B) Section 5315 of title 5, United States Code, is amended by inserting after--

" Deputy Administrator, Federal Aviation Administration.."

the following:

"Deputy Administrator, Transportation Security Administration."

(C) Section 8331(3) of title 5, United States Code, is amended by striking subparagraph (E) and substituting the following:

"(E) Availability pay --

"(i) received by a criminal investigator under section 5545a of this title, or

"(ii) received by a Federal Air Marshal of the Federal Aviation Administration or any successor organization subsequent to September 11, 2001 and pursuant to the authority of the Administrator of the Federal Aviation Administration set forth in sections 106(f)(2), 106(l)(1), and 40122(g) of title 49, United States Code, or of a successor organization;".

(4) Any restriction now or hereafter specified in law on the number of political and Presidential appointees in the Department of Transportation shall be increased by three appointees by operation of this paragraph.

(5) Title 49, United States Code, is amended by inserting the following after chapter 51:

"CHAPTER 52--TRANSPORTATION SECURITY

"SUBCHAPTER I--GENERAL

"Sec.
"5201. Definitions.
"5202. Acquisition management system; additional authority
"5203. Multiyear procurement contracts for services and related items
"5204. Multiyear procurement contracts for property
"5205. Severable services contracts for periods crossing fiscal years.
"5206. Protection of voluntarily submitted information.
"5207. Research, development, testing, and training.
"5208. Authority to exempt.
"5209. Administrative.

"SUBCHAPTER II--MULTIMODAL SECURITY

"5231. General Responsibilities of the Administration.
"5232. **Aviation-related duties. [picked up from pages 4 and 5 of S. 1447]**
"5233. General regulatory authority.

SUBCHAPTER III--ENFORCEMENT

"5251. Enforcement and civil penalties.
"5252. Criminal penalties.

"SUBCHAPTER I--GENERAL

"Sec. 5201. Definitions

"A term used in this chapter that is defined in section 40102 of this title has the meaning specified in section 40102.

"Sec. 5202. Acquisition management system; additional authority

"(a) IN GENERAL.--Notwithstanding provisions of Federal acquisition law, the Secretary of Transportation shall develop and implement, not later than January 1, 2002, an acquisition management system for the Transportation Security Administration that

addresses the unique needs of transportation security and, at a minimum, provides for more timely and cost-effective acquisitions of equipment and materials.

"(b) APPLICABILITY OF FEDERAL ACQUISITION LAW.--The following provisions of Federal acquisition law shall not apply to the acquisition management system developed and implemented under this section:

"(1) Title III of the Federal Property and Administrative Services Act of 1949.

"(2) The Office of Federal Procurement Policy Act.

"(3) The Federal Acquisition Streamlining Act of 1994.

"(4) The Small Business Act, except that all reasonable opportunities to be awarded contracts shall be provided to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

"(5) The Competition in Contracting Act.

"(6) Subchapter V of chapter 35 of title 31, relating to the procurement protest system.

"(7) The Brooks Automatic Data Processing Act.

"(8) The Federal Acquisition Regulation and any laws not listed in this subsection providing authority to promulgate regulations in the Federal Acquisition Regulation.

"(c) CERTAIN PROVISIONS OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT.--Notwithstanding subsection (b)(2), section 27 of the Office of Federal Procurement Policy Act shall apply to the acquisition management system developed and implemented under this section with the following modifications:

"(1) Subsections (f) and (g) shall not apply.

"(2) Within 90 days after the date of the enactment of this section, the Secretary shall adopt definitions for the acquisition management system that are consistent with the purpose and intent of the Office of Federal Procurement Policy Act. After the adoption of those definitions, the criminal, civil, and administrative remedies provided under the Office of Federal Procurement Policy Act apply to the acquisition management system.

"(3) In the administration of the acquisition management system, the Secretary may take adverse personnel action under section 27(e)(3)(A)(iv) of the Office of Federal

Procurement Policy Act in accordance with the procedures contained in the Administration's personnel management system.

"(d) PROHIBITION ON RELEASE OF OFFEROR PROPOSALS.--(1) Except as provided in paragraph (2), a proposal in the possession or control of the Secretary under this chapter may not be made available to any person under section 552 of title 5.

"(2) Paragraph (1) shall not apply to any portion of a proposal of an offeror the disclosure of which is authorized by the Secretary under procedures published in the Federal Register. The Secretary shall provide an opportunity for public comment on the procedures for a period of not less than 30 days beginning on the date of such publication in order to receive and consider the views of all interested parties on the procedures. The procedures shall not take effect before the 60th day following the date of such publication.

"(3) In this subsection, the term "proposal" means information contained in or originating from any proposal, including a technical, management, or cost proposal, submitted by an offeror in response to the requirements of a solicitation for a competitive proposal.

"(e) PROPERTY ACQUISITION.--(1) The Secretary is authorized to acquire by purchase, lease, condemnation, or otherwise any property, real or personal (including office space and intellectual property), facilities, services (including personal services), or any other items the Secretary decides is appropriate to carry out the provisions of this Act. The Secretary is also authorized to construct, repair, operate, and maintain, by contract or otherwise, such property, and to utilize, in his discretion, the services of a non-profit entity which may be established to assist in such acquisition services.

(2) Notwithstanding any other provision of law, including sections 1341, 6505, and 9701 of title 31 and all sections of title 41, the Secretary is authorized to enter into and perform such contracts, leases, grants, cooperative agreements, international agreements, or other transactions as the Secretary may decide is appropriate with any Federal agency or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Secretary may consider appropriate. The Secretary may, with or without reimbursement, use or accept the services, equipment, personnel, or facilities of any other Federal agency, and any other public or private entity. The head of each Federal agency or department shall cooperate with the Secretary and is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Secretary, without reimbursement, supplies, equipment, services, personnel and facilities. Notwithstanding any other provision of law, the Secretary is authorized to lease to others or dispose of any property (real or personal).

"Sec. 5203. Multiyear procurement contracts for services and related items

"(a) GENERAL AUTHORITY.--Notwithstanding section 1341(a)(1)(B) of title 31, to carry out this chapter, the Secretary of Transportation may make a contract of not more than 5 years for the following types of services and items of supply related to those services for which amounts otherwise would be available for obligation only in the fiscal year for which appropriated:

"(1) Operation, maintenance, and support of facilities and installations.

"(2) Operation, maintenance, and modification of vehicles and other highly complex equipment.

"(3) Specialized training requiring high quality instructor skills, including foreign language training.

"(b) REQUIRED FINDINGS.--The Secretary may make a contract under this section only if the Secretary finds that--

"(1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;

"(2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and

"(3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

"(c) CONSIDERATIONS.--When making a contract under this section, the Secretary shall be guided by the following:

"(1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the anticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

"(2) The Secretary shall consider the desirability of--

"(A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and

"(B) reserving in the Secretary the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

"(d) ENDING CONTRACTS.--A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from--

"(1) an appropriation originally available for carrying out the contract;

"(2) an appropriation currently available for procuring the type of service concerned and not otherwise obligated; or

"(3) amounts appropriated for payments to end the contract.

"Sec. 5204. Multiyear procurement contracts for property

"(a) GENERAL AUTHORITY.--Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, to carry out this chapter, the Secretary of Transportation may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property.

"(b) REQUIRED FINDINGS.--The Secretary may make a contract under this section if the Secretary finds that--

"(1) the contract will promote transportation security and will result in reduced total contract costs;

"(2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;

"(3) there is a reasonable expectation that throughout the proposed contract period the Secretary will request appropriations for the contract at the level required to avoid cancellation;

"(4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and

"(5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

"(c) REGULATIONS.--The Secretary may prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and nonrecurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable--

"(1) to broaden the transportation security industrial base--

"(A) a contract under this section shall be used to seek, retain, and promote the use under that contract of subcontractors, vendors, or suppliers; and

"(B) on accrual of a payment or other benefit accruing on a contract under this section to a subcontractor, vendor, or supplier participating in the contract, the payment or benefit shall be delivered in the most expeditious way practicable; and

"(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Secretary to provide for--

"(A) competition in producing items to be delivered under a contract under this section; or

"(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

"(d) CONTRACT PROVISIONS.--(1) A contract under this section may--

"(A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;

"(B) provide that performance under the contract after the first year is subject to amounts being appropriated; and

"(C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

"(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

"(e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.--(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

"(2) Before awarding a contract under this section containing a cancellation ceiling of more than $ 100,000,000, the Secretary shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of

the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

"(f) ENDING CONTRACTS.--A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from--

"(1) an appropriation originally available for carrying out the contract;

"(2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or

"(3) amounts appropriated for payments to end the contract.

"Sec. 5205. Severable services contracts for periods crossing fiscal years

"(a) IN GENERAL.--The Secretary of Transportation may enter into a contract for procurement of severable services for a period that begins in 1 fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed 1 year.

"(b) OBLIGATION OF FUNDS.--Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

"Sec. 5206. Protection of voluntarily submitted information

"(a) IN GENERAL.--Notwithstanding any other provision of law, neither the Secretary of Transportation, nor any agency receiving information from the Secretary, shall disclose voluntarily-provided safety or security related information if the Secretary finds that--

"(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Secretary's safety and security responsibilities; and

"(2) withholding such information from disclosure would be consistent with the Secretary's safety and security responsibilities.

"(b) REGULATIONS.--The Secretary shall issue regulations to carry out this section.

"Sec. 5207. Research, development, testing, and training

"(a) GENERAL REQUIREMENTS.--(1) The Secretary of Transportation shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence, terrorism, and aircraft piracy.

"(2) The Secretary may carry out or supervise, as necessary, any other research, development, testing, evaluation, and training for an area of transportation security.

"(3) To carry out this chapter, the Secretary may make contracts for research, development, testing, evaluation, and training.

"(b) DISCLOSURE.--(1) Notwithstanding section 552 of title 5, the Secretary shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security research and development activities under this chapter if the Secretary decides disclosing the information would--

"(A) be an unwarranted invasion of personal privacy;

"(B) reveal a trade secret or privileged or confidential commercial or financial information; or

"(C) be detrimental to the safety of passengers in air transportation.

"(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

"(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.--Except as otherwise provided by law, the Secretary may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

"Sec. 5208. Authority to exempt

"The Secretary of Transportation may grant an exemption from a regulation prescribed in carrying out this chapter when the Secretary decides the exemption is in the public interest.

"Sec. 5209. Administrative

"(a) IN GENERAL.--The Secretary of Transportation may take action the Secretary considers necessary to carry out this chapter, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

"(b) GOVERNMENTAL ASSISTANCE.--The Secretary may use the assistance of any research or technical department, agency, or instrumentality of the United States Government on matters related to transportation security. Each department, agency, and

instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary in carrying out this chapter.

"(c) INDEMNIFICATION.--The Secretary may indemnify an officer or employee of the Administration against a claim or judgment arising out of an act that the Administrator.

"SUBCHAPTER II--MULTIMODAL SECURITY

"Sec. 5231. General Responsibilities of the Administration

"The Secretary of Transportation shall--

"(1) develop policies, strategies, and plans for dealing with threats to transportation security;

"(2) coordinate countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

"(3) undertake research and development activities necessary to enhance transportation security;

"(4) receive and assess intelligence information related to transportation security;

"(5) assess security threats to transportation;

"(6) serve as the liaison for transportation security to the intelligence and law enforcement communities;

"(7) issue and enforce security-related regulations and requirements;

"(8) inspect, maintain, and test security facilities, equipment, and systems;

"(9) ensure the adequacy of security measures for the transportation of cargo;

"(10) oversee the implementation, and ensure the adequacy, of security measures for transportation infrastructure;

"(11) implement and ensure the adequacy, of background checks for airport screeners, individuals with unescorted access to secure areas of airports, and other transportation security personnel; and

"(12) notwithstanding any other law, carry out duties and powers relating to transportation security vested in the Department of Transportation.

"5232. **Aviation-related duties** **[from S. 1447, page 4, line 8--page 5, line 13]**

"The Secretary of Transportation--

"(1) is responsible for day-to-day Federal security operations for air transportation or intrastate air transportation;

"(2) shall coordinate and direct, as appropriate, the security functions and responsibilities under chapter 449;

"(3) shall work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

"(4) is responsible for hiring and training personnel to provide security screening at all United States airports involved in air transportation or intrastate air transportation; and

"(5) shall actively cooperate and coordinate with appropriate Federal agencies and departments with responsibilities for national security and criminal justice enforcement activities that are related to aviation security through the Aviation Security Coordination Council.

"Sec. 5233. General regulatory authority

"(a) IN GENERAL.--Under the authority of this chapter, the Secretary of Transportation shall prescribe regulations for the security of transportation in the United States, as well as to and from the United States, against terrorist attack and other, comparable threats, which regulations shall govern all aspects of the transportation system the Secretary considers appropriate.

"(b) ADMINISTRATIVE PROCEDURE ACT.--(1) IN GENERAL.--Except as provided in paragraphs (2) and (3), a proceeding to prescribe the regulations shall be conducted under section 553 of title 5.

"(2) EXCEPTION.--The Secretary may determine that transportation security requires the immediate issuance of a regulation without regard to the requirements of section 553 of title 5.

"(3) TRANSITION.--During the transition period provided in the Aviation Security Act, any action required to implement the Act shall not be subject to section 553 of title 5.

SUBCHAPTER IV--ENFORCMENT

"Sec. 5291. Enforcement and civil penalties

"Enforcement of the requirements and other provisions of this chapter, other than the imposition of criminal penalties, shall be carried out under chapter 463 of this title. The general civil penalty specified in section 46301(a) applies to a violation or other failure to comply with the requirements of this chapter, or a regulation prescribed or order issued by the Secretary of Transportation under this chapter.

"Sec. 5292. Criminal penalties

"A person that knowingly and willfully violates this chapter, or a regulation prescribed or order issued by the Secretary of Transportation under this chapter, shall be fined under title 18. A separate violation occurs for each day the violation continues.".

(b) CONFORMING AMENDMENT.-- The analysis of Subtitle III of title 49, United States Code, is amended by inserting after the item for chapter 51 the following:

"52. Transportation Security.....5201".

(2) On page 6, strike lines 4 through 8, and add the following at the end of the bill:

SEC. 20. TRANSFER OF FUNCTIONS.

(a) DEFINITION.--In this section, "date of transfer" is the date established by the Secretary of Transportation on which the authority exercised by the Office of Intelligence and Security (established under 49 U.S.C. 44931 as in effect on the date of the enactment of this Act) and of the Administrator of the Federal Aviation Administration over transportation security matters transfers to the Transportation Security Administration, as set forth in this section. The "date of transfer" shall not be later than January 1, 2002, and may be specified by the Secretary as an earlier date for specified authorities.

(b) IN GENERAL.--Effective on the date of transfer, there are transferred to the Transportation Security Administration of the Department of Transportation under the terms of this section the functions, personnel, and associated funding of the following program and project activities of the Department of Transportation:

(1) Office of Intelligence and Security, Department of Transportation;

(2) Crisis Management, Research and Special Projects Administration; and

(3) Civil Aviation Security functions (and related functions, including associated research and development), including Federal Air Marshals, Federal Aviation Administration.

(c) TRANSFER OF ASSETS AND PERSONNEL.—The personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred under this Act shall be transferred to the Administration for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds shall also be transferred to the Administration.

(d) LEGAL DOCUMENTS- All orders, determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges--

(1) that have been issued, made, granted, or allowed to become effective by the transferring entities, any officer or employee of the transferring entities, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act or the amendments made by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Administration,

any other authorized official, a court of competent jurisdiction, or operation of law.

(e) PROCEEDINGS.--(1) The provisions of this Act shall not affect any proceedings or any application for any license pending before the transferring entities at the time this Act takes effect, insofar as those functions are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(2) Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(3) The Secretary of Transportation is authorized to provide for the orderly transfer of pending proceedings from the transferring entities.

(f) SUITS.--(1) This Act shall not affect suits commenced before the date of the enactment of this Act, except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(2) Any suit by or against the transferring entities begun before the date of transfer shall be continued, insofar as it involves a function retained and transferred under this Act, with the Administration (to the extent the suit involves functions transferred to the Administration under this Act) substituted for the transferring entity.

(3) If the court in a suit described in paragraph (1) remands a case to the Administration, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

(g) CONTINUANCE OF ACTIONS AGAINST OFFICERS.--No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the transferring entity shall abate by reason of the enactment of this Act. No cause of action by or against the transferring entity, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act.

(h) EXERCISE OF AUTHORITIES- Except as otherwise provided by law, an officer or employee of the Administration may, for purposes of performing a function transferred by this Act or the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that

function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act.

(i) REFERENCES.--Any reference to the transferring entities in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the transferring entities or an officer or employee of the transferring entities is deemed to refer to the Administration or a member or employee of the Administration, as appropriate.

(3) At each place in the bill where the words "Deputy Secretary" or "Deputy Secretary for Transportation Security" appear, substitute "Secretary of Transportation".

(4) At each place in the bill after page 13 where the words "Administrator" or "Administrator of the Federal Aviation Administration" appear, substitute "Secretary of Transportation".

(5) On page 31, strike line 19 and all that follows through line 2 on page 32, and substitute the following:

> (i) SCREENER PERSONNEL.--Notwithstanding any other provision of law, the Secretary may employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment of such a number of individuals as the Secretary determines may be necessary to carry out the screening function of the Secretary under this Act.

S:\WPSHR\LEGCNSL\XYWRITE\AVIATION\S1447MGR.7

10/3
TECHNICAL
ASSISTANCE

AMENDMENT NO. CAL. NO.

(Also see associated amendments to text)

[STAFF WORKING DRAFT]

October 3, 2001

Purpose: To improve aviation security.

IN THE SENATE OF THE UNITED STATES—107TH Cong., 1ST Sess.

S. 1447, 107TH Congress, 1ST Session

OCTOBER ——, 2001

( ) Referred to the Committee on ———— and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. HOLLINGS (for himself and Mr. MCCAIN)

Viz: Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Aviation Security Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Findings.
Sec. 3. Transportation security function.
Sec. 4. Aviation Security Coordination Council.
Sec. 5. Improved flight deck integrity measures.
Sec. 6. Deployment of Federal air marshals.
Sec. 7. Improved airport perimeter access security.
Sec. 8. Enhanced anti-hijacking training for flight crews.
Sec. 9. Passenger screening.
Sec. 10. Training and employment of security screening personnel.
Sec. 11. Suspension and removal.
Sec. 12. Research and development.
Sec. 13. Flight school security.

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Sec. 14. Report to Congress on security.
Sec. 15. General aviation and air charters.
Sec. 16. Security funding.
Sec. 17. Increased funding flexibility for aviation security.
Sec. 18. Authorization of funds for reimbursement of airports for security mandates.
Sec. 19. Definitions.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The safety and security of the civil air transportation system is critical to the United States' security and its national defense.

(2) A safe and secure United States civil air transportation system is essential to the basic freedom of Americans to move in intrastate, interstate, and international transportation.

(3) The terrorist hijackings and crashes of passenger aircraft on September 11, 2001, converting civil aircraft into guided bombs for strikes against civilian and military targets requires the United States to change fundamentally the way it approaches the task of ensuring the safety and security of the civil air transportation system.

(4) The existing fragmentation of responsibility for that safety and security among government agencies and between government and nongovernment entities is inefficient and unacceptable in light of the hijackings and crashes on September 11, 2001.

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(5) The General Accounting Office has recommended that security functions and security personnel at United States airports should become a Federal government responsibility.

(6) Although the number of Federal air marshals is classified, their presence on both international and domestic flights would have a deterrent effect on hijacking and would further bolster public confidence in the safety of air travel.

(7) The effectiveness of existing security measures, including employee background checks and passenger pre-screening, is impaired because of the inaccessibility of, or the failure to share information among, data bases maintained by different Federal and international agencies for criminal behavior or pertinent intelligence information.

SEC. 3. TRANSPORTATION SECURITY FUNCTION.

(a) IN GENERAL.—Section 102 of title 49, United States Code, is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g); and

(2) by inserting after subsection (c) the following:

"(d) DEPUTY SECRETARY FOR TRANSPORTATION SECURITY.—

See amendments

"(1) IN GENERAL.—The Department has a Deputy Secretary for Transportation Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary for Transportation Security shall carry out duties and powers prescribed by the Secretary relating to security for all modes of transportation.

"(2) AVIATION-RELATED DUTIES.—The Deputy Secretary—

"(A) is responsible for day-to-day Federal security operations for air transportation or intrastate air transportation;

"(B) shall coordinate and direct, as appropriate, the functions and responsibilities of the Secretary of Transportation and the Administrator of the Federal Aviation Administration under chapter 449;

"(C) shall work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

"(D) is responsible for hiring and training personnel to provide security screening at all United States airports involved in air transpor-

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tation or intrastate air transportation, in consultation with the Attorney General, the Secretary of Defense, and the heads of other appropriate Federal agencies and departments; and

"(E) shall actively cooperate and coordinate with the Attorney General, the Secretary of Defense, and the heads of other appropriate Federal agencies and departments with responsibilities for national security and criminal justice enforcement activities that are related to aviation security through the Aviation Security Coordination Council.".

(b) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECURITY.—Section 44932(c) of title 49, United States Code, is amended—

(1) by striking "x-ray" in paragraph (4);

(2) by striking "and" at the end of paragraph (4);

(3) by striking "passengers." in paragraph (5) and inserting "passengers;"; and

(4) by adding at the end the following:

"(6) to strengthen and enhance the ability to detect nonexplosive weapons, such as biological, chemical, or similar substances; and

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"(7) to evaluate such additional measures as may be appropriate to enhance physical inspection of passengers, luggage, and cargo.".

(c) TRANSITION.—Until the Deputy Secretary for Transportation Security takes office, the functions of the Deputy Secretary that relate to aviation security shall be carried out by the Assistant Administrator for Civil Aviation Security of the Federal Aviation Administration.

See Amendments

SEC. 4. AVIATION SECURITY COORDINATION COUNCIL.

(a) IN GENERAL.—Section 44911 of title 49, United States Code, is amended by adding at the end the following:

"(f) AVIATION SECURITY COORDINATION COUNCIL.—

"(1) IN GENERAL.—There is established an Aviation Security Coordination Council.

"(2) FUNCTION.—The Council shall work with the intelligence community to coordinate intelligence, security, and criminal enforcement activities affecting the safety and security of aviation at all United States airports and air navigation facilities involved in air transportation or intrastate air transportation.

"(3) CHAIR.—The Council shall be chaired by the Secretary of Transportation or the Secretary's designee.

"(4) MEMBERSHIP.—The members of the Council are:

"(A) The Secretary of Transportation, or the Secretary's designee.

"(B) The Attorney General, or the Attorney General's designee.

"(C) The Secretary of Defense, or the Secretary's designee.

"(D) The Secretary of the Treasury, or the Secretary's designee.

"(E) The Director of the Central Intelligence Agency, or the Director's designee.

"(F) The head, or an officer or employee designated by the head, of any other Federal agency the participation of which is determined by the Secretary of Transportation ~~in consultation with the Attorney General~~ to be appropriate.

"(g) CROSS-CHECKING DATA BASE INFORMATION.—The Secretary of Transportation, acting through the Aviation Security Coordination Council, shall—

"(1) explore the technical feasibility of developing a common database of individuals who may pose a threat to aviation or national security;

"(2) enter into memoranda of understanding with other Federal agencies to share or otherwise cross-check data on such individuals identified on Federal agency data bases, and may utilize other available data bases as necessary; and

"(3) evaluate and assess technologies in development or use at Federal departments, agencies, and instrumentalities that might be useful in improving the safety and security of aviation in the United States.".

(b) POLICIES AND PROCEDURES.—Section 44911(b) of title 49, United States Code, is amended by striking "international".

(c) STRATEGIC PLANNING.—Section 44911(c) of title 49, United States Code, is amended by striking "consider placing" and inserting "place".

SEC. 5. IMPROVED FLIGHT DECK INTEGRITY MEASURES.

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration ~~shall~~, as soon as possible after the date of enactment of this Act, to issue an order (without regard to the provisions of chapter 5 of title 5, United States Code)—

(1) prohibiting access to the flight deck of aircraft engaged in air transportation or intrastate air transportation except to authorized personnel;

To the extent the Secretary of Transportation deems appropriate, the Secretary shall instruct

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(2) requiring the strengthening of the flight deck door and locks on any such aircraft operating in air transportation or intrastate air transportation that has a rigid door in a bulkhead between the flight deck and the passenger area to ensure that the door cannot be forced open from the passenger compartment;

(3) requiring that such flight deck doors remain locked while any such aircraft is in flight except when necessary to permit the flight deck crew access and egress;

(4) prohibit the possession of a key to any such flight deck door by any member of the flight crew who is not assigned to the flight deck; and

(5) take such other action, including modification of safety and security procedures, as may be necessary to ensure the safety and security of the aircraft.

(b) COMMUTER AIRCRAFT.—The Administrator ~~shall~~ The Secretary shall direct to investigate means of securing, to the greatest feasible extent, the flight deck of aircraft operating in air transportation or intrastate air transportation that do not have a rigid fixed door with a lock between the passenger compartment and the flight deck and issue such an order as the Administrator deems appropriate (without regard to

the provisions of chapter 5 of title 5, United States Code) to ensure the inaccessibility, to the greatest extent feasible, of the flight deck while the aircraft is so engaged.

SEC. 6. DEPLOYMENT OF FEDERAL AIR MARSHALS.

(a) IN GENERAL.—Section 44903(d) of title 49, United States Code, is amended by adding at the end the following:

"The Secretary may place Federal air marshals on every scheduled passenger flight in air transportation and intrastate air transportation.".

(b) DEPLOYMENT.—Within 30 days after the date of enactment of this Act, the Secretary of Transportation, under the authority of subsections (d) and (e) of section 44903 of title 49, United States Code, shall—

(1) provide for deployment of Federal air marshals on flights in air transportation and intrastate air transportation;

(2) provide for appropriate background and fitness checks for candidates for appointment as Federal air marshals;

(3) provide for appropriate training, supervision, and equipment of Federal air marshals; and

(4) require air carriers to provide seating for Federal air marshals on any flight without regard to the availability of seats on that flight.

(c) INTERNATIONAL FLIGHTS.—The Secretary shall work with the International Civil Aviation Organization and with appropriate civil aviation authorities of foreign governments under section 44907 of title 49, United States Code, to address security concerns on flights by foreign air carriers to and from the United States.

(d) INTERIM MEASURES.—The Secretary may, after consultation with the heads of other Federal agencies and departments, use personnel from those agencies and departments, ~~on a reimbursable or nonreimbursable basis,~~ to provide air marshal service on domestic and international flights, and may use the authority provided by section 324 of title 49, United States Code, for such purpose.

(e) REPORTS.—

(1) IN GENERAL.—The Secretary of Transportation shall submit the following reports in classified form, if necessary, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure:

(A) Within 18 months after the date of enactment of this Act, an assessment of the program carried out under section 44903(d) of title 49, United States Code.

(B) Within 120 days after such date, an assessment of the effectiveness of the security screening process for carry-on baggage and checked baggage.

(C) Within 12 months after the date of enactment of this Act, an assessment of the safety and security-related training provided to flight and cabin crews.

(2) RECOMMENDATIONS.—The Secretary may submit, as part of any report under this subsection or separately, any recommendations the Secretary may have for improving the effectiveness of the Federal air marshal program or the security screening process.

(f) COOPERATION WITH OTHER AGENCIES.—The last sentence of section 106(m) of title 49, United States Code, is amended by striking "supplies and" and inserting "supplies, personnel, services, and".

SEC. 7. IMPROVED AIRPORT PERIMETER ACCESS SECURITY.

(a) IN GENERAL.—Section 44903 of title 49, United States Code, is amended by adding at the end the following:

"(h) IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

"(1) IN GENERAL.—The Secretary of Transportation, in consultation with the airport operator and law enforcement authorities, may order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

"(2) SECURITY OF AIRCRAFT AND GROUND ACCESS TO SECURE AREAS.—In determining where to deploy such personnel, the Secretary shall consider the physical security needs of air traffic control facilities, parked aircraft, aircraft servicing equipment, aircraft supplies (including fuel), automobile parking facilities within airport perimeters or adjacent to secured facilities, and access and transition areas at airports served by other means of ground or water transportation. The Secretary of Transportation, after consultation with the Aviation Security Coordination Council, shall consider whether airport and air carrier personnel and other individuals with access to such areas should be screened to prevent individuals who present a risk to aviation security or national security from gaining access to such areas.

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"(3) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—The Secretary of Transportation may enter into a memorandum of understanding or other agreement with the Attorney General or the head of any other appropriate Federal law enforcement agency to deploy Federal law enforcement personnel at an airport in order to meet aviation safety and security concerns.".

(b) SMALL AND MEDIUM AIRPORTS.—The Administrator of the Federal Aviation Administration shall develop a plan to provide technical support to small and medium airports to enhance security operations, including screening operations, and to provide financial assistance to those airports to defray the costs of enhancing security.

see amendment

(c) CHEMICAL AND BIOLOGICAL WEAPON DETECTION.—Section 44903(c)(2)(C) of title 49, United States Code, is amended to read as follows:

"(C) MAXIMUM USE OF CHEMICAL AND BIOLOGICAL WEAPON DETECTION EQUIPMENT.—The Secretary ~~of Transportation~~ shall require airports to maximize the use of technology and equipment that is designed to detect potential chemical or biological weapons.".

To the extent the Secretary deems appropriate,

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(d) IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—Section 44903(g)(2) of title 49, United States Code, is amended—

(1) by striking "weaknesses by January 31, 2001;" in subparagraph (A) and inserting "weaknesses";

(2) by striking subparagraph (D) and inserting the following:

"(D) on an ongoing basis, assess and test for compliance with access control requirements, report annually findings of the assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions when noncompliance is found;";

(3) by striking "program by January 31, 2001;" in subparagraph (F) and inserting "program;"; and

(4) by striking subparagraph (G) and inserting the following:

"(G) work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery

areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.".

(e) EMPLOYMENT INVESTIGATIONS AND RESTRICTIONS.—Section 44903(c) of title 49, United States Code, is amended by adding at the end the following:

"(3) The Administrator ~~shall~~ may establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protections for closed or secure areas of the airports. Such technology may include biometric or other technology that ensures only authorized access to secure areas.".

(f) AIRPORT SECURITY AWARENESS PROGRAMS.—The Secretary of Transportation shall require air carriers and airports involved in air transportation or intrastate air transportation to develop security awareness programs for airport employees, ground crews, and other individuals employed at such airports.

SEC. 8. ENHANCED ANTI-HIJACKING TRAINING FOR FLIGHT CREWS.

(a) IN GENERAL.—The Secretary of Transportation shall develop a ~~mandatory air carrier~~ program of training for flight and cabin crews of aircraft providing air trans-

portation or intrastate air transportation in dealing with attempts to commit aircraft piracy (as defined in section 46502(a)(1)(A) of title 49, United States Code).

(b) NOTIFICATION PROCEDURES.—The Administrator of the Federal Aviation Administration shall review the procedures by which cabin crews of aircraft can notify flight deck crews of security breaches and other emergencies.

SEC. 9. PASSENGER SCREENING.

(a) IN GENERAL.—Section 44901 of title 49, United States Code, is amended to read as follows:

"§ 44901. Screening passengers and property

"(a) IN GENERAL.—The Secretary of Transportation ~~, in consultation with the Attorney General,~~ shall provide for the screening of all passengers and property, including United States mail, that will be carried aboard an aircraft in air transportation or intrastate air transportation. The screening shall take place before boarding and, except as provided in subsection (c), shall be carried out by Federal government personnel. In carrying out this subsection, the Secretary shall maximize the use of available nonintrusive and other inspection and detection technology that is approved by the Administrator of the Federal Aviation Administration for the purpose of screening passengers, baggage, or cargo.

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"(b) DEPLOYMENT OF ARMED PERSONNEL.—

"(1) IN GENERAL.—The Secretary of Transportation, ~~in consultation with the Attorney General,~~ shall ~~order the deployment of~~ ensure that law enforcement personnel authorized to carry firearms are stationed at each airport security screening location to ensure passenger safety and national security.

"(2) MINIMUM REQUIREMENTS.—Except at airports required to enter into agreements under subsection (c), the Secretary shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100 largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which data are available, the Secretary shall order the deployment of additional law enforcement personnel at airport security screening locations if the Secretary determines that the additional deployment is necessary to ensure passenger safety and national security.".

"(c) SECURITY AT SMALL COMMUNITY AIRPORTS.—

"(1) PASSENGER SCREENING.—In carrying out subsection (a) and subsection (b)(1), the Secretary of Transportation, ~~with the approval of the Attorney General,~~ may require any nonhub airport (as defined

in section 41731(a)(4)) or smaller airport with scheduled passenger operations to enter into an agreement under which screening of passengers and property will be carried out by qualified, trained State or local law enforcement personnel if—

"(A) the screening services are equivalent to the screening services that would be carried out by Federal personnel under subsection (a);

"(B) the training and evaluation of individuals conducting the screening or providing security services meets the standards set forth in section 44935 for training and evaluation of Federal personnel conducting screening or providing security services under subsection (a); and

"(C) the airport is reimbursed by the United States for the costs incurred in providing the required screening, training, and evaluation.

"(2) DETERMINATION OF LIMITED REQUIREMENTS.—The Secretary ~~, in consultation with the Attorney General,~~ may prescribe modified aviation security measures for a nonhub airport if the Secretary determines that specific security measures are

not required at a nonhub airport at all hours of airport operation because of—

"(A) the types of aircraft that use the airport;

"(B) seasonal variations in air traffic and types of aircraft that use the airport; or

"(C) other factors that warrant modification of otherwise applicable security requirements.

"(3) ADDITIONAL FEDERAL SECURITY MEASURES.—At any airport required to enter into a reimbursement agreement under paragraph (1), the Secretary and the Attorney General—

"(A) may provide or require additional security measures;

"(B) may conduct random security inspections; and

"(C) may provide assistance to enhance airport security at that airport.

"(d) MANUAL PROCESS.—

"(1) IN GENERAL.—The Administrator ~~shall~~ may require a manual process, at explosive detection system screening locations in airports where explosive detection equipment is underutilized, which will augment the Computer Assisted Passenger Prescreening

System by randomly selecting additional checked bags for screening so that a minimum number of bags, as prescribed by the Administrator, are examined.

"(2) LIMITATION ON STATUTORY CONSTRUCTION.—Paragraph (1) shall not be construed to limit the ability of the Administrator to impose additional security measures when a specific threat warrants such additional measures.

"(3) MAXIMUM USE OF EXPLOSIVE DETECTION EQUIPMENT.—In prescribing the minimum number of bags to be examined under paragraph (1), the Administrator shall seek to maximize the use of the explosive detection equipment.

"(e) FLEXIBILITY OF ARRANGEMENTS.—In carrying out subsections (a), (b), and (c), the Secretary of Transportation may use memoranda of understanding or other agreements with the Attorney General or the heads of appropriate Federal law enforcement agencies covering the utilization and deployment of personnel of the Department of Justice or such other agencies.".

(b) DEPUTIZING OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.—Section 512 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century is amended—

(1) by striking "purpose of" in subsection (b)(1)(A) and inserting "purposes of (i)"; and

(2) by striking "transportation;" in subsection (b)(1)(A) and inserting "transportation, and (ii) providing security screening services under section 44901(c) of title 49, United States Code;".

(c) TRANSITION.—The Secretary of Transportation shall complete the full implementation of section 44901 of title 49, United States Code, as amended by subsection (a), as soon as is practicable but in no event later than 18 months after the date of enactment of this Act. The Secretary may make or continue such arrangements, including arrangements under the authority of sections 40110 and 40111 of that title, for the screening of passengers and property under that section as the Secretary determines necessary pending full implementation of that section as so amended.

SEC. 10. TRAINING AND EMPLOYMENT OF SECURITY SCREENING PERSONNEL.

NOTE: The screener provisions fm p 22-30 are probably not implementable in the limited transition period.

(a) IN GENERAL.—Section 44935 of title 49, United States Code, is amended—

(1) by redesignating subsection (f) as subsection (i); and

(2) by striking subsection (e) and inserting the following:

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"(e) SECURITY SCREENERS.—

"(1) TRAINING PROGRAM.—The Secretary of Transportation ~~, in consultation with the Attorney General,~~ shall establish a program for the hiring and training of security screening personnel.

"(2) HIRING.—

"(A) QUALIFICATIONS.—The Secretary shall establish, within 30 days after the date of enactment of the Aviation Security Act, qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any other provision of law, Those standards shall, at a minimum, require an individual—

"(i) to have a satisfactory or better score on a Federal security screening personnel selection examination;

"(ii) to have been a national of the United States, as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), for a minimum of 5 consecutive years;

"(iii) to have passed an examination for recent consumption of a controlled substance;

"(iv) to meet, at a minimum, the requirements set forth in subsection (f); and

"(v) to meet such other qualifications as the Secretary may establish.

"(B) BACKGROUND CHECKS.—The Secretary shall require that an individual to be hired as a security screener undergo an employment investigation (including a criminal history record check) under section 44936(a)(1). To the extent practicable, the background check shall be conducted before training.

"(C) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Secretary, in consultation with the heads of other appropriate Federal agencies, shall establish procedures, in addition to any background check conducted under section 44936, to ensure that no individual who presents a threat to national security is employed as a security screener.

"(D) The Secretary may impose additional requirements in the interests of security, as the Secretary deems appropriate.

"(3) EXAMINATION; REVIEW OF EXISTING RULES.—The Secretary shall develop a security screening personnel examination for use in determining the qualification of individuals seeking employment as security screening personnel. The Secretary shall also review, and revise as necessary, any

standard, rule, or regulation governing the employment of individuals as security screening personnel.

"(f) EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—

"(1) SCREENER REQUIREMENTS.—Notwithstanding any other provision of law, an individual may not be employed as a security screener unless that individual meets the following requirements:

"(A) The individual shall possess a high school diploma, a General Equivalency Diploma, or experience that the Secretary has determined to have equipped the individual to perform the duties of the position.

"(B) The individual shall possess basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

"(i) Screeners operating screening equipment shall be able to distinguish on the screening equipment monitor the appropriate imaging standard specified by the Secretary. Wherever the screening equipment system displays colors, the operator shall be able to perceive each color.

"(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

"(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment.

"(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing.

"(v) Screeners who perform pat-downs or hand-held metal detector searches of individuals shall have sufficient dexterity and capability to thoroughly conduct those procedures over a individual's entire body.

"(C) The individual shall be able to read, speak, and write English well enough to—

"(i) carry out written and oral instructions regarding the proper performance of screening duties;

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"(ii) read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

"(iii) provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

"(iv) write incident reports and statements and log entries into security records in the English language.

"(D) The individual shall have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program, except as provided in paragraph (2).

"(2) EXCEPTIONS.—An individual who has not completed the training required by ~~paragraph~~ subsection (1) may be employed during the on-the-job portion of training to perform security functions if that individual—

"(A) is closely supervised; and

"(B) does not make independent judgments as to whether individuals or property

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may enter a sterile area or aircraft without further inspection.

"(3) REMEDIAL TRAINING.—No individual employed as a security screener may perform a screening function after that individual has failed an operational test related to that function until that individual has successfully completed the remedial training specified in the security program.

"(4) ANNUAL PROFICIENCY REVIEW.—The Secretary shall provide that an annual evaluation of each individual assigned screening duties is conducted and documented. An individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual—

"(A) continues to meet all qualifications and standards required to perform a screening function;

"(B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and

"(C) demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

"(5) OPERATIONAL TESTING.—In addition to the annual proficiency review conducted under paragraph (4), the Secretary shall provide for the operational testing of such personnel.

"(g) TRAINING.—

"(1) USE OF OTHER AGENCIES.—The Secretary of Transportation shall enter into a memorandum of understanding or other arrangement with the Attorney General, or any other Federal agency or department with appropriate law enforcement responsibilities, to provide personnel, resources, or other forms of assistance in the training of security screening personnel.

"(2) TRAINING PLAN.—The Secretary shall, within 60 days after the date of enactment of the Aviation Security Act, develop a plan for the training of security screening personnel. The plan shall, at a minimum, require that before being employed as a security screener, an individual—

"(A) has completed 40 hours of classroom instruction or successfully completed a program that the Secretary determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction;

"(B) has completed 60 hours of on-the-job instruction; and

"(C) has successfully completed an on-the-job training examination prescribed by the Secretary.

"(3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a security screener may not use any security screening device or equipment in the scope of that individual's employment unless the individual has been trained on that device or equipment and has successfully completed a test on the use of the device or equipment.

"(h) TECHNOLOGICAL TRAINING.—The Secretary of Transportation shall require training to ensure that screeners are proficient in using the most up-to-date new technology and to ensure their proficiency in recognizing new threats and weapons. The Secretary shall make periodic assessments to determine if there are dual use items and inform security screening personnel of the existence of such items. Current lists of dual use items shall be part of the ongoing training for screeners. For purposes of this subsection, the term 'dual use' item means an item that may seem harmless but that may be used as a weapon.".

(b) CONFORMING AMENDMENTS.—

(1) Section 44936(a)(1)(A) is amended by inserting "as a security screener under section 44935(e) or a position" after "a position".

(2)Section 44936(b) of title 49, United States Code, is amended—

(A) by inserting "the Secretary," after "subsection," in paragraph (1); and

(B) by striking "An" in paragraph (3) and inserting "The Secretary, an".

(c) TRANSITION.—The Secretary of Transportation shall complete the full implementation of section 44935(e), (f), (g), and (h) of title 49, United States Code, as amended by subsection (a), as soon as is practicable. The Secretary may make or continue such arrangements for the training of security screeners under that section as the Secretary determines necessary pending full implementation of that section as so amended.

(d) EXPEDITED PERSONNEL PROCESS.—

(1) AUTHORIZATION OF EMPLOYMENT.—The Secretary of Transportation may appoint and fix the compensation of such a number of individuals as may be necessary to carry out section 44901 and 44903 of title 49, United States Code, in accordance with the provisions of part III of title 5, United States Code, without regard to any limitation on

see amendments

number of employees imposed by any other law or Executive Order.

(2) STRIKES PROHIBITED.—Section 7311(3) and section 7116(b)(7) of title 5, United States Code, apply to individuals employed as security screeners.

SEC. 11. SUSPENSION AND REMOVAL.

(a) IN GENERAL.—Notwithstanding other provision of law (specifically including section 7532 of title 5, United States Code), the Secretary of Transportation may suspend without pay an individual employed as a security screener under title 49, United States Code, when the Secretary considers that action necessary in the interests of national security or because the screener has failed to perform screening duties adequately. To the extent that the Secretary determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the Secretary statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the Secretary may remove an employee suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, the Secretary deter-

mines that removal is necessary or advisable in the interests of national security or because the screener has failed to perform screening duties adequately. The determination of the Secretary is final.

(c) An employee suspended under subsection (a) of this section who--

(1) had a permanent or indefinite appointment for at least 3 years;

(2) has completed his probationary or trial period; and

(3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him, within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by a Department of Transportation authority duly constituted for this purpose;

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(D) a review of his case by the Secretary or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the Secretary.

SEC. 12. RESEARCH AND DEVELOPMENT.

Section 44912(b)(1) of title 49, United States Code, is amended—

(1) by striking "complete an intensive review of" and inserting "periodically review";

(2) by striking "commercial aircraft in service and expected to be in service in the 10-year period beginning on November 16, 1990;" in subparagraph (B) and inserting "aircraft in air transportation;"; and

(3) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively, and inserting after subparagraph (C) the following:

"(D) the potential release of chemical, biological, or similar weapons or devices either within an aircraft or within an airport;".

SEC. 13. FLIGHT SCHOOL SECURITY.

(a) PROHIBITION.—Chapter 449 of title 49, United States Code, is amended by adding at the end the following new section:

"§ 44939. Training to operate certain aircraft

"(a) PROHIBITION.—No person subject to regulation under this part may provide training in the operation of any aircraft rated over 12,500 pounds to any alien (or other individual specified by the Secretary of Transportation under this section) within the United States unless the Secretary of Transportation issues to that person a certification of the completion of a background investigation of the alien under subsection (b).

"(b) INVESTIGATION.—

"(1) REQUEST.—Upon the joint request of a person subject to regulation under this part and an alien (or individual specified by the Secretary) for the purposes of this section, the Secretary shall—

"(A) carry out a background investigation of the alien or individual; and

"(B) upon completing the investigation, issue a certification of the completion of the investigation to the person.

"(2) SCOPE.—A background investigation of an alien or individual under this subsection shall consist of the following:

"(A) A determination of whether there is a record of a criminal history for the alien or individual and, if so, a review of the record.

"(B) A determination of the status of the alien under the immigration laws of the United States.

"(C) A determination of whether the alien or individual presents a national security risk to the United States.

"(c) SANCTIONS.—A person who violates subsection (a) shall be subject to administrative sanctions that the Secretary of Transportation shall prescribe in regulations. The sanctions may include suspension and revocation of licenses and certificates issued under this part.

"(d) COVERED TRAINING.—For the purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

"(e) REPORTING REQUIREMENT.—Each person subject to regulation under this part that provides training in the operation of any ~~jet propelled~~ rated over 12,500 pounds aircraft shall report to the Secretary of Transportation, at such time and in such manner as the Secretary may prescribe, the name,

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address, and such other information as the Secretary may require concerning—

"(1) each alien to whom such training is provided; and

"(2) every other individual to whom such training is provided as the Secretary may require.

"(f) ALIEN DEFINED.—In this section, the term 'alien' has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"44939. Training of aliens to operate jet-propelled aircraft.".

(c) INTERNATIONAL COOPERATION.—The Secretary of Transportation, in consultation with the Secretary of State, shall work with the International Civil Aviation Organization and the civil aviation authorities of other countries to improve international aviation security through screening programs for flight instruction candidates.

SEC. 14. REPORT TO CONGRESS ON SECURITY.

Within 60 days after the date of enactment of this Act, ~~the Attorney General and~~ the Secretary of Transportation shall transmit a report to the Congress containing ~~their joint~~ recommendations on additional measures for

the Federal government to address transportation security functions.

SEC. 15. GENERAL AVIATION AND AIR CHARTERS.

The Secretary of Transportation shall submit to the Congress within 3 months after the date of enactment of this Act a report on how to improve security with respect to general aviation and air charter operations in the United States.

SEC. 16. SECURITY FUNDING.

(a) USER FEE FOR SECURITY SERVICES.—

(1) IN GENERAL.—Chapter 481 is amended by adding at the end thereof the following:

"§ 48114. User fee for security services charge

"(a) IN GENERAL.—The Secretary of Transportation shall collect a user fee from air carriers. Amounts collected under this section shall be treated as offsetting collections to offset the costs of providing aviation security services to air carriers. The amounts collected shall be immediately available to the Secretary for obligation and expenditure for its activities, and shall remain available in a revolving fund, to be established by the Secretary, until expended.

"(b) AMOUNT OF FEE.—Air carriers shall pay $2.50 for each passenger enplanement, adjusted annually to reflect changes in the consumer price index.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 481 is amended by adding at the end thereof the following:

"48114. User fee for security services".

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to transportation beginning after the date which is 180 days after the date of enactment of this Act.

(b) SPECIFIC AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Part C of subtitle VII of title 49, United States Code, is amended by adding at the end the following:

"CHAPTER 483. AVIATION SECURITY FUNDING.

"Sec.
"48301. Aviation security funding

"§ 48301. Aviation security funding

"There are authorized to be appropriated for fiscal years 2002, 2003, and 2004, such sums as may be necessary to carry out chapter 449 and related aviation security activities under this title.".

(2) CONFORMING AMENDMENT.—The subtitle analysis for subtitle VII of title 49, United States Code, is amended by inserting after the item relating to chapter 482 the following:

"483. Aviation Security Funding.....48301".

SEC. 17. INCREASED FUNDING FLEXIBILITY FOR AVIATION SECURITY.

(a) LIMITED USE OF AIRPORT IMPROVEMENT PROGRAM FUNDS.—

(1) BLANKET AUTHORITY.—Notwithstanding any provision of chapter 471 of title 49, United States Code, or any rule, regulation, or agreement thereunder to the contrary, for fiscal year 2002 an airport operator may use amounts made available under that chapter to defray additional direct security-related expenses imposed by law or rule after September 11, 2001, for which funds are not otherwise specifically appropriated or made available under this or any other Act.

(2) AIRPORT DEVELOPMENT FUNDS.—Section 47102(3) of title 49, United States Code, is amended by adding at the end the following:

"(J) after September 11, 2001, and before October 1, 2002, for fiscal year 2002, additional operational requirements, improvement of facilities, purchase and deployment of equipment, hiring, training, and providing appropriate personnel, or an airport or any aviation operator at an airport, that the Secretary determines will enhance and ensure the security of

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passengers and other persons involved in air travel.".

(3) ALLOWABLE COSTS.—Section 47110(b)(2) of title 49, United States Code, is amended—

(A) by striking "or" in subparagraph (B);

(B) by inserting "or" after "executed;" in subparagraph (C); and

(C) by adding at the end the following:

"(D) if the cost is incurred after September 11, 2001, for a project described in section 47102(3)(J), and shall not depend upon the date of execution of a grant agreement made under this subchapter;".

(4) DISCRETIONARY GRANTS.—Section 47115 of title 49, United States Code, is amended by adding at the end the following:

"(i) CONSIDERATIONS FOR PROJECT UNDER EXPANDED SECURITY ELIGIBILITY.—In order to assure that funding under this subchapter is provided to the greatest needs, the Secretary, in selecting a project described in section 47102(3)(J) for a grant, shall consider the non-federal resources available to sponsor, the use of such non-federal resources, and the degree to which the sponsor is providing increased funding for the project.".

(5) FEDERAL SHARE.—Section 47109(a) of title 49, United States Code, is amended—

(A) by striking "and" in paragraph (3);

(B) by striking "47134." in paragraph (4) and inserting "47134; and"; and

(C) by adding at the end the following:

"(5) for fiscal year 2002, 100 percent for a project described in section 47102(3)(J).".

(b) APPORTIONED FUNDS.—For the purpose of carrying out section 47114 of title 49, United States Code, for fiscal year 2003, the Secretary shall use, in lieu of passenger boardings at an airport during the prior calendar year, the greater of—

(1) the number of passenger boardings at that airport during 2000; or

(2) the number of passenger boardings at that airport during 2001.

(c) EXPEDITED PROCESSING OF SECURITY-RELATED PFC REQUESTS.—The Administrator of the Federal Aviation Administration shall, to the extent feasible, expedite the processing and approval of passenger facility fee requests under subchapter I of chapter 471 of title 49, United States Code, for projects described in section 47192(3)(J) of title 49, United States Code.

SEC. 18. AUTHORIZATION OF FUNDS FOR REIMBURSEMENT OF AIRPORTS FOR SECURITY MANDATES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for fiscal year 2002 to compensate airport operators for eligible security costs.

(b) REIMBURSABLE COSTS.—The Secretary may reimburse an airport operators (from amounts made available for obligation under subsection (a)) for the direct costs incurred by the airport operator in complying with new, additional, or revised security requirements imposed on airport operators by the Federal Aviation Administration on or after September 11, 2001.

(c) DOCUMENTATION OF COSTS; AUDIT.—The Secretary may not reimburse an airport operator under this section for any cost for which the airport operator does not demonstrate to the satisfaction of the Secretary, using sworn financial statements or other appropriate data, that—

(1) the cost is eligible for reimbursement under subsection (b); and

(2) the cost was incurred by the airport operator.

The Inspector General of the Department of Transportation and the Comptroller General of the United States

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may audit such statements and may request any other information that necessary to conduct such an audit.

(d) CLAIM PROCEDURE.—Within 30 days after the date of enactment of this Act, the Secretary, after consultation with airport operators, shall publish in the Federal Register the procedures for filing claims for reimbursement under this section of eligible costs incurred by airport operators.

SEC. 19. DEFINITIONS.

Except as otherwise explicitly provided, any term used in this Act that is defined in section 40102 of title 49, United States Code, has the meaning given that term in that section.

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Media Review - Judicial Nominations
Thursday, October 4, 2001

General Judicial Articles

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Paul Kane, *Roll Call*, October 4, 2001

"Grassley: Suspect Underscores Need for Confirmation," 4
The Associated Press, October 2, 2001

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Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

General Judicial Articles

Lott's Push for Judges Imperils Partisan Truce

By Paul Kane
Roll Call
Thursday, October 4, 2001

Revisiting a pre-Sept. 11 strategy, Senate Republicans plan to block and delay the appropriations process until they get solid guarantees that the Democratic majority will begin to confirm more judicial nominees.

Senate GOP leaders acknowledge this tactic may slow the appropriations process during a period of otherwise unprecedented bipartisanship, but contend that they have no other means of forcing Democrats to confirm more Bush administration judicial nominees. The move appears to have at least the tacit blessing of the White House.

"If they don't approve a significant number of them, it's going to be hard to get those appropriations bills moving," said Senate Minority Leader Trent Lott (R-Miss.). "I'm going to assume that they are going to move them, so we won't have to resort to any extraordinary measures. If they don't, we will have to." Democrats contend Lott's approach is unreasonable, considering that Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) has focused almost entirely on anti-terrorism legislation since terrorists crashed airplanes into the World Trade Center and the Pentagon.

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"We're doing the best we can on nominations," said Majority Whip Harry Reid (D-Nev.). "It's not as if Senator Leahy hasn't been busy."

Reid, who has been a key player in negotiating with Republicans on nominations, said Senate Democrats have gone out of their way to quickly approve "scores" of President Bush's nominees to key security-related posts since the attacks.

Noting that Leahy was holding a hearing today on five more judicial nominees, aides to the Judiciary chairman and Senate Majority Leader Thomas Daschle (D-S.D.) said the process is clearly moving forward again.

Any delays in approving the 13 appropriations bills would only hinder Congress' ability to meet the Oct. 16 deadline for the expiration of the current continuing resolution funding the federal government and jeopardize the goal for a late October adjournment, Daschle warned Wednesday. "We have 13 bills to go and 13 days to do them."

Republicans claim that while Democrats have helped move many key agency nominees in the weeks since the attacks, they have been slow to act on individuals nominated to the bench. Moreover, in the wake of the attacks and the new anti-terrorism laws likely to be passed in the coming weeks, Senate Republicans believe they have gained political leverage in forcing Democrats to quickly move more judges.

With 107 vacancies on the federal bench, Lott and Republicans are confident they can make the argument that new investigative powers to intercede against potential terrorists will be weakened because there won't be enough federal judges to approve warrants to execute searches.

"If we don't have the third branch of government staffed, we're all in trouble," said Sen. Orrin Hatch (R-Utah), ranking member of Judiciary.

In the weeks after Democrats assumed the majority in the summer, Republicans employed a similar strategy of blocking Daschle and Reid's attempts to move to appropriations until they allowed votes on agency nominations, a strategy GOP aides believe resulted in the confirmation of dozens of agency appointees.

Shortly after Labor Day, Republicans signaled they were ready to adopt the same tactic in an effort to secure more confirmations of judicial nominees, who they felt were being stonewalled in Judiciary because of their conservative leanings.

However, Sept. 11 ushered in what some consider a remarkable run of comity that has helped pave the way for almost unanimous passage of several bills aimed at dealing with the crisis.

This week, though, Lott decided to return to the confrontational approach to nominees, and a Bush official said the White House "appreciates" the strategy. Bush, however, is not expected to have a high profile on the issue.

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Aides and Senators say the decision to go forward with the strategy rests almost entirely with Lott, who is not expected to rely on deputies such as Sen. Larry Craig (R-Idaho) and Sen. Jon Kyl (R-Ariz.) to make the objections to Daschle's attempts to bring up appropriations.

Asked where the decisions were coming from, Craig said, "From the top - above my pay grade."

Some Republicans have their doubts about the strategy.

Sen. Ted Stevens (R-Alaska), ranking member on Appropriations, said he agreed with GOP leaders that there has been a "severe delay" in getting judicial nominations approved, but questioned the amount of political pressure that could be applied to Judiciary members, whose interests aren't necessarily the same as those of appropriators.

"I don't think there is any leverage. They're not interested in appropriations," Stevens said. "I don't agree with [the strategy], but it's going to happen."

Another GOP leadership aide predicted the new offensive "may not prove as fruitful as they would like" and suggested that the issue would end up being settled through a private, diplomatic set of negotiations between Reid and one of Lott's deputies.

Democrats say a more partisan approach to the issue isn't likely to succeed. The Senate has already confirmed three circuit court judges, as many as then-President Clinton had on the bench in his first year, and Democrats expect to approve a few more circuit-level judges before adjournment. In his first year in office, in 1989, President George H.W. Bush had five circuit court judges approved.

Leahy has taken an almost personal offense to Republicans who have questioned his pace in confirming judges. He wasn't able to hold any judicial nomination hearings until early July, after the GOP had put up a four-week fight over the reorganization of committees when Democrats claimed the majority in early June.

The Vermont Democrat then held hearings and allowed for the confirmation of FBI Director Robert Mueller within weeks of his nomination, and also allowed for speedy confirmations of the new directors of the Immigration and Naturalization Service and the U.S. Marshals Service, as well as 12 U.S. attorneys.

Within days of a personal request from Lott, Leahy held a hearing for a Mississippi nominee to the district court. And in a recent floor speech, Leahy said in the past three weeks, he has given "virtually undivided attention" to the anti-terrorism package.

"It's been anything but a typical year, but despite that, the committee's been handling nominees a lot faster than Republicans ever did with Democratic nominees," said David Carle, Leahy's spokesman.

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One senior GOP leadership aide said Republicans would be content if the chairman simply offered a guarantee to start holding more hearings, possibly doubling up on the number of circuit court nominees at each hearing or holding more hearings each week.

Of the 49 pending nominees, GOP aides said 28 have received their ratings from the American Bar Association, with half of those earning what legal experts call the "gold standard" - meaning a majority of the ABA board rated the candidate as "well qualified."

GOP aides say they hope to make Democrats appear to be the ones playing petty politics over judgeships.

"We have some critical needs that have to be filled," said the administration official. "I don't think it's dangerous partisanship to say we want judges to be given fair consideration."

Grassley: Suspect Underscores Need for Confirmation

The Associated Press
Tuesday, October 2, 2001

The arrest of a man in Cedar Rapids in connection with a federal terrorism investigation underscores the need for Senate confirmation of key law enforcement and judicial appointment, U.S. Sen. Charles Grassley said Tuesday.

"As we work to fight terrorism, it is imperative that key federal law enforcement and judicial vacancies are filled so that the U.S. Attorneys offices and federal courts can function at full capacity," Grassley said. Grassley released a letter he sent Senate Judiciary Committee Chairman Patrick Leahy urging quick action on appointments. He argued that 35 U.S. Attorneys and 51 federal judges await confirmation.

In Iowa, there are four appointments which have been made, with confirmation awaiting. Chuck Larson Sr. was named U.S. Attorney for the Northern District, Steve Colloton was named U.S. Attorney for the Southern District, James Gritzner, of West Des Moines, has been named to a district judge post and District Judge Michael Melloy, of Cedar Rapids, has been appointed to the Eightth Circuit Court of Appeals.

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Please see attached review

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Media Review - Judicial Nominations
Thursday, October 4, 2001

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General Judicial Articles

Lott's Push for Judges Imperils Partisan Truce

By Paul Kane
Roll Call
Thursday, October 4, 2001

Revisiting a pre-Sept. 11 strategy, Senate Republicans plan to block and delay the appropriations process until they get solid guarantees that the Democratic majority will begin to confirm more judicial nominees.

Senate GOP leaders acknowledge this tactic may slow the appropriations process during a period of otherwise unprecedented bipartisanship, but contend that they have no other means of forcing Democrats to confirm more Bush administration judicial nominees. The move appears to have at least the tacit blessing of the White House.

"If they don't approve a significant number of them, it's going to be hard to get those appropriations bills moving," said Senate Minority Leader Trent Lott (R-Miss.). "I'm going to assume that they are going to move them, so we won't have to resort to any extraordinary measures. If they don't, we will have to." Democrats contend Lott's approach is unreasonable, considering that Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) has focused almost entirely on anti-terrorism legislation since terrorists crashed airplanes into the World Trade Center and the Pentagon.

REV_00132835

"We're doing the best we can on nominations," said Majority Whip Harry Reid (D-Nev.). "It's not as if Senator Leahy hasn't been busy."

Reid, who has been a key player in negotiating with Republicans on nominations, said Senate Democrats have gone out of their way to quickly approve "scores" of President Bush's nominees to key security-related posts since the attacks.

Noting that Leahy was holding a hearing today on five more judicial nominees, aides to the Judiciary chairman and Senate Majority Leader Thomas Daschle (D-S.D.) said the process is clearly moving forward again.

Any delays in approving the 13 appropriations bills would only hinder Congress' ability to meet the Oct. 16 deadline for the expiration of the current continuing resolution funding the federal government and jeopardize the goal for a late October adjournment, Daschle warned Wednesday. "We have 13 bills to go and 13 days to do them."

Republicans claim that while Democrats have helped move many key agency nominees in the weeks since the attacks, they have been slow to act on individuals nominated to the bench. Moreover, in the wake of the attacks and the new anti-terrorism laws likely to be passed in the coming weeks, Senate Republicans believe they have gained political leverage in forcing Democrats to quickly move more judges.

With 107 vacancies on the federal bench, Lott and Republicans are confident they can make the argument that new investigative powers to intercede against potential terrorists will be weakened because there won't be enough federal judges to approve warrants to execute searches.

"If we don't have the third branch of government staffed, we're all in trouble," said Sen. Orrin Hatch (R-Utah), ranking member of Judiciary.

In the weeks after Democrats assumed the majority in the summer, Republicans employed a similar strategy of blocking Daschle and Reid's attempts to move to appropriations until they allowed votes on agency nominations, a strategy GOP aides believe resulted in the confirmation of dozens of agency appointees.

Shortly after Labor Day, Republicans signaled they were ready to adopt the same tactic in an effort to secure more confirmations of judicial nominees, who they felt were being stonewalled in Judiciary because of their conservative leanings.

However, Sept. 11 ushered in what some consider a remarkable run of comity that has helped pave the way for almost unanimous passage of several bills aimed at dealing with the crisis.

This week, though, Lott decided to return to the confrontational approach to nominees, and a Bush official said the White House "appreciates" the strategy. Bush, however, is not expected to have a high profile on the issue.

REV_00132836

Aides and Senators say the decision to go forward with the strategy rests almost entirely with Lott, who is not expected to rely on deputies such as Sen. Larry Craig (R-Idaho) and Sen. Jon Kyl (R-Ariz.) to make the objections to Daschle's attempts to bring up appropriations.

Asked where the decisions were coming from, Craig said, "From the top - above my pay grade."

Some Republicans have their doubts about the strategy.

Sen. Ted Stevens (R-Alaska), ranking member on Appropriations, said he agreed with GOP leaders that there has been a "severe delay" in getting judicial nominations approved, but questioned the amount of political pressure that could be applied to Judiciary members, whose interests aren't necessarily the same as those of appropriators.

"I don't think there is any leverage. They're not interested in appropriations," Stevens said. "I don't agree with [the strategy], but it's going to happen."

Another GOP leadership aide predicted the new offensive "may not prove as fruitful as they would like" and suggested that the issue would end up being settled through a private, diplomatic set of negotiations between Reid and one of Lott's deputies.

Democrats say a more partisan approach to the issue isn't likely to succeed. The Senate has already confirmed three circuit court judges, as many as then-President Clinton had on the bench in his first year, and Democrats expect to approve a few more circuit-level judges before adjournment. In his first year in office, in 1989, President George H.W. Bush had five circuit court judges approved.

Leahy has taken an almost personal offense to Republicans who have questioned his pace in confirming judges. He wasn't able to hold any judicial nomination hearings until early July, after the GOP had put up a four-week fight over the reorganization of committees when Democrats claimed the majority in early June.

The Vermont Democrat then held hearings and allowed for the confirmation of FBI Director Robert Mueller within weeks of his nomination, and also allowed for speedy confirmations of the new directors of the Immigration and Naturalization Service and the U.S. Marshals Service, as well as 12 U.S. attorneys.

Within days of a personal request from Lott, Leahy held a hearing for a Mississippi nominee to the district court. And in a recent floor speech, Leahy said in the past three weeks, he has given "virtually undivided attention" to the anti-terrorism package.

"It's been anything but a typical year, but despite that, the committee's been handling nominees a lot faster than Republicans ever did with Democratic nominees," said David Carle, Leahy's spokesman.

REV_00132837

One senior GOP leadership aide said Republicans would be content if the chairman simply offered a guarantee to start holding more hearings, possibly doubling up on the number of circuit court nominees at each hearing or holding more hearings each week.

Of the 49 pending nominees, GOP aides said 28 have received their ratings from the American Bar Association, with half of those earning what legal experts call the "gold standard" - meaning a majority of the ABA board rated the candidate as "well qualified."

GOP aides say they hope to make Democrats appear to be the ones playing petty politics over judgeships.

"We have some critical needs that have to be filled," said the administration official. "I don't think it's dangerous partisanship to say we want judges to be given fair consideration."

Grassley: Suspect Underscores Need for Confirmation

The Associated Press
Tuesday, October 2, 2001

The arrest of a man in Cedar Rapids in connection with a federal terrorism investigation underscores the need for Senate confirmation of key law enforcement and judicial appointment, U.S. Sen. Charles Grassley said Tuesday.

"As we work to fight terrorism, it is imperative that key federal law enforcement and judicial vacancies are filled so that the U.S. Attorneys offices and federal courts can function at full capacity," Grassley said. Grassley released a letter he sent Senate Judiciary Committee Chairman Patrick Leahy urging quick action on appointments. He argued that 35 U.S. Attorneys and 51 federal judges await confirmation.

In Iowa, there are four appointments which have been made, with confirmation awaiting. Chuck Larson Sr. was named U.S. Attorney for the Northern District, Steve Colloton was named U.S. Attorney for the Southern District, James Gritzner, of West Des Moines, has been named to a district judge post and District Judge Michael Melloy, of Cedar Rapids, has been appointed to the Eightth Circuit Court of Appeals.

REV_00132838

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To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/4/2001 3:31:00 PM
Subject: : RE: OLC: Possible Unconstitutionality of Airline Board

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i am on with him now
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Let me look at these. DOn't send them any talkers until we approve here.

Heather Wingate
10/05/2001 09:39:43 AM
Record Type: Record

To: James R. Wilkinson/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: talking points on anti-terrorism

Jim, we will need to provide formal talking points to the Senate first thing Monday, if not today, because this bill will be on the floor either Wed or Thurs. For purposes of this weekend, I can just provide raw talking points to Sen. Judiciary Committee Republicans so that they can all sing off the same page back home this weekend w/their state press

James R. Wilkinson
10/05/2001 09:36:58 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Heather Wingate/WHO/EOP@EOP
bcc:
Subject: Re: talking points on anti-terrorism

Let me take a look.

Brett M. Kavanaugh
10/04/2001 08:54:24 PM
Record Type: Record

To: James R. Wilkinson/WHO/EOP@EOP
cc:

Subject: talking points on anti-terrorism

Heather Wingate asked if you could edit and convert these into nice White House format and e-mail them to her and to Makan_Delrahim@judiciary.senate.gov. She left it to you whether to send them out broadly or just to give to her and Makan so that they can distribute to certain key members on the Hill. (I would probably just send to her and Makan. If you send to everyone, however, can you run them by me first just to spot-check any word changes.) Thanks a lot.

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Administration's Anti-Terrorism Proposals

The Administration's proposed legislation represents a measured, careful, responsible, and constitutional approach to the threat of terrorist activities conducted in the United States and directed against United States citizens. The proposed legislation seeks to enhance the government's ability both (i) to detect and prevent terrorist acts; and (ii) for those terrorists who are brought to justice through a criminal process rather than a military process, to severely punish terrorists and those who support and harbor them.

- The Administration's primary legislative proposals seek to achieve four main goals:

  - ***First***, the legislation would ensure that information that is important to both intelligence and criminal investigations can be easily shared so that vital information is available to all relevant federal agencies. The legislation will begin to break down the walls between law enforcement and intelligence agencies and thereby help both to prevent terrorist acts before they happen and to severely punish terrorists and those who harbor and support terrorists.

  - ***Second***, the legislation would update laws authorizing government surveillance. These laws were enacted decades ago by Congress in an era of rotary telephones. These laws must be updated to account for e-mail, Internet usage, cellular phones, and other forms of modern communication.

    - The government is currently fighting a modern war -- a war that threatens our people and our way of life -- with antique weapons. Terrorists are taking advantage by using the Internet, e-mail, and multiple cellular telephones to escape and evade detection by United States agents.

    - The proposed legislation does *not* purport to change the legal standards that govern when and under what circumstances the government can seek such information. Rather, the proposed legislation merely seeks to ensure that the same legal standards that govern wiretaps on telephones, for example, also apply to modern forms of communication such as e-mail.

    - Consistent with the Constitution, the Administration believes that the law of search and surveillance should be technology neutral. The government's ability to detect and prevent crime should not depend on the technology used by the suspect. To do otherwise is a prescription for failure.

  - ***Third***, the legislation would ensure that certain categories of federal search warrants and surveillance orders are valid throughout the United States so that federal prosecutors and federal agents need not pointlessly seek re-authorization in multiple districts throughout the country. Eliminating these kinds of administrative burdens, which serve no discernible purpose, will allow federal

agents to respond rapidly in fast-moving intelligence and criminal investigations so that agents can track and follow potential terrorists.

- ***Fourth***, the legislation would establish tough new penalties and sanctions on terrorists and those who harbor and support terrorists. In many instances, these changes would simply ensure that terrorism offenses are subject to the same kinds of penalties as other serious criminal offenses, such as drug trafficking.

    - For example, the proposed legislation would:
        - impose new penalties for possession of biological weapons;
        - enhance the government's ability to seize assets of terrorists;
        - assist the government's ability to exclude and remove from the United States both terrorists and those who support and harbor terrorists;
        - extend the statute of limitations on terrorist crimes; and
        - ensure lengthy sentences for terrorist crimes, including on those who harbor and support terrorists.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
BCC: helgi (helgi [UNKNOWN])
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Judge: In my joking today about the "drafting oversight" Helgi raised re the airline bill, I said something like "hey, that's Joel's part." That actually is NOT true, but is a joke he and I have with each other when the many criticisms of this Act are launched. I fear, however, I may have left you with the erroneous impression that he actually was involved in/responsible for drafting/negotiating that section of the bill when in fact he was not. Out of an abundance of caution, this e-mail . . .

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
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CQ MONITOR NEWS

PARTISAN SPARRING OVER JUDICIAL NOMINEES RESUMES

By Emily Pierce and Jennifer A. Dlouhy, CQ Staff Writer
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Oct. 4, 2001 - Amid fraying tempers, Senate leaders were working Thursday to resolve an impasse between Democrats and Republicans over judicial nominations and the floor schedule for the next few weeks.

A truce was called on nominations shortly after the Sept. 11 terrorist attacks, but now Senate Republicans have resumed their tactic of blocking appropriations bills in an effort to win floor consideration of President Bush's judicial nominees.

When Majority Whip Harry Reid, Nev., tried to call up the foreign operations (HR 2506) and agriculture (HR 2330) spending bills Thursday morning, Republicans objected and argued that not enough progress has been made on 49 judicial nominations sent up by Bush.

Majority Leader Tom Daschle, S.D., chided Republicans for what he called "a pattern developing" of "obstructionism." He cited the delay in passage of the defense authorization bill (S 1438) that arose when James M. Inhofe, R-Okla., tried to force Daschle to schedule an energy policy debate, as well as GOP objections to proceeding to the aviation security bill (S 1447) on Wednesday and to the foreign operations spending measure Thursday.

"Three filibusters, three critical bills, (is) obstruction in, I believe, the most harmful way as we try to address this emergency agenda," Daschle said.

Republicans responded angrily. "I'm saying to Tom at this time, shame on you, Tom Daschle," said GOP Policy Committee Chairman Larry E. Craig, R-Idaho.

Mitch McConnell, R-Ky., said the backlog of judges is significant nationwide, and has thrown some districts into "emergency" status. "It's been painfully slow," he said.

Reid and Minority Whip Don Nickles, Okla., were working to devise a schedule for committee consideration of several judicial nominees, but no deal was reached on scope or timing.

Judiciary Committee ranking Republican Orrin G. Hatch, Utah, said only six judges have been confirmed since Democrats took over the Senate in June. "I know there's a lot of irritation. ... If we don't do something about judges, we're really putting this country at jeopardy."

The committee approved two judges Thursday morning in a hearing off the Senate floor -- Barrington Parker Jr. to be U.S. Circuit Court Judge for the Second Circuit, and Michael P. Mills to be District Court Judge for the Northern District of Mississippi. The panel also held a sparsely attended hearing on five other judicial nominees Thursday afternoon.

At the hearing, Chairman Patrick J. Leahy, D-Vt., observed that a Republican objection held up action on Edith Brown Clement from Louisiana, nominated to be Circuit Judge for the Fifth Circuit. She was one of the first nominees sent to the committee.

"We have already confirmed since July as many Court of Appeals nominees as were reported during the first year of the Clinton Administration, and we have reported as many such nominees as were reported by this committee all last year," Leahy said in a statement.

By the end of his first year in office, Clinton had won confirmation of 27 judges. Bush's father, President George Bush, had won 15 (out of the 19 nominated). Former GOP President Ronald

Reagan had won 41.

But Senate Democrats note that they have had control of the chamber for only four months and are acting as rapidly as possible to confirm judges and other nominees.

"I think it's unfortunate any bill is held up," Leahy said. "I'm not going to go any faster or any slower on judges" because of such actions.

Leahy also suggested that Republicans weren't as concerned about judgeships as they appeared. "I suspect that judges don't have anything to do with it. I suspect they just don't want to go to appropriations bills," he said.

Indeed, some Republican staffers acknowledged that their party was not quite ready to go forward on spending bills. "Nobody's really in an appropriations state of mind," said one GOP aide.

Source: CQ Monitor News
Round-the-clock coverage of news from Capitol Hill.
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From: CN=Jeffrey R. Brown/OU=CEA/O=EOP [CEA]
To: Sheila.Bair@do.treas.gov [UNKNOWN] <Sheila.Bair@do.treas.gov>
CC: marcus_sumerlin@opd.eop.gov [UNKNOWN] <marcus_sumerlin@opd.eop.gov>;peter.fisher@do.treas.gov [UNKNOWN] <peter.fisher@do.treas.gov>;k. philippa malmgren/opd/eop@eop [OPD] <k. philippa malmgren>;augustine t. smythe/omb/eop@eop [OMB] <augustine t. smythe>;kathleen.cooper@esa.doc.gov [UNKNOWN] <kathleen.cooper@esa.doc.gov>;michael.jackson@ost.dot.gov [UNKNOWN] <michael.jackson@ost.dot.gov>;kirk.vantine@ost.dot.gov [UNKNOWN] <kirk.vantine@ost.dot.gov>;charles d. mcgrath jr/ovp/eop@eop [OVP] <charles d. mcgrath jr>;john w. howard/who/eop@eop [WHO] <john w. howard>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;randall s. kroszner/cea/eop@eop [CEA] <randall s. kroszner>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;jay p. lefkowitz/omb/eop@eop [OMB] <jay p. lefkowitz>
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###### End Original ARMS Header ######

CEA has a different view on pricing than is inherent in the Treasury memo
just sent. We attach the following for your consideration at today's
meeting.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_P6024004_OPD.TXT_1>
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Pricing the Federal Excess Loss Coverage

The federal government should charge the insurance industry a "fair market price" for excess loss coverage. The price would be determined by the Secretary of the Treasury.

Rationale:

1. The purpose of pricing insurance is to provide proper incentives for loss mitigation activity. The magnitude of losses from terrorist activity is not fixed, but depend on the level of *ex ante* mitigation activity. Because individual economic actors can affect the loss distribution, it is important that they internalize the cost of their decisions. Charging them a fair price provides the right incentives. In the case of terrorism, mitigation activities could include such decisions as:
    - Investing in new security procedures
    - Investing in better data back-up systems to reduce business interruption
    - Reducing the spatial concentration of firm business activity
    - Locating future firm operations in areas that are less prone to terrorist attack
    - Focusing new construction on buildings that are less likely to be terrorist targets (e.g., smaller buildings)

2. These prices should be set *ex ante* rather than *ex post* for two reasons:
    - This is there is a credibility problem with *ex post* pricing. Actors will rationally expect that the government may not actually levy the charges after an incident. In other words, *ex post* pricing will is highly likely to reduce to "free coverage."
    - Even if the government could credibly commit to *ex post* pricing, it still would not get the incentives exactly right. The reason is that due to entry and exit from affected industries, the actors that would be levied *ex post* will not necessarily be the same actors who took the risks *ex ante*. For example, some firms could take a high level of risk, and then simply declare bankruptcy and default *ex post*.

How would the Treasury determine prices?

From the perspective of providing proper incentives, charging even an arbitrary cost-based price would be an improvement over a zero price, but using market signals would be even better. Obtaining market prices is a challenge because the reason for government intervention in the first place is that the private market does not have the capacity to absorb extremely large losses.

There are many potential mechanisms for determining the right price to charge, including:

1. Hiring a private sector actuarial firm to determine the actuarial fair price, and then adjusting this price to reflect standard underwriting costs for catastrophe insurance. (There is much data in the private market for catastrophe insurance with which to determine the adjustment factor.)
2. The government could offer to sell a small "slice" (e.g., 1-2%) of the excess loss to the private market. Example: The government then offers to the private market a

securitized package along the lines of "1% of losses between $50 billion and $100 billion." Thus, the maximum exposure to the purchaser of this contract is $0.5 billion, and in expectation is much less. Such a package could be sold directly to a private actor (e.g., Berkshire Hathaway) and use that price as a basis for setting premiums.

3. The government could directly securitize a portion of the excess loss coverage through the use of Treasury-issued "cat bonds" or "cat call options." For example, the government could sell catastrophic option contracts that pay out when aggregate insured losses exceeding a certain amount. One type of contract is the Catastrophic Options contract that trades on the Chicago Board of Trade. The model for these types of contracts is already in place and could be quickly implemented.

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>
Sent: 10/5/2001 9:49:26 AM
Subject: : Re: World Against Terrorism Foundation

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-OCT-2001 13:49:26.00
SUBJECT:: Re: World Against Terrorism Foundation
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:john b. bellinger (CN=john b. bellinger/OU=nsc/O=eop@eop [NSC])
READ:UNKNOWN
End Original ARMS Header

I agree: The Administration should have nothing to do with it.

Robert W. Cobb
10/05/2001 01:44:43 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
bcc:
Subject: Re: World Against Terrorism Foundation

A group is contemplating putting together (and seeking Government endorsement) of a foundation establishing a bounty on terrorists:

the purpose of this Foundation will be to accept contributions from individuals and entities worldwide to assist governments and law enforcement agencies to fight terrorism by developing financial resources capable of
providing effective reward incentives for the capture of terrorists worldwide or for providing information leading directly to their capture.

This idea seems like a real loser to me. It may be that it could be done, but from a policy/legal policy standpoint, I would recommend keeping the administration away from it . Any thoughts?

Noel J. Francisco
10/05/2001 12:01:05 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP

cc: robert w. cobb/who/eop@eop
bcc:
Subject: Re: World Against Terrorism Foundation

Any meeting should include DPC as well as a representative from our office. I'll leave it to DPC to determine if this is good policy, and Moose to determine if it violates any ethics rules.

Jason B. Torchinsky
10/05/2001 11:49:02 AM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
cc: Dee Dee Benkie/WHO/EOP@EOP
Subject: World Against Terrorism Foundation

Any thoughts for Chris?
---------- Forwarded by Jason B. Torchinsky/WHO/EOP on 10/05/2001 11:48 AM ----------

Dee Dee Benkie
10/05/2001 11:45:31 AM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP
cc:
Subject: World Against Terrorism Foundation

who would take a look at this?
---------- Forwarded by Dee Dee Benkie/WHO/EOP on 10/05/2001 11:43 AM ----------

Chris Henick
10/05/2001 10:38:11 AM
Record Type: Record

To: Dee Dee Benkie/WHO/EOP@EOP
cc:
Subject: World Against Terrorism Foundation

---------- Forwarded by Chris Henick/WHO/EOP on 10/05/2001 10:38 AM ----------

Eric Tanenblatt <etanenblatt@lanlaw.com>
10/02/2001 04:08:50 PM
Record Type: Record

To: Chris Henick/WHO/EOP@EOP
cc:
Subject: World Against Terrorism Foundation

Chris:

Below is an email sent to me by Steve Leeds, an Atlanta attorney and close advisor to Senator Max Cleland. He is requesting a meeting to discuss with appropriate Administration officials.

Eric

We represent a group of Georgia businessmen in the formation of a tax-free foundation named The WAT Foundation. WAT stands for World Against Terrorism and the purpose of this Foundation will be to accept contributions from individuals and entities worldwide to assist governments and law enforcement agencies to fight terrorism by developing financial resources capable of providing effective reward incentives for the capture of terrorists worldwide or for providing information leading directly to their capture.

It is anticipated that the Foundation will raise hundreds of millions of dollars and that a significant portion of this "reward" money will come from average citizens who feel helpless in this "new type of war" but who otherwise want to "bear arms" in this fight.

While the local group will manage the day to day affairs of the Foundation, Bank of America will handle the banking and lockbox arrangement for the deposit and distribution of funds and Deloitte Touche will handle the accounting for the Foundation.

The organizers seek the approval and support of the Administration in this effort for 2 primary reasons. First, such is required for obtaining a 501(c)(3) designation as assisting the government in its efforts to eradicate terrorism. Secondly, given the efforts of the Administration, no action should be taken in conflict with the foreign policy of the United States in these efforts.

Once Administration support is received, an internationally recognized Board of Directors of approximately 8-10 will be solicited to set the parameters of the reward amounts and criteria in consultation with the Administration and Justice Department and such Board will have final say, again in consultation with the Executive branch, in approval of disbursement of the rewards. While no people have been approached, it is anticipated individuals of the stature of Presidents Carter and Bush and former Senators like Sam Nunn would be ideal.

We would appreciate and welcome an opportunity to meet with representatives of the Administration in Washington as soon as possible to initiate this endeavor and assist in expediting eradication of terrorism and achieving justice for the horrific acts of September 11.

Thank you
Steve Leeds

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/5/2001 11:50:10 AM
Subject: :

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CREATION DATE/TIME: 5-OCT-2001 15:50:10.00
SUBJECT::
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I like Tony Blair.
```

From: Dinh, Viet <Viet.Dinh@usdoj.gov>

To: Bryant, Dan <Dan.Bryant@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Karp, David J <David.J.Karp@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Lindemann, Michael <Michael.Lindemann@usdoj.gov>;Kris, David <David.Kris@usdoj.gov>;Madan, Rafael <Rafael.Madan@usdoj.gov>;'Fishman, George' <George.Fishman@mail.house.gov>;'cwolff@ovp.cop.gov' <cwolff@ovp.cop.gov>;'makan_delrahim@judiciary.senate.gov' <makan_delrahim@judiciary.senate.gov>;'Dudas, Jon' <jon.dudas@mail.house.gov>;'john_mashburn@lott.senate.gov' <john_mashburn@lott.senate.gov>;'sharon_soderstrom@lott.senate.gov' <sharon_soderstrom@lott.senate.gov>;'Peterlin, Margaret' <Margaret.Peterlin@mail.house.gov>;'Farry, Doug' <Doug.Farry@mail.house.gov>;'stuart_nash@judiciary.senate.gov' <stuart_nash@judiciary.senate.gov>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Elwood, John <John.Elwood@usdoj.gov>;Painter, Christopher <Christopher.Painter@usdoj.gov>;Geise, Jack <Jack.Geise@usdoj.gov>

Sent: 10/6/2001 1:27:12 PM

Subject: : Bills and Side by sides

Attachments: P_BQ924004_WHO.TXT_1.wpd; P_BQ924004_WHO.TXT_2.pdf; P_BQ924004_WHO.TXT_3.pdf; P_BQ924004_WHO.TXT_4.wpd

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)
CREATION DATE/TIME: 6-OCT-2001 17:27:12.00
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
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TO:"Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Elwood, John" <John.Elwood@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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All,

For your viewing pleasure, enclosed are current versions of the House and Senate Bills, a revised draft side-by-side analysis of the bills by DoJ, and a side-by-side analysis of the immigration provisions by George Fishman of House Judiciary. Please note that we have structured the DoJ

chart based on the numeration in the Senate version of the bill for convenience only; the structure reflects no prejudice or preference of the Administration for either bill. Have a good evening, and happy Columbus Day.

Viet Dinh

- revised house-senate side by side.wpd - JEN01_933.pdf - MDB_964.PDF - terrorismsidebyside2.wpd
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File attachment <P_BQ924004_WHO.TXT_1>

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BQ924004_WHO.TXT_4>

Senate and House Bill Comparison

Senate Bill Provision No.	Senate Bill Description	Corresponding House Bill No.	Differences from Senate Bill	Notes
2	Construction and severability clause	2	Same.	
101	Establishes a fund to reimburse DOJ components for costs incurred to rebuild facilities, investigate and prosecute terrorism, and to reimburse other Federal agencies for detaining individuals in foreign countries accused of terrorist acts.	None		
102	Sense of Congress condemning discrimination against Arab and Muslim Americans	None		
103	Authorizes $200M for FY 2002, 2003 and 2004 for the FBI Technical Support Center (established by AEDPA)	None		
104	Broadens Attorney General's authority to request the Secretary of Defense to support DOJ activities in emergency situations involving weapons of mass destruction	None		
105	Directs the Secret Service to develop a national network of electronic crime task forces modeled on the New York task force	None		
201	*Plain Language Description* Adds terrorism statutes as Title III predicate offenses, includes chemical weapons offenses under 18 U.S.C. 229. *Technical Language Description* Amends 18 U.S.C. 2516(1), which lists predicate offenses for electronic	N/A	No corresponding provision.	

REV_00132875

	surveillance orders under Title III, by adding 18 U.S.C. 229 (relating to chemical weapons) and 18 U.S.C. 2332, 2332a, 2332b, 2332d (relating to the use of weapons of mass destruction, acts of terrorism transcending national boundaries, and engaging in financial transactions with countries supporting international terrorism) and 18 U.S.C. 2339A or 2339B (providing material support or resources to terrorists or designated terrorist organizations).			
202	*Plain Language Description* Allows voice wiretaps in computer hacking investigations. *Technical Language Description* Adds Section 1030 to list of offenses in 18 USC 2516(1).	None.		
203(a)	Permits (without court order) sharing of grand jury information regarding foreign intelligence, counterintelligence, and foreign intelligence information with federal law-enforcement, intelligence, protective, immigration, national defense and national security personnel	353	Requires court order. Subject to sunset.	
203(b)	Sharing of wiretap information regarding foreign intelligence and counterintelligence (Under NSA) and foreign intelligence information (as defined) with federal law-enforcement, intelligence, protective, immigration, national defense and national security personnel	103	limited to "foreign intelligence information" under FISA	
203(c)	Requires AG to establish procedure for information sharing in 203(a) and (b)	N/A	No comparable provision	

REV_00132876

203(d)	Permits sharing of information regarding foreign intelligence, counterintelligence, and foreign intelligence information with federal law-enforcement, intelligence, protective, immigration, national defense and national security personnel notwithstanding other law	154	Essentially the same coverage; subject to sunset provision	
204	*Plain Language Description* Assures that foreign intelligence gathering authorities are not disrupted by changes to pen/trap statute *Technical*: amends 2511(2)(f) to exempt out chapter 121 (the pen/trap statute)	104	Same. House subject to sunset provision.	
205	Employment of translators by the FBI	None		
206	Allows court to authorize roving surveillance where court finds that the actions of the target may have effect of thwarting the identification of a target.	152	Same. Subject to sunset.	
207	Initial authorization for surveillance and search of officers/employees of foreign powers changed to 120 days; can be extended for one year period. All other searches authorized for 90 day period.	151	Surveillance and search of officers/ employees of foreign powers can be authorized for one year. All other searches authorized for 90 day period/ authorization. Subject to sunset.	
208	Increases the number of judges on the FISA Court to 11, no less than 3 of whom must live within 20 miles of Washington, D.C.	N/A	N/A	
209	*Plain Language Description* Allows acquisition of voice mail stored with a third party provider to be obtained with a search warrant, rather than a wiretap order. *Technical*: strikes stored voice from	102	Same. Subject to sunset	

REV_00132877

	definition of "wire communications" and expands provisions for stored electronic communications to include stored voice.			
210	*Plain Language Description* *S*peeds investigations by allowing investigators to obtain via subpoena a slightly broader class of records to identify computer criminals. *Technical*: broadens categories of information related to electronic communications obtainable under 2703(c)(1)(C).	107	Same, except for the way in which the subdivisions are labeled.	

REV_00132878

211	*Plain Language Description* Clarifies that statutes governing telephone and Internet communications (and not the burdensome provisions of the cable act) apply where cable companies are providing Internet or telephone service. *Technical*: creates an exception to 47 USC 551 (the "Cable Act") for voluntary or obligatory disclosure of communications and records of communications under the wiretap statute, the pen/trap statute, and ECPA.	109	*Plain Language Description* House bill attempts to achieve the same goal as Senate bill, but fails to clarify the law by introducing an ambiguous term. *Technical*: House bill (1) uses the undefined term "cable viewing activity," which could include viewing of web pages or viewing "streaming video" over the Internet; and (2) references "Section 631(a)" when correct citation is "Section 631".	
212	*Plain Language Description* (1) allows providers to disclose communications and records of communications to protect life and limb; and (2) clarifies that victims of computer hacking can disclose non-content records to protect their rights and property. *Technical*: (1) adds amendment to 2702(b)(6) for emergency disclosure; and (2) makes a structural changes to 2702 and 2703 to broaden providers' ability to disclose records to the government.	110	*Plain Language Description* Identical, except that it includes a change to 2703 to confirm that providers have civil immunity for such disclosures to the government. *Technical*:	
213	Amends 18 USC 3103a to permit delayed notice of search warrants; may seize property where is "reasonably necessary"	[No equivalent; corresponds to stricken section		

REV_00132879

		352 of Administration bill.]		
214	To get pen-trap must certify that information likely to be obtained is relevant to an ongoing investigation to protect against IT or clandestine intelligence activities, provided that such investigation of a US Person is not conducted upon the basis of constitutionally protected activities.	155	To get pen-trap must certify that the information likely to be obtained from the telephone line to which the pen-trap is attached is relevant to ongoing FI or IT investigation being conducted by FBI under AG Guidelines.	
215	Business records provision allows any designee of FBI director no lower than ASAC to apply to FISA court or a magistrate designated by Chief Justice for an ex parte order requiring production of any tangible things for an investigation to protect against IT or clandestine intel activities so long as the investigation is conducted under AG Guidelines under EO 12333 and for a US person that the investigation is not based on constitutionally protected behavior. Also requires semiannual reporting to Congress.	156	Same except that there is no reference to investigation based on constitutionally protected behavior or reporting requirement.	
216	*Plain Language Description* Amends the pen/trap statute to (1) clearly apply to the Internet; and (2) allow for a single order valid across the country. *Technical Language Description* Changes words like "device" to "device or process" and includes all "dialing, routing, addressing, and signaling information"; and (2) allows federal courts to issue orders valid throughout the country	101	*Plain*: The two provisions are almost the same, except with the phrasing of the content exclusion. *Technical*: The Senate bill makes even more explicit that pen/trap orders cannot collect content. The house bill has amends 3124, the provider assistance requirement.	
217	*Plain:* allows law enforcement to assist victims of crime in monitoring hackers	105	House bill contains an explicit immunity provision for providers.	

REV_00132880

	trespassing on their computers. *Technical*: amends the wiretap statute to allow persons acting under color of law to intercept "computer trespassers" with the consent of the computer owner.		Senate bill excludes from the definition of "computer trespasser" individuals who have "an existing contractual relationship" for access to all or part of the protected computer.	
218	AG must certify that "a significant purpose" of the surveillance or search is foreign intelligence.	153	Same. Subject to sunset.	
219	Allows search warrants in terrorism investigations to be obtained in any district "in which activities related to the terrorism may have occurred" and executable nationwide.	351	Same, except that search warrant has to be obtained in any district having "jurisdiction over the offense being investigated."	
220	*Plain*: allows investigators to get order in local court for communications stored by providers anywhere in the country (court must have jurisdiction over the offense). *Technical*: amends 2703(a) to give nation-wide effect to search warrants for stored electronic communications.	108	Same.	
222	*Plain*: Attempts to protect providers from having to develop or deploy new technology as a result of the Bill, and assure that they will be reasonably compensated. *Technical*: Adds free-standing provision to effectuate above intent. Compensation applies only to pen/trap amendments	160	House bill provision would apply to services. The Senate bill has a second sentence (redundant with current law) that assures providers reasonable compensation. *Technical*: The Senate bill does not include "services" in the first sentence, and the second sentence is not present in the House bill.	
Title III	Money Laundering and Financial Infrastructure	N/A	This title of the Senate Bill are the provisions passed out of the Senate Banking Committee, for which there are	

REV_00132881

			no corresponding provisions in the House bill.	
315	Adds foreign corruption offenses as specified unlawful activities for money laundering crimes.	No corresponding house provision	No corresponding house provision	
316	allows Government to use otherwise inadmissible evidence in contested forfeitures of assets of international terrorists if court determines that such use is needed to protect national security interests. Otherwise, standard 18 U.S.C. §983 civil forfeiture procedures apply.	no corresponding house provision	no corresponding house provision	
317	amends 18 U.S.C.§1956(b) to give district court "long-arm" jurisdiction over foreign bank that commits money laundering offense in the United States; authorizes restraint of assets found in U.S. to satisfy civil judgment.	no corresponding house provision	no corresponding house provision	
318	a technical amendment to make clear that the definition of "financial institution" in 18 U.S.C. §§ 1956 and 1957 includes foreign banks.	no corresponding house provision	no corresponding house provision	
319	provides for forfeiture of funds in United States interbank accounts	no corresponding house provision	no corresponding house provision	
320	amends 18 U.S.C. § 981(a)(1)(B) to allow the United States to institute its own civil forfeiture action against proceeds of foreign criminal offenses when such proceeds are found in the United States.	no corresponding house provision	no corresponding house provision	
321	provides for exclusion from the United States by consular officer or the Attorney General of aliens reasonably believed to be or to have been involved in activities that would constitute money laundering if done in the United States.	no corresponding house provision	no corresponding provision	
322	clarifies that 28 U.S.C. § 2466, [Senate bill has typo "18 U.S.C."] which bars a	no corresponding house provision	no corresponding provision	

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	fugitive from contesting forfeiture of the proceeds of crime, applies also to corporations that the fugitive controls.			
323	creates procedure in 28 U.S.C.§ 2467 for federal courts, which are authorized by that statute to enforce foreign judgments for forfeiture of criminal proceeds, to restrain property pending the proceeding, and expands such foreign forfeiture judgment enforcement authority beyond drug-related forfeitures to any foreign crimes for which forfeiture would be available if committed in the United States.	no corresponding house provision	no corresponding house provision	
333	provides penalty under Bank Secrecy Act for violations of 31 U.S.C. § 5326 (pertaining to Geographic Targeting orders)	no corresponding house provision	no corresponding house provision	
351	makes currency smuggling a criminal offense and codifies procedures set forth by the Supreme Court for determining whether forfeitures of the smuggled cash violates the Excessive Fines Clause.	no corresponding house provision	no corresponding house provision	
401	Northern Border	209	House: Authorizes "to be appropriated" necessary funds to triple Northern border Border Patrol and INS officials, and $50,000,000 for systems additions.	
402	Northern Border			
403	NCIC-III data sharing Amends INA § 105 to authorize FBI to share criminal record systems information with INS and State for visa application adjudication purposes, by "extracts" or more information if SecState provides alien's finger prints and other information to FBI. Pilot aspect in that AG is authorized to reconsider "extracts" provision.	206		
404	One-time expansion of INS authority to pay overtime	503	Same.	

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413	Multilateral cooperation against terrorists. Provision for SecState to provide visa and other record information to courts and 3d governments, in SecState's discretion.	205		
501	McDade modification: establishes choice-of-law defaults; eliminates requirement of being member of bar of particular state; permits counseling of undercover activities	N/A	No comparable provision	
502	Enhances the AG's authority to pay rewards *in connection with terrorism.*	502	Enhances AG's authority to pay rewards *under all circumstances.*	
503	Enhances Sec. State's authority to pay rewards in connection with terrorism.	504	Same as Senate, *but-- (1) no single reward may exceed $25M; & (2) sense of House that a $25M reward should be offered.*	
504	Expands DNA sample collection predicates for federal offenders to include all offenses in 2332b(g)(5)(B) list, all crimes of violence (as defined in 18 USC 16), and attempts and conspiracies to commit such crimes.	352	Adds as DNA sample collection predicates for federal offenders any "Federal terrorism offense" under section 309(a) definition.	
505	Allows "federal officers" who conduct electronic surveillance or physical search under FISA to consult with federal law enforcement officers to coordinate efforts	N/A		

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	to investigate or protect against actual or potential attack, grave hostile acts, sabotage, IT or clandestine intelligence activities by foreign power.			
506	Allows for issuance of NSLs for toll and transaction records, financial records and consumer reports by FBI HQ Deputy Assistant Director or higher or SAC.	157		
507	Extends certain jurisdiction of Secret Service (concurrently with FBI's).	None.		
508	Eliminates restrictions on obtaining educational records. Person not lower than Assistant AG can apply for an ex parte order to obtain educational records that are relevant to an authorized investigation or prosecution of a grave felony or an act of domestic or international terrorism after showing specific and articulable facts showing that the records are likely to contain information related to the offenses. AG required to issue guidelines to protect confidentiality of records retained, disseminated and used.	N/A		
509	Eliminates restrictions on production of information from National Center for Education Statistics and allows person not lower than Assistant AG to collect information provided that there are	N/A		

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	specific and articulable facts giving reason to believe the records are likely to contain information related to a grave felony or an act of domestic or international terrorism. AG required to issue guidelines to protect confidentiality of records retained, disseminated and used.			
611	Provides for expedited payment of PSOB benefits in connection with terrorism	None.		
612	Technical amendments to Pub. L. 107-37.	501(d)	Same as Senate provision.	
613	Raises base amount of PSOB benefits from $100K to $250K.	506	Same as Senate provision.	
614	Enhances authority of AAG/OJP to manage OJP	501(b)	Same as Senate provision.	
621	Makes changes in crime victims comp. program; one is: amounts received by the Crime Victims Fund from the Pres. $40B emergency fund are not subject to spending cap	501(a)	Amounts received by the Crime Victims Fund from the Pres. $40B emergency fund are not subject to spending cap	
622	Makes changes in the crime victims comp. program	None.		
623	Makes changes in the crime victims comp. program	None.		
624	Makes many minor changes in the crime victims comp. program; one expands use of its emergency reserve	501(c)	Expands use of the emergency reserve.	
801	Creates crime for terrorist attacks on mass transportation systems	N/A	No comparable provision	
802	Strengthens biological weapons offense. Adds new offense of possessing bio-agent or toxin of type or in quantity not reasonably justified for legitimate purpose. Adds criminal prohibition of convicted felons, etc., possessing listed bio-agents or toxins.	305	Similar to Senate provision, but appears to be earlier version. Tauzin proposal under consideration.	

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803, 809	(1) Amends list of terrorism crimes in 18 USC 2332b(g)(5)(B) – adds some but deletes or restricts others. (2) Makes conforming amendment to 2332b(f) to avoid reduction of A.G.'s primary investigative jurisdiction. (3) Adds definition of "domestic terrorism" to 18 USC 2331 and makes conforming change in existing definition of "international terrorism."	309	(1) Creates new 18 USC 25 defining "Federal terrorism offense," including terrorist motivation requirement in 25(1), and offense list in 25(2)-(5). (2) Substitutes "Federal terrorism offense" as defined in the new section 25 for the existing offense list in 18 USC 2332b(g)(5). (This affects the A.G.'s primary investigative jurisdiction under 2332b(f).) (3) Terrorism definitions differ – House definition of "domestic terrorism" includes apparent effect (not just intent).	
804	Creates new harboring offense where perpetrator knows or has reasonable grounds to believe that the person harbored has committed or is about to commit an offense in a short list of highly serious terrorism crimes. Includes venue provision.	307	Creates harboring offense where perpetrator knows that the person harbored has committed or is about to commit an offense in the 25(2) list of terrorism crimes. (The provisions says "section 25(2) or this title," which would cover all title 18 offenses; presumably this is a drafting error and the intended reference is just the 25(2) offenses.) Includes explicit extraterritoriality and venue provisions.	
805	Includes in special maritime and territorial jurisdiction offenses in U.S. foreign missions and related residences, committed by or against U.S. nationals. Excludes offenses by persons covered under 18 USC 3261(a) (which provides	355	Senate provision broader regarding coverage of buildings and lands associated with the missions.	

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	separate extraterritorial provision for persons accompanying the armed forces).			
806	In material support of terrorists offense: (1) deletes "within the U.S." restriction, (2) adds some additional predicate offenses, (3) adds venue for prosecution in district of underlying offense, (4) adds "monetary instruments" and "expert advice or assistance" as types of prohibited support. Also, adds material support of foreign terrorist organizations as money laundering predicate.	306, 402	Does not delete "within the U. S." restriction. Amends material support predicates to be "any Federal terrorism offense" (as defined in section 309(a)) and all terrorism crimes in 25(2) list. Same as Senate bill on venue, "monetary instruments," "expert advice or assistance," and money laundering predicates.	
806(a)(1)(A)	Strikes restriction of scope of the material support of terrorists offense to acts within the United States	354	General provision providing extraterritorial jurisdiction over any "Federal terrorism offense" (as defined in section 309(a)) or offense under the terrorism chapter of title 18.	
806(b) (and also sections 809 and 814)	Makes 18 U.S.C. § 2339B a specified unlawful activity for money laundering offenses. Section 806(b) does this the same way as section 401 of the House bill; however, section 806(b) is redundant in the Senate bill because 809 accomplishes the same result by adding 18 U.S.C. § 2339B to 18 U.S.C. §2332b(g)(5)(B) which section 814 incorporates into 18 U.S.C. § 1961(1), all	401	House bill specifically adds 18 U.S.C.§2339B (material support to foreign terrorist organizations) as a new specified unlawful activity (SUA) for money laundering offenses at 18 U.S.C. § 1956(c)(7)(D)	

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	of whose offenses are specified unlawful activities (SUAs) for money laundering under to 18 U.S.C. § 1956(c)(7)(A).			
807	Amends 18 U.S.C. §981(a)(1) to provide civil forfeiture of assets involved with terrorism.	403	Same	
808	Technical clarification avoiding conflict of Trade Sanctions Reform and Export Enhancement Act of 2000 with 18 U.S.C. §§ 2339A and 2339B.	404	Same	
810	No limitation period for prosecution of terrorism crimes involving occurrence or foreseeable risk of death or serious injury.	301	No limitation period for prosecution of any "Federal terrorism offense" (as defined in section 309(a)) or for any offense in a list of major terrorism crimes. 15 year limitation period for prosecution of offenses in a list of lesser terrorism crimes.	
811	Amends statutes defining various terrorism crimes to provide base maximum prison terms of at least 15 or 20 years, and up to life imprisonment were death results.	302	Authorizes imprisonment up to life for person convicted of any "Federal terrorism offense" (as defined in section 309(a)).	
812	Amends statutes defining various terrorism crimes to add conspiracy language and provide increased conspiracy penalties.	303	Enacts general attempt and conspiracy provisions applicable to "Federal terrorism offense[s]" and to offenses listed in new 18 USC 25(2). (See section 309(a) of bill.) For the covered offenses, this consistently equalizes attempt and conspiracy penalties to the penalties for the object offense.	
813	Authorizes postrelease supervision periods	308	Authorizes postrelease supervision	

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	of up to life for persons convicted of terrorism crimes involving occurrence or foreseeable risk of death or serious injury.		periods of up to life for persons convicted of any "Federal terrorism offense" (as defined in section 309(a)).	
814	Adds terrorism crimes as RICO predicates (through cross-reference to 2332b(g)(5)(B) list as amended by section 809).	304	Adds as RICO predicates any "Federal terrorism offense" (as defined in section 309(a)) and all terrorism crimes in an extensive list.	
815	*Plain*: Makes a number of amendments to the computer hacking law to fix problems encountered in its application and assure adequate penalties for cyber-terrorists. *Technical*: Numerous technical changes to 18 USC 1030; doubles penalty for damaging a protected computer. *Contains one technical error (page 225, lines 21-24).*	None		
901	Amends National Security Act of 1947 to give the DCI the responsibility of establishing requirements and priorities for foreign intelligence information under FISA and provide assistance to AG to ensure that information derived from electronic surveillance of physical searches under FISA is disseminated so it may be used efficiently and effectively for FI purposes. DCI shall have no authority to direct, manage, or undertake elec surv operations.	N/A		
902	Expands scope of definition of foreign	N/A		

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	intelligence to include international terrorist activities.			
904	Defers submission of semi-annual reports to 2/1/02.	N/A		
905	AG shall disclose to DCI pursuant to AG Guidelines FI acquired by an element of DOJ during a criminal investigation. Note this does not say that the AG has to provide FI obtained during intel investigation. AG can provide exceptions for classes of information to protect an ongoing investigation. AG must notify DCI within a reasonable period of time days of decision to commence or decline to commence criminal investigation of such activity.	N/A		
[No provision]	No corresponding provision.	111	Extends statutory exclusionary rule to permit suppression of electronic evidence.	
[No provision]	No corresponding provision	112	*Plain Language Description* Adds a reporting requirement to the stored wire and electronic communications	

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			provision at chapter 121 of Title 18, U.S.C. At 18 U.S.C. 2703(g), the courts [and agencies using administrative subpoena would have to report to the Administrative Office of the U.S. Courts (AOUSC), and then the AOUSC to Congress, concerning the applications for obtaining (mislabeled "disclosure") wire or electronic communications in storage or from a remote computing service, whether granted by the court or denied, along with certain numerical details. [The inclusion of wire communications in storage/remote computing service in 18 U.S.C. 2703(a) and (b) would be added elsewhere in the pending electronic surveillance amendments.] *Technical Language Description* Would amend 18 U.S.C. 2703 to append a new subsection (g) "Reports concerning the Disclosure [sic] of the Contents of Electronic Communications" that would require judges or other authorities to report to the AOUSC by January 31 of each year concerning proceedings under 2703(a) and (b) regarding the obtaining of stored wire or electronic communications during the preceding calendar year. The entities reporting to the AOUSC must provide: the fact and type of order, warrant, or subpoena applied for [or if an administrative subpoena was utilized]; whether the application was granted, modified, or denied; the offenses specified; the agency making the application [or utilizing an administrative subpoena]; "the nature of the facilities from which or the place where the contents of electronic communications were to be disclosed"; and a general description of the communications	

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			obtained, including the approximate number (and the number of incriminating ones) and the approximate number of persons whose communications were obtained. By June of each year starting in 2003 [year not listed as to the judges' reporting requirement], the AOUSC	
N/A		161(d) (1)	Liquidated damages for civil actions increased to $10,000; new 2 year statute of limitation. If a court finds there are questions as to whether or not an employee "willfully or intentionally violated" FISA, employee must be referred to administrative proceeding. If the administrative board clears the employee, conclusions and support must be sent to Deputy I.G. for Civil Rights	

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N/A		161(d)(3)	Amends section on pen-traps to provide for fine and/or prison if individual intentionally instals/uses pen-trap under color of law except as authorized by statute or discloses or uses information obtained under color of law by using pen-trap while knowing or having reason to believe that the information was obtained using pen-trap device not authorized by statute. Also extends civil liability provision to pen-traps.	
[No provision]	No corresponding provision	162	*Plain:* all of the electronic surveillance improvements (except sec. 109) would sunset in 2003.	

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[No provision]	No corresponding provision	160	*Plain Language Description* All of the electronic surveillance improvements (except sec. 109) would sunset in 2003.	
[No provision]	No corresponding provision.	204	Amends existing INA § 208 political asylum bars relative to terrorist aliens to make clear that alien need not be charged with and found removable on a terrorism charge under § 212(a)(3(B) and § 237(a)(4)(B) for the bar to apply. Existing language in § 208(b)(2), "inadmissable under" and "removable under," would read "described in." House 204(b) would make this provision retroactive to all aliens and cases in which no final order has issued.	

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[No provision]	No corresponding provision	207	Adds new money laundering provision to INA, new § 212(a)(2)(I), with respect to "any alien who a consular officer or the Attorney General knows or has reason to believe has engaged, is engaging, or seeks to enter" the U.S. to in conduct in violation of 18 U.S.C. § 1956, or any alien who a consular officer or the AG "knows is, or has been, a knowing aider, abettor, assister, conspirator, or colludes with others" in a § 1956 offense. Also requires SecState to establish within 90 days post enactment, an international "money laundering watch list, which identifies individuals worldwide who are known or suspected of money laundering" for visa adjudication purposes. Requires "list" updates by SecState, with AG, SecTreasury, and CIA cooperation.	
[No provision]	No corresponding provision	208	Amends IIRIRA with respect to foreign students to require foreign students from state sponsors of terrorism to pay higher fees.	

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[No provision]	No corresponding provision	209	Authorizes "to be appropriated" necessary funds to triple Northern border Border Patrol and INS officials, and $50,000,000 for systems additions.	
[No provision]	No corresponding provision	Title II, Subtitle B	Entitled "Preservation of Immigration Benefits for Victims of Terrorism," this title contains numerous provisions, some of them complex, to preserve the ability of aliens affected by the WTCP to preserve existing status and applications that may lapse.	
[No provision]	No corresponding provision	310	Increases minimum liquidated damages in suits alleging violations of the "stored communications" chapter from $1000 to $10,000.	

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N/A	No comparable provision	355	Provides blanket extraterritorial jurisdiction over "any Federal terrorism offense," requiring showing of Terrorism mens rea	
N/A	No comparable provision in antiterrorism bill; provision similiar to House 405 is being considered for inclusion in Senate's Victim Tax Relief Act, which is on a fast track	405	Provides for disclosure of tax information that may be related to "terrorist incident, threat, or activity." Provision is far more restrictive than old Administration Section 405–for example, would prohibit Secretary from disclosing if doing so would compromise a confidential informant or any civil or criminal tax investigation, regardless of importance of terrorist threat; 2-year Sunset	
N/A	No comparable provision	406	Provides extraterritorial jurisdiction for narrow category of credit-card fraud offenses under 18 USC 1029; provision deleted from Senate because it was unnecessary and may suggest lack of extra-territorial application in other fraud statutes	
N/A		702	Appoints Deputy Inspector General for Civil Rights, Civil Liberties, and the FBI, who will review info alleging violations of civil rights, civil liberties, and racial profiling by DOJ employees.	

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107TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. DASCHLE (for himself, Mr. LOTT, Mr. LEAHY, Mr. HATCH, Mr. GRAHAM, Mr. SHELBY, and Mr. SARBANES) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Uniting and Strengthening America Act" or the "USA Act of 2001".

(b) TABLE OF CONTENTS.— The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Construction; severability.

TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

Sec. 101. Counterterrorism fund.
Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans.
Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation.
Sec. 104. Requests for military assistance to enforce prohibition in certain emergencies.
Sec. 105. Expansion of national electronic crime task force initiative.
Sec. 106. Presidential authority.

TITLE II—ENHANCED SURVEILLANCE PROCEDURES

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.
Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.
Sec. 203. Authority to share criminal investigative information.
Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.
Sec. 205. Employment of translators by the Federal Bureau of Investigation.
Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.
Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.
Sec. 208. Designation of judges.
Sec. 209. Seizure of voice-mail messages pursuant to warrants.
Sec. 210. Scope of subpoenas for records of electronic communications.
Sec. 211. Clarification of scope.
Sec. 212. Emergency disclosure of electronic communications to protect life and limb.
Sec. 213. Authority for delaying notice of the execution of a warrant.
Sec. 214. Pen register and trap and trace authority under FISA.
Sec. 215. Access to records and other items under the Foreign Intelligence Surveillance Act.
Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.
Sec. 217. Interception of computer trespasser communications.
Sec. 218. Foreign intelligence information.
Sec. 219. Single-jurisdiction search warrants for terrorism.
Sec. 220. Nationwide service of search warrants for electronic evidence.
Sec. 221. Trade sanctions.
Sec. 222. Assistance to law enforcement agencies.

TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI-TERRORIST FINANCING ACT OF 2001

Sec. 301. Short title.
Sec. 302. Findings and purposes.
Sec. 303. 4-Year congressional review-expedited consideration.

SUBTITLE A—INTERNATIONAL COUNTER MONEY LAUNDERING AND RELATED MEASURES

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Sec. 311. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.
Sec. 312. Special due diligence for correspondent accounts and private banking accounts.
Sec. 313. Prohibition on United States correspondent accounts with foreign shell banks.
Sec. 314. Cooperative efforts to deter money laundering.
Sec. 315. Inclusion of foreign corruption offenses as money laundering crimes.
Sec. 316. Anti-terrorist forfeiture protection.
Sec. 317. Long-arm jurisdiction over foreign money launderers.
Sec. 318. Laundering money through a foreign bank.
Sec. 319. Forfeiture of funds in United States interbank accounts.
Sec. 320. Proceeds of foreign crimes.
Sec. 321. Exclusion of aliens involved in money laundering.
Sec. 322. Corporation represented by a fugitive.
Sec. 323. Enforcement of foreign judgments.
Sec. 324. Increase in civil and criminal penalties for money laundering.
Sec. 325. Report and recommendation.
Sec. 326. Report on effectiveness.
Sec. 327. Concentration accounts at financial institutions.

SUBTITLE B—CURRENCY TRANSACTION REPORTING AMENDMENTS AND RELATED IMPROVEMENTS

Sec. 331. Amendments relating to reporting of suspicious activities.
Sec. 332. Anti-money laundering programs.
Sec. 333. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders.
Sec. 334. Anti-money laundering strategy.
Sec. 335. Authorization to include suspicions of illegal activity in written employment references.
Sec. 336. Bank Secrecy Act advisory group.
Sec. 337. Agency reports on reconciling penalty amounts.
Sec. 338. Reporting of suspicious activities by securities brokers and dealers.
Sec. 339. Special report on administration of Bank Secrecy provisions.
Sec. 340. Bank Secrecy provisions and anti-terrorist activities of United States intelligence agencies.
Sec. 341. Reporting of suspicious activities by hawala and other underground banking systems.
Sec. 342. Use of Authority of the United States Executive Directors.

SUBTITLE D—CURRENCY CRIMES

Sec. 351. Bulk cash smuggling.

SUBTITLE E—ANTICORRUPTION MEASURES

Sec. 361. Corruption of foreign governments and ruling elites.
Sec. 362. Support for the financial action task force on money laundering.
Sec. 363. Terrorist funding through money laundering.

TITLE IV—PROTECTING THE BORDER

Subtitle A—Protecting the Northern Border

Sec. 401. Ensuring adequate personnel on the northern border.

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Sec. 402. Northern border personnel.
Sec. 403. Access by the Department of State and the INS to certain identifying information in the criminal history records of visa applicants and applicants for admission to the United States.
Sec. 404. Limited authority to pay overtime.
Sec. 405. Report on the integrated automated fingerprint identification system for points of entry and overseas consular posts.

Subtitle B—Enhanced Immigration Provisions

Sec. 411. Definitions relating to terrorism.
Sec. 412. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
Sec. 413. Multilateral cooperation against terrorists.

TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

Sec. 501. Professional Standards for Government Attorneys Act of 2001.
Sec. 502. Attorney General's authority to pay rewards to combat terrorism.
Sec. 503. Secretary of State's authority to pay rewards.
Sec. 504. DNA identification of terrorists and other violent offenders.
Sec. 505. Coordination with law enforcement.
Sec. 506. Miscellaneous national security authorities.
Sec. 507. Extension of Secret Service jurisdiction.
Sec. 508. Disclosure of educational records.
Sec. 509. Disclosure of information from NCES surveys.

TITLE VI—PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS, AND THEIR FAMILIES

Subtitle A—Aid to Families of Public Safety Officers

Sec. 611. Expedited payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to a terrorist attack.
Sec. 612. Technical correction with respect to expedited payments for heroic public safety officers.
Sec. 613. Public Safety Officers Benefit Program payment increase.
Sec. 614. Office of justice programs.

Subtitle B—Amendments to the Victims of Crime Act of 1984

Sec. 621. Crime Victims Fund.
Sec. 622. Crime victim compensation.
Sec. 623. Crime victim assistance.
Sec. 624. Victims of terrorism.

TITLE VII—INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE PROTECTION

Sec. 711. Expansion of regional information sharing system to facilitate Federal-State-local law enforcement response related to terrorist attacks.

TITLE VIII—STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

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Sec. 801. Terrorist attacks and other acts of violence against mass transportation systems.
Sec. 802. Expansion of the biological weapons statute.
Sec. 803. Definition of domestic terrorism.
Sec. 804. Prohibition against harboring terrorists.
Sec. 805. Jurisdiction over crimes committed at U.S. facilities abroad.
Sec. 806. Material support for terrorism.
Sec. 807. Assets of terrorist organizations.
Sec. 808. Technical clarification relating to provision of material support to terrorism.
Sec. 809. Definition of Federal crime of terrorism.
Sec. 810. No statute of limitation for certain terrorism offenses.
Sec. 811. Alternate maximum penalties for terrorism offenses.
Sec. 812. Penalties for terrorist conspiracies.
Sec. 813. Post-release supervision of terrorists.
Sec. 814. Inclusion of acts of terrorism as racketeering activity.
Sec. 815. Deterrence and prevention of cyberterrorism.
Sec. 816. Additional defense to civil actions relating to preserving records in response to government requests.
Sec. 817. Development and support of cybersecurity forensic capabilities.

TITLE IX—IMPROVED INTELLIGENCE

Sec. 901. Responsibilities of Director of Central Intelligence regarding foreign intelligence collected under Foreign Intelligence Surveillance Act of 1978.
Sec. 902. Inclusion of international terrorist activities within scope of foreign intelligence under National Security Act of 1947.
Sec. 903. Sense of Congress on the establishment and maintenance of intelligence relationships to acquire information on terrorists and terrorist organizations.
Sec. 904. Temporary authority to defer submittal to Congress of reports on intelligence and intelligence-related matters.
Sec. 905. Disclosure to director of central intelligence of foreign intelligence-related information with respect to criminal investigations.
Sec. 906. Foreign terrorist asset tracking center.
Sec. 907. National virtual translation center.
Sec. 908. Training of government officials regarding identification and use of foreign intelligence.

SEC. 2. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this

Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

SEC. 101. COUNTERTERRORISM FUND.

(a) ESTABLISHMENT; AVAILABILITY.—There is hereby established in the Treasury of the United States a separate fund to be known as the "Counterterrorism Fund", amounts in which shall remain available without fiscal year limitation—

(1) to reimburse any Department of Justice component for any costs incurred in connection with—

(A) reestablishing the operational capability of an office or facility that has been damaged or destroyed as the result of any domestic or international terrorism incident;

(B) providing support to counter, investigate, or prosecute domestic or international terrorism, including, without limitation, paying rewards in connection with these activities; and

(C) conducting terrorism threat assessments of Federal agencies and their facilities; and

(2) to reimburse any department or agency of the Federal Government for any costs incurred in connection with detaining in foreign countries individuals accused of acts of terrorism that violate the laws of the United States.

(b) NO EFFECT ON PRIOR APPROPRIATIONS.—Subsection (a) shall not be construed to affect the amount or availability of any appropriation to the Counterterrorism Fund made before the date of enactment of this Act.

SEC. 102. SENSE OF CONGRESS CONDEMNING DISCRIMINATION AGAINST ARAB AND MUSLIM AMERICANS.

(a) FINDINGS.—Congress makes the following findings:

(1) Arab Americans, Muslim Americans, and Americans from South Asia play a vital role in our Nation and are entitled to nothing less than the full rights of every American.

(2) The acts of violence that have been taken against Arab and Muslim Americans since the September 11, 2001, attacks against the United States should be and are condemned by all Americans who value freedom.

(3) The concept of individual responsibility for wrongdoing is sacrosanct in American society, and applies equally to all religious, racial, and ethnic groups.

(4) When American citizens commit acts of violence against those who are, or are perceived to be, of Arab or Muslim descent, they should be punished to the full extent of the law.

(5) Muslim Americans have become so fearful of harassment that many Muslim women are changing the way they dress to avoid becoming targets.

(6) Many Arab Americans and Muslim Americans have acted heroically during the attacks on the United States, including Mohammed Salman Hamdani, a 23-year-old New Yorker of Pakistani descent, who is believed to have gone to the World Trade Center to offer rescue assistance and is now missing.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans, and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety;

(2) any acts of violence or discrimination against any Americans be condemned; and

(3) the Nation is called upon to recognize the patriotism of fellow citizens from all ethnic, racial, and religious backgrounds.

SEC. 103. INCREASED FUNDING FOR THE TECHNICAL SUPPORT CENTER AT THE FEDERAL BUREAU OF INVESTIGATION.

There are authorized to be appropriated for the Technical Support Center established in section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) to help meet the demands for activities to combat terrorism and support and enhance the technical support and tactical operations of the FBI, $200,000,000 for each of the fiscal years 2002, 2003, and 2004.

SEC. 104. REQUESTS FOR MILITARY ASSISTANCE TO ENFORCE PROHIBITION IN CERTAIN EMERGENCIES.

Section 2332e of title 18, United States Code, is amended—

(1) by striking ''2332c'' and inserting ''2332a''; and

(2) by striking ''chemical''.

SEC. 105. EXPANSION OF NATIONAL ELECTRONIC CRIME TASK FORCE INITIATIVE.

The Director of the United States Secret Service shall take appropriate actions to develop a national network of electronic crime task forces, based on the New York Electronic Crimes Task Force model, throughout the United States, for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

SEC. 106. PRESIDENTIAL AUTHORITY.

Section 203 of the International Emergency Powers Act (50 U.S.C. 1702) is amended—

(1) in subsection (a)(1)—

(A) at the end of subparagraph (A) (flush to that subparagraph), by striking "; and" and inserting a comma and the following:

"by any person, or with respect to any property, subject to the jurisdiction of the United States;";

(B) in subparagraph (B)—

(i) by inserting ", block during the pendency of an investigation" after "investigate"; and

(ii) by striking "interest;" and inserting "interest by any person, or with re-

spect to any property, subject to the jurisdiction of the United States; and''; and

(C) by inserting at the end the following:

''(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.''; and

(2) by inserting at the end the following:

"(c) CLASSIFIED INFORMATION.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.".

TITLE II—ENHANCED SURVEILLANCE PROCEDURES

SEC. 201. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO TERRORISM.

Section 2516(1) of title 18, United States Code, is amended—

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–565), the following new paragraph:

"(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b,

2332d, 2339A, or 2339B of this title (relating to terrorism); or''.

SEC. 202. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO COMPUTER FRAUD AND ABUSE OFFENSES.

Section 2516(1)(c) of title 18, United States Code, is amended by striking ''and section 1341 (relating to mail fraud),'' and inserting ''section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse),''.

SEC. 203. AUTHORITY TO SHARE CRIMINAL INVESTIGATIVE INFORMATION.

(a) AUTHORITY TO SHARE GRAND JURY INFORMATION.—

(1) IN GENERAL.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended—

(A) in clause (iii), by striking ''or'' at the end;

(B) in clause (iv), by striking the period at the end and inserting ''; or''; and

(C) by inserting at the end the following:

''(v) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security

Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in Rule 6(e)(3)(C)(ii)) to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

Any Federal official who receives information pursuant to clause (v) may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.".

(2) DEFINITION.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure, as amended by paragraph (1), is amended by—

(A) inserting "(i)" after "(C)";

(B) redesignating clauses (i) through (v) as subclauses (I) through (IV), respectively; and

(C) inserting at the end the following:

"(ii) In this subparagraph, the term 'foreign intelligence information' means—

"(I) information, whether or not concerning a United States person, that re-

lates to the ability of the United States to protect against—

"(aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

"(cc) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

"(II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

"(aa) the national defense or the security of the United States; or

"(bb) the conduct of the foreign affairs of the United States.".

(b) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—

(1) LAW ENFORCEMENT.—Section 2517 of title 18, United States Code, is amended by inserting at the end the following:

"(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.".

(2) DEFINITION.—Section 2510 of title 18, United States Code, is amended by—

(A) in paragraph (17), by striking "and" after the semicolon;

(B) in paragraph (18), by striking the period and inserting "; and"; and

(C) by inserting at the end the following:

"(19) 'foreign intelligence information' means—

"(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

"(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

"(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

"(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

"(i) the national defense or the security of the United States; or

"(ii) the conduct of the foreign affairs of the United States.".

(c) PROCEDURES.—The Attorney General shall establish procedures for the disclosure of information pursu-

ant to section 2517(6) and Rule 6(e)(3)(C)(v) of the Federal Rules of Criminal Procedure that identifies a United States person, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)).

(d) FOREIGN INTELLIGENCE INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.

(2) DEFINITION.—In this subsection, the term "foreign intelligence information" means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

(i) the national defense or the security of the United States; or

(ii) the conduct of the foreign affairs of the United States.

SEC. 204. CLARIFICATION OF INTELLIGENCE EXCEPTIONS FROM LIMITATIONS ON INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking ''this chapter or chapter 121'' and inserting ''this chapter or chapter 121 or 206 of this title''; and

(2) by striking ''wire and oral'' and inserting ''wire, oral, and electronic''.

SEC. 205. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators under subsection (a).

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal, State, or

local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

SEC. 206. ROVING SURVEILLANCE AUTHORITY UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting ", or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons," after "specified person".

SEC. 207. DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS WHO ARE AGENTS OF A FOREIGN POWER.

(a) DURATION .—

(1) SURVEILLANCE.—Section 105(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(d)(1)) is amended by—

(A) inserting "(A)" after "except that"; and

(B) inserting before the period the following: ", and (B) an order under this Act for

a surveillance targeted against an agent of a foreign power, as defined in section 101(b)(A) may be for the period specified in the application or for 120 days, whichever is less".

(2) PHYSICAL SEARCH.—Section 304(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(1)) is amended by—

(A) striking "forty-five" and inserting "90";

(B) inserting "(A)" after "except that"; and

(C) inserting before the period the following: ", and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 101(b)(A) may be for the period specified in the application or for 120 days, whichever is less".

(b) EXTENSION.—

(1) IN GENERAL.—Section 105(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(d)(2)) is amended by—

(A) inserting "(A)" after "except that"; and

(B) inserting before the period the following: ", and (B) an extension of an order under this Act for a surveillance targeted against an agent of a foreign power as defined

in section 101(b)(1)(A) may be for a period not to exceed 1 year''.

(2) DEFINED TERM.—Section 304(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)(2) is amended by inserting after ''not a United States person,'' the following: ''or against an agent of a foreign power as defined in section 101(b)(1)(A)''.

SEC. 208. DESIGNATION OF JUDGES.

Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended by—

(1) striking ''seven district court judges'' and inserting ''11 district court judges''; and

(2) inserting ''of whom no less than 3 shall reside within 20 miles of the District of Columbia'' after ''circuits''.

SEC. 209. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.

Title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (1), by striking beginning with ''and such'' and all that follows through ''communication''; and

(B) in paragraph (14), by inserting ''wire or'' after ''transmission of''; and

(2) in subsections (a) and (b) of section 2703—

(A) by striking ''CONTENTS OF ELECTRONIC'' and inserting ''CONTENTS OF WIRE OR ELECTRONIC'' each place it appears;

(B) by striking ''contents of an electronic'' and inserting ''contents of a wire or electronic'' each place it appears; and

(C) by striking ''any electronic'' and inserting ''any wire or electronic'' each place it appears.

SEC. 210. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.

Section 2703(c)(2) of title 18, United States Code, as redesignated by section 212, is amended—

(1) by striking ''entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of the subscriber'' and inserting the following: ''entity the—

''(A) name;

''(B) address;

''(C) local and long distance telephone connection records, or records of session times and durations;

"(D) length of service (including start date) and types of service utilized;

"(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(F) means and source of payment (including any credit card or bank account number),

of a subscriber"; and

(2) by striking "and the types of services the subscriber or customer utilized,".

SEC. 211. CLARIFICATION OF SCOPE.

Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (B), by striking "or";

(B) in subparagraph (C), by striking the period at the end and inserting"; or"; and

(C) by inserting at the end the following:

"(D) authorized under chapters 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing customer cable television viewing activity."; and

(2) in subsection (h) by striking "A governmental entity" and inserting "Except as provided in subsection (c)(2)(D), a governmental entity".

SEC. 212. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.

(a) DISCLOSURE OF CONTENTS.—

(1) IN GENERAL.—Section 2702 of title 18, United States Code, is amended—

(A) by striking the section heading and inserting the following:

"§ 2702. Voluntary disclosure of customer communications or records";

(B) in subsection (a)—

(i) in paragraph (2)(A), by striking "and" at the end;

(ii) in paragraph (2)(B), by striking the period and inserting "; and"; and

(iii) by inserting after paragraph (2) the following:

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.";

(C) in subsection (b), by striking "EXCEPTIONS.—A person or entity" and inserting "EXCEPTIONS FOR DISCLOSURE OF COMMUNICA-

TIONS.— A provider described in subsection (a)";

(D) in subsection (b)(6)—

(i) in subparagraph (A)(ii), by striking "or";

(ii) in subparagraph (B), by striking the period and inserting "; or"; and

(iii) by adding after subparagraph (B) the following:

"(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay."; and

(E) by inserting after subsection (b) the following:

"(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

"(1) as otherwise authorized in section 2703;

"(2) with the lawful consent of the customer or subscriber;

"(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

"(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

"(5) to any person other than a governmental entity.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 18, United States Code, is amended by striking the item relating to section 2702 and inserting the following:

"2702. Voluntary disclosure of customer communications or records.".

(b) REQUIREMENTS FOR GOVERNMENT ACCESS.—

(1) IN GENERAL.—Section 2703 of title 18, United States Code, is amended—

(A) by striking the section heading and inserting the following:

"§ 2703. Required disclosure of customer communications or records";

(B) in subsection (c) by redesignating paragraph (2) as paragraph (3);

(C) in subsection (c)(1)—

(i) by striking "(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may" and inserting "A governmental entity may require a provider of electronic communication service or remote computing service to";

(ii) by striking "covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity" and inserting ")";

(iii) by redesignating subparagraph (C) as paragraph (2);

(iv) by redesignating clauses (i), (ii), (iii), and (iv) as subparagraphs (A), (B), (C), and (D), respectively;

(v) in subparagraph (D) (as redesignated) by striking the period and inserting "; or"; and

(vi) by inserting after subparagraph (D) (as redesignated) the following:

"(E) seeks information under paragraph (2).."; and

(D) in paragraph (2) (as redesignated) by striking "subparagraph (B)" and insert "paragraph (1)".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 18, United States Code, is amended by striking the item relating to section 2703 and inserting the following:

"2703. Required disclosure of customer communications or records.".

SEC. 213. AUTHORITY FOR DELAYING NOTICE OF THE EXECUTION OF A WARRANT.

Section 3103a of title 18, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "In addition"; and

(2) by adding at the end the following:

"(b) DELAY.—With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or mate-

rial that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if—

"(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705);

"(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510), or, except as expressly provided in chapter 121, any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and

"(3) the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.".

SEC. 214. PEN REGISTER AND TRAP AND TRACE AUTHORITY UNDER FISA.

(a) APPLICATIONS AND ORDERS.—Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended—

(1) in subsection (a)(1), by striking "for any investigation to gather foreign intelligence information or information concerning international terrorism"

and inserting "for any investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution";

(2) by amending subsection (c)(2) to read as follows:

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.";

(3) by striking subsection (c)(3); and

(4) by amending subsection (d)(2)(A) to read as follows:

"(A) shall specify—

"(i) the identity, if known, of the person who is the subject of the investigation;

"(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to

which the pen register or trap and trace device is to be attached or applied;

"(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order.".

(b) AUTHORIZATION DURING EMERGENCIES.—Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a), by striking "foreign intelligence information or information concerning international terrorism" and inserting "information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution"; and

(2) in subsection (b)(1), by striking "foreign intelligence information or information concerning international terrorism" and inserting "information

to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution".

SEC. 215. ACCESS TO RECORDS AND OTHER ITEMS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.

Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended by striking sections 501 through 503 and inserting the following:

"SEC. 501. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

"(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

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"(2) An investigation conducted under this section shall—

"(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

"(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

"(b) Each application under this section—

"(1) shall be made to—

"(A) a judge of the court established by section 103(a); or

"(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

"(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to protect against international terrorism or clandestine intelligence activities.

"(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

"(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

"(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

"(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

"SEC. 502. CONGRESSIONAL OVERSIGHT.

"(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for the production of tangible things under section 402.

"(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

"(1) the total number of applications made for orders approving requests for the production of tangible things under section 402; and

"(2) the total number of such orders either granted, modified, or denied.".

SEC. 216. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

(a) GENERAL LIMITATIONS.—Section 3121(c) of title 18, United States Code, is amended—

(1) by inserting "or trap and trace device" after "pen register";

(2) by inserting ", routing, addressing," after "dialing"; and

(3) by striking "call processing" and inserting "the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications".

(b) ISSUANCE OF ORDERS.—

(1) IN GENERAL.—Section 3123(a) of title 18, United States Code, is amended to read as follows:

"(a) IN GENERAL.—

"(1) ATTORNEY FOR THE GOVERNMENT.—Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served.

"(2) STATE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.—Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen

register or trap and trace device within the jurisdiction of the court, if the court finds that the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

(2) CONTENTS OF ORDER.—Section 3123(b)(1) of title 18, United States Code, is amended—

(A) in subparagraph (A)—

(i) by inserting "or other facility" after "telephone line"; and

(ii) by inserting before the semicolon at the end "or applied"; and

(B) by striking subparagraph (C) and inserting the following:

"(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and".

(3) NONDISCLOSURE REQUIREMENTS.—Section 3123(d)(2) of title 18, United States Code, is amended—

(A) by inserting "or other facility" after "the line"; and

(B) by striking ", or who has been ordered by the court" and inserting "or applied, or who is obligated by the order".

(c) DEFINITIONS.—

(1) COURT OF COMPETENT JURISDICTION.—Section 3127(2) of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following:

"(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals having jurisdiction over the offense being investigated; or".

(2) PEN REGISTER.—Section 3127(3) of title 18, United States Code, is amended—

(A) by striking "electronic or other impulses" and all that follows through "is attached" and inserting "dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire

or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication''; and

(B) by inserting ''or process'' after ''device'' each place it appears.

(3) TRAP AND TRACE DEVICE.—Section 3127(4) of title 18, United States Code, is amended—

(A) by striking ''of an instrument'' and all that follows through the semicolon and inserting ''or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication;''; and

(B) by inserting ''or process'' after ''a device''.

(4) CONFORMING AMENDMENT.—Section 3127(1) of title 18, United States Code, is amended—

(A) by striking ''and''; and

(B) by inserting '', and 'contents' '' after ''electronic communication service''.

(5) TECHNICAL AMENDMENT.—Section 3124(d) of title 18, United States Code, is amended by striking "the terms of".

SEC. 217. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.

Chapter 119 of title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (17), by striking "and" at the end;

(B) in paragraph (18), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (18) the following:

"(19) 'protected computer' has the meaning set forth in section 1030; and

"(20) 'computer trespasser'—

"(A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and

"(B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with

the owner or operator of the protected computer for access to all or part of the protected computer."; and

(2) in section 2511(2), by inserting at the end the following:

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if—

"(i) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

"(ii) the person acting under color of law is lawfully engaged in an investigation;

"(iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

"(iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser.".

SEC. 218. FOREIGN INTELLIGENCE INFORMATION.

Sections 104(a)(7)(B) and section 303(a)(7)(B) (50 U.S.C. 1804(a)(7)(B) and 1823(a)(7)(B)) of the Foreign

Intelligence Surveillance Act of 1978 are each amended by striking "the purpose" and inserting "a significant purpose".

SEC. 219. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district".

SEC. 220. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.

Chapter 121 of title 18, United States Code, is amended—

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" every place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period and inserting "; and"; and

(C) by inserting at the end the following:

"(3) the term 'court of competent jurisdiction' has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation.".

SEC. 221. TRADE SANCTIONS.

(a) IN GENERAL.—The Trade Sanctions Reform and Export Enhancement Act of 2000 (Public Law 106–387; 114 Stat. 1549A–67) is amended—

(1) by amending section 904(2)(C) to read as follows:

"(C) used to facilitate the design, development, or production of chemical or biological weapons, missiles, or weapons of mass destruction.";

(2) in section 906(a)(1)—

(A) by inserting ", the Taliban or the territory of Afghanistan controlled by the Taliban," after "Cuba"; and

(B) by inserting ", or in the territory of Afghanistan controlled by the Taliban," after "within such country"; and

(3) in section 906(a)(2), by inserting ", or to any other entity in Syria or North Korea" after "Korea".

(b) APPLICATION OF THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT.—Nothing in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall limit the application or scope of any law establishing criminal or civil penalties, including any executive order or regulation promulgated pursuant to such laws (or similar or successor laws), for the unlawful export of any agricultural commodity, medicine, or medical device to—

(1) a foreign organization, group, or person designated pursuant to Executive Order 12947 of June 25, 1995;

(2) a Foreign Terrorist Organization pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132);

(3) a foreign organization, group, or person designated pursuant to Executive Order 13224 (September 23, 2001);

(4) any narcotics trafficking entity designated pursuant to Executive Order 12978 (October 21, 1995) or the Foreign Narcotics Kingpin Designation Act (Public Law 106–120); or

(5) any foreign organization, group, or persons subject to any restriction for its involvement in weapons of mass destruction or missile proliferation.

SEC. 222. ASSISTANCE TO LAW ENFORCEMENT AGENCIES.

Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities or technical assistance. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to section 216 shall be reasonably compensated for such reasonable expenditures incurred in providing such facilities or assistance.

TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI-TERRORIST FINANCING ACT OF 2001.

SEC. 301. SHORT TITLE.

This title may be cited as the "International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001".

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) money laundering, estimated by the International Monetary Fund to amount to between 2

and 5 percent of global gross domestic product, which is at least $600,000,000,000 annually, provides the financial fuel that permits transnational criminal enterprises to conduct and expand their operations to the detriment of the safety and security of American citizens;

(2) money laundering, and the defects in financial transparency on which money launderers rely, are critical to the financing of global terrorism and the provision of funds for terrorist attacks;

(3) money launderers subvert legitimate financial mechanisms and banking relationships by using them as protective covering for the movement of criminal proceeds and the financing of crime and terrorism, and, by so doing, can threaten the safety of United States citizens and undermine the integrity of United States financial institutions and of the global financial and trading systems upon which prosperity and growth depend;

(4) certain jurisdictions outside of the United States that offer ''offshore'' banking and related facilities designed to provide anonymity, coupled with special tax advantages and weak financial supervisory and enforcement regimes, provide essential tools to disguise ownership and movement of crimi-

nal funds, derived from, or used to commit, offenses ranging from narcotics trafficking, terrorism, arms smuggling, and trafficking in human beings, to financial frauds that prey on law-abiding citizens;

(5) transactions involving such offshore jurisdictions make it difficult for law enforcement officials and regulators to follow the trail of money earned by criminals, organized international criminal enterprises, and global terrorist organizations;

(6) correspondent banking facilities are one of the banking mechanisms susceptible in some circumstances to manipulation by foreign banks to permit the laundering of funds by hiding the identity of real parties in interest to financial transactions;

(7) private banking services can be susceptible to manipulation by money launderers, for example corrupt foreign government officials, particularly if those services include the creation of offshore accounts and facilities for large personal funds transfers to channel funds into accounts around the globe;

(8) United States anti-money laundering efforts are impeded by outmoded and inadequate statutory provisions that make investigations, prosecutions, and forfeitures more difficult, particularly in cases

in which money laundering involves foreign persons, foreign banks, or foreign countries;

(9) the ability to mount effective counter-measures to international money launderers requires national, as well as bilateral and multilateral action, using tools specially designed for that effort; and

(10) the Basle Committee on Banking Regulation and Supervisory Practices and the Financial Action Task Force on Money Laundering, of both of which the United States is a member, have each adopted international anti-money laundering principles and recommendations.

(b) PURPOSES.—The purposes of this title are—

(1) to increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism;

(2) to ensure that—

(A) banking transactions and financial relationships and the conduct of such transactions and relationships, do not contravene the purposes of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act, or chapter 2 of title I

of Public Law 91–508 (84 Stat. 1116), or facilitate the evasion of any such provision; and

(B) the purposes of such provisions of law continue to be fulfilled, and that such provisions of law are effectively and efficiently administered;

(3) to strengthen the provisions put into place by the Money Laundering Control Act of 1986 (18 U.S.C. 981 note), especially with respect to crimes by non-United States nationals and foreign financial institutions;

(4) to provide a clear national mandate for subjecting to special scrutiny those foreign jurisdictions, financial institutions operating outside of the United States, and classes of international transactions that pose particular, identifiable opportunities for criminal abuse;

(5) to provide the Secretary of the Treasury (in this title referred to as the "Secretary") with broad discretion, subject to the safeguards provided by the Administrative Procedures Act under title 5, United States Code, to take measures tailored to the particular money laundering problems presented by specific foreign jurisdictions, financial institutions oper-

ating outside of the United States, and classes of international transactions;

(6) to ensure that the employment of such measures by the Secretary permits appropriate opportunity for comment by affected financial institutions;

(7) to provide guidance to domestic financial institutions on particular foreign jurisdictions, financial institutions operating outside of the United States, and classes of international transactions that are of primary money laundering concern to the United States Government;

(8) to ensure that the forfeiture of any assets in connection with the anti-terrorist efforts of the United States permits for adequate challenge consistent with providing due process rights;

(9) to clarify the terms of the safe harbor from civil liability for filing suspicious activity reports;

(10) to strengthen the authority of the Secretary to issue and administer geographic targeting orders, and to clarify that violations of such orders or any other requirement imposed under the authority contained in chapter 2 of title I of Public Law 91–508 and subchapters II and III of chapter 53 of

title 31, United States Code, may result in criminal and civil penalties;

(11) to ensure that all appropriate elements of the financial services industry are subject to appropriate requirements to report potential money laundering transactions to proper authorities, and that jurisdictional disputes do not hinder examination of compliance by financial institutions with relevant reporting requirements;

(12) to fix responsibility for high level coordination of the anti-money laundering efforts of the Department of the Treasury;

(13) to strengthen the ability of financial institutions to maintain the integrity of their employee population; and

(14) to strengthen measures to prevent the use of the United States financial system for personal gain by corrupt foreign officials and to facilitate the repatriation of any stolen assets to the citizens of countries to whom such assets belong.

SEC. 303. 4-YEAR CONGRESSIONAL REVIEW-EXPEDITED CONSIDERATION.

(a) IN GENERAL.—Effective on and after the first day of fiscal year 2005, the provisions of this title and the amendments made by this title shall terminate if the

Congress enacts a joint resolution, the text after the resolving clause of which is as follows: "That provisions of the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, and the amendments made thereby, shall no longer have the force of law.".

(b) EXPEDITED CONSIDERATION.—Any joint resolution submitted pursuant to this section shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Control Act of 1976. For the purpose of expediting the consideration and enactment of a joint resolution under this section, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee, shall be treated as highly privileged in the House of Representatives.

Subtitle A—International Counter Money Laundering and Related Measures

SEC. 311. SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5318 the following new section:

"SEC. 5318A. SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

"(a) INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

"(2) FORM OF REQUIREMENT.—The special measures described in—

"(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

"(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

"(C) subsection (b)(5) may be imposed only by regulation.

"(3) DURATION OF ORDERS; RULEMAKING.—Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)—

"(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

"(B) may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of issuance of such order.

"(4) PROCESS FOR SELECTING SPECIAL MEASURES.—In selecting which special measure or measures to take under this subsection, the Secretary—

"(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, the Securities and Exchange Commission, the National Credit Union Administration Board, and in the sole discre-

tion of the Secretary such other agencies and interested parties as the Secretary may find to be appropriate; and

"(B) shall consider—

"(i) whether similar action has been or is being taken by other nations or multilateral groups;

"(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States; and

"(iii) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions.

"(5) NO LIMITATION ON OTHER AUTHORITY.—This section shall not be construed as superseding or otherwise restricting any other authority granted to

the Secretary, or to any other agency, by this subchapter or otherwise.

"(b) SPECIAL MEASURES.—The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

"(1) RECORDKEEPING AND REPORTING OF CERTAIN FINANCIAL TRANSACTIONS.—

"(A) IN GENERAL.—The Secretary may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or class of transactions to be of primary money laundering concern.

"(B) FORM OF RECORDS AND REPORTS.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

"(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

"(ii) the legal capacity in which a participant in any transaction is acting;

"(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

"(iv) a description of any transaction.

"(2) INFORMATION RELATING TO BENEFICIAL OWNERSHIP.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and prac-

ticable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction to be of primary money laundering concern.

"(3) INFORMATION RELATING TO CERTAIN PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account in the

United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a payable through account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

"(A) to identify each customer (and representative of such customer) of such financial institution who is permitted to use, or whose transactions are routed through, such payable-through account; and

"(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

"(4) INFORMATION RELATING TO CERTAIN CORRESPONDENT ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial in-

stitution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

"(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

"(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

"(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of trans-

actions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

"(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN.—

"(1) IN GENERAL.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States,

or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State, and the Attorney General.

"(2) ADDITIONAL CONSIDERATIONS.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

"(A) JURISDICTIONAL FACTORS.—In the case of a particular jurisdiction—

"(i) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction;

(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special tax or regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

"(iii) the substance and quality of administration of the bank supervisory and

counter-money laundering laws of that jurisdiction;

"(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

"(v) the extent to which that jurisdiction is characterized as a tax haven or offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

"(vi) whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of United States law enforcement officials, regulatory officials, and tax administrators in obtaining information about transactions originating in or routed through or to such jurisdiction; and

"(vii) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

"(B) INSTITUTIONAL FACTORS.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) only

to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

"(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction;

"(ii) the extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and

"(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

"(d) NOTIFICATION OF SPECIAL MEASURES INVOKED BY THE SECRETARY.—Not later than 10 days after the date of any action taken by the Secretary under subsection (a)(1), the Secretary shall notify, in writing,

the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

"(e) STUDY AND REPORT ON FOREIGN NATIONALS.—

"(1) STUDY.—The Secretary, in consultation with the appropriate Federal agencies, including the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), shall conduct a study to—

"(A) determine the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate information, comparable to that which is required of United States nationals, concerning their identity, address, and other related information necessary to enable such institutions and agencies to comply with the reporting, information gathering, and other requirements of this section; and

"(B) consider the need for requiring foreign nationals to apply for and obtain an identification number, similar to what is required for United States citizens through a social security number or tax identification number, prior to

opening an account with a domestic financial institution.

"(2) REPORT.—The Secretary shall report to Congress not later than 180 days after the date of enactment of this section with recommendations for implementing such action referred to in paragraph (1) in a timely and effective manner.

"(f) DEFINITIONS.—Notwithstanding any other provision of this subchapter, for purposes of this section, the following definitions shall apply:

"(1) BANK DEFINITIONS.—The following definitions shall apply with respect to a bank:

"(A) ACCOUNT.—The term 'account'—

"(i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

"(ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

"(B) CORRESPONDENT ACCOUNT.—The term 'correspondent account' means an account established to receive deposits from, make payments on behalf of a foreign financial institu-

tion, or handle other financial transactions related to such institution.

"(C) PAYABLE-THROUGH ACCOUNT.—The term 'payable-through account' means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

"(2) DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.—With respect to any financial institution other than a bank, the Secretary shall, after consultation with the Securities and Exchange Commission, define by regulation the term 'account', and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable-through and correspondent accounts.

"(3) REGULATORY DEFINITION.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this

section. Such regulations shall address issues related to an individual's authority to fund, direct, or manage the account (including, without limitation, the power to direct payments into or out of the account), and an individual's material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.".

"(4) OTHER TERMS.—The Secretary may, by regulation, further define the terms in paragraphs (1) and (2) and define other terms for the purposes of this section, as the Secretary deems appropriate.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5318 the following new item:

"5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.".

SEC. 312. SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

"(i) DUE DILIGENCE FOR UNITED STATES PRIVATE BANKING AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

"(1) IN GENERAL.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls to detect and report instances of money laundering through those accounts.

"(2) MINIMUM STANDARDS FOR CORRESPONDENT ACCOUNTS.—

"(A) IN GENERAL.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

"(i) under an offshore banking license; or

"(ii) under a banking license issued by a foreign country that has been designated—

"(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; or

"(II) by the Secretary as warranting special measures due to money laundering concerns.

"(B) POLICIES, PROCEDURES, AND CONTROLS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

"(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and

extent of the ownership interest of each such owner;

"(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under section 5318(g); and

"(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

"(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

"(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under section 5318(g); and

"(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, to prevent, detect, and report transactions that may involve the proceeds of foreign corruption.

"(4) DEFINITIONS AND REGULATORY AUTHORITY.—

"(A) OFFSHORE BANKING LICENSE.—For purposes of this subsection, the term 'offshore banking license' means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

"(B) REGULATORY AUTHORITY.—The Secretary, in consultation with the appropriate functional regulators of the affected financial institutions, may further delineate, by regulation the due diligence policies, procedures, and controls required under paragraph (1).".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect beginning 180 days after the

date of enactment of this Act with respect to accounts covered by section 5318(i) of title 31, United States Code, as added by this section, that are opened before, on, or after the date of enactment of this Act.

SEC. 313. PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended by inserting after section 5318(i), as added by section 312 of this title, the following:

"(j) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

"(1) IN GENERAL.—A financial institution described in subparagraphs (A) through (F) of section 5312(a)(2) (in this subsection referred to as a 'covered financial institution') shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

"(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, ad-

ministered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. The Secretary shall, by regulation, delineate the reasonable steps necessary to comply with this paragraph.

"(3) EXCEPTION.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

"(A) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

"(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank described in subparagraph (A), as applicable.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'affiliate' means a foreign bank that is controlled by or is under common

control with a depository institution, credit union, or foreign bank; and

"(B) the term 'physical presence' means a place of business that—

"(i) is maintained by a foreign bank;

"(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

"(I) employs 1 or more individuals on a full-time basis; and

"(II) maintains operating records related to its banking activities; and

"(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.".

SEC. 314. COOPERATIVE EFFORTS TO DETER MONEY LAUNDERING.

(a) COOPERATION AMONG FINANCIAL INSTITUTIONS, REGULATORY AUTHORITIES, AND LAW ENFORCEMENT AUTHORITIES.—

(1) REGULATIONS.—The Secretary shall, within 120 days after the date of enactment of this Act, adopt regulations to encourage further cooperation

among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

(2) CONTENTS.—The regulations promulgated pursuant to paragraph (1) may—

(A) require that each financial institution designate 1 or more persons to receive information concerning, and to monitor accounts of individuals, entities, and organizations identified, pursuant to paragraph (1); and

(B) further establish procedures for the protection of the shared information, consistent with the capacity, size, and nature of the institution to which the particular procedures apply.

(3) RULE OF CONSTRUCTION.—The receipt of information by a financial institution pursuant to this section shall not relieve or otherwise modify the obligations of the financial institution with respect to any other person or account.

(4) USE OF INFORMATION.—Information received by a financial institution pursuant to this section shall not be used for any purpose other than identifying and reporting on activities that may involve terrorist acts or money laundering activities.

(b) COOPERATION AMONG FINANCIAL INSTITUTIONS.—Upon notice provided to the Secretary, 2 or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities. A financial institution or association that transmits, receives, or shares such information for the purposes of identifying and reporting activities that may involve terrorist acts or money laundering activities shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure, or any other person identified in the disclosure, except where such transmission, receipt, or sharing violates this section or regulations promulgated pursuant to this section.

(c) RULE OF CONSTRUCTION.—Compliance with the provisions of this title requiring or allowing financial institutions and any association of financial institutions to disclose or share information regarding individuals, entities, and organizations engaged in or suspected of engaging in terrorist acts or money laundering activities shall not constitute a violation of the provisions of title V of the Gramm-Leach-Bliley Act (Public Law 106–102).

SEC. 315. INCLUSION OF FOREIGN CORRUPTION OFFENSES AS MONEY LAUNDERING CRIMES.

Section 1956(c)(7)(B) of title 18, United States Code, is amended—

(1) in clause (ii), by striking "or destruction of property by means of explosive or fire" and inserting "destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16)";

(2) in clause (iii), by striking "1978" and inserting "1978)"; and

(3) by adding at the end the following:

"(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

"(v) smuggling or export control violations involving—

"(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

"(II) an item controlled under regulations under the Export Administration Act of 1977 (15 C.F.R. Parts 730–774);

"(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

"(vii) the misuse of funds of, or provided by, the International Monetary Fund in contravention of the Articles of Agreement of the Fund or the misuse of funds of, or provided by, any other international financial institution (as defined in section 1701(c)(2) of the International Financial

Institutions Act (22 U.S.C. 262r(c)(2)) in contravention of any treaty or other international agreement to which the United States is a party, including any articles of agreement of the members of the international financial institution;''.

SEC. 316. ANTI-TERRORIST FORFEITURE PROTECTION.

(a) RIGHT TO CONTEST.—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) EVIDENCE.—In considering a claim filed under this section, the Government may rely on evidence that is otherwise inadmissible under the Federal Rules of Evidence, if a court determines that such reliance is necessary to protect the national security interests of the United States.

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(c) OTHER REMEDIES.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

SEC. 317. LONG-ARM JURISDICTION OVER FOREIGN MONEY LAUNDERERS.

Section 1956(b) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving the margins 2 ems to the right;

(2) by inserting after "(b)" the following: "PENALTIES.—

"(1) IN GENERAL.—";

(3) by inserting ", or section 1957" after "or (a)(3)"; and

(4) by adding at the end the following:

"(2) JURISDICTION OVER FOREIGN PERSONS.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of

Civil Procedure or the laws of the country in which the foreign person is found, and—

"(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

"(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

"(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

"(3) COURT AUTHORITY OVER ASSETS.—A court described in paragraph (2) may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

"(4) FEDERAL RECEIVER.—

"(A) IN GENERAL.—A court described in paragraph (2) may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take cus-

tody, control, and possession of all assets of the defendant, wherever located, to satisfy a judgment under this section or section 981, 982, or 1957, including an order of restitution to any victim of a specified unlawful activity.

"(B) APPOINTMENT AND AUTHORITY.—A Federal Receiver described in subparagraph (A)—

"(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

"(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

"(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

"(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

"(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.".

SEC. 318. LAUNDERING MONEY THROUGH A FOREIGN BANK.

Section 1956(c) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

"(6) the term 'financial institution' includes—

"(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

"(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).".

SEC. 319. FORFEITURE OF FUNDS IN UNITED STATES INTERBANK ACCOUNTS.

(a) FORFEITURE FROM UNITED STATES INTERBANK ACCOUNT.—Section 981 of title 18, United States Code, is amended by adding at the end the following:

"(k) INTERBANK ACCOUNTS.—

"(1) IN GENERAL.—

"(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign bank, and that foreign bank has an interbank account in the United States with a covered financial institution (as defined in section 5318A of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign bank, may be restrained, seized, or arrested.

"(B) AUTHORITY TO SUSPEND.—The Attorney General, in consultation with the Secretary, may suspend or terminate a forfeiture

under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign bank is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

"(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign bank, nor shall it be necessary for the Government to rely on the application of section 984.

"(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign bank may contest the forfeiture by filing a claim under section 983.

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"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) INTERBANK ACCOUNT.—The term 'interbank account' has the same meaning as in section 984(c)(2)(B).

"(B) OWNER.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'owner'—

"(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign bank at the time such funds were deposited; and

"(II) does not include either the foreign bank or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

"(ii) EXCEPTION.—The foreign bank may be considered the 'owner' of the funds (and no other person shall qualify as the owner of such funds) only if—

"(I) the basis for the forfeiture action is wrongdoing committed by the foreign bank; or

"(II) the foreign bank establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign bank had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign bank shall be deemed the owner of the funds to the extent of such discharged obligation.".

(b) BANK RECORDS.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

"(k) BANK RECORDS RELATED TO ANTI-MONEY LAUNDERING PROGRAMS.—

"(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

"(B) INCORPORATED TERMS.—The terms 'correspondent account', 'covered financial institution', and 'foreign bank' have the same meanings as in section 5318A.

"(2) 120-HOUR RULE.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

"(3) FOREIGN BANK RECORDS.—

"(A) SUMMONS OR SUBPOENA OF RECORDS.—

"(i) IN GENERAL.—The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including

records maintained outside of the United States relating to the deposit of funds into the foreign bank.

"(ii) SERVICE OF SUMMONS OR SUBPOENA.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

"(B) ACCEPTANCE OF SERVICE.—

"(i) MAINTAINING RECORDS IN THE UNITED STATES.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

"(ii) LAW ENFORCEMENT REQUEST.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

"(C) TERMINATION OF CORRESPONDENT RELATIONSHIP.—

"(i) TERMINATION UPON RECEIPT OF NOTICE.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General that the foreign bank has failed—

"(I) to comply with a summons or subpoena issued under subparagraph (A); or

"(II) to initiate proceedings in a United States court contesting such summons or subpoena.

"(ii) LIMITATION ON LIABILITY.—A covered financial institution shall not be

liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

"(iii) FAILURE TO TERMINATE RELATIONSHIP.—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.".

(c) GRACE PERIOD.—Financial institutions affected by section 5333 of title 31 United States Code, as amended by this title, shall have 60 days from the date of enactment of this Act to comply with the provisions of that section.

(d) REQUESTS FOR RECORDS.—Section 3486(a)(1) of title 18, United States Code, is amended by striking ", or (II) a Federal offense involving the sexual exploitation or abuse of children" and inserting ", (II) a Federal offense involving the sexual exploitation or abuse of children, or (III) money laundering, in violation of section 1956, 1957, or 1960 of this title".

(e) AUTHORITY TO ORDER CONVICTED CRIMINAL TO RETURN PROPERTY LOCATED ABROAD.—

(1) FORFEITURE OF SUBSTITUTE PROPERTY.—Section 413(p) of the Controlled Substances Act (21 U.S.C. 853) is amended to read as follows:

"(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

"(1) IN GENERAL.—Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

"(A) cannot be located upon the exercise of due diligence;

"(B) has been transferred or sold to, or deposited with, a third party;

"(C) has been placed beyond the jurisdiction of the court;

"(D) has been substantially diminished in value; or

"(E) has been commingled with other property which cannot be divided without difficulty.

"(2) SUBSTITUTE PROPERTY.—In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

"(3) RETURN OF PROPERTY TO JURISDICTION.—In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.".

(2) PROTECTIVE ORDERS.—Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended by adding at the end the following:

"(4) ORDER TO REPATRIATE AND DEPOSIT.—

"(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

"(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under sub-

section (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.''.

SEC. 320. PROCEEDS OF FOREIGN CRIMES.

Section 981(a)(1)(B) of title 18, United States Code, is amended to read as follows:

''(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

''(i) involves the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

''(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

''(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity con-

stituting the offense had occurred within the jurisdiction of the United States.''.

SEC. 321. EXCLUSION OF ALIENS INVOLVED IN MONEY LAUNDERING.

Section 212(a)(2) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

''(I) MONEY LAUNDERING ACTIVITIES.—Any alien who the consular officer or the Attorney General knows or has reason to believe is or has been engaged in activities which, if engaged in within the United States would constitute a violation of section 1956 or 1957 of title 18, United States Code, or has been a knowing assister, abettor, conspirator, or colluder with others in any such illicit activity is inadmissible.''.

SEC. 322. CORPORATION REPRESENTED BY A FUGITIVE.

Section 2466 of title 18, United States Code, is amended by designating the present matter as subsection (a), and adding at the end the following:

''(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.''.

SEC. 323. ENFORCEMENT OF FOREIGN JUDGMENTS.

Section 2467 of title 28, United States Code, is amended—

(1) in subsection (d), by adding the following after paragraph (2):

"(3) PRESERVATION OF PROPERTY.—To preserve the availability of property subject to a foreign forfeiture or confiscation judgment, the Government may apply for, and the court may issue, a restraining order pursuant to section 983(j) of title 18, United States Code, at any time before or after an application is filed pursuant to subsection (c)(1). The court, in issuing the restraining order—

"(A) may rely on information set forth in an affidavit describing the nature of the proceeding investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

"(B) may register and enforce a restraining order has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

No person may object to the restraining order on any ground that is the subject to parallel litigation involving the same property that is pending in a foreign court.";

(2) in subsection (b)(1)(C), by striking "establishing that the defendant received notice of the proceedings in sufficient time to enable the defendant" and inserting "establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons";

(3) in subsection (d)(1)(D), by striking "the defendant in the proceedings in the foreign court did not receive notice" and inserting "the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property"; and

(4) in subsection (a)(2)(A), by inserting ", any violation of foreign law that would constitute a violation of an offense for which property could be forfeited under Federal law if the offense were committed in the United States" after "United Nations Convention".

SEC. 324. INCREASE IN CIVIL AND CRIMINAL PENALTIES FOR MONEY LAUNDERING.

(a) CIVIL PENALTIES.—Section 5321(a) of title 31, United States Code, is amended by adding at the end the following:

"(7) PENALTIES FOR INTERNATIONAL COUNTER MONEY LAUNDERING VIOLATIONS.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than $1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.".

(b) CRIMINAL PENALTIES.—Section 5322 of title 31, United States Code, is amended by adding at the end the following:

"(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than $1,000,000.".

SEC. 325. REPORT AND RECOMMENDATION.

Not later than 30 months after the date of enactment of this Act, the Secretary, in consultation with the Attorney General, the Federal banking agencies (as defined at section 3 of the Federal Deposit Insurance Act), the Securities and Exchange Commission, and such other agencies as the Secretary may determine, at the discretion of the Secretary, shall evaluate the operations of the provisions of this subtitle and make recommendations to Congress as to any legislative action with respect to this subtitle as the Secretary may determine to be necessary or advisable.

SEC. 326. REPORT ON EFFECTIVENESS.

The Secretary shall report annually on measures taken pursuant to this subtitle, and shall submit the report to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Committee on Financial Services of the House of Representatives.

SEC. 327. CONCENTRATION ACCOUNTS AT FINANCIAL INSTITUTIONS.

Section 5318(h) of title 31, United States Code, as amended by section 202 of this title, is amended by adding at the end the following:

"(3) CONCENTRATION ACCOUNTS.—The Secretary may issue regulations under this subsection that govern maintenance of concentration accounts

by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

"(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

"(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

"(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.".

Subtitle B—Currency Transaction Reporting Amendments and Related Improvements

SEC. 331. AMENDMENTS RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.

(a) AMENDMENT RELATING TO CIVIL LIABILITY IMMUNITY FOR DISCLOSURES.—Section 5318(g)(3) of title 31, United States Code, is amended to read as follows:

"(3) LIABILITY FOR DISCLOSURES.—

"(A) IN GENERAL.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the

person who is the subject of such disclosure or any other person identified in the disclosure.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

"(i) any inference that the term 'person', as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

"(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.".

(b) PROHIBITION ON NOTIFICATION OF DISCLOSURES.—Section 5318(g)(2) of title 31, United States Code, is amended to read as follows:

"(2) NOTIFICATION PROHIBITED.—

"(A) IN GENERAL.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

"(i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

"(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

"(B) DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.—

"(i) RULE OF CONSTRUCTION.—Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

"(I) in a written employment reference that is provided in accordance with section 18(v) of the Federal Deposit Insurance Act in response to a request from another financial institution, except that such written reference may not disclose that such information was also included in any such report or that such report was made; or

"(II) in a written termination notice or employment reference that is provided in accordance with the rules of the self-regulatory organizations registered with the Securities and Exchange Commission, except that such written notice or reference may not disclose that such information was also included in any such report or that such report was made.

"(ii) INFORMATION NOT REQUIRED.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in

any employment reference or termination notice referred to in clause (i).''.

SEC. 332. ANTI-MONEY LAUNDERING PROGRAMS.

Section 5318(h) of title 31, United States Code, is amended to read as follows:

''(h) ANTI-MONEY LAUNDERING PROGRAMS.—

''(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

''(A) the development of internal policies, procedures, and controls;

''(B) the designation of a compliance officer;

''(C) an ongoing employee training program; and

''(D) an independent audit function to test programs.

''(2) REGULATIONS.—The Secretary may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so

long as such financial institution is not subject to the provisions of such rules.''.

SEC. 333. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORD-KEEPING REQUIREMENTS, AND LENGTHENING EFFECTIVE PERIOD OF GEOGRAPHIC TARGETING ORDERS.

(a) CIVIL PENALTY FOR VIOLATION OF TARGETING ORDER.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by inserting ''or order issued'' after ''subchapter or a regulation prescribed''; and

(2) by inserting '', or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,'' after ''sections 5314 and 5315)''.

(b) CRIMINAL PENALTIES FOR VIOLATION OF TARGETING ORDER.—Section 5322 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''or order issued'' after ''willfully violating this subchapter or a regulation prescribed''; and

(B) by inserting '', or willfully violating a regulation prescribed under section 21 of the

Federal Deposit Insurance Act or section 123 of Public Law 91–508," after "under section 5315 or 5324)"; and

(2) in subsection (b)—

(A) by inserting "or order issued" after "willfully violating this subchapter or a regulation prescribed"; and

(B) by inserting "or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508," after "under section 5315 or 5324),".

(c) STRUCTURING TRANSACTIONS TO EVADE TARGETING ORDER OR CERTAIN RECORDKEEPING REQUIREMENTS.—Section 5324(a) of title 31, United States Code, is amended—

(1) by inserting a comma after "shall";

(2) by striking "section—" and inserting "section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508—";

(3) in paragraph (1), by inserting ", to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508" after "regulation prescribed under any such section"; and

(4) in paragraph (2), by inserting ", to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508," after "regulation prescribed under any such section".

(d) LENGTHENING EFFECTIVE PERIOD OF GEOGRAPHIC TARGETING ORDERS.—Section 5326(d) of title 31, United States Code, is amended by striking "more than 60" and inserting "more than 180".

SEC. 334. ANTI-MONEY LAUNDERING STRATEGY.

(b) STRATEGY.—Section 5341(b) of title 31, United States Code, is amended by adding at the end the following:

"(12) DATA REGARDING FUNDING OF TERRORISM.—Data concerning money laundering efforts related to the funding of acts of international terrorism, and efforts directed at the prevention, detection, and prosecution of such funding.".

SEC. 335. AUTHORIZATION TO INCLUDE SUSPICIONS OF ILLEGAL ACTIVITY IN WRITTEN EMPLOYMENT REFERENCES.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(v) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

"(1) AUTHORITY TO DISCLOSE INFORMATION.—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

"(2) INFORMATION NOT REQUIRED.—Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

"(3) MALICIOUS INTENT.—Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

"(4) DEFINITION.—For purposes of this subsection, the term 'insured depository institution' includes any uninsured branch or agency of a foreign bank.".

SEC. 336. BANK SECRECY ACT ADVISORY GROUP.

Section 1564 of the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. 5311 note) is amended—

(1) in subsection (a), by inserting ", of non-governmental organizations advocating financial privacy," after "Drug Control Policy"; and

(2) in subsection (c), by inserting ", other than subsections (a) and (d) of such Act which shall apply" before the period at the end.

SEC. 337. AGENCY REPORTS ON RECONCILING PENALTY AMOUNTS.

Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury and the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) shall each submit their respective reports to the Congress containing recommendations on possible legislation to conform the penalties imposed on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) for violations of subchapter II of chapter 53 of title 31, United States Code, to the penalties imposed on such institutions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

SEC. 338. REPORTING OF SUSPICIOUS ACTIVITIES BY SECURITIES BROKERS AND DEALERS; INVESTMENT COMPANY STUDY.

(a) 270-DAY REGULATION DEADLINE.—Not later than 270 days after the date of enactment of this Act, the Secretary of the Treasury, after consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, shall issue final

regulations requiring registered brokers and dealers to file reports of suspicious financial transactions, consistent with the requirements applicable to financial institutions, and directors, officers, employees, and agents of financial institutions under section 5318(g) of title 31, United States Code.

(b) REPORT ON INVESTMENT COMPANIES.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission shall jointly submit a report to Congress on recommendations for effective regulations to apply the requirements of subchapter II of chapter 53 of title 31, United States Code, to investment companies, pursuant to section 5312(a)(2)(I) of title 31, United States Code.

(2) DEFINITION.—For purposes of this section, the term ''investment company''—

(A) has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3); and

(B) any person that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c) of the Investment Company Act of 1940

(15 U.S.C. 80a–3(c)), would be an investment company.

(3) ADDITIONAL RECOMMENDATIONS.—In its report, the Securities and Exchange Commission may make different recommendations for different types of entities covered by this section.

(4) BENEFICIAL OWNERSHIP OF PERSONAL HOLDING COMPANIES.—The report described in paragraph (1) shall also include recommendations as to whether the Secretary should promulgate regulations to treat any corporation or business or other grantor trust whose assets are predominantly securities, bank certificates of deposit, or other securities or investment instruments (other than such as relate to operating subsidiaries of such corporation or trust) and that has 5 or fewer common shareholders or holders of beneficial or other equity interest, as a financial institution within the meaning of that phrase in section 5312(a)(2)(I) and whether to require such corporations or trusts to disclose their beneficial owners when opening accounts or initiating funds transfers at any domestic financial institution.

SEC. 339. SPECIAL REPORT ON ADMINISTRATION OF BANK SECRECY PROVISIONS.

(a) REPORT REQUIRED.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress relating to the role of the Internal Revenue Service in the administration of subchapter II of chapter 53 of title 31, United States Code (commonly known as the "Bank Secrecy Act").

(b) CONTENTS.—The report required by subsection (a)—

(1) shall specifically address, and contain recommendations concerning—

(A) whether it is advisable to shift the processing of information reporting to the Department of the Treasury under the Bank Secrecy Act provisions to facilities other than those managed by the Internal Revenue Service; and

(B) whether it remains reasonable and efficient, in light of the objective of both anti-money-laundering programs and Federal tax administration, for the Internal Revenue Service to retain authority and responsibility for audit and examination of the compliance of money services businesses and gaming institu-

tions with those Bank Secrecy Act provisions; and

(2) shall, if the Secretary determines that the information processing responsibility or the audit and examination responsibility of the Internal Revenue Service, or both, with respect to those Bank Secrecy Act provisions should be transferred to other agencies, include the specific recommendations of the Secretary regarding the agency or agencies to which any such function should be transferred, complete with a budgetary and resources plan for expeditiously accomplishing the transfer.

SEC. 340. BANK SECRECY PROVISIONS AND ANTI-TERRORIST ACTIVITIES OF UNITED STATES INTELLIGENCE AGENCIES.

(a) AMENDMENT RELATING TO THE PURPOSES OF THE BANK SECRECY ACT.—Section 5311 of title 31, United States Code, is amended by inserting before the period at the end the following: ", or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism".

(b) AMENDMENT RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.—Section 5318(g)(4)(B) of title 31, United States Code, is amended by striking "or supervisory agency" and inserting ", supervisory agency, or

United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism''.

(c) AMENDMENT RELATING TO AVAILABILITY OF REPORTS.—Section 5319 of title 31, United States Code, is amended to read as follows:

''§ 5319. Availability of reports

''The Secretary of the Treasury shall make information in a report filed under this subchapter available to an agency, including any State financial institutions supervisory agency or United States intelligence agency, upon request of the head of the agency. The report shall be available for a purpose that is consistent with this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from disclosure under section 552 of title 5.''.

(d) AMENDMENT RELATING TO THE PURPOSES OF THE BANK SECRECY ACT PROVISIONS.—Section 21(a) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(a)) is amended to read as follows:

''(a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.—

"(1) FINDINGS.—Congress finds that—

"(A) adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism; and

"(B) microfilm or other reproductions and other records made by insured depository institutions of checks, as well as records kept by such institutions, of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in proceedings described in subparagraph (A).

"(2) PURPOSE.—It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory inves-

tigations or proceedings, recognizes that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.''.

(e) AMENDMENT RELATING TO THE PURPOSES OF THE BANK SECRECY ACT.—Section 123(a) of Public Law 91–508 (12 U.S.C. 1953(a)) is amended to read as follows:

''(a) REGULATIONS.—If the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b), has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, he may by regulation require such bank, institution, or person.''.

(f) AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.—The Right to Financial Privacy Act of 1978 is amended—

(1) in section 1112(a) (12 U.S.C. 3412(a)), by inserting ", or intelligence or counterintelligence activity, investigation or analysis related to international terrorism" after "legitimate law enforcement inquiry"; and

(2) in section 1114(a)(1) (12 U.S.C. 3414(a)(1))—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.".

(g) AMENDMENT TO THE FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding at the end the following new section:

"SEC. 626. DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES.

"(a) DISCLOSURE.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or analysis.

"(b) FORM OF CERTIFICATION.—The certification described in subsection (a) shall be signed by the Secretary of the Treasury.

"(c) CONFIDENTIALITY.—No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

"(d) RULE OF CONSTRUCTION.—Nothing in section 625 shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

"(e) SAFE HARBOR.—Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a governmental agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.".

SEC. 341. REPORTING OF SUSPICIOUS ACTIVITIES BY HAWALA AND OTHER UNDERGROUND BANKING SYSTEMS.

(a) DEFINITION FOR SUBCHAPTER.—Section 5312(a)(2)(R) of title 31, United States Code, is amended to read as follows:

"(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system;".

(b) MONEY TRANSMITTING BUSINESS.—Section 5330(d)(1)(A) of title 31, United States Code, is amended

by inserting before the semicolon the following: ''or any other person who engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system;''.

(d) APPLICABILITY OF RULES.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

''(l) APPLICABILITY OF RULES.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system.''.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall report to Congress on the need for any additional legislation relating to informal value transfer banking systems or networks of people facilitating the transfer of value domestically or internationally outside of the conven-

tional financial institutions system, counter money laundering and regulatory controls relating to underground money movement and banking systems, such as the system referred to as 'hawala', including whether the threshold for the filing of suspicious activity reports under section 5318(g) of title 31, United States Code should be lowered in the case of such systems.

SEC. 342. USE OF AUTHORITY OF UNITED STATES EXECUTIVE DIRECTORS.

(a) ACTION BY THE PRESIDENT.—If the President determines that a particular foreign country has taken or has committed to take actions that contribute to efforts of the United States to respond to, deter, or prevent acts of international terrorism, the Secretary of the Treasury may, consistent with other applicable provisions of law, instruct the United States Executive Director of each international financial institution to use the voice and vote of the Executive Director to support any loan or other utilization of the funds of respective institutions for such country, or any public or private entity within such country.

(b) USE OF VOICE AND VOTE.—The Secretary of the Treasury may instruct the United States Executive Director of each international financial institution to aggressively use the voice and vote of the Executive Director to require an auditing of disbursements at such institutions

to ensure that no funds are paid to persons who commit, threaten to commit, or support terrorism.

(c) DEFINITION.—For purposes of this section, the term "international financial institution" means an institution described in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)).

Subtitle C—Currency Crimes

SEC. 351. BULK CASH SMUGGLING.

(a) FINDINGS.—Congress finds that—

(1) effective enforcement of the currency reporting requirements of chapter 53 of title 31, United States Code (commonly referred to as the Bank Secrecy Act), and the regulations promulgated thereunder, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions;

(2) in their effort to avoid using traditional financial institutions, drug dealers, and other criminals are forced to move large quantities of currency in bulk form to and through the airports, border crossings, and other ports of entry where it can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market;

(3) the transportation and smuggling of cash in bulk form may, at the time of enactment of this Act, be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion, and similar crimes;

(4) the intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of chapter 53 of title 31, United States Code, is the equivalent of, and creates the same harm as, the smuggling of goods;

(5) the arrest and prosecution of bulk cash smugglers is an important part of law enforcement's effort to stop the laundering of criminal proceeds, but the couriers who attempt to smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and are easily replaced, and therefore only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of bulk cash is a critical part;

(6) the penalties for violations of the currency reporting requirements of the chapter 53 of title 31, United States Code, are insufficient to provide a deterrent to the laundering of criminal proceeds;

(7) because the only criminal violation under Federal law before the date of enactment of this Act was a reporting offense, the law does not adequately provide for the confiscation of smuggled currency; and

(8) if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

(b) PURPOSES.—The purposes of this section are—

(1) to make the act of smuggling bulk cash itself a criminal offense;

(2) to authorize forfeiture of any cash or instruments of the smuggling offense;

(3) to emphasize the seriousness of the act of bulk cash smuggling; and

(4) to prescribe guidelines for determining the amount of property subject to such forfeiture in various situations.

(c) BULK CASH SMUGGLING OFFENSE.—

(1) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

"§ 5331. Bulk cash smuggling

"(a) CRIMINAL OFFENSE.—

"(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on his or her person or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer the currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside of the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment under subsection (b).

"(b) PENALTIES.—

"(1) PRISON TERM.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such an offense, shall be imprisoned for not more than 5 years.

"(2) FORFEITURE.—

"(A) IN GENERAL.—In addition to a prison term under paragraph (1), the court, in imposing sentence, shall order that the defendant forfeit to the United States any property, real or personal, involved in the offense, and any property traceable to such property, subject to subsection (d).

"(B) APPLICABILITY OF OTHER LAWS.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act (21 U.S.C. 853). If the property subject to forfeiture is unavailable, and the defendant has no substitute property that may be forfeited pursuant to section 413(p) of that Act, the court shall enter a personal money judgment against the defendant in an amount equal to the value of the unavailable property.

"(c) SEIZURE OF SMUGGLING CASH.—

"(1) IN GENERAL.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable thereto, may be seized and, subject to subsection (d), forfeited to the United States.

"(2) APPLICABLE PROCEDURES.—A seizure and forfeiture under this subsection shall be governed by the procedures governing civil forfeitures under section 981(a)(1)(A) of title 18, United States Code.

"(d) PROPORTIONALITY OF FORFEITURE.—

"(1) MITIGATION.—Upon a showing by the property owner by a preponderance of the evidence that the currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense.

"(2) CONSIDERATIONS.—In determining the amount of the forfeiture under paragraph (1), the court shall consider all aggravating and mitigating facts and circumstances that have a bearing on the gravity of the offense, including—

"(A) the value of the currency or other monetary instruments involved in the offense;

"(B) efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice; and

"(C) whether the offense is part of a pattern of repeated violations of Federal law.

"(e) RULE OF CONSTRUCTION.—For purposes of subsections (b) and (c), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used or intended to be used to conceal or transport the currency or other monetary instrument, and any other property used or intended to be used to facilitate the offense, shall be considered property involved in the offense.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5330 the following new item:

"5331. Bulk cash smuggling.".

(d) CURRENCY REPORTING VIOLATIONS.—Section 5317(c) of title 31, United States Code, is amended to read as follows:

"(c) FORFEITURE OF PROPERTY.—

"(1) IN GENERAL.—

"(A) CRIMINAL FORFEITURE.—The court, in imposing sentence for any violation of section 5313, 5316, or 5324, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

"(B) APPLICABLE PROCEDURES.—Forfeitures under this paragraph shall be governed by the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), and the guidelines set forth in paragraph (3) of this subsection.

"(2) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5316, or 5324, or any conspiracy to commit such violation, and any property traceable thereto, may be seized and, subject to paragraph (3), forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

"(3) MITIGATION.—In a forfeiture case under this subsection, upon a showing by the property owner by a preponderance of the evidence that any currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source, and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense. In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances

that have a bearing on the gravity of the offense. Such circumstances include, but are not limited to, the following: the value of the currency or other monetary instruments involved in the offense; efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice; and whether the offense is part of a pattern of repeated violations.

(e) CONFORMING AMENDMENTS.—Title 18, United States Code, is amended—

(1) in section 981(a)(1)(A) by striking "of section 5313(a) or 5324(a) of title 31, or"; and

(2) in section 982(a)(1), striking "of section 5313(a), 5316, or 5324 of title 31, or".

Subtitle E—Anticorruption Measures

SEC. 361. CORRUPTION OF FOREIGN GOVERNMENTS AND RULING ELITES.

It is the sense of Congress that, in deliberations between the United States Government and any other country on money laundering and corruption issues, the United States Government should—

(1) emphasize an approach that addresses not only the laundering of the proceeds of traditional criminal activity but also the increasingly endemic

problem of governmental corruption and the corruption of ruling elites;

(2) encourage the enactment and enforcement of laws in such country to prevent money laundering and systemic corruption;

(3) make clear that the United States will take all steps necessary to identify the proceeds of foreign government corruption which have been deposited in United States financial institutions and return such proceeds to the citizens of the country to whom such assets belong; and

(4) advance policies and measures to promote good government and to prevent and reduce corruption and money laundering, including through instructions to the United States Executive Director of each international financial institution (as defined in section 1701(c) of the International Financial Institutions Act) to advocate such policies as a systematic element of economic reform programs and advice to member governments.

SEC. 362. SUPPORT FOR THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING.

It is the sense of Congress that—

(1) the United States should continue to actively and publicly support the objectives of the Fi-

nancial Action Task Force on Money Laundering (hereafter in this section referred to as the "FATF") with regard to combating international money laundering;

(2) the FATF should identify noncooperative jurisdictions in as expeditious a manner as possible and publicly release a list directly naming those jurisdictions identified;

(3) the United States should support the public release of the list naming noncooperative jurisdictions identified by the FATF;

(4) the United States should encourage the adoption of the necessary international action to encourage compliance by the identified noncooperative jurisdictions; and

(5) the United States should take the necessary countermeasures to protect the United States economy against money of unlawful origin and encourage other nations to do the same.

SEC. 363. TERRORIST FUNDING THROUGH MONEY LAUNDERING.

It is the sense of the Congress that, in deliberations and negotiations between the United States Government and any other country regarding financial, economic, as-

sistance, or defense issues, the United States should encourage such other country—

(1) to take actions which would identify and prevent the transmittal of funds to and from terrorists and terrorist organizations; and

(2) to engage in bilateral and multilateral cooperation with the United States and other countries to identify suspected terrorists, terrorist organizations, and persons supplying funds to and receiving funds from terrorists and terrorist organizations.

TITLE IV—PROTECTING THE BORDER

Subtitle A—Protecting the Northern Border

SEC. 401. ENSURING ADEQUATE PERSONNEL ON THE NORTHERN BORDER.

The Attorney General is authorized to waive any FTE cap on personnel assigned to the Immigration and Naturalization Service to address the national security needs of the United States on the Northern border.

SEC. 402. NORTHERN BORDER PERSONNEL.

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (from the number authorized under current law), and the necessary

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personnel and facilities to support such personnel, in each State along the Northern Border;

(2) such sums as may be necessary to triple the number of Customs Service personnel (from the number authorized under current law), and the necessary personnel and facilities to support such personnel, at ports of entry in each State along the Northern Border;

(3) such sums as may be necessary to triple the number of INS inspectors (from the number authorized on the date of enactment of this Act), and the necessary personnel and facilities to support such personnel, at ports of entry in each State along the Northern Border; and

(4) an additional $50,000,000 each to the Immigration and Naturalization Service and the United States Customs Service for purposes of making improvements in technology for monitoring the Northern Border and acquiring additional equipment at the Northern Border.

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SEC. 403. ACCESS BY THE DEPARTMENT OF STATE AND THE INS TO CERTAIN IDENTIFYING INFORMATION IN THE CRIMINAL HISTORY RECORDS OF VISA APPLICANTS AND APPLICANTS FOR ADMISSION TO THE UNITED STATES.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105) is amended—

(1) in the section heading, by inserting "; DATA EXCHANGE" after "SECURITY OFFICERS";

(2) by inserting "(a)" after "SEC. 105.";

(3) in subsection (a), by inserting "and border" after "internal" the second place it appears; and

(4) by adding at the end the following:

"(b)(1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

"(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

"(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving the access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

"(4) Access to an extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) For purposes of administering this section, the Department of State shall, prior to receiving access to

NCIC data but not later than 4 months after the date of enactment of this subsection, promulgate final regulations—

"(1) to implement procedures for the taking of fingerprints; and

"(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

"(A) to limit the redissemination of such information;

"(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;

"(C) to ensure the security, confidentiality, and destruction of such information; and

"(D) to protect any privacy rights of individuals who are subjects of such information.".

(b) REPORTING REQUIREMENT.—Not later than 2 years after the date of enactment of this Act, the Attorney General and the Secretary of State jointly shall report to Congress on the implementation of the amendments made by this section.

(c) TECHNOLOGY STANDARD TO CONFIRM IDENTITY.—

(1) IN GENERAL.—The Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other Federal law enforcement and intelligence agencies the Attorney General or Secretary of State deems appropriate, shall within 2 years after the date of enactment of this section, develop and certify a technology standard that can confirm the identity of a person applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(2) INTEGRATED.—The technology standard developed pursuant to paragraph (1), shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully integrated means to share law enforcement and intelligence information necessary to confirm the identity of such persons applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(3) ACCESSIBLE.—The electronic system described in paragraph (2), once implemented, shall be readily and easily accessible to—

(A) all consular officers responsible for the issuance of visas;

(B) all Federal inspection agents at all United States border inspection points; and

(C) all law enforcement and intelligence officers as determined by regulation to be responsible for investigation or identification of aliens admitted to the United States pursuant to a visa.

(4) REPORT.—Not later than 18 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General and the Secretary of State shall jointly, in consultation with the Secretary of Treasury, report to Congress describing the development, implementation and efficacy of the technology standard and electronic database system described in this subsection.

(d) STATUTORY CONSTRUCTION.—Nothing in this section, or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or

officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with the National Crime Prevention and Privacy Compact Act of 1998 (subtitle A of title II of Public Law 105–251; 42 U.S.C. 14611–16) and section 552a of title 5, United States Code.

SEC. 404. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings ''Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs'' and ''Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration And Program Direction'' in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106–553 (114 Stat. 2762A–58 to 2762A–59)) is amended by striking the following each place it occurs: ''*Provided*, That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:''.

SEC. 405. REPORT ON THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM FOR POINTS OF ENTRY AND OVERSEAS CONSULAR POSTS.

(a) IN GENERAL.—The Attorney General, in consultation with the appropriate heads of other Federal agencies, including the Secretary of State, Secretary of the Treasury, and the Secretary of Transportation, shall report to Congress on the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation and other identification systems in order to better identify a person who holds a foreign passport or a visa and may be wanted in connection with a criminal investigation in the United States or abroad, before the issuance of a visa to that person or the entry or exit by that person from the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not less than $2,000,000 to carry out this section.

Subtitle B—Enhanced Immigration Provisions

SEC. 411. DEFINITIONS RELATING TO TERRORISM.

(a) GROUNDS OF INADMISSIBILITY.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended—

(1) in subparagraph (B)—

(A) in clause (i)—

(i) by amending subclause (IV) to read as follows:

"(IV) is a representative (as defined in clause (v)) of—

"(aa) a foreign terrorist organization, as designated by the Secretary of State under section 219, or

"(bb) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities,";

(ii) in subclause (V), by inserting "or" after "section 219,"; and

(iii) by adding at the end the following new subclauses:

"(VI) has used the alien's position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support

terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities, or

"(VII) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years,";

(B) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively;

(C) in clause (i)(II), by striking "clause (iii)" and inserting "clause (iv)";

(D) by inserting after clause (i) the following:

"(ii) EXCEPTION.—Subclause (VII) of clause (i) does not apply to a spouse or child—

"(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

"(II) whom the consular officer or Attorney General has reasonable

grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.";

(E) in clause (iii) (as redesignated by subparagraph (B))—

(i) by inserting "it had been" before "committed in the United States"; and

(ii) in subclause (V)(b), by striking "or firearm" and inserting ", firearm, or other weapon or dangerous device";

(F) by amending clause (iv) (as redesignated by subparagraph (B)) to read as follows:

"(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this chapter, the term 'engage in terrorist activity' means, in an individual capacity or as a member of an organization—

"(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

"(II) to prepare or plan a terrorist activity;

"(III) to gather information on potential targets for terrorist activity;

"(IV) to solicit funds or other things of value for—

"(aa) a terrorist activity;

"(bb) a terrorist organization described in clauses (vi)(I) or (vi)(II); or

"(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity;

"(V) to solicit any individual—

"(aa) to engage in conduct otherwise described in this clause;

"(bb) for membership in a terrorist organization described in clauses (vi)(I) or (vi)(II); or

"(cc) for membership in a terrorist organization described

in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity; or

"(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

"(aa) for the commission of a terrorist activity;

"(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

"(cc) to a terrorist organization described in clauses (vi)(I) or (vi)(II); or

"(dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate that he did not know, and should not reasonably have known, that the act would further the organization's terrorist activity.

This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, concludes in his sole unreviewable discretion, that this clause should not apply."; and

(D) by adding at the end the following new clause:

"(vi) TERRORIST ORGANIZATION DEFINED.—As used in clause (i)(VI) and clause (iv), the term 'terrorist organization' means an organization—

"(I) designated under section 219;

"(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that it engages in the activities described in subclause (I), (II), or (III) of clause (iv), or that it provides material support to further terrorist activity; or

"(III) that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv)."; and

(2) by adding at the end the following new subparagraph:

"(F) ASSOCIATION WITH TERRORIST ORGANIZATIONS.—Any alien who the Secretary of

State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.".

(b) CONFORMING AMENDMENT.—Section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)) is amended by striking "section 212(a)(3)(B)(iii)" and inserting "section 212(a)(3)(B)(iv)".

(c) RETROACTIVE APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of enactment of this Act and shall apply to—

(A) actions taken by an alien before, on, or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States—

(i) in removal proceedings on or after such date (except for proceedings in which

there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.—Notwithstanding any other provision of law, the amendments made by this section shall apply to all aliens in exclusion or deportation proceedings on or after the date of enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS AND ORGANIZATIONS DESIGNATED UNDER SECTION 212(a)(3)(B)(vi)(II).—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in

subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a group at any time when the group was not a terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189) or otherwise designated under section 212(a)(3)(B)(vi)(II).

(B) STATUTORY CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity—

(i) described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act or otherwise designated under section 212(a)(3)(B)(vi)(II); or

(ii) described in subclause (IV)(cc), (V)(cc), or (VI)(dd) of section 212(a)(3)(B)(iv) of such Act (as so amend-

ed) with respect to a terrorist organization described in section 212(a)(3)(B)(vi)(III).

(4) EXCEPTION.—The Secretary of State, in consultation with the Attorney General, may determine that the amendments made by this section shall not apply with respect to actions by an alien taken outside the United States before the date of enactment of this Act upon the recommendation of a consular officer who has concluded that there is not reasonable ground to believe that the alien knew or reasonably should have known that the actions would further a terrorist activity.

(c) DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.—Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) is amended—

(1) in paragraph (1)(B), by inserting ''or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)) or retains the capability and intent to engage in terrorist activity or terrorism)'' after ''212(a)(3)(B))'';

(2) in paragraph (1)(C), by inserting ''or terrorism'' after ''terrorist activity'';

(3) by amending paragraph (2)(A) to read as follows:

"(A) NOTICE.—

"(i) TO CONGRESSIONAL LEADERS.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

"(ii) PUBLICATION IN FEDERAL REGISTER.—The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).";

(4) in paragraph (2)(B)(i), by striking "subparagraph (A)" and inserting "subparagraph (A)(ii)";

(5) in paragraph (2)(C), by striking "paragraph (2)" and inserting "paragraph (2)(A)(i)";

(6) in paragraph (3)(B), by striking ''subsection (c)'' and inserting ''subsection (b)'';

(7) in paragraph (4)(B), by inserting after the first sentence the following: ''The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.'';

(8) in paragraph (6)(A)—

(A) by inserting ''or a redesignation made under paragraph (4)(B)'' after ''paragraph (1)'';

(B) in clause (i)—

(i) by inserting ''or redesignation'' after ''designation'' the first place it appears; and

(ii) by striking ''of the designation''; and

(C) in clause (ii), by striking ''of the designation'';

(9) in paragraph (6)(B)—

(A) by striking ''through (4)'' and inserting ''and (3)''; and

(B) by inserting at the end the following new sentence: ''Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.'';

(10) in paragraph (7), by inserting '', or the revocation of a redesignation under paragraph (6),'' after ''paragraph (5) or (6)''; and

(11) in paragraph (8)—

(A) by striking ''paragraph (1)(B)'' and inserting ''paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)'';

(B) by inserting ''or an alien in a removal proceeding'' after ''criminal action''; and

(C) by inserting ''or redesignation'' before ''as a defense''.

SEC. 412. MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW.

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 236 the following:

"MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW

"SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).

"(2) RELEASE.—Except as provided in paragraph (5), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

"(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

"(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

"(B) is engaged in any other activity that endangers the national security of the United States.

"(4) NONDELEGATION.—The Attorney General may delegate the authority provided under paragraph (3) only to the Commissioner. The Commissioner may not delegate such authority.

"(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

"(b) HABEAS CORPUS AND JUDICIAL REVIEW.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3)) is available exclusively in habeas corpus proceedings in the United States District Court for the District of Columbia. Notwith-

standing any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

"(c) STATUTORY CONSTRUCTION.—The provisions of this section shall not be applicable to any other provisions of the Immigration and Nationality Act.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236 the following:

"Sec. 236A. Mandatory detention of suspected terrorist; habeas corpus; judicial review.".

(c) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a);

(2) the grounds for such certifications;

(3) the nationalities of the aliens so certified;

(4) the length of the detention for each alien so certified; and

(5) the number of aliens so certified who—

(A) were granted any form of relief from removal;

(B) were removed;

(C) the Attorney General has determined are no longer aliens who may be so certified; or

(D) were released from detention.

SEC. 413. MULTILATERAL COOPERATION AGAINST TERRORISTS.

Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) is amended—

(1) by striking ''except that in the discretion of'' and inserting the following: ''except that—

''(1) in the discretion of''; and

(2) by adding at the end the following:

''(2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database—

''(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing

acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

"(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.".

TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

SEC. 501. PROFESSIONAL STANDARDS FOR GOVERNMENT ATTORNEYS ACT OF 2001.

(a) SHORT TITLE.—This title may be cited as the "Professional Standards for Government Attorneys Act of 2001".

(b) PROFESSIONAL STANDARDS FOR GOVERNMENT ATTORNEYS.—Section 530B of title 28, United States Code, is amended to read as follows:

"§ 530B. Professional Standards for Government Attorneys

"(a) DEFINITIONS.—In this section:

"(1) GOVERNMENT ATTORNEY.—The term 'Government attorney'—

"(A) means the Attorney General; the Deputy Attorney General; the Solicitor General; the Associate Attorney General; the head of, and any attorney employed in, any division, office, board, bureau, component, or agency of the Department of Justice; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney appointed under section 515; any Special Assistant United States Attorney appointed under section 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States; any independent counsel, or employee of such counsel, appointed under chapter 40; and any outside special counsel, or employee of such coun-

sel, as may be duly appointed by the Attorney General; and

"(B) does not include any attorney employed as an investigator or other law enforcement agent by the Department of Justice who is not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

"(2) STATE.—The term 'State' includes a Territory and the District of Columbia.

"(b) CHOICE OF LAW.—Subject to any uniform national rule prescribed by the Supreme Court under chapter 131, the standards of professional responsibility that apply to a Government attorney with respect to the attorney's work for the Government shall be—

"(1) for conduct in connection with a proceeding in or before a court, or conduct reasonably intended to lead to a proceeding in or before a court, the standards of professional responsibility established by the rules and decisions of the court in or before which the proceeding is brought or is intended to be brought;

"(2) for conduct in connection with a grand jury proceeding, or conduct reasonably intended to lead to a grand jury proceeding, the standards of

professional responsibility established by the rules and decisions of the court under whose authority the grand jury was or will be impaneled; and

"(3) for all other conduct, the standards of professional responsibility established by the rules and decisions of the Federal district court for the judicial district in which the attorney principally performs his or her official duties.

"(c) LICENSURE.—A Government attorney (except foreign counsel employed in special cases)—

"(1) shall be duly licensed and authorized to practice as an attorney under the laws of a State; and

"(2) shall not be required to be a member of the bar of any particular State.

"(d) UNDERCOVER ACTIVITIES.—Notwithstanding any provision of State law, including disciplinary rules, statutes, regulations, constitutional provisions, or case law, a Government attorney may, for the purpose of enforcing Federal law, provide legal advice, authorization, concurrence, direction, or supervision on conducting undercover activities, and any attorney employed as an investigator or other law enforcement agent by the Department of Justice who is not authorized to represent the United States in criminal or civil law enforcement litigation or

to supervise such proceedings may participate in such activities, even though such activities may require the use of deceit or misrepresentation, where such activities are consistent with Federal law.

"(e) ADMISSIBILITY OF EVIDENCE.—No violation of any disciplinary, ethical, or professional conduct rule shall be construed to permit the exclusion of otherwise admissible evidence in any Federal criminal proceedings.

"(f) RULEMAKING AUTHORITY.—The Attorney General shall make and amend rules of the Department of Justice to ensure compliance with this section.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 31 of title 28, United States Code, is amended, in the item relating to section 530B, by striking "Ethical standards for attorneys for the Government" and inserting "Professional standards for Government attorneys".

(d) REPORTS.—

(1) UNIFORM RULE.—In order to encourage the Supreme Court to prescribe, under chapter 131 of title 28, United States Code, a uniform national rule for Government attorneys with respect to communications with represented persons and parties, not later than 1 year after the date of enactment of this Act, the Judicial Conference of the United States

shall submit to the Chief Justice of the United States a report, which shall include recommendations with respect to amending the Federal Rules of Practice and Procedure to provide for such a uniform national rule.

(2) ACTUAL OR POTENTIAL CONFLICTS.—Not later than 2 years after the date of enactment of this Act, the Judicial Conference of the United States shall submit to the Chairmen and Ranking Members of the Committees on the Judiciary of the House of Representatives and the Senate a report, which shall include—

(A) a review of any areas of actual or potential conflict between specific Federal duties related to the investigation and prosecution of violations of Federal law and the regulation of Government attorneys (as that term is defined in section 530B of title 28, United States Code, as amended by this Act) by existing standards of professional responsibility; and

(B) recommendations with respect to amending the Federal Rules of Practice and Procedure to provide for additional rules governing attorney conduct to address any areas of

actual or potential conflict identified pursuant to the review under subparagraph (A).

(3) REPORT CONSIDERATIONS.—In carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall take into consideration—

(A) the needs and circumstances of multiforum and multijurisdictional litigation;

(B) the special needs and interests of the United States in investigating and prosecuting violations of Federal criminal and civil law; and

(C) practices that are approved under Federal statutory or case law or that are otherwise consistent with traditional Federal law enforcement techniques.

SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS TO COMBAT TERRORISM.

(a) PAYMENT OF REWARDS TO COMBAT TERRORISM.—Funds available to the Attorney General may be used for the payment of rewards pursuant to public advertisements for assistance to the Department of Justice to combat terrorism and defend the Nation against terrorist acts, in accordance with procedures and regulations established or issued by the Attorney General.

(b) CONDITIONS.—In making rewards under this section—

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(1) no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

(2) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under paragraph (1);

(3) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) may provide the Attorney General with funds for the payment of rewards;

(4) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review; and

(5) no such reward shall be subject to any per- or aggregate reward spending limitation established by law, unless that law expressly refers to this section, and no reward paid pursuant to any such offer shall count toward any such aggregate reward spending limitation.

SEC. 503. SECRETARY OF STATE'S AUTHORITY TO PAY REWARDS.

Section 36 of the State Department Basic Authorities Act of 1956 (Public Law 885, August 1, 1956; 22 U.S.C. 2708) is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "or" at the end;

(B) in paragraph (5), by striking the period at the end and inserting ", including by dismantling an organization in whole or significant part; or"; and

(C) by adding at the end the following:

"(6) the identification or location of an individual who holds a key leadership position in a terrorist organization.";

(2) in subsection (d), by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2); and

(3) in subsection (e)(1), by inserting ", except as personally authorized by the Secretary of State if he determines that offer or payment of an award of a larger amount is necessary to combat terrorism or defend the Nation against terrorist acts." after "$5,000,000".

SEC. 504. DNA IDENTIFICATION OF TERRORISTS AND OTHER VIOLENT OFFENDERS.

Section 3(d)(2) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(2)) is amended to read as follows:

"(2) In additional to the offenses described in paragraph (1), the following offenses shall be treated for purposes of this section as qualifying Federal offenses, as determined by the Attorney General:

"(A) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code.

"(B) Any crime of violence (as defined in section 16 of title 18, United States Code).

"(C) Any attempt or conspiracy to commit any of the above offenses.".

SEC. 505. COORDINATION WITH LAW ENFORCEMENT.

(a) INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.—Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806), is amended by adding at the end the following:

"(k)(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against—

"(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

"(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

"(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 104(a)(7)(B) or the entry of an order under section 105.".

(b) INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.—Section 305 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by adding at the end the following:

"(k)(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this title may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against—

"(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

"(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

"(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 303(a)(7) or the entry of an order under section 304.".

SEC. 506. MISCELLANEOUS NATIONAL SECURITY AUTHORITIES.

(a) TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709(b) of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting "at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "Assistant Director";

(2) in paragraph (1)—

(A) by striking "in a position not lower than Deputy Assistant Director"; and

(B) by striking "made that" and all that follows and inserting the following: "made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a

United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and''; and

(3) in paragraph (2)—

(A) by striking ''in a position not lower than Deputy Assistant Director''; and

(B) by striking ''made that'' and all that follows and inserting the following: ''made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.''.

(b) FINANCIAL RECORDS.—Section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A)) is amended—

(1) by inserting ''in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director'' after ''designee''; and

(2) by striking ''sought'' and all that follows and inserting ''sought for foreign counter intelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.''.

(c) CONSUMER REPORTS.—Section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended—

(1) in subsection (a)—

(A) by inserting ''in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director'' after ''designee'' the first place it appears; and

(B) by striking ''in writing that'' and all that follows through the end and inserting the following: ''in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amend-

ment to the Constitution of the United States.";

(2) in subsection (b)—

(A) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director" after "designee" the first place it appears; and

(B) by striking "in writing that" and all that follows through the end and inserting the following: "in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States."; and

(3) in subsection (c)—

(A) by inserting "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "designee of the Director"; and

(B) by striking "in camera that" and all that follows through "States." and inserting the following: "in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.".

SEC. 507. EXTENSION OF SECRET SERVICE JURISDICTION.

(a) CONCURRENT JURISDICTION UNDER 18 U.S.C. 1030.—Section 1030(d) of title 18, United States Code, is amended to read as follows:

"(d)(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

"(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C.

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2014(y)), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056(a) of this title.

"(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.".

(b) REAUTHORIZATION OF JURISDICTION UNDER 18 U.S.C. 1344.—Section 3056(b)(3) of title 18, United States Code, is amended by striking "credit and debit card frauds, and false identification documents or devices" and inserting "access device frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution".

SEC. 508. DISCLOSURE OF EDUCATIONAL RECORDS.

Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), is amended by adding after subsection (i) a new subsection (j) to read as follows:

"(j) INVESTIGATION AND PROSECUTION OF TERRORISM.—

"(1) IN GENERAL.—Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney Gen-

eral) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

"(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18 United States Code, or an act of domestic or international terrorism as defined in section 2331 of that title; and

"(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

"(2) APPLICATION AND APPROVAL.—

"(A) IN GENERAL.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to

contain information described in paragraph (1)(A).

"(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

"(3) PROTECTION OF EDUCATIONAL AGENCY OR INSTITUTION.—An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

"(4) RECORD-KEEPING.—Subsection (b)(4) does not apply to education records subject to a court order under this subsection.".

SEC. 509. DISCLOSURE OF INFORMATION FROM NCES SURVEYS.

Section 408 of the National Education Statistics Act of 1994 (20 U.S.C. 9007), is amended by adding after subsection (b) a new subsection (c) to read as follows:

"(c) INVESTIGATION AND PROSECUTION OF TERRORISM.—

"(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the Attorney General (or any Federal officer or employee, in a position not lower

than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring the Secretary to permit the Attorney General (or his designee) to—

"(A) collect reports, records, and information (including individually identifiable information) in the possession of the center that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, or an act of domestic or international terrorism as defined in section 2331 of that title; and

"(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such information, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

"(2) APPLICATION AND APPROVAL.—

"(A) IN GENERAL.—An application under paragraph (1) shall certify that there are spe-

cific and articulable facts giving reason to believe that the information sought is described in paragraph (1)(A).

"(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

"(3) PROTECTION.—An officer or employee of the Department who, in good faith, produces information in accordance with an order issued under this subsection does not violate subsection (b)(2) and shall not be liable to any person for that production.".

TITLE VI—PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS, AND THEIR FAMILIES

Subtitle A—Aid to Families of Public Safety Officers

SEC. 611. EXPEDITED PAYMENT FOR PUBLIC SAFETY OFFICERS INVOLVED IN THE PREVENTION, INVESTIGATION, RESCUE, OR RECOVERY EFFORTS RELATED TO A TERRORIST ATTACK.

(a) IN GENERAL.—Notwithstanding the limitations of subsection (b) of section 1201 or the provisions of sub-

sections (c), (d), and (e) of such section or section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796, 3796a), upon certification (containing identification of all eligible payees of benefits pursuant to section 1201 of such Act) by a public agency that a public safety officer employed by such agency was killed or suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty as described in section 1201 of such Act in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

(b) DEFINITIONS.—For purposes of this section, the terms "catastrophic injury", "public agency", and "public safety officer" have the same meanings given such terms in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b).

SEC. 612. TECHNICAL CORRECTION WITH RESPECT TO EXPEDITED PAYMENTS FOR HEROIC PUBLIC SAFETY OFFICERS.

Section 1 of Public Law 107-37 (an Act to provide for the expedited payment of certain benefits for a public safety officer who was killed or suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty in connection with the terrorist attacks of September 11, 2001) is amended by—

(1) inserting before "by a" the following: "(containing identification of all eligible payees of benefits pursuant to section 1201)";

(2) inserting "producing permanent and total disability" after "suffered a catastrophic injury"; and

(2) striking "1201(a)" and inserting "1201".

SEC. 613. PUBLIC SAFETY OFFICERS BENEFIT PROGRAM PAYMENT INCREASE.

(a) PAYMENTS.—Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

SEC. 614. OFFICE OF JUSTICE PROGRAMS.

Section 112 of title I of section 101(b) of division A of Public Law 105–277 and section 108(a) of appendix A of Public Law 106–113 (113 Stat. 1501A–20) are amended—

(1) after ''that Office'', each place it occurs, by inserting ''(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)''; and

(2) by inserting ''functions, including any'' after ''all''.

Subtitle B—Amendments to the Victims of Crime Act of 1984

SEC. 621. CRIME VICTIMS FUND.

(a) DEPOSIT OF GIFTS IN THE FUND.—Section 1402(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(b)) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(5) any gifts, bequests, or donations to the Fund from private entities or individuals.''.

(b) FORMULA FOR FUND DISTRIBUTIONS.—Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) is amended to read as follows:

"(c) FUND DISTRIBUTION; RETENTION OF SUMS IN FUND; AVAILABILITY FOR EXPENDITURE WITHOUT FISCAL YEAR LIMITATION.—

"(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year in any fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the previous fiscal year.

"(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d). All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation.".

(c) ALLOCATION OF FUNDS FOR COSTS AND GRANTS.—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended—

(1) by striking "deposited in" and inserting "to be distributed from";

(2) in subparagraph (A), by striking "48.5" and inserting "47.5";

(3) in subparagraph (B), by striking "48.5" and inserting "47.5"; and

(4) in subparagraph (C), by striking "3" and inserting "5".

(d) ANTITERRORISM EMERGENCY RESERVE.—Section 1402(d)(5) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(5)) is amended to read as follows:

"(5)(A) In addition to the amounts distributed under paragraphs (2), (3), and (4), the Director may set aside up to $50,000,000 from the amounts transferred to the Fund for use in responding to the airplane hijackings and terrorist acts that occurred on September 11, 2001, as an antiterrorism emergency reserve. The Director may replenish any amounts expended from such reserve in subsequent fiscal years by setting aside up to 5 percent of the amounts remaining in the Fund in any fiscal year

after distributing amounts under paragraphs (2), (3) and (4). Such reserve shall not exceed $50,000,000.

"(B) The antiterrorism emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 1404B and to provide compensation to victims of international terrorism under section 1404C.

"(C) Amounts in the antiterrorism emergency reserve established pursuant to subparagraph (A) may be carried over from fiscal year to fiscal year. Notwithstanding subsection (c) and section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (and any similar limitation on Fund obligations in any future Act, unless the same should expressly refer to this section), any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.".

(e) VICTIMS OF SEPTEMBER 11, 2001.—Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, shall not be subject to any limitation on obligations from

amounts deposited to or available in the Fund, notwithstanding—

(1) section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, and any similar limitation on Fund obligations in such Act for Fiscal Year 2002; and

(2) subsections (c) and (d) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).

SEC. 622. CRIME VICTIM COMPENSATION.

(a) ALLOCATION OF FUNDS FOR COMPENSATION AND ASSISTANCE.—Paragraphs (1) and (2) of section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) are amended by inserting "in fiscal year 2002 and of 60 percent in subsequent fiscal years" after "40 percent".

(b) LOCATION OF COMPENSABLE CRIME.—Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(6)(B)) is amended by striking "are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or".

(c) RELATIONSHIP OF CRIME VICTIM COMPENSATION TO MEANS-TESTED FEDERAL BENEFIT PROGRAMS.—Section 1403 of the Victims of Crime Act of

1984 (42 U.S.C. 10602) is amended by striking subsection (c) and inserting the following:

"(c) EXCLUSION FROM INCOME, RESOURCES, AND ASSETS FOR PURPOSES OF MEANS TESTS.—Notwithstanding any other law (other than title IV of Public Law 107–42), for the purpose of any maximum allowed income, resource, or asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall that amount reduce the amount of the assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.".

(d) DEFINITIONS OF "COMPENSABLE CRIME" AND "STATE".—Section 1403(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)) is amended—

(1) in paragraph (3), by striking "crimes involving terrorism,"; and

(2) in paragraph (4), by inserting "the United States Virgin Islands," after "the Commonwealth of Puerto Rico,".

(e) RELATIONSHIP OF ELIGIBLE CRIME VICTIM COMPENSATION PROGRAMS TO THE SEPTEMBER 11TH VICTIM COMPENSATION FUND.—

(1) IN GENERAL.—Section 1403(e) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(e)) is amended by inserting "including the program established under title IV of Public Law 107–42," after "Federal program,".

(2) COMPENSATION.—With respect to any compensation payable under title IV of Public Law 107–42, the failure of a crime victim compensation program, after the effective date of final regulations issued pursuant to section 407 of Public Law 107–42, to provide compensation otherwise required pursuant to section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) shall not render that program ineligible for future grants under the Victims of Crime Act of 1984.

SEC. 623. CRIME VICTIM ASSISTANCE.

(a) ASSISTANCE FOR VICTIMS IN THE DISTRICT OF COLUMBIA, PUERTO RICO, AND OTHER TERRITORIES AND POSSESSIONS.—Section 1404(a) of the Victims of

Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

"(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1).".

(b) PROHIBITION ON DISCRIMINATION AGAINST CERTAIN VICTIMS.—Section 1404(b)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(b)(1)) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(F) does not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.".

(c) GRANTS FOR PROGRAM EVALUATION AND COMPLIANCE EFFORTS.—Section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A))

is amended by inserting ", program evaluation, compliance efforts," after "demonstration projects".

(d) ALLOCATION OF DISCRETIONARY GRANTS.—Section 1404(c)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(2)) is amended—

(1) in subparagraph (A), by striking "not more than" and inserting "not less than"; and

(2) in subparagraph (B), by striking "not less than" and inserting "not more than".

(e) FELLOWSHIPS AND CLINICAL INTERNSHIPS.—Section 1404(c)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(3)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(E) use funds made available to the Director under this subsection—

"(i) for fellowships and clinical internships; and

"(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting

from demonstrations, surveys, and special projects.''.

SEC. 624. VICTIMS OF TERRORISM.

(a) COMPENSATION AND ASSISTANCE TO VICTIMS OF DOMESTIC TERRORISM.—Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(b)) is amended to read as follows:

''(b) VICTIMS OF TERRORISM WITHIN THE UNITED STATES.—The Director may make supplemental grants as provided in section 1402(d)(5) to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring within the United States.''.

(b) ASSISTANCE TO VICTIMS OF INTERNATIONAL TERRORISM.—Section 1404B(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(a)(1)) is amended by striking ''who are not persons eligible for compensation

under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986''.

(c) COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM.—Section 1404C(b) of the Victims of Crime of 1984 (42 U.S.C. 10603c(b)) is amended by adding at the end the following: ''The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.''.

TITLE VII—INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE PROTECTION

SEC. 711. EXPANSION OF REGIONAL INFORMATION SHARING SYSTEM TO FACILITATE FEDERAL-STATE-LOCAL LAW ENFORCEMENT RESPONSE RELATED TO TERRORIST ATTACKS.

Section 1301 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) is amended—

(1) in subsection (a), by inserting ''and terrorist conspiracies and activities'' after ''activities'';

(2) in subsection (b)—

(A) in paragraph (3), by striking "and" after the semicolon;

(B) by redesignating paragraph (4) as paragraph (5);

(C) by inserting after paragraph (3) the following:

"(4) establishing and operating secure information sharing systems to enhance the investigation and prosecution abilities of participating enforcement agencies in addressing multi-jurisdictional terrorist conspiracies and activities; and (5)"; and

(3) by inserting at the end the following:

"(d) AUTHORIZATION OF APPROPRIATION TO THE BUREAU OF JUSTICE ASSISTANCE.—There are authorized to be appropriated to the Bureau of Justice Assistance to carry out this section $50,000,000 for fiscal year 2002 and $100,000,000 for fiscal year 2003.".

TITLE VIII—STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

SEC. 801. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST MASS TRANSPORTATION SYSTEMS.

Chapter 97 of title 18, United States Code, is amended by adding at the end the following:

"§ 1993. Terrorist attacks and other acts of violence against mass transportation systems

"(a) GENERAL PROHIBITIONS.—Whoever willfully—

"(1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry;

"(2) places or causes to be placed any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

"(3) sets fire to, or places any biological agent or toxin for use as a weapon, destructive substance, or destructive device in, upon, or near any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and knowing or having reason to know such activity would likely derail, disable, or wreck a mass transportation vehicle or ferry used, operated, or employed by the mass transportation provider;

"(4) removes appurtenances from, damages, or otherwise impairs the operation of a mass transportation signal system, including a train control system, centralized dispatching system, or rail grade crossing warning signal;

"(5) interferes with, disables, or incapacitates any dispatcher, driver, captain, or person while they are employed in dispatching, operating, or maintaining a mass transportation vehicle or ferry, with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life;

"(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider or any other person while any of the foregoing are on the property of a mass transportation provider;

"(7) conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection; or

"(8) attempts, threatens, or conspires to do any of the aforesaid acts,

shall be fined under this title or imprisoned not more than twenty years, or both, if such act is committed, or in the case of a threat or conspiracy such act would be committed, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, that person travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act.

''(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) in a circumstance in which—

''(1) the mass transportation vehicle or ferry was carrying a passenger at the time of the offense; or

''(2) the offense has resulted in the death of any person,

shall be guilty of an aggravated form of the offense and shall be fined under this title or imprisoned for a term of years or for life, or both.

''(c) DEFINITIONS.—In this section—

''(1) the term 'biological agent' has the meaning given to that term in section 178(1) of this title;

''(2) the term 'dangerous weapon' has the meaning given to that term in section 930 of this title;

"(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4) of this title;

"(4) the term 'destructive substance' has the meaning given to that term in section 31 of this title;

"(5) the term 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, United States Code, except that the term shall include schoolbus, charter, and sightseeing transportation;

"(6) the term 'serious bodily injury' has the meaning given to that term in section 1365 of this title;

"(7) the term 'State' has the meaning given to that term in section 2266 of this title; and

"(8) the term 'toxin' has the meaning given to that term in section 178(2) of this title.".

(f) CONFORMING AMENDMENT.—The analysis of chapter 97 of title 18, United States Code, is amended by adding at the end:

"1993. Terrorist attacks and other acts of violence against mass transportation systems.".

SEC. 802. EXPANSION OF THE BIOLOGICAL WEAPONS STATUTE.

Chapter 10 of title 18, United States Code, is amended—

(1) in section 175—

(A) in subsection (b)—

(i) by striking "does not include" and inserting "includes";

(ii) by inserting "other than" after "system for"; and

(iii) by inserting "bona fide research" after "protective";

(B) by redesignating subsection (b) as subsection (c); and

(C) by inserting after subsection (a) the following:

"(b) ADDITIONAL OFFENSE.—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. In this subsection, the terms 'biological agent' and 'toxin' do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological

agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.";

(2) by inserting after section 175a the following:

"SEC. 175b. POSSESSION BY RESTRICTED PERSONS.

"(a) No restricted person described in subsection (b) shall ship or transport interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(l) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of the Code of Regulations.

"(b) In this section:

"(1) The term 'select agent' does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

"(2) The term 'restricted person' means an individual who—

"(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

"(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

"(C) is a fugitive from justice;

"(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(E) is an alien illegally or unlawfully in the United States;

"(F) has been adjudicated as a mental defective or has been committed to any mental institution;

"(G) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that re-

mains in effect) that such country has repeatedly provided support for acts of international terrorism; or

"(H) has been discharged from the Armed Services of the United States under dishonorable conditions.

"(3) The term 'alien' has the same meaning as in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

"(4) The term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

"(c) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity."; and

(3) in the chapter analysis, by inserting after the item relating to section 175a the following:

"175b. Possession by restricted persons.".

SEC. 803. DEFINITION OF DOMESTIC TERRORISM.

(a) DOMESTIC TERRORISM DEFINED.—Section 2331 of title 18, United States Code, is amended—

(1) in paragraph (1)(B)(iii), by striking "by assassination or kidnapping" and inserting "by mass destruction, assassination, or kidnapping";

(2) in paragraph (3), by striking "and";

(3) in paragraph (4), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(5) the term 'domestic terrorism' means activities that—

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

"(C) occur primarily within the territorial jurisdiction of the United States.".

(b) CONFORMING AMENDMENT.—Section 3077(1) of title 18, United States Code, is amended to read as follows:

"(1) 'act of terrorism' means an act of domestic or international terrorism as defined in section 2331;".

SEC. 804. PROHIBITION AGAINST HARBORING TERRORISTS.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding after section 2338 the following new section:

"§ 2339. Harboring or concealing terrorists

"(a) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or is about to commit, an offense under section 32 (relating to destruction of aircraft or aircraft facilities), section 175 (relating to biological weapons), section 229 (relating to chemical weapons), section 831 (relating to nuclear materials), paragraph (2) or (3) of section 844(f) (relating to arson and bombing of government property risking or causing injury or death), section 1366(a) (relating to the destruction of an energy facility), section 2280 (relating to violence against maritime navigation), section 2332a (relating to weapons of mass destruction), or section 2332b (relating to acts of terrorism transcending national boundaries) of this title, section 236(a) (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)), or section 46502 (relat-

ing to aircraft piracy) of title 49, shall be fined under this title or imprisoned not more than ten years, or both.''.

''(b) A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.''.

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item for section 2338 the following:

''2339. Harboring or concealing terrorists.''.

SEC. 805. JURISDICTION OVER CRIMES COMMITTED AT U.S. FACILITIES ABROAD.

Section 7 of title 18, United States Code, is amended by adding at the end the following:

''(9) With respect to offenses committed by or against a United States national, as defined in section 1203(c) of this title—

''(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

"(B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.

Nothing in this paragraph shall be deemed to supersede any treaty or international agreement in force on the date of enactment of this paragraph with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.".

SEC. 806. MATERIAL SUPPORT FOR TERRORISM.

(a) IN GENERAL.—Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ", within the United States,";

(B) by inserting "229," after "175,";

(C) by inserting "1993," after "1992,";

(D) by inserting ", section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284)," after "of this title";

(E) by inserting "or 60123(b)" after "46502"; and

(F) by inserting at the end the following: "A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law."; and

(2) in subsection (b)—

(A) by striking "or other financial securities" and inserting "or monetary instruments or financial securities"; and

(B) by inserting "expert advice or assistance," after "training,".

(b) TECHNICAL AMENDMENT.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

SEC. 807. ASSETS OF TERRORIST ORGANIZATIONS.

Section 981(a)(1) of title 18, United States Code, is amended by inserting at the end the following:

"(G) All assets, foreign or domestic—

"(i) of any person, entity, or organization engaged in planning or perpetrating any act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, af-

fording any person a source of influence over any such entity or organization;

"(ii) acquired or maintained by any person for the purpose of supporting, planning, conducting, or concealing an act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

SEC. 808. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.

No provision of the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of Public Law 106–387) shall be construed to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

SEC. 809. DEFINITION OF FEDERAL CRIME OF TERRORISM.

Section 2332b of title 18, United States Code, is amended—

(1) in subsection (f), by inserting after "terrorism" the following: "and any violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1366(c), 1751(e), 2152, or 2156 of this title," before "and the Secretary"; and

(2) in subsection (g)(5)(B), by striking clauses (i) through (iii) and inserting the following:

"(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 229 (relating to chemical weapons), 351 (a) through (d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) (2) through (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dan-

gerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim within special maritime and territorial jurisdiction of the United States), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751 (a) through (d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence

against mass transportation systems), 2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title;

"(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or

"(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section

46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.''.

SEC. 810. NO STATUTE OF LIMITATION FOR CERTAIN TERRORISM OFFENSES.

(a) IN GENERAL.—Section 3286 of title 18, United States Code, is amended to read as follows:

''§ 3286. Extension of statute of limitation for certain terrorism offenses.

''(a) EIGHT-YEAR LIMITATION.—Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any noncapital offense involving a violation of any provision listed in section 2332b(g)(5)(B) other than a provision listed in section 3295, or a violation of section 112, 351(e), 1361, or 1751(e) of this title, or section 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed.

"(b) NO LIMITATION.—Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense listed in section 2332b(g)(5)(B), if the commission of such offense resulted in, or created a forseeable risk of, death or serious bodily injury to another person.".

(b) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

SEC. 811. ALTERNATE MAXIMUM PENALTIES FOR TERRORISM OFFENSES.

(a) ARSON.—Section 81 of title 18, United States Code, is amended in the second undesignated paragraph by striking "not more than twenty years" and inserting "for any term of years or for life".

(b) DESTRUCTION OF AN ENERGY FACILITY.—Section 1366 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "ten" and inserting "20"; and

(2) by adding at the end the following:

"(d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.".

(c) MATERIAL SUPPORT TO TERRORISTS.—Section 2339A(a) of title 18, United States Code, is amended—

(1) by striking "10" and inserting "15"; and

(2) by striking the period and inserting "and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(d) MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a)(1) of title 18, United States Code, is amended—

(1) by striking "10" and inserting "15"; and

(2) by striking the period after "or both" and inserting "and, if the death of any person results, shall be imprisoned for any term of years or for life.".

(e) DESTRUCTION OF NATIONAL-DEFENSE MATERIALS.—Section 2155(a) of title 18, United States Code, is amended—

(1) by striking "ten" and inserting "20"; and

(2) by striking the period at the end and inserting ", and, if death results to any person, shall be imprisoned for any term of years or for life.".

(f) SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended—

(1) by striking "ten" each place it appears and inserting "20";

(2) in subsection (a), by striking the period at the end and inserting ", and, if death results to any person, shall be imprisoned for any term of years or for life."; and

(3) in subsection (b), by striking the period at the end and inserting ", and, if death results to any person, shall be imprisoned for any term of years or for life.".

(g) SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES.—Section 46505(c) of title 49, United States Code, is amended—

(1) by striking "15" and inserting "20"; and

(2) by striking the period at the end and inserting ", and, if death results to any person, shall be imprisoned for any term of years or for life.".

(h) DAMAGING OR DESTROYING AN INTERSTATE GAS OR HAZARDOUS LIQUID PIPELINE FACILITY.—Section 60123(b) of title 49, United States Code, is amended—

(1) by striking "15" and inserting "20"; and

(2) by striking the period at the end and inserting ", and, if death results to any person, shall be imprisoned for any term of years or for life.".

SEC. 812. PENALTIES FOR TERRORIST CONSPIRACIES.

(a) ARSON.—Section 81 of title 18, United States Code, is amended in the first undesignated paragraph—

(1) by striking ", or attempts to set fire to or burn"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be imprisoned".

(b) KILLINGS IN FEDERAL FACILITIES.—

(1) Section 930(c) of title 18, United States Code, is amended—

(A) by striking "or attempts to kill";

(B) by inserting "or attempts or conspires to do such an act," before "shall be punished"; and

(C) by striking "and 1113" and inserting "1113, and 1117".

(2) Section 1117 of title 18, United States Code, is amended by inserting "930(c)," after "section".

(c) COMMUNICATIONS LINES, STATIONS, OR SYSTEMS.—Section 1362 of title 18, United States Code, is amended in the first undesignated paragraph—

(1) by striking "or attempts willfully or maliciously to injure or destroy"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be fined".

(d) BUILDINGS OR PROPERTY WITHIN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—Section 1363 of title 18, United States Code, is amended—

(1) by striking "or attempts to destroy or injure"; and

(2) by inserting "or attempts or conspires to do such an act," before "shall be fined" the first place it appears.

(e) WRECKING TRAINS.—Section 1992 of title 18, United States Code, is amended by adding at the end the following:

"(c) A person who conspires to commit any offense defined in this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.".

(f) MATERIAL SUPPORT TO TERRORISTS.—Section 2339A of title 18, United States Code, is amended by inserting "or attempts or conspires to do such an act," before "shall be fined".

(g) TORTURE.—Section 2340A of title 18, United States Code, is amended by adding at the end the following:

"(c) CONSPIRACY.—A person who conspires to commit an offense under this section shall be subject to the

same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.".

(h) SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), is amended—

(1) in subsection (a)—

(A) by striking ", or who intentionally and willfully attempts to destroy or cause physical damage to";

(B) in paragraph (4), by striking the period at the end and inserting a comma; and

(C) by inserting "or attempts or conspires to do such an act," before "shall be fined"; and

(2) in subsection (b)—

(A) by striking "or attempts to cause"; and

(B) by inserting "or attempts or conspires to do such an act," before "shall be fined".

(i) INTERFERENCE WITH FLIGHT CREW MEMBERS AND ATTENDANTS.—Section 46504 of title 49, United States Code, is amended by inserting "or attempts or conspires to do such an act," before "shall be fined".

(j) SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES.—Section 46505 of title 49, United

States Code, is amended by adding at the end the following:

"(e) CONSPIRACY.—If two or more persons conspire to violate subsection (b) or (c), and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in such subsection.".

(k) DAMAGING OR DESTROYING AN INTERSTATE GAS OR HAZARDOUS LIQUID PIPELINE FACILITY.—Section 60123(b) of title 49, United States Code, is amended—

(1) by striking ", or attempting to damage or destroy,"; and

(2) by inserting ", or attempting or conspiring to do such an act," before "shall be fined".

SEC. 813. POST-RELEASE SUPERVISION OF TERRORISTS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(j) SUPERVISED RELEASE TERMS FOR TERRORISM PREDICATES.—Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person, is any term of years or life.".

SEC. 814. INCLUSION OF ACTS OF TERRORISM AS RACKETEERING ACTIVITY.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or (F)" and inserting "(F)"; and

(2) by inserting before the semicolon at the end the following: ", or (G) any act that is indictable as an offense listed in section 2332b(g)(5)(B)".

SEC. 815. DETERRENCE AND PREVENTION OF CYBERTERRORISM.

(a) CLARIFICATION OF PROTECTION OF PROTECTED COMPUTERS.—Section 1030(a)(5) of title 18, United States Code, is amended—

(1) by inserting "(i)" after (A)";

(2) by redesignating subparagraphs (B) and (C) as clauses (ii) and (iii), respectively;

(3) by adding "and" at the end of clause (iii), as so redesignated; and

(4) by adding at the end the following:

"(B) caused (or, in the case of an attempted offense, would, if completed, have caused) conduct described in clause (i), (ii), or (iii) of subparagraph (A) that resulted in—

"(i) loss to 1 or more persons during any 1-year period (including loss resulting

from a related course of conduct affecting 1 or more other protected computers) aggregating at least $5,000 in value;

"(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

"(iii) physical injury to any person;

"(iv) a threat to public health or safety; or

"(v) damage affecting a computer system used by or for a Government entity in furtherance of the administration of justice, national defense, or national security;".

(b) PENALTIES.—Section 1030(c) of title 18, United States Code is amended—

(1) in paragraph (2)—

(A) in subparagraph (A) —

(i) by inserting "except as provided in subparagraph (B)," before "a fine";

(ii) by striking "(a)(5)(C)" and inserting "(a)(5)(A)(iii)"; and

(iii) by striking "and' at the end;

(B) in subparagraph (B), by inserting "or an attempt to commit an offense punishable under this subparagraph," after "subsection (a)(2)," in the matter preceding clause (i); and

(C) in subparagraph (C), by striking "and" at the end;

(2) in paragraph (3)—

(A) by striking ", (a)(5)(A), (a)(5)(B)," both places it appears; and

(B) by striking "and" at the end; and

(3) by striking "(a)(5)(C)" and inserting "(a)(5)(A)(iii)"; and

(4) by adding at the end the following new paragraphs:

"(4)(A) a fine under this title, imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(5)(A)(i), or an attempt to commit an offense punishable under that subsection;

"(B) a fine under this title, imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(5)(A)(ii), or an attempt to commit an offense punishable under that subsection;

"(C) a fine under this title, imprisonment for not more than 20 years, or both, in the case of an offense under subsection (a)(5)(A)(i) or (a)(5)(A)(ii), or an attempt to commit an offense punishable under either subsection, that occurs after a conviction for another offense under this section.".

(c) DEFINITIONS.—Subsection (e) of section 1030 of title 18, United States Code is amended—

(1) in paragraph (2)(B), by inserting ", including a computer located outside the United States" before the semicolon;

(2) in paragraph (7), by striking "and" at the end;

(3) by striking paragraph (8) and inserting the following new paragraph (8):

"(8) the term 'damage' means any impairment to the integrity or availability of data, a program, a system, or information;";

(4) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following new paragraphs:

"(10) the term 'conviction' shall include a conviction under the law of any State for a crime pun-

ishable by imprisonment for more than 1 year, an element of which is unauthorized access, or exceeding authorized access, to a computer;

"(11) the term 'loss' includes any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service;

"(12) the term 'person' means any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity;".

(d) DAMAGES IN CIVIL ACTIONS.—Subsection (g) of section 1030 of title 18, United States Code is amended—

(1) by striking the second sentence and inserting the following new sentences: "A suit for a violation of subsection (a)(5) may be brought only if the conduct involves one of the factors enumerated in subsection (a)(5)(B). Damages for a violation involving only conduct described in subsection (a)(5)(B)(i) are limited to economic damages."; and

(2) by adding at the end the following: "No action may be brought under this subsection for the

negligent design or manufacture of computer hardware, computer software, or firmware.''.

(e) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER FRAUD AND ABUSE.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment.

SEC. 816. ADDITIONAL DEFENSE TO CIVIL ACTIONS RELATING TO PRESERVING RECORDS IN RESPONSE TO GOVERNMENT REQUESTS.

Section 2707(e)(1) of title 18, United States Code, is amended by inserting after ''or statutory authorization'' the following: ''(including a request of a governmental entity under section 2703(f) of this title)''.

SEC. 817. DEVELOPMENT AND SUPPORT OF CYBERSECURITY FORENSIC CAPABILITIES.

(a) IN GENERAL.—The Attorney General shall establish such regional computer forensic laboratories as the Attorney General considers appropriate, and provide support to existing computer forensic laboratories, in order

that all such computer forensic laboratories have the capability—

(1) to provide forensic examinations with respect to seized or intercepted computer evidence relating to criminal activity (including cyberterrorism);

(2) to provide training and education for Federal, State, and local law enforcement personnel and prosecutors regarding investigations, forensic analyses, and prosecutions of computer-related crime (including cyberterrorism);

(3) to assist Federal, State, and local law enforcement in enforcing Federal, State, and local criminal laws relating to computer-related crime;

(4) to facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer-related crime with State and local law enforcement personnel and prosecutors, including the use of multijurisdictional task forces; and

(5) to carry out such other activities as the Attorney General considers appropriate.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) AUTHORIZATION.—There is hereby authorized to be appropriated in each fiscal year

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$50,000,000 for purposes of carrying out this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

TITLE IX—IMPROVED INTELLIGENCE

SEC. 901. RESPONSIBILITIES OF DIRECTOR OF CENTRAL INTELLIGENCE REGARDING FOREIGN INTELLIGENCE COLLECTED UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following new paragraph (6):

"(6) establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for foreign intel-

ligence purposes, except that the Director shall have no authority to direct, manage, or undertake electronic surveillance operations pursuant to that Act unless otherwise authorized by statute or executive order;".

SEC. 902. INCLUSION OF INTERNATIONAL TERRORIST ACTIVITIES WITHIN SCOPE OF FOREIGN INTELLIGENCE UNDER NATIONAL SECURITY ACT OF 1947.

Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended—

(1) in paragraph (2), by inserting before the period the following: ", or international terrorist activities"; and

(2) in paragraph (3), by striking "and activities conducted" and inserting ", and activities conducted,".

SEC. 903. SENSE OF CONGRESS ON THE ESTABLISHMENT AND MAINTENANCE OF INTELLIGENCE RELATIONSHIPS TO ACQUIRE INFORMATION ON TERRORISTS AND TERRORIST ORGANIZATIONS.

It is the sense of Congress that officers and employees of the intelligence community of the Federal Government, acting within the course of their official duties,

should be encouraged, and should make every effort, to establish and maintain intelligence relationships with any person, entity, or group for the purpose of engaging in lawful intelligence activities, including the acquisition of information on the identity, location, finances, affiliations, capabilities, plans, or intentions of a terrorist or terrorist organization, or information on any other person, entity, or group (including a foreign government) engaged in harboring, comforting, financing, aiding, or assisting a terrorist or terrorist organization.

SEC. 904. TEMPORARY AUTHORITY TO DEFER SUBMITTAL TO CONGRESS OF REPORTS ON INTELLIGENCE AND INTELLIGENCE-RELATED MATTERS.

(a) AUTHORITY TO DEFER.—The Secretary of Defense, Attorney General, and Director of Central Intelligence each may, during the effective period of this section, defer the date of submittal to Congress of any covered intelligence report under the jurisdiction of such official until February 1, 2002.

(b) COVERED INTELLIGENCE REPORT.—Except as provided in subsection (c), for purposes of subsection (a), a covered intelligence report is as follows:

(1) Any report on intelligence or intelligence-related activities of the United States Government

that is required to be submitted to Congress by an element of the intelligence community during the effective period of this section.

(2) Any report or other matter that is required to be submitted to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives by the Department of Defense or the Department of Justice during the effective period of this section.

(c) EXCEPTION FOR CERTAIN REPORTS.—For purposes of subsection (a), any report required by section 502 or 503 of the National Security Act of 1947 (50 U.S.C. 413a, 413b) is not a covered intelligence report.

(d) NOTICE TO CONGRESS.—Upon deferring the date of submittal to Congress of a covered intelligence report under subsection (a), the official deferring the date of submittal of the covered intelligence report shall submit to Congress notice of the deferral. Notice of deferral of a report shall specify the provision of law, if any, under which the report would otherwise be submitted to Congress.

(e) EXTENSION OF DEFERRAL.—(1) Each official specified in subsection (a) may defer the date of submittal to Congress of a covered intelligence report under the jurisdiction of such official to a date after February 1, 2002,

if such official submits to the committees of Congress specified in subsection (b)(2) before February 1, 2002, a certification that preparation and submittal of the covered intelligence report on February 1, 2002, will impede the work of officers or employees who are engaged in counterterrorism activities.

(2) A certification under paragraph (1) with respect to a covered intelligence report shall specify the date on which the covered intelligence report will be submitted to Congress.

(f) EFFECTIVE PERIOD.—The effective period of this section is the period beginning on the date of the enactment of this Act and ending on February 1, 2002.

(g) ELEMENT OF THE INTELLIGENCE COMMUNITY DEFINED.—In this section, the term "element of the intelligence community" means any element of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 905. DISCLOSURE TO DIRECTOR OF CENTRAL INTELLIGENCE OF FOREIGN INTELLIGENCE-RELATED INFORMATION WITH RESPECT TO CRIMINAL INVESTIGATIONS.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended—

(1) by redesignating subsection 105B as section 105C; and

(2) by inserting after section 105A the following new section 105B:

"DISCLOSURE OF FOREIGN INTELLIGENCE ACQUIRED IN CRIMINAL INVESTIGATIONS; NOTICE OF CRIMINAL INVESTIGATIONS OF FOREIGN INTELLIGENCE SOURCES

"SEC. 105B. (a) DISCLOSURE OF FOREIGN INTELLIGENCE.—(1) Except as otherwise provided by law and subject to paragraph (2), the Attorney General, or the head of any other department or agency of the Federal Government with law enforcement responsibilities, shall expeditiously disclose to the Director of Central Intelligence, pursuant to guidelines developed by the Attorney General in consultation with the Director, foreign intelligence acquired by an element of the Department of Justice or an element of such department or agency, as the case may be, in the course of a criminal investigation.

"(2) The Attorney General by regulation and in consultation with the Director of Central Intelligence may provide for exceptions to the applicability of paragraph (1) for one or more classes of foreign intelligence, or foreign intelligence with respect to one or more targets or matters, if the Attorney General determines that disclosure of such foreign intelligence under that paragraph would jeopardize

an ongoing law enforcement investigation or impair other significant law enforcement interests.

"(b) PROCEDURES FOR NOTICE OF CRIMINAL INVESTIGATIONS.—Not later than 180 days after the date of enactment of this section, the Attorney General, in consultation with the Director of Central Intelligence, shall develop guidelines to ensure that after receipt of a report from an element of the intelligence community of activity of a foreign intelligence source or potential foreign intelligence source that may warrant investigation as criminal activity, the Attorney General provides notice to the Director of Central Intelligence, within a reasonable period of time, of his intention to commence, or decline to commence, a criminal investigation of such activity.

"(c) PROCEDURES.—The Attorney General shall develop procedures for the administration of this section, including the disclosure of foreign intelligence by elements of the Department of Justice, and elements of other departments and agencies of the Federal Government, under subsection (a) and the provision of notice with respect to criminal investigations under subsection (b).".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of that Act is amended by striking the item relating to section 105B and inserting the following new items:

"Sec. 105B. Disclosure of foreign intelligence acquired in criminal investigations; notice of criminal investigations of foreign intelligence sources.
"Sec. 105C. Protection of the operational files of the National Imagery and Mapping Agency.".

SEC. 906. FOREIGN TERRORIST ASSET TRACKING CENTER.

(a) REPORT ON RECONFIGURATION.—Not later than February 1, 2002, the Attorney General, the Director of Central Intelligence, and the Secretary of the Treasury shall jointly submit to Congress a report on the feasibility and desirability of reconfiguring the Foreign Terrorist Asset Tracking Center and the Office of Foreign Assets Control of the Department of the Treasury in order to establish a capability to provide for the effective and efficient analysis and dissemination of foreign intelligence relating to the financial capabilities and resources of international terrorist organizations.

(b) REPORT REQUIREMENTS.—(1) In preparing the report under subsection (a), the Attorney General, the Secretary, and the Director shall consider whether, and to what extent, the capacities and resources of the Financial Crimes Enforcement Center of the Department of the Treasury may be integrated into the capability contemplated by the report.

(2) If the Attorney General, Secretary, and the Director determine that it is feasible and desirable to undertake the reconfiguration described in subsection (a) in order to establish the capability described in that subsection, the

Attorney General, the Secretary, and the Director shall include with the report under that subsection a detailed proposal for legislation to achieve the reconfiguration.

SEC. 907. NATIONAL VIRTUAL TRANSLATION CENTER.

(a) REPORT ON ESTABLISHMENT.—(1) Not later than February 1, 2002, the Director of Central Intelligence shall, in consultation with the Director of the Federal Bureau of Investigation, submit to the appropriate committees of Congress a report on the establishment and maintenance within the intelligence community of an element for purposes of providing timely and accurate translations of foreign intelligence for all other elements of the intelligence community. In the report, the element shall be referred to as the ''National Virtual Translation Center''.

(2) The report on the element described in paragraph (1) shall discuss the use of state-of-the-art communications technology, the integration of existing translation capabilities in the intelligence community, and the utilization of remote-connection capacities so as to minimize the need for a central physical facility for the element.

(b) RESOURCES.—The report on the element required by subsection (a) shall address the following:

(1) The assignment to the element of a staff of individuals possessing a broad range of linguistic

and translation skills appropriate for the purposes of the element.

(2) The provision to the element of communications capabilities and systems that are commensurate with the most current and sophisticated communications capabilities and systems available to other elements of intelligence community.

(3) The assurance, to the maximum extent practicable, that the communications capabilities and systems provided to the element will be compatible with communications capabilities and systems utilized by the Federal Bureau of Investigation in securing timely and accurate translations of foreign language materials for law enforcement investigations.

(4) The development of a communications infrastructure to ensure the efficient and secure use of the translation capabilities of the element.

(c) SECURE COMMUNICATIONS.—The report shall include a discussion of the creation of secure electronic communications between the element described by subsection (a) and the other elements of the intelligence community.

(d) DEFINITIONS.—In this section:

(1) FOREIGN INTELLIGENCE.—The term ''foreign intelligence'' has the meaning given that term

in section 3(2) of the National Security Act of 1947 (50 U.S.C. 401a(2)).

(2) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ''element of the intelligence community'' means any element of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 908. TRAINING OF GOVERNMENT OFFICIALS REGARDING IDENTIFICATION AND USE OF FOREIGN INTELLIGENCE.

(a) PROGRAM REQUIRED.—The Attorney General shall, in consultation with the Director of Central Intelligence, carry out a program to provide appropriate training to officials described in subsection (b) in order to assist such officials in—

(1) identifying foreign intelligence information in the course of their duties; and

(2) utilizing foreign intelligence information in the course of their duties, to the extent that the utilization of such information is appropriate for such duties.

(b) OFFICIALS.—The officials provided training under subsection (a) are, at the discretion of the Attorney General and the Director, the following:

(1) Officials of the Federal Government who are not ordinarily engaged in the collection, dissemination, and use of foreign intelligence in the performance of their duties.

(2) Officials of State and local governments who encounter, or may encounter in the course of a terrorist event, foreign intelligence in the performance of their duties.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for the Department of Justice such sums as may be necessary for purposes of carrying out the program required by subsection (a).

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2975

[AS ORDERED REPORTED FROM THE COMMITTEE ON THE JUDICIARY ON 3 OCTOBER 2001]

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001".

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Construction; severability.

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

Sec. 101. Modification of authorities relating to use of pen registers and trap and trace devices.
Sec. 102. Seizure of voice-mail messages pursuant to warrants.
Sec. 103. Authorized disclosure.
Sec. 104. Savings provision.
Sec. 105. Interception of computer trespasser communications.
Sec. 106. Technical amendment.
Sec. 107. Scope of subpoenas for records of electronic communications.
Sec. 108. Nationwide service of search warrants for electronic evidence.
Sec. 109. Clarification of scope.
Sec. 110. Emergency disclosure of electronic communications to protect life and limb.
Sec. 111. Use as evidence.
Sec. 112. Reports concerning the disclosure of the contents of electronic communications.

Subtitle B—Foreign Intelligence Surveillance and Other Information

Sec. 151. Period of orders of electronic surveillance of non-United States persons under foreign intelligence surveillance.

Sec. 152. Multi-point authority.
Sec. 153. Foreign intelligence information.
Sec. 154. Foreign intelligence information sharing.
Sec. 155. Pen register and trap and trace authority.
Sec. 156. Business records.
Sec. 157. Miscellaneous national-security authorities.
Sec. 158. Proposed legislation.
Sec. 159. Presidential authority.
Sec. 160. Clarification of no technology mandates.
Sec. 161. Civil liability for certain unauthorized disclosures.
Sec. 162. Sunset.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

Sec. 201. Changes in classes of aliens who are ineligible for admission and deportable due to terrorist activity.
Sec. 202. Changes in designation of foreign terrorist organizations.
Sec. 203. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
Sec. 204. Changes in conditions for granting asylum.
Sec. 205. Multilateral cooperation against terrorists.
Sec. 206. Requiring sharing by the Federal bureau of investigation of certain criminal record extracts with other Federal agencies in order to enhance border security.
Sec. 207. Inadmissibility of aliens engaged in money laundering.
Sec. 208. Program to collect information relating to nonimmigrant foreign students and other exchange program participants.
Sec. 209. Protection of northern border.

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

Sec. 211. Special immigrant status.
Sec. 212. Extension of filing or reentry deadlines.
Sec. 213. Humanitarian relief for certain surviving spouses and children.
Sec. 214. "Age-out" protection for children.
Sec. 215. Temporary administrative relief.
Sec. 216. Evidence of death, disability, or loss of employment.
Sec. 217. No benefits to terrorists or family members of terrorists.
Sec. 218. Definitions.

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

Sec. 301. Statute of limitation for prosecuting terrorism offenses.
Sec. 302. Alternative maximum penalties for terrorism crimes.
Sec. 303. Penalties for terrorist conspiracies.
Sec. 304. Terrorism crimes as rico predicates.
Sec. 305. Biological weapons.
Sec. 306. Support of terrorism through expert advice or assistance.
Sec. 307. Prohibition against harboring.
Sec. 308. Post-release supervision of terrorists.
Sec. 309. Definition.
Sec. 310. Civil damages.

Subtitle B—Criminal Procedure

Sec. 351. Single-jurisdiction search warrants for terrorism.
Sec. 352. DNA identification of terrorists.
Sec. 353. Grand jury matters.
Sec. 354. Extraterritoriality.
Sec. 355. Jurisdiction over crimes committed at United States facilities abroad.
Sec. 356. Special agent authorities.

TITLE IV—FINANCIAL INFRASTRUCTURE

Sec. 401. Laundering the proceeds of terrorism.
Sec. 402. Material support for terrorism.
Sec. 403. Assets of terrorist organizations.
Sec. 404. Technical clarification relating to provision of material support to terrorism.
Sec. 405. Disclosure of tax information in terrorism and national security investigations.
Sec. 406. Extraterritorial jurisdiction.

TITLE V—EMERGENCY AUTHORIZATIONS

Sec. 501. Office of Justice programs.
Sec. 502. Attorney General's authority to pay rewards.
Sec. 503. Limited authority to pay overtime.
Sec. 504. Department of State reward authority.
Sec. 505. Authorization of funds for DEA police training in South and Central Asia.
Sec. 506. Public safety officer benefits.

TITLE VI—DAM SECURITY

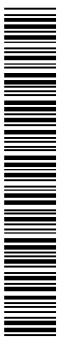
Sec. 601. Security of reclamation dams, facilities, and resources.

TITLE VII—MISCELLANEOUS

Sec. 701. Employment of translators by the Federal Bureau of Investigation.
Sec. 702. Review of the Department of Justice.
Sec. 703. Feasibility study on use of biometric identifier scanning system with access to the FBI integrated automated fingerprint identification system at overseas consular posts and points of entry to the United States.
Sec. 704. Study of access.
Sec. 705. Enforcement of certain anti-terrorism judgments.

TITLE VIII—PRIVATE SECURITY OFFICER QUALITY ASSURANCE

Sec. 801. Short title.
Sec. 802. Findings.
Sec. 803. Background checks.
Sec. 804. Sense of Congress.
Sec. 805. Definitions.



SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

(a) GENERAL LIMITATION ON USE BY GOVERNMENTAL AGENCIES.—Section 3121(c) of title 18, United States Code, is amended—

(1) by inserting "or trap and trace device" after "pen register";

(2) by inserting ", routing, addressing," after "dialing"; and

(3) by striking "call processing" and inserting "the processing and transmitting of wire and electronic communications".

(b) ISSUANCE OF ORDERS.—

(1) IN GENERAL.—Subsection (a) of section 3123 of title 18, United States Code, is amended to read as follows:

"(a) IN GENERAL.—

"(1) Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the assistance of the person or entity being served is related to the order.

"(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

(2) CONTENTS OF ORDER.—Subsection (b)(1) of section 3123 of title 18, United States Code, is amended—

(A) in subparagraph (A)—

(i) by inserting "or other facility" after "telephone line"; and

(ii) by inserting before the semicolon at the end "or applied"; and

(B) by striking subparagraph (C) and inserting the following:

"(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of

an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and".

(3) NONDISCLOSURE REQUIREMENTS.—Subsection (d)(2) of section 3123 of title 18, United States Code, is amended—

(A) by inserting "or other facility" after "the line"; and

(B) by striking ", or who has been ordered by the court" and inserting "or applied, or who is obligated by the order".

(c) DEFINITIONS.—

(1) COURT OF COMPETENT JURISDICTION.—Paragraph (2) of section 3127 of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following:

"(A) any district court of the United States (including a magistrate judge of such a court), or any United States court of appeals, having jurisdiction over the offense being investigated; or".

(2) PEN REGISTER.—Paragraph (3) of section 3127 of title 18, United States Code, is amended—

(A) by striking "electronic or other impulses" and all that follows through "is at-

tached'' and inserting ''dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted (but not including the contents of such communication)''; and

(B) by inserting ''or process'' after ''device'' each place it appears.

(3) TRAP AND TRACE DEVICE.—Paragraph (4) of section 3127 of title 18, United States Code, is amended—

(A) by inserting ''or process'' after ''a device''; and

(B) by striking ''of an instrument'' and all that follows through the end and inserting ''or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication (but not including the contents of such communication);''.

(4) CONFORMING AMENDMENT.—Section 3127(1) of title 18, United States Code, is amended—

(A) by striking ''and''; and

(B) by inserting ", and 'contents'" after "'electronic communication service'".

(d) NO LIABILITY FOR INTERNET SERVICE PROVIDERS.—Section 3124(d) of title 18, United States Code, is amended by striking "the terms of".

SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.

Title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (1), by striking all the words after "commerce"; and

(B) in paragraph (14), by inserting "wire or" after "transmission of"; and

(2) in section 2703—

(A) in the headings for subsections (a) and (b), by striking "CONTENTS OF ELECTRONIC" and inserting "CONTENTS OF WIRE OR ELECTRONIC";

(B) in subsection (a), by striking "contents of an electronic" and inserting "contents of a wire or electronic" each place it appears; and

(C) in subsection (b), by striking "any electronic" and inserting "any wire or electronic" each place it appears.

SEC. 103. AUTHORIZED DISCLOSURE.

Section 2510(7) of title 18, United States Code, is amended by inserting ", and (for purposes only of section 2517 as it relates to foreign intelligence information as that term is defined in section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)) any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States" after "such offenses".

SEC. 104. SAVINGS PROVISION.

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking "or chapter 121" and inserting ", chapter 121, or chapter 206"; and

(2) by striking "wire and oral" and inserting "wire, oral, and electronic".

SEC. 105. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.

Chapter 119 of title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (17), by striking "and" at the end;

(B) in paragraph (18), by striking the period and inserting a semi-colon; and

(C) by adding after paragraph (18) the following:

"(19) 'protected computer' has the meaning set forth in section 1030; and

"(20) 'computer trespasser' means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer.";

(2) in section 2511(2), by inserting after paragraph (h) the following:

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if—

"(i) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

"(ii) the person acting under color of law is lawfully engaged in an investigation;

"(iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

"(iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser."; and

(3) in section 2520(d)(3), by inserting "or 2511(2)(i)" after "2511(3)".

SEC. 106. TECHNICAL AMENDMENT.

Section 2518(3)(c) of title 18, United States Code, is amended by inserting "and" after the semicolon.

SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.

Section 2703(c)(1)(C) of title 18, United States Code, is amended—

(1) by striking "entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a" and inserting the following:

"entity the—

"(i) name;

"(ii) address;

"(iii) local and long distance telephone connection records, or records of session times and durations;

"(iv) length of service (including start date) and types of service utilized;

"(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(vi) means and source of payment (including any credit card or bank account number);

of a"; and

(2) by striking "and the types of services the subscriber or customer utilized," after "of a subscriber to or customer of such service".

SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.

Chapter 121 of title 18, United States Code, is amended—

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" each place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(3) the term 'court of competent jurisdiction' has the meaning given that term in section 3127, and includes any Federal court within that definition, without geographic limitation.".

SEC. 109. CLARIFICATION OF SCOPE.

Section 2511(2) of title 18, United States Code, as amended by section 105(2) of this Act, is further amended by adding at the end the following:

"(j) With respect to a voluntary or obligatory disclosure of information (other than information revealing customer cable viewing activity) under this chapter, chapter 121, or chapter 206, subsections (c)(2)(B) and (h) of section 631 of the Communications Act of 1934 do not apply.".

SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.

(a) Section 2702 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 2702. Voluntary disclosure of customer communications or records";

(2) in subsection (a)(2)(B) by striking the period and inserting "; and";

(3) in subsection (a), by inserting after paragraph (2) the following:

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.";

(4) in subsection (b), by striking "EXCEPTIONS.—A person or entity" and inserting "EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a)";

(5) in subsection (b)(6)—

(A) in subparagraph (A)(ii), by striking "or";

(B) in subparagraph (B), by striking the period and inserting "; or";

(C) by inserting after subparagraph (B) the following:

"(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay."; and

(6) by inserting after subsection (b) the following:

"(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

"(1) as otherwise authorized in section 2703;

"(2) with the lawful consent of the customer or subscriber;

"(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

"(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

"(5) to any person other than a governmental entity.".

(b) Section 2703 of title 18, United States Code, is amended—

(1) so that the section heading reads as follows: **"§ 2703. Required disclosure of customer communications or records";**

(2) in subsection (c)(1)—

(A) in subparagraph (A), by striking ''Except'' and all that follows through ''only when'' in subparagraph (B) and inserting ''A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when'';

(B) by striking ''or'' at the end of clause (iii) of subparagraph (B);

(C) by striking the period at the end of clause (iv) of subparagraph (B) and inserting ''; or'';

(D) by inserting after clause (iv) of subparagraph (B) the following:

''(v) seeks information pursuant to subparagraph (B).'';

(E) in subparagraph (C), by striking ''(B)'' and inserting ''(A)''; and

(F) by redesignating subparagraph (C) as subparagraph (B); and

(3) in subsection (e), by striking ''or certification'' and inserting ''certification, or statutory authorization''.

(c) The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended so that the items relating to sections 2702 through 2703 read as follows:

"2702. Voluntary disclosure of customer communications or records.
"2703. Required disclosure of customer communications or records.".

SEC. 111. USE AS EVIDENCE.

(a) IN GENERAL.—Section 2515 of title 18, United States Code, is amended—

(1) by striking "**wire or oral**" in the heading and inserting "**wire, oral, or electronic**";

(2) by striking "Whenever any wire or oral communication has been intercepted" and inserting "(a) Except as provided in subsection (b), whenever any wire, oral, or electronic communication has been intercepted, or any electronic communication in electronic storage has been disclosed";

(3) by inserting "or chapter 121" after "this chapter"; and

(4) by adding at the end the following:

"(b) Subsection (a) does not apply to the disclosure, before a grand jury or in a criminal trial, hearing, or other criminal proceeding, of the contents of a communication, or evidence derived therefrom, against a person alleged to have intercepted, used, or disclosed the communication in

violation of this chapter, or chapter 121, or participated in such violation.''.

(b) SECTION 2517.—Paragraphs (1) and (2) of section 2517 are each amended by inserting ''or under the circumstances described in section 2515(b)'' after ''by this chapter''.

(c) SECTION 2518.—Section 2518 of title 18, United States Code, is amended—

(1) in subsection (7), by striking ''subsection (d)'' and inserting ''subsection (8)(d)''; and

(2) in subsection (10)—

(A) in paragraph (a)—

(i) by striking ''or oral'' each place it appears and inserting '', oral, or electronic'';

(ii) by striking the period at the end of clause (iii) and inserting a semicolon; and

(iii) by inserting ''except that no suppression may be ordered under the circumstances described in section 2515(b).'' before ''Such motion''; and

(B) by striking paragraph (c).

(d) CLERICAL AMENDMENT.—The item relating to section 2515 in the table of sections at the beginning of

chapter 119 of title 18, United States Code, is amended to read as follows:

"2515. Prohibition of use as evidence of intercepted wire, oral, or electronic communications.".

SEC. 112. REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.

Section 2703 of title 18, United States Code, is amended by adding at the end the following:

"(g) REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.—

"(1) By January 31 of each calendar year, the judge issuing or denying an order, warrant, or subpoena, or the authority issuing or denying a subpoena, under subsection (a) or (b) of this section during the preceding calendar year shall report on each such order, warrant, or subpoena to the Administrative Office of the United States Courts—

"(A) the fact that the order, warrant, or subpoena was applied for;

"(B) the kind of order, warrant, or subpoena applied for;

"(C) the fact that the order, warrant, or subpoena was granted as applied for, was modified, or was denied;

"(D) the offense specified in the order, warrant, subpoena, or application;

"(E) the identity of the agency making the application; and

"(F) the nature of the facilities from which or the place where the contents of electronic communications were to be disclosed.

"(2) In January of each year the Attorney General or an Assistant Attorney General specially designated by the Attorney General shall report to the Administrative Office of the United States Courts—

"(A) the information required by subparagraphs (A) through (F) of paragraph (1) of this subsection with respect to each application for an order, warrant, or subpoena made during the preceding calendar year; and

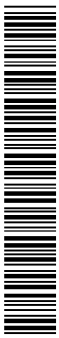
"(B) a general description of the disclosures made under each such order, warrant, or subpoena, including—

"(i) the approximate number of all communications disclosed and, of those, the approximate number of incriminating communications disclosed;

"(ii) the approximate number of other communications disclosed; and

"(iii) the approximate number of persons whose communications were disclosed.

"(3) In June of each year, beginning in 2003, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders, warrants, or subpoenas authorizing or requiring the disclosure of the contents of electronic communications pursuant to subsections (a) and (b) of this section and the number of orders, warrants, or subpoenas granted or denied pursuant to subsections (a) and (b) of this section during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by paragraphs (1) and (2) of this subsection. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by paragraphs (1) and (2) of this subsection.".



Subtitle B—Foreign Intelligence Surveillance and Other Information

SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE.

(a) INCLUDING AGENTS OF A FOREIGN POWER.—(1) Section 105(e)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)(1)) is amended by inserting "or an agent of a foreign power, as defined in section 101(b)(1)(A)," after "or (3),".

(2) Section 304(d)(1) of such Act (50 U.S.C. 1824(d)(1)) is amended by inserting "or an agent of a foreign power, as defined in section 101(b)(1)(A)," after "101(a),".

(b) PERIOD OF ORDER.—Such section 304(d)(1) is further amended by striking "forty-five" and inserting "90".

SEC. 152. MULTI-POINT AUTHORITY.

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting ", or, in circumstances where the Court finds that the actions of the target of the electronic surveillance may have the effect of thwarting the identifica-

tion of a specified person, such other persons," after "specified person".

SEC. 153. FOREIGN INTELLIGENCE INFORMATION.

Sections 104(a)(7)(B) and 303(a)(7)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)(B), 1823(a)(7)(B)) are each amended by striking "that the" and inserting "that a significant".

SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHARING.

It shall be lawful for foreign intelligence information (as that term is defined in section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)) obtained as part of a criminal investigation (including information obtained pursuant to chapter 119 of title 18, United States Code) to be provided to any Federal law-enforcement-, intelligence-, protective-, national-defense, or immigration personnel, or the President or the Vice President of the United States, for the performance of official duties.

SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHORITY.

Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

(1) in paragraph (1), by adding "and" at the end;

(2) in paragraph (2)—

(A) by inserting "from the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device" after "obtained"; and

(B) by striking "; and" and inserting a period; and

(3) by striking paragraph (3).

SEC. 156. BUSINESS RECORDS.

(a) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended to read as follows:

"ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

"SEC. 501. (a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, such investigation being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General may approve pursuant to Executive Order No. 12333 (or a successor order), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an applica-

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tion for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) that are relevant to the investigation.

"(b) Each application under this section—

"(1) shall be made to—

"(A) a judge of the court established by section 103(a) of this Act; or

"(B) a United States magistrate judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

"(2) shall specify that the records concerned are sought for an investigation described in subsection (a).

"(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested requiring the production the tangible things sought if the judge finds that the application satisfies the requirements of this section.

"(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

"(d) A person who, in good faith, produces tangible things under an order issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.".

(b) CONFORMING AMENDMENTS.—(1) Section 502 of such Act (50 U.S.C. 1862) is repealed.

(2) Section 503 of such Act (50 U.S.C. 1863) is redesignated as section 502.

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to title V and inserting the following:

"TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

"Sec. 501. Access to certain business records for foreign intelligence and international terrorism investigations.
"Sec. 502. Congressional oversight.".

SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.

(a) Section 2709(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ", or electronic communication transactional records" after "toll billing records"; and

(B) by striking "made that" and all that follows through the end of such paragraph and inserting "made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and"; and

(2) in paragraph (2), by striking "made that" and all that follows through the end of such paragraph and inserting "made that the information sought is relevant to an authorized foreign counterintelligence investigation.".

(b) Section 624 of the Fair Credit Reporting Act (Public Law 90–321; 15 U.S.C. 1681u), as added by section 601(a) of the Intelligence Authorization Act for Fiscal Year 1996 (P.L. 104–93; 110 Stat. 974), is amended—

(1) in subsection (a), by striking "writing that" and all that follows through the end and inserting "writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.";

(2) in subsection (b), by striking "writing that" and all that follows through the end and inserting "writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation."; and

(3) in subsection (c), by striking "camera that" and all that follows through "States." and inserting "camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation.".

SEC. 158. PROPOSED LEGISLATION.

Not later than August 31, 2003, the President shall propose legislation relating to the provisions set to expire by section 160 of this Act as the President may judge necessary and expedient.

SEC. 159. PRESIDENTIAL AUTHORITY.

Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) is amended in subsection (a)(1)—

(1) in subparagraph (A)—

(A) in clause (ii), by adding "or" after "thereof,"; and

(B) by striking clause (iii) and inserting the following:

"(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;";

(2) by striking after subparagraph (B), "by any person, or with respect to any property, subject to the jurisdiction of the United States.";

(3) in subparagraph (B)—

(A) by inserting after "investigate" the following: ", block during the pendency of an investigation for a period of not more than 90 days (which may be extended by an additional 60 days if the President determines that such blocking is necessary to carry out the purposes of this Act)"; and

(B) by striking "interest;" and inserting "interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and"; and

(4) by adding at the end the following new subparagraph:

"(C) when a statute has been enacted authorizing the use of force by United States armed forces against a foreign country, foreign organization, or foreign national, or when the United States has been subject to an armed attack by a foreign country, foreign organization, or foreign national, confiscate any property, subject to the jurisdiction of the United States, of any foreign country, foreign organization,

or foreign national against whom United States armed forces may be used pursuant to such statute or, in the case of an armed attack against the United States, that the President determines has planned, authorized, aided, or engaged in such attack; and

"(i) all right, title, and interest in any property so confiscated shall vest when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time,

"(ii) upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, except that the proceeds of any such liquidation or sale, or any cash assets, shall be segregated from other United States Government funds and shall be used only pursuant to a statute authorizing the expenditure of such proceeds or assets, and

"(iii) such designated agency or person may perform any and all acts incident to the

accomplishment or furtherance of these purposes.".

SEC. 160. CLARIFICATION OF NO TECHNOLOGY MANDATES.

Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities, services, or technical assistance.

SEC. 161. CIVIL LIABILITY FOR CERTAIN UNAUTHORIZED DISCLOSURES.

(a) CHAPTER 119.—Section 2520 of title 18, United States Code, is amended—

(1) by redesignating paragraph (2) of subsection (c) as paragraph (3);

(2) by inserting after paragraph (1) of subsection (c) the following:

"(2) In an action under this section by a citizen or legal permanent resident of the United States against the United States or any Federal investigative or law enforcement officer (or against any State investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of—

"(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000."; and

(3) by adding at the end the following:

"(f) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).

"(g) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for

Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(h) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(b) CHAPTER 121.—Section 2707 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "(1)" before "The court";

(2) by adding at the end of subsection (c) the following:

"(2) In an action under this section by a citizen or legal permanent resident of the United States against the United States or any Federal investigative or law enforcement officer (or against any State investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of—

"(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of $10,000."; and

(3) by adding at the end the following:

"(f) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2707(a).

"(g) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(h) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(c) CHAPTER 206.—

(1) IN GENERAL.—Chapter 206 of title 18, United States Code, is amended by adding at the end the following:

"§ 3128. Civil action

"(a) CAUSE OF ACTION.—Except as provided in subsections (d) and (e) of section 3124, any person aggrieved by any violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In any action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—In any action under this section, the court may assess as damages whichever is the greater of—

"(1) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(2) statutory damages of $10,000.

"(d) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(e) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 3128(a).

"(f) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head

of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(g) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 206 of title 18, United States Code, is amended by adding at the end the following new item:

"3128. Civil action.".

(d) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended—

(A) by inserting "(a)" before "CIVIL ACTION.—";

(B) by inserting "or entity" after "shall have a cause of action against any person";

(C) by striking "(a) actual" and inserting "(1) actual";

(D) by striking "(b) punitive" and inserting "(2) punitive";

(E) by striking "(c) reasonable" and inserting "(3) reasonable";

(F) by striking "$1,000" and inserting "$10,000"; and

(G) by adding at the end the following new subsections:

"(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report conclusions for the determination and the reasons therefor to the Deputy Inspector

General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(2) Section 308 of the the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1828) is amended—

(A) by inserting "(a) CIVIL ACTION.—" before "An aggrieved person,";

(B) by inserting "or entity" after "shall have a cause of action against any person";

(C) by striking "$1,000" and inserting "$10,000"; and

(D) by adding at the end the following new subsections:

"(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau

thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report the conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

''(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.''.

(3)(A) Title IV of the the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) is amended by adding at the end the following new sections:

''PENALTIES

''SEC. 407. (a) PROHIBITED ACTIVITIES.—A person is guilty of an offense if the person intentionally—

"(1) installs or uses a pen register or trap and trace device under color of law except as authorized by statute; or

"(2) discloses or uses information obtained under color of law by using a pen register or trap and trace device, knowing or having reason to know that the information was obtained through using a pen register or trap and trace device not authorized by statute.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the pen register or trap and trace device was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

"(c) PENALTIES.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

"(d) FEDERAL JURISDICTION .—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

"CIVIL LIABILITY

"SEC. 408. (a) CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power,

as defined in section 101(a) or (b)(1)(A), respectively, who has been subjected to a pen register or trap and trace device or about whom information obtained by a pen register or trap and trace device has been disclosed or used in violation of section 407 shall have a cause of action against any person or entity who committed such violation and shall be entitled to recover—

"(1) actual damages, but not less than liquidated damages of $10,000, whichever is greater;

"(2) punitive damages; and

"(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

"(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who

was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report the conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

[(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.]".

(B) The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end of the items relating to title IV the following new items:

"Sec. 407. Penalties.
"Sec. 408. Civil liability.".

SEC. 162. SUNSET.

This title and the amendments made by this title (other than sections 106 (relating to technical amendment), 109 (relating to clarification of scope), and 159 (relating to presidential authority)) and the amendments made by those sections shall take effect on the date of

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enactment of this Act and shall cease to have any effect on December 31, 2003.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

SEC. 201. CHANGES IN CLASSES OF ALIENS WHO ARE INELIGIBLE FOR ADMISSION AND DEPORTABLE DUE TO TERRORIST ACTIVITY.

(a) ALIENS INELIGIBLE FOR ADMISSION DUE TO TERRORIST ACTIVITIES.—Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclauses (I), (II), and (III), by striking the comma at the end and inserting a semicolon;

(B) by amending subclause (IV) to read as follows:

"(IV) is a representative of—

"(a) a foreign terrorist organization, as designated by the Secretary of State under section 219; or

"(b) a political, social, or other similar group whose public endorsement of terrorist activity the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;";

(C) in subclause (V), by striking any comma at the end, by striking any "or" at the end, and by adding "; or" at the end; and

(D) by inserting after subclause (V) the following:

"(VI) has used the alien's prominence within a foreign state or the United States to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;";

(2) in clause (ii)—

(A) in the matter preceding subclause (I), by striking "(or which, if committed in the

United States," and inserting "(or which, if it had been or were to be committed in the United States,"; and

(B) in subclause (V)(b), by striking "explosive or firearm" and inserting "explosive, firearm, or other object";

(3) by amending clause (iii) to read as follows:

"(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorist activity' means, in an individual capacity or as a member of an organization—

"(I) to commit a terrorist activity;

"(II) to plan or prepare to commit a terrorist activity;

"(III) to gather information on potential targets for a terrorist activity;

"(IV) to solicit funds or other things of value for—

"(a) a terrorist activity;

"(b) an organization designated as a foreign terrorist organization under section 219; or

"(c) a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity;

"(V) to solicit any individual—

"(a) to engage in conduct otherwise described in this clause;

"(b) for membership in a terrorist government;

"(c) for membership in an organization designated as a foreign terrorist organization under section 219; or

"(d) for membership in a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity; or

"(VI) to commit an act that the actor knows, or reasonably should

know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training—

"(a) for the commission of a terrorist activity;

"(b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

"(c) to an organization designated as a foreign terrorist organization under section 219; or

"(d) to a terrorist organization described in clause (v)(II), but only if the actor knows, or reasonably should know, that the act would further a terrorist activity."; and

(4) by adding at the end the following:

"(v) TERRORIST ORGANIZATION DEFINED.—As used in this subparagraph, the term 'terrorist organization' means—

"(I) an organization designated as a foreign terrorist organization under section 219; or

"(II) with regard to a group that is not an organization described in subclause (I), a group of 2 or more individuals, whether organized or not, which engages in, or which has a significant subgroup which engages in, the activities described in subclause (I), (II), or (III) of clause (iii).

"(vi) SPECIAL RULE FOR MATERIAL SUPPORT.—Clause (iii)(VI)(b) shall not be construed to include the affording of material support to an individual who committed or planned to commit a terrorist activity, if the alien establishes by clear and convincing evidence that such support was afforded only after such individual permanently and publicly renounced, rejected the use of, and had ceased to engage in, terrorist activity.".

(b) ALIENS INELIGIBLE FOR ADMISSION DUE TO ENDANGERMENT.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended by adding at the end the following:

"(F) ENDANGERMENT.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.".

(c) ALIENS DEPORTABLE DUE TO TERRORIST ACTIVITIES.—Section 237(a)(4)(B) of the Immigration and Nationality (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:

"(B) TERRORIST ACTIVITIES.—Any alien is deportable who—

"(i) has engaged, is engaged, or at any time after admission engages in terrorist activity (as defined in section 212(a)(3)(B)(iii));

"(ii) is a representative (as defined in section 212(a)(3)(B)(iv)) of—

"(I) a foreign terrorist organization, as designated by the Secretary of State under section 219; or

"(II) a political, social, or other similar group whose public endorsement of terrorist activity—

"(a) is intended and likely to incite or produce imminent lawless action; and

"(b) has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities; or

"(iii) has used the alien's prominence within a foreign state or the United States—

"(I) to endorse, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or

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eliminate terrorist activities, terrorist activity; or

"(II) to persuade others, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities, to support terrorist activity or a terrorist organization (as defined in section 212(a)(3)(B)(v))."

(d) RETROACTIVE APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(A) actions taken by an alien before such date, as well as actions taken on or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States—

(i) in removal proceedings on or after such date (except for proceedings in which

there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.—Notwithstanding any other provision of law, the amendments made by this section shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(b), (V)(c), or (VI)(c) of section

212(a)(3)(B)(iii) of such Act (as so amended) with respect to a group at any time when the group was not a foreign terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189).

(B) CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity—

(i) described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a foreign terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act; or

(ii) described in subclause (IV)(c), (V)(d), or (VI)(d) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to any group described in any of such subclauses.

SEC. 202. CHANGES IN DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

(a) DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.—Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking "212(a)(3)(B));" and inserting "212(a)(3)(B)), engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or to engage in terrorism (as so defined);"; and

(B) in subparagraph (C), by inserting "or terrorism" after "activity";

(2) in paragraph (2)—

(A) by amending subparagraph (A) to read as follows:

"(A) NOTICE.—

"(i) IN GENERAL.—Seven days before a designation is made under this subsection, the Secretary of State shall, by classified communication, notify the Speaker and minority leader of the House of Representatives, the President pro tem-

pore, majority leader, and minority leader of the Senate, the members of the relevant committees, and the Secretary of the Treasury, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

"(ii) PUBLICATION OF DESIGNATION.—The Secretary of State shall publish the designation in the Federal Register seven days after providing the notification under clause (i).";

(B) in subparagraph (B), by striking "(A)." and inserting "(A)(ii)."; and

(C) in subparagraph (C), by striking "paragraph (2)," and inserting "subparagraph (A)(i),";

(3) in paragraph (3)(B), by striking "subsection (c)." and inserting "subsection (b).';

(4) in paragraph (4)(B), by inserting after the first sentence the following: "The Secretary may also redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60

days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.";

(5) in paragraph (6)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting "or a redesignation made under paragraph (4)(B)" after "paragraph (1)";

(ii) in clause (i)—

(I) by inserting "or redesignation" after "designation" the first place it appears; and

(II) by striking "of the designation;" and inserting a semicolon; and

(iii) in clause (ii), by striking "of the designation." and inserting a period;

(B) in subparagraph (B), by striking "through (4)" and inserting "and (3)"; and

(C) by adding at the end the following:

"(C) EFFECTIVE DATE.—Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.";

(6) in paragraph (7), by inserting ", or the revocation of a redesignation under paragraph (6)," after "(5) or (6)"; and

(7) in paragraph (8)—

(A) by striking "(1)(B)," and inserting "(2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)";

(B) by inserting "or an alien in a removal proceeding" after "criminal action"; and

(C) by inserting "or redesignation" before "as a defense".

(b) AUTHORITY TO INITIATE DESIGNATIONS, REDESIGNATIONS, AND REVOCATIONS.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as amended by subsection (a), is further amended—

(1) by striking "Secretary" each place such term appears, excluding subparagraphs (A) and (C) of subsection (a)(2), and inserting "official specified under subsection (d)";

(2) in subsection (c)—

(A) in paragraph (2), by adding "and" at the end;

(B) in paragraph (3), by striking "; and" at the end and inserting a period; and

(C) by striking paragraph (4); and

(3) by adding at the end the following:

"(d) IMPLEMENTATION OF DUTIES AND AUTHORITIES.—

"(1) BY SECRETARY OR ATTORNEY GENERAL.—Except as otherwise provided in this subsection, the duties under this section shall, and authorities under this section may, be exercised by—

"(A) the Secretary of State—

"(i) after consultation with the Secretary of the Treasury and with the concurrence of the Attorney General; or

"(ii) upon instruction by the President pursuant to paragraph (2); or

"(B) the Attorney General—

"(i) after consultation with the Secretary of the Treasury and with the concurrence of the Secretary of State; or

"(ii) upon instruction by the President pursuant to paragraph (2).

"(2) CONCURRENCE.—The Secretary of State and the Attorney General shall each seek the other's concurrence in accordance with paragraph (1). In any case in which such concurrence is denied or withheld, the official seeking the concurrence shall so notify the President and shall request the President to make a determination as to how the issue shall be resolved. Such notification and request of the President may not be made before the earlier of—

"(A) the date on which a denial of concurrence is received; or

"(B) the end of the 60-day period beginning on the date the concurrence was sought.

"(3) EXCEPTION.—It shall be the duty of the Secretary of State to carry out the procedural requirements of paragraphs (2)(A) and (6)(B) of subsection (a) in all cases, including cases in which a designation or revocation is initiated by the Attorney General.".

SEC. 203. MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW.

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 236 the following:

"MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW

"SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).

"(2) RELEASE.—Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States or found not to be inadmissible or deportable, as the case may be. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

"(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the At-

torney General has reasonable grounds to believe that the alien—

"(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

"(B) is engaged in any other activity that endangers the national security of the United States.

"(4) NONDELEGATION.—The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

"(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

"(6) LIMITATION ON INDEFINITE DETENTION.—An alien detained under paragraph (1) who has been ordered removed based on one or more of

the grounds of inadmissibility or deportability referred to in paragraph (3)(A), who has not been removed within the removal period specified under section 241(a)(1)(A), and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months if the Attorney General demonstrates that the release of the alien will not protect the national security of the United States or adequately ensure the safety of the community or any person.

"(b) HABEAS CORPUS AND JUDICIAL REVIEW.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings initiated in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236 the following:

"Sec. 236A. Mandatory detention of suspected terrorists; habeas corpus; judicial review.".

(c) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a);

(2) the grounds for such certifications;

(3) the nationalities of the aliens so certified;

(4) the length of the detention for each alien so certified; and

(5) the number of aliens so certified who—

(A) were granted any form of relief from removal;

(B) were removed;

(C) the Attorney General has determined are no longer an alien who may be so certified; or

(D) were released from detention.

SEC. 204. CHANGES IN CONDITIONS FOR GRANTING ASYLUM.

(a) IN GENERAL.—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

(1) by striking ''inadmissible under'' each place such term appears and inserting ''described in''; and

(2) by striking ''removable under'' and inserting ''described in''.

(b) RETROACTIVE APPLICATION OF AMENDMENTS.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to—

(1) actions taken by an alien before such date, as well as actions taken on or after such date; and

(2) all aliens, without regard to the date of entry or attempted entry into the United States, whose application for asylum is pending on or after such date (except for applications with respect to which there has been a final administrative decision before such date).

SEC. 205. MULTILATERAL COOPERATION AGAINST TERRORISTS.

Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) is amended—

(1) by striking "The records" and inserting "(1) Subject to paragraphs (2) and (3), the records";

(2) by striking "United States," and all that follows through the period at the end and inserting "United States."; and

(3) by adding at the end the following:

"(2) In the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

"(3)(A) Subject to the provisions of this paragraph, the Secretary of State may provide copies of records of the Department of State and of diplomatic and consular offices of the United States (including the Department of State's automated visa lookout database) pertaining to the issuance or refusal of visas or permits to enter the United States, or information contained in such records, to foreign governments if the Secretary determines that it is necessary and appropriate.

"(B) Such records and information may be provided on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. General access to records and information may be provided under an

agreement to limit the use of such records and information to the purposes described in the preceding sentence.

"(C) The Secretary of State shall make any determination under this paragraph in consultation with any Federal agency that compiled or provided such records or information.

"(D) To the extent possible, such records and information shall be made available to foreign governments on a reciprocal basis.".

SEC. 206. REQUIRING SHARING BY THE FEDERAL BUREAU OF INVESTIGATION OF CERTAIN CRIMINAL RECORD EXTRACTS WITH OTHER FEDERAL AGENCIES IN ORDER TO ENHANCE BORDER SECURITY.

(a) IN GENERAL.—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended—

(1) in the section heading, by adding "AND DATA EXCHANGE" at the end;

(2) by inserting "(a) LIAISON WITH INTERNAL SECURITY OFFICERS.—" after "105.";

(3) by striking "the internal security of" and inserting "the internal and border security of"; and

(4) by adding at the end the following:

"(b) CRIMINAL HISTORY RECORD INFORMATION.—The Attorney General and the Director of the Federal Bu-

reau of Investigation shall provide the Secretary of State and the Commissioner access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the official to be provided access, for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the Department of State's automated visa lookout database or other appropriate database, and shall be provided without any fee or charge. The Director of the Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon by the Attorney General and the official provided access. Upon receipt of such updated extracts, the receiving official shall make corresponding updates to the official's databases and destroy previously provided extracts. Such access to any extract shall not be construed to entitle the Secretary of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Secretary of State shall submit the applicant's fingerprints and any appro-

priate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) RECONSIDERATION.—The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving official upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) REGULATIONS.—For purposes of administering this section, the Secretary of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations—

"(1) to implement procedures for the taking of fingerprints; and

"(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

"(A) to limit the redissemination of such information;

"(B) to ensure that such information is used solely to determine whether to issue a visa to an individual;

"(C) to ensure the security, confidentiality, and destruction of such information; and

"(D) to protect any privacy rights of individuals who are subjects of such information.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by amending the item relating to section 105 to read as follows:

"Sec. 105. Liaison with internal security officers and data exchange.".

(c) EFFECTIVE DATE AND IMPLEMENTATION.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall be fully implemented not later than 18 months after such date.

(d) REPORTING REQUIREMENT.—Not later than 2 years after the date of the enactment of this Act, the Attorney General and the Secretary of State, jointly, shall report to the Congress on the implementation of the amendments made by this section.

(e) CONSTRUCTION.—Nothing in this section, or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, or to any other information maintained by such center, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administra-

tion, upon terms that are consistent with sections 212 through 216 of the National Crime Prevention and Privacy Compact Act of 1998 (42 U.S.C. 14611 et seq.).

SEC. 207. INADMISSIBILITY OF ALIENS ENGAGED IN MONEY LAUNDERING.

(a) AMENDMENT TO IMMIGRATION AND NATIONALITY ACT.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

"(I) MONEY LAUNDERING.—Any alien—

"(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments); or

"(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.".

(b) MONEY LAUNDERING WATCHLIST.—Not later than 90 days after the date of the enactment of this Act,

the Secretary of State shall develop, implement, and certify to the Congress that there has been established a money laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.

SEC. 208. PROGRAM TO COLLECT INFORMATION RELATING TO NONIMMIGRANT FOREIGN STUDENTS AND OTHER EXCHANGE PROGRAM PARTICIPANTS.

(a) CHANGES IN DEADLINES.—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended—

(1) in subsection (f), by striking "Not later than 4 years after the commencement of the program established under subsection (a)," and inserting "Not later than 120 days after the date of the enactment of the PATRIOT Act of 2001,"; and

(2) in subsection (g)(1), by striking "12 months" and inserting "120 days".

(b) INCREASED FEE FOR CERTAIN STUDENTS.—Section 641(e)(4)(A) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(e)(4)(A)) is amended by adding at the end the following: "In the case of an alien who is a national of a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has repeatedly provided support for acts of international terrorism, the Attorney General may impose on, and collect from, the alien a fee that is greater than that imposed on other aliens described in paragraph (3).".

(c) DATA EXCHANGE.—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following:

"(h) DATA EXCHANGE.—Notwithstanding any other provision of law, the Attorney General shall provide to the Secretary of State and the Director of the Federal Bureau of Investigation the information collected under subsection (a)(1).".

SEC. 209. PROTECTION OF NORTHERN BORDER.

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (from the number authorized under current law) in each State along the northern border;

(2) such sums as may be necessary to triple the number of Immigration and Naturalization Service inspectors (from the number authorized under current law) at ports of entry in each State along the northern border; and

(3) an additional $50,000,000 to the Immigration and Naturalization Service for purposes of enhancing technology for security and enforcement at the northern border, such as infrared technology and technology that enhances coordination between the Governments of Canada and the United States generally and specifically between Canadian police and the Federal Bureau of Investigation.

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

SEC. 211. SPECIAL IMMIGRANT STATUS.

(a) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may provide an alien described in subsection (b)

with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C. 1101(a(27)), if the alien—

(1) files with the Attorney General a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Attorney General on or before September 11, 2001—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C.

1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) (8 U.S.C. 1184(d)) of such Act to authorize the issuance of a non-immigrant visa to the alien under section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)); or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was filed under regulations of the Secretary of Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), either before or after its approval, due to a specified terrorist activity that directly resulted in—

(i) the death or disability of the petitioner, applicant, or alien beneficiary; or

(ii) loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien was, on September 10, 2001, the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien not later than September 11, 2003.

(B) CONSTRUCTION.—For purposes of construing the terms "accompanying" and "following to join" in subparagraph (A)(ii), any death of a principal alien that is described in paragraph (1)(B)(i) shall be disregarded.

(3) GRANDPARENTS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent of a child, both of whose parents died as a direct result of a specified terrorist activity, if either of such deceased parents was, on September 10, 2001, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Attorney General under subsection (a)(1), except that if an alien was assigned a priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants described in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) who are not described in subparagraph (A), (B), (C), or (K) of such section.

SEC. 212. EXTENSION OF FILING OR REENTRY DEADLINES.

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), in the case of an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on September 10, 2001, the alien may remain lawfully in the United States in the same nonimmigrant status until the later of—

(A) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted; or

(B) 1 year after the death or onset of disability described in paragraph (2).

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this paragraph if the alien was disabled as a direct result of a specified terrorist activity.

(B) SPOUSES AND CHILDREN.—An alien is described in this paragraph if the alien was, on September 10, 2001, the spouse or child of—

(i) a principal alien described in subparagraph (A); or

(ii) an alien who died as a direct result of a specified terrorist activity.

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien shall be provided an "employment authorized" endorsement or other appropriate document signifying authorization of employment not later than 30 days after the alien requests such authorization.

(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NONIMMIGRANT STATUS.—

(1) FILING DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due.

(2) DEPARTURE DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien is unable timely to depart the United States as a direct result of a specified terrorist activity, the alien shall not be considered to have been unlawfully present in the United States during the period beginning on September 11, 2001, and ending on the date of the alien's departure, if such departure occurs on or before November 11, 2001.

(3) SPECIAL RULE FOR ALIENS UNABLE TO RETURN FROM ABROAD.—

(A) PRINCIPAL ALIENS.—In the case of an alien who was in a lawful nonimmigrant status

on September 10, 2001, but who was not present in the United States on such date, if the alien was prevented from returning to the United States in order to file a timely application for an extension of nonimmigrant status as a direct result of a specified terrorist activity—

(i) the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due; and

(ii) the alien's lawful nonimmigrant status shall be considered to continue until the later of—

(I) the date such status otherwise would have terminated if this subparagraph had not been enacted; or

(II) the date that is 60 days after the date on which the application described in clause (i) otherwise would have been due.

(B) SPOUSES AND CHILDREN.—In the case of an alien who is the spouse or child of a principal alien described in subparagraph (A), if the spouse or child was in a lawful nonimmigrant status on September 10, 2001, the spouse or

child may remain lawfully in the United States in the same nonimmigrant status until the later of—

(i) the date such lawful nonimmigrant status otherwise would have terminated if this subparagraph had not been enacted; or

(ii) the date that is 60 days after the date on which the application described in subparagraph (A) otherwise would have been due.

(c) DIVERSITY IMMIGRANTS.—

(1) WAIVER OF FISCAL YEAR LIMITATION.—Notwithstanding section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)), an immigrant visa number issued to an alien under section 203(c) of such Act for fiscal year 2001 may be used by the alien during the period beginning on October 1, 2001, and ending on April 1, 2002, if the alien establishes that the alien was prevented from using it during fiscal year 2001 as a direct result of a specified terrorist activity.

(2) WORLDWIDE LEVEL.—In the case of an alien entering the United States as a lawful permanent resident, or adjusting to that status, under

paragraph (1), the alien shall be counted as a diversity immigrant for fiscal year 2001 for purposes of section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)), unless the worldwide level under such section for such year has been exceeded, in which case the alien shall be counted as a diversity immigrant for fiscal year 2002.

(3) TREATMENT OF FAMILY MEMBERS OF CERTAIN ALIENS.—In the case of a principal alien issued an immigrant visa number under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 2001, if such principal alien died as a direct result of a specified terrorist activity, the aliens who were, on September 10, 2001, the spouse and children of such principal alien shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of section 203 of such Act, be entitled to the same status, and the same order of consideration, that would have been provided to such alien spouse or child under section 203(d) of such Act if the principal alien were not deceased.

(d) EXTENSION OF EXPIRATION OF IMMIGRANT VISAS.—Notwithstanding the limitations under section 221(c) of the Immigration and Nationality Act (8 U.S.C.

1201(c)), in the case of any immigrant visa issued to an alien that expires or expired before December 31, 2001, if the alien was unable to effect entry to the United States as a direct result of a specified terrorist activity, then the period of validity of the visa is extended until December 31, 2001, unless a longer period of validity is otherwise provided under this subtitle.

(e) GRANTS OF PAROLE EXTENDED.—In the case of any parole granted by the Attorney General under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) that expires on a date on or after September 11, 2001, if the alien beneficiary of the parole was unable to return to the United States prior to the expiration date as a direct result of a specified terrorist activity, the parole is deemed extended for an additional 90 days.

(f) VOLUNTARY DEPARTURE.—Notwithstanding section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure under such section expired during the period beginning on September 11, 2001, and ending on October 11, 2001, such voluntary departure period is deemed extended for an additional 30 days.

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SEC. 213. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.

(a) TREATMENT AS IMMEDIATE RELATIVES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activity, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries.

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before September 11, 2001, shall be considered (if the

spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned prior to the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Attorney General, if the spouse, child, son, or daughter was present in the United States on September 11, 2001. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on September 10, 2001, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in

clause (i), and admissible to the United States for permanent residence.

(d) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

SEC. 214. "AGE-OUT" PROTECTION FOR CHILDREN.

For purposes of the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), in the case of an alien—

(1) whose 21st birthday occurs in September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 90 days after the alien's 21st birthday for purposes of adjudicating such petition or application; and

(2) whose 21st birthday occurs after September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 45 days after the alien's 21st birthday

for purposes of adjudicating such petition or application.

SEC. 215. TEMPORARY ADMINISTRATIVE RELIEF.

The Attorney General, for humanitarian purposes or to ensure family unity, may provide temporary administrative relief to any alien who—

(1) was lawfully present in the United States on September 10, 2001;

(2) was on such date the spouse, parent, or child of an individual who died or was disabled as a direct result of a specified terrorist activity; and

(3) is not otherwise entitled to relief under any other provision of this subtitle.

SEC. 216. EVIDENCE OF DEATH, DISABILITY, OR LOSS OF EMPLOYMENT.

(a) IN GENERAL.—The Attorney General shall establish appropriate standards for evidence demonstrating, for purposes of this subtitle, that any of the following occurred as a direct result of a specified terrorist activity:

(1) Death.

(2) Disability.

(3) Loss of employment due to physical damage to, or destruction of, a business.

(b) WAIVER OF REGULATIONS.—The Attorney General shall carry out subsection (a) as expeditiously as pos-

sible. The Attorney General is not required to promulgate regulations prior to implementing this subtitle.

SEC. 217. NO BENEFITS TO TERRORISTS OR FAMILY MEMBERS OF TERRORISTS.

Notwithstanding any other provision of this subtitle, nothing in this subtitle shall be construed to provide any benefit or relief to—

(1) any individual culpable for a specified terrorist activity; or

(2) any family member of any individual described in paragraph (1).

SEC. 218. DEFINITIONS.

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term ''specified terrorist activity'' means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

SEC. 301. STATUTE OF LIMITATION FOR PROSECUTING TERRORISM OFFENSES.

(a) IN GENERAL.—Section 3286 of title 18, United States Code, is amended to read as follows:

"§ 3286. Terrorism offenses

"(a) An indictment may be found or an information instituted at any time without limitation for any Federal terrorism offense or any of the following offenses:

"(1) A violation of, or an attempt or conspiracy to violate, section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 791 (relating to harboring terrorists), 831 (relating to nuclear materials), 844(f) or (i) when it relates to bombing (relating to arson and bombing of certain property), 1114(1) (relating to protection of officers and employees of the United States), 1116, if the offense involves murder (relating to murder or manslaughter of foreign officials, official guests, or

internationally protected persons), 1203 (relating to hostage taking), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 2332(a)(1) (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries) of this title.

"(2) Section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(3) Section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421).

"(4) Section 46502 (relating to aircraft piracy) of title 49.

"(b) An indictment may be found or an information instituted within 15 years after the offense was committed for any of the following offenses:

"(1) Section 175b (relating to biological weapons), 842(m) or (n) (relating to plastic explosives), 930(c) if it involves murder (relating to possessing a dangerous weapon in a Federal facility), 956 (relating to conspiracy to injure property of a foreign

government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1992 (relating to trainwrecking), 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture).

"(2) Any of the following provisions of title 49: the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate

gas or hazardous liquid pipeline facility) of title 49.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by amending the item relating to section 3286 to read as follows:

''3286. Terrorism offenses.''.

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.

Section 3559 of title 18, United States Code, is amended by adding after subsection (d) the following:

''(e) AUTHORIZED TERMS OF IMPRISONMENT FOR TERRORISM CRIMES.—A person convicted of any Federal terrorism offense may be sentenced to imprisonment for any term of years or for life, notwithstanding any maximum term of imprisonment specified in the law describing the offense. The authorization of imprisonment under this subsection is supplementary to, and does not limit, the availability of any other penalty authorized by the law describing the offense, including the death penalty, and does not limit the applicability of any mandatory minimum

term of imprisonment, including any mandatory life term, provided by the law describing the offense.''.

SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.

Chapter 113B of title 18, United States Code, is amended—

(1) by inserting after section 2332b the following:

''§ 2332c. Attempts and conspiracies

''(a) Except as provided in subsection (c), any person who attempts or conspires to commit any Federal terrorism offense shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

''(b) Except as provided in subsection (c), any person who attempts or conspires to commit any offense described in section 25(2) shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

''(c) A death penalty may not be imposed by operation of this section.''; and

(2) in the table of sections at the beginning of the chapter, by inserting after the item relating to section 2332b the following new item:

''2332c. Attempts and conspiracies.''.

SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or (F)" and inserting "(F)"; and

(2) by striking "financial gain." and inserting "financial gain, or (G) any act that is a Federal terrorism offense or is indictable under any of the following provisions of law: section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) when it involves a bombing (relating to arson and bombing of certain property), 930(c) when it involves an attack on a Federal facility, 1114 when it involves murder (relating to protection of officers and employees of the United States), 1116 when it involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to de-

struction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to trainwrecking), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title; section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or section 46502 (relating to aircraft piracy) or 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49;".

SEC. 305. BIOLOGICAL WEAPONS.

Chapter 10 of title 18, United States Code, is amended—

(1) in section 175—

(A) in subsection (b)—

(i) by striking, "section, the" and inserting "section—

"(1) the";

(ii) by striking ''does not include'' and inserting ''includes'';

(iii) by inserting ''other than'' after ''system for''; and

(iv) by striking ''purposes.'' and inserting ''purposes, and

''(2) the terms biological agent and toxin do not encompass any biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.'';

(B) by redesignating subsection (b) as subsection (c); and

(C) by inserting after subsection (a) the following:

''(b) ADDITIONAL OFFENSE.—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both.'';

(2) by inserting after section 175a the following:

"§ 175b. Possession by restricted persons

"(a) No restricted person described in subsection (b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or Appendix A of part 72 of such title; except that the term select agent does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

"(b) As used in this section, the term 'restricted person' means an individual who—

"(1) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

"(3) is a fugitive from justice;

"(4) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(5) is an alien illegally or unlawfully in the United States;

"(6) has been adjudicated as a mental defective or has been committed to any mental institution; or

"(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination that remains in effect that such country has repeatedly provided support for acts of international terrorism.

"(c) As used in this section, the term 'alien' has the same meaning as that term is given in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), and the term 'lawfully' admitted for permanent residence has the same meaning as that term is given in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

"(d) Whoever knowingly violates this section shall be fined under this title or imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947."; and

(3) in the table of sections in the beginning of such chapter, by inserting after the item relating to section 175a the following:

"175b. Possession by restricted persons.".

SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT ADVICE OR ASSISTANCE.

Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "a violation" and all that follows through "49" and inserting "any Federal terrorism offense or any offense described in section 25(2)"; and

(B) by striking "violation," and inserting "offense,"; and

(2) in subsection (b), by inserting "expert advice or assistance," after "training,".

SEC. 307. PROHIBITION AGAINST HARBORING.

(a) Title 18, United States Code, is amended by inserting before section 792 the following:

"§ 791. Prohibition against harboring

"Whoever harbors or conceals any person who he knows has committed, or is about to commit, an offense described in section 25(2) or this title shall be fined under this title or imprisoned not more than ten years or both. There is extraterritorial Federal jurisdiction over any violation of this section or any conspiracy or attempt to violate this section. A violation of this section or of such a conspiracy or attempt may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.".

(b) The table of sections at the beginning of chapter 37 of title 18, United States Code, is amended by inserting before the item relating to section 792 the following:

"791. Prohibition against harboring.".

SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(j) SUPERVISED RELEASE TERMS FOR TERRORISM OFFENSES.—Notwithstanding subsection (b), the authorized terms of supervised release for any Federal terrorism offense are any term of years or life.".

SEC. 309. DEFINITION.

(a) Chapter 1 of title 18, United States Code, is amended—

(1) by adding after section 24 a new section as follows:

"§ 25. Federal terrorism offense defined

"As used in this title, the term 'Federal terrorism offense' means an offense that is—

"(1) is calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct; and

"(2) is a violation of, or an attempt or conspiracy to violate- section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 791 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) (relating to arson and bombing of certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1114 (relating to protection of officers and employees of the United States), 1116 (re-

lating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to

terrorist organizations), or 2340A (relating to torture);

"(3) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(4) section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421); or

"(5) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49."; and

(2) in the table of sections in the beginning of such chapter, by inserting after the item relating to section 24 the following:

"25. Federal terrorism offense defined.".

(b) Section 2332b(g)(5)(B) of title 18, United States Code, is amended by striking "is a violation" and all that follows through "title 49" and inserting "is a Federal terrorism offense".

(c) Section 2331 of title 18, United States Code, is amended—

(1) in paragraph (1)(B)—

(A) by inserting ''(or to have the effect)'' after ''intended''; and

(B) in clause (iii), by striking ''by assassination or kidnapping'' and inserting ''(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)'';

(2) in paragraph (3), by striking ''and'';

(3) in paragraph (4), by striking the period and inserting ''; and''; and

(4) by inserting the following paragraph (4):

''(5) the term 'domestic terrorism' means activities that—

''(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and

''(B) appear to be intended (or to have the effect)—

''(i) to intimidate or coerce a civilian population;

''(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof).".

SEC. 310. CIVIL DAMAGES.

Section 2707(c) of title 18, United States Code, is amended by striking "$1,000" and inserting "$10,000".

Subtitle B—Criminal Procedure

SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district court of the United States (including a magistrate judge of such court), or any United States Court of Appeals, having jurisdiction over the offense being investigated, for a search of property or for a person within or outside the district".

SEC. 352. DNA IDENTIFICATION OF TERRORISTS.

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(1)) is amended—

(1) by redesignating subparagraph (G) as subparagraph (H); and

(2) by inserting after subparagraph (F) the a new subparagraph as follows:

"(G) Any Federal terrorism offense (as defined in section 25 of title 18, United States Code).".

SEC. 353. GRAND JURY MATTERS.

Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended—

(1) by adding after clause (iv) the following:

"(v) when permitted by a court at the request of an attorney for the government, upon a showing that the matters pertain to international or domestic terrorism (as defined in section 2331 of title 18, United States Code) or national security, to any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or to the President or Vice President of the United States, for the performance of official duties.";

(2) by striking "or" at the end of clause (iii); and

(3) by striking the period at the end of clause (iv) and inserting "; or".

SEC. 354. EXTRATERRITORIALITY.

Chapter 113B of title 18, United States Code, is amended—

(1) in the heading for section 2338, by striking "**Exclusive**";

(2) in section 2338, by inserting "There is extraterritorial Federal jurisdiction over any Federal terrorism offense and any offense under this chapter, in addition to any extraterritorial jurisdiction that may exist under the law defining the offense, if the person committing the offense or the victim of the offense is a national of the United States (as defined in section 101 of the Immigration and Nationality Act) or if the offense is directed at the security or interests of the United States." before "The district courts"; and

(3) in the table of sections at the beginning of such chapter, by striking "Exclusive" in the item relating to section 2338.

SEC. 355. JURISDICTION OVER CRIMES COMMITTED AT UNITED STATES FACILITIES ABROAD.

Section 7 of title 18, United States Code, is amended by adding at the end the following:

"(9)(A) With respect to offenses committed by or against a United States national, as defined in section 1203(c) of this title—

"(i) the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign states, including the buildings, parts of buildings, and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities; and

"(ii) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, except that this paragraph does not supercede any treaty or international agreement in force on the date of the enactment of this paragraph.

"(B) This paragraph does not apply with respect to an offense committed by a person described in section 3261(a).".

SEC. 356. SPECIAL AGENT AUTHORITIES.

(a) GENERAL AUTHORITY OF SPECIAL AGENTS.—Section 37(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)) is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) in the course of performing the functions set forth in paragraphs (1) and (3), obtain and execute search and arrest warrants, as well as obtain and serve subpoenas and summonses, issued under the authority of the United States;";

(2) in paragraph (3)(F) by inserting "or President-elect" after "President"; and

(3) by striking paragraph (5) and inserting the following:

"(5) in the course of performing the functions set forth in paragraphs (1) and (3), make arrests without warrant for any offense against the United States committed in the presence of the special agent, or for any felony cognizable under the laws of the United States if the special agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.".

(b) CRIMES.—Section 37 of such Act (22 U.S.C. 2709) is amended by inserting after subsection (c) the following new subsections:

"(d) INTERFERENCE WITH AGENTS.—Whoever knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged in the performance of the protective functions authorized by this

section shall be fined under title 18 or imprisoned not more than one year, or both.

"(e) PERSONS UNDER PROTECTION OF SPECIAL AGENTS.—Whoever engages in any conduct—

"(1) directed against an individual entitled to protection under this section, and

"(2) which would constitute a violation of section 112 or 878 of title 18, United States Code, if such individual were a foreign official, an official guest, or an internationally protected person, shall be subject to the same penalties as are provided for such conduct directed against an individual subject to protection under such section of title 18.".

TITLE IV—FINANCIAL INFRASTRUCTURE

SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

SEC. 402. MATERIAL SUPPORT FOR TERRORISM.

Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a), by adding at the end the following "A violation of this section may be prosecuted in any Federal judicial district in which the

underlying offense was committed, or in any other Federal judicial district as provided by law."; and

(2) in subsection (b), by striking "or other financial securities" and inserting "or monetary instruments or financial securities".

SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.

Section 981(a)(1) of title 18, United States Code, is amended by inserting after subparagraph (F) the following:

"(G) All assets, foreign or domestic—

"(i) of any person, entity, or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

"(ii) acquired or maintained by any person for the purpose of supporting, planning, conducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.

No provision of title IX of Public Law 106–387 shall be understood to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

SEC. 405. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) of the Internal Revenue Code of 1986 (relating to disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances) is amended by adding at the end the following new subparagraph:

"(C) TERRORIST ACTIVITIES, ETC.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may

disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

"(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

"(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.".

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Subsection (i) of section 6103 of such Code (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

"(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities.

"(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

"(iii) REQUIREMENTS.—A request meets the requirements of this clause if—

"(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and

"(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

"(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

"(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning terrorists and terrorist organizations and activities. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the

use of such officers and employees in such investigation, collection, or analysis.

"(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

"(I) is made by an individual described in clause (iii), and

"(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

"(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

"(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

"(II) who is responsible for the collection and analysis of intelligence and counterintelligence information

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concerning terrorists and terrorist organizations and activities.

"(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(C) DISCLOSURE UNDER EX PARTE ORDERS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist activity or threats. Return or return information opened pursuant to the

preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to any such terrorist activity or threat.

"(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(I) there is reasonable cause to believe, based upon information believed to be reliable, that the taxpayer whose return or return information is to be disclosed may be connected to a terrorist activity or threat,

"(II) there is reasonable cause to believe that the return or return infor-

mation may be relevant to a matter relating to such terrorist activity or threat, and

"(III) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.

"(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subclauses (I) and (II) of subparagraph (C)(ii) are met.

"(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—

"(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

"(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

"(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.".

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(a)(2) of such Code is amended by inserting "any local law enforcement agency receiving information under subsection (i)(7)(A)," after "State,".

(2) The heading of section 6103(i)(3) of such Code is amended by inserting "OR TERRORIST" after "CRIMINAL".

(3) Paragraph (4) of section 6103(i) of such Code is amended—

(A) in subparagraph (A) by inserting "or (7)(C)" after "paragraph (1)", and

(B) in subparagraph (B) by striking "or (3)(A)" and inserting "(3)(A) or (C), or (7)".

(4) Paragraph (6) of section 6103(i) of such Code is amended—

(A) by striking "(3)(A)" and inserting "(3)(A) or (C)", and

(B) by striking "or (7)" and inserting "(7), or (8)".

(5) Section 6103(p)(3) of such Code is amended—

(A) in subparagraph (A) by striking "(7)(A)(ii)" and inserting "(8)(A)(ii)", and

(B) in subparagraph (C) by striking "(i)(3)(B)(i)" and inserting "(i)(3)(B)(i) or (7)(A)(ii)".

(6) Section 6103(p)(4) of such Code is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking "or (5)," the first place it appears and inserting "(5), or (7),", and

(ii) by striking "(i)(3)(B)(i)" and inserting "(i)(3)(B)(i) or (7)(A)(ii)", and

(B) in subparagraph (F)(ii) by striking "or (5)," the first place it appears and inserting "(5) or (7),".

(7) Section 6103(p)(6)(B)(i) of such Code is amended by striking "(i)(7)(A)(ii)" and inserting "(i)(8)(A)(ii)".

(8) Section 7213(a)(2) of such Code is amended by striking "(i)(3)(B)(i)," and inserting "(i)(3)(B)(i) or (7)(A)(ii),".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made on or after the date of the enactment of this Act.

SEC. 406. EXTRATERRITORIAL JURISDICTION.

Section 1029 of title 18, United States Code, is amended by adding at the end the following:

"(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall

be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

"(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

"(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.".

TITLE V—EMERGENCY AUTHORIZATIONS

SEC. 501. OFFICE OF JUSTICE PROGRAMS.

(a) In connection with the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, in the United States, amounts transferred to the Crime Victims Fund from the Executive Office of the President or funds appropriated to the President shall not be subject to any limitation on obligations from amounts deposited or available in the Fund.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105–277 and section 108(a) of the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 2000 (H.R. 3421 of the 106th Congress, as enacted into law by section 1000(a)(1) of Public Law 106–113; Appendix A; 113 Stat. 1501A–20) are amended—

(1) after ''that Office'', each place it occurs, by inserting ''(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title I of Public Law 90–351)''; and

(2) by inserting ''functions, including any'' after ''all''.

(c) Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b) is amended by inserting '', to victim service organizations, to public agencies (including Federal, State, or local governments), and to non-governmental organizations that provide assistance to victims of crime,'' after ''programs''.

(d) Section 1 of Public Law 107–37 is amended—

(1) by inserting ''(containing identification of all eligible payees of benefits under section 1201)'' before ''by a'';

(2) by inserting "producing permanent and total disability" after "suffered a catastrophic injury"; and

(3) by striking "1201(a)" and inserting "1201".

SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS.

(a) IN GENERAL.—(1) Title 18, United States Code, is amended by striking sections 3059 through 3059B and inserting the following:

"§ 3059. Rewards and appropriations therefor

"(a) IN GENERAL.—Subject to subsection (b), the Attorney General may pay rewards in accordance with procedures and regulations established or issued by the Attorney General.

"(b) LIMITATIONS.— The following limitations apply with respect to awards under subsection (a):

"(1) No such reward, other than in connection with a terrorism offense or as otherwise specifically provided by law, shall exceed $2,000,000.

"(2) No such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President.

"(3) The Attorney General shall give written notice to the Chairmen and ranking minority mem-

bers of the Committees on Appropriations and the Judiciary of the Senate and the House of Representatives not later than 30 days after the approval of a reward under paragraph (2);

"(4) Any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards.

"(5) Neither the failure to make or authorize such a reward nor the amount of any such reward made or authorized shall be subject to judicial review.

"(c) DEFINITION.—In this section, the term 'reward' means a payment pursuant to public advertisements for assistance to the Department of Justice.".

(2) The items relating to sections 3059A through 3059B in the table of sections at the beginning of chapter 203 of title 18, United States Code, are repealed.

(b) CONFORMING AMENDMENTS.——

(1) Section 3075 of title 18, United States Code, and that portion of section 3072 of title 18, United States Code, that follows the first sentence, are repealed.

(2) Public Law 101–647 is amended—

(A) in section 2565 (12 U.S.C. 4205)—

(i) by striking all the matter after "section 2561," in subsection (c)(1) and inserting "the Attorney General may, in the Attorney General's discretion, pay a reward to the declaring."; and

(ii) by striking subsection (e); and

(B) by striking section 2569 (12 U.S.C. 4209).

SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs" and "Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration Support And Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106–553 (114 Stat. 2762A–58 to 2762A–59)) is amended by striking each place it occurs: "*Provided*" and all that follows through "That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

SEC. 504. DEPARTMENT OF STATE REWARD AUTHORITY.

(a) CHANGES IN REWARD AUTHORITY.—Section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

(1) in subsection (b)—

(A) by striking "or" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting ", including by dismantling an organization in whole or significant part; or"; and

(C) by adding at the end the following new paragraph:

"(6) the identification or location of an individual who holds a leadership position in a terrorist organization.";

(2) in subsection (d), by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2); and

(3) by amending subsection (e)(1) to read as follows:

"(1) AMOUNT OF AWARD.—

"(A) Except as provided in subparagraph (B), no reward paid under this section may exceed $10,000,000.

"(B) The Secretary of State may authorize the payment of an award not to exceed $25,000,000 if the Secretary determines that payment of an award exceeding the amount under subparagraph (A) is important to the national interest of the United States.".

(b) SENSE OF CONGRESS REGARDING REWARDS RELATING TO THE SEPTEMBER 11, 2001 ATTACK.—It is the sense of the Congress that the Secretary of State should use the authority of section 36 of the State Department Basic Authorities Act of 1956, as amended by subsection (a), to offer a reward of $25,000,000 for Osama bin Laden and other leaders of the September 11, 2001 attack on the United States.

SEC. 505. AUTHORIZATION OF FUNDS FOR DEA POLICE TRAINING IN SOUTH AND CENTRAL ASIA.

In addition to amounts otherwise available to carry out section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291), there is authorized to be appropriated to the President not less than $5,000,000 for fiscal year 2002 for regional antidrug training in the Republic of Turkey by the Drug Enforcement Administration for police, as well as increased precursor chemical control efforts in the South and Central Asia region.

SEC. 506. PUBLIC SAFETY OFFICER BENEFITS.

(a) IN GENERAL.—Section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any death or disability occurring on or after January 1, 2001.

TITLE VI—DAM SECURITY

SEC. 601. SECURITY OF RECLAMATION DAMS, FACILITIES, AND RESOURCES.

Section 2805(a) of the Reclamation Recreation Management Act of 1992 (16 U.S.C. 460l–33(a)) is amended by adding at the end the following:

"(3) Any person who violates any such regulation which is issued pursuant to this Act shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate judge designated for that purpose by the court by which such judge was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18, United States Code.

"(4) The Secretary may—

"(A) authorize law enforcement personnel from the Department of the Interior to act as law enforcement officers to maintain law and order and protect persons and property within a Reclamation project or on Reclamation lands;

"(B) authorize law enforcement personnel of any other Federal agency that has law enforcement authority, with the exception of the Department of Defense, or law enforcement personnel of any State or local government, including Indian tribes, when deemed economical and in the public interest, and with the concurrence of that agency or that State or local government, to act as law enforcement officers within a Reclamation project or on Reclamation lands with such enforcement powers as may be so assigned them by the Secretary to carry out the regulations promulgated under paragraph (2);

"(C) cooperate with any State or local government, including Indian tribes, in the enforcement of the laws or ordinances of that State or local government; and

"(D) provide reimbursement to a State or local government, including Indian tribes, for expenditures incurred in connection with activities under subparagraph (B).

"(5) Officers or employees designated or authorized by the Secretary under paragraph (4) are authorized to—

"(A) carry firearms within a Reclamation project or on Reclamation lands and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, and if such arrests occur within a Reclamation project or on Reclamation lands or the person to be arrested is fleeing therefrom to avoid arrest;

"(B) execute within a Reclamation project or on Reclamation lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law for an offense committed within a Reclamation project or on Reclamation lands; and

"(C) conduct investigations within a Reclamation project or on Reclamation lands of offenses against the United States committed within a Reclamation project or on Reclamation lands, if the Federal law enforcement agency having investigative

jurisdiction over the offense committed declines to investigate the offense or concurs with such investigation.

"(6)(A) Except as otherwise provided in this paragraph, a law enforcement officer of any State or local government, including Indian tribes, designated to act as a law enforcement officer under paragraph (4) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, employment discrimination, leave, unemployment compensation, and Federal benefits.

"(B) For purposes of chapter 171 of title 28, United States Code, popularly known as the Federal Tort Claims Act, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be considered a Federal employee.

"(C) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement

officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be deemed a civil service employee of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, and the provisions of that subchapter shall apply. Benefits under this subchapter shall be reduced by the amount of any entitlement to State or local workers' compensation benefits arising out of the same injury or death.

"(7) Nothing in paragraphs (3) through (9) shall be construed or applied to limit or restrict the investigative jurisdiction of any Federal law enforcement agency, or to affect any existing right of a State or local government, including Indian tribes, to exercise civil and criminal jurisdiction within a Reclamation project or on Reclamation lands.

"(8) For the purposes of this subsection, the term 'law enforcement personnel' means employees of a Federal, State, or local government agency, including an Indian tribal agency, who have successfully completed law enforcement training approved by the Secretary and are authorized to carry firearms, make arrests, and execute service of process to enforce criminal laws of their employing jurisdiction.

"(9) The law enforcement authorities provided for in this subsection may be exercised only pursuant to rules and regulations promulgated by the Secretary and approved by the Attorney General.".

TITLE VII—MISCELLANEOUS

SEC. 701. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators.

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

SEC. 702. REVIEW OF THE DEPARTMENT OF JUSTICE.

(a) APPOINTMENT OF DEPUTY INSPECTOR GENERAL FOR CIVIL RIGHTS, CIVIL LIBERTIES, AND THE FEDERAL BUREAU OF INVESTIGATION.—The Inspector General of the Department of Justice shall appoint a Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation (hereinafter in this section referred to as the ''Deputy'').

(b) CIVIL RIGHTS AND CIVIL LIBERTIES REVIEW.—The Deputy shall—

(1) review information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by government employees and officials including employees and officials of the Department of Justice;

(2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the Deputy; and

(3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

(c) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Congress a plan for oversight of the Federal Bureau of Investigation. The Inspector General shall consider the following activities for inclusion in such plan:

(1) FINANCIAL SYSTEMS.—Auditing the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation.

(2) PROGRAMS AND PROCESSES.—Auditing and evaluating programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action.

(3) INTERNAL AFFAIRS OFFICES.—Reviewing the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility.

(4) PERSONNEL.—Investigating allegations of serious misconduct by personnel of the Federal Bureau of Investigation.

(5) OTHER PROGRAMS AND OPERATIONS.—Reviewing matters relating to any other program or and operation of the Federal Bureau of Investigation that the Inspector General determines requires review.

(6) RESOURCES.—Identifying resources needed by the Inspector General to implement such plan.

(d) REVIEW OF INVESTIGATIVE TOOLS.—Not later than August 31, 2003, the Deputy shall review the implementation, use, and operation (including the impact on civil rights and liberties) of the law enforcement and intelligence authorities contained in title I of this Act and provide a report to the President and Congress.

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SEC. 703. FEASIBILITY STUDY ON USE OF BIOMETRIC IDENTIFIER SCANNING SYSTEM WITH ACCESS TO THE FBI INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM AT OVERSEAS CONSULAR POSTS AND POINTS OF ENTRY TO THE UNITED STATES.

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of State and the Secretary of Transportation, shall conduct a study on the feasibility of utilizing a biometric identifier (fingerprint) scanning system, with access to the database of the Federal Bureau of Investigation Integrated Automated Fingerprint Identification System, at consular offices abroad and at points of entry into the United States to enhance the ability of State Department and immigration officials to identify aliens who may be wanted in connection with criminal or terrorist investigations in the United States or abroad prior to the issuance of visas or entry into the United States.

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall submit a report summarizing the findings of the study authorized under subsection (a) to the Committee on International Relations and the Committee on the Judiciary of the House of Representatives and the

Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

SEC. 704. STUDY OF ACCESS.

(a) IN GENERAL.—Not later than December 31, 2002, the Federal Bureau of Investigation shall study and report to Congress on the feasibility of providing to airlines access via computer to the names of passengers who are suspected of terrorist activity by Federal officials.

(b) AUTHORIZATION.—There are authorized to be appropriated for fiscal years 2002 though 2003 not more than $250,000 to carry out subsection (a).

SEC. 705. ENFORCEMENT OF CERTAIN ANTI-TERRORISM JUDGMENTS.

(a) SHORT TITLE.—This section may be cited as the ''Justice for Victims of Terrorism Act''.

(b) DEFINITION.—

(1) IN GENERAL.—Section 1603(b) of title 28, United States Code, is amended—

(A) in paragraph (3) by striking the period and inserting ''; and'';

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(C) by striking ''(b)'' through ''entity—'' and inserting the following:

"(b) An 'agency or instrumentality of a foreign state' means—

"(1) any entity—"; and

(D) by adding at the end the following:

"(2) for purposes of sections 1605(a)(7) and 1610(a)(7) and (f), any entity as defined under subparagraphs (A) and (B) of paragraph (1), and subparagraph (C) of paragraph (1) shall not apply.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1391(f)(3) of title 28, United States Code, is amended by striking "1603(b)" and inserting "1603(b)(1)".

(c) ENFORCEMENT OF JUDGMENTS.—Section 1610(f) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A) by striking "(including any agency or instrumentality or such state)" and inserting "(including any agency or instrumentality of such state), except to the extent of any punitive damages awarded"; and

(B) by adding at the end the following:

"(C) Notwithstanding any other provision of law, moneys due from or payable by the United States (including any agency or instrumentality thereof) to any state against which a judgment is pending under section

1605(a)(7) shall be subject to attachment and execution with respect to that judgment, in like manner and to the same extent as if the United States were a private person, except to the extent of any punitive damages awarded.''; and

(2) by striking paragraph (3) and adding the following:

''(3)(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

''(B) A waiver under this paragraph shall not apply to—

''(i) if property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

''(ii) if any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations is sold or otherwise

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transferred for value to a third party, the proceeds of such sale or transfer.

"(C) In this paragraph, the term 'property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' and the term 'asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

"(4) For purposes of this subsection, all assets of any agency or instrumentality of a foreign state shall be treated as assets of that foreign state.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of the enactment of this Act.

(e) PAYGO ADJUSTMENT.—The Director of the Office of Management and Budget shall not make any estimates of changes in direct spending outlays and receipts under section 252(d) of the Balanced Budget and Emergency

Deficit Control Act of 1985 (2 U.S.C. 902(d)) for any fiscal year resulting from the enactment of this section.

TITLE VIII—PRIVATE SECURITY OFFICER QUALITY ASSURANCE

SEC. 801. SHORT TITLE.

This title may be cited as the ''Private Security Officer Quality Assurance Act of 2001''.

SEC. 802. FINDINGS.

Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) the private security industry provides numerous opportunities for entry-level job applicants, including individuals suffering from unemployment due to economic conditions or dislocations;

(3) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are only supplemented by private security officers who provide prevention and reporting services in support of, but not in place of, regular sworn police;

(4) given the growth of large private shopping malls, and the consequent reduction in the number of public shopping streets, the American public is more likely to have contact with private security per-

sonnel in the course of a day than with sworn law enforcement officers;

(5) regardless of the differences in their duties, skill, and responsibilities, the public has difficulty in discerning the difference between sworn law enforcement officers and private security personnel; and

(6) the American public demands the employment of qualified, well-trained private security personnel as an adjunct, but not a replacement for sworn law enforcement officers.

SEC. 803. BACKGROUND CHECKS.

(a) IN GENERAL.—An association of employers of private security officers, designated for the purpose of this section by the Attorney General, may submit fingerprints or other methods of positive identification approved by the Attorney General, to the Attorney General on behalf of any applicant for a State license or certificate of registration as a private security officer or employer of private security officers. In response to such a submission, the Attorney General may, to the extent provided by State law conforming to the requirements of the second paragraph under the heading "Federal Bureau of Investigation" and the subheading "Salaries and Expenses" in title II of Public Law 92–544 (86 Stat. 1115), exchange, for licensing and employment purposes, identification and criminal his-

tory records with the State governmental agencies to which such applicant has applied.

(b) REGULATIONS.—The Attorney General may prescribe such regulations as may be necessary to carry out this section, including measures relating to the security, confidentiality, accuracy, use, and dissemination of information and audits and recordkeeping and the imposition of fees necessary for the recovery of costs.

(c) REPORT.—The Attorney General shall report to the Senate and House Committees on the Judiciary 2 years after the date of enactment of this Act on the number of inquiries made by the association of employers under this section and their disposition.

SEC. 804. SENSE OF CONGRESS.

It is the sense of Congress that States should participate in the background check system established under section 803.

SEC. 805. DEFINITIONS.

As used in this title—

(1) the term ''employee'' includes an applicant for employment;

(2) the term ''employer'' means any person that—

(A) employs one or more private security officers; or

(B) provides, as an independent contractor, for consideration, the services of one or more private security officers (possibly including oneself);

(3) the term "private security officer"—

(A) means—

(i) an individual who performs security services, full or part time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes whose primary duty is to perform security services, or

(ii) an individual who is an employee of an electronic security system company who is engaged in one or more of the following activities in the State: burglar alarm technician, fire alarm technician, closed circuit television technician, access control technician, or security system monitor; but

(B) does not include—

(i) sworn police officers who have law enforcement powers in the State,

(ii) attorneys, accountants, and other professionals who are otherwise licensed in the State,

(iii) employees whose duties are primarily internal audit or credit functions,

(iv) persons whose duties may incidentally include the reporting or apprehension of shoplifters or trespassers, or

(v) an individual on active duty in the military service;

(4) the term ''certificate of registration'' means a license, permit, certificate, registration card, or other formal written permission from the State for the person to engage in providing security services;

(5) the term ''security services'' means the performance of one or more of the following:

(A) the observation or reporting of intrusion, larceny, vandalism, fire or trespass;

(B) the deterrence of theft or misappropriation of any goods, money, or other item of value;

(C) the observation or reporting of any unlawful activity;

(D) the protection of individuals or property, including proprietary information, from harm or misappropriation;

(E) the control of access to premises being protected;

(F) the secure movement of prisoners;

(G) the maintenance of order and safety at athletic, entertainment, or other public activities;

(H) the provision of canine services for protecting premises or for the detection of any unlawful device or substance; and

(I) the transportation of money or other valuables by armored vehicle; and

(6) the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

TITLE II – ALIENS ENGAGING IN TERRORIST ACTIVITY

SUBTITLE A – DETENTION AND REMOVAL OF ALIENS ENGAGING IN TERRORIST ACTIVITY

Current Law	Problems/Need	Administration Bill	Committee Bill	Senate Bill
Representatives of Organizations Endorsing Terrorism An alien is not inadmissible or deportable for being a representative of an organization that endorses terrorist activity.	An alien should be inadmissible and deportable for being a representative of an organization that endorses terrorist activity.	An alien is inadmissible if he is a representative of a political, social, or other similar group whose public endorsement of terrorist activity the Secretary of State has determined undermines the efforts of the U.S. to reduce or eliminate terrorist activity.	SAME AS ADMIN (section 201(a)). In addition, the bill makes an alien deportable on the same grounds if the endorsement is intended and likely to incite or produce imminent lawless action. (section 201(c)).	SAME AS ADMIN (section 411(a)).
Advocates of Terrorism An alien is not inadmissible or deportable for endorsing or espousing terrorist activity in a way that undermines the efforts of the U.S. to fight terrorism.	An alien should be inadmissible and deportable for endorsing or espousing terrorist activity in a way that undermines the efforts of the U.S. to fight terrorism.	An alien is inadmissible if he has used his prominence within a foreign state or the U.S. to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines the efforts of the U.S. to reduce or eliminate terrorist activities.	SAME AS ADMIN (section 201(a)). In addition, the bill makes an alien deportable on the same grounds if done in a manner that is intended and likely to incite or produce imminent lawless action. (section 201(c)).	SAME AS ADMIN (section 411(a)).
Family Members of Terrorists The spouse and children of alien terrorists are not inadmissible.	The spouse and children of alien terrorists should be inadmissible.	The spouse and children of an alien terrorist are inadmissible if the terrorist activity occured within the last 5 years.	DELETED	SIMILAR TO ADMIN, but provides an exception where the spouse or child did not know of the proscribed activity or has renounced the activity.

				(section 411(a)).
Objects Used by Terrorists An alien is inadmissible and deportable for using explosives or a firearm in a terrorist attack.	Aliens can use other items, such as boxcutters, knives, and airplanes, in terrorist attacks.	An alien is inadmissible and deportable for using explosives or a firearm or other weapon or dangerous device in a terrorist attack.	An alien is inadmissible and deportable for using explosives or a firearm or other object in a terrorist attack. (section 201(a)).	SAME AS ADMIN (section 411(a).
Material Support to Terrorist Organizations An alien is not inadmissible or deportable for providing material support, including contributing funds, to a terrorist organization. However, an alien is inadmissible and deportable for soliciting funds for or membership in a terrorist organization.	An alien should be inadmissible and deportable for contributing funds to a terrorist organization.	An alien is inadmissible and deportable for committing an act that the alien knows or reasonably should know provides material support (including contributing funds) to any organization that alien knows or reasonably should know is a terrorist organization.	An alien is inadmissible and deportable for contributing funds or material support to or soliciting funds for or membership in an organization that has been designated as a terrorist organization by the Secretary of State, or for contributing to, or soliciting membership in or funds for, any non-designated terrorist organization if the alien knows or reasonably should know that the funds, material support or solicitation will further terrorist activity. (section 201(a)).	An alien is inadmissible and deportable for contributing funds or material support to or soliciting funds for or membership in an organization that has been designated as a terrorist organization by the Secretary of State, or has been designated by the Secretary of State as an organization engaging in terrorist activities or providing material support to terrorists, or for contributing to, or soliciting membership in or funds for, any non-designated terrorist organization if the alien cannot demonstrate that he did not know nor reasonably should know that the funds, material support or solicitation will further terrorist activity. This provision shall not apply to any material support or contributed funds if the Secretary of State or AG determine that it should not. (section 411(a)).
Terrorist Organizations	The term should be defined.	A terrorist organization is	A terrorist organization is	A terrorist organization is

The term "terrorist organization" is not defined for purposes of the immigration law.			either an organization designated by the Secretary of State as a foreign terrorist organization or any organization that commits, intends to commit, or has committed (or materially supports), or that has a significant subgroup that does so, terrorist activity, regardless of any other activities conducted by the organization or its subgroups. For a group that has committed terrorist activity, the Secretary of State can decide that it is no longer a terrorist organization.	either an organization designated by the Secretary of State as a foreign terrorist organization or any group of two of more individuals which commits terrorist activities or plans or prepares to commit (including locating targets for) terrorist activities. This latter category includes any group which has a significant subgroup that carries out such activities. (section 201(a)).	either an organization designated by the Secretary of State as a foreign terrorist organization, or designated by the Secretary of State as an organization engaging in terrorist activities or providing material support to terrorists, or any group of two of more individuals which commits terrorist activities or plans or prepares to commit (including locating targets for) terrorist activities. (section 411(a)).
Endangerment of U.S. An alien is not inadmissible for being associated with a terrorist organization and intending to come to the U.S. to engage in activities that could endanger the U.S.	An alien should be inadmissible for being associated with a terrorist organization and intending to come to the U.S. to engage in activities that could endanger the U.S.	An alien is inadmissible for being associated with a terrorist organization and intending while in the U.S. to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the U.S.	SAME AS ADMIN (section 201(b)).		SAME AS ADMIN (section 411(a)).
Designation of Foreign Terrorist Organizations Section 219 of the	It should be clarified that the Secretary of State can redesignate	It is clarified that the Secretary of State can redesignate an organization as a terrorist organization and can revoke a designation or	SAME AS ADMIN In addition, either the Secretary or the Attorney General may recommend an organization for designation, and the organization will be so designated if the other concurs. In		SAME AS ADMIN (section 411(c)).

Immigration and Nationality Act contains a process whereby the Secretary of State can designate an organization as a foreign terrorist organization.	an organization as a terrorist organization and can revoke a designation or redesignation .	redesignation.	instances where either official cannot gain the other's concurrence, the President shall decide on the requested designation. (section 202).	
Representative of Terrorist Organization An alien is not deportable for being a representative of a foreign terrorist organization so designated by the Secretary of State.	An alien should be deportable for being a representativ e of a foreign terrorist organization so designated by the Secretary of State.	None	An alien is deportable for being a representative of a foreign terrorist organization so designated by the Secretary of State. (section 201(c)).	None
Detention of Terrorists By regulation, the INS can detain an alien for 48 hours before making a decision as to charging the alien with a crime or a deportable offense (except that in the event of an emergency or other extraordinary circumstance, an additional reasonable time is	The INS needs more flexibility in detaining aliens suspected of being terrorists.	The INS shall detain an alien until removed from the U.S. if the Attorney General has certified that he has reason to believe that the alien may commit, further, or facilitate acts of terrorism, espionage, sabotage, the unlawful opposition to or overthrow of the U.S. government, or engage in any other activity that endangers the national security of the U.S. There would be no administrative review of the detention by immigration judges and judicial review	The INS shall detain an alien until removed from the U.S. if the AG (or the DAG – not further delegable) has certified that he has reasonable grounds to believe that the alien is inadmissible or deportable under the terrorism grounds. If the Attorney General has not placed the alien in removal proceedings or charged him with a criminal offense not later than 7 days after the commencement of detention, the alien shall be released. There would be no administrative review of the detention by immigration judges and judicial review would be limited to habeas corpus review by the U.S. District Court for the District of Columbia. Such review would include review of the merits of the certification. The AG shall	The INS shall detain an alien until removed from the U.S. if the AG (or the INS Commissioner – not further delegable) has certified that he has reasonable grounds to believe that the alien is inadmissible or deportable under the terrorism grounds. If the Attorney General has not placed the alien in removal proceedings or charged him with a criminal offense not later than 7 days after the commencement of detention, the alien shall be released. There would be no administrative review of the

allowed). Once the alien is charged with a deportable offense, he may be detained by the INS until a final decision is reached on deporting him. The INS must detain an alien accused of being a terrorist. Detention is reviewable by an immigration judge and in federal court by writ of habeas corpus.		would be limited to habeas corpus review by the U.S. District Court for the District of Columbia.	report to Congress every 6 months on the use of this detention mechanism. The alien shall be maintained in custody irrespective of any relief from removal granted the alien, until the Attorney General determines that the alien no longer warrants certification. However, if an alien detained pursuant to this section is ordered removed as a terrorist (or on the other grounds allowing certification) has not been removed within 90 days and is unlikely to be removed in the reasonably foreseeable future, the alien may be detained for additional periods of up to six months if the Attorney General demonstrates that release will not protect the national security of the United States or ensure the	detention by immigration judges and judicial review would be limited to habeas corpus review by the U.S. District Court for the District of Columbia. Such review would include review of the merits of the certification. The AG shall report to Congress every 6 months on the use of this detention mechanism. The alien shall be maintained in custody irrespective of any relief from removal granted the alien, until the Attorney General determines that the alien no longer warrants certification. (section 412).
Multilateral Cooperation against Terrorism The records of the State Department pertaining to the issuance of or refusal to issue visas to enter the U.S. are confidential and can be used only in the formulation and enforcement of U.S. law.	The government should be able to provide such records to a foreign government for the purpose of preventing, investigating, or punishing acts of terrorism.	Such records can be provided to a foreign government on a case-by-case basis	SIMILAR TO ADMIN, but only for the purpose of preventing, investigating, or punishing acts of terrorism. (section 205).	SIMILAR TO ADMIN, but only for purposes of preventing, investigating, or punishing acts that are crimes in the U.S. (section 413).
Interagency Data Sharing The State Department and	The State Department and INS should have access to the	The Justice Department shall provide to the State Department and the INS access to the criminal history record information contained	SAME AS ADMIN (section 206).	SAME AS ADMIN (section 403).

INS do not have adequate access to the NCIC database.	NCIC database.	in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the NCIC that may be mutually agreed upon by the Justice Department and the official to be provided access, for purposes of determining whether a visa applicant or an applicant for admission has a criminal history record. Such access shall be provided by means of extracts of the records for placement in the State Department's automated visa lookout database or other appropriate database. The State Department shall establish the conditions for the use of the information in order to limit the redissemination of the information, to ensure that it is used solely to determine whether to issue a visa, to ensure the security, confidentiality and destruction of the information, and to protect any privacy rights of the subjects of the information.		
Asylum for Terrorists If the INS charges an alien for purposes of removal or	The INS should be able in such an instance to oppose a grant of asylum on	None	It is clarified that even if the INS charges an alien for purposes of removal or deportation with a non terrorist-based offense, if the alien seeks asylum, the INS can seek to oppose its grant by providing evidence that the alien is a terrorist. (section 204).	None

deportation with a non terrorist-based offense, and the alien seeks asylum, the INS cannot seek to oppose its grant by providing evidence that the alien is a terrorist.	the basis on the applicant being a terrorist.			
Northern Border Few border patrol agents patrol the northern border.	More needs to be done to prevent alien terrorists from entering the U.S. from Canada.	None	Authorizes the appropriation of funds necessary to triple the number of Border Patrol personnel in each State along the northern border and the number of INS inspectors at each port of entry along the northern border. The Act also authorizes $50 million to the INS for purposes of making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border. (section 209).	Authorizes the appropriation of funds necessary to triple the number of Border Patrol personnel in each State along the northern border, the number of INS inspectors at ports of entry along the northern border, and the number of Customs agents at ports of entry. The Act also authorizes $50 million each to the INS and the Customs Service for purposes of making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border. The cap on INS personnel assigned to the northern border is eliminated (section 401-402).
Inadmissibility of Money Launderers Alien money launderers are not inadmissible.	Alien money launderers should be inadmissible.	None	An alien is inadmissible alien who the government know or has reason to believe is a money launderer. The Secretary of State shall create a watchlist, to be checked before the issuance of a visa or admission into the U.S., which identifies persons who are known or suspected of money laundering. (section	An alien is inadmissible alien who the government know or has reason to believe is a money launderer. (section 321).

			207).	
Foreign Students The Illegal Immigration Reform and Immigrant Responsibility Act of 1996set up a foreign student tracking system that has never been fully implemented. The system is to be funded by a fee on foreign students.	CIPRIS should be implemented expeditiously .	None	The date by which the system must be fully operational is advanced and students who are nationals of countries that have repeatedly provided support for acts of international terrorism may be assessed a higher fee than other foreign students. In addition, the Act provides that the Attorney General shall provide to the Secretary of State and the Director of the FBI the information collected by the system. (section 208).	None

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;noel j. francisco/who /eop@eop [WHO] <noel j. francisco>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;kyle sampson/who /eop@eop [WHO] <kyle sampson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 10/8/2001 4:49:52 AM
Subject: : Re: Judges meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-OCT-2001 08:49:52.00
SUBJECT:: Re: Judges meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
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CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
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CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

either time is fine with me

Brett M. Kavanaugh
10/07/2001 04:23:26 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judges meeting

I propose that the 8 associate counsel with judge responsibility meet Tuesday at 10:00 a.m. (backup time Tuesday at 6:00 p.m.). Despite our progress, we currently have 54 vacancies for which no nominee is pending (9 circuit and 45 district), which is too high a number. I think we should meet just at our associate counsel level first to quickly go through each vacancy so that we can check progress, make sure we are pressuring Senators/commissions where we can, think about what else we can do. After we get our information/recommendations together, we can confer with Judge and Tim with information/plan/schedule. Please let me know whether you are available at 10:00 or 6:00 Tuesday. Thanks.

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
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From: CN=Hector F. Irastorza/OU=WHO/O=EOP [WHO]

To: Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Ruben S. Barrales/WHO /EOP@EOP [WHO] <Ruben S. Barrales>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>;Michael J. Gerson/WHO /EOP@EOP [WHO] <Michael J. Gerson>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;John W. Howard/WHO /EOP@EOP [WHO] <John W. Howard>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Hector F. Irastorza/WHO/EOP@EOP [WHO] <Hector F. Irastorza>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Anna M. Perez/NSC/EOP@EOP [NSC] <Anna M. Perez>;Mark V. Rosenker/WHO/EOP@EOP [WHO] <Mark V. Rosenker>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Elliott Abrams/NSC/EOP@EOP [NSC] <Elliott Abrams>;George M. Andricos/NSC/EOP@EOP [NSC] <George M. Andricos>;Jodey Arrington/WHO/EOP@EOP [WHO] <Jodey Arrington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Laura F. Chadwick/OVP/EOP@EOP [OVP] <Laura F. Chadwick>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Richard A. Clarke/NSC/EOP@EOP [NSC] <Richard A. Clarke>;John A. Cloud/NSC/EOP@EOP [NSC] <John A. Cloud>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Jendayi E. Frazer/NSC/EOP@EOP [NSC] <Jendayi E. Frazer>;Daniel Fried/NSC/EOP@EOP [NSC] <Daniel Fried>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Kelley Gannon/WHO /EOP@EOP [WHO] <Kelley Gannon>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Israel Hernandez/WHO /EOP@EOP [WHO] <Israel Hernandez>;Stuart Holliday/WHO/EOP@EOP [WHO] <Stuart Holliday>;Robert G. Joseph/NSC/EOP@EOP [NSC] <Robert G. Joseph>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Daniel J. Keniry/WHO/EOP@EOP [WHO] <Daniel J. Keniry>;Zalmay M. Khalilzad/NSC/EOP@EOP [NSC] <Zalmay M. Khalilzad>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;David Kuo/WHO /EOP@EOP [WHO] <David Kuo>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;Roland N. Litterst/WHO/EOP@EOP [WHO] <Roland N. Litterst>;John F. Maisto/NSC/EOP@EOP [NSC] <John F. Maisto>;K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Robert Marsh/WHO /EOP@EOP [WHO] <Robert Marsh>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Edmund C. Moy/WHO /EOP@EOP [WHO] <Edmund C. Moy>;Torkel L. Patterson/NSC/EOP@EOP [NSC] <Torkel L. Patterson>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Dina Powell/WHO /EOP@EOP [WHO] <Dina Powell>;Craig Ray/WHO/EOP@EOP [WHO] <Craig Ray>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Kristine Simmons/OPD/EOP@EOP [OPD] <Kristine Simmons>;Deborah A. Spagnoli/WHO/EOP@EOP [WHO] <Deborah A. Spagnoli>;Mary K. Sturtevant/NSC/EOP@EOP [NSC] <Mary K. Sturtevant>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;Helgard C. Walker/WHO/EOP@EOP [

WHO] <Helgard C. Walker>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Stephen E. Biegun/NSC/EOP@EOP [NSC] <Stephen E. Biegun>;Sean C. O'Keefe/OMB/EOP@EOP [OMB] <Sean C. O'Keefe>

Sent: 10/8/2001 10:49:02 AM

Subject: : Operational Briefing -- Additional Information

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Hector F. Irastorza ( CN=Hector F. Irastorza/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-OCT-2001 14:49:02.00
SUBJECT:: Operational Briefing -- Additional Information
TO:Andrea G. Ball ( CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ruben S. Barrales ( CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradley A. Blakeman ( CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John M. Bridgeland ( CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Don E. Eberly ( CN=Don E. Eberly/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gary R. Edson ( CN=Gary R. Edson/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Linda M. Gambatesa ( CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Gerson ( CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Chris Henick ( CN=Chris Henick/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John W. Howard ( CN=John W. Howard/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Hector F. Irastorza ( CN=Hector F. Irastorza/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Barry S. Jackson ( CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kenneth B. Mehlman ( CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brian D. Montgomery ( CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anna M. Perez ( CN=Anna M. Perez/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Mark V. Rosenker ( CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elliott Abrams ( CN=Elliott Abrams/OU=NSC/O=EOP@EOP [ NSC ] )
```

READ:UNKNOWN
TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jodey Arrington (CN=Jodey Arrington/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura F. Chadwick (CN=Laura F. Chadwick/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:John A. Cloud (CN=John A. Cloud/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stuart Holliday (CN=Stuart Holliday/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert G. Joseph (CN=Robert G. Joseph/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Zalmay M. Khalilzad (CN=Zalmay M. Khalilzad/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Kuo (CN=David Kuo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Torkel L. Patterson (CN=Torkel L. Patterson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen E. Biegun (CN=Stephen E. Biegun/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Sean C. O'Keefe (CN=Sean C. O'Keefe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

The mandatory operational briefing referenced below which will be held
tomorrow morning, Tuesday, October 9, at 10:30AM in conference room 450 is
for Deputy Assistants to the President, Special Assistants to the

President and equivalents only. Thank you.

---------- Forwarded by Hector F. Irastorza/WHO/EOP on 10/08/2001 02:42 PM ----------

From: A. Merrill Hughes on 10/08/2001 02:18:26 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Cathy Alix/WHO/EOP@EOP
Subject: Operational Briefing

Please be aware that there will be a mandatory operational briefing tomorrow morning, Tuesday, October 9, at 10:30AM in conference room 450. If you have any questions, please call X6-5400. Thank you.

Message Sent
To:_____
Andrea G. Ball/WHO/EOP@EOP
Ruben S. Barrales/WHO/EOP@EOP
Daniel J. Bartlett/WHO/EOP@EOP
Bradley A. Blakeman/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
John M. Bridgeland/OPD/EOP@EOP
Don E. Eberly/WHO/EOP@EOP
Gary R. Edson/NSC/EOP@EOP
Tucker A. Eskew/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Linda M. Gambatesa/WHO/EOP@EOP
Michael J. Gerson/WHO/EOP@EOP
Chris Henick/WHO/EOP@EOP
David W. Hobbs/WHO/EOP@EOP
John W. Howard/WHO/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Hector F. Irastorza/WHO/EOP@EOP
Barry S. Jackson/WHO/EOP@EOP
Scott McClellan/WHO/EOP@EOP
Kenneth B. Mehlman/WHO/EOP@EOP
Brian D. Montgomery/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Anna M. Perez/NSC/EOP@EOP
Mark V. Rosenker/WHO/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Lezlee J. Westine/WHO/EOP@EOP
Elliott Abrams/NSC/EOP@EOP
George M. Andricos/NSC/EOP@EOP
Jodey Arrington/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Charles P. Blahous/OPD/EOP@EOP
Kirk Blalock/WHO/EOP@EOP
Carlos E. Bonilla/OPD/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Claire E. Buchan/WHO/EOP@EOP
Laura F. Chadwick/OVP/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
Alicia P. Clark/WHO/EOP@EOP
Richard A. Clarke/NSC/EOP@EOP
John A. Cloud/NSC/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Nicolle Devenish/WHO/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

Catherine S. Fenton/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Jendayi E. Frazer/NSC/EOP@EOP
Daniel Fried/NSC/EOP@EOP
David Frum/WHO/EOP@EOP
Kelley Gannon/WHO/EOP@EOP
Dylan C. Glenn/OPD/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Israel Hernandez/WHO/EOP@EOP
Stuart Holliday/WHO/EOP@EOP
Robert G. Joseph/NSC/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Daniel J. Keniry/WHO/EOP@EOP
Zalmay M. Khalilzad/NSC/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
David Kuo/WHO/EOP@EOP
Phillip Larsen/OA/EOP@EOP
Dirksen Lehman/WHO/EOP@EOP
Roland N. Litterst/WHO/EOP@EOP
John F. Maisto/NSC/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Robert Marsh/WHO/EOP@EOP
Robert C. McNally/OPD/EOP@EOP
Franklin C. Miller/NSC/EOP@EOP
Edmund C. Moy/WHO/EOP@EOP
Torkel L. Patterson/NSC/EOP@EOP
Anne E. Phelps/OPD/EOP@EOP
Dina Powell/WHO/EOP@EOP
Craig Ray/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP
Matthew O. Scully/WHO/EOP@EOP
Scott N. Sforza/WHO/EOP@EOP
Kristine Simmons/OPD/EOP@EOP
Deborah A. Spagnoli/WHO/EOP@EOP
Mary K. Sturtevant/NSC/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Peter H. Wehner/WHO/EOP@EOP
James R. Wilkinson/WHO/EOP@EOP
Don R. Willett/WHO/EOP@EOP
Heather Wingate/WHO/EOP@EOP

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 10/9/2001 4:38:30 AM
Subject: : possible WHJSC agenda

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-OCT-2001 08:38:30.00
SUBJECT:: possible WHJSC agenda
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just checking to see what you all would have to present if a meeting is
scheduled for tomorrow...

Thanks!
```

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>;helgard c. walker/who /eop@eop [WHO] <helgard c. walker>
Sent: 10/9/2001 4:10:30 AM
Subject: : Re: NextWave Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-OCT-2001 08:10:30.00
SUBJECT:: Re: NextWave Meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rebecca a. beynon (CN=rebecca a. beynon/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I can do 5pm, if need be.

Brett M. Kavanaugh
10/08/2001 01:55:51 PM
Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP
cc: helgard c. walker/who/eop@eop
bcc:
Subject: Re: NextWave Meeting

This is Helgi's issue. She is out today, but will be in Tuesday morning.

From: Rebecca A. Beynon on 10/08/2001 01:48:17 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP
cc:
Subject: NextWave Meeting

We're trying to set up a meeting tomorrow for the FCC/DOJ to come and discuss legislative options they want the Adminstration to be thinking about with respect to the NextWave case and the settlement they've been trying to put together, including some legislative options they've been thinking about. According to the FCC, Verizon and the other telecom companies are trying to put together a separate meeting for Wednesday, so there's some urgency on the timing. Is one of you guys handling this issue? If you are, does 4 or 5 o'clock tomorrow work for you? If you aren't, could you please let me know who the appropriate person is? Thanks, RB 5-3193.

From: CN=David Kuo/OU=WHO/O=EOP [WHO]
To: Esbeck, Carl <Carl.Esbeck@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Don R. Willett/WHO /EOP@EOP [WHO] <Don R. Willett>
Sent: 10/9/2001 10:09:50 AM
Subject: : Re: OLC Opinion Letter re CC

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David Kuo ( CN=David Kuo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-OCT-2001 14:09:50.00
SUBJECT:: Re: OLC Opinion Letter re CC
TO:"Esbeck, Carl" <Carl.Esbeck@usdoj.gov> ( "Esbeck, Carl" <Carl.Esbeck@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Don R. Willett ( CN=Don R. Willett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Carl -- still no word on the OLC opinion.




"Esbeck, Carl" <Carl.Esbeck@usdoj.gov>
10/09/2001 12:19:13 PM
Record Type: Record

To: Don R. Willett/WHO/EOP, David Kuo/WHO/EOP
cc:
Subject: OLC Opinion Letter re CC



Don W. and David,

Last Thursday (Oct. 4th) OLC was to have sent over its Opinion Letter to
Brett Kavanaugh re: Charitable Choice in '96 version and in H.R. 7
version. Brett said the questions really came from WH OFBCI and were for
you benefit. Has the letter arrive? If so, could you forward a copy?

Thanks,
Carl H. Esbeck
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Nober, Roger <Roger.Nober@ost.dot.gov>
Sent: 10/10/2001 6:27:00 AM
Subject: : Re: Update on Executive Order

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-OCT-2001 10:27:00.00
SUBJECT:: Re: Update on Executive Order
TO:"Nober, Roger" <Roger.Nober@ost.dot.gov> ("Nober, Roger" <Roger.Nober@ost.dot.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I need your comments

"Nober, Roger" <Roger.Nober@ost.dot.gov>
10/10/2001 10:09:31 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Joel D. Kaplan/WHO/EOP@EOP, Elizabeth S. Dougherty/OPD/EOP@EOP
cc: "Leitch, David <FAA>" <David.Leitch@faa.dot.gov>, "Van Tine, Kirk" <Kirk.VanTine@ost.dot.gov>
Subject: Update on Executive Order

Can you provide me with any update on where the EO stands or do you have a new draft?

Thanks

Roger

From: Nober, Roger <Roger.Nober@ost.dot.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>
CC: Leitch, David <FAA>;Van Tine, Kirk <Kirk.VanTine@ost.dot.gov>
Sent: 10/10/2001 6:29:00 AM
Subject: : Update on Executive Order

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Nober, Roger" <Roger.Nober@ost.dot.gov> ( "Nober, Roger" <Roger.Nober@ost.dot.gov>
[ UNKNOWN ] )
CREATION DATE/TIME:10-OCT-2001 10:29:00.00
SUBJECT:: Update on Executive Order
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth S. Dougherty ( CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:"Leitch, David <FAA>" <David.Leitch@faa.dot.gov> ( "Leitch, David <FAA>"
<David.Leitch@faa.dot.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Van Tine, Kirk" <Kirk.VanTine@ost.dot.gov> ( "Van Tine, Kirk"
<Kirk.VanTine@ost.dot.gov> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can you provide me with any update on where the EO stands or do you have a
new draft?

Thanks

Roger
```

From: CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/11/2001 9:40:07 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:11-OCT-2001 13:40:07.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

not me

Brett M. Kavanaugh
10/11/2001 01:36:52 PM
Record Type: Record

To: Joel D. Kaplan/WHO/EOP@EOP, Kristen Silverberg/WHO/EOP@EOP, D. Marcus Sumerlin/OPD/EOP@EOP
cc:
Subject:

Anyone know anything about the owner of World Trade Center meeting here Monday to discuss liability issues re September 11?

From: John Elwood <John.Elwood@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Receipt Notification Requested) (Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Jennifer.Newstead@usdoj.gov>
Sent: 10/11/2001 1:19:56 PM
Subject: : I would pay NOT to go to this

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John Elwood <John.Elwood@usdoj.gov> ( John Elwood <John.Elwood@usdoj.gov> [ UNKNOWN
] )
CREATION DATE/TIME:11-OCT-2001 17:19:56.00
SUBJECT:: I would pay NOT to go to this
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) (
Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Date: 10/11/2001 05:23 pm -0400 (Thursday)
From: John Elwood
To: Brett_M._Kavanaugh@who.eop.gov; Courtney_s._elwood@who.eop.gov;
Jennifer Newstead
Subject: I would pay NOT to go to this

The DC bar is sponsoring a brown bag lunch on November 1 entitled
"Fighting Terrorism Through Legislation: Where Privacy Rights and Law
Enforcement Collide." It is JUST $18 to hear Beryl Howell and CCIPS's
Chris Painter talk about this subject.

If you haven't had enough of Beryll and terrorism yet, let me know and
I'll try to get you into this event on my member's discount.
```

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Coniglio, Peter J <Peter.J.Coniglio@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;'James Carroll' <James.Carroll@usdoj.gov>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;'Patrick O'Brien' <Patrick.Obrien@usdoj.gov>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
Sent: 10/11/2001 12:53:22 PM
Subject: : FW: Hearing, Thursday, October 18 @ 2:00 pm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:11-OCT-2001 16:53:22.00
SUBJECT:: FW: Hearing, Thursday, October 18 @ 2:00 pm
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM

Return Requested) ("Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:'James Carroll' <James.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ('James Carroll' <James.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:'Patrick O'Brien' <Patrick.Obrien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ('Patrick O'Brien' <Patrick.Obrien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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-----Original Message-----
From: Joy, Sheila
Sent: Thursday, October 11, 2001 3:20 PM
To: Dinh, Viet; Newstead, Jennifer; Benedi, Lizette D; Suit, Neal; Scottfinan, Nancy
Subject: Hearing, Thursday, October 18 @ 2:00 pm

Charles Pickering, 5th Cir
Larry Hicks, NV
Christina Armijo, NM
Karon Bowdre, AL,N
Stephen Friot, OK,W

Don't know who will chair but they are apparently trying to get Schumer

From: John Elwood <John.Elwood@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Receipt Notification Requested) (Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Jennifer.Newstead@usdoj.gov>
Sent: 10/11/2001 1:20:25 PM
Subject: : I would pay NOT to go to this

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John Elwood <John.Elwood@usdoj.gov> ( John Elwood <John.Elwood@usdoj.gov> [ UNKNOWN
] )
CREATION DATE/TIME:11-OCT-2001 17:20:25.00
SUBJECT:: I would pay NOT to go to this
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) (
Jennifer.Newstead@usdoj.gov (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Date: 10/11/2001 05:23 pm -0400 (Thursday)
From: John Elwood
To: Brett_M._Kavanaugh@who.eop.gov; Courtney_s._elwood@who.eop.gov;
Jennifer Newstead
Subject: I would pay NOT to go to this

The DC bar is sponsoring a brown bag lunch on November 1 entitled
"Fighting Terrorism Through Legislation: Where Privacy Rights and Law
Enforcement Collide." It is JUST $18 to hear Beryl Howell and CCIPS's
Chris Painter talk about this subject.

If you haven't had enough of Beryll and terrorism yet, let me know and
I'll try to get you into this event on my member's discount.
```

From:	CN=Edward Ingle/OU=WHO/O=EOP [WHO]
To:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole_E._Grodner@who.eop.gov [UNKNOWN] <Nicole_E._Grodner@who.eop.gov>
Sent:	10/11/2001 2:24:34 PM
Subject:	: agency FOIA requests...
Attachments:	P_9K854004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-OCT-2001 18:24:34.00
SUBJECT:: agency FOIA requests...
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nicole_E._Grodner@who.eop.gov ( Nicole_E._Grodner@who.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

....for the past week as reported in the agencies' cabinet report
submissions.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_9K854004_WHO.TXT_1>
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10/11/01

SIGNIFICANT AGENCY FOIA REQUESTS

COMMERCE

- Received 10/1/01, from Erik Wemple, a reporter for the Export Practitioner, requesting Bureau of Export Administration licensing statistics for exports to China from January 1, 2000, to September 30, 2000, and for the same period in 2001. Wemple specifically requested information covering the total number and dollar value for cases approved, denied, pending, and returned without action.

- Received 10/1/01 from Richard Greenberg, Producer, "Dateline NBC," requesting copies of all deemed export applications approved from 1996 to the present, including the name of the individual approved, country of origin, employer name and address, and type of technology to which access was permitted.

- Received 10/4/01 from Randy R. Herschaft of The Associated Press, requesting all agency records identifiable with Osama Bin Laden or Osama Bin Ladin from 1999 to present.

- Received 10/4/01 from Michael Doyle of McClatchy Newspapers, requesting copies of correspondence from Representative Gary Condit between January 1, 1996, and May 1, 2001.

- Received 10/4/01 from Rob Evans of *Guardian Newspaper*, requesting copies of the minutes and agenda for a June 20, 2000 meeting between Kelly H. Carnes, then-Assistant Secretary for Technology Policy, and Lord David Sainsbury, British science minister

LABOR

UNITED MINE WORKERS OF AMERICA
Joseph A. Main, Administrator, Department of Occupational Health and Safety, United Mine Workers of America (UMWA), Fairfax, Virginia is seeking:

> documents that relate to an investigation into the September 23. 2001 coal mine explosion in Tuscaloosa County, Brookwood, Alabama in which 13 miners lost their lives.

This request is currently being processed by the Mine Safety and Health Administration.
Date request received: October 3, 2001.

HHS

CDC

- ***Citizens Against Government Waste,*** Washington, D.C. has requested that CDC provide them information on salary or other employment related benefits received by Dr. Helene

Gayle, Senior Advisor for HIV/AIDS with the Bill and Melinda Gates Foundation, from CDC or PHS after August 31, 2001. They also requested (in a separate FOIA) a list of all grants/cooperative agreements for all HIV/AIDS prevention projects for FY 1998, 1999, and 2000 to private and non-profit and community-based organizations, and bona fide agents of local governments.

- ***The Fertilizer Institute,*** Washington, D.C., has requested that CDC provide them a document on industrial security and terrorism prevention that appeared on the ATSDR web site.

DOT

- *Public Citizen Joan Claybrook* - All correspondence, meeting agendas, planning documents, work programs, shared or published meeting notes, proposals, memoranda, electronic communications, produced by third parties for the United States, Canada or Mexico, or by U.S., Canadian or Mexican officials, and that are in the possession of the United States as a part of the United States' participation in the Land Transportation Standards Subcommittee created by NAFTA and various Subcommittee working groups.

- The interest group Ground Zero has filed two extensive FOIA requests. The request concerns Security Zones established by the Coast Guard on June 20, 2001 to protect Naval Submarine Base Bangor, WA and transiting submarines in the Puget Sound area. Ground Zero is a non-profit group opposed to the deployment and use of nuclear weapons. The first FOIA request has been completed. Material that was determined to be law enforcement or security sensitive was withheld.

USDA

- The Sierra Nevada Forest Protection Campaign has submitted a Freedom of Information Act request to some national forests covered by the Sierra Nevada Framework decision. They are asking for information on changes to land allocations since the January 2001 decision. The group is particularly interested in changes driven by the local determination process, spotted owls that may have been affected by land allocation changes, and the documents outlining the rationale for the allocation changes.

JUSTICE

- The American Civil Liberties Union has requested copies of the Attorney General Guidelines for Domestic Terrorism Investigations and the Attorney General Guidelines for International Terrorism Investigations, as well as any documents relating to or interpreting those guidelines.

INTERIOR

- ***National Monuments.*** The Wilderness Society requested "copies of all correspondence received by the Department and BLM pursuant to the March 2001 letters from Secretary

Norton concerning the future of the national monuments established by the previous administration." They also requested access to all correspondence received since March 30, 2001 by the Department and BLM regarding national monuments designated by President Clinton, and any and all analyses, compilations, summaries, charts and other materials of the content of those letters.

- ***Multiple-Use Management.*** Forest Guardians filed a request with BLM-NM regarding the BLM's "ongoing efforts to manage livestock grazing, oil and gas, and other resource(s) on the public lands of New Mexico." The request specifically seeks documents that would show "whether or not and to what degree the BLM has completed mitigation measures to prevent jeopardy to the Pecos gambusia and the Pecos bluntnose shiner." There is a notice of intent to sue on the subject of this FOIA request.

- ***Grand Coulee Dam Emergency Action Plan.*** Reclamation's Pacific Northwest Region recently received a request under the Freedom of Information Act from the Colville Indian Tribe for the Grand Coulee Dam Emergency Action Plan. Reclamation staff are currently evaluating the document for releasability.

EPA

- During the week of October 2-8, 2001, the Agency received a total of 216 FOIA requests. Of that total, 31 were received in Headquarters. This week's FOIA requests include: (1) David Tripp of Stinson, Mag & Fizzell requests all records referring or relating to Starlink corn and corn seed, Cry9C and/or the presence of Cry9C in corn seed, corn or corn products; (2) New York Public Interest Research Group requests all records and documents pertaining to meetings or correspondence between EPA and General Electric Company representatives that took place between Sept. 7, 2001 to the present regarding the Hudson River PCB Superfund site; (3) Jeff Buckley of Williams Kastner & Gibbs PLLC requests asbestos air monitoring records from lower Manhattan between Sept. 10 and 28, 2001; and (4) the National Academy of Public Administration requests copies of all complaints received by EPA under Title VI of the Civil Rights Act of 1964 which deal with permitting.

From: Edward_Ingle@who.eop.gov [UNKNOWN]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole E. Grodner/WHO/EOP@EOP [WHO] <Nicole E. Grodner>
Sent: 10/11/2001 2:28:04 PM
Subject: : agency FOIA requests...
Attachments: P_HO854004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward_Ingle@who.eop.gov ( Edward_Ingle@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:11-OCT-2001 18:28:04.00
SUBJECT:: agency FOIA requests...
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
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....for the past week as reported in the agencies' cabinet report
submissions.

(See attached file: FOIA10-11-01.doc)
- FOIA10-11-01.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HO854004_WHO.TXT_1>
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 10/11/2001 2:42:46 PM

Subject: : CSPAN - Ch. 39 - talking about Judges

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-OCT-2001 18:42:46.00
SUBJECT:: CSPAN - Ch. 39 - talking about Judges
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/12/2001 6:03:55 AM
Subject: : Testimony
Attachments: P_3KI54004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:12-OCT-2001 10:03:55.00
SUBJECT:: Testimony
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

** High Priority **

Here is our proposed testimony. Let me know if you have any concerns
asap, before we send it to OMB. Also let me know if we should say
anything about the proposed new EO, such as the last sentence in
brackets. Thanks.

- housepra.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3KI54004_WHO.TXT_1>
```

DRAFT 10/12/01

STATEMENT
by John W. Carlin
Archivist of the United States Stat

to the
Subcommittee on Government Efficiency, Financial Management,
and Intergovernmental Relations
of the Committee on Government Reform
House of Representatives
Congress of the United States

On the Implementation and Effectiveness of the Presidential Records Act of 1978

19 October 2001

Chairman Horn, Congresswoman Schakowsky, members of the Subcommittee, and Subcommittee staff, I am John Carlin, Archivist of the United States, and I thank you for the opportunity to appear before you this morning on the implementation of the Presidential Records Act. Mr. Chairman, I particularly want to thank you for holding this hearing and for your continued interest in the programs and responsibilities of the National Archives and Records Administration. We are fully aware that with the jurisdiction of this subcommittee, attention to NARA is your job. However, you have taken a particular interest in our mission during your career in Congress and the people of NARA and our many constituent groups thank you for that interest.

In order to set the foundation for this dialogue today, I would like to set out the history of the Presidential Records Act and provide the Subcommittee with an overview of our implementation to date. The Presidential Records Act (PRA) was enacted in 1978 to establish public ownership of the records created by subsequent Presidents and their staffs and to establish procedures

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governing the preservation and public availability of the records. As noted in the House Report accompanying the pending bill:

> The legislation would terminate the tradition of private ownership of Presidential papers and the reliance on volunteerism to determine the fate of their disposition. Instead, the preservation of the historical record of future Presidents would be assured and public access to the materials would be consistent under standards affixed in law. The primary function of the Presidential libraries remains unchanged. The libraries are to continue to provide information about their holdings and to make records available to researchers upon request on an impartial basis.

H. Rep. 95-1487, at 2-3 (95th Cong., 2d Sess., Aug. 14, 1978).

The PRA mandates that the Presidential records of an Administration be transferred to the legal and physical custody of the National Archives and Records Administration (NARA) immediately upon the end of the President's last term of office. The Archivist of the United States is given the independent legal "responsibility for the custody, control, and preservation of, and access to, the Presidential records of th[e former] President." 44 U.S.C. § 2203(f)(1). The PRA also requires the Archivist to appoint a Library Director in "consultation with the former President." *Id.* § 2203(f)(2). The Library Director balances archival and public access considerations with national security, confidentiality, and privacy concerns.

Since its enactment, NARA has taken legal custody of the Presidential records of Presidents Ronald Reagan, George H.W. Bush, and William J. Clinton. The Reagan and Bush records are housed in Presidential Libraries in Simi Valley, California and College Station, Texas, respectively. The Clinton records are stored in a records storage facility in Little Rock, Arkansas, until they can be transferred to a Presidential Library that is being constructed by former President Clinton.

REV_00133435

The PRA applies to all Vice-Presidential records in same manner as Presidential records, and affords the former Vice-Presidents the same authority as the former Presidents. Accordingly, all of the procedures and authorities that are ascribed in this testimony to the former Presidents also apply to the former Vice-Presidents (except that Vice-Presidential records may be stored at a separate location from the Presidential records).

Responsibilities of the Archivist of the United States Under the PRA

The PRA established Government control over Presidential records while codifying and preserving some of the basic practices that long existed with respect to the papers that Presidents had donated to the National Archives (dating back to President Hoover). As the House Report on the PRA bill stated: "It is anticipated that the Archivist will process the former Administration's papers in a manner roughly similar to current practices." H. Rep. 95-1487, at 15. The report also stated that "the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President." *Id.* § 2204(b)(3).

The PRA mandates that "[t]he Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act." *Id.* § 2203(f)(1). Overall, the PRA represents an effort to legislate a "careful balance between the public's right to know, with its vast implications to historians and other academic interests, and the rights of privacy and confidentiality of certain sensitive records generated by

REV_00133436

the President and his staff during the course of their White House activities." Floor Statement of Congressman Thompson, *Cong. Rec.*, Oct. 10, 1978, at 34897.

The authorities of the Archivist of the United States changed in 1984, when Congress established the National Archives and Records Administration as an independent agency. Prior to that time, the National Archives and Records Service was a component of the General Services Administration. Among the reasons that Congress expressed for making NARA a separate Federal agency was a concern about "politicization." The Senate Report, for example, noted that "NARS' subordination to GSA has opened the door for archival decisionmaking which is politicized, rather than professional," and described problems dating from the Eisenhower Administration through the controversies over the Nixon tapes and materials. *See* S. Rep. 98-373, on the National Archives and Records Administration Act of 1983, at 10-13 (98th Cong., 2d Sess., Apr. 3, 1984). The Senate Report concluded that "the record, under both Democratic and Republican administrations, amply demonstrates the dangers of politicization which can occur under the current arrangement." *Id.* at 13. The House Report raised similar concerns about the "constant threat of manipulation of the Archives' professional processes to achieve political purposes." H. Rep. 98-707, on the National Archives and Records Administration Act of 1984, at 5 (98th Cong., 2d Sess., Apr. 25, 1984).

Presidential Papers and Materials Prior to the PRA

Prior to the PRA, and with the exception of the materials of former President Richard M. Nixon, the Presidential papers and materials maintained under NARA's control at the Presidential Libraries of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson,

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Ford, and Carter are controlled by the terms of the deeds of gift by which the former Presidents donated their records to the National Archives. Each of these deeds has provisions outlining categories of records that may be withheld from public access for some period of time. All of them seek to protect information that could harm national security, invade personal privacy, or cause embarrassment or harassment. Some also seek to protect documents involving confidential communications directly with the President. The deeds of Presidents Ford and Carter model the restrictions on the PRA exemptions.

In all instances, the Director of the Presidential Library, who is appointed by NARA in close consultation with the former President or representative, was given the independent authority and discretion to process and open the papers, with very limited involvement by the former President or representative. Living former Presidents in some cases would establish priorities for the processing of particular subjects or series of records. In other cases, a representative or review board was established – such as for Presidents Roosevelt and Kennedy because they died in office, as well as for Truman and Eisenhower – that exercised limited control over the decisions made by the Libraries. The boards' principal concern was with respect to the President's personal and family matters, and, in most cases, they disbanded after a short period of time.

Under these deeds of gift, NARA processed and opened Presidential materials based on the deeds and professional archival considerations. Moreover, because the materials at these Libraries were donated to the United States, they are not subject to request under the Freedom of Information Act (FOIA) or any other public access statute. This meant that the Library staff were able to process and open most records in an organized and systematic way based on how

REV_00133438

the records were filed or arranged. Such "systematic processing" is generally much more efficient and less time consuming than processing in response to FOIA requests. However, researchers have no legal recourse to challenge the withholding of records or delays in responding to requests.

The records of President Nixon are governed by the Presidential Recordings and Materials Preservation Act (PRMPA), 44 U.S.C. § 2111, note, which was passed by Congress in 1974 to ensure government control over the Nixon papers and tapes. The PRMPA also established a National Study Commission on Records and Documents of Federal Officials, which was charged with studying, among other things, "whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all federal officials." Pub. L. 93-526, 88 Stat. 1695 (December 19, 1974), sec. 202. That commission produced a final report in 1977, and its recommendations were considered by Congress in drafting the PRA. *See* Hearings before a Subcommittee of the Committee on Government Operations on H.R. 10998 (the Presidential Records Act of 1978) and Related Bills, 95th Cong., 2d Sess., (Feb. 23, 28, Mar. 2, 7, 1978) (PRA Hearings).

Public Access to Presidential Records

Presidential records are not subject to public access requests during the President's term of office, and may be made available only by decision of the incumbent President. After the President leaves office, the records are also not available to public access requests for five years, unless NARA has processed an integral file segment sooner than five years. This five year period

REV_00133439

was intended principally to give NARA an opportunity to organize the records and begin systematic archival processing. At the end of the five year period, all Presidential records are subject to public access requests in accordance with the FOIA. However, for a period not to exceed 12 years from when the President leaves office, the President is authorized, but not required, to impose up to six Presidential restrictions (which must be imposed before the President leaves office and which are not subject to judicial review).

In addition, the PRA establishes that eight of the nine FOIA exemptions shall apply to Presidential records, which stay in effect after the Presidential restrictions expire. Congress specifically excluded Presidential records from the FOIA (b)(5) exemption concerning the deliberative process and other recognized privileges. Four of the six presidential restrictions are identical to corresponding FOIA exemptions: exemptions 1, for classified national security information; exemptions 3, for information protected by other statute; exemptions 4, for trade secrets and confidential business information; and exemptions 6, for unwarranted invasions of personal privacy. Presidential exemption 2 ("P2"), for "appointments to Federal office," has no FOIA counterpart, but is subsumed, in large part, under FOIA exemption (b)(6). Presidential exemption 5 ("P5"), concerning "confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers," is similar to FOIA exemption (b)(5), and protects the disclosure of presidential communications, deliberations, and other information that could be subject to a common law or constitutionally-based privilege.

Because the PRA subjects all Presidential records to public access through the FOIA, PRA Libraries open records almost exclusively in response to FOIA requests (or mandatory

REV_00133440

declassification review requests under Executive Order 12958 on Classified National Security Information), and have very little opportunity to conduct systematic processing of records after the first five years. Moreover, Congressional and grand jury investigations and other litigation has significantly limited systematic processing even during the first five years.

PRA Restrictions

The PRA does not mandate the Presidential restrictions, but rather makes clear that they may be narrowed or waived any time after the President leaves office. Moreover, in the legislative history, Congress advised the Archivist and former Presidents to do just that:

> It is also expected that the Archivist will follow past practice in applying the restrictive categories in former Presidents' deeds of gift, and negotiate with the ex-President or his representative on an on-going basis to lessen the number of years chosen for particular mandatory restriction categories, to eliminate entire categories, or to permit release of particular records otherwise restricted.

H. Rep. 95-1487, at 15. Former Presidents Reagan and Bush have both narrowed the scope of PRA exemptions P2 and P5, allowing significantly more records to be opened than what might otherwise be authorized. NARA will work with former President Clinton and his representative to try to narrow these exemptions as well.

The PRA also removes the authority to withhold Presidential records under FOIA exemption (b)(5) after the expiration of the P5 exemption. During debate on the bill, Senator Percy stated that "[a]fter the 12-year period, . . . no document should be withheld simply because it contains confidential materials; such a result would undermine a basic purpose of the legislation. Consequently, the (b)(5) exemption has no place in this statutory scheme." Floor Statement of Senator Percy, *Cong. Rec.*, Oct. 13, 1978, at 36844.

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In drafting the statute, Congress considered alternative time periods for how long the Presidential exemptions should be available. For example, the National Study Commission on Records and Documents of Federal Officials recommended that the restriction period be 15 years. Similarly, in his testimony on the pending legislation to establish the Presidential Records Act, the Archivist of the United States also recommended a 15-year period. On the other hand, early versions of the legislation set out a 10-year period. President Ford, in his 1976 deed of gift of his Presidential papers to the National Archives, established a 13-year restriction period, after which time all "communications made in confidence to me or between my advisors for the purpose of assisting or advising me" could be opened.

Ultimately, Congress settled on 12 years, which, in the words of Congressman Brooks, "will further insulate from partisan politics the pending public availability of a former President's records by removing the mandatory restrictive period to include a third election cycle after the President has left office." Floor Statement of Congressman Brooks, *Cong. Rec.*, Oct. 5, 1978, at 33860.

The elimination of a statutory exemption in no way prevents a proper assertion of Executive privilege by the former or incumbent President. As the PRA itself notes, the incumbent and former Presidents have clear legal authority to assert Executive privilege over the Presidential records of former Presidents. "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." 44 U.S.C. § 2204(c)(2). As Senator Percy explained, the PRA does not

REV_00133442

> prevent a former or incumbent President from arguing, even after the 12-year period, that a particular confidential communication between the President and an advisor should not be released. To what extent the concept of "executive privilege" protects the confidentiality of a former or incumbent President's communications with his advisors is an open question. If some future President believes that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year. This legislation does not resolve the outcome of such legal action; the issue would be resolved by the courts. The fourth amendment [to the pending legislation] would make it explicit that "nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President."

Floor Statement of Senator Percy, *Cong. Rec.*, Oct. 13, 1978, at 36844. This provision reflects the holding by the Supreme Court that the constitutionally based privileges available to a President "survive[] the individual President's tenure." *Nixon v. Administrator of General Services*, 433 U.S. 425, 449 (1977). But the Supreme Court also noted that Executive privilege with respect to Presidential communications is "subject to erosion over time after an administration leaves office," especially to the extent it can be exercised by a former President. *Id.* at 451.

Special Access to Presidential Records

In addition to establishing procedures for public access, the PRA also establishes procedures for what NARA calls "special access" to Presidential records that are otherwise closed from public access. These special access provisions are designed to accommodate requests by Congressional investigators, Federal prosecutors, other parties in litigation, and the incumbent President for the ongoing business of the current Administration. However, prior to providing such access, NARA must notify the former and incumbent Presidents and provide them an opportunity to review the records and consider whether to assert any constitutionally-based privilege. Accordingly, either House of Congress, or a Committee or Subcommittee with appropriate

REV_00133443

jurisdiction, may request access to Presidential records. Similarly, Federal prosecutors may seek access through a grand jury subpoena, and other parties in litigation may seek access through court orders. The incumbent President may also obtain access to the records of a predecessor on behalf of his staff, such as the NSC, or any other agency, "for the conduct of current business." 44 U.S.C. § 2205(2)(B). The former President and his designated representative are always entitled to access to the Presidential records of his Administration.

Executive Order on Presidential Records

Executive Order 12667, issued by President Reagan in 1989, establishes the procedures for providing notice to the former and incumbent Presidents so that they can review records and assert any rights or privileges prior to public or special access disclosures. [The Administration is currently considering whether to issue a new Executive Order on this matter.]

That concludes my formal statement, Mr. Chairman, and I would be happy to answer any questions at the appropriate time.

REV_00133444

From: CN=A. Morgan Middlemas/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 10/12/2001 12:06:47 PM
Subject: : Presidential Records Act - CEA has 'No Comment'

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-OCT-2001 16:06:47.00
SUBJECT:: Presidential Records Act - CEA has 'No Comment'
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/13/2001 6:12:57 AM
Subject: : Terror Definition
Attachments: P_6B164004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:13-OCT-2001 10:12:57.00
SUBJECT:: Terror Definition
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

current Treas/NSC definition

---------- Forwarded by D. Marcus Sumerlin/OPD/EOP on 10/13/2001 10:12 AM ----------

Sheila.Bair@do.treas.gov
10/12/2001 04:16:00 PM
Record Type: Record

To: D. Marcus Sumerlin/OPD/EOP@EOP, John B. Wiegmann/NSC/EOP@EOP
cc: Edward.Demarco@do.treas.gov, Martha.Ellett@do.treas.gov
Subject: Terror Definition

<<ACT OF TERRORISM definition 10-12.doc>> For your review and comment.

- ACT OF TERRORISM definition 10-12.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6B164004_WHO.TXT_1>

ACT OF TERRORISM - For purposes of this Act, an "act of terrorism" means any act, certified by the Secretary of the Treasury in his sole discretion after consultation with the Secretary of State [the Secretary of Defense} and the Attorney General, as a violent act or act dangerous to human life, property or infrastructure, within the United States, that appears to be intended to intimidate or coerce the civilian population of the United States and to influence the policy or affect the conduct of the United States government by intimidation or coercion. The Secretary shall not certify any act as an act of terrorism if it is committed in the course of a war declared by the Congress of the United States. Any certification determination by the Secretary shall be final.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>
Sent: 10/14/2001 1:49:49 PM
Subject: : Re: NASA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-OCT-2001 17:49:49.00
SUBJECT:: Re: NASA
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

have left a message for my friend Rosario at NASA; will let you know (tomorrow, I assume) when I receive their confirmation that this has been closed out from their end; TERPS

Stuart W. Bowen
10/14/2001 04:43:52 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NASA

Comrade kavanov
Pease send me the close out doc on this matter so I can close the file.
thansk sb

From: CN=Mary Ann Hanusa/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/15/2001 3:22:16 AM
Subject: : Re: Meeting Reminder

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 07:22:16.00
SUBJECT:: Re: Meeting Reminder
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The purpose of the meeting is to review what has been done re: the Library and discuss any future action we need to take or plan, etc. There are levels of planning for the Library--for instance, one level is the collection of artifacts, etc. from this WH for use in eventual displays. I have been collecting things which relate to Sept. 11---the folder from National Prayer Service, etc. If we don't collect these things now, we won't have it for the Library. Higher levels are the responses we have already done to those interested in the site of the Library, and the selection of the site.
There's nothing you have to prepare for the meeting. Just come and enjoy! :)

Brett M. Kavanaugh
10/14/2001 01:02:41 PM
Record Type: Record

To: Mary Ann Hanusa/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Meeting Reminder

Also, is there anything I need to be prepared to discuss; who is setting agenda; what is agenda?

Mary Ann Hanusa
10/14/2001 12:59:27 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Meeting Reminder

Just a reminder that our Presidential Library meeting is scheduled for 9:30 Monday morning in Harriet's office. See you then!

Message Sent
To:_____
Harriet Miers/WHO/EOP@EOP
Linda M. Gambatesa/WHO/EOP@EOP

Terry W. Good/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Blake Gottesman/WHO/EOP@EOP

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/15/2001 5:28:13 AM
Subject: : Resuming on Tuesday our 8:00

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 09:28:13.00
SUBJECT:: Resuming on Tuesday our 8:00
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you go to this?

---------- Forwarded by Kyle Sampson/WHO/EOP on 10/15/2001 09:28 AM ----------

Makan_Delrahim@judiciary.senate.gov (Makan Delrahim)
10/12/2001 03:14:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Timothy E. Flanigan/WHO/EOP@EOP, Ziad S. Ojakli/WHO/EOP@EOP
Subject: Resuming on Tuesday our 8:00

weekly mtg on Judicial nominees. You will recall the last meeting was on 9/11,
and Viet and I think it would be helpful to all to regroup and bring everyone
upto speed on various developments, as we prepare our strategy for the remainder
of the year.

Given the fact that our usual mtg place does not provide us with adequate privacy (last time, Ralp Neas was there), tuesday's meeting will take place here
in Dirksen 145. Hope to see you then. Makan

Message Sent
To:_____
bcomstock@rnchq.org
dan.bryant@usdoj.gov
Eric_Ueland@aml.senate.gov (Eric Ueland)
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jennifer.Newstead@usdoj.gov
Rena_Johnson@judiciary.senate.gov (Rena Johnson)
Kyle Sampson/WHO/EOP@EOP
mgoodling@rnchq.org
Stewart_Verdery@aml.senate.gov (Stewart Verdery)
viet.dinh@usdoj.gov
John_Mashburn@lott.senate.gov (John Mashburn)
Dave_Hoppe@lott.senate.gov (Dave Hoppe)
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins)
Alex_Dahl@judiciary.senate.gov (Alex Dahl)
Ed_Haden@judiciary.senate.gov (Ed Haden)
Hunter_Bates_at_MCCONNELL-DC@IMAEXC2.senate.gov (Hunter Bates)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 10/15/2001 6:18:36 AM
Subject: : Re: Resuming on Tuesday our 8:00

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 10:18:36.00
SUBJECT:: Re: Resuming on Tuesday our 8:00
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brad went to one (on the 11th) and so did I; we should talk about
how best to do it on a regular basis

Kyle Sampson
10/15/2001 09:28:12 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Resuming on Tuesday our 8:00

Do you go to this?

---------- Forwarded by Kyle Sampson/WHO/EOP on 10/15/2001
09:28 AM ----------

Makan_Delrahim@judiciary.senate.gov (Makan Delrahim)
10/12/2001 03:14:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Timothy E. Flanigan/WHO/EOP@EOP, Ziad S. Ojakli/WHO/EOP@EOP
Subject: Resuming on Tuesday our 8:00

weekly mtg on Judicial nominees. You will recall the last meeting was on
9/11,
and Viet and I think it would be helpful to all to regroup and bring
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upto speed on various developments, as we prepare our strategy for the
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of the year.

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privacy (last time, Ralp Neas was there), tuesday's meeting will take
place here
in Dirksen 145. Hope to see you then. Makan

Message Sent
To:_____

bcomstock@rnchq.org
dan.bryant@usdoj.gov
Eric_Ueland@aml.senate.gov (Eric Ueland)
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jennifer.Newstead@usdoj.gov
Rena_Johnson@judiciary.senate.gov (Rena Johnson)
Kyle Sampson/WHO/EOP@EOP
mgoodling@rnchq.org
Stewart_Verdery@aml.senate.gov (Stewart Verdery)
viet.dinh@usdoj.gov
John_Mashburn@lott.senate.gov (John Mashburn)
Dave_Hoppe@lott.senate.gov (Dave Hoppe)
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins)
Alex_Dahl@judiciary.senate.gov (Alex Dahl)
Ed_Haden@judiciary.senate.gov (Ed Haden)
Hunter_Bates_at_MCCONNELL-DC@IMAEXC2.senate.gov (Hunter Bates)

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 10/15/2001 10:23:13 AM
Subject: : assoc counsel judicial assignments
Attachments: P_CXG64004_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-OCT-2001 14:23:13.00
SUBJECT:: assoc counsel judicial assignments
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Libby:

Per your request, here's the update list of Associate counsel judicial
assignments.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_CXG64004_WHO.TXT_1>
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District Court Vacancy Assignments by State

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Alaska
Alabama
Iowa
Minnesota
New Jersey
Oregon
Wisconsin

Bart
Arkansas
Florida
Maine
New Hampshire
New Mexico
Texas
Virgin Islands

Helgi
Georgia
Hawaii
North Carolina
South Carolina
Virginia
West Virginia
Guam

Brett
Arizona
Washington
Idaho
Maryland
Illinois
Pennsylvania
Puerto Rico

Brad
California
Connecticut
Massachusetts
Michigan
Montana

Courtney
Kansas
Kentucky
Missouri
Nebraska
New York
Wyoming

Noel
Colorado
Ohio
Louisiana
Mississippi
North Dakota
Rhode Island
South Dakota

Kyle
Indiana
Oklahoma
Tennessee
Vermont
Delaware
Nevada
Utah

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/15/2001 6:29:50 AM
Subject: : LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions
Attachments: P_YJA64004_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 10:29:50.00
SUBJECT:: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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I saw nothing in the first one that was remotely interesting. Just looks like your typical big Government program. Did not look at the tax part of it, but by its girth, tax simplification must not have been a big part of it.

---------- Forwarded by Robert W. Cobb/WHO/EOP on 10/15/2001 10:27 AM ----------

Allison L. Riepenhoff
10/15/2001 09:41:23 AM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 10/15/2001 09:41 AM ----------

From: Ingrid M. Schroeder on 10/15/2001 09:37:54 AM
Record Type: Record

To: llr@do.treas.gov , lrm@hhs.gov , justice.lrm@usdoj.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

This package is identical to the package faxed to your agency on Friday afternoon. Please provide any comments by 4pm today to Karen Blank.

Attached is a proposal that is the subject of discussion for possible consideration before Congress adjourns. This document should be considered "close hold" and shared only with the necessary reviewers. Please provide any comments or concerns ASAP.

LRM ID: IMS4
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, October 12, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Karen N. Blank
PHONE: (202) FAX: (202)
SUBJECT: Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

DEADLINE: 4pm Monday, October 15, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a proposal that is the subject of discussion for possible consideration before Congress adjourns. This document should be considered "close hold" and shared only with the necessary reviewers. Please provide any comments or concerns ASAP.

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Ingrid M. Schroeder
LRM ID: IMS4 SUBJECT: Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Karen N. Blank Phone: Fax:
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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To:_____
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OMNIBUS CHARITY/COMPASSION BILL

TITLE I--CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL- Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

`(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS-

`(1) IN GENERAL- In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of--

`(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

`(B) the applicable amount.

`(2) APPLICABLE AMOUNT- For purposes of paragraph (1), the applicable amount shall be determined as follows:

`For taxable years

--The applicable

beginning in:

--amount is:

2001, 2002, 2003

$200 for individuals; $400 for joint filers;

2004, 2005, 2006

$300 for individuals; $600 for joint filers;

2007, 2008, 2009

$400 for individuals; $800 for joint filers;

2010 and thereafter
$500 for individuals; $1,000 for joint filers.

In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.'.

(b) DIRECT CHARITABLE DEDUCTION-

(1) IN GENERAL- Subsection (b) of section 63 of such Code is amended by striking `and' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting `, and', and by adding at the end thereof the following new paragraph:

`(3) the direct charitable deduction.'.

(2) DEFINITION- Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

`(g) DIRECT CHARITABLE DEDUCTION- For purposes of this section, the term `direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).'.

(3) CONFORMING AMENDMENT- Subsection (d) of section 63 of such Code is amended by striking `and' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting `, and', and by adding at the end thereof the following new paragraph:

`(3) the direct charitable deduction.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL- Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new
paragraph:

`(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES-

`(A) IN GENERAL- No amount shall be includible in gross income by reason

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of a qualified charitable distribution.

`(B) QUALIFIED CHARITABLE DISTRIBUTION- For purposes of this paragraph, the term `qualified charitable distribution' means any distribution from an individual retirement account--

`(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 59 1/2 , and

`(ii) which is made directly by the trustee--

`(I) to an organization described in section 170(c), or

`(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

`(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE- For purposes of this paragraph--

`(i) DIRECT CONTRIBUTIONS- A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

`(ii) SPLIT-INTEREST GIFTS- A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

`(D) APPLICATION OF SECTION 72- Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were

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distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

`(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES-

`(i) CHARITABLE REMAINDER TRUSTS- Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

`(ii) POOLED INCOME FUNDS- No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

`(iii) CHARITABLE GIFT ANNUITIES- Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

`(F) DENIAL OF DEDUCTION- Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

`(G) SPLIT-INTEREST ENTITY DEFINED- For purposes of this paragraph, the term `split-interest entity' means--

`(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

`(ii) a pooled income fund (as defined in section 642(c)(5)), and

`(iii) a charitable gift annuity (as defined in section 501(m)(5)).'.

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS-

(1) RETURNS- Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

`SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

REV_00133477

`(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2)- Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

`(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c)-

`(1) IN GENERAL- Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

`(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

`(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

`(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

`(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

`(E) the total income of the trust within such year and the expenses attributable thereto, and

`(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

`(2) EXCEPTIONS- Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust described in section 4947(a)(1).'.

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS- Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

`(C) SPLIT-INTEREST TRUSTS- In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that--

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`(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

`(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting `$100' for `$20', and the second sentence thereof shall be applied by substituting `$50,000' for `$10,000', and
`(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.'.

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES- Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: `In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).'.

(c) EFFECTIVE DATES-

(1) SUBSECTION (a)- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

(2) SUBSECTION (b)- The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2001.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL- Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by striking `10 percent' and inserting `the applicable percentage'.

(b) APPLICABLE PERCENTAGE- Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

`(3) APPLICABLE PERCENTAGE DEFINED- For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

`For taxable years beginning

--The applicable

REV_00133479

in calendar year--

--percentage is--

2001 through 2005

--15

2006

--17

2007

--19

2008

– 21

2009

– 23

2010 and thereafter

– 25.'.

(c) CONFORMING AMENDMENTS-

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by striking `10 percent' each place it occurs and inserting `the applicable percentage (determined under section 170(b)(3))'.

(2) Sections 545(b)(2) and 556(b)(2) of such Code are each amended by striking `10-percent limitation' and inserting `applicable percentage limitation'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 104. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL- Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and

REV_00133480

capital gain property) is amended by adding at the end the following new paragraph:

`(7) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY- For purposes of this section--

`(A) CONTRIBUTIONS BY NON-CORPORATE TAXPAYERS- In the case of a charitable contribution of food by a taxpayer, paragraph (3)(A) shall be applied without regard to whether or not the contribution is made by a corporation.

`(B) LIMIT ON REDUCTION- In the case of a charitable contribution of food which is a qualified contribution (within the meaning of paragraph (3)(A), as modified by subparagraph (A) of this paragraph)--

`(i) paragraph (3)(B) shall not apply, and

`(ii) the reduction under paragraph (1)(A) for such contribution shall be no greater than the amount (if any) by which the amount of such contribution exceeds twice the basis of such food.

`(C) DETERMINATION OF BASIS- For purposes of this paragraph, if a taxpayer uses the cash method of accounting, the basis of any qualified contribution of such taxpayer shall be deemed to be 50 percent of the fair market value of such contribution.

`(D) DETERMINATION OF FAIR MARKET VALUE- In the case of a charitable contribution of food which is a qualified contribution (within the meaning of paragraph (3), as modified by subparagraphs (A) and (B) of this paragraph) and which, solely by reason of internal standards of the taxpayer, lack of market, or similar circumstances, or which is produced by the taxpayer exclusively for the purposes of transferring the food to an organization described in paragraph (3)(A), cannot or will not be sold, the fair market value of such contribution shall be determined--

`(i) without regard to such internal standards, such lack of market, such circumstances, or such exclusive purpose, and

`(ii) if applicable, by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

REV_00133481

(a) IN GENERAL- Paragraph (3) of section 170(e) of the Internal Revenue Code of 1986 (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

`(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY-

`(i) GENERAL RULE- In the case of a charitable contribution of food, this paragraph shall be applied--

`(I) without regard to whether the contribution is made by a C corporation, and

`(II) only for food that is apparently wholesome food.

`(ii) DETERMINATION OF FAIR MARKET VALUE- In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

`(iii) APPARENTLY WHOLESOME FOOD- For purposes of this subparagraph, the term `apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 105. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL- Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by striking `2 percent' and inserting `1 percent'.

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS- Section 4940 of such Code is amended by striking subsection (e).

REV_00133482

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 106. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL- Subsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to exemption from income taxes) is amended to read as follows:

`(c) TAXATION OF TRUSTS-

`(1) INCOME TAX- A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

`(2) EXCISE TAX-

`(A) IN GENERAL- In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

`(B) CERTAIN RULES TO APPLY- The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

`(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS- The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of--

`(i) subsection (b),

`(ii) determining the value of trust assets under subsection (d)(2), and

`(iii) determining income under subsection (d)(3).

`(D) TAX COURT PROCEEDINGS- For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

REV_00133483

SEC. 107. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH- Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributions) is amended by inserting `or assembled' after `constructed'.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES- Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting `or assembled' after `constructed' and `or assembling' after `construction'.
(c) CONFORMING AMENDMENT- Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting `or assembled' after `constructed' and `or assembling' after `construction'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 108. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL- Paragraph (1) of section 1367(a) of such Code (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking `and' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting `, and', and by adding at the end the following new subparagraph:

> `(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.'.

TITLE II--INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 201. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress makes the following findings:

(1) For the vast majority of households the pathway to the economic mainstream and financial security is not through spending and consumption, but through saving, investing, and the accumulation of assets. Assets promote economic household stability, decrease economic strain on households, promote educational attainment, decrease marital dissolution, decrease the risk of intergenerational poverty transmission, increase health and satisfaction among adults, increase property values, decrease residential mobility, increase property maintenance, and increase local civic involvement.

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(2) One-third of all Americans have no assets available for investment and another 20 percent have only negligible assets. Assets are distributed far more unevenly than income. Whereas the top 20 percent of American households earn over 43 percent of all income, such households hold over 68 percent of net worth and almost 87 percent of net financial assets. Moreover, asset poverty and wealth gaps are even higher among minority households by a ratio of more than 11 to 1. Up to 20 percent of all households are unbanked and do not have access to the basic financial tools that make asset accumulation possible.

(3) Public policy has contributed to large asset gaps in the United States. Traditional public assistance programs based on income and consumption have rarely been successful in supporting the transition to economic self-sufficiency. Tax policy, through $288,000,000,000 in annual tax incentives, has helped lay the foundation for the great American middle class, but only for some citizens. Fully 90 percent of such current tax benefits accrue to households earning more than $50,000 per year, roughly half of all American households. Lacking an income tax liability, low-income working families cannot take advantage of asset development incentives. Moreover, low-income families seeking public assistance must first spend down their assets and face severe asset limits once on assistance.

(4) Individual Development Accounts , or IDAs, have proven to be successful in helping low-income working families save and accumulate assets. In one national demonstration project, 2,378 low-income families saved a total of $834,442 in one year which generated another $1,644,510 in private matching funds. Thus far, IDA savings have been used to purchase long-term, high-return assets, including homes, post-secondary education and training, and small businesses. Presently, about 10,000 IDAs are in existence in the United States, held by a very small fraction of the at least 70 million Americans who are asset poor.

(5) Therefore, the Federal Government should support, through the tax code, a significant expansion of Individual Development Accounts so that millions of low-income working families across the country can save, accumulate assets, and move their lives forward, and thus make positive contributions to the economic and social well-being of the United States, as well as to its future.

(b) PURPOSES- The purposes of this title are to provide for the establishment of individual development account programs that will--

(1) provide individuals and families with limited means an opportunity to accumulate assets and to enter the financial mainstream;

(2) promote education, homeownership, and the development of small businesses;

(3) stabilize families and build communities; and

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(4) support continued United States economic expansion.

SEC. 202. DEFINITIONS.

As used in this title:

(1) ELIGIBLE INDIVIDUAL -

(A) IN GENERAL- The term `eligible individual' means an individual who--

(i) has attained the age of 18 years but not the age of 61;

(ii) is a citizen or legal resident of the United States;

(iii) is not a student (as defined in section 151(c)(4)); and

(iv) is a taxpayer the adjusted gross income of whom for the preceding taxable year does not exceed--

(I) $20,000, in the case of a taxpayer described in section 1(c) or 1(d) of the Internal Revenue Code of 1986;

(II) $25,000, in the case of a taxpayer described in section 1(b) of such Code; and

(III) $40,000, in the case of a taxpayer described in section 1(a) of such Code.

(B) INFLATION ADJUSTMENT-

(i) IN GENERAL- In the case of any taxable year beginning after 2002, each dollar amount referred to in subparagraph (A)(iv) shall be increased by an amount equal to--

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section (1)(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, by substituting `2001' for `1992'.

(ii) ROUNDING- If any amount as adjusted under clause (i) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

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(2) INDIVIDUAL DEVELOPMENT ACCOUNT- The term `Individual Development Account' means an account established for an eligible individual as part of a qualified individual development account program, but only if the written governing instrument creating the account meets the following requirements:

(A) The sole owner of the account is the individual for whom the account was established.

(B) No contribution will be accepted unless it is in cash.

(C) The holder of the account is a qualified financial institution.

(D) The assets of the account will not be commingled with other property except in a common trust fund or common investment fund.

(E) Except as provided in section 1005(b), any amount in the account may be paid out only for the purpose of paying the qualified expenses of the account owner.

(3) PARALLEL ACCOUNT- The term `parallel account' means a separate, parallel individual or pooled account for all matching funds and earnings dedicated to an Individual Development Account owner as part of a qualified individual development account program, the sole owner of which is a qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(4) QUALIFIED FINANCIAL INSTITUTION-

(A) IN GENERAL- The term `qualified financial institution' means any person authorized to be a trustee of any individual retirement account under section 408(a)(2).

(B) RULE OF CONSTRUCTION- Nothing in this paragraph shall be construed as preventing a person described in subparagraph (A) from collaborating with 1 or more contractual affiliates, qualified nonprofit organizations, or Indian tribes to carry out an individual development account program established under section 1002.

(5) QUALIFIED NONPROFIT ORGANIZATION- The term `qualified nonprofit organization' means--

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

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(B) any community development financial institution certified by the Community Development Financial Institution Fund; or

(C) any credit union chartered under Federal or State law.

(6) INDIAN TRIBE- The term `Indian tribe' means any Indian tribe as defined in section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(12), and includes any tribal subsidiary, subdivision, or other wholly owned tribal entity.

(7) QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM- The term `qualified individual development account program' means a program established under section 1002 under which--

(A) Individual Development Accounts and parallel accounts are held by a qualified financial institution; and

(B) additional activities determined by the Secretary as necessary to responsibly develop and administer accounts , including recruiting, providing financial education and other training to account owners, and regular program monitoring, are carried out by the qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(8) QUALIFIED EXPENSE DISTRIBUTION-

(A) IN GENERAL- The term `qualified expense distribution' means any amount paid (including through electronic payments) or distributed out of an Individual Development Account and a parallel account established for an eligible individual if such amount--

(i) is used exclusively to pay the qualified expenses of the Individual Development Account owner or such owner's spouse or dependents, as approved by the qualified financial institution, qualified nonprofit organization, or Indian tribe;

(ii) is paid by the qualified financial institution, qualified nonprofit organization, or Indian tribe--

(I) except as otherwise provided in this clause, directly to the unrelated third party to whom the amount is due;

(II) in the case of distributions for working capital under a qualified business plan (as defined in subparagraph (B)(iv)(IV)), directly to the account owner;

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(III) in the case of any qualified rollover, directly to another Individual Development Account and parallel account; or

(IV) in the case of a qualified final distribution, directly to the spouse, dependent, or other named beneficiary of the deceased account owner; and

(iii) is paid after the account owner has completed a financial education course as required under section 1003(b).

(B) QUALIFIED EXPENSES-

(i) IN GENERAL- The term `qualified expenses' means any of the following:

(I) Qualified higher education expenses.

(II) Qualified first-time homebuyer costs.

(III) Qualified business capitalization or expansion costs.

(IV) Qualified rollovers.

(V) Qualified final distribution.

(ii) QUALIFIED HIGHER EDUCATION EXPENSES-

(I) IN GENERAL- The term `qualified higher education expenses' has the meaning given such term by section 72(t)(7) of the Internal Revenue Code of 1986, determined by treating postsecondary vocational educational schools as eligible educational institutions.

(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL- The term `postsecondary vocational educational school' means an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of the enactment of this Act.

(III) COORDINATION WITH OTHER BENEFITS- The amount of qualified higher education expenses for any taxable year

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shall be reduced as provided in section 25A(g)(2) of such Code and may not be taken into account for purposes of determining qualified higher education expenses under section 135 or 530 of the Internal Revenue Code of 1986.

(iii) QUALIFIED FIRST-TIME HOMEBUYER COSTS- The term `qualified first-time homebuyer costs' means qualified acquisition costs (as defined in section 72(t)(8) of such Code without regard to subparagraph (B) thereof) with respect to a principal residence (within the meaning of section 121 of such Code) for a qualified first-time homebuyer (as defined in section 72(t)(8) of such Code).

(iv) QUALIFIED BUSINESS CAPITALIZATION OR EXPANSION COSTS-

(I) IN GENERAL- The term `qualified business capitalization or expansion costs' means qualified expenditures for the capitalization or expansion of a qualified business pursuant to a qualified business plan.

(II) QUALIFIED EXPENDITURES- The term `qualified expenditures' means expenditures included in a qualified business plan, including capital, plant, equipment, working capital, inventory expenses, attorney and accounting fees, and other costs normally associated with starting or expanding a business.

(III) QUALIFIED BUSINESS- The term `qualified business' means any business that does not contravene any law.

(IV) QUALIFIED BUSINESS PLAN- The term `qualified business plan' means a business plan which has been approved by the qualified financial institution, qualified nonprofit organization, or Indian tribe and which meets such requirements as the Secretary may specify.

(v) QUALIFIED ROLLOVERS- The term `qualified rollover' means the complete distribution of the amounts in an Individual Development Account and parallel account to another Individual Development Account and parallel account established in another qualified financial institution, qualified nonprofit organization, or Indian tribe for the benefit of the account owner.

(vi) QUALIFIED FINAL DISTRIBUTION- The term `qualified final distribution' means, in the case of a deceased account owner, the

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complete distribution of the amounts in an Individual Development Account and parallel account directly to the spouse, any dependent, or other named beneficiary of the deceased.

(9) SECRETARY- The term `Secretary' means the Secretary of the Treasury.

SEC. 203. STRUCTURE AND ADMINISTRATION OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) ESTABLISHMENT OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS- Any qualified financial institution, qualified nonprofit organization, or Indian tribe may establish 1 or more qualified individual development account programs which meet the requirements of this title.

(b) BASIC PROGRAM STRUCTURE-

(1) IN GENERAL- All qualified individual development account programs shall consist of the following 2 components:

(A) An Individual Development Account to which an eligible individual may contribute cash in accordance with section 1003.

(B) A parallel account to which all matching funds shall be deposited in accordance with section 1004.

(2) TAILORED IDA PROGRAMS- A qualified financial institution, a qualified nonprofit organization, or an Indian tribe may tailor its qualified individual development account program to allow matching funds to be spent on 1 or more of the categories of qualified expenses.

(c) TAX TREATMENT OF PARALLEL ACCOUNTS - Any account described in subparagraph (B) of subsection (b)(1) is exempt from taxation under the Internal Revenue Code of 1986.

SEC. 204. PROCEDURES FOR OPENING AND MAINTAINING AN INDIVIDUAL DEVELOPMENT ACCOUNT AND QUALIFYING FOR MATCHING FUNDS.

(a) OPENING AN ACCOUNT- An eligible individual may open an Individual Development Account with a qualified financial institution, a qualified nonprofit organization, or an Indian tribe upon certification that such individual maintains no other Individual Development Account (other than an Individual Development Account to be terminated by a qualified rollover).

(b) REQUIRED COMPLETION OF FINANCIAL EDUCATION COURSE-

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(1) IN GENERAL- Before becoming eligible to withdraw matching funds to pay for qualified expenses, owners of Individual Development Accounts must complete a financial education course offered by a qualified financial institution, a qualified nonprofit organization, an Indian tribe, or a government entity.

(2) STANDARD AND APPLICABILITY OF COURSE- The Secretary, in consultation with representatives of qualified individual development account programs and financial educators, shall establish minimum quality standards for the contents of financial education courses and providers of such courses offered under paragraph (1) and a protocol to exempt individuals from the requirement under paragraph (1) because of hardship or lack of need.

(c) PROOF OF STATUS AS AN ELIGIBLE INDIVIDUAL - Federal income tax forms from the preceding taxable year (or in the absence of such forms, such documentation as specified by the Secretary proving the eligible individual's adjusted gross income and the status of the individual as an eligible individual) shall be presented to the qualified financial institution, qualified nonprofit organization, or Indian tribe at the time of the establishment of the Individual Development Account and in any taxable year in which contributions are made to the Account to qualify for matching funds under section 1004(b)(1)(A).

(d) DIRECT DEPOSITS- The Secretary may, under regulations, provide for the direct deposit of any portion (not less than $1) of any overpayment of Federal tax of an individual as a contribution to the Individual Development Account of such individual .

SEC. 205. DEPOSITS BY QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) PARALLEL ACCOUNTS - The qualified financial institution, qualified nonprofit organization, or Indian tribe shall deposit all matching funds for each Individual Development Account into a parallel account at a qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(b) REGULAR DEPOSITS OF MATCHING FUNDS-

(1) IN GENERAL- Subject to paragraph (2), the qualified financial institution, qualified nonprofit organization, or Indian tribe shall not less than quarterly (or upon a proper withdrawal request under section 1005, if necessary) deposit into the parallel account with respect to each eligible individual the following:

(A) A dollar-for-dollar match for the first $500 contributed by the eligible individual into an Individual Development Account with respect to any taxable year.

(B) Any matching funds provided by State, local, or private sources in

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accordance to the matching ratio set by those sources.

(2) INFLATION ADJUSTMENT-

(A) IN GENERAL- In the case of any taxable year beginning after 2002, the dollar amount referred to in paragraph (1)(A) shall be increased by an amount equal to--

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section (1)(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, by substituting `2001' for `1992'.

(B) ROUNDING- If any amount as adjusted under subparagraph (A) is not a multiple of $20, such amount shall be rounded to the nearest multiple of $20.

(3) Cross reference-

For allowance of tax credit for Individual Development Account subsidies, including matching funds,

see section 30B of the Internal Revenue Code of 1986.

(c) DEPOSIT OF MATCHING FUNDS INTO INDIVIDUAL DEVELOPMENT ACCOUNT OF INDIVIDUAL WHO HAS ATTAINED AGE 61- In the case of an Individual Development Account owner who attains the age of 61, the qualified financial institution, qualified nonprofit organization, or Indian tribe which holds the parallel account for such individual shall deposit the funds in such parallel account into the Individual Development Account of such individual on the first day of the succeeding taxable year of such individual .

(d) UNIFORM ACCOUNTING REGULATIONS- To ensure proper recordkeeping and determination of the tax credit under section 30B of the Internal Revenue Code of 1986, the Secretary shall prescribe regulations with respect to accounting for matching funds in the parallel accounts .

(e) REGULAR REPORTING OF ACCOUNTS - Any qualified financial institution, qualified nonprofit organization, or Indian tribe shall report the balances in any Individual Development
Account and parallel account of an individual on not less than an annual basis to such individual .

SEC. 206. WITHDRAWAL PROCEDURES.

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(a) WITHDRAWALS FOR QUALIFIED EXPENSES- To withdraw money from an individual's Individual Development Account to pay qualified expenses of such individual or such individual's spouse or dependents, the qualified financial institution, qualified nonprofit organization, or Indian tribe shall directly transfer such funds from the Individual Development Account, and, if applicable, from the parallel account electronically to the distributees described in section 1001(8)(A)(ii). If the distributee is not equipped to receive funds electronically, the qualified financial institution, qualified nonprofit organization, or Indian tribe may issue such funds by paper check to the distributee.

(b) WITHDRAWALS FOR NONQUALIFIED EXPENSES- An Individual Development Account owner may unilaterally withdraw any amount of funds from the Individual Development Account for purposes other than to pay qualified expenses, but shall forfeit a proportionate amount of matching funds from the individual's parallel account by doing so, unless such withdrawn funds are recontributed to such Account by September 30 following the withdrawal.

(c) WITHDRAWALS FROM ACCOUNTS OF NONELIGIBLE INDIVIDUALS- If the individual for whose benefit an Individual Development Account is established ceases to be an eligible individual , such account shall remain an Individual Development Account, but such individual shall not be eligible for any further matching funds under section 1004(b)(1)(A) during the period--

(1) beginning on the first day of the taxable year of such individual following the beginning of such ineligibility, and

(2) ending on the last day of the taxable year of such individual in which such ineligibility ceases.

(d) TAX TREATMENT OF MATCHING FUNDS- Any amount withdrawn from a parallel account shall not be includible in an eligible individual's gross income.

(e) WITHDRAWAL LIABILITY RESTS ONLY WITH ELIGIBLE INDIVIDUALS- Nothing in this title may be construed to impose liability on a qualified financial institution, a qualified nonprofit organization, or an Indian tribe for non-compliance with the requirements of this title related to withdrawals from Individual Development Accounts .

SEC. 207. CERTIFICATION AND TERMINATION OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) CERTIFICATION PROCEDURES- Upon establishing a qualified individual

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development account program under section 1002, a qualified financial institution, a qualified nonprofit organization, or an Indian tribe shall certify to the Secretary on forms prescribed by the Secretary and accompanied by any documentation required by the Secretary, that--

(1) the accounts described in subparagraphs (A) and (B) of section 1002(b)(1) are operating pursuant to all the provisions of this title; and

(2) the qualified financial institution, qualified nonprofit organization, or Indian tribe agrees to implement an information system necessary to monitor the cost and outcomes of the qualified individual development account program.

(b) AUTHORITY TO TERMINATE QUALIFIED IDA PROGRAM- If the Secretary determines that a qualified financial institution, a qualified nonprofit organization, or an Indian tribe under this title is not operating a qualified individual development account program in accordance with the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such institution's, nonprofit organization's, or Indian tribe's authority to conduct the program. If the Secretary is unable to identify a qualified financial institution, a qualified nonprofit organization, or an Indian tribe to assume the authority to conduct such program, then any funds in a parallel account established for the benefit of any individual under such program shall be deposited into the Individual Development Account of such individual as of the first day of such termination.

SEC. 208. REPORTING, MONITORING, AND EVALUATION.

(a) RESPONSIBILITIES OF QUALIFIED FINANCIAL INSTITUTIONS, QUALIFIED NONPROFIT ORGANIZATIONS, AND INDIAN TRIBES- Each qualified financial institution, qualified nonprofit organization, or Indian tribe that operates a qualified individual development account program under section 1002 shall report annually to the Secretary within 90 days after the end of each calendar year on--

(1) the number of eligible individuals making contributions into Individual Development Accounts ;

(2) the amounts contributed into Individual Development Accounts and deposited into parallel accounts for matching funds;

(3) the amounts withdrawn from Individual Development Accounts and parallel accounts , and the purposes for which such amounts were withdrawn;

(4) the balances remaining in Individual Development Accounts and parallel accounts ; and

(5) such other information needed to help the Secretary monitor the cost and outcomes of the qualified individual development account program (provided in a

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non-individually-identifiable manner).

(b) RESPONSIBILITIES OF THE SECRETARY-

(1) MONITORING PROTOCOL- Not later than 12 months after the date of the enactment of this Act, the Secretary shall develop and implement a protocol and process to monitor the cost and outcomes of the qualified individual development account programs established under section 1002.

(2) ANNUAL REPORTS- In each year after the date of the enactment of this Act, the Secretary shall submit a progress report to Congress on the status of such qualified individual development account programs. Such report shall include from a representative sample of qualified individual development account programs information on--

(A) the characteristics of participants, including age, gender, race or ethnicity, marital status, number of children, employment status, and monthly income;

(B) deposits, withdrawals, balances, uses of Individual Development Accounts , and participant characteristics;

(C) the characteristics of qualified individual development account programs, including match rate, economic education requirements, permissible uses of accounts , staffing of programs in full time employees, and the total costs of programs; and

(D) process information on program implementation and administration, especially on problems encountered and how problems were solved.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $1,000,000 for fiscal year 2002 and for each fiscal year through 2008, for the purposes of implementing this title, including the reporting, monitoring, and evaluation required under section 1007, to remain available until expended.

SEC. 210. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED FEDERAL PROGRAMS.

Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual , for the purposes of determining eligibility to receive,
or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual , an amount equal to the sum of--

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(1) all amounts (including earnings thereon) in any Individual Development Account; plus

(2) the matching deposits made on behalf of such individual (including earnings thereon) in any parallel account,

shall be disregarded for such purposes.

SEC. 211. MATCHING FUNDS FOR INDIVIDUAL DEVELOPMENT ACCOUNTS PROVIDED THROUGH A TAX CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

(a) IN GENERAL- Subpart B of part IV of subchapter A of chapter 1 (relating to other credits) is amended by inserting after section 30A the following new section:

`SEC. 30B. INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

`(a) DETERMINATION OF AMOUNT- There shall be allowed as a credit against the applicable tax for the taxable year an amount equal to the individual development account investment provided by an eligible entity during the taxable year under an individual development account program established under section 1002 of the XX Act.

`(b) APPLICABLE TAX- For the purposes of this section, the term `applicable tax' means the excess (if any) of--

`(1) the tax imposed under this chapter (other than the taxes imposed under the provisions described in subparagraphs (C) through (Q) of section 26(b)(2)), over

`(2) the credits allowable under subpart B (other than this section) and subpart D of this part.

`(c) INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT-

`(1) IN GENERAL- For purposes of this section, the term `individual development account investment' means, with respect to an individual development account program of a qualified financial institution in any taxable year, an amount equal to the sum of--

`(A) the aggregate amount of dollar-for-dollar matches under such program under section 1004(b)(1)(A) of the XX Act for such taxable year, plus

`(B) an amount equal to the sum of--

`(i) with respect to each Individual Development Account opened during

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such taxable year, $100, plus

`(ii) with respect to each Individual Development Account maintained during such taxable year, $30.

`(2) INFLATION ADJUSTMENT-

`(A) IN GENERAL- In the case of any taxable year beginning after 2002, each dollar amount referred to in paragraph (1)(B) shall be increased by an amount equal to--

`(i) such dollar amount, multiplied by
`(ii) the cost-of-living adjustment determined under section (1)(f)(3) for the calendar year in which the taxable year begins, by substituting `2001' for `1992'.

`(B) ROUNDING- If any amount as adjusted under subparagraph (A) is not a multiple of $5, such amount shall be rounded to the nearest multiple of $5.

`(d) ELIGIBLE ENTITY- For purposes of this section, the term `eligible entity' means a qualified financial institution, or 1 or more contractual affiliates of such an institution as defined by the Secretary in regulations.

`(e) OTHER DEFINITIONS- For purposes of this section, any term used in this section and also in the XX Act shall have the meaning given such term by such Act.

`(f) DENIAL OF DOUBLE BENEFIT- No deduction or credit (other than under this section) shall be allowed under this chapter with respect to any expense which is taken into account under subsection (c)(1)(A) in determining the credit under this section.

`(g) REGULATIONS- The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section (notwithstanding any termination date described in subsection

(h)) in cases where there is a forfeiture under section 1005(b) of the XX Act in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

`(h) APPLICATION OF SECTION- This section shall apply to any expenditure made in any taxable year beginning after December 31, 2001, and before January 1, 2009, with respect to any Individual Development Account opened before January 1, 2007.'.

(b) CONFORMING AMENDMENT- The table of sections for subpart B of part IV of

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subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

`Sec. 30B. Individual development account investment credit for qualified financial institutions.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE III -- CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS

SEC. 301. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS- For purposes of this section:

(1) AIRCRAFT- The term `aircraft' has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY- The term `business entity' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT- The term `equipment' includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY- The term `facility' means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE- The term `gross negligence' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT- The term `intentional misconduct' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE- The term `motor vehicle' has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION- The term `nonprofit organization' means--

(A) any organization described in section 501(c)(3) of the Internal Revenue

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Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE- The term `State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY-

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS-

(A) IN GENERAL- Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION- This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS-

(A) IN GENERAL- Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if--

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION- This paragraph shall apply--

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a

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facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT-

(A) IN GENERAL- Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if--

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION- This paragraph shall apply--

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(c) EXCEPTIONS- Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

(d) SUPERSEDING PROVISION-

(1) IN GENERAL- Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION- Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY- A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute--

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE- This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act .

REV_00133502

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/15/2001 7:46:22 AM
Subject: : LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions
Attachments: P_58D64004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 11:46:22.00
SUBJECT:: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/15/2001 11:46 AM ----------

Robert W. Cobb
10/15/2001 10:29:49 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

I saw nothing in the first one that was remotely interesting. Just looks like your typical big Government program. Did not look at the tax part of it, but by its girth, tax simplification must not have been a big part of it.

---------- Forwarded by Robert W. Cobb/WHO/EOP on 10/15/2001 10:27 AM ----------

Allison L. Riepenhoff
10/15/2001 09:41:23 AM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 10/15/2001 09:41 AM ----------

From: Ingrid M. Schroeder on 10/15/2001 09:37:54 AM
Record Type: Record

To: llr@do.treas.gov , lrm@hhs.gov , justice.lrm@usdoj.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IMS4 - - Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

This package is identical to the package faxed to your agency on Friday afternoon. Please provide any comments by 4pm today to Karen Blank.

Attached is a proposal that is the subject of discussion for possible consideration before Congress adjourns. This document should be considered "close hold" and shared only with the necessary reviewers. Please provide any comments or concerns ASAP.

LRM ID: IMS4
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, October 12, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Karen N. Blank
PHONE: (202) FAX: (202)
SUBJECT: Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions

DEADLINE: 4pm Monday, October 15, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a proposal that is the subject of discussion for possible consideration before Congress adjourns. This document should be considered "close hold" and shared only with the necessary reviewers. Please provide any comments or concerns ASAP.

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Ingrid M. Schroeder
LRM ID: IMS4 SUBJECT: Draft Bill on Omnibus Charity/Compassion Package - Tax and IDA Provisions
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Karen N. Blank Phone: Fax:
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied

To:_____
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_58D64004_WHO.TXT_1>

OMNIBUS CHARITY/COMPASSION BILL

TITLE I--CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL- Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

`(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS-

`(1) IN GENERAL- In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of--

`(A) the amount allowable under subsection (a) for the taxable year for cash contributions, or

`(B) the applicable amount.

`(2) APPLICABLE AMOUNT- For purposes of paragraph (1), the applicable amount shall be determined as follows:

`For taxable years

--The applicable

beginning in:

--amount is:

2001, 2002, 2003

$200 for individuals; $400 for joint filers;

2004, 2005, 2006

$300 for individuals; $600 for joint filers;

2007, 2008, 2009

$400 for individuals; $800 for joint filers;

2010 and thereafter
$500 for individuals; $1,000 for joint filers.

In the case of a joint return, the applicable amount is twice the applicable amount determined under the preceding table.'.

(b) DIRECT CHARITABLE DEDUCTION-

(1) IN GENERAL- Subsection (b) of section 63 of such Code is amended by striking `and' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting `, and', and by adding at the end thereof the following new paragraph:

`(3) the direct charitable deduction.'.

(2) DEFINITION- Section 63 of such Code is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

`(g) DIRECT CHARITABLE DEDUCTION- For purposes of this section, the term `direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).'.

(3) CONFORMING AMENDMENT- Subsection (d) of section 63 of such Code is amended by striking `and' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting `, and', and by adding at the end thereof the following new paragraph:

`(3) the direct charitable deduction.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL- Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new
paragraph:

`(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES-

`(A) IN GENERAL- No amount shall be includible in gross income by reason

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of a qualified charitable distribution.

`(B) QUALIFIED CHARITABLE DISTRIBUTION- For purposes of this paragraph, the term `qualified charitable distribution' means any distribution from an individual retirement account--

`(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 59 1/2 , and

`(ii) which is made directly by the trustee--

`(I) to an organization described in section 170(c), or

`(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

`(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE- For purposes of this paragraph--

`(i) DIRECT CONTRIBUTIONS- A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

`(ii) SPLIT-INTEREST GIFTS- A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

`(D) APPLICATION OF SECTION 72- Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would be so includible if all amounts were

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distributed from all individual retirement accounts otherwise taken into account in determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

`(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES-

`(i) CHARITABLE REMAINDER TRUSTS- Distributions made from an individual retirement account to a trust described in subparagraph (G)(ii)(I) shall be treated as income described in section 664(b)(1) except to the extent that the beneficiary of the individual retirement account notifies the trustee of the trust of the amount which is not allocable to income under subparagraph (D).

`(ii) POOLED INCOME FUNDS- No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)(II)) by reason of a qualified charitable distribution to such fund.

`(iii) CHARITABLE GIFT ANNUITIES- Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

`(F) DENIAL OF DEDUCTION- Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

`(G) SPLIT-INTEREST ENTITY DEFINED- For purposes of this paragraph, the term `split-interest entity' means--

`(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)),

`(ii) a pooled income fund (as defined in section 642(c)(5)), and

`(iii) a charitable gift annuity (as defined in section 501(m)(5)).'.

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS-

(1) RETURNS- Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

`SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

REV_00133511

`(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2)- Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

`(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c)-

`(1) IN GENERAL- Every trust not required to file a return under subsection (a) but claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including:

`(A) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

`(B) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

`(C) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

`(D) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

`(E) the total income of the trust within such year and the expenses attributable thereto, and

`(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

`(2) EXCEPTIONS- Paragraph (1) shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries. Paragraph (1) shall not apply in the case of a trust described in section 4947(a)(1).'.

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS- Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

`(C) SPLIT-INTEREST TRUSTS- In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that--

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`(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

`(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting `$100' for `$20', and the second sentence thereof shall be applied by substituting `$50,000' for `$10,000', and
`(iii) the third sentence of paragraph (1)(A) shall be disregarded.

If the person required to file such return knowingly fails to file the return, such person shall be personally liable for the penalty imposed pursuant to this subparagraph.'.

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES- Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: `In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).'.

(c) EFFECTIVE DATES-

(1) SUBSECTION (a)- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

(2) SUBSECTION (b)- The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2001.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL- Paragraph (2) of section 170(b) of the Internal Revenue Code of 1986 (relating to corporations) is amended by striking `10 percent' and inserting `the applicable percentage'.

(b) APPLICABLE PERCENTAGE- Subsection (b) of section 170 of such Code is amended by adding at the end the following new paragraph:

`(3) APPLICABLE PERCENTAGE DEFINED- For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

`For taxable years beginning

--The applicable

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in calendar year--

--percentage is--

2001 through 2005

--15

2006

--17

2007

--19

2008

– 21

2009

– 23

2010 and thereafter

– 25.'.

(c) CONFORMING AMENDMENTS-

(1) Sections 512(b)(10) and 805(b)(2)(A) of such Code are each amended by striking `10 percent' each place it occurs and inserting `the applicable percentage (determined under section 170(b)(3))'.

(2) Sections 545(b)(2) and 556(b)(2) of such Code are each amended by striking `10-percent limitation' and inserting `applicable percentage limitation'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 104. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL- Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and

REV_00133514

capital gain property) is amended by adding at the end the following new paragraph:

`(7) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY- For purposes of this section--

`(A) CONTRIBUTIONS BY NON-CORPORATE TAXPAYERS- In the case of a charitable contribution of food by a taxpayer, paragraph (3)(A) shall be applied without regard to whether or not the contribution is made by a corporation.

`(B) LIMIT ON REDUCTION- In the case of a charitable contribution of food which is a qualified contribution (within the meaning of paragraph (3)(A), as modified by subparagraph (A) of this paragraph)--

`(i) paragraph (3)(B) shall not apply, and

`(ii) the reduction under paragraph (1)(A) for such contribution shall be no greater than the amount (if any) by which the amount of such contribution exceeds twice the basis of such food.

`(C) DETERMINATION OF BASIS- For purposes of this paragraph, if a taxpayer uses the cash method of accounting, the basis of any qualified contribution of such taxpayer shall be deemed to be 50 percent of the fair market value of such contribution.

`(D) DETERMINATION OF FAIR MARKET VALUE- In the case of a charitable contribution of food which is a qualified contribution (within the meaning of paragraph (3), as modified by subparagraphs (A) and (B) of this paragraph) and which, solely by reason of internal standards of the taxpayer, lack of market, or similar circumstances, or which is produced by the taxpayer exclusively for the purposes of transferring the food to an organization described in paragraph (3)(A), cannot or will not be sold, the fair market value of such contribution shall be determined--

`(i) without regard to such internal standards, such lack of market, such circumstances, or such exclusive purpose, and

`(ii) if applicable, by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

REV_00133515

(a) IN GENERAL- Paragraph (3) of section 170(e) of the Internal Revenue Code of 1986 (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

`(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY-

`(i) GENERAL RULE- In the case of a charitable contribution of food, this paragraph shall be applied--

`(I) without regard to whether the contribution is made by a C corporation, and

`(II) only for food that is apparently wholesome food.

`(ii) DETERMINATION OF FAIR MARKET VALUE- In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or similar food items are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

`(iii) APPARENTLY WHOLESOME FOOD- For purposes of this subparagraph, the term `apparently wholesome food' shall have the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 105. REFORM OF EXCISE TAX ON NET INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL- Subsection (a) of section 4940 of the Internal Revenue Code of 1986 (relating to excise tax based on investment income) is amended by striking `2 percent' and inserting `1 percent'.

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS- Section 4940 of such Code is amended by striking subsection (e).

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(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 106. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL- Subsection (c) of section 664 of the Internal Revenue Code of 1986 (relating to exemption from income taxes) is amended to read as follows:

`(c) TAXATION OF TRUSTS-

`(1) INCOME TAX- A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

`(2) EXCISE TAX-

`(A) IN GENERAL- In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

`(B) CERTAIN RULES TO APPLY- The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

`(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS- The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of--

`(i) subsection (b),

`(ii) determining the value of trust assets under subsection (d)(2), and

`(iii) determining income under subsection (d)(3).

`(D) TAX COURT PROCEEDINGS- For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

REV_00133517

SEC. 107. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH- Clause (ii) of section 170(e)(4)(B) of the Internal Revenue Code of 1986 (defining qualified research contributions) is amended by inserting `or assembled' after `constructed'.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES- Clause (ii) of section 170(e)(6)(B) of such Code is amended by inserting `or assembled' after `constructed' and `or assembling' after `construction'.
(c) CONFORMING AMENDMENT- Subparagraph (D) of section 170(e)(6) of such Code is amended by inserting `or assembled' after `constructed' and `or assembling' after `construction'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 108. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL- Paragraph (1) of section 1367(a) of such Code (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking `and' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting `, and', and by adding at the end the following new subparagraph:

> `(D) the excess of the amount of the shareholder's deduction for any charitable contribution made by the S corporation over the shareholder's proportionate share of the adjusted basis of the property contributed.'.

TITLE II--INDIVIDUAL DEVELOPMENT ACCOUNTS

SEC. 201. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress makes the following findings:

(1) For the vast majority of households the pathway to the economic mainstream and financial security is not through spending and consumption, but through saving, investing, and the accumulation of assets. Assets promote economic household stability, decrease economic strain on households, promote educational attainment, decrease marital dissolution, decrease the risk of intergenerational poverty transmission, increase health and satisfaction among adults, increase property values, decrease residential mobility, increase property maintenance, and increase local civic involvement.

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(2) One-third of all Americans have no assets available for investment and another 20 percent have only negligible assets. Assets are distributed far more unevenly than income. Whereas the top 20 percent of American households earn over 43 percent of all income, such households hold over 68 percent of net worth and almost 87 percent of net financial assets. Moreover, asset poverty and wealth gaps are even higher among minority households by a ratio of more than 11 to 1. Up to 20 percent of all households are unbanked and do not have access to the basic financial tools that make asset accumulation possible.

(3) Public policy has contributed to large asset gaps in the United States. Traditional public assistance programs based on income and consumption have rarely been successful in supporting the transition to economic self-sufficiency. Tax policy, through $288,000,000,000 in annual tax incentives, has helped lay the foundation for the great American middle class, but only for some citizens. Fully 90 percent of such current tax benefits accrue to households earning more than $50,000 per year, roughly half of all American households. Lacking an income tax liability, low-income working families cannot take advantage of asset development incentives. Moreover, low-income families seeking public assistance must first spend down their assets and face severe asset limits once on assistance.

(4) Individual Development Accounts , or IDAs, have proven to be successful in helping low-income working families save and accumulate assets. In one national demonstration project, 2,378 low-income families saved a total of $834,442 in one year which generated another $1,644,510 in private matching funds. Thus far, IDA savings have been used to purchase long-term, high-return assets, including homes, post-secondary education and training, and small businesses. Presently, about 10,000 IDAs are in existence in the United States, held by a very small fraction of the at least 70 million Americans who are asset poor.

(5) Therefore, the Federal Government should support, through the tax code, a significant expansion of Individual Development Accounts so that millions of low-income working families across the country can save, accumulate assets, and move their lives forward, and thus make positive contributions to the economic and social well-being of the United States, as well as to its future.

(b) PURPOSES- The purposes of this title are to provide for the establishment of individual development account programs that will--

(1) provide individuals and families with limited means an opportunity to accumulate assets and to enter the financial mainstream;

(2) promote education, homeownership, and the development of small businesses;

(3) stabilize families and build communities; and

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(4) support continued United States economic expansion.

SEC. 202. DEFINITIONS.

As used in this title:

(1) ELIGIBLE INDIVIDUAL -

(A) IN GENERAL- The term `eligible individual' means an individual who--

(i) has attained the age of 18 years but not the age of 61;

(ii) is a citizen or legal resident of the United States;

(iii) is not a student (as defined in section 151(c)(4)); and

(iv) is a taxpayer the adjusted gross income of whom for the preceding taxable year does not exceed--

(I) $20,000, in the case of a taxpayer described in section 1(c) or 1(d) of the Internal Revenue Code of 1986;

(II) $25,000, in the case of a taxpayer described in section 1(b) of such Code; and

(III) $40,000, in the case of a taxpayer described in section 1(a) of such Code.

(B) INFLATION ADJUSTMENT-

(i) IN GENERAL- In the case of any taxable year beginning after 2002, each dollar amount referred to in subparagraph (A)(iv) shall be increased by an amount equal to--

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section (1)(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, by substituting `2001' for `1992'.

(ii) ROUNDING- If any amount as adjusted under clause (i) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

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(2) INDIVIDUAL DEVELOPMENT ACCOUNT- The term `Individual Development Account' means an account established for an eligible individual as part of a qualified individual development account program, but only if the written governing instrument creating the account meets the following requirements:

(A) The sole owner of the account is the individual for whom the account was established.

(B) No contribution will be accepted unless it is in cash.

(C) The holder of the account is a qualified financial institution.

(D) The assets of the account will not be commingled with other property except in a common trust fund or common investment fund.

(E) Except as provided in section 1005(b), any amount in the account may be paid out only for the purpose of paying the qualified expenses of the account owner.

(3) PARALLEL ACCOUNT- The term `parallel account' means a separate, parallel individual or pooled account for all matching funds and earnings dedicated to an Individual Development Account owner as part of a qualified individual development account program, the sole owner of which is a qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(4) QUALIFIED FINANCIAL INSTITUTION-

(A) IN GENERAL- The term `qualified financial institution' means any person authorized to be a trustee of any individual retirement account under section 408(a)(2).

(B) RULE OF CONSTRUCTION- Nothing in this paragraph shall be construed as preventing a person described in subparagraph (A) from collaborating with 1 or more contractual affiliates, qualified nonprofit organizations, or Indian tribes to carry out an individual development account program established under section 1002.

(5) QUALIFIED NONPROFIT ORGANIZATION- The term `qualified nonprofit organization' means--

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

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(B) any community development financial institution certified by the Community Development Financial Institution Fund; or

(C) any credit union chartered under Federal or State law.

(6) INDIAN TRIBE- The term `Indian tribe' means any Indian tribe as defined in section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(12), and includes any tribal subsidiary, subdivision, or other wholly owned tribal entity.

(7) QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM- The term `qualified individual development account program' means a program established under section 1002 under which--

(A) Individual Development Accounts and parallel accounts are held by a qualified financial institution; and

(B) additional activities determined by the Secretary as necessary to responsibly develop and administer accounts , including recruiting, providing financial education and other training to account owners, and regular program monitoring, are carried out by the qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(8) QUALIFIED EXPENSE DISTRIBUTION-

(A) IN GENERAL- The term `qualified expense distribution' means any amount paid (including through electronic payments) or distributed out of an Individual Development Account and a parallel account established for an eligible individual if such amount--

(i) is used exclusively to pay the qualified expenses of the Individual Development Account owner or such owner's spouse or dependents, as approved by the qualified financial institution, qualified nonprofit organization, or Indian tribe;

(ii) is paid by the qualified financial institution, qualified nonprofit organization, or Indian tribe--

(I) except as otherwise provided in this clause, directly to the unrelated third party to whom the amount is due;

(II) in the case of distributions for working capital under a qualified business plan (as defined in subparagraph (B)(iv)(IV)), directly to the account owner;

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(III) in the case of any qualified rollover, directly to another Individual Development Account and parallel account; or

(IV) in the case of a qualified final distribution, directly to the spouse, dependent, or other named beneficiary of the deceased account owner; and

(iii) is paid after the account owner has completed a financial education course as required under section 1003(b).

(B) QUALIFIED EXPENSES-

(i) IN GENERAL- The term `qualified expenses' means any of the following:

(I) Qualified higher education expenses.

(II) Qualified first-time homebuyer costs.

(III) Qualified business capitalization or expansion costs.

(IV) Qualified rollovers.

(V) Qualified final distribution.

(ii) QUALIFIED HIGHER EDUCATION EXPENSES-

(I) IN GENERAL- The term `qualified higher education expenses' has the meaning given such term by section 72(t)(7) of the Internal Revenue Code of 1986, determined by treating postsecondary vocational educational schools as eligible educational institutions.

(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL- The term `postsecondary vocational educational school' means an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of the enactment of this Act.

(III) COORDINATION WITH OTHER BENEFITS- The amount of qualified higher education expenses for any taxable year

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shall be reduced as provided in section 25A(g)(2) of such Code and may not be taken into account for purposes of determining qualified higher education expenses under section 135 or 530 of the Internal Revenue Code of 1986.

(iii) QUALIFIED FIRST-TIME HOMEBUYER COSTS- The term `qualified first-time homebuyer costs' means qualified acquisition costs (as defined in section 72(t)(8) of such Code without regard to subparagraph (B) thereof) with respect to a principal residence (within the meaning of section 121 of such Code) for a qualified first-time homebuyer (as defined in section 72(t)(8) of such Code).

(iv) QUALIFIED BUSINESS CAPITALIZATION OR EXPANSION COSTS-

(I) IN GENERAL- The term `qualified business capitalization or expansion costs' means qualified expenditures for the capitalization or expansion of a qualified business pursuant to a qualified business plan.

(II) QUALIFIED EXPENDITURES- The term `qualified expenditures' means expenditures included in a qualified business plan, including capital, plant, equipment, working capital, inventory expenses, attorney and accounting fees, and other costs normally associated with starting or expanding a business.

(III) QUALIFIED BUSINESS- The term `qualified business' means any business that does not contravene any law.

(IV) QUALIFIED BUSINESS PLAN- The term `qualified business plan' means a business plan which has been approved by the qualified financial institution, qualified nonprofit organization, or Indian tribe and which meets such requirements as the Secretary may specify.

(v) QUALIFIED ROLLOVERS- The term `qualified rollover' means the complete distribution of the amounts in an Individual Development Account and parallel account to another Individual Development Account and parallel account established in another qualified financial institution, qualified nonprofit organization, or Indian tribe for the benefit of the account owner.

(vi) QUALIFIED FINAL DISTRIBUTION- The term `qualified final distribution' means, in the case of a deceased account owner, the

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complete distribution of the amounts in an Individual Development Account and parallel account directly to the spouse, any dependent, or other named beneficiary of the deceased.

(9) SECRETARY- The term `Secretary' means the Secretary of the Treasury.

SEC. 203. STRUCTURE AND ADMINISTRATION OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) ESTABLISHMENT OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS- Any qualified financial institution, qualified nonprofit organization, or Indian tribe may establish 1 or more qualified individual development account programs which meet the requirements of this title.

(b) BASIC PROGRAM STRUCTURE-

(1) IN GENERAL- All qualified individual development account programs shall consist of the following 2 components:

(A) An Individual Development Account to which an eligible individual may contribute cash in accordance with section 1003.

(B) A parallel account to which all matching funds shall be deposited in accordance with section 1004.

(2) TAILORED IDA PROGRAMS- A qualified financial institution, a qualified nonprofit organization, or an Indian tribe may tailor its qualified individual development account program to allow matching funds to be spent on 1 or more of the categories of qualified expenses.

(c) TAX TREATMENT OF PARALLEL ACCOUNTS - Any account described in subparagraph (B) of subsection (b)(1) is exempt from taxation under the Internal Revenue Code of 1986.

SEC. 204. PROCEDURES FOR OPENING AND MAINTAINING AN INDIVIDUAL DEVELOPMENT ACCOUNT AND QUALIFYING FOR MATCHING FUNDS.

(a) OPENING AN ACCOUNT- An eligible individual may open an Individual Development Account with a qualified financial institution, a qualified nonprofit organization, or an Indian tribe upon certification that such individual maintains no other Individual Development Account (other than an Individual Development Account to be terminated by a qualified rollover).

(b) REQUIRED COMPLETION OF FINANCIAL EDUCATION COURSE-

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(1) IN GENERAL- Before becoming eligible to withdraw matching funds to pay for qualified expenses, owners of Individual Development Accounts must complete a financial education course offered by a qualified financial institution, a qualified nonprofit organization, an Indian tribe, or a government entity.

(2) STANDARD AND APPLICABILITY OF COURSE- The Secretary, in consultation with representatives of qualified individual development account programs and financial educators, shall establish minimum quality standards for the contents of financial education courses and providers of such courses offered under paragraph (1) and a protocol to exempt individuals from the requirement under paragraph (1) because of hardship or lack of need.

(c) PROOF OF STATUS AS AN ELIGIBLE INDIVIDUAL - Federal income tax forms from the preceding taxable year (or in the absence of such forms, such documentation as specified by the Secretary proving the eligible individual's adjusted gross income and the status of the individual as an eligible individual) shall be presented to the qualified financial institution, qualified nonprofit organization, or Indian tribe at the time of the establishment of the Individual Development Account and in any taxable year in which contributions are made to the Account to qualify for matching funds under section 1004(b)(1)(A).

(d) DIRECT DEPOSITS- The Secretary may, under regulations, provide for the direct deposit of any portion (not less than $1) of any overpayment of Federal tax of an individual as a contribution to the Individual Development Account of such individual .

SEC. 205. DEPOSITS BY QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) PARALLEL ACCOUNTS - The qualified financial institution, qualified nonprofit organization, or Indian tribe shall deposit all matching funds for each Individual Development Account into a parallel account at a qualified financial institution, a qualified nonprofit organization, or an Indian tribe.

(b) REGULAR DEPOSITS OF MATCHING FUNDS-

(1) IN GENERAL- Subject to paragraph (2), the qualified financial institution, qualified nonprofit organization, or Indian tribe shall not less than quarterly (or upon a proper withdrawal request under section 1005, if necessary) deposit into the parallel account with respect to each eligible individual the following:

(A) A dollar-for-dollar match for the first $500 contributed by the eligible individual into an Individual Development Account with respect to any taxable year.

(B) Any matching funds provided by State, local, or private sources in

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accordance to the matching ratio set by those sources.

(2) INFLATION ADJUSTMENT-

(A) IN GENERAL- In the case of any taxable year beginning after 2002, the dollar amount referred to in paragraph (1)(A) shall be increased by an amount equal to--

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section (1)(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, by substituting `2001' for `1992'.

(B) ROUNDING- If any amount as adjusted under subparagraph (A) is not a multiple of $20, such amount shall be rounded to the nearest multiple of $20.

(3) Cross reference-

For allowance of tax credit for Individual Development Account subsidies, including matching funds,

see section 30B of the Internal Revenue Code of 1986.

(c) DEPOSIT OF MATCHING FUNDS INTO INDIVIDUAL DEVELOPMENT ACCOUNT OF INDIVIDUAL WHO HAS ATTAINED AGE 61- In the case of an Individual Development Account owner who attains the age of 61, the qualified financial institution, qualified nonprofit organization, or Indian tribe which holds the parallel account for such individual shall deposit the funds in such parallel account into the Individual Development Account of such individual on the first day of the succeeding taxable year of such individual .

(d) UNIFORM ACCOUNTING REGULATIONS- To ensure proper recordkeeping and determination of the tax credit under section 30B of the Internal Revenue Code of 1986, the Secretary shall prescribe regulations with respect to accounting for matching funds in the parallel accounts .

(e) REGULAR REPORTING OF ACCOUNTS - Any qualified financial institution, qualified nonprofit organization, or Indian tribe shall report the balances in any Individual Development
Account and parallel account of an individual on not less than an annual basis to such individual .

SEC. 206. WITHDRAWAL PROCEDURES.

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(a) WITHDRAWALS FOR QUALIFIED EXPENSES- To withdraw money from an individual's Individual Development Account to pay qualified expenses of such individual or such individual's spouse or dependents, the qualified financial institution, qualified nonprofit organization, or Indian tribe shall directly transfer such funds from the Individual Development Account, and, if applicable, from the parallel account electronically to the distributees described in section 1001(8)(A)(ii). If the distributee is not equipped to receive funds electronically, the qualified financial institution, qualified nonprofit organization, or Indian tribe may issue such funds by paper check to the distributee.

(b) WITHDRAWALS FOR NONQUALIFIED EXPENSES- An Individual Development Account owner may unilaterally withdraw any amount of funds from the Individual Development Account for purposes other than to pay qualified expenses, but shall forfeit a proportionate amount of matching funds from the individual's parallel account by doing so, unless such withdrawn funds are recontributed to such Account by September 30 following the withdrawal.

(c) WITHDRAWALS FROM ACCOUNTS OF NONELIGIBLE INDIVIDUALS- If the individual for whose benefit an Individual Development Account is established ceases to be an eligible individual , such account shall remain an Individual Development Account, but such individual shall not be eligible for any further matching funds under section 1004(b)(1)(A) during the period--

(1) beginning on the first day of the taxable year of such individual following the beginning of such ineligibility, and

(2) ending on the last day of the taxable year of such individual in which such ineligibility ceases.

(d) TAX TREATMENT OF MATCHING FUNDS- Any amount withdrawn from a parallel account shall not be includible in an eligible individual's gross income.

(e) WITHDRAWAL LIABILITY RESTS ONLY WITH ELIGIBLE INDIVIDUALS- Nothing in this title may be construed to impose liability on a qualified financial institution, a qualified nonprofit organization, or an Indian tribe for non-compliance with the requirements of this title related to withdrawals from Individual Development Accounts .

SEC. 207. CERTIFICATION AND TERMINATION OF QUALIFIED INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.

(a) CERTIFICATION PROCEDURES- Upon establishing a qualified individual

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development account program under section 1002, a qualified financial institution, a qualified nonprofit organization, or an Indian tribe shall certify to the Secretary on forms prescribed by the Secretary and accompanied by any documentation required by the Secretary, that--

(1) the accounts described in subparagraphs (A) and (B) of section 1002(b)(1) are operating pursuant to all the provisions of this title; and

(2) the qualified financial institution, qualified nonprofit organization, or Indian tribe agrees to implement an information system necessary to monitor the cost and outcomes of the qualified individual development account program.

(b) AUTHORITY TO TERMINATE QUALIFIED IDA PROGRAM- If the Secretary determines that a qualified financial institution, a qualified nonprofit organization, or an Indian tribe under this title is not operating a qualified individual development account program in accordance with the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such institution's, nonprofit organization's, or Indian tribe's authority to conduct the program. If the Secretary is unable to identify a qualified financial institution, a qualified nonprofit organization, or an Indian tribe to assume the authority to conduct such program, then any funds in a parallel account established for the benefit of any individual under such program shall be deposited into the Individual Development Account of such individual as of the first day of such termination.

SEC. 208. REPORTING, MONITORING, AND EVALUATION.

(a) RESPONSIBILITIES OF QUALIFIED FINANCIAL INSTITUTIONS, QUALIFIED NONPROFIT ORGANIZATIONS, AND INDIAN TRIBES- Each qualified financial institution, qualified nonprofit organization, or Indian tribe that operates a qualified individual development account program under section 1002 shall report annually to the Secretary within 90 days after the end of each calendar year on--

(1) the number of eligible individuals making contributions into Individual Development Accounts ;

(2) the amounts contributed into Individual Development Accounts and deposited into parallel accounts for matching funds;

(3) the amounts withdrawn from Individual Development Accounts and parallel accounts , and the purposes for which such amounts were withdrawn;

(4) the balances remaining in Individual Development Accounts and parallel accounts ; and

(5) such other information needed to help the Secretary monitor the cost and outcomes of the qualified individual development account program (provided in a

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non-individually-identifiable manner).

(b) RESPONSIBILITIES OF THE SECRETARY-

(1) MONITORING PROTOCOL- Not later than 12 months after the date of the enactment of this Act, the Secretary shall develop and implement a protocol and process to monitor the cost and outcomes of the qualified individual development account programs established under section 1002.

(2) ANNUAL REPORTS- In each year after the date of the enactment of this Act, the Secretary shall submit a progress report to Congress on the status of such qualified individual development account programs. Such report shall include from a representative sample of qualified individual development account programs information on--

(A) the characteristics of participants, including age, gender, race or ethnicity, marital status, number of children, employment status, and monthly income;

(B) deposits, withdrawals, balances, uses of Individual Development Accounts , and participant characteristics;

(C) the characteristics of qualified individual development account programs, including match rate, economic education requirements, permissible uses of accounts , staffing of programs in full time employees, and the total costs of programs; and

(D) process information on program implementation and administration, especially on problems encountered and how problems were solved.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $1,000,000 for fiscal year 2002 and for each fiscal year through 2008, for the purposes of implementing this title, including the reporting, monitoring, and evaluation required under section 1007, to remain available until expended.

SEC. 210. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED FEDERAL PROGRAMS.

Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual , for the purposes of determining eligibility to receive,
or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual , an amount equal to the sum of--

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(1) all amounts (including earnings thereon) in any Individual Development Account; plus

(2) the matching deposits made on behalf of such individual (including earnings thereon) in any parallel account,

shall be disregarded for such purposes.

SEC. 211. MATCHING FUNDS FOR INDIVIDUAL DEVELOPMENT ACCOUNTS PROVIDED THROUGH A TAX CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

(a) IN GENERAL- Subpart B of part IV of subchapter A of chapter 1 (relating to other credits) is amended by inserting after section 30A the following new section:

`SEC. 30B. INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT CREDIT FOR QUALIFIED FINANCIAL INSTITUTIONS.

`(a) DETERMINATION OF AMOUNT- There shall be allowed as a credit against the applicable tax for the taxable year an amount equal to the individual development account investment provided by an eligible entity during the taxable year under an individual development account program established under section 1002 of the XX Act.

`(b) APPLICABLE TAX- For the purposes of this section, the term `applicable tax' means the excess (if any) of--

`(1) the tax imposed under this chapter (other than the taxes imposed under the provisions described in subparagraphs (C) through (Q) of section 26(b)(2)), over

`(2) the credits allowable under subpart B (other than this section) and subpart D of this part.

`(c) INDIVIDUAL DEVELOPMENT ACCOUNT INVESTMENT-

`(1) IN GENERAL- For purposes of this section, the term `individual development account investment' means, with respect to an individual development account program of a qualified financial institution in any taxable year, an amount equal to the sum of--

`(A) the aggregate amount of dollar-for-dollar matches under such program under section 1004(b)(1)(A) of the XX Act for such taxable year, plus

`(B) an amount equal to the sum of--

`(i) with respect to each Individual Development Account opened during

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such taxable year, $100, plus

`(ii) with respect to each Individual Development Account maintained during such taxable year, $30.

`(2) INFLATION ADJUSTMENT-

`(A) IN GENERAL- In the case of any taxable year beginning after 2002, each dollar amount referred to in paragraph (1)(B) shall be increased by an amount equal to--

`(i) such dollar amount, multiplied by
`(ii) the cost-of-living adjustment determined under section (1)(f)(3) for the calendar year in which the taxable year begins, by substituting `2001' for `1992'.

`(B) ROUNDING- If any amount as adjusted under subparagraph (A) is not a multiple of $5, such amount shall be rounded to the nearest multiple of $5.

`(d) ELIGIBLE ENTITY- For purposes of this section, the term `eligible entity' means a qualified financial institution, or 1 or more contractual affiliates of such an institution as defined by the Secretary in regulations.

`(e) OTHER DEFINITIONS- For purposes of this section, any term used in this section and also in the XX Act shall have the meaning given such term by such Act.

`(f) DENIAL OF DOUBLE BENEFIT- No deduction or credit (other than under this section) shall be allowed under this chapter with respect to any expense which is taken into account under subsection (c)(1)(A) in determining the credit under this section.

`(g) REGULATIONS- The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section (notwithstanding any termination date described in subsection

(h)) in cases where there is a forfeiture under section 1005(b) of the XX Act in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

`(h) APPLICATION OF SECTION- This section shall apply to any expenditure made in any taxable year beginning after December 31, 2001, and before January 1, 2009, with respect to any Individual Development Account opened before January 1, 2007.'.

(b) CONFORMING AMENDMENT- The table of sections for subpart B of part IV of

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subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

`Sec. 30B. Individual development account investment credit for qualified financial institutions.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE III -- CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS

SEC. 301. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS- For purposes of this section:

(1) AIRCRAFT- The term `aircraft' has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY- The term `business entity' means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT- The term `equipment' includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY- The term `facility' means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE- The term `gross negligence' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT- The term `intentional misconduct' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE- The term `motor vehicle' has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION- The term `nonprofit organization' means--

(A) any organization described in section 501(c)(3) of the Internal Revenue

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Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE- The term `State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY-

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS-

(A) IN GENERAL- Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION- This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS-

(A) IN GENERAL- Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if--

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION- This paragraph shall apply--

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a

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facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT-

(A) IN GENERAL- Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if--

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION- This paragraph shall apply--

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(c) EXCEPTIONS- Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

(d) SUPERSEDING PROVISION-

(1) IN GENERAL- Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION- Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY- A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute--

(1) citing the authority of this section;

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(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE- This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act .

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REV_00133537

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
Sent: 10/15/2001 7:52:41 AM
Subject: :
Attachments: P_OFD64004_WHO.TXT_1.doc

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CREATION DATE/TIME:15-OCT-2001 11:52:41.00
SUBJECT::
TO:Nancy P. Dorn ( CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Note that I just learned the $250,000 compensation provision for
Africa bombing victims was deleted on the House floor; Maxine Waters
termed it an "insult as redrafted" and asked that it be cut rather than
included. I have attached a revised side by side to so reflect.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OFD64004_WHO.TXT_1>
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Primary Differences Between House and Senate Bills
(October 15, 2001)

(1) Section 203 of the House bill requires post-sharing notification to the court for grand jury information.
(2) Section 216 of the House bill modifies the pen/trap provisions consistent with Congressman Armey's proposal.
(3) Section 223 of the House bill contains a version of Congressman Frank's proposals relating to civil liability and disciplinary action based on surveillance activities.
(4) Section 224 of the House bill sunsets most of title II.
(5) The House bill does not incorporate title III of the Senate Bill, which is entitled "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001."
(6) Title IV of the House bill (relating to immigration) has a subtitle C relating to victims of terrorism that has no counterpart in the Senate bill.
(7) Section 412 of the House bill requires reconsideration of the detention of terrorist aliens who are not removed every six months, and consolidates habeas review in the D.C. Circuit.
(8) Title V of the House bill omits the McDade fix (section 501 in the Senate Bill).
(9) Title VIII of the House bill omits the biological weapons section (section 802 in the Senate bill).
(10) The House bill adds a section that requires the designation of an official by the Inspector General to receive allegations of civil rights and civil liberties abuses by Department personnel.

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 10/15/2001 10:42:36 AM
Subject: : Re: judges meeting

Begin Original ARMS Header
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CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 14:42:36.00
SUBJECT:: Re: judges meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
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CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I have judicial interviews and 9 and 10:30 tomorrow morning, so that time won't work very well for me. You can still go ahead and have it, however, and fill me in afterwards.

Brett M. Kavanaugh
10/15/2001 02:41:28 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: judges meeting

still would like to do that quick internal judges meeting to go over remaining vacancies; how about tomorrow right after staff meeting? And we can vow to make the staff meeting itself as quick as possible?

Message Sent
To:_____
Helgard C. Walker/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: John.Elwood@usdoj.gov [UNKNOWN] <John.Elwood@usdoj.gov>
Sent: 10/15/2001 1:00:05 PM
Subject: : Fwd: Technical Amendments to House Bill
Attachments: P_HBL64004_WHO.TXT_1.txt; P_HBL64004_WHO.TXT_2.wpd

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SUBJECT:: Fwd: Technical Amendments to House Bill
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:John.Elwood@usdoj.gov (John.Elwood@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

If you have any other technical amendments from Justice, could you pass them my way? I am trying to make sure that nothing falls through the cracks.
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 10/15/2001 04:57 PM ----------

John Elwood <John.Elwood@usdoj.gov>
10/15/2001 04:00:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP, Pat.O'Brien@usdoj.gov (Receipt Notification Requested)
cc:
Subject: Fwd: Technical Amendments to House Bill

Date: 10/15/2001 04:10 pm -0400 (Monday)
From: John Elwood
To: Brett_M._Kavanaugh@who.eop.gov; Courtney_s._elwood@who.eop.gov; Pat O'Brien
Subject: Fwd: Technical Amendments to House Bill

FYI: CCIPS' requested changes to the House bill.

All but the last request - which is a request to insert language in the report - were included in the list I sent over Friday. Even those these are virtually all repetitive, I am passing these along anyway since they include updated page and line numbers that correspond to the most recent House version.

- ENCLOSURE
- House Bill comments CCIPS 1.1.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HBL64004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HBL64004_WHO.TXT_2>

From: Richard Downing
To: <chiefs>;<Daley>;<Cybele>;<Eckenwiler>;<Mark>;<Elwood>;<John>;<Newstead>;<Jennifer>
Sent: 10/15/2001 3:58:00 AM
Subject: Technical Amendments to House Bill

The attached includes the pagination for the new version of the bill. These ar
e pretty important - a couple of them are required to have the intended amendme
nts take effect.

Thanks,
richard.

Prepared by: Richard W. Downing
CCIPS
October 15, 2001

CCIPS Comments on H.R. 2975

The following are proposed technical amendments to the House Bill. Page and line numbers refer to House Bill circulated on October 15, 2001.

I. Important Technical Amendments

A. Section 216(5), page 44, after line 3:
Proposed change: Insert:

> "(6) CONFORMING AMENDMENT.– Section 3124(b) of title 18, United States Code, is amended by inserting "or other facility" after "the appropriate line"."

Reason: The amendments contained in the bill insert "or other facility" after "line" throughout the statute to reflect the fact that pen/trap devices are no longer used only on telephone lines (see, e.g., page 40, line 20; page 41, line 13). This change to 3124(b) was inadvertently left out.

B. Section 220(3), page 47, after line 9:
Proposed change: Insert:

> "(3) CONFORMING AMENDMENT.– Section 2703(d) of title 18, United States Code, is amended by striking "described in section 3127(2)(A)"."

Reason: In order for the amendment in Section 220(2) to have the intended effect of modifying the definition of "court of competent jurisdiction," the 2703(d) cross-
reference to another section of title 18 must be struck.

C. Section 814(a)(4), page 155, line 12-15.
Proposed change: Strike "(B) caused (or, in the" and all that follows through "resulted in–" and insert the following:

> "(B) by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or in the case of an attempted offense, would, if completed, have caused)–"

Reason: The language in the bill does not make sense. The above text was taken from the proposed Senate manager's amendment.

D. Section 814(c)(1), page 158, lines 1-3.
Proposed change: Strike subsection (c)(1) and insert the following:

"(1) in subsection (e)(2) after "means a computer" insert "including a computer located outside of the United States"

Reason: Moving the phrase to a different place in the same subsection reduces the risk that the amendment will have negative implications on other statutes that contain this language.

II. Technical Changes To Frank Amendment To Which Rep. Frank Already Agreed

A. Section 223(b)(3), page 51, line 24.
Proposed change: Strike "duties" and insert "functions".
Reason: Rep. Frank agreed to change, but it inadvertently does not appear in the text.

B. Section 223(c)(1), page 52, line 8.
Proposed change: After "any" insert "willful".
Reason: Rep. Frank agreed to change, but it inadvertently does not appear in the text.

C. Section 223(c)(1), page 52, line 14.
Proposed change: After "successfully establishes" insert "such".
Reason: Rep. Frank agreed to change, but it inadvertently does not appear in the text.

D. Section 223(c)(1), page 53, lines 1-5.
Proposed change: Strike "(2) Any action against" and all that follows through "discovers the violation." and insert the following new paragraph (2):

> "(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation."

Reason: Rep. Frank agreed to change, but it inadvertently does not appear in the text.

III. Report Language

A. Section 222, page 49, line 6-15:
Proposed change: If possible, insert the following report language:

> "The Act does not require providers to spend money to develop, design, or implement technical capabilities or facilities. Providers must, of course, continue to comply with obligations imposed by court orders to assist in the interception or collection of evidence in criminal investigations."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
Sent: 10/15/2001 3:21:59 PM
Subject: : RE: Presidential Libraries Act

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-OCT-2001 19:21:59.00
SUBJECT:: RE: Presidential Libraries Act
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
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No.

"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
10/15/2001 05:35:40 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: Presidential Libraries Act

May Paul consult with the Archivist's office on this?

-----Original Message-----
From: Whelan, M Edward III
Sent: Monday, October 15, 2001 3:37 PM
To: 'Kavanaugh, Brett'
Subject: Presidential Libraries Act

We don't have anything in the can on this. I've asked Paul Colborn to
prepare a summary of legal requirements. Let me know your deadline.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
Sent: 10/15/2001 4:59:32 PM
Subject: : Re: Presidential Libraries Act

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CREATION DATE/TIME:15-OCT-2001 20:59:32.00
SUBJECT:: Re: Presidential Libraries Act
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

this week, if possible, thanks (no on Archives consultation)

"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
10/15/2001 03:36:40 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Presidential Libraries Act

We don't have anything in the can on this. I've asked Paul Colborn to
prepare a summary of legal requirements. Let me know your deadline.

From: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
To: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Coniglio, Peter J <Peter.J.Coniglio@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Carroll, James W (OLP) <James.W.Carroll@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;'Patrick O'Brien' <Patrick.Obrien@usdoj.gov>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
Sent: 10/16/2001 4:30:18 AM
Subject: : judicial media review
Attachments: P_5IS64004_WHO.TXT_1.wpd

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READ:UNKNOWN
TO:"Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Coniglio, Peter J" <Peter.J.Coniglio@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:"Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:'Patrick O'Brien' <Patrick.Obrien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ('Patrick O'Brien' <Patrick.Obrien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
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Please see attached review

- Judicial Media Review 10-15-01.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5IS64004_WHO.TXT_1>

Media Review - Judicial Nominations
Monday, October 15, 2001

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Paul Kane, *Roll Call*, October 15, 2001

"Inhofe: Two Oklahoma Nominees for Federal Bench Could be Confirmed Soon," 4
The Associated Press, October 15, 2001

"Foreign Aid Bill Held Up by GOP; Senators Demand Action on Nominees," 5
Helen Dewar, *The Washington Post*, October 13, 2001

"Nominee Criticized for Club Affiliation; It has Been Accused of Discriminating," 7
Bill Walsh, *The Times-Picayune*, October 13, 2001

"Palm Beach Circuit Judge, Miami Lawyer to get Presidential Nod for Judgeships," 8
Dan Christensen, *Palm Beach Daily Business Review*, October 12, 2001

"Mills Confirmed for North Mississippi Federal Judgeship" 10
Emily Wagster, *The Associated Press*, October 12, 2001

Op/Eds
NONE

Transcripts/Members of Congress
NONE

Interest Groups/Press Releases
NONE

General Judicial Articles

Senate Faces Showdown on Judges

By Paul Kane
Roll Call

REV_00133557

Monday, October 15, 2001
With Democrats and Republicans still clashing over the pace of judicial nominations, the appropriations process is expected to remain in slow motion this week in the Senate.

For now, appropriators say the Senate gridlock is not hampering efforts to meet the end-of-the-month target for wrapping up the annual spending bills. House Members and Senators on the spending committees have continued to work on a handful of conference reports that could be concluded this week.

But another week or more of foot-dragging on appropriations measures in the Senate could seriously jeopardize Congress' ability to conclude action on spending bills this month. Senate GOP leaders, however, say ensuring President Bush's judicial nominees get confirmed to the federal bench is just as important a goal as moving appropriations.

"It's still a major problem," Senate Minority Leader Trent Lott (R-Miss.) said at the end of last week. Less than two weeks ago, Lott initiated the strategy of objecting to any attempt by Democrats
to bring up an appropriations bill.

Asked if he expected any appropriations measures to move forward this week, Lott replied, "Not right now. No, sir."

Senate Majority Leader Thomas Daschle (D-S.D.) has not blinked, and instead Friday linked the fate of one of the Republicans' key legislative initiatives - the energy bill - to their cooperation on the
appropriations bills.

"They say they want to bring up energy, and yet they filibuster every bill that we need to take up to get to a point where we can bring up energy," Daschle said, adding that he will first finish any emergency legislation related to Sept. 11 events and appropriations. "As soon as we get that essential work done, I'm more than willing to look at energy and agriculture - those two bills in particular."

Since adopting the more aggressive approach toward judicial nominees and the spending process, Senate Republicans have only grown increasingly frustrated with Democrats, particularly Judiciary
Chairman Patrick Leahy (Vt.).

On Friday the nine Judiciary Republicans sent Leahy a letter attacking his decision last month to change the questionnaire that all nominees coming before the committee must answer. For the first time, nominees will have to answer questions in the publicly released portion of the questionnaire pertaining to any arrests, charges or convictions of the past 20 years. In the confidential section, which is available to all committee members and their staffs, nominees will now have to spell out past drug use.

REV_00133558

Noting that Leahy did not push for these changes during the Clinton administration, the GOP Senators suggested that he was "motivated to implement these changes for political purposes," and they argue that publicizing these issues would have a chilling effect on public service.

"The cumulative effect of your changes is that qualified potential nominees may be deterred from pursuing a career in public service by the more complex and intrusive nature of the questionnaire," the
Senators wrote.

Leahy, however, contends that his new questionnaire simplifies the process and that his questions are almost identical to those being publicly asked of nominees by other committees, particularly Governmental Affairs, which had its survey of nominees serve as a model for Judiciary.

Leahy's sixth hearing on judicial nominees came this month. In 1989 and in 1993, similar first years of new administrations, the committee didn't hold its fifth judicial nomination hearing until November.

"The committee and the Senate should be commended, not criticized,"Leahy said in a floor speech Thursday, noting that Judiciary has focused recently on anti-terrorism legislation as well. "In spite of unfair and unfounded criticism, I have continued to proceed with additional hearings and press onward as best I can."

Lott, however, said rank-and-file Republicans are still furious with Leahy, and noted that recent moves to slow the appropriations process came after the GOP Conference had previously urged him
to block the spending bills to gain leverage on judicial nominees - a tactic he initially resisted but one he has since agreed upon.

"I've already pushed them back twice," he said of his fellow Republicans.

The anger with Leahy has turned somewhat personal in nature. A growing number of GOP Senators complain that the only way they can get him to move judges from their home states is if they personally ask the chairman to hold a hearing and give them a committee vote, something they say is akin to "begging."

GOP committee members contend that this method leaves open the question of favoritism. "To avoid concerns about favoritism, we suggest that you move judicial nominees in roughly the order that
they were nominated," the nine Republicans wrote in an Oct. 3 letter to Leahy.

In his floor speech, Leahy acknowledged that he appreciated the "courtesy" shown by some GOPSenators who personally approached him and let him know how important certain nominees were to their judicial districts, pleas that he has answered. "Others will carp and criticize no matter what we are able to achieve," he said.

REV_00133559

Republicans said the impasse over judges and appropriations will end only after Daschle and Leahy give them specifics of when and how often the nominees will be confirmed.

"We're going to have to have some assurances that we're going to get some judges up [on the floor]," said Minority Whip Don Nickles (R-Okla.), who has been negotiating with his Democratic counterpart, Majority Whip Harry Reid (Nev.).

Reid, however, said he is still waiting to hear from Nickles about which nominees Republicans feel should be moved first and fastest and that the delay will only hold up the problem's resolution.

"Senator Nickles said he'd bring me a list. I'll be happy to talk to him," Reid said.

In the meantime, the Senate has been unable to take up the remaining five appropriations measures left to be approved and sent to a House-Senate conference. Four of those bills have already been completed by the Appropriations Committee and are awaiting floor action.

Daschle, having grown impatient with Republican demands, has scheduled a cloture vote for this afternoon on the foreign operations appropriation, which could serve as the first major test of the GOP's will on the issue.

The House, meanwhile, has completed work on 12 of the 13 spending bills, with the final appropriation bill, on national security and Defense issues, targeted for a floor vote at the end of this week or early next week.

Eight spending measures have passed both chambers, but House and Senate appropriators have approved just one conference report.

Because of the work on conference reports, House appropriators don't believe they have been held up by the Senate delays, according to John Scofield, spokesman for Appropriations Chairman Bill Young (R-Fla.). But if the judicial fight lasts another week or more, House appropriators will be left with nothing to do, and the target date for adjournment will inevitably fall well into next month, he said.

"If it goes on much longer," Scofield warned, "we'll have some problems."

Inhofe: Two Oklahoma Nominees for Federal Bench Could be Confirmed Soon

The Associated Press
Monday, October 15, 2001

Two nominees for the federal bench in Oklahoma could soon be confirmed by the U.S. Senate, according to Sen. Jim Inhofe.

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The Senate Judiciary Committee could act upon the nominations of Claire Eagan and James Payne within days, Inhofe, R-Okla., said. He also said a confirmation vote by the full Senate could follow quickly. Eagan, 51, and Payne, 60, were nominated by President Bush less than three months ago. The brevity of their confirmation process is uncommon considering it takes some nominees more than a year to win confirmation.

Eagan of Tulsa is headed for a slot in the state's Northern judicial district, while Payne of Muskogee will divide his time on the bench among the Northern, Western and Eastern districts. Both currently serve as U.S. magistrates.

During their confirmation hearing, both nominees were asked how to maintain the balance between liberty and security while addressing the threat of terrorism.

Eagan said she trusts Congress to be conscious of the balance between civil liberties and the fear people have of more terrorist attacks.

"I believe the Supreme Court has suggested that there might be an exception when dealing with civil liberties and the different procedural safeguards for those liberties if there is an issue of terrorism," she said. "And I believe any statute will have a presumption of constitutionality."

Payne also said he had confidence in lawmakers' judgments in these trying times.

"The hallmark of this country is our personal freedoms," he said. "I know the Senate and the Congress has a very difficult balancing act to keep us free and keep us secure. I know the role of the court is not to interfere with your process."

Oklahoma has two other vacancies on the federal bench.

Assistant U.S. Attorney Joe Heaton and Stephen P. Friot, both of Oklahoma City, have been nominated to fill those two slots in the Western District.

Foreign Aid Bill Held Up by GOP; Senators Demand Action on Nominees

By Helen Dewar
The Washington Post
Saturday, October 13, 2001

In a resumption of partisan squabbling over judicial nominations, Senate Republicans are holding up action on a $ 15.6 billion foreign aid spending bill as leverage to force Democrats to speed action on President Bush's selections for the federal bench.

Democrats have scheduled a vote late Monday to curtail the delaying tactics, but key Republicans say they will continue stalling on spending bills until the Senate completes action on the roughly 35 nominations that were sent to the Senate before its summer recess and that are still pending.

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The two parties have been feuding over the pace of action on judicial nominations since shortly after Democrats took control of the Senate in early June. Democrats say they are acting as fast as they can -- faster, they say, than Republicans acted in moving many of President Bill Clinton's judicial nominations. Republicans, using different statistics to measure speed, contend that Democrats are dragging their heels and reneging on agreements to expedite action. The sparring subsided a bit
after the Sept. 11 terrorist attacks on New York and Washington but has resumed with renewed vigor on both sides.

According to Sen. Orrin G. Hatch (Utah), ranking Republican on the Judiciary Committee, there are 108 vacancies on the federal bench, which he said is more than there were when committee Chairman Patrick J. Leahy (D-Vt.) used to complain about judicial vacancies, when the White House was controlled by Democrats and the Senate by Republicans.

Eight judicial nominees have been confirmed, including two who were approved by the Senate late Thursday. Fifty-two other nominations are awaiting action, according to Hatch.

Defending the Democratic record, Leahy said no Bush nominees even had hearings before Democrats took over. Leahy said Democrats "are now ahead of the pace of confirmations for judicial nominees in the first year of the Clinton administration and the pace in the first year of the first Bush administration." He also said the administration had yet to nominate any U.S. marshals and still has to fill 40 U.S. attorney posts.

On Oct. 3, all nine Republicans on the Judiciary Committee wrote Leahy to demand faster action on judges. "In our view, once the anti-terrorism legislation is completed," they said, referring to legislation that passed the Senate on Thursday, "there is no higher priority than filling the vacancies that exist in our federal courts." Because of the terrorist attacks, they added, "the other priority is confirmation of U.S. attorney nominees."

In an interview yesterday, Sen. Jon Kyl (R-Ariz.), one of the signers of the letter, said Republicans may continue holding up spending bills -- except for the bill that funds military operations -- to ensure action on judges. "It's very clear we can do many things at the same time if we want to," he said. "This has a very high priority."

In addition to the foreign operations and defense bills, the Senate has yet to act on three domestic spending measures, including the huge bill for education, health and other social welfare programs.

"Obviously we have to get together and work this out," Kyl said.

Reacting to the GOP tactics on the foreign operations bill, Senate Majority Leader Thomas A. Daschle (D-S.D.) said Republicans have tried to filibuster virtually every bill that has come up in recent weeks. "So I'm not surprised, I'm just disappointed," he added.

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Added David Carle, spokesman for Leahy: "Some Republicans are scared to death that Democrats are going to treat their nominees as badly as they treated Democratic nominees, and they're not. Democrats are being fair."

Nominee Criticized for Club Affiliation; It has Been Accused of Discriminating

By Bill Walsh
The Times-Picayune
Saturday, October 13, 2001

U.S. Rep. Billy Tauzin said Friday that he will urge federal judicial nominee Jay Zainey to drop his
membership to Metairie Country Club because questions have been raised about whether the club discriminates against African-Americans.

Tauzin said he expected to make the suggestion "pretty soon" to Zainey, a Metairie lawyer who was nominated Wednesday by President Bush to fill a vacancy on U.S. District Court in New Orleans.

Tauzin, R-Chackbay, said he has no knowledge of the membership practices of the 79-year-old Jefferson Parish club but that questions about the club's policy should be enough to make the candidate rethink his membership, even though a recent FBI check of the club found no discrimination. "The mere perception of a problem, when he is a judicial nominee, is best dealt with forcefully," Tauzin said.

An official from Metairie Country Club said the organization does not discriminate against anyone. According to club rules, potential members must be invited to join, endorsed by two other members and then approved by a membership committee.

General Manager Don Beever would not say whether there are any African-American members among the club's 1,270 families.

Zainey, 50, did not return calls for comment.

In 1990, then-club President Dalton Truax told The Times-Picayune that the country club had no African-American members.

Earlier complaints

The club's membership practices came under scrutiny during a judicial race in September 1998, when a group of civic and church leaders in New Orleans filed a complaint with the state Judicial Commission about club member Judge Niles Hellmers, who was running for re-election to 1st City Court.

The complaint alleged that Hellmers was in violation of the judicial code of ethics, which forbids

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judges from holding memberships in any organization that arbitrarily excludes members on the basis of race, sex, religion or national origin.

The complaint was rendered moot when Hellmers was defeated for re-election a month later by Sonja Spears.

Marie Galatas, a local pastor and one of those who filed the complaint, said Zainey's membership in the club should disqualify him from serving on the bench.

"If he knows there are no black members of that club, he should resign before getting that position," Galatas said. "If he doesn't know, it's time for him to inquire."

FBI finds nothing wrong

The FBI recently looked at the club's membership policies and practices as part of Zainey's background check. The agency concluded there was no discrimination.

Should Zainey remain in the club, he can expect questions about its membership practices when his nomination is scrutinized by the Senate Judiciary Committee. The committee requests that all nominees say whether they belong to any organizations that discriminate "through either formal membership requirements or practical implementation of the membership policies." If so, nominees are asked what they have done to change those policies.

With a backlog of Bush nominees pending before the judiciary panel, it's unclear when Zainey's nomination will be considered

Palm Beach Circuit Judge, Miami Lawyer to get Presidential Nod for Judgeships

By Dan Christensen
Palm Beach Daily Business Review
Friday, October 12, 2001

A Palm Beach circuit judge and a prominent Miami attorney have been chosen by the White House to fill two vacant U.S. District Court judgeships in South Florida, the Daily Business Review has learned.

Judge Kenneth A. Marra, who has declared no party affiliation, and Jose E. Martinez, a Republican, were selected for the lifetime appointments from among six finalists whose names were submitted to President Bush last month by the Florida Federal Nominating Commission.

After FBI background checks are completed in about 45 days, their nominations will be officially announced and their names sent to the U.S. Senate for confirmation.

Marra was tapped for a seat on the federal bench in Fort Lauderdale. Martinez will sit in Miami. Bob Martinez, the former Miami U.S. attorney who chairs the Federal Nominating Commission,

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said the White House isn't issuing a statement now regarding the nominations and asked him not to discuss the matter publicly. Asked whether that was for security reasons, Martinez said he doesn't know why.

"I don't know what their thinking is," said Martinez. He referred a caller to an assistant White House general counsel who did not return a phone message.

Jose Martinez, through a secretary, declined to comment about his selection.

Martinez, a stalwart Republican who was born in the Dominican Republic, a former federal prosecutor and regional director of the old federal Office for Drug Abuse Law Enforcement, is name partner in the nine-attorney firm Martinez & Gutierrez. He specializes in product liability cases, including tobacco and automotive product liability defense.

Martinez, 60, is also vice chair of the Federal Court Practice Committee, the Florida Bar's liaison to the federal district courts.

"He's well-known, well-liked and has been a very capable trial attorney for many years," said attorney Edward B. Davis, a retired U.S. District chief judge.

Marra, who currently serves on Palm Beach's criminal bench, also declined to comment on being selected.

Marra is a Stetson law school graduate who was appointed to his seat in 1996 by Gov. Lawton Chiles.

Early in his career, the 50-year-old jurist worked as a civil trial attorney for the Department of Justice. He was also a partner and commercial attorney in Palm Beach with the firm of Nason Gildan Yeager Gerson & White. The firm is now known as Nason Yeager Gerson White & Lioce.

More than 30 lawyers applied for the two judgeships when they were announced earlier this year. The two other finalists for the Miami judgeship were Miami federal magistrate Ted Bandstra and Miami-Dade Circuit Judge Jerald Bagley. The two other finalists for the Fort Lauderdale seat were Fort Lauderdale federal magistrate Barry S. Seltzer and Broward Circuit Judge James I. Cohn.

All were interviewed by Sens. Bob Graham and Bill Nelson and officials from the White House and the Justice Department.

"I found the process to be extremely fair," said finalist Cohn. "I am disappointed, but not deterred."

With choices for the two judgeships made, the only major federal post in South Florida with finalists under consideration by the president is that of the U.S. attorney. The contenders are

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incumbent Guy Lewis, White & Case Republican insider Marcos Jimenez and Marcia Cooke, a former federal prosecutor and chief inspector general to Gov. Jeb Bush.

Mills Confirmed for North Mississippi Federal Judgeship

By Emily Wagster
The Associated Press
Friday, October 12, 2001

The U.S. Senate voted 98-0 Thursday to confirm Mike Mills of Fulton for a federal judgeship in north Mississippi.

The vote came after Sen. Dianne Feinstein, D-Calif., said she wouldn't delay a vote on his nomination. She had raised concerns about an abortion case dissent in which Mills participated. "I'm very excited and very grateful," Mills, 45, said shortly after learning of his confirmation.

Mills has been on the Supreme Court since 1995 and said he expects to remain on it until the end of the month. After that, he'll be based in U.S. District Court in Oxford. He'll also hear cases in Aberdeen and Greenville.

"The approval of Justice Mills by the Senate will give our state the benefit of a very well qualified new federal judge," said Sen. Thad Cochran, R-Miss. "He will be a fine addition to the federal bench in Mississippi."

Mills will replace U.S. District Judge Neal Biggers Jr. of Oxford, who has taken senior status. Mills served 12 years in the Mississippi House of Representatives before then-Gov. Kirk Fordice tapped him to fill a Supreme Court vacancy. Mills won a full term in 1996.

Sen. Trent Lott, R-Miss., who also promoted Mills' nomination to the federal judgeship, said he hoped Feinstein's questions were answered.

"Mike Mills is highly qualified by education, by experience and by demeanor," Lott said Thursday.

Feinstein had expressed concern over Mills' ruling in a case involving a woman accused of trespassing at an abortion clinic in Jackson.

Dr. Beverly McMillan said the trespassing was justified because she had information about dangerous and illegal procedures at the clinic. A Hinds County judge did not allow the testimony and McMillan was convicted on the trespassing charge.

In a 5-4 decision by the Supreme Court, Mills joined a dissent that said every defendant had a right to present his or her theory of a case.

National abortion rights groups had brought his vote to the attention of senators.

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Feinstein's spokesman, Howard Gantman, said Wednesday that Feinstein had reviewed the record and wouldn't try to block Mills' confirmation.

Gov. Ronnie Musgrove will appoint a replacement for Mills. Musgrove will fill another vacancy when Justice Fred L. Banks of leaves the Supreme Court at the end of October to go into private law practice.

REV_00133567

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/16/2001 4:30:20 AM
Subject: : RE: Presidential Libraries Act

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CREATION DATE/TIME:16-OCT-2001 08:30:20.00
SUBJECT:: RE: Presidential Libraries Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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May Paul consult with the Archivist's office on this?

-----Original Message-----
From: Whelan, M Edward III
Sent: Monday, October 15, 2001 3:37 PM
To: 'Kavanaugh, Brett'
Subject: Presidential Libraries Act

We don't have anything in the can on this. I've asked Paul Colborn to
prepare a summary of legal requirements. Let me know your deadline.

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/16/2001 5:05:30 AM
Subject: : Re: liability reform

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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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It may make sense. The reaction of the leg team when we raised it last
time was that it would be a non-starter on the Hill, but maybe if we
describe it as something akin to workers comp -- no fault coverage for
certain types of injuries-- it wouldn't seem as controversial. How would
the pool be funded?
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From: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
To: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Coniglio, Peter J <Peter.J.Coniglio@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Carroll, James W (OLP) <James.W.Carroll@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;'Patrick O'Brien' <Patrick.Obrien@usdoj.gov>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>
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Subject: : judicial media review
Attachments: P_21374004_WHO.TXT_1.wpd

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Please see attached review

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NONE

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General Judicial Articles

Senate Faces Showdown on Judges

By Paul Kane
Roll Call

REV_00133573

Monday, October 15, 2001
With Democrats and Republicans still clashing over the pace of judicial nominations, the appropriations process is expected to remain in slow motion this week in the Senate.

For now, appropriators say the Senate gridlock is not hampering efforts to meet the end-of-the-month target for wrapping up the annual spending bills. House Members and Senators on the spending committees have continued to work on a handful of conference reports that could be concluded this week.

But another week or more of foot-dragging on appropriations measures in the Senate could seriously jeopardize Congress' ability to conclude action on spending bills this month. Senate GOP leaders, however, say ensuring President Bush's judicial nominees get confirmed to the federal bench is just as important a goal as moving appropriations.

"It's still a major problem," Senate Minority Leader Trent Lott (R-Miss.) said at the end of last week. Less than two weeks ago, Lott initiated the strategy of objecting to any attempt by Democrats
to bring up an appropriations bill.

Asked if he expected any appropriations measures to move forward this week, Lott replied, "Not right now. No, sir."

Senate Majority Leader Thomas Daschle (D-S.D.) has not blinked, and instead Friday linked the fate of one of the Republicans' key legislative initiatives - the energy bill - to their cooperation on the
appropriations bills.

"They say they want to bring up energy, and yet they filibuster every bill that we need to take up to get to a point where we can bring up energy," Daschle said, adding that he will first finish any emergency legislation related to Sept. 11 events and appropriations. "As soon as we get that essential work done, I'm more than willing to look at energy and agriculture - those two bills in particular."

Since adopting the more aggressive approach toward judicial nominees and the spending process, Senate Republicans have only grown increasingly frustrated with Democrats, particularly Judiciary
Chairman Patrick Leahy (Vt.).

On Friday the nine Judiciary Republicans sent Leahy a letter attacking his decision last month to change the questionnaire that all nominees coming before the committee must answer. For the first time, nominees will have to answer questions in the publicly released portion of the questionnaire pertaining to any arrests, charges or convictions of the past 20 years. In the confidential section, which is available to all committee members and their staffs, nominees will now have to spell out past drug use.

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Noting that Leahy did not push for these changes during the Clinton administration, the GOP Senators suggested that he was "motivated to implement these changes for political purposes," and they argue that publicizing these issues would have a chilling effect on public service.

"The cumulative effect of your changes is that qualified potential nominees may be deterred from pursuing a career in public service by the more complex and intrusive nature of the questionnaire," the
Senators wrote.

Leahy, however, contends that his new questionnaire simplifies the process and that his questions are almost identical to those being publicly asked of nominees by other committees, particularly Governmental Affairs, which had its survey of nominees serve as a model for Judiciary.

Leahy's sixth hearing on judicial nominees came this month. In 1989 and in 1993, similar first years of new administrations, the committee didn't hold its fifth judicial nomination hearing until November.

"The committee and the Senate should be commended, not criticized,"Leahy said in a floor speech Thursday, noting that Judiciary has focused recently on anti-terrorism legislation as well. "In spite of unfair and unfounded criticism, I have continued to proceed with additional hearings and press onward as best I can."

Lott, however, said rank-and-file Republicans are still furious with Leahy, and noted that recent moves to slow the appropriations process came after the GOP Conference had previously urged him
to block the spending bills to gain leverage on judicial nominees - a tactic he initially resisted but one he has since agreed upon.

"I've already pushed them back twice," he said of his fellow Republicans.

The anger with Leahy has turned somewhat personal in nature. A growing number of GOP Senators complain that the only way they can get him to move judges from their home states is if they personally ask the chairman to hold a hearing and give them a committee vote, something they say is akin to "begging."

GOP committee members contend that this method leaves open the question of favoritism. "To avoid concerns about favoritism, we suggest that you move judicial nominees in roughly the order that
they were nominated," the nine Republicans wrote in an Oct. 3 letter to Leahy.

In his floor speech, Leahy acknowledged that he appreciated the "courtesy" shown by some GOPSenators who personally approached him and let him know how important certain nominees were to their judicial districts, pleas that he has answered. "Others will carp and criticize no matter what we are able to achieve," he said.

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Republicans said the impasse over judges and appropriations will end only after Daschle and Leahy give them specifics of when and how often the nominees will be confirmed.

"We're going to have to have some assurances that we're going to get some judges up [on the floor]," said Minority Whip Don Nickles (R-Okla.), who has been negotiating with his Democratic counterpart, Majority Whip Harry Reid (Nev.).

Reid, however, said he is still waiting to hear from Nickles about which nominees Republicans feel should be moved first and fastest and that the delay will only hold up the problem's resolution.

"Senator Nickles said he'd bring me a list. I'll be happy to talk to him," Reid said.

In the meantime, the Senate has been unable to take up the remaining five appropriations measures left to be approved and sent to a House-Senate conference. Four of those bills have already been completed by the Appropriations Committee and are awaiting floor action.

Daschle, having grown impatient with Republican demands, has scheduled a cloture vote for this afternoon on the foreign operations appropriation, which could serve as the first major test of the GOP's will on the issue.

The House, meanwhile, has completed work on 12 of the 13 spending bills, with the final appropriation bill, on national security and Defense issues, targeted for a floor vote at the end of this week or early next week.

Eight spending measures have passed both chambers, but House and Senate appropriators have approved just one conference report.

Because of the work on conference reports, House appropriators don't believe they have been held up by the Senate delays, according to John Scofield, spokesman for Appropriations Chairman Bill Young (R-Fla.). But if the judicial fight lasts another week or more, House appropriators will be left with nothing to do, and the target date for adjournment will inevitably fall well into next month, he said.

"If it goes on much longer," Scofield warned, "we'll have some problems."

Inhofe: Two Oklahoma Nominees for Federal Bench Could be Confirmed Soon

The Associated Press
Monday, October 15, 2001

Two nominees for the federal bench in Oklahoma could soon be confirmed by the U.S. Senate, according to Sen. Jim Inhofe.

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The Senate Judiciary Committee could act upon the nominations of Claire Eagan and James Payne within days, Inhofe, R-Okla., said. He also said a confirmation vote by the full Senate could follow quickly. Eagan, 51, and Payne, 60, were nominated by President Bush less than three months ago. The brevity of their confirmation process is uncommon considering it takes some nominees more than a year to win confirmation.

Eagan of Tulsa is headed for a slot in the state's Northern judicial district, while Payne of Muskogee will divide his time on the bench among the Northern, Western and Eastern districts. Both currently serve as U.S. magistrates.

During their confirmation hearing, both nominees were asked how to maintain the balance between liberty and security while addressing the threat of terrorism.

Eagan said she trusts Congress to be conscious of the balance between civil liberties and the fear people have of more terrorist attacks.

"I believe the Supreme Court has suggested that there might be an exception when dealing with civil liberties and the different procedural safeguards for those liberties if there is an issue of terrorism," she said. "And I believe any statute will have a presumption of constitutionality."

Payne also said he had confidence in lawmakers' judgments in these trying times.

"The hallmark of this country is our personal freedoms," he said. "I know the Senate and the Congress has a very difficult balancing act to keep us free and keep us secure. I know the role of the court is not to interfere with your process."

Oklahoma has two other vacancies on the federal bench.

Assistant U.S. Attorney Joe Heaton and Stephen P. Friot, both of Oklahoma City, have been nominated to fill those two slots in the Western District.

Foreign Aid Bill Held Up by GOP; Senators Demand Action on Nominees

By Helen Dewar
The Washington Post
Saturday, October 13, 2001

In a resumption of partisan squabbling over judicial nominations, Senate Republicans are holding up action on a $ 15.6 billion foreign aid spending bill as leverage to force Democrats to speed action on President Bush's selections for the federal bench.

Democrats have scheduled a vote late Monday to curtail the delaying tactics, but key Republicans say they will continue stalling on spending bills until the Senate completes action on the roughly 35 nominations that were sent to the Senate before its summer recess and that are still pending.

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The two parties have been feuding over the pace of action on judicial nominations since shortly after Democrats took control of the Senate in early June. Democrats say they are acting as fast as they can -- faster, they say, than Republicans acted in moving many of President Bill Clinton's judicial nominations. Republicans, using different statistics to measure speed, contend that Democrats are dragging their heels and reneging on agreements to expedite action. The sparring subsided a bit
after the Sept. 11 terrorist attacks on New York and Washington but has resumed with renewed vigor on both sides.

According to Sen. Orrin G. Hatch (Utah), ranking Republican on the Judiciary Committee, there are 108 vacancies on the federal bench, which he said is more than there were when committee Chairman Patrick J. Leahy (D-Vt.) used to complain about judicial vacancies, when the White House was controlled by Democrats and the Senate by Republicans.

Eight judicial nominees have been confirmed, including two who were approved by the Senate late Thursday. Fifty-two other nominations are awaiting action, according to Hatch.

Defending the Democratic record, Leahy said no Bush nominees even had hearings before Democrats took over. Leahy said Democrats "are now ahead of the pace of confirmations for judicial nominees in the first year of the Clinton administration and the pace in the first year of the first Bush administration." He also said the administration had yet to nominate any U.S. marshals and still has to fill 40 U.S. attorney posts.

On Oct. 3, all nine Republicans on the Judiciary Committee wrote Leahy to demand faster action on judges. "In our view, once the anti-terrorism legislation is completed," they said, referring to legislation that passed the Senate on Thursday, "there is no higher priority than filling the vacancies that exist in our federal courts." Because of the terrorist attacks, they added, "the other priority is confirmation of U.S. attorney nominees."

In an interview yesterday, Sen. Jon Kyl (R-Ariz.), one of the signers of the letter, said Republicans may continue holding up spending bills -- except for the bill that funds military operations -- to ensure action on judges. "It's very clear we can do many things at the same time if we want to," he said. "This has a very high priority."

In addition to the foreign operations and defense bills, the Senate has yet to act on three domestic spending measures, including the huge bill for education, health and other social welfare programs.

"Obviously we have to get together and work this out," Kyl said.

Reacting to the GOP tactics on the foreign operations bill, Senate Majority Leader Thomas A. Daschle (D-S.D.) said Republicans have tried to filibuster virtually every bill that has come up in recent weeks. "So I'm not surprised, I'm just disappointed," he added.

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Added David Carle, spokesman for Leahy: "Some Republicans are scared to death that Democrats are going to treat their nominees as badly as they treated Democratic nominees, and they're not. Democrats are being fair."

Nominee Criticized for Club Affiliation; It has Been Accused of Discriminating

By Bill Walsh
The Times-Picayune
Saturday, October 13, 2001

U.S. Rep. Billy Tauzin said Friday that he will urge federal judicial nominee Jay Zainey to drop his
membership to Metairie Country Club because questions have been raised about whether the club discriminates against African-Americans.

Tauzin said he expected to make the suggestion "pretty soon" to Zainey, a Metairie lawyer who was nominated Wednesday by President Bush to fill a vacancy on U.S. District Court in New Orleans.

Tauzin, R-Chackbay, said he has no knowledge of the membership practices of the 79-year-old Jefferson Parish club but that questions about the club's policy should be enough to make the candidate rethink his membership, even though a recent FBI check of the club found no discrimination. "The mere perception of a problem, when he is a judicial nominee, is best dealt with forcefully," Tauzin said.

An official from Metairie Country Club said the organization does not discriminate against anyone. According to club rules, potential members must be invited to join, endorsed by two other members and then approved by a membership committee.

General Manager Don Beever would not say whether there are any African-American members among the club's 1,270 families.

Zainey, 50, did not return calls for comment.

In 1990, then-club President Dalton Truax told The Times-Picayune that the country club had no African-American members.

Earlier complaints

The club's membership practices came under scrutiny during a judicial race in September 1998, when a group of civic and church leaders in New Orleans filed a complaint with the state Judicial Commission about club member Judge Niles Hellmers, who was running for re-election to 1st City Court.

The complaint alleged that Hellmers was in violation of the judicial code of ethics, which forbids

judges from holding memberships in any organization that arbitrarily excludes members on the basis of race, sex, religion or national origin.

The complaint was rendered moot when Hellmers was defeated for re-election a month later by Sonja Spears.

Marie Galatas, a local pastor and one of those who filed the complaint, said Zainey's membership in the club should disqualify him from serving on the bench.

"If he knows there are no black members of that club, he should resign before getting that position," Galatas said. "If he doesn't know, it's time for him to inquire."

FBI finds nothing wrong

The FBI recently looked at the club's membership policies and practices as part of Zainey's background check. The agency concluded there was no discrimination.

Should Zainey remain in the club, he can expect questions about its membership practices when his nomination is scrutinized by the Senate Judiciary Committee. The committee requests that all nominees say whether they belong to any organizations that discriminate "through either formal membership requirements or practical implementation of the membership policies." If so, nominees are asked what they have done to change those policies.

With a backlog of Bush nominees pending before the judiciary panel, it's unclear when Zainey's nomination will be considered

Palm Beach Circuit Judge, Miami Lawyer to get Presidential Nod for Judgeships

By Dan Christensen
Palm Beach Daily Business Review
Friday, October 12, 2001

A Palm Beach circuit judge and a prominent Miami attorney have been chosen by the White House to fill two vacant U.S. District Court judgeships in South Florida, the Daily Business Review has learned.

Judge Kenneth A. Marra, who has declared no party affiliation, and Jose E. Martinez, a Republican, were selected for the lifetime appointments from among six finalists whose names were submitted to President Bush last month by the Florida Federal Nominating Commission.

After FBI background checks are completed in about 45 days, their nominations will be officially announced and their names sent to the U.S. Senate for confirmation.

Marra was tapped for a seat on the federal bench in Fort Lauderdale. Martinez will sit in Miami. Bob Martinez, the former Miami U.S. attorney who chairs the Federal Nominating Commission,

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said the White House isn't issuing a statement now regarding the nominations and asked him not to discuss the matter publicly. Asked whether that was for security reasons, Martinez said he doesn't know why.

"I don't know what their thinking is," said Martinez. He referred a caller to an assistant White House general counsel who did not return a phone message.

Jose Martinez, through a secretary, declined to comment about his selection.

Martinez, a stalwart Republican who was born in the Dominican Republic, a former federal prosecutor and regional director of the old federal Office for Drug Abuse Law Enforcement, is name partner in the nine-attorney firm Martinez & Gutierrez. He specializes in product liability cases, including tobacco and automotive product liability defense.

Martinez, 60, is also vice chair of the Federal Court Practice Committee, the Florida Bar's liaison to the federal district courts.

"He's well-known, well-liked and has been a very capable trial attorney for many years," said attorney Edward B. Davis, a retired U.S. District chief judge.

Marra, who currently serves on Palm Beach's criminal bench, also declined to comment on being selected.

Marra is a Stetson law school graduate who was appointed to his seat in 1996 by Gov. Lawton Chiles.

Early in his career, the 50-year-old jurist worked as a civil trial attorney for the Department of Justice. He was also a partner and commercial attorney in Palm Beach with the firm of Nason Gildan Yeager Gerson & White. The firm is now known as Nason Yeager Gerson White & Lioce.

More than 30 lawyers applied for the two judgeships when they were announced earlier this year. The two other finalists for the Miami judgeship were Miami federal magistrate Ted Bandstra and Miami-Dade Circuit Judge Jerald Bagley. The two other finalists for the Fort Lauderdale seat were Fort Lauderdale federal magistrate Barry S. Seltzer and Broward Circuit Judge James I. Cohn.

All were interviewed by Sens. Bob Graham and Bill Nelson and officials from the White House and the Justice Department.

"I found the process to be extremely fair," said finalist Cohn. "I am disappointed, but not deterred."

With choices for the two judgeships made, the only major federal post in South Florida with finalists under consideration by the president is that of the U.S. attorney. The contenders are

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incumbent Guy Lewis, White & Case Republican insider Marcos Jimenez and Marcia Cooke, a former federal prosecutor and chief inspector general to Gov. Jeb Bush.

Mills Confirmed for North Mississippi Federal Judgeship

By Emily Wagster
The Associated Press
Friday, October 12, 2001

The U.S. Senate voted 98-0 Thursday to confirm Mike Mills of Fulton for a federal judgeship in north Mississippi.

The vote came after Sen. Dianne Feinstein, D-Calif., said she wouldn't delay a vote on his nomination. She had raised concerns about an abortion case dissent in which Mills participated. "I'm very excited and very grateful," Mills, 45, said shortly after learning of his confirmation.

Mills has been on the Supreme Court since 1995 and said he expects to remain on it until the end of the month. After that, he'll be based in U.S. District Court in Oxford. He'll also hear cases in Aberdeen and Greenville.

"The approval of Justice Mills by the Senate will give our state the benefit of a very well qualified new federal judge," said Sen. Thad Cochran, R-Miss. "He will be a fine addition to the federal bench in Mississippi."

Mills will replace U.S. District Judge Neal Biggers Jr. of Oxford, who has taken senior status. Mills served 12 years in the Mississippi House of Representatives before then-Gov. Kirk Fordice tapped him to fill a Supreme Court vacancy. Mills won a full term in 1996.

Sen. Trent Lott, R-Miss., who also promoted Mills' nomination to the federal judgeship, said he hoped Feinstein's questions were answered.

"Mike Mills is highly qualified by education, by experience and by demeanor," Lott said Thursday.

Feinstein had expressed concern over Mills' ruling in a case involving a woman accused of trespassing at an abortion clinic in Jackson.

Dr. Beverly McMillan said the trespassing was justified because she had information about dangerous and illegal procedures at the clinic. A Hinds County judge did not allow the testimony and McMillan was convicted on the trespassing charge.

In a 5-4 decision by the Supreme Court, Mills joined a dissent that said every defendant had a right to present his or her theory of a case.

National abortion rights groups had brought his vote to the attention of senators.

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Feinstein's spokesman, Howard Gantman, said Wednesday that Feinstein had reviewed the record and wouldn't try to block Mills' confirmation.

Gov. Ronnie Musgrove will appoint a replacement for Mills. Musgrove will fill another vacancy when Justice Fred L. Banks of leaves the Supreme Court at the end of October to go into private law practice.

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To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

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Attachments: P_59J74004_WHO.TXT_1.wpd

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The Supreme Court opened its new Term on Monday. The most stable Court in history -- the same Justices have been serving since the opening of the 1994 Term -- issued its end-of-summer orders and began its long march toward a rush of decisions concluding with its anticipated June 2002 adjournment. Two cases were argued, and a host of lawyers from around the country were admitted to practice in the nation's highest court. But the ostensibly routine proceedings were not the same. With no recent precedent from which to draw, Chief Justice Rehnquist opened the Court's new session with a stirring tribute to the nation's courage and greatness. The great tide of recent events had not simply passed the Justices by. To the contrary, the Chief made specific reference to Solicitor General Ted Olson and the loss of his wife, Barbara. The Court family had been directly touched.

Not on the docket, but looming large in the background, were legal issues of high moment stemming from the September 11 attacks. Proposed legislation aimed at re-arming law enforcement in the struggle against terrorism was under debate across the oak-dotted lawn on Capitol Hill. Justice O'Connor, the week before, made what was seen by the press as an indirect reference to the Court's role in that unfolding debate -- and that of the judiciary more generally -- in remarks at New York University's School of Law. She spoke strongly about the need, even in crisis, "to preserve the rule of law." Part of her message was universal: The need to persuade "a sometimes hostile world that our dream of a society that conforms to the rule of law is a dream we all should share." But her point was also directed to the homeland, as if aimed at the congressional debate on the anti-terrorist legislation. "We wish it were not necessary; we wish we could set the clock back. But to preserve liberty, we must preserve the rule of law."

The Court is, of course, ordinarily the last word on these and other issues of moment, as we saw in the epic (and unexpected) high-stakes litigation last autumn culminating in *Bush v. Gore*. Toqueville wisely observed early in our history that, in this country, great issues of policy almost invariably become questions of law. The Court's landmark decision in the Steel Seizure case during the Korean Conflict stands as a jolting reminder that, even in times of war, the Court will strike down actions by the President if they are incompatible with constitutional or statutory

commands. And so the question arises, whether the proposals submitted by the Administration would pass muster under the scrutiny of a closely-divided Court that frequently resolves some of the thorniest legal issues by a razor-thin 5-4 margin.

My early-on prediction is that the proposals, if enacted, would fare very well indeed when and if called to run the Supreme Court gauntlet. Much of the Administration's package is mild and non-controversial. The lion's share of the proposals will therefore will not spawn difficult or novel legal questions. One reason is that a unifying theme of the proposals is to update and modernize aging provisions of law, ensuring that the law enforcement arsenal employed in anti-terrorism investigations is as modern and serviceable as that used in, say, drug investigations. A number of these laws were enacted in a quieter era of rotary telephones. Terrorists and their support rings are thoroughly modern, using the Internet, e-mail and multiple cellular phones. The proposed law would apply the same legal standards that govern wiretaps on telephones to e-mail and the like. The idea is technological neutrality. Law enforcement's ability to detect the most serious and unsettling of crimes should not depend on the technology used by the would-be assailants and their comrades. The point is that there is no change in the legal standards that govern when or under what circumstances federal law enforcement could seek such information. That means the Supreme Court will choose to remain on the sidelines -- no one is purporting to change the law, as happened when Congress purported to overrule the Miranda decision only to find the Rehnquist Court rallying to its defense.

Improvements are also sought to ease the administrative burdens -- and delays -- attendant to getting approvals from the Attorney General and a special court created by Congress to review applications for surveillance in the United States directed at the agents of foreign powers. So too, parochial limitations of search warrants and surveillance orders would be jettisoned. Federal prosecutors, FBI agents and others would not have to seek, pointlessly, re-authorization in multiple judicial districts (93 in all) across the country. These too present no thorny legal question likely to interest the Justices. No standards are being changed. Legal shifts that fall within the category of streamlining, within the context of settled and accepted

legal and constitutional principles, likewise are doubtful candidates for Supreme Court review. And stepped-up penalties, for example stronger punishments for possession of biological weapons, are classic policy questions that involve judgment calls by Congress and the President. No place for Supreme Court intervention there.

The hottest issue under debate has been the proposal concerning detention, indefinitely, of aliens. That, some suggest, runs afoul of basic constitutional liberties, including recent decisions by the Supreme Court. Despite the fervor, there is far less here than meets the eye. There is no authorization of indefinite detention of suspected terrorists, as has been widely assumed. Rather, the proposal is more targeted. It authorizes detention of suspected terrorists who are otherwise subject to criminal or deportation proceedings. That is the equivalent of denying release pending bail. Although unusual in a free society, there are various circumstances under existing law when indefinite detention is permitted. And the Supreme Court has so ruled. Individuals who are dangers to the community may be held without bond as the judicial or administrative process runs its course.

Part of the misunderstanding arises from the Supreme Court's controversial decisions last June in what appear to be very similar cases. But the appearance is deceptive, and the similarity ends on closer examination. In two consolidated cases, the Court held by a 5-4 margin that the Attorney General could not hold indefinitely in confinement individuals who were subject to deportation proceedings once a 90-day period (provided by Congress for bringing about the individual's exit to another country) had expired. The concern was a possible constitutional violation that might be created by indefinitely detaining an alien who had been ordered deported but who had nowhere to go (since in both cases no country was willing to welcome the individual back home). Over separate dissenting opinions by Justice Scalia and Justice Kennedy, with Chief Justice Rehnquist and Justice Thomas in agreement, the Court created an implied term in the deportation statute in question to save the provision from the possible constitutional violation created by indefinite detention.

Not only were the cases decided by a narrow 5-4 margin, Justice Breyer, in writing for

the majority, took pains, presciently as it turned out, to distinguish the situation before the Court from one involving terrorism. Showing their concern for the prerogatives of the Executive Branch when confronted with a genuine danger, the five Justices were emphatic in limiting the scope of their judgment. "Neither do we consider terrorism or other special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security."

The Court, in short, has already done the relevant legal groundwork. It has laid down the legal standards to govern the debate. It would appear that the Administration has carefully kept a lawyerly eye on the Court's precedent in crafting the tools the President and the Attorney General want and need in facing the post-September 11 world.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
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Subject: : state judicial assignments
Attachments: P_QMR74004_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-OCT-2001 18:48:12.00
SUBJECT:: state judicial assignments
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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###### End Original ARMS Header ######

per Libby's instruction, I moved WYoming from Courtney to Helgi. Revised
list attached
```

```
Elizabeth N. Camp
10/16/2001 06:39:17 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc:
Subject: Can you resend to me that list, again. SORRY!

I need to send it to Matt Schlapp in Political but need to move Wyoming
```

from Courtney's list to Helgi's.

Thanks!

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QMR74004_WHO.TXT_1>

District Court Vacancy Assignments by State

Rachel
Alaska
Alabama
Iowa
Minnesota
New Jersey
Oregon
Wisconsin

Bart
Arkansas
Florida
Maine
New Hampshire
New Mexico
Texas
Virgin Islands

Helgi
Georgia
Hawaii
North Carolina
South Carolina
Virginia
West Virginia
Guam
Wyoming

Brett
Arizona
Washington
Idaho
Maryland
Illinois
Pennsylvania
Puerto Rico

Brad
California
Connecticut
Massachusetts
Michigan
Montana

Courtney
Kansas
Kentucky
Missouri
Nebraska
New York

Noel
Colorado
Ohio
Louisiana
Mississippi
North Dakota
Rhode Island
South Dakota

Kyle
Indiana
Oklahoma
Tennessee
Vermont
Delaware
Nevada
Utah

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

Sent: 10/16/2001 3:04:12 PM

Subject: : We are having the JSC meeting tomorrow (Wednesday)

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-OCT-2001 19:04:12.00
SUBJECT:: We are having the JSC meeting tomorrow (Wednesday)
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
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TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

4:00 pm in the Roosevelt.

From: CN=Danielle M. Simonetta/OU=OMB/O=EOP [OMB]
To: Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>
CC: nicholas e. calio/who/eop@eop [WHO] <nicholas e. calio>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;jack howard/who /eop@eop [WHO] <jack howard>;david w. hobbs/who/eop@eop [WHO] <david w. hobbs>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;virginia t. gregory/who /eop@eop [WHO] <virginia t. gregory>;michael j. conway/who/eop@eop [WHO] <michael j. conway>;jill davie/who/eop@eop [WHO] <jill davie>;christal r. west/who/eop@eop [WHO] <christal r. west>;mark a. phelan/who/eop@eop [WHO] <mark a. phelan>;peter m. rowan/who /eop@eop [WHO] <peter m. rowan>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;emily willeford/opd/eop@eop [OPD] <emily willeford>;janet p. walker/opd/eop@eop [OPD] <janet p. walker>;d. marcus sumerlin/opd/eop@eop [OPD] <d. marcus sumerlin>;linda c. luisi/nsc/eop@eop [NSC] <linda c. luisi>;george m. andricos/nsc/eop@eop [NSC] <george m. andricos>;john a. cloud/nsc/eop@eop [NSC] <john a. cloud>;k. philippa malmgren/opd /eop@eop [OPD] <k. philippa malmgren>;john m. bridgeland/opd/eop@eop [OPD] <john m. bridgeland>;britt grant/opd/eop@eop [OPD] <britt grant>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;cesar conda/ovp/eop@eop [OVP] <cesar conda>;neil s. patel/ovp /eop@eop [OVP] <neil s. patel>;jonathan w. burks/ovp/eop@eop [OVP] <jonathan w. burks>;Nancy P. Dorn/WHO/EOP [WHO] <Nancy P. Dorn>;stephen s. ruhlen/ovp/eop@eop [OVP] <stephen s. ruhlen>;edward ingle/who/eop@eop [WHO] <edward ingle>;albert hawkins/who/eop@eop [WHO] <albert hawkins>;harriet miers/who/eop@eop [WHO] <harriet miers>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;barbara a. barclay/who /eop@eop [WHO] <barbara a. barclay>;debra d. bird/who/eop@eop [WHO] <debra d. bird>;karen d. cruson/who/eop@eop [WHO] <karen d. cruson>;carolyn e. cleveland/who /eop@eop [WHO] <carolyn e. cleveland>;brett s. loper/omb/eop@eop [OMB] <brett s. loper>;eric c. pelletier/omb/eop@eop [OMB] <eric c. pelletier>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 10/16/2001 5:17:26 PM
Subject: : Re: FINAL CLEARANCE- SAP, H.R. 3004- Financial Anti-Terrorism Act
Attachments: P_7CT74004_OPD.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:16-OCT-2001 21:17:26.00
SUBJECT:: Re: FINAL CLEARANCE- SAP, H.R. 3004- Financial Anti-Terrorism Act
TO:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:nicholas e. calio ( CN=nicholas e. calio/OU=who/O=eop@eop [ WHO ] )
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CC:joel d. kaplan ( CN=joel d. kaplan/OU=who/O=eop@eop [ WHO ] )
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CC:david w. hobbs ( CN=david w. hobbs/OU=who/O=eop@eop [ WHO ] )
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CC:mark a. phelan ( CN=mark a. phelan/OU=who/O=eop@eop [ WHO ] )
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CC:peter m. rowan ( CN=peter m. rowan/OU=who/O=eop@eop [ WHO ] )
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READ:UNKNOWN
CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
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CC:emily willeford (CN=emily willeford/OU=opd/O=eop@eop [OPD])
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End Original ARMS Header

Danielle M. Simonetta
10/16/2001 09:15:24 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FINAL CLEARANCE- SAP, H.R. 3004- Financial Anti-Terrorism
Act

Here is the final version of the SAP on H.R. 3004 (money laundering). The bill is scheduled to be on the floor first thing tomorrow morning. Please respond to me with your comments/clearance by no later than 9:00 am tomorrow, Wednesday, October 17th. If you have any questions, please call me.
Thanks,
Danielle
(54790)

DRAFT -- NOT FOR RELEASE

October 16, 2001
(House)

H.R. 3004 - The Financial Anti-Terrorism Act of 2001
(Rep. Oxley (R) Ohio and 24 cosponsors)

The Administration supports House passage of H.R. 3004 and welcomes the anti-money laundering proposals that are included in this bill. In particular, the Administration welcomes the incorporation of due process into the regulations, orders, actions, and definitions that would be established under this legislation. In addition, the Administration supports the inclusion of relevant Administration representatives and banking regulators in decision-making that impacts the financial services industry and its conduct around the world.

The Administration does have some concerns with H.R. 3004. The Administration believes that the jurisdictional factors provided in Section 301 of the bill for determining whether a jurisdiction, financial institution, or class of transactions is "of primary money laundering concern" may not constitute definitive proof of money laundering. In that regard, the Administration especially appreciates the elimination in the House bill of references to tax havens and lower tax rates as possible indications of money laundering concern. In addition, the Administration expects that a small but financially efficient economy would not find itself targeted under this bill on the grounds of these jurisdictional factors alone.

Despite these concerns, the Administration applauds the overall efforts reflected by this legislation to equip enforcement officials with the new anti-money laundering tools needed to successfully conduct the war on terrorism. The Administration appreciates the opportunity to work with the Financial Services Committee on this legislation and looks forward to continuing to work with Congress as these proposals move through the legislative process.

* * * * * * *
(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Rodgers) in consultation with the Departments of Justice (Jones), State (Harrison), the Treasury (Leavy), OSTP (Wilson), CEA (Furchotgott-Roth), NEC (Malmgren), OVP (Addington, Burks), and OMB/HTF (Hire).

The following did not respond to our request for views: CIA and NSC

OMB/LA Clearance: _____.

We understand that a manager's amendment to H.R. 3004 is under development, for consideration as early as this evening under suspension of the rules, that makes significant changes to the introduced version of the bill and the manager's amendment ordered reported by the House Financial Services Committee on October 11, 2001. However the text of the new manager's amendment was not available when the description of the bill

below was prepared.

Administration Position to Date

The Administration has not taken a position on H.R. 3004.

Summary of H.R. 3004

The description below is based on the introduced version of H.R. 3004.

Title I - Strengthening Law Enforcement

Title I of H.R. 3004 would enhance the ability of law enforcement agencies to identify the financial infrastructure of terrorist and other criminal organizations, by requiring interagency coordination and information exchange.

Specifically Title I of H.R. 3004 would:

abmake it a Federal crime, punishable by up to 5 years in prison, for anyone to knowingly conceal more than $10,000 in currency or other monetary instruments on his person or in any conveyance, article of luggage, merchandise or other container, and to transport or attempt to transport that currency across the border with the intent to avoid the requirement that such currency be declared to Customs inspectors;

abmake it an offense to transport more than $10,000 in criminal proceeds in interstate commerce, if the courier knows the money came from an illegal source or that it was intended to be used for an unlawful purpose;
abprovide that the government need not establish that the defendant was familiar with the Federal statute making the operation of an unlicenced money remitter a criminal offense;

abgive district courts "long-arm" jurisdiction over a foreign bank that commits a money laundering offense in the United States, and authorizes the restraint of assets found in the United States that may be used to satisfy a civil judgment against such a bank;

abexpand the number of foreign offenses that are predicated for money laundering to include fraud, corruption, smuggling and other offenses, including crimes of violence perpetrated by terrorists;

abadd "material support for terrorism" to the list of predicate offenses that can give rise to a money laundering prosecution;

abprovide for the inadmissibility of any individual seeking entry to the U.S. who a consular officer has reason to believe has engaged in certain money laundering offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the U.S., as well as the spouse, son or daughter of such persons under certain circumstances;

abauthorize the seizure of laundered funds from correspondent accounts (accounts of foreign banks maintained in the U.S.);

abauthorize the U.S. Customs Service to conduct limited warrant-less searches of outbound international mail when there is a reasonable suspicion that the mail contains bulk cash or other illegal contraband. The bill would extend authority to outbound international mail sent via the U.S. Postal Service. The bill also includes a provision that would prohibit U.S. Customs Service inspectors from reading, copying, or seizing any correspondence without a search warrant or the written consent of the sender;

abmake it a Federal crime, punishable by up to 5 years in prison, to knowingly falsify or conceal a customers true identity in a transaction with a financial institution (including a bank, securities firm, or

insurance company);

abrequire the Secretary of the Treasury to utilize already existing statutory authority to prescribe regulations requiring financial institutions to verify the identity of all persons who open and maintain accounts, and to keep records of the information used to verify such identification;

Title II - Public-Private Cooperation

This title would encourage cooperation and information exchange between the government and the financial services sector, to ensure that suspicious financial activities that may be related to terrorism are identified and investigated.
Specifically, Title II of H.R. 3004 would require the Secretary of the Treasury to:

abestablish a secure website dedicated to receiving electronic filings of Suspicious Activity Reports by financial institutions and provide financial institutions with alerts and other information regarding suspicious activity that warrants enhanced scrutiny.

abdisseminate quarterly reports to the financial services industry identifying and analyzing patterns of suspicious financial activity disclosed by the reports filed by the industry pursuant to the Bank Secrecy Act.

abpublish by no later than December 31, 2001, a proposed regulation requiring securities broker-dealers to file Suspicious Activity Reports.

Title II of H.R. 3004 would also:

abclarify the Bank Secrecy Act's "safe harbor" provision, which protects financial institutions that disclose possible violations of law or regulation from civil liability for reporting their suspicions and for not alerting those identified in the reports.

abpermit a bank, upon request by another bank, to share information in a written employment reference concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

Title III - Combating International Money Laundering.

Title III of H.R. 3004 would address money laundering associated with off-shore secrecy havens and other countries that generally do not cooperate with U.S. law enforcement efforts to track terrorist assets and the proceeds of other criminal activity.

H.R. 3004 would give the Secretary of the Treasury discretionary authority to impose one or more of five special measures against foreign jurisdictions, financial institutions operating outside the United States, and international transactions that are determined to be of primary money laundering concern. Those measures include: (1) additional record keeping and reporting requirements; (2) identification of beneficial ownership of accounts held by foreign persons; (3) identification of persons permitted to use a payable-through account with an institution outside the U.S.; (4) identification of persons permitted to use a correspondent account with an institution outside the U.S.; and (5) prohibition of, or imposition of conditions on, correspondent or payable-through accounts with institutions outside the U.S.

The bill would require the Secretary to consult with the Secretary of State and the Attorney General to determine whether a foreign jurisdiction is of "primary money laundering concern," by taking into consideration: (1) whether a jurisdiction offers bank secrecy and special tax advantages;

(2) the quality of its bank supervision and anti-money laundering laws;
(3) the volume of transactions relative to the size of its economy; and
(4) the experience of U.S. law enforcement officials in receiving cooperation from the jurisdiction.

H.R. 3004 would prohibit a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks.

H.R. 3004 would define the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. The bill would clarify that bets or wagers do not include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game. The bill would also clarify that businesses of betting or wagering do not generally include any financial intermediary (creditor, credit card issuer, insured depository institution, transmitter of an electric fund transfer, money transmitting business, or network used to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network).

H.R. 3004 would authorize civil penalties, including a preliminary injunction or injunction, against any person to prevent or restrain a violation of this section, including expedited proceedings in exigent circumstances, to be brought by the U.S. Attorney General, or the attorney general of a State or other appropriate State official. The bill would also clarify that the bill is not intended to alter, supercede, or otherwise affect the application of the Indian Gaming Regulatory Act.

H.R. 3004 would authorize criminal penalties, including fines or imprisonment for not more than five years, or both. The bill would also authorize a permanent injunction against a person convicted under this subsection, enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

H.R. 3004 would provide that the "safe harbor provided" to a financial intermediary (creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional, or local network) does not apply to a financial intermediary that operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers are or may be placed, received, or otherwise made; or is owned or controlled by any person who operates, manages, supervises, or directs such an Internet website.

H.R. 3004 would authorize the appropriate Federal banking agency to prohibit an insured depository institution from extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service, or from paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution, where the institution has actual knowledge that a person is violating this section in connection with such activities. The bill would provide that a financial intermediary is not held liable for a violation of this act solely based on the unknowing and unintentional involvement of the intermediary through the use of the facilities of such intermediary in an unlawful Internet gambling transaction, unless the intermediary acted as an agent of a gambling business and had: (1) actual knowledge that the specific transaction is an unlawful Internet gambling transaction; and (2) the intent to engage in the business of submitting into the payment system Internet gambling transactions prohibited by this section.

H.R. 3004 would provide that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering.

Title IV - Currency Protection

Title IV of H.R. 3004 would make it a criminal offense to possess an electronic image of an obligation or security document of the United States with intent to defraud, also increasing maximum sentences for a series of counterfeiting offenses. This title would also conform the legal prohibition on counterfeiting foreign security documents or obligations within the U.S. to that of counterfeiting U.S. security document or obligations.

This title would also permit the Secretary of the Treasury to authorize production of currency, stamps or other security documents for foreign countries if such work does not interfere with the production of such documents for the U.S. and if the Secretary of State has concurred in the production.

Pay-As-You-Go Scoring

According to HTF (Hire), H.R. 3004 would increase receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This Office has not completed estimates, but expects that the effect will be marginal.

LEGISLATIVE REFERENCE DIVISION
October 16, 2001/6:00 PM

Message Sent
To:_____
Nicholas E. Calio/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Jack Howard/WHO/EOP@EOP
David W. Hobbs/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Virginia T. Gregory/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
Jill Davie/WHO/EOP@EOP
Christal R. West/WHO/EOP@EOP
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Peter M. Rowan/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Emily Willeford/OPD/EOP@EOP
Janet P. Walker/OPD/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Linda C. Luisi/NSC/EOP@EOP
George M. Andricos/NSC/EOP@EOP
John A. Cloud/NSC/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
John M. Bridgeland/OPD/EOP@EOP
Britt Grant/OPD/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP

Cesar Conda/OVP/EOP@EOP
Neil S. Patel/OVP/EOP@EOP
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Nancy P. Dorn/WHO/EOP
Stephen S. Ruhlen/OVP/EOP@EOP
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Brett S. Loper/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
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DRAFT -- NOT FOR RELEASE

October 16, 2001
(House)

H.R. 3004 - The

Financial Anti-Terrorism Act of 2001

(Rep. Oxley (R) Ohio

and 24 cosponsors)

The Administration supports House passage of H.R. 3004 and welcomes the anti-money laundering proposals that are included in this bill. In particular, the Administration welcomes the incorporation of due process into the regulations, orders, actions, and definitions that would be established under this legislation. In addition, the Administration supports the inclusion of relevant Administration representatives and banking regulators in decision-making that impacts the financial services industry and its conduct around the world.

The Administration does have some concerns with H.R. 3004. The Administration believes that the jurisdictional factors provided in Section 301 of the bill for determining whether a jurisdiction, financial institution, or class of transactions is "of primary money laundering concern" may not constitute definitive proof of money laundering. In that regard, the Administration especially appreciates the elimination in the House bill of references to tax havens and lower tax rates as possible indications of money laundering concern. In addition, the Administration expects that a small but financially efficient economy would not find itself targeted under this bill on the grounds of these jurisdictional factors alone.

Despite these concerns, the Administration applauds the overall efforts reflected by this legislation to equip enforcement officials with the new anti-money laundering tools needed to successfully conduct the war on terrorism. The Administration appreciates the opportunity to work with the Financial Services Committee on this legislation and looks forward to continuing to work with Congress as these proposals move through the legislative process.

* * * * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Rodgers) in consultation with the Departments of Justice (Jones), State (Harrison), the Treasury (Leavy), OSTP (Wilson), CEA (Furchotgott-Roth), NEC (Malmgren), OVP (Addington, Burks), and OMB/HTF (Hire).

REV_00133638

The following did not respond to our request for views: CIA and NSC

OMB/LA Clearance: _____.

We understand that a manager's amendment to H.R. 3004 is under development, for consideration as early as this evening under suspension of the rules, that makes significant changes to the introduced version of the bill and the manager's amendment ordered reported by the House Financial Services Committee on October 11, 2001. However the text of the new manager's amendment was not available when the description of the bill below was prepared.

Administration Position to Date

The Administration has not taken a position on H.R. 3004.

Summary of H.R. 3004

The description below is based on the introduced version of H.R. 3004.

Title I - Strengthening Law Enforcement

Title I of H.R. 3004 would enhance the ability of law enforcement agencies to identify the financial infrastructure of terrorist and other criminal organizations, by requiring interagency coordination and information exchange.

Specifically Title I of H.R. 3004 would:

- make it a Federal crime, punishable by up to 5 years in prison, for anyone to knowingly conceal more than $10,000 in currency or other monetary instruments on his person or in any conveyance, article of luggage, merchandise or other container, and to transport or attempt to transport that currency across the border with the intent to avoid the requirement that such currency be declared to Customs inspectors;

- make it an offense to transport more than $10,000 in criminal proceeds in interstate commerce, if the courier knows the money came from an illegal source or that it was intended to be used for an unlawful purpose;
- provide that the government need not establish that the defendant was familiar with the Federal statute making the operation of an unlicenced money remitter a criminal offense;

- give district courts "long-arm" jurisdiction over a foreign bank that commits a money laundering offense in the United States, and authorizes the restraint of assets found in the United States that may be used to satisfy a civil judgment against such a bank;

- expand the number of foreign offenses that are predicated for money laundering to include fraud, corruption, smuggling and other offenses, including crimes of violence perpetrated by terrorists;

REV_00133639

- add "material support for terrorism" to the list of predicate offenses that can give rise to a money laundering prosecution;

- provide for the inadmissibility of any individual seeking entry to the U.S. who a consular officer has reason to believe has engaged in certain money laundering offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the U.S., as well as the spouse, son or daughter of such persons under certain circumstances;

- authorize the seizure of laundered funds from correspondent accounts (accounts of foreign banks maintained in the U.S.);

- authorize the U.S. Customs Service to conduct limited warrant-less searches of outbound international mail when there is a reasonable suspicion that the mail contains bulk cash or other illegal contraband. The bill would extend authority to outbound international mail sent via the U.S. Postal Service. The bill also includes a provision that would prohibit U.S. Customs Service inspectors from reading, copying, or seizing any correspondence without a search warrant or the written consent of the sender;

- make it a Federal crime, punishable by up to 5 years in prison, to knowingly falsify or conceal a customers true identity in a transaction with a financial institution (including a bank, securities firm, or insurance company);

- require the Secretary of the Treasury to utilize already existing statutory authority to prescribe regulations requiring financial institutions to verify the identity of all persons who open and maintain accounts, and to keep records of the information used to verify such identification;

Title II - Public-Private Cooperation

This title would encourage cooperation and information exchange between the government and the financial services sector, to ensure that suspicious financial activities that may be related to terrorism are identified and investigated.

Specifically, Title II of H.R. 3004 would require the Secretary of the Treasury to:

- establish a secure website dedicated to receiving electronic filings of Suspicious Activity Reports by financial institutions and provide financial institutions with alerts and other information regarding suspicious activity that warrants enhanced scrutiny.

- disseminate quarterly reports to the financial services industry identifying and analyzing patterns of suspicious financial activity disclosed by the reports filed by the industry pursuant to the Bank Secrecy Act.

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- publish by no later than December 31, 2001, a proposed regulation requiring securities broker-dealers to file Suspicious Activity Reports.

Title II of H.R. 3004 would also:

- clarify the Bank Secrecy Act's "safe harbor" provision, which protects financial institutions that disclose possible violations of law or regulation from civil liability for reporting their suspicions and for not alerting those identified in the reports.

- permit a bank, upon request by another bank, to share information in a written employment reference concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

Title III - Combating International Money Laundering.

Title III of H.R. 3004 would address money laundering associated with off-shore secrecy havens and other countries that generally do not cooperate with U.S. law enforcement efforts to track terrorist assets and the proceeds of other criminal activity.

H.R. 3004 would give the Secretary of the Treasury discretionary authority to impose one or more of five special measures against foreign jurisdictions, financial institutions operating outside the United States, and international transactions that are determined to be of primary money laundering concern. Those measures include: (1) additional record keeping and reporting requirements; (2) identification of beneficial ownership of accounts held by foreign persons; (3) identification of persons permitted to use a payable-through account with an institution outside the U.S.; (4) identification of persons permitted to use a correspondent account with an institution outside the U.S.; and (5) prohibition of, or imposition of conditions on, correspondent or payable-through accounts with institutions outside the U.S.

The bill would require the Secretary to consult with the Secretary of State and the Attorney General to determine whether a foreign jurisdiction is of "primary money laundering concern," by taking into consideration: (1) whether a jurisdiction offers bank secrecy and special tax advantages; (2) the quality of its bank supervision and anti-money laundering laws; (3) the volume of transactions relative to the size of its economy; and (4) the experience of U.S. law enforcement officials in receiving cooperation from the jurisdiction.

H.R. 3004 would prohibit a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks.

H.R. 3004 would define the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. The bill would clarify that bets or wagers do not

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include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game. The bill would also clarify that businesses of betting or wagering do not generally include any financial intermediary (creditor, credit card issuer, insured depository institution, transmitter of an electric fund transfer, money transmitting business, or network used to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network).

H.R. 3004 would authorize civil penalties, including a preliminary injunction or injunction, against any person to prevent or restrain a violation of this section, including expedited proceedings in exigent circumstances, to be brought by the U.S. Attorney General, or the attorney general of a State or other appropriate State official. The bill would also clarify that the bill is not intended to alter, supercede, or otherwise affect the application of the Indian Gaming Regulatory Act.

H.R. 3004 would authorize criminal penalties, including fines or imprisonment for not more than five years, or both. The bill would also authorize a permanent injunction against a person convicted under this subsection, enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

H.R. 3004 would provide that the "safe harbor provided" to a financial intermediary (creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional, or local network) does not apply to a financial intermediary that operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers are or may be placed, received, or otherwise made; or is owned or controlled by any person who operates, manages, supervises, or directs such an Internet website.

H.R. 3004 would authorize the appropriate Federal banking agency to prohibit an insured depository institution from extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service, or from paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution, where the institution has actual knowledge that a person is violating this section in connection with such activities. The bill would provide that a financial intermediary is not held liable for a violation of this act solely based on the unknowing and unintentional involvement of the intermediary through the use of the facilities of such intermediary in an unlawful Internet gambling transaction, unless the intermediary acted as an agent of a gambling business and had: (1) actual knowledge that the specific transaction is an unlawful Internet gambling transaction; and (2) the intent to engage in the business of submitting into the payment system Internet gambling transactions prohibited by this section.

H.R. 3004 would provide that, in deliberations between the U.S. Government and any other

REV_00133642

country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering.

Title IV - Currency Protection

Title IV of H.R. 3004 would make it a criminal offense to possess an electronic image of an obligation or security document of the United States with intent to defraud, also increasing maximum sentences for a series of counterfeiting offenses. This title would also conform the legal prohibition on counterfeiting foreign security documents or obligations within the U.S. to that of counterfeiting U.S. security document or obligations.

This title would also permit the Secretary of the Treasury to authorize production of currency, stamps or other security documents for foreign countries if such work does not interfere with the production of such documents for the U.S. and if the Secretary of State has concurred in the production.

REV_00133643

Pay-As-You-Go Scoring

According to HTF (Hire), H.R. 3004 would increase receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This Office has not completed estimates, but expects that the effect will be marginal.

LEGISLATIVE

REFERENCE DIVISION

October 16,

2001/6:00 PM

REV_00133644

From: CN=Danielle M. Simonetta/OU=OMB/O=EOP [OMB]
To: Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>
CC: nicholas e. calio/who/eop@eop [WHO] <nicholas e. calio>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;jack howard/who /eop@eop [WHO] <jack howard>;david w. hobbs/who/eop@eop [WHO] <david w. hobbs>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;virginia t. gregory/who /eop@eop [WHO] <virginia t. gregory>;michael j. conway/who/eop@eop [WHO] <michael j. conway>;jill davie/who/eop@eop [WHO] <jill davie>;christal r. west/who/eop@eop [WHO] <christal r. west>;mark a. phelan/who/eop@eop [WHO] <mark a. phelan>;peter m. rowan/who /eop@eop [WHO] <peter m. rowan>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;emily willeford/opd/eop@eop [OPD] <emily willeford>;janet p. walker/opd/eop@eop [OPD] <janet p. walker>;d. marcus sumerlin/opd/eop@eop [OPD] <d. marcus sumerlin>;linda c. luisi/nsc/eop@eop [NSC] <linda c. luisi>;george m. andricos/nsc/eop@eop [NSC] <george m. andricos>;john a. cloud/nsc/eop@eop [NSC] <john a. cloud>;k. philippa malmgren/opd /eop@eop [OPD] <k. philippa malmgren>;john m. bridgeland/opd/eop@eop [OPD] <john m. bridgeland>;britt grant/opd/eop@eop [OPD] <britt grant>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;cesar conda/ovp/eop@eop [OVP] <cesar conda>;neil s. patel/ovp /eop@eop [OVP] <neil s. patel>;jonathan w. burks/ovp/eop@eop [OVP] <jonathan w. burks>;Nancy P. Dorn/WHO/EOP [WHO] <Nancy P. Dorn>;stephen s. ruhlen/ovp/eop@eop [OVP] <stephen s. ruhlen>;edward ingle/who/eop@eop [WHO] <edward ingle>;albert hawkins/who/eop@eop [WHO] <albert hawkins>;harriet miers/who/eop@eop [WHO] <harriet miers>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;barbara a. barclay/who /eop@eop [WHO] <barbara a. barclay>;debra d. bird/who/eop@eop [WHO] <debra d. bird>;karen d. cruson/who/eop@eop [WHO] <karen d. cruson>;carolyn e. cleveland/who /eop@eop [WHO] <carolyn e. cleveland>;brett s. loper/omb/eop@eop [OMB] <brett s. loper>;eric c. pelletier/omb/eop@eop [OMB] <eric c. pelletier>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 10/16/2001 5:17:26 PM
Subject: : Re: FINAL CLEARANCE- SAP, H.R. 3004- Financial Anti-Terrorism Act
Attachments: F_7CT74004_NSC.TXT_1.wpd

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CREATION DATE/TIME:16-OCT-2001 21:17:26.00
SUBJECT:: Re: FINAL CLEARANCE- SAP, H.R. 3004- Financial Anti-Terrorism Act
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Danielle M. Simonetta

10/16/2001 09:15:24 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FINAL CLEARANCE- SAP, H.R. 3004- Financial Anti-Terrorism Act

Here is the final version of the SAP on H.R. 3004 (money laundering). The bill is scheduled to be on the floor first thing tomorrow morning. Please respond to me with your comments/clearance by no later than 9:00 am tomorrow, Wednesday, October 17th. If you have any questions, please call me.
Thanks,
Danielle
(54790)

DRAFT -- NOT FOR RELEASE

October 16, 2001
(House)

H.R. 3004 - The Financial Anti-Terrorism Act of 2001
(Rep. Oxley (R) Ohio and 24 cosponsors)

The Administration supports House passage of H.R. 3004 and welcomes the anti-money laundering proposals that are included in this bill. In particular, the Administration welcomes the incorporation of due process into the regulations, orders, actions, and definitions that would be established under this legislation. In addition, the Administration supports the inclusion of relevant Administration representatives and banking regulators in decision-making that impacts the financial services industry and its conduct around the world.

The Administration does have some concerns with H.R. 3004. The Administration believes that the jurisdictional factors provided in Section 301 of the bill for determining whether a jurisdiction, financial institution, or class of transactions is "of primary money laundering concern" may not constitute definitive proof of money laundering. In that regard, the Administration especially appreciates the elimination in the House bill of references to tax havens and lower tax rates as possible indications of money laundering concern. In addition, the Administration expects that a small but financially efficient economy would not find itself targeted under this bill on the grounds of these jurisdictional factors alone.

Despite these concerns, the Administration applauds the overall efforts reflected by this legislation to equip enforcement officials with the new anti-money laundering tools needed to successfully conduct the war on terrorism. The Administration appreciates the opportunity to work with the Financial Services Committee on this legislation and looks forward to continuing to work with Congress as these proposals move through the legislative process.

* * * * * * *
(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Rodgers) in consultation with the Departments of Justice (Jones), State (Harrison), the Treasury (Leavy), OSTP (Wilson),

CEA (Furchotgott-Roth), NEC (Malmgren), OVP (Addington, Burks), and OMB/HTF (Hire).

The following did not respond to our request for views: CIA and NSC

OMB/LA Clearance: _____.

We understand that a manager's amendment to H.R. 3004 is under development, for consideration as early as this evening under suspension of the rules, that makes significant changes to the introduced version of the bill and the manager's amendment ordered reported by the House Financial Services Committee on October 11, 2001. However the text of the new manager's amendment was not available when the description of the bill below was prepared.

Administration Position to Date

The Administration has not taken a position on H.R. 3004.

Summary of H.R. 3004

The description below is based on the introduced version of H.R. 3004.

Title I - Strengthening Law Enforcement

Title I of H.R. 3004 would enhance the ability of law enforcement agencies to identify the financial infrastructure of terrorist and other criminal organizations, by requiring interagency coordination and information exchange.

Specifically Title I of H.R. 3004 would:

abmake it a Federal crime, punishable by up to 5 years in prison, for anyone to knowingly conceal more than $10,000 in currency or other monetary instruments on his person or in any conveyance, article of luggage, merchandise or other container, and to transport or attempt to transport that currency across the border with the intent to avoid the requirement that such currency be declared to Customs inspectors;

abmake it an offense to transport more than $10,000 in criminal proceeds in interstate commerce, if the courier knows the money came from an illegal source or that it was intended to be used for an unlawful purpose;
abprovide that the government need not establish that the defendant was familiar with the Federal statute making the operation of an unlicenced money remitter a criminal offense;

abgive district courts "long-arm" jurisdiction over a foreign bank that commits a money laundering offense in the United States, and authorizes the restraint of assets found in the United States that may be used to satisfy a civil judgment against such a bank;

abexpand the number of foreign offenses that are predicated for money laundering to include fraud, corruption, smuggling and other offenses, including crimes of violence perpetrated by terrorists;

abadd "material support for terrorism" to the list of predicate offenses that can give rise to a money laundering prosecution;

abprovide for the inadmissibility of any individual seeking entry to the U.S. who a consular officer has reason to believe has engaged in certain money laundering offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the U.S., as

well as the spouse, son or daughter of such persons under certain circumstances;

abauthorize the seizure of laundered funds from correspondent accounts (accounts of foreign banks maintained in the U.S.);

abauthorize the U.S. Customs Service to conduct limited warrant-less searches of outbound international mail when there is a reasonable suspicion that the mail contains bulk cash or other illegal contraband. The bill would extend authority to outbound international mail sent via the U.S. Postal Service. The bill also includes a provision that would prohibit U.S. Customs Service inspectors from reading, copying, or seizing any correspondence without a search warrant or the written consent of the sender;

abmake it a Federal crime, punishable by up to 5 years in prison, to knowingly falsify or conceal a customers true identity in a transaction with a financial institution (including a bank, securities firm, or insurance company);

abrequire the Secretary of the Treasury to utilize already existing statutory authority to prescribe regulations requiring financial institutions to verify the identity of all persons who open and maintain accounts, and to keep records of the information used to verify such identification;

Title II - Public-Private Cooperation

This title would encourage cooperation and information exchange between the government and the financial services sector, to ensure that suspicious financial activities that may be related to terrorism are identified and investigated.
Specifically, Title II of H.R. 3004 would require the Secretary of the Treasury to:

abestablish a secure website dedicated to receiving electronic filings of Suspicious Activity Reports by financial institutions and provide financial institutions with alerts and other information regarding suspicious activity that warrants enhanced scrutiny.

abdisseminate quarterly reports to the financial services industry identifying and analyzing patterns of suspicious financial activity disclosed by the reports filed by the industry pursuant to the Bank Secrecy Act.

abpublish by no later than December 31, 2001, a proposed regulation requiring securities broker-dealers to file Suspicious Activity Reports.

Title II of H.R. 3004 would also:

abclarify the Bank Secrecy Act's "safe harbor" provision, which protects financial institutions that disclose possible violations of law or regulation from civil liability for reporting their suspicions and for not alerting those identified in the reports.

abpermit a bank, upon request by another bank, to share information in a written employment reference concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

Title III - Combating International Money Laundering.

Title III of H.R. 3004 would address money laundering associated with off-shore secrecy havens and other countries that generally do not cooperate with U.S. law enforcement efforts to track terrorist assets and the proceeds of other criminal activity.

H.R. 3004 would give the Secretary of the Treasury discretionary authority to impose one or more of five special measures against foreign jurisdictions, financial institutions operating outside the United States, and international transactions that are determined to be of primary money laundering concern. Those measures include: (1) additional record keeping and reporting requirements; (2) identification of beneficial ownership of accounts held by foreign persons; (3) identification of persons permitted to use a payable-through account with an institution outside the U.S.; (4) identification of persons permitted to use a correspondent account with an institution outside the U.S.; and (5) prohibition of, or imposition of conditions on, correspondent or payable-through accounts with institutions outside the U.S.

The bill would require the Secretary to consult with the Secretary of State and the Attorney General to determine whether a foreign jurisdiction is of "primary money laundering concern," by taking into consideration: (1) whether a jurisdiction offers bank secrecy and special tax advantages; (2) the quality of its bank supervision and anti-money laundering laws; (3) the volume of transactions relative to the size of its economy; and (4) the experience of U.S. law enforcement officials in receiving cooperation from the jurisdiction.

H.R. 3004 would prohibit a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks.

H.R. 3004 would define the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. The bill would clarify that bets or wagers do not include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game. The bill would also clarify that businesses of betting or wagering do not generally include any financial intermediary (creditor, credit card issuer, insured depository institution, transmitter of an electric fund transfer, money transmitting business, or network used to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network).

H.R. 3004 would authorize civil penalties, including a preliminary injunction or injunction, against any person to prevent or restrain a violation of this section, including expedited proceedings in exigent circumstances, to be brought by the U.S. Attorney General, or the attorney general of a State or other appropriate State official. The bill would also clarify that the bill is not intended to alter, supercede, or otherwise affect the application of the Indian Gaming Regulatory Act.

H.R. 3004 would authorize criminal penalties, including fines or imprisonment for not more than five years, or both. The bill would also authorize a permanent injunction against a person convicted under this subsection, enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information

assisting in the placing of bets or wagers.

H.R. 3004 would provide that the "safe harbor provided" to a financial intermediary (creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional, or local network) does not apply to a financial intermediary that operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers are or may be placed, received, or otherwise made; or is owned or controlled by any person who operates, manages, supervises, or directs such an Internet website.

H.R. 3004 would authorize the appropriate Federal banking agency to prohibit an insured depository institution from extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service, or from paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution, where the institution has actual knowledge that a person is violating this section in connection with such activities. The bill would provide that a financial intermediary is not held liable for a violation of this act solely based on the unknowing and unintentional involvement of the intermediary through the use of the facilities of such intermediary in an unlawful Internet gambling transaction, unless the intermediary acted as an agent of a gambling business and had: (1) actual knowledge that the specific transaction is an unlawful Internet gambling transaction; and (2) the intent to engage in the business of submitting into the payment system Internet gambling transactions prohibited by this section.

H.R. 3004 would provide that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering.

Title IV - Currency Protection

Title IV of H.R. 3004 would make it a criminal offense to possess an electronic image of an obligation or security document of the United States with intent to defraud, also increasing maximum sentences for a series of counterfeiting offenses. This title would also conform the legal prohibition on counterfeiting foreign security documents or obligations within the U.S. to that of counterfeiting U.S. security document or obligations.

This title would also permit the Secretary of the Treasury to authorize production of currency, stamps or other security documents for foreign countries if such work does not interfere with the production of such documents for the U.S. and if the Secretary of State has concurred in the production.

Pay-As-You-Go Scoring

According to HTF (Hire), H.R. 3004 would increase receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This Office has not completed estimates, but expects that the effect will be marginal.

LEGISLATIVE REFERENCE DIVISION
October 16, 2001/6:00 PM

Message Sent
To:_____
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ATT CREATION TIME/DATE: 0 00:00:00.00
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DRAFT -- NOT FOR RELEASE

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REV_00133653

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OMB/LA Clearance: _____.

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- provide that the government need not establish that the defendant was familiar with the Federal statute making the operation of an unlicenced money remitter a criminal offense;

- give district courts "long-arm" jurisdiction over a foreign bank that commits a money laundering offense in the United States, and authorizes the restraint of assets found in the United States that may be used to satisfy a civil judgment against such a bank;

- expand the number of foreign offenses that are predicated for money laundering to include fraud, corruption, smuggling and other offenses, including crimes of violence perpetrated by terrorists;

REV_00133654

- add "material support for terrorism" to the list of predicate offenses that can give rise to a money laundering prosecution;

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- authorize the seizure of laundered funds from correspondent accounts (accounts of foreign banks maintained in the U.S.);

- authorize the U.S. Customs Service to conduct limited warrant-less searches of outbound international mail when there is a reasonable suspicion that the mail contains bulk cash or other illegal contraband. The bill would extend authority to outbound international mail sent via the U.S. Postal Service. The bill also includes a provision that would prohibit U.S. Customs Service inspectors from reading, copying, or seizing any correspondence without a search warrant or the written consent of the sender;

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include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game. The bill would also clarify that businesses of betting or wagering do not generally include any financial intermediary (creditor, credit card issuer, insured depository institution, transmitter of an electric fund transfer, money transmitting business, or network used to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network).

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H.R. 3004 would provide that, in deliberations between the U.S. Government and any other

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country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering.

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This title would also permit the Secretary of the Treasury to authorize production of currency, stamps or other security documents for foreign countries if such work does not interfere with the production of such documents for the U.S. and if the Secretary of State has concurred in the production.

REV_00133658

Pay-As-You-Go Scoring

According to HTF (Hire), H.R. 3004 would increase receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This Office has not completed estimates, but expects that the effect will be marginal.

LEGISLATIVE

REFERENCE DIVISION

October 16,

2001/6:00 PM

REV_00133659

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 10/17/2001 9:27:46 AM

Subject: : If you have been to the Hart Office Building this week please let me know...

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-OCT-2001 13:27:46.00
SUBJECT:: If you have been to the Hart Office Building this week please let me know...
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READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
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so we can arrange to have you tested.

If you have not been to the Hart Office Building this week no need to
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Thanks!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 10/17/2001 9:27:05 AM

Subject: : Testing for those of you who have been on the Hill

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-OCT-2001 13:27:05.00
SUBJECT:: Testing for those of you who have been on the Hill
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Judge and Tim are both aware of the possible need for testing and have
spoken to Joe Hagin about this.
```

We will let you know what is decided as soon as possible.

Until then please be patient.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>

Sent: 10/17/2001 10:53:12 AM

Subject: : Reminder re: NASA event

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-OCT-2001 14:53:12.00
SUBJECT:: Reminder re: NASA event
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:A. Morgan Middlemas ( CN=A. Morgan Middlemas/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If you have not already done so please let me know if you will be
attending so I can send your name in.
```

Details are listed below...

On Thursday, October 18th NASA will have a sneak preview of the IMAX3D footage of the assembly of the International Space Station. This event will be held at the Johnson IMAX Theater in the Smithsonian National Museum of Natural History located at 10th and Constitution. The 35 minute feature film will begin at 9:00 am.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 10/17/2001 12:41:14 PM

Subject: : Reminder - we have a 3:30 JSC prep meeting!

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-OCT-2001 16:41:14.00
SUBJECT:: Reminder - we have a 3:30 JSC prep meeting!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/18/2001 4:38:28 AM
Subject: : Re: Ashcroft Memo on Tobacco lawsuit

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-OCT-2001 08:38:28.00
SUBJECT:: Re: Ashcroft Memo on Tobacco lawsuit
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

correct, Mehlman

Helgard C. Walker
10/18/2001 08:37:22 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Ashcroft Memo on Tobacco lawsuit

i assume, thus, that he means ken MEHLMAN not KEN. no, he shouldn't call ciongo.

Brett M. Kavanaugh
10/18/2001 08:36:16 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Ashcroft Memo on Tobacco lawsuit

young (college) intern in Political Affairs. he worked on campaign/florida and knows ciongo independently. he obviously should not call ciongo about this.

Helgard C. Walker
10/18/2001 08:34:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Ashcroft Memo on Tobacco lawsuit

who is this person?

Brett M. Kavanaugh
10/17/2001 07:30:59 PM
Record Type: Record

To: Michael J. Napolitano/WHO/EOP@EOP
cc: Helgard C. Walker/WHO/EOP@EOP
bcc:
Subject: Re: Ashcroft Memo on Tobacco lawsuit

You should talk to Helgi Walker about this matter, and Helgi should place any necessary calls to Justice/Ciongoli.

Michael J. Napolitano
10/17/2001 03:48:03 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Ashcroft Memo on Tobacco lawsuit

Brett -

Ken asked me to see if you/Counsel's office knew where this issue was heading - do you know the issue, do you know who could provide details for me.

I've put a call into Adam Ciangoli this AM.

Let me know, and thanks.

Napo

From: CN=Daniel M. McCarthy/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Dan.Bryant@usdoj.gov @ inet [UNKNOWN] <Dan.Bryant@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
Sent: 10/18/2001 10:12:36 AM
Subject: : 10:30am Meeting Tommorrow

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Daniel M. McCarthy ( CN=Daniel M. McCarthy/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-OCT-2001 14:12:36.00
SUBJECT:: 10:30am Meeting Tommorrow
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Dan.Bryant@usdoj.gov ( Dan.Bryant@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The meeting will be in room 107 in the East Wing of the White House.
Those of you coming in from other agencies must send me names, DOB, &
Social Security #'s so that I may clear you and your colleagues in.

Dan
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/19/2001 12:40:47 PM
Subject: : LRM MJR75 - - Council of Economic Advisers Testimony on Insurance Markets in the Aftermath of the Current Terrorist Threat
Attachments: P_7OW94004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-OCT-2001 16:40:47.00
SUBJECT:: LRM MJR75 - - Council of Economic Advisers Testimony on Insurance Markets in the Aftermath of the Current Terrorist Threat
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

didn't you review?
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/19/2001 04:40 PM ----------

Allison L. Riepenhoff
10/19/2001 02:49:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM MJR75 - - Council of Economic Advisers Testimony on Insurance Markets in the Aftermath of the Current Terrorist Threat

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 10/19/2001 02:49 PM ----------

From: Marshall J. Rodgers on 10/19/2001 02:38:57 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: CLRM@doc.gov , justice.lrm@usdoj.gov , llr@do.treas.gov
Subject: LRM MJR75 - - Council of Economic Advisers Testimony on Insurance Markets in the Aftermath of the Current Terrorist Threat

Attached for your review is CEA (Hubbard) testimony for an October 24th hearing before the Senate Committee on Banking, Housing, and Urban Affairs.

LRM ID: MJR75
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, October 19, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for

Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: Council of Economic Advisers Testimony on Insurance Markets in the Aftermath of the Current Terrorist Threat

DEADLINE: Noon Monday, October 22, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review is CEA (Hubbard) testimony for an October 24th hearing before the Senate Committee on Banking, Housing, and Urban Affairs.

DISTRIBUTION LIST

AGENCIES:
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EOP:
Andrew Abrams
Hitesh Vyas
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Michael K. Berkholtz
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K. Philippa Malmgren
Steven D. Aitken
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Sarah S. Lee
Alexander T. Hunt
Jefferson B. Hill
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David S. Addington
Cesar Conda
Neil S. Patel
Matthew Kirk
Jack Howard
Kristen Silverberg
Albert Hawkins
Edward Ingle
Richard M. Russell
John M. Bridgeland
Heather Wingate
Kenneth L. Schwartz
Randolph M. Lyon
Rebecca L. Halkias
Nancy P. Dorn
Ronald E. Jones
Siobhan Murphy
James J. Jukes
Richard E. Green

LRM ID: MJR75 SUBJECT: Council of Economic Advisers Testimony on Insurance Markets in the Aftermath of the Current Terrorist Threat

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Marshall J. Rodgers Phone: 395-7813 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Andrew Abrams/OMB/EOP@EOP
Hitesh Vyas/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Lloyd A. Blanchard/OMB/EOP@EOP
Michael K. Berkholtz/OMB/EOP@EOP
Augustine T. Smythe/OMB/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Rosemarie W. Dale/OMB/EOP@EOP
Sarah S. Lee/OMB/EOP@EOP
Alexander T. Hunt/OMB/EOP@EOP
Jefferson B. Hill/OMB/EOP@EOP
WHGC LRM
NEC LRM

D. Marcus Sumerlin/OPD/EOP@EOP
Robert F. Mahaffie/OMB/EOP@EOP
Andrew D. Hire/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP
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Jack Howard/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Richard M. Russell/OSTP/EOP@EOP
John M. Bridgeland/OPD/EOP@EOP
Heather Wingate/WHO/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
Rebecca L. Halkias/WHO/EOP@EOP
Nancy P. Dorn/WHO/EOP@EOP
Ronald E. Jones/OMB/EOP@EOP
Siobhan Murphy/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Richard E. Green/OMB/EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7OW94004_WHO.TXT_1>

~~DRAFT: 9/27/01~~

Testimony
of
R. Glenn Hubbard
Chairman
Council of Economic Advisers
Before the
Committee on Banking, Housing, and Urban Affairs
U.S. Senate~~on the Budget~~
~~United States Senate~~

October 24, 2001
10:00 a.m.

Mr. Chairman, Senator Gramm~~Senator Domenici, and~~, and members of the Committee, it is a pleasure to appear before you today to discuss the situation facing insurance markets in the aftermath of the current terrorist threat. ~~outlook for the U.S. economy. The terrible~~ The terrible tragedy associated with the terrorist attacks on New York and Washington exacted an economic toll on the United States as well as a human toll, and the Administration is working with Congress to address both losses.

Among the direct repercussions of these attacks has been an increased appreciation of the need to focus public policy on s~~.~~

~~**Growth in the U. S. Economy and the Outlook Prior to September 11**~~

~~It is useful to begin with the backdrop to these events. Prior to the tragedy on September 11, the United States was experiencing a growth slowdown: real GDP growth slowed to only an average 1.2 percent annual pace during the past four quarters, with a low of 0.2 percent in the second quarter, and 0.0 percent in the third quarter.~~ ~~**NOTE: Change the numbers after GDP is released.**~~ ~~While the probability of an outright recession was low, the fact that the economy was~~

growing slower that its potential rate of growth dictated that unemployment rate was likely to rise in the near term. Economic disruptions emanating from the bombings in New York and Washington almost certainly worsen the short-run growth prospects.

Growth rates this much below their potential levels are not acceptable. Accordingly, monetary and fiscal policy moved decisively to reverse pre-September 11 recessionary pressures. The Federal Reserve cut the target federal funds rate by 300 basis points from the beginning of the year through, September 11, and $41 billion was returned to taxpayers during the third quarter as a downpayment on a large permanent tax cut.

Looking outside the nation, the United States had an interest in the resumption of economic growth in Japan and accelerated growth in Europe. During the first half of 2001, GDP declined in Japan, and the rate of decline accelerated. In Europe, the rate of GDP growth remains positive, but has decelerated. Moreover, European Commission surveys of the outlook for new manufacturing orders, industrial production, and consumer confidence indicate recent declines. More rapid growth in the major economies will in turn enhance the likelihood of stability and progress in the rest of the world, such as developing Asia and Latin America. In the absence of resumption of global growth, trends in output and asset prices may force painful adjustments.

Economic Consequences of the Events of September 11

To analyze the effects of the terrorist attacks on the World Trade Center and the Pentagon, it is instructive to consider two steps. First, the collapse of the World Trade Center and surrounding buildings acted as an adverse supply shock to the economy. The physical damages from the attacks likely were not sufficiently consequential to affect the underlying potential growth rate of the economy. However, the destruction of the World Trade Center, the

damage to the financial sector, and the interruption of commercial aviation temporarily restricted the economy's ability to supply goods and services in the short run. These "supply shock" consequences of the attacks substantially reduce the growth rate of GDP over the next two quarters and increase significantly the likelihood that the economy is in a recession. These consequences also imply a greater gap between the economy's actual and potential growth rate, with adverse consequences for employment.

This first step treats -- for strictly analytic purposes -- the attacks as a contained physical event. Of course, there is a second, and more important, effect. Because the destruction on September 11 arose as a result of terrorism, the economic aftermath includes shocks to household and business confidence, and increased uncertainty regarding the overall environment. The effects on confidence and uncertainty give rise to a number of additional supply-side costs of transacting business -- ranging from enhanced security to more costly insurance -- which reduce output growth.

On the demand side, the attacks and their potential repercussions lowered household and business confidence about the future, and along with it their willingness to spend and invest. Prior to the attacks, a focus of policy was to ensure a continued flow of resources -- incomes, cash flow, and so forth -- to households and businesses to provide a base for sustained growth in aggregate demand. If confidence effects are substantial, the attacks must necessarily shift our focus somewhat -- away from simply providing dollars to households, for example, and toward buttressing the confidence of households to make purchases out of those dollars.

What is the outlook for consumer confidence? To gain a sense of the magnitudes involved, one can derive estimates of the expected decline in confidence by utilizing the changes to the Blue Chip consensus forecast due to the terrorist attacks. The implied drop in confidence is

substantial and likely incorporates effects of recent equity price declines. Using the most recent Blue Chip consensus forecast as a guide, the implied decline in confidence is temporary — following roughly the path of the confidence decline and recovery during the Gulf War — and is essentially eliminated by the second half of 2002. The Blue Chip Consensus forecast is, of course, only an estimate. More shallow declines in confidence would permit a more rapid recovery. Larger and more sustained declines in confidence would suggest a longer downturn and slower recovery, particularly if accompanied by prolonged weakness in equity prices.

To be concrete, the consensus economic forecasts by private sector economists (as reflected in the September 20, 2001 release of the Blue Chip Economic Indicators) indicates a modest recession, again fueled by a decline in confidence and equity values. (While a recession is defined by the National Bureau of Economic Research, we use the term in its common association with two quarters of negative GDP growth.) The consensus estimate is for a decline in real GDP of 0.5 percent and 0.7 percent in the third and fourth quarters, respectively, of this year. Consensus estimates of GDP growth rebound in 2002, with growth of 1.4 percent and 2.8 percent, respectively, in the first two quarters of 2002, and 3.7 percent in the second half of 2002. Even with this recovery, the unemployment rate is likely to rise through 2002 **[True?: More details?]**

A range of estimates underlies the Blue Chip forecasts, and that range reflects a divergence of views about the depth of the initial decline in confidence and the persistence of that decline. For example, the range between the top ten and bottom ten estimates is 0.4 percent to -1.5 percent for the third quarter of 2001, 1.5 percent to -2.4 percent for the fourth quarter of 2001, 3.3 percent to -0.8, percent for the first quarter of 2002, 4.0 percent to 1.0 percent in the second quarter of 2002, and 3.8 percent to 1.8 percent for growth during 2002 as a whole.

[Insert comment on implied range for unemployment rate]. This range suggests the need to think seriously about downside risks and policies that address the source of the economy's vulnerability in the quarter ahead.

Existing public policies also continue to buffer the downward pressure on aggregate demand. On the monetary side, the Federal Reserve reduced its federal funds rate target on September 17 by 50 basis points. From a fiscal perspective, the $40 billion emergency appropriation will provide additional stimulus later this year and throughout 2002. These policy moves will mitigate somewhat the effects of the terrorist attack on output growth and unemployment, and should aid a recovery in 2002, though again downside risks remain.

Implications for Public Policy

This simple analysis of the short-term economic consequences of the events of September 11 suggests important lessons for public policy. Consumer and business confidence is the key factor in calibrating the depth of any downturn occurring as a result of the terrorist attacks and the pace of the subsequent recovery. Indeed, improvements in confidence are themselves a potent stimulus; a rapid rebound of household and business sentiment will hasten the arrival and pace of recovery in 2002. A longer decline in confidence could lead to a significant period of mediocre output growth and rising unemployment, as I noted earlier.

Hence one way to evaluate policy responses is by their effect on household or business confidence. What is the framework for policies?

First, the tragedy of September 11 is a seminal event and policies should be forward-looking, not attempting to simply replicate the world of September 10. Policies should provide consumers and businesses with confidence that the policy infrastructure is in place to ensure the

~~conduct of economic activity in this new environment. As an example, consider the response of the Administration and the Congress to the immediate problems in commercial aviation.~~

~~The problem is not simply one of keeping commercial aircrafts in the air. Instead a key feature of the policy response is the provision of funding for enhanced security, thereby addressing the root cause of the airline industry downturn – diminished confidence by travelers. This funding should address aircraft security, security personnel and screening of passengers and baggage.~~

~~Prudent investment in aviation security restore confidence in air travel, and the hardened infrastructure in this economic sector will also support the numerous industries related to the travel and tourism sectors of the economy~~

~~On a broader scale, a policy focus on~~ Security, including efforts toward defending American economic activity against terrorist intrusions. The need for security in economic activity – whether in such visible forms as Federal Air Marshals or more mundane needs like additional backup computer systems – raises the overall cost of transacting business. In this sense, the attacks acted as a shock to the costs of supplying goods and services in the economy. It is in our economic interest to contain these transactions costs as much as possible.

The attacks also raised the degree of uncertainty in the economic environment – from the state of aggregate demand, to the demand for particular goods and services (air travel, for example), to a myriad of other areas.

Commercial insurance lies at the intersection of these two forces. Property and casualty insurance is one mechanism by which economies respond efficiently to risks in the environment. Risks are spread, converting for each business a potential cost of unknowable size and timing into a set of smaller, known premium payments. The events of September 11 induced a dramatic revision in perceived risks. In normal circumstances, increased risks are translated into higher

premiums. This serves the useful economic function of pricing risk, leading the private sector toward those activities where the risk is "worth it" -- there might be losses now and then, but on average society will benefit – and away from foolhardy gambles.

At the moment, however, the entire nation is unsure of the genuine likelihood of additional terrorist events. For insurance markets, unfortunately, the distinction between risk – not knowing when an event will happen, but having solid knowledge of the odds of an occurrence – and genuine uncertainty about the frequency of an insured event is the key to being able to price efficiently. Experience with our new security environment will mitigate this difficulty over time. In the near term, however, it would not be terribly surprising to experience disruption of the property and casualty market. In the extreme, customers may not be able to renew policies until the market resolves pricing difficulties.

An interruption of coverage is a particular, and extreme, version of an increase in transactions costs as a result of terrorist-associated risks. Still, there is the possibility that existing lines of coverage will be renewed only with quite substantial increases in premiums. I believe we are all now familiar with the difficulties facing aviation; disproportionate rises in insurance coverage or, in the extreme, withdrawal of insurance coverage, would hinder transition to a new operating environment. This phenomenon is more widespread, however. Lenders usually require businesses to insure any property they use to secure loans. The terms of terrorism coverage could diminish bank lending for new construction projects. It could as well act as a sharp impediment to transactions that permit existing commercial properties – skyscrapers, pipelines, power plants, and so forth – to change hands. It is important to point out that this "changing hands" is an important economic function. The relative efficiency with

REV_00133760

which our economy reallocates capital from less productive to more productive uses sets it apart from many other nations.

In short, a well-functioning insurance market is part of the financial infrastructure that underpins our economy. The Administration and Congress worked together to restore the institutional underpinnings of the financial markets in the week after September 11. In the same way, the Administration looks forward to working with the Congress to bolster the capacity of private insurance markets to provide the risk-sharing services that benefit commerce and consumers.

Principles for Government Involvement

To this end, the Administration believes that any federal intervention in the insurance market should adhere to four key principles:

1. Intervention should encourage, not discourage, private market incentives to expand its capacity to absorb and diversify risk.
2. Intervention should be temporary, permitting us to review in the future the ability of the insurance industry to price these risks and absorb losses.
3. Private market actors should face appropriate price incentives to encourage efforts to minimize the probability of a terrorist event and to limit losses should such an event occur.
4. Private sector uncertainty about liabilities that arise from litigation should be reduced.

The Administration's approach to Terrorism Insurance adheres to each of these four principles. In order to see this, please allow me to first explain the basic outlines of how this approach would work.

The Administration Proposal

Upon enactment of this legislation, if the United States were the victim of a terrorist attack before the end of 2002, the federal government would pay for 80 percent of the first $20 billion of insured losses, and 90 percent of insured losses in excess of this amount. The private insurance industry would pay for the remaining insured losses.

In the year 2003, the industry would be responsible for the first $10 billion in insured losses, and 50 percent of insured losses between $10 billion and $20 billion. Above $20 billion, the federal government would continue to pay 90 percent of all losses.

In the year 2004, the third and final year of this program, the industry would be responsible for 100 percent of the first $20 billion in losses, and 50 percent of insured losses between $20 billion and $40 billion. Above $40 billion, the federal government would continue to pay 90 percent of all losses.

In the event that total insured losses exceed $100 billion in any calendar year, Congress would determine the procedures for and source of any such payments.

In addition to this insurance component, the Administration approach would also consolidate all claims arising from a terrorist incident in a single federal forum. In addition, it would prohibit claims for punitive damages (other than those directed at the perpetrators), and require that non-economic damages be proportional to a defendant's responsibility (for economic losses, ordinary rules of joint and several liability would apply).

Consistency of Approach with Prinicples

This proposal is consistent with the Administration principles outlined above.

This proposal encourages private sector capacity building in several ways. First, it is forward-looking. It respects the insurance industry's proven ability to develop the capacity to

price, market, and service products for new types of risks. In the past, naysayers deemed reinsurance against the risks of natural catastrophes such as hurricanes as beyond the reach of private insurance markets. Experience has proven them wrong. By providing a temporary bridge of three years, a steadily receding Federal presence, and an explicit sunset, we will permit the industry to grow into this new market.

Second, the Administration's proposal recognizes that a limitation facing the insurance and reinsurance industry is its total capacity to absorb risk. For this reason, we provide the economic function of limiting its maximum exposure in order to provide a backstop against catastrophic losses, which could generate large increases in transactions costs for businesses and, ultimately, for consumers.

Third, because the industry shares in the losses – up to a maximum loss – and the share it shoulders rises over time, there will be a profit motive for insurance companies – and actuaries and economists – to begin now to refine pricing models. As I noted earlier, there are economic benefits to the efficient pricing of risks. While no covered individual company can control whether terrorists strike, efficient pricing can lead every covered company to take actions lessen the damage that results from terrorist incidents. After the approach sunsets, the industry will have made progress toward efficient pricing of risks. At that time, issues of pricing and the industry's capacity to absorb losses can be revisited.

In addition, having the industry participate will control costs after any event. If the government agrees to pick up 100 percent of all claims, the insurance industry has no incentive to do careful claims adjustments.

The potential losses facing insurers depend not only upon the security and economic environment, but on the legal setting as well. That is why the Administration approach would

also includes elements of legal reform. These reforms to the tort process will bring damage claims closer to their economic foundation and reduce the uncertainty about the magnitude of potential claims. The consolidation of claims in a single federal forum, for example, helps to ensure that the claims will be treated in a consistent manner and eliminates the redundancy costs of litigating similar claims in multiple courts. In addition, consolidation tends to expedite the claims process, reducing the uncertainty about the length of the litigation. Limitations on punitive damages (other than those directed at perpetrators or abettors) and proportional liability for non-economic harms (except those caused by perpetrators or abettors) reduces the potential for open-ended claims. Such reforms are essential for economically enhancing the efficiency of the insurance market by increasing the ability of the insurance industry to price and absorb the risks associated with terrorism.

To conclude, the U. S. economy is very resilient, and, through the combined efforts of the Administration and Congress it is possible to provide transitional public policy to support the needs of purchasers of property and casualty insurance. Thank you again, Mr. Chairman, for the opportunity to appear before you today. I am happy to answer your questions.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/22/2001 4:56:21 AM
Subject: : Volunteer needed to deliver file to the Hill at 12:30 pm-location TBD

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-OCT-2001 08:56:21.00
SUBJECT:: Volunteer needed to deliver file to the Hill at 12:30 pm-location TBD
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Nominee is Sanra Pack (Asst. Sec. of Army for Financial Management)

Please let me know if you are available.
```

From: CN=Christopher J. Orr/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/22/2001 7:32:04 AM
Subject: : Claire Buchan and FOIA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-OCT-2001 11:32:04.00
SUBJECT:: Claire Buchan and FOIA
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Claire suggested I talk to you about this Brett.

I'm getting a lot of calls from reporters on this. Deadlines are today.

The issue is a letter the President sent supporting an exception to FOIA to encourage companies to come forward and discuss breaches of network security.

AP has put a story out on it (attached). What can you tell me about it?

Claire told me you were working on this.....

Bush Supports Disclosure Limits
By TED BRIDIS, Associated Press Writer

WASHINGTON (AP) - The White House will support proposals to withhold details about electronic attacks against the nation's most important computer networks, an administration expert in computer security confirmed Thursday.

The proposed changes, meant to encourage corporate victims of hackers to report crimes, would restrict government agencies' disclosures about attacks under the Freedom of Information Act. The proposal seeks to overcome traditional reluctance by industries, especially technology, to reveal potentially embarrassing details without fear of disclosure.

In a letter to the chairman of the National Security and Telecommunications Advisory Committee, President Bush (news - web sites) said he will ``support a narrowly crafted exception ... to protect information about corporations' and other organizations' vulnerabilities to information warfare and malicious hacking.''

Bush sent the letter three weeks ago to Daniel Burnham, chairman of Raytheon Co., who heads the advisory committee. The Associated Press obtained the letter Thursday.

John Tritak, director of the federal Critical Infrastructure Assurance Office, confirmed during a Thursday speech to technology executives the administration's support for such a ``narrowly crafted'' exemption to the information act. Tritak cautioned that any change must be ``fully protective of open government and

privacy.''

Other officials, including Ron Dick, director of the FBI (news - web sites)'s National Infrastructure Protection Center, privately have expressed support for an FOIA exemption to encourage broader sharing of threat information between industries and the government.

``This is a much stronger, more-clear message from the administration,'' said Harris Miller, head of the Information Technology Association of America, a trade group that supports the new limits.

Support by President Bush marks a shift from the Clinton administration, which said existing restrictions on FOIA disclosures were adequate for protecting sensitive corporate information.

In a different move to limit information available under the U.S. information law, Attorney General John Ashcroft (news - web sites) ordered federal agencies this week to review more closely which documents they release. Ashcroft's new policy allows officials to withhold information on any ``sound legal basis.'' Under looser policies issued in 1993, agencies could hold back information to prevent ``foreseeable harm.'' Ashcroft cited the Sept. 11 terrorist attacks against New York and Washington as reasons for the change.

Currently, Sens. Robert Bennett, R-Utah, and Jon Kyl, R-Ariz., and Reps. Tom Davis, R-Va., and James Moran, D-Va., have introduced bills to limit government disclosures about hacking attacks.

``If you do not pass this bill, industry will not tell government'' about hacking incidents against important networks, Bennett said Thursday.

President Bush responded with support for the new FOIA exemption after a request from Raytheon's Burnham over the summer on behalf of the telecommunications advisory committee. Burnham wrote that ``barriers to sharing (information) must be removed'' and asked the president also to limit legal liabilities facing companies that make such disclosures.

Burnham's letter to Bush was originally obtained this week by the Washington-based Electronic Privacy Information Center, which contends that existing limits under the information law are adequate to protecting disclosures about hacking attacks.

EPIC lawyer David Sobel charged Thursday that technology companies want liability protections for hardware and software products that might be flawed in ways that could allow security breaches. ``Most of us have concluded that companies really want the ability to unload this information on the government, then wash their hands of it,'' Sobel said.

A White House official, who asked not to be identified, said Bush has not committed to supporting any liability limits.

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/22/2001 10:18:38 AM
Subject: : LRM IKK127 - - TREASURY Report on Legislative Proposals to the Internal Revenue Service
Attachments: P_QZSA4004_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-OCT-2001 14:18:38.00
SUBJECT:: LRM IKK127 - - TREASURY Report on Legislative Proposals to the Internal Revenue Service
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 10/22/2001 02:18 PM ----------

From: Irene Kho on 10/22/2001 02:13:19 PM
Record Type: Record

To: justice.lrm@usdoj.gov , smires@email.usps.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IKK127 - - TREASURY Report on Legislative Proposals to the Internal Revenue Service

Attached is a Treasury letter, which provides legislative proposals that would improve the IRS's ability to administer provisions of the Restructuring and Reform Act of 1998. Please review and provide comments by 12:00 PM, Wednesday, October 24th.

- Letter from O'Neill re 2001 IRS legislation.doc

LRM ID: IKK127
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, October 22, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Report on Legislative Proposals to the Internal Revenue Service

DEADLINE: 12:00 PM Wednesday, October 24, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a Treasury letter, which provides legislative

proposals that would improve the IRS's ability to administer provisions of the Restructuring and Reform Act of 1998. Please review and provide comments by 12:00 PM, Wednesday, October 24th.

DISTRIBUTION LIST

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018-Council of Economic Advisers - Liaison Officer - (202) 395-5084
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Richard E. Green
James J. Jukes
WHGC LRM
LRM ID: IKK127 SUBJECT: TREASURY Report on Legislative Proposals to the Internal Revenue Service
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
NEC LRM
K. Philippa Malmgren/OPD/EOP@EOP
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Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
WHGC LRM
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QZSA4004_WHO.TXT_1>

October 18, 2001

The Honorable Max S. Baucus
United States Senate
Washington, D.C. 20510-6200

Dear Senator Baucus:

Earlier this year I asked agencies within the Department of Treasury to identify roadblocks to their achieving improved efficiencies and performance within the limits of their current resources. Internal Revenue Service Commissioner Rossotti responded with several legislative proposals. Some would improve the IRS's ability to administer provisions of the Restructuring and Reform Act of 1998. Others would result in significant cost savings to the IRS. A list of these proposals is enclosed.

I support including these proposals in the earliest appropriate legislation.

Sincerely,

Paul O'Neill

Enclosure

cc: Charles O. Rossotti
Mark Weinberger

Legislative Proposals from the IRS

RRA Proposals

1. Modify Section 1203
2. Curb Frivolous Submissions
3. Authorize Partial Pay Installment Agreements
4. Terminate Installment Agreements for Failure to File Returns and Failure to Make Tax Deposits
5. Grant Tax Court Full Jurisdiction in Collection Due Process Cases
6. Remove Monetary Threshold for Counsel Review of Offers-in-Compromise

Cost Savings Proposals

1. Permit Certificates of Mailing as Alternative to Certified Mail
2. Modify Certified Mail Return Receipt Requested Requirement
3. Clarify Dual Notice Requirement
4. Treat "False Returns" as Nullities, Not Subject to Deficiency Procedures
5. Permit Collection of Federal Payment Levy Program Fees from Amounts Levied

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/22/2001 10:39:19 AM
Subject: : Re: Joan Biskupic

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-OCT-2001 14:39:19.00
SUBJECT:: Re: Joan Biskupic
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

haven't had a chance to look at it yet.

your weekend?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/22/2001 6:00:53 PM
Subject: : reminder

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-OCT-2001 22:00:53.00
SUBJECT:: reminder
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 10/22/2001 6:09:26 PM
Subject: : Re: general talking points on counter-terrorism
Attachments: P_OY5B4004_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-OCT-2001 22:09:26.00
SUBJECT:: Re: general talking points on counter-terrorism
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Courtney: I think you may want to tweak these to best reflect
final bills.

Courtney S. Elwood
10/22/2001 06:48:39 PM
Record Type: Record

To: Candida P. Wolff/OVP/EOP@EOP
cc: heather wingate/who/eop@eop, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: general talking points on counter-terrorism

Brett prepared some, early in the process. I will see if he still has
them.

Candida P. Wolff

10/22/2001 06:46:59 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP, Heather Wingate/WHO/EOP@EOP
cc:
Subject: general talking points on counter-terrorism

Do you all still have copies of the general talking points on this bill?
Mitch Daniels is looking for broad talking points on the bill and
unfortunately all my materials are in the Senate.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OY5B4004_WHO.TXT_1>

Administration's Anti-Terrorism Proposals

The Administration's proposals represent a measured, careful, responsible, and constitutional approach to the threat of terrorist activities conducted in the United States and directed against United States citizens. The proposals seek to enhance the government's ability both (i) to detect and prevent terrorist acts; and (ii) for those terrorists who are brought to justice through a criminal process rather than a military process, to severely punish terrorists and those who support and harbor them.

- The Administration's primary legislative proposals seek to achieve four main goals:

  - ***First***, the legislation would ensure that information that is important to both intelligence and criminal investigations can be easily shared so that vital information is available to all relevant federal agencies. The legislation will begin to break down the walls between law enforcement and intelligence agencies and thereby help both to prevent terrorist acts before they happen and to severely punish terrorists and those who harbor and support terrorists.

  - ***Second***, the legislation would update laws authorizing government surveillance. These laws were enacted decades ago by Congress in an era of rotary telephones. These laws must be updated to account for e-mail, Internet usage, cellular phones, and other forms of modern communication.

    - The government is currently fighting a modern war -- a war that threatens our people and our way of life -- with antique weapons. Terrorists are taking advantage by using the Internet, e-mail, and multiple cellular telephones to escape and evade detection by United States agents.

    - The proposed legislation does *not* purport to change the legal standards that govern when and under what circumstances the government can seek such information. Rather, the proposed legislation merely seeks to ensure that the same legal standards that govern wiretaps on telephones, for example, also apply to modern forms of communication such as e-mail.

    - Consistent with the Constitution, the Administration believes that the law of search and surveillance should be technology neutral. The government's ability to detect and prevent crime should not depend on the technology used by the suspect. To do otherwise is a prescription for failure.

  - ***Third***, the legislation would ensure that certain categories of federal search warrants and surveillance orders are valid throughout the United States so that federal prosecutors and federal agents need not pointlessly seek re-authorization in multiple districts throughout the country. Eliminating these kinds of administrative burdens, which serve no discernible purpose, will allow federal

agents to respond rapidly in fast-moving intelligence and criminal investigations so that agents can track and follow potential terrorists.

- ***Fourth***, the legislation would establish tough new penalties and sanctions on terrorists and those who harbor and support terrorists. In many instances, these changes would simply ensure that terrorism offenses are subject to the same kinds of penalties as other serious criminal offenses, such as drug trafficking.

    - For example, the legislation would:
        - impose new penalties for possession of biological weapons;
        - enhance the government's ability to seize assets of terrorists;
        - assist the government's ability to exclude and remove from the United States both terrorists and those who support and harbor terrorists;
        - extend the statute of limitations on terrorist crimes; and
        - ensure lengthy sentences for terrorist crimes, including on those who harbor and support terrorists.

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/23/2001 6:04:29 AM
Subject: : Re: FW: PA candidates

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<Jennifer.Newstead@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:23-OCT-2001 10:04:29.00
SUBJECT:: Re: FW: PA candidates
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This message is a Read Receipt Notification

Your Message : Re: FW: PA candidates
Was Read By : Jennifer.Newstead@usdoj.gov
On : Tue, 23 Oct 2001 9:58:01 -0400

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/23/2001 6:26:15 AM
Subject: : Re: FW: PA candidates

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CREATION DATE/TIME:23-OCT-2001 10:26:15.00
SUBJECT:: Re: FW: PA candidates
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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This message is a Read Receipt Notification

Your Message : Re: FW: PA candidates
Was Read By : Viet.Dinh@usdoj.gov
On : Tue, 23 Oct 2001 10:08:19 -0400
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From: Thomas, Ginni <ginni.thomas@heritage.org>
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CC: Alan Gilbert <alan.gilbert@hhs.gov>;Andrew Marshall <marshala@mail.policy.osd.mil>;Andrew McKenna <Andrew.J.McKenna@usda.gov>;Angela Antonelli <angela_m._antonelli@hud.gov>;Ann Combs <combs-ann@dol.gov>;Ann Ilten <ilten-ann@dol.gov>;Anthony Principi <charles.yoder@mail.va.gov>;April Lehman <april.lehman@do.treas.gov>;Autumn VandeHei <Autumn.VandeHei@hhs.gov>;Bennett Raley <bennett_raley@ios.doi.gov>;Bill Hansen <william.hansen@ed.gov>;Bill Hawks <bill.hawks@usda.gov>;Bill Lucia <bill.Lucia@ed.gov>;Bob Bostock <Bostock.Bob@epamail.epa.gov>;Bob Wood <robert.wood@hhs.gov>;Bobby Jindal <bjindal@osaspe.dhhs.gov>;Brenda Becker <bbecker@doc.gov>;Brian Jackson <BrianAllanJackson@yahoo.com>;Brian Jones <brian.jones@ed.gov>;Brian Roseboro <brian.roseboro@do.treas.gov>;Brian Waidmann <brian.waidmann@os.doi.gov>;Bruce Mehlman <Bruce.Mehlman@ta.doc.gov>;Cameron Findlay <findlay-cameron@dol.gov>;Carl Esbeck <carl.esbeck@usdoj.gov>;Cathy Martin <CMartin@doc.gov>;Cheri Nolan <CNolan9947@aol.com>;Chris Bowlin <bowlin-christopher@dol.gov>;Chris Spear <spear-chris@dol.gov>;Christina Rocca <RoccaCB@state.gov>;Claude Kicklighter <m.kicklighter@mail.va.gov>;Dale Moore <dwm@usda.gov>;Dan Brouillette <dan.brouillette@hq.doe.gov>;Dan Bryant <dan.bryant@usdoj.gov>;Dan Levinson <daniel.levinson@gsa.gov>;Dan McCardell <dan.mccardell@do.treas.gov>;Dan Nichols <nicholsda@state.gov>;Dan Schneider <schneider-daniel@dol.gov>;Dan Sullivan <daniel_j._sullivan@hud.gov>;Dave Boyer <dave.boyer@hhs.gov>;Dave Lauriski <lauriski-david@msha.gov>;David Aufhauser <david.aufhauser@do.treas.gov>;David Israelite <David.Israelite@usdoj.gov>;David Weintraub <dweintraub@doc.gov>;Dennis Teti <dennis.E.teti@hud.gov>;Dina Ellis <dina.ellis@do.treas.gov>;Don Trigg <DTrigg@doc.gov>;Donald Burnham Ensenat <ensenatdb@state.gov>;Donald Evans <DEvans@doc.gov>;Doug Faulkner <doug.faulkner@hq.doe.gov>;Ed Fox <edfox@usaid.gov>;Elizabeth Seale <eseale@osaspe.dhhs.gov>;Eric Bost <eric.bost@usda.gov>;Eric Ruff <eric_ruff@ios.doi.gov>;Erica Yamat <erica.yamat@hhs.gov>;Erik Lokkesmoe <lokkesmoe-erik@dol.gov>;Eugene Hickok <gene.hickok@ed.gov>;Eugene Scalia <scalia-eugene@dol.gov>;Ev Chasen <ev.chasen@mail.va.gov>;Faryar Shirzad <faryar_shirzad@ita.doc.gov>;Frederico Juarbe, Jr. <juarbe-fred@dol.gov>;Gale Norton <exsec@ios.doi.gov>;George Tracey Mehan III <mehan.gtracy@epa.gov>;Gordon Mansfield <gordon.mansfield@mail.va.gov>;Grant Green <greengs@state.gov>;Greg Hampton <greg.hampton@hhs.gov>;Harold Heilsnis <harold.heilsnis@osd.mil>;Hew Pate <hew.pate@usdoj.gov>;J. David Bethel <DBethel@doc.gov>;Jacob Lozada <jacob.lozada@mail.va.gov>;James Andrew Kelly <silvama@state.gov>;James Jochum <JJOCHUM@bxa.doc.gov>;Jamie Burke <jamie_burke@ed.gov>;Janet Hale <janet.hale@hhs.gov>;Jeanne Lopatto <jeanne.lopatto@hq.doe.gov>;Jeff Salmon <jeffrey.salmon@hq.doe.gov>;Jennifer Newstead <jennifer.newstead@usdoj.gov>;Jim Dyke <JDyke@doc.gov>;Jim Moore <jim.moore@mail.va.gov>;Jim O'Neil <james.o'neill@ed.gov>;Jimmy Gurule <jimmy.gurule@do.treas.gov>;Joe Engelhard <Joe.Engelhard@do.treas.gov>;John Bolton <j.bolton@state.gov>;John Charles Weicher <john_c._weicher@hud.gov>;John Duncan <john.duncan@do.treas.gov>;John Henshaw <Henshaw-John@dol.gov>;John Oxford <john.oxford@hhs.gov>;John Taylor <john.taylor@do.treas.gov>;Joseph Jen <joseph.jen@usda.gov>;Kevin Keane <kevin.keane@hhs.gov>;Kevin Kolevar <kevin.kolevar@hq.doe.gov>;Kris Ardizzone Ullman <Kristen.A.Ullman@usdoj.gov>;Kristine Iverson <iverson-kristine@dol.gov>;Kyle McSlarrow <Kyle.McSlarrow@hq.doe.gov>;Laurie Fenton <Jwillis@doc.gov>;Leo MacKay, Jr. <leo.mackay@mail.va.gov>;Lindsey Kozberg <lindsey_kozberg@ed.gov>;Lori Forman <lforman@usaid.gov>;Lori Jones <LJones@osec.doc.gov>;Lorne Craner <cranerlw@state.gov>;Marc Katz <katz-marc@dol.gov>;Margaret Wilson <MWilson@doc.gov>;Maria Cino <Maria.Cino@mail.doc.gov>;Mark Pfeifle <mark_pfeifle@ios.doi.gov>;Mark Weinberger <Mark.Weinberger@do.treas.gov>;Mary Crawford <mcrawford@osec.doc.gov>;Mary Diamond <mdiamond@doc.gov>;Mary Kay Mantho <carrie.loy@hhs.gov>;Matthew Becker <becker-matthew@dol.gov>;Maureen Cragin <maureen.cragin@mail.va.gov>;Max Schulz <Max.Schulz@hq.doe.gov>;Mel Martinez <terry_s._couch@hud.gov>;Melissa Naudin <naudin-melissa@dol.gov>;Michael Dominguez <Michael.Dominguez@pentagon.af.mil>;Michele Davis <Michele.Davis@do.treas.gov>;Michelle Larson <larson-michelle@dol.gov>;Mindy Tucker <mindy.tucker@usdoj.gov>;Nancy Segerdahl <nancy_segerdahl@hud.gov>;Neal Burnham

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Sent: 10/23/2001 12:21:07 PM
Subject: : Recent Heritage Publications and Upcoming Events

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thomas, Ginni" <ginni.thomas@heritage.org> ( "Thomas, Ginni"
<ginni.thomas@heritage.org> [ UNKNOWN ] )
CREATION DATE/TIME:23-OCT-2001 16:21:07.00
SUBJECT:: Recent Heritage Publications and Upcoming Events
TO:"Thomas, Ginni" <ginni.thomas@heritage.org> ( "Thomas, Ginni"
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READ:UNKNOWN
CC:Alan Gilbert <alan.gilbert@hhs.gov> ( Alan Gilbert <alan.gilbert@hhs.gov> [ UNKNOWN ] )
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Our sympathies and prayers for all the anxiety sweeping the mail. We appreciate the leadership and statesmanship of our President and his Administration in these times. Heritage has, obviously, suspended distribution of anything by mail and we encourage you to share these URL sites with your colleagues who will not be getting these publications for some time. We hope to be of service. Thanks, Ginni

Lowey Blow - A Democrat's uncivil words.
By John J. Miller & Ramesh Ponnuru

"To have Tom DeLay delay an airport security bill is immoral, is wrong, and it just doesn't make any sense," blustered Nita Lowey, a Democratic congresswoman from New York, in yesterday's Washington Post. It's immoral?
DeLay opposes a Senate-approved plan that would turn the nation's 28,000 airport baggage screeners into federal employees. His opposition may be wise
or unwise - we happen to think it's wise, on the grounds that private companies won't handle security the way the Post Office handles the mail - but it certainly isn't immoral.
(http://www.heritage.org/views/2001/ed101901b.html for an argument in favor of DeLay's position).

Domestic Policy

Lessons on How NOT to Stimulate the Economy by Ronald D. Utt, Ph.D.
http://www.heritage.org/library/backgrounder/bg1495.html

The House Farm Bill: A Step Backward in Agricultural Policy by John E. Frydenlund
http://www.heritage.org/library/execmemo/em786.html

Removing Social Security's Tax Cap on Wages Would Do More Harm Than Good by D. Mark Wilson
http://www.heritage.org/library/cda/cda01-07.html

Social Security Reform Helps Small Business by James Morrison, Ph.D.
http://www.heritage.org/library/backgrounder/bg1494es.html

Defense Policy

Finding the Funds to Fight Terrorism by David Muhlhausen
http://www.heritage.org/views/2001/ed101901a.html

Not Just Osama, But Saddam As Well by Jim Phillips
http://www.heritage.org/views/2001/ed101801.html

A Better Approach to Airport Security by Robert W. Poole Jr.
http://www.heritage.org/views/2001/ed101901b.html

Raising Labor Standards Through Trade by Aaron Schavey
http://www.heritage.org/library/execmemo/em785.html

Southeast Asia & the War Against Terrorism by Dana R. Dillon
http://www.heritage.org/library/backgrounder/bg1496.html

Upcoming Events

Grading the Graders: How Internet-Based School Report Cards are Revolutionizing Educational Accountability
Featuring Governer Bill Owens & Hon. Gene Hickok, U.S. Undersecretary of Education
Friday, October 26, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=51

The Battle of Britain: Blaire, Labor and the Future of Conservatism in Great
Britain
Featuring Hon. David Willetts, M.P., Shadow Secretary of State, Great Britain & Author, Is Conservatism Dead?
Tuesday, October 30, 2001, 6:00 PM

http://cf.heritage.org/events/eventDetails.cfm?EventID=55

Defending Freedom: U.S. Foreign Policy And Human Rights
Featuring: Hon. Lorne Craner, Assistant Secretary of State for Democracy, Human Rights, & Labor
Wednesday, October 31, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=56

The Changing Face Of Asia: How Terror, Trade And Politics Are Transforming The East
Featuring: Hon. James Kelly, Assistant Secretary of State for East Asian & Pacific Affairs
Thursday, November 1, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=57

Upcoming Publications

1. How Members of Congress Practice School Choice by Jennifer Garrett
2. Time to Liberalize Trade in Textiles and Apparel by Aaron Schavey
3. Increasing Marriage Among Poor Parents: New Evidence Shows High Potential by Pat Fagan
4. What the Taliban Has Done to the Afghan People by Brett Schaefer
5. Assessing the Patients Bill of Rights: The Right Prescription? by Robert
Moffit
6. Comparison of Fiscal and Economic Effects of Two Economic Stimulus Proposals by Bill Beach
7. Judging Al Qaeda: Subjecting bin Laden and His Followers to Trial by Military Commission, a Heritage Lecture

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Sent: 10/23/2001 12:24:20 PM

Subject: : Recent Heritage Publications and Upcoming Events

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CREATION DATE/TIME:23-OCT-2001 16:24:20.00
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CC:Donald Evans <DEvans@doc.gov> (Donald Evans <DEvans@doc.gov> [UNKNOWN])
READ:UNKNOWN
CC:Doug Faulkner <doug.faulkner@hq.doe.gov> (Doug Faulkner <doug.faulkner@hq.doe.gov> [UNKNOWN])
READ:UNKNOWN
CC:Ed Fox <edfox@usaid.gov> (Ed Fox <edfox@usaid.gov> [UNKNOWN])
READ:UNKNOWN
CC:Elizabeth Seale <eseale@osaspe.dhhs.gov> (Elizabeth Seale <eseale@osaspe.dhhs.gov> [UNKNOWN])
READ:UNKNOWN
CC:Eric Bost <eric.bost@usda.gov> (Eric Bost <eric.bost@usda.gov> [UNKNOWN])

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CC:Eric Ruff <eric_ruff@ios.doi.gov> (Eric Ruff <eric_ruff@ios.doi.gov> [UNKNOWN])
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CC:Erica Yamat <erica.yamat@hhs.gov> (Erica Yamat <erica.yamat@hhs.gov> [UNKNOWN])
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])
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CC:Ev Chasen <ev.chasen@mail.va.gov> (Ev Chasen <ev.chasen@mail.va.gov> [UNKNOWN])
READ:UNKNOWN
CC:Faryar Shirzad <faryar_shirzad@ita.doc.gov> (Faryar Shirzad
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CC:Richard Hauser <richard_a._hauser@hud.gov> (Richard Hauser <richard_a._hauser@hud.gov>

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CC:Russ Whitehurst <grover.whitehurst@sunysb.edu> (Russ Whitehurst
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CC:Ruth Davis <davisra4@state.gov> (Ruth Davis <davisra4@state.gov> [UNKNOWN])
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CC:Sally Canfield <sally.canfield@hhs.gov> (Sally Canfield <sally.canfield@hhs.gov> [
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CC:Shinae Chun <chun-shinae@dol.gov> (Shinae Chun <chun-shinae@dol.gov> [UNKNOWN])
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CC:Tevi Troy <troy-tevi@dol.gov> (Tevi Troy <troy-tevi@dol.gov> [UNKNOWN])
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CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
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CC:Elizabeth Gianini <EGIANINI@ustr.gov> (Elizabeth Gianini <EGIANINI@ustr.gov> [UNKNOWN
])
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CC:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
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CC:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
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CC:Jack Howard <John_W._Howard@who.eop.gov> (Jack Howard <John_W._Howard@who.eop.gov> [
UNKNOWN])
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CC:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
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CC:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
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CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=OVP/O=EOP [OVP])
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CC:Mary M. Rose (CN=Mary M. Rose/OU=WHO/O=EOP [WHO])
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CC:Matthew Rees <mrees@ustr.gov> (Matthew Rees <mrees@ustr.gov> [UNKNOWN])
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Our sympathies and prayers for all the anxiety sweeping the mail. We appreciate the leadership and statesmanship of our President and his Administration in these times. Heritage has, obviously, suspended distribution of anything by mail and we encourage you to share these URL sites with your colleagues who will not be getting these publications for some time. We hope to be of service. Thanks, Ginni

Lowey Blow - A Democrat's uncivil words.
By John J. Miller & Ramesh Ponnuru

"To have Tom DeLay delay an airport security bill is immoral, is wrong, and it just doesn't make any sense," blustered Nita Lowey, a Democratic congresswoman from New York, in yesterday's Washington Post. It's immoral?
DeLay opposes a Senate-approved plan that would turn the nation's 28,000 airport baggage screeners into federal employees. His opposition may be wise
or unwise - we happen to think it's wise, on the grounds that private companies won't handle security the way the Post Office handles the mail - but it certainly isn't immoral.
(http://www.heritage.org/views/2001/ed101901b.html for an argument in favor of DeLay's position).

Domestic Policy

Lessons on How NOT to Stimulate the Economy by Ronald D. Utt, Ph.D.
http://www.heritage.org/library/backgrounder/bg1495.html

The House Farm Bill: A Step Backward in Agricultural Policy by John E. Frydenlund
http://www.heritage.org/library/execmemo/em786.html

Removing Social Security's Tax Cap on Wages Would Do More Harm Than Good by D. Mark Wilson
http://www.heritage.org/library/cda/cda01-07.html

Social Security Reform Helps Small Business by James Morrison, Ph.D.
http://www.heritage.org/library/backgrounder/bg1494es.html

Defense Policy

Finding the Funds to Fight Terrorism by David Muhlhausen
http://www.heritage.org/views/2001/ed101901a.html

Not Just Osama, But Saddam As Well by Jim Phillips
http://www.heritage.org/views/2001/ed101801.html

A Better Approach to Airport Security by Robert W. Poole Jr.
http://www.heritage.org/views/2001/ed101901b.html

Raising Labor Standards Through Trade by Aaron Schavey
http://www.heritage.org/library/execmemo/em785.html

Southeast Asia & the War Against Terrorism by Dana R. Dillon
http://www.heritage.org/library/backgrounder/bg1496.html

Upcoming Events

Grading the Graders: How Internet-Based School Report Cards are Revolutionizing Educational Accountability
Featuring Governer Bill Owens & Hon. Gene Hickok, U.S. Undersecretary of Education
Friday, October 26, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=51

The Battle of Britain: Blaire, Labor and the Future of Conservatism in Great
Britain
Featuring Hon. David Willetts, M.P., Shadow Secretary of State, Great Britain & Author, Is Conservatism Dead?
Tuesday, October 30, 2001, 6:00 PM

http://cf.heritage.org/events/eventDetails.cfm?EventID=55

Defending Freedom: U.S. Foreign Policy And Human Rights
Featuring: Hon. Lorne Craner, Assistant Secretary of State for Democracy, Human Rights, & Labor
Wednesday, October 31, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=56

The Changing Face Of Asia: How Terror, Trade And Politics Are Transforming The East
Featuring: Hon. James Kelly, Assistant Secretary of State for East Asian & Pacific Affairs
Thursday, November 1, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=57

Upcoming Publications

1. How Members of Congress Practice School Choice by Jennifer Garrett
2. Time to Liberalize Trade in Textiles and Apparel by Aaron Schavey
3. Increasing Marriage Among Poor Parents: New Evidence Shows High Potential by Pat Fagan
4. What the Taliban Has Done to the Afghan People by Brett Schaefer
5. Assessing the Patients Bill of Rights: The Right Prescription? by Robert
Moffit
6. Comparison of Fiscal and Economic Effects of Two Economic Stimulus Proposals by Bill Beach
7. Judging Al Qaeda: Subjecting bin Laden and His Followers to Trial by Military Commission, a Heritage Lecture

Virginia (Ginni) Thomas, Director
Executive Branch Relations, The Heritage Foundation
214 Mass. Ave, NE/Washington, D.C. 20002
phone: (202) 608-6240 or 546-4400
fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

Sent: 10/23/2001 11:41:03 AM

Subject: : Reminder re: JSC meeting tomorrow

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-OCT-2001 15:41:03.00
SUBJECT:: Reminder re: JSC meeting tomorrow
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
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TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
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TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
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TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
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TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
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TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
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Date: Wednesday, Oct. 23
Time: 4-5pm
Location: Roosevelt Room

From: Thomas, Ginni <ginni.thomas@heritage.org>
To: Thomas, Ginni <ginni.thomas@heritage.org>
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Sent: 10/23/2001 12:22:01 PM

Subject: : Recent Heritage Publications and Upcoming Events

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CREATION DATE/TIME:23-OCT-2001 16:22:01.00
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CC:Donald Evans <DEvans@doc.gov> (Donald Evans <DEvans@doc.gov> [UNKNOWN])
READ:UNKNOWN
CC:Doug Faulkner <doug.faulkner@hq.doe.gov> (Doug Faulkner <doug.faulkner@hq.doe.gov> [UNKNOWN])
READ:UNKNOWN
CC:Ed Fox <edfox@usaid.gov> (Ed Fox <edfox@usaid.gov> [UNKNOWN])
READ:UNKNOWN
CC:Elizabeth Seale <eseale@osaspe.dhhs.gov> (Elizabeth Seale <eseale@osaspe.dhhs.gov> [UNKNOWN])
READ:UNKNOWN
CC:Eric Bost <eric.bost@usda.gov> (Eric Bost <eric.bost@usda.gov> [UNKNOWN])

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CC:Eric Ruff <eric_ruff@ios.doi.gov> (Eric Ruff <eric_ruff@ios.doi.gov> [UNKNOWN])
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CC:Erica Yamat <erica.yamat@hhs.gov> (Erica Yamat <erica.yamat@hhs.gov> [UNKNOWN])
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])
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CC:Ev Chasen <ev.chasen@mail.va.gov> (Ev Chasen <ev.chasen@mail.va.gov> [UNKNOWN])
READ:UNKNOWN
CC:Faryar Shirzad <faryar_shirzad@ita.doc.gov> (Faryar Shirzad
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CC:Richard Hauser <richard_a._hauser@hud.gov> (Richard Hauser <richard_a._hauser@hud.gov>

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CC:Russ Whitehurst <grover.whitehurst@sunysb.edu> (Russ Whitehurst
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CC:Ruth Davis <davisra4@state.gov> (Ruth Davis <davisra4@state.gov> [UNKNOWN])
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CC:Sally Canfield <sally.canfield@hhs.gov> (Sally Canfield <sally.canfield@hhs.gov> [
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CC:Shinae Chun <chun-shinae@dol.gov> (Shinae Chun <chun-shinae@dol.gov> [UNKNOWN])
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CC:Tevi Troy <troy-tevi@dol.gov> (Tevi Troy <troy-tevi@dol.gov> [UNKNOWN])
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CC:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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Our sympathies and prayers for all the anxiety sweeping the mail. We appreciate the leadership and statesmanship of our President and his Administration in these times. Heritage has, obviously, suspended distribution of anything by mail and we encourage you to share these URL sites with your colleagues who will not be getting these publications for some time. We hope to be of service. Thanks, Ginni

Lowey Blow - A Democrat's uncivil words.
By John J. Miller & Ramesh Ponnuru

"To have Tom DeLay delay an airport security bill is immoral, is wrong, and it just doesn't make any sense," blustered Nita Lowey, a Democratic congresswoman from New York, in yesterday's Washington Post. It's immoral?
DeLay opposes a Senate-approved plan that would turn the nation's 28,000 airport baggage screeners into federal employees. His opposition may be wise
or unwise - we happen to think it's wise, on the grounds that private companies won't handle security the way the Post Office handles the mail - but it certainly isn't immoral.
(http://www.heritage.org/views/2001/ed101901b.html for an argument in favor of DeLay's position).

Domestic Policy

Lessons on How NOT to Stimulate the Economy by Ronald D. Utt, Ph.D.
http://www.heritage.org/library/backgrounder/bg1495.html

The House Farm Bill: A Step Backward in Agricultural Policy by John E. Frydenlund
http://www.heritage.org/library/execmemo/em786.html

Removing Social Security's Tax Cap on Wages Would Do More Harm Than Good by D. Mark Wilson
http://www.heritage.org/library/cda/cda01-07.html

Social Security Reform Helps Small Business by James Morrison, Ph.D.
http://www.heritage.org/library/backgrounder/bg1494es.html

Defense Policy

Finding the Funds to Fight Terrorism by David Muhlhausen
http://www.heritage.org/views/2001/ed101901a.html

Not Just Osama, But Saddam As Well by Jim Phillips
http://www.heritage.org/views/2001/ed101801.html

A Better Approach to Airport Security by Robert W. Poole Jr.
http://www.heritage.org/views/2001/ed101901b.html

Raising Labor Standards Through Trade by Aaron Schavey
http://www.heritage.org/library/execmemo/em785.html

Southeast Asia & the War Against Terrorism by Dana R. Dillon
http://www.heritage.org/library/backgrounder/bg1496.html

Upcoming Events

Grading the Graders: How Internet-Based School Report Cards are Revolutionizing Educational Accountability
Featuring Governer Bill Owens & Hon. Gene Hickok, U.S. Undersecretary of Education
Friday, October 26, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=51

The Battle of Britain: Blaire, Labor and the Future of Conservatism in Great
Britain
Featuring Hon. David Willetts, M.P., Shadow Secretary of State, Great Britain & Author, Is Conservatism Dead?
Tuesday, October 30, 2001, 6:00 PM

http://cf.heritage.org/events/eventDetails.cfm?EventID=55

Defending Freedom: U.S. Foreign Policy And Human Rights
Featuring: Hon. Lorne Craner, Assistant Secretary of State for Democracy, Human Rights, & Labor
Wednesday, October 31, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=56

The Changing Face Of Asia: How Terror, Trade And Politics Are Transforming The East
Featuring: Hon. James Kelly, Assistant Secretary of State for East Asian & Pacific Affairs
Thursday, November 1, 2001, 11:00 AM

http://cf.heritage.org/events/eventDetails.cfm?EventID=57

Upcoming Publications

1. How Members of Congress Practice School Choice by Jennifer Garrett
2. Time to Liberalize Trade in Textiles and Apparel by Aaron Schavey
3. Increasing Marriage Among Poor Parents: New Evidence Shows High Potential by Pat Fagan
4. What the Taliban Has Done to the Afghan People by Brett Schaefer
5. Assessing the Patients Bill of Rights: The Right Prescription? by Robert
Moffit
6. Comparison of Fiscal and Economic Effects of Two Economic Stimulus Proposals by Bill Beach
7. Judging Al Qaeda: Subjecting bin Laden and His Followers to Trial by Military Commission, a Heritage Lecture

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REV_00133894

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/23/2001 4:40:28 PM
Subject: : Talking points on Tort and Terrorism
Attachments: P_VG1C4004_WHO.TXT_1.wpd

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CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:23-OCT-2001 20:40:28.00
SUBJECT:: Talking points on Tort and Terrorism
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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- Terrorism Insurance.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VG1C4004_WHO.TXT_1>
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Tort Law and Terrorist Activity

I. The tort system is neither designed nor equipped to deal with terrorism.

- The risks of terrorist activities are not measurable and manageable by potential defendants.
  - Even insurance actuaries cannot quantify and price the risk, because terrorist events, their victims, and potential defendants are unknowable.
- There is no need to impose an incentive for due care, the traditional justification for regulation through tort liability.
  - Citizenry already vigilant against terrorist activity.
  - Entities already motivated to protect their property from catastrophic loss.
- There are many more potential defendants in a terrorist incident than traditional torts, including mass torts.
  - In traditional tort, risk of liability extends to those who designed, built, or operated the harm-causing instrumentality.
  - In terrorist acts, risk of liability extends to all those connected with the terrorists, their activities, their instrumentality, or their target.
  - For example, potential defendants for Sept. 11:
    - Managers of the World Trade Center (which could have expedited departures); designers and builders of WTC (who could have designed it to withstand attacks by fully fueled jet liners); bar owners in Florida (allegedly threats); state and local police agencies (which did not arrest terrorists involved in petty crimes to support themselves prior to the attacks); airlines (hijack); airline contractors (security at airports); New York City (reaction and response).

II. At least features of the tort system should be altered for terrorism claims.

- Eliminate joint and several liability and apportion damages.
  - Potential for catastrophic damages from a finding of minimal fractional liability imposes incredible pressure to settle, thereby incentivizing further claims and exacerbating the insurance crisis.
- Increase the standard for legal liability to gross negligence or recklessness.
  - Simple negligence is sufficient to protect defendants who cannot

anticipate the risk of terrorist incidents.

- Simple negligence would discourage normal economic activity and encourage excessive risk-avoidance because loss is catastrophic.

- Eliminate punitive damages.
  - Punitives are predicated on fault, which does not apply except to the terrorists themselves.

From: CN=Edmund A. Walsh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>
Sent: 10/24/2001 7:06:53 AM
Subject: : Re: Anti-terror

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edmund A. Walsh ( CN=Edmund A. Walsh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-OCT-2001 11:06:53.00
SUBJECT:: Re: Anti-terror
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Peter H. Wehner ( CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [ WHO ] )
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Brett -- Can you just confirm that the points in the memo you sent earlier
(draft #7) are provisions that are actually contained in the bill to be
signed on Friday, as opposed to being in the proposed legislation we sent
to the Hill? -- Ed.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 10/24/2001 11:30:42 AM

Subject: : reminder - JSC Prep starts NOW!!!

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To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/24/2001 11:30:42 AM
Subject: : reminder - JSC Prep starts NOW!!!

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From: Davids, James <James.Davids@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: Esbeck, Carl <Carl.Esbeck@usdoj.gov>
Sent: 10/24/2001 12:26:03 PM
Subject: : FOIA Requests to Cabinet Centers for Faith-Based & Community Initiatives

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SUBJECT:: FOIA Requests to Cabinet Centers for Faith-Based & Community Initiatives
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:"Esbeck, Carl" <Carl.Esbeck@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Esbeck, Carl" <Carl.Esbeck@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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End Original ARMS Header

Mr. Kavanaugh,

You will recall that the Centers for Faith-Based & Community Initiatives at HHS, HUD, DOJ, Labor and Education have received FOIA requests from the People for the American Way Foundation (PFAW) and the ACLU. Because of concerns that the various Departments would respond in different ways to the requestors, White House Counsel was asked to get involved, and you then accepted our offer of assistance in this matter. The following is a status report and an action plan.

Since the assignment, I have contacted the various departmental FOI offices to determine what they have received, what communication they have had with the requestors, what promises they have made, and what (if any) strategy they have developed for dealing with these requests. I have also reviewed the Freedom of Information Act and have spoken with two trained and experienced people regarding the applicable exemptions under the Act. I have learned the following to date:

DOJ/DOL/HUD/DoED - DOJ, DOL and HUD have received the same requests from the ACLU and the PFAW. The ACLU has asked that each department provide a copy of the report which the department sent to the "White House Office of Faith-Based and Community Initiatives submitted in response to Section 5 of Executive Order 13198..." ACLU also asked for "any and all documents in your possession which formed the basis, in whole or part, of any statements or fats (sic) contained in the report."

PFAW asked for "all reports and other documents generated by [the department] in response to, or otherwise containing the information sought by, the directive of Executive Order 13198 (Jan. 29, 2001) that [the department] conduct 'a department wide-audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the department...' " PFAW expressly excluded from its request the documentation generated for the OMB "faith-based" survey which was completed in relatively close proximity to the departmental audit.

DoED received a request only from the ACLU, and it has already responded with a copy of its redacted report (see below on this issue). Other departments have been in verbal and/or written communication with the requestors, but have not provided a copy of the reports or any other documents. DOJ, DOL, and HUD are inclined only to give the requestors a copy of the report, and nothing else (including no supporting documentation). The FOI offices at Justice and Labor have informed me of their impression that sending their respective reports will satisfy the requestors.

HHS - On June 22, 2001, during the time HHS's Center was working on its audit, Elizabeth Seale, the Director of HHS' Center for F-B & CI, wrote a Memo to "All Involved in the recent OMB Survey Request." In this Memo, Ms. Seale stated that "[b]esides responding directly to detailed survey questions, your divisions provided a tremendous amount of supporting documentation." This Memo was leaked to PFAW, which then requested the "tremendous amount of supporting documentation." To date, Ms. Seale's staff has segregated 7-8 boxes of material, and HHS's FOI Office wants to invite PFAW to HHS's offices to review this material with an HHS FOI employee present. The process of establishing a date for this review was interrupted by my new involvement in this matter. HHS has not received an FOIA request from the ACLU.

Issues and Action Plan: On the due date for the audit reports, ED and HUD submitted to the White House their reports in draft form, since they had not yet been approved internally by the Departments. These reports, similar to the other departmental reports, contained certain recommendations for removing the barriers to participation in federal grant programs by faith-based organizations. The ED report was approved by the Department after modifications were made, and the recommendations initially included in the draft report were removed at the request of the White House (as part of its legislative strategy to promote HR 7 through a separate roll-out of the recommendations). I understand that this form of the report (modified for Departmental approval and stripped of recommendations) was the one provided to the requestor.

I have not seen the letter transmitting the ED report to the ACLU, and I am inclined not to request a copy or otherwise interfere with the progress made by Education on this matter. With respect to the request of HUD, I am inclined to provide the draft report which was submitted to the White House (rather than the "stripped" model). Regarding DOJ and DOL, I am also inclined to provide copies of the reports directly submitted to the WH on July 27 (due date).

We have given considerable thought as to the wisdom of interjecting ourselves directly into this process at this time. On the one hand, the dissemination of documents would be much better controlled if we did the disseminating, but on the other hand, taking this matter out of the hands of the FOI staff would certainly raise questions with the requestors (why are we involved, and what are we trying to hide). Given the facts that the DOJ and DOL offices are inclined to only give the reports and not any underlying documents, that the ACLU sent out "form" requests, and that the faith-based initiative is currently less important to the requestors than the "threat" to civil liberties posed by the anti-terrorism legislation, our thought now is to simply allow the FOI offices to proceed to answer the requests. These answers (other than HHS) will provide the reports but not any further documentation. For HHS, we will review the 7-8 boxes of documents and, if we find nothing harmful, we will authorize the HHS FOI office to proceed as it had planned.

After your review of this matter, please provide me with your direction. Thanks.

Jim Davids

James A. Davids
Counsel to the Deputy Attorney General
Deputy Director, Faith-Based Task Force
Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530
202/514-2987
James.Davids@usdoj.gov

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/25/2001 4:31:58 AM
Subject: : Need a volunteer to take file to Hill at 12Noon today

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-OCT-2001 08:31:58.00
SUBJECT:: Need a volunteer to take file to Hill at 12Noon today
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Frederico Juarbe (Asst. Sec. for Veterans Employment and Training)

Dept. of Labor - Cap Bldg., S203

Senator Rockefellers staff - Jamie Lockwood
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From: Catherine_S._Anderson@oa.eop.gov [UNKNOWN]
To: Timothy Campen/OA/EOP@EOP [OA] <Timothy Campen>
CC: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>
Sent: 10/25/2001 4:58:07 AM
Subject: : Re: Blackberry Issues

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Catherine_S._Anderson@oa.eop.gov ( Catherine_S._Anderson@oa.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:25-OCT-2001 08:58:07.00
SUBJECT:: Re: Blackberry Issues
TO:Timothy Campen ( CN=Timothy Campen/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Phillip Larsen ( CN=Phillip Larsen/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Tim: I thought we resolved this issue at least with regard to OA and the
other
Federal Records Act (FRA) components (OMB, CEQ, OSTP, ONDCP, and USTR).
Because
substantive e-mail sent via PIN to PIN cannot be records managed and is not
secure, I recommend that the PIN to PIN feature be disabled for the FRA
components. This is consistent with what we did with the e-mail feature in
Netscape and Internet Explorer.

As an alternative, in the event that Phil determines that the PIN to PIN
feature
is critical for operating in an emergency environment when the basic
Blackberry
services are unavailable, then the PIN to PIN feature could be enabled
only for
a limited number of staff determined by Phil to be emergency personnel.
Such
personnel would have to be advised in writing that PIN to PIN messaging is
not
secure and shall only be used in emergency situations when the basic
Blackberry
services are unavailable. Further, emergency personnel would have to be
further
advised of their responsibility to document and incorporate any substantive
information created/received via the PIN to PIN feature for OA's official
files
as soon as practicable under the circumstances.

Obviously, I prefer the first approach, disabling PIN to PIN for all of
the FRA
components, but I can live with the second if it is truly critical for
operating
in an emergency. Let me know if you have any additional questions. I'll
defer
to Brett on the Presidential components. Kate
```

Timothy Campen

10/24/2001 02:02:28 PM

Record Type: Record

To: calix, Brett M. Kavanaugh/WHO/EOP@EOP, Catherine S. Anderson/OA/EOP@EOP

cc: phillip_larsen@oa.eop.gov
Subject: Blackberry Issues

We are getting down to the final few integration and operational testing issues
and I'd like to see if we can get a "finding" (maybe the wrong word) from you to
say something like.. " the carrier provided services (i.e. paging, PIN to PIN
communication, faxing, etc.) are exempt from ARMS because these are vendor provided services and, like cellular phone voice communication, it is not technologically feasible to records manage these services" However, all
Lotus Notes email to and from Blackberries will be records managed.

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/25/2001 11:02:05 AM
Subject: : Re: Draft Language
Attachments: P_E4ID4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-OCT-2001 15:02:05.00
SUBJECT:: Re: Draft Language
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

As I mentioned on the conf. call, the language Treasury proposed on insured losses doesn't make sense.

Imagine a terrorist incident nearly identical to the WTC. An injured party sues his employer and the bldg. owner for inadequate evacuation procedures, the airline for negligent security procedures, a flight school, the Virginia DMV, the Boston Airport Authority and Osama Bin Laden. The plaintiff seeks punitive damages against all of the plaintiffs. He alleges criminal actions by Bin Laden and by an agent of the airport authority. If the Treasury language is enacted, would this be a "civil action for insured losses." In other words, would any of our liability provisions apply?

First, there is no way to tell prior to litigation whether the case is one for "insured losses" b/c whether the damages would be insured depends, among other things, on whether the jury assigns liability to any insured party. A jury might reject claims against all of the defendants except Bin Laden, in which case there would be no "insured losses" at issue. Or, Bin Laden and the Airport Authority could be liable, but based on evidence that fits within a standard policy exclusion (i.e. criminal activity). The issue of whether damages awarded against any deft would be covered by an insurance policy would itself be a hotly litigated issue that would depend in part on evidence produced in the underlying case. The Treasury language, nonsensically, requires a judge to make this determination before he determines what law applies in the underlying case and before of the parties have presented the evidence at issue.

Second, the language would require a procedurally bizarre set of steps. The plaintiff would file in state ct. The deft would remove even though nothing in plaintiff's complaint would indicate whether they were insured losses or not (violating black letter rule that generally fed Q jurisdiction is available only on basis of plaintiff's affirmative case). On motion to remand, the plaintiff would argue that this isn't a case for an insured loss b/c the deft's conduct falls within an exclusion to its insurance policy (even though the parties haven't engaged in discovery and the plaintiff probably doesn't have the deft's insurance policy). The insurance company would be stuck in a terribly uncomfortable position b/c it would be forced to either 1) concede that the damages would be covered in order to keep the case in fed ct or 2) assert its rights under the policy which would increase the chances that the case would stay in state ct.

Third, even if it were possible to determine that the claims against some of the defts were action "for insured losses," how would you consolidate those claims and leave the plaintiff's remaining claims in state court? There is no logic for mandating procedures that would encourage a single plaintiff to litigate the same facts in two fora simultaneously. The

entire point of consolidation is to ensure that one court handles all the cases.

Fourth, any punitive damages assessed against parties would by definition not be "insured losses" in any state in which punitives are not insurable. Many states mandate exclusions for particularly willful behavior b/c allowing defts to insure violates public policy). In these states, the Treasury language would allow the punitive damages limitation to apply only in cases in which it by definition could not apply.

Anyway -- you get the point.

Also, the Judicial Panel on Multidistrict Litigation language is in brackets. Do we know why?

D. Marcus Sumerlin
10/25/2001 01:48:21 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Kristen Silverberg/WHO/EOP@EOP
cc:
Subject: Draft Language

Have y'all worked out your difference with Treas. about whether the legal procedures only apply to insured losses? The draft language she sent me still has brackets.

---------- Forwarded by D. Marcus Sumerlin/OPD/EOP on 10/25/2001 01:47 PM ----------

Sheila.Bair@do.treas.gov
10/24/2001 06:20:26 PM
Record Type: Record

To: D. Marcus Sumerlin/OPD/EOP@EOP
cc:
Subject: Draft Language

<<terrorlosssharingdraftbill102301.doc>>

As requested.

Sheila

- terrorlosssharingdraftbill102301.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_E4ID4004_WHO.TXT_1>

S. _____

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. SHORT TITLE.

This Act may be cited as the "Terrorism Risk Insurance Act of 2001."

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE

(a) **FINDINGS.** The Congress finds that:

(1) The September 11 terrorist attacks on the World Trade Center and the Pentagon have created widespread market uncertainties with regard to the risk of losses arising from future terrorist attacks;
(2) These market uncertainties have disrupted the current ability of private insurance companies to price insurance coverage for losses resulting from future attacks, thereby threatening the continued availability of affordable insurance for such losses;
(3) The unavailability of affordable insurance for terrorist acts in turn threatens the growth and stability of the U.S. economy, including impeding the ability of financial services providers to finance commercial and residential property acquisitions and new construction;
(4) In the past, the private insurance markets have shown an ability to expand their capacity in response to changed circumstances;
(5) In as much as terrorism is a national concern and terrorist attacks are attacks on the government and people of the United States, the federal government should provide financial assistance to limit immediate market disruptions, encourage economic stabilization and facilitate a transition to a viable market for private terrorism risk insurance.

(b) **PURPOSE.** The purpose of this Act is to provide for a temporary federal program of shared public and private compensation for insured losses resulting from future acts of terrorism in order to:

(1) address current market disruptions and ensure the continued widespread availability and affordability of such insurance; and
(2) allow a transitional period for the private markets to stabilize, resume pricing of such insurance and build capacity to absorb futures losses.

TITLE I – COMPENSATION FOR INSURED LOSSES FROM ACTS OF TERRORISM

SEC. 101. DEFINITIONS AND CERTIFICATION

For purposes of this Act –

(a) ACT OF TERRORISM –
The term "act of terrorism" means any act, jointly certified by the Secretary, the Secretary of State and the Attorney General, as a violent act or act dangerous to human life, property or infrastructure, within the United States, that appears to be committed by an individual or individuals acting on behalf of foreign agents or foreign interests as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the U. S. government by coercion. No act shall be certified as an act of terrorism if (1) the act is committed in the course of a war declared by the Congress of the United States or (2) if property damage resulting from the act does not exceed $25 million. Any joint certification under this subsection shall be final and shall not be subject to judicial review.

(b) INSURANCE COMPANY –
The term "insurance company" means any primary insurance company, licensed to do business in the United States, that has issued a policy covering an insured loss from an act of terrorism and that meets any other criteria the Secretary may prescribe. The term "insurance company" shall not include a reinsurer or provider of retrocessional insurance.

(d) INSURED LOSS –
The term "insured loss" means any loss in the United States covered by any type of property and casualty insurance policy or endorsement for commercial property, commercial liability, commercial automobile, workers' compensation, private passenger automobile and homeowners insurance. The term "insured loss" does not include any loss covered by any type of business interruption or life or health insurance policy.

(e) NON-ECONOMIC DAMAGES –
The term "non-economic damages" means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and all other non-pecuniary losses of any kind or nature.

(f) PERSON –
The term "person" means any individual or business or non-profit entity (including a partnership, limited liability company, corporation or association) or a trust or estate or a state or political subdivision of a state.

(g) PROGRAM –
The term "Program" means the Terrorism Insured Loss Shared Compensation Program established by this Act.

(h) PROPERTY DAMAGE –
The term "property damage" means physical injury to or destruction of tangible or intangible property, or loss of tangible or intangible property that has not been physically injured or destroyed but has been evacuated, withdrawn from, or otherwise rendered inaccessible.

(i) SECRETARY –
The term "Secretary" means the Secretary of the Treasury.

(j) STATE –
The term "State" shall mean any State of the United States and the District of Columbia, [the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or any of the U.S. Virgin Islands].

(k) UNITED STATES –
The term "United States" means all States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam and the U. S. Virgin Islands.

SEC. 102. TERRORISM INSURED LOSS SHARED COMPENSATION PROGRAM

(a) IN GENERAL. A Terrorism Insured Loss Shared Compensation Program is hereby established in accordance with this Act. Notwithstanding any other provision of state or federal law, the Secretary is authorized to pay compensation in accordance with this Act to any person or persons for insured losses resulting from an act of terrorism.

(b) REQUIREMENTS FOR FEDERAL PAYMENT. Conditions for compensation under this Program for insured losses arising from an act of terrorism are as follows:
(1) [the insurance company must provide property and casualty insurance for acts of terrorism for insured losses covered by this Program and a person's insurance coverage for acts of terrorism may not be materially different from the terms, amounts, and other coverage limitations in the person's policy that apply to insured losses arising from non-terrorist acts]**;**
(2) a person that suffers an insured loss as a result of an act of terrorism must file a claim with the person's insurance company;
(3) at the time of purchase and renewal of each policy, the insurance company must provide clear and conspicuous disclosure in the policy to the policy holder of the federal government's share of compensation payments for insured loss under the Program;
(4) the insurance company must process the claim according to its standard business practices and any procedures that the Secretary may prescribe; and
(5) the insurance company must pay the portion of the losses not covered by the Program under the schedule established in subsection (c) and must submit

verification and certification of that payment, and must certify compliance with the conditions of this subsection, at the time the company files a claim with the Secretary.

(c) SHARED INSURED LOSS COVERAGE.

(1) The Secretary shall pay compensation [directly to or on behalf of the policyholder] for insured losses that result from an act of terrorism, in accordance with the following schedule and limitations:

(A) for acts of terrorism occurring on the date of enactment of this Act through December 31, 2002, 80 percent of the first $20 billion in insured losses and 90 percent of insured losses in excess of $20 billion;

(B) for acts of terrorism occurring on January 1, 2003 through December 31, 2003, 50 percent of the insured losses between $10 billion and $20 billion and 90 percent of insured losses in excess of $20 billion; and

(C) for acts of terrorism occurring on January 1, 2004 through December 31, 2004, 50 percent of insured losses between $20 billion and $40 billion and 90 percent of insured losses in excess of $40 billion.

(2) The Secretary shall announce the applicable percentage of insured losses to be paid by insurance companies, and may adjust as appropriate the applicable percentages, in accordance with the schedule and limitations contained in paragraph (1).

(3) If claims for insured losses from acts of terrorism exceed any of the threshold levels contained in paragraph (1), the Secretary shall reimburse or seek repayment, on a pro rata basis, from insurance companies that have submitted claims for insured losses on behalf of policy holders to ensure that, as of the end of each applicable time period referenced in paragraph (1), each such insurance company pays the applicable percentage of insured loss incurred during the applicable time period, in accordance with the schedule and limitations contained in paragraph (1) of this subsection.

(4) The Secretary, in his sole discretion, may determine the timing of any final netting of payments for insured losses under the Program, including payments due to the Secretary and to any insurance company, to effect the insured loss sharing established by this subsection.

(5) Any decision of the Secretary under this subsection shall be final.

(d) CAP ON ANNUAL LIABILITY. Notwithstanding section 102 (c) of this Act or any other provision of federal or state law -

(1) the Secretary shall not pay compensation under this Act in excess of $88 billion for insured losses occurring by December 31, 2002; $77 billion for insured losses occurring in 2003, and $64 billion for insured losses occurring in 2004;

(2) the Secretary shall notify Congress if claims under the Program exceed the Secretary's authority to pay and Congress shall determine the procedures for and source of any such payments; and

(3) no insurance company or companies shall be liable for more than $12 billion of insured losses incurred by December 31, 2002; $23 billion for insured losses incurred in 2003, and $36 billion for insured losses incurred in 2004.

(c) FUNDING – Necessary amounts are appropriated, out of any money in the Treasury not otherwise appropriated, for 1) the Secretary to pay compensation to any person or persons pursuant to sections 102 or 106 and [2) for reasonable costs of administering the Program, not to exceed 1% of compensation paid under the Program].

SEC. 103. ADMINISTRATION OF CLAIMS FOR FEDERAL INSURED LOSS COMPENSATION UNDER PROGRAM

(a) GENERAL AUTHORITY. The Secretary shall have the powers and authorities necessary to carry out this Program, including authority to prescribe regulations and procedures establishing the manner in which insurance companies may file and certify claims for insured losses; to investigate, audit, adjust or settle claims under the Program and otherwise to implement the Program.

(b) SUBROGATION RIGHTS. The U.S. government shall have the right of subrogation or salvage at law or in equity to any payment made by the United States in connection with this Program.

(c) CONTRACT FOR SERVICES. The Secretary may employ persons or contract for services with third parties, as may be necessary to implement the Program.

(d) [CIVIL PENALTIES. The Secretary may assess civil penalties for failure to meet any required claims conditions. [**Alternative**: LIABILITY UNDER FALSE CLAIMS ACT. The provisions and penalties of the federal False Claims Act, 31 U.S.C. 3729 *et seq* shall apply to all claims for payment under this Program, including required conditions for payment].

SEC. 104. RELATIONSHIP OF INSURANCE PROGRAM WITH OTHER LAWS

(a) EXCLUSIVE DEFINITION. The definition of "act of terrorism" contained in section 101 of this Act shall be the exclusive definition for purposes of compensation for insured losses under this Act and shall preempt any inconsistent state law to the extent such law applies to any insurance policy relating to terrorism risk in the United States.

(b) [If a person receives compensation for an insured loss under this Program, the person shall not also receive a benefit for substantially the same loss under

1) chapter 443 of title 49, United States Code;
2) Title XII of the Merchant Marine Act, 1936 (46 U.S.C. 1281, et seq) and

3) section 201(b)(2) of Public Law 107-42 (September 22, 2001)]

SEC. 105. LIMITATION ON CIVIL ACTIONS.

(a) SUBJECT MATTER JURISDICTION. Notwithstanding any other law, [the Judicial Panel on Multidistrict Litigation] shall assign a single federal district court to conduct pre-trial and trial proceedings in all civil actions [for insured losses/ for property damage, personal injury or death] arising out of or resulting from a single act of terrorism as defined in section 101, and shall transfer all such pending civil actions to that district court. The district court [assigned by the Judicial Panel on Multidistrict Litigation] shall have original and exclusive jurisdiction over all such actions. For purposes of personal jurisdiction, the district court [assigned by the Judicial Panel on Multidistrict Litigation] shall be deemed to sit in all judicial districts in the United States.

(b) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS. Any civil action [for insured losses/ for property damage, personal injury, or death] arising out of or resulting from an act of terrorism that is filed in a federal district court other than the federal district court [assigned by the Judicial Panel on Multidistrict Litigation] shall be transferred to the federal district court [assigned by the Judicial Panel on Multidistrict Litigation].

(c) REMOVAL OF CASES FILED IN STATE COURTS. Any civil action [for insured losses/ for property damage, personal injury, or death] arising out of or resulting from an act of terrorism that is filed in a state court shall be removable to the federal district court [assigned by the Judicial Panel on Multidistrict Litigation].

(d) FEDERAL CAUSE OF ACTION. There shall exist a federal cause of action [for insured losses/ for property damage, personal injury, or death] arising out of or resulting from an act of terrorism as defined in section 101. This cause of action shall be the exclusive remedy for claims for [insured loss/ property damage, personal injury, or death] arising out of or resulting from an act of terrorism as defined in section 101. This [**title**] preempts all state causes of action of any kind otherwise available arising out of or resulting from an act of terrorism as defined in section 101.

(e) SUBSTANTIVE LAW. The standard of care for the federal cause of action in subsection (d) of this section shall be gross negligence. Unless otherwise specified in this [**title**], the district court shall derive other substantive principles of liability for the federal cause of action from the common law.

(f) NON-ECONOMIC DAMAGES. Each defendant shall be liable only for the amount of non-economic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the claimant. No plaintiff may recover non-economic damages unless the plaintiff suffered physical harm.

(g) OFFSET. In determining the amount of any money damages available under this [**title**], the court shall offset any compensation or benefits received or entitled to be received by

the plaintiff or plaintiffs from the United States or any federal agency thereof in response to or as a result of the act of terrorism.

(i) PUNITIVE DAMAGES. Punitive damages, exemplary damages, and other damages not intended to compensate the plaintiff for actual losses shall not be available in any civil action subject to this **[title]**.

(j) STATUTE OF LIMITATIONS. Any claim [for an insured loss/ for property damage, personal injury, or death] arising out of or resulting from an act of terrorism as defined in section 101 shall be filed within one year. This period shall be computed from the date of discovery of the injury by the plaintiff or the date such injury should have been discovered by the plaintiff through the exercise of reasonable diligence, whichever is earlier.

(k) CLAIMS AGAINST TERRORISTS. Nothing in this section shall in any way limit the ability of any [person, government or other entity] to seek any form of recovery from [any person, government or other entity] that was a participant in, or aider and abettor of, any act of terrorism as defined in section 101.

SEC. 106. TERMINATION OF FEDERAL TERRORISM LOSS COMPENSATION

(a) The Program established by this Act shall terminate on December 31, 2004.

(b) Nothwithstanding subsection (a), the Secretary may take any actions necessary to ensure payment, reimbursement, or adjustment of compensation for insured losses incurred within the time periods referenced in section 102(c) of this Act.

REV_00133934

From: Brett_M._Kavanaugh@who.eop.gov [UNKNOWN]
To: Catherine S. Anderson/OA/EOP@EOP [OA] <Catherine S. Anderson>
CC: Timothy Campen/OA/EOP@EOP [OA] <Timothy Campen>;Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>
Sent: 10/25/2001 5:12:43 PM
Subject: : Re: Blackberry Issues

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett_M._Kavanaugh@who.eop.gov (Brett_M._Kavanaugh@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:25-OCT-2001 21:12:43.00
SUBJECT:: Re: Blackberry Issues
TO:Catherine S. Anderson (CN=Catherine S. Anderson/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Timothy Campen (CN=Timothy Campen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

From our perspective for PRA, there is no need to disable this feature any
more than there is to disable voice mail.

Catherine S. Anderson
10/25/2001 08:56:12 AM

Record Type: Record

To: Timothy Campen/OA/EOP@EOP
cc: Cathy Alix/WHO/EOP@EOP, brett m. kavanaugh/who/eop@eop, phillip_larsen@oa.eop.gov
bcc:
Subject: Re: Blackberry Issues (Document link: Brett M. Kavanaugh)

Tim: I thought we resolved this issue at least with regard to OA and the other
Federal Records Act (FRA) components (OMB, CEQ, OSTP, ONDCP, and USTR). Because
substantive e-mail sent via PIN to PIN cannot be records managed and is not secure, I recommend that the PIN to PIN feature be disabled for the FRA components. This is consistent with what we did with the e-mail feature in Netscape and Internet Explorer.

As an alternative, in the event that Phil determines that the PIN to PIN feature
is critical for operating in an emergency environment when the basic Blackberry
services are unavailable, then the PIN to PIN feature could be enabled only for
a limited number of staff determined by Phil to be emergency personnel. Such
personnel would have to be advised in writing that PIN to PIN messaging is

not
secure and shall only be used in emergency situations when the basic
Blackberry
services are unavailable. Further, emergency personnel would have to be
further
advised of their responsibility to document and incorporate any substantive
information created/received via the PIN to PIN feature for OA's official
files
as soon as practicable under the circumstances.

Obviously, I prefer the first approach, disabling PIN to PIN for all of
the FRA
components, but I can live with the second if it is truly critical for
operating
in an emergency. Let me know if you have any additional questions. I'll
defer
to Brett on the Presidential components. Kate

Timothy Campen
10/24/2001 02:02:28 PM

Record Type: Record

To: calix, Brett M. Kavanaugh/WHO/EOP@EOP, Catherine S.
Anderson/OA/EOP@EOP

cc: phillip_larsen@oa.eop.gov
Subject: Blackberry Issues

We are getting down to the final few integration and operational testing
issues
and I'd like to see if we can get a "finding" (maybe the wrong word) from
you to
say something like.. " the carrier provided services (i.e. paging, PIN
to PIN
communication, faxing, etc.) are exempt from ARMS because these are vendor
provided services and, like cellular phone voice communication, it is not
technologically feasible to records manage these services" However,
all
Lotus Notes email to and from Blackberries will be records managed.

From:	CN=Edward Ingle/OU=WHO/O=EOP [WHO]
To:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole_E._Grodner@who.eop.gov [UNKNOWN] <Nicole_E._Grodner@who.eop.gov>
Sent:	10/25/2001 1:19:43 PM
Subject:	: agency FOIA requests reported to us this week
Attachments:	P_M5OD4004_WHO.TXT_1.doc

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CREATOR:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-OCT-2001 17:19:43.00
SUBJECT:: agency FOIA requests reported to us this week
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Nicole_E._Grodner@who.eop.gov ( Nicole_E._Grodner@who.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_M5OD4004_WHO.TXT_1>
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10/25/01

SIGNIFICANT AGENCY FOIA REQUESTS

LABOR

MARTIN COUNTY COAL CORPORATION
Gary Ball, Editor, Mountain Citizen, Inez, Kentucky, is seeking:

- records relating to Martin County Coal Corporation's (M.C.C.C.) Big Branch Impoundment failure on October 11, 2000.

- three of the citations issued to M.C.C.C.

- minutes of meetings held between MSHA investigative team leader Timothy Thompson and members of the investigative team and all internal memos, letters and other written correspondence between team members. Mr. Ball requested the same information concerning investigative team leader Tony Oppegard.

- original eight citations that the majority of the investigative team had agreed upon earlier.

- letters written by Jack Spadaro to investigative team members of MSHA officials after the pond failure.

This request is currently being processed by the Mine Safety and Health Administration.
Date requested received: October 18, 2001.

TYSON FOODS, INC.
Eric L. Young, Esq., Law Offices of Elliott Reihner Siedzikowski & Egann is seeking:

- copies of any and all documents maintained by the U.S. Department of Labor and/or Wage & Hour Division with regard to the following:

- any DOL or Wage and Hour investigations of or proceedings against Tyson Foods Inc. (whose corporate headquarters are located in Springdale, Arkansas), for actual violations, suspected violations of the Fair Labor Standards Act at any of its chicken-processing facilities throughout the United States at any point in time.

This request is currently being processed by the Employment Standards Administration, Wage and Hour Division. Date request received: October 3, 2001.

AMERICAN LAWYER MEDIA
Michael Ravnitzky, Journalist, American Lawyer Media, is seeking:

a copy of any list of agency databases.

Mr. Ravnitzky limited his request to those database lists found at HQ or in the HQ region. This request was forwarded to all components of the Department for processing.
Date request received: October 15, 2001.

HHS

Fred Hutchinson Cancer Research Center. Mr. Duff Wilson, staff reporter *for The Seattle Times,* has requested copies of all communications between the Office of Human Research Protections, OPHS, and the Fred Hutchinson Cancer Research Center from March 11, 2001 to the present.

Louisiana State University Medical Center. Dr. Harold M. Ginzburg requested the entire case file concerning OHRP's recent compliance oversight investigation of the Louisiana State University Medical Center.

Virginia Commonwealth University (VCU). Ms. Alysia D. Maffucci of the Yale University School of Medicine's Human Investigation Committee, has requested a copy of all of the Office of Human Research Protections (OHRP), OPHS, compliance determination letters issued from January 1, 2000 through June 20, 2000 for Virginia Commonwealth University, as well as the OHRP compliance determination letter issued to VCU on December 17, 1999.

The Office of Human Research Protections Suspensions/Restrictions. Ms. Mary K. Palmer of the University of Miami Sylvester Cancer Center, requested a copy of the list of the Office of Human Research Protections Compliance Oversight Branch investigations resulting in restrictions/actions to Multiple Project Assurances from 1998 to the present.

COMMERCE

- Received on 10/19/01 from Gabrielle Herderschee-Hunter, FTC Watch, requesting copies of all contracts entered into by DOC with Microsoft Corporation, since January 1, 1995.

- Received on 10/19/01 from Laura Peterson, The Center for Public Integrity, requesting any documents relating to Halliburton Company, Halliburton Energy Services, Kellogg Brown & Root, Landmark Graphics Corporation, Security DBS, Baroid Drilling Fluids, Numar Corporation, Wheatly/Gaso, Nonoflo, Sperry-Sun Drilling Services, Halliburton Subsea, JDH, Granhearne, Wellstream, Rockwater, Geographix, Brown & Root Services, Enventure Global Technology, Welldynamics, Bredero-Shaw Group, Bredero-Price Group, Dresser Industries, European Marine Contractors, Halliburton Deepwater, European Marine Service (EMC), and Alfred McAlpine PLC.

- Received on 10/19/01 from Nikki Austin, Squire Sanders, requesting all material from January 1, 1998 to the present, forming the basis for the Commerce Committee Democrats' June 21, 2000 letter to the Honorable David M. Walker, Comptroller General, regarding Reliance Insurance Company.

- Received on 10/17/01 from Samuel N. Penney, Nez Perce Tribal Executive Committee, requesting a copy of all draft or final biological opinions or biological assessments prepared by or received by the National Marine Fisheries Service (NMFS) on the ongoing operation of Idaho Power Company's Hells Canyon Complex; all correspondence between NMFS and the Federal Energy Regulatory Commission; and all correspondence between NMFS and Idaho Power Company since the formal consultation under section seven of the Endangered Species Act regarding the ongoing operations of the Hells Canyon Complex ceased.

- Received on 10/17/01 from Reinhard Thaler, Royal Sea Fisheries, Inc., requesting a copy of the names and addresses of all of the permit holders of the Golden Crab Fisheries.

- Received on 10/17/01 from Alice Hill-Murray, Litton PRC, requesting a copy of the contract, delivery orders, labor rates and descriptions, etc., for a contract awarded to Lockheed Martin Services Inc., for the last 12 months.

- Received on 10/15/01 from Frank Bailey III, Frank Bailey Grain Co., Inc., Fort Worth, Texas, requesting "a copy of all information concerning the co-op rail grant proposal in Robstown, Texas."

- Received on 10/15/01 from Russell C. Brooks, Pacific Legal Foundation, requesting a copy of the administrative record upon which the *Southern Oregon/Northern California Coast Evolutionarily Significant Unit Coho Salmon* as "threatened" is based.

INTERIOR

Plan and EIS Support Documents. The San Diego Off-Road Coalition and Off-Road Business Association requested approximately 24 documents referenced in the BLM's Northern & Eastern Colorado Desert Coordinated Management Plan and Environmental Impact Statement.

Kern River Pipeline. Public Employees for Environmental Responsibility (PEER) requested copies of the Final EIS for the Mojave-Kern River Pipeline Projects, the Supplemental EIS prepared for those projects, the Reclamation Plan for California, and the report on status of re-vegetation and reclamation for the Kern River pipeline to be prepared 5 years following completion of the pipeline.

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/26/2001 6:34:40 AM
Subject: : Inside: Thomas L. Jipping's Commentary: Obedient De mocrats

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CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-OCT-2001 10:34:40.00
SUBJECT:: Inside: Thomas L. Jipping's Commentary: Obedient De mocrats
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Colleagues:

Another very good email column.

Warmly

tsg

---------- Forwarded by Tim Goeglein/WHO/EOP on 10/26/2001 10:33 AM ----------

Notable News Now <NotableNewsNow@freecongress.org>
10/25/2001 09:16:30 PM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP
cc:
Subject: fcfnnn102601 Inside: Thomas L. Jipping's Commentary: Obedient De mocrats

<<fcfnnn102601.doc>>

Free Congress Foundation's
Notable News Now
October 26, 2001

The Free Congress Commentary
Obedient Democrats
By Thomas L. Jipping

Senate Democrats are playing hardball in their obstruction campaign against President Bush's judicial nominees.

Mind you, Republicans thought they were the ones playing hardball recently by blocking appropriations bills to force confirmations. But most people equate government spending with government activity and, even more since Sept. 11, people want to see government activity. According to the Washington Times, Senate Majority Leader Tom Daschle met with President Bush on Oct. 22 and said simply that "Mr. Bush needed the spending bills more than Senate Democrats did." Hence that article's title: "Daschle Wins Struggle Over Judicial Nominations."

The judiciary must be an important front in the war against terrorism. President Bush has nominated highly qualified individuals to the U.S. District Court in jurisdictions such as Washington, D.C., where they will be particularly needed in this effort. These include Richard Leon, a former deputy assistant attorney general and special assistant U.S. attorney, who is still waiting for a hearing. The judiciary cannot play this important role when more than 100 full-time positions sit vacant.

Even so, Senate Democrats are simply doing what they're told by their far-left constituencies. Groups such as the leftist Alliance for Justice have switched from demanding confirmations when vacancies were low under President Clinton to now opposing confirmations when vacancies are high under President Bush. Hypocrisy, however, is a small price to pay for a judiciary that will deliver your political agenda.

Just look at AFJ's complaints over the last few years compared to the current situation. In their 2000 judicial selection report, AFJ complained that "only eight of Clinton's 26 appellate nominations" were confirmed.

This year, the Senate has confirmed just four of President Bush's 25 appellate nominations. One of those, Roger Gregory, was originally a Clinton nominee and another, Sharon Prost, a former Judiciary Committee staffer.

AFJ complained that "the Republican-controlled Senate confirmed only 39 judges" last year. This year, the Democrat-controlled Senate has confirmed just 12 of President Bush's 60 nominees.

In their 1999 judicial selection report, AFJ complained that "the year ended with more circuit nominees still waiting for a Senate vote than were confirmed." This year, the Senate has confirmed four circuit nominees while 21 still wait for a Senate vote.

AFJ complained that judicial vacancies only declined from 64 to 58 during 1999. This year, judicial vacancies have increased from 80 to 105.

AFJ complained that "nearly a quarter of all seats [on the U.S. Court of Appeals for the Ninth Circuit] were vacant at year's end." By the end of this year, half the seats on the Sixth Circuit, one-third the seats on the D.C. and 10th Circuits, and four of 15 seats on the Fourth Circuit will be vacant.

In its 1998 judicial selection report, AFJ complained that "the Judiciary Committee failed to process or take a vote on 17 nominees and the Senate failed to vote on four others." This year, the Judiciary Committee has held a hearing on just 14 of President Bush's 60 nominees. Though the Senate has confirmed an average of 39 nominees by November 1 over the past 20 years, this year the Senate has confirmed just 12 nominees.

AFJ complained that there were "50 vacancies on the federal bench" at adjournment. Vacancies today are 108 percent higher.

In July 1999, with just 66 judicial vacancies, AFJ president Nan Aron wrote in the San Francisco Chronicle that the president "has a duty to fill judicial vacancies and appoint jurists who share his views." President Bush

is attempting to do just that. Now, however, these same left-wing activists are singing a different tune and their obedient Senate Democrats are standing in the courthouse door.

Thomas L. Jipping is vice president for legal policy at the Free Congress Foundation.

Note: This commentary was published originally in WorldNetDaily

From: CN=Lisa D. Branch/OU=CEA/O=EOP [CEA]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Matthew Kirk/WHO /EOP@EOP [WHO] <Matthew Kirk>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/26/2001 7:17:16 AM
Subject: : CFA proposal
Attachments: P_NQ2E4004_CEA.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa D. Branch (CN=Lisa D. Branch/OU=CEA/O=EOP [CEA])
CREATION DATE/TIME:26-OCT-2001 11:17:16.00
SUBJECT:: CFA proposal
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:peter.fisher@do.treas.gov (peter.fisher@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:sheila.bair@do.treas.gov (sheila.bair@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

For your attentin, attached is a message from Randy Kroszner (CEA).
---------- Forwarded by Lisa D. Branch/CEA/EOP on 10/26/2001 11:06 AM ----------

Randall S. Kroszner
10/26/2001 10:53:39 AM
Record Type: Record

To: Lisa D. Branch/CEA/EOP@EOP
cc:
Subject: CFA proposal

Please forward this to Peter Fisher, Shelia Bair, Matt Kirk, Brett Cavanaugh, and Marc Sumerlin.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NQ2E4004_CEA.TXT_1>

October 25, 2001

From: Randy Kroszner, CEA

To: Marc Sumerlin, NEC

Re: CFA Plan Talking Points

Plan Summary

- If an insurer experiences losses due to a terrorist attack greater than 5 percent of its surplus (as of December 31, 2001), then the insurer would be eligible for federal low or no interest loans with a term up to 30 years.

- Repayment of any such loans would be through a surcharge on all property-causality insurers, thereby spreading the repayment burden industry-wide.

Analysis

1) Entails Long-term Federal Government Involvement

- In contrast to the administration's view that any Federal involvement should be temporary and should help to build private sector capacity to absorb risks, this approach may keep the Federal Government involved in the insurance industry for 30 years.

2) Provides a **Dis**incentive for Insurance Companies to Accumulate Surplus

- Since the low or no interest loan becomes available only when losses are greater than 5 percent of an insurer's surplus, each insurer will face an incentive to keep a smaller surplus;.
  - In other words, the lower is your capital relative to your risks, the more likely you are to receive a low or no interest loan.
- Ultimately, this weakens the capacity of the industry to absorb risk.

3) Provides an Incentive for Insurers to Take High Risks and **Dis**incentive to Be Prudent

- Since the industry as a whole is assessed a surcharge in order to pay for the loans to the weak companies, the strong are taxed through the surcharge to pay for the weak. Insurers will realize this and that give them an incentives individually to reduce their capital and take more risks.
- These types of ex-post assessment schemes were used in the 1920s for state deposit insurance systems and each such system went bankrupt.

Bottom Line: The CFA plan is likely to undermine rather than strengthen the private sector's ability to absorb risk and provide terrorist risk insurance.

From: CN=Lisa D. Branch/OU=CEA/O=EOP [CEA]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Matthew Kirk/WHO /EOP@EOP [WHO] <Matthew Kirk>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/26/2001 7:17:16 AM
Subject: : CFA proposal
Attachments: P_NQ2E4004_WHO.TXT_1.doc

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CREATOR:Lisa D. Branch (CN=Lisa D. Branch/OU=CEA/O=EOP [CEA])
CREATION DATE/TIME:26-OCT-2001 11:17:16.00
SUBJECT:: CFA proposal
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:peter.fisher@do.treas.gov (peter.fisher@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:sheila.bair@do.treas.gov (sheila.bair@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

For your attentin, attached is a message from Randy Kroszner (CEA).
---------- Forwarded by Lisa D. Branch/CEA/EOP on 10/26/2001 11:06 AM ----------

Randall S. Kroszner
10/26/2001 10:53:39 AM
Record Type: Record

To: Lisa D. Branch/CEA/EOP@EOP
cc:
Subject: CFA proposal

Please forward this to Peter Fisher, Shelia Bair, Matt Kirk, Brett Cavanaugh, and Marc Sumerlin.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NQ2E4004_WHO.TXT_1>

October 25, 2001

From: Randy Kroszner, CEA

To: Marc Sumerlin, NEC

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Bottom Line: The CFA plan is likely to undermine rather than strengthen the private sector's ability to absorb risk and provide terrorist risk insurance.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 10/27/2001 8:39:00 AM
Subject: : US Comm. on Civil Rights

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-OCT-2001 12:39:00.00
SUBJECT:: US Comm. on Civil Rights
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If you handle this entity please let me know.

If you don't handle this entity no response necessary.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 10/28/2001 7:35:23 AM
Subject: : Re: terrorism risk insurance - civil action limitations
Attachments: P_1YNE4004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-OCT-2001 12:35:23.00
SUBJECT:: Re: terrorism risk insurance - civil action limitations
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

My only changes to this are in bold in the attached.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1YNE4004_WHO.TXT_1>
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SEC 807. LIMITATIONS ON CIVIL ACTIONS.

(a) SUBJECT MATTER JURISDICTION. Notwithstanding any other law, the Judicial Panel on Multidistrict Litigation shall assign a single federal district court to conduct pre-trial and trial proceedings in all civil actions for property damage, personal injury or death arising out of or resulting from a single act of terrorism as defined in section 803, and shall transfer all such pending civil actions to that district court. The district court assigned by the Judicial Panel on Multidistrict Litigation shall have original and exclusive jurisdiction over all such actions. For purposes of personal jurisdiction, the district court assigned by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(b) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS. Any civil action for property damage, personal injury, or death arising out of or resulting from an act of terrorism that is filed in a federal district court other than the federal district court assigned by the Judicial Panel on Multidistrict Litigation shall be transferred to the federal district court assigned by the Judicial Panel on Multidistrict Litigation.

(c) REMOVAL OF CASES FILED IN STATE COURTS. Any civil action for property damage, personal injury, or death arising out of or resulting from an act of terrorism that is filed in a state court shall be removable to the federal district court assigned by the Judicial Panel on Multidistrict Litigation.

(d) FEDERAL CAUSE OF ACTION. There shall exist a federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism as defined in section 803. This cause of action shall be the exclusive **cause of action and** remedy for claims for property damage, personal injury, or death arising out of or resulting from an act of terrorism as defined in section 803. This title preempts all state causes of action of any kind otherwise available arising out of or resulting from an act of terrorism as defined in section 803.

(e) SUBSTANTIVE LAW. The standard of care for the federal cause of action in subsection (d) of this section shall be gross negligence. Unless otherwise specified in this title, the district court shall derive other substantive principles of liability for the federal cause of action from the **principles of the** common law.

(f) NON-ECONOMIC DAMAGES. Each defendant shall be liable only for the amount of non-economic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the claimant. No plaintiff may recover non-economic damages unless the plaintiff suffered physical harm.

(g) OFFSET. In determining the amount of any money damages available under this title, the court shall offset any compensation or benefits received or entitled to be received by the plaintiff or plaintiffs from any collateral source**,** including the United States or any federal agency thereof**,** in response to or as a result of the act of terrorism.

(i) PUNITIVE DAMAGES. Punitive damages, exemplary damages, and other damages not intended to compensate the plaintiff for actual losses shall not be available in any civil action subject to this title.

(j) STATUTE OF LIMITATIONS. Any claim for property damage, personal injury, or death arising out of or resulting from an act of terrorism as defined in section 803 shall be filed within one year. This period shall be computed from the date of discovery of the injury by the plaintiff or the date such injury should have been discovered by the plaintiff through the exercise of reasonable diligence, whichever is earlier.

(k) CLAIMS AGAINST TERRORISTS. Nothing in this section shall in any way limit the ability of any plaintiff to seek any form of recovery from any person, government or other entity that was a participant in, or aider and abettor of, any act of terrorism as defined in section 803.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 10/28/2001 7:40:18 AM
Subject: : Re: draft talking pts -- internal only.
Attachments: P_HYNE4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-OCT-2001 12:40:18.00
SUBJECT:: Re: draft talking pts -- internal only.
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

These look good with some very minor edits that I would suggest.
If we need to get everything onto 1 page, then we can do that as well
pretty easily. Let me know.

Kristen Silverberg
10/26/2001 05:15:32 PM
Record Type: Record

To: Matthew Kirk/WHO/EOP@EOP, Brian C. Conklin/WHO/EOP@EOP, Brett
M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: draft talking pts -- internal only.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HYNE4004_WHO.TXT_1>

Proposed Legal Procedures for
Future Mass Tort Terrorism Incidents

- The American legal system has long employed special procedures for mass tort cases that otherwise threaten to overwhelm the legal system.

- Fair and expeditious procedures are especially important in mass tort situations arising from terrorist incidents because the federal government is likely to have significant incentives to relieve businesses of the consequences of liability resulting from a terrorist attack. In many cases, the government will have no practical options other than to only accept liability on behalf of the private sector, as it did following the September 11 attacks. In these cases, the price for the government's failure to provide fair and reasonable procedures before the attack will be paid by the federal taxpayer.

- The potential risk to the federal fisc is particularly high if the federal government agrees to provide a federal backstop for purposes of insurance coverage. In these cases, the federal government is agreeing to directly accept the risk of unmanageable or overzealous litigation.

- The Administration has proposed modest and reasonable procedures for future mass tort terrorism cases that would help resolve such cases in a fair and equitable manner.

  - ***First*, all tort cases arising out of a terrorism incident would be consolidated in a single federal court and decided under a uniform federal cause of action.**

    - A single federal court and a uniform standard of liability are necessary to ensure that the legal system is not overwhelmed by multiple cases in multiple courts in multiple states -- with similar claims in multiple forums decided under widely varying standards for liability, causation, defenses, and damages.

    - Consolidation of cases in a single court is a common procedure in mass tort cases and was a central feature of the legislation recently enacted by Congress for the tort cases arising out of the September 11 attacks.

  - *Second*, **punitive damages would be unavailable and non-economic damages would be allowed only in proportion to the percentage of the defendant's responsibility.**

    - In most mass tort cases, only a limited pool of resources will be available to plaintiffs who prove liability (whether because of settlement or bankruptcy).

    - Because of the limited pool of resources, it would be grossly inequitable and unfair to allow one plaintiff or class of plaintiffs to receive an

excessive award that may preclude (or greatly limit) recovery by other similarly situated plaintiffs.

- Even for defendants who face no possibility of bankruptcy, the possibility of massive punitive or non-economic damages creates a pressure on solvent defendants to settle even unmeritorious cases.

- Provisions for proportional liability are less restrictive than the provisions that would apply in many state courts and are essential to ensuring that American businesses are not liable for non-economic harms caused by the terrorists themselves.

Third, **the amount of a plaintiff's award would be reduced by the amount of compensation the plaintiff has received or is entitled to receive from the government and from first-party insurers, including property and health insurers, for injuries arising out of the terrorism incident.**

- This procedure, which Congress adopted for the victims claims process applicable to individual cases arising out of the September 11 terrorist attacks, will (i) ensure that plaintiffs are compensated for their losses, yet also prevent double recovery by plaintiffs and (ii) protect legitimate businesses and liability insurers from massive class judgments. This procedure thus would help preserve the limited pool of defendant resources available for *uninsured* damages suffered by plaintiffs in mass tort cases.

- The procedure again is consistent with the principle that first-party private insurance and, where necessary, standard government benefits have been (and should be) the primary means for promptly and appropriately compensating the parties injured in a terrorism attack.

- Even in ordinary tort cases, many states offset past and prospective insurance benefits paid or payable to the plaintiff against the plaintiff's recovery.

Fourth, **the standard for liability in such cases would be gross negligence.**

- That standard of care is appropriate because the wrongdoers in mass terrorism incidents are, by definition, the terrorists themselves, not the legitimate bystander property and business owners. A simple negligence standard would generate hydraulic pressure towards a massive settlement and/or bankruptcy, yet legitimate businesses should not be forced to bankruptcy as a result of damage and injuries caused by terrorists, at least absent serious wrongdoing on the part of these legitimate businesses.

- This standard is consistent with the principle that first-party private insurance and, where necessary, standard government benefits have been (and should be) the primary means for promptly and appropriately compensating the parties injured in a terrorism attack. Through these resources, injured parties will receive appropriate care and compensation without resort to an unwieldy and inefficient judicial process that would trigger widespread bankruptcies.

- Because of the devastating effect that a liability judgment would cause for defendants in a mass tort case, a simple negligence standard for terrorism cases would inevitably discourage normal economic activity, particularly in locales that are susceptible to terrorist attacks.

- Taken together, these procedures will help avoid bankruptcies and the widespread economic uncertainty that otherwise would result from potentially unlimited liability in the wake of a mass tort terrorism incident. The procedures will ensure an equitable and orderly litigation process for mass tort cases that is fair for plaintiffs and defendants alike. And the procedures will help provide economic stability and predictability to businesses and insurance companies that must attempt to forecast the risks and potential costs of future terrorism incidents.

From: CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD]
To: Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>
CC: peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;randall s. kroszner/cea/eop@eop [CEA] <randall s. kroszner>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;matthew kirk/who /eop@eop [WHO] <matthew kirk>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;anna.hart@do.treas.gov [UNKNOWN] <anna.hart@do.treas.gov>;lisa d. branch/cea/eop@eop [CEA] <lisa d. branch>;betty.ann.hunt@do.treas.gov [UNKNOWN] <betty.ann.hunt@do.treas.gov>;carol j. thompson/who/eop@eop [WHO] <carol j. thompson>;eric h. otto/opd/eop@eop [OPD] <eric h. otto>
Sent: 10/28/2001 9:58:24 AM
Subject: : Re: Call-in info for Daily Insurance Conference Call

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:28-OCT-2001 14:58:24.00
SUBJECT:: Re: Call-in info for Daily Insurance Conference Call
TO:Leslie A. Mooney ( CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:randall s. kroszner ( CN=randall s. kroszner/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brian c. conklin ( CN=brian c. conklin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:matthew kirk ( CN=matthew kirk/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:anna.hart@do.treas.gov ( anna.hart@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:lisa d. branch ( CN=lisa d. branch/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:betty.ann.hunt@do.treas.gov ( betty.ann.hunt@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:carol j. thompson ( CN=carol j. thompson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:eric h. otto ( CN=eric h. otto/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We will not be able to have Monday's insurance call due to a meeting on
the Hill.

Thanks,

Marc
```

From: Leslie A. Mooney on 10/26/2001 06:21:11 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Call-in info for Daily Insurance Conference Call

The call in information for next week's 9:30 am Daily Insurance Conference Call is as follows:

Call-in number: 456-2565 (same number each day)

Monday, 10/29: pass code is 7494
Tuesday, 10/30: pass code is 7494
Wedesnday, 10/31: pass code is 1731
Thursday, 11/1 pass code is 1731
Friday, 11/2 pass code is 9673

Thanks and please call with any questions.

Leslie Mooney
456-5804

Message Sent
To:_____
Peter.Fisher@do.treas.gov @ inet
Randall S. Kroszner/CEA/EOP@EOP
Sheila.Bair@do.treas.gov @ inet
Kristen Silverberg/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

Message Copied
To:_____
anna.hart@do.treas.gov
Lisa D. Branch/CEA/EOP@EOP
Betty.Ann.Hunt@do.treas.gov
Carol J. Thompson/WHO/EOP@EOP
Eric H. Otto/OPD/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: matthew kirk/who/eop@eop [WHO] <matthew kirk>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;sheila.bair@do.treas.gov [UNKNOWN] <sheila.bair@do.treas.gov>;martha.ellett@do.treas.gov [UNKNOWN] <martha.ellett@do.treas.gov>;roberta.mcinerney@do.treas.gov [UNKNOWN] <roberta.mcinerney@do.treas.gov>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;d. marcus sumerlin/opd/eop@eop [OPD] <d. marcus sumerlin>
Sent: 10/29/2001 10:41:56 AM
Subject: : Side by side with airline liability provisions
Attachments: P_DLBF4004_OPD.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-OCT-2001 15:41:56.00
SUBJECT:: Side by side with airline liability provisions
TO:matthew kirk ( CN=matthew kirk/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:brian c. conklin ( CN=brian c. conklin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:martha.ellett@do.treas.gov ( martha.ellett@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:roberta.mcinerney@do.treas.gov ( roberta.mcinerney@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:d. marcus sumerlin ( CN=d. marcus sumerlin/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Senate staffers requested a document that would compare the
liability proposals with the provisions of the Airline Act. Unless anyone
suggests changes to the attached, we will plan to send it to Senate
staffers later this afternoon (around 5:00). Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DLBF4004_OPD.TXT_1>
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Section 809
("Procedures for Civil Actions")

Analogues to Air Transportation Act Provisions

- **Consolidation**
  - Section 408(b) of the Air Transportation Act consolidates all cases arising out of the September 11 attacks in a single federal court.
  - Section 809 (a)-(c) of the proposed bill would consolidate all cases arising out of a mass terrorism incident in a single federal court.
- **Punitive Damages**
  - Section 405(b)(5) of the Air Transportation Act precludes recovery of punitive damages in the victims' claims process, and Section 408(a) limits any recovery against air carriers to the limits of their liability policies.
  - Section 809(e) of the proposed bill would preclude recovery of punitive damages, and would not cap damages against any defendant.
- **Offset**
  - Section 405(b)(6) of the Air Transportation Act requires that recovery by a claimant in the victims' claims process be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.
  - Section 809(f) of the proposed bill would require that a plaintiff's recovery be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.
- **Non-Economic Damages**
  - Section 408(a) of the Air Transportation Act limits recovery against air carriers to the limits of their liability policies.
  - The proposed bill would not limit or cap the liability of any particular defendant. Rather, as a more limited measure to help preserve the pool of defendants' assets in a mass tort incident and allow for an equitable distribution to successful plaintiffs, Section 809(g) of the proposed bill would require that non-economic damages be awarded in proportion to the percentage of the harm caused by the defendant and only to plaintiffs who have suffered physical injury. (The proposed bill is more modest than many proposals: It would not eliminate non-economic damages entirely, nor would it impose proportional fault for economic damages.)

- **Substantive Standard for Liability**

  - Section 408(b) of the Air Transportation Act provides that the substantive standard for liability is to be derived from the law of the State where the incident occurred.

  - Because the procedure in Section 408(b) of the Air Transportation Act could be unwieldy and unfair in a mass terrorism incident that occurs in multiple states, Section 809(h) of the proposed bill would establish a single federal standard of gross negligence. The gross negligence standard is a middle-ground standard between simple negligence and intentional wrongdoing and is particularly appropriate in tort cases where, by definition, the injury has been caused by the criminal acts of an intervening third party, not by legitimate bystander property and business owners.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/29/2001 11:04:25 AM
Subject: : Re: Azar # again

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-OCT-2001 16:04:25.00
SUBJECT:: Re: Azar # again
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

6907741

Helgard C. Walker
10/29/2001 04:02:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Azar # again

Sorry to bother you, but the primary I have # for Azar just rings and I did not save the second one you gave me...

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 10/29/2001 11:17:15 AM
Subject: : Re: legal advice requested

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-OCT-2001 16:17:15.00
SUBJECT:: Re: legal advice requested
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I would get OLC/OLP on these questions as well as FEMA GC. That
will make your life a lot easier.

Helgard C. Walker
10/29/2001 04:05:38 PM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: legal advice requested

I'll get with you soon on this -- I think Tim identified me because I have
some contacts at FEMA from the early days of the emergency, but at the
same time Brett has done a lot of work on liability and insurance issues.
I am copying him to see what he thinks his involvement should be.

Kristen Silverberg
10/29/2001 04:01:34 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP
cc: John M. Bridgeland/OPD/EOP@EOP, Gary R. Edson/NSC/EOP@EOP
Subject: legal advice requested

As I mentioned to Brad, the New York group (Bridge, Gary, Austin et al)
needs some fairly urgent legal guidance and has asked me to "translate"
the question to WHC. Tim said that you were the appropriate contacts.

I'll provide the background my email -- we can discuss in greater detail
when Brad gets back from his meetings.

The contractors cleaning up the WTC debris site have not yet signed
contracts with the city. They were called in on an emergency basis and
have been removing debris without any formal agreements. They are
threatening to stop the clean up because their lawyers are advising them
that their liability risk could run in the billions of dollars. They are
particularly concerned about environmental and professional liability.
(There are hazardous materials on site; the retention wall for the Hudson
River is close to the clean up, etc.)

The contractors have demanded indemnification from the city for any liability in excess of whatever insurance they can procure for work on the site. The city is, in turn, attempting to purchase as much insurance as possible for an umbrella policy, but is having difficulty finding willing insurers (even though the fed govt is required to pick up the cost of the premiums).

Schumer and Clinton are threatening to offer legislation that would require the fed govt to indemnify the city for any liability above the amount of available insurance (could be billions of dollars). The Administration obviously is very nervous about this potential exposure and particularly about the wisdom of relieving the city of liability even though the city has effective control over the site.

Several questions came up at a mtg this afternoon, which I can discuss with you in greater detail:

1. Currently, the fed govt's role in the clean up is to write checks, monitor and advise the clean up through FEMA engineers, exercise some control over the site in connection with the criminal investigation, etc. This city, however, has primary control over the clean up and generally FEMA executes agreements with the state that require the state to indemnify the fed govt against any liability.

However, assuming we couldn't/ wouldn't collect from the state, what is the fed govt's potential exposure for any accidents? I assume FEMA's GC could give some good guidance on this.

2. If the fed govt agrees to indemnify the city, what is the govt's exposure? Would indemnification be accomplished through the federal tort claims act or some other mechanism? If the city violated some environmental statute and had liability to the state or fed govt, could the fed govt be on the hook for that amount?

3. If the fed govt assumes effective control for the clean up by effectively making the Corps the general contractor, what is the liability risk? I assume the Corps' GC would know -- to what extent is the fed govt on the hook for any property or environmental damage it might cause when it runs an operation?

I hope that makes sense. Let's talk in greater detail when Brad gets back.

From: Sutton, Jason <Jason.J.Sutton@usdoj.gov>
To: Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Cole, Deloris L <Deloris.L.Cole@usdoj.gov>;Carroll, James W (OLP) <James.W.Carroll@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ullman, Kristen A <Kristen.A.Ullman@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Rabjohns, Lori <Lori.Rabjohns@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Tucker, Mindy <Mindy.Tucker@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 10/29/2001 12:20:34 PM
Subject: : No 8:00 am mtg. Tues. morning on judges

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Sutton, Jason" <Jason.J.Sutton@usdoj.gov> ( "Sutton, Jason"
<Jason.J.Sutton@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:29-OCT-2001 17:20:34.00
SUBJECT:: No 8:00 am mtg. Tues. morning on judges
TO:"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Cole, Deloris L" <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Cole, Deloris L" <Deloris.L.Cole@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Carroll, James W (OLP)" <James.W.Carroll@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Ullman, Kristen A" <Kristen.A.Ullman@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Rabjohns, Lori" <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
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TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Tucker, Mindy" <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There will be no 8:00 am meeting tomorow morning (Tues.) w/ Hill staff on judges. The meeting will be rescheduled for later this week or next week.
-----Original Message-----
From: Brinkley, Winnie
Sent: Monday, October 29, 2001 11:13 AM
To: Adam Ciongoli; Allison_L._Riepenhoff@who.eop.gov@inetgw; Bradford_A._Berenson@who.eop.gov%inetgw; Brett_M._Kavanaugh@who.eop.gov%inetgw; Dan Bryant; Deloris Cole; Heather_Wingate@who.eop.gov; James Carroll; Jason Sutton; Jennifer Newstead; Kristen Ullman; Linda Long; Lizette Benedi; Lori Rabjohns; Lori SharpeDay; Matthew_E._Smith@who.eop.gov%inetgw; Mindy Tucker; Neal Suit; Patrick O'Brien; Sheila Joy; Tim_Goeglein@who.eop.gov%inetgw; Timothy_E._Flanigan@who.eop.gov%inetgw; Viet Dinh; Winnie Brinkley; Ziad_S._Ojakli@who.eop.gov%inetgw
Subject: Reminder: Judicial Confirmation Working Group Mtg today at 4pm. Main Justice Room 4646.
Importance: High

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: matthew kirk/who/eop@eop [WHO] <matthew kirk>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;sheila.bair@do.treas.gov [UNKNOWN] <sheila.bair@do.treas.gov>;martha.ellett@do.treas.gov [UNKNOWN] <martha.ellett@do.treas.gov>;roberta.mcinerney@do.treas.gov [UNKNOWN] <roberta.mcinerney@do.treas.gov>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;d. marcus sumerlin/opd/eop@eop [OPD] <d. marcus sumerlin>
Sent: 10/29/2001 12:52:07 PM
Subject: : UPDATED side by side with airline liability provisions
Attachments: P_V0IF4004_OPD.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-OCT-2001 17:52:07.00
SUBJECT:: UPDATED side by side with airline liability provisions
TO:matthew kirk ( CN=matthew kirk/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:brian c. conklin ( CN=brian c. conklin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:martha.ellett@do.treas.gov ( martha.ellett@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:roberta.mcinerney@do.treas.gov ( roberta.mcinerney@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:d. marcus sumerlin ( CN=d. marcus sumerlin/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This document is now ready to go to Senate staffers.
Sheila/Martha/Roberta: I assume you all will send this to
Senate. Let me know if you want us to do so (my number is 456-7984), but
I thought all documents to Senate staffers would come from you. Thanks.


ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V0IF4004_OPD.TXT_1>
```

Section 809
("Procedures for Civil Actions")

Analogues to Air Transportation Act Provisions

- **Consolidation**
  - Section 408(b) of the Air Transportation Act consolidates all cases arising out of the September 11 attacks in a single federal court.
  - Section 809 (a)-(c) of the proposed bill would consolidate all cases arising out of a mass terrorism incident in a single federal court.
- **Punitive Damages**
  - Section 405(b)(5) of the Air Transportation Act precludes recovery of punitive damages in the victims' claims process, and Section 408(a) limits any recovery against air carriers to the limits of their liability policies.
  - Section 809(e) of the proposed bill would preclude recovery of punitive damages, and would not cap damages against any defendant.
- **Offset**
  - Section 405(b)(6) of the Air Transportation Act requires that recovery by a claimant in the victims' claims process be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.
  - Section 809(f) of the proposed bill would require that a plaintiff's recovery be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.
- **Non-Economic Damages**
  - Section 408(a) of the Air Transportation Act limits recovery against air carriers to the limits of their liability policies and applies state law limits on joint and several liability.
  - The proposed bill would not limit or cap the liability of any particular defendant (the limit in the Air Transportation Act, which is tied to insurance coverage, would not make sense for future incidents, as it would create perverse incentives). Rather, as a more limited measure to help preserve the pool of defendants' assets in a mass tort incident and allow for an equitable distribution to successful plaintiffs, Section 809(g) of the proposed bill would require that non-economic damages be awarded in proportion to the percentage of the harm caused by the defendant and only to plaintiffs who have suffered physical injury. (The proposed

bill is more modest than many proposals: It would not eliminate non-economic damages entirely, nor would it impose proportional fault for economic damages.)

- **Substantive Standard for Liability**

  - Section 408(b) of the Air Transportation Act provides that the substantive standard for liability is to be derived from the law of the State where the incident occurred.

  - Because the procedure in Section 408(b) of the Air Transportation Act could be unwieldy and unfair in a mass terrorism incident that occurs in multiple states, Section 809(h) of the proposed bill would establish a single federal standard of gross negligence. The gross negligence standard is a middle-ground standard between simple negligence and intentional wrongdoing and is particularly appropriate in tort cases where, by definition, the injury has been caused by the criminal acts of an intervening third party, not by legitimate bystander property and business owners.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 10/29/2001 3:20:25 PM
Subject: : Re:
Attachments: P_8RKF4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-OCT-2001 20:20:25.00
SUBJECT:: Re:
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

good; I will re-format and include in draft

Kristen Silverberg
10/29/2001 08:18:45 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Needs to be reformated, but what about these points?

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8RKF4004_WHO.TXT_1>

To ensure that defendants are responsible only for the damages caused by their actions, non-economic damages (i.e. pain and suffering) should be allowed only in proportion to the percentage of the defendant's responsibility.

- Without this provision, a court could apply hold any defendant "jointly and severally" liable for the full amount of the plaintiff's non-economic damages, even for those damages unrelated to the defendant's actions or attributable to the terrorists.

- Non-economic damages frequently comprise __% of the damages assessed in a case. For example, parties have estimated that non-economic damages in the World Trade Center attack could easily exceed $____. If any defendant, even the marginally involved, could be made to pay the full extent of non-economic damages, these damages could easily threaten to bankrupt hundreds of legitimate businesses many times over.

- Limitations on joint and several liability are fairly commonplace. At least thirty-seven states have enacted some form of proportional liability. Indeed, seventeen states have adopted proportional liability even for economic damages. Another eight states have adopted proportional liability for economic and non-economic damages for any marginally-involved defendant (e.g., one found to be less than 50% at fault).[1]

- Reasonable damage limitations have precedent in the airline bill. In that legislation, Congress capped each defendant's damages at the amount of its liability coverage, a provision that will have the effect of effectively eliminating joint and several liability for both economic and non-economic damages.

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[1] Many of these limitations were adopted in the mid-1980s in response to an insurance crisis making it difficult for defendants – even those exercising caution in their business dealing – to obtain liability coverage. See 1986 Tort Reform Legislation: A Systematic Evaluation of Caps on Damages and Limitations on Joint and Several Liability, 73 Cornell L. Rev. 628 (1988). In addition, many states provide an absolute cap on the non-economic damages available to any single plaintiff. See, e.g., COLO. REV. STAT. § 13-21-102.5 (1987) ($ 250,000 unless clear and convincing evidence indicates greater damages warranted; in no case more than $ 500,000); FLA. STAT. ANN. § 768.80 (West Supp. 1988) ($ 450,000); HAW. REV. STAT. § 663-867 (Supp. 1987) ($ 375,000 except for specified types of torts such as strict and products liability, intentional torts, and environmental pollution torts); MD. CTS. & JUD. PROC. CODE ANN. § 11-108 (Supp. 1987) ($ 350,000); MONT. CODE ANN. § 2-9-108 (1987) ($ 750,000 for each claim, $ 1.5 million for each occurrence against political subdivision; statute terminates in 1991); N.H. REV. STAT. ANN. § 508:4-d (Supp. 1987) ($ 875,000); S.C. CODE ANN. § 15-78-120 (Law. Co-op. Supp. 1987) (limits total damages to $ 250,000 per plaintiff and $ 500,000 per occurrence against political subdivision).

From: CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Randall S. Kroszner/CEA /EOP@EOP [CEA] <Randall S. Kroszner>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>
Sent: 10/30/2001 6:37:11 AM
Subject: : Cap Narrative
Attachments: P_4FUF4004_CEA.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:30-OCT-2001 11:37:11.00
SUBJECT:: Cap Narrative
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Leslie A. Mooney/OPD/EOP on 10/30/2001 10:40 AM ----------

Sheila.Bair@do.treas.gov
10/30/2001 08:32:18 AM
Record Type: Record

To: steve_harris@banking.senate.gov, wayne_abernathy@banking.senate.gov, alex_sternhell@banking.senate.gov
cc: Peter.Fisher@do.treas.gov, D. Marcus Sumerlin/OPD/EOP
Subject: Cap Narrative

Per Steve's request yesterday morning, attached please find a narrative description of the New Option for a per company cap that would apply as a percentage (10%) of direct (gross) premia collected for all of a company's commercial or residential P&C lines.. <<capnarrative.doc>>

- capnarrative.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4FUF4004_CEA.TXT_1>

Explanation of Per Company Payments Cap Based on 10% of Direct Premiums

For the first 12 months of the terrorism risk insurance program, the proposal would provide for an absolute cap on an individual company's exposure to losses resulting from acts of terrorism equal to 10% of direct (gross) premiums collected for *all* lines of commercial or residential property and casualty coverage during the preceeding 12 months.

The proposal would establish firm parameters for a company's outside losses from underwriting terrorism risk insurance during the early stages of the federal program, thereby providing greater certainty of risk exposure, particularly for those insurers writing P&C policies on high risk properties.

The cap would apply separately to commercial and residential lines. Thus if an insurer's policyholders suffered $100 million dollars of commercial P&C loss from a terrorist act, and had collected $900 million in P&C premia for all commercial lines and $600 million in premia for all residential lines, the cap would be $90 million. The insurer would pay $90 million in claims and the federal government would pay $10 million.

Aggregate industry exposure under this approach would be $32 billion, based on last year's P&C premiums, which totalled $320 billion. ($139 billion for commercial lines and $181 billion for residential.) Aggregate commercial exposure would be $13.9 billion and aggregate residential exposure would be $18.1 billion.

Losses would be calculated net of resinsurance. Thus the cap would maintain incentives for primary insurers to reinsure their exposures up to the cap.

It is possible that the cap would result in an individual company or companies receiving payments even though the $10 billion industry aggregate deductible had not been reached. The cap has been set at a relatively high 10% of premia to mitigate against this happening. Using the 10% benchmark, preliminary analysis indicates that only one of the major P&C insurers would have exceeded the cap as a result of losses on September 11. (see attached chart)

This proposal resulted from a suggestion by Ron Ferguson, CEO of General Re, made during the Banking Committee hearings in response to suggestions by CFA and others that there should be a per company cap based on a percentage of the company's surplus. The problem with a cap based on surplus is that it rewards poorly capitalized companies. The advantages of using premia is that the more a company increases premia, the higher its cap. In addition, premia are readily ascertainable and verifiable.

attachment

From: CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Randall S. Kroszner/CEA /EOP@EOP [CEA] <Randall S. Kroszner>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>
Sent: 10/30/2001 6:37:11 AM
Subject: : Cap Narrative
Attachments: P_4FUF4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:30-OCT-2001 11:37:11.00
SUBJECT:: Cap Narrative
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Leslie A. Mooney/OPD/EOP on 10/30/2001 10:40 AM ----------

Sheila.Bair@do.treas.gov
10/30/2001 08:32:18 AM
Record Type: Record

To: steve_harris@banking.senate.gov, wayne_abernathy@banking.senate.gov, alex_sternhell@banking.senate.gov
cc: Peter.Fisher@do.treas.gov, D. Marcus Sumerlin/OPD/EOP
Subject: Cap Narrative

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- capnarrative.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4FUF4004_WHO.TXT_1>

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This proposal resulted from a suggestion by Ron Ferguson, CEO of General Re, made during the Banking Committee hearings in response to suggestions by CFA and others that there should be a per company cap based on a percentage of the company's surplus. The problem with a cap based on surplus is that it rewards poorly capitalized companies. The advantages of using premia is that the more a company increases premia, the higher its cap. In addition, premia are readily ascertainable and verifiable.

attachment

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wood, John F <John.F.Wood@usdoj.gov>
Sent: 10/30/2001 10:52:27 AM
Subject: : Re: Victims Compensation Notice
Attachments: P_DM5G4004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-OCT-2001 15:52:27.00
SUBJECT:: Re: Victims Compensation Notice
TO:"Wood, John F" <John.F.Wood@usdoj.gov> ("Wood, John F" <John.F.Wood@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

have you received comments from Rebecca Beynon?

"Wood, John F" <John.F.Wood@usdoj.gov>
10/30/2001 02:53:20 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Victims Compensation Notice

Attached is a revised notice, incorporating the changes that I have received on last night's draft. If anyone needs a redline version, please let me know. We need to get this to the Federal Register by 2:00 tomorrow in order to meet our plan for Friday publication.

- Notice103001.wpd

Message Sent
To:_____
"Israelite, David" <David.Israelite@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Perry, Phil" <Phil.Perry@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"McCallum, Robert" <Robert.McCallum@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Harris, Paul" <Paul.Harris@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Jones, Kevin R" <Kevin.R.Jones@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Philbin, Patrick" <Patrick.Philbin@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Hart, Rosemary" <Rosemary.Hart@usdoj.gov> (Receipt Notification

Requested) (IPM Return Requested)
Rebecca A. Beynon/OMB/EOP
Jay P. Lefkowitz/OMB/EOP
Brett M. Kavanaugh/WHO/EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DM5G4004_WHO.TXT_1>

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 104

CIV 104P; AG Order No.

RIN: 1105-AA79

"September 11th Victim Compensation Fund of 2001"

AGENCY: Civil Division, Justice.

ACTION: Notice of Inquiry and Advance Notice of Rulemaking

SUMMARY:

Shortly after the September 11, 2001 terrorist attack, the President signed legislation authorizing compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day. This Notice of Inquiry and Advance Notice of Rulemaking seeks public comment on a range of matters critical to implementing a program that will carry out the intent of the legislation of providing compensation to victims.

DATES:

Comments in response to this notice are due by November __, 2001.

ADDRESSES:

Comments should be submitted by email to: victimcompensation.comments@usdoj.gov, or by telefax to 301-519-5956. Telefaxes should be limited to 15 pages. Comments may also be mailed to Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW, Washington, DC 20530. However, in view of the short time period for comments and the current delays in the delivery of mail, it is strongly recommended that comments be submitted by email or telefax. Comments received are public records. The name and address of the commenter should be included with all submissions. The text of comments, along with the name and address of the

commenter, will be available on the Victim Compensation Fund web site, www.usdoj.gov/victimcompensation. Comments will also be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling 888-714-3385 (TDD: 888-560-0844).

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone 888-714-3385 (TDD 888-560-0844).

SUPPLEMENTARY INFORMATION:

Background.

The President signed the "September 11 Victim Compensation Fund of 2001" (the "Fund") into law on September 22, 2001, as Title IV of Public Law 107-42 ("Air Transportation Safety and System Stabilization Act") (the "Act"). The purpose of this Fund is to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and compensation through a "personal representative" for those who were lost in the crashes. Generally, eligibility extends to: a) individuals on the planes at the time of the crashes (other than the terrorists); and b) individuals present at the World Trade Center, the Pentagon or the site of the crash in Pennsylvania at the time of the crashes as well as those present in the immediate aftermath of the crashes.

The Attorney General, acting through a Special Master appointed by the Attorney General, is responsible for the administration of the Fund. By law, regulations addressing certain administrative matters should be issued within 90 days of enactment (i.e., by December 21, 2001). Section 407 of the Act provides that the Attorney General, in consultation with the Special Master, promulgate regulations on four matters by December 21, 2001:

(1) forms to be used in submitting claims;

(2) the information to be included in such forms;

(3) procedures for hearing and the presentation of evidence; and

(4) procedures to assist an individual in filing and pursuing claims under this title.

In addition, section 407 authorizes, but does not require, the Attorney General to issue additional rules to implement the program.

After determining whether an individual is an eligible claimant under the Act and applicable regulations, the Special Master is to determine the extent of harm to the claimant, and then determine the amount of compensation to be awarded based on "the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant." The law also provides that the Special Master is to make a final determination on any claim within 120 days of its receipt and, if an award is made, to authorize payment within 20 days thereafter. The determinations of the Special Master are final and are not reviewable by any court.

The Fund is designed to provide a no-fault alternative to tort litigation for individuals who were physically injured or killed as a result of the aircraft highjackings and crashes on September 11, 2001. Individuals who may have suffered other kinds of losses as a result of those events (e.g., those without identifiable physical injuries but who lost employment) are not included in this special program. However, a claimant who files for compensation must at the time of filing waive any right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001.

Claims with the Fund must be filed within two years after the initial regulations are promulgated. Payments from the Fund are made by the United States government, which in turn obtains the right of subrogation to each award.

General approach to regulations that must be promulgated by December 21, 2001.

a) The purpose of this notice.

As noted above, the Act requires that the Attorney General promulgate regulations in consultation with the Special Master. The Department is currently considering potential candidates for the Special Master position. In addition, the Department is in the process of seeking information from state and local agencies, as well as many other sources, that may be

useful in crafting proposed regulations. In the meantime, however, the Department considers it very important that, to the extent feasible given the time frames involved, the public be fully involved in the development of any rules established under the program -- including, but not limited to, potential beneficiaries of the program, their employers, the legal community, and all those who have stepped up to help those impacted. For this reason, the Department has decided to issue this notice to obtain as much public comment as feasible before issuing those rules that it is required to promulgate by December 21, 2001. This notice describes the issues involved, identifies possible courses of action, and invites comment on a number of points.

b) The Department's plan to issue implementing regulations by December 21, 2001 as "interim final" rules.

Although the Attorney General, in consultation with the Special Master, is to issue certain implementing rules by December 21, 2001, the law does not specifically define how such rules must be issued. Your comments on those procedural plans would be most welcome.

The Department is considering promulgating the initial rules on December 21, 2001 as "interim final" rules. "Interim final" rules are "final" rules which can be relied upon (and challenged) under the law, but which also become the subject of a new round of immediate comment and review – essentially, asking the public for comment on whether the newly-adopted rules should be amended. The Department wishes to begin processing claims as soon as possible. This procedural methodology should permit to program to commence operations as soon as practicable. The Department welcomes comment in this regard.

c) How to comment in response to this notice.

There are a number of issues presented in the course of this discussion, and this notice only provides you 21 days to comment. However, the Department only has a limited time to evaluate the information received in response to this notice. Accordingly, the Department would appreciate comments that are transmitted as soon as possible and in a form that is as succinct as possible. As indicated at the beginning of this notice, we encourage you to use e-mail and telefax for this purpose, particularly given the current problems associated with the delivery of

mail to government offices in the Washington, DC area.

While the Department endeavors to review every submission it receives in response to this notice, from handwritten letters to copies of scholarly legal articles and books, it reserves the right under the circumstances to set aside that information which it simply lacks the time to consider before the Department must make its determination, even if that information is received before the end of the comment period. The Department urges commenters to submit materials as early in the comment period as possible.

If the Department cannot fully consider all the comments it receives before it must act, the comments will be retained by the Department for subsequent consideration as appropriate. The Department intends to provide another opportunity for notice and comment after the initial rules are issued in December; any information submitted to the Department in response to this notice which cannot be reviewed before the December rules are issued will be considered during the subsequent review. Similarly, to the extent that any issues addressed in comments are not addressed in this initial regulatory action, those comments will be retained by the Special Master for appropriate consideration as the program is implemented.

d) Will there also be meetings and hearings to gather information before December 21, 2001?

The Department anticipates that it may have many requests for meetings from individuals and groups who wish to provide input on these rules, and is likely going to want to initiate such meetings on its own as well. The Department will endeavor to accommodate any such requests as best it can given its many important obligations, the available time, and any applicable legal requirements.

As a matter of general policy, the Department has declined to take a position prohibiting so-called "ex parte communications" in informal rulemaking proceedings. 28 CFR 50.17. Such a prohibition would inhibit the ability of the Department to obtain valuable information, and would be inconsistent with the nature of informal rulemaking under 5 U.S.C. 553 (as contrasted with so-called "formal" rulemaking under 5 U.S.C. 554, which is handled in a quasi-judicial

manner). Consistent with the policy set forth in 28 CFR 50.17, the Department will endeavor to add notes on any relevant meetings or other communications to the record.

e) The effective date of the rules to be promulgated December 21, 2001.

The law generally provides that rules not go into effect for at least 30 days absent "good cause" to waive this requirement, and in some cases even more time is required to permit an opportunity for Congressional review.

The Department is seeking comment on an appropriate effective date for these rules, including whether "good cause" exists to waive the 30 day requirement. Although the Department would prefer not to waive the APA=s requirements for at least a 30 day delay in the effective date, it is prepared to assert that there is good cause for taking such an action should it be warranted in light of your comments. The Department welcomes comments on other alternatives. For example, a 30 day effective date delay might not significantly hinder implementation of the program, and would provide time for some initial counseling and other information dissemination prior to any claims being filed.

f) Issues relating to the rules to be promulgated by December 21, 2001.

The Department welcomes comment on whether the rules that must be issued by December 21, 2001 should cover matters beyond the four that are listed in the statute. One reason for making the set of regulations to be published in December as comprehensive as possible is the possibility that there are some potential claimants who have already filed or will soon be filing tort suits seeking damages arising out of the September 11 incidents. These potential claimants do not have the option of waiting to see the determination of the Special Master in response to a compensation claim as to their eligibility for compensation, or as to the amount of compensation that will be provided, before they must decide whether to withdraw their pending civil litigation. Rather, section 405(c)(3)(B)(ii) of the Compensation Act provides that, if an individual is already a party to a civil action when the regulations enumerated in section 407 are promulgated, the individual cannot submit a compensation claim under this federal program unless he or she withdraws from the legal action within 90 days from the date

the rules are promulgated. Without having information about how the compensation program works, such individuals might not view the compensation program as a viable alternative to continuing their litigation, potentially reducing the effectiveness of the program in serving the community of victims.

The Department believes that the number of individuals who have already filed a civil claim, or who have irrevocably committed to doing so in the next few months, may well be very small. The Department would welcome information on this point. The Department would also welcome comment as to whether the statutory requirement that a claimant "withdraws" from such action by 90 days after the date the initial rules are promulgated was intended to preclude such a claimant from refiling or rejoining a civil action: a) should the claimant ultimately elect not to file a compensation claim under the Federal program; or b) if the claimant is determined by the Special Master not to be eligible to file a claim. Also in this regard, the Department would welcome comment on whether the interpretation given to the statute in a particular case would be binding upon a court considering a claim for damages, and whether it would be appropriate or inappropriate for the Department to issue an interpretive rule on this point.

In short, potential claimants have an interest in knowing as soon as possible how the program is likely to operate in their circumstances. Litigation to obtain damages, particularly in a mass tort context, can be a lengthy, uncertain and complex process, with substantial risk and expense. The purpose of this compensation program is to offer all potential claimants a more expeditious, predictable and less complex alternative to that process. The Department recognizes that unless and until it can provide some certainty about how the compensation award program will work, some claimants may be reluctant to commit themselves to the compensation fund as an alternative to tort awards.

Despite this incentive to promptly "flesh out" the details of the program, there are also countervailing concerns. For example, there a number of complex questions that need to be addressed by the Special Master in determining compensation awards for individuals who file claims, and many of those questions cannot be anticipated in advance. The Department would

like to obtain as much input as practicable before determining its approach.

We now turn to a set of specific topics on which comment is solicited. The first four topics deal with regulations that must be issued by December 21, 2001; the others discuss key issues which could also be the subject of prompt regulatory action.

Topics #1 & 2: <u>The forms to be used in submitting claims under this program and the information to be included on the claims form</u>.

Section 405(a) of the statute establishes some specific requirements with respect to the claims form and the information to be included. The law requires the Special Master to develop a claim form to use in filing claims for compensation under this program. The Special Master is to ensure that the form can be filed electronically if it is determined to be practicable.

The form must include a statement of the factual basis for eligibility and for the amount of compensation sought. In addition, the form is to request information from the claimant as to: 1) the physical harm suffered by a victim, or information confirming the death of the victim, of the terrorist-related aircraft crashes of September 11, 2001; 2) any possible economic and non-economic losses that the claimant suffered as a result of the crashes; and 3) any collateral sources of compensation the claimant has received or is entitled to receive as a result of such crashes.

It would appear that these requirements, combined with the statutory time frame for the Special Master to reach a decision once a claim is filed, contemplate a very detailed form and filing, including submission by the claimant of prior tax returns, certifications and documents concerning the eligibility of a claimant as a personal representative of a deceased victim, and relevant medical records. Accordingly, the Department invites comment on whether the Special Master should determine that a claim has not been "filed" in those circumstances in which the Special Master determines that there is insufficient information submitted to permit a reasonably informed determination to be made. Comments are solicited on whether it is advisable to include in the rules a procedure where the time for making a determination could be extended by agreement and any suggestions as to whether such a procedure should, or should not, follow any

preliminary action and of any limitations to such a procedure that should be adopted. Along similar lines, the Department invites comments on whether there are actions the Special Master should be required to take before he or she can accept a claim, or deem a claim "filed."

The Department welcomes comment on the design and content of the claims forms in light of the statutory requirements. Specific comments on making the forms and their instructions readable and readily available are welcome.

Topic #3: Procedures for hearing and the presentation of evidence.

Section 405(b)(4) provides that a claimant has the right after the filing of the claim to present evidence to the office of the Special Master. The statute specifically provides that the claimant has the right to present witness statements and documents, the right to be represented by an attorney, and such other due process rights as are determined to be appropriate by the Special Master.

The Department solicits comments on the procedures to be used in taking and evaluating such evidence. In formulating your comments, please keep in mind that the statute appears to provide only a very limited time for the Special Master to evaluate such evidence before making a decision: Section 405(b)(3) of the statute provides that the Special Master must make final decisions on claims within 120 days of the date of filing. Comments as to whether the statute permits the Special Master to temporarily halt the running of this clock, at the initiative of the claimant or otherwise, would be welcome. Also the Department invites comment on whether the Special Master should be permitted to dismiss a claim as not properly filed for lack of adequate supporting information and, if so, whether an individual should thereafter be permitted to refile the claim.

Among other matters, the Department welcomes comment on whether every claimant should be granted an oral hearing or whether paper hearings may be sufficient; and what types of oral hearing may practicable consistent with the statutory time frames. If oral hearings are provided, should the Special Master always use "hearing officers" to hear witnesses and review written evidence? What qualifications and training should those who should perform such tasks

have? In addition, the Department welcomes comment on whether there are other specific duties and powers that should be delegated to hearing officers (e.g., to ask questions of the claimant or witnesses, to request submissions of such further information as the hearing officer may deem valuable in reaching a decision, and/or to prepare recommended decisions for the consideration of the Special Master).

The Department welcomes comment on whether claimants should have the right to appeal directly to the Special Master specific "rulings" or "working decisions" of a hearing officer on questions that arise in the course of his or her evaluation of the claim. The Department would welcome comment on whether it is authorized to enforce requests made by the hearing officer to third parties for evidence that is necessary to a proceeding – e.g., evidence that might bear on whether all aspects of the claim file on which the decision will be based are accurate and complete. The Department would welcome comment on whether such proceedings should be recorded, whether such proceedings must be held in a location convenient to the claimant and how to deal with scheduling conflicts, and whether the opportunity for a hearing can be waived by a claimant through inaction or unwarranted delay.

The Department would particularly welcome comments that reference the practices or experience of existing compensation programs with respect to the hearing of evidence.

Topic #4: Procedures to assist an individual in filing and pursuing claims under this title.

The statute does not provide guidance on what actions the Special Master is to take to assist claimants in filing and pursuing claims. However, the Department believes that it is important that claimants be able to proceed without counsel or experts if they elect to do so. Accordingly, the Department welcomes any and all suggestions as to how it can assist claimants, including suggestions for office locations, toll-free phone lines, outreach meetings, newsletters, information about the availability of pro-bono legal or other services that could assist claimants, etc.

In addition, the Department welcomes comments on whether the Special Master has the

authority to limit the types and amounts of fees that can be charged by counsel, accountants, experts or others who are retained by claimants to assist them to file and pursue compensation claims, and whether such fees can and should be paid by the Special Master directly out of compensation awards. The Department welcomes information about practices in this regard with respect to other Federal compensation programs, and welcomes specific suggestions on any appropriate fee schedule or policy. The Department also will welcome comments on what limitations, if any, the rules should impose on non-attorney, non-claimant representatives' participation in filing claims and in subsequent proceedings.

The Department is also interested in comments as to whether it needs to take any actions to ensure that individuals who have the option of filing a compensation claim with this program are not improperly solicited or influenced by those with an interest in having them make such an election.

Topic #5: Claimant Eligibility.

Section 405(b) of the statute requires the Special Master to determine whether a claimant is an "eligible individual" under section 405(c). "Eligibility," in turn, is defined to include: (i) victims (other than the terrorists) aboard American Airlines flights 11 and 77 and United Airlines flights 93 and 175; or (ii) victims who were "present at" the World Trade Center, the Pentagon, or the site of the aircraft crash at Shanksville, Pennsylvania at the time or in the immediate aftermath of the crashes, and who suffered physical harm or death as a result of such an air crash. The Department seeks comment on whether a Departmental regulation or a statement of policy by the Special Master would be appropriate to clarify these criteria, and if so, what those criteria should be.

Public commentators have suggested differing interpretations of the statutory terms "present at," "physical harm," and "immediate aftermath." The Department invites comment on the appropriate scope of each of those terms. In particular, should "present at" refer only to persons who were inside the World Trade Center Towers or Pentagon at the time of impact, explosions, fire, and collapse and to those conducting rescue operations, or should the term be

construed more broadly? Should the term "physical harm" be limited to serious injuries, as it is under some other no-fault compensation schemes (*see, e.g.*, N.Y. Ins. Law § 5102), or should it be construed more broadly? Further, should "physical harm" be limited to currently identifiable injuries? Can and should the program address latent, but not yet evident, harm? What documentation or other evidence should be required by the Special Master as to the claimant's presence at the World Trade Center or physical harm resulting from the air crash? Moreover, what documentation or other evidence should the Special Master seek to verify the identity of those lost for whom claims are filed? Finally, what duration of time is intended by the statutory phrase "immediate aftermath"?

Section 405(c)(2)(C) provides that the "personal representative" of an eligible decedent is the appropriate person to file a claim on a decedent's behalf. The Department seeks comment on whether a Departmental regulation or a statement of policy by the Special Master would be appropriate to clarify questions concerning personal representatives, for example:

- Whether the Special Master should require that all those who consider themselves to be survivors of someone lost in the crashes be notified of a claim by a "personal representative";
- Whether the Special Master can, within the brief statutory period identified by the statute, determine who among contesting claimants is the appropriate "personal representative";
- Whether the Special Master should, in any matter involving a dispute as to the identity of the "personal representative," require prior adjudication and judgment by a state court of competent jurisdiction; and
- Whether the Special Master should make determinations of compensation for claimants even when the identity of the "personal representative" is in dispute, but escrow payment until such disputes can be resolved by a court of competent jurisdiction.

Topic #6: Nature and Amount of Compensation.

Section 405(b) of the statute indicates that the Special Master shall determine the amount of compensation based on "the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant." Yet each of the perhaps thousands of determinations must be made in a very short time period. Moreover, such determinations should be founded on consistent and clear principles that treat each claimant fairly. The Department invites comments that identify the practical means to achieve these results all within the strict statutory time period. Among other topics, the Department would welcome comment on whether and how statistical methodologies should be developed and used as a starting point for decision, and whether publication of hypothetical or presumptive awards for classes of individuals would assist potential claimants in determining whether to file.

Economic Loss: As indicated above, the Special Master will not require that any

claimant employ counsel or any experts on economic or other theories of losses. The Special Master will draw on available information from appropriate specialists in relevant fields to analyze economic losses. The Department invites comment regarding the necessary qualifications for such specialists, the data that should be utilized, the methodologies that should be employed in analyzing economic losses, the documentation that should be required for every claimant, and how state law should bear upon such determinations. In addition, the Department invites comments on how to address the economic losses of individuals whose lost future income streams would have been highly contingent, variable, or unpredictable.

Noneconomic Loss: Section 402(7) lists several types of noneconomic losses that should be considered. The Department invites comments regarding whether, and in what manner, the Special Master can or should draw meaningful distinctions between individuals who died in different locations and, similarly, whether the Special Master can or should draw meaningful distinctions between individuals who suffered similar injuries. The Department also invites comments on whether the Department should, as some have suggested, issue regulations determining the amount of noneconomic loss for classes of similarly situated individuals or whether, instead, the Special Master should determine all noneconomic loss on a detailed claim-by-claim basis. Further, what facts and circumstances should be considered in determining non-economic losses for each individual, and what standards should be employed?

Collateral Sources: Section 405(b)(6) provides that the Special Master shall reduce the amount of compensation by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001. The Department invites comments on how to determine what constitutes a "collateral source" for purposes of this provision, and other related issues. For example, the Department appreciates the strong policy reasons for excluding charitable contributions from the definition of "collateral sources" and invites comment regarding whether the Act indeed permits the Department to exclude such contributions from the definition. Similarly, the Department invites comments on whether "in kind" and/or material contributions could or should be considered collateral sources. Finally, the Department invites comments on how to determine whether potential future collateral source payments are ones which individuals are "entitled to receive" for purposes of Section 405(b)(6).

Fraud Prevention Measures: The Department is committed to preventing and prosecuting any fraudulent attempts to collect from the Fund. The Department therefore invites comments regarding any measures that the Department should take to prevent and detect fraud.

Other topics for comment.

The Department wants to reiterate that your comments are welcome on any and all aspects of the administration of the fund.

Application of various laws and Executive Orders to this rulemaking.

There are a number of laws and Executive Orders whose provisions may have implications for this rulemaking process. Due to the preliminary nature of this notice, this notice does not address these requirements. Nonetheless, the Department welcomes comments that will help it address the applicability of any laws or Executive orders to future rulemaking under the Act.

Signed at Washington, D.C. on _____, 2001

_____

John D. Ashcroft

Attorney General

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

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Sent: 10/30/2001 10:52:58 AM

Subject: : Judicial Selection Committee Meeting for Wed., Oct. 31 is CANCELLED!

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-OCT-2001 15:52:58.00
SUBJECT:: Judicial Selection Committee Meeting for Wed., Oct. 31 is CANCELLED!
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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If you have any questions I can be reached at 456-2632.

Lib

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

Sent: 10/30/2001 10:52:58 AM

Subject: : Judicial Selection Committee Meeting for Wed., Oct. 31 is CANCELLED!

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CREATION DATE/TIME:30-OCT-2001 15:52:58.00
SUBJECT:: Judicial Selection Committee Meeting for Wed., Oct. 31 is CANCELLED!
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

If you have any questions I can be reached at 456-2632.

Lib

From: Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>
To: Adam Ciongoli <Adam.Ciongoli@usdoj.gov>;Dan Bryant <Dan.Bryant@usdoj.gov>;Deloris Cole <Deloris.L.Cole@usdoj.gov>;James Carroll <James.W.Carroll@usdoj.gov>;Jason Sutton <Jason.J.Sutton@usdoj.gov>;Jennifer Newstead <Jennifer.Newstead@usdoj.gov>;Kristen Ullman <Kristen.A.Ullman@usdoj.gov>;Linda Long <Linda.E.Long@usdoj.gov>;Lizette Benedi <Lizette.D.Benedi@usdoj.gov>;Lori Rabjohns <Lori.Rabjohns@usdoj.gov>;Lori SharpeDay <Lori.SharpeDay@usdoj.gov>;Mindy Tucker <Mindy.Tucker@usdoj.gov>;Neal Suit <Neal.Suit@usdoj.gov>;Patrick O'Brien <Pat.O'Brien@usdoj.gov>;Sheila Joy <Sheila.Joy@usdoj.gov>;Viet Dinh <Viet.Dinh@usdoj.gov>;Winnie Brinkley <Winnie.Brinkley@usdoj.gov>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 10/31/2001 3:44:32 AM
Subject: : Notice of Hearing -- Wednesday, November 7, 2001 at 10:00 am
Attachments: P_A7KG4004_WHO.TXT_1.wpd

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CREATOR:"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> ( "Brinkley, Winnie"
<Winnie.Brinkley@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:31-OCT-2001 08:44:32.00
SUBJECT:: Notice of Hearing -- Wednesday, November 7, 2001 at 10:00 am
TO:Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
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Requested) ( Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Deloris Cole <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Deloris Cole <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
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READ:UNKNOWN
TO:Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Patrick O'Brien <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Patrick O'Brien <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please see attached notice of hearing scheduled for Wednesday, November 7, 2001 at 10:00 am Senate Dirksen Building room 226. Also, there will be a prep session for the judicial hearing on Tuesday, November 6 at 2:00 pm in the Office of Legal Policy conference room 4260 at Main Justice. For White House personnel, if you plan to attend please let me or Sheila Joy know so we can have you cleared to come into the building on Tuesday.

Winnie
(202) 514-2737

- NotNov7-nom.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_A7KG4004_WHO.TXT_1>

October 30, 2001

NOTICE OF HEARING

The Senate Committee on the Judiciary will hold a hearing on **Wednesday, November 7, 2001 at 10:00 a.m.** in Room **226** of the **Senate Dirksen Building**, on **"Nominations."**

Senator Feinstein will preside.

By order of the Chairman

From: Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>

To: Adam Ciongoli <Adam.Ciongoli@usdoj.gov>;Dan Bryant <Dan.Bryant@usdoj.gov>;Deloris Cole <Deloris.L.Cole@usdoj.gov>;James Carroll <James.W.Carroll@usdoj.gov>;Jason Sutton <Jason.J.Sutton@usdoj.gov>;Jennifer Newstead <Jennifer.Newstead@usdoj.gov>;Kristen Ullman <Kristen.A.Ullman@usdoj.gov>;Linda Long <Linda.E.Long@usdoj.gov>;Lizette Benedi <Lizette.D.Benedi@usdoj.gov>;Lori Rabjohns <Lori.Rabjohns@usdoj.gov>;Lori SharpeDay <Lori.SharpeDay@usdoj.gov>;Mindy Tucker <Mindy.Tucker@usdoj.gov>;Neal Suit <Neal.Suit@usdoj.gov>;Patrick O'Brien <Pat.O'Brien@usdoj.gov>;Sheila Joy <Sheila.Joy@usdoj.gov>;Viet Dinh <Viet.Dinh@usdoj.gov>;Winnie Brinkley <Winnie.Brinkley@usdoj.gov>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>

Sent: 10/31/2001 3:47:06 AM

Subject: : Notice of Hearing -- Wednesday, November 7, 2001 at 10:00 am

Attachments: P_PAKG4004_WHO.TXT_1.wpd

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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<Winnie.Brinkley@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:31-OCT-2001 08:47:06.00
SUBJECT:: Notice of Hearing -- Wednesday, November 7, 2001 at 10:00 am
TO:Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
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Requested) ( Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
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READ:UNKNOWN
TO:Deloris Cole <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Deloris Cole <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM
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READ:UNKNOWN
TO:Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM
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READ:UNKNOWN
TO:Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Patrick O'Brien <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Patrick O'Brien <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please see attached notice of hearing scheduled for Wednesday, November 7, 2001 at 10:00 am Senate Dirksen Building room 226. Also, there will be a prep session for the judicial hearing on Tuesday, November 6 at 2:00 pm in the Office of Legal Policy conference room 4260 at Main Justice. For White House personnel, if you plan to attend please let me or Sheila Joy know so we can have you cleared to come into the building on Tuesday.

Winnie
(202) 514-2737

- NotNov7-nom.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PAKG4004_WHO.TXT_1>

October 30, 2001

NOTICE OF HEARING

The Senate Committee on the Judiciary will hold a hearing on **Wednesday, November 7, 2001 at 10:00 a.m.** in Room **226** of the **Senate Dirksen Building**, on **"Nominations."**

Senator Feinstein will preside.

By order of the Chairman

From: Brinkley, Winnie <Winnie.Brinkley@usdoj.gov>
To: Adam Ciongoli <Adam.Ciongoli@usdoj.gov>;Dan Bryant <Dan.Bryant@usdoj.gov>;Deloris Cole <Deloris.L.Cole@usdoj.gov>;James Carroll <James.W.Carroll@usdoj.gov>;Jason Sutton <Jason.J.Sutton@usdoj.gov>;Jennifer Newstead <Jennifer.Newstead@usdoj.gov>;Kristen Ullman <Kristen.A.Ullman@usdoj.gov>;Linda Long <Linda.E.Long@usdoj.gov>;Lizette Benedi <Lizette.D.Benedi@usdoj.gov>;Lori Rabjohns <Lori.Rabjohns@usdoj.gov>;Lori SharpeDay <Lori.SharpeDay@usdoj.gov>;Mindy Tucker <Mindy.Tucker@usdoj.gov>;Neal Suit <Neal.Suit@usdoj.gov>;Patrick O'Brien <Pat.O'Brien@usdoj.gov>;Sheila Joy <Sheila.Joy@usdoj.gov>;Viet Dinh <Viet.Dinh@usdoj.gov>;Winnie Brinkley <Winnie.Brinkley@usdoj.gov>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>
Sent: 10/31/2001 3:48:14 AM
Subject: : Notice of Hearing -- Wednesday, November 7, 2001 at 10:00 am
Attachments: P_5CKG4004_WHO.TXT_1.wpd

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<Winnie.Brinkley@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:31-OCT-2001 08:48:14.00
SUBJECT:: Notice of Hearing -- Wednesday, November 7, 2001 at 10:00 am
TO:Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Adam Ciongoli <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Dan Bryant <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Deloris Cole <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Deloris Cole <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( James Carroll <James.W.Carroll@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Jason Sutton <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( Jennifer Newstead <Jennifer.Newstead@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Kristen Ullman <Kristen.A.Ullman@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Linda Long <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lizette Benedi <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( Lori Rabjohns <Lori.Rabjohns@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
```

READ:UNKNOWN
TO:Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Lori SharpeDay <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Mindy Tucker <Mindy.Tucker@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Neal Suit <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Patrick O'Brien <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Patrick O'Brien <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Sheila Joy <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Viet Dinh <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) (Winnie Brinkley <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please see attached notice of hearing scheduled for Wednesday, November 7, 2001 at 10:00 am Senate Dirksen Building room 226. Also, there will be a prep session for the judicial hearing on Tuesday, November 6 at 2:00 pm in the Office of Legal Policy conference room 4260 at Main Justice. For White House personnel, if you plan to attend please let me or Sheila Joy know so we can have you cleared to come into the building on Tuesday.

Winnie
(202) 514-2737

- NotNov7-nom.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5CKG4004_WHO.TXT_1>

October 30, 2001

NOTICE OF HEARING

The Senate Committee on the Judiciary will hold a hearing on **Wednesday, November 7, 2001 at 10:00 a.m.** in Room **226** of the **Senate Dirksen Building**, on **"Nominations."**

Senator Feinstein will preside.

By order of the Chairman

From: CN=Sarah E. Youssef/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/31/2001 8:36:33 AM
Subject: : Re: POTOCOL QUESTION

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sarah E. Youssef ( CN=Sarah E. Youssef/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:31-OCT-2001 13:36:33.00
SUBJECT:: Re: POTOCOL QUESTION
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'll be part of a panel that will discuss the President's policy efforts
since coming to office -- I will represent the education issue.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 10/31/2001 5:50:42 AM
Subject: : Re: EO new version

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-OCT-2001 10:50:42.00
SUBJECT:: Re: EO new version
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

that's Judge's goal. I have my doubts.

Anne Womack
10/31/2001 10:45:32 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: EO new version

we need to talk today. This is happening on Friday?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 10/31/2001 7:53:26 AM
Subject: : classified computer

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-OCT-2001 12:53:26.00
SUBJECT:: classified computer
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

can you call Brad Wigmann in NSC and tell him that you will be preparing
the letter for me seeking use of classified computer and that you need his
assistance on what to say and to whom the letter should be addressed; then
can you prepare a draft letter for me; thanks
```

From: CN=Sarah E. Youssef/OU=OPD/O=EOP [OPD]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 10/31/2001 8:25:22 AM
Subject: : Re: POTOCOL QUESTION

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sarah E. Youssef (CN=Sarah E. Youssef/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:31-OCT-2001 13:25:22.00
SUBJECT:: Re: POTOCOL QUESTION
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you all have an answer to this question? Thanks
---------- Forwarded by Sarah E. Youssef/OPD/EOP on 10/31/2001 01:25 PM ----------

Noel J. Francisco
10/09/2001 06:06:30 PM
Record Type: Record

To: Sarah E. Youssef/OPD/EOP@EOP
cc: Robert W. Cobb/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: POTOCOL QUESTION

Sarah, I am forwarding your question to Moose Cobb and Brett Kavanaugh, who handle this type of issue for our office.

Sarah E. Youssef
10/09/2001 06:04:22 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: POTOCOL QUESTION

Noel, I've been invited to present the President's education agenda to the GA Republican Party. Since it's work-related, can they pay for my ticket? How does that work. I want to make sure everything is done above board, so in the interest of full disclosure, my family lives in GA (I am a former GA resident). Will that affect the ethics of my invitation?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>
Sent: 10/31/2001 2:52:51 PM
Subject: : Re: Libraries Act
Attachments: P_JCBH4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-OCT-2001 19:52:51.00
SUBJECT:: Re: Libraries Act
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks. I sent a note to Terry, as I believe (acc to my notes)
that he was looking into this. I will let you know.

Linda M. Gambatesa
10/31/2001 03:53:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Libraries Act

Thanks Brett.
At our meeting, one of the tasks was to check historic records for when
decisions have been or need to be made to select a library site. Did we
find anything on this?

Brett M. Kavanaugh
10/29/2001 10:23:36 PM
Record Type: Record

To: harriet miers/who/eop@eop, linda m. gambatesa/who/eop@eop,
terry w. good/who/eop@eop, Mary Ann Hanusa/WHO/EOP@EOP
cc:
Subject: Libraries Act

Attached is a summary of statutory authorities applicable to
Presidential libraries.

Message Copied
To:_____
harriet miers/who/eop@eop
linda m. gambatesa/who/eop@eop
terry w. good/who/eop@eop

mary ann hanusa/who/eop@eop
Stuart W. Bowen/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JCBH4004_WHO.TXT_1>

Presidential Libraries Act -- Primary Legal Provisions
(October 26, 2001)

- The Presidential Records Act requires that the Archivist of the United States take custody and control of all Presidential records and deposit them in a Presidential library (referred to in the statutes as a "Presidential archival depository").

- The Presidential Libraries Act governs the establishment and operation of Presidential libraries. The provisions applicable to President Bush are codified at 44 U.S.C. § 2112.

    - The Archivist, on behalf of the United States, must

        - accept and take title to "land, a facility, and equipment offered as a gift to the United States for the purpose of creating" a Presidential library, *id.* at § 2112(a)(1)(A); or

        - enter into an agreement with "a State, political subdivision, university, institution of higher learning, institute, or foundation" to use its land, facilities, and equipment for that purpose, and to operate the Presidential library as part of the National Archives system, *id.* at § 2112(a)(1)(B).

    - The Archivist is required to submit to Congress a report on a proposed establishment of a Presidential library and wait 60 days of continuous session of Congress before taking title or entering into a use agreement for the purpose of establishing the library. *Id.* at § 2112(a)(3), (5). This process is also required before the Archivist may accept a gift for the purpose of renovating a Presidential library or implementing a statutory requirement to renovate a library. *Id.* at § 2112(a)(4). The statute specifies the contents of those reports. *Id.* at § 2112(a)(3)(A)-(G), (4)(A)-(F).

    - The Archivist is authorized to deposit in a Presidential library records not subject to the Presidential Records Act that the Archivist has been authorized to accept for deposit under other statutory authority. *Id.* at § 2112(b); *see* 44 U.S.C. § 2111 ("(1) the papers and other historical materials of a President or former President of the United States, or other official or former official[] of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and (2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions").

        - The authority to deposit additional records extends to agency records covered by the Federal Records Act. *Id.* at § 2112(b).

- With respect to such additionally deposited papers, the Archivist may exercise "all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control," and in negotiating for the deposit of such papers, "shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials." *Id.* at § 2112(c).

- With respect to the operation of Presidential libraries, the Archivist is authorized to "cooperate with and assist a university, institution of higher learning, institute, foundation, or other organization or qualified individual to further or to conduct study or research in historical materials deposited in a [Presidential library]," *id.* at § 2112(d), to charge fees to visitors to the library, *id.* at § 2112(e), and to provide office space in the library for the personal use of the former President, *id.* at § 2112(f).

- The Archivist is authorized to solicit and accept gifts or bequests of money and other property, the proceeds of which, along with proceeds from fees or sales of materials by the National Archives, are to be paid into the National Archives Trust Fund and expended for the benefit of the library. *Id.* at § 2112(g)(1). The Archivist is required to establish separate endowments in the Trust Fund for the maintenance of each Presidential library. *Id.* at § 2112(g)(2).

  - The Archivist may not take title or enter into an agreement for the purpose of establishing a Presidential library unless he determines that there is available, by gift or bequest for deposit into the library's endowment, an amount for maintenance of the library that meets a statutory minimum, as calculated by a statutory formula. *Id.* at § 2112(g)(3).

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 11/1/2001 7:31:29 AM
Subject: : RE: draft PRA order

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP [ OVP ] )
CREATION DATE/TIME: 1-NOV-2001 12:31:29.00
SUBJECT:: RE: draft PRA order
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

You are a good man Brett -- I have a call into Mr. Whelan to see if I can help refine his thinking.

From: CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO]
BCC: Agency Spokespersons (Agency Spokespersons [UNKNOWN]), Latino Leaders (Latino Leaders [UNKNOWN]), Latino Leaders II (Latino Leaders II [UNKNOWN]), Spanish Publication (Spanish Publication [UNKNOWN]), Spanish Publications II (Spanish Publications II [UNKNOWN]), Text list (Text list [UNKNOWN]), Ziad S. Ojakli (Ziad S. Ojakli/WHO/EOP [WHO]), Matthew A. Schlapp (Matthew A. Schlapp/WHO/EOP [WHO]), Kyle Sampson (Kyle Sampson/WHO/EOP [WHO]), Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 11/1/2001 11:45:51 AM
Subject: : HNBA Endorses Miguel Estrada

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leonard B. Rodriguez ( CN=Leonard B. Rodriguez/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-NOV-2001 16:45:51.00
SUBJECT:: HNBA Endorses Miguel Estrada
BCC:Agency Spokespersons ( Agency Spokespersons [ UNKNOWN ] )
READ:UNKNOWN
BCC:Latino Leaders ( Latino Leaders [ UNKNOWN ] )
READ:UNKNOWN
BCC:Latino Leaders II ( Latino Leaders II [ UNKNOWN ] )
READ:UNKNOWN
BCC:Spanish Publication ( Spanish Publication [ UNKNOWN ] )
READ:UNKNOWN
BCC:Spanish Publications II ( Spanish Publications II [ UNKNOWN ] )
READ:UNKNOWN
BCC:Text list ( Text list [ UNKNOWN ] )
READ:UNKNOWN
BCC:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Matthew A. Schlapp ( CN=Matthew A. Schlapp/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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HISPANIC NATIONAL BAR ASSOCIATION ENDORSES APPOINTMENT OF MIGUEL ESTRADA TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

McLean-VA- October 12, 2001.

The Hispanic National Bar Association, national voice of over 25,000 Hispanic lawyers in the United States, issues its endorsement of President George W. Bush's nominee, Mr. Miguel Estrada, to the U. S. Court of Appeals for the District of Columbia. Mr. Estrada would be the first Hispanic to sit in the D.C. Circuit, widely regarded as the second most important appellate court in the nation.

Mr. Estrada, who emigrated from Honduras at seventeen, is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. A member of the firm's Appellate and Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group, Estrada clerked for the Honorable Anthony M. Kennedy in the U.S. Supreme Court from 1988-1989, and has argued 15 cases before the U.S. Supreme Court.

A 1983 magna cum laude graduate of Columbia College in New York, Estrada received a J.D. degree magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review.

President Bush nominated Mr. Estrada in May of this year. "Mr. Estrada's distinguished and impressive career illustrates the promise and opportunity that America offers to all immigrants, especially Hispanic immigrants. It is encouraging that President Bush has started tapping in

the substantial pool of Hispanic legal talent throughout the country. Mr. Estrada's confirmation will break new ground for Hispanics in the judiciary. The time has come to move on Mr. Estrada's nomination. I urge the Senate Committee on the Judiciary to schedule a hearing on Mr. Estrada's nomination and the U.S. Senate to bring this highly qualified nominee to a vote." said Rafael A. Santiago, of Hartford, Connecticut, National President of the Hispanic National Bar Association.

From: Sheila.Bair@do.treas.gov [UNKNOWN]
To: Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>
CC: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/2/2001 5:49:25 AM
Subject: : RE: Bill

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME: 2-NOV-2001 10:49:25.00
SUBJECT:: RE: Bill
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

we are in the process. House bill too.

sheila

-----Original Message-----
From: Matthew_Kirk@who.eop.gov [mailto:Matthew_Kirk@who.eop.gov]
Sent: Friday, November 02, 2001 10:23 AM
To: Sheila.Bair@do.treas.gov
Cc: D._Marcus_Sumerlin@opd.eop.gov; Kristen_Silverberg@who.eop.gov;
Randall_S._Kroszner@cea.eop.gov; Brett_M._Kavanaugh@who.eop.gov
Subject: Bill


Has anyone drafted a one-page outline of the Senate bill?
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/5/2001 5:06:52 AM
Subject: : Re: Judge's letter to Congressman Horn
Attachments: P_ZZCJ4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-NOV-2001 10:06:52.00
SUBJECT:: Re: Judge's letter to Congressman Horn
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett M. Kavanaugh
11/05/2001 10:02:20 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Judge's letter to Congressman Horn

can you e-mail final version so that I have a computer-file copy; thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZZCJ4004_WHO.TXT_1>

November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

REV_00134735

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Steve Horn
United States House of Representatives
Washington, DC 20515

cc: The Honorable Janice Schakowsky

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 11/5/2001 5:45:46 AM
Subject: : fax machine(s)

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-NOV-2001 10:45:46.00
SUBJECT:: fax machine(s)
TO:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Hey -

I think Scott is trying to scare up an extra fax machine or two for
Counsel's Office.

If at least one can be found and installed sooner rather than later for
Brett Kavanaugh in OEOB 156 we would be most appreciative. Brett often
works very late nights and on pretty time sensitive and sensitive material
tasks so having a fax in his office would be of great help.

Thanks!

Lib
```

From: Ben Wittes <wittesb@washpost.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/5/2001 6:31:34 AM
Subject: : Re: EXECUTIVE ORDER: FURTHER IMPLEMENTATION OF THE PRESIDENTIAL RECORDS ACT

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
CREATION DATE/TIME: 5-NOV-2001 11:31:34.00
SUBJECT:: Re: EXECUTIVE ORDER: FURTHER IMPLEMENTATION OF THE PRESIDENTIAL RECORDS ACT
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks. You got a cite on Nixon v. GSA?

On a completely unrelated subject, given our conversations on the subject a year back, I thought you might get a kick out of this:
http://wwics.si.edu/outreach/wq/WQSELECT/BERK.HTM

Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/5/2001 8:14:58 AM
Subject: : Call w/ Carlin set for 5:15 pm today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-NOV-2001 13:14:58.00
SUBJECT:: Call w/ Carlin set for 5:15 pm today
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/5/2001 8:18:51 AM
Subject: : Re: Is the Horn meeting at 2:30 now?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-NOV-2001 13:18:51.00
SUBJECT:: Re: Is the Horn meeting at 2:30 now?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

A car is scheduled to depart West Basement at 2:10 en route Rayburn -
return departing Rayburn at 3:15 pm en route West Basement.

Brett M. Kavanaugh
11/05/2001 01:13:01 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Is the Horn meeting at 2:30 now?

yes

Elizabeth N. Camp
11/05/2001 01:12:46 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Is the Horn meeting at 2:30 now?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/5/2001 8:57:19 AM
Subject: : timing of calls not good for ARG to sit in

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-NOV-2001 13:57:19.00
SUBJECT:: timing of calls not good for ARG to sit in
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Ash said the schedule allows for calls around 2:30pm. As you know the
Judge will be on the Hill with you at that time.

Two questions from Ash...
Is it a problem for the President to do these solo? If so maybe Tim could
sit in.
Is there any chance any of these folks will be pulled back?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 11/5/2001 10:44:01 AM
Subject: : were you the Marriott promotion guy?

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-NOV-2001 15:44:01.00
SUBJECT:: were you the Marriott promotion guy?
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 11/5/2001 11:21:58 AM
Subject: : Re: Veterans Day Video

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-NOV-2001 16:21:58.00
SUBJECT:: Re: Veterans Day Video
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

OK

Matthew E. Smith

11/05/2001 03:39:01 PM

Record Type: Record

To: Brett Kavanaugh
cc:
Subject: Veterans Day Video

The President is going to cut a general Veterans Day greeting to be used at different events.

Is it ok to have VA/Secretary Principi pay for it?

Matt

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 11/5/2001 11:34:02 AM
Subject: : Re: were you the Marriott promotion guy?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-NOV-2001 16:34:02.00
SUBJECT:: Re: were you the Marriott promotion guy?
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

call gion-carlo in public liasion; but this might have been Noel

Robert W. Cobb
11/05/2001 04:24:21 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: were you the Marriott promotion guy?

which promotion was this? This has a ring to it.

Brett M. Kavanaugh
11/05/2001 03:43:58 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: were you the Marriott promotion guy?

From: CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Kasey S. Pipes/WHO /EOP@EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP@EOP [WHO] <Kenneth B. Mehlman>
Sent: 11/6/2001 5:22:39 AM
Subject: : INS Video

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-NOV-2001 10:22:39.00
SUBJECT:: INS Video
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett--
We are set to record the President's welcoming greeting for newly naturalized citizens. This greeting would be played at INS controlled ceremonies and be made available to Judge's if they so desire to play the President's message in their chambers.

DOJ/INS will be letting us know if they can cover the recording expense. Our legal questions are:

Is there any issue we need to be aware of in mass producing this video greeting and payment thereof?

Are there any legal hoop we need to jump through with the contracted recording team and INS/DOJ?

Israel mentioned we may need to use DTR...your guidance is much appreciated.

Thanks

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/6/2001 6:50:37 AM
Subject: : ethics training

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-NOV-2001 11:50:37.00
SUBJECT:: ethics training
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

It looks like Monday morning at 9:30 for ethics training at Homeland
Security. You will be featured guest speaker. This is unconfirmed time.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>
Sent: 11/6/2001 7:38:40 AM
Subject: : Re: URGENT: NEED YOUR HELP

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-NOV-2001 12:38:40.00
SUBJECT:: Re: URGENT: NEED YOUR HELP
TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Judge called, but Horn would not change it, so we are going ahead
with the one big panel

Kirsten A. Chadwick
11/06/2001 12:37:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: URGENT: NEED YOUR HELP

what do you mean by over

Brett M. Kavanaugh
11/06/2001 12:29:52 PM
Record Type: Record

To: Kirsten A. Chadwick/WHO/EOP@EOP
cc:
bcc:
Subject: Re: URGENT: NEED YOUR HELP

Judge just talked to Horn; it's over; but thanks for your efforts

Kirsten A. Chadwick
11/06/2001 09:54:07 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: URGENT: NEED YOUR HELP

i put a call in to him - i think he is avoiding me

Brett M. Kavanaugh
11/06/2001 07:16:19 AM
Record Type: Record

To: Kirsten A. Chadwick/WHO/EOP@EOP
cc:
Subject: URGENT: NEED YOUR HELP

At today's 2:00 hearing, Chairman Horn is apparently putting the two Administration witnesses (the Archivist and the Deputy AAG for Office of Legal Counsel at Justice) on the same panel with several historians who are likely to be quite critical of the Administration. (Originally, they had the deputy AAG on a second panel, which was even worse.) Can you help us change this as it is inconsistent with standard practice, we understand. Russell George is staff director at 225-5147, but he is not very sympathetic. We have Justice (Faith Burton) working on this as well. Bottom line is that we, Justice, and Archives all think this is a crazy procedure, and it almost certainly will make Administration witnesses look bad and draw them into a food fight in what could be a contentious hearing. Not sure how to change it, but we need to try. Thanks.
My number is 6-7984 and cell is 365-4120.

From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/6/2001 7:55:29 AM
Subject: : Re: need car at 1:30

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-NOV-2001 12:55:29.00
SUBJECT:: Re: need car at 1:30
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Courtney is leaving for DOJ at 1:45. You can ride with her if you are
going to DOJ (car 93).
```

From: CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>
Sent: 11/6/2001 8:23:19 AM
Subject: : donation

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine G. Marinis ( CN=Katherine G. Marinis/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-NOV-2001 13:23:19.00
SUBJECT:: donation
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Leonard B. Rodriguez ( CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Leonard Rodriguez met with Sheila Bair's assistant today in our office,
and she handed him a check made out to the RNC from Sheila. Sheila Bair
is the Asst. Sec. for Financial Management at Treasury. The check is on
my desk. Can we put in the mail or give to Jack Oliver in person? or do
we need to send back to Sheila and say please send to Jack. It was
totally unsolicitated, but we do not want to do anything wrong. thanks
```

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 11/6/2001 2:21:56 PM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP [ OVP ] )
CREATION DATE/TIME: 6-NOV-2001 19:21:56.00
SUBJECT::
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Gang:

The opinion today in National Coalition to Save Our Mall v. Norton, No 01-5290 (D.C. Cir. Nov. 6, 2001)(World War II Memorial Case) is an interesting and relatively short review of issues that arise when Congress makes exceptions to the appellate jurisdiction of Article III courts.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rebecca A. Beynon/OMB/EOP@EOP [OMB] <Rebecca A. Beynon>
Sent: 11/6/2001 4:13:33 PM
Subject: : vaccine

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-NOV-2001 21:13:33.00
SUBJECT:: vaccine
TO:Rebecca A. Beynon ( CN=Rebecca A. Beynon/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

we need to talk; how's 10:00 tomorrow? 156?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: kenneth_starr@dc.kirkland.com @ inet [UNKNOWN] <kenneth_starr@dc.kirkland.com>;kannon_shanmugam@dc.kirkland.com @ inet [UNKNOWN] <kannon_shanmugam@dc.kirkland.com>
Sent: 11/6/2001 4:36:55 PM
Subject: :
Attachments: P_QO0L4004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-NOV-2001 21:36:55.00
SUBJECT::
TO:kenneth_starr@dc.kirkland.com ( kenneth_starr@dc.kirkland.com @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:kannon_shanmugam@dc.kirkland.com ( kannon_shanmugam@dc.kirkland.com @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI: This letter from last Friday actually lays out our position
pretty clearly.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QO0L4004_WHO.TXT_1>
```

November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

REV_00134849

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Steve Horn
United States House of Representatives
Washington, DC 20515

cc: The Honorable Janice Schakowsky

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: wittesb@washpost.com @ inet [UNKNOWN] <wittesb@washpost.com>
Sent: 11/6/2001 4:38:25 PM
Subject: : letter
Attachments: P_1P0L4004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-NOV-2001 21:38:25.00
SUBJECT:: letter
TO:wittesb@washpost.com ( wittesb@washpost.com @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

this lays out position pretty clearly
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1P0L4004_WHO.TXT_1>
```

November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

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The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

REV_00134852

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Steve Horn
United States House of Representatives
Washington, DC 20515

cc: The Honorable Janice Schakowsky

From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
CC: 'alex.azar@hhs.gov' <alex.azar@hhs.gov>;yoo, john c <john.c.yoo@usdoj.gov>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 11/7/2001 7:07:54 AM
Subject: : Re: House Commerce request

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME: 7-NOV-2001 12:07:54.00
SUBJECT:: Re: House Commerce request
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"'alex.azar@hhs.gov'" <alex.azar@hhs.gov> (receipt notification requested) (ipm return
requested) ( "'alex.azar@hhs.gov'" <alex.azar@hhs.gov> (receipt notification requested)
(ipm return requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"yoo, john c" <john.c.yoo@usdoj.gov> (receipt notification requested) (ipm return
requested) ( "yoo, john c" <john.c.yoo@usdoj.gov> (receipt notification requested) (ipm
return requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I've talked to Alex and put him in touch with Carl Buchholz in Governor
Ridge's office. Thanks, Paul.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 11/7/2001 7:09:23 AM
Subject: : Re: JSC Prep - can you all do 2:00-2:30?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-NOV-2001 12:09:23.00
SUBJECT:: Re: JSC Prep - can you all do 2:00-2:30?
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes and cannot do 11:30

Elizabeth N. Camp
11/07/2001 09:45:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: JSC Prep - can you all do 2:00-2:30?

Respond only if you cannot attend at this time.

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 11/7/2001 7:56:16 AM
Subject: : more on USA Today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-NOV-2001 12:56:16.00
SUBJECT:: more on USA Today
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judge was fine with USA Today piece. He would change "fear" to
"concern" in first sentence of paragraph 3. Let me know.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/7/2001 12:42:20 PM
Subject: : We are still holding ALL CALLS re: Judges until further notice.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-NOV-2001 17:42:20.00
SUBJECT:: We are still holding ALL CALLS re: Judges until further notice.
TO:Ashley Estes ( CN=Ashley Estes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thanks!
```

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/7/2001 10:57:17 AM
Subject: : ethics torture

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-NOV-2001 15:57:17.00
SUBJECT:: ethics torture
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

The latest exercise relates to the authors series where authors may be giving away books to WH employees. This issue has come up before. I may have an idea for the appropriate receipt, use, and ultimate personal possession by WH officials of these items, even though they may exceed $20 in value. One question I have is, if the books are received and utilized in the White House workplace on the theory that those who give the books are interested having views (even of history or the arts or other similar fields) considered by administration officials, do the books become Presidential records?

From: CN=Rebecca A. Beynon/OU=OMB/O=EOP [OMB]
To: Mark McClellan [CEA] <Mark McClellan>;Diana E. Furchtgott-Roth/CEA/EOP@EOP [CEA] <Diana E. Furchtgott-Roth>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/7/2001 11:06:48 AM
Subject: : Vaccine Liability

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rebecca A. Beynon ( CN=Rebecca A. Beynon/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME: 7-NOV-2001 16:06:48.00
SUBJECT:: Vaccine Liability
TO:Mark McClellan ( Mark McClellan [ CEA ] )
READ:UNKNOWN
TO:Diana E. Furchtgott-Roth ( CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Diana - Could you circulate to me and Brett via email the various
documents that you guys have put together on this issue? I know that
there have been several things that have gone around, and I wanted to be
sure that everyone had copies of the relevant materials. Also, I know
Brett would like to get an idea of what it is that you guys think is the
best approach to this issue. Thanks very much!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 11/7/2001 11:26:00 AM
Subject: : Re: ethics torture

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-NOV-2001 16:26:00.00
SUBJECT:: Re: ethics torture
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

intriguing.

Robert W. Cobb
11/07/2001 03:57:14 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: ethics torture

The latest exercise relates to the authors series where authors may be giving away books to WH employees. This issue has come up before. I may have an idea for the appropriate receipt, use, and ultimate personal possession by WH officials of these items, even though they may exceed $20 in value. One question I have is, if the books are received and utilized in the White House workplace on the theory that those who give the books are interested having views (even of history or the arts or other similar fields) considered by administration officials, do the books become Presidential records?

From: CN=Ashley Estes/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 11/8/2001 4:47:45 AM
Subject: : Re: Continue to HOLD all calls to nominees

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Estes ( CN=Ashley Estes/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-NOV-2001 09:47:45.00
SUBJECT:: Re: Continue to HOLD all calls to nominees
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

yes. assumed as much.




Elizabeth N. Camp
11/08/2001 09:46:10 AM
Record Type: Record

To: Ashley Estes/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Continue to HOLD all calls to nominees

Hey Ash-

Just wanted to let you know that the Judges wants to continue hold off on
all calls to nominees.

We'll let you know when to resume calls.

Thanks!

Lib


Message Copied
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
```

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/8/2001 8:22:02 AM
Subject: : Karl's flight to CA
Attachments: P_V6FM4004_WHO.TXT_1.htm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-NOV-2001 13:22:02.00
SUBJECT:: Karl's flight to CA
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

could you check this one out too?
---------- Forwarded by Robert W. Cobb/WHO/EOP on 11/08/2001 01:21 PM ----------

Brett M. Kavanaugh
11/08/2001 01:14:00 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Karl's flight to CA

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/08/2001 01:14 PM ----------

Susan B. Ralston
11/07/2001 12:05:26 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc: Dee Dee Benkie/WHO/EOP@EOP, Chris Henick/WHO/EOP@EOP, David M. Thomas/WHO/EOP@EOP
Subject: Karl's flight to CA

Karl has a trip to CA this weekend. His plan was to return to DC on Mon, 11/12 via commercial carrier. Warren Tichenor would like to use his corporate plane owned by W.W. Tichenor & Co. (TX corp.) to fly Karl and Chris Henick back from San Diego to DC. What do you think?

Adriana Matouk <AM@StargazerAviation.com>
11/07/2001 11:58:07 AM
Record Type: Record

To: Israel Hernandez/WHO/EOP, Susan B. Ralston/WHO/EOP
cc: Dee Dee Benkie/WHO/EOP
Subject: Tichenor Aircraft N765WT

Thank you for your recent inquiries regarding N765WT, Mr. Tichenor's

airplane.

In as much as I've received the same or similar inquiries from each of you this morning, I'm responding to all of you with this correspondence.

N765WT is a Bombardier Challenger 601-3A, owned and operated by W.W. Tichenor & Co., Inc., a Texas based corporation. Under our present and existing ownership, we flew during the campaign, Laura Bush, Barbara Bush, Secretary Evans, Director Allbaugh, Karen and Karl among numerous other campaign officials. For this reason, we believe that we can satisfy any requirements the Counsel's office may have.

Additionally, our lead counsel William D. White at Locke Liddell & Sapp in Dallas is a partner at the firm Ms. Miers headed before assuming her present
position as Assistant to the President and Staff Secretary and is available to answer any questions in this regard. If there are any, please call me at 210-375-0765 and we'll endeavor to get them answered for you.

Sincerely,

Adriana Matouk
---------- Forwarded by Susan B. Ralston/WHO/EOP on 11/07/2001 09:34 AM ----------

Dee Dee Benkie
11/06/2001 06:38:09 PM
Record Type: Record

To: Susan B. Ralston/WHO/EOP@EOP
cc:
Subject: Letter from Warren Tichenor to Chris Henick

Just wanted to confirm this was ok with you
---------- Forwarded by Dee Dee Benkie/WHO/EOP on 11/06/2001 06:33 PM ----------

Adriana Matouk <AM@StargazerAviation.com>
11/06/2001 05:40:56 PM
Record Type: Record

To: Dee Dee Benkie/WHO/EOP
cc:
Subject: Letter from Warren Tichenor to Chris Henick

Dear Dee Dee,

Warren requested that I send this letter to you and ask that you please forward to Chris Henick. Thanks so much. Adriana

---

Dear Chris,

Thank you for your time Monday.

I enjoyed the lunch and the visit. I'll look forward to seeing you in Los Angeles this weekend and to doing everything I can to engage Hollywood in helping to win the war on terrorism.

Thanks again. Please let me know if it works for Karl, you, and me to fly back to Washington Monday, as this would be an ideal time to plan the next steps.

Sincerely,

Warren W. Tichenor

P.S. Please send me the framing remarks via e-mail to am@wwtichenorco.com <mailto:am@wwtichenorco.com> and I"ll add my comments. Thanks.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V6FM4004_WHO.TXT_1>

Dear Dee Dee,

Warren requested that I send this letter to you and ask that you please forward to Chris Henick. Thanks so much. Adriana

---

Dear Chris,

Thank you for your time Monday.

I enjoyed the lunch and the visit. I'll look forward to seeing you in Los Angeles this weeken d and to doing everything I can to engage Hollywood in helping to win the war on terrorism.

Thanks again. Please let me know if it works for Karl, you, and me to fly back to Washington Monday, as this would be an ideal time to plan the next steps.

Sincerely,

Warren W. Tichenor

P.S. Please send me the framing remarks via e-mail to am@wwtichenorco.com and I"ll add my comments. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 11/8/2001 4:37:54 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-NOV-2001 09:37:54.00
SUBJECT:: Re:
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

good idea; sure; schedule pretty clear this morning

Kristen Silverberg
11/08/2001 09:37:21 AM
Record Type: Record

To: 1120106@SkyTel, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

I would like to call Ben Cohen to ask about substance. Any objection?
Want to call together?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 11/8/2001 4:42:31 AM
Subject: : Re: insurance

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-NOV-2001 09:42:31.00
SUBJECT:: Re: insurance
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

agreed; good idea; I have good relations with most of those House staff folks

Kristen Silverberg
11/08/2001 09:38:23 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: insurance

The House process looks like a total trainwreck. I'm going to ask Brian to set up mtgs for you on Hill.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/8/2001 9:53:12 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-NOV-2001 14:53:12.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No burning desire. Why don't we do it jointly? Since it's
time-sensitive, that might give us the best chance of working out our
schedules. Let's call Carl and see when he wants to meet.

Brett M. Kavanaugh
11/08/2001 02:48:16 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject:

you can handle the Homeland Security matter if you wish. I will
do so if not. No equities.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 11/8/2001 7:56:49 AM
Subject: : read Susan's e-mail re other Karl travel

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-NOV-2001 12:56:49.00
SUBJECT:: read Susan's e-mail re other Karl travel
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/8/2001 8:13:39 AM
Subject: : Re: read Susan's e-mail re other Karl travel

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-NOV-2001 13:13:39.00
SUBJECT:: Re: read Susan's e-mail re other Karl travel
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

???? what e-mail.

Brett M. Kavanaugh
11/08/2001 12:56:45 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: read Susan's e-mail re other Karl travel

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 11/8/2001 9:43:58 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-NOV-2001 14:43:58.00
SUBJECT:: Re:
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thank you!!!

Elizabeth N. Camp
11/08/2001 02:42:43 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

Tuesday, November 20
3:25-3:55 pm

Brett M. Kavanaugh
11/08/2001 02:29:11 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject:

what's story with meeting with President a week from Monday -- the
19th?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 11/8/2001 9:46:51 AM
Subject: : FW: Suit on Executive Order re Presidential Records Act

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-NOV-2001 14:46:51.00
SUBJECT:: FW: Suit on Executive Order re Presidential Records Act
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

-----Original Message-----
From: Anderson, David
Sent: Thursday, November 08, 2001 11:19 AM
To: McCallum, Robert; Schiffer, Stuart; Wood, John F; Colborn, Paul
P
Subject: Suit on Executive Order re Presidential Records Act

According to Judicial Watch's website, it is planning to challenge the PRA
Executive Order issued on Monday.
```

From: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
Sent: 11/8/2001 9:57:30 AM
Subject: : FW: Suit on Executive Order re Presidential Records Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ("Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 8-NOV-2001 14:57:30.00
SUBJECT:: FW: Suit on Executive Order re Presidential Records Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

fyi

-----Original Message-----
From: Anderson, David
Sent: Thursday, November 08, 2001 11:19 AM
To: McCallum, Robert; Schiffer, Stuart; Wood, John F; Colborn, Paul
P
Subject: Suit on Executive Order re Presidential Records Act

According to Judicial Watch's website, it is planning to challenge the PRA
Executive Order issued on Monday. Fyi, the site (judicialwatch.org) also
has a commentary about how the Department is blocking the Reno deposition
in the Trulock case. On the latter matter, I am faxing over to Robert a
letter received from Larry Klayman this morning. Dave

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
Sent: 11/9/2001 5:13:45 AM
Subject: : Ose questions

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ( "Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 9-NOV-2001 10:13:45.00
SUBJECT:: Ose questions
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I received follow-up questions from Ose and am sending them to you.
Deadline for response is 11/30.
```

From: CN=Christine Ciccone/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
CC: dan.bryant@usdoj.gov @ inet [UNKNOWN] <dan.bryant@usdoj.gov>;viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;nicholas e. calio/who/eop@eop [WHO] <nicholas e. calio>
Sent: 11/9/2001 6:24:17 AM
Subject: : Re: Judicial Noms and Questions

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christine Ciccone ( CN=Christine Ciccone/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-NOV-2001 11:24:17.00
SUBJECT:: Re: Judicial Noms and Questions
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:dan.bryant@usdoj.gov ( dan.bryant@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:viet.dinh@usdoj.gov ( viet.dinh@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:nicholas e. calio ( CN=nicholas e. calio/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thanks Heather. Nick is trying to pull a meeting together for Tuesday,
and they will need the information for the meeting.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 11/9/2001 3:34:04 AM
Subject: : Judges and meetings

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-NOV-2001 08:34:04.00
SUBJECT:: Judges and meetings
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Do you know how many judges (and which ones) were confirmed last night? Also, after all the flurry of e-mails, when and where are any meetings today that I and/or Brad need to go to? Thanks.

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/9/2001 3:55:49 AM
Subject: :

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME: 9-NOV-2001 08:55:49.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett:

I don't get the Post here, but a buddy read me a portion of Kamen's column today starring you and the Executive Order on Presidential Records. It struck me that -- if read by an intelligent person -- all the story does is prove you are a lawyer, and a good one. Last I checked, lawyers zealously advocated the interests of their clients within the bounds of the law.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 11/9/2001 4:29:45 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-NOV-2001 09:29:45.00
SUBJECT:: Re:
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

David: appreciate that very much. probably would have been too much to expect Kamen to distinguish executive privilege generally, as outlined in the EO, from executive privilege in the face of a criminal GJ or trial subpoena, as in US v. Nixon and Clinton/Lindsey cases.

David S. Addington
11/09/2001 08:55:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Brett:

I don't get the Post here, but a buddy read me a portion of Kamen's column today starring you and the Executive Order on Presidential Records. It struck me that -- if read by an intelligent person -- all the story does is prove you are a lawyer, and a good one. Last I checked, lawyers zealously advocated the interests of their clients within the bounds of the law.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 11/9/2001 4:47:38 AM
Subject: : #s on Judges

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-NOV-2001 09:47:38.00
SUBJECT:: #s on Judges
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

One more judge (Wooten) was confirmed last night; that makes 18
confirmed out of 64 nominees.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 11/9/2001 4:53:42 AM
Subject: : I need to go to Hill for judges at 10:45

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-NOV-2001 09:53:42.00
SUBJECT:: I need to go to Hill for judges at 10:45
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: thungar@gibsondunn.com @ inet [UNKNOWN] <thungar@gibsondunn.com>
Sent: 11/12/2001 9:43:42 AM
Subject: :
Attachments: P_BFBO4004_WHO.TXT_1.doc; P_BFBO4004_WHO.TXT_2.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-NOV-2001 14:43:42.00
SUBJECT::
TO:thungar@gibsondunn.com ( thungar@gibsondunn.com @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BFBO4004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BFBO4004_WHO.TXT_2>
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November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

REV_00135051

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Steve Horn
United States House of Representatives
Washington, DC 20515

cc: The Honorable Janice Schakowsky

Presidential Records Act Executive Order -- Talking Points

- The order establishes procedures for former and current Presidents to review confidential and privileged records of former Presidents and to make appropriate determinations *whether* to withhold or release privileged documents. *The proposed order makes clear that, absent extraordinary and compelling circumstances, a current President will not seek to withhold records that a former President otherwise has authorized for disclosure.*

- The Supreme Court has specifically and definitively held (in 1977) that former Presidents retain the right to assert privileges over their records even after they have left office. This order simply establishes *procedures* for the former Presidents to protect and assert their rights if they so choose. It obviously would be inappropriate, if not contrary to law, for a current President to flout the Supreme Court by unilaterally overriding the constitutional rights of a former President.

- This order expressly states that it does not indicate whether and when a former President should assert privileges. This order is about procedure, not when -- if ever -- privilege should be asserted.

- The Act itself, as well as the legislative history, expressly recognizes that constitutional privileges remain available to a former and current President after expiration of the 12-year-period. (Congress has no authority, in any event, to limit the scope of the *constitutional* privileges available to a President or former President.)

- Before this Act took effect, former Presidents generally released the majority of their records over time even though they possessed plenary authority over their records. The Act and the executive order give former Presidents *less* power to withhold records than they possessed before enactment of the Presidential Records Act. There is no reason to think or predict, therefore, that former Presidents would seize upon their authority to withhold only *privileged* records more aggressively than previous former Presidents seized upon their authority to withhold *all* records.

- In determining the legal requirements and assessing the policy issues, the Administration has consulted extensively with the National Archives and Records Administration, the Department of Justice, and the former Presidents' representatives and has benefited from the consultation.

REV_00135053

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: thungar@gibsondunn.com @ inet [UNKNOWN] <thungar@gibsondunn.com>
Sent: 11/12/2001 9:44:28 AM
Subject: : USA Today

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-NOV-2001 14:44:28.00
SUBJECT:: USA Today
TO:thungar@gibsondunn.com (thungar@gibsondunn.com @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

President Bush's recent executive order establishes sensible procedures for making public the records of former presidents. The order fulfills the president's statutory obligation to implement the Presidential Records Act, as well as his obligations under a 1977 Supreme Court ruling which held that former presidents continue to have the right to assert privileges over their records even after their term has ended.

Neither President Bush nor Congress has the power or authority to ignore that Supreme Court ruling. President Bush's order therefore allows a former President to assert privileges to protect sensitive documents, such as records that could impact national security. It is clear that virtually all criticism of President Bush's order is actually criticism of the Supreme Court decision guaranteeing the rights of former Presidents to assert privileges over their records.

The Presidential Records Act fails to establish a procedure for former Presidents to assert their constitutionally guaranteed privilege. President Bush's order provides such procedures and sets a reasonable time frame for review of records and assertion of privileges. Importantly, the executive order does not expand or encourage the assertion of any privilege available to the former president.

Under President Bush's order, a large portion of Presidential records, for example those not covered by privilege, will be released no later than 12 years after President's term is over, as established by the Presidential Records Act.

In addition, history has proved that most former Presidents release the vast majority of even their privileged documents. Before the Presidential Records Act took effect in 1981, former Presidents were under no legal obligation to disclose any records, but those who visit the libraries of Presidents Kennedy, Ford or Carter know the valuable array of historical materials that are available. President Bush's executive order preserves this rich tradition.

,

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: thungar@gibsondunn.com @ inet [UNKNOWN] <thungar@gibsondunn.com>
Sent: 11/12/2001 12:24:14 PM
Subject: :
Attachments: P_ZUDO4004_WHO.TXT_1.doc; P_ZUDO4004_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-NOV-2001 17:24:14.00
SUBJECT::
TO:thungar@gibsondunn.com (thungar@gibsondunn.com @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/12/2001 05:24 PM ----------

Brett M. Kavanaugh
11/12/2001 02:43:39 PM
Record Type: Record

To: thungar@gibsondunn.com @ inet
cc:
Subject:

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZUDO4004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZUDO4004_WHO.TXT_2>

November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

REV_00135080

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Steve Horn
United States House of Representatives
Washington, DC 20515

cc: The Honorable Janice Schakowsky

Presidential Records Act Executive Order -- Talking Points

- The order establishes procedures for former and current Presidents to review confidential and privileged records of former Presidents and to make appropriate determinations *whether* to withhold or release privileged documents. *The proposed order makes clear that, absent extraordinary and compelling circumstances, a current President will not seek to withhold records that a former President otherwise has authorized for disclosure.*

- The Supreme Court has specifically and definitively held (in 1977) that former Presidents retain the right to assert privileges over their records even after they have left office. This order simply establishes *procedures* for the former Presidents to protect and assert their rights if they so choose. It obviously would be inappropriate, if not contrary to law, for a current President to flout the Supreme Court by unilaterally overriding the constitutional rights of a former President.

- This order expressly states that it does not indicate whether and when a former President should assert privileges. This order is about procedure, not when -- if ever -- privilege should be asserted.

- The Act itself, as well as the legislative history, expressly recognizes that constitutional privileges remain available to a former and current President after expiration of the 12-year-period. (Congress has no authority, in any event, to limit the scope of the *constitutional* privileges available to a President or former President.)

- Before this Act took effect, former Presidents generally released the majority of their records over time even though they possessed plenary authority over their records. The Act and the executive order give former Presidents *less* power to withhold records than they possessed before enactment of the Presidential Records Act. There is no reason to think or predict, therefore, that former Presidents would seize upon their authority to withhold only *privileged* records more aggressively than previous former Presidents seized upon their authority to withhold *all* records.

- In determining the legal requirements and assessing the policy issues, the Administration has consulted extensively with the National Archives and Records Administration, the Department of Justice, and the former Presidents' representatives and has benefited from the consultation.

REV_00135082

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/13/2001 4:06:48 AM
Subject: : Re: draft JSC agenda

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-NOV-2001 09:06:48.00
SUBJECT:: Re: draft JSC agenda
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Are you away today?

Can I get copies of any paper you want included?
```

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/13/2001 11:19:58 AM
Subject: : Re: Stephen Ambrose spin-off

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-NOV-2001 16:19:58.00
SUBJECT:: Re: Stephen Ambrose spin-off
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

i would be up for attending but, organizing, not.

Brett M. Kavanaugh
11/13/2001 03:23:31 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Stephen Ambrose spin-off

how about we start a program for us and other WH lawyers and other interested WH folks (and perhaps certain DOJ lawyers) that has some legal outsider and/or commentator come to speak to us and do Q&A once a month. bipartisan speakers. So we invite, say, from fomer OLC heads, former SGs, former White House counsels, former AG's, former Judges, current professors. E.g., Bill Barr, Walter Dellinger, Lloyd Cutler, Bernie Nussbaum, Kathleen Sullivan, Akhil Amar, Harold Koh, Fred Fielding, Dick Thornburgh. Maybe too ambitious or not worth it, but we could try to find interesting and informative speakers as at best a source of historical information and at worse a diversion once a month.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/13/2001 02:11 PM ----------

From: Barry S. Jackson on 11/13/2001 10:29:14 AM
Record Type: Record

To: Senior Advisor Offices
cc:
Subject: Stephen Ambrose

He needs no introduction...

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 11/13/2001 10:23:43 AM
Subject: : Stephen Ambrose spin-off

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-NOV-2001 15:23:43.00
SUBJECT:: Stephen Ambrose spin-off
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
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how about we start a program for us and other WH lawyers and other interested WH folks (and perhaps certain DOJ lawyers) that has some legal outsider and/or commentator come to speak to us and do Q&A once a month. bipartisan speakers. So we invite, say, from fomer OLC heads, former SGs, former White House counsels, former AG's, former Judges, current professors. E.g., Bill Barr, Walter Dellinger, Lloyd Cutler, Bernie Nussbaum, Kathleen Sullivan, Akhil Amar, Harold Koh, Fred Fielding, Dick Thornburgh. Maybe too ambitious or not worth it, but we could try to find interesting and informative speakers as at best a source of historical information and at worse a diversion once a month.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/13/2001 02:11 PM ----------

From: Barry S. Jackson on 11/13/2001 10:29:14 AM
Record Type: Record

To: Senior Advisor Offices
cc:

Subject: Stephen Ambrose

He needs no introduction...

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/13/2001 2:42:11 PM
Subject: : Re: FYI: Here's the Latest Draft of Possible Litigation Management Pr ovisions for HR 3210
Attachments: P_V6EP4004_WHO.TXT_1.doc

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CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-NOV-2001 19:42:11.00
SUBJECT:: Re: FYI: Here's the Latest Draft of Possible Litigation Management Pr ovisions for HR 3210
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have some concern w/ how it meshes with act of terrorism in main bill which is a source of major concern for Treasury. We should probably bring up on the call.

Could you review the attached, which Brian wants to send to the comm. Dems.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V6EP4004_WHO.TXT_1>

GENERAL POINTS

- A premise of this legislation is that a short-term federal program is necessary to address the substantial uncertainty faced by the insurance industry in pricing terrorism risk. The largest piece of this uncertainty, in many cases, results from the risk of third-party liability. It does not make sense, in our view, to design a system to allow the insurance industry to better manage uncertain terrorism risks without addressing a fundamental cause of the uncertainty – unmanageable and unpredictable litigation.

- The procedures for litigation arising out of mass tort terrorism incidents should achieve the following goals:
  (i) Ensure that plaintiffs have access to fair and expeditious litigation procedures;
  (ii) Provide economic stability by avoiding, where appropriate, widespread bankruptcies from litigation arising out of a mass terrorism incident where terrorists, by definition, are the wrongdoers, not the legitimate bystander property and business owners; and
  (iii) Preserve the available pool available for victims' compensation by ensuring that liability is related to actual damages;
  (iv) Appropriately spread the costs of terrorism incidents without requiring federal taxpayers, in the first instance, to incur the full costs of compensation for injuries and property damage.

- Legislation should merely establish the basic contours of the litigation process, and should not attempt to pre-ordain every substantive and procedural detail, which is best left to the discretion of the district court in light of the facts and circumstances of particular events.

CONSOLIDATION

PURPOSE

- A single federal court and a uniform standard of liability are necessary to ensure that the legal system is not overwhelmed by multiple cases in multiple courts in multiple states -- with similar claims in multiple forums decided under widely varying standards for liability, causation, defenses, and damages.

- Consolidation of cases in a single court is a common procedure in mass tort cases and was a central feature of the legislation recently enacted by Congress for the tort cases arising out of the September 11 attacks.

- A uniform standard of liability helps ensure that plaintiffs can litigate cases expeditiously. Requiring a court to apply multiple, varied state standards will prolong the litigation.

ANALOGUE IN AIR TRANSPORTATION ACT

- Section 408(b) of the Air Transportation Act consolidates all cases arising out of the September 11 attacks in a single federal court.

PROPORTIONAL NON-ECONOMIC DAMAGES

PURPOSE

- Without this provision, a court could hold any defendant "jointly and severally" liable for the full amount of the plaintiff's non-economic damages, even for those damages attributable to the terrorists' acts and are unrelated to the defendant's actions.

- Limitations on joint and several liability are commonplace and this proposal is a modest version of those limitation. Over 35 states have enacted some form of proportional liability. Seventeen states have adopted proportional liability *even for economic damages*. Another eight states have adopted proportional liability for economic and non-economic damages for any marginally-involved defendant (e.g., one found to be less than 50% at fault). This proposal would apply proportional liability only to non-economic damages.

- Some studies suggest that non-economic damages can comprise 40-50% of damages in certain classes of tort cases. If *any* defendant, even the marginally involved, could be made to pay the full extent of non-economic damages in a mass terrorism incident, these damages could easily threaten to bankrupt hundreds of legitimate businesses.

ANALOGUE IN AIR TRANSPORTATION ACT

- Section 408(a) of the Air Transportation Act limits recovery against air carriers to the limits of their liability policies, which is an effective cap on non-economic damages against air carriers, and applies state law limits on joint and several liability, which in many cases will be more restrictive than this proposal.

PUNITIVE DAMAGES

PURPOSE

- In mass tort cases, only a limited pool of resources will be available to plaintiffs who prove liability (whether because of bankruptcy or settlement).

- Because of the limited pool of resources, it would be grossly inequitable and unfair to allow one plaintiff or class of plaintiffs to receive an excessive award -- including a punitive component entirely unrelated to the plaintiff's injuries -- that could greatly limit or outright preclude recovery by other plaintiffs.

- Even for defendants who face no possibility of bankruptcy, the possibility of massive punitive or non-economic damages creates pressure to settle even unmeritorious cases and economic instability for potential defendants in terrorism cases.

- A business defendant who engages in the kind of wrongdoing that otherwise would trigger punitive damages will face a variety of federal and state criminal and administrative investigations and sanctions.

ANALOGUE IN AIR TRANSPORTATION ACT

- Section 408(a) limits any recovery against air carriers to the limits of their liability policies, which effectively precludes punitive damages. Section 201 prospectively precludes punitive damages in any terrorism-related case against airlines for 180 days after enactment. Section 405(b)(5) of the Air Transportation Act precludes recovery of punitive damages in the victims' claims process.

OFFSET

PURPOSE

- This procedure, which Congress adopted for the victims claims process applicable to individual cases arising out of the September 11 terrorist attacks, will ensure that plaintiffs are compensated for their losses, yet also prevent double recovery by plaintiffs. It thus will help preserve the limited pool of defendant resources available for successful plaintiffs without penalizing injured victims.

- The procedure is consistent with the principle that first-party private insurance and, where necessary, standard government benefits have been (and should be) the primary means for promptly and appropriately compensating the parties injured in a terrorism attack. Through these resources, injured parties will receive appropriate care and compensation without resort to an inefficient judicial process that would trigger widespread bankruptcies.

- Even in ordinary tort cases, many states offset past and prospective insurance benefits paid or payable to the plaintiff against the plaintiff's recovery.

ANALOGUE IN AIR TRANSPORTATION ACT

- Section 405(b)(6) of the Air Transportation Act requires that recovery by a claimant in the victims' claims process be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.

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Sent: 11/13/2001 3:00:54 PM

Subject: : Re:New Republic Article: Leahy

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Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [ UNKNOWN ] )
CREATION DATE/TIME:13-NOV-2001 20:00:54.00
SUBJECT:: Re:New Republic Article: Leahy
TO:Christopher_Rosche@hatch.senate.gov (Christopher Rosche) (
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End Original ARMS Header

Amazing that the New Republic would write this!!

_____Reply Separator_____
Subject: New Republic Article
Author: Christopher Rosche
Date: 11/13/2001 7:34 PM

The New Republic

ON THE HILL
Personal Time
by Michael Crowley

Post date 11.08.01 | Issue date 11.19.01

Patrick Leahy doesn't look like an especially groovy guy. He is bald and pale,
speaks in a gravelly monotone, and wears drab gray suits. If you didn't know he
was a U.S. senator, you might peg him for a nasa engineer. But upon closer
inspection, the Vermont Democrat turns out to have some unexpectedly funky
tastes. He is, for instance, an avowed Grateful Dead fan who can explain the
bootleg concert-tape trade, and who once brought Jerry Garcia to the Senate
dining room. He has dined with U2 singer Bono and, at last year's Democratic
convention, hosted a bash at Hollywood's Sunset Room featuring sultry rocker

Sheryl Crow. Leahy even took to the Senate floor in 1994 to hail the mass appeal of his state's answer to the Dead--the trippy jam band Phish. ("Add two trampolines, a vacuum cleaner, a first-rate light show, and you have a live performance that is hard to forget," he explained to the American people.) Leahy is also a Batman fanatic who owns hundreds of masked-man comic books, has appeared in a Batman movie, and penned the introduction to a Batman book. Throw in his other signature issues--defusing old land mines, protecting Internet privacy (he has been called "the cybersenator"), promoting Ben and Jerry's ice cream--and Leahy starts to seem pretty cool for an old white guy in a suit.

This quirky repertoire delights liberal fans from Burlington to Berkeley--especially since Leahy's ascension this year to chairman of the Senate Judiciary Committee. In his new post, Leahy is one of the most powerful Democrats in Congress. He has the power to block George W. Bush's judicial nominees, including any future Supreme Court appointments and, since September 11, has been a fulcrum of the debate over granting law enforcement new powers to fight terrorism.

But it has been a rough transition from Senator Mellow to Mr. Chairman. Leahy has found himself under near-constant assault from Republicans who say he plays vindictive games with their judicial nominees. The attorney general has suggested that he endangered the public by trying to stall and water down anti-terrorism legislation. Even fellow Democrats claim he has been imperious, hypersensitive, and a pain to work with. Indeed, Leahy is fast becoming one of the most resented members of the Senate. And this isolation--from his Democratic colleagues as well as his Republican antagonists--is starting to undermine the political causes about which he cares so much.

For most of his 27 years in the Senate, Leahy has been less a legislative heavyweight than a spokesman for the NPR set, a champion of liberal causes like expanding political asylum, death sentence reviews, and ending the travel ban on Cuba. When the Senate gave nonbinding approval to missile defense in 1999, Leahy cast one of just three dissenting votes. Throughout the 1990s he pushed, in opposition to the Clinton administration, for a global treaty outlawing land mines. And Leahy was among the Senate's bluntest critics of the Supreme Court after its Bush v. Gore decision, fuming, "Their credibility ... and their moral posture is so diminished, it will take years to repair."

All that changed in May, when the defection of his fellow Vermonter, Jim Jeffords, tipped the Senate to Democratic control. Delaware Senator Joe Biden was next in line to chair the Judiciary Committee, but instead chose to take over Foreign Relations. And so, Leahy suddenly had a powerful perch. Liberal interest groups were thrilled. But on Capitol Hill the reaction was less effusive. Some Democrats considered Leahy to be fairly pleasant, someone with "a real low-key affability," as one party operative puts it. But many others

found
him prickly and arrogant. "He always had a much higher view of himself than anyone else," says a former top aide to another liberal Senate Democrat who remembers his boss disliking Leahy despite their ideological kinship.

And, as feared, Leahy hasn't made many friends during his short tenure as chairman. Even by the testy standards of judicial nominations, Republicans have
reacted viscerally to his stewardship. On one level, the complaints are hard to
take too seriously. Though The Wall Street Journal editorial page has attacked
him for "unprecedented stonewalling on judges," Leahy has treated nominees no
worse than Republicans treated Clinton's. A Democratic operative notes that Leahy has an "extraordinarily difficult" job as Judiciary chairman and should be
given some slack. But GOP senators insist Leahy has made the process unusually
personal. According to a Senate Republican aide, after Idaho Republican Larry
Craig criticized Leahy in the media, Leahy told him that one of his home-state
judges would have to wait until next year for a hearing. The aide also says Leahy warned Charles Grassley of Iowa that if he signed a letter of grievance
circulating among Republican Judiciary Committee members, his judges' scheduled
hearings would be canceled. (Aides to the senators didn't respond, and a Leahy
staffer says he doesn't know anything about the charges.) Meanwhile, Colorado's
two GOP Senators, Wayne Allard and Ben Nighthorse Campbell, told Roll Call last
month that Leahy implied their support for a GOP filibuster--protesting stalled
nominations--would affect the fate of their judges. (A Leahy aide told me that
anyone familiar with the senator's dry wit would understand that he was kidding.) As a result, Leahy has become the subject of profane denunciations by
Republican senators during their weekly policy lunches, according to one attendee. Adds a top Republican aide, "They are taking his actions personally
because it seems to be the way he operates."

Such accusations would be easier to dismiss as partisan sniping if members of
Leahy's own party weren't grousing as well. Democratic staffers are still buzzing, for instance, about Leahy's harsh treatment of California Democrat Dianne Feinstein at a September 13 Judiciary hearing on a Justice Department
authorization bill. Feinstein wanted to introduce an amendment adding several
new judicial slots for California's Southern District Court, where she argued
backlogs had created a state of "crisis." She'd tried for months to add the judges, Feinstein pleaded, without avail. "I don't do this lightly," a transcript shows her saying. "I obviously don't like to annoy my chairman. I
have tried and I have tried and I have tried, and now I fight."

"Don't speak of annoyance," Leahy snapped. "This is not a time to be personal on
these things." Leahy then patronizingly suggested that Feinstein "may not have
understood" an earlier promise he made to pass the measure if she would hold off

for now. "I was told you would not approve that," Feinstein fired back, "and I would be 'Rule Sixteened'"--i.e., shot down. Several other senators--including the liberal Democrat Dick Durbin--rose to Feinstein's defense. Growing ever more irritated, Leahy turned "beet red," according to an aide, and snapped at Feinstein for talking to her staff while he was speaking. The two senators finally retreated to a private anteroom, from which they could be heard yelling at each other. By the end of the exchange, witnesses say, Feinstein was practically in tears.

Multiple people to whom I related this story replied that anyone who so upsets Dianne Feinstein--less than a fan favorite herself--must be doing something right. And a Leahy aide notes that Feinstein's amendment was added to the bill a few weeks later. But others say that Leahy's response to this mild insubordination was typical. "He'll blow up at you," says a basically sympathetic observer. "Even if you don't make it personal, he'll take it personally."

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MICHAEL CROWLEY is an associate editor at TNR.

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Sent: 11/13/2001 3:02:14 PM

Subject: : Re:New Republic Article: Leahy

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Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [ UNKNOWN ] )
CREATION DATE/TIME:13-NOV-2001 20:02:14.00
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Amazing that the New Republic would write this!!

_____Reply Separator_____
Subject: New Republic Article
Author: Christopher Rosche
Date: 11/13/2001 7:34 PM

The New Republic

ON THE HILL
Personal Time
by Michael Crowley

Post date 11.08.01 | Issue date 11.19.01

Patrick Leahy doesn't look like an especially groovy guy. He is bald and pale, speaks in a gravelly monotone, and wears drab gray suits. If you didn't know he was a U.S. senator, you might peg him for a nasa engineer. But upon closer inspection, the Vermont Democrat turns out to have some unexpectedly funky tastes. He is, for instance, an avowed Grateful Dead fan who can explain the bootleg concert-tape trade, and who once brought Jerry Garcia to the Senate dining room. He has dined with U2 singer Bono and, at last year's Democratic convention, hosted a bash at Hollywood's Sunset Room featuring sultry rocker Sheryl Crow. Leahy even took to the Senate floor in 1994 to hail the mass appeal of his state's answer to the Dead--the trippy jam band Phish. ("Add two trampolines, a vacuum cleaner, a first-rate light show, and you have a live performance that is hard to forget," he explained to the American people.) Leahy is also a Batman fanatic who owns hundreds of masked-man comic books, has appeared in a Batman movie, and penned the introduction to a Batman book. Throw in his other signature issues--defusing old land mines, protecting Internet privacy (he has been called "the cybersenator"), promoting Ben and Jerry's ice cream--and Leahy starts to seem pretty cool for an old white guy in a suit.

This quirky repertoire delights liberal fans from Burlington to Berkeley--especially since Leahy's ascension this year to chairman of the Senate Judiciary Committee. In his new post, Leahy is one of the most powerful Democrats in Congress. He has the power to block George W. Bush's judicial nominees, including any future Supreme Court appointments and, since September 11, has been a fulcrum of the debate over granting law enforcement new powers to fight terrorism.

But it has been a rough transition from Senator Mellow to Mr. Chairman. Leahy has found himself under near-constant assault from Republicans who say he plays vindictive games with their judicial nominees. The attorney general has suggested that he endangered the public by trying to stall and water down anti-terrorism legislation. Even fellow Democrats claim he has been imperious, hypersensitive, and a pain to work with. Indeed, Leahy is fast becoming one of the most resented members of the Senate. And this isolation--from his Democratic colleagues as well as his Republican antagonists--is starting to undermine the political causes about which he cares so much.

For most of his 27 years in the Senate, Leahy has been less a legislative heavyweight than a spokesman for the NPR set, a champion of liberal causes like expanding political asylum, death sentence reviews, and ending the travel ban on Cuba. When the Senate gave nonbinding approval to missile defense in 1999, Leahy cast one of just three dissenting votes. Throughout the 1990s he pushed, in opposition to the Clinton administration, for a global treaty outlawing

land
mines. And Leahy was among the Senate's bluntest critics of the Supreme
Court
after its Bush v. Gore decision, fuming, "Their credibility ... and their
moral
posture is so diminished, it will take years to repair."

All that changed in May, when the defection of his fellow Vermonter, Jim
Jeffords, tipped the Senate to Democratic control. Delaware Senator Joe
Biden
was next in line to chair the Judiciary Committee, but instead chose to
take
over Foreign Relations. And so, Leahy suddenly had a powerful perch.
Liberal
interest groups were thrilled. But on Capitol Hill the reaction was less
effusive. Some Democrats considered Leahy to be fairly pleasant, someone
with "a
real low-key affability," as one party operative puts it. But many others
found
him prickly and arrogant. "He always had a much higher view of himself than
anyone else," says a former top aide to another liberal Senate Democrat who
remembers his boss disliking Leahy despite their ideological kinship.

And, as feared, Leahy hasn't made many friends during his short tenure as
chairman. Even by the testy standards of judicial nominations, Republicans
have
reacted viscerally to his stewardship. On one level, the complaints are
hard to
take too seriously. Though The Wall Street Journal editorial page has
attacked
him for "unprecedented stonewalling on judges," Leahy has treated nominees
no
worse than Republicans treated Clinton's. A Democratic operative notes that
Leahy has an "extraordinarily difficult" job as Judiciary chairman and
should be
given some slack. But GOP senators insist Leahy has made the process
unusually
personal. According to a Senate Republican aide, after Idaho Republican
Larry
Craig criticized Leahy in the media, Leahy told him that one of his
home-state
judges would have to wait until next year for a hearing. The aide also says
Leahy warned Charles Grassley of Iowa that if he signed a letter of
grievance
circulating among Republican Judiciary Committee members, his judges'
scheduled
hearings would be canceled. (Aides to the senators didn't respond, and a
Leahy
staffer says he doesn't know anything about the charges.) Meanwhile,
Colorado's
two GOP Senators, Wayne Allard and Ben Nighthorse Campbell, told Roll Call
last
month that Leahy implied their support for a GOP filibuster--protesting
stalled
nominations--would affect the fate of their judges. (A Leahy aide told me
that
anyone familiar with the senator's dry wit would understand that he was
kidding.) As a result, Leahy has become the subject of profane
denunciations by
Republican senators during their weekly policy lunches, according to one
attendee. Adds a top Republican aide, "They are taking his actions
personally
because it seems to be the way he operates."

Such accusations would be easier to dismiss as partisan sniping if members of Leahy's own party weren't grousing as well. Democratic staffers are still buzzing, for instance, about Leahy's harsh treatment of California Democrat Dianne Feinstein at a September 13 Judiciary hearing on a Justice Department authorization bill. Feinstein wanted to introduce an amendment adding several new judicial slots for California's Southern District Court, where she argued backlogs had created a state of "crisis." She'd tried for months to add the judges, Feinstein pleaded, without avail. "I don't do this lightly," a transcript shows her saying. "I obviously don't like to annoy my chairman. I have tried and I have tried and I have tried, and now I fight."

"Don't speak of annoyance," Leahy snapped. "This is not a time to be personal on these things." Leahy then patronizingly suggested that Feinstein "may not have understood" an earlier promise he made to pass the measure if she would hold off for now. "I was told you would not approve that," Feinstein fired back, "and I would be 'Rule Sixteened'"--i.e., shot down. Several other senators--including the liberal Democrat Dick Durbin--rose to Feinstein's defense. Growing ever more irritated, Leahy turned "beet red," according to an aide, and snapped at Feinstein for talking to her staff while he was speaking. The two senators finally retreated to a private anteroom, from which they could be heard yelling at each other. By the end of the exchange, witnesses say, Feinstein was practically in tears.

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Feinstein and Arizona Republican Jon Kyl (See "Sin of Commission," by Franklin Foer, October 8). And the September 11 attacks appeared to do little to change his mind. When Attorney General John Ashcroft asked Congress for swift passage of expanded wiretapping, detention, and evidence-sharing powers, Leahy insisted on opening up detailed negotiations with Justice Department and White House officials before advancing a bill out of his committee.

Few people objected to such consultation. But Leahy proceeded to alienate his colleagues by limiting the talks to a narrow circle consisting of himself, Ted Kennedy, ranking Judiciary Republican Orrin Hatch, and Justice Department officials. When other Judiciary Committee senators-- primarily Feinstein and New York's Chuck Schumer-- suggested changes, Leahy and his famously thorny chief counsel, Bruce Cohen, closed ranks further, implying that the negotiations were his responsibility alone. "I think it was a mistake to go ahead with that view of the world," says one civil liberties lobbyist.

And, in a sad irony, Leahy's insularity appears to have made the bill less protective of civil liberties. Had Leahy been more open to working with his fellow senators, some observers say, he might have had enough support in his committee to alter the bill more to his liking. Instead he went it largely solo.
At an October 2 press conference, Ashcroft, joined by Hatch and Senate Minority Leader Trent Lott, implied that Leahy was stalling the legislation and leaving the public "susceptible" to more attacks. It was a startlingly partisan move--and one that appalled Leahy, who accuses the White House of shifting its own time-consuming delays--but it worked. Without allies on his committee, and quite likely under pressure from Senate Majority Leader Tom Daschle, who was concerned about the Democrats looking weak on terrorism, Leahy was forced to cave, according to observers.

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MICHAEL CROWLEY is an associate editor at TNR.

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Sent: 11/13/2001 3:02:47 PM

Subject: : Re:New Republic Article: Leahy

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Makan_Delrahim@judiciary.senate.gov (Makan Delrahim) [ UNKNOWN ] )
CREATION DATE/TIME:13-NOV-2001 20:02:47.00
SUBJECT:: Re:New Republic Article: Leahy
TO:Christopher_Rosche@hatch.senate.gov (Christopher Rosche) (
Christopher_Rosche@hatch.senate.gov (Christopher Rosche) [ UNKNOWN ] )
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
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End Original ARMS Header

Amazing that the New Republic would write this!!

_____Reply Separator_____
Subject: New Republic Article
Author: Christopher Rosche
Date: 11/13/2001 7:34 PM

The New Republic

ON THE HILL
Personal Time
by Michael Crowley

Post date 11.08.01 | Issue date 11.19.01

Patrick Leahy doesn't look like an especially groovy guy. He is bald and pale,
speaks in a gravelly monotone, and wears drab gray suits. If you didn't know he
was a U.S. senator, you might peg him for a nasa engineer. But upon closer
inspection, the Vermont Democrat turns out to have some unexpectedly funky
tastes. He is, for instance, an avowed Grateful Dead fan who can explain the
bootleg concert-tape trade, and who once brought Jerry Garcia to the Senate
dining room. He has dined with U2 singer Bono and, at last year's Democratic
convention, hosted a bash at Hollywood's Sunset Room featuring sultry rocker

Sheryl Crow. Leahy even took to the Senate floor in 1994 to hail the mass appeal of his state's answer to the Dead--the trippy jam band Phish. ("Add two trampolines, a vacuum cleaner, a first-rate light show, and you have a live performance that is hard to forget," he explained to the American people.) Leahy is also a Batman fanatic who owns hundreds of masked-man comic books, has appeared in a Batman movie, and penned the introduction to a Batman book. Throw in his other signature issues--defusing old land mines, protecting Internet privacy (he has been called "the cybersenator"), promoting Ben and Jerry's ice cream--and Leahy starts to seem pretty cool for an old white guy in a suit.

This quirky repertoire delights liberal fans from Burlington to Berkeley--especially since Leahy's ascension this year to chairman of the Senate Judiciary Committee. In his new post, Leahy is one of the most powerful Democrats in Congress. He has the power to block George W. Bush's judicial nominees, including any future Supreme Court appointments and, since September 11, has been a fulcrum of the debate over granting law enforcement new powers to fight terrorism.

But it has been a rough transition from Senator Mellow to Mr. Chairman. Leahy has found himself under near-constant assault from Republicans who say he plays vindictive games with their judicial nominees. The attorney general has suggested that he endangered the public by trying to stall and water down anti-terrorism legislation. Even fellow Democrats claim he has been imperious, hypersensitive, and a pain to work with. Indeed, Leahy is fast becoming one of the most resented members of the Senate. And this isolation--from his Democratic colleagues as well as his Republican antagonists--is starting to undermine the political causes about which he cares so much.

For most of his 27 years in the Senate, Leahy has been less a legislative heavyweight than a spokesman for the NPR set, a champion of liberal causes like expanding political asylum, death sentence reviews, and ending the travel ban on Cuba. When the Senate gave nonbinding approval to missile defense in 1999, Leahy cast one of just three dissenting votes. Throughout the 1990s he pushed, in opposition to the Clinton administration, for a global treaty outlawing land mines. And Leahy was among the Senate's bluntest critics of the Supreme Court after its Bush v. Gore decision, fuming, "Their credibility ... and their moral posture is so diminished, it will take years to repair."

All that changed in May, when the defection of his fellow Vermonter, Jim Jeffords, tipped the Senate to Democratic control. Delaware Senator Joe Biden was next in line to chair the Judiciary Committee, but instead chose to take over Foreign Relations. And so, Leahy suddenly had a powerful perch. Liberal interest groups were thrilled. But on Capitol Hill the reaction was less effusive. Some Democrats considered Leahy to be fairly pleasant, someone with "a real low-key affability," as one party operative puts it. But many others

found
him prickly and arrogant. "He always had a much higher view of himself than anyone else," says a former top aide to another liberal Senate Democrat who remembers his boss disliking Leahy despite their ideological kinship.

And, as feared, Leahy hasn't made many friends during his short tenure as chairman. Even by the testy standards of judicial nominations, Republicans have
reacted viscerally to his stewardship. On one level, the complaints are hard to
take too seriously. Though The Wall Street Journal editorial page has attacked
him for "unprecedented stonewalling on judges," Leahy has treated nominees no
worse than Republicans treated Clinton's. A Democratic operative notes that Leahy has an "extraordinarily difficult" job as Judiciary chairman and should be
given some slack. But GOP senators insist Leahy has made the process unusually
personal. According to a Senate Republican aide, after Idaho Republican Larry
Craig criticized Leahy in the media, Leahy told him that one of his home-state
judges would have to wait until next year for a hearing. The aide also says Leahy warned Charles Grassley of Iowa that if he signed a letter of grievance
circulating among Republican Judiciary Committee members, his judges' scheduled
hearings would be canceled. (Aides to the senators didn't respond, and a Leahy
staffer says he doesn't know anything about the charges.) Meanwhile, Colorado's
two GOP Senators, Wayne Allard and Ben Nighthorse Campbell, told Roll Call last
month that Leahy implied their support for a GOP filibuster--protesting stalled
nominations--would affect the fate of their judges. (A Leahy aide told me that
anyone familiar with the senator's dry wit would understand that he was kidding.) As a result, Leahy has become the subject of profane denunciations by
Republican senators during their weekly policy lunches, according to one attendee. Adds a top Republican aide, "They are taking his actions personally
because it seems to be the way he operates."

Such accusations would be easier to dismiss as partisan sniping if members of
Leahy's own party weren't grousing as well. Democratic staffers are still buzzing, for instance, about Leahy's harsh treatment of California Democrat Dianne Feinstein at a September 13 Judiciary hearing on a Justice Department
authorization bill. Feinstein wanted to introduce an amendment adding several
new judicial slots for California's Southern District Court, where she argued
backlogs had created a state of "crisis." She'd tried for months to add the judges, Feinstein pleaded, without avail. "I don't do this lightly," a transcript shows her saying. "I obviously don't like to annoy my chairman. I
have tried and I have tried and I have tried, and now I fight."

"Don't speak of annoyance," Leahy snapped. "This is not a time to be personal on
these things." Leahy then patronizingly suggested that Feinstein "may not have
understood" an earlier promise he made to pass the measure if she would hold off

for now. "I was told you would not approve that," Feinstein fired back, "and I would be 'Rule Sixteened'"--i.e., shot down. Several other senators--including the liberal Democrat Dick Durbin--rose to Feinstein's defense. Growing ever more irritated, Leahy turned "beet red," according to an aide, and snapped at Feinstein for talking to her staff while he was speaking. The two senators finally retreated to a private anteroom, from which they could be heard yelling at each other. By the end of the exchange, witnesses say, Feinstein was practically in tears.

Multiple people to whom I related this story replied that anyone who so upsets Dianne Feinstein--less than a fan favorite herself--must be doing something right. And a Leahy aide notes that Feinstein's amendment was added to the bill a few weeks later. But others say that Leahy's response to this mild insubordination was typical. "He'll blow up at you," says a basically sympathetic observer. "Even if you don't make it personal, he'll take it personally."

nd Leahy's prickliness is starting to have national policy ramifications. Consider what happened during negotiations last month over emergency anti-terrorism legislation. At the outset, the Bush administration was confident it would get enhanced law enforcement authority from the GOP-controlled House. It was Leahy and the Democratic-controlled Senate they worried about. After all, last year Leahy, a former prosecutor deeply wary of broad law enforcement powers, almost single-handedly sank a similar anti-terrorism bill crafted by Feinstein and Arizona Republican Jon Kyl (See "Sin of Commission," by Franklin Foer, October 8). And the September 11 attacks appeared to do little to change his mind. When Attorney General John Ashcroft asked Congress for swift passage of expanded wiretapping, detention, and evidence-sharing powers, Leahy insisted on opening up detailed negotiations with Justice Department and White House officials before advancing a bill out of his committee.

Few people objected to such consultation. But Leahy proceeded to alienate his colleagues by limiting the talks to a narrow circle consisting of himself, Ted Kennedy, ranking Judiciary Republican Orrin Hatch, and Justice Department officials. When other Judiciary Committee senators-- primarily Feinstein and New York's Chuck Schumer-- suggested changes, Leahy and his famously thorny chief counsel, Bruce Cohen, closed ranks further, implying that the negotiations were his responsibility alone. "I think it was a mistake to go ahead with that view of the world," says one civil liberties lobbyist.

And, in a sad irony, Leahy's insularity appears to have made the bill less protective of civil liberties. Had Leahy been more open to working with his

fellow senators, some observers say, he might have had enough support in his committee to alter the bill more to his liking. Instead he went it largely solo.

At an October 2 press conference, Ashcroft, joined by Hatch and Senate Minority Leader Trent Lott, implied that Leahy was stalling the legislation and leaving the public "susceptible" to more attacks. It was a startlingly partisan move--and one that appalled Leahy, who accuses the White House of shifting its own time-consuming delays--but it worked. Without allies on his committee, and quite likely under pressure from Senate Majority Leader Tom Daschle, who was concerned about the Democrats looking weak on terrorism, Leahy was forced to cave, according to observers.

The outcome: The Senate, as The Wall Street Journal put it, "produced a bill whose vast expansion of law-enforcement powers delivers almost everything the Bush administration sought." In the House, by contrast, a coalition of ACLU liberals and anti-government conservatives succeeded in adding a sunset provision phasing out expanded wiretap authority after five years, along with other restraints. (The final bill includes a four-year sunset.)

Leahy takes credit for slowing down and restraining Ashcroft's original plan. But the anti-terrorism fight clearly left a sour taste in his mouth. At an October 25 press conference celebrating Senate passage of the final bill, he wore the sullen frown of a sore loser. Even as the C-SPAN cameras rolled, he couldn't resist scowling and bickering with Hatch. Things got so touchy that Lott had to step in and defuse the tension with a joke about what a "magnificent achievement" it was getting the two to agree.

But then, despite his Deadhead tastes, Leahy has never pretended to be all sunshine and flowers. Indeed, when he emerged from the 1997 premiere of Batman & Robin, Leahy complained that the movie presented too cheery a vision of a superhero who was, after all, first conceived as an obsessed loner seeking vengeance for his parents' deaths. "I'd love to get back to the dark side," Leahy told The Hill. In his own work, at least, he seems to be succeeding.

MICHAEL CROWLEY is an associate editor at TNR.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 11/13/2001 4:31:37 PM
Subject: : Military Commissions

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-NOV-2001 21:31:37.00
SUBJECT:: Military Commissions
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Assume you were involved in that. Congrats. Looks good.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Paul B. Dyck/WHO/EOP@EOP [WHO] <Paul B. Dyck>
CC: matthew a. schlapp/who/eop@eop [WHO] <matthew a. schlapp>
Sent: 11/13/2001 5:12:03 PM
Subject: : Re: OPA database for boards and commissions

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TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:matthew a. schlapp (CN=matthew a. schlapp/OU=who/O=eop@eop [WHO])
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This database is fine.

As to ethnicity, in a perfect world, no one would keep track, but the census asks for it, the media/public asks about it, Congress asks about it, interest groups ask about it. It is incumbent upon the Administration to be able to respond to inquiries along these lines about the President's appointees. There is no legal problem whatever with that.

As to party affiliation, that is acceptable for political appointee positions for reasons you suggest -- and others. Again, no legal problem.

Do not keep any database that references political contributions.

Paul B. Dyck
11/12/2001 11:23:01 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Matthew A. Schlapp/WHO/EOP@EOP
Subject: OPA database for boards and commissions

Brett: We are working closely with PPO to identify qualified folks to serve on presidential boards and commissions (of which there are hundreds of slots that will be opening during the course of the administration). We have collected names and resumes of supporters who we would like to recommend to PPO to serve on these boards and are trying to create a better database through which we can match people with available openings. The technical guys in the NEOB have helped us build a File Maker Pro database, but are now balking b/c of some of the information we would like to include (specifically party affiliation and ethnicity) and have asked that we get a read from you all before proceeding.

The reason that we want to collect and track this info is that, in addition to requiring people to be of certain professions and have particular backgrounds, some of the boards and commissions by statute require members be of one party or another. And having diverse representation on these is obviously a goal of the administration. For us to be able to effectively match people to these requirements, we need a database that allows us to track this information on people.

Note that all of this information that we are collecting comes to us via Bush leadership in the states for the specific reason of matching these people with appropriate boards and commissions. We are not using any of the data that people have submitted via the on-line application system to PPO.

Do you think we're on safe ground proceeding w/ the database? We'll need you guys to bless it in order to proceed. If you need more specifics or have questions, let me know.

Thanks very much. Paul

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<jfischman@pd.state.gov>;Elizabeth P. Austin/WHO/EOP [WHO] <Elizabeth P. Austin>;Jane M. Cook/WHO/EOP [WHO] <Jane M. Cook>;Robert_Traynham@src.senate.gov [UNKNOWN]
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Sent: 11/14/2001 2:06:07 AM
Subject: : War on Terrorism -- November 14, 2001
Attachments: P_Q5HP4004_CEA.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov (James_R._Wilkinson@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:14-NOV-2001 07:06:07.00
SUBJECT:: War on Terrorism -- November 14, 2001
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
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TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP [WHO])
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TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:acampbell@no10.x.gsi.gov.uk (acampbell@no10.x.gsi.gov.uk [UNKNOWN])
READ:UNKNOWN
TO:torie.clarke@osd.mil (torie.clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
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TO:alastair.campbell@fco2.demon.co.uk (alastair.campbell@fco2.demon.co.uk [UNKNOWN])
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TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
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TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
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TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
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TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
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TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP [WHO])

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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP [WHO])
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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/14/01

Today's Schedule (EST)

8:00a EST	Secretary Rumsfeld and Mayor Giuliani press availability at Ground Zero.
10:00a EST	Prime Minister Blair releases new evidence document against bin Laden.
11:30a EST	Vice President Cheney speaks at U.S. Chamber of Commerce.
1:30p EST	Press briefing at the Department of Defense.
3:15p EST	President and Mrs. Bush greet President and Mrs. Putin in Texas.

In Case You Missed It...

- "Liberating it [Afghanistan] from this evil Taliban will only be good for women, men and children. It is a very good war of liberation. The Americans aren't like the Soviet Union, they are not trying to overthrow Muslims for communists. They are helping the Afghans to progress and saving poor Muslims from evil." (The Amir of Bahrain, 11/13/01)

Recent Key Quotes & Developments

- "Small crowds of Kabul residents lined the streets in the north of the city to cheer the arrival of the Northern Alliance forces…they chanted "Allah o Akhbar (God is Great)." (AFP, 11/13/01)
- "The Taliban were also accused of looting as they retreated from Mazar. UNICEF officials said they had taken all the organization's vehicles and communications equipment and its offices had been robbed of computers, furniture and radio equipment." (The Independent [U.K.], 11/13/01)
- "Among the accounts of mutilations, beatings and arbitrary executions there was evidence of a new abomination: the torture of children. An unknown number of infants were savagely beaten during the [Taliban] Islamic militia's 14-month occupation of Taloqan, the former headquarters of the [Northern] Alliance, usually for the supposed crimes of their parents." (The Times [U.K.], 11/13/01)
- "The BBC has confirmed that the central Afghan town of Bamiyan was totally destroyed by the Taliban before they fled over the weekend. Evidence has also emerged of Bosnian-style ethnic cleansing in the region involving the execution of hundreds of local ethnic Hazara men." (BBC, 11/13/01)

Message

- The fall of key cities in Afghanistan to anti-Taliban forces advances our objectives of eliminating the Al-Qaida terrorist organization and breaking the Taliban hold on Afghanistan.
- The positive reception of the anti-Taliban forces as liberators is a clear indication that the people of Afghanistan are ready to throw off the oppressive yoke of the Taliban and the Al-Qaida foreigners.
- We look forward to the opening of a corridor from these liberated areas to the borders with Uzbekistan and Tajikistan. This will open up Afghanistan to expanded delivery of humanitarian assistance and reconstruction supplies. In particular, the Friendship Bridge between Uzbekistan and Afghanistan will be cleared of mines and made safe for the passage of these supplies. It will become a "Food Bridge" to feed suffering people.
- This will further reduce the suffering of the Afghan people and show the rest of Afghanistan that life for the entire nation will be better once the Taliban have been removed from power.
- The advance of the anti-Taliban forces has been assisted by defections from disillusioned supporters. It is time for the rest of Afghanistan -- particularly the ethnic groups in the south -- to join the uprising against the Taliban and throw off their oppressive rule. The sooner they act, the greater the benefit.
- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

Facts of the Day

- From 11/1-12, the World Food Program delivered 27,000 metric tons of food to Afghanistan. Of that, 18,000 metric tons was sent to Kabul and the Central Highlands.
- To date, the U.S. has airdropped 1,454,820 Humanitarian Daily Rations valued at $6,255,726.

REV_00135201

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>
Sent: 11/14/2001 2:46:53 AM
Subject: : addresses from POTUS meeting

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-NOV-2001 07:46:53.00
SUBJECT:: addresses from POTUS meeting
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Laura L. Flippin ( CN=Laura L. Flippin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Please send me the names and addresses (or indicate home/work) of your
candidates from yesterday's POTUS meeting so I can give a list to Sheila.
```

From: CN=Rebecca A. Beynon/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 11/14/2001 3:06:22 AM
Subject: : Re: Vaccine Liability
Attachments: P_EFIP4004_WHO.TXT_1.doc; P_EFIP4004_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:14-NOV-2001 08:06:22.00
SUBJECT:: Re: Vaccine Liability
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

5 pm on Wednesday sounds good.

Brett M. Kavanaugh
11/13/2001 10:26:34 PM
Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP
cc: Rachel L. Brand/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: Vaccine Liability

Seems to me we need to get together with Rachel in WH Counsel's office -- and then with our leg folks -- and then perhaps with Ben Cohen in House policy shop. There apparently are many different tracks, and we need to get everyone here and HHS on one page. First thing that would be useful is a briefing from Rachel, who has been working bioterrorism bills -- on which this vaccine issue has arisen. How is Wednesday at 5:00 in Rachel's office?

Diana E. Furchtgott-Roth 11/08/2001 10:48:43 AM

Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Vaccine Liability

Rebecca, Brett,

Here are two memos that we wrote. One is on the vaccine issue, and the other is on punitive damages in general. They encompass everything that we have been working on. Please let us know if we an provide you with more information.

If there are upcoming meetings, Mark McClellan and I would be interested in attending.

Diana

From: Rebecca A. Beynon on 11/07/2001 04:07:04 PM
Record Type: Record

To: Mark McClellan, Diana E. Furchtgott-Roth/CEA/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Vaccine Liability

Diana - Could you circulate to me and Brett via email the various documents that you guys have put together on this issue? I know that there have been several things that have gone around, and I wanted to be sure that everyone had copies of the relevant materials. Also, I know Brett would like to get an idea of what it is that you guys think is the best approach to this issue. Thanks very much!

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_EFIP4004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_EFIP4004_WHO.TXT_2>

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20502

TIME

MEMORANDUM FOR DIANA FURCHTGOTT-ROTH AND JOHN ACKERLY

FROM: PETER FEATHER

SUBJECT: SMALLPOX VACCINE

Presently there are 15.4 million doses of smallpox vaccine maintained by the Government. An additional 40 million more doses have been contracted to be produced. Health risks associated with the present vaccine are thought to be similar to risks associated with smallpox vaccines administered in the past. The potential liabilities faced by a manufacturer for resulting fatalities, disabilities and hospitalizations are significant. Several options exist to mitigate these liabilities:

Options for Insuring Vaccine Manufacturers

1. **Direct Government Indemnification**: The Department of Health and Human Services (HHS) has drafted a proposed executive order amending Executive Order 10789. This authorizes government agencies to enter into indemnification agreements with contractors engaged in unusually hazardous activities relating to national defense functions

2. **Transfer Liability to the Government**: The National Swine Flu Immunization Program of 1976 made a suit against the United States under the Federal Tort Claims Act to be the sole remedy for claims arising from adverse reactions to the swine flu vaccine. Such an approach could be used for smallpox vaccine to protect manufacturers. This requires an act of Congress.

3. **Government Insurance Reimbursement**: Under the Federal Acquisition Regulation, the Government may reimburse contractors for the cost of acquiring liability insurance. In some circumstances, the Government may require contractors to carry liability insurance, which is factored into their bids. This option does not require legislation, but may significantly increase the cost of a vaccine.

4. **Vaccine Compensation Funds**. Congress enacted the National Vaccine Injury Compensation Program (VICP) as a no-fault alternative to the tort system for resolving claims resulting from adverse reactions to mandated childhood vaccines. A tax ($0.75 per antigen) is levied on vaccines and held in a fund to be used for damages. Awards include economic costs, pain and suffering, estimated costs of future care and attorney fees. A similar program could be established for smallpox vaccine if it were sold on the open market. Congress has to create the surcharge, so for smallpox vaccine to be added to the VICP program, an act of Congress would be required.

5. **Extension of Executive Order**: PLE-5804 grants indemnity to military contractors if they produce equipment according to contract specifications. Under Boyle vs United Technologies Corp (487 U.S. 500, 1988), liability design defects cannot be imposed where 1. The government provided reasonable precise specifications; 2. The product conformed to specifications; 3. The supplier warned about dangers in the case of the product of which it (but not the government) was aware. Its possible, but not known, that this precedent extends to vaccines produced under government contract.

Potential Liabilities

The health risks associated with smallpox vaccine are well documented. Data from vaccination programs in the 1960's show the following frequencies of adverse reactions.

a. Fatalities: 0.5-2.5 per million
b. Disability: 0.25-1.5 per million
c. Hospitalization: 15-30 per million
d. Medical Attended: 875 per million

It is difficult to accurately estimate the expected liability vaccine manufacturers are exposed to. Persons with compromised immune systems are at greater risk to adverse reactions. The U.S. population has significantly more of these individuals now than in the 1960's. On the other hand, persons with previous exposure to the vaccine are at less risk. Approximately half of the population of the U.S. is at least 35 years of age or older and has probably been exposed to the vaccine. It is believed that the additional risks from persons with compromised immune systems far outweigh the reductions in risk to previous exposure. The numbers above express these differences in the population from the 1960's to the present. The higher risk estimates are believed to be more likely to apply to the present U.S. population.

Damages paid by the VICP program (option 4 above) include economic costs, pain and suffering, estimated costs of future care and attorney fees. Awards have ranged from $120.00 to $7.9 million. The average injury award since the inception of the VICP for both Pre-1988 and Post-1988 claims is $822,045. Awards for death cases are capped at $250,000 plus attorneys' fees/costs.

Industry Estimate

Acambis Incorporated has contracted with the Government to produce 40 million doses of smallpox vaccine. The contract specifies that Acambis acquire $225 million of insurance for liabilities associated with the development, testing and potential utilization of the vaccine. Acambis identified three risks that would result in potential liability. Based on settlement information from previous lawsuits involving similar injuries, Acambis estimates the following liabilities[1]:

[1] The CDC supplied this confidential information. It should not be made public.

1. Non-fatal Encephalpathies: Estimated frequency is 4.55 cases per million, or 182 cases per 40 million doses. Average liability is estimated to be $3 million per case (350 verdicts were examined with settlements ranging from $17,000 to $45 million – extreme settlements were discarded). Total liability is $546 million.
2. Non-fatal Scarring: Estimated frequency is 0.525 cases per million, or 21 cases per 40 million doses. Average liability is estimated to be $0.4 million per case (600 verdicts of similar injuries were examined ranging from $2,000 to $20 million – extreme settlements were discarded). Total liability is $8.4 million.
3. Death: Estimated frequency is 6.625 cases per million, or 265 cases per 40 million doses. Average liability is estimated to be $0.76 million per case (This is based on the present value of future earnings, a low estimate for the value of life. EPA, for example, uses $6.2 million). Total liability is $202 million.

Total estimated liability is $756.3 million -- approximately triple the insurance coverage. Instead of acquiring more insurance, Acambis advocates the use of consent forms at the time of innoculation to reduce liability risks. They also discuss the applicability of the Government contracts executive order (5 above).

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20502

November 6, 2001

MEMORANDUM FOR: DIANA FURCHTGOTT-ROTH

FROM: PETER FEATHER

SUBJECT: TORT LIABILITY AND TERRORISM

Introduction

The American civil liability system cost $161 billion in 1999, or 2 percent of the nation's gross domestic product, compared with 1.4 percent in 1970, and 0.6 percent in 1950. Breaking down tort costs, 24% go to litigants for their actual (economic) losses, and 22% to compensate for pain and suffering, 30% for lawyers fees and defense costs and 24% for administrative costs. Only 3 percent of liability claims are settled by court verdict. However, lawsuit verdicts have a disproportionate impact on liability costs because they influence the damage amount sought by plaintiffs and the size of out-of-court settlement.

Higher product prices, medical costs and insurance rates pay for the tort system. For example, it has been estimated that 55% of the price of a football helmet and 30% of the price of a stepladder are attributable to litigation risk cost. The extra cost imposed by liability costs from insurance on childhood vaccines accounts for 95% of the price. Studies have shown that physicians may prescribe unnecessary precautionary treatments, (referred to as "defensive medicine"), or avoid those they perceive as risky (referred to as "non-defensive medicine") in order to avoid non-financial litigation penalties such as harm to their reputations and the time and stress associated with a malpractice suit.

The Tort system serves the economically useful purpose of what economists refer to as internalizing externalities. In other words, it makes persons who injure others aware of their actions and act appropriately. If the awards or the expectation of the liability exceeds the actual damage, then too much cost is passed onto consumers and distortions in the economy occur. Although it is nearly impossible to know exactly what defines an excessive award, it is useful to examine trends in awards over time. The levels of jury awards have risen dramatically in this decade. These jury awards are used as precedents in out of court settlements. During a five year period from 1994 to 1999:

1. average death awards have risen from $1.1 million to $5.5 million;
2. average business negligence awards have risen from $0.7 million to $1.7 million;
3. average personal negligence awards have risen from $0.3 million to 3.0 million;
4. average products liability awards have risen from $1.7 million to $7.4 million

The tort system can also be useful in keeping undesirable (usually unsafe) products out of the market place. If the expected harm these products will create (as defined in the tort system) exceeds their benefits, then the tort system serves a useful function. However, if the expectation of liability greatly exceeds the actual harm that will be caused, then (net) beneficial products may be kept out of the market. Economic theory tells us that the resources that would be used to produce these goods will be used to produce the next best alternative. Therefore, the loss is not the value of the good that isn't produced, but rather the difference in the value of the good that isn't produced less the value of the next best alternative. Since only one of these goods is produced, it is difficult to assess this loss. Still, anecdotal evidence suggests that some products that may have a net benefit to society as a whole are withheld from the market place due to excessive concerns of liability from the tort system.

1. Because many lawyers are familiar with asbestos liability theories, Monsanto decided to not release a safe, biodegradable asbestos substitute into the market place over a decade ago. At this date, it has still not been commercially utilized.
2. Concerns over liability have resulted in withdrawals of medicines such as bendectin and thalidomide, and halted the production of vaccines such as smallpox and DPT.

The terrorist attack on September 11 has added to the problem. Insurance companies uncertain how to assess new liability risks are raising premiums and, in some cases, denying coverage. A new survey of insurance agents and brokers reports that businesses across the U.S. are seeing large increases in premiums and more restrictive policy terms. The third quarter survey, conducted by the Council of Insurance Agents and Brokers, indicates that insurance policies covering property damages have some of the largest increases. Approximately 25% of respondents said their customers were paying rates 30%-50% higher than the previous quarter. Some (14%) said their clients face increases of more than 50%. Almost half (44%) of agents and brokers report premium increases of at least 30% in umbrella liability coverage. Although insurance costs were expected to trend upward due to a slowing economy, the September 11 terrorist attacks have probably added to the cost increases.

Several industries have been impacted by higher insurance costs that may force many to either raise prices, or exit the market.

Airlines

Airlines carry insurance for public liability, passenger liability, property damage, and damage to its aircraft. The policies in place before September 11 typically contained limits of liability that are reported by one major insurer to max out at $2 billion. Anything above this level would be left uncovered by an airline's insurance policy. Absent the provisions in the Airline Transport System Stabilization Act, the airlines have a large liability exposure. *The New York Times* reported September 14, 2001, that "While airlines are insured, William Shernoff, a lawyer in Claremont, Calif., who specializes in litigation against insurance companies, said liability claims could easily exceed the coverage, forcing airlines to pay much of the cost of claims directly."

In the aftermath of September 11, these risks will be incorporated into insurance costs, and therefore be a cost of doing business. Absent resolution of insurance and liability issues, costs of flying will rise. These costs could be significant given the precedents set by recent plane crash awards ranging from $3.5 million per passenger (Swissair Flight 111) to $5.7 million per passenger (Pan Am Flight 103).

Transportation

Many freight carriers cannot afford to pay insurance. Insurance costs have increased 200%-300% in some cases. The American Trucking Association has documented reports of increases as high as 800% -1000% since September 11. Most of the increases are in "umbrella" liability policies. Over the past several years, the number of claims has fallen, but the cost per claim has risen. Fewer companies are willing to insure carriers, which may force some out of the business. It appears that there will be no way to insure against terrorist attacks in the future.

The American Bus Association reports a similar situation. Insurance costs before September 11 were scheduled to rise. Since September 11, they have risen more than expected. On average, premiums have risen 25%-50%, and some as high as 100%. The biggest concern is that insurance companies will refuse to pay for "war risks" or acts of terrorism. Most bus operators are small companies with five or fewer buses. This type of risk will likely drive many out of business

Construction

The Contractor's Association of America reports that Insurance premiums have been trending up in the construction sector, especially in the areas of worker's compensation and liability to the public. The biggest concern in the contracting industry is obtaining insurance in conjunction with the construction of public projects. Presently, insurers will not provide surety bonds unless the contractor has a net worth of at least $50 million. The previous net worth limit was $5 million. This requirement forces all but the largest companies out of the public projects construction sector.

Mail Services

There will be little if any impact on the U.S. Postal Service. The U.S. Postal Service is protected under the Federal Tort Claims Ac and is self-insured. Employee can be compensated exclusively through the Federal Employee Compensation Act. Many mental distress claims are expected, but this legislation makes winning these difficult. Through a discretionary function exemption, the USPS cannot be sued on the grounds of insufficient security.

In the past, United Parcel Service has not been held liable for items they have shipped (e.g., forearms used to commit crimes). They do have a fleet of 240 jet aircraft and are buying FAA act of war insurance. UPS is also experiencing a large insurance cost increases for their vehicle fleet.

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
Sent: 11/14/2001 4:35:59 AM
Subject: : PRA questions

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ( "Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:14-NOV-2001 09:35:59.00
SUBJECT:: PRA questions
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
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FYI: I received, and am sending you, two more sets of questions from
Chairman Horn. The requested response date is Nov. 20. We'll try to have
draft responses for your review by the end of the week.
```

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 11/14/2001 6:43:00 AM
Subject: : Re: Grant notification laws

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-NOV-2001 11:43:00.00
SUBJECT:: Re: Grant notification laws
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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what about notifying members of congress before the $$ is sent out from the agencies?

Brett M. Kavanaugh
11/13/2001 10:45:36 PM
Record Type: Record

To: Adrian G. Gray/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Grant notification laws

should not pre-notify recipients except per the ordinary processes of the agency providing the grant.

From: Adrian G. Gray on 11/01/2001 10:39:33 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Grant notification laws

Brett - do you know who I could speak to about Grant notification laws? I gather there are some laws that restrict early notification of grant announcements from the Administration. Let me know if there is somebody who would know in your shop.

AG

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 11/14/2001 6:58:08 AM
Subject: : Edith Brown Clement

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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-NOV-2001 11:58:08.00
SUBJECT:: Edith Brown Clement
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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was confirmed 99-0 last night. She will be a very solid addition to CA5.
Good news for once on this front.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Holbrook/WHO/EOP@EOP [WHO] <Ashley Holbrook>
Sent: 11/14/2001 7:15:55 AM
Subject: : PRA
Attachments: P_J9UP4004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-NOV-2001 12:15:55.00
SUBJECT:: PRA
TO:Ashley Holbrook ( CN=Ashley Holbrook/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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This is electronic version of letter Judge sent to Chairman Horn
in House.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_J9UP4004_WHO.TXT_1>
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November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13th or 15th or 20th year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

REV_00135223

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Steve Horn
United States House of Representatives
Washington, DC 20515

cc: The Honorable Janice Schakowsky

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Holbrook/WHO/EOP@EOP [WHO] <Ashley Holbrook>
Sent: 11/14/2001 7:17:45 AM
Subject: : PRA more

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CREATION DATE/TIME:14-NOV-2001 12:17:45.00
SUBJECT:: PRA more
TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This is Judge Gonzales' USA Today op-ed that appeared Monday.

President Bush's recent executive order establishes sensible procedures for making public the records of former presidents. The order fulfills the president's statutory obligation to implement the Presidential Records Act, as well as his obligations under a 1977 Supreme Court ruling which held that former presidents continue to have the right to assert privileges over their records even after their term has ended.
Neither President Bush nor Congress has the power or authority to ignore that Supreme Court ruling. President Bush's order therefore allows a former President to assert privileges to protect sensitive documents, such as records that could impact national security. It is clear that virtually all criticism of President Bush's order is actually criticism of the Supreme Court decision guaranteeing the rights of former Presidents to assert privileges over their records.
The Presidential Records Act fails to establish a procedure for former Presidents to
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assert their constitutionally guaranteed privilege. President Bush's order provides such procedures and sets a reasonable time frame for review of records and assertion of privileges. Importantly, the executive order does not expand or encourage the assertion of any privilege available to the former president.
Under President Bush's order, a large portion of Presidential records, for example those not covered by privilege, will be released no later than 12 years after President's term is over, as established by the Presidential Records Act.
In addition, history has proved that most former Presidents release the vast majority of even their privileged documents. Before the Presidential Records Act took effect in 1981, former Presidents were under no legal obligation to disclose any records, but those who visit the libraries of Presidents Kennedy, Ford or Carter know the valuable array of historical materials that are available. President Bush's executive order pre-

serves this rich tradition.

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/14/2001 11:50:46 AM
Subject: : Re: Meeting on the Hill

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-NOV-2001 16:50:46.00
SUBJECT:: Re: Meeting on the Hill
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Can you go? I am happy to attend with you if you like, but think you should be there.

---------- Forwarded by Kristen Silverberg/WHO/EOP on 11/14/2001 04:50 PM ----------

Jean M. Russell 11/14/2001 04:04:12 PM

Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Meeting on the Hill

Tomorrow Larry Lindsey is meeting with Congressman LaFalce regarding insurance. Marc Sumerlin suggested that one of you attend the meeting with Larry and himself. We are still working out the time but believe it will be sometime in the afternoon. Are either of you available to attend. The meeting will be at the Congressman's office in the Rayburn building.

thanks!
Jeannie
---------- Forwarded by Jean M. Russell/OPD/EOP on 11/14/2001 03:53 PM ----------

D. Marcus Sumerlin
11/14/2001 03:34:22 PM
Record Type: Record

To: Jean M. Russell/OPD/EOP@EOP
cc: leslie a. mooney/opd/eop@eop
bcc:
Subject: Re: Meeting on the Hill

yes -- should also invite brett kavanaugh or kristen silverberg because it will be about legal provisions.

Jean M. Russell 11/14/2001 03:13:01 PM

Record Type: Record

To: D. Marcus Sumerlin/OPD/EOP@EOP
cc: Leslie A. Mooney/OPD/EOP@EOP
Subject: Meeting on the Hill

Pete Rowan called from Leg. Affairs and asked whether LL was available to meet with Congressman LaFalce from New York about Insurance.
LL agreed on the phone--are you interested in attending?

Jeannie
Rayburn 2310

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Logan M. Walters/WHO/EOP [WHO] <Logan M. Walters>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP [WHO] <Scott Stanzel>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John_W._Howard@oa.eop.gov [UNKNOWN] <John_W._Howard@oa.eop.gov>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP [WHO] <Christal R. West>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott_Jeffcoat@oa.eop.gov [UNKNOWN] <Scott_Jeffcoat@oa.eop.gov>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP [WHO] <L. Camille Welborn>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Heather L. West/WHO/EOP [WHO] <Heather L. West>;Gregory J. Jenkins/WHO/EOP [WHO] <Gregory J. Jenkins>;Tobin_K._Harvey@oa.eop.gov [UNKNOWN] <Tobin_K._Harvey@oa.eop.gov>;Bradley A. Blakeman/WHO/EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP [WHO] <Kara G. Figg>;Amanda L. Moore/WHO/EOP [WHO] <Amanda L. Moore>;Mary Elizabeth Farr/WHO/EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP [WHO] <Anne Heiligenstein>;Melanie A. Jackson/WHO/EOP [WHO] <Melanie A. Jackson>;Ashley M. Snee/OVP/EOP [OVP] <Ashley M. Snee>;Debra Heiden/OVP/EOP [OVP] <Debra Heiden>;Douglas_D._McCormick@oa.eop.gov [UNKNOWN] <Douglas_D._McCormick@oa.eop.gov>;Mary J. Matalin/OVP/EOP [OVP] <Mary J. Matalin>;I._Lewis_Libby@oa.eop.gov [UNKNOWN] <I._Lewis_Libby@oa.eop.gov>;Charles D. McGrath Jr/OVP/EOP [OVP] <Charles D. McGrath Jr>;Jennifer H. Mayfield/OVP/EOP [OVP] <Jennifer H. Mayfield>;Ethan A. Hastert/OVP/EOP [OVP] <Ethan A. Hastert>;Juleanna R.

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Sent: 11/15/2001 1:46:30 AM

Subject: : The War on Terrorism -- November 15, 2001

Attachments: 04583_p_5afq4004_who.txt_1.doc

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CREATION DATE/TIME:15-NOV-2001 06:46:30.00
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READ:UNKNOWN
TO:Michael J. Gerson ( CN=Michael J. Gerson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Krista L. Ritacco ( CN=Krista L. Ritacco/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Peter H. Wehner ( CN=Peter H. Wehner/OU=WHO/O=EOP [ WHO ] )
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TO:Matthew O. Scully ( CN=Matthew O. Scully/OU=WHO/O=EOP [ WHO ] )
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TO:David Frum ( CN=David Frum/OU=WHO/O=EOP [ WHO ] )
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TO:Anthony J. Gibson ( CN=Anthony J. Gibson/OU=OSTP/O=EOP [ OSTP ] )
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TO:John D. Gibson ( CN=John D. Gibson/OU=NSC/O=EOP [ NSC ] )
READ:UNKNOWN
TO:Edmund A. Walsh ( CN=Edmund A. Walsh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov ( Karl_Doenges@oa.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:William T. Griffin ( CN=William T. Griffin/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Taylor S. Gross ( CN=Taylor S. Gross/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Wendy L. Nipper ( CN=Wendy L. Nipper/OU=WHO/O=EOP [ WHO ] )
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TO:Christopher J. Orr ( CN=Christopher J. Orr/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Scott Stanzel ( CN=Scott Stanzel/OU=WHO/O=EOP [ WHO ] )
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
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TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP [WHO])
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TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP [OVP])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John_W._Howard@oa.eop.gov (John_W._Howard@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Scott_Jeffcoat@oa.eop.gov (Scott_Jeffcoat@oa.eop.gov [UNKNOWN])
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TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
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TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP [WHO])
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TO:Tobin_K._Harvey@oa.eop.gov (Tobin_K._Harvey@oa.eop.gov [UNKNOWN])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP [OVP])
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TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP [OVP])
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TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP [OVP])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP [OVP])
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TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
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TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP [WHO])
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TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
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READ:UNKNOWN

TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lisa_T._Cummins@oa.eop.gov (Lisa_T._Cummins@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mark_V._Scott@oa.eop.gov (Mark_V._Scott@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
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TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
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TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
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TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
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TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
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TO:David_F._Lussier@oa.eop.gov (David_F._Lussier@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
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TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP [OPD])
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TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])

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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
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TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:ekertz@doc.gov (ekertz@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:jdyke@doc.gov (jdyke@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:melliott@doc.gov (melliott@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Chesenterp@aol.com (Chesenterp@aol.com [UNKNOWN])
READ:UNKNOWN
TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
READ:UNKNOWN
TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
READ:UNKNOWN
TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])

READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP [OVP])

READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ali H. Tulbah (CN=Ali H. Tulbah/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:ginni.thomas@heritage.org (ginni.thomas@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
READ:UNKNOWN
TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:bberrytx@aol.com (bberrytx@aol.com [UNKNOWN])
READ:UNKNOWN
TO:jenniferecrooks@hotmail.com (jenniferecrooks@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:rsavarese@kpmg.com (rsavarese@kpmg.com [UNKNOWN])
READ:UNKNOWN
TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
READ:UNKNOWN
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TO:campsite@nts-online.net (campsite@nts-online.net [UNKNOWN])
READ:UNKNOWN
TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:mona@gregabbottcampaign.com (mona@gregabbottcampaign.com [UNKNOWN])
READ:UNKNOWN
TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])
READ:UNKNOWN
TO:creazzo@hotmail.com (creazzo@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:Natalie S. Wozniak (CN=Natalie S. Wozniak/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jessica.incitto@mail.house.gov (jessica.incitto@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jonathan.grella@mail.house.gov (jonathan.grella@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
READ:UNKNOWN
TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
READ:UNKNOWN
TO:pat.shortridge@enron.com (pat.shortridge@enron.com [UNKNOWN])
READ:UNKNOWN
TO:richard.mcbride@glo.state.tx.us (richard.mcbride@glo.state.tx.us [UNKNOWN])

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TO:jerogan@venable.com (jerogan@venable.com [UNKNOWN])
READ:UNKNOWN
TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
READ:UNKNOWN
TO:kathicard@springmail.com (kathicard@springmail.com [UNKNOWN])
READ:UNKNOWN
TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
)
READ:UNKNOWN
TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
READ:UNKNOWN
TO:Kirk.Boyle@mail.house.gov (Kirk.Boyle@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Duncan Campbell (CN=Duncan Campbell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:patrick.rhode@sba.gov (patrick.rhode@sba.gov [UNKNOWN])
READ:UNKNOWN
TO:YRobinso@pd.state.gov (YRobinso@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:robert.traynham@src.senate.gov (robert.traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
READ:UNKNOWN
TO:Ansley C. Tillman (CN=Ansley C. Tillman/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:jwillis@doc.gov (jwillis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:molly.millerwise@mail.house.gov (molly.millerwise@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jrendon@rendon.com (jrendon@rendon.com [UNKNOWN])
READ:UNKNOWN
TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
READ:UNKNOWN
TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
READ:UNKNOWN
TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:jfischman@pd.state.gov (jfischman@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth P. Austin (CN=Elizabeth P. Austin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jane M. Cook (CN=Jane M. Cook/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Heidi K. Marquez (CN=Heidi K. Marquez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:McDonaldDJ@state.gov (McDonaldDJ@state.gov [UNKNOWN])
READ:UNKNOWN

TO:bitterr@state.gov (bitterr@state.gov [UNKNOWN])
READ:UNKNOWN
TO:schriverrg@state.gov (schriverrg@state.gov [UNKNOWN])
READ:UNKNOWN
TO:kelseyt@state.gov (kelseyt@state.gov [UNKNOWN])
READ:UNKNOWN
TO:mike_buttry@hagel.senate.gov (mike_buttry@hagel.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:echeney@ifc.org (echeney@ifc.org [UNKNOWN])
READ:UNKNOWN
TO:taskforce-1-pd@state.gov (taskforce-1-pd@state.gov [UNKNOWN])
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TO:wparker@pd.state.gov (wparker@pd.state.gov [UNKNOWN])
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TO:jmcgovern@pd.state.gov (jmcgovern@pd.state.gov [UNKNOWN])
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TO:jbjohnson@pd.state.gov (jbjohnson@pd.state.gov [UNKNOWN])
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TO:MeierAW@state.gov (MeierAW@state.gov [UNKNOWN])
READ:UNKNOWN
TO:john.higginbotham@dfait-maeci.gc.ca (john.higginbotham@dfait-maeci.gc.ca [UNKNOWN])
READ:UNKNOWN
TO:arif.lalani@dfait-maeci.gc.ca (arif.lalani@dfait-maeci.gc.ca [UNKNOWN])
READ:UNKNOWN
TO:shalom@pmo.gov.il (shalom@pmo.gov.il [UNKNOWN])
READ:UNKNOWN
TO:agoldstein@hadassah.org (agoldstein@hadassah.org [UNKNOWN])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:acampbell@no10.x.gsi.gov.uk (acampbell@no10.x.gsi.gov.uk [UNKNOWN])
READ:UNKNOWN
TO:torie.clarke@osd.mil (torie.clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Note: Some recipients have been dropped due to syntax errors.Please refer to the "$AdditionalHeaders" item for the complete headers.
Good morning and have a great day.

(See attached file: CIC -- Daily November 15.doc)
- CIC -- Daily November 15.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <04583_p_5afq4004_who.txt_1>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 11/15/2001 5:27:55 AM
Subject: : Re: need bio info on 3 judge candidates

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-NOV-2001 10:27:55.00
SUBJECT:: Re: need bio info on 3 judge candidates
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

basic bio

Jason B. Torchinsky
11/15/2001 10:24:42 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: need bio info on 3 judge candidates

Memos or just basic bio information?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 11/16/2001 3:59:51 AM

Subject: : Monday, Nov. 19 JSC Prep - 2:00-2:30 (instead of 3:30-4:00)

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-NOV-2001 08:59:51.00
SUBJECT:: Monday, Nov. 19 JSC Prep - 2:00-2:30 (instead of 3:30-4:00)
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Sent: 11/16/2001 1:28:12 AM
Subject: : The War on Terrorism -- November 16, 2001
Attachments: F_2UCR4004_NSC.TXT_1.doc

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov (James_R._Wilkinson@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:16-NOV-2001 06:28:12.00
SUBJECT:: The War on Terrorism -- November 16, 2001
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READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Deborah_K._Hair@oa.eop.gov (Deborah_K._Hair@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
READ:UNKNOWN

TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:jdyke@doc.gov (jdyke@doc.gov [UNKNOWN])
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TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne C. Guilsher (CN=Anne C. Guilsher/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN

TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
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TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN

TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John Fenzel (CN=John Fenzel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
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TO:ginni.thomas@heritage.org (ginni.thomas@heritage.org [UNKNOWN])
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TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:mona@gregabbottcampaign.com (mona@gregabbottcampaign.com [UNKNOWN])
READ:UNKNOWN
TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])
READ:UNKNOWN
TO:creazzo@hotmail.com (creazzo@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jessica.incitto@mail.house.gov (jessica.incitto@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jonathan.grella@mail.house.gov (jonathan.grella@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
READ:UNKNOWN
TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
READ:UNKNOWN
TO:pat.shortridge@enron.com (pat.shortridge@enron.com [UNKNOWN])
READ:UNKNOWN
TO:richard.mcbride@glo.state.tx.us (richard.mcbride@glo.state.tx.us [UNKNOWN])
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TO:jerogan@venable.com (jerogan@venable.com [UNKNOWN])
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READ:UNKNOWN
TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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READ:UNKNOWN
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READ:UNKNOWN
TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
READ:UNKNOWN
TO:Kirk.Boyle@mail.house.gov (Kirk.Boyle@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Duncan Campbell (CN=Duncan Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
READ:UNKNOWN
TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:patrick.rhode@sba.gov (patrick.rhode@sba.gov [UNKNOWN])
READ:UNKNOWN
TO:YRobinso@pd.state.gov (YRobinso@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:robert.traynham@src.senate.gov (robert.traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
READ:UNKNOWN
TO:Ansley C. Tillman (CN=Ansley C. Tillman/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:jwillis@doc.gov (jwillis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:molly.millerwise@mail.house.gov (molly.millerwise@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jrendon@rendon.com (jrendon@rendon.com [UNKNOWN])

READ:UNKNOWN
TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
READ:UNKNOWN
TO:Gian-Carlo A. Peressutti (CN=Gian-Carlo A. Peressutti/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
READ:UNKNOWN
TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:jfischman@pd.state.gov (jfischman@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth P. Austin (CN=Elizabeth P. Austin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jane M. Cook (CN=Jane M. Cook/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heidi K. Marquez (CN=Heidi K. Marquez/OU=WHO/O=EOP@EOP [WHO])
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TO:McDonaldDJ@state.gov (McDonaldDJ@state.gov [UNKNOWN])
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READ:UNKNOWN
TO:comm@rnchq.org (comm@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:acampbell@no10.x.gsi.gov.uk (acampbell@no10.x.gsi.gov.uk [UNKNOWN])

READ:UNKNOWN
TO:torie.clarke@osd.mil (torie.clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Good morning. Nice sunrise out there. Have a great day.

(See attached file: CIC -- Daily November 16.doc)
- CIC -- Daily November 16.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_2UCR4004_NSC.TXT_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

11/16/01

Today's Schedule (EST)

9:30a EST	Deputy Secretary of Defense Wolfowitz to meet the Secretary of National Defense for the Phillipines.
12:30p EST	Daily State Department Press Briefing with Ambassador Rick Boucher.
1:30p EST	Daily Department of Defense Press Briefing by Rear Admiral Stufflebeem.
2:00p EST	Defense Intelligence Agency background briefing on Central Asia.

In Case You Missed It…

"This is no longer the center of terrorism – tell your people that. We are happy to be rid of the Taliban." (Mohamad Ahmad; The Daily Mirror [U.K.], 11/14/01)

Recent Key Quotes & Developments

- "Many Kabul residents said seeing the Taliban depart – hastily during the night, with their belongings piled high on trucks – was like having a heavy veil lifted after a long period of darkness." (*The Washington Post*, 11/14/01)
- "For five years in a two-story house in central Kabul, two sisters secretly taught dozens of girls in defiance of a Taliban edict that said females couldn't go to school…The sisters risked arrest, and beatings, for teaching the girls from old textbooks that they had bought in the bazaar, and for writing on blackboards they had made from two pieces of plywood, painted black and nailed to the wall." (*The Los Angeles Times*, 11/15/01)
- …[Afghan women] are smiling, and speaking without fear of punishment. It is as if a weight has been lifted off their shoulders and they can breathe again. One woman beckoned me inside her house and kissed me. She was wearing just a scarf. "It is so nice to be able to say hello," she said." (Kate Clark; The Independent [U.K.], 11/15/01)
- "Jamila Mujahid, 40, a radio announcer sacked by the Taliban five years ago, read the first words on Radio Afghanistan — and afterwards she said: 'I thought this time would never come.'" (Sue Evison; The Sun [U.K.], 11/15/01)

Looking Ahead

Tomorrow First Lady Laura Bush will deliver the weekly presidential radio address. The First Lady will kick off a comprehensive effort to focus on the brutality against women and children by the Al-Qaida terrorist network and the regime it supports in Afghanistan – the Taliban.

Message

- Afghan women know, through hard experience, what the rest of the world is discovering: The brutal oppression of women is a central goal of the terrorists.
- Life under the Taliban is so hard and repressive, even small displays of joy are outlawed – children aren't allowed to fly kites; their mothers face beatings for laughing out loud. Women cannot work outside the home, or even leave their homes by themselves.
- The severe repression and brutality against women in Afghanistan is not a matter of legitimate religious practice. Muslims around the world have condemned the brutal degradation of women and children by the Taliban regime.
- Al Qaida and the Taliban in Afghanistan have shown us the world the terrorists would like to impose on the rest of us.
- All of us have an obligation to speak out. We may come from different backgrounds and faiths – but parents the world over love our children. We respect our mothers and sisters and daughters. Fighting brutality against women and children is not the expression of a specific culture; it is the acceptance of our common humanity – a commitment shared by people of good will on every continent.

Facts of the Day

- Since 10/1/01, the United States has provided nearly $120 million in aid to Afghanistan and has supplied more than 80 percent of all food aid to vulnerable Afghans through the U.N. World Food Program. (USAID news release, 11/15/01)
- USAID is providing $5.5 million to the French Humanitarian Organization ACTED, more than half of its operation in Khwaja Bahawudin [Afghanistan], for food, blankets, winter clothing, and shelter for internally displaced persons. USAID is funding similar humanitarian efforts across northern Afghanistan. (USAID news release, 11/15/01)

REV_00135351

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
Sent: 11/16/2001 3:51:37 AM
Subject: : Re: letter for counsel
Attachments: P_N5FR4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-NOV-2001 08:51:37.00
SUBJECT:: Re: letter for counsel
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This letter is fine.

Katherine G. Marinis
11/15/2001 06:22:25 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: letter for counsel

Brett- Ken wants to send out a note to some leaders in the coal industry who came to the WH for a meeting. He thought we should run it by counsel b/c they discussed ongoing legislation in the meeting. thanks
---------- Forwarded by Katherine G. Marinis/WHO/EOP on 11/15/2001 06:10 PM ----------

David McMaster
11/14/2001 08:10:26 AM
Record Type: Record

To: Katherine G. Marinis/WHO/EOP@EOP
cc:
Subject: letter for counsel

Here is the letter Ken wants counsel to check over to see if it is ok to send out.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_N5FR4004_WHO.TXT_1>

November 14, 2001

«PRE» «FIRST» «LAST» «SUFF»
«COMPANY»
«ADD1»
«ADD2»
«CITY», «ST» «ZIP»

Dear «SAL»,

Thank you for providing me with the opportunity to meet with you and discuss coal related issues.

If I can ever be of assistance to you in the future, please do not hesitate to give me a call. My office number is (202) 456-5240. Thanks again.

Sincerely,

Kenneth B. Mehlman
Deputy Assistant to the President
and Director of Political Affairs

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP [WHO] <Marcus J. Mollmann>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP [WHO] <David Frum>;Edmund A. Walsh/WHO/EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP [WHO] <Christopher J. Orr>;Jennifer K. Millerwise/WHO/EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;John_W._Howard@oa.eop.gov [UNKNOWN] <John_W._Howard@oa.eop.gov>;Virginia T. Gregory/WHO/EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott_Jeffcoat@oa.eop.gov [UNKNOWN] <Scott_Jeffcoat@oa.eop.gov>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP [WHO] <Kasey S. Pipes>;Kenneth B. Mehlman/WHO/EOP [UNKNOWN] <Kenneth B. Mehlman>;Collister W. Johnson/WHO/EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO/EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Gregory J. Jenkins/WHO/EOP [WHO] <Gregory J. Jenkins>;Tobin_K._Harvey@oa.eop.gov [UNKNOWN] <Tobin_K._Harvey@oa.eop.gov>;Bradley A. Blakeman/WHO/EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP [WHO] <Kara G. Figg>;Danner_R._Bethel@oa.eop.gov [UNKNOWN] <Danner_R._Bethel@oa.eop.gov>;Mary Elizabeth Farr/WHO/EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP [WHO] <Anne Heiligenstein>;Melanie A. Jackson/WHO/EOP [WHO] <Melanie A. Jackson>;Ashley M. Snee/OVP/EOP [OVP] <Ashley M. Snee>;Debra Heiden/OVP/EOP [OVP] <Debra Heiden>;Douglas_D._McCormick@oa.eop.gov [UNKNOWN] <Douglas_D._McCormick@oa.eop.gov>;I._Lewis_Libby@oa.eop.gov [UNKNOWN] <I._Lewis_Libby@oa.eop.gov>;Charles D. McGrath Jr/OVP/EOP [OVP] <Charles D. McGrath Jr>;Ethan A. Hastert/OVP/EOP [OVP] <Ethan A. Hastert>;Juleanna R. Glover/OVP/EOP [OVP] <Juleanna R. Glover>;Megan D. Moran/OVP/EOP [OVP] <Megan D. Moran>;David S. Addington/OVP/EOP [OVP] <David S. Addington>;Cesar Conda/OVP/EOP [OVP] <Cesar Conda>;Ronald I. Christie/OVP/EOP [OVP] <Ronald I. Christie>;Nina Rees/OVP/EOP [OVP] <Nina Rees>;Margita N. Thompson/OVP/EOP [OVP] <Margita N. Thompson>;Nancy P.

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Sent: 11/16/2001 7:56:43 AM

Subject: : The Taliban War on Women & Children

Attachments: P_PSQR4004_CEA.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:16-NOV-2001 12:56:43.00
SUBJECT:: The Taliban War on Women & Children
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READ:UNKNOWN
TO:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP [ WHO ] )
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TO:Karl_Doenges@oa.eop.gov ( Karl_Doenges@oa.eop.gov [ UNKNOWN ] )
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TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
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TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP [WHO])
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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP [WHO])
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TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
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TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
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TO:Sean I. McCormack (CN=Sean I. McCormack/OU=NSC/O=EOP [NSC])
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TO:Hannah Siemers (CN=Hannah Siemers/OU=WHO/O=EOP [WHO])
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Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.

Attached are talking points for the new initiative for Afghan women that
the
First Lady will kick off this weekend.

(See attached file: CIC -- Women.doc)
- CIC -- Women.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PSQR4004_CEA.TXT_1>

THE TALIBAN'S WAR AGAINST WOMEN & CHILDREN

HELPING REBUILD THE AFGHAN FAMILY

First Lady Laura Bush will kick off an effort to focus on the brutality against women and children by the al-Qaida terrorist network and the Taliban regime it supports in Afghanistan. That regime is now in retreat across much of the country, and the people of Afghanistan – especially women – are rejoicing. Afghan women know, through hard experience, what the rest of the world is discovering: The brutal oppression of women is a central goal of the terrorists.

LIFE BEFORE THE TALIBAN

Before the Taliban regime took power, Afghan women were protected by law, had important freedoms and were active participants in society:

- In 1977, women comprised over 15 percent of Afghanistan's highest legislative body;
- By the early 1990s women comprised 70 percent of schoolteachers;
- Women made up 50 percent of government workers; and
- 40 percent of doctors in Kabul were women.

Then came the Taliban and their destruction of the family.

LIFE UNDER THE TALIBAN

The Taliban quickly became one of the world's most brutal regimes and leading perpetrators of human rights abuses.

The Taliban regime has especially targeted Afghan women and children, taking away their basic freedoms, splintering their families, putting their lives at risk, and relegating them to poverty. For example, the Taliban:

- Forbid the schooling for girls over the age of eight;
- Shut down the women's university;
- Banned women from working (stripping a society in desperate need of trained professionals of half its assets);
- Restricted access to medical care for women;
- Brutally enforced a restrictive dress code;
- Forbade women from moving about their communities freely.
- Beat women for laughing out loud.

As many as 50,000 widows, have lost husbands and other male relatives in the course of Afghanistan's long civil war. Forbidden from working, they have been forced to sell all of their possessions and beg in the streets, or worse, in order to provide for themselves and their families.

The Taliban's disregard for its people doesn't stop there:

- More than 10 million children in Afghanistan have suffered under years of civil war and drought and now suffer under the repressive Taliban regime.
- One in four Afghan children will not make it to their fifth birthday.
- Afghanistan ranks number one worldwide in maternal mortality.
- One in three Afghan children is an orphan.
- Almost 1/2 of Afghan children suffer chronic malnutrition.

ISLAM RESPECTS WOMEN & CHILDREN

Islam has a tradition of protecting the rights of women and children, and supporting the family.

The Taliban regime has cruelly reduced women and girls to poverty, poor health, and illiteracy – unlike the treatment of women in the Muslim world or following the tenets of Islam.

Muslims around the world have condemned the brutal degradation of women and children by the Taliban regime. The poverty, poor health, and illiteracy that the terrorists and the Taliban have imposed on women in Afghanistan do not conform with the treatment of women in most of the Islamic world, where women make important contributions in their societies. Only the terrorists and the Taliban forbid education to women. Only the terrorists and the Taliban threaten to pull out women's fingernails for wearing nail polish. The plight of women and children in Afghanistan is a matter of deliberate human cruelty, carried out by those who seek to intimidate and control.

Islam is a religion that respects women and humanity. The Taliban respects neither.

REBUILDING THE AFGHAN FAMILY

We are committed to helping rebuild the Afghan family.

- We support a broadly-based and representative post-Taliban government that protects its citizens and preserves basic human rights for women and children – Afghan women have an important role to play in the future of Afghanistan.
- Even before September 11, the U.S. was the largest humanitarian donor to the people of Afghanistan.
- Since September 11 the U.S. has dropped more than 1.5 million meals into Afghanistan.
- The U.S. is working overtime to preposition food, blankets, and other important relief supplies to help Afghans face the upcoming harsh winter.
- Recent military successes against the Taliban can best be described as humanitarian successes for Afghan women and children. Seizing control of key cities from the Taliban will open humanitarian access to those Afghans who suffer the most.
- With U.S. support, the World Food Program is exceeding its objectives for food deliveries to the Afghan people. With U.S. support, the World Food Program has increased its daily food delivery in Afghanistan from 200 tons daily to 2,400 tons daily.
- In the first half of November, the World Food Program delivered over 30,000 metric tons of food into Afghanistan. This represented the largest amount ever moved by the WFP in Afghanistan. In the entire month of October, the WFP moved 29,000 metric tons of food into Afghanistan.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
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Subject: : interview HELP

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Judge may not be able to do 3 MD PA interviews today from 1 to
2:30. Can anyone step in to do them with me?
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To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
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Subject: : Re: 100 plaintiffs

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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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excellent

I have an idea; call when you can
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From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

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Sent: 11/16/2001 7:52:29 AM
Subject: : The Taliban War on Women & Children
Attachments: F_TMQR4004_OA.TXT_1.doc

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-NOV-2001 12:52:29.00
SUBJECT:: The Taliban War on Women & Children
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
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TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov @ inet [UNKNOWN])
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TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov @ inet [UNKNOWN])
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TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov @ inet [UNKNOWN])
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TO:roy-stuart@dol.gov (roy-stuart@dol.gov @ inet [UNKNOWN])
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TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
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TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
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TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
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TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
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TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
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TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
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TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
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TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@EOP [WHO])
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TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
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TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
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TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
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TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
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TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
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TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])

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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
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TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
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Attached are talking points for the new initiative for Afghan women that
the First Lady will kick off this weekend.

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THE TALIBAN'S WAR AGAINST WOMEN & CHILDREN

HELPING REBUILD THE AFGHAN FAMILY

First Lady Laura Bush will kick off an effort to focus on the brutality against women and children by the al-Qaida terrorist network and the Taliban regime it supports in Afghanistan. That regime is now in retreat across much of the country, and the people of Afghanistan – especially women – are rejoicing. Afghan women know, through hard experience, what the rest of the world is discovering: The brutal oppression of women is a central goal of the terrorists.

LIFE BEFORE THE TALIBAN

Before the Taliban regime took power, Afghan women were protected by law, had important freedoms and were active participants in society:

- In 1977, women comprised over 15 percent of Afghanistan's highest legislative body;
- By the early 1990s women comprised 70 percent of schoolteachers;
- Women made up 50 percent of government workers; and
- 40 percent of doctors in Kabul were women.

Then came the Taliban and their destruction of the family.

LIFE UNDER THE TALIBAN

The Taliban quickly became one of the world's most brutal regimes and leading perpetrators of human rights abuses.

The Taliban regime has especially targeted Afghan women and children, taking away their basic freedoms, splintering their families, putting their lives at risk, and relegating them to poverty. For example, the Taliban:

- Forbid the schooling for girls over the age of eight;
- Shut down the women's university;
- Banned women from working (stripping a society in desperate need of trained professionals of half its assets);
- Restricted access to medical care for women;
- Brutally enforced a restrictive dress code;
- Forbade women from moving about their communities freely.
- Beat women for laughing out loud.

As many as 50,000 widows, have lost husbands and other male relatives in the course of Afghanistan's long civil war. Forbidden from working, they have been forced to sell all of their possessions and beg in the streets, or worse, in order to provide for themselves and their families.

The Taliban's disregard for its people doesn't stop there:

- More than 10 million children in Afghanistan have suffered under years of civil war and drought and now suffer under the repressive Taliban regime.
- One in four Afghan children will not make it to their fifth birthday.
- Afghanistan ranks number one worldwide in maternal mortality.
- One in three Afghan children is an orphan.
- Almost 1/2 of Afghan children suffer chronic malnutrition.

ISLAM RESPECTS WOMEN & CHILDREN

Islam has a tradition of protecting the rights of women and children, and supporting the family.

The Taliban regime has cruelly reduced women and girls to poverty, poor health, and illiteracy – unlike the treatment of women in the Muslim world or following the tenets of Islam.

Muslims around the world have condemned the brutal degradation of women and children by the Taliban regime. The poverty, poor health, and illiteracy that the terrorists and the Taliban have imposed on women in Afghanistan do not conform with the treatment of women in most of the Islamic world, where women make important contributions in their societies. Only the terrorists and the Taliban forbid education to women. Only the terrorists and the Taliban threaten to pull out women's fingernails for wearing nail polish. The plight of women and children in Afghanistan is a matter of deliberate human cruelty, carried out by those who seek to intimidate and control.

Islam is a religion that respects women and humanity. The Taliban respects neither.

REBUILDING THE AFGHAN FAMILY

We are committed to helping rebuild the Afghan family.

- We support a broadly-based and representative post-Taliban government that protects its citizens and preserves basic human rights for women and children – Afghan women have an important role to play in the future of Afghanistan.
- Even before September 11, the U.S. was the largest humanitarian donor to the people of Afghanistan.
- Since September 11 the U.S. has dropped more than 1.5 million meals into Afghanistan.
- The U.S. is working overtime to preposition food, blankets, and other important relief supplies to help Afghans face the upcoming harsh winter.
- Recent military successes against the Taliban can best be described as humanitarian successes for Afghan women and children. Seizing control of key cities from the Taliban will open humanitarian access to those Afghans who suffer the most.
- With U.S. support, the World Food Program is exceeding its objectives for food deliveries to the Afghan people. With U.S. support, the World Food Program has increased its daily food delivery in Afghanistan from 200 tons daily to 2,400 tons daily.
- In the first half of November, the World Food Program delivered over 30,000 metric tons of food into Afghanistan. This represented the largest amount ever moved by the WFP in Afghanistan. In the entire month of October, the WFP moved 29,000 metric tons of food into Afghanistan.

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Reid/WHO/EOP [WHO] <Peter Reid>;Allison Barber/WHO/EOP [WHO] <Allison
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<Karl C. Rove>;Stephen J. Hadley/NSC/EOP [NSC] <Stephen J.
Hadley>;Pbassett@no10.x.gsi.gov.uk [UNKNOWN]
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McCormack/NSC/EOP [NSC] <Sean I. McCormack>;Joseph R. Wood/OVP/EOP [OVP]
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<rruth@pd.state.gov>;allan.percival@fco.gov.uk [UNKNOWN]
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<sarh.hayward@fco.gov.uk>;Deborah Hermer/WHO/EOP [WHO] <Deborah Hermer>;Gordon
D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;alastair.campbell@fco2.demon.co.uk [

UNKNOWN] <alastair.campbell@fco2.demon.co.uk>;phil.bassett@fco2.demon.co.uk [UNKNOWN] <phil.bassett@fco2.demon.co.uk>;Kenneth Hill/WHO/EOP [WHO] <Kenneth Hill>;Eric W. Holland/WHO/EOP [WHO] <Eric W. Holland>;Paul Ashin/WHO/EOP [WHO] <Paul Ashin>;Charles James/WHO/EOP [WHO] <Charles James>;Lucy B. Hartley/WHO/EOP [WHO] <Lucy B. Hartley>;Hannah Siemers/WHO/EOP [WHO] <Hannah Siemers>

Sent: 11/16/2001 7:55:42 AM

Subject: : The Taliban War on Women & Children

Attachments: 04772_p_2rqr4004_who.txt_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:16-NOV-2001 12:55:42.00
SUBJECT:: The Taliban War on Women & Children
TO:Noelia Rodriguez ( CN=Noelia Rodriguez/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Tracey L. Schmitt ( CN=Tracey L. Schmitt/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Gail Randall ( CN=Gail Randall/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Gregory Goss ( CN=Gregory Goss/OU=WHO/O=EOP [ WHO ] )
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TO:Tracy Young ( CN=Tracy Young/OU=WHO/O=EOP [ WHO ] )
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TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP [ WHO ] )
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TO:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP [ WHO ] )
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TO:Kenneth A. Lisaius ( CN=Kenneth A. Lisaius/OU=WHO/O=EOP [ WHO ] )
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TO:Edmund A. Walsh ( CN=Edmund A. Walsh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov ( Karl_Doenges@oa.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:William T. Griffin ( CN=William T. Griffin/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Taylor S. Gross ( CN=Taylor S. Gross/OU=WHO/O=EOP [ WHO ] )
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TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP [WHO])
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TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP [WHO])
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TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John_W._Howard@oa.eop.gov (John_W._Howard@oa.eop.gov [UNKNOWN])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
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TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
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TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP [WHO])
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TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
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TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
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TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
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READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
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TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
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TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
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TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
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TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
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TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP [NSC])
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TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP [WHO])
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TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])

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TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
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TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
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TO:Anne C. Guilsher (CN=Anne C. Guilsher/OU=NSC/O=EOP [NSC])
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TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
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TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])

READ:UNKNOWN
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READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
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TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
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TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP [OPD])
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TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
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TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])

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TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP [NSC])
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TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP [OMB])
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)
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TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
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TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
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TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
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TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
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TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
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TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Peter Reid (CN=Peter Reid/OU=WHO/O=EOP [WHO])
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TO:Allison Barber (CN=Allison Barber/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Paddy Feeny (CN=Paddy Feeny/OU=WHO/O=EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
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TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Pbassett@no10.x.gsi.gov.uk (Pbassett@no10.x.gsi.gov.uk [UNKNOWN])
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TO:cross2@pd.state.gov (cross2@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:Sean I. McCormack (CN=Sean I. McCormack/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Joseph R. Wood (CN=Joseph R. Wood/OU=OVP/O=EOP [OVP])
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TO:rruth@pd.state.gov (rruth@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:allan.percival@fco.gov.uk (allan.percival@fco.gov.uk [UNKNOWN])
READ:UNKNOWN
TO:sarh.hayward@fco.gov.uk (sarh.hayward@fco.gov.uk [UNKNOWN])
READ:UNKNOWN
TO:Deborah Hermer (CN=Deborah Hermer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:alastair.campbell@fco2.demon.co.uk (alastair.campbell@fco2.demon.co.uk [UNKNOWN])
READ:UNKNOWN
TO:phil.bassett@fco2.demon.co.uk (phil.bassett@fco2.demon.co.uk [UNKNOWN])
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TO:Kenneth Hill (CN=Kenneth Hill/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Eric W. Holland (CN=Eric W. Holland/OU=WHO/O=EOP [WHO])
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TO:Charles James (CN=Charles James/OU=WHO/O=EOP [WHO])
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TO:Lucy B. Hartley (CN=Lucy B. Hartley/OU=WHO/O=EOP [WHO])
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TO:Hannah Siemers (CN=Hannah Siemers/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.

Attached are talking points for the new initiative for Afghan women that
the
First Lady will kick off this weekend.

(See attached file: CIC -- Women.doc)
- CIC -- Women.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <04772_p_2rqr4004_who.txt_1>

THE TALIBAN'S WAR AGAINST WOMEN & CHILDREN

HELPING REBUILD THE AFGHAN FAMILY

First Lady Laura Bush will kick off an effort to focus on the brutality against women and children by the al-Qaida terrorist network and the Taliban regime it supports in Afghanistan. That regime is now in retreat across much of the country, and the people of Afghanistan – especially women – are rejoicing. Afghan women know, through hard experience, what the rest of the world is discovering: The brutal oppression of women is a central goal of the terrorists.

LIFE BEFORE THE TALIBAN

Before the Taliban regime took power, Afghan women were protected by law, had important freedoms and were active participants in society:

- In 1977, women comprised over 15 percent of Afghanistan's highest legislative body;
- By the early 1990s women comprised 70 percent of schoolteachers;
- Women made up 50 percent of government workers; and
- 40 percent of doctors in Kabul were women.

Then came the Taliban and their destruction of the family.

LIFE UNDER THE TALIBAN

The Taliban quickly became one of the world's most brutal regimes and leading perpetrators of human rights abuses.

The Taliban regime has especially targeted Afghan women and children, taking away their basic freedoms, splintering their families, putting their lives at risk, and relegating them to poverty. For example, the Taliban:

- Forbid the schooling for girls over the age of eight;
- Shut down the women's university;
- Banned women from working (stripping a society in desperate need of trained professionals of half its assets);
- Restricted access to medical care for women;
- Brutally enforced a restrictive dress code;
- Forbade women from moving about their communities freely.
- Beat women for laughing out loud.

As many as 50,000 widows, have lost husbands and other male relatives in the course of Afghanistan's long civil war. Forbidden from working, they have been forced to sell all of their possessions and beg in the streets, or worse, in order to provide for themselves and their families.

The Taliban's disregard for its people doesn't stop there:

- More than 10 million children in Afghanistan have suffered under years of civil war and drought and now suffer under the repressive Taliban regime.
- One in four Afghan children will not make it to their fifth birthday.
- Afghanistan ranks number one worldwide in maternal mortality.
- One in three Afghan children is an orphan.
- Almost 1/2 of Afghan children suffer chronic malnutrition.

ISLAM RESPECTS WOMEN & CHILDREN

Islam has a tradition of protecting the rights of women and children, and supporting the family.

The Taliban regime has cruelly reduced women and girls to poverty, poor health, and illiteracy – unlike the treatment of women in the Muslim world or following the tenets of Islam.

Muslims around the world have condemned the brutal degradation of women and children by the Taliban regime. The poverty, poor health, and illiteracy that the terrorists and the Taliban have imposed on women in Afghanistan do not conform with the treatment of women in most of the Islamic world, where women make important contributions in their societies. Only the terrorists and the Taliban forbid education to women. Only the terrorists and the Taliban threaten to pull out women's fingernails for wearing nail polish. The plight of women and children in Afghanistan is a matter of deliberate human cruelty, carried out by those who seek to intimidate and control.

Islam is a religion that respects women and humanity. The Taliban respects neither.

REBUILDING THE AFGHAN FAMILY

We are committed to helping rebuild the Afghan family.

- We support a broadly-based and representative post-Taliban government that protects its citizens and preserves basic human rights for women and children – Afghan women have an important role to play in the future of Afghanistan.
- Even before September 11, the U.S. was the largest humanitarian donor to the people of Afghanistan.
- Since September 11 the U.S. has dropped more than 1.5 million meals into Afghanistan.
- The U.S. is working overtime to preposition food, blankets, and other important relief supplies to help Afghans face the upcoming harsh winter.
- Recent military successes against the Taliban can best be described as humanitarian successes for Afghan women and children. Seizing control of key cities from the Taliban will open humanitarian access to those Afghans who suffer the most.
- With U.S. support, the World Food Program is exceeding its objectives for food deliveries to the Afghan people. With U.S. support, the World Food Program has increased its daily food delivery in Afghanistan from 200 tons daily to 2,400 tons daily.
- In the first half of November, the World Food Program delivered over 30,000 metric tons of food into Afghanistan. This represented the largest amount ever moved by the WFP in Afghanistan. In the entire month of October, the WFP moved 29,000 metric tons of food into Afghanistan.

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Kenneth B. Mehlman/WHO/EOP@EOP [UNKNOWN] <Kenneth B. Mehlman>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/16/2001 9:09:45 AM
Subject: : Monday OPM deal

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-NOV-2001 14:09:45.00
SUBJECT:: Monday OPM deal
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I was speaking with Carol Harvey who is putting on the schedule c
conference on Monday. She said you were speaking at 4pm, right after
Elaine Kaplan at 3:30. Just so you know, Elaine Kaplan is the head of the
Office of Special Counsel who, among other things, is responsible for
Hatch Act enforcement. I thought you'd want to know. If you have time,
you might consider attending her session. She's a pretty good speaker,
and you may find the content helpful.

From: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/16/2001 10:14:01 AM
Subject: : RE: Horn Questions

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ("Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:16-NOV-2001 15:14:01.00
SUBJECT:: RE: Horn Questions
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett: I've faxed you the edits that Ed and I suggest. It's ok with us
if NARA meets the 11/20 deadline.
-- Paul
cc: Ed

-----Original Message-----
From: GaryM Stern [mailto:garym.stern@nara.gov]
Sent: Friday, November 16, 2001 1:25 PM
To: Colborn, Paul P; Brett_M._Kavanaugh@who.eop.gov
Subject: Horn Questions

Here are NARA's proposed response to questions from Chairman Horn. We are
still governed by the Nov. 20 date (next Tuesday). Please let us know if
you think that we will not be able to meet that deadline, so we can let
the Hill and OMB know.

Also, I have sent you both a new PRA notice on the 68,000, which we felt
was necessary particularly in light of the new FOIA for those records.

Brett, I am still waiting to hear back from you on whether, in fact, you
all really want us to provide you with copies of all 68,000+ pages, or is
some other option available: e.g., you start with the sample we already
did provide, or we give you an additional 5000 pages, which you all can
review and then decide whether you really want and need to see any more,
and/or you wait to see what the Reagan reps intend to do.

We will also be sending in a notice reminding you of five pending notices
to open Reagan records, all of which did not involve P5 and for which the
Reagan rep has authorized disclosure. (We will also be sending in new
notices for records that we put on hold that do contain some P5 records.)

Finally, we still need to address overall guidance on how we are supposed
to conduct reviews of Reagan records henceforth. Thanks.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

Sent: 11/16/2001 12:04:33 PM

Subject: : Time change for JSC Mtg. on Monday, Nov. 19

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-NOV-2001 17:04:33.00
SUBJECT:: Time change for JSC Mtg. on Monday, Nov. 19
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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JSC Meeting will be in the Roosevelt fon Monday rom 4:30-5:30 pm (instead
of 4-5pm).

Thanks!

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
CC: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/16/2001 12:10:11 PM
Subject: : Re: Travel to TN

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-NOV-2001 17:10:11.00
SUBJECT:: Re: Travel to TN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have signed off on the travel. If the travel is not being accepted by a WH employee from a political entity required to report the contribution of the travel expense under Federal election law, the travel expense or reimbursement will be required to be reported on Ken's annual public financial disclosure report filed in May 2002. In short, Ken has to report it unless a political entity (the RNC) is required to report it.

Katherine G. Marinis
11/16/2001 10:18:02 AM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Travel to TN

Can you please approve Ken Mehlman to travel to on Sen. Frist's private plane with him on Monday to TN? (return Tuesday) It is political travel, and Frist owns the plane. I will fill out the necessary forms, but I wanted to let you know about it since it is not commercial. thanks

also- there is a chance that Coddy Johnson is going to go too.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 11/17/2001 7:44:05 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-NOV-2001 12:44:05.00
SUBJECT:: Re:
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ouch

Kristen Silverberg
11/16/2001 07:04:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re:

Diana has the tort reform lead for DPC. Jay, Courtney Viet and I are involved. We're supporting the bill (it was a campaign commitment), but haven't been working it very hard. You should get involved if you like (although we're trying to limit the team to hard-core tort reformers).

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 11/17/2001 10:19:02 AM
Subject: : interviews Monday

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-NOV-2001 15:19:02.00
SUBJECT:: interviews Monday
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

could Judge do 10:00, 10:30, and 1:00 interviews Monday for WD Washington?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
CC: brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>
Sent: 11/19/2001 3:00:02 AM
Subject: : Re: MD Pennsylvania memo for both books

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-NOV-2001 08:00:02.00
SUBJECT:: Re: MD Pennsylvania memo for both books
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brent d. greenfield (CN=brent d. greenfield/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

call him for POTUS data sheet; thanks

Jason B. Torchinsky
11/19/2001 07:46:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: brent d. greenfield/who/eop@eop
Subject: Re: MD Pennsylvania memo for both books

Does this mean he's the only MD-PA candidate?

Do you have any information for the POTUS data sheet or do you want me to call him?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 11/19/2001 3:00:13 AM
Subject: : Re: interviews Monday

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-NOV-2001 08:00:13.00
SUBJECT:: Re: interviews Monday
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

no, that's ok

Elizabeth N. Camp
11/19/2001 07:43:59 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: interviews Monday

Judge has interviews w/ Rachel from 10:00-11:30 this morning but can probably do the 1:00 - he has a pretty packed day.

Let me know if you want the 1-1:30 slot.

Lib

Brett M. Kavanaugh
11/17/2001 03:18:52 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: interviews Monday

could Judge do 10:00, 10:30, and 1:00 interviews Monday for WD Washington?

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP [WHO])
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TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP [OPD])
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TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
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TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
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TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
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READ:UNKNOWN

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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
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TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
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TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
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TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP [WHO])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP [WHO])
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TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP [WHO])
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TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
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TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
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TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP [OMB])
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TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
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READ:UNKNOWN
TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO])
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TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP [WHO])
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TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP [NSC])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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TO:wparker@pd.state.gov (wparker@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:bmward@pd.state.gov (bmward@pd.state.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.
This will be released today at the President's Cabinet meeting where he
will
receive a briefing on the humanitarian situation in Afghanistan.

(See attached file: CIC -- Natsios Cabinet.doc)
- CIC -- Natsios Cabinet.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_TFTS4004_NSC.TXT_1>

THE U.S. COMMITMENT TO THE AFGHAN PEOPLE

SUMMARY

The U.S. is committed to helping alleviate the suffering of the innocent Afghan people affected by the long-standing dire humanitarian situation in Afghanistan.

The U.S. has provided more aid than any other country. In fact, the U.S. has supported the Afghan people for decades, providing over $1 billion in humanitarian assistance to Afghanistan since 1979.

According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11. The U.S. and its partners in the Central Asia region are working around the clock to move food and relief supplies into Afghanistan from surrounding countries, positioning it directly where it will be needed most as harsh winter weather approaches.

With U.S. support, the U.N. World Food Program delivered over 30,000 metric tons of food into Afghanistan in the first half of November, exceeding records for food delivery into the country The more than 29,000 metric tons that WFP moved in October had been the most food ever moved in an entire month in Afghanistan.

USAID ADMINISTRATOR ANDREW NATSIOS RETURNS FROM REVIEW OF U.S. HUMANITARIAN OPERATIONS INTO AFGHANISTAN

Andrew S. Natsios, Administrator for the U.S. Agency for International Development, just returned from a week (Nov. 10-17) in Central Asia. He was in the region to review the U.S. humanitarian operations into Afghanistan.

Natsios visited a camp for internally displaced Afghans in Khwaja Bahawudin, Afghanistan, that receives funding from USAID. There, he visited a school for girls, an income-generating project for women, a site for winter housing of 10,000 families, and a warehouse stocked with supplies funded by USAID.

On his mission, Natsios visited several Central Asia countries including:

- Ashgabat, Turkmenistan
- Tashkent and Termez, Uzbekistan
- Dushanbe, Tajikistan
- Bishkek, Kyrgyzstan
- Almaty, Kazakhstan

Natsios also met with U.N. and government officials and members of non-governmental organizations (NGOs); religious leaders; human rights, media and civil society advocates; and Afghan refugees -- many of whom were women.

Throughout the trip, Natsios pushed to accelerate the delivery of aid. In Turkmenistan, he reviewed aid from a USAID warehouse in Pisa, Italy, en route to Afghanistan, and discussed improving roads to speed more deliveries. In Termez, he visited the humanitarian barges, which moved the next day, and the Friendship Bridge, which still remains closed. Natsios urged officials to open it as soon as security permits because as much as 40 percent of humanitarian assistance could enter Afghanistan via this route.

USAID is also currently reviewing opportunities for small-scale, spot reconstruction for roads, wells and irrigation systems in northern Afghanistan where nearly 80 percent of the people in the most critical need of humanitarian assistance are located.

A LONG HISTORY OF SUPPORT FOR THE AFGHAN PEOPLE

According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11. Over the past three months, 180,000 people have been displaced in Afghanistan.

Afghanistan has suffered two decades of war, an ongoing and debilitating three-year drought, and the collapse of government infrastructure and access to basic social services. As the Taliban directed national resources toward war and imposed severe restrictions on its people, including a restriction on women working outside the home, the situation of the Afghan people worsened:

- Six million people in Afghanistan and 1.5 million Afghan refugees depend on international relief programs for food aid.
- Afghanistan has the world's fourth worst child mortality rate, with about a quarter of Afghan children dying before age five.
- Afghanistan ranks number one worldwide in maternal mortality.
- As many as 50,000 widows lost husbands and other male relatives in the course of Afghanistan's long civil war.
- The average life expectancy in Afghanistan is 46 years.

The United States has long been the leading donor of humanitarian assistance to Afghanistan:

- The U.S. has supplied more than 80 percent of all food aid to vulnerable Afghans through the United Nations' World Food Program (WFP).
- Last year, the U.S. Government provided over $178 million in humanitarian aid to the Afghan people.
- The U.S. Government has provided over $237 million in aid to Afghanistan thus far in FY 2002.

PREPARATION FOR WINTER IN AFGHANISTAN

Afghanistan experiences extreme winter weather, with heavy snow in the mountains and the high plateaus. Even low-lying areas like Kabul can have up to 25 inches of snow on the ground in late winter. In preparation for the harsh winter weather, the U.N. World Food Program has stepped up its food deliveries into Afghanistan. At any given moment over the past few days, WFP had more than 2,000 trucks moving inside Afghanistan delivering food to various parts of the country, particularly rural areas.

With U.S. support, WFP delivered over 30,000 metric tons of food into Afghanistan in the first half of November, exceeding records for food delivery into the country. The more than 29,000 metric tons that WFP moved in October had been the most food ever moved in a whole month in Afghanistan.

In the Central Highlands of Afghanistan, where snow fall is heavy, WFP has already moved 13,000 metric tons of food, which is almost half the amount needed to help the people of that region make it through the winter. The U.S. and its partners are working to move food and other relief items into the region from a variety of routes.

The U.S. airlifted 20,000 wool blankets, 100 rolls of plastic sheeting, 200 metric tons of High Energy Biscuits, and one metric ton of sugar to Turkmenistan for distribution in Afghanistan.

As of November 14, humanitarian relief commodities from the international community began to move into Afghanistan from Uzbekistan by barge. The first shipment contained 50 metric tons of wheat flour as well as nonfood relief commodities such as blankets and winter clothing. A second shipment of commodities, including 200 metric tons of wheat flour departed for Hairantan, Afghanistan on November 15.

The U.S. purchased 15,000 metric tons of wheat in Kazakstan, which is due to arrive by rail in Turkmenabad later in November. Thereafter, rail shipments should arrive in Turkmenabad on a daily basis, at the rate of 1,000 – 1,500 metric tons per day. The U.S. Department of Defense has airdropped over 1.5 million Humanitarian Daily Rations into Afghanistan. Each ration is enough to sustain a person with a day's worth of calories. ***(Note: One bag of wheat flour will feed about four adults or a family of 6-8 people. There are 20, 50 kg bags in one metric ton).***

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: GaryM Stern <garym.stern@nara.gov>
CC: paul.p.colborn@usdoj.gov [UNKNOWN] <paul.p.colborn@usdoj.gov>;john constance <john.constance@nara.gov>
Sent: 11/19/2001 4:37:04 AM
Subject: : Re: Horn Questions

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-NOV-2001 09:37:04.00
SUBJECT:: Re: Horn Questions
TO:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
READ:UNKNOWN
CC:paul.p.colborn@usdoj.gov (paul.p.colborn@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:john constance <john.constance@nara.gov> (john constance <john.constance@nara.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I have given comments to Paul, who is coordinating for two of us.

GaryM Stern <garym.stern@nara.gov>
11/19/2001 09:29:06 AM
Record Type: Record

To: Paul.P.Colborn@usdoj.gov, Brett M. Kavanaugh/WHO/EOP
cc: John Constance <john.constance@nara.gov>
Subject: Re: Horn Questions

** High Priority **

To meet our deadline of tomorrow, we need to send these questions to Horn today. Please let me or John Constance know as soon as you can if you have any comments, changes, or do not want us to send these to OMB yet. Thanks.

>>> GaryM Stern 11/16/01 1:24:40 PM >>>
Here are NARA's proposed response to questions from Chairman Horn. We are still governed by the Nov. 20 date (next Tuesday). Please let us know if you think that we will not be able to meet that deadline, so we can let the Hill and OMB know.

Also, I have sent you both a new PRA notice on the 68,000, which we felt was necessary particularly in light of the new FOIA for those records.

Brett, I am still waiting to hear back from you on whether, in fact, you all really want us to provide you with copies of all 68,000+ pages, or is some other option available: e.g., you start with the sample we already did provide, or we give you an additional 5000 pages, which you all can review and then decide whether you really want and need to see any more, and/or you wait to see what the Reagan reps intend to do.

We will also be sending in a notice reminding you of five pending notices to open Reagan records, all of which did not involve P5 and for which the Reagan rep has authorized disclosure. (We will also be sending in new notices for records that we put on hold that do contain some P5 records.)

Finally, we still need to address overall guidance on how we are supposed to conduct reviews of Reagan records henceforth. Thanks.

From:	CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD]
To:	Jeffrey R. Brown/CEA/EOP@EOP [CEA] <Jeffrey R. Brown>
CC:	kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;kirk blalock/who/eop@eop [WHO] <kirk blalock>;randall s. kroszner/cea/eop@eop [CEA] <randall s. kroszner>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent:	11/19/2001 4:50:31 AM
Subject:	: Re: terrorism insurance: request for electronic handouts from Friday's meeting
Attachments:	P_HOJS4004_CEA.TXT_1.doc

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TO:Jeffrey R. Brown (CN=Jeffrey R. Brown/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
CC:kristen silverberg (CN=kristen silverberg/OU=who/O=eop@eop [WHO])
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CC:randall s. kroszner (CN=randall s. kroszner/OU=cea/O=eop@eop [CEA])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
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Jeffrey R. Brown
11/19/2001 09:35:55 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: terrorism insurance: request for electronic handouts from
Friday's meeting

I have a request from the Real Estate Roundtable to send them an
electronic version of all of the handouts from last Friday's meeting,
including the talking points on the liability issues. Can the keeper of
these documents send me the most recent versions? I'd like to get them
copies as early today as possible, as they are trying to get one or more
of their members to place some op-eds in support of quick action.

Thanks,
Jeff Brown

Message Sent
To:_____
D. Marcus Sumerlin/OPD/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Kirk Blalock/WHO/EOP@EOP
Randall S. Kroszner/CEA/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HOJS4004_CEA.TXT_1>

Terrorism Insurance: A Key to Economic Recovery

"Without full cooperation between our government and America's private industries in support of insurance activities, there could be major disruption in the marketplace and harm to our economy." -- Leslie Baker, Chairman of Wachovia Bank

The tragic events of September 11 enacted an economic as well as a human toll. The attacks directly impacted industries such as airlines and hotels, but also have reverberated throughout many other sectors of the economy. Because our military strength and our economic strength are inseparable, our nation must work with resolve to restore economic growth. The current lack of insurance for terrorist acts poses an unnecessary and avoidable barrier to economic recovery.

Lack of Insurance

The terrorist attacks proved that the probability of catastrophic property and casualty losses was much higher than anticipated. Due to the current inability to evaluate the probability of more events or to handle numerous large events in a short time, the reinsurance industry has been reluctant to cover terrorist events. According to Marc Morial, Mayor of New Orleans, "Reinsurers already are saying they will exclude 'acts of terrorism' from coverage on a going-forward basis." Keith Buckley, an insurance analyst with Fitch Ratings Company, states that it is "the universally stated plan of reinsurance companies to add specific terrorism exclusions to reinsurance coverage." Without reinsurance, primary insurers are forced to either exclude terrorism coverage, charge very high premiums, or withdraw from the market entirely:

- On October 31, AIG decided to drop coverage of Brookfield properties, which includes 8 million square feet of office space in lower Manhattan. Brookfield secured a new policy with FM Global Insurance, but the insurance specifically excludes events related to terrorism.
- At Chicago's O'Hare airport, premiums have risen from $125,000 a year to $7 million a year.
- New York's JFK international terminal cannot secure the $1 billion in insurance coverage it needs. Developer Dave Sigman has considered shutting the terminal down.
- Seventeen of the twenty-five property insures that trade with Marsh, Inc. have enacted terrorism exclusions.

Although most state insurance commissioners are unlikely to approve terrorism exclusions to existing policies, insurance companies are free to completely drop coverage of potential targets. In addition, some states allow insurers to adopt exclusions to new policies without approval. Alternatively, insurers may move policies to non-admitted, or so-called "excess and surplus" carriers, which are non-licensed insurers whose policies are not subject to regulatory scrutiny and thus offer less protection to policyholders. Many insurance companies are likely to exercise this flexibility to protect their financial integrity. On October 23, Standard and Poor's warned that insurer ratings could fall if underwriters opted to continue offering terrorism coverage without support from reinsurers or the federal government.

Impact on Construction and Real Estate

Lenders require businesses to insure any property they use to secure loans. Without terrorism coverage, banks may not lend to new construction projects and many existing commercial properties may not be able to change hands. According to Thomas Donohue, President of the U.S. Chamber of Commerce, "Bank loans for major construction project undertakings such as new power plants, pipelines, and commercial office space would sharply decrease without coverage."

Without adequate insurance, it will be difficult to develop, operate, acquire, refinance, or sell property. Thomas J. O'Brien, Senior Vice President of Finance for LCOR Incorporated, argues that the disruption could be widespread: "It will not only affect the real estate owners and lenders but also their tenants who lease facilities, their employees and customers as well as anyone who rents an apartment."

Impact on Banking

The terms of most loans require adequate insurance, and without insurance borrowers may find themselves in technical default on their loan. As a result, lenders could be in a position of accelerating payments under the terms of the loan or calling in the loan in its entirety. If banks do not call the loans, they may be forced to reduce the amount of available credit as they build reserves to protect against a terrorist attack.

Thomas J. O'Brien of LCOR argues that a significant amount of real estate-backed debt runs the risk of being in non-monetary default without the availability of terrorism coverage. According to O'Brien, "This lack of coverage raises profound liquidity concerns not only on existing loans and the institutions that hold them but on the ability of borrowers to secure any type of financing going forward."

Impacted Sectors

The potential disruption will fall primarily on areas of dense economic activity, such as skyscrapers and industrial factories. But it is likely that stadiums, trains, and many other areas will be impacted as well. According to Thomas Donohoe, "without adequate coverage, trucking firms, railroads, airlines, and ships may be unable to transport many types of cargo or may limit their destinations."

Impact on the Overall Economy

The absence of insurance coverage for terrorism risks will likely reduce the willingness of lenders to provide financing for existing commercial structures and deter the construction of new projects. The result could look like a "credit crunch." The Council of Economic Advisers estimates an overall reduction in 2002 GDP of 0.3 percentage point if the problem is not solved. This reduced growth rate of GDP is equal to 0.8 percentage point in the first quarter of 2002, 0.7 percentage point in the second quarter of 2002, and diminishes thereafter. The decline is caused by a reduction in asset values that reduces the consumption purchases of the household sector.

In addition, lower valuations reduce the incentive to invest in new structures. The overall liquidity effects also reduce the path for investment in non-residential structures.

Given the underlying weakness of the U.S. economy, it is not prudent to add more uncertainty by allowing insurance markets to fail. According to Steve Dreyer, Managing Director at Standard and Poor's Insurance Rating Service, "Absence of coverage could have a chilling effect on the economy if businesses from airlines to sports teams, to shopping centers curtail or even shut down activity, and if banks prove unwilling to make loans to companies without terrorism coverage." To prevent this disruption, the federal government must take action to provide a temporary backstop until the private sector develops the ability and capacity to insure against terrorist acts.

Talking Points on Terrorism Insurance

- The tragic events of September 11 had a considerable impact on our economy. We must act just as aggressively at home as we are abroad to prevent the U.S. economy from becoming a victim.

- At a time of economic weakness, we simply cannot afford to risk allowing more disruptions to the economy.

- Adequate insurance coverage is an essential component of a growing economy. Without insurance, you cannot get loans or sell existing property.

- The reinsurance industry is refusing to provide coverage against terrorist attacks, so the federal government must temporarily provide a backstop.

- This is not about helping insurance companies; it is about preventing a potential credit crunch and exacerbating an economic downturn.

- The federal government must also provide reasonable legal procedures.

- These procedures must: 1) ensure that victims can quickly recover real losses; 2) protect the taxpayers from spurious claims; 3) prevent unnecessary bankruptcies; and 4) reduce the likelihood that a terrorist attack will significantly burden the economy.

- Unfortunately, our current legal system cannot handle mass tort events.

- The end of the year is fast approaching, so the Congress must act quickly to prevent an unnecessary drag on our economic recovery.

From: CN=Jason B. Torchinsky/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/19/2001 10:49:53 AM
Subject: : Re: Leighton

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SUBJECT:: Re: Leighton
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Any other thoughts on completing the information for his data sheet?
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Marshall J. Rodgers/OMB/EOP [OMB] <Marshall J. Rodgers>
Sent: 11/19/2001 7:59:43 AM
Subject: RECEIVED: DOJ Views on Tort Provision of Terrorism Risk Insurance Legislation

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TO:Marshall J. Rodgers (CN=Marshall J. Rodgers/OU=OMB/O=EOP [OMB])
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RETURN RECEIPT

Your Document:
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was successfully received by:
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at:
11/19/2001 12:57:09 PM

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Sent: 11/20/2001 1:45:56 AM
Subject: : The War on Terrorism -- November 20, 2001
Attachments: F_ECBT4004_OA.TXT_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:20-NOV-2001 06:45:56.00
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Deborah_K._Hair@oa.eop.gov (Deborah_K._Hair@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP [WHO])
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])

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READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:David_F._Lussier@oa.eop.gov (David_F._Lussier@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:paige.ralston@mail.house.gov (paige.ralston@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
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READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:ekertz@doc.gov (ekertz@doc.gov [UNKNOWN])
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TO:jdyke@doc.gov (jdyke@doc.gov [UNKNOWN])
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TO:melliott@doc.gov (melliott@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Chesenterp@aol.com (Chesenterp@aol.com [UNKNOWN])
READ:UNKNOWN
TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
READ:UNKNOWN
TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
READ:UNKNOWN
TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])
READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN

TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP [OVP])

READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ali H. Tulbah (CN=Ali H. Tulbah/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:ginni.thomas@heritage.org (ginni.thomas@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
READ:UNKNOWN
TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:bberrytx@aol.com (bberrytx@aol.com [UNKNOWN])
READ:UNKNOWN
TO:jenniferecrooks@hotmail.com (jenniferecrooks@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:rsavarese@kpmg.com (rsavarese@kpmg.com [UNKNOWN])
READ:UNKNOWN
TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
READ:UNKNOWN
TO:ccamp@llano-permian.com (ccamp@llano-permian.com [UNKNOWN])
READ:UNKNOWN
TO:campsite@nts-online.net (campsite@nts-online.net [UNKNOWN])
READ:UNKNOWN
TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:mona@gregabbottcampaign.com (mona@gregabbottcampaign.com [UNKNOWN])
READ:UNKNOWN
TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])
READ:UNKNOWN
TO:creazzo@hotmail.com (creazzo@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:Natalie S. Wozniak (CN=Natalie S. Wozniak/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
TO:jonathan.grella@mail.house.gov (jonathan.grella@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
READ:UNKNOWN

TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
READ:UNKNOWN
TO:pat.shortridge@enron.com (pat.shortridge@enron.com [UNKNOWN])
READ:UNKNOWN
TO:richard.mcbride@glo.state.tx.us (richard.mcbride@glo.state.tx.us [UNKNOWN])
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TO:kathicard@springmail.com (kathicard@springmail.com [UNKNOWN])
READ:UNKNOWN
TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
)
READ:UNKNOWN
TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
READ:UNKNOWN
TO:Kirk.Boyle@mail.house.gov (Kirk.Boyle@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP [WHO])
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TO:Duncan Campbell (CN=Duncan Campbell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:patrick.rhode@sba.gov (patrick.rhode@sba.gov [UNKNOWN])
READ:UNKNOWN
TO:YRobinso@pd.state.gov (YRobinso@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:robert.traynham@src.senate.gov (robert.traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
READ:UNKNOWN
TO:Ansley C. Tillman (CN=Ansley C. Tillman/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:jwillis@doc.gov (jwillis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:molly.millerwise@mail.house.gov (molly.millerwise@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jrendon@rendon.com (jrendon@rendon.com [UNKNOWN])
READ:UNKNOWN
TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
READ:UNKNOWN
TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
READ:UNKNOWN
TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:jfischman@pd.state.gov (jfischman@pd.state.gov [UNKNOWN])
READ:UNKNOWN

TO:Elizabeth P. Austin (CN=Elizabeth P. Austin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jane M. Cook (CN=Jane M. Cook/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Heidi K. Marquez (CN=Heidi K. Marquez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:McDonaldDJ@state.gov (McDonaldDJ@state.gov [UNKNOWN])
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TO:bitterr@state.gov (bitterr@state.gov [UNKNOWN])
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TO:mike_buttry@hagel.senate.gov (mike_buttry@hagel.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:echeney@ifc.org (echeney@ifc.org [UNKNOWN])
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TO:taskforce-1-pd@state.gov (taskforce-1-pd@state.gov [UNKNOWN])
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READ:UNKNOWN
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TO:john.higginbotham@dfait-maeci.gc.ca (john.higginbotham@dfait-maeci.gc.ca [UNKNOWN])
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TO:arif.lalani@dfait-maeci.gc.ca (arif.lalani@dfait-maeci.gc.ca [UNKNOWN])
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READ:UNKNOWN
TO:agoldstein@hadassah.org (agoldstein@hadassah.org [UNKNOWN])
READ:UNKNOWN
TO:comm@rnchq.org (comm@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:johnbuckley100@aol.com (johnbuckley100@aol.com [UNKNOWN])
READ:UNKNOWN
TO:abrackbill@aol.com (abrackbill@aol.com [UNKNOWN])
READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])
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TO:research@rnchq.org (research@rnchq.org [UNKNOWN])
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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Note: Some recipients have been dropped due to syntax errors.Please refer to the "$AdditionalHeaders" item for the complete headers.
Good morning. Have a great Thanksgiving.

(See attached file: CIC -- Daily November 20.doc)
- CIC -- Daily November 20.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_ECBT4004_OA.TXT_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

11/20/01

Today's Schedule (EST)

9:00a	EST	Afghan Reconstruction Conference begins.
10:15a	EST	President Bush visits So Others Might Eat in Washington, D.C.
11:00a	EST	Food aid barge with food destined for Afghan people leaves Lake Charles, LA.
12:15p	EST	White House press briefing by Ari Fleischer
1:25p	EST	President Bush meets with President of the Philippines.
2:25p	EST	President Bush dedicates Department of Justice Building in honor of Robert Kennedy.
3:00p	EST	Conference call with State Undersecretary Paula Dobriansky and Karen Hughes with women editors and publishers on Taliban oppression of women.

Other Events

- AID Administrator Natsios briefs at Washington Foreign Press Center.
- State Department briefing at New York foreign press center
- State Department briefing by Richard Boucher
- Department of Defense daily briefing

Recent Key Quotes & Developments

Message

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Facts of the Day

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Sent: 11/20/2001 3:03:06 AM

Subject: : The REAL War on Terrorism Daily for Today

Attachments: 04952_p_96ct4004_who.txt_1.doc

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CREATION DATE/TIME:20-NOV-2001 08:03:06.00
SUBJECT:: The REAL War on Terrorism Daily for Today
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READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Deborah_K._Hair@oa.eop.gov (Deborah_K._Hair@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP [OPD])
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TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
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TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
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TO:gerry_fritz@rpc.senate.gov (gerry_fritz@rpc.senate.gov [UNKNOWN])

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lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
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TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
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TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
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TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov [UNKNOWN])
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TO:paige.ralston@mail.house.gov (paige.ralston@mail.house.gov [UNKNOWN])
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TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP [CEA])
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TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
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TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
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TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP [NSC])
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TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
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TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
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TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
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TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
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TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP [OA])
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
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TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
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TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP [NSC])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP [OVP])
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TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP [OPD])
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TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP [WHO])
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TO:John Fenzel (CN=John Fenzel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
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TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
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TO:ginni.thomas@heritage.org (ginni.thomas@heritage.org [UNKNOWN])
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TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
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TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:mona@gregabbottcampaign.com (mona@gregabbottcampaign.com [UNKNOWN])
READ:UNKNOWN
TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])
READ:UNKNOWN

TO:creazzo@hotmail.com (creazzo@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
TO:jonathan.grella@mail.house.gov (jonathan.grella@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
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TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
)
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TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
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TO:Kirk.Boyle@mail.house.gov (Kirk.Boyle@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Duncan Campbell (CN=Duncan Campbell/OU=WHO/O=EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
READ:UNKNOWN
TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
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TO:patrick.rhode@sba.gov (patrick.rhode@sba.gov [UNKNOWN])
READ:UNKNOWN
TO:YRobinso@pd.state.gov (YRobinso@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:robert.traynham@src.senate.gov (robert.traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
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TO:Ansley C. Tillman (CN=Ansley C. Tillman/OU=OPD/O=EOP [OPD])
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TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])

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TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP [OPD])
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TO:molly.millerwise@mail.house.gov (molly.millerwise@mail.house.gov [UNKNOWN])
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TO:jrendon@rendon.com (jrendon@rendon.com [UNKNOWN])
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TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
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TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:jfischman@pd.state.gov (jfischman@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth P. Austin (CN=Elizabeth P. Austin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jane M. Cook (CN=Jane M. Cook/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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TO:Heidi K. Marquez (CN=Heidi K. Marquez/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
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TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
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TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP [WHO])
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TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:acampbell@no10.x.gsi.gov.uk (acampbell@no10.x.gsi.gov.uk [UNKNOWN])
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TO:torie.clarke@osd.mil (torie.clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
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TO:Peter Reid (CN=Peter Reid/OU=WHO/O=EOP [WHO])
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TO:Allison Barber (CN=Allison Barber/OU=WHO/O=EOP [WHO])
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TO:Paddy Feeny (CN=Paddy Feeny/OU=WHO/O=EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
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TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
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TO:Pbassett@no10.x.gsi.gov.uk (Pbassett@no10.x.gsi.gov.uk [UNKNOWN])
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TO:cross2@pd.state.gov (cross2@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:Sean I. McCormack (CN=Sean I. McCormack/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Joseph R. Wood (CN=Joseph R. Wood/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:rruth@pd.state.gov (rruth@pd.state.gov [UNKNOWN])
READ:UNKNOWN
TO:allan.percival@fco.gov.uk (allan.percival@fco.gov.uk [UNKNOWN])
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TO:sarh.hayward@fco.gov.uk (sarh.hayward@fco.gov.uk [UNKNOWN])
READ:UNKNOWN
TO:Deborah Hermer (CN=Deborah Hermer/OU=WHO/O=EOP [WHO])
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TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Eric W. Holland (CN=Eric W. Holland/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
TO:Lucy B. Hartley (CN=Lucy B. Hartley/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Ok, folks. Little problem with the email system this morning. Attached is your
War on Terrorism Daily. Please pardon me as the President pardoned the turkey
yesterday.

(See attached file: CIC -- Daily November 20.doc)
- CIC -- Daily November 20.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <04952_p_96ct4004_who.txt_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

11/20/01

Today's Schedule (EST)

9:00a	EST	Afghan Reconstruction Conference begins.
10:15a	EST	President Bush visits So Others Might Eat in Washington, D.C.
11:00a	EST	Food aid barge with food destined for Afghan people leaves Lake Charles, LA.
12:15p	EST	White House press briefing by Ari Fleischer
1:25p	EST	President Bush meets with President of the Philippines.
2:25p	EST	President Bush dedicates Department of Justice Building in honor of Robert Kennedy.
3:00p	EST	Conference call with State Undersecretary Paula Dobriansky and Karen Hughes with women editors and publishers on Taliban oppression of women.

Other Events

- AID Administrator Natsios briefs at Washington Foreign Press Center.
- State Department briefing at New York foreign press center
- State Department daily briefing by Richard Boucher
- Department of Defense daily briefing

Recent Key Quotes & Developments

- "Arab fighters loyal to Osama bin Laden apparently shot dead at least 100 Taliban soldiers in Kunduz who were trying to give themselves up." (*The Guardian*, 11/19/01)
- "A 16-year old Afghan girl fronted Kabul Television's return to the airwaves yesterday, after a five-year TV blackout under the Taliban." (*The Independent* [U.K.], 11/19/01)
- "There was more celebration yesterday at the Kabul office of the United Nations refugee agency UNCHR when four women returned to their jobs. The Taliban had forbidden females to work, attend school or even leave home without a male relative. (*The Sun* [U.K.], 11/19/01)
- "'The good days are ahead,' said Rana Entezari, a neighbor who stopped by Mrs. Helal's house today. A doctor, she was fired from a laboratory for being a woman after the Taliban came to power." (*New York Times*, 11/19/01)

Message

Charitable Giving

- Since September 11th, America's charities have stood by America. After the September 11th attacks we have seen the best of America – particularly a tremendous outpouring of giving. Relief organizations received more than 1 billion dollars from concerned citizens.
- But many charities not directly involved in the relief effort have seen their donations fall. During this season of giving we should all dig a little deeper – if possible – to help the organizations that are helping our neighbors.

Humanitarian Assistance

- The U.S. is committed to helping alleviate the suffering of the innocent Afghan people affected by the long-standing dire humanitarian situation in Afghanistan.
- **The U.S. has provided more aid than any other country.** In fact, the U.S. has supported the Afghan people for decades, providing over $1 billion in humanitarian assistance to Afghanistan since 1979.
- **According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11.** The U.S. and its partners in the Central Asia region are working around the clock to move food and relief supplies into Afghanistan from surrounding countries, positioning it directly where it will be needed most as harsh winter weather approaches.

REV_00136189

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Tracey L. Schmitt/WHO /EOP@EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP@EOP [WHO] <Gregory Goss>;Tracy Young/WHO /EOP@EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Logan M. Walters/WHO/EOP@EOP [WHO] <Logan M. Walters>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO /EOP@EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP/EOP@EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP@EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP@EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO /EOP@EOP [WHO] <Harry W. Wolff>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;John_W._Howard@oa.eop.gov [UNKNOWN] <John_W._Howard@oa.eop.gov>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP@EOP [WHO] <Christal R. West>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott_Jeffcoat@oa.eop.gov [UNKNOWN] <Scott_Jeffcoat@oa.eop.gov>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO /EOP@EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO /EOP@EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO /EOP@EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L. West>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Tobin_K._Harvey@oa.eop.gov [UNKNOWN] <Tobin_K._Harvey@oa.eop.gov>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Amanda L. Moore/WHO/EOP@EOP [WHO] <Amanda L. Moore>;Mary Elizabeth Farr/WHO/EOP@EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP@EOP [WHO]

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Sent: 11/20/2001 7:12:55 AM

Subject: : Talking Points from Domestic Policy
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CREATION DATE/TIME:20-NOV-2001 12:12:55.00
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READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
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TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])

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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
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TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:Natalie S. Wozniak (CN=Natalie S. Wozniak/OU=NSC/O=EOP@EOP [NSC])
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TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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President Urges Support for America's Charities

TODAY'S ACTION

- During a visit to a local charity, President Bush called on Americans to support charities of all kinds, especially during the holiday season. The Corporation for National and Community Service website (www.nationalservice.org) has been updated to provide information for all Americans who are interested in supporting a charity – either with financial support or by volunteering.

- The President also announced more than $1 billion in new grants to help the homeless through the Department of Housing and Urban Development.

- The President encouraged Congress to pass legislation enacting his Armies of Compassion initiative to significantly expand incentives for charitable giving, provide equal treatment for non-governmental organizations and support those Americans most in need.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visited So Others Might Eat, a Washington, DC interfaith charity that provides food, medical, rehabilitative and other assistance to the homeless. The President met with the group's volunteers, who help to serve more than 300,000 meals per year to the homeless.

- To support efforts by community organizations to aid the homeless, the President announced more than $1 billion in grants through the Department of Housing and Urban Development. The grants, part of HUD's Continuum of Care and Emergency Shelter Grant programs, will help the homeless to find emergency shelter, transitional housing and a permanent home. These funds will go to state and local governments and non-profit organizations in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam.

- The President's Armies of Compassion initiative is designed to improve the federal government's efforts to support and encourage the good work of community-based non-profits. Many of America's charities have been hit hard in the aftermath of September 11 due to the effects of a weakened economy. A recent survey by the Independent Sector found that 48% of Americans will reduce their charitable giving in the next six months if the economic slowdown worsens. The survey also found that 26% of Americans will stop giving or reduce the size of their donations to the charities they normally support due to their recent donation to September 11-related charitable causes.

- For many of the nonprofits providing vital, ongoing services to our communities, a 25% reduction in contributions during the most significant fund-raising period of the year would force the reduction or even elimination of services to some of our neediest individuals and families.

- President Bush wants to expand the resources available to charities of all kinds by making it easier for individuals, businesses and other organizations to donate money and resources to charitable organizations nationwide. The House of Representatives has already passed bipartisan legislation to support these efforts – and leading Senators are preparing to introduce an Armies of Compassion bill.

- The Armies of Compassion initiative includes:

  (1) Programs aimed at increasing charitable giving through tax incentives.

  - Allow individuals to make tax-free distributions from their IRAs to charities;
  - Provide enhanced deductions for farmers and restaurants to donate food to food banks; and
  - Allow an estimated 84 million taxpayers who do not itemize to deduct their charitable contributions;

  (2) Equal treatment for all non-governmental organizations – sacred or secular.

  - Require non-discrimination against non-governmental organizations based on religious grounds, including religious iconography, governance, and experience with government contracts;
  - Create 501(c)3 "EZ Pass" process so community-based groups can get tax-deductible status more easily; and
  - Establish a Compassion Capital Fund to educate and empower community-based organizations.

  (3) Other initiatives supporting vulnerable populations.

  - Mentoring for children of prisoners; and
  - Maternity group homes, principally for teenage unwed mothers.

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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
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TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
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TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
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TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:lisette_mcsoud_mondello@hutchison.senate.gov (
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TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov @ inet [UNKNOWN])
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TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
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TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
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TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
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TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
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President Urges Support for America's Charities

TODAY'S ACTION

- During a visit to a local charity, President Bush called on Americans to support charities of all kinds, especially during the holiday season. The Corporation for National and Community Service website (www.nationalservice.org) has been updated to provide information for all Americans who are interested in supporting a charity – either with financial support or by volunteering.

- The President also announced more than $1 billion in new grants to help the homeless through the Department of Housing and Urban Development.

- The President encouraged Congress to pass legislation enacting his Armies of Compassion initiative to significantly expand incentives for charitable giving, provide equal treatment for non-governmental organizations and support those Americans most in need.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visited So Others Might Eat, a Washington, DC interfaith charity that provides food, medical, rehabilitative and other assistance to the homeless. The President met with the group's volunteers, who help to serve more than 300,000 meals per year to the homeless.

- To support efforts by community organizations to aid the homeless, the President announced more than $1 billion in grants through the Department of Housing and Urban Development. The grants, part of HUD's Continuum of Care and Emergency Shelter Grant programs, will help the homeless to find emergency shelter, transitional housing and a permanent home. These funds will go to state and local governments and non-profit organizations in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam.

- The President's Armies of Compassion initiative is designed to improve the federal government's efforts to support and encourage the good work of community-based non-profits. Many of America's charities have been hit hard in the aftermath of September 11 due to the effects of a weakened economy. A recent survey by the Independent Sector found that 48% of Americans will reduce their charitable giving in the next six months if the economic slowdown worsens. The survey also found that 26% of Americans will stop giving or reduce the size of their donations to the charities they normally support due to their recent donation to September 11-related charitable causes.

- For many of the nonprofits providing vital, ongoing services to our communities, a 25% reduction in contributions during the most significant fund-raising period of the year would force the reduction or even elimination of services to some of our neediest individuals and families.

- President Bush wants to expand the resources available to charities of all kinds by making it easier for individuals, businesses and other organizations to donate money and resources to charitable organizations nationwide. The House of Representatives has already passed bipartisan legislation to support these efforts – and leading Senators are preparing to introduce an Armies of Compassion bill.

- The Armies of Compassion initiative includes:

  (1) Programs aimed at increasing charitable giving through tax incentives.

  - Allow individuals to make tax-free distributions from their IRAs to charities;
  - Provide enhanced deductions for farmers and restaurants to donate food to food banks; and
  - Allow an estimated 84 million taxpayers who do not itemize to deduct their charitable contributions;

  (2) Equal treatment for all non-governmental organizations – sacred or secular.

  - Require non-discrimination against non-governmental organizations based on religious grounds, including religious iconography, governance, and experience with government contracts;
  - Create 501(c)3 "EZ Pass" process so community-based groups can get tax-deductible status more easily; and
  - Establish a Compassion Capital Fund to educate and empower community-based organizations.

  (3) Other initiatives supporting vulnerable populations.

  - Mentoring for children of prisoners; and
  - Maternity group homes, principally for teenage unwed mothers.

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Sent: 11/20/2001 6:38:42 AM

Subject: : Talking Points from Domestic Policy

Attachments: F_TFV84003_OA.TXT_1.doc

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CREATION DATE/TIME:20-NOV-2001 11:38:42.00
SUBJECT:: Talking Points from Domestic Policy
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President Urges Support for America's Charities

TODAY'S ACTION

- During a visit to a local charity, President Bush called on Americans to support charities of all kinds, especially during the holiday season. The Corporation for National and Community Service website (www.nationalservice.org) has been updated to provide information for all Americans who are interested in supporting a charity – either with financial support or by volunteering.

- The President also announced more than $1 billion in new grants to help the homeless through the Department of Housing and Urban Development.

- The President encouraged Congress to pass legislation enacting his Armies of Compassion initiative to significantly expand incentives for charitable giving, provide equal treatment for non-governmental organizations and support those Americans most in need.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visited So Others Might Eat, a Washington, DC interfaith charity that provides food, medical, rehabilitative and other assistance to the homeless. The President met with the group's volunteers, who help to serve more than 300,000 meals per year to the homeless.

- To support efforts by community organizations to aid the homeless, the President announced more than $1 billion in grants through the Department of Housing and Urban Development. The grants, part of HUD's Continuum of Care and Emergency Shelter Grant programs, will help the homeless to find emergency shelter, transitional housing and a permanent home. These funds will go to state and local governments and non-profit organizations in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam.

- The President's Armies of Compassion initiative is designed to improve the federal government's efforts to support and encourage the good work of community-based non-profits. Many of America's charities have been hit hard in the aftermath of September 11 due to the effects of a weakened economy. A recent survey by the Independent Sector found that 48% of Americans will reduce their charitable giving in the next six months if the economic slowdown worsens. The survey also found that 26% of Americans will stop giving or reduce the size of their donations to the charities they normally support due to their recent donation to September 11-related charitable causes.

- For many of the nonprofits providing vital, ongoing services to our communities, a 25% reduction in contributions during the most significant fund-raising period of the year would force the reduction or even elimination of services to some of our neediest individuals and families.

- President Bush wants to expand the resources available to charities of all kinds by making it easier for individuals, businesses and other organizations to donate money and resources to charitable organizations nationwide. The House of Representatives has already passed bipartisan legislation to support these efforts – and leading Senators are preparing to introduce an Armies of Compassion bill.

- The Armies of Compassion initiative includes:

  (1) Programs aimed at increasing charitable giving through tax incentives.

  - Allow individuals to make tax-free distributions from their IRAs to charities;
  - Provide enhanced deductions for farmers and restaurants to donate food to food banks; and
  - Allow an estimated 84 million taxpayers who do not itemize to deduct their charitable contributions;

  (2) Equal treatment for all non-governmental organizations – sacred or secular.

  - Require non-discrimination against non-governmental organizations based on religious grounds, including religious iconography, governance, and experience with government contracts;
  - Create 501(c)3 "EZ Pass" process so community-based groups can get tax-deductible status more easily; and
  - Establish a Compassion Capital Fund to educate and empower community-based organizations.

  (3) Other initiatives supporting vulnerable populations.

  - Mentoring for children of prisoners; and
  - Maternity group homes, principally for teenage unwed mothers.

From: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Suit, Neal <Neal.Suit@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
Sent: 11/20/2001 6:46:21 AM
Subject: : RE: Web site

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ("Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:20-NOV-2001 11:46:21.00
SUBJECT:: RE: Web site
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett, thanks for the comments. As to the updating -- we try to update as often as there are events to report (nomination, hearing, confirmation etc), but sometimes there's delay we can't control due to bureaucracy here. Neal, can we try to do this at least once a week? thanks

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, November 19, 2001 7:48 PM
To: Newstead, Jennifer
Subject: Re: Web site

ignore the first comment; I found a "last updated" notice.

Brett M. Kavanaugh
11/19/2001 07:36:23 PM

Record Type: Record

To: "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>

cc:
Subject: Web site (Document link: Brett M. Kavanaugh)

Two suggestions on your judges web site, which is quite useful:
First, put
"date last updated" in some prominent place. Second, I would have someone update it virtually every day, or a few times a week if possible. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 11/20/2001 10:44:08 AM
Subject: : Re: DOJ packets for judicial candidates

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-NOV-2001 15:44:08.00
SUBJECT:: Re: DOJ packets for judicial candidates
TO:Jason B. Torchinsky ( CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

send memos without a signed letter? anyway, they somehow have to
get out today




Jason B. Torchinsky
11/20/2001 03:11:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Bradford A. Berenson/WHO/EOP@EOP
Subject: DOJ packets for judicial candidates

sorry - should have included you on the original e-mail.


---------------------- Forwarded by Jason B. Torchinsky/WHO/EOP on
11/20/2001 03:11 PM ----------------------------



Jason B. Torchinsky
11/20/2001 03:11:01 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: DOJ packets for judicial candidates

Sheila is out this week but someone else in the office can send out the
packets.

However, neither Viet nor Jennifer are there to sign the letters
accompanying the materials.

How do you want to handle this?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 11/20/2001 11:04:22 AM
Subject: : Re: POTUS meeting addresses

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-NOV-2001 16:04:22.00
SUBJECT:: Re: POTUS meeting addresses
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

home address for both of mine

Jason B. Torchinsky
11/20/2001 04:03:06 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: POTUS meeting addresses

Please let me know which address you want used for your candidates. I'll need this information soon to get the addresses over to DOJ.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>
Sent: 11/21/2001 4:16:45 AM
Subject: : Re: Victims

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:21-NOV-2001 09:16:45.00
SUBJECT:: Re: Victims
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rebecca a. beynon (CN=rebecca a. beynon/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
End Original ARMS Header

My goal is to get a full set of draft regs by December 10.

You may want to weigh in with Phil and buttress my point that we should absolutely strive to get these regs final by Dec. 21 at the latest, which is the statutory deadline.

Although DOJ may want to call them interim final regs, they really need to be final for purposes of assessing awards, because once we release them, claimants should be able to rely on them and come forward to claim awards and waive tort claims.

Also, the more "final" they are by Dec. 21, the stronger our argument is for the quick and rough approach.

We're willing to draft as much of the actual regs here as DOJ wants, and given that we were able to do the airline loan regs in 14 days, this shouldn't be that hard. But you may want to echo that sentiment.

thanks

Brett M. Kavanaugh
11/21/2001 09:01:44 AM
Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP
cc: Jay P. Lefkowitz/OMB/EOP@EOP
Subject: Victims

what's latest status of reg process? when do you think we'll see draft regs from DOJ?

From: CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>
Sent: 11/21/2001 4:51:44 AM
Subject: : Re: Victims

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:21-NOV-2001 09:51:44.00
SUBJECT:: Re: Victims
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rebecca a. beynon (CN=rebecca a. beynon/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
End Original ARMS Header

Rebecca:

can you email Brett our most current set up charts and
assumptions?

brett: I have a set in my office and if you want a walk-through of the
assumptions, I'll be happy to do so.

Brett M. Kavanaugh
11/21/2001 09:28:23 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc: rebecca a. beynon/omb/eop@eop
bcc:
Subject: Re: Victims

I just talked to Phil and made the points about timing and interim
versus final; he also said to get from you some material you provided him
yesterday; can you e-mail or inter-office that to me? thanks.

Jay P. Lefkowitz
11/21/2001 09:16:57 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: rebecca a. beynon/omb/eop@eop
bcc:
Subject: Re: Victims

My goal is to get a full set of draft regs by December 10.

You may want to weigh in with Phil and buttress my point that we should

absolutely strive to get these regs final by Dec. 21 at the latest, which is the statutory deadline.

Although DOJ may want to call them interim final regs, they really need to be final for purposes of assessing awards, because once we release them, claimants should be able to rely on them and come forward to claim awards and waive tort claims.

Also, the more "final" they are by Dec. 21, the stronger our argument is for the quick and rough approach.

We're willing to draft as much of the actual regs here as DOJ wants, and given that we were able to do the airline loan regs in 14 days, this shouldn't be that hard. But you may want to echo that sentiment.

thanks

Brett M. Kavanaugh
11/21/2001 09:01:44 AM
Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP
cc: Jay P. Lefkowitz/OMB/EOP@EOP
Subject: Victims

what's latest status of reg process? when do you think we'll see draft regs from DOJ?

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Lawrence A. Fleischer/WHO /EOP@EOP [WHO] <Lawrence A. Fleischer>;Gregory L. Schulte/NSC/EOP@EOP [NSC] <Gregory L. Schulte>;Jill L. Angelo/WHO/EOP@EOP [WHO] <Jill L. Angelo>;Christina D. Roberts/WHO/EOP@EOP [WHO] <Christina D. Roberts>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;acampbell@no10.x.gsi.gov.uk [UNKNOWN] <acampbell@no10.x.gsi.gov.uk>;torie.clarke@osd.mil [UNKNOWN] <torie.clarke@osd.mil>;boucherra@state.gov [UNKNOWN] <boucherra@state.gov>;Mary J. Matalin/OVP/EOP@EOP [OVP] <Mary J. Matalin>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Peter Reid/WHO/EOP@EOP [WHO] <Peter Reid>;Allison Barber/WHO /EOP@EOP [WHO] <Allison Barber>;Paddy Feeny/WHO/EOP@EOP [WHO] <Paddy Feeny>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Stephen J. Hadley/NSC /EOP@EOP [NSC] <Stephen J. Hadley>;Pbassett@no10.x.gsi.gov.uk [UNKNOWN] <Pbassett@no10.x.gsi.gov.uk>;cbeers@pd.state.gov [UNKNOWN] <cbeers@pd.state.gov>;ddejban@pd.state.gov [UNKNOWN] <ddejban@pd.state.gov>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;cross2@pd.state.gov [UNKNOWN] <cross2@pd.state.gov>;Sean I. McCormack/NSC/EOP@EOP [NSC] <Sean I. McCormack>;Joseph R. Wood/OVP/EOP@EOP [OVP] <Joseph R. Wood>;rruth@pd.state.gov [UNKNOWN] <rruth@pd.state.gov>;allan.percival@fco.gov.uk [UNKNOWN] <allan.percival@fco.gov.uk>;sarh.hayward@fco.gov.uk [UNKNOWN] <sarh.hayward@fco.gov.uk>;Deborah Hermer/WHO/EOP@EOP [WHO] <Deborah Hermer>;Gordon D. Johndroe/WHO/EOP@EOP [WHO] <Gordon D. Johndroe>;alastair.campbell@fco2.demon.co.uk [UNKNOWN] <alastair.campbell@fco2.demon.co.uk>;phil.bassett@fco2.demon.co.uk [UNKNOWN] <phil.bassett@fco2.demon.co.uk>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Kenneth Hill/WHO/EOP@EOP [WHO] <Kenneth Hill>;Paul Ashin/WHO/EOP@EOP [WHO] <Paul Ashin>;Charles James/WHO/EOP@EOP [WHO] <Charles James>;Lucy B. Hartley/WHO/EOP@EOP [WHO] <Lucy B. Hartley>;Hannah Siemers/WHO/EOP@EOP [WHO] <Hannah Siemers>;Nina Rees/OVP/EOP@EOP [OVP] <Nina Rees>;Jennifer Foley/WHO /EOP@EOP [WHO] <Jennifer Foley>;Megan D. Moran/OVP/EOP@EOP [OVP] <Megan D. Moran>;josepht@pd.state.gov [UNKNOWN] <josepht@pd.state.gov>;percivala@pd.state.gov [UNKNOWN] <percivala@pd.state.gov>;haywards@pd.state.gov [UNKNOWN] <haywards@pd.state.gov>;hoogesr@pd.state.gov [UNKNOWN] <hoogesr@pd.state.gov>;keithk@pd.state.gov [UNKNOWN] <keithk@pd.state.gov>;kincannonj@state.gov [UNKNOWN] <kincannonj@state.gov>;wentworth@state.gov [UNKNOWN] <wentworth@state.gov>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP@EOP [WHO] <Gregory Goss>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP@EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>;Harry W. Wolff/WHO/EOP@EOP [WHO] <Harry W. Wolff>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;John_W._Howard@oa.eop.gov [UNKNOWN] <John_W._Howard@oa.eop.gov>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Peter

M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott_Jeffcoat@oa.eop.gov [UNKNOWN] <Scott_Jeffcoat@oa.eop.gov>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO /EOP@EOP [WHO] <Edward Ingle>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO /EOP@EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Kenneth_B._Mehlman@oa.eop.gov [UNKNOWN] <Kenneth_B._Mehlman@oa.eop.gov>;Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L. West>;Tobin_K._Harvey@oa.eop.gov [UNKNOWN] <Tobin_K._Harvey@oa.eop.gov>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Danner_R._Bethel@oa.eop.gov [UNKNOWN] <Danner_R._Bethel@oa.eop.gov>;Mary Elizabeth Farr/WHO/EOP@EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Debra Heiden/OVP /EOP@EOP [OVP] <Debra Heiden>;Douglas_D._McCormick@oa.eop.gov [UNKNOWN] <Douglas_D._McCormick@oa.eop.gov>;I._Lewis_Libby@oa.eop.gov [UNKNOWN] <I._Lewis_Libby@oa.eop.gov>;Charles D. McGrath Jr/OVP/EOP@EOP [OVP] <Charles D. McGrath Jr>;Ethan A. Hastert/OVP/EOP@EOP [OVP] <Ethan A. Hastert>;Juleanna R. Glover/OVP/EOP@EOP [OVP] <Juleanna R. Glover>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>;Ronald I. Christie/OVP/EOP@EOP [OVP] <Ronald I. Christie>;Margita N. Thompson/OVP/EOP@EOP [OVP] <Margita N. Thompson>;Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Stephen S. Ruhlen/OVP/EOP@EOP [OVP] <Stephen S. Ruhlen>;Lauren K. Allgood/OVP /EOP@EOP [OVP] <Lauren K. Allgood>;Debra R. Dunn/OVP/EOP@EOP [WHO] <Debra R. Dunn>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Donald_M._Sumerlin@oa.eop.gov [UNKNOWN] <Donald_M._Sumerlin@oa.eop.gov>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Stephen M. Garrison/OPD/EOP@EOP [OPD] <Stephen M. Garrison>;Eric H. Otto/OPD/EOP@EOP [OPD] <Eric H. Otto>;edgillespie@quinngillespie.com [UNKNOWN] <edgillespie@quinngillespie.com>;christine.iverson@mail.house.gov [UNKNOWN] <christine.iverson@mail.house.gov>;Josephine B. Robinson/WHO/EOP@EOP [WHO] <Josephine B. Robinson>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;charles.yoder@mail.va.gov [UNKNOWN] <charles.yoder@mail.va.gov>;lindsey_kozberg@ed.gov [UNKNOWN] <lindsey_kozberg@ed.gov>;mindy.tucker@usdoj.gov [UNKNOWN] <mindy.tucker@usdoj.gov>;terrell.halaska@hhs.gov [UNKNOWN] <terrell.halaska@hhs.gov>;nancy_i._segerdahl@hud.gov [UNKNOWN] <nancy_i._segerdahl@hud.gov>;kreisher.tina@epa.gov [UNKNOWN] <kreisher.tina@epa.gov>;cooper.mildred@epa.gov [UNKNOWN] <cooper.mildred@epa.gov>;roy-stuart@dol.gov [UNKNOWN] <roy-stuart@dol.gov>;cliff_may@ios.doi.gov [UNKNOWN] <cliff_may@ios.doi.gov>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Melissa_sabatine@hotmail.com [UNKNOWN] <Melissa_sabatine@hotmail.com>;brian.gunderson@mail.house.gov [UNKNOWN] <brian.gunderson@mail.house.gov>;terry.holt@mail.house.gov [UNKNOWN] <terry.holt@mail.house.gov>;kevin.schweers@mail.house.gov [UNKNOWN]

<kevin.schweers@mail.house.gov>;paul.morrell@mail.house.gov [UNKNOWN]
<paul.morrell@mail.house.gov>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael
Shannon>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E.
Eberly>;Lisa_T._Cummins@oa.eop.gov [UNKNOWN]
<Lisa_T._Cummins@oa.eop.gov>;Mark_V._Scott@oa.eop.gov [UNKNOWN]
<Mark_V._Scott@oa.eop.gov>;Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H.
Tennery>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;sschmidt@nrcc.org
[UNKNOWN] <sschmidt@nrcc.org>;Brian R. Besanceney/OPD/EOP@EOP [OPD] <Brian R.
Besanceney>;mmckinnon@pstrategies.com [UNKNOWN]
<mmckinnon@pstrategies.com>;MMiner@rnchq.org [UNKNOWN]
<MMiner@rnchq.org>;BComstock@rnchq.org [UNKNOWN] <BComstock@rnchq.org>;James
R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;jcram@rnchq.org [UNKNOWN]
<jcram@rnchq.org>;dmishoe@rnchq.org [UNKNOWN]
<dmishoe@rnchq.org>;Kevin_J._Martin@oa.eop.gov [UNKNOWN]
<Kevin_J._Martin@oa.eop.gov>;Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G.
Gray>;mcrawford@doc.gov [UNKNOWN] <mcrawford@doc.gov>;maryanne.lyle@fema.gov [
UNKNOWN] <maryanne.lyle@fema.gov>;Nancy_L._segerdahl@hud.gov [UNKNOWN]
<Nancy_L._segerdahl@hud.gov>;chet.lunner@ost.dot.gov [UNKNOWN]
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Subject: : The War on Terrorism -- November 21, 2001
Attachments: P_E1H94003_WHO.TXT_1.doc

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TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN

TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:ginni.thomas@heritage.org (ginni.thomas@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
READ:UNKNOWN
TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:bberrytx@aol.com (bberrytx@aol.com [UNKNOWN])
READ:UNKNOWN
TO:jenniferecrooks@hotmail.com (jenniferecrooks@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:rsavarese@kpmg.com (rsavarese@kpmg.com [UNKNOWN])
READ:UNKNOWN
TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
READ:UNKNOWN
TO:ccamp@llano-permian.com (ccamp@llano-permian.com [UNKNOWN])
READ:UNKNOWN
TO:campsite@nts-online.net (campsite@nts-online.net [UNKNOWN])
READ:UNKNOWN
TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:mona@gregabbottcampaign.com (mona@gregabbottcampaign.com [UNKNOWN])
READ:UNKNOWN
TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])
READ:UNKNOWN
TO:creazzo@hotmail.com (creazzo@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jessica.incitto@mail.house.gov (jessica.incitto@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jonathan.grella@mail.house.gov (jonathan.grella@mail.house.gov [UNKNOWN])
READ:UNKNOWN

TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
READ:UNKNOWN
TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
READ:UNKNOWN
TO:pat.shortridge@enron.com (pat.shortridge@enron.com [UNKNOWN])
READ:UNKNOWN
TO:richard.mcbride@glo.state.tx.us (richard.mcbride@glo.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:jerogan@venable.com (jerogan@venable.com [UNKNOWN])
READ:UNKNOWN
TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:kathicard@springmail.com (kathicard@springmail.com [UNKNOWN])
READ:UNKNOWN
TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
)
READ:UNKNOWN
TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
READ:UNKNOWN
TO:Kirk.Boyle@mail.house.gov (Kirk.Boyle@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
READ:UNKNOWN
TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.
Good morning. Today's weather forecast is partly cloudy with a high of 53
degrees. And remember, its still not too late to pardon your turkey.

(See attached file: CIC -- Daily November 21.doc)
- CIC -- Daily November 21.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_E1H94003_WHO.TXT_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

11/21/2001

Today's Schedule

4:00a EST	British Foreign Secretary Jack Straw to host a media briefing on political and humanitarian events related to Afghanistan.
12:00p EST	President Bush shares a pre-Thanksgiving meal with troops at Fort Campbell in Kentucky.
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher.
2:35p EST	Secretary Rumsfeld visits the Military Intelligence Center at Fort Bragg North Carolina for a demonstration of U.S. Special Forces.

In Case You Missed It...

- "A 16-year old Afghan girl fronted Kabul Television's return to the airwaves yesterday, after a five-year TV blackout under the Taliban." (James Plamer; *The Independent* [U.K.], 11/19/01)

Recent Key Quotes & Developments

- "In the past few days, we have witnessed…the pure joy and relief expressed by Afghan civilians in cities that the Taliban lost or abandoned." (John Donvan; ABC's "Nightline," 11/19/01)
- The first leaflets, containing reward information for the capture of al Qaeda leaders, were dropped over Afghanistan during the last 24 hours.
- "Four journalists were forced out of their cars at gunpoint yesterday and shot dead by Taliban diehards…The gunmen then stole satellite phones, cameras and the journalists' belongings." (Philip Smucker; *The Daily Telegraph* [U.K.], 11/20/01)
- A meeting of various Afghan groups and representatives is scheduled for the week of November 26 in Germany. The meeting will be brokered by the U.N. and is the first step towards the establishment of a broad-based representative government in Afghanistan.

Message

- U.S. troops are deployed far from home, in a war against terror and evil. Our Nation and the world are counting on them. They are making us secure, and they are making us proud.
- Our enemies are devious and ruthless. They have no conscience, no religion, and no mercy. They seek to kill our citizens. They seek to overthrow friendly governments. They seek weapons of mass destruction. But we are seeking them. We are finding them. And we are fighting them.
- We fight the terrorists – and all those who give them aid. America has a message for the nations of the world: If you harbor a terrorist, you are a terrorist. If you feed a terrorist or fund a terrorist, you are a terrorist. And you will be held accountable.
- The Taliban know that by now. Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.

Facts of the Day

- The State Department's Bureau for Population, Refugees and Migration recently provided an additional $4 million to support humanitarian relief in Central Asia. Of that, $2 million went to the Red Cross/Red Crescent and $2 million went to UNICEF's emergency relief initiatives in Afghanistan.
- On November 20, USAID's Office of Foreign Disaster Assistance confirmed that a shipment of 5 medical kits arrived in Turkmenistan for distribution in Afghanistan. This brings the total number of kits to 10, each of which provides basic medical supplies and medicines for 10,000 people for three months.
- To date, the U.S. Department of Defense has airdropped 1,725,840 Humanitarian Daily Rations, totaling approximately $120 million, into Afghanistan.
- According to the U.N., since November 1 nearly 12,000 refugees have spontaneously returned to Afghanistan from refugee camps in Iran.

REV_00136281

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John P. McConnell/OVP/EOP@EOP [OVP] <John P. McConnell>;Matthew O. Scully/WHO /EOP@EOP [WHO] <Matthew O. Scully>
Sent: 11/21/2001 4:06:18 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-NOV-2001 09:06:18.00
SUBJECT::
TO:John P. McConnell ( CN=John P. McConnell/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Matthew O. Scully ( CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I called and left John a voice mail with some thoughts on US
Attorneys.
```

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Oscar Gonzalez/OMB/EOP@EOP [OMB] <Oscar Gonzalez>
Sent:	11/21/2001 6:33:57 AM
Subject:	: Re: REMINDER on LRM OGG168 - - National Archives and Records Administration Qs and As on Implementation of the Presidential Records Act
Attachments:	P_HBP94003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-NOV-2001 11:33:57.00
SUBJECT:: Re: REMINDER on LRM OGG168 - - National Archives and Records Administration Qs and As on Implementation of the Presidential Records Act
TO:Oscar Gonzalez (CN=Oscar Gonzalez/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel approves.

From: Oscar Gonzalez on 11/21/2001 11:31:37 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: REMINDER on LRM OGG168 - - National Archives and Records Administration Qs and As on Implementation of the Presidential Records Act

This is a reminder that comments on these Qs and As are due at 12:00 P.M. TODAY. Please provide comments ASAP.
If you've already responded to this request, please disregard this message.

Thanks
---------- Forwarded by Oscar Gonzalez/OMB/EOP on 11/21/2001 11:29 AM ----------

From: Oscar Gonzalez on 11/20/2001 01:01:26 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM OGG168 - - National Archives and Records Administration Qs and As on Implementation of the Presidential Records Act

We are seeking your review of NARA responses to questions from the House Government Reform Committee's Subcommittee on Government Efficiency following an October 19th hearing on the implementation of the Presidential Records Act (PL 95-591). Please submit comments by no later than 12:00 P.M. Wednesday, November 21st.

Note to agencies and EOP staff: You will only receive an electronic version of these Qs and As.

LRM ID: OGG168
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, November 20, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Oscar Gonzalez
PHONE: (202)395-3923 FAX: (202)395-3109
SUBJECT: National Archives and Records Administration Qs and As on Implementation of the Presidential Records Act

DEADLINE: 12:00 P.M. Wednesday, November 21, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: We are seeking your review of NARA responses to questions from the House Government Reform Committee's Subcommittee on Government Efficiency following an October 19th hearing on the implementation of the Presidential Records Act (PL 95-591). Please submit comments by no later than 12:00 P.M. Wednesday, November 21st.

DISTRIBUTION LIST

AGENCIES:
061-JUSTICE - Daniel Bryant - (202) 514-2141
088-Office of Government Ethics - Jane Ley - (202) 208-8022

EOP:
Augustine T. Smythe
Lloyd A. Blanchard
Michael K. Berkholtz
Kenneth L. Schwartz
Randolph M. Lyon
Kimberley S. Luczynski
David J. Haun
Eric W. Hunn
S. A. Noe
Lauren Uher
Jay P. Lefkowitz
McGavock D. Reed
Steven D. Aitken
Daniel J. Chenok
Brooke Dickson
Eva Kleederman
WHGC LRM
Brett M. Kavanaugh
Danielle M. Simonetta
Brett S. Loper
Kirsten A. Chadwick
Kristine Simmons
Clay Johnson III
Carrie C. Pauska
Kenneth B. Mehlman
Katherine G. Marinis
OVP LRM
David S. Addington
Richard E. Green
James J. Jukes
LRM ID: OGG168 SUBJECT: National Archives and Records Administration Qs and As on Implementation of the Presidential Records Act

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Oscar Gonzalez Phone: 395-3923 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4607

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

- Hornq&afinal.doc

Message Sent
To:_____
Augustine T. Smythe/OMB/EOP@EOP
Lloyd A. Blanchard/OMB/EOP@EOP
Michael K. Berkholtz/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
Kimberley S. Luczynski/OMB/EOP@EOP
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Lauren Uher/OMB/EOP@EOP
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Steven D. Aitken/OMB/EOP@EOP
Daniel J. Chenok/OMB/EOP@EOP
Brooke Dickson/OMB/EOP@EOP
Eva Kleederman/OMB/EOP@EOP
WHGC LRM
Brett M. Kavanaugh/WHO/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP

Brett S. Loper/OMB/EOP@EOP
Kirsten A. Chadwick/WHO/EOP@EOP
Kristine Simmons/OPD/EOP@EOP
Clay Johnson III/WHO/EOP@EOP
Carrie C. Pauska/WHO/EOP@EOP
Kenneth B. Mehlman/WHO/EOP@EOP
Katherine G. Marinis/WHO/EOP@EOP
OVP LRM
David S. Addington/OVP/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

Message Sent
To:_____
Augustine T. Smythe/OMB/EOP@EOP
Lloyd A. Blanchard/OMB/EOP@EOP
Michael K. Berkholtz/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
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Carrie C. Pauska/WHO/EOP@EOP
Kenneth B. Mehlman/WHO/EOP@EOP
Katherine G. Marinis/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HBP94003_WHO.TXT_1>

ADDITIONAL QUESTIONS FOR GOVERNOR CARLIN

1. Pursuant to former Executive Order 12667, you notified former President Reagan and incumbent President Bush earlier this year of your intentions to release about 68,000 pages of Reagan records. (We understand that you sent one notice in February and another notice in June.) Please provide the subcommittee copies of these notices.

A: NARA's communications with the former and current Presidents concerning the review of records that may be subject to constitutionally based privileges has always been deemed sensitive, deliberative, and confidential, and NARA has never made such information available to outside parties. Accordingly, NARA does not believe it is appropriate to provide these notices to the Committee.

2. Section 2 of Executive Order 12667 required that, when giving notice, "the Archivist, utilizing any guidelines provided by the incumbent and former Presidents, shall identify any specific materials, the disclosure of which he believes may raise a substantial question of Executive privilege." Did your notices for the Reagan records identify any such materials? If so, please briefly describe what substantial questions of Executive privilege you identified.

A: NARA's communications with the former and current Presidents concerning the review of records that may be subject to constitutionally based privileges has always been deemed sensitive, deliberative, and confidential, and NARA has never made such information available to outside parties. Accordingly, NARA does not believe it is appropriate to provide these notices to the Committee.

3. To your knowledge, had former President Reagan's representatives completed or largely completed their review of these records under Executive Order 12667 before this Executive Order was revoked on November 1?

A: Former President Reagan's representatives have conducted a preliminary review of the records subject to the two notices, but had not completed a final review prior to November 1, 2001.

4. Did the Reagan representatives request any extensions of the 30-day time limit under Executive Order 12667?

A: No.

5. Did they object to release of any of the 68,000 pages of records within the 30-day time period under Executive Order 12667 or at any time thereafter?

A: Former President Reagan's representatives have not completed a final review, and therefore have not raised any objections.

REV_00136304

6. Have they given you any indication whether they planned to object to release of any records under the terms of the Executive Order?

A: Because former President Reagan's representatives have not completed a final review, they have not indicated whether they intend to raise any objections.

7. You suggested in your testimony that the Reagan representatives might have to re-review the records under President Bush's new Executive Order 13233. Do you agree with Mr. Whelan's testimony that the new Executive Order does not change in any way the standards or criteria for asserting privilege claims? If so, what possible need could there be for a re-review by the Reagan representatives?

A: As we understood Mr. Whelan's testimony, the new Executive Order does not purport to define the contours of constitutionally based privileges. Former President Reagan's representatives have not completed a final review; rather, they would simply be completing their initial review of the records.

8. You testified that the current White House has not yet started a substantive review of the 68,000 pages of records covered by your notices of many months ago in order to determine whether to invoke Executive privilege. Have they even asked for any of the records for this purpose?

A: Yes.

9. Do you have any idea when or if they intend to conduct a substantive review of these records?

A: The Executive Order authorizes the incumbent President or his designee to review the records. Any questions concerning the timing or intent of the incumbent President's actions should be addressed directly to the White House.

10. Is it your understanding that the new Executive Order takes us back to where we were in February of this year when you first noticed your intent to release the Reagan records? In other words, the former and incumbent Presidents both have a right to start over in their review of the records?

A: Given the fact that review of the records has not been completed by either the former or incumbent Presidents, NARA has provided notice to both parties pursuant to E.O. 13233.

11. Did you propose to release these 68,000 pages of records in response to a request for access under Section 2204(c)(1) of the Presidential Records Act? If not, is not the new Executive Order inapplicable by its terms to this proposed release? (See Section 3(a) of the Order).

REV_00136305

A: NARA has now received an access request under Section 2204(c)(1) of the Presidential Records Act, and has therefore provided notice to the former and incumbent Presidents under E.O. 13233. In any event, it is NARA's understanding that E.O. 13233 applies to proposed disclosures initiated by NARA through systematic processing.

12. The Presidential Records Act provides that, once any restriction periods authorized by the Act expire, the records of a former President "shall be administered in accordance with" the Freedom of Information Act (FOIA). The only exception is that the FOIA's so-called "(b)(5) deliberative process" exemption does not apply. The Act further provides that presidential records shall be deemed to be records of your agency for purposes of applying FOIA. Do you agree that these provisions incorporate the time limits, requester rights, and all other requirements and procedures applicable under FOIA?

A: This question involves an interpretation of law, which should be answered by the Department of Justice.

13. Has it been and is it still your practice to apply the full range of FOIA requirements and procedures when processing access requests under Section 2204(c)(1) of the Presidential Records Act?

A: NARA has and will process access requests in accordance with the Presidential Records Act, including Section 2204(c)(1). The extent to which "the full range of FOIA requirements and procedures" apply to the PRA involves an interpretation of law, which should be answered by the Department of Justice.

14. Do you see any inconsistency between the applicable FOIA procedures and Executive Order 13233? To the extent there is inconsistency, will you follow the FOIA procedures?

A: This question involves an interpretation of law, which should be answered by the Department of Justice.

15. Do you agree that a notice to an incumbent and former President of intent to release records pursuant to a FOIA request would not toll the running of FOIA's time limits or otherwise affect the application of FOIA requirements?

A: This question involves an interpretation of law, which should be answered by the Department of Justice.

16. Do you agree that a former or current President could enlarge the FOIA time limits or otherwise affect the operation of FOIA by seeking an extension of time to review the records?

REV_00136306

A: This question involves an interpretation of law, which should be answered by the Department of Justice.

17. If action on a request is not completed within FOIA's applicable time limits, do you agree that the requester could invoke FOIA's exhaustion of administrative remedies provision and go to court even if the reviews under Executive Order were still underway?

A: This question involves an interpretation of law, which should be answered by the Department of Justice.

18. The Presidential Records Act and your implementing regulations (36 C.F.R.§ 1270.46) vest you with authority and responsibility to determine the validity of Executive privilege claims by a former President, do they not?

A: Any authority to assess the validity of Executive privilege claims by a former President is subject to direction from the incumbent President.

19. Executive Order 13233 divests you of this authority and responsibility, does it not?

A: Executive Order 13233 establishes a presumption that the incumbent President will support a claim of Executive privilege by a former President; the Archivist is obliged to follow direction from the incumbent President.

20. How do you intend to deal with this conflict? Will you follow the law and regulation or the Executive Order?

A: To the extent necessary, NARA intends to revise its regulations to be consistent with the Executive Order.

21. Although recognizing the possibility of privilege claims, the Presidential Records Act and your implementing regulations (36 C.F.R.§ 1270.44) grant Congress and the courts access to presidential records notwithstanding any restrictions imposed by the law or the regulations. Executive Order 13233 purports to impose essentially the same limits on congressional and judicial access that apply to public requests for access. How do you intend to deal with this conflict? Will you honor congressional and judicial requests for records in accordance with section 2205 of the Act? For example, absent an actual claim of privilege, will you provide records by the return date specified in a congressional or judicial subpoena?

A: The authority and procedures for access to Presidential records by Congress and the Courts are established in Section 2205 of the PRA. NARA has responded to such "special access" requests since 1989, which has until now included a "30 day" notice and review procedure, as established in Executive Order 12667, by

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which the former and incumbent Presidents could assert a constitutionally based privilege. NARA does not understand E.O. 13233 to be changing that process, except with respect to the review time periods. The order does not impose the same limits on congressional and judicial access that apply to public requests for access.

22. The Presidential Records Act and your implementing regulations (36 C.F.R. §§ 1270.20 and .22) provide that the Archivist will exercise discretion and authority on behalf of a former President after his death of disability, unless the former President designates another representative by written notice to the Archivist before his death or disability. Executive Order 13233 makes no provision for the Archivist to act on behalf of a former President. Instead, it provides that, absent a prior designation, the family of a former President may designate someone to act on his behalf. How do you intend to deal with this conflict?

A: All of the former Presidents subject to the PRA have designated representatives by written notice to the Archivist. When and if any such conflict arose, NARA will address the issue at that time in consultation with the former and incumbent Presidents.

23. Your implementing regulations (36 C.F.R. § 1270.46) also permit you to release records after 30 days following notice to the former and incumbent Presidents, and within less than 30 days if requested by Congress. Executive Order 13233 effectively negates this regulation, does it not? How do you intend to deal with this conflict?

A: NARA intends to revise its regulations to be consistent with the Executive Order.

24. You testified that you shared certain "professional concerns" with the Administration in the course of developing the new Executive Order. What were those concerns and how were they resolved? Did you raise any concerns over potential conflicts between the proposed Executive Order and the requirements of the Presidential Records Act and your implementing regulation?

A: The White House afforded NARA a substantial and unprecedented opportunity to provide comments, concerns, and input into the drafting process of E.O. 13233. NARA recognizes that there are many ways to address this issue, and NARA's input reflected our longstanding and direct experience in working with the records of former Presidents, as well as the Archivist's statutory mandate to make Presidential "records available to the public as rapidly and completely as possible consistent with the provisions of [the PRA]." This input was provided in confidence as part of the deliberative processes of the President. Therefore, NARA does not believe that it is appropriate to share the nature or details of these communications with outside parties.

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Sent: 11/21/2001 12:26:56 PM
Subject: : Al Qaeda & Taliban Catalog of Atrocities
Attachments: P_3Q0A4003_CEA.TXT_1.doc

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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN

TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
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TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov @ inet [UNKNOWN])
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TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov @ inet [UNKNOWN])
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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
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TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
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TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
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TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [UNKNOWN])
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TO:melissa_sabatine@hotmail.com (melissa_sabatine@hotmail.com @ inet [UNKNOWN])
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TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
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TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
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TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
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READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
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TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
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TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
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THE AL QAEDA & TALIBAN CATALOGUE OF ATROCITIES

Al Qaeda & the Taliban told us at their press conference yesterday that it is time to "forget" their murder of thousands of innocent people from more than 80 countries on September 11.

As President George W. Bush has said, "We will never forget all the innocent people killed by the hatred of a few."

Presumably Al Qaeda and the Taliban would also like the world to "forget" about their other atrocities against the innocent. Below are a few examples from their growing catalogue of terrorist atrocities.

EXAMPLES OF RECENT AL QAEDA & TALIBAN ATROCITIES

ATROCITY

"Among the accounts of mutilations, beatings and arbitrary executions there was evidence of a new abomination: the torture of children. An unknown number of infants were savagely beaten during the Islamic militia's 14-month occupation of Taloqan, the former headquarters of the Alliance, usually for the supposed crimes of their parents." *(Source: The Times [U.K.], 11/13/01)*

ATROCITY

"The barbarity of the Taliban plumbed new depths when troops shot dead eight boys for daring to laugh, sickened refugees revealed yesterday. The teenage lads had been chuckling at the soldiers who suddenly raised their Kalashnikov rifles and gunned them down. It was one of a string of atrocities in the besieged Afghanistan city of Kunduz, which was last night poised to fall to the Northern Alliance. At least 300 frightened Taliban were killed by men from their own side because they wanted to surrender." *(Source: The Sun [U.K.], 11/19/01)*

ATROCITY

"The Taliban is jailing children as young as 10 in Kabul to root out dissent, it is claimed today. According to French journalist Michel Peyrard, who was held by the Taliban for 25 days, the biggest threat to the extremist regime is its own paranoia. He said his fellow detainees included several children. On one occasion the nephews of an escaped political prisoner - aged 10, 13 and 19 - were rounded up. The eldest was tortured and subjected to a mock execution. The Taliban also jails leaders and military commanders for being traitors on only the flimsiest evidence." *(Source: The Evening Standard (London), 11/9/01)*

ATROCITY

"One day they came, and ordered everyone to go into the bazaar and protest against the bombings, and chant: 'Death to America'," said Salahuddin. "I was in my house and I had to go outside. When we refused to protest against America, they got angry." Another man who fled the village said he saw the Taliban drag a man called Lash Boi from his house to the mosque and beat him to death when he refused to protest. Lash Boi's three sons are on the front line now, fighting to avenge their father's death, he said." *(Source: The Independent (U.K.), 11/9/01)*

ATROCITY

"When the family returned six hours later they found that Abdul's right femur had been shattered by repeated blows from a Kalashnikov, the stock of the rifle leaving a clear imprint on the floor of the family's home. Doctors gave Nurala a couple of packets of paracetamol and bluntly told him that his son would never walk again. 'He was in so much pain for a long time, and it changed his mind as well,' Nurala said. 'I don't understand how anyone can do such a thing to a small child. I have spoken to many people about this and nobody understands it.' There are many others in Taloqan who have similar stories of children being beaten in front of their parents because their fathers were unable to hand over a weapon to the Taleban, of men who had a hand amputated when they were accused of stealing the bread that they carried home to their families, and of women who were raped after their husbands were taken away and imprisoned in Kandahar or Mazar-i Sharif." *(Source: The Times [U.K.], 11/13/01)*

ATROCITY

"'They burnt some of us alive.' It was almost the first thing he said to us. In the dust and squalor of a refugee camp, Salahuddin told yesterday how the Taliban burnt an entire family to death in their own home in revenge for the American bombing. He says he saw them bringing out the blackened bodies of the children. Then the Taliban took Salahuddin and the other villagers to the front line, where they ordered them to gather up scattered bits of bodies, all that was left of Taliban soldiers killed by the American bombs." *(Source: The Independent U.K. 11/9/01)*

ATROCITY

"'The Taliban commanders killed 100 of our friends,' said this defector, adding, 'They hung their bodies from lamp posts as a warning to the rest of us.'" *(Source: CBS Evening News, 11/19/01)*

ATROCITY

"One said a doctor was shot dead for not treating a wounded Taliban soldier quickly enough, while others said a group of eight teenage boys were killed for laughing at Taliban soldiers." *(Source: The Herald (Scotland), 11/19/01)*

ATROCITY

"Foreign Taliban soldiers, who have gathered in Kunduz for what appears to be a last stand, have gunned down more than 400 Afghan Taliban soldiers trying to defect to the Northern Alliance, the refugees and the alliance soldiers said. The 400 were killed in mass shootings late last week, refugees said, and were prompted in part by the defection of a local Taliban commander to the Northern Alliance. According to the reports, Arab and Pakistani soldiers with the Taliban have also begun shooting young civilian men of the Uzbek and Tajik ethnic groups suspected of trying to escape to territory controlled by the Northern Alliance. 'The foreigners came into the village and shot all the men,' said Muhammadullah, a 21-year-old man who crossed into Northern Alliance territory today. 'I saw this with my own eyes.'" *(Source: The New York Times, 11/19/01)*

ATROCITY

"Foreign Taliban soldiers also killed dozens of Afghan Taliban soldiers on Friday at the village of Musazai near the Kunduz airport, refugees and Northern Alliance soldiers said. Refugees fleeing Kunduz said foreign Taliban soldiers had gunned down 125 Afghan Taliban soldiers who had been stopped on their way to the front lines. The foreign Taliban soldiers seem to have decided that the local Taliban were trying to defect. When they tried to stop them, a fight began and the foreign Taliban opened fire, the refugees said." *(Source: The New York Times, 11/19/01)*

ATROCITY

"The BBC has confirmed that the central Afghan town of Bamiyan was totally destroyed by the Taleban before they fled over the weekend. Evidence has also emerged of Bosnian-style ethnic cleansing in the region involving the execution of hundreds of local ethnic Hazara men." *(Source: BBC News, 11/13/01)*

ATROCITY

"Our correspondent said every building, shop and house had been destroyed before the town fell on Sunday after a two-hour gun battle." *(Source: BBC News, 11/13/01)*

ATROCITY

September 1996 -- Upon capturing Kabul the Taliban castrated President Najibullah, dragged his body behind a jeep for several rounds of the Palace and then shot him dead. His brother was similarly tortured and then throttled to death. (Source: Department of Defense)

ATROCITY

January 1998 -- In the Western province of Faryab, the Taliban massacred approximately 600 Uzbek villageres. Western aid workers who later investigated the incident said civilians were dragged from their homes, lined up and gunned down. *(Source: Department of Defense)*

ATROCITY

August 1998 -- The Taliban entered Mazar-I-Sharif and went on a frenzy killing shop owners, cart pullers, women and children shoppers. *(Source: Department of Defense)*

ATROCITY

August 2000 -- Taliban execute POWs in the streets of Heart as a lesson to the local population. *(Source: Department of Defense)*

ATROCITY

June 2001 -- Taliban bombed the administrative center of Yakaolang, including the district hospital and an aid agency office. *(Source: Department of Defense)*

ATROCITY

Massacre at Yakaolang -- Taliban forces committed a massacre in Yakaolang in January 2001. The victims were primarily Hazaras. The massacre began on January 8, 2001, and continued for four days. The Taliban detained about 300 civilian adult males, including staff members of local humanitarian organizations. The men were herded to assembly points, and then shot by firing squad in public view. According to Human Rights Watch, about 170 men are confirmed to have been killed. According to Amnesty International, eyewitnesses reported the deliberate killing of dozens of civilians hiding in a mosque: Taliban soldiers fired rockets into a mosque where some 73 women, children and elderly men had taken shelter. *(Source: State Department)*

ATROCITY

Massacre at Robatak Pass -- The May 2000 massacre took place near the Robatak pass. 31 bodies were found one site, of these, 26 were positively identified as civilians. The victims were Hazara Shi'as. *(Source: State Department)*

ATROCITY

Massacre in Bamiyan -- When the Taliban recaptured Bamiyan in 1999, there were reports that Taliban forces carried out summary executions upon entering the city. According to Amnesty International, hundreds of men, and some instances women and children, were separated from their families, taken away, and killed. Human Rights Watch reports that besides executing civilians, the Taliban burned homes and used detainees for forced labor. *(Source: State Department)*

ATROCITY

Massacre in the Shomaili Plains -- July 1999 Human Rights Watch reports that a Taliban offensive here was marked by summary executions, the abduction and disappearance of women, the burning of homes, destruction of property, and the cutting down of fruit trees. According to a report by the U.N. Secretary General on November 16, 1999, "The Taliban forces, who allegedly carried out these acts, essentially treated the civilian population with hostility and made no distinction between combatants and non-combatants." *(Source: U.S. State Department)*

ATROCITY

Massacre in Mazar-I-Sharif -- In August 1998, the Taliban captured Mazar-I-Sharif. There were reports that between 2,000 and 5,000 men, women and children -- mostly ethnic Hazara civilians -- were massacred by the Taliban after the takeover of Mazar-I-Sharif. During the massacre, the Taliban forces carried out a systematic search for male members for the ethnic Hazara, Tajik, and Uzbek communities in the city. Human Rights Watch estimates that scores, perhaps hundreds, of Hazara men and boys were summarily executed. There were also reports that women and girls were raped and abducted during the Taliban takeover of the city. *(Source: State Department)*

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Sent: 11/21/2001 12:43:13 PM
Subject: : Al Qaeda & Taliban Catalog of Atrocities
Attachments: P_H51A4003_WHO.TXT_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:21-NOV-2001 17:43:13.00
SUBJECT:: Al Qaeda & Taliban Catalog of Atrocities
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READ:UNKNOWN
TO:Lawrence A. Fleischer ( CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gregory L. Schulte ( CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [ NSC ] )
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(See attached file: CIC -- Taliban Catalog Atrocities.doc)
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THE AL QAEDA & TALIBAN CATALOGUE OF ATROCITIES

Al Qaeda & the Taliban told us at their press conference yesterday that it is time to "forget" their murder of thousands of innocent people from more than 80 countries on September 11.

As President George W. Bush has said, "We will never forget all the innocent people killed by the hatred of a few."

Presumably Al Qaeda and the Taliban would also like the world to "forget" about their other atrocities against the innocent. Below are a few examples from their growing catalogue of terrorist atrocities.

EXAMPLES OF RECENT AL QAEDA & TALIBAN ATROCITIES

ATROCITY

"Among the accounts of mutilations, beatings and arbitrary executions there was evidence of a new abomination: the torture of children. An unknown number of infants were savagely beaten during the Islamic militia's 14-month occupation of Taloqan, the former headquarters of the Alliance, usually for the supposed crimes of their parents." *(Source: The Times [U.K.], 11/13/01)*

ATROCITY

"The barbarity of the Taliban plumbed new depths when troops shot dead eight boys for daring to laugh, sickened refugees revealed yesterday. The teenage lads had been chuckling at the soldiers who suddenly raised their Kalashnikov rifles and gunned them down. It was one of a string of atrocities in the besieged Afghanistan city of Kunduz, which was last night poised to fall to the Northern Alliance. At least 300 frightened Taliban were killed by men from their own side because they wanted to surrender." *(Source: The Sun [U.K.], 11/19/01)*

ATROCITY

"The Taliban is jailing children as young as 10 in Kabul to root out dissent, it is claimed today. According to French journalist Michel Peyrard, who was held by the Taliban for 25 days, the biggest threat to the extremist regime is its own paranoia. He said his fellow detainees included several children. On one occasion the nephews of an escaped political prisoner - aged 10, 13 and 19 - were rounded up. The eldest was tortured and subjected to a mock execution. The Taliban also jails leaders and military commanders for being traitors on only the flimsiest evidence." *(Source: The Evening Standard (London), 11/9/01)*

ATROCITY

"One day they came, and ordered everyone to go into the bazaar and protest against the bombings, and chant: 'Death to America'," said Salahuddin. "I was in my house and I had to go outside. When we refused to protest against America, they got angry." Another man who fled the village said he saw the Taliban drag a man called Lash Boi from his house to the mosque and beat him to death when he refused to protest. Lash Boi's three sons are on the front line now, fighting to avenge their father's death, he said." *(Source: The Independent (U.K.), 11/9/01)*

ATROCITY

"When the family returned six hours later they found that Abdul's right femur had been shattered by repeated blows from a Kalashnikov, the stock of the rifle leaving a clear imprint on the floor of the family's home. Doctors gave Nurala a couple of packets of paracetamol and bluntly told him that his son would never walk again. 'He was in so much pain for a long time, and it changed his mind as well,' Nurala said. 'I don't understand how anyone can do such a thing to a small child. I have spoken to many people about this and nobody understands it.' There are many others in Taloqan who have similar stories of children being beaten in front of their parents because their fathers were unable to hand over a weapon to the Taleban, of men who had a hand amputated when they were accused of stealing the bread that they carried home to their families, and of women who were raped after their husbands were taken away and imprisoned in Kandahar or Mazar-i Sharif." *(Source: The Times [U.K.], 11/13/01)*

ATROCITY

"'They burnt some of us alive.' It was almost the first thing he said to us. In the dust and squalor of a refugee camp, Salahuddin told yesterday how the Taliban burnt an entire family to death in their own home in revenge for the American bombing. He says he saw them bringing out the blackened bodies of the children. Then the Taliban took Salahuddin and the other villagers to the front line, where they ordered them to gather up scattered bits of bodies, all that was left of Taliban soldiers killed by the American bombs." *(Source: The Independent U.K. 11/9/01)*

ATROCITY

"'The Taliban commanders killed 100 of our friends,' said this defector, adding, 'They hung their bodies from lamp posts as a warning to the rest of us.'" *(Source: CBS Evening News, 11/19/01)*

ATROCITY

"One said a doctor was shot dead for not treating a wounded Taliban soldier quickly enough, while others said a group of eight teenage boys were killed for laughing at Taliban soldiers." *(Source: The Herald (Scotland), 11/19/01)*

ATROCITY

"Foreign Taliban soldiers, who have gathered in Kunduz for what appears to be a last stand, have gunned down more than 400 Afghan Taliban soldiers trying to defect to the Northern Alliance, the refugees and the alliance soldiers said. The 400 were killed in mass shootings late last week, refugees said, and were prompted in part by the defection of a local Taliban commander to the Northern Alliance. According to the reports, Arab and Pakistani soldiers with the Taliban have also begun shooting young civilian men of the Uzbek and Tajik ethnic groups suspected of trying to escape to territory controlled by the Northern Alliance. 'The foreigners came into the village and shot all the men,' said Muhammadullah, a 21-year-old man who crossed into Northern Alliance territory today. 'I saw this with my own eyes.'" *(Source: The New York Times, 11/19/01)*

ATROCITY

"Foreign Taliban soldiers also killed dozens of Afghan Taliban soldiers on Friday at the village of Musazai near the Kunduz airport, refugees and Northern Alliance soldiers said. Refugees fleeing Kunduz said foreign Taliban soldiers had gunned down 125 Afghan Taliban soldiers who had been stopped on their way to the front lines. The foreign Taliban soldiers seem to have decided that the local Taliban were trying to defect. When they tried to stop them, a fight began and the foreign Taliban opened fire, the refugees said." *(Source: The New York Times, 11/19/01)*

ATROCITY

"The BBC has confirmed that the central Afghan town of Bamiyan was totally destroyed by the Taleban before they fled over the weekend. Evidence has also emerged of Bosnian-style ethnic cleansing in the region involving the execution of hundreds of local ethnic Hazara men." *(Source: BBC News, 11/13/01)*

ATROCITY

"Our correspondent said every building, shop and house had been destroyed before the town fell on Sunday after a two-hour gun battle." *(Source: BBC News, 11/13/01)*

ATROCITY

September 1996 -- Upon capturing Kabul the Taliban castrated President Najibullah, dragged his body behind a jeep for several rounds of the Palace and then shot him dead. His brother was similarly tortured and then throttled to death. (Source: Department of Defense)

ATROCITY

January 1998 -- In the Western province of Faryab, the Taliban massacred approximately 600 Uzbek villageres. Western aid workers who later investigated the incident said civilians were dragged from their homes, lined up and gunned down. *(Source: Department of Defense)*

ATROCITY

August 1998 -- The Taliban entered Mazar-I-Sharif and went on a frenzy killing shop owners, cart pullers, women and children shoppers. *(Source: Department of Defense)*

ATROCITY

August 2000 -- Taliban execute POWs in the streets of Heart as a lesson to the local population. *(Source: Department of Defense)*

ATROCITY

June 2001 -- Taliban bombed the administrative center of Yakaolang, including the district hospital and an aid agency office. *(Source: Department of Defense)*

ATROCITY

Massacre at Yakaolang -- Taliban forces committed a massacre in Yakaolang in January 2001. The victims were primarily Hazaras. The massacre began on January 8, 2001, and continued for four days. The Taliban detained about 300 civilian adult males, including staff members of local humanitarian organizations. The men were herded to assembly points, and then shot by firing squad in public view. According to Human Rights Watch, about 170 men are confirmed to have been killed. According to Amnesty International, eyewitnesses reported the deliberate killing of dozens of civilians hiding in a mosque: Taliban soldiers fired rockets into a mosque where some 73 women, children and elderly men had taken shelter. *(Source: State Department)*

ATROCITY

Massacre at Robatak Pass -- The May 2000 massacre took place near the Robatak pass. 31 bodies were found one site, of these, 26 were positively identified as civilians. The victims were Hazara Shi'as. *(Source: State Department)*

ATROCITY

Massacre in Bamiyan -- When the Taliban recaptured Bamiyan in 1999, there were reports that Taliban forces carried out summary executions upon entering the city. According to Amnesty International, hundreds of men, and some instances women and children, were separated from their families, taken away, and killed. Human Rights Watch reports that besides executing civilians, the Taliban burned homes and used detainees for forced labor. *(Source: State Department)*

ATROCITY

Massacre in the Shomaili Plains -- July 1999 Human Rights Watch reports that a Taliban offensive here was marked by summary executions, the abduction and disappearance of women, the burning of homes, destruction of property, and the cutting down of fruit trees. According to a report by the U.N. Secretary General on November 16, 1999, "The Taliban forces, who allegedly carried out these acts, essentially treated the civilian population with hostility and made no distinction between combatants and non-combatants." *(Source: U.S. State Department)*

ATROCITY

Massacre in Mazar-I-Sharif -- In August 1998, the Taliban captured Mazar-I-Sharif. There were reports that between 2,000 and 5,000 men, women and children -- mostly ethnic Hazara civilians -- were massacred by the Taliban after the takeover of Mazar-I-Sharif. During the massacre, the Taliban forces carried out a systematic search for male members for the ethnic Hazara, Tajik, and Uzbek communities in the city. Human Rights Watch estimates that scores, perhaps hundreds, of Hazara men and boys were summarily executed. There were also reports that women and girls were raped and abducted during the Taliban takeover of the city. *(Source: State Department)*

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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
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TO:jessica.incitto@mail.house.gov (jessica.incitto@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jonathan.grella@mail.house.gov (jonathan.grella@mail.house.gov [UNKNOWN])
READ:UNKNOWN

TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
READ:UNKNOWN
TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
READ:UNKNOWN
TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
READ:UNKNOWN
TO:pat.shortridge@enron.com (pat.shortridge@enron.com [UNKNOWN])
READ:UNKNOWN
TO:richard.mcbride@glo.state.tx.us (richard.mcbride@glo.state.tx.us [UNKNOWN])
READ:UNKNOWN
TO:jerogan@venable.com (jerogan@venable.com [UNKNOWN])
READ:UNKNOWN
TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:kathicard@springmail.com (kathicard@springmail.com [UNKNOWN])
READ:UNKNOWN
TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
)
READ:UNKNOWN
TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
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TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
READ:UNKNOWN
TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.
This document will be released out of our Pakistan CIC tomorrow morning.
(5 a.m.
our time)

(See attached file: CIC -- Taliban Catalog Atrocities.doc)
- CIC -- Taliban Catalog Atrocities.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_H51A4003_OA.TXT_1>

THE AL QAEDA & TALIBAN CATALOGUE OF ATROCITIES

Al Qaeda & the Taliban told us at their press conference yesterday that it is time to "forget" their murder of thousands of innocent people from more than 80 countries on September 11.

As President George W. Bush has said, "We will never forget all the innocent people killed by the hatred of a few."

Presumably Al Qaeda and the Taliban would also like the world to "forget" about their other atrocities against the innocent. Below are a few examples from their growing catalogue of terrorist atrocities.

EXAMPLES OF RECENT AL QAEDA & TALIBAN ATROCITIES

ATROCITY

"Among the accounts of mutilations, beatings and arbitrary executions there was evidence of a new abomination: the torture of children. An unknown number of infants were savagely beaten during the Islamic militia's 14-month occupation of Taloqan, the former headquarters of the Alliance, usually for the supposed crimes of their parents." *(Source: The Times [U.K.], 11/13/01)*

ATROCITY

"The barbarity of the Taliban plumbed new depths when troops shot dead eight boys for daring to laugh, sickened refugees revealed yesterday. The teenage lads had been chuckling at the soldiers who suddenly raised their Kalashnikov rifles and gunned them down. It was one of a string of atrocities in the besieged Afghanistan city of Kunduz, which was last night poised to fall to the Northern Alliance. At least 300 frightened Taliban were killed by men from their own side because they wanted to surrender." *(Source: The Sun [U.K.], 11/19/01)*

ATROCITY

"The Taliban is jailing children as young as 10 in Kabul to root out dissent, it is claimed today. According to French journalist Michel Peyrard, who was held by the Taliban for 25 days, the biggest threat to the extremist regime is its own paranoia. He said his fellow detainees included several children. On one occasion the nephews of an escaped political prisoner - aged 10, 13 and 19 - were rounded up. The eldest was tortured and subjected to a mock execution. The Taliban also jails leaders and military commanders for being traitors on only the flimsiest evidence." *(Source: The Evening Standard (London), 11/9/01)*

ATROCITY

"One day they came, and ordered everyone to go into the bazaar and protest against the bombings, and chant: 'Death to America'," said Salahuddin. "I was in my house and I had to go outside. When we refused to protest against America, they got angry." Another man who fled the village said he saw the Taliban drag a man called Lash Boi from his house to the mosque and beat him to death when he refused to protest. Lash Boi's three sons are on the front line now, fighting to avenge their father's death, he said." *(Source: The Independent (U.K.), 11/9/01)*

ATROCITY

"When the family returned six hours later they found that Abdul's right femur had been shattered by repeated blows from a Kalashnikov, the stock of the rifle leaving a clear imprint on the floor of the family's home. Doctors gave Nurala a couple of packets of paracetamol and bluntly told him that his son would never walk again. 'He was in so much pain for a long time, and it changed his mind as well,' Nurala said. 'I don't understand how anyone can do such a thing to a small child. I have spoken to many people about this and nobody understands it.' There are many others in Taloqan who have similar stories of children being beaten in front of their parents because their fathers were unable to hand over a weapon to the Taleban, of men who had a hand amputated when they were accused of stealing the bread that they carried home to their families, and of women who were raped after their husbands were taken away and imprisoned in Kandahar or Mazar-i Sharif." *(Source: The Times [U.K.], 11/13/01)*

ATROCITY

"'They burnt some of us alive.' It was almost the first thing he said to us. In the dust and squalor of a refugee camp, Salahuddin told yesterday how the Taliban burnt an entire family to death in their own home in revenge for the American bombing. He says he saw them bringing out the blackened bodies of the children. Then the Taliban took Salahuddin and the other villagers to the front line, where they ordered them to gather up scattered bits of bodies, all that was left of Taliban soldiers killed by the American bombs." *(Source: The Independent U.K. 11/9/01)*

ATROCITY

"'The Taliban commanders killed 100 of our friends,' said this defector, adding, 'They hung their bodies from lamp posts as a warning to the rest of us.'" *(Source: CBS Evening News, 11/19/01)*

ATROCITY

"One said a doctor was shot dead for not treating a wounded Taliban soldier quickly enough, while others said a group of eight teenage boys were killed for laughing at Taliban soldiers." *(Source: The Herald (Scotland), 11/19/01)*

ATROCITY

"Foreign Taliban soldiers, who have gathered in Kunduz for what appears to be a last stand, have gunned down more than 400 Afghan Taliban soldiers trying to defect to the Northern Alliance, the refugees and the alliance soldiers said. The 400 were killed in mass shootings late last week, refugees said, and were prompted in part by the defection of a local Taliban commander to the Northern Alliance. According to the reports, Arab and Pakistani soldiers with the Taliban have also begun shooting young civilian men of the Uzbek and Tajik ethnic groups suspected of trying to escape to territory controlled by the Northern Alliance. 'The foreigners came into the village and shot all the men,' said Muhammadullah, a 21-year-old man who crossed into Northern Alliance territory today. 'I saw this with my own eyes.'" *(Source: The New York Times, 11/19/01)*

ATROCITY

"Foreign Taliban soldiers also killed dozens of Afghan Taliban soldiers on Friday at the village of Musazai near the Kunduz airport, refugees and Northern Alliance soldiers said. Refugees fleeing Kunduz said foreign Taliban soldiers had gunned down 125 Afghan Taliban soldiers who had been stopped on their way to the front lines. The foreign Taliban soldiers seem to have decided that the local Taliban were trying to defect. When they tried to stop them, a fight began and the foreign Taliban opened fire, the refugees said." *(Source: The New York Times, 11/19/01)*

ATROCITY

"The BBC has confirmed that the central Afghan town of Bamiyan was totally destroyed by the Taleban before they fled over the weekend. Evidence has also emerged of Bosnian-style ethnic cleansing in the region involving the execution of hundreds of local ethnic Hazara men." *(Source: BBC News, 11/13/01)*

ATROCITY

"Our correspondent said every building, shop and house had been destroyed before the town fell on Sunday after a two-hour gun battle." *(Source: BBC News, 11/13/01)*

ATROCITY

September 1996 -- Upon capturing Kabul the Taliban castrated President Najibullah, dragged his body behind a jeep for several rounds of the Palace and then shot him dead. His brother was similarly tortured and then throttled to death. (Source: Department of Defense)

ATROCITY

January 1998 -- In the Western province of Faryab, the Taliban massacred approximately 600 Uzbek villageres. Western aid workers who later investigated the incident said civilians were dragged from their homes, lined up and gunned down. *(Source: Department of Defense)*

ATROCITY

August 1998 -- The Taliban entered Mazar-I-Sharif and went on a frenzy killing shop owners, cart pullers, women and children shoppers. *(Source: Department of Defense)*

ATROCITY

August 2000 -- Taliban execute POWs in the streets of Heart as a lesson to the local population. *(Source: Department of Defense)*

ATROCITY

June 2001 -- Taliban bombed the administrative center of Yakaolang, including the district hospital and an aid agency office. *(Source: Department of Defense)*

ATROCITY

Massacre at Yakaolang -- Taliban forces committed a massacre in Yakaolang in January 2001. The victims were primarily Hazaras. The massacre began on January 8, 2001, and continued for four days. The Taliban detained about 300 civilian adult males, including staff members of local humanitarian organizations. The men were herded to assembly points, and then shot by firing squad in public view. According to Human Rights Watch, about 170 men are confirmed to have been killed. According to Amnesty International, eyewitnesses reported the deliberate killing of dozens of civilians hiding in a mosque: Taliban soldiers fired rockets into a mosque where some 73 women, children and elderly men had taken shelter. *(Source: State Department)*

ATROCITY

Massacre at Robatak Pass -- The May 2000 massacre took place near the Robatak pass. 31 bodies were found one site, of these, 26 were positively identified as civilians. The victims were Hazara Shi'as. *(Source: State Department)*

ATROCITY

Massacre in Bamiyan -- When the Taliban recaptured Bamiyan in 1999, there were reports that Taliban forces carried out summary executions upon entering the city. According to Amnesty International, hundreds of men, and some instances women and children, were separated from their families, taken away, and killed. Human Rights Watch reports that besides executing civilians, the Taliban burned homes and used detainees for forced labor. *(Source: State Department)*

ATROCITY

Massacre in the Shomaili Plains -- July 1999 Human Rights Watch reports that a Taliban offensive here was marked by summary executions, the abduction and disappearance of women, the burning of homes, destruction of property, and the cutting down of fruit trees. According to a report by the U.N. Secretary General on November 16, 1999, "The Taliban forces, who allegedly carried out these acts, essentially treated the civilian population with hostility and made no distinction between combatants and non-combatants." *(Source: U.S. State Department)*

ATROCITY

Massacre in Mazar-I-Sharif -- In August 1998, the Taliban captured Mazar-I-Sharif. There were reports that between 2,000 and 5,000 men, women and children -- mostly ethnic Hazara civilians -- were massacred by the Taliban after the takeover of Mazar-I-Sharif. During the massacre, the Taliban forces carried out a systematic search for male members for the ethnic Hazara, Tajik, and Uzbek communities in the city. Human Rights Watch estimates that scores, perhaps hundreds, of Hazara men and boys were summarily executed. There were also reports that women and girls were raped and abducted during the Taliban takeover of the city. *(Source: State Department)*

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/23/2001 3:57:30 AM
Subject: : RE: draft answers

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:23-NOV-2001 08:57:30.00
SUBJECT:: RE: draft answers
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There is no agreed date for responding to the questions. As you will
recall, Horn asked for responses by Nov. 20, and Ose by Nov. 30. We
(through Faith Burton of OLA) have made clear that we do not view these
deadlines as reasonable and that we will respond in due course.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, November 21, 2001 4:37 PM
To: Whelan, M Edward III
Subject: Re: draft answers

did we get an extension?

(Embedded
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
to file: 11/21/2001 04:28:03 PM
pic28642.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Subject: draft answers

Brett:

I attach a set of draft answers to the questions from Horn and Ose. The
questions that don't have answers are the ones that we thought it best for
you
to take a first crack at. Please review when you can.

So that I can keep track of what's in the draft, please provide your draft
answers in a separate document and please fax any comments to the existing
draft. Thanks.

Ed

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 11/26/2001 5:21:27 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-NOV-2001 10:21:27.00
SUBJECT::
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

keep your blood pressure low; nothing of note happened last week
on terrorism insurance; I sent you a potential addition for SAP, which we
would add to the existing SAP.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 11/26/2001 9:14:45 AM
Subject: : JSC prep

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-NOV-2001 14:14:45.00
SUBJECT:: JSC prep
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

JSC prep meeting for this Wednesday will be held immediately after our
8:15 am staff meeting.

Please arrive prepared.

Thanks!
```

From: O'Brien, Pat <Pat.O'Brien@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/26/2001 9:27:20 AM
Subject: : FW: From Mindy Tucker -- Important facts on monitoring attorney client communications

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> ("O'Brien, Pat" <Pat.O'Brien@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:26-NOV-2001 14:27:20.00
SUBJECT:: FW: From Mindy Tucker -- Important facts on monitoring attorney client communications
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----
From: Tucker, Mindy
Sent: Friday, November 09, 2001 10:34 AM
To: O'Brien, Pat
Subject: FW: From Mindy Tucker -- Important facts on monitoring attorney client communications

-----Original Message-----
From: Tucker, Mindy
Sent: Friday, November 09, 2001 10:05 AM
To: Seifer, Andrea
Subject: From Mindy Tucker -- Important facts on monitoring attorney client communications

As part of its effort to prevent further terrorist acts, the Department of Justice has expanded an existing regulation regarding the monitoring of certain communications of inmates subject to a special administrative measure. The regulation now allows the monitoring of attorney-client communication for those inmates subject to the special administrative measure.

In order to be subject to a special administrative measure the Attorney General has to have a certification from the head of a law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular inmate may use communication with attorneys or their agents to further or facilitate acts of terrorism.

Currently less than 1/10 of 1% of the federal inmate population is subject to special administrative measure. The vast majority of inmates currently under special administrative measure were taken into custody prior to September 11, 2001.

There are important safeguards in place with this change.

* The attorney and his client will be notified if their communications will be monitored.

* The team monitoring the communications will have no connection to any ongoing prosecution that involves that client.

* No information that is protected by attorney-client privilege may be used for prosecution. There is not protection however, for communications related to the client's ongoing or contemplated illegal acts.

This type of monitoring has been allowed in the past through court order.

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Sent: 11/26/2001 2:09:06 PM
Subject: : If you get asked...
Attachments: F_JP0B4003_OA.TXT_1.doc

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CREATION DATE/TIME:26-NOV-2001 19:09:06.00
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READ:UNKNOWN
TO:Gail Randall ( CN=Gail Randall/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])

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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
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TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
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TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
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TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])
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End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.
about the President's recent Military Order regarding military tribunals,
here
are some talking points you can use:

(See attached file: CIC -- Military Tribunal Talkers.doc)
- CIC -- Military Tribunal Talkers.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_JP0B4003_OA.TXT_1>

BRINGING TERRORISTS TO JUSTICE

- The terrorist attacks of September 11 were acts of war. The perpetrators should be treated not as violators of the law, but as war criminals, and the Military Order signed by President Bush reflects the unique nature of our present situation.

- The Military Order gives President Bush an additional tool in fighting the war against terrorism and another option to bring justice to foreign terrorists. The President's order states that military commissions will only be used in extraordinary instances in which the direct safety of the American people is at risk.

- As Commander in Chief, the President has the authority to establish military commissions. That authority is strengthened by statutes first passed by Congress during World War I and the Supreme Court has reviewed and upheld the practice in 1942 and again in 1946..

- Trial by military commission is a tested method for bringing individuals to justice during times of war while also protecting sensitive information. President Roosevelt ordered the trial of Nazi saboteurs by military commission in 1942 during World War II and the Supreme Court upheld the procedure. Military commissions have been used throughout American history – during the Mexican War, the Indian Wars, the Civil War, and the Revolutionary War.

- President Bush's requires certain protections that are consistent with American values: the right to counsel and a full and fair trial; they will not be discriminated against because of their race, gender or status; they may freely exercise their religion and will receive food, shelter and medical treatment.

- President Bush has said on many occasions that this war is not about one person, but about rooting out global terrorist networks. Disclosing classified information in a civilian trial of a foreign terrorist would jeopardize the ongoing war against terrorism and threaten American lives at home and abroad.

- When classified evidence must be used in civilian trials, the government is forced to choose between compromising sensitive intelligence information and letting criminals go free – the World Trade Center bombing trial resulted in the disclosure of sensitive classified information. After the attack on September 11, President Bush finds this choice to be unacceptable.

- Civilian courts would also place judges, juries, prosecutors and the press at risk from threats of reprisals, and the security of the courtroom facility would be a concern. Military commissions provide a safe alternative.

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<ProkopowiczJT@state.gov>

Sent: 11/26/2001 2:09:07 PM
Subject: : If you get asked...
Attachments: F_LP0B4003_OA.TXT_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:26-NOV-2001 19:09:07.00
SUBJECT:: If you get asked...
TO:Noelia Rodriguez ( CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Tracey L. Schmitt ( CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gail Randall ( CN=Gail Randall/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gregory Goss ( CN=Gregory Goss/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Tracy Young ( CN=Tracy Young/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kenneth A. Lisaius ( CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
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TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])

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TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
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TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
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TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
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TO:John M. Ackerly (CN=John M. Ackerly/OU=OPD/O=EOP@EOP [OPD])
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TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])

READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Deborah_K._Hair@oa.eop.gov (Deborah_K._Hair@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:susan_irby@lott.senate.gov (susan_irby@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:john.feehery@mail.house.gov (john.feehery@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
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TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
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lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
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TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
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TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
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TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
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TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
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TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne C. Guilsher (CN=Anne C. Guilsher/OU=NSC/O=EOP@EOP [NSC])
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TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
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TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
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READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
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TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
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TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
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TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
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TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
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TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
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TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
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TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
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TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
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TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP@EOP [NSC])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John Fenzel (CN=John Fenzel/OU=OVP/O=EOP@EOP [OVP])
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TO:ginni.thomas@heritage.org (ginni.thomas@heritage.org [UNKNOWN])
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TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
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TO:bberrytx@aol.com (bberrytx@aol.com [UNKNOWN])
READ:UNKNOWN
TO:jenniferecrooks@hotmail.com (jenniferecrooks@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:rsavarese@kpmg.com (rsavarese@kpmg.com [UNKNOWN])
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TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
READ:UNKNOWN
TO:ccamp@llano-permian.com (ccamp@llano-permian.com [UNKNOWN])
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TO:campsite@nts-online.net (campsite@nts-online.net [UNKNOWN])
READ:UNKNOWN
TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
READ:UNKNOWN
TO:mona@gregabbottcampaign.com (mona@gregabbottcampaign.com [UNKNOWN])
READ:UNKNOWN
TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
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TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:campcopmc@aol.com (campcopmc@aol.com [UNKNOWN])
READ:UNKNOWN
TO:creazzo@hotmail.com (creazzo@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:mike.franc@heritage.org (mike.franc@heritage.org [UNKNOWN])
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TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
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TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
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)
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TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
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TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
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TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Duncan Campbell (CN=Duncan Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
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TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:patrick.rhode@sba.gov (patrick.rhode@sba.gov [UNKNOWN])
READ:UNKNOWN
TO:YRobinso@pd.state.gov (YRobinso@pd.state.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
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TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP@EOP [OPD])
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TO:molly.millerwise@mail.house.gov (molly.millerwise@mail.house.gov [UNKNOWN])
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TO:jrendon@rendon.com (jrendon@rendon.com [UNKNOWN])
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TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
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TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
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TO:Elizabeth P. Austin (CN=Elizabeth P. Austin/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
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TO:MeierAW@state.gov (MeierAW@state.gov [UNKNOWN])
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TO:john.higginbotham@dfait-maeci.gc.ca (john.higginbotham@dfait-maeci.gc.ca [UNKNOWN])
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TO:agoldstein@hadassah.org (agoldstein@hadassah.org [UNKNOWN])
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TO:comm@rnchq.org (comm@rnchq.org [UNKNOWN])
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TO:johnbuckley100@aol.com (johnbuckley100@aol.com [UNKNOWN])
READ:UNKNOWN
TO:abrackbill@aol.com (abrackbill@aol.com [UNKNOWN])
READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])

READ:UNKNOWN
TO:Cheryl A. Oldham (CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:research@rnchq.org (research@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
READ:UNKNOWN
TO:bob.gold@starpoint.com (bob.gold@starpoint.com [UNKNOWN])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:iocurrops@js.pentagon.mil (iocurrops@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:vandalts@js.pentagon.mil (vandalts@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.
about the President's recent Military Order regarding military tribunals,
here
are some talking points you can use:

(See attached file: CIC -- Military Tribunal Talkers.doc)
- CIC -- Military Tribunal Talkers.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_LP0B4003_OA.TXT_1>

BRINGING TERRORISTS TO JUSTICE

- The terrorist attacks of September 11 were acts of war. The perpetrators should be treated not as violators of the law, but as war criminals, and the Military Order signed by President Bush reflects the unique nature of our present situation.

- The Military Order gives President Bush an additional tool in fighting the war against terrorism and another option to bring justice to foreign terrorists. The President's order states that military commissions will only be used in extraordinary instances in which the direct safety of the American people is at risk.

- As Commander in Chief, the President has the authority to establish military commissions. That authority is strengthened by statutes first passed by Congress during World War I and the Supreme Court has reviewed and upheld the practice in 1942 and again in 1946..

- Trial by military commission is a tested method for bringing individuals to justice during times of war while also protecting sensitive information. President Roosevelt ordered the trial of Nazi saboteurs by military commission in 1942 during World War II and the Supreme Court upheld the procedure. Military commissions have been used throughout American history – during the Mexican War, the Indian Wars, the Civil War, and the Revolutionary War.

- President Bush's requires certain protections that are consistent with American values: the right to counsel and a full and fair trial; they will not be discriminated against because of their race, gender or status; they may freely exercise their religion and will receive food, shelter and medical treatment.

- President Bush has said on many occasions that this war is not about one person, but about rooting out global terrorist networks. Disclosing classified information in a civilian trial of a foreign terrorist would jeopardize the ongoing war against terrorism and threaten American lives at home and abroad.

- When classified evidence must be used in civilian trials, the government is forced to choose between compromising sensitive intelligence information and letting criminals go free – the World Trade Center bombing trial resulted in the disclosure of sensitive classified information. After the attack on September 11, President Bush finds this choice to be unacceptable.

- Civilian courts would also place judges, juries, prosecutors and the press at risk from threats of reprisals, and the security of the courtroom facility would be a concern. Military commissions provide a safe alternative.

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Sent: 11/26/2001 2:09:07 PM
Subject: : If you get asked...
Attachments: 05609_p_lp0b4003_who.txt_1.doc

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CREATION DATE/TIME:26-NOV-2001 19:09:07.00
SUBJECT:: If you get asked...
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READ:UNKNOWN
TO:Erin E. Healy ( CN=Erin E. Healy/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Tracey L. Schmitt ( CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Gail Randall ( CN=Gail Randall/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gregory Goss ( CN=Gregory Goss/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tracy Young ( CN=Tracy Young/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Tucker A. Eskew ( CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kenneth A. Lisaius ( CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Nicolle Devenish ( CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [ WHO ] )
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about the President's recent Military Order regarding military tribunals,
here
are some talking points you can use:

(See attached file: CIC -- Military Tribunal Talkers.doc)
- CIC -- Military Tribunal Talkers.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <05609_p_lp0b4003_who.txt_1>

BRINGING TERRORISTS TO JUSTICE

- The terrorist attacks of September 11 were acts of war. The perpetrators should be treated not as violators of the law, but as war criminals, and the Military Order signed by President Bush reflects the unique nature of our present situation.

- The Military Order gives President Bush an additional tool in fighting the war against terrorism and another option to bring justice to foreign terrorists. The President's order states that military commissions will only be used in extraordinary instances in which the direct safety of the American people is at risk.

- As Commander in Chief, the President has the authority to establish military commissions. That authority is strengthened by statutes first passed by Congress during World War I and the Supreme Court has reviewed and upheld the practice in 1942 and again in 1946..

- Trial by military commission is a tested method for bringing individuals to justice during times of war while also protecting sensitive information. President Roosevelt ordered the trial of Nazi saboteurs by military commission in 1942 during World War II and the Supreme Court upheld the procedure. Military commissions have been used throughout American history – during the Mexican War, the Indian Wars, the Civil War, and the Revolutionary War.

- President Bush's requires certain protections that are consistent with American values: the right to counsel and a full and fair trial; they will not be discriminated against because of their race, gender or status; they may freely exercise their religion and will receive food, shelter and medical treatment.

- President Bush has said on many occasions that this war is not about one person, but about rooting out global terrorist networks. Disclosing classified information in a civilian trial of a foreign terrorist would jeopardize the ongoing war against terrorism and threaten American lives at home and abroad.

- When classified evidence must be used in civilian trials, the government is forced to choose between compromising sensitive intelligence information and letting criminals go free – the World Trade Center bombing trial resulted in the disclosure of sensitive classified information. After the attack on September 11, President Bush finds this choice to be unacceptable.

- Civilian courts would also place judges, juries, prosecutors and the press at risk from threats of reprisals, and the security of the courtroom facility would be a concern. Military commissions provide a safe alternative.

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Sent: 11/27/2001 1:33:16 AM
Subject: : The War on Terrorism -- November 27, 2001
Attachments: P_VWUT4004_CEA.TXT_1.doc

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TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
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TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
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TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
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READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
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TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
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TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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Good morning everyone. Have a great day.

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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/27/2001

Today's Schedule

8:00a EST	First Lady Laura Bush to appear on ABC's *Good Morning America*.
9:00a EST	Department of Defense daily press briefing with spokeswoman Torie Clark.
10:00a EST	White House press gaggle with Ari Fleischer.
11:00a EST	Homeland Security Director Ridge to make remarks at Aviation Week conference on Homeland Security & Defense.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher.
1:30p EST	Secretary Rumsfeld, Gen. Meyers & Gen. Franks press briefing in Tampa
3:25p EST	President Bush to meet the President of Yemen.
4:00p EST	President Bush to attend White House meeting with Pakistani-Americans

Other Events

- World leaders and representatives from Afghan groups meet today in Bonn, Germany, to discuss the future post-Taliban government in Afghanistan.

Recent Key Quotes & Developments

- "It is hard to find a woman in Kabul now who does not remember a beating at the hands of the Taliban." (*Time*, 12/03/01)
- "...a suicide attack...took place on Saturday, as 500 foreign Taliban surrendered...In that incident, a foreign Taliban soldier blew himself up with a grenade, killing two Taliban comrades, badly injuring a senior alliance commander and leaving Andrea Catherwood, an ITN reporter, with shrapnel wounds in her leg." (*Daily Telegraph* [U.K.], 11/26/01)
- "It is believed foreign Taliban slaughtered moderates who wanted to surrender Kunduz." (Jeremy Armstrong; *Daily Mirror* [U.K.], 11/26/01)
- "The assessment that can be made after seven weeks of operations is astounding.... In the U.S., the necessity to crush Al Qaida and to liberate Afghanistan by the same means from a medieval regime was disputed by almost no one...." (*Le Monde*, 11/23)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.
- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.
- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

Facts of the Day

- Since October 1, 2001, the U.S. Government has provided $246,761,996 in Humanitarian assistance to the people of Afghanistan.
- As of November 26, 2001, the Department of Defense had airdropped 1,883,100 humanitarian daily rations into Afghanistan.
- Since Mid-October, the U.N.'s World Food Program – through U.S. assistance – has delivered enough food into Afghanistan to feed 6 million hungry Afghans for one month.
- On November 23, for the first time, food aid was airlifted into Afghanistan from Tajikistan. 17 metric tons of wheat flour – enough for almost 275,000 people – was delivered to provide food aid to remote locations in northeastern Afghanistan.
- A ship carrying 10,000 metric tons of food aid for Afghans left Port Lake Charles, Louisiana, on November 20.

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Sent: 11/27/2001 1:39:08 AM
Subject: : The War on Terrorism -- November 27, 2001
Attachments: P_YYUT4004_CEA.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:27-NOV-2001 06:39:08.00
SUBJECT:: The War on Terrorism -- November 27, 2001
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:acampbell@no10.x.gsi.gov.uk (acampbell@no10.x.gsi.gov.uk [UNKNOWN])
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TO:torie.clarke@osd.mil (torie.clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
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TO:Peter Reid (CN=Peter Reid/OU=WHO/O=EOP@EOP [WHO])
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TO:Allison Barber (CN=Allison Barber/OU=WHO/O=EOP@EOP [WHO])
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TO:Paddy Feeny (CN=Paddy Feeny/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP@EOP [NSC])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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Good morning everyone. Have a great day.

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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/27/2001

Today's Schedule

8:00a EST	First Lady Laura Bush to appear on ABC's *Good Morning America*.
9:00a EST	Department of Defense daily press briefing with spokeswoman Torie Clark.
10:00a EST	White House press gaggle with Ari Fleischer.
11:00a EST	Homeland Security Director Ridge to make remarks at Aviation Week conference on Homeland Security & Defense.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher.
1:30p EST	Secretary Rumsfeld, Gen. Meyers & Gen. Franks press briefing in Tampa
3:25p EST	President Bush to meet the President of Yemen.
4:00p EST	President Bush to attend White House meeting with Pakistani-Americans

Other Events

- World leaders and representatives from Afghan groups meet today in Bonn, Germany, to discuss the future post-Taliban government in Afghanistan.

Recent Key Quotes & Developments

- "It is hard to find a woman in Kabul now who does not remember a beating at the hands of the Taliban." (*Time*, 12/03/01)
- "...a suicide attack...took place on Saturday, as 500 foreign Taliban surrendered...In that incident, a foreign Taliban soldier blew himself up with a grenade, killing two Taliban comrades, badly injuring a senior alliance commander and leaving Andrea Catherwood, an ITN reporter, with shrapnel wounds in her leg." (*Daily Telegraph* [U.K.], 11/26/01)
- "It is believed foreign Taliban slaughtered moderates who wanted to surrender Kunduz." (Jeremy Armstrong; *Daily Mirror* [U.K.], 11/26/01)
- "The assessment that can be made after seven weeks of operations is astounding.... In the U.S., the necessity to crush Al Qaida and to liberate Afghanistan by the same means from a medieval regime was disputed by almost no one...." (*Le Monde*, 11/23)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.
- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.
- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

Facts of the Day

- Since October 1, 2001, the U.S. Government has provided $246,761,996 in Humanitarian assistance to the people of Afghanistan.
- As of November 26, 2001, the Department of Defense had airdropped 1,883,100 humanitarian daily rations into Afghanistan.
- Since Mid-October, the U.N.'s World Food Program – through U.S. assistance – has delivered enough food into Afghanistan to feed 6 million hungry Afghans for one month.
- On November 23, for the first time, food aid was airlifted into Afghanistan from Tajikistan. 17 metric tons of wheat flour – enough for almost 275,000 people – was delivered to provide food aid to remote locations in northeastern Afghanistan.
- A ship carrying 10,000 metric tons of food aid for Afghans left Port Lake Charles, Louisiana, on November 20.

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Sent: 11/27/2001 1:39:08 AM
Subject: : The War on Terrorism -- November 27, 2001
Attachments: P_YYUT4004_OPD.TXT_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:27-NOV-2001 06:39:08.00
SUBJECT:: The War on Terrorism -- November 27, 2001
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READ:UNKNOWN
TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Lawrence A. Fleischer ( CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Gregory L. Schulte ( CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Jill L. Angelo ( CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Christina D. Roberts ( CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:acampbell@no10.x.gsi.gov.uk ( acampbell@no10.x.gsi.gov.uk [ UNKNOWN ] )
READ:UNKNOWN
TO:torie.clarke@osd.mil ( torie.clarke@osd.mil [ UNKNOWN ] )
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TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
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Good morning everyone. Have a great day.

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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/27/2001

Today's Schedule

8:00a EST	First Lady Laura Bush to appear on ABC's *Good Morning America*.
9:00a EST	Department of Defense daily press briefing with spokeswoman Torie Clark.
10:00a EST	White House press gaggle with Ari Fleischer.
11:00a EST	Homeland Security Director Ridge to make remarks at Aviation Week conference on Homeland Security & Defense.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher.
1:30p EST	Secretary Rumsfeld, Gen. Meyers & Gen. Franks press briefing in Tampa
3:25p EST	President Bush to meet the President of Yemen.
4:00p EST	President Bush to attend White House meeting with Pakistani-Americans

Other Events

- World leaders and representatives from Afghan groups meet today in Bonn, Germany, to discuss the future post-Taliban government in Afghanistan.

Recent Key Quotes & Developments

- "It is hard to find a woman in Kabul now who does not remember a beating at the hands of the Taliban." (*Time*, 12/03/01)
- "...a suicide attack...took place on Saturday, as 500 foreign Taliban surrendered...In that incident, a foreign Taliban soldier blew himself up with a grenade, killing two Taliban comrades, badly injuring a senior alliance commander and leaving Andrea Catherwood, an ITN reporter, with shrapnel wounds in her leg." (*Daily Telegraph* [U.K.], 11/26/01)
- "It is believed foreign Taliban slaughtered moderates who wanted to surrender Kunduz." (Jeremy Armstrong; *Daily Mirror* [U.K.], 11/26/01)
- "The assessment that can be made after seven weeks of operations is astounding.... In the U.S., the necessity to crush Al Qaida and to liberate Afghanistan by the same means from a medieval regime was disputed by almost no one...." (*Le Monde*, 11/23)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.
- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.
- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

Facts of the Day

- Since October 1, 2001, the U.S. Government has provided $246,761,996 in Humanitarian assistance to the people of Afghanistan.
- As of November 26, 2001, the Department of Defense had airdropped 1,883,100 humanitarian daily rations into Afghanistan.
- Since Mid-October, the U.N.'s World Food Program – through U.S. assistance – has delivered enough food into Afghanistan to feed 6 million hungry Afghans for one month.
- On November 23, for the first time, food aid was airlifted into Afghanistan from Tajikistan. 17 metric tons of wheat flour – enough for almost 275,000 people – was delivered to provide food aid to remote locations in northeastern Afghanistan.
- A ship carrying 10,000 metric tons of food aid for Afghans left Port Lake Charles, Louisiana, on November 20.

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Sent: 11/27/2001 1:40:07 AM
Subject: : The War on Terrorism -- November 27, 2001
Attachments: 05673_p_gzut4004_who.txt_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:27-NOV-2001 06:40:07.00
SUBJECT:: The War on Terrorism -- November 27, 2001
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lawrence A. Fleischer ( CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Gregory L. Schulte ( CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
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TO:acampbell@no10.x.gsi.gov.uk (acampbell@no10.x.gsi.gov.uk [UNKNOWN])
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TO:torie.clarke@osd.mil (torie.clarke@osd.mil [UNKNOWN])
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TO:boucherra@state.gov (boucherra@state.gov [UNKNOWN])
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TO:Peter Reid (CN=Peter Reid/OU=WHO/O=EOP@EOP [WHO])
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TO:Allison Barber (CN=Allison Barber/OU=WHO/O=EOP@EOP [WHO])
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TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])

READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
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TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
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TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
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TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
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TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
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lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
READ:UNKNOWN

TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
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TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
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TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
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TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
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TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
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TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
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TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
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TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
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TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
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TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP@EOP [OMB])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
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TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
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End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to
the "$AdditionalHeaders" item for the complete headers.
Good morning everyone. Have a great day.

(See attached file: CIC -- Daily, November 27.doc)
- CIC -- Daily, November 27.doc
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File attachment <05673_p_gzut4004_who.txt_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

11/27/2001

Today's Schedule

8:00a EST	First Lady Laura Bush to appear on ABC's *Good Morning America*.
9:00a EST	Department of Defense daily press briefing with spokeswoman Torie Clark.
10:00a EST	White House press gaggle with Ari Fleischer.
11:00a EST	Homeland Security Director Ridge to make remarks at Aviation Week conference on Homeland Security & Defense.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher.
1:30p EST	Secretary Rumsfeld, Gen. Meyers & Gen. Franks press briefing in Tampa
3:25p EST	President Bush to meet the President of Yemen.
4:00p EST	President Bush to attend White House meeting with Pakistani-Americans

Other Events

- World leaders and representatives from Afghan groups meet today in Bonn, Germany, to discuss the future post-Taliban government in Afghanistan.

Recent Key Quotes & Developments

- "It is hard to find a woman in Kabul now who does not remember a beating at the hands of the Taliban." (*Time*, 12/03/01)
- "...a suicide attack...took place on Saturday, as 500 foreign Taliban surrendered...In that incident, a foreign Taliban soldier blew himself up with a grenade, killing two Taliban comrades, badly injuring a senior alliance commander and leaving Andrea Catherwood, an ITN reporter, with shrapnel wounds in her leg." (*Daily Telegraph* [U.K.], 11/26/01)
- "It is believed foreign Taliban slaughtered moderates who wanted to surrender Kunduz." (Jeremy Armstrong; *Daily Mirror* [U.K.], 11/26/01)
- "The assessment that can be made after seven weeks of operations is astounding.... In the U.S., the necessity to crush Al Qaida and to liberate Afghanistan by the same means from a medieval regime was disputed by almost no one...." (*Le Monde*, 11/23)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.
- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.
- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

Facts of the Day

- Since October 1, 2001, the U.S. Government has provided $246,761,996 in Humanitarian assistance to the people of Afghanistan.
- As of November 26, 2001, the Department of Defense had airdropped 1,883,100 humanitarian daily rations into Afghanistan.
- Since Mid-October, the U.N.'s World Food Program – through U.S. assistance – has delivered enough food into Afghanistan to feed 6 million hungry Afghans for one month.
- On November 23, for the first time, food aid was airlifted into Afghanistan from Tajikistan. 17 metric tons of wheat flour – enough for almost 275,000 people – was delivered to provide food aid to remote locations in northeastern Afghanistan.
- A ship carrying 10,000 metric tons of food aid for Afghans left Port Lake Charles, Louisiana, on November 20.

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 11/27/2001 3:03:48 AM
Subject: : Re:

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CREATION DATE/TIME:27-NOV-2001 08:03:48.00
SUBJECT:: Re:
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No

Jason B. Torchinsky
11/27/2001 08:02:12 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re:

I'll print those now. Should have them to you soon.

Do you have the finalized memos for the MD PA candidates?

From: CN=A. Merrill Hughes/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/27/2001 3:21:39 AM
Subject: : one more request

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:A. Merrill Hughes (CN=A. Merrill Hughes/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-NOV-2001 08:21:39.00
SUBJECT:: one more request
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Mornin' Brett-- I'd like your thoughts on raising this issue with Toner.
Thanks--AMH

---------- Forwarded by A. Merrill Hughes/WHO/EOP on
11/27/2001 08:19 AM ----------

Cathy Alix
11/26/2001 11:58:44 AM
Record Type: Record

To: A. Merrill Hughes/WHO/EOP@EOP
cc:
Subject: one more request

Let's discuss.
---------- Forwarded by Cathy Alix/WHO/EOP on 11/26/2001 11:58
AM ----------

Colleen Litkenhaus
11/16/2001 03:10:09 PM
Record Type: Record

To: Cathy Alix/WHO/EOP@EOP
cc:
Subject: one more request

Joe would like to try to do this for Barry. I told him that it goes
against the general policy of spending money to decorate offices. I also
told him it wouldn't be very expensive. He said he would like to do it
since he feels bad about having to move Barry and his staff. Morale was
sort of low in that office and this might help.

Do you want to bring this issue to Hector's attention? Then he can decide
if he wants to help Barry with this request or raise the issue with Joe,
making him aware of his concerns regarding making a policy exception?

Thanks for your help as always!
---------- Forwarded by Colleen Litkenhaus/WHO/EOP on
11/16/2001 03:04 PM ----------

From: Barry S. Jackson on 11/14/2001 03:41:23 PM
Record Type: Record

To: Colleen Litkenhaus/WHO/EOP@EOP
cc:

Subject: one more request

for our OSI lectures, we always have a program (8 1/2" x 5 1/2") we print up and then have our lecturer sign - we'd like to have these framed to hang in our office as a series - nothing fancy - the room 1 folks told us no framing unless it's a potus document or a potus pix - can you help us with this? we'd even go to target and get frames if we can be reimbursed - or if the guys that fram the jumbo's can make us a set of small frames - nothing fancy - thanks

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Clement, Paul D <Paul.D.Clement@usdoj.gov>;Katsas, Gregory <Gregory.Katsas@usdoj.gov>
Sent: 11/27/2001 4:58:06 AM
Subject: : FW: Presidential Records Act meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:27-NOV-2001 09:58:06.00
SUBJECT:: FW: Presidential Records Act meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Katsas, Gregory" <Gregory.Katsas@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Katsas, Gregory" <Gregory.Katsas@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

FYI: Paul Colborn, Greg Katsas and I are all available at 3:00 today.
Paul Clement is probably at the Court right now, so we may not hear back
from him for a while.

Let us know if you want to plan on 3:00, subject to change if Paul Clement
can't make it. We can make a conference room available here at OLC if
that's convenient.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, November 26, 2001 8:05 PM
To: Whelan, M Edward III
Subject: Re: FW: draft answers

Can we get a meeting together tomorrow or Wed with Katsas, Clement,
Colborn
and whoever else you think appropriate to discuss the possible litigation
and
theories? I am free from 9 until 3:30 tomorrow and then on Wednesday
morning
from 9 until 10:30.

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/27/2001 5:46:56 AM
Subject: : RE: Presidential Records Act meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:27-NOV-2001 10:46:56.00
SUBJECT:: RE: Presidential Records Act meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Clement is on for 3:00. Per your suggestion, Colborn is also inviting a
few others -- including the attorneys in Federal Programs who will do the
initial litigating. I've reserved our big conference room.

-----Original Message-----
From: Whelan, M Edward III
Sent: Tuesday, November 27, 2001 9:30 AM
To: 'Kavanaugh, Brett'
Cc: Colborn, Paul P; Clement, Paul D; Katsas, Gregory
Subject: FW: Presidential Records Act meeting

FYI: Paul Colborn, Greg Katsas and I are all available at 3:00 today.
Paul Clement is probably at the Court right now, so we may not hear back
from him for a while.

Let us know if you want to plan on 3:00, subject to change if Paul Clement
can't make it. We can make a conference room available here at OLC if
that's convenient.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, November 26, 2001 8:05 PM
To: Whelan, M Edward III
Subject: Re: FW: draft answers

Can we get a meeting together tomorrow or Wed with Katsas, Clement,
Colborn
and whoever else you think appropriate to discuss the possible litigation
and
theories? I am free from 9 until 3:30 tomorrow and then on Wednesday
morning
from 9 until 10:30.

From: Peterlin, Margaret <Margaret.Peterlin@mail.house.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/27/2001 12:35:50 PM
Subject: : Pataki language
Attachments: P_3XMU4004_WHO.TXT_1.html

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Peterlin, Margaret" <Margaret.Peterlin@mail.house.gov> ( "Peterlin, Margaret"
<Margaret.Peterlin@mail.house.gov> [ UNKNOWN ] )
CREATION DATE/TIME:27-NOV-2001 17:35:50.00
SUBJECT:: Pataki language
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett,

I talked to Jim from Pataki's office. He acknowledges (admits) that the
second sentence is an expansion of liability protections fm what was passed
previously. If this expansion is problematic they may prefer to excise it
rather than lose ground on getting the original protections. It is also
obvious that they are offering a different formulation from what came
before.

Pls let me know what you think,
Margaret
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3XMU4004_WHO.TXT_1>
```

Brett,

I talked to Jim from Pataki's office. He ack nowledges (admits) that the second sentence is an expansion of liability protec tions fm what was passed previously. If this expansion is problematic the y may prefer to excise it rather than lose ground on getting the original prote ctions. It is also obvious that they are offering a different formulation from what came before.

Pls let me know what you think,
Margaret

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/27/2001 12:43:30 PM
Subject: : Re: Pataki language
Attachments: P_PBNU4004_WHO.TXT_1.html

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-NOV-2001 17:43:30.00
SUBJECT:: Re: Pataki language
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

One thought for you to consider is how this affects the current contractual commitment FEMA has from NYC to indemnify FEMA for any and all claims arising out of FEMA's efforts at the site. We would not want to impair that, I would think.

Brett M. Kavanaugh
11/27/2001 05:24:25 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
Subject: Pataki language

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/27/2001 05:24 PM ----------

"Peterlin, Margaret" <Margaret.Peterlin@mail.house.gov>
11/27/2001 05:18:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Pataki language

Brett,

I talked to Jim from Pataki's office. He acknowledges (admits) that the second sentence is an expansion of liability protections fm what was passed previously. If this expansion is problematic they may prefer to excise it rather than lose ground on getting the original protections. It is also obvious that they are offering a different formulation from what came before.

Pls let me know what you think,
Margaret

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PBNU4004_WHO.TXT_1>

Brett,

I talked to Jim from Pataki's office. He ack nowledges (admits) that the second sentence is an expansion of liability protec tions fm what was passed previously. If this expansion is problematic the y may prefer to excise it rather than lose ground on getting the original prote ctions. It is also obvious that they are offering a different formulation from what came before.

Pls let me know what you think,
Margaret

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

CC: Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>

Sent: 11/27/2001 1:57:08 PM

Subject: : Reminder-JSC meeting on Wednesday, Nov. 28th

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-NOV-2001 18:57:08.00
SUBJECT:: Reminder-JSC meeting on Wednesday, Nov. 28th
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

4-5pm in the Roosevelt.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Carrie C. Pauska/WHO/EOP@EOP [WHO] <Carrie C. Pauska>;Alison Jones/WHO /EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>

CC: Stacey B. Silva/WHO/EOP@EOP [WHO] <Stacey B. Silva>

Sent: 11/27/2001 1:57:08 PM

Subject: : Reminder-JSC meeting on Wednesday, Nov. 28th

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-NOV-2001 18:57:08.00
SUBJECT:: Reminder-JSC meeting on Wednesday, Nov. 28th
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carrie C. Pauska ( CN=Carrie C. Pauska/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Stacey B. Silva (CN=Stacey B. Silva/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

4-5pm in the Roosevelt.

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

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Sent: 11/27/2001 2:18:55 PM
Subject: : The War on Terrorism -- November 28, 2001
Attachments: F_ZVQU4004_OA.TXT_1.doc; F_ZVQU4004_OA.TXT_2.doc

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READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])

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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
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TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
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TO:David F. Lussier (CN=David F. Lussier/OU=OPD/O=EOP@EOP [UNKNOWN])
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READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
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TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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Tomorrow in our Pakistan and London CICs we will hold our daily briefing
and release the attached document which outlines the Al Qaeda and Taliban
systematic campaign to seize humanitarian supplies for themselves while
leaving the innocent Afghan people unfed and unprotected.

Also attached is your War on Terrorism message of the day document for
tomorrow.

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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/28/2001

Today's Schedule

7:00a EST	President Bush has breakfast with Congressional leaders
9:30a EST	White House press gaggle with Ari Fleischer
10:30a EST	President Bush to meet with U.N. Secretary General Kofi Annan
11:15a EST	President Bush to meet the President of Spain
12:00p EST	Department of Defense daily press briefing with Admiral Stufflebeem and Torie Clarke
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher
1:30p EST	President Bush to make remarks to Farm Journal Corporation Convention
2:30p EST	White House daily press briefing with Ari Fleischer
3:00p EST	Secretary Powell to meet with U.N. Secretary General Kofi Annan
6:00p EST	DOD Deputy Secretary Wolfowitz interview with Indonesia TV

In Case You Missed It

- "Monday was the first day at the Naswan Girls School…shut down by Taliban troops four years ago…'Today I am very happy,' said Bibi Zanan [9]...'I want to learn English.'" (*Los Angeles Times*, 11/27/01)

Recent Key Quotes & Developments

- A three-day international conference on "Preparing for Afghanistan's Reconstruction" began Monday in Islamabad. More than 330 international development experts and Afghan NGO representatives are meeting to prepare for the challenges of providing international assistance in post-Taliban Afghanistan.

- "In the [Kunduz hospital] wards lay many wounded patients, but the doctor had little medicine to give them: It had all been stolen. 'The Taliban came and wrecked everything and took everything,' [Dr. Mohammed] Usman said angrily. 'Everything that was here was brought in by the U.N.. and the Taliban took it all away today." (Robyn Dixon; *Los Angeles Times*, 11/27/01)

- "Under the Taliban, going to school was frightening. We were desperate to learn, but we always had to worry about being caught and dealt with by authorities,' Fatema [18] says." (Thor Valdmanis; *USA Today*, 11/27/01)

- "Around the city [of Kunduz], the Taliban's fall brought a general sense of relief and the pleasure of newfound freedoms." (Sharon LaFroniere; *Washington Post*, 11/27/01)

Message

- The humanitarian situation in Afghanistan is dire. Years of civil war, compounded by the cruel and selfish rule of the Taliban and the worst drought in living memory, have made matters worse.

- Millions face the threat of starvation. 70% of the Afghan people are malnourished. Only 13% of the Afghan people have access to clean water. One in four Afghan children will not make it to their fifth birthday. According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11. And before September 11 there were over 3.5 million Afghan refugees.

- **For years the U.S. has been the largest humanitarian aid donor to the people of Afghanistan.** And the U.S. and its coalition allies are working around the clock to help get food, blankets, medicine and other important humanitarian aid to the Afghan people before their harsh winter sets in.

- The Al Qaeda and Taliban contribution to the Afghan people has been a deliberate and systematic campaign to disrupt the efforts of international relief agencies to deliver desperately needed food and medical supplies to the Afghan people. **Among other things, the Taliban have seized and looted humanitarian supplies for themselves and have harassed and beaten Afghan and international aid workers.**

- **The Taliban are clearly more interested in protecting the Al Qaeda terrorist network than feeding the starving innocent people of Afghanistan.**

Facts of the Day

- According to new figures, since October 1 the U.S. government has provided $164,381,033 in humanitarian assistance to the people of Afghanistan.

- Since September 11, the U.N. World Food Program – with U.S. assistance -- has delivered 70,000 tons of food into Afghanistan.

- In November, so far, the World Food Program – with U.S. assistance -- has delivered enough food commodities to cover the needs of 4.3 million people.

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AL QAEDA & THE TALIBAN: THE MAKING OF A HUMANITARIAN DISASTER

The humanitarian situation in Afghanistan is dire. Years of civil war -- compounded by the cruel and selfish rule of the Taliban and the worst drought in living memory – have made matters worse.

Al Qaeda and the Taliban have not only failed to provide security, food, and shelter for the Afghan people, but they have disrupted the efforts of international relief agencies to deliver desperately needed food and medical supplies to the Afghan people. **Among other things, the Taliban have seized and looted humanitarian supplies for themselves and have harassed and beaten Afghan and international aid workers.**

The U.S. has long been the largest humanitarian aid donor to the people of Afghanistan.

The Taliban are clearly more interested in protecting Al Qaeda than feeding the starving innocent people of Afghanistan.

AFGHANISTAN BEFORE SEPTEMBER 11

Afghanistan has suffered two decades of war, the worst drought in living memory, and the collapse of government infrastructure and access to basic social services. As Al Qaeda and the Taliban directed national resources toward war and imposed severe restrictions on its people, including a restriction on women working outside the home, the situation of the Afghan people worsened. The statistics are alarming:

- Millions face the threat of starvation.
- 70% of the Afghan people are malnourished.
- Only 13% of the Afghan people have access to clean water.
- One in four Afghan children will not make it to their fifth birthday.
- One in three Afghan children is an orphan.
- One in two Afghan children is malnourished.
- Afghanistan has the world's fourth worst child mortality rate.
- Afghanistan ranks number one worldwide in maternal mortality.
- According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11.
- Before September 11 there were over 3.5 million Afghan refugees
- Six million people in Afghanistan and 1.5 million Afghan refugees depend on international relief programs for food.
- As many as 50,000 widows lost husbands and other male relatives in the course of Afghanistan's long civil war.
- The average life expectancy in Afghanistan is 46 years.

THE HARSH AFGHAN WINTER

Afghanistan is a mountainous country in a dry part of the world which experiences extremes of climate and weather. Afghanistan experiences extreme winter weather, with heavy snow in the mountains and the high plateaus. Even low-lying areas like Kabul can have up to 25 inches of snow on the ground in late winter.

The Afghan winters are harsh. Whole families of refugees live in tents no more than 3.5 feet square. They sleep on the ground with no blankets or protection from the brutal winters. Last winter, desperate parents dug holes in the ground, placed their children in the holes, and laid on top of them to give their children a slight respite from frigid temperatures.

Countless Afghans find themselves with no protection whatsoever against the harsh Afghan winter. For example, the U.N. Coordinator for Afghanistan reported that over 110 displaced persons taking shelter in camps in Herat died from

extreme cold on the night of January 29, 2001. Children, the elderly, and women were among the main victims of the cold snap, which saw temperatures as low as –25 degrees centigrade.

THE TERRORIST CONTRIBUTION TO THE SUFFERING AFGHAN PEOPLE

The U.S. and its coalition partners work around the clock to help get food and other aid to the Afghan people.

The Al Qaeda and Taliban contribution to the Afghan people has been a deliberate and systematic campaign to disrupt the efforts of international relief agencies to deliver desperately needed food and medical supplies to the Afghan people.

Among other things, the Taliban have seized and looted humanitarian supplies for themselves and have harassed and beaten Afghan and international aid workers.

The Taliban and Al Qaeda are clearly more interested in protecting Al Qaeda than feeding the starving people of Afghanistan.

The following specific examples of Taliban disruptions are contained in the November 6 State Department Fact Sheet: *The Taliban's Betrayal of the Afghan People*:

- October 16: The Taliban seized control of two U.N. World Food Program (WFP) warehouses, one in Kabul, and one in Kandahar, containing more than half the World Food Program's wheat supply for Afghanistan. The WFP in Kandahar had been feeding 150,000 Afghans a month before the Taliban seizure. The WFP reports that 1,600 tons of food and several vehicles have since disappeared from the Kandahar WFP warehouse. (Source: World Food Program)

- **The Taliban are actually hijacking humanitarian convoys for military purposes.** The November 6 *Washington Post* reports, "A truck in a convoy purportedly on a humanitarian mission to deliver food tipped over, and crates of tank and mortar shells could be seen spilling to the ground underneath a thin layer of flour."

- "UNICEF lost all its properties and had its offices looted when the Taliban took control in north Afghanistan in 1997, and U.N. operations were suspended." (Source: UNICEF)

- November 6: The UN refugee agency (UNHCR) says the Taliban is hindering humanitarian efforts inside Afghanistan… Speaking on behalf of the UNHCR, Peter Kessler said the Taliban was failing to cooperate: "The UNHCR and our partner agencies have had our vehicles stolen, our offices taken over and our staff beaten." (Source: BBC)

- October 31: The UN Refugee Agency (UNHCR) offices in Spin Boldak were taken over by Taliban soldiers. (Source: UNHCR)

- October 18: Taliban soldiers seized the Mercy Corps International Office in Kandahar, and remain in possession of the office and MCI vehicles. (Source: Mercy Corps)

- October 17: The Taliban occupied the Kunduz office and warehouse of the International Organization for Migration (IOM). The warehouse had been stocked with winter clothing, shoes and blankets to be distributed to internally displaced persons in the region. (Source: IOM)

- October 16: The Swedish Committee for Afghanistan reported that its compound in Taliban-controlled Mazar-I-Sharif was seized on October 16, with fuel stores set ablaze by the Taliban. (Source: Human Rights Watch)

- October 16: The UN Security Council demanded that the Taliban cease obstructing aid destined for the Afghan people.

- October 8: Armed Taliban entered the compound of a demining NGO in Kandahar and demanded vehicles. Staff who resisted were beaten. The Taliban left with several ambulances, seven pick-up trucks, and six cargo trucks from the compound. (Source: Human Rights Watch)

THE U.S. COMMITMENT TO FEEDING & PROTECTING THE AFGHAN PEOPLE

The United States has long been the leading donor of humanitarian assistance to Afghanistan:

- The U.S. has supplied more than 80 percent of all food aid to vulnerable Afghans through the United Nations' World Food Program (WFP). Since September 11th, WFP has delivered about 70,000 tons of food into Afghanistan. In November so far, WFP has delivered enough food commodities to cover the needs of 4.3 million people.

- Last year, the U.S. Government provided over $178 million in humanitarian aid to the Afghan people.

- The U.S. Government has provided over $164 million in aid to Afghanistan thus far since October 1.

- With U.S. support, WFP delivered over 30,000 metric tons of food into Afghanistan in the first half of November, exceeding records for food delivery into the country. The more than 29,000 metric tons that WFP moved in October had been the most food ever moved in a whole month in Afghanistan.

- The U.S. airlifted 20,000 wool blankets, 100 rolls of plastic sheeting, 200 metric tons of High Energy Biscuits, and one metric ton of sugar to Turkmenistan for distribution in Afghanistan.

- The U.S. purchased 15,000 metric tons of wheat in Kazakstan, which is moving by railway to Turkmenabad. The first rail car of wheat arrived on November 23 carrying 1,500 metric tons of wheat.

- The U.S. Department of Defense has airdropped nearly 2 million Humanitarian Daily Rations into Afghanistan. Each ration is enough to sustain a person with a day's worth of calories.

- On November 20, a ship departed Port Lake Charles, Louisiana with 10,000 metric tons of U.S.-donated food for the people of Afghanistan.

- A shipment of five large USAID-funded medical shipments arrived in Turkmenistan on November 12 for distribution by UNICEF. Each shipment provides basic medical supplies and medicines for 10,000 people for three months. USAID has provided a total of 10 kits for Afghanistan.

- On November 21, 65,000 metric tons of food provided by USAID arrived in Iran for transfer to WFP regional hubs in Uzbekistan, Turkmenistan, Iran, Tajikistan, and Kyrgyzstan for delivery into Afghanistan.

- On November 24, USAID airlifted 350,000 wheat bags to Turkmenabad for WFP to use to package and distribute WFP wheat supplies.

- USAID airlifted 1,000 rolls of plastic sheeting to Turkmenistan for emergency shelter use in Afghanistan.

- USAID transported 20,400 blankets from its stockpiles on October 23, and an additional 15,000 blankets on October 25, to Pakistan for the UN High Commissioner for Refugees to use in the event of a refugee influx.

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Sent: 11/27/2001 2:28:14 PM
Subject: : The War on Terrorism -- November 28, 2001
Attachments: P_Q3RU4004_CEA.TXT_1.doc; P_Q3RU4004_CEA.TXT_2.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:27-NOV-2001 19:28:14.00
SUBJECT:: The War on Terrorism -- November 28, 2001
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Lawrence A. Fleischer ( CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Gregory L. Schulte ( CN=Gregory L. Schulte/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Jill L. Angelo ( CN=Jill L. Angelo/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Christina D. Roberts ( CN=Christina D. Roberts/OU=WHO/O=EOP@EOP [ WHO ] )
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Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Tomorrow in our Pakistan and London CICs we will hold our daily briefing and
release the attached document which outlines the Al Qaeda and Taliban systematic
campaign to seize humanitarian supplies for themselves while leaving the innocent Afghan people unfed and unprotected.

Also attached is your War on Terrorism message of the day document for tomorrow.

(See attached file: CIC -- Daily November 28.doc)(See attached file: CIC -- Winter.doc)
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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/28/2001

Today's Schedule

7:00a EST	President Bush has breakfast with Congressional leaders
9:30a EST	White House press gaggle with Ari Fleischer
10:30a EST	President Bush to meet with U.N. Secretary General Kofi Annan
11:15a EST	President Bush to meet the President of Spain
12:00p EST	Department of Defense daily press briefing with Admiral Stufflebeem and Torie Clarke
12:30p EST	State Department's daily press briefing with Spokesman Richard Boucher
1:30p EST	President Bush to make remarks to Farm Journal Corporation Convention
2:30p EST	White House daily press briefing with Ari Fleischer
3:00p EST	Secretary Powell to meet with U.N. Secretary General Kofi Annan
6:00p EST	DOD Deputy Secretary Wolfowitz interview with Indonesia TV

In Case You Missed It

- "Monday was the first day at the Naswan Girls School…shut down by Taliban troops four years ago…'Today I am very happy,' said Bibi Zanan [9]...'I want to learn English.'" (*Los Angeles Times*, 11/27/01)

Recent Key Quotes & Developments

- A three-day international conference on "Preparing for Afghanistan's Reconstruction" began Monday in Islamabad. More than 330 international development experts and Afghan NGO representatives are meeting to prepare for the challenges of providing international assistance in post-Taliban Afghanistan.

- "In the [Kunduz hospital] wards lay many wounded patients, but the doctor had little medicine to give them: It had all been stolen. 'The Taliban came and wrecked everything and took everything,' [Dr. Mohammed] Usman said angrily. 'Everything that was here was brought in by the U.N.. and the Taliban took it all away today." (Robyn Dixon; *Los Angeles Times*, 11/27/01)

- "Under the Taliban, going to school was frightening. We were desperate to learn, but we always had to worry about being caught and dealt with by authorities,' Fatema [18] says." (Thor Valdmanis; *USA Today*, 11/27/01)

- "Around the city [of Kunduz], the Taliban's fall brought a general sense of relief and the pleasure of newfound freedoms." (Sharon LaFroniere; *Washington Post*, 11/27/01)

Message

- The humanitarian situation in Afghanistan is dire. Years of civil war, compounded by the cruel and selfish rule of the Taliban and the worst drought in living memory, have made matters worse.

- Millions face the threat of starvation. 70% of the Afghan people are malnourished. Only 13% of the Afghan people have access to clean water. One in four Afghan children will not make it to their fifth birthday. According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11. And before September 11 there were over 3.5 million Afghan refugees.

- **For years the U.S. has been the largest humanitarian aid donor to the people of Afghanistan.** And the U.S. and its coalition allies are working around the clock to help get food, blankets, medicine and other important humanitarian aid to the Afghan people before their harsh winter sets in.

- The Al Qaeda and Taliban contribution to the Afghan people has been a deliberate and systematic campaign to disrupt the efforts of international relief agencies to deliver desperately needed food and medical supplies to the Afghan people. **Among other things, the Taliban have seized and looted humanitarian supplies for themselves and have harassed and beaten Afghan and international aid workers.**

- **The Taliban are clearly more interested in protecting the Al Qaeda terrorist network than feeding the starving innocent people of Afghanistan.**

Facts of the Day

- According to new figures, since October 1 the U.S. government has provided $164,381,033 in humanitarian assistance to the people of Afghanistan.

- Since September 11, the U.N. World Food Program – with U.S. assistance -- has delivered 70,000 tons of food into Afghanistan.

- In November, so far, the World Food Program – with U.S. assistance -- has delivered enough food commodities to cover the needs of 4.3 million people.

REV_00136823

AL QAEDA & THE TALIBAN: THE MAKING OF A HUMANITARIAN DISASTER

The humanitarian situation in Afghanistan is dire. Years of civil war -- compounded by the cruel and selfish rule of the Taliban and the worst drought in living memory – have made matters worse.

Al Qaeda and the Taliban have not only failed to provide security, food, and shelter for the Afghan people, but they have disrupted the efforts of international relief agencies to deliver desperately needed food and medical supplies to the Afghan people. **Among other things, the Taliban have seized and looted humanitarian supplies for themselves and have harassed and beaten Afghan and international aid workers.**

The U.S. has long been the largest humanitarian aid donor to the people of Afghanistan.

The Taliban are clearly more interested in protecting Al Qaeda than feeding the starving innocent people of Afghanistan.

AFGHANISTAN BEFORE SEPTEMBER 11

Afghanistan has suffered two decades of war, the worst drought in living memory, and the collapse of government infrastructure and access to basic social services. As Al Qaeda and the Taliban directed national resources toward war and imposed severe restrictions on its people, including a restriction on women working outside the home, the situation of the Afghan people worsened. The statistics are alarming:

- Millions face the threat of starvation.
- 70% of the Afghan people are malnourished.
- Only 13% of the Afghan people have access to clean water.
- One in four Afghan children will not make it to their fifth birthday.
- One in three Afghan children is an orphan.
- One in two Afghan children is malnourished.
- Afghanistan has the world's fourth worst child mortality rate.
- Afghanistan ranks number one worldwide in maternal mortality.
- According to U.N. estimates, there were over a million displaced people in Afghanistan prior to September 11.
- Before September 11 there were over 3.5 million Afghan refugees
- Six million people in Afghanistan and 1.5 million Afghan refugees depend on international relief programs for food.
- As many as 50,000 widows lost husbands and other male relatives in the course of Afghanistan's long civil war.
- The average life expectancy in Afghanistan is 46 years.

THE HARSH AFGHAN WINTER

Afghanistan is a mountainous country in a dry part of the world which experiences extremes of climate and weather. Afghanistan experiences extreme winter weather, with heavy snow in the mountains and the high plateaus. Even low-lying areas like Kabul can have up to 25 inches of snow on the ground in late winter.

The Afghan winters are harsh. Whole families of refugees live in tents no more than 3.5 feet square. They sleep on the ground with no blankets or protection from the brutal winters. Last winter, desperate parents dug holes in the ground, placed their children in the holes, and laid on top of them to give their children a slight respite from frigid temperatures.

Countless Afghans find themselves with no protection whatsoever against the harsh Afghan winter. For example, the U.N. Coordinator for Afghanistan reported that over 110 displaced persons taking shelter in camps in Herat died from

extreme cold on the night of January 29, 2001. Children, the elderly, and women were among the main victims of the cold snap, which saw temperatures as low as –25 degrees centigrade.

THE TERRORIST CONTRIBUTION TO THE SUFFERING AFGHAN PEOPLE

The U.S. and its coalition partners work around the clock to help get food and other aid to the Afghan people.

The Al Qaeda and Taliban contribution to the Afghan people has been a deliberate and systematic campaign to disrupt the efforts of international relief agencies to deliver desperately needed food and medical supplies to the Afghan people.

Among other things, the Taliban have seized and looted humanitarian supplies for themselves and have harassed and beaten Afghan and international aid workers.

The Taliban and Al Qaeda are clearly more interested in protecting Al Qaeda than feeding the starving people of Afghanistan.

The following specific examples of Taliban disruptions are contained in the November 6 State Department Fact Sheet: *The Taliban's Betrayal of the Afghan People*:

- October 16: The Taliban seized control of two U.N. World Food Program (WFP) warehouses, one in Kabul, and one in Kandahar, containing more than half the World Food Program's wheat supply for Afghanistan. The WFP in Kandahar had been feeding 150,000 Afghans a month before the Taliban seizure. The WFP reports that 1,600 tons of food and several vehicles have since disappeared from the Kandahar WFP warehouse. (Source: World Food Program)

- **The Taliban are actually hijacking humanitarian convoys for military purposes.** The November 6 *Washington Post* reports, "A truck in a convoy purportedly on a humanitarian mission to deliver food tipped over, and crates of tank and mortar shells could be seen spilling to the ground underneath a thin layer of flour."

- "UNICEF lost all its properties and had its offices looted when the Taliban took control in north Afghanistan in 1997, and U.N. operations were suspended." (Source: UNICEF)

- November 6: The UN refugee agency (UNHCR) says the Taliban is hindering humanitarian efforts inside Afghanistan… Speaking on behalf of the UNHCR, Peter Kessler said the Taliban was failing to cooperate: "The UNHCR and our partner agencies have had our vehicles stolen, our offices taken over and our staff beaten." (Source: BBC)

- October 31: The UN Refugee Agency (UNHCR) offices in Spin Boldak were taken over by Taliban soldiers. (Source: UNHCR)

- October 18: Taliban soldiers seized the Mercy Corps International Office in Kandahar, and remain in possession of the office and MCI vehicles. (Source: Mercy Corps)

- October 17: The Taliban occupied the Kunduz office and warehouse of the International Organization for Migration (IOM). The warehouse had been stocked with winter clothing, shoes and blankets to be distributed to internally displaced persons in the region. (Source: IOM)

- October 16: The Swedish Committee for Afghanistan reported that its compound in Taliban-controlled Mazar-I-Sharif was seized on October 16, with fuel stores set ablaze by the Taliban. (Source: Human Rights Watch)

- October 16: The UN Security Council demanded that the Taliban cease obstructing aid destined for the Afghan people.

- October 8: Armed Taliban entered the compound of a demining NGO in Kandahar and demanded vehicles. Staff who resisted were beaten. The Taliban left with several ambulances, seven pick-up trucks, and six cargo trucks from the compound. (Source: Human Rights Watch)

THE U.S. COMMITMENT TO FEEDING & PROTECTING THE AFGHAN PEOPLE

The United States has long been the leading donor of humanitarian assistance to Afghanistan:

- The U.S. has supplied more than 80 percent of all food aid to vulnerable Afghans through the United Nations' World Food Program (WFP). Since September 11th, WFP has delivered about 70,000 tons of food into Afghanistan. In November so far, WFP has delivered enough food commodities to cover the needs of 4.3 million people.

- Last year, the U.S. Government provided over $178 million in humanitarian aid to the Afghan people.

- The U.S. Government has provided over $164 million in aid to Afghanistan thus far since October 1.

- With U.S. support, WFP delivered over 30,000 metric tons of food into Afghanistan in the first half of November, exceeding records for food delivery into the country. The more than 29,000 metric tons that WFP moved in October had been the most food ever moved in a whole month in Afghanistan.

- The U.S. airlifted 20,000 wool blankets, 100 rolls of plastic sheeting, 200 metric tons of High Energy Biscuits, and one metric ton of sugar to Turkmenistan for distribution in Afghanistan.

- The U.S. purchased 15,000 metric tons of wheat in Kazakstan, which is moving by railway to Turkmenabad. The first rail car of wheat arrived on November 23 carrying 1,500 metric tons of wheat.

- The U.S. Department of Defense has airdropped nearly 2 million Humanitarian Daily Rations into Afghanistan. Each ration is enough to sustain a person with a day's worth of calories.

- On November 20, a ship departed Port Lake Charles, Louisiana with 10,000 metric tons of U.S.-donated food for the people of Afghanistan.

- A shipment of five large USAID-funded medical shipments arrived in Turkmenistan on November 12 for distribution by UNICEF. Each shipment provides basic medical supplies and medicines for 10,000 people for three months. USAID has provided a total of 10 kits for Afghanistan.

- On November 21, 65,000 metric tons of food provided by USAID arrived in Iran for transfer to WFP regional hubs in Uzbekistan, Turkmenistan, Iran, Tajikistan, and Kyrgyzstan for delivery into Afghanistan.

- On November 24, USAID airlifted 350,000 wheat bags to Turkmenabad for WFP to use to package and distribute WFP wheat supplies.

- USAID airlifted 1,000 rolls of plastic sheeting to Turkmenistan for emergency shelter use in Afghanistan.

- USAID transported 20,400 blankets from its stockpiles on October 23, and an additional 15,000 blankets on October 25, to Pakistan for the UN High Commissioner for Refugees to use in the event of a refugee influx.

From: CN=John M. Bridgeland/OU=OPD/O=EOP [OPD]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: chris henick/who/eop@eop [WHO] <chris henick>;augustine t. smythe/omb/eop@eop [OMB] <augustine t. smythe>;stephen m. garrison/opd/eop@eop [OPD] <stephen m. garrison>;gary r. edson/nsc/eop@eop [NSC] <gary r. edson>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 11/27/2001 3:06:56 PM
Subject: : Re: NYC Liability Limitation in Aviation Security Act

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John M. Bridgeland ( CN=John M. Bridgeland/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:27-NOV-2001 20:06:56.00
SUBJECT:: Re: NYC Liability Limitation in Aviation Security Act
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:chris henick ( CN=chris henick/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:augustine t. smythe ( CN=augustine t. smythe/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:stephen m. garrison ( CN=stephen m. garrison/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:gary r. edson ( CN=gary r. edson/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Nicely done, as always. thx. Pls. make sure McCallam circles back with
you after he receives the information he expects. Depending on how hard
they push indemnity, we may want to pivot and support a limit on liability
for the contractors as well....as a last resort. Th group should discuss
at our next meeting (perhaps tomorrow). We also have a new (as of
tonight) package of tax incentives that the Governor has submitted for our
consideration.




Helgard C. Walker
11/27/2001 05:41:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Bradford A. Berenson/WHO/EOP@EOP, Brett M.
Kavanaugh/WHO/EOP@EOP
Subject: NYC Liability Limitation in Aviation Security Act

This email responds to Bridgeland's request for more information regarding
liability limitations for NYC in the Aviation
Security Act. In short, there is indeed such a limitation, but it
protects only NYC and does not operate, in the view of WHCO or
Robert McCallum of the Civil Division, to solve the problem of the lack of
indemnification for the contractors.

In particular, the Aviation and Transporation Security Act includes the
following provision:
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" LIMITATIONS ON LIABILITY FOR NEW YORK CITY- Liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity arising from the terrorist-related aircraft crashes of September 11, 2001, against the City of New York shall not exceed the greater of the city's insurance coverage or $350,000,000. If a claimant who is eligible to seek compensation under section 405 of this Act, submits a claim under section 405, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, including any such action against the City of New York. The preceding sentence does not apply to a civil action to recover collateral source obligations."

The Conference Report has this to say about the meaning of the provision:

"The Conference substitute also limits the liability for all claims arising from the terrorist-related attacks of September 11, 2001, brought against the City of New York to the greater of the City's insurance coverage or $350,000,000. This limitation on damages against the City of New York, however, does not apply to any non-government or private entity that is contracted with the City."

In other words, the statutory limitation does not extend to contractors and the like who might argue they are agents of New York.

As to anecdotal legislative history, Liz Dougherty of DPC recalls that it was Don Young (not McCain) who inserted the language in an effort to garner support for the bill from the New York delegation. (In fact, McCain complained on the floor about the inclusion of these provisions as evidence of unfair interest group influence). Don Marsh of Legislative Affairs is going to find out more from Young's staff as to the intended purpose of the provision, how it wound up in the bill, and at whose behest, et cetera.

As to the scope of the statutory liability limitation for NYC, WHCO is of the view that one can advance arguments for either broad and narrow interpretations based on the meaning of the phrase "arising from." That is, it is not clear from the face of the statute or the legislative history whether the liability limitation is only for claims directly and immediately related to the attacks (e.g., wrongful death claims for persons trapped in the building) or whether it extends to claims for injury that occurred a few steps down the causal chain (e.g. a personal injury claim for an accident during debris removal, months after the attack).

Even on a broad reading of "claims arising from" the attacks, however, the provision only provides protection to NYC and does nothing for the contractors. For instance, if a third party sued the contractors for damages caused by an accident during the cleanup and the contractors in turn sued NYC for indemnification, NYC would be protected against that claim up to the statutory limit but the contractors would be on the hook for all damages that might be awarded.

Accordingly, I do not view the instant provision as solving the contractual issue at hand. I got the impression from Austin this morning that NYC somehow thought this provision fixed everything, but my conclusion is that it does not. To repeat, it fixes things from NYC's particular standpoint of liability, but it does not solve the larger problem of the contractors' liability on the site and the fact that NYC has not indemnified them for potential claims

arising out of their work or secured insurance for
such indemnification.

Also, you may be interested to know that Pataki is now pushing for a
similar liability limitation for the State of New York. He is
working with DeLay's office on language now. The solution for the
contractor situation (if indeed it remains a live "emergency")
is to fashion a like limitation for the debris removal contractors, and
perhaps even for other contractors at the site. As we
have noted all along, that is, although not ideal, preferable to a federal
indemnification of NYC or the State.

Finally, the latest update from McCallum is excerpted below for your
information:

"My last conversations were last Tues. with the attny for the
contractors who continued to stress the ability of the
federal gov't to provide an indemnity . . . . I told him and the
folks in NY that I would be back in touch with them this week
once we had gotten from Ernst &Young the insurance analysis and
once we had gotten info on the insurance coverages
and efforts from Willis, neither of which we have received."

That's it for now.

HCW

Message Sent
To:_____
John M. Bridgeland/OPD/EOP@EOP
Chris Henick/WHO/EOP@EOP
Augustine T. Smythe/OMB/EOP@EOP
Stephen M. Garrison/OPD/EOP@EOP
Gary R. Edson/NSC/EOP@EOP
peter.fisher@do.treas.gov @ inet

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: melissa s. bennett/who/eop@eop [WHO] <melissa s. bennett>;carol j. thompson/who/eop@eop [WHO] <carol j. thompson>;susan b. ralston/who/eop@eop [WHO] <susan b. ralston>;carrie c. pauska/who/eop@eop [WHO] <carrie c. pauska>;alison jones/who/eop@eop [WHO] <alison jones>;michael j. conway/who/eop@eop [WHO] <michael j. conway>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;dee dee benkie/who/eop@eop [WHO] <dee dee benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;jennifer.newstead@usdoj.gov [UNKNOWN] <jennifer.newstead@usdoj.gov>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>;heather wingate/who/eop@eop [WHO] <heather wingate>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;jason.j.sutton@usdoj.gov [UNKNOWN] <jason.j.sutton@usdoj.gov>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;stacey b. silva/who/eop@eop [WHO] <stacey b. silva>
Sent: 11/28/2001 5:47:19 AM
Subject: : Re: Reminder-JSC meeting on Wednesday, Nov. 28th

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-NOV-2001 10:47:19.00
SUBJECT:: Re: Reminder-JSC meeting on Wednesday, Nov. 28th
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:melissa s. bennett ( CN=melissa s. bennett/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:carol j. thompson ( CN=carol j. thompson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:susan b. ralston ( CN=susan b. ralston/OU=who/O=eop@eop [ WHO ] )
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CC:carrie c. pauska ( CN=carrie c. pauska/OU=who/O=eop@eop [ WHO ] )
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CC:alison jones ( CN=alison jones/OU=who/O=eop@eop [ WHO ] )
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CC:michael j. conway ( CN=michael j. conway/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
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READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
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CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
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CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:dee dee benkie (CN=dee dee benkie/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
CC:brent d. greenfield (CN=brent d. greenfield/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:jennifer.newstead@usdoj.gov (jennifer.newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:heather wingate (CN=heather wingate/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:lori l. lorenzi (CN=lori l. lorenzi/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jason.j.sutton@usdoj.gov (jason.j.sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stacey b. silva (CN=stacey b. silva/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I have an important conference call on the PLA litigation that was scheduled, after coordinating the schedules of about 10 people, for 4pm today. I don't have any items to present to the WHJSC so, if it's all right with the Chairs, I will participate in the call and see you all next week.

Elizabeth N. Camp
11/27/2001 06:57:06 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Stacey B. Silva/WHO/EOP@EOP
Subject: Reminder-JSC meeting on Wednesday, Nov. 28th

4-5pm in the Roosevelt.

Message Sent
To:_____
Melissa S. Bennett/WHO/EOP@EOP
Carol J. Thompson/WHO/EOP@EOP
Susan B. Ralston/WHO/EOP@EOP
Carrie C. Pauska/WHO/EOP@EOP
Alison Jones/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP

John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Dee Dee Benkie/WHO/EOP@EOP
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evelyn.v.long@usdoj.gov
Jennifer.Newstead@usdoj.gov
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Heather Wingate/WHO/EOP@EOP
Lori L. Lorenzi/WHO/EOP@EOP
Jason.J.Sutton@usdoj.gov
Kyle Sampson/WHO/EOP@EOP

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Peter.Fisher@do.treas.gov @ inet [UNKNOWN] <Peter.Fisher@do.treas.gov>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Sheila.Bair@do.treas.gov @ inet [UNKNOWN] <Sheila.Bair@do.treas.gov>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Lisa D. Branch/CEA /EOP@EOP [CEA] <Lisa D. Branch>;Eric H. Otto/OPD/EOP@EOP [OPD] <Eric H. Otto>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Brian R. Besanceney/OPD /EOP@EOP [OPD] <Brian R. Besanceney>
CC: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/28/2001 2:42:16 AM
Subject: : Terrorism insurance
Attachments: P_8J4B4003_OPD.TXT_1.html; P_8J4B4003_OPD.TXT_2.doc; P_8J4B4003_OPD.TXT_3.doc; P_8J4B4003_OPD.TXT_4.doc; P_8J4B4003_OPD.TXT_5.doc; P_8J4B4003_OPD.TXT_6.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-NOV-2001 07:42:16.00
SUBJECT:: Terrorism insurance
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Peter.Fisher@do.treas.gov ( Peter.Fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lisa D. Branch ( CN=Lisa D. Branch/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Eric H. Otto ( CN=Eric H. Otto/OU=OPD/O=EOP@EOP [ OPD ] )
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TO:Nicolle Devenish ( CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
CC:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

fyi
---------------------- Forwarded by Kirk Blalock/WHO/EOP on 11/28/2001
07:40 AM ---------------------------



"Rubin, Joe" <JRubin@USChamber.com>
11/27/2001 07:18:18 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: "Josten, Bruce" <BJosten@USChamber.com>, "Wootton, Jim"
```

<Jwootton@USChamber.com>, "Lundberg, Rolf" <RLundberg@USChamber.com>
Subject: Terrorism insurance

As you can see from the enclosed coalition letter that was sent to the President, there is a very broad and deep coalition that is concerned about this issue that is working hard to get it enacted.

The Chamber and the Coalition have been extremely active in our efforts to pass the terrorism insurance legislation with reasonable liability provisions that treat all businesses equally, with more activity planned right up to the House vote and for the Senate.

Along with a substantial number of House and Senate visits, CEO calls and grass-roots activity, the Chamber and the Coalition have also:

sent the enclosed coalition letter to the White House;
sent the enclosed letter to House GOP leadership and relevant Committee Chairs;
undertaken a heavy print, TV and radio ad buy (copies available on the enclosed link: http://www.litigationfairness.org/);
sent the enclosed GAIN piece to more than 45,000 Chamber activists across the country;
sent the enclosed Action Alert to almost 4000 Chambers and Associations; and
will send up the enclosed Key Vote letter to the House tomorrow.

In addition, we are circulating another Coalition letter for Thursday, and we are collecting all of the letters sent up by other companies and trade associations, which will be compiled into a packet for distribution to the House.

If you have any questions, or if there are other activities that could be helpful, please don't hesitate to give me a call.

Thanks!

Joe Rubin
Director, Congressional and Public Affairs
US Chamber of Commerce
202 463-5354
Cell: 202 365-8999

<<Business letter to POTUS for publication in Roll Call.doc>> <<Insurance Pooling House Leadership Letter Re-Revised.doc>> <<Terror Insurance GAIN.doc>> <<Immediate Action Needed.doc>> <<House Key Vote Letter on HR 3210 Final.doc>>

- att1.htm
- Business letter to POTUS for publication in Roll Call.doc
- Insurance Pooling House Leadership Letter Re-Revised.doc
- Terror Insurance GAIN.doc
- Immediate Action Needed.doc
- House Key Vote Letter on HR 3210 Final.doc

Message Sent
To:_____
"'terry.haines@mail.house.gov'" <terry.haines@mail.house.gov>
"'rober.gorton@mail.house.gov'" <rober.gorton@mail.house.gov>
"Drew. Maloney@Mail. House. Gov (E-mail)" <drew.maloney@mail.house.gov>
"Doug. Farry@Mail. House. Gov (E-mail)" <doug.farry@mail.house.gov>
"Tim. Kurth@Mail. House. Gov (E-mail)" <tim.kurth@mail.house.gov>
"'paul.taylor@mail.house.gov'" <paul.taylor@mail.house.gov>
"'steve.pinkos@mail.house.gov'" <steve.pinkos@mail.house.gov>

"Seth. Webb@Mail. House. Gov (E-mail)" <seth.webb@mail.house.gov>
"'ben.cohen@mail.house.gov'" <ben.cohen@mail.house.gov>
"'jack.horner@mail.house.house'" <jack.horner@mail.house.house>
Kirk Blalock/WHO/EOP@EOP
"'brent_cavanaugh@who.eop.gov'" <brent_cavanaugh@who.eop.gov>
Brian C. Conklin/WHO/EOP@EOP
"'charles.symington@mail.house.gov'" <charles.symington@mail.house.gov>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8J4B4003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8J4B4003_OPD.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8J4B4003_OPD.TXT_3>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8J4B4003_OPD.TXT_4>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8J4B4003_OPD.TXT_5>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8J4B4003_OPD.TXT_6>

As you can see from the enclosed coalition letter that was sent to the President, there is a very broad and deep coalition that i s concerned about this issue that is working hard to get it enacted.

The Chamber and the Coalition have been extremely active in our efforts to pass the terrorism insurance legislation with reasonab le liability provisions that treat all businesses equally, with more activity p lanned right up to the House vote and for the Senate.

Along with a substantial number of House and Senat e visits, CEO calls and grass-roots activity, the Chamber and the Coalition hav e also:

sent the enclosed coalition letter to the White Ho use;
sent the enclosed letter to House GOP leadership and relevant Committee Chairs;
undertaken a heavy print, TV and radio ad buy (co pies available on the enclosed link: http://www.litigationfairness.org/);

sent the enclosed GAIN piece to more than 45,000 C hamber activists across the country;
sent the enclosed Action Alert to almost 4000 Cha mbers and Associations; and
will send up the enclosed Key Vote letter to the House tomorrow.

In addition, we are circulating another Coalition letter for Thursday, and we are collecting all of the letters sent up by other companies and trade associations, which will be compiled into a packet for dist ribution to the House.

If you have any questions, or if there are other a ctivities that could be helpful, please don't hesitate to give me a call.

Thanks!

Joe Rubin
Director, Congressional and Public Affairs
US Chamber of Commerce
202 463-5354
Cell: 202 365-8999

<<Business letter to POTUS for publication in Roll Call.doc>> <<Insurance Pooling House Leadership Letter Re-Revised.doc> ;> <<Terror Insuranc e GAIN.doc>> <<Im mediate Action Needed.doc>> <<House Key Vote Letter on HR 3210 Final.doc>>

October 25, 2001

The Honorable George W. Bush
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

The terrorists who attacked our nation September 11 deliberately struck at the center of U.S. finance and commerce. While the attacks were devastating in many ways, we have absolutely no doubt that our nation will recover and move forward, unbowed and ever-stronger. We have great faith in our national leaders, our economic system, and in the millions of individual workers who comprise American business.

However, the attacks have left an important mark on an industry that underpins all sectors of the U.S. economy: insurance. In short, the possibility of additional terrorist attacks has made insurance against such risks virtually unobtainable.

Our market-driven economy is predicated on risk. Insurers provide much-needed security. Without insurance, financiers cannot lend, and companies are reluctant to invest. Without insurance, new construction would cease. All types of cargo would be stuck in place. Some businesses may choose to cease operations after determining that the risks of continuing to operate in the current environment without the ability to share potential losses is too great. In addition, the potential benefits of the Administration's economic stimulus package could be greatly muted.

Fortunately, the insurance market failure can be averted through federal action. To that end, we urge you to consider immediate enactment of legislation to stabilize the insurance market by creating a federal backstop for terrorism insurance coverage. Other countries that live with the constant threat of terrorism have successfully established such mechanisms.

The terrorists who attacked America on September 11 cannot be allowed to hobble the U.S. economy. We strongly urge the Administration and Congress to quickly enact the insurance legislation needed to keep the wheels of American commerce turning without interruption.

Respectfully,

Airports Council International – North America
Alliance of Automobile Manufacturers
American Association of Airport Executives
American Bankers Association
American Bankers Insurance Association
American Chemistry Council

American Council for Capital Formation
American Council of Independent Laboratories
American Iron & Steel Institute
American Resort Development Association
American Road & Transportation Builders Association
American Nursery & Landscape Association
American Society of Association Executives
APICS, the Educational Society for Resource Management
Associated General Contractors of America
Association of Financial Guaranty Insurors
The Business Roundtable
Club Managers Association of America
Community Associations Institute
Consumer Bankers Association
Consumer Mortgage Coalition
Council of Growing Companies
Edison Electric Institute
Electronic Financial Services Association
Electronic Retailing Association
Electronic Representatives Association International
Financial Services Roundtable
Greater Washington Society of Association Executives
Hotel Association of New York City, Inc.
International Association of Amusement Parks and Attractions
International Council of Shopping Centers
International Dairy Foods Association
International Franchise Association
Interstate Natural Gas Association of America
Manufactured Housing Institute
Mortgage Bankers Association of America
Motion Picture Association of America
National Apartment Association
National Association of Chain Drug Stores
National Association of Industrial & Office Properties
National Association of Real Estate Investment Trusts
National Council of Chain Restaurants
National Court Reporters Association
National Lumber and Building Materials Dealers Association
National Multi Housing Council
National Petrochemical & Refiners Association
National Retail Federation
National Tank Truck Carriers, Inc.
The New England Council
Nuclear Energy Institute
Outdoor Power Equipment Aftermarket Association
Printing Industries Association of America, Inc.

Portland Cement Association
Real Estate Board of New York
The Real Estate Roundtable
Reserve Officers Association
Society of American Florists
Surety Association of America
Truck Renting and Leasing Association
United States Chamber of Commerce
United States Telecom Association
U.S. Capitol Historical Society
Yellow Pages Publishers Association

November 16, 2001

To [Members of the House Republican Leadership as well as Chairmen Sensenbrenner, Thomas, Oxley & Dreier – Personalized]:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region, to urge you to pass legislation that will provide an appropriate federal financial backstop to ensure that insurance coverage is available to cover future financial losses associated with terrorism. It is vital that such legislation be enacted into law before the end of this Congressional session.

In addition to the unfathomable personal impact on families and individuals, the tragic events of September 11th have had a substantially negative economic effect. As our nation continues with its recovery and war efforts, it is critical that American businesses be certain that the economic consequences of any future terrorist attacks will not cripple them beyond the point of recovery. Because of the unprecedented scope and nature of the losses sustained in September, terrorism has now become virtually uninsurable in the private marketplace. If terrorism insurance becomes unavailable, our entire economy stands to experience deep, widespread and negative ripple effects. The Chamber also recognizes that there are a number of ways in which this issue can be addressed, including H.R. 3210, the "Terrorism Risk Protection Act."

In addition, personal injury lawyers who seek to exploit the events of September 11th or any future terrorist attacks will likely hamper our nation's economic recovery, enriching themselves at our nation's expense. Acts of terrorism must not become a bonus for personal injury lawyers. Those who are truly injured or damaged by an act of terrorism should receive fair and fast compensation—but not a windfall. Accordingly, we support reasonable limits on the liability of non-terrorists for damages caused by an act of terrorism.

We are concerned, however, that the version of H.R. 3210, reported out of the Financial Services Committee would not treat all potential business litigants equally in the area of liability rules. The U.S. Chamber believes that any solution to the problem of liability resulting from acts of terrorism should subject all parties (other than terrorists) to the same liability rules, and not favor one group of litigants over another.

It is critical that Congress quickly pass a terrorism insurance plan that will facilitate the availability of appropriate insurance mechanisms to cover terrorism-related events. If such a backstop is not created soon, our nation's economic recovery will be severely jeopardized. Because of the importance of making sure that insurance coverage for future acts of terrorism is available, the U.S. Chamber of Commerce strongly urges you to quickly pass legislation that would provide an appropriate federal backstop for terrorism insurance and treats all businesses equally in the area of liability.

Sincerely,

R. Bruce Josten

REV_00136866

ACTION CALL!

November 28, 2001

GAIN
GRASSROOTS ACTION INFORMATION NETWORK
U.S. Chamber of Commerce

U.S. HOUSE TO VOTE ON TERRORISM INSURANCE

CALL YOUR REPRESENTATIVE TO ASK FOR THEIR SUPPORT

The U.S. House of Representatives will vote on terrorism insurance legislation this Thursday, November 29th. H.R. 3210, the "Terrorism Risk Protection Act," will limit liability and discourage trial lawyers from cashing in on future terrorist acts by blaming and suing businesses for acts they have no control over.

Thousands of companies across the nation are already beginning to receive notices indicating that insurance coverage for future acts will be cancelled. Without this important legislation, by the end of the year, the majority of American businesses will lose their insurance protection against acts of terrorism, putting them in jeopardy and millions of jobs at risk.

IMMEDIATE ACTION NEEDED: Call or write your representative today and ask them to support H.R. 3210, the "Terrorism Risk Protection Act."

- To call, use the GAIN Legislative Hotline at 1-888-832-GAIN (4246)
- To fax, go to GAIN Online at www.uschamber.policy.net

Background: Without adequate terrorism insurance, businesses and industries will face significantly higher financial & transportation costs. For example:

- Banks cannot lend money for new construction or the purchase of real estate unless borrowers have adequate insurance;
- Borrowers may be considered in default on their existing loans, since lenders often require insurance as a condition of the loan;
- Stadiums and arenas may be forced to no longer feature sporting or entertainment events;
- Shopping malls, factories, power plants, pipelines and skyscrapers could be put out of business;
- Trucking firms, railroads, airlines and ships may be unable to transport many types of cargo or required to limit their destinations.

Any legislation must also include reasonable limits on liability for non-terrorist victims. Liability limits are needed so that businesses won't be sued for terrorist attacks and so that taxpayers won't be subsidizing trial lawyers excesses. Terrorism legislation should provide reasonable legal procedures that would:

- Ensure that victims can quickly recover real losses;
- Protect the taxpayer from spurious claims;
- Prevent unnecessary bankruptcies; and
- Reduce the likelihood that future terrorist attacks will significantly burden the U.S. economy.

A federal backstop for terrorism insurance is not just about helping insurance companies; it's about preventing a widespread credit crunch that jeopardizes thousands of diverse industries of all sizes and millions of workers.

If you would prefer to receive future alerts and updates via e-mail, please visit www.uschamber.policy.net to register.

Immediate Action Needed: Terrorism Reinsurance Availability

The underlying weakness of the U.S. economy, now in a recession, will only deteriorate if Congress doesn't act immediately to head off a collapse of insurance markets insuring against risk, notably from acts of terrorism.

We are requesting that you contact your member companies immediately to alert them to the urgent need for Congress to act.

In the aftermath of the September 11th terrorist attacks, commercial property / casualty insurance disruptions, cancellations and significantly increased premium costs on business will result, unless Congress acts as President Bush has requested.

What's at issue: Reinsurance companies cover the excess of risk for insurance companies helping to spread the risk of losses beyond a single company. Reinsurance companies, the majority of which renew reinsurance contracts in January have notified Property & Casualty Insurers that policies will no longer provide coverage for acts of terrorism. That means your member companies' primary insurers will be forced to exclude acts of terrorism from coverage or raise insurance premiums dramatically.

Why Important: Unless Congress acts, all companies will confront drastically higher insurance premiums, and will face a lack of complete insurance coverage. This, in turn, will result in a potential credit shortage as lenders who require insurance coverage for commercial loans will see their collateral inadequately covered and will raise rates to compensate for that additional risk. Additionally, since similar insurance requirements exist on all major modes of transportation, much higher shipping costs will be imposed on business as well.

Action Needed: President Bush has called on Congress to enact legislation that will allow the Federal government to provide a temporary backstop until the private insurance market develops the ability and capacity to insure against terrorist acts. Such legislation must also provide reasonable legal protections for businesses from lawsuits resulting from harms any future terrorist attacks may cause. These legal protections include: having cases heard in neutral federal courts (keep cases out of trial-lawyer friendly state courts); no punitive damages; no joint liability ("deep pockets") for non-economic damages ("pain and suffering"); and no double recoveries. These legal remedies for injured parties exist for fault-based acts. Acts of terrorism are not the fault of insurers anymore than they are the fault of your member companies.

What YOU need to do: Immediately notify your member companies of this urgent situation and strongly encourage them to contact their members of Congress to call on the Congressional leadership to quickly move terrorism insurance legislation, with appropriate legal protections, to the floor for a vote immediately. The House of Representatives is voting Thursday (Nov.29th) so immediate action is needed. Lack of insurance for terrorist acts will jeopardize economic recovery.

Enclosed is a copy of the U.S. Chamber's "Key Vote" alert sent to members of the House of Representatives.

November 28, 2001

~~Terrorism insurance key vote letter to full house~~TO MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector and region, to strongly urge you to support H.R. 3210, the terrorism insurance legislation. It is ~~IMPERATIVE~~ imperative that Congress, before going out of session this year, pass legislation that provides for ~~this~~ an appropriate federal financial backstop for terrorism insurance~~legislation before going out of session this year~~. If Congress does not pass this vital legislation, the vast majority of businesses will lose the opportunity to obtain insurance against terrorist attacks before Ceongress returns next year.

If businesses are unable to obtain insurance to cover losses caused by future acts of terror~~for terrorist acts~~, they ~~would~~ will not only potentially be directly liable for the ~~possibly billions of dollars of~~significant damages that terrorists may cause, but they will also face significantly higher financing and other costs~~,~~. This could potentially ~~wiping~~ wipe out the beneficial impact of ~~the~~ any economic stimulus legislation. It is important to note that H.R. 3210 ~~This is NOT~~is not a "bailout" for the insurance industry, ~~but represents the~~ but stands as an appropriate federal financial backstop to help ensure that insurance coverage is available to cover future financial losses associated with terrorist attacks.~~ONLY way that small businesses will be able to obtain insurance for future terrorist acts.~~ If appropriate ~~this legislation~~terrorism insurance legislation is not enacted, ~~insurance companies will simply stop selling insurance for terrorist acts. The ones who suffer as a result will be~~ businesses will be~~that are~~ faced with the Hobson's Choice of either having to ~~forced to~~ pay exorbitant rates for terrorism insurance that will be difficult or even impossible to locate, or ~~are~~ forced to do without ~~insurance~~, resulting in higher costs for financing, potential loan defaults and extreme risk to their employees.

It is also important to include in H.R. 3210 reasonable limits on the liability of non-terrorists for damages caused by an act of terrorism and that treat all businesses equally. Those trial lawyers who seek to exploit the events of September 11th or any future terrorist attacks will likely hamper our nation's economic recovery, enriching themselves at our nation's expense. Acts of terrorism must not become a bonus for personal injury lawyers, especially at a significant cost to the U.S. Treasury. Those who are truly injured or damaged by an act of terrorism should receive fair and fast compensation—but not a windfall. Without appropriate liability limits, future victims of terrorist attacks will be forced into a race to the courthouse in order to make sure that they are one of the lucky plaintiffs that happens to receive a damage award made at the expense of the other victims and subsidized by the government.

~~Finally, it is important, for fairness reasons, that this legislation include limits on liability for acts of terrorism. First of all, it is unfair to the victims of intentional, criminal, terrorist acts, including the business victims, that they could actually be sued for unlimited punitive damages, and that they could find themselves liable for 100% of the damages, even if they were only .001% responsible and the terrorists were 99.99%~~

~~responsible. Second, without limits on punitive damages, for example, a terrorist act could generate a "race to the court-house" as plaintiffs lawyers seek to obtain massive punitive damages before many victims even have a chance to file their claim. Such awards would not only wipe out significant portions of the backstop, forcing the federal government to in effect pay a wind-fall to a few lucky plaintiffs, but would award some plaintiffs at the expense of all of the rest of the victims. Victims should have the ability to recover compensation quickly and fairly, but exorbitant recoveries should not preclude other victims from receiving compensation, either.~~

Therefore, we strongly urge you to support the rule governing debate on ~~this legislation~~H.R. 3210, support final passage and to oppose any ~~weakening amendments~~motions to recommit, instruct or otherwise weaken the bill. ***The Chamber will strongly consider including votes on or in relation to H.R. 3210 as a key vote in its annual "How They Voted" ratings for 2001.***

~~The U.S. Chamber may use this vote and any related votes in our annual "How They Voted" guide to Congress.~~

Sincerely,

R. Bruce Josten ~~(TOM?)~~

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Wilson, Karen L <Karen.L.Wilson@usdoj.gov>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>
Sent: 11/28/2001 9:17:40 AM
Subject: : RE: Views Letter on Litigation Management Provisions for Terrorism In surance Bill

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:28-NOV-2001 14:17:40.00
SUBJECT:: RE: Views Letter on Litigation Management Provisions for Terrorism In surance
Bill
TO:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Wilson, Karen L" <Karen.L.Wilson@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Wilson, Karen L" <Karen.L.Wilson@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert Marsh ( CN=Robert Marsh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Paul Taylor told me that it should be addressed to Sensenbrenner.

-----Original Message-----
From: Thorsen, Carl
Sent: Wednesday, November 28, 2001 1:34 PM
To: Wilson, Karen L; Dinh, Viet
Cc: 'brett_m._kavanaugh@who.eop.gov'; 'Kristen_Silverberg@who.eop.gov';
Bryant, Dan; 'robert.marsh@who.eop.gov'
Subject: RE: Views Letter on Litigation Management Provisions for
Terrorism In surance Bill


Why is it addressed to Oxley? It should probably go to Sensenbrenner, no?

Kristen, Brett, any thoughts on this?

-----Original Message-----
From: Wilson, Karen L
Sent: Wednesday, November 28, 2001 1:30 PM
To: Thorsen, Carl; Dinh, Viet
Subject: RE: Views Letter on Litigation Management Provisions for
Terrorism In surance Bill


I got a voicemail message from Jeff Weinberg, the Legislative Reference
```

Attorney at OMB who is facilitating clearance of this letter. He said that he has forwarded the letter to WH counsel, but that they (?) was to know what the rationale is for sending the letter up now, when they are clearing a SAP for House rules today. Also, they want to know why its addressed to Rep. Oxley rather than Judiciary.

-----Original Message-----
From: Thorsen, Carl
Sent: Wednesday, November 28, 2001 8:40 AM
To: Dinh, Viet
Cc: Wilson, Karen L
Subject: RE: Views Letter on Litigation Management Provisions for Terrorism In surance Bill

It went to OMB yesterday. Karen, could you see if we can goose it along over there.

-----Original Message-----
From: Dinh, Viet
Sent: Wednesday, November 28, 2001 8:11 AM
To: 'Taylor, Paul'; Thorsen, Carl; 'brett(u)m.(u)kavanaugh(a)who.eop.gov'
Cc: Newstead, Jennifer; 'Pinkos, Steve'; 'Mautz, John'
Subject: RE: Views Letter on Litigation Management Provisions for Terrorism In surance Bill

Carl and jennifer, anything I need to do to move this along?

-----Original Message-----
From: Taylor, Paul [mailto:Paul.Taylor@mail.house.gov]
Sent: Monday, November 26, 2001 3:43 PM
To: Thorsen, Carl; Dinh, Viet; 'brett(u)m.(u)kavanaugh(a)who.eop.gov'
Cc: Newstead, Jennifer; Pinkos, Steve; Mautz, John
Subject: Views Letter on Litigation Management Provisions for Terrorism In surance Bill

Viet, any word on an ETA for the Views Letter? We'll want to put the bill together in final form tomorrow.

Paul Taylor
Counsel
House Subcommittee on the Constitution
202-225-7157 (w)
571-235-7575 (cell)
703-535-3394 (home)

From: CN=Don R. Willett/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/28/2001 10:14:50 AM
Subject: : Re: what's your view on this?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Don R. Willett (CN=Don R. Willett/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-NOV-2001 15:14:50.00
SUBJECT:: Re: what's your view on this?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

GGGGGRRRRRRRRRRRR!!!!!!!!!!

Totally maddening.

And you?

DRW

Brett M. Kavanaugh
11/28/2001 02:13:12 PM
Record Type: Record

To: Don R. Willett/WHO/EOP@EOP
cc:
Subject: what's your view on this?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 11/28/2001 1:00:58 PM
Subject: : CSPAN endless entertainment

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-NOV-2001 18:00:58.00
SUBJECT:: CSPAN endless entertainment
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Harry Reid just said on floor that he thinks that Sen Kyl's
allegation that Dems are blocking Estrada to prevent him from going to SCt
as an Hispanic nominee is wrong because "I thought that Judge Gonzales,
the President's lawyer down there at the White House, was going to be the
next nominee to the Supreme Court."
```

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/28/2001 2:02:27 PM
Subject: : Re: PRA amicus brief

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-NOV-2001 19:02:27.00
SUBJECT:: Re: PRA amicus brief
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

how and when do we respond to their filing?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 11/28/2001 3:21:54 PM
Subject: : Re: PRA amicus brief

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-NOV-2001 20:21:54.00
SUBJECT:: Re: PRA amicus brief
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We respond within 20 days in a bare-bones "answer"; then there likely will be cross-motions for summary judgment, which means briefs are submitted by both sides. Then judge has oral argument. Probable district court resolution in spring.
Note that there are about 30,000 Reagan documents that may be released immediately this week; these are not part of the 68,000, but are still important and will help us a lot (and no one is expecting this release). I will talk to you more about that tomorrow, but we have a good chance to gain higher p.r. ground with this release. DO NOT FORESHADOW THIS WITH PRESS YET.

Anne Womack
11/28/2001 07:02:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: PRA amicus brief

how and when do we respond to their filing?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 11/29/2001 2:49:05 AM
Subject: : Re: PRA amicus brief

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-NOV-2001 07:49:05.00
SUBJECT:: Re: PRA amicus brief
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

just trying to be careful!!?!

Anne Womack
11/28/2001 08:32:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: PRA amicus brief

OK, I WILL NOT FORESHADOW WITH THE PRESS YET

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 11/29/2001 3:58:36 AM
Subject: : Re: PRA amicus brief

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CREATION DATE/TIME:29-NOV-2001 08:58:36.00
SUBJECT:: Re: PRA amicus brief
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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"sound law and sound policy" -- very good
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 11/29/2001 4:25:30 AM
Subject: : ABA Ratings

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-NOV-2001 09:25:30.00
SUBJECT:: ABA Ratings
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Fred Fielding is awesome!!

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/29/2001 09:25 AM ----------

Elizabeth N. Camp
11/29/2001 09:23:53 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: ABA Ratings

Richard Leon - DC Dist.Court
Unanimous - Well Qualified

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 11/29/2001 4:40:40 AM
Subject: : fyi

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SUBJECT:: fyi
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Suit Filed to Reverse Presidential Papers Order (Reuters)
By Deborah Charles
Reuters, November 29, 2001
WASHINGTON (Reuters) - A government watchdog group filed suit in federal court on Wednesday to overturn an executive order issued by President Bush that lets presidents block the release of a former president's papers.
Public Citizen, a consumer advocacy group, filed suit in Washington on behalf of several historical associations, a nonprofit group dedicated to publishing declassified documents, a reporters' group and two presidential historians.
``The suit seeks to compel the National Archives to abide by the terms of the Presidential Records Act and to release to the public some 68,000 pages of records of former President Ronald Reagan, which should have been released last January, 12 years after President Reagan left office,'' Public Citizen said.
Earlier this month, Bush issued an executive order allowing either an incumbent or a former president to block the release of a former president's papers.
The order, which alarmed historians, would require applicants to show a ``specific'' need for many types of presidential records.
It would also give Bush control over access to Reagan's papers, including any involving members of Reagan's Republican administration who now work for Bush.
``Bush's executive order violates not only the spirit but the letter of the law,'' said Public Citizen President Joan Claybrook.
``We will not stand by while the administration tramples on the people's right to find out about their own government. The president should not have the ability to arbitrarily withhold public information to hide wrongdoing or avoid embarrassment.''
Under the Presidential Records Act, passed in 1978 in response to disputes over the records of former President Richard Nixon, the records of presidents and vice presidents are public property and the National Archives must make them available to the public after a president leaves office.
Former presidents and vice presidents can restrict access to some categories of records, including confidential communication with their advisers, for up to 12 years. After that the materials must be made public except for classified documents that could damage national security.
The 12-year restriction on Reagan's presidential documents expired this year.
Although Reagan issued a broad order in 1989 governing the release of his documents, the White House began drafting its own order after receiving a request for a large volume of documents. Bush's executive order gives a former president 90 days to decide on all but ``unduly burdensome'' requests. The incumbent president is to decide whether to concur and is to defer to the wishes of a former president unless there are ``compelling circumstances.''
The White House said those circumstances could include current national security issues a former president might be unaware of. ``In effect the executive order makes the release of records dependent on the good graces of the former president,'' said Public Citizen attorney Scott Nelson.

``The whole point of the Presidential Records Act was to take control of access out of the hands of the former presidents,'' he said. ``By giving the presidents back the power to cover up inconvenient demands, the executive order has inevitably made people wonder what they may be trying to hide.'' Nelson said the government had 60 days to respond and he expected briefs to be presented in U.S. District court early in 2002.

Records Order Spurs Lawsuit (WPost)

Groups Oppose Bush Limit on Access to Presidential Papers

By Bill Miller

The Washington Post, November 29, 2001

Historians and public interest groups filed a lawsuit yesterday asking a federal judge to strike down an executive order signed by President Bush that restricts access to presidential records, arguing that the action illegally promotes secrecy.

The suit filed in U.S. District Court here accuses the Bush administration of violating the 1978 Presidential Records Act, maintaining the law was meant to limit presidential control over records and promote public access to papers and other materials after presidents leave office.

"We will not stand by while the administration tramples on the people's right to find out about their own government," said Joan Claybrook, president of Public Citizen, a watchdog group that joined in the suit. "The president should not have the ability to arbitrarily withhold public information to hide wrongdoing or avoid embarrassment."

Other plaintiffs include the American Historical Association, the National Security Archive, the Organization of American Historians, the Reporters Committee for Freedom of the Press, and presidential historians Hugh Davis Graham and Stanley I. Kutler.

White House spokeswoman Anne Womack said Bush's order is "sound law and sound policy" and backed by a 1977 Supreme Court ruling that former presidents can continue to assert various constitutional privileges for their records.

Susan Cooper, spokeswoman for the National Archives, said officials there would not comment on pending litigation. As keeper of the records, the National Archives was named as a defendant.

Under Bush's order, a former president or a sitting president -- or in some cases, the family of a deceased or disabled president -- could block the release of records requested by individuals and force them to go to court to challenge the decisions.

Passed in the wake of a controversy over the papers and tapes of former president Richard M. Nixon, the Presidential Records Act of 1978 declared that the records of presidents and vice presidents are public property. The law called for the archivist of the United States to make them available to the public "as rapidly and completely as possible."

The act envisioned the release of most sensitive records, such as those involving confidential communications between presidents and their advisers, 12 years after a president left office. There were exceptions for national security matters.

Until Bush's order was signed Nov. 1, a former president could claim privilege for particular documents, but the archivist could overrule him, and the former president would have to go to court to sustain his claim. Bush's order shifts the legal burden, requiring individuals to show a "demonstrated, specific need" for particular records to overcome constitutionally raised privileges by former and incumbent presidents.

Scott L. Nelson, a lawyer for the Public Citizen Litigation Group, said the order could prevent or delay the release of important materials, including 68,000 pages of records of former president Ronald Reagan that historians hoped to obtain earlier this year. He said records could remain off limits even if the privileges raised were unfounded.

The lawsuit, assigned to Judge Colleen Kollar-Kotelly, also seeks a court order requiring the release of the Reagan-era papers.

Nelson said the executive order also gave former vice presidents additional control over their records and noted that Bush's father, former president George Bush, could be the first to benefit because scholars want his papers from the Reagan administration, when he was vice president.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 11/29/2001 6:41:27 AM
Subject: : click the LA Times article

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SUBJECT:: click the LA Times article
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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From: CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: jason b. torchinsky/who/eop@eop [WHO] <jason b. torchinsky>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>
Sent: 11/29/2001 10:44:52 AM
Subject: : Re: Travel Authorization for KR and I to FL

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READ:UNKNOWN
CC:jason b. torchinsky (CN=jason b. torchinsky/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks. I have FL on the brain (POTUS is going there next week nad KR).
This is for the SC trip, actually -- it's ok, right?

Next, have you thought more about the trip to FL next Friday and Saturday
that the FL GOP will pay for and it will be on board Al HOffman's plane?

Brett M. Kavanaugh
11/29/2001 03:38:19 PM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

I did; Jason, what's story?

Kelley J. McCullough
11/29/2001 03:37:56 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP, Brett M.
Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Travel Authorization for KR and I to FL

Have not heard anything official (no #) on the flight to SC for the Jim
DeMint for Congress event tomorrow. Did you all sign off on it?

Thanks for any info.
Kelley

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: Sara B. McIntosh/WHO/EOP@EOP [WHO] <Sara B. McIntosh>;Anne Heiligenstein/WHO /EOP@EOP [WHO] <Anne Heiligenstein>;Sonya E. Medina/WHO/EOP@EOP [WHO] <Sonya E. Medina>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>;Tiffany L. Barfield/OPD/EOP@EOP [OPD] <Tiffany L. Barfield>;Torie.Clarke@osd.mil [UNKNOWN] <Torie.Clarke@osd.mil>;rgeorge@nypost.com [UNKNOWN] <rgeorge@nypost.com>;Neil S. Patel/OVP/EOP@EOP [OVP] <Neil S. Patel>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;susan_irby@lott.senate.gov [UNKNOWN] <susan_irby@lott.senate.gov>;brook_simmons@nickles.senate.gov [UNKNOWN] <brook_simmons@nickles.senate.gov>;gerry_fritz@rpc.senate.gov [UNKNOWN] <gerry_fritz@rpc.senate.gov>;margaret_camp@frist.senate.gov [UNKNOWN] <margaret_camp@frist.senate.gov>;lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN] <lisette_mcsoud_mondello@hutchison.senate.gov>;Melissa_Sabatine@src.senate.gov [UNKNOWN] <Melissa_Sabatine@src.senate.gov>;melissa_sabatine@hotmail.com [UNKNOWN] <melissa_sabatine@hotmail.com>;john.feehery@mail.house.gov [UNKNOWN] <john.feehery@mail.house.gov>;terry.holt@mail.house.gov [UNKNOWN] <terry.holt@mail.house.gov>;christine.iverson@mail.house.gov [UNKNOWN] <christine.iverson@mail.house.gov>;MMiner@rnchq.org [UNKNOWN] <MMiner@rnchq.org>;sschmidt@nrcc.org [UNKNOWN] <sschmidt@nrcc.org>;emily.miller@mail.house.gov [UNKNOWN] <emily.miller@mail.house.gov>;ron_bonjean@lott.senate.gov [UNKNOWN] <ron_bonjean@lott.senate.gov>;paige.ralston@mail.house.gov [UNKNOWN] <paige.ralston@mail.house.gov>;paul.morrell@mail.house.gov [UNKNOWN] <paul.morrell@mail.house.gov>;cforti@nrcc.org [UNKNOWN] <cforti@nrcc.org>;TDuffy@rnchq.org [UNKNOWN] <TDuffy@rnchq.org>;dallen@nrsc.org [UNKNOWN] <dallen@nrsc.org>;Peter.jeffries@mail.house.gov [UNKNOWN] <Peter.jeffries@mail.house.gov>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Leslie A. Mooney/OPD /EOP@EOP [OPD] <Leslie A. Mooney>;kfedewa@rnchq.org [UNKNOWN] <kfedewa@rnchq.org>;greg_jenkins@ita.doc.gov [UNKNOWN] <greg_jenkins@ita.doc.gov>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;dean.clancy@mail.house.gov [UNKNOWN] <dean.clancy@mail.house.gov>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;ekertz@doc.gov [UNKNOWN] <ekertz@doc.gov>;jdyke@doc.gov [UNKNOWN] <jdyke@doc.gov>;melliott@doc.gov [UNKNOWN] <melliott@doc.gov>;Chesenterp@aol.com [UNKNOWN] <Chesenterp@aol.com>;cz@greenerandhook.com [UNKNOWN] <cz@greenerandhook.com>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;RGustafson@rnchq.org [UNKNOWN] <RGustafson@rnchq.org>;Anthony K. Crawford/NSC/EOP@EOP [NSC] <Anthony K. Crawford>;Ashleigh A. Adams/WHO /EOP@EOP [WHO] <Ashleigh A. Adams>;sspicer@nrcc.org [UNKNOWN] <sspicer@nrcc.org>;Michelle N. Brawer/WHO/EOP@EOP [WHO] <Michelle N. Brawer>;cmay@bsmg.com [UNKNOWN] <cmay@bsmg.com>;tnelson@dmnmedia.com [UNKNOWN] <tnelson@dmnmedia.com>;kevin.schweers@mail.house.gov [UNKNOWN] <kevin.schweers@mail.house.gov>;kyle.downey@mail.house.gov [UNKNOWN] <kyle.downey@mail.house.gov>;Anne C. Guilsher/NSC/EOP@EOP [NSC] <Anne C. Guilsher>;Michael Davis/WHO/EOP@EOP [WHO] <Michael Davis>;joliver@rnchq.org [UNKNOWN] <joliver@rnchq.org>;bhazelwood@rnchq.org [UNKNOWN] <bhazelwood@rnchq.org>;ekutler@cwdc.com [UNKNOWN] <ekutler@cwdc.com>;john.mcmanus@mail.phrma.org [UNKNOWN] <john.mcmanus@mail.phrma.org>;sstyles@bbchb.com [UNKNOWN] <sstyles@bbchb.com>;kevin.herglotz@usda.gov [UNKNOWN] <kevin.herglotz@usda.gov>;ksheridan@rnchq.org [UNKNOWN] <ksheridan@rnchq.org>;byronyork@att.net [UNKNOWN] <byronyork@att.net>;bishopn@state.gov [UNKNOWN] <bishopn@state.gov>;englandMP@state.gov [UNKNOWN]

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Sent: 11/29/2001 2:20:50 PM
Subject: : The War on Terrorism -- November 30, 2001
Attachments: P_UBQV4004_OPD.TXT_1.doc

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TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
READ:UNKNOWN
TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
READ:UNKNOWN
TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])
READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
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TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
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TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
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TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
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TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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READ:UNKNOWN
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
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TO:abrackbill@aol.com (abrackbill@aol.com [UNKNOWN])
READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])
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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
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TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
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TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
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TO:martin.weiss@bmaa.gv.at (martin.weiss@bmaa.gv.at [UNKNOWN])
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TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
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TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
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TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
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TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Here is your message of the day for tomorrow.

(See attached file: CIC -- November 30, 2001.doc)
- CIC -- November 30, 2001.doc
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THE WHITE HOUSE
COALITION INFORMATION CENTER

11/30/2001

Today's Schedule

7:00a EST	Vice President Cheney interview on *Good Morning America*.
7:00a EST	Mrs. Cheney to be interviewed on *Today*.
8:00a EST	President Aznar of Spain to tour Ground Zero with Mayor Giuliani.
9:45a EST	White House press gaggle with Ari Fleischer.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:30p EST	State Department daily press briefing with spokesman Richard Boucher.
1:00p EST	Defense Department daily press briefing with Secretary Rumsfeld and Joint Chiefs Vice Chairman Gen. Peter Pace.
2:00p EST	Secretary Rumsfeld hosts the Uzbekistan Minster of Defense.
5:00p EST	Dep. Defense Secretary Wolfowitz to host Pentagon Iftaar dinner.

In Case You Missed It

- On November 27, the International Organization for Migration -- with USAID funding – sent a 30-truck convoy of winter clothing and blankets from the Turkmenistan/Afghanistan to the Afghan city of Andkhoi.

Recent Key Quotes & Developments

- "...senior officials of the Taliban regime, including two ministers, visited Kabul's famous museum. They arrived with a team of men carrying sledgehammers, then stood around in transports of delight as Afghanistan's cultural history was reduced to rubble. After three days they repaired to the Ministry of Culture where, over three months, they meted out the same treatment to the priceless antiquities stored in the basement." (Peter Popham; *The Independent*, 11/29/01)

- "Fleeing Taliban plundered Afghanistan's national bank of millions of dollars in cash...during their hurried retreat from Kabul. Its Taliban governor, Haji Mullah Mohammad Ahmadi, showed up with a posse of gunmen on 12 November, and took $6 million..." (*The Daily Mail* [U.K.], 11/29/01)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.

- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.

- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

- Our enemies are devious and ruthless. They have no conscience, no religion, and no mercy. They seek to kill our citizens and overthrow friendly governments. But we are seeking them. We are finding them. And we are fighting them.

- We fight the terrorists – and all those who give them aid. America has a message for the nations of the world: If you harbor a terrorist, you <u>are</u> a terrorist. If you feed a terrorist or fund a terrorist, you <u>are</u> a terrorist. And you will be held accountable.

Facts of the Day

- The Department of Defense is approaching the two million mark in Humanitarian Daily Rations airdropped into Afghanistan. Since the war began, more than 1,970,000 HDRs have been airdropped.

- To help deal with the difficulty of delivering aid in winter, the World Food Program – with U.S. funding – has 50 heavy-duty trucks, some fitted with snow plows, in Turkmenistan ready to deliver food into Afghanistan's Central Highlands.

REV_00137006

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To: Sara B. McIntosh/WHO/EOP@EOP [WHO] <Sara B. McIntosh>;Anne Heiligenstein/WHO /EOP@EOP [WHO] <Anne Heiligenstein>;Sonya E. Medina/WHO/EOP@EOP [WHO] <Sonya E. Medina>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>;Tiffany L. Barfield/OPD/EOP@EOP [OPD] <Tiffany L. Barfield>;Torie.Clarke@osd.mil [UNKNOWN] <Torie.Clarke@osd.mil>;rgeorge@nypost.com [UNKNOWN] <rgeorge@nypost.com>;Neil S. Patel/OVP/EOP@EOP [OVP] <Neil S. Patel>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;susan_irby@lott.senate.gov [UNKNOWN] <susan_irby@lott.senate.gov>;brook_simmons@nickles.senate.gov [UNKNOWN] <brook_simmons@nickles.senate.gov>;gerry_fritz@rpc.senate.gov [UNKNOWN] <gerry_fritz@rpc.senate.gov>;margaret_camp@frist.senate.gov [UNKNOWN] <margaret_camp@frist.senate.gov>;lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN] <lisette_mcsoud_mondello@hutchison.senate.gov>;Melissa_Sabatine@src.senate.gov [UNKNOWN] <Melissa_Sabatine@src.senate.gov>;melissa_sabatine@hotmail.com [UNKNOWN] <melissa_sabatine@hotmail.com>;john.feehery@mail.house.gov [UNKNOWN] <john.feehery@mail.house.gov>;terry.holt@mail.house.gov [UNKNOWN] <terry.holt@mail.house.gov>;christine.iverson@mail.house.gov [UNKNOWN] <christine.iverson@mail.house.gov>;MMiner@rnchq.org [UNKNOWN] <MMiner@rnchq.org>;sschmidt@nrcc.org [UNKNOWN] <sschmidt@nrcc.org>;emily.miller@mail.house.gov [UNKNOWN] <emily.miller@mail.house.gov>;ron_bonjean@lott.senate.gov [UNKNOWN] <ron_bonjean@lott.senate.gov>;paige.ralston@mail.house.gov [UNKNOWN] <paige.ralston@mail.house.gov>;paul.morrell@mail.house.gov [UNKNOWN] <paul.morrell@mail.house.gov>;cforti@nrcc.org [UNKNOWN] <cforti@nrcc.org>;TDuffy@rnchq.org [UNKNOWN] <TDuffy@rnchq.org>;dallen@nrsc.org [UNKNOWN] <dallen@nrsc.org>;Peter.jeffries@mail.house.gov [UNKNOWN] <Peter.jeffries@mail.house.gov>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Leslie A. Mooney/OPD /EOP@EOP [OPD] <Leslie A. Mooney>;kfedewa@rnchq.org [UNKNOWN] <kfedewa@rnchq.org>;greg_jenkins@ita.doc.gov [UNKNOWN] <greg_jenkins@ita.doc.gov>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;dean.clancy@mail.house.gov [UNKNOWN] <dean.clancy@mail.house.gov>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;ekertz@doc.gov [UNKNOWN] <ekertz@doc.gov>;jdyke@doc.gov [UNKNOWN] <jdyke@doc.gov>;melliott@doc.gov [UNKNOWN] <melliott@doc.gov>;Chesenterp@aol.com [UNKNOWN] <Chesenterp@aol.com>;cz@greenerandhook.com [UNKNOWN] <cz@greenerandhook.com>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;RGustafson@rnchq.org [UNKNOWN] <RGustafson@rnchq.org>;Anthony K. Crawford/NSC/EOP@EOP [NSC] <Anthony K. Crawford>;Ashleigh A. Adams/WHO /EOP@EOP [WHO] <Ashleigh A. Adams>;sspicer@nrcc.org [UNKNOWN] <sspicer@nrcc.org>;Michelle N. Brawer/WHO/EOP@EOP [WHO] <Michelle N. Brawer>;cmay@bsmg.com [UNKNOWN] <cmay@bsmg.com>;tnelson@dmnmedia.com [UNKNOWN] <tnelson@dmnmedia.com>;kevin.schweers@mail.house.gov [UNKNOWN] <kevin.schweers@mail.house.gov>;kyle.downey@mail.house.gov [UNKNOWN] <kyle.downey@mail.house.gov>;Anne C. Guilsher/NSC/EOP@EOP [NSC] <Anne C. Guilsher>;Michael Davis/WHO/EOP@EOP [WHO] <Michael Davis>;joliver@rnchq.org [UNKNOWN] <joliver@rnchq.org>;bhazelwood@rnchq.org [UNKNOWN] <bhazelwood@rnchq.org>;ekutler@cwdc.com [UNKNOWN] <ekutler@cwdc.com>;john.mcmanus@mail.phrma.org [UNKNOWN] <john.mcmanus@mail.phrma.org>;sstyles@bbchb.com [UNKNOWN] <sstyles@bbchb.com>;kevin.herglotz@usda.gov [UNKNOWN] <kevin.herglotz@usda.gov>;ksheridan@rnchq.org [UNKNOWN] <ksheridan@rnchq.org>;byronyork@att.net [UNKNOWN]

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TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
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TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott_Jeffcoat@oa.eop.gov (Scott_Jeffcoat@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth_B._Mehlman@oa.eop.gov (Kenneth_B._Mehlman@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tobin_K._Harvey@oa.eop.gov (Tobin_K._Harvey@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner_R._Bethel@oa.eop.gov (Danner_R._Bethel@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas_D._McCormick@oa.eop.gov (Douglas_D._McCormick@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Lisa_T._Cummins@oa.eop.gov (Lisa_T._Cummins@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mark_V._Scott@oa.eop.gov (Mark_V._Scott@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Deborah_K._Hair@oa.eop.gov (Deborah_K._Hair@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Here is your message of the day for tomorrow.

(See attached file: CIC -- November 30, 2001.doc)
- CIC -- November 30, 2001.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <06119_p_ubqv4004_who.txt_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

11/30/2001

Today's Schedule

7:00a EST	Vice President Cheney interview on *Good Morning America*.
7:00a EST	Mrs. Cheney to be interviewed on *Today*.
8:00a EST	President Aznar of Spain to tour Ground Zero with Mayor Giuliani.
9:45a EST	White House press gaggle with Ari Fleischer.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:30p EST	State Department daily press briefing with spokesman Richard Boucher.
1:00p EST	Defense Department daily press briefing with Secretary Rumsfeld and Joint Chiefs Vice Chairman Gen. Peter Pace.
2:00p EST	Secretary Rumsfeld hosts the Uzbekistan Minster of Defense.
5:00p EST	Dep. Defense Secretary Wolfowitz to host Pentagon Iftaar dinner.

In Case You Missed It

- On November 27, the International Organization for Migration -- with USAID funding – sent a 30-truck convoy of winter clothing and blankets from the Turkmenistan/Afghanistan to the Afghan city of Andkhoi.

Recent Key Quotes & Developments

- "...senior officials of the Taliban regime, including two ministers, visited Kabul's famous museum. They arrived with a team of men carrying sledgehammers, then stood around in transports of delight as Afghanistan's cultural history was reduced to rubble. After three days they repaired to the Ministry of Culture where, over three months, they meted out the same treatment to the priceless antiquities stored in the basement." (Peter Popham; *The Independent*, 11/29/01)

- "Fleeing Taliban plundered Afghanistan's national bank of millions of dollars in cash...during their hurried retreat from Kabul. Its Taliban governor, Haji Mullah Mohammad Ahmadi, showed up with a posse of gunmen on 12 November, and took $6 million..." (*The Daily Mail* [U.K.], 11/29/01)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.

- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.

- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

- Our enemies are devious and ruthless. They have no conscience, no religion, and no mercy. They seek to kill our citizens and overthrow friendly governments. But we are seeking them. We are finding them. And we are fighting them.

- We fight the terrorists – and all those who give them aid. America has a message for the nations of the world: If you harbor a terrorist, you <u>are</u> a terrorist. If you feed a terrorist or fund a terrorist, you <u>are</u> a terrorist. And you will be held accountable.

Facts of the Day

- The Department of Defense is approaching the two million mark in Humanitarian Daily Rations airdropped into Afghanistan. Since the war began, more than 1,970,000 HDRs have been airdropped.

- To help deal with the difficulty of delivering aid in winter, the World Food Program – with U.S. funding – has 50 heavy-duty trucks, some fitted with snow plows, in Turkmenistan ready to deliver food into Afghanistan's Central Highlands.

REV_00137025

From: CN=Brian C. Conklin/OU=WHO/O=EOP [WHO]
To: Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>
CC: peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;randall s. kroszner/cea/eop@eop [CEA] <randall s. kroszner>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;matthew kirk/who/eop@eop [WHO] <matthew kirk>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;amy.smith@do.treas.gov @ inet [UNKNOWN] <amy.smith@do.treas.gov>;k. philippa malmgren/opd/eop@eop [OPD] <k. philippa malmgren>;kirk blalock/who/eop@eop [WHO] <kirk blalock>
Sent: 11/29/2001 2:29:23 PM
Subject: : Re: Brian Conklin

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CREATION DATE/TIME:29-NOV-2001 19:29:23.00
SUBJECT:: Re: Brian Conklin
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:peter.fisher@do.treas.gov (peter.fisher@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
CC:randall s. kroszner (CN=randall s. kroszner/OU=cea/O=eop@eop [CEA])
READ:UNKNOWN
CC:sheila.bair@do.treas.gov (sheila.bair@do.treas.gov @ inet [UNKNOWN])
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CC:matthew kirk (CN=matthew kirk/OU=who/O=eop@eop [WHO])
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READ:UNKNOWN
CC:amy.smith@do.treas.gov (amy.smith@do.treas.gov @ inet [UNKNOWN])
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CC:k. philippa malmgren (CN=k. philippa malmgren/OU=opd/O=eop@eop [OPD])
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CC:kirk blalock (CN=kirk blalock/OU=who/O=eop@eop [WHO])
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End Original ARMS Header

While as a lobbyist, I should take full credit, this was a good team victory. Thanks to all.

From: Leslie A. Mooney on 11/29/2001 04:56:58 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Brian Conklin

Brian Conklin should be congratualted for securing an impressive 227-193 win on the House terrorism insurance bill!

Best,

Marc

Message Sent
To:_____

Peter.Fisher@do.treas.gov @ inet
Randall S. Kroszner/CEA/EOP@EOP
Sheila.Bair@do.treas.gov @ inet
Kristen Silverberg/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
amy.smith@do.treas.gov @ inet
K. Philippa Malmgren/OPD/EOP@EOP
Kirk Blalock/WHO/EOP@EOP

From:	CN=Edward Ingle/OU=WHO/O=EOP [WHO]
To:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole_E._Grodner@who.eop.gov [UNKNOWN] <Nicole_E._Grodner@who.eop.gov>
Sent:	11/29/2001 2:37:36 PM
Subject:	: agency FOIA requests
Attachments:	P_WLQV4004_WHO.TXT_1.doc

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CREATION DATE/TIME:29-NOV-2001 19:37:36.00
SUBJECT:: agency FOIA requests
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READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nicole_E._Grodner@who.eop.gov ( Nicole_E._Grodner@who.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
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from this week's agency cabinet report submissions.....

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WLQV4004_WHO.TXT_1>
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11/29/01

AGENCY FOIA REQUESTS

HHS

- *9/11 Medical Records* Anticipating a large volume of requests from attorneys and others seeking medical records prepared by PHS emergency medical personnel in connection with recent events, OGC and the Office of Emergency Preparedness drafted standard language for responding. Requesters will be advised to follow applicable FOI and Privacy Act procedures for seeking government records

- *NIH* ***Judicial Watch*** contacted NIH seeking documents regarding an October 23 meeting between NIH's Dr. Anthony Fauci and the Secretary in which the anthrax crisis was discussed.

- ***Associated Press,*** Washington, D.C., has requested that CDC provide copies of all contracts of $25,000 or more awarded by the Agency from September 12 through November 9, 2001, on a no-bid or non-competitive basis.

- ***USA TODAY*** has requested that CDC provide all EPI-AID request forms and trip reports for the New York, Washington D.C., New Jersey and Florida anthrax investigations (and any other anthrax investigations). In addition, they have requested all information relative to any CDC World Series assignments in Arizona and New York.

- *CMS* On November 14 **Senator Harkin** requested that CMS provide electronic access to current demographic data regarding Medicare-eligible Iowans, with monthly electronic updates to ensure accuracy of records.

- Anthrax ***Judicial Watch*** requested from FDA any records related to Bioport Corp. and anthrax vaccine, and communications concerning its use during the Gulf War.

- *Office of International Affairs.* The request is for all deliberations and drafting that contributed to the finalized letter sent to Dr. Hogerzeil, of the World Health Organization (WHO), regarding the WHO's proposed changes to their Essential Drugs List review process.

COMMERCE

- Received 11/26/01 from Joseph W. Dorn and Duane W. Layton of **King & Spalding**, requesting a copy of the Secretary's report to the President concerning the Secretary's findings and recommendations resulting from the investigation under Section 232 of the Trade Expansion Act of 1962. The Section 232 investigation determined the effects on U.S. national security of imports of iron ore and semi-finished steel.

- Received 11/21/01 from Michael Ravnitzky of **American Lawyer Media**, requesting membership and participant lists for the Interagency Working Group on Technology Transfer (IWGTT) as well as agendas, minutes, and handouts for all meetings of the IWGTT from 1992 to present.

- Received 11/21/01 from Christopher J. Farrell of ***Judicial Watch***, requesting all information relating to: (1) the decision to settle with McDonnell Douglass on charges that the company violated U.S. export laws by selling aerospace machine tools to a Chinese company; (2) communications concerning the decision to drop the criminal charges filed against McDonnell Douglass; (3) communications concerning the decision to set the civil penalty for McDonnell Douglass at $2.1 million; (4) communications concerning the decision to preserve the right of McDonnell Douglass to conduct business overseas as part of the settlement; (5) the sale of $5.4 million in machine equipment to the China National Aero-Technology Import and Export Corporation; and (6) communications concerning the decision to require McDonnell Douglass' parent company, the Boeing Company, to assume responsibility and liability for all exports under DOC's jurisdiction made or to be made by McDonnell Douglass.

- Received 11/15/01 from Gabrielle Herderschee-Hunter of the Federal Trade Commission's ***FTC Watch,*** requesting Microsoft Corporation Contracts.

JUSTICE

- ***Mark Benjamin, of United Press International,*** has requested all correspondence between the Department and members of Congress since September 11 regarding the following: 1) recent Department policy allowing the government to monitor communications between suspects and their attorneys; 2) information on individuals detained in the government's investigation of the attacks; 3) the administration's decision to possibly establish military tribunals to try terrorist suspects; and, 4) the subject of civil liberties.

- ***Christopher Farrell, of Judicial Watch, Inc.,*** has requested all records pertaining to the decision to settle with McDonnell Douglas on charges that the company "violated US export laws by selling to a Chinese-run company aerospace machine tools that ultimately wound up in a Chinese military plant."

- ***Erica Miller, of the Chemical and Biological Arms Control Institute,*** has requested a document entitled, "Attorney General's Five-Year Interagency Counterterrorism and Technology Crime Plan."

DOT

- ***Judicial Watch.*** Records relating to: (1) communications between former FAA Deputy Administrator Linda Daschle and former DOT Inspector General Mary Schiavo regarding criminal-record checks for all airline employees, as cited in the Miami Herald; (2) a meeting between Ms. Daschle and L-3 Communications or InVision Technologies Inc.; (3) the number of "eXaminer" airline luggage bomb-detection devices, manufactured by L-3

Communications, currently in use at airports in the U.S.; (4) the number of "CTX" airline luggage bomb-detection devices, manufactured by InVision Technologies Inc., currently in use at airports in the U.S.; (5) the reported breakdowns of "eXaminer" bomb-detection devices at the Dallas/Fort Worth Airport after installation in the spring of 2000; (6) the number of breakdowns the "eXaminer" bomb-detection devices experience; (7) the number of breakdowns the "CTX" bomb-detection devices experience; (8) FAA's certification of L-3 Communications' "eXaminer" as an FAA approved bomb-scanner; and (9) the decision to mandate the purchase of an "eXaminer" bomb-scanner for every "CTX" bomb-scanner purchased by the FAA.

EPA

- During the week of November 20-26, 2001, the Agency received a total of 177 FOIA requests. Of that total, 35 were received in Headquarters. Significant FOIA requests included: **New York Public Interest Research Group** is asking for all records and documents between EPA and any representative of the General Electric Company from September 7, 2001 to the present regarding the Hudson River PCB Superfund Site.

From: Sheila.Bair@do.treas.gov [UNKNOWN]
To: Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Leslie A. Mooney/OPD /EOP@EOP [OPD] <Leslie A. Mooney>
CC: Peter.Fisher@do.treas.gov [UNKNOWN] <Peter.Fisher@do.treas.gov>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Sheila.Bair@do.treas.gov [UNKNOWN] <Sheila.Bair@do.treas.gov>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Amy.Smith@do.treas.gov [UNKNOWN] <Amy.Smith@do.treas.gov>;K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>
Sent: 11/30/2001 2:36:15 AM
Subject: : RE: Brian Conklin

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:30-NOV-2001 07:36:15.00
SUBJECT:: RE: Brian Conklin
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Leslie A. Mooney ( CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Peter.Fisher@do.treas.gov ( Peter.Fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
CC:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Amy.Smith@do.treas.gov ( Amy.Smith@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:K. Philippa Malmgren ( CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

You are too modest! Brian, I have always had tremendous respect for the
White House lobbying operation, but the way you have handled this bill --
with all its difficulties -- has boosted my opinion 1000%. Great job.

Sheila

-----Original Message-----
From: Brian_C._Conklin@who.eop.gov [mailto:Brian_C._Conklin@who.eop.gov]
Sent: Thursday November 29, 2001 7:29 PM
To: Leslie_A._Mooney@opd.eop.gov
Cc: peter.fisher@do.treas.gov; Randall_S._Kroszner@cea.eop.gov;
sheila.bair@do.treas.gov; Kristen_Silverberg@who.eop.gov;
Matthew_Kirk@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
amy.smith@do.treas.gov; K._Philippa_Malmgren@opd.eop.gov;
Kirk_Blalock@who.eop.gov
Subject: Re: Brian Conklin


While as a lobbyist, I should take full credit, this was a good team
victory.
Thanks to all.
```

From: Leslie A. Mooney on 11/29/2001 04:56:58 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Brian Conklin

Brian Conklin should be congratualted for securing an impressive 227-193
win
on
the House terrorism insurance bill!

Best,

Marc

Message Sent
To:_____

Peter.Fisher@do.treas.gov @ inet
Randall S. Kroszner/CEA/EOP@EOP
Sheila.Bair@do.treas.gov @ inet
Kristen Silverberg/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
amy.smith@do.treas.gov @ inet
K. Philippa Malmgren/OPD/EOP@EOP
Kirk Blalock/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 11/30/2001 3:02:58 AM
Subject: : WPost judges editorial

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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-NOV-2001 08:02:58.00
SUBJECT:: WPost judges editorial
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Karl: Needless to say, we are and will be working to ensure wide
dissemination of the Post editorial of this morning. Ideas and help from
your office on that also would be welcome and important. Thanks.
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>
Sent: 11/30/2001 7:16:35 AM
Subject: : Re: Circuit openings with well qual POTUS candidates

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CREATOR:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-NOV-2001 12:16:35.00
SUBJECT:: Re: Circuit openings with well qual POTUS candidates
TO:Matthew A. Schlapp ( CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Viet's website is a good source:

http://www.usdoj.gov/olp/judicialnominations.htm
```

```
Matthew A. Schlapp
11/30/2001 12:11:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Kyle Sampson/WHO/EOP@EOP,
Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Circuit openings with well qual POTUS candidates

can we get a list of all the openings with detail on candidates nominated
(with state) who have been judged well qualified by ABA? Want to start
the project Karl referenced in last meeting.
```

From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: james.waurishuk@js.pentagon.mil [UNKNOWN] <james.waurishuk@js.pentagon.mil>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP@EOP [WHO] <Gregory Goss>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO /EOP@EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO /EOP@EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Brian Bravo/WHO /EOP@EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO/EOP@EOP [WHO] <Harry W. Wolff>;Rachael L. Sunbarger/WHO /EOP@EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;John_W._Howard@oa.eop.gov [UNKNOWN] <John_W._Howard@oa.eop.gov>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott_Jeffcoat@oa.eop.gov [UNKNOWN] <Scott_Jeffcoat@oa.eop.gov>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO /EOP@EOP [WHO] <Edward Ingle>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO /EOP@EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Kenneth_B._Mehlman@oa.eop.gov [UNKNOWN] <Kenneth_B._Mehlman@oa.eop.gov>;Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L. West>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Tobin_K._Harvey@oa.eop.gov [UNKNOWN] <Tobin_K._Harvey@oa.eop.gov>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Danner_R._Bethel@oa.eop.gov [UNKNOWN] <Danner_R._Bethel@oa.eop.gov>;Mary Elizabeth Farr/WHO/EOP@EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Ashley M. Snee/OVP/EOP@EOP [OVP] <Ashley M. Snee>;Debra Heiden/OVP /EOP@EOP [OVP] <Debra Heiden>;Douglas_D._McCormick@oa.eop.gov [UNKNOWN] <Douglas_D._McCormick@oa.eop.gov>;Mary J. Matalin/OVP/EOP@EOP [OVP] <Mary J.

Matalin>;I._Lewis_Libby@oa.eop.gov [UNKNOWN] <I._Lewis_Libby@oa.eop.gov>;Charles D. McGrath Jr/OVP/EOP@EOP [OVP] <Charles D. McGrath Jr>;Ethan A. Hastert/OVP /EOP@EOP [OVP] <Ethan A. Hastert>;Juleanna R. Glover/OVP/EOP@EOP [OVP] <Juleanna R. Glover>;Megan D. Moran/OVP/EOP@EOP [OVP] <Megan D. Moran>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>;Ronald I. Christie/OVP/EOP@EOP [OVP] <Ronald I. Christie>;Nina Rees/OVP/EOP@EOP [OVP] <Nina Rees>;Margita N. Thompson/OVP/EOP@EOP [OVP] <Margita N. Thompson>;Nancy P. Dorn/WHO/EOP@EOP [WHO] <Nancy P. Dorn>;Stephen S. Ruhlen/OVP/EOP@EOP [OVP] <Stephen S. Ruhlen>;Lauren K. Allgood/OVP/EOP@EOP [OVP] <Lauren K. Allgood>;Debra R. Dunn/OVP/EOP@EOP [OVP] <Debra R. Dunn>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Donald_M._Sumerlin@oa.eop.gov [UNKNOWN] <Donald_M._Sumerlin@oa.eop.gov>;Eric C. Pelletier/OMB/EOP@EOP [OMB] <Eric C. Pelletier>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Stephen M. Garrison/OPD /EOP@EOP [OPD] <Stephen M. Garrison>;Eric H. Otto/OPD/EOP@EOP [OPD] <Eric H. Otto>;edgillespie@quinngillespie.com [UNKNOWN]
<edgillespie@quinngillespie.com>;christine.iverson@mail.house.gov [UNKNOWN]
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<cooper.mildred@epa.gov>;roy-stuart@dol.gov [UNKNOWN]
<roy-stuart@dol.gov>;cliff_may@ios.doi.gov [UNKNOWN] <cliff_may@ios.doi.gov>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Melissa_sabatine@hotmail.com [UNKNOWN] <Melissa_sabatine@hotmail.com>;brian.gunderson@mail.house.gov [UNKNOWN]
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<kevin.schweers@mail.house.gov>;paul.morrell@mail.house.gov [UNKNOWN]
<paul.morrell@mail.house.gov>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael Shannon>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Lisa_T._Cummins@oa.eop.gov [UNKNOWN]
<Lisa_T._Cummins@oa.eop.gov>;Mark_V._Scott@oa.eop.gov [UNKNOWN]
<Mark_V._Scott@oa.eop.gov>;Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H. Tennery>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;sschmidt@nrcc.org [UNKNOWN] <sschmidt@nrcc.org>;Brian R. Besanceney/OPD/EOP@EOP [OPD] <Brian R. Besanceney>;mmckinnon@pstrategies.com [UNKNOWN]
<mmckinnon@pstrategies.com>;MMiner@rnchq.org [UNKNOWN]
<MMiner@rnchq.org>;BComstock@rnchq.org [UNKNOWN] <BComstock@rnchq.org>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;jcram@rnchq.org [UNKNOWN]
<jcram@rnchq.org>;dmishoe@rnchq.org [UNKNOWN] <dmishoe@rnchq.org>;John M. Ackerly/OPD/EOP@EOP [OPD] <John M. Ackerly>;Kevin_J._Martin@oa.eop.gov [UNKNOWN] <Kevin_J._Martin@oa.eop.gov>;Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>;mcrawford@doc.gov [UNKNOWN] <mcrawford@doc.gov>;maryanne.lyle@fema.gov [UNKNOWN] <maryanne.lyle@fema.gov>;Nancy_L._segerdahl@hud.gov [UNKNOWN]
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<kmclane@pstrategies.com>;John D. Estes/WHO/EOP@EOP [WHO] <John D. Estes>;Angela R. Sailor/WHO/EOP@EOP [WHO] <Angela R. Sailor>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Terry C. Miller/WHO/EOP@EOP [WHO] <Terry C. Miller>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;brusbolt@iiaa.net [UNKNOWN]
<brusbolt@iiaa.net>;blewis@rnchq.org [OVP] <blewis@rnchq.org>;Charles P. Blahous/OPD /EOP@EOP [OPD] <Charles P. Blahous>;Maria.Cino@mail.doc.gov [UNKNOWN]
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Attachments: 06196_p_duyc4003_who.txt_1.doc

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CREATION DATE/TIME:30-NOV-2001 18:35:12.00
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READ:UNKNOWN
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READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Have a great weekend. Call your family to say hello.

(See attached file: CIC -- Daily, Weekend Edition.doc)
- CIC -- Daily, Weekend Edition.doc
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THE WHITE HOUSE
COALITION INFORMATION CENTER

12/1-2/2001

Weekend Schedule (EST)

Sunday

9:00a EST	Secretary Powell to appear on *Face the Nation*.
10:30a EST	Secretary Rumsfeld to appear on *Meet the Press*.
10:30a EST	Attorney General Ashcroft to appear on *Fox News Sunday*.
11:30a EST	Attorney General Ashcroft to appear on *This Week*.
12:00p EST	Secretary Powell to appear on *Late Edition*.

In Case You Missed It…

- On November 30th, the Department of Defense dropped enough Humanitarian Daily Rations into Afghanistan to push its total HDRs dropped to 2,005,620. The total cost of this unprecedented humanitarian aid effort is more than $44 million and U.S. military aircraft will continue dropping HDRs each night.

Recent Key Quotes & Developments

- "The predominantly male delegation at the Afghan peace talks in Bonn yesterday agreed to a package securing the rights of women to an education, work and a role in politics." (Ewen MacAskill; *The Guardian* [U.K.], 11/30/01)

- "Girls are being allowed to return to formal education in Afghanistan after being excluded from schools since the Taliban took power in 1996…In Nangarhar province in eastern Afghanistan, 3500 girls have registered for classes and 320 women teachers have returned to work, says Abdul Ghani Hidayat, director of education in the post-Taliban provincial administration." (*The Daily Express* [U.K.], 11/30/01)

- "'They've mixed traditions with Islam and their own misinterpretation of it, and then imposed it on the Afghan people in the name of Islam'…[Jalal] Jalalizadeh [Iranian lawmakers, Sunni with a doctorate in Islamic studies] grew agitated as he reached the parts [of the Taliban rule book] banning children's activities such as kite flying or playing with dolls. 'This makes no sense…'" (Soraya Sarhaddi Nelson; *Los Angeles Times*, 11/30/01)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaeda is becoming more and more isolated.

- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.

- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

- Our enemies are devious and ruthless. They have no conscience, no religion, and no mercy. They seek to kill our citizens and overthrow friendly governments. But we are seeking them. We are finding them. And we are fighting them.

Facts of the Day

- Tajikistan has changed its rules governing access to international crossing points into Afghanistan to make it easier for humanitarian aid workers and vehicles to make crossings. This will increase the volume of U.S. assistance and the speed with which it gets to needy Afghans.

- The World Food Program – with U.S. assistance – has already distributeded 33,000 metric tons of food aid out of the 51,000 metric tons it is estimated are required for the region over the next three months.

- The total amount of money spent by the U.S. government on humanitarian aid to Afghanistan in FY01 and 02, to date, is $344,738,658.

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<richard.mcgraw@osd.mil>;tfrancis@doc.gov [UNKNOWN] <tfrancis@doc.gov>;Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>;Marisa K. Medrano/OPD /EOP@EOP [OPD] <Marisa K. Medrano>;Kelley J. McCullough/WHO/EOP@EOP [WHO] <Kelley J. McCullough>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO/EOP@EOP [WHO] <Craig Felner>;julie.nichols@ost.dot.gov [UNKNOWN] <julie.nichols@ost.dot.gov>;gwolfe@nrsc.org [UNKNOWN] <gwolfe@nrsc.org>;ginni.thomas@heritage.org [UNKNOWN] <ginni.thomas@heritage.org>;camille.cain@msn.com [UNKNOWN] <camille.cain@msn.com>;bethsturgeon@austin.rr.com [UNKNOWN] <bethsturgeon@austin.rr.com>;bberrytx@aol.com [UNKNOWN] <bberrytx@aol.com>;jenniferecrooks@hotmail.com [UNKNOWN] <jenniferecrooks@hotmail.com>;rsavarese@kpmg.com [UNKNOWN] <rsavarese@kpmg.com>;tom.sellers@usa.conoco.com [UNKNOWN] <tom.sellers@usa.conoco.com>;ccamp@llano-permian.com [UNKNOWN] <ccamp@llano-permian.com>;campsite@nts-online.net [UNKNOWN] <campsite@nts-online.net>;daviddurham@austin.rr.com [UNKNOWN] <daviddurham@austin.rr.com>;lpollard@austin.rr.com [UNKNOWN] <lpollard@austin.rr.com>;mona@gregabbottcampaign.com [UNKNOWN] <mona@gregabbottcampaign.com>;rsullivan@governor.state.tx.us [UNKNOWN] <rsullivan@governor.state.tx.us>;nikki.robinson@mail.house.gov [UNKNOWN] <nikki.robinson@mail.house.gov>;campcopmc@aol.com [UNKNOWN] <campcopmc@aol.com>;creazzo@hotmail.com [UNKNOWN] <creazzo@hotmail.com>;Natalie S. Wozniak/NSC/EOP@EOP [NSC] <Natalie S. Wozniak>;Peter Smith/NSC/EOP@EOP [NSC] <Peter Smith>;Michele Ahern/OMB/EOP@EOP [OMB] <Michele Ahern>;greg.crist@mail.house.gov [UNKNOWN] <greg.crist@mail.house.gov>;brad.bennett@mail.house.gov [UNKNOWN] <brad.bennett@mail.house.gov>;jessica.incitto@mail.house.gov [UNKNOWN] <jessica.incitto@mail.house.gov>;jonathan.grella@mail.house.gov [UNKNOWN] <jonathan.grella@mail.house.gov>;mike.franc@heritage.org [UNKNOWN] <mike.franc@heritage.org>;lisa.nelson@aoltw.com [UNKNOWN] <lisa.nelson@aoltw.com>;pmoreno@acf.dhhs.gov [UNKNOWN] <pmoreno@acf.dhhs.gov>;pat.shortridge@enron.com [UNKNOWN] <pat.shortridge@enron.com>;richard.mcbride@glo.state.tx.us [UNKNOWN] <richard.mcbride@glo.state.tx.us>;jerogan@venable.com [UNKNOWN] <jerogan@venable.com>;GamonalAM@state.gov [UNKNOWN] <GamonalAM@state.gov>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;kathicard@springmail.com [UNKNOWN] <kathicard@springmail.com>;lowellrandel@meyersandassociates.com [UNKNOWN] <lowellrandel@meyersandassociates.com>;Joe.Eule@mail.house.gov [UNKNOWN] <Joe.Eule@mail.house.gov>;jsolsby@drasnincommunications.com [UNKNOWN] <jsolsby@drasnincommunications.com>;Kirk.Boyle@mail.house.gov [UNKNOWN] <Kirk.Boyle@mail.house.gov>;gonzalez@glo.state.tx.us [OMB] <gonzalez@glo.state.tx.us>;Mark Holman/WHO/EOP@EOP [WHO] <Mark Holman>;Carl Buchholz/WHO/EOP@EOP [WHO] <Carl Buchholz>;Duncan Campbell/WHO/EOP@EOP [WHO] <Duncan Campbell>;EWILLEFO@fcc.gov [UNKNOWN] <EWILLEFO@fcc.gov>;Danner.Bethel@ed.gov [UNKNOWN] <Danner.Bethel@ed.gov>;SabatineM@osd.pentagon.mil [UNKNOWN] <SabatineM@osd.pentagon.mil>;patrick.rhode@sba.gov [UNKNOWN] <patrick.rhode@sba.gov>;YRobinso@pd.state.gov [UNKNOWN] <YRobinso@pd.state.gov>;robert.traynham@src.senate.gov [UNKNOWN] <robert.traynham@src.senate.gov>;dmackinnon@verner.com [UNKNOWN] <dmackinnon@verner.com>;Ansley C. Tillman/OPD/EOP@EOP [OPD] <Ansley C. Tillman>;jwillis@doc.gov [UNKNOWN] <jwillis@doc.gov>;Britt Grant/OPD/EOP@EOP [OPD] <Britt Grant>;Kristine Simmons/OPD/EOP@EOP [OPD] <Kristine Simmons>;molly.millerwise@mail.house.gov [UNKNOWN] <molly.millerwise@mail.house.gov>;jrendon@rendon.com [UNKNOWN] <jrendon@rendon.com>;KJohnson@isi-consulting.com [OMB] <KJohnson@isi-consulting.com>;mjohnson@ob-cgroup.com [OA] <mjohnson@ob-cgroup.com>;caranaga@pd.state.gov [UNKNOWN] <caranaga@pd.state.gov>

Sent: 11/30/2001 1:35:52 PM

Subject: : The War on Terrorism -- Weekend Message
Attachments: 06197_p_5vyc4003_who.txt_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James_R._Wilkinson@who.eop.gov (James_R._Wilkinson@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:30-NOV-2001 18:35:52.00
SUBJECT:: The War on Terrorism -- Weekend Message
TO:james.waurishuk@js.pentagon.mil (james.waurishuk@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_W._Howard@oa.eop.gov (John_W._Howard@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Scott_Jeffcoat@oa.eop.gov (Scott_Jeffcoat@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tobin_K._Harvey@oa.eop.gov (Tobin_K._Harvey@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Douglas_D._McCormick@oa.eop.gov (Douglas_D._McCormick@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:I._Lewis_Libby@oa.eop.gov (I._Lewis_Libby@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com [UNKNOWN])
READ:UNKNOWN
TO:christine.iverson@mail.house.gov (christine.iverson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov [UNKNOWN])
READ:UNKNOWN
TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov [UNKNOWN])
READ:UNKNOWN
TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
READ:UNKNOWN

TO:nancy_i._segerdahl@hud.gov (nancy_i._segerdahl@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:kreisher.tina@epa.gov (kreisher.tina@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:cooper.mildred@epa.gov (cooper.mildred@epa.gov [UNKNOWN])
READ:UNKNOWN
TO:roy-stuart@dol.gov (roy-stuart@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov [UNKNOWN])
READ:UNKNOWN
TO:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa_sabatine@hotmail.com (Melissa_sabatine@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:brian.gunderson@mail.house.gov (brian.gunderson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:terry.holt@mail.house.gov (terry.holt@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa_T._Cummins@oa.eop.gov (Lisa_T._Cummins@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Mark_V._Scott@oa.eop.gov (Mark_V._Scott@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sschmidt@nrcc.org (sschmidt@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:mmckinnon@pstrategies.com (mmckinnon@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:MMiner@rnchq.org (MMiner@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:BComstock@rnchq.org (BComstock@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:James R. Wilkinson (CN=James R. Wilkinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:jcram@rnchq.org (jcram@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmishoe@rnchq.org (dmishoe@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mcrawford@doc.gov (mcrawford@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov [UNKNOWN])

READ:UNKNOWN
TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:m.kicklighter@mail.va.com (m.kicklighter@mail.va.com [UNKNOWN])
READ:UNKNOWN
TO:roy_stuart@dol.gov (roy_stuart@dol.gov [UNKNOWN])
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TO:mark_pfeifle@ios.doi.gov (mark_pfeifle@ios.doi.gov [UNKNOWN])
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TO:kevin.keane@hhs.gov (kevin.keane@hhs.gov [UNKNOWN])
READ:UNKNOWN
TO:moridanis@state.gov (moridanis@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly_J._Ward@oa.eop.gov (Beverly_J._Ward@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Deborah_K._Hair@oa.eop.gov (Deborah_K._Hair@oa.eop.gov [UNKNOWN])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov [UNKNOWN])
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TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
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TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [OPD])
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TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David_F._Lussier@oa.eop.gov (David_F._Lussier@oa.eop.gov [UNKNOWN])

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TO:Torie.Clarke@osd.mil (Torie.Clarke@osd.mil [UNKNOWN])
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TO:rgeorge@nypost.com (rgeorge@nypost.com [UNKNOWN])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:brook_simmons@nickles.senate.gov (brook_simmons@nickles.senate.gov [UNKNOWN])
READ:UNKNOWN
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TO:margaret_camp@frist.senate.gov (margaret_camp@frist.senate.gov [UNKNOWN])
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TO:lisette_mcsoud_mondello@hutchison.senate.gov (
lisette_mcsoud_mondello@hutchison.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Melissa_Sabatine@src.senate.gov (Melissa_Sabatine@src.senate.gov [UNKNOWN])
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READ:UNKNOWN
TO:emily.miller@mail.house.gov (emily.miller@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:ron_bonjean@lott.senate.gov (ron_bonjean@lott.senate.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
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TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
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TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
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TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
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TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
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TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
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TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
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TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph Ratajczak (CN=Joseph Ratajczak/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
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TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP@EOP [WHO])
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TO:Ali H. Tulbah (CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [WHO])
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TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
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TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
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TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
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TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])

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TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
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READ:UNKNOWN
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TO:rsullivan@governor.state.tx.us (rsullivan@governor.state.tx.us [UNKNOWN])
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TO:Natalie S. Wozniak (CN=Natalie S. Wozniak/OU=NSC/O=EOP@EOP [NSC])
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TO:Peter Smith (CN=Peter Smith/OU=NSC/O=EOP@EOP [NSC])
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TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP@EOP [OMB])
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TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
TO:lisa.nelson@aoltw.com (lisa.nelson@aoltw.com [UNKNOWN])
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TO:pmoreno@acf.dhhs.gov (pmoreno@acf.dhhs.gov [UNKNOWN])
READ:UNKNOWN
TO:pat.shortridge@enron.com (pat.shortridge@enron.com [UNKNOWN])
READ:UNKNOWN
TO:richard.mcbride@glo.state.tx.us (richard.mcbride@glo.state.tx.us [UNKNOWN])
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TO:jerogan@venable.com (jerogan@venable.com [UNKNOWN])
READ:UNKNOWN
TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:kathicard@springmail.com (kathicard@springmail.com [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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READ:UNKNOWN
TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:jsolsby@drasnincommunications.com (jsolsby@drasnincommunications.com [UNKNOWN])
READ:UNKNOWN
TO:Kirk.Boyle@mail.house.gov (Kirk.Boyle@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:gonzalez@glo.state.tx.us (gonzalez@glo.state.tx.us [OMB])
READ:UNKNOWN
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:EWILLEFO@fcc.gov (EWILLEFO@fcc.gov [UNKNOWN])
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TO:SabatineM@osd.pentagon.mil (SabatineM@osd.pentagon.mil [UNKNOWN])
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TO:patrick.rhode@sba.gov (patrick.rhode@sba.gov [UNKNOWN])
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READ:UNKNOWN
TO:robert.traynham@src.senate.gov (robert.traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
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READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kristine Simmons (CN=Kristine Simmons/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:molly.millerwise@mail.house.gov (molly.millerwise@mail.house.gov [UNKNOWN])
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TO:jrendon@rendon.com (jrendon@rendon.com [UNKNOWN])
READ:UNKNOWN
TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
READ:UNKNOWN
TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
READ:UNKNOWN
TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
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End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
Have a great weekend. Call your family to say hello.

(See attached file: CIC -- Daily, Weekend Edition.doc)
- CIC -- Daily, Weekend Edition.doc
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THE WHITE HOUSE
COALITION INFORMATION CENTER

12/1-2/2001

Weekend Schedule (EST)

Sunday

9:00a EST	Secretary Powell to appear on *Face the Nation*.
10:30a EST	Secretary Rumsfeld to appear on *Meet the Press*.
10:30a EST	Attorney General Ashcroft to appear on *Fox News Sunday*.
11:30a EST	Attorney General Ashcroft to appear on *This Week*.
12:00p EST	Secretary Powell to appear on *Late Edition*.

In Case You Missed It…

- On November 30th, the Department of Defense dropped enough Humanitarian Daily Rations into Afghanistan to push its total HDRs dropped to 2,005,620. The total cost of this unprecedented humanitarian aid effort is more than $44 million and U.S. military aircraft will continue dropping HDRs each night.

Recent Key Quotes & Developments

- "The predominantly male delegation at the Afghan peace talks in Bonn yesterday agreed to a package securing the rights of women to an education, work and a role in politics." (Ewen MacAskill; *The Guardian* [U.K.], 11/30/01)

- "Girls are being allowed to return to formal education in Afghanistan after being excluded from schools since the Taliban took power in 1996…In Nangarhar province in eastern Afghanistan, 3500 girls have registered for classes and 320 women teachers have returned to work, says Abdul Ghani Hidayat, director of education in the post-Taliban provincial administration." (*The Daily Express* [U.K.], 11/30/01)

- "'They've mixed traditions with Islam and their own misinterpretation of it, and then imposed it on the Afghan people in the name of Islam'…[Jalal] Jalalizadeh [Iranian lawmakers, Sunni with a doctorate in Islamic studies] grew agitated as he reached the parts [of the Taliban rule book] banning children's activities such as kite flying or playing with dolls. 'This makes no sense…'" (Soraya Sarhaddi Nelson; *Los Angeles Times*, 11/30/01)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaeda is becoming more and more isolated.

- Our military forces, the forces of our allies, and many Afghans seeking a better future are liberating Afghanistan. The Afghan people are celebrating. The Taliban and the terrorists are on the run. And we are dismantling the terrorist network in Afghanistan, piece by piece.

- The structure of post-Taliban Afghanistan will be for the Afghan people to determine. But we will provide strong diplomatic and economic support to the aspirations of Afghan parties committed to an inclusive, democratic political structure, committed to the welfare of all Afghan men and women, and providing substantial local autonomy. This is a structure in which all Afghan ethnic groups can participate and find their rightful place.

- Our enemies are devious and ruthless. They have no conscience, no religion, and no mercy. They seek to kill our citizens and overthrow friendly governments. But we are seeking them. We are finding them. And we are fighting them.

Facts of the Day

- Tajikistan has changed its rules governing access to international crossing points into Afghanistan to make it easier for humanitarian aid workers and vehicles to make crossings. This will increase the volume of U.S. assistance and the speed with which it gets to needy Afghans.

- The World Food Program – with U.S. assistance – has already distributeded 33,000 metric tons of food aid out of the 51,000 metric tons it is estimated are required for the region over the next three months.

- The total amount of money spent by the U.S. government on humanitarian aid to Afghanistan in FY01 and 02, to date, is $344,738,658.

REV_00137098

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
Sent: 12/3/2001 11:15:46 AM
Subject: : U.S. Civil Rights Commission

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-DEC-2001 16:15:46.00
SUBJECT:: U.S. Civil Rights Commission
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Alex Acosts just left me a message indicating that they would be releasing
in OLC opinion on this issue today in a letter under Dan Bryant's name. I
assume everyone is aware of this, but forward this information just in
case.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jason B. Torchinsky/WHO/EOP@EOP [WHO] <Jason B. Torchinsky>
Sent: 12/3/2001 8:08:00 AM
Subject: : Re: Travel Authorization for KR and I to FL

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-DEC-2001 13:08:00.00
SUBJECT:: Re: Travel Authorization for KR and I to FL
TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes

Jason B. Torchinsky
12/03/2001 12:51:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Re: Travel Authorization for KR and I to FL

Want me to do a lexis search on Hoffman?
---------------------- Forwarded by Jason B. Torchinsky/WHO/EOP on 12/03/2001 12:51 PM ----------------------------

Kelley J. McCullough
12/03/2001 12:51:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

WCI Communities, Bonita Springs, FL.

Brett M. Kavanaugh
12/03/2001 10:40:49 AM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: Jason B. Torchinsky/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
bcc:
Subject: Re: Travel Authorization for KR and I to FL

What are Al Hoffman's business and commercial interests, other than being National Finance Chair?

Kelley J. McCullough

11/29/2001 03:44:50 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

thanks. I have FL on the brain (POTUS is going there next week nad KR).
This is for the SC trip, actually -- it's ok, right?

Next, have you thought more about the trip to FL next Friday and Saturday
that the FL GOP will pay for and it will be on board Al HOffman's plane?

Brett M. Kavanaugh
11/29/2001 03:38:19 PM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

I did; Jason, what's story?

Kelley J. McCullough
11/29/2001 03:37:56 PM
Record Type: Record

To: Jason B. Torchinsky/WHO/EOP@EOP, Brett M.
Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Travel Authorization for KR and I to FL

Have not heard anything official (no #) on the flight to SC for the Jim
DeMint for Congress event tomorrow. Did you all sign off on it?

Thanks for any info.
Kelley

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/3/2001 9:21:06 AM
Subject: : did you see grant in campaign case?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-DEC-2001 14:21:06.00
SUBJECT:: did you see grant in campaign case?
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

that thing is going down in flames, mark my words.
```

From: CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/3/2001 12:31:26 PM
Subject: : Re: Travel Authorization for KR and I to FL

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kelley J. McCullough (CN=Kelley J. McCullough/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-DEC-2001 17:31:26.00
SUBJECT:: Re: Travel Authorization for KR and I to FL
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

it will be very uncomfortable. do we have to?

Brett M. Kavanaugh
12/03/2001 05:26:19 PM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

Are there any alternative modes of travel that Fla GOP can
arrange, for example, a charter?

Kelley J. McCullough
12/03/2001 12:51:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

WCI Communities, Bonita Springs, FL.

Brett M. Kavanaugh
12/03/2001 10:40:49 AM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: Jason B. Torchinsky/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
bcc:
Subject: Re: Travel Authorization for KR and I to FL

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To: Brett M. Kavanaugh/WHO/EOP@EOP
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 12/3/2001 12:33:39 PM
Subject: : Re: Travel Authorization for KR and I to FL

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-DEC-2001 17:33:39.00
SUBJECT:: Re: Travel Authorization for KR and I to FL
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 12/03/2001 05:33 PM ----------

Kelley J. McCullough
12/03/2001 05:31:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Travel Authorization for KR and I to FL

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12/03/2001 05:26:19 PM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: robert w. cobb/who/eop@eop
bcc:
Subject: Re: Travel Authorization for KR and I to FL

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12/03/2001 12:51:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
bcc:
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Brett M. Kavanaugh

12/03/2001 10:40:49 AM
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11/29/2001 03:38:19 PM
Record Type: Record

To: Kelley J. McCullough/WHO/EOP@EOP
cc: jason b. torchinsky/who/eop@eop, robert w. cobb/who/eop@eop
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Subject: Re: Travel Authorization for KR and I to FL

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Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Travel Authorization for KR and I to FL

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DeMint for Congress event tomorrow. Did you all sign off on it?

Thanks for any info.
Kelley

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 12/3/2001 1:57:41 PM

Subject: : TUES STAFF MTG TIME CHANGE- 9:15am instead of 8:15am

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-DEC-2001 18:57:41.00
SUBJECT:: TUES STAFF MTG TIME CHANGE- 9:15am instead of 8:15am
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: James_R._Wilkinson@who.eop.gov [UNKNOWN]

To: james.waurishuk@js.pentagon.mil [UNKNOWN] <james.waurishuk@js.pentagon.mil>;Noelia Rodriguez/WHO/EOP@EOP [WHO] <Noelia Rodriguez>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Gail Randall/WHO/EOP@EOP [WHO] <Gail Randall>;Gregory Goss/WHO/EOP@EOP [WHO] <Gregory Goss>;Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Andrew H. Card/WHO/EOP@EOP [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO/EOP@EOP [WHO] <Joshua B. Bolten>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>;Marcus J. Mollmann/WHO/EOP@EOP [WHO] <Marcus J. Mollmann>;Logan M. Walters/WHO /EOP@EOP [WHO] <Logan M. Walters>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Matthew O. Scully/WHO/EOP@EOP [WHO] <Matthew O. Scully>;David Frum/WHO/EOP@EOP [WHO] <David Frum>;Anthony J. Gibson/OSTP /EOP@EOP [OSTP] <Anthony J. Gibson>;John D. Gibson/NSC/EOP@EOP [NSC] <John D. Gibson>;Edmund A. Walsh/WHO/EOP@EOP [WHO] <Edmund A. Walsh>;Karl_Doenges@oa.eop.gov [UNKNOWN] <Karl_Doenges@oa.eop.gov>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Wendy L. Nipper/WHO/EOP@EOP [WHO] <Wendy L. Nipper>;Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>;Jennifer K. Millerwise/WHO/EOP@EOP [WHO] <Jennifer K. Millerwise>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>;Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Harry W. Wolff/WHO /EOP@EOP [WHO] <Harry W. Wolff>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;John_W._Howard@oa.eop.gov [UNKNOWN] <John_W._Howard@oa.eop.gov>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Christal R. West/WHO/EOP@EOP [WHO] <Christal R. West>;Peter M. Rowan/WHO/EOP@EOP [WHO] <Peter M. Rowan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Townsend_L._McNitt@oa.eop.gov [UNKNOWN] <Townsend_L._McNitt@oa.eop.gov>;Scott_Jeffcoat@oa.eop.gov [UNKNOWN] <Scott_Jeffcoat@oa.eop.gov>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Cynthia R. Mendl/WHO/EOP@EOP [WHO] <Cynthia R. Mendl>;Edward Ingle/WHO /EOP@EOP [WHO] <Edward Ingle>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Chris Henick/WHO /EOP@EOP [WHO] <Chris Henick>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Alicia P. Clark/WHO /EOP@EOP [WHO] <Alicia P. Clark>;William_S._Clark@oa.eop.gov [UNKNOWN] <William_S._Clark@oa.eop.gov>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>;Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Kathryn J. Hayes/WHO/EOP@EOP [WHO] <Kathryn J. Hayes>;John_Gardner@oa.eop.gov [UNKNOWN] <John_Gardner@oa.eop.gov>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Brian D. Montgomery/WHO/EOP@EOP [WHO] <Brian D. Montgomery>;Heather L. West/WHO/EOP@EOP [WHO] <Heather L. West>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Tobin_K._Harvey@oa.eop.gov [UNKNOWN] <Tobin_K._Harvey@oa.eop.gov>;Bradley A. Blakeman/WHO/EOP@EOP [WHO] <Bradley A. Blakeman>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Amanda L. Moore/WHO/EOP@EOP [WHO] <Amanda L. Moore>;Mary Elizabeth Farr/WHO/EOP@EOP [WHO] <Mary Elizabeth Farr>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Melanie

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Sent: 12/4/2001 1:45:35 AM
Subject: : The War on Terrorism -- December 4, 2001
Attachments: P_ND0W4004_WHO.TXT_1.doc

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CREATOR:James_R._Wilkinson@who.eop.gov ( James_R._Wilkinson@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 4-DEC-2001 06:45:35.00
SUBJECT:: The War on Terrorism -- December 4, 2001
TO:james.waurishuk@js.pentagon.mil ( james.waurishuk@js.pentagon.mil [ UNKNOWN ] )
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TO:Noelia Rodriguez ( CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
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TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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Good morning. Have a great day! :)

(See attached file: CIC -- Daily December 4.doc)

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THE WHITE HOUSE
COALITION INFORMATION CENTER

12/4/2001

Today's Schedule

11:00a EST	President Bush to make remarks in the Rose Garden about terrorist finances.
12:30p EST	State Department daily press briefing with spokesman Richard Boucher.
1:00p EST	Defense Department daily press briefing with Secretary Rumsfeld and Chairman of the Joint Chiefs, Gen. Meyers.
3:05p EST	President Bush participates in town hall meeting in Orlando, Florida

In Case You Missed It

- "The U.N. has employed 2,424 Afghan women desperate for work after years of harsh Taliban rule to carry out an urgent food distribution campaign for more than one million people in Kabul. The women and 1,200 men will go door-to-door across the Afghan capital from Sunday in a week-long campaign distributing food coupons to be exchanged for emergency supplies at WFP food depots around the city." (AFP, 12/1/01)

Recent Key Quotes & Developments

- A total of 80,000 metric tons of food aid donated by the U.S. government is in the region around Afghanistan and in route to intended beneficiaries. This includes 15,000 metric tons of wheat purchased by USAID/OFDA in Kazakhstan, valued at $6 million, that is currently arriving in warehouses in Turkmenabad. USAID's Office of Food for Peace (USAID/FFP) has provided 65,000 metric tons of wheat, which is being unloaded at Bandar Abbas port in Rian for various World Food Program warehouses in the region.

- "'We [Human Rights Watch] have fairly strong testimony that the Taliban have resorted to human shielding in the last month. That is moving men and equipment to civilian areas, in clear violation of international law,' said [HRW's Sam] Zarifi. An entire village of around 300 Afghans was forced to flee from their homes close to Kandahar city when the Taliban towed their planes to the edge of their village, said Zarifi. They left just in time as U.S. jets promptly moved in to destroy the jets." (AFP, 12/3/01)

Message

- We are pressing the war against terror on every front -- from the mountains of Afghanistan to the bank accounts of terrorist organizations.

- Today we take another important step in the financial fight against terror. From the beginning of the war against terrorism, the President has said that our enemy is every terrorist organization of global reach and all who harbor and support them.

- We began with Al Qaeda. We identified some of its backers – and we moved against their finances. In November, we advanced further, and identified even more global terrorist organizations. And we are moving against their financing as well. The net is closing. And it will close tighter.

- Those who do business with terror will not do business with the United States – or anywhere the United States can reach.

- By shutting these financial networks down, we disrupt the murderers' work.

Facts of the Day

- USAID is providing a $3.5 million grant to International Medical Corps (IMC) for primary health care activities in Bamiyan, Wardak, and Parwan provinces in central Afghanistan. Activities will include emergency primary health care, maternal and child health care, obstetric care, supplementary feeding, and micro-nutrient supplementation.

- To date, the Department of Defense has airdropped 2,160,000 Humanitarian Daily Rations in Afghanistan.

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Sent: 12/4/2001 2:46:34 PM

Subject: : The War on Terrorism -- December 5, 2001

Attachments: P_84WW4004_WHO.TXT_1.doc

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SUBJECT:: The War on Terrorism -- December 5, 2001
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READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Anne C. Guilsher (CN=Anne C. Guilsher/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])

READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
READ:UNKNOWN
TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
READ:UNKNOWN
TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])
READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
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TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
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TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [OMB])
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TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
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TO:gregory_J._jenkins@who.eop.gov (gregory_J._jenkins@who.eop.gov [UNKNOWN])
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TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
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TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP@EOP [NSC])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
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TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
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TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
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TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
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READ:UNKNOWN
TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ali H. Tulbah (CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
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TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
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TO:ccamp@llano-permian.com (ccamp@llano-permian.com [UNKNOWN])
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TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
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TO:Natalie S. Wozniak (CN=Natalie S. Wozniak/OU=NSC/O=EOP@EOP [NSC])
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TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP@EOP [OMB])
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TO:greg.crist@mail.house.gov (greg.crist@mail.house.gov [UNKNOWN])
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TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
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TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
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READ:UNKNOWN

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TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
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TO:mjohnson@ob-cgroup.com (mjohnson@ob-cgroup.com [OA])
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TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
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TO:jfischman@pd.state.gov (jfischman@pd.state.gov [UNKNOWN])
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TO:Elizabeth P. Austin (CN=Elizabeth P. Austin/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heidi K. Marquez (CN=Heidi K. Marquez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:McDonaldDJ@state.gov (McDonaldDJ@state.gov [UNKNOWN])
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TO:bitterr@state.gov (bitterr@state.gov [UNKNOWN])
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TO:mike_buttry@hagel.senate.gov (mike_buttry@hagel.senate.gov [UNKNOWN])
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TO:MeierAW@state.gov (MeierAW@state.gov [UNKNOWN])
READ:UNKNOWN
TO:john.higginbotham@dfait-maeci.gc.ca (john.higginbotham@dfait-maeci.gc.ca [UNKNOWN])
READ:UNKNOWN

TO:arif.lalani@dfait-maeci.gc.ca (arif.lalani@dfait-maeci.gc.ca [UNKNOWN])
READ:UNKNOWN
TO:shalom@pmo.gov.il (shalom@pmo.gov.il [UNKNOWN])
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TO:johnbuckley100@aol.com (johnbuckley100@aol.com [UNKNOWN])
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READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])
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TO:Cheryl A. Oldham (CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:research@rnchq.org (research@rnchq.org [UNKNOWN])
READ:UNKNOWN
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TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
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TO:bob.gold@starpoint.com (bob.gold@starpoint.com [UNKNOWN])
READ:UNKNOWN
TO:Quincy Hicks (CN=Quincy Hicks/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:iocurrops@js.pentagon.mil (iocurrops@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:vandalts@js.pentagon.mil (vandalts@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
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TO:remi.marechaux@diplomatie.gouv.fr (remi.marechaux@diplomatie.gouv.fr [UNKNOWN])
READ:UNKNOWN
TO:GrenellR@state.gov (GrenellR@state.gov [UNKNOWN])
READ:UNKNOWN
TO:martin.weiss@bmaa.gv.at (martin.weiss@bmaa.gv.at [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
READ:UNKNOWN
TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
READ:UNKNOWN
TO:Robert.Ollison@EXIM.GOV (Robert.Ollison@EXIM.GOV [UNKNOWN])
READ:UNKNOWN
TO:Barbara Jo Goergen (CN=Barbara Jo Goergen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:james.waurishuk@js.pentagon.mil (james.waurishuk@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anthony J. Gibson (CN=Anthony J. Gibson/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:John W. Howard (CN=John W. Howard/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
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TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Scott Jeffcoat (CN=Scott Jeffcoat/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:L. Camille Welborn (CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth B. Mehlman (CN=Kenneth B. Mehlman/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn J. Hayes (CN=Kathryn J. Hayes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Tobin_K._Harvey@oa.eop.gov (Tobin_K._Harvey@oa.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
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TO:Douglas_D._McCormick@oa.eop.gov (Douglas_D._McCormick@oa.eop.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ethan A. Hastert (CN=Ethan A. Hastert/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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READ:UNKNOWN

TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:cliff_may@ios.doi.gov (cliff_may@ios.doi.gov @ inet [UNKNOWN])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Mark_V._Scott@oa.eop.gov (Mark_V._Scott@oa.eop.gov @ inet [UNKNOWN])
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TO:Michele H. Tennery (CN=Michele H. Tennery/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Kevin_J._Martin@oa.eop.gov (Kevin_J._Martin@oa.eop.gov @ inet [UNKNOWN])
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TO:chet.lunner@ost.dot.gov (chet.lunner@ost.dot.gov @ inet [UNKNOWN])
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TO:moridanis@state.gov (moridanis@state.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
READ:UNKNOWN
TO:craig.quigley@osd.mil (craig.quigley@osd.mil @ inet [UNKNOWN])
READ:UNKNOWN
TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:POnnuru@ix.netcom.com (POnnuru@ix.netcom.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:dtrigg@doc.gov (dtrigg@doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:dorrance.smith@fema.gov (dorrance.smith@fema.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:oliver.north@msnbc.com (oliver.north@msnbc.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net @ inet [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org @ inet [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Here is your message of the day for tomorrow.

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THE WHITE HOUSE
COALITION INFORMATION CENTER

12/5/2001

Today's Schedule

9:45a EST	White House press gaggle with Ari Fleischer.
12:00p EST	White House daily press briefing with Ari Fleischer.
12:00p EST	Defense Department daily press briefing with Admiral Stufflebeam and Torie Clarke.
1:00p EST	State Department daily press briefing with spokesman Philip Reeker.
3:30p EST	President Bush to meet the Prime Minister of Norway.
9:00p EST	Secretary Rumsfeld to appear on CNN's Larry King Live show.

In Case You Missed It

- On December 3, USAID's Office of U.S. Foreign Disaster Assistance provided $3,583,330 to the Cooperative for American Relief Everywhere (CARE) to support initiatives that will provide water and sanitation services, agricultural rehabilitation, and shelter assistance to Afghans in need of humanitarian relief.

Recent Key Quotes & Developments

- "Targeting the pocketbooks of terrorists, the Bush Administration froze the assets early Tuesday of an American foundation and two overseas groups accused of financing the militant Palestinian organization HAMAS." (AP, 12/4/01)
- Federal agents locked down the offices of the Holy Land Foundation for Relief and Development in Texas, Illinois, New Jersey, and California, taking custody of relevant business records. The Foundation provides millions of dollars each year to HAMAS. The assets of Beit el-Mal Holdings, an investment company controlled by HAMAS, and Al-Aqsa Islamic Bank, a financial arms of HAMAS substantially owned by Beit el-Mal, were also frozen.
- "U.S. and Canadian officials have agreed to measures tightening border security, including the deployment of 600 U.S. National Guard troops to border crossings and the sharing of computerized fingerprints. The measures – signed by the U.S. Attorney General John Ashcroft and Canadian Cabinet ministers on Monday – are aimed at speeding up commerce across the border while strengthening anti-terrorism controls." (AP, 12/4/01)

Message

- The global coalition against terrorism grows stronger every day – every day al-Qaida is becoming more and more isolated.
- The terrorists seek to destroy our freedom and impose its views. We value life, the terrorists ruthlessly destroy it.
- The President has called our military into action to hunt down the members of the al-Qaida organization who murdered innocent Americans. We gave fair warning to the government that harbors them in Afghanistan. The Taliban made a choice to continue hiding terrorists, and now they are paying the price.
- Throughout this battle, we adhere to our values. Unlike our enemy, we respect life. We do not target innocent civilians. We care for the innocent people of Afghanistan, so we continue to provide humanitarian aid, even while their government tries to steal the food we send. When the terrorists and their supporters are gone, the people of Afghanistan will say with the rest of the world: good riddance.
- No group or nation should mistake America's intentions: Where terrorist groups of global reach exist, the United States and our friends and allies will seek it out and destroy them.

Facts of the Day

- Already in FY02, USAID has contributed $98,556,594 in emergency assistance to Afghanistan. To date, the United States Government has provided $177,214,363 in humanitarian assistance to Central Asia in response to the Afghan crisis.
- USAID has also provided an additional $2,000,000 to the U.N.'s World Food Program to support the logistics requirements of its current food aid distribution program. The grant supplements $13.5 million previously granted to WFP's Afghanistan operation for food commodities and food transport equipment.

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Sent: 12/4/2001 2:48:09 PM
Subject: : Economic Talking Points from President's Event Today
Attachments: P_96WW4004_WHO.TXT_1.doc

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TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
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TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
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TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
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TO:bberrytx@aol.com (bberrytx@aol.com [UNKNOWN])
READ:UNKNOWN
TO:jenniferecrooks@hotmail.com (jenniferecrooks@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:rsavarese@kpmg.com (rsavarese@kpmg.com [UNKNOWN])
READ:UNKNOWN
TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
READ:UNKNOWN
TO:ccamp@llano-permian.com (ccamp@llano-permian.com [UNKNOWN])
READ:UNKNOWN
TO:campsite@nts-online.net (campsite@nts-online.net [UNKNOWN])
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TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
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TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
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TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
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TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
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TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
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TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

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Sent: 12/4/2001 2:48:09 PM
Subject: : Economic Talking Points from President's Event Today
Attachments: P_96WW4004_CEA.TXT_1.doc

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TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
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TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])

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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
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TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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TO:arif.lalani@dfait-maeci.gc.ca (arif.lalani@dfait-maeci.gc.ca [UNKNOWN])
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TO:comm@rnchq.org (comm@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:johnbuckley100@aol.com (johnbuckley100@aol.com [UNKNOWN])
READ:UNKNOWN
TO:abrackbill@aol.com (abrackbill@aol.com [UNKNOWN])
READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])
READ:UNKNOWN

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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
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TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
READ:UNKNOWN
TO:bob.gold@starpoint.com (bob.gold@starpoint.com [UNKNOWN])
READ:UNKNOWN
TO:iocurrops@js.pentagon.mil (iocurrops@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:vandalts@js.pentagon.mil (vandalts@js.pentagon.mil [UNKNOWN])
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TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
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TO:GrenellR@state.gov (GrenellR@state.gov [UNKNOWN])
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TO:martin.weiss@bmaa.gv.at (martin.weiss@bmaa.gv.at [UNKNOWN])
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TO:fernando.garcia@mp.boe.es (fernando.garcia@mp.boe.es [UNKNOWN])
READ:UNKNOWN
TO:intspw@hotmail.com (intspw@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:allison.barber@osd.mil (allison.barber@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
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TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
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TO:Robert.Ollison@EXIM.GOV (Robert.Ollison@EXIM.GOV [UNKNOWN])
READ:UNKNOWN
TO:james.waurishuk@js.pentagon.mil (james.waurishuk@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
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TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
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TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
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TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN
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READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
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TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov [UNKNOWN])
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TO:terrell.halaska@hhs.gov (terrell.halaska@hhs.gov [UNKNOWN])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
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TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
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TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
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TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
(See attached file: Economic Talkers - POTUS FL 12-3.doc)

- Economic Talkers - POTUS FL 12-3.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_96WW4004_CEA.TXT_1>

President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Nicole Petrosino/WHO/EOP@EOP [WHO] <Nicole Petrosino>
Sent: 12/4/2001 2:36:58 PM
Subject: : Re: LETTER

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-DEC-2001 19:36:58.00
SUBJECT:: Re: LETTER
TO:Nicole Petrosino (CN=Nicole Petrosino/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, please tell them that I had referred it to OLC for a draft
(OLC helps with these kinds of things), and we should have it tomorrow.
sorry about the delay.

Nicole Petrosino
12/04/2001 04:41:59 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LETTER

Brett,

SORRY TO BOTHER YOU WITH THIS...

The Office of Homeland Security has been asking me about the language they
need for letters to Members on why staff can not testify before Congress.
I think that I talked to you about it last week.

Do you have any language that you can send me?

Thanks.
Nicole

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

To: Sara B. McIntosh/WHO/EOP@EOP [WHO] <Sara B. McIntosh>;Anne Heiligenstein/WHO /EOP@EOP [WHO] <Anne Heiligenstein>;Sonya E. Medina/WHO/EOP@EOP [WHO] <Sonya E. Medina>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>;Tiffany L. Barfield/OPD/EOP@EOP [OPD] <Tiffany L. Barfield>;David F. Lussier/OPD /EOP@EOP [UNKNOWN] <David F. Lussier>;Torie.Clarke@osd.mil @ inet [UNKNOWN] <Torie.Clarke@osd.mil>;rgeorge@nypost.com @ inet [UNKNOWN] <rgeorge@nypost.com>;Neil S. Patel/OVP/EOP@EOP [OVP] <Neil S. Patel>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;susan_irby@lott.senate.gov @ inet [UNKNOWN] <susan_irby@lott.senate.gov>;brook_simmons@nickles.senate.gov @ inet [UNKNOWN] <brook_simmons@nickles.senate.gov>;gerry_fritz@rpc.senate.gov @ inet [UNKNOWN] <gerry_fritz@rpc.senate.gov>;margaret_camp@frist.senate.gov @ inet [UNKNOWN] <margaret_camp@frist.senate.gov>;lisette_mcsoud_mondello@hutchison.senate.gov @ inet [UNKNOWN] <lisette_mcsoud_mondello@hutchison.senate.gov>;Melissa_Sabatine@src.senate.gov @ inet [UNKNOWN] <Melissa_Sabatine@src.senate.gov>;melissa_sabatine@hotmail.com @ inet [UNKNOWN] <melissa_sabatine@hotmail.com>;john.feehery@mail.house.gov @ inet [UNKNOWN] <john.feehery@mail.house.gov>;terry.holt@mail.house.gov @ inet [UNKNOWN] <terry.holt@mail.house.gov>;christine.iverson@mail.house.gov @ inet [UNKNOWN] <christine.iverson@mail.house.gov>;MMiner@rnchq.org @ inet [UNKNOWN] <MMiner@rnchq.org>;sschmidt@nrcc.org @ inet [UNKNOWN] <sschmidt@nrcc.org>;emily.miller@mail.house.gov @ inet [UNKNOWN] <emily.miller@mail.house.gov>;ron_bonjean@lott.senate.gov @ inet [UNKNOWN] <ron_bonjean@lott.senate.gov>;paige.ralston@mail.house.gov @ inet [UNKNOWN] <paige.ralston@mail.house.gov>;paul.morrell@mail.house.gov @ inet [UNKNOWN] <paul.morrell@mail.house.gov>;cforti@nrcc.org @ inet [UNKNOWN] <cforti@nrcc.org>;TDuffy@rnchq.org @ inet [UNKNOWN] <TDuffy@rnchq.org>;dallen@nrsc.org @ inet [UNKNOWN] <dallen@nrsc.org>;Peter.jeffries@mail.house.gov @ inet [UNKNOWN] <Peter.jeffries@mail.house.gov>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;Deborah A. Spagnoli/WHO/EOP@EOP [WHO] <Deborah A. Spagnoli>;kfedewa@rnchq.org @ inet [UNKNOWN] <kfedewa@rnchq.org>;greg_jenkins@ita.doc.gov @ inet [UNKNOWN] <greg_jenkins@ita.doc.gov>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>;dean.clancy@mail.house.gov @ inet [UNKNOWN] <dean.clancy@mail.house.gov>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;ekertz@doc.gov @ inet [UNKNOWN] <ekertz@doc.gov>;jdyke@doc.gov @ inet [UNKNOWN] <jdyke@doc.gov>;melliott@doc.gov @ inet [UNKNOWN] <melliott@doc.gov>;Chesenterp@aol.com @ inet [UNKNOWN] <Chesenterp@aol.com>;cz@greenerandhook.com @ inet [UNKNOWN] <cz@greenerandhook.com>;Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>;RGustafson@rnchq.org @ inet [UNKNOWN] <RGustafson@rnchq.org>;Anthony K. Crawford/NSC/EOP@EOP [NSC] <Anthony K. Crawford>;Ashleigh A. Adams/WHO /EOP@EOP [WHO] <Ashleigh A. Adams>;sspicer@nrcc.org @ inet [UNKNOWN] <sspicer@nrcc.org>;Michelle N. Brawer/WHO/EOP@EOP [WHO] <Michelle N. Brawer>;cmay@bsmg.com @ inet [UNKNOWN] <cmay@bsmg.com>;tnelson@dmnmedia.com @ inet [UNKNOWN] <tnelson@dmnmedia.com>;kevin.schweers@mail.house.gov @ inet [UNKNOWN] <kevin.schweers@mail.house.gov>;kyle.downey@mail.house.gov @ inet [UNKNOWN] <kyle.downey@mail.house.gov>;Anne C. Guilsher/NSC/EOP@EOP [NSC] <Anne C. Guilsher>;Michael Davis/WHO/EOP@EOP [WHO] <Michael Davis>;joliver@rnchq.org [UNKNOWN] <joliver@rnchq.org>;bhazelwood@rnchq.org [UNKNOWN] <bhazelwood@rnchq.org>;ekutler@cwdc.com [UNKNOWN]

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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CREATION DATE/TIME: 4-DEC-2001 19:37:05.00
SUBJECT:: Economic Talking Points from President's Event Today
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TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:remi.marechaux@diplomatie.gouv.fr (remi.marechaux@diplomatie.gouv.fr [UNKNOWN])
READ:UNKNOWN
TO:GrenellR@state.gov (GrenellR@state.gov [UNKNOWN])
READ:UNKNOWN
TO:martin.weiss@bmaa.gv.at (martin.weiss@bmaa.gv.at [UNKNOWN])
READ:UNKNOWN
TO:fernando.garcia@mp.boe.es (fernando.garcia@mp.boe.es [UNKNOWN])
READ:UNKNOWN
TO:intspw@hotmail.com (intspw@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:allison.barber@osd.mil (allison.barber@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
READ:UNKNOWN
TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
READ:UNKNOWN
TO:Robert.Ollison@EXIM.GOV (Robert.Ollison@EXIM.GOV [UNKNOWN])
READ:UNKNOWN
TO:Barbara Jo Goergen (CN=Barbara Jo Goergen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:james.waurishuk@js.pentagon.mil (james.waurishuk@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:John D. Gibson (CN=John D. Gibson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
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READ:UNKNOWN
TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
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TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
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TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
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READ:UNKNOWN
TO:Juleanna R. Glover (CN=Juleanna R. Glover/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
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TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Dylan C. Glenn (CN=Dylan C. Glenn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Donald_M._Sumerlin@oa.eop.gov (Donald_M._Sumerlin@oa.eop.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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TO:edgillespie@quinngillespie.com (edgillespie@quinngillespie.com @ inet [UNKNOWN])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@EOP [WHO])
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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TO:lindsey_kozberg@ed.gov (lindsey_kozberg@ed.gov @ inet [UNKNOWN])
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TO:mindy.tucker@usdoj.gov (mindy.tucker@usdoj.gov @ inet [UNKNOWN])
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TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
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TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Nancy_L._segerdahl@hud.gov (Nancy_L._segerdahl@hud.gov @ inet [UNKNOWN])
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TO:Michele.davis@do.treas.gov (Michele.davis@do.treas.gov @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:kmclane@pstrategies.com (kmclane@pstrategies.com @ inet [UNKNOWN])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
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TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
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TO:brusbolt@iiaa.net (brusbolt@iiaa.net @ inet [UNKNOWN])
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TO:blewis@rnchq.org (blewis@rnchq.org @ inet [OVP])
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TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
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TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
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TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [UNKNOWN])
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TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
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TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
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TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
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President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

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Sent: 12/4/2001 2:45:10 PM
Subject: : Economic Talking Points from President's Event Today
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CREATION DATE/TIME: 4-DEC-2001 19:45:10.00
SUBJECT:: Economic Talking Points from President's Event Today
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TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Chad M. Kolton (CN=Chad M. Kolton/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Craig Felner (CN=Craig Felner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:julie.nichols@ost.dot.gov (julie.nichols@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:gwolfe@nrsc.org (gwolfe@nrsc.org [UNKNOWN])
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TO:camille.cain@msn.com (camille.cain@msn.com [UNKNOWN])
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TO:bethsturgeon@austin.rr.com (bethsturgeon@austin.rr.com [UNKNOWN])
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TO:bberrytx@aol.com (bberrytx@aol.com [UNKNOWN])
READ:UNKNOWN
TO:jenniferecrooks@hotmail.com (jenniferecrooks@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:rsavarese@kpmg.com (rsavarese@kpmg.com [UNKNOWN])
READ:UNKNOWN
TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
READ:UNKNOWN
TO:ccamp@llano-permian.com (ccamp@llano-permian.com [UNKNOWN])
READ:UNKNOWN
TO:campsite@nts-online.net (campsite@nts-online.net [UNKNOWN])
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TO:daviddurham@austin.rr.com (daviddurham@austin.rr.com [UNKNOWN])
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TO:lpollard@austin.rr.com (lpollard@austin.rr.com [UNKNOWN])
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TO:nikki.robinson@mail.house.gov (nikki.robinson@mail.house.gov [UNKNOWN])
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TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
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TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
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TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Megan D. Moran (CN=Megan D. Moran/OU=OVP/O=EOP@EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN

TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP@EOP [OVP])
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TO:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
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TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP@EOP [WHO])
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TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP@EOP [OVP])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

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Sent: 12/4/2001 2:45:10 PM
Subject: : Economic Talking Points from President's Event Today
Attachments: P_C2WW4004_OPD.TXT_1.doc

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CREATION DATE/TIME: 4-DEC-2001 19:45:10.00
SUBJECT:: Economic Talking Points from President's Event Today
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TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brian P. Doherty (CN=Brian P. Doherty/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:gayland.barksdale@mail.house.gov (gayland.barksdale@mail.house.gov [UNKNOWN])
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TO:kathryn.lehman@mail.house.gov (kathryn.lehman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:JTMastranadi@nrsc.org (JTMastranadi@nrsc.org [UNKNOWN])

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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:kevin.kellems@osd.mil (kevin.kellems@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:hensley-sue@dol.gov (hensley-sue@dol.gov [UNKNOWN])
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TO:richard.mcgraw@osd.mil (richard.mcgraw@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:tfrancis@doc.gov (tfrancis@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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TO:Marisa K. Medrano (CN=Marisa K. Medrano/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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TO:arif.lalani@dfait-maeci.gc.ca (arif.lalani@dfait-maeci.gc.ca [UNKNOWN])
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TO:comm@rnchq.org (comm@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:johnbuckley100@aol.com (johnbuckley100@aol.com [UNKNOWN])
READ:UNKNOWN
TO:abrackbill@aol.com (abrackbill@aol.com [UNKNOWN])
READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])
READ:UNKNOWN

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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
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TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
READ:UNKNOWN
TO:bob.gold@starpoint.com (bob.gold@starpoint.com [UNKNOWN])
READ:UNKNOWN
TO:iocurrops@js.pentagon.mil (iocurrops@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:vandalts@js.pentagon.mil (vandalts@js.pentagon.mil [UNKNOWN])
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TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
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TO:GrenellR@state.gov (GrenellR@state.gov [UNKNOWN])
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TO:martin.weiss@bmaa.gv.at (martin.weiss@bmaa.gv.at [UNKNOWN])
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TO:fernando.garcia@mp.boe.es (fernando.garcia@mp.boe.es [UNKNOWN])
READ:UNKNOWN
TO:intspw@hotmail.com (intspw@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:allison.barber@osd.mil (allison.barber@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
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TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
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TO:Robert.Ollison@EXIM.GOV (Robert.Ollison@EXIM.GOV [UNKNOWN])
READ:UNKNOWN
TO:james.waurishuk@js.pentagon.mil (james.waurishuk@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
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TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
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TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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TO:John_Gardner@oa.eop.gov (John_Gardner@oa.eop.gov [UNKNOWN])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:RGustafson@rnchq.org (RGustafson@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:sspicer@nrcc.org (sspicer@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:Michelle N. Brawer (CN=Michelle N. Brawer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:cmay@bsmg.com (cmay@bsmg.com [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov [UNKNOWN])

READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Anne C. Guilsher (CN=Anne C. Guilsher/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
READ:UNKNOWN
TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
READ:UNKNOWN
TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
READ:UNKNOWN
TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])
READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
READ:UNKNOWN
TO:Samuel A. Thernstrom (CN=Samuel A. Thernstrom/OU=CEQ/O=EOP@EOP [CEQ])
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TO:jo.powers@mail.house.gov (jo.powers@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP@EOP [NSC])
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TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
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TO:mkitchens@pstrategies.com (mkitchens@pstrategies.com [UNKNOWN])
READ:UNKNOWN
TO:kscurry@princeton.edu (kscurry@princeton.edu [UNKNOWN])
READ:UNKNOWN
TO:LMBNelson@aol.com (LMBNelson@aol.com [UNKNOWN])
READ:UNKNOWN
TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kjersten S. Drager (CN=Kjersten S. Drager/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:melody_h._fennel@hud.gov (melody_h._fennel@hud.gov [UNKNOWN])
READ:UNKNOWN
TO:All OVP Users (All OVP Users [UNKNOWN])
READ:UNKNOWN
TO:don.meyer@osd.mil (don.meyer@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:chris.willcox@osd.mil (chris.willcox@osd.mil [UNKNOWN])
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TO:tom.sellers@usa.conoco.com (tom.sellers@usa.conoco.com [UNKNOWN])
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TO:brad.bennett@mail.house.gov (brad.bennett@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
TO:GamonalAM@state.gov (GamonalAM@state.gov [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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TO:Joe.Eule@mail.house.gov (Joe.Eule@mail.house.gov [UNKNOWN])
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TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
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TO:caranaga@pd.state.gov (caranaga@pd.state.gov [UNKNOWN])
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READ:UNKNOWN
TO:Robert_Traynham@src.senate.gov (Robert_Traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
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TO:mike_buttry@hagel.senate.gov (mike_buttry@hagel.senate.gov [UNKNOWN])
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READ:UNKNOWN
TO:MeierAW@state.gov (MeierAW@state.gov [UNKNOWN])
READ:UNKNOWN
TO:john.higginbotham@dfait-maeci.gc.ca (john.higginbotham@dfait-maeci.gc.ca [UNKNOWN])
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TO:arif.lalani@dfait-maeci.gc.ca (arif.lalani@dfait-maeci.gc.ca [UNKNOWN])
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TO:shalom@pmo.gov.il (shalom@pmo.gov.il [UNKNOWN])
READ:UNKNOWN
TO:agoldstein@hadassah.org (agoldstein@hadassah.org [UNKNOWN])
READ:UNKNOWN
TO:comm@rnchq.org (comm@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:johnbuckley100@aol.com (johnbuckley100@aol.com [UNKNOWN])
READ:UNKNOWN
TO:abrackbill@aol.com (abrackbill@aol.com [UNKNOWN])
READ:UNKNOWN
TO:pa.whitehouse@osd.mil (pa.whitehouse@osd.mil [UNKNOWN])
READ:UNKNOWN

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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
READ:UNKNOWN
TO:bob.gold@starpoint.com (bob.gold@starpoint.com [UNKNOWN])
READ:UNKNOWN
TO:iocurrops@js.pentagon.mil (iocurrops@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:vandalts@js.pentagon.mil (vandalts@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:ProkopowiczJT@state.gov (ProkopowiczJT@state.gov [UNKNOWN])
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TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
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TO:remi.marechaux@diplomatie.gouv.fr (remi.marechaux@diplomatie.gouv.fr [UNKNOWN])
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TO:GrenellR@state.gov (GrenellR@state.gov [UNKNOWN])
READ:UNKNOWN
TO:martin.weiss@bmaa.gv.at (martin.weiss@bmaa.gv.at [UNKNOWN])
READ:UNKNOWN
TO:fernando.garcia@mp.boe.es (fernando.garcia@mp.boe.es [UNKNOWN])
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READ:UNKNOWN
TO:allison.barber@osd.mil (allison.barber@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
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TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
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TO:Robert.Ollison@EXIM.GOV (Robert.Ollison@EXIM.GOV [UNKNOWN])
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TO:james.waurishuk@js.pentagon.mil (james.waurishuk@js.pentagon.mil [UNKNOWN])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@EOP [WHO])
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TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gail Randall (CN=Gail Randall/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Frum (CN=David Frum/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:William T. Griffin (CN=William T. Griffin/OU=WHO/O=EOP@EOP [WHO])
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TO:Taylor S. Gross (CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer K. Millerwise (CN=Jennifer K. Millerwise/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@EOP [WHO])
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TO:Virginia T. Gregory (CN=Virginia T. Gregory/OU=WHO/O=EOP@EOP [WHO])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
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TO:Townsend_L._McNitt@oa.eop.gov (Townsend_L._McNitt@oa.eop.gov [UNKNOWN])
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TO:Scott_Jeffcoat@oa.eop.gov (Scott_Jeffcoat@oa.eop.gov [UNKNOWN])
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TO:Albert Hawkins (CN=Albert Hawkins/OU=WHO/O=EOP@EOP [WHO])
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TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris Henick (CN=Chris Henick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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TO:William_S._Clark@oa.eop.gov (William_S._Clark@oa.eop.gov [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
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TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
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(See attached file: Economic Talkers - POTUS FL 12-3.doc)

- Economic Talkers - POTUS FL 12-3.doc
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President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

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READ:UNKNOWN
TO:paige.ralston@mail.house.gov (paige.ralston@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:paul.morrell@mail.house.gov (paul.morrell@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:cforti@nrcc.org (cforti@nrcc.org [UNKNOWN])
READ:UNKNOWN
TO:TDuffy@rnchq.org (TDuffy@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dallen@nrsc.org (dallen@nrsc.org [UNKNOWN])
READ:UNKNOWN
TO:Peter.jeffries@mail.house.gov (Peter.jeffries@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kfedewa@rnchq.org (kfedewa@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:greg_jenkins@ita.doc.gov (greg_jenkins@ita.doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:dean.clancy@mail.house.gov (dean.clancy@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:ekertz@doc.gov (ekertz@doc.gov [UNKNOWN])
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TO:cz@greenerandhook.com (cz@greenerandhook.com [UNKNOWN])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [WHO])
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TO:Anthony K. Crawford (CN=Anthony K. Crawford/OU=NSC/O=EOP@EOP [NSC])
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TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])
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TO:All OVP Users (All OVP Users [UNKNOWN])
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TO:lowellrandel@meyersandassociates.com (lowellrandel@meyersandassociates.com [UNKNOWN]
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TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner.Bethel@ed.gov (Danner.Bethel@ed.gov [UNKNOWN])
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TO:robert.traynham@src.senate.gov (robert.traynham@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:dmackinnon@verner.com (dmackinnon@verner.com [UNKNOWN])
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TO:KJohnson@isi-consulting.com (KJohnson@isi-consulting.com [OMB])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
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TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@EOP [WHO])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
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TO:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP@EOP [WHO])
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TO:Karl_Doenges@oa.eop.gov (Karl_Doenges@oa.eop.gov [UNKNOWN])
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TO:Wendy L. Nipper (CN=Wendy L. Nipper/OU=WHO/O=EOP@EOP [WHO])
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TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
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Note: Some recipients have been dropped due to Notes summary item limits.Please refer to the "$AdditionalHeaders" item for the complete headers.
(See attached file: Economic Talkers - POTUS FL 12-3.doc)

- Economic Talkers - POTUS FL 12-3.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_96WW4004_OA.TXT_1>

President Promotes Economic Security & Worker Assistance

TODAY'S PRESIDENTIAL ACTION

- President Bush visits Operation Paycheck – a job training center in Orlando, Florida – to emphasize his concern and his plans to help workers who lost their jobs in the wake of the September 11 attacks. The President also leads a town hall meeting with local citizens from a community adversely impacted by the September 11 attacks to discuss economic concerns and America's efforts in the war on terrorism.

- The attacks of September 11 were also an attack on our economy. President Bush continues to urge Congress to act on an economic security package to help America's workers.

BACKGROUND ON THE PRESIDENT'S VISIT

- The President visits the newest Operation Paycheck One-Stop Center in Orlando. Operation Paycheck is a program of the State of Florida's Agency for Workforce Innovation that helps laid-off workers obtain the skills they need to quickly transition into a new job. A significant number of the workers in the Operation Paycheck program are from the service sector, including the tourism and aviation industries.

- The One-Stop Center is an example of how an effective state-federal partnership can quickly get assistance to the displaced workers who need it. Florida is implementing the Operation Paycheck program with $10 million in existing dislocated worker funds from the Department of Labor. The program will further benefit from a portion of the $3.4 million in new National Emergency Grant funds that the Department of Labor approved for Florida this week. With these funds, qualifying employees are eligible for income support and job training.

THE PRESIDENT'S AGENDA FOR ECONOMIC SECURITY & WORKER RELIEF

- President Bush has urged Congress to act on an economic security package to jumpstart the economy and directly help workers who have lost their jobs in the wake of the September 11 attacks.

- The President proposed a Back to Work Relief Package on October 4 to provide help to those workers hardest hit by the economic impact of the attacks. This package would:

  - Extend unemployment benefits by 13 weeks for workers in the states hardest hit by the events of September 11;
  - Provide $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training;
  - Make $11 billion available to states to help low-income workers obtain health insurance; and
  - Encourage affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs.

- The President initially urged Congress on October 5 to enact an economic security package that focuses on:

  - *Accelerating Marginal Tax Rate Reductions:* Gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs.
  - *Partial Expensing:* Encourages businesses to invest in new equipment and resources by allowing them to partially expense capital expenditures, allowing them to make purchases they might not otherwise have been able to afford.
  - *Eliminating the Corporate AMT:* Promotes new investment by businesses by eliminating the corporate alternative minimum tax, which imposes job-killing higher taxes on corporations and small businesses.

- *Tax Relief for Low- and Moderate-Income Workers:* Reduces taxes for low- and moderate-income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets.

For more information on the President's initiatives please visit www.whitehouse.gov

From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/6/2001 6:17:20 AM
Subject: : Re: Victims Comp

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CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-DEC-2001 11:17:20.00
SUBJECT:: Re: Victims Comp
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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I think that Brent may be going to DOJ so he can bring the information on his way back. He should be in a little after noon.

From:	CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	12/6/2001 3:11:20 AM
Subject:	: LRM KCT102 - - VETERANS AFFAIRS Report on Legislation to Authorize Payment of Dependency and Indemnity Compensation (DIC) to the Surviving Spouses and Children of Certain Veterans With a Service-Connected Disability That Was Continuously Rated Totally Disabling For a Period of One or More Years Immediately Preceding Death
Attachments:	P_8A1X4004_WHO.TXT_1.wpd; P_8A1X4004_WHO.TXT_2.txt; P_8A1X4004_WHO.TXT_3.pdf

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CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-DEC-2001 08:11:20.00
SUBJECT:: LRM KCT102 - - VETERANS AFFAIRS Report on Legislation to Authorize Payment of Dependency and Indemnity Compensation (DIC) to the Surviving Spouses and Children of Certain Veterans With a Service-Connected Disability That Was Continuously Rated Totally Disabling For a Period of One or More Years Immediately Preceding Death
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 12/06/2001 08:11 AM ----------

From: Kathryn C. Thompson on 12/05/2001 05:37:56 PM
Record Type: Record

To: dodlrs@osdgc.osd.mil , National Security Council LRM Recipients
cc: See the distribution list at the bottom of this message
Subject: LRM KCT102 - - VETERANS AFFAIRS Report on Legislation to Authorize Payment of Dependency and Indemnity Compensation (DIC) to the Surviving Spouses and Children of Certain Veterans With a Service-Connected Disability That Was Continuously Rated Totally Disabling For a Period of One or More Years Immediately Preceding Death

The following is LRM ID: KCT102 -- Veterans Affairs Report on Legislation to Authorize Payment of Dependency and Indemnity Compensation (DIC) to the Surviving Spouses and Children of Certain Veterans With a Service-Connected Disability That Was Continuously Rated Totally Disabling For a Period of One of More Years Immediately Preceding Death.

The VA report is attached below in Wordperfect format and it consists of two pages. The text of H.R. 5435 from the 106th Congress is attached below in html format and it consists of one page. The letter from Rep. Chris Smith to VA, requesting VA's views on the legislation, is attached below in pdf format and it consists of one page.

Please comment on the VA report by Noon, Wednesday, December 12th. If you do not respond by the deadline, I will assume that you have no objection to the VA report.

LRM ID: KCT102
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, December 5, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for

Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Report on Legislation to Authorize Payment of Dependency and Indemnity Compensation (DIC) to the Surviving Spouses and Children of Certain Veterans With a Service-Connected Disability That was Continuously Rated Totally Disabling For a Period of One or More Years Immediately Preceding Death

DEADLINE: Noon Wednesday, December 12, 2001

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This report discusses legislation from the 106th Congress, H.R. 5435, Veterans' Families Protection Act, which would authorize the payment of dependency and indemnity compensation (DIC) to the surviving spouses and children of certain veterans with a service-connected disability that was continuously rated totally disabling for a period of one or more years immediately preceding death. Rep. Chris Smith asked VA for their views on the legislation since he plans to introduce the proposal again this year. VA states in the report that they do not support the legislation.

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WHGC LRM
OVP LRM
Ingrid M. Schroeder
James J. Jukes
LRM ID: KCT102 SUBJECT: VETERANS AFFAIRS Report on Legislation to Authorize Payment of Dependency and Indemnity Compensation (DIC) to the Surviving Spouses and Children of Certain Veterans With a Service-Connected Disability That was Continuously Rated Totally Disabling For a Period of One or More Years Immediately Preceding Death

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
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1.

The Honorable Christopher H. Smith
Chairman, Committee on Veterans' Affairs
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on H.R. 5435, 106th Cong., the "Veterans' Families Protection Act of 2000," a bill "[t]o amend title 38, United States Code, to authorize the payment of dependency and indemnity compensation to the surviving spouses and children of certain veterans with a service-connected disability that was continuously rated totally disabling for a period of one or more years immediately preceding death." You indicate that you plan to reintroduce this proposal this year. VA does not support enactment of such legislation.

Current section 1318 of title 38, United States Code, authorizes the payment of dependency and indemnity compensation (DIC) to the surviving spouse or children of a veteran who died from a nonservice-connected cause and who was in receipt of or entitled to receive compensation at the time of death for a service-connected disability rated totally disabling if: (1) the disability was continuously rated totally disabling for a period of 10 or more years immediately preceding death; (2) the disability was continuously rated totally disabling for a period of not less than five years from the date of the veteran's separation from active duty; or (3) the veteran was a former prisoner of war who died after September 30, 1999, and the disability was continuously rated totally disabling for a period of not less than one year immediately preceding death.

In the "Veterans' Disability Compensation and Survivors' Benefits Act of 1978," Pub. L. No. 95-479, § 204, 92 Stat. 1560, 1564, Congress authorized payment of DIC to the surviving spouse or children of a veteran who died from a nonservice-connected cause if the veteran was continuously rated totally disabled due to a service-connected disability for at least 10 years immediately prior to death, or was continuously rated totally disabled due to a service-connected disability for at least 5 years from the date of separation from active service. The legislative history of that Act indicates that Congress sought to recognize the survivors' financial dependence on disability compensation received by a veteran

2.

totally disabled for a lengthy period prior to death. S. Rep. No. 95-1054, at 28 (1978), reprinted in 1978 U.S.C.C.A.N. 3465, 3486 (citing the example of a veteran totally disabled from service-connected causes for 33 years prior to death). Congress also felt that the veteran's total disability, endured over a lengthy period of time, would necessarily result in a substantial impairment of the veteran's ability to provide for his or her survivors and that the primary purpose of the new benefit was to compensate for that impairment. S. Rep. No. 95-1054, at 30, reprinted in 1978 U.S.C.C.A.N. at 3488. In the "Veterans Millennium Health Care and Benefits Act," Pub. L. No. 106-117, § 501, 113 Stat. 1545, 1573 (1999), Congress amended section 1318 to authorize the payment of DIC to survivors of former prisoners of war who died from nonservice-connected causes after September 30, 1999, and who were continuously rated totally disabled due to a service-connected disability for at least one year immediately prior to death.

The contemplated legislation would amend 38 U.S.C. § 1318 to offer the same DIC eligibility criterion provided for the survivors of former prisoners of war to the survivors of all totally disabled veterans. In so doing, the legislation may diminish the significance of the special provision established to recognize the sacrifices of former prisoners of war. In addition, expanding the group of survivors eligible for DIC as contemplated may lessen our acknowledgment of the sacrifices of those veterans who died in service or due to service-connected disabilities.

Moreover, the contemplated legislation would not further Congress' objectives in enacting what is now 38 U.S.C. § 1318 of recognizing: (1) the financial dependence of a totally disabled veteran's survivors on disability compensation received by the veteran over many years; and (2) the impairment in the totally disabled veteran's ability to provide for his or her survivors due to his or her disability. A surviving spouse may be expected to be less dependent on a veteran's disability income when little more than one year has elapsed between an initial rating of total disability and the veteran's death. Further, the impact on the veteran's ability to provide for his or her survivors would be less in such a case.

The costs associated with the enactment of the contemplated legislation would be $9.4 million in benefits for Fiscal Year (FY) 2002, $257 million in benefits for the five-year period from FY 2002 through FY 2006, and $1.1 billion in benefits for the ten-year period from FY 2002 through FY 2011.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

HR 5435 IH

106th CONGRESS

2d Session

H. R. 5435

To amend title 38, United States Code, to authorize the payment of d ependency and indemnity compensation to the surviving spouses and children of c ertain veterans with a service-connected disability that was continuously rated totally disabling for a period of one or more years immediately preceding deat h.

IN THE HOUSE OF REPRESENTATIVES

October 10, 2000

Mr. SMITH of New Jersey (for himself and Mr. SAXTON) introduced the followin g bill; which was referred to the Committee on Veterans' Affairs

---

A BILL

To amend title 38, United States Code, to authorize the payment of d ependency and indemnity compensation to the surviving spouses and children of c ertain veterans with a service-connected disability that was continuously rated totally disabling for a period of one or more years immediately preceding deat h.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Veterans' Families Protection Act of 200 0'.

SEC. 2. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES AND CHILDREN OF CERTAIN VETERANS WITH A SERVICE-CONNECTED DISABILITY THAT WAS CONTI NUOUSLY RATED TOTALLY DISABLING FOR A PERIOD OF ONE OR MORE YEARS IMMEDIATELY P RECEDING DEATH.

Subsection (b) of section 1318 of title 38, United States Code, is ame nded by striking `rated totally disabling if--' and all that follows through th e end of the subsection and inserting `that was continuously rated totally disa bling for a period of one or more years immediately preceding death.'.

END

149397

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CHIEF COUNSEL AND STAFF DIRECTOR

U.S. House of Representatives
COMMITTEE ON VETERANS' AFFAIRS
CHRISTOPHER H. SMITH
CHAIRMAN
ONE HUNDRED SEVENTH CONGRESS
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WASHINGTON, DC 20515
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C.M. DURISHIN
DEMOCRATIC STAFF DIRECTOR

August 10, 2001

Honorable Anthony J. Principi
Secretary
Department of Veterans Affairs
Washington, DC 20420

Dear Mr. Secretary:

Enclosed is a copy of H.R. 5435, a bill to amend title 38, United States Code, to authorize the payment of dependency and indemnity compensation to the surviving spouses and children of certain veterans with a service-connected disability that was continuously rated totally disabling for a period of one or more years immediately preceding death. Although this bill is from the previous Congress, I do plan to reintroduce it this year.

It would be appreciated if the Committee could receive the views of the Department on the bill, including an estimate of the cost by September 10, 2001.

Sincerely,

Chris Smith

CHRISTOPHER H. SMITH
Chairman

CHS:jm

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Rachel Brand [WHO] <Rachel Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Kyle Sampson [WHO] <Kyle Sampson>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Laura L. Flippin/WHO/EOP@EOP [WHO] <Laura L. Flippin>
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Subject: : LRM KCT101 - - Annual Report to Congress for 2000 on Research on Gulf War Veterans' Illnesses
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From: Kathryn C. Thompson on 12/06/2001 03:03:26 PM
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To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT101 - - Annual Report to Congress for 2000 on Research on Gulf War Veterans' Illnesses

The following is LRM ID: KCT101 -- Annual Report to Congress for 2000 on Research on Gulf War Veterans' Illnesses. The report is attached below in Word format and it consists of 70 pages.

Please comment on the report by Close of Business, Thursday, December 13th . If you do not respond by the deadline, I will assume that you have no objection to the report.

LRM ID: KCT101
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, December 6, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: Annual Report to Congress for 2000 on Research on Gulf War Veterans' Illnesses

DEADLINE: COB Thursday, December 13, 2001

In accordance with OMB Circular A-19, OMB requests the views of your

agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This annual report for 2000, prepared by the Research Working Group of Military and Veterans Health Coordinating Board, describes Federal research activities for Gulf War illnesses over the past year.

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LRM ID: KCT101 SUBJECT: Annual Report to Congress for 2000 on Research on Gulf War Veterans' Illnesses
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this

response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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FROM: _____ (Date)

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The following is the response of our agency to your request for views on the above-captioned subject:

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_____ See proposed edits on pages _____

_____ Other: _____

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Department of Veterans Affairs

ANNUAL REPORT TO CONGRESS

Federally Sponsored Research on Gulf War Veterans' Illnesses for 2000

2001

Research Working Group of Military and Veterans Health Coordinating Board

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Annual Report to Congress - 2000

Research on Gulf War Veterans' Illnesses

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Department of Veterans Affairs:
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EXECUTIVE SUMMARY

I. INTRODUCTION

The Secretary of Veterans Affairs is required to submit to the Senate and House Veterans' Affairs Committees an annual report on the results, status, and priorities of research activities related to the health consequences of military service in the Gulf War. The Research Working Group (RWG) of the Military and Veterans Health Coordinating Board (MVHCB) prepared this document, the 2000 *Annual Report to Congress*, which is the seventh report on research and research activities. (PGVCB, 1995a; 1996a; 1997; 1998; 1999a; 2001)

This Annual Report is divided into six sections. Section I is an introduction. Section II highlights and summarizes research progress since the last Annual Report. Section III is an analysis of the Federal Government's portfolio of research on Gulf War veterans' illnesses. Section IV highlights significant new research projects and initiatives since the last Annual Report. Section V discusses the management of Federal Gulf War veterans' illnesses research programs, including research oversight, peer review, and coordination. Section VI discusses priorities established in 1995, 1996, and 1998 for future research, and highlights the progress made to date.

II. RESEARCH RESULTS IN 2000

In the past year, several research studies have yielded results that provide new and expanded information on the health problems of Gulf War veterans. Section II provides brief summaries of research projects for which results were published from January 2000 to January 2001. The RWG tracks all Federally funded research projects related to Gulf War veterans' illnesses. As in previous reports to Congress, the research reports summarized in Section II are grouped according to nine focus areas: symptoms and general health status, brain and nervous system function, diagnosis, reproductive health, mortality, depleted uranium, chemical weapons, pyridostigmine bromide, and interactions of exposures.

1. Symptoms and General Health Status:

Nine large studies were published that focused on symptoms and general health. (Kang, et al, 2000; Doebbeling, et al, 2000; Knoke, et al, 2000; Bell, et al, 2000; Nisenbaum, et al, 2000; Ismail, et al, 2000; Hotopf, et al, 2000; Steele, 2000; Smith, et al, 2000) These publications included the results of studies conducted at four large research centers in Washington, DC, Iowa, San Diego, and London, UK. Each of the nine studies included several hundred to thousands of individuals. Four of the studies have included some form of medical evaluation, such as causes of hospitalization. (Knoke, et al, 2000; Bell, et al, 2000; Nisenbaum, et al, 2000; Smith, et al, 2000) Six of these studies were population-based, which means that the results of these studies may have implications for the overall population of 697,000 Gulf War veterans. (Kang, et al, 2000; Doebbeling, et al, 2000; Bell, et al, 2000; Ismail, et al, 2000; Hotopf, et al, 2000; Smith, et al, 2000)

One of the most significant conclusions based on these recent studies and others is that Gulf War veterans do not suffer from a unique, previously unrecognized "syndrome." Four large studies have evaluated the health of thousands of Gulf War veterans and non-deployed veterans, involving the US Air Force; US Navy; US Army, Navy, and Air Force, combined; and all three services from the United Kingdom, combined. (Fukuda, et al, 1998; Knoke, et al, 2000; Doebbeling, et al, 2000; Ismail, et al, 1999) In each study, the patterns of symptoms reported by Gulf War veterans were similar to the patterns of symptoms reported by non-deployed veterans.

2. Brain and Nervous System Function:

Seven studies were published that focused on brain and nervous system function, including posttraumatic stress disorder, major depression, and neuropsychological functioning. (Storzbach, et al, 2000; Storzbach, et al, 2001; King, et al, 2000; Sharkansky, et al, 2000; Benotsch, et al, 2000; Fiedler, et al, 2000; Engel, et al, 2000) These publications presented the results of studies conducted at five federally funded research centers in Portland, Oregon, Boston, New Orleans, East Orange, New Jersey, and Washington, DC. Six of these studies included several hundred to several thousand individuals. Four of these publications relied upon neurological and/or psychiatric evaluations, rather than relying solely on self-administered

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surveys. (Storzbach, et al, 2000; Storzbach, et al, 2001; Fiedler, et al, 2000; Engel, et al, 2000)

Two of these seven studies, which focused on brain and nervous system function, were published by the Portland Environmental Hazards Research Center. 241 Gulf War veterans who reported unexplained symptoms, which could not be diagnosed after a thorough evaluation, were compared with 113 healthy Gulf War veterans (controls). (Storzbach, et al, 2000) 87% of the 241 cases had unexplained cognitive or psychological symptoms, 38% had unexplained musculoskeletal symptoms, and 42% had unexplained fatigue. There were 12 psychological tests and 6 neurobehavioral tests. Cases differed significantly from controls on all psychological test scales, in the direction of increased distress. Case performance on all neurobehavioral tests was deficient compared to the controls. However, the deficiencies were statistically significant in only 2 of the 6 tests. The performance of about 90% of the cases on the neurobehavioral tests was similar to the controls. (Storzbach, et al, 2001) In contrast, about 10% of the cases performed significantly worse than the controls on almost all the neurobehavioral tests.

3. Diagnosis:

Two studies were published that focused on the diagnosis of infectious diseases in Gulf War veterans, including one study on *Mycoplasma fermentans,* and one study on infectious diseases that are endemic to the Persian Gulf region. (Lo, et al, 2000; Specht, et al, 2000) The prevalence of antibodies to *Mycoplasma fermentans* was compared among chronically ill Gulf War veterans (cases) and healthy Gulf War veterans (controls), based on specimens obtained before and after the war. (Lo, et al, 2000) Some scientists and veterans have proposed that previously undetected infections with this organism might be a cause of symptoms in some Gulf War veterans. Before the war, 34 out of 718 cases (4.8%) and 116 out of 2,233 controls (5.2%) tested positive for antibodies to *Mycoplasma fermentans*. After the war, an additional 1.1% of cases and 1.2% of controls tested positive for antibodies. These results provided no evidence that infection with this organism was associated with the development of chronic illnesses in the cases.

4. Reproductive Health:

Two studies were published that focused on reproductive health among Gulf War veterans. These included one study on the prevalence of major congenital abnormalities among infants of veterans in Hawaii, and one study on the rates of abnormalities in cervical cytology among women veterans. (Araneta, et al, 2000; Frommelt, et al, 2000) Between 1989 and 1993, 17,182 infants were born to military parents in Hawaii, including 22% Gulf War veterans and 78% non-deployed veterans. (Araneta, et al, 2000) There were no differences in infants born to the two groups of veterans in the rates of low birth weight or prematurity. 367 infants were identified with one or more of 48 major birth defects (2% of live births). The prevalence of birth defects was similar for infants born to the two veteran groups, in the prewar and postwar periods.

5. Mortality:

One study was published that focused on mortality of Gulf War veterans in the United Kingdom. (Macfarlane, et al, 2000) The rates of mortality in all 53,462 British Gulf War veterans were compared with the rates among the same number of non-deployed British veterans. There were 395 deaths among Gulf War veterans (0.7%) and 378 deaths among non-deployed veterans (0.7%). Mortality rates due to diseases (natural causes) were slightly lower among Gulf War veterans. Mortality rates due to external causes were slightly higher among Gulf war veterans, mostly due to motor vehicle accidents. These British results are very similar to results of a mortality study in US Gulf war veterans. (Kang and Bullman, 1996) Both the UK and US mortality studies will continue indefinitely.

6. Depleted Uranium:

One study was published that focused on the effects of depleted uranium (DU) in Gulf War veterans. (McDiarmid, et al, 2001) VA and DoD initiated a national effort in August 1998 to offer a DU medical evaluation to any concerned Gulf War veteran. This study described the results of the first 169 veterans who volunteered for this program through December 1999. Of the 169 veterans who submitted 24-hour samples for determination of urinary uranium concentration, there were only 3 individuals with validated, elevated results. One of these individuals

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probably had retained DU metal fragments from a friendly fire incident. The sources of the elevated results in the other 2 persons were unknown. The authors concluded "Those with normal uranium values now are unlikely to develop any uranium-related toxicity in the future regardless of what their DU exposure may have been during the Gulf War."

7. Chemical Weapons:

Three studies were published that focused on the effects of chemical weapons in laboratory animals. These studies focused on sarin, and included one study in guinea pigs and two studies in rats. (Spruit, et al, 2000; Khan, et al, 2000; Jones, et al, 2000)

8. Pyridostigmine Bromide:

One study was published that focused on the effects of pyridostigmine bromide in rats. (Li, et al, 2000)

9. Interactions of Exposures:

Nine animal studies were published that focused on the health effects of interactions of exposures. These included five animal studies of the effects of pyridostigmine bromide (PB), in combination with stressors (forced swimming stress, heat stress, severe cold stress, restraint stress, or exercise training). (Grauer, et al, 2000; Sinton, et al, 2000; Servatius, et al, 2000; Somani, et al, 2000; Verma-Ahuja, et al, 2000) Four animal studies evaluated the effects of PB, in combination with other chemicals, in particular, DEET or permethrin. (Hoy, et al, 2000a; Hoy, et al, 2000b; van Haaren, et al, 2000; Chaney, et al, 2000)

III. RESEARCH FUNDING TRENDS

The Gulf War Veterans' Illnesses research portfolio currently includes 193 projects. It was last updated during the second quarter of Fiscal Year 2001 (through March 31, 2001). These 193 Federal research projects are sponsored by the Departments of Veterans Affairs (VA), Defense (DoD), or Health and Human Services (HHS). The scope of the Federal research portfolio is broad, from small pilot studies to large-scale epidemiology studies involving large populations and major research center programs. Currently, the Federal Government is projecting cumulative expenditures of $173.6 million for research from FY 1994 through FY 2001. As of March 31, 2001, 116 projects were completed and 77 projects were ongoing. The overall emphasis of research has been greatest in the focus areas of Symptoms and General Health Status, and Brain and Nervous System Function. The numbers of projects in each focus area are examined in more detail in Section III.

IV. NEW RESEARCH PROJECTS AND INITIATIVES

Besides new research findings appearing in the published scientific literature, there have been several important events since last year's *Annual Report to Congress* that deserve discussion. These include the awarding of new research projects and the development of new research initiatives. This section also updates important accomplishments in 2000 for key research projects and initiatives.

IV.A. NEW RESEARCH PROJECTS

IV.A.1. New Projects Funded by the 2000 DoD Broad Agency Announcements

In 1998, DoD established new funding for programmed research. The purpose of this program element funding is to address Gulf War veterans' illnesses issues, which may also be of concern in future deployments. This planned funding is approximately $20 million per year for FY 1999 through FY 2002 and $5 million per year thereafter. DoD published four Broad Agency Announcements (BAAs) in 2000. The new projects funded by these BAAs will be announced in 2001. The specific requests focused on the following areas of research interest:

- Epidemiological Investigations of Deployment Health Monitoring Methods
- Deployment Stress Health and Performance Consequences
- Biochemical and Physiological Markers to Assess Toxic Chemical Exposures and Health Effects in Deployed Military Personnel
- Toxicity of Militarily Relevant Heavy Metals

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IV.B. 2000 UPDATE OF KEY RESEARCH PROJECTS AND INITIATIVES

IV.B.1. Institute of Medicine Study of Health Effects Associated with the Gulf War

In 1998, the VA contracted with the Institute of Medicine (IOM) to perform a review of the scientific and medical literature regarding adverse health effects associated with the exposures experienced during the Gulf War. The first phase of this study focused on the medical literature on pyridostigmine bromide, depleted uranium, sarin and cyclosarin, and the anthrax and botulinum toxoid vaccines. A report on this first phase was published in September 2000, entitled *Gulf War and Health: Volume 1. Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines*. (IOM, 2000) The findings and research recommendations in this IOM report are summarized in Section IV.B.1. In 2000, planning started for the second phase of the IOM project, which will focus on a review of the scientific literature on pesticides and solvents used during the Gulf War.

IV.B.2. White House Report: *Health Consequences of the Gulf War: An Ongoing Analysis*

In mid-2000, White House staff requested that an interagency report be coordinated and edited by the MVHCB, which would summarize the activities of the Federal Government to address illnesses in Gulf War veterans. This report was completed in December 2000, and was entitled *Health Consequences of the Gulf War: An Ongoing Analysis*. (White House, 2000) This report provides an overview of the clinical programs, research and investigations, compensation initiatives, outreach efforts, and lessons learned. The report includes a chapter on Research, which summarizes the findings to date. The major research conclusions are provided in Section IV.B.2.

IV.B.3. Conference on Federally Sponsored Gulf War Veterans' Illnesses Research

The RWG organized and hosted an international meeting, entitled "*2001 Conference on Illnesses among Gulf War Veterans: A Decade of Scientific Research*," on January 24-26, 2001, in Alexandria, Virginia. The purpose of the meeting was to bring together Federally sponsored researchers on Gulf War veterans' illnesses in a common forum. This was the fifth such conference, and almost 400 scientists, clinicians, government officials, and veterans attended it. The *Proceedings* for this conference were published in early 2001. (MVHCB, 2001b)

V. RESEARCH MANAGEMENT

The RWG has accomplished several notable achievements, including:

- Development, production, and dissemination of the 1995 *A Working Plan for Research on Persian Gulf Veterans' Illness* (PGVCB, 1995b), and its 1996 revision (PGVCB, 1996b).
- Production and dissemination of *Annual Reports to Congress* for 1994 through 2000 on results, status, and priorities of Federal research activities (PGVCB, 1995a; 1996a; 1997; 1998a; 1999a; 2001; MVHCB, 2001a).
- Secondary programmatic review and recommendations on research proposals that have been competitively reviewed by funding agencies.
- Organization of five conferences of Federally funded researchers, including publication of three Proceedings (PGVCB, 1998b; PGVCB, 1999b; MVHCB, 2001b).
- Coordination and oversight of implementation of relevant recommendations of the Institute of Medicine, Presidential Advisory Committee, Senate Veterans' Affairs Committee, the Presidential Review Directive 5, and the Presidential Special Oversight Board (IOM, 1995, 1996; PAC, 1996a, 1996b, 1997; SVAC, 1998; NSTC, 1998; PSOB, 2000).

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- Two national treatment trials (exercise/behavior therapy trial and antibiotic treatment trial).

VI. RESEARCH PRIORITIES

The RWG has identified three sets of research priorities in 1995, 1996, and 1998 (PGVCB, 1995b; PGVCB, 1996b; PGVCB, 1999a). Substantial progress has been made on each of these sets of priorities, which is detailed in Section VI.

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I. INTRODUCTION

On August 31, 1993, in response to Section 707 of Public Law 102-585, President William J. Clinton named the Secretary of Veterans Affairs (VA) to coordinate research activities undertaken or funded by the Executive Branch of the Federal Government into the health consequences of service in the Gulf War. Section 104 of Public Law 105-368 (1998) expanded the range of activities to be coordinated. VA carries out its research-coordinating role through the Research Working Group (RWG) of the Military and Veterans Health Coordinating Board (MVHCB). The Secretaries of the Department of Defense (DoD), Health and Human Services (HHS), and VA chair the MVHCB.

As part of its coordination role, VA is required to submit an annual report on the results, status, and priorities of research activities to the Senate and House Veterans' Affairs Committees. This document, the 2000 *Annual Report to Congress*, is the seventh report on research and research activities. (PGVCB, 1995a; 1996a; 1997; 1998; 1999a; 2001) The 2000 *Annual Report to Congress* reports on research funded by Federal and non-federal institutions. All new peer reviewed reports of high quality research add to and build upon existing knowledge, regardless of funding source.

This Annual Report is divided into six Sections. Following this introductory Section, Section II highlights and summarizes research progress since the last Annual Report. Section III is an analysis of the Federal Government's portfolio of research on Gulf War veterans' illnesses. Section IV highlights significant new research projects and initiatives since the last Annual Report. Section V discusses the management of Federal Gulf War veterans' illnesses research programs, including research oversight, peer review, and coordination. Section VI discusses priorities established in 1995, 1996, and 1998 for future research, and highlights the progress made to date.

II. RESEARCH RESULTS IN 2000

New Research Publications

In the past year, several research studies have yielded results that provide new and expanded information on the health problems of Gulf War veterans. This Section provides brief summaries of research projects for which results were published from January 2000 to January 2001. Because all scientifically peer reviewed research must be considered in any future assessments of Gulf War veterans' illnesses, these summaries include both Federally funded and non-federally funded research. The primary source of information on research is from the peer reviewed scientific literature. The RWG tracks all Federally funded research projects related to Gulf War veterans' illnesses. These projects are described in detail in Appendix A.

It is important to note that all research studies have strengths and limitations. Among the limitations, epidemiological studies are frequently subject to a variety of biases. For example, studies that rely on self-reported symptoms and exposures are subject to recall bias, and studies that rely on self-selected cohorts (such as registry participants) are subject to selection bias. Biases can distort the magnitude of differences between cohorts and affect the strength of associations between exposures and outcomes. Other factors potentially affecting epidemiological outcomes include sample size and response rate.

Research using animal models is also subject to limitations in its applicability to a specific situation for humans. Sources of limitations include extrapolation of biological processes from one animal species to another and extrapolation of experimental dosing regimens (route of administration, amount, and duration) from animal experiments to real human exposure situations.

The presence of limitations in a particular study does not necessarily invalidate its findings or conclusions, but must be taken into account in evaluating a study's overall weight and impact. For this reason, the strengths and limitations of each of the new reports of study findings are cited as a guide for the reader.

As in previous reports to Congress, research has been categorized according to particular focus areas. The research reports summarized below are grouped according to nine focus areas: symptoms and general health status, brain and nervous system function, diagnosis, reproductive health, mortality, depleted uranium, chemical weapons, pyridostigmine bromide, and interactions of exposures. In each category, an

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overview section highlights the results of relevant reports, followed by a summary of each individual report.

A. Symptoms and General Health Status

Overview:

Nine large studies were published in 2000 that focused on symptoms and general health. These publications included the results of studies conducted at four large research centers in Washington, DC, Iowa, San Diego, and London, UK. Each of the nine studies included several hundred to thousands of individuals. Four of the studies have included some form of medical evaluation, such as causes of hospitalization. (Knoke, et al, 2000; Bell, et al, 2000; Nisenbaum, et al, 2000; Smith, et al, 2000) Six of these studies were population-based, which means that the results of these studies may have implications for the overall population of 697,000 Gulf War veterans. (Kang, et al, 2000; Doebbeling, et al, 2000; Bell, et al, 2000; Ismail, et al, 2000; Hotopf, et al, 2000; Smith, et al, 2000)

In almost all published studies, Gulf War veterans have reported significantly higher frequencies of symptoms and medical conditions, in comparison with non-deployed veterans. In contrast, the rates of objectively validated medical conditions among Gulf War veterans have generally been similar to the rates in non-deployed veterans. These patterns have been demonstrated again in the VA National Survey and in a survey of veterans in Kansas (Kang, et al, 2000; Steele, 2000)

In 1995, VA initiated a population-based, mailed survey, entitled the "National Health Survey of Gulf War Era Veterans and Their Families." (Kang, et al, 2000) A total of 11,441 Gulf War veterans responded (75%), and 9,476 non-deployed veterans responded (64%). Gulf War veterans reported many chronic medical conditions significantly more frequently than the controls, such as recurrent headaches, frequent diarrhea, and arthritis. In addition, Gulf War veterans reported an increased frequency of all 48 of the 48 symptoms on the survey, compared to the controls. 7.8% of Gulf War veterans reported having been hospitalized overnight during the past year, compared with 6.4% of non-deployed veterans. However, there were no reported differences in the rates of several serious conditions, such as cancer, coronary heart disease, stroke, diabetes, or cirrhosis of the liver. These results were consistent with other large population-based studies of Gulf War veterans in Iowa, Canada, and the United Kingdom. (Iowa, 1997; Goss Gilroy, 1998; Unwin, et al, 1999)

The state of Kansas conducted a statewide survey in 1998 to describe the prevalence and risk factors for health problems in 1,548 Gulf War veterans and 482 non-deployed veterans (65% participation rate). (Steele, 2000) This study included only veterans who had retired or separated by 1998 or who were current Reserve/National Guard members. There were 55% Reserve/National Guard in the Kansas sample, compared to 17% of all Gulf War veterans. Gulf War veterans reported significantly higher rates of 10 of 21 medical conditions that were diagnosed or treated by a physician, such as depression, arthritis, migraine headache, or posttraumatic stress disorder (PTSD). Gulf War veterans reported significantly higher rates of all 37 of 37 symptoms. Notably, there were no reported differences in the rates of hospitalizations (1991 to 1998) or rates of application for VA disability benefits (1991 to 1998). The prevalence of the Centers for Disease Control and Prevention (CDC) working case definition of multisymptom illness was also evaluated. (Fukuda, et al, 1998) This CDC case definition was reported by 47% of Gulf War veterans in Kansas and 20% of non-deployed veterans. Overall, the Kansas data indicated that Gulf War veterans and non-deployed veterans reported similar patterns of symptoms, although Gulf War veterans reported higher rates.

Four major studies have been published that used a statistical technique, factor analysis, to identify patterns of symptoms. The health of thousands of Gulf War veterans has been evaluated in these four studies, involving the US Air Force; the US Navy; the US Army, Navy, and Air Force combined; and all three armed services in the United Kingdom, combined. (Fukuda, et al, 1998; Knoke, et al, 2000; Doebbeling, et al, 2000; Ismail, et al, 1999) In each of these studies, the patterns of symptoms reported by Gulf War veterans were similar to the patterns reported by non-deployed veterans. The results of these four studies are consistent with the conclusion of a recent Institute of Medicine report, which was, "Thus far, there is insufficient

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evidence to classify veterans' symptoms as a new syndrome. . . All Gulf War veterans do not experience the same array of symptoms. Thus, the nature of the symptoms suffered by many Gulf War veterans does not point to an obvious diagnosis, etiology, or standard treatment." (Institute of Medicine, 2000)

Differences in demographic variables, health behaviors, risk-taking behaviors, and mental or physical health could influence a soldier's postwar health status. Such factors could also influence the chance of selection for deployment. 675,626 active duty Army soldiers were followed from 1980 to the beginning of the Gulf War. (Bell, et al, 2000) About 38% of these soldiers were deployed to the Gulf War. In comparison to non-deployed soldiers, Gulf War veterans were more likely to have the following characteristics: male, fewer than 5 years of time in service, younger than 25 years of age, black, single, high school education, fewer dependents, and junior enlisted rank. Deployed soldiers were more likely to be in certain military occupational specialties: infantry/gun crews, mechanical repair, or crafts workers (e.g., plumbers, metal workers). Deployed soldiers were more likely to have received hazardous duty pay before July 1990; and deployed soldiers received this hazardous duty pay more frequently for parachuting or for potential exposure to hostile fire before July 1990. Rates of hospitalizations for all injuries in military hospitals were evaluated from 1980 to August 1, 1990. The risk of hospitalization for injuries was higher among the deployed soldiers in most years. In addition, male gender, young age, less education, single marital status, less time in service, and receipt of two or more types of hazardous duty pay during one pay period were all significant predictors of prewar hospitalization for injuries. The authors concluded that "postwar excess injury risk may be explained in part by a propensity for greater risk-taking, which was evident before and persisted throughout the war."

Several studies have demonstrated a significant association between demographic, lifestyle, and occupational risk factors and increased symptoms among Gulf War veterans. For example, in the VA National Survey, Gulf War veterans who were in the Army or in the Reserve/National Guard consistently reported higher rates of symptoms and medical conditions, than veterans in other services or on active-duty. (Kang, et al, 2000) In the Kansas study, there was a significant association between increasing symptoms in multiple organ systems in Gulf War veterans, and female gender, lower household incomes, lower education, enlisted status, and service in the Army. (Steele, 2000) The CDC evaluated the association between several risk factors and a working case definition of chronic multisymptom illness in 1,002 Air Force veterans of the Gulf War. (Fukuda, et al, 1998; Nisenbaum, et al, 2000) The multisymptom illness was significantly associated with increasing age, female gender, non-white race, current smoking, and enlisted rank.

In 1997-98, a mailed survey was conducted among a randomly selected sample of 3,297 British servicemen, who had deployed to the Gulf War (70% response rate). (Unwin, et al, 1999; Ismail, et al, 2000) The authors used two physical health status measures and two mental health status measures. Physical ill health was measured as fatigue, and as a measure of multisymptom illness, based on the CDC working case definition. (Fukuda, et al, 1998) Psychological ill health was measured as psychological distress, and as a measure of post-traumatic stress reaction. There was a significant relationship between decreasing military rank and all four health outcomes. Privates were about two to three times more likely to report ill health than officers were. At the time of the survey, 57% of the Gulf War veterans had left the armed forces. Veterans who had been discharged were about two times more likely to report all four health outcomes. There was a highly significant linear trend between smoking and all four health outcomes.

Some studies have shown a significant association between reported environmental exposures and increased symptoms among Gulf War veterans, while other studies have shown no association. In the CDC study of multisymptom illness, 6% and 39% of Gulf War veterans fulfilled the case definition of severe illness and mild-to-moderate illness, respectively. (Fukuda, et al, 1998) The rates of severe and mild-to-moderate illness were significantly associated with self-reports of pyridostigmine bromide (PB) use; insect repellent use on a regular basis; and the belief that chemical or biological weapons were used against them. (Nisenbaum, et al, 2000) Severe illness was also associated with injuries during the war that required medical attention. The authors cautioned, however, that

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these self-reports of exposures could be subject to recall bias. In particular, the reports could be strongly influenced by extensive media coverage or by psychological states, such as PTSD, which were not controlled in the analysis.

In the British study of Gulf War veterans, it was hypothesized that Royal Army personnel might have been in closer geographical proximity to some of the environmental exposures implicated during the war, than Royal Navy or Royal Air Force personnel. (Ismail, et al, 2000) Nonetheless, Army personnel reported the same levels of health problems as Navy and Air Force personnel. In addition, combat troops, such as the infantry, reported the same levels of health problems as support troops, such as engineering or medical personnel. One possible explanation of this finding is that the ground war only lasted four days, whereas chemical and biological weapons were considered to be a real threat for several months and beyond the immediate geographical frontline.

A second analysis of the British Gulf War cohort focused on the relationship between ill health after the Gulf War and vaccines received before or during the conflict. (Hotopf, et al, 2000) This study used data only from veterans who reported that they still had their vaccine records (n=923; 28% of responders). The patterns of vaccines given before and during deployment were different, with more "routine" vaccines and fewer biological warfare vaccines given before deployment. The associations of vaccines with six health outcomes were evaluated. Multiple vaccines (defined as 5 or more vaccines) received before deployments were associated with only one of the six health outcomes (post-traumatic stress reaction). In contrast, five of the six outcomes were associated with multiple vaccines received during deployment (all but post-traumatic stress reaction). The strongest association was with the CDC case definition of multisymptom illness. The authors concluded that multiple vaccines, combined with the "stress" of deployment, might be associated with ill health. This study has raised a number of methodological concerns, in particular, that the restricted sample of 923 veterans who kept their vaccine records might be biased in some way. (Shaheen, 2000; Bolton, et al, 2001)

The rates of three diseases were compared among Gulf War and non-deployed veterans, due to concern among some veterans: systemic lupus erythematosus (SLE), amyotrophic lateral sclerosis (ALS; also called Lou Gehrig's disease), and fibromyalgia (FM). (Smith, et al, 2000) This included 551,841 service members who were deployed to the Gulf War and 1,478,704 service members who were not deployed. All military hospitalization data were evaluated for the three specific diseases during the follow-up period of August 1, 1991 to July 31, 1997 (six years). There were 36 Gulf War veterans and 160 non-deployed veterans who were diagnosed with SLE (relative risk of 0.94; not significant). There were 6 Gulf War veterans and 12 non-deployed veterans who were diagnosed with ALS (relative risk of 1.66; not significant). It is noteworthy that in 2000, the VA and DoD initiated an evaluation of the rates of ALS in Gulf War and non-deployed veterans, which will include data from VA, DoD, and civilian sources. There were 239 Gulf War veterans and 621 non-deployed veterans who were diagnosed with FM (relative risk of 1.23; significantly increased). Comprehensive Clinical Evaluation Program (CCEP) participation was a strong independent risk factor for FM. In particular, CCEP participants had 26.4 times the risk of being hospitalized for FM compared with non-participants.

Symptoms and General Health Status-Individual Studies:

1. Kang, HK, Mahan, CM, Lee, KY, Magee, CA, and Murphy, FM. Illnesses among United States veterans of the Gulf War: a population-based survey of 30,000 veterans. *Journal of Occupational and Environmental Medicine* 2000; 42(5):491-501. **(VA-2)**

In 1995, VA initiated a population-based, mailed survey, entitled the "National Health Survey of Gulf War Era Veterans and Their Families." (Kang, et al, 2000) The purpose of the survey was to compare the health status of a sample of 15,000 Gulf War veterans with the health status of a sample of 15,000 non-deployed veterans. Women and members of the Reserve and National Guard were over-sampled. In 1995 to 1996, 15,817 veterans responded to the mailed survey. In 1996 to 1998, an additional 5,100 responded to a supplemental telephone survey. A total of 11,441 Gulf War veterans responded (75%), and 9,476 non-deployed veterans responded (64%) (overall response rate of 70%).

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The questionnaire included various symptoms, medical diagnoses, measures of functional impairment, and potential environmental exposures. Gulf War veterans reported many chronic medical conditions significantly more frequently than the controls, such as recurrent headaches, frequent diarrhea, and arthritis. However, there were no reported differences in the rates of several serious conditions, such as cancer, coronary heart disease, stroke, diabetes, or cirrhosis of the liver. In addition, Gulf War veterans reported an increased frequency of all 48 of the 48 symptoms on the survey, compared to the controls. Members of the Reserve or National Guard consistently reported higher rates of symptoms and medical conditions, than active-duty members did. Army veterans reported higher rates than veterans of the other services did.

50.8% of Gulf War veterans reported that they had visited a clinic or seen a physician during the past year, compared to 40.5% of non-deployed veterans. 7.8% of Gulf War veterans reported having been hospitalized overnight during the past year, compared with 6.4% of non-deployed veterans. Medical records were retrieved for a small proportion of veterans (784 records of clinic visits and 105 records of hospitalizations). To the extent that records were available, the self-reported reasons for clinic visits (e.g., headaches, rash) and reasons for hospitalizations (e.g., appendicitis) correlated well with the reasons documented in the written records.

Overall, the results of this survey indicate that the self-reported health of Gulf War veterans is not as good as the self-reported health of non-deployed veterans, as measured by functional impairment, health care utilization, symptoms, and medical conditions. These results are consistent with other large population-based studies of Gulf War veterans in Iowa, Canada, and the United Kingdom. (Iowa, 1997; Goss Gilroy, 1998; Unwin, et al, 1999) The final stage of this national VA survey includes a medical evaluation of 1,000 Gulf War veterans and their families and 1,000 non-deployed veterans and their families, which will be completed in 2001.

2. Doebbeling, BN, Clarke, WR, Watson, D, Torner, JC, Woolson, RF, Voelker, MD, Barrett, DH, and Schwartz, DA. Is there a Persian Gulf War syndrome? Evidence from a large population-based survey of veterans and nondeployed controls. *American Journal of Medicine* 2000; 108(9):695-704. **(HHS-1)**
In 1995-96, a randomly selected sample of Iowa military personnel was surveyed using a telephone interview. (Iowa, 1997) A total of 1,896 Gulf War veterans and 1,799 non-deployed veterans participated (76% response rate). The Gulf War veterans came from 889 different units that had been widely distributed during the war, which reflected a broad range of geographic and environmental exposures. The objective of this study was to look for evidence of a novel illness that was unique to Gulf War veterans, and that was not seen in a comparable military population. (Doebbeling, et al, 2000) Gulf War veterans reported significantly higher rates of 123 of 137 (90%) symptoms during the past year, compared to the controls. These symptoms were related to all organ systems. The authors concluded that the increased prevalence of nearly every symptom among Gulf War veterans is "difficult to explain pathophysiologically as a single condition."

A statistical technique, factor analysis, was used to identify patterns of symptoms. This technique was used separately with the symptoms of the Gulf War veterans and with the symptoms of the controls, to determine if the patterns were unique. Factor analysis identified three patterns of symptoms that correlated with each other, among the Gulf War veterans. The three patterns included: 1) joint stiffness, myalgia, polyarthralgia, numbness or tingling, headaches, and nausea; 2) feeling nervous, worrying, feeling distant or cut-off, depression, and anhedonia; and 3) anxiety attacks, a racing, pounding or skipping heart, attacks of chest pain or pressure, and attacks of sweating.

However, these three patterns were highly replicable in the controls, that is, the patterns were almost identical (convergent correlations of 0.95 to 0.98). The authors concluded that the identification of the same patterns of symptoms among both groups is "not consistent with the existence of a unique Gulf War syndrome;" and the results should "help alleviate concern about an unexplained 'mystery illness.' "

3. Knoke, JD, Smith, TC, Gray, GC, Kaiser, KS, and Hawksworth, AW. Factor analysis of self-reported symptoms: does it identify a Gulf War syndrome? *American Journal of Epidemiology* 2000; 152(4):379-388. **(DoD-1A)**

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In 1994-95, an evaluation was performed of 98 symptoms reported by 524 Gulf War veterans and 935 non-deployed veterans, who were members of 14 Seabee commands, and who had remained on active-duty from 1991 until the time of the study. (Gray, et al, 1999a) A questionnaire assessed postwar symptoms and environmental exposures during the war, and it screened for chronic fatigue syndrome, post-traumatic stress disorder, and psychological symptoms (Hopkins Symptom Checklist). The objective of this study was to investigate the usefulness of a statistical technique, factor analysis, in characterizing a Gulf War syndrome. (Knoke, et al, 2000)

Factor analysis applied to the symptoms of Gulf War veterans yielded five patterns of symptoms. These were three patterns of psychological symptoms that derived from the Hopkins Symptom Checklist, one pattern that suggested clinical depression, and one pattern that contained various physical symptoms that are often reported by Gulf War veterans. Factor analysis applied to non-deployed veterans yielded the same five patterns of symptoms. However, Gulf War veterans reported these patterns of symptoms with greater frequencies than the non-deployed veterans did. The authors concluded that "the symptoms and illnesses of Gulf War veterans closely reflect the symptoms and illnesses reported by non-deployed veterans; Gulf War veterans simply report more of the same symptoms and illnesses." The authors concluded that factor analysis did not identify a unique Gulf War syndrome.

Some of the earliest Gulf War veterans who reported postwar morbidity were members of a Navy Reserve unit, the Naval Mobile Construction Battalion 24 (24th Seabees). In 1994, 249 members of this unit participated in a survey (41% response). Factor analysis was used to evaluate the symptoms, which yielded six patterns of symptoms. The authors of this study interpreted these six patterns to be "unique Gulf War syndromes." (Haley, et al, 1997a) A major strength of the active-duty Seabee population included in the 2000 study is that they had served in the same tasks (construction work) and at the same sites as the symptomatic Reserve members in the 24th Seabees. (Gray, et al, 1999a; Knoke, et al, 2000) Four of the five symptom patterns in the 2000 study, found in both Gulf War veterans and non-deployed veterans, resembled four of the six symptom patterns in the 1997 Haley study. The authors of the 2000 study stated that the conclusion of the 1997 Haley study regarding unique syndromes "was premature and would not have been reached had a corresponding analysis on an appropriate control group been performed."

Four major studies have been published that used factor analysis to identify patterns of symptoms. The health of thousands of Gulf War veterans has been evaluated in these four studies, involving the US Air Force; the US Navy; the US Army, Navy, and Air Force combined, and all three armed services in the United Kingdom, combined. (Fukuda, et al, 1998; Knoke, et al, 2000; Doebbeling, et al, 2000; Ismail, et al, 1999) In each of these studies, the patterns of symptoms reported by Gulf War veterans were similar to the patterns reported by non-deployed veterans. The results of these four studies are consistent with the conclusion of a recent Institute of Medicine report, which was, "Thus far, there is insufficient evidence to classify veterans' symptoms as a new syndrome. . . All Gulf War veterans do not experience the same array of symptoms. Thus, the nature of the symptoms suffered by many Gulf War veterans does not point to an obvious diagnosis, etiology, or standard treatment." (Institute of Medicine, 2000)

4. Bell, NS, Amoroso, PJ, Williams, JO, Yore, MM, Engel, CC, Senier, L, DeMattos, AC, and Wegman, DH. Demographic, physical, and mental health factors associated with deployment of U.S. Army soldiers to the Persian Gulf. *Military Medicine* 2000; 165(10):762-772. **(DoD-73)**

The objective of this study was to describe the prewar demographic, occupational and physical health status of active duty Army soldiers who deployed to the Persian Gulf and to compare these with the same characteristics of soldiers on active duty who did not deploy. (Bell, et al, 2000) Differences in demographic variables, health behaviors, risk-taking behaviors, and mental or physical health could influence a soldier's postwar health status. Such factors could also influence the chance of selection for deployment. This study expands on previous studies, by examining a broader range of prewar health status measures for all Army soldiers on active duty during the war, followed over a longer prewar period. A total of 675,626 active duty Army soldiers were followed from 1980, or

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upon entry into the Army if they joined after 1980, to the beginning of the Gulf War. About 38% of these soldiers were deployed to the Gulf War between August 1, 1990 and June 14, 1991.

The Total Army Injury and Health Outcomes Database were used to describe the study population's demographic, health, and behavioral characteristics. In comparison to soldiers who did not deploy, Gulf War veterans were more likely to have the following characteristics: male, fewer than 5 years of time in service, younger than 25 years of age, black, single, high school education, fewer dependents, and junior enlisted rank. Deployed soldiers were more likely to be in certain military occupational specialties: infantry/gun crews, mechanical repair, or crafts workers (e.g., plumbers, metal workers). Deployed soldiers were more likely to have received hazardous duty pay before July 1990. Compared to non-deployed soldiers, deployed soldiers received this hazardous duty pay more frequently for parachuting or for potential exposure to hostile fire before July 1990.

Rates of hospitalizations in military hospitals were evaluated from 1980 to August 1, 1990, for all causes and all injuries. After adjustment for demographic and occupational factors, deployed soldiers were at slightly, but significantly, decreased risk of hospitalization for all causes, particularly in the three years before the war. This implies that the prewar health status of deployed soldiers was as good as or better than the prewar health status of non-deployed veterans. For most years between 1980 and 1990, the risk of hospitalization for injuries was higher among the deployed soldiers, even after control of potential confounders. This could imply a greater frequency of risk-taking behavior. In addition, male gender, young age, less education, single marital status, less time in service, and receipt of two or more types of hazardous duty pay during one pay period were all significant predictors of prewar hospitalization for injuries. The authors concluded that "postwar excess injury risk may be explained in part by a propensity for greater risk-taking, which was evident before and persisted throughout the war."

5. Nisenbaum, R, Barrett, DH, Reyes, M, and Reeves, WC. Deployment stressors and a chronic multisymptom illness among Gulf War veterans. *Journal of Nervous and Mental Disease* 2000; 188(5):259-266. **(HHS-2)**

The Centers for Disease and Control Prevention performed a survey of four Air Force units in 1995 to compare symptoms and risk factors among 1,155 Gulf War veterans and 2,520 non-deployed veterans. (Fukuda, et al, 1998) A working case definition of a chronic multisymptom illness was developed, which included 1 or more chronic symptoms from at least 2 of 3 categories (fatigue, mood and cognition symptoms, and musculoskeletal symptoms). The prevalence of mild-to-moderate cases and severe cases among Gulf War veterans was 39% and 6%, respectively, compared with 14% and 0.7% among non-deployed veterans. The objective of this analysis was to determine the association between the chronic multisymptom illness and self-reported stressors during the war, among 1,002 Gulf War veterans with complete data. (Nisenbaum, et al, 2000)

Increasing age, female gender, non-white race, current smoking, and enlisted rank were significantly associated with illness. Severe illness and mild-to-moderate illness were significantly associated with self-reports of pyridostigmine bromide (PB) use; insect repellent use on a regular basis; and the belief that chemical or biological weapons (CBW) were used against them. The authors categorized these risk factors as chemical stressors (PB and insect repellent) and emotional stressors (belief in use of CBW). Severe illness was also associated with injuries during the war that required medical attention. The authors categorized injuries as physical stressors.

The authors suggested that these chemical, emotional, and physical stressors might have triggered physiological and psychological stress responses, thereby impacting the health of some veterans. They cautioned, however, that the self-reports of exposures could be subject to recall bias. In particular, the reports could be strongly influenced by extensive media coverage or by psychological states, such as PTSD, which were not controlled in the analysis.

6. Ismail, K, Blatchley, N, Hotopf, M, Hull, L, Palmer, I, Unwin, C, David, A, and Wessely, S. Occupational risk factors for ill health in Gulf veterans of the United Kingdom. *Journal of Epidemiology and Community Health* 2000; 54(11):834-838. **(DoD-39)**

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In 1997-98, a mailed survey was conducted among a randomly selected sample of 3,297 British servicemen, who had deployed to the Gulf War (70% response rate). (Unwin, et al, 1999) The objective of this particular analysis was to examine whether certain military and deployment factors were associated with increased reporting of ill health in Gulf War veterans, after adjustment for potential sociodemographic confounders. (Ismail, et al, 2000) Because there is no general consensus on the definition of ill health in Gulf War veterans, the authors used two physical health status measures and two mental health status measures. Physical ill health was measured as fatigue, using the Chalder Fatigue Questionnaire, and as a multisymptom illness, based on the Centers for Disease Control and Prevention working case definition. (Fukuda, et al, 1998) Psychological ill health was measured as psychological distress, using the General Health Questionnaire-12, and as a measure of post-traumatic stress reaction.

There was a significant relationship between decreasing military rank and all four health outcomes. Privates were about two to three times more likely to report ill health than officers were. Rank may be considered as a proxy indicator for socioeconomic status, which is associated with both physical and psychological morbidity in civilian populations. At the time of the survey, 57% of the Gulf War veterans had left the armed forces. Veterans who had been discharged were about two times more likely to report all four health outcomes. Gulf War veterans who were divorced or separated were about two times more likely than married veterans to report psychological distress or post-traumatic stress reaction, which is similar to associations seen in civilian populations. There was a highly significant linear trend between smoking and all four health outcomes.

The authors hypothesized that Royal Army personnel might have been in closer geographical proximity to some of the environmental exposures implicated during the war, than Royal Navy or Royal Air Force personnel. Nonetheless, Army personnel reported the same levels of health problems as Navy and Air Force personnel. Combat troops, such as the infantry, reported the same levels of health problems as support troops, such as engineering or medical personnel. One possible explanation is that the ground war only lasted four days, whereas chemical and biological weapons were a real threat for several months and beyond the immediate geographical frontline.

7. Hotopf, M, David, A, Hull, L, Ismail, K, Unwin, C, and Wessely, S. Role of vaccinations as risk factors for ill health in veterans of the Gulf War: cross-sectional study. *British Medical Journal* 2000: 320(7246):1363-1367. **(DoD-39)**

In 1997-98, a mailed survey was conducted among a randomly selected sample of 3,284 British servicemen, who had deployed to the Gulf War (70% response rate). (Unwin, et al, 1999) The objective of this particular analysis was to explore the relationship between ill health after the Gulf War and vaccines received before or during the conflict. (Hotopf, et al, 2000) Because recall bias can be a problem, this study only used data from veterans who reported that they still had their vaccine records (n=923; 28% of responders). The associations of vaccinations with six health outcomes were evaluated. These were: fatigue, using the Chalder Fatigue Questionnaire: multisymptom illness, based on the Centers for Disease Control and Prevention working case definition (Fukuda, et al, 1998); psychological distress, using the General Health Questionnaire-12; a measure of post-traumatic stress reaction; health perception, using the SF-36; and physical functioning, using the SF-36.

Multiple vaccines (defined as 5 or more vaccines) received before deployments were associated with only one of the six health outcomes (post-traumatic stress reaction). In contrast, five of the six outcomes were associated with multiple vaccines received during deployment (all but post-traumatic stress reaction). The strongest association was with the CDC multisymptom illness (odds ratio of 5.0). In addition, the associations were evaluated between multiple vaccinations and three atopic conditions (asthma, hay fever, and eczema or psoriasis). There were no significant associations between vaccines, before or during deployment, and these atopic conditions. Anthrax vaccination was not associated with the CDC multisymptom illness, whether given before or during deployment.

The pattern of vaccines given before deployment was different from the pattern given during deployment, with more "routine" vaccines and

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fewer biological warfare vaccines given before deployment. In addition, there were probably reasons why some veterans received vaccines during the war rather than before it, including, veterans who received vaccines during deployment tended to have been deployed earlier; and Army personnel were more likely to receive multiple vaccines during deployment than Navy or Air Force personnel. The authors concluded that multiple vaccines in themselves do not seem to be harmful, in that the combination of multiple vaccines before deployment seemed safe. However, multiple vaccines, combined with the "stress" of deployment, might be associated with ill health. The authors recommended that "every effort should be made to maintain routine vaccinations during peacetime;" or at least, "early vaccination with as long a gap as possible before the actual stress of deployment would be prudent."

This study has raised a number of methodological concerns, in particular, that the restricted sample of 923 veterans who kept their vaccine records might be biased in some way. (Shaheen, 2000; Bolton, et al, 2001) For example, symptomatic veterans who kept their vaccine records might have discerned the study hypothesis, and therefore over-reported the vaccines they received. The authors are continuing their investigation, using a case-control design comparing healthy and ill Gulf War veterans, and relying on Ministry of Defence medical records to validate vaccine use. (Hotopf, et al, 2001)

8. Steele, L. Prevalence and patterns of Gulf War illness in Kansas veterans: association of symptoms with characteristics of person, place, and time of military service. *American Journal of Epidemiology* 2000; 152(10):992-1002. **(Not Federally funded; funded by state of Kansas)**

The objective of this study was to describe the prevalence and risk factors for health problems in 1,548 Gulf War veterans, in comparison with 482 non-deployed veterans. (Steele, 2000) Telephone interviews were conducted in 1998, achieving a 65% participation rate. Veterans currently living in Kansas in 1998 were eligible if they had served on active-duty some time between August 1990 and July 1991; and if they were separated or retired from the military or currently serving in the Reserve. Note that this sampling design lead to a skewed sample that contained 55% Reserve/National Guard, which is more than three times the proportion that served during the war (17% Reserve/National Guard). In other studies, Reserve/National Guard troops have invariably reported more symptoms than active-duty troops. (Iowa, 1997; Sharkansky, et al, 2000; Kang, et al, 2000)

47% of Gulf War veterans stated their health was worse in 1998 than in 1990, compared to 19% of non-deployed veterans. Gulf War veterans reported significantly higher rates of 10 of 21 medical conditions that were diagnosed or treated by a physician, such as depression, arthritis, migraine headache, or PTSD. Gulf War veterans reported significantly higher rates of all 37 of 37 symptoms. Notably, there were no reported differences in the rates of hospitalizations (1991 to 1998) or rates of application for VA disability benefits (1991 to 1998).

The author proposed a Kansas case definition of "Gulf War Illness" as the report of chronic symptoms in 3 or more of 6 domains (fatigue/sleep problems; pain symptoms; neurologic/cognitive/mood symptoms; gastrointestinal symptoms; respiratory symptoms; skin symptoms). This Kansas case definition was reported by 34% of Gulf War veterans and 8% of non-deployed veterans. The prevalence of this Kansas case definition was significantly associated with female gender, lower household incomes, lower education, enlisted status, and service in the Army. The prevalence of the CDC working case definition of multisymptom illness was also evaluated. (Fukuda, et al, 1998) This CDC case definition was reported by 47% of Gulf War veterans and 20% of non-deployed veterans. These data clearly indicate that Gulf War veterans and non-deployed veterans reported similar patterns of symptoms, although Gulf War veterans reported higher rates.

This study has substantial limitations, in particular, all the health data and most of the military data were self-reported. The author pointed out that "The considerable amount of media attention given to issues surrounding Gulf War-related health problems may have generated an increased awareness of symptoms among Gulf War veterans and an increased willingness to report them." For example, 70 of the 482 veterans, whose military records did not document that they had deployed, provided a history of Gulf War service. The self-reported

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deployment information of 50 of these veterans could not be verified, and their data was excluded in the analysis.

9. Smith, TC, Gray, GC, and Knoke, JD. Is systemic lupus erythematosus, amyotrophic lateral sclerosis, or fibromyalgia associated with Persian Gulf War service? An examination of Department of Defense hospitalization data. *American Journal of Epidemiology* 2000; 151(11):1053-1059. **(DoD-1B)**

The objective of this study was to examine the association of Gulf War service with three diseases: systemic lupus erythematosus (SLE), amyotrophic lateral sclerosis (ALS; also called Lou Gehrig's disease), and fibromyalgia (FM). All regular, active-duty personnel were included, who were on active duty during the period of August 8, 1990 to July 31, 1991. This included 551,841 service members who were deployed to the Gulf War and 1,478,704 service members who were not deployed. All military hospitalization data were evaluated for the three specific diseases, during the six-year follow-up period of August 1, 1991 to July 31, 1997.

During the six-year follow-up period, 36 Gulf War veterans and 160 non-deployed veterans were diagnosed with SLE. Gulf War service was not associated with a diagnosis of SLE (relative risk = 0.94). Other factors were significantly associated with a diagnosis of SLE: female sex (relative risk = 12.12); black race (relative risk = 3.61); and increasing age (relative risk = 1.04).

During the six-year follow-up period, 6 Gulf War veterans and 12 non-deployed veterans were diagnosed with ALS. Gulf War service was not associated with a diagnosis of ALS (relative risk = 1.66). One factor that was significantly associated with a diagnosis of ALS was increasing age. It is noteworthy that in 2000, the VA and DoD initiated an evaluation of the rates of ALS in Gulf War and non-deployed veterans, which will include data from VA, DoD, and civilian sources.

During the six-year follow-up period, 239 Gulf War veterans and 621 non-deployed veterans were diagnosed with FM. Gulf War service was significantly associated with a diagnosis of FM (relative risk = 1.23). Other factors were also significantly associated with a diagnosis of FM: female sex (relative risk = 3.28); increasing age (relative risk = 1.05); and hospitalization for any diagnosis other than FM, during the 12 months prior to the war (relative risk =1.63). Comprehensive Clinical Evaluation Program (CCEP) participation was a strong independent risk factor for FM. In particular, CCEP participants had 26.4 times the risk of being hospitalized for FM, compared with non-participants. It is important to note that symptoms of FM are being evaluated in three large Gulf War populations. These include questionnaires and physical examinations in the VA National Survey, Iowa study, and Portland study.

B. Brain and Nervous System Function

Overview:

Seven studies were published that focused on brain and nervous system function. These publications presented the results of studies conducted at five Federally funded research centers in Portland, Oregon, Boston, New Orleans, East Orange, New Jersey, and Washington, DC. Six of these studies included several hundred to several thousand individuals. Four of these publications relied upon neurological and/or psychiatric evaluations, rather than relying solely on self-administered surveys. (Storzbach, et al, 2000; Storzbach, et al, 2001; Fiedler, et al, 2000; Engel, et al, 2000)

The Portland Environmental Hazards Research Center performed a population-based case-control study of 2,022 Gulf War veterans. In this analysis, 241 Gulf War veterans who reported unexplained symptoms, which could not be diagnosed after a thorough evaluation, were compared with 113 healthy Gulf War veterans (controls). (Storzbach, et al, 2000) 87% of the cases had unexplained cognitive or psychological symptoms, 38% had unexplained musculoskeletal symptoms, and 42% had unexplained fatigue. There were 12 psychological tests and 6 neurobehavioral tests. Cases differed significantly from controls on all psychological test scales, in the direction of increased distress. There were significant differences on tests of posttraumatic stress disorder, psychiatric symptoms, and personality measures. Almost all psychological measures had effect sizes that were large. Case performance on all neurobehavioral tests was deficient compared to the controls. However, the deficiencies were statistically significant in only 2 of the 6 tests. All neurobehavioral tests had

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effect sizes that were small. The results of the neurobehavioral tests did not support a distribution-wide deficit in ill veterans. (Storzbach, et al, 2001) The performance of about 90% of the cases was similar to the controls. In contrast, about 10% of the cases performed significantly worse than the controls on almost all the neurobehavioral tests.

Ill Gulf War veterans consistently reported more combat stressors than healthy Gulf War veterans, such as deaths of unit members. This has been demonstrated in several different groups of ill veterans. These have included veterans with posttraumatic stress disorder (PTSD) (King et al, 2000; Benotsch, et al, 2000; Engel, et al, 2000); veterans with chronic fatigue syndrome (Fiedler, et al, 2000); and veterans with unexplained symptoms that could not be diagnosed after a thorough evaluation (Storzbach, et al, 2000).

In two large longitudinal studies in Boston and New Orleans, Gulf War veterans were evaluated soon after returning from the war, and again 1 to 2 years later. (King, et al, 2000; Benotsch, et al, 2000) In both cohorts, the number of reported PTSD symptoms increased significantly from Time 1 to Time 2, rather than ameliorating over time. In the Boston cohort, the number of reported depression symptoms increased significantly from Time 1 to Time 2. (King, et al, 2001) Also, in the Boston cohort, the number of reported combat stressors increased significantly from Time 1 to Time 2.

Three studies evaluated the relationship between psychological symptoms and different types of strategies for coping with combat-related stress. (Sharkansky, et al, 2000; Benotsch, et al, 2000; Fiedler, et al 2000) In other studies, efforts to deal directly with the stressor (problem-focused or approach-based coping) tended to be associated with better outcomes, compared to attempts to alleviate the emotional distress associated with the stressor or efforts to avoid the stressor (emotion-focused or avoidance-based coping).

A subgroup of 1,058 members of the Boston cohort were selected at Time 1 because they had identified a combat-related experience as their most stressful event during the Gulf War (e.g., deaths of unit members). (Sharkansky, et al, 2000) At Time 1, increased PTSD symptoms were predicted by the number of combat-related stressors, female gender, younger age, Reserve/National Guard status, enlisted status and by proportionately greater reliance on avoidance-based coping strategies during the war. At Time 2, PTSD symptoms were predicted by PTSD symptoms at Time 1, combat exposure, Reserve/National Guard status, and intervening stressors (such as divorce or loss of a home due to a disaster, between Time 1 and Time 2). At Time 1, depression symptoms were predicted by combat exposure, female gender, and greater reliance on avoidance-based coping strategies during the war. At Time 2, depression symptoms were predicted by combat exposure, intervening stressors, and greater reliance on avoidance-based coping strategies during the war.

In the New Orleans cohort, problem solving as a positive coping strategy decreased significantly from Time 1 to Time 2, while the disadvantageous strategy of avoidance-based coping increased significantly over time. (Benotsch, et al, 2000) Both avoidance-based coping at Time 1 and decreased family cohesion at Time 1 significantly predicted PTSD symptoms at Time 2. These relationships between coping, family cohesion, and PTSD remained significant, after controlling for emotional distress at Time 1, reported number of war zone stressors, and enlisted status.

The New Jersey Environmental Hazards Research Center performed a study to compare several risk factors among 58 Gulf War veterans, who met clinical criteria for chronic fatigue syndrome (CFS), with 45 healthy Gulf War veterans. (Fiedler, et al, 2000) Veterans with CFS reported significantly more negative life events during the 6 months following the war. Veterans with CFS reported more avoidance-based coping strategies. The authors concluded that Gulf War veterans with medically unexplained fatigue could be significantly differentiated from healthy veterans, on the basis of stressors both during and since the war (e.g., combat stressors, negative life events); personality traits (e.g., neuroticism, the tendency to experience negative, distressing emotions); and avoidance-based coping strategies.

The relationship of the diagnosis of PTSD to physical symptoms was evaluated, after controlling for the possible effects of medical diagnoses and reported environmental exposures. (Engel, et al, 2000) Symptoms and diagnoses were based on the medical records of 21,232

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participants in the DoD Comprehensive Clinical Evaluation Program. Physical symptoms were determined using a 16-item checklist. Veterans diagnosed with PTSD were more likely to report each of the 16 physical symptoms. 5.2% of veterans were diagnosed with PTSD, who reported a mean of 6.7 physical symptoms. 31.4% of veterans were diagnosed with other psychological conditions, who reported a mean of 5.3 physical symptoms. 63.4% of veterans were diagnosed with non-psychological conditions, who reported a mean of 3.1 physical symptoms. The positive association between PTSD and the number of physical symptoms remained almost unchanged, even after controlling for the potentially confounding effects of other psychological diagnoses, medical diagnoses, and reported environmental exposures. The authors recommended that "Clinicians should carefully consider PTSD when evaluating Gulf War veterans with vague, multiple, or medically-unexplained physical symptoms."

Brain and Nervous System Function-Individual Studies:

1. Storzbach, D, Campbell, KA, Binder, LM, McCauley, L, Anger, WK, Rohlman, DS, and Kovera, CA. Psychological differences between veterans with and without Gulf War unexplained symptoms. *Psychosomatic Medicine* 2000; 62(5):726-735. **(VA-6)**

The Portland Environmental Hazards Research Center performed a population-based case-control study, which was designed to compare Gulf War veterans, who reported unexplained symptoms that could not be diagnosed, with healthy Gulf War veterans (controls). (McCauley, et al, 1999) Cases and controls were selected from respondents to a questionnaire, which was mailed to a random sample of 2,022 Gulf War veterans who lived in Oregon or Washington. Questions focused on chronic fatigue, psychological/cognitive symptoms, and musculoskeletal symptoms. Potential cases of unexplained illnesses and healthy controls were recruited for clinical evaluations within 3 months of returning the mail questionnaire. The evaluations included a physical exam with an emphasis on neurological and musculoskeletal systems, a detailed health history, and psychological and neurobehavioral tests. Potential cases were excluded from the study if they had explainable diagnoses, or exclusionary diagnoses, or if they denied having case symptoms at the time of clinical evaluation.

The objective of this particular analysis was to compare measures of psychological and neurobehavioral functioning between 241 Gulf War veterans with unexplained symptoms and 113 healthy Gulf War veterans. (Storzbach, et al, 2000) 87% of the cases had unexplained cognitive or psychological symptoms, 38% had unexplained musculoskeletal symptoms, and 42% had unexplained fatigue. 48% had 2 or more symptom types. There were 12 psychological tests and 6 neurobehavioral tests, which provided objective measures of memory, concentration, complex cognitive processing, and response speed.

Cases were significantly different from controls on all psychological test scales, in the direction of increased distress. There were significant differences on tests of posttraumatic stress disorder, psychiatric symptoms, and personality measures. Almost all psychological measures had effect sizes that were large. There were also significant differences on all SF-36 scales of self-rated physical health, mental health, and health-related function. Cases reported significantly greater exposure to combat stressors. Case performance on all neurobehavioral tests was deficient compared to the controls. However, the deficiencies were statistically significant in only 2 of the 6 tests (2 tests of memory, attention, and response speed). All neurobehavioral tests had effect sizes that were small.

All statistically significant psychological and neurobehavioral variables were entered as candidate variables into a logistic regression analysis, with case disposition as the dependent variable (case vs. control). Four psychological variables and no neurobehavioral variables entered into the model. The four tests were: the Hs scale of the MMPI-2, a measure of somatic symptoms associated with psychological distress; the Mississippi PTSD scale, a measure of symptoms associated with wartime posttraumatic stress; the SCIS, a measure of subjective experience of cognitive impairment; and the SF-36 General Health, a measure of perceived health. The model successfully classified 86% of the subjects overall (89% of the cases and 80% of the controls). The authors concluded that "The high degree of accurate classification based on psychological tests

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highlights the relative prominence of the psychological measures, suggesting that they discriminate veterans with health symptoms from those without symptoms and should be retained as part of future batteries used to assess Gulf war veterans."

2. Storzbach, D, Rohlman, DS, Anger, WK, Binder, LM, and Campbell, KA. Neurobehavioral deficits in Persian Gulf veterans: additional evidence from a population-based study. *Environmental Research* 2001; 85(1):1-13. **(VA-6)**

The Portland Environmental Hazards Research Center performed a population-based case-control study. (McCauley, et al, 1999; Anger, et al, 1999; Storzbach, et al, 2000) The objective of this particular analysis was to compare measures of psychological and neurobehavioral functioning between 239 Gulf War veterans with unexplained symptoms and 112 healthy Gulf War veterans. (Storzbach, et al, 2001) There were 12 psychological tests and 6 neurobehavioral tests, which provided objective measures of memory, concentration, complex cognitive processing, and response speed.

There was a definite bimodal distribution on one of the neurobehavioral tests, the latency time on the Oregon Dual Task Procedure (ODTP), a test of motivation, attention, and memory. (Storzbach, et al, 2001) Subjects were divided into 30 individuals who were slow on this test ("slow ODTP," including 27 cases and 3 controls), 212 "other cases," and 109 controls. Both subgroups of slow ODTP and other cases had significantly higher levels of abnormal results on the psychological tests than the controls. The performance of the other cases was similar to the controls on the neurobehavioral tests, whereas, the slow ODTP subgroup performed significantly worse than the controls on almost all of the neurobehavioral tests.

On the Armed Forces Qualifying Test, which each recruit must take, there were no differences between the other cases and the controls. In contrast, the subgroup of slow ODTP had significantly lower scores on this test than the controls. This raises the possibility that the neurobehavioral performance of the slow ODTP is attributable to pre-Gulf War ability. In addition, a significantly higher percentage of slow ODTP reported seeking medical treatment during the Gulf War (73%), than the other cases (54%) or the controls (28%). The authors suggested that this difference in seeking medical attention might mean that the slow ODTP group could have been from the "unhealthy end" of the Gulf War population at the time of their deployment.

The authors pointed out that deficits on neurobehavioral tests are not markers of brain dysfunction. Cognitive abnormalities are nonspecific and associated with various conditions, including somatoform disorders and PTSD. The authors concluded that their results did not support a distribution-wide neurobehavioral deficit in ill veterans. If a distribution-wide deficit had been demonstrated, it would have important implications for the understanding of Gulf War veterans with unexplained illnesses. Instead, it appeared that a small proportion of quite symptomatic veterans, who responded very slowly on a recognition memory test, also demonstrated deficits on other tests of response speed, memory and attention.

3. King, DW, King, LA, Erickson, DJ, Huang, MT, Sharkansky, EJ, and Wolfe, J. Posttraumatic stress disorder and retrospectively reported stressor exposure: A longitudinal prediction model. *Journal of Abnormal Psychology* 2000; 109(4):624-633. **(VA-7)**

The Boston Environmental Hazards Research Center has been following 2,949 Army veterans who processed through Fort Devens, Massachusetts, at the time of their return from the Gulf War in 1991. (Wolfe, et al 1996) These veterans have been evaluated at four time points, starting within five days of their return to the U.S., and again at 18 to 24 months (Time 2), four years (Time 3), and six years (Time 4). The study population includes about 72% Reserve/National Guard and about 28% active duty, and it includes 84 units with a wide range of military occupational specialties from several regions of the U.S. At Time 2, 2,313 subjects participated, which was 78% of the original cohort.

The objective of this particular analysis was to use longitudinal data to evaluate risk factors for posttraumatic stress disorder (PTSD) over time. (King, et al, 2000) Comparisons were made at Time 1 and Time 2, focusing on responses on the Mississippi Scale for Combat-Related PTSD, a well-validated survey instrument. The Laufer

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Combat Exposure Scale, a validated questionnaire, was used to measure combat stressor exposure. It was supplemented by additional questions intended to represent events unique to the Gulf War, for a total of 31 combat stressors. This analysis examined the association between PTSD and retrospective self-reports of exposure to highly stressful events. In particular, it focused on the question: To what extent does PTSD symptom severity alter later reports of stressor exposure?

Mean scores on both the reported stressor measure and the PTSD scale increased between Time 1 and Time 2. On the reported stressor measure, only 9% of the subjects responded completely consistently at Time 1 and Time 2. The mean number of changes was 3 out of 31 questions. The number of no-to-yes changes was two times the number of yes-to-no changes, which means that persons who initially disavowed a particular exposure later endorsed that event. Some questions changed by as much as 30% over time. This is puzzling, since some of these exposures were serious, dramatic, and distressing events, such as "Did you see Americans or other troops killed or wounded?"

The number of changes in the stressor measure had a significant, although small, association with the severity of PTSD symptoms at both Time 1 and Time 2. One possible explanation is that increased reporting as a function of PTSD symptoms might be related to efforts to explain distress in terms of prior war experiences; veterans experiencing psychological problems might seek justification by increasing their endorsement of possible causal events. However, there was little evidence that the severity of Time 1 PTSD symptoms significantly influenced reporting of stressor exposure at Time 2. Stressor exposures reported at Time 2 were primarily related to stressor exposures reported at Time 1. The authors concluded that "changes in reporting past events over time should not necessarily be a source of undue alarm that Time 1 PTSD symptom severity accounts for those changes."

4. Sharkansky, EJ, King, DW, King, LA, Wolfe, J, Erickson, DJ, and Stokes, LR. Coping with Gulf War combat stress: mediating and moderating effects. *Journal of Abnormal Psychology* 2000; 109(2):188-197. **(VA-7)**

The Boston Environmental Hazards Research Center has been performing a prospective study of 2,949 Army veterans since their return from the Gulf War in 1991. (Wolfe, et al, 1996; King, et al, 2000) The objective of this particular analysis was to evaluate the relationship between psychological symptoms at Time 1 and Time 2 and different types of strategies for coping with combat-related stress. (Sharkansky, et al, 2000) The hypothesis was that greater reliance on avoidance-based coping would be associated with worse outcomes (higher levels of symptoms of PTSD and depression). Coping is defined as conscious efforts to manage internal or external stressors that the individual perceives as exceeding existing resources. In previous studies, efforts to deal directly with the stressor (problem-focused or approach-based coping) tended to be associated with better outcomes, compared to attempts to alleviate the emotional distress associated with the stressor or efforts to avoid the stressor (emotion-focused or avoidance-based coping).

1,058 subjects (36% of the total cohort at Time 1) were selected for this analysis. These subjects were selected because they had identified a combat-related experience as their most stressful event during the Gulf War (for example, a SCUD missile attack or deaths of unit members). They were asked to identify which of 48 possible coping strategies they used to deal with the most stressful event. PTSD and depression symptoms were assessed with two validated questionnaires, the Mississippi Scale for Combat-Related PTSD and the Brief Symptom Inventory.

At Time 1, increased PTSD symptoms were predicted by combat exposure (number of combat-related stressors), female gender, younger age, Reserve/National Guard status, and enlisted status. PTSD symptoms at Time 1 were also predicted by proportionately greater reliance on avoidance-based coping strategies during the war. At Time 2, PTSD symptoms were predicted by PTSD symptoms at Time 1, combat exposure, Reserve/National Guard status, and intervening stressors (such as divorce or loss of a home due to a disaster, between Time 1 and Time 2). PTSD symptoms at Time 2 were not predicted by coping strategies during the war. At Time 1, depression symptoms were predicted by combat exposure, female gender, and proportionately greater reliance on avoidance-based coping strategies during the war. At Time 2, depression symptoms were predicted by

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combat exposure, intervening stressors, and proportionately greater reliance on avoidance-based coping strategies during the war.

The authors concluded: "These data suggest that soldiers who actively attempt to cope with combat-related stress by analyzing and making efforts to solve the problem, seeking guidance and support from others, and positively reappraising the situation fared better initially and in the long run than those who coped by avoiding thinking about the situation, getting involved with distracting activities, letting off emotional steam, or resigning themselves to the situation." They stated their data suggested "the potential value of training military personnel in more active methods of coping with war zone stress to aid in the prevention of some combat-related disorders."

5. Benotsch, EG, Brailey, K, Vasterling, JJ, Uddo, M, Constans, JI, and Sutker, PB. War zone stress, personal and environmental resources, and PTSD symptoms in Gulf War veterans: a longitudinal perspective. *Journal of Abnormal Psychology* 2000; 109(2):205-213. **(VA-12)**

The New Orleans Veterans Affairs Medical Center has been following 348 Gulf War veterans since 1991, including 180 members of the Louisiana National Guard and 168 members of the Army, Marine, Air Force, or Navy Reserve. (Sutker, et al, 1995; Brailey, et al, 1998) The initial assessments occurred an average of 14 months after the end of hostilities (Time 1). Follow-up assessments occurred an average of 13 months later (Time 2). The assessments were identical at both time points. The 348 participants available for retesting were from an original sample of 828 (42% response at Time 2). Attrition was due to reservists having left the military, having been transferred to another unit, or being absent from drill exercises on the scheduled retest date. Although there did not appear to be important psychological differences between the participants who were retested and those who were lost to follow-up, the authors acknowledged the high rate of attrition as a limitation.

The objective of this particular analysis was to examine the relationships of resources and PTSD symptoms at two time points, including personal resources (personality hardiness and coping styles), environmental resources (social support and family relationships), emotional distress, and potentially protective demographic variables (age and rank). (Benotsch, et al, 2000) Forty-two percent of participants reported experiencing at least one potentially traumatizing event during the war, such as encountering casualties. Probable diagnoses of PTSD were based on the PTSD Checklist, and psychological distress was assessed with the Brief Symptom Inventory (BSI), in particular, anxiety, depression, and hostility. PTSD symptoms increased significantly from Time 1 to Time 2. 39 veterans (11%) scored high enough for a probable PTSD diagnosis at Time 2. Veterans identified as having PTSD at Time 2 reported significantly greater war zone stress than veterans without PTSD.

The positive personal resources of hardiness, commitment, and control decreased significantly from Time 1 to Time 2. Problem solving as a positive coping strategy decreased significantly over time, while the disadvantageous strategy of avoidance-based coping increased significantly over time. There were no significant decreases in the environmental resources of family or other social support. Both avoidance-based coping and decreased family cohesion at Time 1 significantly predicted PTSD symptoms at Time 2. These relationships remained significant after controlling for emotional distress on the BSI at Time 1, perceived stressfulness of the war zone, and enlisted vs. officer status.

The authors concluded that "Troops returning from a war zone may be faced with the dual challenge of simultaneously accommodating to increasing emotional distress and decreasing personal resources." For example, PTSD symptoms are likely to disrupt social relationships, and the loss of such support limits the subsequent available options to manage new sources of stress, leading, in turn, to increased emotional distress. The authors cautioned that the original directionality of cause and effect between PTSD and resources could not be determined conclusively, because of a lack of pre-war information on coping strategies, social support, and psychopathology.

6. Fiedler, N, Lange, G, Tiersky, L, DeLuca, J, Policastro, T, Kelly-McNeil, K, McWilliams, R, Korn, L, and Natelson, B. Stressors, personality traits, and coping of Gulf War veterans with chronic fatigue. *Journal of Psychosomatic Research* 2000; 48(6):525-535. **(VA-5)**

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The New Jersey Environmental Hazards Research Center performed a study of veterans who were enrolled in the VA Persian Gulf Registry. (Kipen, et al, 1999; Lange, et al, 1999) The objective of this study was to compare several risk factors among Gulf War veterans, who met clinical criteria for chronic fatigue syndrome (CFS), with healthy Gulf War veterans. (Fiedler, et al, 2000) Fifty-eight veterans who reported severe fatigue and forty-five healthy veterans were selected from 1,161 veterans who were enrolled in the VA Persian Gulf Registry, and who had participated in a large mailed questionnaire in 1995-1996. This particular analysis evaluated several risk factors, including the occurrence of self-reported war-related and non-war-related stressors, personality variables, and coping styles.

These 103 veterans underwent an intensive medical history, physical exam, and blood tests. To assess Axis I psychiatric disorders according to DSM-III-R criteria, trained personnel administered a computerized standardized diagnostic interview. The 58 CFS cases were divided into two groups: 35 veterans with Axis I psychiatric illnesses within the past 12 months (CFS/psychiatric illness), and 23 veterans with no Axis I illnesses since the war (CFS/no psychiatric illness). The healthy veterans had no Axis I psychiatric illnesses since the war. Both CFS groups reported significantly more combat exposures than the healthy controls.

There were no differences among the three groups for non-war-related negative life events during the 6 months before the war or during the war. Both CFS groups reported significantly more negative life events during the 6 months following the war. Both CFS groups reported more avoidance-based coping strategies, with the CFS/psychiatric illness group reporting the highest levels of these strategies. The CFS/psychiatric illness group reported the most significant levels of negative affective state ("neuroticism," the tendency to experience negative, distressing emotions), as well as having the most difficulty in clearly identifying and communicating this distress accurately (highest level of "alexithymia"). The authors suggested that these personality attributes likely contributed to their difficulty in coping with adverse life events since the war.

The authors concluded that Gulf War veterans with medically unexplained fatigue could be significantly differentiated from healthy veterans on the basis of stressors both during and since the war (e.g., combat stressors, negative life events); personality traits (e.g., neuroticism, alexithymia); and avoidance-based coping strategies. They cautioned, however, that these results were restricted to Gulf War veterans with CFS who were willing to undergo extensive evaluation, and therefore, these results could not be generalized to all Gulf War veterans with unexplained symptoms.

7. Engel, CC, Liu, X, McCarthy, BD, Miller, RF, and Ursano, R. Relationship of physical symptoms to posttraumatic stress disorder among veterans seeking care for Gulf War related health conditions. *Psychosomatic Medicine* 2000: 62(6):739-745. **(Funded by DoD)**

The objective of this study was to test the relationship of the diagnosis of PTSD to physical symptoms, after controlling for the possible effects of medical diagnoses and reported environmental exposures. (Engel, et al, 2000) Symptoms and diagnoses were based on the medical records of 21,232 participants in the DoD Comprehensive Clinical Evaluation Program. Physical symptoms were determined using a 16-item checklist. The mean number of symptoms was 4.0. 16% of veterans reported no symptoms, while 9% reported 10 or more symptoms. Veterans diagnosed with PTSD were more likely to report each of the 16 physical symptoms. This was even true for symptoms that have no apparent relationship to the neurophysiology of PTSD, such as bleeding gums. The symptoms most frequently reported by patients with PTSD were fatigue, sleep disturbance, joint pain, memory loss, headache, depressed mood, and difficulty concentrating.

5.2% of veterans were diagnosed with PTSD, who reported a mean of 6.7 physical symptoms. 31.4% of veterans were diagnosed with other psychological conditions, who reported a mean of 5.3 physical symptoms. 63.4% of veterans were diagnosed with non-psychological conditions, who reported a mean of 3.1 physical symptoms. 7.6% of the latter group were diagnosed as healthy, who reported a mean of 1.2 physical symptoms. In addition, veterans diagnosed with PTSD reported significantly increased numbers of combat stressors,

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compared to veterans diagnosed with other psychological conditions or non-psychological conditions.

A second symptom count was also evaluated, after exclusion of 5 symptoms that potentially overlap with symptoms of PTSD and other psychological disorders (depressed mood, difficulty concentrating, memory loss, sleep disturbance, and fatigue). The same order was maintained, with PTSD patients reporting the most symptoms, even after exclusion of the 5 neuropsychiatric symptoms. The authors commented that "The relationship between PTSD and different physical symptoms is remarkably consistent, irrespective of whether a given symptom overlaps with the diagnostic criteria for PTSD."

A model was developed to predict the number of physical symptoms, including PTSD diagnoses, other psychological diagnoses, medical diagnoses, and reported environmental exposures. The positive association between PTSD and the number of physical symptoms remained almost unchanged, even after controlling for the potentially confounding effects of other diagnoses and environmental exposures. The authors cautioned that, because physical symptoms and psychological distress were assessed at the same time, it could not be determined whether distress caused amplified estimates of physical symptom severity or whether physical symptoms caused psychological distress. They recommended that "Clinicians should carefully consider PTSD when evaluating Gulf War veterans with vague, multiple, or medically-unexplained physical symptoms."

C. Diagnosis

Overview:

Two published studies in 2000 focused on the diagnosis of infectious diseases. (Lo, et al 2000; Specht, et al, 2000) The objectives of the first study were to compare the prevalence of antibodies *to Mycoplasma fermentans* among ill and healthy Gulf War veterans, and to determine the rates of seroconversion for this organism, based on specimens obtained before and after the war. (Lo, et al, 2000) The objective of the second study was to identify infectious diseases that are endemic to the Persian Gulf region, through review of pathology specimens obtained from Gulf War veterans. (Specht, et al, 2000)

Diagnosis-Individual Studies:

1. Lo, SC, Levin, L, Ribas, J, Chung, R, Wang, RY, Wear, D, and Shih, JW. Lack of serological evidence for *Mycoplasma fermentans* infection in army Gulf War veterans: A large-scale case-control study. *Epidemiology and Infection* 2000; 125(3):609-619. **(DoD-47)**

The objectives of this study were to compare the prevalence of antibodies to *Mycoplasma fermentans* among ill and healthy Gulf War veterans, and to determine the rates of seroconversion for this organism, based on specimens obtained before and after the war. (Lo, et al, 2000) There has been some speculation that the increased rate of symptom reporting in Gulf War veterans might be due to a previously undetected infectious organism. Some scientists and veterans have proposed occult infection with *Mycoplasma fermentans* as a possible cause.

The cases were 718 Army Gulf War veterans with chronic illnesses, which were often disabling, who had been evaluated in Phase II of the DoD Comprehensive Clinical Evaluation Program (CCEP). The controls were 2,233 Gulf War veterans who were randomly selected from Army veterans who had not enrolled in the CCEP. Cases were matched on age, gender, length of time deployed to the Gulf War, and length of time between the pre-war and post-war specimen collections. Despite the matching procedure, cases were significantly more likely to be non-white, married, and senior enlisted rank. These demographic differences were not associated with antibody status.

Before the war, 34 out of 718 cases (4.8%) and 116 out of 2,233 controls (5.2%) tested positive for antibodies to *Mycoplasma fermentans*. There were no differences in the rates of seroconversion, which means a negative result on the first antibody test, and a positive result on a later antibody test. 1.1% of cases and 1.2% of controls seroconverted. Based on a large sample size, these results provide no evidence that infection with *Mycoplasma fermentans* was associated with the development of chronic illnesses in the cases. The authors concluded that such infection is unlikely to play an

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important role in the disease process of chronic illnesses in Gulf War veterans.

The results of this study of Army Gulf War veterans are quite consistent with the results of a similar study of Navy Gulf War veterans. The Navy study compared the rates of antibodies to *Mycoplasma fermentans* between Gulf War veterans and non-deployed veterans. (Gray, et al, 1999b) Antibodies to *Mycoplasma* were present both before the war and after the war. The prevalence of antibodies was similar in Gulf War veterans and non-deployed veterans. Also, antibodies to *Mycoplasma* were not associated with postwar symptoms in either Gulf War veterans or non-deployed veterans.

2. Specht, CS, Lewin-Smith, MR, Kalasinsky, VF, Peterson, MR, and Mullick, FG. The surgical pathology and cytopathology of US Persian Gulf War military veterans: Identification of diseases endemic to the theater of operations. *Archives of Pathology and Laboratory Medicine* 2000; 124(9):1299-1301. **(Funded by DoD and VA)**

The objective of this study was to identify infectious diseases that are endemic to the Persian Gulf region, through review of pathology specimens obtained from Gulf War veterans. (Specht, et al, 2000) The Kuwait Registry was established at the Armed Forces Institute of Pathology to act as a repository for surgical pathology and cytopathology specimens, which were contributed from Veterans Affairs medical centers and military medical treatment facilities. These specimens were collected as part of routine screening or as part of workups for any presenting medical complaints.

Registry diagnoses from 1992 to December 1997 were reviewed to identify infectious diseases endemic to the Persian Gulf region. This long list of infections included leishmaniasis, malaria, hepatitis A, B, and C, anthrax, and several others. Most of these endemic infectious diseases produce acute medical illnesses that do not require biopsy or surgery, or do not leave long-term specific cellular changes. The only endemic diseases that would be detectable in pathology specimens would be associated with an etiologic agent that persists within the patient for a long time or associated with a persistent cellular abnormality.

Specimens were available from 2,852 Gulf War veterans. One patient in the Registry was diagnosed with hepatitis B (prevalence of 0.04%) and 15 patients were diagnosed with hepatitis C (prevalence of 0.58%). The prevalence of these two diseases in the Registry was well below the prevalence in the general US population. It is unknown whether these cases of hepatitis were contracted before, during, or after the war. No other endemic diseases were identified in the Registry specimens. Nearly all of the 32 cases of leishmaniasis among Gulf War veterans were diagnosed before the Registry started in 1992, so the Registry did not identify any of those cases.

D. Reproductive Health

Overview:

Two published studies focused on reproductive health among Gulf War veterans. (Araneta, et al, 2000; Frommelt, et al, 2000) The objective of the first study was to determine the prevalence of major congenital abnormalities among infants of Gulf War veterans and non-deployed veterans in Hawaii, a state that conducts statewide, population-based surveillance for birth defects. (Araneta, et al, 2000) The objective of the second study was to evaluate the rates of cervical cytology abnormalities among female Gulf War veterans and non-deployed veterans, using the results of Pap smears. (Frommelt, et al, 2000)

Reproductive Health-Individual Studies:

1. Araneta, MR, Destiche, DA, Schlangen, KM, Merz, RD, Forrester, MB, and Gray, GC. Birth defects prevalence among infants of Persian Gulf War veterans born in Hawaii, 1989-1993. *Teratology* 2000; 62(4):195-204. **(DoD-1G)**

The objective of this study was to determine the prevalence of major congenital abnormalities among infants of Gulf War veterans and non-deployed veterans in Hawaii, a state that conducts statewide, population-based surveillance for birth defects. (Araneta, et al, 2000) The personal identifiers of 684,645 Gulf War veterans (GWV) and 1,587,102 non-deployed veterans (NDV) were matched against birth certificate records of 99,545 live births in Hawaii between 1989 and 1993, to identify births to military personnel. 17,182 infants were identified who were born to military parents (22% GWV and 78% NDV). Notably, 19% of

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all infants born in Hawaii were born to military parents. GWV infants were less likely to have a mother in the military (5% GWV vs. 17% NDV). GWV infants were much more likely to have parent who served in the Marine Corps (41% GWV vs. 9% NDV). There were no differences in infants born to GWV and NDV in rates of low birth weight or prematurity.

Live births were matched to records in the Hawaii Birth Defects Program. 367 infants were identified with one or more of 48 major birth defects (2% of live births). The prevalence of the 48 birth defects was similar for GWV and NDV in the prewar period (January 1, 1989 to December 31, 1990); and for the postwar period (January 1, 1991 to December 31, 1993). The prevalence of birth defects was similar among GWV before and after the war. For both GWV and NDV, the most common types of birth defects were in the genitourinary system (hypospadias and epispadias). 202 women were GWV who gave birth in 1989 to 1993. 37 of these infants were conceived before the war and 165 of these infants were conceived during or after the war. Of these 165 infants, 6 were born with birth defects.

Only one previous, large study had a similar purpose; that is, to evaluate birth defects among Gulf War veterans. This earlier study had the limitation that it included only births in military hospitals. (Cowan, et al, 1997) The 2000 study has a number of strengths, in particular, the inclusion of births in both military and civilian hospitals. (Araneta, et al, 2000) It included parents who were currently in the Reserve or National Guard, and it included live births to parents who had separated from the military (40% of the GWV and 46% of the NDV, by the end of 1993). It included birth defects diagnosed through the first 12 months of life. The authors are continuing their investigation using the same methods in 5 additional states that perform active case surveillance for birth defects--Arizona, Arkansas, California, Georgia, and Iowa.

2. Frommelt, RA, Peterson, MR, and O'Leary, TJ. A comparison of cervical pathology between United States Air Force women who did and did not serve in the Persian Gulf War. *Annals of Epidemiology* 2000; 10(5):285-292. **(Funded by DoD)**

The objective of this study was to evaluate the rates of cervical cytology abnormalities among female Gulf War veterans and non-deployed veterans, using the results of Pap smears. (Frommelt, et al, 2000) More than 48,000 women deployed to the Gulf War, more than any other war in US history. Concerns about an increased frequency of abnormal Pap smears among women Gulf War veterans had been raised because of a 1995 survey of 525 female Air Force veterans. (Pierce, 1997) In 1995, Gulf War veterans reported a rate of 10.4% abnormal tests vs. 4.9% among non-deployed veterans.

Pap smears were collected as part of routine medical care at 28 military treatment facilities in 20 states and Japan, and forwarded to the Armed Forces Institute of Pathology. Pap smears were evaluated from 6,715 women on active-duty in the Air Force in 1994 (1,446 Gulf War and 5,269 non-deployed). Pap smears were also evaluated from a minority of these same women in 1995 and 1996. For the 3 years of data, there were no differences in the rates of abnormal Pap smears between the two groups of women. In 1994, 11.9% of the Pap smears in the Gulf War veterans were classified as "other than within normal limits," as were 10.9% in the non-deployed veterans (not significant).

The percentage of self-reported abnormal results among Gulf War veterans in the 1997 study was similar to the findings here (10.4% vs. 11.9%). (Pierce, 1997) In contrast, the percentage of self-reported abnormal results among the non-deployed veterans in the 1997 study was about half the findings here (4.9% vs. 10.9%). The authors stated that a possible explanation for the results of the 1997 study is that the non-deployed veterans failed to recall an abnormal Pap smear that did not require additional treatment, rather than a real increase in abnormal Pap smears among Gulf War veterans. The authors concluded that "Overall, the data provide little support for the hypothesis that a difference exists between Gulf War veterans and non-deployed veterans with respect to abnormal cervical cytology." (Frommelt, et al, 2000)

E. Mortality

Macfarlane, GJ, Thomas, E, and Cherry, N. Mortality among UK Gulf War veterans. *Lancet* 2000; 356(9223):17-21. **(Funded by UK Medical Research Council)**

One published study in 2000 focused on mortality in Gulf War veterans. The objective of

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this study was to document the mortality experience of all 53,462 British Gulf War veterans and a matched comparison group of 53,462 non-deployed veterans in the eight years since the war. (Macfarlane, et al, 2000) The comparison group was matched on age, sex, rank, and service. Individuals were identified on central registers of the UK Office for National Statistics, and information on death among subjects was obtained, including cause of death. Follow-up started on April 1, 1991, and continued to March 31, 1999. Person-years at risk were calculated until the earliest of: date of death, date of permanent emigration from the UK, or March 31, 1999.

Vital status was determined for 97.2% of the Gulf War veterans and 95.7% of non-deployed veterans. The cohorts were 98% male and 72% were 30 years or younger on January 1, 1991. There were 395 deaths among the Gulf War veterans (0.7%) and 378 deaths among the non-deployed veterans (0.7%). Mortality due to disease-related causes was slightly lower in the Gulf War veterans (mortality rate ratio [MRR] = 0.87; 95% C.I., 0.67-1.11). There were 53 cancer deaths among the Gulf War veterans and 48 cancer deaths among the controls. There was no excess of any particular type of cancer.

Mortality due to "external" causes was slightly higher in the Gulf War veterans (MRR = 1.18; 95% C.I., 0.98-1.42). This higher mortality rate due to "external" causes was mainly due to accidents, and there were no differences in the rates of suicide or homicide. The higher mortality rate due to "external" causes in the UK is consistent with the results of a mortality study in US Gulf War veterans. (Kang and Bullman, 1996) Both the UK and US mortality studies will continue indefinitely.

F. Depleted Uranium

McDiarmid, MA, Engelhardt, SM, and Oliver, M. Urinary uranium concentrations in an enlarged Gulf War veteran cohort. *Health Physics* 2001; 80(3):270-273. **(Funded by VA and DoD)**

One published study focused on the effects of depleted uranium in Gulf War veterans. (McDiarmid, et al, 2001) In 1993, the Baltimore Veterans Affairs Medical Center began a prospective study of Gulf War veterans who had been wounded in friendly fire incidents, to quantify body burdens of uranium over time and to detect any adverse health effects from this exposure. (Hooper, et al, 1999; McDiarmid, et al, 2000) The VA and DoD were concerned that embedded depleted uranium (DU) fragments could dissolve over time, potentially leading to toxic effects in the kidneys and other organs. Because of concern expressed by many veterans about possible DU exposure, VA and DoD initiated a national effort in August 1998 to offer a DU medical evaluation to any concerned Gulf War veteran, including urinary uranium testing. The objective of this particular study was to describe the results of the first 169 veterans who volunteered for this expanded program in August 1998 to December 1999. (McDiarmid, et al, 2001)

169 veterans submitted 24-hour urine samples for determination of urinary uranium concentration and questionnaires describing their potential exposures to DU during the Gulf War. 44 of these individuals were still on active-duty and 125 had been discharged. DU exposure was determined from 30 questions, such as inspection or repair activities in damaged Abrams tanks or Bradley vehicles with possible DU contamination, or clean-up activities after a fire at Doha, Kuwait, which included possible DU contamination.

The urinary uranium concentrations ranged from 0.001 to 0.432 micrograms uranium per gram creatinine (median of 0.010). The cut point of elevated uranium concentration was selected as 0.050 micrograms uranium per gram creatinine, based on the upper limit of normal in the general population. Twelve individuals exceeded this cut point on the first urine test. Six of these 12 were retested; and 3 were still in the elevated range and 3 were in the low range. Of the 3 individuals with repeat elevated results, one person probably had retained DU metal fragments from a friendly fire incident. The sources of the elevated results in the other 2 persons were unknown. In fact, one of them was not even a Gulf War veteran.

The authors concluded that in 2000, elevated urinary uranium levels were unlikely to be observed, except for those veterans with retained DU metal fragments. This is consistent with their previous results in the medical surveillance of veterans involved in friendly fire incidents. (Hooper, et al, 1999; McDiarmid, et al, 2000) The authors concluded, "There is little likelihood

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that the possible but transient exposure to DU during the Gulf War will result in significant health issues now or in the future. . . Those with normal uranium values now are unlikely to develop any uranium-related toxicity in the future regardless of what their DU exposure may have been during the Gulf War."

G. Chemical Weapons

Overview:

Three published studies in 2000 focused on the effects of sarin in laboratory animals. (Spruit, et al, 2000; Khan, et al, 2000; Jones, et al, 2000) None of the results of these studies can be directly extrapolated to health effects in humans, because of the high doses used and the routes of exposure (injection, in most of the studies). The first study investigated the toxicokinetics of two stereoisomers of sarin in guinea pigs. (Spruit, et al, 2000) The second study evaluated the short-term effects of sarin on several enzymes and acetylcholine receptors in Sprague-Dawley rats. (Khan, et al, 2000) The third study evaluated the effects on enzymes and permeability of the blood-brain barrier, 90 days after a single dose of sarin in Sprague-Dawley rats. (Jones, et al, 2000)

Chemical Weapons-Individual Studies:

1. Spruit, HE, Langenberg, JP, Trap HC, van der Wiel, HJ, Helmich, RB, van Helden, HP, and Benschop, HP. Intravenous and inhalation toxicokinetics of sarin stereoisomers in atropinized guinea pigs. *Toxicology and Applied Pharmacology* 2000; 169(3):249-254. **(DoD-55)**

The objective of this study was to investigate the toxicokinetics of two stereoisomers of sarin (- and +). (Spruit, et al, 2000) The – isomer causes toxic effects, while the + isomer is relatively nontoxic. Anesthetized, atropinized, and restrained guinea pigs were exposed to air concentrations of sarin for 8 minutes, which corresponded to 0.4 and 0.8 of the LCt50 (lethal air concentration in 50% of the animals). To serve as a reference for the respiratory exposures, another set of experiments was performed with an intravenous dose corresponding to 0.8 of the LD50 (lethal intravenous (IV) dose in 50% of the animals). Blood specimens were taken for analysis of sarin level and blood acetylcholinesterase level (AChE). In all experiments, the blood concentrations of the non-toxic isomer of sarin (+) were below the detection limit. In both the IV and respiratory experiments, the toxicokinetics of the toxic isomer of sarin (-) showed a significant non-linearity with dose. During the respiratory experiments, the blood AChE levels decreased rapidly during the exposure period. At a dose of 0.4 and 0.8 of the LCt50, the AChE decreased to about 70% and 15% of control activity, respectively.

2. Khan, WA, Dechkovskaia, AM, Herrick, EA, Jones, KH, and Abou-Donia, MB. Acute sarin exposure causes differential regulation of choline acetyltransferase, acetylcholinesterase, and acetylcholine receptors in the central nervous system of the rat. *Toxicological Sciences* 2000; 57(1):112-120. **(DoD-72)**

The objective of this study was to evaluate the short-term effects of sarin on several enzymes and acetylcholine receptors concurrently, because of the central role of the cholinergic system in the manifestation of toxic symptoms of sarin. (Khan, et al, 2000) Previous studies have shown that changes in acetylcholine-related metabolism are the key regulators of central nervous system toxicity of sarin and other organophosphate chemicals. The acute effects of intramuscular injections of sarin were studied in male Sprague-Dawley rats. The rats were treated with injections of either 1 x LD50 (lethal dose in 50% of the animals) and sacrificed at several different time points, up to 20 hours after treatment; or they were treated with smaller doses of sarin (0.01, 0.1 or 0.5 x LD50) and sacrificed 15 hours after treatment. Plasma butyrylcholinesterase levels (BChE) and brain acetylcholinesterase levels (AChE) were inhibited 45-50%, 30 minutes after the LD50 dose. BChE in the plasma and AChE in various brain regions remained inhibited for up to 20 hours after a single LD50 dose. No inhibition in plasma BChE was observed 20 hours after treatment with doses lower than the LD50 dose. Another enzyme, choline acetyltransferase (ChAT) is considered a specific marker of cholinergic innervation in the brain, because it catalyzes the final step in the biosynthesis of acetylcholine. ChAT activity was increased in various brain regions 6 hours after LD50 treatment, and this elevated enzyme activity persisted up to 20 hours after treatment. Overall, sarin caused significant inhibition of brain region-specific AChE and activation of ChAT.

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The elevated activity of ChAT in the brain may enhance the availability of acetylcholine above and beyond that caused by inhibition of AChE alone. This combination of effects on enzymes could lead to overstimulation of the receptors for acetylcholine in the brain.

3. Jones, KH, Dechkovskaia, AM, Herrick, EA, Abdel-Rahman, AA, Kahn, WA, Abou-Donia, MB. Subchronic effects following a single sarin exposure on blood-brain and blood-testes barrier permeability, acetylcholinesterase, and acetylcholine receptors in the central nervous system of rat: a dose-response study. *Journal of Toxicology and Environmental Health* 2000; 61(8);695-707. **(DoD-72)**

The objective of this study was to evaluate the effects after 90 days of a single intramuscular dose of sarin in male Sprague-Dawley rats. (Jones, et al, 2000) The animals were treated once with various doses of sarin (0.01, 0.1, 0.5, or 1 x LD50-lethal dose in 50% of the animals), and then sacrificed 90 days later. The blood-brain permeability was measured in various brain regions at 90 days. The brainstem showed a significant decrease in the permeability of the blood-brain barrier (BBB), at the 1 x LD50 dose. There were no changes in the permeability of the BBB at any dose in the other brain regions. Plasma butyrylcholinesterase (BChE) activity was at control levels at 90 days, reflecting recovery of the enzyme activity from its initial inhibition. At the 1 x LD50 dose, acetylcholinesterase activity (AChE) in the brain cortex remained inhibited at 90 days, whereas AChE activity in the brainstem showed an increase. These results suggest that BBB changes in the brainstem and inhibition of AChE in the cortex are persistent as long as 90 days after a single 1 x LD50 dose of sarin. Even though the rats had recovered from all the acute clinical effects, there were persistent changes in the brain that could play a role in neuropathological conditions, long after a single, high-dose sarin exposure.

H. Pyridostigmine Bromide

Li, L, Gunasekar, PG, Borowitz, JL, and Isom, GE. Muscarinic receptor-mediated pyridostigmine-induced neuronal apoptosis. *NeuroToxicology* 2000; 21(4):541-552. **(DoD-59)**

One published study in 2000 focused on the effects of pyridostigmine bromide (PB) alone. (Li, et al, 2000) The objective of this study was to evaluate the potential of PB to produce cell death in the brains of male Sprague-Dawley rats. Rats were injected (intraperitoneally) with one of four doses of PB twice daily for 4 days. Apoptosis, which is a sequential process of programmed cell death, was evaluated by special histological studies of the brains. Apoptotic brain cell death was noted in cerebral cortex of some rats, at all 4 doses, and at the highest dose, it was also noted in the striatum and hippocampus of some rats. These cell death processes were blocked by pretreatment with atropine 30 minutes before PB injection. The results of these experiments in rats cannot be directly extrapolated to humans because of the very high doses of PB, and because the route of administration was injection directly into the abdomen. PB did not cause a significant decrease in brain cholinesterase activity, which implies that PB did not cross the blood brain barrier. The authors stated that the mechanism could possibly be due to either central or peripheral action. The possibility of peripheral action has been suggested by other studies. (Van Haaren, et al, 1999, 2000; Chaney, et al, 1999, 2000)

I. Interactions of Exposures (Pyridostigmine Bromide in Combination with Other Chemicals or Stress)

Overview:

Five published laboratory studies in 2000 focused on the effects of pyridostigmine bromide in combination with stress. (Grauer, et al, 2000; Sinton, et al, 2000; Servatius, et al, 2000; Somani, et al, 2000; Verma-Ahuja, et al, 2000)

Four published laboratory studies focused on the effects of pyridostigmine bromide (PB), in combination with other chemicals (DEET or permethrin). (Hoy, et al, 2000a; Hoy, et al, 2000b; van Haaren, et al, 2000; Chaney, et al, 2000)

Stress alone has been shown to induce significant changes in blood-brain barrier (BBB) permeability in young rats and mice, but little or no change in adults. Reports in rodents have shown effects of exogenous stressors like forced swim, restraint, or heat stress on the entry of

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radioactive tracers, dyes, or viruses into the CNS. These studies have been conducted primarily in young, immature animals. (Ben-Nathan, et al, 1989; Dvorska, et al, 1992; Sharma, et al, 1991; Sharma, et al, 1992; Sharma, et al, 1995; Wijsman and Shivers, 1993) The overall conclusions in a recent study were "There is no evidence that exogenous stress increases BBB permeability in mature rodents." (Sinton, et al, 2000)

The one exception, regarding adult rodents, was a study by Friedman that suggested that pyridostigmine bromide (PB) could enter the brain of adult mice subjected to forced swimming stress. (Friedman, et al, 1996) Friedman demonstrated that the dose of PB required to produce 50% inhibition of brain acetylcholinesterase (AChE) activity in stressed FVB/n mice was only 1% of the dose of PB required to produce 50% inhibition in non-stressed mice. However, there is some experimental evidence that the FVB/n mouse strain may have an unusually permeable BBB. (Telang, et al, 1999) Furthermore, the intensity of the reported effect in Friedman's study (more than 50% inhibition) could not be easily explained by the limited and localized changes in BBB permeability that had previously been reported to be induced by stress. (Sharma, et al, 1991)

Several studies have recently evaluated whether stress can increase BBB permeability, and can therefore enhance penetration of PB into the brain. These have included several species and strains of animals: 3 different strains of mice (Telang, et al, 1999; Chaney, et al, 1999; Grauer, et al, 2000); guinea pigs (Lallement, et al, 1998); and 3 strains of rats (Sinton, et al, 2000; Chaney, et al, 2000). These studies have included several types of acute stressors: forced swimming stress (Telang, et al, 1999; Grauer, et al, 2000; Sinton, et al, 2000); heat stress (Lallement, et al, 1998; Sinton, et al, 2000); severe cold stress (Grauer, et al, 2000); restraint stress (Sinton, et al, 2000); and chemical stress (coadministration of high doses of DEET) (Chaney, et al, 1999; Chaney, et al, 2000).

All of these recent studies have reached the conclusion that stress does not increase BBB permeability to PB, and that PB does not penetrate the brain, even at lethal doses. For example, Sinton, et al, concluded "to the extent that cross-species comparisons are valid" between humans and rodents, "the effects of stress on BBB permeability to PB are unlikely to explain the chronic CNS symptoms reported by some Gulf War veterans." (Sinton, Haley, et al, 2000) This conclusion is particularly noteworthy because it is contradictory to a report by one of the authors. He had previously reported an association between a history of PB use and long-term CNS symptoms, based on a questionnaire administered to a small group of Gulf War veterans. (Haley, et al, 1997b)

These recent findings about PB and stress are consistent with the conclusion of a recent White House report on illnesses in Gulf War veterans, as follows: "Several more recent studies have failed to reproduce this finding [of Friedman's study in 1996] using a variety of species, a variety of stressful stimuli, and extremely high doses of PB. If PB does not cross the BBB, it is very unlikely to cause changes in brain function." (White House, 2000)

Interactions of Exposures-Individual Studies:

Interactions of PB in Combination with Stress-Individual Studies:

1. Grauer, E, Alkalai, D, Kapon, J, Cohen, G, and Raveh, L. Stress does not enable pyridostigmine to inhibit brain cholinesterase after parenteral administration. *Toxicology and Applied Pharmacology* 2000; 164(3):301-304. **(Not Federally funded; Israeli study)**

The objective of the Grauer study was to determine the effects in mice of pyridostigmine bromide (PB), with or without stress. (Grauer, et al, 2000) PB was injected at a dose that was equivalent to about 0.1% of the LD50. Two strains of adult mice were used, including CD-1 and FVB/n, the same strain used in Friedman's study. (Friedman, et al, 1996) There was no inhibition of brain AChE due to mild stress (swimming) or severe stress (standing in ice water). No change in brain AChE activity was detected in any of the groups treated with PB, with or without stress. Even with variations in gender, strain of mouse, and type of stressor, the authors concluded that they could not replicate Friedman's findings that suggested that PB could effect brain AChE following stress.

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2. Sinton, CM, Fitch, TE, Petty, F, and Haley, RW. Stressful manipulations that elevate corticosterone reduce blood-brain barrier permeability to pyridostigmine in the rat. *Toxicology and Applied Pharmacology* 2000; 165(1):99-105. **(Not Federally funded; funded by the Perot Foundation)**

The objective of Sinton study was to determine the effects of stress on the permeability to PB in the brains of two strains of adult male rats, Long-Evans and Wistar. (Sinton, et al, 2000) Three main types of stress were used: a forced swim stress, a restraint stress, and a combination of swim and restraint. In addition, a smaller number of rats were subjected to heat stress. Rats were injected intraperitoneally with one of five doses of PB; the three highest doses caused severe signs of toxicity. Both the dosage of PB and the effects of each type of stress were significantly associated with decreased brain AChE levels. However, stress reduced the penetration of PB across the BBB. The authors concluded "to the extent that cross-species comparisons are valid" between humans and rodents, "the effects of stress on BBB permeability to PB are unlikely to explain the chronic CNS symptoms reported by some Gulf War veterans." This conclusion is particularly noteworthy because it is contradictory to a report by one of the authors. He had previously reported an association between a history of PB use and long-term CNS symptoms, based on a questionnaire administered to a small group of Gulf War veterans. (Haley, et al, 1997)

3. Servatius, RJ, Ottenweller, JE, Guo, W, Beldowicz, D, Guanping, Z, and Natelson, BH. Effects of inescapable stress and treatment with pyridostigmine bromide on plasma butyrylcholinesterase and the acoustic startle response in rats. *Physiology and Behavior* 2000; 69(3):239-246. **(VA-49)**

The objectives of the Servatius study were 1) to determine whether exposure to inescapable stress decreased plasma butyrylcholinesterase (BuChE) levels in male Sprague-Dawley rats; and 2) to determine whether concurrent exposure to stress and PB would produce persistent neurobehavioral changes in rats. (Servatius, et al, 2000) A supine restraint protocol was chosen to evaluate the effects of inescapable stress. Exposure to supine restraint alone induced a persistent decrease in plasma BuChE levels. However, the combination of stress plus PB did not cause further decreases in BuChE levels. Exposure to restraint stress caused an exaggerated startle response, evident on the last day of stress (Day 7) and for an additional 24 hours. This exaggerated response did not persist at 8, 15, or 22 days after cessation of stress. PB also caused an exaggerated startle response over the same time period, but to a lesser degree. However, treatment with PB appeared to antagonize the effects of stress on startle response (stress plus PB had less effect than stress alone). Two major strengths of this study included the use of oral PB doses that were relevant to those used by humans, and the follow-up period of 22 days after the cessation of treatment with stress or PB, which demonstrated reversibility of the effects on startle response.

4. Somani, SM, Husain, K, Asha, T, and Helfert, R. Interactive and delayed effects of pyridostigmine and physical stress on biochemical and histological changes in peripheral tissues of mice. *Journal of Applied Toxicology* 2000; 20(4):327-334. **(DoD-62)**

The objective of the Somani study was to investigate the effects of PB and treadmill exercise on cholinesterase activity and histology of peripheral tissues in male, adult NIH Swiss mice. (Somani, et al, 2000) There were four groups of mice: sedentary controls; exercise training for 10 weeks; PB during weeks 5 and 6, but no exercise training; and exercise training for 10 weeks, plus PB during weeks 5 and 6. The oral dose of PB in the mice was chosen to correspond to the dose (1.2 mg per kg body weight) and duration (2 weeks) that veterans used during the Gulf War. Each group of mice was sacrificed at 10 weeks, at which time blood and muscle chemistries and histological studies were performed. Overall, there were no significant chemistry changes due to exercise alone or PB alone. There were only a few significant changes in blood and muscle chemistries related to the combination of exercise plus PB. There were no obvious histological abnormalities in the triceps muscle among the four groups.

5. Verma-Ahuja, S, Husain, K, Verhulst, S, Espinosa, JA, and Somani, SM. Delayed effects of pyridostigmine and exercise training on acetylcholinesterase and muscle tension in mouse lower extremity. *Archives of Toxicology* 2000: 74(9):539-546. **(DoD-62)**

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The objective of the Verma-Ahuja study was to investigate the effects of PB and treadmill exercise on muscle tension and acetylcholinesterase activity in male, adult NIH Swiss mice. (Verma-Ahuja, et al, 2000) There were four groups of mice: sedentary controls; exercise training for 10 weeks; PB during weeks 5 and 6, but no exercise training; and exercise training for 10 weeks, plus PB during weeks 5 and 6. Each group of mice was sacrificed at 10 weeks, at which time muscle tension studies and blood and muscle chemistries were performed. There were no differences in triceps muscle levels of AChE among the controls, the exercise alone group, and the PB alone group. The exercise plus PB group demonstrated a significant decrease in AChE levels in triceps muscle (79% of control levels; $p < 0.01$). Muscle tension was measured in the lower extremity by flexing the foot and stimulation of the peroneal nerve. There was a significant increase in muscle tension in the exercise plus PB group, compared to the control and exercise alone groups. The authors do not discuss the relevance of a daily, strenuous treadmill test in mice to sedentary or exercising humans. There was no follow-up after cessation of the treadmill exercise to determine if the changes in muscle tension or blood and muscle chemistries were prolonged, which is relevant to the possible effects in humans.

Interactions of PB in Combination with Other Chemicals-Individual Studies:

1. Hoy, JB, Cornell, JA, Karlix, JL, Schmidt, CJ, Tebbett, IR, and van Haaren, F. Interactions of pyridostigmine bromide, DEET, and permethrin alter locomotor behavior of rats. *Veterinary and Human Toxicology* 2000a; 42(2):65-71. **(DoD-37)**

The objective of the first Hoy study was to determine if there were interactions of various combinations of PB, DEET and permethrin on the locomotor behavior of male and female Sprague-Dawley rats. (Hoy, et al, 2000a) Various doses of PB and DEET were given by gavage, and various doses of permethrin were injected. The routes of exposures for DEET (oral) and permethrin (injection) in the rats caused higher doses than could have been absorbed in a few hours of dermal exposure in soldiers. The three chemicals were tested singly and in various combinations to determine the effects on the rate of locomotion in a one square meter open-field arena, during a two-hour period. Single drug effects were very limited with the doses tested. In particular, PB caused no effects at 10 mg per kg of body weight. Two-drug administrations at half the single-drug doses resulted in significant interactions in male rats only. Female rats did not show any significant interactions. In male rats, the combinations of permethrin plus PB or permethrin plus DEET caused a significantly decreased speed of locomotion. There was no follow-up to determine if the behavioral changes due to the chemical combinations were prolonged, which is relevant to the possible effects in humans.

2. Hoy, JB, Cornell, JA, Karlix, JL, Tebbett, IR, and van Haaren, F. Repeated coadministrations of pyridostigmine bromide, DEET, and permethrin alter locomotor behavior of rats. *Veterinary and Human Toxicology* 2000b; 42(2):72-76. **(DoD-37)**

The objective of the second Hoy study was to determine the effects of repeated administrations of PB, DEET and permethrin, alone and in combination, on the locomotor behavior of male and female Sprague-Dawley rats. (Hoy, et al, 2000b) Various doses of PB and DEET were given by gavage, and various doses of permethrin were injected. The three chemicals were tested singly and in various combinations to determine the effects on the rate of locomotion in a one square meter open-field arena. Twenty-four hours after the last of 7 daily drug administrations, locomotor behavior was quantified by video camera for one hour. Single-drug administrations caused no significant effects compared to controls. Both male and female rats given DEET plus PB had a significantly slower locomotion rate. Males given DEET plus permethrin had a significantly faster locomotion rate. Three-drug administration (at one-third the single-drug doses) caused no significant effects. There was no follow-up to determine if the behavioral changes due to the chemical combinations were prolonged, which is relevant to the possible effects in humans.

3. van Haaren, F, Cody, B, Hoy, JB, Karlix, JL, Schmidt, CJ, Tebbett, IR, and Wielbo, D. The effects of pyridostigmine bromide and permethrin, alone or in combination, on response acquisition in male and female rats. *Pharmacology Biochemistry and Behavior* 2000; 66(4):739-746. **(DoD-37)**

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The objective of the van Haaren study was to investigate the effects of PB and permethrin, alone or in combination, on the acquisition of a learned response in male and female Sprague-Dawley rats. (van Haaren, et al, 2000) The rats were treated with PB or distilled water by gavage for 7 days. Half of the rats also received an intraperitoneal injection of permethrin, at one of two doses, before they were placed in an experiment, in which they could earn food pellets by pressing a lever in a learning chamber. Permethrin alone had no effect on acquisition of the learned response. PB caused delayed acquisition of the learned response in male and female rats, and decreased the number of reinforced responses. Permethrin levels were higher in rats that were treated with PB; however, the combination of PB plus permethrin did not cause a decrement in learning, compared to the rats treated with PB alone. There were no measurements of brain levels of PB, permethrin, or acetylcholinesterase; therefore, it is unknown whether these chemicals crossed the blood-brain barrier. There was no follow-up to determine if the behavioral changes due to the chemicals were prolonged, which is relevant to the possible effects in humans.

4. Chaney, LA, Wineman, RW, Rockhold, RW, and Hume, AS. Acute effects of an insect repellant, N,N-Diethyl-m-toluamide, on cholinesterase inhibition induced by pyridostigmine bromide in rats. *Toxicology and Applied Pharmacology* 2000; 165(2):107-114. **(Not Federally funded)**

The objective of the Chaney study was to investigate changes in acetylcholinesterase (AChE) levels in the brain and periphery (diaphragm, heart, and blood) after injection of PB and/or DEET in male Sprague-Dawley rats. (Chaney, et al, 2000) The intent was to determine if the combination caused inhibition of brain AChE. Several animals receiving the highest PB alone dose experienced seizures and died shortly after dosing. Combinations of PB and DEET, at all PB doses, caused seizures and death in some animals. PB alone did not alter brain AChE levels, even at doses that caused lethality. DEET alone had no effects on peripheral or brain AChE levels. PB plus DEET caused a significant decrease of brain AChE at only the highest PB dose (60% of the control levels). This study demonstrates that doses of PB alone and PB plus DEET, that were high enough to cause seizures and lethality, did not cause an effect on brain AChE in most animals. This means that even these high doses did not cause increased permeability of the blood-brain barrier. Because these massive doses caused seizures and death within minutes, the results of this study cannot be directly extrapolated to humans.

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III. RESEARCH FUNDING TRENDS

A. Overview

Appendix A provides details of the Gulf War Veterans' Illnesses Research Database. It was last updated during the second quarter of Fiscal Year 2001 (through March 31, 2001). Research projects are grouped according to the Department that is responsible for the conduct or sponsorship of the research.

Each entry in the database includes:

- Project Title
- Responsible Federal Agency
- Study Location
- Project Start-up Date
- Project Completion Date (estimated if ongoing)
- Overall Objectives of Project
- Specific Aims of Project
- Methods of Approach
- Expected Products (Milestones)
- Current Status/Results
- Publications

Two descriptors can approximately categorize each research project. The first descriptor is a series of **research focus areas.** The research focus areas are categorized as follows:

- Prevalence and risk factors for symptoms and alterations in general health status
- Brain and nervous system function
- Chemical weapons
- Environmental toxicology (e.g. studies focused on specific environmental toxicants such as pesticides, oil well fires, etc.)
- Reproductive health
- Depleted uranium
- Leishmaniasis
- Immune function
- Pyridostigmine bromide
- Mortality experience
- Interactions of exposures (chemical, biological, pharmacological, physiological, etc.)
- Prevention of diseases (i.e. studies that will produce knowledge that could lead to disease prevention strategies)
- Treatment
- Diagnosis (i.e. studies that will improve the ability to diagnose previously unexplained conditions, or to better refine diagnoses with new tools)

Each project is assigned up to three focus areas as categorical descriptors. This allows accounting for projects that cover multiple focus areas. For example, a project on the neurophysiological effects of exposure to sarin in animals would have a focus on the brain and nervous system, and a focus on chemical weapons. The number of focus areas (between one and three) assigned to a project depends on the project itself.

The other descriptor for each project is **Research Type**. The Federal Government defines **Research** as systematic investigation designed to develop or contribute to generalizable knowledge. Each research project on Gulf War veterans' illnesses uses a method of approach to test a specific research hypothesis. Approaches range in type from **mechanistic research**, addressing potential biological mechanisms of causation, to **clinical** and **epidemiological research** that attempt to determine illness prevalence and risk factors. Although precise categorization of research types can be difficult because of overlapping methodologies, research projects can be divided into the following general types:

MECHANISTIC RESEARCH: Research into underlying mechanisms of diseases and illnesses using *in vitro* and *in vivo* models.

CLINICAL RESEARCH: Application of an intervention, such as in a controlled drug trial, or use of methodologies such as case-control studies to define disease risk factors.

EPIDEMIOLOGY RESEARCH: Study of the distribution and determinants of disease in human populations. It includes population-based studies focused on outcomes such as mortality, symptoms, hospitalizations, etc., using devices such as postal surveys, telephone interviews, and medical records reviews.

In addition to the research on Gulf War veterans' illnesses, the RWG also tracks development work. In general, **development** is the systematic use of the knowledge or understanding gained from research directed toward the production of materials; devices; systems; or methods, including design, development, and improvement of prototypes and new processes.

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Within the context of Gulf War veterans' illnesses, the RWG categorizes activities as **development** as follows:

DEVELOPMENT: An activity that satisfies the general definition of development described above, and is directed toward new biologically based prevention, intervention, and treatment measures.

The Gulf War Veterans' Illnesses Research Database catalogs only research and development activities that either directly involve Gulf War veterans, or has been initiated to answer specific questions about risk factors. An example of the latter is a research project using animal models to determine health effects of low-level chemical warfare agents. The database does not account for the vast accumulated knowledge derived from the nation's investment in biomedical research over the past 40 years.

The Gulf War Veterans' Research Database only contains research that is Federally sponsored. This includes research conducted by Federal scientists, as well as that by non-federal scientists supported by Federal research funds through grants, contracts, and cooperative agreements. It is not possible to accurately track research efforts that fall within the private sector or otherwise outside of the purview of the Federal Government. Nonetheless, the RWG attempts to stay abreast of all research relevant to Gulf War veterans' illnesses. The RWG accomplishes this by monitoring the peer reviewed published scientific literature, attending scientific meetings, and even using newspaper reports and personal accounts of researchers.

Regardless of the source of support for particular research projects, the RWG will ensure that all research, which has been published in peer reviewed scientific literature, will be used in formal assessments of the nature and causes of Gulf War veterans' illnesses. A number of projects that were not Federally funded have been reviewed in Section II. Research Results of this *Annual Report to Congress*.

A formal assessment of the nature and causes of illnesses in Gulf War veterans has been included in this *Annual Report to Congress* in Appendix C. In 1996, the RWG identified 21 major research questions. The comprehensive Gulf War research portfolio has addressed each of these questions, and relevant results have been published on each one. Appendix C provides a formal assessment of the progress made on each of these 21 questions.

The following sections provide a quantitative overview of the current research portfolio on Gulf War veterans' illnesses and the evolution of the portfolio over time since 1994. Topics that are covered include overall research expenditures from 1994-2001 (projected), and the types and areas of research in which the Federal Government has invested.

B. Research Funding

All current Federal research projects directly related to Gulf War veterans' illnesses are sponsored by VA, DoD, or HHS. From 1994 through 2000, the Departments have sponsored 193 distinct research projects on Gulf War veterans' illnesses. This does not include research projects that recently have been selected for funding but are currently in final contract negotiations. Nor does it account for anticipated projects arising from competition of proposals submitted in response to new initiatives, such as the planned DoD Broad Agency Announcement (BAA) for 2001.

A table in Appendix A lists all of the research and development projects and programs supported now or in the past by the Federal Government. The appropriated funds centrally distributed to each program or project are shown in the fiscal years that funds were obligated. Many extramural projects are multi-year efforts for which funds are obligated at the beginning of the project period.

Table III-1 is a summary of research expenditures by DoD, VA, and HHS between FY94 and FY00, and a projection of funding into FY01. Currently, the Federal Government is projecting cumulative expenditures of $173.6 million for research from FY94 through FY01. As of September 30, 2000, 100 projects were completed. As of March 31, 2001, an additional 16 projects were completed, and 77 projects were ongoing (40% of total of 193 projects).

Table III-2 is a year-by-year account of new and completed projects.

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Table III-1. Funding for Research FY'94-00 in $Millions									
Department	FY'94	FY'95	FY'96	FY'97	FY'98	FY'99	FY'00	FY'94-00	FY'01
DoD	$ 6.2	$11.0	$11.7	$28.9	$12.6	$23.2	$16.3	$109.8	$10.6
VA	$ 1.2	$ 2.3	$ 3.9	$ 2.8	$ 4.8	$ 9.1	$12.1	$ 36.1	$ 7.9
HHS	$ 0.0	$ 2.5	$ 1.6	$ 0.0	$ 1.6	$ 1.6	$ 1.6	$ 9.0	$ 0.2
Total	**$ 7.4**	**$15.8**	**$17.2**	**$31.7**	**$19.0**	**$33.9**	**$30.0**	**$154.9**	**$18.7**

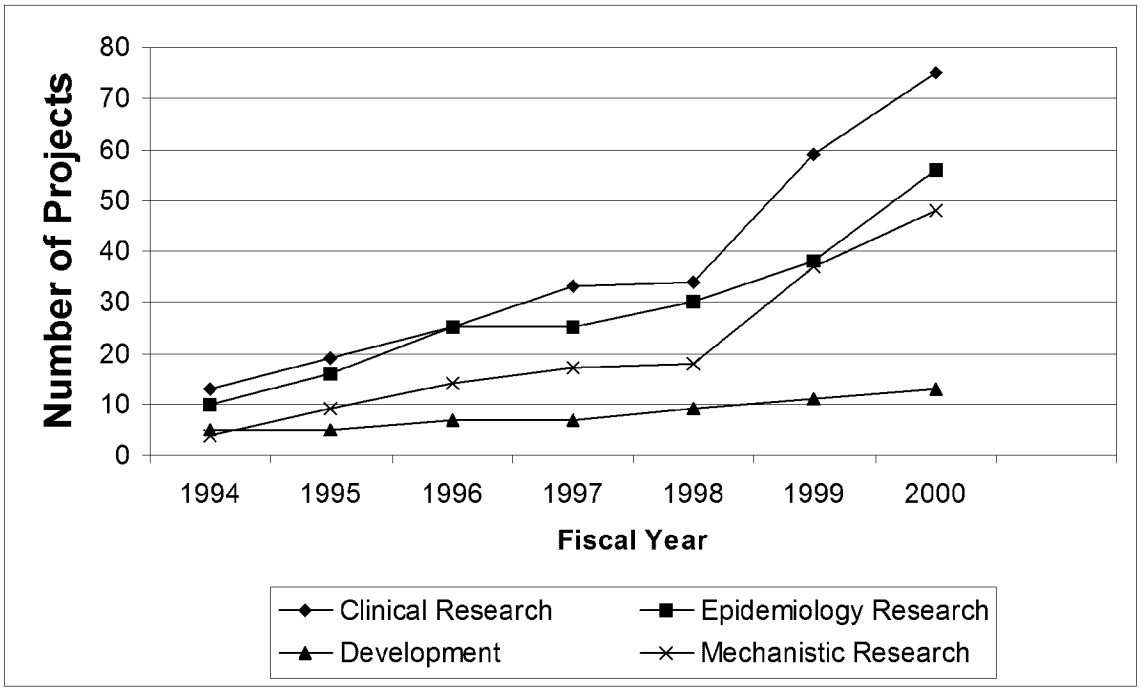
Table III-1. does not include funds to cover operational costs for administration, infrastructure, etc. For example, the VA research appropriation does not pay for clinician/investigator salaries. In addition, Table III.1. does not include funding for activities performed by members of the RWG (salaries, travel, etc.). The FY'01 funds are estimated, and they do not include funds for anticipated or future solicitations.

Table III-2. Number of New and Completed Projects by Year*

Fiscal Year	*New*	*Completed*
1992-1994	61	3
1995	21	8
1996	16	4
1997	35	10
1998	17	15
1999	29	22
2000	14	38

*For programs/centers with multiple projects, each project is counted as an individual project for accounting purposes.

Figure III-1. Cumulative number of research projects by research type (1994-2000).



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C. Diversity of Research Approaches

The funds that have been invested in research on Gulf War veterans' illnesses over the years have gone into a broad-based portfolio with respect to research type and research focus area. **Figure III-1** illustrates the number of projects of each research type for each year since FY94. On average, epidemiology and clinical research have each comprised approximately one third of the total number of projects. The remaining third has been divided between mechanistic research and development, with the larger share going to mechanistic research. In particular, the numbers of clinical and mechanistic research projects have increased more rapidly over time.

The distribution of projects across different research focus areas is illustrated in **Figure III-2**. Projects for each focus area are categorized, based on which of the focus areas are listed as one of the three areas assigned to each project. The total number of projects by research focus areas is shown in Figure III-2 in two ways. For each focus area, a black bar represents the total number of projects for which that focus area is listed as being primary. A clear bar represents the total number of projects for which the focus area is listed as being secondary or tertiary. Thus the total height of a bar represents the total number of projects for which the focus area is listed as primary, secondary, or tertiary. By showing the data this way, the multiplicative effects of research investments are demonstrated. For example, a project that examines the effects of Pyridostigmine Bromide on the Brain and Nervous System is counted under both of these focus areas.

As can be seen in **Figure III-2**, the overall emphasis of research has been greatest in the focus areas of the Brain and Nervous System and in Symptoms and General Health. This reflects the focus of epidemiological efforts on the prevalence of symptoms and illnesses in Gulf War veterans, and the focus of clinical research efforts on risk factors for illnesses. The focus on the brain and nervous system is a result of both the dominance of health complaints in this area, and the fact that many of the potential exposures in the Gulf were to neurotoxins.

The number of research projects in the various research focus areas has changed over time since 1994 as a reflection of the evolution of issues centered on Gulf War veterans' illnesses. Of note is a relatively greater increase over the years of research on chemical interactions, chemical warfare agents and pyridostigmine bromide. These increases are an outgrowth of increased concern over the health risks posed to veterans by exposures to multiple toxic agents at low levels.

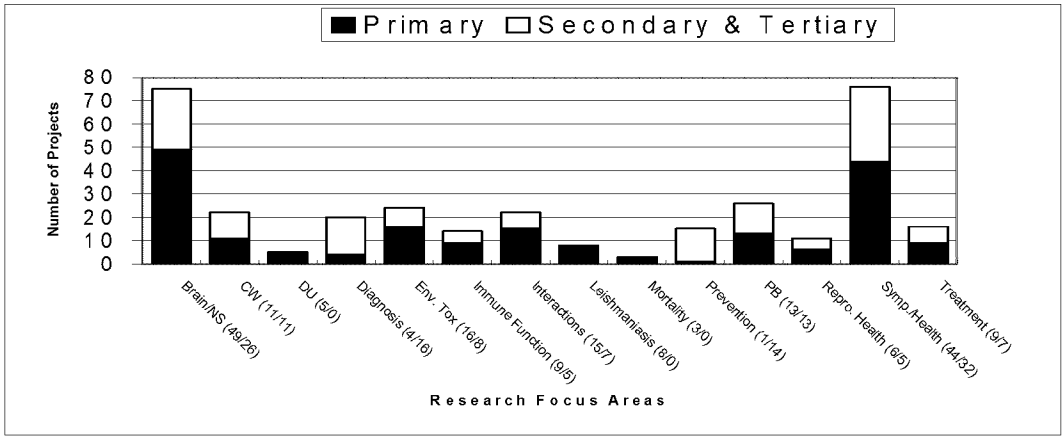

Figure III-2. Number of projects in each research focus area. Closed bars represent the number of projects with the focus area as primary; open bars represent the number of projects with the focus area being either secondary or tertiary. The first number within the parenthesis represents the number of projects with a primary research focus area. The second number represents the number of projects with a secondary or tertiary research focus area

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IV. NEW RESEARCH PROJECTS AND INITIATIVES

Several new research projects and initiatives that have been undertaken since last year's *Annual Report to Congress* are highlighted in this Section. These include the awarding of new research projects and the development of new research initiatives. In addition, this section provides an update of important accomplishments in 2000 for key research projects and initiatives.

Many of the new research projects and initiatives are responsive to recommendations from a variety of sources, including the Presidential Advisory Committee on Gulf War Veterans' Illnesses (PAC, 1996a; PAC, 1996b; PAC, 1997); the Institute of Medicine Committee on the Health Consequences of Service During the Persian Gulf War (IOM, 1995; IOM, 1996); the Senate Veterans' Affairs Committee (SVAC, 1998); the Presidential Special Oversight Board (PSOB, 2000); and the RWG (PGVCB, 1995b; PGVCB, 1996b).

IV.A. NEW RESEARCH PROJECTS

IV. A. 1. New Research Projects Funded by the 2000 DoD Broad Agency Announcements

In 1998, DoD established new funding for programmed research. The purpose of this program element funding is to address Gulf War veterans' illnesses issues, which may also be of concern in future deployments. These include issues identified in both the research plans of the PGVCB and the Presidential Review Directive 5. (PGVCB, 1995b; PGVCB, 1996b; NSTC, 1998) This planned funding is approximately $20 million per year for fiscal year 1999 through fiscal year 2002, and $5 million per year thereafter. This funding makes it possible to organize multi-year research and improves the ability to respond to new research needs based on discoveries in the currently funded programs. The program is guided by a tri-service DoD panel and coordinated with the RWG.

The overall objective of this effort is to enhance force health protection in future deployments, through research specifically targeted to solving problems that emerged from service in the Gulf War. Specific research areas include:

1. prevention and treatment of persistent stress symptoms;
2. methods to assess health hazards from toxic chemicals and mixtures and to monitor exposures;
3. improved safety assessments of medical materiel, including potential interactions in operational environments;
4. epidemiological studies to continue long-term follow-up of Gulf War veterans and to improve health status monitoring in future deployments; and
5. improved and accelerated research on leishmaniasis prevention, diagnosis, and treatment.

In coordination with the RWG, DoD developed a new research initiative for Fiscal Year 2000. Under this initiative, DoD solicited new research proposals for studies consistent with current concepts of Force Health Protection. There were four Broad Agency Announcements (BAAs), each with a deadline of July 26, 2000.

The specific requests focused on the following four areas of research interest:

1. Epidemiological Investigations of Deployment Health Monitoring Methods

The purpose of these epidemiological studies is to fill critical knowledge gaps for monitoring soldier health during deployments. Threats to health during deployments might include psychological stress, toxic chemical exposures, environmental stressors, and infectious agents. The focus is on physiologically based methods to assess deployment health consequences, through a demonstrated change in health. Projects are required to have a strong biological basis (i.e., objective measurements instead of subjective/questionnaire assessments). Studies are specifically sought in four topic areas:

a. psychological health status, including establishment of mental health baselines of military populations;
b. practical methods for large-scale studies to assess changes in male and female reproductive fertility;
c. clinical illness associated with high frequency of deployments or perceived stress of deployments; and
d. coping strategies used by military personnel to alleviate symptoms associated with Gulf War

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deployment (e.g., alcohol or complementary and alternative medicine).

2. Deployment Stress Health and Performance Consequences

These studies focus on the effects of psychological stress on cognitive and physiological consequences. Studies should quantify the association between clinical health outcomes or militarily-relevant performance measures and various types of stress, which might be typically encountered in military field deployments (e.g., isolation, family separation, anxiety, inadequate sleep). The studies should explore biological stress measures, which may be useful predictors of health and performance decrements.

3. Biochemical and Physiological Markers to Assess Toxic Chemical Exposures and Health Effects in Deployed Military Personnel

These studies focus on applied physiologically based methods and techniques for assessment of toxic chemical exposures in deployed military personnel. The research should improve current methods and techniques or identify and develop new, readily applied, methods and techniques. Specifically, studies must identify and develop biological markers of exposure that enhance environmental monitoring or provide markers of effect related to exposures of individual service members. Methods and techniques should be applicable to risk assessment or health surveillance of toxic chemicals and chemical mixtures that are a concern in military deployments. Specific chemicals of interest include petrochemical products (including JP8 fuel), insecticides, insect repellents, and Chemical Agent Resistant Coating (CARC).

4. Toxicity of Militarily Relevant Heavy Metals

These studies focus on biological effects of heavy metals currently used or contemplated for use in armor and as armor penetrators. These include tungsten and tungsten alloys, depleted uranium, depleted uranium and titanium alloys, and oxidation products of these metals and their alloys. Inclusion of positive (e.g. lead) and negative (e.g. tantalum) controls should be considered in study designs. Outcomes of special interest include identification of mechanisms of injury to pulmonary, hepatic, renal, and nervous systems from particulate and solubilized forms; and localized soft tissue responses produced by embedded fragments (distinguishing foreign body, radiation, toxicological, and acute phase responses). Exposures should be based on realistic scenarios, and should consider current pharmacokinetic and pharmacodynamic knowledge of the metal or alloy under study. Epidemiological studies could be included based on exposure models.

A total of 62 proposals were submitted in response to these 4 BAAs. These proposals were scientifically peer reviewed by the American Institute of Biological Sciences. Highly meritorious proposals were chosen for funding by DoD program review and then were referred to the RWG for secondary review, based on interagency programmatic relevance. This review process is detailed in Section V. Research Management.

In early 2001, funding decisions were made and DoD undertook contract negotiations with principal investigators. The scope of work and funding level for each project should be finalized by the end of 2001, at which time the list of the newly funded projects will be announced.

IV.B. 2000 UPDATE OF KEY RESEARCH PROJECTS AND INITIATIVES

Three research initiatives are described in this section:

- one ongoing Institute of Medicine project;
- one completed White House report; and
- the 2001 Conference on Illnesses among Gulf War Veterans: A Decade of Scientific Research.

IV.B.1. Institute of Medicine Study of Health Effects Associated with Exposures during the Gulf War

In 1997, VA followed the recommendation of the Presidential Advisory Committee on Gulf War Veterans' Illnesses to contract for an assessment with an independent scientific organization, such as the National Academy of Sciences (NAS). (PAC, 1997) In its *Special Report*, the PAC recommended that the VA contract for a periodic review

> "of the available scientific evidence regarding associations between illnesses

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and Gulf War service. The object of such an analysis would be to determine statistical associations between service in the Gulf War and morbidity and mortality, while also considering whether a plausible biological mechanism exists, whether research results are capable of replication and of clinical significance, and whether the data withstand peer review." (PAC, 1997)

Public Law 105-368 was enacted on October 21, 1998, and was titled the "Veterans Programs Enhancement Act of 1998." It mandated that the VA contract with the NAS to perform a "review and evaluate the available scientific evidence regarding associations between illness and service in the Persian Gulf War." The Public Law stated that the NAS review should:

- identify the biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which members of the Armed Forces may have been exposed;
- identify the illnesses associated with the agents, hazards, or medicines or vaccines; and
- identify the illnesses (including diagnosed illnesses and undiagnosed illnesses) for which there is scientific evidence of a higher prevalence among populations of Gulf War veterans when compared with other appropriate populations of individuals.

On June 24, 1998, four months before the passage of the Public Law, VA contracted with the Institute of Medicine (IOM) of the NAS to carry out the assessment. The purpose of the IOM project is to review the scientific and medical literature regarding adverse health effects associated with exposures experienced during the Gulf War. Scientific evidence concerning the association of exposures and illness will be examined taking into account:

- the strength of the scientific evidence and the appropriateness of the methods used to identify associations;
- whether the evidence indicates the levels of exposure of the studied populations were comparable to the exposures of Gulf War veterans; and
- whether there exists a plausible biological mechanism or other evidence of a causal relationship between exposure to the risk factor or factors and the medical conditions.

Different types of research findings, e.g., animal toxicology data, occupational exposure data, and epidemiological data, need to be analyzed and integrated. The review will include recommendations for additional scientific studies to resolve areas of continued scientific uncertainty related to the health effects of Gulf War service.

The first phase of the study summarized the medical literature on pyridostigmine bromide, depleted uranium, sarin and cyclosarin, and the anthrax and botulinum toxoid vaccines. The two chemical warfare agents were selected because Gulf War veterans may have had low-level exposure to them as a result of the demolitions at Khamisiyah. Phase one was funded for 27 months at a cost of $1.25 million. The IOM committee held their first meeting in January 1999 and they held six additional meetings through March 2000. The report on this first phase was published in September 2000, entitled *Gulf War and Health: Volume 1. Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines*. The findings and research recommendations are summarized below.

During phase two, medical literature on pesticides and solvents used during the Gulf War is being reviewed. The cost of phase two is $3.57 million. This second phase began when a newly constituted IOM committee held its first meeting in February 2001. The methodology of the review will be the same in the second phase as in the first phase. IOM plans to publish the second report about 18 months after the first meeting, in September 2002.

The third phase will consist of a series of updates of the literature and the associations, to be conducted every two years. These periodic reviews are consistent with the language of Public Law 105-368.

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Findings and Recommendations of *Gulf War and Health: Volume 1. Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines* (IOM, 2000), and VA, DoD, and HHS Plans for Implementation of IOM Recommendations

Sarin:

- IOM Findings on potential long-term effects of sarin: IOM concluded that there was "limited or suggestive evidence" of an association between "exposure to sarin at doses sufficient to cause acute cholinergic signs and symptoms and subsequent long-term health effects." IOM concluded that there was "inadequate evidence" to determine whether an association does or does not exist between "sarin at low doses insufficient to cause acute cholinergic signs and symptoms and subsequent adverse long-term effects."

- IOM Recommendations and Research Working Group Response (Note that all IOM research recommendations appear in italics.):

1. *IOM: Long-term follow-up of populations exposed to sarin in the Matsumoto and Tokyo terrorist attacks.*

    - The RWG concurs with IOM's recommendation that Japanese scientists should continue the long-term follow-up of populations exposed to sarin in the Matsumoto and Tokyo terrorist attacks. The RWG will keep apprised of the results of these studies.

2. *IOM: Studies in experimental animals to investigate the long-term effects of an acute, short-term exposure to sarin at doses that do not cause overt cholinergic effects and minimal acetylcholinesterase inhibition.*

    - Since 1996, DoD has funded several studies of the long-term effects of short-term sarin exposure at doses that do not cause overt symptoms and cause only minimal acetylcholinesterase inhibition. Nine toxicology studies are focusing on the effects of sarin, alone or in combination. These combinations have included PB, DEET, permethrin, chlorpyrifos, heat stress and/or exercise stress.

    - In addition to the IOM recommendation on animal studies on sarin, the RWG is coordinating three epidemiological studies that are focusing on the health of veterans potentially exposed to low-level sarin due to the demolitions at Khamisiyah. The results of one of these projects were published in 1999 (project DoD-1B). (Gray, 1999c) The conclusion was there were no differences in rates of health problems among Gulf War veterans, who were potentially exposed to subclinical levels of sarin, compared to Gulf War veterans who were not exposed. The second Khamisiyah-related project is being performed by the Oregon Health Sciences University (DoD-63). The purpose is to compare neurological symptoms and results of neuropsychological tests between Gulf War veterans, who were potentially exposed to low levels of sarin, versus Gulf War veterans who were not exposed. The third Khamisiyah-related project is being performed by the Medical Follow-Up Agency of the IOM (DoD-69). The purpose is to compare mortality, hospitalizations, and symptoms between Gulf War veterans, who were potentially exposed to low levels of sarin, versus Gulf War veterans who were not exposed.

    - In addition to the Khamisiyah studies, the RWG is coordinating a contract for MFUA to perform an epidemiologic study of the long-term effects of short-term exposure to nerve agents in human volunteers in experiments conducted at Aberdeen Proving Ground in the 1950s to 1970s (DoD-93).

3. *IOM: Research on genetic factors that may alter susceptibility to sarin toxicity.*

    - VA and DoD have funded a number of research projects on genetic factors that may alter the susceptibility to sarin and/or PB toxicity. These studies are described in detail in the section on PB below.

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Pyridostigmine Bromide (PB):

- IOM Findings on potential long-term effects of PB: IOM concluded that there was "inadequate evidence" to determine whether an association does or does not exist between PB and long-term adverse health effects.

- IOM Recommendations and Research Working Group Response:

1. *IOM: Research on chemical interactions between PB and other agents such as stressful stimuli, and certain insecticides.*

    - Since 1994, VA and DoD have funded 26 projects related to PB, alone or in combination with other chemicals or stressful stimuli. In particular, VA and DoD have funded 18 projects on the potential interactions between PB and other agents. Six of these projects have published results, focusing on the effects of PB in rodents, in combination with DEET, permethrin, swimming stress, restraint stress, or exercise stress (projects VA-49, DoD-10, DoD-37, DoD-62, DoD-65, DoD-75). One important and consistent result of recent studies is that stressful stimuli, such as swimming stress or restraint stress, do not cause an increase in the permeability of the blood-brain barrier, or cause PB to cross the blood-brain barrier into the brain. In 1996, the earliest research in this area was performed, which indicated increased permeability of the blood brain barrier to PB, due to swimming stress in a particular strain of mice. Several more recent studies have failed to replicate this finding using a variety of species, a variety of types of stressful stimuli, and extremely high doses of PB.

2. *IOM: Research on differences in genetic susceptibility (e.g., genetic polymorphisms of butyrylcholinesterase or paraoxonase) that may contribute to increased risk of disease.*

    - VA and DoD have funded eight projects on genetic factors that may alter susceptibility to the effects of PB or sarin, including polymorphisms of enzymes. Six projects in humans are evaluating the effects of genetic differences in polymorphisms of acetylcholinesterase, butyrylcholinesterase, and/or paraoxonase (projects VA-5, DoD-21, DoD-60, DoD-64, DoD-65, DoD-111). Two projects in rats are evaluating the effects of genetic differences in polymorphisms of acetylcholinesterase and butyrylcholinesterase (VA-5D, VA-49).

3. *IOM: Epidemiological studies on the possible long-term health effects of PB.*

    - The RWG concurs with IOM that neurologists, who perform long-term follow-up of the course and treatment of myasthenia patients, should consider the possible long-term effects of PB. These patients take PB for many years. IOM concluded that PB has been used safely and effectively in thousands of myasthenia gravis patients since the 1950s. However, there has not been a systematic evaluation to determine if there are subtle long-term effects. The RWG plans to keep apprised of the results of such long-term studies of myasthenia gravis patients, and contacts have been instituted on this issue with the Myasthenia Gravis Foundation of America.

Vaccines:

- IOM Findings on the potential long-term effects of vaccines: IOM concluded that there was "inadequate evidence" to determine whether an association does or does not exist between anthrax vaccination, botulinum toxoid vaccination, or multiple vaccinations, and long-term adverse health effects.

- IOM Recommendations and Research Working Group Response:

1. *IOM: Long-term systematic research to examine potential adverse effects of anthrax and botulinum toxoid vaccination in multiple species and strains of animals.*

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- The RWG concurs that long-term research is needed to examine potential adverse effects of anthrax and botulinum toxoid vaccination in experimental animals. Such research is underway in DoD laboratories, including more than 50 projects. Also, CDC has recently funded non-human primate studies of the health effects and efficacy of the anthrax vaccine.

- In 2000, the CDC Anthrax Group began a collaborative effort with DoD to study the safety and effectiveness of vaccines used against biological agents, especially the anthrax vaccine. This effort includes addressing the risk factors for various reactions, including differences in rates between men and women; developing better measurements of vaccine effectiveness; reducing the number of injections in the series; and changing the route of administration from subcutaneous to intramuscular.

2. *IOM: Identification of cohorts of Gulf War veterans and Gulf War era veterans, for whom vaccination records exist, followed by careful studies of current symptoms, functional status, and disease status.*

    - The CDC published a study of Air Force Gulf War veterans in 1998, which included measuring antibodies to anthrax and botulinum to determine which individuals had received the vaccines (HHS-2). (Fukuda, et al, 1998) The CDC found no relationship between the vaccinations and the development of a multisymptom illness (chronic symptoms of fatigue, cognitive and mood problems, and musculoskeletal pain).

    - The United Kingdom has also published a study in 2000 on a cohort of 923 Gulf War veterans for whom vaccination records exist (DoD-39). (Hotopf, et al, 2000) There was no association between having received the anthrax vaccine and the development of multisymptom illness, as defined by CDC.

3. *IOM: Long-term longitudinal studies of the participants in the Anthrax Vaccine Immunization Program that would actively monitor and systematically collect and analyze data about symptoms, functional status, and disease status.*

    - In 1999, DoD funded a long-term longitudinal study of participants in the Anthrax Vaccine Immunization Program. The Naval Health Research Center has established DoD-wide surveillance of hospitalizations in military hospitals, linking these to data on anthrax vaccine recipients (project DoD-99). This active surveillance system ensures early detection of any associations between vaccinations and severe reactions that require hospitalizations. In addition, there are several ongoing projects that are following smaller groups of vaccine recipients to evaluate adverse effects.

    - IOM summarized several of these smaller completed and ongoing human studies, nearly all of which are unpublished. (IOM, 2000) IOM strongly urged the DoD investigators who are conducting these studies to submit their results to peer reviewed journals for publication. Additionally, IOM recently started a new two-year study on the safety and efficacy of the anthrax vaccine, funded by DoD. This new study will review some of the unpublished, non-peer reviewed information that was not previously available. CDC has also recently funded a two-year IOM study of the safety and efficacy of the anthrax vaccine.

Depleted Uranium (DU):

- IOM Findings on the potential long-term health effects of DU: IOM concluded that there is "limited or suggestive evidence" that there is no association between exposure to uranium and "lung cancer at cumulative internal dose levels lower than 200 millisieverts or 25 centigrays." IOM also concluded that there is "limited or suggestive evidence" that there is no association between exposure to uranium and "clinically significant renal

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dysfunction." IOM concluded that there was "inadequate evidence" to determine whether an association does or does not exist for several other potential long-term health effects.

- IOM Recommendations and Research Working Group Response:

1. *IOM: Continued follow-up of the Baltimore cohort of Gulf War veterans with DU exposure. Long-term studies of the health of other Gulf War veterans at high risk for DU exposure (e.g. cleanup or radiation control units).*

    - The RWG concurs with the long-term follow-up of the veterans in the Baltimore cohort, who were injured during friendly fire incidents. (Hooper, et al, 1999; McDiarmid, et al, 2000) This cohort was expanded in 1999, beyond the original 33 individuals. Approximately 100 veterans were involved in friendly fire incidents. OSAGWI has interviewed each of these individuals, and invited them to participate in the Baltimore program. (OSAGWI, 2000a) While the Baltimore researchers have seen no definitive evidence of adverse clinical outcomes associated with uranium exposure to date, the veterans who were involved in the friendly fire incidents will remain under continuing medical surveillance.

    - In addition, since mid-1998, VA and DoD have offered a DU medical evaluation to hundreds of other veterans with potential DU exposure, such as those involved in cleanup operations or radiation control units. Individuals who performed these functions have been interviewed and invited to participate in the DU medical evaluation program. (OSAGWI, 2000a) To date, the published data have shown that only veterans who have retained metallic fragments have demonstrated persistently elevated urinary uranium levels. (McDiarmid, et al, 2001)

2. *IOM: Continued follow-up of the cohorts of uranium processing workers.*

    - The RWG concurs that the long-term follow-up should continue of cohorts of uranium processing workers. Many of these studies involve employees of manufacturing facilities managed by the Department of Energy or its contractors. Because of the recent increase in interest in the employees of these facilities, ongoing surveillance is likely to intensify in the future. The RWG will keep apprised of the results of these studies.

3. *IOM: Additional studies of the effects of depleted uranium in animals.*

    - DoD has funded five toxicology projects that are investigating the health effects of DU in experimental animals (DoD-7A, DoD-7B, DoD-121, DoD-122, DoD-123). In particular, since 1994, the Armed Forces Radiobiology Research Institute (AFRRI) has been investigating the health effects of embedded DU pellets on rats. IOM cited the results of several published AFRRI studies. (IOM, 2000) For example, there was no detectable kidney toxicity in rats embedded with DU pellets, even at very high concentrations of urinary uranium. Also, in 2000, DoD released a Broad Agency Announcement to fund additional studies of health effects of heavy metals in experimental animals, including DU. Outcomes of particular interest include effects on the lung, liver, kidney, and nervous systems; and localized soft tissue responses of embedded fragments. Awards for these projects will occur in 2001.

IV.B.2. White House Report: *Health Consequences of the Gulf War: An Ongoing Analysis*

In mid-2000, White House staff charged the MVHCB with coordinating and editing an interagency report, which would summarize the activities of the Federal Government to address illnesses in Gulf War veterans. This report was completed in December 2000, and it was entitled *Health Consequences of the Gulf War: An Ongoing Analysis.* (White House, 2000) The White House released this report officially on

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January 16, 2001, and President Clinton signed the foreword. This report provides an overview of the background, clinical programs, research and investigations, compensation initiatives, outreach efforts, and lessons learned from the Federal efforts to understand the causes of the illnesses arising from the Gulf War.

The Military and Veterans Health Coordinating Board coordinated the planning and drafting of this document by staff of DoD, VA, and HHS. MVHCB staff edited the report and placed it on their Internet site, at http://www.mvhcb.gov/. The Office of the Special Assistant for Gulf War Illnesses funded the printing of 3,300 color copies of the report. It was distributed to all members of Congress, the White House, Veterans' Service Organizations, and Military Service Organizations.

The report includes a chapter on Research, which summarizes the findings, to date, on illnesses in Gulf War veterans. (White House, 2000) The major conclusions are:

- Military personnel who served in the Gulf War have had a significantly higher incidence of suffering one or more symptoms that include fatigue, memory loss, difficulty concentrating, pains in muscles and joints, and rashes.
- The symptoms range in severity from barely detectable to completely debilitating.
- Other symptoms are noted with reduced frequency, but still may be experienced more often by deployed than by non-deployed veterans.
- No single accepted diagnosis or group of diagnoses has been identified that describes and explains these symptoms.
- No single exposure, or set of exposures, has been shown conclusively to cause individual or combinations of symptoms.
- No diseases included in the international classification systems have been shown to be more frequent in the deployed or in non-deployed veterans with the exception of PTSD [posttraumatic stress disorder] symptoms.
- Deaths among deployed veterans are not higher in general than deaths among non-deployed veterans (through 1997).
- Deaths due to accidents are higher among veterans that deployed to the Gulf.

IV.B.3. 2001 Conference on Illnesses among Gulf War Veterans: A Decade of Scientific Research

The RWG organized and hosted an international meeting, entitled the "*2001 Conference on Illnesses among Gulf War Veterans: A Decade of Scientific Research.*" It was held on January 24-26, 2001, in Alexandria, Virginia. The purpose of the meeting was to bring Federally sponsored researchers on Gulf War veterans' illnesses together in a common forum. This year's conference emphasized the current state of the science and lessons learned. Speakers were encouraged to place their new findings within the context of the implications of the research that has already been completed.

This was the fifth such conference. The first was held in Washington, DC, at the Armed Forces Institute of Pathology in 1995; the second in Fort Detrick, Maryland, in 1997; and the third and fourth in Arlington, Virginia, in 1998 and 1999. Since 1995, the conference has grown from about 50 participants to almost 400 scientists, clinicians, government officials, and veterans. The 2001 Conference included scientists from Great Britain, Canada, Australia, France, the Netherlands, Denmark, and Israel.

The objectives of the Conference were to bring Federally sponsored researchers together in a common forum to:

- Provide an opportunity for researchers to present and exchange study results.
- Learn from recognized experts about overarching research areas as they relate to the etiology, diagnosis, and treatment of Gulf War veterans' illnesses.
- Inform clinicians of current practices for the treatment of Gulf War veterans' illnesses, and the latest research findings and their potential impact on clinical care.
- Provide an opportunity for veterans and veterans groups to learn about ongoing research and to interact directly with researchers, clinicians, and Government officials.
- Provide an opportunity to inform executive and legislative branches of the Government about research and clinical initiatives related to the Gulf War that should be considered for future deployments.

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- Encourage communication, cooperation, and collaboration among researchers, clinicians, and veterans.
- Evaluate the implications of research on Gulf War veterans' illnesses: current state of the science and lessons learned.

Over the course of three days, the 2001 Conference was organized into three morning plenary sessions, two afternoon breakout sessions on specific research topics, and one evening poster session. In addition, there were two early morning and one afternoon clinical symposia addressing treatment and clinical management of Gulf War veterans' illnesses.

The plenary sessions were intended to be of broad appeal to a wide audience. Nationally and internationally recognized experts focused on four major themes: longitudinal follow-up studies of Gulf War veterans; alternate approaches to case definitions; results of neuropsychological testing; and research on potential exposures during the Gulf War. During the breakout sessions and the poster session, researchers presented their research findings in a wide range of scientific areas, including epidemiology, toxicology, psychology, neurology, neuropsychology, treatment, force health protection, and prevention.

The *Proceedings* for this conference were published in early 2001. (MVHCB, 2001b) The *Proceedings* contain the texts of the presentations provided by each plenary speaker, summaries of each breakout session, and a complete set of abstracts for each presentation in the breakout sessions and poster session. The section of the *Proceedings*, which contains the texts of the plenary sessions, has been reprinted as Appendix B of this *Annual Report to Congress for 2000.*

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V. RESEARCH MANAGEMENT

A. Overview

Research on Gulf War veterans' illnesses is a complex undertaking, involving a number of different approaches. The Federal research effort on this problem involves scientists in Federal, academic, and private institutions, both in the United States and abroad, conducting research sponsored by VA, DoD, and HHS. Each of these Departments has distinct, though complementary, capabilities and capacities for conducting and sponsoring research on Gulf War veterans' health issues. In addition, each Department has its own appropriation for extramural and intramural general biomedical research programs.

The biomedical research programs in VA, DoD, and HHS have well-established management structures for science policy formulation and the solicitation, scientific peer review, and funding of both extramural and intramural programs. Each Department's research management hierarchy for Gulf War veterans' illnesses research has been linked through an overall coordinated effort carried out by the Research Working Group (RWG) of the Military and Veterans Health Coordinating Board (MVHCB). As an operational policy, the RWG works through the management authority that each Department maintains over its intramural scientists, its scientific program managers who are responsible for extramural research, and its budgets. However, the RWG has no budget authority itself, which ensures greater objectivity. As a consequence, all funds for research flow through the funding agency or Department.

B. Oversight of Research

Each Department engaged in research on Gulf War veterans' illnesses endorses the need for both prospective and retrospective scientific peer review of research. Review and oversight of research have been important, because of the urgency of the health concerns of Gulf War veterans and their families, and the diverse nature of the reported illnesses. VA, DoD, HHS, and the Executive Office of the President have established multiple oversight mechanisms to capture the full spectrum of the overall effort. Some oversight mechanisms are broad-based, encompassing all research issues, while others are more focused on individual research projects and programs.

Four of the most important oversight activities are briefly discussed below. Although each has had a broad mandate that has encompassed virtually all issues related to Gulf War veterans' illnesses, the discussion below will focus on their research oversight activities, findings, and recommendations.

1. Institute of Medicine/Medical Follow-up Agency: *Health Consequences of Service During the Persian Gulf War*

As directed by Public Law 102-585, VA and DoD jointly entered into a contract with the Medical Follow-Up Agency (MFUA) of the Institute of Medicine, National Academy of Sciences. The three-year IOM contract started on September 30, 1993. The IOM was mandated to review existing scientific, medical and other information on the health consequences of military service during the Gulf War. The IOM was also mandated to write a report that focused on the following:

- an assessment of the effectiveness of actions taken by the VA and DoD to collect and maintain information that is potentially useful for assessing the health consequences of military service in the Gulf War;
- recommendations on means of improving the collection and maintenance of such information; and
- recommendations on whether there is sound scientific basis for an epidemiological study or studies on the health consequences of service in the Gulf War, and the nature of such study or studies.

On January 4, 1995, the IOM issued a report, entitled *Health Consequences of Service During the Persian Gulf War: Initial Findings and Recommendations for Action* (IOM, 1995). In general, the IOM panel endorsed previous findings of the Defense Science Board (DSB, 1994) and a National Institutes of Health Technology Assessment Workshop (NIH, 1994) that no single disease entity could be identified for the health complaints expressed by Gulf War veterans. The panel also strongly emphasized the importance of population-based studies, which are currently ongoing in a number of areas.

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The final IOM report of September 1996 stands as a separate document from its initial January 1995 report. It is entitled *Health Consequences of Service During the Persian Gulf War: Recommendations for Research and Information Systems.* (IOM, 1996) The IOM panel stated that it could find no scientific evidence to date demonstrating adverse health consequences associated with service in the Gulf War beyond the few documented cases of leishmaniasis, combat-related or injury-related mortality or morbidity, and increased risk of psychiatric sequelae of deployment. The panel went on to state that there is a strong likelihood that no single hypothesis could account for all illnesses reported by Gulf War veterans, whether or not they resulted from service in the Gulf War. Finally, the panel observed that after previous wars and conflicts, a proportion of military service personnel and veterans have had medical complaints of varying degrees of severity that are not explainable based on identifiable health hazards or physical illnesses. This observation echoes work by Hyams et al. (1996) tracing such a phenomenon back at least to the Civil War.

The IOM panel made the following research recommendations:

- Determine factors for possible response differences among active and non-active duty service members.
- Conduct mortality studies on Gulf War veterans out to at least 30 years.
- Determine the reason for excess deaths by external causes among Gulf War and other veterans.
- Continue and extend the Defense Medical Epidemiological Database.
- Refine geographical information systems (GIS) for troop locations and plan for future conflicts.
- Conduct reviews of the Total Exposure Assessment Methodology used to predict pollutant exposure in the Gulf War.
- Study gender issues when assessing health effects of deployment.
- Conduct studies on the consequences of assigning men and women to serve together.
- Complete and publish the Naval Health Research Center epidemiology studies.
- Complete and publish the VA National Survey of Persian Gulf Veterans.
- Complete evaluation of predictors of VA registry enrollment.
- Strengthen the epidemiologic capabilities of the armed forces.
- Submit all research (intra- and extramural) for peer review publication in a timely manner.

Each of these IOM recommendations has been implemented by VA, DoD, and HHS. The progress, to date, is summarized below, in Section VI. Research Priorities.

In accordance with P.L. 102-585, the agreement with IOM has been extended for the general purposes of providing core epidemiological support for research on military and veteran populations. This support provides a valuable infrastructure to carry out epidemiological research on Gulf War veterans' illnesses. The Medical Follow-up Agency of the IOM is currently conducting a number of related projects (DoD-69, DoD-93, DoD-116/VA-63, and DoD-117).

2. Executive Office of the President: Presidential Advisory Committee on Gulf War Veterans' Illnesses (PAC)

The President established the PAC by Executive Order on May 26, 1995. Between August 1995 and January 1997, the Committee met a total of 23 times either as a full Committee or in subcommittees. The 12 member committee was composed of scientists, health care professionals, veterans, and policy experts. The Committee was charged with reviewing and providing recommendations on the full range of activities relating to the government's response to Gulf War veterans' illnesses. In addition the Committee evaluated the available data on the nature of Gulf War veterans' illnesses and on potential health effects related to Gulf War risk factors.

The Committee released an interim report in February 1996 (PAC, 1996a). Although the Interim Report stated that VA, DoD, and HHS research programs were generally well-designed and should lead to meaningful answers to issues concerning Gulf War veterans-related health issues, it also had several recommendations. The Committee's recommendations covered issues such as peer review, coordination of agency research activities, the use of public advisory committees, and the availability of information

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on troop exposures. The Committee made no findings about specific illnesses or risk factors in the Interim Report. In response to the Interim Report, the Departments developed a coordinated plan of action that responded to the Advisory Committee's interim recommendations.

The Final Report of the Committee was released in December 1996 (PAC, 1996b). The PAC came to the following conclusions:

- Many veterans have illnesses likely to be connected to service in the Gulf War.

- Current scientific evidence does not support a causal link between the symptoms and illnesses reported today by Gulf War veterans and exposures while in the Gulf to:

  Pesticides
  Chemical warfare agents
  Biological warfare agents
  Vaccines
  Pyridostigmine bromide
  Infectious diseases
  Depleted uranium
  Oil well fires and smoke
  Petroleum products

The Final Report also concluded that stress (known to affect the brain, immune system, cardiovascular system, and various hormonal responses) is likely to be an important contributing factor to Gulf War veterans' illnesses.

The Final Report made the following research recommendations:

- Require any new large-scale epidemiologic studies to have scientific and public advisory committees.
- Develop more accurate and reliable troop locator systems.
- Plan and conduct further research on low-level exposure to organophosphate chemical warfare nerve agents.
- Monitor Gulf War veterans for increased rates of cancer through mortality studies.
- Conduct research on the health status of individuals with embedded depleted uranium fragments.
- Collect and archive serum samples from U.S. service personnel when feasible.
- Conduct basic and clinical research on the physiologic effects of stress and stress-related disorders.
- The Research Working Group should consult more thoroughly with other Federal agencies.

Each of these PAC recommendations has been implemented by VA, DoD, and HHS. The progress, to date, is summarized below, in Section VI. Research Priorities.

Because of concern over the adequacy of investigations into reports of possible chemical and biological warfare exposure incidents during the Gulf War, and because of a need to follow up on recommendations from the Committee's Final Report, the President extended the Committee through October 1997. At that time the PAC issued a Special Report (PAC, 1997). In the Special Report the Committee did not alter its findings and conclusions with respect to potential causes of Gulf War veterans' illnesses. The Special Report did not contain any specific recommendations for research.

With respect to Federally funded research on Gulf War veterans' illnesses, the PAC concluded that the Government has been adequately and appropriately responding to its recommendations. (PAC, 1997) The PAC particularly commended the Government for its new initiatives targeted on health effects of low-level exposure to chemical warfare (CW) agents. As the PAC noted in its Final Report, "the amount of data from either human or animal research on low-level exposures [to CW agents] is minimal." However, in its Special Report, the PAC concluded that planned research on the health effects of low-level exposure might address any uncertainties and inconclusiveness identified in the Final Report.

The PAC approved of the government's targeted solicitations for research and the process used to make such awards. (PAC, 1997) However, the Committee expressed reservations about a perceived deficiency in processes for funding some research projects related to Gulf War veterans' illnesses. The Committee noted that "competition and external peer review of research proposals are essential to guarantee scientific merit, relevance, and level of priority generally." The Committee acknowledged that benefit can accrue from small-scale, short-term funding on a sole source basis for pilot projects

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or to address narrow scientific questions. The Committee stated, though, that such approaches should be rare and that protocols still should be peer reviewed prior to funding, limited in the amount of funds released, and not subject to renewal without competition.

The RWG of the MVHCB will continue to endorse peer review and competition as the means of obtaining the best research products.

3. Senate Committee on Veterans' Affairs: ***Report of the Special Investigation Unit on Gulf War Illnesses***

The Senate Committee on Veterans' Affairs undertook a year-long investigation in 1997, and published a comprehensive report in 1998. (SVAC, 1998) The Special Investigative Unit (SIU) examined the policies and actions of the U.S. government that have had an impact on the current health of Gulf War veterans.

Specific areas of concern were encompassed: the DoD's plans and policies; the intelligence community's role; health risks encountered by U.S. troops during the war; record keeping before, during, and after it; and the VA's accountability to and responsibilities for Gulf War veterans.

The major conclusions of the SVAC related to research were:

- While there does not appear to be any single "Gulf War Syndrome," there is a constellation of symptoms and illnesses whose cause or causes eludes explanation at this time.
- There is a great need to monitor those veterans who are ill, or who may become ill in the future, to assess whether they are getting better or worse and to define better the long-term effects they may experience.
- There is insufficient evidence to prove or disprove that there was an actual low-level exposure of any troops to chemical weapon nerve agents, or that any of the health effects some veterans are experiencing were caused by such exposure.
- In the inherently difficult area of military health, research that is conducted before illnesses occur, not after the fact, can help to assure prompt, effective medical treatment; to prevent adverse health effects in the first place; and to provide clear information to veterans who may be adversely affects by such exposures.

The SVAC made the following research recommendations:

- DoD should fund research into the health effects of depleted uranium exposure.
- DoD should establish a program to improve the capacity for rapid and early detection of exposures that may affect troop health during and after deployments; for example to develop technology to rapidly screen persons exposed to a wide range of chemical toxins, including chemical warfare agents.
- DoD and VA should monitor the treatment provided to ill Gulf War veterans on an ongoing basis, especially those with unexplained illnesses, to determine whether those veterans are getting better or worse over time.
- DoD and VA should implement methods to monitor the health status of Gulf War veterans over time to provide early detection of future illnesses that may emerge years later, such as higher rates of cancer.
- DoD and VA should establish a birth defects registry for military service members to gather statistics on possible reproductive health effects stemming from battlefield exposures.
- DoD and VA should evaluate treatment protocols that have been useful for persons in the general population who suffer from illnesses similar to Gulf War veterans' unexplained illnesses, and they should fund appropriate clinical programs and research in this area.
- DoD and VA should fund Gulf War health research only through an impartial, scientific peer review process, except in the case of the most serious circumstances.

Each of the SVAC recommendations has been implemented by DoD and VA. The progress, to date, is summarized below, in Section VI. Research Priorities.

4. Presidential Special Oversight Board: ***Final Report of Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents***

The Presidential Special Oversight Board (PSOB) was established in June 1998 in

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response to a recommendation of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. (PAC, 1997) The *Final Report* of the PSOB was published on December 20, 2000. (PSOB, 2000)

The PSOB charter called for it to "provide advice and recommendations [and oversight] . . . of DoD investigations into possible detections of, and exposures to, chemical or biological warfare agents and environmental and other factors that may have contributed to Gulf War Illnesses . . . [and to provide an] overall evaluation of DoD's plan for and progress toward the implementation of the Presidential Advisory Committee's recommendations contained in its Special Report." (PSOB, 2000)

There were a limited number of research conclusions and recommendations in this report, which were scattered in the report, rather than clustered in a summary. (PSOB, 2000) Most of the report was not directly related to research, since most of the report focused on an evaluation of the work of the DoD Office of the Special Assistant for Gulf War Illnesses (OSAGWI).

The major conclusions related to research in the PSOB *Final Report* were:

- "After every deployment of troops for war, similar symptoms have occurred in returning service personnel. This 'post-war syndrome' has been attributed to the stresses of deployment. It has been described in various ways in every war since the Civil War. . . The Board concludes that it is highly likely that a proportion of Gulf War veterans suffering from the symptoms of undiagnosed illnesses fall into the generalized category of 'post-war syndrome' or post deployment illness. As with all previous wars, stressful deployments to a combat zone can create significant medical problems for returning troops." (pages 44-45)

- "Mental disorders clearly affect military readiness. These factors are the second leading cause of hospitalization, the leading cause of inpatient bed days, and the leading medical cause of attrition from the military service. Mental disorders are also the most important cause of medical and occupational morbidity among active duty US military personnel." (page 72)

- "The only known potential exposure of US personnel to chemical warfare agents remains the accidental low-level release of nerve agents during demolition operations at Khamisiyah, Iraq, in March 1991." (page ii)

- "Based on the current body of evidence in the medical literature on studies of humans accidentally exposed to organophosphate nerve agents and on controlled animal exposures to organophosphate nerve agents at levels causing no acute signs or symptoms, low-level exposures do not produce chronic illnesses. However, gaps exist in the scientific literature regarding the potential long-term health consequences of exposure to low concentrations of nerve agents that are initially asymptomatic." (pages 48-49)

- "The Board concludes that DU [depleted uranium] is unlikely to be the cause of either the unexplained illnesses among Gulf War veterans or the diagnosed illnesses found during CCEP and VA Registry evaluations." (page 51)

- "The Board concurs with both the RAND study on PB [pyridostigmine bromide] and the Institute of Medicine analysis that 'available evidence is of insufficient quality, consistency or statistical power to permit a conclusion regarding the presence or absence of an association [of PB use with adverse health effects] in humans.' " (page 55)

In its *Final Report*, the PSOB made the following research recommendations:

- "The Board concludes that stress is likely a primary cause of illness in at least some Gulf War veterans; it is a likely secondary factor in potentiating other causes of undiagnosed illnesses among some Gulf War veterans. . . This issue requires continued research. The Board commends DoD for recognizing the role of stress in deployment and in combat and for developing and implementing programs to address this issue." (page iv)

- "The Board recommends that OSAGWI and the MVHCB closely monitor the

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development and resourcing of DoD's research on the health effects of low-level CWA [chemical warfare agent] exposures and make recommendations as appropriate to ensure continued progress in this area." (page vii)

- "The Board strongly believes that efforts to fund non-peer reviewed research projects do not serve the best interest of the nation or of its Gulf War veterans. Researchers and clinicians who advocate 'alternative' diagnostic and treatment methods, as well as those proposing more conventional approaches, should be encouraged to respond to Requests for Proposal and Broad Agency Announcements with well-constructed proposals capable of passing vigorous and independent peer review." (page viii)

- "The Board believes that DoD should fully support the Millennium Cohort Study and that the service members selected to participate in the program should cooperate fully. This twenty-year research project will significantly enhance the Federal Government's and the medical community's understanding of the long-term health consequences of military service and facilitate improved clinical care and force health protection for members of the Armed Forces." (page ix)

- "The Board concurs with the Institute of Medicine recommendations for: '1) additional studies in experimental animals to investigate the specific effects of DU; and 2) long-term follow-up of veterans exposed [and potentially exposed] to DU, including. . . [those] involved in clean-up operations or radiation control units.' " (page 51)

- "Further study is clearly needed in this area [pyridostigmine bromide], since PB remains the only viable prophylactic agent for soman exposure, and DoD intends to continue its use in future conflicts." (page 55)

- "PRD-5 recommended DoD possess the capability to collect and assess data associated with anticipated exposures during deployments and to respond to newly identified threats. . . The Board believes that the complexity of accurate assessment tools and epidemiological standards have inhibited progress in this area of environmental health research. The Board recommends that DoD develop and implement a system for applied toxicological research based on prioritized lists of environmental and occupational substances, as suggested in PRD-5." (page 74)

Each of the PSOB recommendations has been implemented by DoD and VA. The progress, to date, is summarized below, in Section VI. Research Priorities.

5. Other Oversight

In addition to the broad oversight that has been provided by the four committees cited above, there are several standing and special committees responsible for oversight on individual research projects and programs. The RWG also continues to encourage that all large epidemiological studies establish public advisory groups that include representation of Gulf War veterans. Additionally, valuable review and oversight has been provided by the House Committee on Veterans' Affairs, the House Committee on Government Reform, and the General Accounting Office.

C. Research Coordination

In 1993, VA, DoD, and HHS recognized the importance of a coordinated approach to research on Gulf War veterans' illnesses and formed the "Persian Gulf Interagency Research Coordinating Council." In January 1994, the Secretaries of VA, DoD, and HHS formed the Persian Gulf Veterans Coordinating Board. The Research Coordinating Council became the Research Working Group (RWG), operating under the auspices of the Coordinating Board. In 2000, the mission of the RWG broadened to include issues of Force Health Protection, as the PGVCB transitioned to become the MVHCB. (PGVCB, 2001) Membership on the RWG consists of senior research scientists and clinical managers from VA, DoD, and HHS.

The RWG includes various subcommittees that have been in existence over the past several years. The Planning Subcommittee for Annual Meetings of Federal Researchers has been responsible for organizing five meetings of Federally funded researchers. These meetings have provided an opportunity for researchers to

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gather and share recent research results and to discuss research problems of mutual interest. The 2001 conference was an open meeting allowing for extensive interactions among researchers, clinicians, veterans, and other members of the public.

The RWG reevaluated its general functions in September 2000, when the PGVCB transitioned to the MVHCB. The consensus statement on general functions is:

- The Research Working Group will provide coordination of the interagency research strategy, related to deployment health and health risk communication initiatives, affecting military personnel, veterans, and their families. It will:

    1. Assess the state and direction of research to identify new ideas or new research approaches, to identify gaps in scientific knowledge, and to make recommendations regarding research priorities.

    2. Promote and encourage appropriate scientific review of research sponsored by the Federal government.

    3. Make recommendations concerning appropriate actions and responses to research findings.

    4. Provide a forum for information exchange about research initiatives and priorities among the Departments of Defense, Veterans Affairs, and Health and Human Services, and the national and international research community.

Programmatic Review of Extramural Research Proposals

An important function of the RWG is programmatic review of research proposals that have been competitively reviewed and recommendation to funding agencies. Figure V-1. illustrates the general approach the RWG has taken regarding extramural research (research funded by an agency, but carried out by organizations outside of the agency such as universities, private laboratories, or other independent organizations). The RWG works collectively with VA, DoD, and HHS to establish research needs and identify agency-specific funding mechanisms to support that research. For a specific research funding activity, the responsible funding agency works in coordination with the RWG to develop a targeted solicitation for research.

Proposals that are submitted to the funding agency in response to a solicitation are scientifically peer reviewed using agency-specific peer review programs. For example, the Department of the Army in DoD uses a contract with the American Institute of Biological Sciences. Abstracts of peer reviewed proposals, summaries of the reviews of the peer reviewers, and the scientific merit scores assigned by the peer reviewers, are provided to a subcommittee of the RWG charged with providing secondary review of proposals for relevance. Relevance determinations are guided by interagency programmatic needs articulated through the RWG process and reflected in the *Working Plan for Research* (1996b). In its secondary review, the RWG may re-rank proposals based on relevance, but it will not recommend funding for any non-meritorious proposal, regardless of relevance or availability of funds. The RWG has no budget authority; therefore all final funding decisions about research are made by the individual agencies.

Though scientists within intramural research programs do not compete for their funding in the same way as non-federal extramural scientists, the RWG works with agencies to ensure that intramural programs and projects are adequately peer reviewed. The RWG will continue to work diligently to foster the highest standards of competition and peer review for all research on Gulf War veterans' illnesses.

Notable among the activities of the RWG are:

- Development, production, and dissemination of the 1995 *A Working Plan for Research on Persian Gulf Veterans' Illness* (PGVCB, 1995b), and its 1996 revision (PGVCB, 1996b).

- Production and dissemination of *Annual Reports to Congress* for 1994 through 2000 on results, status, and priorities of Federal research activities (PGVCB, 1995a; 1996a; 1997; 1998a; 1999a; 2001; MVHCB, 2001a).

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- Secondary programmatic review of research proposals that have been competitively reviewed by funding agencies.

- Organization of five conferences of Federally funded researchers, including publication of three Proceedings (PGVCB, 1998b; PGVCB, 1999b; MVHCB, 2001b).

- Coordination and oversight of implementation of relevant recommendations of the Institute of Medicine, Presidential Advisory Committee, Senate Veterans Affairs' Committee, the Presidential Review Directive 5, and the Presidential Special Oversight Board (IOM, 1995, 1996; PAC, 1996a, 1996b, 1997; SVAC, 1998; NSTC, 1998; PSOB, 2000).

- Two national treatment trials (exercise/behavior trial and antibiotic treatment trial).

- Organization of an international symposium in 1997, in conjunction with the Society of Toxicology on the health effects of low-level exposure to chemical warfare nerve agents.

- Development of a strategy for research on the health effects of exposure to low-levels of chemical warfare nerve agents.

- Follow-up investigation of preliminary reports of positive experimental serological tests for leishmaniasis in Gulf War veterans.

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VI. RESEARCH PRIORITIES

The Research Working Group has identified the three sets of research priorities in 1995, 1996, and 1998. (PGVCB, 1995b; 1996b; 1999a) Substantial progress has been made on each of these priorities, which is summarized here.

A. RESEARCH PRIORITIES FOR 1995

In 1995, the scope and magnitude of the research activities required implementation of a comprehensive plan. This resulted in the publication of *A Working Plan for Research on Persian Gulf Veterans' Illnesses* on August 5, 1995. (PGVCB, 1995b) The *Working Plan* was coordinated by the Department of Veterans Affairs (VA), in conjunction with the PGVCB. The plan mapped out the course to pursue the following overarching goals:

- Establish the nature and prevalence of symptoms, diagnosable illnesses, and unexplained conditions among Persian Gulf veterans in comparison to appropriate control groups.

- Identify the possible risk factors for any illnesses, beyond those expected to occur, among Persian Gulf veterans.

- Identify appropriate diagnostic tools, treatment methods, and prevention strategies for any excess illness conditions found among Persian Gulf veterans.

A key component of the 1995 *Working Plan* was an assessment of current knowledge and research on Gulf War veterans' illnesses. This assessment led to the identification of 19 research questions, which are included below, in the section on research priorities for 1996.

This assessment also led to the identification of the following issues for which significant gaps in knowledge existed in 1995:

1. Information on the prevalence of symptoms, illnesses, and/or diseases within other coalition forces.
2. Information on the prevalence of symptoms, illnesses, and/or diseases within indigenous populations within the Persian Gulf area including Saudi Arabia and Kuwait.
3. Information on the prevalence of adverse reproductive outcomes among Persian Gulf veterans and their spouses.
4. Simple and sensitive tests for *L. tropica* infection that could lead to quantification of the prevalence of *L. tropica* infection among Persian Gulf veterans.
5. Information on the long-term, cause-specific mortality among Persian Gulf veterans.

Each of these research issues has been addressed since 1995, as follows:

1. The US government has coordinated its research effort with the UK and Canada, as coalition partners in the Gulf War. The UK fielded the second largest force during the Gulf War, including 53,000 service members. The US DoD has funded epidemiological research in the UK, which has compared the health of British Gulf War veterans, Bosnia veterans, and non-deployed veterans (projects DoD-39 and DoD-106). The results of the first phase of the British investigation have been published. (Unwin, et al, 1999; Ismail, et al, 1999; Ismail, et al, 2000; Hotopf, et al, 2000) The Canadian government has published a comprehensive study of the health of Canadian Gulf War veterans, compared to non-deployed veterans. (Goss Gilroy, et al, 1998) Denmark also participated in the Gulf War as a coalition partner, primarily in the postwar period after April 1991. American scientists are collaborating with researchers in Denmark on a study of neuropsychological function in Danish soldiers (project HHS-5).

2. Because the health status of Saudi Arabian soldiers has not been systematically addressed, a team of US researchers from DoD and CDC started an epidemiology study of the Saudi Arabian National Guard in 1999 (DoD-102). The objective is to examine available computerized databases for unusual health trends, comparing soldiers who were stationed in a combat area in January 1991 (Al Khafji), with soldiers who were stationed in a non-combat area (Riyadh). Mortality rates will be compared, as will rates and causes of hospitalizations and outpatient visits.

3. Eight projects include research objectives related to the prevalence of adverse

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reproductive outcomes among Gulf War veterans and their spouses. Three of these projects have been completed (HHS-4, DoD-1C, DoD-1G), and their results have been published. (Penman and Tarver, 1996; Cowan, et al, 1997; Araneta, et al, 1997; Araneta, et al, 2000) Five of these projects were completed recently, but have not published results yet (VA-2, VA-47, DoD-1D, DoD-35, and DoD-44).

4. Eight projects have focused on the development of simple, sensitive tests for leishmaniasis that could lead to quantification of the prevalence of infection, as well as new treatment methods. Six of these projects have been completed and have led to several publications (VA-6E, VA-16, DoD-8A, DoD-8B, DoD-9, and DoD-38). Two of these projects are ongoing (VA-15 and DoD-95).

5. The long-term mortality of Gulf War veterans will be followed by the VA for many years (project VA-1). Four publications have focused on the causes of mortality among American Gulf War veterans, compared to non-deployed veterans. (Helmkamp, 1994; Writer, et al, 1996; Kang and Bullman, 1996; Kang and Bullman, 2001) The major finding was that there was an increased mortality risk due to external causes (e.g., motor vehicle accidents) among Gulf War veterans. The British recently published a mortality study of Gulf War veterans and non-deployed veterans in the UK, and they demonstrated very similar results. (Macfarlane, et al, 2000)

B. RESEARCH PRIORITIES FOR 1996

In 1995 and 1996, the number of research programs investigating Gulf War veterans' illnesses increased substantially. Many research programs began to produce results. One major development in 1996 was the information about potential exposures to chemical weapons due to the demolitions at Khamisiyah. The addition of new research, results of ongoing research, and new information about potential exposures formed the basis of a new assessment of knowledge and research. This changed the context in which the research was conducted and necessitated a revision of the 1995 *Working Plan*. The 1996 report was entitled *A Working Plan for Research on Persian Gulf Veterans' Illnesses, First Revision*. (PGVCB, 1996b) This report identified three sets of research objectives: a) shorter-term objectives; b) long-term objectives; and c) a comprehensive list of 21 research questions.

a. Short-Term Objectives

Emerging findings from ongoing research in 1995 and 1996, and new factual information on the potential for chemical weapons exposure in southern Iraq in 1991 led to the following specific, near-term recommendations for additional research:

1. More longitudinal follow-up studies of the health of Persian Gulf veterans, including those with illnesses that are difficult to diagnose.
2. Critical peer review of models used to predict exposure concentrations of environmental pollution (such as the Kuwait oil well fires) and chemical warfare agents (such as the demolition of weapons storage sites at Khamisiyah in March 1991, and aerial bombing of chemical weapons facilities during the air war).
3. Assessment of the potential for clinical investigations of the health status of the service members in the vicinity of Khamisiyah when weapons bunker 73 and the storage pit were detonated in March 1991. If deemed possible, such clinical investigations should be carried out.

Each of these research issues has been addressed since 1996, as follows:

1. Five studies include longitudinal follow-up of Gulf War veterans, in Boston, New Orleans, New Jersey, Iowa, and the United Kingdom. These studies were described in detail in Section IV.C.4. of the *Annual Report for 1999*. (PGVCB, 2001)

2. Several publications have described the results of models of the oil well fire smoke and potential releases of chemical weapons, all of which have been peer reviewed. The modeling of environmental pollution released by the Kuwaiti oil well fires has been described in detail. (Office of the Special Assistant for Gulf War Illnesses (OSAGWI), 1998b; Spektor, 1998; OSAGWI, 2000b; OSAGWI, 2000c) The

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results of modeling of the potential release of chemical weapons, due to the demolitions at Khamisiyah in March 1991, have been reported by two agencies. (OSAGWI, 1997; CIA, 1997; OSAGWI, 2000f) The results of modeling of the potential release of chemical weapons, due to aerial bombing of facilities during the air war, have also been published by two agencies. (CIA, 1996; OSAGWI, 2000e) Only three sites that were bombed during the air war might have released chemical weapons-Muhammadiyat, Al Muthanna, and Ukhaydir. (OSAGWI, 2001b; OSAGWI, 2001f; OSAGWI, 2001e) The results of investigations about potential exposure of US troops to the oil well fires and to chemical weapons are summarized in Appendix C. of this *Annual Report to Congress for 2000*.

3. Three funded investigations are focusing on the potential health effects among service members who were near Khamisiyah at the time of the demolitions in 1991 (DoD-1B, DoD-63, and DoD-69). One of these studies (DoD-1B) is complete and published. (Gray, et al, 1999c) In addition to these three funded projects focusing on Khamisiyah, there are three related studies that are outgrowths of other projects, which evaluate mortality rates, clinical diagnoses, and self-reported symptoms (VA-1, DoD-94, and VA-4). The mortality study is complete and published. (Kang and Bullman, 2001)

b. Long Term-Objectives

Additional research on health-related issues arising from the Gulf War experience, but with potential for more general applicability to future conflicts, was also recommended in 1996, including:

1. Investigation of the risk factors for the development of stress-related disorders including, but not limited to, post-traumatic stress disorder (PTSD).
2. Investigation of the risk factors responsible for the observed excess mortality due to external causes (e.g., motor vehicle accidents) in veterans of all wars and conflicts.
3. Exploration of the development of practical, sensitive, and specific biomarkers of exposure to chemical agents, including organophosphate nerve agents and vesicants such as sulfur mustard.
4. Toxicological and, where feasible, epidemiological research on the potential for long-term health effects resulting from low-level, sub-clinical exposures to chemical agents, particularly organophosphate agents such as sarin.
5. Development of a strategic plan for research into the potential long-term health consequences of exposure to low-levels of chemical warfare agents.

Each of these research issues has been addressed since 1996, as follows:

1. Many projects are focusing on the risk factors for the development of stress-related disorders, including post-traumatic stress disorder and major depression. Several studies that focused on stress-related disorders were published in 2000. (Benotsch, et al, 2000; Engel, et al, 2000; Fiedler, et al, 2000; Ismail, et al, 2000; King, et al, 2000; Nisenbaum, et al, 2000; Sharkansky, et al, 2000; Storzbach, et al, 2000; Wagner, et al 2000)

2. An increased risk for mortality due to external causes has been observed in veterans of both the Vietnam War and the Gulf War. One project is evaluating the risk factors responsible for the observed increase in mortality due to motor vehicle accidents in Gulf War veterans (DoD-102). Another project is evaluating the risk factors for the significantly increased risk for unintentional injuries in Gulf War veterans (DoD-73). This project resulted in an important epidemiologic report in 2000. (Bell, et al, 2000)

3. Three projects are focusing on the development of sensitive, specific biomarkers of exposure to chemical agents, including organophosphate nerve agents and vesicants such as sulfur mustard (VA-6D, VA-47, and DoD-49). Several studies related to sarin and mustard agent have been published.

4. Fifteen toxicological projects are focusing on the potential long-term health effects resulting from low-level, subclinical exposures to chemical agents. Nine of these projects are focusing on sarin. Seven

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epidemiological research projects are focusing on the potential long-term health effects resulting from low-level, subclinical nerve agent exposures. Six projects are focusing on possible sarin exposures due to the demolitions at Khamisiyah. (DoD-1B, DoD-63, DoD-69, DoD-94, VA-1, and VA-4) One project is evaluating the long-term effects of sarin and other nerve agents on volunteers who participated in experiments at Aberdeen Proving Grounds in the 1950s to 1970s (DoD-93).

5. A strategic research plan was developed, entitled "Effects of Low-Level Exposure to Chemical Warfare Agents: A Research Strategy." An interagency committee wrote it, including members from VA, DoD, CDC, and the Environmental Protection Agency (EPA). It was published in the *Annual Report to Congress for 1997.* (PGVCB, 1998a)

c. Comprehensive List of 21 Research Questions

In 1995, it was recommended that a contextual framework be provided for the results of completed and ongoing studies, to develop an approach for the interpretation of research results. In 1995, the Research Working Group identified 19 major research questions, to which two additional questions were added in 1996. (PGVCB, 1996b) The comprehensive Gulf War research portfolio has addressed each of these 21 questions, and relevant results have been published on each one. A comprehensive assessment of the progress made on each of these 21 questions is provided in Appendix C of this *Annual Report to Congress for 2000.*

21 Research Questions Highlighted in the 1996 *A Working Plan for Research*

1. WHAT IS THE PREVALENCE OF SYMPTOMS/ILLNESSES IN THE PERSIAN GULF VETERAN POPULATION? HOW DOES THIS PREVALENCE COMPARE TO THAT IN AN APPROPRIATE CONTROL GROUP?

2. WHAT WAS THE OVERALL EXPOSURE OF TROOPS TO LEISHMANIA TROPICA?

3. WHAT WERE THE EXPOSURE CONCENTRATIONS TO VARIOUS PETROLEUM PRODUCTS, AND THEIR COMBUSTION PRODUCTS, IN TYPICAL USAGE DURING THE PERSIAN GULF CONFLICT?

4. WHAT WAS THE EXTENT OF EXPOSURE TO SPECIFIC OCCUPATIONAL/ENVIRONMENTAL HAZARDS KNOWN TO BE COMMON IN THE PERSIAN GULF VETERANS EXPERIENCE? WAS THIS EXPOSURE DIFFERENT FROM THAT OF AN APPROPRIATE CONTROL GROUP?

5. WHAT WERE THE POTENTIAL EXPOSURES OF TROOPS TO ORGANOPHOSPHORUS NERVE AGENT AND/OR SULFUR MUSTARD AS A RESULT OF ALLIED BOMBING AT MUHAMMADIYAT AND AL MUTHANNA, OR THE DEMOLITION OF A WEAPONS BUNKER AT KHAMISIYAH?

6. WHAT WAS THE EXTENT OF EXPOSURE TO CHEMICAL AGENT, OTHER THAN AT KHAMISIYAH, IRAQ, IN THE PERSIAN GULF AS A FUNCTION OF SPACE AND TIME?

7. WHAT WAS THE PREVALENCE OF PB USE AMONG PERSIAN GULF TROOPS?

8. WHAT WAS THE PREVALENCE OF VARIOUS PSYCHOPHYSIOLOGICAL STRESSORS AMONG GULF WAR VETERANS? IS THE PREVALENCE DIFFERENT FROM THAT OF AN APPROPRIATE CONTROL POPULATION?

9. ARE PERSIAN GULF VETERANS MORE LIKELY THAN AN APPROPRIATE COMPARISON GROUP TO EXPERIENCE NON-SPECIFIC SYMPTOMS AND SYMPTOM COMPLEXES?

10. DO PERSIAN GULF VETERANS HAVE A GREATER PREVALENCE OF ALTERED IMMUNE FUNCTION OR HOST DEFENSE WHEN COMPARED WITH AN APPROPRIATE CONTROL GROUP?

11. IS THERE A GREATER PREVALENCE OF BIRTH DEFECTS IN THE OFFSPRING OF PERSIAN GULF VETERANS THAN IN AN APPROPRIATE CONTROL POPULATION?

12. HAVE PERSIAN GULF VETERANS EXPERIENCED LOWER REPRODUCTIVE SUCCESS THAN AN APPROPRIATE CONTROL POPULATION?

13. IS THE PREVALENCE OF SEXUAL DYSFUNCTION GREATER AMONG PERSIAN GULF VETERANS THAN AMONG AN APPROPRIATE COMPARISON POPULATION?

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14. Do Gulf War veterans report more pulmonary symptoms, or diagnoses, than persons in appropriate control groups?

15. Do Gulf War veterans have a smaller baseline lung function in comparison to an appropriate control group? Do Gulf War veterans have a greater degree of non-specific airway reactivity in comparison to an appropriate control group?

16. Is there a greater prevalence of organic neuropsychological and Neurological deficits in Persian Gulf Veterans compared to appropriate control populations?

17. can short-term, low-level exposures to pyridostigmine bromide, the insect repellant DEET, and the insecticide permethrin, alone or in combination, cause short-term and/or long-term neurological effects?

18. Do Persian Gulf veterans have a significantly higher prevalence of psychological symptoms and/or diagnoses than do members of an appropriate control group?

19. What is the prevalence of leismaniasis and other infectious diseases in the Gulf War veteran population?

20. Do Gulf War veterans have a greater risk of developing cancers of any type when compared with an appropriate control population?

21. Are Gulf War veterans experiencing a higher mortality rate than that of an appropriate control population? Are specific causes of death related to service in the Persian Gulf region?

C. RESEARCH PRIORITIES FOR 1998

During 1998, the RWG reevaluated the issue of research priorities. (PGVCB, 1999a) Key factors that guided the RWG in it discussions were recent research findings, the current breadth and depth of the research portfolio in key areas, and the availability of resources to develop needed new initiatives.

1. Research on Treatments for Gulf War Veterans' Illnesses

Some Gulf War veterans with unexplained illnesses are suffering from a complex of symptoms such as fatigue, musculoskeletal pain, and cognitive problems. These symptom complexes significantly overlap with other symptom complexes identified in the civilian population such as chronic fatigue syndrome (CFS) and fibromyalgia (FM). As with illnesses in Gulf War veterans, no clearly defined etiologic agent has been identified for CFS and FM.

The RWG determined that experimental treatment methods that have been applied to persons with CFS or FM deserved further exploration in the context of Gulf War veterans' illnesses. Consequently, the RWG established the development of treatment protocols for unexplained illnesses as a research priority. In 1999, VA and DoD began two major multi-site treatment trials. These are the Exercise Behavioral Therapy Trial (VA-62 and DoD-115) and the Antibiotic Treatment Trial (VA-55 and DoD-119). Details of these two trials were provided in Section IV.C.1. of the *Annual Report for 1999*. (PGVCB, 2001) Total investment by VA and DoD for these two trials is more than $9.6 million and $5.2 million, respectively. These treatment trials will be completed in 2002.

In addition, VA has funded an Institute of Medicine study to identify effective treatments for health problems in Gulf War veterans. This 18-month study started in 1999 and it was described in some detail in section IV.B.2. of the *Annual Report for 1999*. (PGVCB, 2001) This project will be published in 2001.

2. Longitudinal Follow-Up for Gulf War Veterans' Illnesses

The RWG has concluded that research approaches to determine the long-term health of veterans are a high priority. Several research projects funded by the Federal Government have longitudinal components built into them. These projects are directed toward understanding the progress of Gulf War veterans' illnesses over time. In 2000, there are five studies that include longitudinal follow-up, in Boston, New Orleans,

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East Orange, New Jersey, Iowa, and the United Kingdom. These studies were described in detail in Section IV.C.4. of the *Annual Report for 1999*. (PGVCB, 2001) Preliminary results of these follow-up studies were presented at the 2001 Conference on Illnesses among Gulf War Veterans: A Decade of Scientific Research. (MVHCB, 2001b) The abstracts for these presentations are included in Appendix B.

3. Disease Prevention

The substantial proportion of veterans who have reported ill health following deployment to the Gulf War represents a significant level of morbidity that might be preventable. To ensure that future health problems in future deployments can be prevented, the RWG has endorsed future research aimed generally at disease prevention, and more specifically at prevention of stress-related symptoms and conditions. As a result of RWG recommendations in the past, the Federal investment focusing on the pathophysiology of stress-related illnesses has markedly increased. There are currently approximately 75 projects with a primary or secondary focus on the Brain and Nervous System. With this investment in better understanding of the pathophysiology of stress-related illnesses, it is also appropriate to initiate research that can take advantage of new findings and how they might lead to better disease prevention and treatment.

4. Improved Hazard Assessment

The Presidential Review Directive-5 recognized that the ability to better anticipate environmental and occupational hazards prior to deployments could potentially reduce morbidity associated with unintended or unanticipated exposures. (NSTC, 1998) The RWG, in conjunction with the Working Groups that developed the PRD-5, recommended enhanced research efforts aimed at improving methods of hazard identification and risk assessment for environmental and occupational hazards. Such research efforts should emphasize the reality of complex multiple exposures to more than one hazardous agent.

In 1998, the DoD established new funding for programmed research. The purpose of this program element funding, explicitly put into DoD's budget requests, was to address issues of Gulf War veterans' illnesses, which may also be of concern in future deployments. The funding is approximately $20 million per year for fiscal years 1999 to 2002, and about $5 million per year thereafter. The overall objective is to enhance force health protection in future deployments. The program is guided by a tri-service DoD panel and is coordinated with the RWG. Specific research thrust areas in 1999 and 2000 have included:

1. prevention and treatment of persistent stress symptoms;
2. methods to assess health hazards from toxic chemicals and mixtures and to monitor exposures;
3. improved safety assessments of medical materiel, including potential interactions in operational environments;
4. epidemiological studies to continue long-term follow-up of Gulf War veterans and to improve health status monitoring in future deployments; and
5. improved and accelerated research on leishmaniasis prevention, diagnosis, and treatment.

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VII. REFERENCES

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Media Review - Judicial Nominations
Thursday, December 6, 2001

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General Judicial Articles

Senate Panel Oks 5 Bush Nominees; Leahy Seeks Action on Judicial Picks

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By Audrey Hudson
The Washington Times
Thursday, December 6, 2001

A Senate panel yesterday approved five of President Bush's judicial nominees and eased bitter feuding
between Democrats and Republicans over the backlogged process.

Mr. Bush has submitted 64 district and circuit court nominees to the Senate for confirmation - a record
number of first-year nominations over the past three administrations.

However, the Democrat-controlled Senate has confirmed only 18 judges - a confirmation rate of 28 percent - angering Republicans who have used myriad procedural tactics to push confirmations.

Sen. Patrick J. Leahy, Judiciary Committee chairman, has asked Senate leaders to expedite confirmation of the five approved yesterday, plus nine nominees approved last week. That would bring the confirmation rate to 50 percent - 7 percent shy of former President Bill Clinton's nominees confirmed during his first year in office. "During these last six difficult months, the committee has worked hard to report 27 judicial nominations favorably to the Senate, including six to the Courts of Appeals," said Mr. Leahy, Vermont Democrat.

Approved and sent to the floor for final consideration yesterday were: Callie V. Granade to be U.S. District Court judge for the Southern District of Alabama; Marcia S. Krieger to be U.S. District Court judge for the District of Colorado; James C. Mahan to be U.S. District Court judge for the District of Nevada; Philip R. Martinez to be U.S. District Court judge for the Western District of Texas; and C. Ashley Royal to be U.S. District Court judge for the Middle District of Georgia.

"I congratulate all of you on being selected by President Bush to serve in high office. After reviewing your distinguished records, I have no doubt that you will do great service for the citizens of this country upon confirmation," said Sen. Orrin G. Hatch, Utah Republican and ranking Judiciary Committee member.

The 14 nominees awaiting final Senate action could, however, be held hostage to another feud erupting over legislation funding programs for homeless veterans.

A Republican Senator has placed an anonymous hold on the bill's final passage, and its chief sponsor said he may block judiciary nominations dear to Republicans to shake the hold.

"I will stop nominees if I have to," said Sen. Paul Wellstone, Minnesota Democrat. "I feel strongly about it and am prepared to fight really hard on this."

Meanwhile, Sen. Christopher S. Bond, Missouri Republican, said yesterday there is "no good

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reason" for Senate Democratic leaders to block a confirmation vote on Eugene Scalia, President Bush's nominee to become solicitor of the Labor Department.

Mr. Bond said Mr. Scalia is "languishing in limbo" because he is the son of Supreme Court Justice Antonin Scalia, who ruled with the majority last year in favor of Mr. Bush in the contested Florida presidential election.

"The only basis on which Mr. Scalia is being blocked is because Democrats do not agree with the results of last year's election," Mr. Bond said.

"They don't like the fact that George Bush emerged as the new president and they are doing everything in their power to frustrate and impede his administration from pursuing its agenda," Mr. Bond said.

Senate Majority Leader Tom Daschle, South Dakota Democrat, said Tuesday there will be no vote on Mr. Scalia's nomination.

A Bush administration official said Mr. Daschle's announcement came on the one-year anniversary of the Supreme Court's decision that vacated a Florida court's decision to extend the deadline for vote counting.

"It was payback day," the official said.

Mr. Daschle said he will not be influenced by Republicans' strategy of placing "holds" on nominations to the National Labor Relations Board, which Democrats and their union supporters view as an important agency.

"I think further holds just complicate circumstances," Mr. Daschle said. "Reciprocal holds generate more reciprocal holds, and ultimately nobody moves. And that isn't healthy."

Cheney Makes Appeal for More Judges

The Associated Press
Wednesday, December 5, 2001

Vice President Cheney on Thursday joined a long list of Republicans urging the Senate to confirm more of President Bush's judicial nominations before the Senate leaves for the year.

"President Bush has fulfilled his constitutional responsibility to the federal judiciary," Cheney said in a letter to Senate Judiciary Chairman Patrick Leahy, D-Vt. "He has submitted more judicial nominations in his first year than any other recent president. ... I urge your committee to act so the Senate, in the remainder of this session and next year, can likewise fulfill its constitutional responsibility and fill the more than 100 vacancies on the federal court."

Republicans have been complaining since June that the Democrat-controlled Senate has not

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confirmed
enough of Bush's nominations. The Senate has confirmed 18 of Bush's 44 nominations.

Leahy defends his committee's work.

"We have matched or exceeded the number of confirmations of judges during the first year of the first Bush Administration, the first year of the Clinton Administration and the last year of the first Clinton term," he said Wednesday. "We are holding more hearings on more judicial nominees faster and reporting and confirming more than during the last 61/2 years."

Senate Confirms Three More Judges as Republicans Increase Pressure to get More Confirmations Before End of Year

By Jesse Holland
The Associated Press
Thursday, December 6, 2001

The Senate on Thursday confirmed three of President Bush's judicial nominees, elevating New Mexico
appellate judge Harris L. Hartz to the Denver-based 10th U.S. Circuit Court of Appeals.

Hartz was confirmed 99-0. Sen. Phil Gramm, R-Texas, did not vote. The 10th Circuit Court handles appeals from Utah, Wyoming, Colorado, New Mexico, Kansas and Oklahoma.

Also approved by voice vote were new U.S. District Judges Danny Reeves of Kentucky and Joe Heaton of Oklahoma.

Senate Judiciary Chairman Patrick Leahy, D-Vt., said there are six more judges awaiting Senate confirmation, and when those six are finished, the number of vacant judicial positions will drop below 100 for the first time since Democrats took over the Senate.

"I am proud of the work the committee has done on nominations, and I am proud that by the end of the day, we will have confirmed 21 judges," Leahy said. "I hope that by the end of this session, that total will rise to about 30."

Republicans have been pushing for more judicial confirmations by the Democrat-controlled Senate. Senate Republican Leader Trent Lott, R-Miss., called the Senate a "a black hole of inactivity" and Vice President Cheney wrote a letter asking for speedier confirmations earlier this week.

"The failure to confirm qualified individuals to serve in the federal government and the federal judiciary hurts the American people," White House spokesman Ari Fleischer said. "It's time for the Senate to act on the president's nominees and ensure that the important work of American government can be done and that justice can be carried out."

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Albuquerque Attorney Confirmed as Circuit Judge

The Associated Press
Thursday, December 6, 2001

The U.S. Senate on Thursday confirmed an Albuquerque attorney as a judge on the 10th Circuit Court of Appeals.

Harris Hartz now has to be sworn in before taking his seat on the Denver-based court. The 10th Circuit
carries legal jurisdiction over New Mexico, Colorado, Kansas, Oklahoma, Utah and Wyoming.

Sen. Jeff Bingaman, D-N.M., said the unanimous endorsement shows the strong bipartisan support for Hartz.

Sen. Pete Domenici, R-N.M., said he was convinced of Harris' qualifications.

"His presence on the 10th Circuit will certainly elevate that court, and I look forward to what I'm sure will be a continuation of his distinguished career on the bench," Domenici said.

Hartz was a New Mexico Court of Appeals judge from 1989 to 1999. He left the court to join the Albuquerque law firm Stier, Anderson and Malone.

Hartz is also a former Assistant U.S. Attorney for the District of New Mexico.

The Senate has not yet scheduled a confirmation vote on the nomination of William Johnson of Roswell as a U.S. District Court judge in New Mexico.

Cheney Jumps In

By Byron York
National Review
Wednesday, December 5, 2001

At a time of increasing tension between the Justice Department and Senate Judiciary Committee chairman Patrick Leahy over the administration's antiterrorist policies, the White House has entered into battle on another front with a letter to the chairman from Vice President Dick Cheney blasting the committee's record on confirming judges.

"As we near the end of the first session of the 107th Congress," Cheney writes in the letter dated December 4, "vacancies on the federal bench are occurring at a faster pace than the confirmations of new judges, and barely one in four of President Bush's nominees has received a hearing and a vote."

"In recent past administrations," Cheney continues, "well over 50 percent of judicial nominees

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have
been confirmed in a new president's first year. In 1989, President George H.W. Bush had 62 percent of his nominees confirmed by the end of his first year. In 1993, President Clinton had 57 percent confirmed. To date, President Bush has only had 28 percent of his nominees confirmed."

Cheney tells Leahy that "the current record with respect to circuit court appointments is even worse." While Bush has nominated 28 candidates to federal appeals courts, Cheney says, just five have been confirmed. "Indeed, 75 percent of the president's circuit nominees are still awaiting a hearing before your committee. This poor record of confirmations is having a negative impact on a number of these vital courts." Cheney mentions two nominees to the District of Columbia circuit by name, Miguel Estrada and John Roberts, calling them "outstanding, widely praised nominations" who have not received a hearing before Leahy's committee.

"President Bush has fulfilled his constitutional responsibility to the federal judiciary," Cheney writes. "He announced his first nominees more than six months ago; eight of them have yet to receive a hearing." Cheney concludes, "I urge your committee to act so the Senate, in the remainder of this session and next year, can likewise fulfill its constitutional responsibility and fill the more than one hundred vacancies on the federal courts. It is time for the Senate to act."

The letter is the product of strategy sessions between Senate aides and the lawyers in the White House counsel's office, both of them frustrated by the slow pace of judicial confirmations. Although the letter calls for immediate action, in reality the administration has no hope for anything happening before January at the earliest. "It's meant to lay down a marker for next year," says one Hill aide. "Next year,
you'll see a concerted effort from the Senate and the White House."

As happy as they are to receive high-profile help from the White House, some in the GOP worry that the timing of Cheney's letter is not particularly good. First, Leahy actually held a confirmation hearing on Wednesday, considering the nominations of five candidates for the federal district courts. Second, Leahy is engaged in a ongoing battle with the Justice Department and Attorney General John Ashcroft over military tribunals, detention of terrorist suspects and witnesses, waivers of attorney-client privilege, and other issues in the war on terrorism. Cheney's letter arrived a day before Ashcroft's much-anticipated appearance before the Judiciary Committee, and some in the GOP worry that it
might divert attention from the anti-terrorism issue.

Still, Republicans hope the letter will convince Leahy that the White House and Senate GOP mean business. "As soon as we get back [from the year-end holidays]," says the Republican aide, "they better start moving some people or nothing will happen in the Senate. Or that's the plan."

Transcripts/Members of Congress

White House Regular Briefing

Federal News Service

REV_00137481

December 6, 2001

EXCERPT

One last item, and then I'll be happy to take questions.

The president would like to commend the Senate for last night's confirmation of John Walters as the director of the Office of National Drug Control Policy. But the president would also like to remind the Senate of the important work that remains to be done this year. There are 153 individuals awaiting confirmation by the Senate. Some are like Eugene Scalia, nominated to be secretary -- solicitor of the Department of Labor, who have passed out of committee but simply await a vote on the floor of the Senate. Others, like Otto Reich, the president's nominee to be assistant secretary of State for the Western Hemisphere, has not even been given a fair committee hearing, while other nominations have languished in the Senate for months.

The rate of confirmation of federal judges, particularly circuit court judges, in the Senate is very, very
troubling. Federal judicial seats are being vacated at a rate faster than the Senate is confirming new people to these positions, and despite a record number of nominees by President Bush, there are fewer federal judges today than at the beginning of the administration, because of the Senate's failure to act. President Bush has nominated 60 judges to the federal judiciary, and only 18, or 27 percent, have been confirmed. The Senate confirmed 57 percent of President Clinton's judicial nominations in his first year; 62 percent of President Bush's in his first year; and 91 percent of President Reagan's judicial nominations.

Vice President Cheney, earlier this week, sent a letter to Senator Leahy citing the slow pace of confirmations, and urged the Senate Judiciary Committee and the Senate to take action so that justice can be done.

The failure to confirm qualified individuals to serve in the federal government and the federal judiciary hurts the American people.

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From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>
Sent: 12/8/2001 10:02:26 AM
Subject: : fcfnnn120701 Inside: John Nowacki's Commentary: Senator LeahyDoes Not Meet His Own Standards

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Subject: fcfnnn120701 Inside: John Nowacki's Commentary: Senator Leahy Does Not Meet His Own Standards

Free Congress Foundation's
Notable News Now
December 7, 2001

The Free Congress Commentary
Senator Leahy Does Not Meet His Own Standards
By John Nowacki

In recent letters to the Wall Street Journal and the Washington Times, Senate Judiciary Committee chairman Patrick Leahy continues to insist that with him at the helm, judicial nominations are being confirmed at fair pace and that the Democrats' record on judicial nominations does credit to the Senate. Unfortunately, neither claim is true.

Of President Bush's 64 judicial nominees, 21 have been confirmed - 33 percent. In his first year, a Democrat Senate confirmed 27 of President Clinton's 47 nominees - 57 percent. For former President Bush - again with a Democrat Senate - the total was 15 of 24 (62 percent), and for President Reagan, it was 41 of 45 (91 percent). Three of President Bush's nominees were confirmed yesterday afternoon, meaning that the disparity was even greater when Mr. Leahy declared that he was keeping up the pace.

Obviously, comparing the number of confirmations without factoring in the number of nominees doesn't paint an accurate picture. Yet Mr. Leahy won't address the percentage of nominees he allows out of his committee - and it's
not hard to see why.

When you factor in the date a President starts nominating judges, Senator Leahy's case looks even worse. President Bush sent down his first eleven nominations on May 9, and by the beginning of August, more than 40 nominees were before the Senate. President Clinton, in contrast, didn't make his first lower court nominations until August 6. Yet by December, 27 of his nominees were confirmed. With three more months in which to work, the Senate hasn't even confirmed that many of this President's nominees.

So much for keeping pace with other Presidents' first years. And when it comes to doing credit to the Senate, the Democrats' record isn't much better.

From the beginning of President Bush's administration, Democrats have made it clear that they would manufacture whatever obstacles they could to block this President's nominees. They held a retreat to discuss how to make a nominee's ideology the issue, regardless of his qualifications. They held hearings to justify ideological litmus tests. They held hearings to explain
why a nominee must now bear the burden of proof, a complete reversal of past
practice. They insisted that without the support of both of a state's Senators, a nomination is dead in the water. And so on. The search for qualified, fair judges who will follow the law has become a process of picking whose "acceptable" political beliefs will allow them into an institution where personal beliefs and politics are supposed to be set aside.

Last year, Mr. Bush said the Senate should act on a nomination within 60 days of its submission. On several occasions, Mr. Leahy stood on the Senate
floor and very publicly agreed. This year, eight of the President's nominees have waited 212 days - and not for Senate action, but for a hearing. The other 43 nominees have waited less time, but for most, that 60
day marker has come and gone.

Now Senator Leahy ignores that and talks about a different deadline altogether. "President Bush's nominations confirmed since this summer have been acted upon within 60 days, on average, of receipt of an American Bar Association peer review," he wrote to the Washington Times. What about the 41 nominations made by August 1, before the summer ended? What about nominees whose ABA reviews came in months ago? Nominees like Miguel Estrada
(unanimously well qualified, July 9), Jeffrey Sutton (qualified/well qualified, June 11), John Roberts (unanimously well qualified, June 20) or Deborah Cook (unanimously qualified, June 11)? Mr. Leahy doesn't say. And again, it's not hard to see why.

The number of judicial vacancies has always been important to Senator Leahy - or it was important until recently. He and others like Majority Leader Tom Daschle have spoken of a "vacancy crisis" or "judicial emergency" when the number of vacancies was actually much lower than it is today. Mr. Leahy

has explained how empty judgeships delay justice, and as everyone knows, justice delayed is justice denied.

The number of empty judgeships has skyrocketed this year. A year ago, there
were 67 judicial vacancies. By Inauguration Day, that figure was in the 80s. A few days before Mr. Bush's first nominations were made it hit 100. And it hasn't dropped below it since then.

Senator Leahy's Washington Times letter contains a truly obnoxious comment about empty judgeships. "At the time Republicans took charge of the Judiciary Committee in 1995, there were 65 judicial vacancies," he wrote. "When they turned over the gavel this summer, we inherited 103 vacancies, which rose to 111 by the time the committee was organized . . ."

Republicans took over with 65 vacancies, and when their session was all but over last December, there were only 67. In the midst of the Florida election debacle, who would have expected them to confirm any more of the outgoing President's judges? Considering that from 1991 to mid-1994, vacancies (under a Democrat Senate) were always over 100, that's not too bad.

Besides, vacancies are inevitable - judges with lifetime appointments will eventually retire or resign. What matters is how the Senate handles them when the nominees to fill them are there. That Mr. Leahy has not allowed that number to go down despite the number of nominees before him says volumes about how serious he is when it comes to easing the burden on undermanned courts and long-suffering litigants.

On June 16, 1997, Senator Leahy delivered a Senate floor speech that he would do well to remember. "A President should be given a great deal of latitude on who he nominates to the Federal court. If we disagree with a nomination, then we can vote against it," he said. "But, frankly, Mr. President, not only does it damage the integrity and the independence of the
Federal judiciary by just holding judicial nominations hostage where nobody ever even votes on them, but I think it damages the integrity of the U.S. Senate."

In that speech, Mr. Leahy set a reasonable standard for what it takes to do credit to the Senate. Unfortunately, his actions don't measure up.
John Nowacki is the deputy director of the Center for Law and Democracy at the Free Congress.

For media inquiries, contact Steve Lilienthal slilienthal@freecongress.org

For other questions or comments, or to unsubscribe contact Angie Wheeler awheeler@freecongress.org

Don't Miss FCF Television This Weekend!
Endangered Liberties, hosted by J. Bradley Jansen, features a very interesting discussion on money laundering and terrorism. Banking Consultant (and author of the latest Privacy Paper on this same topic) Bert Ely, warns that newly enacted legislation might actually help terrorists hide their financial dealings! (http://www.ely-co.com). Mr. Gideon Samid, President and Founder of D&G Sciences, offers a unique idea on how authorities might track terrorist money. For details of his plan go to http://www.dgsciences.com. Brad Jansen also interviews a person who had his
bank account frozen because of mistaken identity.
The program airs: Sunday at 11:00 PM EST. http://www.americaone.com
This week's Legal Notebook with Tom Jipping is a must for people who want a better understanding of the use of military tribunals. Attorney Lee Casey from the law firm of Baker & Hostetler LLP squares off with Bob Levy from the Cato Institute.(www.cato.org) Their discussion offers a very solid in-depth look at the President's Executive Order and the legal issues at stake.

The program airs Saturday 9:00 am EST. http://www.americaone.com

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From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>
CC: Jonathan R. Scharfen/NSC/EOP@EOP [NSC] <Jonathan R. Scharfen>
Sent: 12/9/2001 10:01:53 AM
Subject: : FW: Proposed Legislation to Compensate Victims of International T errorism
Attachments: P_1CVY4004_WHO.TXT_1.doc; P_1CVY4004_WHO.TXT_2.doc; P_1CVY4004_WHO.TXT_3.doc

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CC:Jonathan R. Scharfen (CN=Jonathan R. Scharfen/OU=NSC/O=EOP@EOP [NSC])
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FYI, revised State proposal incorporating your comments as well as
conclusions from last week's meeting...
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12/07/2001 03:20:23 PM
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To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: FW: Proposed Legislation to Compensate Victims of International T
errorism

Attached FYI is the revised legislative package we've sent to OMB.

-----Original Message-----
From: Bettauer, Ronald J (Internet)
Sent: Friday, December 07, 2001 2:57 PM
To: 'Jay Lefkowitz'
Cc: Taft IV, William H. (Internet)
Subject: Proposed Legislation to Compensate Victims of International
Terrorism
Importance: High

As promised, we have revised our proposed legislative package to reflect
the
approach that was agreed upon at your March 4 meeting.
<<coverletter.doc>> <<statute.doc>> <<sectionby.doc>>

- coverletter.doc
- statute.doc
- sectionby.doc

Message Sent
To:_____
allenc@osdgc.osd.mil

david.e.bradley@usdoj.gov
davidsoe@osdgc.osd.mil
jane.dalton@js.pentagon.mil
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The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for your consideration is a legislative proposal entitled "Compensation for Victims of International Terrorism Act," along with a sectional analysis. This legislation would establish a comprehensive federal program to compensate eligible individuals who are physically injured or killed as a result of an act of international terrorism.

As the Congress recognized in section 626 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Public Law 107-77), there is a pressing need for a program to compensate victims of international terrorism in a fair, coherent, and timely manner. Currently, compensation for victims is highly erratic -- dependent on a number of legislative programs, litigation, and in many cases private relief bills. This ad hoc approach raises serious questions of equity and fairness for the victims. In addition, there is a particular need to provide a rational compensation program where state-sponsored terrorism is involved. Recent legislation permitting a handful of victim plaintiffs to attach the blocked assets of foreign states designated as sponsors of terrorism is not only arbitrary but undermines U.S. foreign policy and national security interests.

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives

Background

Victims of international terrorism currently are eligible to receive compensation under a variety of legislative schemes. If they are U.S. government employees, they are entitled to federal benefit programs designed to replace income and other expenses, and in some cases death gratuity benefits. Private victims, whether they are U.S. nationals or foreign nationals, may receive compensation from their employers or insurers, and in the case of aircraft incidents from airlines or airlines' insurers. Both U.S. government and private U.S. victims also are eligible for assistance from the Crime Victims Fund administered by the Department of Justice.

In the case of the victims of the September 11 terrorist attacks, Congress has established a special compensation program administered by the Attorney General, acting through a Special Master. *See* Title IV of the Air Transportation Safety and System Stabilization Act (Public Law 107-42). Victims of the attacks (including both U.S. and foreign nationals) may file claims for compensation and any awards are paid from the U.S. Treasury. Legislation has been introduced recently seeking to bring the U.S. victims of the East Africa bombings within the September 11 compensation program.

In addition, certain U.S. victims and their families are filing lawsuits seeking compensatory and punitive damages against designated foreign state sponsors of terrorism. A series of measures were enacted beginning in 1996 to repeal the historic immunity of foreign states from litigation, thus permitting victims or their survivors to sue designated terrorist states, and to collect on their default judgments either out of blocked assets or the U.S. Treasury.

In short, different levels of compensation are being provided to victims of international terrorism depending on the terrorist incident at issue, their ability to identify a foreign state sponsor of terrorism and pursue litigation, or their effectiveness in obtaining Congressional support for private relief. Also, recent legislation permitting collection against the blocked assets of foreign states undermines U.S. foreign policy and national security interests. The legislation impairs our ability to use blocked assets as diplomatic leverage and invites similar

measures by other countries. Moreover, legislative initiatives permitting the attachment of diplomatic or consular property may contravene our international legal obligations.

A Rational Compensation Program

In view of the foregoing, the Administration believes that a comprehensive and rational program to compensate victims of international terrorism is urgently needed. The proposed legislation establishes just such a program, building upon the legislation enacted to compensate the September 11 victims.

The proposed legislation contains the following key elements:

- Acts of "international terrorism" (as defined in the statute) both within and outside the United States would be covered by the program.

- Where the act of international terrorism occurs outside the United States, all U.S. national and U.S. government employee victims would be covered. Where the act of international terrorism occurs within the United States, all victims (including foreign nationals) would be covered.

- The Secretary of State, after consultation with the Attorney General, would make a threshold determination as to whether a terrorist incident comes within the scope of the program. If the incident is covered, a victim or victim's representative will be able to recover without having to prove in a court action who was responsible for the act of international terrorism.

- Claimants would then file claims for compensation with the Foreign Claims Settlement Commission (an agency within the Department of Justice with expertise in handling claims). The Commission would review the claims and issue a lump-sum award.

- In the event of a death directly resulting from an act of international terrorism, an eligible individual would receive an award of $1 million, adjusted for inflation.

- In the event of physical injury directly resulting from an act of international terrorism, an eligible individual would be entitled to economic and noneconomic losses, up to the same amount as available for death claims.

- The amount of the compensation would be reduced by any payments the claimant has received or is entitled to receive from collateral sources.

- The Foreign Claims Settlement Commission would issue a final, written decision, and certify any award to the Secretary of Treasury for payment.

- Awards would be paid from the Judgment Fund, for which there is already a permanent, indefinite appropriation under 31 U.S.C. 1304.

- Victims of acts of international terrorism that took place before the effective date of this Act may "opt in" to the new compensation system, provided that they hold a final judgment for a claim brought against a foreign state sponsor of terrorism.

- This Act would be the exclusive remedy for compensating eligible individuals for death or injury resulting from an act of international terrorism. Individuals could not file lawsuits against the U.S. government or foreign states, or instrumentalities thereof.

- Nothing in the Act, however, limits rights of recovery against private individuals or entities who may be responsible for the act of international terrorism.

- The United States would be subrogated, to the extent of the payments, to all rights related to the injury of an individual paid under the program.

The Administration looks forward to working with you on this important legislative package.

Sincerely,

Colin Powell

A BILL

To establish a comprehensive federal program to compensate victims of international terrorism.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SEC. 101 SHORT TITLE

This Act may be cited as the "Compensation for Victims of International Terrorism Act of 2002."

SEC. 102 ESTABLISHMENT OF PROGRAM

There is established the Compensation for Victims of International Terrorism Program ("Program") under which monetary awards shall be made in accordance with this Act to eligible individuals who are physically injured or killed as a result of an act of international terrorism.

SEC. 103 DEFINITIONS

In this Act, the following definitions apply:

(a) Abroad. - The term "abroad" means outside the United States.

(b) Claimant. - The term "claimant" means an individual filing a claim for compensation under this Act.

(c) Collateral Source. - The term "collateral source" means life insurance, pension funds, death benefit or disability programs, and payments by Federal, State or local governments related to the act of international terrorism, and payments from whatever source similar in purpose to the foregoing.

(d) Commission. - The term "Commission" means the Foreign Claims Settlement Commission.

(e) Economic Loss. - The term "economic loss" means any pecuniary loss resulting from the injury inflicted as a result of the act of international terrorism, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due

to death, burial costs, and loss of business or employment opportunities.

(f) Employee of the United States Government. - The term "employee of the United States Government" means a civilian employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, a member of the U.S. armed forces, or an individual rendering personal service to the United States similar to the service of a civilian employee of the United States or a member of the U.S. armed forces, with pay, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual, but does not include an independent contractor.

(g) Noneconomic Losses. - The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), and other nonpecuniary losses of any kind or nature.

(h) International Terrorism. - The term "international terrorism" has the meaning given in section 2331(1), title 18 of the United States Code.

(i) National of the United States. - The term "national of the United States" has the meaning given in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(j) Personal Representative. - The term "personal representative" means an executor or administrator of the estate of the deceased, or persons who perform substantially the same function under applicable law.

(k) United States. - The term "United States" means the States, the District of Colombia, the Commonwealth of Puerto Rico, the Commonwealth of the Mariana Islands, the territories and possessions of the United States, the territorial sea of the United States, and the airspace above them.

SEC. 104 ADMINISTRATION

(a) Threshold Determination. -

(1) Upon the occurrence of a terrorist incident, the Secretary of State, after consultation with the Attorney General, shall promptly determine in writing whether an act of international terrorism as defined in section 103(h) of this Act has taken place.

(2) The Secretary of State's determination under this section shall be final and conclusive, and it shall not be subject to review in any judicial, administrative or other proceeding.

(3) If the Secretary determines that an act of international terrorism as defined in section 103(h) has taken place, the Secretary shall publish such a determination in the Federal Register and transmit a copy of it to the Commission.

(b) Commission. -

(1) Upon receipt of the threshold determination set forth in subsection (a), the Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims filed under section 105 in accordance with the provisions of this Act.

(2) A decision of the Commission to make an award with respect to a claim shall be contained in a written, final decision of the Commission on that claim. The Commission shall transmit to the Secretary of State, the Secretary of the Treasury, and the Attorney General copies of all final decisions made by the Commission under the Program.

(3) When a final decision of the Commission makes an award of compensation, the transmittal of the final decision shall be accompanied by the Commission's certification of that award to the Secretary of the Treasury for payment.

(4) Except to the extent inconsistent with the provisions of this Act, the provisions of title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621 et seq.) shall apply to claims filed under the Program.

(c) Authorization of Appropriations. -- There are authorized to be appropriated such sums as may be necessary to pay the administrative and support costs for the Department of State, the Department of Justice, the Department of Defense, and the Foreign Claims Settlement Commission in carrying out the provisions of this Act.

SEC. 105 FILING OF CLAIMS

(a) In General. -- Claims for compensation under the Program shall be filed with the Commission on the form developed under subsection (b) and shall state the factual basis for eligibility for compensation and the amount of compensation sought.

(b) Claim Form. --

(1) The Commission shall develop a form that claimants shall use when submitting claims under subsection (a).

(2) The claim form at a minimum shall request -

(A) in the case of a claim filed with respect to a decedent, information demonstrating the decedent's death as a direct result of the act of international terrorism;

(B) in the case of a claim not involving a death, information demonstrating - (i) the physical harm that the claimant suffered as a direct result of the act of international terrorism; and (ii) any economic and noneconomic losses that the claimant, or the individual on whose behalf the individual is filing, suffered as a direct result of the act of international terrorism;

(C) in the case of a claim filed by a parent or legal guardian, information demonstrating

the claimant's status as a parent or legal guardian;

(D) information regarding collateral sources of payments the claimant, or the individual on whose behalf the claimant is filing, has received or is entitled to receive as a result of the act of international terrorism.

(c) The claim form shall state clearly and conspicuously that filing of a claim under this Program constitutes a waiver as described in section 109(c).

SEC. 106 ELIGIBILITY

(a) In General. - The Commission shall review each claim filed under this Program and determine whether the claimant is an eligible individual under subsection (b) of this section.

(b) Eligible Individuals. -- A claimant is an eligible individual if the Commission determines that such claimant is --

(1) where the act of international terrorism occurs within the United States, an individual who suffered physical injury or death as a direct result of the act of international terrorism;

(2) where the act of international terrorism occurs outside the United States, an individual who, as of the date on which the act of international terrorism occurred, (A) was a national of the United States or an employee of the United States Government; and (B) suffered physical injury or death as a direct result of the act of international terrorism;

(3) in the case of a decedent who is an individual within the meaning of subparagraph (b)(1) or (b)(2), the personal representative of the decedent who files a claim on behalf of the decedent; or

(4) in the case of an individual who is an individual within the meaning of subparagraph

(b)(1) or (b)(2), and who is less than 18 years of age, incompetent or incapacitated, the parent or legal guardian of the individual who files a claim on behalf of the individual.

(2) An individual identified by the Attorney General to have been a participant or conspirator in the act of international terrorism, or a representative of such individual, shall not be eligible to receive compensation under the Program.

(c) Exclusion for Armed Conflict. - This Program does not apply to any claim arising out of injury or death sustained while engaged in armed conflict by a member of the U.S. Armed Forces serving on active duty. The Secretary of Defense shall determine promptly whether the incident giving rise to the claims shall be deemed an armed conflict for the purposes of the preceding sentence. The Secretary of Defense's determination under this subsection shall be final and conclusive, and it shall not be subject to review in any judicial, administrative or other proceeding.

SEC. 107 NATURE OF AWARDS

(a) Awards shall be made without regard to the negligence or any other theory of liability of the claimant or of the individual on whose behalf the claimant is filing a claim.

(b) In the event of a death resulting from an act of international terrorism, there shall be an award of $1 million to an eligible individual, adjusted at three-year intervals beginning January 1, 2005, to reflect changes in the consumer price index for the immediately preceding three-year period.

(c) In the event of physical injury directly resulting from an act of international terrorism, compensation shall be determined on the net present value of the economic and noneconomic losses demonstrated by the claimant, provided that the amount awarded shall not exceed the amount provided for under the preceding subsection.

(d) The portion of any award for actual and projected pain and suffering or emotional distress resulting from a

physical injury shall not exceed $250,000, adjusted at three year intervals beginning January 1, 2005, to reflect changes in the consumer price index for the immediately preceding three year period.

(e) Amounts may not be awarded for punitive or exemplary purposes.

(f) The Commission shall reduce the amount awarded by the amount of the collateral source payments the claimant has received or is entitled to receive as a result of the act of international terrorism.

SEC. 108 LIMITATIONS ON CLAIMS

(a) Single Claim. -- Not more than one claim may be submitted under this Program by an individual or on behalf of an individual with respect to an act of international terrorism.

(b) Time Limitation for Filing. -- No claim may be filed on the basis of an act of international terrorism after the date that is 2 years after the date of publication in the Federal Register of a determination under section 104(a) of this Act.

(c) Bar on Other Claims. - No claim may be made in any judicial, administrative, or other proceeding if such claim could have been filed under this Act in the absence of subsection (b).

SEC. 109 INTERNATIONAL TERRORISM BEFORE EFFECTIVE DATE

(a) Compensation may be awarded under the Program in relation to acts of international terrorism that took place before the effective date of this Act and with respect to which an individual holds a final judgment for a claim brought under section 1605(a)(7), title 28 of the United States Code.

(b) The Secretary of State, in consultation with the Attorney General, shall issue, promptly after the effective date of this Act, determinations whether a terrorist incident within the scope of subsection (a) of this section was an act of international terrorism as defined in section 103(h) of this Act.

(c) By filing a claim under this section, the claimant, or the individual on whose behalf the claimant is filing, (1) waives any right to file and any right to continue to pursue any judicial, administrative or other proceeding for damages sustained as a result of the act of international terrorism, and (2) relinquishes all claims and rights to compensatory and punitive damages and amounts awarded as judicial sanctions under such judgments.

SEC. 110 PAYMENT OF AWARDS

(a) Judgment Fund. - Awards under this Program shall be paid from the appropriation made under section 1304 of title 31, United States Code.

(b) Conforming Amendment. - Section 1304(a)(3) of title 31, United States Code, is amended by adding the following new subsection (E) -

> "(E) pursuant to a final decision of the Foreign Claims Settlement Commission under the Compensation for Victims of International Terrorism Act of 2002."

SEC. 111 EXCLUSIVITY OF REMEDY

(a) In General. - Subject to subsections (b) and (c) of this section, this Program constitutes the exclusive remedy in the United States with respect to the injury or death of an eligible individual caused by an act of international terrorism after the effective date of this Act. The United States or a foreign state, or instrumentalities thereof, shall have no liability to eligible individuals, their legal representatives, spouses, dependents, next of kin, heirs, successors, assignees, and any other persons entitled to recover damages in a judicial, administrative, or other proceeding in the United States as a result of the injury or death caused by an act of international terrorism.

(b) Nothing in this Act limits or otherwise affects any right of recovery against persons or entities who may be involved in an act of international terrorism and who are not foreign states or instrumentalities or officials thereof.

(c) Nothing in this Act limits or otherwise affects any right of an eligible individual to bring an action to obtain collateral source payments.

(d) Conforming Amendments. --

(1) Section 1605, title 28 of the United States Code is amended -
(A) in subsection (a), by striking subparagraph (7);
(B) by striking subsection (e); and
(C) by striking subsection (f).

(2) Section 1610, title 28 of the United States Code is amended -

(A) in subsection (a), by striking subparagraph (7);
(B) in subsection (b)(2), by striking ",or (7)"; and
(C) by striking subsection (f).

(3) Section 589 of Title V of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, as enacted in Public Law 104-208, Div. A, title I, sec. 101(c) is repealed.

SEC. 112 SUBROGRATION

(a) The United States shall be subrogated, to the extent of the payments, to all rights related to an injury or death of an individual paid under the Program.

(b) Nothing in this Act shall limit or otherwise affect any right of the United States, including any right of recovery from a foreign state or instrumentality thereof, under any applicable law.

SECTION BY SECTION ANALYSIS

SEC. 101 SHORT TITLE

This section provides that this Act may be cited as the "Compensation for Victims of International Terrorism Act of 2002."

SEC. 102 ESTABLISHMENT OF PROGRAM

This section establishes the Compensation for Victims of International Terrorism Program ("Program"). The Program is a comprehensive federal system under which monetary awards will be made in accordance with this Act to eligible individuals who are physically injured or killed as a result of an act of international terrorism. As Congress recognized in section 626 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Public Law 107-77), there is a pressing need to rationalize the current piecemeal approach to compensation for victims of international terrorism.

This Program is modeled loosely on the compensation program that was established by Congress for the victims of the September 11 attacks (see Title IV of the Air Transportation Safety and System Stabilization Act, Public Law 107-42). This Program, however, sets in place a permanent structure to compensate victims of future acts of international terrorism, and covers acts of international terrorism both in the United States and abroad. Instead of a Special Master appointed by the Attorney General, as is the case with the September 11 program, the review and adjudication of claims is committed to the Foreign Claims Settlement Commission ("Commission"). The Commission is a quasi-independent agency of the Department of Justice which has career staff with substantial experience handling large-scale claims programs.

SEC. 103 DEFINITIONS

This section sets forth the definitions of critical terms in this Act. Notably, the Act relies on the definition of "international terrorism" already contained in 18 U.S.C. 2331. The definition of "employee of the United States Government" modifies and expands upon the

definition in 5 U.S.C. 8101, which applies to the federal worker's compensation program administered by the Department of Labor. It is intended to be a broad definition, covering all categories of U.S. government personnel, including the military, Civil Service employees, members of the Foreign Service (including locally employed staff), and personal service contractors.

SEC. 104 ADMINISTRATION

This section lays out the administrative framework of the Program. As set forth in subsection (a), the first step is that upon the occurrence of a terrorist incident, the Secretary of State, after consultation with the Attorney General, will issue a written determination if he concludes that the incident is an act of "international terrorism" within the meaning of the Act. This determination, which must be published in the Federal Register, triggers the application of the Program.

The second step is that claimants may file claims for compensation with the Foreign Claims Settlement Commission. Subsection (b) explains that the Commission shall have jurisdiction to receive, examine, adjudicate and render final decisions with respect to claims. A decision to make an award shall be in writing, and copies of such decision shall be transmitted to the Secretary of State, the Secretary of the Treasury, and the Attorney General. When the Commission decides to make an award of compensation, the transmittal of the final decision will be accompanied by certification of the award to the Secretary of the Treasury for payment out of the Judgment Fund (31 U.S.C. 1304).

Subsection (b) further provides that except to the extent inconsistent with the provisions of the Act, the provisions of title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621 et seq.) will apply to claims filed under the Program. Accordingly, the Program can take advantage of the existing statutory authorities of the Commission, for example, to promulgate regulations necessary to perform its functions; to give public notice of the time when claims may be filed; to take evidence through documents, hearings, and depositions; to issue awards in accordance with the applicable principles of international law, justice and equity; and to issue final decisions.

Finally, subsection (c) authorizes such sums as may be necessary to pay the administrative and support costs for the Department of State, the Department of Justice, and the Foreign Claims Settlement Commission in carrying out the provisions of this Act.

SEC. 105 FILING OF CLAIMS

This section sets forth claims filing procedures similar to those established for the victims of the September 11 terrorist attacks. Subsection (a) requires claims for compensation to be filed with the Commission on a standard form and to state the factual basis for eligibility for compensation and the amount of compensation sought.

Subsection (b) directs the Commission to develop a form that claimants will use when submitting claims. In the case of a claim filed with respect to a decedent, the claim form should request information demonstrating the decedent's death as a direct result of the act of international terrorism. In the case of a claim not involving a death, the claim form should request information concerning (1) the physical harm that the claimant suffered as a direct result of the act of international terrorism; and (2) information concerning any economic and noneconomic losses that the claimant, or the individual on whose behalf the claimant is filing a claim, suffered as a direct result of the act of international terrorism. The claim form also should request information regarding collateral source payments the claimant, or the individual on whose behalf the claimant is filing, has received or is entitled to receive as a result of the act of international terrorism.

Subsection (c) provides that the claim form will state clearly and conspicuously that filing of a claim under this Program constitutes a waiver as described in section 109(c).

SEC. 106 ELIGIBILITY

This section contains provisions governing the eligibility of claimants for compensation. Subsection (a) explains that the Commission will review each claim filed

under this Program and determine whether the claimant is an eligible individual.

Subsection (b) sets forth the criteria for a determination that a claimant is an "eligible individual." Where the act of international terrorism occurs within the United States, this would be an individual who suffered physical injury or death as a direct result of the act of international terrorism. Where the act of international terrorism occurs outside the United States, this would be an individual who, as of the date on which the act of international terrorism occurred, (A) was a national of the United States or an employee of the United States Government; and (B) suffered physical harm or death as a direct result thereof. In the case of a decedent, the "eligible individual" is the personal representative of the decedent who files a claim on behalf of the decedent. In the case of an individual who is less than 18 years of age, incompetent, or incapacitated, the parent or legal guardian is an "eligible individual." An individual identified by the Attorney General to have been a participant or conspirator in the act of international terrorism, or a representative of such individual, shall not be eligible to receive compensation under this Act.

Subsection (c) clarifies that the Program does not apply to any claim arising out of injury or death sustained while engaged in armed conflict by a member of the U.S. Armed Forces serving on active duty. The Secretary of Defense will determine whether the incident giving rise to the claims should be deemed an armed conflict for the purposes of the Program.

SEC. 107 NATURE OF AWARDS

Section 107 sets forth conditions regarding compensation awarded under the Program. Subsection (a) provides that compensation under the Program is to be awarded without regard to the negligence or any other theory of liability of the claimant, or of the individual on whose behalf the claimant is filing a claim.

Subsection (b) provides that in the event of a death resulting from an act of international terrorism, there will be an award of $1 million to the eligible individual. This amount will be adjusted for inflation.

Subsection (c) provides that in the event of physical injury directly resulting from an act of international terrorism, compensation shall be determined on the basis of the net present value of the economic and noneconomic losses demonstrated by the claimant, up to the amount available for death claims.

Subsection (d) places a cap of $250,000 on that portion of an award regarding actual and projected pain and suffering or emotional distress from a physical injury. This amount will be adjusted for inflation.

Subsection (e) provides that compensation awarded under the Program may not include punitive or exemplary damages.

Subsection (f) directs the Commission to reduce the amount of compensation awarded by the amount of the collateral source payments the claimant, or the individual on whose behalf the claimant is filing a claim, has received or is entitled to receive as a result of the act of international terrorism.

SEC. 108 LIMITATIONS ON CLAIMS

Subsection (a) provides that not more than one claim may be submitted under this program by an individual or on behalf of an individual.

Subsection (b) provides that no claim may be filed after the date that is 2 years after the date of publication in the Federal Register of a determination under section 104 of this Act.

Subsection (c) provides that no claim may be made in any judicial, administrative, or other proceeding if such claim could have been filed under this Act in the absence of a statute of limitations issue.

SEC. 109 INTERNATIONAL TERRORISM BEFORE EFFECTIVE DATE

Subsection (a) provides that compensation may be awarded under this Program in relation to acts of international terrorism that took place before the effective date of this Act, provided that an individual holds a final judgment for a claim brought under section 1605(a)(7) of title 28, United States Code.

Subsection (b) provides that the Secretary of State, in consultation with the Attorney General, will issue promptly a written determination as to whether a terrorist incident that comes within the scope of subsection (a) of this section is an act of international terrorism within the meaning of this Act.

Subsection (c) makes clear that upon the submission of a claim for compensation under this section, the claimant, or the individual on whose behalf the claimant is filing a claim, (1) waives any right to file or to continue to pursue a civil action (or to be a party to an action) in any court for damages sustained as a result of the terrorist incident, and (2) relinquishes all claims and rights to compensatory and punitive damages and amounts awarded as judicial sanctions under such judgments. The preceding sentence does not apply to a civil action to obtain collateral source payments.

SEC. 110 PAYMENT OF AWARDS

Subsection (a) provides that awards under this Program will be paid from the Judgment Fund pursuant to the appropriation made under 31 U.S.C. 1304.

Subsection (b) makes a conforming amendment to 31 U.S.C. 1304.

SEC. 111 EXCLUSIVITY OF REMEDY

This section makes clear that litigation against the United States and foreign states cannot be a part of a fair, timely, and rational compensation scheme for U.S. victims of international terrorism.

Subsection (a) provides that subject to subsections (b) and (c), the compensation awarded under the Program is the exclusive means by which U.S. nationals and U.S. government employees who are injured or killed by an act of international terrorism may receive compensation. Therefore, any judicial, administrative or other proceedings against the United States or a foreign state, or instrumentalities thereof, are barred.

Subsection (b) clarifies that nothing in this Act limits or otherwise affects any right of recovery against

individuals or entities who may have been involved in an act of international terrorism who are not foreign states or instrumentalities or officials thereof.

Subsection (c) provides that nothing in this Act limits or otherwise affects any right of an eligible individual to bring a civil action to obtain collateral source payments.

Subsection (d) makes certain conforming amendments to the Foreign Sovereign Immunities Act and related legislation in order to preclude suits for damages against foreign states designated as sponsors of terrorism and against foreign officials acting in their official capacity. This would rectify the current situation in which certain victims who have been able to obtain default judgments against foreign states are able to collect hundreds of millions of dollars in payments, while other U.S. victims obtain far less. However, as set forth in section 109, those plaintiffs who have obtained judgments under 28 U.S.C. 1605(a)(7) would be entitled to opt in to this new compensation system.

SEC. 112 SUBROGRATION

Subsection (a) provides that for each individual paid under this section, the United States becomes subrogated, to the extent of the payments, to rights of that individual.

Subsection (b) provides that nothing in this Act shall limit or otherwise affect any right of the United States, including any right of recovery from a foreign state or instrumentality thereof, under any applicable law.

From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 12/9/2001 11:21:30 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-DEC-2001 16:21:30.00
SUBJECT::
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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What are the rules of engagement for speeches or letters that Karl and I give? For instance, if we attend a fundraiser for a candidate, can we urge participants to give again? Can we attend an association meeting and recommend support for particular campaigns? Can we send out a letter on non-official stationary urging support for a candidate, particularly as an invitation for an upcoming fundraiser?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
CC: karl c. rove/who/eop@eop [WHO] <karl c. rove>
Sent: 12/10/2001 4:06:07 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-DEC-2001 09:06:07.00
SUBJECT:: Re:
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:karl c. rove (CN=karl c. rove/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

The general principle, of course, is that White House and PAS officials are allowed to engage in a wide variety of political activity, including while on duty and in their offices -- with a caveat being that you may not "personally solicit political contributions," even at a political fundraiser at which you are the featured speaker. That exception to the general principle is somewhat odd (why allow someone to speak at a fundraiser but not specifically solicit funds?), but the exception is contained in both the statute and the regulations on political activity that apply to White House and PAS officials.

With that in mind, the answers to your three questions are as follows:

1. You should not ask attendees at a fundraiser to contribute financially again (thanking them for their support and what they have already done is fine).

2. You can tell an association which races are most important, closest, etc., and which warrant their general support, but you should not personally ask the associations to contribute financially to particular campaigns.

3. A letter asking for general support for a particular candidate is fine so long as there is no express solicitation for contributions in the letter and the letter is not expressly connected to the fundraiser.

On all fundraisers, letters, and the like, your staffs should continue to keep me informed ahead of time so that we can continue to avoid problems and issues. They have been doing that quite well thus far.

Ken Mehlman
12/09/2001 04:21:24 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Karl C. Rove/WHO/EOP@EOP
Subject:

What are the rules of engagement for speeches or letters that Karl and I give? For instance, if we attend a fundraiser for a candidate, can we urge

participants to give again? Can we attend an association meeting and recommend support for particular campaigns? Can we send out a letter on non-official stationary urging support for a candidate, particularly as an invitation for an upcoming fundraiser?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 12/10/2001 4:59:32 AM
Subject: : Fed Society speech Thursday

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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-DEC-2001 09:59:32.00
SUBJECT:: Fed Society speech Thursday
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judge: I will have a draft speech for you tomorrow, which you can
then cut and paste or edit, etc., as you see fit. Please let me know if
that time frame is sufficient.
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From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;a. morgan middlemas/who/eop@eop [WHO] <a. morgan middlemas>;lori l. lorenzi/who/eop@eop [WHO] <lori l. lorenzi>;jason b. torchinsky/who /eop@eop [WHO] <jason b. torchinsky>
Sent: 12/10/2001 7:28:51 AM
Subject: : Re: ABA hearing on Judiciary being broadcast now -CSPAN Ch 17

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-DEC-2001 12:28:51.00
SUBJECT:: Re: ABA hearing on Judiciary being broadcast now -CSPAN Ch 17
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:laura l. flippin ( CN=laura l. flippin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:a. morgan middlemas ( CN=a. morgan middlemas/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:lori l. lorenzi ( CN=lori l. lorenzi/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jason b. torchinsky ( CN=jason b. torchinsky/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is the Bunning confirrmation hearing before the SJC.
```

Elizabeth N. Camp
12/10/2001 12:27:04 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: ABA hearing on Judiciary being broadcast now -CSPAN Ch 17

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
A. Morgan Middlemas/WHO/EOP@EOP
Lori L. Lorenzi/WHO/EOP@EOP
Jason B. Torchinsky/WHO/EOP@EOP

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 12/11/2001 6:58:49 AM
Subject: : Re: Wash Times

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-DEC-2001 11:58:49.00
SUBJECT:: Re: Wash Times
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

If we consider this guy to be a fair-minded reporter, we probably ought to engage with him. After you've found out as specifically as possible what's on his mind, one person, probably from our office, ought to talk to him -- on background if it's me or Brett, or on the record if the Judge is willing -- to discuss his claims. He's really just trying to make a mountain out of a small group of molehills.

Anne Womack
12/11/2001 11:39:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Wash Times

Frank Murray is writing a broad story about criticism that the administration is sytematically limiting access to the courts, from limitiing civil lawsuits against insurance companies to denying the detainees access to immigration courts to possibly subjecting individuals to military commissions rather than American courts .

thoughts?

From: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/11/2001 8:45:15 AM
Subject: : RE: Executive privilege claim

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:11-DEC-2001 13:45:15.00
SUBJECT:: RE: Executive privilege claim
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : RE: Executive privilege claim
Was Read By : Paul.P.Colborn@usdoj.gov
On : Tue, 11 Dec 2001 14:38:53 -0400
```

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/11/2001 9:04:49 AM
Subject: : Blackberries

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN]
)
CREATION DATE/TIME:11-DEC-2001 14:04:49.00
SUBJECT:: Blackberries
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

I have looked into this matter a little further, and offer the following additional recommendations for managing blackberry emails that are PRA records. As we discussed before, NARA assumes that an email sent via a blackberry is no less a record than an email sent or received from an ARMS managed PC (or a home PC, for that matter), and the only issue is whether it is possible to preserve and manage such record emails when they are sent from one blackberry to another:

1) The simple solution is to cc, or bcc, or forward, each message to the sender's ARMS account, so a copy is automatically captured and managed in ARMS. (Note, similarly, that the 2/26/01 Gonzales memo on the PRA states that PRA an email that is received "on a personal e-mail account" must be "preserved and filed as such by printing it out and saving it or by forwarding it to your White House e-mail account.")

2) As we understand it, the technology does allow downloading of data from the blackberry to a PC or other system. We don't know whether what you purchased includes that feature, but we believe it can be established.

3) The OA project to redesign and upgrade the ARMS system should incorporate a permanent solution to this issue.

I hope this is helpful. Feel free to contact me if you have any questions or comments.

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/11/2001 11:39:41 AM
Subject: : LRM PTM69 - - HUD Testimony on Housing and Community Development Needs
Attachments: P_Q0OZ4004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-DEC-2001 16:39:41.00
SUBJECT:: LRM PTM69 - - HUD Testimony on Housing and Community Development Needs
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Allison L. Riepenhoff/WHO/EOP on 12/11/2001 04:39 PM ----------

From: P. Thaddeus Messenger on 12/11/2001 04:39:04 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM69 - - HUD Testimony on Housing and Community Development Needs

LRM ID: PTM69
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, December 11, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Testimony on Housing and Community Development Needs

DEADLINE: 2:00 p.m. Wednesday, December 12, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached, please find a draft copy of the text of testimony to be presented by HUD Secretary Martinez before the Senate Banking, Housing and Urban Affairs Committee on Thursday, 13 December 2001.

Please provide your comments by 2:00 p.m., Wednesday, 12 December. This deadline is firm.

If you experience difficulty with this LRM, or its attachment, please contact us immediately. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile.

Thank you.

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James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM69 SUBJECT: HUD Testimony on Housing and Community
Development Needs
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
lrm@hhs.gov
justice.lrm@usdoj.gov
llr@do.treas.gov
CLRM@doc.gov
OPBRE_E-Mail_-_EDITORS@OA.EOP.GOV

Message Copied
To:_____
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
James F. Jordan/OMB/EOP@EOP
Andrea E. Jacobson/OMB/EOP@EOP
Lauren Larson/OMB/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
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Elizabeth L. Rossman/OMB/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
NEC LRM
WHGC LRM

Scott H. Evertz/OPD/EOP@EOP
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James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Q0OZ4004_WHO.TXT_1>

Opening Statement of
The Honorable Mel Martinez
Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs

Thursday, December 13, 2001

Chairman Sarbanes, Ranking Member Gramm, and distinguished Members of the Committee, thank you for the invitation to testify before you this morning. I appreciate this opportunity to address the many ways in which the Department of Housing and Urban Development (HUD) is working to meet the nation's housing and community development needs.

Mr. Chairman, I would like to begin by thanking you and the Members of this Committee for the advice and expertise you provided this year as I settled into town and took on this tremendous challenge. The Committee has shown me great respect, which I appreciate, and we have developed a very positive working relationship.

Let me also thank you for your cooperation in confirming HUD's Presidential nominees. I consider myself fortunate to be surrounded by colleagues who bring great expertise to the job from both the public and private sectors, and have a rich diversity of background and experience. With your continued assistance, we hope to have our entire management team in place in the near future.

Our job is made easier through the support of a President who is firmly committed to HUD's mission of public service. President Bush is an active advocate for our work at HUD. He speaks passionately about the dreams a family can achieve through homeownership. He has joined me on two occasions to stress the point by building homes with Habitat for Humanity… and wants to triple the funding for the HUD program that supports the good work of similar organizations.

President Bush has directed this Department to serve Americans in need not simply by raising their quality of life to some minimum standard, but by fueling their hopes and dreams to achieve the life they always imagined. Despite the success of welfare reform, too many families still live below the poverty line. As a catalyst in our communities, HUD is putting its resources to work empowering citizens to lift themselves out of poverty and into prosperity.

We have touched many lives this year… in many different ways.

The Department reacted quickly and sympathetically following the tragic events in September. I immediately required lenders to provide relief on FHA-insured mortgages for families of the victims, and urged conventional lenders to do the same. They responded, and we have protected these families from losing their homes. A short time later, Secretary Rumsfeld and I also announced a mortgage rate cut for National Guardsmen and Reservists called to active duty.

REV_00137612

HUD provided an additional $700 million in Community Development Block Grant funds to help stimulate New York City's economic recovery. We also allowed waivers of regulatory provisions for the HOME, Section 8, and public housing programs.

Immediately after being sworn in, I took steps to steer HUD's focus back to its core mission: helping families find affordable and decent housing. This means ensuring housing opportunities for those who rent either out of necessity or by choice. And it means creating new opportunities for homeownership, so that more families can achieve what is envied around the world as the American Dream.

The Census Bureau reported in October that the homeownership rate reached an all-time high of 68.1%. Historically, homeownership rates for minority groups have been lower than for the rest of the population. Minority homeownership stands at 49.2%, and while this is a record high and positive news, we must continue to do better in closing the gap.

We have begun to create new opportunities for homeownership, so that more families can achieve what is envied around the world as the American Dream.

This year, HUD reached out to the thousands of low-income families who find the road to homeownership blocked by high downpayments, and proposed the President's American Dream Downpayment Fund. We also put forward the new Federal Housing Administration (FHA) hybrid adjustable rate mortgage, which promotes homeownership by reducing initial homebuying costs. Congress recently created both of these programs, for which you have my thanks.

If we are to further expand the ranks of America's homeowners, we must address the challenge of making the homebuying experience less complicated, the paperwork demands less time-consuming, and the mortgage process itself less expensive.

To ensure that homebuyers have the information they need in order to make an informed purchase, I have undertaken comprehensive reform of the Real Estate Settlement Procedures Act (RESPA). In addition to preserving yield spread premiums as a valuable tool for opening the doors of homeownership, reform will: (1) ensure better protections for new homebuyers and those who refinance; (2) offer clarity for the mortgage lending industry about their disclosure responsibilities, and; (3) provide an additional tool to fight predatory lending.

The need for RESPA reform is even more urgent during times of economic uncertainty. Homeownership helps create financial stability for families, and in return brings economic stability to our communities.

Homeownership is an important goal, but is obviously not an option for everyone. I appreciate the need to expand the availability of affordable rental housing, and ensure quality and options for residents. The just-enacted 25 percent increase in the limits for FHA multifamily insurance will help to spur the construction and rehabilitation of affordable rental housing. I am awaiting the recommendations of the Millennial Housing

REV_00137613

Commission, as we look to ways to increase the supply of affordable housing. I will continue to urge the industry, and the Government-Sponsored Enterprises in particular, to do much more in the area of affordable housing production.

But let me say that I look forward to the day when we measure compassion not by the number of families living in assisted housing, but the number of families who have moved into a home of their own.

Predatory lending and property flipping are abusive practices that continue to plague homebuyers in cities across the country. Senator Sarbanes, the Administration is particularly concerned about the situation in Baltimore. Since April, our Housing Fraud Initiative has resulted in 40 indictments, six federal arrests, two state arrests, 27 successful prosecutions, and 66 debarments. We have provided relocation assistance to 46 families. We also worked with you, Mr. Chairman, to develop the Credit Watch legislation that was included in the fiscal year 2002 budget.

I am pleased with these accomplishments, but we know there is more work to be done. HUD remains committed to addressing the problems in Baltimore, and we feel confident that the lessons we learn there will be beneficial to the rest of the country.

Exposure to lead-based paint is a serious concern that many low-income citizens deal with on a daily basis. Every American child deserves the opportunity to grow up in a healthy home, safe from the debilitating and often irreversible effects of lead exposure. Because the most common source of exposure is lead paint in older housing, HUD has a critical role in protecting our children. HUD awarded more than $67 million in grants nationwide in October to protect children from lead-based paint, with a focus on eliminating lead hazards in low-income housing.

At HUD, we are working to ease the daily struggles of those who live in the most difficult circumstances. Certainly, this includes the residents of the colonias. Earlier this year, I traveled to the colonias – the communities along the Mexico border steeped in poverty – to see the difficult living conditions for myself. HUD has stepped in to offer assistance, through grants that will bring water and sewer hook-ups, and a Colonias Task Force I established to ensure that HUD programs make an impact in the colonias.

In January, President Bush directed HUD to help lead his Faith-Based and Community Initiatives. We have studied the barriers that prevent grassroots social service providers from reaching out in partnership with the federal government to Americans in need. HUD has prepared a report examining what the Department can do through regulatory and management improvements to "level the playing field" and encourage greater acts of charity in our communities, while preserving Constitutional safeguards.

I would urge the Senate to take up the President's faith-based legislation before Congress adjourns. This legislation is critical to helping HUD expand its partnerships with groups working to meet the housing needs of low-income Americans, the elderly, disabled citizens, and those living with HIV/AIDS.

REV_00137614

HUD has a special duty to the nation's vulnerable populations, and this includes those who have no place to call home. Last month, we announced the awarding of more than $1 billion to organizations serving homeless Americans – the largest homeless assistance in history. To streamline and focus the response of the many federal agencies involved in delivering homeless services, I have reactivated the Interagency Council on the Homeless.

In addition, the Administration remains committed to expanding housing opportunities for people with disabilities. For example, a voluntary compliance agreement, signed recently with the District of Columbia Housing Authority, will provide more than 500 fully accessible public housing units to disabled residents. HUD continues to strive to ensure equal housing opportunities for all.

Mr. Chairman, Committee Members warned me during the confirmation process that HUD was plagued by mismanagement on many levels. I understood that meeting the needs of the American people meant improving HUD's management, and I assured you that I was prepared to take on this challenge.

In the past eleven months, HUD has significantly streamlined its management structure to improve the quality and delivery of services, and restore the agency's credibility in the eyes of Congress and the American public

I set a goal that HUD address audit findings made by the Inspector General in a timely manner and make corrections that actually fix serious management problems. As a telling sign that we are committed to doing better, HUD completed the six-month period ending September 30 with no overdue management decisions on any of the Inspector General's 363 audit recommendations – the first time HUD has met that deadline in [TWO? FIVE?] years.

Our goal is to deliver the best possible services to those in need, and we have moved aggressively to ensure that HUD programs are getting the job done.

With the support of the National Education Association, the American Federation of Teachers, and the Fraternal Order of Police, I suspended HUD's Officer Next Door and Teacher Next Door programs in April. This came after officials handed down indictments and felony convictions against buyers who purchased their homes fraudulently. We put into place aggressive monitoring and tightened controls to prevent homebuyer fraud, and restarted the programs in August.

Working with Congress, we terminated HUD's drug elimination program this year. This was a well-intentioned program that suffered from a large number of abuses, and duplicated the work of other Cabinet Departments. Despite the termination of this program, HUD's commitment to ensuring safe and drug-free homes for America's families has not wavered. I am working with the Department of Justice and other agencies in exploring ways to effectively meet this commitment.

REV_00137615

Until this year, HUD's credit subsidy – which is used to cover expected losses on FHA multifamily loans – was fraught with uncertainty due to regular appropriations shortfalls. The Department restructured the program to make it more self-sufficient and less dependent on taxpayer dollars. Since the restructuring became effective on October 1, 2001, HUD has issued firm commitments totaling $869 million for more than 10,000 housing units.

I am proud of the strides we have made in identifying the programs that are meeting the needs of the people… and identifying – and fixing – those that are not. HUD is quickly becoming a more efficient, more effective provider of the services no agency but ours can deliver.

Mr. Chairman, I will conclude my formal testimony so that I may dedicate as much of our remaining time as possible to answering questions from the Committee. As I indicated to you in our last conversation, HUD's ongoing negotiations with the White House regarding the fiscal year 2003 budget preclude me from addressing – in anything more than very general terms – any budget initiatives we may be considering.

In closing, we all understand that housing is a non-partisan issue – one that crosses the lines of politics and party. The families who come to us for help are not interested in our political affiliations, and our success in serving them depends on cooperation. I am happy to say that this is the spirit in which HUD and the Committee have undertaken our work this year… and the same spirit that will guide us tomorrow and into the future. I would like to thank each of you for your personal support of my efforts, and I welcome your guidance as we continue our work together on behalf of the American people.

Thank you.

REV_00137616

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John P. McConnell/OVP/EOP@EOP [OVP] <John P. McConnell>
Sent: 12/12/2001 5:19:46 AM
Subject: : Judge speech

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-DEC-2001 10:19:46.00
SUBJECT:: Judge speech
TO:John P. McConnell ( CN=John P. McConnell/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I have drafted a speech for Judge Gonzales for him to give
tomorrow at Fed Society. Any chance you have time to review briefly
before I submit the draft to him? I obviously understand if you have
other obligations today, but if you have time to review/edit/comment, that
would be very helpful. Thanks.
```

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 12/13/2001 4:11:19 AM
Subject: : Re: House Joint Resolution on Iraq

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-DEC-2001 09:11:19.00
SUBJECT:: Re: House Joint Resolution on Iraq
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Not I.




Allison L. Riepenhoff
12/13/2001 09:09:09 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Re: House Joint Resolution on Iraq


---------------------- Forwarded by Allison L. Riepenhoff/WHO/EOP on
12/13/2001 09:08 AM ---------------------------



Timothy E. Flanigan
12/12/2001 10:08:00 PM
Record Type: Record
```

To: John B. Bellinger/NSC/EOP@EOP
cc: alberto r. gonzales/who/eop@eop, Allison L. Riepenhoff/WHO/EOP@EOP
bcc:
Subject: Re: House Joint Resolution on Iraq

Never heard of it.

Allison-- would you check with the other attroneys and ask if they have seen the resolution?

John B. Bellinger
12/12/2001 09:32:54 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
cc:
Subject: House Joint Resolution on Iraq

Is either of you aware of a House Joint Resolution on Iraq? This was introduced last week by Congressmen Hyde and Graham and we were told that the WH Counsel's Office (??) had been consulted about it. The version we've seen has a number of problems with it and we're concerned about having the President sign it if it remains a joint resolution. We need to make some changes or change to a concurrent resolution.

Message Sent
To:_____
Rachel Brand
Noel J. Francisco/WHO/EOP@EOP
Kyle Sampson
Robert W. Cobb/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/13/2001 5:48:17 AM
Subject: : Victims Comp Fund Mtg

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-DEC-2001 10:48:17.00
SUBJECT:: Victims Comp Fund Mtg
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Friday morning is flexible for a meeting on this with ARG-anytime after
9:30 am that is...

Let me know when you want to do this so I can hold the time. Also provide
names of participants.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/13/2001 6:32:38 AM
Subject: : Re: Victims Comp Fund Mtg

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-DEC-2001 11:32:38.00
SUBJECT:: Re: Victims Comp Fund Mtg
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

done

Brett M. Kavanaugh
12/13/2001 11:19:55 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Victims Comp Fund Mtg

schedule at 11 -- can you call Phil and Jay

Elizabeth N. Camp
12/13/2001 10:48:09 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Victims Comp Fund Mtg

Friday morning is flexible for a meeting on this with ARG-anytime after 9:30 am that is...

Let me know when you want to do this so I can hold the time. Also provide names of participants.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>
Sent: 12/13/2001 12:25:35 PM
Subject: : Heads up on Forest Service's road management policy

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-DEC-2001 17:25:35.00
SUBJECT:: Heads up on Forest Service's road management policy
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

For whoever has USDA....
---------------------- Forwarded by Helgard C. Walker/WHO/EOP on
12/13/2001 05:25 PM ---------------------------
```

```
Jay P. Lefkowitz
12/13/2001 04:41:34 PM
Record Type: Record

To: Scott McClellan/WHO/EOP@EOP, Claire E. Buchan/WHO/EOP@EOP
cc: Kristen Silverberg/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP
Subject: Heads up on Forest Service's road management policy

Although this is different from the Roadless Rule, it covers some related
issues. Here are USDA's talking points on the policy announcement that
should become public today:

1. The Forest Service has issued an interim directive to the road
management policy (January 2001) consistent with recent actions taken by
the Chief to protect roadless values.

Specifically, this interim directive (7710-2001-3) clarifies how and when
decisions on roads are made and removes from the policy the interim
requirements for inventoried roadless areas and contiguous unroaded areas,
which are already covered by the Chief's June 7 direction regarding
inventoried roadless areas. The policy requires managers to conduct a
science-based roads analysis to help make better decisions on all new
construction, reconstruction and decommissioning activities beginning July
12, 2001. Maintenance of roads is exempt from the roads analysis
requirement. The policy also requires a forest to conduct a forest-scale
roads analysis by January 12, 2003. Currently, the August 1999 process
titled Roads Analysis: Informing Decisions About Managing the National
```

Forest Transportation System (FS-643) is the only approved analysis process.

In addition, the agency has consolidated the two interim directives on the Chief's June 7 decision regarding inventoried roadless areas to the Forest Service manual's planning section, where it is more appropriate. This action in no way changes the nature or effect of the Chief's decision including its application to the 58 million acres of inventoried roadless areas identified in the January 12, 2001, Roadless Area Conservation Rule.

2. This action supports Agriculture Secretary Veneman's and Forest Service Chief Dale Bosworth's commitment to protect inventoried roadless areas as important components of the National Forest System. This is the next step to the Chief's June 7 letter and is consistent with Secretary Veneman's principles of making better decisions; working together; protecting forests; protecting communities, homes and property; and protecting access to property.

In contrast to the Roadless Area Conservation Rule, which applies to inventoried roadless areas, the road management policy governs the management of the Forest Service's existing road network. The road management policy provides direction for transportation planning while allowing land management allocations to be made through the forest planning process.

3. The new interim directive on road management is effective immediately and the public will be invited to comment on it. In addition, the Forest Service has issued a separate interim directive to the planning section of the agency's manual to incorporate the Chief's June 7 decision regarding inventoried roadless areas.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/14/2001 6:03:21 AM
Subject: : Re: talked to bart

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-DEC-2001 11:03:21.00
SUBJECT:: Re: talked to bart
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

bart, could you do tues and wed? if so, i think we'll have a plan, as bk has indicated he is willing to consider sunday and monday night, though he is not committed.

the instant plan would be a second-choice alternative to expansion of the pool, as suggested by bk's prior email.

Noel J. Francisco
12/14/2001 10:51:38 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: H. Christopher Bartolomucci/WHO/EOP@EOP
bcc:
Subject: Re: talked to bart

I cannot do Wed. night. I can do Thurs. night (and Friday), if needed.

Helgard C. Walker
12/14/2001 10:46:23 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: talked to bart

can you do wed night and thurs night, into fri afternoon? if you can do that, everything will work out, i think, but need to nail down bk too.

From: Edward_Ingle@who.eop.gov [UNKNOWN]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole E. Grodner/WHO/EOP@EOP [WHO] <Nicole E. Grodner>;Melissa L. McAdoo/WHO/EOP@EOP [WHO] <Melissa L. McAdoo>
Sent: 12/14/2001 6:11:51 AM
Subject: : this week's agency foia requests
Attachments: P_7JFH4003_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward_Ingle@who.eop.gov ( Edward_Ingle@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:14-DEC-2001 11:11:51.00
SUBJECT:: this week's agency foia requests
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nicole E. Grodner ( CN=Nicole E. Grodner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Melissa L. McAdoo ( CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

....as provided to us via the agencies' weekly cabinet report submissions.

(See attached file: FOIA12-14-01.doc)
- FOIA12-14-01.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7JFH4003_WHO.TXT_1>
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12/14/01

AGENCY FOIA REQUESTS

INTERIOR

- ***Stone Canyon Wilderness, California.*** The California Association of 4-Wheel Drive Clubs requested documents from 1994 to the present regarding the boundaries of the Stone Canyon Wilderness in the Argus Range. The 75,000-acre Stone Canyon Wilderness borders the northern edge of Death Valley National Park and is managed by California's BLM Ridgecrest Field Office.

- ***D.J. Schubert, Schubert & Associates (on behalf of The Fund for Animals).*** Requested a copy of all records received in either hard copy or electronic format submitted to the NPS by the International Snowmobile Manufacturers Association and/or its members or any other organization or entity regarding snowmobiles and snowmobile technology. The requested information was required to be submitted to the NPS within 30 days of the effective date of the Settlement Agreement (June 29) in International Snowmobile Manufacturers Association, et al., v. Norton et al.

- ***Request for Keechelus Dam Operational Data.*** Reclamation's Pacific Northwest Region received a FOIA requesting information on Keechelus Dam operations, including repair, replacement, and reconstruction activities; environmental effects of operation; and plans for improvement. Keechelus Dam is located on the Yakima Project in south-central Washington.

JUSTICE

- Christopher Farrell, of ***Judicial Watch,*** Inc., has requested all records pertaining to the decision to implement military tribunals for the trials of suspected terrorists, and the decision to monitor phone conversations between counsel and clients who are either convicted or suspected terrorists.

- Christopher Farrell, of ***Judicial Watch,*** Inc., has requested all records that refer or relate in anyway to the Enron Corporation.

HHS

- ***Smallpox Vaccine.*** During the week of November 30-December 6, ***Science Magazine*** requested from FDA all records and correspondence between HHS and potential smallpox vaccine manufacturers on the subject of a possible new vaccine to fight the disease

- ***Smallpox Vaccine.*** A free lance writer for ***Science*** and other magazines requested that CDC provide all documents related to the development of a new generation smallpox vaccine.

Bacillus anthracis Los Alamos Study Group, Santa Fe, New Mexico, asked that CDC provide copies of form EA-101 and all related documents for the October 26, 2001 transfer of *Bacillus anthracis* to the Los Alamos National Lab.

Maine Medicare Contract. On November 27 ***Senator Olympia Snowe*** requested, on behalf of a constituent a copy of the Medicare contract for Maine.

ENERGY

- ***Sierra Club*** has requested information about meetings of the National Energy Policy Development Group with private individuals and groups.

- ***Seattle Post-Intelligencer*** has requested a copy of a report on the 60 day review of expressions of interest in using the Fast Flux Test Facility as a commercial production facility for medical isotopes in the treatment of cancer.

COMMERCE

- Received 12/5/01 from Christopher J. Farrell, ***Judicial Watch,*** requesting information regarding the decision to give Advanced Cell Technology, a Massachusetts biotechnology firm, a $1.8 million grant under the Advanced Technology Program in October 2001.

- Received 12/5/01 from Christopher J. Farrell, ***Judicial Watch,*** requesting specified information regarding the Enron Corporation and its Chairman, Kenneth Lay.

- Received 12/5/01 from Giovanna Cinelli, ***Patton Boggs***, McLean, Virginia, requesting a copy of a 1978 Department of Commerce study entitled, *Export of Technical Data by Publication or Other Means of Dissemination: A Study Pursuant to Section 120 of the Export Administration Act of 1977*; and other studies, publications, policy papers, or written materials relating to the export of technical data by the academic community or through publication in general.

LABOR

- **GREEN RIVER PENTECOSTAL CHURCH, McKINNEY, KENTUCKY**
  Ashley Nix, Paralegal, Law Offices of Sturgill, Turner, Barker & Moloney, Lexington, Kentucky, is seeking:

  all materials relating to OSHA's investigation of the accident involving Bobby `Statom, Jacob Ison, and Shawn Reynolds which occurred on July 23, 2001 at Green River Pentecostal Church on Kentucky 698 in McKinney, Kentucky.

  This request is currently being processed by the Occupational Safety and Health Administration. Date request received: October 25, 2001.

- **JIM WALTER RESOURCES, INC.'S NUMBER 5**
  Jonathan C. Sapp, Esq., Law Offices of Warren & Sapp, Jasper, Alabama, is seeking:

  any and all documents and information regarding the investigation of the death of Joseph Sorah, who worked at Jim Walter Resources, Inc.'s Number 5 Mine in Brookwood on September 24, 2001.

  This request is currently being processed by the Mine Safety and Health Administration. Date request received: December 5, 2001.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who /eop@eop [WHO] <helgard c. walker>
Sent: 12/14/2001 6:28:12 AM
Subject: : Re: talked to bart

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-DEC-2001 11:28:12.00
SUBJECT:: Re: talked to bart
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I propose this plan:

Brett -- Sunday & Monday nights (double duty since he didn't go this week)
Helgi -- Tuesday night
Bart -- Wednesday night
Noel -- Thursday night
```

```
Noel J. Francisco
12/14/2001 11:15:17 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: helgard c. walker/who/eop@eop, noel j. francisco/who/eop@eop,
h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re: talked to bart

I am assuming that the plan is Brett (Sunday and Monday night); Bart
(Tuesday and Wednesday night); and Helgi (Thursday night and Friday) (or
is it me Thursday night and Friday)?
```

```
Brett M. Kavanaugh
12/14/2001 11:09:56 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: noel j. francisco/who/eop@eop, h. christopher
bartolomucci/who/eop@eop
bcc:
Subject: Re: talked to bart

I am ok with that plan if -- but only if -- no meetings I have to
be at Monday. will keep you advised . . .
```

Helgard C. Walker
12/14/2001 11:03:13 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: talked to bart

bart, could you do tues and wed? if so, i think we'll have a plan, as bk has indicated he is willing to consider sunday and monday night, though he is not committed.

the instant plan would be a second-choice alternative to expansion of the pool, as suggested by bk's prior email.

Noel J. Francisco
12/14/2001 10:51:38 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: H. Christopher Bartolomucci/WHO/EOP@EOP
bcc:
Subject: Re: talked to bart

I cannot do Wed. night. I can do Thurs. night (and Friday), if needed.

Helgard C. Walker
12/14/2001 10:46:23 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: talked to bart

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From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 12/14/2001 7:10:15 AM
Subject: : Re: talked to bart

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-DEC-2001 12:10:15.00
SUBJECT:: Re: talked to bart
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, how would you feel about covering Tuesday night for me, since I
picked up a night for you last week and because I have a birthday lunch on
Wednesday?
```

```
H. Christopher Bartolomucci
12/14/2001 11:28:02 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: talked to bart

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Record Type: Record

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cc: helgard c. walker/who/eop@eop, noel j. francisco/who/eop@eop,
h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re: talked to bart

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Record Type: Record

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bcc:
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Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: talked to bart

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12/14/2001 10:51:38 AM
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cc: H. Christopher Bartolomucci/WHO/EOP@EOP
bcc:
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Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 12/14/2001 10:11:54 AM
Subject: : Re: Holiday Contact Info

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-DEC-2001 15:11:54.00
SUBJECT:: Re: Holiday Contact Info
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

If Brett does Sun. and Mon., and Noel does Thur. and Fri., I will do Tue. and Wed. Although I may need to arrive late on Tue.

Helgard C. Walker
12/14/2001 03:06:54 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

Understood and appreciated. Chris, are you still willing to do Tues and Wed, since Brett has declined to cover me for Wed? If it's a problem I will suck it up and go for Tuesday night.

Noel J. Francisco
12/14/2001 03:04:19 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

I'm glad to work it all out, but I cannot be out of the office on Monday, and I will already be travelling on Tuesday and Wednesday. So Thursday night and Friday are really the only days that I can do.

Helgard C. Walker
12/14/2001 03:00:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

Would that it were for real.

Brett M. Kavanaugh
12/14/2001 02:57:30 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

attempted humor

Helgard C. Walker
12/14/2001 02:56:40 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

Is that for real or another attempt at humor?

Brett M. Kavanaugh
12/14/2001 02:56:04 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

kyle sunday; courtney monday and tuesday; brad wed-friday

Helgard C. Walker
12/14/2001 02:53:27 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

While I have all of your attention, can we come to a resolution on next week's plan?

Brett M. Kavanaugh
12/14/2001 02:48:05 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

meant that to be funny, but lost in the e-mail nuance . . .

H. Christopher Bartolomucci
12/14/2001 02:47:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

Aren't we snippy today?

Brett M. Kavanaugh
12/14/2001 02:46:13 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: helgard c. walker/who/eop@eop, h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re: Holiday Contact Info

dunno, dunno, and dunno; does anyone really think I plan that far in advance??

Noel J. Francisco
12/14/2001 02:30:11 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Holiday Contact Info

Please e-mail to me the dates that you will be travelling over the holidays, where you will be, and the numbers at which you can be contacted. Thanks.

From: Sharon Bradford Franklin <franklin@wclawyers.org>
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;franklin@wclawyers.org [ONDCP] <franklin@wclawyers.org>
Sent: 12/14/2001 12:47:30 PM
Subject: : Status check on invitation for Hon. Alberto Gonzales
Attachments: P_42XH4003_WHO.TXT_1.txt

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sharon Bradford Franklin <franklin@wclawyers.org> ( Sharon Bradford Franklin
<franklin@wclawyers.org> [ UNKNOWN ] )
CREATION DATE/TIME:14-DEC-2001 17:47:30.00
SUBJECT:: Status check on invitation for Hon. Alberto Gonzales
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:franklin@wclawyers.org ( franklin@wclawyers.org [ ONDCP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Dear Ms. Camp,
I don't want to pester you too much, but I wanted to touch base and
see whether Hon. Alberto Gonzales will be able to participate in the
Washington Council of Lawyers' forum on responses to terrorism on Jan. 9th
or 17th.
We will be sending out our membership newsletter on Tuesday, and need
to be able to announce the date of this event. Knowing Judge Gonzales'
availability will help us to select the final date. Also, although we
sincerely hope that Judge Gonzales will be able to participate, if he is
unavailable, we would appreciate your checking on whether his Deputy may
be able to participate instead.
I look forward to hearing from you by reply email or at 202-942-5063.
Thank you very much.
Sincerely,
Sharon Bradford Franklin
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_42XH4003_WHO.TXT_1>
```

Dear Ms. Camp,

I don't want to pester you too much, but I wanted to touch base and see whether Hon. Alberto Gonzales will be able to participate in the Washington Council of Lawyers' forum on responses to terrorism on Jan. 9th or 17th.

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I look forward to hearing from you by reply email or at 202-942-5063. Thank you very much.

Sincerely,
Sharon Bradford Franklin

From: Sharon Bradford Franklin <franklin@wclawyers.org>
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;franklin@wclawyers.org [ONDCP] <franklin@wclawyers.org>
Sent: 12/14/2001 12:54:10 PM
Subject: : Status check on invitation for Hon. Alberto Gonzales
Attachments: P_PAXH4003_WHO.TXT_1.txt

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sharon Bradford Franklin <franklin@wclawyers.org> ( Sharon Bradford Franklin
<franklin@wclawyers.org> [ UNKNOWN ] )
CREATION DATE/TIME:14-DEC-2001 17:54:10.00
SUBJECT:: Status check on invitation for Hon. Alberto Gonzales
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:franklin@wclawyers.org ( franklin@wclawyers.org [ ONDCP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Dear Ms. Camp,
I don't want to pester you too much, but I wanted to touch base and
see whether Hon. Alberto Gonzales will be able to participate in the
Washington Council of Lawyers' forum on responses to terrorism on Jan. 9th
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We will be sending out our membership newsletter on Tuesday, and need
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availability will help us to select the final date. Also, although we
sincerely hope that Judge Gonzales will be able to participate, if he is
unavailable, we would appreciate your checking on whether his Deputy may
be able to participate instead.
I look forward to hearing from you by reply email or at 202-942-5063.
Thank you very much.
Sincerely,
Sharon Bradford Franklin
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PAXH4003_WHO.TXT_1>
```

Dear Ms. Camp,

I don't want to pester you too much, but I wanted to touch base and see whether Hon. Alberto Gonzales will be able to participate in the Washington Council of Lawyers' forum on responses to terrorism on Jan. 9th or 17th.

We will be sending out our membership newsletter on Tuesday, and need to be able to announce the date of this event. Knowing Judge Gonzales' availability will help us to select the final date. Also, although we sincerely hope that Judge Gonzales will be able to participate, if he is unavailable, we would appreciate your checking on whether his Deputy may be able to participate instead.

I look forward to hearing from you by reply email or at 202-942-5063. Thank you very much.

Sincerely,
Sharon Bradford Franklin

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/17/2001 7:42:35 AM
Subject: : Re: PRA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-DEC-2001 12:42:35.00
SUBJECT:: Re: PRA
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

great, but I thought people requested the documents from the archivist.

did you have fun on Saturday? I couldn't handle that party - too many drunk people in too little space.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 12/17/2001 8:17:26 AM
Subject: : PRA

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-DEC-2001 13:17:26.00
SUBJECT:: PRA
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

may need your help, along with Courtney's, to review some Reagan records
tomorrow. Please block out large chunk of time. This is per request of
Judge and Tim. Thanks
```

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/17/2001 12:48:36 PM
Subject: : Re: Horn letter -- procedures

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-DEC-2001 17:48:36.00
SUBJECT:: Re: Horn letter -- procedures
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, we need to get sign off from DOJ by tomorrow morning if possible
and then try to get the letter to Horn by tomorrow afternoon for their
comments. I would like to have the letter ready to go by Wednesday.

Brett M. Kavanaugh
12/17/2001 05:33:25 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E.
Flanigan/WHO/EOP@EOP
cc:
Subject: Horn letter -- procedures

reminder that (i) we need to show DOJ litigators the letter to
make sure they are ok and (ii) we promised Horn we would share draft with
his staff
both steps can be accomplished in very short time period if need
be

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/17/2001 11:29:50 AM
Subject: : RE: Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
[UNKNOWN])
CREATION DATE/TIME:17-DEC-2001 16:29:50.00
SUBJECT:: RE: Meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

4:30 may work, i need to check with chertoff. they may insist that the
meeting happen on the Hill. would that be a problem?

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, December 17, 2001 4:15 PM
To: Thorsen, Carl
Subject: RE: Meeting

how about 4:30 at DOJ?

(Embedded
image moved "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
to file: 12/17/2001 04:10:31 PM
pic18483.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: Meeting

ok. she says tim is available from 2:30 on.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, December 17, 2001 4:07 PM
To: Thorsen, Carl
Subject: Re: Meeting

late for me; check with Allison at 456-2632 re Tim; I am out of town today

(Embedded
image moved "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
to file: 12/17/2001 03:58:28 PM
pic31013.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Meeting

Brett,

Chertoff is out starting Wednesday. I'm going to propose to Wilson a
meeting
tomorrow afternoon. Are you guys available?

Carl Thorsen
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/17/2001 3:40:00 PM
Subject: : please review, get it the way you want it and resend cleaned up
Attachments: P_2ZT15004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-DEC-2001 20:40:00.00
SUBJECT:: please review, get it the way you want it and resend cleaned up
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This has changes made by both the Judge and Tim.



ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2ZT15004_WHO.TXT_1>
```

Revised: 12/17/01-5:31 pm

Dear Chairman Horn:

Thank you very much for providing me your thoughts and insights about the President's recent executive order implementing the Presidential Records Act. Our discussion identified several areas where some outside parties have misdescribed the order because of apparent confusion, and I therefore wanted to take this opportunity to ~~explain~~ further clarify certain aspects of the order for the benefit of you and your colleagues.

At the outset, we are well aware that many historians and academics have publicly suggested that the Presidential Records Act requires release of all Presidential records after expiration of the 12-year period. As you know, that suggestion is simply incorrect. In fact, the Presidential Records Act explicitly states that former and current Presidents retain the right to assert constitutional privileges over Presidential records even after the 12-year period has elapsed, a point that is reflected in the Act's legislative history as well. The statute thus conforms, as it must, to binding Supreme Court precedent. The Supreme Court definitively held in *Nixon v. GSA* that the Constitution authorizes former Presidents to assert privileges to prevent release of their records. No matter how much some might seek to *mandate* the release of all Presidential records at a certain point in time, the Supreme Court and Congress have~~s~~ both determined ~~spoken -- and spoken definitively -- in holding~~ that former and current Presidents may assert privileges over such records. ~~And of course, neither the President nor~~, respectively ~~the Congress is at liberty to ignore or override this binding Supreme Court precedent.~~

In that regard, it seems to us that much of the criticism of the executive order is, at root, misdirected criticism of the Supreme Court's decision. We find it extraordinary, for example, that much of the supposed expert public commentary on the President's order never mentions the Supreme Court's ruling, an omission that is especially ~~odd and unfair~~disappointing given that the President's order is expressly designed to implement and abide by the dictates of that Supreme Court decision.

Although a few of the order's critics have stated that the order precluded the release of presidential documents, that is simply false. The order merely sets up an orderly [and expeditious] procedure whereby both the sitting and the former president review documents requested for release to make the privilege determination. Moreover, as we have said, respectively, ~~T~~the fact that the order sets up procedures for former Presidents to assert their constitutionally guaranteed privileges does not mean that former Presidents must or should assert such privileges. In fact, the order expressly refrains from indicating whether and under what circumstances a former President should assert privileges. The order appropriately leaves that decision to the former President and his representatives in their discretion.

I am confident that, as the order is implemented, few records will be withheld from release. ~~The order also prominently notes the important historical fact that, e~~Even before the Presidential Records Act, former Presidents over time authorized release of the vast majority of their records. That is a critical practical point, for there surely is no reason to think that former Presidents would exercise their constitutional right to seek withholding of *privileged* records more aggressively than previous Presidents exercised their right to withhold *all* records.

Relatedly, we also want to emphaize that the single most important aspect of the President's executive order -- and its single biggest innovation -- is that the current President will defer "absent compelling circumstances" to the decision of the former President to authorize

release of records. That provision of the order should largely remove the current President as a gatekeeper and impediment to release of the fomer President's records. This was a significant policy decision. When combined with the historical fact that former Presidents over time have authorized release of the vast majority of records, it becomes clear that the order is designed to -- and will -- help facilitate the expeditious release of Presidential records. We therefore believe it unfortunate ~~and quite troubling~~ that the President's order, which has largely removed a potentially major roadblock to release of Presidential records, has been characterized in precisely the opposite fashion, including by Members of Congress.

Let me turn next to some specific areas where ~~the order has been misdescribed~~which apparently require further clarification.

First, some have suggested that the order somehow alters the scope of "constitutionally based privileges" by expressly identifying attorney-client and work product privileges as subsumed within executive privilege. ~~In fact~~As we have previously explained to you, the order simply reiterates the long-standing position of the Executive Branch that executive privilege subsumes such attorney-client and work product records. We understand that some commentators disagree with the Executive Branch's traditional legal analysis on that point. But *the order* does not purport to resolve that debate because the order cannot and does not alter the scope of constitutionally based privileges. For example, if a former President seeks to withhold particular records by asserting a privilege that the courts subsequently determine not to be constitutionally based, then the courts will order disclosure of those records -- regardless whether that privilege was or was not identified in the executive order as being within the scope of executive privilege. As I previously communicted to you, we understand that there is a disagreement on this legal issue and that the question cannot be resolved in this executive order.

Second, some have suggested that the 21-day time frames established in the order for asserting privileges in response to congressional subpoenas may inappropriately override shorter subpoena return dates. That is incorrect. In the event of a legitimate and reasonable subpoena return date that is shorter than 21 days, the Executive Branch will respond within that time frame, if it ordinarily and otherwise would do so, without regard to the time frames in the executive order. The order simply sets out an outside ~~*self-imposed*~~ deadline (i) for asserting privileges in response to, *inter alia*, congressional requests other than subpoenas and (ii) for responding *more expeditiously* than otherwise might be required to congressional subpoenas.

Third, some have suggested that the order requires a requester of Presidential records to make some showing of "need" in order to request Presidential records. That is also incorrect. A requester need not make any showing of need to submit a request for Presidential records. If a former President asserts a privilege in response to a request, and the requester chooses to challenge that privilege claim in court, the requester only *then* must satisfy whatever standards *the courts* have established for executive privilege cases. The President's order, of course, could not and does not affect the standards the courts have established with respect to executive privilege claims. In any event, the important point for present purposes is that a requester need not make any showing of need when submitting a request for records.

There also have been some questions raised about the fact that a denied requester must initiate litigation against a former President who asserts a privilege, rather than requiring the former President to sue the current President and Archivist when asserting a privilege. Even assuming arguendo that it is constitutionally permissible to force a former President to sue the current President when asserting his constitutional privileges, we do not think such a procedure constitutionally appropriate or sound policy. The Supreme Court has held that former Presidents

have the constitutional right to assert privileges over their records. If such a privilege is asserted, we believe it most appropriate for the requester who disagrees with the privilege assertion to proceed to court -- just as the requester would do in ordinary FOIA litigation -- not to require the former President take the extraordinary and jarring public step of suing the current President. In our view, the alternative procedure contained in the 1989 executive order would, as a practical matter, confuse the public and burden the former President's exercise of his constitutionally guaranteed rights in a manner inconsistent with the spirit, if not the letter, of the Supreme Court's decision guaranteeing the former President's rights.

As a practical matter, moreover, it is no more difficult for a requester to file suit when a former President asserts a privilege than for a denied requester to file an ordinary FOIA suit, which happens routinely. Because this procedure is so common in the FOIA setting, we think it an entirely appropriate model for these purposes, particularly given the countervailing considerations we have identified.

We hope these comments are of assistance to you and your colleagues. As I said, the President's order is designed to facilitate release of Presidential records in a manner consistent with the Supreme Court's case law and the Act. We ask, at a mimimum, that those who are ~~critical or skeptical~~concerned give this process a chance to operate before erroneously speculating how it will operate.

Mr. Chairman, thank you for your careful attention and devotion to these important issues. We look forward to working together with you on this and other issues in the future.

From:	CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD]
To:	Edward.Demarco@do.treas.gov [UNKNOWN] <Edward.Demarco@do.treas.gov>;Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>
CC:	sheila.bair@do.treas.gov [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov [UNKNOWN] <peter.fisher@do.treas.gov>;matthew kirk/who/eop@eop [WHO] <matthew kirk>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;randall s. kroszner/cea/eop@eop [CEA] <randall s. kroszner>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;mario.ugoletti@do.treas.gov [UNKNOWN] <mario.ugoletti@do.treas.gov>;martha.ellett@do.treas.gov [UNKNOWN] <martha.ellett@do.treas.gov>;roberta.mcinerney@do.treas.gov [UNKNOWN] <roberta.mcinerney@do.treas.gov>;amy.smith@do.treas.gov [UNKNOWN] <amy.smith@do.treas.gov>
Sent:	12/18/2001 6:07:07 AM
Subject:	: Re: Draft SAP for Senate Terrorism Insurance bill - 2nd draft
Attachments:	P_IY735004_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:18-DEC-2001 11:07:07.00
SUBJECT:: Re: Draft SAP for Senate Terrorism Insurance bill - 2nd draft
TO:Edward.Demarco@do.treas.gov ( Edward.Demarco@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Amy C. Smith ( CN=Amy C. Smith/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:matthew kirk ( CN=matthew kirk/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brian c. conklin ( CN=brian c. conklin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:randall s. kroszner ( CN=randall s. kroszner/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:mario.ugoletti@do.treas.gov ( mario.ugoletti@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:martha.ellett@do.treas.gov ( martha.ellett@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:roberta.mcinerney@do.treas.gov ( roberta.mcinerney@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:amy.smith@do.treas.gov ( amy.smith@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I like this version much better. I would suggest changing the word
"crucial" to "needed" and adding one or two sentences on the legal
procedures. I believe that Kristen Silverberg is working on this. I
would urge everyone to send their changes in to Ed by noon, and then have
Ed send to OMB for immediate circulation in their SAP process (with a
short turnaround). We should have a final version ready by late this
afternoon.

Thanks,

Marc
```

Edward.Demarco@do.treas.gov
12/18/2001 10:39:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Mario.Ugoletti@do.treas.gov, Martha.Ellett@do.treas.gov,
Roberta.McInerney@do.treas.gov, Amy.Smith@do.treas.gov
Subject: Draft SAP for Senate Terrorism Insurance bill - 2nd draft

Attached for your review is a second draft of the SAP for the Senate's terrorism insurance bill. It builds on Marc's first draft as discussed earlier this morning.

> <<Senate SAP v2 Dec18.doc>>

- Senate SAP v2 Dec18.doc

Message Sent
To:_____
Sheila.Bair@do.treas.gov
Peter.Fisher@do.treas.gov
D. Marcus Sumerlin/OPD/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Randall S. Kroszner/CEA/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IY735004_WHO.TXT_1>

SECOND DRAFT

Senate SAP on Terrorism Risk Insurance

The Administration strongly supports the creation of a terrorism risk insurance program that will provide much needed stability to our economy. The backstop insurance program established in the Senate-amended version of H.R. 3210 is a well-crafted and effective mechanism for ensuring the continued availability of insurance for terrorist-related acts. The program provides insurance companies with transparency in assessing their potential loss exposure while appropriately limiting that exposure and encouraging the private sector to build new capacity. It will aid the economy by dampening any increases in insurance costs or curtailment of insurance coverage while limiting federal intrusion into private activity.

The Administration urges Senate passage of the Senate-amended version of H.R. 3210 as a crucial step towards enactment of a terrorism risk insurance program. However, the Administration cannot support final enactment of the bill unless stronger procedures for terrorist-related litigation management are added in conference.

From: CN=Randall S. Kroszner/OU=CEA/O=EOP [CEA]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>
CC: edward.demarco@do.treas.gov [UNKNOWN] <edward.demarco@do.treas.gov>;amy c. smith/omb/eop@eop [OMB] <amy c. smith>;sheila.bair@do.treas.gov [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov [UNKNOWN] <peter.fisher@do.treas.gov>;matthew kirk/who/eop@eop [WHO] <matthew kirk>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;randall s. kroszner/cea/eop@eop [CEA] <randall s. kroszner>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;mario.ugoletti@do.treas.gov [UNKNOWN] <mario.ugoletti@do.treas.gov>;martha.ellett@do.treas.gov [UNKNOWN] <martha.ellett@do.treas.gov>;roberta.mcinerney@do.treas.gov [UNKNOWN] <roberta.mcinerney@do.treas.gov>;amy.smith@do.treas.gov [UNKNOWN] <amy.smith@do.treas.gov>
Sent: 12/18/2001 6:53:28 AM
Subject: : Re: Draft SAP for Senate Terrorism Insurance bill - 2nd draft
Attachments: P_NCA35004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP [ CEA ] )
CREATION DATE/TIME:18-DEC-2001 11:53:28.00
SUBJECT:: Re: Draft SAP for Senate Terrorism Insurance bill - 2nd draft
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:edward.demarco@do.treas.gov ( edward.demarco@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:amy c. smith ( CN=amy c. smith/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:matthew kirk ( CN=matthew kirk/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brian c. conklin ( CN=brian c. conklin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:randall s. kroszner ( CN=randall s. kroszner/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:mario.ugoletti@do.treas.gov ( mario.ugoletti@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:martha.ellett@do.treas.gov ( martha.ellett@do.treas.gov [ UNKNOWN ] )
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CC:roberta.mcinerney@do.treas.gov ( roberta.mcinerney@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:amy.smith@do.treas.gov ( amy.smith@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I agree with Mark.



D. Marcus Sumerlin
12/18/2001 11:07:03 AM
Record Type: Record

To: Edward.Demarco@do.treas.gov, Amy C. Smith/OMB/EOP@EOP
```

cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Draft SAP for Senate Terrorism Insurance bill - 2nd draft

I like this version much better. I would suggest changing the word "crucial" to "needed" and adding one or two sentences on the legal procedures. I believe that Kristen Silverberg is working on this. I would urge everyone to send their changes in to Ed by noon, and then have Ed send to OMB for immediate circulation in their SAP process (with a short turnaround). We should have a final version ready by late this afternoon.

Thanks,

Marc

Edward.Demarco@do.treas.gov
12/18/2001 10:39:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Mario.Ugoletti@do.treas.gov, Martha.Ellett@do.treas.gov, Roberta.McInerney@do.treas.gov, Amy.Smith@do.treas.gov
Subject: Draft SAP for Senate Terrorism Insurance bill - 2nd draft

Attached for your review is a second draft of the SAP for the Senate's terrorism insurance bill. It builds on Marc's first draft as discussed earlier this morning.

> <<Senate SAP v2 Dec18.doc>>

- Senate SAP v2 Dec18.doc

Message Sent
To:_____
Sheila.Bair@do.treas.gov
Peter.Fisher@do.treas.gov
D. Marcus Sumerlin/OPD/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Randall S. Kroszner/CEA/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

Message Copied
To:_____
sheila.bair@do.treas.gov
peter.fisher@do.treas.gov
matthew kirk/who/eop@eop
brian c. conklin/who/eop@eop
randall s. kroszner/cea/eop@eop
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NCA35004_WHO.TXT_1>

SECOND DRAFT

Senate SAP on Terrorism Risk Insurance

The Administration strongly supports the creation of a terrorism risk insurance program that will provide much needed stability to our economy. The backstop insurance program established in the Senate-amended version of H.R. 3210 is a well-crafted and effective mechanism for ensuring the continued availability of insurance for terrorist-related acts. The program provides insurance companies with transparency in assessing their potential loss exposure while appropriately limiting that exposure and encouraging the private sector to build new capacity. It will aid the economy by dampening any increases in insurance costs or curtailment of insurance coverage while limiting federal intrusion into private activity.

The Administration urges Senate passage of the Senate-amended version of H.R. 3210 as a crucial step towards enactment of a terrorism risk insurance program. However, the Administration cannot support final enactment of the bill unless stronger procedures for terrorist-related litigation management are added in conference.

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/18/2001 3:23:34 AM
Subject: : senate reinsurance bill memo.DOC
Attachments: P_OTZ25004_WHO.TXT_1.pdf; P_OTZ25004_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-DEC-2001 08:23:34.00
SUBJECT:: senate reinsurance bill memo.DOC
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Kristen Silverberg/WHO/EOP on 12/18/2001 08:23 AM ----------

Kirk Blalock
12/17/2001 10:09:41 PM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP, D. Marcus Sumerlin/OPD/EOP@EOP, Karl C. Rove/WHO/EOP@EOP
cc: Susan B. Ralston/WHO/EOP@EOP
Subject: senate reinsurance bill memo.DOC

---------- Forwarded by Kirk Blalock/WHO/EOP on 12/17/2001 10:09 PM ----------

"Tedesco, Rochelle" <RTEDESCO@shb.com>
12/17/2001 06:32:21 PM
Record Type: Record

To: Kirk Blalock/WHO/EOP@EOP
cc:
Subject: senate reinsurance bill memo.DOC

<<Senate terrorism reinsurance bill.pdf>> <<senate reinsurance bill memo.DOC>> Attached is a memorandum by Victor Schwartz and Tiger Joyce regarding the compromise consensus version of the terrorism reinsurance act that is currently circulating in the Senate. The memo explains their concerns regarding the litigation management provisions in the bill.

"MMS <shb.com>" made the following annotations on 12/17/2001 05:32:22 PM

From the law offices of Shook, Hardy & Bacon L.L.P.

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- Senate terrorism reinsurance bill.pdf
- senate reinsurance bill memo.DOC

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OTZ25004_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OTZ25004_WHO.TXT_2>

107TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To promote the stabilization of the economy by encouraging financial institutions to continue to support economic development, including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Terrorism Risk Insurance Act of 2001".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

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(1) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(2) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of informa-

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tion from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) PURPOSE.—The purpose of this Act is to establish a temporary Federal program that provides for a

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transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term ''act of terrorism'' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

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(ii) to have resulted in damage within the United States, or outside the United States in the case of an air carrier described in paragraph (3)(A)(ii); and

(iii) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION.—No act or event shall be certified by the Secretary as an act of terrorism if—

(i) the act or event is committed in the course of a war declared by the Congress; or

(ii) losses resulting from the act or event, in the aggregate, do not exceed $5,000,000.

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act or event as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

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(2) BUSINESS INTERRUPTION COVERAGE.—The term "business interruption coverage"—

(A) means coverage of losses for temporary relocation expenses and ongoing expenses, including ordinary wages, where—

(i) there is physical damage to the business premises of such magnitude that the business cannot open for business;

(ii) there is physical damage to other property that totally prevents customers or employees from gaining access to the business premises; or

(iii) the Federal, State, or local government shuts down an area due to physical or environmental damage, thereby preventing customers or employees from gaining access to the business premises; and

(B) does not include lost profits, other than in the case of a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632) and applicable regulations thereunder) in any case described in clause (i), (ii), or (iii) of subparagraph (A).

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(3) INSURED LOSS.—The term ''insured loss''—

(A) means any loss resulting from an act of terrorism that is covered by primary property and casualty insurance, including business interruption coverage, issued by a participating insurance company, if such loss—

(i) occurs within the United States; or

(ii) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), regardless of where the loss occurs; and

(B) excludes coverage under any life or health insurance.

(4) MARKET SHARE.—

(A) IN GENERAL.—The ''market share'' of a participating insurance company shall be calculated using the total amount of gross property and casualty insurance premiums for the participating insurance company during the 2-year period preceding the year in which the subject act of terrorism occurred (or during such other period for which adequate data are available, as determined by the Secretary), as a percentage of the aggregate of all such property

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and casualty insurance premiums industry-wide during that period.

(B) ADJUSTMENTS.—The Secretary may adjust the market share of a participating insurance company under subparagraph (A), as necessary to reflect current market participation of that participating insurance company.

(5) NAIC.—The term "NAIC" means the National Association of Insurance Commissioners.

(6) PARTICIPATING INSURANCE COMPANY.—The term "participating insurance company" means any insurance company, including any subsidiary or affiliate thereof—

(A) that—

(i) is licensed or admitted to engage in the business of providing primary insurance in any State, and was so licensed or admitted on September 11, 2001; or

(ii) is not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(B) that receives direct premiums for any type of commercial property and casualty insur-

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ance coverage or that, not later than 21 days after the date of enactment of this Act, submits written notification to the Secretary of its intent to participate in the Program with regard to personal lines of property and casualty insurance; and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(7) PARTICIPATING INSURANCE COMPANY DEDUCTIBLE.—The term ''participating insurance company deductible'' means—

(A) a participating insurance company's market share, multiplied by $10,000,000,000, with respect to insured losses resulting from an act of terrorism occurring during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002; and

(B) a participating insurance company's market share, multiplied by $15,000,000,000, with respect to insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2003 and ending at midnight on December 31, 2003, if the Program is extended in accordance with section 6.

REV_00138031

(8) PERSON.—The term ''person'' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(9) PROGRAM.—The term ''Program'' means the Terrorism Insured Loss Shared Compensation Program established by this Act.

(10) PROPERTY AND CASUALTY INSURANCE.—The term ''property and casualty insurance''—

(A) means commercial lines of property and casualty insurance; and

(B) includes personal lines of property and casualty insurance, if a notification is made in accordance with paragraph (6)(B).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(12) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and each of the United States Virgin Islands.

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(13) UNITED STATES.—The term ''United States'' means all States of the United States.

SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insured Loss Shared Compensation Program.

(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under subsection (e), unless—

(1) a person that suffers an insured loss, or a person acting on behalf of that person, files a claim with a participating insurance company;

(2) the participating insurance company provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

REV_00138033

(A) in the case of any policy covering an insured loss that is issued on or after the date of enactment of this Act, in the policy, at the time of offer, purchase, and renewal of the policy; and

(B) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(3) the participating insurance company processes the claim for the insured loss in accordance with its standard business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the participating insurance company submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written verification and certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

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(c) MANDATORY PARTICIPATION; MANDATORY COVERAGE.—Each insurance company that meets the definition of a participating insurance company under section 3—

(1) shall participate in the Program;

(2) shall make available in all of its property and casualty insurance policies (in all of its participating lines), coverage for insured losses; and

(3) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(d) PARTICIPATION BY SELF INSURED ENTITIES.—

(1) DETERMINATION BY THE SECRETARY.—The Secretary may, in consultation with the NAIC, establish procedures to allow participation in the Program by municipalities and other governmental or quasi-governmental entities (and by any other entity, as the Secretary deems appropriate) operating through self insurance arrangements that were in existence on September 11, 2001, but only if the Secretary makes a determination with regard to participation by any such entity before the occurrence

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of an act of terrorism in which the entity incurs an insured loss.

(2) PARTICIPATION.—If the Secretary makes a determination to allow an entity described in paragraph (1) to participate in the Program, all reports, conditions, requirements, and standards established by this Act for participating insurance companies shall apply to any such entity, as determined to be appropriate by the Secretary.

(e) SHARED INSURANCE LOSS COVERAGE.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—Subject to the cap on liability under paragraph (2) and the limitation under paragraph (6), the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002—

(i) shall be equal to 80 percent of that portion of the amount of aggregate insured losses that—

(I) exceeds the participating insurance company deductibles required

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to be paid for those insured losses; and

(II) does not exceed $10,000,000,000; and

(ii) shall be equal to 90 percent of that portion of the amount of aggregate insured losses that—

(I) exceeds the participating insurance company deductibles required to be paid for those insured losses; and

(II) exceeds $10,000,000,000.

(B) EXTENSION PERIOD.—If the Program is extended in accordance with section 6, the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2003 and ending at midnight on December 31, 2003, shall be calculated in accordance with clauses (i) and (ii) of subparagraph (A), subject to the cap on liability in paragraph (2) and the limitation under paragraph (6).

(C) PRO RATA SHARE.—If, during the period described in subparagraph (A) (or during

REV_00138037

the period described in subparagraph (B), if the Program is extended in accordance with section 6), the aggregate insured losses for that period exceed $10,000,000,000, the Secretary shall determine the pro rata share for each participating insurance company of the Federal share of compensation for insured losses calculated under subparagraph (A).

(2) CAP ON ANNUAL LIABILITY.—Notwithstanding paragraph (1), or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000 during any period referred to in subparagraph (A) or (B) of paragraph (1)—

(A) the Secretary shall not make any payment under this Act for any portion of the amount of such losses that exceeds $100,000,000,000; and

(B) participating insurance companies shall not be liable for the payment of any portion of the amount that exceeds $100,000,000,000.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 in any period described in paragraph (1), and the Con-

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gress shall determine the procedures for and the source of any such excess payments.

(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, and shall not be subject to judicial review.

(6) IN-FORCE REINSURANCE AGREEMENTS.—

(A) REDUCTION IN FEDERAL SHARE.—The Federal share of compensation for insured losses incurred by a participating insurance company calculated under paragraph (1) shall be reduced by the amount received under any agreement described in subparagraph (B)(i) in excess of the total amount of payments for such insured losses required to be made by the participating insurance company in accordance with this section.

(B) APPLICABILITY.—Subparagraph (A) shall apply only—

(i) if the participating insurance company had in effect on the date of enactment of this Act, an agreement that is a

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contractual arrangement for reimbursement of losses that are insured losses under the Program; and

(ii) during the period beginning on the date of enactment of this Act and ending on the earlier of—

(I) the date on which the agreement is renewed or amended; or

(II) the first annual anniversary date of the agreement occurring after the date of enactment of this Act.

SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to implement the Program.

(b) INTERIM RULES AND PROCEDURES.—The Secretary shall issue interim final rules or procedures specifying the manner in which—

(1) participating insurance companies may file, verify, and certify claims under the Program;

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(2) the Secretary shall publish or otherwise publicly announce the applicable percentage of insured losses that is the responsibility of participating insurance companies and the percentage that is the responsibility of the Federal Government under the Program;

(3) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual aggregate insured losses;

(4) the Secretary may, at any time, seek repayment from or reimburse any participating insurance company, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions contained in section 4;

(5) each participating insurance company that incurs insured losses shall pay its pro rata share of insured losses, in accordance with section 4; and

(6) the Secretary will determine any final netting of payments for actual insured losses under the Program, including payments owed to the Federal Government from any participating insurance company and any Federal share of compensation for insured losses owed to any participating insurance

REV_00138041

company, to effectuate the insured loss sharing provisions contained in section 4.

(c) SUBROGATION RIGHTS.—The United States shall have the right of subrogation with respect to any payment made by the United States under the Program.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) CIVIL PENALTIES.—The Secretary may assess civil money penalties for violations of this Act or any rule, regulation, or order issued by the Secretary under this Act relating to the submission of false or misleading information for purposes of the Program, or any failure to repay any amount required to be reimbursed under regulations or procedures described in section 5(b). The authority granted under this subsection shall continue during any period in which the Secretary's authority under section 6(d) is in effect.

SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EXTENSION.

(a) TERMINATION OF PROGRAM.—

(1) IN GENERAL.—The Program shall terminate at midnight on December 31, 2002, unless the Secretary—

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(A) determines, after considering the report and finding required by this section, that the Program should be extended for one additional year, until midnight on December 31, 2003; and

(B) promptly notifies the Congress of such determination and the reasons therefor.

(2) DETERMINATION FINAL.—The determination of the Secretary under paragraph (1) shall be final, and shall not be subject to judicial review.

(3) TERMINATION AFTER EXTENSION.—If the Program is extended under paragraph (1), the Program shall terminate at midnight on December 31, 2003.

(b) REPORT TO CONGRESS.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to Congress—

(1) regarding—

(A) the availability of insurance coverage for acts of terrorism;

(B) the affordability of such coverage, including the effect of such coverage on premiums; and

(C) the capacity of the insurance industry to absorb future losses resulting from acts of

REV_00138043

terrorism, taking into account the profitability of the insurance industry; and

(2) that considers—

(A) the impact of the Program on each of the factors described in paragraph (1); and

(B) the probable impact on such factors and on the United States economy if the Program terminates at midnight on December 31, 2002.

(c) FINDING REQUIRED.—A determination under subsection (a) to extend the Program shall be based on a finding by the Secretary that—

(1) widespread market uncertainties continue to disrupt the ability of insurance companies to price insurance coverage for losses resulting from acts of terrorism, thereby resulting in the continuing unavailability of affordable insurance for consumers; and

(2) extending the Program for an additional year would likely encourage economic stabilization and facilitate a transition to a viable market for private terrorism risk insurance.

(d) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program under subsection (a), the Secretary may take such

REV_00138044

actions as may be necessary to ensure payment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this Act, in accordance with the provisions of section 4 and regulations promulgated thereunder.

(e) REPEAL; SAVINGS CLAUSE.—This Act is repealed at midnight on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (d) of this section and sections 4(e)(4), 4(e)(5), 5(a)(1), 5(c), and 5(e) (as in effect on the day before the date of such repeal), and applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (d) of this section is in effect; or

(2) to prevent the availability of funding under section 10(b) during any period in which the authority of the Secretary under subsection (d) of this section is in effect.

(f) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Secretary should make any determination under subsection (a) in sufficient time to enable par-

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ticipating insurance companies to include coverage for acts of terrorism in their policies for 2003.

(g) STUDY AND REPORT ON SCOPE OF THE PROGRAM.—

(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage.

(2) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

(h) REPORTS REGARDING TERRORISM RISK INSURANCE PREMIUMS.—

(1) REPORT TO THE NAIC.—Beginning 6 months after the date of enactment of this Act, and every 6 months thereafter, each participating insurance company shall submit a report to the NAIC that states the premium rates charged by that participating insurance company during the preceding 6-month period for insured losses covered by the Program, and includes an explanation of and justification for those rates.

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(2) REPORTS FORWARDED.—The NAIC shall promptly forward copies of each report submitted under paragraph (1) to the Secretary, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Comptroller General of the United States.

(3) AGENCY REPORTS TO CONGRESS.—

(A) IN GENERAL.—The Secretary, the Secretary of Commerce, and the Chairman of the Federal Trade Commission shall submit joint reports to Congress and the Comptroller General of the United States summarizing and evaluating the reports forwarded under paragraph (2).

(B) TIMING.—The reports required under subparagraph (A) shall be submitted—

(i) 9 months after the date of enactment of this Act; and

(ii) 12 months after the date of submission of the first report under clause (i).

(4) GAO EVALUATION AND REPORT.—

(A) EVALUATION.—The Comptroller General of the United States shall evaluate each report submitted under paragraph (3), and upon request, the Secretary, the Secretary of Com-

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merce, the Chairman of the Federal Trade Commission, and the NAIC shall provide to the Comptroller all documents, records, and any other information that the Comptroller deems necessary to carry out such evaluation.

(B) REPORT TO CONGRESS.—Not later than 90 days after receipt of each report submitted under paragraph (3), the Comptroller General of the United States shall submit to Congress a report of the evaluation required by subparagraph (A).

SEC. 7. PRESERVATION OF STATE LAW.

Nothing in this Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any participating insurance company or other person—

(1) except as specifically provided in this Act; and

(2) except that—

(A) the definition of the term ''act of terrorism'' in section 3 shall be the exclusive definition of that term for purposes of compensation for insured losses under this Act, and shall preempt any provision of State law that is in-

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consistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this Act;

(B) during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002, rates for terrorism risk insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period, under any law of a State that would otherwise be applicable, except that nothing in this Act affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 6 (including any period during which the authority of the Secretary under section 6(d) is in effect), books and records of any participating insurance company that are relevant to the Program shall be provided, or caused to be provided, to the Secretary or the designee of the Secretary, upon request by the Secretary or such designee, notwithstanding any provision of

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the laws of any State prohibiting or limiting such access.

SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY BUILDING.

It is the sense of the Congress that the insurance industry should build capacity and aggregate risk to provide affordable property and casualty insurance coverage for terrorism risk.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT AUTHORITY.

(a) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary for administrative expenses of the Program, to remain available until expended.

(b) PAYMENT AUTHORITY.—This Act constitutes payment authority in advance of appropriation Acts, and represents the obligation of the Federal Government to provide for the Federal share of compensation for insured losses under the Program.

SEC. 10. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of

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terrorism, which shall be the exclusive cause of action and remedy for claims for such property damage, personal injury, or death, except as provided in subsection (d).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (d).

(b) GOVERNING LAW.—The substantive law for decision in an action described in subsection (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined pursuant to paragraph (1)), is inconsistent with or otherwise preempted by Federal law.

(c) PUNITIVE DAMAGES.—Any amounts awarded in a civil action described in subsection (a)(1) that are attrib-

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utable to punitive damages shall not count as insured losses for purposes of this Act.

(d) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including, if applicable, any extension period provided for under section 6.

REV_00138052

TO: Kirk Blalock, Office of Public Liaison

FROM: Victor Schwartz
Counsel to the American Tort Reform Association

Tiger Joyce
President, American Tort Reform Association

DATE: December 17, 2001

RE: **SENATE VERSION OF TERRORISM REINSURANCE LEGISLATION**

We have obtained a draft of the version of the "Terrorism Risk Protection Act" that has been proposed as a consensus compromise bill and is currently circulating in the Senate. (See Section 10 of the bill, attached). We believe that there is a great need for a terrorism reinsurance bill, and that some compromises will have to be made in order to get the bill passed before the end of the year. We have serious concerns, however, regarding the litigation management provisions in the bill. Not only are the President's four civil justice reforms not included in this bill, but the litigation management provisions that are included may actually be harmful to the business community.

The consensus compromise bill may be voted on as early as Wednesday, December 19. The House bill contains the principal civil justice reforms recommended by the President, and does not contain some of the problems that we will outline in this memorandum. Assuming that the Senate bill passes as is, corrective action may be possible when the bill goes to the House and Senate Conference Committee, which will have the burden of reconciling the House and Senate bills.

1. Federal Cause of Action May Not Apply to All Claims.

Section 10(a) of the bill creates a federal cause of action for "property damage, personal injury, or death, arising out of or resulting from an act of terrorism." The bill does not create a federal cause of action for direct or indirect economic losses arising out of an act of terrorism. For example, if anthrax were released in a place of business, the owner of that business might have to shut down his business for a few weeks, or even months. The owner would have direct and indirect economic losses, but there might not be any property damage. Therefore, claims for economic losses, if available under state law, would not be pre-empted by this section. Claimants could pursue these claims for damages under state law in state court.

2. Federal Cause of Action Will Not Ensure that Claims Are Brought in Federal Court.

Unlike the House Terrorism Risk Protection Act, which states that the federal district courts shall have exclusive jurisdiction for all of the claims arising out of the act, the Senate bill does not state that federal courts shall have exclusive jurisdiction for claims brought under the act. Therefore, although a federal cause of action is created by the bill, nothing in the bill would prevent state courts from hearing the federal claims that arise under the bill. Litigation under prior acts of Congress that have created a federal cause of action, such as the Federal Employers' Liability Act,[1] demonstrates that federal claims may be brought in either state or federal court.

3. Punitive Damages Provision Does Not Help-and May Hurt Some Insureds.

Section 10(c) of the bill states that any amounts that are awarded in a civil action due to punitive damages do not count as insured losses for the purposes of this act. In twenty-two states, the law does not permit insurers to insure against punitive damages. In the other twenty-eight states, however, this section would create a disincentive for reinsurers to include punitive damages coverage in their policies. The principle underlying this legislation is that in the event of a terrorist attack, after reinsurers have sustained a certain level of loss, the government will step in and help the reinsurer deal with additional losses. According to this section, however, if those losses result from punitive damages awards, then the losses do not "count" in helping the reinsurer reach the loss level necessary for federal assistance. In other words, under this section, an insurer could pay out billions of dollars in losses due to a terrorist event and never become eligible for federal assistance if the losses result from punitive damages. Because the section does not provide any protection for losses resulting from punitive damages awards, most reinsurers will choose not to include punitive damages in the policies that they issue if this section of the bill is included in the final legislation. This will directly hurt and affect insureds.

Conclusion

Based upon the above analysis, we believe that the litigation management provisions in this bill will have a negative result for the business community. As indicated in the beginning of this memorandum, we understand that the consensus compromise bill is for Senate action only. If you have any information to the contrary, please let us know immediately. There may be an opportunity when the bill is before the Conference Committee to make changes to eliminate the negative aspects of the bill described above and also to include at least modest civil justice reforms such as case consolidation in federal court and punitive damages reform.

We will be working toward these goals and if we can be of any assistance to you in pursuing them, please let us know tomorrow. Victor can be reached at (202) 662-4886 or through e-mail at vschwartz@shb.com. Tiger can be reached at (202) 682-1163 or through e-mail sjoyce@atra.com.

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[1] *See* 45 U.S.C. §§51 *et seq*. The Federal Employers' Liability Act provided a tort cause of action for employees against employers that are railroads in interstate commerce.

REV_00138054

From: Miller, Michele <Michele.Miller@usdoj.gov>
To: Perry, Phil <Phil.Perry@usdoj.gov>;Harris, Paul <Paul.Harris@usdoj.gov>;Reyes, Luis <Luis.A.Reyes2@usdoj.gov>;Bloemendal, Katherine <Katherine.Bloemendal@usdoj.gov>;Boudreaux, Chad <Chad.Boudreaux@usdoj.gov>;Camille Biros (E-mail) <camille@thefeinberggroup.com>;'Debbie Greenspan (E-mail)' <dgreenspan@thefeinberggroup.com>
CC: Wood, John F <John.F.Wood@usdoj.gov>;Higbee, David <David.Higbee@usdoj.gov>;McCallum, Robert <Robert.McCallum@usdoj.gov>;Jacob, Gregory F <Gregory.F.Jacob@usdoj.gov>;Jordan, Bill <Bill.Jordan@usdoj.gov>;Philbin, Patrick <Patrick.Philbin@usdoj.gov>;Jones, Kevin R <Kevin.R.Jones@usdoj.gov>;Hinchman, Robert <Robert.Hinchman@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Zwick, Ken <Ken.Zwick@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rebecca A. Beynon/OMB/EOP@EOP [OMB] <Rebecca A. Beynon>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;'Pete Galvin (E-mail)' <galvin-peter@dol.gov>;'Ken Feinberg (E-mail)' <kfeinberg@thefeinberggroup.com>;Gillis, John <John.Gillis@usdoj.gov>;Hightower, Carolyn <Carolyn.Hightower@usdoj.gov>
Sent: 12/18/2001 4:12:12 AM
Subject: : Victims Comp outreach Pentagon

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<Michele.Miller@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:18-DEC-2001 09:12:12.00
SUBJECT:: Victims Comp outreach Pentagon
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TO:"Harris, Paul" <Paul.Harris@usdoj.gov> (Receipt Notification Requested) (IPM Return
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TO:"Reyes, Luis" <Luis.A.Reyes2@usdoj.gov> (Receipt Notification Requested) (IPM Return
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<Katherine.Bloemendal@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [
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(IPM Return Requested) ( "Camille Biros (E-mail)" <camille@thefeinberggroup.com> (Receipt
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<dgreenspan@thefeinberggroup.com> (Receipt Notification Requested) (IPM Return Requested) [
UNKNOWN ] )
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CC:"Wood, John F" <John.F.Wood@usdoj.gov> (Receipt Notification Requested) (IPM Return
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CC:"Jacob, Gregory F" <Gregory.F.Jacob@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Jacob, Gregory F" <Gregory.F.Jacob@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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CC:"Jones, Kevin R" <Kevin.R.Jones@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Jones, Kevin R" <Kevin.R.Jones@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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CC:"Hinchman, Robert" <Robert.Hinchman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Hinchman, Robert" <Robert.Hinchman@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Zwick, Ken" <Ken.Zwick@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Zwick, Ken" <Ken.Zwick@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:"'Pete Galvin (E-mail)'" <galvin-peter@dol.gov> (Receipt Notification Requested) (IPM Return Requested) ("'Pete Galvin (E-mail)'" <galvin-peter@dol.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"'Ken Feinberg (E-mail)'" <kfeinberg@thefeinberggroup.com> (Receipt Notification Requested) (IPM Return Requested) ("'Ken Feinberg (E-mail)'" <kfeinberg@thefeinberggroup.com> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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FYI: there will be an open forum meeting with Pentagon victims tomorrow evening to discuss the Victim Compensation Fund. Ken Feinberg will provide information and take questions about the Fund. The meeting is open to the public; victims, family members, casualty assistance providers, employers, and all interested persons have been invited.

When/where: Wednesday, Dec 19th, 7:30-9:30 p.m. at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA (corner of Eads St. & S. 18th).

Parking is available at the hotel. If you take metro, take blue or yellow line to Crystal City. Exit on street level. Turn left at the top of the

escalator, then turn right on the street. Hotel is on the left. Front door is under construction; enter the side door marked "Garden Court Restaurant." Meeting is in the ballroom.

Let me know if you have any questions. Mickey

MICKEY MILLER
Colonel, U.S. Army JAGC
Special Counsel to AAG, Civil Div.
Dept of Justice
202-514-3886

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/18/2001 6:57:53 AM
Subject: : RE: important: need review of draft PRA letter

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<M.Edward.Whelan@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:18-DEC-2001 11:57:53.00
SUBJECT:: RE: important: need review of draft PRA letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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This message is a Read Receipt Notification

Your Message : RE: important: need review of draft PRA
letter
Was Read By : M.Edward.Whelan@usdoj.gov
On : Tue, 18 Dec 2001 12:44:58 -0400
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From: Bryant, Dan <Dan.Bryant@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/18/2001 12:20:03 PM
Subject: : Re: FW: important: need review of draft PRA letter

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Bryant, Dan" <Dan.Bryant@usdoj.gov> ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME:18-DEC-2001 17:20:03.00
SUBJECT:: Re: FW: important: need review of draft PRA letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : Re: FW: important: need review of draft
PRA letter
Was Read By : Dan.Bryant@usdoj.gov
On : Tue, 18 Dec 2001 18:16:52 -0400
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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/18/2001 12:24:31 PM
Subject: : TIME SENSITIVE LRM MJR92 - - Statement of Administration Policy on H.R. 3210 - Terrorism Risk Protection Act
Attachments: P_6KP35004_WHO.TXT_1.wpd; P_6KP35004_WHO.TXT_2.pdf

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-DEC-2001 17:24:31.00
SUBJECT:: TIME SENSITIVE LRM MJR92 - - Statement of Administration Policy on H.R. 3210 - Terrorism Risk Protection Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by H. Christopher Bartolomucci/WHO/EOP on 12/18/2001 04:22 PM ----------

Allison L. Riepenhoff
12/18/2001 03:07:48 PM
Record Type: Record

To: John B. Bellinger/NSC/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: TIME SENSITIVE LRM MJR92 - - Statement of Administration Policy on H.R. 3210 - Terrorism Risk Protection Act

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From: Marshall J. Rodgers on 12/18/2001 02:49:29 PM
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To: See the distribution list at the bottom of this message
cc: CLRM@doc.gov , justice.lrm@usdoj.gov , statelrm@state.gov , llr@do.treas.gov
Subject: TIME SENSITIVE LRM MJR92 - - Statement of Administration Policy on H.R. 3210 - Terrorism Risk Protection Act

The Senate may consider H.R. 3210 as early as tomorrow (12/19). We understand that the attached bill text may be offered as a substitute amendment to H.R. 3210.

Please comment on the draft SAP by 4:30 PM - Today (12/18).

LRM ID: MJR92
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, December 18, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: Statement of Administration Policy on H.R. 3210 - Terrorism Risk Protection Act

DEADLINE: 4:30 PM Tuesday, December 18, 2001
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Senate may consider H.R. 3210 as early as tomorrow (12/19). We understand that the attached bill text may be offered as a substitute amendment to H.R. 3210.

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WHGC LRM
OHS LRM
NEC LRM
OVP LRM
LRM ID: MJR92 SUBJECT: Statement of Administration Policy on H.R. 3210 - Terrorism Risk Protection Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Marshall J. Rodgers Phone: 395-7813 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

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File attachment <P_6KP35004_WHO.TXT_2>

DRAFT - NOT FOR RELEASE

December 19, 2001
(Senate)

H.R. 3210 - Terrorism Risk Protection Act
(Rep. Oxley (R) Ohio and 35 cosponsors)

The Administration strongly supports the creation of a terrorism risk insurance program that will provide much needed stability to our economy. The backstop insurance program established in the proposed Senate version of H.R. 3210 is a well-crafted and effective mechanism for ensuring the continued availability of insurance for terrorist-related acts. The program provides insurance companies with transparency in assessing their potential loss exposure while appropriately limiting that exposure and encouraging the private sector to build new capacity. It will aid the economy by dampening any increases in insurance costs or curtailment of insurance coverage while limiting federal intrusion into private activity.

The Administration urges Senate passage of the proposed Senate version of H.R. 3210 as a needed step towards enactment of a terrorism risk insurance program. However, the Administration cannot support final enactment of the bill unless stronger procedures for terrorist-related litigation management are added in conference. Reasonable litigation management procedures are an essential element of any terrorism insurance bill. For many companies facing rising insurance premiums, the increased costs result almost entirely from the risk of litigation. In addition, the federal program exposes taxpayer dollars, and litigation management procedures are therefore necessary to manage excessive and unnecessary costs resulting from litigation. Finally, litigation procedures will ensure an orderly process that will help resolve claims more expeditiously and thereby benefit plaintiffs and defendants alike.

* * * * * *

107TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To promote the stabilization of the economy by encouraging financial institutions to continue to support economic development, including development in urban areas, through the provision of affordable insurance coverage against acts of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Terrorism Risk Insurance Act of 2001".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

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(1) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(2) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of informa-

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tion from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) PURPOSE.—The purpose of this Act is to establish a temporary Federal program that provides for a

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transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term ''act of terrorism'' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

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(ii) to have resulted in damage within the United States, or outside the United States in the case of an air carrier described in paragraph (3)(A)(ii); and

(iii) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION.—No act or event shall be certified by the Secretary as an act of terrorism if—

(i) the act or event is committed in the course of a war declared by the Congress; or

(ii) losses resulting from the act or event, in the aggregate, do not exceed $5,000,000.

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act or event as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

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(2) BUSINESS INTERRUPTION COVERAGE.—The term "business interruption coverage"—

(A) means coverage of losses for temporary relocation expenses and ongoing expenses, including ordinary wages, where—

(i) there is physical damage to the business premises of such magnitude that the business cannot open for business;

(ii) there is physical damage to other property that totally prevents customers or employees from gaining access to the business premises; or

(iii) the Federal, State, or local government shuts down an area due to physical or environmental damage, thereby preventing customers or employees from gaining access to the business premises; and

(B) does not include lost profits, other than in the case of a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632) and applicable regulations thereunder) in any case described in clause (i), (ii), or (iii) of subparagraph (A).

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(3) INSURED LOSS.—The term ''insured loss''—

(A) means any loss resulting from an act of terrorism that is covered by primary property and casualty insurance, including business interruption coverage, issued by a participating insurance company, if such loss—

(i) occurs within the United States; or

(ii) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), regardless of where the loss occurs; and

(B) excludes coverage under any life or health insurance.

(4) MARKET SHARE.—

(A) IN GENERAL.—The ''market share'' of a participating insurance company shall be calculated using the total amount of gross property and casualty insurance premiums for the participating insurance company during the 2-year period preceding the year in which the subject act of terrorism occurred (or during such other period for which adequate data are available, as determined by the Secretary), as a percentage of the aggregate of all such property

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and casualty insurance premiums industry-wide during that period.

(B) ADJUSTMENTS.—The Secretary may adjust the market share of a participating insurance company under subparagraph (A), as necessary to reflect current market participation of that participating insurance company.

(5) NAIC.—The term "NAIC" means the National Association of Insurance Commissioners.

(6) PARTICIPATING INSURANCE COMPANY.—The term "participating insurance company" means any insurance company, including any subsidiary or affiliate thereof—

(A) that—

(i) is licensed or admitted to engage in the business of providing primary insurance in any State, and was so licensed or admitted on September 11, 2001; or

(ii) is not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(B) that receives direct premiums for any type of commercial property and casualty insur-

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ance coverage or that, not later than 21 days after the date of enactment of this Act, submits written notification to the Secretary of its intent to participate in the Program with regard to personal lines of property and casualty insurance; and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(7) PARTICIPATING INSURANCE COMPANY DEDUCTIBLE.—The term ''participating insurance company deductible'' means—

(A) a participating insurance company's market share, multiplied by $10,000,000,000, with respect to insured losses resulting from an act of terrorism occurring during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002; and

(B) a participating insurance company's market share, multiplied by $15,000,000,000, with respect to insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2003 and ending at midnight on December 31, 2003, if the Program is extended in accordance with section 6.

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(8) PERSON.—The term ''person'' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(9) PROGRAM.—The term ''Program'' means the Terrorism Insured Loss Shared Compensation Program established by this Act.

(10) PROPERTY AND CASUALTY INSURANCE.—The term ''property and casualty insurance''—

(A) means commercial lines of property and casualty insurance; and

(B) includes personal lines of property and casualty insurance, if a notification is made in accordance with paragraph (6)(B).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(12) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and each of the United States Virgin Islands.

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(13) UNITED STATES.—The term ''United States'' means all States of the United States.

SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insured Loss Shared Compensation Program.

(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under subsection (e), unless—

(1) a person that suffers an insured loss, or a person acting on behalf of that person, files a claim with a participating insurance company;

(2) the participating insurance company provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

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(A) in the case of any policy covering an insured loss that is issued on or after the date of enactment of this Act, in the policy, at the time of offer, purchase, and renewal of the policy; and

(B) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(3) the participating insurance company processes the claim for the insured loss in accordance with its standard business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the participating insurance company submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written verification and certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

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(c) MANDATORY PARTICIPATION; MANDATORY COVERAGE.—Each insurance company that meets the definition of a participating insurance company under section 3—

(1) shall participate in the Program;

(2) shall make available in all of its property and casualty insurance policies (in all of its participating lines), coverage for insured losses; and

(3) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(d) PARTICIPATION BY SELF INSURED ENTITIES.—

(1) DETERMINATION BY THE SECRETARY.—The Secretary may, in consultation with the NAIC, establish procedures to allow participation in the Program by municipalities and other governmental or quasi-governmental entities (and by any other entity, as the Secretary deems appropriate) operating through self insurance arrangements that were in existence on September 11, 2001, but only if the Secretary makes a determination with regard to participation by any such entity before the occurrence

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of an act of terrorism in which the entity incurs an insured loss.

(2) PARTICIPATION.—If the Secretary makes a determination to allow an entity described in paragraph (1) to participate in the Program, all reports, conditions, requirements, and standards established by this Act for participating insurance companies shall apply to any such entity, as determined to be appropriate by the Secretary.

(e) SHARED INSURANCE LOSS COVERAGE.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—Subject to the cap on liability under paragraph (2) and the limitation under paragraph (6), the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002—

(i) shall be equal to 80 percent of that portion of the amount of aggregate insured losses that—

(I) exceeds the participating insurance company deductibles required

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to be paid for those insured losses; and

(II) does not exceed $10,000,000,000; and

(ii) shall be equal to 90 percent of that portion of the amount of aggregate insured losses that—

(I) exceeds the participating insurance company deductibles required to be paid for those insured losses; and

(II) exceeds $10,000,000,000.

(B) EXTENSION PERIOD.—If the Program is extended in accordance with section 6, the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2003 and ending at midnight on December 31, 2003, shall be calculated in accordance with clauses (i) and (ii) of subparagraph (A), subject to the cap on liability in paragraph (2) and the limitation under paragraph (6).

(C) PRO RATA SHARE.—If, during the period described in subparagraph (A) (or during

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the period described in subparagraph (B), if the Program is extended in accordance with section 6), the aggregate insured losses for that period exceed $10,000,000,000, the Secretary shall determine the pro rata share for each participating insurance company of the Federal share of compensation for insured losses calculated under subparagraph (A).

(2) CAP ON ANNUAL LIABILITY.—Notwithstanding paragraph (1), or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000 during any period referred to in subparagraph (A) or (B) of paragraph (1)—

(A) the Secretary shall not make any payment under this Act for any portion of the amount of such losses that exceeds $100,000,000,000; and

(B) participating insurance companies shall not be liable for the payment of any portion of the amount that exceeds $100,000,000,000.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 in any period described in paragraph (1), and the Con-

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gress shall determine the procedures for and the source of any such excess payments.

(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, and shall not be subject to judicial review.

(6) IN-FORCE REINSURANCE AGREEMENTS.—

(A) REDUCTION IN FEDERAL SHARE.—The Federal share of compensation for insured losses incurred by a participating insurance company calculated under paragraph (1) shall be reduced by the amount received under any agreement described in subparagraph (B)(i) in excess of the total amount of payments for such insured losses required to be made by the participating insurance company in accordance with this section.

(B) APPLICABILITY.—Subparagraph (A) shall apply only—

(i) if the participating insurance company had in effect on the date of enactment of this Act, an agreement that is a

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contractual arrangement for reimbursement of losses that are insured losses under the Program; and

(ii) during the period beginning on the date of enactment of this Act and ending on the earlier of—

(I) the date on which the agreement is renewed or amended; or

(II) the first annual anniversary date of the agreement occurring after the date of enactment of this Act.

SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to implement the Program.

(b) INTERIM RULES AND PROCEDURES.—The Secretary shall issue interim final rules or procedures specifying the manner in which—

(1) participating insurance companies may file, verify, and certify claims under the Program;

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(2) the Secretary shall publish or otherwise publicly announce the applicable percentage of insured losses that is the responsibility of participating insurance companies and the percentage that is the responsibility of the Federal Government under the Program;

(3) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual aggregate insured losses;

(4) the Secretary may, at any time, seek repayment from or reimburse any participating insurance company, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions contained in section 4;

(5) each participating insurance company that incurs insured losses shall pay its pro rata share of insured losses, in accordance with section 4; and

(6) the Secretary will determine any final netting of payments for actual insured losses under the Program, including payments owed to the Federal Government from any participating insurance company and any Federal share of compensation for insured losses owed to any participating insurance

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company, to effectuate the insured loss sharing provisions contained in section 4.

(c) SUBROGATION RIGHTS.—The United States shall have the right of subrogation with respect to any payment made by the United States under the Program.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) CIVIL PENALTIES.—The Secretary may assess civil money penalties for violations of this Act or any rule, regulation, or order issued by the Secretary under this Act relating to the submission of false or misleading information for purposes of the Program, or any failure to repay any amount required to be reimbursed under regulations or procedures described in section 5(b). The authority granted under this subsection shall continue during any period in which the Secretary's authority under section 6(d) is in effect.

SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EXTENSION.

(a) TERMINATION OF PROGRAM.—

(1) IN GENERAL.—The Program shall terminate at midnight on December 31, 2002, unless the Secretary—

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(A) determines, after considering the report and finding required by this section, that the Program should be extended for one additional year, until midnight on December 31, 2003; and

(B) promptly notifies the Congress of such determination and the reasons therefor.

(2) DETERMINATION FINAL.—The determination of the Secretary under paragraph (1) shall be final, and shall not be subject to judicial review.

(3) TERMINATION AFTER EXTENSION.—If the Program is extended under paragraph (1), the Program shall terminate at midnight on December 31, 2003.

(b) REPORT TO CONGRESS.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to Congress—

(1) regarding—

(A) the availability of insurance coverage for acts of terrorism;

(B) the affordability of such coverage, including the effect of such coverage on premiums; and

(C) the capacity of the insurance industry to absorb future losses resulting from acts of

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terrorism, taking into account the profitability of the insurance industry; and

(2) that considers—

(A) the impact of the Program on each of the factors described in paragraph (1); and

(B) the probable impact on such factors and on the United States economy if the Program terminates at midnight on December 31, 2002.

(c) FINDING REQUIRED.—A determination under subsection (a) to extend the Program shall be based on a finding by the Secretary that—

(1) widespread market uncertainties continue to disrupt the ability of insurance companies to price insurance coverage for losses resulting from acts of terrorism, thereby resulting in the continuing unavailability of affordable insurance for consumers; and

(2) extending the Program for an additional year would likely encourage economic stabilization and facilitate a transition to a viable market for private terrorism risk insurance.

(d) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program under subsection (a), the Secretary may take such

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actions as may be necessary to ensure payment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this Act, in accordance with the provisions of section 4 and regulations promulgated thereunder.

(e) REPEAL; SAVINGS CLAUSE.—This Act is repealed at midnight on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (d) of this section and sections 4(e)(4), 4(e)(5), 5(a)(1), 5(c), and 5(e) (as in effect on the day before the date of such repeal), and applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (d) of this section is in effect; or

(2) to prevent the availability of funding under section 10(b) during any period in which the authority of the Secretary under subsection (d) of this section is in effect.

(f) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Secretary should make any determination under subsection (a) in sufficient time to enable par-

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ticipating insurance companies to include coverage for acts of terrorism in their policies for 2003.

(g) STUDY AND REPORT ON SCOPE OF THE PROGRAM.—

(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage.

(2) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

(h) REPORTS REGARDING TERRORISM RISK INSURANCE PREMIUMS.—

(1) REPORT TO THE NAIC.—Beginning 6 months after the date of enactment of this Act, and every 6 months thereafter, each participating insurance company shall submit a report to the NAIC that states the premium rates charged by that participating insurance company during the preceding 6-month period for insured losses covered by the Program, and includes an explanation of and justification for those rates.

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(2) REPORTS FORWARDED.—The NAIC shall promptly forward copies of each report submitted under paragraph (1) to the Secretary, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Comptroller General of the United States.

(3) AGENCY REPORTS TO CONGRESS.—

(A) IN GENERAL.—The Secretary, the Secretary of Commerce, and the Chairman of the Federal Trade Commission shall submit joint reports to Congress and the Comptroller General of the United States summarizing and evaluating the reports forwarded under paragraph (2).

(B) TIMING.—The reports required under subparagraph (A) shall be submitted—

(i) 9 months after the date of enactment of this Act; and

(ii) 12 months after the date of submission of the first report under clause (i).

(4) GAO EVALUATION AND REPORT.—

(A) EVALUATION.—The Comptroller General of the United States shall evaluate each report submitted under paragraph (3), and upon request, the Secretary, the Secretary of Com-

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merce, the Chairman of the Federal Trade Commission, and the NAIC shall provide to the Comptroller all documents, records, and any other information that the Comptroller deems necessary to carry out such evaluation.

(B) REPORT TO CONGRESS.—Not later than 90 days after receipt of each report submitted under paragraph (3), the Comptroller General of the United States shall submit to Congress a report of the evaluation required by subparagraph (A).

SEC. 7. PRESERVATION OF STATE LAW.

Nothing in this Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any participating insurance company or other person—

(1) except as specifically provided in this Act; and

(2) except that—

(A) the definition of the term ''act of terrorism'' in section 3 shall be the exclusive definition of that term for purposes of compensation for insured losses under this Act, and shall preempt any provision of State law that is in-

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consistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this Act;

(B) during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002, rates for terrorism risk insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period, under any law of a State that would otherwise be applicable, except that nothing in this Act affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 6 (including any period during which the authority of the Secretary under section 6(d) is in effect), books and records of any participating insurance company that are relevant to the Program shall be provided, or caused to be provided, to the Secretary or the designee of the Secretary, upon request by the Secretary or such designee, notwithstanding any provision of

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the laws of any State prohibiting or limiting such access.

SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY BUILDING.

It is the sense of the Congress that the insurance industry should build capacity and aggregate risk to provide affordable property and casualty insurance coverage for terrorism risk.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT AUTHORITY.

(a) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary for administrative expenses of the Program, to remain available until expended.

(b) PAYMENT AUTHORITY.—This Act constitutes payment authority in advance of appropriation Acts, and represents the obligation of the Federal Government to provide for the Federal share of compensation for insured losses under the Program.

SEC. 10. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of

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terrorism, which shall be the exclusive cause of action and remedy for claims for such property damage, personal injury, or death, except as provided in subsection (d).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (d).

(b) GOVERNING LAW.—The substantive law for decision in an action described in subsection (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined pursuant to paragraph (1)), is inconsistent with or otherwise preempted by Federal law.

(c) PUNITIVE DAMAGES.—Any amounts awarded in a civil action described in subsection (a)(1) that are attrib-

REV_00138162

utable to punitive damages shall not count as insured losses for purposes of this Act.

(d) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including, if applicable, any extension period provided for under section 6.

REV_00138163

From: CN=Danielle M. Simonetta/OU=OMB/O=EOP [OMB]
To: Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Marshall J. Rodgers/OMB/EOP@EOP [OMB] <Marshall J. Rodgers>
Sent: 12/18/2001 1:07:25 PM
Subject: : POLICY CALL NEEDED

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:18-DEC-2001 18:07:25.00
SUBJECT:: POLICY CALL NEEDED
TO:Amy C. Smith ( CN=Amy C. Smith/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Marshall J. Rodgers ( CN=Marshall J. Rodgers/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Marshall has just heard from DOJ. They've informed him that they have three offices (Legal Counsel, Legal Policy, and Civil Division) that need to review the SAP and will not be able to review it tonight. I need a consensus from you all that we either: 1) Wait for them until tomorrow- and not have the SAP ready for when they begin consideration (Matt, is the plan still that they will proceed to consideration tomorrow?), or 2) Marshall gets comments from the remaining agencies and gives me the SAP for WH Clearance and we attempt to incorporate any edits that DOJ may have tomorrow morning, or 3) Someone calls Dan Bryant and tells him we need their comments (or at least his sign off) tonight no matter what else they have going on and if he says he can't do it, we tell him that we have to go ahead without him. Please advise.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Dinh, Viet <Viet.Dinh@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/18/2001 2:41:01 PM
Subject: : RE: JSC Meeting Schedule

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-DEC-2001 19:41:01.00
SUBJECT:: RE: JSC Meeting Schedule
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

You tell us when and where and we'll try to be there. Does 8pm count as
"happy hour"? Perhaps Old Ebbitt or another nearby location?

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
12/18/2001 05:20:14 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: RE: JSC Meeting Schedule

whoo hoo! I mean Boo hoo: I hope this does not mean that we won't see you
all until the holidays--let's try to do another HH this week.

-----Original Message-----
From: Elizabeth_N._Camp@who.eop.gov
[mailto:Elizabeth_N._Camp@who.eop.gov]
Sent: Tuesday, December 18, 2001 5:14 PM
To: Sutton, Jason; Newstead, Jennifer; Dinh, Viet; Ciongoli, Adam;
Petersen, Amy; Beach, Andrew; Long, Evelyn V;
Melissa_S._Bennett@who.eop.gov; Carol_J._Thompson@who.eop.gov;
Susan_B._Ralston@who.eop.gov; Carrie_C._Pauska@who.eop.gov;
Alison_Jones@who.eop.gov; Michael_J._Conway@who.eop.gov;
David_S._Addington@ovp.eop.gov;
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+
DOJ/A=TELEMAIL/C=US/; John_B._Bellinger@nsc.eop.gov;
Bradford_A._Berenson@who.eop.gov; Rachel_L._Brand@who.eop.gov;
Robert_W._Cobb@who.eop.gov; Courtney_S._Elwood@who.eop.gov;
Timothy_E._Flanigan@who.eop.gov; Noel_J._Francisco@who.eop.gov;
Brett_M._Kavanaugh@who.eop.gov; Helgard_C._Walker@who.eop.gov;
Allison_L._Riepenhoff@who.eop.gov; Dee_Dee_Benkie@who.eop.gov;
Brent_D._Greenfield@who.eop.gov; Heather_Wingate@who.eop.gov;
Lori_L._Lorenzi@who.eop.gov; Kyle_Sampson@who.eop.gov;
Douglas_L._Hoelscher@who.eop.gov
Subject: JSC Meeting Schedule

Wednesday, December 19 Canceled

Wednesday, December 26 Canceled

Wednesday, January 2* Normal time of 4:00 pm -
*Will likely be a short meeting to provide updates and discuss strategy.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Danielle M. Simonetta/OMB/EOP [OMB] <Danielle M. Simonetta>
Sent: 12/19/2001 6:46:40 AM
Subject: RECEIVED: DOJ Comment on HR3210 -Terrorism Risk Protection - SAP

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-DEC-2001 11:46:40.00
SUBJECT:RECEIVED: DOJ Comment on HR3210 -Terrorism Risk Protection - SAP
TO:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

RETURN RECEIPT

Your Document:
DOJ Comment on HR3210 -Terrorism Risk Protection - SAP
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
12/19/2001 11:44:37 AM
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/19/2001 8:08:00 AM
Subject: : After you make revisions will you email the op ed to me, judge and brett?

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-DEC-2001 13:08:00.00
SUBJECT:: After you make revisions will you email the op ed to me, judge and brett?
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thanks!
```

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/19/2001 8:50:37 AM
Subject: :
Attachments: P_0AD25004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-DEC-2001 13:50:37.00
SUBJECT::
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0AD25004_WHO.TXT_1>
```

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/19/2001 10:34:15 AM
Subject: : RE: Draft op-ed
Attachments: P_VVH25004_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:19-DEC-2001 15:34:15.00
SUBJECT:: RE: Draft op-ed
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Redlined revisions attached.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, December 19, 2001 2:00 PM
To: Whelan, M Edward III
Subject: Draft op-ed

An op-ed is running tomorrow in Wash Post. Please review this draft
ASAP.
Thanks.

(See attached file: WP Gonzales Presidential Reocrds draft 2 12.18.doc)

- WP Gonzales Presidential Reocrds draft 2 12.18.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VVH25004_WHO.TXT_1>

President Bush recently signed an Executive Order to ~~further~~ implement the 1978 Presidential Records Act, which establishes a process by which documents of former Presidents are reviewed and released. Freedom and openness lie at the core of our government, and President Bush's executive order ensures the expeditious disclosure of documents to provide historians, scholars and the public valuable insight into the way our government works. The order was crafted to provide as much information as possible to the public while also ~~drawing upon sound legal policy to~~ respecting the constitutional rights of former Presidents.

Consistent with his~~the President's~~ order, the President (?) has today authorized the National Archives and Records Administration ~~today has been authorized~~ to publicly release thousands of pages of records belonging to former President Reagan. These documents represent all that have been forwarded to the Administration thus far from the Reagan Library. This release ~~, and~~ is only one of what will be many routine releases of records belonging to former Presidents, including otherwise privileged records, following the clear steps in President Bush's new order.

Critics have irresponsibly alleged that the recent executive order was intended to prevent access to Presidential papers . Today's~~This~~ release and the anticipated release of thousands of additional pages in the very near future demonstrate that the Bush administration is committed to the appropriate and expeditious public release of Presidential records. ~~despite allegations by critics that the recent executive order was intended to prevent access to Presidential papers~~.

~~At times, certain documents may still be so sensitive that it is necessary that they remain confidential. In some cases, documents could jeopardize our current national security, and while the pursuit of history is invaluable to our society, it should not jeopardize American lives. In such situations the current President and former Presidents may assert constitutionally based privileges over Presidential records. While the executive order says nothing about whether and under what circumstances a privilege may be asserted, it does recognize the role that former Presidents play.~~ Some have been critical of the order's inclusion of former Presidents in this process, but former Presidents have the right to assert executive privilege based on Supreme Court precedent and the Presidential Records Act itself.

The Supreme Court, in its landmark 1977 *Nixon v. GSA* decision written by Justice William Brennan, definitively held that the Constitution guarantees former Presidents the right to assert privileges over their records. Additionally, the Presidential Records Act provides for the release of documents after 12 years from the end of the President's term, but expressly provides that former Presidents retain the right to assert available privileges over their Presidential records after the twelve year period expires. Indeed~~Thus~~, the Presidential Records Act would be ~~deemed~~ unconstitutional if it did not allow former Presidents to assert available privileges over their records.

Throughout history Presidents have taken steps over time to release the vast majority of their records. Before the Presidential Records Act was enacted, former Presidents enjoyed complete control over their Presidential records. Even without a legal requirement, former Presidents have chosen to provide their papers for historical study, and millions of people who

have visited the Kennedy, Ford or Carter Libraries, for example, have taken advantage of the rich and valuable array of historical materials that have been made available.

President Bush expects that this tradition will continue. The value of Presidential records and the principles of openness and access that their release represents are respected by President Bush and are no doubt just as important to the former Presidents whose papers will be subject to the Presidential Records Act. There is no fair or logical basis for presuming that former Presidents subject to the Presidential Records Act will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents. We are confident that, over time, the vast majority of Presidential records -- including otherwise privileged records -- will be made available to the public as they should.

By providing ~~A significant policy decision was made~~ that "absent compelling circumstances" the current President will defer to the decision of the former President to authorize release of records, the order~~. This provision~~ largely removes a sitting President as a potential impediment to release of a former President's records. When combined with the historical fact that former Presidents over time have authorized release of the vast majority of records, it is clear that President Bush's order ~~intended to and the order and~~ will help facilitate the expeditious release of Presidential records.

If a former President should choose to assert privilege over a sensitive record, a requester may challenge the privilege claim in court. Such proceedings are routine when there is disagreement about the release of Executive Branch records under the Freedom of Information Act (FOIA). The argument that the burden should lie with the former President would require the awkward situation of a former President being forced to sue the current President. That suggestion is neither constitutionally proper nor sound policy. It is far more appropriate and sensible to require the requester who disagrees with the former President's privilege assertion to proceed to court -- just as the requester would do in ordinary FOIA litigation.

For months, there have been skeptics who have wrongly questioned President Bush's motives in establishing sensible procedures for the review of Presidential records. The President's order faithfully implements the requirements of the Constitution and the Presidential Records Act. Today's action authorizing the initial release of thousands of pages of privileged records from President Reagan's library shows that the skeptics were wrong and that President Bush's executive order can and will work as intended: to facilitate appropriate and expeditious public release of Presidential records consistent with the Constitution and the Act.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
CC: d. marcus sumerlin/opd/eop@eop [OPD] <d. marcus sumerlin>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;danielle m. simonetta/omb/eop@eop [OMB] <danielle m. simonetta>
Sent: 12/19/2001 10:48:33 AM
Subject: : Re: URGENT

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-DEC-2001 15:48:33.00
SUBJECT:: Re: URGENT
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:d. marcus sumerlin (CN=d. marcus sumerlin/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:danielle m. simonetta (CN=danielle m. simonetta/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
End Original ARMS Header

might change "pay" to "incur the costs of," but otherwise that's
good

Kristen Silverberg
12/19/2001 03:46:52 PM
Record Type: Record

To: D. Marcus Sumerlin/OPD/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, danielle m.
simonetta/omb/eop@eop
Subject: Re: URGENT

Looks fine. per Karl's comment -- should we say "may require federal
taxpayers to pay damages awarded against private defendants" instead of
"exposes federal taxpayers"

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: m.edward.whelan@udoj.gov @ inet [UNKNOWN] <m.edward.whelan@udoj.gov>
Sent: 12/19/2001 12:48:49 PM
Subject: : FINAL CLEARANCE- SAP, H.R. 3210-Terrorism Risk Insurance Protection Act (Senate substitute)
Attachments: P_OSN25004_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-DEC-2001 17:48:49.00
SUBJECT:: FINAL CLEARANCE- SAP, H.R. 3210-Terrorism Risk Insurance Protection Act (Senate substitute)
TO:m.edward.whelan@udoj.gov (m.edward.whelan@udoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 12/19/2001 05:48 PM ----------

Danielle M. Simonetta
12/18/2001 08:34:07 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FINAL CLEARANCE- SAP, H.R. 3210-Terrorism Risk Insurance Protection Act (Senate substitute)

Here is the final version of the SAP on H.R. 3210, for your clearance. The SAP is written to reflect Sen. Daschle's proposed substitute amendment (not the House version of the bill). The bill is scheduled to be considered on the floor at some point after 12:00 pm tomorrow. Therefore, please respond to me with your comments/clearance, by 11:00 am tomorrow, Wednesday, December 19th. If you have any questions, please call me.
Thanks,
Danielle
(54790)

DRAFT - NOT FOR RELEASE

December 19, 2001

(Senate)

H.R. 3210 - Terrorism Risk Protection Act
(Rep. Oxley (R) Ohio and 35 cosponsors)

The Administration strongly supports the creation of a terrorism risk insurance program that will help provide much needed stability to our economy. The backstop insurance program established in the proposed Senate version of H.R. 3210 is a well-crafted and effective mechanism for ensuring the continued availability of insurance for terrorist-related acts. The program provides insurance companies with transparency in assessing their potential loss exposure while appropriately limiting that

exposure and encouraging the private sector to build new capacity. It will aid the economy by dampening any increases in insurance costs or curtailment of insurance coverage while limiting federal intrusion into private activity.

The Administration urges Senate passage of the proposed amendment in the nature of a substitute to H.R. 3210 as a needed step towards enactment of a terrorism risk insurance program. However, the Administration cannot support final enactment of the bill unless stronger procedures for terrorist-related litigation management are added in conference. Reasonable litigation management procedures are an essential element of any terrorism insurance bill. For many companies facing rising insurance, a significant part of the increased costs results from the risk of litigation. In addition, the federal program exposes taxpayer dollars, and litigation management procedures are therefore necessary to manage excessive and unnecessary costs resulting from litigation. Finally, litigation procedures will ensure an orderly process that will help resolve claims more expeditiously and thereby benefit plaintiffs and defendants alike. Section 6(h) of the Senate substitute relating to Comptroller General access to information would be construed in a manner consistent with constitutional provisions relating to the separation of powers. Section 10 of the Senate substitute does not, and should not, affect existing U.S. law regarding the immunities of foreign sovereigns.

* * * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Rodgers), in consultation with Commerce (Clark), Treasury (Dorsey), State (Faulkner), EP (Smith), NEC (Sumerlin), OVP (Addington), CEA (Furchtgott-Roth, Holtz-Eakin, Brown), BRD (Dale, Lobron, Timberlake), OIRA (Noe), OMBGC (Beynon), and HTF (Boden, Enger).

Justice did not respond to our request for views.

OMB/LA Clearance:_____

Administration Position to Date

The Administration has not taken a position on the Senate version of H.R. 3210.

On November 28, 2001, a SAP on H.R. 3210, the "Terrorism Risk Protection Act" was sent to the House Rules Committee. The SAP urged prompt passage of H.R. 3210 "as a step toward enactment of legislation to ensure the continued availability of insurance for terrorist-related acts." H.R. 3210 included provisions that limited terrorist-related litigation. The SAP expressed the Administration's concern with the repayment assessment mechanism and the administrative complexities of H.R. 3210 as a whole. The SAP also stated that "procedures for consolidation and management of mass tort litigation arising out of a terrorism incident are a necessary part of any meaningful terrorism insurance proposal, and thus a necessary condition for Administration support of any terrorism insurance bill."

Summary of Senate Manager's Amendment to H.R. 3210

The following summary is based on a draft of a manager's amendment that Treasury staff believe will be offered as a substitute for the House passed version of H.R. 3210.

The amendment would establish a temporary "Terrorism Insured Loss Shared Compensation Program" (Program) within the Department of the Treasury

intended to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks. The amendment would provide for Federal assistance for future terrorism damage if it reaches certain levels. That amount would be based on a formula, which is market share multiplied by $10 billion in the first year, and market share multiplied by $15 billion in the optional second year. For losses above this "retention level," the cost of terrorism losses would be shared. The Federal government would pay for approximately 80 percent of insurance losses below $10 billion, with the industry paying 20 percent. For losses between $10 billion and $100 billion, the split would be 90-10. The amendment would provide authority for one year to pay for certain property and casualty losses resulting from a terrorist attack; the authority could be extended for a second year.

Authority of the Secretary of the Treasury. The amendment would make the Secretary of the Treasury responsible for carrying out the program for financial assistance for commercial property and casualty insurers that would be established by the bill. The Secretary could extend the Program an additional year, expiring on December 31, 2003.

Triggering Determination and Federal Cost-Sharing for Commercial Insurers. Under the amendment, Federal financial assistance would be triggered by a determination of the Secretary that the insured losses resulting from the event of an act of terrorism occurring during the covered period, or the aggregate insured losses resulting from multiple events of acts of terrorism all occurring during the covered period. The Secretary would have the sole authority for determining whether an occurrence or event was caused by an act of terrorism, whether insured losses from acts of terrorism were caused by one or multiple events or occurrences, and whether an act of terrorism occurred during the covered period.

The amount of Federal assistance would be based on a formula, which is the "market share" of a participating insurance company (total amount of gross property and casualty insurance premiums during the 2-year period preceding the year in which the act of terrorism occurred, as a percentage of the aggregate of all industry wide premiums) multiplied by $10 billion in the first year, and market share multiplied by $15 billion in the optional second year. For losses above the "insurance company's deductible," the cost of terrorism losses would be shared. The Federal government would pay for approximately 80 percent of insurance losses below $10 billion, with the industry paying 20 percent. For losses between $10 billion and $100 billion, the split would be 90-10. The amendment would provide authority for one year to pay for certain property and casualty losses resulting from a terrorist attack; the authority could be extended for a second year. The aggregate amount of financial assistance provided could not exceed $100 billion.

Sovereign Immunity Protections. Whenever Federal financial assistance is triggered (i.e., whenever an act of terrorism occurs), the amendment would provide for a Federal cause of action which would be the exclusive remedy for damages claimed pursuant to any acts of terrorism that caused the insured losses. These cases would be governed by the law of the State in which the act of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Under the amendment, the plaintiff may seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

Extension of Program. The Secretary could, upon making a determination that an extension of the provisions of the bill is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, extend the period in which these provisions apply to a date no later than December 31, 2003.

State Preemption. Under the amendment, a commercial insurer would be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under the regulations issued by the Secretary. If any provision

of any State law prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to the amendment, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

Studies and Reports. Under the amendment, no later than 9 months after the date of enactment the Secretary would be required to submit a report to Congress that would consider the impact of the Program on: (1) the availability of insurance coverage for acts of terrorism; (2) the affordability of such coverage, including the effect of such coverage of premiums; and (3) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry. The Secretary would also consider the probable impact on the United States economy if the Program terminates at midnight on December 31, 2002.

Within 9 months of enactment of the amendment, the Secretary would be required to conduct a study and report to the Congress on the potential effects of acts of terrorism on the life insurance industry in the United States and other lines of insurance coverage. The Secretary would be required to consult with the National Association of Insurance Commissioners (NAIC), representatives of the insurance industry, and other experts in the field.

Beginning 6 months after enactment of the amendment, and every 6 months thereafter, each participating insurance company would be required to submit a report to the NAIC that states the premium rates charged by that insurance company during the preceding 6-month period for insured losses covered by the Program, and includes an explanation of and justification for those rates. The NAIC would be required to forward copies of each report submitted, to the Secretary of the Treasury, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Comptroller General of the United States. The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the Federal Trade Commission would be required to submit a joint report to Congress and the Comptroller General of the United States summarizing and evaluating the reports forwarded by NAIC. No later than 90 days after receipt, the Comptroller General of the United States would be required to evaluate and submit a report to Congress an evaluating the reports.

Pay-As-You-Go Scoring

According to BRD (Lee), the amendment would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. RMO staff advises that the bill could potentially have a PAYGO cost, but an OMB estimate has not been made. Cost estimates are problematic due to uncertainties involving future acts of terrorism. CBO scoring of the manager's amendment is not yet available.

LEGISLATIVE REFERENCE DIVISION
DECEMBER 18, 2001

Message Sent
To:_____
Nicholas E. Calio/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Jack Howard/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
Jill Davie/WHO/EOP@EOP
Alison Jones/WHO/EOP@EOP
Ashley Holbrook/WHO/EOP@EOP
Daniel M. McCarthy/WHO/EOP@EOP

D. Marcus Sumerlin/OPD/EOP@EOP
Leslie A. Mooney/OPD/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Rebecca L. Halkias/WHO/EOP@EOP
Wendy J. Grubbs/WHO/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Nancy P. Dorn/WHO/EOP
Candida P. Wolff/OVP/EOP@EOP
Lauren K. Allgood/OVP/EOP@EOP
Cesar Conda/OVP/EOP@EOP
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Susan B. Ralston/WHO/EOP@EOP
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Stuart W. Bowen/WHO/EOP@EOP
Barbara A. Barclay/WHO/EOP@EOP
Debra D. Bird/WHO/EOP@EOP
Carolyn E. Cleveland/WHO/EOP@EOP
Karen D. Cruson/WHO/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
Randall S. Kroszner/CEA/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
Linda C. Luisi/NSC/EOP@EOP
George M. Andricos/NSC/EOP@EOP
John A. Cloud/NSC/EOP@EOP
John F. Sammis/NSC/EOP@EOP
Amy C. Smith/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OSN25004_WHO.TXT_1>

DRAFT - NOT FOR RELEASE

December 19, 2001
(Senate)

H.R. 3210 - Terrorism Risk Protection Act
(Rep. Oxley (R) Ohio and 35 cosponsors)

The Administration strongly supports the creation of a terrorism risk insurance program that will help provide much needed stability to our economy. The backstop insurance program established in the proposed Senate version of H.R. 3210 is a well-crafted and effective mechanism for ensuring the continued availability of insurance for terrorist-related acts. The program provides insurance companies with transparency in assessing their potential loss exposure while appropriately limiting that exposure and encouraging the private sector to build new capacity. It will aid the economy by dampening any increases in insurance costs or curtailment of insurance coverage while limiting federal intrusion into private activity.

The Administration urges Senate passage of the proposed amendment in the nature of a substitute to H.R. 3210 as a needed step towards enactment of a terrorism risk insurance program. However, the Administration cannot support final enactment of the bill unless stronger procedures for terrorist-related litigation management are added in conference. Reasonable litigation management procedures are an essential element of any terrorism insurance bill. For many companies facing rising insurance, a significant part of the increased costs results from the risk of litigation. In addition, the federal program exposes taxpayer dollars, and litigation management procedures are therefore necessary to manage excessive and unnecessary costs resulting from litigation. Finally, litigation procedures will ensure an orderly process that will help resolve claims more expeditiously and thereby benefit plaintiffs and defendants alike. Section 6(h) of the Senate substitute relating to Comptroller General access to information would be construed in a manner consistent with constitutional provisions relating to the separation of powers. Section 10 of the Senate substitute does not, and should not, affect existing U.S. law regarding the immunities of foreign sovereigns.

* * * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Rodgers), in consultation with Commerce (Clark), Treasury (Dorsey), State (Faulkner), EP (Smith), NEC (Sumerlin), OVP (Addington), CEA (Furchtgott-Roth, Holtz-Eakin, Brown), BRD (Dale, Lobron, Timberlake), OIRA (Noe), OMBGC (Beynon), and HTF (Boden, Enger).

Justice did not respond to our request for views.

OMB/LA Clearance:

Administration Position to Date

The Administration has not taken a position on the Senate version of H.R. 3210.

On November 28, 2001, a SAP on H.R. 3210, the "Terrorism Risk Protection Act" was sent to the House Rules Committee. The SAP urged prompt passage of H.R. 3210 "as a step toward enactment of legislation to ensure the continued availability of insurance for terrorist-related acts." H.R. 3210 included provisions that limited terrorist-related litigation. The SAP expressed the Administration's concern with the repayment assessment mechanism and the administrative complexities of H.R. 3210 as a whole. The SAP also stated that "procedures for consolidation and management of mass tort litigation arising out of a terrorism incident are a necessary part of any meaningful terrorism insurance proposal, and thus a necessary condition for Administration support of any terrorism insurance bill."

Summary of Senate Manager's Amendment to H.R. 3210

The following summary is based on a draft of a manager's amendment that Treasury staff believe will be offered as a substitute for the House passed version of H.R. 3210.

The amendment would establish a temporary "Terrorism Insured Loss Shared Compensation Program" (Program) within the Department of the Treasury intended to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks. The amendment would provide for Federal assistance for future terrorism damage if it reaches certain levels. That amount would be based on a formula, which is market share multiplied by $10 billion in the first year, and market share multiplied by $15 billion in the optional second year. For losses above this "retention level," the cost of terrorism losses would be shared. The Federal government would pay for approximately 80 percent of insurance losses below $10 billion, with the industry paying 20 percent. For losses between $10 billion and $100 billion, the split would be 90-10. The amendment would provide authority for one year to pay for certain property and casualty losses resulting from a terrorist attack; the authority could be extended for a second year.

REV_00138233

Authority of the Secretary of the Treasury. The amendment would make the Secretary of the Treasury responsible for carrying out the program for financial assistance for commercial property and casualty insurers that would be established by the bill. The Secretary could extend the Program an additional year, expiring on December 31, 2003.

Triggering Determination and Federal Cost-Sharing for Commercial Insurers. Under the amendment, Federal financial assistance would be triggered by a determination of the Secretary that the insured losses resulting from the event of an act of terrorism occurring during the covered period, or the aggregate insured losses resulting from multiple events of acts of terrorism all occurring during the covered period. The Secretary would have the sole authority for determining whether an occurrence or event was caused by an act of terrorism, whether insured losses from acts of terrorism were caused by one or multiple events or occurrences, and whether an act of terrorism occurred during the covered period.

The amount of Federal assistance would be based on a formula, which is the "market share" of a participating insurance company (total amount of gross property and casualty insurance premiums during the 2-year period preceding the year in which the act of terrorism occurred, as a percentage of the aggregate of all industry wide premiums) multiplied by $10 billion in the first year, and market share multiplied by $15 billion in the optional second year. For losses above the "insurance company's deductible," the cost of terrorism losses would be shared. The Federal government would pay for approximately 80 percent of insurance losses below $10 billion, with the industry paying 20 percent. For losses between $10 billion and $100 billion, the split would be 90-10. The amendment would provide authority for one year to pay for certain property and casualty losses resulting from a terrorist attack; the authority could be extended for a second year. The aggregate amount of financial assistance provided could not exceed $100 billion.

Sovereign Immunity Protections. Whenever Federal financial assistance is triggered (i.e., whenever an act of terrorism occurs), the amendment would provide for a Federal cause of action which would be the exclusive remedy for damages claimed pursuant to any acts of terrorism that caused the insured losses. These cases would be governed by the law of the State in which the act of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Under the amendment, the plaintiff may seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

Extension of Program. The Secretary could, upon making a determination that an extension of the provisions of the bill is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, extend the period in which these provisions apply to a date no later than December 31, 2003.

State Preemption. Under the amendment, a commercial insurer would be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under the regulations issued by the Secretary. If any provision of any State law

REV_00138234

prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to the amendment, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

Studies and Reports. Under the amendment, no later than 9 months after the date of enactment the Secretary would be required to submit a report to Congress that would consider the impact of the Program on: (1) the availability of insurance coverage for acts of terrorism; (2) the affordability of such coverage, including the effect of such coverage of premiums; and (3) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry. The Secretary would also consider the probable impact on the United States economy if the Program terminates at midnight on December 31, 2002.

Within 9 months of enactment of the amendment, the Secretary would be required to conduct a study and report to the Congress on the potential effects of acts of terrorism on the life insurance industry in the United States and other lines of insurance coverage. The Secretary would be required to consult with the National Association of Insurance Commissioners (NAIC), representatives of the insurance industry, and other experts in the field.

Beginning 6 months after enactment of the amendment, and every 6 months thereafter, each participating insurance company would be required to submit a report to the NAIC that states the premium rates charged by that insurance company during the preceding 6-month period for insured losses covered by the Program, and includes an explanation of and justification for those rates. The NAIC would be required to forward copies of each report submitted, to the Secretary of the Treasury, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Comptroller General of the United States. The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the Federal Trade Commission would be required to submit a joint report to Congress and the Comptroller General of the United States summarizing and evaluating the reports forwarded by NAIC. No later than 90 days after receipt, the Comptroller General of the United States would be required to evaluate and submit a report to Congress an evaluating the reports.

Pay-As-You-Go Scoring

According to BRD (Lee), the amendment would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. RMO staff advises that the bill could potentially have a PAYGO cost, but an OMB estimate has not been made. Cost estimates are problematic due to uncertainties involving future acts of terrorism. CBO scoring of the manager's amendment is not yet available.

LEGISLATIVE REFERENCE DIVISION
DECEMBER 18, 2001

REV_00138235

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/20/2001 11:36:52 AM
Subject: : knowing that you have ceased checking your emails,,,

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-DEC-2001 16:36:52.00
SUBJECT:: knowing that you have ceased checking your emails,,,
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

have another question about PRA - our good friend George Lardner just called.
---------- Forwarded by Anne Womack/WHO/EOP on 12/20/2001 04:36 PM ----------

Anne Womack
12/20/2001 04:27:36 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: knowing that you have ceased checking your emails,,,

please call me to discuss Joan Biscupic. thanks.

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 12/21/2001 11:12:31 AM
Subject: : Re: Anybody know who the GC of the Social Security Administration is?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-DEC-2001 16:12:31.00
SUBJECT:: Re: Anybody know who the GC of the Social Security Administration is?
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
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CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
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CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
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CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
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CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
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Lisa deSoto is awaiting confirmation
Charlotte Hardnett is acting (she's Principal Deputy)

Rachel L. Brand 12/21/2001 04:00:06 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Anybody know who the GC of the Social Security
Administration is?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From:	CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To:	Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC:	h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent:	12/21/2001 11:17:02 AM
Subject:	: Re: Anybody know who the GC of the Social Security Administration is?

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CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-DEC-2001 16:17:02.00
SUBJECT:: Re: Anybody know who the GC of the Social Security Administration is?
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
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CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
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CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I don't see deSoto on my lists, but I was told she was the person who will
be GC. The phone number is 410-965-3135.



Rachel L. Brand 12/21/2001 04:00:06 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Anybody know who the GC of the Social Security
Administration is?



Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
```

Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/22/2001 9:55:29 AM
Subject: : cars

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CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-DEC-2001 14:55:29.00
SUBJECT:: cars
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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After the holiday, I intend to nail down with Gary Walters, the military office (and the transportation folks operating there) who has been going to Camp David over the years in Government vehicles. My discussion on Friday with Leroy Borden who is the Transportation Director and has been working in the garage since the Johnson administration, reflected that over the years there has been widespread use of the cars to take friends and family of Presidents to Camp David. This practice may be justified on the basis of security precautions in connection with persons visiting the President, for the convenience of the President, and logistical convenience. It also makes security at Camp David easier.

From: Ben Wittes <wittesb@washpost.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/26/2001 5:53:49 AM
Subject: : Hatch article

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
CREATION DATE/TIME:26-DEC-2001 10:53:49.00
SUBJECT:: Hatch article
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Have you seen Hatch's op-ed this morning?

/b

_____
Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 12/27/2001 5:25:27 AM
Subject: : Article on Confirmations

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CREATION DATE/TIME:27-DEC-2001 10:25:27.00
SUBJECT:: Article on Confirmations
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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With 'Hatch Express' Gone, Judiciary Crisis Hits Utah

BY DAWN HOUSE
THE SALT LAKE TRIBUNE

During the six years that Utah Sen. Orrin Hatch was chairman of the Judiciary Committee, Utah nominees for federal judgeships waited only a few months, and as few as 10 days, for Senate confirmations -- while judicial posts sat vacant so long elsewhere in the nation that 30 courts declared "judiciary emergencies."

The emergency has now hit Utah.

Hatch no longer is chairman of the Judiciary Committee, and Utahns nominated as federal judges must wait in line for confirmation hearings, just like everyone else.

In May, President Bush nominated University of Utah law professor Michael McConnell to the 10th U.S. Circuit Court of Appeals for one of two seats, which have been vacant so long that the court qualifies for a judicial emergency.

In all, the 12-member court has four vacancies -- and a caseload of 684. Federal guidelines say an "emergency" is a load of 500 to 700 cases per judicial panel where seats are vacant for more than 18 months.

"Since October 1999, when the first of the now four vacancies came about, the workload has increased dramatically," said Michael Murphy, a Utahn on the appeals court who waited less than three months for his confirmation in 1995 when Hatch was judiciary chairman.

Paul Cassell, a U. law professor and nominee to the U.S. District Court for Utah, now has the distinction of being the appointee to the Utah

bench who has had to wait the longest for confirmation. The Utah federal court is not overburdened, however, in part because Hatch was instrumental in creating another judgeship in 1991, despite figures that suggested the post was not needed at the time.

Hatch criticized the committee's slow pace in confirming judges last week.

"We are about to adjourn with nearly 100 vacancies [on the federal bench], a rate of over 11 percent,'' Hatch said in a speech before the Senate. "This year will indeed go down in history as a black hole and a black mark for the failure to confirm judicial nominees."

In June, Utah's senior senator became just another member of the Republican minority when disgruntled Vermont Republican James Jeffords switched parties, which toppled Hatch from his Judiciary chairmanship.

But during his tenure as chairman, Hatch had been instrumental in streamlining the nominations of federal judges for Utah in what came to be known as the "Hatch Express."

The time between Ted Stewart's nomination and confirmation in 1999 was less than three months; Dale Kimball's was three weeks in 1997; and in 1995, Tena Campbell waited only 10 days.

In contrast, Cassell was nominated for the bench by Bush in June and is still awaiting a confirmation hearing. [Utah's second-longest confirmation wait goes back more than 50 years, when it took more than five months before a divided Senate finally confirmed the nomination of the controversial Willis Ritter.]

In the 1990s, during the same time that district and appeals courts in Hatch's back yard were fully staffed, more than 100 judgeships sat vacant nationwide, at one point comprising nearly 12 percent of the federal court system.

The backlog meant citizens had to wait for personal injury claims from car accidents or discrimination suits, creditors had to postpone trying to win back debts and business disputes languished for want of a court date. Democrats and the White House criticized Hatch for failing to move on replacements, while Hatch blamed Clinton for failing to nominate qualified candidates.

An independent report, however, found the Senate and White House were equally to blame for the logjam. The Washington, D.C.-based Citizens for Independent Courts reported that the average number of days it took a president to nominate a candidate increased from 240 for President Carter to 315 for Clinton. And the number of days it took the Senate to confirm a federal judge rose from 38 days in 1977-78 to 201 days two decades later.

Despite the bitter rhetoric between Clinton and Hatch, the White House deferred to Hatch's choices when nominating Utah judges, even though presidents usually look to their own parties in filling judgeships.

Hatch's power came from being able to stall nominations.

Clinton named Stewart to the Utah federal bench over objections from Utah Democrats and environmentalists, then, in a snub, waited weeks before issuing the final appointment.

Hatch's power was such that judgeships for Utah nominees went unfilled only when his choices were unacceptable to a wide range of opponents -- and that opposition surfaced before the candidates were officially nominated.

Although Murphy was appointed within months of his 1995 nomination to the 10th U.S. Circuit Court of Appeals, the seat stood vacant for nearly two years because of a tug-of-war between a core group of influential Democrats and Hatch.

Hatch had stubbornly held out for the appointment of respected Salt Lake City attorney Dan Berman.

But opponents, led by then-Attorney General Jan Graham, wealthy activist Annette Cumming and then-Congress- woman Karen Shepard, pushed for the appointment of Utah Supreme Court Justice Christine Durham.

The White House was barraged with letters from Utah Democrats claiming Berman was not a loyal Democrat and noting he had been a financial backer of Hatch's re-election bid in 1994. Hatch's efforts finally hit a roadblock when the American Bar Association declined to give Berman a glowing endorsement.

There had been so much behind-the-scenes bickering, however, that the Durham nomination was in a shambles as well.

Murphy, a respected state judge and a Democrat, was the compromise

candidate -- selected by Hatch.
The current logjam is being blamed on Sen. Patrick Leahy, D- Vt., who took over as Judiciary chairman last past summer.
Currently, 94 judicial posts are vacant, which accounts for 11 percent of the district and appellate posts.
So far, half the candidates have no scheduled hearing before the Senate, according to the Department of Justice.
Judicial emergencies have been declared in six appellate courts and in California, Oregon, Arizona, New Mexico, Colorado, Alaska, Hawaii, Florida, Texas, North Carolina, Missouri, Ohio and Virginia.
Leahy maintains his committee has confirmed more judges than did past committees during the first years of the administration of the elder George Bush or the first year of the Clinton administration. For his part, Hatch said overall percentages of confirmations are a fairer comparison.
In a letter to rebut an editorial in The Wall Street Journal that criticized the judicial committee's slow progress, Leahy defended fellow Democrats.
"Our steady pace in acting on nominees predates the Sept. 11 attacks and continued during the extensive negotiations we oversaw in gaining passage of the anti-terrorism bill," Leahy wrote. "We convened unprecedented August recess hearings, holding one without a single Republican senator bothering to attend."
This month, Hatch pleaded with Democrats to "move the roadblocks they have erected in the confirmation process,'' particularly "those circuit court nominees who have been pending since May." Included on that list is McConnell, who is among the 36 nominees who are still awaiting a hearing date.

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 12/31/2001 7:08:43 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-DEC-2001 12:08:43.00
SUBJECT:: Re:
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Probably not. Who is throwing the party and who will be in attendance?
Do you want me to talk to somebody other than you so you do not have to be
the middleman?

Brett M. Kavanaugh
12/31/2001 10:05:09 AM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc: Ken Mehlman/WHO/EOP@EOP
Subject:

Ken: This is a Moose issue, I believe. Moose?

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
12/31/2001 10:03 AM ----------

Ken Mehlman
12/28/2001 05:27:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Several folks who volunteered at the Iowa caucuses want to host a 2 year
anniversary party in late Jnauary. White House staff will be invited.
Does this violate the gift ban?

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 12/31/2001 8:04:49 AM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-DEC-2001 13:04:49.00
SUBJECT:: Re:
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Last I spoke with TF about it, he said that he would raise it with the
Judge. I think it's worth Brett raising it independently with TF and/or
ARG.




Helgard C. Walker
12/31/2001 01:03:21 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher
bartolomucci/who/eop@eop, noel j. francisco/who/eop@eop, helgard c.
walker/who/eop@eop
bcc:
Subject: Re:

Didn't TEF say to raise it with the Judge? I think that's what BK had in
mind.




Noel J. Francisco
12/31/2001 12:16:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, noel j.
francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re:

I'm happy for you to raise it. Just so you know, I already raised it with
Tim just before Christmas.
```

Brett M. Kavanaugh
12/31/2001 12:03:43 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: noel j. francisco/who/eop@eop, helgard c. walker/who/eop@eop
bcc:
Subject: Re:

we need to get the other 4 or 5 involved. I am happy to talk to Judge/Tim about that if you all agree (or to let one of you do it if you want).

From: CN=Elizabeth Hogan/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;elizabeth hogan/who/eop@eop [WHO] <elizabeth hogan>
Sent: 1/2/2002 5:59:31 AM
Subject: : Re: Travel form

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth Hogan (CN=Elizabeth Hogan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JAN-2002 10:59:31.00
SUBJECT:: Re: Travel form
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth hogan (CN=elizabeth hogan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Will do! Thank you for your help - I appreciate it.

Rachel L. Brand 01/02/2002 10:52:07 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: elizabeth hogan/who/eop@eop
bcc:
Subject: Re: Travel form

Elizabeth:
You need to fill out two forms. First is the Travel Authorization form, which you get from your office and must be signed by your supervisor. I have nothing to do with that part of the process, and you don't need to submit that to me.

Second, you need to fill out a Travel Expenses From Outside Sources (TEFOS) form, which you can get off the internal website or from Jason Torchinsky in our office. This must be filled out by you and signed by me prior to your trip (note -- prior approval is legally required in order to accept the payment, so make sure I see it and sign it before you leave).

Rachel Brand
6-7909

Brett M. Kavanaugh
01/02/2002 10:43:29 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc: Elizabeth Hogan/WHO/EOP@EOP
Subject: Travel form

Rachel: Elizabeth Hogan needs to fill out a travel form for her high school to fly her home to speak as an alum. I know you are the point

person for those forms; if you could let Elizabeth know what to do, that would be great. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 1/2/2002 4:13:57 AM
Subject: : Re: next mtg w/ POTUS for judges

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JAN-2002 09:13:57.00
SUBJECT:: Re: next mtg w/ POTUS for judges
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I think not as of now, but will check.

Elizabeth N. Camp
01/02/2002 09:08:52 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A.
Berenson/WHO/EOP@EOP
cc:
Subject: next mtg w/ POTUS for judges

If there is a need to get a meeting on the books w/ the President for next week or the week after it would probably be wise to get our request in sooner rather than later.

If you guys will let me know when/if needed that would be great.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Hungar, Thomas G. <THUNGAR@gibsondunn.com>
Sent: 1/2/2002 4:17:44 AM
Subject: : RE: McNeil Lehrer

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JAN-2002 09:17:44.00
SUBJECT:: RE: McNeil Lehrer
TO:"Hungar, Thomas G." <THUNGAR@gibsondunn.com> ("Hungar, Thomas G." <THUNGAR@gibsondunn.com> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Recently President Bush signed an executive order to further implement the 1978 Presidential Records Act, the law that establishes a process for reviewing and releasing documents of former presidents. This order ensures expeditious disclosure of documents to provide historians, scholars and the public valuable insights into the way our government works.

Freedom and openness are at the core of our government. The president's order was crafted to provide as much information as possible to the public while also respecting the constitutional rights of former presidents. For months skeptics have questioned President Bush's motives in establishing these sensible procedures. The order, they said, was an affront to open government and would put procedural roadblocks in the way of disclosure of important historical information. The critics were wrong.

Today, consistent with the president's order, the National Archives and Records Administration will inform the public that thousands of pages of records belonging to former president Reagan are available for release. These documents represent all that have been reviewed by the administration after receipt from the Reagan Library -- and this is only one of what will be many routine releases of records belonging to former presidents, including otherwise privileged records.

Today's action shows that President Bush's executive order can and will work as intended -- to facilitate appropriate and expeditious public release of presidential records consistent with the Constitution and the act.

At times, certain documents may still be so sensitive that they must remain confidential. In some cases, release of documents could jeopardize our national security, and while the pursuit of history is invaluable to our society, it should not endanger American lives. Nor should it deprive a president of candid advice while making crucial decisions.

Recognizing this, the Presidential Records Act expressly provides that former and current presidents retain the right to assert available privileges over presidential records after the act's 12-year period of presumed non-disclosure expires. While the executive order says nothing about whether and under what circumstances a privilege should be asserted, it does recognize a role for former presidents.

Some have been critical of the order's inclusion of former presidents in this process, but former presidents have the right to assert executive privilege based on both Supreme Court precedent and the Presidential Records Act itself. The act would be deemed unconstitutional if it did not allow them to assert available privileges.

Before the act became law, former chief executives enjoyed complete control over their presidential records. But even without a legal requirement, former presidents have chosen to provide their papers for historical study.

President Bush expects that this tradition will continue. The value of presidential records and the principles of openness and access that their release represents are respected by him and are no doubt just as important to the former presidents whose papers will be subject to the Presidential Records Act.

There is no fair or logical basis for presuming that former presidents subject to the act will exercise their constitutional and statutory authority to seek withholding of privileged records more aggressively than have earlier presidents. We are confident that, over time, the vast majority of presidential records -- including many otherwise privileged records -- will be made available to the public.

The executive order states that "absent compelling circumstances" the current president will defer to the decision of the former president to authorize release of records. This provision largely removes a sitting president as a potential impediment to release of a former president's records. Given that over time former presidents have authorized release of the vast majority of their records, it is clear President Bush intended the order to facilitate the expeditious release of such records.

If a former president should choose to assert privilege over a sensitive record, a requester may challenge the privilege claim in court. Such proceedings are routine when there is disagreement about the release of executive branch records under the Freedom of Information Act. Some have argued that the burden should lie with the former president in disputes over disclosure. But this would create the awkward situation of a former president's being forced to sue the current one -- a suggestion that is neither constitutionally proper nor sound policy.

The writer is counsel to the president.

"Hungar, Thomas G." <THUNGAR@gibsondunn.com>
12/31/2001 03:00:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: McNeil Lehrer

I didn't find the op-ed you mentioned on a quick search, so if you have it readily accessible and could shoot it to me by e-mail or fax (202-530-9555) I'd appreciate it. Thanks.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, December 31, 2001 2:39 PM

To: thungar@gibsondunn.com
Subject: McNeil Lehrer

is doing Presidential Records on Thursday. You and Doug Kmiec will speak
in support of order (assuming you can do it) and two historians will oppose.
That show is usually reasoned dialogue so it should be good forum. A woman (Katherine Mulhol) from the show will be calling you. Let me know if there is a
problem.

==========
===

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
"PLEASE NOTE: Our e-mail and web site address has changed to gibsondunn.com"

==========
===

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Hungar, Thomas G. <THUNGAR@gibsondunn.com>
Sent: 1/2/2002 4:47:04 AM
Subject: : RE: McNeil Lehrer
Attachments: P_6WPK4003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JAN-2002 09:47:04.00
SUBJECT:: RE: McNeil Lehrer
TO:"Hungar, Thomas G." <THUNGAR@gibsondunn.com> ("Hungar, Thomas G." <THUNGAR@gibsondunn.com> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

am FAXing you a letter that may be useful. Also attaching some basic talking points.

"Hungar, Thomas G." <THUNGAR@gibsondunn.com>
12/31/2001 03:00:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: McNeil Lehrer

I didn't find the op-ed you mentioned on a quick search, so if you have it readily accessible and could shoot it to me by e-mail or fax (202-530-9555) I'd appreciate it. Thanks.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, December 31, 2001 2:39 PM
To: thungar@gibsondunn.com
Subject: McNeil Lehrer

is doing Presidential Records on Thursday. You and Doug Kmiec will speak
in support of order (assuming you can do it) and two historians will oppose.
That show is usually reasoned dialogue so it should be good forum. A woman (Katherine Mulhol) from the show will be calling you. Let me know if there is a
problem.

==========
===

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

"PLEASE NOTE: Our e-mail and web site address has changed to
gibsondunn.com"

==========
===

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6WPK4003_WHO.TXT_1>

Presidential Records Act Executive Order -- Talking Points (1/02/02)

- The order establishes procedures for former and current Presidents to review confidential and privileged records of former Presidents and to make appropriate determinations *whether* to withhold or release privileged documents. *The proposed order makes clear that, absent extraordinary and compelling circumstances, a current President will not seek to withhold records that a former President otherwise has authorized for disclosure.*

- The Supreme Court held (in 1977) that former Presidents retain the right to assert privileges over their records even after they have left office. This order simply establishes *procedures* for the former Presidents to protect and assert their rights if they so choose. It obviously would be inappropriate, if not contrary to law, for a current President to flout the Supreme Court by unilaterally overriding the constitutional rights of a former President.

- This order expressly states that it does not indicate whether and when a former President should assert privileges. This order is about procedure, not when -- if ever -- privilege should be asserted.

- The Act itself, as well as the legislative history, expressly recognizes that constitutional privileges remain available to a former and current President after expiration of the 12-year-period. (Congress has no authority, in any event, to limit the scope of the *constitutional* privileges available to a President or former President.)

- Before this Act took effect, former Presidents generally released the majority of their records over time even though they possessed plenary authority over their records. The Act and the executive order give former Presidents *less* power to withhold records than they possessed before enactment of the Presidential Records Act. There is no reason to think or predict, therefore, that former Presidents would seize upon their authority to withhold only *privileged* records more aggressively than previous former Presidents seized upon their authority to withhold *all* records.

    - The authorization for release of Reagan records that occurred on December 19 (and that are to be made available on January 3, 2002) is the first indication that this analysis is correct.

- In determining the legal requirements and assessing the policy issues, the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and the former Presidents' representatives and has benefited from the consultation.

REV_00138561

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 1/2/2002 12:00:47 PM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JAN-2002 17:00:47.00
SUBJECT:: Re:
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

please

Robert W. Cobb
01/02/2002 02:49:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

someplace, you want me to find it?

Brett M. Kavanaugh
01/02/2002 01:54:23 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject:

do you have a January 30, 1993, memo from Counsel's office on use of
corporate aircraft?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: A. Merrill Hughes/WHO/EOP@EOP [WHO] <A. Merrill Hughes>
Sent: 1/3/2002 3:52:52 AM
Subject: : Re: NH Event

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JAN-2002 08:52:52.00
SUBJECT:: Re: NH Event
TO:A. Merrill Hughes (CN=A. Merrill Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

If it is not a fundraiser, not a state party event, and not an event for a specific candidate, it becomes a close call whether it in fact should be considered a "political event" for these calculation purposes. Do we know more about it? Then, I can double check with my people at Office of Special Counsel to make sure we classify it correctly. It could be an event in the gray area where we have some discretion as to how to classify.

From: A. Merrill Hughes on 01/03/2002 08:48:41 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NH Event

a political event is a political event, correct? handled the way we are currently doing it whether it's a reception or fundraiser--unless, of course, POTUS is the candidate? thanks--amh

---------- Forwarded by A. Merrill Hughes/WHO/EOP on 01/03/2002 08:46 AM ----------

Alicia W. Davis
01/02/2002 07:34:20 PM
Record Type: Record

To: A. Merrill Hughes/WHO/EOP@EOP
cc:
Subject: NH Event

We are having a political reception-- not a fundraiser-- in NH. Who can I talk to about the formula for RNC vs. EOP on the travel costs?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>
Sent: 1/3/2002 4:18:22 AM
Subject: : Re: "NAIC PRESIDENT EXPECTS MAJORITY OF STATES TO APPROVE TERRORISM EXCLUSION"

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JAN-2002 09:18:22.00
SUBJECT:: Re: "NAIC PRESIDENT EXPECTS MAJORITY OF STATES TO APPROVE TERRORISM EXCLUSION"
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

What is status of our approach to a potential federal legislative response?

D. Marcus Sumerlin
01/02/2002 07:23:36 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: "NAIC PRESIDENT EXPECTS MAJORITY OF STATES TO APPROVE TERRORISM EXCLUSION"

---------- Forwarded by D. Marcus Sumerlin/OPD/EOP on 01/02/2002 07:23 PM ----------

Eric H. Otto
01/02/2002 06:59:42 PM
Record Type: Record

To: D. Marcus Sumerlin/OPD/EOP@EOP
cc:
Subject: "NAIC PRESIDENT EXPECTS MAJORITY OF STATES TO APPROVE TERRORISM EXCLUSION"

"NAIC PRESIDENT EXPECTS MAJORITY OF STATES TO APPROVE TERRORISM EXCLUSION"
(BestWire, 12/27/01)
DES MOINES, Iowa (BestWire) - Commissioners in 47 states approved a recommendation to allow exclusions for terrorism coverage, but whether that translates into those states actually allowing them is another matter, said the president of the National Association of Insurance Commissioners. During a Dec. 20 conference call, only California, New York and Connecticut voted against recommending approval for limited terrorism exclusions in the language of commercial property and commercial liability policies, said Terri Vaughan, Iowa insurance commissioner and NAIC president. Individual state laws will affect the insurance commissioners' ability to approve the exclusions, but the NAIC also recommended that any approval be withdrawn 15 days after the president signs a federal reinsurance program into law. "Our hope is Congress will come back in January and pass a law," Vaughan said. Massachusetts, Colorado, Idaho, South Dakota and Minnesota have said they will approve limited terrorism exclusions, and Vaughan said the " vast majority of states" will approve

limited exclusions for terrorism. "The vote was overwhelming," she said. Commissioners had been receiving a number of exclusion filings for commercial lines, including a filing from the Insurance Services Office in early November, as the industry waited for Congress to pass a federal reinsurance backstop. The industry has been asking Congress for one since the terrorist attacks of Sept. 11 made reinsurance for terrorism all but disappear. The House passed a bill, but the Senate had not, when Congress adjourned Dec. 20. The commissioners held their conference call later that day. The Commissioners approved using ISO's exclusion language after working with ISO to narrow its scope, she said. The exclusion will be invoked if an act of terrorism results in losses of more than $25 million industrywide. "That pales in comparison to the magnitude of the World Trade Center losses, but it does provide limited coverage for small, isolated events," Vaughan said. ISO's original exclusion language was very broad and would have included limited events that had always intended to be covered, she said. For example, because the bombing of an abortion clinic was an exposure that was covered previously, commissioners wanted to find a way to continue it, she said. Along with narrowing the ISO exclusion language, the NAIC also changed its definition of terrorism to include terrorism caused by domestic sources, Vaughan said. When the definition was made public during the NAIC's Winter Meeting in Chicago, it only addressed international sources. An additional exclusion threshold applies to liability coverage only. When 50 or more people are killed or injured by an act of terrorism, the exclusion kicks in, and the policy would not provide coverage for any loss, she said. Terrorist acts involving the use of nuclear or biochemical materials would not be covered, either. On Dec. 21, the NAIC provided states an example of a bulletin that could be used to show they would allow the exclusions. Iowa's insurance department, for example, has posted the bulletin on its Web site indicating it would permit the exclusion, consistent with ISO language. Vaughan said she suspects other states will use the same expedited filing process Iowa is using so the insurance department can act quickly. A company can file a standard exclusion application indicating it's using the ISO endorsement and that it cannot get reinsurance coverage. Commissioners received very few filings for personal lines exclusions until a week ago, when ISO filed for them, Vaughan said. "We'll study that and make recommendations," she added. State insurance commissioners recognize the market issues that would be created if they did not make exclusions an option, Vaughan said. She declined to speculate on how big the potential disruption could be, but noted only renewal policies will need the exclusion, and not everyone is renewing on Jan. 1. They were also hearing that some commercial policies were moving into the surplus market and being written without terrorism coverage. The problem is the surplus or non-admitted market does not provide the policy purchaser with the same protection as the admitted market, which is backed up by a state guaranty fund, Vaughan said. Commissioners were concerned about consumers losing the guaranty fund protection, as well as losing other commercial coverages. "Anecdotal" stories about huge price increases in commercial rates, were being heard by the Commissioners, Vaughan said, and in response, the NAIC formed a task force at the Chicago meeting to gather data from states on rate trends. Commissioners will look at the data to identify any issues that need tackling. "We're in the process of designing what the data request will look like," Vaughan said. Aware of talk about the need for optional federal chartering, particularly since Sept. 11, Vaughan said that with all the discussion that has taken place in Congress since then "It's my sense there is a pretty high level of understanding on this issue of the inability of the industry to manage this potentially catastrophic exposure." The insurance industry's performance following Sept. 11 is a "remarkable" statement on the strength of state regulation. Vaughan said. State regulators have the industry in a position to withstand the significant losses of that day. "It's still standing and still offering coverage," she said. In the past, the federal government has created programs to address major problems, she said, citing the federal riot insurance program in the 1960s and the current federal flood insurance program, as examples. "In neither case was that seen as an argument favoring the need for federal regulation," Vaughan said. "I have a lot of difficulty figuring out how people tie the need for federal regulation with Sept. 11." (By Dennis Kelly, Washington bureau

manager, BestWeek: dennis.kelly@ambest.com)

Message Sent
To:_____
Peter.Fisher@do.treas.gov
Randall S. Kroszner/CEA/EOP@EOP
Sheila.Bair@do.treas.gov
Kristen Silverberg/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

From: CN=Edmund C. Moy/OU=WHO/O=EOP [WHO]

To: Jodey Arrington/WHO/EOP@EOP [UNKNOWN] <Jodey Arrington>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Jane M. Cook/WHO/EOP@EOP [WHO] <Jane M. Cook>;Don E. Eberly/WHO/EOP@EOP [WHO] <Don E. Eberly>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Matthew R. Erbaugh/WHO/EOP@EOP [WHO] <Matthew R. Erbaugh>;Stephen M. Garrison/OPD /EOP@EOP [OPD] <Stephen M. Garrison>;dgitsham@whf.gov [WHO] <dgitsham@whf.gov>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Dina Powell/WHO/EOP@EOP [WHO] <Dina Powell>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Don R. Willett/WHO/EOP@EOP [WHO] <Don R. Willett>;Sarah E. Youssef/OPD/EOP@EOP [OPD] <Sarah E. Youssef>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;Kim E. Nickles/WHO/EOP@EOP [WHO] <Kim E. Nickles>;John P. McConnell/OVP/EOP@EOP [OVP] <John P. McConnell>;Michael J. Gerson/WHO/EOP@EOP [WHO] <Michael J. Gerson>;Justin A. Grove/WHO/EOP@EOP [WHO] <Justin A. Grove>;Christa J. Bailey/WHO/EOP@EOP [WHO] <Christa J. Bailey>;Robert T. Pratt Jr/WHO /EOP@EOP [WHO] <Robert T. Pratt Jr>;Chris B. Nagel/WHO/EOP@EOP [WHO] <Chris B. Nagel>;Karen D. Cruson/WHO/EOP@EOP [WHO] <Karen D. Cruson>;Charity N. Wallace/WHO /EOP@EOP [WHO] <Charity N. Wallace>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Eric L. Motley/WHO/EOP@EOP [WHO] <Eric L. Motley>;Sarah M. Lenti/NSC /EOP@EOP [NSC] <Sarah M. Lenti>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;OVERTON#032#BRUCE@ustr.gov [UNKNOWN] <OVERTON#032#BRUCE@ustr.gov>;Ruth E. Elliott/NSC/EOP@EOP [NSC] <Ruth E. Elliott>;Thomas A. Bezas/WHO/EOP@EOP [WHO] <Thomas A. Bezas>;Michael J. Bell/WHO /EOP@EOP [WHO] <Michael J. Bell>;Reed Dickens/WHO/EOP@EOP [WHO] <Reed Dickens>;Deanna R. Rodriguez/WHO/EOP@EOP [WHO] <Deanna R. Rodriguez>;truthseeker@erols.com @ inet [UNKNOWN] <truthseeker@erols.com>;Matthew L. Wendel/WHO/EOP@EOP [WHO] <Matthew L. Wendel>;Sarah Penny/WHO/EOP@EOP [WHO] <Sarah Penny>;Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>;Leslie A. Shockley/WHO/EOP@EOP [WHO] <Leslie A. Shockley>;David.Contreras@sba.gov [UNKNOWN] <David.Contreras@sba.gov>;Lynn A. Crable/WHO/EOP@EOP [WHO] <Lynn A. Crable>;Lindsay J. Bourns/WHO/EOP@EOP [WHO] <Lindsay J. Bourns>;Timothy C. Stout/WHO/EOP@EOP [WHO] <Timothy C. Stout>;David Kuo/WHO/EOP@EOP [WHO] <David Kuo>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Margaret M. Spellings/OPD/EOP@EOP [OPD] <Margaret M. Spellings>;Josephine B. Robinson/WHO /EOP@EOP [WHO] <Josephine B. Robinson>;Logan M. Walters/WHO/EOP@EOP [WHO] <Logan M. Walters>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Michael Shannon/WHO/EOP@EOP [WHO] <Michael Shannon>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Karen Hughes/WHO/EOP@EOP [WHO] <Karen Hughes>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Ruben S. Barrales/WHO /EOP@EOP [WHO] <Ruben S. Barrales>;Roland N. Litterst/WHO/EOP@EOP [WHO] <Roland N. Litterst>;Virginia T. Gregory/WHO/EOP@EOP [WHO] <Virginia T. Gregory>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;Stuart Holliday/WHO/EOP@EOP [WHO] <Stuart Holliday>;Nathaniel C. Ryun/WHO/EOP@EOP [WHO] <Nathaniel C. Ryun>;pmoreno@acf.dhhs.gov [UNKNOWN] <pmoreno@acf.dhhs.gov>;Nancy G. Hansen/WHO/EOP@EOP [WHO] <Nancy G. Hansen>;Annie Stewart/WHO/EOP@EOP [WHO] <Annie Stewart>;Donni M. LeBoeuf/WHO /EOP@EOP [WHO] <Donni M. LeBoeuf>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Stephen E. Biegun/NSC/EOP@EOP [NSC] <Stephen E. Biegun>;Michele H. Tennery/WHO/EOP@EOP [WHO] <Michele H. Tennery>;Kirstknut@aol.com [UNKNOWN] <Kirstknut@aol.com>;Thais C. Conway/WHO/EOP@EOP [WHO] <Thais C. Conway>;Daniel D. Heath/OMB/EOP@EOP [OMB] <Daniel D. Heath>;Dylan C. Glenn/OPD/EOP@EOP [OPD] <Dylan C. Glenn>;Christina M. Battisti/OMB/EOP@EOP [OMB] <Christina M. Battisti>;Wendy J. Hall/OSTP/EOP@EOP [OSTP] <Wendy J. Hall>;Katharine Balls/WHO/EOP@EOP [WHO] <Katharine Balls>;Amy M. Bilyeau/OA/EOP@EOP [OA] <Amy M. Bilyeau>;John L. Howard Jr./CEQ/EOP@EOP [CEQ] <John L. Howard Jr.>;Megan D. Moran/OVP/EOP@EOP [OVP] <Megan D. Moran>;LCummins@cns.gov [UNKNOWN] <LCummins@cns.gov>;Jeffrey T.

Jezierski/WHO/EOP@EOP [WHO] <Jeffrey T. Jezierski>;Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>;Heidi K. Marquez/WHO/EOP@EOP [WHO] <Heidi K. Marquez>;Josh Deckard/WHO/EOP@EOP [WHO] <Josh Deckard>;Andrea McDaniel/WHO /EOP@EOP [WHO] <Andrea McDaniel>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;RTUBB@whmo.mil [UNKNOWN] <RTUBB@whmo.mil>;Katherine G. Marinis/WHO /EOP@EOP [WHO] <Katherine G. Marinis>;Kasey S. Pipes/WHO/EOP@EOP [WHO] <Kasey S. Pipes>;Gina M. Wolford/OSTP/EOP@EOP [OSTP] <Gina M. Wolford>;Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>;Dan.Sutherland@ed.gov [UNKNOWN] <Dan.Sutherland@ed.gov>;Ddfree@erols.com [UNKNOWN] <Ddfree@erols.com>;Rich.Westfall@cpbm.org [UNKNOWN] <Rich.Westfall@cpbm.org>

Sent: 1/3/2002 4:16:27 AM

Subject: : White House Christian Fellowship meeting today, 1/3 from noon to 1pm in room 472 EEOB

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Edmund C. Moy ( CN=Edmund C. Moy/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JAN-2002 09:16:27.00
SUBJECT:: White House Christian Fellowship meeting today, 1/3 from noon to 1pm in room 472
EEOB
TO:Jodey Arrington ( CN=Jodey Arrington/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:dgitsham@whf.gov ( dgitsham@whf.gov [ WHO ] )
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TO:OVERTON#032#BRUCE@ustr.gov (OVERTON#032#BRUCE@ustr.gov [UNKNOWN])
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READ:UNKNOWN
TO:truthseeker@erols.com (truthseeker@erols.com @ inet [UNKNOWN])
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TO:Kasey S. Pipes (CN=Kasey S. Pipes/OU=WHO/O=EOP@EOP [WHO])

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TO:Ddfree@erols.com (Ddfree@erols.com [UNKNOWN])
READ:UNKNOWN
TO:Rich.Westfall@cpbm.org (Rich.Westfall@cpbm.org [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Our special guest this week is none other than Jodey Arrington, formerly of Presidential Personnel and now the new Chief of Staff for the Federal Deposit Insurance Corporation. Join us for a devotional from brother Jodey and a prayer time to begin the new year.

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

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Sent: 1/3/2002 1:11:43 PM

Subject: : If you get asked about civilian casualties in Afghanistan...

Attachments: P_XZ3M4003_WHO.TXT_1.doc

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CREATION DATE/TIME: 3-JAN-2002 18:11:43.00
SUBJECT:: If you get asked about civilian casualties in Afghanistan...
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READ:UNKNOWN
TO:cliff@defenddemocracy.org ( cliff@defenddemocracy.org [ UNKNOWN ] )
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TO:gmrossiter@fedex.com ( gmrossiter@fedex.com [ UNKNOWN ] )
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TO:cmay@bsmg.com (cmay@bsmg.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:tnelson@dmnmedia.com (tnelson@dmnmedia.com @ inet [UNKNOWN])
READ:UNKNOWN
TO:kevin.schweers@mail.house.gov (kevin.schweers@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:kyle.downey@mail.house.gov (kyle.downey@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Anne C. Guilsher (CN=Anne C. Guilsher/OU=NSC/O=EOP@EOP [NSC])
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TO:Michael Davis (CN=Michael Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:bhazelwood@rnchq.org (bhazelwood@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:ekutler@cwdc.com (ekutler@cwdc.com [UNKNOWN])
READ:UNKNOWN
TO:john.mcmanus@mail.phrma.org (john.mcmanus@mail.phrma.org [UNKNOWN])
READ:UNKNOWN
TO:sstyles@bbchb.com (sstyles@bbchb.com [UNKNOWN])

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TO:kevin.herglotz@usda.gov (kevin.herglotz@usda.gov [UNKNOWN])
READ:UNKNOWN
TO:ksheridan@rnchq.org (ksheridan@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:byronyork@att.net (byronyork@att.net [UNKNOWN])
READ:UNKNOWN
TO:bishopn@state.gov (bishopn@state.gov [UNKNOWN])
READ:UNKNOWN
TO:englandMP@state.gov (englandMP@state.gov [UNKNOWN])
READ:UNKNOWN
TO:rncresearch@rnchq.org (rncresearch@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:dmattoon@podestamattoon.com (dmattoon@podestamattoon.com [UNKNOWN])
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READ:UNKNOWN
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READ:UNKNOWN
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TO:susan.hirschman@mail.house.gov (susan.hirschman@mail.house.gov [UNKNOWN])
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TO:dan.flynn@mail.house.gov (dan.flynn@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:scott.palmer@mail.house.gov (scott.palmer@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:mike.stokke@mail.house.gov (mike.stokke@mail.house.gov [UNKNOWN])
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TO:tobin.harvey@ee.doe.gov (tobin.harvey@ee.doe.gov [UNKNOWN])
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TO:All OVP Users (All OVP Users [UNKNOWN])

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TO:McDonaldDJ@state.gov (McDonaldDJ@state.gov [UNKNOWN])
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TO:bitterr@state.gov (bitterr@state.gov [UNKNOWN])
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TO:schriverrg@state.gov (schriverrg@state.gov [UNKNOWN])
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TO:kelseyt@state.gov (kelseyt@state.gov [UNKNOWN])
READ:UNKNOWN
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TO:echeney@ifc.org (echeney@ifc.org [UNKNOWN])
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TO:jbjohnson@pd.state.gov (jbjohnson@pd.state.gov [UNKNOWN])
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TO:MeierAW@state.gov (MeierAW@state.gov [UNKNOWN])
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TO:john.higginbotham@dfait-maeci.gc.ca (john.higginbotham@dfait-maeci.gc.ca [UNKNOWN])
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TO:bill.schuster@mail.house.gov (bill.schuster@mail.house.gov [UNKNOWN])
READ:UNKNOWN
TO:RBentz@visa.com (RBentz@visa.com [UNKNOWN])
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TO:bob.gold@starpoint.com (bob.gold@starpoint.com [UNKNOWN])
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TO:iocurrops@js.pentagon.mil (iocurrops@js.pentagon.mil [UNKNOWN])
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TO:allison.barber@osd.mil (allison.barber@osd.mil [UNKNOWN])
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TO:Barbara Jo Goergen (CN=Barbara Jo Goergen/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Nina DeLorenzo (CN=Nina DeLorenzo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer Foley (CN=Jennifer Foley/OU=WHO/O=EOP@EOP [WHO])
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TO:pam.lambo@dfait-maeci.gc.ca (pam.lambo@dfait-maeci.gc.ca [UNKNOWN])
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TO:terry.colli@dfait-maeci.gc.ca (terry.colli@dfait-maeci.gc.ca [UNKNOWN])
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TO:carol.melton@viacom.com (carol.melton@viacom.com [UNKNOWN])
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TO:hthomas@nsc.oep.gov (hthomas@nsc.oep.gov [NSC])
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TO:levy-leah@dol.gov (levy-leah@dol.gov [UNKNOWN])
READ:UNKNOWN
TO:bbaney@phigam.org (bbaney@phigam.org [UNKNOWN])
READ:UNKNOWN
TO:kristen.gilley@mail.house.gov (kristen.gilley@mail.house.gov [UNKNOWN])
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TO:doug.seay@mail.house.gov (doug.seay@mail.house.gov [UNKNOWN])
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READ:UNKNOWN
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TO:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Gregory Goss (CN=Gregory Goss/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@EOP [WHO])
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TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Logan M. Walters (CN=Logan M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
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Here is a 1-pager that will help you respond....

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PREVENTING CIVILIAN CASUALTIES

"There's never been a conflict where there have not been civilian deaths. If one were to take this activity in Afghanistan and rank it as to the number of civilian deaths, and the care and attentiveness that has gone in to try to have the right weapon and the most precise method of doing things, I can't imagine there's been a conflict in history where there has been less collateral damage--less unintended consequences."

-- Defense Secretary Donald Rumsfeld, 1/3/02

☑ The terrorists declared war on civilians, killing more than 3,000 innocent people from more than 80 countries on September 11.

☑ The coalition has taken every step possible to protect civilians while the terrorists have targeted civilians by placing their military assets near mosques, hospitals and neighborhoods.

☑ The Afghan people themselves are noting the precision of the coalition military campaign.

IN THEIR OWN WORDS…

"Ali Ahmed, a 16-year-old thrill-seeker proficient in English, said that for kicks he would go to every bomb site in the city minutes after the blasts occurred. 'They rarely killed normal people,' Ali said. 'I went to many sites. I never saw a dead normal person.'" (*The Washington Post*, 12/12/01)

"I found to my surprise that rather than Kandahar being a city that was totally destroyed by bombing, it was a city certainly in disrepair, a poor city that was decaying, but not as a result of the bombing. In fact the bombing appeared to have been incredibly targeted. Just to give you one example, I went to this one street where there were two al-Qaida houses, and you saw a bombed-out house, basically nothing remaining, then a fully standing house that belonged to a family who lived there, and then another bombed-out house that had been an al-Qaida and Taliban safe house. So it was very interesting to see that some of the reports we had heard about the Pentagon doing precision bombing, in fact, had been correct, that to a large extent they had really pinpoint bombed al-Qaida headquarters or al-Qaida offices," said Indira Lakshmanan, Asia correspondent for the Boston Globe. (*The NewsHour with Jim Lehrer*, 12/26/01)

"Now, with journalists and humanitarian workers gaining access to bombed areas for the first time, a picture is emerging of an aerial campaign remarkable for its pinpoint accuracy." *(Source: Chicago Tribune, 11/21/01)*

"The capture of Kandahar, perhaps more than any other city in Afghanistan, stands as an example of the new American high-tech war. A visit to about 20 bombing targets in the city showed that relatively few innocent bystanders had been killed, largely because the bombs were accurate." *(Source: The New York Times, 12/26/01)*

"We were amazed at the accuracy," said Mohammed Alem, a carpenter from the Qasabale-Kargere housing complex near the airport, where the tarmac and surrounding grounds are littered with aircraft fuselages scattered like broken pencils. *(Source: The Philadelphia Inquirer, 11/21/01)*

"A drive around [Kandahar] seemed to contradict Taliban assertions of wholesale damage and massive civilian casualties; on the contrary, US airstrikes appear to have hit Taliban and Qaeda facilities, not civilian targets. There are few war injuries in Kandahar hospitals, and no evidence of a large civilian death toll." (*The Boston Globe,* 12/15/01)

“The targeting was exact," said Qiamuddin, 50, a former Afghan army officer and a village elder. *(Source: The Guardian [U.K.], 12/01/01)*

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 1/3/2002 11:56:27 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JAN-2002 16:56:27.00
SUBJECT:: Re:
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Careful. These e-mails will all be disclosed in 12 years.

Bradford A. Berenson
01/03/2002 04:53:39 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: kyle sampson/who/eop@eop
bcc:
Subject: Re:

Hooray! When we're not skewering exceptionally well-qualified prosecutors for political reasons, we're denying historians and generations of American schoolchildren important information about their government . . .

Brett M. Kavanaugh
01/03/2002 04:33:56 PM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject:

You have some company; Stanley Kutler blasted me by name on Pres Records in Chicago Tribune today . . .

From: Edward_Ingle@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole E. Grodner/WHO/EOP@EOP [WHO] <Nicole E. Grodner>;Melissa L. McAdoo/WHO/EOP@EOP [WHO] <Melissa L. McAdoo>
Sent: 1/3/2002 1:11:23 PM
Subject: : agency FOIA requests
Attachments: P_HZ3M4003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward_Ingle@who.eop.gov ( Edward_Ingle@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 3-JAN-2002 18:11:23.00
SUBJECT:: agency FOIA requests
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nicole E. Grodner ( CN=Nicole E. Grodner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Melissa L. McAdoo ( CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

from this week's agency cabinet report submissions.....

(See attached file: FOIA1-3-02.doc)
- FOIA1-3-02.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HZ3M4003_WHO.TXT_1>
```

1/3/02

SIGNIFICANT AGENCY FOIA REQUESTS

DOE

- **David McIntosh of Natural Resources Defense Council** requested information related to the new source review program and regulations regarding the Clean Air Act.
- **Ginger Allen of CBS News** requested copy of the DOE Fiscal Year 2000 financial statements.
- **Benjamin Jones of Democratic Senatorial Campaign Committee** requested correspondence between DOE and Cong. Lindsey Graham.
- **Michael Doyle of McClatchy Newspapers** requested copy of the FOIA request log for January 2001 through June 2001.
- **Reece Rushing of OMB Watch** requested records pertaining to the removal of information from DOE websites, reading rooms, depository libraries or any other venue from which the public can retrieve government information after the September 11.

DOI

- **Bald Eagles and Off-Road Vehicles.** The Center for Biological Diversity has submitted a request for materials under the Freedom of Information Act to BLM. As a result, the USGS Forest and Rangeland Ecosystem Science Center, was contacted by the BLM to determine the availability of a 1979 biological opinion related to bald eagles and a proposed off-road-vehicle designation in Tuolumne County, California.

DOJ

- **Christopher Farrell, of Judicial Watch, Inc.,** has requested all records pertaining to George Salem. This is to include any records of meetings he has had with the Department, any records pertaining to political contributions he has made to the Administration, and any records involving litigation with the Holy Land Foundation and the Quranic Literacy Institute.

- **Eliot Kleinberg, of the *Palm Beach Post*,** has requested all records pertaining to "any Florida aspects of [the Department's] investigation into the terrorist attacks of Sept.11 as well as the anthrax investigation in South Florida."

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 1/4/2002 4:04:34 AM
Subject: : USA today article - ARG mentioned

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JAN-2002 09:04:34.00
SUBJECT:: USA today article - ARG mentioned
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Administration
Thousands Of Reagan Presidential Papers Released (USA/AP)
The Reagan papers
USA Today/AP, January 04, 2002
WASHINGTON (AP) - President Reagan's image as a "man's man" was hurting him with women voters, adviser Elizabeth Dole says in a memo released Thursday in a batch of Reagan records.
"While this characterization has been helpful with men, it may have worked to his detriment with regard to women," Dole, then special assistant to the president for public liaison, wrote in the handwritten draft of a 1982 memo to three Reagan advisers.
"An often-heard question is whether the president takes women seriously." Dole went on to become Reagan's transportation secretary. She now is running for a Senate seat in North Carolina.
The memo was among 8,000 Reagan presidential papers kept under wraps since January 2001 while the Bush administration developed an executive order to govern release of presidential records from Reagan on.
Still sealed are an additional 60,000 pages of Reagan records and tens of thousands of pages left behind by Reagan's vice president, George Bush.
The boxes opened Thursday at the Reagan presidential library in Simi Valley, Calif., included the office files of some of his lieutenants, including former chief of staff James Baker and Baker's aides Richard Darman and James Cicconi.
In one memo, adviser Lyn Nofziger complains the Reagan White House was too supportive of liberal AFL-CIO president Lane Kirkland. "When are we going to quit trying to be nice to Lane Kirkland?" Nofziger asks in his July 1, 1981, memo to Baker.
The Presidential Records Act allowed the 68,000 pages of records to remain closed for 12 years because they contained confidential internal advice and deliberations among government officials.
That wait ended in January 2001. Because there is no provision under the Freedom of Information Act to keep the records secret any longer, they were scheduled for release.
The Bush White House, however, delayed opening the files for a year so it could review them and work on an executive order Bush issued Nov. 1 that gives former presidents more authority to withhold certain papers.
The White House said Thursday it expects to finish reviewing all 68,000 records by the end of the month. Duke Blackwood, director of the Reagan library, said the rest of the records should be available to the public by spring.
"Assuming Bush administration officials have opted not to be overly restrictive in their decisions of what to release in these pages, there is a fascinating story about how President Reagan chose to use or ignore the confidential advice of his key lieutenants," says Bruce Craig, director of the National Coordinating Committee for the Promotion of History.

Even if all the records are released in coming weeks, Public Citizen, a consumer advocacy group based in Washington, plans to continue its legal challenge of the executive order.

"This executive order is unlawful," said Public Citizen attorney Scott Nelson. "We shouldn't have to have this order governing the release of Reagan documents and Bush documents and other president's documents from here to eternity."

White House officials say Bush's action establishes an orderly process for implementing the Presidential Records Act. Bush's order gives former presidents more authority to claim executive privilege to withhold certain papers because they contain military, diplomatic or national security secrets, communications among the president and his advisers or legal advice.

Although White House counsel Alberto Gonzales denies it, some historians have suggested the Bush White House is worried about what the Reagan papers might reveal about former Reagan officials who now work for Bush. Among former Reagan aides are Secretary of State Colin Powell, Budget Director Mitch Daniels, Jr. and White House Chief of Staff Andrew Card.

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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>
CC: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: Rachel L. Brand (Rachel L. Brand/WHO/EOP [WHO])
Sent: 1/4/2002 1:44:35 PM
Subject: : Ari attending fundraisers

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JAN-2002 18:44:35.00
SUBJECT:: Ari attending fundraisers
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ari may attend these events and have the RJC pay for them, as long as the events pertain to his official responsibilities (sounds like they do). He may attend and speak at fundraisers, but he may not raise or ask for money. I'm happy to help draw that distinction if you'd like. Moose Cobb and Brett Kavanagh also know something about it.

Rachel Brand

Vickie A. McQuade
01/04/2002 10:25:44 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc:
Subject:

Ari has been invited by the Republican Jewish Coalition to participate in a series of events in Palm Beach, Florida. He would arrive on a Saturday afternoon with a major event to be held that evening. The next morning, they would hold a breakfast and lunch in either Broward or Miami-Dade County. Ari would be back in DC on Sunday afternoon. They would provide roundtrip transportation. Before I pursue this any further, is this something Ari would be permitted to do? (They only mention a series of events generally, no mention of a fundraiser.) Can he do fundraisers? I need to clarify with the RJC.

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;vickie a. mcquade/who /eop@eop [WHO] <vickie a. mcquade>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/4/2002 2:01:27 PM
Subject: : Re: Ari attending fundraisers

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JAN-2002 19:01:27.00
SUBJECT:: Re: Ari attending fundraisers
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:vickie a. mcquade (CN=vickie a. mcquade/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I concur, but I note that if the event is a political event, than Ari's participation would be better viewed as "unofficial" and if it is not a political event, it would be easier to do if his participation were "official." Brett handles all political event questions, which touch upon use of title rules and et cetera.

Rachel L. Brand 01/04/2002 06:44:24 PM

Record Type: Record

To: Vickie A. McQuade/WHO/EOP@EOP
cc: Robert W. Cobb/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Ari attending fundraisers

Ari may attend these events and have the RJC pay for them, as long as the events pertain to his official responsibilities (sounds like they do). He may attend and speak at fundraisers, but he may not raise or ask for money. I'm happy to help draw that distinction if you'd like. Moose Cobb and Brett Kavanagh also know something about it.

Rachel Brand

Vickie A. McQuade
01/04/2002 10:25:44 AM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc:
Subject:

Ari has been invited by the Republican Jewish Coalition to participate in a series of events in Palm Beach, Florida. He would arrive on a Saturday afternoon with a major event to be held that evening. The next morning,

they would hold a breakfast and lunch in either Broward or Miami-Dade County. Ari would be back in DC on Sunday afternoon. They would provide roundtrip transportation. Before I pursue this any further, is this something Ari would be permitted to do? (They only mention a series of events generally, no mention of a fundraiser.) Can he do fundraisers? I need to clarify with the RJC.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 1/7/2002 4:57:38 AM
Subject: : fyi

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JAN-2002 09:57:38.00
SUBJECT:: fyi
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Bush Administration Under Fire For Claiming Privilege In FBI Informant Case. ABC News (1/6, story 9, Simpson) reported last night, &There's another controversy involving the White House tonight. At issue is the President's decision to block a congressional inquiry into the FBI's use of informants.8 ABC (Gerstein) added, &Joseph Salvati spent decades in prison for murder, even though the FBI knew he was innocent.8 Salvati was shown saying, &The FBI took away 30 years of my life, my family, my wife and my four children. That should never have to happen again.8 ABC added, &The FBI's Boston office kept quiet about Salvati to protect two informants, reputed mobsters Whitey Bulger and Steven Flemmi. While working for the FBI, they allegedly carried out at least 19 murders. Their FBI handler says his actions were authorized by top Justice Department officials.8 Former FBI agent Joseph Connolly was shown saying, &The strike force directed the FBI, my superiors, to confer a special status on Mr. Bulger and Mr. Flemmi. We were told they were to be left alone to continue to do what they were doing.8 ABC added, &Congress opened an investigation into the FBI's handling of top informants, but last month, President Bush invoked executive privilege, ordering the Justice Department not to turn over documents detailing prosecutors' internal discussions about the informants. The move puts Mr. Bush at odds with members of his own party.8 Rep. Dan Burton (R-IN) was shown saying, & If Congress cannot exercise its oversight responsibilities, then you end up with one branch of government, the executive branch, running everything, and they'll be able to control and cover up anything they want to.8 ABC added, &Traditionally, executive privilege has protected a president's right to confidential advice, but one law professor says Mr. Bush is trying to extend the privilege to decisions at all Federal agencies.8 Legal analyst Mark Rozell was shown saying, &I think the Bush team is trying to rewrite the rules on executive privilege. They are trying to expand the scope of executive privilege, I think, in almost breathtaking fashion.8 ABC added, &Bush Administration officials declined to be interviewed, but one former White House counsel says the President is right to resist.8 C. Boyden Gray was shown saying, &The enforcement of the criminal laws is a very unique area. It's one of a few areas that's committed exclusively to the President, who is charged by the Constitution with seeing that the laws are faithfully executed.8 ABC added, & Congressman Burton says he will not seek a court fight with the President, but he will hold hearings to expose the FBI's misconduct and to press Mr. Bush to cooperate with Congress.8

From: Boudreaux, Chad <Chad.Boudreaux@usdoj.gov>
To: Collins, Dan <Dan.Collins@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Smith, George <George.Smith3@usdoj.gov>;Hunt, Jody <Jody.Hunt@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Reyes, Luis <Luis.A.Reyes2@usdoj.gov>;Bloemendal, Katherine <Katherine.Bloemendal@usdoj.gov>
CC: McCallum, Robert <Robert.McCallum@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/7/2002 10:30:46 AM
Subject: : RE: Reagan Documents

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Boudreaux, Chad" <Chad.Boudreaux@usdoj.gov> ( "Boudreaux, Chad"
<Chad.Boudreaux@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 7-JAN-2002 15:30:46.00
SUBJECT:: RE: Reagan Documents
TO:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Smith, George" <George.Smith3@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Smith, George" <George.Smith3@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Hunt, Jody" <Jody.Hunt@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Hunt, Jody" <Jody.Hunt@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Reyes, Luis" <Luis.A.Reyes2@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Reyes, Luis" <Luis.A.Reyes2@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bloemendal, Katherine" <Katherine.Bloemendal@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) ( "Bloemendal, Katherine"
<Katherine.Bloemendal@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [
UNKNOWN ] )
READ:UNKNOWN
CC:"McCallum, Robert" <Robert.McCallum@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "McCallum, Robert" <Robert.McCallum@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There are four of us currently reviewing the documents. Each of us is
working out of a separate box, and each box is being tagged so as to not
be initially reviewed twice. Those boxes will be separated from the
others to further avoid duplicative efforts.

I am available at anytime Thursday morning.

-----Original Message-----
From: Collins, Dan
Sent: Monday, January 07, 2002 2:16 PM
To: Boudreaux, Chad; Whelan, M Edward III; Smith, George; Hunt,
Jody; Colborn, Paul P; Reyes, Luis; Bloemendal, Katherine
```

Cc: McCallum, Robert; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Reagan Documents

Chad--

Terrific. Thanks for your help in getting them over here so soon.

All--

Ed made a great suggestion last week that's worth reiterating: Please leave a written record in the room of which boxes you've taken a look at; this will ensure that at least one person takes a preliminary look at each of the boxes.

Let's plan to meet either on Thursday morning to assess where we are at that point preliminarily in terms of being able to craft a workable review protocol. What times work best for everyone? My schedule is relatively flexible that morning.

Thanks,

--Dan

-----Original Message-----
From: Boudreaux, Chad
Sent: Monday, January 07, 2002 1:41 PM
To: Whelan, M Edward III; Collins, Dan; Smith, George; Hunt, Jody; Colborn, Paul P; Reyes, Luis; Bloemendal, Katherine
Cc: McCallum, Robert
Subject: Reagan Documents

The Reagan documents are in Rms. 7521/7523.

I am walking up there shortly to open the door and start looking the documents over.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: HHS ("Azar <Azar, Alex>;Alex (HHS/OS) <Alex.Azar@hhs.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>
Sent: 1/7/2002 8:43:17 AM
Subject: : RE: Lunch tomorrow?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JAN-2002 13:43:17.00
SUBJECT:: RE: Lunch tomorrow?
TO:"Azar, Alex (HHS ("Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There's a cafeteria, such as it is, here in the OEOB. Or we could walk directly across the street to Cosi.
Sounds like Brett is in too.
Why don't you come to my office (149) when your meeting is out.

"Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov>
01/07/2002 01:38:13 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP
cc:
Subject: RE: Lunch tomorrow?

Great. I'm meeting with John Graham at 11-12 and then have a Jay meeting at
12:45. How should we hook up to grab a bite? Is there a cafeteria over there in OEOB?

-----Original Message-----
From: Rachel_L._Brand@who.eop.gov [mailto:Rachel_L._Brand@who.eop.gov]
Sent: Monday, January 07, 2002 1:29 PM
To: Azar, Alex (HHS/OS)
Cc: Brett_M._Kavanaugh@who.eop.gov; Bradford_A._Berenson@who.eop.gov; john p. mcconnell (e-mail); Noel_J._Francisco@who.eop.gov
Subject: Re: Lunch tomorrow?

yep, I'm available

(Embedded
image moved "Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov>
to file: 01/07/2002 12:18:42 PM
pic00034.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Lunch tomorrow?

I've got two meetings at OEOB tomorrow (Tuesday) with a brief break from 12 to 12:45. Would any of you be free to grab a very quick bite to eat at or near your shop?

_____
This message is intended for the exclusive use of the recipient(s) named above. It may contain information that is PROTECTED, PRIVILEGED, and/or CONFIDENTIAL, and it should not be disseminated, distributed, or copied to persons not authorized to receive such information. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately.
_____

Message Sent
To:_____

Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
"John P. McConnell (E-mail)" <JMcConnell@georgewbush.com>
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;stuart w. bowen/who/eop@eop [WHO] <stuart w. bowen>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 1/7/2002 2:20:20 PM
Subject: : Re: September 11 Commission

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JAN-2002 19:20:20.00
SUBJECT:: Re: September 11 Commission
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:stuart w. bowen (CN=stuart w. bowen/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Courtney and I (mostly Courtney) have been looking at that.

Noel J. Francisco
01/07/2002 07:15:09 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: September 11 Commission

Has anyone reviewed (or heard anything about) a Lieberman proposal to create a commission to look into September 11?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 1/7/2002 12:06:34 PM
Subject: : U.S. Civil Rights Commission

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JAN-2002 17:06:34.00
SUBJECT:: U.S. Civil Rights Commission
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
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CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Noel's right.
I suggest adding a sentence at the end of the 3rd paragraph of the draft response that says something like:
"Further, we assume that by asserting your independence from "the views of any administration or branch of government" on questions of statutory interpretation, you do not mean to imply that you would not abide by a judicial decision in the pending suit.

---------- Forwarded by Rachel L. Brand/WHO/EOP on 01/07/2002 04:56 PM ----------

Noel J. Francisco
01/07/2002 04:53:30 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: U.S. Civil Rights Commission

Mary Berry's letter states that "[i]t is essential that the Commission . . . no be compelled to abide by the views of any administration or branch of government on matters such as internal agency statutory interpretation." Is she saying that she would not follow the Judicial Branch's construction of the law?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=James R. Wilkinson/OU=WHO/O=EOP [WHO]

To: Wambsganss@aol.com [UNKNOWN] <Wambsganss@aol.com>;MTucker@rnchq.org [NSC] <MTucker@rnchq.org>;haddocke@ndu.edu [UNKNOWN] <haddocke@ndu.edu>;Ronald.Rand@pentagon.af.mil [UNKNOWN] <Ronald.Rand@pentagon.af.mil>;mlevy@texasmonthly.emmis.com [UNKNOWN] <mlevy@texasmonthly.emmis.com>;Tobin.Harvey@ee.doe.gov [UNKNOWN] <Tobin.Harvey@ee.doe.gov>;BallmanLS@state.gov [UNKNOWN] <BallmanLS@state.gov>;lauraballman@hotmail.com [UNKNOWN] <lauraballman@hotmail.com>;britishembassykabul@gtnet.gov.uk [UNKNOWN] <britishembassykabul@gtnet.gov.uk>;cliff@defenddemocracy.org [UNKNOWN] <cliff@defenddemocracy.org>;gmrossiter@fedex.com [UNKNOWN] <gmrossiter@fedex.com>;leighwambsganss@aol.com [UNKNOWN] <leighwambsganss@aol.com>;waurisjm@js.pentagon.mil [UNKNOWN] <waurisjm@js.pentagon.mil>;Josie_Fernandez@nps.gov [UNKNOWN] <Josie_Fernandez@nps.gov>;john.pitney@claremontmckenna.edu [UNKNOWN] <john.pitney@claremontmckenna.edu>;afoti@AKINGUMP.COM [UNKNOWN] <afoti@AKINGUMP.COM>;marcel.lettre@censa.net [UNKNOWN] <marcel.lettre@censa.net>;Sara B. McIntosh/WHO/EOP@EOP [WHO] <Sara B. McIntosh>;Anne Heiligenstein/WHO/EOP@EOP [WHO] <Anne Heiligenstein>;Sonya E. Medina/WHO/EOP@EOP [WHO] <Sonya E. Medina>;Catherine S. Fenton/WHO/EOP@EOP [WHO] <Catherine S. Fenton>;Melanie A. Jackson/WHO/EOP@EOP [WHO] <Melanie A. Jackson>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Eleanor L. Gillmor/OPD /EOP@EOP [OPD] <Eleanor L. Gillmor>;Tiffany L. Barfield/OPD/EOP@EOP [OPD] <Tiffany L. Barfield>;David F. Lussier/OPD/EOP@EOP [UNKNOWN] <David F. Lussier>;Torie.Clarke@osd.mil @ inet [UNKNOWN] <Torie.Clarke@osd.mil>;rgeorge@nypost.com @ inet [UNKNOWN] <rgeorge@nypost.com>;Neil S. Patel/OVP/EOP@EOP [OVP] <Neil S. Patel>;Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>;susan_irby@lott.senate.gov @ inet [UNKNOWN] <susan_irby@lott.senate.gov>;brook_simmons@nickles.senate.gov @ inet [UNKNOWN] <brook_simmons@nickles.senate.gov>;gerry_fritz@rpc.senate.gov @ inet [UNKNOWN] <gerry_fritz@rpc.senate.gov>;margaret_camp@frist.senate.gov @ inet [UNKNOWN] <margaret_camp@frist.senate.gov>;lisette_mcsoud_mondello@hutchison.senate.gov @ inet [UNKNOWN] <lisette_mcsoud_mondello@hutchison.senate.gov>;Melissa_Sabatine@src.senate.gov @ inet [UNKNOWN] <Melissa_Sabatine@src.senate.gov>;melissa_sabatine@hotmail.com @ inet [UNKNOWN] <melissa_sabatine@hotmail.com>;john.feehery@mail.house.gov @ inet [UNKNOWN] <john.feehery@mail.house.gov>;terry.holt@mail.house.gov @ inet [UNKNOWN] <terry.holt@mail.house.gov>;christine.iverson@mail.house.gov @ inet [UNKNOWN] <christine.iverson@mail.house.gov>;MMiner@rnchq.org @ inet [UNKNOWN] <MMiner@rnchq.org>;sschmidt@nrcc.org @ inet [UNKNOWN] <sschmidt@nrcc.org>;emily.miller@mail.house.gov @ inet [UNKNOWN] <emily.miller@mail.house.gov>;ron_bonjean@lott.senate.gov @ inet [UNKNOWN] <ron_bonjean@lott.senate.gov>;paige.ralston@mail.house.gov @ inet [UNKNOWN] <paige.ralston@mail.house.gov>;paul.morrell@mail.house.gov @ inet [UNKNOWN] <paul.morrell@mail.house.gov>;cforti@nrcc.org @ inet [UNKNOWN] <cforti@nrcc.org>;TDuffy@rnchq.org @ inet [OMB] <TDuffy@rnchq.org>;dallen@nrsc.org @ inet [UNKNOWN] <dallen@nrsc.org>;Peter.jeffries@mail.house.gov @ inet [UNKNOWN] <Peter.jeffries@mail.house.gov>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;Deborah A. Spagnoli/WHO/EOP@EOP [WHO] <Deborah A. Spagnoli>;kfedewa@rnchq.org @ inet [UNKNOWN] <kfedewa@rnchq.org>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;Aquiles F. Suarez/OPD/EOP@EOP [OPD] <Aquiles F. Suarez>;Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>;dean.clancy@mail.house.gov @ inet [UNKNOWN] <dean.clancy@mail.house.gov>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;ekertz@doc.gov @ inet [UNKNOWN] <ekertz@doc.gov>;jdyke@doc.gov @ inet [UNKNOWN]

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<caranaga@pd.state.gov>;jfischman@pd.state.gov [UNKNOWN]
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TO:intspw@hotmail.com (intspw@hotmail.com [UNKNOWN])
READ:UNKNOWN
TO:allison.barber@osd.mil (allison.barber@osd.mil [UNKNOWN])
READ:UNKNOWN
TO:grant.sellers@myflorida.com (grant.sellers@myflorida.com [UNKNOWN])
READ:UNKNOWN
TO:Anthony.Welcher@exim.gov (Anthony.Welcher@exim.gov [UNKNOWN])
READ:UNKNOWN
TO:Robert.Ollison@EXIM.GOV (Robert.Ollison@EXIM.GOV [UNKNOWN])
READ:UNKNOWN
TO:Barbara Jo Goergen (CN=Barbara Jo Goergen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katherine M. Channell (CN=Katherine M. Channell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nina DeLorenzo (CN=Nina DeLorenzo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Jennifer Foley (CN=Jennifer Foley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Georgia D. Godfrey (CN=Georgia D. Godfrey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy Campen (CN=Timothy Campen/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
TO:bsacco@shadowtv.com (bsacco@shadowtv.com [UNKNOWN])
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TO:kathicard@ix.netcom.com (kathicard@ix.netcom.com [UNKNOWN])
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TO:kenneth.mcclellan@osd.mil (kenneth.mcclellan@osd.mil [UNKNOWN])
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TO:michael.perini@peterson.af.mil (michael.perini@peterson.af.mil [UNKNOWN])
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TO:pam.lambo@dfait-maeci.gc.ca (pam.lambo@dfait-maeci.gc.ca [UNKNOWN])
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TO:hope_boonshaft@spe.sony.com (hope_boonshaft@spe.sony.com [UNKNOWN])
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TO:mamin@lgecorp.com (mamin@lgecorp.com [UNKNOWN])
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TO:wetsigb@usa.redcross.org (wetsigb@usa.redcross.org [UNKNOWN])
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TO:vansantl@usa.redcross.org (vansantl@usa.redcross.org [UNKNOWN])
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TO:james@mail.house.gov (james@mail.house.gov [WHO])
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TO:hthomas@nsc.oep.gov (hthomas@nsc.oep.gov [NSC])
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READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
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TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@EOP [WHO])
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TO:Heather L. West (CN=Heather L. West/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Amanda L. Moore (CN=Amanda L. Moore/OU=WHO/O=EOP@EOP [WHO])
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TO:Danner R. Bethel (CN=Danner R. Bethel/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Mary Elizabeth Farr (CN=Mary Elizabeth Farr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [WHO])
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TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley M. Snee (CN=Ashley M. Snee/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OVP/O=EOP@EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
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TO:Debra R. Dunn (CN=Debra R. Dunn/OU=OVP/O=EOP@EOP [OVP])
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READ:UNKNOWN
TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen M. Garrison (CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
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TO:charles.yoder@mail.va.gov (charles.yoder@mail.va.gov @ inet [UNKNOWN])
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READ:UNKNOWN
TO:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Don E. Eberly (CN=Don E. Eberly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lisa T. Cummins (CN=Lisa T. Cummins/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
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TO:Carrie W. Click (CN=Carrie W. Click/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:maryanne.lyle@fema.gov (maryanne.lyle@fema.gov @ inet [UNKNOWN])
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TO:Jeanne.lopatto@hq.doe (Jeanne.lopatto@hq.doe @ inet [UNKNOWN])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@EOP [WHO])
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TO:John D. Estes (CN=John D. Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Angela R. Sailor (CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Terry C. Miller (CN=Terry C. Miller/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brusbolt@iiaa.net (brusbolt@iiaa.net @ inet [UNKNOWN])
READ:UNKNOWN
TO:blewis@rnchq.org (blewis@rnchq.org @ inet [OVP])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Maria.Cino@mail.doc.gov (Maria.Cino@mail.doc.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Matthew W. Lindley (CN=Matthew W. Lindley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Chris B. Nagel (CN=Chris B. Nagel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa L. McAdoo (CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen L. Hughes (CN=Kristen L. Hughes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert T. Pratt Jr (CN=Robert T. Pratt Jr/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Beverly J. Ward (CN=Beverly J. Ward/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Deborah K. Hair (CN=Deborah K. Hair/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark.Corallo@mail.house.gov (Mark.Corallo@mail.house.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Traci R. Campbell (CN=Traci R. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James E. Carter (CN=James E. Carter/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helen R. Mobley (CN=Helen R. Mobley/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Kuo (CN=David Kuo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Roberta Shea (CN=Roberta Shea/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:tom.eisenhauer@mail.house.gov (tom.eisenhauer@mail.house.gov [UNKNOWN])
READ:UNKNOWN

End Original ARMS Header

Here is your message of the day for tomorrow...

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_XW5O4003_NSC.TXT_1>

THE WHITE HOUSE
COALITION INFORMATION CENTER

1/8/2002

Today's Schedule

President Bush travels to Ohio, New Hampshire and Massachusetts to discuss education

8:00a EST	Secretary Rumsfeld appears on C-SPAN.
12:30p EST	Department of State daily press briefing by spokesman Richard Boucher.
1:15p EST	Department of Defense daily press briefing by Secretary Rumsfeld.

In Case You Missed It

- On December 11, the three month anniversary of the September 11th attacks, more than 5,300 radio stations played the U.S. national anthem to recognize the date.

Recent Key Quotes & Developments

- "Canada's Defense Minister Art Eggleton announced today that Canada is sending approximately 750 soldiers to Afghanistan as part of Operation APOLLO, the Canadian contribution to the United States-led coalition campaign against terrorism. Members of the 3rd Battalion, Princess Patricia's Canadian Light Infantry Battle Group (3 PPCLI) will deploy to Kandahar as part of a U.S. Army task force by mid-February." (Canadian Defense Ministry news release, 1/7/02)

- "Mine action teams continue to work in and around Kabul. On January 3, 108 different unexploded ordinances were discovered and destroyed by explosive ordnance disposal personnel and manual teams around Bagram and Kabul." (USAID fact sheet, 1/7/02)

- "Pakistan rejects terrorism in all its forms and manifestations and has fully cooperated with the international coalition against terrorism in that spirit." (Pakistan President Pervez Musharraf, at a press conference with UK Prime Minister Tony Blair, 1/7/02)

- "It is important that we do everything that we can now that the military action has been successful, although we still have objectives to be secured, that we make sure that the international community is there with the commitment for reconstruction in Afghanistan in the medium and long term..." (UK Prime Minister Tony Blair, at a press conference with Pakistan President Pervez Musharraf, 1/7/02)

Message

Osama bin Laden is a coward who murders innocents, including women, children and Muslims.

We are a long way from finished in Afghanistan. Much difficult and dangerous work is yet to come. Many terrorists are still hiding in heavily fortified bunkers in rugged territory. One by one, we are going to find them. Piece by piece, we will destroy their network of terror.

The U.S. is leading a global coalition that has made great progress in the war on terrorism:

- **Began to destroy al-Qaeda's grip on Afghanistan by driving the Taliban from power.**
- **Disrupted al-Qaeda's global operations and terrorist financing networks.**
- **Helped the innocent people of Afghanistan recover from the Taliban's reign of terror.**
- **Helped Afghans put aside long-standing differences to form a new interim government that represents all Afghans – including women.**

Facts of the Day

- The U.S. government is keeping at least 16,000 Afghan families warm through the harsh winter months. USAID has contributed more than $1 million to provide 2,756 tons of cooking and heating charcoal to approximately 96,000 of Afghanistan's most vulnerable people for the next three months.
- USAID has contributed more than $7 million to address the water and sanitation needs to the Afghani people. This includes funding the drilling and rehabilitation of water sources, the construction of latrines, and education on hygiene and waste disposal.

REV_00138725

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;laura l. flippin/who/eop@eop [WHO] <laura l. flippin>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 1/8/2002 11:16:33 AM
Subject: : Re: Jason

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-JAN-2002 16:16:33.00
SUBJECT:: Re: Jason
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:laura l. flippin (CN=laura l. flippin/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Brad had suggested a lunch, and I concur. Do you think that you and Libby might organize something? Thanks.

Lori L. Lorenzi
01/08/2002 03:55:42 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Elizabeth N. Camp/WHO/EOP@EOP, Allison L. Riepenhoff/WHO/EOP@EOP
Subject: Jason

Jason's last day is Friday and we are just trying to figure out what is being planned for his departure so that we can perhaps consolidate plans

or put something in the works.

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: jgroberts@hhlaw.com @ inet [UNKNOWN] <jgroberts@hhlaw.com>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/8/2002 7:19:20 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-JAN-2002 12:19:20.00
SUBJECT::
TO:jgroberts@hhlaw.com ( jgroberts@hhlaw.com @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Congratulations on your victory today in the ADA case! You are now Jeff
Sutton.
```

From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: Michael J. Napolitano/WHO/EOP@EOP [WHO] <Michael J. Napolitano>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/8/2002 10:03:34 AM
Subject: : Re: Candidate photo ops

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-JAN-2002 15:03:34.00
SUBJECT:: Re: Candidate photo ops
TO:Michael J. Napolitano (CN=Michael J. Napolitano/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What about pictures in the Rose Garden or along the portico?

Michael J. Napolitano
01/08/2002 02:59:02 PM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
bcc:
Subject: Candidate photo ops

I spoke to the President's diarist - she told me that Oval Office photo ops w/ candidates have precedent (they were done during the last three administrations). However, she could not provide me with details b/c the search is too vague.

How do you want to proceed?

Ellen W. McCathran
01/08/2002 01:38:37 PM
Record Type: Record

To: Michael J. Napolitano/WHO/EOP@EOP
cc:
Subject:

I said to call, but neglected to give you the number....6-7566.

thanks,
Ellen

From: CN=Michael J. Napolitano/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/8/2002 10:09:39 AM
Subject: : Re: Candidate photo ops

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael J. Napolitano (CN=Michael J. Napolitano/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-JAN-2002 15:09:39.00
SUBJECT:: Re: Candidate photo ops
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I should have been more clear....we discussed "photos taking place in the WH." I mentioned the Oval - but, she said it occured everywhere, depending on the particular president's schedule.

She said that this included both incumbants and candidates - we did a variation of this twice this year (Schundler & Early). Though this also included time with the press which would be unnecc. if we were just doing photos.

Ken Mehlman
01/08/2002 03:03:32 PM
Record Type: Record

To: Michael J. Napolitano/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: Candidate photo ops

What about pictures in the Rose Garden or along the portico?

Michael J. Napolitano
01/08/2002 02:59:02 PM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
bcc:
Subject: Candidate photo ops

I spoke to the President's diarist - she told me that Oval Office photo ops w/ candidates have precedent (they were done during the last three administrations). However, she could not provide me with details b/c the search is too vague.

How do you want to proceed?

Ellen W. McCathran
01/08/2002 01:38:37 PM
Record Type: Record

To: Michael J. Napolitano/WHO/EOP@EOP
cc:
Subject:

I said to call, but neglected to give you the number....6-7566.

thanks,
Ellen

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>
Sent: 1/8/2002 11:25:00 AM
Subject: : Re: NEED QUICK ANSWER

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-JAN-2002 16:25:00.00
SUBJECT:: Re: NEED QUICK ANSWER
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I don't see any reason not to attribute a good quote to you.

Brett M. Kavanaugh
01/08/2002 04:18:59 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: NEED QUICK ANSWER

Judge and Tim: Carl Cannon (president of writers association) was in my meeting with historians. He is writing story for National Journal. He wants to describe the meeting and use the quote below from me from the meeting. Anne was ok with it. I am unsure whether it is good that I be identified publicly, although the horse is unfortunately well out of the barn on that. The quote itself is good, I guess. We could try to have me identified as a "White House lawyer." Let me know.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 01/08/2002 04:12 PM ----------

"Cannon, Carl" <ccannon@nationaljournal.com>
01/08/2002 04:09:47 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: deadline is looming...

so about only this quote (from you to the scholars):

> "Give us a little time here. We think you'll be happy with the

> procedures. We think they will work -- and work well ...We'll work with
> you."
>
> -- Carl
>
> Carl M. Cannon
> White House Correspondent
> National Journal
> 202.739-8413
> 202.833-8069 (fax)
>

From: Cannon, Carl <ccannon@nationaljournal.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/8/2002 11:29:32 AM
Subject: : deadline is looming...

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Cannon, Carl" <ccannon@nationaljournal.com> ( "Cannon, Carl"
<ccannon@nationaljournal.com> [ UNKNOWN ] )
CREATION DATE/TIME: 8-JAN-2002 16:29:32.00
SUBJECT:: deadline is looming...
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

so about only this quote (from you to the scholars):

> "Give us a little time here. We think you'll be happy with the
> procedures. We think they will work -- and work well ...We'll work with
> you."
>
> -- Carl
>
> Carl M. Cannon
> White House Correspondent
> National Journal
> 202.739-8413
> 202.833-8069 (fax)
>
```

From: Collins, Dan <Dan.Collins@usdoj.gov>
To: Boudreaux, Chad <Chad.Boudreaux@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Smith, George <George.Smith3@usdoj.gov>;Hunt, Jody <Jody.Hunt@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Reyes, Luis <Luis.A.Reyes2@usdoj.gov>;Bloemendal, Katherine <Katherine.Bloemendal@usdoj.gov>
CC: McCallum, Robert <Robert.McCallum@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/8/2002 11:29:34 AM
Subject: : RE: Reagan Room

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Collins, Dan" <Dan.Collins@usdoj.gov> ( "Collins, Dan" <Dan.Collins@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME: 8-JAN-2002 16:29:34.00
SUBJECT:: RE: Reagan Room
TO:"Boudreaux, Chad" <Chad.Boudreaux@usdoj.gov> ( "Boudreaux, Chad"
<Chad.Boudreaux@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ( "Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Smith, George" <George.Smith3@usdoj.gov> ( "Smith, George" <George.Smith3@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:"Hunt, Jody" <Jody.Hunt@usdoj.gov> ( "Hunt, Jody" <Jody.Hunt@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Reyes, Luis" <Luis.A.Reyes2@usdoj.gov> ( "Reyes, Luis" <Luis.A.Reyes2@usdoj.gov> [
UNKNOWN ] )
READ:UNKNOWN
TO:"Bloemendal, Katherine" <Katherine.Bloemendal@usdoj.gov> ( "Bloemendal, Katherine"
<Katherine.Bloemendal@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"McCallum, Robert" <Robert.McCallum@usdoj.gov> ( "McCallum, Robert"
<Robert.McCallum@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The time that seems to work best for all is 11:00 AM on Thursday. Let's
plan to meet then in Room 3143. Thanks.

--Dan


-----Original Message-----
From: Boudreaux, Chad
Sent: Tuesday, January 08, 2002 8:01 AM
To: Collins, Dan; Whelan, M Edward III; Smith, George; Hunt, Jody;
Colborn, Paul P; Reyes, Luis; Bloemendal, Katherine
Cc: McCallum, Robert
Subject: Reagan Room

I am heading upstairs in ten minutes to open Rooms 7521/7523, where they
will remain open all day. The only exception may be lunch, depending on
who is there from noon-1:00pm. If you arrive at the rooms between noon
and 1:00pm to find the doors locked, they will be reopened at 1:00pm.

Further, in light of Dan's email yesterday regarding our meeting to
discuss protocol, I have blocked off Conference Room 3143 (where we met
last time) for Thursday morning between 8:00am and noon.
```

-----Original Message-----
From: Collins, Dan
Sent: Monday, January 07, 2002 2:16 PM
To: Boudreaux, Chad; Whelan, M Edward III; Smith, George; Hunt, Jody; Colborn, Paul P; Reyes, Luis; Bloemendal, Katherine
Cc: McCallum, Robert; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Reagan Documents

Chad--

Terrific. Thanks for your help in getting them over here so soon.

All--

Ed made a great suggestion last week that's worth reiterating: Please leave a written record in the room of which boxes you've taken a look at; this will ensure that at least one person takes a preliminary look at each of the boxes.

Let's plan to meet either on Thursday morning to assess where we are at that point preliminarily in terms of being able to craft a workable review protocol. What times work best for everyone? My schedule is relatively flexible that morning.

Thanks,

--Dan

-----Original Message-----
From: Boudreaux, Chad
Sent: Monday, January 07, 2002 1:41 PM
To: Whelan, M Edward III; Collins, Dan; Smith, George; Hunt, Jody; Colborn, Paul P; Reyes, Luis; Bloemendal, Katherine
Cc: McCallum, Robert
Subject: Reagan Documents

The Reagan documents are in Rms. 7521/7523.

I am walking up there shortly to open the door and start looking the documents over.

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
CC: David_S._Addington@ovp.eop.gov [UNKNOWN] <David_S._Addington@ovp.eop.gov>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 1/8/2002 11:32:20 AM
Subject: : The GAO Protocols

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-JAN-2002 16:32:20.00
SUBJECT:: The GAO Protocols
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:David_S._Addington@ovp.eop.gov (David_S._Addington@ovp.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

David has just sent to me a copy of a letter dated December 27 from Walker to Rumsfeld enclosing draft agency protocols which are intended to govern the GAO's work with the agencies. I agree with David's initial impression that this cries out ofr a coordinated response. Please discuss this with Judge Gonzales with a view towards (1) contacting the general counsels to see whether they have received copies of the GAO draft and (2) coordinating a response. We should also get a copy to OLC and get their views ASAP.

Tim

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 1/8/2002 4:51:04 PM
Subject: : did you call Cannon; he's on deadline

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-JAN-2002 21:51:04.00
SUBJECT:: did you call Cannon; he's on deadline
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/9/2002 3:57:18 AM
Subject: : Miami Herald (1/9/02) re: Attorney seeking Judgeship

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-JAN-2002 08:57:18.00
SUBJECT:: Miami Herald (1/9/02) re: Attorney seeking Judgeship
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Published Wednesday, January 9, 2002

Attorney seeking judgeship
BY JAY WEAVER
Miami Herald

Interim U.S. Attorney Guy Lewis, passed over by President Bush for the permanent job as South Florida's top prosecutor, reset his sights Tuesday on a federal judgeship in Miami.

Lewis submitted his application for a seat to be vacated by U.S. District Judge Shelby Highsmith on March 15.

Lewis, 40, who lost out to Miami lawyer Marcos Jim?nez for the U.S. attorney nomination in November, declined to comment about his quest for the federal bench.

Roberto Martinez, who chairs the Federal Judicial Nominating Commission, noted Lewis' judicial application is virtually the same as his previous one for U.S. attorney.

SEEMS FAMILIAR

``It looks like one I've seen before,'' said Martinez, a former Miami U.S. attorney for the Southern District of Florida.

Martinez said Lewis attached a cover letter to his judicial application, expressing a strong interest in continuing his public service. The Tennessee native began his legal career in 1986 as a law clerk for a Miami federal judge before becoming an assistant U.S. attorney.

``It's a wonderful opportunity to continue to serve the South Florida community, and I appreciate very much your kind consideration,'' wrote Lewis, who is not affiliated with any political party.

Lewis' application may carry great weight with the 22-member Southern District Judicial Nominating Commission, which includes his mentor, Thomas Scott. Lewis first clerked for Scott when he was a federal judge and later served as the No. 2 prosecutor when Scott was U.S. attorney. Lewis replaced Scott in June 2000.

Lewis, a popular and well respected career prosecutor who won convictions

against Panamanian dictator Manuel Noriega and a Cuba spy ring, apparently lacked the political juice to keep the job permanently.

REPRESENTED BUSH

Jim?nez, 42, a partner in the law firm of White & Case and a federal prosecutor in Miami for four years, was on the GOP legal team that represented George W. Bush in the 2000 presidential election recount fight.

Lewis' pursuit of the federal judicial post also could have a chilling effect on others who asked for applications but have not submitted them.

During the past month, Martinez said more than 30 lawyers, prosecutors and judges have requested applications for the vacancy created by Highsmith's decision to become a senior federal judge. Highsmith, 72, appointed by President George Bush in 1991, will have a lighter caseload as a senior judge.

The mailing deadline for applications is next Tuesday.

``There has been a lot of interest in this vacancy,'' Martinez said.

OTHER APPLICANT

He stressed he could not identify those who requested applications but could disclose those who already submitted them.

He said the only other applicant so far is Barry Seltzer, a Fort Lauderdale federal magistrate. He was among the three finalists last fall for a vacant U.S. district judgeship in Fort Lauderdale but lost the presidential nomination to Palm Beach Circuit Judge Kenneth Marra.

Last fall's other federal bench vacancy in Miami went to Republican Miami attorney Jose Martinez.

Federal judicial candidates must fill out 34 sections, with pointed questions about their legal education, experience, cases, public service, finances and other factors.

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: Rachel L. Brand (Rachel L. Brand/WHO/EOP [WHO])
Sent: 1/9/2002 11:28:11 AM
Subject: : Draft Presidential Records request
Attachments: P_D4ZP4003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-JAN-2002 16:28:11.00
SUBJECT:: Draft Presidential Records request
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Paul:
Attached is a draft of a request to NARA for the Clinton presidential
records we discussed this morning.
The last paragraph is meant to track the requirements of 44 USC
2205(2)(B).


Brad -- Paul thought you had done one of these in conjunction with the
tobacco litigation. Any suggestions?
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_D4ZP4003_WHO.TXT_1>
```

Dear Mr. Stern:

Pursuant to 44 U.S.C. § 2205(2)(B), I am writing to request access to the presidential records described below.

It is my understanding that the International Trade Commission, in conjunction with litigation in *Nippon Steel v. United States* (CIT No. 01-00103), requested that National Archives and Records Administration staff conduct a search of President Clinton's presidential records to locate documents responsive to plaintiffs' discovery requests in that case. I also understand that your staff identified 21 pages of potentially responsive material and provided three of those pages to the ITC.

I request that the National Archives and Records Administration provide the White House with access to the 18 pages identified by your staff but not provided to the ITC. Upon receipt of those documents, we would review them for privilege and would provide non-privileged documents to the ITC for potential use in the litigation.

Although we do not know the nature or contents of the requested documents, we believe that they are not otherwise available to the Administration. Moreover, they are needed for the conduct of current business of the executive branch.

Sincerely,

Alberto R. Gonzales
Counsel to the President

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Burton, Faith <Faith.Burton@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Horowitz, Michael-CRM <Michael.Horowitz3@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>
Sent: 1/10/2002 6:05:02 AM
Subject: : RE: Privilege log

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:10-JAN-2002 11:05:02.00
SUBJECT:: RE: Privilege log
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I defer to the experts, but thought I understood that scope of the privilege claim would not be modified vis a vis these documents. Any modification would be to the accommodation policy subject to further conversations re. particularized need.

-----Original Message-----
From: Colborn, Paul P
Sent: Thursday, January 10, 2002 10:39 AM
To: Whelan, M Edward III; Thorsen, Carl; Burton, Faith; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: FW: Privilege log

Carl --

P.S. to message below: Someone might want to shorten or otherwise modify the last ten items in the attached log, which I previously prepared for the executive privilege claim.

-----Original Message-----
From: Colborn, Paul P
Sent: Thursday, January 10, 2002 10:22 AM
To: Thorsen, Carl; Burton, Faith; Whelan, M Edward III; 'brett_m._kavanaugh@who.eop.gov'
Subject: RE: Privilege log

The level of detail is fine with me. But I suggest making the format consistent. I see three types of inconsistency among the entries: (1) "Memo re: Possible Prosecution" (##1,3,6) vs. "Prosecutive Memo" (rest); "Patriarca, et al." (#3) vs. listing individuals (#2,5,9,10); and identifying alleged violations (#4) vs. not listing them (rest).

-----Original Message-----
From: Thorsen, Carl
Sent: Wednesday, January 09, 2002 6:43 PM
To: Burton, Faith; Colborn, Paul P; Whelan, M Edward III; 'brett_m._kavanaugh@who.eop.gov'
Subject: FW: Privilege log

Please review this. We may need if a meeting happens tomorrow.

-----Original Message-----
From: Michael-CRM Horowitz
Sent: Wednesday, January 09, 2002 5:54 PM
To: Thorsen, Carl
Subject: Fwd: Privilege log

Date: 01/09/2002 05:57 pm -0500 (Wednesday)
From: Michael-CRM Horowitz
To: Thorsen, Carl
Subject: Fwd: Privilege log

Here's a draft. Feel free to share with OLC.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/10/2002 10:20:14 AM
Subject: : QUICK PROOF ON STATS, PLEASE
Attachments: P_35VQ4003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-JAN-2002 15:20:14.00
SUBJECT:: QUICK PROOF ON STATS, PLEASE
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_35VQ4003_WHO.TXT_1>
```

Counsel to the President

Alberto R. Gonzales

Federal Bar Association

Austin, Texas

January 4, 2002

REV_00138851

- As with every Administration, there is a mixture…

- It has been an exciting year. Like many of you, I can chronicle my life with events I have watched unfold…

- It is one thing to tour the White House on a Saturday afternoon, but altogether different to walk into the Oval Office…

- The days begin before dawn, across the Roosevelt Bridge…
  - 7:30 am Senior Staff Meeting
  - 8:15 am Counsel Staff Meeting
  - 8:50 am Intelligence Briefing
  - 9:30 am National Security Council/ Homeland Security Council Meeting
  - 10:30 am Domestic Consequences Principals Committee
  - 12:00 p.m. Message Meeting
  - 6:00 p.m. Principals Committee Meeting

REV_00138853

- The rest of the day includes other miscellaneous meetings/judicial interviews/visits to the hill to visit with Senators about judicial candidates or members of Congress about legislation important to the President.

- I have a very talented staff of young lawyers, a group described in one publication as the best law firm in the country.

- My staff of 12 lawyers do much: 9 work on various matters, one works on ethics, one works on National Security Issues and one works on Homeland Security issues.

1.Clearance/Suitability

2.Ethics

3.Litigation/DOJ

4.Policy

5.Legislative Process

6.Executive Privilege

- Burton Subpoena

- Presidential Records

7.Clemency

- Executions

- Pardons

8.National Security

a) General Issues

- India/Pakistan

- Middle East

- Russia

b) War on Terrorism

- Treaty interpretation

- What tools/responses are lawful?

- How do we deal with people that are captured?

- Issues relating to continuity of government and succession to the Presidency

9.Judges

- During Transition POTUS said this is important
- Importance/Lifetime
- Process - Judicial Selection Committee
  - Membership
  - Identify vacancies/get names
  - Interviews
  - Go to POTUS
  - FBI Background Check
  - Nomination

- What we look for:
    - Judicial Restraint/Respect for Precedent
    - No litmus test
    - Imperfect Process
- Scorecard
    - Nominations
    - Confirmations

Let me give you some comparisons to where we are on judicial nominations.

Timing and Number of Judicial Nominations

(January 3, 2002)

First, Timing

- The President made his initial 11 circuit court nominations on May 9, 2001
  - President Reagan's initial nominations did not occur until July 9, 1981.
  - President George H.W. Bush's initial nominations did not occur until August 4, 1989.
  - President Clinton's initial nominations did not occur until August 6, 1993.

REV_00138860

Second, Number of Nominations Before August Recess

- The President made 44 circuit and district court nominations by the August recess.
  - President Reagan made 13 circuit and district nominations before the recess.
  - President George H.W. Bush's made 8 circuit and district nominations before the recess.
  - President Clinton made 13 circuit and district nominations before the recess.

Third, Number of Nominations During First Year

- The Administration anticipates that the President will make over 100 circuit and district court nominations during his first year in office.
- The Administration has nominated 66 judges…29 circuit court judges and 36 district court judges and one to the Court of International Trade.
  - President Reagan made a total of 44 circuit and district court nominations during his first year in office.

REV_00138862

- President George H.W. Bush's made a total of 23 circuit and district court nominations during his first year in office.
- President Clinton made a total of 47 circuit and district court nominations during his first year in office.

As for the number of our 66 nominees that have been confirmed:

- There have been 28 of our nominees confirmed…6 circuit and 22 district court judges.

REV_00138863

- 42% of total nominees confirmed.

- So 21% of our circuit court nominees and 59% of our district court nominees have been confirmed.

When President Bush took office there were 82 vacancies. Right now there are 94 vacancies meaning that despite record number of nominations, the federal judiciary is actually shrinking.

REV_00138864

Compare those ratios with the confirmation percentages of the past three presidents during their first year in office.

- Presidents Reagan, Bush and Clinton nominated 44 judges prior to the August recess in the first year of their respective Administrations.
- Of those 44, 43 were confirmed by the end of the President's first year in office.
- This President made 44 circuit and district court nominations - yet only 24 have been confirmed.

94 US Attorneys *94 US Marshals*

REV_00138865

Closing

- Rewarding/Challenging/Much rides on the advice…

- It is a job of relentless pressure/reflected in average tenure - 18 months/Clinton had seven Counsels.

- But there are fun moments
    - Horseshoes
    - Golf
- Yes - the hours are long, pay not so great
    - West Wing visitors
    - Sons playing on South Lawn
- Questions and Answers

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/10/2002 12:40:19 PM
Subject: : Personnel Announcements for 01.11.01
Attachments: P_0O1R4003_WHO.TXT_1.doc; P_0O1R4003_WHO.TXT_2.doc; P_0O1R4003_WHO.TXT_3.doc; P_0O1R4003_WHO.TXT_4.doc; P_0O1R4003_WHO.TXT_5.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JAN-2002 17:40:19.00
SUBJECT:: Personnel Announcements for 01.11.01
TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Is the bioethics board the "Kass Commission" for which Dr. Cooney was a candidate? If so, where are you on disappointee calls? This is the one Brett and I would like to see go smoothly (as all of yours do!). Please advise as to status of disappointee call so I can weigh whether to call Manus Cooney. Thanks.

---------- Forwarded by Kyle Sampson/WHO/EOP on 01/10/2002 04:37 PM ----------

Carrie B. Cabelka 01/10/2002 05:27:30 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Personnel Announcements for 01.11.01

Message Sent
To:_____
Clay Johnson III/WHO/EOP@EOP
Dorothy C. Garvin/WHO/EOP@EOP
Katja Bullock/WHO/EOP@EOP
Rebecca Contreras/WHO/EOP@EOP
Darren W. Bearson/WHO/EOP@EOP
Edmund C. Moy/WHO/EOP@EOP
Dina Powell/WHO/EOP@EOP
Kim E. Nickles/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Jan E. Williams/WHO/EOP@EOP
Bradley E. Hester/WHO/EOP@EOP
Nicholas E. Calio/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Harriet Miers/WHO/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP

Paul B. Dyck/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
Laura L. Flippin/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
G. Timothy Saunders/WHO/EOP@EOP
Douglas L. Hoelscher/WHO/EOP@EOP
Carrie C. Pauska/WHO/EOP
Jack Howard/WHO/EOP@EOP
Michael J. Conway/WHO/EOP@EOP
Jackie Arends/WHO/EOP@EOP
Raquel Cabral/WHO/EOP@EOP
Andrea McDaniel/WHO/EOP@EOP
Christine Anthony/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_001R4003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_001R4003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_001R4003_WHO.TXT_3>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_001R4003_WHO.TXT_4>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_001R4003_WHO.TXT_5>

January 11, 2002

MEMORANDUM FOR ARI FLEISCHER

FROM: CLAY JOHNSON III

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to appoint the following individuals as Members of the President's Council on Bioethics for a two-year term:

Elizabeth Helen Blackburn of Australia, vice New Position
Stephen Lisle Carter of Connecticut, vice New Position
Rebecca Susan Dresser of Missouri, vice New Position
Daniel Willett Foster of Texas, vice New Position
Yoshihiro Francis Fukuyama of Virginia, vice New Position
Michael S. Gazzaniga of Vermont, vice New Position
Robert Peter George of New Jersey, vice New Position
Alfonso Gomez-Lobo of Maryland, vice New Position
Mary Ann Glendon of Massachusetts, vice New Position
William Barton Hurlbut of California, vice New Position
Charles Krauthammer of Maryland, vice New Position
William Francis May of Texas, vice New Position
Paul Rodney McHugh of Maryland, vice New Position
Gilbert Carl Meilaender, Jr. of Indiana, vice New Position
Janet Davison Rowley of Illinois, vice New Position
Michael Joseph Sandal of Massachusetts, vice New Position
James Quinn Wilson of California, vice New Position

cc: Alberto R. Gonzales
Nicholas Calio
Harriet Miers
Tim Saunders
Matt Schlapp
Rebecca Contreras

January 11, 2002

MEMORANDUM FOR ARI FLEISCHER

FROM: CLAY JOHNSON III

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to nominate the following individual:

Donald S. Prophete of Kansas, to be General Counsel of the Equal Employment Opportunity Commission for a term of four years, vice Clifford Gregory Stewart.

cc: Alberto R. Gonzales
Nicholas Calio
Harriet Miers
Tim Saunders
Matt Schlapp
Ed Moy

January 11, 2002

MEMORANDUM FOR ARI FLEISCHER

FROM: CLAY JOHNSON III

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to appoint the following individuals as Members of the President's National Security Telecommunications Advisory Committee:

Thomas Casey of California (Global Crossing), vice Louis V. Gerstner, Jr.
Christopher B. Galvin of Illinois (Motorola), vice John Francis Mitchell
Arun Netravali of New Jersey (Lucent Technologies), vice John H. Mattingly
Edward Earl Whitacre, Jr. (SBC Communications), vice Larry J. Schumann

cc: Alberto R. Gonzales
Nicholas Calio
Harriet Miers
Tim Saunders
Matt Schlapp
Rebecca Contreras

REV_00138878

January 11, 2002

MEMORANDUM FOR ARI FLEISCHER

FROM: CLAY JOHNSON III

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to appoint the following individuals as Members of the Board of Trustees of the John F. Kennedy Center for the Performing Arts for a term expiring 09/01/07:

Lois Betts of New York, vice New Position
Bo Derek of California, vice New Position
David Girard-deCarlo of Pennsylvania, vice New Position
Anne Sewell Johnson of Texas, vice New Position
Kathleen Koll of California, vice New Position
Catherine A. Stevens of Alaska, vice New Postion

cc: Alberto R. Gonzales
Nicholas Calio
Harriet Miers
Tim Saunders
Matt Schlapp
Rebecca Contreras

January 11, 2002

MEMORANDUM FOR ARI FLEISCHER

FROM: CLAY JOHNSON III

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to appoint the following individuals as Members of the Federal Service Impasses Panel:

Richard Barber Ainsworth, Jr. of Ohio, for the remainder of a five-year term expiring 01/10/04, vice David J. Leland.

Andrea Fischer Newman of Michigan, for the remainder of a five-year term expiring 01/10/02 and an additional five-year term expiring 01/10/07, vice John C. Wofford.

Joseph Carter Whitaker of Louisiana, for the remainder of a five-year term expiring 01/10/02 and an additional five-year term expiring 01/10/07, vice Stanley M. Fisher.

In addition, please announce the President's intention to appoint the following candidate as Chairman of the Federal Service Impasses Panel:

Becky Norton Dunlop of Virginia, vice Bonnnie Prouty Castrey.

cc: Alberto R. Gonzales
Nicholas Calio
Harriet Miers
Tim Saunders
Matt Schlapp
Rebecca Contreras

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>
Sent: 1/10/2002 11:23:25 AM
Subject: : GAO protocol

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-JAN-2002 16:23:25.00
SUBJECT:: GAO protocol
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI: I have talked to Ed Whelan and Paul Colborn at OLC about this
matter. They are contacting the department/agency general counsels and
will take appropriate steps to coordinate a uniform Executive Branch
response.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Leanna F. Terrell/OA/EOP@EOP [OA] <Leanna F. Terrell>;Erna G. Beverly/OA/EOP@EOP [OA] <Erna G. Beverly>
Sent: 1/10/2002 4:08:21 PM
Subject: : upgrade of Presidential Diary System

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-JAN-2002 21:08:21.00
SUBJECT:: upgrade of Presidential Diary System
TO:Leanna F. Terrell ( CN=Leanna F. Terrell/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Erna G. Beverly ( CN=Erna G. Beverly/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

You requested written White House Counsel approval for use of
sample data w/r/t an upgrade of the Presidential Diary system. This is
the written approval.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Leanna F. Terrell/OA/EOP@EOP [OA] <Leanna F. Terrell>;Erna G. Beverly/OA/EOP@EOP [OA] <Erna G. Beverly>
Sent: 1/10/2002 4:08:21 PM
Subject: : upgrade of Presidential Diary System

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-JAN-2002 21:08:21.00
SUBJECT:: upgrade of Presidential Diary System
TO:Leanna F. Terrell ( CN=Leanna F. Terrell/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Erna G. Beverly ( CN=Erna G. Beverly/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

You requested written White House Counsel approval for use of
sample data w/r/t an upgrade of the Presidential Diary system. This is
the written approval.
```

Media Review - Judicial Nominations
Thursday, January 10, 2002

General Judicial Articles

"3 Judges, 2 Lawyers Remain on List to Replace Federal Judge," 1
Robert Ruth, *The Columbus Dispatch*, January 10, 2002

"Following Jesse's Lead," 2
The Hotline, January 9, 2002

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Op/Eds

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Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

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By Robert Ruth
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REV_00138905

Sources said the five remaining candidates for the lifetime appointment are William A. Klatt, Taft's chief counsel; Judge Gregory L. Frost of the Licking County Common Pleas Court; Judges Patrick M. McGrath and Michael H. Watson of the Franklin County Common Pleas Court; and Catherine Adams, Lashutka's wife and a partner with the Columbus branch of the law firm Squire, Saunders & Dempsey. U.S. Sens. Mike DeWine and George V. Voinovich, both Ohio Republicans, are expected to recommend a candidate to the White House within weeks. President Bush then would formally nominate the person, who would be subject to Senate confirmation.

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The nomination and confirmation process is expected to take months, even after DeWine and Voinovich make their recommendation. The candidate's background must be checked by the FBI before Bush sends a name to the Senate.

The Democratic-controlled Senate has moved slowly this year in confirming the Republican president's judicial nominees.

Smith's replacement will be paid $145,100 a year to handle federal criminal and civil cases from a 30- county area in central and southeastern Ohio.

Following Jesse's Lead

The Hotline
Wednesday, January 9, 2002

UNC School Of Law professor Gene Nichol, writing in the Raleigh News & Observer, notes that during Pres. Clinton's WH yrs, Sen. Jesse Helms (R-NC) "blocked all" NC judicial nominations to the 4th US Circuit of Appeals. Well-qualified candidates were put forward," but Helms said "no new judges were needed." Helms later reversed his position when Pres. Bush nominated Judge Terrence Boyle, an ex-Helms staffer. "But, this time, Edwards was the holdup. He refused to let Boyle pass unless accompanied by a more moderate" NC addition, and NC, as a result, is still "unrepresented." So "now Edwards is under fire." The 4th Circuit, "dominated by Reagan and Bush appointees," has "repeatedly handed down rulings rejected by all other circuits, only to be reversed by the solidly conservative" SCOTUS "for going too far." Edwards seems "unwilling to aid a process that will inexorably lead to weaker civil liberties protections for" NCians "than exist in the rest of the nation. I'm inclined to cheer the effort. Sometimes you can't face the future without remembering the past"

REV_00138906

Judge Garcia to "Slow Down"; Move Creates Opening in Western District

By Gary Martin
The San Antonio Express-News
Tuesday, January 8, 2002

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Garcia, 76, was appointed to the federal bench in 1981 by President Carter.

He is the first Mexican American to serve as a judge in the Western Judicial District, which sweeps from Austin to El Paso and includes San Antonio, Del Rio and Midland. Chief Judge Royal Ferguson has indicated he will move to San Antonio to fill the vacancy created by Garcia, leaving a judicial vacancy in Midland to be filled by the president.

Garcia, who has been ill, announced in a letter to Bush and other federal judges that he would take senior status Jan. 15. The change in status will allow Garcia to retain some judicial duties.

"He wants to remain in service," said Marilyn Primomo, a briefing attorney for Garcia in San Antonio, adding that the change of status "allows him to slow down a little."

U.S. Sens. Phil Gramm and Kay Bailey Hutchison, both Texas Republicans, have indicated they will begin a search for a candidate to fill the Western Judicial District vacancy.

The senators have recommended to Bush two candidates for previous openings in the Western Judicial District: Philip Martinez in El Paso and Alia Moses Ludlum of Del Rio.

Martinez, a former state judge in El Paso, has been nominated by Bush and is awaiting Senate confirmation.

The recommendation of Ludlum, a U.S. magistrate in Del Rio, is being reviewed at the White House.

Gramm and Hutchison are likely to select the candidate for the vacancy from a pool of applicants screened for the earlier posts.

Garcia was born in San Antonio, just blocks from the U.S. Courthouse, and began his legal career as an assistant criminal district attorney. He was elected and served as judge for Bexar County Court-at-Law No. 2 for 10 years.

He was appointed judge to the state's 144th District Court in 1975, and he served in that capacity until Carter selected him for the federal bench six years later.

REV_00138907

In 1998, Garcia attended a ceremony at the Bexar County Criminal Justice Center where his portrait was unveiled for years of service.

"Things don't just happen by themselves," Garcia said at the event. "Everyone has to have help and advice and support from his friends."

Op/Eds

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The Deseret News
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Senators are throwing around such statistics to seek political points about judicial confirmations. And a couple of Utah nominees are pinned in the crossfire.

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Leahy said that is one more than the 27 confirmed by a Democratic-controlled Senate in Democrat Bill Clinton's first year in office.

Sounds big-hearted, right? Democrats gave Bush one more judge than they gave their own Clinton -- even though they think Republicans on the Supreme Court improperly gave Bush the presidency through rulings that stopped the Florida vote recount.

Immediately jumping in, wearing his statistics judo black belt, was Hatch.

He countered Leahy by pointing out that Clinton made just 32 judicial nominations during his first year in office. The Senate confirmed 27, for a confirmation rate of 84 percent.

But Bush nominated 66 people as judges in 2001. Only 28 were confirmed, for a low confirmation rate of 42 percent. That's exactly half the rate the Senate gave to Clinton.

Besides merely blocking Leahy, Hatch tried attacking with some statistics of his own.

For example, Hatch said since Democrats are proud they gave Bush as many judges as Clinton received in his first year -- they should continue by also giving Bush as many judges next year as they gave Clinton in his second year: a whopping 100.

REV_00138908

Fat chance. Bush's nominees are bogged down for many reasons -- leading to the statistics judo. Among casualties are two University of Utah law professors. Paul Cassell is nominated to Federal District Court in Utah. And Michael McConnell is nominated to the 10th Circuit Court of Appeals.

Both are conservatives. Democrats are not anxious to put more true-blue conservatives on the bench.

Also, Democrats -- without saying it out loud -- appear to be giving Republicans some payback.

They contend that Republicans confirmed too few of Clinton's nominees during his last year in office. They were furious at Republicans for taking the liberal-leaning American Bar Association out of the confirmation process. When Democrats seized back Senate control earlier this year, they restored that power to the ABA. The ABA then soon gave mixed ratings to Cassell.

Democrats also claimed Bush had not consulted closely enough with them about home-state nominees and that Hatch as chairman also gave home-state Democrats too little say. Hence, confirmations proceed at snail's pace -- maybe a glacier's pace.

Further complicating chances of McConnell and Cassell -- but also maybe giving them hope -- is that Democrats may use them as bargaining chips with home-state-sponsor Hatch.

They did that in 2000 when they long delayed the nomination of Ted Stewart to the Utah federal bench. It ended when then-chairman Hatch in exchange allowed votes on some controversial nominees made by Clinton.

The games being playing have left one of every nine seats vacant on the federal bench. It also caused White House spokesman Ari Fleischer to complain, "The president deserves to have his team in place, particularly during a time of war."

Senate Democratic Leader Tom Daschle responded that such comments are "part of an increasingly fierce and highly coordinated campaign by Republicans in Washington to attack Senate Democrats."

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He said, "The process of advice and consent on the president's judicial nominations is not a game. This is not football or baseball, and the goal here is not a particular set of numbers. These are nominations for very important positions . . . and it is the Senate's constitutional obligation to review them."

But 2002 is an election year. With politicians seeking any advantage for their parties, the games -- and use of statistics and other darned lies -- will likely continue.

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Depleted Bench; The Chief Justice Decries the Lack of Federal Judges

Akron Beacon Journal
Tuesday, January 8, 2001

Even the daily operations of the U.S. Supreme Court have been affected by the terrorist attacks of Sept. 11 and the subsequent anthrax threat. Chief Justice William Rehnquist noted last week in his annual report on the federal courts that the justices may not hear as many cases as usual this year. Mail deliveries have been delayed. As a result, the flow of legal documents has been interrupted.

The chief justice stretched his point to suggest that the failure of the Senate to confirm nominees to the federal bench jeopardizes (however slightly) the war on terror. Hard to imagine a federal court failing to act on a key wiretap or other concern because its staffing levels have fallen.

Rehnquist could easily have stuck with the view he articulated when Republicans held the Senate. Senators abuse the principle of advise and consent when they turn nominations into little more than political combat. Republicans blocked Clinton nominees, and now Democrats have thrown obstacles in the way of Bush selections.

You need only count the vacancies on the U.S. Court of Appeals for the 6th Circuit in Cincinnati. The court should have 16 judges. It currently operates at half-strength. The war on terror may not be compromised, but the interests of people with business before the court have been ill-served.

President Bush has put forward six nominations for the 6th circuit. A Jeffrey Sutton, a former Ohio solicitor, may deserve most careful assessment. A Justice Deborah Cook of the Ohio Supreme Court deserves better than to have her nomination held hostage to Michigan senators upset with the selections from their state.

The Senate has an important role. It should fulfill its duty by moving ahead on judicial nominations.

REV_00138910

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REV_00138913

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REV_00138914

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REV_00138915

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REV_00138916

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REV_00138918

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/10/2002 2:09:55 PM
Subject: : Draft memo to White House staff re Enron
Attachments: P_HL4R4003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JAN-2002 19:09:55.00
SUBJECT:: Draft memo to White House staff re Enron
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Here is the draft memorandum. Please let me know if you have any comments or suggestions.

Libby, please fax this to the judge, as he will probably not be able to detach it on his blackberry.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HL4R4003_WHO.TXT_1>

DRAFT: January 10, 2002 [7:07 p.m.]

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: GUIDELINES FOR COMMUNICATIONS RELATING TO MATTERS SUBJECT TO INVESTIGATION

From the first days of the Administration, President Bush and Secretary Card have emphasized the importance of conducting ourselves with honor and integrity and maintaining the highest ethical standards. After President Bush's first year in office, we can all be proud of the Administration's record in this regard. As we head into our second year, the announcement of a variety of investigations into the causes and consequences of the Enron corporation bankruptcy provides an excellent opportunity for us all to review some basic but important guidelines that will help to ensure our continued success.

The President has made clear that he is committed to seeing that the appropriate agencies of the federal government conduct full and fair investigations into Enron's collapse and examine changes in law, regulation, and policy that might help to correct whatever problems may have contributed to it. In complex situations of this kind, however, even entirely innocent actions or statements by members of the White House staff can unfortunately be misconstrued or distorted and give rise to damaging suspicions or accusations. To help reduce the risk of such misunderstandings, we ask that you observe the following guidelines:

1. Refrain from taking any action or making any communication that might influence – or be perceived as influencing or attempting to influence – the course of an official investigation. Professional investigators and law enforcement personnel must be permitted to do their jobs and find and evaluate the facts unaffected by any considerations apart from a full and vigorous pursuit of the truth. If you need to communicate with people outside the White House, whether within the government or in the private sector, in relation to a matter that may be under investigation, please check with my office first.

2. If you are contacted by any person conducting an investigation who is requesting documents or other information from you, please contact my office so that we may assist you in ensuring that a timely and appropriate response is made.

3. Consistent with our previous guidance concerning the requirements of the Presidential Records Act, do not destroy or discard any presidential records. In addition, even your personal notes or other documents that might not constitute presidential records should be preserved if they pertain, even indirectly, to a matter that is under investigation.

4. If you are in doubt about the propriety of anything you are planning or being requested to do or say, please do not hesitate to contact my office for additional guidance.

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>
CC: Brett Kavanaugh [WHO] <Brett Kavanaugh>
Sent: 1/11/2002 4:44:20 AM
Subject: : Re: judges talking points from yesterday

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JAN-2002 09:44:20.00
SUBJECT:: Re: judges talking points from yesterday
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:Brett Kavanaugh (Brett Kavanaugh [WHO])
READ:UNKNOWN
End Original ARMS Header

They went far and wide.

Tim Goeglein
01/10/2002 03:46:44 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: judges talking points from yesterday

M

i know you are on top of this already

tsg

---------- Forwarded by Tim Goeglein/WHO/EOP on 01/10/2002 03:46 PM ----------

Brett M. Kavanaugh
01/10/2002 01:30:13 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: judges talking points from yesterday

this is just to confirm that the judges talking points from yesterday can and should be circulated widely to the Hill, interested groups and parties, and state and local.

Message Sent
To:_____
Matthew A. Schlapp/WHO/EOP@EOP
Douglas L. Hoelscher/WHO/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Matthew E. Smith/WHO/EOP@EOP
Heather Wingate/WHO/EOP@EOP

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 1/11/2002 7:23:12 AM
Subject: : National Review on Enron

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JAN-2002 12:23:12.00
SUBJECT:: National Review on Enron
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Brett,

Libby asked me to forward this article to you. Please let us know if this is something the Judge should see.

Thanks,
Patrick

http://www.nationalreview.com/york/yorkprint011002.html

From: Edward_Ingle@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole E. Grodner/WHO/EOP@EOP [WHO] <Nicole E. Grodner>;Melissa L. McAdoo/WHO/EOP@EOP [WHO] <Melissa L. McAdoo>
Sent: 1/11/2002 4:14:29 AM
Subject: : agency FOIA requests
Attachments: P_BXAR4003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward_Ingle@who.eop.gov ( Edward_Ingle@who.eop.gov [ UNKNOWN ] )
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READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nicole E. Grodner ( CN=Nicole E. Grodner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Melissa L. McAdoo ( CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

from this week's cabinet report submissions....

(See attached file: FOIA1-11-02.doc)
- FOIA1-11-02.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BXAR4003_WHO.TXT_1>
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1/11/02

AGENCY FOIA REQUESTS

HHS

- The **Physicians Committee for Responsible Medicine** (PCRM) has filed a lawsuit for information about an experiment involving cats at Ohio State University (OSU) in Columbus. The research is funded by the NIH National Institute on Drug Abuse. PCRM's suit alleges NIH improperly withheld details of OSU veterinarian Michael Podell's work, aimed at developing an animal model for brain damage known to occur in humans who are both drug abusers and infected with the AIDS virus. The suit is being brought in the U.S. District Court for the District of Columbia

- **ACF received the following requests:**
  Timothy J. Casey, of the NOW Legal Defense Fund, requested copies of documents in reference to comments received regarding the listening sessions on TANF reauthorization.

  Gordy Holt, of the Seattle Post-Intelligencer, requested copies of documents pertaining to all financial audit-reports involving Seattle's 1996 JOLI grant recipient, Black Dollar Days Task Force.

- **HRSA received the following requests:**

  Twelve requests for samples of funded Community-Based Abstinence Education Planning or Implementation grant applications.

  Riverfront Times, *St. Louis, MO*, requested the 1998,1999, and 2000 audit reports for Grace Hill Neighborhood Health Centers, also located in St. Louis.

DOI

- **Landmark Legal Foundation v. Department of the Interior.** Landmark Legal Foundation mailed a FOIA request to the BLM on October 24, 2001. The BLM evidently never received the request due to the non-delivery of mail from the Brentwood Post Office after the anthrax incident. Landmark Legal Foundation served this suit on the Department on December 26, 2001, which is the first anyone at the Department or BLM had heard of the request. The BLM is beginning to process the request, which is for numerous documents pertaining to issuance or award of grants or contracts to non-profit organizations, from 1993 to the present. DOI is contacting the U.S. Attorney's Office to determine how to handle the case.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 1/11/2002 8:58:18 AM
Subject: :
Attachments: P_SXNR4003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JAN-2002 13:58:18.00
SUBJECT::
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 01/11/2002 01:58 PM ----------

"Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
01/11/2002 01:44:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Here's the draft letter to Burton, per our conversation. FB

at some point soon we should probably send a letter like this just to make a record of Burton's bs move.

i don't suppose you've heard anything encouraging?

-----Original Message-----
From: Burton, Faith
Sent: Friday, January 11, 2002 11:57 AM
To: Thorsen, Carl
Subject: Here's the draft letter to Burton, per our conversation. FB

- burton.111.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SXNR4003_WHO.TXT_1>

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft January 11, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is to follow up on the letter from the Honorable Alberto Gonzalez, Counsel to the President, dated January 10, 2002, regarding the Committee's subpoena for sensitive deliberative prosecutorial memoranda.

In accordance with Judge Gonzalez's letter, we scheduled a meeting with Committee staff for yesterday afternoon to confer about the documents subject to the President's assertion of executive privilege and explore possibilities for accommodating the Committee's oversight needs, consistent with Executive Branch interests. We were disappointed that Committee staff canceled the meeting moments before it was scheduled to begin. It is not clear to us how the issues relating to these documents can be resolved if the Committee is unwilling to engage in the accommodation process by meeting with us.

We are advised that you intend to hold a hearing on January 23, 2002 about executive privilege precedents and while we will be prepared to provide testimony on that subject, we were under the impression that you were primarily interested in these documents in connection with your oversight regarding the FBI's handling of informants in Boston. If that is, in fact, the Committee's interest, then I hope that you will agree to meet with Department representatives in the near future to discuss the outstanding issues relating to the Boston documents.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/11/2002 11:51:29 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JAN-2002 16:51:29.00
SUBJECT:: Re:
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I hadn't heard about it. If you have a program, I wouldn't mind seeing it. Odds are I won't be able to make it.

Tim Goeglein
01/11/2002 04:02:29 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

My friends

Are you going to the CATO debate the 16th on judicial ideology?

4pm at CATO. I am going. Let me know.

Warmly

tsg

From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent:	1/11/2002 11:57:13 AM
Subject:	: Memo to staff
Attachments:	P_6BWR4003_WHO.TXT_1.doc

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CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JAN-2002 16:57:13.00
SUBJECT:: Memo to staff
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6BWR4003_WHO.TXT_1>
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DRAFT: January 11, 2002 [5:07 p.m.]

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: TIMOTHY FLANIGAN
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: GUIDELINES FOR COMMUNICATIONS RELATING TO MATTERS SUBJECT TO INVESTIGATION

From the first days of the Administration, President Bush and Chief of Staff Card have emphasized the importance of conducting ourselves with honor and integrity and maintaining the highest ethical standards. After President Bush's first year in office, we can all be proud of the Administration's record in this regard. As we head into our second year, the announcement of a variety of investigations into the causes and consequences of the Enron corporation bankruptcy provides an excellent opportunity for us all to review some basic but important guidelines that will help to ensure our continued success.

The President has made clear that he is committed to seeing that the appropriate agencies of the federal government conduct full and fair investigations into Enron's collapse and examine changes in law, regulation, and policy that might help to correct whatever problems may have contributed to it. In complex situations of this kind, however, even entirely innocent actions or statements by members of the White House staff can unfortunately be misconstrued. To help reduce the risk of such misunderstandings, we ask that you observe the following guidelines:

1. Refrain from taking any action or making any communication that might influence – or be perceived as influencing or attempting to influence – the course of an official investigation. Professional investigators and law enforcement personnel must be permitted to do their jobs and find and evaluate the facts unaffected by any considerations apart from a full and vigorous pursuit of the truth. If you need to communicate with people outside the White House, whether within the government or in the private sector, in relation to a matter that may be under investigation, please check with my office first.

2. If you are contacted by any person conducting an investigation who is requesting official documents or other official information from you, please contact my office so that we may assist you in ensuring that a timely and appropriate response is made. Inquiries or requests for information from the media should be referred to the Press Office.

3. Consistent with our previous guidance concerning the requirements of the Presidential Records Act, do not destroy or discard any presidential records. In addition, even your personal notes or other documents that do not constitute presidential records should be preserved if they pertain to a matter that is under investigation.

4. If you are in doubt about the propriety of anything you are planning or being requested to do or say, please do not hesitate to contact my office for additional guidance.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 1/11/2002 12:05:33 PM
Subject: : Slightly revised
Attachments: P_2OWR4003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JAN-2002 17:05:33.00
SUBJECT:: Slightly revised
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2OWR4003_WHO.TXT_1>
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DRAFT: January 11, 2002 [5:07 p.m.]

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: TIMOTHY E. FLANIGAN
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: COMMUNICATIONS RELATING TO
MATTERS SUBJECT TO INVESTIGATION

From the first days of the Administration, President Bush and Chief of Staff Card have emphasized the importance of conducting ourselves with honor and integrity and maintaining the highest ethical standards. After President Bush's first year in office, we can all be proud of the Administration's record in this regard. As we head into our second year, the announcement of a variety of investigations into the causes and consequences of the Enron Corporation bankruptcy provides an excellent opportunity for us all to review some basic but important guidelines that will help to ensure our continued success.

The President has made clear that he is committed to seeing that the appropriate agencies of the federal government conduct full and fair investigations into Enron's collapse and examine changes in law, regulation, and policy that might help to correct whatever problems may have contributed to it. In complex situations of this kind, however, even entirely innocent actions or statements by members of the White House staff can unfortunately be misconstrued. To help reduce the risk of such misunderstandings, we ask that you observe the following guidelines:

1. Refrain from taking any action or making any communication that might influence – or be perceived as influencing or attempting to influence – the course of an official investigation. Professional investigators and law enforcement personnel must be permitted to do their jobs and find and evaluate the facts unaffected by any considerations apart from a full and vigorous pursuit of the truth. If you need to communicate with people outside the White House, whether within the government or in the private sector, in relation to a matter that may be under investigation, please check with my office first.

2. If you are contacted by any person conducting an investigation who is requesting official documents or other official information from you, please contact my office so that we may assist you in ensuring that a timely and appropriate response is made. Inquiries or requests for information from the media should be referred to the Press Office.

3. Consistent with our previous guidance concerning the requirements of the Presidential Records Act, do not destroy or discard any presidential records. In addition, even your personal notes or other documents that do not constitute presidential records should be preserved if they pertain to a matter that is under investigation.

4. As always, if you are in doubt about the propriety of anything you are planning or being requested to do or say, please do not hesitate to contact my office for additional guidance.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/12/2002 3:14:51 PM
Subject: : Enron Chronology
Attachments: P_T37S4003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-JAN-2002 20:14:51.00
SUBJECT:: Enron Chronology
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is the chronology of Enron events that Brad started and I added to
today.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_T37S4003_WHO.TXT_1>
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ENRON CHRONOLOGY
(compiled from public secondary sources)

Date	Event
Aug. 2000	Enron stock trading at $90 per share.
Sept. 10, 2000	Enron Chairman Ken Lay contributes more than $290,000 to the Bush campaign.
Jan. 3, 2001	Lay is one of the 474 people President-elect Bush names to advise his presidential transition team.
Feb. 2001	Jeffrey Skilling becomes Enron's CEO; Lay remains Chairman.
Feb. 22, 2001	Lay and other Enron officials meet with White House energy task force staff at the White House.
March 7, 2001	Lay and other Enron officials again meet with energy task force staff.
April 17, 2001	Vice President *Cheney* meets with Lay and other Enron officials.
April 30, 2001	President *Bush* sees Lay at a literacy foundation fundraiser in Texas; Enron stock is trading at almost $60 a share.
May 17, 2001	Energy task force report is issued.
June 5, 2001	Senior Advisor *Karl Rove* divests his stocks in energy, defense, and pharmaceutical companies; *Rove* owned holdings worth more than $100,000 in each Enron, Boeing, General Electric, and Pfizer.
June 24, 2001	Vice President *Cheney* has his last contact with Lay at a conference.
June 30, 2001	White House acknowledges *Rove's* involvement in developing the administration's energy policy at a time when he owned stock in energy companies.
Aug. 7, 2001	Officials from a German subsidiary of Enron meet with energy task force staff.
Aug. 14, 2001	Lay takes over as Enron CEO after Skilling resigns.
Oct. 10, 2001	Member of Vice President's staff meets with Enron officials to discuss energy policy; Enron's financial position is not discussed.

Oct. 15, 2001	Lay calls Commerce Secretary *Don Evans* while Evans is in Russia on a trade mission; the call concerns Enron energy project in India and does not relate to Enron's financial difficulties.
Oct. 16, 2001	Enron reports loss of $618 million for third quarter and discloses that transactions involving partnerships run by CFO Andrew Fastow had reduced shareholder equity by $1.2 billion.
Oct. 17, 2001	SEC notifies Enron that it has begun an inquiry into the Fastow partnership transactions; Enron and 401(k) administrator Northern Trust "lock down" Enron retirement funds, barring employees from selling shares of Enron stock.
Oct. 22, 2001	Enron publicly acknowledges the SEC inquiry into possible conflicts of interest relating to its dealings with partnerships run by CFO Fastow; news causes Enron stock to fall by more than 20%.
Oct. 23, 2001	Enron states that it may have to issue additional stock because of shortfalls from partnership investments; Lay tries to reassure investors in conference call.
Oct. 24, 2001	Fastow resigns under pressure.
Oct. 25, 2001	Enron draws down $3 billion from its lines of credit.
Oct. 26, 2001	Lay calls Federal Reserve Chairman Alan Greenspan to provide information about Enron; Greenspan takes no action in response to the call; Lay also calls Secretary *Evans*, who is out of town.
Oct. 28, 2001	Lay calls Treasury Secretary *Paul O'Neill* to provide a heads up on Enron's precarious financial condition as it might relate to the capital markets; *O'Neill* takes no action to assist the company.
Oct. 29, 2001	Secretary *Evans* returns Lay's call. Lay asks if *Evans* can do anything to influence Moody's decision to downgrade Enron's credit rating; *Evans* takes no action; at a previously scheduled lunch, *Evans* and *O'Neill* discuss the Lay calls and agree that no action should be taken; Enron's credit is downgraded.
Oct. 31, 2001	SEC announces that it has upgraded its Enron inquiry into a formal investigation.
Late Oct. Early Nov.	Enron President Greg Whalley has six to eight conversations with *Peter Fisher*, Treasury Undersecretary for Domestic Finance, including one in which Whalley asks *Fisher* to encourage Enron's lenders to give Enron a credit extension; *Fisher* takes no action.

REV_00138980

Nov. 2, 2001	Energy Secretary *Spencer Abraham* calls Lay to talk about Enron's financial problems; Lay does not ask for help and *Abraham* offers none; Enron's auditor, Arthur Andersen, reports to Enron that it has found possible criminal actions in the company's financial management.
Nov. 5, 2001	Enron seeks $2 billion in capital as it struggles to keep its credit rating from falling to junk bond status.
Nov. 6, 2001	Enron's stock falls below $10 a share.
Nov. 8, 2001	Lay again calls Secretary *O'Neill* to discuss Enron's deteriorating financial condition; former Treasury Secretary Robert Rubin calls *Fisher* to ask whether the administration could intervene on behalf of Enron with bond-rating agencies to avoid reduction of Enron's credit rating; *Fisher* takes no action; Enron announces financial statements from 1997 are "unreliable" and may have overstated income by $600 million.
Nov. 9, 2001	Enron files documents with the SEC revising financial statements for the past five years to reflect $567 million in losses; Enron fires two executives connected to the Fastow partnerships.
Nov. 10, 2001	Dynegy agrees to buy Enron for more than $8 billion in stock.
Nov. 13, 2001	Lay turns down a $60.6 million severance payment that would be triggered at the completion of the Dynegy deal.
Nov. 14, 2001	Enron says it is trying to raise up to $1 billion in private equity to shore up customer and market confidence.
Nov. 19, 2001	Enron restates third-quarter earnings again and reveals that it owes more money than it has available in the next year.
Nov. 20, 2001	Enron stock drops 23% to $6.99, the lowest level in nearly ten years.
Nov. 21-22, 2001	Enron wins three-week reprieve from J.P. Morgan Chase and Citigroup on a $690 million note; Goldman Sachs downgrades Enron's stock to neutral.
Nov. 26, 2001	Enron stock drops another 15%, to $4.01.
Nov. 28, 2001	Dynegy backs out of deal with Enron after S&P and Moody's downgrade Enron debt to junk status; Enron shuts down on-line energy trading; Enron stock trading at $.61.
Late Nov. Early Dec.	Department of Justice commences criminal investigation into Enron's collapse.

REV_00138981

Dec. 2, 2001	Enron files for Chapter 11 bankruptcy (listing assets of $49.8 billion and debts of $31.2 billion, not including items not listed on financial statements); files lawsuit against Dynegy for backing out of purchase deal (seeking $10 billion in damages and an injunction blocking Dynegy from seizing Enron's pipelines).
Dec. 3, 2001	Dynegy counter-sues; congressional hearings begin in House Financial Services Committee this week.
Dec. 5, 2001	Labor Department announces it is investigating Enron's freezing of 401(k) accounts in mid-October.
Dec. 12, 2001	Joseph Bernadino, the chief executive of Arthur Andersen, testifies before Congress that Enron may have violated securities laws.
Dec. 18, 2001	Senate hearings on pension fund occur; class action lawsuits regarding pension plans filed.
Jan. 3, 2002	Office of the Vice President provides letter to Rep. Henry Waxman revealing that the Vice President or his aides met with representatives of Enron six times in formulating national energy policy; subpoenas are issued by Senate Governmental Affairs Committee to top Enron executives and directors.
Jan. 9, 2002	Department of Justice confirms that it has begun a criminal investigation of Enron.
Jan. 10, 2002	President Bush states that he has never discussed Enron's financial problems with Lay and that he last saw Lay at an April 30 literacy foundation fundraiser in Texas; White House discloses the Enron contacts between Lay and Secretaries *O'Neill* and *Evans* prior to collapse; White House announces creation of task forces to study possible changes in federal pension rules to protect workers' retirement savings and to provide full disclosure of information to stockholders; Attorney General *John Ashcroft* and his chief of staff recuse themselves from Enron investigation because of campaign contributions made by Enron during Ashcroft's 2000 Senate campaign; the U.S. Attorney for the Southern District of Texas, Michael Shelby, also recuses because of relatives employed by Enron; Arthur Andersen reveals that its employees destroyed Enron-related documents in September, October, and November.
Jan. 11, 2002	Treasury Department discloses the calls from Lay to *Fisher* in late October and early November 2001; Energy Department discloses the call from Secretary *Abraham* to Lay; Army Secretary *Thomas White*, a former Enron vice chairman, announces that he has not talked to company officials since he took office on May 31, 2001; Senate Permanent Subcommittee on Investigations, chaired by Senator Carl Levin, issues 51 subpoenas to Enron,

REV_00138982

	49 of its officials, including Wendy Gramm, and Arthur Andersen; National Republican Congressional Committee announces that it will return $100,000 donated by Enron in 2001.
Jan. 24, 2002	Senate Governmental Affairs Committee, chaired by Sen. Lieberman, to hold hearing.

REV_00138983

From: CN=Carla B. Stone/OU=OMB/O=EOP [OMB]
To: Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>
CC: diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>;jay p. lefkowitz/omb/eop@eop [OMB] <jay p. lefkowitz>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;ansley c. tillman/opd/eop@eop [OPD] <ansley c. tillman>
Sent: 1/14/2002 5:21:03 AM
Subject: : Re: meeting on Victims of Foreign Terror Legislation

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Carla B. Stone ( CN=Carla B. Stone/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:14-JAN-2002 10:21:03.00
SUBJECT:: Re: meeting on Victims of Foreign Terror Legislation
TO:Eleanor L. Gillmor ( CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:diana l. schacht ( CN=diana l. schacht/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:rebecca a. beynon ( CN=rebecca a. beynon/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:jay p. lefkowitz ( CN=jay p. lefkowitz/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:ansley c. tillman ( CN=ansley c. tillman/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

2:00 works for Jay.
```

From: Blackwell, Craig <Craig.Blackwell@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/14/2002 4:55:32 AM
Subject: : EO 13223

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ( "Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:14-JAN-2002 09:55:32.00
SUBJECT:: EO 13223
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY-CLIENT COMMUNICATION

Brett,

I'm putting the finishing touches on a draft brief I hope to send around
by Wednesday.

It would help if you could give me some guidance on the following: do you
anticipate another interim release of Reagan records before the end of the
month (and, if so, by when and approx. how many pages)? Or, are you
planning to hold off until all remaining records are reviewed? Thanks.

Craig
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>
Sent: 1/14/2002 5:15:35 AM
Subject: : Re: meeting on Victims of Foreign Terror Legislation

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-JAN-2002 10:15:35.00
SUBJECT:: Re: meeting on Victims of Foreign Terror Legislation
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Wed at 2 works for me.

Eleanor L. Gillmor
01/14/2002 10:14:59 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Carla B. Stone/OMB/EOP@EOP, Ansley C. Tillman/OPD/EOP@EOP
Subject: meeting on Victims of Foreign Terror Legislation

Margaret would like to convene a meeting on Victims of Foreign Terror Legislation--would Wednesday afternoon work for everyone? Maybe 2pm? Please let me know, so we can finialize this today. I will send you the location when we have locked down a time.

Thanks,
Eleanor
6-5595

Message Sent
To:_____
Diana L. Schacht/OPD/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP
Jay P. Lefkowitz/OMB/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/14/2002 8:46:58 AM
Subject: : Re: Legal Guidance: Two Ohio Supporters

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-JAN-2002 13:46:58.00
SUBJECT:: Re: Legal Guidance: Two Ohio Supporters
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

absolutely -
thanks Brett -

cj

Brett M. Kavanaugh
01/14/2002 01:41:28 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Legal Guidance: Two Ohio Supporters

It is entirely appropriate for us to listen to the policy views of interested individuals, whether it be to (and through) the offices of Public Liaison, Legislative Affairs, Intergovernmental Affairs, Political Affairs, or some other appropriate mechanism. But decisions are made on the merits, of course, so no one should be under any misimpression about how the Administration's policy decisions are and will be made.

From: CN=Rebecca A. Beynon/OU=OMB/O=EOP [OMB]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/15/2002 3:09:33 AM
Subject: : Re: Tort Reform

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:15-JAN-2002 08:09:33.00
SUBJECT:: Re: Tort Reform
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Tuesday or Wednesday is fine. Thanks very much!

Courtney S. Elwood
01/15/2002 08:01:59 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: rebecca a. beynon/omb/eop@eop
bcc:
Subject: Re: Tort Reform

Yes, we do expect to get you comments. I unfortunately may be farther behind in my project than Brett. (I got pulled away on some other matters yesterday.) Would it inconvenience you terribly if we got you the comments on Wednesday? Would that give you enough time to prepare for the Friday meeting?

Brett M. Kavanaugh
01/14/2002 09:52:46 PM
Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP
cc: courtney s. elwood/who/eop@eop
bcc:
Subject: Re: Tort Reform

Yes, we are intending to get you our thoughts on Tuesday, probably afternoon. Thanks.

From: Rebecca A. Beynon on 01/14/2002 08:16:09 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Tort Reform

Hi Brett & Courtney - Did you have specific comments on the tort reform paper that we circulated at last week's meeting? As you know, we're hoping to put together another version that reflects the group's comments. Among other things, if there are proposals you think are not worth supporting and proposals that you think we should pursue, it would be very helpful to have your input. Any other thoughts are also welcome. Thanks very much.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stephen W. Devine/NSC/EOP@EOP [NSC] <Stephen W. Devine>
Sent: 1/15/2002 7:40:46 AM
Subject: : Re: Interviews of ISOO candidates

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JAN-2002 12:40:46.00
SUBJECT:: Re: Interviews of ISOO candidates
TO:Stephen W. Devine (CN=Stephen W. Devine/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

I would prefer doing these Friday afternoon after 2:30. I am
happy to see whoever you think I should, whether 2 or 5. Thanks.

Stephen W. Devine
01/14/2002 10:02:49 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Interviews of ISOO candidates

... Or, if you'd prefer, we could arrange to have each of the 5 come in,
one after the other, for a chat. ('Don't think you'll want more than a
half-hour with anyone, though -- shouldn't take even that long to get
their measure.) Let me know. Thanks. Steve
---------- Forwarded by Stephen W. Devine/NSC/EOP on
01/14/2002 10:08 AM ----------

Stephen W. Devine
01/11/2002 02:59:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: John B. Bellinger/NSC/eop@eop
Subject: Re: Interviews of ISOO candidates

Just picked up your note; sorry for the delay. I think you'd want to
start with the top 2; if either of those is acceptable, we know there'll
be no protest from Carlin & Co./NARA -- as you know, this is a very
anomalous appointment process. (He'll insist on consultation if look
below the top two, but not as between them.) Fall-back or follow-on is
certainly available to dig deeper, but it'd seem most efficient to start
with the two that emerged as front-runners. If that seems sensible, I
think the easiest way to arrange interviews is for us to agree on a time
that'd work for you and then call to invite each down -- to your office,
say, for a half-hour's chat. If you don't mind my sitting in, I may be
able to help you elicit some reactions on declass philosophy, priorities,
etc. that seem to tumble out when they're asked about specifics of the
current system -- and may be able to help question/spin out some themes
that emerged the other day. John may want to be there, as well, to form
an impression. How does all that sound? Times? Etc. Thanks. Steve

From: CN=Brian P. McKaig/OU=OA/O=EOP [OA]
To: Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/16/2002 3:55:31 AM
Subject: : Re: Replacement SecurID card for Brett Kavanaugh

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brian P. McKaig (CN=Brian P. McKaig/OU=OA/O=EOP [OA])
CREATION DATE/TIME:16-JAN-2002 08:55:31.00
SUBJECT:: Re: Replacement SecurID card for Brett Kavanaugh
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Lori,

I have assigned a replacement SecurID card for Brett Kavanaugh. The card may be picked up in NEOB 5116. Please bring the broken card.
Sorry for not getting back to you sooner.

Brian,

Lori L. Lorenzi
01/14/2002 09:12:50 AM
Record Type: Record

To: Brian P. McKaig/OA/EOP@EOP
cc:
Subject:

Brett Kavanaugh is in desperate need of a new Secure ID card. You cannot read the numbers on his card. His card number is 361064. Please call me to instruct me what I need to do to handle this.

Lori Lorenzi
6-5298

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Rebecca A. Beynon/OMB/EOP@EOP [OMB] <Rebecca A. Beynon>
Sent: 1/16/2002 8:48:37 AM
Subject: : today's 2:00 meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-JAN-2002 13:48:37.00
SUBJECT:: today's 2:00 meeting
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Rebecca A. Beynon ( CN=Rebecca A. Beynon/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I cannot make this meeting due to our Office meeting with
President at 2:20. But I believe my views are known to you (keep the
amount appropriate and reasonable and offset collateral sources), and I am
happy to do whatever follow-up is needed.
```

From: CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/16/2002 11:58:48 AM
Subject: : Re: FEMA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:16-JAN-2002 16:58:48.00
SUBJECT:: Re: FEMA
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks

Brett M. Kavanaugh
01/16/2002 03:52:32 PM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP
cc:
Subject: FEMA

OLC should have some info back to me tomorrow on that.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Rebecca A. Beynon/OMB/EOP@EOP [OMB] <Rebecca A. Beynon>
Sent: 1/16/2002 8:48:37 AM
Subject: : today's 2:00 meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-JAN-2002 13:48:37.00
SUBJECT:: today's 2:00 meeting
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Rebecca A. Beynon ( CN=Rebecca A. Beynon/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I cannot make this meeting due to our Office meeting with
President at 2:20. But I believe my views are known to you (keep the
amount appropriate and reasonable and offset collateral sources), and I am
happy to do whatever follow-up is needed.
```

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/16/2002 10:55:19 AM
Subject: : RE: FEMA matter

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:16-JAN-2002 15:55:19.00
SUBJECT:: RE: FEMA matter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

will do

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, January 16, 2002 1:53 PM
To: Whelan, M Edward III
Subject: RE: FEMA matter

I would like to report back quickly on the initial question; maybe by
end
of day tomorrow on that?

(Embedded
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
to file: 01/16/2002 01:49:27 PM
pic10366.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: FEMA matter

Thanks. Any deadline? Also, if you haven't done so already, please send
pp. 17
et seq. of the memo.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, January 16, 2002 1:43 PM
To: Whelan, M Edward III
Subject: RE: FEMA matter

Per a request, we would like OLC to review FEMA procedures for this

kind of
matter and determine whether it is appropriate for DOJ or any other
Administration official or entity to weigh in with FEMA to establish an
Administration position on this matter, or is this appropriately left
entirely
to FEMA? If the former, what should that position be and how should it be
established/communicated?

(Embedded
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
to file: 01/15/2002 04:06:03 PM
pic12361.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: FEMA matter

I received only the first 16 pages of the memo. Also, let's discuss, at
your
convenience, what you would like OLC to do on this.

-----Original Message-----
From: Whelan, M Edward III
Sent: Monday, January 14, 2002 3:25 PM
To: 'Kavanaugh, Brett'
Subject: FEMA matter

I believe you said that you would be faxing me some info on FEMA's denial
of
relief to a religious institution in Washington state. Just wanted you to
know
that I haven't received anything yet.

From: Michael Chertoff <Michael.Chertoff@usdoj.gov>
To: Receipt Notification Requested) (Michael.Horowitz3@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Michael.Horowitz3@usdoj.gov>;Receipt Notification Requested) (Matthew.Martens@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Matthew.Martens@usdoj.gov>;Receipt Notification Requested) (Faith.Burton@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Faith.Burton@usdoj.gov>;Receipt Notification Requested) (Paul.P.Colborn@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Paul.P.Colborn@usdoj.gov>;Receipt Notification Requested) (Kris.W.Kobach@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Kris.W.Kobach@usdoj.gov>;Receipt Notification Requested) (M.Edward.Whelan@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <M.Edward.Whelan@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Receipt Notification Requested) (James.E.Rybicki@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <James.E.Rybicki@usdoj.gov>;Receipt Notification Requested) (Patrick.O'Brien@usdoj.gov (Receipt Notification Requested) [UNKNOWN] <Patrick.O'Brien@usdoj.gov>
Sent: 1/16/2002 11:08:00 AM
Subject: : RE: Draft questions for hearing

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael Chertoff <Michael.Chertoff@usdoj.gov> ( Michael Chertoff
<Michael.Chertoff@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:16-JAN-2002 16:08:00.00
SUBJECT:: RE: Draft questions for hearing
TO:Michael.Horowitz3@usdoj.gov (Receipt Notification Requested) (
Michael.Horowitz3@usdoj.gov (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew.Martens@usdoj.gov (Receipt Notification Requested) ( Matthew.Martens@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Faith.Burton@usdoj.gov (Receipt Notification Requested) ( Faith.Burton@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Paul.P.Colborn@usdoj.gov (Receipt Notification Requested) ( Paul.P.Colborn@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Kris.W.Kobach@usdoj.gov (Receipt Notification Requested) ( Kris.W.Kobach@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:M.Edward.Whelan@usdoj.gov (Receipt Notification Requested) ( M.Edward.Whelan@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:James.E.Rybicki@usdoj.gov (Receipt Notification Requested) ( James.E.Rybicki@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Patrick.O'Brien@usdoj.gov (Receipt Notification Requested) ( Patrick.O'Brien@usdoj.gov
(Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Date: 01/16/2002 04:01 pm -0500 (Wednesday)
From: Michael Chertoff
To: "FBurton".WTGATE2.CRMGW; "PColborn".WTGATE2.CRMGW;
"wKWKobach".WTGATE2.CRMGW; "wMWhelan".WTGATE2.CRMGW; Horowitz,
Michael-CRM; Martens, Matthew
CC: "Brett_M._Kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;
"wJERybick".WTGATE2.CRMGW; "wPO'Brien".WTGATE2.CRMGW
Subject: RE: Draft questions for hearing

Are these questions for real?

>>> Kobach, Kris W 01/16/02 03:51PM >>>
```

I can take the first three questions.

Kris

-----Original Message-----
From: Burton, Faith
Sent: Wednesday, January 16, 2002 3:43 PM
To: Colborn, Paul P; Whelan, M Edward III; Kobach, Kris W; Martens, Matthew; Horowitz, Michael-CRM; Chertoff, Michael
Cc: O'Brien, Patrick; Rybicki, James E; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Draft questions for hearing

Who can prepare answers? << File: burton.qs.wpd >>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
CC: Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>
Sent: 1/16/2002 1:47:21 PM
Subject: : follow up on Ninth Circuit

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-JAN-2002 18:47:21.00
SUBJECT:: follow up on Ninth Circuit
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Some additional specifics on future CA9 vacancies:
-- There are 3 California Ninth Circuit judges now eligible for senior status (Pregerson, Reinhardt, and Tashima). All 3 were appointed by Democratic Presidents. Based solely on the party affiliation of the Presidents who appointed them, which is admittedly a rough guide, one would NOT expect these judges to take senior status unless forced to do so by health or other considerations.
-- During the President's first term, there are 4 other judges who will become eligible to take senior status: 1 California (Fernandez, May 2002); 1 Oregon (O'Scannlain, March 2002), 1 Idaho (Nelson, November 2003), and 1 that might be either California or Idaho (Trott, December 2004). These judges were all appointed by Republican Presidents. Based on the party affiliation of the Presidents who appointed them (again a rough predictive guide), one might expect these judges to take senior status when eligible.

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Andrea Lafferty <alafferty@traditionalvalues.org>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/17/2002 8:51:35 AM
Subject: : RE: Status of Judicial Nominations talking points

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JAN-2002 13:51:35.00
SUBJECT:: RE: Status of Judicial Nominations talking points
TO:Andrea Lafferty <alafferty@traditionalvalues.org> (Andrea Lafferty
<alafferty@traditionalvalues.org> [UNKNOWN])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

A

As ever, all the credit goes to Brett.

Warmly

tsg

Andrea Lafferty <alafferty@traditionalvalues.org>
01/17/2002 01:50:24 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Tim Goeglein/WHO/EOP@EOP
Subject: RE: Status of Judicial Nominations talking points

Brett/Tim-

Thank you for getting me the update. We will send this info out today.

Warm regards
Andrea

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, January 17, 2002 1:40 PM
To: Andrea Lafferty
Cc: Tim_Goeglein@who.eop.gov
Subject: Status of Judicial Nominations talking points

(See attached file: judges status january 17 2002.doc)

From:	Burton, Faith <Faith.Burton@usdoj.gov>
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;'attyadv.opca@fbi.gov' <attyadv.opca@fbi.gov>
Sent:	1/17/2002 11:57:42 AM
Subject:	: FW: Two draft letters, one on Priv. Log, another on docs John Durham provided
Attachments:	P_901W4003_WHO.TXT_1.wpd; P_901W4003_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Burton, Faith" <Faith.Burton@usdoj.gov> ("Burton, Faith" <Faith.Burton@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:17-JAN-2002 16:57:42.00
SUBJECT:: FW: Two draft letters, one on Priv. Log, another on docs John Durham provided
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) (IPM Return Requested) ("'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett and Beth, these didn't get through to you the first time. FB

-----Original Message-----
From: Burton, Faith
Sent: Thursday, January 17, 2002 4:13 PM
To: Chertoff, Michael; Horowitz, Michael-CRM; Martens, Matthew; Whelan, M Edward III; 'attyadv@opca.fbi.gov'; 'Brett_M_Kavanaugh@who.eop.gov'; Colborn, Paul P; Collins, Daniel P; Kobach, Kris W
Cc: O'Brien, Pat
Subject: Two draft letters, one on Priv. Log, another on docs John Durham provided

The Privilege Log letter is drafted for Mike Chertoff's signature as WH preferred that it come from DOJ today or tomorrow. The other is simply a cover letter on a Connecticut Special Revenue Commission transcript from May 1976, in which Paul Rico was the witness and Austin McGuigan was the prosecutor. McGuigan is on Burton's witness list for the Feb. hearings. Please give me comments this afternoon; both of these letters should go out tomorrow. Thanks. Faith
- burton.conn.wpd - burton.eplog.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_901W4003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_901W4003_WHO.TXT_2>

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 18, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to the letter of your Chief Counsel, James C. Wilson, dated January 11, 2002, which requested a copy of the transcript of a hearing before a Connecticut or Massachusetts Commission on Special Revenue in May or April of 1976. Based upon a subsequent conversation with Committee staff, we have identified the enclosed transcript as the document you are seeking. It pertains to a hearing on May 3-4, 1976 before the Connecticut Commission on Special Revenue.

I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

Patrick O'Brien
Deputy Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

REV_00139086

Draft January 17, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is to respond to requests articulated at the Committee's hearing on December 13, 2001 for a log of the documents relating to the Boston FBI matter that were subject to the President's claim of executive privilege.

Enclosed for your review is a log of those documents. I was going to provide this log to you at the meeting that was scheduled for January 10, 2002. Our expectation was that we would describe the documents to Committee staff and hear the staff's explanation of how the Committee's investigative needs relate to particular documents, which would allow the Committee and the Department to explore together the possibilities for further accommodating the Committee's needs. Consequently, we were very disappointed that you canceled the meeting and we hope that we can reschedule it in the near future.

Sincerely,

Michael Chertoff
Assistant Attorney General

Enclosure

cc: The Honorable Henry Waxman
Ranking Minority Member

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stephen W. Devine/NSC/EOP@EOP [NSC] <Stephen W. Devine>
Sent: 1/17/2002 2:44:26 PM
Subject: : Re: Interviews of ISOO candidates

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JAN-2002 19:44:26.00
SUBJECT:: Re: Interviews of ISOO candidates
TO:Stephen W. Devine (CN=Stephen W. Devine/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

great; why don't you come down at 2:20 tomorrow.

Stephen W. Devine
01/17/2002 07:33:07 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Interviews of ISOO candidates

Brett: These are scheduled; i'vees are cleared in. First will be at 2:30 tomorrow; second at 3. We get a break then til 4 (couldn't book one in then), when another comes in; then a 4:30. I've told 'em just 20-30 minutes. You and I should get together beforehand to discuss process, etc. I'll give you a call.

From: Wes Foster <wfoster@gwbcompliance.com>
To: wfoster@gwbcompliance.com [OMB] <wfoster@gwbcompliance.com>
CC: John M. Ackerly/OPD/EOP@EOP [OPD] <John M. Ackerly>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>;Stephen M. Garrison/OPD/EOP@EOP [OPD] <Stephen M. Garrison>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Gordon D. Johndroe/WHO/EOP@EOP [WHO] <Gordon D. Johndroe>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Heidi K. Marquez/WHO/EOP@EOP [WHO] <Heidi K. Marquez>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Marcus J. Mollmann/WHO /EOP@EOP [WHO] <Marcus J. Mollmann>;Sarah M. Moss/WHO/EOP@EOP [WHO] <Sarah M. Moss>;Michael J. Napolitano/WHO/EOP@EOP [WHO] <Michael J. Napolitano>;Lorraine Nisbet/WHO/EOP@EOP [WHO] <Lorraine Nisbet>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael Shannon/WHO /EOP@EOP [WHO] <Michael Shannon>;Ashley_M._Snee@ovp.eop.gov [UNKNOWN] <Ashley_M._Snee@ovp.eop.gov>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Meredith A. Terpeluk/WHO/EOP@EOP [WHO] <Meredith A. Terpeluk>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Margita N. Thompson/OVP/EOP@EOP [OVP] <Margita N. Thompson>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;melissa.mcknight@lmco.com [UNKNOWN] <melissa.mcknight@lmco.com>;ewillefo@ffc.gov [UNKNOWN] <ewillefo@ffc.gov>;kmartin@fcc.gov [UNKNOWN] <kmartin@fcc.gov>;tcruz@ftc.gov [UNKNOWN] <tcruz@ftc.gov>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;robert_l._woodson@hud.gov [UNKNOWN] <robert_l._woodson@hud.gov>;robert.ollison@exim.gov [UNKNOWN] <robert.ollison@exim.gov>;joliver@rnchq.org [UNKNOWN] <joliver@rnchq.org>;kmurphy@doc.gov [UNKNOWN] <kmurphy@doc.gov>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>
Sent: 1/18/2002 9:56:27 AM
Subject: : Change of Address for W-2 Tax Forms
Attachments: P_FQ5Y4003_OPD.TXT_1.htm

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wes Foster <wfoster@gwbcompliance.com> ( Wes Foster <wfoster@gwbcompliance.com> [
UNKNOWN ] )
CREATION DATE/TIME:18-JAN-2002 14:56:27.00
SUBJECT:: Change of Address for W-2 Tax Forms
TO:wfoster@gwbcompliance.com ( wfoster@gwbcompliance.com [ OMB ] )
READ:UNKNOWN
CC:John M. Ackerly ( CN=John M. Ackerly/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Ashley Estes ( CN=Ashley Estes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stephen M. Garrison ( CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Blake Gottesman ( CN=Blake Gottesman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Adrian G. Gray ( CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:William T. Griffin ( CN=William T. Griffin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Taylor S. Gross ( CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
CC:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP@EOP [WHO])
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CC:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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CC:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
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CC:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
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CC:Michael J. Napolitano (CN=Michael J. Napolitano/OU=WHO/O=EOP@EOP [WHO])
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CC:Lorraine Nisbet (CN=Lorraine Nisbet/OU=WHO/O=EOP@EOP [WHO])
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CC:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
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CC:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
CC:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ashley_M._Snee@ovp.eop.gov (Ashley_M._Snee@ovp.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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CC:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
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CC:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:melissa.mcknight@lmco.com (melissa.mcknight@lmco.com [UNKNOWN])
READ:UNKNOWN
CC:ewillefo@ffc.gov (ewillefo@ffc.gov [UNKNOWN])
READ:UNKNOWN
CC:kmartin@fcc.gov (kmartin@fcc.gov [UNKNOWN])
READ:UNKNOWN
CC:tcruz@ftc.gov (tcruz@ftc.gov [UNKNOWN])
READ:UNKNOWN
CC:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
CC:robert_l._woodson@hud.gov (robert_l._woodson@hud.gov [UNKNOWN])
READ:UNKNOWN
CC:robert.ollison@exim.gov (robert.ollison@exim.gov [UNKNOWN])
READ:UNKNOWN
CC:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
CC:kmurphy@doc.gov (kmurphy@doc.gov [UNKNOWN])
READ:UNKNOWN
CC:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please be advised that the W-2 Tax forms, from the Presidential Transition Foundation, will be going out soon. If you have changed addresses within the past year please respond to this email with your updated address information.

Please disregard this message if you did not receive compensation or work for the Transition Foundation.

Thank you.
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_FQ5Y4003_OPD.TXT_1>

Please be advised that the W-2 Tax forms, from the Presidential Transition Foundation, will be going out soon. If you have changed addresses within the past year please respond to this email with your updated address information.

Please disregard this message if you did not receive compensation or work for the Transition Foundation.

Thank you.

From: Wes Foster <wfoster@gwbcompliance.com>
To: wfoster@gwbcompliance.com [OMB] <wfoster@gwbcompliance.com>
CC: John M. Ackerly/OPD/EOP@EOP [OPD] <John M. Ackerly>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>;Stephen M. Garrison/OPD/EOP@EOP [OPD] <Stephen M. Garrison>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Gordon D. Johndroe/WHO/EOP@EOP [WHO] <Gordon D. Johndroe>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Heidi K. Marquez/WHO/EOP@EOP [WHO] <Heidi K. Marquez>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Marcus J. Mollmann/WHO /EOP@EOP [WHO] <Marcus J. Mollmann>;Sarah M. Moss/WHO/EOP@EOP [WHO] <Sarah M. Moss>;Michael J. Napolitano/WHO/EOP@EOP [WHO] <Michael J. Napolitano>;Lorraine Nisbet/WHO/EOP@EOP [WHO] <Lorraine Nisbet>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael Shannon/WHO /EOP@EOP [WHO] <Michael Shannon>;Ashley_M._Snee@ovp.eop.gov [UNKNOWN] <Ashley_M._Snee@ovp.eop.gov>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Meredith A. Terpeluk/WHO/EOP@EOP [WHO] <Meredith A. Terpeluk>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Margita N. Thompson/OVP/EOP@EOP [OVP] <Margita N. Thompson>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;melissa.mcknight@lmco.com [UNKNOWN] <melissa.mcknight@lmco.com>;ewillefo@ffc.gov [UNKNOWN] <ewillefo@ffc.gov>;kmartin@fcc.gov [UNKNOWN] <kmartin@fcc.gov>;tcruz@ftc.gov [UNKNOWN] <tcruz@ftc.gov>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;robert_l._woodson@hud.gov [UNKNOWN] <robert_l._woodson@hud.gov>;robert.ollison@exim.gov [UNKNOWN] <robert.ollison@exim.gov>;joliver@rnchq.org [UNKNOWN] <joliver@rnchq.org>;kmurphy@doc.gov [UNKNOWN] <kmurphy@doc.gov>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>
Sent: 1/18/2002 10:01:48 AM
Subject: : Change of Address for W-2 Tax Forms
Attachments: P_WZ5Y4003_WHO.TXT_1.htm

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wes Foster <wfoster@gwbcompliance.com> ( Wes Foster <wfoster@gwbcompliance.com> [
UNKNOWN ] )
CREATION DATE/TIME:18-JAN-2002 15:01:48.00
SUBJECT:: Change of Address for W-2 Tax Forms
TO:wfoster@gwbcompliance.com ( wfoster@gwbcompliance.com [ OMB ] )
READ:UNKNOWN
CC:John M. Ackerly ( CN=John M. Ackerly/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Ashley Estes ( CN=Ashley Estes/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Stephen M. Garrison ( CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [ OPD ] )
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CC:Taylor S. Gross ( CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
CC:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
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CC:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ashley_M._Snee@ovp.eop.gov (Ashley_M._Snee@ovp.eop.gov [UNKNOWN])
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CC:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
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CC:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
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CC:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:melissa.mcknight@lmco.com (melissa.mcknight@lmco.com [UNKNOWN])
READ:UNKNOWN
CC:ewillefo@ffc.gov (ewillefo@ffc.gov [UNKNOWN])
READ:UNKNOWN
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READ:UNKNOWN
CC:tcruz@ftc.gov (tcruz@ftc.gov [UNKNOWN])
READ:UNKNOWN
CC:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
CC:robert_l._woodson@hud.gov (robert_l._woodson@hud.gov [UNKNOWN])
READ:UNKNOWN
CC:robert.ollison@exim.gov (robert.ollison@exim.gov [UNKNOWN])
READ:UNKNOWN
CC:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
CC:kmurphy@doc.gov (kmurphy@doc.gov [UNKNOWN])
READ:UNKNOWN
CC:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please be advised that the W-2 Tax forms, from the Presidential Transition Foundation, will be going out soon. If you have changed addresses within the past year please respond to this email with your updated address information.

Please disregard this message if you did not receive compensation or work for the Transition Foundation.

Thank you.
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WZ5Y4003_WHO.TXT_1>

Please be advised that the W-2 Tax forms, from the Presidential Transition Foundation, will be going out soon. If you have changed addresses within the past year please respond to this email with your updated address information.

Please disregard this message if you did not receive compensation or work for the Transition Foundation.

Thank you.

From: Burton, Faith <Faith.Burton@usdoj.gov>
To: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Kobach, Kris W <Kris.W.Kobach@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Chertoff, Michael <Michael.Chertoff@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Horowitz, Michael-CRM <Michael.Horowitz3@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>;Collins, Daniel P <Daniel.P.Collins@usdoj.gov>
CC: O'Brien, Pat <Pat.O'Brien@usdoj.gov>
Sent: 1/18/2002 6:14:46 AM
Subject: : Revised draft letter to Burton on privilege log; PLEASE REVIEW ASAP; THIS SHOULD GO, IF AT ALL, TODAY
Attachments: P_C9WX4003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Burton, Faith" <Faith.Burton@usdoj.gov> ("Burton, Faith" <Faith.Burton@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:18-JAN-2002 11:14:46.00
SUBJECT:: Revised draft letter to Burton on privilege log; PLEASE REVIEW ASAP; THIS SHOULD GO, IF AT ALL, TODAY
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Kobach, Kris W" <Kris.W.Kobach@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Kobach, Kris W" <Kris.W.Kobach@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
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TO:"Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Collins, Daniel P" <Daniel.P.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Collins, Daniel P" <Daniel.P.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

A sentence has been added here to comport with information that could be provided to Mr. Garo; please e-mail responsive comments by 1 p.m.
Thanks. Faith
- burton.eplog.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C9WX4003_WHO.TXT_1>

Draft January 17, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is to respond to requests articulated at the Committee's hearing on December 13, 2001 for a log of the documents relating to the Boston FBI matter that were subject to the President's claim of executive privilege.

Enclosed for your review is a log of those documents. I was going to provide this log to you at the meeting that was scheduled for January 10, 2002. Our expectation was that we would describe the documents to Committee staff and hear the staff's explanation of how the Committee's investigative needs relate to particular documents, which would allow the Committee and the Department to explore together the possibilities for further accommodating the Committee's needs. We especially wanted to advise you about one document relevant to the Salvati matter, which you have identified as a focus of the Committee's interest. Consequently, we were very disappointed that you canceled the meeting and we hope that we can reschedule it in the near future.

Sincerely,

Michael Chertoff
Assistant Attorney General

Enclosure

cc: The Honorable Henry Waxman
Ranking Minority Member

From: Wes Foster <wfoster@gwbcompliance.com>
To: wfoster@gwbcompliance.com [OMB] <wfoster@gwbcompliance.com>
CC: John M. Ackerly/OPD/EOP@EOP [OPD] <John M. Ackerly>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>;Stephen M. Garrison/OPD/EOP@EOP [OPD] <Stephen M. Garrison>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Taylor S. Gross/WHO/EOP@EOP [WHO] <Taylor S. Gross>;Alison M. Harden/WHO/EOP@EOP [WHO] <Alison M. Harden>;Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>;Gordon D. Johndroe/WHO/EOP@EOP [WHO] <Gordon D. Johndroe>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Heidi K. Marquez/WHO/EOP@EOP [WHO] <Heidi K. Marquez>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Marcus J. Mollmann/WHO /EOP@EOP [WHO] <Marcus J. Mollmann>;Sarah M. Moss/WHO/EOP@EOP [WHO] <Sarah M. Moss>;Michael J. Napolitano/WHO/EOP@EOP [WHO] <Michael J. Napolitano>;Lorraine Nisbet/WHO/EOP@EOP [WHO] <Lorraine Nisbet>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Tracey L. Schmitt/WHO/EOP@EOP [WHO] <Tracey L. Schmitt>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Michael Shannon/WHO /EOP@EOP [WHO] <Michael Shannon>;Ashley_M._Snee@ovp.eop.gov [UNKNOWN] <Ashley_M._Snee@ovp.eop.gov>;Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Meredith A. Terpeluk/WHO/EOP@EOP [WHO] <Meredith A. Terpeluk>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Margita N. Thompson/OVP/EOP@EOP [OVP] <Margita N. Thompson>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Brent D. Greenfield/WHO /EOP@EOP [WHO] <Brent D. Greenfield>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;melissa.mcknight@lmco.com [UNKNOWN] <melissa.mcknight@lmco.com>;ewillefo@ffc.gov [UNKNOWN] <ewillefo@ffc.gov>;kmartin@fcc.gov [UNKNOWN] <kmartin@fcc.gov>;tcruz@ftc.gov [UNKNOWN] <tcruz@ftc.gov>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;robert_l._woodson@hud.gov [UNKNOWN] <robert_l._woodson@hud.gov>;robert.ollison@exim.gov [UNKNOWN] <robert.ollison@exim.gov>;joliver@rnchq.org [UNKNOWN] <joliver@rnchq.org>;kmurphy@doc.gov [UNKNOWN] <kmurphy@doc.gov>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>
Sent: 1/18/2002 10:07:13 AM
Subject: : Change of Address for W-2 Tax Forms
Attachments: P_SA6Y4003_WHO.TXT_1.htm

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wes Foster <wfoster@gwbcompliance.com> ( Wes Foster <wfoster@gwbcompliance.com> [
UNKNOWN ] )
CREATION DATE/TIME:18-JAN-2002 15:07:13.00
SUBJECT:: Change of Address for W-2 Tax Forms
TO:wfoster@gwbcompliance.com ( wfoster@gwbcompliance.com [ OMB ] )
READ:UNKNOWN
CC:John M. Ackerly ( CN=John M. Ackerly/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Ashley Estes ( CN=Ashley Estes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stephen M. Garrison ( CN=Stephen M. Garrison/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Blake Gottesman ( CN=Blake Gottesman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Adrian G. Gray ( CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:William T. Griffin ( CN=William T. Griffin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Taylor S. Gross ( CN=Taylor S. Gross/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
CC:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Heidi K. Marquez (CN=Heidi K. Marquez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
CC:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Sarah M. Moss (CN=Sarah M. Moss/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Michael J. Napolitano (CN=Michael J. Napolitano/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Lorraine Nisbet (CN=Lorraine Nisbet/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Tracey L. Schmitt (CN=Tracey L. Schmitt/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Michael Shannon (CN=Michael Shannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ashley_M._Snee@ovp.eop.gov (Ashley_M._Snee@ovp.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Margita N. Thompson (CN=Margita N. Thompson/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
CC:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Neil H. Zimmerman (CN=Neil H. Zimmerman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:melissa.mcknight@lmco.com (melissa.mcknight@lmco.com [UNKNOWN])
READ:UNKNOWN
CC:ewillefo@ffc.gov (ewillefo@ffc.gov [UNKNOWN])
READ:UNKNOWN
CC:kmartin@fcc.gov (kmartin@fcc.gov [UNKNOWN])
READ:UNKNOWN
CC:tcruz@ftc.gov (tcruz@ftc.gov [UNKNOWN])
READ:UNKNOWN
CC:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
CC:robert_l._woodson@hud.gov (robert_l._woodson@hud.gov [UNKNOWN])
READ:UNKNOWN
CC:robert.ollison@exim.gov (robert.ollison@exim.gov [UNKNOWN])
READ:UNKNOWN
CC:joliver@rnchq.org (joliver@rnchq.org [UNKNOWN])
READ:UNKNOWN
CC:kmurphy@doc.gov (kmurphy@doc.gov [UNKNOWN])
READ:UNKNOWN
CC:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please be advised that the W-2 Tax forms, from the Presidential Transition Foundation, will be going out soon. If you have changed addresses within the past year please respond to this email with your updated address information.

Please disregard this message if you did not receive compensation or work for the Transition Foundation.

Thank you.
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SA6Y4003_WHO.TXT_1>

Please be advised that the W-2 Tax forms, from the Presidential Transition Foundation, will be going out soon. If you have changed addresses within the past year please respond to this email with your updated address information.

Please disregard this message if you did not receive compensation or work for the Transition Foundation.

Thank you.

From: Timothy_E._Flanigan@who.eop.gov [UNKNOWN]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 1/20/2002 4:59:44 PM
Subject: : Fw: Enron

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy_E._Flanigan@who.eop.gov (Timothy_E._Flanigan@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:20-JAN-2002 21:59:44.00
SUBJECT:: Fw: Enron
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sent from my BlackBerry Handheld.

----- Original Message -----
From:Joshua B. Bolten/WHO/EOP
To:Timothy E. Flanigan/WHO/EOP@EOP
Cc:
Date: 01/20/2002 09:01:45 PM
Subject: Enron

When you get a chance on Mon (or Tue), I'd be grateful for an update on
what WH
and agencies are doing in response to many inquiries re Enron, particularly
whether/how OLC is coordinating responses of the agencies. Also, I'd like
to
see your proposed response to Waxman's 1/14 letter to Card. thx jb

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>
Sent: 1/21/2002 6:28:00 AM
Subject: : Re: Draft Daniels response to Waxman
Attachments: P_DDFX4003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-JAN-2002 11:28:00.00
SUBJECT:: Re: Draft Daniels response to Waxman
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Let's discuss when Judge and Tim have time.

Bradford A. Berenson
01/21/2002 11:24:55 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Timothy E. Flanigan/WHO/EOP@EOP
bcc:
Subject: Re: Draft Daniels response to Waxman

Looks good. My only comment is that the second paragraph seems strange after the first. Consider whether (1) the order ought to be inverted, or (2) the first paragaraph ought to be omitted. I realize option 2 undercuts the general approach, but the second paragraph may do that in and of itself, even if it is accompanied by paragraph 1.

Brett M. Kavanaugh
01/21/2002 11:15:12 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Draft Daniels response to Waxman

Attached is a draft.

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
timothy e. flanigan/who/eop@eop
alberto r. gonzales/who/eop@eop
h. christopher bartolomucci/who/eop@eop
david s. addington/ovp/eop@eop

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DDFX4003_WHO.TXT_1>

Draft: 1/21/02 11:15 a.m.

January 23, 2002

The Honorable Henry A. Waxman
U.S. House of Representatives
2204 Rayburn House Office Building
Washington, D.C. 20515-0529

Dear Congressman Waxman:

This letter responds to your letter of January 15, 2002. As you know, numerous committees of the House and Senate and many executive branch departments and agencies, including the Securities and Exchange Commission, the Department of Labor, and the Department of Justice, are currently conducting official investigations into the causes and consequences of the Enron bankruptcy. To the extent any duly authorized investigative bodies may believe I have information relevant to their investigations, I will respond in a timely, orderly, and appropriate way to their requests.

As has been reported publicly, I had a brief conversation with Kenneth Lay on October 11. He had left a message for me on October 10, I left him a return message later that day, and he then returned my call and we talked on October 11. Our conversation addressed the prospects for an economic stimulus bill along the lines the President had articulated. Other than discussions with my wife about the unfortunate aspects of the Enron bankruptcy, I am not aware of any additional information responsive to your letter to me.

Please be assured that the President and I share your concern about the causes and consequences of the Enron bankruptcy, including the consequences for Enron employees and shareholders. The President has assured the American people that he will seek appropriate policy changes that might help to prevent similar occurrences in the future. Indeed, two cabinet-level working groups are now examining the pension regulation and financial disclosure issues presented by Enron's situation. In short, the Administration's resources are fully devoted to appropriate investigative, law enforcement, and policy actions relating to the Enron bankruptcy.

Sincerely,

Mitchell E. Daniels, Jr.
Director

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/21/2002 3:30:36 AM
Subject: : fyi

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-JAN-2002 08:30:36.00
SUBJECT:: fyi
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ENERGY POLICY: Cheney Must Disclose: How Task Force Operated (St. Paul)
Editorial
St. Paul Pioneer, January 20, 2002
Long before Enron imploded in public view, there were widely expressed concerns about how Vice President Dick Cheney's National Energy Policy Development Group crafted what became the Bush energy plan. That plan, about to find its second wind as the administration and Congress gear up, was unveiled with fanfare to a friendly audience at St. Paul's RiverCentre last May. Cheney has refused to reveal detail about how his task force operated and to whom it spoke. The General Accounting Office has sued to force the White House to build a window into this particular part of its massive stone wall of secrecy.
Cheney, a former Texas energy tycoon, last week felt the heat from Enron cronyism in the Bush administration and Congress. That heat resulted in the vice president disclosing that his energy task force had met six times with Enron representatives. Again, no details have been forthcoming, as the administration cites executive privilege for conducting business on an array of issues in deep secrecy.
History has shown the privilege worth protecting from promiscuous snoops elsewhere in official Washington or among enemies without. In the long run, however, refusing to disclose the workings of the energy task force will do more political damage than principled good for Cheney. There is not yet evidence that any of at least 35 bigwigs in the Bush administration acted improperly because Enron had enriched their careers or wallets. But the scope of those relationships demand full disclosure, not dribs and drabs of information from a White House that seems to have no sense of organized political damage control on the Enron matter.
There is also no reason to have confidence that the investigations circus on Capitol Hill has value other than to produce evidence to the point of how the Enron scams happened, with the rich guys cashing in, leaving their loyal employees in ruin.
Cheney's task force is a part of the story about who did what for whom inside and outside of government. The whole of it should be turned over to the General Accounting Office, which is an agency independent of those in Congress and the administration who got money or jobs from Enron.
It is vital for this administration, pressing a war on terrorism, to retain the public confidence and broad support it has earned since Sept. 11. Getting all the Enron dealings, including Cheney's, out in the open is a political and security imperative.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 1/21/2002 6:15:15 AM
Subject: : Draft Daniels response to Waxman
Attachments: P_1D255004_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-JAN-2002 11:15:15.00
SUBJECT:: Draft Daniels response to Waxman
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
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Attached is a draft.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1D255004_WHO.TXT_1>
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Draft: 1/21/02 11:15 a.m.

January 23, 2002

The Honorable Henry A. Waxman
U.S. House of Representatives
2204 Rayburn House Office Building
Washington, D.C. 20515-0529

Dear Congressman Waxman:

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Please be assured that the President and I share your concern about the causes and consequences of the Enron bankruptcy, including the consequences for Enron employees and shareholders. The President has assured the American people that he will seek appropriate policy changes that might help to prevent similar occurrences in the future. Indeed, two cabinet-level working groups are now examining the pension regulation and financial disclosure issues presented by Enron's situation. In short, the Administration's resources are fully devoted to appropriate investigative, law enforcement, and policy actions relating to the Enron bankruptcy.

Sincerely,

Mitchell E. Daniels, Jr.
Director

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 1/21/2002 1:48:40 PM
Subject: : status of op-ed

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-JAN-2002 18:48:40.00
SUBJECT:: status of op-ed
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judge: Anne is cutting some and making appropriate tone changes.
She will e-mail to me later tonight. In the morning, Tim and I can review
and then go over with you and Anne to finalize before noon.
```

From: Allison_L._Riepenhoff@who.eop.gov [UNKNOWN]
CC: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 1/22/2002 6:43:31 AM
Subject: : Re: Files to the Hill

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison_L._Riepenhoff@who.eop.gov ( Allison_L._Riepenhoff@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:22-JAN-2002 11:43:31.00
SUBJECT:: Re: Files to the Hill
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Time change:

3:30 to Hollings
4:00 to Daschle




Allison L. Riepenhoff
01/22/2002 11:34:24 AM

Record Type: Record


To: See the distribution list at the bottom of this message

cc:
Subject: Files to the Hill

I need two files to go to the Hill:

3:00 pm to Sen. Hollings

4:00 pm to Sen. Daschle

Please let me know ASAP who can take them.
```

Thanks,
Allison

Message Sent
To:_____

Rachel_L._Brand@who.eop.gov @ inet
Noel_J._Francisco@who.eop.gov @ inet
Kyle_Sampson@who.eop.gov @ inet
Brett_M._Kavanaugh@who.eop.gov @ inet
H._Christopher_Bartolomucci@who.eop.gov @ inet
Bradford A. Berenson/WHO/EOP@EOP
Courtney_S._Elwood@who.eop.gov @ inet
Helgard C. Walker/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 1/22/2002 1:09:40 PM

Subject: : Staff meeting time change

```
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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-JAN-2002 18:09:40.00
SUBJECT:: Staff meeting time change
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

On Wednesday, Thursday and Friday of this week the Counsel staff meeting
will begin at 9:00 am instead of 8:15 am.

Thanks!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
Sent: 1/22/2002 1:14:49 PM
Subject: : Re: PRA protocol

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-JAN-2002 18:14:49.00
SUBJECT:: Re: PRA protocol
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III"
<M.Edward.Whelan@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

tomorrow a.m.

"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
01/22/2002 06:12:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: PRA protocol

In light of the upcoming briefing deadline, I just wanted to check when
you anticipate that some version of the protocol will become operative.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 1/23/2002 6:12:03 AM
Subject: : Re: Summary

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-JAN-2002 11:12:03.00
SUBJECT:: Re: Summary
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

we are circulating new general tp's in about 5 minutes to be
blasted everywhere . . . you will be on receipt list

Matthew E. Smith

01/23/2002 11:00:43 AM

Record Type: Record

To: Brett Kavanaugh
cc:
Subject: Summary

Is the summary put out last week the latest and greatest?

Meaning current numbers and facts.

Karl is doing a call with 350 people this afternoon and we are going to
have him bring it up.

Thanks.

Matt

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Suit, Neal <Neal.Suit@usdoj.gov>;Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/23/2002 8:02:13 AM
Subject: : NEW VACANCY NUMBer

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:23-JAN-2002 13:02:13.00
SUBJECT:: NEW VACANCY NUMBer
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please check, but I believe that the correct number of vacancies is now
101, not 100. Brett, is this because of the death in Texas?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>
CC: robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;mtoner@rnchq.org @ inet [WHO] <mtoner@rnchq.org>;ken mehlman/who/eop@eop [WHO] <ken mehlman>;katherine g. marinis/who/eop@eop [WHO] <katherine g. marinis>
Sent: 1/24/2002 3:52:33 AM
Subject: : Re: political travel

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-JAN-2002 08:52:33.00
SUBJECT:: Re: political travel
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:mtoner@rnchq.org (mtoner@rnchq.org @ inet [WHO])
READ:UNKNOWN
CC:ken mehlman (CN=ken mehlman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:katherine g. marinis (CN=katherine g. marinis/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

this should be ok, but call me this morning to discuss.

Sara M. Taylor
01/23/2002 02:35:13 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: robert w. cobb/who/eop@eop, mtoner@rnchq.org @ inet, ken mehlman/who/eop@eop, katherine g. marinis/who/eop@eop
bcc:
Subject: Re: political travel

Yes - they have planes that they regularly use for political travel - Schwann's ice cream is one example.

Brett M. Kavanaugh
01/23/2002 01:43:54 PM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc: robert w. cobb/who/eop@eop, mtoner@rnchq.org @ inet, ken mehlman/who/eop@eop, katherine g. marinis/who/eop@eop
bcc:
Subject: Re: political travel

Does Thune campaign have corporate planes that it regularly uses for these purposes?

Sara M. Taylor
01/23/2002 01:29:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc: mtoner@rnchq.org @ inet, Ken Mehlman/WHO/EOP@EOP, Katherine G. Marinis/WHO/EOP@EOP
Subject: political travel

I'm trying to get a better understanding of trave procedures when it comes to sending Administration officials to do poltical events for our Republican candidates. Example:

Secretary Evans has agreed to speak to the SD Chamber of Commerce in Pierre, SD. We would also like him to do a fundraiser for John Thune. Because there would be a fundraiser in the same city as the SD chamber event, the Thune campaign is responsible for travel costs. (I conferred with Toner on FEC law)

FEC law also states that a campaign can use a corporate plane if first class airfare is reimbursed for each person traveling before the plane takes off. Legally, it is ok for Thune to fly Evans on a corporate plane.

But, my question for you is will you allow Evans to fly on a corporate plane?? If we find an owner who allows his plane to be used frequently for political travel and the company doesn't have significant business before the federal government, can we generally operate under the assumption that this will work?? This is particularly important for far away states like SD. Please advise.

Thanks.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 1/24/2002 2:51:47 AM
Subject: : another one

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CREATION DATE/TIME:24-JAN-2002 07:51:47.00
SUBJECT:: another one
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Enron Chief Lay Steps Down (Orlando Sentinel)
By Tamara Lytle | Sentinel Bureau Chief
The Orlando Sentinel, January 24, 2002
WASHINGTON -- Enron Corp. Chairman Kenneth Lay resigned Wednesday night as the investigation into the company's collapse headed to Capitol Hill today in full force, with more tales of greed, cover-ups, corruption and heartbreak on the agenda.
"This was a decision the board and I reached in cooperation with our creditors' committee," Lay, 59, said in a statement released by Enron. "I want to see Enron survive, and for that to happen we need someone at the helm who can focus 100 percent of his efforts on reorganizing the company and preserving value for our creditors and hard-working employees."
Lay will retire as an Enron employee, but will remain on the company's board of directors.
In the 1980s, Lay was president of Florida Gas Co. in Winter Park, which later became part of Enron. He has been under fire for encouraging Enron employees to keep buying the company's stock even as he and other top executives were quietly unloading millions of dollars worth of options.
Enron's lead outside auditor laid the groundwork Wednesday for a dramatic opening to the congressional hearings by contesting a subpoena to testify today about his role in the destruction of financial documents.
A House panel, nonetheless, is compelling fired Arthur Andersen LLP partner David Duncan to appear. Andersen, the auditing firm based in Chicago, dismissed Duncan last week for his role in the destruction of Enron documents after federal regulators began investigating possible accounting improprieties.
Beyond the daily revelations of corporate mismanagement and suspected misconduct, the hearings will be a political powder keg as Democrats try to focus attention on President Bush's relationship with the Texas energy-trading giant that dished out millions in campaign contributions to Republicans.
Analysts say it's too early to know whether Bush will be hurt by his association with Enron and Lay. Company executives had a direct line to the administration but apparently were rebuffed when they asked for help as bankruptcy loomed.
That lack of a clear quid pro quo could mean Enron won't severely damage Bush, said Paul Light of the Brookings Institution think tank.
"It's a significant tropical storm, but you don't have the ingredients to produce a hurricane," Light said.
But Enron's spectacular collapse will cast a broad shadow as no fewer than seven congressional committees launch hearings in the next three weeks.
Democrats, too, have connections to the company. The campaign of Sen. Bob Graham, D-Fla., for instance, received $8,000 from Enron.
"When mud starts being thrown, everyone gets a little dirty," said Tripp Baird of the think tank Heritage Foundation.

Seventy-one percent of the Senate received contributions from Enron, as did 43 percent of the House.
The campaign system, by which rich contributors enjoy special consideration, is likely to have a starring role in the hearings and could spur Congress to tighten campaign-finance laws.
Walking wounded
Enron, the seventh-largest company in the country, filed for Chapter 11 bankruptcy protection in December after admitting it had hidden vast debts in secret partnerships. Thousands of workers lost their jobs and investors lost huge sums when the stock price plunged from triple digits to pennies. Florida's state pension fund alone lost more than $300 million.
The luckless investors included Enron retirees who lost their life savings. Now Congress is investigating the actions of top executives, auditor Andersen, the Bush administration and the systems that allowed such a huge financial collapse to occur.
The investigation will last months, if not years. The congressional inquiry is in addition to criminal investigations by the Justice Department, the Securities and Exchange Commission and Labor Department.
The Senate Governmental Affairs Committee wants to know what the government should have done to prevent the disaster. Sen. Joseph Lieberman, D-Conn., will chair the first hearing today. Former SEC Chairman Arthur Levitt will testify.
Lieberman will look at the Bush administration's ties to Enron, but he has a few of his own. He received $2,000 in campaign donations from Enron. The New Democratic Network that he founded received $10,000. His former chief of staff, Michael Lewan, was a lobbyist for Enron.
Sen. Bill Nelson, D-Fla., received $1,000 from Enron. Robert Rubin, former President Clinton's treasury secretary, tried to help Enron when it was clear that an Enron bankruptcy would hurt his company, Citigroup.
Democrats, however, point out that while many of them picked up Enron campaign checks, the bulk of the company's largesse went to Republicans.
Money and access
Enron has donated $6 million to federal candidates since 1989, according to the Center for Responsive Politics. Three-quarters of it went to Republicans.
Lay and other Enron colleagues gave $312,000 to the president's Texas gubernatorial campaigns. Lay also was one of the biggest contributors to Bush's presidential campaign. Enron kicked in $250,000 for last year's GOP convention and even made its private jet available to the Bush campaign.
Once in office, the Bush team granted Enron easy access.
As Enron's troubles worsened last fall, executives called two Bush Cabinet officials asking for help, apparently without success. Enron had earlier received help from Vice President Dick Cheney when he pressed officials in India on Enron's behalf concerning a power plant. The White House said Cheney was going to bat for an American company because tax dollars were at stake.
Cheney also met privately with Lay as he was formulating the administration's energy policy last year. The vice president's task force met six times with Enron. Cheney, citing executive privilege, is refusing a congressional auditor's request for information about those meetings.
U.S. Rep. Henry Waxman of California said the policies that emerged from Cheney's task force -- such as deregulation of the electric-utilities market -- mirrored Enron's agenda. Waxman, a top Democrat on the House Government Reform Committee, tried without success to pressure the White House to release information about the meetings. Other committees will jump into the fray, starting with today's hearing by the House Energy and Commerce Committee that is looking into the actions of Arthur Andersen.
Andersen was Enron's auditor when it was misstating its earnings and other financial measures that Wall Street and investors use to judge stocks. Andersen officials said they made a mistake in judging one of Enron's off-the-books partnerships, but blamed Enron for withholding other crucial data.
The House Financial Services Committee will examine the apparent conflicts of interest among Wall Street analysts whose firms rely on fees from companies they are supposed to be independently evaluating. That conflict was highlighted in the Enron case when 16 of 17 energy analysts urged investors to buy Enron stock despite problems with its business model.
The Senate Commerce Committee already has heard from devastated Enron

retirees who have little left of their nest eggs. On Feb. 4, the committee is scheduled to hear from Lay.

Some lawmakers want to prevent similar heartbreak by changing retirement-savings rules. Some ideas being considered: Providing investment advice to workers; limiting how much 401(k) money can be invested in company stock; and allowing workers to divest themselves of company stock. At Enron, workers younger than 50 could not sell the company stock that was funded through an employer match.

Congress, aware of the vast number of Americans invested in the stock market, likely will propose changes to pension and accounting rules, as well.

The hearings also will bring new information to light that could determine whether the business fiasco becomes a political scandal.

Independent pollster John Zogby said Democrats could land some punches because the public already perceives Bush as tied to the oil industry. Cheney and Bush were in the Texas oil business.

But the Sept. 11 tragedy helped renew Americans' faith in government, so dragging out a partisan battle over Enron could backfire, he said. Still, analysts agreed, Democrats are fighting a tight race for control of Congress this year and likely will use the Enron mess to portray Republicans as friends of the rich.

Reformers in Congress are just a few signatures short of the 218 supporters needed to force House leaders to vote on a campaign-finance overhaul. Rep. Corrine Brown, D-Jacksonville, said she might provide one of the crucial votes because of the Enron mess.

"It seems to me that this is a perfect time to limit the excessive influence money plays in Washington," said Brown, who received no contributions from Enron.

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/24/2002 11:48:36 AM
Subject: : FW: Waxman briefs
Attachments: P_ZM915003_WHO.TXT_1.wpd; P_ZM915003_WHO.TXT_2.wpd

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CREATION DATE/TIME:24-JAN-2002 16:48:36.00
SUBJECT:: FW: Waxman briefs
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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In case you're interested.
---------------------- Forwarded by Courtney S. Elwood/WHO/EOP on
01/24/2002 04:48 PM ----------------------------

"Wood, John F" <John.F.Wood@usdoj.gov>
01/24/2002 04:35:47 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: FW: Waxman briefs

- summary.judgment.wpd
- replybrief.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZM915003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZM915003_WHO.TXT_2>

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Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HENRY A. WAXMAN, et al., Plaintiffs, v. DONALD L. EVANS, Secretary of Commerce, Defendant.	No. 01-04530-LGB (AJWx) **SECRETARY'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, CROSS-MOTION FOR SUMMARY JUDGMENT** Date: November 26, 2001 Time: 10:00 a.m. Courtroom: No. 780 Location: Los Angeles-Roybal

REV_00139236

REV_00139237

INTRODUCTION

In this action, plaintiffs ask that the Court interpret 5 U.S.C. § 2954, a statute enacted in 1928 but "yet to be adjudicated in court," to permit access by a minority of the members of the House Committee on Government Reform to any information contained in the files of any agency within the committee's jurisdiction. At its core, then, this action is a controversy between the Executive and Legislative branches over access to information in the possession of executive officials, and a controversy between the minority and majority members of the House Committee on Government Reform. The Court should decline to wade into this political thicket. Separation of powers principles dictate that this controversy be sorted out in the political realm, not in this or any other court. Accordingly, the Court should decline to interpret Section 2954 and dismiss this action.

Even if the Court were to entertain this intra- and inter-branch dispute, plaintiffs cannot prevail as a matter of statutory interpretation. Plaintiffs interpret Section 2954 solely with reference to two words in the text of the statute, disregarding entirely Congress's readily ascertainable purpose, which is completely at odds with the interpretation plaintiffs advance. Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment ("Pl. Mem."), at 13. This is not the manner in which any court, including the current Supreme Court and the Ninth Circuit, interprets statutory language, even purportedly "plain" language. Read in its proper context, Section 2954 is far from the sweeping grant of authority plaintiffs advocate. Rather, the statute was enacted to preserve access to a limited universe of agency reports for members of two of Congress' numerous committees. This is not simply the convenient "litigating position" of the Executive Branch, Pl. Mem. at 2, but a longstanding interpretation of Section 2954 that is consistent with Congress's plain intent. Indeed, the Congressional Research Service itself has consistently interpreted Section 2954 in the same, narrow manner. Adjusted census data, the information sought by plaintiffs, does not fall within Section 2954's narrow scope. Accordingly, the Secretary is entitled to judgment.[1]

Moreover, to interpret Section 2954 as plaintiffs propose would raise serious doubts

REV_00139238

about the constitutionality of the statute, which, in plaintiffs' view, admits of no exceptions, even for materials that are protected by Executive privilege. If Congress had intended to vest such sweeping authority in the minority, indeed in only a fraction of the members of only one House and one Senate committee, raising obvious and substantial separation of powers concerns, one would expect that the legislative history would at least hint at such an intention. To the contrary, however, Congress had no such intention, and never believed that it was vesting in these members alone a power Congress itself does not possess as a body. The grave constitutional doubts attributable to plaintiffs' interpretation of Section 2954 may easily be avoided by interpreting the statute in light of its plain purpose. For this additional reason, plaintiffs' constitutionally doubtful interpretation should be rejected, and judgment should be granted in favor of the Secretary.

BACKGROUND

Plaintiffs seek adjusted Census 2000 data based on 5 U.S.C. § 2954, which provides in pertinent part:

> An executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof . . . shall submit any information requested of it relating to any matter within the jurisdiction of the committee.[2]

Section 2954 is derived from section 2 of the Act of May 29, 1928, 45 Stat. 996. Section 1 of that Act provided for the repeal of 128 statutes requiring the submission of reports to Congress,

---

[1] Because the Secretary has presented matters outside the pleadings, this motion is styled, in the alternative, as one for summary judgment. However, those matters consist only of legislative history, which the Court may notice, and documents created by the Congressional Research Service which, although instructive, are not critical to the Court's disposition of this action. Thus, the Secretary also maintains that he is entitled to judgment on the pleadings. See Fed. R. Civ. P. 12(c).

[2] As plaintiffs note, the House Committee on Government Operations has since been renamed the Committee on Government Reform.

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most of which either had become obsolete or served no useful purpose. See S. Rep. No. 1320, 70th Cong., 1st Sess., p. 2; H.R. Rep. No. 1757, 70th Cong., 1st Sess., p. 3 (attached as Exhibit A to the Declaration of Timothy Zick). A study by the Bureau of Efficiency had recommended that many of these reports be eliminated. S. Rep. No. 1320, at 1; H.R. Rep. No. 1757, at 2 (Zick Decl. Ex. A, at 3, 8). In addition, some of the subject reports contained information that Congress determined could be more efficiently provided in some other form, upon request by the named committees. See S. Rep. No. 1320, at 3; H.R. Rep. No. 1757, at 4 (Zick Decl. Ex. A, at 5, 10).

Section 2, which has been re-enacted as 5 U.S.C. § 2954, was intended to enable Congress to obtain, if needed, the information theretofore contained in the discontinued reports. The House Report accompanying Section 2954 states:

> To save any question of the House of Representatives to have furnished to it *any of the information contained in the reports proposed to be abolished*, a provision has been added to the bill requiring such information to be furnished to the Committee on Expenditures in the Executive Departments or upon the request of any seven members thereof[.]

H. Rep. No. 1757, 70th Cong., 1st Sess., p. 6 (Zick Decl., Ex. A, at 12) (emphasis added). Similarly, the Senate Report states:

> This section makes it possible to require *any report discontinued by the language of this bill* to be resubmitted to either House upon its necessity becoming evident to the membership of either body.

S. Rep. No. 1320, 70th Cong., 1st Sess., p. 4 (Zick Decl., Ex. A, at 6)(emphasis added).

Section 2954 is codified in a subchapter entitled "Reports" (5 U.S.C. Chapter 29, Subchapter II). It is one of four sections in the subchapter; the other sections concern reports to the Office of Personnel Management, when to submit annual reports to Congress, and a requirement that certain reports to Congress contain information on additional employee requirements. See 5 U.S.C. §§ 2951-2953.

REV_00139240

As plaintiffs note, in light of this plain legislative history, the Executive Branch has long interpreted Section 2954 to preserve the right of the members of the respective committees to obtain the information contained in the reports abolished by Section 1 of the Act. See Declaration of Michael Yeager, Exhibits J-L. For example, then Assistant Attorney General Scalia testified: "The legislative history of this provision . . . shows that it did not represent a Congressional judgment that such a minority should have the power to demand all information, but rather only the information which was formerly contained in annual reports which the Congress abolished." Yeager Declaration, Ex. K, at 29.

The Congressional Research Service has also consistently interpreted Section 2954 in a similar fashion. *See* Memorandum from American Law Division to Senate Government Operations Committee, dated January 15, 1975, at 2 ("The legislative history . . . indicates that the purpose of the 1928 Act was not to assert a sweeping right of Congress to obtain any information it might desire from the executive branch.") (Zick Decl., Exhibit B). See also "Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry, CRS Report No. 95-464A (April 7, 1995), at 24-25 (same) (Zick Decl., Exhibit C, at 39).

ARGUMENT

The Court should decline to referee what is essentially a political skirmish, pitting the desire of the minority party for information contained in the files of an executive agency against the agency's own desire to maintain the confidentiality of information in its files. If, however, the Court decides to entertain plaintiffs' claims, it should reject their sweeping interpretation of Section 2954. The ultimate issue in construing the statute is Congress' purpose. That purpose, which is readily apparent from Section 2954's context and history, is directly contrary to plaintiffs' interpretation. Moreover, plaintiffs' interpretation casts grave doubts on the constitutionality of the statute, and should be rejected for that additional reason.

I. THE COURT SHOULD EXERCISE ITS REMEDIAL DISCRETION AND DISMISS THIS ACTION

Plaintiffs, sixteen minority party members of the House Committee on Government

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Reform have requested, purportedly under the authority of Section 2954, the adjusted data compiled during the 2000 census. Stripped to its essence, this controversy is two-fold. Plaintiffs' desire for information held by an executive agency pits a minority party's request against the desires of the majority party, and aligns sixteen members of the Committee against the Secretary

of Commerce.[3] Similar disputes have come before the D.C. Circuit from time to time. As that court has recognized, disputes over congressional access to Executive Branch records and information are neither novel nor matters for which judicial involvement is appropriate, considering the proper separation of powers among the branches and the array of political remedies available to settle intra- and inter-branch disputes. To the contrary, courts have been loathe to intervene in such disputes and, by refraining from judicial review, have left matters such as this for resolution between the political branches.[4] This matter is no different and the Court should refrain from adjudication as a matter of its equitable discretion.

The D.C. Circuit first applied what later came to be known as the doctrine of remedial, or equitable, discretion in United States v. AT&T Co., 551 F.2d 384 (D.C. Cir. 1976), appeal after remand, 567 F.2d 121 (D.C. Cir. 1977). In that case, the Justice Department sought to block production of a telephone company's records of national security wiretaps to a congressional committee in response to a subpoena. Acknowledging the interests of both branches and the

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[3] Although eighteen minority members of the committee signed the original request for census information, only sixteen members have joined this lawsuit as plaintiffs.

[4] As plaintiffs note, on some occasions Congress and the subject agency have managed to come to an agreement on the production of information, even where the committee's jurisdiction over the matter was doubtful. See Pl. Mem. at 14. These examples in no way compromise the Justice Department's consistent, and longstanding, narrow interpretation of Section 2954. For one thing, the agencies involved in those instances all operated to some extent as independent agencies, and in Leach two of the agencies – OTS and FDIC – were not even represented by the Department. In addition, the agencies did not simply accede to a blanket request for all information requested, but rather sought and obtained assurances that privileged and personal information would be protected from disclosure. Moreover, these disclosures in no way waived the right of any agency to object to a request under Section 2954. Rather, these disclosures appear to illustrate the core of the doctrine of remedial discretion – the viability of political compromise, even under trying circumstances.

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inherent difficulty in any judicial effort to balance those interests, 551 F.2d at 394, the court noted that "[t]he legislative and executive branches have a long history of settlement of disputes that seemed irreconcilable," id., and declined to resolve the case, requesting instead that the parties seek a negotiated solution. In so doing, the court noted that a judicial resolution would not necessarily protect the interests of both branches and could alter the constitutional separation of powers:

> This dispute between the legislative and executive branches has at least some elements of the political question doctrine. A court decision selects a victor, and tends thereafter to tilt the scales. A compromise worked out between the branches is most likely to meet their essential needs and the country's constitutional balance.

551 F.2d at 394.

In a subsequent opinion, which again sought to guide a negotiated solution rather than impose a judicial determination of one branch's right to prevail, the court further explained that judicial abstention in cases of this nature actually fosters the type of inter-branch dynamics contemplated by the constitutional separation of powers:

> The framers, rather than attempting to define and allocate all government power in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches of government do not exist in an exclusively adversarial relationship to one another when a conflict arises. Rather, each branch should take of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of our constitutional scheme avoids the mischief of polarization of disputes.

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567 F.2d 121, 127.

Applying this same doctrine, the court in United States v. House of Representatives, 556 F. Supp. 150 (D.D.C. 1983), declined to entertain a declaratory judgment action concerning the rights of a House committee to subpoena documents over which the President asserted executive privilege:

> When constitutional disputes arise concerning the respective powers of the Legislative and Executive Branches, judicial intervention should be delayed until all possibilities for settlement have been exhausted.... Judicial restraint is essential to maintain the delicate balance of powers among the branches established by the Constitution.

556 F. Supp. at 152 (citation omitted).

Similar concerns for the proper functioning of coordinate branches of the federal government have led the D.C. Circuit to refrain from exercising jurisdiction over litigation brought by individual members of Congress when such disputes merely reflected extensions of legislative controversies. The D.C. Circuit developed the doctrine of remedial or equitable discretion to give due regard for separation of powers concerns in cases brought by legislators where other doctrines, such as standing and political question, were not a sufficient means of articulating the prudential separation of powers concerns which such cases presented. See Riegle v. Federal Open Market Committee, 656 F.2d 873, 880-81 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). The Riegle court stated that "[t]he most satisfactory means of translating our separation of powers concerns into principled decisionmaking is through a doctrine of circumscribed equitable discretion" to be applied in cases "[w]here a congressional plaintiff could obtain substantial relief from his fellow legislators[.]" 656 F.2d at 881.

Where other remedies are available, "the doctrine of remedial discretion properly permits" the courts to consider separation of powers concerns and to avoid adjudicating intra- and inter-branch disputes. See Moore v. U.S. House of Representatives, 733 F.2d 946 (D.C. Cir. 1984) ("Congressional actions pose a real danger of misuse of the courts by members of

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Congress whose actual dispute is with their fellow legislators."), cert. denied, 469 U.S. 1106 (1985). See also Melcher v. Federal Open Market Committee, 836 F. 2d 561 (D.C. Cir. 1987) (equitable discretion proper where potential relief existed in the form of new or repealed legislation); Leach v. Resolution Trust Corp., 860 F. Supp. 868 (D.D.C. 1994) (declining to give an expansive reading to a statutory provision to allow access by a ranking minority committee member to agency records otherwise exempt from disclosure under the FOIA).[5] Similarly, where individual members have sought judicial review of executive action in advance of any action by Congress itself, courts have applied their remedial discretion to withhold relief. Crockett v. Reagan, 720 F.2d 1355 (D.C. Cir. 1983), cert. denied, 467 U.S. 1251 (1984); Lowry v. Reagan, 676 F. Supp. 333, 339 (D.D.C. 1987).[6] Application of the doctrine of remedial discretion does not turn on whether the court could fashion a remedy, but rather on "respect for a co-equal branch of government" to order its own affairs. Vander Jagt v. O'Neill, 699 F.2d 1166, 1176 (D. C. Cir. 1982), cert. denied, 464 U.S. 823 (1983).

The same separation of powers concerns should lead this Court to dismiss plaintiffs' action. The request for the census information in the Secretary's possession was made by a group of minority members of the House Committee on Government Reform. Rather than invoke the authority of the full committee through a subpoena, or convince a chamber majority of their need for the information, these members ask the Court to decide that Section 2954 grants

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[5] The court in Leach was not presented with a claim under Section 2954, and thus had no occasion to consider the statute's history, purpose, or scope. The dicta in Leach does not stand for the proposition that all requests for information under Section 2954 would fall outside the remedial discretion doctrine. Where, as here, there are other avenues of relief available, the doctrine counsels against judicial involvement.

[6] In Chenoweth v. Clinton, 181 F.3d 112 (D.C. Cir. 1999), cert. denied, 529 U.S. 1012 (2000), the court dismissed for lack of standing a suit by several members of Congress challenging an executive order. The court noted that the remedial discretion doctrine had developed as an alternative application of separation of powers concerns following the development of special rules for standing in cases brought by Congressmen. The court held that the Supreme Court's dismissal of an action by several members of Congress for lack of standing in Raines v. Byrd, 521 U.S. 811 (1997) governed the claims in Chenoweth. 181 F.3d 114-116. It noted, however, that the same result would apply under the doctrine of remedial discretion, as plaintiffs could seek a political solution through legislation. 181 F.3d at 116.

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any seven members of the committee carte blanche with respect to any and all information within its jurisdiction. The Court should not select a victor in such intra- and inter-branch disputes "until circumstances indicate that judicial intervention is necessary." That showing has not been made here. Separation of powers concerns dictate that plaintiffs first seek to convince their majority colleagues of their need for the adjusted Census figures they seek before requesting a ruling of first impression from the Court.

Whether this controversy is viewed as a one between the sixteen plaintiffs and their majority colleagues, or one between plaintiffs and the Secretary, this Court should abstain from deciding the dispute. This is precisely the type of controversy for which the remedial discretion doctrine was devised. Indeed, even if the requests had the full support of the House, the same separation of powers concerns underlying the decisions in AT&T and House of Representatives, discussed above, would still strongly favor judicial restraint. Without that support, the case for the exercise of equitable discretion is even more compelling.

II. SECTION 2954 IS NOT A SWEEPING GRANT OF AUTHORITY

If the Court is inclined to referee this inter-Branch dispute, it should grant summary judgment in favor of the Secretary. Section 2954 must be construed with its narrow purpose firmly in mind. Congress' intent in enacting Section 2954 was not to grant broad access to all information in the possession of agencies, but rather to preserve access to information formerly contained in a series of reports required to be submitted to Congress. That purpose is readily apparent from the context of the entire statute, and from the accompanying House and Senate Reports, which are quoted above. It cannot be ignored merely because Section 2954 uses "language of command" (shall) and a "broad adjective" (any). Pl. Mem. at 6, 9.

A. Section 2954 Preserves Access Only To "Reports"

Although this is the first time any court has been asked to interpret Section 2954, plaintiffs ask the Court to ignore the statute's context and its legislative history. As the Supreme Court and the Ninth Circuit have made clear on numerous occasions, while courts begin with the statutory language, they are not shackled to it, particularly where, as here, the statutory text is at

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loggerheads with Congress' plain intent. Statutory interpretation is not, as plaintiffs argue, merely a black letter exercise. The Supreme Court has repeatedly emphasized that "'the meaning of statutory language, plain or not, depends on context.'" Holloway v. United States, 526 U.S. 1, 7 (1999) (quoting Brown v. Gardner, 513 U.S. 115, 118 (1994)) (quoting King v. St. Vincent's Hospital, 502 U.S. 215, 221 (1991)). Thus, the task of statutory construction begins, but does not end, with the specific words or phrases used by the drafters. See Holloway, 526 U.S. at 6. See also Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

"The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect." Watt v. Alaska, 451 U.S. 259, 266 (1981). The circumstances of Section 2954's enactment demonstrate that Congress did not intend the sweeping, literal meaning plaintiffs advocate. The Act under consideration must be construed as a whole. Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998). Section 1 of the Act required the repeal of statutes mandating the submission of 128 specific reports to the House and Senate Committees. Section 2 of the Act, later codified as Section 2954, was enacted contemporaneously with Section 1. Section 2, as the legislative history makes abundantly clear, was merely intended to preserve access to the reports abolished by Section 1 of the Act. See S. Rep. No. 1320, 70th Cong., 1st Sess., p. 4; H. Rep. No. 1757, 70th Cong., 1st Sess., p. 6 (Zick Decl., Ex. A, at 6, 12).

Further persuasive demonstration of the limited nature of Section 2954's reach can be found in the congressional design. As noted, Section 2954 is part of a subchapter entitled "Reports" (5 U.S.C. Chapter 29, Subchapter II). It is one of four sections in the subchapter; the other sections concern reports to the Office of Personnel Management, when to submit annual reports to Congress, and a requirement that certain reports to Congress contain information on additional employee requirements. Of course, "the title of a statute and the heading of a section" are "tools available for the resolution of a doubt" concerning the reach of a provision.

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Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co., 331 U.S. 519, 528-29 (1947). See also Almendarez-Torres v. United States, 523 U.S. 224, 234 (1998) (resorting to title, and concluding title was "reinforced" by legislative history).

Placing Section 2954 within its proper context, including its position in the United States Code, plainly indicates that the provision was intended to preserve a right to specific "reports," not to grant a minority of committee members access to any and all information located in the files of any agency within the committee's jurisdiction. Further evidence of Congress' narrow design is readily discernible from the statute's brief, but clear, history.

B. Congress' Narrow Purpose Is Readily Apparent

The language of the statute "ordinarily" controls, but only "'[a]bsent a clearly expressed legislative intent to the contrary.'" Central Mont. Elec. Power Coop. v. Administrator of Bonneville Power Admin., 840 F.2d 1472, 1477 (9th Cir. 1988) (quoting Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)). Indeed, the Ninth Circuit has expressly held that departure from the literal language of the statute is appropriate "where the legislative history clearly indicates that Congress meant something other than what it said." In re Catapult Entertainment, Inc., 165 F.3d 747, 753 (9th Cir.), cert. dismissed, 528 U.S. 924 (1999). See also Foxgord v. Hischemoeller, 820 F.2d 1030, 1034 (9th Cir.) ("This court may give effect to a clearly expressed legislative intent which is contrary to the language of the statute itself."), cert. denied, 484 U.S. 986 (1987). That is precisely the case here.

Moreover, courts are not confined to the "naked text" where guidance as to the meaning of statutory terms is readily available. Public Citizen v. United States Department of Justice, 491 U.S. 440, 454 (1989). Nor are courts required to discard common sense when interpreting statutes, or to ignore the plain purpose of a statute, particularly where, as here, it can easily be ascertained. The plain meaning rule "is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists." Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 48 (1928) (Holmes, J.). See also United States v. American Trucking Ass'ns., Inc., 310 U.S. 534, 543-44 (1940) ("When aid to construction of the meaning

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of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'") (citations omitted). Particularly where matters of first impression are concerned, courts should not ignore readily discernible indicia of congressional intent. See Foxgord, 820 F.2d at 1034 (concluding that case of first impression presented "exceptional circumstances" calling for an explanation of the "historical basis" for Congress' enactment).

As plaintiffs point out, although Section 2954 has been codified for more than seventy years, it has never been interpreted by any court. Despite the novelty of the issue presented, however, plaintiffs ask this Court to wear interpretive blinders and ignore both the context in which Section 2954 was enacted, and clear, identical expressions of legislative purpose in both the House and Senate Reports. Notwithstanding plaintiffs' efforts to cloud the statements in those reports, they make unmistakably clear that Congress did not intend to vest in any seven members of the Committee on Government Reform the broadest possible right of access to agency information, but rather to preserve the right to obtain, in the words of the House Report, "any of the information contained in the reports proposed to be abolished," or, as the Senate Report stated, "any report discontinued by the language of this bill." S. Rep. No. 1320, 70th Cong., 1st Sess., p. 4; H. Rep. No. 1757, 70th Cong., 1st Sess., p. 6 (Zick Decl., Ex. A, at 6, 12).

The Supreme Court has repeatedly resorted to the legislative history in the face of similar contentions that "plain meaning" controls. The Court has rejected literal readings of statutory provisions where the "natural sense" of the statute, in light of its intended purpose, leads it toward a "common sense view" of the matter. Heckler v. Edwards, 465 U.S. 870, 879 (1984). See id. at 880-882 & n. 14 (examining "history of the enactment" and floor debates to discern congressional purpose). See also Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 530 (1983) ("[B]efore we hold that the statute is as broad as its words suggest, we must consider whether Congress intended such an open-ended meaning."). In Associated General Contractors, the Court rejected the contention that a union could recover under the Clayton Act, which made remedies available to "any

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person." Although it acknowledged the literal breadth of the statute, the Court examined the legislative history of the Act, including the "larger context in which the entire statute was debated." 459 U.S. at 530. Relying on statements in the legislative debate regarding the purpose of the Act, the Court held that the phrase "any person," although literally broad in scope, did not encompass the union's alleged injuries. Id.

More recently, in Lewis v. United States, 523 U.S. 155 (1998), the Court considered whether the federal Assimilative Crimes Act (ACA), which applies state law to a defendant's acts or omissions on federal enclaves that are "not made punishable by any enactment of Congress," precluded application of state law under the circumstances because several federal laws appeared to "punish" the acts in question. See id. at 159 (emphasis added). Again, although the language of the statute was broadly worded to encompass "any" congressional enactment, the Court consulted the legislative history to determine the "basic purpose" of the ACA, which it concluded was to fill gaps in federal criminal enclave law. In light of this history, the Court expressly rejected a "literal" interpretation of the statutory provision because it "would dramatically separate the statute from its intended purpose." Id. at 160. A literal interpretation of "any" enactment, the Court reasoned, would have created the very gaps the ACA was designed to fill. Id. at 161. Accordingly, the Court concluded "that Congress did not intend the relevant words – '*any* enactment' – to carry an absolutely literal meaning." Id. at 162 (emphasis in original).

Similarly, in Public Citizen, supra, the Court expressly rejected a literal interpretation of the phrase "utilized" under the Federal Advisory Committee Act (FACA). Under the proposed interpretation, the Department of Justice would have been required to disclose information relating to its consultations with the American Bar Association concerning potential nominees for federal judgeships. The Court was "convinced" that Congress could not have intended a literal reading of the statute, which would have "extend[ed] FACA's requirements to any group of two or more persons, or at least any formal organization, from which the President or an Executive Agency seeks advice." Id. at 452. The Court explained: "A nodding acquaintance

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with FACA's purposes, *as manifested by its legislative history* and as recited in § 2 of the Act, reveals that it cannot have been Congress' intention" to extend FACA's requirements "to cover every formal and informal consultation between the President or an Executive agency and a group rendering advice." Id. at 453 (emphasis added). "Close attention to FACA's history" convinced the Court that a literal interpretation was inconsistent with the statute's purpose. Id. at 455.

A "nodding acquaintance" with Section 2954's purpose, as manifested by its legislative history, compels a similar result. The statute's purpose and origin are plainly set forth in the legislative history. Although Congress chose broad language, it plainly did not intend that Section 2954 create a sweeping tool for the gathering of any information that any seven members of the House Committee on Government Reform might desire. As the Supreme Court long ago stated:

> Frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.

Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892). Such is the case here. Congress merely intended to preserve legislators' right to require the production of the 128 reports eliminated by Section 1 of the Act, in the event members later determined that the information therein was critical to an issue within the committee's jurisdiction.

Indeed, even plaintiffs concede that the doctrine of "plain meaning," or literal interpretation, is not the hard-and-fast rule they claim it is. None of the cases plaintiffs rely upon raised any issue of incongruence between statutory language and congressional purpose. See Miller v. French, 530 U.S. 327, 336-37 (2000) (finding clear intent in language and "context" of statute as a whole); id. at 360 ("the legislative history is neutral") (Souter, J., concurring in part and dissenting in part). See also Lexecon, 523 U.S. at 39 (reviewing legislative history and

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concluding that, on balance, the history supported a literal reading of the statute); United States v. Gonzales, 520 U.S. 1, 6 (1997) ("Indeed, far from clarifying the statute, the legislative history only muddies the waters."). Thus, despite the apparent stridency of their position, the most plaintiffs can say with respect to the statutory directive "shall," for example, is that it is "ordinarily" language of command, or is a "general proposition" that guides courts with respect to interpretive issues. Pl. Mem. at 6, 7. Plaintiffs do not, and cannot, suggest that the literal language always controls, or that it must control even where the legislative history plainly contradicts their textual interpretation.

Courts should be particularly wary of endorsing literal interpretations that appear to countenance odd or troubling results. "Where the literal reading of a statutory term would 'compel an odd result,' we must search for other evidence of congressional intent to lend the term its proper scope." Public Citizen, supra, 491 U.S. at 454 (quoting Green v. Bock Laundry Machine Co., 490 U.S. 504, 509 (1989)). The odd, and constitutionally troubling (see III., infra), result compelled by plaintiffs' proposed interpretation is that, without ever having uttered a word on the matter, Congress purportedly vested in a small fraction of the membership of only two committees, and no others, an absolute right of access with regard to any information contained in the files of any agency whose activities fall within the jurisdiction of those committees. The scope of that proposed power is out of all proportion to Congress's own right of access, which although not expressly delineated, is not absolute. See Barenblatt v. United States, 360 U.S. 109, 111 (1959) ("Broad as it is, the power [to investigate] is not, however, without limitations."). See also McGrain v. Daugherty, 273 U.S. 135, 177 (1927) (congressional investigations must pertain to subjects "on which legislation could be had"). Thus, to accept plaintiffs' view is to accept that Congress vested in any seven members of the House Committee on Government Reform a right of access broader in scope than that enjoyed by the body as a whole.

C. Plaintiffs Misconstrue the Legislative History

Plaintiffs themselves quote the clear, concise portions of the House and Senate Reports that clarify the narrow scope of Section 2954. Ironically, however, they do not believe

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themselves bound by the "plain meaning" of the language contained therein. Rather, plaintiffs seek to maneuver around the legislative history by misinterpreting it.

Section 1 of the Act abolished reports that were, in their then form, considered either useless or obsolete, or were thought to contain information that could be assembled upon request in another, more useful form. See S. Rep. No. 1320, at 3; H.R. Rep. No. 1757, at 2 (Zick Decl., Ex. A at 5, 8). At the time of enactment, Section 2 did not simply confer "a narrow right of access to obsolete information." Pl. Mem. at 11. Rather, it preserved legislators' access to the information in these reports, insofar as that information could be assembled in a report more useful in form or substance to the requesting members. Even a passing acquaintance with the brief legislative history demonstrates that it was the form of the reports, more than anything else, that caused Congress to conclude that their submission served no useful purpose.

This point was driven home in the House and Senate Reports. The additional portions of these reports quoted by plaintiffs (Pl. Mem. at 12) have no specific bearing on the issue in this case – the precise scope of Section 2 of the Act. The Reports simply state each committee's summary conclusion that reports generally, including some "303 reports required to be made to Congress by the executive departments and the independent establishments," S. Rep. No. 1320, at 4, were all of such poor quality as to be virtually useless:

> The committee desires to make the observation that it is easy in the enactment of general legislation on some subject for some one to suggest that a special report be made to Congress. Little attention is given to the character of the report that should be submitted, and the legislation goes in the statute books. The department makes the character of the report that it thinks will fit the legal requirement, and often it is entirely valueless for the purpose intended. . . . If any information is desired by any Member or Committee upon a particular subject that information can be better secured by a request made by an individual Member or committee so framed to bring out the special information desired. It would be helpful if in the future committees would be more careful as to the character and

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extent of requiring that reports be made to Congress in connection with the administration of legislation.

See S. Rep. No. 1320, at 4; H. R. Rep. No. 1757, at 6 (Zick Decl., Ex. A, at 6, 12). Thus, in the view of each committee, members might be better served, in general, to make individual requests for desired information, and to frame their request for reports in a manner calculated to lead to the production of the most useful reports. This general observation says nothing about any right under Section 2954 itself to "particularized information." Pl. Mem. at 12.

Further, nothing in the Senate Report indicates any "intention to allow a broad right of access." Pl. Mem. at 11. To the contrary, immediately after the quotation plaintiffs take out of context (see Pl. Mem. at 12), the Senate Report plainly states that Section 2 of the Act "makes it possible to require *any report discontinued by the language of this bill* to be resubmitted to either House upon its necessity becoming evident to the membership of either body." S. Rep. No. 1320, at 4 (Zick Decl., Ex. A, at 6) (emphasis added). In light of this clear statement, it is disingenuous to argue, as plaintiffs do, that the drafters "understood that they were granting broad authority and that they intended to do so." Pl. Mem. at 12.

III. PLAINTIFFS' SWEEPING INTERPRETATION RAISES SERIOUS CONSTITUTIONAL DOUBTS

In choosing between competing versions of statutory construction, it is axiomatic that a court must choose that which avoids constitutional question "if a serious doubt of constitutionality is raised" by the alternative interpretation. Crowell v. Benson, 285 U.S. 22, 62 (1932). The Supreme Court assumes that Congress "legislates in the light of constitutional limitations." Rust v. Sullivan, 500 U.S. 173, 191 (1991). This approach "not only reflects the prudential concern that constitutional issues not be needlessly confronted, but also recognizes that Congress, like this Court, is bound by and swears an oath to uphold the Constitution." Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 485 U.S. 568, 575 (1988).

The Supreme Court has indicated that the reluctance to confront or decide constitutional

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issues "is especially great where, as here, they concern the relative powers of coordinate branches of government." Public Citizen, 491 U.S. at 466. Absent some evidence that Congress at least considered the matter, the Court is "loath to conclude that Congress intended to press ahead into dangerous constitutional thickets[.]" Id. Thus, in Public Citizen, the Court declined to adopt a literal interpretation of FACA that would have brought the ABA and other consultive groups within the statutory orbit, fearing the separation of powers issues that would have been raised under such a broad interpretation of the statute. The legislative history, the Court determined, suggested a congressional intent contrary to the words it had chosen to include in the statute. Id. at 467. That history, the Court said, "counsels adherence to our rule of caution." Ibid.

Similar considerations counsel adherence to the rule of constitutional doubt in this case. Plaintiffs' interpretation of Section 2954 requires submission on demand by the Secretary of any information in the agency's files on the request of only seven members of the House Committee on Government Reform. That interpretation raises two substantial questions that require rejection of plaintiffs' statutory interpretation.

First, plaintiffs' interpretation admits of not a single exception to disclosure, instead purporting to vest a sweeping authority in any seven members of the Committee to demand disclosure of executive information. Thus, an agency in possession of material deemed sensitive for national security or other reasons, or which is otherwise protected by Executive privilege, would have no choice, in plaintiffs' view, but to make the requested disclosure. This rather remarkable power, which on plaintiffs' view was apparently randomly vested only in members of these particular committees, is one not enjoyed even by the full Congress. See Barenblatt, 360 U.S. at 111 ("Broad as it is, the power [to investigate] is not, however, without limitations."). See also McGrain v. Daugherty, 273 U.S. 135, 177 (1927) (congressional investigations must pertain to subjects "on which legislation could be had").

Not only does the legislative history suggest a far narrower statutory scope, but there is not a shred of evidence that any member even considered the ramifications of a sweeping grant

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of access to executive information. This silence is particularly disturbing in light of the separation of powers issues such an interpretation raises. Granting unlimited access to agency files may cause unwarranted interference with the Executive function to "take care that the laws be faithfully executed." U.S. Const., art. II, § 3. See Yeager Decl. Ex. K, at 29 (then Assistant Attorney General Scalia noting the "questionable constitutionality" of Section 2954 should it be interpreted to provide unfettered access to executive materials). Indeed, save for the jurisdiction of the committee itself, plaintiffs would place no limits whatever on the committee's right of access. The Constitution requires that Congress, and its committees and members, respect and defer to a sphere of Executive autonomy. See Barenblatt, 360 U.S. at 112 (Congress "cannot inquire into matters which are within the exclusive province of one of the other branches of the Government"; it cannot "supplant the Executive in what exclusively belongs to the Executive").[7] An unfettered right of access by members of Congress to Executive materials would, as noted, be unprecedented, and would denigrate the constitutional doctrine of executive privilege. See Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 733 (D.C. Cir. 1974) (en banc) (holding that House Judiciary Committee's need for information was "too attenuated and too tangential to its functions" to permit judicial enforcement of subpoena directed at President).

Second, plaintiffs' interpretation is all the more unusual, and constitutionally suspect, because this absolute power is proposed to be lodged not in any committee, or subcommittee, but

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[7] Moreover, granting an unfettered right of access to agency information will result in the very vices Executive privilege is designed to cure – it will inhibit frank discussion, prematurely foreclose useful lines of inquiry by agency officials, and generally negatively affect the quality of agency decisions. See NLRB v. Sears Roebuck & Co., 421 U.S. 149, 151 (1975) ("Manifestly, the ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions."). The Secretary has consistently taken the position in suits brought under the Freedom of Information Act that adjusted census information is protected by the deliberative process privilege. See Florida House of Representatives v. United States Department of Commerce, 961 F.2d 941 (11th Cir.), cert. dismissed, 506 U.S. 969 (1992) (holding that adjusted census figures are protected from disclosure under the FOIA). But see Assembly of the State of California v. United States Department of Commerce, 968 F.2d 916 (9th Cir. 1992) (holding that factual record did not support privilege claim for census figures).

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in a mere fraction of the membership of only two of Congress' more than 40 full committees. Article I of the Constitution vests the lawmaking power and, by implication, the investigatory power, in "Congress." Plaintiffs do not even hint at what authority Congress presumably relied upon in writing a blank investigatory check to any seven members of the House Committee on Government Reform. Odder still, they do not explain why Congress would vest such powers in a small number of minority members of the committee. Moreover, plaintiffs' interpretation has no logical constitutional limitations. In plaintiffs' view, Congress presumably could vest in even a single member of a committee a breadth of investigatory powers not enjoyed by the full Congress. The Court should not simply assume that Congress intended to so empower a small fraction of the House Committee on Government Reform when it enacted Section 2954. There is no evidence that Congress considered, much less expressly intended, such a constitutionally doubtful, and politically bizarre, result.

This Court should not adopt plaintiffs' interpretation, particularly absent some demonstration that Congress intended to vest blanket access to Executive materials in any seven members of the House Committee on Government Reform and, indeed, in the face of plain evidence that it did not so intend. The Court should reject plaintiffs' constitutionally doubtful interpretation, accept the Secretary's interpretation, and grant summary judgment in favor of the Secretary.

CONCLUSION

For the foregoing reasons, the Court should exercise its remedial discretion and dismiss plaintiffs' Complaint. In the alternative, the Court should grant summary judgment in favor of the Secretary.

Respectfully submitted,
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Dated: September 27, 2001

REV_00139258

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2001, I caused a true copy of Defendant's Opposition To Plaintiffs' Motion For Summary Judgment And Memorandum In Support Of Motion to Dismiss Or, In the Alternative, Cross-Motion for Summary Judgment to be served by first class mail, postage prepaid, upon:

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HENRY A. WAXMAN, et al., Plaintiffs, v. DONALD L. EVANS, Secretary of Commerce, Defendant.	No. 01-04530-LGB (AJWx) **SECRETARY'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS OR, IN THE ALTERNATIVE, CROSS-MOTION FOR SUMMARY JUDGMENT** Date: November 26, 2001 Time: 10:00 a.m. Courtroom: No. 780 Location: Los Angeles-Roybal

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INTRODUCTION

Plaintiffs' Opposition to the Secretary's Motion to Dismiss Or, in the Alternative, Cross-Motion for Summary Judgment ("Pl. Opp.") is noticeably long on rhetoric and accusation, but short on persuasive argument. Plaintiffs' report of the demise of the doctrine of remedial discretion is decidedly premature. Indeed, far from "dismantling" the doctrine shortly after adopting it, the D.C. Circuit has hewed to the doctrine of remedial discretion for nearly twenty years as a means of avoiding just the sort of political branch confrontation Plaintiffs seek to foist on this Court. The doctrine remains a viable, and in this case wholly appropriate, means for the Court to sidestep an inter- and intra-branch political dispute concerning access to information.

Even if the Court should decide to wade into the parties' political dispute and declare a victor, it should not do so by ignoring, as Plaintiffs continue to do, the plain intent of Congress in enacting Section 2954. "Plain meaning" is not the talismanic rule Plaintiffs claim it to be. For good and sound reasons, courts seek to render common sense interpretations of statutes. They do so, of course, by discerning Congress' purpose in enacting the statute at issue. It does not require an "interpretive voyage," Pl. Opp. at 10, or any other judicial stretch, to discern Congress' plain intent with respect to Section 2954. The brief legislative history accompanying Section 2954, which the Secretary has provided to the Court in full, supports the Secretary's interpretation that Congress' intent was to ensure that committee members who might be interested in information formerly contained in what came to be seen as useless reports would continue to have access to that information after the reporting requirements were repealed. Particularly where, as here, the issue is one of first impression, there is ample authority, in the Ninth Circuit and elsewhere, to permit the Court to consider Congress' plain, and readily discernible, intent. Given Congress' plainly discernible purpose, and the inherent constitutional difficulties engendered by Plaintiffs' expansive interpretation of Section 2954's scope, the Court should enter judgment in favor of the Secretary.

ARGUMENT

I. THE COURT SHOULD EXERCISE ITS REMEDIAL DISCRETION

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Plaintiffs misread the scope of the remedial discretion doctrine. The doctrine is not aimed solely at avoiding constitutional crises, or narrowly concerned with "thorny constitutional issues," Pl. Opp. at 4, although given the nature of the parties to these disputes it should come as no surprise that such weighty issues do arise. The essence of the doctrine of remedial discretion, which was first articulated in Riegle v. Federal Open Market Committee, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981), is that courts should encourage political compromise rather than intercede in inter- and intra-branch disputes. The doctrine is intended to ensure that "the court not interfere in matters which properly could, and should, be decided by appeal to one's fellow legislators." Gregg v. Barrett, 771 F.2d 539, 545 (D.C. Cir. 1985). It is intended to shield the courts from political skirmishes where "individual members of Congress seek to vent their frustration with their colleagues, or with the executive branch, or both, by appeals to the courts." Id. at 543.[1]

That, of course, is the precise concern raised by the instant lawsuit. Sixteen members of the House Committee on Government Reform appeal to this Court to adjudicate the nature of their right to information held by an Executive agency. The Secretary has argued, and Plaintiffs do not dispute, that these minority committee members have at their disposal remedies that would not entail judicial meddling in their dispute. For example, Plaintiffs could seek to convince their majority colleagues to join them in subpoenaing the information sought.[2] They

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[1] Contrary to Plaintiffs' argument, invocation of the remedial discretion doctrine does not depend upon the merits of any claim of privilege the Secretary may make with respect to the information at issue. Indeed, that is the whole point of the doctrine – for courts to avoid resolving such claims. Thus, Plaintiffs improperly seek to interject the Ninth Circuit's decision in Assembly of the State of California v. United States Dep't of Commerce, 968 F.2d 916 (9th Cir. 1992) into this case. In any event, it suffices to state that the Secretary disagrees with Plaintiffs' interpretation of Assembly. In fact, the scope and effect of that decision, which is not at issue here, is currently being litigated in another forum. Carter et al. v. Dep't of Commerce, No. 01-
868-RE (D. Ore.).

[2] As Plaintiffs themselves note, one or more of them could also have sought the requested information under the Freedom of Information Act. Pl. Opp. at 5. They chose not to do so, even though they claim Ninth Circuit precedent mandates disclosure under FOIA, on the purported grounds that FOIA procedures are "burdensome and delay access." Id. at 5. If there is

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have chosen instead to "vent their frustration" with the Secretary in this judicial forum, asking the Court to declare a victor under Section 2954. The purpose of the doctrine of remedial discretion is to avoid just such a tilting of the scales in favor of one branch. The doctrine enforces the notion, rooted in the separation of powers, that the legislative and executive branches are best situated to achieve a compromise solution. United States v. AT&T Co., 551 F.2d 384, 394 (D.C. Cir. 1976), appeal after remand, 567 F.2d 121 (D.C. Cir. 1977). Under the doctrine of equitable discretion, the Court should stay its hand and insist that these Plaintiffs invoke the alternative, collegial remedies available to them.

Plaintiffs also mischaracterize the vitality of the remedial discretion doctrine. The doctrine has not been "abandoned," "discarded," or "interred," Pl. Opp. at 1, 4, and the Secretary is not asking that the Court "resurrect" the doctrine of remedial discretion. Id. at 2. Plaintiffs seek to bury the doctrine alive through a highly selective rendering of its history and pedigree. It is nothing more than Plaintiffs' own "wishful thinking," Pl. Opp. at 6, that the D.C. Circuit began to "dismantle the equitable discretion doctrine almost at the same time it was being created." Id. at 3. In fact, as the D.C. Circuit itself pointed out in Gregg, supra, the court "openly embraced" the doctrine in Riegle, and then proceeded to "firmly establish[]" the doctrine by upholding the dismissal of numerous claims brought by members of Congress in a long line of cases. Gregg, 771 F.2d at 544. See Vander Jagt v. O'Neill, 699 F.2d 1166, 1176 (D. C. Cir. 1982), cert. denied, 464 U.S. 823 (1983); Crockett v. Reagan, 720 F.2d 1355, 1357 (D.C. Cir. 1983) (per curiam); Moore v. U.S. House of Representatives, 733 F.2d 946 (D.C. Cir. 1984), cert. denied, 469 U.S. 1106 (1985); Gregg, 771 F.2d at 545-46; Melcher v. Federal Open Market Committee, 836 F. 2d 561 (D.C. Cir. 1987).

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a "strawman" in this lawsuit, Pl. Opp. at 11, it is Plaintiffs' argument that the mere existence of FOIA demonstrates that there are no separation of powers concerns in asking the Court to adjudicate the scope of Section 2954. The fact that these Plaintiffs did not, acting as "ordinary citizens," Pl. Opp. at 5, invoke FOIA proves nothing with regard to the applicability of the remedial discretion doctrine in this case. As a matter of constitutional separation of powers, the difference between a request made by an individual Member under a public information statute available to all citizens, and one made by a group of legislators pursuant to a statute that purportedly provides a sweeping right to Executive information to minority Members *by virtue of their membership on a specific House committee*, should be obvious.

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To be sure, as Plaintiffs note, then-Judge Scalia expressed his own concerns about the doctrine in his concurrence in Moore, and other judges from time to time have cautioned against over-extending the doctrine. See Gregg, 771 F.2d at 545. It is, however, an unwarranted, and unsupportable, leap from criticisms that the doctrine is imperfect to Plaintiffs' conclusion that the doctrine has been "discarded" by the court. Pl. Opp. at 2. None of the cases cited above has been overruled. Nor, despite their efforts, can Plaintiffs rewrite the D.C. Circuit's opinion in Chenoweth v. Clinton, 181 F.3d 112 (D.C. Cir. 1999), to accomplish this purpose. Chenoweth was concerned principally with whether, after the Supreme Court's decision in Raines v. Byrd, 521 U.S. 811 (1997), the D.C. Circuit's prior legislative standing doctrine remained good law. Although holding that its standing doctrine in this area was "untenable" in light of Raines, 181 F.3d at 115, and that the legislators' claims must therefore be dismissed, the court expressly left open what effect, if any, Raines had on the doctrine of remedial discretion. See id. at 116 ("Whatever Moore gives the Representatives under the rubric of standing, it takes away as a matter of equitable discretion.").[3] The doctrine remains viable, and the Court should apply it in this case.

II. CONGRESS' PLAIN PURPOSE CANNOT BE IGNORED

There should be no confusion concerning Congress' intent in enacting Section 2954. As the legislative history demonstrates, prior to 1928, numerous agencies had been required to submit to Congress reports and statements that members had come to view as being of little or no value. The legislative history demonstrates that it was principally the form, or "character," of the reports and statements themselves that troubled Congress and caused it in 1928 to decide that henceforth128 reports and other statements would not be submitted. See, e.g., S. Rep. No. 1320,

[3] Plaintiffs again overstate their case in arguing that Chenoweth holds that in all subsequent cases, standing is the "key inquiry" and displaces the separation of powers concerns that gave rise to a separate doctrine of remedial discretion. The D.C. Circuit itself noted that Raines did not address either the applicability or validity of the remedial discretion doctrine. See 181 F.3d at 115. The Chenoweth panel speculated, in what is plainly dicta, that Raines "may not overrule Moore so much as require us to merge our separation of powers and standing analyses." Id. at 116. Such ruminations hardly sound the death knell for the doctrine of remedial discretion.

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at 4 ("Little attention is given to the character of report that should be submitted, and the legislation goes in the statute books. The department makes the character of report that it thinks will fit the legal requirement, and often it is entirely valueless for the purpose intended.") (Zick Decl., Ex. A, at 6). See also H. Rep. No. 1757, at 6 (same) (Zick Decl., Ex. A, at 12). In many instances, the information required to be submitted in the reports was available elsewhere, thus rendering the submission of the mandated report, in Congress' judgment, a useless exercise. See S. Rep. No. 1320, at 2-3; H.R. Rep. No. 1757, at 3-5 (Zick Decl. Ex. A, at 4-5, 9-11). The history further indicates that, based on this experience, both the House and Senate urged members in the future generally to be more circumspect in requesting reports from agencies, and to seek to narrow and refine their requests for information such that reports would be of some use to the recipient committees. See S. Rep. No. 1320, at 4; H.R. Rep. No. 1757, at 6 (Zick Decl. Ex. A, at 6, 12).

Although Congress decided, for the reasons stated, to repeal a number of mandatory reporting requirements, it did not wish to deny members access to whatever useful information might have been contained in the reports, or even to the reports themselves, should members later find them to be of value. The plain statements of legislative purpose relating to Section 2954, which Plaintiffs continue to ignore, thus bear repeating once more. The House Report accompanying Section 2954 states:

> To save any question of the House of Representatives to have furnished to it *any of the information contained in the reports proposed to be abolished*, a provision has been added to the bill requiring such information to be furnished to the Committee on Expenditures in the Executive Departments or upon the request of any seven members thereof[.]

H. Rep. No. 1757, 70th Cong., 1st Sess., p. 6 (Zick Decl., Ex. A, at 12) (emphasis added).[4]

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[4] Thus, the House Report speaks in terms of preserving the "information contained in the reports." This may well explain why Congress chose to place Section 2954 in the subchapter entitled "Reports," but to label the specific section "Information to committees of Congress on request."

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Similarly, the Senate Report states:

> This section makes it possible to require *any report discontinued by the language of this bill* to be resubmitted to either House upon its necessity becoming evident to the membership of either body.

S. Rep. No. 1320, 70th Cong., 1st Sess., p. 4 (Zick Decl., Ex. A, at 6)(emphasis added). What is astonishing is that, in the face of these plain statements, Plaintiffs continue to insist that "[t]here is simply nothing in the Reports or the statute itself to suggest that the drafters intended to limit the information the Committee and its members could request to information formerly contained in the discontinued reports." Pl. Opp. at 8 (emphasis added).[5] That is precisely what the Reports say.[6]

Plaintiffs treat the notion that "plain meaning" can be trumped by clear, but contrary, legislative intent as a contrived canon of statutory construction. To the contrary, there is ample support in case law from this circuit for the rule of construction that purportedly plain or literal meaning does not control where there exists a "clearly expressed legislative intent" that is contrary to the text of the statute under consideration. Central Mont. Elec. Power Coop. v. Administrator of Bonneville Power Admin., 840 F.2d 1472, 1477 (9th Cir. 1988). See also In re Catapult Entertainment, Inc., 165 F.3d 747, 753 (9th Cir.) (court will depart from plain language "only where the legislative history clearly indicates that Congress meant something other than it said"), cert. dismissed, 528 U.S. 924 (1999); Foxgord v. Hischemoeller, 820 F.2d 1030, 1034 (9th Cir.) ("This court may give effect to a clearly expressed legislative intent which is contrary to the language of the statute itself."), cert. denied, 484 U.S. 986 (1987).

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[5] It is Plaintiffs, not the Secretary, who engage in a "highly selective discussion of the legislative history." Pl. Opp. at 8. The House and Senate Reports could not more plainly state that the right conferred in § 2954 was a narrow one. See Secretary's Opposition to Plaintiffs' Motion for Summary Judgment, at 15-17.

[6] There is nothing unusual about Congress limiting Section 2954's reach regarding the discontinued reports and the information therein to the Committee's jurisdiction. See Pl. Opp. at 8-9. Indeed, it is hard to imagine what authority the affected committees would have to compel information and reports outside their jurisdiction.

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The legislative history, which Plaintiffs did not provide to the Court despite its brevity, and which they repeatedly ignore or mischaracterize, meets the Ninth Circuit's standard. It is not the Secretary's "theory," Pl. Opp. at 7, that Section 2954 confers a narrow right of access to information formerly contained in reports Congress found to be useless and unnecessary; that is a matter of historical fact, as indicated in the statements quoted above and in the other legislative materials.[7] It is that plain history that distinguishes this case from In re Catapult Entertainment, supra, and other cases in which courts, although recognizing that they should not turn a blind eye to legislative intent, refused to depart from the text because the legislative history did not persuasively demonstrate that Congress' purpose was at odds with the text. Here, there is ample evidence that Congress' purpose is at variance with what Plaintiffs argue is the "plain language" of § 2954.

Plaintiffs again overreach in arguing that the Secretary wishes simply to ignore the statutory text of Section 2954.[8] Plaintiffs ask the Court to ignore the reality that legislative will sometimes is imperfectly, or even incorrectly, represented in statutory text. Fortunately, the canon of plain meaning is not a judicial straightjacket. It is well settled that "'the meaning of statutory language, plain or not, depends on context.'" Holloway v. United States, 526 U.S. 1, 7 (1999) (quoting Brown v. Gardner, 513 U.S. 115, 118 (1994)) (quoting King v. St. Vincent's Hospital, 502 U.S. 215, 221 (1991)). See also Watt v. Alaska, 451 U.S. 259, 266 (1981) ("The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect."). The canon does not present any obstacle to this Court taking the legislative materials into consideration when determining the breadth of "information" Congress intended to affect in Section 2954. See United States v. American Trucking Ass'ns., Inc., 310 U.S. 534, 543-44 (1940) ("When aid to construction of the

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[7] Based in part on this history, the Department of Justice and the Congressional Research Service have consistently adhered to the same narrow interpretation of § 2954.

[8] Contrary to Plaintiffs' assertion, Pl. Opp. at 6, the Secretary quoted the language of Section 2954 at page 4 of his opening brief.

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meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'") (citations omitted). Section 2954's context, circumstances, and overall history compel the conclusion that Plaintiffs' broad interpretation of Section 2954 must be rejected by the Court.

III. CONSTITUTIONAL DOUBTS RESULT FROM PLAINTIFFS' PROPOSED INTERPRETATION OF SECTION 2954

Plaintiffs chastise the Secretary for raising the serious constitutional doubts that accompany their expansive interpretation of Section 2954. This is no "strawman," as Plaintiffs suggest. Pl. Opp. at 11. In determining the validity of a party's proposed statutory interpretation, courts must, of course, concern themselves with the consequences of the interpretations pressed upon them.

Plaintiffs cannot avoid the sheer oddness of their proposed interpretation, which would vest sweeping authority in a small number of minority members of the House Committee on Government Reform. Of course, as Plaintiffs note, Congress vests a number of powers in less than the full membership of its many committees. But it does not vest any power of the magnitude encouraged by Plaintiffs under Section 2954 in a small number of minority members of a committee. If the majority in Congress had intended that result in 1928, one would expect to find some mention of it in the legislative materials.

The matter of Section 2954's interpretation is one of constitutional proportion because Plaintiffs ask this Court to rule as a matter of law that these minority members have blanket access to any Executive information within the jurisdiction of the committee. In their opening brief, Plaintiffs nowhere hinted that Section 2954 had any limits other than the committee's jurisdictional bounds. Now they argue that, of course, a "valid" claim of Executive privilege is an exception to Section 2954's mandate. Pl. Opp. at 11. In other words, rather than accept an interpretation consistent with Congress' narrow purposes, Plaintiffs press an interpretation that vaults the judiciary into future contests over the validity of constitutional privilege claims. Plaintiffs seek to avoid this result by arguing that no Presidential materials are even implicated

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by their proposed interpretation, since Section 2954 applies only to "Executive agencies." But, of course, those materials, and other sensitive information, may well be found within the files of the "Executive agency" called upon to produce information upon request of the committee.

Nowhere do Plaintiffs provide any reason, other than their own interest in expediency, for this Court, or any other, to risk interference with Executive functions and prerogatives by reaching out to interpret Section 2954 in the manner proposed. Indeed, Plaintiffs themselves offer the best reason not to embark on this course: "Members of the majority have no need for provisions like § 2954, because they can always resort, if need be, to the subpoena process to gather information." Pl. Opp. at 13. Plaintiffs should be required to resort to this or other remedies here.

CONCLUSION

For the foregoing reasons, the Court should exercise grant the Secretary's Motion to Dismiss or, in the Alternative, Cross-Motion for Summary Judgment, and deny Plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

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Attorneys for Defendant

Dated: November 6, 2001

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2001, I caused a true copy of the Secretary's Reply to Plaintiffs' Opposition to Motion to Dismiss or, in the Alternative, Cross-Motion for Summary Judgment to be served by first class mail, postage prepaid, upon:

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REV_00139271

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Burton, Faith <Faith.Burton@usdoj.gov>
Sent: 1/24/2002 8:08:48 AM
Subject: : RE: meeting
Attachments: P_7EY05003_WHO.TXT_1.wpd; P_7EY05003_WHO.TXT_2.wpd; P_7EY05003_WHO.TXT_3.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:24-JAN-2002 13:08:48.00
SUBJECT:: RE: meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

by the way, we're meeting at 1:45 today just to keep everyone focused and to keep our spade work progressing.

also, my understanding is that we have 3 letters responding to burton pending WH Cnsl. approval. any reason we can't send 2 and 3 this week? i realize 1. is a bit trickier but at some point soon, before the 6th, we may want to send it up.

Here are the 3 drafts we've discussed and circulated:
1. On the privilege log;
2. On relevant precedents;
3. A summary of our document production to date.

- burton.eplog.wpd - burton.precedents.wpd - burton.confirming.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7EY05003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7EY05003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7EY05003_WHO.TXT_3>

Draft January 17, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is to respond to requests articulated at the Committee's hearing on December 13, 2001 for a log of the documents relating to the Boston FBI matter that were subject to the President's claim of executive privilege.

Enclosed for your review is a log of those documents. I was going to provide this log to you at the meeting that was scheduled for January 10, 2002. Our expectation was that we would describe the documents to Committee staff and hear the staff's explanation of how the Committee's investigative needs relate to particular documents, which would allow the Committee and the Department to explore together the possibilities for further accommodating the Committee's needs. We especially wanted to advise you about one document relevant to the Salvati matter, which you have identified as a focus of the Committee's interest. Consequently, we were very disappointed that you canceled the meeting and we hope that we can reschedule it in the near future.

Sincerely,

Michael Chertoff
Assistant Attorney General

Enclosure

cc: The Honorable Henry Waxman
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 18, 2002 DRAFT

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated September 7, 2001, and referenced in your letter, dated January 17, 2002, regarding the Committee hearing scheduled for January 23, 2002, which has been postponed. I apologize for the delay in responding to your September letter.

The Department does not maintain records of the precedents that you requested in any readily retrievable form. Hence, we are not in a position to provide comprehensive information about requests for deliberative prosecutorial documents prior to 1992. We appreciate your interest in information about how such requests were handled prior to the Clinton Administration, however, and we have compiled the enclosed records, which we hope will be helpful to you. They include a 1986 Opinion of the Office of Legal Counsel (OLC), a 1989 Memorandum of OLC Assistant Attorney General William Barr, a 1991 letter from Assistant Attorney General Lee Rawls to Senator Metzenbaum, and a January 27, 2000 letter from Assistant Attorney General Robert Raben to Chairman John Linder of the House Rules Subcommittee on Rules and Organization of the House. These documents have informed the Department's responses to requests for deliberative prosecutorial documents and our approach to the accommodation process. It remains our hope that you will agree to engage in such a process with regard to the Boston FBI documents. We would appreciate receiving from you information about the precedents that you believe are relevant to your request for these documents.

I look forward to hearing from you further about these issues. Please do not hesitate to contact me if you would like additional assistance about this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft January 18, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is to confirm and further the conversation between the Committee's Chief Counsel Jim Wilson and FBI Special Counsel Beth Beers on January 9, 2002 regarding the status of our responses to your requests for documents relating to the oversight of the Bureau's handling of informants in Boston.

As a preliminary matter, Mr. Wilson confirmed that the Department has complied with the Committee's document requests dated March 30, May 10, and May 23, 2001. With regard to items requested in your letter dated June 5, 2001, our production of documents responsive to items 1 (Messrs. Rico, Condon, Connolly and Morris awards and similar documents) and 7 (records about DOJ involvement in State prosecution of Joseph Barboza) are complete.

We have not processed records responsive to item 2 because they relate to matters under investigation by the Justice Task Force. In addition, we have not produced material responsive to items 5 (FBI/OPR report on FBI's relationship with James Bulger, Stephen Flemmi and other Boston informants) or 9(b) (Stephen Flemmi, 1960-1971) because we believe that they are covered by the Protective Order entered by Judge Wolf in *United States v. Francis P. Salemme, et al.* (D. Mass. 1997). The FBI/OPR report also contains information relating to pending law enforcement matters.

We have produced some records responsive to item 3 (Patriarca wiretaps and overhears, January 1, 1962 to December 31, 1968) and item 12 (Top Hoodlum Program). We have completed our production of FBI records responsive to these items and appreciated Mr. Wilson's clarification that, regarding item 12, you are not seeking AG Informant Guidelines. We also have completed our production of FBI records responsive to item 4 (Gennaro Angiulo wiretaps and overhears, January 1, 1962 to December 31, 1968) and item 6 (Mr. Rico's recall from retirement and subsequent involvement in investigation of former U.S. District Judge Alcee Hastings). We have not identified any documents responsive to item 8 (post-retirement contacts with Messrs. Rico, Condon, and Connolly) beyond those identified in response to items 1 and 6. We have not searched files pertaining to pending civil actions in which these individuals may be named as defendants.

We have also produced records responsive to item 9(c) (Joseph Barboza) and are

continuing to review and process responsive records. As we advised Mr. Wilson, our search for and release of records responsive to items 10 and 11, regarding Mr. Barboza's contacts with listed individuals and contacts between listed individuals concerning Mr. Barboza, was conducted in conjunction with our processing of records responsive to item 9(c). Efforts to locate records responsive to 9(a) (Vincent Flemmi) have recently identified potentially responsive records maintained by the FBI's Boston office. Those records are being reviewed and responsive material will be processed and released. Mr. Wilson advised that he would provide additional information regarding item 9(d) (John S. Kelley) to assist the FBI in searching for records.

Please be advised, in responding to your request, we have not disclosed information which would reveal the identity of an FBI informant. In some cases, this has required redaction of material contained in documents that have been released and in other instances we have withheld entire informant files. The FBI advises that more specific information concerning the material being withheld cannot be provided without jeopardizing the very information we are trying to protect. This issue was discussed with Mr. Wilson during his review of material responsive to item 13 (redacted text) during two visits during August 2001. We are continuing to consider alternatives for accommodating the Committee's needs regarding this matter.

With regard to your letter dated December 18, 2001, I am advised that the FBI believes, based on a preliminary search for responsive material, that disclosure of documents responsive to items 1 and 2, regarding contacts between Frank Oreto and Joseph Salvati and Marie Salvati, respectively, if they exist, would be prohibited by Title III. We are conferring with Department attorneys about that question and will supplement this response as soon as possible. Mr. Wilson instructed that the Committee does not currently wish to receive documents responsive to items 3 (SA Rico's handling of John "Red" Kelley); 4 (SA Sheehan's handling of John "Red" Kelley); 5 (Strike Force Chief Edward Harrington's handling of John "Red" Kelley); 6 (re Rhode Island Supreme Court finding on subornation of perjury by SA Rico during 1970 trial of Maurice Lerner); and 7 (re Rhode Island Supreme Court finding of perjury by SA Rico during 1970 trial of Maurice Lerner). Lastly, the FBI advised that they have identified material concerning item 8 (Victor Garo), but it is not investigative in nature. Mr. Wilson said he is not interested in those records.

The Department is continuing to search for documents responsive to your requests and we will supplement this response when additional documents become available. I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent:	1/25/2002 3:55:10 AM
Subject:	: letters
Attachments:	P_E8L15003_WHO.TXT_1.doc; P_E8L15003_WHO.TXT_2.doc; P_E8L15003_WHO.TXT_3.doc

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TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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for limited circulation as determined by Judge and Tim after Judge
and Tim approve.

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_E8L15003_WHO.TXT_3>
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DRAFT

January __, 2002

The Honorable Henry A. Waxman
U.S. House of Representatives
2204 Rayburn House Office Building
Washington, D.C. 20515-0529

Dear Congressman Waxman:

This letter responds to your letter of January 15, 2002. As I have previously stated, I had a brief conversation with Kenneth Lay on October 11. Our conversation addressed the prospects for an economic stimulus bill along the lines the President had articulated. Beyond that, as you know, numerous committees of the House and Senate and many executive branch departments and agencies, including the Securities and Exchange Commission, the Department of Labor, and the Department of Justice, are currently conducting official investigations into the causes and consequences of the Enron bankruptcy. To the extent any duly authorized investigative bodies may request additional relevant information, I will respond in a timely, orderly, and appropriate way.

Please be assured that the President and I share your concern about the causes and consequences of the Enron bankruptcy, including the consequences for Enron employees and shareholders. The President has assured the American people that he will seek appropriate policy changes that might help to prevent similar occurrences in the future. Indeed, two cabinet-level working groups are now examining the pension regulation and financial disclosure issues presented by Enron's situation. In short, the Administration's resources are fully devoted to appropriate investigative, law enforcement, and policy actions relating to the Enron bankruptcy.

Sincerely,

Mitchell E. Daniels, Jr.
Director

DRAFT

January __, 2002

The Honorable Henry A. Waxman
U.S. House of Representatives
2204 Rayburn House Office Building
Washington, D.C. 20515-0529

Dear Congressman Waxman:

This letter responds to your letter of January 14, 2002. As I have noted on previous occasions, I had no communications with Kenneth Lay or other Enron executives last fall relating to their company's financial situation. Following media reports of Enron's deteriorating condition, I did, however, lead an effort to monitor the energy and financial markets in an effort to assess the potential systemic impacts, if any, of Enron's failure. That effort obviously and necessarily involved some interaction between members of the President's economic team and others in the Administration who were working on similar issues.

I have already furnished the limited information in my possession that is necessary to understand my role in responding to Enron's financial collapse. To the extent that any of the duly authorized investigations that are currently ongoing in either the executive branch or the Congress may request further information from me, I will of course make a timely and appropriate response. In the meantime, I will continue to devote my energies to helping President Bush develop and pursue policies that will help our economy enjoy a rapid, steady, and robust recovery. I welcome your continuing interest and assistance in that important enterprise.

Sincerely,

Lawrence B. Lindsey

DRAFT

January __, 2002

The Honorable Henry A. Waxman
U.S. House of Representatives
2204 Rayburn House Office Building
Washington, D.C. 20515-0529

Dear Congressman Waxman:

This letter responds to your letter of January 14, 2002. As Secretary Evans has previously reported, he spoke to me and advised me that he received communications from Enron and also spoke from time to time with my Deputy, Josh Bolten. Beyond that, as you know, numerous committees of the House and Senate and many executive branch departments and agencies, including the Securities and Exchange Commission, the Department of Labor, and the Department of Justice, are currently conducting official investigations into the causes and consequences of the Enron bankruptcy. To the extent any duly authorized investigative bodies may request additional relevant information, we will respond in a timely, orderly, and appropriate way.

The President shares your concern over the Enron bankruptcy, and he is committed to ensuring that its causes and consequences are fully explored and understood. The President is determined to ensure that the law is fully enforced against any person or entity who may have broken it in connection with Enron's failure and to support policy changes that might help to prevent similar occurrences in the future. To that end, he has convened two cabinet-level working groups to examine the pension regulation and financial disclosure issues presented by Enron's situation. All Americans have a right to expect that their government will respond to this problem in a cooperative, responsible, and bipartisan way, and I hope and believe that we will continue to do so.

Sincerely,

Andrew H. Card, Jr.

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Daniel J. Keniry/WHO /EOP@EOP [WHO] <Daniel J. Keniry>
CC:	Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Rebecca A. Beynon/OMB /EOP@EOP [OMB] <Rebecca A. Beynon>
Sent:	1/25/2002 5:10:40 AM
Subject:	: Meeting on Victims of Foreign Terrorism Legislation

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CREATION DATE/TIME:25-JAN-2002 10:10:40.00
SUBJECT:: Meeting on Victims of Foreign Terrorism Legislation
TO:Diana L. Schacht ( CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Rebecca A. Beynon ( CN=Rebecca A. Beynon/OU=OMB/O=EOP@EOP [ OMB ] )
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Josh and Judge Gonzales have discussed this issue and Judge asked
me, in coordination with Jay, to convene a meeting to come to closure on
analysis/recommendation. State, Defense, and Treasury will be part of the
meeting as well.
Please let me know your availability at the following possible
times. After hearing from everyone, I will send you an e-mail today with
time and place.
Possible times:
Monday 1/28 at 4:00
Tuesday 1/29 at 11:00
Tuesday 1/29 at 2:00
Wednesday 1/30 at 11:00
```

From: CN=Daniel J. Keniry/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/25/2002 7:11:02 AM
Subject: : Re: Meeting on Victims of Foreign Terrorism Legislation

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CREATOR:Daniel J. Keniry ( CN=Daniel J. Keniry/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-JAN-2002 12:11:02.00
SUBJECT:: Re: Meeting on Victims of Foreign Terrorism Legislation
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, the Monday time is best for me. Tues I will be on the Hill most of
the day, and Wed we go to the GOP retreat.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 1/25/2002 4:38:35 AM
Subject: : Peggy Noonan article in case you are interested

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CREATION DATE/TIME:25-JAN-2002 09:38:35.00
SUBJECT:: Peggy Noonan article in case you are interested
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
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An Empire Built on Ifs
Enron deserves a big Texas whippin'.

Friday, January 25, 2002 12:01 a.m. EST

How rich do you have to be?

I know a man who once ran a big international company, who had done very well in life and was happily retired. Years after he left the company, it went public in an IPO that would make all the company's officers even richer than they were, which was already pretty rich. The company's retired executives got together and decided to press for a piece of the pie. They had to fight for it, and it got messy, but in the end they all got some more money.

I asked my friend, during the controversy, why the retired members were fighting so hard. Had some fallen on hard times? No, he said, not to his knowledge. Did they need the money for immediate and pressing concerns? No, he said, not that he knew of. "Then why is this such a big deal to them if they're already rich?" He looked at me with the kind of face people get when they hear something truly inexplicable. And then he said in a pleasant, explanatory tone, "Everyone wants more."

It was my turn to get the inexplicable look. Because not everyone wants more, or at least not everyone wants more in circumstances like that. The idea of getting into a struggle to squeeze out another $5 million when you already have a $100 million seemed to me absurd, a misallocation of energy and interest. It's not as if you can buy a better steak if you're already that rich. It's not as if you can buy a better anything. So why fight for another five?

I have thought of this conversation ever since the Enron scandal began. Enron's officers, its leaders and top dogs, were really rich. They created

a big company out of nothing and did very well. But then when things went bad--when their own decisions, apparently, drove the enterprise south--they made sure they would stay rich. They did this by quietly selling off their stock while the peons below them were not allowed to. While the peons below watched the worth of their stock erode, and then fall, and then plummet. The big guys had to stay rich. Everyone wants more.
It is, to me, an amazing, an almost unbelievable story. And I bring a particular and personal knowledge to it.

You have heard the past few weeks of journalists, political figures and others who were advisers to Enron or served on its board. I was not an adviser or board member, but in 1997 I spent two days in their Houston headquarters touring the place and meeting with their top officers to get to know the company so I could work on a speech with the CEO, Ken Lay, and work with his people on the CEO's letter in an upcoming annual report. They wanted the report to be interesting to read, like Jack Welch's famous letter to shareholders at the beginning of General Electric annual reports. I'd never done work like that before and wound up never doing it again, in part because I wasn't good at it, and in part because I realized I just didn't get modern big business.

The people I dealt with at Enron were mostly middle-level workers, and they were terrific--smart, dedicated and loyal to their company. They worked like dogs. They're probably among those who just lost much of their money. One of the things they believed in as good public policy was deregulating the sale of consumer electricity in America. I supported it too but had reservations about it. I understood the basic arguments: that deregulation held the promise of lower energy costs for consumers, cleaner and more efficient energy, profit for private sector investors in those companies that would compete to provide energy, such as Enron, and, ultimately, a spur to more inventions that would make consumers' lives better.
Deregulation was part of the reason Enron asked me to come down and talk to them. For I had told an Enron worker I'd met in Manhattan that making the case for the deregulation of anything these days, especially a commodity that has been a public utility since before almost everyone in the country was born, would be difficult.

When I went down to Houston, I met with Enron's No. 2, Jeff Skilling, and told him I felt Enron would have a big problem in persuading the American people to support deregulation. The reason? Two words: Too complicated.

He told me that deregulation of electricity is certainly not complicated.

Well, I said, maybe you're right, but this is how I see it. American consumers have a myriad of choices on almost everything now, which is wonderful in the abstract but often hellish in the particular. For instance, telephones. When I was a kid you got a phone from the phone company. There was only one phone company, so you didn't have to do research. They came and put in the jack and you called your friends. You didn't even choose the color of the phone when I was a kid; all the phones were black. Everyone had the same kind of phone and the same service. It was easy.

Now there are 50 phone companies, 50 kinds of phones, 50 kinds of service, 50 package deals, five different phone bills every month, phone companies calling at dinnertime to sell their wares, secret codes to get our messages. And it sometimes makes you feel like you wish there could be one big phone company again, and one black phone.

I told him that it is fabulous that we have such choice, such progress, but that it's burdensome too. I sometimes miss the simplicity of the old, limited world. And I thought if I did, some others did too. Asking people

to make individual decisions about what local electric company to use just might be one item too many on the average consumer's Daily Decision List.

Mr. Skilling got a sort of dark look as I spoke. And finally he said, impatiently, that phone deregulation has made telephones not more expensive but less. "Do you know what it costs to call London now compared to the way it was?"

I said I didn't, and thought: Most people even today, in 1997, aren't calling London all the time. That's not how normal people judge progress. And anyway it's not the point. Life has gotten too complicated for a lot of people, that's the point.

Let me tell you what I saw when I was there. I saw cavernous rooms with big monitors on the walls, and on desks too. The monitors and computers were blinking out numbers. I remember the numbers and words on the screens as bright green. Young future Masters of the Universe were standing with phones, monitoring the numbers, saying things, buying and selling. I met with a woman famous in the company for being in charge of putting big natural gas pipelines into Central or South America and India. She seemed intense and intelligent and, like the men, very Armani but kind of Texas Armani--everyone well tailored but with more gold, more colors than Wall Street people, who are sort of more gray-hued.
I thought Ken Lay intelligent, soft-spoken, somewhat opaque. At one point I met Mr. Lay's wife. It was just after I returned from Houston, and I met with him in an Enron suite at a hotel in New York. Mrs. Lay was visiting New York and had just come in from a long day of shopping. I was introduced to her and what I remember was she was wearing beautiful soft tailored black leather slacks. They were like movie-star pants. And I thought: Boy, these people have a lot of money.

And I thought, they spend a lot of money. That was one thing that hit me hard in Houston: They were "hemorrhaging money!" as Tom Wolfe's Sherman McCoy said. They were building this and tearing down that, they were, they told me, talking to legislators in various state houses, lobbying to get deregulation bills passed. All of it seemed expensive, labor-intensive, time-intensive.

And it all seemed so tentative, so provisional. The Enron building was huge; the Enron sign outside, the big tilted E, was huge; the gold earrings on the women executives were huge; the watches on the men were huge; the paychecks were huge; the company's ambitions were huge. But all of it seemed to depend on things that were provisional. If they are able to build the big pipeline in India, it will be great and profitable--provided it happens. If they are able to get states to deregulate electricity, and Enron is able to provide it, and it all goes well, it will be great and profitable--if it happens. If the Central or South American pipeline goes through and works and runs a profit it will be great--if it happens. An empire built on ifs. It all seemed so provisional.

I went away for a few weeks and worked hard and tried to put together a speech and make a contribution to the annual report, but none of it really worked. Mr. Lay used at least part of the speech I worked on, about deregulation and its challenges. Some of what I tried to write for the annual report made it in. But mostly my contributions weren't helpful, and I think for two reasons. One was that the guys at the top, and in the middle, seemed unable to communicate to me exactly what it was the company was doing to make money. So I didn't absorb the information and make it understandable to others. The other was that I think I sensed a sort of

corporate monomania at the top--if you can't understand what we're doing then maybe you're not too bright.
But the key part was that I couldn't help them explain their mission because I didn't fully understand what their mission was. I understand what the Kenneth Cole shoe company does. It makes shoes and sells them in stores. Firestone makes tires. I couldn't figure out how Enron was making its money, what exactly it was selling, and every time I asked I got a kind of gobbledygook answer or a cryptic one, like "The future!"

We should all have a realistic sense of our limits, and I decided that one of mine is that I don't have a mind that appears to be able to understand the complexities of modern big business. But my dimness was in this case helpful to me. It meant I would have not a long relationship with Enron but a short one that lasted about a month. And it allowed me to make another choice. A friend, on being told I'd been to Houston and was working on an annual report, told me: "Get paid in stock, that company is golden."

But it didn't seem golden to me, it only seemed confusing. So I sent them a bill, charging, if memory serves, $250 an hour for the 100 to 200 hours I worked, which is more than a first-rate psychiatrist and less than a first-rate lawyer. This is what I used to charge for speeches in those days when I did them.

I never worked for Enron again. I stayed in touch with a few of the midlevel people for a while, but they all left in time. I'd think of them now and then, wonder how the company was doing, read or hear that it was No. 1, top in the field, golden. Until it wasn't anymore.

I'm speaking of all of this because I feel I have to in order to write about Enron. And I have to write about Enron because I have strong views about the scandal.
I am a conservative, and so a Republican. I believe that conservatives and Republicans have a special responsibility, as the party that stands for free markets, to see to it that free markets work, and are not abused, gamed or finagled. Republicans and conservatives have, I believe, a special responsibility to come down hard on people who cheat their shareholders and their employees.

Obviously the primary question at the moment is whether anyone from Ken Lay on down literally violated the criminal code. The Justice Department is investigating. This is good. But it seems to me the administration might consider a special prosecutor in the case, too.

President Bush yesterday changed his tone about Enron, admitting that what its leaders appear to have done angers him. That's good. But more anger is needed, or rather a greater and more obvious commitment to get to the bottom of the scandal.

Representatives of Enron, as everyone knows, met with Vice President Dick Cheney's office before the administration put forward its energy bill. Congress is demanding the notes and records of those meetings. The vice president is refusing, on principle: It would be a violation of executive privilege. Mr. Cheney explained the other night to Tom Brokaw that the principle is an important one: A president and vice president simply have to preserve their ability to meet with and talk candidly with citizens and groups on policy issues, and the candor is compromised if all the details of every meeting are made public.

He is no doubt correct, and his arguments would, one suspects, be upheld by the courts.

But the administration could both insist on the principle of executive privilege and, in this case, waive it. Just waive it. They could announce

that Congress can, in this special case, see all of the notes and materials on the Enron meetings.

Why should the administration consider doing this? Because the Enron case is special--huge, damaging to individuals and damaging to faith in free markets. Because, as I've said, Republicans have a special responsibility as the free market party to support the transparency of those markets. And there is a third reason, which is merely political, but then politics is rarely mere. If the administration continues to resist the request for documents and fight in the courts, its victory may well be Pyrrhic and its potential loss even more painful. Because as long as the administration doesn't come forward with everything, the issue remains alive and potent for the opposition's use.

(Yes, Enron was, like most big corporations, a corporate whore in terms of its contributions. It gave to both parties; it gave to both Clintons. But the Republicans will be hard-pressed to shake the Democrats' insistence that this was largely a Republican problem. And in any case it would be good to see just how Enron operated politically in its dealings with both parties--which is to say, it would be good for the public to have more information about big business and politics, not less.)

Finally, those who insist the law should change with respect to accountants certainly seem to be correct. It appears to be a conflict of interest when an accounting firm that audits a company also receives millions of dollars for consulting--that is, millions for advising the company on business decisions even as they're getting millions for reviewing its books. This is what appears to have happened with Arthur Andersen and Enron. It's hard to understand why and how this is legal.

It's not true that everyone wants more. It's not true that "everyone does it." And it's not true that free markets are rigged, a sucker's game. But it does seem that the party that stands for free markets and free economic dealings has a special responsibility to make sure that those who abuse them are given one big Texas whippin'.

Ms. Noonan is a contributing editor of The Wall Street Journal. Her new book, "When Character Was King: A Story of Ronald Reagan," is just out from Viking Penguin. Her column appears Fridays.

From: Edward_Ingle@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;L. Camille Welborn/WHO/EOP@EOP [WHO] <L. Camille Welborn>;Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>;Craig Felner/WHO /EOP@EOP [WHO] <Craig Felner>;Cheryl A. Oldham/WHO/EOP@EOP [WHO] <Cheryl A. Oldham>;Nicole E. Grodner/WHO/EOP@EOP [WHO] <Nicole E. Grodner>;Melissa L. McAdoo/WHO/EOP@EOP [WHO] <Melissa L. McAdoo>
Sent: 1/25/2002 11:10:04 AM
Subject: : agency foia requests
Attachments: P_AB725003_WHO.TXT_1.doc

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CREATION DATE/TIME:25-JAN-2002 16:10:04.00
SUBJECT:: agency foia requests
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Laura S. Lawlor ( CN=Laura S. Lawlor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:L. Camille Welborn ( CN=L. Camille Welborn/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Ali H. Tulbah ( CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Craig Felner ( CN=Craig Felner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Cheryl A. Oldham ( CN=Cheryl A. Oldham/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nicole E. Grodner ( CN=Nicole E. Grodner/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Melissa L. McAdoo ( CN=Melissa L. McAdoo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

....from this week's cabinet report submissions.

(See attached file: FOIA1-25-02.doc)
- FOIA1-25-02.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AB725003_WHO.TXT_1>
```

1/25/02

SIGNIFICANT AGENCY FOIA REQUESTS

VETERANS

- On January 14, 2002, Mrs. **Lynette Kalsnes, Staff Reporter,** ***Chicago Tribune***, Chicago, IL requested copies of several Office of Inspector General reports pertaining to the Edward J. Hines, Jr. VA Hospital, Hines, Illinois.

- On January 17, 2002, Mr. **Russell Carollo, Reporter,** ***Dayton Daily News***, Dayton, Ohio, requested copies of Office of Inspector General report entitled "Healthcare Inspection Alleged Research Improprieties and Quality of Care Issues, VA Medical Center, Miami, FL."

DOE

- **Mary Orndorff, The Birmingham News** requests copies of correspondence between DOE and members of the Alabama Congressional Delegation from 2001 to the present that relate to the New Source Review of Power Plants.

- **Tom Hamburger, Wall Street Journal** requests copies of correspondence between: 1) members of Congress and any federal agency since January 2001 related to Enron Corporation; and 2) Enron Corporation and any federal agency since January 2001.

- **John Bresnahan, Roll Call** requests copies of correspondence between DOE and various Senators and Representatives from January 1, 1997 to the present.

- **Tim Burger, New York Daily News** requests information about DOE involvement with Enron Corporation from 1998 to the present, documents between Enron Corporation and the Overseas Private Investment Corporation (OPIC) and applications submitted by Enron Corporation to OPIC.

- **Christopher Farrell, Judicial Watch** requests copies of documents related to Enron Corporation Chief Executive Kenneth L. Lay and Secretary of Energy Secretary Spencer Abraham.

EPA

During the week of January 15-21, 2002, the Agency received a total of 347 FOIA requests. Of that total, 46 were received in Headquarters. Significant FOIAs include: (1) a request from the ***Bangor Daily News*** regarding criminal violations of the Clean Water Act at Maine mills; (2) a request from *Greenwire* regarding New Source Review information; (3) a request from **NBC 4** regarding the number of reported incidents involving deaths, major effects and minor incidents from Hartz Mountain flea control products and documents from the review of these products; (4) a request from ***The Birmingham News*** regarding Congressional letters concerning New Source Review; (5) a request from Benjamin Jones of the Democratic Senatorial Campaign

Committee regarding Congressional correspondence with John Cooksey from January 1, 1996 to the present; (6) a request from **Heather White of the Environmental Working Group** regarding studies involving human test subjects; and (7) a request from **Thomas Adams of the Oxygenated Fuels Association**, Inc. regarding MTBE.

HHS

ACF reported the following:

- **Renee M. Limoge** requested a copy of all correspondence between the office of Representative Ken Bentsen, Jr. (D- TX) and DHHS from January 1995 to the present.

- **Benjamin Jones, Democratic Senatorial Campaign Committee**, requested a copy of correspondence between Senator Gordon Smith (R-OR) and the Department of Health and Human Services from January 1, 1997, through July 19, 2001.

- **Katherine S. Legg** requested a copy of documents concerning the Infants Adoption Awareness Training Program awards announced on October 15, 2001.

– **Heather J. Christie** requested a copy of documents concerning the FY 2001 Competitive Discretionary Grant Awards for Field Initiated Demonstration Projects Advancing the State of the Art in the Adoption Field.

LABOR

Benjamin Jones, Deputy Research Director, Democratic Senatorial Campaign Committee *is seeking:* all direct correspondence between the following current and former Members of the House of Representatives and United States Senate between the dates listed below:

Jean Carnahan: Sen: 1/1/00 - Present

Mr. Jones is seeking all direct correspondence between the listed members or their staff and [the Department of Labor], including letters, reports, requests and other relevant material. He is <u>not</u> interested in any secondary material such as phone logs, e-mails, notations of conversations. This request is being forwarded to all components of the Department, including the Divisions in the Solicitor's Office for processing. Date request received: Dec. 12, 2001.

TREASURY

- Received 1/10/02 from ***Bloomberg News*** requested records regarding the Enron Corporation.

- Received 1/11/02 from ***The Center for Public Integrity*** requested records regarding the Enron Corporation.

- Received 1/11/02 from ***the Los Angeles Times*** requested records regarding the Enron Corporation.

- Received 1/11/02 from ***The Washington Post*** requested records regarding the Enron Corporation.

- Received 1/13/02 from the ***Associated Press*** requested records regarding the Enron Corporation.

- Received 1/14/02 from the ***New York Daily News*** requested records regarding the Enron Corporation.

- Received 1/15/02 from the ***Wall Street Journal*** requested records regarding the Enron Corporation.

COMMERCE

- Received 1/18/02 from **Alan C. Miller, *The Los Angeles Times*,** requesting a list of all participants in any trade missions led by Secretary Donald L. Evans or any other senior Commerce official between January 22, 2001, and December 31, 2001. The requested information includes: dates of the mission, destinations, itinerary, purpose, number of Commerce participants, number of participants from any other federal agency, number of business or non-governmental participants, and total cost.

- Received 1/17/02 from **Rob Evans, *Guardian Newspaper***, requesting all correspondence from January 20, 2001, to November 28, 2001, between Secretary Evans and ministers in the British government.

- Received 1/17/02 from **Carla J. Christofferson, O'Melveny & Meyers LLP**, requesting all documents relating to laboratory analyses, sampling, and other testing performed by the Auke Bay Laboratory in connection with or in support of any study related to the sampling of beaches in western Prince William Sound. The documents are needed to determine the amount of Exxon Valdez oil remaining in the upper intertidal areas, recovery trends, and if the remaining oil still has the characteristic composition of Exxon Valdez oil since January 2001. Cruise ship logs related to the analysis were also requested.

- Received 1/15/02 from **Richard N. Brown, De Sola & Pate** (Venezuelan Law Firm), requesting records related to the United States Patent and Trademark Office's travel for U.S. Adherence to the Madrid Protocol (WIPO).

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Mack C. Bayne III/OA/EOP@EOP [OA] <Mack C. Bayne III>
Sent: 1/28/2002 2:44:40 AM
Subject: : Re: BlackBerry Wireless e-mail device.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-JAN-2002 07:44:40.00
SUBJECT:: Re: BlackBerry Wireless e-mail device.
TO:Mack C. Bayne III (CN=Mack C. Bayne III/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

Is 2:00 today (Monday) available?

Mack C. Bayne III
01/22/2002 03:38:00 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: BlackBerry Wireless e-mail device.

You have been approved to receive a new EOP issued BlackBerry Wireless e-mail device. I am trying to schedule a time with you whena techician can take care of the installation of the unit at your desktop computer. The installation of a BlackBerry takes about 1 hour. The technician will be happy to review the BlackBerry configuration with you and answer any questions you may have.

The technician will need your password several times during the installation. If you do not plan on being available during the installation, please contact Lori Lorenzo so that she may be available to help the technician to log into your PC.

Please return this e-mail to me with a date and time that you would like the technician to perform your install and whether you will or will not be there at the time the techician performs the install. We will do our best to work into your schedule. The installers are normally available from 9:30 to 4:00.

Regards

Mack Bayne
Office of Administration
Computer Specialist

Message Sent
To:_____
Rachel L. Brand/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP

Kyle Sampson/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/28/2002 4:15:47 AM
Subject: : Re: tort proposal

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-JAN-2002 09:15:47.00
SUBJECT:: Re: tort proposal
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

What is your fax number? I will send the relevant page of the report.
Drafts of the report were circulated through policy a month or two ago.
I'm not aware of any objections to this proposal, but will double check to
make sure.
```

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/28/2002 5:14:11 AM
Subject: : Re: tort proposal

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###### Begin Original ARMS Header ######
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CREATOR:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-JAN-2002 10:14:11.00
SUBJECT:: Re: tort proposal
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 1/28/2002 12:13:41 PM
Subject: : transcript

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-JAN-2002 17:13:41.00
SUBJECT:: transcript
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brent, can you track down the transcript of the television show referenced
below? Thanks.

O'Connor On "Dateline"
SCOTUS Justice Sandra Day O'Connor, when asked to describe the atmosphere
of the court during Bush vs. Gore: "I just think that's inappropriate."
More O'Connor: "There was a great deal criticism. It was a difficult case.
It's too bad that it came up." O'Connor, when asked if she wished the
court had never gotten the case: "Of course. Of course, I do. We don't
enjoy being thrust into the middle of political controversy. We don't
always have a choice in what comes here."
NBC's Couric: "There was speculation that Justice O'Connor might consider
retiring in the near future. But in a highly unusual move for a member of
the high court, she announced that she would not be stepping down any time
soon. During our interview, Justice O'Connor also addressed speculation
that if Chief Justice Rehnquist were to retire, she might be tapped to
take his place. She told me she doesn't even think of that possibility"
("Dateline," NBC, 1/25).
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>
Sent: 1/29/2002 6:03:08 AM
Subject: : one more news article

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-JAN-2002 11:03:08.00
SUBJECT:: one more news article
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The Washington Post, 05/05/91:

Mosbacher Flies the Corporate Skies) Free

Commerce Secretary Has Traveled to Official Meetings on Jets Provided by Businesses

By Dana Priest, Washington Post Staff Writer

Since becoming commerce secretary, Robert A. Mosbacher has flown to 30 of his 86 official meetings on corporate and private jets owned by former business associates, rich GOP contributors and companies that stand to benefit from his department's foreign trade policy initiatives.

Where he goes and whom he sees is determined, to some extent, by who offers a ride, according to department travel documents and a senior Commerce Department official who acted as a spokesman for Mosbacher on condition he not be identified. Mosbacher was said to be unavailable for comment.

The use of corporate planes is legal and Commerce officials said the practice does not influence Mosbacher's decision-making. Mosbacher or other officials often solicit the use of corporate aircraft for specific trips and the department "aggressively encourages" companies to pay for travel costs, the senior official said. In December 1989, Northern Telecom Inc. flew Mosbacher to Raleigh, N.C., to tour its plant, present a federal export award and attend a fund-raiser for Sen. Jesse Helms (R-N.C.). The company had a 10-year equipment contract with the department's National Institute of Standards and Technology and won a $ 153,000 contract extension six months after the trip.

In April 1990, Philip Morris Companies Inc. flew Mosbacher to its board of directors' meeting and, in June, to a Nashville dinner sponsored by the Tennessee Republican Party. In September, Philip Morris International and RJR Nabisco signed a deal to sell billions of cigarettes to the Russian republic. It was Philip Morris's largest single export order. The department had encouraged U.S. tobacco manufacturers to pursue the Soviet market.

The Commerce Department, Northern Telecom and Philip Morris point to an extensive paperwork trail to underscore their contention that the travel arrangements do not influence departmental actions.

Unlike White House Chief of Staff John H. Sununu, whose use of military planes is under White House review, Mosbacher rarely used military aircraft. When he did, it was for high-level official meetings. He also flew commercial or reimbursed friends for personal trips on their planes, according to department and federal financial disclosure records.

Some executive departments have been permitted to accept corporate donations for official business for years. But unlike Commerce, the others generally have steered clear of them because of the potential for conflicts.

Agriculture Department spokeswoman Kelly Shipp said, "Almost anyone is [an interested party] because the job of the Agriculture Department is so large."

"There's just too many possible conflicts of interest," said Mary Brunette, a spokeswoman for the Department of Housing and Urban Development. "Flying commercially is inconvenient for everyone, but not enough to make it prohibitive."

Since 1964 Commerce has had legal authority to accept "gifts" from non-governmental sources, as long as the donor had no business pending before the department. A new regulation, which took effect in March, gave every department the right to have corporations directly subsidize some of their work. If a conflict of interest exists, the department may still accept a donation, as long as the benefit to the agency "outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee."

The regulation was written by the General Services Administration under the Ethics Reform Act of 1989 to make the policy uniform for all departments and agencies.

Commerce officials said the practice of accepting corporate travel saves taxpayer money, allows Mosbacher to spend more time with individual CEOs and enables him to attend more events because he can avoid the inconveniences of commercial airline scheduling.

No one company benefits from its generosity, said the senior aide to Mosbacher. Everyone has the opportunity to donate and the propriety of each offer is reviewed by department lawyers.

Most important, said the Mosbacher aide, the goals of the Commerce Department and American business are one and the same.

But critics say letting corporations foot the bill for government business may influence who gets access to government officials.

"The so-called saving of taxpayer dollars may well come as a trade-off of taxpayer confidence in the integrity of governmental decision-making," said Fred Wertheimer, president of Common Cause, a public interest lobby group. "There's probably no area that could affect specific companies more than tax or trade policy."

With a limited travel budget, Commerce officials said, Mosbacher and his staff would be unable to do all they want to carry out the department's mission, which includes promoting international trade, technological advances and domestic economic development.

"Would it be better to have much less travel, far fewer events and have it all paid for by the government?" the Mosbacher aide asked. "If we can't accept [private flights], we'll have a tough time choosing which ones [events] to accept . . . and the press will yell and scream."

Of the 86 official trips Mosbacher took between Feb. 27, 1989, and April 12, 1991, the Houston oil multimillionaire flew free on corporate or private jets to 30 events, according to departmental documents.

On some occasions, corporations with an interest in opening up foreign markets -- also one of the main missions of the Commerce Department and the Bush administration -- gave Mosbacher free travel.

For example, to promote a proposed U.S.-Mexico free trade agreement, which

is being opposed by many U.S. labor and environmental groups, Mosbacher used the corporate jets of oil and natural gas companies, a bank that has benefited from U.S.-Mexican border industry, and a large apparel manufacturer.

Oil and gas, financial services and the textile and apparel trades are all areas of contention in the debate over the proposed agreement.

Mosbacher took at least 10 trips on jets owned by his former business associates or people from whom he successfully solicited GOP contributions of more than $ 100,000 during the 1988 presidential campaign.

Mosbacher raised more than $ 25 million in large donations for George Bush and other GOP candidates during the campaign and he is reported to be the likely chairman of President Bush's reelection campaign.

On some of those trips, the owner of the aircraft and the destination of the trip had something in common. These include:

On June 22-25, 1989, Mosbacher attended an economic retreat at the Gerald Ford American Enterprise Institute at the Beaver Creek resort in Colorado. He flew on a plane owned by George N. Gillett Jr., who had contributed more than $ 100,000 to the GOP in 1988. Gillett Holdings Inc., which developed the Beaver Creek ski resort, encountered financial troubles after going $ 1 billion in debt to buy several television stations, according to published reports.

On March 30, 1990, Mosbacher flew on a plane provided by Transco Energy Co., a Houston natural gas company whose executive officer is a close Mosbacher friend from the secretary's days as a Houston oilman, Commerce officials said. The two-day trip included Texas meetings to pitch the proposed U.S.-Mexico free trade agreement, a speech to the Houston Savings Bond Campaign and to members of the Team 100 project, the Republican National Committee's large donor program.

The Republican Party reimbursed the company for the political portion of this trip and others in which Mosbacher combined official and political business, said the department.

In mid-May 1990, Chesley Pruet, a former Mosbacher business partner who was then on the board of Millsaps College, flew Mosbacher to Jackson, Miss., to speak at the college commencement. Pruet Ramco was a partnership between Mosbacher and Chesley Pruet Drilling Co. of El Dorado, Ark., which was set up to handle drilling operations in North Dakota and was dissolved in October 1989.

In June 1990, Mosbacher flew to Detroit on Heinz Prechter's plane to attend a fund-raiser for then-Rep. Bill Schuette (R-Mich). Prechter is a friend of Mosbacher's from whom the secretary also raised more than $ 100,000 for the GOP.

Prechter, president of the American Sunroof Company Inc. in Michigan, also flew Mosbacher to the International Auto Show in Detroit on Jan. 7, 1991, where he spoke at a Cadillac news conference about U.S. competitiveness and the Malcolm Baldrige National Quality Award the company had won.

Other big GOP donors have flown Mosbacher on official trips. They include real estate developer Alec Courtelis and investor and real estate developer Saul Steinberg, president of Reliance Group Holdings. Each contributed at least $ 100,000 to the 1988 GOP campaign.

In February 1990, Steinberg flew Mosbacher to Vienna and Prague. Mosbacher's wife, Georgette, was with her husband in Vienna, where he held meetings with senior U.S. officials, the Austrian economics minister, Austrian bankers, business leaders and others. He attended the Viennese ball and visited an art museum, said Commerce officials. He paid all of his and his wife's expenses in Vienna, they said. In Prague he attended six official meetings in one day.

When Mosbacher flew on commercial airlines, his meetings were usually to address industry associations or to hold high-level foreign trade talks.

These trips included: the Pharmaceutical Manufacturers Association; the International Home Furnishings Market; the Foreign Policy Association; the American Jewish Committee; the Business Roundtable Policy Committee, the Institutional Investors Conference; and the Council of 100.

He also flew commercially for trade missions and meetings with foreign ministers in Germany, France, South America, Australia, Poland, Mexico, Belgium, Japan, Singapore, Indonesia, Thailand, Spain, Italy, Switzerland and Korea.

Staff researcher Ralph Gaillard Jr. contributed to this report.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 1/29/2002 6:48:40 AM
Subject: : meeting on victims of foreign terrorism legislation

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-JAN-2002 11:48:40.00
SUBJECT:: meeting on victims of foreign terrorism legislation
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI: We are hoping to meet Wednesday at 2:00 on the victims of
foreign terrorism legislation.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 1/29/2002 6:48:40 AM
Subject: : meeting on victims of foreign terrorism legislation

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-JAN-2002 11:48:40.00
SUBJECT:: meeting on victims of foreign terrorism legislation
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI: We are hoping to meet Wednesday at 2:00 on the victims of
foreign terrorism legislation.
```

From: CN=David W. Hobbs/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;nicholas e. calio/who/eop@eop [WHO] <nicholas e. calio>;kirsten a. chadwick/who /eop@eop [WHO] <kirsten a. chadwick>;daniel j. bartlett/who/eop@eop [WHO] <daniel j. bartlett>;mary j. matalin/ovp/eop@eop [OVP] <mary j. matalin>;anne womack/who/eop@eop [WHO] <anne womack>
Sent: 1/29/2002 7:11:27 AM
Subject: : Re: Possible House subcommittee oversight hearing on GAO

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-JAN-2002 12:11:27.00
SUBJECT:: Re: Possible House subcommittee oversight hearing on GAO
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:nicholas e. calio ( CN=nicholas e. calio/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kirsten a. chadwick ( CN=kirsten a. chadwick/OU=who/O=eop@eop [ WHO ] )
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CC:daniel j. bartlett ( CN=daniel j. bartlett/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:mary j. matalin ( CN=mary j. matalin/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:anne womack ( CN=anne womack/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I'm not the message person but I suspect that given the current
controversy any hearing on this subject is likely to generate more
negative stories than positive ones. While we may have some GOP supporters
who could ask the right questions and help shape the story, we will have
Waxman, et al full bore against us. Also, as Brett points out, we're
fighting the committee on executive privilege already and these two
subjects are closely linked. Not that the committee would necessarily heed
our request but perhaps it would be best if the committee decided against
having this hearing.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
Sent: 1/30/2002 4:16:57 AM
Subject: : Re: Meeting today on Victims of Foreign Terrorism Legislation

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-JAN-2002 09:16:57.00
SUBJECT:: Re: Meeting today on Victims of Foreign Terrorism Legislation
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

yes, on ground floor somewhere near 17th St. entrance, I believe.

Diana L. Schacht
01/30/2002 09:15:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Meeting today on Victims of Foreign Terrorism
Legislation

is that on the ground floor somewhere?

Brett M. Kavanaugh
01/30/2002 09:14:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Meeting today on Victims of Foreign Terrorism Legislation

We are scheduled for 2:00 in Room 48-A of EEOB.

Message Sent
To:_____
diana l. schacht/opd/eop@eop
john b. bellinger/nsc/eop@eop
kristen silverberg/who/eop@eop
ziad s. ojakli/who/eop@eop
daniel j. keniry/who/eop@eop
jay p. lefkowitz/omb/eop@eop
rebecca a. beynon/omb/eop@eop
Jonathan R. Scharfen/NSC/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>

Sent: 1/30/2002 5:11:14 AM

Subject: : reminder - JSC meeting today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-JAN-2002 10:11:14.00
SUBJECT:: reminder - JSC meeting today
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

4-5 pm in the Roosevelt

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 1/30/2002 6:54:52 AM
Subject: : From the AP Wire..

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-JAN-2002 11:54:52.00
SUBJECT:: From the AP Wire..
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 01/30/2002 11:54 AM ----------

Patrick J. Bumatay
01/30/2002 11:50:07 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: From the AP Wire..

GAO decides to sue White House seeking release of energy task force documents, congressional sources say

JESSE J. HOLLAND

Associated Press Writer

WASHINGTON (AP) _ The General Accounting Office has decided to sue the White House for access to documents from President Bush's energy task force, a congressional source told The Associated Press on Wednesday.

A decision had been expected from GAO Comptroller General David Walker, leader of Congress's investigative arm, all week. The GAO wants to force Vice President Dick Cheney, who ran the task force, to turn over documents on the meetings held last year with business executives as the Bush administration crafted a new national energy policy.

Some of the meetings included officials from the now-collapsed Enron Corp., a Houston-based energy broker with deep ties to Bush.

``We have been notified that they will be announcing their decision today and that their decision is that they will be moving forward,'' said the Senate source, speaking on condition on anonymity.

It would be the first time in the GAO's 80-year existence that it sued the executive branch. The lawsuit would be filed in the U.S. District Court in Washington, D.C.

GAO officials were calling congressional leaders at the Capitol Wednesday morning to tell them of the decision. An official announcement explaining the GAO's reasoning was expected after noon.

``They said this morning that they're sending the letter up,'' said a

House source, also speaking on condition of anonymity. The letter itself had not yet been delivered to Congress, the source said.

Although lawyers for the White House and the agency had continued talks this week, Cheney said on Sunday that the dispute ``probably will get resolved in court.''

In resisting the GAO, Cheney insists that providing the list of industry executives would harm his ability to receive advice in the future and that the congressional investigators are overstepping their bounds. GAO, as a congressional agency, insists it has the authority to request the information.

Any GAO lawsuit would be highly controversial on Capitol Hill. The agency's investigation began after Democrats on April 19 requested that GAO investigate the conduct, operations and funding of the Cheney energy task force.

On Tuesday, some Republicans had threatened to try to block the suit.

``I think it may come to that,'' said Sen. Orrin Hatch, R-Utah, the top Republican on the Senate Judiciary Committee.

Congress' investigative arm shouldn't be ``trying to impose disclosure on internal White House meetings to determine policy,'' Hatch said. ``If you have to do that, pretty soon there wouldn't be any meetings.''

House Majority Leader Dick Armey, R-Texas, said he and House Speaker Dennis Hastert, R-Ill., planned to ``talk to the agency.''

Sen. Arlen Specter, R-Pa., said he was researching to see whether the GAO would be overstepping its authority by taking on the administration.

``My concerns are that it would encroach upon the deliberative process and make it impossible for the vice president at the direction of the president to make a recommendation,'' Specter said. ``It's also a tricky area on executive privilege.''

Also Tuesday, an energy consultant suggested to the Senate Energy and Natural Resources Committee that Enron may have been using largely secret trades to manipulate energy markets.

Robert McCullough, a consultant whose clients include several Northwest utilities, testified that in the week after Enron announced its bankruptcy, the ``forward price'' of electricity in the West fell sharply. Enron had been a key trader in this market, which is used as a hedge against future power price changes and is unregulated.

``That certainly raises the question about whether Enron was manipulating the West Coast market'' by keeping prices artificially high, Sen. Ron Wyden, D-Ore., said in response to the consultant's testimony.

McCullough said ``the clear implication is that Enron may have been using its market dominance to set forward prices.''

Other energy experts said other reasons may have been behind the price decline. Lawrence Makovich, a power industry expert at Cambridge Energy Research Associates, said it would be impossible to determine simply from the decline in price whether prices were manipulated.

The Federal Energy Regulatory Commission told the Senate panel it would investigate Enron's influence on wholesale electricity prices.

The San Francisco Chronicle reported Wednesday that then-Enron Chairman Kenneth Lay gave Cheney a three-page document last April detailing the energy trading company's arguments against price caps or other measures to stabilize electricity prices in California.

``Events in California and in other parts of the country demonstrated that the benefits of competition have yet to be realized and have not reached consumers,'' the memo said.

The newspaper said some of the positions included in the memo were included in Cheney's energy plan.

An Enron spokesman told the newspaper that Lay gave the memo to Cheney. Mary Matalin, an adviser to Cheney, said the energy plan included input from many sources.

2nd Ld-Writethru, f0073-74-76-81-83

Message Sent
To:_____
Elizabeth N. Camp/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
Claire E. Buchan/WHO/EOP@EOP
Anne Womack/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Marvin Miller/OA/EOP@EOP [OA] <Marvin Miller>
Sent: 1/31/2002 5:08:05 AM
Subject: : Re: Test Message from Mack for new BlackBerry

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-JAN-2002 10:08:05.00
SUBJECT:: Re: Test Message from Mack for new BlackBerry
TO:Marvin Miller (CN=Marvin Miller/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

received

Marvin Miller
01/31/2002 10:02:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP
cc:
Subject: Test Message from Mack for new BlackBerry

Test Message for New BlackBerry

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Marvin Miller/OA/EOP@EOP [OA] <Marvin Miller>
Sent: 1/31/2002 5:08:05 AM
Subject: : Re: Test Message from Mack for new BlackBerry

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-JAN-2002 10:08:05.00
SUBJECT:: Re: Test Message from Mack for new BlackBerry
TO:Marvin Miller (CN=Marvin Miller/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
End Original ARMS Header

received

Marvin Miller
01/31/2002 10:02:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP
cc:
Subject: Test Message from Mack for new BlackBerry

Test Message for New BlackBerry

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 1/31/2002 6:14:30 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-JAN-2002 11:14:30.00
SUBJECT:: Re:
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Allright, then. Didn't K&E go after Microsoft?

H. Christopher Bartolomucci
01/31/2002 11:08:15 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re:

Hey you should be shooting at Brett, not me.

Bradford A. Berenson
01/31/2002 11:04:26 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re:

OK, ok, so you're all feeling righteous. I seem to recall John Roberts taking on the cause of racial special pleading in the Hawaiian case.

Brett M. Kavanaugh
01/31/2002 10:57:44 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:

Subject:

I am informed that Kirkland & Ellis was approached and refused to take the case.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 1/31/2002 6:17:38 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-JAN-2002 11:17:38.00
SUBJECT:: Re:
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
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I think a more fundamental question is, does K&E get any Supreme Court work? (Cf. John Roberts with three high profile arguments this term).

Bradford A. Berenson
01/31/2002 11:14:23 AM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re:

Allright, then. Didn't K&E go after Microsoft?

H. Christopher Bartolomucci
01/31/2002 11:08:15 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re:

Hey you should be shooting at Brett, not me.

Bradford A. Berenson
01/31/2002 11:04:26 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re:

OK, ok, so you're all feeling righteous. I seem to recall John Roberts taking on the cause of racial special pleading in the Hawaiian case.

Brett M. Kavanaugh
01/31/2002 10:57:44 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject:

I am informed that Kirkland & Ellis was approached and refused to take the case.

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 1/31/2002 10:15:26 AM
Subject: : Re: who's got DOE?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:31-JAN-2002 15:15:26.00
SUBJECT:: Re: who's got DOE?
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I do

Helgard C. Walker
01/31/2002 02:54:55 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: who's got DOE?

Message Sent
To:_____

Courtney S. Elwood/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

Rachel L. Brand/WHO/EOP@EOP

Media Review - Judicial Nominations
Thursday, January 31, 2002

General Judicial Articles

"A Rocky Milestone for Roe vs. Wade; Activists See Many Routes for Abortion Rights' Erosion," 1
Beth Kanter, *The Chicago Tribune*, January 30, 2002

"Privacy, Cameras in Court Are Senator's New Concern," 2
Linda Gasparello, *White House Weekly*, January 29, 2002,"

"Private Labor Lawyer Nominated for Spot on U.S. District Court," 4
The Associated Press, January 30, 2002

"Second Pickering Hearing Slated; NAACP Questions Record," 5
Jason Straziuso, *The Associated Press*, January 31, 2001

Op/Eds

NONE

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

General Judicial Articles

A Rocky Milestone for Roe vs. Wade; Activists See Many Routes for Abortion Rights' Erosion

By Beth Kanter
The Chicago Tribune
Wednesday, January 30, 2002

EXCERPT

Judicial nominations

REV_00139557

President George W. Bush likely will nominate at least one U.S. Supreme Court justice--a prospect of paramount concern for those who support the Roe vs. Wade decision. Justices selected by Bush and confirmed by the Senate have the potential to overturn the 1973 Supreme Court ruling.

"The Supreme Court is in crisis with the current 5-4 split," said Feminist Majority President Eleanor Smeal, referring to the division among the high court when it comes to upholding abortion as a constitutional right. "But it is not just the Supreme Court we have to worry about but the federal Court of Appeals--eight of the 12 circuit courts are already comprised of anti-choice majorities. . . . The worst-case scenario is that we lose all 12 circuit courts and we can't get a case to the Supreme Court."

Hearings begin in February for some of the federal court nominees, and NARAL has identified several nominees the group plans to challenge with a national grass-roots campaign. Topping that list is Judge Charles W. Pickering Sr., nominated to the 5th U.S. Circuit Court of Appeals, which covers Mississippi, Louisiana and Texas. "Pickering, among other things, led the right-wing charge for the Republican Party's first call for a constitutional amendment to ban abortion, he fought against choice and family planning as a Mississippi state legislator and he was an open opponent of the Equal Rights Amendment," said Michelman.

Privacy, Cameras in Court Are Senator's New Concern

By Linda Gasparello
White House Weekly
Tuesday, January 29, 2002

A week after a federal judge rejected cable network Court TV's petition to televise the trial of Zacarias Moussaoui, the first person indicted in connection with the Sept 11 attacks, questions about cameras in the courtroom and personal privacy dominated the Senate confirmation hearing for five of President Bush's federal court nominees.

Sitting in Thursday for Sen. Patrick Leahy (D-Vt.), chairman of the Senate Judiciary Committee, Sen. Maria Cantwell (D-Wash.) asked Richard D. Leon, nominee to he U.S. District Court for the District of Columbia, to comment on cameras in federal courtrooms. Leon has a special appreciation of the issue: he was deputy chief minority counsel for the U.S. Select Iran-Contra Committee—the second ranking counsel to Rep. Dick Cheney (R-Wyo.), and the Republican members of the committee—from March 1987 to March 1988.

Leon said that cameras in the courtroom are a challenging and difficult issue for Congress and federal judges to wrestle. "On the whole," he said, "it is a close-call question." Court TV, which is owned by AOL Time Warner and Liberty Media Corp., had argued in legal papers that the ban on televising federal criminal trials is unconstitutional because the U.S. Constitution gives the public the right to have access to courtroom proceedings. On Jan. 18, U.S. District Judge Leonie M. Brinkema essentially ruled that it is up to Congress to change the law barring cameras in federal courtrooms.

REV_00139558

"Given the growing public consensus and favorable experience in the majority of states that allow cameras in their courtrooms, we are optimistic that the United States Congress will soon pass legislation permitting cameras in our federal courts subject, however, to the sole discretion of the trial judge," Court TV's chairman and chief executive officer Henry Schleiff said in a statement.

Leon told Senate Judiciary Committee members that he prefers "not to have cameras in the courtroom, but to provide special access for the press. Part of my concern is for the security of the jury and the witnesses."

Noting that prior to Sept. 11, Americans were concerned about the issue of information attainment, Cantwell asked each of the six appointees for their views on how to "balance the need for individual privacy against the issues of information collected by the government, or in other criminal investigations."

James Edward Gritzner, nominee to the U.S. District Court for the Southern District of Iowa, said: "There are two issues involved here: One would be a social issue, and the other would be a legal issue.

As a social issue, Gritzner said "people have an expectation of privacy, whether that has actually been provided to them by the Constitution or by statute. So they come to Congress and the courts with that expectation."

He added: "With regard to the legal expectation of privacy, certainly we know in constitutional law that there have been cases involving the concept of privacy. Whether they would apply to this situation [anti-terrorism] is still not a resolved issue."

Americans are looking at certain courts, he said, for "a high degree of vigilance in protecting their privacy—the concept of being left alone, being able to maintain your personal records, your own personal lifestyle.

"They're looking to both the courts and the Congress for assistance in protecting them not only under the current circumstances, but I think they felt that way on Sept. 10."

Having served as a prosecutor on national security matters, Leon said it is going to be an "interesting and difficult challenge to see that privacy interests are weighed fairly."

Jay C. Zainey, nominee to the U.S. District Court for the Eastern District of Louisiana, said that the courts and Congress should "look closely at the U.S. Constitution" for guidance on privacy issues.

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By Jason Straziuso
The Associated Press
Thursday, January 31, 2002

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Judge Kessler promised at the end of the hearing to rule by Feb. 8 (the
date of
the Commission's next meeting).
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Media Review - Judicial Nominations
Thursday, January 31, 2002

General Judicial Articles

"A Rocky Milestone for Roe vs. Wade; Activists See Many Routes for Abortion Rights' Erosion," 1
Beth Kanter, *The Chicago Tribune*, January 30, 2002

"Privacy, Cameras in Court Are Senator's New Concern," 2
Linda Gasparello, *White House Weekly*, January 29, 2002,"

"Private Labor Lawyer Nominated for Spot on U.S. District Court," 4
The Associated Press, January 30, 2002

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A Rocky Milestone for Roe vs. Wade; Activists See Many Routes for Abortion Rights' Erosion

By Beth Kanter
The Chicago Tribune
Wednesday, January 30, 2002

EXCERPT

Judicial nominations

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President George W. Bush likely will nominate at least one U.S. Supreme Court justice--a prospect of paramount concern for those who support the Roe vs. Wade decision. Justices selected by Bush and confirmed by the Senate have the potential to overturn the 1973 Supreme Court ruling.

"The Supreme Court is in crisis with the current 5-4 split," said Feminist Majority President Eleanor Smeal, referring to the division among the high court when it comes to upholding abortion as a constitutional right. "But it is not just the Supreme Court we have to worry about but the federal Court of Appeals--eight of the 12 circuit courts are already comprised of anti-choice majorities. . . . The worst-case scenario is that we lose all 12 circuit courts and we can't get a case to the Supreme Court."

Hearings begin in February for some of the federal court nominees, and NARAL has identified several nominees the group plans to challenge with a national grass-roots campaign. Topping that list is Judge Charles W. Pickering Sr., nominated to the 5th U.S. Circuit Court of Appeals, which covers Mississippi, Louisiana and Texas. "Pickering, among other things, led the right-wing charge for the Republican Party's first call for a constitutional amendment to ban abortion, he fought against choice and family planning as a Mississippi state legislator and he was an open opponent of the Equal Rights Amendment," said Michelman.

Privacy, Cameras in Court Are Senator's New Concern

By Linda Gasparello
White House Weekly
Tuesday, January 29, 2002

A week after a federal judge rejected cable network Court TV's petition to televise the trial of Zacarias Moussaoui, the first person indicted in connection with the Sept 11 attacks, questions about cameras in the courtroom and personal privacy dominated the Senate confirmation hearing for five of President Bush's federal court nominees.

Sitting in Thursday for Sen. Patrick Leahy (D-Vt.), chairman of the Senate Judiciary Committee, Sen. Maria Cantwell (D-Wash.) asked Richard D. Leon, nominee to he U.S. District Court for the District of Columbia, to comment on cameras in federal courtrooms. Leon has a special appreciation of the issue: he was deputy chief minority counsel for the U.S. Select Iran-Contra Committee—the second ranking counsel to Rep. Dick Cheney (R-Wyo.), and the Republican members of the committee—from March 1987 to March 1988.

Leon said that cameras in the courtroom are a challenging and difficult issue for Congress and federal judges to wrestle. "On the whole," he said, "it is a close-call question." Court TV, which is owned by AOL Time Warner and Liberty Media Corp., had argued in legal papers that the ban on televising federal criminal trials is unconstitutional because the U.S. Constitution gives the public the right to have access to courtroom proceedings. On Jan. 18, U.S. District Judge Leonie M. Brinkema essentially ruled that it is up to Congress to change the law barring cameras in federal courtrooms.

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"Given the growing public consensus and favorable experience in the majority of states that allow cameras in their courtrooms, we are optimistic that the United States Congress will soon pass legislation permitting cameras in our federal courts subject, however, to the sole discretion of the trial judge," Court TV's chairman and chief executive officer Henry Schleiff said in a statement.

Leon told Senate Judiciary Committee members that he prefers "not to have cameras in the courtroom, but to provide special access for the press. Part of my concern is for the security of the jury and the witnesses."

Noting that prior to Sept. 11, Americans were concerned about the issue of information attainment, Cantwell asked each of the six appointees for their views on how to "balance the need for individual privacy against the issues of information collected by the government, or in other criminal investigations."

James Edward Gritzner, nominee to the U.S. District Court for the Southern District of Iowa, said: "There are two issues involved here: One would be a social issue, and the other would be a legal issue.

As a social issue, Gritzner said "people have an expectation of privacy, whether that has actually been provided to them by the Constitution or by statute. So they come to Congress and the courts with that expectation."

He added: "With regard to the legal expectation of privacy, certainly we know in constitutional law that there have been cases involving the concept of privacy. Whether they would apply to this situation [anti-terrorism] is still not a resolved issue."

Americans are looking at certain courts, he said, for "a high degree of vigilance in protecting their privacy—the concept of being left alone, being able to maintain your personal records, your own personal lifestyle.

"They're looking to both the courts and the Congress for assistance in protecting them not only under the current circumstances, but I think they felt that way on Sept. 10."

Having served as a prosecutor on national security matters, Leon said it is going to be an "interesting and difficult challenge to see that privacy interests are weighed fairly."

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To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kenneth A. Lisaius/WHO /EOP@EOP [WHO] <Kenneth A. Lisaius>
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Senators play politics with judicial choice
Jan 28 2002 12:00AM By the Editorial Board of the Union-Bulletin
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for Western Washington. The senators believe Bush, a Republican, should have
made the selection through a ``bipartisan'' process.
Funny, we heard the same sort of rant from former Sen. Slade Gorton, a Republican, when President Clinton, a Democrat, was in office. Yet, Murray wasn't too riled about the issue during the Clinton years.
Murray's and Cantwell's concerns ring as hollow today as Gorton's did a few years ago.
The power to appoint federal judges is clearly vested with the president. The Senate's role in the process is equally clear - it looks at nominees' qualifications to determine if they are fit for the post.
However, it is custom that the president consult with the senators from the state where the federal judge will be presiding. Not surprisingly, the president tends to take more seriously the wishes of senators of his own political party.
Murray and Cantwell, both seasoned political veterans, should understand that reality.
Yet, the pair have promised (or is that threatened?) to block Leighton's nomination unless the White House uses a bipartisan commission to make federal judicial appointments. The tirade is akin to a kid throwing a tantrum at a sandlot baseball game when he vows to take his ball and go home
if he doesn't get to play shortstop.
The Bush administration is on high ground here. Perhaps, from a standpoint of political expediency, the administration should have catered more to Murray and Cantwell. After all, the Democrats do control the Senate.
Nevertheless, the White House has no reason to apologize. Bush asked Rep. Jennifer Dunn, R-Wash., to head a selection committee. Dunn apparently asked
Murray and Cantwell to appoint people to the committee, but they declined because the senators did not want to be obligated to support the commission's final four candidates.
Ultimately, we would like to see a truly bipartisan process used to select federal judges. But we are also pragmatists. This president, like all

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Walla Walla Union-Bulletin 2002

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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judge Kessler promised at the end of the hearing to rule by Feb. 8 (the
date of
the Commission's next meeting).
```

From: Administrator) (Administrator@judiciary.senate.gov (Administrator) [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/1/2002 6:49:32 AM
Subject: : Message not deliverable

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Administrator@judiciary.senate.gov (Administrator) (
Administrator@judiciary.senate.gov (Administrator) [ UNKNOWN ] )
CREATION DATE/TIME: 1-FEB-2002 11:49:32.00
SUBJECT:: Message not deliverable
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

we are adding all the relevant cites to talking points and will
forward
later today (perhaps Monday a.m.)
```

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Jason Baron <jason.baron@nara.gov>;Nancy Smith <nancy.smith@nara.gov>
Sent: 2/1/2002 7:02:48 AM
Subject: : Re: URGENT

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
)
CREATION DATE/TIME: 1-FEB-2002 12:02:48.00
SUBJECT:: Re: URGENT
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jason Baron <jason.baron@nara.gov> ( Jason Baron <jason.baron@nara.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Nancy Smith <nancy.smith@nara.gov> ( Nancy Smith <nancy.smith@nara.gov> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I assume you got all you needed for today.

You should be aware that beginning as early as Monday, we will be making
available to defendants in the tobacco lawsuit Clinton, Gore, and Bush 41
records and emails, under an open-records discovery process by which they
can select what they deem to be responsive, and then allow the Government
to claim any privileges. This will be thus the first stage of a
complicated process, which is designed to preserve all privileges and
likely keep most of the PRA records that are finally produced to the d's
under seal. All of the reps have been consulted and approved of this
process (the Gore rep for this issue is Lisa Brown), as has Brad B.

>>> <Brett_M._Kavanaugh@who.eop.gov> 2/1/02 10:07:11 AM >>>
Gary: To reiterate, we urgently need the names and dates that
Clinton and
Gore representatives reviewed and ok'ed release of the e-mails and Barak
transcripts referenced in today's New York Times article. Thanks very
much.
```

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/1/2002 7:53:17 AM
Subject: : Re: Bush Appointee Watch: Roger Gregory

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-FEB-2002 12:53:17.00
SUBJECT:: Re: Bush Appointee Watch: Roger Gregory
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Niemeyer (author) and Wilkins

Brett M. Kavanaugh
02/01/2002 12:46:50 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Bush Appointee Watch: Roger Gregory

who were two judges in majority

H. Christopher Bartolomucci
02/01/2002 12:34:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Bush Appointee Watch: Roger Gregory

On January 10, the Fourth Circuit held in United States v. Pierce that a conviction under North Carolina law for the crime of taking indecent liberties with a child is a "crime of violence" for sentence-enhancement purposes under the federal sentencing guidelines. The defendant's conduct underlying the indecent liberties offense -- which is descibed by the court in its opinion -- was truly gross and involved the seven year old daughter of the defendant's then-girlfriend.

Judge Gregory dissented. He included a footnote stating that "[t]he majority's description of the alleged events that led to the defendant's guilty plea to taking indecent liberties with a child is unnecessary."

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
James W. Carroll/WHO/EOP@EOP

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Robert W. Cobb/WHO /EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Edward McNally/WHO /EOP@EOP [WHO] <Edward McNally>
Sent: 2/1/2002 8:07:47 AM
Subject: : help with 4:30 interview

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov ( Rachel_L._Brand@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 1-FEB-2002 13:07:47.00
SUBJECT:: help with 4:30 interview
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Is anyone available to help with a D NJ interview in my office at 4:30?
```

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Neil S. Patel/OVP/EOP@EOP [OVP] <Neil S. Patel>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO]), Claire M. O'Donnell (Claire M. O'Donnell/OVP/EOP@EOP [OVP]), David S. Addington (David S. Addington/OVP/EOP@EOP [OVP])
Sent: 2/1/2002 2:14:57 PM
Subject: : ADMINISTRATIVE ALERT: Department of Justice Request Regarding Enron

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME: 1-FEB-2002 19:14:57.00
SUBJECT:: ADMINISTRATIVE ALERT: Department of Justice Request Regarding Enron
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
BCC:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
BCC:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Neil:

Please forward this e-mail to all Office of Vice President personnel, so that they will be aware that all OVP personnel have an obligation, as a result of the Department of Justice request received today (Feb. 1, 2001), to preserve all physical and electronic documents and materials which relate in any way to Enron's financial condition and/or business interests.

Anyone in the Office of the Vice President who has questions about the instructions to preserve the documents and materials should contact me, David S. Addington, ext. 6-9089, or, in my absence, Brett Kavanaugh of the Counsel to the President's office at ext. 6-7984.
---------- Forwarded by David S. Addington/OVP/EOP on 02/01/2002 07:16 PM ----------

PostMaster
02/01/2002 06:49:49 PM
Record Type: Record

To: All EOP Users
cc:
Subject: ADMINISTRATIVE ALERT: Department of Justice Request Regarding Enron

Department of Justice Request Regarding Enron

We wish to bring to your attention the following request transmitted to us this evening by the Department of Justice. The Department of Justice requests that you do the following:

"preserv[e] and maintain[ ] for time period January 1, 1999 to the present, all documents, electronic records and correspondence, computer records and storage devices, notes and memorandum [sic] which relate in any way to Enron,s financial condition and/or business interests, including contacts with its officers, employees, agents or other representatives and any individual acting officially or unofficially,

directly or indirectly on behalf of Enron about these matters."

The Department of Justice,s letter also states that "[a]t this time, we are only requesting that you ensure the retention of these records."

You are directed to comply with the Department of Justice,s request in all respects.

If you have any questions, please contact my office. Thank you. #000162

Alberto R. Gonzales
Counsel to the President

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 2/1/2002 11:04:40 AM
Subject: : Re: Administrative Alerts

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-FEB-2002 16:04:40.00
SUBJECT:: Re: Administrative Alerts
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 02/01/2002 04:01 PM ----------

Patrick J. Bumatay
02/01/2002 03:52:02 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Administrative Alerts

7 PM.

Bradford A. Berenson
02/01/2002 03:44:58 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Administrative Alerts

Great. Thanks. How late will they be here tonight?

Patrick J. Bumatay
02/01/2002 03:39:27 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Administrative Alerts

Brad,

All you need to do is send the text of the message to the Rachel Comte and Cathy Alix . If you want me to take care of it and follow up to make sure

it happens, just send me what you would like done.

Thanks,
Patrick

From:	CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC:	Janet P. Walker/OPD/EOP@EOP [OPD] <Janet P. Walker>;Melissa S. Bennett/WHO /EOP@EOP [WHO] <Melissa S. Bennett>;Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>
Sent:	2/1/2002 1:42:20 PM
Subject:	: Letters from Card, Lindsey & Daniels to Waxman have been faxed!

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-FEB-2002 18:42:20.00
SUBJECT:: Letters from Card, Lindsey & Daniels to Waxman have been faxed!
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Janet P. Walker ( CN=Janet P. Walker/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/2/2002 8:27:40 AM
Subject: : waxman letters

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-FEB-2002 13:27:40.00
SUBJECT:: waxman letters
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

do you want me to go ahead and mail the originals to waxman or is the
faxing of these letters sufficient?
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/4/2002 3:34:31 AM
Subject: : LRM Reminders

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 08:34:31.00
SUBJECT:: LRM Reminders
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett -

Just a reminder, you have 2 LRMs due at 10 AM today.
1) Sec. O'Neil Testimony
2) Testimony on Financial Literacy

Patrick
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>
Sent: 2/4/2002 3:37:31 AM
Subject: : Judge's meetings on the Hill

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 08:37:31.00
SUBJECT:: Judge's meetings on the Hill
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Wed., Feb. 6 - 1:30-3:00 pm Kohl/Feingold (re: judicial nominees)
Wed., Feb. 6 - 2:15-2:45 pm Conrad/Dorgan (re: judicial nominees)
Wed., Feb. 6 - 3:00-3:15 pm* Cong. DeLay w/ Bart re: Appointment of
judges to the new Family Court
Thurs, Feb. 7, 5:30-6:00 pm Levin/Stabenow (re: judicial nominees)

*time change
```

We are still working on a date/time for meeting w/ Leahy.

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Rybicki, James E <James.E.Rybicki@usdoj.gov>
Sent: 2/4/2002 4:29:39 AM
Subject: : RE: briefing book'

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
[UNKNOWN])
CREATION DATE/TIME: 4-FEB-2002 09:29:39.00
SUBJECT:: RE: briefing book'
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Rybicki, James E" <James.E.Rybicki@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ("Rybicki, James E" <James.E.Rybicki@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

done.

jim, pls send it over.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, February 04, 2002 8:08 AM
To: Thorsen, Carl
Subject: Re: briefing book'

if you can, that would be great. I am in 156 OEOB.

(Embedded
image moved "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
to file: 02/03/2002 03:48:14 PM
pic18311.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: briefing book'

our shop is making for you. do you want it before 3 pm tomorrow? i could
have
it couriered over.

cpt

Carl Thorsen
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett Kavanaugh [WHO] <Brett Kavanaugh>
Sent: 2/4/2002 4:44:12 AM
Subject: : The Judicial Confirmation Working Group will meet today (Monday, February 4, 2002) at 4pm Main Justice Room 4646.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-FEB-2002 09:44:12.00
SUBJECT:: The Judicial Confirmation Working Group will meet today (Monday, February 4, 2002) at 4pm Main Justice Room 4646.
TO:Brett Kavanaugh (Brett Kavanaugh [WHO])
READ:UNKNOWN
End Original ARMS Header

We're doing a big conference call for the budget.
---------- Forwarded by Matthew E. Smith/WHO/EOP on 02/04/2002 09:43 AM ----------

"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov>
02/04/2002 09:05:36 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: The Judicial Confirmation Working Group will meet today (Monday, February 4, 2002) at 4pm Main Justice Room 4646.

Message Sent
To:_____
"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Cole, Deloris L" <Deloris.L.Cole@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Sutton, Jason" <Jason.J.Sutton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"McMahon, Lori" <Lori.McMahon@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Brinkley, Winnie" <Winnie.Brinkley@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Allison L. Riepenhoff/WHO/EOP@EOP
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Matthew E. Smith/WHO/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/4/2002 4:51:21 AM
Subject: : Re: Meeting on Monday re: airplanes

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-FEB-2002 09:51:21.00
SUBJECT:: Re: Meeting on Monday re: airplanes
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks. who's coming?

Elizabeth N. Camp
02/04/2002 09:51:00 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Meeting on Monday re: airplanes

Yes - 10:30-11:00 in the Judge's office.

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 02/04/2002 09:50 AM ----------

Elizabeth N. Camp
02/01/2002 09:26:31 AM
Record Type: Record

To: Katherine G. Marinis/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc: Records Management@EOP
Subject: Meeting on Monday re: airplanes

How does 10:30-11:00 am in the Judge's office sound?

Katherine G. Marinis
02/01/2002 09:16:36 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Meeting on monday

Brett mentioned that the Judge and he need to talk to Ken on Monday about corporate airplanes for political use. Do you want to set up a time? Ken would prefer to do it in the morning b/c he has to be at the RNC all afternoon. thanks

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lisa J. Macecevic/OMB/EOP@EOP [OMB] <Lisa J. Macecevic>
Sent: 2/4/2002 4:59:06 AM
Subject: : LRM LJM54 - - TREASURY Testimony on Financial Literacy
Attachments: P_RU385003_WHO.TXT_1.doc; P_RU385003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-FEB-2002 09:59:06.00
SUBJECT:: LRM LJM54 - - TREASURY Testimony on Financial Literacy
TO:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel's office has no objection to either except to raise a question about the reference to "minority groups" on page 3 of the prepared testimony. Is that reference supported by data that controls for wealth/income? If not, we would recommend deleting it.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/04/2002 09:47 AM ----------

Patrick J. Bumatay
01/31/2002 03:14:44 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM LJM54 - - TREASURY Testimony on Financial Literacy

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 01/31/2002 03:14 PM ----------

From: Lisa J. Macecevic on 01/31/2002 03:09:01 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM LJM54 - - TREASURY Testimony on Financial Literacy

Attached is Secretary O'Neill's testimony and an attachment for your review for a Senate Banking Committee hearing on Tuesday, February 5th. Please note that the attachment mentions specific activities of your agencies directed toward improving financial literacy of the public. Please return any comments on both pieces by 10:00 AM Monday, February 4th. Thank you.

- tt0085asta.doc - tt0085aatt.doc

LRM ID: LJM54
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, January 31, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on Financial Literacy

DEADLINE: 10:00 A.M. Monday, February 4, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Secretary O'Neill's testimony and an attachment for your review for a Senate Banking Committee hearing on Tuesday, February 5th. Please note that the attachment mentions specific activities of your agencies directed toward improving financial literacy of the public. Please return any comments on both pieces by 10:00 AM Monday, January 4th. Thank you.

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LRM ID: LJM54 SUBJECT: TREASURY Testimony on Financial Literacy

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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File attachment <P_RU385003_WHO.TXT_2>

PAUL H. O'NEILL
SECRETARY
U.S. DEPARTMENT OF THE TREASURY
BEFORE THE
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

FEBRUARY 5, 2002

FINANCIAL EDUCATION

Introduction

Chairman Sarbanes, Senator Gramm, distinguished members of the Committee. Thank you for the opportunity to appear before you this morning to talk about the vital importance of financial education. I am especially pleased to do so in the company of Chairman Greenspan and Chairman Pitt. Mr. Chairman, I commend you for focusing a national spotlight on this critical topic, which is so closely linked to our economic future. It is one, I might add, in which I have a deep and longstanding personal interest.

Need for Improved Financial Education

The U.S. financial system commands the respect and admiration of the world in large part because of the widespread availability of low-cost, high quality financial services. Technology and innovation have made possible a rich diversity of financial products to meet the individual needs of millions of American households and businesses.

Today's expansive menu of financial product offerings, however, has added complexity to the decisions Americans must make in choosing the financial products that best serve their needs. I recall a time not so long ago when, for a large number of Americans, mortgage rates were fixed, savings went into a bank passbook account, consumer goods were bought on a cash-only basis, and pensions all had defined benefits for retirement. Today, mortgage financing comes in a variety of packages, credit card use is ubiquitous, and savings investment vehicles range from CDs to mutual funds to individual stocks to annuities. Moreover, the importance of knowing how to invest savings wisely has risen exponentially with the decline in popularity of defined benefit retirement plans.

To be sure, the evolution of our nation's financial system has created wonderful new opportunities for Americans to meet their needs as consumers, while at the same time, building wealth and security for their and their families' economic futures. However, Americans need to be fully prepared and financially educated to take advantage of these opportunities. If we do not understand the most important concepts of personal finance, such as how to budget, save, invest and use credit wisely, then we are missing our full potential as individuals, as well as our potential as a country. I believe wholeheartedly in the noble ideal espoused by our President that "[t]he ambitions of some Americans are limited by failing schools and hidden prejudice and the circumstances of their birth. We do not accept this, and we will not allow it."

We have significant room for improvement in the area of financial education. Recent studies illuminate this fact. In one test of financial basics given to high school students, the average score was a disappointing 51 percent, with only one-tenth of students scoring above 70 percent on the exam. Remarkably, only fifty percent of high school students understood the concept of compound interest. Results were similarly disappointing when adults were tested: their average score was only 57 percent.

There is a tragic human and personal cost that our society pays for this lack of financial knowledge. All of us know family or friends who have had money problems at some stage in their life. We all know the terrible price in suffering, stress, and humiliation that is faced by those in financial trouble. Four in ten Americans admit they are living beyond their means,

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primarily because of the misuse and misunderstanding of credit. Between 1990 and 2000, personal bankruptcies rose by 69%, again stemming primarily from credit misuse.

A lack of financial knowledge is especially problematic for the most vulnerable members of our society. The poor, the elderly, and minority groups are some of the more likely targets of fraud and deception, identity theft, predatory lending, and other such abuses. Financial education is a crucial weapon in our arsenal to protect our citizens from these types of attack. Understanding personal finance is a consumer's first line of defense against financial rip-offs and scams. Those most vulnerable to these attacks are precisely the people who have the most to gain by a concerted nationwide effort to raise Americans' level of financial knowledge.

Current Efforts to Address the Problem

Considerable efforts are being made in the private and public sector to promote financial education. Our staff has completed a list of financial educational resources offered by the various Federal departments and agencies which is attached to my testimony for inclusion in the record.

As the attached document shows, no fewer than 10 federal departments and agencies, including the Treasury Department, offer a wide variety of financial education programs and resources. In addition, many states, Wisconsin, Maryland, and California, to name a few, have taken initiatives to raise the level of their residents' financial knowledge. Similarly, financial service providers have made extensive efforts in the banking, securities, and insurance industries to teach the public how to properly use their products.

Faith-based organizations and community groups have also promoted financial education. As we all know, talking about money, and especially about the state of one's own finances, can be difficult. Faith-based and community organizations tend to foster the trust necessary for their members to discuss these personal matters with them. Such groups can encourage people who have never saved before to begin saving; to think twice about making an impulse purchase; or to consider more deeply the need to focus not only on short-term consumption, but also on long-term investment.

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A Focus on the Schools

These current efforts are important, yet much more needs to be done if we are to significantly raise the ability of Americans to more effectively master their financial lives. To be sure, our national strategy must address the financial educational needs of Americans in all walks of life. This morning, however, I would like to focus in particular on the need for more financial education in our nation's schools.

No better venue exists for us to reach such a large segment of the population than through our schools. No better mechanism exists for providing our nation's youth with the educational building blocks they will need to become competent consumers and managers of household wealth. By beginning the financial education process early, we can equip our youth with a foundation for making sound financial decisions throughout their lives. Indeed, in those states that have begun requiring personal financial education in high school, research shows that high school graduates have higher savings rates and higher levels of net-worth.

Of course, financial education must begin with basic literacy. A child with insufficient reading skills will never be able to comprehend a credit card application or a Truth in Lending disclosure. A child lacking basic math skills will never be able to balance a checkbook or compare credit card interest rates. Financial education programs will be successful only for those children who have mastered basic academic skills. This is one of the reasons why it was so important for the Congress to pass the President's education bill – the No Child Left Behind Act of 2001 – signed into law on January 8.

This landmark legislation provides the most sweeping reforms of the Elementary and Secondary Education Act since it first became law in 1965. Included among the bill's provisions are requirements that states set high standards for achievement in reading and math and that they test every child in grades 3 through 8 to ensure that students are making progress in achieving those standards. The bill also includes specific language recognizing the importance of financial education efforts by local schools.

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State and local educators are now undertaking the process of developing standards in math and reading, and the educational curricula that will help their students achieve those standards. In collaboration with Secretary Paige, I would like to take the opportunity of this hearing to call upon schools to integrate financial education into those standards and curricula – not as a separate discipline, but as means of exposing children to basic financial and economic principles at the same time they acquire core reading and mathematical skills.

Teaching a child how to balance a checkbook reinforces basic addition and subtraction. Learning how to calculate compound interest provides an excellent way to exercise knowledge of percentages. Reading lessons can include stories about children saving money to buy something special, or getting their first after-school job. For older children, assignments in English literature can easily be structured to include novels that not only build reading comprehension, but also help students explore and analyze principles of economic behavior.

Successfully interweaving financial education into math and reading standards required by the President's education program would be a giant leap forward in helping prepare our nation's youth to become financially literate adults. In the short run, building financial education into courses that are already required by all schools may be the most expeditious and least expensive way to make our educational system more responsive to students' financial educational needs.

At the same time, such efforts would complement initiatives already underway in several states to incorporate personal finance courses into school curriculums. Mississippi, Illinois, Idaho and New York have been leaders in assuring that personal finance is at least offered to all students before they graduate from high school. I would also note that legislation or resolutions have now been passed in Tennessee, Delaware, Louisiana, Michigan and Wisconsin to provide personal finance education courses. And Delaware and Wisconsin have established task forces to review the issue and make recommendations.

A Financial/Educational Alliance

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In 1996, I had the privilege of co-chairing the Pennsylvania Advisory Commission on Academic Standards. This was a 17-member panel of non-educators, charged by Governor Tom Ridge with the job of reviewing education standards being developed for Pennsylvania. Our goal was two-fold: to ensure that the concerns of students, parents, and local businesses were considered in developing the standards; and to serve as a reality check, if you will, so that the standards reflected the real-world needs of students once they graduated and entered the workforce. The effort was highly successful and today Pennsylvania is recognized as having one of the highest quality education standards for its children.

Just as Governor Ridge called upon non-educators in Pennsylvania to partner with educators in the successful development of "real world" education standards, I believe the financial services sector can just as effectively partner with state and local educators in the development of financial education standards. For instance state banking superintendents, insurance commissioners, and securities administrators all possess a wealth of expertise and experience to contribute to the development of financial education guidelines. Private financial institutions also have much to offer in terms of expertise, as well as providing a source of additional resources to support teacher training and the establishment of financial education curricula and programs.

At the national level, the Treasury Department is focusing much of its existing financial education programs on youth. Just last year, we launched the *Money Math* program, a personal finance education kit for young people in grades 7 through 9. More than 110,000 middle school math teachers in 16,000 school districts nationwide received the kits free of charge.

In terms of new initiatives, I am pleased to announce that our Treasurer, Rosario Marin, has agreed to organize an effort to recruit the support of state treasurers in pressing for more financial education in the schools.

In addition, we are working to find a suitable way in which we can recognize, in conjunction with the U.S. Department of Education, local schools that have exhibited high distinction in the area of financial education. By providing a national spotlight for innovative educators who have

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developed successful programs for teaching personal finance, we hope to motivate their colleagues in other schools to follow suit.

In partnership with the Department of Education, I am willing to do whatever I can to promote financial education in the schools. As all of us know, education forms one of the most important bases of our free and prosperous society, and financial education skills figure prominently in the success with which we exercise our economic freedoms. As a grandfather of twelve wonderful grandchildren, I know well that children are America's future, and I would like to see an educational system that provides all American children with these vital life skills.

Other Areas of Focus

Youth education will not, of course, help the legions of adult Americans whose financial education skills fall short. Let me mention some of policy issues where we have identified financial education as key to protecting and promoting the financial health of the adult population.

I will begin with First Accounts, since I know this is a program in which Senator Sarbanes has a major interest. First Accounts is a grant program administered by the Treasury Department and designed to move a maximum number of "unbanked" low- and moderate-income individuals to "banked" status with insured depository institutions. Without basic financial services, low- and moderate-income individuals may have a reduced ability to manage their finances and may be limited in planning and saving for the future.

We issued a Notice of Funding Availability on December 27, 2001, and are providing applicants until March 20, 2002 to respond. In addition, we sent hundreds of copies of this Notice to community groups, faith-based organizations, labor unions in all fifty states, and dozens of financial institutions and their trade associations. We expect to use the First Accounts program to fund replicable model projects that develop financial products and services for these individuals without the need for ongoing public subsidies. In seeking applications, we have recognized that financial education can be a key component in persuading more Americans to

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open bank accounts. We will also undertake research to evaluate the success of the funded projects and to understand what products, services, educational initiatives, marketing techniques, or incentives are needed.

We should extend our efforts on financial education to retirement security. As you know, the President requested that I, along with Labor Secretary Chao and Commerce Secretary Evans examine retirement savings laws to determine whether any reforms are necessary to promote the ability of all Americans to plan for a secure retirement. Last week, the President announced our recommendations, which include proposals to increase the freedom of American workers to choose how they wish to invest their 401(k) assets, as well as to prevent corporate officers from selling company stock during a so-called "blackout" when workers are prohibited from trading in their 401(k) plans. A key feature of our recommendations is to expand workers' access to financial educational resources and professional investment advice, so that they can have the tools they need to make informed investment decisions.

Moreover, investors cannot learn what companies do not disclose. Recognizing that the Nation's corporate disclosure system is not working as well as it should, the President has asked his Working Group on Financial Markets to take a hard look at what we can do to fix it. Chairman Greenspan, Chairman Pitt, CFTC Chairman James Newsome and I are looking for ways to realign our corporate disclosure and accounting system with its basic purpose – to provide investors with the information they need to make informed decisions about public corporations' financial positions and prospects. Clear, accurate, and comprehensive disclosures are essential to all Americans' ability to invest and save. The key is accountability and responsibility for corporate officers and directors, accountants and auditors. We are committed to the President's call to hold corporate America to "the highest standards of conduct." I am confident that the Working Group's recommendations to the President will point the way to strengthening our disclosure regime.

Finally, I think it is important to make this observation: unwise financial decisions do not always stem from a lack of financial education. All too often, bad choices stem from economic despair. No amount of financial education will help individuals build their retirement nest eggs if their

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incomes barely cover their families' living expenses. No amount of financial education will help individuals escape the high fees charged on short-term, unsecured loans if their families are in need of food or medicine, and there is no other place to go for the funds. With more money in their pockets, people will be better positioned to make sound economic choices and provide for their and their families' economic futures. As we aggressively promote financial education, we must not lose sight of the larger goal to promote economic prosperity through the President's economic program.

Conclusion

The importance of high quality education to the future of our society and to our nation's economy can never be underestimated. I am reminded of a saying from the gentleman who graces the one hundred dollar bill - Benjamin Franklin, "If a man empties his purse into his head, no man can take it away from him." Those words written at the dawn of this great nation's history are as true today.

Financial education can be compared to a road map to the American Dream. I believe that we need to teach all Americans the necessary tools to read that map. As the Secretary of the Treasury, I stand ready to do what I can to improve the financial know-how of all Americans. A sound economy is made up of financially literate individuals. We as a society should strive aggressively to achieve higher standards of financial knowledge, so that all Americans can fully share in the economic benefits of our great nation.

# # # # #

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WHAT THE FEDERAL GOVERNMENT IS DOING TO IMPROVE FINANCIAL EDUCATION

U.S. TREASURY EFFORTS

Bureau of Public Debt (BPD): Savings Bond Marketing Office

- *MoneyMath:* BPD's Savings Bond Marking Office launched the *MoneyMath* program to teach the importance of savings and financial literacy. *MoneyM*ath is an education kit for grades 7 through 9, which includes lesson plans and supplemental learning activities focused on savings and investing, money management, and spending and credit. The kits were provided, free of charge, to over 110,000 middle school math teachers in 16,000 school districts nationwide. *MoneyMath* was kicked off at the NASDAQ MarketSite in New York City on May 7, 2001. The Securities Industry Foundation for Economic Education, sponsor of the Stock Market Game, agreed to incorporate the *MoneyMath* kit into their distribution system. Partners for the *MoneyMath* program include the Jump$tart Coalition, the Center for Economic Education, Merrill Lynch, the Fannie Mae Foundation, the MetLife Foundation, the NASDAQ Stock Market, and many others.

- *Savings Bond Program:* Each year a month-long Savings Bond Campaign is held to encourage employees to save for retirement and other financial needs through US Savings Bonds.

- *Treasury Hunt*: In 2001, BPD launched *Treasury Hunt*, a web site to help people find out if they may have a matured savings bond, a bond that the Postal Service could not deliver, or an interest payment that was returned to Public Debt. *Treasury Hunt* helps in BPD's outreach effort to encourage the holders of some 20 million matured savings bonds worth $8 billion to redeem their bonds. Although nearly all of the owners of matured bonds that Public Debt has contacted know where their bonds are, two out of three did not realize that their bond had stopped earning interest.

Office of the Comptroller of the Currency

- The Office of the Comptroller of the Currency (OCC) provides an on-line list of financial literacy resources including national and local organizations that offer and research financial literacy. In addition, the OCC promotes financial literacy through its six district offices. Under the regulations promulgated by the OCC, banks may be considered for credit under the Community Reinvestment Act for providing financial literacy services.

Office of Thrift Supervision

- Community Service Program: Since 1998, Office of Thrift Supervision (OTS) employees participate as tutors in established, legitimate financial education programs in local schools and in the community as part of the agency's Community Service Program. Examples of financial education programs that the agency has participated in over the past three years

include Operation Hope's Banking on the Future Day in Los Angeles, the Neighborhood Services of New York Financial Life Skills Course, Junior Achievement, American Bankers Association's National Teach Children to Save Day, Seahawks Academy Financial Literacy Training and Central City Lutheran Mission Financial Literacy Training.

- OTS also participates in the Department of Treasury's Partnership in Education (PIE) program, which is co-sponsored with the National Academy Foundation (NAF), by hiring summer interns from local high schools. The National Academy Foundation is a nonprofit educational organization that works to improve the quality of education for students and access to career opportunities by supporting partnerships between business and public schools. OTS employees have also served as board members of the National Academy Foundation Advisory Board.

- OTS has produced several financial literacy and consumer education publications. Primarily through the *Community Liaison*, a quarterly newsletter edited and produced by the Community Affairs staff, OTS works to inform and educate the industry about financial literacy issues and to highlight programs that the industry is involved in. The consumer education materials are available on OTS's web site.

- OTS Community Affairs staff is also active with the Women in Housing & Finance Foundation and a member of the staff co-chairs the Personal Finance Committee. The Personal Finance Committee provides an opportunity for WHF members to provide financial education to primarily low-income women and their families in the Washington, DC area by partnering with local community organizations.

Bureau of the Mint

- The mission of the Mint includes providing marketing, education, and advertising for U.S. coinage. The Mint, while not directly engaged in financial literacy efforts, supports a Treasury-led financial literacy initiative, and will use its resources to promote a national financial literacy initiative. The Mint has worked with the National Education Association (NEA) to educate young people about U.S. currency. In addition, the Mint has been involved in the Partnership in Education Initiative, described below.

Office of the Treasurer

- The Treasurer serves as an effective venue to communicate the importance of financial literacy.

OTHER FEDERAL EFFORTS

- *Social Security Administration*: The Social Security Administration (SSA) is engaged in a number of initiatives to educate people about the importance of planning for their financial future. SSA produced nationally broadcasted public service announcements that explain the importance of saving for retirement. In addition, SSA began mailing all workers copies of their Social Security statements that include customized benefit estimates. The purpose is to

REV_00139664

convey to the public the need for financial resources in addition to social security for retirement.

- *Housing and Urban Development*: In conjunction with the Treasury Department, the Department of Housing and Urban Development (HUD) published a 2000 report on predatory lending, which listed the need for greater financial literacy as a tool to curb predatory lending practices. The HUD website also provides the names of local financial education and housing counselors throughout the country.

- *Department of Labor:* In conjunction with the Federal Deposit Insurance Corporation, the Department of Labor (DOL) created *Money Smart*, a financial literacy curriculum that is distributed through DOL's 800 "One-Stop" shops across the country.[1] In addition, DOL's Pension and Welfare Benefits Administration published "Savings Fitness: A Guide to Your Financial Future." In 1998, DOL held the *National Summit on Retirement Savings,* a two-day event at which the President and the Speaker of the House made remarks. Planning is underway currently for the second *National Summit on Retirement Savings,* which is scheduled to take place in early Spring of 2002.

- *Department of Agriculture*: The United States Department of Agriculture (USDA), through its Cooperative State Research, Education, and Extension Service makes financial literacy materials available throughout rural and agricultural areas. USDA is also launching a significant financial literacy initiative entitled "Financial Security in Later Life." The initiative's goal is to provide senior Americans with financial literacy information most relevant for them. In addition, the USDA is able to draw on the resources of academic professionals found throughout the U.S. in the Land Grant University System. Financial literacy courses are taught at many land grant universities, which pool together teaching plans and other educational materials intended for adults.

- *General Service Administration:* The General Service Administration places financial literacy information from various governmental sources on its website. For example, the DOL's "Savings Fitness: A Guide to Your Money and Your Financial Future" can be found there.

- *Federal Trade Commission:* In 1998, the Federal Trade Commission (FTC) joined with the Securities and Exchange Commission, the North American Securities Administrators Association, and a number of public and private organizations including government, industry associations, and consumer organizations to launch a campaign to educate consumers about investing and saving. The FTC has an entire Webpage dedicated to consumer credit issues, investments, and abusive lending. In addition, the FTC continues to publish reports on personal finance issues such as "Avoiding Home Equity Scams," "Cancellation of Private Mortgage Insurance: Federal Law May Save You Hundreds of Dollars Each Year," and "Credit Repair, Help Yourself First."

[1] The Department of Labor established social service shops throughout the country. Known as "One Stop Shops," they often include job-training courses, financial education, and child care services.

REV_00139665

- *Federal Reserve Board*: The Federal Reserve Board (FRB) provides consumer and financial information via the twelve member banks, the Federal Reserve website, and a number of publications. The website features informational pages such as "Building Wealth, A Beginner's Guide to Securing Your Financial Future." Many of the FRB's publications are provided in Spanish as well as English. Publications include "Understanding the Process and Your Right to Fair lending," "Looking for the Best Mortgage: Shop, Compare, Negotiate," and "Keys to Vehicle Leasing: A Consumer Guide." Chairman Greenspan has publicly expressed his support for financial education. In January 2002, he gave an address that focused on the need for increased personal financial education at the Ninth Annual Economic Development Summit held by the Greenlining Institute.

- *Federal Deposit Insurance Corporation*:
(See the Department of Labor description for *Money Smart* above.)

- *The Securities and Exchange Commission:* The Securities and Exchange Commission (SEC) provides public information on the fundamentals of investing and investment products. The SEC provides information that is balanced and neutral regarding securities markets and the types of investment products available to average investors. In addition, the SEC works to ensure that its documents and the documents of the companies that it regulates are easily readable by typical investors.

- *Department of Defense:* Many military credit unions work with local commanders to provide personal financial education for military personnel.

REV_00139666

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Oscar Gonzalez/OMB/EOP [OMB] <Oscar Gonzalez>
Sent: 2/4/2002 6:16:52 AM
Subject: RECEIVED: Re: Update and Request on H.R. 577 - Disclosure of Presidential Library Funds

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 11:16:52.00
SUBJECT:RECEIVED: Re: Update and Request on H.R. 577 - Disclosure of Presidential Library
Funds
TO:Oscar Gonzalez ( CN=Oscar Gonzalez/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

RETURN RECEIPT

Your Document:
Re: Update and Request on H.R. 577 - Disclosure of Presidential Library Funds
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
02/04/2002 11:15:44 AM
```

From: Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>
To: Coughlin, Robert <Robert.Coughlin@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Garre, Gregory G <Gregory.G.Garre@usdoj.gov>;Philbin, Patrick <Patrick.Philbin@usdoj.gov>;Clement, Paul D <Paul.D.Clement@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;'alex.azar@hhs.gov' <alex.azar@hhs.gov>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 2/4/2002 6:26:08 AM
Subject: : Eureka

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> ( "Ciongoli, Adam"
<Adam.Ciongoli@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 4-FEB-2002 11:26:08.00
SUBJECT:: Eureka
TO:"Coughlin, Robert" <Robert.Coughlin@usdoj.gov> (Receipt Notification Requested) (
"Coughlin, Robert" <Robert.Coughlin@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ]
)
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) ( "Bryant, Dan"
<Dan.Bryant@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Garre, Gregory G" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) (
"Garre, Gregory G" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Philbin, Patrick" <Patrick.Philbin@usdoj.gov> (Receipt Notification Requested) (
"Philbin, Patrick" <Patrick.Philbin@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ]
)
READ:UNKNOWN
CC:"Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (
"Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) ( "Dinh, Viet"
<Viet.Dinh@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"'alex.azar@hhs.gov'" <alex.azar@hhs.gov> (Receipt Notification Requested) (
"'alex.azar@hhs.gov'" <alex.azar@hhs.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The usual, tonight 7:30. Someone invite Noel. Gene Scalia is coming too,
I think.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 2/4/2002 7:42:30 AM
Subject: : Mehlman

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 12:42:30.00
SUBJECT:: Mehlman
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

appeal
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 2/4/2002 8:16:39 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 13:16:39.00
SUBJECT::
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

any luck with the information from Friday?
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/4/2002 12:34:16 PM
Subject: : Authorization to administer the oath of office

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-FEB-2002 17:34:16.00
SUBJECT:: Authorization to administer the oath of office
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Has anyone prepared a document delegating the President's authority to administer the oath of office?
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 02/04/2002 05:33 PM ----------

Timothy_E._Flanigan@who.eop.gov
02/04/2002 04:38:18 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Authorization to administer the oath of office

Courtney,

Could you prepare a delegation for Albert to administer these oaths? Ideally,
it would be limited to this group.

Tim
---------- Forwarded by Timothy E. Flanigan/WHO/EOP on 02/04/2002
04:42 PM ----------

Alberto R. Gonzales
02/04/2002 04:06:31 PM

Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP

cc:
Subject: Authorization to administer the oath of office

please handle
---------- Forwarded by Alberto R. Gonzales/WHO/EOP on
02/04/2002
04:06 PM ----------

Albert Hawkins
02/04/2002 03:18:39 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP

cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: Authorization to administer the oath of office

The Dept. of Education has asked me to swear-in the President's Advisory
Committee on Historically Black Colleges and Universities on Tuesday 2/12.
At present, I don't think I am authorized but, I understand that the
President
may authorize others to administer the oath. If that is correct, I
request that
I be authorized.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 2/4/2002 12:37:00 PM
Subject: : Granade

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 17:37:00.00
SUBJECT:: Granade
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Senate is voting on Granade right now on C-Span 2.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 2/4/2002 1:06:55 PM
Subject: : Commerce

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-FEB-2002 18:06:55.00
SUBJECT:: Commerce
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Margaret Wilson called to say they sent out this morning their notice to
employees re: retention of Enron documents.

She is notifying DOJ also.

Thanks!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Holbrook/WHO/EOP@EOP [WHO] <Ashley Holbrook>
Sent: 2/5/2002 6:34:13 AM
Subject: : Re: Gonzales letter

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-FEB-2002 11:34:13.00
SUBJECT:: Re: Gonzales letter
TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

good

Ashley Holbrook
02/05/2002 10:54:17 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Gonzales letter

Does this sound ok to you?
AH
---------- Forwarded by Ashley Holbrook/WHO/EOP on 02/05/2002 10:53 AM ----------

Heather Wingate
02/05/2002 10:52:45 AM
Record Type: Record

To: Ashley Holbrook/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Gonzales letter

he really should sign all of them, unless they've got some fancy way of making an electronic signature look real, but I'd say sign them. HW

Ashley Holbrook
02/05/2002 10:21:55 AM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc:
Subject: Gonzales letter

Is it necessary for Judge Gonzales to sign 49 letters? Brett says he can

do it if you want him to, I'm just making sure that that's the way you want to handle it.
AH

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Marie Vachon/WHO/EOP@EOP [WHO] <Marie Vachon>;Ashley E. Davis/WHO/EOP@EOP [WHO] <Ashley E. Davis>
Sent: 2/5/2002 1:55:10 PM
Subject: : Contact in Financial Management?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-FEB-2002 18:55:10.00
SUBJECT:: Contact in Financial Management?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Marie Vachon (CN=Marie Vachon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ashley E. Davis (CN=Ashley E. Davis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett -- Thanks your quick help on this. One question -- WHO in Financial Management is the go-to person for doing these financial calculations -- for the percentage, or allocation, of the political vs. the official portion of these travel expenses? We're hearing rumors that some people think YOU do the math. Pls. point us in the right direction. Thanks -- McNally

Brett M. Kavanaugh
02/05/2002 04:12:47 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc:
Subject:

Governor's involvement in NYC political event is approved.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>

Sent: 2/5/2002 2:06:07 PM

Subject: : Reminder - JSC from 4-5pm on Wednesday in the Roosevelt

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-FEB-2002 19:06:07.00
SUBJECT:: Reminder - JSC from 4-5pm on Wednesday in the Roosevelt
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
```

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 2/6/2002 3:58:57 AM
Subject: : fyi

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 08:58:57.00
SUBJECT:: fyi
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Lawyers Oppose Release of Task Force Papers (Reuters)
By Susan Cornwell
Reuters, February 06, 2002
WASHINGTON (Reuters) - Releasing details of White House energy task force meetings last year would put a chill on future presidential deliberations, government lawyers told a federal court on Tuesday.
Critics of the task force say its behind-closed-door operations allowed interests such as Enron Corp. to influence the Bush administration as it drafted energy policy, while environmentalists were largely shut out.
But Justice Department lawyers representing the energy task force, which was chaired by Vice President Dick Cheney, said demands to see the documents about the task force's work were unconstitutional, adding that the documents themselves might be subject to executive privilege.
"In order for the executive branch to function effectively, a president and his senior advisers must be able to work in an atmosphere that protects the communications if the president is to get the blunt, candid advice upon which wise decision-making depends," the lawyers said in a brief filed with U.S. District Court in Washington.
The argument was filed in a case brought by Judicial Watch, a public interest law firm that has been widely described as conservative after it spent years in court dogging the administration of former President Bill Clinton, a Democrat.
The General Accounting Office, Congress' investigative arm, said last week it also would file a lawsuit for the White House energy task force records, setting up a possible constitutional clash between the executive and legislative branches before the third branch of government.
Environmentalists are also after the task force papers. The Bush administration, worried about an erosion of power stretching back to Watergate, has refused to hand over the task force documents to any of the groups seeking them.
RAISING EXECUTIVE PRIVILEGE
Judicial Watch filed suit last July against the National Energy Policy Development Group, as the task force was called, demanding the administration release records on who the group met and when, and minutes of the meetings held.
Last week U.S. District Judge Emmet Sullivan ordered the government's lawyers to explain their contention that handing over the documents would harm the president's constitutional right to get candid advice.
"What is unconstitutional, then, is not merely the potential disclosure of documents, which may be subject to a claim of executive privilege, but a direct intrusion by the other branches into the process by which the president carries out his constitutional function," the task force lawyers said in reply on Tuesday.

Larry Klayman, counsel for Judicial Watch, said he thought the government lawyers had not explained their constitutional arguments, just re-stated them. Judicial Watch must file its answer by Friday, and a hearing is set for Feb. 12.

Noting the government's raising of the possibility of claiming executive privilege, Klayman said, "They are willing to take out the big guns if they have to. There must be some real good documents they are hiding."

The government's brief was signed by Robert D. McCallum, Jr., Assistant Attorney General, as well as U.S. Attorney Roscoe C. Howard Jr. and Anne L. Weismann, an attorney in the Justice Department's Civil Division.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 2/6/2002 4:08:29 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 09:08:29.00
SUBJECT::
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

did someone look at draft Card memo on info security from HSC or
NSC?
```

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 2/6/2002 6:29:06 AM
Subject: : DDC/Ct Fed Claims

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov ( Rachel_L._Brand@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 6-FEB-2002 11:29:06.00
SUBJECT:: DDC/Ct Fed Claims
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Of the people in the book for DDC today, which ones can I not consider for
the
Ct Fed Claims?

Also, does anyone have thoughts about whether any of these people
would/would
not be suited for or interested in the Ct Federal Claims? (e.g. I would
doubt
someone like Peter Keisler would be interested in that court).

RLB
```

From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/6/2002 4:13:25 AM
Subject: : Re: important question

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 09:13:25.00
SUBJECT:: Re: important question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

that would be nice. I will send over to Bruce right now. you guys are so nice!! (as we should be... (-:)

Brett M. Kavanaugh
02/06/2002 09:06:05 AM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc:
Subject: important question

Judge wants to know whether, as a courtesy, we should send Sen. Leahy a copy of the packet sent to Republican Senators yesterday.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/6/2002 4:14:00 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 09:14:00.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

not i

Brett M. Kavanaugh
02/06/2002 09:08:22 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

did someone look at draft Card memo on info security from HSC or NSC?

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 2/6/2002 4:31:06 AM

Subject: : JSC prep postponed to 10:30 am - thanks!

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 09:31:06.00
SUBJECT:: JSC prep postponed to 10:30 am - thanks!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/6/2002 5:39:45 AM
Subject: : car 96

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 10:39:45.00
SUBJECT:: car 96
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 2/6/2002 10:01:52 AM
Subject: : Re: Your Approval: An official frank-mail piece from Cong. Hulshoff with a Picture of the President
Attachments: P_1ONA5003_WHO.TXT_1.html; P_1ONA5003_WHO.TXT_2.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 15:01:52.00
SUBJECT:: Re: Your Approval: An official frank-mail piece from Cong. Hulshoff with a Picture of the President
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Approved.

Collister W. Johnson
02/06/2002 01:56:45 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Ianthe.Jackson@mail.house.gov
Subject: Your Approval: An official frank-mail piece from Cong. Hulshoff with a Picture of the President

Brett:
Please check the attached PDF file.
With your approval, it will be the upcoming frank-mail piece for Cong. Hulshoff - please note the picture of POTUS on the third panel (that is the only POTUS-involvement in the piece)

thanks -
cj

---------- Forwarded by Collister W. Johnson/WHO/EOP on 02/05/2002 10:52 AM ----------

"Jackson, Ianthe" <Ianthe.Jackson@mail.house.gov>
02/05/2002 09:03:48 AM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: RE: FW: The President's Budget

Coddy,
Here's a mock-up of our mailer. There will be some text changes and we still need to fill some components, but the Bush picture is in there. Will this work for approval purposes? Thanks, Ianthe

-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Collister_W._Johnson@who.eop.gov]

Sent: Monday, February 04, 2002 8:26 PM
To: Jackson, Ianthe
Subject: Re: FW: The President's Budget

Lanthe:
Thanks very much for the note -
please send the markup when ready and we will push through for approval -
thanks again -
cj

(Embedded
image moved "Jackson, Ianthe" <Ianthe.Jackson@mail.house.gov>
to file: 02/04/2002 04:02:06 PM
pic26154.pcx)

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:
Subject: FW: The President's Budget

Hi Coddy, my name is Ianthe Jackson. I work for Congressman Hulshof. Matt Miller sent this email along to me. I've pasted the photo of President Bush
(Bush.tif) into this email that we'd like to use for a Homeland Defense mailer. We are having it worked into a mock-up and I will get that to you once it's in our hands. Thank you, Ianthe Jackson

Ianthe Jackson
Communications Director
Congressman Kenny Hulshof (MO-9)
202.225.2956
202.225.5712 fax
ianthe.jackson@mail.house.gov

-----Original Message-----
From: Miller, Matthew
Sent: Monday, February 04, 2002 12:45 PM
To: Jackson, Ianthe
Subject: FW: The President's Budget

-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Collister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 12:40 PM
To: Miller, Matthew

Subject: RE: The President's Budget

Thanks Matt -
process rolls through this office -
(i think my assistant returned someone in your shop's call on the same
matter) -

do you already know the picture you want to use? If so, can you send me a
draft
of how you plan to use it and i'll get legal approval?
thanks matt -

cj

(Embedded
image moved "Miller, Matthew" <Matt.Miller1@mail.house.gov>
to file: 02/04/2002 11:34:20 AM
pic19231.pcx)

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:
Subject: RE: The President's Budget

Coddy:

I have a question regarding a photo of President Bush and a firefighter a
the the WTC. Congressman Gutknecht used the picture in a mailer recently.
We would like to use the same picture.

In talking with Gutknecht's staff they said that they got the OK to use the
picture from the White House. Can you direct me to the who at the White
House that can Ok its use for us?

Thanks

Matt

-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Collister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 11:11 AM
Subject: The President's Budget

Attached are (1) talking points for the President's budget that is being
released today, (2) Q&A on the budget, and (3) a 1-page summary of
important
budget facts.

(See attached file: Budget 2002 -- Talking Points.doc)(See attached file:
Budget

2003 -- Q&A.doc)(See attached file: Budget Basics -- 2003.doc)

- att1.htm
- security.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1ONA5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1ONA5003_WHO.TXT_2>

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-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Coll ister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 8:26 PM
To: Jackson, Ianthe
Subject: Re: FW: The President's Budget

Lanthe:
Thanks very much for the note -
please send the markup when ready and we will push through for approval -
thanks again -
cj

&nb sp; &nbs p; ; & nbsp;
(Embedded ; & nbsp; &n bsp;
image moved "Jackson, Ianthe" < Ianthe.Jackson@mail.house.gov>
to file: 02/04/2002 04:02: 06 PM &n bsp; &nb sp;
pic26154.pcx) & nbsp; &n bsp; &nb sp; &nbs p;
&n bsp; &nb sp; &nbs p; ;

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:
Subject: FW: The President's Budget

Hi Coddy, my name is Ianthe Jackson. I work for Congressm an Hulshof. Matt Miller sent this email along to me. I've pasted the phot o of President Bush (Bush.tif) into this email that we'd like to use for a Homelan d Defense mailer. We are having it worked into a mock-up and I wil l get that to you once it's in our hands. Thank you, Ianthe Jackson

Ianthe Jackson
Communications Director
Congressman Kenny Hulshof (MO-9)
202.225.2956
202.225.5712 fax
ianthe.jackson@mail.house.gov

-----Original Message-----
From: Miller, Matthew
Sent: Monday, February 04, 2002 12:45 PM
To: Jackson, Ianthe
Subject: FW: The President's Budget

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[mailto:Coll ister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 12:40 PM
To: Miller, Matthew
Subject: RE: The President's Budget

Thanks Matt -
process rolls through this office -
(i think my assistant returned someone in your shop's call on the same matter) -

do you already know the picture you want to use? If so, c an you send me a draft
of how you plan to use it and i'll get legal approval?
thanks matt -

cj

(Embedded
image moved "Miller, Matthew" < Matt.Miller1@mail.house.gov>
to file: 02/04/2002 11:34: 20 AM
pic19231.pcx)

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:
Subject: RE: The President's Budget

Coddy:

I have a question regarding a photo of President Bush and a&nbs p; firefighter a the the WTC. Congressman Gutknecht used the picture in a mailer recently. We would like to use the same picture.

In talking with Gutknecht's staff they said that they got the O K to use the picture from the White House. Can you direct me to the w ho at the White House that can Ok its use for us?

Thanks

Matt

-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Coll ister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 11:11 AM
Subject: The President's Budget

Attached are (1) talking points for the President's budget that is being released today, (2) Q&A on the budget, and (3) a 1-page su mmary of important budget facts.

(See attached file: Budget 2002 -- Talking Points.doc)(See atta ched file: Budget
2003 -- Q&A.doc)(See attached file: Budget Basics -- 2003. doc)

Dear Friends,

letter here

Captions

Emergency Contact Numbers

FBI 202.324.3000
www.fbi.gov

US Department of Justice (to report crime)
866.483.5137

National Response Center (to report chemical/biological terrorism)
800.424.8802

Bureau of Alcohol, Tobacco and Firearms
202.927.7777

Center for Disease Control
404.639.3311
www.cdc.gov

Department of Labor (for employment help and job opportunities)
877-US-2JOBS

Federal Aviation Administration
800.255.1111

Contacting Congressman Kenny Hulshof

Columbia Office:
33 East Broadway
Suite 280
Columbia, MO 65203
Phone: (573) 449-5111
Fax: (573) 449-5312

Hannibal Office:
201 N. 3rd. St.
Suite 240
Hannibal, MO 63401
Phone: (573) 221-1200
Fax: (573) 221-5349

Washington Office:
516 Jefferson St.
Washington, MO 63090
Phone: (636) 239-4001
Fax: (636) 239-1987

Washington D.C. Office:
Fax: (202) 225-5712

To email Congressman Hulshof, log on to:
www.house.gov/writerep

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

PUBLIC DOCUMENT
OFFICIAL BUSINESS

This mailing was prepared, published and mailed at taxpayer expense.

Concerning Constituent Mail

Last year's anthrax attacks have complicated the mail delivery process. All mail sent to the offices of the House of Representatives is being checked for biological agents. As a result the mail is being delayed. I thank you for your patience and invite you to continue contacting our District Offices or contact the Washington DC office via fax or email.

M.C.

Prstd Std

Inside This Report

Aviation Security

Victims' Needs

Military Response

Military Readiness

Bioterrorism

Domestic Law Enforcement

"Quote from Kenny....."

REV_00139753

Improving Aviation Security

To protect against future terrorist attacks and to restore confidence in the airline industry, Congress passed the Aviation and Transportation Security Act, which President Bush signed into law on November 19, 2001. This vital law improves security at our nation's airports on several different fronts.

This measure increases the security of cockpit doors on airplanes and places armed sky marshals on domestic and international flights. All checked luggage must now be screened. National and international carriers are now required to provide passenger manifests. Flight crews will be trained in anti-hijacking procedures.

This legislation also creates the Transportation Security Administration (TSA) to oversee, train and hire airport security personnel. All security personnel must be U.S. citizens and will be subject to criminal background checks. The TSA will also implement tough new passenger and baggage screening standards and will have the authority to make future changes to ensure airline security.

Caption

Addressing the needs of Victims:

We have as a nation responded to the attacks of September 11th by coming to the aid of our fellow Americans who were impacted by the attacks. The loss suffered by victims and their families cannot be put into dollar and cents. Congress, however, can take meaningful steps to ease the suffering of these unfortunate victims.

As a member of the House Ways and Means Committee, I helped craft and voted for the Victims Tax Relief Act. This bill, which President Bush signed into law recently, will ensure that the victims of September 11th and their families will not be subject to unanticipated tax liabilities as a result of the terrorist attacks.

People, organizations and companies have donated more than one billion dollars to help the victims of September 11th. Those who gave have every right to expect that every dollar of their charitable gift will be used to help victims. As a member of the Ways and Means Oversight Subcommittee, I worked in a non-partisan way to ensure that donations reach those who have suffered as a result of the terrorist attacks.

The terrorist attacks had a negative impact on our economy. While we should do everything we can to create jobs and economic growth, we cannot ignore the plight of those who have lost their jobs and simply need a helping hand. I helped craft legislation, which has been approved by the House, that will provide extended unemployment benefits and tax credits to help those who lost their health insurance get coverage.

Military Response to Terror:

On September 14, 2001, the U.S. House passed H.J.Res. 64, which authorizes the President to use all necessary and appropriate force against those who planned, authorized or aided those who committed the attacks of September 11th. Moreover, this resolution authorizes the President to use military force against nations that harbored these terrorists in order to prevent future attacks. I joined overwhelming bipartisan majorities in both the House and Senate in voting to express Congress' approval of the use of force to respond to the terrorist threat.

To date, our military actions have been a success. The terrorist al-Qaeda network no longer enjoys safe haven in Afghanistan. The military campaign has broken the Taliban's oppressive grip on Afghanistan. We are winning the war, but the war is far from over.

Those responsible for the September 11th attacks are part of an organization with global reach. Their intentions are to kill innocent Americans and impose their intolerant views on others. To preserve freedom and live without fear, our nation's war effort cannot fail. I will continue to support the President's efforts to use every military, financial and diplomatic tool to eliminate the terrorist threat and those who provide safe havens to our enemies.

Providing for the Military:

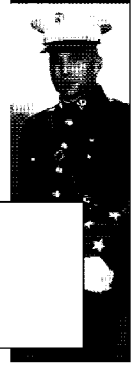
Our military must have the resources needed to win the war on terror. Those fighting this war have to continue to be the best-trained and best-prepared military units in the world. I was pleased that Congress approved the Defense Authorization bill which among other things provides for $19.2 billion increase in spending on defense over last year's levels.

To increase our safety at home, this bill allocates millions to respond to various terrorist threats, including weapons of mass destruction. It also provides increased funding for homeland security and resources to protect our military and diplomatic assets abroad. $7.8 billion is provided to continue the work necessary to establish a defense system capable to stopping a missile attack launched by a rogue state.

Our current military effort is unlike any other undertaken by the our nation. To defeat terrorists, our armed services must have access to the best intelligence. Billions in additional funding will be provided to enhance U.S. intelligence, reconnaissance, surveillance and targeting capabilities against terrorist organizations.

Finally, the Defense Appropriations Bill will give up to 15% pay raises for service members and reduces housing costs for our men and women in uniform. This is an essential commitment we must make to improve the lives of those protecting our freedoms.

Caption



Combating Bioterrorism:

Last year's anthrax attacks underscore the need to safeguard against biological and chemical attacks. That is why I voted for the Public Health Security and Bioterrorism Response Act of 2001, when it was approved by the House on December 12, 2001. This bill will enable private and public institutions to respond to bioterror attacks.

Specifically, this bill authorizes funding for bioterrorism preparedness, increases the detection and response capabilities of the Centers for Disease Control and Prevention (CDC) and expands our national stockpiles of medicines, vaccines and other supplies. It also tightens controls and increases enforcement on possession of biological agents. Food and drinking water safety measures would be increased as well.

Caption

Bolstering Domestic Law Enforcement:

The terrorists who attacked our nation on September 11 exploited our open society to achieve their evil ends. Law enforcement officials told Congress that there were several steps we could take to improve safety and stop terrorist cells from operating in the United States. To address those needs, I cast my vote in favor the USA PATRIOT Act. President Bush signed it into law on October 26, 2001.

The PATRIOT Act ensures Americans' safety and liberty are preserved at home. The bill blocks terrorist groups from raising money by improving our money laundering laws. It also increases criminal penalties for those individuals who support terrorists. The PATRIOT Act improves border security by increasing the Immigration and Naturalization Service (INS) and U.S. Customs presence at our borders.

The anti-terrorism bill makes it easier for federal officials to stop terrorists from entering the United States and facilitates detaining and deporting foreign terror suspects. The package also makes it easier for law-enforcement and intelligence agencies to share information to stop future terror attacks.

REV_00139754

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Coffin, Shannen <Shannen.Coffin@usdoj.gov>
Sent: 2/6/2002 11:05:11 AM
Subject: : RE: revised draft

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 16:05:11.00
SUBJECT:: RE: revised draft
TO:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> ("Coffin, Shannen"
<Shannen.Coffin@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I know this is a pain for everyone, but can I participate by
phone. Too much else going on here.

"Coffin, Shannen" <Shannen.Coffin@usdoj.gov>
02/06/2002 12:58:05 PM
Record Type: Record

To: "Blackwell, Craig" <Craig.Blackwell@usdoj.gov> (Receipt Notification
Requested), Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: RE: revised draft

I'd like to have a meeting at 4:30 today in the Civil Division conference
room (3143) in main justice to finalize some big picture issues on the
American Historical Ass'n PRA brief, which is due Friday. Please attend
if you are able.

Shannen W. Coffin
Civil Division
U.S. Department of Justice
(202) 514-3310 (phone)
(202) 514-8071 (fax)
shannen.coffin@usdoj.gov

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, February 06, 2002 10:07 AM
To: Blackwell, Craig
Cc: Weismann, Anne; Anderson, David; Letter, Douglas; Katsas, Gregory;
Wood, John F; Whelan, M Edward III; Raab, Michael; Clement, Paul D;
Colborn, Paul P; McCallum, Robert; Coffin, Shannen
Subject: Re: revised draft

I am FAXing my edits/comments to Craig this morning.

(Embedded
image moved "Blackwell, Craig" <Craig.Blackwell@usdoj.gov>
to file: 01/31/2002 05:07:03 PM
pic05565.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc: "Coffin, Shannen" <Shannen.Coffin@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested), "Anderson, David"
<David.Anderson@usdoj.gov> (Receipt Notification Requested) (IPM
Return
Requested), "Weismann, Anne" <Anne.Weismann@usdoj.gov> (Receipt
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Attached is a revised version of our motion to dismiss in AHA v. NARA,
which
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Please e-mail or call with any thoughts/comments by cob next Tuesday
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I don't hear from you by then, I will assume you are comfortable with the
approach in the draft. The brief is due Friday, 2/8.

Thanks.

Craig

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"Anderson, David" <David.Anderson@usdoj.gov> (Receipt Notification
Requested)
"Letter, Douglas" <Douglas.Letter@usdoj.gov> (Receipt Notification
Requested)
"Katsas, Gregory" <Gregory.Katsas@usdoj.gov> (Receipt Notification
Requested)
"Wood, John F" <John.F.Wood@usdoj.gov> (Receipt Notification Requested)
"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification
Requested)
"Raab, Michael" <Michael.Raab@usdoj.gov> (Receipt Notification Requested)
"Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification
Requested)
"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested)
"McCallum, Robert" <Robert.McCallum@usdoj.gov> (Receipt Notification
Requested)

From: Coffin, Shannen <Shannen.Coffin@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/6/2002 11:53:37 AM
Subject: : RE: revised draft

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> ("Coffin, Shannen"
<Shannen.Coffin@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 6-FEB-2002 16:53:37.00
SUBJECT:: RE: revised draft
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sure, if I can figure out how to do that. What's your direct dial?

Shannen W. Coffin
Civil Division
U.S. Department of Justice
(202) 514-3310 (phone)
(202) 514-8071 (fax)
shannen.coffin@usdoj.gov

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(Embedded
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to file: 02/06/2002 12:58:05 PM
pic02860.pcx)

Record Type: Record

To: "Blackwell, Craig" <Craig.Blackwell@usdoj.gov> (Receipt Notification
Requested), Brett M. Kavanaugh/WHO/EOP@EOP

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"Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested)
"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested)
"McCallum, Robert" <Robert.McCallum@usdoj.gov> (Receipt Notification Requested)

From:	CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	Ianthe.Jackson@mail.house.gov [UNKNOWN] <Ianthe.Jackson@mail.house.gov>
Sent:	2/6/2002 8:56:53 AM
Subject:	: Your Approval: An official frank-mail piece from Cong. Hulshoff with a Picture of the President
Attachments:	P_BDKA5003_WHO.TXT_1.html; P_BDKA5003_WHO.TXT_2.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 13:56:53.00
SUBJECT:: Your Approval: An official frank-mail piece from Cong. Hulshoff with a Picture of the President
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ianthe.Jackson@mail.house.gov (Ianthe.Jackson@mail.house.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett:
Please check the attached PDF file.
With your approval, it will be the upcoming frank-mail piece for Cong.
Hulshoff - please note the picture of POTUS on the third panel (that is
the only POTUS-involvement in the piece)

thanks -
cj

---------- Forwarded by Collister W. Johnson/WHO/EOP on
02/05/2002 10:52 AM ----------

"Jackson, Ianthe" <Ianthe.Jackson@mail.house.gov>
02/05/2002 09:03:48 AM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: RE: FW: The President's Budget

Coddy,
Here's a mock-up of our mailer. There will be some text changes and we
still need to fill some components, but the Bush picture is in there. Will
this work for approval purposes? Thanks, Ianthe

-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Collister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 8:26 PM
To: Jackson, Ianthe
Subject: Re: FW: The President's Budget

Lanthe:
Thanks very much for the note -
please send the markup when ready and we will push through for approval -
thanks again -
cj

(Embedded
image moved "Jackson, Ianthe" <Ianthe.Jackson@mail.house.gov>
to file: 02/04/2002 04:02:06 PM
pic26154.pcx)

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:
Subject: FW: The President's Budget

Hi Coddy, my name is Ianthe Jackson. I work for Congressman Hulshof. Matt Miller sent this email along to me. I've pasted the photo of President Bush
(Bush.tif) into this email that we'd like to use for a Homeland Defense mailer. We are having it worked into a mock-up and I will get that to you once it's in our hands. Thank you, Ianthe Jackson

Ianthe Jackson
Communications Director
Congressman Kenny Hulshof (MO-9)
202.225.2956
202.225.5712 fax
ianthe.jackson@mail.house.gov

-----Original Message-----
From: Miller, Matthew
Sent: Monday, February 04, 2002 12:45 PM
To: Jackson, Ianthe
Subject: FW: The President's Budget

-----Original Message-----
From: Collister_W._Johnson@who.eop.gov
[mailto:Collister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 12:40 PM
To: Miller, Matthew
Subject: RE: The President's Budget

Thanks Matt -
process rolls through this office -
(i think my assistant returned someone in your shop's call on the same matter) -

do you already know the picture you want to use? If so, can you send me a draft
of how you plan to use it and i'll get legal approval?
thanks matt -

cj

(Embedded
image moved "Miller, Matthew" <Matt.Miller1@mail.house.gov>
to file: 02/04/2002 11:34:20 AM
pic19231.pcx)

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:
Subject: RE: The President's Budget

Coddy:

I have a question regarding a photo of President Bush and a firefighter a
the the WTC. Congressman Gutknecht used the picture in a mailer recently.
We would like to use the same picture.

In talking with Gutknecht's staff they said that they got the OK to use the
picture from the White House. Can you direct me to the who at the White
House that can Ok its use for us?

Thanks

Matt

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From: Collister_W._Johnson@who.eop.gov
[mailto:Collister_W._Johnson@who.eop.gov]
Sent: Monday, February 04, 2002 11:11 AM
Subject: The President's Budget

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released today, (2) Q&A on the budget, and (3) a 1-page summary of
important
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(See attached file: Budget 2002 -- Talking Points.doc)(See attached file:
Budget
2003 -- Q&A.doc)(See attached file: Budget Basics -- 2003.doc)

- att1.htm
- security.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BDKA5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BDKA5003_WHO.TXT_2>

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&nb sp; &nbs p; ; & nbsp;
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image moved "Jackson, Ianthe" < Ianthe.Jackson@mail.house.gov>
to file: 02/04/2002 04:02: 06 PM &n bsp; &nb sp;
pic26154.pcx) & nbsp; &n bsp; &nb sp; &nbs p;
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(See attached file: Budget 2002 -- Talking Points.doc)(See atta ched file: Budget
2003 -- Q&A.doc)(See attached file: Budget Basics -- 2003. doc)

Dear Friends,

letter here

Captions

Emergency Contact Numbers

FBI 202.324.3000
www.fbi.gov

US Department of Justice (to report crime)
866.483.5137

National Response Center (to report chemical/biological terrorism)
800.424.8802

Bureau of Alcohol, Tobacco and Firearms
202.927.7777

Center for Disease Control
404.639.3311
www.cdc.gov

Department of Labor (for employment help and job opportunities)
877-US-2JOBS

Federal Aviation Administration
800.255.1111

Contacting Congressman Kenny Hulshof

Columbia Office:
33 East Broadway
Suite 280
Columbia, MO 65203
Phone: (573) 449-5111
Fax: (573) 449-5312

Hannibal Office:
201 N. 3rd. St.
Suite 240
Hannibal, MO 63401
Phone: (573) 221-1200
Fax: (573) 221-5349

Washington Office:
516 Jefferson St.
Washington, MO 63090
Phone: (636) 239-4001
Fax: (636) 239-1987

Washington D.C. Office:
Fax: (202) 225-5712

To email Congressman Hulshof, log on to:
www.house.gov/writerep

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

PUBLIC DOCUMENT
OFFICIAL BUSINESS

This mailing was prepared, published and mailed at taxpayer expense.

Concerning Constituent Mail

Last year's anthrax attacks have complicated the mail delivery process. All mail sent to the offices of the House of Representatives is being checked for biological agents. As a result the mail is being delayed. I thank you for your patience and invite you to continue contacting our District Offices or contact the Washington DC office via fax or email.

M.C.

Prstd Std

Inside This Report

Aviation Security

Victims' Needs

Military Response

Military Readiness

Bioterrorism

Domestic Law Enforcement

"Quote from Kenny....."

REV_00139782

Improving Aviation Security

To protect against future terrorist attacks and to restore confidence in the airline industry, Congress passed the Aviation and Transportation Security Act, which President Bush signed into law on November 19, 2001. This vital law improves security at our nation's airports on several different fronts.

This measure increases the security of cockpit doors on airplanes and places armed sky marshals on domestic and international flights. All checked luggage must now be screened. National and international carriers are now required to provide passenger manifests. Flight crews will be trained in anti-hijacking procedures.

This legislation also creates the Transportation Security Administration (TSA) to oversee, train and hire airport security personnel. All security personnel must be U.S. citizens and will be subject to criminal background checks. The TSA will also implement tough new passenger and baggage screening standards and will have the authority to make future changes to ensure airline security.

Caption

Addressing the needs of Victims:

We have as a nation responded to the attacks of September 11th by coming to the aid of our fellow Americans who were impacted by the attacks. The loss suffered by victims and their families cannot be put into dollar and cents. Congress, however, can take meaningful steps to ease the suffering of these unfortunate victims.

As a member of the House Ways and Means Committee, I helped craft and voted for the Victims Tax Relief Act. This bill, which President Bush signed into law recently, will ensure that the victims of September 11th and their families will not be subject to unanticipated tax liabilities as a result of the terrorist attacks.

People, organizations and companies have donated more than one billion dollars to help the victims of September 11th. Those who gave have every right to expect that every dollar of their charitable gift will be used to help victims. As a member of the Ways and Means Oversight Subcommittee, I worked in a non-partisan way to ensure that donations reach those who have suffered as a result of the terrorist attacks.

The terrorist attacks had a negative impact on our economy. While we should do everything we can to create jobs and economic growth, we cannot ignore the plight of those who have lost their jobs and simply need a helping hand. I helped craft legislation, which has been approved by the House, that will provide extended unemployment benefits and tax credits to help those who lost their health insurance get coverage.

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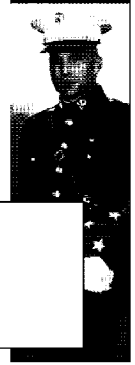
Caption



Combating Bioterrorism:

Last year's anthrax attacks underscore the need to safeguard against biological and chemical attacks. That is why I voted for the Public Health Security and Bioterrorism Response Act of 2001, when it was approved by the House on December 12, 2001. This bill will enable private and public institutions to respond to bioterror attacks.

Specifically, this bill authorizes funding for bioterrorism preparedness, increases the detection and response capabilities of the Centers for Disease Control and Prevention (CDC) and expands our national stockpiles of medicines, vaccines and other supplies. It also tightens controls and increases enforcement on possession of biological agents. Food and drinking water safety measures would be increased as well.

Caption

Bolstering Domestic Law Enforcement:

The terrorists who attacked our nation on September 11 exploited our open society to achieve their evil ends. Law enforcement officials told Congress that there were several steps we could take to improve safety and stop terrorist cells from operating in the United States. To address those needs, I cast my vote in favor the USA PATRIOT Act. President Bush signed it into law on October 26, 2001.

The PATRIOT Act ensures Americans' safety and liberty are preserved at home. The bill blocks terrorist groups from raising money by improving our money laundering laws. It also increases criminal penalties for those individuals who support terrorists. The PATRIOT Act improves border security by increasing the Immigration and Naturalization Service (INS) and U.S. Customs presence at our borders.

The anti-terrorism bill makes it easier for federal officials to stop terrorists from entering the United States and facilitates detaining and deporting foreign terror suspects. The package also makes it easier for law-enforcement and intelligence agencies to share information to stop future terror attacks.

REV_00139783

From: Rena Johnson) (Rena_Johnson@judiciary.senate.gov (Rena Johnson) [UNKNOWN]
To: Pat.O'Brien@usdoj.gov [UNKNOWN] <Pat.O'Brien@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>;John Mashburn) (John_Mashburn@lott.senate.gov (John Mashburn) [UNKNOWN] <John_Mashburn@lott.senate.gov>;steven_wall@lott.senate.gov [UNKNOWN] <steven_wall@lott.senate.gov>
CC: Alex Dahl) (Alex_Dahl@judiciary.senate.gov (Alex Dahl) [UNKNOWN] <Alex_Dahl@judiciary.senate.gov>
Sent: 2/6/2002 10:04:00 AM
Subject: : Conference call this afternoon?

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rena_Johnson@judiciary.senate.gov (Rena Johnson) (
Rena_Johnson@judiciary.senate.gov (Rena Johnson) [ UNKNOWN ] )
CREATION DATE/TIME: 6-FEB-2002 15:04:00.00
SUBJECT:: Conference call this afternoon?
TO:Pat.O'Brien@usdoj.gov ( Pat.O'Brien@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov ( Jennifer.Newstead@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ed_Haden@judiciary.senate.gov (Ed Haden) ( Ed_Haden@judiciary.senate.gov (Ed Haden) [
UNKNOWN ] )
READ:UNKNOWN
TO:John_Mashburn@lott.senate.gov (John Mashburn) ( John_Mashburn@lott.senate.gov (John
Mashburn) [ UNKNOWN ] )
READ:UNKNOWN
TO:steven_wall@lott.senate.gov ( steven_wall@lott.senate.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:Alex_Dahl@judiciary.senate.gov (Alex Dahl) ( Alex_Dahl@judiciary.senate.gov (Alex Dahl)
[ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I know we are all swamped getting ready for tomorrow's hearing, but I
think it
would be a good idea for us to touch base late this afternoon to see where
we
are, collectively. I was thinking in the neighborhood of 6:30 p.m.
Ideally, we
can do a conference call so that we can do this from our respective
offices and
keep it brief. DOJ, do you have the capacity to set this up by e-mailing
us the
number to call?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/6/2002 11:01:10 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 16:01:10.00
SUBJECT::
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

are West Wing tours available again?
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/6/2002 12:20:04 PM
Subject: : Re: Problematic Judicial Vacancies and Candidates

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-FEB-2002 17:20:04.00
SUBJECT:: Re: Problematic Judicial Vacancies and Candidates
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

when are you back on campus?

Brett M. Kavanaugh
02/06/2002 05:15:49 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: elizabeth n. camp/who/eop@eop
bcc:
Subject: Re: Problematic Judicial Vacancies and Candidates

can we make it Friday if possible because I would like to be there
for that.

H. Christopher Bartolomucci
02/06/2002 05:14:58 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Problematic Judicial Vacancies and Candidates

Libby -- The Judge told me he wants to have a meeting to discuss our problematic judicial vacancies and candidates. I'm guessing that this a 45 minute meeting. Can you identify some time on the schedule for this purpose? Thanks.

Message Copied
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 2/6/2002 12:25:55 PM

Subject: : FRIDAY MTG - correction on time - 11-12N on Friday (not 10-11)

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 17:25:55.00
SUBJECT:: FRIDAY MTG - correction on time - 11-12N on Friday (not 10-11)
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 2/6/2002 12:25:55 PM

Subject: : FRIDAY MTG - correction on time - 11-12N on Friday (not 10-11)

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 17:25:55.00
SUBJECT:: FRIDAY MTG - correction on time - 11-12N on Friday (not 10-11)
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>
Sent: 2/6/2002 12:42:08 PM
Subject: : Re: Problematic Judicial Vacancies and Candidates

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-FEB-2002 17:42:08.00
SUBJECT:: Re: Problematic Judicial Vacancies and Candidates
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

11-12.
```

```
Brett M. Kavanaugh
02/06/2002 05:41:28 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: elizabeth n. camp/who/eop@eop
bcc:
Subject: Re: Problematic Judicial Vacancies and Candidates

Is it 10 or 11; please advise!! And I will be there either way.
```

```
H. Christopher Bartolomucci
02/06/2002 05:39:52 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Problematic Judicial Vacancies and Candidates

Those who are out of the office can participate by conference call.
```

```
Elizabeth N. Camp
02/06/2002 05:25:05 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Problematic Judicial Vacancies and Candidates

This meeting will occur from 10-11am on Friday in the Judge's office.
```

H. Christopher Bartolomucci
02/06/2002 05:14:58 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Problematic Judicial Vacancies and Candidates

Libby -- The Judge told me he wants to have a meeting to discuss our problematic judicial vacancies and candidates. I'm guessing that this a 45 minute meeting. Can you identify some time on the schedule for this purpose? Thanks.

Message Copied
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

Message Copied
To:_____
bradford a. berenson/who/eop@eop
rachel l. brand/who/eop@eop
courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
kyle sampson/who/eop@eop
helgard c. walker/who/eop@eop

Message Copied
To:_____
bradford a. berenson/who/eop@eop
rachel l. brand/who/eop@eop
courtney s. elwood/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
kyle sampson/who/eop@eop
helgard c. walker/who/eop@eop

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Blackwell, Craig <Craig.Blackwell@usdoj.gov>
Sent: 2/7/2002 5:42:30 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-FEB-2002 10:42:30.00
SUBJECT::
TO:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ( "Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

can you do me a favor and e-mail the Burke case in the text of a reply e-mail. I cannot access and I also am having trouble opening attachments. thanks,

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ronald I. Christie/OVP /EOP@EOP [OVP] <Ronald I. Christie>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>
Sent: 2/7/2002 3:46:44 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-FEB-2002 08:46:44.00
SUBJECT::
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ronald I. Christie ( CN=Ronald I. Christie/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Elizabeth S. Dougherty ( CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Senate Passes 13-Week Extension In Unemployment Benefits, Kills Broader
Stimulus. NBC (2/6, story 5, Brokaw) reports, &President Bush's economic
stimulus package is dead. Democrats in the Senate shelved the bill after
Republicans couldn't muster the votes to get over a procedural hurdle.
Republicans called Majority Leader Tom Daschle an obstructionist. Daschle
said the tax cuts in the bill favored the wealthy and businesses much too
heavily. The Senate did pass a 13-week extension of unemployment
benefits.8

More money for unemployed people and no tax cuts?
I want my money back.
```

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 4:20:39 AM
Subject: : Afghan Children Fund photo

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 09:20:39.00
SUBJECT:: Afghan Children Fund photo
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Any political check necessary for this? Do you care? I think its okay.
---------- Forwarded by Robert W. Cobb/WHO/EOP on 02/07/2002 09:19 AM ----------

From: Jill Davie on 02/05/2002 04:52:11 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Afghan Children Fund photo

Cong. John Tanner is requesting WH permission to release a photo of the Congressman and the President posing with an Afghan Children Fund check. Tanner would like to release it to local media. Pls. Advise.
thanks - Jill Davie, Leg Affairs 6-2230

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 2/7/2002 4:36:09 AM
Subject: : Re: Afghan Children Fund photo

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 09:36:09.00
SUBJECT:: Re: Afghan Children Fund photo
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ok

Robert W. Cobb
02/07/2002 09:20:20 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Afghan Children Fund photo

Any political check necessary for this? Do you care? I think its okay.
---------- Forwarded by Robert W. Cobb/WHO/EOP on 02/07/2002 09:19 AM ----------

From: Jill Davie on 02/05/2002 04:52:11 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Afghan Children Fund photo

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thanks - Jill Davie, Leg Affairs 6-2230

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Jay P. Lefkowitz/OMB /EOP@EOP [OMB] <Jay P. Lefkowitz>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 2/7/2002 4:45:22 AM
Subject: :

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 09:45:22.00
SUBJECT::
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

Judge Finds Iran Liable For $56 Million In Wrongful Death. The New York Times (2/7, A26) reports, &A federal judge yesterday granted a $56 million damage award to the family of an American killed in a 1996 terrorist bombing in Israel, but the family faces a difficult battle to collect the money. US District Judge Royce C. Lamberth specified in a 23-page opinion that the widow and children of Ira Weinstein should receive the money from Iran, which has been identified in several court cases as the sponsor of the militant group Hamas. Hamas had claimed credit for the bus bombing.8 The Times adds, &But whether Iran will ever pay the judgment is an open question. The government there has ignored this and similar lawsuits. (The United States has paid about $350 million from the general treasury to satisfy some claims, and it may later pursue Iran for repayment from the balance of a $400 million military sales account that dates back to the time of Shah Mohammad Reza Pahlavi.8

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Jay P. Lefkowitz/OMB /EOP@EOP [OMB] <Jay P. Lefkowitz>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 2/7/2002 4:45:22 AM
Subject: :

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 09:45:22.00
SUBJECT::
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

Judge Finds Iran Liable For $56 Million In Wrongful Death. The New York Times (2/7, A26) reports, &A federal judge yesterday granted a $56 million damage award to the family of an American killed in a 1996 terrorist bombing in Israel, but the family faces a difficult battle to collect the money. US District Judge Royce C. Lamberth specified in a 23-page opinion that the widow and children of Ira Weinstein should receive the money from Iran, which has been identified in several court cases as the sponsor of the militant group Hamas. Hamas had claimed credit for the bus bombing.8 The Times adds, &But whether Iran will ever pay the judgment is an open question. The government there has ignored this and similar lawsuits. (The United States has paid about $350 million from the general treasury to satisfy some claims, and it may later pursue Iran for repayment from the balance of a $400 million military sales account that dates back to the time of Shah Mohammad Reza Pahlavi.8

From: Burton, Faith <Faith.Burton@usdoj.gov>
To: Collins, Dan <Dan.Collins@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Bybee, Jay <Jay.Bybee@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Chertoff, Michael <Michael.Chertoff@usdoj.gov>;Horowitz, Michael-CRM <Michael.Horowitz3@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>
CC: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
Sent: 2/7/2002 5:17:33 AM
Subject: : RE: Draft letter to Chairman Burton re next step

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Burton, Faith" <Faith.Burton@usdoj.gov> ( "Burton, Faith" <Faith.Burton@usdoj.gov>
[ UNKNOWN ] )
CREATION DATE/TIME: 7-FEB-2002 10:17:33.00
SUBJECT:: RE: Draft letter to Chairman Burton re next step
TO:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bybee, Jay" <Jay.Bybee@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bybee, Jay" <Jay.Bybee@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:"Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can we do a conference call on this at 10:15? Best way to work it on
short notice is to have Brett call Carl at 4-3951 and we'll loop in OLC at
4-2048; Collins at 4-6753; and Crim at 3-8579 - is that doable for
everyone?

-----Original Message-----
From: Collins, Dan
Sent: Wednesday, February 06, 2002 5:39 PM
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To: Burton, Faith; 'Brett_M._Kavanaugh@who.eop.gov'; Colborn, Paul P; Chertoff, Michael; Horowitz, Michael-CRM; Martens, Matthew; Whelan, M Edward III; Bybee, Jay
Cc: Thorsen, Carl
Subject: RE: Draft letter to Chairman Burton re next step

What about taking this one a notch further and stating that we have prepared a redacted version of that particular document that we are willing to show them at the meeting? (Assuming that we can do such a redaction without delaying the letter.)

-----Original Message-----
From: Burton, Faith
Sent: Wednesday, February 06, 2002 5:25 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Colborn, Paul P; Chertoff, Michael; Horowitz, Michael-CRM; Martens, Matthew; Whelan, M Edward III; Collins, Dan; 'attyadv.opca@fbi.gov'
Cc: Thorsen, Carl
Subject: Draft letter to Chairman Burton re next step

Please give me your comments by 11 a.m. << File: burton.harrington.wpd >>

From: CN=Mary Ann Hanusa/OU=WHO/O=EOP [WHO]
To: Karen Hughes/WHO/EOP@EOP [WHO] <Karen Hughes>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>;Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Christa J. Bailey/WHO/EOP@EOP [WHO] <Christa J. Bailey>
CC: Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Krista L. Ritacco/WHO /EOP@EOP [WHO] <Krista L. Ritacco>
Sent: 2/7/2002 5:41:44 AM
Subject: : Meeting Place for Library Meeting Today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Mary Ann Hanusa ( CN=Mary Ann Hanusa/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-FEB-2002 10:41:44.00
SUBJECT:: Meeting Place for Library Meeting Today
TO:Karen Hughes ( CN=Karen Hughes/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Harriet Miers ( CN=Harriet Miers/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Linda M. Gambatesa ( CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Andrea G. Ball ( CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Christa J. Bailey ( CN=Christa J. Bailey/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Scott N. Sforza ( CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Krista L. Ritacco ( CN=Krista L. Ritacco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Father-Son exhibit meeting will be in the conference room on the
ground floor of the West Wing, next to Hector Irastorza's office.

Same time, 4:00pm--see you there. Thanks.
```

From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 5:42:46 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME: 7-FEB-2002 10:42:46.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Yep...
```

From: Collins, Dan <Dan.Collins@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 10:23:19 AM
Subject: : Re: Review of Reagan Records

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Collins, Dan" <Dan.Collins@usdoj.gov> ( "Collins, Dan" <Dan.Collins@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME: 7-FEB-2002 15:23:19.00
SUBJECT:: Re: Review of Reagan Records
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : Re: Review of Reagan Records
Was Read By : Dan.Collins@usdoj.gov
On : Thu, 7 Feb 2002 15:04:44 -0500
```

From: Blackwell, Craig <Craig.Blackwell@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 6:24:07 AM
Subject: : RE:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ("Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 7-FEB-2002 11:24:07.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Here you go (it's Part III that's the problem for us)

United States Court of Appeals,
District of Columbia Circuit.
PUBLIC CITIZEN, et al.
v.
Frank BURKE, Acting Archivist, National Archives & Records Administration,
et
al., Appellants,
Richard M. Nixon.
PUBLIC CITIZEN, et al.
v.
Frank BURKE, Acting Archivist, National Archives & Records Administration,
et
al.
Appeal of Richard M. NIXON.
Nos. 87-5194, 87-5215.
Argued Jan. 12, 1988.
Decided April 12, 1988.

Action was brought challenging regulations issued under the Presidential Recordings and Materials Preservation Act by the Archivist of the United States, as official charged with custody of materials of former president,

governing disclosure of some of those materials. The United States District Court for the District of Columbia, George H. Revercomb, J., 655 F.Supp. 318, upheld challenge, and appeal was taken. The Court of Appeals, Silberman, Circuit Judge, held that: (1) there was no constitutional requirement that Archivist acquiesce in any claim of executive privilege asserted by former president to block disclosure of materials, and (2) regulations, as interpreted to oblige Archivist to acquiesce in any claim of executive privilege by former president, were contrary to PRMPA and, therefore, could not be sustained.
Affirmed.

West Headnotes

[1] KeyCite this headnote

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k11 General Rules of Construction
92k20 k. Subsequent Legislative or Executive Construction. (Formerly 90k20)

Federal judiciary does not owe deference to Executive Branch's interpretation of the Constitution.

[2] KeyCite this headnote

326 Records
326II Public Access
326II(A) In General
326k31 k. Regulations Limiting Access; Offenses.

Regulations issued under the Presidential Recordings and Materials Preservation Act by the Archivist of the United States, as official charged with custody of materials of former president, did not have to be interpreted for constitutional reasons as obliging the Archivist to acquiesce in any claim of executive privilege asserted by former president to block disclosure of materials, as asserted by Justice Department; Archivist--appointee of incumbent president--was not constitutionally compelled to afford deference to former president's claim. 44 U.S.C.A. õ 2111 note.

[3] KeyCite this headnote

326 Records
326II Public Access
326II(A) In General
326k31 k. Regulations Limiting Access; Offenses.

Regulations issued under the Presidential Recordings and Materials Preservation Act by the Archivist of the United States, concerning disclosure of former president's materials in custody of Archivist, as interpreted by the Justice Department to oblige Archivist to acquiesce in any claim of executive privilege asserted by former president to block disclosure of materials, were not consistent with PRMPA and, therefore, could not be sustained; regulations would be approved as promulgated, without Justice Department's modification. 44 U.S.C.A. õ 2111 note.

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Appeals from the United States District Court for the District of Columbia (Civil Action No. 86-01787).

Samuel A. Alito, Jr., U.S. Atty., Newark, N.J., with whom Michael Carvin, Deputy Asst. Atty. Gen., was on the brief, for federal appellants.
R. Stan Mortenson, with whom Herbert J. Miller, Jr., Washington, D.C., was on the brief, for appellant Richard M. Nixon.
Eric R. Glitzenstein, with whom David C. Vladeck and Alan B. Morrison, Washington, D.C., were on the brief, for appellees.

Before SILBERMAN and SENTELLE, Circuit Judges, and HAROLD H. GREENE, [FN*] Judge, United States District Court for the District of Columbia.

FN* Sitting by designation pursuant to 28 U.S.C. õ 292(a).

Opinion for the Court filed by Circuit Judge SILBERMAN.

SILBERMAN, Circuit Judge:
This case involves a challenge to regulations issued under the Presidential Recordings and Materials Preservation Act of 1974 ("PRMPA"), note following 44 U.S.C. õ 2111 (1982). In March of 1985, the Archivist of the

United States, the official charged with custody of the materials of

former President Nixon, published regulations governing disclosure of certain of these materials. The Justice Department opined that the regulations must be "interpreted" for constitutional reasons as obliging the Archivist to acquiesce in any claim of executive privilege asserted by the former President to block disclosure of materials, and the Archivist has adopted that interpretation.
Appellees, Public Citizen, Reporters Committee for Freedom of the Press, and writer David A. Bollier challenged that interpretation successfully in the district court, and the government appeals. Since the Archivist's regulations, as interpreted by the Justice Department, are premised on what we believe is a misunderstanding of the Constitution, we agree with the district *1475
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court that the agency's regulations cannot be upheld with the gloss placed upon them by the Justice Department. SEC v. Chenery Corp., 318 U.S. 80, 94, 63 S.Ct. 454, 462, 87 L.Ed. 626 (1943). The district court, 655 F.Supp. 318, is therefore affirmed.

I.
The Nixon Papers Act has engendered much litigation since its passage in 1974. See Nixon v. General Servs. Admin., 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977); Nixon v. Freeman, 670 F.2d 346 (D.C.Cir.), cert. denied, 459 U.S. 1035, 103 S.Ct. 445, 74 L.Ed.2d 601 (1982); Allen v. Carmen, 578 F.Supp. 951 (D.D.C.1983). The principal intent of Congress in

passing PRMPA was to maintain a publicly available historical record of the Nixon presidency by gaining control over some 42 million pages of documents and 880 tape recordings from former President Nixon by in effect abrogating Mr. Nixon's depository agreement with Arthur F. Sampson, Administrator of the General Services Administration ("GSA"). H.R.Rep. No. 1507, 93d Cong., 2d Sess. 2-4 (1974). The Nixon-Sampson Agreement, announced on September 8, 1974, the day then President Ford pardoned Mr. Nixon, gave former President Nixon "all legal and equitable title" to the materials, the power to control access to the materials, the right to withdraw any portion of the materials after three years, and the assurance that all tape recordings would be destroyed upon Mr. Nixon's death or September 1, 1984, whichever was earlier. See Nixon v. Sampson, 389 F.Supp. 107, 160-62 (D.D.C.1975) (App. A., Nixon- Sampson Agreement). Congress entrusted the Administrator of the GSA with custody of the Nixon materials--an action the Supreme Court subsequently upheld as not unconstitutional, at least on its face. Nixon v. General Servs. Admin., 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867. Although the Administrator was replaced by the Archivist in 1984 as the official in charge of the materials, [FN1] the Act and its goals have remained largely intact. PRMPA requires the Archivist to promulgate regulations for public access, taking into account seven factors ranging from the "need" to disclose information about "Watergate"

to the "need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access." PRMPA õ 104(a). [FN2] Congress *1476
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intended PRMPA to "provide the public with the full truth, at the earliest reasonable date, of the abuses of government power" during the "Watergate" period. H.R.Rep. No. 1507, 93d Cong., 2d Sess. 1-3 (1974). In order to protect its interest in disclosure, Congress at first enacted a legislative veto provision in õ 104(b), but after INS v. Chadha, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983) held unconstitutional Congress' use of the one-House veto, it settled on a requirement that the regulations not take effect until sixty days after their submission to Congress, PRMPA õ 104(b) (Supp. II 1984).

FN1. In 1984, Congress established the National Archives and Records Administration ("NARA") as an independent agency within the Executive Branch to administer the presidential papers and tape recordings of Mr. Nixon and to supervise the screening, processing, and preparation of those materials for public access. National Archives and Records Administration Act of 1984, 44 U.S.C. õõ 2101-2118 (Supp. II 1984). Congress provided

that the Archivist be appointed by the President, with the advice and consent of the Senate, be removable by the President, and that the Archivist "shall be appointed without regard to political affiliations and

solely on the basis of professional qualifications." 44 U.S.C. õ 2103(a). Congress' intent was to ensure that "archival and records management decisions would be made on a professional basis unaffected by political considerations or other extraneous factors." S.REP. NO. 373, 98th Cong., 2d Sess. 13 (1984) U.S.Code Cong. & Admin.News 1984, 3865, 3877; see also H.R.CONF.REP. NO. 1124, 98th Cong., 2d Sess. 20 (1984).

FN2. Section 104(a) requires in full:

The Archivist shall, within ninety days after the date of enactment of this title, submit to each House of the Congress a report proposing and explaining regulations that would provide public access to the tape recordings and other materials referred to in section 101. Such regulations shall take into account the following factors:

(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";

(2) the need to make such recordings and materials available for use in judicial proceedings;

(3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings to information relating to the Nation's security;

(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

Under the current, sixth set of regulations, [FN3] the Archivist prepares the Nixon materials for public access by organizing them into "integral file segments," which are "intelligible and complete unit[s] for purposes of historical research." Freeman, 670 F.2d at 352 n. 11. Access is tempered, however, by the Archivist's segregation of certain restricted materials: for example, materials that are private or that neither relate to "abuses of power" nor have general historical significance are not released. 36 C.F.R. õ 1275.46(b) (1987); see also id. õ 1275.50(a) (no access if release of

Watergate materials would violate a federal statute or is subject to a claim of privilege); id. õ 1275.52(b) (no access if release of non-Watergate materials would disclose trade secrets or constitute libel or an invasion of personal privacy).

FN3. The first three sets of regulations were rejected by Congress, using its one-House legislative veto. See Nixon v. Freeman, 670 F.2d at 349 n. 4. The fourth set of regulations became effective December 16, 1977, 42

Fed.Reg. 63,626, but they were later modified in 1980 pursuant to a settlement agreement with former President Nixon. Freeman, 670 at 349-50. The fifth set became effective on March 7, 1980. 45 Fed.Reg. 14,85 6 (1980). They survived an initial attack by President Nixon in Freeman, but they were ultimately struck down as poisoned by the Act's legislative veto provision. Allen v. Carmen, 578 F.Supp. 951 (D.D.C.1983). On March 29, 1985, the Archivist, with the blessing of the specially empaneled Nixon Materials Regulations Review Group, filed a notice of proposed rulemaking, announcing his intention essentially to repromulgate the fifth set of regulations. 50 Fed.Reg. 12,575. After the close of the comment period, the Civil Division of the Justice Department reviewed the regulations and proposed no significant changes. See Review of Nixon Presidential Materials Access Regulations: Hearings

Before a Subcomm. of the House Comm. on Gov't Operations, 99th Cong., 2d Sess. 176, at 256 (1986) (Letter from Richard K. Willard, Acting Assistant Attorney General Civil Division to Gary L. Brooks, Acting General Counsel National Archives (July 19, 1985)). This sixth set of regulations became effective June 26, 1986 and is the subject of this appeal.

Once a segment is fully prepared, the Archivist is obliged to publish in the Federal Register notice of his intent to provide public access. Id. õ 1275.42(b). This notice must identify the materials to be made public and also apprise any interested person that he is entitled to assert a legal or constitutional right or privilege to halt access. Those who are to receive special notice include former President Nixon and any individual whose name appears in the materials. If there is a complaint protesting disclosure, the interested individual may file his objection with the Archivist, who, according to the language of the regulations, is responsible for the decision in those cases involving claims of privilege. Id. õ 1275.44(a).
Before publication of this sixth version of the regulations, the Archivist, pursuant to Executive Order No. 12,291, forwarded the regulations to the Office of Management and Budget ("OMB") for clearance. OMB in turn requested the views of the Justice Department's Office of Legal Counsel ("OLC") as to whether the proposed regulations adequately honored õ 104(a)(5) of PRMPA

concerning claims of privilege. OLC responded by memorandum asserting that the language of the regulations--insofar as they authorized the Archivist to determine the merits of an assertion of executive privilege--would not be consistent with the Constitution. According to OLC, if either an incumbent President or former President Nixon were to assert executive
*1477
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privilege with respect to any document or group of documents, the Archivist would be obliged to honor that claim and a requester could only challenge the assertion of executive privilege in federal court. The Archivist did not formally modify the regulations to conform to OLC's
view, but has, since publication, indicated his determination to conform fully to the Justice Department's opinion. Testifying before Congress, the Archivist, Dr. Frank G. Burke, said "Because approval by the [OMB] of our regulations was conditioned upon the Department of Justice opinion and because the Department of Justice represents the National Archives in all litigation, we consider the opinion binding upon our administration of the Nixon materials." Review of Nixon Presidential Materials Access Regulations: Hearing Before a Subcomm. of the Comm. on Gov't Operations, 99th Cong., 2d Sess. 176, at 43 (1986) (testimony of Frank G. Burke, National Archivist); see also Letter from Frank G. Burke to Hon. Thomas P. O'Neill (Feb. 26, 1986) (reporting the final set of PRMPA regulations with OLC memorandum interpretation). [FN4] All parties to this litigation agree that the

regulations have essentially been modified to accord with the Justice Department's views and it is as modified that they were challenged in the

district court by appellees. [FN5]

FN4. As the government's brief points out, however, the Deputy Administrator of OMB testified that while OMB expected the Archivist to follow the Justice Department's opinion, OMB had not intended to condition the issuance of the regulation on compliance with the opinion. We therefore take the government's position to be that if the Justice Department's opinion is rejected by this court, the regulations are to stand as promulgated.

FN5. Appellants agree that Public Citizen's challenge to the regulations is now ripe for review in light of former President Nixon's pending claims of executive privilege and the Archivist's expressed intention to follow the OLC memorandum.

II.

The statute is not explicit as to whether Congress intended the Archivist to determine himself the merits of a claim of executive privilege. We therefore must consider whether the government's construction of the statute is entitled

to deference. Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-43 & n. 9, 104 S.Ct. 2778, 2781 n. 9, 81 L.Ed.2d 694 (1984). Appellees argue that deference would be manifestly inappropriate here since Congress originally delegated its interpretation to GSA and subsequently, to ensure professional non-partisan implementation, to the Archivist. And, as is quite clear, the Archivist did not originally interpret the statute as the Justice Department would wish; in fact, the Archivist does not explicitly embrace OLC's view, he only acquiesces in OLC's opinion.

The doctrine of administrative law obliging the Judiciary to defer to an administrative agency's interpretation of a statute the agency is charged with enforcing does in part, as appellees suggest, rest on the assumption that a specific agency's expertise is greater than the court's--and therefore that agency is likely to understand congressional purpose, in the zone of its expertise, more profoundly than the Judiciary. But deference is required also because the Executive Branch, populated by political appointees, is thought to have greater legitimacy than the non-political Judiciary in resolving statutory ambiguities, in light of policy concerns, when congressional intent is unclear. Chevron, 467 U.S. at 864-66, 104 S.Ct. at 2792-93. Of the Executive Branch officers, the President, of course, embodies the ultimate political legitimacy and therefore his views as to the manner by which his appointees will interpret a statute may not be lightly disregarded, see

Sierra Club v. Costle, 657 F.2d 298, 405 (D.C.Cir.1981); see also In Re: Sealed Case, 838 F.2d 476, 488-89 & n. 21 (D.C.Cir.1988), prob. juris. noted sub nom. Morrison v. Olson, --- U.S. ----, 108 S.Ct. 1010, 98 L.Ed.2d 976 (1988). [FN6] Since the incumbent President, by virtue of Article II's command that he take care that the laws be faithfully executed, quite legitimately guides his subordinates' interpretations of statutes, it seems anomalous for *1478
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the Judiciary to refuse deference merely on the grounds that it can be shown that the agency's interpretation was one pressed by the President upon reluctant subordinates. Cf. Chevron, 467 U.S. at 865- 66, 104 S.Ct. at 2792-93. Indeed, even the inquiry might raise separation of powers concerns.

FN6. We assume that OLC's view reflects the President's.

[1] We need not decide, however, whether appellees are correct in contending deference should not be afforded because the interpretation is

not truly that of the Archivist. We agree with appellees that deference is inappropriate here for a second reason they advance; the government's administrative position is not, in any meaningful sense, an interpretation of the statute. The OLC memorandum is driven entirely by its constitutional reasoning; it makes no effort to ground its view of the statute on

congressional purpose, even if such purpose is understood very broadly. Chevron, 467 U.S. at 843 & n. 9, 104 S.Ct. at 2781 n. 9; SEC v. Chenery, 332 U.S. 194, 200, 67 S.Ct. 1575, 1579, 91 L.Ed. 1995 (1947); Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of Am., 836 F.2d 599, 609 (D.C.Cir.1988). Rather, OLC's position fairly read is that the regulations must carry its gloss, otherwise, they would be unconstitutional, which of course is simply another way to say the statute would be unconstitutional if interpreted as the Archivist's regulations (without OLC's gloss) do. [FN7] The federal Judiciary does not, however, owe deference to the Executive Branch's interpretation of the Constitution. See United States v. Nixon, 418 U.S. 683, 703-05, 94 S.Ct. 3090, 3105-06, 41 L.Ed.2d 1039 (1974).

FN7. We also note that the OLC interpretation abruptly departs from the uniform prior interpretation by GSA and the Archivist, under which the Archivist had the initial responsibility to decide individual claims of executive privilege by the former President. See Freeman, 670 F.2d at 359.

[2] The government's constitutional argument is essentially this: An executive privilege claim could be raised by the incumbent President to release any of the Nixon papers. In that event, it is wholly inconsistent with

Article II to contemplate the Archivist, an appointee of the President, independently determining whether the President's claim is meritorious. The Archivist would instead be obliged to honor the claim of his constitutional superior. Since, moreover, a former President retains his right to claim executive privilege, Nixon v. General Servs. Admin., 433 U.S. at 448-49, 97 S.Ct. at 2792-93, it follows according to the government that the Archivist must afford him the same deference that he gives the incumbent President: "[J]ust as we believe ... that the Archivist must and will honor any claim of executive privilege asserted by an incumbent President, we believe that the Archivist must and will treat any claim by a former President in the manner outlined in this opinion." Assuming arguendo that the government is correct in its premise--we recognize its argument on that point is powerful--its conclusion does not follow. Ronald Reagan, not Richard Nixon, is the constitutional superior of the Archivist. Ronald Reagan has the constitutional power to direct the Archivist, not Richard Nixon.
The OLC memorandum acknowledges, indeed insists, that in the event there were to be disagreement between an incumbent President and former President Nixon as to whether documents should be disclosed (the disagreement could involve the incumbent President favoring either disclosure or non-disclosure) the Archivist would be obliged to follow the direction of the incumbent. To be sure, OLC believes an incumbent President should honor the claims of

executive privilege interposed by a former President, but that is argued seemingly as a question of policy, not law, because OLC recognizes "this principle must yield when it conflicts with the discharge of the incumbent's constitutional responsibilities." It may well be, as OLC observes, that a former President's privilege is diminished if an incumbent President sits "as judge" of the validity of the claim, but that seems an overstatement of the effect of the regulations. After all, even if the incumbent President were to determine that certain documents over which former President *1479
**151
Nixon asserted executive privilege should be disclosed in order to satisfy the incumbent President's constitutional responsibilities in the event Mr. Nixon brought suit to stop disclosure, a federal court would do the

"judging."
In short, since the incumbent President is not constitutionally obliged to honor former President Nixon's invocation of executive privilege with respect to the Nixon papers, we see no reason why the Archivist--an appointee of the incumbent President--is himself constitutionally compelled to afford any more deference to Mr. Nixon's claim than would be the incumbent President. OLC's discomfort with the role that the Archivist would play under the regulations as written suggests more notions of lese majeste than unconstitutionality.
We find no support for OLC's constitutional argument in Nixon v. General Services Administration. The Supreme Court recognized that an incumbent

President--as opposed to a former President--is in the "best position to assess the present and future needs of the Executive Branch, and to support invocation of the privilege accordingly." 433 U.S. at 449, 97 S.Ct. at 2793. Indeed, former Presidents' "expectations of the confidentiality of executive communications" is understood to erode over time. Id. at 451, 97 S.Ct. at 2794; Freeman, 670 F.2d at 356. That suggests, therefore, that an incumbent President, aided perhaps by his close subordinates, must exercise some discrimination and judgment with respect to a former President's assertion of executive privilege if he wishes to support it. To say, as does OLC, that Mr. Nixon's invocation of executive privilege cannot be disputed by the Archivist, a subordinate of the incumbent President, but must rather be evaluated by the Judiciary in the first instance is in truth to delegate to the Judiciary the Executive Branch's responsibility as set forth in the statute and the accompanying regulations. It may well be unpleasant for the Executive Branch to be forced to consider the host of difficult questions that arise in this area, and the statute may place the incumbent President in an awkward position by obligating him to take a position on claims of executive privilege put forward by former President Nixon. Nonetheless, since the Archivist is part of the Executive Branch, we do not see how the incumbent President's responsibility to take care that the laws be faithfully executed can properly be transferred to the Judiciary. [FN8]

FN8. Appellant Nixon also claims that the Archivist's determination of his claim in the first instance creates an unconstitutional delegation to non-Article III officers, as in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (opinion of Brennan, J.). But unlike Marathon, where Congress had created a bankruptcy court in each judicial district as an adjunct to the district court, placing the initial determination of claims concerning the documents in the Archivist does not disturb our constitutional scheme whereby essential attributes of the judicial power reside in only Article III tribunals. Id. at 77 & n. 29, 102 S.Ct. at 2874 & n. 29. As we have stated earlier, the Archivist does not exercise "judicial power" when he treats claims of executive privilege by Mr. Nixon, but rather he merely makes, as the OLC memorandum itself describes it, an "administrative decision"--concerning the public release of documents within the government's possession. Unlike the judges of the bankruptcy court in Marathon, the Archivist is not vested with the various powers of a court of equity, law, or admiralty (e.g., jury trials, habeas corpus, and issuance of writs). 458 U.S. at 54-55, 102 S.Ct. at 2862-63.

The Archivist may well not be particularly qualified by himself to

evaluate former President Nixon's claims of executive privilege, but we see no reason why the incumbent President cannot ensure adequate consultation with his Justice Department--perhaps OLC--to enable the Archivist to make appropriate determinations. See 36 C.F.R. õ 1275.44(c) (Archivist may consult with other appropriate federal agencies in making his determinations regarding a claim of privilege). And the Archivist will be knowledgeable, as appellees emphasize, as to what information is already disclosed and therefore will be, if properly advised as to constitutional matters, uniquely suited to expressing the Executive

Branch's determination on such claims.
Finally, our conclusion that OLC's modification of the Archivist's regulations is not constitutionally compelled is consistent with our prior opinion in Nixon v. Freeman, *1480
**152
670 F.2d 346 (D.C.Cir.1982). There the fifth set of regulations was challenged in part because, like the sixth set prior to OLC's memorandum, it required former President Nixon to assume the burden of coming forward to challenge any particular disclosure that he thought would violate executive privilege. Mr. Nixon argued that the Archivist was obliged to identify and segregate material implicating the privilege to reduce the burden on the former President to examine all disclosures to determine whether he should assert a privilege. We rejected that argument, holding that Mr. Nixon must assert the privilege on a disclosure-by-disclosure basis and only after that assertion should the Archivist focus on the issue. Freeman,

670 F.2d at 359. We also rejected Mr. Nixon's claim, similar, if not identical, to the one presented here, that a requester must show a particularized need for sought documents:
Rather, we think that those who see in disclosure a threat to the privilege must be given a meaningful opportunity to contest disclosure on that basis. The regulations give Mr. Nixon such an opportunity. He can raise a challenge by sending a letter to the Administrator explaining his position; only if his claim is rejected administratively need he present his claim in court.
Freeman, 670 F.2d at 359 (emphasis added). Clearly in Freeman we saw no constitutional anomaly in the prospect of the Archivist rejecting a challenge by Mr. Nixon based on executive privilege.

III.
[3] We are thus left with the question whether the OLC (the government's) "interpretation" of the Archivist's regulation is consistent with the statute. This is an issue of law concerning which, as we have explained, we afford no deference to the government's position. As such, we conclude that it is at variance with congressional purpose and therefore reject it. Section 104(a)'s primary thrust is disclosure. Section 104(a)(5) is an exception to the statute's central purpose, but the government's construction of the regulation results in the exception looming larger than the rule. If, whenever Mr. Nixon asserts executive privilege, the Archivist in effect loses
jurisdiction over his responsibilities to affect disclosure, the former President has gained power to withdraw from the Archivist some indefinite portion of the responsibilities that Congress delegated to him--and transfer those responsibilities to the Judiciary. We think that is a strained interpretation of congressional purpose, indeed one which, but for OLC's constitutional concerns, apparently would not be advanced by the government. We read the statute, as do appellees, as imposing on the Archivist the responsibility to arrange for disclosure of a category of the Nixon papers. The burden to seek disclosure is not, as is largely true of the Freedom of Information Act, 5 U.S.C. õ 552 (1982), for example, placed upon the public. Of course, as õ 104(a)(5) specifically provides, the Archivist must afford an "opportunity" to Mr. Nixon to assert his privileges, but the implication of the statute is that Mr. Nixon's assertion must be directed to that individual whom Congress entrusted with the affirmative duty to disclose. The regulations proposed by the Archivist, without OLC's modification, accomplish just that, whereas OLC's modification shifts much of the administrative responsibility to the Judiciary. We do not believe that shift reflects a correct understanding of congressional intent.
We hold, as did the district court, that the Archivist's regulations, as interpreted by the OLC memorandum, rely on an erroneous construction of the Constitution and therefore cannot be sustained. Since the government asserts

in this court that the promulgation of the regulation was not conditioned upon the Justice Department's interpretation, there is no need to direct the district court to remand to the Archivist. The judgment of the

district court approving the regulations as promulgated by the Archivist, without the Justice Department's modification, is therefore affirmed.
It is so ordered.
C.A.D.C.,1988.
Public Citizen v. Burke(Two Cases)
END OF DOCUMENT

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, February 07, 2002 10:44 AM
To: Blackwell, Craig
Subject:

can you do me a favor and e-mail the Burke case in the text of a reply e-mail.
I cannot access and I also am having trouble opening attachments. thanks,

From: Durham, John <John.Durham@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 6:47:52 AM
Subject: : RE: Draft letter to Chairman Burton re next step

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Durham, John" <John.Durham@usdoj.gov> ( "Durham, John" <John.Durham@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME: 7-FEB-2002 11:47:52.00
SUBJECT:: RE: Draft letter to Chairman Burton re next step
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : RE: Draft letter to Chairman Burton re
next step
Was Read By : John.Durham@usdoj.gov
On : Thu, 7 Feb 2002 11:39:03 -0500
```

From: Katsas, Gregory <Gregory.Katsas@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 11:55:12 AM
Subject: : Re: revised draft

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Katsas, Gregory" <Gregory.Katsas@usdoj.gov> ( "Katsas, Gregory"
<Gregory.Katsas@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 7-FEB-2002 16:55:12.00
SUBJECT:: Re: revised draft
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : Re: revised draft
Was Read By : Gregory.Katsas@usdoj.gov
On : Thu, 7 Feb 2002 16:40:10 -0500
```

From: CN=Kimberly A. Douglass/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 9:19:23 AM
Subject: : The Greenbrier

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kimberly A. Douglass ( CN=Kimberly A. Douglass/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-FEB-2002 14:19:23.00
SUBJECT:: The Greenbrier
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett,

Do you know if last week's trip to The Greenbrier (WV) for the Republican
Congressional Retreat was official or political? I am getting uncertain
answers and need to do trip summary.

Thanks!!

Kim
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
Sent: 2/7/2002 10:21:10 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-FEB-2002 15:21:10.00
SUBJECT::
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I talked to Kate and that is very good plan. (And sorry about the
delay in returning the call from this morning; I am out of town
today.)
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 2/7/2002 2:31:38 PM
Subject: : Re: Fax

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 19:31:38.00
SUBJECT:: Re: Fax
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

did not get it

Patrick J. Bumatay
02/07/2002 05:57:18 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fax

FYI - Libby just sent you over a fax.

Patrick

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 11:04:42 AM
Subject: : Re: DECISION

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 16:04:42.00
SUBJECT:: Re: DECISION
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Nothing has been decided. The issue is being considered by the administrator. There is no need to decide now. The next schedule is set. And for the schedule after that, Brad said that he would switch back with you, so that you would return to where you are in the current schedule.

Brett M. Kavanaugh
02/07/2002 03:53:48 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: DECISION

Can you tell me what has been decided on order of rotation? I have asked several times. Thx.

From:	Cynthia R. Mendl
To:	<Andrew H. Card>;<Joshua B. Bolten>;<Joseph W. Hagin>;<Karen Hughes>;<Daniel J. Bartlett>;<Michael J. Gerson>;<Scott McClellan>;<Alberto R. Gonzales>;<Timothy E. Flanigan>;<Lewis Libby>;<Margaret M. Spellings>;<John M. Bridgeland>;<Lawrence B. Lindsey>;<Joel D. Kaplan>;<Israel Hernandez>;<Barry S. Jackson>;<Jay P. Lefkowitz>;<Mitchell Daniels>;<David S. Addington>;<H. Christopher Bartolomucci>;<Courtney S. Elwood>;<Noel J. Francisco>;<Brett M. Kavanaugh>;<Helgard C. Walker>;<Nina Rees>;<et al>
Sent:	2/7/2002 3:29:00 PM
Subject:	Cabinet Report for the Week of February 11, 2002

THIS RECORD HAS BEEN WITHDRAWN FROM THIS LOCATION
Date created: 20140724_140931

Reason for Withdrawal:

This email message has been withdrawn as b(1).

Description of Record:

Email message.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 2/7/2002 11:30:38 AM
Subject: : Re: DECISION

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 16:30:38.00
SUBJECT:: Re: DECISION
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Please stop with the crap about the injustice to you, even if you believe it. Brett, Noel, and I have spent a lot more time there than you. Although you started going before the other newbies, you have spent a grand total of one day more out there than Rachel, Kyle, and Bradl.

Maybe we should revisit the total time served issue first suggested by Brett. Brett, Noel and I would love to have you four go there for two nights every other week for the next two months or until you catch up to us.

Helgard C. Walker
02/07/2002 04:23:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re: DECISION

I agree that we should just decide what the rule is. And of course, I favor my rule -- even if it won't be applied retroactively to remedy the injustice of my being moved ahead in the rotation on a permanent basis due to my switch with Noel...

Brett M. Kavanaugh
02/07/2002 04:16:49 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: Helgard C. Walker/WHO/EOP@EOP
bcc:

Subject: Re: DECISION

what's to consider? (I am cc'ing Helgi on this as well.)

H. Christopher Bartolomucci
02/07/2002 04:04:16 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: DECISION

Nothing has been decided. The issue is being considered by the administrator. There is no need to decide now. The next schedule is set. And for the schedule after that, Brad said that he would switch back with you, so that you would return to where you are in the current schedule.

Brett M. Kavanaugh
02/07/2002 03:53:48 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: DECISION

Can you tell me what has been decided on order of rotation? I have asked several times. Thx.

From: Coffin, Shannen <Shannen.Coffin@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/7/2002 11:55:10 AM
Subject: : Re: revised draft

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> ( "Coffin, Shannen"
<Shannen.Coffin@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 7-FEB-2002 16:55:10.00
SUBJECT:: Re: revised draft
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : Re: revised draft
Was Read By : Shannen.Coffin@usdoj.gov
On : Thu, 7 Feb 2002 16:39:42 -0500
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/7/2002 12:27:15 PM
Subject: : Re: fyi re: Murray and Cantwell

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-FEB-2002 17:27:15.00
SUBJECT:: Re: fyi re: Murray and Cantwell
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

how about Cantwell?

Elizabeth N. Camp
02/07/2002 05:25:12 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@EOP
cc:
Subject: fyi re: Murray and Cantwell

I spoke to Murrray's schedule, April, today and request the meeting for next week.

She said she would get back with me.

I'll keep you posted.

Thanks!

From: Boudreaux, Chad <Chad.Boudreaux@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/8/2002 3:39:34 AM
Subject: : RE: Reagan Documents

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Boudreaux, Chad" <Chad.Boudreaux@usdoj.gov> ( "Boudreaux, Chad"
<Chad.Boudreaux@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 8-FEB-2002 08:39:34.00
SUBJECT:: RE: Reagan Documents
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : RE: Reagan Documents
Was Read By : Chad.Boudreaux@usdoj.gov
On : Fri, 8 Feb 2002 8:34:36 -0500
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/8/2002 2:59:02 AM
Subject: : another red tag

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-FEB-2002 07:59:02.00
SUBJECT:: another red tag
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett -

Also, just faxed you a political red tag entitled "Generic Suthern GOP Meeting"

Patrick
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 02/08/2002 07:57 AM ----------

Brett M. Kavanaugh
02/07/2002 07:31:30 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fax

did not get it

Patrick J. Bumatay
02/07/2002 05:57:18 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fax

FYI - Libby just sent you over a fax.

Patrick

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 2/8/2002 3:22:11 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-FEB-2002 08:22:11.00
SUBJECT:: Re:
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

whether that regulation would authorize more than our policy, or whether we have a policy that would cover that issue to begin with

Courtney S. Elwood
02/08/2002 08:09:30 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

I need a little more information than this.

Brett M. Kavanaugh
02/07/2002 09:46:27 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: Re:

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/07/2002 09:43 PM ----------

Robert W. Cobb
02/07/2002 09:46:06 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

Talk to Courtney if we're talking about Presidential auction program.

Brett M. Kavanaugh
02/07/2002 08:52:20 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject:

5 CFR 734.208 example 8. Your view?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Dan.Collins@usdoj.gov [UNKNOWN] <Dan.Collins@usdoj.gov>;shannen.coffin@usdoj.gov [UNKNOWN] <shannen.coffin@usdoj.gov>
CC: [UNKNOWN] <>
Sent: 2/8/2002 7:22:24 AM
Subject: : IMPORTANT: Reagan Documents

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-FEB-2002 12:22:24.00
SUBJECT:: IMPORTANT: Reagan Documents
TO:Dan.Collins@usdoj.gov ( Dan.Collins@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:shannen.coffin@usdoj.gov ( shannen.coffin@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:" ( " [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Is it correct to say we have cleared approximately 59,000 of the
approximately 60,000 remaining pages for release?
```

From: Coffin, Shannen <Shannen.Coffin@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/8/2002 4:16:44 AM
Subject: : RE: Reagan Documents

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> ( "Coffin, Shannen"
<Shannen.Coffin@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 8-FEB-2002 09:16:44.00
SUBJECT:: RE: Reagan Documents
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : RE: Reagan Documents
Was Read By : Shannen.Coffin@usdoj.gov
On : Fri, 8 Feb 2002 9:10:18 -0500
```

From: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/8/2002 4:34:05 AM
Subject: : RE: Reagan Documents

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 8-FEB-2002 09:34:05.00
SUBJECT:: RE: Reagan Documents
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : RE: Reagan Documents
Was Read By : Paul.P.Colborn@usdoj.gov
On : Fri, 8 Feb 2002 9:17:18 -0500
```

From: Collins, Dan <Dan.Collins@usdoj.gov>
To: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Blackwell, Craig <Craig.Blackwell@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Katsas, Gregory <Gregory.Katsas@usdoj.gov>;Coffin, Shannen <Shannen.Coffin@usdoj.gov>;Boudreaux, Chad <Chad.Boudreaux@usdoj.gov>
Sent: 2/8/2002 8:13:13 AM
Subject: : RE: REVIEW Draft letter ASAP

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Collins, Dan" <Dan.Collins@usdoj.gov> ( "Collins, Dan" <Dan.Collins@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME: 8-FEB-2002 13:13:13.00
SUBJECT:: RE: REVIEW Draft letter ASAP
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ( "Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Katsas, Gregory" <Gregory.Katsas@usdoj.gov> ( "Katsas, Gregory"
<Gregory.Katsas@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> ( "Coffin, Shannen"
<Shannen.Coffin@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Boudreaux, Chad" <Chad.Boudreaux@usdoj.gov> ( "Boudreaux, Chad"
<Chad.Boudreaux@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Paul, the draft letter was not attached.

-----Original Message-----
From: Colborn, Paul P
Sent: Friday, February 08, 2002 12:47 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Blackwell, Craig
Cc: Katsas, Gregory; Coffin, Shannen; Collins, Dan; Boudreaux, Chad
Subject: RE: REVIEW Draft letter ASAP



The letter is fine with me, but I defer to Civil on the accuracy of the
59,000 estimate.
-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, February 08, 2002 12:34 PM
To: Blackwell, Craig
Cc: Katsas, Gregory; Colborn, Paul P; Coffin, Shannen
Subject: REVIEW Draft letter ASAP


please review ASAP and give me any comments before 1:30

(See attached file: Letter Gary Stern february 8.doc)
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;jan e. williams/who/eop@eop [WHO] <jan e. williams>;matthew a. schlapp/who/eop@eop [WHO] <matthew a. schlapp>
Sent: 2/8/2002 8:59:01 AM
Subject: : Re: Looking for a friendly female judge for WH Fellows Program

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-FEB-2002 13:59:01.00
SUBJECT:: Re: Looking for a friendly female judge for WH Fellows Program
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jan e. williams (CN=jan e. williams/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:matthew a. schlapp (CN=matthew a. schlapp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

If friendly is the core spec, then I have the judge for you:

Hon. Karen J. Williams
U.S. Court of Appeals for the Fourth Circuit
(803) 533-0711 dir.

Federal judge for 10 years (appointed by G.H.W. Bush).
Lawyer in private practice in Orangeburg, SC for 12 years.
Public School teacher for about 5 years.
50 years old.
Loves Pres. Bush.

Douglas L. Hoelscher
02/08/2002 01:47:45 PM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Jan E. Williams/WHO/EOP@EOP
cc: Matthew A. Schlapp/WHO/EOP@EOP
Subject: Looking for a friendly female judge for WH Fellows Program

PPO and OPA are currently working on the WH Fellows Board and is looking for a friendly female judge -- it can be a current or retired judge (federal or state) -- do any of you have some people you would recommend? Names with contact information is very helpful and any bio info. is a great help. Unfortunately there is a time crunch on this one, so any ideas you have today please forward along. Thanks for any help/ideas you can provide.
-Doug
6-7016

From: Boudreaux, Chad <Chad.Boudreaux@usdoj.gov>
To: Collins, Dan <Dan.Collins@usdoj.gov>;Coffin, Shannen <Shannen.Coffin@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/8/2002 9:05:00 AM
Subject: : RE: IMPORTANT: Reagan Documents

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Boudreaux, Chad" <Chad.Boudreaux@usdoj.gov> ("Boudreaux, Chad" <Chad.Boudreaux@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 8-FEB-2002 14:05:00.00
SUBJECT:: RE: IMPORTANT: Reagan Documents
TO:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> (Receipt Notification Requested) ("Coffin, Shannen" <Shannen.Coffin@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

If Civil received 60,000, then that is correct. You could actually say more than 59k.

-----Original Message-----
From: Collins, Dan
Sent: Friday, February 08, 2002 12:38 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Coffin, Shannen; Boudreaux, Chad; Colborn, Paul P
Subject: RE: IMPORTANT: Reagan Documents
Importance: High

Chad or Paul, do you know the answer to Brett's question?

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, February 08, 2002 12:29 PM
To: Collins, Dan; Coffin, Shannen
Subject: IMPORTANT: Reagan Documents

Is it correct to say we have cleared approximately 59,000 of the approximately 60,000 remaining pages for release?

From: Blackwell, Craig <Craig.Blackwell@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/8/2002 11:44:56 AM
Subject: : RE: REVIEW Draft letter ASAP

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ("Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 8-FEB-2002 16:44:56.00
SUBJECT:: RE: REVIEW Draft letter ASAP
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, if you email me your address I'll mail you a copy of the final.
Thanks for all of you suggestions/comments/edits. They really improved
the brief.
Craig

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, February 08, 2002 4:26 PM
To: Blackwell, Craig
Subject: RE: REVIEW Draft letter ASAP

yes

(Embedded
image moved "Blackwell, Craig" <Craig.Blackwell@usdoj.gov>
to file: 02/08/2002 04:00:38 PM
pic08155.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: REVIEW Draft letter ASAP

Brett--I'm assuming you're comfortable with the brief since I haven't
heard to
the contrary. I'm planning to file at 6 tonight.
Craig

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, February 08, 2002 12:34 PM
To: Blackwell, Craig
Cc: Katsas, Gregory; Colborn, Paul P; Coffin, Shannen
Subject: REVIEW Draft letter ASAP

please review ASAP and give me any comments before 1:30

(See attached file: Letter Gary Stern february 8.doc)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Stuart W. Bowen/WHO/EOP@EOP [WHO] <Stuart W. Bowen>
Sent: 2/9/2002 9:41:59 AM
Subject: : Re: Voucher argument

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-FEB-2002 14:41:59.00
SUBJECT:: Re: Voucher argument
TO:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

yes and yes.




Stuart W. Bowen
02/09/2002 02:37:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Voucher argument

can you get me a seat and can i go with you?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 2/11/2002 3:53:06 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-FEB-2002 08:53:06.00
SUBJECT::
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

btw, if no one has to be there, I would propose pushing the entire
schedule back rather than giving anyyone (me actually) a windfall due to
luck of the schedule.
```

From: Blackwell, Craig <Craig.Blackwell@usdoj.gov>
To: Letter, Douglas <Douglas.Letter@usdoj.gov>;Katsas, Gregory <Gregory.Katsas@usdoj.gov>;Raab, Michael <Michael.Raab@usdoj.gov>;Coffin, Shannen <Shannen.Coffin@usdoj.gov>;Wood, John F <John.F.Wood@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/11/2002 6:09:04 AM
Subject: : I'm sending around

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ( "Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:11-FEB-2002 11:09:04.00
SUBJECT:: I'm sending around
TO:"Letter, Douglas" <Douglas.Letter@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Letter, Douglas" <Douglas.Letter@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Katsas, Gregory" <Gregory.Katsas@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Katsas, Gregory" <Gregory.Katsas@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Raab, Michael" <Michael.Raab@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Raab, Michael" <Michael.Raab@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Coffin, Shannen" <Shannen.Coffin@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Coffin, Shannen" <Shannen.Coffin@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Wood, John F" <John.F.Wood@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Wood, John F" <John.F.Wood@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

copies of Nelson's motion for summary judgment. Our opposition is due
March 8.
```

From:	CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To:	Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>
CC:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent:	2/11/2002 4:06:46 AM
Subject:	: Elizabeth Frater from National Journal called just now

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-FEB-2002 09:06:46.00
SUBJECT:: Elizabeth Frater from National Journal called just now
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

She wants to know if the Judge did any Enron work when he was at V&E. I
transferred her to lower press.

She asked for a call back as soon as possible from the Judge b/c her
deadline is this afternoon. I know she has been working on this article
for at least a week.

Her number is 202-739-8576.
```

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/11/2002 4:12:41 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-FEB-2002 09:12:41.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Absolutely agree.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/11/2002 4:12:42 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-FEB-2002 09:12:42.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will check.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Erin P. Hassing/OMB/EOP@EOP [OMB] <Erin P. Hassing>;Patrick J. Bumatay/WHO /EOP@EOP [WHO] <Patrick J. Bumatay>
Sent:	2/11/2002 5:09:06 AM
Subject:	: Re: LRM EPH113 - - TREASURY Draft Bill on Restoring the Federal Hospital Insurance Trust Fund
Attachments:	P_Q2JD5003_WHO.TXT_1.doc; P_Q2JD5003_WHO.TXT_2.wpd; P_Q2JD5003_WHO.TXT_3.rtf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-FEB-2002 10:09:06.00
SUBJECT:: Re: LRM EPH113 - - TREASURY Draft Bill on Restoring the Federal Hospital Insurance Trust Fund
TO:Erin P. Hassing (CN=Erin P. Hassing/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

White House Counsel's office has no objection.

Patrick J. Bumatay
02/11/2002 09:57:15 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM EPH113 - - TREASURY Draft Bill on Restoring the Federal Hospital Insurance Trust Fund

please cc me on your response to this LRM

Thanks,
Patrick
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 02/11/2002 09:56 AM ----------

From: Erin P. Hassing on 02/11/2002 09:53:44 AM
Record Type: Record

To: lrm@hhs.gov
cc: See the distribution list at the bottom of this message
Subject: LRM EPH113 - - TREASURY Draft Bill on Restoring the Federal Hospital Insurance Trust Fund

LRM ID: EPH113
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, February 8, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: TREASURY Draft Bill on Restoring the Federal Hospital
Insurance Trust Fund

DEADLINE: COB Friday, February 15, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This draft bill will restore the Federal Hospital Insurance Trust Fund (HI Trust Fund), to the financial position it would have been in if a clerical bookkeeping error had not occured. Please review the attached language and provide any comments or edits by COB Friday, February 15th.

- treas0042alts.doc
- treas0042bil2.wpd
- treas0042asec.doc

DISTRIBUTION LIST

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Sheila Conley
Pamula L. Simms
Attia Little
Ingrid M. Schroeder
Richard E. Green
James J. Jukes
LRM ID: EPH113 SUBJECT: TREASURY Draft Bill on Restoring the Federal Hospital Insurance Trust Fund
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
WHGC LRM
OVP LRM
Alan B. Rhinesmith/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Andrew D. Hire/OMB/EOP@EOP
Barry T. Clendenin/OMB/EOP@EOP
Keith J. Fontenot/OMB/EOP@EOP
Diana Espinosa/OMB/EOP@EOP
Marc Garufi/OMB/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP
Mark McClellan/CEA/EOP@EOP
Ellen J. Balis/OMB/EOP@EOP
Sheila Conley/OMB/EOP@EOP
Pamula L. Simms/OMB/EOP@EOP
Attia Little/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Q2JD5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Q2JD5003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Q2JD5003_WHO.TXT_3>

The Honorable Richard B. Cheney
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

As the result of a clerical bookkeeping error that occurred on April 15, 2001, the Federal Hospital Insurance Trust Fund ("HI Trust Fund") was under-invested by approximately $2.6 billion. When the error was discovered the week of December 17, 2001, the HI Trust Fund was immediately warranted $2.6 billion. Consequently, the principal amount of the bookkeeping error has been fully corrected. However, the under-investment in the HI Trust Fund caused it to be deprived of interest earnings.

The Administration believes that the error should be corrected in full to ensure that the HI Trust Fund has the balance and the investment holdings that it would have had if the error had not occurred. Otherwise, there would be an undeserved loss to the HI Trust Fund.

Enclosed is a draft bill designed to restore the HI Trust Fund to its correct financial position. Also enclosed is an analysis of the proposed legislation. The draft bill would direct the Secretary of the Treasury to replicate the investment holdings that the HI Trust Fund would have held if the error had not occurred, and would appropriate to the HI Trust Fund an amount equal to the difference between the amount of interest that the Treasury general fund would have paid to the HI Trust Fund if the error had not occurred and the amount that was actually paid. The Department of the Treasury would work with the Department of Health and Human Services to determine the investments to be replicated and the amounts to be appropriated.

The prompt and favorable consideration of this proposal would be appreciated. An identical letter has been transmitted to the Speaker of the House of Representatives.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this proposed legislation to the Congress.

Sincerely,

Paul H. O'Neill

Enclosures

A BILL

To restore the Federal Hospital Insurance Trust Fund to the financial position it would have been in if a clerical bookkeeping error had not occurred, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Hospital Insurance Trust Fund Restoration Act of 2001".

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) Clerical error.—The term "clerical error" means the failure to have transferred the correct amount from the general fund to the trust fund, which failure occurred on April 15, 2001.

(2) Trust fund.—The term "trust fund" means the Federal Hospital Insurance Trust Fund.

SEC. 3. CORRECTION OF TRUST FUND HOLDINGS.

(a) IN GENERAL—Within 120 days after the effective date of this Act, the Secretary of the Treasury shall take the actions described in subsection (b) with respect to the Federal Hospital Insurance Trust Fund with the goal being that, after the actions are taken, the holdings of the trust fund will replicate, to the extent

practicable in the judgment of the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, the obligations that would have been held by the trust fund if the clerical error had not occurred.

(b) OBLIGATIONS ISSUED AND REDEEMED.—The Secretary of the Treasury shall —

(1) issue to the trust fund obligations under chapter 31 of title 31, United States Code, that bear issue dates, interest rates, and maturity dates as the obligations that —

(A) would have been issued to the trust fund if the clerical error had not occurred; or

(B) were issued to the trust fund and were redeemed by reason of the clerical error; and

(2) redeem from the trust fund obligations that would have been redeemed from the trust fund if the clerical error had not occurred.

SEC. 4. APPROPRIATION TO TRUST FUND.

Within 120 days after the effective date of this Act, there is hereby appropriated to the trust fund, out of any money in the Treasury not otherwise appropriated, an amount determined by the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, to be equal to the interest income lost by the trust fund through the date of credit by reason of the clerical error.

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2024

Section 1796 provides the short title.

Section 2796 defines certain terms used in the bill.

Section 3796 restores the Federal Hospital Insurance Trust Fund (HI Trust Fund) to the financial position it would have been in if a clerical bookkeeping error had not occurred.

As a result of a bookkeeping error, the HI Trust Fund was under-invested by approximately $2.6 billion. The principal amount of the bookkeeping error has previously been fully corrected. However, the under-investment of the HI Trust Fund caused it to be deprived of interest earnings. The bill is intended to ensure that the HI Trust Fund has the correct balance and investment holdings.

Section 3 directs the Secretary of the Treasury to replicate the investment holdings that the HI Trust Fund would have held if the error had not occurred.

Section 4796 appropriates to the HI Trust Fund an amount equal to the difference between the amount of interest that the Treasury general fund would have paid to the HI Trust Fund if the error had not occurred and the amount that was actually paid.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>
Sent: 2/11/2002 5:10:05 AM
Subject: : Re: McCallum event tonight

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-FEB-2002 10:10:05.00
SUBJECT:: Re: McCallum event tonight
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, that is fine.

Sara M. Taylor
02/11/2002 10:09:08 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: McCallum event tonight

Brett - We are headed to Milwaukee tonight. McCallum's film crew would like to be in the press pool, which we have said was fine. Just wanted to make sure that was ok with you? Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 2/11/2002 6:14:34 AM
Subject: : Reagan records

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-FEB-2002 11:14:34.00
SUBJECT:: Reagan records
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We have less than a box of Reagan records that need NSC review
before authorization for release. These are documents that were never
classified, but that OLC has identified as worthy of NSC review. Can you
identify someone who can do this today and tomorrow? Thanks.
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From: Blackwell, Craig <Craig.Blackwell@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/11/2002 6:30:45 AM
Subject: :
Attachments: P_0AOD5003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Blackwell, Craig" <Craig.Blackwell@usdoj.gov> ("Blackwell, Craig"
<Craig.Blackwell@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:11-FEB-2002 11:30:45.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, attached is a copy of what we filed Friday. I left in your language about promptly notifying the court when review of the remaining records is completed, so please keep me posted on that. Thanks.

Craig

- dismiss2.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0AOD5003_WHO.TXT_1>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN HISTORICAL ASSOCIATION, et al., Plaintiffs,	)	
v.	)	No. 1:01CV02447 (CKK)
NATIONAL ARCHIVES AND RECORD ADMINISTRATION, et al., Defendants.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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United States Attorney

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Attorneys for Defendants

Date: February 8, 2002

REV_00140001

PRELIMINARY STATEMENT

In its 1977 decision in Nixon v. Administrator of General Services, 433 U.S. 425 (1977), a case involving former President Nixon's records, the Supreme Court held that both current *and* former Presidents retain the right to assert constitutionally-based privileges over the records of a former President. In the wake of that decision, Congress, in 1978, enacted the Presidential Records Act ("PRA" or "the Act"), 44 U.S.C. §§ 2201-2207.

The PRA established that presidential records are government property, but also recognized, consistent with the Court's decision in Nixon v. Admin., that disclosure of particular records can "adversely affect" a President's (or former President's) "rights and privileges." Id. § 2206(3). Thus, Congress specifically provided that the PRA does not "limit . . . any constitutionally-based privilege which may be available to an incumbent or former President." Id. § 2204(c)(2). The PRA did not establish procedures or guidelines for incumbent and former Presidents to review records subject to release and assert (or waive) any constitutional privileges.

On November 1, 2001, President Bush, acting under the PRA and his inherent constitutional authority, signed Executive Order ("EO") No. 13233 ("Bush Order") to "further implement" the PRA. The President's Order establishes timetables and procedures for incumbent and former Presidents to claim constitutional privileges with respect to presidential records otherwise subject to release under the Act. It does *not* purport to establish whether, or under what circumstances, a former or incumbent President should assert or waive any constitutionally-based privilege.

Less than a month after President Bush signed EO 13233, Plaintiffs filed this action against the National Archives and Record Administration ("NARA") and John W. Carlin, Archivist of the United States ("Archivist"). Although neither President Bush nor any former President has asserted privilege over any records Plaintiffs seek, and although none of the Order's principal provisions has been applied to Plaintiffs, the Complaint seeks a declaratory judgment that EO 13233 is invalid on its face.

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Plaintiffs also seek a mandatory injunction (or a writ of mandamus) requiring Defendants to make available approximately 68,000 pages of presidential records from the Administration of former President Reagan ("68,000 pages"). On November 29, 2001, former President Reagan, through his representative, stated he was not asserting constitutional privilege over any of the 68,000 pages. Since that time, the Executive Branch has been actively reviewing these records for release, and, as of this date, President Bush has authorized release of approximately 67,000 of the 68,000 pages. The remaining approximately 1,000 pages are under active review, and we will promptly advise the Court when that review is completed.

This action should be dismissed. Whether viewed as a problem of standing, ripeness, or mootness (or some combination of the three), Plaintiffs' claims are not justiciable. Most importantly, the only "injury" Plaintiffs allege is neither traceable to the Bush Order provisions they challenge, nor redressable against these Defendants. Plaintiffs' claims also are unripe, under either the constitutional or prudential branch of the ripeness doctrine. Their injunctive relief claim also is largely moot.

Even assuming justiciability, this action should be dismissed for failure to state a claim. While the PRA recognizes that presidential records may be subject to constitutionally-based privileges – and, indeed, states it should not be construed to "limit" such privileges – the Act does not address the mechanics for asserting and preserving privilege objections. Congress appropriately left those issues to the Executive Branch, and the Bush Order is fully consistent with the PRA, as well as Supreme Court precedent on presidential privilege.

In the end, Plaintiffs' arguments are based on a fundamental misunderstanding of the Bush Order. EO 13233 does not make records "secret." It establishes procedures by which incumbent and former Presidents can assert constitutionally-based privileges in presidential records prior to their release under the PRA. These procedures are lawful and sensible.

BACKGROUND

A. Statutory and Regulatory Framework

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To understand the issues raised by Plaintiffs' challenge, it is necessary to put the Bush Order into an historical framework.

1. Nixon Papers Litigation

A President's papers historically were viewed as his personal property. See Nixon v. United States, 978 F.2d 1269, 1287-96 (D.C. Cir. 1992). Congress first broke with this tradition in 1974, when, concerned that then-recently-resigned President Nixon "might destroy documents necessary to the Watergate investigation," see id. at 1271, it passed the Presidential Recordings and Materials Preservation Act ("PRMPA"). See note following 44 U.S.C. § 2111. The PRMPA transferred control of Mr. Nixon's presidential materials to the Administrator of General Services ("Administrator"), and directed the Administrator to promulgate regulations opening the materials for public access. See id. at §§ 101, 104.

Upon challenge by Mr. Nixon (and others), the Supreme Court upheld the PRMPA as facially constitutional in Nixon v. Administrator. Three of the Court's conclusions are relevant here. *First*, the Court rejected Mr. Nixon's broad claim that Congress could not, consistent with the separation of powers doctrine, authorize the Administrator to regulate the disposition of his presidential materials. See 433 U.S. at 441-46. The Court stressed that the materials remained in the Executive Branch, under the control of an officer appointed by, and subordinate to, the President, see id. at 441, and that the Act "facially is designed to ensure that the materials can be released *only when release is not barred by some applicable privilege inherent in [the Executive Branch*]." Id. at 444 (emphasis added).

Second, the Court rejected Mr. Nixon's equally broad claim that the executive privilege for presidential communications shielded his papers and tapes from Executive Branch scrutiny. See 433 U.S. at 446-55. The Court concluded that, given the important congressional purposes underlying the PRMPA, the "limited intrusion" worked by Executive Branch screening outweighed Mr. Nixon's general privilege claim. See id. at 452-54. Again, the Court noted that

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the PRMPA "specifically preserved" Mr. Nixon's right to assert presidential privilege to bar release of particular documents. See id. at 455.

Third, and critically, the Court reaffirmed that the executive privilege is constitutionally-based (see United States v. Nixon, 418 U.S. 683 (1974)), and held, for the first time, that both current *and* former Presidents can assert constitutional privileges over presidential records of a former President. See Nixon v. Admin., 433 U.S. at 447-49. The Court did not specify the duration of a former President's privilege, although it did note that the records of the Constitutional Convention were sealed for more than thirty years. See id. at 447 n.11.

2. The Presidential Records Act of 1978

Against the backdrop of Nixon v. Administrator, Congress in 1978 began work on a bill to deal "more broadly with control of and access to Presidential papers." See Presidential Records Act of 1978, H. Rep. No. 95-1487, reprinted in 1978 U.S.C.C.A.N. 5732, 5737 ("House PRA Report"). Both Houses held hearings on draft legislation.[1]

Congress fully recognized what one legislative sponsor described as "the constitutional issues which must be dealt with by all who attempt to legislate in this area." See Senate PRA Hearing at 2 (statement of Sen. Nelson); see also House PRA Report at 5737-38. One government witness, the Deputy Assistant Attorney General for the Department of Justice's Office of Legal Counsel, testified at length about privilege concerns from the Executive Branch's perspective. See, e.g., House PRA Hearings at 91, 96, 100-01, 105, 124-25 (advocating that legislation preserve a former President's ability to assert legally- or constitutionally-based rights or privileges prior to release of specific records).

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[1]See To Amend Title 44 to Insure the Preservation of and Public Access to the Official Records of the President, and for other Purposes: Hearing before the Senate Committee on Governmental Affairs, 95th Cong. (1978) ("Senate PRA Hearing"); To Amend the Freedom of Information Act to Insure Public Access to the Official Papers of the President, and for other Purposes: Hearings Before a Subcommittee of the House Committee on Government Operations, 95th Cong. (1978) ("House PRA Hearings"). The draft legislation discussed during the hearings (particularly on the House side) varied in some respects from the final bill.

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The PRA, as enacted, reflects Congress's consideration of the constitutional issues.[2] Under the Act, "Presidential records" – but not "personal records" (see 44 U.S.C. § 2201(3)) – are subject to the "complete ownership, possession, and control" of the United States. See id. § 2202. The Act's provisions can be grouped in two parts: those governing presidential records during a President's term in office, and those governing presidential records after a President's term (or terms) ends. See id. §§ 2203(c)-(f).

During a President's term of office, the PRA "accords the President virtually complete control over his records." See Armstrong v. Bush, 924 F.2d 282, 290 (D.C. Cir. 1991). After a President's term (or terms) ends, the Archivist of the United States[3] assumes responsibility for the "custody, control, and preservation of, and access to" PRA-covered records. See 44 U.S.C. § 2203(f). The PRA has three principal provisions relevant to the disclosure of presidential records.

First, prior to leaving office, a President may, for up to twelve years, restrict public access to records containing any of six categories of information.[4] See 44 U.S.C. § 2204(a). These categories (which are somewhat analogous to exemptions under the Freedom of

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[2]See 124 Cong. Rec. 36846 (Oct. 13, 1978) (statement of Sen. Nelson) (noting Congress's desire to draft a bill "fair to all parties concerned"); 124 Cong. Rec. 34895 (Oct. 10, 1978) (statement of Rep. Brademas) (legislation "strikes a reasonable balance between the public's right to have access to the work product of the Government . . . and the need to provide for a free flow of ideas within the executive branch"); 124 Cong. Rec. 36844 (Oct. 13, 1978) (statement of Sen. Percy) ("while it is crucial to protect the public interest in these papers, we must also protect the constitutional rights of the individuals involved"); see generally House PRA Report at 5737-40.

[3]In 1984, Congress transferred statutory responsibility for archival- and records-management functions from the Administrator of General Services to the Archivist, an Executive Branch official appointed, and removable, by the President. See National Archives and Records Administration Act, 44 U.S.C. §§ 2101-2118; id. § 2103(a). NARA, an Executive Branch agency, is administered "under the supervision and direction" of the Archivist. See id. § 2102.

[4]These restrictions do not apply to access requests by Congress, the courts, and the incumbent President, who may access presidential records otherwise restricted from public view "subject to any rights, defenses, or privileges which the United States or any agency or person may invoke." See 44 U.S.C. § 2205(2).

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Information Act ("FOIA"), 5 U.S.C. § 552) are: classified information; see 44 U.S.C. § 2204(a)(1); information relating to appointments to federal office; id. § 2204(a)(2); information exempt from disclosure by statute (other than under FOIA or the Privacy Act); id. § 2204(a)(3); trade secret and commercial/financial information; id. § 2204(a)(4); personnel and medical information and similar information the disclosure of which would invade privacy; id. § 2204(a)(6); and, in the so-called "P5" exception, "confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers."[5] Id. § 2204(a)(5). A President's decision to restrict access to a particular category of information is not judicially reviewable. See Armstrong v. Executive Office of the President, 1 F.3d 1274, 1291, 1293 (D.C. Cir. 1993).

Second, five years after the Archivist obtains custody of a President's records, public access is governed by the FOIA (subject, of course, to any applicable presidentially-imposed access restrictions).[6] See 44 U.S.C. § 2204(c)(1). Thus, as the House Report explains, presidential records are not "automatically available to the public," but, instead, requests for access are treated as FOIA requests, "subject to" FOIA's exemptions from compulsory disclosure. See House PRA Report at 5746-47; see also 5 U.S.C. § 552(b) (listing FOIA exemptions).

The one critical statutory exception to this rule is that NARA may not withhold presidential records based on FOIA exemption (b)(5). See 44 U.S.C. § 2204(c)(1). This

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[5]This last category, which protects disclosure of presidential communications, deliberations, and other information subject to a common-law or constitutionally-based privilege, was the basis for restricting public access to the 68,000 pages of Reagan records during the twelve-year period after Mr. Reagan's Presidency ended. See Complaint ¶ 31.

[6]The Office of the President is exempt from the requirements of FOIA. See Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 156 (1980). The PRA deems presidential records "to be records of [NARA]." See 44 U.S.C.§ 2204(c)(1). The Archivist is required to "administer[] [presidential records] in accordance with" FOIA, id. § 2204(c)(1), on the date no later than five years after obtaining custody of the records at the end of a President's Administration. See id. § 2204(b)(2).

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exemption, which overlaps to some extent with the PRA's "P5" restriction, generally protects from disclosure records subject to traditional common law privileges applicable in civil litigation (including privileges respecting presidential communications). See 5 U.S.C. § 552(b)(5); Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 862 (D.C. Cir. 1980).

Third, and finally, the PRA does not (and could not) override a former or incumbent President's assertion of constitutional privilege. Congress understood it could not compel, or otherwise provide for, release of privileged records. See House PRA Report at 5737 (noting that, under Nixon v. Admin., Congress may provide for release of presidential records "only when [release is] not barred by some applicable privilege inherent in the Executive Branch").[7] As the PRA itself states: "[n]othing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." 44 U.S.C. § 2204(c)(2).

The PRA does not establish procedures for incumbent and former Presidents to review presidential records and assert (or waive) any constitutionally-based privileges. Those issues are left to the Executive Branch. See 124 Cong. Rec. 34895 (Oct. 10, 1978) (statement of Rep. Preyer) (legislation not "designed to prejudge" issues "involving the manner of assertion of the constitutional privilege").

3. Executive Order No. 13233

President Reagan's records were the first presidential records made subject to the PRA. See 44 U.S.C. § 2201 (effective date provision). President Bush took office on the date the twelve-year access restrictions imposed by Mr. Reagan expired. See Complaint ("Compl.") ¶ 27.

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[7]See also 124 Cong. Rec. 34895 (Oct. 10, 1978) (statement of Rep. Preyer) (noting that the Archivist, "if so directed," would be required to "exercise any assertion of privilege on the incumbent President's behalf"); 124 Cong. Rec. 36844 (Oct. 13, 1978) (statement of Sen. Percy) (acknowledging that Congress "cannot prevent a former or incumbent President from arguing, even after the [lapse of a presidentially-imposed restriction], that a particular confidential communication between the President and an adviser should not be released").

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Faced with administering the PRA, and the fact that otherwise-privileged records were now theoretically subject to release under FOIA (because FOIA exemption (b)(5) could not be claimed), the Bush Administration undertook "a thorough legal review of the PRA and consider[ed] its long-term implications on the deliberative process for the Presidency and the Executive Branch." See Compl. ¶ 36 (quoting statement of the Archivist).

As a result of this review, President Bush, on November 1, 2001, issued Executive Order 13233 to "[f]urther [i]mplement[]" the PRA. See Bush Order (title). The Order is designed to "establish policies and procedures . . . with respect to constitutionally based privileges."[8] See id. (preamble). It is "not intended to indicate whether and under what circumstances a former President should assert or waive any privilege." See id. § 9.

Five provisions of the Bush Order are relevant to Plaintiffs' claims.

Sections 3(a)-(c). These sections establish timetables for reviewing requests for access to presidential records under 44 U.S.C. § 2204(c). See Bush Order §§ 3(a)-(c). For example, under the Order, former Presidents have ninety days to review requested records for privilege, absent an "unduly burdensome" request. See id. § 3(b). The Order imposes no time limit on an incumbent's privilege review. See id. § 3(d).

Section 4. Section 4 confers on former Presidents the primary (but not sole) responsibility for asserting or waiving constitutional privileges with respect to their records. It provides that the incumbent, absent compelling circumstances, will "concur in the privilege decision of the former President in response to a request for [public] access." See Bush Order § 4. This means that the incumbent President presumptively will assert privilege over otherwise-

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[8]Before leaving office, President Reagan also issued an Executive Order to establish procedures for current and former Presidents to assert constitutional privileges over records governed by the PRA. See Exec. Order No. 12667 ("Reagan Order"), 54 Fed. Reg. 3403 (Jan. 18, 1989), reprinted in note following 44 U.S.C. § 2204. The Bush Order revokes the Reagan Order, see Bush Order § 13, although, as explained infra p.20, one of the Reagan Order provisions is still relevant to our justiciability arguments.

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privileged records when the former President does so, and that he presumptively will waive privilege over otherwise-privileged records when the former President chooses to waive privilege. When the incumbent concurs in a former President's privilege assertion, he "will support that privilege claim in any forum in which the privilege claim is challenged." Id.

Section 3(d). Section 3(d) establishes that the Archivist (at the incumbent's direction) may not release records as to which either the incumbent or former President has asserted constitutional privilege, "unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access . . . or until so ordered by a final and nonappealable court order." See Bush Order § 3(d)(1). This provision is designed to accord with the Supreme Court's decision in Nixon v. Admin., which recognized that both incumbent and former Presidents can assert the privilege. See 433 U.S. at 448-49 (former President has an independent constitutional right to assert the privilege).[9]

Section 10. Section 10 provides that a former President may designate a representative to assert constitutional privileges on his behalf in the event he dies or becomes disabled. See Bush Order § 10. Absent such a designation before his death, the former President's family may designate a representative to "act on the former President's behalf for purposes of the [PRA] and this order, including with respect to the assertion of constitutionally based privileges." See id.

Section 11. Finally, Section 11 states that the Bush Order policies and procedures apply equally to "records that are subject to any constitutionally based privilege that the former Vice President may be entitled to invoke." See Bush Order § 11.[10]

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[9]If the former President does not assert privilege, the incumbent may either concur in the former President's assessment (in which case the Archivist is directed to "permit access to" the requested documents), see Bush Order § 3(d)(2)(i), or, if the incumbent does not concur, the incumbent may "independently order the Archivist to withhold privileged records . . . . unless and until the incumbent President advised the Archivist that the former President and the incumbent President agree to authorize access . . . or until so ordered by a final and nonappealable court order." See id. § 3(d)(2)(ii).

[10]The other provisions of the Bush Order (not challenged by Plaintiffs) are: Section 5,

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B. Facts As Alleged In Plaintiffs' Complaint

Plaintiffs – two historians, three historical and/or archival organizations, a press association, and a public interest group (Public Citizen, Inc., also serving as counsel) – filed this action against the Archivist and NARA on November 28, 2001, a little less than a month after President Bush signed EO 13233.

Plaintiffs' factual assertions are straightforward. President Reagan, upon leaving office, restricted access to approximately 68,000 pages of records based on 44 U.S.C. § 2204(a)(5), the PRA's "P5" exception. See Compl. ¶ 31. These restrictions, which President Reagan generally imposed for twelve years, lapsed on January 20, 2001 (although some of the restrictions were narrowed by Mr. Reagan before President Bush took office). See id. ¶¶ 26, 27.

NARA, by letters dated February 28, 2001 and June 19, 2001, notified Mr. Reagan and President Bush of its intent to disclose the 68,000 pages. See Compl. ¶ 33. President Bush, upon receiving NARA's letters, directed the Archivist to extend the time period for releasing the 68,000 pages, twice for ninety days, once "indefinite[ly]." See id. ¶¶ 36, 37. At the end of this period (and, Plaintiffs claim, having reviewed no records), the President issued EO 13233. See id. ¶¶ 37, 38, 55.

One of the historian-plaintiffs, Hugh Davis Graham, notes that, during the period of restricted access, he was denied access to Reagan presidential records on the basis of the P5

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which states that the Order does not expand or limit an incumbent's right to obtain presidential records under 44 U.S.C. § 2205(2)(B); see Bush Order § 5; Section 6, which establishes procedures for reviewing judicial and congressional requests for presidential records under 44 U.S.C. § 2205; see Bush Order § 6; Section 7, which states that the Order does not limit a former or incumbent President's right to withhold records on any ground supplied by Constitution, statute, or regulation; see id. § 7; Section 8, which states that, during the 12-year period of restricted access established by 44 U.S.C. § 2204(a), a former or incumbent President may request withholding of any privileged records not already protected from disclosure under § 2204(a); see Bush Order § 8; and Section 12, which states that the Order is not intended to create any right or benefit enforceable at law by a party other than a former President or his representative. See id. § 12.

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exception. See Compl. ¶¶ 29-30. Plaintiffs do not contend, however, that either President Bush or former President Reagan has claimed constitutional privilege over any of the 68,000 pages (or that they have a right to access any constitutionally-privileged records). See id. ¶ 56. Rather, Plaintiffs' claim is that, in the absence of a privilege assertion (or some applicable FOIA exemption), the 68,000 pages should be released now, whether or not President Bush and Mr. Reagan have completed their privilege review. See id. ¶¶ 54-57.

Plaintiffs assert two claims for relief. In their first count, they seek a declaration that the Bush Order is contrary to both the PRA and NARA's regulations. See Compl. ¶¶ 58-63 & p. 22. Specifically, Plaintiffs contend that the five Bush Order provisions discussed supra pp. 9-11 are unlawful. See Compl. ¶¶ 60(i)-(v) (challenging these provisions). Plaintiffs claim their challenge is reviewable under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, et seq., the Declaratory Judgment Act, 22 U.S.C. § 2201, and their "nonstatutory right to judicial review" of "unlawful" executive action. See Compl. ¶¶ 1, 65.

In their second count, Plaintiffs's seek a mandatory injunction, or, in the alternative, a writ of mandamus, compelling the Archivist to make the 68,000 pages "available to the public at the Reagan Presidential Library forthwith." See Compl. ¶¶ 67-75 & p. 22. According to Plaintiffs, "[b]ecause the Bush Order is unlawful and in violation of the PRA, its terms cannot be relied upon as a basis for continued withholding of the 68,000 pages." See id. ¶ 72. Plaintiffs claim this "withholding" is reviewable under the APA, the Declaratory Judgment Act, and the mandamus statute, 28 U.S.C. § 1361. See Compl. ¶ 75.

C. Additional Facts Relevant To The Court's Jurisdiction

Before turning to the merits of our motion, there are two facts relevant to the Court's jurisdiction not contained in Plaintiffs' Complaint. See Bayvue Apartments Joint Venture v. OCWEN Fed. Bank FSB, 971 F. Supp. 129, 132 n.5 (D.D.C. 1997) ("[i]n determining the presence of subject matter jurisdiction on a motion to dismiss under F.R.C.P. 12(b)(1), the court may look to material outside the complaint").

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First, by letter dated November 29, 2001, the representative of former President Reagan informed NARA that Mr. Reagan had no objection to release of any of the 68,000 pages. See Letter from Joanne Drake to Gary Stern (Nov. 29, 2001) (attached at Tab A).

Second, as of today's date, the Bush Administration has reviewed, and the President has authorized release of, virtually all of the 68,000 pages. By letter dated December 19, 2001, the Counsel to President Bush notified NARA that the President had determined not to assert any constitutionally-based privilege over approximately 8,000 of the 68,000 pages (the totality of records provided to and reviewed by the White House as of that date). See Letter from Alberto R. Gonzales to Gary Stern (Dec. 19, 2001) (attached at Tab B); Press Release, NARA, Previously Withheld Reagan Presidential Materials to be Released (Dec. 20, 2001) (attached at Tab C). In a second letter, dated February 8, 2002, the Counsel to the President notified NARA that President Bush had determined not to assert any constitutionally-based privilege over approximately 59,000 of the approximately 60,000 remaining pages (leaving approximately 1,000 of the total 68,000 pages left for review). See Letter from Alberto R. Gonzales to Gary Stern (Feb. 8, 2002) (attached at Tab D). The Administration "anticipate[s] prompt completion of the review of the remaining records." See id.

ARGUMENT

Our argument is in three parts. Part I demonstrates that Plaintiffs' claims are not justiciable because they lack standing and their claims are either unripe or moot. Part II demonstrates that, even assuming justiciability, the Court lacks jurisdiction over Plaintiffs' request for a mandatory injunction. Part III demonstrates that, even assuming a proper claim, Plaintiffs' challenge lacks merit because the Bush Order is fully consistent with the PRA and any applicable constitutional principles.

I. PLAINTIFFS' CLAIMS ARE NOT JUSTICIABLE.

The judicial power extends only to cases and controversies. See National Treasury

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Employees Union v. United States, 101 F.3d 1423, 1427 (D.C. Cir. 1996) ["NTEU"]. "In an attempt to give meaning to Article III's case-or-controversy requirement, the courts have developed a series of principles termed 'justiciability doctrines,' among which are standing, ripeness, [and] mootness." Id. (citing Allen v. Wright, 468 U.S. 737, 750 (1984)).

Each of these doctrines presents an independent bar (partial, in the case of mootness, complete, in the case of standing and ripeness) to the Court's consideration of Plaintiffs' claims. Two of the doctrines – standing and ripeness – are closely interrelated on these facts and, indeed, to a degree, overlap. No matter how the Court views the justiciability issue, however, the outcome is clear: Plaintiffs' claims should be dismissed for lack of jurisdiction.

A. Plaintiffs Lack Standing.

The party asserting jurisdiction always has the burden "'clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.'" FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) (internal citation omitted). To have standing under the Constitution, Plaintiffs must allege they have suffered (or will suffer): (1) an "actual or imminent" injury-in-fact; (2) "fairly . . . trace[able] to the challenged action of the defendant"; and (3) "likely" to be "redressed by a favorable decision." See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotations and citations omitted).

Plaintiffs claim they have been injured solely by the ongoing privilege review (under Section 3(c) of the Bush Order), which (they say) has "delayed" release of the 68,000 pages beyond the conclusion of the twelve-year restricted period. See, e.g., Compl. ¶¶ 57, 63, 74 Assuming that such "delay," absent an ultimate withholding, can amount to injury,[11] the

[11]While assuming this point for purposes of this motion, we do not concede it. The PRA does not purport to establish "deadlines" for constitutional-privilege review. Indeed, President Bush did not even take office until January 20, 2001, the day the twelve-year restrictions imposed by former President Reagan expired. See Compl. ¶ 27. Nothing in the PRA would – or could – have required release of the 68,000 pages on that date. Because the Constitution requires a meaningful opportunity to assert the privilege, see Nixon v. Admin., 433 U.S. at 444 n.7,

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Complaint should be dismissed because Plaintiffs cannot meet the second and third standing requirements.

1.Any "Injury" Is Not Traceable To The Challenged Provisions.

To satisfy traceability, a plaintiff must establish a "causal connection between the injury and the [complained of] conduct." See Lujan, 504 U.S. at 560; see also Allen, 468 U.S. at 753 n.19. All but one of the provisions Plaintiffs challenge, however, applies only upon *invocation* of a constitutional privilege. See Bush Order § 4 (requiring an incumbent to concur in a former President's privilege assertion absent "compelling circumstances");[12] id. § 3(d)(1) (requiring the Archivist to withhold access to requested documents upon a former President's privilege assertion); id. § 10 (authorizing a former President to designate a representative to assert constitutional privilege on his behalf); id. § 11 (stating that the Order applies equally to any assertion of constitutional privilege by an incumbent or former Vice President); see also Compl. ¶¶ 60(ii)-(v) (alleging these provisions are unlawful).[13]

Because neither President Bush nor former President Reagan has asserted privilege over any of the 68,000 pages, Plaintiffs cannot establish a "causal connection" between their alleged "injury" and these sections of the Bush Order, which have caused Plaintiffs no harm. See Lujan,

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absent some showing that privilege review has been unreasonably long under the circumstances (something Plaintiffs have not – and cannot – show here), it is hard to see how delay, standing alone, can constitute injury. See Claybrook v. Slater, 111 F.3d 904, 906 (D.C. Cir. 1997) (absent a duty to act, failure to act cannot constitute injury). In any event, for purposes of this motion, we rest our standing argument on Plaintiffs' failure to meet the traceability and redressability requirements.

[12]This provision also applies when a former President determines not to assert a privilege, see Bush Order § 4, but Plaintiffs presumably do not challenge it to that extent.

[13]The remaining provision Plaintiffs challenge, Section 3, establishes procedures for incumbent and former Presidents to determine whether to assert a privilege. See Bush Order §§ 3(a)-(c); Compl. ¶ 60(i) (challenging this provision). As explained below, even if Plaintiffs have been injured by this provision (through any "delay" caused by the President's ongoing privilege review under Section 3(c)), they lack standing because any "injury" is not redressable.

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504 U.S. at 560 (traceability requires such a connection); Allen, 468 U.S. at 753 n.19 (same). The heart of Plaintiffs' challenge (i.e., to all but Section 3(c) of the Bush Order) should, therefore, be dismissed for this reason alone.

2. Plaintiffs' Claims Are Not Redressable.

Even putting traceability aside, Plaintiffs lack standing because *none* of their claims (including their Section 3(c) challenge) is redressable. Our redressability argument has two points. The first point relates to Plaintiffs' requests for both declaratory and injunctive relief. The second point relates only to Plaintiffs' request for declaratory relief.

a. The Named Defendants Cannot Provide Plaintiffs The Relief They Seek.

Plaintiffs sued NARA and the Archivist (presumably) because they could not have brought their claims directly against the President. The Chief Executive is not subject to suit under the APA. See Franklin v. Massachusetts, 505 U.S. 788, 796 (1992) (plurality) ("the President is not an agency within the meaning of the [APA]"). Moreover, while the Constitution does not "bar every exercise of jurisdiction over the President," see Nixon v. Fitzgerald, 457 U.S. 731, 753-54 (1982), courts generally have "'no jurisdiction of a bill to enjoin the President in the performance of his official [as opposed to ministerial] duties.'" Franklin, 505 U.S. at 802-03 (plurality) (quoting Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 501 (1866)); see also id. at 826 (Scalia, J., concurring) (providing a majority). This latter principle plainly would bar a direct suit by Plaintiffs against President Bush (a suit which, in effect, would seek to direct the President *not* to assert a constitutional privilege over any of the documents Plaintiffs seek).

To be sure, an aggrieved party ordinarily may obtain review of presidential action indirectly, i.e., by suing the subordinate official directed to carry out an allegedly illegal presidential command. See Chamber of Commerce of the United States v. Reich, 74 F.3d 1322, 1328 (D.C. Cir. 1996). But the D.C. Circuit has noted that there may be "rare instances where the bypass [of a subordinate-officer suit] is closed, and only injunctive relief against the

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President himself will redress [a plaintiff's] injury." Swan v. Clinton, 100 F.3d 973, 979 (D.C. Cir. 1996). In that instance, if the underlying presidential conduct is not subject to an injunction – where, for example, the action at issue relates to the President's "official" duties – the plaintiff lacks standing.[14] See id. at 976-77; see also id. at 978 (noting that, in Reich, review of executive order did "not raise issue of whether judicial power can be brought 'to bear directly on the President'") (quoting 74 F.3d at 1331 n.4). That is the case here.

In determining whether the "bypass" is closed, Swan, 100 F.3d at 979, the critical question is whether injunctive relief against a subordinate officer *alone* can "substantially redress" a plaintiff's injury. See id. In Swan, a holdover appointee of the National Credit Union Administration ("NCUA") advisory board sued then-President Clinton, a presidential aide, and the NCUA's Executive Director, seeking reinstatement and removal of his presidentially-appointed successor (Wheat). See 100 F.3d at 975. Swan alleged the President's actions violated the removal provisions in the NCUA statute. See id. at 977.

Although finding the statutory "duty" ministerial (and thus *potentially* enforceable against the President), see 100 F.3d at 977, the court nevertheless considered whether it could redress Swan's alleged injury by enjoining a presidential subordinate.[15] See id. at 979. The court held it could provide such "*de facto*" relief, by ordering the other NCUA board members (added by the court as defendants) to "treat[] Swan as a member of the NCUA Board and allow[]

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[14]This principle applies to requests for declaratory relief, see Swan, 100 F.3d at 976 n.1; id. at 988 (Judge Silberman, concurring), and for "non statutory" review. See Dalton v. Specter, 511 U.S. 462, 474 (1994).

[15]The court noted that, even in the context of a purely ministerial act, "injunctive relief against the President personally is an extraordinary measure not lightly to be undertaken." See Swan, 100 F.3d at 978; see also Franklin, 505 U.S. at 802 (plurality) (leaving open whether the President "might be subject to a judicial injunction requiring the performance of a purely 'ministerial' duty"). The Court of Appeals also questioned whether one of its prior decisions, National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974), wherein it asserted (but did not exercise) the authority to order the President to perform a ministerial act, remained good law after Franklin. See 100 F.3d at 978.

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him to exercise the privileges of that office . . . denying any such treatment to Wheat." See id. at 980 & n.3.

Here, injunctive relief solely against NARA or the Archivist (or any other subordinate official) cannot provide Plaintiffs even partial relief. In their Complaint, Plaintiffs acknowledge their request for a mandatory injunction requiring release of the 68,000 pages is really a request for release of *non-privileged* records, for Plaintiffs have no right, under the PRA or elsewhere, to access presidential records subject to a valid assertion of constitutional privilege.[16] Neither the Archivist nor NARA, however, can invoke the President's authority to assert constitutional privilege. See, e.g., United States v. Nixon, 418 U.S. at 713; 124 Cong. Rec. 34895 (Oct. 10, 1978) (statement of Rep. Preyer) ("the Archivist could not, on his own authority, withhold deliberative documents for which Presidential privilege might be claimed"). Nor can they "waive" the President's privilege by releasing records before the President has determined whether any privilege *should* be asserted. There is, therefore, no "*de facto*" relief for Plaintiffs to obtain against these Defendants.

For all of these reasons, Plaintiffs' claims against NARA and the Archivist are not redressable. Moreover, because Plaintiffs cannot bring their claims directly against the President, they lack standing.

b. Declaratory Relief Will Not Alleviate Plaintiffs' "Injury."

Plaintiffs declaratory claim is not redressable for an additional reason: because they cannot show that relief is "'likely' to flow from a favorable judicial decision." See Allen, 468 U.S. at 751. As noted above, the only injury Plaintiffs' allege is "delay" in making the 68,000 pages available. See, e.g., Compl. ¶¶ 57, 63, 74, 75. More specifically, because former

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[16]See, e.g., Compl. ¶ 33 ("NARA's notice [of intent to release] did not state that any of the records 'raise a substantial question of Executive privilege' within the meaning of § 2(a) of the Reagan Order"); id. ¶ 56 ("[n]o one has asserted a constitutionally based right or privilege that would preclude release of the 68,000 pages").

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President Reagan's representative has determined not to assert privilege over any of these records (see Tab A), the only injury Plaintiffs allege is "delay" due to President Bush's ongoing privilege review.

If Plaintiffs prevail on their declaratory judgment claim, however, the Reagan Order will again govern the procedures for asserting constitutional privilege. Under the Reagan Order (which Plaintiffs do not challenge or otherwise take issue with), an incumbent may "instruct[]" the Archivist to delay the time for privilege review. See Reagan Order § 2(b). In fact, as Plaintiffs note in their Complaint, before issuing EO 13233, President Bush, under authority of the Reagan Order, three times directed the Archivist to extend the time period for releasing the 68,000 pages, twice for ninety days, once "indefinite[ly]." See Compl. ¶¶ 36-37. These extensions account for much of the "delay" at issue.

Thus, if Plaintiffs prevail on their declaratory judgment claim, and if President Bush has not completed review of the 68,000 pages, the President likely will, under authority of the Reagan Order, instruct the Archivist to extend, for as long as is necessary to conduct his privilege review, the time for release. Given these circumstances, Plaintiffs cannot establish that declaratory relief will have any impact on (let alone abate) their alleged injury. See Allen, 468 U.S. at 753 n.19 (to satisfy redressability prong of standing, a plaintiff must establish a "causal connection" between "the alleged injury and the judicial relief requested"); see also Mideast Sys. and China Civil Constr. Saipan Joint Venture, Inc. v. Hodel, 792 F.2d 1172, 1177 (D.C. Cir. 1986) (plaintiff could not establish standing where "the remedy would not alleviate the

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[17]Indeed, even if Plaintiffs could establish standing, declaratory relief would be improper because, given the President's authority to extend the time for privilege review under the Reagan Order, a declaratory judgment would serve no "useful purpose." See Public Serv. Comm'n v. Wycoff Co., Inc., 344 U.S. 237, 244 (1952) (before issuing a declaratory judgment, court should be able to see "what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them"); McCorkle v. United States, 559 F.2d 1258, 1262 (4th Cir. 1977) ("[a]n important question of public law should not be resolved by a declaratory judgment if that judgment would be futile."), cert. denied, 434 U.S.

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injury").[17]

B. Plaintiffs' Claims Are Not Ripe.

Even assuming, *arguendo*, that Plaintiffs can establish standing, their claims are unripe. The ripeness doctrine has both a constitutional and a prudential component. See NTEU, 101 F.3d at 1427. Plaintiffs cannot establish ripeness under either aspect of the doctrine.

1. Absent A Withholding, Plaintiffs' Claims Are Not Constitutionally Ripe.

To establish constitutional ripeness, Plaintiffs must show their alleged injury is both "imminent" and "certainly impending." See NTEU, 101 F.3d at 1427-28. As the Supreme Court has stated, a claim is not constitutionally ripe "if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300 (1998) (internal quotations and citations omitted).

Even assuming Plaintiffs have been injured by any "delay" caused by Section 3(c) (but see supra n.11), their remaining claims are not constitutionally ripe because they are directed to provisions of the Bush Order that rest, for their application, upon a future event: an assertion of privilege by an incumbent or former President. See supra p. 16; see also Lujan v. National Wildlife Fed'n, 497 U.S. 871, 892-94 (1990) (ripeness is determined on a claim-by-claim basis). It is impossible, at this stage, to say when, if ever, these provisions may be invoked against these Plaintiffs. Any "injury" Plaintiffs might suffer, therefore, is neither "imminent" nor "impending." See Texas, 523 U.S. at 300 (where court has "'no idea whether or when'" an allegedly unlawful action may occur, "the issue is not fit for adjudication") (internal citation omitted); City of Williams v. Dombeck, 151 F.Supp.2d 9, 14 (D.D.C. 2001) (alleged injury not constitutionally ripe where "there is no certainty as to when Plaintiffs will suffer this injury").

2. Even If Plaintiffs' Claims Technically Meet Article III Ripeness

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1011 (1978).

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Requirements, The Court Should Stay Its Hand Under The Prudential Ripeness Doctrine.

Even where a plaintiff satisfies constitutional ripeness, prudential ripeness bars jurisdiction where a court otherwise would "prematurely entangl[e] [itself] in abstract disagreements." See NTEU, 101 F.3d at 1431. In analyzing prudential ripeness, courts apply a two-part test, evaluating: "'[1] the fitness of the issues for judicial decision and [2] the hardship to the parties of withholding court consideration.'" See id. (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 149 (1967)). None of Plaintiffs' claims (including their Section 3(c) challenge) is ripe under this test.

First, Plaintiffs' claims are not fit for review because they are academic. See NTEU, 101 F.3d at 1431. No Plaintiff has been affected, in *any* way, by the challenged provisions at the heart of this lawsuit (i.e., those triggered by an assertion of privilege). See Abbott Labs., 387 U.S. at 148-49 (prudential ripeness protects other Branches from judicial interference until the effects of their decisions are "felt in a concrete way by the challenging parties"). Nor is it clear when, if ever, Plaintiffs will be affected by a withholding. See, e.g., Toilet Goods Ass'n, Inc. v. Gardner, 387 U.S. 158, 163 (1967) (claim challenging inspection regulations unripe where Court had "no idea whether or when such an inspection will be ordered").

Second, absent an assertion of constitutional privilege, it is difficult to see how Plaintiffs will be harmed if the Court defers review. The only "harm" Plaintiffs allege is delay. But, as explained above, even if Plaintiffs prevail on their challenge, President Bush will still have authority, under the Reagan Order, to direct the Archivist to withhold access to the 68,000 pages until the Executive Branch finishes reviewing those records for constitutional privilege. See Reagan Order § 2(b). The prospect of "delay," therefore, exists independently of the Bush Order. See Winter v. California Med. Review, Inc., 900 F.2d 1322, 1325 (9th Cir. 1990) (showing of hardship requires some "nexus" between the alleged injury and the challenged action).

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Moreover, any "hardship" Plaintiffs might suffer is outweighed by the institutional interests in postponing review. See State Farm Mut. Auto. Ins. Co. v. Dole, 802 F.2d 474, 480 (D.C. Cir. 1986) ("if the interests of the court and agency in postponing review outweigh the interests of those seeking relief, settled principles of ripeness squarely call for adjudication to be postponed"), cert. denied, 480 U.S. 951 (1987). Plaintiffs' challenge ultimately implicates the "usually unspoken element of the rationale underlying the ripeness doctrine: If [a court] do[es] not decide [the issue] now, [it] may never need to." See NTEU, 101 F.3d at 1431; see also City of Williams, 151 F.Supp.2d. at 16. As the D.C. Circuit has explained:

> Not only does this rationale protect the expenditure of judicial resources, but it comports with our theoretical role as the governmental branch of last resort. *Article III courts should not make decisions unless they have to.*

NTEU, 101 F.3d at 1431 (internal citation omitted) (emphasis added).

This Court does not "have to" reach the merits of Plaintiffs' challenges. Nor is there any reason why this Court *should* reach out now to decide abstract claims implicating the Executive's authority to assert constitutionally-based privileges. See NTEU, 101 F.3d at 1432 (deciding claim that "may never be ripe . . . to decide" is "at best a waste of judicial resources, and at worst a usurpation"); see also United States v. American Telephone & Telegraph Co., 567 F.2d 121, 133 (D.C. Cir. 1977) ("delay" in adjudication may be "an inherent corollary of the existence of coordinate branches"). For all of these reasons, Plaintiffs' claims are not ripe.[18]

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[18]Finally, we note that Plaintiffs' claim for injunctive relief is moot to the extent it seeks production of the approximately 67,000 pages made public since this action was filed. As to these documents (the overwhelming bulk of the documents Plaintiffs seek), Plaintiffs have obtained "'everything that [they] could recover . . . by a judgment . . . in [their] favor.'" See Nat'l Res. Def. Council, Inc. v. United States Nuclear Regulatory Comm'n, 680 F.2d 810, 814 (D.C. Cir. 1982) (internal quotation and citation omitted). Because the Court "can hardly order [defendants] at this point to do something that [they have] already done," see id., Plaintiffs' claim for release of these now-publicly-available records should be dismissed. Cf. Perry v. Block, 684 F.2d 121, 125 (D.C. Cir. 1982) ("however fitful or delayed the release of information under the FOIA may be, once all requested records are surrendered, federal courts have no further statutory function to perform").

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II. THE COURT LACKS JURISDICTION OVER PLAINTIFFS' REQUEST FOR A MANDATORY INJUNCTION.

Plaintiffs' request for a mandatory injunction – i.e., that the Court require Defendants to "make the 68,000 pages . . . available" (Compl. p. 22) – is essentially a request for a writ of mandamus. See Swan, 100 F.3d at 976 n.1. Even assuming that Plaintiffs have standing to raise this claim (and that it is ripe), the Court, nevertheless, lacks jurisdiction to hear it.

To establish mandamus jurisdiction, a plaintiff must make three showings: (i) that the plaintiff has a "clear right to relief"; (2) that the defendant has a "clear duty to act"; and (3) that there is "no other adequate remedy" available. See Swan, 100 F.3d at 976 n.1. Putting aside, for the moment, the first and third requirements,[19] the Court lacks jurisdiction over Plaintiffs' mandamus claim because Plaintiffs cannot establish that Defendants have a "clear duty" to disclose the 68,000 pages.

A court may, in its discretion, issue a writ of mandamus to compel a federal official to perform a "statutorily required ministerial duty." Swan, 100 F.3d at 976 n.1; see also Hayakawa v. Brown, 415 U.S. 1304, 1305 (1974) (Douglas, Circuit Justice) (writ is discretionary). A court has no power, however, under the mandamus statute, to require any government official to perform a discretionary act. See Swan, 100 F.3d at 977. Generally speaking, "a duty is discretionary if it involves judgment, planning, or policy decisions." Beatty v. Washington Metro. Area Transit Auth., 860 F.2d 1117, 1127 (D.C. Cir. 1988) (internal quotation marks and emphasis omitted).

The "duty" at issue here – disclosure of the 68,000 pages under review – plainly is discretionary. The PRA imposes no duty to disclose records the incumbent President, in his

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[19]The requirements for stating a cause of action under the mandamus statute are the same as the requirements for establishing jurisdiction. See Swan, 100 F.3d at 976 n.1. We show infra, Part III, in our discussion of the merits, why Plaintiffs cannot establish the first mandamus requirement (i.e., that they have "a clear right" to mandamus relief).

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judgment, says are privileged. See 124 Cong. Rec. 34895 (Oct. 10, 1978) (statement of Rep. Preyer) (under the PRA, "the Archivist would continue to act under the supervision of the incumbent President and would, if so directed, exercise any assertion of privilege on the incumbent President's behalf"). Nor could it: the Archivist is duty-bound, under the Constitution, to honor an incumbent President's disclosure decisions. See, e.g., Myers v. United States, 272 U.S. 52, 134 (1926) (when exercising Executive discretion, subordinate officers "must do [the President's] will").

If Defendants have no duty to disclose records asserted (by the incumbent) to be privileged, then, *a fortiori*, they can have no duty to disclose while the incumbent is in the process of determining whether any privilege should, in fact, be asserted. At a minimum, construing the Act to require disclosure of such unreviewed records would contravene Congress's express instruction that the PRA not be read to "limit . . . any constitutionally-based privilege which may be available to . . . an incumbent." See 44 U.S.C. § 2204 (c)(2). Accordingly, because the "duty" at issue is neither "ministerial" nor "statutorily-required," see Swan, 100 F.3d at 976 n.1, the court lacks jurisdiction over Plaintiffs' mandamus request.

III. EO 13233 IS A LAWFUL EXERCISE OF PRESIDENTIAL POWER.

Notwithstanding these various jurisdictional barriers, in the event the Court determines to reach the merits of some, or all, of Plaintiffs' legal challenges, it should dismiss this action under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

Plaintiffs challenge five specific provisions of the Bush Order: (i) Section 3(a) (which establishes time frames for privilege review); (ii) Section 3(d)(1) (which obliges the Archivist to accommodate a former President's privilege assertion by not releasing requested records upon an assertion of privilege); (iii) Section 4 (which provides that an incumbent will generally concur in a former President's privilege assertion); (iv) Section 10 (which establishes procedures by which a former President may designate a representative for purposes of asserting constitutional

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privilege); and (v) Section 11 (which establishes procedures by which a former Vice President may assert constitutional privilege). See Compl. ¶¶ 60(i)-(v). In addition, Plaintiffs allege the Bush Order is contrary to NARA's regulations, and "the proper constitutional scope of executive privilege." Id. ¶¶ 61, 62.

We show below why each of Plaintiffs' challenges lacks merit. At the outset, however, it is important to note the standard by which the Bush Order should be judged. A President's power to act "must stem either from an act of Congress or from the Constitution itself." See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952). Here, the power stems largely from the Constitution: authority to establish policies and procedures governing the assertion of constitutionally-based privileges derives from, and is a necessary corollary of, the President's Article II power to assert constitutional privilege in the first instance. See, e.g., United States v. Nixon, 418 U.S. at 705-07 (privilege rooted in the Constitution).

To the extent Congress has authority in this area, it has left the task of devising procedures for asserting constitutional privileges to the Executive Branch. See 124 Cong. Rec. 34895 (Oct. 10, 1978) (statement of Rep. Preyer) (PRA is not "designed to prejudge" issues "involving the manner of assertion of the constitutional privilege"); 124 Cong. Rec. 36846 (Oct. 13, 1978) (statement of Sen. Nelson) (PRA "not in any way . . . intended to impinge on whatever constitutional Presidential privilege the incumbent or the former President might assert"); 44 U.S.C. § 2206(3) (delegating to NARA authority to promulgate regulations governing notice to former Presidents "when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have").

Where a President exercises not only his own powers, but those delegated (explicitly or implicitly) by Congress, his action is "supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion [] rest[s] heavily upon any who might attack it." Dames & Moore v. Regan, 453 U.S. 654, 668 (1981) (internal quotation omitted). With these principles in mind, we turn to the specific provisions at issue.

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A. Section 3(a).

Section 3(a) of the Bush Order establishes timetables for incumbent and former Presidents to review requests for access to presidential records under 44 U.S.C. § 2204(c). Plaintiffs contend these provisions violate the "PRA's command that records may not be restricted after the 12-year period expires," see Compl. ¶ 60(i), as well as the Archivist's "duty" to make presidential records public "as soon as possible." See id. Both contentions are wrong.

Section 3(a)'s procedures are straightforward. At an "appropriate time" after receiving a request, the Archivist must provide notice to the incumbent and former President, and, as "soon as practicable" thereafter, copies of any records sought for review. See Bush Order § 3(a). If the former President requests copies, he must review any records "as expeditiously as possible, and for no longer than 90 days for requests that are not unduly burdensome." See id. § 3(b). "Concurrent with or after" the former President's review, the incumbent "may also review the records in question" or utilize any other procedures to determine whether to concur in the former President's privilege assessment. See id § 3(d). The Archivist may not allow access to requested records while a President's (or former President's) review is ongoing. See id. §§ 3(b), (d).

The PRA does not "command" the Archivist to make presidential records available before the incumbent or former President can determine whether to assert a privilege. To the contrary, the Act states it should not be construed to "limit . . . any constitutionally-based privilege." See 44 U.S.C. § 2204(c)(2). As the Supreme Court recognized in Nixon v. Administrator, the privilege would be meaningless without an ability to assert it. See 433 U.S. at 444 n.7 (PRMPA must be read to afford President Nixon "meaningful notice" of archival decisions potentially implicating constitutional or legal privileges); see also Nixon v. Freeman, 670 F.2d 346, 359 (D.C. Cir.), cert. denied sub nom. Nixon v. Carmen, 459 U.S. 1035 (1982) ("those who see in disclosure a threat to the privilege must be given a meaningful opportunity to contest disclosure on that basis").[20]

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Indeed, President Bush did not even take office until January 20, 2001, the day the twelve-year restrictions imposed by former President Reagan expired. See Compl. ¶ 27. It should be common ground that President Bush could not have reviewed the 68,000 pages for privilege *before* January 20. But under Plaintiffs' theory of the PRA, the Archivist would have been required to release the 68,000 pages on that date. This is nonsensical.

Moreover, while Plaintiffs are correct that the Archivist has a duty to make presidential records available "as rapidly and completely as possible," see 44 U.S.C. § 2203(f)(1), the Archivist is required to exercise that duty "consistent with" the other provisions of the Act (not to mention the Constitution). See id. As noted above, the PRA specifically states it should not be read to "limit" any constitutionally-based privilege. See id. § 2204(c)(2). It would be squarely inconsistent with the Act, as well as the separation-of-powers doctrine, to require release of presidential records before the incumbent (or former) President has a "meaningful opportunity" for privilege review.

At bottom, the Section 3 procedures are similar to the scheme Congress generally has adopted for administering public access to presidential records – FOIA. Just as FOIA contemplates that an agency (here, NARA) should have an opportunity to conduct a page-by-page review of requested records to determine the applicability of any FOIA exemptions, see 5 U.S.C. §§ 552(a)(6)(B), (C), the Executive Order provides that a President, too, should have an adequate opportunity to conduct a page-by-page review of requested records to determine the applicability of his constitutional privileges.

B. Section 3(d)(1)(ii) and Section 4.

Section 4 of EO 13233 provides that the incumbent President, absent "compelling

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[20]Because a President's records can be so voluminous, see, e.g., Compl. ¶ 25 (President Reagan's records included "almost 44 million pages of documents"); Freeman, 670 F.2d at 349 n.3 (President Nixon's records included approximately 42 million pages of documents), it is appropriate that any privilege review take place as records are requested and subject to release.

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circumstances," will "concur in the privilege decision of the former President in response to a request for [public] access" and, if privilege is asserted by the former and incumbent President, "support that privilege claim in any forum in which the privilege claim is challenged." See Bush Order § 4. Section 3(d)(1)(ii) provides that, even absent incumbent concurrence, upon a former President's assertion of privilege, the Archivist (at the incumbent's direction) "shall not permit access" to requested records "unless and until" the incumbent and former Presidents "agree to authorize access . . . or until so ordered by a final and nonappealable court order." See Bush Order § 3(d)(1)(ii). Plaintiffs contend these provisions are inconsistent with the Archivist's duty to make presidential records available "as rapidly and completely as possible" upon expiration of the 12-year restricted-access period.[21] Not so.

As an initial matter, Plaintiffs do not appear to contend that, absent the PRA, Sections 3(d)(1)(ii) and 4 would be unconstitutional. See Compl. ¶ 60 (arguing the Bush Order "violates the PRA"). Nor could they. Former Presidents have an independent constitutional right to assert the constitutional privilege, see Nixon v. Admin., 433 U.S. at 448-49, and there are compelling reasons why an incumbent generally should defer to, accommodate, and support, a former President's assertion (and certainly no constitutional bar to the incumbent doing so).[22] See discussion infra pp. 33-34. President Bush is uniquely suited to judge these points, for he, as the incumbent, is in "the best position to assess the present and future needs of the Executive Branch." Nixon v. Admin., 433 U.S. at 449.

Thus, Plaintiffs' argument here is statutory: i.e., that Sections 4 and 3(d)(1)(ii) somehow

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[21]Plaintiffs' position is set out extensively in their lawyer's recent testimony before Congress. See http://www.citizen.org/litigation/briefs/FOIAGovtSec/articles.cfm?ID=6427.

[22]To be sure, an incumbent could not support a former President's assertion of privilege in a manner inconsistent with the incumbent's own constitutional duty to "take care that the laws be faithfully executed." See U.S. Const., Art. II, § 3, cl. 4. The Bush Order, however, specifically provides that, where "compelling circumstances" exist, the incumbent has no obligation to support (and, indeed, may choose to oppose in court) a former President's privilege assertion. See Bush Order § 4.

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conflict with the PRA. But the PRA does not state that an incumbent President is required to authorize release of presidential records unless *he* determines to assert a constitutional privilege. Rather, the Act expressly recognizes that former Presidents retain an independent right to assert the privilege. See 44 U.S.C. §§ 2204(c)(2), 2206(3). There is thus no "conflict" between the PRA and Sections 3(d)(1)(ii) and 4 of the Bush Order.

Plaintiffs' argument against these provisions rests solely on the D.C. Circuit's decision in Public Citizen v. Burke, 843 F.2d 1473, 1478 (D.C. Cir. 1988), but that case supports Defendants. Burke involved a challenge to regulations NARA issued under the PRMPA. The regulations, as written, authorized the Archivist to evaluate – in the first instance, and subject to judicial review – any privilege asserted by the former President against the release of Nixon materials. See 843 F.2d at 1476. Before the regulations were implemented, however, the OLC issued an opinion binding on the Archivist stating that he was "constitutionally compelled" (id. at 1479) to honor any assertion of executive privilege by former President Nixon, and that a requester could only challenge such an assertion in federal court. See id. at 1476-77.

The court held that the regulations, as interpreted, conflicted with the PRMPA, because they impermissibly delegated to the Judiciary the Executive Branch's statutory responsibility to evaluate, in the first instance, claims of privilege by former President Nixon. See 843 F.2d at 1479-80. The court noted that, under the PRMPA, "the Archivist must afford an 'opportunity' to Mr. Nixon to *assert* his privileges." See id. at 1480 (quoting PRMPA § 104(a)(5) (emphasis in original). Given the PRMPA's emphasis on "disclosure," the court held, "the implication of the statute is that Mr. Nixon's assertion must be directed to that individual whom Congress entrusted with the affirmative duty to disclose [i.e., the Archivist]." Id.

The court's opinion is noteworthy for two reasons. *First*, by analyzing whether OLC's interpretation was consistent with the PRMPA, see 843 F.2d at 1480, Burke necessarily concluded that OLC's interpretation was constitutionally *permissible*. That is, the court

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necessarily concluded that an incumbent may, consistent with the Constitution, give considerable deference to a former President's privilege claim, subject only to challenge by a requester in court.

Second, while the PRA, like the PRMPA, emphasizes "disclosure" (see 843 F.2d at 1480), unlike the PRMPA, it contains no provision requiring the *Archivist* to "afford an 'opportunity'" (id.) to a former President to "assert" any privilege against public access. Compare PRMPA § 104(a)(5) with 44 U.S.C. § 2206. Nor does the PRA contain any other provision which arguably could impose a duty on the Archivist to evaluate claims of privilege.[23]

To the contrary, the PRA states expressly that it should not be construed to "limit" any constitutionally-based privilege of an incumbent or former President. See 44 U.S.C. § 2204(c)(2). Obligating an incumbent President, through the Archivist, to review *de novo*, and take positions on, privilege assertions of a former President, while perhaps not a "constitutional anomaly," see Burke, 843 F.2d at 1480, could well have a "real world" impact on a former President's privilege. See Burke, 843 F.2d at 1478 ("[i]t may well be . . . that a former President's privilege is diminished if an incumbent President sits 'as judge' of the validity of the claim"); Nixon v. Admin., 433 U.S. at 491 (Blackmun, J., concurring in part and in the judgment) (noting that "our Nation's history reveals a number of instances where Presidential transition has not been particularly friendly or easy," and that "[o]n occasion it has been openly hostile"); Dellums v. Powell, 561 F.2d 242, 251 (D.C. Cir.) (Judge MacKinnon, concurring), cert. denied, 434 U.S. 880 (1977).

Indeed, one reason why Congress made presidential records subject to "statutory access" was "to shield the Archivist from unnecessary pressure," see PRA House Rep. at 5739, including "possible pressure from the incumbent President to release embarrassing and inappropriate

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[23]The Reagan Order required that the Archivist, under the direction of the President, determine whether to honor a former President's privilege claim, see Reagan Order § 4, but only as a matter of Executive Branch policy.

REV_00140031

material concerning a predecessor or rival." See id. at 5739-40; cf. National Archives And Records Administration Act of 1984, H. Conf. Rep. No. 98-1124, reprinted in 1984 U.S.C.C.A.N. 3894, 3895 (in creating NARA, noting that archival decisions should be "insulated from the political orientation of a particular administration").

Given Congress's apparent desire to "de-politicize" presidential-record disclosure decisions, it would be anomalous, to say the least, if the PRA were interpreted to *require* the incumbent to judge, in the first instance *and under a de novo standard*, the validity of a predecessor's privilege claim. For all of these reasons, then, Sections 3(d)(1)(ii) and 4 are fully consistent with the PRA.

C. Section 10.

Section 10 authorizes a former President to designate a representative (or group of representatives) "to act on his behalf" upon death or disability for purposes of asserting constitutionally-based privileges under the Bush Order. See Bush Order § 10. Absent such a designation, Section 10 authorizes the former President's family, upon his death or disability, to designate a representative (or group of representatives) to act on the former President's behalf. See id. Plaintiffs claim this provision – which has never been invoked – is unlawful because "the Constitution does not allow for assertion of a claim of executive privilege by someone who has not held the office of president." Compl. ¶ 60(iv). This argument is contrary to both law and history.

The Constitution does not bar a delegatee from asserting constitutional privilege on a former President's behalf. The privilege exists "'not for the benefit of the President as an individual, but for the benefit of the Republic.'" Nixon v. Admin., 433 U.S. at 449 (internal citation omitted). As the Supreme Court has explained, unless a President "'can give his advisers some assurance of confidentiality,'" he "'could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends.'" See id. at 448-49 (internal citation omitted).

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Because the privilege is tied to the office (in the constitutional sense), not the occupant, the public interest in asserting the privilege may endure beyond a President's lifetime or capacity to act. For example, an "assurance of confidentiality" would mean little if it automatically vanished upon the death of a President who died while in office. It is true, of course, that a President's constitutional privilege is "subject to erosion over time." Nixon v. Admin., 433 U.S. at 451; see also id. at 450 (noting that modern Presidents have historically deposited their papers for "eventual disclosure"). But the duration of the privilege cannot be measured by a "fixed number of years." See Freeman, 670 F.2d at 356.

Plaintiffs' argument also is inconsistent with history. Until 1955, when Congress passed the Presidential Libraries Act, 44 U.S.C. §§ 2111-2112, "the burden of preserving the records of the presidents was placed on each President and his heirs," see House PRA Hearings at 478 (Appendix 10), creating a system of "private control and access restrictions." See id. at 469-70. While presidential papers are now owned by the government, neither Congress nor the courts has ever questioned the legality of this prior practice. See, e.,g., Nixon v. United States, 978 F.2d at 1277-78 (surveying history of private ownership); House PRA Rep. at 5739 & n.12.

To take a more recent example, under regulations implementing the PRMPA, Mr. Nixon's heirs (or agents) may assert any privilege on Mr. Nixon's behalf to bar public release of his presidential materials. See 36 C.F.R. §§ 1275.42, 1275.44. Again, no court has ever suggested that these regulations are unlawful or somehow improper. See Freeman, 670 F.2d at 352 (discussing provision without comment).

Providing a means for former Presidents to delegate their authority to assert constitutionally-based privileges is thus consistent with the Constitution, history, and common sense. As with any assertion of privilege by a former President himself, the Archivist must, of course, abide by any final nonappealable court order requiring disclosure of particular presidential records asserted to be privileged by a former President's delegatee. See, e.g., Bush Order §§ 3(d)(1)(i), (ii).

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D. Section 11.

The PRA applies equally to vice presidential records. See 44 U.S.C. § 2207 ("Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records"). Section 11 of the Bush Order provides that it, too, applies "with respect to any [executive records of the Vice President] that are subject to any constitutionally based privilege that the former Vice President *may* be entitled to invoke." Bush Order § 11(a) (emphasis added). Plaintiffs contend Section 11 is unlawful because "there is no constitutional basis for a vice presidential executive privilege." Compl. ¶ 60(v). This argument misunderstands the nature of the provision.

Section 11 does not – nor could it – "create" a constitutional privilege in the Vice President. Such a privilege is created, if at all, by the Constitution. See United States v. Nixon, 418 U.S. at 703-07. Section 11 does provide *procedures* for Vice Presidents to assert any constitutional privilege they "may" be entitled to invoke. See Bush Order § 11. But neither it, nor any other provision of the Bush Order, speaks to whether an incumbent or former Vice President has a constitutional privilege, or, if so, whether the privilege can be invoked to preclude release of particular vice presidential records.

E. The "Proper Scope" Of Constitutional Privilege.

> The preamble to the Bush Order states it is intended to establish policies and procedures . . . with respect to constitutionally based privileges, including those that apply to Presidential records reflecting military, diplomatic, or national security secrets, Presidential communications, legal advice, legal work, or the deliberative processes of the President and the President's advisors, and to do so in a manner consistent with the Supreme Court's decision in [Nixon v. Admin.].

Plaintiffs contend this provision is "contrary to[] the proper constitutional scope of executive privilege" (Compl. ¶ 62) because it includes "not only the privilege for confidential communications between the president and his close advisers, but also the common-law

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attorney-

client and work-product privileges, the deliberative process privilege, and the state secrets privilege." Id. ¶ 40.

This argument is wrong for two reasons. Most importantly, as explained above, the Bush Order does not – and could not – "expand" the constitutional privilege beyond its scope. The scope of the privilege is determined by the Constitution. See United States v. Nixon, 418 U.S. at 703-07.

Moreover, the notion that the constitutional privilege may, in appropriate circumstances, embrace traditional common-law privileges – such as the attorney-client, attorney work-product, or executive "deliberative process" privileges – is not remarkable. See Nixon v. Fitzgerald, 457 U.S. at 753 ("while courts generally have looked to the common law to determine the scope of an official's evidentiary privilege, we have recognized that the Presidential privilege is 'rooted in the separation of powers under the Constitution'") (quoting United States v. Nixon, 418 U.S. at 708); 10 Op. Off. Legal Counsel 68, 78-79 (1986) (stating long-standing Executive Branch view that a President's constitutional privilege may "subsume" otherwise common-law privileges); 6 Op. Off. Legal Counsel 481, 494 n.24 (1982) (same); see also In re Sealed Case, 121 F.3d 729, 737 n.4 (D.C. Cir. 1997) (noting that "[s]ome aspects" of the common-law deliberative process privilege "have roots in the constitutional separation of powers"); cf. In re Lindsey, 158 F.3d 1263, 1271 (D.C. Cir.) (appearing to recognize that a communication may implicate both constitutional and common-law privileges), cert. denied, 525 U.S. 996 (1998).

There is no rule (nor could there be) that the constitutional privilege necessarily *excludes* attorney-client, work-product, or deliberative communications. Rather, in determining whether these types of communications fall within the scope of the constitutional privilege, ordinary considerations – involving separation of powers and effective performance of constitutional duties – apply. See, e.g., 10 Op. Off. Legal Counsel at 78-79.

F. NARA's Regulations.

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Plaintiffs' suggestion that EO 13233 should be declared unlawful because it allegedly is inconsistent with NARA's regulations (see Compl. ¶ 61) misunderstands the nature of the President's position in the Executive Branch. The President directs the actions of subordinate Executive Branch officers like the Archivist in the performance of their statutory duties, not the other way around. See, e.g., Myers, 272 U.S. at 134-35; Burke, 843 F.2d at 1478. Given that EO 13233 is a lawful exercise of presidential authority, it necessarily supersedes any inconsistent regulations of NARA. See Carlisle Tire and Rubber Co. v. United States Customs Serv., 663 F.2d 210, 217-18 (D.C. Cir. 1980) (refusing to accept the "notion that a regulation of a cabinet department can serve to override a direct Executive Order of the President"). NARA, of course, may be required to amend its regulations to conform to the Bush Order, but that presents no constitutional problem. See Myers, 272 U.S. at 134-35. [24]

[24]Finally, Plaintiffs contend the Bush Order is unlawful because it allegedly requires requesters to establish a "'demonstrated, specific need'" in order to request specific presidential records. See Compl. ¶ 41. This is wrong. The portion of the Bush Order Plaintiffs cite merely notes, in a background section, that courts have required a showing of "need" to *overcome* a constitutional privilege. See Bush Order § 2(c). Nothing in the Bush Order suggests that a requester must make a showing of need merely to request a presidential record. Under the PRA, requests for presidential records are governed by the FOIA, see 44 U.S.C. § 2204(c)(1), which has no "need" requirement. The Bush Order does not change this procedure.

REV_00140036

CONCLUSION

For all of the foregoing reasons, this case should be dismissed for lack of jurisdiction, or, in the alternative, on the merits for failure to state a claim.

Respectfully submitted,

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Attorneys for Defendants

Date: February 8, 2002

REV_00140037

CERTIFICATE OF SERVICE

I certify that on February 8, 2002, I caused copies of the foregoing "Motion To Dismiss," "Memorandum In Support Of Motion To Dismiss," and proposed order to be served by first-class mail, postage prepaid, and by facsimile, on:

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
fax: (202) 588-7795

_____

Craig M. Blackwell

REV_00140038

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Sent: 2/11/2002 6:34:01 AM
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SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Brett M. Kavanaugh
02/11/2002 11:27:32 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
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per your Q, I also have not received any tax documents yet

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To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
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To: Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 2/11/2002 9:05:49 AM
Subject: : Re: LRM MLG179 - - AGRICULTURE Oversight Testimony on Eco-Terrorism
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To: Michael L. Goad/OMB/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: LRM MLG179 - - AGRICULTURE Oversight Testimony on
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White House Counsel has no objection.

From: Michael L. Goad on 02/11/2002 09:41:15 AM
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LRM ID: MLG179
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, February 11, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: John D. Burnim (for) Assistant Director for
Legislative Reference
OMB CONTACT: Michael L. Goad
PHONE: (202)395-3857 FAX: (202)395-5691
SUBJECT: AGRICULTURE Oversight Testimony on Eco-Terrorism

DEADLINE: 2:30 PM, TODAY, Monday, February 11, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: If you do not respond by the deadline, we will assume that your agency has no objection to/no comment on the draft statement.

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If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
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REV_00140050

_____ (Agency)

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_____ Concur

_____ No Objection

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_____ See proposed edits on pages _____

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velma.taylor@usdoj.gov
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02/07/02
USDA Testimony
Tina J. Terrell
Legislative Affairs
202-205-0580

STATEMENT OF
WILLIAM F. WASLEY
DIRECTOR, LAW ENFORCEMENT AND INVESTIGATIONS (LEI)
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Concerning
Eco-Terrorism and Lawlessness on National Forests

Before the
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

February 12, 2002

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is Bill Wasley, and I am the Director of the Forest Service Law Enforcement and Investigations (LEI) program. Thank you for the opportunity to appear before you today to discuss eco-terrorism acts on Forest Service facilities and how the Agency is addressing employee safety.

The Forest Service manages approximately 192 million acres of land in the United States. Protecting people and natural resources is part of our mission. This mission has become more difficult over the years as crimes occurring on national forests and to federal property have increased, especially acts of eco-terrorism on research projects and government facilities. LEI is responsible for protecting and serving the public and agency employees; protecting natural

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02/07/02
USDA Testimony
Tina J. Terrell
Legislative Affairs
202-205-0580

resources and other property under the jurisdiction of the Forest Service; and cooperating with other law enforcement agencies.

Incidents of Ecoterrorism

Over the past 10 years, destructive civil disobedience and acts of eco-terrorism have increased, damaging resources and placing people in harm's way. Destructive criminal acts have primarily been related to protests against commercial logging activity on National Forest System (NFS) lands. These acts have included the illegal occupation of NFS lands and roads that place protestors at great risk; spiking trees designated for cutting; damaging or destroying natural resources, public roads, and facilities; damaging private property; and threatening and interfering with timber sale purchasers and timber operators. Since 1998, the Earth Liberation Front (ELF) has claimed responsibility for at least five terrorist acts to Forest Service resources, facilities, or vehicles.

Forest Service research programs have also been the targets of recent criminal acts. The Agency has an extensive research and development program that conducts basic and applied research on an array of subjects that complement the diverse mission of the Agency, including research on biological pathogens or forest genetics. In FY 2000, two acts of vandalism resulted in damages to the Forest Service Research facilities in Minnesota and Wisconsin, estimated at over $1.3 million. Over 850 pine and broadleaf trees, and saplings from "superior" tree stock and cross-pollination research were cut down, ring-barked and trampled. ELF claimed responsibility for this act. In November of 2001, two explosive arson devices were planted near university and Forest Service

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research buildings at Michigan Technical University, but fortunately were located by security personnel prior to detonation. No one has yet been charged with this crime.

Prevention is critical to the Agency's action plan against criminal acts of eco-terrorism. Currently, the Forest Service is conducting facility security assessments to identify those facilities that are vulnerable to terrorist acts. These assessments will address employee, facility, asset, transportation, special use permitting, and resource protection concerns.

Safety in the Workplace

Forest Service employees have been the targets of increasing domestic terrorism threats and attacks since the mid 1990's. Examples of these attacks include the bombing of an employee's residence and the complete destruction by arson of two Forest Service offices. These attacks have raised fears and concern among Agency employees for their personal safety. The Agency is addressing these concerns by securing government facilities; producing and distributing safety pamphlets, brochures, and videos; holding safety meetings; providing information to employees on steps that are being implemented to improve employee security; and providing violence awareness training. The Forest Service has an agreement with the Office of Inspector General (OIG) regarding investigations dealing with employee safety. The safety of Agency employees and the public is one of the highest priorities for the Forest Service.

Efforts to Ensure Coordinated Security

In cases of domestic terrorism the FBI has primary jurisdiction. LEI assist the FBI by serving on the joint task force investigating domestic terrorism acts.

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Agency law enforcement officers and criminal investigators coordinate closely with line and staff officers to provide and implement security procedures for Forest Service facilities, resources, employees, and the public. Security measures undertaken by LEI include: conducting intelligence gathering and threat assessments; providing personnel and facility security details during protests or high risk events, providing first responders to incidents; responding to protest and civil disobedience activities; investigating criminal acts; conducting search and rescues; responding to shooting incidents and drug and alcohol possession and use problems; and responding and investigating all reported instances of intimidation, threat, or assault against agency employees.

In investigating criminal acts, LEI has developed many cooperative agreements with other Federal, State, and local agencies for performance of routine law enforcement patrols, drug enforcement, timber theft investigations, and coordination of other enforcement activities. LEI participate in many task forces, particularly the FBI's counterterrorism taskforce mentioned above and the Office of National Drug Control Policy's (ONDCP) High Intensity Drug Trafficking Area (HIDTA) program.

Conclusion

The Forest Service is committed to work with the FBI to combat acts of domestic terrorism. We also are committed to ensuring safety and security of the public and our employees. The job is immense, but we will continue to work at providing these services and expend resources consistent with this priority.

REV_00140055

This concludes my statement, I would be happy to answer any questions you or Members of the Subcommittee might have.

REV_00140056

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
CC: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>
Sent: 2/12/2002 5:13:11 AM
Subject: : Tom Jipping's Commentary: Dismantling Dem ocracy through Judicial Activism / Sue Blevins Guest Commentary:

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SUBJECT:: Tom Jipping's Commentary: Dismantling Dem ocracy through Judicial Activism / Sue Blevins Guest Commentary:
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TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
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Colleagues:

Jipping's piece.

Warmly

tsg

Notable News Now <NotableNewsNow@freecongress.org>
02/11/2002 09:52:26 PM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP
cc:
Subject: fcfnnn021202 Inside: Tom Jipping's Commentary: Dismantling Dem ocracy through Judicial Activism / Sue Blevins Guest Commentary: MEHPA S pells Trouble

Free Congress Foundation???s
Notable News Now
February 12, 2002

The Free Congress Commentary
Dismantling Democracy through Judicial Activism
By Tom Jipping

While Senate Democrats are blocking President Bush???s judicial

appointments,
guess who???s minding the judicial store and guess what are they up to?
Liberal activist Clinton judges, that???s who, and they are up to no good.

Out on the left coast, for example, more than 70% of the full-time judges
on
the U.S. Court of Appeals for the Ninth Circuit are Democrat appointees.
Two of President Clinton???s 14 appointees to that court are among his most
radical ever and they are busy dismantling what the people of California
have spent years building.

In 1994, nearly 72% of California voters decided no longer to treat
perpetual criminals as if they were first-time offenders. Instead, each
additional felony would be treated more seriously. They enacted the
???Three
Strikes??? law requiring that a third serious or violent felony would
bring at
least 25 years behind bars.

Last November, Judge Richard Paez ruled that using this law to do exactly
as
Californians intended violates the Constitution???s ban on cruel and
unusual
punishment. He insisted that the sentence was ???grossly
disproportionate??? to
the crime, a standard urged by only three Supreme Court Justices concurring
in a 1991 case. But hey, it was all an activist needed to get where he
wanted to go.

Well, now fellow Clinton appointee Judge Marsha Berzon has done the same
thing in two cases. Earnest Bray had in the 1980s been convicted of four
counts of robbery. In one incident, a co-defendant threatened to kill the
woman they were robbing, and actually fired three shots. In another
robbery, his co-defendants punched and kicked their victim.

Had he not chosen this criminal path, prosecutors could have charged him
with petty theft when Bray stole several videotapes in March 1994.
Instead,
they charged him with felony petty theft ???with a prior.??? Conviction
of this
felony became his third strike when added to his earlier robbery
convictions. He received the mandatory minimum of 25 years in prison.

Richard Brown had in the 1970s and 80s been convicted of at least five
serious or violent felonies including second degree murder, assault with a
deadly weapon, and robbery. He also had a string of other convictions for
felony vehicle theft, burglary, battery, second-degree robbery, and
possession of drug paraphernalia.

Brown???s life of crime had similar consequences for him. When caught for
shoplifting in 1995, prosecutors charged him with petty theft with a prior.
With three felony strikes, he too received the mandatory minimum of 25
years
in prison.

Joined by liberal activist extraordinaire Judge Stephen Reinhardt and
fellow
Clinton appointee Judge A. Wallace Tashima, Judge Berzon did the same thing
her colleague Judge Paez had done last fall. Going to prison for 25 years
for petty theft or shoplifting would, by itself, strike most people as a
little much ??? or, in legalese, ???grossly disproportionate. Since
neither of
these career criminals had received that sentence for that crime, however,
she had her work cut out for her.

Judge Berzon repeatedly said that petty theft itself, what she called the
???core conduct??? of the crime for which Bray was convicted, ???is
ordinarily

punished by no more than six months in jail.??? Indeed it is, but Bray had chosen to commit other crimes. He chose the serious of crimes that resulted
in his conviction for petty theft ???with a prior.??? That ???with a prior??? part
is what takes him outside the ordinary realm of first-time offenders receiving slaps on the wrist.

Only by re-framing the facts in this case, by acting as if this were a first-timer rather than a habitual felon, could Judge Berzon get where she wanted to go. She???s a true activist judge, making things up and moving things around to achieve the result she wants to reach. Like the case last year before Judge Paez, these were brought by law professor Erwin Chemerinsky, a dedicated leftist crusader willing to use the courts to thwart the democratic choices of his fellow citizens. Activist lawyers and activist judges are a potent combination, and here they are dismantling democracy itself and putting the safety of law-abiding citizens at risk.

This is the judicial legacy of Bill Clinton. With more than 100 judicial vacancies and more than 50 Bush nominees languishing in the Democratic Senate, these Clinton activists are striking at will. They are continuing the revolution, substituting their values and political agenda for those of the people.

Tom Jipping is the director of the Free Congress Foundation???s Center for Law
and Democracy.

The Free Congress Guest Commentary
MEHPA Spells Trouble
By Sue A. Blevins, M.P.H.

Editor???s Note: Free Congress Foundation president Paul M. Weyrich in his 11/19/01 commentary, ???Another Conservative Gone Native,??? warned NNN readers
about the threat that the proposed Model State Emergency Health Powers Act poses to our civil liberties. More and more conservatives and other advocates of privacy are starting to realize that their state legislators are trying to have MEHPA become law in their state despite having given no serious thought to its consequences. Recently, Maryland State Senator Andrew
Harris of Baltimore County remarked about his state???s own version of the model bill: ???As I read it, why couldn???t the governor declare [a catastrophic
emergency] for tobacco smoke???? While MEHPA???s proponents dispute that claim,
the fact is that history is littered with examples of how laws with such vague language are placed on the books for one reason (ostensibly good) only
to be used for another, often damaging our privacy and civil liberties. MEHPA is a model bill full of bad consequences just waiting to happen. Sue A. Blevins, M.P.H., founder and president of the Institute for Health Freedom, explains why she mistrusts MEHPA in the commentary below.

State legislatures should give serious thought to how the Model State Emergency Health Powers Act could severely infringe on the precious individual liberties that are the hallmark of our nation and its states. Everyone would agree that our federal and state governments should be defending citizens against bioterrorism. But if you examine the model bill closely, it goes much, much further than necessary to perform that important
and legitimate government function.

There are two major concerns.

First: The model bill would force individuals to accept vaccines and other treatments that they might oppose for various reasons. We are often told

how
important vaccines are for preventing various diseases. It???s true that
from
a public-health point of view, the best way to protect all citizens -
without infringing on a minority group???s freedom of conscience - is to
have
an adequate supply of safe and effective vaccines for those who want them.
Then anyone who is vaccinated with the vaccines should be protected against
the relevant disease. Unvaccinated people (those who reject vaccines for
whatever reasons) will pose no harm to those who have been vaccinated with
effective vaccines.

Second: Concerned citizens need to read their state???s MEHPA bills very
closely. It is all too likely that MEHPA will infringe on the freedom of
conscience of doctors and other health-care providers. Maryland???s draft
of
the MEHPA stated: ???If a health care practitioner fails to comply with an
order, regulation, or directive???the secretary may request the appropriate
licensing board to take disciplinary action against the health care
practitioner?????? Maryland's version of MEHPA said it would impose fines
up to
$10,000 for each offense. This provision could force a doctor opposed to
abortion to administer vaccines made from fetal tissue. It would force
doctors to perform other services that he or she might strongly object to.
It absolutely infringes on his or her freedom of conscience - a fundamental
freedom in this country.

The coercive provisions of the Model State Emergency Health Powers Act are
sound reasons why the state legislatures should find a better way to defend
against bioterrorism while protecting our individual freedom - the very
freedom that the current war on terror is being waged to defend.

Sue A. Blevins, M.P.H. is founder and president of the Institute for Health
Freedom which is located in Washington, D.C.
(www.forhealthfreedom.org)

Contact: Institute for Health Freedom (202) 429-6610

For media inquiries, contact Steve Lilienthal slilienthal@freecongress.org

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 2/12/2002 8:21:28 AM
Subject: : info needed

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-FEB-2002 13:21:28.00
SUBJECT:: info needed
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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When exactly was Ron Leighton (WD Washington) nominated by
President George H.W. Bush in 1991 or 1992?
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/12/2002 4:24:39 AM
Subject: : Re: LRM IKK158 - - TREASURY Testimony on HR3162 USA PATRIOT ACT: Investigating Patterns of Terrorist Financing

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CREATION DATE/TIME:12-FEB-2002 09:24:39.00
SUBJECT:: Re: LRM IKK158 - - TREASURY Testimony on HR3162 USA PATRIOT ACT: Investigating
Patterns of Terrorist Financing
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett,

Just to confirm, you responded to this LRM, correct?

Patrick
```

From: CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/12/2002 5:20:28 AM
Subject: : Re: OPA Staff meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2002 10:20:28.00
SUBJECT:: Re: OPA Staff meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

sure- 8 am in ken's office.

Brett M. Kavanaugh
02/12/2002 10:08:25 AM
Record Type: Record

To: Katherine G. Marinis/WHO/EOP@EOP
cc:
bcc:
Subject: Re: OPA Staff meeting

would Thursday morning work instead?

Katherine G. Marinis
02/12/2002 10:06:31 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: OPA Staff meeting

Brett- Ken wanted to know if you could come to our staff meeting tomorrow morning either at 7:30 or 8 am to discuss political travel. thanks

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Irene Kho/OMB/EOP [OMB] <Irene Kho>
Sent: 2/12/2002 5:25:28 AM
Subject: RECEIVED: TT-0090-A LRM IKK158 - - TREASURY Testimony on HR3162 USA PATRIO T ACT: Investigating Patterns of Terrorist Financing

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2002 10:25:28.00
SUBJECT:RECEIVED: TT-0090-A LRM IKK158 - - TREASURY Testimony on HR3162 USA PATRIO T ACT: Investigating Patterns of Terrorist Financing
TO:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
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RETURN RECEIPT

Your Document:
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was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
02/12/2002 10:23:11 AM

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/12/2002 5:36:41 AM
Subject: : Wed-6pm w/ Murray and Cantwell

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-FEB-2002 10:36:41.00
SUBJECT:: Wed-6pm w/ Murray and Cantwell
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just a reminder of this meeitng tomorrow. Written talking points for him
to review/use are helpful - let me know if you will be sending them over
and please cc me so I can attach it to his calendar.

Thanks!
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
CC: robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/12/2002 10:45:54 AM
Subject: : Re: Ruth Griffin, Presidential Appointee

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-FEB-2002 15:45:54.00
SUBJECT:: Re: Ruth Griffin, Presidential Appointee
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI - She is Executive Councillor in NH (an elected position).
```

From: Burton, Faith <Faith.Burton@usdoj.gov>
To: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Collins, Dan <Dan.Collins@usdoj.gov>;'attyadv.opca@fbi.gov' <attyadv.opca@fbi.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Chertoff, Michael <Michael.Chertoff@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>
CC: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
Sent: 2/12/2002 10:54:05 AM
Subject: : Draft letter to Chairman Burton on Harrington memo
Attachments: P_OQ3F5003_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
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CREATOR:"Burton, Faith" <Faith.Burton@usdoj.gov> ( "Burton, Faith" <Faith.Burton@usdoj.gov>
[ UNKNOWN ] )
CREATION DATE/TIME:12-FEB-2002 15:54:05.00
SUBJECT:: Draft letter to Chairman Burton on Harrington memo
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
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READ:UNKNOWN
TO:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return
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TO:"'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) (IPM
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:"Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM
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CC:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
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Please comment asap; we'd like to get this up today. Matt, I'm coming up
to see you about docs.
- burton.212.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OQ3F5003_WHO.TXT_1>
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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft February 12,. 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated February 12, 2002, regarding the Committee's hearing on February 14, 2002, which will include testimony from Judge Edward Harrington. Judge Harrington was an Assistant United States Attorney in 1967 when he prepared a memorandum, which we have identified as one of those responsive to the Committee's subpoena of September 6, 2001.

With respect to the Boston matter, as Judge Gonzalez indicated in his January 10 letter, these are unusual circumstances where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process. Further, we appreciate the Committee's interest, as articulated in your letter, in learning what information Judge Harrington knew about the Deegan matter, including the evidence and the reliability of witnesses. Based upon your February 12 letter and other Committee correspondence, we agree that the Committee has demonstrated a particular and critical need for access to this document and we are prepared to meet with you and contemporaneously make it available for your review at your earliest convenience and in advance of the hearing.

We believe that this accommodation is consistent with the President's guidance in asserting Executive Privilege. We also hope that when we meet to make this document available for review, you also will permit us to describe other Boston documents. Such a conversation may include additional exchanges of information about the documents and the Committee's information needs that may be helpful to your oversight efforts.

I am advised that there are modest redactions in the Harrington memorandum relating to Rule 6(e) and our law enforcement responsibilities. We will be in touch to discuss a convenient time for your review of this document.

Sincerely,

Daniel J. Bryant

Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/12/2002 11:38:12 AM
Subject: : Re: Draft letter to Chairman Burton on Harrington memo

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
[ UNKNOWN ] )
CREATION DATE/TIME:12-FEB-2002 16:38:12.00
SUBJECT:: Re: Draft letter to Chairman Burton on Harrington memo
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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This message is a Read Receipt Notification

Your Message : Re: Draft letter to Chairman Burton on
Harrington memo
Was Read By : Carl.Thorsen@usdoj.gov
On : Tue, 12 Feb 2002 16:31:04 -0500
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>

Sent: 2/12/2002 12:27:44 PM

Subject: : JSC for Feb. 13 is CANCELLED!

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-FEB-2002 17:27:44.00
SUBJECT:: JSC for Feb. 13 is CANCELLED!
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
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TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
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TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We'll resume next wee, Feb. 20th, at our normal time/location.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 2/12/2002 12:51:21 PM
Subject: : RE: Draft letter to Chairman Burton on Harrington memo

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-FEB-2002 17:51:21.00
SUBJECT:: RE: Draft letter to Chairman Burton on Harrington memo
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fyi
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/12/2002 05:50 PM ----------

Brett M. Kavanaugh
02/12/2002 05:48:30 PM
Record Type: Record

To: "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
cc: "burton, faith" <faith.burton@usdoj.gov>
bcc: Records Management@EOP
Subject: RE: Draft letter to Chairman Burton on Harrington memo

Judge Gonzales has now reviewed, but he has asked that Nick Calio also review it, which may delay the sending of this until tomorrow. (Carl: Can you please circulate ASAP a new draft with the following changes made to the extent you deem them appropriate, and I will then get it to Nick and Judge.)
1. Change "you have" to "The Committee has" at beginning of second paragraph.
2. Change second sentence of second paragraph to "Consistent with long-standing constitutional principles and Department of Justice practices, the President asserted executive privilege as to those documents. The President also directed that the Department work with the Committee to continue to accommodate the Committee's information needs to the extent appropriate and consistent with the constitutional separation of powers."
3. Add to beginning of third paragraph: "Since the President's assertion of privilege, we are pleased that the Committee has focused on only one of the four categories of subpoenaed documents: the Boston documents."
4. Gonzales has an "s" not a "z" at end.
5. Add "and other information provided by the Committee" after "other Committee correspondence" in para. 3.
6. Change "has demonstrated" to "had not previously but has now demonstrated"
7. Delete "at your earliest convenience and" at end of para. 3.
8. Change the "we also hope" sentence to "In addition, we have previously offered to provide the Committee an oral briefing as to the other Boston documents, and we reiterate that offer here."
9. Delete the "Such a conversation" sentence.
10. Add "legally mandated" before "redactions."
11. Cc the whole Committee?

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Collins, Dan <Dan.Collins@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Burton, Faith <Faith.Burton@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>;'attyadv.opca@fbi.gov' <attyadv.opca@fbi.gov>
Sent: 2/12/2002 1:08:45 PM
Subject: : Draft letter to Chairman Burton on Harrington memo
Attachments: P_OBAF5003_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
[ UNKNOWN ] )
CREATION DATE/TIME:12-FEB-2002 18:08:45.00
SUBJECT:: Draft letter to Chairman Burton on Harrington memo
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) ( "Burton,
Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, DOJ recommends that WHC approve the attached letter.

We've been moving quickly, and our folks will continue reviewing it, but
all components have agreed to this letter in concept.




- harrington_mem.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OBAF5003_WHO.TXT_1>
```

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft February 12, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated February 12, 2002, regarding the Committee's hearing on February 14, 2002, which will include testimony from Judge Edward Harrington. Judge Harrington was an Assistant United States Attorney in 1967 when he prepared a memorandum, which we have identified as one of those responsive to the Committee's subpoena of September 6, 2001.

Your have subpoenaed four categories of Department of Justice prosecutorial documents: those relating to (i) the potential appointment of a special counsel for the campaign financing investigation; (ii) the investigation of Mark Middleton; (iii) the investigation of Ernest Howard; and, (iv) the investigation of certain individuals investigated and prosecuted by the Boston United States Attorney's Office (i.e. the Boston matter). While the President invoked executive privilege concerning these documents, he directed the Department to work informally with the Committee to provide such information as it can.

With respect to the Boston matter, as Judge Gonzalez indicated in his January 10 letter, these are unusual circumstances where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process. Further, we appreciate the Committee's interest, as articulated in your letter, in learning what information Judge Harrington knew about the Deegan matter, including the evidence and the reliability of witnesses. Based upon your February 12 letter and other Committee correspondence, we agree that the Committee has demonstrated a particular and critical need for access to this document and we are prepared to meet with you and contemporaneously make it available for your review at your earliest convenience and in advance of the hearing. Please note that much of the relevant underlying factual information contained in this memorandum has already been provided to the Committee pursuant to its previous document requests.

This accommodation is consistent with the President's guidance in asserting executive privilege. We also hope that when we meet to make this document available for review, we can use the occasion to schedule a further discussion about the other Boston documents. Such a conversation may include additional exchanges of information about the documents and the Committee's information needs that may be helpful to your investigative efforts.

I am advised that there are redactions in the Harrington memorandum relating to Rule 6(e). We will be in touch to discuss a convenient time for your review of this document.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;Collins, Dan <Dan.Collins@usdoj.gov>;Burton, Faith <Faith.Burton@usdoj.gov>;Rybicki, James E <James.E.Rybicki@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>;'attyadv.opca@fbi.gov' <attyadv.opca@fbi.gov>
Sent: 2/13/2002 5:10:34 AM
Subject: : RE:
Attachments: P_UONF5003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:13-FEB-2002 10:10:34.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) ("Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) ("Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) ("Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Rybicki, James E" <James.E.Rybicki@usdoj.gov> (Receipt Notification Requested) ("Rybicki, James E" <James.E.Rybicki@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) ("Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) ("Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) ("'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Edits made, including Colborn's (which I like). Please review and let me know.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, February 13, 2002 9:17 AM
To: Thorsen, Carl
Cc: Thorsen, Carl; Bryant, Dan; Collins, Dan; Burton, Faith; Rybicki, James E; Whelan, M Edward III; Martens, Matthew; Colborn, Paul P; attyadv.opca@fbi.gov
Subject:

another round of suggested edits from here:

1. Change the second sentence in second paragraph to the following:
"In
light of the particular facts and circumstances that existed at the time
of the
Committee's hearing on December 13, including the Committee's articulation
of
its informational needs and the information already provided by the
Department
to the Committee, and consistent with long-standing constitutional
principles
applicable to these extraordinarily sensitive Executive Branch documents,
the
President on December 12 asserted executive privilege as to those four
categories of documents."

2. Change the first sentence in third full paragraph to: "Since the
President's assertion of privilege, the Committee has challenged the
privilege
assertion only with respect to the fourth category, the ten Boston
documents."
[Note that it is important to include the number ten here.]

3. Delete "we agree that" in first sentence of fourth paragraph. In
that
same sentence, change, "access to this document" to "access to the one
Harrington memorandum sufficient to satisfy constitutional standards . .
." And
also delete "contemporaneously."

4. Delete the sentence "This accommodation is consistent with . . ."

5. Move the sentence on 6(e) redactions to the end of the
next-to-last
paragraph.

6. In last sentence, change "this document" to "the Harrington
memorandum."

7. "The "We will be in touch" phrasing seemed somewhat colloquial
for this
kind of letter.

- harrington_mem.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UONF5003_WHO.TXT_1>

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 13, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated February 12, 2002, regarding the Committee's hearing on February 14, 2002, which will include testimony from Judge Edward Harrington. Judge Harrington was an Assistant United States Attorney in 1967 when he prepared a memorandum that we have identified as one of those responsive to the Committee's subpoena of September 6, 2001.

The Committee has subpoenaed four categories of Department of Justice prosecutorial documents: those relating to (i) the potential appointment of a special counsel for the campaign financing investigation; (ii) the investigation of Mark Middleton; (iii) the investigation of Ernest Howard; and, (iv) the investigation of certain individuals investigated and prosecuted by the Boston United States Attorney's Office (i.e. the Boston matter). In light of the particular facts and circumstances that existed at the time of the Committee's hearing on December 13, including the Committee's articulation of its informational needs and the information already provided by the Department to the Committee, and consistent with long-standing constitutional principles applicable to these extraordinarily sensitive Executive Branch documents, the President on December 12 asserted executive privilege as to those four categories of documents. The President also directed that the Department work with the Committee to continue to accommodate the Committee's informational needs to the extent appropriate and consistent with the constitutional separation of powers.

Since the President's assertion of privilege, the Committee has challenged the privilege assertion only with respect to the fourth category, the ten Boston documents. As Judge Gonzales indicated in his January 10 letter, the Boston documents should be assessed in light of the unusual circumstances present here, where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process. Further, we appreciate the Committee's interest, as articulated in your letter, in learning what information Judge Harrington knew about the Deegan matter, including the evidence and the reliability of witnesses.

Based upon your February 12 letter, other Committee correspondence, and additional information provided by the Committee, the Committee has now demonstrated a particular and critical need for access to the one Harrington memorandum sufficient to satisfy constitutional

REV_00140121

standards and we are prepared to meet with you and make it available for your review in advance of the hearing. Please note that much of the relevant underlying factual information contained in this memorandum has already been provided to the Committee pursuant to other document requests. I am advised that there are legally mandated redactions in the Harrington memorandum relating to Rule 6(e) of the Federal Rules of Criminal Procedure.

In addition, we have previously offered to meet with the Committee to discuss all of the Boston documents, and we reiterate that offer here. We will contact Committee staff to discuss a convenient time for your review of this document.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

Members of the Committee

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Janet P. Walker/OPD/EOP@EOP [OPD] <Janet P. Walker>
Sent: 2/13/2002 6:22:06 AM
Subject: : Paperwork Reduction Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-FEB-2002 11:22:06.00
SUBJECT:: Paperwork Reduction Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Janet P. Walker (CN=Janet P. Walker/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Brett - any ideas?

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 02/13/2002 11:21 AM ----------

Janet P. Walker
02/13/2002 11:16:35 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Paperwork Reduction Act

Hi Libby! Can you drop me a line with who is the expert on Paperwork Reduction? We'd like to have them stop by one of our staff meetings and discuss records -- what to keep, what can be tossed -- as a refresher for our team.

Many thanks!
Janet

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/13/2002 5:38:18 AM
Subject: : RE:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
[UNKNOWN])
CREATION DATE/TIME:13-FEB-2002 10:38:18.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

done

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, February 13, 2002 9:51 AM
To: Thorsen, Carl
Subject: Re:

In our second suggestion below, we may want to delete the word "only"
so as
to be safe.

Brett M. Kavanaugh
02/13/2002 09:12:36 AM

Record Type: Record

To: "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>

cc: See the distribution list at the bottom of this message
Subject: (Document link: Brett M. Kavanaugh)

another round of suggested edits from here:

1. Change the second sentence in second paragraph to the following:
"In
light of the particular facts and circumstances that existed at the time
of the
Committee's hearing on December 13, including the Committee's articulation
of
its informational needs and the information already provided by the
Department
to the Committee, and consistent with long-standing constitutional
principles
applicable to these extraordinarily sensitive Executive Branch documents,
the
President on December 12 asserted executive privilege as to those four
categories of documents."

2. Change the first sentence in third full paragraph to: "Since the President's assertion of privilege, the Committee has challenged the privilege assertion only with respect to the fourth category, the ten Boston documents."
[Note that it is important to include the number ten here.]

3. Delete "we agree that" in first sentence of fourth paragraph. In that same sentence, change, "access to this document" to "access to the one Harrington memorandum sufficient to satisfy constitutional standards . . ." And also delete "contemporaneously."

4. Delete the sentence "This accommodation is consistent with . . ."

5. Move the sentence on 6(e) redactions to the end of the next-to-last paragraph.

6. In last sentence, change "this document" to "the Harrington memorandum."

7. "The "We will be in touch" phrasing seemed somewhat colloquial for this kind of letter.

Message Copied To:_____

"collins, dan" <dan.collins@usdoj.gov>
"whelan, m edward iii" <m.edward.whelan@usdoj.gov>
"colborn, paul p" <paul.p.colborn@usdoj.gov>
"burton, faith" <faith.burton@usdoj.gov>
"bryant, dan" <dan.bryant@usdoj.gov>
"thorsen, carl" <carl.thorsen@usdoj.gov>
"rybicki, james e" <james.e.rybicki@usdoj.gov>
"martens, matthew" <matthew.martens@usdoj.gov>
attyadv.opca@fbi.gov

From: CN=Ansley C. Tillman/OU=OPD/O=EOP [OPD]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>
Sent: 2/13/2002 9:46:13 AM
Subject: : Victims Rights Meeting

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CREATOR:Ansley C. Tillman ( CN=Ansley C. Tillman/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:13-FEB-2002 14:46:13.00
SUBJECT:: Victims Rights Meeting
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Robert Marsh ( CN=Robert Marsh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Garry Malphrus ( CN=Garry Malphrus/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Diana will be holding a meeting on Victims Rights with Viet Dinh next
Thursday, February 21st, at 12:30 p.m. in Room 211. Please let me know if
there are any conflicts with this. Thanks.
```

From: CN=Michael J. Conway/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/13/2002 6:02:55 AM
Subject: : Re: IMPORTANT: Letter to Burton
Attachments: P_2XQF5003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-FEB-2002 11:02:55.00
SUBJECT:: Re: IMPORTANT: Letter to Burton
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sounds good. Thanks, Brett. I will have them review it.

Mike

Brett M. Kavanaugh
02/13/2002 10:51:53 AM
Record Type: Record

To: Michael J. Conway/WHO/EOP@EOP
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: IMPORTANT: Letter to Burton

We need Nick or Jack to see and sign off on this letter from Department of Justice to Chairman Burton. They want to send by 1:00 p.m. today. Please call me at 6-7984 if there is any problem with that timing.

- harrington_mem.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2XQF5003_WHO.TXT_1>

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 13, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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The Committee has subpoenaed four categories of Department of Justice prosecutorial documents: those relating to (i) the potential appointment of a special counsel for the campaign financing investigation; (ii) the investigation of Mark Middleton; (iii) the investigation of Ernest Howard; and, (iv) the investigation of certain individuals investigated and prosecuted by the Boston United States Attorney's Office (i.e. the Boston matter). In light of the particular facts and circumstances that existed at the time of the Committee's hearing on December 13, including the Committee's articulation of its informational needs and the information already provided by the Department to the Committee, and consistent with long-standing constitutional principles applicable to these extraordinarily sensitive Executive Branch documents, the President on December 12 asserted executive privilege as to those four categories of documents. The President also directed that the Department work with the Committee to continue to accommodate the Committee's informational needs to the extent appropriate and consistent with the constitutional separation of powers.

Since the President's assertion of privilege, the Committee has challenged the privilege assertion only with respect to the fourth category, the ten Boston documents. As Judge Gonzales indicated in his January 10 letter, the Boston documents should be assessed in light of the unusual circumstances present here, where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process. Further, we appreciate the Committee's interest, as articulated in your letter, in learning what information Judge Harrington knew about the Deegan matter, including the evidence and the reliability of witnesses.

Based upon your February 12 letter, other Committee correspondence, and additional information provided by the Committee, the Committee has now demonstrated a particular and critical need for access to the one Harrington memorandum sufficient to satisfy constitutional

standards and we are prepared to meet with you and make it available for your review in advance of the hearing. Please note that much of the relevant underlying factual information contained in this memorandum has already been provided to the Committee pursuant to other document requests. I am advised that there are legally mandated redactions in the Harrington memorandum relating to Rule 6(e) of the Federal Rules of Criminal Procedure.

In addition, we have previously offered to meet with the Committee to discuss all of the Boston documents, and we reiterate that offer here. We will contact Committee staff to discuss a convenient time for your review of this document.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

Members of the Committee

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>
Sent: 2/13/2002 8:36:27 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-FEB-2002 13:36:27.00
SUBJECT::
TO:William H. Leary ( CN=William H. Leary/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

how's the progress?
```

From: Collins, Dan <Dan.Collins@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/13/2002 9:13:15 AM
Subject: : FW: Regan docs

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Collins, Dan" <Dan.Collins@usdoj.gov> ("Collins, Dan" <Dan.Collins@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:13-FEB-2002 14:13:15.00
SUBJECT:: FW: Regan docs
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI.

-----Original Message-----
From: Boudreaux, Chad
Sent: Wednesday, February 13, 2002 1:52 PM
To: Collins, Dan
Cc: Coffin, Shannen; Colborn, Paul P
Subject: FW: Regan docs

May want to pass this along to Brett. Let me know if you need anything else.

-----Original Message-----
From: Blackwell, Craig
Sent: Wednesday, February 13, 2002 11:54 AM
To: Boudreaux, Chad
Subject: RE: Regan docs

Our next brief (opposition to pltfs' motion for summary judgment) is due March 8. Or final brief (reply in support of our motion to dismiss) is due March 22. It would be great to have the review done by March 8.

-----Original Message-----
From: Boudreaux, Chad
Sent: Wednesday, February 13, 2002 11:34 AM
To: Blackwell, Craig
Subject: FW: Regan docs

Can you help us with the question below ("What's the date for the next brief?") re: Amer. Historical v. National Archives? Thanks.

-----Original Message-----
From: Coffin, Shannen
Sent: Wednesday, February 13, 2002 11:31 AM
To: Boudreaux, Chad
Subject: RE: Regan docs

Check with Craig Blackwell -- he has the dates.

Shannen W. Coffin
Civil Division
U.S. Department of Justice
(202) 514-3310 (phone)
(202) 514-8071 (fax)
shannen.coffin@usdoj.gov

-----Original Message-----
From: Boudreaux, Chad
Sent: Wednesday, February 13, 2002 11:30 AM
To: Coffin, Shannen
Cc: Collins, Dan
Subject: FW: Regan docs

Shannen, is there a scheduling/case management order in this case and/or a date certain by which to file our next pleading?

-----Original Message-----
From: Collins, Dan
Sent: Wednesday, February 13, 2002 11:23 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Colborn, Paul P; Boudreaux, Chad
Subject: Regan docs

Brett, after you've had a chance to review the documents, we all should probably have a meeting to discuss any documents (if any) that may actually be candidates for privilege. What's your schedule like for this? Our timing would be influenced by when the next brief is due; ideally, we'd like to be able to report that the review is done. Chad, what's the date for the next brief? Thanks.

--Dan

From: CN=Ansley C. Tillman/OU=OPD/O=EOP [OPD]
To: Jay P. Lefkowitz/OMB/EOP@EOP [OMB] <Jay P. Lefkowitz>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>
Sent: 2/13/2002 9:46:13 AM
Subject: : Victims Rights Meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ansley C. Tillman ( CN=Ansley C. Tillman/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:13-FEB-2002 14:46:13.00
SUBJECT:: Victims Rights Meeting
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Robert Marsh ( CN=Robert Marsh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Garry Malphrus ( CN=Garry Malphrus/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Diana will be holding a meeting on Victims Rights with Viet Dinh next
Thursday, February 21st, at 12:30 p.m. in Room 211. Please let me know if
there are any conflicts with this. Thanks.
```

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Collins, Dan <Dan.Collins@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Burton, Faith <Faith.Burton@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/13/2002 9:54:53 AM
Subject: : Burton Review of Harrington Memo

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ( "Thorsen, Carl" <Carl.Thorsen@usdoj.gov>
[ UNKNOWN ] )
CREATION DATE/TIME:13-FEB-2002 14:54:53.00
SUBJECT:: Burton Review of Harrington Memo
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Burton's staff just called, they asked that unless we hear back from them
(after they've discussed our letter with the Chairman I presume) we bring
it up at 4:30 PM today for their review. Unless someone disagrees, I'll
plan to do that alone so Faith and Matt can participate in Jay's prep
session.
```

Carl Thorsen
Deputy Assistant Attorney General
Office of Legislative Affairs

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/13/2002 12:03:43 PM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-FEB-2002 17:03:43.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I know you've handled this before; sorry if I intruded on your responsibilities. I just want to get the ball rolling on a couple of sensitive U.S. Attorneys.

Brett M. Kavanaugh
02/13/2002 09:47:55 AM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP
cc:
Subject:

fyi that I had tried to get this ball rolling yesterday as well .
. .

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/13/2002 09:47 AM ----------

Brett M. Kavanaugh
02/12/2002 02:29:37 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject:

We think it's time to schedule another POTUS judges meeting, probably after he returns from the Far East.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/13/2002 12:43:22 PM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-FEB-2002 17:43:22.00
SUBJECT:: Re:
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Not at all. Just in case you wondered why libby seemed bemused I wanted to
let you she was getting it from multilpledirections
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 2/14/2002 6:15:14 AM
Subject: : Chron

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-FEB-2002 11:15:14.00
SUBJECT:: Chron
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

At the risk of seeming a little nannyish, I just wanted to check up again
and make sure that we're all still on the correct 3-day chron cycle and
keeping current. I believe I have today.
```

From: CN=Kimberly A. Douglass/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/14/2002 7:42:41 AM
Subject: : it's me again...

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kimberly A. Douglass ( CN=Kimberly A. Douglass/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-FEB-2002 12:42:41.00
SUBJECT:: it's me again...
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

hey there! may I stop by to get the blue sheet I dropped off last night?
I've already had two emails today about this laptop...ugh.

also, (yes, it's time for me to bug you again...) any chance I could get
those trip summaries by late tomorrow morning? I am leaving the office at
noon tomorrow and won't be back until Wednesday. I am just trying to keep
the OA folks from having a meltdown while I am away. If you can pull it
off, there's a reward in it for you...more blue sheets!!!!! Now there's
incentive for you...

Thanks!!!

Kim
```

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: courtney_elwood@who.eop.gov@EOP [UNKNOWN] <courtney_elwood@who.eop.gov@EOP>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;kyle sampson/who/eop@eop [WHO] <kyle sampson>
Sent: 2/14/2002 3:48:56 AM
Subject: : Re: Medical Privacy meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 08:48:56.00
SUBJECT:: Re: Medical Privacy meeting
TO:courtney_elwood@who.eop.gov@EOP (courtney_elwood@who.eop.gov@EOP [UNKNOWN])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This is one of my issues, and I was planning on going until the GAO mtg was changed to 11:00.
(Courtney, this may be another instance of people mixing you and me up.)

Courtney S. Elwood
02/14/2002 08:46:55 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Medical Privacy meeting

Can any of you cover this meeting at 11 a.m. today? I have a scheduling conflict. I know nothing about the subject matter, so there is no "background" that you'll be lacking.
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 02/14/2002 08:45 AM ----------

Mary M. Chuckerel
02/08/2002 10:50:37 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Medical Privacy meeting

I have been asked to schedule a meeting to discuss the coordination of the

HHS medical privacy rule... This meeting has been scheduled for Feb. 14 at 11:00 a.m. in rm 180 of the EEOB. If you are not able to attend, please send an alternate.

Message Sent
To:_____
Stuart Shapiro/OMB/EOP@EOP
John F. Morrall III/OMB/EOP@EOP
Donald R. Arbuckle/OMB/EOP@EOP
Daniel J. Chenok/OMB/EOP@EOP
Eva Kleederman/OMB/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Richard M. Russell/OSTP/EOP@EOP
John M. Ackerly/OPD/EOP@EOP
Anne E. Phelps/OPD/EOP@EOP
Mark McClellan/CEA/EOP@EOP
James C. Capretta/OMB/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP

Message Copied
To:_____
Lisa M. Jones/OMB/EOP@EOP
Carolyn Swinney/OMB/EOP@EOP
Carla B. Stone/OMB/EOP@EOP
Karen S. Dooley/OMB/EOP@EOP
Veronica Vargas/OMB/EOP@EOP
Paul R. Noe/OMB/EOP@EOP

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 2/14/2002 3:49:33 AM
Subject: : Re: Medical Privacy meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 08:49:33.00
SUBJECT:: Re: Medical Privacy meeting
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

that happens to the boys too.

Rachel L. Brand 02/14/2002 08:48:49 AM

Record Type: Record

To: courtney_elwood@who.eop.gov@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Medical Privacy meeting

This is one of my issues, and I was planning on going until the GAO mtg was changed to 11:00.
(Courtney, this may be another instance of people mixing you and me up.)

Courtney S. Elwood
02/14/2002 08:46:55 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Medical Privacy meeting

Can any of you cover this meeting at 11 a.m. today? I have a scheduling conflict. I know nothing about the subject matter, so there is no "background" that you'll be lacking.
---------- Forwarded by Courtney S. Elwood/WHO/EOP on 02/14/2002 08:45 AM ----------

Mary M. Chuckerel
02/08/2002 10:50:37 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Medical Privacy meeting

I have been asked to schedule a meeting to discuss the coordination of the HHS medical privacy rule... This meeting has been scheduled for Feb. 14 at 11:00 a.m. in rm 180 of the EEOB. If you are not able to attend, please send an alternate.

Message Sent
To:_____
Stuart Shapiro/OMB/EOP@EOP
John F. Morrall III/OMB/EOP@EOP
Donald R. Arbuckle/OMB/EOP@EOP
Daniel J. Chenok/OMB/EOP@EOP
Eva Kleederman/OMB/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Richard M. Russell/OSTP/EOP@EOP
John M. Ackerly/OPD/EOP@EOP
Anne E. Phelps/OPD/EOP@EOP
Mark McClellan/CEA/EOP@EOP
James C. Capretta/OMB/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP

Message Copied
To:_____
Lisa M. Jones/OMB/EOP@EOP
Carolyn Swinney/OMB/EOP@EOP
Carla B. Stone/OMB/EOP@EOP
Karen S. Dooley/OMB/EOP@EOP
Veronica Vargas/OMB/EOP@EOP
Paul R. Noe/OMB/EOP@EOP

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

Message Copied
To:_____
h. christopher bartolomucci/who/eop@eop
bradford a. berenson/who/eop@eop
brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
kyle sampson/who/eop@eop

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 2/14/2002 8:05:21 AM
Subject: :
Attachments: P_4GYG5003_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:14-FEB-2002 13:05:21.00
SUBJECT::
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached is my proposed revised waiver. It has taken TIm's undertaking
and made it into a reservation. That way we can change the baseline
without the ABA's concurrence (Roscoe said he cannot sign the undertaking
without committee authorization in any event). Your thoughts are greatly
appreacited.




- ABA waiver.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4GYG5003_WHO.TXT_1>
```

AUTHORIZATION AND WAIVER

With specific reservations and limitations as provided below, I _____ (the "Nominee") hereby

(1) authorize _____, a representative of the American Bar Association Standing Committee on the Federal Judiciary, to request and receive information which concerns me, including any complaints erased by law, that is known to, recorded with, on file with, or in the possession of the _____ **[insert names of relevant state bar ethics or disciplinary organizations and, if applicable, judicial conduct review body]** for the purpose a review being conducted by such Committee in connection my pending nomination to fill a position in the federal judiciary and

(2) waive any privilege of confidentiality I may have with respect to any such information to the extent necessary to permit such representative to obtain such information for such purpose.

Reservations and Limitations:

The foregoing Authorization and Waiver is conditioned upon and limited by the understanding that the American Bar Association's Standing Committee on the Federal Judiciary and all of its members, representatives, affiliates and agents will hold in strict confidence any information obtained by the Committee and will not disclose, disseminate or use for any purpose other than such review and will be destroyed immediately upon the confirmation by the United States Senate of the Nominee to the position in the federal judiciary for which the Nominee has been nominated or the receipt by the Committee of written notice that such nomination has been withdrawn by the President or rejected by the United States Senate.

_____

Date: _____

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/14/2002 8:46:05 AM
Subject: : question

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 13:46:05.00
SUBJECT:: question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

i assume you'll respond . . .
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 02/14/2002 01:45 PM ----------

Heather Wingate
02/14/2002 01:43:20 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: question

approximately, how many more judicial nominees (broken down as Circuit and Dist.) do we expect to nominate:

between now and the end of July (beginning of Aug. Congressional recess); and
between now and the end of the Congressional session (target adjournment is Oct. 4th)?

Also, do we have any District noms or Circuit noms that we expect to nominate any time soon from states with two Dem Senators?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 2/14/2002 7:42:59 AM
Subject: : Roll Call article on Pickering

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-FEB-2002 12:42:59.00
SUBJECT:: Roll Call article on Pickering
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

February 14, 2002

Pickering Judiciary Chances Dim

By Paul Kane

Despite increasing threats of retaliation from Republicans, Senate Democrats have dug in their heels to fight a controversial judicial nomination that has further poisoned the already strained relations between the two sides.

Resistance to U.S. District Judge Charles Pickering's elevation to the Fifth Circuit Court of Appeals has only grown among Democrats on the Judiciary Committee since his unusual second hearing last week, according to interviews with activists, aides and Senators.

With a one-vote edge on the panel, the 10 Judiciary Democrats have the power to sink the Pickering nomination, which has become a top priority for Minority Leader Trent Lott (R-Miss.), a close Pickering friend for 30 years.

Written follow-up questions to the Mississippi judge are due to be sent off today, but one Judiciary Democrat said his side is "ready to vote" and doesn't need any more information.

Asked if Pickering could do more to help his cause, Sen. Dick Durbin (D-Ill.) said, "Idon't think so. ... He had ample opportunity to express himself."

Sen. Maria Cantwell (D-Wash.), expressing concerns about his rulings on privacy, said she is "not likely" to vote for Pickering.

Sen. Russ Feingold (D-Wis.) said he had grave concerns about Pickering's efforts to round up letters of support from home-state interests, questioning whether it was improper because some of those same people may have cases before his federal court.

And Sen. Joseph Biden (D-Del.) said he was not certain of Pickering's "veracity" in responding to questions posed by Sen. John Edwards (D-N.C.) about a 1994 case in which the judge contacted Justice Department officials about sentencing.

Although no Democrat would officially declare Pickering's nomination dead, aides and Senators privately said it was unlikely Pickering would receive the single Democratic vote he needs to get out of committee. That sentiment was backed up by Majority Leader Thomas Daschle's (D-S.D.) decision to take the unusual step of announcing his opposition to Pickering in two nationally televised interviews Sunday and Monday before Judiciary had rendered its verdict.

GOP sources said Lott is personally incensed about the opposition to Pickering, which has been laced with racially tinged allegations regarding Mississippi's civil rights era. Lott is particularly irate at Daschle for taking such a public stance against his home-state friend.

"Senate Democrats haven't really thought through the consequences of opposing this nominee. This is a political boomerang that's going to come back at them very hard," said one senior GOP aide.

Lott has declined to spell out what retribution he will mete out for knocking down Pickering's appellate court bid, but he's made clear he will seek revenge. "It certainly will not be a positive thing for relations around here," he said this week.

Another senior GOP aide said Republicans have grown so irate over Pickering's treatment and the perceived lack of response from Judiciary Chairman Patrick Leahy (D-Vt.) to take up more circuit court nominees that many Senators want to shut down all legislative activity on the floor.

"There has been serious talk of just shutting down the whole damn Senate for however long it takes," the aide said.

Republican Policy Committee Chairman Larry Craig (Idaho) said that Democrats, at the behest of left-wing interest groups, have acted in a "strident, openly partisan" manner that will result in a shot back

at them. "That's a game played that does have repercussions in the end," he said, predicting that Pickering's defeat could lead to "the inability of the Senate to function."

"You have to operate with 60-plus votes,"he said, an indirect threat to block any moves to legislation on the Senate floor, which requires at least 60 votes. Last fall, in an attempt to confirm more GOP-nominated judges, Republicans blocked all appropriations bills for several weeks.

Unbowed by the threats, Democrats are ready for the fights. "We'll be reminding them that this is better treatment than many Democratic nominees who never got a hearing, who never got a vote," said one Democratic aide.

Echoing statements by Leahy and Daschle, Durbin said that Democrats have every intention of holding hearings and votes on controversial nominees. They will not take a "death-through-inaction" approach to nominees, he said, something Democrats accused Senate Republicans of doing with Clinton administration nominees in the 1990s.

If all 10 Judiciary Democrats oppose a nominee, Durbin said the message will be sent to the White House and the nominee, giving him or her the chance to back out before actually being rejected. "We should make every effort to be sensitive to the nominees. If we are not going to support them, then they should be given every opportunity to make a final decision," he said.

Republicans are particularly bitter about a potential committee defeat on Pickering, and any future judicial battles, because they know they can win a floor vote on the Mississippi judge. They expect to hold all 49 of their votes, and at least two Senate Democrats, Zell Miller (Ga.) and Fritz Hollings (S.C.), are willing to vote for Pickering if his nomination ever gets out of Judiciary and onto the floor.

Miller said his main standard for a judge would be if the two home-state Senators support the nominee, which in this case both Lott and Sen. Thad Cochran (R-Miss.) do.

Hollings, meanwhile, noted that the most salacious charges concern the judge's activities in the 1960s. "Iknow all of these charges they bring up, but I'll still vote for him. They haven't brought up anything recent. On the contrary, Ithink he's a fine judge," he said.

Hollings dismissed allegations that Pickering had ties to segregationists in Mississippi in the civil rights era and suggested that a high standard such as that might disqualify a few people from serving in the Senate.

"We've got leaders in the Senate that used to be members of the Klan," Hollings said, an apparent shot at Appropriations Chairman Robert Byrd's (D-W.Va.) past membership in the Ku Klux Klan more than 50 years ago.

Republicans are particularly concerned about what a potential defeat in committee for Pickering will mean for future appellate court nominees, such as Miguel Estrada and Jeffrey Sutton, who are younger, more ideologically conservative and potential Supreme Court nominees in the future.

All 10 Judiciary Democrats fall within the liberal wing of the party on social issues. At least three - Biden, Edwards and Feingold - are considering presidential bids and would need the support of interest groups such as the NAACP and the National Abortion and Reproductive Rights Action League, both of which oppose Pickering.

Biden said he was surprised to receive calls from his friends to put in good words for Pickering, who has been supported by Dicky Scruggs, the nation's leading anti-tobacco trial lawyer (and Lott's brother-in-law), and Charles Evers, the brother of slain civil rights activist Medgar Evers, among others.

"A lot of people Irespect - people that aren't in politics - have called to say this guy's a good guy. Istill have an open mind on this," Biden said.

But Republicans are taking a believe-it-when-we-see-it approach, doubtful that any Democrat will cross the key liberal constituencies opposed to Pickering.

"Unless there's going to be some Democrat that's going to look beyond the rhetoric that's being put out by the civil rights lobby, it's going to be pretty tough to get [Pickering] out of committee," said Sen. Chuck Grassley (R-Iowa), a senior Judiciary member.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/14/2002 9:09:21 AM
Subject: : Re: Chron

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 14:09:21.00
SUBJECT:: Re: Chron
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I haven't seen any new entries other than my own, which is why I inquired. Did anyone actually speak to Brent and instruct him? I know I didn't.

H. Christopher Bartolomucci
02/14/2002 01:55:29 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Chron

I thought Brent was now in charge of the chron. I have not been adding to it since we discussed assigning this to him.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/14/2002 9:49:43 AM
Subject: : Re: Chron

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 14:49:43.00
SUBJECT:: Re: Chron
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

no objection. he may have to go back a few days to cover whatever gap there was.

Brett M. Kavanaugh
02/14/2002 02:43:04 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Chron

no and no. why don't I speak to him and have him do it. I'll take care of that if that is ok plan with you all.

Bradford A. Berenson
02/14/2002 02:09:12 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Chron

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02/14/2002 01:55:29 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Chron

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Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: Dinh, Viet <Viet.Dinh@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/14/2002 10:35:31 AM
Subject: : RE: did/can you call Wittes?

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:14-FEB-2002 15:35:31.00
SUBJECT:: RE: did/can you call Wittes?
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

am talking to him as I type

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, February 14, 2002 2:55 PM
To: Dinh, Viet
Cc: Newstead, Jennifer
Subject: did/can you call Wittes?
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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/14/2002 11:24:07 AM
Subject: : LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds
Attachments: P_NW8H5003_WHO.TXT_1.doc; P_NW8H5003_WHO.TXT_2.doc; P_NW8H5003_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 16:24:07.00
SUBJECT:: LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 02/14/2002 04:24 PM ----------

From: Oscar Gonzalez on 02/14/2002 04:22:00 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds

Please read "COMMENTS" field below

Please respond by noon Thursday, February 21st.

LRM ID: OGG198
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 14, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Oscar Gonzalez
PHONE: (202)395-3923 FAX: (202)395-3109
SUBJECT: General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds

DEADLINE: 12:00 P.M. Thursday, February 21, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: We are seeking your review of a GSA draft bill that would raise the monetary thresholds above which approval by the House and Senate Public Works Committees is required before appropriations can be made for public building construction, acquisition, and repairs. Please submit comments by noon Thursday, February 21st.

DISTRIBUTION LIST

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Joel D. Kaplan
OVP LRM
WHGC LRM
NEC LRM
Kristine Simmons
Richard E. Green
James J. Jukes
LRM ID: OGG198 SUBJECT: General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Oscar Gonzalez Phone: 395-3923 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4607

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Rebecca A. Beynon/OMB/EOP@EOP
Kimberley S. Luczynski/OMB/EOP@EOP
Stephen S. McMillin/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
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Danielle M. Simonetta/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
Robert Marsh/WHO/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
OVP LRM
WHGC LRM
NEC LRM
Kristine Simmons/OPD/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NW8H5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NW8H5003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NW8H5003_WHO.TXT_3>

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Transmitted herewith for referral to the appropriate committee is a draft bill "to amend the Public Buildings Act of 1959, as amended, to raise certain prospectus submission thresholds, and for other purposes".

This draft bill proposes to raise the dollar thresholds above which the General Services Administration (GSA) and other Federal agencies would have to submit prospectuses to the Public Works Committees. By raising the thresholds, Congress can greatly reduce the number of prospectuses GSA and others have to submit for Congressional review before constructing, altering, leasing or repairing public buildings and leased space.

Reducing the number of prospectus reports that must be prepared, and which must be reviewed and approved by the Committees, will reduce prospectus preparation costs and speed up needed construction, alteration and leasing actions, and provide added flexibility in GSA's space acquisition and capital planning programs. Reducing the number of prospectuses that must be reviewed by the Committees will free up limited Committee resources and staff to concentrate on those larger construction, alteration, or leasing projects that might be of interest to the Committees or which have the most significant impact on agency programs and budgets.

We note that raising the thresholds does not preclude the Public Works Committees from requesting that a Federal agency submit prospectus information for a project below the prospectus level if the Committee feels that information would be useful for its oversight responsibilities. Likewise, while Congress would still be free to enact line item appropriations for specific projects below the prospectus threshold amounts, there would be fewer instances where GSA would need to submit, and authorizing and appropriating Committees would need to review and approve, formal reprogramming/transfer requests or project escalation requests.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this proposed bill.

Sincerely,

Stephen A. Perry
Administrator

Enclosure

107TH CONGRESS
2nd SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

A BILL

To amend the Public Buildings Act of 1959, as amended, to raise certain prospectus submission thresholds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. The Public Buildings Act of 1959, as amended (40 U.S.C. § 601 *et seq.*), is amended as follows –

(a) in subsection 4(b) (40 U.S.C. §603(b)) by striking "$1,500,000" and inserting in lieu thereof "$5,000,000"; and

(b)(1) in subsection 7(a) (40 U.S.C. §606(a)) by striking "$1,500,000" in the first sentence and inserting in lieu thereof "$5,000,000";

(2) by striking "$1,500,000" in the second sentence and inserting in lieu thereof "$5,000,000"; and

(3) by striking "$750,000" in the third sentence and inserting in lieu thereof "$2,500,000".

107TH CONGRESS
2nd SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

A BILL

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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(b)(1) in subsection 7(a) (40 U.S.C. §606(a)) by striking "$1,500,000" in the first sentence and inserting in lieu thereof "$5,000,000";

(2) by striking "$1,500,000" in the second sentence and inserting in lieu thereof "$5,000,000"; and

(3) by striking "$750,000" in the third sentence and inserting in lieu thereof "$2,500,000".

SECTION-BY-SECTION ANALYSIS

Section 1(a) of the bill would amend section 4(b) of the Public Buildings Act of 1959, as amended, to raise from $1.5 million (as adjusted by a composite index of construction costs) to $5 million (as similarly adjusted) the threshold under which GSA could alter a public building without seeking Committee approval.

Subsection 1(b) of the bill would amend section 7(a) of the Act to raise, from the current threshold of $1.5 million (as adjusted by a composite index of construction costs) to $5 million (as adjusted), the thresholds for public building construction, alteration, or acquisition projects. Congress would no longer be barred from appropriating funds for public building construction, alteration or acquisition projects over $1.5 (as adjusted) without first obtaining formal resolutions of approval from the House and Senate Public Works Committees. Such approval resolutions would still be required for new constructions projects, building alterations, or acquisitions over $5 million (as adjusted).

Similarly, subsection 1(b)(2) would raise from $1.5 million to $5 million (as adjusted) the threshold for lease acquisitions requiring Committee approval.

Subsection 1(b)(3) raises from $750,000 to $2.5 million (as adjusted) the Committee approval threshold for projects involving paying for alterations to leased property.

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Oscar Gonzalez/OMB /EOP@EOP [OMB] <Oscar Gonzalez>
Sent:	2/14/2002 11:57:52 AM
Subject:	: Re: LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds
Attachments:	P_ATAH5003_WHO.TXT_1.doc; P_ATAH5003_WHO.TXT_2.doc; P_ATAH5003_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-FEB-2002 16:57:52.00
SUBJECT:: Re: LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Oscar Gonzalez (CN=Oscar Gonzalez/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel's office has no objection.

Patrick J. Bumatay
02/14/2002 04:23:59 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 02/14/2002 04:24 PM ----------

From: Oscar Gonzalez on 02/14/2002 04:22:00 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM OGG198 - - General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds

Please read "COMMENTS" field below

Please respond by noon Thursday, February 21st.

LRM ID: OGG198
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 14, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution

below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: Oscar Gonzalez
PHONE: (202)395-3923 FAX: (202)395-3109
SUBJECT: General Services Administration Draft Bill to Raise
Certain Prospectus Submission Thresholds

DEADLINE: 12:00 P.M. Thursday, February 21, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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Robert Marsh
Christine Ciccone
Kristen Silverberg
Joel D. Kaplan
OVP LRM
WHGC LRM
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Kristine Simmons
Richard E. Green
James J. Jukes
LRM ID: OGG198 SUBJECT: General Services Administration Draft Bill to Raise Certain Prospectus Submission Thresholds
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MEMORANDUM

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Please include the LRM number shown above, and the subject shown below.

TO: Oscar Gonzalez Phone: 395-3923 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-4607

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Rebecca A. Beynon/OMB/EOP@EOP
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Stephen S. McMillin/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
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Lourdes M. Lamela/OMB/EOP@EOP
Steven M. Mertens/OMB/EOP@EOP
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Richard E. Green/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
Robert Marsh/WHO/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
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OVP LRM
WHGC LRM
NEC LRM
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The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Transmitted herewith for referral to the appropriate committee is a draft bill "to amend the Public Buildings Act of 1959, as amended, to raise certain prospectus submission thresholds, and for other purposes".

This draft bill proposes to raise the dollar thresholds above which the General Services Administration (GSA) and other Federal agencies would have to submit prospectuses to the Public Works Committees. By raising the thresholds, Congress can greatly reduce the number of prospectuses GSA and others have to submit for Congressional review before constructing, altering, leasing or repairing public buildings and leased space.

Reducing the number of prospectus reports that must be prepared, and which must be reviewed and approved by the Committees, will reduce prospectus preparation costs and speed up needed construction, alteration and leasing actions, and provide added flexibility in GSA's space acquisition and capital planning programs. Reducing the number of prospectuses that must be reviewed by the Committees will free up limited Committee resources and staff to concentrate on those larger construction, alteration, or leasing projects that might be of interest to the Committees or which have the most significant impact on agency programs and budgets.

We note that raising the thresholds does not preclude the Public Works Committees from requesting that a Federal agency submit prospectus information for a project below the prospectus level if the Committee feels that information would be useful for its oversight responsibilities. Likewise, while Congress would still be free to enact line item appropriations for specific projects below the prospectus threshold amounts, there would be fewer instances where GSA would need to submit, and authorizing and appropriating Committees would need to review and approve, formal reprogramming/transfer requests or project escalation requests.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this proposed bill.

Sincerely,

Stephen A. Perry
Administrator

Enclosure

107TH CONGRESS
2nd SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

A BILL

To amend the Public Buildings Act of 1959, as amended, to raise certain prospectus submission thresholds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. The Public Buildings Act of 1959, as amended (40 U.S.C. § 601 *et seq.*), is amended as follows –

(a) in subsection 4(b) (40 U.S.C. §603(b)) by striking "$1,500,000" and inserting in lieu thereof "$5,000,000"; and

(b)(1) in subsection 7(a) (40 U.S.C. §606(a)) by striking "$1,500,000" in the first sentence and inserting in lieu thereof "$5,000,000";

(2) by striking "$1,500,000" in the second sentence and inserting in lieu thereof "$5,000,000"; and

(3) by striking "$750,000" in the third sentence and inserting in lieu thereof "$2,500,000".

107TH CONGRESS
2nd SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

A BILL

To amend the Public Buildings Act of 1959, as amended, to raise certain prospectus submission thresholds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. The Public Buildings Act of 1959, as amended (40 U.S.C. § 601 *et seq.*), is amended as follows –

(a) in subsection 4(b) (40 U.S.C. §603(b)) by striking "$1,500,000" and inserting in lieu thereof "$5,000,000"; and

(b)(1) in subsection 7(a) (40 U.S.C. §606(a)) by striking "$1,500,000" in the first sentence and inserting in lieu thereof "$5,000,000";

(2) by striking "$1,500,000" in the second sentence and inserting in lieu thereof "$5,000,000"; and

(3) by striking "$750,000" in the third sentence and inserting in lieu thereof "$2,500,000".

SECTION-BY-SECTION ANALYSIS

Section 1(a) of the bill would amend section 4(b) of the Public Buildings Act of 1959, as amended, to raise from $1.5 million (as adjusted by a composite index of construction costs) to $5 million (as similarly adjusted) the threshold under which GSA could alter a public building without seeking Committee approval.

Subsection 1(b) of the bill would amend section 7(a) of the Act to raise, from the current threshold of $1.5 million (as adjusted by a composite index of construction costs) to $5 million (as adjusted), the thresholds for public building construction, alteration, or acquisition projects. Congress would no longer be barred from appropriating funds for public building construction, alteration or acquisition projects over $1.5 (as adjusted) without first obtaining formal resolutions of approval from the House and Senate Public Works Committees. Such approval resolutions would still be required for new constructions projects, building alterations, or acquisitions over $5 million (as adjusted).

Similarly, subsection 1(b)(2) would raise from $1.5 million to $5 million (as adjusted) the threshold for lease acquisitions requiring Committee approval.

Subsection 1(b)(3) raises from $750,000 to $2.5 million (as adjusted) the Committee approval threshold for projects involving paying for alterations to leased property.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kimberly A. Douglass/WHO/EOP@EOP [WHO] <Kimberly A. Douglass>
Sent: 2/14/2002 1:08:45 PM
Subject: : Re: political expenses

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CREATION DATE/TIME:14-FEB-2002 18:08:45.00
SUBJECT:: Re: political expenses
TO:Kimberly A. Douglass (CN=Kimberly A. Douglass/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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why have they increased?

Kimberly A. Douglass 02/14/2002 06:01:30 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: political expenses

This should give you a good idea of the average costs. However, according to Jacque in FMD, expenses for trips after September 11th (eg. Orlando) have increased significantly. So, we may want to consider increasing the deposit request. I can give you an update on trip costs as soon as the bills are processed for the trip summaries you signed today.

Let me know if you need more info.

Kim

---------- Forwarded by Kimberly A. Douglass/WHO/EOP on 02/14/2002 05:58 PM ----------

Jacque J. Hightower
02/14/2002 05:54:54 PM
Record Type: Record

To: Kimberly A. Douglass/WHO/EOP@EOP
cc:
bcc:
Subject: Re: political expenses

Kim,

Based on the political percentages assigned to the perspective trips, the following identifies the total amount billed:

LOCATION TOTAL

Little Rock, AK $11,143.58

Birmingham, AL $8,708.81

Denver, CO $9,503.23

Albuquerque, NM $3,763.12

Orlando, FL $23,878.45

Call me if you have any questions.

Jacque

Kimberly A. Douglass 02/14/2002 04:07:35 PM

Record Type: Record

To: Jacque J. Hightower/OA/EOP@EOP
cc: Andris Kalnins/OA/EOP@EOP
Subject: political expenses

Hi, Jacque

As we just discussed, I am trying to find out the political expense totals for the four mixed trips that occurred in 2001 (calendar year.) I need to provide this info to Counsel by COB today. Thanks!!

Kim

From: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
To: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;McMahon, Lori <Lori.McMahon@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Comstock, Barbara <Barbara.Comstock@usdoj.gov>;Koebele, Steve <Steve.Koebele@usdoj.gov>;Ho, James <James.Ho@usdoj.gov>;Goodling, Monica <Monica.Goodling@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>
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General Judicial Articles

Race Issues Stir Debate Over Bush's Judicial Pick; Mississippian's Past Scrutinized

By Naftali Bendavid
The Chicago Tribune
Wednesday, February 13, 2002

Despite the turbulence that inevitably surrounds judicial nominees, President Bush's selections have generally fared well, with none generating the level of controversy raised over nominees such as Robert Bork or Clarence Thomas.

That may be about to change. Bush's attempt to elevate Mississippi federal Judge Charles

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Pickering to the 5th Circuit Court of Appeals is generating serious resistance. In the process, the nomination has awakened some long-dormant issues from the bitter fights of the civil rights era. Pickering, 64, came of age in Mississippi's racially explosive 1950s and 1960s, and opponents say his career shows a history of racial insensitivity. He wrote an article in law school explaining how to strengthen a state statute against interracial marriage, he voted as a state senator to fund the notoriously segregationist Sovereignty Commission and he intervened to reduce the sentence of a cross-burner.

The Congressional Black Caucus and the Mississippi NAACP oppose Pickering's nomination. Asked if the judge is a racist, L.A. Warren, an official with the Mississippi NAACP, responded: "If it walks like a duck and it quacks like a duck, it appears to be a duck."

But supporters, including some of the state's black leaders, describe Pickering as an entirely different person. They say he has helped the state shed its racist past by, for example, testifying against a grand wizard of the Ku Klux Klan in the 1960s at great peril to himself.

W.O. "Chet" Dillard, a lifelong friend of Pickering, said he and Pickering fought for such causes as putting blacks on juries when the two were local prosecutors in the 1960s.

"We almost had to stand back-to-back to protect each other in Jones County," Dillard said. "He was from Jones County, and it was difficult for him to take a stand that was unpopular among his friends and neighbors and tell them, 'This is the law.'"

The Senate Judiciary Committee may vote by the end of the month on the nomination of Pickering, who is extraordinarily well-connected. He is a close friend of Senate Minority Leader Trent Lott (R-Miss.) and the father of Rep. Charles "Chip" Pickering Jr. (R-Miss.).

The debate is sharpened because Pickering is a candidate for the 5th Circuit Court of Appeals, which covers Mississippi, Texas and Louisiana, an area that is a historic civil rights battleground. In the 1960s, 5th Circuit judges such as John Minor Wisdom surprised the nation with decisions ordering the desegregation of the University of Mississippi and other institutions.

But the court has swung to the conservative side in recent years. It covers an area with a high poverty rate and many minorities, and liberals are anxious to prevent it from becoming more conservative.

This helps explain why the Pickering nomination is shaping up as Bush's first real judicial battle.

Pickering's opponents reel off a litany of questionable actions: As a law student in 1959, Pickering wrote a law review article suggesting ways for the state to close a loophole in its law against interracial marriage. The Legislature acted on his suggestions the following year, passing an amendment to close the loophole.

Critics also fault Pickering for going into private practice with Carroll Gartin, an avowed segregationist. Pickering's supporters say Gartin was a prominent Mississippi figure and that his

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positions were hardly unusual.

The Sovereignty Commission represents another bleak chapter in Mississippi's past, and critics say Pickering was associated with that group. The commission was created by the state to fight the U.S. Supreme Court's desegregation orders, and Pickering voted to fund it twice when he was in the state Legislature.

Pickering has denied any substantial association with the commission. "I never had any contact with that agency, and I had disagreement with the purposes and the methods and some of the approaches that they took," Pickering told the Senate in 1990. His opponents dispute this, saying he had more contact than he admits, such as seeking information on a commission investigation.

More broadly, some of Pickering's defenders argue that these events took place 35 years ago or more and belong to a distant past. But a more recent episode could prove the most controversial for Pickering.

In 1994, the judge presided over a trial of three people accused of burning a cross on the lawn of an interracial couple. Two pleaded guilty and received relatively light penalties; the third went to trial and was convicted, receiving a 5-year mandatory sentence.

Saying he was disturbed by the 5-year sentence and the disparity in the punishments, Pickering personally contacted the Justice Department to express his frustration, possibly violating judicial ethics rules. He made his displeasure clear to prosecutors, who dropped a key charge against the cross-burner--a virtually unheard-of action, because the man already had been convicted.

At a recent Senate Judiciary Committee hearing, Pickering defended his action, saying he had made clear his disapproval of the defendants' actions in court. "I described the cross-burning as a despicable act," Pickering told the senators. "I observed that the act was drunk young men doing a dastardly deed that they should not have had in their heart."

Pickering's opponents were not mollified. "He is a throwback to a pretty shameful episode in our nation's history," said Nan Aron, president of the Alliance for Justice, adding that Pickering's rulings have been hostile to civil rights.

But his friends say they do not recognize Pickering in this portrait. Among the judge's backers are prominent African-Americans including James Charles Evers, brother of slain civil rights leader Medgar Evers, and Henry Wingate, the first black federal judge in Mississippi.

Pickering showed flashes of courage during the civil rights era, supporters say, and in his recent career he has shown sensitivity to minority concerns.

Pickering sent his children to public schools when many whites were abandoning them for all-white private schools, these supporters say. In 1967, Pickering testified against Ku Klux Klan imperial wizard Samuel Bowers in a case involving the murder of civil rights worker Vernon Dahmer.

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The judge's backers cite other actions: He hired the first black staffer in the Mississippi Republican Party, for example, and he helped establish an Institute for Racial Reconciliation at the University of Mississippi.

"He does happen to be white and he does happen to be a Baptist," said Dillard, his old friend. "But you couldn't find any person that I think is more morally conscientious about following the laws as set forth by the United States Supreme Court."

The Senate Judiciary Committee's vote on Pickering could be close, and the rhetoric has become fierce.

"We hope to God that he doesn't make it," Warren said. "We know his past."

Bush Puts Abortion Card Back Into Play; President Starts Preparing for 2004

By Tom Teepen
Dayton Daily News
Tuesday, February 12, 2002

Abortion is back. not that it ever exactly disappeared as a political issue, but it did lapse into an extended period of blessed quiet, like a bear hibernating. Alas, a grizzly.

Anti-abortion leaders, aware that he was on their side, let George W. Bush campaign for the presidency without having to make the repeated and histrionic obeisance to them that they had demanded of previous Republican candidates, to the detriment, on balance, of their campaigns. The silence gave Al Gore little to make hay of and, in kind with the rest of his flailing campaign, he never figured out how to work the issue to his advantage without seeming to cry fire where there were no flames. (Democrats must be groaning at the recent indications that Gore is ramping up for 2004.)

Bush was smart enough not to characterize his new administration right off with a lot of anti-abortion maneuvering. Now, however, the administration is slipping firmly into anti-abortion gear.

The president recently favored abortion opponents, rallying on the anniversary of the Supreme Court ruling that established women's abortion rights, with a Reaganesque, go-get-'em statement of support.

The White House has put forward judicial nominees who are committed opponents of lawful abortion, such as federal district Judge Charles Pickering, the recovering (one hopes) racist who Bush wants to jump up to the U.S. Fifth Circuit Court of Appeals.

The Justice Department has intervened in an Ohio case to argue for a state ban on so-called partial-birth abortions - a term without medical meaning invented by anti-abortion groups to

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demonize procedures that are rare and usually resorted to only in medically desperate circumstances.

Anti-abortion groups have been trying for years to use this side issue as an oblique way to get at all abortions. A federal district court, following the lead of other courts in reviewing similar laws, ruled that the Ohio statute was overly restrictive. The administration wants the law upheld on appeal.

And Secretary Tommy Thompson of the Department of Health and Human Services recently ruled that, for the purposes of the Children's Health Insurance Program, enacted in 1997, fetuses are 'children.' The program provides medical coverage to children whose families are needy but not poor enough to qualify for Medicaid.

The change was necessary, Thompson said, to provide prenatal care to women.

Bunk.

The goal is worthy, but there were a variety of other ways - from similar fiat to legislation - to accomplish it without pouring a little bureaucratic acid on the foundation of the 1973 Roe v. Wade decision.

Thompson announced the move - to cheers - at the annual Conservative Political Action Conference. If you think the delegates were actually cheering the expansion of a federal program, welcome to Oz.

White House analysts have concluded that the usual Christian fundamentalist turnout for Republicans wasn't as strong for Bush as it should have been, and the president has opportunities, as well, to significantly increase support among Catholics.

Gore isn't the only player from 2002 already revving up for '04.

Pennsylvania Republican's Vote May Be Key

By Ana Radelat
Gannett News Service
Tuesday, February 12, 2002

With Democrats likely to vote against the candidacy of Judge Charles Pickering for a seat on the 5th U.S. Circuit Court of Appeals, a Republican from Pennsylvania may hold the swing vote on the nomination.

While most of the nine Republican members of the Senate Judiciary Committee lauded 64-year-old Pickering's record as a U.S. District judge, state senator, and a prosecuting attorney in Jones County, Sen. Arlen Specter, was skeptical of the judge's defense of some of his rulings.

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"I don't think its schizophrenia, but it's a little ambivalent at least," Specter said.

The Pennsylvania lawmaker also rebuked Pickering for criticisms he had made of the Voting Rights Act, a key federal civil rights law. "It's curious to me that you want to be a federal judge because here you are saying the courts have no business in these cases," Specter said.

Specter's vote may not be needed to defeat Pickering if all 10 Democrats on the Judiciary Committee decide to vote against the judge's nomination.

None of the panel's members, no Democrat or Republican, has revealed how they will vote when the committee meets again to decide Pickering's future, an event that probably will occur at the end of this month at the earliest.

But speculation over Specter's vote is keenest among those who oppose and support Pickering's candidacy.

A former prosecutor known for his tough stance on crime and his strong defense of civil and women's rights, Specter may muster the courage to defy Senate Republican Leader Trent Lott. The Mississippi senator, a friend and political ally of the judge, pressed the White House to nominate Pickering for a seat on the appeals court that hears cases from Mississippi, Louisiana and Texas.

But in the aftermath of last week's contentious Senate hearing on his candidacy, Lott couldn't predict whether Pickering would win confirmation.

"I think it's going to be close, but I certainly hope he does. He deserves it," Lott said on "Fox News Sunday." "This is a very unfair besmirching of a good man's record."

Lott also said he did not think the White House was abandoning Pickering's candidacy.

Kate Michelman, president of the National Abortion & Reproductive Rights Action League said she thinks Lott is under a lot of pressure to try to sway at least a couple of Democratic members of the panel and keep Specter from crossing the line. Her organization is one of dozens opposing Pickering's nomination.

"I think he underestimated the difficulty Pickering's record presents," Michelman said.

A report to be released Tuesday from the Citizens' Commission on Civil Rights, a bipartisan group of former government officials and civic leaders, called the Bush administration's selection of judicial nominees -- especially Pickering -- part of a continuous erosion of the nation's civil rights laws.

The groups lined up against Pickering, which run the gamut from the National Association for the Advancement of Colored People to the American Association of University Women, hope Pickering's nomination is buried by an unfavorable vote in the Judiciary Committee and the full

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Senate never has a chance to consider his candidacy.

"I'd be very difficult to defeat him on the Senate floor given Lott's power," Michelman said.

On Feb. 4, in his second appearance before the panel, Specter and Democratic members of the Senate Judiciary Committee grilled Pickering for more than four hours.

The embattled nominee was accused of improper conduct in presiding over a 1994 cross-burning case in Jones County, of writing an article in 1959 on Mississippi's law on interracial marriages that provided a blueprint for correcting a flaw in the statute and of voting in the Mississippi Senate in favor of spending bills that financed the anti-segregationist Sovereignty Commission.

Pickering also was criticized for becoming the law partner of a former state official who was an avowed segregationist and for calling lawyers in Mississippi asking them to write letters in support of his candidacy. Sen. Russ Feingold, D-Wis., said Pickering's request for recommendation letters -- which the judge collected in his chambers and faxed to Washington -- "creates an appearance of coercion" among the lawyers who bring cases before him.

In addition, several Democrats, including Sen. Dianne Feinstein, D-Calif., accused Pickering of being "outside the mainstream" of legal though on civil and women's rights.

Pickering objected to the characterization.

"I do not think that my activities in all of the things I've done in my life are outside the mainstream," Pickering told the panel. "They indicate someone who has been concerned about these rights, and I have taken action to protect these rights."

Pickering's Republican supporters say the judge had demonstrated "moral courage" in prosecuting Ku Klux Klan members and prodding Mississippi to abandon its segregationist past.

Pickering Expected to Lose Judiciary Committee Vote

By Paul Kane
Roll Call
Thursday, February 14, 2002

Despite increasing threats of retaliation from Republicans, Senate Democrats have dug in their heels to fight a controversial judicial nomination that has further poisoned the already strained relations between the two sides.

Resistance to U.S. District Judge Charles Pickering's elevation to the Fifth Circuit Court of Appeals has only grown among Democrats on the Judiciary Committee since his unusual second hearing last week, according to interviews with activists, aides and Senators.

With a one-vote edge on the panel, the 10 Judiciary Democrats have the power to sink the

Pickering nomination, which has become a top priority for Minority Leader Trent Lott (R-Miss.), a close Pickering friend for 30 years.

Written follow-up questions to the Mississippi judge are due to be sent off today, but one Judiciary Democrat said his side is "ready to vote" and doesn't need any more information.

Asked if Pickering could do more to help his cause, Sen. Dick Durbin (D-Ill.) said, "Idon't think so. ... He had ample opportunity to express himself."

Sen. Maria Cantwell (D-Wash.), expressing concerns about his rulings on privacy, said she is "not likely" to vote for Pickering.

Sen. Russ Feingold (D-Wis.) said he had grave concerns about Pickering's efforts to round up letters of support from home-state interests, questioning whether it was improper because some of those same people may have cases before his federal court.

And Sen. Joseph Biden (D-Del.) said he was not certain of Pickering's "veracity" in responding to questions posed by Sen. John Edwards (D-N.C.) about a 1994 case in which the judge contacted Justice Department officials about sentencing.

Although no Democrat would officially declare Pickering's nomination dead, aides and Senators privately said it was unlikely Pickering would receive the single Democratic vote he needs to get out of committee. That sentiment was backed up by Majority Leader Thomas Daschle's (D-S.D.) decision to take the unusual step of announcing his opposition to Pickering in two nationally televised interviews Sunday and Monday before Judiciary had rendered its verdict.

GOP sources said Lott is personally incensed about the opposition to Pickering, which has been laced with racially tinged allegations regarding Mississippi's civil rights era. Lott is particularly irate at Daschle for taking such a public stance against his home-state friend.

"Senate Democrats haven't really thought through the consequences of opposing this nominee. This is a political boomerang that's going to come back at them very hard," said one senior GOP aide.

Lott has declined to spell out what retribution he will mete out for knocking down Pickering's appellate court bid, but he's made clear he will seek revenge. "It certainly will not be a positive thing for relations around here," he said this week.

Another senior GOP aide said Republicans have grown so irate over Pickering's treatment and the perceived lack of response from Judiciary Chairman Patrick Leahy (D-Vt.) to take up more circuit court nominees that many Senators want to shut down all legislative activity on the floor.

"There has been serious talk of just shutting down the whole damn Senate for however long it takes," the aide said.

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Republican Policy Committee Chairman Larry Craig (Idaho) said that Democrats, at the behest of left-wing interest groups, have acted in a "strident, openly partisan" manner that will result in a shot back at them. "That's a game played that does have repercussions in the end," he said, predicting that Pickering's defeat could lead to "the inability of the Senate to function."

"You have to operate with 60-plus votes,"he said, an indirect threat to block any moves to legislation on the Senate floor, which requires at least 60 votes. Last fall, in an attempt to confirm more GOP-nominated judges, Republicans blocked all appropriations bills for several weeks.

Unbowed by the threats, Democrats are ready for the fights. "We'll be reminding them that this is better treatment than many Democratic nominees who never got a hearing, who never got a vote," said one Democratic aide.

Echoing statements by Leahy and Daschle, Durbin said that Democrats have every intention of holding hearings and votes on controversial nominees. They will not take a "death-through-inaction" approach to nominees, he said, something Democrats accused Senate Republicans of doing with Clinton administration nominees in the 1990s.

If all 10 Judiciary Democrats oppose a nominee, Durbin said the message will be sent to the White House and the nominee, giving him or her the chance to back out before actually being rejected. "We should make every effort to be sensitive to the nominees. If we are not going to support them, then they should be given every opportunity to make a final decision," he said.

Republicans are particularly bitter about a potential committee defeat on Pickering, and any future judicial battles, because they know they can win a floor vote on the Mississippi judge. They expect to hold all 49 of their votes, and at least two Senate Democrats, Zell Miller (Ga.) and Fritz Hollings (S.C.), are willing to vote for Pickering if his nomination ever gets out of Judiciary and onto the floor.

Miller said his main standard for a judge would be if the two home-state Senators support the nominee, which in this case both Lott and Sen. Thad Cochran (R-Miss.) do.

Hollings, meanwhile, noted that the most salacious charges concern the judge's activities in the 1960s. "Iknow all of these charges they bring up, but I'll still vote for him. They haven't brought up anything recent. On the contrary, I think he's a fine judge," he said.

Hollings dismissed allegations that Pickering had ties to segregationists in Mississippi in the civil rights era and suggested that a high standard such as that might disqualify a few people from serving in the Senate.

"We've got leaders in the Senate that used to be members of the Klan," Hollings said, an apparent shot at Appropriations Chairman Robert Byrd's (D-W.Va.) past membership in the Ku Klux Klan more than 50 years ago.

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Republicans are particularly concerned about what a potential defeat in committee for Pickering will mean for future appellate court nominees, such as Miguel Estrada and Jeffrey Sutton, who are younger, more ideologically conservative and potential Supreme Court nominees in the future.

All 10 Judiciary Democrats fall within the liberal wing of the party on social issues. At least three - Biden, Edwards and Feingold - are considering presidential bids and would need the support of interest groups such as the NAACP and the National Abortion and Reproductive Rights Action League, both of which oppose Pickering.

Biden said he was surprised to receive calls from his friends to put in good words for Pickering, who has been supported by Dicky Scruggs, the nation's leading anti-tobacco trial lawyer (and Lott's brother-in-law), and Charles Evers, the brother of slain civil rights activist Medgar Evers, among others.

"A lot of people I Respect - people that aren't in politics - have called to say this guy's a good guy. I still have an open mind on this," Biden said.

But Republicans are taking a believe-it-when-we-see-it approach, doubtful that any Democrat will cross the key liberal constituencies opposed to Pickering.

"Unless there's going to be some Democrat that's going to look beyond the rhetoric that's being put out by the civil rights lobby, it's going to be pretty tough to get [Pickering] out of committee," said Sen. Chuck Grassley (R-Iowa), a senior Judiciary member.

Hawaii's Two U.S. Senators Approve Clifton Nomination

The Associated Press
Wednesday, February 13, 2002

Hawaii's two Democratic U.S. senators have approved the nomination of Honolulu attorney Richard Clifton to the 9th U.S. Circuit Court of Appeals.

Sen. Daniel Inouye officially notified the Senate Judiciary Committee last week that he would allow the nomination of Clifton, counsel for the Hawaii Republican Party, to proceed, The Honolulu Advertiser reported from Washington. Sen. Daniel Akaka notified the committee on Monday. The committee has yet to schedule a hearing on the Clifton nomination.

President Bush nominated Clifton in June, but the nomination stalled after the two Hawaii senators refused to approve Bush's choice because they were not involved in the selection.

The Clinton administration had nominated Honolulu attorney James Duffy for the position, but the Senate, then led by Republicans, never acted on it.

Courts: Enviros Question Appellate Court Nominee's Background

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By Brian Stempeck
Greenwire
Thursday, February 14, 2002

With the zeal normally reserved for Supreme Court nominations, environmental and other activist groups are attacking the records of appellate court nominees. Though a great deal of attention has been paid to the civil rights-related furor surrounding Judge Charles Pickering, the Bush administration's pick for the Fifth Circuit Court of Appeals, conservation groups are trying to shift the spotlight to controversial environmental decisions made by another nominee, Judge D. Brooks Smith, nominated to the Third Circuit.

In a letter sent at the beginning of the month, a coalition of 27 environmental groups including the Earthjustice Legal Defense Fund, Defenders of Wildlife, the Alliance for Justice and the Community Rights Counsel called for the Judiciary Committee to investigate the track record of Smith. The groups say the Pennsylvania District Court judge has a history of ruling in favor of polluters and that Smith took all-expenses paid trips courtesy of corporations and special interests. But one of the groups that sponsored the judge's trips -- and some environmentalists themselves -- say the trips were in fact legitimate judicial seminars.

SMITH'S ENVIRONMENTAL RECORD

In the letter to the Judiciary Committee dated Feb. 1, the coalition identified four "anti-environmental rulings" authored by Judge Smith, including decisions related to pollution settlements, the takings clause and toxic dumping.

The groups claim Smith accepted a biased plea bargain from Action Coal, Inc., a Pennsylvania coal mining company that illegally dumped acid mine drainage into a nearby stream. "Smith penalized the company only $50,000 for dumping, just one percent of the profit realized," the groups said, referring to the $5 million the company saved by not treating the waste instead. Action Coal has since disputed the amount it saved, however, said Glenn Sugameli of Earthjustice.

But Smith's decision was only the federal side of the case, said Ted Kopas, a spokesman for the Pennsylvania Department of Environmental Quality. At the state level, Action Coal was forced to pay the "largest civil penalty in the history of Pennsylvania mining," said Kopas, setting up a trust fund to "ensure perpetual treatment of discharges on Action mining sites." Action Coal was forced to pay $625,000 to the state, he said. "Certainly we were satisfied with how we settled the situation. The watershed is in better health today than it has been in years."

The environmental groups also mentioned a district court case, Wicker v. Conrail in which they say Smith unlawfully dismissed claims from railroad employees who had been exposed to toxic waste. "A three-judge Third Circuit panel that included two Reagan appointees unanimously reversed Judge Smith," the groups said in the letter.

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Other cases cited included: o Unity Real Estate v. Hudson, which the groups say "strongly suggests that these property rights extremists would find a sympathetic ear in Judge Smith."

* A case related to Wicker where Smith excluded testimony from a pathologist who felt toxic waste was responsible for one employee's death.

Land and property rights advocates contacted had no comment regarding Smith's background or the cases involved. Justice Department officials did not return phone calls.

"Environmental groups don't usually weigh in with judicial concerns," said Sugameli of Earthjustice. Of 34 judges confirmed under this administration, and 56 pending nominations, environmental groups have only raised concerns with Smith, Pickering and one other judge, he said. "Unfortunately the current crop seems to include a number of judges outside the mainstream." Smith's positions in particular are "much more extreme than anything the Supreme Court or any court has ever said." The letter is "technically not a position of opposition," he added, but is a call to investigate Smith's background further.

The groups are also trying to stress that "lower court nominations can be as important as Supreme Court nominations," said Sugameli. Because the high court typically takes less than 80 cases a year, "the vast majority of decisions are made by circuit courts," he said.

JUDICIAL JUNKETS

The environmental coalition was also critical of the trips it says Smith took, trips sponsored by corporations and special interest groups. According to the Community Rights Counsel, Smith took 12 trips between 1992 and 2000. Doug Kendell of CRC called him "one of the most junketed federal judges in America," and the groups cite trips to "luxury resorts and dude ranches."

But the Foundation for Research on Economics and the Environment (FREE), one of the groups sponsoring the trips for federal judges says CRC has misrepresented what are valuable seminars on environmental economics. Smith attended three FREE seminars in Montana between 1996 and 1998, said Doug Geddes, FREE program director, but "for those folks to imply that this is some sort of opportunity for the far right to come talk to judges is just nonsense."

"We are accused of holding conferences at 'luxury' resorts," FREE said on its website in response to CRC criticisms. "Have you ever been to or spoken with representatives of our $110 a night conference facility, the Gallatin Gateway Inn?" CRC publicizes "a distorted and indeed dishonest caricature of FREE's environmental economics and risk analysis seminar series for federal judges," FREE says.

In fact, members of some of the environmental groups criticizing Smith's nomination have even attended FREE seminars themselves. "Over the last twenty years I have attended several FREE programs, including a seminar for federal judges where I made a presentation," said Hank Fischer, former Northern Rockies Representative for Defenders of Wildlife, in a letter to FREE.

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"I have never attended a FREE program that didn't feature a full array of viewpoints," he said. "For instance, at the judges seminar where I gave my presentation, the judges also heard from Michael Bean of Environmental Defense (one of the nations most respected endangered species experts) and Doug Honnold of Earth Justice (one of the nations leading environmental litigants)."

Nevertheless, with Sen. Russ Feingold (D-Wis.) -- who co-sponsored a bill outlawing judicial junkets with Sen. John Kerry (D-Mass.) -- on the Judiciary Committee, there will likely be plenty of interest in Smith's background, said Sugameli. A committee source said that although no date has yet been set for a hearing on Smith, "it's likely that his record on environmental issues and all-expense paid trips will come up." No senators in particular have yet expressed interest in probing Smith's background, the source said, but Sen. Maria Cantwell (D-Wash.) may take an interest.

Supporters of Smith's nomination, including Sen. Rick Santorum (R-Penn.) had no comment on the environmental groups' allegations.

Pickering's Fate in Hands of 'Undecideds'

By James Brosnan
The Commercial Appeal
Wednesday, February 13, 2002

A majority of Democrats on the Senate Judiciary Committee said Tuesday they remain undecided about whether to confirm U.S. Dist. Judge Charles Pickering of Mississippi to the Fifth U.S. Circuit Court of Appeals.

Committee chairman Patrick Leahy (D-Vt.) said Pickering probably added to their concerns during his four-plus hours of testimony before the committee Thursday, but he has not polled the members and has not decided when to schedule a vote. Pickering, 65, of Laurel, Miss., has come under fire from civil rights, pro-choice and African-American groups. Pickering needs one of the 10 Democrats on the committee to support his confirmation if he can get all nine Republicans.

"Obviously they (the Democrats) control the committee," said Sen. Thad Cochran (R-Miss.). I don't know the extent to which they're going to enforce discipline on all their members."

Senate Majority Leader Tom Daschle (D-S.D.) closed one door Tuesday when he said he would not allow a full Senate vote on Pickering if he doesn't clear the Judiciary Committee. He will extend that privilege only on the President's Supreme Court nominees.

One committee Democrat, Maria Cantwell of Washington, said she is "not likely to support Pickering" because he would not say whether he personally believes there is a right of privacy implicit in the Constitution. That right of privacy was the basis of the Roe vs. Wade ruling striking down state laws prohibiting abortion.

Sen. Diane Feinstein (D-Calif.) also expressed concern about whether Pickering would follow precedent in abortion cases.

Senate Minority Leader Trent Lott (R-Miss.) said he believes Pickering still has a chance, even though he has been "unfairly besmirched."

"This is not about Charles Pickering. It's not even about me," said Lott.

"It's about, 'OK, we'll teach you that if you nominate any conservatives, people who are personally pro-life, even though they comply with what the Supreme Court has ruled, we're going to give you a hard time.'"

Leahy responded, "I don't care what someone's personal view on abortion is. That was only one question."

Sen. John Edwards (D-N.C.) said he has "very serious reservations" about Pickering's actions in a
cross-burning case to pressure the Department of Justice to drop one charge against a defendant.

Democrats Ted Kennedy of Massachusetts and Russ Feingold and Herbert Kohl of Wisconsin also said they have concerns, but have not reached a conclusion.

Sen. Specter May Hold Judge's Fate; The Moderate Republican is Mum About His Vote on Charles Pickering's Appeal Court Nomination

By Ben Bryant
The Philadelphia Inquirer
Wednesday, February 13, 2002

Sen. Arlen Specter's support was key to the confirmations of Supreme Court Justice Clarence Thomas in 1991 and Attorney General John Ashcroft last year.

Now, the Pennsylvania Republican may be able to determine the fate of Charles W. Pickering Sr., the federal judge from Mississippi whom President Bush wants to fill a seat on the U.S. Court of Appeals for the Fifth Circuit.

And Specter is not tipping his hand.

Specter, one of the most liberal Republicans in the Senate, is the only Republican on the Judiciary Committee not to endorse the nomination of Pickering, who is a U.S. District Court judge for the Southern District of Mississippi. "He'll make up his mind when he makes up his mind," said Bill Reynolds, Specter's press secretary.

If Specter does not support Pickering, Republicans will need to attract two of the committee's 10 Democrats to send the nomination to the floor.

The situation indicates how much power Republicans lost last year when Sen. James M. Jeffords of Vermont left the party, swinging control of the upper house to the Democrats. Deprived of majorities on committees, Republicans are facing significant delays in moving Bush nominees through the Senate.

Adding to their problems is the high-stakes nature of appeals court nominations.

"A lot of the matters that don't make it to the Supreme Court get held up in the appeals courts," said Norm Ornstein, a congressional expert with the American Enterprise Institute in Washington. "Democrats want to have their say on who gets to sit on those benches."

Sen. Orrin G. Hatch of Utah, the ranking Republican on the Judiciary Committee, said Democrats were working hand in hand with "leftist groups" to scuttle all Bush nominees.

Thomas Mann, a Brookings Institution scholar in Washington, said there was a definite element of partisan warfare to the hearings, an aspect present since the 1987 scuttling of Robert Bork's nomination to the Supreme Court.

"This is about more than Charles Pickering," Mann said. "This is about Bush and the Democrats."

Specter's role is more complex. He has supported conservative nominees over his four terms in the Senate, drawing criticism from feminists over his skeptical questioning of Anita Hill, the law professor whose sexual-harassment allegations almost sank Thomas' appointment to the Supreme Court in 1991.

Specter's support was key in holding other moderate Republicans in line for Thomas. His seal of approval on Ashcroft had similar power last year, when liberal Democrats were assailing Bush's nominee for attorney general on issues of abortion rights and race. Ashcroft eventually prevailed with the support of all Republicans and several Democrats.

So what's holding Specter back from endorsing Pickering?

"Abortion is a very important issue to him," a Democratic staffer on the Judiciary Committee said. "He wants to be sure to preserve a woman's right to choose."

At Pickering's second confirmation hearing Thursday, Specter said he noticed a "curious ambivalence" toward reproductive rights and questions of sexual privacy in several of the judge's opinions.

At the hearing, Democrats suggested Pickering was too far off-center on minority and women's rights. A Republican said the Democrats treated the judge as if he were a criminal.

Thanks to their slim majority, Judiciary's 10 Democrats have enough votes to kill the Pickering

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nomination if all of them vote no.

But Republicans may have a Plan B, said a Republican Judiciary staffer who asked not to be identified. Although the staffer did not name Democratic senators being pursued by the GOP to support Pickering, an aide to a House Democrat said Sens. Dianne Feinstein (D., Calif.) and Russell D. Feingold (D., Wis.) were possible votes for the judge.

The vote will take place "probably in four to five weeks," a Judiciary spokesman said.

The committee can vote to send the nomination to the full Senate with a favorable or unfavorable recommendation. It can also report Pickering to the floor with no recommendation.

Or the full Senate can bring Pickering up for a vote by itself, discharging his nomination from Judiciary with a majority vote. To do that, Republicans would have to attract support across the aisle from conservative Democrats such as Zell Miller of Georgia and Ben Nelson of Nebraska.

And, in what may be a harder task, they would have to hold onto the moderate-to-liberal members of their own caucus - Specter and several other Northeastern senators.

Metairie Lawyer OK'd as U.S. District Judge

The Advocate
Tuesday, February 12, 2002

The U.S. Senate unanimously approved Jay Zainey of Metairie to be a U.S. District Court judge of the Eastern District of Louisiana on Monday.

After his nomination, Zainey withdrew his family's membership from a Jefferson Parish country club after questions were raised about whether it discriminates against black people. U.S. Rep. Billy Tauzin, R-Chackbay, and former Gov. Dave Treen supported Zainey's nomination. Zainey was Treen's campaign spokesman in 1999, when the former governor ran and lost against David Vitter to succeed Rep. Robert Livingston in Congress.

Zainey received a bachelor's degree from the University of New Orleans in 1973 and a law degree from LSU in 1975.

He served as president of the state bar from 1995-96. While he was president, the bar voted to changes its rules of conduct and bar lawyers from sending targeted solicitation letters for 30 days after an accident or disaster.

Zainey has served as an ad hoc judge in the First Parish Court and Juvenile Court in Jefferson Parish.

As a defense attorney, Zainey represented Frank Bedell, the bus driver implicated after his death in a bus crash on Mother's Day, 1999, which killed 22 people.

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Louisiana's federal Eastern District court is in New Orleans.

Civil Rights Panel Assails Bush Record

CNN.com
Tuesday, February 12, 2002

The Bush administration, backed by a conservative judiciary, is pursuing policies that will increasingly resegregate the United States, according to a new report issued by the Citizens' Commission on Civil Rights.

The commission, founded as a bipartisan body in 1982 to monitor federal policies, said in a 350-page report issued Tuesday that the country was witnessing a "judicial assault on civil rights," partly under cover of the war against terrorism.

"The Bush administration seems determined to pursue policies that will widen the gap between the haves and have-nots," said William Taylor, acting chair of the panel.

"We may awaken from our current preoccupation with national security to find ourselves a nation more divided, less equal, and therefore less secure, than before," he said.

Although President Bush has only been in office slightly more than a year, the report said the direction of his administration seemed "ominous," especially on the issue of judicial appointments.

"Fueled by an economic slowdown and the nation's ongoing war on terrorism, attention to civil rights issues, particularly those involving regulation and enforcement, has been almost nonexistent at a time when events demand just the opposite," the commission said.

It was particularly critical of what it called the judicial dismantling of affirmative action programs that had sought to give women and minorities more opportunities in employment and education to make up for past inequities.

"These decisions have reversed the progress of earlier years and led to a trend towards resegregating America," the report said.

It said this trend was reinforced by failures to apply fair housing laws and the collapse of federal programs designed to give poor people access to affordable housing outside of inner-city ghettos.

The Bush administration was spurring these developments by nominating conservatives opposed to using federal authority to protect civil rights to key positions, the report said.

While the federal government and state and local authorities have poured billions of dollars into urban sprawl, helping construct the infrastructure for expanding suburban developments, it has

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allowed inner cities to decay while failing to invest in mass transportation, it charged.

"The president came to office trumpeting a concept that he called 'compassionate conservatism.' In practice, after a year, we can see that it amounts to practical and policy tokenism. ... Compassionate conservatism is a sham," said Roger Wilkins, a professor of history and culture at George Mason University and a member of the commission.

Wilkins said Bush's budget, delivered to Congress last week, crippled job training and community development programs that were needed to help poor parents provide a stable environment in which their children could succeed.

In the criminal justice system, racial inequality was pervasive at all levels and growing, the report said.

"Our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased," it said.

"Blacks, Hispanics and other minorities are victimized by disproportionate targeting and unfair treatment by police and other front-line law enforcement officials; by racially skewed charging and plea bargaining decisions of prosecutors; by discriminatory sentencing practices; and by the failure of judges, elected officials and other criminal justice policy-makers to redress the inequities that become more glaring every day," the report said.

Op/Eds

So Much for the Truth; Democrats Distort Nominee's Record

The Daily Oklahoman
Wednesday, February 13, 2002

LIBERALS' scorched-earth strategy in dealing with President Bush's judicial nominations is well illustrated by the distortion job currently being done on U.S. District Judge Charles Pickering, Bush's choice to move up to the 5th U.S. Circuit Court of Appeals in New Orleans.

Pickering, 64, who has served as a district judge in Hattiesburg, Miss., for 11 years, is being attacked by civil rights and women's rights activists in a style more typical of the assaults made on nominees of presidents in their seventh or eighth year in office, not their second.

Detractors imply that Pickering is a racist because he worked to reduce the sentence of a man in a 1994 cross-burning case. They also don't like his opposition to abortion or his skeptical view of federal job-discrimination laws. For Democrats in the Senate who have slowed confirmations of Bush appointees to a trickle, this is red meat. And grossly unfair.

In fact, as a young lawyer Pickering testified against the imperial wizard of the Ku Klux Klan and worked with federal law enforcement to arrest klansmen. He also worked to heal racial

wounds in his community. As for abortion, he's never had to rule on the issue and has steadfastly maintained that a judge's role is to uphold the law.

Concerning the 1994 cross-burning case, Pickering intervened because of a huge disparity he saw in the sentences recommended for the various defendants.

He called the actions of one of the men a "drunken prank," but he also called it a "despicable act" deserving jail time. Still, he disagreed with a Justice Department civil rights lawyer about whether the man deserved a seven-year term when another defendant was recommended for only a minimal sentence.

Democrats claim Pickering acted improperly by meeting with prosecutors in the case and by going over their heads to the Justice Department. All we know is that Pickering is praised by people who know him and his work in Mississippi. Among his supporters is James Charles Evers, brother of slain civil rights leader Medgar Evers, who would know a racist if he saw one.

It seems to matter little to Democrats, who run the Senate by a one-vote margin. Pickering's nomination is just one of a bundle they have put into the deep freeze, mostly for purely partisan reasons. Last year they confirmed just 43 percent of Bush's judicial nominees, which trailed the confirmation rates of Ronald Reagan (91 percent), George H.W. Bush (62 percent) and Bill Clinton (57 percent) in their first years in office.

Pickering, who received a "well qualified" recommendation from the American Bar Association, doesn't deserve this kind of treatment. He and other Bush nominees are entitled to more timely consideration by the Senate Judiciary Committee and up-or-down votes by the full Senate.

The country deserves an end to the partisanship on Bush's judicial appointments.

Passing Judgement

Intelligencer Journal
Tuesday, February 12, 2002

Sen. Orrin Hatch's selective memory is showing once again.

As chairman of the Senate Judiciary Committee during the Clinton administration, Hatch and his colleagues held up hundreds of judicial appointments.

Last week, in defense of Charles W. Pickering Sr., a Mississippi judge whose actions and decisions in the arena of race and the law have raised questions about his fitness to serve on the U.S. Court of Appeals for the 5th Circuit, Hatch accused Democrats colleagues of working hand-in-hand with "leftist groups that want to inject political litmus tests into the confirmation process. "Frankly," he said, "I get a little sick of these things that seem to happen here every time we get a Republican president (making judicial nominations)."

His remark evoked the appropriate guffaws from Pickering critics in the gallery, as they should.

In a thinly veiled reference to Hatch and Senate Republicans, Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt., said he will schedule confirmation hearings "at a pace that will exceed the pace of the past six years."

In fact, Hatch told The Washington Post that the real test for Leahy's committee will be if they can match the 100 confirmations that occurred during Clinton's second year in office. To that end, he said, the committee is off to a good start.

That list, however, should exclude Pickering. As a young attorney in 1959, he offered legal advice on ways to enable Mississippi to criminalize interracial marriage. He also has been linked with Mississippi's Sovereignty Commission, which spied on civil rights and labor groups. While Pickering has maintained he had no ties to the group, he did vote to fund the organization in 1972 and 1973, and a 1972 commission memo lists his name as one of the state lawmakers who wanted to be kept informed of the group's activities.

To counter those accusations, his supporters point out that in the late 1960s he helped prosecute the Ku Klux Klan in Mississippi, and that his views at that time, were not unique in the South.

But during an unusual second hearing last week, evidence was presented suggesting that his past continues to color his present. In a 1994 case involving a cross-burning, Pickering was upset about the stiff, 7-year sentence proposed for Daniel Swan, a 20-year-old who joined two accomplices.

According to Justice Department files, the judge met privately with prosecutors and threatened to order a new trial unless they agreed to a lesser sentence. When they refused, documents show, he contacted a Justice Department official in Washington. The defendant eventually received a 27-month sentence.

Pickerings' actions, said some senators, appear to have violated the judge's code of conduct.

This is not, as some have claimed, a witch hunt into Pickering's past, but a compilation of the sum and total of his actions.

The 5th Circuit of the U.S. Appeals Court covering Mississippi, Louisiana and Texas has been called a trailblazer on desegregation and voting rights in the past. Little wonder Pickering faces opposition. He should not be confirmed.

Appeals Court Nominee Has Earned Our Support

Women's Bar Association of Western Pennsylvania
Pittsburgh Post-Gazette
Thursday, February 14, 2002

We are writing in response to the Feb. 9 article reporting that a group called the Feminist Majority is among a coalition that is "mounting a campaign against President Bush's nomination of Western Pennsylvania's Chief U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals" ("Appeals Court Nominee Targeted"). We feel compelled to respond.

On behalf of the executive board of the Women's Bar Association of Western Pennsylvania, we support, without reservation, the nomination of the Honorable D. Brooks Smith to the 3rd Circuit Court of Appeals. Since his appointment to the U.S. District Court for the Western District of Pennsylvania, we have had the pleasure of appearing before Judge Smith as federal prosecutors, defense attorneys and sole practitioners, as well as members of large national law firms. He has always treated each of us and our clients, both individuals and corporations, with dignity and respect. We have found Judge Smith to be a person of high integrity. He is exceptionally intelligent, thoughtful, hard-working and conscientious. When appearing before Judge Smith, you can be assured your case and issues will receive fair and thorough consideration. The public should be aware that the American Bar Association rated Judge Smith as well qualified for the 3rd Circuit Court of Appeals and the Allegheny County Bar Association gave Judge Smith its highest rating, highly recommended.

Judge Smith has consistently attended and supported events sponsored by the Women's Bar Association. This year, we asked him to speak at our annual Susan B. Anthony Award presentation, which is in honor of Mary Beth Buchanan, Western Pennsylvania's first appointed female U.S. attorney. Judge Smith was chosen to speak because of his contributions in creating a good working relationship between attorneys and the judiciary, and because of his commitment to eradicating gender bias in the court system.

Last year, our organization prepared and presented a report to the Supreme Court of Pennsylvania
committee on racial and gender bias in the justice system. In interviewing attorneys to prepare the report, we did not receive a single complaint concerning Judge Smith. Based on our personal experience, as well as this study (through which a complaint could be made anonymously), any suggestion or insinuation that Judge Smith is sexist or gender-biased is simply not true.

SHELLY R. PAGAC

Co-President

CYNTHIA REED EDDY

Co-Chair of Judiciary Committee

Women's Bar Association of Western Pennsylvania

Living in a State of Constitutional Denial

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By Jonathan Turley
The Chicago Tribune
Sunday, February 10, 2002

Liberal Democrats appear these days to be slowly moving through the stages of loss first defined by psychiatrist Elizabeth Kubler- Ross: denial, anger, bargaining, depression and acceptance. A recent proposal by University of Chicago law professor Abner Mikva would suggest that some Democrats remain mired somewhere between denial and bargaining.

Mikva recently put forward a theory that has the hearts of many die-hard Democrats racing with anticipation: President Bush should be barred from filling any vacancies to the U.S. Supreme Court during his current term. Cloaked in constitutional and historical arguments, Mikva insists that any Supreme Court appointments should be delayed until the next presidential election in two years.

With Bush's popularity at a historic high, Mikva appears to be moving from denial to anger to bargaining. Mikva grudgingly accepts that Bush is president, though in a Washington Post commentary he emphasizes that Al Gore won the popular vote. This is suggested as somehow significant despite the facts that the popular vote margin was statistically razor thin; that previous presidents have been elected on the electoral but not the popular vote; and that, in our constitutional electoral system, popular vote is legally meaningless. Yet this image of an election stolen creates a useful appearance of victimization for Mikva and others in advancing this proposal. It is not that we are trying to subvert the constitutional process, we have been injured and deserve recourse. Otherwise, Mikva's proposal is nothing more than a raw partisan shutdown of the president's prerogative to fill Supreme Court vacancies.

The real motivation for this proposal, however, lies elsewhere. Mikva notes that the Supreme Court could easily have as many as three vacancies during Bush's term and he asks menacingly: "What kind of person would President Bush nominate?" Clearly, not a person to Mikva's liking.

The solution for Mikva is simply to divvy up powers with Bush like hostile roommates locked into a multiyear lease: Bush can continue to wage war and enjoy the trappings of office but the Supreme Court would be off-limits. His reasons are many but few withstand serious review. First, Mikva argues that nothing in the Constitution requires nine justices and that historically there have been long periods of delay in the confirmation of nominees. This ignores that modern delays in confirmation have been due to concern of an individual's qualifications, not some categorical denial of the right of a president to place qualified people on the court.

Mikva also argues that it would be unseemly to allow the president to add to a court that "itself made the final decision as to who should be president."

Mikva again chooses to ignore that voters chose this president through our constitutional electoral system. As it turns out, the people of Florida and the rest of the country made the final decision as to who should be president. Mikva simply notes that "there is still unhappiness" about the court's decision, an empirical observation apparently based on his conversations with

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other
unrequited Gore supporters.

Mikva labels the current Supreme Court as an "activist" court that only needs a couple of new votes to reshape laws in an image that Mikva finds unacceptable. He apparently prefers his own image. For years, conservatives criticized Mikva as one of the most liberal members of Congress when he represented the 10th Congressional District and later as one of the nation's most liberal judges in Washington D.C. Long accused of continuing his legislative career from the bench after leaving Congress, Mikva's labeling of any court as activist is rather disorienting.

Mikva's suggestion would seriously weaken our constitutional system by creating ambiguities in authority or questions of legitimacy. Mikva would create a precedent for members of Congress to
categorically refuse nominees by presidents under certain undefined circumstances. It is not simply a bad idea, it is a dangerous one. The sooner this bizarre theory is put to rest the sooner Mikva and others may reach the stage of Kubler-Ross that most voters reached last January: acceptance.

Judge Pickering's Past

By Marcia Greenberger
The Washington Post
Thursday, February 14, 2002

In the Feb. 8 news story "Democrats Challenge Choice of Mississippi Judge," District Court Judge Charles W. Pickering reportedly said that the reason he repeatedly rules against people with employment discrimination claims is because most claims of merit are resolved by the federal Equal Employment Opportunity Commission (EEOC).

Judge Pickering is wrong.

The EEOC has a backlog of nearly 35,000 cases, so those needing a timely resolution of their claims can hardly depend on the commission to provide it.

In those cases where the EEOC does offer mediation as an option, both parties must agree. Although most employees who file discrimination complaints with the agency agree to mediation, almost two-thirds of employers decline -- thus giving victims of discrimination little choice but to pursue their claims in court.

Finally, given its resource constraints, the EEOC typically litigates only 3.5 percent of the charges in which it finds reason to believe that discrimination has occurred.

A judge who approaches the employment discrimination cases that come before him with the misguided preconception that they must be without merit -- because otherwise they would have been resolved by the EEOC – cannot be counted on to uphold the laws and the constitutional

protections that guarantee civil rights and equal opportunities for all citizens.

Judge Pickering should not be elevated to the 5th Circuit.

MARCIA D. GREENBERGER

Co-President

National Women's Law Center

Fight Over Judge Replay our Bitter History

By Clarence Page
The Atlanta Journal-Constitution
Wednesday, February 13, 2002

Supporters of U.S. District Judge Charles W. Pickering Sr. compare his confirmation hearings to the McCarthy era. That critique misses the point. I'd compare it to the Nuremberg Trials--or, better yet, to South Africa's Truth and Reconciliation Commission.

Are those comparisons too harsh? Not for those of us who were on the receiving end of the racial apartheid that Pickering once helped to uphold. Questions about his past explain why his nomination to the U.S. 5th Circuit Court of Appeals in New Orleans has become President Bush's first big judicial confirmation fight.

Pickering's Feb. 7 hearing went all the way back to his college days to dig up tidbits like the article he penned in 1959 as a 21- year-old law student in the University of Mississippi Law Journal. Without expressing a hint of moral reservation, it suggested how the state could salvage its overturned ban on interracial marriages to "serve the purpose that the legislature undoubtedly intended it to serve."

It was just an "academic exercise," Pickering says now. But some observers were not impressed, especially those of us who remember how disregarding the "white" and "colored" signs on restrooms, water fountains and restaurants in the South could get you killed.

"This hearing is a painful recollection of America's civil rights history," said Sen. Dick Durbin (D-Ill.), who was one of Pickering's toughest interrogators during his hearing. (The committee probably will vote by the end of the month on Pickering's confirmation.)

Yes, such recollections apparently are so painful that Pickering had some trouble recalling all that he was doing at the time. Take, for example, his alleged associations with his state's notorious Sovereignty Commission.

From 1956 to 1973, that supersecretive body devoted itself to protecting the state's

"sovereignty," meaning its racial segregation laws and traditions, against the U.S. Supreme Court and other pesky Washington intrusions.

It spied on civil rights groups and targeted civil rights sympathizers for firings, beatings and maybe even killings. Leaked documents revealed that the commission secretly helped the defense
team of avowed racist Byron de la Beckwith, who escaped punishment in two trials for the 1963 murder of civil rights leader Medgar Evers. He finally was convicted in 1994 after the documents leaked out.

Pickering testified in 1990, when appointed by the first President Bush, that he had no contact with the commission. He further denied that it was still in business in the 1970s when Pickering was a state senator. Yet a document that was unearthed when the commission's files were opened to the public in 1998 showed Pickering's response to be less than truthful. As a state senator, the document indicated, he had "requested to be advised of developments" in a labor dispute
in Laurel, Miss., in the early 1970s.

"If I were making that decision today, I would not do it," Pickering replied to Durbin's questioning.

Pickering also denied that former Mississippi Lt. Gov. Carroll Gartin, who was Pickering's law partner from 1961 to 1971, was a segregationist. But Pickering changed that tune when Durbin waved copies of an old campaign ad. It showed Gartin waving a pen with
which, he declares in the ad, he "will veto any effort to weaken our
defenses around our Southern way of life."

Pickering said he believed Gartin was "trying to move the state forward and still stay in politics." Right. Sometimes you have to go along to get ahead.

With that in mind, Pickering deserves praise for courageously testifying in 1967 against Sam Bowers, a Ku Klux Klan leader who was being tried for the firebombing death of Vernon Dahmer Sr., a civil rights leader who was helping blacks register to vote.

Pickering's testimony against Bowers cost Pickering his re- election as the local prosecutor, Medgar Evers' brother Charles Evers wrote in a Wall Street Journal piece in support of Pickering.

On the other hand, William Taylor, a Washington lawyer who served on the Washington, D-C.-based Citizens' Commission on Civil Rights at that time, pointed out that, by that time, even the white establishment of Mississippi had begun to decide that Klan violence was bad for business.

And Charles Evers, who went on to become a civil rights leader and a small-town mayor before switching from the Democratic to the Republican Party, was listed in the Sovereignty

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Commission's documents among the 5,000 tipsters, black and white, who informed on their neighbors. When Time magazine asked him about it in 1998, he was quoted as saying, "If you don't know who your enemies are and talk to them, how are you going to deal with them."

Yes, if Charles Evers sees the value in going along to get ahead, he probably learned it from the masters of the game.

Bush should withdraw this nomination to spare the nation and his administration any more pain.

Do the Crime, Do the Time

By Thomas Jipping
WorldNetDaily
Thursday, February 14, 2002

Senate Democrats say Republicans blocked President Clinton's judicial nominees when they ran the Senate. It's odd, though, that Republican "obstruction" still resulted in confirmation of a lot of radical judges.

Two of Mr. Clinton's most radical nominees were Richard Paez and Marsha Berzon. Republicans resisted for a time, and then-Majority Leader Trent Lott promised in September 1999 not to bring up the nominations "unless we have the votes to defeat them." Yet the obstructionist Republican Senate confirmed them both on March 9, 2000, and today they are among Mr. Clinton's 14 appointments to the activist U.S. Court of Appeals for the Ninth Circuit. Three cheers for Republican obstruction.

In 1994, nearly three-fourths of California voters said habitual criminals were not first-time offenders, enacting the "Three Strikes" law requiring at least 25 years behind bars for a third serious or violent felony. The legislature determines, and can always change, the definition of a serious felony, but the people decided that multiple serious felonies deserve more serious punishment.

Californians may have been what one reporter called the "world's largest legislature" when they enacted this law, but last November they met the world's smallest legislature. And Judge Richard Paez won, ruling that using it exactly as Californians intended results in unconstitutional cruel and unusual punishment. The people said to look at the last felony in light of the others; Judge Paez looked at the last felony by itself, concluding that a 25-year sentence was "grossly disproportionate" to the crime.

Judge Marsha Berzon, confirmed on that same fateful day by that same obstructionist Republican
Senate, has now had a crack at it. Earnest Bray had been convicted of four counts of robbery, Richard Brown of at least five serious or violent felonies – including second degree murder, assault with a deadly weapon, and robbery. They had chosen a life of crime and those prior crimes converted a subsequent offense from a misdemeanor petty theft into a felony petty theft

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"with a prior." Conviction of this third (actually, fifth for Bray and sixth for Brown) felony required a minimum sentence of 25 years. They kept doing the crime so they were finally to do some time.

Opponents of "Three Strikes," however, did not stop when they lost at the polls in 1994. Leftist law professor Erwin Chemerinsky looked for cases in which, no matter what the rap sheet, the latest felony looked relatively minor. Though under "Three Strikes" the rap sheet helped determine the sentence, if a judge looked only at the small tip of the criminal iceberg, he might say the sentence did not fit the crime. Bingo – Mr. Chemerinsky hit pay-dirt with Mr. Clinton's liberal activists out there on the left coast.

(Mr. Chemerinsky, by the way, is now helping bring the lawsuit alleging mistreatment of foreign terrorists in Guantanamo Bay, Cuba. Yes, that Chemerinsky.)

Joined by liberal activist poster boy Stephen Reinhardt and fellow Clinton appointee A. Wallace Tashima, Judge Berzon did her part. Going to prison for 25 years for petty theft or shoplifting would, by itself, strike most people as a little much – or, in legalese, "grossly disproportionate." The point is, of course, that neither of these career criminals had received that sentence for that crime. That's not, however, how it works in judicial activist-land. There, reality is whatever the judge says it is.

Judge Berzon looked at petty theft itself – what she called the "core conduct" of the crime for which Bray was convicted. But then homicide is the "core conduct" of both involuntary manslaughter and first-degree murder. It's the other circumstances that define the actual crime and resulting sentence. Bray chose to commit the "prior" that turned his petty theft from a misdemeanor into a felony. Never mind, Judge Berzon's version of the law is what matters and that's what she struck down.

Democrats planned all along to block President Bush's judges. In May 2000, six months before the election, Sen. Joe Biden said: "If Bush is elected … we will see most of the judges stopped who are Republican." Even after Sept. 11, Sen. Biden said: "We are not united on the makeup of the Supreme Court." Democrats planned to justify their obstruction by accusing Republicans of it, whether it had actually happened or not.

If Republicans had only lived up to their billing, perhaps judges like these would not be overturning the people's decisions and dismantling the criminal justice system. Instead, the accusation of fake obstruction is keeping Bush judges from balancing the activism of judges that some real obstruction could have prevented.

Don't Confirm Pickering: Appeals Court Nominee Carries Too Much Baggage

The Register-Guard
Tuesday, February 12, 2002

Charles Pickering, a federal trial judge in Mississippi and now President Bush's nominee for

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the 5th U.S. Circuit Court of Appeals, has become something of a political lightning rod.

Civil rights and pro-choice advocates strongly oppose his nomination. Some Democrats are raising questions about a possible violation of the judicial canon of ethics because of a phone call Pickering made to one party in a 1994 trial over a cross-burning incident. Conservatives and, most particularly, U.S. Senate Minority Leader Trent Lott, R-Miss., strongly support the nominee as a principled, courageous judge.

On the civil rights front, Pickering's opponents have reached back to 1959, when Pickering was a law student and wrote a three-page note for the school's law review, pointing out flaws in Mississippi's anti-miscegenation law prohibiting marriages between blacks and whites. The note said that the law was vulnerable unless the state legislature made changes. The suggested changes were made.

Questions have also been raised about an alleged connection in the 1960s to the notorious Mississippi Sovereignty Commission, which sought to maintain segregation in the state. Pickering has said he had no contact with the commission, but a document disclosed in 1998 showed that, as a state senator, he asked a commission official to inform him of labor unrest in his home county. And, finally, Sen. John Edwards, D-N.C., raised the ethics issue relating to the phone call.

Pickering's supporters told the Senate Judiciary Committee that Pickering was not and had never been a racist and that it was unfair to reach back 40 years to find fault. Others said the judge had helped, not hindered, the recruitment of black Mississippians to run for public office. And Pickering himself testified at the committee's confirmation hearing that he didn't consider his phone call to the U.S. Justice Department to complain about a mandatory five-year sentence for the cross-burner to be a violation of judicial ethics.

The Pickering nomination is seen as a precursor to later Bush nominees to the federal bench. With Democrats in control of the Senate, the president would do well - for himself and for the country - to choose middle-of-the-road nominees and not conservative ideologues. Lott's support for Pickering will certainly help the nominee on the political front, but what's at stake here is the judiciary, not hometown buddies and political cronies.

Charles Pickering's background suggests a mixed view on race, a strong opposition to women's right to choose an abortion, a possible fib about his connection to the Mississippi Sovereignty Commission and a relaxed view of judicial ethics. None of that adds up to a good reason to put him on the appeals court that covers Mississippi, Louisiana and Texas. If anything, it adds up to a reason to reject his nomination. The Senate should do just that.

Transcripts/Members of Congress

Newsmaker: Sen. Tom Dashchle

PBS Newshour with Jim Lehrer

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Tuesday, February 11, 2002

EXCERPT

JIM LEHRER: Finally Senator, yesterday you said you were going to oppose the nomination of Federal District Judge Charles Pickering--nominated to go to the Circuit Court of Appeals in New Orleans.

He's from Mississippi; he's a close friend of Senator Lott (R-Miss.) that you're going to oppose the nomination. Why?

SEN. TOM DASCHLE: Well, because I don't think that Mr. Pickering is qualified at this point. I think that there are some very serious questions about his ability as well as his background and it causes me concern.

So while I certainly believe he has every right to be - to have his case heard, for a vote to be taken, unlike our Republican colleagues, who would sit on nominations for years, we're going to have a vote in committee, and if it reaches the floor on the floor, but when that vote is cast, I've made the decision to oppose his nomination.

JIM LEHRER: It has to do with what he has done as a federal district judge or what he did earlier as a state senator, or what?

SEN. TOM DASCHLE: Well, I think a combination of things, Jim. I'll have a lot more to say about it as the nomination comes to the floor, if it does, but I believe that we can do better than that, and I've expressed myself in that regard.

JIM LEHRER: Senator Daschle, thank you very much.

Interest Groups/Press Releases

Letter to the Wall Street Journal Editorial Board

People for the American Way
Tuesday, February 12, 2002

Having been attacked some two dozen times over the years on the editorial page of the Wall Street Journal, I was not surprised by the February 8 editorial regarding the opposition of People For the American Way to the confirmation of Charles Pickering to the United States Court of Appeals for the Fifth Circuit. The Journal's editorial page, of course, has long been known as the national chat room of right wing conservatism. Far too often that page has been characterized by vitriolic, shoddy, and irresponsible journalism. For these reasons, I rarely respond to Journal
diatribes. However, given what is at stake with the Pickering nomination specifically, and the broader right-wing campaign for ideological domination of the federal judiciary, I am compelled

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this time to respond.

Your editorial fails to note the opposition to Pickering's confirmation from the Mississippi NAACP and the Magnolia Bar Association, a predominantly African American bar association in Mississippi. His confirmation is also opposed by the Congressional Black Caucus and by a large and diverse coalition of national organizations, including People For the American Way. After carefully reviewing Judge Pickering's record, these organizations have come to the conclusion that Pickering's confirmation to the Fifth Circuit would pose a significant threat to the rights and freedoms that Americans hold dear.

With respect to the Journal's attack on the Democratic members of the Senate Judiciary Committee, particularly Committee Chair Patrick Leahy, the very thought that anyone could control the members of the Senate is absurd. Indeed, the editorial is a transparent attempt to intimidate the Judiciary Committee Democrats, and is sadly typical of the tactics employed throughout the years by the Journal's editorial page.

Rather than deal with Judge Pickering's record, the editorial calls me a "race-card specialist" for having the temerity to address Pickering's disturbing record on civil rights. It is a sad day in America when legitimate concerns about a judicial nominee's record on civil rights cannot be raised without those expressing such concerns being attacked in this manner. It is the obvious aim of such mud-slinging not only to discourage the careful scrutiny required of any judicial nominee but to deflect attention from the nominee's actual record.

People For the American Way has carefully examined Judge Pickering's long public record, focusing particularly on his record as a Mississippi state Senator and later as a federal district court judge. That record is one of insensitivity and hostility to key principles and laws protecting the civil rights of minorities, women, and all Americans. For example, ignored by the Journal editorial is the fact that Pickering, as a judge, has criticized the fundamental "one-person one-vote" principle recognized by the Supreme Court under the 14th Amendment. Also, he has suggested that large deviations from equality in drawing legislative district lines, which the Supreme Court has held presumptively unconstitutional, were "relatively minor" and "de minimis." And, as a judge, Pickering has also criticized or sought to limit important remedies provided by the Voting Rights Act. In addition, in a number of cases involving claims of employment discrimination, Pickering has inserted severe criticisms of civil rights plaintiffs and the use of civil rights statutes, disparagingly stating that the courts "are not super personnel managers charged with second guessing every employment decision made regarding minorities." (See Report of People For the American Way Opposing the Confirmation of Charles W. Pickering, Sr. to the U.S. Court of Appeals for the Fifth Circuit ["PFAW Report"], pgs. 4-7.)

As a Mississippi state Senator, Pickering supported voting-related measures that helped perpetuate discrimination against African Americans. For example, in 1973, Pickering voted for a partial Senate redistricting plan that harmed minority voting rights by continuing to provide for county-wide voting in a populous county rather than creating single-member districts. In 1975, Pickering voted for a broader Senate-passed measure that similarly provided for county-wide district voting. Also in 1975, when Congress was to renew Section 5 of the Voting Rights Act

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mandating pre-clearance of voting changes in jurisdictions with a history of discrimination like Mississippi, some legislators opposed it. Pickering co-sponsored a Mississippi Senate resolution calling on Congress to repeal the provision or apply it to all states, regardless of their discrimination history. (See PFAW Report, pgs. 7-9.)

In addition, Pickering voted twice as a Senator (in 1972 and 1973) to appropriate state monies to fund the notorious Mississippi Sovereignty Commission, created by the state after Brown v. Board of Education to resist desegregation. At Pickering's first confirmation hearing, in 1990, he told the Judiciary Committee that "I know very little about what is in those [Commission] records. In fact, the only thing I know is what I read in the newspapers." And while Pickering denied under oath, at his 1990 hearing, having had any contact with the Sovereignty Commission, a subsequently released Commission memorandum dated January 5, 1972 stated that "Senator Charles Pickering" and two other state legislators were "very interested" in a Commission investigation into union activity that had resulted in a strike against a large employer in Laurel, Pickering's home town. Also according to this memorandum, Pickering and the other legislators had "requested to be advised of developments" concerning the union investigation, and had requested background information on the union leader. (See PFAW Report, pgs. 7-10.)

Confronted with this Commission document that conflicts not only with Pickering's 1990 denial of contact with the Sovereignty Commission but also with his professed lack of knowledge about the Commission, Pickering suggested at his February 7, 2002 hearing that he was worried about Ku Klux Klan attempts to infiltrate the union. The Sovereignty Commission, however, worked to infiltrate and spy on civil rights organizations and to obstruct desegregation, hardly the group to which one would turn if concerned about the Klan, as Senator Durbin observed at the February 7 hearing. Moreover, the Commission memorandum itself contains no foundation for the suggestion that Pickering's request had anything to do with the Klan. To the contrary, it states that the request from Pickering and the other legislators was to be "advised of developments in connection with SCEF [Southern Conference Educational Fund] infiltration of GPA [Gulfcoast Pulpwood Association] and full background on James Simmons [President of the GPA]." None of these troubling facts is even mentioned in the Journal editorial.

Completely ignoring Pickering's record in the state Senate, the editorial goes back farther in time and attempts to minimize Pickering's role in Mississippi's shameful history of prohibiting and penalizing interracial marriage. As a law student, Pickering wrote an article advising the Mississippi legislature how to fix a loophole in the state's law making interracial marriage a felony punishable by up to ten years in prison. The loophole had rendered the law unenforceable; Pickering's advice, which the legislature promptly took, enabled the law to be enforced. (See PFAW Report, pgs. 10-12.)

Defending Pickering, the Journal claims that Pickering's article "was supposed to be presenting a neutral analysis of the law," as though neutrality in the face of such an utterly repugnant law was somehow praiseworthy. Moreover, the article was not neutral at all, but rather a prescription for curing the legal defect in the law. And while Pickering has testified at his confirmation hearings to a current belief that who one marries is a personal choice that should not be regulated, at none

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of his confirmation hearings has he even expressed regret over having written the article. To the contrary, as recently as last week at his confirmation hearing, Pickering has tried to characterize the article as an "academic exercise." But there was nothing "academic" at all about these laws, which harmed real people, or about Pickering's advice to the legislature that the law "should" be amended, or about the fact that the legislature did amend the law as he had suggested, making it enforceable. The Journal falsely accuses us of being concerned only about Pickering's article, which your editorial excuses as youthful indiscretion, conveniently ignoring the concerns specifically expressed in our report about Pickering's far more recent efforts to minimize the article at his confirmation hearings. (See PFAW Report, pgs. 9-11.)

Instead, the Journal editorial rests its entire view of Pickering's civil rights record on Pickering's brief testimony given in a 1967 trial against a leader of the Klan. It is true that this was a courageous and commendable act. But the act itself does not mean, as the Journal suggests, that Pickering has been a champion of civil rights, or even that the testimony was motivated by opposition to the Klan's racist activities. Neither we nor the Journal's editorial writers can know Pickering's motivations. In fact, it appears from a book written by Chet Dillard, one of Judge Pickering's supporters, that Klan violence at that time in Mississippi was hurting the white business establishment in Laurel, Pickering's home town. Dillard's book also includes the following portion of a public statement regarding Klan violence issued in the mid-1960s by the local District Attorney (Dillard), the sheriff of Jones County, the Mayor of the City of Laurel, the county attorney (identified elsewhere in Dillard's book as Charles Pickering) and the Laurel Chief of Police:

We, the undersigned elected officials and public officers charged with the responsibility of protecting you and your property, wish to publicly state and make known our position and intentions concerning certain acts of violence which have recently taken place in Jones County. While we believe in continuing our Southern way of life and realize that outside agitators have cause [sic] much turmoil and racial hatred, let there be no misunderstanding, we oppose such activities, but law and order must prevail.

W.O. Dillard, Clear Burning, at 119 (emphasis added).

In any event, the charge against Judge Pickering is not that he is a racist, which is nothing more than a straw person set up by the Journal for debunking by reference to his 1967 testimony. In evaluating Pickering's commitment to progress on civil rights and hence his qualifications for a lifetime appointment to the court of appeals, of far greater relevance than one act taken 35 years ago is how he subsequently handled broader civil rights issues as a state Senator and then as a federal trial judge. In those important and influential public positions, Pickering has been sorely wanting, as his record reveals. (See PFAW Report, pgs. 4-12.)

Ignoring that record, the Journal moves on to a different subject and criticizes us for our concern about Judge Pickering's use of his official judicial position to promote religion and religious practices. In a speech made in 1984, before he became a judge, Pickering stated that the Bible should be "recognized as the absolute authority by which all conduct of man is judged . . . ." He was asked about this by the Senate Judiciary Committee at his 1990 confirmation hearing, and

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whether he would have any problem separating his religious beliefs from his role as a judge. He assured the Committee he would not. But his record since becoming a judge indicates that he has had such difficulty. Indeed, the Almanac of the Federal Judiciary, an independent publication that profiles all federal judges, contains this statement from one lawyer who has practiced before Judge Pickering: "He is the judge who concerns me the most. He's a fine person, but he's almost so pious that it interferes with his assignment as a judge." As we stressed in our report, our concern does not relate to Judge Pickering's personal religious beliefs. Judge Pickering, like every American, is entitled to hold and to practice his religious beliefs. But it is inappropriate for a federal judge, acting in that capacity, to attempt to promote those beliefs or suggest to those appearing before him that they should undertake particular religious practices or bring religion into their own lives. As the Supreme Court has recognized, "a union of government and religion tends to destroy government and to degrade religion." (See PFAW Report, pgs. 20-24.)

The Journal editorial wrongly accuses us of criticizing Judge Pickering because he has published fewer than 100 of the approximately 1,100 written decisions he estimates he has issued in his 11 years on the bench. The editorial misses the point entirely, which is that it would have been premature for the Senate Judiciary Committee to consider Judge Pickering's nomination without having copies of his unpublished decisions, decisions that form the bulk of his record as a district court judge and are unquestionably relevant to his qualification to sit on the court of appeals. Nonetheless, Senator Trent Lott, a friend of Pickering's and his Senate patron, pushed for Pickering's consideration by the Senate Judiciary Committee last fall even though Pickering's unpublished decisions were not available. The efforts by Senator Lott to bring about this irresponsible act was political maneuvering at its worst. Fortunately, Senator Leahy takes seriously the Senate's constitutional role in examining and consenting to judicial nominees, and insisted that Judge Pickering provide his unpublished decisions to the Judiciary Committee. Even then, scores of those decisions were not provided to the Committee until the eve of Pickering's hearing on February 7, and more than 100 still have not been produced, additional points overlooked by the Journal.

Another critical point about Judge Pickering's decisions is the record of his reversals by the Fifth Circuit, also ignored by the Journal. In 15 of the 26 cases that Pickering has been reversed by the Fifth Circuit, it has been through unpublished decisions by the court of appeals. According to Fifth Circuit rules, unpublished decisions are used to decide "particular cases on the basis of well-settled principles of law." Eleven of those 15 cases in which Pickering, according to the Fifth Circuit, violated "well-settled principles of law" involved constitutional, civil rights, criminal procedure, or labor issues, further raising troubling concerns about Pickering. Moreover, Pickering is one of two district court judges within the Fifth Circuit nominated by President Bush to that court of appeals. The other, Edith Brown Clement, who was recently elevated to the Fifth Circuit after serving as a district court judge for a slightly shorter period than Pickering, was never reversed in an unpublished opinion by the Fifth Circuit, according to the information that she provided to the Senate. (See PFAW Report, pgs. 11-16.)

The Journal editorial next moves to an attack on the Judiciary Committee for failing to hold hearings on 21 of 23 pending appellate court nominations. In fact, since June, when the Senator

REV_00140270

Leahy became chair of the Committee, the Committee has held hearings on eight of President Bush's appellate nominees. Also since June, the Senate has confirmed a total of 34 of President Bush's judicial nominees. Indeed, despite the tragedies of September 11 and the disruptions caused by the anthrax attacks, the Committee is acting far more responsibly under Senator Leahy's leadership than the past six-and-one-half years when Republicans controlled the Committee.

While your editorial appears to minimize the importance of appellate court nominations, senators like Trent Lott, John Ashcroft, and Orrin Hatch thought the appeals courts were so important that they created an unprecedented ideological blockade against President Clinton's appellate court nominees. Between 1995-2000, 35 percent of Clinton's appeals court nominees were blocked without even getting a vote; 45 percent failed to receive a vote in the Congress during which they were nominated. The record was even worse with regard to the Fifth Circuit, to which Judge Pickering has been nominated. During the last five years of the Clinton administration, only one of the four Clinton nominees to that court was confirmed; the three others were not even allowed to come up for a vote.

This was not politics as usual. Progressive organizations opposed only a handful of lower court nominees during the 12 years that Ronald Reagan and George H.W. Bush filled federal courts with hundreds of extremely conservative judges. Consistent with the Senate tradition with respect to lower court nominees, we generally focused on competence and character, though ideology was considered in a few extreme cases.

But right-wing senators, urged on by Religious Right organizations and their allies, shattered that tradition. Their campaign was remarkably successful in perpetuating appeals court vacancies. Currently, seven of the 13 federal circuit courts are dominated by Republican appointees and four by Democratic appointees; two are tied. When current vacancies are filled, the number dominated by Republican appointees will be 11 of 13. And by the end of this presidential term, it could be all 13. That makes it critically important that President Bush nominate and the Senate confirm mainstream judges who can win genuine bipartisan support.

The campaign by right-wing senators reflects their understanding that the appeals courts are critical to the ultimate success of their efforts to achieve ideological domination of the federal judiciary. Because the Supreme Court hears fewer and fewer cases each year (fewer than 90 last Term, compared with nearly 30,000 last year by the federal courts of appeal), the appeals courts frequently are the court of last resort when it comes to protecting civil and constitutional rights.

Judge Pickering's nomination to the Fifth Circuit is of particular importance and concern since that court's jurisdiction includes the largest minority population in the country (42%). Especially in the Fifth Circuit, which has already issued a number of troubling decisions on civil and constitutional rights, adding another judge like Charles Pickering poses a grave danger to Americans' rights and liberties.

As more than 200 law professors stated in a letter sent to the Senate Judiciary Committee last summer, no judicial nominee is presumptively entitled to confirmation. Because federal judicial

REV_00140271

appointments are for life and significantly affect the rights of all Americans, and because of the Senate's co-equal role with the President in the confirmation process, nominees must demonstrate that they meet the appropriate criteria. These criteria include an "exemplary record in the law," an "open mind to decision-making," a "commitment to protecting the rights of ordinary Americans," and a "record of commitment to the progress made on civil rights, women's rights and individual liberties."

Given what is at stake, and given the unprecedented situation created by the six-year blockade of the appellate courts, it is our right and our obligation as citizens to examine carefully this nominee's record against these criteria and to express any legitimate concerns about that record to the public and to the Senate. Indeed, history shows that People For the American Way and others who exposed the right wing judicial philosophies of such Supreme Court nominees as Robert Bork and Clarence Thomas were guilty, if anything, of understatement.

The Journal editorial considers our opposition to Judge Pickering's confirmation as "borking," propagating the right-wing's use of that word as a verb meaning an unfair personal attack on a nominee. But the Bork nomination was not about Robert Bork's personal life or politics. Robert Bork's confirmation to the Supreme Court was opposed by millions of Americans and rejected by the largest bipartisan vote in Senate history because his record of extremism in opposition to civil and constitutional rights demonstrated that he was unqualified to sit on our nation's highest court. Our report examining Charles Pickering's long public record is precisely that, an examination of his record. Space does not permit a full recitation of everything overlooked by the Journal in Judge Pickering's record. We commend your readers to our full report, available on our web site, www.pfaw.org, for the details that the Journal ignored.

We believe strongly in the Senate's constitutional obligation to scrutinize carefully the record of every nominee for a lifetime appointment to the federal judiciary, particularly a nominee to the Supreme Court or the Courts of Appeals. While we cannot know what is in Judge Pickering's heart, we can know what is in his record. And that record makes him unworthy of a lifetime appointment to one of the most powerful courts in the country.

REV_00140272

From: CN=Kimberly A. Douglass/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2002 3:39:39 AM
Subject: : Re: political expenses

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kimberly A. Douglass (CN=Kimberly A. Douglass/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-FEB-2002 08:39:39.00
SUBJECT:: Re: political expenses
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sorry, I should have been more clear last night. I was confusing two different conversations that I had with Jacque. Actually, only site costs have increased which would not affect the political travel costs since those only include hotel, per diem, rental cars, etc. So, this would not be factored into the deposit costs and you can disregard my suggestion about increasing the deposit. However, each individual city should be evaluated somewhat when asking for the deposit...hotels in NYC will obviously be more expensive than in Boise.

As for why site costs have increased, there's no real clear explanation other than the economy. Apparently, since September 11th, vendors have increased their prices and, therefore, site costs have gone up. Luckily, hotels, rental cars, etc. have not had much of a price change. So, the political costs on this end won't be affected that much but the hosts site costs will be higher (but we don't need to worry about that.)

Brett M. Kavanaugh
02/14/2002 06:08:38 PM
Record Type: Record

To: Kimberly A. Douglass/WHO/EOP@EOP
cc:
bcc:
Subject: Re: political expenses

why have they increased?

Kimberly A. Douglass 02/14/2002 06:01:30 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: political expenses

This should give you a good idea of the average costs. However, according to Jacque in FMD, expenses for trips after September 11th (eg. Orlando) have increased significantly. So, we may want to consider increasing the deposit request. I can give you an update on trip costs as soon as the bills are processed for the trip summaries you signed today.

Let me know if you need more info.

Kim

---------- Forwarded by Kimberly A. Douglass/WHO/EOP on 02/14/2002 05:58 PM ----------

Jacque J. Hightower
02/14/2002 05:54:54 PM
Record Type: Record

To: Kimberly A. Douglass/WHO/EOP@EOP
cc:
bcc:
Subject: Re: political expenses

Kim,

Based on the political percentages assigned to the perspective trips, the following identifies the total amount billed:

LOCATION TOTAL

Little Rock, AK $11,143.58

Birmingham, AL $8,708.81

Denver, CO $9,503.23

Albuquerque, NM $3,763.12

Orlando, FL $23,878.45

Call me if you have any questions.

Jacque

Kimberly A. Douglass 02/14/2002 04:07:35 PM

Record Type: Record

To: Jacque J. Hightower/OA/EOP@EOP
cc: Andris Kalnins/OA/EOP@EOP
Subject: political expenses

Hi, Jacque

As we just discussed, I am trying to find out the political expense totals for the four mixed trips that occurred in 2001 (calendar year.) I need to provide this info to Counsel by COB today. Thanks!!

Kim

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
Sent: 2/15/2002 6:05:37 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2002 11:05:37.00
SUBJECT::
TO:Katherine G. Marinis ( CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

just to confirm that we have 180 reserved fro 3:00 to 4:00 next
Wednesday the 20th. I have sent out the e-mail to the GC's.
```

From: CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 2/15/2002 6:04:52 AM
Subject: : Re: Tort Reform

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:15-FEB-2002 11:04:52.00
SUBJECT:: Re: Tort Reform
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rebecca a. beynon (CN=rebecca a. beynon/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Regarding process going forward on tort reform, the working group has had a couple of meetings and we are getting close to what appears to be a set of consensus proposals. Before I try to set up a briefing for principals, which would include on this issue at the very least, Karl, the Judge, Josh and Karen, I plan to set up a DPC deputies meeting at which any additional policy suggestions or concerns about the working group product can be raised. Tim, as well, as Brett and Courtney would obviously be invited to participate in that meeting. The main reason to tee it up at the Deputies level is simply to make sure that the key agencies (DOJ, HHS, and a couple of others) are heard from with respect to the policy.

Please let me know if you have any suggestions on process or substance.

thanks -- Jay

Courtney S. Elwood
02/15/2002 10:13:36 AM
Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP, Rebecca A. Beynon/OMB/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Tort Reform

Brett and I just met with the Judge re: the tort reform initiatives. We had a couple of questions: Rebecca mentioned that the memo she has been preparing will be presented to the "deputies meeting" in the next week or two. What is the "deputies meeting"? Who attends? Will it then be presented to the principals, including Judge Gonzales to reach a final decision on recommendations to be presented to the President?

As you know, representatives of Citizens for Civil Justice Reform asked to meet with the Judge about these issues. The Judge will not be meeting with the group. Obviously you all are welcome to reach out to them if you like.

From: CN=Janet P. Walker/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2002 6:06:14 AM
Subject: : Paperwork Reduction Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Janet P. Walker (CN=Janet P. Walker/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:15-FEB-2002 11:06:14.00
SUBJECT:: Paperwork Reduction Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Good morning! We're trying to find out who in Counsel's office we should invite to come by our staff meeting next week to address Paperwork Reduction. We're particularly interested in a refresher on the definition of a presidential document, what must be saved, what can be thrown out, etc.

Many thanks!
Janet

---------- Forwarded by Janet P. Walker/OPD/EOP on 02/15/2002 10:26 AM ----------

Elizabeth N. Camp
02/13/2002 11:21:59 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Janet P. Walker/OPD/EOP@EOP
Subject: Paperwork Reduction Act

Brett - any ideas?

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 02/13/2002 11:21 AM ----------

Janet P. Walker
02/13/2002 11:16:35 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Paperwork Reduction Act

Hi Libby! Can you drop me a line with who is the expert on Paperwork Reduction? We'd like to have them stop by one of our staff meetings and discuss records -- what to keep, what can be tossed -- as a refresher for our team.

Many thanks!
Janet

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>;Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>
CC: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 2/15/2002 6:06:53 AM
Subject: : Loans to Bush Library

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2002 11:06:53.00
SUBJECT:: Loans to Bush Library
TO:Linda M. Gambatesa ( CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Mary Ann Hanusa ( CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just checking in. Let us know if there is anything else you need
re the loans to the President George H.W. Bush Library.
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2002 6:07:02 AM
Subject: : Re: Delivery Notification: Delivery has failed

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-FEB-2002 11:07:02.00
SUBJECT:: Re: Delivery Notification: Delivery has failed
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This is for Kirk Vantine, which should go to "kirk.vantine@ost.dot.gov"
(it went to "dot.ost.gov" in email below).

Brett M. Kavanaugh
02/15/2002 10:45:53 AM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc:
Subject: Delivery Notification: Delivery has failed

??

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
02/15/2002 10:45 AM ----------

"EOP.GOV Postmaster General" <Postmaster@EOP2.EOP.GOV>
02/15/2002 10:34:12 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Delivery Notification: Delivery has failed

This report relates to a message you sent with the following header fields:

Message-id: <85256B61.005571E1.00@sgeop01.eop.gov>
Date: Fri, 15 Feb 2002 10:33:08 -0500
From: Brett_M._Kavanaugh@who.eop.gov
To: kirk.vantine@dot.ost.gov
Subject: Meeting of Department General Counsels on political activity
rules and
issues

Your message cannot be delivered to the following recipients:

Recipient address: kirk.vantine@dot.ost.gov
Reason: Illegal host/domain name found

Original-envelope-id: 01KEAT69V8BI99GDOL@EOP.GOV

Reporting-MTA: dns;EOPC.EOP.GOV

Action: failed
Status: 5.4.4 (Illegal host/domain name found)
Original-recipient: rfc822;kirk.vantine@dot.ost.gov
Final-recipient: rfc822;kirk.vantine@dot.ost.gov

Return-path: <Brett_M._Kavanaugh@who.eop.gov>
Received: from TCP-DAEMON by EOP.GOV (PMDF V5.2-33 #41014) id
<01KEAT6CYD5E99FQWY@EOP.GOV> (original mail from
Brett_M._Kavanaugh@who.eop.gov); Fri, 15 Feb 2002 10:34:12 EST
Received: from conversion.EOP2.EOP.GOV by EOP.GOV (PMDF V5.2-33 #41014) id
<01KEAT69HWWW99GDOL@EOP.GOV> for kirk.vantine@dot.ost.gov; Fri, 15 Feb
2002 10:34:07 EST
Received: from mhub2.eop.gov ([198.137.241.11]) by EOP.GOV (PMDF V5.2-33
#41061) with ESMTP id <01KEAT63B0LA9AMH38@EOP.GOV> for
kirk.vantine@dot.ost.gov; Fri, 15 Feb 2002 10:33:59 -0500 (EST)
Received: from sgeop01.eop.gov ([165.119.1.33]) by mhub.eop.gov (PMDF
V5.2-33 #40371) with SMTP id <01KEAT5GA49E91Y45J@mhub.eop.gov> for
kirk.vantine@dot.ost.gov; Fri, 15 Feb 2002 10:33:28 -0500 (EST)
Received: by sgeop01.eop.gov(Lotus SMTP MTA v4.6.7 (934.1 12-30-1999)) id
85256B61.0055737E ; Fri, 15 Feb 2002 10:33:21 -0500
Date: Fri, 15 Feb 2002 10:33:08 -0500
From: Brett_M._Kavanaugh@who.eop.gov
Subject: Meeting of Department General Counsels on political activity
rules and issues
To: kirk.vantine@dot.ost.gov
Message-id: <85256B61.005571E1.00@sgeop01.eop.gov>
MIME-version: 1.0
Content-type: text/plain; charset=us-ascii
Content-disposition: inline
X-Lotus-FromDomain: EOP

---------------------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
02/15/2002
10:32 AM ---------------------------

Brett M. Kavanaugh
02/15/2002 09:59:13 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Meeting of Department General Counsels on political activity
rules and
issues

The White House Counsel's office requests that you and/or a designated
high-level attorney in your office attend a meeting next Wednesday the
20th at
3:00 in Room 180 of the EEOB. At the meeting, we will review political
activity
rules and issues, as well as answer any questions you may have. The
meeting
should last less than an hour.

Please let me know by reply e-mail who from your office will attend.
Clearance information should be provided to Lori Lorenzi at 456-7900.

Ken Mehlman of the White House Office of Political Affairs also will
be in
contact with the Chiefs of Staffs of your departments about this meeting.

Message Sent
To:_____

tkassinger@doc.gov @ inet
brian.jones@ed.gov @ inet
lee.otis@hq.doe.gov @ inet
alex.azar@hhs.gov @ inet
Richard_a._hauser@hud.gov @ inet
William_myersIII@ios.doi.gov @ inet
adam.ciongoli@usdoj.gov @ inet
scalia-eugene@dol.gov @ inet
taftwh@ms.state.gov @ inet
kvantine@dot.ost.gov @ inet
david.aufhauser@do.treas.gov @ inet
tim.mcclain@mail.va.gov @ inet
j_michael.kelly@usda.gov @ inet
hayneswj@osdgc.osd.mil @ inet

From: David.Aufhauser@do.treas.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2002 6:44:42 AM
Subject: : RE: Meeting of Department General Counsels on political activityrules and issues

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David.Aufhauser@do.treas.gov (David.Aufhauser@do.treas.gov [UNKNOWN])
CREATION DATE/TIME:15-FEB-2002 11:44:42.00
SUBJECT:: RE: Meeting of Department General Counsels on political activity rules and issues
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will attend.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, February 15, 2002 9:59 AM
To: tkassinger@doc.gov; brian.jones@ed.gov; lee.otis@hq.doe.gov;
alex.azar@hhs.gov; Richard_a._hauser@hud.gov;
William_myersIII@ios.doi.gov; adam.ciongoli@usdoj.gov;
scalia-eugene@dol.gov; taftwh@ms.state.gov;
kvantine@dot.ost.gov.treas.gov; david.aufhauser@do.treas.gov;
tim.mcclain@mail.va.gov; j_michael.kelly@usda.gov;
hayneswj@osdgc.osd.mil
Subject: Meeting of Department General Counsels on political activity
rules and issues

The White House Counsel's office requests that you and/or a designated
high-level attorney in your office attend a meeting next Wednesday the 20th
at
3:00 in Room 180 of the EEOB. At the meeting, we will review political
activity
rules and issues, as well as answer any questions you may have. The
meeting
should last less than an hour.

Please let me know by reply e-mail who from your office will attend.
Clearance information should be provided to Lori Lorenzi at 456-7900.

Ken Mehlman of the White House Office of Political Affairs also will
be
in
contact with the Chiefs of Staffs of your departments about this meeting.

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>
Sent: 2/15/2002 7:13:23 AM
Subject: : Fw: Card / Hutchinson Event
Attachments: 05750_p_4zuh5003_who.txt_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-FEB-2002 12:13:23.00
SUBJECT:: Fw: Card / Hutchinson Event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett - can you take a look at the attached invite for a Tim Hutchison event with Secretary Card? Thanks much. Paul

---------- Forwarded by Paul B. Dyck/WHO/EOP on 02/15/2002 12:12 PM ----------

Paul Dyck <pdyck@georgewbush.com>
02/15/2002 11:51:50 AM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc:
Subject: Fw: Card / Hutchinson Event

----- Original Message -----
From: "Maggie Hemmer" <mshemmer@mindspring.com>
To: <pdyck@georgewbush.com>
Sent: Friday, February 15, 2002 10:59 AM
Subject: Card / Hutchinson Event

> Paul -
>
> Thanks for the help on your end. I'm open to any changes you suggest.
> "Signatures" Restaurant is Jack Abramoff's new endeavor that opens on Feb
> 28th. He is going to open it to us the night before for this special event
> with Sec. Card. Call me with any questions. Thanks - Mag / 703-533-2201 or
> 202-256-8485
>

- Sec. Card Invite - Feb02.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <05750_p_4zuh5003_who.txt_1>

Please join…..

Hon. Bob Livingston *Jack Abramoff*

Jay Velasquez **John Motley** **Doug Badger**

For a Reception & Dinner Honoring

Senator Tim Hutchinson (AR)

With Special Guest Andrew Card

Wednesday, February 27th

Signatures
801 Pennsylvania Avenue, NW

6:30pm Reception / $1000
7:00pm Dinner / $2000

Please RSVP to: Maggie S. Hemmer / 703-533-2201 or mshemmer@mindspring.com

Please make checks payable to:
Hutchinson for Senate
% Barrett Consulting, 2731 N. George Mason Drive, Arlington, VA 22207

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Contributions or gifts to the Hutchinson for Senate committee are not tax deductible.
Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in an election cycle.

From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]

To: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Ann L. Loughlin/WHO/EOP@EOP [WHO] <Ann L. Loughlin>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Patricia C. Zemple/WHO /EOP@EOP [WHO] <Patricia C. Zemple>;Larry Cote/WHO/EOP@EOP [WHO] <Larry Cote>;Barrett Aldemeyer/WHO/EOP@EOP [WHO] <Barrett Aldemeyer>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>

Sent: 2/15/2002 8:30:56 AM

Subject: : Deliveries

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2002 13:30:56.00
SUBJECT:: Deliveries
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
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###### End Original ARMS Header ######

This is just a reminder that we are still not accepting deliveries. I
will keep everyone posted on when we get permission to do so.
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From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2002 9:33:57 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-FEB-2002 14:33:57.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

that's the sort of "leveling" I favor -- leveling down on regs, not levelling UP.

Brett M. Kavanaugh
02/15/2002 12:49:04 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
Subject:

interesting new FCC rules on broadband. They would level the playing field between telcos and cable cos, which is all that telcos had ever asked for.

From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/15/2002 12:11:21 PM
Subject: : updated list of ABA ratings

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2002 17:11:21.00
SUBJECT:: updated list of ABA ratings
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, can you email or fax to me an updated list of the ABA ratings for
our nominees?

fax (if you don't have it electronically): 66468

Thanks!
```

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 2/15/2002 1:07:50 PM
Subject: : annual conflicts prosecution survey
Attachments: P_W4AI5003_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-FEB-2002 18:07:50.00
SUBJECT:: annual conflicts prosecution survey
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

- 00SURVEY2.wpd

I commend to all of you the survey of conflicts of interest prosecutions.
It provides insight into various pitfalls and, to an extent, the arbitrary
nature of enforcement. The first one, for example, does not on its face
meet the elements of section 208 because it does not establish the
employee's financial interest in the matter he handled officially (having
a business relationship is not enough.) Also, look at 2,3,4,5, 7, 10.
This is an annual publication of OGE.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_W4AI5003_WHO.TXT_1>
```

2000 Conflict of
Interest Prosecution Survey

1. United States v. Douglas J. Blake -- Blake was an employee of the United States Department of the Air Force.

Blake had business relationships with Champion Construction Company whereby he and Champion Construction Company shared profits as business partners in a series of ongoing business ventures. At various times, Blake used the equipment and resources in his Government office to advance some of their joint business interests.

In or about April and May 1998, Blake advised principals of Champion Construction Company that there would be a bid process initiated to award a contract to renovate office space being prepared for the Government office for which he served as supervisory special agent and recommended that Champion Construction Company bid on the project. Prior to making the bid, principals of Champion Construction Company asked Blake whether there was any problem with Champion Construction Company bidding on the project because of the Company's and the principals' relationship with him. Blake assured them that there would be no conflict because he would not participate in the bidding process or the selection of the contractor.

In or about May and June 1998, Blake recommended to the entity conducting the bidding process on behalf of the Government that Champion Construction Company be given the opportunity to bid on the contract to renovate office space being prepared for the Government. In or about June and July 1998, Blake provided advice to the Contracting Officer's Technical Representative at Blake's agency in Northern Virginia in the Eastern District of Virginia that Champion Construction Company should be selected to perform the work on the construction project. On or about July 8, 1998, Blake personally selected Champion Construction Company for the construction project. He did so after being delegated the responsibility to make the decision but without ever disclosing to anyone within the agency that he knew he should not participate because of his relationship with Champion Construction Company. In or about July 1998 through October 1998, Blake continued to participate personally and substantially in change orders to the original contract and in the oversight of Champion Construction Company's

work on the construction project, for which Champion Construction Company was paid approximately $303,000 out of money belonging to the United States.

Blake pled guilty on July 11, 2000, to a felony count of violating 18 U.S.C. § 208. Blake was sentenced on September 22, 2000, to one-year probation and a $2,000 fine. Blake
resigned from his position with the Air Force in March 2000, during the investigation.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

2. United States v. Mark A. Boster -- Boster served as the Deputy Assistant Attorney General of the Information Resources Management office within the Department of Justice from 1995 until January 30, 1999, when he left Government service. In that position, Boster managed the various functions of the Information Resources Management office, including computer systems. The Information Resources Management office is responsible for maintaining, assessing, designing, and procuring the information systems and telecommunications for the Department of Justice.

At all pertinent times, Boster was paid at the rate of level 5 of the Executive Service pay scale while employed by the Government. In January 1999, Boster left the position of Deputy Assistant Attorney General and joined Science Applications International Corporation (SAIC) in McLean, Virginia. On or about April 7, 1999, after Boster had left Government service and was working for SAIC, he telephoned the Acting Deputy Assistant Attorney General of Information Resources Management, the position Boster previously held before leaving the Department of Justice. Boster told the official that he knew that the Department of Justice was considering not using SAIC on a new contract and stated that such action might require a payment to SAIC, which could, in turn, trigger the Anti-Deficiency Act because budgeted funds would have been exceeded.

The Government maintained that Boster's conduct violated 18 U.S.C. § 207(c), a one-year post-employment restriction that prohibits a former "senior employee" from communicating to or appearing before his former department or agency, on behalf of

REV_00140327

another person or entity other than the United States, with the intent to influence official action. Boster denied the allegations. Pursuant to a civil settlement agreement signed by the parties in August 2000, Boster paid the Government $30,000, and the Government released Boster from its claims.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

3. United States v. Francis DeGeorge -- During the relevant period, DeGeorge served as the Inspector General of the United States Department of Commerce.

During the same time period, Litton/PRC, Inc., was a company conducting business with the Department of Commerce and one of its components, the National Weather Service. Litton/PRC had a contract known as the "Advanced Weather Interactive Processing System" with the National Weather Service. That contract involved the updating of the National Weather Service's automated system. Litton/PRC had a financial interest in the outcome of the contract, which DeGeorge knew.

As the Inspector General of the Department of Commerce, DeGeorge was responsible for oversight of Litton/PRC's contract with the National Weather Service, and he participated personally and substantially in that contract by making recommendations and rendering advice thereon. From on or about November 1995 through July 1996, while still employed with the Department of Commerce and participating personally and substantially in Litton/PRC's contract with the National Weather Service, DeGeorge negotiated with a representative of Litton/PRC for prospective employment. DeGeorge also met with the president of Litton/PRC and other Litton/PRC personnel in connection with prospective employment. DeGeorge's meetings and negotiations with Litton/PRC's representatives took place within the Eastern District of Virginia.

DeGeorge pled guilty on May 25, 2000, to a misdemeanor count of violating 18 U.S.C. § 208, for participating personally and substantially as a Government employee in a particular matter in which, to his knowledge, an organization with whom he is negotiating prospective employment has a financial interest. DeGeorge was sentenced on June 22, 2000, to one-year probation.

REV_00140328

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

4. United States v. Michael P. Filchock -- Filchock was employed by the Export-Import Bank of the United States (Ex-Im Bank) from September 1994 until June 1998. Ex-Im Bank is a wholly owned Government corporation and independent agency of the United States. Ex-Im Bank provides a variety of financing to foreign buyers of United States goods. For the period of November 1996 through September 1997, Filchock served as a loan officer. In that position, Filchock was responsible for reviewing loan applications and presenting his financial analysis to his superiors. Based on Filchock's recommendation and analysis, Ex-Im Bank would decide whether to make a loan.

First National Bank of New England (First National Bank) was among the financial institutions that requested the services of Ex-
Im Bank. While a loan officer at Ex-Im Bank, Filchock had frequent, almost daily, contact with First National Bank regarding the various guarantees sought by the bank.

On July 30, 1997, Filchock sent his resume to First National Bank. On August 8, 1997, Filchock interviewed with First National Bank, and he sent a follow-up thank-you letter to First National Bank on August 13, 1997. By a letter dated August 12, 1997, First National Bank offered Filchock a position with First National Bank. Filchock eventually declined the offer by a letter dated August 26, 1997.

While negotiating employment with First National Bank, Filchock authored two memoranda recommending the approval of guarantees requested by First National Bank. On August 12, 1997, Filchock wrote a memorandum recommending the approval of First National Bank's request for a guarantee in the amount of $266,567. On August 13, 1997, Filchock authored a memorandum recommending approval for First National Bank's request for a comprehensive guarantee in the amount of $774,451.

The Government maintained that Filchock's conduct violated 18 U.S.C. § 208, for participating personally and substantially as a Government employee in a particular matter in which, to his knowledge, an organization with whom he is negotiating prospective employment has a financial interest. Pursuant to a

REV_00140329

civil settlement agreement signed by the parties in August 2000, Filchock paid the Government $5,000, and the Government released Filchock from its claims.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

5. United States v. Jean Kennedy Smith -- From June 1993 to October 1998, Smith served as United States Ambassador to Ireland. By letter to the President of the United States dated April 20, 1998, Smith advised of her decision to resign as Ambassador, although she subsequently agreed to stay on in that capacity until conclusion of the President's trip to Ireland in the Fall of 1998.

On August 5, 1998, while serving as Ambassador, Smith sent a letter on official State Department letterhead to Irish Prime Minister Bertie Ahern requesting a one million dollar donation from the Irish Government to help underwrite costs related to the year 2000 Irish Festival to be sponsored by and held at the John F. Kennedy Center for the Performing Arts (the Kennedy Center). At the time she sent the letter, Smith was also serving on the Board of Trustees of the Kennedy Center. The Kennedy Center is a non-profit cultural and charitable organization located in Washington, D.C. In addition to hosting performances of music and dance, the Kennedy Center also sponsors numerous cultural events. Smith was aware of the relevant prohibitions on fundraising activities. In May 1993, before being confirmed by the United States Senate as Ambassador, Smith wrote in a letter to the Department of State's Deputy Legal Advisor and Designated Agency Ethics Official that she would not personally participate in any solicitation of funds involving the Kennedy Center. Smith asserted that she understood she had received approval to send the letter in question. There was no allegation that Smith gained personally in the matter.

The Government maintained that Smith's conduct violated 18 U.S.C. § 208, for participating personally and substantially as a Government employee in a particular matter in which, to her knowledge, an organization in which she is serving as an officer, director, or trustee has a financial interest. Smith denied that she violated section 208 and asserted affirmatively that as Ambassador to Ireland she sought to conduct herself in accord with the highest ethical standards. Pursuant to a civil

REV_00140330

settlement agreement signed by the parties in September 2000, Smith paid the Government $5,000, and the Government released Smith from its claims.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

6. United States v. Matthew Norouz -- 18 U.S.C. § 209, which bars the unlawful supplementation of salary, applies to officers and employees of the District of Columbia and non-Government sources who compensate any such officers and employees for their Government services. Several inspectors employed by the District of Columbia Department of Consumer and Regulatory Affairs were accepting bribes and gratuities in exchange for the issuance of construction, plumbing, and electrical permits. Norouz is a private architect who paid "tips" to one of these inspectors in exchange for speedy and favorable inspections on his renovation projects.

Norouz was allowed to plead guilty on April 10, 2000, to a misdemeanor count of section 209. On July 10, 2000, Norouz was sentenced to one-year probation and a $1,000 fine. [The inspectors were convicted on charges of violating 18 U.S.C. § 201.]

Prosecution handled by the U.S. Attorney's office, District of Columbia.

7. United States v. Donald Rappaport -- Rappaport served as Chief Financial Officer and Chief Information Officer of the United States Department of Education.

During such period, Rappaport's wife owned 600 shares of Compaq computer stock that she had inherited from her mother. During this period, Rappaport was involved in his official capacity in issues concerning Compaq computers.

The Government contended that Rappaport violated 18 U.S.C. § 208, for participating personally and substantially as a Government officer in a particular matter in which, to his knowledge, he and/or his spouse has a financial interest. Rappaport denied the claims. Pursuant to a civil settlement and release in October 2000, Rappaport paid the Government $20,000,

REV_00140331

and the Government released Rappaport from its claims.

Prosecution handled by the U.S. Attorney's office, District of Columbia.

8. United States v. Lugman Sabour, United States v. Kittim Simpson -- 18 U.S.C. § 209, which bars the unlawful supplementation of salary, applies to officers and employees of the District of Columbia and non-Government sources who compensate any such officers and employees for their Government services. Richard Greenblat, an employee of the District of Columbia Department of Motor Vehicles (DMV), was accepting bribes in exchange for altering DMV computer records in order to "clean up" the driving records of individuals who had outstanding traffic tickets or past violations that might prevent them from obtaining a driver's license. These bribe transactions were arranged through a middleman named James Bevineau. Sabour and Simpson were private individuals who paid Bevineau in order to have their driving records "cleaned up." Bevineau then passed a portion of the money on to Greenblat.

Sabour and Simpson were allowed to plead guilty on January 5, 2000, and April 13, 2000, respectively, to a misdemeanor count of aiding and abetting a violation of section 209. On April 5, 2000, Sabour was sentenced to two-years probation and a $200 fine. On July 12, 2000, Simpson was sentenced to one-year probation and a $250 fine. [Greenblat and Bevineau were convicted of violating 18 U.S.C. § 201.]

Prosecutions handled by the U.S. Attorney's office, District of Columbia.

9. United States v. Arnett Smith -- 18 U.S.C. § 208, which bars taking official action in matters affecting personal financial interests, is applicable to officers and employees of the District of Columbia. Smith was the Chief of the Day Programs Branch of the District of Columbia Mental Retardation and Developmentally Disabled Administration.

Smith's duties included assigning patients to various day treatment facilities for mentally disabled adults. He was involved in a series of financial dealings with the operator of one of these day treatment centers, Denise Braxtonbrown-Smith.

REV_00140332

These dealings included making loans to Braxtonbrown-Smith, which were repaid at exorbitant interest rates, and engaging in secret real estate transactions with Braxtonbrown-Smith that resulted in financial gains for Smith. During the same time period, Smith was personally involved in the assignment of clients to Braxtonbrown-Smith's day treatment center, which directly resulted in substantial monetary benefits to Braxtonbrown-Smith.

On November 5, 1999, Smith was indicted on charges of violating section 208; 18 U.S.C. § 371 (conspiracy); and 18 U.S.C. § 201. Following trial, he was found guilty on May 16, 2000, of section 371 (conspiracy) and two felony counts of section 208. On December 12, 2000, Smith was sentenced to forty-six months incarceration, a $25,000 fine, and 100 hours of community service.

Prosecution handled by the U.S. Attorney's office, District of Columbia.

10. United States v. Glenn R. Hodges -- Hodges was Chief of Staff at the Department of Veterans Affairs Medical Center in Kansas City, Missouri.

During the same time period he was employed in this capacity at the Department of Veterans Affairs Medical Center, Hodges was also employed as a physician by the University of Kansas Medical Center in Kansas City, Kansas. In his official Governmental capacity, Hodges approved a contract dated May 5, 1995, for cardiocath services to the Department of Veterans Affairs Medical Center by the University of Kansas Medical Center.

On March 8, 2000, Hodges pled guilty to a misdemeanor violation of 18 U.S.C. § 208, which bars taking official action in matters affecting personal financial interests. On August 7, 2000, Hodges was sentenced to pay a $250 fine and a special assessment of twenty-five dollars.

Prosecution handled by the Western District of Missouri.

11. United States v. Timothy A. Anderson -- Anderson was an employee of the United States Government.

REV_00140333

According to the Government's factual allegations in a civil complaint, Anderson was employed as a chemist by the United States Food and Drug Administration (FDA) in the Office of Generic Drugs (OGD) from February 9, 1992, through March 25, 1994. In that capacity, he performed reviews of Abbreviated New Drug Applications (ANDAs) submitted by pharmaceutical companies seeking to gain approval to manufacture and market generic versions of innovator drugs. Shortly before leaving employment with the FDA, in March 1994, Anderson completed the first-level chemistry review of Taro Pharmaceuticals, Inc. ANDA #74-444 for Miconazole Nitrate Vaginal Creme 2%, an alleged generic equivalent to the prescription innovator drug Monistat-7. His review consisted of an extensive analysis of the chemical components, manufacturing process, testing methods, and labeling requirements of the product.

On or about July 1996, Anderson commenced employment as Vice President of Regulatory Affairs and United States Agent for Taro Pharmaceuticals, Inc., in its Hawthorne, New York office. In 1996 and early 1997, Anderson contacted OGD officials on numerous occasions in an effort to obtain approval of Taro Pharmaceuticals, Inc. ANDA #74-444 for Miconazole Nitrate Vaginal Creme 2%, which was still pending before OGD. Anderson's contacts consisted of status calls in which he urged OGD representatives to speed up the process of approval of the application and substantive discussions concerning problems with the application. Throughout his contacts with OGD officials, Anderson was aggressive in seeking the approval of ANDA #74-444. Further, Anderson used his acquaintance with supervisory-level OGD officials from his tenure as an OGD employee in an attempt to get special treatment for ANDA #74-444 based on his relationships with these officials. Anderson made a number of calls to these supervisory-level officials regarding ANDA #74-444 urging them to speed up the process of its approval. ANDA #74-444 was approved in January 1997.

In the complaint, the Government alleged that Anderson's actions violated 18 U.S.C. § 207(a)(1), which prohibits a former Government employee from communicating to or appearing before the Government, on behalf of another person or entity other than the United States, in connection with a matter in which he participated personally and substantially as a Government employee. Anderson denied the allegations of the complaint. Pursuant to a settlement agreement signed by the parties in June 2000, Anderson agreed to pay the Government $15,000, and the Government released Anderson from its claims.

REV_00140334

Prosecution handled by the Southern District of New York.

12. United States v. Annette Johnson -- Johnson was a clerical employee of the Immigration and Naturalization Service (INS) who took money in exchange for assisting in processing INS employment authorization documents.

Johnson pled guilty to a misdemeanor violation of 18 U.S.C. § 203(a)(1), for receiving compensation for representational services rendered in a particular matter before a department or agency of the United States. On December 12, 2000, Johnson was sentenced to two-years probation and a $1,000 fine.

Prosecution handled by the Southern District of New York.

13. United States v. Gilford Moss -- Moss was an Internal Revenue Service (IRS) Revenue/Settlement Officer.

Moss was assigned to an IRS collection matter which gave him inside information concerning a proposed stock exchange. After his role in the case was substantially over, Moss purchased approximately $2,000 in the stock subject to the proposed exchange based in part upon information he had learned during the course of his duties as a Revenue Officer. After his stock purchase, on several occasions Moss had minor contact on the case with the parties before the IRS. He eventually went to his supervisor, disclosed his interest in the stock, and was removed from further participation in the case. Moss lost money on the stock transaction.

Moss was prosecuted pursuant to 18 U.S.C. § 208, for participating personally and substantially as a Government officer or employee in a particular matter in which, to his knowledge, he has a financial interest, and 18 U.S.C. § 216(a)(1). Moss was placed on pretrial diversion for six months on the condition that he resign from the IRS and perform 120 hours of community service.

Prosecution handled by the District of Oregon.

REV_00140335

14. United States v. Carlos Colina-Vargas -- Colina-Vargas was a grant writer for city and county governments. Raymundo Ramirez was an employee of the Department of Commerce. Colina-Vargas agreed to give a fee to Ramirez in exchange for getting a grant application approved.

Though originally charged with violating 18 U.S.C. § 201, Colina-Vargas was permitted to plead guilty on April 20, 2000, to a misdemeanor violation of 18 U.S.C. § 203(a)(2), promising compensation to a Government employee for representational services rendered in a particular matter before a department or agency of the United States. On June 20, 2000, the District Judge sentenced Colina-Vargas to two-years probation. [Ramirez pled guilty to violating 18 U.S.C. § 201.]

Prosecution handled by the Western District of Texas.

15. United States v. Genaro M. Suarez -- Suarez, who was a private citizen, attempted to bribe an Internal Revenue Service (IRS) employee by paying him $250 for favorable treatment regarding an IRS matter.

On August 17, 2000, Suarez pled guilty to a misdemeanor violation of 18 U.S.C. § 209, which prohibits the payment of supplementation to a Government employee's salary. On the same date, Suarez was sentenced to one-year probation and a special assessment of $25.

Prosecution handled by the Western District of Texas.

REV_00140336

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/18/2002 2:58:39 AM
Subject: : NY Times: Blacks at Home Support a Judge Liberals Assail

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-FEB-2002 07:58:39.00
SUBJECT:: NY Times: Blacks at Home Support a Judge Liberals Assail
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Very good piece on Pickering in New York Times.

February 17, 2002

Blacks at Home Support a Judge Liberals Assail
By DAVID FIRESTONE

LAUREL, Miss., Feb. 15 ? Back in Washington, his opponents have depicted Judge Charles W. Pickering as the personification of white Mississippi's oppressive past, a man so hostile to civil rights and black progress that

he is unfit for promotion to a federal appeals court.

But here on the streets of his small and largely black hometown, far from the bitterness of partisan agendas and position papers, Charles Pickering is a widely admired figure of a very different present.

In funeral parlors and pharmacies, used-car lots and the City Council chambers, the city's black establishment overwhelmingly supports his nomination to the United States Court of Appeals for the Fifth Circuit, which is heading toward a contentious vote in the Senate in the first major judicial battle of the Bush administration.

Though few black residents here subscribe to Judge Pickering's staunchly Republican politics, many say they admire his efforts at racial reconciliation, which they describe as highly unusual for a white Republican in the state.

"I have never seen Trent Lott open his arms to the black community the way Charles Pickering has," said Larry E. Thomas, owner of Thomas Pharmacy, referring to the Senate minority leader, who is Judge Pickering's friend and patron. "Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community. That's a progressiveness that we need to see more of in this state."

Progressive is not exactly the description used by the national black officials who are making an intense effort to prevent the judge's appointment. "A vote for Pickering is a vote against civil rights," said Julian Bond, the national chairman of the N.A.A.C.P. Representative Robert C. Scott, Democrat of Virginia, speaking against the nomination with other members of the Congressional Black Caucus, said, "It's hard to imagine a person who is more hostile to civil rights." Judge Pickering has also been condemned by a variety of big-city newspaper editorial boards and columnists.

But such comments carry little weight among those who actually know the man personally here in Laurel, in southeast Mississippi. Judge Pickering, now a federal district judge in the nearby city of Hattiesburg, was praised by black city officials for helping to set up after- school youth programs here, and for directing federal money to medical clinics in low-income areas when he was a state senator. Black business leaders say he was influential in persuading white-owned banks to lend money to black entrepreneurs, helping to strengthen the city's black middle class.

"I can't believe the man they're describing in Washington is the same one I've known for years," said Thaddeus Edmonson, a former local president of the N.A.A.C.P. who is now president of the seven-member Laurel City Council and one of its five black members. "If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

The judge's widespread popularity in his hometown has been frustrating to the many civil rights and abortion rights groups that have worked to portray him as an ideological relic of the Old South.

Several opponents of his nomination have tried unsuccessfully to get his supporters to change their minds, and their inability to do so reflects the distance between national liberal groups and many Southern blacks in small towns. In a city like Laurel, with a population of 18,393, one's personality and faith are often more important than a judicial paper trail or an adherence to an agenda.

People for the American Way, a liberal organization based in Washington, has criticized Judge Pickering for disregarding the separation of church and state by promoting religious programs from the bench. But many prominent blacks here say it is precisely his religious background ? he was president of the Mississippi Baptist Convention in the 1980's ? that they admire.

"I know Judge Pickering is a fair and impartial person grounded with Christian ethics and beliefs, who ought to be given this chance," said the Rev. Arthur Logan, the black pastor of the Union Baptist Church and a member of the City Council. "There are many people in Mississippi who made these same mistakes early in life, but their strong Christian character brought them closer to God and helped them change."

Four of the five black council members, in fact, said they enthusiastically supported Judge Pickering's appointment. The fifth, Manuel Jones, said he opposed the nomination, largely because he differed with Judge Pickering's efforts in the late 1980's to integrate the largely black city schools with the largely white county schools.

Judge Pickering, then in private practice in Laurel, was one of several white city leaders who argued that the city could not attract economic development with an effectively segregated school system. At the time, Mr. Jones was president of the Laurel-Jones County branch of the N.A.A.C.P., which maintained that consolidation would dilute black administrative power over the city schools. The consolidation plan was eventually overturned by a federal judge, who said it was not justified.

Mr. Jones said he rebuffed a recent telephone request by Judge Pickering that he write the Senate a letter of support. (He had publicly opposed the judge's original appointment to the federal bench in 1990.) Several other council members did agree to the judge's request, however, and their letters are on file with the Senate Judiciary Committee.

"It's hard to go against a sitting federal judge," said Mr. Jones, searching for an explanation of why his colleagues have taken a position that differs so sharply from his.

Many of the judge's critics have cited actions or statements he made in the 1960's and 70's. They have pointed to an article he wrote in 1959 that appeared to support strengthening the state's law against interracial marriages, and to his votes in the state senate that appeared to dilute black voting strength.

But his many black supporters here ? all lifelong Democrats ? say they are more interested in his journey than his starting point. They say Judge Pickering, like many white Mississippians, has moved beyond his all-too-common origins.

"He grew up like a lot of white people here," said the Rev. George L. Barnes, a black minister who is pastor at two Missionary Baptist churches and owns a used-car lot. "But his daddy and my daddy used to swim together down in the creek, and I've never heard him say a racist thing. I would say, of people in his age bracket, he's probably come further than any white man I know of."

Local leaders' support for Judge Pickering has put them at odds with several black state officials and the Mississippi conference of the N.A.A.C.P., which oppose his appointment. Bennie Thompson, a Democrat who represents the Delta region on the opposite side of the state in Congress, has called the judge's black supporters "Judases." State N.A.A.C.P. officials say the judge's supporters in Laurel have succumbed to an effort to cover up his feelings with small acts of kindness. This alternately angers and amuses local residents, who say no such masquerade can last for decades.

"If he's been putting on a show for us, it's the greatest show on earth," said Mr. Thomas, who runs the city's only black-owned pharmacy and who served with Mr. Pickering on the local economic development board in the 1980's.

Ralph Neas, president of People for the American Way, which is leading the opposition to the appointment, said many of the judge's supporters in Laurel simply did not know the full details of his record.

"We don't dispute that he has support from a number of African- Americans at the local level, and we have never said he is a racist," Mr. Neas said. "He may be a decent person on a one-to-one basis, but that's not the issue. It's his actions as a public official that demonstrate insensitivity and hostility toward basic civil rights principles."

People for the American Way said that as a state senator in the 1970's, Mr. Pickering voted for measures to reduce black voting strength and approved giving state money to the Mississippi Sovereignty Commission, which became notorious for opposing the civil rights movement. On the federal bench, the group said, he has strongly criticized the creation of largely black political districts as a remedy for past discrimination.

Many local residents said they were not familiar with such statements. But they do remember that in 1967, Judge Pickering testified against Sam Bowers, a Ku Klux Klan leader based in Laurel who was on trial for the firebombing death of a black civil rights worker. Several said that just as the judge broke with prevailing white opinion in the state to do so, they have no trouble differing with black opinion.

"What blacks have fought for is freedom, and that means the freedom of expression to differ among ourselves," said Johnny Magee, a black councilman who supports the judge. "So many people are still angry about the past. But if the judge has moved beyond his past, I think we should all try to do the same."

From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Stuart W. Bowen/WHO /EOP@EOP [WHO] <Stuart W. Bowen>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/18/2002 5:45:42 AM
Subject: : Re: NY Times: Blacks at Home Support a Judge Liberals Assail

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-FEB-2002 10:45:42.00
SUBJECT:: Re: NY Times: Blacks at Home Support a Judge Liberals Assail
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There's also an "okay" editorial in the Wash Post.

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From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>
Sent: 2/19/2002 6:05:57 AM
Subject: : Re: 202-844-1111

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 11:05:57.00
SUBJECT:: Re: 202-844-1111
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
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CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Funny thing is that, according to my watch (and, it turns out the "844"
number), I did arrive at 8:43 today. I know that because I didn't leave
my desk here in the EEOB until 8:40, and thought I was going to be late.
So I noticed the time today.

And my previous response was responsive. I said that I agree (as I think
we all do) with the principle you stated in your first e-mail -- don't be
too early. The problem we have is agreeing on the actual time -- not the
time of arrival -- but the actual time of day. Perhaps we should simply
synchronize our watches.




Brett M. Kavanaugh
02/19/2002 10:54:14 AM
Record Type: Non-Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: 202-844-1111

They always say the best defense is a good if non-responsive
attack! My watch is fine (but thank you for asking). Today's meeting
(where two people other than I missed out on part of a discussion of one
of their important issues even though they were on time) sparked my
e-mail, and today I was the second one over there (after you, naturally).
Anyway, just for fun, why don't you try not to arrive before 8:13 (or 8:43
for this week)? That may well solve the problem. Alternatively, I
```

suggest everyone show up at 8:05 (or 8:35 this week) to try to keep up with what one of our colleagues previously termed "the eager-beaver brigade."

Courtney S. Elwood
02/19/2002 09:52:49 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: 202-844-1111

It doesn't really matter what time the "844" number says, if the Judge's clocks are different. In any event, however, I just checked the "844" number, and it said the same time that is on my watch and on the computers -- the times I go by, and which are consistent with the Judge's phone clock. So I think we all agree on the principle (don't get there early); and it may be, Brett, as simple as you needing to adjust your watch.

Brett M. Kavanaugh
02/19/2002 09:48:58 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: 202-844-1111

ok, gang, I suggest that when necessary, we call the phone number above to get the exact time; it's starting to get a little ridiculous again with the staff meeting starting earlier and earlier because a few eager-beavers get to the waiting area many, many minutes before the official 8:15 start (8:45 start this week); if anyone is that eager to start at 8:00 or 8:10, let's do that explicitly so that all have fair notice. (Note that the clocks on our computers appear to be synchronized to the correct time.)

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

Message Copied
To:_____
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop

rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
helgard c. walker/who/eop@eop
noel j. francisco/who/eop@eop

Message Copied
To:_____
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
kyle sampson/who/eop@eop
helgard c. walker/who/eop@eop
noel j. francisco/who/eop@eop

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/19/2002 2:16:25 AM
Subject: : Fw: letter and response device for Cornyn event
Attachments: P_2ESI5003_WHO.TXT_1.htm; P_2ESI5003_WHO.TXT_2.doc; P_2ESI5003_WHO.TXT_3.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-FEB-2002 07:16:25.00
SUBJECT:: Fw: letter and response device for Cornyn event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Another for your blessing - this is for a 3/28 event for John Cornyn with POTUS in Dallas. Thanks.

---------- Forwarded by Paul B. Dyck/WHO/EOP on 02/19/2002 07:15 AM ----------

Paul Dyck <pdyck@georgewbush.com>
02/15/2002 04:12:56 PM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc:
Subject: Fw: letter and response device for Cornyn event

letter and response device for Cornyn event
----- Original Message -----
From: Sahl,Maianne
To: pdyck@georgewbush.com
Sent: Friday, February 15, 2002 3:17 PM
Subject: letter and response device for Cornyn event

Please approve and or edit and get back to me. <<bush43replycard.doc>>
<<bush43replycard.doc>>

Thanks so much! Maianne

Maianne Sahl
Finance Director
John Cornyn for Senate
P.O. Box 13026
Austin, Texas 78711
512-494-8535
512-494-8161 fax

- att1.htm
- bush43replycard.doc
- bush43replycard.doc

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2ESI5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2ESI5003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2ESI5003_WHO.TXT_3>

----- Original Message -----
From: Sahl,Maianne
To: pdyck@georgewbush.com
Sent: Friday, February 15, 2002 3:17 PM
Subject: letter and response device for Cornyn event

Please approve and or edit and get back to me. <<bush43replycard.doc>> <<bush43replycard.doc>> ;

Thanks so much! Maianne

Maianne Sahl
Finance Director
John Cornyn for Senate
P.O. Box 13026
Austin, Texas 78711
512-494-8535
512-494-8161 fax

Please join Attorney General John Cornyn for a fundraising luncheon with special guest

President George W. Bush

Thursday, March 28th
11:30 - 1:00 p.m.
The Wyndham Anatole Hotel (tentative)
Dallas, Texas

_____**YES!** I want to show my support for Attorney General John Cornyn in his campaign for the U.S. Senate. I will join the Host Committee as:

___ **Underwriter (Table Host)**	**$10,000+** **Agrees to raise $10,000 and give a personal contribution up to the legal limit of $2,000/person ($1,000 Primary and $1,000 General) or $4,000/couple.** (This includes special recognition on the invitation, VIP reception including photos and preferred seating.)
____**Host**	**$4,000 per couple/ $2,000 per individual** (includes recognition on the invitation and host reception.)
____**Guest**	**$2,000 Per Couple/$1,000 Per Person** (Contributor(s) to attend the event)

_____I'm sorry, I can't attend the event, but would like to show my support for John Cornyn, enclosed is my contribution of $_____.

NOTE: All Donations for the Primary must be received before March 12th to be counted for the Primary Election

Please complete the information below and on the opposite side.

Name:_____
(As it should appear for printing, i.e. Jane and John Smith)

Address:_____ City, State, Zip_____

Phone:_____ Fax:_____

Email:_____

Please fax this form to The McIntosh Company at 214/520-2196 by March 8th to be printed on the invitation. If you need more information please call Alison McIntosh at 214/520-2194 or Maianne Sahl at 512/494-8535.

Federal Election Law prohibits any contributions exceeding $1,000 per person/$2,000 per couple. Please indicate that your contribution is to be designated to the ***2002 Primary*** in the memo line of your check. Please fill out the form on the back of this sheet, and enclose it with your contribution.

REV_00140356

Please join Attorney General John Cornyn for a fundraising luncheon with special guest

President George W. Bush

Thursday, March 28th
11:30 - 1:00 p.m.
The Wyndham Anatole Hotel (tentative)
Dallas, Texas

_____**YES!** I want to show my support for Attorney General John Cornyn in his campaign for the U.S. Senate. I will join the Host Committee as:

___ **Underwriter (Table Host)**	**$10,000+** **Agrees to raise $10,000 and give a personal contribution up to the legal limit of $2,000/person ($1,000 Primary and $1,000 General) or $4,000/couple.** (This includes special recognition on the invitation, VIP reception including photos and preferred seating.)
____**Host**	**$4,000 per couple/ $2,000 per individual** (includes recognition on the invitation and host reception.)
____**Guest**	**$2,000 Per Couple/$1,000 Per Person** (Contributor(s) to attend the event)

_____I'm sorry, I can't attend the event, but would like to show my support for John Cornyn, enclosed is my contribution of $_____.

NOTE: All Donations for the Primary must be received before March 12th to be counted for the Primary Election

Please complete the information below and on the opposite side.

Name:_____
(As it should appear for printing, i.e. Jane and John Smith)

Address:_____ City, State, Zip_____

Phone:_____ Fax:_____

Email:_____

Please fax this form to The McIntosh Company at 214/520-2196 by March 8th to be printed on the invitation. If you need more information please call Alison McIntosh at 214/520-2194 or Maianne Sahl at 512/494-8535.

Federal Election Law prohibits any contributions exceeding $1,000 per person/$2,000 per couple. Please indicate that your contribution is to be designated to the ***2002 Primary*** in the memo line of your check. Please fill out the form on the back of this sheet, and enclose it with your contribution.

Paid for by John Cornyn for Senate, Inc. www.johncornyn.com

REV_00140357

From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/19/2002 4:46:18 AM
Subject: : question: Map of circuits

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 09:46:18.00
SUBJECT:: question: Map of circuits
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Do either of you have an electronic version of a list or map of the
Circuits? or do you know a web site that would have this? map or list
would be fine.

Thanks! HW
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/19/2002 8:40:07 AM
Subject: : Re: OLP Meeting

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 13:40:07.00
SUBJECT:: Re: OLP Meeting
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ditto
```

```
Bradford A. Berenson
02/19/2002 01:39:09 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: OLP Meeting

Undecided, and no.
```

```
H. Christopher Bartolomucci
02/19/2002 01:11:02 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A.
Berenson/WHO/EOP@EOP
cc:
Subject: OLP Meeting

Are you guys going to Viet's shop for the 4:00 meeting? If so, have you
reserved a car?
```

From: CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/19/2002 9:28:21 AM
Subject: : RE: Invite

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-FEB-2002 14:28:21.00
SUBJECT:: RE: Invite
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Leonard B. Rodriguez/WHO/EOP on
02/19/2002 02:28 PM ----------

Shirley.Wheat@do.treas.gov
02/19/2002 02:00:32 PM
Record Type: Record

To: Leonard B. Rodriguez/WHO/EOP@EOP
cc:
Subject: RE: Invite

Have you heard anything yet?
I am going to have to send this down to our GC soon if I want to get
clearance on this...

-----Original Message-----
From: Leonard_B._Rodriguez@who.eop.gov
[mailto:Leonard_B._Rodriguez@who.eop.gov]
Sent: Tuesday, February 19, 2002 11:15 AM
To: Shirley.Wheat@do.treas.gov
Subject: Invite

With Special Counsel, should hear something shortly...

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
Sent: 2/19/2002 9:31:38 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 14:31:38.00
SUBJECT::
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Unless you have already done otherwise, I think we can limit the
meeting tomorrow to GC's offices only (there are several career attorneys
attending). Then, we can follow up with COS's and WH Liaisions in the
next week or so.
```

From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/19/2002 9:35:39 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-FEB-2002 14:35:39.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I'd like to discuss with you before hand

Brett M. Kavanaugh
02/19/2002 02:31:30 PM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
Subject:

Unless you have already done otherwise, I think we can limit the meeting tomorrow to GC's offices only (there are several career attorneys attending). Then, we can follow up with COS's and WH Liaisions in the next week or so.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
Sent: 2/19/2002 11:00:08 AM
Subject: : Judges: intelligence from Dems

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 16:00:08.00
SUBJECT:: Judges: intelligence from Dems
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I ran into a Schumer Judiciary staffer I know at the gym last
night. He first lamented the time he spends on judges. He then offered:
"Your guys are going to get hearings and votes. You may not like the
votes, but they will get hearings and votes."
```

From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]

To: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Ann L. Loughlin/WHO/EOP@EOP [WHO] <Ann L. Loughlin>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Patricia C. Zemple/WHO /EOP@EOP [WHO] <Patricia C. Zemple>;Larry Cote/WHO/EOP@EOP [WHO] <Larry Cote>;Barrett Aldemeyer/WHO/EOP@EOP [WHO] <Barrett Aldemeyer>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>

Sent: 2/19/2002 11:00:29 AM

Subject: : Admin Mtg.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 16:00:29.00
SUBJECT:: Admin Mtg.
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ann L. Loughlin ( CN=Ann L. Loughlin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Patricia C. Zemple ( CN=Patricia C. Zemple/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Larry Cote ( CN=Larry Cote/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Barrett Aldemeyer ( CN=Barrett Aldemeyer/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just a reminder that all White House staff tour information should be
forwarded to the Admin contact (Libby or me) for proper processing. We
will need all clearance information to reserve a spot (up to 4 per badge
```

holder) and need the information 10 before scheduled tour. The badge holder is also required to attend the tours and tours are held T-Sat. at 10 am.

April 1 is the Easter Egg Roll. Information is forthcoming and volunteers are needed (especially for the Saturday before as well as on Monday). Let me know if you are interested in volunteering.

We are still not receiving courier packages. We are receiving Fed Ex (not the same as Priority Mail which gets processed like US Mail) flat paper packages with a minimum of a 24-hour delay.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;d.r.willett@usdoj.gov [UNKNOWN] <d.r.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>

Sent: 2/19/2002 3:33:23 PM

Subject: : JSC meeting reminder and location change

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 20:33:23.00
SUBJECT:: JSC meeting reminder and location change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:d.r.willett@usdoj.gov (d.r.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

JSC will be held tomorrow, Wednesday, from 4:00-5:00 pm in the Judge's office (WW-2nd fl.).

Thanks!

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;d.r.willett@usdoj.gov [UNKNOWN] <d.r.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>

Sent: 2/19/2002 3:33:23 PM

Subject: : JSC meeting reminder and location change

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-FEB-2002 20:33:23.00
SUBJECT:: JSC meeting reminder and location change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
```

READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:d.r.willett@usdoj.gov (d.r.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
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JSC will be held tomorrow, Wednesday, from 4:00-5:00 pm in the Judge's office (WW-2nd fl.).

Thanks!

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/19/2002 3:33:54 PM
Subject: : Re: Cattlemen's Legal Question

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CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-FEB-2002 20:33:54.00
SUBJECT:: Re: Cattlemen's Legal Question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It is against our policy to allow an outside group to commercially market the President's words.

Brett M. Kavanaugh
02/19/2002 06:21:27 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Cattlemen's Legal Question

also, I need to provide a rationale.

Noel J. Francisco
02/19/2002 06:15:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Cattlemen's Legal Question

No.

Brett M. Kavanaugh
02/19/2002 04:57:37 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Cattlemen's Legal Question

Thoughts on this: The National Cattlemen's Beef Association wants to know if it can sell a video of the President's speech that he gave to their membership on the 8th in Colorado. The video was shot at the convention by the NCBA crew, and the entire convention was paid for by

NCBA.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>
Sent: 2/19/2002 4:14:27 PM
Subject: : Re: Loan Agreement between The White House and National Archives

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-FEB-2002 21:14:27.00
SUBJECT:: Re: Loan Agreement between The White House and National Archives
TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will confirm with Gary Stern at NARA in morning, but all systems
should be a go.

Mary Ann Hanusa
02/15/2002 07:40:18 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc: Linda M. Gambatesa/WHO/EOP@EOP, Christa J. Bailey/WHO/EOP@EOP,
Terry W. Good/WHO/EOP@EOP
Subject: Loan Agreement between The White House and National
Archives

Hey, you groovy Counsel gurus, the National Archives has a truck leaving
Washington on Wednesday, February 20, destined for College Station. I
believe that some of the items we will loan to the Archives will go on the
truck. Would it be possible to have a loan agreement in place before we
send some of our items on this truck?
Thank you for your help!!!

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Katherine G. Marinis/WHO /EOP@EOP [WHO] <Katherine G. Marinis>
Sent:	2/20/2002 7:32:59 AM
Subject:	: draft summary/talking points for distribution at meeting
Attachments:	P_WH5K5003_WHO.TXT_1.doc; P_WH5K5003_WHO.TXT_2.doc

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CREATION DATE/TIME:20-FEB-2002 12:32:59.00
SUBJECT:: draft summary/talking points for distribution at meeting
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Katherine G. Marinis ( CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WH5K5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WH5K5003_WHO.TXT_2>
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Political Activity Overview
(February 20, 2002)

General Principle

- In general, Executive Office of the President political appointees (EOP)[1] and Senate-confirmed officials (PAS) may engage in a wide variety of political activity (other than expressly soliciting contributions) *including while on duty and in the office*. The government must be reimbursed for additional costs associated with that activity -- that is, the costs beyond what the government otherwise would have incurred.
    - Certain investigative and national security agencies have more restrictive rules and policies; each such agency is responsible for appropriate guidance.

The Major Rules for EOP and PAS Officials

- Fundraisers
    - may appear and speak at fundraisers, but no explicit fundraising

- Use of Title
    - no use of actual title in invitations to political events
      (attempt to review invitations in advance)
    - may use "The Honorable" if applicable; former political titles appropriate
    - the official title may be used in a biography distributed at the event itself, in the introduction of the speaker, and in other similar ways at event

- Travel Costs
    - appropriate political entity pays costs associated with political travel
    - mixed trips: reimbursement determined by "total activity time"
    - security-related costs are official costs
    - corporate aircraft policy (do not use absent extraordinary circumstances)
    - Events in government buildings
        - no fundraising events on government property
        - appearance issues with donors *qua* donors

- Equipment
    - generally permissible for EOP and PAS officials to use equipment such as computers, printers, telephones, and FAXes for reasonable political activity because there are no additional costs incurred by government except incidental costs of paper
        - appearance issues from excessive use

[1] Such officials ordinarily work beyond normal work hours and outside the normal duty post as contemplated by the regulations.

Official versus Political

- Few bright-line rules; often a case-by-case judgment (1982 OLC opinion)
- The definitional issue is relevant primarily for use of title and travel purposes.
- Political activity is activity primarily related to an election, a campaign, a political party event, or a political party's operations.
    - Speaking at or attending an event held by a political party or political organization is ordinarily considered "political" unless the speaker is speaking only on official policy matters; if the event is a fundraiser or a campaign event, however, it ordinarily should be considered political regardless of content.
    - An otherwise official event is official notwithstanding that it may somehow incidentally assist the popularity of a political party or candidate (for example, if the event is in a district of a political candidate or if a political candidate such as a House member attends the event).
        - Speakers at an official event should avoid expressly advocating the election of a candidate.
    - Being knowledgeable about the political environment and the status of particular races can be relevant to one's official duties, for it is all but impossible to understand Congress or state or local government without being knowledgeable about the overall political/electoral environment in Congress and the states. Therefore, a briefing on the political environment and the status of particular races can be considered official activity depending on the overall context of the briefing.
    - Being knowledgeable about public opinion and public approval similarly can be relevant to one's official duties, and briefings on such issues ordinarily should be considered official activity depending on the overall context of the briefing.
- Informing the public about public policy issues, about the official and ceremonial activities of the President and the Administration, about activities in Congress, and about the Administration's legislative strategy is official activity (and indeed can be an official responsibility).

Principle for non-EOP, non-PAS employees

- Other Executive Branch officers and employees (again, except those in certain investigative and national security agencies) may engage in a wide variety of political activity, *but they may do so only while off duty and not on government property*.

- The law also recognizes, however, that certain Executive Branch employees who are not themselves White House or PAS officials may be required in the performance of their official duties to accompany or assist White House or PAS officials engaging in political activity (for example, ordinary duties related to security, scheduling, or typing). Such assistance is permissible, and the government need *not* be reimbursed for the compensation and expenses associated with such assistance.

Specific Rules

- Except for those in certain investigative and national security agencies, the permissible range of political activities includes:

    - participation in political organizations, which includes:

        - being a member of a political party;
        - serving as an officer of a political party;
        - attending and participating in nominating caucuses;
        - organizing a political party;
        - participating in a political convention or rally; and
        - serving as a delegate to a political convention.

    - participation in political campaigns, which includes:

        - displaying political pictures, signs, stickers, or buttons (although employees other than White House and PAS appointees cannot do so while on duty or in their offices);
        - circulating a nominating petition;
        - canvassing for votes;
        - endorsing or opposing a candidate in an advertisement, broadcast, campaign literature, or similar material (so long as one's official title is not used, except for that of the President and Vice President);
        - addressing a convention, caucus, rally, or similar gathering of a political party or political group; and
        - actively managing the political campaign of a partisan political candidate or candidate for political party office.

    - participation in elections, including:

        - voting;
        - acting as officer or watcher at a polling place;
        - serving as election judge or clerk; and
        - driving voters to polling places.

    - participation in fundraising:

Other than the President or Vice President, Executive Branch officers and employees may *not* solicit, receive, or accept political contributions. However, Executive Branch officers and employees (other than those in certain investigative and national security agencies) may:

- make political contributions;
- attend political fundraisers;
- manage or organize political fundraisers behind the scenes;
- speak at political fundraisers, so long as one's official title is not used (the term of address "The Honorable" may be used);
- be listed as a guest speaker on the invitation for a fundraiser, so long as the invitation does not use one's official title (again, the term of address "the Honorable" may be used);
- solicit, accept, or receive uncompensated volunteer services from any individual, without using one's official title (however, a superior may not ask his or her subordinate employee to provide such services, nor may he or she ask a company or entity with official matters pending before the agency to provide such services).

- As the above summary reveals, certain kinds of political activities are **forbidden**:
  - no soliciting, accepting, or receiving political contributions, except by President and Vice President (but officials may organize, manage, appear at, and speak at fundraisers)
  - no fundraising on government property
  - official's name cannot appear on an invitation as a "sponsor" of a fundraiser, but can be identified as a guest speaker
  - official's title cannot be used in connection with political events, but can use "The Honorable"
  - general misuse of official authority
    - cannot ask regulated entities or those under investigation to engage in political activities; however, one can speak to a diverse group that includes individuals within those categories
    - cannot ask subordinates to engage in political activity; however, superiors and subordinates may interact on political matters when both are involved in same political activity or organization
  - other than President and Vice President, cannot run as a candidate in a partisan election except under specified circumstances

Meeting on Political Activity
(February 20, 2002)

1. Goals of Meeting
   - provide overview of rules and policies
   - explain need for consistency of application for relevant EOP and PAS officials
   - ask for feedback from departments on difficult or recurring issues (either at or after meeting or in future)
   - will circulate memo for comment before distribution

2. Overview of Rules

3. Explain roles of Office of Special Counsel, White House Counsel, and DOJ Office of Legal Counsel as to EOP and PAS officials (or on issues that may affect those officials)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ali H. Tulbah/WHO/EOP@EOP [WHO] <Ali H. Tulbah>
Sent: 2/20/2002 5:27:56 AM
Subject: : Re: Concurrent Receipt Letter
Attachments: P_ZTZJ5003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2002 10:27:56.00
SUBJECT:: Re: Concurrent Receipt Letter
TO:Ali H. Tulbah (CN=Ali H. Tulbah/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No objection from White House Counsel.

Ali H. Tulbah
02/20/2002 10:19:28 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Concurrent Receipt Letter

The White House has received a large number of letters recently from veterans regarding the issue of concurrent receipt of certain benefits. In early January, Harriet asked Cabinet Affairs to coordinate a response and we have done so by enlisting resources from VA, DOD, and DPC. In her memo, however, Harriet also included NSC, OMB, OPL, and Counsel as interested parties. Therefore, I'm running the draft response by the appropriate person in each office to ensure there are no further concerns.

NSC and OPL have already given it the thumbs-up and OMB is still reviewing. We're looking to have this closed by COB today, so if you have feedback send it by then. If I don't get anything today, I'll assume you didn't see anything that caused concern. Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZTZJ5003_WHO.TXT_1>

This is in response to your inquiry to President George W. Bush concerning concurrent payments of Department of Veterans Affairs' (VA) disability compensation and military retirement pay. Your letter was referred to me for reply and I am pleased to do so.

Many veterans have served this country long and faithfully, and subsequently suffered from illness or injury. Those who retired from the service have given much to this country, and we appreciate their service and sacrifice. I can fully understand why you believe that they should be able to receive both their retired pay and compensation benefits.

VA has been prohibited by law (title 38 U.S.C. §5304(a)(1)) from paying compensation to a military retiree unless and until the retiree had waived a portion of his or her retirement pay equal to the amount of VA compensation. This prohibition has been the law since 1891, a period of more than 110 years.

The principle behind the prohibition is the idea that no one should be able to receive concurrent retirement benefits and disability benefits based upon the same service. A retired civil servant, for example, may not receive civil service disability benefits or workers compensation benefits in addition to civil service retirement benefits. A similar ban exists against concurrent payment of retirement and disability benefits by the Social Security Administration.

In recent years, Congress has considered various legislative proposals that would permit concurrent payment of compensation benefits and service retired pay. On December 28, 2001, President George W. Bush signed into law the National Defense Authorization Act, 2002 (Public Law 107-107), which contained a provision removing one of the barriers prohibiting concurrent receipt of military retired pay and VA disability compensation benefits. However, the new law did not provide the additional funding needed to begin the concurrent payments, and it specifically requires additional legislative action that must be taken before any concurrent payments can be made. This ~~additional legislative action~~ would require either increasing tax revenues or decreasing spending in other program areas in amounts equal to the extra costs of the concurrent payments. ~~before any concurrent payments could be authorized.~~ No additional legislative action has yet been taken.

Thank you for the opportunity to provide this information to you. We appreciate your concern on this issue and hope this information has been helpful.

Sincerely yours,

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/20/2002 6:30:53 AM
Subject: : Re: meeting with ARG on judicial strategy

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CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-FEB-2002 11:30:53.00
SUBJECT:: Re: meeting with ARG on judicial strategy
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Brett M. Kavanaugh
02/20/2002 11:29:14 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP, Bradford A.
Berenson/WHO/EOP@EOP, Kyle Sampson/WHO/EOP@EOP
cc:
Subject: meeting with ARG on judicial strategy

Can we meet with Judge after staff meeting tomorrow on judicial
strategy?
```

From: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>
To: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;McMahon, Lori <Lori.McMahon@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Comstock, Barbara <Barbara.Comstock@usdoj.gov>;Koebele, Steve <Steve.Koebele@usdoj.gov>;Ho, James <James.Ho@usdoj.gov>;Goodling, Monica <Monica.Goodling@usdoj.gov>;Anderson, Carl A <Carl.A.Anderson@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>
Sent: 2/20/2002 8:03:31 AM
Subject: : judicial media review
Attachments: P_9K7K5003_WHO.TXT_1.wpd

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<Andrew.Schauder2@usdoj.gov> [ UNKNOWN ] )
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TO:"Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Please see attached review

- Judicial Media Review 2-19-02.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_9K7K5003_WHO.TXT_1>

Media Review - Judicial Nominations
Tuesday, February 19, 2002

General Judicial Articles

"NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting," 2
U.S. Newswire, February 17, 2002

"Bush Reaffirms Support for Pickering; White House Says Democrats Stall on Judges," 3
James Brosnan, *The Commercial Appeal*, February 16, 2002

"NAACP Decries Judicial Nominee," 4
Christopher Lawton, *Newsday*, February 17, 2002

"NAACP Asks Congress to Oppose Judicial Nominee," 5
Zach Howard, *The Orlando Sentinel*, February 17, 2002

"Review Backs Nominee," 6
Audrey Hudson, *The Washington Times*, February 15, 2002

"Blacks at Home Support a Judge Liberals Assail," 7
David Firestone, *The New York Times*, February 17, 2002

"The Battle Escalates; New Fighting Over the Charles Pickering Nomination," 10
Byron York, *National Review Online*, February 15, 2002

"Speculation Builds Over Chief Justice Successor," 13
Jan Crawford Greenburg, *The Chicago Tribune*, February 17, 2002

"The O'Connor Factor," 17
Charles Lane, *The Washington Post*, February 18, 2002

"Edwards' Tactics Draw Ire," 21
Paul Kane, *Roll Call*, February 18, 2002

"Group in Judge Seminars Denies Slanted Viewpoint," 24
Ann McFeatters, *Pittsburgh Post-Gazette*, February 16, 2002

"Pickering's Actions Questioned in Cross Burning Case," 25
Jason Straziuso, *The Associated Press*, February 15, 2002

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"What Judges Do. The Founders Saw that Laws Are Often Murky, So Judicial Beliefs Matter," 27
Mark Kozlowski, *New Jersey Law Journal*, February 18, 2002

"A Judge's Past and Present," 30
The Chicago Tribune, February 18, 2002

"Campaign to Smear Judicial Nominee Rooted in Ignorance," 31
Creators Syndicate, Inc., *The Augusta Chronicle*, February 19, 2002

"A Case Without Merit; The Nomination of a Broadly Admired Federal Judge in Pittsburgh is Being Challenged Because of Political Pique. Ken Gormley and Frederick W. Thieman Defend Judge D. Brooks Smith Against the Calumny," 33
Jonathan Turley, *The Chicago Tribune*, February 10, 2002

"The Role of Ideology in Judicial Selection: Test Case," 35
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NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting

U.S. Newswire
Sunday, February 17, 2002

Kweisi Mfume, president & CEO, of the National Association for the Advancement of Colored People (NAACP) said yesterday that the association stands firm in its absolute opposition to the

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confirmation of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit at a press conference held here during the Annual Meeting.

Mfume said, "We will continue to demand fairness on the part of those empowered to interpret the laws of our nation. We are opposed to the Pickering confirmation because we decry a judicial nomination process where civil rights and civil liberties, and equal protection under the law are forced to take a back seat to partisan politics and political affiliations." Mfume added, "Accordingly and rightfully so, we stand firm as an organization in our absolute opposition to the Senate confirmation of Judge Charles Pickering of Mississippi, and we stand united against all others whose judicial records give rise to suspicion about their ability to render impartial judgment and fair interpretation of federal law."

Julian Bond, chairman, NAACP Board of Directors said, "The NAACP was created to fight for freedom and justice in a nation dedicated to those goals. We must continue to fight now with renewed determination. Each of has a role to play as guardians of our nation's liberty, and that is the role history has assigned to us."

Mfume called on the Congress to join the association in the fight to defeat the Pickering confirmation, and challenged the members to help fight against hate crimes and racial profiling. He also urged them not to ignore the AIDS epidemic both in Africa and at home.

"These are wrongs that must be confronted," Mfume said. "We are compelled to act responsibly before the world to better humanity, and ultimately, to better ourselves."

In light of the Sept. 11 tragedies, Mfume said, "By moving our Annual Meeting back to New York, the NAACP honors the world's leading city and its residents along with the scores of Americans who are resolved to defend the ideals of a free and open society. This is the city of our birth, and we stand in solidarity with New Yorkers."

The NAACP was founded in New York City on the 100th anniversary of President Abraham Lincoln's birthday, which was Feb. 12, 1909. The Association last held its annual meeting in New York in 1998. The meetings were held in Washington, D.C. between 1999-2001.

Bush Reaffirms Support for Pickering; White House Says Democrats Stall on Judges

By James Brosnan
The Commercial Appeal
Saturday, February 16, 2002

The White House on Friday reiterated President Bush's support for the troubled nomination of U.S. Dist. Judge Charles Pickering of Mississippi to the Fifth U.S. Circuit Court of Appeals in New Orleans.

"The President believes in and will fight for the nomination of Mr. Pickering," said White House spokesman Ari Fleischer. Fleischer's comment on Pickering was not prompted by a question, but

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came instead as Fleischer opened his daily briefing with an attack on Senate Democrats for holding up action on judicial nominations from the Republican administration.

Fleischer complained that the Senate has voted on only 37 of Bush's 90 judicial nominations and that there has been "enhanced lag" for the Circuit Court nominees, with votes on only seven of 29 nominees.

The 12 regional appellate courts have 30 vacancies, a vacancy rate of 18 percent, said Fleischer.

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) noted that many of the vacancies exist because when Republicans controlled the Senate they refused to act on many of President Clinton's nominees.

"During the last six years of the Clinton administration it took an average of about 150 days to move a district court nominee to confirmation. I am proud that we have been able to do better since last July," said Leahy.

The committee held a second hearing on Pickering's nomination last week and Friday members submitted additional questions to the Justice Department for Pickering to answer.

A vote is expected in March. Pickering needs at least one of the 10 committee Democrats to vote to send his nomination to the Senate, but all have expressed concerns either about his civil rights record in the state or rulings on the bench.

Internal Justice Department documents claim Pickering lobbied to reduce jail time for a man convicted of burning a cross on an interracial couple's lawn in 1994.

NAACP Decries Judicial Nominee

By Christopher Lawton
Newsday
Sunday, February 17, 2002

NAACP leaders Kweisi Mfume and Julian Bond voiced staunch opposition yesterday to Senate confirmation of a federal judge's nomination to the Fifth U.S. Circuit Court of Appeals, saying it is an affront to "civil rights, civil liberties and equal protection under the law."

U.S. District Court Judge Charles Pickering, a conservative Mississippi judge, "really represents most of the things that this organization opposes," Mfume, NAACP president and chief executive, said at a news conference at the New York Hilton and Towers Hotel, where the group's board of directors and trustees were having their annual meeting. Pickering, 64, whom President George W. Bush nominated to the appeals court, defended his past actions as a prosecutor and politician on Feb. 7 before the Senate Judiciary Committee. The committee has not scheduled a vote on his nomination.

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Pickering told senators that he took stands against racists in Mississippi in the 1960s and 1970s, endured threats against his family and lost re-election as a county prosecutor due to his views.

But he had to concede that he misled senators in 1990 during the Judiciary Committee's hearing on his nomination as a federal district court judge, when he said he never had contact with the Mississippi Sovereignty Commission, a state agency dedicated to maintaining segregation.

On that point, Bond yesterday was heated, saying Pickering "lied to the United States Senate about his associations with the terrorist group ... a state-funded organization which helped to do all it could to stop democracy in the state of Mississippi."

NAACP Asks Congress to Oppose Judicial Nominee

By Zach Howard
The Orlando Sentinel
Sunday, February 17, 2002

The National Association for the Advancement of Colored People on Saturday asked Congress to support its opposition to President Bush's nomination of a Mississippi judge.

"We challenge every member of the Congress . . . to stand with our association," NAACP President and CEO Kweisi Mfume told hundreds of members of the nation's oldest and largest U.S. civil-rights organization at an annual meeting in New York. The group, which has about 500,000 members nationwide, has said it opposes Senate confirmation of Judge Charles Pickering of Mississippi, nominated to serve on the 5th U.S. Circuit Court of Appeals in New Orleans.

It is one of a coalition of more than 50 organizations acting in opposition to the Pickering nomination since January.

White House officials were not available for comment on the NAACP's action. Efforts to reach Pickering were unsuccessful.

Pickering, a district-court judge since 1990 in Jackson, Miss., has been attacked by national groups for his record as a federal judge and earlier as state senator on matters including women's rights, abortion and voting rights.

"Judge Pickering, in most instances, really represents most of the things that this association is opposed to, and, in most of his rulings, continues to raise suspicions about whether or not he will be able to interpret . .. and administer fairness as he interprets the federal law," Mfume said.

Review Backs Nominee

By Audrey Hudson
The Washington Times

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Friday, February 15, 2002

A legal-ethics expert asked by Republicans on the Senate Judiciary Committee to review a cross-burning case says that District Court Judge Charles W. Pickering's behavior in the matter deserves praise, not criticism.

Democrats charged that the judicial nominee for the U.S. Court of Appeals for the Fifth Circuit behaved unethically in determining a crime sentence in the case involving the burning of a cross in the yard of a racially mixed couple.

Michael Krauss, a professor of legal ethics at George Mason University School of Law, reviewed the 1994 Mississippi case at the request of Senate Judiciary Committee Republican staffers.
Mr. Krauss sits on the Board of Governors of the Virginia state bar's education section and said he is frequently called on to discuss ethical issues with members of the bar and bench.

Judge Pickering's judicial behavior "is not unethical or in any way unbecoming of a member of the judiciary," Mr. Krauss said in a written review.

Liberal organizations oppose the nomination of Judge Pickering and are attempting to label him a racist. Democrats attacked Judge Pickering during his second confirmation hearing last week and said he engaged in unofficial communication to reduce the maximum sentence in the case.

Judge Pickering said he objected to the prosecution's sentencing recommendations on the grounds that it was disproportionate, and redacted documents released yesterday by the Judiciary Committee seem to back his assertion.

A 1994 Justice Department memo said Judge Pickering "immediately took issue with the 'severe disparities'" in the sentencing.

Three men were accused of the federal offense, but the prosecutor cut a deal with two offenders, who were then put on probation and sentenced to community service — one had a history of racism and had fired a gun into the home on a previous occasion, and the second had "low mental capacity," according to the memo.

The third suspect was a first-time offender, but the prosecution recommended more than seven years in prison. Judge Pickering instead sentenced him to 39 months in jail and called his actions "heinous," "reprehensible," "despicable," and "dastardly."

Judge Pickering asked federal prosecutors to inform their superiors at the Justice Department of the discrepancy in their sentencing recommendations. He also complained about the sentencing to a friend in a different branch of the department, but there is no evidence that confidential information was revealed, the review said.

"Judge Pickering was clearly concerned that no rational basis had been demonstrated for the

widely disparate sentencing recommendations ... ," the review said.

Judge Pickering's actions are described as a "determined effort" to "discharge, faithfully and competently, his judicial duties under our Constitution. I believe Judge Pickering deserves praise for his efforts," the review said.

Senate Minority Leader Trent Lott, Mississippi Republican, did not specifically identify Mr. Krauss' review, but said the Senate is receiving letters that should address Democrats' concerns.

"I believe any questions about him will be properly and sufficiently answered and we will get him out of committee," Mr. Lott said.

Sen. Charles E. Schumer, New York Democrat, is the only member of the Judiciary Committee to make public his intention to vote against Judge Pickering. Mr. Schumer cited the cross-burning case as the primary reason for his opposition.

A senior Republican aide said Democrats are underestimating the political consequences of derailing the nomination.

"It will be a political boomerang with a razor-blade tip that will come back at them very hard," said the aide, who refused to detail what Republicans are plotting.

Meanwhile, Sen. Joseph R. Biden Jr., Delaware Democrat, is blocking two Transportation Department appointees responsible for enforcing airline-security regulations, in exchange for getting support for an Amtrak security bill.

The nominees are Emil H. Frankel, for assistant secretary for transportation policy and Jeffrey Shane, for associate deputy secretary.

Blacks at Home Support a Judge Liberals Assail

By David Firestone
The New York Times
Sunday, February 17, 2002

Back in Washington, his opponents have depicted Judge Charles W. Pickering as the personification of white Mississippi's oppressive past, a man so hostile to civil rights and black progress that he is unfit for promotion to a federal appeals court.

But here on the streets of his small and largely black hometown, far from the bitterness of partisan agendas and position papers, Charles Pickering is a widely admired figure of a very different present.

In funeral parlors and pharmacies, used-car lots and the City Council chambers, the city's black establishment overwhelmingly supports his nomination to the United States Court of Appeals for

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the Fifth Circuit, which is heading toward a contentious vote in the Senate in the first major judicial battle of the Bush administration.

Though few black residents here subscribe to Judge Pickering's staunchly Republican politics, many say they admire his efforts at racial reconciliation, which they describe as highly unusual for a white Republican in the state.

"I have never seen Trent Lott open his arms to the black community the way Charles Pickering has," said Larry E. Thomas, owner of Thomas Pharmacy, referring to the Senate minority leader, who is Judge Pickering's friend and patron. "Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community. That's a progressiveness that we need to see more of in this state."

Progressive is not exactly the description used by the national black officials who are making an intense effort to prevent the judge's appointment. "A vote for Pickering is a vote against civil rights," said Julian Bond, the national chairman of the N.A.A.C.P. Representative Robert C. Scott, Democrat of Virginia, speaking against the nomination with other members of the Congressional Black Caucus, said, "It's hard to imagine a person who is more hostile to civil rights." Judge Pickering has also been condemned by a variety of big-city newspaper editorial boards and columnists.

But such comments carry little weight among those who actually know the man personally here in Laurel, in southeast Mississippi. Judge Pickering, now a federal district judge in the nearby city of Hattiesburg, was praised by black city officials for helping to set up after- school youth programs here, and for directing federal money to medical clinics in low-income areas when he was a state senator. Black business leaders say he was influential in persuading white-owned banks to lend money to black entrepreneurs, helping to strengthen the city's black middle class.

"I can't believe the man they're describing in Washington is the same one I've known for years," said Thaddeus Edmonson, a former local president of the N.A.A.C.P. who is now president of the seven-member Laurel City Council and one of its five black members. "If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

The judge's widespread popularity in his hometown has been frustrating to the many civil rights and abortion rights groups that have worked to portray him as an ideological relic of the Old South.

Several opponents of his nomination have tried unsuccessfully to get his supporters to change their minds, and their inability to do so reflects the distance between national liberal groups and many Southern blacks in small towns. In a city like Laurel, with a population of 18,393, one's personality and faith are often more important than a judicial paper trail or an adherence to an agenda.

People for the American Way, a liberal organization based in Washington, has criticized Judge

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Pickering for disregarding the separation of church and state by promoting religious programs from the bench. But many prominent blacks here say it is precisely his religious background — he was president of the Mississippi Baptist Convention in the 1980's — that they admire.

"I know Judge Pickering is a fair and impartial person grounded with Christian ethics and beliefs, who ought to be given this chance," said the Rev. Arthur Logan, the black pastor of the Union Baptist Church and a member of the City Council. "There are many people in Mississippi who made these same mistakes early in life, but their strong Christian character brought them closer
to God and helped them change."

Four of the five black council members, in fact, said they enthusiastically supported Judge Pickering's appointment. The fifth, Manuel Jones, said he opposed the nomination, largely because he differed with Judge Pickering's efforts in the late 1980's to integrate the largely black city schools with the largely white county schools.

Judge Pickering, then in private practice in Laurel, was one of several white city leaders who argued that the city could not attract economic development with an effectively segregated school system. At the time, Mr. Jones was president of the Laurel-Jones County branch of the N.A.A.C.P., which maintained that consolidation would dilute black administrative power over the city schools. The consolidation plan was eventually overturned by a federal judge, who said it was not justified.

Mr. Jones said he rebuffed a recent telephone request by Judge Pickering that he write the Senate a letter of support. (He had publicly opposed the judge's original appointment to the federal bench in 1990.) Several other council members did agree to the judge's request, however, and their letters are on file with the Senate Judiciary Committee.

"It's hard to go against a sitting federal judge," said Mr. Jones, searching for an explanation of why his colleagues have taken a position that differs so sharply from his.

Many of the judge's critics have cited actions or statements he made in the 1960's and 70's. They have pointed to an article he wrote in 1959 that appeared to support strengthening the state's law against interracial marriages, and to his votes in the state senate that appeared to dilute black voting strength.

The Battle Escalates; New Fighting Over the Charles Pickering Nomination

By Byron York
National Review Online
Friday, February 15, 2002

In a move to escalate the already-intense battle over the nomination of Charles W. Pickering Sr. to a place on the Fifth Circuit Court of Appeals, some Democrats on the Senate Judiciary Committee are now suggesting that Pickering may have misled the committee at hearings held

February 7. Pickering strongly denies the allegation.

At issue are statements Pickering made in response to questions from Democrat John Edwards about a 1994 cross-burning case (see "Behind the Democrats' Attack"). At the time, Pickering, a judge on the federal district court in southern Mississippi, questioned the Clinton Justice Department Civil Rights Division's decision to make no-jail plea bargains with two of the three defendants in the case, while recommending that the third defendant, a man named Daniel Swan, be sentenced to seven and a half years in prison. Evidence that emerged during the trial suggested that one of the defendants who got off with no jail had a significant history of racial hatred, which is an important factor in sentencing defendants convicted under the federal hate crimes statute. There was far less evidence of racial animus on Swan's part; in fact, seven witnesses, both black and white, testified that they were not aware of any racial animus he might have held against black people. While Pickering did not object to sending Swan to prison — he was clearly guilty of taking part in the cross burning — the judge believed that the seven and a half year sentence was too severe, given that a more culpable co-defendant was given no jail time at all.

At last week's hearing, Edwards questioned Pickering about a conversation Pickering had with defense lawyers and prosecutors from the Civil Rights Division. Swan had already been found guilty, and Pickering had told both sides that he was unhappy with the government sentencing recommendation. In the Senate questioning, Edwards alleged that Pickering was so unhappy with the sentence that he threatened to order a new trial for Swan.

"You told the government lawyers that you would on your own motion order a new trial, and when the government lawyer asked you, and I'm quoting now, 'What would be the basis for such a motion?' your answer was, 'Any basis you choose.' First of all, judge...did you say that you would order a new trial, even though no motion for a new trial had been made?"

"I did not," Pickering answered.

"So you deny that?"

"I've reviewed the transcript — "

"So you deny having said that?" Edwards pressed.

"I did not say that," Pickering said.

"So if the lawyers who were involved in that case have said that that's a statement you made to them, that would be a lie?"

"Senator, on the record, I mentioned — "

"Excuse me, judge," Edwards interrupted. "According to documents that we've been provided, this took place in a private meeting you had with the lawyers, when you told the lawyers you

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would order a new trial on your own motion, and when they asked you, and I'm quoting now, 'What would be the basis for such a motion for a new trial?' you said, 'Any basis you choose.' Do you deny having said that?"

"I have no recollection of having said that," Pickering answered, "and I do not believe that I said that. Now, I have not seen the document that you are referring to. The Justice Department did not show me the files that they had."

"Did you have private meetings with the lawyers off the record about this case?"

"The response that I gave to Senator Leahy on this indicated that after — "

"I'm not asking about Senator Leahy," Edwards interrupted. "Did you have private meetings with the lawyers?"

"With both the defense counsel and the [government] counsel, I had a meeting, yes."

"So private meetings did take place?"

"A private meeting took place."

"And you deny having any discussion in that meeting about ordering a new trial on your own motion? You deny having done that?"

"There was a discussion on the record of a new trial on the basis of the [jury] instructions, but I don't have a recollection of any indication that I would do that on my own motion," Pickering said.

The documents to which Edwards referred — and which Pickering had not seen at the time of the hearing — were two internal Justice Department Civil Rights Division memos. One of the memos, dated November 29, 1994, concerned the private meeting between Pickering, government lawyers, and defense attorneys. As he had in open court, Pickering expressed great unhappiness with the Civil Rights Division's jail recommendation for Swan. "He said that Swan clearly must do some time behind bars, but seven years is just too much," prosecutor Brad Berry wrote in the memo. "Pickering said he has carefully examined his conscience in this case, and is confident that his discomfort with the sentence is not the product of racism."

Then Berry addressed the issue of a new trial. Much of the conversation centered on what was called the "844 charge," which was the part of the charges against Swan that carried a five-year mandatory minimum sentence (other charges against Swan made up the rest of the seven and a half year sentencing recommendation). Pickering, according to Berry's memo, asked whether the Department would agree not to oppose a motion for a new trial on the 844 charge...if Swan received the maximum on the other two charges. Pickering expressed a willingness to sentence Swan to 36 months on the other two charges if he could find a way to do it. He said that if the Department does not agree to do this, he might well write a nasty opinion from our perspective,

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emphasizing the sentencing disparities and the injustice of applying Section 844 in this case. He said that given his strong feelings about applying 844 in this case, he might well leave the task to the Fifth Circuit. After further discussion, I asked Pickering what would be the basis for the motion for a new trial. Pickering responded, "Any basis you choose."

The paragraph is unclear on where the motion for a new trial might come from, but it does not say, as Edwards alleged, that Pickering threatened to call for a new trial on his own motion. Pickering's defenders suggest that a more reasonable reading of the paragraph would be that Pickering was assuming that the defense, as is common in such cases, would ask for a new trial for Swan. In addition, a later memo, by another Justice Department lawyer, suggests that Pickering never bullied or threatened government lawyers in any way, contrary to Edwards's allegation. "He [Pickering] thinks the sentence facing Swan is draconian, and he wants a way out," prosecutor Jack Lacy wrote,

He has been careful to phrase his concern in such terms as, "I wish you could suggest some way that this harsh sentence could be avoided." He has never directly [italics in the original] asked us to do anything...

In the same memo, Lacy wrote that he "personally agreed with the judge that the sentence is draconian."

Meanwhile, in his first statement since the confirmation hearings, Pickering has offered his own account of the issue. In a letter to Judiciary Committee ranking Republican Orrin Hatch, Pickering writes that he had doubts whether the five-year mandatory-minimum sentence was applicable to the case:

In chambers, I discussed with counsel for both parties (1) the possibility of a motion for a new trial based on the lack of specificity of the jury instruction on racial animus, if the government insisted on applying the five-year mandatory minimum charge, or (2) the possibility of a motion to set aside the verdict or dismiss the charge of the count which carried the mandatory five-year minimum sentence. When counsel for the government asked how this would be accomplished, I recollect responding to him that the government could elect the grounds. I never indicated I would grant a motion for a new trial, sua sponte [on his own motion], and I never indicated I would do so on whatever ground I chose.

Finally, in his letter, Pickering cites a portion of the trial transcript in which a lawyer for the Civil Rights Division appears to admit that the government indeed went too easy on one of the defendants who received a no-jail plea bargain. "The lesson that I take from that, your honor," the lawyer said, "is that perhaps the government should have been more tough — should have asked for a more stringent or stronger or longer sentence for the other defendants in this case."

Speculation Builds Over Chief Justice Successor

By Jan Crawford Greenburg
The Chicago Tribune

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Sunday, February 17, 2002

When Supreme Court Justice Anthony Kennedy walked into a District of Columbia magnet school last month to talk to students about concepts of freedom, he said he was hoping they would gain a greater understanding of democracy.

But his key role in unveiling the "Dialogue on Freedom" initiative, with help from the American Bar Association and First Lady Laura Bush, prompted some court watchers to suggest he also may have something else on his mind.

"I'm sure he wants to be chief justice," one court observer said.

Chief Justice William Rehnquist has not announced his retirement, but most agree he is likely to do so this summer or next. With such a closely divided court, the magnitude of that prospect already has public interest groups, lawyers and law professors quick to speculate on even the sincerest intentions of possible nominees and anxious over what all predict will be a colossal confirmation battle.

"This is going to be one of the most dramatic moments in American history," Ralph Neas, president of People for the American Way, said of the confirmation hearings for the next Supreme Court justice.

Indeed, the bitter battle that Neas' group has spearheaded over Charles Pickering, one of President Bush's federal appeals court nominees, is only a hint of what's to come when the administration seeks to fill a vacancy on the high court, observers say. The current court generally is divided 5-4 on contentious issues such as race, religion and the role of government, and Bush is poised to nominate up to three justices, including the chief justice, as aging ones retire.

Rehnquist, 77, is a likely candidate for retirement this year or next, as is Justice Sandra Day O'Connor, although she said recently she would not step down this year. Justice John Paul Stevens, the court's most liberal member and, at 81, its most senior, also could retire this term--particularly because Democrats control the Senate and, Neas vows, would not confirm an ardent conservative to replace him.

But the chief's spot has grabbed the interest of many. To be sure, the chief justice has just one vote, but he also assigns opinions when he is in the majority. That can help shape how broadly or narrowly a decision is written. What's more, the chief is the administrator of a branch of government.

As such, filling that post could present the biggest problem for Bush, particularly if Rehnquist is the only justice to step down. The Senate historically has placed greater emphasis on confirming the chief justice than associate justices, and Democratic leaders already have indicated they will not make it easy for Bush to fill a vacancy.

Conservative groups, aware of the looming battle, are becoming increasingly critical of the administration's approach. They say the administration is not doing enough to get ready for the fight and are particularly upset at Bush's refusal, despite requests, to mention the issue of judicial appointments in his State of the Union address.

Further complicating matters is that there is no obvious choice to take Rehnquist's place. Opponents on the left and the right have raised flags about several of those believed to be contenders, including Kennedy and the current White House counsel, Alberto Gonzales. Groups such as Neas' say they would love to take on two other possible nominees, conservative federal appeals court Judges J. Harvie Wilkinson III and J. Michael Luttig.

Some have said Kennedy's statesmanlike behavior in recent weeks has the cast of a potential chief justice candidate.

That's not to question his sincerity in the "Dialogue on Freedom" initiative. Kennedy, 65, has had a long-standing interest in promoting the virtues of the legal system to young people.

"I would think if an opening occurs, he certainly is one of the people who would be considered seriously," said Jesse Choper, a law professor at the University of California at Berkeley. Of the Democratic-controlled Senate, Choper said: "They'd be hard-pressed to beat him."

Elevating a current justice could siphon attention from the nominee who would take his place as associate justice. That's what happened in 1986, when President Ronald Reagan sought to elevate
Rehnquist as chief and nominated Antonin Scalia as associate justice. The Senate spent all its time on the chief's nomination, while Scalia- -one of the court's most ardent conservatives--skated through unanimously.

That said, "Chief Justice Kennedy" is an extremely unlikely scenario. His nomination would infuriate the far right, which was outraged by his refusal in 1992 to overturn Roe vs. Wade, as well as other decisions it perceives as liberal, such as one that blocked clergy from praying at school graduation ceremonies.

"A lot of the president's conservative base would strongly oppose elevating Kennedy," said Tom Jipping, director of the Center for Law and Democracy at the Free Congress Foundation.

Moreover, elevating Kennedy to chief would give the left ample fodder as well. He joined the court's three most conservative members two years ago, for example, in dissenting from a decision that struck down state efforts to ban certain late-term abortions.

Bush vs. Gore role damaging

But his role in Bush vs. Gore could be the most damaging for his prospects. Any confirmation hearing for Kennedy (or O'Connor, if she were tapped for the chief's post) would resurrect the 2000 presidential election. Kennedy and O'Connor are considered the architects of the 5-4

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opinion that stopped the vote recounts in Florida and handed the election to Bush over Al Gore.

O'Connor, who will be 72 next month, would have those problems as well as her age working against her, said David Yalof, a political science professor at the University of Connecticut. Bush probably would prefer a younger nominee who would serve for more than a few years, he said.

The other two conservatives on the court, Scalia and Clarence Thomas, are considered simply too conservative--both would overturn Roe vs. Wade, for example--to be confirmed by a Democratic- controlled Senate, Neas, Yalof, Choper and others said.

As such, most observers predict Bush will have little choice but to look outside the court for its next chief, just as President Dwight Eisenhower did in 1953 with Earl Warren, then governor of California, and President Richard Nixon did in 1969 with Warren Burger, then on the U.S. Court of Appeals for the District of Columbia Circuit.

"We're looking at a moment where the current president's best prospects for chief justice lie outside the court," Yalof said.

Yalof and other court watchers, such as Choper, say they believe Bush would like to name the first Hispanic to the court. Most say White House Counsel Gonzales is the front-runner, certainly for associate justice, because he has the confidence of Bush and may not have the damaging paper trails of other potential nominees.

The latter likely would do in the other leading Hispanic candidate, Emilio Garza, a judge on the U.S. Court of Appeals for the 5th Circuit. Garza has openly suggested his opposition to Roe vs. Wade, a decision he said is "inimical to the Constitution."

Gonzales could raise brows

Gonzales could be a controversial choice, however, particularly for chief. He served on the Texas Supreme Court just 23 months before assuming his current position, and he could be viewed as too political, Neas and others said. Moreover, the far right views him suspiciously, noting that while on the Texas Supreme Court he joined a majority decision allowing some minors to get abortions without parental notification.

But Yalof said he thought Gonzales "had a lot to offer for chief" because it is an administrative post.

"He's currently in the administration and is someone the president would feel comfortable with, not simply rendering decisions but running a branch of government," Yalof said.

Bush may believe he could get a more predictable conservative as chief, because the appointment would not move the court to the right. Rehnquist, one of the court's most conservative members, would overturn Roe and has led the court in scaling back congressional

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power and handing it to the states.

If so, Bush could turn to the U.S. Court of Appeals for the 4th Circuit, where Wilkinson and Luttig have established solid conservative reputations. Wilkinson, who turns 58 this year, is a former law professor at the University of Virginia and the chief judge of the circuit.

Luttig is a former Scalia clerk who worked to help get Thomas confirmed while working in the Justice Department. Philosophically, he is closer to Scalia and Thomas--the justices Bush said during the campaign he most admired--than Wilkinson. He wrote the high-profile opinion, which the Supreme Court upheld, striking down a section of the Violence Against Women Act as beyond Congress' power.

Recently, however, the two have parted ways dramatically in several high-profile cases, with Luttig, 47, all but accusing Wilkinson of being a faux conservative.

"Many people think Luttig has blessed Wilkinson by making him seem like a moderate statesman," one court observer said.

Ruled with liberal colleagues

In a recent high-profile school desegregation case, Wilkinson joined with more liberal judges in refusing to hold a North Carolina school system liable for running a race-conscious magnet school. Wilkinson said the school district could not be held liable because it had been under a court order to end segregation. But Luttig, in dissent, said Wilkinson "variously ignored and misunderstood" the law.

They also split ways in a high-profile case over the breadth of Congress' power to protect endangered species. Wilkinson wrote for the majority that the federal government had power to limit the taking of red wolves on private lands, a decision Luttig harshly criticized in dissent.

Wilkinson is more in the mold of the gentle conservative, whereas Luttig is more in-your-face," said one lawyer who frequently practices in the 4th Circuit. "I think Wilkinson tries to be more scholarly, whereas Luttig has much more of a rubber-hits-the-road kind of approach."

That's not to say Wilkinson is not conservative. He wrote a majority opinion upholding the Clinton administration's "don't ask, don't tell" policy that excluded acknowledged homosexuals from the military.

"I would guess if either Luttig or Wilkinson is on the Supreme Court, their voting patterns would not be that different," said A.E. Dick Howard, a law professor at the University of Virginia.

Conservative groups acknowledge that either could be difficult to confirm, which could prompt Bush to name a stealth candidate, such as Judge Samuel Alito Jr. of the U.S. Court of Appeals for the 3rd Circuit. They put the blame partly on Bush and suggest the administration has ceded control of the debate on the issue to the Democrats.

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"I believe the president, before any Supreme Court vacancy, needs to provide sustained public leadership on judicial appointments, generally," said Jipping of the Center for Law and Democracy. "If the administration is going to wait until there's a Supreme Court vacancy, they're going to lose. Or they're going to feel compelled to nominate someone who won't be worth it."

The O'Connor Factor

By Charles Lane
The Washington Post
Monday, February 18, 2002

When word got out that Supreme Court Justice Sandra Day O'Connor would be giving a public lecture last fall in Lincoln, Neb., 500 people snapped up every available seat, leaving 100 others to be turned away. The University of Nebraska gave her a medal. Female law students presented a corsage.

"If it hadn't been for you paving the road, we wouldn't be here today," Lisa Rasmussen told O'Connor, according to the Daily Nebraskan.

More than two decades after President Ronald Reagan made her the first woman on the Supreme Court, O'Connor, 71, may be a bigger celebrity -- and a more powerful influence on American law and society -- than ever before.

She has weathered what she has called the "difficult" 2000 election case in which she was one of five Republican-appointed justices to join a much-criticized ruling that sealed President Bush's victory. She has added her voice to those expressing concern that innocent people may be sentenced to death. Favorable reviews are coming in for her much-publicized new memoir, co-written with her brother, H. Alan Day, about growing up on a remote desert ranch during the 1930s and '40s.

And on the most contentious social issues facing American society, she continues to cast what is frequently the deciding vote on a nine-member court often split between liberals and conservatives.

On Wednesday, the court hears oral arguments on two such issues -- state-funded vouchers for private and parochial school tuition, and a possible ban on the death penalty for mentally retarded capital offenders. And once again, attorneys for both sides will be pitching much of their argument to the tall, silver-haired woman sitting just to Chief Justice William H. Rehnquist's left.

So pivotal -- and familiar -- is O'Connor's role that it has become difficult to imagine the court without her, despite rumors, denied by the justice, that she may retire soon. Lately speculation has run in the opposite direction -- that O'Connor could ascend to chief justice if Rehnquist, 77, steps down -- a scenario she also dismisses.

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O'Connor's power has been accumulated not by asserting an ironclad doctrine for others to follow, but by remaining as noncommittal as possible: Time and again, she has signed on to narrow rulings crafted according to the facts of a particular case, leaving open the option of another incremental holding later on.

"The rule of law must also be flexible enough to adapt to different circumstances," she told her Nebraska audience, expressing a precept she had articulated many times in her opinions.

"Hers is the power of the median voter," said University of California at Los Angeles law professor Eugene Volokh, a former O'Connor law clerk. "Lawyers target her for the same reason both sides in a political campaign target the center."

The question hovering over O'Connor's 21-year career on the court, though, is whether her approach is too much like the political art of compromise she once practiced as majority leader of the Arizona state Senate.

By providing only sketchy constitutional guidance to legislatures and lower courts, some lawyers, legal academics and judges say, her restrained jurisprudence lays the basis for legal instability that ultimately must be sorted out by the Supreme Court -- and, in many cases, by O'Connor herself.

O'Connor's fellow justice, Antonin Scalia, has published opinions blasting her mode of reasoning, including a 1988 gibe at her "Solomonic" answer to a death penalty case: "Solomon," Scalia wrote, "was not subject to the constitutional constraints of the judicial department of a national government in a federal, democratic system."

O'Connor's admirers describe her method as "judicial minimalism."

"Clear rules are better; they make the court's own judgments more transparent," Volokh said. "But if a justice is not persuaded the Constitution demands a clear rule, it's her duty to vote for a more fact-sensitive one."

O'Connor, a lifelong Republican, votes more than 80 percent of the time with Rehnquist, a Nixon appointee. She has joined him, Scalia and other conservatives in the court's recent effort to bolster states' rights.

But on social issues, she has muted the court's rightward tendencies. Most famously, she voted to uphold the right to abortion enshrined in Roe v. Wade, co-writing the 1992 opinion that barred state laws that impose an "undue burden" on the right to choose. In 2000, she provided the fifth vote for a ruling that struck down Nebraska's ban on what opponents call "partial birth" abortions.

Abortion, she recently told NBC's Katie Couric, "is an issue about which people feel passionately, and I'm very much aware of that when we have a case in that area."

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Certainly, there is little evidence of ideological fervor in O'Connor's personal story. Her childhood was spent among some of the last real cowboys in the West, on the 300-square-mile Lazy B Ranch. Straddling Arizona and New Mexico, the Lazy B had no electricity or running water; as depicted in her memoir, it was a place where individual adaptability and common sense were at a premium, and the social changes linked to the New Deal and World War II made little direct impact.

Graduating third in her class (Rehnquist was first) from Stanford Law School in 1952, O'Connor was stunned by law firms' refusal to hire her, but made a career in local government and the Arizona Republican Party. She was appointed to the state Senate in 1969, became majority leader in 1972 and later ran successfully for state trial judge before being elevated to the state appeals court by a Democrat, then-Gov. Bruce Babbitt in 1979.

When Reagan offered her the Supreme Court job in 1981, antiabortion groups tried to derail her nomination, citing her opposition as a state senator to certain laws restricting abortion. O'Connor herself has admitted she felt uncertain about her own modest judicial experience.

But she was fortified by lessons learned on the Lazy B. It gave her, she recently told C-SPAN interviewer Brain Lamb, "a certain amount of self-confidence in your ability to work things out and not be afraid to tackle something."

Today she regularly recruits law clerks who have served both liberal and conservative lower-court judges, relying on them for detailed briefings, oral and written, on each case -- and occasionally treating them to her homemade Tex-Mex cuisine.

Both cases before the court on Wednesday show how O'Connor's past rulings set the stage for future cases in which she again plays the potentially deciding role.

In the school voucher case, opponents of the program will try to persuade the court that, as practiced in Cleveland, the voucher subsidy gives families no real choice but to spend government money at religious schools, an issue framed in O'Connor's past opinions on the church-state balance.

In the death penalty case, Daryl Atkins, convicted of murder in Virginia, asserts that he has an IQ of 65, which qualifies him as moderately retarded under current psychiatric guidelines.

His attorneys argue that a national consensus has formed against the death penalty for persons with very limited intellectual abilities, so Atkins's execution would be "cruel and unusual punishment" prohibited by the Eighth Amendment.

In 1989, a Texas death-row inmate, Johnny Paul Penry, sought and was denied such a ruling from the Supreme Court. O'Connor's role was decisive.

Wrestling with Penry's claim that mentally retarded persons are less able to reason and hence less

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culpable for their crimes than others, O'Connor wrote that states must give juries a genuine chance to consider mental retardation as a factor weighing against the death penalty. It was an argument repeated by Atkins.

This section of O'Connor's opinion, which ordered a new trial for Penry, was joined by liberals such as the late Justices William J. Brennan Jr., Thurgood Marshall and Harry A. Blackmun and John Paul Stevens, who is still on the court.

O'Connor, however, concluded that it was not yet clear that all mentally retarded people lacked the reasoning ability ever to warrant capital punishment. And there was insufficient evidence of a national consensus against executing them, she wrote. Only two states with the death penalty had outlawed it.

This portion of her opinion was joined by conservatives Rehnquist, Scalia, Anthony M. Kennedy and Byron R. White, who has since retired.

Still, O'Connor left the door open. A national consensus, she wrote, "may ultimately find expression in legislation, which is an objective indicator of contemporary values upon which we can rely."

"That day has arrived," Atkins's attorneys argue in their brief for the case to be argued Wednesday. They noted that 18 of the 38 states that permit capital punishment now have laws outlawing death sentences for the mentally retarded. When you add the 12 states that do not allow capital punishment at all, they argue, 30 states -- 60 percent of the total -- plus the federal government, forbid the death penalty for retarded offenders.

Is 60 percent enough to make for a national consensus? O'Connor's past opinions are suggestive but, characteristically, not definitive on how she might rule.

In 1988, when the court voted to strike down the death penalty for 15-year-old murderers, O'Connor supplied the fifth vote -- but did so for reasons that were all her own.

In a separate opinion, she noted that 32 of 50 states -- 64 percent -- either had no death penalty or had limited it to perpetrators 16 or older. This, she said, created a strong presumption that a national consensus against executing those younger than 16 existed. But more state legislation would be needed to know for sure, because a large minority of states that set no minimum age for the death penalty appeared to permit executing 15-year-olds.

O'Connor explained her vote as limited only to situations in which states had specified no minimum age for death penalty.

Just a year later, she joined four conservatives in holding that executions for 16- and 17-year-old perpetrators were constitutional. There, she assented to a national-consensus calculus that focused only on the rules in the 37 states that had the death penalty at the time, noting that "a majority of states authorizing capital punishment permit it for defendants 16 and above." And

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today, a majority of death penalty states still allow sentencing retarded offenders to death.

Five of the death penalty states that have banned capital punishment for the retarded passed their laws in the last year, after the Supreme Court's surprising announcement in March 2001 that it would revisit the 1989 Penry ruling in the case of North Carolina death row inmate Ernest McCarver.

Legal analysts say that the mere fact that the court agreed to reconsider the subject suggests that change is afoot at the court. O'Connor herself has made two public statements -- to a Minnesota women's lawyers' group in July and again on her October visit to Nebraska -- that seemed to capture national anxiety about administration of the death penalty.

"More often than we want to recognize," she said in Nebraska, "some innocent defendants have been convicted and sentenced to death."

Edwards' Tactics Draw Ire

By Paul Kane
Roll Call
Monday, February 18, 2002

With a blistering cross-examination of a controversial judicial nominee, Sen. John Edwards (D-N.C.) has landed in hot water with the nation's leading anti-tobacco lawyer.

Dickie Scruggs, the trial lawyer from Pascagoula, Miss., who recently led the legal assault on the tobacco industry, has vowed to never again support Edwards and plans to rally other trial lawyers to his anti-Edwards campaign.

If Scruggs follows through on his stated mission, it would deal a serious financial blow to Edwards, himself a former trial lawyer who has relied heavily on the legal industry to underwrite his burgeoning national ambitions.

The bone of Scruggs' contention is Edwards' treatment of U.S. District Judge Charles Pickering of Mississippi, who is seeking a lifetime appointment to a seat on the Fifth Circuit Court of Appeals. "I'm really mad about it," Scruggs said of the questioning Edwards subjected Pickering to at a Feb. 7 hearing and the North Carolina Senator's apparent lack of respect for Scruggs' opinion of the judge. "It wasn't the manly thing to do."

Scruggs has a family stake in the Pickering nomination: He's married to Senate Minority Leader Trent Lott's (R-Miss.) sister-in-law. Lott, who has known Pickering for more than 30 years, has made this confirmation a personal crusade and has threatened to retaliate against Democrats if they block Pickering, whose son, Rep. Chip Pickering Jr. (R-Miss.), used to work for Lott.

Scruggs said his efforts to reach out to Edwards, a personal-injury trial lawyer before unseating Sen. Lauch Faircloth (R) in 1998, were part of a broader effort to lobby Democrats he bonded

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with during the "tobacco wars."

Scruggs has tried to make the case that liberal interest groups in Washington are inaccurately portraying Pickering, 64, as a southern segregationist in retaliation for the way Republicans treated Clinton administration nominees in the 1990s.

"He's getting a bum rap," Scruggs said.

Scruggs, who has known Pickering for more than 20 years, called him a "fine judge." A lifelong Democrat who has given and helped raise thousands of dollars for the party's candidates, Scruggs said Democrats are wrong - personally, politically and legally - to oppose Pickering.

If he gets rejected, Scruggs said, Pickering's replacement will in all likelihood pose a greater threat to Democratic interests as a younger and more stridently conservative jurist, and one without decades of rulings and political activity to use in opposition to the nomination at Senate hearings.

Scruggs' ire, however, is currently focused on fellow trial lawyer Edwards, who ignored a series of calls the Mississippi attorney made to Edwards office in advance of the tension-filled Feb. 7 hearing.

"I started calling him on Tuesday [Feb. 5] and left messages all over for him," Scruggs said in an interview last week.

Noting trial lawyers' past financial support for Edwards, Scruggs said: "Not that he owes me a vote, but he owes me a phone call."

Scruggs attended Pickering's hearing, where he spoke with Democratic Sens. Edward Kennedy (Mass.), Russ Feingold (Wis.) and Dianne Feinstein (Calif.) about the nomination. He said he also spoke with top aides to Sen. Joseph Biden (D-Del.), but couldn't get a return call from Edwards.

Other trial lawyers from Mississippi also tried to reach Edwards and were rebuffed, Scruggs said.

At the hearing, Edwards was relentless in his questioning, focusing on a 1994 cross- burning case Pickering oversaw. Frequently cutting Pickering off and forcing him into one-word and yes-or-no answers, Edwards prompted Pickering to admit he had "ex parte" conversations with Justice Department officials regarding the case.

Biden told Roll Call last week that Pickering's answers to Edwards will play a key role in whether he supports the judge and questioned his truthfulness in responding to committee members' inquiries. One senior Democratic aide called Edwards "brilliant," noting that the cross-burning case was the "perfect metaphor" for Democratic opposition. A top GOP aide admitted the line of questioning was hurting the judge's case.

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Pickering's explanation - that he felt prosecutors had gone soft on the main culprit, who received no jail time in exchange for a guilty plea, and were coming down hard on a bit player in the case - barely registered. Scruggs said Pickering's family was furious: "They felt very humiliated about it."

A few days after the hearing, the judge's son said he was in "remarkably good spirits."

But, Rep. Pickering added, "They're trying to use Mississippi's reputation and history to smear a good man."

Scruggs said he left the hearing disgusted with Edwards, who he felt was twisting the facts of the case and playing the role of "the heavy" at the behest of other Democrats.

Not expecting to have his calls returned, Scruggs said he got another trial lawyer to get in touch with Edwards. "I sent a message through another trial lawyer: He can forget my support and that of anybody I have influence with," Scruggs recalled.

Early last week, Edwards finally called Scruggs, who characterized the conversation as "cordial."

Edwards' office did not confirm or deny Scruggs' account. In a statement released by his office, Edwards said, "I will make an independent evaluation on the merits with regard to the nomination of Judge Pickering. At this stage, I have very serious reservations."

On Saturday, Edwards was one of three potential Democratic White House hopefuls, along with Majority Leader Thomas Daschle (S.D.) and Sen. John Kerry (Mass.), to speak at the state Democratic convention in California.

While Scruggs himself has not been a direct financial backer of Edwards, lawyers have been the Senator's single largest backer, and many of Scruggs' friends are among Edwards' supporters. In the 1998 election cycle he received $905,280 from lawyers and law firms, the fourth most of any candidate in that cycle, according to the Center for Responsive Politics. That's all the more impressive considering Edwards does not take PAC money.

Up for re-election in 2004, Edwards campaign committee has already collected at least $218,686 from the legal industry, more than all but three other Senators - and each of those three faces re-election this fall.

To finance his national ambitions, Edwards opened a leadership political action committee, New American Optimists, last fall, raising $731,850 in November and December.

More than $650,000 of that total came from lawyers, their family members or employees of law firms, according to a Roll Call analysis of the PAC's donors.

Of that, $167,000 came from Mississippi attorneys, legal employees or their family members -

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many of whom work at firms, such as Minor & Associates and Langston Law Firm, whose principals are also supporting Pickering.

Asked if he could see himself ever supporting Edwards, or encouraging his friends in the legal community to back him, Scruggs said the Pickering nomination will be decisive. "I guess I ought to see how he votes," he said.

Group in Judge Seminars Denies Slanted View Point

By Ann McFeatters
Pittsburgh Post-Gazette
Saturday, February 16, 2002

A foundation that sponsors seminars on environmental economics for federal judges says its work is being mischaracterized by a land-use group seeking to derail the nomination of Western Pennsylvania U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals.

Community Rights Counsel, an organization that provides legal aid to local governments and environmentalists in land-use cases, is one of 27 environmental, women's rights and civil rights groups that are raising questions about Smith's nomination by President Bush.

In a letter to members of the Senate Judiciary Committee, which holds confirmation hearings for nominees to the federal bench, the group claims that between 1992 and 2000 Smith spent "nearly three months at luxury resorts and dude ranches on trips funded by corporations and special interests with a stake in federal court litigation," including expenses-paid visits to seminars hosted by the Foundation for Research on Economics and the Environment, or FREE, which is based in Bozeman, Mont. FREE Chairman John Baden said that while his group receives corporate money, only money from tax-exempt foundations is used to conduct the seminars for judges. Baden also said Community Rights Counsel wrongly portrays FREE as "right-wing."

"While FREE's programs are explicitly pro-environment, they explain why ecological values are not the only important ones. We stress that tradeoffs among competing values are inescapable. We show why it is ethically and materially irresponsible to pretend such choices can be avoided."

In a letter explaining his group's orientation, Baden went on to say, "The intellectually naive confuse FREE's classical liberal, incentive-based orientation with that advocated by those who support subsidized exploitation of the environment (e.g., below-cost timber sales on the national forests)."

Doug Kendall, a lawyer with Community Rights Counsel, says his group stands by its characterization of FREE as supported by "corporations that litigate in federal courts." He said, "Ninety percent of the speakers at their programs are right-wingers from think tanks or academia and one or two token environmentalists, some of whom say awful things about FREE and some of whom say good things."

FREE's Web site identifies its corporate funders in 2001 as the American Chemistry Council, Caterpillar, Exxon Mobil, General Electric, General Motors, Georgia Pacific, Merck, Shell and Tindall. Foundation supporters include the Ajax Foundation, the Chase Foundation of Virginia, the John M. Olin Foundation, the Sarah Scaife Foundation and the True Foundation.

Pickering's Actions Questioned in Cross Burning Case

By Jason Straziuso
The Associated Press
Friday, February 15, 2002

Internal Justice Department documents claim U.S. District Judge Charles Pickering lobbied to reduce jail time for a man convicted of burning a cross on an interracial couple's lawn in 1994.

At one point in the lobbying effort, according to a written report by a government attorney, the appellate court nominee from Mississippi even threatened to retry the case.

Whether the federal judge acted in good faith in seeking a just punishment for the defendant or attempted to sidestep the law is the question Senate Judiciary Committee members are examining as they contemplate Pickering's nomination to the 5th U.S. Circuit Court of Appeals. After a burning cross was placed on an interracial couple's lawn near Improve in Walthall County, charges were filed against three individuals.

Two males, ages 17 and 25, were sentenced to probation and home confinement in exchange for guilty pleas. A third person, Daniel Swan, then age 20, turned down the plea offer and was convicted in a trial.

The Justice Department sought a seven-year sentence for Swan. One of the charges Swan faced carried a five-year minimum sentence. He eventually received a 27-month sentence.

Government lawyer Brad Berry, in a 1994 internal Justice Department memo, said Pickering called Berry into his chambers and told the attorney he had problems with the seven-year sentence and the disparities in the sentencing for the three defendants.

Berry's memo was made public by the Democratic-controlled Senate Judiciary Committee. Pickering is a Republican.

Berry wrote that Pickering felt the Justice Department "is probably right on the law, but the result in this case would clearly be unjust."

The memos claimed Pickering had several off-the-record conversations with government attorneys in an attempt to get around the minimum sentencing requirement.

Berry also wrote that Pickering threatened to order a new trial on "any basis you choose."

Democrats have alleged Pickering privately contacted the Justice Department to manipulate the sentence.

Pickering has told Judiciary Committee members the only contact he had with the agency outside of court was a telephone call to a friend. Pickering said the contact was not improper because he did not discuss the case's specifics, but rather simply voiced frustration at the situation.

Pickering said Friday he cannot comment on issues surrounding his nomination. U.S. Rep. Chip Pickering, R-Miss., the judge's son, recently said that Swan was pulled into taking part in the cross burning, while the leaders of the act got off with the lighter plea sentences.

Republicans, led by Senate Minority Leader Trent Lott, R-Miss., accuse the Democrats of holding Pickering up as a test case for future conservative Supreme Court nominees.

The Judiciary Committee is expected to vote on Pickering's nomination by mid-March.

On Thursday, Sen. Charles Schumer, D-N.Y., said he would not support Pickering due to the cross burning information.

Marty Wiseman, director of Mississippi State University's John C. Stennis Institute of Government, said it appears Pickering's aim was not to subvert the law but to be just in his sentencing.

"This was what Judge Pickering was wrestling with and discussing with the various folks with the Justice Department," Wiseman said.

Republicans on the committee requested a review of the cross burning affair from George Mason University law professor Michael Krauss.

Krauss, in a Feb. 11 letter to Sen. Orrin Hatch, R-Utah, ranking Republican on the committee, concluded that Pickering's judicial behavior was proper and the just "deserves praise for his efforts."

Krauss wrote that no rational basis had been established for the disparate sentencing among the three accused males.

Op/Eds

What Judges Do. The Founders Saw that Laws Are Often Murky, So Judicial Beliefs Matter

By Mark Kozlowski
New Jersey Law Journal

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Monday, February 18, 2002

Mark Kozlowski is associate counsel at New York University School of Law's Brennan Center for Justice.

Should the Senate be concerned with the personal ideological views of federal judicial nominees? Conservatives say no. A proper judge qua judge, they assert, has no personal ideological views. A legislator may have such views, but not a judge. Thus, when President George W. Bush announced his initial batch of judicial nominees last May, he vowed: "Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench."

Whenever conservatives talk about the courts, the prohibition against "legislating from the bench" gets mentioned sooner or later. The idea is that, although judges must determine the meaning of statutes, the only legitimate elements to be considered are the words of the statute and the intent of the legislature in employing those words. Similarly, when called upon to interpret a provision of the Constitution, conservatives contend that the only proper guide, beyond the text itself, is the intention of those who composed and ratified the provision. To do otherwise, conservatives assert, turns the judge into a creator of law. With regard to ordinary statutes, so the argument goes, this violates the principle of separation of powers. As for the Constitution, when interpretation looks beyond text and intent, the meaning of our fundamental law comes to depend upon the will of individual judges.

What is more, conservatives frequently declare that this stark distinction between proper interpretation and "legislating from the bench" is precisely the way our Founders viewed the task of judging. Consider the testimony of Douglas Kmiec, law school dean at the Catholic University of America, during last year's Senate Judiciary Committee hearings on whether a judicial nominee's political ideology should play any role in the Senate's confirmation decision.

Kmiec noted that the Anti-Federalists, who opposed ratifying the Constitution, were very concerned about how much discretion judges might exercise. Kmiec asserted that Alexander Hamilton "responded to this criticism by emphasizing that it was not the job of judges to make law, that their role under the Constitution was simply to enforce the Constitution and laws as they were written." Under the principle of separation of powers, "lawmaking was left to the legislature and the people themselves."

To remain true to the Founders' vision, Kmiec declared, the Senate should not endeavor to discern a nominee's ideology. On the contrary, any nominee who suggested that ideology may influence the work of statutory or constitutional adjudication should be rejected. Kmiec concluded that, after determining that a nominee possesses the requisite professional qualifications, Senate inquiry should be limited to discerning "whether the nominees coming before you are willing to abide by the text of statutory law as you have authored it."

But did the Founders actually believe that statutory and constitutional interpretation could be reduced to a nondiscretionary exercise of following text and discerning intent? As is usually the

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case when one fully engages the thought of those men, things turn out to be a good deal more complex.

A Cloudy Medium

Begin with language itself. If you read only our most prominent journals of conservative thought, you might conclude that the idea that "meaning" is often indeterminate is a recent invention of deconstructionist literary critics. In fact, the Founders embraced the very same notion. Here is James Madison writing in The Federalist:

"[N]o language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately the objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition may be rendered inaccurate by an inaccuracy of the terms in which it is delivered. ... When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful through the cloudy medium through which it is communicated."

During the constitutional ratification debates, future Chief Justice Oliver Ellsworth made the same point more succinctly: "The charge of being ambiguous and indefinite may be brought against every human composition, and necessarily arises from the imperfection of language."

'More or Less Obscure'

Take first the case of statutory interpretation. Within proper bounds, the Founders believed that judicial interpretation was an extension of the legislative process itself. Madison made the point thus: "All new laws, though penned with the greatest technical skill and passed on the fullest and most mature deliberation, are considered more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." And Hamilton wrote: "Laws are a dead letter without courts to expound and define their true meaning and operation."

What is more, the Founders explicitly asserted that sometimes a judge would be justified in ignoring legislative intent. They fully expected that there would be occasions when a legislature, yielding to the passions of the moment or corrupt influence, would pass unjust laws. Then it would be proper for a judge to disregard legislative intent in favor of equity.

Thus, Hamilton said in The Federalist, legislatures might enact constitutional laws that were nevertheless "unjust and partial" in operation. In such cases, "the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws." Even some Anti-Federalists spoke highly of this practice. One writer praised New York judges for their willingness to construe an unjust statute in a manner that "I will not say evaded the law, but so limited it in its operation as to work the least possible injustice."

Ambiguity Embraced

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With regard to the Constitution itself, the Founders were emphatic that its language was necessarily broad and indeterminate. Why, the Anti-Federalists wanted to know, did the Constitution not list precisely every act that Congress could perform? This would be most unwise, Hamilton replied:

"Nothing ... can be more fallacious than to infer the extent of any power proper to be lodged in the national government from an estimate of immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity."

But if the powers of Congress cannot be precisely defined, how will we know when Congress has gone too far? Speaking specifically to the question of division of powers between Congress and the states, Madison said that there would be legitimate disagreement about the Constitution's meaning because judgments about the proper spheres of state and federal authority would not be "free from different constructions by different interests, or even from ambiguity in the judgment of the impartial." In other words, constitutional interpretation could not be reduced to an exact science.

In The Federalist itself, Hamilton noted that the Constitution's terms regarding the extent of federal court jurisdiction were subject to at least two interpretations. He then argued in favor of "the most natural and the most defensible construction." He pointedly did not assert that he was positing the single correct construction.

What does this mean for the debates over President Bush's judicial nominees? Contrary to Professor Kmiec, the Senate would be truer to the Founders if it expected more of judicial nominees than a pledge to interpret solely through text and intent. The Senate should understand, as did the Founders, that because of imprecise language, unclear intent, unforeseeable developments, and the capacity of legislatures to be swayed, the task of interpretation will inevitably demand a judge's discretion.

A Judge's Past and Present

The Chicago Tribune
Monday, February 18, 2002

The recent confirmation hearing for U.S. District Judge Charles W. Pickering, President Bush's controversial nominee for the U.S. 5th Circuit Court of Appeals in New Orleans, left many wondering which Pickering to believe.

Was he the insensitive right-wing segregationist his critics painted him out to be? Or was he the man his supporters described, a real-life version of Harper Lee's Atticus Finch, who courageously
fought the Ku Klux Klan and helped blacks to advance as a New South emerged in the late 1960s?

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You can find both Pickerings in his paper trail. As a law student in 1959, he wrote a technically impressive yet emotionally cold- blooded law journal recipe for Mississippi to revive its overturned ban on interracial marriages. His recommendation became law the following year.

Democrats, many of whom are seeking payback for the roadblocks Republicans threw up in front of President Bill Clinton's nominees to the bench, hounded Pickering over his past opposition to abortion, gay rights and laws boosting minority voting power.

Pickering has also been criticized for his handling of the 1994 case of Daniel Swan, who was convicted of burning a cross in front of the home of an interracial couple. Two other defendants pleaded guilty and received minimal sentences. Swan, because he had gone to trial, faced a mandatory minimum five years in prison.

Pickering called Frank Hunger, a friend at the Justice Department who also is a brother-in-law of former Vice President Al Gore, to suggest that prosecutors avoid the mandatory sentence by dropping one of the counts on which Swan was convicted. Prosecutors eventually did drop one count and Pickering sentenced the 20-year-old Swan to 27 months in jail.

Was the call a lapse in judgment? Perhaps, but Pickering's concern was one shared by many civil libertarians, that defendants sometimes pay a "trial tax," that is, receive harsher punishment simply for exercising their constitutional right to trial.

Pickering was also grilled over his association with Mississippi's notorious Sovereignty Commission, a secretive, state-funded body that from 1956 to 1973 devoted itself to resisting desegregation.

During his 1990 confirmation hearing for the district court, Pickering said he never had contact with the committee and denied that it was still in business in the 1970s when he was in the state Senate. When the commission's files were opened to the public in 1998, a document refuted those statements. In the early 1970s, according to the document, Pickering had asked a member of the commission to keep him informed of union activity in a Laurel, Miss., labor dispute.

If that was all there was to Pickering's story, the decision would be easy: He would not belong on the appellate court.

But it is not the end of the story. There is ample evidence that Pickering has, through words and deeds, made considerable efforts to restore his reputation and improve race relations in the south.

His courageous testimony against a Ku Klux Klan leader in 1967 cost Pickering his re-election as a local prosecutor in Mississippi. A decade later, he hired the first black staff member for the Mississippi Republican Party. As a private attorney, he successfully defended a 16-year-old African-American accused of robbery in a racially charged case. He has publicly promoted racial reconciliation in the South.

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Perhaps most important, his record on the federal bench has been good. Charles Evers, brother of slain civil rights leader Medgar Evers, and other Mississippi African-Americans are among Pickering's strongest supporters.

Is there a statute of limitations on racism? Hugo Black, once a member of the Ku Klux Klan, joined the Supreme Court in 1937 and became one of its most persuasive advocates for civil liberties. Abraham Lincoln had some curious views about relations between the races, yet went on to free America from slavery.

That does not suggest that Charles Pickering is Lincolnesque. Bush could have made a better choice. But the choice he made should be confirmed.

Campaign to Smear Judicial Nominee Rooted in Ignorance

Creators Syndicate, Inc.
The Augusta Chronicle
Tuesday, February 19, 2002

ONE CAN certainly understand why papers like the Atlanta Journal and Constitution ("Extremist Judge Unfit to Sit on Appeals Court") and the Los Angeles Times ("Say No to This Throwback") are so upset about Charles Pickering, President Bush's nominee for the Fifth Circuit Court of Appeals. After all, the man once testified as a character witness for the Grand Wizard of the Ku Klux Klan.

What's that, you say? He testified against the Grand Wizard? In Mississippi? In 1967? Putting himself at political and personal risk? Oh. You say he was a local prosecutor who lost his bid for re-election because he stood up to the Klan? Hmmm. You say this man Pickering, who has been a federal judge (confirmed by the Senate) for 11 years, was asked by Mississippi's governor to serve on the executive committee of the Institute of Racial Reconciliation at Ole Miss? What? He was the one who urged the state's governor and the chancellor of the university to create the institute in the first place?

Who's been feeding you this stuff? James Charles Evers? You mean the brother of slain civil-rights hero Medgar Evers? He's defending this "extremist" in the pages of The Wall Street Journal? Hmmm.

PEOPLE FOR the American Way, the Alliance for Justice and other members in good standing of the character assassination coalition have been faxing false accusations about Pickering far and wide. Some of those faxes landed on Evers' desk. Evers, who has known Pickering for decades, was "saddened and appalled to read many of the allegations that have been put forth about Judge Pickering ... made by groups with a Washington, D.C., address and a political agenda" and without real knowledge of "Pickering's long and distinguished record on civil rights."

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Evers notes that Pickering did more than face down the Klan. While in private practice, he defended an African-American man accused of robbing a white 16-year-old at knifepoint. After two trials, the man was acquitted.

People for the American Way is making much of a 1990 denial by Pickering that he ever had contact with the racist Mississippi Sovereignty Commission. PAW has uncovered a phone call with a commission staffer dating to 1972. But that phone call dealt with Pickering's concern over a labor dispute in Jones County. According to reporting by National Review's Byron York, the KKK had been making trouble, and Pickering, then a state senator representing Jones County, was keeping tabs on the situation. That one phone call is the entirety of Pickering's "contact" with the Sovereignty Commission.

As a federal judge, Pickering once overturned a damage award in a civil case because he believed that the jury was biased against the plaintiffs, an interracial couple. He ordered that the matter of damages be retried and the award for the couple was thus increased.

WELL, SAY the liberal activists, Pickering joined a law firm one of whose partners was a former
segregationist. How many Southern law firms in the 1970s did not contain former segregationists? The Supreme Court of the United States and the U.S. Senate both contain or have contained not just former segregationists but former members of the KKK. The key term is "former" -- "was blind but now I see." Besides, we are talking here of a law partner, not Pickering himself, who never was a segregationist. The very worst the mud-slingers on the left could find about the fellow was a 1959 law review article in which Pickering pointed out the poor wording of an anti-miscegenation statute. The 21-year-old Pickering did not, in the article, make the case against the law.

But in a four decade career in the law, Pickering has shown himself to be an eminently fair and reasonable jurist. He has recommended to some convicted felons that all was not lost; that they still might turn their lives around by participating in Chuck Colson's Prison Fellowship. Oops, another red flag. PAW says this is evidence of Pickering's "disregard for the separation of church and state."

THIS ATTACK on Pickering is so obviously malicious and in such bad faith that one wonders why anyone takes these liberal groups seriously anymore. They have cried wolf so many times about so many honorable men and women that they have brought shame on themselves. They have become the thing they claimed to detest: McCarthyites.

Creators Syndicate Inc.

A Case Without Merit; The Nomination of a Broadly Admired Federal Judge in Pittsburgh is Being Challenged Because of Political Pique. Ken Gormley and Frederick W. Thieman Defend Judge D. Brooks Smith Against the Calumny

The Pittsburgh Post-Gazette

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Sunday, February 17, 2002

A Washington-based public interest coalition has launched an attack on Chief U.S. District Judge D. Brooks Smith, a Republican sitting in Pittsburgh, who has been nominated by President Bush to fill a vacancy on the 3rd U.S. Circuit Court of Appeals. The byzantine process of appointing federal judges usually does not grab public attention. But be assured that the outcome of this case will have a dramatic impact on every citizen in Western Pennsylvania.

Our federal court handles the most serious drug cases, white collar crimes, constitutional and environmental matters, and high-stakes suits involving out-of-state businesses. For years, though, it has been struggling to operate on two cylinders, due to insidious political warfare that has left our region with a growing number of unfilled vacancies. In the latest shot across the bow, the Community Rights Counsel (aligned with Democratic interests), has written a letter to key Senate Judiciary Committee members, seeking to sink Judge Smith's nomination.

Unfortunately, what is couched as a critique of Judge Smith's record is a stiff dose of political payback. It unfairly impugns the reputation of a sterling member of our federal bench -- and perpetuates a longstanding political grudge match that cannot possibly benefit the citizens here.

As Democratic members of the bar in Western Pennsylvania, we strongly urge the Community Rights Counsel to reconsider this dangerous political strategy.

It is no secret what events precipitated this assault on Judge Smith's nomination. For the past six years, during the Clinton administration, Republican Sen. Rick Santorum blocked every Democratic nominee to the federal court, based upon blatant, hardball political tactics that harmed our region. Now Democrats are prepared to give it back to the Republicans in spades.

We sympathize with the frustration of Democratic interest groups. We also agree that it is crucial to challenge any White House nominee who is not suited -- by virtue of temperament or extreme judicial philosophy -- to hold these influential federal appointments. But Judge D. Brooks Smith is not an extremist, by any stretch of that term. He received the highest rating (unanimously) from the American Bar Association and the top rating from the Allegheny County Bar Association. Since his appointment by President Reagan in 1988, Judge Smith has earned the universal respect of judges and lawyers in Western Pennsylvania, regardless of party affiliation.

Stacked up against one negative letter written by the Washington coalition, over a hundred letters have been written to the Judiciary Committee in support of Judge Smith's nomination by notable Western Pennsylvania lawyers, judges, public officials and organizations.

These include letters from six former U.S. attorneys (under Democratic and Republican presidents); numerous members of Congress of both parties; all 10 of Judge Smith's colleagues on the federal district court, seven of whom were appointed by Democratic presidents; the president of the Pennsylvania Bar Association; the deans of Duquesne and Pitt law schools; the Women's Bar Association; a former president of the local ACLU; dozens of members of the criminal defense bar; and judges from the Supreme Court Superior Court of Pennsylvania (both

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Democrats and Republicans).

Federal judges, unlike elected political officials, cannot respond when attacked in the arena of public opinion. Their positions bind them to silence. Their reputations are the only currency that they bring to the bench in resolving society's most difficult conflicts.

If the Democrats in Washington wish to take aim at objectionable candidates, this is the wrong target. Moreover, the charges leveled against Judge Smith by the Community Rights Counsel are misinformed at best:

* They assert that Judge Smith took "trips paid for by companies and interest groups," a claim that is overblown. The Judicial Conference of the United States has permitted the types of trips cited by the Community Rights Counsel, for the purposes of continuing education, so long as the judge determines there is no actual or potential conflict with pending cases. Most federal judges in the United States -- both Democrats and Republicans -- attend such seminars. Although there has been a recent movement to introduce legislation to limit such trips, it is still the subject of honest debate.

* They state that Judge Smith accepted a plea bargain in U.S. vs. Action Mining that was "too low." This is unsupportable. Judge Smith's fine of $50,000, after this small mining company had already been slapped with $625,000 in civil penalties, was considered within the normal range. Then-U.S. Attorney Harry Litman, whose office prosecuted the case, viewed Judge Smith's sentence as fair, reasonable and a victory for the U.S. government.

* They assert that Judge Smith spoke out against the Violence Against Women's Act, in 1994, which is true. Most of the federal judiciary in the United States, and many state judges, opposed this law. It shifted sensitive abuse cases from the state courts (which were arguably better equipped to handle such matters) to the federal judiciary (which was already overtaxed). Although many of us supported the Violence Against Women's Act, others thought there were better ways to accomplish its important policy goals.

As a lawyer, prosecutor and state judge, Judge Smith handled countless abuse cases involving female victims. It is unfair to oppose a nominee for expressing sincere views as to how best handle this sensitive body of cases.

* * *

Not a single judge or lawyer who has dealt with Judge Smith during his 14 years on the federal bench, to our knowledge, has seriously questioned his fairness, impartiality or absolute competence. Writing to Sen. Patrick Leahy, Amy J. Greer, president of the Allegheny County Bar Association, indicated the local bar association's "full support" for Judge Smith's nomination to the appellate bench.

The public interest demands that a first-rate federal appeals judge be appointed to fill a crucial vacancy on our court. Members of our bar have a tradition of respect for judges, of any political

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affiliation, who earn it. Judge Smith will be a credit to all lawyers, judges and citizens of Western Pennsylvania. That, rather than settling political scores, should be the guiding polestar.

NOTES:
Ken Gormley is a professor at Duquesne University School of Law. Frederick W. Thieman, a partner at Thieman & Kaufman, is a former U.S. attorney for the Western District of Pennsylvania.

The Role of Ideology in Judicial Selection: Test Case

By Stuart Taylor, Jr.
The National Journal
Saturday, February 16, 2002

Federal District Judge Charles Pickering Sr. of Mississippi has the misfortune of being the first Bush federal appeals court nominee openly targeted by liberal groups and Senators determined to block the President from transforming the lower courts-and, if he gets a chance, the Supreme Court-into conservative bastions.

So, poor Pickering finds himself trashed as "a throwback to the old, segregated South," in the words of Marcia Kuntz, of the liberal Alliance for Justice. That makes Kuntz a contender for the 2002 John D. Ashcroft award, given (by me) for the ugliest smear of a nominee in the tradition of then-Sen. Ashcroft's 1999 trashing of Missouri Supreme Court Judge Ronnie White as a "pro-criminal" jurist with "a tremendous bent toward criminal activity." (White's criminal activity consisted of voting to reverse death sentences and convictions in a fraction of his cases.) Pickering, 64, an anti-abortion conservative who would sit on the U.S. Court of Appeals for the 5th Circuit-which covers Mississippi, Texas, and Louisiana-seems a decent man and a diligent, if often-reversed and undistinguished, judge. He may not be quite the paragon of courageous leadership in the struggle for racial equality his supporters portray. But he is hardly the racially insensitive "throwback" portrayed by some of his liberal opponents.

But this battle is not primarily about Pickering. And the major combatants are not animated by whether his heart is tainted by racism (there is no recent evidence it is), or whether he has seemed forthcoming about long-past, race-related episodes that have drawn criticism (he has not), or whether he seems a basically ethical person (he does), or whether his judicial opinions are well-crafted (they are not).

Although such issues are debating points, this is a battle about power-the power to shape the liberal-conservative balance on the federal appeals courts. Appellate judges get little media attention, but they exercise vast influence over national policy on virtually all controversial issues. They also have the last word in 99.7 percent of all federal cases. Bush would like to create conservative majorities on most or all of the 13 appeals courts. Liberals are desperate to avert such a shift.

Supreme Court confirmation battles have focused on the nominees' ideology since two decades

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before the climactic 1987 rejection of Judge Robert Bork. Until recently, the Senate tended to rubber-stamp any lower-court nominee equipped with a pulse, a law degree, and a clean criminal record. Deference to the President's choice was the norm.

But now, Republicans complain that Senate Democrats, their academic auxiliaries, and liberal groups are openly calling for an ideological litmus test to block strongly conservative Bush nominees to the appeals courts. Democrats have a pretty good rejoinder: The Republicans started it by mounting what People for the American Way President Ralph G. Neas calls "an unprecedented partisan and ideological blockade" to derail an unusually high 35 percent (or 24 candidates) of Clinton's appeals court nominees from 1995 to 2001 without even giving them hearings. In some cases, Republican Senators (apparently including Ashcroft) used anonymous "holds" to stall individual nominees-one lasted for a record-breaking four years. Even White House Counsel Alberto R. Gonzales admitted to CNN in August that this Republican stalling had been wrong.

The result of this stall was that Bush inherited an unusually large number of vacancies when he took office. And Senate Democrats are understandably reluctant to reward past Republican obstructionism by helping Bush fill these vacancies with conservatives. If all of Bush's current nominees are confirmed, Neas says, 11 of the 13 appeals courts (up from seven now) will be controlled by Republican-nominated judges.

Such partisan labeling of judges might have sounded strange two or three generations ago. But with the ever-greater politicization of the law over the past 50 or more years, the party registration of the nominating President has become the best rough predictor of how a federal appellate judge is likely to vote in the most-controversial cases. Small wonder that the confirmation process has degenerated into a downward spiral of partisan brawling.

What role should ideology play in the confirmation process for appellate nominees? It depends on where you sit. When Bill Clinton was President, Republicans infuriated Democrats by stalling or killing nominees they deemed to be too liberal. Now that Bush is President, Democrats endorse ideological vetoes (of conservatives) and Republicans are shocked-shocked!- to see the
process politicized.

A more neutral principle might be this: In the interest of filling vacancies within a reasonable amount of time, and encouraging first-rate lawyers to accept nominations without fear of an ever-longer and more harrowing confirmation process, Senators should ordinarily give considerable deference to the President's choices. But deference has a limit.

The limit is that Senators can and should use their "advise and consent" power to keep the judiciary as a whole reasonably representative of the American people, rather than allowing the President to suddenly tilt the courts to the left or the right of center. While courts have not traditionally been seen as representative bodies, they have claimed many of the powers once exercised by those bodies. And Bush's hotly disputed victory in the freakishly close 2000 election gave him no mandate to make the third branch of government dramatically more

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conservative.

This does not mean that the Senate should indiscriminately block the most-conservative nominees. Indeed, the Democrats should stop stalling stellar conservatives such as John Roberts and Miguel Estrada, two leading appellate advocates, who would sit on the District of Columbia Circuit, and Michael McConnell, a widely respected constitutional scholar, who would sit on the 10th Circuit.

Democratic Senators would be justified, however, in temporarily blocking conservative Bush nominees to keep open vacancies that Senate Republicans unjustifiably prevented Clinton from filling, and in insisting that Bush either renominate the Clinton candidate (as he has done in one case) or choose someone else ideologically acceptable to Democrats.

Where would these criteria leave Judge Pickering-whose old friend and chief patron, Senate Minority Leader Trent Lott, R-Miss., has said Pickering will be confirmed "or else"? Pickering is not without virtues. Even opponents who assail his civil-rights record acknowledge that he courageously testified against a Ku Klux Klan leader in a 1967 murder case, when that was a dangerous thing to do. He has long been a leader in organizations seeking to improve race relations in his state and has many admirers there, including some Democrats. Supporters, including James Charles Evers, the brother of slain civil-rights leader Medgar Evers, claim that he "has an admirable record on civil-rights issues."

Liberal groups, Democratic Senators, and the Mississippi NAACP vigorously disagree. In a 25-page report, People for the American Way asserts that Pickering's opinions "suggest a hostility to civil and constitutional rights" and faults him for a rigidly conservative ideology; for his high rate of reversal on appeal, including 15 cases in which the 5th Circuit found that he had misread "well-settled principles of law"; for his use of a judicial opinion as a forum to criticize (while construing narrowly) the Supreme Court's one-person-one-vote precedents; for disparaging comments about black job-discrimination plaintiffs whose claims he considered weak; and for his unconvincing explanations of several decades-old, disputed episodes, including
his authorship of a law review note advising the Mississippi Legislature on how to fix a technical flaw in its anti- miscegenation law, the better to enforce it against interracial couples. (That was in 1959, when Pickering was a 21-year-old law student.) Critics also suggest that he violated an ethical rule when he phoned a high-level Justice Department official in 1994 to protest a prosecutor's insistence on a five-year mandatory prison term for a man convicted of burning a cross on an interracial couple's lawn.

As for Pickering's judicial opinions, a quick scanning calls to mind Sen. Roman Hruska's legendary 1970 encomium to Supreme Court nominee G. Harrold Carswell: "Mediocre judges and people and lawyers ... are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises, Cardozos, and Frankfurters, and stuff like that there."

Indeed we can't. None of Pickering's blemishes seems clearly disqualifying, and ordinarily deference to the President's (and the Minority Leader's) choice might argue for an unenthusiastic

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vote to confirm. But this is not an appropriate case for deference. The reason is that Senate Republicans kept three seats open on the 5th Circuit for Bush to fill by blocking three Clinton nominees from even getting votes. Until the Republicans rectify that obstructionism, maybe Pickering should wait.

Terry Eastland: Bush Not Fighting for Judicial Nominee

By Terry Eastland
The Dallas Morning News
Monday, February 18, 2002

In May, even as Vermont Sen. James Jeffords prepared to leave the Republican Party, President Bush decided to nominate federal District Judge Charles Pickering to the 5th U.S. Circuit Court of Appeals, which encompasses Texas, Louisiana and Mississippi. Mr. Pickering has endured not one but two Senate Judiciary Committee hearings. Today, his nomination is in doubt. And the main reason it is can be traced to Mr. Jeffords' departure from the GOP.

Before he left, the two parties had the same number of senators: 50. But the GOP controlled the Senate on the strength of Vice President Dick Cheney's authority to cast tie-breaking votes. Mr. Jeffords' departure – he became an independent – reduced the GOP number to 49. The Democrats thus gained control, an event of predictable consequence for judicial appointments.

Most judicial nominees are confirmed regardless of who controls the White House or the Senate. But when, as now, there is divided government – with one party in control of the White House and the other the Senate – more nominations are likely to be contested and defeated than when the same party controls both.

Had Mr. Jeffords remained a Republican, Mr. Pickering would have been confirmed long ago. He was unanimously confirmed for the district court in 1990, and the American Bar Association has rated him "well qualified." Even now, if he could be voted out of committee, he would stand a good chance of winning confirmation, since two Democrats – Fritz Hollings and Zell Miller – have voiced their support.

Mr. Pickering's problem, however, is how to get from here to there – from the committee, where the Democrats hold a 10-to-9 edge, to the Senate floor. The Judiciary Committee is territory patrolled by Patrick Leahy (the chairman), Edward Kennedy, Joseph Biden, Herbert Kohl, Dianne Feinstein, Russell Feingold, Charles Schumer, Richard Durbin, Maria Cantwell and John Edwards, most of whom are exquisitely attuned to the imprecations of left-wing interest groups, such as People for the American Way and Alliance for Justice. Those groups have pushed hard, and so far successfully, against the nomination.

Mr. Pickering himself has the misfortune of having virtually invisible White House support. He was chosen largely out of deference to a senator, his longtime friend Trent Lott, who began pitching for the judge's elevation to the 5th Circuit when he was Senate majority leader.

Had Mr. Lott not lobbied for Mr. Pickering's nomination – announced on May 25, one day after Mr. Jeffords fled the GOP – Mr. Bush probably would have selected someone else. Mr. Pickering, after all, is a few months away from 65, the age a judge may take senior status. Nor, his ABA rating aside, is he a legal superstar, someone likely to shape the law of the 5th Circuit. "We did this solely to please the then majority leader," one White House official told me. "It's his guy, and it's up to him to get him confirmed." That task would be far easier were the "then majority leader" still the majority leader.

Rarely making headlines, the Pickering nomination has become a series of stories within a story. Some Democrats are motivated against the nomination because they don't like the way Mr. Lott ran the Senate. Others are inclined against the nomination as payback to Republicans for their sometimes slow processing of Clinton judicial nominees, including three for the 5th Circuit who failed even to get hearings.

Also, there are Clinton Justice Department lawyers who butted heads with Mr. Pickering over their sentencing recommendations in a cross-burning case and are laboring against him behind the scenes. And, of course, there are the liberal interest groups, back after eight years on the sidelines, picking at Mr. Pickering as a warm-up for the real battle – over a Bush nominee to the Supreme Court.

Substantively, the case against the nominee is unimpressive. He grew up in segregated Mississippi, but the left's effort to portray him as "insensitive" to civil rights is misguided and unfair: In 1967, as an elected county prosecutor, Mr. Pickering testified against the imperial wizard of the Ku Klux Klan, an act of moral courage that cost him his office. Mr. Pickering does hold conservative political views. But, contrary to concerns voiced by the law firm of Leahy, Kennedy, Biden, et al., his record on the bench isn't that of a judge who fails to distinguish between his own personal and political views and what the law says.

Of course, none of that may matter, since the Democrats have the power to defeat his nomination. This is the Jeffords effect, and the jury is out on whether Mr. Lott can overcome it. He might, but probably not, unless Mr. Bush, stingy with expenditures of his considerable political capital, finally decides to join the battle.

Interest Groups/Press Releases

NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting

NAACP
Saturday, February 16, 2002

Kweisi Mfume, President & CEO, of the National Association for the Advancement of Colored People (NAACP) said today that the Association stands firm in its absolute opposition to the confirmation of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit at a press conference held here during the Annual Meeting.

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Mfume said: "We will continue to demand fairness on the part of those empowered to interpret the laws of our nation. We are opposed to the Pickering confirmation because we decry a judicial nomination process where civil rights and civil liberties, and equal protection under the law are forced to take a back seat to partisan politics and political affiliations."

Mfume added: "Accordingly and rightfully so, we stand firm as an organization in our absolute opposition to the Senate confirmation of Judge Charles Pickering of Mississippi, and we stand united against all others whose judicial records give rise to suspicion about their ability to render impartial judgment and fair interpretation of federal law."

Julian Bond, Chairman, NAACP Board of Directors said: "The NAACP was created to fight for freedom and justice in a nation dedicated to those goals. We must continue to fight now with renewed determination. Each of has a role to play as guardians of our nation's liberty, and that is the role history has assigned to us."

Mfume called on the Congress to join the Association in the fight to defeat the Pickering confirmation, and challenged the members to help fight against hate crimes and racial profiling. He also urged them not to ignore the AIDS epidemic both in Africa and at home.

"These are wrongs that must be confronted," Mfume said. "We are compelled to act responsibly before the world to better humanity, and ultimately, to better ourselves."

In light of the September 11th tragedies, Mfume said: "By moving our Annual Meeting back to New York, the NAACP honors the world's leading city and its residents along with the scores of Americans who are resolved to defend the ideals of a free and open society. This is the city of our birth, and we stand in solidarity with New Yorkers."

The NAACP was founded in New York City on the 100th anniversary of President Abraham Lincoln's birthday, which was February 12, 1909. The Association last held its annual meeting in New York in 1998. The meetings were held in Washington, D.C. between 1999-2001.

The National Association for the Advancement of Colored People (NAACP) is the nation's oldest and largest civil rights organization. Its half-million adult and youth members throughout the United States and the world are the premier advocates for civil rights in their communities and monitor equal opportunity in the public and private sectors.

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<Andrew.Schauder2@usdoj.gov> [ UNKNOWN ] )
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NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting

U.S. Newswire
Sunday, February 17, 2002

Kweisi Mfume, president & CEO, of the National Association for the Advancement of Colored People (NAACP) said yesterday that the association stands firm in its absolute opposition to the

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confirmation of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit at a press conference held here during the Annual Meeting.

Mfume said, "We will continue to demand fairness on the part of those empowered to interpret the laws of our nation. We are opposed to the Pickering confirmation because we decry a judicial nomination process where civil rights and civil liberties, and equal protection under the law are forced to take a back seat to partisan politics and political affiliations." Mfume added, "Accordingly and rightfully so, we stand firm as an organization in our absolute opposition to the Senate confirmation of Judge Charles Pickering of Mississippi, and we stand united against all others whose judicial records give rise to suspicion about their ability to render impartial judgment and fair interpretation of federal law."

Julian Bond, chairman, NAACP Board of Directors said, "The NAACP was created to fight for freedom and justice in a nation dedicated to those goals. We must continue to fight now with renewed determination. Each of has a role to play as guardians of our nation's liberty, and that is the role history has assigned to us."

Mfume called on the Congress to join the association in the fight to defeat the Pickering confirmation, and challenged the members to help fight against hate crimes and racial profiling. He also urged them not to ignore the AIDS epidemic both in Africa and at home.

"These are wrongs that must be confronted," Mfume said. "We are compelled to act responsibly before the world to better humanity, and ultimately, to better ourselves."

In light of the Sept. 11 tragedies, Mfume said, "By moving our Annual Meeting back to New York, the NAACP honors the world's leading city and its residents along with the scores of Americans who are resolved to defend the ideals of a free and open society. This is the city of our birth, and we stand in solidarity with New Yorkers."

The NAACP was founded in New York City on the 100th anniversary of President Abraham Lincoln's birthday, which was Feb. 12, 1909. The Association last held its annual meeting in New York in 1998. The meetings were held in Washington, D.C. between 1999-2001.

Bush Reaffirms Support for Pickering; White House Says Democrats Stall on Judges

By James Brosnan
The Commercial Appeal
Saturday, February 16, 2002

The White House on Friday reiterated President Bush's support for the troubled nomination of U.S. Dist. Judge Charles Pickering of Mississippi to the Fifth U.S. Circuit Court of Appeals in New Orleans.

"The President believes in and will fight for the nomination of Mr. Pickering," said White House spokesman Ari Fleischer. Fleischer's comment on Pickering was not prompted by a question, but

came instead as Fleischer opened his daily briefing with an attack on Senate Democrats for holding up action on judicial nominations from the Republican administration.

Fleischer complained that the Senate has voted on only 37 of Bush's 90 judicial nominations and that there has been "enhanced lag" for the Circuit Court nominees, with votes on only seven of 29 nominees.

The 12 regional appellate courts have 30 vacancies, a vacancy rate of 18 percent, said Fleischer.

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) noted that many of the vacancies exist because when Republicans controlled the Senate they refused to act on many of President Clinton's nominees.

"During the last six years of the Clinton administration it took an average of about 150 days to move a district court nominee to confirmation. I am proud that we have been able to do better since last July," said Leahy.

The committee held a second hearing on Pickering's nomination last week and Friday members submitted additional questions to the Justice Department for Pickering to answer.

A vote is expected in March. Pickering needs at least one of the 10 committee Democrats to vote to send his nomination to the Senate, but all have expressed concerns either about his civil rights record in the state or rulings on the bench.

Internal Justice Department documents claim Pickering lobbied to reduce jail time for a man convicted of burning a cross on an interracial couple's lawn in 1994.

NAACP Decries Judicial Nominee

By Christopher Lawton
Newsday
Sunday, February 17, 2002

NAACP leaders Kweisi Mfume and Julian Bond voiced staunch opposition yesterday to Senate confirmation of a federal judge's nomination to the Fifth U.S. Circuit Court of Appeals, saying it is an affront to "civil rights, civil liberties and equal protection under the law."

U.S. District Court Judge Charles Pickering, a conservative Mississippi judge, "really represents most of the things that this organization opposes," Mfume, NAACP president and chief executive, said at a news conference at the New York Hilton and Towers Hotel, where the group's board of directors and trustees were having their annual meeting. Pickering, 64, whom President George W. Bush nominated to the appeals court, defended his past actions as a prosecutor and politician on Feb. 7 before the Senate Judiciary Committee. The committee has not scheduled a vote on his nomination.

Pickering told senators that he took stands against racists in Mississippi in the 1960s and 1970s, endured threats against his family and lost re-election as a county prosecutor due to his views.

But he had to concede that he misled senators in 1990 during the Judiciary Committee's hearing on his nomination as a federal district court judge, when he said he never had contact with the Mississippi Sovereignty Commission, a state agency dedicated to maintaining segregation.

On that point, Bond yesterday was heated, saying Pickering "lied to the United States Senate about his associations with the terrorist group ... a state-funded organization which helped to do all it could to stop democracy in the state of Mississippi."

NAACP Asks Congress to Oppose Judicial Nominee

By Zach Howard
The Orlando Sentinel
Sunday, February 17, 2002

The National Association for the Advancement of Colored People on Saturday asked Congress to support its opposition to President Bush's nomination of a Mississippi judge.

"We challenge every member of the Congress . . . to stand with our association," NAACP President and CEO Kweisi Mfume told hundreds of members of the nation's oldest and largest U.S. civil-rights organization at an annual meeting in New York. The group, which has about 500,000 members nationwide, has said it opposes Senate confirmation of Judge Charles Pickering of Mississippi, nominated to serve on the 5th U.S. Circuit Court of Appeals in New Orleans.

It is one of a coalition of more than 50 organizations acting in opposition to the Pickering nomination since January.

White House officials were not available for comment on the NAACP's action. Efforts to reach Pickering were unsuccessful.

Pickering, a district-court judge since 1990 in Jackson, Miss., has been attacked by national groups for his record as a federal judge and earlier as state senator on matters including women's rights, abortion and voting rights.

"Judge Pickering, in most instances, really represents most of the things that this association is opposed to, and, in most of his rulings, continues to raise suspicions about whether or not he will be able to interpret . .. and administer fairness as he interprets the federal law," Mfume said.

Review Backs Nominee

By Audrey Hudson
The Washington Times

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Friday, February 15, 2002

A legal-ethics expert asked by Republicans on the Senate Judiciary Committee to review a cross-burning case says that District Court Judge Charles W. Pickering's behavior in the matter deserves praise, not criticism.

Democrats charged that the judicial nominee for the U.S. Court of Appeals for the Fifth Circuit behaved unethically in determining a crime sentence in the case involving the burning of a cross in the yard of a racially mixed couple.

Michael Krauss, a professor of legal ethics at George Mason University School of Law, reviewed the 1994 Mississippi case at the request of Senate Judiciary Committee Republican staffers.
Mr. Krauss sits on the Board of Governors of the Virginia state bar's education section and said he is frequently called on to discuss ethical issues with members of the bar and bench.

Judge Pickering's judicial behavior "is not unethical or in any way unbecoming of a member of the judiciary," Mr. Krauss said in a written review.

Liberal organizations oppose the nomination of Judge Pickering and are attempting to label him a racist. Democrats attacked Judge Pickering during his second confirmation hearing last week and said he engaged in unofficial communication to reduce the maximum sentence in the case.

Judge Pickering said he objected to the prosecution's sentencing recommendations on the grounds that it was disproportionate, and redacted documents released yesterday by the Judiciary Committee seem to back his assertion.

A 1994 Justice Department memo said Judge Pickering "immediately took issue with the 'severe disparities'" in the sentencing.

Three men were accused of the federal offense, but the prosecutor cut a deal with two offenders, who were then put on probation and sentenced to community service — one had a history of racism and had fired a gun into the home on a previous occasion, and the second had "low mental capacity," according to the memo.

The third suspect was a first-time offender, but the prosecution recommended more than seven years in prison. Judge Pickering instead sentenced him to 39 months in jail and called his actions "heinous," "reprehensible," "despicable," and "dastardly."

Judge Pickering asked federal prosecutors to inform their superiors at the Justice Department of the discrepancy in their sentencing recommendations. He also complained about the sentencing to a friend in a different branch of the department, but there is no evidence that confidential information was revealed, the review said.

"Judge Pickering was clearly concerned that no rational basis had been demonstrated for the

widely disparate sentencing recommendations ... ," the review said.

Judge Pickering's actions are described as a "determined effort" to "discharge, faithfully and competently, his judicial duties under our Constitution. I believe Judge Pickering deserves praise for his efforts," the review said.

Senate Minority Leader Trent Lott, Mississippi Republican, did not specifically identify Mr. Krauss' review, but said the Senate is receiving letters that should address Democrats' concerns.

"I believe any questions about him will be properly and sufficiently answered and we will get him out of committee," Mr. Lott said.

Sen. Charles E. Schumer, New York Democrat, is the only member of the Judiciary Committee to make public his intention to vote against Judge Pickering. Mr. Schumer cited the cross-burning case as the primary reason for his opposition.

A senior Republican aide said Democrats are underestimating the political consequences of derailing the nomination.

"It will be a political boomerang with a razor-blade tip that will come back at them very hard," said the aide, who refused to detail what Republicans are plotting.

Meanwhile, Sen. Joseph R. Biden Jr., Delaware Democrat, is blocking two Transportation Department appointees responsible for enforcing airline-security regulations, in exchange for getting support for an Amtrak security bill.

The nominees are Emil H. Frankel, for assistant secretary for transportation policy and Jeffrey Shane, for associate deputy secretary.

Blacks at Home Support a Judge Liberals Assail

By David Firestone
The New York Times
Sunday, February 17, 2002

Back in Washington, his opponents have depicted Judge Charles W. Pickering as the personification of white Mississippi's oppressive past, a man so hostile to civil rights and black progress that he is unfit for promotion to a federal appeals court.

But here on the streets of his small and largely black hometown, far from the bitterness of partisan agendas and position papers, Charles Pickering is a widely admired figure of a very different present.

In funeral parlors and pharmacies, used-car lots and the City Council chambers, the city's black establishment overwhelmingly supports his nomination to the United States Court of Appeals for

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the Fifth Circuit, which is heading toward a contentious vote in the Senate in the first major judicial battle of the Bush administration.

Though few black residents here subscribe to Judge Pickering's staunchly Republican politics, many say they admire his efforts at racial reconciliation, which they describe as highly unusual for a white Republican in the state.

"I have never seen Trent Lott open his arms to the black community the way Charles Pickering has," said Larry E. Thomas, owner of Thomas Pharmacy, referring to the Senate minority leader, who is Judge Pickering's friend and patron. "Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community. That's a progressiveness that we need to see more of in this state."

Progressive is not exactly the description used by the national black officials who are making an intense effort to prevent the judge's appointment. "A vote for Pickering is a vote against civil rights," said Julian Bond, the national chairman of the N.A.A.C.P. Representative Robert C. Scott, Democrat of Virginia, speaking against the nomination with other members of the Congressional Black Caucus, said, "It's hard to imagine a person who is more hostile to civil rights." Judge Pickering has also been condemned by a variety of big-city newspaper editorial boards and columnists.

But such comments carry little weight among those who actually know the man personally here in Laurel, in southeast Mississippi. Judge Pickering, now a federal district judge in the nearby city of Hattiesburg, was praised by black city officials for helping to set up after- school youth programs here, and for directing federal money to medical clinics in low-income areas when he was a state senator. Black business leaders say he was influential in persuading white-owned banks to lend money to black entrepreneurs, helping to strengthen the city's black middle class.

"I can't believe the man they're describing in Washington is the same one I've known for years," said Thaddeus Edmonson, a former local president of the N.A.A.C.P. who is now president of the seven-member Laurel City Council and one of its five black members. "If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

The judge's widespread popularity in his hometown has been frustrating to the many civil rights and abortion rights groups that have worked to portray him as an ideological relic of the Old South.

Several opponents of his nomination have tried unsuccessfully to get his supporters to change their minds, and their inability to do so reflects the distance between national liberal groups and many Southern blacks in small towns. In a city like Laurel, with a population of 18,393, one's personality and faith are often more important than a judicial paper trail or an adherence to an agenda.

People for the American Way, a liberal organization based in Washington, has criticized Judge

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Pickering for disregarding the separation of church and state by promoting religious programs from the bench. But many prominent blacks here say it is precisely his religious background — he was president of the Mississippi Baptist Convention in the 1980's — that they admire.

"I know Judge Pickering is a fair and impartial person grounded with Christian ethics and beliefs, who ought to be given this chance," said the Rev. Arthur Logan, the black pastor of the Union Baptist Church and a member of the City Council. "There are many people in Mississippi who made these same mistakes early in life, but their strong Christian character brought them closer
to God and helped them change."

Four of the five black council members, in fact, said they enthusiastically supported Judge Pickering's appointment. The fifth, Manuel Jones, said he opposed the nomination, largely because he differed with Judge Pickering's efforts in the late 1980's to integrate the largely black city schools with the largely white county schools.

Judge Pickering, then in private practice in Laurel, was one of several white city leaders who argued that the city could not attract economic development with an effectively segregated school system. At the time, Mr. Jones was president of the Laurel-Jones County branch of the N.A.A.C.P., which maintained that consolidation would dilute black administrative power over the city schools. The consolidation plan was eventually overturned by a federal judge, who said it was not justified.

Mr. Jones said he rebuffed a recent telephone request by Judge Pickering that he write the Senate a letter of support. (He had publicly opposed the judge's original appointment to the federal bench in 1990.) Several other council members did agree to the judge's request, however, and their letters are on file with the Senate Judiciary Committee.

"It's hard to go against a sitting federal judge," said Mr. Jones, searching for an explanation of why his colleagues have taken a position that differs so sharply from his.

Many of the judge's critics have cited actions or statements he made in the 1960's and 70's. They have pointed to an article he wrote in 1959 that appeared to support strengthening the state's law against interracial marriages, and to his votes in the state senate that appeared to dilute black voting strength.

The Battle Escalates; New Fighting Over the Charles Pickering Nomination

By Byron York
National Review Online
Friday, February 15, 2002

In a move to escalate the already-intense battle over the nomination of Charles W. Pickering Sr. to a place on the Fifth Circuit Court of Appeals, some Democrats on the Senate Judiciary Committee are now suggesting that Pickering may have misled the committee at hearings held

February 7. Pickering strongly denies the allegation.

At issue are statements Pickering made in response to questions from Democrat John Edwards about a 1994 cross-burning case (see "Behind the Democrats' Attack"). At the time, Pickering, a judge on the federal district court in southern Mississippi, questioned the Clinton Justice Department Civil Rights Division's decision to make no-jail plea bargains with two of the three defendants in the case, while recommending that the third defendant, a man named Daniel Swan, be sentenced to seven and a half years in prison. Evidence that emerged during the trial suggested that one of the defendants who got off with no jail had a significant history of racial hatred, which is an important factor in sentencing defendants convicted under the federal hate crimes statute. There was far less evidence of racial animus on Swan's part; in fact, seven witnesses, both black and white, testified that they were not aware of any racial animus he might have held against black people. While Pickering did not object to sending Swan to prison — he was clearly guilty of taking part in the cross burning — the judge believed that the seven and a half year sentence was too severe, given that a more culpable co-defendant was given no jail time at all.

At last week's hearing, Edwards questioned Pickering about a conversation Pickering had with defense lawyers and prosecutors from the Civil Rights Division. Swan had already been found guilty, and Pickering had told both sides that he was unhappy with the government sentencing recommendation. In the Senate questioning, Edwards alleged that Pickering was so unhappy with the sentence that he threatened to order a new trial for Swan.

"You told the government lawyers that you would on your own motion order a new trial, and when the government lawyer asked you, and I'm quoting now, 'What would be the basis for such a motion?' your answer was, 'Any basis you choose.' First of all, judge...did you say that you would order a new trial, even though no motion for a new trial had been made?"

"I did not," Pickering answered.

"So you deny that?"

"I've reviewed the transcript — "

"So you deny having said that?" Edwards pressed.

"I did not say that," Pickering said.

"So if the lawyers who were involved in that case have said that that's a statement you made to them, that would be a lie?"

"Senator, on the record, I mentioned — "

"Excuse me, judge," Edwards interrupted. "According to documents that we've been provided, this took place in a private meeting you had with the lawyers, when you told the lawyers you

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would order a new trial on your own motion, and when they asked you, and I'm quoting now, 'What would be the basis for such a motion for a new trial?' you said, 'Any basis you choose.' Do you deny having said that?"

"I have no recollection of having said that," Pickering answered, "and I do not believe that I said that. Now, I have not seen the document that you are referring to. The Justice Department did not show me the files that they had."

"Did you have private meetings with the lawyers off the record about this case?"

"The response that I gave to Senator Leahy on this indicated that after — "

"I'm not asking about Senator Leahy," Edwards interrupted. "Did you have private meetings with the lawyers?"

"With both the defense counsel and the [government] counsel, I had a meeting, yes."

"So private meetings did take place?"

"A private meeting took place."

"And you deny having any discussion in that meeting about ordering a new trial on your own motion? You deny having done that?"

"There was a discussion on the record of a new trial on the basis of the [jury] instructions, but I don't have a recollection of any indication that I would do that on my own motion," Pickering said.

The documents to which Edwards referred — and which Pickering had not seen at the time of the hearing — were two internal Justice Department Civil Rights Division memos. One of the memos, dated November 29, 1994, concerned the private meeting between Pickering, government lawyers, and defense attorneys. As he had in open court, Pickering expressed great unhappiness with the Civil Rights Division's jail recommendation for Swan. "He said that Swan clearly must do some time behind bars, but seven years is just too much," prosecutor Brad Berry wrote in the memo. "Pickering said he has carefully examined his conscience in this case, and is confident that his discomfort with the sentence is not the product of racism."

Then Berry addressed the issue of a new trial. Much of the conversation centered on what was called the "844 charge," which was the part of the charges against Swan that carried a five-year mandatory minimum sentence (other charges against Swan made up the rest of the seven and a half year sentencing recommendation). Pickering, according to Berry's memo, asked whether the Department would agree not to oppose a motion for a new trial on the 844 charge...if Swan received the maximum on the other two charges. Pickering expressed a willingness to sentence Swan to 36 months on the other two charges if he could find a way to do it. He said that if the Department does not agree to do this, he might well write a nasty opinion from our perspective,

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emphasizing the sentencing disparities and the injustice of applying Section 844 in this case. He said that given his strong feelings about applying 844 in this case, he might well leave the task to the Fifth Circuit. After further discussion, I asked Pickering what would be the basis for the motion for a new trial. Pickering responded, "Any basis you choose."

The paragraph is unclear on where the motion for a new trial might come from, but it does not say, as Edwards alleged, that Pickering threatened to call for a new trial on his own motion. Pickering's defenders suggest that a more reasonable reading of the paragraph would be that Pickering was assuming that the defense, as is common in such cases, would ask for a new trial for Swan. In addition, a later memo, by another Justice Department lawyer, suggests that Pickering never bullied or threatened government lawyers in any way, contrary to Edwards's allegation. "He [Pickering] thinks the sentence facing Swan is draconian, and he wants a way out," prosecutor Jack Lacy wrote,

He has been careful to phrase his concern in such terms as, "I wish you could suggest some way that this harsh sentence could be avoided." He has never directly [italics in the original] asked us to do anything...

In the same memo, Lacy wrote that he "personally agreed with the judge that the sentence is draconian."

Meanwhile, in his first statement since the confirmation hearings, Pickering has offered his own account of the issue. In a letter to Judiciary Committee ranking Republican Orrin Hatch, Pickering writes that he had doubts whether the five-year mandatory-minimum sentence was applicable to the case:

In chambers, I discussed with counsel for both parties (1) the possibility of a motion for a new trial based on the lack of specificity of the jury instruction on racial animus, if the government insisted on applying the five-year mandatory minimum charge, or (2) the possibility of a motion to set aside the verdict or dismiss the charge of the count which carried the mandatory five-year minimum sentence. When counsel for the government asked how this would be accomplished, I recollect responding to him that the government could elect the grounds. I never indicated I would grant a motion for a new trial, sua sponte [on his own motion], and I never indicated I would do so on whatever ground I chose.

Finally, in his letter, Pickering cites a portion of the trial transcript in which a lawyer for the Civil Rights Division appears to admit that the government indeed went too easy on one of the defendants who received a no-jail plea bargain. "The lesson that I take from that, your honor," the lawyer said, "is that perhaps the government should have been more tough — should have asked for a more stringent or stronger or longer sentence for the other defendants in this case."

Speculation Builds Over Chief Justice Successor

By Jan Crawford Greenburg
The Chicago Tribune

Sunday, February 17, 2002

When Supreme Court Justice Anthony Kennedy walked into a District of Columbia magnet school last month to talk to students about concepts of freedom, he said he was hoping they would gain a greater understanding of democracy.

But his key role in unveiling the "Dialogue on Freedom" initiative, with help from the American Bar Association and First Lady Laura Bush, prompted some court watchers to suggest he also may have something else on his mind.

"I'm sure he wants to be chief justice," one court observer said.

Chief Justice William Rehnquist has not announced his retirement, but most agree he is likely to do so this summer or next. With such a closely divided court, the magnitude of that prospect already has public interest groups, lawyers and law professors quick to speculate on even the sincerest intentions of possible nominees and anxious over what all predict will be a colossal confirmation battle.

"This is going to be one of the most dramatic moments in American history," Ralph Neas, president of People for the American Way, said of the confirmation hearings for the next Supreme Court justice.

Indeed, the bitter battle that Neas' group has spearheaded over Charles Pickering, one of President Bush's federal appeals court nominees, is only a hint of what's to come when the administration seeks to fill a vacancy on the high court, observers say. The current court generally is divided 5-4 on contentious issues such as race, religion and the role of government, and Bush is poised to nominate up to three justices, including the chief justice, as aging ones retire.

Rehnquist, 77, is a likely candidate for retirement this year or next, as is Justice Sandra Day O'Connor, although she said recently she would not step down this year. Justice John Paul Stevens, the court's most liberal member and, at 81, its most senior, also could retire this term--particularly because Democrats control the Senate and, Neas vows, would not confirm an ardent conservative to replace him.

But the chief's spot has grabbed the interest of many. To be sure, the chief justice has just one vote, but he also assigns opinions when he is in the majority. That can help shape how broadly or narrowly a decision is written. What's more, the chief is the administrator of a branch of government.

As such, filling that post could present the biggest problem for Bush, particularly if Rehnquist is the only justice to step down. The Senate historically has placed greater emphasis on confirming the chief justice than associate justices, and Democratic leaders already have indicated they will not make it easy for Bush to fill a vacancy.

Conservative groups, aware of the looming battle, are becoming increasingly critical of the administration's approach. They say the administration is not doing enough to get ready for the fight and are particularly upset at Bush's refusal, despite requests, to mention the issue of judicial appointments in his State of the Union address.

Further complicating matters is that there is no obvious choice to take Rehnquist's place. Opponents on the left and the right have raised flags about several of those believed to be contenders, including Kennedy and the current White House counsel, Alberto Gonzales. Groups such as Neas' say they would love to take on two other possible nominees, conservative federal appeals court Judges J. Harvie Wilkinson III and J. Michael Luttig.

Some have said Kennedy's statesmanlike behavior in recent weeks has the cast of a potential chief justice candidate.

That's not to question his sincerity in the "Dialogue on Freedom" initiative. Kennedy, 65, has had a long-standing interest in promoting the virtues of the legal system to young people.

"I would think if an opening occurs, he certainly is one of the people who would be considered seriously," said Jesse Choper, a law professor at the University of California at Berkeley. Of the Democratic-controlled Senate, Choper said: "They'd be hard-pressed to beat him."

Elevating a current justice could siphon attention from the nominee who would take his place as associate justice. That's what happened in 1986, when President Ronald Reagan sought to elevate
Rehnquist as chief and nominated Antonin Scalia as associate justice. The Senate spent all its time on the chief's nomination, while Scalia- -one of the court's most ardent conservatives--skated through unanimously.

That said, "Chief Justice Kennedy" is an extremely unlikely scenario. His nomination would infuriate the far right, which was outraged by his refusal in 1992 to overturn Roe vs. Wade, as well as other decisions it perceives as liberal, such as one that blocked clergy from praying at school graduation ceremonies.

"A lot of the president's conservative base would strongly oppose elevating Kennedy," said Tom Jipping, director of the Center for Law and Democracy at the Free Congress Foundation.

Moreover, elevating Kennedy to chief would give the left ample fodder as well. He joined the court's three most conservative members two years ago, for example, in dissenting from a decision that struck down state efforts to ban certain late-term abortions.

Bush vs. Gore role damaging

But his role in Bush vs. Gore could be the most damaging for his prospects. Any confirmation hearing for Kennedy (or O'Connor, if she were tapped for the chief's post) would resurrect the 2000 presidential election. Kennedy and O'Connor are considered the architects of the 5-4

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opinion that stopped the vote recounts in Florida and handed the election to Bush over Al Gore.

O'Connor, who will be 72 next month, would have those problems as well as her age working against her, said David Yalof, a political science professor at the University of Connecticut. Bush probably would prefer a younger nominee who would serve for more than a few years, he said.

The other two conservatives on the court, Scalia and Clarence Thomas, are considered simply too conservative--both would overturn Roe vs. Wade, for example--to be confirmed by a Democratic- controlled Senate, Neas, Yalof, Choper and others said.

As such, most observers predict Bush will have little choice but to look outside the court for its next chief, just as President Dwight Eisenhower did in 1953 with Earl Warren, then governor of California, and President Richard Nixon did in 1969 with Warren Burger, then on the U.S. Court of Appeals for the District of Columbia Circuit.

"We're looking at a moment where the current president's best prospects for chief justice lie outside the court," Yalof said.

Yalof and other court watchers, such as Choper, say they believe Bush would like to name the first Hispanic to the court. Most say White House Counsel Gonzales is the front-runner, certainly for associate justice, because he has the confidence of Bush and may not have the damaging paper trails of other potential nominees.

The latter likely would do in the other leading Hispanic candidate, Emilio Garza, a judge on the U.S. Court of Appeals for the 5th Circuit. Garza has openly suggested his opposition to Roe vs. Wade, a decision he said is "inimical to the Constitution."

Gonzales could raise brows

Gonzales could be a controversial choice, however, particularly for chief. He served on the Texas Supreme Court just 23 months before assuming his current position, and he could be viewed as too political, Neas and others said. Moreover, the far right views him suspiciously, noting that while on the Texas Supreme Court he joined a majority decision allowing some minors to get abortions without parental notification.

But Yalof said he thought Gonzales "had a lot to offer for chief" because it is an administrative post.

"He's currently in the administration and is someone the president would feel comfortable with, not simply rendering decisions but running a branch of government," Yalof said.

Bush may believe he could get a more predictable conservative as chief, because the appointment would not move the court to the right. Rehnquist, one of the court's most conservative members, would overturn Roe and has led the court in scaling back congressional

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power and handing it to the states.

If so, Bush could turn to the U.S. Court of Appeals for the 4th Circuit, where Wilkinson and Luttig have established solid conservative reputations. Wilkinson, who turns 58 this year, is a former law professor at the University of Virginia and the chief judge of the circuit.

Luttig is a former Scalia clerk who worked to help get Thomas confirmed while working in the Justice Department. Philosophically, he is closer to Scalia and Thomas--the justices Bush said during the campaign he most admired--than Wilkinson. He wrote the high-profile opinion, which the Supreme Court upheld, striking down a section of the Violence Against Women Act as beyond Congress' power.

Recently, however, the two have parted ways dramatically in several high-profile cases, with Luttig, 47, all but accusing Wilkinson of being a faux conservative.

"Many people think Luttig has blessed Wilkinson by making him seem like a moderate statesman," one court observer said.

Ruled with liberal colleagues

In a recent high-profile school desegregation case, Wilkinson joined with more liberal judges in refusing to hold a North Carolina school system liable for running a race-conscious magnet school. Wilkinson said the school district could not be held liable because it had been under a court order to end segregation. But Luttig, in dissent, said Wilkinson "variously ignored and misunderstood" the law.

They also split ways in a high-profile case over the breadth of Congress' power to protect endangered species. Wilkinson wrote for the majority that the federal government had power to limit the taking of red wolves on private lands, a decision Luttig harshly criticized in dissent.

Wilkinson is more in the mold of the gentle conservative, whereas Luttig is more in-your-face," said one lawyer who frequently practices in the 4th Circuit. "I think Wilkinson tries to be more scholarly, whereas Luttig has much more of a rubber-hits-the-road kind of approach."

That's not to say Wilkinson is not conservative. He wrote a majority opinion upholding the Clinton administration's "don't ask, don't tell" policy that excluded acknowledged homosexuals from the military.

"I would guess if either Luttig or Wilkinson is on the Supreme Court, their voting patterns would not be that different," said A.E. Dick Howard, a law professor at the University of Virginia.

Conservative groups acknowledge that either could be difficult to confirm, which could prompt Bush to name a stealth candidate, such as Judge Samuel Alito Jr. of the U.S. Court of Appeals for the 3rd Circuit. They put the blame partly on Bush and suggest the administration has ceded control of the debate on the issue to the Democrats.

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"I believe the president, before any Supreme Court vacancy, needs to provide sustained public leadership on judicial appointments, generally," said Jipping of the Center for Law and Democracy. "If the administration is going to wait until there's a Supreme Court vacancy, they're going to lose. Or they're going to feel compelled to nominate someone who won't be worth it."

The O'Connor Factor

By Charles Lane
The Washington Post
Monday, February 18, 2002

When word got out that Supreme Court Justice Sandra Day O'Connor would be giving a public lecture last fall in Lincoln, Neb., 500 people snapped up every available seat, leaving 100 others to be turned away. The University of Nebraska gave her a medal. Female law students presented a corsage.

"If it hadn't been for you paving the road, we wouldn't be here today," Lisa Rasmussen told O'Connor, according to the Daily Nebraskan.

More than two decades after President Ronald Reagan made her the first woman on the Supreme Court, O'Connor, 71, may be a bigger celebrity -- and a more powerful influence on American law and society -- than ever before.

She has weathered what she has called the "difficult" 2000 election case in which she was one of five Republican-appointed justices to join a much-criticized ruling that sealed President Bush's victory. She has added her voice to those expressing concern that innocent people may be sentenced to death. Favorable reviews are coming in for her much-publicized new memoir, co-written with her brother, H. Alan Day, about growing up on a remote desert ranch during the 1930s and '40s.

And on the most contentious social issues facing American society, she continues to cast what is frequently the deciding vote on a nine-member court often split between liberals and conservatives.

On Wednesday, the court hears oral arguments on two such issues -- state-funded vouchers for private and parochial school tuition, and a possible ban on the death penalty for mentally retarded capital offenders. And once again, attorneys for both sides will be pitching much of their argument to the tall, silver-haired woman sitting just to Chief Justice William H. Rehnquist's left.

So pivotal -- and familiar -- is O'Connor's role that it has become difficult to imagine the court without her, despite rumors, denied by the justice, that she may retire soon. Lately speculation has run in the opposite direction -- that O'Connor could ascend to chief justice if Rehnquist, 77, steps down -- a scenario she also dismisses.

O'Connor's power has been accumulated not by asserting an ironclad doctrine for others to follow, but by remaining as noncommittal as possible: Time and again, she has signed on to narrow rulings crafted according to the facts of a particular case, leaving open the option of another incremental holding later on.

"The rule of law must also be flexible enough to adapt to different circumstances," she told her Nebraska audience, expressing a precept she had articulated many times in her opinions.

"Hers is the power of the median voter," said University of California at Los Angeles law professor Eugene Volokh, a former O'Connor law clerk. "Lawyers target her for the same reason both sides in a political campaign target the center."

The question hovering over O'Connor's 21-year career on the court, though, is whether her approach is too much like the political art of compromise she once practiced as majority leader of the Arizona state Senate.

By providing only sketchy constitutional guidance to legislatures and lower courts, some lawyers, legal academics and judges say, her restrained jurisprudence lays the basis for legal instability that ultimately must be sorted out by the Supreme Court -- and, in many cases, by O'Connor herself.

O'Connor's fellow justice, Antonin Scalia, has published opinions blasting her mode of reasoning, including a 1988 gibe at her "Solomonic" answer to a death penalty case: "Solomon," Scalia wrote, "was not subject to the constitutional constraints of the judicial department of a national government in a federal, democratic system."

O'Connor's admirers describe her method as "judicial minimalism."

"Clear rules are better; they make the court's own judgments more transparent," Volokh said. "But if a justice is not persuaded the Constitution demands a clear rule, it's her duty to vote for a more fact-sensitive one."

O'Connor, a lifelong Republican, votes more than 80 percent of the time with Rehnquist, a Nixon appointee. She has joined him, Scalia and other conservatives in the court's recent effort to bolster states' rights.

But on social issues, she has muted the court's rightward tendencies. Most famously, she voted to uphold the right to abortion enshrined in Roe v. Wade, co-writing the 1992 opinion that barred state laws that impose an "undue burden" on the right to choose. In 2000, she provided the fifth vote for a ruling that struck down Nebraska's ban on what opponents call "partial birth" abortions.

Abortion, she recently told NBC's Katie Couric, "is an issue about which people feel passionately, and I'm very much aware of that when we have a case in that area."

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Certainly, there is little evidence of ideological fervor in O'Connor's personal story. Her childhood was spent among some of the last real cowboys in the West, on the 300-square-mile Lazy B Ranch. Straddling Arizona and New Mexico, the Lazy B had no electricity or running water; as depicted in her memoir, it was a place where individual adaptability and common sense were at a premium, and the social changes linked to the New Deal and World War II made little direct impact.

Graduating third in her class (Rehnquist was first) from Stanford Law School in 1952, O'Connor was stunned by law firms' refusal to hire her, but made a career in local government and the Arizona Republican Party. She was appointed to the state Senate in 1969, became majority leader in 1972 and later ran successfully for state trial judge before being elevated to the state appeals court by a Democrat, then-Gov. Bruce Babbitt in 1979.

When Reagan offered her the Supreme Court job in 1981, antiabortion groups tried to derail her nomination, citing her opposition as a state senator to certain laws restricting abortion. O'Connor herself has admitted she felt uncertain about her own modest judicial experience.

But she was fortified by lessons learned on the Lazy B. It gave her, she recently told C-SPAN interviewer Brain Lamb, "a certain amount of self-confidence in your ability to work things out and not be afraid to tackle something."

Today she regularly recruits law clerks who have served both liberal and conservative lower-court judges, relying on them for detailed briefings, oral and written, on each case -- and occasionally treating them to her homemade Tex-Mex cuisine.

Both cases before the court on Wednesday show how O'Connor's past rulings set the stage for future cases in which she again plays the potentially deciding role.

In the school voucher case, opponents of the program will try to persuade the court that, as practiced in Cleveland, the voucher subsidy gives families no real choice but to spend government money at religious schools, an issue framed in O'Connor's past opinions on the church-state balance.

In the death penalty case, Daryl Atkins, convicted of murder in Virginia, asserts that he has an IQ of 65, which qualifies him as moderately retarded under current psychiatric guidelines.

His attorneys argue that a national consensus has formed against the death penalty for persons with very limited intellectual abilities, so Atkins's execution would be "cruel and unusual punishment" prohibited by the Eighth Amendment.

In 1989, a Texas death-row inmate, Johnny Paul Penry, sought and was denied such a ruling from the Supreme Court. O'Connor's role was decisive.

Wrestling with Penry's claim that mentally retarded persons are less able to reason and hence less

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culpable for their crimes than others, O'Connor wrote that states must give juries a genuine chance to consider mental retardation as a factor weighing against the death penalty. It was an argument repeated by Atkins.

This section of O'Connor's opinion, which ordered a new trial for Penry, was joined by liberals such as the late Justices William J. Brennan Jr., Thurgood Marshall and Harry A. Blackmun and John Paul Stevens, who is still on the court.

O'Connor, however, concluded that it was not yet clear that all mentally retarded people lacked the reasoning ability ever to warrant capital punishment. And there was insufficient evidence of a national consensus against executing them, she wrote. Only two states with the death penalty had outlawed it.

This portion of her opinion was joined by conservatives Rehnquist, Scalia, Anthony M. Kennedy and Byron R. White, who has since retired.

Still, O'Connor left the door open. A national consensus, she wrote, "may ultimately find expression in legislation, which is an objective indicator of contemporary values upon which we can rely."

"That day has arrived," Atkins's attorneys argue in their brief for the case to be argued Wednesday. They noted that 18 of the 38 states that permit capital punishment now have laws outlawing death sentences for the mentally retarded. When you add the 12 states that do not allow capital punishment at all, they argue, 30 states -- 60 percent of the total -- plus the federal government, forbid the death penalty for retarded offenders.

Is 60 percent enough to make for a national consensus? O'Connor's past opinions are suggestive but, characteristically, not definitive on how she might rule.

In 1988, when the court voted to strike down the death penalty for 15-year-old murderers, O'Connor supplied the fifth vote -- but did so for reasons that were all her own.

In a separate opinion, she noted that 32 of 50 states -- 64 percent -- either had no death penalty or had limited it to perpetrators 16 or older. This, she said, created a strong presumption that a national consensus against executing those younger than 16 existed. But more state legislation would be needed to know for sure, because a large minority of states that set no minimum age for the death penalty appeared to permit executing 15-year-olds.

O'Connor explained her vote as limited only to situations in which states had specified no minimum age for death penalty.

Just a year later, she joined four conservatives in holding that executions for 16- and 17-year-old perpetrators were constitutional. There, she assented to a national-consensus calculus that focused only on the rules in the 37 states that had the death penalty at the time, noting that "a majority of states authorizing capital punishment permit it for defendants 16 and above." And

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today, a majority of death penalty states still allow sentencing retarded offenders to death.

Five of the death penalty states that have banned capital punishment for the retarded passed their laws in the last year, after the Supreme Court's surprising announcement in March 2001 that it would revisit the 1989 Penry ruling in the case of North Carolina death row inmate Ernest McCarver.

Legal analysts say that the mere fact that the court agreed to reconsider the subject suggests that change is afoot at the court. O'Connor herself has made two public statements -- to a Minnesota women's lawyers' group in July and again on her October visit to Nebraska -- that seemed to capture national anxiety about administration of the death penalty.

"More often than we want to recognize," she said in Nebraska, "some innocent defendants have been convicted and sentenced to death."

Edwards' Tactics Draw Ire

By Paul Kane
Roll Call
Monday, February 18, 2002

With a blistering cross-examination of a controversial judicial nominee, Sen. John Edwards (D-N.C.) has landed in hot water with the nation's leading anti-tobacco lawyer.

Dickie Scruggs, the trial lawyer from Pascagoula, Miss., who recently led the legal assault on the tobacco industry, has vowed to never again support Edwards and plans to rally other trial lawyers to his anti-Edwards campaign.

If Scruggs follows through on his stated mission, it would deal a serious financial blow to Edwards, himself a former trial lawyer who has relied heavily on the legal industry to underwrite his burgeoning national ambitions.

The bone of Scruggs' contention is Edwards' treatment of U.S. District Judge Charles Pickering of Mississippi, who is seeking a lifetime appointment to a seat on the Fifth Circuit Court of Appeals. "I'm really mad about it," Scruggs said of the questioning Edwards subjected Pickering to at a Feb. 7 hearing and the North Carolina Senator's apparent lack of respect for Scruggs' opinion of the judge. "It wasn't the manly thing to do."

Scruggs has a family stake in the Pickering nomination: He's married to Senate Minority Leader Trent Lott's (R-Miss.) sister-in-law. Lott, who has known Pickering for more than 30 years, has made this confirmation a personal crusade and has threatened to retaliate against Democrats if they block Pickering, whose son, Rep. Chip Pickering Jr. (R-Miss.), used to work for Lott.

Scruggs said his efforts to reach out to Edwards, a personal-injury trial lawyer before unseating Sen. Lauch Faircloth (R) in 1998, were part of a broader effort to lobby Democrats he bonded

with during the "tobacco wars."

Scruggs has tried to make the case that liberal interest groups in Washington are inaccurately portraying Pickering, 64, as a southern segregationist in retaliation for the way Republicans treated Clinton administration nominees in the 1990s.

"He's getting a bum rap," Scruggs said.

Scruggs, who has known Pickering for more than 20 years, called him a "fine judge." A lifelong Democrat who has given and helped raise thousands of dollars for the party's candidates, Scruggs said Democrats are wrong - personally, politically and legally - to oppose Pickering.

If he gets rejected, Scruggs said, Pickering's replacement will in all likelihood pose a greater threat to Democratic interests as a younger and more stridently conservative jurist, and one without decades of rulings and political activity to use in opposition to the nomination at Senate hearings.

Scruggs' ire, however, is currently focused on fellow trial lawyer Edwards, who ignored a series of calls the Mississippi attorney made to Edwards office in advance of the tension-filled Feb. 7 hearing.

"I started calling him on Tuesday [Feb. 5] and left messages all over for him," Scruggs said in an interview last week.

Noting trial lawyers' past financial support for Edwards, Scruggs said: "Not that he owes me a vote, but he owes me a phone call."

Scruggs attended Pickering's hearing, where he spoke with Democratic Sens. Edward Kennedy (Mass.), Russ Feingold (Wis.) and Dianne Feinstein (Calif.) about the nomination. He said he also spoke with top aides to Sen. Joseph Biden (D-Del.), but couldn't get a return call from Edwards.

Other trial lawyers from Mississippi also tried to reach Edwards and were rebuffed, Scruggs said.

At the hearing, Edwards was relentless in his questioning, focusing on a 1994 cross- burning case Pickering oversaw. Frequently cutting Pickering off and forcing him into one-word and yes-or-no answers, Edwards prompted Pickering to admit he had "ex parte" conversations with Justice Department officials regarding the case.

Biden told Roll Call last week that Pickering's answers to Edwards will play a key role in whether he supports the judge and questioned his truthfulness in responding to committee members' inquiries. One senior Democratic aide called Edwards "brilliant," noting that the cross-burning case was the "perfect metaphor" for Democratic opposition. A top GOP aide admitted the line of questioning was hurting the judge's case.

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Pickering's explanation - that he felt prosecutors had gone soft on the main culprit, who received no jail time in exchange for a guilty plea, and were coming down hard on a bit player in the case - barely registered. Scruggs said Pickering's family was furious: "They felt very humiliated about it."

A few days after the hearing, the judge's son said he was in "remarkably good spirits."

But, Rep. Pickering added, "They're trying to use Mississippi's reputation and history to smear a good man."

Scruggs said he left the hearing disgusted with Edwards, who he felt was twisting the facts of the case and playing the role of "the heavy" at the behest of other Democrats.

Not expecting to have his calls returned, Scruggs said he got another trial lawyer to get in touch with Edwards. "I sent a message through another trial lawyer: He can forget my support and that of anybody I have influence with," Scruggs recalled.

Early last week, Edwards finally called Scruggs, who characterized the conversation as "cordial."

Edwards' office did not confirm or deny Scruggs' account. In a statement released by his office, Edwards said, "I will make an independent evaluation on the merits with regard to the nomination of Judge Pickering. At this stage, I have very serious reservations."

On Saturday, Edwards was one of three potential Democratic White House hopefuls, along with Majority Leader Thomas Daschle (S.D.) and Sen. John Kerry (Mass.), to speak at the state Democratic convention in California.

While Scruggs himself has not been a direct financial backer of Edwards, lawyers have been the Senator's single largest backer, and many of Scruggs' friends are among Edwards' supporters. In the 1998 election cycle he received $905,280 from lawyers and law firms, the fourth most of any candidate in that cycle, according to the Center for Responsive Politics. That's all the more impressive considering Edwards does not take PAC money.

Up for re-election in 2004, Edwards campaign committee has already collected at least $218,686 from the legal industry, more than all but three other Senators - and each of those three faces re-election this fall.

To finance his national ambitions, Edwards opened a leadership political action committee, New American Optimists, last fall, raising $731,850 in November and December.

More than $650,000 of that total came from lawyers, their family members or employees of law firms, according to a Roll Call analysis of the PAC's donors.

Of that, $167,000 came from Mississippi attorneys, legal employees or their family members -

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many of whom work at firms, such as Minor & Associates and Langston Law Firm, whose principals are also supporting Pickering.

Asked if he could see himself ever supporting Edwards, or encouraging his friends in the legal community to back him, Scruggs said the Pickering nomination will be decisive. "I guess I ought to see how he votes," he said.

Group in Judge Seminars Denies Slanted View Point

By Ann McFeatters
Pittsburgh Post-Gazette
Saturday, February 16, 2002

A foundation that sponsors seminars on environmental economics for federal judges says its work is being mischaracterized by a land-use group seeking to derail the nomination of Western Pennsylvania U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals.

Community Rights Counsel, an organization that provides legal aid to local governments and environmentalists in land-use cases, is one of 27 environmental, women's rights and civil rights groups that are raising questions about Smith's nomination by President Bush.

In a letter to members of the Senate Judiciary Committee, which holds confirmation hearings for nominees to the federal bench, the group claims that between 1992 and 2000 Smith spent "nearly three months at luxury resorts and dude ranches on trips funded by corporations and special interests with a stake in federal court litigation," including expenses-paid visits to seminars hosted by the Foundation for Research on Economics and the Environment, or FREE, which is based in Bozeman, Mont. FREE Chairman John Baden said that while his group receives corporate money, only money from tax-exempt foundations is used to conduct the seminars for judges. Baden also said Community Rights Counsel wrongly portrays FREE as "right-wing."

"While FREE's programs are explicitly pro-environment, they explain why ecological values are not the only important ones. We stress that tradeoffs among competing values are inescapable. We show why it is ethically and materially irresponsible to pretend such choices can be avoided."

In a letter explaining his group's orientation, Baden went on to say, "The intellectually naive confuse FREE's classical liberal, incentive-based orientation with that advocated by those who support subsidized exploitation of the environment (e.g., below-cost timber sales on the national forests)."

Doug Kendall, a lawyer with Community Rights Counsel, says his group stands by its characterization of FREE as supported by "corporations that litigate in federal courts." He said, "Ninety percent of the speakers at their programs are right-wingers from think tanks or academia and one or two token environmentalists, some of whom say awful things about FREE and some of whom say good things."

FREE's Web site identifies its corporate funders in 2001 as the American Chemistry Council, Caterpillar, Exxon Mobil, General Electric, General Motors, Georgia Pacific, Merck, Shell and Tindall. Foundation supporters include the Ajax Foundation, the Chase Foundation of Virginia, the John M. Olin Foundation, the Sarah Scaife Foundation and the True Foundation.

Pickering's Actions Questioned in Cross Burning Case

By Jason Straziuso
The Associated Press
Friday, February 15, 2002

Internal Justice Department documents claim U.S. District Judge Charles Pickering lobbied to reduce jail time for a man convicted of burning a cross on an interracial couple's lawn in 1994.

At one point in the lobbying effort, according to a written report by a government attorney, the appellate court nominee from Mississippi even threatened to retry the case.

Whether the federal judge acted in good faith in seeking a just punishment for the defendant or attempted to sidestep the law is the question Senate Judiciary Committee members are examining as they contemplate Pickering's nomination to the 5th U.S. Circuit Court of Appeals. After a burning cross was placed on an interracial couple's lawn near Improve in Walthall County, charges were filed against three individuals.

Two males, ages 17 and 25, were sentenced to probation and home confinement in exchange for guilty pleas. A third person, Daniel Swan, then age 20, turned down the plea offer and was convicted in a trial.

The Justice Department sought a seven-year sentence for Swan. One of the charges Swan faced carried a five-year minimum sentence. He eventually received a 27-month sentence.

Government lawyer Brad Berry, in a 1994 internal Justice Department memo, said Pickering called Berry into his chambers and told the attorney he had problems with the seven-year sentence and the disparities in the sentencing for the three defendants.

Berry's memo was made public by the Democratic-controlled Senate Judiciary Committee. Pickering is a Republican.

Berry wrote that Pickering felt the Justice Department "is probably right on the law, but the result in this case would clearly be unjust."

The memos claimed Pickering had several off-the-record conversations with government attorneys in an attempt to get around the minimum sentencing requirement.

Berry also wrote that Pickering threatened to order a new trial on "any basis you choose."

Democrats have alleged Pickering privately contacted the Justice Department to manipulate the sentence.

Pickering has told Judiciary Committee members the only contact he had with the agency outside of court was a telephone call to a friend. Pickering said the contact was not improper because he did not discuss the case's specifics, but rather simply voiced frustration at the situation.

Pickering said Friday he cannot comment on issues surrounding his nomination. U.S. Rep. Chip Pickering, R-Miss., the judge's son, recently said that Swan was pulled into taking part in the cross burning, while the leaders of the act got off with the lighter plea sentences.

Republicans, led by Senate Minority Leader Trent Lott, R-Miss., accuse the Democrats of holding Pickering up as a test case for future conservative Supreme Court nominees.

The Judiciary Committee is expected to vote on Pickering's nomination by mid-March.

On Thursday, Sen. Charles Schumer, D-N.Y., said he would not support Pickering due to the cross burning information.

Marty Wiseman, director of Mississippi State University's John C. Stennis Institute of Government, said it appears Pickering's aim was not to subvert the law but to be just in his sentencing.

"This was what Judge Pickering was wrestling with and discussing with the various folks with the Justice Department," Wiseman said.

Republicans on the committee requested a review of the cross burning affair from George Mason University law professor Michael Krauss.

Krauss, in a Feb. 11 letter to Sen. Orrin Hatch, R-Utah, ranking Republican on the committee, concluded that Pickering's judicial behavior was proper and the just "deserves praise for his efforts."

Krauss wrote that no rational basis had been established for the disparate sentencing among the three accused males.

Op/Eds

What Judges Do. The Founders Saw that Laws Are Often Murky, So Judicial Beliefs Matter

By Mark Kozlowski
New Jersey Law Journal

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Monday, February 18, 2002

Mark Kozlowski is associate counsel at New York University School of Law's Brennan Center for Justice.

Should the Senate be concerned with the personal ideological views of federal judicial nominees? Conservatives say no. A proper judge qua judge, they assert, has no personal ideological views. A legislator may have such views, but not a judge. Thus, when President George W. Bush announced his initial batch of judicial nominees last May, he vowed: "Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench."

Whenever conservatives talk about the courts, the prohibition against "legislating from the bench" gets mentioned sooner or later. The idea is that, although judges must determine the meaning of statutes, the only legitimate elements to be considered are the words of the statute and the intent of the legislature in employing those words. Similarly, when called upon to interpret a provision of the Constitution, conservatives contend that the only proper guide, beyond the text itself, is the intention of those who composed and ratified the provision. To do otherwise, conservatives assert, turns the judge into a creator of law. With regard to ordinary statutes, so the argument goes, this violates the principle of separation of powers. As for the Constitution, when interpretation looks beyond text and intent, the meaning of our fundamental law comes to depend upon the will of individual judges.

What is more, conservatives frequently declare that this stark distinction between proper interpretation and "legislating from the bench" is precisely the way our Founders viewed the task of judging. Consider the testimony of Douglas Kmiec, law school dean at the Catholic University of America, during last year's Senate Judiciary Committee hearings on whether a judicial nominee's political ideology should play any role in the Senate's confirmation decision.

Kmiec noted that the Anti-Federalists, who opposed ratifying the Constitution, were very concerned about how much discretion judges might exercise. Kmiec asserted that Alexander Hamilton "responded to this criticism by emphasizing that it was not the job of judges to make law, that their role under the Constitution was simply to enforce the Constitution and laws as they were written." Under the principle of separation of powers, "lawmaking was left to the legislature and the people themselves."

To remain true to the Founders' vision, Kmiec declared, the Senate should not endeavor to discern a nominee's ideology. On the contrary, any nominee who suggested that ideology may influence the work of statutory or constitutional adjudication should be rejected. Kmiec concluded that, after determining that a nominee possesses the requisite professional qualifications, Senate inquiry should be limited to discerning "whether the nominees coming before you are willing to abide by the text of statutory law as you have authored it."

But did the Founders actually believe that statutory and constitutional interpretation could be reduced to a nondiscretionary exercise of following text and discerning intent? As is usually the

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case when one fully engages the thought of those men, things turn out to be a good deal more complex.

A Cloudy Medium

Begin with language itself. If you read only our most prominent journals of conservative thought, you might conclude that the idea that "meaning" is often indeterminate is a recent invention of deconstructionist literary critics. In fact, the Founders embraced the very same notion. Here is James Madison writing in The Federalist:

"[N]o language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately the objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition may be rendered inaccurate by an inaccuracy of the terms in which it is delivered. ... When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful through the cloudy medium through which it is communicated."

During the constitutional ratification debates, future Chief Justice Oliver Ellsworth made the same point more succinctly: "The charge of being ambiguous and indefinite may be brought against every human composition, and necessarily arises from the imperfection of language."

'More or Less Obscure'

Take first the case of statutory interpretation. Within proper bounds, the Founders believed that judicial interpretation was an extension of the legislative process itself. Madison made the point thus: "All new laws, though penned with the greatest technical skill and passed on the fullest and most mature deliberation, are considered more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." And Hamilton wrote: "Laws are a dead letter without courts to expound and define their true meaning and operation."

What is more, the Founders explicitly asserted that sometimes a judge would be justified in ignoring legislative intent. They fully expected that there would be occasions when a legislature, yielding to the passions of the moment or corrupt influence, would pass unjust laws. Then it would be proper for a judge to disregard legislative intent in favor of equity.

Thus, Hamilton said in The Federalist, legislatures might enact constitutional laws that were nevertheless "unjust and partial" in operation. In such cases, "the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws." Even some Anti-Federalists spoke highly of this practice. One writer praised New York judges for their willingness to construe an unjust statute in a manner that "I will not say evaded the law, but so limited it in its operation as to work the least possible injustice."

Ambiguity Embraced

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With regard to the Constitution itself, the Founders were emphatic that its language was necessarily broad and indeterminate. Why, the Anti-Federalists wanted to know, did the Constitution not list precisely every act that Congress could perform? This would be most unwise, Hamilton replied:

"Nothing ... can be more fallacious than to infer the extent of any power proper to be lodged in the national government from an estimate of immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity."

But if the powers of Congress cannot be precisely defined, how will we know when Congress has gone too far? Speaking specifically to the question of division of powers between Congress and the states, Madison said that there would be legitimate disagreement about the Constitution's meaning because judgments about the proper spheres of state and federal authority would not be "free from different constructions by different interests, or even from ambiguity in the judgment of the impartial." In other words, constitutional interpretation could not be reduced to an exact science.

In The Federalist itself, Hamilton noted that the Constitution's terms regarding the extent of federal court jurisdiction were subject to at least two interpretations. He then argued in favor of "the most natural and the most defensible construction." He pointedly did not assert that he was positing the single correct construction.

What does this mean for the debates over President Bush's judicial nominees? Contrary to Professor Kmiec, the Senate would be truer to the Founders if it expected more of judicial nominees than a pledge to interpret solely through text and intent. The Senate should understand, as did the Founders, that because of imprecise language, unclear intent, unforeseeable developments, and the capacity of legislatures to be swayed, the task of interpretation will inevitably demand a judge's discretion.

A Judge's Past and Present

The Chicago Tribune
Monday, February 18, 2002

The recent confirmation hearing for U.S. District Judge Charles W. Pickering, President Bush's controversial nominee for the U.S. 5th Circuit Court of Appeals in New Orleans, left many wondering which Pickering to believe.

Was he the insensitive right-wing segregationist his critics painted him out to be? Or was he the man his supporters described, a real-life version of Harper Lee's Atticus Finch, who courageously
fought the Ku Klux Klan and helped blacks to advance as a New South emerged in the late 1960s?

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You can find both Pickerings in his paper trail. As a law student in 1959, he wrote a technically impressive yet emotionally cold- blooded law journal recipe for Mississippi to revive its overturned ban on interracial marriages. His recommendation became law the following year.

Democrats, many of whom are seeking payback for the roadblocks Republicans threw up in front of President Bill Clinton's nominees to the bench, hounded Pickering over his past opposition to abortion, gay rights and laws boosting minority voting power.

Pickering has also been criticized for his handling of the 1994 case of Daniel Swan, who was convicted of burning a cross in front of the home of an interracial couple. Two other defendants pleaded guilty and received minimal sentences. Swan, because he had gone to trial, faced a mandatory minimum five years in prison.

Pickering called Frank Hunger, a friend at the Justice Department who also is a brother-in-law of former Vice President Al Gore, to suggest that prosecutors avoid the mandatory sentence by dropping one of the counts on which Swan was convicted. Prosecutors eventually did drop one count and Pickering sentenced the 20-year-old Swan to 27 months in jail.

Was the call a lapse in judgment? Perhaps, but Pickering's concern was one shared by many civil libertarians, that defendants sometimes pay a "trial tax," that is, receive harsher punishment simply for exercising their constitutional right to trial.

Pickering was also grilled over his association with Mississippi's notorious Sovereignty Commission, a secretive, state-funded body that from 1956 to 1973 devoted itself to resisting desegregation.

During his 1990 confirmation hearing for the district court, Pickering said he never had contact with the committee and denied that it was still in business in the 1970s when he was in the state Senate. When the commission's files were opened to the public in 1998, a document refuted those statements. In the early 1970s, according to the document, Pickering had asked a member of the commission to keep him informed of union activity in a Laurel, Miss., labor dispute.

If that was all there was to Pickering's story, the decision would be easy: He would not belong on the appellate court.

But it is not the end of the story. There is ample evidence that Pickering has, through words and deeds, made considerable efforts to restore his reputation and improve race relations in the south.

His courageous testimony against a Ku Klux Klan leader in 1967 cost Pickering his re-election as a local prosecutor in Mississippi. A decade later, he hired the first black staff member for the Mississippi Republican Party. As a private attorney, he successfully defended a 16-year-old African-American accused of robbery in a racially charged case. He has publicly promoted racial reconciliation in the South.

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Perhaps most important, his record on the federal bench has been good. Charles Evers, brother of slain civil rights leader Medgar Evers, and other Mississippi African-Americans are among Pickering's strongest supporters.

Is there a statute of limitations on racism? Hugo Black, once a member of the Ku Klux Klan, joined the Supreme Court in 1937 and became one of its most persuasive advocates for civil liberties. Abraham Lincoln had some curious views about relations between the races, yet went on to free America from slavery.

That does not suggest that Charles Pickering is Lincolnesque. Bush could have made a better choice. But the choice he made should be confirmed.

Campaign to Smear Judicial Nominee Rooted in Ignorance

Creators Syndicate, Inc.
The Augusta Chronicle
Tuesday, February 19, 2002

ONE CAN certainly understand why papers like the Atlanta Journal and Constitution ("Extremist Judge Unfit to Sit on Appeals Court") and the Los Angeles Times ("Say No to This Throwback") are so upset about Charles Pickering, President Bush's nominee for the Fifth Circuit Court of Appeals. After all, the man once testified as a character witness for the Grand Wizard of the Ku Klux Klan.

What's that, you say? He testified against the Grand Wizard? In Mississippi? In 1967? Putting himself at political and personal risk? Oh. You say he was a local prosecutor who lost his bid for re-election because he stood up to the Klan? Hmmm. You say this man Pickering, who has been a federal judge (confirmed by the Senate) for 11 years, was asked by Mississippi's governor to serve on the executive committee of the Institute of Racial Reconciliation at Ole Miss? What? He was the one who urged the state's governor and the chancellor of the university to create the institute in the first place?

Who's been feeding you this stuff? James Charles Evers? You mean the brother of slain civil-rights hero Medgar Evers? He's defending this "extremist" in the pages of The Wall Street Journal? Hmmm.

PEOPLE FOR the American Way, the Alliance for Justice and other members in good standing of the character assassination coalition have been faxing false accusations about Pickering far and wide. Some of those faxes landed on Evers' desk. Evers, who has known Pickering for decades, was "saddened and appalled to read many of the allegations that have been put forth about Judge Pickering ... made by groups with a Washington, D.C., address and a political agenda" and without real knowledge of "Pickering's long and distinguished record on civil rights."

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Evers notes that Pickering did more than face down the Klan. While in private practice, he defended an African-American man accused of robbing a white 16-year-old at knifepoint. After two trials, the man was acquitted.

People for the American Way is making much of a 1990 denial by Pickering that he ever had contact with the racist Mississippi Sovereignty Commission. PAW has uncovered a phone call with a commission staffer dating to 1972. But that phone call dealt with Pickering's concern over a labor dispute in Jones County. According to reporting by National Review's Byron York, the KKK had been making trouble, and Pickering, then a state senator representing Jones County, was keeping tabs on the situation. That one phone call is the entirety of Pickering's "contact" with the Sovereignty Commission.

As a federal judge, Pickering once overturned a damage award in a civil case because he believed that the jury was biased against the plaintiffs, an interracial couple. He ordered that the matter of damages be retried and the award for the couple was thus increased.

WELL, SAY the liberal activists, Pickering joined a law firm one of whose partners was a former
segregationist. How many Southern law firms in the 1970s did not contain former segregationists? The Supreme Court of the United States and the U.S. Senate both contain or have contained not just former segregationists but former members of the KKK. The key term is "former" -- "was blind but now I see." Besides, we are talking here of a law partner, not Pickering himself, who never was a segregationist. The very worst the mud-slingers on the left could find about the fellow was a 1959 law review article in which Pickering pointed out the poor wording of an anti-miscegenation statute. The 21-year-old Pickering did not, in the article, make the case against the law.

But in a four decade career in the law, Pickering has shown himself to be an eminently fair and reasonable jurist. He has recommended to some convicted felons that all was not lost; that they still might turn their lives around by participating in Chuck Colson's Prison Fellowship. Oops, another red flag. PAW says this is evidence of Pickering's "disregard for the separation of church and state."

THIS ATTACK on Pickering is so obviously malicious and in such bad faith that one wonders why anyone takes these liberal groups seriously anymore. They have cried wolf so many times about so many honorable men and women that they have brought shame on themselves. They have become the thing they claimed to detest: McCarthyites.

Creators Syndicate Inc.

A Case Without Merit; The Nomination of a Broadly Admired Federal Judge in Pittsburgh is Being Challenged Because of Political Pique. Ken Gormley and Frederick W. Thieman Defend Judge D. Brooks Smith Against the Calumny

The Pittsburgh Post-Gazette

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Sunday, February 17, 2002

A Washington-based public interest coalition has launched an attack on Chief U.S. District Judge D. Brooks Smith, a Republican sitting in Pittsburgh, who has been nominated by President Bush to fill a vacancy on the 3rd U.S. Circuit Court of Appeals. The byzantine process of appointing federal judges usually does not grab public attention. But be assured that the outcome of this case will have a dramatic impact on every citizen in Western Pennsylvania.

Our federal court handles the most serious drug cases, white collar crimes, constitutional and environmental matters, and high-stakes suits involving out-of-state businesses. For years, though, it has been struggling to operate on two cylinders, due to insidious political warfare that has left our region with a growing number of unfilled vacancies. In the latest shot across the bow, the Community Rights Counsel (aligned with Democratic interests), has written a letter to key Senate Judiciary Committee members, seeking to sink Judge Smith's nomination.

Unfortunately, what is couched as a critique of Judge Smith's record is a stiff dose of political payback. It unfairly impugns the reputation of a sterling member of our federal bench -- and perpetuates a longstanding political grudge match that cannot possibly benefit the citizens here.

As Democratic members of the bar in Western Pennsylvania, we strongly urge the Community Rights Counsel to reconsider this dangerous political strategy.

It is no secret what events precipitated this assault on Judge Smith's nomination. For the past six years, during the Clinton administration, Republican Sen. Rick Santorum blocked every Democratic nominee to the federal court, based upon blatant, hardball political tactics that harmed our region. Now Democrats are prepared to give it back to the Republicans in spades.

We sympathize with the frustration of Democratic interest groups. We also agree that it is crucial to challenge any White House nominee who is not suited -- by virtue of temperament or extreme judicial philosophy -- to hold these influential federal appointments. But Judge D. Brooks Smith is not an extremist, by any stretch of that term. He received the highest rating (unanimously) from the American Bar Association and the top rating from the Allegheny County Bar Association. Since his appointment by President Reagan in 1988, Judge Smith has earned the universal respect of judges and lawyers in Western Pennsylvania, regardless of party affiliation.

Stacked up against one negative letter written by the Washington coalition, over a hundred letters have been written to the Judiciary Committee in support of Judge Smith's nomination by notable Western Pennsylvania lawyers, judges, public officials and organizations.

These include letters from six former U.S. attorneys (under Democratic and Republican presidents); numerous members of Congress of both parties; all 10 of Judge Smith's colleagues on the federal district court, seven of whom were appointed by Democratic presidents; the president of the Pennsylvania Bar Association; the deans of Duquesne and Pitt law schools; the Women's Bar Association; a former president of the local ACLU; dozens of members of the criminal defense bar; and judges from the Supreme Court Superior Court of Pennsylvania (both

Democrats and Republicans).

Federal judges, unlike elected political officials, cannot respond when attacked in the arena of public opinion. Their positions bind them to silence. Their reputations are the only currency that they bring to the bench in resolving society's most difficult conflicts.

If the Democrats in Washington wish to take aim at objectionable candidates, this is the wrong target. Moreover, the charges leveled against Judge Smith by the Community Rights Counsel are misinformed at best:

* They assert that Judge Smith took "trips paid for by companies and interest groups," a claim that is overblown. The Judicial Conference of the United States has permitted the types of trips cited by the Community Rights Counsel, for the purposes of continuing education, so long as the judge determines there is no actual or potential conflict with pending cases. Most federal judges in the United States -- both Democrats and Republicans -- attend such seminars. Although there has been a recent movement to introduce legislation to limit such trips, it is still the subject of honest debate.

* They state that Judge Smith accepted a plea bargain in U.S. vs. Action Mining that was "too low." This is unsupportable. Judge Smith's fine of $50,000, after this small mining company had already been slapped with $625,000 in civil penalties, was considered within the normal range. Then-U.S. Attorney Harry Litman, whose office prosecuted the case, viewed Judge Smith's sentence as fair, reasonable and a victory for the U.S. government.

* They assert that Judge Smith spoke out against the Violence Against Women's Act, in 1994, which is true. Most of the federal judiciary in the United States, and many state judges, opposed this law. It shifted sensitive abuse cases from the state courts (which were arguably better equipped to handle such matters) to the federal judiciary (which was already overtaxed). Although many of us supported the Violence Against Women's Act, others thought there were better ways to accomplish its important policy goals.

As a lawyer, prosecutor and state judge, Judge Smith handled countless abuse cases involving female victims. It is unfair to oppose a nominee for expressing sincere views as to how best handle this sensitive body of cases.

* * *

Not a single judge or lawyer who has dealt with Judge Smith during his 14 years on the federal bench, to our knowledge, has seriously questioned his fairness, impartiality or absolute competence. Writing to Sen. Patrick Leahy, Amy J. Greer, president of the Allegheny County Bar Association, indicated the local bar association's "full support" for Judge Smith's nomination to the appellate bench.

The public interest demands that a first-rate federal appeals judge be appointed to fill a crucial vacancy on our court. Members of our bar have a tradition of respect for judges, of any political

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affiliation, who earn it. Judge Smith will be a credit to all lawyers, judges and citizens of Western Pennsylvania. That, rather than settling political scores, should be the guiding polestar.

NOTES:
Ken Gormley is a professor at Duquesne University School of Law. Frederick W. Thieman, a partner at Thieman & Kaufman, is a former U.S. attorney for the Western District of Pennsylvania.

The Role of Ideology in Judicial Selection: Test Case

By Stuart Taylor, Jr.
The National Journal
Saturday, February 16, 2002

Federal District Judge Charles Pickering Sr. of Mississippi has the misfortune of being the first Bush federal appeals court nominee openly targeted by liberal groups and Senators determined to block the President from transforming the lower courts-and, if he gets a chance, the Supreme Court-into conservative bastions.

So, poor Pickering finds himself trashed as "a throwback to the old, segregated South," in the words of Marcia Kuntz, of the liberal Alliance for Justice. That makes Kuntz a contender for the 2002 John D. Ashcroft award, given (by me) for the ugliest smear of a nominee in the tradition of then-Sen. Ashcroft's 1999 trashing of Missouri Supreme Court Judge Ronnie White as a "pro-criminal" jurist with "a tremendous bent toward criminal activity." (White's criminal activity consisted of voting to reverse death sentences and convictions in a fraction of his cases.) Pickering, 64, an anti-abortion conservative who would sit on the U.S. Court of Appeals for the 5th Circuit-which covers Mississippi, Texas, and Louisiana-seems a decent man and a diligent, if often-reversed and undistinguished, judge. He may not be quite the paragon of courageous leadership in the struggle for racial equality his supporters portray. But he is hardly the racially insensitive "throwback" portrayed by some of his liberal opponents.

But this battle is not primarily about Pickering. And the major combatants are not animated by whether his heart is tainted by racism (there is no recent evidence it is), or whether he has seemed forthcoming about long-past, race-related episodes that have drawn criticism (he has not), or whether he seems a basically ethical person (he does), or whether his judicial opinions are well-crafted (they are not).

Although such issues are debating points, this is a battle about power-the power to shape the liberal-conservative balance on the federal appeals courts. Appellate judges get little media attention, but they exercise vast influence over national policy on virtually all controversial issues. They also have the last word in 99.7 percent of all federal cases. Bush would like to create conservative majorities on most or all of the 13 appeals courts. Liberals are desperate to avert such a shift.

Supreme Court confirmation battles have focused on the nominees' ideology since two decades

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before the climactic 1987 rejection of Judge Robert Bork. Until recently, the Senate tended to rubber-stamp any lower-court nominee equipped with a pulse, a law degree, and a clean criminal record. Deference to the President's choice was the norm.

But now, Republicans complain that Senate Democrats, their academic auxiliaries, and liberal groups are openly calling for an ideological litmus test to block strongly conservative Bush nominees to the appeals courts. Democrats have a pretty good rejoinder: The Republicans started it by mounting what People for the American Way President Ralph G. Neas calls "an unprecedented partisan and ideological blockade" to derail an unusually high 35 percent (or 24 candidates) of Clinton's appeals court nominees from 1995 to 2001 without even giving them hearings. In some cases, Republican Senators (apparently including Ashcroft) used anonymous "holds" to stall individual nominees-one lasted for a record-breaking four years. Even White House Counsel Alberto R. Gonzales admitted to CNN in August that this Republican stalling had been wrong.

The result of this stall was that Bush inherited an unusually large number of vacancies when he took office. And Senate Democrats are understandably reluctant to reward past Republican obstructionism by helping Bush fill these vacancies with conservatives. If all of Bush's current nominees are confirmed, Neas says, 11 of the 13 appeals courts (up from seven now) will be controlled by Republican-nominated judges.

Such partisan labeling of judges might have sounded strange two or three generations ago. But with the ever-greater politicization of the law over the past 50 or more years, the party registration of the nominating President has become the best rough predictor of how a federal appellate judge is likely to vote in the most-controversial cases. Small wonder that the confirmation process has degenerated into a downward spiral of partisan brawling.

What role should ideology play in the confirmation process for appellate nominees? It depends on where you sit. When Bill Clinton was President, Republicans infuriated Democrats by stalling or killing nominees they deemed to be too liberal. Now that Bush is President, Democrats endorse ideological vetoes (of conservatives) and Republicans are shocked-shocked!- to see the
process politicized.

A more neutral principle might be this: In the interest of filling vacancies within a reasonable amount of time, and encouraging first-rate lawyers to accept nominations without fear of an ever-longer and more harrowing confirmation process, Senators should ordinarily give considerable deference to the President's choices. But deference has a limit.

The limit is that Senators can and should use their "advise and consent" power to keep the judiciary as a whole reasonably representative of the American people, rather than allowing the President to suddenly tilt the courts to the left or the right of center. While courts have not traditionally been seen as representative bodies, they have claimed many of the powers once exercised by those bodies. And Bush's hotly disputed victory in the freakishly close 2000 election gave him no mandate to make the third branch of government dramatically more

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conservative.

This does not mean that the Senate should indiscriminately block the most-conservative nominees. Indeed, the Democrats should stop stalling stellar conservatives such as John Roberts and Miguel Estrada, two leading appellate advocates, who would sit on the District of Columbia Circuit, and Michael McConnell, a widely respected constitutional scholar, who would sit on the 10th Circuit.

Democratic Senators would be justified, however, in temporarily blocking conservative Bush nominees to keep open vacancies that Senate Republicans unjustifiably prevented Clinton from filling, and in insisting that Bush either renominate the Clinton candidate (as he has done in one case) or choose someone else ideologically acceptable to Democrats.

Where would these criteria leave Judge Pickering-whose old friend and chief patron, Senate Minority Leader Trent Lott, R-Miss., has said Pickering will be confirmed "or else"? Pickering is not without virtues. Even opponents who assail his civil-rights record acknowledge that he courageously testified against a Ku Klux Klan leader in a 1967 murder case, when that was a dangerous thing to do. He has long been a leader in organizations seeking to improve race relations in his state and has many admirers there, including some Democrats. Supporters, including James Charles Evers, the brother of slain civil-rights leader Medgar Evers, claim that he "has an admirable record on civil-rights issues."

Liberal groups, Democratic Senators, and the Mississippi NAACP vigorously disagree. In a 25-page report, People for the American Way asserts that Pickering's opinions "suggest a hostility to civil and constitutional rights" and faults him for a rigidly conservative ideology; for his high rate of reversal on appeal, including 15 cases in which the 5th Circuit found that he had misread "well-settled principles of law"; for his use of a judicial opinion as a forum to criticize (while construing narrowly) the Supreme Court's one-person-one-vote precedents; for disparaging comments about black job-discrimination plaintiffs whose claims he considered weak; and for his unconvincing explanations of several decades-old, disputed episodes, including
his authorship of a law review note advising the Mississippi Legislature on how to fix a technical flaw in its anti- miscegenation law, the better to enforce it against interracial couples. (That was in 1959, when Pickering was a 21-year-old law student.) Critics also suggest that he violated an ethical rule when he phoned a high-level Justice Department official in 1994 to protest a prosecutor's insistence on a five-year mandatory prison term for a man convicted of burning a cross on an interracial couple's lawn.

As for Pickering's judicial opinions, a quick scanning calls to mind Sen. Roman Hruska's legendary 1970 encomium to Supreme Court nominee G. Harrold Carswell: "Mediocre judges and people and lawyers ... are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises, Cardozos, and Frankfurters, and stuff like that there."

Indeed we can't. None of Pickering's blemishes seems clearly disqualifying, and ordinarily deference to the President's (and the Minority Leader's) choice might argue for an unenthusiastic

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vote to confirm. But this is not an appropriate case for deference. The reason is that Senate Republicans kept three seats open on the 5th Circuit for Bush to fill by blocking three Clinton nominees from even getting votes. Until the Republicans rectify that obstructionism, maybe Pickering should wait.

Terry Eastland: Bush Not Fighting for Judicial Nominee

By Terry Eastland
The Dallas Morning News
Monday, February 18, 2002

In May, even as Vermont Sen. James Jeffords prepared to leave the Republican Party, President Bush decided to nominate federal District Judge Charles Pickering to the 5th U.S. Circuit Court of Appeals, which encompasses Texas, Louisiana and Mississippi. Mr. Pickering has endured not one but two Senate Judiciary Committee hearings. Today, his nomination is in doubt. And the main reason it is can be traced to Mr. Jeffords' departure from the GOP.

Before he left, the two parties had the same number of senators: 50. But the GOP controlled the Senate on the strength of Vice President Dick Cheney's authority to cast tie-breaking votes. Mr. Jeffords' departure – he became an independent – reduced the GOP number to 49. The Democrats thus gained control, an event of predictable consequence for judicial appointments.

Most judicial nominees are confirmed regardless of who controls the White House or the Senate. But when, as now, there is divided government – with one party in control of the White House and the other the Senate – more nominations are likely to be contested and defeated than when the same party controls both.

Had Mr. Jeffords remained a Republican, Mr. Pickering would have been confirmed long ago. He was unanimously confirmed for the district court in 1990, and the American Bar Association has rated him "well qualified." Even now, if he could be voted out of committee, he would stand a good chance of winning confirmation, since two Democrats – Fritz Hollings and Zell Miller – have voiced their support.

Mr. Pickering's problem, however, is how to get from here to there – from the committee, where the Democrats hold a 10-to-9 edge, to the Senate floor. The Judiciary Committee is territory patrolled by Patrick Leahy (the chairman), Edward Kennedy, Joseph Biden, Herbert Kohl, Dianne Feinstein, Russell Feingold, Charles Schumer, Richard Durbin, Maria Cantwell and John Edwards, most of whom are exquisitely attuned to the imprecations of left-wing interest groups, such as People for the American Way and Alliance for Justice. Those groups have pushed hard, and so far successfully, against the nomination.

Mr. Pickering himself has the misfortune of having virtually invisible White House support. He was chosen largely out of deference to a senator, his longtime friend Trent Lott, who began pitching for the judge's elevation to the 5th Circuit when he was Senate majority leader.

Had Mr. Lott not lobbied for Mr. Pickering's nomination – announced on May 25, one day after Mr. Jeffords fled the GOP – Mr. Bush probably would have selected someone else. Mr. Pickering, after all, is a few months away from 65, the age a judge may take senior status. Nor, his ABA rating aside, is he a legal superstar, someone likely to shape the law of the 5th Circuit. "We did this solely to please the then majority leader," one White House official told me. "It's his guy, and it's up to him to get him confirmed." That task would be far easier were the "then majority leader" still the majority leader.

Rarely making headlines, the Pickering nomination has become a series of stories within a story. Some Democrats are motivated against the nomination because they don't like the way Mr. Lott ran the Senate. Others are inclined against the nomination as payback to Republicans for their sometimes slow processing of Clinton judicial nominees, including three for the 5th Circuit who failed even to get hearings.

Also, there are Clinton Justice Department lawyers who butted heads with Mr. Pickering over their sentencing recommendations in a cross-burning case and are laboring against him behind the scenes. And, of course, there are the liberal interest groups, back after eight years on the sidelines, picking at Mr. Pickering as a warm-up for the real battle – over a Bush nominee to the Supreme Court.

Substantively, the case against the nominee is unimpressive. He grew up in segregated Mississippi, but the left's effort to portray him as "insensitive" to civil rights is misguided and unfair: In 1967, as an elected county prosecutor, Mr. Pickering testified against the imperial wizard of the Ku Klux Klan, an act of moral courage that cost him his office. Mr. Pickering does hold conservative political views. But, contrary to concerns voiced by the law firm of Leahy, Kennedy, Biden, et al., his record on the bench isn't that of a judge who fails to distinguish between his own personal and political views and what the law says.

Of course, none of that may matter, since the Democrats have the power to defeat his nomination. This is the Jeffords effect, and the jury is out on whether Mr. Lott can overcome it. He might, but probably not, unless Mr. Bush, stingy with expenditures of his considerable political capital, finally decides to join the battle.

Interest Groups/Press Releases

NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting

NAACP
Saturday, February 16, 2002

Kweisi Mfume, President & CEO, of the National Association for the Advancement of Colored People (NAACP) said today that the Association stands firm in its absolute opposition to the confirmation of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit at a press conference held here during the Annual Meeting.

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Mfume said: "We will continue to demand fairness on the part of those empowered to interpret the laws of our nation. We are opposed to the Pickering confirmation because we decry a judicial nomination process where civil rights and civil liberties, and equal protection under the law are forced to take a back seat to partisan politics and political affiliations."

Mfume added: "Accordingly and rightfully so, we stand firm as an organization in our absolute opposition to the Senate confirmation of Judge Charles Pickering of Mississippi, and we stand united against all others whose judicial records give rise to suspicion about their ability to render impartial judgment and fair interpretation of federal law."

Julian Bond, Chairman, NAACP Board of Directors said: "The NAACP was created to fight for freedom and justice in a nation dedicated to those goals. We must continue to fight now with renewed determination. Each of has a role to play as guardians of our nation's liberty, and that is the role history has assigned to us."

Mfume called on the Congress to join the Association in the fight to defeat the Pickering confirmation, and challenged the members to help fight against hate crimes and racial profiling. He also urged them not to ignore the AIDS epidemic both in Africa and at home.

"These are wrongs that must be confronted," Mfume said. "We are compelled to act responsibly before the world to better humanity, and ultimately, to better ourselves."

In light of the September 11th tragedies, Mfume said: "By moving our Annual Meeting back to New York, the NAACP honors the world's leading city and its residents along with the scores of Americans who are resolved to defend the ideals of a free and open society. This is the city of our birth, and we stand in solidarity with New Yorkers."

The NAACP was founded in New York City on the 100th anniversary of President Abraham Lincoln's birthday, which was February 12, 1909. The Association last held its annual meeting in New York in 1998. The meetings were held in Washington, D.C. between 1999-2001.

The National Association for the Advancement of Colored People (NAACP) is the nation's oldest and largest civil rights organization. Its half-million adult and youth members throughout the United States and the world are the premier advocates for civil rights in their communities and monitor equal opportunity in the public and private sectors.

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To: amarone@osc.gov @ inet [UNKNOWN] <amarone@osc.gov>
Sent: 2/20/2002 8:45:28 AM
Subject: : Memo
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Political Activity Overview
(February 20, 2002)

General Principle

- In general, Executive Office of the President political appointees (EOP)[1] and Senate-confirmed officials (PAS) may engage in a wide variety of political activity (other than expressly soliciting contributions) *including while on duty and in the office*. The government must be reimbursed for additional costs associated with that activity -- that is, the costs beyond what the government otherwise would have incurred.
    - Certain investigative and national security agencies have more restrictive rules and policies; each such agency is responsible for appropriate guidance.

The Major Rules for EOP and PAS Officials

- Fundraisers
    - may appear and speak at fundraisers, but no explicit fundraising

- Use of Title
    - no use of actual title in invitations to political events
      (attempt to review invitations in advance)
    - may use "The Honorable" if applicable; former political titles appropriate
    - the official title may be used in a biography distributed at the event itself, in the introduction of the speaker, and in other similar ways at event

- Travel Costs
    - appropriate political entity pays costs associated with political travel
    - mixed trips: reimbursement determined by "total activity time"
    - security-related costs are official costs
    - corporate aircraft policy (do not use absent extraordinary circumstances)
    - Events in government buildings
        - no fundraising events on government property
        - appearance issues with donors *qua* donors

- Equipment
    - generally permissible for EOP and PAS officials to use equipment such as computers, printers, telephones, and FAXes for reasonable political activity because there are no additional costs incurred by government except incidental costs of paper
        - appearance issues from excessive use

[1] Such officials ordinarily work beyond normal work hours and outside the normal duty post as contemplated by the regulations.

Official versus Political

- Few bright-line rules; often a case-by-case judgment (1982 OLC opinion)
- The definitional issue is relevant primarily for use of title and travel purposes.
- Political activity is activity primarily related to an election, a campaign, a political party event, or a political party's operations.
    - Speaking at or attending an event held by a political party or political organization is ordinarily considered "political" unless the speaker is speaking only on official policy matters; if the event is a fundraiser or a campaign event, however, it ordinarily should be considered political regardless of content.
    - An otherwise official event is official notwithstanding that it may somehow incidentally assist the popularity of a political party or candidate (for example, if the event is in a district of a political candidate or if a political candidate such as a House member attends the event).
        - Speakers at an official event should avoid expressly advocating the election of a candidate.
    - Being knowledgeable about the political environment and the status of particular races can be relevant to one's official duties, for it is all but impossible to understand Congress or state or local government without being knowledgeable about the overall political/electoral environment in Congress and the states. Therefore, a briefing on the political environment and the status of particular races can be considered official activity depending on the overall context of the briefing.
    - Being knowledgeable about public opinion and public approval similarly can be relevant to one's official duties, and briefings on such issues ordinarily should be considered official activity depending on the overall context of the briefing.
- Informing the public about public policy issues, about the official and ceremonial activities of the President and the Administration, about activities in Congress, and about the Administration's legislative strategy is official activity (and indeed can be an official responsibility).

Principle for non-EOP, non-PAS employees

- Other Executive Branch officers and employees (again, except those in certain investigative and national security agencies) may engage in a wide variety of political activity, *but they may do so only while off duty and not on government property*.

- The law also recognizes, however, that certain Executive Branch employees who are not themselves White House or PAS officials may be required in the performance of their official duties to accompany or assist White House or PAS officials engaging in political activity (for example, ordinary duties related to security, scheduling, or typing). Such assistance is permissible, and the government need *not* be reimbursed for the compensation and expenses associated with such assistance.

Specific Rules

- Except for those in certain investigative and national security agencies, the permissible range of political activities includes:

    - participation in political organizations, which includes:

        - being a member of a political party;
        - serving as an officer of a political party;
        - attending and participating in nominating caucuses;
        - organizing a political party;
        - participating in a political convention or rally; and
        - serving as a delegate to a political convention.

    - participation in political campaigns, which includes:

        - displaying political pictures, signs, stickers, or buttons (although employees other than White House and PAS appointees cannot do so while on duty or in their offices);
        - circulating a nominating petition;
        - canvassing for votes;
        - endorsing or opposing a candidate in an advertisement, broadcast, campaign literature, or similar material (so long as one's official title is not used, except for that of the President and Vice President);
        - addressing a convention, caucus, rally, or similar gathering of a political party or political group; and
        - actively managing the political campaign of a partisan political candidate or candidate for political party office.

    - participation in elections, including:

        - voting;
        - acting as officer or watcher at a polling place;
        - serving as election judge or clerk; and
        - driving voters to polling places.

    - participation in fundraising:

Other than the President or Vice President, Executive Branch officers and employees may *not* solicit, receive, or accept political contributions. However, Executive Branch officers and employees (other than those in certain investigative and national security agencies) may:

- make political contributions;
- attend political fundraisers;
- manage or organize political fundraisers behind the scenes;
- speak at political fundraisers, so long as one's official title is not used (the term of address "The Honorable" may be used);
- be listed as a guest speaker on the invitation for a fundraiser, so long as the invitation does not use one's official title (again, the term of address "the Honorable" may be used);
- solicit, accept, or receive uncompensated volunteer services from any individual, without using one's official title (however, a superior may not ask his or her subordinate employee to provide such services, nor may he or she ask a company or entity with official matters pending before the agency to provide such services).

- As the above summary reveals, certain kinds of political activities are **forbidden**:
  - no soliciting, accepting, or receiving political contributions, except by President and Vice President (but officials may organize, manage, appear at, and speak at fundraisers)
  - no fundraising on government property
  - official's name cannot appear on an invitation as a "sponsor" of a fundraiser, but can be identified as a guest speaker
  - official's title cannot be used in connection with political events, but can use "The Honorable"
  - general misuse of official authority
    - cannot ask regulated entities or those under investigation to engage in political activities; however, one can speak to a diverse group that includes individuals within those categories
    - cannot ask subordinates to engage in political activity; however, superiors and subordinates may interact on political matters when both are involved in same political activity or organization
  - other than President and Vice President, cannot run as a candidate in a partisan election except under specified circumstances

From: CN=Lori L. Lorenzi/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 2/20/2002 12:04:08 PM
Subject: : Pin #

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-FEB-2002 17:04:08.00
SUBJECT:: Pin #
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

On the back of the blackberry is a MAN #. Please forward that to me.
```

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 2/20/2002 12:26:19 PM
Subject: : Subpoenas and Document Requests

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-FEB-2002 17:26:19.00
SUBJECT:: Subpoenas and Document Requests
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Back in February, I believe you prepared the memo that the Judge sent to all staff on Subpoenas and Document Requests (dated Feb. 26, 2001). Rachel and I have been asked to revise the memo to include requests for information from the GAO. Do you have an electronic version that we start with?

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/20/2002 12:28:14 PM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP [ OVP ] )
CREATION DATE/TIME:20-FEB-2002 17:28:14.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Yes. That's why I sent you a copy of the statute. I think Mr. Mikva's
memo wasn't talking about us, but rather the governmental rank and file.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
CC: rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 2/20/2002 12:47:22 PM
Subject: : Re: Subpoenas and Document Requests
Attachments: P_M9LK5003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2002 17:47:22.00
SUBJECT:: Re: Subpoenas and Document Requests
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This does not look final, but must be close given the date at top (2-26-01). Looking it (at least this draft) over, why doesn't it already cover GAO document requests?

Courtney S. Elwood
02/20/2002 05:26:12 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Rachel L. Brand/WHO/EOP@EOP
Subject: Subpoenas and Document Requests

Back in February, I believe you prepared the memo that the Judge sent to all staff on Subpoenas and Document Requests (dated Feb. 26, 2001). Rachel and I have been asked to revise the memo to include requests for information from the GAO. Do you have an electronic version that we start with?

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_M9LK5003_WHO.TXT_1>

DRAFT 6

February 26, 2001

MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: SUBPOENAS AND DOCUMENT REQUESTS

If the Executive Office of the President (EOP), or any component thereof, receives a document subpoena or document request from a congressional committee, court, grand jury, or other authorized investigating authority, the Counsel's Office will provide immediate notice and instructions to EOP officers and employees. Such instructions will explain the appropriate steps for you to follow in collecting and preserving relevant documents and submitting them to the Counsel's Office for production by the Counsel's Office to the investigating authorities.

Once an EOP officer or employee learns (whether by notice from the Counsel's Office or otherwise) of such a subpoena or document request -- or learns that such a subpoena or document request is approved or even contemplated -- the individual should take extraordinary care to preserve any and all documents in his or her possession, custody, or control that conceivably could be encompassed by such a subpoena or document request. The consequences of knowingly failing to do so can be severe, including criminal prosecution.

It is critical to understand that your obligations in response to a subpoena or document request often will be more onerous than the more limited day-to-day record preservation requirements of the Presidential Records Act or Federal Records Act. ***In particular, a subpoena or document request often will require production of all documents -- including notes, drafts, and potentially even your personal documents, personal e-mails, and personal diaries -- that refer or relate to a particular subject matter and that you possess or control at the time of the subpoena or document request (or that you thereafter create or receive).***

Finally, it is possible that an EOP officer or employee may *personally* receive a subpoena or request from a congressional investigating committee, court, or grand jury -- that is, a subpoena or document request directed to him or her as an *individual*. In such a case, the employee must comply with that subpoena or request as required by law. To the extent the subpoena or document request calls for production of documents or testimony related to official work, however, the White House employee or his or her personal attorney should inform the Counsel's office immediately of the subpoena or document request so that appropriate procedures can be employed, and appropriate decisions made, about any governmental privileges that may apply. In that situation, the Counsel's Office

will take appropriate steps, in consultation with the relevant investigating authorities, to ensure that any factual information communicated to the Counsel's Office in connection with the privilege determination is properly handled and not inappropriately shared with other EOP officers or employees (or their counsel).

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel_L._Brand@who.eop.gov [UNKNOWN] <Rachel_L._Brand@who.eop.gov>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 2/20/2002 1:05:37 PM
Subject: : Re: Subpoenas and Document Requests
Attachments: P_11MK5003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-FEB-2002 18:05:37.00
SUBJECT:: Re: Subpoenas and Document Requests
TO:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:courtney s. elwood (CN=courtney s. elwood/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, got it. keep me posted. thanks.

Rachel_L._Brand@who.eop.gov
02/20/2002 05:48:58 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Courtney S. Elwood/WHO/EOP@EOP, Rachel L. Brand/WHO/EOP@EOP
Subject: Re: Subpoenas and Document Requests

It would cover GAO doc requests, but it doesn't cover GAO phone calls, requests
for information other than documents, and requests for interviews (all of which
have been a problem recently).

Brett M. Kavanaugh
02/20/2002 05:47:15 PM

Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc: rachel l. brand/who/eop@eop
bcc:
Subject: Re: Subpoenas and Document Requests (Document link: Rachel L. Brand)

This does not look final, but must be close given the date at top (2-26-01). Looking it (at least this draft) over, why doesn't it already cover
GAO document requests?

(See attached file: subpoenas policy 6.doc)

Courtney S. Elwood
02/20/2002 05:26:12 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: Rachel L. Brand/WHO/EOP@EOP
Subject: Subpoenas and Document Requests

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- subpoenas policy 6.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_11MK5003_WHO.TXT_1>

DRAFT 6

February 26, 2001

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FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

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It is critical to understand that your obligations in response to a subpoena or document request often will be more onerous than the more limited day-to-day record preservation requirements of the Presidential Records Act or Federal Records Act. ***In particular, a subpoena or document request often will require production of all documents -- including notes, drafts, and potentially even your personal documents, personal e-mails, and personal diaries -- that refer or relate to a particular subject matter and that you possess or control at the time of the subpoena or document request (or that you thereafter create or receive).***

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will take appropriate steps, in consultation with the relevant investigating authorities, to ensure that any factual information communicated to the Counsel's Office in connection with the privilege determination is properly handled and not inappropriately shared with other EOP officers or employees (or their counsel).

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 2/21/2002 3:17:15 AM
Subject: : Re: Fw: North Carolina Salute Program
Attachments: P_K9TK5003_WHO.TXT_1.htm; P_K9TK5003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-FEB-2002 08:17:15.00
SUBJECT:: Re: Fw: North Carolina Salute Program
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

approved.

Collister W. Johnson
02/20/2002 07:52:09 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fw: North Carolina Salute Program

This is the final program that will be distributed for the event for POTUS in NC on Feb. 27 - thought we should run it by you?
thanks so much Brett -

cj

---------- Forwarded by Collister W. Johnson/WHO/EOP on 02/20/2002 07:51 PM ----------

Coddy Johnson <cjohnson@georgewbush.com>
02/20/2002 06:58:22 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: Fw: North Carolina Salute Program

----- Original Message -----
From: Karen Kessenich
To: Coddy Johnson
Cc: Carla Eudy
Sent: Wednesday, February 20, 2002 6:39 PM
Subject: North Carolina Salute Program

Coddy,

Attached is the printed program copy (in text format) for the North Carolina event in Charlotte on February 27 for White House review and approval.

It is the same format and nearly identical copy that was used for the Sessions-Birmingham event last summer.

We are confirming and completing the listing of contributors in conjunction with your review as we discussed.

Many thanks, Coddy. Please don't hesitate to call with any questions.

Karen Kessenich
704 338-5499 Salute Office
703 869-1775 Mobile

- att1.htm
- NC Program.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K9TK5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K9TK5003_WHO.TXT_2>

----- Original Message -----
From: Karen Kessenich
To: Coddy Johnson
Cc: Carla Eudy
Sent: Wednesday, February 20, 2002 6:39 PM
Subject: North Carolina Salute Program

Coddy,

Attached is the printed program copy (in text format) for the North Carolina event in Charlotte on February 27 for White Hous e review and approval.

It is the same format and nearly identical copy that was used for the Sessions-Birmingham event last summer.

We are confirming and completing the listing of contributors in conjunction with your review as we discussed.

Many thanks, Coddy. Please don't hesitate to call with any questions.

Karen Kessenich
704 338-5499 Salute Office
703 869-1775 Mobile

Salute Program Draft
TIME

Cover

(Gold Foil Eagle)

North Carolina's Salute to George W. Bush

Wednesday, February 27, 2002
Charlotte, North Carolina

REV_00140574

We are deeply honored to welcome you to *North Carolina's Salute to George W. Bush*. It appears as though this special event, on behalf of the Dole 2002 Committee, Hayes for Congress and the North Carolina Victory 2002 Committee, will be one of the most successful ever in the state of North Carolina.

This would not be possible without the loyal support and generous enthusiasm of our statewide Finance Committee members and everyone who took part in our Salute Leadership.

From Asheville to Wilmington and Concord to Salisbury, our capital city of Raleigh and our host city of Charlotte, thank you everyone for being here today to honor our president, George W. Bush.

Please accept our heartfelt thanks and gratitude for your continuing support and commitment to Elizabeth Dole, Robin Hayes and our get out the vote efforts for this fall.

Now on to victory in 2002!

(signature)
Jim Culbertson
Salute Finance Chairman

Salute Leadership

North Carolina's Congressional Delegation

The Honorable Jesse Helms, *United States Senator*
The Honorable Cass Ballenger, *U.S. House of Representatives (10th District)*
The Honorable Richard M. Burr, *U.S. House of Representatives (5th District)*
The Honorable Howard Coble, *U.S. House of Representatives (6th District)*
The Honorable Robin Hayes, *U.S. House of Representatives (8th District)*
The Honorable Walter Jones, Jr., *U.S. House of Representatives (3rd District)*
The Honorable Sue Myrick, *U.S. House of Representatives (9th District)*
The Honorable Charles H. Taylor, *U.S. House of Representatives (11th District)*

Salute Chairman

Jim Culbertson, Winston-Salem

Co-Chairmen

Louis DeJoy and Dr. Aldona Wos
The Honorable Ed McMahan
Kay and Dave Phillips

Vice Chairmen

Dave Burner
Bill and Shari Graham
Richard B. Priory
James and Loren Ridinger

Sponsors

James H. Barnhardt, Jr.
Mr. and Mrs. W.C. Cannon, Jr.
Marion and Delano Cox
Otis and Christy Crowder
Mr. & Mrs. J.A. Dalpiaz
Alan T. Dickson
Edward and Frances Greene
John and Bunny Hanford
Representative Michael Harrington
Mr. and Mrs. Donald Hawk
Elizabeth and Peter Heberling
Dennis Hunt
Bill and Jeanne Jordan
Ralph and Carolyn Lovejoy
The Honorable Pat and Ann McCrory
Mark and Debbie Meadows
Ravi Patel
Robert M. Pittenger
Mr. William Reynolds
Rick and Diane Siskey
Southeast Anesthesiology
Wachovia Political Action Committee
Dennis and Kay Yates

Salute Program

Welcome
Mr. A. R. Gardner
XXXXXXXXXXXXXXXX

Invocation
The Reverend Joe Brown
Hickory Grove Baptist Church

Pledge of Allegiance
The Honorable Robert F. Orr
Justice, North Carolina Supreme Court

National Anthem
Ms. Teresa Dodd
Narroway Productions

Introduction of President George W. Bush
The Honorable Elizabeth Dole

Keynote Address
The Honorable George W. Bush
43rd President of the United States

Luncheon

Closing Remarks
Mr. Jim Culbertson
Salute Finance Chairman

The Honorable Robin Hayes
U.S. House of Representatives, 8th District

Salute Leadership

Trustees

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
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XXXXXXXXXXXXXX

Patrons

XXXXXXXXXXXXXX
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XXXXXXXXXXXXXX

Supporters

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
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XXXXXXXXXXXXXX
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XXXXXXXXXXXXXX

The Dole 2002 Committee, the Hayes for Congress Committee and the North Carolina Republican Victory 2002 Committee would like to express its appreciation to all the individuals and organizations, who, without their support and dedication, ***North Carolina's Salute to George W. Bush*** would not be possible.

Salute Leadership listing includes contributions received as of February 19.
Every effort was made to confirm the proper listing of individuals and organizations prior to printing.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 2/21/2002 3:25:53 AM
Subject: : Re: SC Case

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-FEB-2002 08:25:53.00
SUBJECT:: Re: SC Case
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, see Tim's request below.
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 02/21/2002 08:25 AM ----------

Tim Goeglein
02/21/2002 08:20:54 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Re: SC Case

B2

How may I get the transcript of the Solicitor General yesterday in the school choice case? I would like to send widely.

Warmly

tsg

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/21/2002 4:42:12 AM
Subject: : Fw: bush letterhead
Attachments: P_B4XK5003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-FEB-2002 09:42:12.00
SUBJECT:: Fw: bush letterhead
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

one more

---------- Forwarded by Paul B. Dyck/WHO/EOP on 02/21/2002 09:42 AM ----------

Paul Dyck <pdyck@georgewbush.com>
02/21/2002 09:25:04 AM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc:
Subject: Fw: bush letterhead

----- Original Message -----
From: "Sahl,Maianne" <maianne@johncornyn.com>
To: "Paul Dyck" <pdyck@georgewbush.com>
Sent: Wednesday, February 20, 2002 11:11 AM
Subject: FW: bush letterhead

Here is the letterhead we drafted to use. Any word regarding the letter?

Maianne Sahl
Finance Director
John Cornyn for Senate
P.O. Box 13026
Austin, Texas 78711
512-494-8535
512-494-8161 fax

the design is attached

Dolly Gonzales
John Cornyn for Senate
P.O. Box 13026
Austin, TX 78711
512/494-8535
512/494-8161 fax

- BushCorn[1].pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B4XK5003_WHO.TXT_1>

President George W. Bush

★

Attorney General John Cornyn

P.O. Box 13026, Austin, Texas 78711 • 512-494-8535 • Fax 512-494-8161 • www.johncornyn.com

Paid for by John Cornyn for Senate, Inc.

President George W. Bush

Attorney General John Cornyn

A Special Afternoon
with the President

4505 Southern Avenue
Dallas, Texas 75205

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
CC: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 2/21/2002 5:28:44 AM
Subject: : Re: SC Case

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-FEB-2002 10:28:44.00
SUBJECT:: Re: SC Case
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It usually takes a week to 10 days, but DOJ is contacting the court reporter to get an expedited transcript. It may still take a few days. (In case you were wondering, there have been lots of stories written about the SCt's stone age media/communications structure, of which this is a prime example.)

Matthew E. Smith

02/21/2002 09:45:12 AM

Record Type: Record

To: Brett Kavanaugh
cc: Tim Goeglein/WHO/EOP
Subject: Re: SC Case

I notice on the website that the last posted transcript is 1/16/02.
---------- Forwarded by Matthew E. Smith/WHO/EOP on 02/21/2002 09:44 AM ----------

Tim Goeglein
02/21/2002 08:49:26 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: SC Case

B

Can you tell me where we can get that transcript; I would like Matt Smith to send it everywhere this am?

Warmly

tsg

---------- Forwarded by Tim Goeglein/WHO/EOP on 02/21/2002 08:49 AM ----------

Bradford A. Berenson
02/21/2002 08:25:44 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Tim Goeglein/WHO/EOP@EOP
Subject: Re: SC Case

Brett, see Tim's request below.
---------- Forwarded by Bradford A. Berenson/WHO/EOP on 02/21/2002 08:25 AM ----------

Tim Goeglein
02/21/2002 08:20:54 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Re: SC Case

B2

How may I get the transcript of the Solicitor General yesterday in the school choice case? I would like to send widely.

Warmly

tsg

From: CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD]
To: Peter.Fisher@do.treas.gov @ inet [UNKNOWN] <Peter.Fisher@do.treas.gov>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Sheila.Bair@do.treas.gov @ inet [UNKNOWN] <Sheila.Bair@do.treas.gov>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Matthew Kirk/WHO /EOP@EOP [WHO] <Matthew Kirk>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;anna.hart@do.treas.gov @ inet [UNKNOWN] <anna.hart@do.treas.gov>;Lisa D. Branch/CEA/EOP@EOP [CEA] <Lisa D. Branch>;Betty.Ann.Hunt@do.treas.gov @ inet [UNKNOWN] <Betty.Ann.Hunt@do.treas.gov>;Amy C. Smith/OMB/EOP@EOP [OMB] <Amy C. Smith>
Sent: 2/21/2002 5:42:33 AM
Subject: : 4:00 Terrorism Insurance Call Friday

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:21-FEB-2002 10:42:33.00
SUBJECT:: 4:00 Terrorism Insurance Call Friday
TO:Peter.Fisher@do.treas.gov (Peter.Fisher@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Sheila.Bair@do.treas.gov (Sheila.Bair@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:anna.hart@do.treas.gov (anna.hart@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Lisa D. Branch (CN=Lisa D. Branch/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Betty.Ann.Hunt@do.treas.gov (Betty.Ann.Hunt@do.treas.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Amy C. Smith (CN=Amy C. Smith/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

The call has been set up for tomorrow (2/22) at 4:00pm.

call-in #: 456-2561
pass code: 5169

Thanks,
Leslie
---------- Forwarded by Leslie A. Mooney/OPD/EOP on 02/21/2002 10:41 AM ----------

Leslie A. Mooney
02/20/2002 06:00:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Terrorism Insurance Conference CAll

Marc wants to set up an Insurance Call this Friday.

Please let me know if 4:00 works for you.

Thanks,
Leslie

Message Sent
To:_____
Peter.Fisher@do.treas.gov @ inet
Randall S. Kroszner/CEA/EOP@EOP
Sheila.Bair@do.treas.gov @ inet
Kristen Silverberg/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
anna.hart@do.treas.gov @ inet
Lisa D. Branch/CEA/EOP@EOP
Betty.Ann.Hunt@do.treas.gov @ inet

From: Thorsen, Carl <Carl.Thorsen@usdoj.gov>
To: Burton, Faith <Faith.Burton@usdoj.gov>;Horowitz, Michael-CRM <Michael.Horowitz3@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>
CC: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Collins, Dan <Dan.Collins@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/21/2002 5:50:12 AM
Subject: : FW: Your Message
Attachments: P_EX0L5003_WHO.TXT_1.html

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:21-FEB-2002 10:50:12.00
SUBJECT:: FW: Your Message
TO:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

When could Mike do this meeting on Monday or Tuesday?

-----Original Message-----
From: Kass, David [mailto:David.Kass@mail.house.gov]
Sent: Thursday, February 21, 2002 9:45 AM
To: Thorsen, Carl
Subject: RE: Your Message

I did send the letter to 305-2643, and our machine indicates that it went through at 6:19 p.m. Let me know if you need me to send another copy. (For most letters to the Attorney General, we are faxing one to the AG's office, and then faxing a copy to you at 305-2643. Please let me know if we should direct them to other or additional places.)

As far as the meeting goes, I anticipate that Monday or Tuesday works. What times are best for you all?

-----Original Message-----
From: Thorsen, Carl [mailto:Carl.Thorsen@usdoj.gov]
Sent: Wednesday, February 20, 2002 7:16 PM
To: Kass, David
Cc: Burton, Faith
Subject: Your Message

Thanks for your message.

I have not yet seen the letter. (In fact, I'm not sure what fax # your folks have been using, but this has been an issue.) Could you please have them sent to 202/305-2643?

As to a meeting to discuss the documents, what times on Monday or Tuesday would work for you? We'd like to have the meeting down here. I'd expect AAG Chertoff and a few others from DOJ will be there.

Thanks, David

Carl Thorsen
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
- tmp.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_EX0L5003_WHO.TXT_1>

I did send the letter to 305-2643, and our machine indicates th at it went through at 6:19 p.m. Let me know if you need me to send anothe r copy. (For most letters to the Attorney General, we are faxing one to t he AG's office, and then faxing a copy to you at 305-2643. Please let me know if we should direct them to other or additional places.)

As far as the meeting goes, I anticipate that Monday or Tuesday works. What times are best for you all?

-----Original Message-----
From: Thorsen, Carl [m ailto:Carl.Thorsen@usdoj.gov]
Sent: Wednesday, February 20, 2002 7:16 PM
To: Kass, David
Cc: Burton, Faith
Subject: Your Message

Thanks for your message.

I have not yet seen the letter. (In fact, I'm not sure wh at fax # your folks have been using, but this has been an issue.) C ould you please have them sent to 202/305-2643?

As to a meeting to discuss the documents, what times on Monday or Tuesday would work for you? We'd like to have the meeting down h ere. I'd expect AAG Chertoff and a few others from DOJ will be there.&nbs p;

Thanks, David

Carl Thorsen
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>
Sent: 2/21/2002 6:49:30 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP [ OVP ] )
CREATION DATE/TIME:21-FEB-2002 11:49:30.00
SUBJECT::
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Tim et al.:

Justice Thomas's opinion for the six-Justice majority in Tuesday's
(2/19/2002) decision in Barnhart v. Sigmon Coal Company may warm your
heart on the subject of statutory interpretation and legislative
history. For example (internal citations all omitted):

"As in all statutory construction cases, we begin with the language of the
statute. The first step 'is to determine whether the language at issue
has a plain and unambiguous meaning with regard to the particular dispute
in the case.' The inquiry ceases 'if the statutory language is
unambiguous and "the statutory scheme is coherent and consistent."' With
respect to the question presented in this case, this statute is
unambiguous. The statutory text instructs that the Coal Act does not
permit the Commissioner to assign beneficiaries to the successor in
interest of a signatory operator." . . .

"We see no reason to give greater weight to the views of two Senators than
to the collective votes of both Houses, which are memorialized in the
unambiguous statutory text." . . .

FN 15 "Moreover, were we to adopt this form of statutory interpretation,
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we would be placing an obligation on Members of Congress not only to monitor their colleague's floor statements but to read every word of the Congressional Record including written explanations inserted in to the record. This we will not do. The only 'evidence' that we need rely on is the clear statutory text." . . .

"Dissatisfied with the text of the statute, the Commissioner attempts to search for an apply an overarching legislative purpose to each section of the statute. Dissatisfaction, however, is often the cost of legislative compromise. And negotations surrounding enactment of this bill tell a typical story of legislative battle among interest groups, Congress, and the President. Indeed, this legislation failed to ease tensions among many of the interested parties. The deals brokered during a Committee markup, on the floor of the two Houses, during a joint House and Senate Conference, or in negotiations with the President are not for us to judge or second-guess.""

From: Anderson, Carl A <Carl.A.Anderson@usdoj.gov>
To: Schauder, Andrew <Andrew.Schauder2@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;McMahon, Lori <Lori.McMahon@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Comstock, Barbara <Barbara.Comstock@usdoj.gov>;Koebele, Steve <Steve.Koebele@usdoj.gov>;Ho, James <James.Ho@usdoj.gov>;Goodling, Monica <Monica.Goodling@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>
Sent: 2/21/2002 12:45:37 PM
Subject: : judicial media review
Attachments: P_AVKL5003_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Anderson, Carl A" <Carl.A.Anderson@usdoj.gov> ( "Anderson, Carl A"
<Carl.A.Anderson@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:21-FEB-2002 17:45:37.00
SUBJECT:: judicial media review
TO:"Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
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TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"McMahon, Lori" <Lori.McMahon@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "McMahon, Lori" <Lori.McMahon@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Day, Lori Sharpe" <Lori.SharpeDay@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Suit, Neal" <Neal.Suit@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
```

READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ho, James" <James.Ho@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Ho, James" <James.Ho@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Goodling, Monica" <Monica.Goodling@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Goodling, Monica" <Monica.Goodling@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please see attached review

- Judicial Media Review 2-21-02.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AVKL5003_WHO.TXT_1>

Media Review - Judicial Nominations
Thursday, February 21, 2002

General Judicial Articles

"Campaign To Block Nomination Gets Ugly," 2
Brit Hume, *Fox News*, February 19, 2002

"Nation; Inside Politics," 3
Greg Pierce, *The Washington Times*, February 20, 2002

"New Conflict Allegation Surfaces Against Appeals Court Nominee," 4
Ann McFeatters, *Pittsburgh Post-Gazette*, February 21, 2002

"Group Asks Senate Judiciary Committee to Investigate Bush Nominee," 5
The Associated Press State & Local Wire, February 21, 2002

"Black Case Could Sideswipe Nominee," 7
Ann McFeatters, *Pittsburgh Post-Gazette*, February 20, 2002

"U. Kentucky law prof appointed to Circuit post, awaits confirmation," 10
Steve Ivey, *University Wire*, February 20, 2002

"Liberal Groups Question Nominee's Role in '97 Case; Appeals Court Choice Accused of Acting Improperly," 12
Edward Walsh, *The Washington Post*, February 20, 2002

"Pickering Fight Shows Liberals at Their Worst," 14
Morton Kondracke, *Roll Call*, February 21, 2002

"The Pickering Beat: The embattled judge gets help from some unexpected sources," 17
Terry Eastland, *The Weekly Standard*, February 21, 2002

"Shop Talk," 18
Amy Keller, *Roll Call*, February 21, 2002

Op/Eds

"Mississippi Burning Democrats Prepare to Immolate an Unlucky Bush Judicial Nominee," 18
Philip Terzian, *Pittsburgh Post-Gazette*, February 21, 2002

"Pickering's Courage Demands Confirmation," 20

REV_00140615

The Sun Hearld (Biloxi, MS), February 20, 2002

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

"Civil Rights Coalition Launches Campaign for Fair and Impartial Judiciary; Highlights Opposition to Charles W. Pickering Sr.'s Confirmation," 23
AScribe Newswire, February 20, 2002
http://www.fairjudges.org/

General Judicial Articles

Campaign To Block Nomination Gets Ugly

By Brit Hume
Fox News
Tuesday, February 19, 2002

And now the most absorbing two minutes in television, the latest from the wartime grapevine.

The campaign on the left to block the nomination of federal Judge Charles Pickering of Mississippi to the U.S. Court of Appeals may have succeeded; not a single Democrat on the Senate Judiciary Committee seems willing to let the Pickering appointment reach the Senate floor. But the tactics of Pickering's opponents proved too much for even the reliably liberal Washington Post, which over the weekend called it "an ugly affair" and "the latest example of the degradation of confirmation process." The Post said Pickering's critics have focused not on his qualifications, but have "tried to portray him as a barely reconstructed segregationist."

And the New York Times reports that the opposition to Pickering from national liberal and civil rights groups is not shared bythe largely black residents of his hometown of Laurel, Miss. There, said the Times, "many say they admire his efforts at racial conciliation, which they describe as highly unusual for a white Republican in the state." The Times adds, "the city's black establishment overwhelmingly supports his nomination."

Nation; Inside Politics

By Greg Pierce

REV_00140616

The Washington Times
Wednesday, February 20, 2002

EXCERPT

Unmanly behavior

Sen. John Edwards, a former trial lawyer, "has landed in hot water with the nation's leading anti-tobacco lawyer" because of the North Carolina Democrat's harsh questioning of federal appeals court nominee Judge Charles W. Pickering Sr., Roll Call reports.

Mr. Edwards, in a recent confirmation hearing for Judge Pickering, refused to let the judge respond fully to his questions, instead demanding "yes" and "no" answers about the sentencing of a man involved in a cross-burning on the lawn of an interracial couple. Although Mr. Edwards, in a speech last week before California Democrats, bragged about his treatment of Mr. Pickering, others have questioned Mr. Edwards' behavior and what The Washington Post on Sunday described as that and other "ugly" and misleading attempts to defame the judge.

Trial lawyer Dickie Scruggs "has vowed to rally other trial lawyers to his anti-Edwards campaign," reporter Paul Kane writes.

Mr. Edwards' disrespectful behavior toward the judge "wasn't the manly thing to do," Mr. Scruggs said.

Grotesque reminders

Northern Virginia's Dulles chapter of the National Organization for Women says it "was recently contacted by groups tied to the Democratic Party and asked to join the current nasty efforts" to derail the nomination of federal Judge Charles W. Pickering Sr.'s nomination to a U.S. appeals court.

"We refused," the group said in a prepared statement. "Instead, we are pleased to join the ranks of all those who support him."

The group added: "The vicious anti-Pickering smears have even less to do with women's rights, coming as they are from groups who unwaveringly supported sexual harassment and perjury in high office. They are but grotesque reminders of the discredited politics of personal destruction."

NEW CONFLICT ALLEGATION SURFACES AGAINST APPEALS COURT NOMINEE

By Ann McFeatters
Pittsburgh Post-Gazette

REV_00140617

Thursday, February 21, 2002

A new allegation surfaced yesterday that U.S. District Judge D. Brooks Smith did not disqualify himself soon enough in yet another high-profile case in which he had a potential conflict of interest.

On Tuesday, the Senate Judiciary Committee plans to begin hearings to determine whether it should recommend Smith, 50, of Altoona, Pa., to the full Senate for confirmation to the 3rd U.S. Circuit Court of Appeals in Philadelphia.

Smith, appointed to the District Court for Western Pennsylvania in 1988 by President Ronald Reagan, has been nominated to the Circuit Court by President Bush.

Senate investigators already are looking into whether Smith failed to disclose a substantial financial interest in a bank that was involved in the Securities and Exchange Commission's successful civil fraud lawsuit against John Gardner Black. Black is an investor who defrauded 75 Pennsylvania school districts of $69.5 million in the mid-1990s and is serving prison time. Smith recused himself after a month of sitting in judgment on the Black case, revealing that his wife was employed by Mid-State Bank, which was accused of complicity in Black's fraud and ultimately repaid districts $51 million to satisfy a court settlement.

A U.S. Justice Department official who shepherds administration judicial nominations looked into the conflict allegation and found none, saying Smith's recusal on Oct. 31, 1997, demonstrated an "excess of caution." But several legal ethicists say Smith's action raises questions that the Senate panel should consider, including whether rulings he made benefitted Mid-State, in which Smith also maintained a significant portion of his assets.

Sen. Rick Santorum, R-Pa., is "confident in his support of the judge's nomination. He understands this is part of the process of confirming such nominations," a spokeswoman said. Smith, she said, "is a sitting judge, and that attests to the caliber of nominee that he is. He has a lot of support in the legal community."

Yesterday, new documents provided by Doug Kendall, a lawyer and executive director of a land-use activism group, Community Resources Counsel, which has questioned Smith's nomination on ideological grounds, indicated that Smith again sat on the bench when federal authorities filed a criminal suit against Black in 1999. He said Smith continued to sit for five months on that second case, although he still had assets in the bank that Black had used, and that Smith's wife continued to work as an officer for the bank.

After Black's lawyers filed a motion that Smith recuse himself, the judge agreed to withdraw on Nov. 1, 1999, but still did not disclose his financial interest in Mid-State Bank. Smith wrote in a memo that some of Black's reasons for requesting his recusal were "nonsense" and "would not cause a reasonable person to question this judge's impartiality." He cited facts noted by Black that his family and the judge were friends, that they had lived in the same town, that Smith attended school in a district Black was accused of defrauding and that Smith had questioned

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Black's credibility in the civil case.

But Smith said that, despite having recused himself from Black's civil case because of the likelihood that the bank which employed his wife would "figure prominently" in it, he didn't believe when he met the criminal case lawyers in July 1999 that he should withdraw again.

When Black's lawyers eventually did ask for his recusal, Smith said, their probable evidence convinced him that Mid-State would "figure substantially" in the case, and that bank officials might be critical witnesses, so "recusal is the only appropriate course."

Federal law and the American Bar Association Code of Ethics require a judge to disclose all possible conflicts of interest to lawyers involved in a case, even if he or she thinks there is no reason for disqualification.

Supporters of Smith's nomination said they were satisfied that he had indicated at the start of the criminal case that there was no reason to anticipate a conflict and that he withdrew when he saw one.

Although 27 environmental, civil rights and women's groups say they are troubled by what they view as the conservative nature of Smith's prior court opinions, they haven't called upon the Senate to reject his nomination.

Nor is Kendall yet asking for that, but he did say: "It's hard to fathom how Judge Smith could sit on the second case for even a day. It clearly violates federal recusal law and raises serious questions about Judge Smith's fitness for a seat on the appellate bench."

Group asks Senate Judiciary Committee to investigate Bush nominee

The Associated Press State & Local Wire
Thursday, February 21, 2002

An activist organization asked the Senate Judiciary Committee Wednesday for an investigation into improper behavior by U.S. District Judge D. Brooks Smith, a nominee for the U.S. Court of Appeals for the 3rd Circuit.

The Community Rights Counsel said in a letter hand delivered to the offices of Sen. Patrick Leahy, D-Vt., and Sen. Orrin Hatch, R-Utah, that Smith made significant court rulings regarding a company in which he had a "very substantial financial interest."

Leahy is the chairman on the committee and Hatch is the ranking member. The rulings in question have been investigated by the Department of Justice, which cleared Smith of any wrongdoing.

At issue is the trial of John Gardner Black, who pleaded guilty in 2000 to defrauding dozens of

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Pennsylvania schools and municipalities.

Court records show Black sent bogus statements to the schools to cover losses as high-risk investments went sour and tanked. The Securities and Exchange Commission discovered $69.5 million in losses after a surprise inspection.

Smith presided over the trial for a month and issued several rulings before recusing himself.

Smith's wife, Karen Smith, was the vice president of the lending department at Mid-State Bank at the time, which was accused of complicity in the scheme. Mid-State Bank, through its parent company Keystone Financial Services Inc., paid $51 million to the schools to satisfy a court settlement.

Smith recused himself on Oct. 31, 1997, but critics say he should have disclosed his wife's position with the bank immediately.

Smith held $100,000 to $250,000 in Mid-State stock and his wife had the same amount invested in a 401(k) fund with the bank. He did not disclose the investments when he recused himself, but they were listed on a financial disclosure statement required of all federal judges.

Those records were brought to light by Doug Kendall, a lawyer with Community Rights Counsel.

"This is information we stumbled into when we were looking at judges who were accepting privately funded trips by companies," Kendall said.

Smith presided over another trial for five months involving Mid-State Bank two years later before recusing himself at the request of a defense attorney, Kendall said.

"Judge Smith again failed to disclose his large financial stake in the bank," a letter to the committee states.

David Carle, a spokesman for the Senate Judiciary Committee, would not comment on committee investigations. But he did say investigators review all submitted information.

"The committee doesn't turn away new information, but the majority and minority staff review them to determine whether any further investigation is warranted."

Federal law requires judges to recuse themselves if their impartiality might "reasonably be questioned."

"There is no doubt Judge Smith should have disqualified himself and done it much sooner," said Steven Lubet, a professor of legal ethics at Northwestern University School of Law. "This comes squarely within the statute. It is not ambiguous."

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Other legal ethicists say Smith's behavior was improper, but it should not be the sole determining factor in his appointment to the bench.

"The fact the judge has made a mistake of this kind is a fact the Senate should consider," said Stephen Gillers, a professor of legal ethics at New York University School of Law. "But there are other factors that go on the scale."

Smith is barred by the White House from speaking in his own defense during the nomination process. But supporters point out Smith has received the highest ratings from both the American Bar Association and the Allegheny County Bar Association.

Black Case Could Sideswipe Nominee

By Ann McFeatters
Pittsburgh Post-Gazette
Wednesday, February 20, 2002

Senate investigators are expected today to begin looking into whether Western Pennsylvania U.S. District Judge D. Brooks Smith, nominated by President Bush for the Third Circuit Court of Appeals, improperly failed to recuse himself when he issued rulings in the John Gardner Black case, one of the largest cases of investment fraud in Pennsylvania history.

The Senate Judiciary Committee is about to consider whether to recommend the confirmation of Smith, 50, a Republican from Altoona with offices in Pittsburgh and Johnstown, and may hold its first hearing on Smith's nomination next week.

The Department of Justice, to whom Smith referred inquiries, said it has looked into Smith's handling of the matter and found no fault with his actions. But a Justice official and a Senate aide involved in the confirmation process said the Senate was certain to conduct its own investigation.

On Sept. 26, 1997 the Securities and Exchange Commission charged investment adviser Black with defrauding dozens of Pennsylvania school districts and a handful of municipalities by investing in risky securities. Black put the public assets in high-risk, high-yield instruments, expecting their value would rocket, but the investments went sour. As the school accounts dwindled, Black sent false statements to the districts to cover up the losses and repaid early investors with money collected from later investors.

Most of Black's investors were rural Pennsylvania school districts that trusted him with bond proceeds earmarked for construction projects.

Black is now serving a 41-month term in a federal prison in Morgantown, W.Va.

Black's pyramid scheme came to light after SEC auditors found a $71 million hole -- later

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revised to $69.5 million -- in Black's books during a surprise audit. The SEC moved quickly after the audit, seeking an emergency order from Smith as part of a civil lawsuit to shut down the businesses and freeze the remaining assets.

For one month in 1997, Smith presided over the case and issued a number of rulings before recusing himself on Oct. 31, 1997, citing a conflict of interest because his wife Karen was a vice president in the lending department of Mid-State Bank. Mid-State, through its parent company Keystone Financial Services Inc., was eventually accused of complicity in the Black scheme and repaid school districts $51 million to satisfy a court settlement.

At the time, Smith also held $100,000 to $250,000 in Mid-State stock, and his wife had a 401(k) fund invested with Mid-State also valued at between $100,000 and $250,000. Smith did not note these investments in his recusal, but they were listed on the regular financial disclosure statement required of federal judges.

One question investigators will have to sort out is whether Smith's rulings before he recused himself could have benefitted Mid-State by reducing its future liability. The Department of Justice said Smith never ruled on Mid-State's liability and therefore had no conflict of interest, and that Smith, in recusing himself because of his wife's job in a different area of the bank, should be
"commended for an excess of caution."

But Smith was told by Dick Thornburgh, the former Pennsylvania governor and U.S. attorney general who oversaw the management of the case as trustee, that Mid-State's role appeared to be more than that of a depository, and Smith thereafter issued a hotly contested ruling that could have reduced the amount of money Mid-State ultimately had to pay.

Thornburgh had pointed out that Mid-State reported to Black's school-district clients that the market value of their accounts was $157,622,923 while at the same time telling Black the accounts were worth only $86,307,513 -- suggesting Mid-State collusion in Black's scheme.

At one point, Smith denied a motion by the school districts to unfreeze some of their contested assets because they needed money for operations. He denied similar relief to districts whose assets were not held at Mid-State. Smith later allowed the districts access to half their frozen assets as a temporary measure if they agreed not to ask for more until all contested claims could be sorted out.

At the time, one school district called the ruling "economic blackmail." Two weeks before Smith's recusal, some school districts were talking publicly about suing Mid-State.

Smith also decided at one point to pool the assets of districts whose money Black had placed at Mid-State with those whose assets were in investments that had not lost so much money. This would have effectively reduced Mid-State's liability and forced districts with assets elsewhere to subsidize the losses of districts whose assets were held at Mid-State.

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This ruling did not stand. The judge who succeeded Smith on the case, Donetta Ambrose, ruled that Smith had improperly combined the Mid-State and non Mid-State assets. The Third Circuit Court of Appeals agreed.

The White House yesterday referred questions to Mark Rush of Kirkpatrick & Lockhart in Pittsburgh, who was Thornburgh's lawyer as trustee in the case. Rush said Smith acted properly because during Smith's involvement it appeared Mid-State was only a depository for Black and not a potential partner in his scheme.

Toward the end of October, 1997, Rush said, he and Thornburgh told Smith they believed Mid-State was more deeply involved and on Oct. 24 pulled all the school district money out of Mid-State accounts. At that point Smith said he would have to recuse himself because of his wife's job, Rush said.

Rush said he did not know Smith also held stock in Mid-State but maintains that Smith did not act imprudently. "Does [his financial stake in Mid-State] concern me? Not at all. If I would have seen a reason for Judge Smith to recuse himself prior to Oct. 31, I, as an officer of the court, would have filed a motion myself. It was a big case."

Federal recusal law requires judges to disqualify themselves from sitting on a case if their impartiality might "reasonably be questioned." U.S. Code 28, section 455, says judges must know their assets and recuse themselves immediately if they have any financial conflict of interest.

The Supreme Court has upheld the law, which was tightened after Clement Haynsworth, a Nixon nominee for the U.S. Supreme Court, was rejected by the Senate in 1969 after he was found to have adjudicated cases in which he had a small financial interest.

Steven Lubet, a professor of legal ethics at Northwestern University School of Law, said, "There is no doubt Judge Smith should have disqualified himself and done it much sooner. This comes squarely within the statute. It is not ambiguous."

Stephen Gillers, professor of legal ethics at New York University School of Law, said Smith has two problems. "He should have revealed his financial interest in Mid-State and his wife's employment relationship to Mid-State to the parties right away as soon as he learned that Mid-State had an interest in Black's litigations.... The second problem for Judge Smith is that it appears to me Mid-State certainly had an interest in the rulings Judge Smith might make."

While these ethicists said Smith's conduct was an important issue, they said it should not alone decide whether he's confirmed.

"Because I find Judge Smith's conduct imprudent," Giller said, "I don't mean to say he should be confirmed or not confirmed. The fact the judge has made a mistake of this kind is a fact the Senate should consider. But there are other factors that go on to the scale. Has he been a really good judge otherwise? Has he generally shown ethical awareness of his responsibilities?"

Doug Kendall, a lawyer with the environmental activist group Community Rights Counsel, unearthed Smith's financial disclosure records. The group had already raised questions about what it considers Smith's conservative, pro-business rulings.

Sen. Rick Santorum, R-Pa., said Smith's record has not yet been vetted by his office and that he needs more information to decide how seriously to consider Smith's possible conflict of interest. Earlier this month, when 27 liberal environmental, civil rights and women's groups expressed concerns about Smith's conservatism on the bench, Santorum dismissed the criticism and said it was coming from Democrats who resented the delays in confirming nominees during the Clinton administration.

Sen. Arlen Specter, R-Pa., a leading sponsor of Smith's nomination, has said nothing to indicate his support has waned, but he also has championed strict laws on judicial recusal.

In 1994, Specter raised questions about Supreme Court nominee Stephen Breyer's financial interest in a venture involving asbestos and toxic pollutants while he was sitting on pollution cases. Breyer was confirmed, though not unanimously, and Specter called for re-examining the recusal law, saying judges should disqualify themselves if their investments are even indirectly involved in a case.

While Smith is barred by the White House from speaking in his own defense, Smith's friends are rallying around him. They point out that he received the highest rating from the American Bar Association and the top rating from the Allegheny County Bar Association.

U. Kentucky law prof appointed to Circuit post, awaits confirmation

By Steve Ivey
University Wire
Wednesday, February 20, 2002

Faculty excellence in the University of Kentucky's College of Law has gained the attention of the White House.

John Rogers, professor of law, recently received an appointment to the 6th U.S. Circuit Court of Appeals from President George Bush.

Paul Salamanca, associate professor of law, said it's a powerful position. Decisions made by the 6th Circuit Court, which oversees federal cases in Michigan, Ohio, Kentucky and Tennessee, can be reviewed only by the U.S. Supreme Court. Allan Vestal, dean of the College of Law, said the Supreme Court reverses few cases, making the appointment "terribly important."

Rogers said he is unable to say much about the appointment, other than he is excited about the prospect of being a judge, because his appointment is pending confirmation by the U.S. Senate.

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Vestal said Rogers has spent years cultivating his skills for this position.

Rogers received a bachelor's degree in history from Stanford University in 1970 and received his law degree from University of Michigan in 1974. In January and February 1991, he served as special counsel for the Impeachment Committee of the Kentucky House of Representatives. He has been a UK law faculty member since 1978, teaching international law, constitutional law, administrative law, torts, federal courts and legal writing.

Vestal said some Circuit Court judges continue to teach, but whether Rogers will be able to continue full time remains a wait-and-see issue.

Fellow law faculty members said Rogers is a worthy recipient.

"We're all very proud of him," said Salamanca, who has known Rogers since he came to UK in summer 1995. "It's an intelligent nomination."

Salamanca added Rogers is precisely the kind of person suited for an appointment.

"He is thoughtful, intelligent, open minded and very well versed in the law," he said. "He's one of my favorite people to verbally spar with because he certainly has his own ideas, but he's more than willing to listen."

Vestal echoed Salamanca's sentiments.

"John is a very good legal scholar," Vestal said. "His background in the Department of Justice and as a teacher and scholar make him the perfect candidate."

Vestal also said this was an important credit for UK and the College of Law.

"This is a very important distinction for UK," he said. "The fact that we have professors of this caliber speaks well for us."

Salamanca said UK should be proud of Rogers' honor.

"It's a feather in (UK's) cap," he said. "I think John is one of many faculty we have that are worthy of such a position. It's a real compliment."

Law colleagues said they hope this won't be the end of UK's connection with Rogers.

"We hope to keep ties with him," Vestal said. "I've suggested he keeps his offices here at UK. We'd like to keep him as involved as possible."

"He's a great colleague," Salamanca said. "We wish him well."

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Liberal Groups Question Nominee's Role in '97 Case; Appeals Court Choice Accused of Acting Improperly

By Edward Walsh
The Washington Post
Wednesday, February 20, 2002

A judge who has been nominated by President Bush to a federal appeals court is coming under fire from liberal interest groups who say he acted improperly in a 1997 case involving a bank where his wife worked and in which they had a substantial financial interest.

D. Brooks Smith, now the chief judge of the U.S. District Court for Western Pennsylvania, was assigned to the case in late September 1997. In it, the Securities and Exchange Commission accused John Gardner Black, an investment adviser, of defrauding dozens of school districts and other local governments of millions of dollars entrusted to him.

On Oct. 31 of that year, Smith removed himself from the case, citing his wife's job as a vice president of an Altoona, Pa., bank where most of the missing funds were held in accounts Black controlled.

But by then, Smith had presided over the case for a month and had issued several orders, including one four days earlier that critics say could have benefitted his wife's employer by partly shielding the bank from attempts by Black's victims to recover their losses. In his brief recusal order, Smith also failed to disclose an even larger potential conflict: He and his wife, Karen,
jointly owned at least $ 100,000 worth of stock in a holding company that owned the bank. The SEC's civil action against Black, which caused an uproar in western Pennsylvania, has resurfaced now as the Senate Judiciary Committee prepares to hold a confirmation hearing Tuesday on Smith's nomination to the 3rd U.S. Circuit Court of Appeals.

A Justice Department spokeswoman said earlier this month that Smith was not allowed to grant interviews, but that written questions could be submitted to him through the department. Yesterday, a senior Justice Department official, who asked not to be identified, said Smith "cannot respond to questions due to deference to the confirmation process."

The official said Smith removed himself from the case "out of an excess of caution" and that all of his actions were "proper."

Smith, 50, was appointed to federal district court in 1988 by President Ronald Reagan. The challenge to his handling of the Black case is part of a larger struggle over the shape of the federal judiciary. Earlier this month, a coalition of 27 liberal interest groups wrote a letter to the Senate Judiciary Committee contending that Smith's rulings as a district judge "show a disturbing
pattern of bias in favor of powerful interests and disregard for the rights and needs of ordinary

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Americans."

The coalition urged the committee to scrutinize Smith's record closely before voting on his nomination.

The questions about Smith's handling of the case are being raised largely by Doug Kendall, executive director of the Community Rights Counsel, a public interest law firm that was one of the groups that sent the letter to the Judiciary Committee. In a memorandum he has circulated, Kendall argued that some of Smith's rulings "clearly advanced the interests of Mid-State Bank," the Altoona institution where his wife was a vice president and in which they had a financial interest.

Kendall cited a Smith order from Oct. 27 -- four days before the judge left the case -- that kept in place a freeze on some of the money that the school districts had turned over to Black to invest. The school districts wanted access to all of their money, but they were also divided into two camps.

One group had money invested in a pooled account at Mid-State, where about $ 71 million appeared to be missing. The other group's money was held by other banks and apparently was safe. In court filings, the first group argued that their losses should be shared by all of Black's clients, including those that did not have money at Mid-State. The other school districts argued that they should not be entangled in the case at all.

Acting on a recommendation of the SEC and a court-appointed trustee, Smith on Oct. 27 lifted the freeze on half the money, provided that the school districts agreed not to challenge the continuing freeze on the other half.

According to Kendall, by maintaining the freeze on half of the funds that were not in the pooled account at Mid-State, "Judge Smith preserved a very large pot of money that could have dramatically reduced Mid-State's litigation exposure."

Mid-State Bank was not a defendant in the case and was not accused of wrongdoing by the SEC. The school districts were inconvenienced, but eventually gained access to all of their money when another judge lifted the freeze. In 1999, Keystone Financial Inc., a Harrisburg, Pa., holding company that owned the bank, settled lawsuits filed by more than four dozen school districts for $ 51 million.

According to Smith's 1997 financial disclosure statement, he and his wife owned $ 100,000 to $ 250,000 in Keystone Financial stock. Karen Smith also owned $ 15,000 or less in Keystone stock and had a 401(k) plan at Mid-State Bank worth $ 100,000 to $ 250,000.

In an interview, Kendall said he was not accusing Smith of deliberately acting to protect those financial interests. "I'm not getting in his head and saying he's throwing this ruling to the bank, but I think it's unquestionable that this ruling was favorable to the bank," Kendall said. "Despite a very serious conflict, he ruled in a case, and he ruled in a way that benefited his financial

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interest."

Steven Lubet, a Northwestern University Law School professor, said Smith's decision to rule on the case was "an inexplicable lapse, because the facts are clear and the law is clear and there isn't any question that [Smith] is disqualified, but he continued to sit on this case for 30 days."

Lubet said it did not matter that neither Smith nor the bank actually benefited from Smith's rulings. "The 'no harm, no foul' rule doesn't really have a place here," he said. "You expect judges to do the right thing. The disqualification rule is extremely important, because it's a crucial aspect of the legal system that judges should not have an interest in a case."

Smith's actions also appear to have put him at odds with standards set more than a decade ago by the 3rd Circuit, the appellate panel he hopes to join. According to Merri Jo Gillette, the lead SEC lawyer, at an Oct. 27 hearing before he partially lifted the freeze, Smith told the attorneys in the case about his wife's job at the bank and "pretty much told us it was his intention to recuse." But Smith stayed on the Black case for four more days and issued more rulings.

In a case involving another federal district judge, the 3rd Circuit ruled in 1988 that once a judge recognized a potential conflict, "he should recuse himself immediately" and not issue rulings other than "housekeeping orders."

Gillette, however, defended Smith. She said it was not clear at the time what role Mid-State Bank would play in the case. The court-appointed trustee, former attorney general and Pennsylvania governor Dick Thornburgh (R), said, "I never saw any evidence of him favoring the bank."

Stephen Gillers, professor of legal ethics at New York University Law School, said judges are required to tell the lawyers in a case of any potential conflict they have. "I can't say [Smith] certainly had to recuse himself," Gillers added. "I can say that a serious argument for recusal is present in these facts, so that Judge Smith should have revealed the information" before making any rulings.

Pickering Fight Shows Liberals At Their Worst

By Morton Kondracke
RollCall
Thursday, February 21, 2002

It's time for liberal groups such as People for the American Way and the NAACP to quit using character assassination to defeat conservative judicial nominees - and for Democratic Senators to show some independence from them.

Republicans have used defamation against liberal nominees too, as in the branding of Missouri Supreme Court Judge Ronnie White as "soft on crime" in 1999. But the usual pattern when the

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GOP controlled the Senate was to simply deny Democratic nominees a hearing and a confirmation vote.

Democrats are learning to do that as well, but they're more adept at character attacks - the most egregious examples being the campaigns against Supreme Court nominees Clement Haynsworth in 1969, Robert Bork in 1987 and Clarence Thomas in 1991.

Now the liberal groups are systematically vilifying 5th U.S. Circuit Court of Appeals nominee Charles Pickering as "hostile to civil rights" - read: racist - and as yet no Democrat on the Senate Judiciary Committee has raised a peep of objection. Pickering's chances in Judiciary don't look good.

In fact, the evidence suggests that Pickering is a decent, if outspoken, religious conservative who's repeatedly gone out of his way to help African-Americans.

Would a racist send his children to newly integrated schools in Mississippi in the 1960s when an all-white "academy" was just down the road? Pickering did.

And he kept his son, now Rep. Chip Pickering (R-Miss.), and three daughters in the Laurel, Miss., public schools even when, by the time they graduated, their high school was 70 percent African-American.

In majority-black Washington, D.C., white liberals, including some Senators, usually send their kids to private schools.

As a county attorney from 1964 to 1968, Pickering helped the FBI prosecute Ku Klux Klansmen and was defeated for re-election because of it. When he ran for the state Senate in 1971, he won with two-thirds support from black voters in his district.

This is scarcely the record of someone who represents "a throwback to the days of the segregated South," as Marcia Kuntz of the liberal Alliance for Justice called him.

As a state Senator, Pickering did vote twice to fund the notorious Mississippi Sovereignty Commission - at a time, his supporters say, when it claimed to be giving up its failed segregationist mission. Ultimately, it didn't do so and Pickering voted for its dissolution.

In 1992, Pickering urged his son, then an aide to Sen. Trent Lott (R-Miss.), to help win membership in the Sigma Chi chapter at the University of Mississippi for Damon Evans, son of the Ole Miss football coach.

At that point, no African-American had ever been admitted to a white fraternity, and Evans was facing an anonymous "blackball." Pickering flew down to Oxford, made a speech to the members of his and his father's fraternity, and got Evans accepted.

If, as liberals sometimes argue, "the personal is the political," then Pickering's record is that of

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an advocate of civil rights. He was able to get white-owned banks to lend money to black businesses and helped direct federal funds to after-school and medical programs for blacks.

In what ought to be a humiliating blow to the anti-Pickering assault brigade, The New York Times last Sunday reported that African-American leaders in his hometown overwhelmingly vouch for him and dismiss charges that he's racially prejudiced.

People for the American Way Director Ralph Neas was reduced to saying that those who have watched Pickering at close hand for decades know less about him than Washington activists.

I'd trust Mississippi civil rights leader Charles Evers, who backs Pickering, a lot sooner than the NAACP's Julian Bond and Kwesi Mfume, sponsors of one of the most scurrilous campaign ads ever run - the 2000 ad suggesting that George W. Bush's failure to sign a new hate-crimes law in Texas was equivalent to the murder of James Byrd.

Neas says he's never accused Pickering of being personally "racist," but that his record is one of "insensitivity" and "hostility" to civil rights.

Yet, close examinations by Jonathan Groner in Legal Times and Byron York in National Review pretty clearly discredit Neas' charges that Pickering has been biased in employment and voting-rights cases and was too lenient - and may have behaved unethically - in a cross-burning case.

York has demolished the basis for attacks on Pickering by Democratic presidential hopeful Sen. John Edwards (N.C.) in the 1994 cross-burning case.

York showed that Pickering believed that the Justice Department had let off the main perpetrator of the incident and that he intervened with Justice not - as Edwards alleged - to secure leniency for the defendant but to hasten a government response to his inquiries. He sentenced the
defendant, Daniel Swan, to 27 months in prison.

I can't say that Pickering is qualified to serve on the 5th Circuit. The Washington Post, while scolding liberals for their tactics, asserts that Pickering has been a district judge "of no particular distinction."

On the other hand, since Democrats have elevated American Bar Association ratings to iconic status, it's worth noting that a majority of its rating committee found Pickering "well qualified" and the remainder, "qualified."

Still, Pickering is in trouble. Senate Majority Leader Thomas Daschle (D-S.D.) is against him and Democrats have a 10-8 margin over Republicans on Judiciary, enough to deny him a floor vote. Moreover, the White House isn't fighting very hard for his nomination. Too bad - the guy deserves better.

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The Pickering Beat The embattled judge gets help from some unexpected sources

By Terry Eastland
The Weekly Standard
Thursday, February, 21 2002

WITH THE Senate out this week, Judge Charles Pickering's embattled nomination to the U.S. Court of Appeals for the Fifth Circuit is getting help from seemingly unexpected sources.

The first is a February 17 editorial in the Washington Post. The Post editorial page is a neoliberal one and if pressed to pronounce yes or no on the nomination, might, after many nuanced paragraphs, come down politely no. But the Post routinely sticks up for due process--fairness, in a word. And so in this editorial the Post, after making sure the reader knows that Pickering wouldn't have been its choice for the Fifth Circuit, goes after "the liberal groups and Democratic senators" who've been trying "to portray him as a Neanderthal [on race]--all the while denying they are doing so."

The Post observes that Pickering's history on race is "actually quite complicated." What the Post means is that it is more complicated than the liberal groups and Democratic senators have made it out to be. No "committed" or "closeted" seg is this Judge Pickering, says the Post, a man who prosecuted the Klan back in the 1960s and testified in open court in 1967 against a major Klan figure, and in recent decades has joined with others of his state in working for racial reconciliation.

The second unexpected source of support for Pickering is the New York Times, which on February 17 led its "National Report" with a story from Laurel, Mississippi, Pickering's hometown. David Firestone reported that in Laurel, "Pickering is a widely admired figure." Indeed, "the city's black establishment overwhelmingly supports his nomination."

It's no secret that journalists with liberal views run the Times. But Firestone's story is the kind I'd
expect from news pages supervised by executive editor (and former editorial page editor) Howell Raines, who, like Pickering, grew up in the segregated South (Alabama) and has been known to order up fresh reporting where the story, as here, involves race and the South. This is not to say that Raines, were he still running the editorial page, would actually support Pickering. But Firestone's reporting shreds the left's portrayal of the 64-year-old judge as "an ideological relic of the Old South."

The third source is Dickie Scruggs, the trial lawyer from Pascagoula, Mississippi, who spearheaded the legal challenge to the tobacco industry. Scruggs is a Democrat who has helped raise big money for Democrats. (He is also married to the sister-in-law of Senate minority leader Trent Lott, Pickering's friend and biggest supporter.) But, as Roll Call's Paul Kane reported on February 18, Scruggs is upset with the way his fellow trial-lawyer, Democratic senator John Edwards, queried Pickering about a 1994 cross-burning case. Actually, it is more accurate to say

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that Edwards skewered Pickering, a long-time friend of Scruggs's, twisting and even botching facts (detailed by National Review Online's Byron York) to portray the judge in the worst light possible. Scruggs, who took in Edwards's over-the-top performance from his seat in the hearing room, told Roll Call that he might withdraw his support for Edwards, who has presidential ambitions, and encourage his trial-lawyer brethren not to back him. Trial lawyers, it should be noted, have been heavy contributors to Edwards. Whether or not Scruggs carries out his threats, at least he called Edwards on his deplorable behavior.

Thanks to the Post, the Times, and Dickie Scruggs, things are looking up for Judge Pickering. At
least this week they are. The Senate will be back in session next week.

Shop Talk

By Amy Keller
Roll Call
Thursday, February 21, 2002

EXCERPT

"Mr. Backlin is going to be a tremendous asset in leading the charge for Christian Coalition's aggressive 2002 legislative agenda," said Roberta Combs, president of the Christian Coalition.

Top items on the organization's agenda this year include opposing the Shays-Meehan/McCain-Feingold campaign finance reform measure currently under consideration and supporting a bill by Sen. Sam Brownback (R-Kan.) that would ban all forms
of human cloning.

The group is also lending its support for President Bush's judicial nominee for the 5th U.S. Circuit Court of Appeals, Judge Charles Pickering of Mississippi.

Op/Eds

MISSISSIPPI BURNING DEMOCRATS PREPARE TO IMMOLATE AN UNLUCKY BUSH JUDICIAL NOMINEE

By Philip Terzian
Pittsburgh Post-Gazette
Thursday, February 21, 2002

A federal district court judge named Charles Pickering is not likely to be promoted to the 9th U.S. Circuit Court of Appeals. It is true that he was nominated last spring by President Bush. But after Vermont Sen. James Jeffords defected from the Republicans in August, giving Democrats control of the Senate, his colleague, Patrick Leahy, became chairman of the Judiciary

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Committee, and judicial confirmations came to a screeching halt. Democrats on the Judiciary Committee are likely to vote unanimously against Pickering's nomination, thereby killing it.

This is an interesting, and instructive, case for various reasons. The first reason is that Pickering is from Mississippi, and that fact alone seems to have given the Democrats what amounts to a blank check to reject him. And because Pickering is in his 60s, it is presumed that he must have been an integral part of Mississippi's segregationist past. It is more than a little unfair, in my view, to hold the opinions people held a half-century earlier against them, especially if they have long since changed their minds about particular issues. (I say this as one who cast his first presidential ballot for George McGovern.) After all, the Democratic chairman of the Appropriations Committee, Robert Byrd of West Virginia, was once a member of the Ku Klux Klan. And Sen. Hillary Rodham Clinton, D-N.Y., was a Goldwater Girl in her day.

But in fact, Pickering was not only not an integral part of Mississippi's segregationist past, he was by all accounts a racial progressive. In the 1960s, he prosecuted the Klan for violent crimes, thereby losing his legislative seat at the next election. In the 1970s, he helped create the Institute of Racial Reconciliation at the University of Mississippi. Charles Evers, brother of the late Medgar Evers, and a longtime player in Mississippi politics, described to the Judiciary Committee his admiration for Pickering's integrity and fair-mindedness, and complained that "I don't know where the NAACP and these groups are coming from calling Pickering a racist."

All to no avail. Sen. John Edwards, D-N.C., demanded to know why Pickering had complained to the Department of Justice about a prison sentence for someone who had burned a cross on the front lawn of a black homeowner. Because, Pickering explained, he objected to the disparity between the mandatory seven-year term given to one defendant and the slap on the wrist given to a co-defendant who had fired a gun into the house but turned state's evidence. He was disturbed by the fact that one racist got seven years in prison, but his far more dangerous partner in crime got off essentially free.

None of this impressed Edwards, who was content to suggest that Pickering must approve of cross burning, or Edwards' admirers in the press, who congratulated him for standing up to a bigot (Mary McGrory) and dressing down a "throwback" (Los Angeles Times) to pre-civil rights Mississippi. None of the Democrats on the committee could offer any evidence to support this deceptive picture, and none showed any inclination to grapple with the truth. The Pickering nomination is, effectively, dead.

No doubt, Pickering is conservative on many issues, and opposes abortion -- although, as a federal circuit judge, his "personal views [on abortion] are irrelevant," he told the committee.

If Democrats are uncomfortable confirming someone whose opinions are contrary to their own, they should feel free to cast their votes against Pickering. What distinguishes this episode, however, is the fact that the nomination is not being fought on any legal or political principle, but on the basis of character assassination.

For Democrats, of course, it is payback time. They remember three Clinton appointees who

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were denied the courtesy of a hearing, much less a vote, when Republicans controlled the Senate. Such practices are unquestionably wrong. As Chief Justice William Rehnquist has said, every nominee to the federal bench deserves the opportunity to explain himself to the Judiciary Committee, and the courtesy of a Senate vote. But while the Republicans preferred to scuttle nominations by quietly burying them in procedure, the Democrats choose to subject nominees to public campaigns of lies, distortion and personal abuse. The groundwork is laid by those progressive organizations -- Alliance for Justice, People for the American Way, etc. -- that specialize in such dirty work, but senior Democrats depend on their propaganda skills and lend their prestige to the climate of corruption.

In the fullness of time, the republic will not stand or fall on the fate of one district judge from Mississippi at the hands of the Senate. But an increasingly ugly machinery that ruins personal reputations on the basis of public deceit is neither smart politics nor a system of checks and balances.

PICKERING'S COURAGE DEMANDS CONFIRMATION

The Sun Herald (Biloxi, MS)
Wednesday, February 20, 2002

Away down South ". . . in the land of cotton, old times there are not forgotten . . . "

True. Those opening words to "Dixie" capture the spirit not only of the Old South, but of many contemporary Southerners as well.

"Forget? Never!" the bumper stickers say.

But the same could be said of folks in Chicago or New York or Los Angeles. When people in those places think of the South, especially in a political or cultural context, those thoughts run through the Civil War and the Civil Rights years. Their mind's eye sees names like Jefferson Davis and Bull Connors, and they see George Wallace standing in the schoolhouse door. Does racism still live in Mississippi in 2002?

Of course it does.

Sadly, too, it lives in all the rest of America as well.

This nation still bleeds for the sin of slavery and for the omission of deeds we should have done, and the commission of others we should not have done in those intervening years.

The river of pain flowing from that original sin sometimes ebbs, and sometimes rises, but it is never far from our consciousness or our conscience.

Charles Pickering, a 64-year-old federal district judge who hails from Jones County in South

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Mississippi, can attest to that fact. The president of the United States has nominated him to a seat on the 5th Circuit Court of Appeals in New Orleans. For those who oppose him he is a tempting target, for all of those ghosts of Mississippi's past come suddenly to life with the awful thoughts of night riders, nooses and burning crosses.

Judge Pickering's own words and actions four decades ago have become the thread upon which his opposition seeks to deny him confirmation.

Today he regrets those words, utterances that can never be fully removed from the history of one man's life.

Perfection is a high standard. Charles Pickering did not achieve it. Can any of us say we have?

But since that long-ago day and those failed utterances he has been transformed. One cannot say for sure that he has had a change of heart, but of certainty it can be said he has been a changed man.

Since 1964 his public record has been exemplary by any standard.

n He has courageously stood up to the Ku Klux Klan's Imperial Wizard, a stand that contributed to his subsequent defeat as district attorney.

n He defended African-American clients in significant criminal cases.

n He has worked with University of Mississippi Chancellor Robert Khayat to establish an Institute of Racial Reconciliation at Ole Miss and he serves on that board today.

In the cauldron of this firestorm over his nomination, he is supported by the largely black community in his hometown, and by most black leaders in his home state, those who have seen his actions up close for these many years, voices with great moral authority on such matters, including Charles Evers, brother of slain Civil Rights leader Medgar Evers.

There is a plague of piousness afoot in our land today as politicians preen and pontificate before the cameras of so many committee rooms, preaching and prattling to cater to the public opinion of the moment. Their sermons often seem more the words of the Pharisees than the thoughts of pure hearts. It is true of those who have cast their stones at Judge Pickering.

You wonder if Abraham Lincoln or Hugo Black were seeking confirmation from these fellows if either could stand the scrutiny of these modern Jacobins.

Lincoln's own dreadful words would lash him like a whip . . . words so awful they could not be printed today without stirring pain and bitterness. Certainly Hugo Black, a former Klansman, could not have stood their test.

Yet one -- Mr. Lincoln -- many have said was this country's greatest president; the Great

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Emancipator -- the man who freed the slaves and whose leadership maintained the Union. And the other, Justice Black, became one of the leading civil libertarians in U.S. history, rendering opinions whose breadth and majesty extended the rights of African-Americans to their most expansive state.

The young American nation often embraced the idea of redemption, a sense of charity that extends to those who have a change of heart, and who thereafter act in a way that is consistent with the "new way" they have embraced.

Charles Pickering should be confirmed because he is a good man whose past service is proof that he will render justice fairly to all, and whose personal courage and record have earned him not only the nomination of his president, but the approbation of his countrymen.

Interest Groups/Press Releases

Civil Rights Coalition Launches Campaign for Fair and Impartial Judiciary; Highlights Opposition to Charles W. Pickering Sr.'s Confirmation

http://www.fairjudges.org/

AScribe Newswire
Wednesday, February 20, 2002

The Leadership Conference on Civil Rights, the nation's oldest and broadest civil rights coalition, today launched a new outreach campaign designed to educate the civil rights community and the
American public about the importance of a fair and impartial judiciary.

In launching the new campaign entitled, "www.FairJudges.org ," Wade Henderson, LCCR's Executive Director stated, "LCCR strongly believes that the composition of the federal judiciary is a civil rights issue of profound importance because the individuals charged with dispensing justice in our society have a direct impact on civil rights protections for us all." Henderson added, "the FairJudges.org campaign will help to educate and mobilize the civil rights community and the American public in support of individuals who are the embodiment of fairness and impartiality." Specifically, the www.FairJudges.org campaign will:

-- Provide regular updates on the status of judicial nominations;
-- Serve as a clearinghouse for civil rights-related information regarding judicial nominations;
-- Help to coordinate local coalition building efforts around the nation; and
-- Mobilize support and/or opposition to those nominees officially endorsed/opposed by the Leadership Conference.

Charles W. Pickering Sr., President Bush's nominee for the U.S Circuit Court of Appeals for the

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Fifth District, is the first nominee being highlighted in the www.Fair.Judges.org campaign. The Leadership Conference is opposing Judge Pickering's nomination because of his extreme views on important civil rights, women's rights and constitutional issues. The media, civil rights advocates, policy makers, and the American public can learn more about Charles Pickering's record as well as track the growing opposition to his nomination on www.FairJudges.org.

The Leadership Conference on Civil Rights is the nation's oldest, largest and most diverse civil and human rights coalition with more than 180 national organizations committed to the protection and advancement of basic civil and human rights for all persons in our society.

REV_00140637

From: CN=Elliott Abrams/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/21/2002 10:23:07 AM
Subject: : Re: Oral argument

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elliott Abrams ( CN=Elliott Abrams/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME:21-FEB-2002 15:23:07.00
SUBJECT:: Re: Oral argument
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I believe it: the creaky mechanisms of our judiciary. Anyway, thanks very
much.
```

From: CN=Elliott Abrams/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/21/2002 10:23:07 AM
Subject: : Re: Oral argument

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elliott Abrams ( CN=Elliott Abrams/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME:21-FEB-2002 15:23:07.00
SUBJECT:: Re: Oral argument
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I believe it: the creaky mechanisms of our judiciary. Anyway, thanks very
much.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>
Sent: 2/22/2002 5:01:11 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-FEB-2002 10:01:11.00
SUBJECT::
TO:William H. Leary ( CN=William H. Leary/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Any update on when we will have final word on the Reagan documents
from the agencies?
```

From: Ken Mehlman <kmehlman@georgewbush.com>
To: Sara Taylor <Staylor@georgewbush.com>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/22/2002 5:56:04 AM
Subject: : Re: FW: Listings for Presidential Event

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman <kmehlman@georgewbush.com> ( Ken Mehlman <kmehlman@georgewbush.com> [
UNKNOWN ] )
CREATION DATE/TIME:22-FEB-2002 10:56:04.00
SUBJECT:: Re: FW: Listings for Presidential Event
TO:Sara Taylor <Staylor@georgewbush.com> ( Sara Taylor <Staylor@georgewbush.com> [ UNKNOWN
] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

but don't push it if it will reduce their take
----- Original Message -----
From: "Sara Taylor" <Staylor@georgewbush.com>
To: <Brett_M._Kavanaugh@who.eop.gov>
Cc: <kmehlman@georgewbush.com>
Sent: Friday, February 22, 2002 10:43 AM
Subject: RE: FW: Listings for Presidential Event


> I have no strong opinions, I agree with you that it's better to list
> individuals especially in the age of Enron.
>
> -----Original Message-----
> From: Brett_M._Kavanaugh@who.eop.gov
> [mailto:Brett_M._Kavanaugh@who.eop.gov]
> Sent: Friday, February 22, 2002 9:56 AM
> To: Sara Taylor
> Cc: kmehlman@georgewbush.com
> Subject: Re: FW: Listings for Presidential Event
>
>
> I prefer listings as individuals unless you have different thoughts.
>
>
>
>
>
>
> (Embedded
> image moved Sara Taylor <Staylor@georgewbush.com>
> to file: 02/22/2002 08:33:28 AM
> pic19783.pcx)
>
>
>
>
> Record Type: Record
>
>
> To: Brett M. Kavanaugh/WHO/EOP@EOP
>
> cc: kmehlman@georgewbush.com
> Subject: FW: Listings for Presidential Event
>
>
>
```

> Brett - Your thoughts on this??
>
> -----Original Message-----
> From: Jan Unstad [mailto:junstad@colemanforsenate.com]
> Sent: Thursday, February 21, 2002 4:51 PM
> To: Sara Taylor (E-mail)
> Subject: Listings for Presidential Event
>
>
> Sara-we have lots of companies/PAC's etc who are jumping into this
> Presidential event. Do you have an opinion/preference on steering them
> toward being listed as a host in the program as a person or as a company?
>
> e.g.-Do you prefer 3M Company or Jim McNerney? And is only one way
> acceptable?
>
> jan
>
> Jan Unstad
> Coleman for U.S. Senate
> 1410 Energy Park Drive, Suite 11
> St. Paul MN 55108
> 651.645.0766, ext. 13
> 651.646.1387 fax
> junstad@colemanforsenate.com
>
>
>
>
>

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/22/2002 6:33:38 AM
Subject: : Re: Arkansas Democrat Gazette EDITORIAL (2/21/02) re: Justice held hostage

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-FEB-2002 11:33:38.00
SUBJECT:: Re: Arkansas Democrat Gazette EDITORIAL (2/21/02) re: Justice held hostage
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ok, well then I'm taking ALL the credit! :)
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 2/22/2002 7:38:33 AM
Subject: : Draft letter to Burton on Condon dep accommodation for review asap
Attachments: P_685M5003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-FEB-2002 12:38:33.00
SUBJECT:: Draft letter to Burton on Condon dep accommodation for review asap
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/22/2002 12:38 PM ----------

"Burton, Faith" <Faith.Burton@usdoj.gov>
02/22/2002 12:20:44 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: "Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Subject: Draft letter to Burton on Condon dep accommodation for review asap

The subject dep began at 12 noon today in Boston; our plan is to get this and the document to them by 1 p.m. Thanks.

- burton.condon.wpd

Message Sent
To:_____
"Durham, John" <John.Durham@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Herbert, James" <James.Herbert@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Bybee, Jay" <Jay.Bybee@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)
Brett M. Kavanaugh/WHO/EOP@EOP
"'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) (IPM Return Requested)
"Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification

Requested) (IPM Return Requested)
"Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_685M5003_WHO.TXT_1>

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

February 22, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This confirms the agreement reached by Committee staff with Department representatives today about our provision of a document to Committee staff for their use in the deposition of former FBI agent Dennis Condon today.

The document is a memorandum, dated June 6, 1967, by Walter T. Barnes and Assistant Untied States Attorney Edward Harrington, regarding a prosecution of Raymond Patriarca and others. It was listed on the Department's log of documents subject to the President's claim of executive privilege on December 12, 2001. The document was made available for Committee staff to review on a confidential basis in light of your particularized need in advance of your February 14, 2001 hearing, at which Judge Harrington testified.

We have agreed to make it available again today for the limited purpose of Mr. Condon's deposition pursuant to your agreement that it will not be publicly disclosed, no copies will be made, and it will be returned to the Department at the end of the deposition. At the deposition, it may be reviewed by Committee staff and shown to Mr. Condon and his counsel. This agreement is based, again, on the Committee's particularized need for access to the document in the deposition and should not be considered as a precedent regarding other Boston documents.

I hope that availability of this document for today's deposition is helpful to the Committee. We look forward to conferring with Committee staff on February 25, 2002 to discuss other Boston documents.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

From: Michael.Chertoff@usdoj.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/22/2002 8:56:46 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael.Chertoff@usdoj.gov ( Michael.Chertoff@usdoj.gov [ UNKNOWN ] )
CREATION DATE/TIME:22-FEB-2002 13:56:46.00
SUBJECT::
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message :
Was Read By : Michael.Chertoff@usdoj.gov
On : Fri, 22 Feb 2002 13:50:00 -0500
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From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Rebecca A. Beynon/OMB/EOP@EOP [OMB] <Rebecca A. Beynon>
CC: kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;jay p. lefkowitz/omb/eop@eop [OPD] <jay p. lefkowitz>
Sent: 2/22/2002 3:41:52 PM
Subject: : Re: Victims Comp

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME:22-FEB-2002 20:41:52.00
SUBJECT:: Re: Victims Comp
TO:Rebecca A. Beynon ( CN=Rebecca A. Beynon/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:jay p. lefkowitz ( CN=jay p. lefkowitz/OU=omb/O=eop@eop [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We are still waiting for guidance from Dr. Rice, who has been away with
the President. I would recommend that OMB go ahead and circulate the
State draft to agencies for formal views, with a notation that the FSI
issue remains to be resolved and may be the discussion of an interagency
meeting led by the NSC. This will at least allow us to get more formal
views from DoD and Treasury, who have string equities here.
```

From: Rena Johnson) (Rena_Johnson@judiciary.senate.gov (Rena Johnson) [UNKNOWN]
To: Pat.O'Brien@usdoj.gov [UNKNOWN] <Pat.O'Brien@usdoj.gov>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;lizette.d.benedi@usdoj.gov [UNKNOWN] <lizette.d.benedi@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;John Mashburn) (John_Mashburn@lott.senate.gov (John Mashburn) [UNKNOWN] <John_Mashburn@lott.senate.gov>;Ed Haden) (Ed_Haden@judiciary.senate.gov (Ed Haden) [UNKNOWN] <Ed_Haden@judiciary.senate.gov>
Sent: 2/24/2002 11:13:43 AM
Subject: : NYT on Pickering
Attachments: P_OFTM5003_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rena_Johnson@judiciary.senate.gov (Rena Johnson) (
Rena_Johnson@judiciary.senate.gov (Rena Johnson) [ UNKNOWN ] )
CREATION DATE/TIME:24-FEB-2002 16:13:43.00
SUBJECT:: NYT on Pickering
TO:Pat.O'Brien@usdoj.gov ( Pat.O'Brien@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:lizette.d.benedi@usdoj.gov ( lizette.d.benedi@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov ( Jennifer.Newstead@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian.A.Benczkowski@usdoj.gov ( Brian.A.Benczkowski@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John_Mashburn@lott.senate.gov (John Mashburn) ( John_Mashburn@lott.senate.gov (John
Mashburn) [ UNKNOWN ] )
READ:UNKNOWN
TO:Ed_Haden@judiciary.senate.gov (Ed Haden) ( Ed_Haden@judiciary.senate.gov (Ed Haden) [
UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Well, the good press couldn't last forever. In case you haven't seen it .
. . .

- NYT ed 022402.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OFTM5003_WHO.TXT_1>
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From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Rachel_L._Brand@who.eop.gov [UNKNOWN] <Rachel_L._Brand@who.eop.gov>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;edward mcnally/who/eop@eop [WHO] <edward mcnally>
Sent: 2/25/2002 2:58:41 AM
Subject: : Re: Rule of Seven

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-FEB-2002 07:58:41.00
SUBJECT:: Re: Rule of Seven
TO:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:robert w. cobb (CN=robert w. cobb/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:edward mcnally (CN=edward mcnally/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I am, with Brett's help.

Rachel_L._Brand@who.eop.gov
02/22/2002 05:13:48 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Rule of Seven

Who was following the "Rule of Seven" case involving Waxman?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP

Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/25/2002 8:29:23 AM
Subject: : Wall Street Journal OP ED on Exec. Priv. Case
Attachments: P_LU7N5003_WHO.TXT_1.html; P_LU7N5003_WHO.TXT_2.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-FEB-2002 13:29:23.00
SUBJECT:: Wall Street Journal OP ED on Exec. Priv. Case
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

will you take a quick glance over this for Jennifer? It's no good until the end, and I'm surprised they are going to run it, but oh well, not our thing.
---------- Forwarded by Anne Womack/WHO/EOP on 02/25/2002 01:28 PM ----------

Jennifer Millerwise
02/25/2002 01:16:35 PM
Record Type: Record

To: Anne Womack/WHO/EOP@EOP
cc:
Subject: Wall Street Journal OP ED on Exec. Priv. Case

would someone in counsel's office want to take a quick look at this?
---------- Forwarded by Jennifer Millerwise/OVP/EOP on 02/25/2002 01:16 PM ----------

"Prof. Robert F. Turner" <rturner@law5.law.virginia.edu>
02/25/2002 01:03:55 PM
Record Type: Record

To: Jennifer Millerwise/OVP/EOP@EOP
cc:
Subject: Wall Street Journal OP ED on Exec. Priv. Case

Jennifer:

Attached (and as text below, in case you can't open my Word file) is the op ed. As the e-mail below from Max Boot at Wall St. Journal indicates, we may not have much time to make changes--but I'd like your advice (especially if I've misstated any factual matters).

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Warmest regards,

-Bob

>From: "Boot, Max" <Max.Boot@wsj.com>
>To: "'Prof. Robert F. Turner'" <rturner@law5.law.virginia.edu>
>Cc: "Varadarajan, Tunku" <tunku@wsj.com>
>Subject: RE: OP-ED: Walker v. Cheney Case--Defending Executive Privilege
>Date: Mon, 25 Feb 2002 12:43:03 -0500
>
>Thanks. Think we'll probably use this tonite.
>
> -----Original Message-----
> From: Prof. Robert F. Turner
>[mailto:rturner@law5.law.virginia.edu]
> Sent: Monday, February 25, 2002 10:50 AM
> To: Boot, Max
> Subject: OP-ED: Walker v. Cheney Case--Defending
>Executive Privilege
>
> << File: OpEd--GAO_v_Cheney_2-02.doc >> Max--
>
> Over the weekend I wrote the attached (and copied below in
>case you
> can't open the Word file) 1100-word op-ed defending VP
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>
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>Sally was
> Jefferson's lover. The people at Monticello refuse to
>engage on the
> merits, saying they have "moved on" to other issues. 8-)
>
> Warmest regards,
>
> -Bob
>

Prepared for: Wall Street Journal
2/24/02 10:28 AM
1139 words-may be cut

David Walker v. Richard Cheney:
Thinking Seriously About Executive Privilege

Robert F. Turner

Comptroller General David M. Walker, the head of the congressional General Accounting Office (GAO), has brought suit to compel Vice President Richard B. Cheney to provide notes of meetings, names of individuals with whom he communicated, and other documents related to the Vice President's deliberations as chair of the National Energy Policy Development Group. The conventional wisdom is that Cheney is being unreasonably secretive and that the GAO should easily prevail in court. But the issue is far more complex.

First of all, the court may not even consider the case until there is a genuine "case or controversy" as required by Article III of the

Constitution. In 1983, the Supreme Court in INS v. Chadha held that Congress could not delegate authority to a single committee or even the entire House or Senate to act on behalf of Congress with legal effect. If Congress wishes to seek judicial resolution of a constitutional struggle with the Executive Branch over access to information, Congress should express that intention by majority vote of both houses, at which time the issue would be ripe for judicial resolution. The Supreme Court's holding that Congress can not delegate authority to act with legal force even to the full House or Senate would seem to preclude delegating to the Comptroller General power to initiate in the name of Congress an inter-branch constitutional dispute with the Executive Branch.

Second, it is not clear at all that the Constitution gives Congress a legal right to know with whom the Vice President is talking or what is said in such preludial exchanges. The first great constitutional struggle over executive privilege occurred in 1796 over a House of Representatives request for background documents on the Jay Treaty. As the Supreme Court noted in United States v. Nixon in 1974, the President's claim of executive privilege is strongest when military or diplomatic documents are at issue. But President Washington's refusal to share the documents in question with the House was not solely premised upon a national security claim-indeed, he had already shared the documents in question with the Senate. Washington did not believe the House had any business looking at treaties that had already been ratified with the advice and consent of the Senate.

During that floor debate, which lasted nearly two months, only a single member of the House (Massachusetts Democrat William Lyman) asserted an absolute right of access to documents within the Executive Branch. As reported on page 773 of volume 5 of the Annals of Congress, James Madison reasoned that both branches had a right "to ask for information which might assist their deliberations on the subjects submitted to them by the Constitution," and it "belonged to each department to judge for itself" what documents to share. Madison's objection to Washington's actions was that the President had based his refusal upon his own interpretation of the constitutional power of the House to examine treaties on their merits when called upon to appropriate implementation funds. Washington won that struggle, and in 1936 his refusal was praised by the Supreme Court in its landmark Curtiss-Wright case.

Third, as a policy matter, the case against secrecy in the preliminary stages of formulating public policy is not nearly as clear as some would have us believe. James Madison was almost certainly correct when he wrote that there would have been no U.S. Constitution had the delegates who met in Philadelphia in the summer of 1787 not first established a strict secrecy rule. We certainly want public accountability for final policy decisions, but I submit we also want our policymakers to be able to listen to a broad range of views from a diverse range of sources. If White House officials can listen to no opinion that is not to be announced to the world, only the most courageous and foolhardy elected officials will be willing to consider the views of unpopular minority groups-even though those views may contribute substantially to understanding problems and finding solutions that might benefit all Americans.

I spent five years in the mid-1970s working as a Senate staff member, and there were occasions where elected legislators were clearly afraid to even meet with Americans of Turkish or Arab ancestry for fear their Greek or Jewish constituents would learn of the meetings and manifest their displeasure in the next election. That is unhealthy for democratic governance. The wise decision-maker ought to be free to speak candidly with and receive the views of representatives of all points of view, being ultimately personally accountable for the policies that are implemented.

Obviously, if it is bad public policy for the Vice President to be

able to have candid conversations that are not subject to public disclosure, then the same theory should apply to Congress. For some reason, when Congress decided that the public had a "right to know" what was going on in the Executive Branch and enacted the Freedom of Information Act in 1966, it neglected to include the documents of the Legislative Branch in that process. If the people have a "need to know" what people in government are doing, it would seem to apply most strongly to the actions of their own elected representatives. But even if legislators were willing to install webcams in every room of their offices and homes and to permit open broadcast of every telephone conversation, this would have a horribly chilling effect upon the candid exchange of diverse views that are essential to the making of sound public policy.

Vice President Cheney's decision to resist the assertions of the GAO clearly has less to do with the specific issue in dispute than with his very correct perception that, particularly in the aftermath of Vietnam, Congress has routinely usurped authority vested by the Constitution in the President and the Executive Branch. During that era of legislative lawbreaking, highly partisan Congresses shoved through literally hundreds of statutory constraints on discretion clearly vested by the Constitution in the President.

To mention just one example, how many Americans realize that when Congress in 1973 enacted the War Powers Resolution over a presidential veto, Section 2(c) denied the President his well-established constitutional power to use military force to rescue endangered American civilians abroad from terrorist attacks? That flagrantly unconstitutional statute remains on the books, but of course no simple statute enacted by Congress can amend the Constitution or legally take from the President powers vested in him by the people through that instrument.

Whatever the ultimate outcome of Walker v. Cheney, President Bush and Vice President Cheney deserve high praise for their courage and principle in trying to restore the Constitution to its proper balance. As Harvard Law Professor Charles Warren once noted, "In maintaining his rights against a trespassing Congress, the President defends not himself, but popular government; he represents not himself, but the people."

_____

Professor Turner is Associate Director of the Center for National Security Law at the University of Virginia School of Law and a former Acting Assistant Secretary of State for Legislative Affairs.

CONTACT: (434) 996-7838 or rturner@law5.law.virginia.edu

--
Prof. Robert F. Turner
Center for National Security Law
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903-1789
(434) 924-4083
http://www.virginia.edu/cnsl/

- att1.htm - OpEd--GAO_v_Cheney_2-02.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LU7N5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_LU7N5003_WHO.TXT_2>

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From: "Boot, Max"< Max.Boot@wsj.com>
To: "'Prof. Robert F. Turner'"< rturner@law5.law.virginia.edu>
Cc: "Varadarajan, Tunku" <tunku@wsj.com>
Subject: RE: OP-ED: Walker v. Cheney Case--Defending Executive Privilege
Date: Mon, 25 Feb 2002 12:43:03 -0500

Thanks. Think we'll probably use this tonite.

-----Original Message-----
From: Prof. Robert F. Turner
[mailto:rturner@law5.law.virginia.edu]
Sent: Monday, February 25, 2002 10:50 AM
To: Boot, Max
Subject: OP-ED: Walker v. Cheney Case--Defending Executive Privilege

<< File: OpEd--GAO_v_Cheney_2-02.doc >> Max--

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Jefferson's lover. The people at Monticello refuse to engage on the merits, saying they have "moved on" to other issues. 8-)

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Prepared for: *Wall Street Journal*
2/24/02 10:28 AM
1139 words-may be cut

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Thinking Seriously About Executive Privilege

Robert F. Turner

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Prepared for: *Wall Street Journal*
2/24/02 10:28 AM
1139 words—may be cut

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REV_00140712

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REV_00140713

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REV_00140714

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REV_00140715

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;jay p. lefkowitz/omb/eop@eop [OPD] <jay p. lefkowitz>
Sent: 2/25/2002 11:20:38 AM
Subject: : Re: Victims Comp

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
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SUBJECT:: Re: Victims Comp
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The Borking of Pickering

The Weekly Standard
Monday, February 25, 2002

As reported in these pages last week, Judiciary Committee Democrats are going hard and heavy after U.S. District Judge Charles Pickering, selected by President Bush for the Fifth U.S. Circuit Court of Appeals. We've seen the law firm of Biden, Kennedy, and Leahy engaged before in various forms of borking. But the Pickering hearings have introduced the nation to a new borker: John Edwards of North Carolina. It fell -- or perhaps it was assigned -- to Edwards, who made millions as a plaintiff's lawyer, to cross-examine Judge Pickering about his handling of a case from 1994. Working from Clinton-era Justice Department documents he had in his possession but which Pickering had not seen (how about that for due process, Your Honor?), Edwards accused Pickering of conduct violating the Code of Judicial Ethics.

Now that the documents have been made available to everyone, including the judge, it appears at the least that there is another side to the story. Reviewing the issues at the request of Senate Republicans, Michael Krauss, professor of legal ethics at George Mason School of Law, writes, "One is hard pressed to see any violation of Judge Pickering's ethical duties here." And: "[The] documents reveal nothing more than a determined effort by Judge Pickering to discharge, faithfully and competently, his judicial duties under the Constitution."

Drawing on the same documents, Edwards also said Pickering had told "the government lawyers [in the case] that you would on your own motion order a new trial." Pickering denied saying that. And the documents back him up. The pertinent one -- a Nov. 29, 1994, memo by prosecutor Brad Berry -- said that Pickering had asked whether the Justice Department would agree not to oppose a motion for a new trial on a certain charge. But Berry's memo doesn't say that Pickering said he would call for this trial "on your own motion."

Edwards, who has presidential aspirations, may not have established himself as the equal of the established borkers in his party, but he shows promise. And he certainly has the character. We still remember those ads when he ran for the Senate in 1998, which suggested he was born in North Carolina though in fact he came into the world in Seneca, South Carolina. In case you wonder, there's documentation for that.

Campaign-finance foe says bill will pass

Paul Leavitt

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USA TODAY
February 25, 2002, Monday

EXCERPT
Senate panel to vote this week on judge

Sen. Dianne Feinstein, D-Calif., said the Senate Judiciary Committee likely will not approve the nomination of Charles Pickering to the 5th U.S. Circuit Court of Appeals in New Orleans. A vote is expected Wednesday. He has been a federal judge since 1990. Some Democrats, civil rights activists and abortion-rights proponents oppose him. Republicans say that he is rated well-qualified by the American Bar Association and that the opposition is politically motivated.

Mississippi redistricting almost over - or is it?

Emily Wagster
The Associated Press State & Local Wire
February 24, 2002, Sunday,

It's not a sure bet Mississippi's congressional redistricting battle will end Monday despite a deadline by federal judges, officials say.

Democrats are appealing to the U.S. Supreme Court to implement a plan approved by state court. It's uncertain when that appeal will be resolved and one of the congressmen with the most at stake in redistricting says he's not ready to accept a plan drawn by Republican-appointed judges.

"We're not going to sit there and let three appointed federal judges sit there and say what the district is going to be," U.S. Rep. Ronnie Shows, D-Miss., said late last week. U.S. Rep. Chip Pickering, R-Miss., who will face Shows in a new central district this election season, believes the federal judges' redistricting plan is fair and should be used.

"I think that will be it," Pickering said last week.

Mississippi is losing one of its five congressional seats because of slow population growth in the 1990s.

The federal judges said if the U.S. Justice Department fails to approve a state court redistricting plan by the close of business Monday, they'll order that their own map be used in this year's congressional races.

The federal judges' order could come early Tuesday. Congressional candidates face a Friday qualifying deadline.

The federal plan is thought to favor Republicans, while the state plan is thought to favor Democrats.

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Both national parties are watching the outcome of Mississippi redistricting because the battle could help determine the balance of partisan power on Capitol Hill.

The Justice Department since late December has been examining a plan approved by Hinds County Chancery Judge Patricia Wise. The Justice Department is trying to determine if the plan is fair to minorities.

The department on Feb. 14 asked state officials for more information about how chancery judges are elected. Responses were submitted last Tuesday, giving the department another 60 days to consider the state court plan. That pushed the department's deadline well past the congressional qualifying date.

Fifth U.S. Circuit Court of Appeals Judge E. Grady Jolly of Jackson and U.S. District Judges David Bramlette of Natchez and Henry T. Wingate of Jackson have drawn a separate redistricting plan that does not need Justice Department clearance.

Both plans toss Pickering and Shows, the state's junior congressmen, into a new central district.

Pickering now represents east central Mississippi and Shows represents the southwest.

The key difference in the state and federal plans is the composition of the new central district.

The state court plan's central district has a higher concentration of black voters, who traditionally favor Democrats. The federal plan's central district includes heavily Republican precincts in suburban Jackson.

Shows said it's ironic that people who traditionally push for states' rights are now supporting the federal judges' plan.

Chancery judges are chosen in nonpartisan elections, but Wise comes from a heavily Democratic district. Opponents to her plan say a judge from a single district should not decide a plan for the entire state.

Shows and other Democrats also accuse the Bush administration Justice Department of delaying action on the state court plan to help Republicans. "They're stalling because they want to ride this thing out," Shows said.

Pickering said "it's simply not true" that the Justice Department is being politicized. He said that Republicans are still appealing the chancery court plan to the state Supreme Court.

"There is no precedent in the history of the Voting Rights Act or the Justice Department of ever approving a plan that is still subject to appeal," Pickering said.

Democrats also accused Republicans of dragging their feet on filing an appeal to the state

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Supreme Court. GOP lawyers waited almost until the end of the 30-day filing period to submit their appeal.

Pickering says Democrats are trying to use his father's federal appeals court nomination as leverage in congressional redistricting.

President Bush has nominated U.S. District Judge Charles Pickering Sr. of Laurel to a seat on the 5th U.S. Circuit Court of Appeals in New Orleans. The judge has had two confirmation hearings before the Senate Judiciary Committee.

The NAACP opposes his nomination, saying the elder Pickering is hostile to minority rights. The judge has defended his civil rights record and last week gave a speech at the Mississippi Capitol calling for racial reconciliation.

Several prominent Democrats, including members of the Congressional Black Caucus, also oppose the judge's confirmation.

"I think that fact that redistricting and his confirmation came at the same time ... creates an opportunity, unfortunately, to politicize his confirmation," Chip Pickering said last week.

Shows said he thinks the Pickering camp is trying to use the confirmation difficulties to its own political advantage. "They're trying to make like they're the ones being picked on and, hell, they've got the judges and the Justice Department on their side," Shows said.

He said that two of the three federal judges involved in redistricting serve on U.S. District Court with Judge Pickering and one serves on the court he hopes to join.

Shows has been criticized by Mississippi Republican Chairman Jim Herring and others for not speaking out in support of Judge Pickering's nomination. "It's not relevant," Shows said of the criticism. "I don't even have a vote. It's in the Senate."

Daschle says Judiciary Committee to vote on Pickering this week

The Associated Press State & Local Wire
February 24, 2002, Sunday
Senate Majority Leader Tom Daschle said the Judiciary Committee will vote this week on the nomination of Mississippi Judge Charles Pickering to a federal appeals court.

"If the vote fails in the committee, of course, it dies in the committee. There is no other action required," said Daschle, D-S.D., who was appearing on ABC's 'This Week' on Sunday. Daschle said he believed the committee would take up Pickering's nomination on Wednesday.

Pickering, of Laurel has been a federal judge since 1990. He has been nominated by President Bush for a seat on the 5th U.S. Circuit Court of Appeals in New Orleans, which handles cases

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from Mississippi, Louisiana and Texas.

He has gone through two sets of hearings before the U.S. Senate Judiciary Committee.

Some U.S. Senate Democrats and civil rights groups are questioning parts of his record, including his effort to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn.

Abortion rights groups also are trying to block his confirmation.

Daschle was asked if Pickering's nomination would be confirmed by the Senate if it passes the Judiciary Committee.

"I don't know, I have not talked to my colleagues or know just what the vote will be at this point," he said. "But .... if the nomination comes to the floor, I have every expectation we'll take it up and we'll have that debate."

Sen. Diane Feinstein, D-Calif., speaking on NBC's 'Meet the Press,' said she doubts the nomination will get out of the Judiciary Committee.

"I believe that there is virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed. In other words, he will not be voted out of the Judiciary Committee," she said.

Pickering has strong support from Senate Minority Leader Trent Lott and other state Republicans, who say opposition to the judge is politically motivated. Pickering is rated as well qualified by the American Bar Association.

Sen. Sam Brownback, R-Kan., who also appeared on 'Meet the Press,' said he supports Pickering.

"We need to get some judges out there and confirmed in positions, if for no other reason, for homeland security, so we can deal with judicial issues coming on forward," he said.

Race, politics, history: Mississippi redistricting fight has it all

David Espo
The Associated Press State & Local Wire
February 22, 2002, Friday

Republicans and Democrats are battling in state and federal courts over a single Mississippi House district, a dispute that blends race, irony and politics and stirs memories of the presidential recount of 2000.

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"This is Florida at the congressional level," says Republican Rep. Charles (Chip) Pickering, Jr., thrown together with Democratic Rep. Ronnie Shows in a new district with unsettled boundaries.

Democrats charge President Bush's Justice Department with trying to dilute the voting strength of Mississippi blacks, much as they charged Bush's campaign with disenfranchising blacks in Florida.

"Instead of enforcing the voting rights act, they are carrying the water of Chip Pickering and the Republican Party," alleges Rob McDuff, a lawyer in the case. Agency officials and other Republicans dispute the charge. "One judge from one county shouldn't draw the plan for the entire state of Mississippi," Henry Barbour, Pickering's campaign manager, said in an interview. "This ought to be about all 2.8 million people in Mississippi."

As was the case in Florida, Republicans and Democrats filed suit in different courts. And as a result, there are two court-drawn redistricting plans.

And in an irony acknowledged by all sides, one argument central to the civil rights struggle of a generation ago has been reversed. Democrats accuse Republicans of trampling "states' rights" by going into federal court to deny blacks their rights.

One redistricting plan, with 37.5 percent black voting age population, was issued by a local judge, is backed by Democrats and - to their anger- has been awaiting approval under the Voting Rights Act at the Justice Department for more than six weeks.

Under the law, the agency must make sure there is no backsliding - the legal term is "retrogression" - when new congressional district maps are drawn.

In this case, though, lawyers raised questions about approving a statewide plan drawn up by a local judge.

The other plan, supported by Republicans, includes 30 percent black voting age population in the contested district. It was advanced by federal judges who say they will intervene if the Justice Department hasn't acted by Monday on the rival map.
Democrats on Wednesday asked the U.S. Supreme Court to step in, with a March 1 filing deadline approaching for the two men at the center of the dispute.

Pickering, 38, is a conservative third-term lawmaker and protege of Senate Republican Leader Trent Lott. In one of numerous ironies in the controversy, his father, U.S. District Judge Charles Pickering, is at the center of another racially charged dispute. Nominated by Bush for a seat on the appeals court, he faces opposition from Democrats and national civil rights groups.

Shows, 55, won his seat in 1998. A conservative Democrat, he parts company on several issues with more liberal national party leaders. In both his campaigns, he suggested he might not vote for Democratic leader Dick Gephardt as speaker, although he did in the end.

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Both sides speak of possible connections between the confirmation battle and the redistricting controversy.

Democratic Rep. Bennie Thompson, Mississippi's only black lawmaker, said Thursday that one of the federal judges involved in the court case had written a letter of support for Pickering's father.

Rep. Pickering said some Democrats were linking the two issues, holding his father's confirmation hostage while the redistricting case continues.

The presence of two incumbents on the ballot guarantees both parties will focus on the contest in their struggle for control of the House this fall.

But first comes the current dispute, rooted in national population trends requiring Mississippi to give up one of its five House seats. The Democratic-controlled Legislature deadlocked in its efforts to draw new districts.

Democratic lawyers then won the early rounds in court.

The state Supreme Court ruled that a local judge had authority over statewide redistricting, despite an assertion from Democratic Attorney General Mike Moore that "under current precedent ... a chancery court has no subject matter jurisdiction" in such matters.

Next, Hinds County Chancery Court Judge Patricia Wise approved a map backed by Democrats. Moore forwarded it to the Justice Department in December and requested swift approval.

The GOP went to federal court, where three federal judges advanced a map more favorable to Pickering.

This time, Democrats objected. "The plan drawn by the federal courts is a direct assault on states' rights and the state of Mississippi, argued Shows.

Wise was elected in a nonpartisan election from a district that is Democratic. The three federal judges were appointed by Republican presidents.

Now, in another irony, Democrats argue that Bush's Justice Department is turning the law upside down by delaying approval of the plan that maximizes black voting strength in the new district.

Assistant Attorney General Ralph Boyd met recently with several Democratic lawmakers at their request. Department spokesman Dan Nelson said Boyd told them that review of the Mississippi controversy "will be guided solely by existing law and the facts presented."

REV_00140735

Improving race relations morally right, Judge Pickering says

Emily Wagster
The Associated Press State & Local Wire
February 22, 2002, Friday

Reconciling racial differences is in the best interest of Mississippi and America, federal appeals court nominee Charles Pickering Sr. said.

Pickering, 64, was honored Thursday at the Mississippi Capitol during a reunion of former state senators. He was one of the few Republicans in the state Senate when he served from 1972 to 1980. His remarks were the first public response since NAACP leaders last week said the federal judge has been hostile to minorities' rights.

"All of my life, I have seen those who strive to divide," Pickering said. "We must resist the temptation and the allure to divide for political or personal gain."

Some U.S. Senate Democrats and civil rights groups are questioning parts of his record, including his effort to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn.

Abortion rights groups also are trying to block his confirmation.

Pickering, of Laurel has been a federal judge since 1990. He has been nominated by President Bush for a seat on the 5th U.S. Circuit Court of Appeals in New Orleans, which handles cases from Mississippi, Louisiana and Texas.

He has gone through two sets of hearings before the U.S. Senate Judiciary Committee, which could vote on his nomination by mid-March.

Pickering told current and former state lawmakers Thursday he has been promoting racial reconciliation in every speech he has made in the past decade.
"Unless we reach a point where racial differences can be resolved in a positive and constructive manner, the future of our nation and the welfare of our children and grandchildren will be greatly diminished," he said.

Members of the Congressional Black Caucus, including U.S. Rep. Bennie Thompson, D-Miss., also oppose Pickering's confirmation. Thompson said this month that "we could do better" with a different nominee to the appeals court.

Some black state lawmakers said they don't recall Pickering speaking out about racial reconciliation during the civil rights movement of the 1960s and 1970s.

"I respect Bennie's judgment and I respect the NAACP and I respect all the other civil rights organizations that were a part of the struggle at that time and still are," said Sen. David Jordan, D-

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Greenwood. "If they've got problems with the confirmation, I have problems with the confirmation."

Former Sen. Con Maloney of Jackson, who was elected as a Democrat in 1972 and later became a Republican, praised Pickering.

"This great country needs people like Charlie Pickering who, regardless of race, creed or color, will stand up and do what's right," Maloney said.

Pickering also led the Mississippi Baptist Convention from 1983 to 1985. He said Thursday that racial reconciliation "is morally the right thing to do, for God is no respecter of person or race."

The judge also promoted the work of the University of Mississippi's new Institute for Racial Reconciliation. He serves on the institute's board.

Pickering was accompanied Thursday by his wife, Margaret Ann, and three of their four children, including their son, U.S. Rep. Chip Pickering, R-Miss.

Pickering Urges Racial Harmony in Reply to Critics

Emily Wagster
The Commercial Appeal (Memphis, TN)
February 22, 2002 Friday

Embattled federal appeals court nominee Charles Pickering used a speech Thursday at the Mississippi Capitol to call for racial reconciliation.

It was one of his first public statements since NAACP leaders last week accused the federal judge of being hostile to minority rights.

"We must resist the temptation and the allure to divide for political or personal gain," Pickering told a state Senate reunion. Pickering, a federal judge since 1990, has been nominated by President Bush for a seat on the Fifth U.S. Circuit Court of Appeals in New Orleans, which handles cases from Mississippi, Louisiana and Texas.

He has gone through two sets of hearings before the U.S. Senate Judiciary Committee, which could vote on his nomination by mid-March.

Some Senate Democrats and civil rights groups are questioning parts of his record, including his effort to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn. Abortion rights groups also are trying to block his confirmation.

"All of my life, I have seen those who strive to divide," Pickering said as he appealed for efforts to resist divisiveness for political or personal advantage.

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Members of the Congressional Black Caucus, including Rep. Bennie Thompson (D-Miss.), also oppose Pickering's confirmation. Thompson said this month that "we could do better" with a different nominee to the appeals court.

Some black state lawmakers noted that Pickering didn't speak out about racial reconciliation during the civil rights era of the 1960s and 1970s.

"I respect Bennie's judgment and I respect the NAACP" and other civil rights groups, said Sen. David Jordan (D-Greenwood). "If they've got problems with the confirmation, I have problems with the confirmation."

Former state senator Con Maloney of Jackson, who was elected as a Democrat in 1972 and later became a Republican, praised Pickering.

"This great country needs people like Charlie Pickering who, regardless of race, creed or color, will stand up and do what's right," Maloney said.

Pickering was one of the few Republicans in the Legislature when he served in the state Senate from 1972 to 1980.

Pickering also led the Mississippi Baptist Convention from 1983 to 1985. He said Thursday that racial reconciliation "is morally the right thing to do, for God is no respecter of person or race."

Political money eroding trust in judicial system Groups push public funding, merit-based selection of judges

Michelle Mittelstadt
The Dallas Morning News
February 22, 2002, Friday

The gush of political money into state judicial campaigns, much of it from trial lawyers and business interests, is having a corrosive effect on America's courts and the public's perception of their fairness, voters and judges say in two new national surveys.

Nearly two-thirds of voters polled, including nearly 90 percent of black voters, voiced concern that there are two systems of justice - one for well-heeled, powerful interests and one for everybody else. Eighty percent of judges surveyed said they are very concerned about the perception there is inequality in the system.

Three-quarters of voters - and even one-fourth of the judges interviewed - said they believe campaign contributions have at least some influence on judges' decisions. Thirty-eight states including Texas elect judges to their highest court. "When money elects judges, many people will believe that justice is for sale," said North Carolina Court of Appeals Judge James Andrew

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Wynn Jr.

Equating the existing system to letting Major League baseball players contribute money to umpires, Judge Wynn said: "Under that scenario, how can anyone have confidence in the strike calls of an umpire if you know the pitcher contributed $ 10,000 to select that umpire to call the game?"

The poll results come from two surveys commissioned by the Justice at Stake campaign, a national partnership working to reduce the influence of special interests on the judicial system.

A coalition of groups ranging from the American Bar Association and Common Cause to the National Center for State Courts, the partnership is pressing for public financing of judicial races or merit-based selection of judges, improved campaign disclosure laws and contribution limits.

Democratic pollster Stanley Greenberg, who conducted the surveys with Republican pollster Linda DiVall, said the findings exhibit "quite deep discontent with the judicial system - and above all the system of election that may influence the way justice is achieved."

In the 38 states that elect high court judges, donations surged 61 percent in the 2000 elections - to $ 45.6 million - over the campaign cycle two years earlier, the Brennan Center for Justice at the New York University Law School said in a report released last week by Justice at Stake during a Washington news conference.

"Over the past decade, special interests have been spending increasing millions to influence decisions and selection of judges," said Geri Palast, the partnership's executive director. "The cost of judicial campaigns is skyrocketing, and more judges are forced to raise money like politicians."

'Nastier, noisier, costlier'

Judge Wynn and Texas Supreme Court Chief Justice Tom Phillips traveled to Washington to lend their voices to the Justice at Stake campaign.

"Eighty-seven percent of state judges are elected, and those elections are becoming nastier, noisier and costlier," Justice Phillips said, adding that the problem goes well beyond the increasing cost and pressure on candidates to raise money. "It has become a nationwide problem because national special-interest groups are raising and spending money across state lines to influence judicial races in states that they think will have issues important to their own agendas."

The U.S. Chamber of Commerce, which did not intervene in state judicial elections before 2000, spent more than $ 10 million on judicial races in a handful of states that year, the Brennan Center reported.

"Special interests are pouring millions of dollars into state judicial campaigns to serve their interests. And some of them are proudly proclaiming that they are indeed buying justice," said

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American Bar Association president-elect Alfred P. Carlton Jr.

The chief problem, Justice Phillips and others said, is the growing public perception of inequality.
"It is very important not only that justice be done, but that it seems to be done," Justice Phillips said at a news conference with Mr. Carlton and other Justice at Stake campaign supporters.

The survey numbers, he said, "show starkly that while judges are having some doubts about the integrity of their own process, the electorate as a whole is having substantial doubt about whether or not our justice system can deliver the promise of equal justice to all."

The findings are based on a poll of 1,000 registered voters, and a separate mail-in survey completed by 2,428 state judges.

Justice Phillips, who has crusaded for public financing of judicial campaigns in Texas since the early 1980s, called for a "national re-examination" of how judges are selected.

In an interview, he said "some judges - very few" are influenced by political contributions.

"There are a few others who don't think they are, who don't realize they are," he said. For most, he stressed, "I don't think it's a problem."

The entire system, however, is tainted by the perception of influence buying, he said. And the door is opened, he said, to using the contributions as a political tool against judicial candidates.

One of his colleagues, Justice Priscilla Owen, who has been nominated by President Bush for a seat on the 5th U.S. Circuit Court of Appeals, has come under scrutiny for $ 8,600 in contributions she accepted from Enron. A ruling she authored two years later, in an arcane tax case, spared Enron $ 225,000 in taxes.

While that 1996 opinion was unanimous and tracked two earlier U.S. Supreme Court decisions, Senate Judiciary Committee Democrats have vowed to delve into the issue at her confirmation hearing, which is expected to be contentious.

Owen defended

Justice Phillips strongly defended her integrity.

The need to raise campaign contributions casts a negative pall on all judges, said Judge Wynn, the North Carolina appellate judge, acknowledging that most of his funds come from lawyers and business interests.

"While I believe that people who know me know that my commitment to being fair and impartial outweighs any potential influence that a political contribution would have, for those who do not [know me] they cannot be assured that monetary contributions do not influence

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judicial decisions," he said.

One solution, Justice Phillips said, would be public financing of campaigns. He has proposed that Texas bankroll public financing of campaigns by using an existing $ 200 lawyer occupation tax that raises $ 10 million annually. Merit selection of judges, rather than elections, would be another solution, he said.

Getting a public financing plan through the Texas Legislature is an uphill battle, Justice Phillips acknowledged.

"You have some very strong special interests right there on the ground vs. kind of a nebulous public desire for change without an organized focus to mobilize it," he said. "I think the odds are always against us in any single year, but long range it will happen."

Judiciary panel sets vote on Pickering nomination

Audrey Hudson
The Washington Times
February 22, 2002, Friday

The contentious confirmation of District Judge Charles W. Pickering Sr. to the Fifth Circuit Court of Appeals will get its first test next week when the Senate Judiciary Committee votes on the nomination.

"Hopefully, this destructive political process will stop," Rep. Charles W. "Chip" Pickering Jr., Mississippi Republican and son of the embattled nominee said yesterday.

The Senate panel has held two confirmation hearings on Judge Pickering's nomination, the most recent on Feb. 7, when he was grilled on his pro-life stance and civil rights record. Liberal organizations have tried to label Judge Pickering as a racist, but black leaders in Mississippi are vocally backing the nominee as a friend of their community. Supporters hope this will sway public opinion.

The vote is set for next Thursday.

Senate Minority Leader Trent Lott, Mississippi Republican, is Judge Pickering's leading supporter in the Senate.

Mr. Lott's spokesman raised the possibility of repercussions if the judge is not confirmed.

"Senator Lott believes that Mr. Pickering is extremely qualified, and if he is not confirmed, it will not help the relationship and there could be consequences to those actions," Lott spokesman Ron Bonjean said.

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Republicans are concerned that dozens of extraneous questions forwarded to Judge Pickering by Democrats might delay the vote.

And if Democrats on the committee block the contentious nomination, Republicans would be forced to go through cumbersome procedures to force a vote on the Senate floor.

The full Senate can vote on a motion to discharge, which needs only a simple majority to pass, but a single senator can block the motion, triggering other procedures that can leave the nomination in limbo.

One senior Republican aide said there are possible Democrat swing votes on the committee, especially after the recent increased media attention, which has helped bolster support for Judge Pickering's nomination.

"If the vote were held right after the committee hearing, we would have lost, but the Democrats are getting pressure from their own press. We are better off today than we were a week ago," the aide said.

At least two Democrats have publicly stated they would vote for Judge Pickering in a full Senate vote: Zell Miller of Georgia and Ernest F. Hollings of South Carolina. That would give Republicans the votes they need to win in an otherwise party-line vote.

Mr. Hollings dismissed charges that Judge Pickering had ties to segregationists. He told Roll Call, "We've got leaders in the Senate that used to be members of the Klan," an apparent reference to fellow Democratic Sen. Robert C. Byrd of West Virginia, who was a member of the Ku Klux Klan more than 50 years ago.

The younger Mr. Pickering said he hopes this week's congressional recess served as a cooling-off period.

The New York Times on Sunday carried a report from Laurel, Miss., that said: "Here on the streets of his small, largely black hometown, far from the bitterness of partisan agendas and position papers, Charles Pickering is a widely admired figure of a very different present."

Judge Pickering yesterday was given a distinguished-service award by his former state Senate colleagues, and he touched on race relations during his acceptance speech.

"If we are to make progress in promoting racial harmony, first and foremost, we as a society, young and old, black and white, must make a willful, genuine and meaningful commitment to better race relations," he said.

"It will not be easy. It will require a willingness to get involved and take a stand, and if necessary, to pay a price," Judge Pickering said.

D. Brooks Smith Circuit Court Nominee Prepares for Hearing

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Milan Simonich
Pittsburgh Post-Gazette
February 25, 2002 Monday

Inside the capital beltway, U.S. District Judge D. Brooks Smith is such a marked man that he might as well have a bull's-eye on his forehead.

Smith, a Republican from Altoona, has been nominated by President Bush for the 3rd U.S. Circuit Court of Appeals.

A Washington, D.C.-based coalition of 27 environmental, women's, civil rights and disability rights groups will challenge his fitness for the court when his confirmation hearing begins tomorrow before the Senate Judiciary Committee.

Critics of Smith, many aligned with Democratic Party interests, say he has been too quick to dismiss valid lawsuits brought by individuals against corporations, and too eager to travel to conferences paid for by businesses with interests in federal litigation. "Several of his opinions point out to us a judicial philosophy that favors wealthy, powerful parties over ordinary people," said Nan Aron, president of the Alliance for Justice, a national association of public civil rights interests.

But outside Washington's world of partisan politics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record on the federal bench in Western Pennsylvania is being twisted by political opportunists.

His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hard-working and respectful to all.

"He is unpretentious and down-to-earth, a really nice person who is committed to the ideals of equal justice in the courts," said U.S. District Judge Anne E. Thompson, a Democrat on the New Jersey bench.

Pittsburgh lawyer John Bingler, whose own nomination for a federal judgeship was twice blocked by Republican Sen. Rick Santorum, would not comment on the politicking except to say that it should not stand in Smith's way.

"I think he should be confirmed. He's an excellent judge," Bingler said.

Smith, 50, is declining all interview requests while the confirmation process unfolds. He has been through it before, having been appointed to the U.S. District Court in 1988 by President Ronald Reagan.

Just about everybody in Smith's hometown of Tyrone in Blair County expected him to become the kind of man who one day would get a job offer from the president.

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"Even in elementary school you just knew he was going to be something when he grew up," said Tom Rumberger, a classmate of Smith from kindergarten through high school. "He had the total respect of everybody, including the teachers. I don't know how many fourth-graders paid attention to the stock market, but he did.

"For me to say something negative about him, I'd have to make it up."

Smith was the product of a middle-class family. Friends said his father worked in the laboratory of the Tyrone paper mill, the area's major employer during the 1960s.

After high school, Smith went to Franklin & Marshall College in Lancaster, where his interest in a legal career solidified. He graduated from Dickinson School of Law in 1976 and landed a job that same year with the Altoona law firm of Jubelirer, Carothers, Krier & Halpern. One of the principals is Republican state Sen. Bob Jubelirer, who is among the state's most prominent legislators.

Smith rose to managing partner of the firm, prosecuted criminal cases as a part-time assistant in the Blair County district attorney's office and set his sights on becoming a judge.

He succeeded in 1984, receiving an appointment to Blair County Common Pleas Court. Smith won election to the bench the following year, remaining until Reagan selected him for the federal court.

Those skeptical of his performance say they have uncovered evidence that he may not be impartial.

Aron points out that Smith has been reversed 52 times by the 3rd Circuit Court -- a higher rate than that of other Bush nominees for appellate judgeships. She says his performance in cases that were overturned -- some with stiff rebukes -- is at the heart of her concerns about his qualifications.

But the case that critics are likely to focus on during the confirmation process is one that Smith vacated.

It involved John Gardner Black, an investment adviser who was accused of defrauding Pennsylvania school districts of millions of dollars.

Smith presided over the case for a month in 1997, then removed himself. He cited his wife's job as vice president of an Altoona bank, where most of the missing money was held in Black's accounts. By then, critics said, Smith had issued an order that protected the bank from attempts by Black's victims to recover their money.

His detractors say he should have immediately recognized his potential for conflict and withdrawn.

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Smith also has been criticized for appearing too cozy with the business community.

"He has taken more corporate-funded or privately funded judicial trips than just about any other judge in America," said Doug Kendall, executive director of Community Rights Counsel, a law firm in Washington that helps local governments in land-use cases.

Kendall counts a dozen such trips that Smith has made in the last nine years.

"Valid concerns are being raised by our groups about whether judges should be accepting gifts worth thousands of dollars from corporations and foundations that have an interest in federal court litigation," Kendall said.

Others say Smith's overall record is strong and should be examined in the context that he has made tens of thousands of judgments across his career.

"His decisions have not always been in my clients' favor, but they have always been well-reasoned," said Shelly Pagac, a Pittsburgh lawyer and co-president of the Women's Bar Association of Western Pennsylvania. "That's all you can ask of a judge -- to fairly assess your case."

John M. Burkoff, a Democrat who is an associate dean and law professor at the University of Pittsburgh, said Smith deserves a spot on the 3rd Circuit Court because he has proven himself competent and courteous in the most contentious situations.

"We know he is a fairly conservative judge, but that makes no difference so long as he is fair, and that is his reputation," Burkoff said. "He doesn't have an imperious judicial style. He's a decent man on the bench and that counts for a lot."

Aron is not willing to give Smith such a blanket endorsement. She said his record should be examined thoroughly in the confirmation process to determine if he has been as fair as his backers contend.

"The 3rd Circuit is a critically important court," she said. "That means it's critically important that the committee be absolutely sure that D. Brooks Smith would favor impartiality."

Politics plays key role in judicial confirmations

Claude R. Marx
The Associated Press State & Local Wire
February 25, 2002, Monday

When the Senate Judiciary Committee holds a confirmation hearing Tuesday on the nomination of U.S. District Judge D. Brooks Smith, it will be a culmination of a battle that has centered on

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ethics and politics.

Smith, whom President Bush named to a long-vacant spot on the 3rd U.S. Circuit Court of Appeals, has become a political football, according to some of the judge's supporters. The court, which sits in Philadelphia, hears appeals of federal cases from Delaware, New Jersey, Pennsylvania and the Virgin Islands.

Critics see it differently. They say their reservations about Smith's record are based on concerns about his ability to be a good judge and are not motivated by a desire to get back at the Republican Party for its delay of former President Clinton's judicial choices. The major complaint centers on whether Smith should have removed himself earlier from a case involving a the bank where his wife is vice president. The bank was accused of complicity in a scheme to defraud dozens of Pennsylvania schools and municipalities.

Smith also has been criticized for taking trips sponsored by organizations that are hostile to the environment.

"These are legitimate concerns that go to his fitness to be a judge," said Doug Kendall of the Community Rights Counsel, one of the groups that has raised concerns. "The ethics of a nominee matter."

Smith's supporters note that the Justice Department reviewed the allegations and found them baseless and unnecessary for an investigation.

"As outside liberal groups made these accusations, we reviewed the matter and there is no basis to the allegations and has been no investigation," Justice Department spokeswoman Barbara Comstock said.

Leahy's spokesman David Carle said Democrats had treated Republican nominees as fairly as the GOP had treated Clinton's choices and denied there is any effort to block Bush's nominees.

"The chairman is proceeding in good faith and we have confirmed 30 district court nominees and seven appeals court nominees since Democrats took control last year," Carle said. "By contrast, in the last year of the Clinton administration, the Republican-controlled Senate confirmed only 17 nominees."

Sen. Arlen Specter, a Judiciary Committee member, predicted it would "be a battle" to confirm Smith but that is to be expected in a closely divided Senate. The Senate has 50 Democrats, 49 Republicans and one independent.

Duquesne University law professor Ken Gormley, a Democrat who supports Smith's nomination, said that Smith "isn't the person that these groups should make their point with. He is a thoughtful, responsible judge."

"There were no violations of ethics. These are fringe groups doing the bidding of (Judiciary

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Committee Chairman) Pat Leahy and the Democrats. It is reprehensible," said Sen. Rick Santorum, R-Pa.

While Clinton was in office, Santorum and Specter worked out an agreement that allowed the senators to pick one judge for every three picked by Clinton.

That arrangement broke down when Clinton refused to nominate one of the senators' choices for a judgeship in Pittsburgh. Santorum in turn held up the confirmation of other judicial nominees.

Carle said Santorum "did what he could to keep the vacancies open" and therefore has little basis to complain about how the Democrats are handling nominees.

Santorum said he approved people who were selected by the joint committee that he and Specter set up to pick judges and "Clinton picked someone who wasn't on the list."

Gormley contends that until both parties make the process less politically charged, the main victims will be the public.

"It has reached the point where it has threatened the whole process just because special interest groups want to settle a few scores," he said.

Pickering Battles Face Decisions on Two Fronts

Paul Kane
Roll Call
February 25, 2002, Monday

With charges and countercharges flying from Mississippi to Capitol Hill, the father-son duo of U.S. District Judge Charles Pickering and Rep. Chip Pickering (R-Miss.) may face their respective political days of reckoning this week.

In decisions that will have ripple effects throughout all three branches of the federal government, the Pickerings are engaged in racially charged fights, with interest groups on both sides mounting furious campaigns.

Judge Pickering, seeking an elevation to the U.S. 5th Circuit Court of Appeals, has faced a nearly endless volley of charges that he has been racially insensitive as a state politician and on the federal bench. The Senate Judiciary Committee is tentatively slated to vote on Pickering Thursday, with his nomination desperately in need of support from one Democrat on the panel to gain a vote on the Senate floor. Rep. Pickering is facing a redistricting battle that will pit him against Rep. Ronnie Shows (D-Miss.) in the fall, but a legal fight between state and federal courts has not yet resolved the precise shape of the new district. If the Justice Department does not sign off on a state-backed plan by today, a three-judge federal panel has said it will impose

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its own district - which is much more favorable to Chip Pickering because of its lower percentage of voting-age black residents - by tomorrow, in time for the March 1 filing deadline.

While the two cases are seemingly independent of each other, the cast of characters waging fights over the Pickerings' futures are virtually the same, and each side has made vague allegations against the other about linking the two battles for its own advantage.

Rep. Bennie Thompson (D-Miss.), who has been the most outspoken Congressional Black Caucus opponent of Judge Pickering's and the CBC leader in the redistricting fight, went to great lengths to note that the redistricting plan favoring Republicans was designed by three GOP-nominated judges. One of the three, U.S. District Judge Henry Wingate, wrote a letter to the Judiciary Committee in support of Judge Pickering's nomination, and another, District Judge David Bramlett, serves with Wingate and Pickering on the same federal court.

"And now they craft a plan that's more favorable to their colleague's son than the [state-backed plan] that's under review by the Justice Department," Thompson said, adding that it's not too far a stretch to say the judges are seeking retribution for Democratic opposition to the judicial nomination. "It certainly could be made to [look] that way."

Rep. Pickering, who has been the most outspoken supporter on behalf of his father's nomination, has argued just the opposite, that Congressional Democrats are holding up Judge Pickering's nomination as leverage in the redistricting battle.

The nomination fight has become a pivotal one in the Senate, with Minority Leader Trent Lott (R-Miss.) - a friend of Judge Pickering's for 30 years and former boss of Rep. Pickering - vowing retribution if Democrats defeat the judicial nomination. Some Senate Republicans have even talked of holding up all legislative matters through parliamentary tactics, freezing the Senate floor, if the Pickering nomination goes down, according to aides.

But interest groups from the People for the American Way to the NAACP have ratcheted up the pressure on Judiciary Democrats, arguing that Pickering's record as a state Senator and federal judge is replete with insensitivity to civil rights.

According to one aide to a Judiciary Democrat, the anti-Pickering coalition began a fax, phone and e-mail campaign Thursday, with form letters from across Texas, Louisiana and Mississippi accusing Pickering of "insensitive and extreme views."

Despite favorable stories in the national press about home-state support for Pickering among blacks, the coalition is arguing that those supporters only know Pickering as a person, not as a judge. "We're not looking into his heart, we're looking into his record," said Ralph Neas, president of People for the American Way.

Judiciary Chairman Patrick Leahy (D-Vt.) has scheduled a business meeting to vote on nominations Thursday, when it is "likely" Pickering's nomination will be handled, according to David Carle, Leahy's spokesman.

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Aides and observers noted that a decision to hold a vote so quickly after the return from the Presidents' Day recess does not bode well for Pickering's chances. But, Carle stressed, "No final agenda [for the hearing] will be set until closer to Thursday."

By that time, Rep. Pickering's future may already be virtually certain. The Justice Department, under the Voting Rights Act, must approve any redistricting plan in Mississippi, and originally faced a deadline today for approving or rejecting the state-backed plan. But two weeks ago Justice's Civil Rights Division requested more information from Mississippi regarding its plan, which would leave a Pickering-Shows district with 37 percent of the voting-age population being African-American.

Justice thus created a new 60-day deadline for later in the spring, but the filing deadline for candidates continues to be March 1. The three-judge panel, however, has drawn up its own district - 30 percent African-American - and said that redistricting must be in place by the filing deadline, requiring the federal map to be imposed Tuesday if Justice does not clear the state-backed plan by today.

Thompson, Shows and Mississippi Democrats have accused Justice of intentionally delaying its decisions on the state plan to guarantee that the map more favorable to the GOPwould be imposed by the federal court.

If the redistricting fight isn't connected to the judicial battle, it is, at a minimum, dirty politics, they contend. "I have never seen such blatant political manipulation. Instead of enforcing the Voting Rights Act, they are carrying the water of Chip Pickering," said Rob McDuff, a Democratic attorney from Jackson, Miss.

Democrats fear that a district with only a 30 percent African-American voting population may not even be competitive for Shows, whose current district has a population of 43 percent black voters.

Republicans contend that the plan violates the civil rights laws because it was written up by a local judge, an African-American voted into office as an independent from an overwhelmingly Democratic region. Alocal judge should not be drawing up a statewide Congressional map, Republicans contend, an allegation Justice has been inclined to listen to so far. "That's something that has never been done before," said Dan Nelson, a department spokesman.

Nelson said the various political scenarios will not be a factor in the decision, but he couldn't guarantee a decision will come in time to avoid the federal judges' takeover of the redistricting process.

Battle brewing on Capitol Hill over Bush's nomination of Charles Pickering to Federal Appeals Court

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Democrats plan to block Pickering

Joyce Howard Price
The Washington Times
February 25, 2002, Monday

Sen. Dianne Feinstein says she anticipates all 10 Democrats on the Judiciary Committee will oppose the nomination offederal judge Charles Pickering to the 5th Circuit Court of Appeals, in which case the panel will not move it to the Senate floorfor a vote.

"I will not vote for him. ... I believe that there is virtually unanimous opinion on the Democratic side of the JudiciaryCommittee that he will not be confirmed. In other words, he will not be voted out of the Judiciary Committee," the California Democrat said yesterday on NBC's "Meet the Press."

"I've looked rather carefully at his background, and I think you have a person who has very strong right-wing views, bothpolitically and personally. ... I think that people on our side believe that it would be a tremendous mistake to put someone as polarizing in this position now. So I believe he will not be confirmed," she said.

Sen. Sam Brownback of Kansas, one of nine Republicans on the Judiciary Committee, said on the same talk show: "I thinkhe should be confirmed ... this is a good man that people are really trying to smear. ... I think you're going to see a lot of peopletaking actions to try to move that [nomination] on forward some other way." National organizations such as the National Association for the Advancement of Colored people (NAACP) and People forthe American Way are waging a bitter campaign to block the promotion of Judge Pickering to the appeals court. They describethe white Republican, who sits on the U.S. District Court in Hattiesburg, Miss., as being anti-civil rights.

However, blacks who live in Judge Pickering's hometown of Laurel, Miss., deny those charges, citing work he has done to improve both educational and economic opportunities for low-income blacks. Even editorial writers for liberal newspapers such as the New York Times and The Washington Post have expressed concern about the viciousness of the attack on the Pickering
nomination. On "Meet the Press," host Tim Russert read from an editorial in The Washington Post that said Judge Pickering's opponents"have tried to paint him as a barely reconstructive segregationist" and have "plucked a number of unconnected incidents from a long career" to arrive at that portrayal. Asked about that, Mrs. Feinstein said she worries the judge might not be able to put aside his "very strong right-wing views"over the course of a lifetime appointment to the Fifth Circuit. "This is a very sensitive circuit. It represents people of color in a major way," she said.

The California Democrat pointed out that President Bush "did not have a large mandate" in the 2000 election. "There is no mandate to skew the courts to the right. And so I think you are going to see a Judiciary Committee that's really going to be looking for mainstream judges. And those judges that they find outside the mainstream I do not believe will have Democratic support."

Senate Republican leader Trent Lott has said Judge Pickering will be confirmed "or else."

Mr. Brownback said yesterday: "I would hope we wouldn't have a litmus test on judges,"

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either from the "left or the right."

Op/Eds

John Edwards and the Fresh-Face Factor

George F. Will
The Washington Post
February 24, 2002
Editorial

John Edwards, freshman Democratic senator from North Carolina, is thinking of running for president in 2004, which has some of the political cognoscenti wondering, What can he be thinking? Perhaps this: I am from a crucial region, my potential rivals for the nomination are un-ntimidating, and by January 2004 I will have spent as many years in elective office -- five -- as George W. Bush had spent by January 2000.

Edwards is handsome, almost too much so. His boyish features are remarkably unmarked by life, although his life has been scarred by tragedy -- the death, at age 16, of his son in an automobile accident. His prettiness -- "sexiest politician," says People magazine -- may cause suspicions that he is all surface. But such suspicions can be quickly banished. Bush's initial weakness was the suspicion, reinforced by his syntactical fender-benders, that he lacked gravitas. That weakness is, Edwards says, "gone forever." The election of New Yorker Grover Cleveland in 1884 was the first Democratic presidential victory after the Civil War, and Northeasterners provided seven of the Democrats' next eight victories (all but that of Missouri's Truman in 1948) through 1960 (Cleveland again in 1892, New Jersey's Wilson twice, New York's Roosevelt four times and
Massachusetts' Kennedy). However, Democrats have not elected a Northeastern president since Edwards was 7 years old -- Kennedy. The only Northeasterner they have nominated since 1960 was Massachusetts' Michael Dukakis. Memories of 1988 will not help Massachusetts' Sen. John Kerry in 2004.

Since 1960, Democrats have won just four presidential elections, all with candidates from states of the Confederacy -- Johnson from Texas, Carter from Georgia and Clinton from Arkansas. However, after the Clinton experience, the country may not warm to another Southern smoothie. Edwards, a trial lawyer who honed his political skills by connecting with juries (he was one of the first to use focus groups to help with jury selection), is smooth as a Dairy Queen. Coming months will tell if he is more nourishing.

He does understand the importance of Democratic nominees being perceived as sharing some of the South's cultural conservatism. "We can't win elections on cultural issues," he said over lunch recently, "but we sure can lose them on cultural issues." However, Edwards is a lock-step member of the herd of independent minds -- mostly Northern liberals -- currently slandering a judicial nominee from Mississippi, Charles Pickering, who offends Northern liberals, not Mississippi blacks.

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Michael Barone, author of The Almanac of American Politics, says several developments may nudge Democrats rightward. Blacks, the most loyal Democrats, are no longer a growing fraction of the electorate. Neither are the major metropolitan areas. And the places where such favorite Democratic issues as abortion rights and gun control are salient -- California, New Jersey and most major metropolitan areas -- are already solidly Democratic.

Barone notes that if the allocation of electoral votes among the states in 2000 had been what it will be in 2004 on the basis of the 2000 census, Bush would have won not 271 but 278 electoral votes.

Furthermore, a poll done for House Democrats suggests that the "halo" surrounding Bush, and the way the war on terrorism has eclipsed issues usually helpful to Democrats (health care, education, Social Security, the environment), pose problems for Democrats in 22 marginal seats crucial to Democratic hopes of recapturing the House. Such districts are generally more conservative than safe Democratic districts. But Edwards could gain from this. If Democrats fail, for a fourth consecutive time, to recapture the House, their frustration might make them more willing to look at a very fresh face in 2004. But his performance concerning Pickering suggests that although his face is fresh, his philosophy is a stale orthodoxy.

An Unworthy Judicial Nomination

The New York Times
February 24, 2002, Sunday
Editorial

A heated debate is shaping up over Judge Charles Pickering, President Bush's choice to fill a vacancy on the Fifth Circuit Court of Appeals. Mr. Pickering's critics have implied that he is a racist. His supporters have responded that he has warm relations with blacks in his hometown, Laurel, Miss., and that he is being smeared for ideological reasons. We believe that Mr. Pickering bears no animus toward blacks and that charges of racism have no place in this debate. But based on the serious questions raised about his record as a judge, we urge the Senate Judiciary Committee to vote down his nomination.

In his 11 years as a federal trial-court judge, Mr. Pickering has displayed an undue skepticism toward cases involving civil rights. In voting rights cases, he has been troubled by well-settled legal principles like "one person, one vote" and overly concerned about the burdens that Congress, in enacting the Voting Rights Act, placed on local government. In employment discrimination cases, he has been too willing to accept employers' arguments that such suits are based on disgruntlement, rather than valid claims. He has also shown a hostility to awarding attorneys' fees in civil rights cases; without the fees, few such cases could be brought. Mr. Pickering, a friend and ally of Trent Lott, the Mississippi senator and minority leader, is also well outside the mainstream on issues of reproductive choice. He was a driving force behind the Republicans' decision to put a plank in their 1976 party platform calling for an anti-abortion amendment to the Constitution.

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Mr. Pickering's views on civil rights and abortion would be out of place on any Court of Appeals. But his positions would be particularly troubling on the Fifth Circuit, which takes in Mississippi, Louisiana and Texas. It is among the poorest and most heavily minority circuits, and the legislatures in those states have gone as far as any in imposing parental consent and other limitations on women's access to abortion.

The Senate's inquiry into Mr. Pickering's nomination has also uncovered several ethically questionable actions. In 1994, he made contact with the Justice Department, in an extraordinary one-sided communication by a judge, to lobby prosecutors to seek a lighter sentence against one of three men accused of burning a cross in front of, and firing bullets into, the home of a mixed-race couple. Mr. Pickering's critics have also charged that he misled Congress at his last confirmation hearings about contacts he had in the 1970's with the Sovereignty Commission, which worked to preserve segregation in Mississippi. Most recently, Mr. Pickering asked lawyers who appeared in his courtroom to write letters in support of his nomination, a request that creates an appearance of coercion and judicial bias.

In pushing for Mr. Pickering's confirmation, Senate Republicans have disingenuously charged Democrats with moving too slowly on judicial nominations. There are, indeed, an unacceptably high number of vacancies on the federal bench, but many of those openings are the result of Republicans' own calculated inaction on Clinton nominees.

Moreover, the real fault for the slow pace lies with the Bush administration. Judge Pickering is the first of a new wave of more than 50 judicial nominees the Senate is being asked to evaluate. Many of these nominations appear problematic and potentially controversial. If President Bush is committed to speeding up confirmations, he should name men and women who have distinguished records and do not have the hard-right views and ethical problems that Mr. Pickering does.

A confirmation for Pickering; How long must we pay for the sins of our past?

Stan Tiner
Chicago Tribune
February 24, 2002 Sunday

Away down South ". . . in the land of cotton, old times there are not forgotten . . . " True. Those opening words to "Dixie" capture the spirit not only of the Old South, but of many contemporary Southerners as well.

"Forget? Never!" the bumper stickers say.

But the same could be said of folks in Chicago or New York or Los Angeles. When people in those places think of the South, especially in a political or cultural context, those thoughts run through the Civil War and the civil rights years. The mind's eye sees names like Jefferson Davis

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and Bull Connors, and they see George Wallace standing in the schoolhouse door.

As a Southerner who has spent the better part of 30 years editing newspapers in Louisiana, Alabama and Mississippi, I bear witness to the fact racism still lives in these parts.

Does racism still live in Mississippi in 2002? Of course it does.

Sadly, too, it lives elsewhere, in those Northern cities named, and in all the rest of America as well.

This nation still bleeds for the sin of slavery and for the omission of deeds we should have done, and the commission of others
we should not have done in those intervening years.

The river of pain flowing from that original sin sometimes ebbs, and sometimes rises, but it is never far from our consciousness
or our conscience.

Charles Pickering, a 64-year-old federal district judge who hails from Jones County in South Mississippi, can attest to that fact. President Bush has nominated him to a seat on the U.S. Circuit Court of Appeals for the 5th Circuit in New Orleans. For those who oppose him he is a tempting target, for all of those ghosts of Mississippi's past come suddenly to life with the awful thoughts of night riders, nooses and burning crosses.

Judge Pickering's own words and actions four decades ago have become the thread upon which his opposition seeks to deny him confirmation.

Opponents such as the NAACP and the Congressional Black Caucus have cited several concerns with the nominee, but two incidents seem to raise the most serious questions involving his fitness for the appeals court judgeship.

In 1959, while a student a the University of Mississippi Law School, Pickering wrote a Law Review article examining interracial marriage. The article explored how the law should be amended "if it is to serve the purpose that the Legislature undoubtedly intended it to serve."

In 1964, the judge switched to the Republican Party, he later said, because of the "humiliation and embarrassment" he felt had been heaped on Mississippi when President Lyndon Johnson asked the all-white state Democratic delegation to give up two seats to blacks from the "Mississippi Freedom Democratic Party."

Today he regrets those words, utterances that can never be fully removed from the history of one man's life.
Perfection is a high standard. Charles Pickering did not achieve it.

Can any of us say we have?

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But since that long-ago day and those failed utterances, he has been transformed. One cannot say for sure that he has had a change of heart, but of certainty it can be said he has been a changed man.

Since 1964 his public record has been exemplary by any standard.

He has courageously stood up to the Ku Klux Klan's imperial wizard, a stand that contributed to his subsequent defeat as district attorney.

He defended African-Americans in criminal cases that other white attorneys would not handle. He has worked with University of Mississippi Chancellor Robert Khayat to establish an Institute of Racial Reconciliation at Ole Miss and he serves on that board today.

In the cauldron of this firestorm over his nomination, he is supported by the largely black community in his hometown, and by most black leaders in his home state, those who have seen his actions up close for these many years, voices with great moral authority on such matters, including Charles Evers, brother of slain civil rights leader Medgar Evers.

There is a plague of piousness afoot in our land today as politicians preen and pontificate before the cameras of so many committee rooms, preaching and prattling to cater to the public opinion of the moment.
Their sermons often seem more the words of the Pharisees than the thoughts of pure hearts. It is true of those who have cast their stones at Judge Pickering.

You wonder if Abraham Lincoln or Hugo Black were seeking confirmation from these fellows if either could stand the scrutiny of these modern Jacobins.

Lincoln's own dreadful words would lash him like a whip . . . words so awful they could not be printed today without stirring pain and bitterness. Certainly Black, a former Klansman, could not have stood their test.

Yet one--Lincoln--many have said was this country's greatest president; the Great Emancipator--the man who freed the slaves and whose leadership maintained the Union. And the other, Justice Black, became one of the leading civil libertarians in U.S. history, rendering opinions whose breadth and majesty extended the rights of African-Americans to their most expansive state.

The young American nation often embraced the idea of redemption, a sense of charity that extends to those who have a change of heart, and who thereafter act in a way that is consistent with the "new way" they have embraced.

Charles Pickering should be confirmed because he is a good man whose past service is proof that he will render justice fairly to all, and whose personal courage and record have earned him not only the nomination of his president, but the approbation of his countrymen.

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Faulty logic on Pickering

Frank Roso
The Dallas Morning News
February 23, 2002, Saturday

EXCERPT

I have read several columns declaring that Judge Charles Pickering, nominated by President Bush for the federal bench, should not be awarded that post. The reasoning given relies on secondhand information regarding the judge's alleged racial bias while serving in official capacity in his home state. The events took place decades ago and the judge, by most accounts, appears to have become quite an advocate of racial equality.

Apparently, the judge's opponents don't believe "a leopard can change its spots." Such proclamations are amazing coming from a party, the Democrats, that counts among its members a former member of the Ku Klux Klan, Sen. Robert Byrd.

Borking Atticus Finch?

Richard E. Marsh Jr.
The Washington Times
February 23, 2002, Saturday

Clearly, there are many in Laurel, Miss., who regard Judge Charles Pickering as a latter-day Atticus Finch ("Borking Judge Pickering," Editorials, Feb. 21).

Sen. John Edwards, North Carolina Democrat, would have accused Atticus Finch of misconduct for sitting on the jail's front porch and staring down the lynch mob, based on the treatment he gave Judge Pickering.

Nomination trapped by the Jeffords effect

Terry Eastland
The Washington Times
February 22, 2002, Friday

Last May, even as Vermont Sen. James Jeffords of Vermont prepared to leave the Republican Party, President

Bush decided to nominate U.S. District Judge Charles Pickering to the U.S. 5th Circuit Court of Appeals, which encompasses Texas, Louisiana and Mississippi. Judge Pickering has endured not one but two Senate Judiciary Committee
hearings. Today, his nomination is in doubt. And the main reason it is can be traced to Mr.

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Jeffords' departure from the GOP.

Before he left, the two parties had the same number of senators: 50. But the GOP controlled the Senate on the strength of Vice President Dick Cheney's authority to cast tie-breaking votes. Mr. Jeffords' departure - he became an independent - reduced the Republican number to 49. The Democrats thus gained control, an event of predictable consequence for judicial appointments. Most judicial nominees are confirmed regardless of who controls the White House or the Senate. But when, as now, there is divided government - with one party in control of the White House and the other the Senate - more nominations are likely to be contested and defeated than when the same party controls both.

Had Sen. Jeffords remained a Republican, Judge Pickering would have been confirmed long ago. He was unanimously confirmed for the district court in 1990, and the American Bar Association has rated him "well qualified." Even now, if he could be voted out of committee, he would stand a good chance of winning confirmation, since two Democrats - Fritz Hollings and Zell Miller - have voiced their support.

Judge Pickering's problem, however, is how to get from here to there - from the committee, where the Democrats hold a 10-to-9 edge, to the Senate floor.

The Judiciary Committee is territory patrolled by Democrats Patrick Leahy of Vermont (the chairman), Edward Kennedy of Massachusetts, Joseph Biden of Delaware, Herb Kohl and Russell Feingold of Wisconsin, Dianne Feinstein of California, Charles Schumer of New York, Richard Durbin of Illinois, Maria Cantwell of Washington and John Edwards of North Carolina, most of whom are exquisitely attuned to the imprecations of left-wing interest groups, such as People for the American Way and Alliance for Justice. Those groups have pushed hard, and so far successfully, against the nomination.

Judge Pickering himself has the misfortune of having virtually invisible White House support. He was chosen largely out of deference to a senator, his longtime friend Trent Lott, who began pitching for the judge's elevation to the 5th Circuit when he was Senate majority leader.

Had Mr. Lott not lobbied for Judge Pickering's nomination - announced last May 25, one day after Sen. Jeffords fled the GOP - Mr. Bush probably would have selected someone else. Judge Pickering, after all, is a few months away from 65, the age a judge may take senior status. Nor, his ABA rating aside, is he a legal superstar, someone likely to shape the law of the 5th Circuit. "We did this solely to please the then majority leader," one administration official told me. "It's his guy, and it's up to him to get him confirmed."

That task would be far easier were the "then majority leader" still the majority leader.

Rarely making headlines, the Pickering nomination has become a series of stories within a story. Some Democrats are motivated against the nomination because they don't like the way Trent Lott ran the Senate. Others are inclined against the nomination as payback to Republicans for their sometimes slow processing of Clinton judicial nominees, including three for the 5th Circuit

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who failed even to get hearings.

Also, there are Clinton Justice Department lawyers who butted heads with Judge Pickering over their sentencing recommendations in a cross-burning case and are laboring against him behind the scenes. And, of course, there are the liberal interest groups, back after eight years on the sidelines, picking at Judge Pickering as a warm-up for the real battle - over a Bush nominee to the Supreme Court.

Substantively, the case against the nominee is unimpressive. He grew up in segregated Mississippi, but the left's effort to portray him as "insensitive" to civil rights is misguided and unfair: In 1967, as an elected county prosecutor, Mr. Pickering testified against the imperial wizard of the Ku Klux Klan, an act of moral courage that cost him his office. Judge Pickering does hold conservative political views. But, contrary to concerns voiced by the law firm of Leahy, Kennedy, Biden et al., his record on the bench isn't that of a judge who fails to distinguish between his own personal and political views and what the law says.

Of course, none of that may matter, since the Democrats have the power to defeat his nomination. This is the Jeffords effect, and the jury is out on whether Trent Lott can overcome it. He might, but probably not unless Mr. Bush, stingy with expenditures of his considerable political capital, finally decides to join the battle.

Judge Smith's Ruling In No Way Hint at Favoritism Toward Bank in Black

Richard A. Finberg
Pittsburgh Post-Gazette
February 22, 2002 Friday

As lead plaintiffs' counsel in various litigations relating to John Gardner Black, I wanted to share my firsthand views respecting the Post-Gazette's front-page article criticizing Judge D. Brooks Smith's rulings in the Securities and Exchange Commission case against Black (whose scheme resulted in losses of about $70 million to school districts and others) ("Black Case Could Sideswipe Nominee," Feb. 20). Unfortunately, the article is based on a mistaken fact, and therefore is unfairly critical of Judge Smith.

The article implies that Judge Smith should have realized sooner that Mid-State Bank was a potential defendant and therefore should have recused himself sooner due to stock investments in the bank and his wife's job in another area of the bank. The article states incorrectly that Judge Smith ruled in a manner that "would have effectively reduced Mid-State's liability and forced districts with assets elsewhere to subsidize the losses of districts whose assets were held at Mid-State." Respectfully, the Post-Gazette has misconstrued Judge Smith's ruling. Specifically, on Oct. 27, 1997, Judge Smith entered an order approving the joint motion of the trustee (Richard Thornburgh) and the SEC to make an interim distribution of assets over which Black's companies (Devon or FMS) had investment authority. Under this order, those with funds held at banks other than Mid-State Bank, including those with repurchase agreements, would receive up

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to 50 percent of the market value of the funds held in their name, while those with funds in the pooled FMS account at Mid-State Bank would receive 50 percent of their pro rata share of the market value of such pooled funds.

This ruling therefore did not shift losses between Mid-State Bank customers and customers of other banks, but simply allowed all school districts to receive, on an interim basis, one-half of the current actual value of their funds in their respective banks. In fact, because the approximate $70 million collateral shortfall investment was in the FMS account at Mid-State Bank, school districts with deposits at Mid-State Bank would receive only about 25 percent of their investments in the interim distribution, while those with accounts elsewhere would receive 50 percent.

The Oct. 27, 1997, order provided a 10-day period to file objections to the scheduled distribution amounts. Several objections to the specific amounts were filed, as Judge Smith contemplated, and on Dec. 4, 1997, U.S. District Judge Donetta Ambrose entered an order that was virtually identical to Judge Smith's Oct. 27 order, except for technical corrections in the distribution
schedule. In upholding Judge Ambrose's order, the 3rd U.S. Circuit Court of Appeals was not in any sense reversing Judge Smith. The Post-Gazette's conclusions that Judge Smith's ruling "did not stand" and that Judge Ambrose ruled that Judge "Smith had improperly combined the Mid-State and non Mid-State assets" are erroneous.

This firm has since Oct. 15, 1997, played a lead and ongoing role in numerous litigations in state and federal courts (including the bankruptcy court) involving the Black fiasco, and our co-counsel in the Mid-State Bank litigation, Richard R. Nelson II and Cohen & Grigsby, was involved from the outset, immediately after the SEC obtained the asset freeze on Sept. 26, 1997. From this extensive involvement, we are not aware of any impropriety or even appearance of impropriety on the part of Judge Smith, and contrary to the Post-Gazette story, Judge Smith has made no rulings in these proceedings that would even hint that he favored Mid-State Bank.

Wall Street Journal

February 22, 2002, Friday

Letter responds to Feb 8 editorial, Chairman Neas, which criticized House Judiciary Committee chmn Ralph Neas for opposingnomination of Charles Pickering to federal appeals court bench (M)

Nomination deserves legitimate review

Philip Gailey
St. Petersburg Times
February 24, 2002, Sunday

If you wonder why fewer and fewer people are willing to subject themselves to the Senate confirmation process, consider the smear campaign being waged against Charles Pickering Sr. In 1990, the Mississippi lawyer was nominated by President George Bush to be a federal district court judge. His nomination won the unanimous approval of the Senate Judiciary Committee and the full Senate. Now Pickering has been nominated for a seat on the 5th U.S. Circuit Court of Appeals by President George W. Bush, and the opposition is vicious. There are legitimate reasons for why the Senate should deny Pickering this promotion. However, those reasons have little or nothing to do with the ugly campaign being conducted by liberal interest groups bent on destroying his reputation. Pickering is a conservative Republican who has served on the federal district court without particular distinction. He is neither the progressive his defenders say he is nor the Neanderthal his opponents make him out to be. He has a bad habit of injecting his personal views into legal opinions on controversial issues, and some of his opinions suggest that he is not entirely comfortable with key principles of civil rights law, although he generally respects the precedents established by higher courts. His primary qualification appears to be his close friendship with Senate Republican Leader Trent Lott. The president could have come up with a better choice, and the Senate has every right to insist that he do so.

That People for the American Way and other liberal groups have played the race card against Pickering - while denying that they are doing any such thing - only further degrades a judicial confirmation process that has become a nasty arena for advancing political and ideological agendas. The way the process works these days is, interest groups comb through a nominee's work and his personal life looking for anything that can be spinned against him. The press reports on its findings, too, often without bothering to check the facts, and by the time the Senate Judiciary Committee holds a confirmation hearing, the wounded nominee limps into the room on the defensive as senators move in for the kill. Both parties play this game, by the way.

The Washington Post, no advocate for Pickering, expressed its disgust with the ugliness of the campaign against him in a recent editorial: "His critics have focused for the most part not on his qualifications, temperament, approach to judging or on the quality of his judicial work. The judge's opponents, rather, have tried to paint him as a barely reconstructed segregationist. To do so, they have plucked a number of unconnected incidents from a long career: a law review article from 1959 on the state's antimiscegenation statute, written when Judge Pickering was a law student; his incidental contacts as a state legislator in the 1970s with the Mississippi state Sovereignty Commission; and his handling of a cross-burning case in his court a few years back, to cite a few examples. None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate."

Jonathan Groner of the Legal Times did an analysis of Pickering's rulings and talked to African-American leaders in his community and state. He found that Pickering and his record are far more complicated than his liberal critics suggest.

While the national NAACP opposes Pickering's nomination, many prominent blacks in Mississippi support it. They say they do not recognize the man Washington interest groups are

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accusing of "insensitivity" (no one uses the word "racist") on civil rights. The Charles Pickering they know is the young lawyer who, in the early 1960s, helped send a Ku Klux Klan leader to prison even though it cost him re-election as a local prosecutor. He is the federal judge who has worked with local civic leaders to keep young African-Americans out of the criminal justice system. Long before he became a federal judge, he was involved in racial reconciliation efforts, and from the bench he once rebuked an attorney who brought up a plaintiff's homosexuality during a fraud trial. "Homosexuals are as much entitled to be protected from fraud as are any other human beings," the judge told the attorney.

One of the African-Americans in Mississippi who has come to Pickering's defense is James Charles Evers, the brother of the slain civil rights leader Medgar Evers. Writing in the Wall Street Journal, Evers said of Pickering's civil rights record: "He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful."

His opponents say Pickering is hostile to employment discrimination claims. In one case they cite, two blacks who owned a grocery store sued a supplier under civil rights laws for cutting off their credit. Pickering ruled in favor of the supplier, finding no evidence of discrimination. His critics say they have less problem with his decision in this case than with the "harsh" language Pickering used in his opinion. He wrote: "When an adverse action is taken affecting one covered by (civil rights) laws, there is a tendency on the part of the person affected to spontaneously react that discrimination caused the action. All of us have difficulty accepting the fact that we sometimes create our own problems."

The Legal Times said that what the judge's liberal critics fail to mention was that "the supplier canceled the credit terms after both store owners were arrested and indicted for allegedly threatening to murder a federal official. (They were later acquitted.)"
The Pickering nomination is the first major showdown between the president and Senate Democrats over the shape of the federal judiciary. If the Senate rejects the nomination, it should do so for legitimate reasons - and there are some - and not on the basis of a campaign of distortion and innuendo being waged by liberal interest groups. Pickering is not entitled to a seat on the appeals court, but he is entitled to a fair hearing.

Transcripts/Members of Congress

NBC News Transcripts
Meet the Press
February 24, 2002 Sunday

Senators Sam Brownback, Republican of Kansas, and Dianne Feinstein, Democrat of California, discuss the nomination of Judge Charles Pickering to the Supreme Court, and the issue of cloning

MR. RUSSERT: We are back. Senators are welcome. Let me move first to the appointment, the

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nomination of Charles Pickering, a federal judge to the Fifth Circuit Court of Appeals, a very important judiciary branch in our country. Senator Feinstein, you're on the Judiciary Committee. Will you vote for Charles Pickering?

SEN. DIANNE FEINSTEIN, (D-Calif.): No, I will not vote for him. I did have the privilege of chairing his hearing, his second hearing, which was a very full hearing. I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed. In other words, he will not voted out of the Judiciary Committee.

MR. RUSSERT: So, all 10 Democrats will oppose him? SEN. FEINSTEIN: I believe so. Now, you know, obviously, that can change, and I think that this is a recommended appointment that has just been enormously polarizing. And, you know, there isn't a--it's very hard because, obviously, he's a sitting federal court judge. But the views of people are really enormous. It's a polarized community out there. You have every chapter--106 chapters in Mississippi--of the NAACP opposing him, including, his own chapter in Laurel, Mississippi. I think he's had a record of involving some of his personal views and his opinions, and, of course, when he was in public office, he took extraordinary right-wing positions on issues. This is a very sensitive circuit. It represents people of color in a major way. It used to be sort of a breakthrough circuit, in terms of securing rights for people, and it's become much, much more conservative.

I think that people on our side believe that it would be a tremendous mistake to put someone as polarizing in this position now. So I believe he will not be confirmed.

MR. RUSSERT: Senator Brownback.

SEN. SAM BROWNBACK, (R-Kan.): Well, I think he should be confirmed. And I'd sure like us to start getting at least a few judges confirmed. There are over 100 judicial positions, federal district courts, circuit court judge positions that are open in the country today. Judges have been confirmed at a rate of less than 40 percent during the Clinton or first Bush--term Bush One, if you will. We need to get some judges out there and confirmed in positions, if for no other reason than for homeland security, so we can deal with judicial issues coming forward. And they've been continually held on up. Judge Pickering...

MR. RUSSERT: But both parties did that. When President Clinton...

SEN. FEINSTEIN: That's correct. That's correct.

MR. RUSSERT: ...from '95 to 2000, 35 percent of Clinton's appointments to the court of appeals were blocked.

SEN. FEINSTEIN: And then 65 percent the next year.

SEN. BROWNBACK: If you're looking, though, at a comparable period of time, under George Bush, the president now, Bush 43rd, as it was during President Clinton's first years in office, you had a far greater number of people confirmed at that period of time. And plus, the Democrats at

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that point in time, which--we used to point this out greatly about the number of positions that are open, 100 federal district court and circuit court judge positions that are open. That really is untenable, and it shouldn't continue.

MR. RUSSERT: As for Judge Pickering, let me just ask one question on that that I found quite striking. He has been reversed 26 times.

SEN. BROWNBACK: Out of about 4,009 cases.

MR. RUSSERT: But what's important here is 15 of those cases he was reversed because he did not accept well-settled principles of law. Judge Edith Brown Clement, who's also in that district, who was put on the bench, extremely conservative, but not opposed, was never reversed on issues of well-settled principles of law. Does that bother you?

SEN. BROWNBACK: And--well, how many total cases, Tim? I mean, I've practiced law. How many total cases? I mean, I think we have about 4,000 cases that you're talking about.

MR. RUSSERT: But well-settled principle law is...

SEN. BROWNBACK: Well...

MR. RUSSERT: ...as a lawyer, as you well know, is very, very important because...

SEN. BROWNBACK: And it's also in the view of the beholder, well-settled principles of law. I mean...

MR. RUSSERT: But a denial of legal precedent is an indication that someone is not willing to accept legal precedent, which suggests, or indicates, perhaps, their personal opinions are being woven in.

SEN. BROWNBACK: Well, out of what percentage is he not willing to accept? And, plus, if I could submit to you, as a lawyer, the issues of well-settled principles of law is open to definition by lawyers, that one would say this is well-settled, others would not. You know, about 26 cases out of 4,000--I would say that the man is very willing to accept well-settled principled cases of law. Plus, you might recall that we went through some of these same sort of arguments with Attorney General John Ashcroft. People said, "OK, he's going to insert his own personal opinions in these cases." He testified in committee under oath, "I'm not going to do that. This is what the law is. I will enforce the law even if my personal opinion is to differ on that." And I think it's very clear that what you have here is an honorable man, son in the United States Congress, as well, been sitting on the federal bench for some period of time--this is a good man that people are really trying to smear in a way that is not becoming of the institution, and yet it seems to be the way that is evolving around here.

MR. RUSSERT: If the Judiciary Committee rejects Judge Pickering by a vote of 10-to-9, what happens?

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SEN. BROWNBACK: I think you're going to see a lot of people taking actions to try to move that on forward some other way, to see if we can bring pressure to bear on the committee, and to try to press the committee to start getting more judicial nominations in total, moving on through the process. And we can do it.

MR. RUSSERT: Senator Lott has said, "Pickering will be confirmed or else." What does "or else" mean?

SEN. BROWNBACK: I can't speak for Trent, what he's saying on that. But the Senate is virtually evenly divided, and we really do need to be working together to be able to get things on through because we've got a lot of major legislation, passed the House, been held up in the Senate.

MR. RUSSERT: Senator Feinstein, let me pick up on a point that Senator Brownback raised and that is the destruction of judicial nominees. This is what The Washington Post had to say. They said there are a lot of grounds to oppose Pickering. But "...opposing a nominee should not mean destroying him. And the attack on Judge Pickering has become an ugly affair. His critics have focused for the most part not on his qualifications, temperament, approach to judging or on the quality of his judicial work. The judge's opponents, rather, have tried to paint him as a barely reconstructed segregationist. To do so, they have plucked a number of unconnected incidents from a long career...None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate."

Reaction?

SEN. FEINSTEIN: Well, my reaction is this, and I've looked rather carefully at his background, and I think you have a person who has very strong right-wing views, both politically and personally. The question always comes: Can you put those views entirely aside? This is a lifetime appointment. If you can't be assured that the individual is really going to put those views aside,
what happens is two years into the term those views creep forward again. And, generally, when you say, "Well, we're going to follow precedent," there are enough edges around precedent that an individual's views do come into it. That's my finding after nearly a decade on that committee.

I think there's another thing. President Bush did not have a large mandate. There is no mandate, in my view, to skew the courts to the right. And so I think you're going to see a Judiciary Committee that's really going to be looking for mainstream judges, and those judges that they find outside of the mainstream I do not believe will have Democratic support.

MR. RUSSERT: If the Judiciary Committee votes against Pickering 10-to-9, is the nomination dead?

SEN. FEINSTEIN: I believe so.

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MR. RUSSERT: There's no way to bring it to the floor?

SEN. FEINSTEIN: No. I do not believe there is, unless there's a vote to bring it to the floor. If the committee wants to keep it in the committee, the committee can do so. If there is a separate vote to bring it to the floor, then it will go to the floor.

MR. RUSSERT: Would that happen, a vote would go to the floor without recommendation or a negative recommendation?

SEN. FEINSTEIN: Well, I can't say for sure. I don't know. We have only, you know, discussed this informally amongst ourselves, so I can't answer that.

SEN. BROWNBACK: And I would hope we wouldn't have litmus tests on judges. It used to be that, OK, Ronald Reagan was accused of a litmus test on judge. We shouldn't have a litmus test from the left or the right on judges. And I think it'd be fair to say that that should be a standard for both sides.

MR. RUSSERT: Let me turn to another...

SEN. FEINSTEIN: Let me just say one thing 'cause I can't let that one go. This isn't a federal district court. This is an appellate court. For most people, the appellate courts are very much like the Supreme Court. They decide the cases. There are big cases to be decided. There are points that many of us feel passionately about, one of them being Roe vs. Wade. Sam and I would disagree on Roe vs. Wade. I don't want to see Roe overturned. I'm in a position where I'm going to be very careful that a judge that I vote for to go to a circuit court will not do that. And I think I have every right to do so. It's not a question of a litmus test. It's a question of following established law and keeping that law intact.

SEN. BROWNBACK: I think that was defined as a litmus test under Ronald Reagan what Senator Feinstein just articulated.

MR. RUSSERT: We want to come back and talk about cloning. We're going to take a quick break. Another complicated controversial issue, cloning, either reproductive or therapeutic, right after this.

***THE BELTWAY BOYS**: Fox News*
February 23, 2002 Saturday

* EXCERPT*

Fred Barnes, Mort Kondracke

KONDRACKE: Welcome back.

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What's the "Buzz," Fred?

BARNES: You know, Senate Democrats on the Judiciary Committee are beginning to take heat for their really unfair treatment of Bush judicial nominee Charles Pickering. I mean, they're getting heat in "The Washington Post," from you in "Roll Call." There's a way out for them that's getting some attention, that is, vote against the nomination but send it to the floor for a full vote.

If that happens, he has a chance of winning confirmation.

KONDRACKE: Senator Cole and a, and a, and a White House push will be necessary.

Judge Charles Pickering pleads case to Democratic Judiciary Committee for spot as judge; the NAACP and other minority groups protest his appointment

ABC News
World News Tonight Sunday
February 24, 2002 Sunday

CAROLE SIMPSON; anchor

This Thursday, the Senate Judiciary Committee is expected to vote on a fiercely contested judicial nomination. The battle began when President Bush tapped Mississippi federal judge Charles Pickering for a seat on the fifth circuit federal appeals court. At issue, Pickering's record on civil rights and abortion.

Judge CHARLES PICKERING: The charges that have been made against me have been hurtful, and they have been painful. SIMPSON: (VO) This was 64-year-old judge Pickering fighting for his troubled nomination before the Democratic-controlled Senate Judiciary Committee.

Judge PICKERING: I have a record of standing up for equal protection, respecting the rule of law.

SIMPSON: (VO) But critics of the conservative Republican strongly disagree. Among them, the NAACP.

Mr. KWEISI MFUME (NAACP President): Our challenge is not against him the individual; it's against his record which has demonstrated over the years an insensitivity and a lack of tolerance, particularly on civil rights issues.

SIMPSON: (VO) His opponents point to a 1959 article Pickering wrote in law school against interracial marriage. As a state legislator in the '70s, they say he supported funding for the Mississippi Sovereignty Commission, an avowed segregationist organization. And his critics say as recently as 1994, Judge Pickering engaged in extraordinary lobbying to try to get a reduced

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sentence for a young man who participated in a cross burning. The White House says the judge is being unfairly maligned.

Mr. ALBERTO GONZALES (White House Counsel): If you go to the people that know him best, the people in his home town, including the established black community, they firmly support Judge Pickering.

SIMPSON: (VO) Judge Pickering was born and raised in Laurel, Mississippi, population 18,000. The town was hot bed of Ku Klux Klan activities in the 1950s and '60s. It made international headlines when the Klan firebombed the home of a local civil rights leader. Vernon Dahmer was killed in that blaze. A local Klan leader, Sam Bowers, was tried in the case, and Judge Pickering, then a local prosecutor, testified against him. Today in Laurel, people still respect Pickering for what he did.

Mr. THADDEUS EDMONSON (Laurel City Council President): This man has put his own life on the line against the Ku Klux Klan in this city.

SIMPSON: How?

Mr. EDMONSON: By testifying against the imperial wizard of the state of Mississippi, which in 1967, '69, was not a popular thing to do.

SIMPSON: Judge Pickering's black supporters say that the judge is part of the new South. He has changed over the past 40 years, just as the town of Laurel has changed.

Ms. ANNE CLAYTON (Laurel City Council): Just because of the past, what has happened in a person's past, I don't think we should condemn them and feel like they cannot ever change.

Mr. LARRY THOMAS (Pharmacist): I still view Charles Pickering as a--a right-wing Republican. But then on the other hand, I saw him open his arms to try to embrace change palatable to both races in south Mississippi.

SIMPSON: (VO) But for a coalition of 50 civil rights, human rights and women's groups, that is not enough.

Mr. MFUME: While there are some people on the ground in Mississippi who say, well, perhaps he's changed, perhaps he has, but I don't think we have the--the wherewithal and the freedom to run that risk because once the judge is there, there's nothing that can remove him except death.

SIMPSON: Sources on the Judiciary Committee staff say there is a chance that Judge Pickering's nomination may not make it out of the Democratic-led Judiciary Committee. Its members may seek payback for Republicans' failure to approve some of President Clinton's nominees.

"Commercial Break"

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Battle brewing on Capitol Hill over Bush's nomination of Charles Pickering to Federal Appeals Court

NBC News Transcripts
NBC Nightly News
February 24, 2002 Sunday

ANCHORS: JOHN SEIGENTHALER

REPORTERS: JOE JOHNS

JOHN SEIGENTHALER, anchor:

On Capitol Hill, a battle is brewing over the confirmation of the president's nominee to the Federal Court of Appeals. NBC's Joe Johns reports.

JOE JOHNS reporting:

Judge Charles Pickering of Mississippi faced two confirmation hearings before the Senate Judiciary Committee, but his Federal Appeals Court nomination is in trouble. Senator DIANNE FEINSTEIN (Democrat, California): It would be a tremendous mistake to put someone as polarizing in this position now.

JOHNS: More opposition coming from powerful groups including the National Organization for Women.

Ms. KIM GADNY (National Organization for Women): He has an extreme bias towards the enforcement of women's rights laws and particularly civil rights laws.

JOHNS: The NAACP is opposed, too, even though some blacks in Pickering's home state support him.
Reverend GEORGE BARNES (Mississippi Minister): I do not hold people accountable for something that happened 25 or 30 years ago.

JOHNS: The judge, as recently as last Thursday, calling for racial reconciliation.

Unidentified Man: I look forward to the day, hopefully during my lifetime, when all Mississippians, regardless of race, can get around the table and discuss our differences in a constructive way.

JOHNS: The 12 regional courts of appeals get the final word on the vast majority of important federal cases. There are 29 vacancies. The Senate has voted on seven appeals court judgeships,

REV_00140768

but Pickering is the biggest confrontation so far.

Senator SAM BROWNBACK (Republican, Kansas): This is a good man that--that people are really trying to smear in a--in a way that is--that is not becoming of the institution.

JOHNS: Some observers call this a dress rehearsal for future battles between the White House and Senate Democrats over the Supreme Court.

Mr. PAUL ROTHSTEIN (Georgetown University Law School): It's a warning sh--shot across the bow of the ship of state led by President Bush that, 'Please do not give us conservative Supreme Court nominees.'

JOHNS: A vote on the nomination could come later this week, setting down a new marker between the White House and the Senate over federal judges. Joe Johns, NBC News, Washington.

(Commercial Break)

Interest Groups/Press Releases

None

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General Judicial Articles

The Borking of Pickering

The Weekly Standard
Monday, February 25, 2002

As reported in these pages last week, Judiciary Committee Democrats are going hard and heavy after U.S. District Judge Charles Pickering, selected by President Bush for the Fifth U.S. Circuit Court of Appeals. We've seen the law firm of Biden, Kennedy, and Leahy engaged before in various forms of borking. But the Pickering hearings have introduced the nation to a new borker: John Edwards of North Carolina. It fell -- or perhaps it was assigned -- to Edwards, who made millions as a plaintiff's lawyer, to cross-examine Judge Pickering about his handling of a case from 1994. Working from Clinton-era Justice Department documents he had in his possession but which Pickering had not seen (how about that for due process, Your Honor?), Edwards accused Pickering of conduct violating the Code of Judicial Ethics.

Now that the documents have been made available to everyone, including the judge, it appears at the least that there is another side to the story. Reviewing the issues at the request of Senate Republicans, Michael Krauss, professor of legal ethics at George Mason School of Law, writes, "One is hard pressed to see any violation of Judge Pickering's ethical duties here." And: "[The] documents reveal nothing more than a determined effort by Judge Pickering to discharge, faithfully and competently, his judicial duties under the Constitution."

Drawing on the same documents, Edwards also said Pickering had told "the government lawyers [in the case] that you would on your own motion order a new trial." Pickering denied saying that. And the documents back him up. The pertinent one -- a Nov. 29, 1994, memo by prosecutor Brad Berry -- said that Pickering had asked whether the Justice Department would agree not to oppose a motion for a new trial on a certain charge. But Berry's memo doesn't say that Pickering said he would call for this trial "on your own motion."

Edwards, who has presidential aspirations, may not have established himself as the equal of the established borkers in his party, but he shows promise. And he certainly has the character. We still remember those ads when he ran for the Senate in 1998, which suggested he was born in North Carolina though in fact he came into the world in Seneca, South Carolina. In case you wonder, there's documentation for that.

Campaign-finance foe says bill will pass

Paul Leavitt

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USA TODAY
February 25, 2002, Monday

EXCERPT
Senate panel to vote this week on judge

Sen. Dianne Feinstein, D-Calif., said the Senate Judiciary Committee likely will not approve the nomination of Charles Pickering to the 5th U.S. Circuit Court of Appeals in New Orleans. A vote is expected Wednesday. He has been a federal judge since 1990. Some Democrats, civil rights activists and abortion-rights proponents oppose him. Republicans say that he is rated well-qualified by the American Bar Association and that the opposition is politically motivated.

Mississippi redistricting almost over - or is it?

Emily Wagster
The Associated Press State & Local Wire
February 24, 2002, Sunday,

It's not a sure bet Mississippi's congressional redistricting battle will end Monday despite a deadline by federal judges, officials say.

Democrats are appealing to the U.S. Supreme Court to implement a plan approved by state court. It's uncertain when that appeal will be resolved and one of the congressmen with the most at stake in redistricting says he's not ready to accept a plan drawn by Republican-appointed judges.

"We're not going to sit there and let three appointed federal judges sit there and say what the district is going to be," U.S. Rep. Ronnie Shows, D-Miss., said late last week. U.S. Rep. Chip Pickering, R-Miss., who will face Shows in a new central district this election season, believes the federal judges' redistricting plan is fair and should be used.

"I think that will be it," Pickering said last week.

Mississippi is losing one of its five congressional seats because of slow population growth in the 1990s.

The federal judges said if the U.S. Justice Department fails to approve a state court redistricting plan by the close of business Monday, they'll order that their own map be used in this year's congressional races.

The federal judges' order could come early Tuesday. Congressional candidates face a Friday qualifying deadline.

The federal plan is thought to favor Republicans, while the state plan is thought to favor Democrats.

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Both national parties are watching the outcome of Mississippi redistricting because the battle could help determine the balance of partisan power on Capitol Hill.

The Justice Department since late December has been examining a plan approved by Hinds County Chancery Judge Patricia Wise. The Justice Department is trying to determine if the plan is fair to minorities.

The department on Feb. 14 asked state officials for more information about how chancery judges are elected. Responses were submitted last Tuesday, giving the department another 60 days to consider the state court plan. That pushed the department's deadline well past the congressional qualifying date.

Fifth U.S. Circuit Court of Appeals Judge E. Grady Jolly of Jackson and U.S. District Judges David Bramlette of Natchez and Henry T. Wingate of Jackson have drawn a separate redistricting plan that does not need Justice Department clearance.

Both plans toss Pickering and Shows, the state's junior congressmen, into a new central district.

Pickering now represents east central Mississippi and Shows represents the southwest.

The key difference in the state and federal plans is the composition of the new central district.

The state court plan's central district has a higher concentration of black voters, who traditionally favor Democrats. The federal plan's central district includes heavily Republican precincts in suburban Jackson.

Shows said it's ironic that people who traditionally push for states' rights are now supporting the federal judges' plan.

Chancery judges are chosen in nonpartisan elections, but Wise comes from a heavily Democratic district. Opponents to her plan say a judge from a single district should not decide a plan for the entire state.

Shows and other Democrats also accuse the Bush administration Justice Department of delaying action on the state court plan to help Republicans. "They're stalling because they want to ride this thing out," Shows said.

Pickering said "it's simply not true" that the Justice Department is being politicized. He said that Republicans are still appealing the chancery court plan to the state Supreme Court.

"There is no precedent in the history of the Voting Rights Act or the Justice Department of ever approving a plan that is still subject to appeal," Pickering said.

Democrats also accused Republicans of dragging their feet on filing an appeal to the state

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Supreme Court. GOP lawyers waited almost until the end of the 30-day filing period to submit their appeal.

Pickering says Democrats are trying to use his father's federal appeals court nomination as leverage in congressional redistricting.

President Bush has nominated U.S. District Judge Charles Pickering Sr. of Laurel to a seat on the 5th U.S. Circuit Court of Appeals in New Orleans. The judge has had two confirmation hearings before the Senate Judiciary Committee.

The NAACP opposes his nomination, saying the elder Pickering is hostile to minority rights. The judge has defended his civil rights record and last week gave a speech at the Mississippi Capitol calling for racial reconciliation.

Several prominent Democrats, including members of the Congressional Black Caucus, also oppose the judge's confirmation.

"I think that fact that redistricting and his confirmation came at the same time ... creates an opportunity, unfortunately, to politicize his confirmation," Chip Pickering said last week.

Shows said he thinks the Pickering camp is trying to use the confirmation difficulties to its own political advantage. "They're trying to make like they're the ones being picked on and, hell, they've got the judges and the Justice Department on their side," Shows said.

He said that two of the three federal judges involved in redistricting serve on U.S. District Court with Judge Pickering and one serves on the court he hopes to join.

Shows has been criticized by Mississippi Republican Chairman Jim Herring and others for not speaking out in support of Judge Pickering's nomination. "It's not relevant," Shows said of the criticism. "I don't even have a vote. It's in the Senate."

Daschle says Judiciary Committee to vote on Pickering this week

The Associated Press State & Local Wire
February 24, 2002, Sunday
Senate Majority Leader Tom Daschle said the Judiciary Committee will vote this week on the nomination of Mississippi Judge Charles Pickering to a federal appeals court.

"If the vote fails in the committee, of course, it dies in the committee. There is no other action required," said Daschle, D-S.D., who was appearing on ABC's 'This Week' on Sunday. Daschle said he believed the committee would take up Pickering's nomination on Wednesday.

Pickering, of Laurel has been a federal judge since 1990. He has been nominated by President Bush for a seat on the 5th U.S. Circuit Court of Appeals in New Orleans, which handles cases

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from Mississippi, Louisiana and Texas.

He has gone through two sets of hearings before the U.S. Senate Judiciary Committee.

Some U.S. Senate Democrats and civil rights groups are questioning parts of his record, including his effort to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn.

Abortion rights groups also are trying to block his confirmation.

Daschle was asked if Pickering's nomination would be confirmed by the Senate if it passes the Judiciary Committee.

"I don't know, I have not talked to my colleagues or know just what the vote will be at this point," he said. "But .... if the nomination comes to the floor, I have every expectation we'll take it up and we'll have that debate."

Sen. Diane Feinstein, D-Calif., speaking on NBC's 'Meet the Press,' said she doubts the nomination will get out of the Judiciary Committee.

"I believe that there is virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed. In other words, he will not be voted out of the Judiciary Committee," she said.

Pickering has strong support from Senate Minority Leader Trent Lott and other state Republicans, who say opposition to the judge is politically motivated. Pickering is rated as well qualified by the American Bar Association.

Sen. Sam Brownback, R-Kan., who also appeared on 'Meet the Press,' said he supports Pickering.

"We need to get some judges out there and confirmed in positions, if for no other reason, for homeland security, so we can deal with judicial issues coming on forward," he said.

Race, politics, history: Mississippi redistricting fight has it all

David Espo
The Associated Press State & Local Wire
February 22, 2002, Friday

Republicans and Democrats are battling in state and federal courts over a single Mississippi House district, a dispute that blends race, irony and politics and stirs memories of the presidential recount of 2000.

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"This is Florida at the congressional level," says Republican Rep. Charles (Chip) Pickering, Jr., thrown together with Democratic Rep. Ronnie Shows in a new district with unsettled boundaries.

Democrats charge President Bush's Justice Department with trying to dilute the voting strength of Mississippi blacks, much as they charged Bush's campaign with disenfranchising blacks in Florida.

"Instead of enforcing the voting rights act, they are carrying the water of Chip Pickering and the Republican Party," alleges Rob McDuff, a lawyer in the case. Agency officials and other Republicans dispute the charge. "One judge from one county shouldn't draw the plan for the entire state of Mississippi," Henry Barbour, Pickering's campaign manager, said in an interview. "This ought to be about all 2.8 million people in Mississippi."

As was the case in Florida, Republicans and Democrats filed suit in different courts. And as a result, there are two court-drawn redistricting plans.

And in an irony acknowledged by all sides, one argument central to the civil rights struggle of a generation ago has been reversed. Democrats accuse Republicans of trampling "states' rights" by going into federal court to deny blacks their rights.

One redistricting plan, with 37.5 percent black voting age population, was issued by a local judge, is backed by Democrats and - to their anger- has been awaiting approval under the Voting Rights Act at the Justice Department for more than six weeks.

Under the law, the agency must make sure there is no backsliding - the legal term is "retrogression" - when new congressional district maps are drawn.

In this case, though, lawyers raised questions about approving a statewide plan drawn up by a local judge.

The other plan, supported by Republicans, includes 30 percent black voting age population in the contested district. It was advanced by federal judges who say they will intervene if the Justice Department hasn't acted by Monday on the rival map.
Democrats on Wednesday asked the U.S. Supreme Court to step in, with a March 1 filing deadline approaching for the two men at the center of the dispute.

Pickering, 38, is a conservative third-term lawmaker and protege of Senate Republican Leader Trent Lott. In one of numerous ironies in the controversy, his father, U.S. District Judge Charles Pickering, is at the center of another racially charged dispute. Nominated by Bush for a seat on the appeals court, he faces opposition from Democrats and national civil rights groups.

Shows, 55, won his seat in 1998. A conservative Democrat, he parts company on several issues with more liberal national party leaders. In both his campaigns, he suggested he might not vote for Democratic leader Dick Gephardt as speaker, although he did in the end.

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Both sides speak of possible connections between the confirmation battle and the redistricting controversy.

Democratic Rep. Bennie Thompson, Mississippi's only black lawmaker, said Thursday that one of the federal judges involved in the court case had written a letter of support for Pickering's father.

Rep. Pickering said some Democrats were linking the two issues, holding his father's confirmation hostage while the redistricting case continues.

The presence of two incumbents on the ballot guarantees both parties will focus on the contest in their struggle for control of the House this fall.

But first comes the current dispute, rooted in national population trends requiring Mississippi to give up one of its five House seats. The Democratic-controlled Legislature deadlocked in its efforts to draw new districts.

Democratic lawyers then won the early rounds in court.

The state Supreme Court ruled that a local judge had authority over statewide redistricting, despite an assertion from Democratic Attorney General Mike Moore that "under current precedent ... a chancery court has no subject matter jurisdiction" in such matters.

Next, Hinds County Chancery Court Judge Patricia Wise approved a map backed by Democrats. Moore forwarded it to the Justice Department in December and requested swift approval.

The GOP went to federal court, where three federal judges advanced a map more favorable to Pickering.

This time, Democrats objected. "The plan drawn by the federal courts is a direct assault on states' rights and the state of Mississippi, argued Shows.

Wise was elected in a nonpartisan election from a district that is Democratic. The three federal judges were appointed by Republican presidents.

Now, in another irony, Democrats argue that Bush's Justice Department is turning the law upside down by delaying approval of the plan that maximizes black voting strength in the new district.

Assistant Attorney General Ralph Boyd met recently with several Democratic lawmakers at their request. Department spokesman Dan Nelson said Boyd told them that review of the Mississippi controversy "will be guided solely by existing law and the facts presented."

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Improving race relations morally right, Judge Pickering says

Emily Wagster
The Associated Press State & Local Wire
February 22, 2002, Friday

Reconciling racial differences is in the best interest of Mississippi and America, federal appeals court nominee Charles Pickering Sr. said.

Pickering, 64, was honored Thursday at the Mississippi Capitol during a reunion of former state senators. He was one of the few Republicans in the state Senate when he served from 1972 to 1980. His remarks were the first public response since NAACP leaders last week said the federal judge has been hostile to minorities' rights.

"All of my life, I have seen those who strive to divide," Pickering said. "We must resist the temptation and the allure to divide for political or personal gain."

Some U.S. Senate Democrats and civil rights groups are questioning parts of his record, including his effort to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn.

Abortion rights groups also are trying to block his confirmation.

Pickering, of Laurel has been a federal judge since 1990. He has been nominated by President Bush for a seat on the 5th U.S. Circuit Court of Appeals in New Orleans, which handles cases from Mississippi, Louisiana and Texas.

He has gone through two sets of hearings before the U.S. Senate Judiciary Committee, which could vote on his nomination by mid-March.

Pickering told current and former state lawmakers Thursday he has been promoting racial reconciliation in every speech he has made in the past decade.
"Unless we reach a point where racial differences can be resolved in a positive and constructive manner, the future of our nation and the welfare of our children and grandchildren will be greatly diminished," he said.

Members of the Congressional Black Caucus, including U.S. Rep. Bennie Thompson, D-Miss., also oppose Pickering's confirmation. Thompson said this month that "we could do better" with a different nominee to the appeals court.

Some black state lawmakers said they don't recall Pickering speaking out about racial reconciliation during the civil rights movement of the 1960s and 1970s.

"I respect Bennie's judgment and I respect the NAACP and I respect all the other civil rights organizations that were a part of the struggle at that time and still are," said Sen. David Jordan, D-

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Greenwood. "If they've got problems with the confirmation, I have problems with the confirmation."

Former Sen. Con Maloney of Jackson, who was elected as a Democrat in 1972 and later became a Republican, praised Pickering.

"This great country needs people like Charlie Pickering who, regardless of race, creed or color, will stand up and do what's right," Maloney said.

Pickering also led the Mississippi Baptist Convention from 1983 to 1985. He said Thursday that racial reconciliation "is morally the right thing to do, for God is no respecter of person or race."

The judge also promoted the work of the University of Mississippi's new Institute for Racial Reconciliation. He serves on the institute's board.

Pickering was accompanied Thursday by his wife, Margaret Ann, and three of their four children, including their son, U.S. Rep. Chip Pickering, R-Miss.

Pickering Urges Racial Harmony in Reply to Critics

Emily Wagster
The Commercial Appeal (Memphis, TN)
February 22, 2002 Friday

Embattled federal appeals court nominee Charles Pickering used a speech Thursday at the Mississippi Capitol to call for racial reconciliation.

It was one of his first public statements since NAACP leaders last week accused the federal judge of being hostile to minority rights.

"We must resist the temptation and the allure to divide for political or personal gain," Pickering told a state Senate reunion. Pickering, a federal judge since 1990, has been nominated by President Bush for a seat on the Fifth U.S. Circuit Court of Appeals in New Orleans, which handles cases from Mississippi, Louisiana and Texas.

He has gone through two sets of hearings before the U.S. Senate Judiciary Committee, which could vote on his nomination by mid-March.

Some Senate Democrats and civil rights groups are questioning parts of his record, including his effort to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn. Abortion rights groups also are trying to block his confirmation.

"All of my life, I have seen those who strive to divide," Pickering said as he appealed for efforts to resist divisiveness for political or personal advantage.

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Members of the Congressional Black Caucus, including Rep. Bennie Thompson (D-Miss.), also oppose Pickering's confirmation. Thompson said this month that "we could do better" with a different nominee to the appeals court.

Some black state lawmakers noted that Pickering didn't speak out about racial reconciliation during the civil rights era of the 1960s and 1970s.

"I respect Bennie's judgment and I respect the NAACP" and other civil rights groups, said Sen. David Jordan (D-Greenwood). "If they've got problems with the confirmation, I have problems with the confirmation."

Former state senator Con Maloney of Jackson, who was elected as a Democrat in 1972 and later became a Republican, praised Pickering.

"This great country needs people like Charlie Pickering who, regardless of race, creed or color, will stand up and do what's right," Maloney said.

Pickering was one of the few Republicans in the Legislature when he served in the state Senate from 1972 to 1980.

Pickering also led the Mississippi Baptist Convention from 1983 to 1985. He said Thursday that racial reconciliation "is morally the right thing to do, for God is no respecter of person or race."

Political money eroding trust in judicial system Groups push public funding, merit-based selection of judges

Michelle Mittelstadt
The Dallas Morning News
February 22, 2002, Friday

The gush of political money into state judicial campaigns, much of it from trial lawyers and business interests, is having a corrosive effect on America's courts and the public's perception of their fairness, voters and judges say in two new national surveys.

Nearly two-thirds of voters polled, including nearly 90 percent of black voters, voiced concern that there are two systems of justice - one for well-heeled, powerful interests and one for everybody else. Eighty percent of judges surveyed said they are very concerned about the perception there is inequality in the system.

Three-quarters of voters - and even one-fourth of the judges interviewed - said they believe campaign contributions have at least some influence on judges' decisions. Thirty-eight states including Texas elect judges to their highest court. "When money elects judges, many people will believe that justice is for sale," said North Carolina Court of Appeals Judge James Andrew

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Wynn Jr.

Equating the existing system to letting Major League baseball players contribute money to umpires, Judge Wynn said: "Under that scenario, how can anyone have confidence in the strike calls of an umpire if you know the pitcher contributed $ 10,000 to select that umpire to call the game?"

The poll results come from two surveys commissioned by the Justice at Stake campaign, a national partnership working to reduce the influence of special interests on the judicial system.

A coalition of groups ranging from the American Bar Association and Common Cause to the National Center for State Courts, the partnership is pressing for public financing of judicial races or merit-based selection of judges, improved campaign disclosure laws and contribution limits.

Democratic pollster Stanley Greenberg, who conducted the surveys with Republican pollster Linda DiVall, said the findings exhibit "quite deep discontent with the judicial system - and above all the system of election that may influence the way justice is achieved."

In the 38 states that elect high court judges, donations surged 61 percent in the 2000 elections - to $ 45.6 million - over the campaign cycle two years earlier, the Brennan Center for Justice at the New York University Law School said in a report released last week by Justice at Stake during a Washington news conference.

"Over the past decade, special interests have been spending increasing millions to influence decisions and selection of judges," said Geri Palast, the partnership's executive director. "The cost of judicial campaigns is skyrocketing, and more judges are forced to raise money like politicians."

'Nastier, noisier, costlier'

Judge Wynn and Texas Supreme Court Chief Justice Tom Phillips traveled to Washington to lend their voices to the Justice at Stake campaign.

"Eighty-seven percent of state judges are elected, and those elections are becoming nastier, noisier and costlier," Justice Phillips said, adding that the problem goes well beyond the increasing cost and pressure on candidates to raise money. "It has become a nationwide problem because national special-interest groups are raising and spending money across state lines to influence judicial races in states that they think will have issues important to their own agendas."

The U.S. Chamber of Commerce, which did not intervene in state judicial elections before 2000, spent more than $ 10 million on judicial races in a handful of states that year, the Brennan Center reported.

"Special interests are pouring millions of dollars into state judicial campaigns to serve their interests. And some of them are proudly proclaiming that they are indeed buying justice," said

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American Bar Association president-elect Alfred P. Carlton Jr.

The chief problem, Justice Phillips and others said, is the growing public perception of inequality.
"It is very important not only that justice be done, but that it seems to be done," Justice Phillips said at a news conference with Mr. Carlton and other Justice at Stake campaign supporters.

The survey numbers, he said, "show starkly that while judges are having some doubts about the integrity of their own process, the electorate as a whole is having substantial doubt about whether or not our justice system can deliver the promise of equal justice to all."

The findings are based on a poll of 1,000 registered voters, and a separate mail-in survey completed by 2,428 state judges.

Justice Phillips, who has crusaded for public financing of judicial campaigns in Texas since the early 1980s, called for a "national re-examination" of how judges are selected.

In an interview, he said "some judges - very few" are influenced by political contributions.

"There are a few others who don't think they are, who don't realize they are," he said. For most, he stressed, "I don't think it's a problem."

The entire system, however, is tainted by the perception of influence buying, he said. And the door is opened, he said, to using the contributions as a political tool against judicial candidates.

One of his colleagues, Justice Priscilla Owen, who has been nominated by President Bush for a seat on the 5th U.S. Circuit Court of Appeals, has come under scrutiny for $ 8,600 in contributions she accepted from Enron. A ruling she authored two years later, in an arcane tax case, spared Enron $ 225,000 in taxes.

While that 1996 opinion was unanimous and tracked two earlier U.S. Supreme Court decisions, Senate Judiciary Committee Democrats have vowed to delve into the issue at her confirmation hearing, which is expected to be contentious.

Owen defended

Justice Phillips strongly defended her integrity.

The need to raise campaign contributions casts a negative pall on all judges, said Judge Wynn, the North Carolina appellate judge, acknowledging that most of his funds come from lawyers and business interests.

"While I believe that people who know me know that my commitment to being fair and impartial outweighs any potential influence that a political contribution would have, for those who do not [know me] they cannot be assured that monetary contributions do not influence

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judicial decisions," he said.

One solution, Justice Phillips said, would be public financing of campaigns. He has proposed that Texas bankroll public financing of campaigns by using an existing $ 200 lawyer occupation tax that raises $ 10 million annually. Merit selection of judges, rather than elections, would be another solution, he said.

Getting a public financing plan through the Texas Legislature is an uphill battle, Justice Phillips acknowledged.

"You have some very strong special interests right there on the ground vs. kind of a nebulous public desire for change without an organized focus to mobilize it," he said. "I think the odds are always against us in any single year, but long range it will happen."

Judiciary panel sets vote on Pickering nomination

Audrey Hudson
The Washington Times
February 22, 2002, Friday

The contentious confirmation of District Judge Charles W. Pickering Sr. to the Fifth Circuit Court of Appeals will get its first test next week when the Senate Judiciary Committee votes on the nomination.

"Hopefully, this destructive political process will stop," Rep. Charles W. "Chip" Pickering Jr., Mississippi Republican and son of the embattled nominee said yesterday.

The Senate panel has held two confirmation hearings on Judge Pickering's nomination, the most recent on Feb. 7, when he was grilled on his pro-life stance and civil rights record. Liberal organizations have tried to label Judge Pickering as a racist, but black leaders in Mississippi are vocally backing the nominee as a friend of their community. Supporters hope this will sway public opinion.

The vote is set for next Thursday.

Senate Minority Leader Trent Lott, Mississippi Republican, is Judge Pickering's leading supporter in the Senate.

Mr. Lott's spokesman raised the possibility of repercussions if the judge is not confirmed.

"Senator Lott believes that Mr. Pickering is extremely qualified, and if he is not confirmed, it will not help the relationship and there could be consequences to those actions," Lott spokesman Ron Bonjean said.

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Republicans are concerned that dozens of extraneous questions forwarded to Judge Pickering by Democrats might delay the vote.

And if Democrats on the committee block the contentious nomination, Republicans would be forced to go through cumbersome procedures to force a vote on the Senate floor.

The full Senate can vote on a motion to discharge, which needs only a simple majority to pass, but a single senator can block the motion, triggering other procedures that can leave the nomination in limbo.

One senior Republican aide said there are possible Democrat swing votes on the committee, especially after the recent increased media attention, which has helped bolster support for Judge Pickering's nomination.

"If the vote were held right after the committee hearing, we would have lost, but the Democrats are getting pressure from their own press. We are better off today than we were a week ago," the aide said.

At least two Democrats have publicly stated they would vote for Judge Pickering in a full Senate vote: Zell Miller of Georgia and Ernest F. Hollings of South Carolina. That would give Republicans the votes they need to win in an otherwise party-line vote.

Mr. Hollings dismissed charges that Judge Pickering had ties to segregationists. He told Roll Call, "We've got leaders in the Senate that used to be members of the Klan," an apparent reference to fellow Democratic Sen. Robert C. Byrd of West Virginia, who was a member of the Ku Klux Klan more than 50 years ago.

The younger Mr. Pickering said he hopes this week's congressional recess served as a cooling-off period.

The New York Times on Sunday carried a report from Laurel, Miss., that said: "Here on the streets of his small, largely black hometown, far from the bitterness of partisan agendas and position papers, Charles Pickering is a widely admired figure of a very different present."

Judge Pickering yesterday was given a distinguished-service award by his former state Senate colleagues, and he touched on race relations during his acceptance speech.

"If we are to make progress in promoting racial harmony, first and foremost, we as a society, young and old, black and white, must make a willful, genuine and meaningful commitment to better race relations," he said.

"It will not be easy. It will require a willingness to get involved and take a stand, and if necessary, to pay a price," Judge Pickering said.

D. Brooks Smith Circuit Court Nominee Prepares for Hearing

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Milan Simonich
Pittsburgh Post-Gazette
February 25, 2002 Monday

Inside the capital beltway, U.S. District Judge D. Brooks Smith is such a marked man that he might as well have a bull's-eye on his forehead.

Smith, a Republican from Altoona, has been nominated by President Bush for the 3rd U.S. Circuit Court of Appeals.

A Washington, D.C.-based coalition of 27 environmental, women's, civil rights and disability rights groups will challenge his fitness for the court when his confirmation hearing begins tomorrow before the Senate Judiciary Committee.

Critics of Smith, many aligned with Democratic Party interests, say he has been too quick to dismiss valid lawsuits brought by individuals against corporations, and too eager to travel to conferences paid for by businesses with interests in federal litigation. "Several of his opinions point out to us a judicial philosophy that favors wealthy, powerful parties over ordinary people," said Nan Aron, president of the Alliance for Justice, a national association of public civil rights interests.

But outside Washington's world of partisan politics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record on the federal bench in Western Pennsylvania is being twisted by political opportunists.

His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hard-working and respectful to all.

"He is unpretentious and down-to-earth, a really nice person who is committed to the ideals of equal justice in the courts," said U.S. District Judge Anne E. Thompson, a Democrat on the New Jersey bench.

Pittsburgh lawyer John Bingler, whose own nomination for a federal judgeship was twice blocked by Republican Sen. Rick Santorum, would not comment on the politicking except to say that it should not stand in Smith's way.

"I think he should be confirmed. He's an excellent judge," Bingler said.

Smith, 50, is declining all interview requests while the confirmation process unfolds. He has been through it before, having been appointed to the U.S. District Court in 1988 by President Ronald Reagan.

Just about everybody in Smith's hometown of Tyrone in Blair County expected him to become the kind of man who one day would get a job offer from the president.

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"Even in elementary school you just knew he was going to be something when he grew up," said Tom Rumberger, a classmate of Smith from kindergarten through high school. "He had the total respect of everybody, including the teachers. I don't know how many fourth-graders paid attention to the stock market, but he did.

"For me to say something negative about him, I'd have to make it up."

Smith was the product of a middle-class family. Friends said his father worked in the laboratory of the Tyrone paper mill, the area's major employer during the 1960s.

After high school, Smith went to Franklin & Marshall College in Lancaster, where his interest in a legal career solidified. He graduated from Dickinson School of Law in 1976 and landed a job that same year with the Altoona law firm of Jubelirer, Carothers, Krier & Halpern. One of the principals is Republican state Sen. Bob Jubelirer, who is among the state's most prominent legislators.

Smith rose to managing partner of the firm, prosecuted criminal cases as a part-time assistant in the Blair County district attorney's office and set his sights on becoming a judge.

He succeeded in 1984, receiving an appointment to Blair County Common Pleas Court. Smith won election to the bench the following year, remaining until Reagan selected him for the federal court.

Those skeptical of his performance say they have uncovered evidence that he may not be impartial.

Aron points out that Smith has been reversed 52 times by the 3rd Circuit Court -- a higher rate than that of other Bush nominees for appellate judgeships. She says his performance in cases that were overturned -- some with stiff rebukes -- is at the heart of her concerns about his qualifications.

But the case that critics are likely to focus on during the confirmation process is one that Smith vacated.

It involved John Gardner Black, an investment adviser who was accused of defrauding Pennsylvania school districts of millions of dollars.

Smith presided over the case for a month in 1997, then removed himself. He cited his wife's job as vice president of an Altoona bank, where most of the missing money was held in Black's accounts. By then, critics said, Smith had issued an order that protected the bank from attempts by Black's victims to recover their money.

His detractors say he should have immediately recognized his potential for conflict and withdrawn.

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Smith also has been criticized for appearing too cozy with the business community.

"He has taken more corporate-funded or privately funded judicial trips than just about any other judge in America," said Doug Kendall, executive director of Community Rights Counsel, a law firm in Washington that helps local governments in land-use cases.

Kendall counts a dozen such trips that Smith has made in the last nine years.

"Valid concerns are being raised by our groups about whether judges should be accepting gifts worth thousands of dollars from corporations and foundations that have an interest in federal court litigation," Kendall said.

Others say Smith's overall record is strong and should be examined in the context that he has made tens of thousands of judgments across his career.

"His decisions have not always been in my clients' favor, but they have always been well-reasoned," said Shelly Pagac, a Pittsburgh lawyer and co-president of the Women's Bar Association of Western Pennsylvania. "That's all you can ask of a judge -- to fairly assess your case."

John M. Burkoff, a Democrat who is an associate dean and law professor at the University of Pittsburgh, said Smith deserves a spot on the 3rd Circuit Court because he has proven himself competent and courteous in the most contentious situations.

"We know he is a fairly conservative judge, but that makes no difference so long as he is fair, and that is his reputation," Burkoff said. "He doesn't have an imperious judicial style. He's a decent man on the bench and that counts for a lot."

Aron is not willing to give Smith such a blanket endorsement. She said his record should be examined thoroughly in the confirmation process to determine if he has been as fair as his backers contend.

"The 3rd Circuit is a critically important court," she said. "That means it's critically important that the committee be absolutely sure that D. Brooks Smith would favor impartiality."

Politics plays key role in judicial confirmations

Claude R. Marx
The Associated Press State & Local Wire
February 25, 2002, Monday

When the Senate Judiciary Committee holds a confirmation hearing Tuesday on the nomination of U.S. District Judge D. Brooks Smith, it will be a culmination of a battle that has centered on

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ethics and politics.

Smith, whom President Bush named to a long-vacant spot on the 3rd U.S. Circuit Court of Appeals, has become a political football, according to some of the judge's supporters. The court, which sits in Philadelphia, hears appeals of federal cases from Delaware, New Jersey, Pennsylvania and the Virgin Islands.

Critics see it differently. They say their reservations about Smith's record are based on concerns about his ability to be a good judge and are not motivated by a desire to get back at the Republican Party for its delay of former President Clinton's judicial choices. The major complaint centers on whether Smith should have removed himself earlier from a case involving a the bank where his wife is vice president. The bank was accused of complicity in a scheme to defraud dozens of Pennsylvania schools and municipalities.

Smith also has been criticized for taking trips sponsored by organizations that are hostile to the environment.

"These are legitimate concerns that go to his fitness to be a judge," said Doug Kendall of the Community Rights Counsel, one of the groups that has raised concerns. "The ethics of a nominee matter."

Smith's supporters note that the Justice Department reviewed the allegations and found them baseless and unnecessary for an investigation.

"As outside liberal groups made these accusations, we reviewed the matter and there is no basis to the allegations and has been no investigation," Justice Department spokeswoman Barbara Comstock said.

Leahy's spokesman David Carle said Democrats had treated Republican nominees as fairly as the GOP had treated Clinton's choices and denied there is any effort to block Bush's nominees.

"The chairman is proceeding in good faith and we have confirmed 30 district court nominees and seven appeals court nominees since Democrats took control last year," Carle said. "By contrast, in the last year of the Clinton administration, the Republican-controlled Senate confirmed only 17 nominees."

Sen. Arlen Specter, a Judiciary Committee member, predicted it would "be a battle" to confirm Smith but that is to be expected in a closely divided Senate. The Senate has 50 Democrats, 49 Republicans and one independent.

Duquesne University law professor Ken Gormley, a Democrat who supports Smith's nomination, said that Smith "isn't the person that these groups should make their point with. He is a thoughtful, responsible judge."

"There were no violations of ethics. These are fringe groups doing the bidding of (Judiciary

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Committee Chairman) Pat Leahy and the Democrats. It is reprehensible," said Sen. Rick Santorum, R-Pa.

While Clinton was in office, Santorum and Specter worked out an agreement that allowed the senators to pick one judge for every three picked by Clinton.

That arrangement broke down when Clinton refused to nominate one of the senators' choices for a judgeship in Pittsburgh. Santorum in turn held up the confirmation of other judicial nominees.

Carle said Santorum "did what he could to keep the vacancies open" and therefore has little basis to complain about how the Democrats are handling nominees.

Santorum said he approved people who were selected by the joint committee that he and Specter set up to pick judges and "Clinton picked someone who wasn't on the list."

Gormley contends that until both parties make the process less politically charged, the main victims will be the public.

"It has reached the point where it has threatened the whole process just because special interest groups want to settle a few scores," he said.

Pickering Battles Face Decisions on Two Fronts

Paul Kane
Roll Call
February 25, 2002, Monday

With charges and countercharges flying from Mississippi to Capitol Hill, the father-son duo of U.S. District Judge Charles Pickering and Rep. Chip Pickering (R-Miss.) may face their respective political days of reckoning this week.

In decisions that will have ripple effects throughout all three branches of the federal government, the Pickerings are engaged in racially charged fights, with interest groups on both sides mounting furious campaigns.

Judge Pickering, seeking an elevation to the U.S. 5th Circuit Court of Appeals, has faced a nearly endless volley of charges that he has been racially insensitive as a state politician and on the federal bench. The Senate Judiciary Committee is tentatively slated to vote on Pickering Thursday, with his nomination desperately in need of support from one Democrat on the panel to gain a vote on the Senate floor. Rep. Pickering is facing a redistricting battle that will pit him against Rep. Ronnie Shows (D-Miss.) in the fall, but a legal fight between state and federal courts has not yet resolved the precise shape of the new district. If the Justice Department does not sign off on a state-backed plan by today, a three-judge federal panel has said it will impose

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its own district - which is much more favorable to Chip Pickering because of its lower percentage of voting-age black residents - by tomorrow, in time for the March 1 filing deadline.

While the two cases are seemingly independent of each other, the cast of characters waging fights over the Pickerings' futures are virtually the same, and each side has made vague allegations against the other about linking the two battles for its own advantage.

Rep. Bennie Thompson (D-Miss.), who has been the most outspoken Congressional Black Caucus opponent of Judge Pickering's and the CBC leader in the redistricting fight, went to great lengths to note that the redistricting plan favoring Republicans was designed by three GOP-nominated judges. One of the three, U.S. District Judge Henry Wingate, wrote a letter to the Judiciary Committee in support of Judge Pickering's nomination, and another, District Judge David Bramlett, serves with Wingate and Pickering on the same federal court.

"And now they craft a plan that's more favorable to their colleague's son than the [state-backed plan] that's under review by the Justice Department," Thompson said, adding that it's not too far a stretch to say the judges are seeking retribution for Democratic opposition to the judicial nomination. "It certainly could be made to [look] that way."

Rep. Pickering, who has been the most outspoken supporter on behalf of his father's nomination, has argued just the opposite, that Congressional Democrats are holding up Judge Pickering's nomination as leverage in the redistricting battle.

The nomination fight has become a pivotal one in the Senate, with Minority Leader Trent Lott (R-Miss.) - a friend of Judge Pickering's for 30 years and former boss of Rep. Pickering - vowing retribution if Democrats defeat the judicial nomination. Some Senate Republicans have even talked of holding up all legislative matters through parliamentary tactics, freezing the Senate floor, if the Pickering nomination goes down, according to aides.

But interest groups from the People for the American Way to the NAACP have ratcheted up the pressure on Judiciary Democrats, arguing that Pickering's record as a state Senator and federal judge is replete with insensitivity to civil rights.

According to one aide to a Judiciary Democrat, the anti-Pickering coalition began a fax, phone and e-mail campaign Thursday, with form letters from across Texas, Louisiana and Mississippi accusing Pickering of "insensitive and extreme views."

Despite favorable stories in the national press about home-state support for Pickering among blacks, the coalition is arguing that those supporters only know Pickering as a person, not as a judge. "We're not looking into his heart, we're looking into his record," said Ralph Neas, president of People for the American Way.

Judiciary Chairman Patrick Leahy (D-Vt.) has scheduled a business meeting to vote on nominations Thursday, when it is "likely" Pickering's nomination will be handled, according to David Carle, Leahy's spokesman.

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Aides and observers noted that a decision to hold a vote so quickly after the return from the Presidents' Day recess does not bode well for Pickering's chances. But, Carle stressed, "No final agenda [for the hearing] will be set until closer to Thursday."

By that time, Rep. Pickering's future may already be virtually certain. The Justice Department, under the Voting Rights Act, must approve any redistricting plan in Mississippi, and originally faced a deadline today for approving or rejecting the state-backed plan. But two weeks ago Justice's Civil Rights Division requested more information from Mississippi regarding its plan, which would leave a Pickering-Shows district with 37 percent of the voting-age population being African-American.

Justice thus created a new 60-day deadline for later in the spring, but the filing deadline for candidates continues to be March 1. The three-judge panel, however, has drawn up its own district - 30 percent African-American - and said that redistricting must be in place by the filing deadline, requiring the federal map to be imposed Tuesday if Justice does not clear the state-backed plan by today.

Thompson, Shows and Mississippi Democrats have accused Justice of intentionally delaying its decisions on the state plan to guarantee that the map more favorable to the GOPwould be imposed by the federal court.

If the redistricting fight isn't connected to the judicial battle, it is, at a minimum, dirty politics, they contend. "I have never seen such blatant political manipulation. Instead of enforcing the Voting Rights Act, they are carrying the water of Chip Pickering," said Rob McDuff, a Democratic attorney from Jackson, Miss.

Democrats fear that a district with only a 30 percent African-American voting population may not even be competitive for Shows, whose current district has a population of 43 percent black voters.

Republicans contend that the plan violates the civil rights laws because it was written up by a local judge, an African-American voted into office as an independent from an overwhelmingly Democratic region. Alocal judge should not be drawing up a statewide Congressional map, Republicans contend, an allegation Justice has been inclined to listen to so far. "That's something that has never been done before," said Dan Nelson, a department spokesman.

Nelson said the various political scenarios will not be a factor in the decision, but he couldn't guarantee a decision will come in time to avoid the federal judges' takeover of the redistricting process.

Battle brewing on Capitol Hill over Bush's nomination of Charles Pickering to Federal Appeals Court

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Democrats plan to block Pickering

Joyce Howard Price
The Washington Times
February 25, 2002, Monday

Sen. Dianne Feinstein says she anticipates all 10 Democrats on the Judiciary Committee will oppose the nomination offederal judge Charles Pickering to the 5th Circuit Court of Appeals, in which case the panel will not move it to the Senate floorfor a vote.

"I will not vote for him. ... I believe that there is virtually unanimous opinion on the Democratic side of the JudiciaryCommittee that he will not be confirmed. In other words, he will not be voted out of the Judiciary Committee," the California Democrat said yesterday on NBC's "Meet the Press."

"I've looked rather carefully at his background, and I think you have a person who has very strong right-wing views, bothpolitically and personally. ... I think that people on our side believe that it would be a tremendous mistake to put someone as polarizing in this position now. So I believe he will not be confirmed," she said.

Sen. Sam Brownback of Kansas, one of nine Republicans on the Judiciary Committee, said on the same talk show: "I thinkhe should be confirmed ... this is a good man that people are really trying to smear. ... I think you're going to see a lot of peopletaking actions to try to move that [nomination] on forward some other way." National organizations such as the National Association for the Advancement of Colored people (NAACP) and People forthe American Way are waging a bitter campaign to block the promotion of Judge Pickering to the appeals court. They describethe white Republican, who sits on the U.S. District Court in Hattiesburg, Miss., as being anti-civil rights.

However, blacks who live in Judge Pickering's hometown of Laurel, Miss., deny those charges, citing work he has done to improve both educational and economic opportunities for low-income blacks. Even editorial writers for liberal newspapers such as the New York Times and The Washington Post have expressed concern about the viciousness of the attack on the Pickering
nomination. On "Meet the Press," host Tim Russert read from an editorial in The Washington Post that said Judge Pickering's opponents"have tried to paint him as a barely reconstructive segregationist" and have "plucked a number of unconnected incidents from a long career" to arrive at that portrayal. Asked about that, Mrs. Feinstein said she worries the judge might not be able to put aside his "very strong right-wing views"over the course of a lifetime appointment to the Fifth Circuit. "This is a very sensitive circuit. It represents people of color in a major way," she said.

The California Democrat pointed out that President Bush "did not have a large mandate" in the 2000 election. "There is no mandate to skew the courts to the right. And so I think you are going to see a Judiciary Committee that's really going to be looking for mainstream judges. And those judges that they find outside the mainstream I do not believe will have Democratic support."

Senate Republican leader Trent Lott has said Judge Pickering will be confirmed "or else."

Mr. Brownback said yesterday: "I would hope we wouldn't have a litmus test on judges,"

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either from the "left or the right."

Op/Eds

John Edwards and the Fresh-Face Factor

George F. Will
The Washington Post
February 24, 2002
Editorial

John Edwards, freshman Democratic senator from North Carolina, is thinking of running for president in 2004, which has some of the political cognoscenti wondering, What can he be thinking? Perhaps this: I am from a crucial region, my potential rivals for the nomination are un-ntimidating, and by January 2004 I will have spent as many years in elective office -- five -- as George W. Bush had spent by January 2000.

Edwards is handsome, almost too much so. His boyish features are remarkably unmarked by life, although his life has been scarred by tragedy -- the death, at age 16, of his son in an automobile accident. His prettiness -- "sexiest politician," says People magazine -- may cause suspicions that he is all surface. But such suspicions can be quickly banished. Bush's initial weakness was the suspicion, reinforced by his syntactical fender-benders, that he lacked gravitas. That weakness is, Edwards says, "gone forever." The election of New Yorker Grover Cleveland in 1884 was the first Democratic presidential victory after the Civil War, and Northeasterners provided seven of the Democrats' next eight victories (all but that of Missouri's Truman in 1948) through 1960 (Cleveland again in 1892, New Jersey's Wilson twice, New York's Roosevelt four times and
Massachusetts' Kennedy). However, Democrats have not elected a Northeastern president since Edwards was 7 years old -- Kennedy. The only Northeasterner they have nominated since 1960 was Massachusetts' Michael Dukakis. Memories of 1988 will not help Massachusetts' Sen. John Kerry in 2004.

Since 1960, Democrats have won just four presidential elections, all with candidates from states of the Confederacy -- Johnson from Texas, Carter from Georgia and Clinton from Arkansas. However, after the Clinton experience, the country may not warm to another Southern smoothie. Edwards, a trial lawyer who honed his political skills by connecting with juries (he was one of the first to use focus groups to help with jury selection), is smooth as a Dairy Queen. Coming months will tell if he is more nourishing.

He does understand the importance of Democratic nominees being perceived as sharing some of the South's cultural conservatism. "We can't win elections on cultural issues," he said over lunch recently, "but we sure can lose them on cultural issues." However, Edwards is a lock-step member of the herd of independent minds -- mostly Northern liberals -- currently slandering a judicial nominee from Mississippi, Charles Pickering, who offends Northern liberals, not Mississippi blacks.

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Michael Barone, author of The Almanac of American Politics, says several developments may nudge Democrats rightward. Blacks, the most loyal Democrats, are no longer a growing fraction of the electorate. Neither are the major metropolitan areas. And the places where such favorite Democratic issues as abortion rights and gun control are salient -- California, New Jersey and most major metropolitan areas -- are already solidly Democratic.

Barone notes that if the allocation of electoral votes among the states in 2000 had been what it will be in 2004 on the basis of the 2000 census, Bush would have won not 271 but 278 electoral votes.

Furthermore, a poll done for House Democrats suggests that the "halo" surrounding Bush, and the way the war on terrorism has eclipsed issues usually helpful to Democrats (health care, education, Social Security, the environment), pose problems for Democrats in 22 marginal seats crucial to Democratic hopes of recapturing the House. Such districts are generally more conservative than safe Democratic districts. But Edwards could gain from this. If Democrats fail, for a fourth consecutive time, to recapture the House, their frustration might make them more willing to look at a very fresh face in 2004. But his performance concerning Pickering suggests that although his face is fresh, his philosophy is a stale orthodoxy.

An Unworthy Judicial Nomination

The New York Times
February 24, 2002, Sunday
Editorial

A heated debate is shaping up over Judge Charles Pickering, President Bush's choice to fill a vacancy on the Fifth Circuit Court of Appeals. Mr. Pickering's critics have implied that he is a racist. His supporters have responded that he has warm relations with blacks in his hometown, Laurel, Miss., and that he is being smeared for ideological reasons. We believe that Mr. Pickering bears no animus toward blacks and that charges of racism have no place in this debate. But based on the serious questions raised about his record as a judge, we urge the Senate Judiciary Committee to vote down his nomination.

In his 11 years as a federal trial-court judge, Mr. Pickering has displayed an undue skepticism toward cases involving civil rights. In voting rights cases, he has been troubled by well-settled legal principles like "one person, one vote" and overly concerned about the burdens that Congress, in enacting the Voting Rights Act, placed on local government. In employment discrimination cases, he has been too willing to accept employers' arguments that such suits are based on disgruntlement, rather than valid claims. He has also shown a hostility to awarding attorneys' fees in civil rights cases; without the fees, few such cases could be brought. Mr. Pickering, a friend and ally of Trent Lott, the Mississippi senator and minority leader, is also well outside the mainstream on issues of reproductive choice. He was a driving force behind the Republicans' decision to put a plank in their 1976 party platform calling for an anti-abortion amendment to the Constitution.

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Mr. Pickering's views on civil rights and abortion would be out of place on any Court of Appeals. But his positions would be particularly troubling on the Fifth Circuit, which takes in Mississippi, Louisiana and Texas. It is among the poorest and most heavily minority circuits, and the legislatures in those states have gone as far as any in imposing parental consent and other limitations on women's access to abortion.

The Senate's inquiry into Mr. Pickering's nomination has also uncovered several ethically questionable actions. In 1994, he made contact with the Justice Department, in an extraordinary one-sided communication by a judge, to lobby prosecutors to seek a lighter sentence against one of three men accused of burning a cross in front of, and firing bullets into, the home of a mixed-race couple. Mr. Pickering's critics have also charged that he misled Congress at his last confirmation hearings about contacts he had in the 1970's with the Sovereignty Commission, which worked to preserve segregation in Mississippi. Most recently, Mr. Pickering asked lawyers who appeared in his courtroom to write letters in support of his nomination, a request that creates an appearance of coercion and judicial bias.

In pushing for Mr. Pickering's confirmation, Senate Republicans have disingenuously charged Democrats with moving too slowly on judicial nominations. There are, indeed, an unacceptably high number of vacancies on the federal bench, but many of those openings are the result of Republicans' own calculated inaction on Clinton nominees.

Moreover, the real fault for the slow pace lies with the Bush administration. Judge Pickering is the first of a new wave of more than 50 judicial nominees the Senate is being asked to evaluate. Many of these nominations appear problematic and potentially controversial. If President Bush is committed to speeding up confirmations, he should name men and women who have distinguished records and do not have the hard-right views and ethical problems that Mr. Pickering does.

A confirmation for Pickering; How long must we pay for the sins of our past?

Stan Tiner
Chicago Tribune
February 24, 2002 Sunday

Away down South ". . . in the land of cotton, old times there are not forgotten . . . " True. Those opening words to "Dixie" capture the spirit not only of the Old South, but of many contemporary Southerners as well.

"Forget? Never!" the bumper stickers say.

But the same could be said of folks in Chicago or New York or Los Angeles. When people in those places think of the South, especially in a political or cultural context, those thoughts run through the Civil War and the civil rights years. The mind's eye sees names like Jefferson Davis

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and Bull Connors, and they see George Wallace standing in the schoolhouse door.

As a Southerner who has spent the better part of 30 years editing newspapers in Louisiana, Alabama and Mississippi, I bear witness to the fact racism still lives in these parts.

Does racism still live in Mississippi in 2002? Of course it does.

Sadly, too, it lives elsewhere, in those Northern cities named, and in all the rest of America as well.

This nation still bleeds for the sin of slavery and for the omission of deeds we should have done, and the commission of others
we should not have done in those intervening years.

The river of pain flowing from that original sin sometimes ebbs, and sometimes rises, but it is never far from our consciousness
or our conscience.

Charles Pickering, a 64-year-old federal district judge who hails from Jones County in South Mississippi, can attest to that fact. President Bush has nominated him to a seat on the U.S. Circuit Court of Appeals for the 5th Circuit in New Orleans. For those who oppose him he is a tempting target, for all of those ghosts of Mississippi's past come suddenly to life with the awful thoughts of night riders, nooses and burning crosses.

Judge Pickering's own words and actions four decades ago have become the thread upon which his opposition seeks to deny him confirmation.

Opponents such as the NAACP and the Congressional Black Caucus have cited several concerns with the nominee, but two incidents seem to raise the most serious questions involving his fitness for the appeals court judgeship.

In 1959, while a student a the University of Mississippi Law School, Pickering wrote a Law Review article examining interracial marriage. The article explored how the law should be amended "if it is to serve the purpose that the Legislature undoubtedly intended it to serve."

In 1964, the judge switched to the Republican Party, he later said, because of the "humiliation and embarrassment" he felt had been heaped on Mississippi when President Lyndon Johnson asked the all-white state Democratic delegation to give up two seats to blacks from the "Mississippi Freedom Democratic Party."

Today he regrets those words, utterances that can never be fully removed from the history of one man's life.
Perfection is a high standard. Charles Pickering did not achieve it.

Can any of us say we have?

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But since that long-ago day and those failed utterances, he has been transformed. One cannot say for sure that he has had a change of heart, but of certainty it can be said he has been a changed man.

Since 1964 his public record has been exemplary by any standard.

He has courageously stood up to the Ku Klux Klan's imperial wizard, a stand that contributed to his subsequent defeat as district attorney.

He defended African-Americans in criminal cases that other white attorneys would not handle. He has worked with University of Mississippi Chancellor Robert Khayat to establish an Institute of Racial Reconciliation at Ole Miss and he serves on that board today.

In the cauldron of this firestorm over his nomination, he is supported by the largely black community in his hometown, and by most black leaders in his home state, those who have seen his actions up close for these many years, voices with great moral authority on such matters, including Charles Evers, brother of slain civil rights leader Medgar Evers.

There is a plague of piousness afoot in our land today as politicians preen and pontificate before the cameras of so many committee rooms, preaching and prattling to cater to the public opinion of the moment.
Their sermons often seem more the words of the Pharisees than the thoughts of pure hearts. It is true of those who have cast their stones at Judge Pickering.

You wonder if Abraham Lincoln or Hugo Black were seeking confirmation from these fellows if either could stand the scrutiny of these modern Jacobins.

Lincoln's own dreadful words would lash him like a whip . . . words so awful they could not be printed today without stirring pain and bitterness. Certainly Black, a former Klansman, could not have stood their test.

Yet one--Lincoln--many have said was this country's greatest president; the Great Emancipator--the man who freed the slaves and whose leadership maintained the Union. And the other, Justice Black, became one of the leading civil libertarians in U.S. history, rendering opinions whose breadth and majesty extended the rights of African-Americans to their most expansive state.

The young American nation often embraced the idea of redemption, a sense of charity that extends to those who have a change of heart, and who thereafter act in a way that is consistent with the "new way" they have embraced.

Charles Pickering should be confirmed because he is a good man whose past service is proof that he will render justice fairly to all, and whose personal courage and record have earned him not only the nomination of his president, but the approbation of his countrymen.

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Faulty logic on Pickering

Frank Roso
The Dallas Morning News
February 23, 2002, Saturday

EXCERPT

I have read several columns declaring that Judge Charles Pickering, nominated by President Bush for the federal bench, should not be awarded that post. The reasoning given relies on secondhand information regarding the judge's alleged racial bias while serving in official capacity in his home state. The events took place decades ago and the judge, by most accounts, appears to have become quite an advocate of racial equality.

Apparently, the judge's opponents don't believe "a leopard can change its spots." Such proclamations are amazing coming from a party, the Democrats, that counts among its members a former member of the Ku Klux Klan, Sen. Robert Byrd.

Borking Atticus Finch?

Richard E. Marsh Jr.
The Washington Times
February 23, 2002, Saturday

Clearly, there are many in Laurel, Miss., who regard Judge Charles Pickering as a latter-day Atticus Finch ("Borking Judge Pickering," Editorials, Feb. 21).

Sen. John Edwards, North Carolina Democrat, would have accused Atticus Finch of misconduct for sitting on the jail's front porch and staring down the lynch mob, based on the treatment he gave Judge Pickering.

Nomination trapped by the Jeffords effect

Terry Eastland
The Washington Times
February 22, 2002, Friday

Last May, even as Vermont Sen. James Jeffords of Vermont prepared to leave the Republican Party, President

Bush decided to nominate U.S. District Judge Charles Pickering to the U.S. 5th Circuit Court of Appeals, which encompasses Texas, Louisiana and Mississippi. Judge Pickering has endured not one but two Senate Judiciary Committee
hearings. Today, his nomination is in doubt. And the main reason it is can be traced to Mr.

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Jeffords' departure from the GOP.

Before he left, the two parties had the same number of senators: 50. But the GOP controlled the Senate on the strength of Vice President Dick Cheney's authority to cast tie-breaking votes. Mr. Jeffords' departure - he became an independent - reduced the Republican number to 49. The Democrats thus gained control, an event of predictable consequence for judicial appointments. Most judicial nominees are confirmed regardless of who controls the White House or the Senate. But when, as now, there is divided government - with one party in control of the White House and the other the Senate - more nominations are likely to be contested and defeated than when the same party controls both.

Had Sen. Jeffords remained a Republican, Judge Pickering would have been confirmed long ago. He was unanimously confirmed for the district court in 1990, and the American Bar Association has rated him "well qualified." Even now, if he could be voted out of committee, he would stand a good chance of winning confirmation, since two Democrats - Fritz Hollings and Zell Miller - have voiced their support.

Judge Pickering's problem, however, is how to get from here to there - from the committee, where the Democrats hold a 10-to-9 edge, to the Senate floor.

The Judiciary Committee is territory patrolled by Democrats Patrick Leahy of Vermont (the chairman), Edward Kennedy of Massachusetts, Joseph Biden of Delaware, Herb Kohl and Russell Feingold of Wisconsin, Dianne Feinstein of California, Charles Schumer of New York, Richard Durbin of Illinois, Maria Cantwell of Washington and John Edwards of North Carolina, most of whom are exquisitely attuned to the imprecations of left-wing interest groups, such as People for the American Way and Alliance for Justice. Those groups have pushed hard, and so far successfully, against the nomination.

Judge Pickering himself has the misfortune of having virtually invisible White House support. He was chosen largely out of deference to a senator, his longtime friend Trent Lott, who began pitching for the judge's elevation to the 5th Circuit when he was Senate majority leader.

Had Mr. Lott not lobbied for Judge Pickering's nomination - announced last May 25, one day after Sen. Jeffords fled the GOP - Mr. Bush probably would have selected someone else. Judge Pickering, after all, is a few months away from 65, the age a judge may take senior status. Nor, his ABA rating aside, is he a legal superstar, someone likely to shape the law of the 5th Circuit. "We did this solely to please the then majority leader," one administration official told me. "It's his guy, and it's up to him to get him confirmed."

That task would be far easier were the "then majority leader" still the majority leader.

Rarely making headlines, the Pickering nomination has become a series of stories within a story. Some Democrats are motivated against the nomination because they don't like the way Trent Lott ran the Senate. Others are inclined against the nomination as payback to Republicans for their sometimes slow processing of Clinton judicial nominees, including three for the 5th Circuit

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who failed even to get hearings.

Also, there are Clinton Justice Department lawyers who butted heads with Judge Pickering over their sentencing recommendations in a cross-burning case and are laboring against him behind the scenes. And, of course, there are the liberal interest groups, back after eight years on the sidelines, picking at Judge Pickering as a warm-up for the real battle - over a Bush nominee to the Supreme Court.

Substantively, the case against the nominee is unimpressive. He grew up in segregated Mississippi, but the left's effort to portray him as "insensitive" to civil rights is misguided and unfair: In 1967, as an elected county prosecutor, Mr. Pickering testified against the imperial wizard of the Ku Klux Klan, an act of moral courage that cost him his office. Judge Pickering does hold conservative political views. But, contrary to concerns voiced by the law firm of Leahy, Kennedy, Biden et al., his record on the bench isn't that of a judge who fails to distinguish between his own personal and political views and what the law says.

Of course, none of that may matter, since the Democrats have the power to defeat his nomination. This is the Jeffords effect, and the jury is out on whether Trent Lott can overcome it. He might, but probably not unless Mr. Bush, stingy with expenditures of his considerable political capital, finally decides to join the battle.

Judge Smith's Ruling In No Way Hint at Favoritism Toward Bank in Black

Richard A. Finberg
Pittsburgh Post-Gazette
February 22, 2002 Friday

As lead plaintiffs' counsel in various litigations relating to John Gardner Black, I wanted to share my firsthand views respecting the Post-Gazette's front-page article criticizing Judge D. Brooks Smith's rulings in the Securities and Exchange Commission case against Black (whose scheme resulted in losses of about $70 million to school districts and others) ("Black Case Could Sideswipe Nominee," Feb. 20). Unfortunately, the article is based on a mistaken fact, and therefore is unfairly critical of Judge Smith.

The article implies that Judge Smith should have realized sooner that Mid-State Bank was a potential defendant and therefore should have recused himself sooner due to stock investments in the bank and his wife's job in another area of the bank. The article states incorrectly that Judge Smith ruled in a manner that "would have effectively reduced Mid-State's liability and forced districts with assets elsewhere to subsidize the losses of districts whose assets were held at Mid-State." Respectfully, the Post-Gazette has misconstrued Judge Smith's ruling. Specifically, on Oct. 27, 1997, Judge Smith entered an order approving the joint motion of the trustee (Richard Thornburgh) and the SEC to make an interim distribution of assets over which Black's companies (Devon or FMS) had investment authority. Under this order, those with funds held at banks other than Mid-State Bank, including those with repurchase agreements, would receive up

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to 50 percent of the market value of the funds held in their name, while those with funds in the pooled FMS account at Mid-State Bank would receive 50 percent of their pro rata share of the market value of such pooled funds.

This ruling therefore did not shift losses between Mid-State Bank customers and customers of other banks, but simply allowed all school districts to receive, on an interim basis, one-half of the current actual value of their funds in their respective banks. In fact, because the approximate $70 million collateral shortfall investment was in the FMS account at Mid-State Bank, school districts with deposits at Mid-State Bank would receive only about 25 percent of their investments in the interim distribution, while those with accounts elsewhere would receive 50 percent.

The Oct. 27, 1997, order provided a 10-day period to file objections to the scheduled distribution amounts. Several objections to the specific amounts were filed, as Judge Smith contemplated, and on Dec. 4, 1997, U.S. District Judge Donetta Ambrose entered an order that was virtually identical to Judge Smith's Oct. 27 order, except for technical corrections in the distribution
schedule. In upholding Judge Ambrose's order, the 3rd U.S. Circuit Court of Appeals was not in any sense reversing Judge Smith. The Post-Gazette's conclusions that Judge Smith's ruling "did not stand" and that Judge Ambrose ruled that Judge "Smith had improperly combined the Mid-State and non Mid-State assets" are erroneous.

This firm has since Oct. 15, 1997, played a lead and ongoing role in numerous litigations in state and federal courts (including the bankruptcy court) involving the Black fiasco, and our co-counsel in the Mid-State Bank litigation, Richard R. Nelson II and Cohen & Grigsby, was involved from the outset, immediately after the SEC obtained the asset freeze on Sept. 26, 1997. From this extensive involvement, we are not aware of any impropriety or even appearance of impropriety on the part of Judge Smith, and contrary to the Post-Gazette story, Judge Smith has made no rulings in these proceedings that would even hint that he favored Mid-State Bank.

Wall Street Journal

February 22, 2002, Friday

Letter responds to Feb 8 editorial, Chairman Neas, which criticized House Judiciary Committee chmn Ralph Neas for opposingnomination of Charles Pickering to federal appeals court bench (M)

Nomination deserves legitimate review

Philip Gailey
St. Petersburg Times
February 24, 2002, Sunday

If you wonder why fewer and fewer people are willing to subject themselves to the Senate confirmation process, consider the smear campaign being waged against Charles Pickering Sr. In 1990, the Mississippi lawyer was nominated by President George Bush to be a federal district court judge. His nomination won the unanimous approval of the Senate Judiciary Committee and the full Senate. Now Pickering has been nominated for a seat on the 5th U.S. Circuit Court of Appeals by President George W. Bush, and the opposition is vicious. There are legitimate reasons for why the Senate should deny Pickering this promotion. However, those reasons have little or nothing to do with the ugly campaign being conducted by liberal interest groups bent on destroying his reputation. Pickering is a conservative Republican who has served on the federal district court without particular distinction. He is neither the progressive his defenders say he is nor the Neanderthal his opponents make him out to be. He has a bad habit of injecting his personal views into legal opinions on controversial issues, and some of his opinions suggest that he is not entirely comfortable with key principles of civil rights law, although he generally respects the precedents established by higher courts. His primary qualification appears to be his close friendship with Senate Republican Leader Trent Lott. The president could have come up with a better choice, and the Senate has every right to insist that he do so.

That People for the American Way and other liberal groups have played the race card against Pickering - while denying that they are doing any such thing - only further degrades a judicial confirmation process that has become a nasty arena for advancing political and ideological agendas. The way the process works these days is, interest groups comb through a nominee's work and his personal life looking for anything that can be spinned against him. The press reports on its findings, too, often without bothering to check the facts, and by the time the Senate Judiciary Committee holds a confirmation hearing, the wounded nominee limps into the room on the defensive as senators move in for the kill. Both parties play this game, by the way.

The Washington Post, no advocate for Pickering, expressed its disgust with the ugliness of the campaign against him in a recent editorial: "His critics have focused for the most part not on his qualifications, temperament, approach to judging or on the quality of his judicial work. The judge's opponents, rather, have tried to paint him as a barely reconstructed segregationist. To do so, they have plucked a number of unconnected incidents from a long career: a law review article from 1959 on the state's antimiscegenation statute, written when Judge Pickering was a law student; his incidental contacts as a state legislator in the 1970s with the Mississippi state Sovereignty Commission; and his handling of a cross-burning case in his court a few years back, to cite a few examples. None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate."

Jonathan Groner of the Legal Times did an analysis of Pickering's rulings and talked to African-American leaders in his community and state. He found that Pickering and his record are far more complicated than his liberal critics suggest.

While the national NAACP opposes Pickering's nomination, many prominent blacks in Mississippi support it. They say they do not recognize the man Washington interest groups are

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accusing of "insensitivity" (no one uses the word "racist") on civil rights. The Charles Pickering they know is the young lawyer who, in the early 1960s, helped send a Ku Klux Klan leader to prison even though it cost him re-election as a local prosecutor. He is the federal judge who has worked with local civic leaders to keep young African-Americans out of the criminal justice system. Long before he became a federal judge, he was involved in racial reconciliation efforts, and from the bench he once rebuked an attorney who brought up a plaintiff's homosexuality during a fraud trial. "Homosexuals are as much entitled to be protected from fraud as are any other human beings," the judge told the attorney.

One of the African-Americans in Mississippi who has come to Pickering's defense is James Charles Evers, the brother of the slain civil rights leader Medgar Evers. Writing in the Wall Street Journal, Evers said of Pickering's civil rights record: "He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful."

His opponents say Pickering is hostile to employment discrimination claims. In one case they cite, two blacks who owned a grocery store sued a supplier under civil rights laws for cutting off their credit. Pickering ruled in favor of the supplier, finding no evidence of discrimination. His critics say they have less problem with his decision in this case than with the "harsh" language Pickering used in his opinion. He wrote: "When an adverse action is taken affecting one covered by (civil rights) laws, there is a tendency on the part of the person affected to spontaneously react that discrimination caused the action. All of us have difficulty accepting the fact that we sometimes create our own problems."

The Legal Times said that what the judge's liberal critics fail to mention was that "the supplier canceled the credit terms after both store owners were arrested and indicted for allegedly threatening to murder a federal official. (They were later acquitted.)"
The Pickering nomination is the first major showdown between the president and Senate Democrats over the shape of the federal judiciary. If the Senate rejects the nomination, it should do so for legitimate reasons - and there are some - and not on the basis of a campaign of distortion and innuendo being waged by liberal interest groups. Pickering is not entitled to a seat on the appeals court, but he is entitled to a fair hearing.

Transcripts/Members of Congress

NBC News Transcripts
Meet the Press
February 24, 2002 Sunday

Senators Sam Brownback, Republican of Kansas, and Dianne Feinstein, Democrat of California, discuss the nomination of Judge Charles Pickering to the Supreme Court, and the issue of cloning

MR. RUSSERT: We are back. Senators are welcome. Let me move first to the appointment, the

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nomination of Charles Pickering, a federal judge to the Fifth Circuit Court of Appeals, a very important judiciary branch in our country. Senator Feinstein, you're on the Judiciary Committee. Will you vote for Charles Pickering?

SEN. DIANNE FEINSTEIN, (D-Calif.): No, I will not vote for him. I did have the privilege of chairing his hearing, his second hearing, which was a very full hearing. I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed. In other words, he will not voted out of the Judiciary Committee.

MR. RUSSERT: So, all 10 Democrats will oppose him? SEN. FEINSTEIN: I believe so. Now, you know, obviously, that can change, and I think that this is a recommended appointment that has just been enormously polarizing. And, you know, there isn't a--it's very hard because, obviously, he's a sitting federal court judge. But the views of people are really enormous. It's a polarized community out there. You have every chapter--106 chapters in Mississippi--of the NAACP opposing him, including, his own chapter in Laurel, Mississippi. I think he's had a record of involving some of his personal views and his opinions, and, of course, when he was in public office, he took extraordinary right-wing positions on issues. This is a very sensitive circuit. It represents people of color in a major way. It used to be sort of a breakthrough circuit, in terms of securing rights for people, and it's become much, much more conservative.

I think that people on our side believe that it would be a tremendous mistake to put someone as polarizing in this position now. So I believe he will not be confirmed.

MR. RUSSERT: Senator Brownback.

SEN. SAM BROWNBACK, (R-Kan.): Well, I think he should be confirmed. And I'd sure like us to start getting at least a few judges confirmed. There are over 100 judicial positions, federal district courts, circuit court judge positions that are open in the country today. Judges have been confirmed at a rate of less than 40 percent during the Clinton or first Bush--term Bush One, if you will. We need to get some judges out there and confirmed in positions, if for no other reason than for homeland security, so we can deal with judicial issues coming forward. And they've been continually held on up. Judge Pickering...

MR. RUSSERT: But both parties did that. When President Clinton...

SEN. FEINSTEIN: That's correct. That's correct.

MR. RUSSERT: ...from '95 to 2000, 35 percent of Clinton's appointments to the court of appeals were blocked.

SEN. FEINSTEIN: And then 65 percent the next year.

SEN. BROWNBACK: If you're looking, though, at a comparable period of time, under George Bush, the president now, Bush 43rd, as it was during President Clinton's first years in office, you had a far greater number of people confirmed at that period of time. And plus, the Democrats at

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that point in time, which--we used to point this out greatly about the number of positions that are open, 100 federal district court and circuit court judge positions that are open. That really is untenable, and it shouldn't continue.

MR. RUSSERT: As for Judge Pickering, let me just ask one question on that that I found quite striking. He has been reversed 26 times.

SEN. BROWNBACK: Out of about 4,009 cases.

MR. RUSSERT: But what's important here is 15 of those cases he was reversed because he did not accept well-settled principles of law. Judge Edith Brown Clement, who's also in that district, who was put on the bench, extremely conservative, but not opposed, was never reversed on issues of well-settled principles of law. Does that bother you?

SEN. BROWNBACK: And--well, how many total cases, Tim? I mean, I've practiced law. How many total cases? I mean, I think we have about 4,000 cases that you're talking about.

MR. RUSSERT: But well-settled principle law is...

SEN. BROWNBACK: Well...

MR. RUSSERT: ...as a lawyer, as you well know, is very, very important because...

SEN. BROWNBACK: And it's also in the view of the beholder, well-settled principles of law. I mean...

MR. RUSSERT: But a denial of legal precedent is an indication that someone is not willing to accept legal precedent, which suggests, or indicates, perhaps, their personal opinions are being woven in.

SEN. BROWNBACK: Well, out of what percentage is he not willing to accept? And, plus, if I could submit to you, as a lawyer, the issues of well-settled principles of law is open to definition by lawyers, that one would say this is well-settled, others would not. You know, about 26 cases out of 4,000--I would say that the man is very willing to accept well-settled principled cases of law. Plus, you might recall that we went through some of these same sort of arguments with Attorney General John Ashcroft. People said, "OK, he's going to insert his own personal opinions in these cases." He testified in committee under oath, "I'm not going to do that. This is what the law is. I will enforce the law even if my personal opinion is to differ on that." And I think it's very clear that what you have here is an honorable man, son in the United States Congress, as well, been sitting on the federal bench for some period of time--this is a good man that people are really trying to smear in a way that is not becoming of the institution, and yet it seems to be the way that is evolving around here.

MR. RUSSERT: If the Judiciary Committee rejects Judge Pickering by a vote of 10-to-9, what happens?

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SEN. BROWNBACK: I think you're going to see a lot of people taking actions to try to move that on forward some other way, to see if we can bring pressure to bear on the committee, and to try to press the committee to start getting more judicial nominations in total, moving on through the process. And we can do it.

MR. RUSSERT: Senator Lott has said, "Pickering will be confirmed or else." What does "or else" mean?

SEN. BROWNBACK: I can't speak for Trent, what he's saying on that. But the Senate is virtually evenly divided, and we really do need to be working together to be able to get things on through because we've got a lot of major legislation, passed the House, been held up in the Senate.

MR. RUSSERT: Senator Feinstein, let me pick up on a point that Senator Brownback raised and that is the destruction of judicial nominees. This is what The Washington Post had to say. They said there are a lot of grounds to oppose Pickering. But "...opposing a nominee should not mean destroying him. And the attack on Judge Pickering has become an ugly affair. His critics have focused for the most part not on his qualifications, temperament, approach to judging or on the quality of his judicial work. The judge's opponents, rather, have tried to paint him as a barely reconstructed segregationist. To do so, they have plucked a number of unconnected incidents from a long career...None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate."

Reaction?

SEN. FEINSTEIN: Well, my reaction is this, and I've looked rather carefully at his background, and I think you have a person who has very strong right-wing views, both politically and personally. The question always comes: Can you put those views entirely aside? This is a lifetime appointment. If you can't be assured that the individual is really going to put those views aside,
what happens is two years into the term those views creep forward again. And, generally, when you say, "Well, we're going to follow precedent," there are enough edges around precedent that an individual's views do come into it. That's my finding after nearly a decade on that committee.

I think there's another thing. President Bush did not have a large mandate. There is no mandate, in my view, to skew the courts to the right. And so I think you're going to see a Judiciary Committee that's really going to be looking for mainstream judges, and those judges that they find outside of the mainstream I do not believe will have Democratic support.

MR. RUSSERT: If the Judiciary Committee votes against Pickering 10-to-9, is the nomination dead?

SEN. FEINSTEIN: I believe so.

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MR. RUSSERT: There's no way to bring it to the floor?

SEN. FEINSTEIN: No. I do not believe there is, unless there's a vote to bring it to the floor. If the committee wants to keep it in the committee, the committee can do so. If there is a separate vote to bring it to the floor, then it will go to the floor.

MR. RUSSERT: Would that happen, a vote would go to the floor without recommendation or a negative recommendation?

SEN. FEINSTEIN: Well, I can't say for sure. I don't know. We have only, you know, discussed this informally amongst ourselves, so I can't answer that.

SEN. BROWNBACK: And I would hope we wouldn't have litmus tests on judges. It used to be that, OK, Ronald Reagan was accused of a litmus test on judge. We shouldn't have a litmus test from the left or the right on judges. And I think it'd be fair to say that that should be a standard for both sides.

MR. RUSSERT: Let me turn to another...

SEN. FEINSTEIN: Let me just say one thing 'cause I can't let that one go. This isn't a federal district court. This is an appellate court. For most people, the appellate courts are very much like the Supreme Court. They decide the cases. There are big cases to be decided. There are points that many of us feel passionately about, one of them being Roe vs. Wade. Sam and I would disagree on Roe vs. Wade. I don't want to see Roe overturned. I'm in a position where I'm going to be very careful that a judge that I vote for to go to a circuit court will not do that. And I think I have every right to do so. It's not a question of a litmus test. It's a question of following established law and keeping that law intact.

SEN. BROWNBACK: I think that was defined as a litmus test under Ronald Reagan what Senator Feinstein just articulated.

MR. RUSSERT: We want to come back and talk about cloning. We're going to take a quick break. Another complicated controversial issue, cloning, either reproductive or therapeutic, right after this.

***THE BELTWAY BOYS**: Fox News*
February 23, 2002 Saturday

* EXCERPT*

Fred Barnes, Mort Kondracke

KONDRACKE: Welcome back.

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What's the "Buzz," Fred?

BARNES: You know, Senate Democrats on the Judiciary Committee are beginning to take heat for their really unfair treatment of Bush judicial nominee Charles Pickering. I mean, they're getting heat in "The Washington Post," from you in "Roll Call." There's a way out for them that's getting some attention, that is, vote against the nomination but send it to the floor for a full vote.

If that happens, he has a chance of winning confirmation.

KONDRACKE: Senator Cole and a, and a, and a White House push will be necessary.

Judge Charles Pickering pleads case to Democratic Judiciary Committee for spot as judge; the NAACP and other minority groups protest his appointment

ABC News
World News Tonight Sunday
February 24, 2002 Sunday

CAROLE SIMPSON; anchor

This Thursday, the Senate Judiciary Committee is expected to vote on a fiercely contested judicial nomination. The battle began when President Bush tapped Mississippi federal judge Charles Pickering for a seat on the fifth circuit federal appeals court. At issue, Pickering's record on civil rights and abortion.

Judge CHARLES PICKERING: The charges that have been made against me have been hurtful, and they have been painful. SIMPSON: (VO) This was 64-year-old judge Pickering fighting for his troubled nomination before the Democratic-controlled Senate Judiciary Committee.

Judge PICKERING: I have a record of standing up for equal protection, respecting the rule of law.

SIMPSON: (VO) But critics of the conservative Republican strongly disagree. Among them, the NAACP.

Mr. KWEISI MFUME (NAACP President): Our challenge is not against him the individual; it's against his record which has demonstrated over the years an insensitivity and a lack of tolerance, particularly on civil rights issues.

SIMPSON: (VO) His opponents point to a 1959 article Pickering wrote in law school against interracial marriage. As a state legislator in the '70s, they say he supported funding for the Mississippi Sovereignty Commission, an avowed segregationist organization. And his critics say as recently as 1994, Judge Pickering engaged in extraordinary lobbying to try to get a reduced

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sentence for a young man who participated in a cross burning. The White House says the judge is being unfairly maligned.

Mr. ALBERTO GONZALES (White House Counsel): If you go to the people that know him best, the people in his home town, including the established black community, they firmly support Judge Pickering.

SIMPSON: (VO) Judge Pickering was born and raised in Laurel, Mississippi, population 18,000. The town was hot bed of Ku Klux Klan activities in the 1950s and '60s. It made international headlines when the Klan firebombed the home of a local civil rights leader. Vernon Dahmer was killed in that blaze. A local Klan leader, Sam Bowers, was tried in the case, and Judge Pickering, then a local prosecutor, testified against him. Today in Laurel, people still respect Pickering for what he did.

Mr. THADDEUS EDMONSON (Laurel City Council President): This man has put his own life on the line against the Ku Klux Klan in this city.

SIMPSON: How?

Mr. EDMONSON: By testifying against the imperial wizard of the state of Mississippi, which in 1967, '69, was not a popular thing to do.

SIMPSON: Judge Pickering's black supporters say that the judge is part of the new South. He has changed over the past 40 years, just as the town of Laurel has changed.

Ms. ANNE CLAYTON (Laurel City Council): Just because of the past, what has happened in a person's past, I don't think we should condemn them and feel like they cannot ever change.

Mr. LARRY THOMAS (Pharmacist): I still view Charles Pickering as a--a right-wing Republican. But then on the other hand, I saw him open his arms to try to embrace change palatable to both races in south Mississippi.

SIMPSON: (VO) But for a coalition of 50 civil rights, human rights and women's groups, that is not enough.

Mr. MFUME: While there are some people on the ground in Mississippi who say, well, perhaps he's changed, perhaps he has, but I don't think we have the--the wherewithal and the freedom to run that risk because once the judge is there, there's nothing that can remove him except death.

SIMPSON: Sources on the Judiciary Committee staff say there is a chance that Judge Pickering's nomination may not make it out of the Democratic-led Judiciary Committee. Its members may seek payback for Republicans' failure to approve some of President Clinton's nominees.

"Commercial Break"

REV_00140813

Battle brewing on Capitol Hill over Bush's nomination of Charles Pickering to Federal Appeals Court

NBC News Transcripts
NBC Nightly News
February 24, 2002 Sunday

ANCHORS: JOHN SEIGENTHALER

REPORTERS: JOE JOHNS

JOHN SEIGENTHALER, anchor:

On Capitol Hill, a battle is brewing over the confirmation of the president's nominee to the Federal Court of Appeals. NBC's Joe Johns reports.

JOE JOHNS reporting:

Judge Charles Pickering of Mississippi faced two confirmation hearings before the Senate Judiciary Committee, but his Federal Appeals Court nomination is in trouble. Senator DIANNE FEINSTEIN (Democrat, California): It would be a tremendous mistake to put someone as polarizing in this position now.

JOHNS: More opposition coming from powerful groups including the National Organization for Women.

Ms. KIM GADNY (National Organization for Women): He has an extreme bias towards the enforcement of women's rights laws and particularly civil rights laws.

JOHNS: The NAACP is opposed, too, even though some blacks in Pickering's home state support him.
Reverend GEORGE BARNES (Mississippi Minister): I do not hold people accountable for something that happened 25 or 30 years ago.

JOHNS: The judge, as recently as last Thursday, calling for racial reconciliation.

Unidentified Man: I look forward to the day, hopefully during my lifetime, when all Mississippians, regardless of race, can get around the table and discuss our differences in a constructive way.

JOHNS: The 12 regional courts of appeals get the final word on the vast majority of important federal cases. There are 29 vacancies. The Senate has voted on seven appeals court judgeships,

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but Pickering is the biggest confrontation so far.

Senator SAM BROWNBACK (Republican, Kansas): This is a good man that--that people are really trying to smear in a--in a way that is--that is not becoming of the institution.

JOHNS: Some observers call this a dress rehearsal for future battles between the White House and Senate Democrats over the Supreme Court.

Mr. PAUL ROTHSTEIN (Georgetown University Law School): It's a warning sh--shot across the bow of the ship of state led by President Bush that, 'Please do not give us conservative Supreme Court nominees.'

JOHNS: A vote on the nomination could come later this week, setting down a new marker between the White House and the Senate over federal judges. Joe Johns, NBC News, Washington.

(Commercial Break)

Interest Groups/Press Releases

None

REV_00140815

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/25/2002 12:57:58 PM
Subject: : Re: Agenda item for JSC

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FYI: this is the only item so far on the agenda. If nothing else comes through, do you still want to have the meeting?

Bradford A. Berenson
02/25/2002 04:07:37 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Agenda item for JSC

Please add a discussion item just before the Confirmation Update for "Update on War Room Planning."

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>

Sent: 2/26/2002 5:04:55 AM

Subject: : No JSC Mtg. tomorrow - Wed., Feb. 27th

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We will resume next week (March 6th) with usual time and place - Wednesday
in the Roosevelt at 4:00 pm.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: kelly.sinclair@epa.gov @ inet [UNKNOWN] <kelly.sinclair@epa.gov>
Sent: 2/26/2002 8:23:41 AM
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Political Activity Overview
(February 20, 2002)

General Principle

- In general, Executive Office of the President political appointees (EOP)[1] and Senate-confirmed officials (PAS) may engage in a wide variety of political activity (other than expressly soliciting contributions) *including while on duty and in the office*. The government must be reimbursed for additional costs associated with that activity -- that is, the costs beyond what the government otherwise would have incurred.
    - Certain investigative and national security agencies have more restrictive rules and policies; each such agency is responsible for appropriate guidance.

The Major Rules for EOP and PAS Officials

- Fundraisers
    - may appear and speak at fundraisers, but no explicit fundraising
- Use of Title
    - no use of actual title in invitations to political events
      (attempt to review invitations in advance)
    - may use "The Honorable" if applicable; former political titles appropriate
    - the official title may be used in a biography distributed at the event itself, in the introduction of the speaker, and in other similar ways at event
- Travel Costs
    - appropriate political entity pays costs associated with political travel
    - mixed trips: reimbursement determined by "total activity time"
    - security-related costs are official costs
    - corporate aircraft policy (do not use absent extraordinary circumstances)
    - Events in government buildings
        - no fundraising events on government property
        - appearance issues with donors *qua* donors
- Equipment
    - generally permissible for EOP and PAS officials to use equipment such as computers, printers, telephones, and FAXes for reasonable political activity because there are no additional costs incurred by government except incidental costs of paper
        - appearance issues from excessive use

[1] Such officials ordinarily work beyond normal work hours and outside the normal duty post as contemplated by the regulations.

Official versus Political

- Few bright-line rules; often a case-by-case judgment (1982 OLC opinion)
- The definitional issue is relevant primarily for use of title and travel purposes.
- Political activity is activity primarily related to an election, a campaign, a political party event, or a political party's operations.
    - Speaking at or attending an event held by a political party or political organization is ordinarily considered "political" unless the speaker is speaking only on official policy matters; if the event is a fundraiser or a campaign event, however, it ordinarily should be considered political regardless of content.
    - An otherwise official event is official notwithstanding that it may somehow incidentally assist the popularity of a political party or candidate (for example, if the event is in a district of a political candidate or if a political candidate such as a House member attends the event).
        - Speakers at an official event should avoid expressly advocating the election of a candidate.
    - Being knowledgeable about the political environment and the status of particular races can be relevant to one's official duties, for it is all but impossible to understand Congress or state or local government without being knowledgeable about the overall political/electoral environment in Congress and the states. Therefore, a briefing on the political environment and the status of particular races can be considered official activity depending on the overall context of the briefing.
    - Being knowledgeable about public opinion and public approval similarly can be relevant to one's official duties, and briefings on such issues ordinarily should be considered official activity depending on the overall context of the briefing.
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Specific Rules

- Except for those in certain investigative and national security agencies, the permissible range of political activities includes:

    - participation in political organizations, which includes:

        - being a member of a political party;
        - serving as an officer of a political party;
        - attending and participating in nominating caucuses;
        - organizing a political party;
        - participating in a political convention or rally; and
        - serving as a delegate to a political convention.

    - participation in political campaigns, which includes:

        - displaying political pictures, signs, stickers, or buttons (although employees other than White House and PAS appointees cannot do so while on duty or in their offices);
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Other than the President or Vice President, Executive Branch officers and employees may *not* solicit, receive, or accept political contributions. However, Executive Branch officers and employees (other than those in certain investigative and national security agencies) may:

- make political contributions;
- attend political fundraisers;
- manage or organize political fundraisers behind the scenes;
- speak at political fundraisers, so long as one's official title is not used (the term of address "The Honorable" may be used);
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- As the above summary reveals, certain kinds of political activities are **forbidden**:
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  - no fundraising on government property
  - official's name cannot appear on an invitation as a "sponsor" of a fundraiser, but can be identified as a guest speaker
  - official's title cannot be used in connection with political events, but can use "The Honorable"
  - general misuse of official authority
    - cannot ask regulated entities or those under investigation to engage in political activities; however, one can speak to a diverse group that includes individuals within those categories
    - cannot ask subordinates to engage in political activity; however, superiors and subordinates may interact on political matters when both are involved in same political activity or organization
  - other than President and Vice President, cannot run as a candidate in a partisan election except under specified circumstances

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: sinclair.kelly@epa.gov @ inet [UNKNOWN] <sinclair.kelly@epa.gov>
Sent: 2/26/2002 8:23:34 AM
Subject: : points
Attachments: P_ZQEO5003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-FEB-2002 13:23:34.00
SUBJECT:: points
TO:sinclair.kelly@epa.gov ( sinclair.kelly@epa.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ZQEO5003_WHO.TXT_1>
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Political Activity Overview
(February 20, 2002)

General Principle

- In general, Executive Office of the President political appointees (EOP)[1] and Senate-confirmed officials (PAS) may engage in a wide variety of political activity (other than expressly soliciting contributions) *including while on duty and in the office*. The government must be reimbursed for additional costs associated with that activity -- that is, the costs beyond what the government otherwise would have incurred.

    - Certain investigative and national security agencies have more restrictive rules and policies; each such agency is responsible for appropriate guidance.

The Major Rules for EOP and PAS Officials

- Fundraisers
    - may appear and speak at fundraisers, but no explicit fundraising

- Use of Title
    - no use of actual title in invitations to political events
      (attempt to review invitations in advance)
    - may use "The Honorable" if applicable; former political titles appropriate
    - the official title may be used in a biography distributed at the event itself, in the introduction of the speaker, and in other similar ways at event

- Travel Costs
    - appropriate political entity pays costs associated with political travel
    - mixed trips: reimbursement determined by "total activity time"
    - security-related costs are official costs
    - corporate aircraft policy (do not use absent extraordinary circumstances)
    - Events in government buildings
        - no fundraising events on government property
        - appearance issues with donors *qua* donors

- Equipment
    - generally permissible for EOP and PAS officials to use equipment such as computers, printers, telephones, and FAXes for reasonable political activity because there are no additional costs incurred by government except incidental costs of paper
        - appearance issues from excessive use

[1] Such officials ordinarily work beyond normal work hours and outside the normal duty post as contemplated by the regulations.

Official versus Political

- Few bright-line rules; often a case-by-case judgment (1982 OLC opinion)
- The definitional issue is relevant primarily for use of title and travel purposes.
- Political activity is activity primarily related to an election, a campaign, a political party event, or a political party's operations.
    - Speaking at or attending an event held by a political party or political organization is ordinarily considered "political" unless the speaker is speaking only on official policy matters; if the event is a fundraiser or a campaign event, however, it ordinarily should be considered political regardless of content.
    - An otherwise official event is official notwithstanding that it may somehow incidentally assist the popularity of a political party or candidate (for example, if the event is in a district of a political candidate or if a political candidate such as a House member attends the event).
        - Speakers at an official event should avoid expressly advocating the election of a candidate.
    - Being knowledgeable about the political environment and the status of particular races can be relevant to one's official duties, for it is all but impossible to understand Congress or state or local government without being knowledgeable about the overall political/electoral environment in Congress and the states. Therefore, a briefing on the political environment and the status of particular races can be considered official activity depending on the overall context of the briefing.
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  - other than President and Vice President, cannot run as a candidate in a partisan election except under specified circumstances

From: CN=Jennifer Millerwise/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/26/2002 2:01:33 PM
Subject: : FW: Law Day Luncheon

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jennifer Millerwise (CN=Jennifer Millerwise/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME:26-FEB-2002 19:01:33.00
SUBJECT:: FW: Law Day Luncheon
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

is this something your shop ever does?
---------- Forwarded by Jennifer Millerwise/OVP/EOP on 02/26/2002 07:00 PM ----------

"Dillon, Arlene" <ADD@cbsnews.com>
02/13/2002 03:02:57 PM
Record Type: Record

To: Jennifer Millerwise/OVP/EOP@EOP
cc:
Subject: FW: Law Day Luncheon

Jennifer --
This is from a VERY dear friend of mine. We were best friends in college. Anyway, he's a lawyer in Montgomery County, MD and as you can see from his e-mail, a VERY GOOD REPUBLICAN. Would you take a look and let me know what I should advise him to do? I realize it won't be Pres or VP but there must be someone over there who might be able to do this. It's local so no travel involved and there is a pretty decent audience to address. What do you think?
thanks,
arlene

-----Original Message-----
From: Harry C. Storm [mailto:HCStorm@awsdlaw.com]
Sent: Wednesday, February 13, 2002 3:07 PM
To: Dillon, Arlene
Subject: Law Day Luncheon

Arlene -- sorry I missed your call and sorry to hear about Danny's father. Things sounded pretty crazy in the background and am sorry to add one more thing to your list. Anyway, the details are these: Our County Bar Association has its Law Day luncheon on the first Friday in May, which is May 3rd. We usually have between 350-500 attend. We need a speaker to speak for no more than 20 minutes. Being the good Republican that I am in a county full of Democrats, and because this luncheon is when the gavel is turned over to me as president of the association, I thought that it would be great to have someone from the White House. Unsure of how high to go or just who might be interested, if anyone. President, Vice-President, White House Counsel, White House maid or butler... whoever. Anyway, I had thought about this months ago, but then sort of gave up on it after September 11th. Now, however, as the date is approaching I would really like to see if this could still work. Any ideas on a person to talk to would be great. I might add that

I was a precinct chairman in Montgomery County for Bush-Cheney.

Arlene, thank you again. Give my best to Danny. Hope the girls are doing well. Look forward to seeing you soon. Harry

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 2/26/2002 12:41:21 PM
Subject: : TIME CHANGE for POTUS mtg re: Judges

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-FEB-2002 17:41:21.00
SUBJECT:: TIME CHANGE for POTUS mtg re: Judges
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

New time is Tuesday, March 5th at 4:00 pm.

Please remove the Thursday, Feb. 27 meeting date/time from your schedule.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 2/26/2002 12:41:21 PM
Subject: : TIME CHANGE for POTUS mtg re: Judges

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-FEB-2002 17:41:21.00
SUBJECT:: TIME CHANGE for POTUS mtg re: Judges
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jennifer Millerwise/OVP/EOP@EOP [OVP] <Jennifer Millerwise>
Sent: 2/26/2002 2:05:15 PM
Subject: : Re: FW: Law Day Luncheon

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-FEB-2002 19:05:15.00
SUBJECT:: Re: FW: Law Day Luncheon
TO:Jennifer Millerwise (CN=Jennifer Millerwise/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

I actually know Harry quite well and would be happy to call him if
that is ok with you.

Jennifer Millerwise
02/26/2002 07:01:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Law Day Luncheon

is this something your shop ever does?
---------- Forwarded by Jennifer Millerwise/OVP/EOP on
02/26/2002 07:00 PM ----------

"Dillon, Arlene" <ADD@cbsnews.com>
02/13/2002 03:02:57 PM
Record Type: Record

To: Jennifer Millerwise/OVP/EOP@EOP
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Anyway, he's a lawyer in Montgomery County, MD and as you can
see from his e-mail, a VERY GOOD REPUBLICAN. Would you take a look and let
me know what I should advise him to do? I realize it won't be Pres or VP
but there must be someone over there who might be able to do this. It's
local so no travel involved and there is a pretty decent audience to
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thanks,
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From: Harry C. Storm [mailto:HCStorm@awsdlaw.com]
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>
Sent: 2/27/2002 2:50:51 AM
Subject: : Re: Victims Rights

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-FEB-2002 07:50:51.00
SUBJECT:: Re: Victims Rights
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Do you have the text in e-mail format. need to forward to another
here.

Garry Malphrus
02/22/2002 11:45:03 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Victims Rights

If anyone has any concerns with the text of the victims rights constitutional amendment as Viet presented it to us, please let me know by the end of the day on Wednesday. As we discussed at the meeting, the Department is interested in potentially having a White House ceremony announcing the President's support for the amendment during National Crime Victims Week, which is April 21-27. Thank you.

Message Sent
To:_____
Diana L. Schacht/OPD/EOP@EOP
Jay p. lefkowitz/omb/eop@eop
robert marsh/who/eop@eop
heather wingate/who/eop@eop
brett m. kavanaugh/who/eop@eop
joel d. kaplan/who/eop@eop

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: jay p. lefkowitz/opd/eop@eop [OPD] <jay p. lefkowitz>;rebecca a. beynon/omb/eop@eop [OMB] <rebecca a. beynon>
Sent: 2/27/2002 5:04:55 AM
Subject: : Re: Victims comp

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:27-FEB-2002 10:04:55.00
SUBJECT:: Re: Victims comp
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:jay p. lefkowitz ( CN=jay p. lefkowitz/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:rebecca a. beynon ( CN=rebecca a. beynon/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

How about 4:30 if that's better for KS. We can hold Taft off another day
if need be. Brett, can you coordinate with leg and comm.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: m.edward.whelan@usdoj.gov @ inet [UNKNOWN] <m.edward.whelan@usdoj.gov>
Sent: 2/27/2002 9:07:36 AM
Subject: : AP - Congressman Wants FBI Records

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-FEB-2002 14:07:36.00
SUBJECT:: AP - Congressman Wants FBI Records
TO:m.edward.whelan@usdoj.gov (m.edward.whelan@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/27/2002 02:07 PM ----------

Anne Womack
02/27/2002 01:37:40 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: AP - Congressman Wants FBI Records

---------- Forwarded by Anne Womack/WHO/EOP on 02/27/2002 01:37 PM ----------

Brian Bravo
02/27/2002 01:20:54 PM
Record Type: Record

To:
cc:
Subject: AP - Congressman Wants FBI Records

Congressman Wants FBI Records
By Melissa B. Robinson
Associated Press Writer
WASHINGTON)) The chairman of a House committee said Wednesday he may try to hold President Bush in contempt of Congress for failing to turn over Justice Department records on the FBI's handling of mob informants in Boston in the 1960s.
Rep. Dan Burton, R-Ind., chairman of the Government Reform Committee, said during a hearing on the Boston case that his panel's legal staff "is preparing a contempt citation."
If Bush and Attorney General John Ashcroft "continue to be recalcitrant, I hope everyone on this committee will support me in getting the House to move this forward," Burton said.
It's unclear how long Burton will wait for the documents before deciding to bring the citation before his committee for consideration. If he does, and the committee approves it, he would then have to convince the House's Republican leaders to bring the citation against a GOP president to the full House for a vote.
Bush ordered Ashcroft to withhold the documents from the committee in December. He cited executive privilege, a doctrine recognized by the courts that ensures presidents can get candid advice in private without fear it will become public.
Bush argued that releasing records could have a chilling effect on

prosecutors' willingness to discuss criminal matters.
Committee members of both parties have argued the documents should be released to Congress so it can fulfill its responsibility of monitoring the executive branch's activities.
With regard to the Boston case, they want to ensure that past excesses of the FBI aren't repeated. Among the facts Burton's committee has learned since it began looking into the issue is the FBI's knowledge that an innocent man was convicted of a murder actually committed by an FBI informant.

From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: jonathan r. scharfen/nsc/eop@eop [NSC] <jonathan r. scharfen>
Sent: 2/27/2002 6:37:28 AM
Subject: : Re: VICTIMS COMP: another meeting at 4:30 in Jay's office

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME:27-FEB-2002 11:37:28.00
SUBJECT:: Re: VICTIMS COMP: another meeting at 4:30 in Jay's office
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:jonathan r. scharfen ( CN=jonathan r. scharfen/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Why? Do we need to do homework?
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>
Sent: 2/27/2002 11:08:42 AM
Subject: : Re: meeting tomorrow

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-FEB-2002 16:08:42.00
SUBJECT:: Re: meeting tomorrow
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

2pm works.
```

```
Brett M. Kavanaugh
02/27/2002 04:04:52 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: Courtney S. Elwood/WHO/EOP@EOP
Subject: meeting tomorrow

Judge Courtney and I for a half hour at 2:00 on tort reform
```

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/27/2002 8:37:51 AM
Subject: : AP - Congressman Wants FBI Records

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-FEB-2002 13:37:51.00
SUBJECT:: AP - Congressman Wants FBI Records
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Anne Womack/WHO/EOP on 02/27/2002 01:37 PM ----------

Brian Bravo
02/27/2002 01:20:54 PM
Record Type: Record

To:
cc:
Subject: AP - Congressman Wants FBI Records

Congressman Wants FBI Records
By Melissa B. Robinson
Associated Press Writer
WASHINGTON)) The chairman of a House committee said Wednesday he may try to hold President Bush in contempt of Congress for failing to turn over Justice Department records on the FBI's handling of mob informants in Boston in the 1960s.
Rep. Dan Burton, R-Ind., chairman of the Government Reform Committee, said during a hearing on the Boston case that his panel's legal staff "is preparing a contempt citation."
If Bush and Attorney General John Ashcroft "continue to be recalcitrant, I hope everyone on this committee will support me in getting the House to move this forward," Burton said.
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Bush argued that releasing records could have a chilling effect on prosecutors' willingness to discuss criminal matters.
Committee members of both parties have argued the documents should be released to Congress so it can fulfill its responsibility of monitoring the executive branch's activities.
With regard to the Boston case, they want to ensure that past excesses of the FBI aren't repeated. Among the facts Burton's committee has learned since it began looking into the issue is the FBI's knowledge that an innocent man was convicted of a murder actually committed by an FBI informant.

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 2/27/2002 9:47:20 AM
Subject: : RE: AP - Congressman Wants FBI Records

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:27-FEB-2002 14:47:20.00
SUBJECT:: RE: AP - Congressman Wants FBI Records
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

"As Congressman Burton is well aware, the Department of Justice, at the direction of the White House, has been meeting with Congressman Burton's staff to determine which of the Boston documents his Committee has established a genuine need to review. Congressman Burton's staff has already conceded that it has no legitimate interest in several of the documents. Consistent with the President's directive, the Department of Justice is working with Congressman Burton's staff to resolve disputes as to the other documents. Talk of a contempt citation may attract the press's attention, but it does not advance the process that is already underway."

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, February 27, 2002 2:08 PM
To: Whelan, M Edward III
Subject: AP - Congressman Wants FBI Records

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/27/2002
02:07 PM ----------

Anne Womack
02/27/2002 01:37:40 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: AP - Congressman Wants FBI Records

---------- Forwarded by Anne Womack/WHO/EOP on 02/27/2002 01:37 PM ----------

Brian Bravo
02/27/2002 01:20:54 PM

Record Type: Record

To:

cc:
Subject: AP - Congressman Wants FBI Records

Congressman Wants FBI Records
By Melissa B. Robinson
Associated Press Writer
WASHINGTON

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 2/28/2002 4:51:18 AM
Subject: : Re: April 25/26 - Maryland Judicial Conf.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-FEB-2002 09:51:18.00
SUBJECT:: Re: April 25/26 - Maryland Judicial Conf.
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Yes, he should do this one.




Elizabeth N. Camp
02/28/2002 08:59:16 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
cc:
Subject: April 25/26 - Maryland Judicial Conf.

The Judge will be invited to speak to them at a luncheon event in
Baltimore in April.

Right now his schedule permits so unless you have objections he will
probably be inclined to do it.

Any comments?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
CC: Jonathan R. Scharfen/NSC/EOP@EOP [NSC] <Jonathan R. Scharfen>
Sent: 2/28/2002 5:34:07 AM
Subject: : you have John Kim's number?

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-FEB-2002 10:34:07.00
SUBJECT:: you have John Kim's number?
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:Jonathan R. Scharfen ( CN=Jonathan R. Scharfen/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: Goodling, Monica <Monica.Goodling@usdoj.gov>
To: Comstock, Barbara <Barbara.Comstock@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>;Thorsen, Carl <Carl.Thorsen@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Collins, Dan <Dan.Collins@usdoj.gov>;Burton, Faith <Faith.Burton@usdoj.gov>;Bybee, Jay <Jay.Bybee@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Martens, Matthew <Matthew.Martens@usdoj.gov>;Chertoff, Michael <Michael.Chertoff@usdoj.gov>;Horowitz, Michael-CRM <Michael.Horowitz3@usdoj.gov>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>
Sent: 2/28/2002 7:20:13 AM
Subject: : Burton stories

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Goodling, Monica" <Monica.Goodling@usdoj.gov> ("Goodling, Monica" <Monica.Goodling@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:28-FEB-2002 12:20:13.00
SUBJECT:: Burton stories
TO:"Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Comstock, Barbara" <Barbara.Comstock@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Thorsen, Carl" <Carl.Thorsen@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Collins, Dan" <Dan.Collins@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Burton, Faith" <Faith.Burton@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Bybee, Jay" <Jay.Bybee@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Bybee, Jay" <Jay.Bybee@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Martens, Matthew" <Matthew.Martens@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Chertoff, Michael" <Michael.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Horowitz, Michael-CRM" <Michael.Horowitz3@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ:UNKNOWN
CC:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett - Hi, I'm the senior counsel in Barbara's office at DOJ Public Affairs. Here are some of the relevant Burton stories you thought everyone should be emailed. I'll send a daily email with additions on the subject. Take care.

The Associated Press, February 27, 2002
HEADLINE: Congressman Wants FBI Records
BYLINE: MELISSA B. ROBINSON

Faced with a contempt threat, the Justice Department agreed Wednesday to give a congressional committee records on the Boston FBI's handling of mob informants in the 1960s, the committee chairman said.
"My committee has been investigating this tragic case for over a year," said House Government Reform Chairman Dan Burton. "We've finally reached an agreement with the Justice Department to see the documents we need to see to move forward with this investigation."
A department spokesman declined comment, saying he was reviewing the details.
For now, the agreement settles the showdown between Burton and the White House over its use of executive privilege to shield prosecutorial documents from congressional scrutiny. The dispute had led to charges by both Democrats and Republicans that Bush was trying to run an "imperial" presidency.
At a committee hearing Wednesday, Burton said he might try to hold President Bush in contempt because he and Attorney General John Ashcroft had yet to comply with a subpoena for the documents.
After department officials and committee aides met later, the department agreed to provide five documents in question, the aides said. The committee had sought 10 records, but four were found to be irrelevant to the case or not responsive to the subpoena. One was provided earlier.
Executive privilege is a doctrine recognized by the courts that ensures presidents can get candid advice in private without fear it will become public.
Bush invoked it in December when he ordered Ashcroft not to turn the Boston records over. He argued that releasing the records could have a chilling effect on prosecutors' willingness to discuss criminal matters.
Burton has focused on revelations that Joseph Salvati of Boston spent 30 years in prison for a murder he did not commit even though the FBI had evidence of his innocence.

LOAD-DATE: February 27, 2002

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The Associated Press, February 27, 2002
HEADLINE: Burton drafting contempt citation against Bush to get FBI records from the 1960s
BYLINE: By MELISSA B. ROBINSON, Associated Press Writer

The chairman of a House committee said Wednesday he may try to hold President Bush in contempt of Congress for failing to turn over Justice Department records on the FBI's handling of mob informants in Boston in the 1960s.
Rep. Dan Burton, R-Ind., chairman of the Government Reform Committee, said during a hearing on the Boston case that his panel's legal staff "is preparing a contempt citation."
If Bush and Attorney General John Ashcroft "continue to be recalcitrant, I hope everyone on this committee will support me in getting the House to move this forward," Burton said.
It's unclear how long Burton will wait for the documents before deciding to bring the citation before his committee for consideration. If he does, and the committee approves it, he would then have to convince the House's Republican leaders to bring the citation against a GOP president to the

full House for a vote.
Bush ordered Ashcroft to withhold the documents from the committee in December. He cited executive privilege, a doctrine recognized by the courts that ensures presidents can get candid advice in private without fear it will become public.
Bush argued that releasing records could have a chilling effect on prosecutors' willingness to discuss criminal matters.
Committee members of both parties have argued the documents should be released to Congress so it can fulfill its responsibility of monitoring the executive branch's activities.
With regard to the Boston case, they want to ensure that past excesses of the FBI aren't repeated. Among the facts Burton's committee has learned since it began looking into the issue is the FBI's knowledge that an innocent man was convicted of a murder actually committed by an FBI informant.

LOAD-DATE: February 28, 2002

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The Boston Globe, February 27, 2002
SECTION: NATIONAL/FOREIGN; Pg. A3
HEADLINE: UNLIKELY FRIENDS, ENEMIES BURTON PROBE RILES BUSH, WINS PRAISE FROM DEMOCRATS
BYLINE: By Wayne Washington, Globe Staff

WASHINGTON - Dan Burton is a conservative Republican who has been liberal in his scorn for Democrats.
Few Republicans in Congress are seen by their Democratic counterparts as more partisan, more scandal-raking than Burton, a 10-term representative from Indiana. As chairman of the House Committee on Government Reform, he has conducted hearings on Bill Clinton's White House and presidential pardons, Democratic fund-raising, and the Clinton administration's handling of the FBI raid in Waco, Texas.
So how come Massachusetts Democrats have started saying such nice things about Burton? Representative William D. Delahunt of Quincy calls him "passionate." Representative Barney Frank of Newton says some of Burton's recent actions have been "impressive."
The surprising praise stems from Burton's investigation into how the false testimony of a murderous FBI informant sent four men to prison in 1967 for slaying Edward "Teddy" Deegan in Chelsea, a crime they did not commit. Two of the men died in prison. Two served about 30 years each before their convictions were overturned.
Burton will continue digging into the case today, when another committee hearing is scheduled.
For more than a year now, the Government Reform Committee has trained a sharp focus on what the FBI knew about the informant, the lengths it went to protect him, and its willingness to allow innocent men to be imprisoned on testimony the agency knew to be false. That focus has put Burton at odds with the Justice Department and the Bush White House.
Delahunt, a former Norfolk County district attorney with an interest in the case, says he originally preferred to have the House Judiciary Committee do the investigating. Three Massachusetts congressmen - Delahunt, Frank, and Martin T. Meehan - serve on Judiciary, and they would have surely gotten involved in a Boston-related case.
Republicans control the House, however, and that panel's Republican chairman, F. James Sensenbrenner Jr. of Wisconsin, had little interest in pursuing a case that would almost certainly be a headache for the Bush administration.
To the surprise of many Democrats, Burton pressed ahead. He decided to conduct hearings and invited the Massachusetts Democrats to participate.
The invitation was more than mere congressional courtesy. Delahunt, for example, was dispatched to Boston last week to take the deposition of a retired FBI agent who declined to travel to Washington to provide testimony.
Delahunt said his working relationship with Burton has been terrific.
"He's treated me with respect, and we've gotten full cooperation," Delahunt said.

Mark Corallo, spokesman for the Government Reform Committee, said fairness and justice are Burton's main interests.
"Contrary to popular belief, the chairman has always believed you have to look at the issues objectively," Corallo said. Democrats "know he's still a conservative Republican, but there are instances where everybody can come together," he said.
Well, not everybody.
The Justice Department has refused to comply with a committee subpoena for FBI records in the case. President Bush has issued an order contending that executive privilege allows his administration to keep the documents secret.
That position has infuriated Burton, who contends officials at the highest levels of the FBI, including then-director J. Edgar Hoover, knew the men being convicted were not guilty.
"He knew it, and his name should not be emblazoned on the FBI's headquarters," Burton said on "60 Minutes" last month. "We ought to change the name of that building."
Such fiery rhetoric is typically aimed at Democrats.
"Burton's willingness to take on the Bush administration has been impressive," Frank said. "His willingness to go after the memory of J. Edgar Hoover is impressive."
In the past, Frank has been one of Burton's sharpest critics.
"I thought his Clinton stuff was wacky," he said. "I'm critical of his positions. I'm less critical now of his motives."
Frank said he's particularly struck by the timing of Burton's actions.
"We've been in this atmosphere where we're giving more power to law enforcement," Frank said. "We should give law enforcement more power. They're the good guys. They're protecting us. But Burton is showing what can happen when that power is abused."
Still, some Democrats squirm at the news that Burton is getting praise from members of their party. Frank said colleagues have told him, "Don't be so nice to the guy."
Frank said he and his Massachusetts colleagues are giving praise where praise is due.
"Yes, I dislike Dan Burton," Frank said. "If he went back to doing some of the Clinton stuff, I'd be critical. But what goal is served by not encouraging him to go after these FBI abuses? Why would I not want to encourage that?"
Delahunt said he has sensed no reluctance from Burton about confronting the administration.
"In my mind, Dan Burton has proven himself beyond any reasonable doubt that he's interested in the facts of this case," Delahunt said.
Corallo, the Government Reform Committee spokesman, said Burton, who spent last week at home in Indiana with his sick wife, feels vindicated by the praise of Democrats. The relationship between Burton and Democrats has gone a long way toward bridging a partisan gap that developed during the Clinton administration, Corallo said.
"When you can start smiling at each other in the halls again, that's nice," Corallo said.

GRAPHIC: PHOTO, AP PHOTO

LOAD-DATE: February 27, 2002

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Knight Ridder Washington Bureau, February 26, 2002, Tuesday
HEADLINE: Bush White House, Congress in a Tug-of-War over Balance of Power
BYLINE: By James Kuhnhenn

WASHINGTON -- The Bush White House provoked a major lawsuit and is angering even its political allies in a campaign to increase its control over federal spending and public information.
At stake are public access to White House deliberations, the fate of federal projects in communities across America, and the ever-shifting balance of power between Congress and the presidency.
Last week, the General Accounting Office, the investigative arm of Congress, sued Vice President Dick Cheney to learn who participated in

meetings he chaired while formulating the administration's energy policy.
The suit was the latest move in a series of clashes that illustrate the administration's determination to reverse what it believes is a decades-long erosion of presidential authority.
Congress is fighting back on other fronts as well.
Some influential lawmakers, including senior Republicans, are bristling at efforts by the White House Office of Management and Budget to limit spending on projects in their home districts. And when the White House rejected a request by Rep. Dan Burton, R-Ind., for Justice Department documents on organized crime dating to 1967, Burton threatened to hold President Bush in contempt of Congress.
Power struggles between Congress and the White House date to the nation's founders. But the current quarrels are distinguished by the administration's unyielding stance and the bipartisan furor it has aroused. They are especially noteworthy given a president who promised an administration characterized by openness and affability.
"It's hard to be an open populist when you're trying to protect presidential power," said Marshall Wittmann, a Republican strategist and fellow at the Hudson Institute, a conservative policy research center.
But for Cheney and Bush, fortifying the presidency is as much a policy goal as cutting taxes and building up the nation's defenses.
"One of the things that I feel an obligation on, and I know the president does, too ... is to pass on our offices in better shape than we found them," Cheney said recently on ABC's "This Week." "We are weaker today as an institution because of the unwise compromises that have been made over the last 30 or 35 years."
That view has brought the GAO lawsuit and the thundering contempt-of-Congress threat from Burton, the chairman of the House Government Reform Committee.
It has also led to a confrontation over what many lawmakers maintain is their fundamental right under the Constitution -- the power to decide how to spend taxpayers' money.
The White House and its budget office are out to limit Congress' practice of adding to spending legislation special projects for the folks back home.
Upon delivering the budget to Congress earlier this month, White House Budget Director Mitchell Daniels declared that such spending "has gotten out of hand." The administration took a swipe at Congress in the budget document, singling out an $ 80,000 grant to a Wisconsin county sheriff's department for the purchase of an Ice Angel Windsled, used for winter rescues on frozen Lake Superior.
It was no coincidence that the Republican Bush administration zeroed in on a project championed by the ranking Democrat on the Appropriations Committee, Wisconsin's David Obey. Obey was furious.
But Daniels had angered Republicans, too. To make up for a shortfall in a federal education program, he wanted to eliminate hundreds of health and education projects that members inserted into spending legislation last year.
Appropriations Committee Chairman Bill Young, R-Fla., fumed.
"All wisdom on the allocation of federal grant funding does not reside in the executive branch," he wrote Daniels on Feb. 6. "Unless the Constitution is amended, Congress will continue to exercise its discretion over federal funds and will earmark those funds for purposes we deem appropriate."
National moods, scandals and the personalities of the individuals occupying the White House have dictated the power swings from White House to Congress over the years. Congress was at its peak of power in the post-Watergate period.
"As time has passed, it has swung back to the executive," said Gary Bass, executive director of OMB Watch, a research group that advocates openness in government. "And this administration has put much greater stock in protecting executive turf."
In the end, the Bush White House may not win all these confrontations. But by drawing a line across Pennsylvania Avenue and daring Congress to cross it, Bush and Cheney have done more to assert presidential power than previous administrations.
But the White House faces significant political risks. The public may be more likely to believe that a president is hiding something rather than protecting a constitutional principle. Among the energy industry executives who advised

Cheney last year was
Kenneth Lay, then Enron Corp. chairman, and a major fund-raiser for Bush's presidential campaign. By fighting the GAO, the White House gives fuel to critics who say that Cheney, a former energy company executive himself, was drafting a policy to benefit the administration's industry friends. Others say that Enron and energy policy aside, a successful White House stand could dramatically alter how Congress performs its job as a check on the executive branch.
"This could have huge, huge policy implications," said Bass of OMB Watch. "I do believe that Cheney and the White House are pursuing a principled issue on the energy task force. ...This is beyond Enron and the work of the Cheney task force. This is an issue about executive power."

LOAD-DATE: February 26, 2002

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The Washington Post, February 26, 2002, Tuesday, Final Edition
SECTION: A SECTION; Pg. A19; WHITE HOUSE NOTEBOOK DANA MILBANK
HEADLINE: Pizza Crust, Principles and Politics
BYLINE: Dana Milbank

It was the modern political equivalent of Moses and the Burning Bush. On Inauguration Day 2001, Bush presidential aides entered the White House to discover the Miracle of the Warm Pizza Crust.
The famous crust was found, appropriately enough, in a pizza box that had been left on a desk when a Bush aide arrived for work on the new administration's first day. The discovery was included in a list of alleged vandalism of White House offices by departing Clinton aides, furnished by the Bush White House to the investigative arm of Congress, the General Accounting Office. But when presented with the warm-crust allegation, Clinton officials pointed out that no Clinton aides assigned to that office were even in the White House complex after Jan. 19 -- the day before inauguration.
This means that even if the Clinton aides left at midnight the night before and the Bush aides showed up at noon on Inauguration Day, the pizza crust stayed warm for 12 hours.
That the Bush administration would cooperate so freely in the GAO investigation of such matters as pizza temperature in the Clinton White House stands in stark contrast to the administration's stand against another GAO investigation, this one involving Vice President Cheney's energy task force. In protecting the identities and requests of outsiders who met with the task force, top White House officials have indicated they may challenge the constitutionality of the law empowering the GAO -- a move that, if successful, would pretty much put the 80-year-old office out of business.
In the GAO's Clinton vandalism probe, due to wrap up in April, the Bush administration has furnished the agency with a list of allegations.
"We are saddened that especially after the events of September 11, 2001, the White House continues to push this matter," two former Clinton aides in charge of White House administration, Mark Lindsay and Mike Malone, wrote to the GAO last month.
Lindsay and Malone pointed out some apparent flaws in the catalogue of Clinton vandalism, including the Warm Pizza Crust incident. The Bush team gave the GAO a photo of a dirty room in the White House complex, but the Clinton aides wrote that "the office featured in the photograph was vacated at least one week prior to Inauguration Day, and had been in fact completely cleaned by the morning of January 20th."
Then there was the case of Room 145 in the building next to the White House. The Bush administration said "historical artifacts" had been taken from the office. "We understand that at least one of the artifacts, an historic fireplace mirror, can be found hanging over the fireplace in [Bush] Chief of Staff [Andrew H.] Card's office," Lindsay and Malone wrote.
The GAO itself, in its suit filed last week against Cheney over the energy task force records, argues that the White House worked to "facilitate the investigation" into alleged Clinton vandalism. The suit points out that before President Bush came to office, "the executive branch has complied with countless GAO requests for information." The Clinton White House gave GAO the names of outside consultants who met with

its health care task force and "thousands of documents" from a task force on trade relations with China.

Even the Nixon administration, no standard of transparency, relented during the Watergate years when the GAO wished to examine White House records. "To litigate the GAO's authority would bring only negative publicity and defeat," former Nixon counsel John Dean has said.

Apples and oranges, says the Bush White House. Previous GAO requests did not involve requests for information about meetings of the president or vice president, Bush aides say, while the current request is for meetings held by Cheney in his role as head of the task force. "This would be something we've never seen before," a senior Bush aide says.

But that principle is a bit murky. While the GAO had not previously asked the current White House for information regarding the contacts of the president or vice president, the Bush White House has been quick to relinquish to Congress such information from the Clinton White House.

Last September, Rep. Dan Burton (R-Ind.), chairman of the House Government Reform Committee, asked for e-mails from the Clinton White House to see whether campaign contributors had inappropriate influence over President Bill Clinton and Vice President Al Gore. The National Archives, noting that Bush "agreed to this release," turned over 2,000 pages of e-mails two months later, including those to Gore from his staff and between senior Gore staff.

Also last year, Bush raised no objection to handing over to Burton's committee 2,475 pages of Clinton documents related to the Marc Rich pardon -- including phone records, a list of visitors cleared to enter the White House and notes of Clinton conversations with a foreign leader.

Clinton did not object. But such flexibility was learned the hard way. Lanny Davis, who was Clinton's special counsel, says Bush is right to stiff the GAO, and Clinton was right to try to block earlier congressional "encroachments," too. Problem is, it never works.

"Been there, done that," Davis said. "We abandoned principle under the pressure of politics, and unfortunately, that's going to happen here."

LOAD-DATE: February 26, 2002

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Thought this was pretty good, in case you haven't seen.

Marc, I think we need to have another call on this. I'd like to bring everyone up to date on our conversations with Schumer's office.

Also, what would the group think about my setting up a meeting with Bob Hunter of CFA to talk with him and try to share perspectives? His skepticism on this issue is hurting us with some of the key players on the Dem side. I think it would be helpful to have White House representation at
such a meeting.

Let me know.

Sheila

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Equity Research
North America

Industry

Financial Institutions

Alice Schroeder
Henry H. McVey
Gregory J. Whyte
Matthew Ostrower
Vinay Saqi
Robert Stevenson
Chris Winans

Industry Overview

February 27, 2002

Assessing Terror and Related Legislative Risks

- **Earnings and valuation risks are real**
  We assess potential impact on real estate, banking, brokerage and nonlife insurance sectors of another 9/11-size attack and the government response.
- **Current valuations don't seem to reflect attack risk**
  In all these sectors, we think current valuations do not reflect impact of another attack without a terrorism bill in place.
- **Insurance stocks most vulnerable to attacks with no bill**
  Insurers, lacking data, may be allowing exposures to expand with insufficient safeguards; reinsurers are managing exposures better.
- **REITs are caught in the middle**
  Lenders and insurers can impose higher rates, and REITs and landlords can pass along only some of the increased costs.
- **Capital markets-focused firms seem least exposed**
  Fallout on borrowers could ripple through mortgage-backed market; however, investment banks could come up with innovative products as alternatives.

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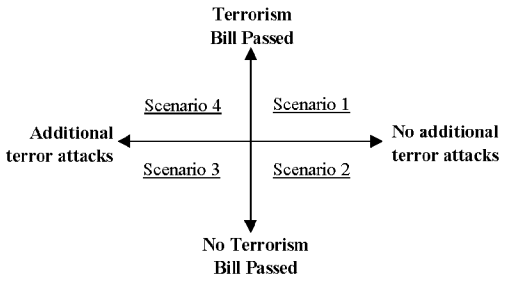
Assessing Terror and Related Legislative Risks

Summary
September 11 changed the world's perception of risk. Insurers and reinsurers were the first to react, moving to exclude losses from future terrorist attacks in policy language. Congress immediately began work on a bill to provide the coverage but failed to pass legislation before year-end. The issue is back before Congress but passage of a bill is uncertain. Whether another terrorist attack occurs with or without a bill in place has significant implications for the banking, brokerage, asset management, real estate and insurance industries' earnings and valuations.

Morgan Stanley's analysts who cover these sectors have produced this report to weigh the likely impact on these sectors of a federal terrorism insurance bill passing or not, depending on whether another World Trade Center-size attack occurs in the US. (For discussion purposes, we are ignoring the worst-case scenario of a major nuclear, chemical or bio-terrorism attack because of the enormous, unpredictable consequences on the economy and society. Only the government can address this risk, in our view.) We assume that if a bill were to pass, it would resemble some compromise between the current House bill and last year's failed Senate version (under which the federal government would pay as much as $90 billion of terror attack losses over a three-year period, with insurers paying the first $10 billion of losses). Our aim is to identify the degree to which stocks are discounting in terrorism and the winners and losers under the four possible scenarios (Exhibit 1):

Exhibit 1
The Terrorism Matrix



Source: Morgan Stanley Research

We are currently in Scenario 2. No bill has passed (and the likelihood of one passing this year remains uncertain without action from the Senate). No follow-up massive attack has occurred although some seem to have been averted (and investors — and even some businesses — seem to be assuming that none will occur any time soon). The government has indicated that terrorism remains a very real risk, and our aim is to provide investors with a framework for thinking about the implications of the four possible scenarios, without necessarily assigning probabilities to whether a bill will pass or another massive attack occurs.

The 9/11 event by itself showed that the terrorists are much more coordinated, capable and determined than was generally thought prior to the event. Since then, the government's stepped-up efforts to gather intelligence has turned up new evidence that the terrorists are determined to plan and execute additional attacks. Preventive efforts also have been ramped up and appear to have thwarted some attacks. The risk of terrorism should be reduced over time; however, in a recent speech, former CIA Director Robert Gates indicated it would be at least 5-10 years before the level of terrorism risk is economically insurable. Accordingly, we believe the message in all this new information is that the risk of massive losses from terrorism in the near future needs to be weighed in terms of its impact on property owners, lenders, insurers and their investors.

Investment conclusion. Our overall conclusion is that the stocks currently reflect the assumption that no terrorism insurance bill will pass, and no WTC-size loss will be repeated any time soon. Weighing the business and stock valuation impact of political behavior and terrorist attacks is tricky for the same reason we believe terrorism losses are uninsurable. It is practically impossible to assign a probability of recurrence to an unprecedented event of the magnitude of the September 11 attacks. One thing we now believe, however, is that such a massive attack *is* possible. In all our scenario analysis, we think a negative scenario — another attack occurring today without a terrorism bill in place — is the one investors need to think about most, because this is the one scenario we think is currently least priced into the market. Under this scenario, we believe:

- The property/casualty insurance companies (the first derivative in the financial sector chain of events) and their stocks would suffer the greatest blow, offset by further acceleration in insurance rate increases. We

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believe the primary insurers would likely take a significantly bigger hit than reinsurers, with the insurance brokers, as non-risk-bearing intermediaries, possibly gaining. Government intervention financially, however, would probably be swift and might reverse the valuation dynamics. The question is whether the government would restore capital as well as pay claims. We also do not think capital would rush into the industry as quickly as it did after 9/11, because the level of risk would be perceived as greater. The financial impact of a second event could be more severe than the impact of the WTC event for some companies, assuming a comparable amount of losses despite post-9/11 efforts to reduce exposures, because of the already weakened financial condition of certain insurer balance sheets.

- Real estate investment trusts (REITs), in addition to incurring the actual loss of property, could be hit by both lower liquidity and lower real estate values as well as by higher borrowing costs, higher security costs and higher insurance costs and reduced insurance availability for properties that most closely fit the profile of the terrorists' targets. Developers might find asset-backed financing harder to complete and be forced to move toward corporate debt issuance, which can be costlier.
- Lower down on the impact scale would be credit-sensitive financials, depending on whether another wave of attacks would negatively affect interest rates. We think interest rates could be vulnerable in the aftermath of another attack without a terrorism bill in place, depending on the size of the losses and the method the government would use to fund those losses under financial-crisis conditions. Offsetting this impact would be how the event could lead to stricter credit standards, higher loan interest rates and an acceleration of efforts to improve loan portfolios in terms of credit quality. Individual financial institutions that have excess concentrations in affected properties would suffer losses.
- Capital markets financials could be hurt by the impact on the collateralized mortgage backed securities market as well as any post-attack weakness in the equity markets akin to what happened after 9/11. At the same time, another attack might create the opportunity to generate innovative property financing alternatives created by the impacts on the real estate market and interest rates.

Exhibit 2

Escalating Terrorism

Date	Event	Fatalities
1985	Air India explosion	325
1987	Korean Airlines sabotage	115
1988	Pan Am Flight 103	270
1989	UTA flight crash	171
1993	Beirut truck bombing	241
1993	Bombay car bombing	300
1994	Algerian Eiffel Tower plot*	-
1995	Oklahoma City bombing	168
		1,590

** Plot to use hijacked aircraft as a weapon and massacre civilians was foiled*
Source: "How Did This Happen? Terrorism and the New War" Gregg Easterbrook; edited by James F. Hoge Jr. and Gideon Rose

Who holds the risk? Our view is that the bulk of the financial risk in a terrorist attack resides with those who finance and own commercial real estate, the companies that occupy the space, and those who insure real estate and the businesses and lives of the people who occupy those spaces. This would include central business district real estate, regional shopping malls, and large hotels. This does not mean, however, that the risk is non-existent for suburban offices, small hotels and shopping centers — only that the risk may be lower in those locations.

We are aware, for example, that insurers are not excluding terrorism coverage on properties and businesses that do not seem like obvious terrorist targets — a motel on a sparsely populated highway. On the other hand, we think it is a mistake to assume that only major cities like New York and trophy real estate like the World Trade Center constitute the *only* potential targets. As a recent Swiss Re report pointed out, a terrorist destroyed a major federal office building in Oklahoma City — not an especially high-profile property in a medium-sized city.

Exhibit 3 gives an indication of how much value is tied up in US commercial property and how much property-related financing was outstanding at year-end 2000. This represents the total value at risk — to varying but essentially unknowable degrees — in a terrorist attack. This does not cover residential real estate, but once again, that does not mean we think residences are immune to terrorist actions. For example, terrorists are known to have worked on launching attacks involving nuclear, biological and chemical weapons. Many insurers and reinsurers are specifically excluding losses from these types of attacks, but

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fire losses following a nuclear attack are not excluded, and fire following any act of terrorism is not excludable in 29 states, including the major industrial states such as California and New York. Nor can workers' compensation losses or group life be excluded. Nuclear, chemical, and biological terrorism may not be excluded from personal insurance. Life and disability covers all risks.

Exhibit 3

Commercial Real Estate Landscape of Risk *($, Billions)*

US office space under construction[1]	44.0
US office space[1]	573.8
Structure Replacement Costs	$5,532.9
Inventory	$1,403.9
Equipment & Software	$3,698.7
Real Estate	$7,091.5
Real Estate, Inventory and Equipment	$12,194.1
Leases Receivable	$170.9
Real Estate/Mortgage Loans[2]	$6,937.4
Industrial Loans	$1,082.7
Total assets	$12,194
Total debt[3]	$8,191

[1] *Square feet in millions (source: Cushman & Wakefield).*
[2] *Includes commercial and residential loans.*
[3] *Excludes commercial/industrial loans that may be secured by inventory and equipment*
Source: FDIC, Federal Reserve, Morgan Stanley research estimates

Exhibit 4 shows the extent to which some of the sectors referred to in this report are exposed to commercial real estate in terms of equity and debt ownership. Not surprisingly, the commercial banking sector has the largest exposure to commercial real estate loans, while corporations have the largest exposure to real estate owned.

Insurance covers only a fraction of value. Perhaps the most striking reality is the relatively small amount of net premiums US property/casualty insurers collect — $19.8 billion in 2000 — for commercial multiperil coverage, which includes insuring the $5.5 trillion replacement value of all US commercial structures plus another $5.1 trillion in inventory, equipment and software. This also compares to total property/casualty industry capital ("surplus") of about $282 billion at year-end 2001, which is the entire US property/casualty industry's capacity to pay claims of all types (including personal coverages). We estimate the capital of the commercial lines industry, for all types of coverages including casualty, is about $125 billion. The premiums collected for commercial multiperil are 13.4% of all commercial lines premiums. To put these numbers in context, for covering every dollar of commercial-structure replacement value and contents, property insurers collect about two tenths of a penny of premium and maintain surplus of approximately the same amount.

Exhibit 4

Commercial Real Estate Assets by Sector ($, Billions)

	Asset
Commercial Banks	
Financed lease receivables	$166.7
Non-farm real estate loans	$465.5
Industrial loans	$1,048.2
Subtotal	**$1.680.4**
Savings Institutions	
Financed lease receivables	$4.3
Industrial Loans	$34.4
Real estate loans	$59.7
Subtotal	**$98.4**
REITS	
Enterprise value for equity REITs	$260.0
Enterprise value for mortgage REITS	$17.0
Subtotal	**$277.0**
Brokers	
Collateralized mortgage backed securities	$63.0
Subtotal	**$63.0**
Non-Farm Corporations	
Inventory owned	$1,333.7
Equipment & software owned	$3,170.6
Real estate owned	$4,796.2
Subtotal	**$9.300.5**
Non-Corporations	
Inventory owned	$70.2
Equipment & software owned	$412.0
Real estate owned	$1,070.2
Subtotal	**$1.552.4**
Non-Profits	
Equipment & software owned	$116.1
Real estate owned	$1,225.1
Subtotal	**$1.341.2**
Commercial P-C Insurers	
Mortgage loans	$0.8
Real estate investments	$1.1
Real estate owned and occupied	$2.4
Subtotal	**$4.3**
Life Insurers	
Real estate owned for debt satisfaction	$1.6
Real estate owned and occupied	$6.2
Real estate investments	$15.8
Mortgage loans (includes residential)	$229.8
Subtotal	**$253.4**
Total	**$14,570.6**

Source: FDIC, Federal Reserve statutory data, Morgan Stanley research estimates

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While insurance performs an extremely important economic function, by design it covers a finite amount of risk that is, in the aggregate, somewhat predictable over time. Events that fall outside this definition of insurability due to their potential size and lack of predictability are not insurable because the economic cost to set aside capital to cover such a risk is too high for the economy to bear. This is the point at which the government steps in, and this is what the debate over terrorism is all about.

Terror bill background. The September 11 terrorist attacks brought to light a new level of risk that clearly had not been previously contemplated. Nearly every kind of insurance coverage was triggered — including personal and commercial property (with business interruption), aviation liability, workers' compensation, personal and commercial auto, commercial property, liability and others, along with life insurance and accident & health. It involved an unprecedented concentration of property loss, economic losses and loss of life — more than 3,000 lives, four commercial airliners, hundreds of companies and thousands of their employees who survived but were affected in various ways.

Reinsurers immediately began to notify clients they would renew expiring contracts with exclusions for claims from future similar terrorist attack losses. At the same time, however, reinsurers as well as insurers quietly started looking for ways to write the coverage in limited ways and away from locations they deemed to be obvious terrorist targets — high-profile urban trophy properties, power plants, airports, and major events. Publicity focused on the immediate threat of property owners and developers and commercial enterprises facing potential default notices from lenders citing the lack of terrorism coverage.

Starting in October, Congressional aides began to write legislation to provide a government guarantee to cover such losses, without which it was assumed banks would be unwilling to make any commercial and industrial real estate loans. At that time, no one seemed to question the assumption that the inability to get terrorism coverage would lead to an economic crisis triggered by lenders calling in property loans with covenants requiring the coverage. The bill that emerged would authorize the Treasury Department to pay as much as $90 billion of losses above the first $10 billion that the insurance industry would cover.

By the end of the year, the bill had stumbled. The two parties split over a provision for tort reform, which President Bush had set as a requirement for his signature. The inability to compromise on this point killed the bill. Once it was clear there would be no bill by year-end, a reinsurance renewal logjam, caused by the wait-and-see over the terror bill, broke open.

Bill's current status. The urgency to pass a bill diminished after year-end, partly because no obvious evidence emerged of a brewing economic crisis. Bank regulators and industry trade associations indicated that lenders were not wholesale calling in loans or turning away borrowers over terror insurance exclusions. Examples of deals derailed by lack of terror-cover availability were the exception rather than the rule. However, as of this writing, the House Financial Services Committee was reconvening hearings on a bill, including testimony from the Government Accounting Office pointing to the need for a federal backstop. Still, we think that the farther away we get from September 11 without another catastrophic event, the harder it gets to push a bill through Congress. Meanwhile, insurers, developers and lenders keep finding ways to do business — essentially by increasing their exposures and costs — without a backstop.

Why a bill is still needed. We believe, however, that such a bill is as necessary as ever. Repeated terrorist attacks of the WTC magnitude are essentially uninsurable risks. It is practically impossible to estimate the probability of recurrence. Politically motivated intentional criminal acts resist actuarial analysis. The lack of a bill puts property and business owners in the position of having to pay much higher insurance rates — 50-100% and greater for central business district real estate — for less coverage and self-funding the balance of the exposure under pressure from lenders.

If and when a catastrophic event occurs, these owners will absorb a far greater share of the loss than they did on 9/11. As a result, some businesses could fail, unless they tied up much more capital in advance to cover the risk — capital that normally would be available to finance normal operations and growth. Without a terror bill, we think lenders will be imposing stricter requirements on an increasing portion of their loan portfolios as those portfolios mature. Insurers, meanwhile, are still over-exposed, because they can exclude only as much terrorism coverage as state governments allow (which is not a lot) and can buy

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very little reinsurance affordably to limit their exposure. In effect, all these businesses collectively are gambling on either dodging the next massive attack or having the government step in after the fact and efficiently provide the capital.

Most important to recognize is that the 9/11 attack was not a fluke, nor was it entirely unforeseen. It was a second attempt on the same property perpetrated by sophisticated, well-funded terrorists. Since 1968, more than 10,000 acts of terrorism have been recorded, including 14 events with more than 100 fatalities. In 1999, the Hart-Rudman Commission on National Security in the 21st Century concluded "Americans will die on American soil, possibly in large numbers" as a result of terrorism. The National Commission on Terrorism in June 2001 said the "#1 priority" of the US should be to address loose affiliations of transnational terrorists seeking to inflict large numbers of casualties.

Yet the economy continues to absorb such exposure. In the end, we think it would be better for the federal government to establish a structure for covering uninsurable losses from the next major attack than to do nothing. Any after-the-fact response would probably involve emergency funding that could have inequitable outcomes. Congress has been widely criticized for bailing out the airlines just 10 days after 9/11, then not acting on other parts of the economy. Such disparate outcomes are avoidable.

Experts have noted that the historical roots of the current Islamist terrorism to some extent lie in the distant past. For example, Osama bin Laden refers to Western culture as "Crusaders."

Exhibit 5

Timeline of Mideast Turmoil

Date	Event
612 AD	Prophet Muhammed begins to preach in Mecca
632	Death of Muhammed
637	Muslims defeat Persia
638	Jerusalem falls under Muslim rule
641	Muslims defeat Byzantium; conquer Egypt, Palestine & Syria
1099	Jerusalem taken by Christians in First Crusade
1839-42	First Afghan War (Britain vs. Russia)
1878-81	Second Afghan War
1917	Third Afghan War
1948	Founding of Israel
1972	Biological Weapons Convention signed
1979	Soviet Union invades Afghanistan
1980s	Osama bin Laden fights in Afghan-Soviet war
1989	Biological Weapons Act passed in US
1990-91	bin Laden concludes US wants to dominate Middle East
April 1992	Taliban begins rule of Afghanistan
1992	Islamist activists send "Memorandum of Advice" to Saudi
1993	World Trade Center bombing
1994	bin Laden stripped of Saudi citizenship; moves to Sudan
November 1995	Car bombing of US military training mission in Riyadh. Numerous fatalities; perpetrator claims inspired by bin Laden
June 1996	Car bombing of Khobar Towers in Saudi Eastern Province
1996	bin Laden moves to Afghanistan
1996	US Anti-Terrorism Act passed
September 1996	bin Laden issues fatwa against "Crusader-Zionist Alliance"
February 1998	Unites with Sunni radicals in Egypt, Bangladesh & Pakistan
August 1998	Car bombing of US embassies in Kenya and Tanzania
1989-2000	Major TV networks close foreign bureaus, cut foreign news content by two-thirds
January 2000	"World affairs" ranks 20th in importance in presidential
October 2000	Bombing of destroyer USS Cole in Aden, Yemen
February 2001	CIA Director George Tenet testifies before US Senate Intelligence Committee that bin Laden's network is the most immediate and serious threat to US security
June 2001	Persian Gulf on high alert during joint US-Jordanian military exercises; cut short due to terrorism threat
September 11	Attack on America; more than 3,000 fatalities
October 7 2001	Second Khobar Tower bombing; two fatalities
October 2001	50 people infected by anthrax spores sent through US mail
December 23	Richard Reid prevented from blowing up American Flight 63
January 2002	President Bush discusses "Axis of Evil" in State of the Union

Source: "Holy War, Inc." Peter L. Bergen, "How Did This Happen? Terrorism and the New War" Gregg Easterbrook; edited by James F. Hoge Jr. and Gideon Rose, "Inside Terrorism" Bruce Hoffman, Morgan Stanley Research

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The Scenarios

Exhibit 6 shows the winners and losers in each scenario, reflecting our collaborative thinking and analysis of the earnings and valuation implications under each scenario for property/casualty insurers, REITs and mortgage lenders. Detailed summaries for each of these segments follow.

Exhibit 6

Winners and Losers Under Four Scenarios

	Terrorism Bill Passed	
Attacks Occur	**Scenario 4:** **Winners:** Primary insurers and reinsurers; insurance brokers; brokers without equity market exposure; capital markets-focused firms (assuming no significant infrastructure damage). **Losers:** REITs; credit-sensitive firms.	**Scenario 1:** **Winners:** Insurers, reinsurers, insurance brokers; REITs (especially BXP, BPO, EOP, VNO, RSE, SPG); marginally positive for capital markets based firms, less so for credit-sensitive firms and banks; C, JPM. **Losers:** None
	Scenario 3: **Winners:** Capital markets-focused firms (assuming no significant infrastructure damage), asset managers with a fixed-income focus; reinsurers; insurance brokers. **Losers:** Primary insurers; REITs; credit-sensitive firms; asset managers with an equity focus.	**Scenario 2:** **Winners:** Insurers (although still assuming risk); reinsurers; insurance brokers; marginally positive for capital markets based firms, less so for credit-sensitive firms and banks; C, JPM. **Losers:** The weaker commercial insurers with lower financial strength ratings; REITs.
	No Terrorism Bill Passed	**No Attack Occurs**

Source: Company data, Morgan Stanley Research

Real Estate Investment Trusts

The current lack of affordable terrorism insurance coverage for many types of real estate has already generated negative impacts for a variety of REITs. Significant uncertainty continues to surround the possibility of government intervention as well as the possibility of another terror attack. In order to help investors better navigate these uncertainties, we provide some initial conclusions about the prospects of the real estate industry (as well as various property sectors and REITs). (See *Terrorism and Insurance Risks: Assessing Sensitivities* by Gregory Whyte, Matthew Ostrower and Robert Stevenson being published simultaneously with this report.).

Initial conclusions. The terrorist attacks of September 11 and the enormous and tragic loss of human life and property that accompanied them led to significant new uncertainties in the real estate sector, which was already beginning to feel the brunt of a national economic downturn. Among these uncertainties was how real estate owners would continue to obtain insurance coverage for their assets, particularly those

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with high rise ("skyline") characteristics. This issue was exacerbated by: 1) the fact that most insurance policies (and the terrorism insurance that has traditionally been a part of them) expire on December 31 of each year, and 2) most secured loans (mortgages) would fall into technical default without some kind of ongoing terrorism insurance.

With no backstop legislation in place, the negative consequences of no terrorism coverage have begun to set in for real estate landlords, and, we believe, ultimately tenants as well. Certain real estate asset types and companies are clearly more affected than others are (Exhibit 7). However, we believe it is possible to draw some broad conclusions. We believe the current lack of terrorism legislation has, and will continue to have several negative effects:

1) Real estate borrowing will likely become more difficult and more expensive. We expect mortgage spreads to rise in response to increased insurance risk, the collateralized mortgage-backed securities (CMBS) market may continue to balk at single loans with trophy/skyline collateral, and REITs will likely increasingly resort more to the (generally) higher spread corporate market.

2) General insurance costs will likely continue to remain higher than pre-9/11 levels (we believe earthquake insurance is already up sharply, with meaningfully higher deductibles). We expect these costs to continue to rise, but to rise less dramatically if a terrorism insurance bill is eventually passed.

3) Building security costs will likely remain higher

Exhibit 7

Terrorism Issue Sensitivity Spectrum

More Sensitive

	Relevant Tickers
"Skyline" CBD Office	BPO, BXP, EOP, VNO
Lower-Profile CBD Office	CRE, RA, TZH
All Other CBD Real Estate	ASN, AVB, HOT, HMT
High Profile Regional Mall	RSE, SPG, TCO
Large Hotels	HMT, HOT
Suburban Office	
Low Profile Regional Mall	
Multifamily / Small Hotels	
Community Shopping Center	
Self Storage	

Less Sensitive

Source: Company data, Morgan Stanley Research

4) The absence of suitable insurance coverage will likely affect the general real estate lending market, which could impact real estate valuations, particularly for asset types seen as vulnerable to attack: central business district (CBD) office buildings, certain regional malls, and assets located near sites perceived as risky.

Issue Sensitivity Spectrum

In the event terrorism insurance legislation is ultimately passed, we believe the short-term impacts will be lower insurance and debt costs, providing the most relief to those companies and asset types that were most adversely affected by the current lack of coverage. Given the negative impacts on the real estate industry in just the past 8-10 weeks, we now believe that a bill is more likely today than it would have appeared even four weeks ago. We believe even the passage of a bill and no new attack will still see the real estate industry worse off than pre-9/11, but it is still the best case scenario. In an effort to assess the degree of negative impact, we have outlined the consequences of each of four different scenarios on the industry below. We believe companies in the most sensitive sectors (e.g. BXP, BPO, EOP, VNO, RSE, and SPG) will be the biggest winners in positive scenarios (such as Scenario 1) and the biggest losers in the negative scenarios (Scenario 3). *(Current prices: BXP $37, BPO $18, EOP $28, VNO $42, RSE $30, SPG $31.)*

Scenario Analysis: Real Estate and REITS

Scenario 1: A bill is in place, no attack occurs. As it pertains to the real estate industry, and with particular focus on the landlord (often time the public landlords are REITs), we believe:

- After rising to exorbitant rates post 9/11 (and becoming unavailable in many circumstances) market rates on new terrorism insurance policies begin to fall. Terrorism insurance again becomes widely available.
- The passage of a bill would eventually see the return of liquidity to mortgage and single asset CMBS markets, particularly those involving higher profile "trophy" assets (e.g. skyline CBD assets).
- Although some asset classes allow for occupancy costs to be billed back to tenants (e.g. commercial and retail), we believe higher insurance costs are effectively shared by landlords and tenants regardless of property type. For this reason, the somewhat lower costs that would likely accompany a terrorism bill would benefit both landlords and tenants.

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Potential winners/losers. We believe valuations of companies in the most sensitive sectors already reflect some of the negatives associated with the current lack of easily available terrorism insurance (though they do not appear to reflect any major discount as a result of potential exposure to another terrorist event). The passage of a terror bill would lead to more extensive insurance coverage, and potentially lower insurance and borrowing costs for companies such as BXP, BPO, EOP, VNO, RSE, SPG, etc. Less sensitive companies/sectors that are currently experiencing fewer impacts would benefit, but to a lesser extent.

Scenario 2: No bill is passed, no attack occurs. The absence of any passage of a terrorism bill, even without an additional terror attack, is clearly a negative for the REIT sector. We believe this scenario would lead to:

- A sharp rise in operating expenses to cover extremely high insurance and security costs. Landlords begin to question the ability of insurers to meet future terror claims.
- Some landlords may choose to forego expensive terrorism insurance, which would have ramifications on borrowing conditions:
  1) Borrowers may fall into technical default on secured loans, which could precipitate some adjustment to both terms and rate.
  2) Rating agencies might respond with cuts to credit ratings, making alternative, non-secured borrowing more costly and less accessible.
  3) Construction financing and takeout financing become landlord headaches.

- CMBS liquidity becomes more limited and may even dry up, particularly for those real estate assets perceived as more vulnerable. Initiating new single skyline asset CMBS transactions becomes impossible; rates on multi asset CMBS deals also go up, reflecting higher risks.
- Reduced liquidity in the real estate market negatively impacts real estate valuations, particularly for those assets typically financed with secured debt.
- Banks likely eventually begin originating secured loans, but increasingly seek cross-collateralization or recourse when high profile assets are involved.
- Rental rates slow further than they already have as tenants respond to rising occupancy costs.
- For the tenants, occupancy costs may rise up to or even exceed expense stops. Most affected assets will likely be office/high-rise, or other perceived-to-be-vulnerable properties (e.g. regional malls).

Potential winners/losers. The lack of a terrorism insurance bill (despite the lack of terror attack) would serve to raise operating and borrowing costs as well as cause the most exposed companies to take on more risk by self-insuring. We believe that the values of stocks in the most sensitive sectors only partially reflect these negatives, and could therefore face more multiple contraction if it becomes clear that no affordable terrorism insurance will become available. As in Scenario 1, the less sensitive sectors will also be negatively affected, but to a lesser extent.

Scenario 3: No bill is in place, an attack occurs. This represents the worst scenario for real estate owners. In assessing the impact on the industry (and on REITs specifically), we believe it is necessary to examine the *initial* and *longer term* impacts:

- Initial impacts:
  1) There will be a sharp rise in operating costs due to much higher insurance costs (expect tenants to experience higher occupancy costs up to the entire expense stop limitation).
  2) The CMBS market (both single- and multi-asset transactions) likely freezes for all asset types, but particularly for the skyline assets and the asset class targeted in the attack.
  3) Landlords assess the value of continuing with terrorism insurance coverage given the potential inability of insurers to meet future claims.
  4) Secured borrowing rates spike, limiting liquidity in this market.
  5) Non-secured corporate borrowing for REITs is the only remaining alternative, but higher perceived risk drive rates up sharply after rating agencies focus on ratings.
  6) Real estate values fall sharply due to limited insurability and dramatic drop in real estate debt liquidity.
- Longer-term impacts:
  1) Congress ultimately establishes some sort of federal backstop or "Pool Re" program.
  2) This will likely result in the return of some normalcy in the real estate markets, with values appreciating, but operating costs still higher than pre-9/11 levels.

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Potential winners/losers. We believe all REITs would experience significant negative short-term valuation impacts if a terror attack were to occur in the absence of any terrorism insurance legislation. Investor fears about further equity losses in the event of future attacks, potentially unavailable terrorism insurance, higher borrowing spreads and the limited availability of debt capital would cause significant multiple contraction. This phenomenon would likely occur most for the most sensitive property sectors. These negative effects would likely be greatly mitigated if the federal government were to quickly enact a terrorism insurance backstop/bailout following the second attack.

Scenario 4: A bill is passed, an attack occurs. Despite the passage of a terrorism bill, whereby there is a federally funded backstop, we believe overall costs of obtaining insurance after an attack will likely rise — particularly for the affected asset type(s). From the landlord's perspective, we believe the impact from this scenario includes:

- Higher property operating expenses
- Higher borrowing costs on debt renewal, as the asset class is seen to be riskier, both in the CMBS and corporate borrowing arena
- Security costs rise again.
- The secured lending market would probably become even more focused on adequate insurance coverage for loan collateral.

Potential winners/losers. The passage of a terrorism insurance bill (and the more extensive, affordable terrorism insurance and debt capital) likely would not prevent some negative valuation impact if another terror attack were to occur. In this case, we believe REITs with skyline and high profile assets would clearly be most impacted, while their lower profile peers would likely be spared. It is worth mentioning, however, that the more sensitive companies would likely be deemed winners in between the passage of the insurance bill and the actual attack.

Banks, Brokers and Asset Managers

Initial Conclusions. We think that investors may be too focused on credit issues (Enron, K-Mart and now Global Crossing) and off-balance sheet disclosures to think about the implications of the passage / non-passage of the terrorism bill. We do not fault them, but we do believe that the outcome of the terrorism bill legislation could have a significant impact on banking and brokerage stocks. A key issue, as we see it, is whether lenders will continue to lend to what are perceived to be high-risk properties if the real estate companies cannot secure adequate insurance protection. Also, if the commercial mortgage-backed market does slow, what does this mean for trading profits for the BIG fixed income players in this area?

In evaluating the possible impact on the stocks in our universe based on the four scenarios, our primary conclusion is that in all scenarios, capital markets based firms seem to fare slightly better than the credit sensitive firms (except if a major terrorist attack does irrevocable damage to the securities industry's infrastructure).

On the other hand, we do think that traditional lending companies face marginal risks if the bill is not passed and another attack occurs. Under this scenario, more properties would be damaged potentially limiting the repayment of those loans to some banks and the insurance industry may become increasingly fragile limiting the effectiveness of current insurance policies. Longer term, credit spreads against commercial real estate would also likely rise, although the positive impact to the income statement would be offset by a slower pace of real estate activity.

According to Betsy Daniels, who is working on picking up the regional banks, banks are thinking through how they want to approach lending in a world without terrorism coverage on property. There is no "one-size-fits-all" approach. The banks can take several paths, ranging from renewing the loan, changing the terms on the loan, asking the borrower to get a terrorism rider, asking the borrower to self-insure for terrorism, or pulling the loan. Banks are choosing what makes sense for them given their business mix and risk appetite and decisions are likely to be made on a loan-by-loan basis. The key point is that the banks are thinking about these issues and are trying to create a game-plan to limit their exposure to further terrorist property destruction.

These issues are more likely to impact the traditional lending companies than the capital markets companies. Construction and commercial real estate loans were 19.5% of total average loans at US commercial banks as of September 30, 2001. At JPM and Citigroup, though, these loans represent just a fraction of overall business. Indeed, based on our analysis, we think that around 0.99% of Citi's total loans are related to domestic real estate, while we believe that 2.27% of JPM's total loans are related to domestic real estate (at the end of 3Q01, latest available

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data). At the moment, we retain our Neutral rating on JPM and maintain our Outperform on Citigroup.

Within the brokerage sector, we think that Lehman Brothers (LEH, $56, Outperform-V, target $73) and Goldman Sachs (GS, $81, Outperform-V, target $92) are most levered to the commercial mortgage back industry (which would obviously slow if real estate companies were not able to obtain financing at will), ranking second and fourth, respectively, in U.S. public and Rule 144A CMBS (collateralized mortgage backed securities) offerings. However, Goldman is traditionally not a major player in this market (i.e., the company had some big trades at the end of the 2001 that boosted it in the rankings). Separately, Credit Suisse First Boston (a unit of Credit Suisse), ranked first in this CMBS market in 2001. All told, according to Thomson Financial Securities Data, $63.0 billion of CMBS were offered in 2001 (Exhibit 8).

Exhibit 8

U.S. Public and Rule 144A CMBS Offerings

	Proceeds ($ M)	Rank	Market share	No. of tranches
CSFB	9,366.1	1	14.9	146
Lehman Brothers	7,813.5	2	12.4	91
Morgan Stanley	7,720.4	3	12.3	107
Goldman Sachs & Co	7,257.2	4	11.5	130
Deutsche Bank AG	6,196.4	5	9.8	105
JP Morgan	6,171.7	6	9.8	86
Banc of America Sec.	4,126.1	7	6.6	42
Bear Stearns & Co Inc	4,116.4	8	6.5	49
Wachovia Corp	3,498.7	9	5.6	91
Citigroup/SSB	3,017.8	10	4.8	30
Merrill Lynch & Co Inc	2,186.8	11	3.5	55
Industry Total	62,990.8	-	100	749

Source: Thomson Financial Securities Data

Interest rate impact. Looking at the big picture, we also are intrigued by the possible impact of the passage of the terrorism bill on the treasury market. If the terrorism bill is passed, the Federal Government becomes the reinsurer of terrorism related risks. Would government bondholders demand a terrorism risk free premium? If yes, then would the long-term *benchmark* risk free rate rise significantly? An increase in the benchmark rate would increase lending costs for all borrowers, which could be a negative for companies with high leverage ratios. Also, if real estate companies (REITS) were not able to secure mortgage financing and had to use the capital markets via straight debt issuance, we actually think that this opportunity could be an interesting one for the capital markets that we cover, particularly firms with a strong presence in the investment grade market.

Scenario Analysis: Banks and Brokers

Scenario 1: A bill is in place, no attack occurs. We believe that the passage of the bill with no incidence of further terrorist attacks in the near future would be a marginal positive for the credit sensitive names like C and JPM. Key to our thinking is government protection would allow lenders to still allocate capital to real estate companies with little residual impact from "event risks" like the tragic events of September 11, 2001. Separately, we believe that this scenario would entail healthier economic growth and stronger equity markets (due to the absence of any external shocks) — a significant positive for the broker/dealers and equity focused asset managers in our universe. In addition, the factors favoring economic growth (lower costs of doing business — specifically, insurance and security costs) would also positively impact the expense lines for all the stocks we cover. However, we do expect a

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marginal increase in documentation costs for banks as lending agreements incorporate various terrorism related clauses, and a marginal increase in insurance rates for policyholders.

Potential winners/losers. We think that this scenario would be a marginal positive for all the stocks in our group for the reasons highlighted above. As such, under this scenario, we do feel comfortable reiterating our investment thesis: From a macro perspective, we continue to believe that capital markets firms outpace credit sensitive and fee-based companies. In diversified financials we continue to favor Citigroup (C, $44, Outperform, target $59) over JPMorgan Chase (JPM, $29, Neutral). In the small cap asset management arena, we remain bullish across the board: Affiliated Managers (AMG, $67, Outperform, target $73), BlackRock (BLK, $44, Outperform, target $48), Waddell & Reed (WDR, $30, Outperform, target $35), and Federated Investors (FII, $31, Strong Buy, target $35). Finally, we have a mixed bag on the Arms Dealers. Specifically, we like companies like Investment Technology Group (ITG, $45, Outperform, target $46) (play on cost, speed, globalization, and value-added), while we remain cautious on other names, including Instinet (INET, $7, not rated).

Scenario 2: No bill is passed, no attack occurs. Our second scenario would essentially entail continuation of the status quo (we don't have a terrorism bill and fortunately there have been no more terrorist attacks). As we think that investors in our stocks have not yet focused on these issues, we do not expect any major impact on stock prices. However, we expect companies to spend more on security especially since terrorism related insurance coverage would be more difficult to secure.

Lenders continue to expect insurance against terrorist acts on the credits they extend — either through insurance policy coverage or through borrower self-insurance. Some lenders may look to cash in some of their "bad chips" by charging higher rates or refusing to extend funds to some credits on the grounds that they are not willing to underwrite loans that do not have terrorism related coverage. We believe that lenders may selectively take this approach towards certain credits. We do not expect widespread application, as it would result in the lender self-selecting out of the real estate lending market. Targeted pruning could marginally improve asset quality at some lenders.

Another related development would be a slowdown in some sectors of the CMBS market — especially for securities backed by high profile assets like tall office buildings and big regional malls. As a result we expect real estate firms to borrow funds at the corporate level rather than accessing capital markets through asset backed securities leading to a 20 to 30 basis point increase in their cost of funds. We think that investment banks will look upon this development as an opportunity and would come up with innovative financial products to solve the financing needs of real estate firms.

Potential winners/losers. Given that this scenario entails continuation of the Status Quo and the additional risk of muted revenue growth for the credit sensitive names, we are sticking to our investment theme (as highlighted in scenario 1). However we do want to point out that as in scenario 1, credit sensitive firms with lower credit standards could display higher growth rates than peers who have tighter credit standards.

Scenario 3: No bill is in place, an attack occurs. Our third scenario, which is also our worst case scenario, evaluates the impact of a major terrorist attack in case the terrorism bill has not been passed. As in scenario 4, the development could be a significant negative for firms like GS, MER ($47), and LEH if it leads to another disruption in the nation's capital markets. For the credit sensitive names, we expect major credit losses as a direct result of the attack as most exposures would not be backed by insurance. In addition, the shock to the economy could lead to a deterioration in the overall credit situation, driving both provisions and credit costs materially higher. The shock to the equity markets could also depress earnings at capital markets based firms and equity focused asset managers. The occurrence of another attack would also lead to increased security expenses by businesses.

Potential winners/losers. We believe that credit sensitive names will come under the most pressure under such a scenario. Although we believe that the federal government would intervene to prevent a breakdown of the financial system, we believe that credit sensitive names could experience a "double whammy". Specifically, in addition to the direct credit losses they would experience as a result of the attack, the external shock to the nation's economy would increase credit costs going forward (even if the companies had no exposure to the areas/ businesses directly impacted by the attack). We would expect capital markets

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firms to outperform other financials, as the rebuilding effort would require a significant amount of capital to be raised. Within asset managers, we believe that fixed income focused firms would outperform their equity focused counterparts.

Scenario 4: A bill is passed, an attack occurs. Irrespective of whether a terrorism bill has been passed, we believe that the initial reaction of the market will be negative for most of the stocks in our coverage universe. The development could be a significant negative for capital markets based firms if it leads to another disruption in the nation's capital markets.

However we do not expect any major credit losses at the credit sensitive firms as a direct result of the attack as most exposures would be backed by insurance. That said the shock to the economy could lead to a deterioration in the overall credit situation, leading to higher credit costs at the firms we cover. In addition, the shock to the equity markets could depress earnings at capital markets based firms and equity focused asset managers. The occurrence of another attack would also lead to higher insurance rates for policyholders and increased security expenses by businesses.

Potential winners/losers. If the attack does not lead to a disruption in the nation's capital markets and equity markets rebound soon after the attack, we believe that capital markets firms will outperform credit sensitive and fee-based companies (as happened after 9/11). We also expect capital markets firms to outperform other financials, as the rebuilding effort would require a significant amount of capital to be raised. We think that the attack could amount to another external shock to the nation's economy, leading to a deterioration in credit that could raise credit costs at Citigroup and JPMorgan Chase. Within the credit sensitive names, we would expect firms with better credit management practices to significantly outperform their peers because of two reasons: 1) they would have pruned their uninsured terrorism risk exposure, and 2) they would also have lower credit costs if the economy were to head into a recession.

The Property/Casualty Sector

As noted in the February 22, 2002, issue of *P/C Insurance & Risk Briefing*, we believe the equity markets generally do not appear to be discounting in insurers' material risk from terrorism in the absence of a terrorism bill. Nevertheless, we believe many primary commercial lines insurers (and, to a lesser extent, personal lines insurers) retain considerable residual terrorism risk. Therefore, we believe that investors need to reconcile their willingness to accept terrorism risk, other offsetting factors they may find attractive in a stock, and their return requirement.

Initial conclusions. We believe that most primary insurers and some reinsurers cannot adequately measure their exposure aggregations from a hypothetical event. They are only just beginning to gather exposure information, such as employee locations for workers' compensation. Meantime, virtually all primary insurers talk about limiting exposure as much as they can, but they do not provide enough information to determine how a particular insurer would fare under a worst-case scenario. They do not, for example, provide a probable maximum loss estimate (PML) as they ordinarily do with other types of catastrophic risks. Nor are we aware of any insurer taking an across-the-board approach of simply non-renewing policies without terrorism losses excluded.

Insurers imposing exclusions using nonadmitted policy forms are assuming that the ban on exclusions in some states is trumped by their nonadmittance status. There is a slight risk, however, that policyholders and regulators might challenge that interpretation in an effort to broaden available coverage after the fact. We also believe insurers are assuming they can invoke the war exclusion in another attack; however, we assume that issue would ultimately be litigated. Additionally, we believe that the primary exclusions that have been approved may be insufficient to prevent insurer insolvency, especially for insurers that write workers' compensation, group life, and significant amounts of property insurance (Exhibits 9 and 10).

In short, we think investors cannot assess the risk of terrorism in a portfolio of insurance stocks any better than an insurer can assess the terrorism risk in its insurance portfolio. However, investors can control their exposure to risk, by limiting the amount they invest in such stocks to an amount within their risk tolerance from such an event. Accordingly, we are not averse to investing in terrorism-exposed insurance stocks, but we believe investors should not over-concentrate in these stocks. We also believe that investors should require a higher return in exchange for this additional, and unquantifiable, risk. Comparisons to historical valuations should take note of this higher level of risk. We would consider stocks with the same valuation as pre-9/11 as now more "expensive."

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This approach to investing is similar to one we would follow for cat-exposed insurers that do not buy earthquake or hurricane reinsurance, although with added uncertainties: 1) we do not know as much about the level of risk for individual insurers as we normally do for other types of catastrophic risks; 2) we know nothing about the overall frequency and severity of terrorism risk.

Exhibit 9

Top 20 Workers' Compensation Insurers
Ranked by 2000 Net Premiums Written

Workers' Compensation Market	2000	
Company	Premiums	Mkt Share
Liberty Mutual	$2,313,115	8.2%
State Comp Ins Fund of CA	$1,789,807	6.4%
American International Group	$1,554,411	5.5%
CNA	$1,417,875	5.0%
Zurich/Farmers	$1,228,744	4.4%
Kemper	$1,081,883	3.9%
Travelers/Citigroup Companies	$1,065,492	3.8%
Hartford Financial	$1,023,565	3.6%
Fremont General	$965,611	3.4%
Royal & SunAlliance USA	$823,032	2.9%
St Paul Companies	$592,393	2.1%
Fairfax Financial (US)	$533,962	1.9%
CGU	$496,860	1.8%
Chubb	$413,702	1.5%
GE Capital	$393,322	1.4%
SAFECO	$388,117	1.4%
Allianz of America	$379,380	1.4%
FCCI	$342,370	1.2%
Zenith National	$314,157	1.1%
Texas Workers' Comp	$299,875	1.1%
Top 10 Total	$13,263,535	47.2%
Top 20 Total	$17,417,673	62.0%
Top 30 Total	$19,602,224	69.8%
Total WC Market	**$28,098,870**	

Source: Statutory financial statements and Morgan Stanley estimates

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Exhibit 10

Top 16 Global P-C Insurers

Top 16 Global P-C Insurers Ranked by 2000 Revenues

	Revenues		Earnings		Earnings/Revenues	
Company	**Millions**	**% Chg. from 1999**	**Millions**	**% Chg. from 1999**	**E/R**	**% Chg. from 1999**
Allianz	$71,022	-4%	$3,198	34%	5%	1%
State Farm	$47,863	7%	$408	-61%	1%	0%
AIG	$45,972	13%	$5,636	11%	12%	2%
Munich Re	$40,672	6%	$1,617	34%	4%	1%
Zurich Fincl. Services	$37,431	-6%	$2,328	-29%	6%	1%
Berkshire Hathaway	$33,976	41%	$3,328	114%	10%	2%
Allstate	$29,134	8%	$2,211	-19%	8%	2%
Royal & Sun Alliance	$25,570	-2%	($21)	-115%	0%	0%
Loews	$20,670	-1%	$1,877	417%	9%	3%
Swiss Re	$18,688	-5%	$1,757	-5%	9%	2%
Tokio Marine & Fire	$17,762	-3%	$378	22%	2%	1%
Liberty Mutual	$16,438	6%	$287	-43%	2%	1%
Groupama-Gan	$14,851	-16%	$37	35%	0%	0%
Nationwide	$14,762	9%	$411	-20%	3%	0%
Hartford Fincl. Services	$14,703	9%	$974	13%	7%	1%
Yasuda Fire & Marine	$12,166	-1%	$129	2%	1%	0%
Top 16 Total	**$449,514**		**$24,426**			

Source: Fortune

Scenario Analysis: Property/Casualty Insurers

Scenario 1: A bill is in place, no attack occurs. This is the second-best scenario for short-term earnings and the best case for valuation. Reinsurers and property insurers would have greater certainty about their exposures and could price accordingly.

While rates might not rise as sharply as without a bill, the existence of a federal backstop would remove a large balance sheet vulnerability. Under this scenario, we assume no WTC-size event occurs this year, presumably giving insurers that much time to rebuild surplus — including additional capital-raising. Brokers' earnings upside from commissions and fees might be slightly muted, taking their portion of rates that might not be as sharply higher as they would be without a terror bill. Valuations could probably be higher with a terror bill in place because of the perception of reduced shock-loss risk and volatility. However, since we believe the market is not discounting terrorism risk, the impact could be limited.

Potential Winners/Losers. Our current market-weight position on the brokers would stand. For the commercial primary insurers, this could be a positive, removing the uncertainty. Our position on the reinsurers would also shift toward the positive.

Scenario 2: No bill is passed, no attack occurs. This is the best-case scenario from an earnings perspective in the short term and the second-best scenario from a valuation perspective. It is also the current scenario, and our current market-weight position on the commercial insurance industry reflects this status quo. In our view, this is a

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positive for reinsurers and brokers and for property insurers on non-customized coverages. Insurers and reinsurers are charging steeper rates for more restricted coverage of an unpredictable risk that under this scenario does not recur this year.

The more prudent insurers are excluding the coverage altogether. Some are offering it as a steeply priced add-on with much tighter limits on what they perceive to be the most exposed properties. Terrorism is a negative for valuation, however, because the risk premium should be higher to cover the uncertainty of another costly attack occurring without a federal backstop in place. We would expect this premium to decline over time, as risk declines.

Potential winners/losers. We think that only the most disciplined commercial insurers and reinsurers with the strongest balance sheets, best ratings and compelling valuations are desirable amid the protracted uncertainty of no federal backstop and no guarantees that terrorists will never again strike with the ferocity of 9/11. We are skeptical that exclusions will remain as firm as they are currently.

Scenario 3: No bill is in place, an attack occurs. Rates likely would soar, we believe, along with demand, but capacity would likely shrink as losses mounted. Earnings, in our view, would be depressed for many large commercial insurers and reinsurers, and net investment income would come under pressure from the likely impact on capital markets in the wake of another attack. The government might step in with some form of emergency funding, with an uncertain and possibly inequitable impact. The capital markets might be reluctant after the second major attack to commit another round of funding. In a second attack, some of the stronger players, in our view, could have impaired balance sheets and have difficulty maintaining their financial strength and credit ratings. A capacity crisis could develop. The post-9/11 measures taken to limit exposures would probably have a minimal effect, because we think those measures would not have had a chance to permeate insurers entire books. The following legal questions could quickly arise under this scenario:

- Was the attack an act of war, and excludable?
- Might states try to force policies written on an excess & surplus lines basis to cover terrorism after the fact?
- Would anyone bear liability exposure?
- Would Congress be more inclined to grant liability relief from terrorism-related events?
- Would foreign insurers and reinsurers doing business in the US follow US laws and practices?

Potential winners/losers. We would expect reinsurance and insurance broker stocks to gain under this scenario and primary insurer stocks to lose. We think reinsurers, which are not subject to state regulation on terrorism coverage exclusions, have generally been reducing their exposures to terror risk faster than primary writers and writing new contracts that offer more limited coverages at high rates. Brokers, again as the intermediaries, would benefit from what we think would be another surge in rates, as well as demand. Primary insurers, in our view, would be much more vulnerable, having achieved limited success in excluding terrorist losses and in finding affordable, effective reinsurance.

Scenario 4: A bill is passed, an attack occurs. This could actually be one of the better scenarios for earnings, again depending on the shape of the bill passed, and third best for valuation. We view this scenario as a net positive. Underwriters would know exactly where their exposures begin and end, and could price and set deductibles, limits and exclusions more accurately. Yet the private market would still bear the insurable portion of the risk.

Potential winners/losers. We assume the impact on insurers and reinsurers would be far more predictable than without a bill—analogous to any other catastrophe (i.e., positive).

Please see the important disclosures at the end of this report.

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I assume that hell will freeze over before Daschle lets us have the Sarbanes deal. If we're going to make another run at it, I'm wondering whether it makes sense to say uncle on punitives and, instead. try to get them to bite on consolidation plus a provision that businesses are only jointly and severally liable if they are more than 20% (or 25% or 15% or whatever) liable. I don't know what Larry and Glenn would think, but I think it could be substantively helpful, and it's hard to argue w/ the fact that only nominally liable American businesses should not be made to subsidize terrorists. These defendants would still pay their share, but not the terrorists'. Just a thought.

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Judiciary Democrats Grill Pa. Judge

Jesse Holland
AP Online
February 27, 2002 Wednesday

Two Republican judges looking to step up to the Court of Appeals level will have to wait at least until next week before finding out whether the Democrat-controlled Senate Judiciary Committee will send their nominations to the full Senate.

U.S. District Judge D. Brooks Smith faced grilling from Judiciary Democrats on Tuesday at his nomination hearing. They questioned his failure to step down immediately when a fraud case involving a bank where his wife worked came before his court. Smith, whom President Bush has nominated for the 3rd U.S. Circuit Court of Appeals in Philadelphia, said he disqualified himself after a month because of the appearance of conflict of interest, although he wasn't required to.

"I wish I had recused myself earlier," Smith said.

Under committee rules, senators now must wait at least a week before they can even bring up Smith's nomination for a vote.

The committee also put off a vote scheduled Thursday on U.S. District Judge Charles Pickering, whose conservative record as a state lawmaker and a federal judge has been questioned by Democrats.

It will be next week at the earliest before the panel considers Pickering's nomination by Bush to the 5th U.S. Circuit Court of Appeals in New Orleans.

Senate Minority Leader Trent Lott, R-Miss., asked the committee to give Pickering extra time to answer a "long list" of written questions submitted by senators after his second confirmation hearing.

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"Judge Pickering should have the opportunity to respond to the questions," Lott said.

At least two Democrats aren't waiting on Pickering's answers. Sen. John Edwards of North Carolina joined California Sen. Dianne Feinstein in going public with his intention to vote against Pickering.

His "record as a judge clearly demonstrates that he is willing to put his own views above the law," Edwards said.

The Senate confirmed without dissent two new district judges on Tuesday: Cindy Jorgenson of Arizona and Robert Blackburn
of Colorado. They were confirmed by 98-0 votes.

Like Pickering, Smith's supporters said the judge's record is being distorted, and he deserves to be on the higher court. "There is a lot of misinformation about him out there," Sen. Rick Santorum, R-Pa., told the committee.

Democrats questioned Smith, 50, for overseeing for a month in 1997 a fraud trial involving Mid-State Bank.

Smith's wife, Karen Smith, was vice president of the lending department at Mid-State Bank at the time. The Smiths also held Mid-State stock.

Smith said Tuesday he didn't know Mid-State Bank would be involved, and there wasn't enough of a conflict later on to trigger an automatic disqualification.

"I was still satisfied ... there was no specific information that had been presented to me that was sufficient to suggest a basis for recusal," Smith said.

Smith issued several rulings before taking himself out of the trial, but the Justice Department cleared him of any wrongdoing.

Sen. Russ Feingold, D-Wis., questioned Smith's frequency of taking paid educational trips. He said Smith has taken more such trips than all but four judges in the nation. Feingold said the trips' total value was about $30,000, and some were to resort
locations like Hilton Head Island, S.C.

Smith said the trips were purely for educational purposes, but he would not attend similar seminars if elevated to the appeals court unless he was sure it would not cause an appearance of conflict of interest.

Dems Lose in Redistricting Fight

Emily Wagster

REV_00141078

AP Online
February 27, 2002 Wednesday

A new Mississippi congressional map drawn by three Republican-appointed judges is moving closer to becoming a reality.

Supreme Court Justice Antonin Scalia denied an emergency appeal filed by an attorney who wants a Democrat-backed map drawn by a state judge. Scalia's denial on Tuesday came hours after the three federal judges in Jackson ordered that the state use their map. The lawyer, Robert McDuff of Jackson, immediately refiled his emergency appeal with Justice David H. Souter. McDuff said Souter can take up the appeal or, more likely, forward it to the full court.

"This is obviously a setback," said McDuff, who expected some word from the court within a week.

Mississippi was forced to give up one of its five U.S. House seats after Census figures showed slowing population growth in the 1990s.

The redistricting ended up in the courts after state lawmakers were unable to agree on their own map. Democrats sued in chancery court and Republicans sued in federal court.

Hinds County Chancery Judge Patricia Wise drew up the plan backed by Democrats, while the federal judges came up with their own.

In ordering that their map be used, the federal judges said it's unconstitutional for a chancery judge rather than the Legislature to draw a redistricting plan.

The federal judges said their plan would be used until the state produces a redistricting map that the Justice Department agrees is fair to minorities.

"We're obviously very pleased that the U.S. Supreme Court denied the emergency petition of the Democrats," said Grant Fox of Tupelo, an attorney who has represented Republicans in state and federal court redistricting fights.

No matter which plan is used, Rep. Chip Pickering, a Republican, and Rep. Ronnie Shows, a Democrat, will meet in a new consolidated district.

The federal judges' plan puts heavily Republican, suburban Jackson precincts in the new district where Pickering and Shows will face off.

Wise's plan puts those precincts in a district that dips down from northern Mississippi and gives the new district a higher concentration of black voters, who often vote Democratic.

Congressional candidates' qualifying deadline is Friday. Primaries are June 4 and the general election is Nov. 5.

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Scalia presided over Pickering's first swearing-in ceremony to Congress in 1997.

The justice also has spoken in Mississippi several times since the early 1990s. One trip in 1996 was arranged by Pickering's father, U.S. District Judge Charles Pickering, who is awaiting Senate action on his nomination to the 5th Circuit.

War begins over bench nominees

Peter Grier and Seth Stern
The Christian Science Monitor
February 27, 2002, Wednesday

The nomination of a little-known Mississippi judge to a federal appeals-court seat has mushroomed into the Bush administration's first big judicial-choice battle.

The fight over Charles Pickering Sr. hasn't reached the intensity of a full-scale struggle over a Supreme Court nominee, such as the one sparked by Clarence Thomas in 1991. But it does seem like something of a warm-up for skirmishes to come. All the familiar elements are there, from the pugnacious conservative Senate defenders to the attack coalition of liberal groups that says it is outraged by the nominee's past record.

There are some interesting twists on that lineup in this case - but more on that later. First, the main substantive issue. What's more important: the person Judge Pickering once was, or the man he has become?

A key Senate Judiciary Committee vote on the nomination could come this week.

"This is a very public debate over a candidate's record," says Nan Aron, president of the Alliance for Justice, one of the groups that opposes the Pickering nomination.

Aron and other opponents say that Pickering's past actions position him far to the right of the American mainstream, particularly in regard to minority rights.

They point, for instance, to a 1959 law review article Pickering wrote suggesting changes in Mississippi's law banning interracial marriage that would make it more effective.

In 1964, critics add, Pickering - then a state senator - bolted the Democratic party in part because he opposed efforts to integrate the Mississippi delegation to the Democratic National Convention.

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Since his appointment to the federal bench, he has criticized the creation of largely African-American political districts as a means to remedy past racial discrimination. Critics question his record on job discrimination and other civil rights cases.

"The bottom line is that we believe he is a right-wing ideologue," says Ralph Neas, president of People for the American Way.

Pickering's defenders point out that many of the objections to his record deal with items in the long-ago past, when white Southern politicians operated in a very different political context.

Nor do the criticisms tell the whole story, they say. In 1967 Pickering lost a reelection race for county attorney after testifying against a Ku Klux Klan leader on trial for killing a civil rights leader.

Furthermore - and here's where the twist part comes in - the black establishment in Pickering's hometown of Laurel, Miss., overwhelmingly supports his elevation to the appeals bench. They consider him someone who has at least tried to foster racial
reconciliation by supporting the funding of medical clinics in poor districts, and other actions.

The Senate Judiciary Committee has received some 27 letters of support for Pickering from members of the African-American community, said Sen. Orrin Hatch (R) of Utah, ranking GOP member of the panel, at the opening of a Feb. 7 hearing on the nomination. "Those fighting Pickering's nomination, in contrast, seem to consist primarily of a host of Washington lobbyists," said Sen. Hatch.

A FEW years ago, the Pickering nomination might have attracted much less attention. It doesn't involve the power and prestige of the Supreme Court, for one thing.

As a close friend of the top-ranking Republican in the Senate, Sen. Trent Lott of Mississippi, he might reasonably have expected to be whooped through confirmation on grounds of senatorial courtesy.

But the bitter battles over such high court picks as Robert Bork, the Reagan nominee who was defeated in 1987, and Clarence Thomas, the eventually-confirmed choice of George H. W. Bush, have left behind an ideological infrastructure of judicial
confrontation.

Both conservative and liberal groups have institutionalized "opposition research" for court nominees, consisting of detailed scrutiny of past decisions and writings, including unpublished ones. The result: a sort of rote warfare that now extends down several layers deep into choices for lower-level federal courts.

Pickering is not the only appeals court pick who will face opposition, for instance. Nominee D. Brooks Smith, a Pennsylvania judge, is now facing charges of misconduct involving financial

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conflicts of interest from liberal opponents. "The strategy is one of defeat through caricature," says Thomas Jipping, a judicial expert at the Free Congress Foundation, a group that supports Pickering and other Bush nominees.

The new intensity of struggle over judicial nominees also reflects the realization that the federal bench profoundly affects US life, of course. Bush has been open about his desire to make US courts more conservative - as were his father and Ronald Reagan before him.

Pickering's future now turns on Democratic unity. If all 10 Democrats on the judiciary panel vote "no," his nomination won't make it to the Senate floor. "He will not be confirmed," predicted panel member Sen. Dianne Feinstein (D) of California on Feb. 24.

Senate postpones vote on Pickering nomination

Ben Bryant
The Sun Herald
February 27, 2002, Wednesday

At the request of Senate Minority Leader Trent Lott, R-Miss., the Senate Judiciary Committee has postponed a vote on the nomination of Judge Charles W. Pickering Sr. to the 5th U.S. Circuit Court of Appeals.

The vote, originally scheduled for Thursday, will take place "sometime next week," said Mimi Devlin, a spokesman for the committee's Democratic majority. Lott said he asked for the postponement to give Pickering more time to respond to written questions submitted to the judge by committee members three weeks ago. He said one senator, whom he did not identify, gave Pickering 78 questions. "I think that Judge Pickering has been treated very poorly," Lott said.

Meanwhile, four Pickering opponents from Mississippi took their case to Lott and Sen. Thad Cochran, R-Miss., in private meetings Tuesday. One of the judge's foes, Kathy Egland of Gulfport, Miss., said his confirmation would mean "retrogression" on civil rights issues.

Egland said the news media has distorted the level of support among Mississippi blacks for the judge, who has been endorsed by blacks in his hometown of Laurel and by Charles Evers, brother of slain civil rights leader Medgar Evers. But Pickering's home-state black proponents are more loud than large, said Egland, a veteran of the NAACP who is serving her second term on the organization's national board of directors.

"Charles Pickering would open a gateway of horror in our own back yards," she said, citing decisions Pickering issued against plaintiffs in employment discrimination cases. "I can't speak for anybody else, what's on their hearts."

Pickering's nomination has been criticized by Democratic senators and interest groups that have

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called his legal record "insensitive and sometimes even hostile" to civil rights. They have also questioned whether he violated judicial ethics by intervening on behalf of a cross-burning suspect in 1995.

Egland and the rest of the four-person delegation from Mississippi assailed the judge for calling the cross burning, which took place in Walthall County, Miss., in 1993, a drunken prank."

Pickering asked federal prosecutors to reduce the charges against one of the three suspects, whom he deemed less responsible for the crime than the others.

"That (Pickering) would call burning a cross 'a drunken prank,' I can't tell you how offensive that is to me," said Richard Glisson, president of Students Envisioning Equality through Diversity at the University of Mississippi. "In fact, I'll go far enough to say that Sen. Lott is racially insensitive for nominating him."

Glisson and Egland were joined by Jolivette Anderson and Betty Thompson, both of Jackson, Miss., for the meetings with Lott and Cochran, who both said they still support Pickering.

But staffers for the Democratic senators on the Senate Judiciary Committee predicted the vote would go against the judge and said the delay would make no difference in the vote.

"We're pretty unified on this side," one said, echoing comments made Sunday by Sen. Dianne Feinstein, D-Calif., a committee member.

Campaign-finance bill will pass this year, Daschle vows

Paul Leavitt
USA TODAY
February 27, 2002, Wednesday,

Senate Majority Leader Tom Daschle, D-S.D., promised Tuesday that legislation revamping campaign-finance laws will be passed this year, and Sen. Mitch McConnell, R-Ky., who has been the bill's leading opponent, signaled that he won't try to block passage with a filibuster. Supporters want the Senate to pass the version that cleared the House last month. That would avoid a conference committee of House and Senate members to iron out differences. President Bush has indicated he likely would sign the legislation. -- Jim Drinkard

Senate battling over judicial nominations

U.S. District Judge D. Brooks Smith defended his record at his Senate confirmation hearing for the 3rd U.S. Circuit Court of Appeals in Philadelphia. Opponents say Smith ruled in a case in which he had a financial interest. He oversaw for a month a trial in 1997 in which Mid-State Bank was accused of complicity in a defendant's fraud scheme. His wife, Karen, was a bank officer, and he had stock in the bank. Smith said Mid-State's role wasn't apparent, but when it

arose, he took himself off the case. "None of the parties, lawyers or judges, nor the trustee has questioned my conduct," Smith said.

The Judiciary Committee delayed a vote on another nominee, Charles Pickering of Mississippi, for a seat on the 5th U.S. Circuit Court of Appeals in New Orleans. Senate Minority Leader Trent Lott, R-Miss., sought the delay so Pickering could respond to more questions. Critics question his views on civil rights, but some blacks in his state have come to his defense.

Bush pushes marriage in welfare plan

President Bush's proposed changes to welfare include new federal spending on programs to promote marriage and sexual abstinence. He wants to spend $ 200 million in federal money and $ 100 million from states on programs such as premarital counseling and education. He also wants $ 135 million to discourage premarital sex among youth. Abstinence prevents "unwanted pregnancies and sexually transmitted diseases," he said. "When our children face a choice between self-restraint and self-destruction, government should not be neutral." -- Judy Keen

Federal Panel Imposes Miss. Redistricting Plan; Outcome Favors Republican Rep. Pickering

Thomas B. Edsall
The Washington Post
February 27, 2002, Wednesday,

A three-judge federal panel yesterday imposed a Mississippi congressional redistricting plan putting Rep. Charles W. "Chip" Pickering Jr. (R) and Rep. Ronnie Shows (D) together in a district that favors the Republican.

An appeal to Supreme Court Justice Antonin Scalia was rejected hours later.

The outcome infuriated Democrats and civil rights advocates who argued that black voters will have far less influence under the federal court plan than they would have under a state court plan ruled unconstitutional by the federal panel. The state and federal courts entered the dispute after the state legislature was unable to agree on new congressional district lines. The federal court acted in part because the Justice Department had delayed granting "preclearance" approval to the state plan as required
by the Voting Rights Act of 1965. Districts had to be in place so that candidates preparing to run could meet the March 1 filing deadline for federal office in Mississippi.

Rep. Martin Frost (D-Tex.), who has overseen national Democratic redistricting strategy, attacked political appointees at the Justice Department, charging they "cynically manipulated the Voting Rights Act to help Republicans by hurting African American voters. . . . The Bush Justice Department has abused its most fundamental duty -- fairly enforcing America's civil rights."

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Yesterday, Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) submitted written questions to Attorney General John D. Ashcroft asking whether career attorneys recommended approval of the state plan and whether they were overruled by political appointees.

Asked whether that was the case, Justice Department spokesman Dan Nelson said, "We don't comment on internal
deliberative documents," referring to recommendations made by the career staff. "I couldn't give you any guidance on that." He said no one from the White House tried to influence departmental consideration of the Mississippi case.

Career lawyers in the voting rights division at Justice declined to discuss their recommendations or views about the Mississippi case. Former career lawyers contended, however, that the preclearance delays were based on questions that are not a legitimate part of a voting rights review. The questions raised by Justice involved the legality of a Mississippi Chancery Court ordering a redistricting plan.

Paul Hancock, a former deputy assistant attorney general for civil rights, said preclearance review is limited to just one question: "only whether the submitted plan is retrogressive in purpose or effect." He said the Justice letter questioning the state court plan "seems to be much more political in nature than programatic."

The three-judge panel, all GOP appointees, went substantially beyond the preclearance issue in ordering its own plan into effect.

The federal judges -- E. Grady Jolly, Henry T. Wingate and David C. Bramlette -- wrote that under Article 1, Section 4 of the Constitution -- "The Times, Places and manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof" -- the state court had no authority to draw new congressional districts.

"We can only conclude that the requirements [of the Constitution] were not met in this case, as there has been no indication that the chancery court had any legislative authority to draw the state's districts."

Under the rejected state court plan, Shows and Pickering would have been placed in a district in which blacks, a heavily Democratic constituency, made up 37.5 percent of the voting age population. Under the federal court plan, blacks make up 30 percent.

Scalia, who handles emergency appeals from the 5th U.S. Circuit Court of Mississippi, Louisiana and Texas, has a number of ties to the Pickering family. In 1997, the Associated Press reported that Scalia presided over Pickering's first congressional
swearing-in ceremony and that Pickering's father, U.S. District Judge Charles Pickering, arranged a trip for Scalia to Mississippi to give a speech.

Scalia Denies Miss. Dems' Appeal

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Emily Wagster
AP Online
February 26, 2002 Tuesday

A U.S. Supreme Court justice on Tuesday denied an emergency appeal filed by Democrats in Mississippi's congressional redistricting dispute, which could clear the way for the state to use a map drawn up by three GOP-appointed judges.

After a decade of slow population growth, Mississippi must give up one of its five U.S. House seats.

Supreme Court Justice Antonin Scalia on Tuesday denied the appeal filed by attorney Robert McDuff of Jackson. McDuff wanted the court to order the state to use a congressional map drawn by Hinds County Chancery Judge Patricia Wise that was
backed by Democrats. Scalia's denial came hours after three federal judges in Jackson ordered that the state use a map they drew. All three federal judges were appointed by Republicans.

McDuff immediately refiled his emergency appeal with Justice David H. Souter. The attorney said Souter can take up the appeal or, more likely, forward it to the full court.

He said he expected some word from the court either later this week or early next week.

No matter which plan is used, Rep. Chip Pickering, a Republican, and Rep. Ronnie Shows, a Democrat, will meet in a new consolidated district.

The federal judges' plan is thought to favor Pickering, while the rival plan was thought to favor Shows.

"We're obviously very pleased that the U.S. Supreme Court denied the emergency petition of the Democrats," said Grant Fox of Tupelo, an attorney who has represented Republicans in state and federal court redistricting fights.

McDuff said he also would ask the full Supreme Court to consider his appeal. He said it could be heard in the fall.

"This is obviously a setback," McDuff said.

Congressional candidates' qualifying deadline is Friday. Primaries are June 4 and the general election is Nov. 5.

Scalia handles emergency appeals from the 5th U.S. Circuit of Mississippi, Louisiana and Texas.

Scalia presided over Pickering's first swearing-in ceremony to Congress in 1997.

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The justice also has spoken in Mississippi several times since the early 1990s. One trip in 1996 was arranged by Pickering's father, U.S. District Judge Charles Pickering, who is awaiting Senate action on his nomination to the 5th U.S. Circuit Court of Appeals.

Mississippi redistricting landed in the courts after state lawmakers were unable to agree on their own map. Democrats sued in chancery court and Republicans sued in federal court.

In ordering that their map be used, the three federal judges said it's unconstitutional for a chancery judge rather than the Legislature to draw a redistricting plan.

The federal judges said their plan would be used until the state produces a redistricting map that the Justice Department agrees is fair to minorities.

The federal judges' plan puts heavily Republican, suburban Jackson precincts in the new district where Pickering and Shows will face off.

Wise's plan puts those precincts in a district that dips down from northern Mississippi and gives the new district a higher concentration of black voters, who often vote Democratic.

Panel Grills Pa. Judge on Ethics

Jesse Holland
AP Online
February 26, 2002 Tuesday

A Pennsylvania judge who is up for a promotion told senators Tuesday he did nothing unethical by temporarily overseeing a fraud case involving a bank where his wife worked.

U.S. District Judge D. Brooks Smith said during his confirmation hearing for the 3rd U.S. Circuit Court of Appeals in Philadelphia that he recused himself from the trial after a month because of the appearance, even though he wasn't required to.

"I wish I had recused myself earlier, but I did it because it was the right thing to do," Smith said.

Democrats and liberal groups have questioned Smith's qualifications for the court, which covers Pennsylvania, New Jersey, Delaware and the Virgin Islands. Some senators are worried about his chances in front of the Democratic-controlled Senate Judiciary Committee. "I'm just hoping they'll be fair when the time comes," said Sen. Jon Kyl, R-Ariz.

Smith's supporters said his record is being distorted and he deserves to be on the higher court. "There is a lot of misinformation about him out there," Sen. Rick Santorum, R-Pa., told the committee.

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Sen. Arlen Specter, R-Pa., who sits on the committee, said, "I'm satisfied that Judge Smith has completely responded and answered any questions that have been raised."

It was not immediately known when the committee will vote on Smith.

The committee also delayed a planned Thursday confirmation vote for U.S. District Judge Charles Pickering of Mississippi, whose conservative record has brought criticism by liberal groups.

Sen. John Edwards, D-N.C., said Tuesday he would join Sen. Dianne Feinstein, D-Calif., in announcing publicly their intention to vote against Pickering. His "record as a judge clearly demonstrates that he is willing to put his own views above the law,"
Edwards said.

Senate Minority Leader Trent Lott, R-Miss., asked the committee to give Pickering extra time to answer a "long list" of written questions submitted to him by senators after his second confirmation hearing.

It will be next week at the earliest before Pickering, who wants to be elevated to the 5th U.S. Circuit Appeals Court in New Orleans, is considered.

"Judge Pickering should have the opportunity to respond to the questions," Lott said.

Justice Department officials told the committee they expected Pickering to finish answering the questions before the day was out, a committee spokesman said. "There's been no indication from the White House or the Department of Justice that there
would be any difficulty in Judge Pickering responding to the written questions," spokesman David Carle said.

Democrats questioned Smith, 50, for overseeing for a month in 1997 a fraud trial involving Mid-State Bank.

Smith's wife, Karen Smith, was the vice president of the lending department at Mid-State Bank at the time. The Smiths also held Mid-State stock.

Smith said Tuesday there was nothing at the outset of the case that indicated that Mid-State Bank would be involved, and there wasn't enough of a conflict later on to trigger an automatic disqualification.

"I was still satisfied ... there was no specific information that had been presented to me that was sufficient to suggest a basis for
recusal," Smith said.

Smith issued several rulings before taking himself out of the trial, but the Justice Department

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cleared him of any wrongdoing.

Sen. Russ Feingold, D-Wis., questioned Smith taking paid educational trips, saying Smith has taken more such trips than all but four judges in the nation. Feingold said the trips' total value was about $30,000, and some were to resort locations like Hilton
Head Island, S.C.

Smith said the trips were purely education-related but he would not attend similar seminars if elevated to the appeals court unless he was sure it would not cause an appearance problem.

Sen. Joseph Biden, D-Del., threatened to filibuster Smith if he refused to answer questions because he might have to make a ruling on the issues later. Biden pointed out that in 1993 Smith talked about the Violence Against Women Act, which was going
to be challenged in court, in front of the conservative Federalist Society.

"If you suggest to me that you cannot respond in the same way you responded as a sitting federal judge on the Violence Against Women Act, then I will do everything in my power to defeat you, including moving to the Senate floor to take an action I've never taken in my life as a United States senator, a filibuster," Biden said.

Biden left before Smith could respond. It was not immediately known whether Smith, like Pickering, would be required to come to a second hearing.

The Senate also confirmed two U.S. District Court judges on Tuesday: Cindy Jorgenson of Arizona and Robert Blackburn of Colorado. They were both confirmed by 98-0 votes.

U.S. Supreme Court denies Dems' initial redistricting appeal

Emily Wagster
The Associated Press State & Local Wire
February 26, 2002, Tuesday

A U.S. Supreme Court justice on Tuesday denied an emergency appeal filed by Democrats in Mississippi's congressional redistricting dispute, possibly clearing the way for the state to use a map drawn up by three GOP-appointed judges.

After a decade of slow population growth, Mississippi must give up one of its five U.S. House seats.

Supreme Court Justice Antonin Scalia denied the appeal filed by attorney Robert McDuff of Jackson. McDuff wanted the court to order the state to use a congressional map drawn by Hinds County Chancery Judge Patricia Wise that was backed by Democrats. Scalia handles emergency appeals from the 5th U.S. Circuit Court of Appeals, which includes Mississippi, Louisiana and

Texas.

His denial came hours after three Republican-appointed federal judges in Jackson ordered that the state use a map they drew.

McDuff immediately refiled his emergency appeal with Justice David H. Souter. The attorney said Souter can take up the appeal or, more likely, forward it to the full Supreme Court.

McDuff said he expected some word from the court either later this week or early next week.

No matter which plan is used, the state's two junior congressmen - Republican Chip Pickering and Democrat Ronnie Shows - will meet in a new consolidated district.

The federal judges' plan is thought to favor Pickering, while the rival plan was thought to favor Shows.

Scalia presided over Pickering's first congressional swearing-in ceremony to Congress.

The justice also has spoken in Mississippi several times since the early 1990s. One trip in 1996 was arranged by Pickering's father, U.S. District Judge Charles Pickering, who is awaiting Senate action on his nomination to the 5th U.S. Circuit Court of Appeals.

Shows spokeswoman Cassie Sheldon would not comment on Scalia's connections to the Pickering family.

Speaking for Shows, she said of Scalia's denial of Democrats' initial appeal: "We're disappointed but we're not going to give up the fight for what's fair. We are going to run no matter what and we are going to win."

Chip Pickering's campaign manager, Henry Barbour, said Scalia has been hunting with Judge Pickering but the Pickerings' acquaintance with the justice has nothing to do with the redistricting case.

"This is an issue of the facts and the law," Barbour said. "If the other side wants to whine or complain, I think people are getting tired of that."

Barbour also said Chip Pickering plans to run "an aggressive, strong, grass-roots campaign."

During a budget hearing in Washington Tuesday, U.S. Sen. Patrick Leahy, D-Vt., gave Attorney General John Ashcroft a list of questions about the Justice Department, including its handling of Mississippi redistricting, said Leahy spokesman David Carle.

Leahy is chairman of the Senate Judiciary Committee, where Judge Pickering's confirmation is pending.

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Grant Fox of Tupelo, an attorney who has represented Republicans in state and federal court redistricting fights, said he expects the federal court's plan to be used in this year's elections.

"We're obviously very pleased that the U.S. Supreme Court denied the emergency petition of the Democrats," Fox said.

McDuff said he also will ask the full U.S. Supreme Court to consider more extensive arguments on Mississippi redistricting. He said those arguments could be heard in the fall.

"This is obviously a setback," McDuff said Tuesday. "We knew that an emergency application to the Supreme Court was an uphill ride and the hill has just gotten little steeper with this initial denial."

Congressional candidates' qualifying deadline is Friday. Primaries are June 4 and the general election is Nov. 5.

Mississippi redistricting bounced into the courts after state lawmakers were unable to agree on their own map. Democrats sued in chancery court and Republicans sued in federal court.

In ordering that their map be used, the three federal judges said it's unconstitutional for a chancery judge rather than the Legislature to draw a redistricting plan.

McDuff said previous court rulings from other states show the federal judges' ruling Tuesday is "totally wrong."

He said the state court didn't steal legislators' ability to draw a map.

"The Legislature dropped the ball and walked away," McDuff said.

The federal judges said their plan would be used until the state produces a redistricting map that the Justice Department agrees is fair to minorities.

The federal judges' plan puts heavily Republican, suburban Jackson precincts in the new central district where Pickering and Shows will face off.

Wise's plan puts those precincts in a district that dips down from northern Mississippi and gives the new central district a higher concentration of black voters, who often vote Democratic.

The three federal judges in Jackson said last week that they would order their plan to be used if the U.S. Justice Department by late Monday didn't approve Wise's map. That approval didn't come.

The Justice Department has been checking Wise's plan to ensure it's fair to minorities. The federal judges' plan does not need Justice clearance.

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Democrats, including Shows, have accused the Justice Department of stalling on the state map to give Republicans an edge.

Mississippi has had one of the nation's most contentious redistricting fights, and the outcome could help determine the partisan balance of power on Capitol Hill.

Judiciary Democrats grill Pa. judge on ethics; Pickering vote delayed for a week

Jesse Holland
The Associated Press State & Local Wire
February 26, 2002, Tuesday

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Smith's supporters said his record is being distorted and he deserves to be on the higher court. "There is a lot of misinformation about him out there," Sen. Rick Santorum, R-Pa., told the committee.

Sen. Arlen Specter, R-Pa., who sits on the committee, said, "I'm satisfied that Judge Smith has completely responded and answered any questions that have been raised."

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Senate Minority Leader Trent Lott, R-Miss., asked the committee to give Pickering extra time to answer a "long list" of written questions submitted to him by senators after his second confirmation hearing.

It will be next week at the earliest before Pickering, who wants to be elevated to the 5th U.S. Circuit Appeals Court in New Orleans, is considered.

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to be challenged in court, in front of the conservative Federalist Society.

"If you suggest to me that you cannot respond in the same way you responded as a sitting

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federal judge on the Violence Against Women Act, then I will do everything in my power to defeat you, including moving to the Senate floor to take an action I've never taken in my life as a United States senator, a filibuster," Biden said.

Biden left before Smith could respond. It was not immediately known whether Smith, like Pickering, would be required to come to a second hearing.

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Pickering Defeat Looms as Democrats Hold to Tough Line

James W. Brosnan
The Commercial Appeal (Memphis, TN)
February 26, 2002 Tuesday

President Bush faces defeat for one of his judicial picks Thursday, when the Senate Judiciary Committee is scheduled to vote on the nomination of Mississippian Charles Pickering to the Fifth U.S. Circuit Court of Appeals.

One Democrat, Dianne Feinstein of California, is predicting Pickering's defeat and that seems to be borne out in the tough line taken by Democrats, who hold a 10-9 majority, in written questions submitted to Pickering, a 64-year-old U.S. District Court judge, in the wake of two contentious hearings.

Sen. Herb Kohl (D-Wis.), who has been reticent about Pickering in public, asked the judge about his statement in a 1993 voting rights case that the one-person, one-vote doctrine might be "obtrusive" and give people "more government than they want." "What could be more important in this country than an equal right to vote?" wrote Kohl.

Several Democrats asked Pickering about a 1994 cross-burning case in which he forced Justice Department prosecutors to drop one charge against defendant Daniel Swan. Pickering did not want to sentence Swan to 7 years in prison as required by sentencing guidelines.

According to a memo from Linda Davis, head of the criminal section of the Justice Department's civil rights division, Pickering told prosecutors "that in the current racial climate in that part of the state, such a harsh sentence would serve only to divide the community."

Sen. Joe Biden (D-Del.) asked Pickering if the sentence would be more divisive "than the act of burning a cross on the lawn of a minority or mixed-race family."

In a letter sent to Sen. Orrin Hatch (R-Utah), Pickering said that unlike a 17-year-old

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co-defendant, who pled guilty and got probation, Swan had no history of racial violence.

"As repugnant as this crime was, I nevertheless felt this was the worst case of disparate sentencing that had come before me during my tenure on the bench," said Pickering.

He also said there was a split in the appellate courts about whether the most serious charge, use of a fire in commission of a felony, applied in cross-burning case.

"A Fair-Minded Judge"

Byron York
National Review
February 26, 2002

In a new twist in the battle over the nomination of Charles Pickering to a place on the Fifth Circuit Court of Appeals, a former top Clinton Justice Department official - who also happens to be former Vice President Al Gore's brother-in-law - has given the Senate Judiciary Committee a strong endorsement of Pickering's character.

The former official is Frank Hunger, who headed the Justice Department's Civil Division from 1993 until 1999. Like Pickering, Hunger is a Mississippian, and the two men have known each other for almost 30 years. Hunger is the man Pickering called in early 1995 when Pickering, a federal district judge in southern Mississippi, was trying to decide how to sentence a man convicted in a cross burning case. Pickering had become frustrated by the Justice Department's reluctance to answer questions about sentencing practices for similar crimes and complained to Hunger, who told him the problem was outside his area of responsibility. Democratic senator John Edwards, in a harsh interrogation at Pickering's February 7 confirmation hearing, accused Pickering of violating judicial ethics by calling Hunger. In a February 12 letter to committee chairman Patrick Leahy
and ranking Republican Orrin Hatch, Hunger takes issue with those allegations. "I have little or no recollection of the call," Hunger writes. "The significance of this to me is had I felt at the time that there was anything inappropriate or improper about Judge Pickering's call I would most assuredly remember it today." Hunger says he has read Pickering's account of the matter and has "no reason whatsoever to take issue with anything he [Pickering] has said about the call."

Hunger's letter continues with an endorsement of Pickering as a judge and a man. "I have known Judge Pickering for nearly thirty years and have the utmost respect for him as a fair-minded judge who would never knowingly do anything improper or unethical," Hunger writes. "He is a person of great integrity, strong moral character, courage and compassion who treats all who come before him in a fair and dignified way." Hunger concludes by saying that Pickering has been "a distinguished judge and I think it most regrettable that his nomination has become controversial."

Despite the lift provided by Hunger's letter, there is increasing pessimism among Republicans about Pickering's chances. Many were deeply discouraged on Sunday after the appearance of Democratic Sen. Dianne Feinstein on NBC's Meet the Press, in
which Feinstein declared her opposition to Pickering and said every Democrat on the committee agreed with her. "I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed," Feinstein
said. "In other words, he will not be voted out of the Judiciary Committee."

"So all ten Democrats will oppose him?" host Tim Russert asked.

"I believe so," Feinstein answered.

From a Republican perspective, what is even more disturbing than the fate of the Pickering nomination is the fear that Democrats are making good on threats to adopt a no-conservatives-allowed policy of evaluating nominations to the federal bench. "I've looked rather carefully at [Pickering's] background, and I think you have a person who has very strong right-wing views, both politically and personally," Feinstein said. "The question always comes: Can you put those views entirely aside? This is a lifetime appointment. If you can't be assured that the individual is really going to put those views aside, what happens is two years into the term those views creep forward again."

Finally, in the most disheartening development for Republicans, Feinstein returned to an argument against President Bush that Democrats have not used publicly in many months, certainly not since Sept. 11: the contention that the narrowness of Bush's victory in the 2000 election disqualifies him from appointing conservatives to the bench. "President Bush did not have a large mandate," Feinstein said. "There is no mandate, in my view, to skew the courts to the right. And so I think you're going to see a Judiciary Committee that's really going to be looking for mainstream judges, and those judges that they find outside of the mainstream I do not believe will have Democratic support."

A committee vote on Pickering is likely by March 7, but some key Republicans now believe Pickering's defeat is just a formality. "I still had hope until Sunday," said one GOP aide after watching Feinstein on Meet the Press. Now, that hope appears to be gone.

Unwarranted charges of racism

Stanley Kurtz
National Review
February 26, 2002, Tuesday

Racism is wrong. That's for certain. The trouble is, accusations of racism have also been turned into easily abused tools of personal destruction.

We've seen how opponents of Charles Pickering's appointment to the federal bench have tried to ruin him by pretending to discover in his judicial conservatism the taint of personal racism. Now a false charge of racism has brought a call for the dismissal of Candace de Russy, an outspoken trustee of the State University of New York, who dared to publicly criticize the SUNY system's African-American-studies programs for political bias and lack of rigor. The United University Professions, the 27,000-member union of faculty and staff at the SUNY system, has passed a resolution calling for de Russy's dismissal from the board. De Russy's crime was to be quoted in Newsday arguing that most black studies departments have become "flabby feel-good programs that carry an anti-American bias and do little to advance knowledge." De Russy happily concedes that

there has been a good deal of distinguished African-American scholarship in recent years, pointing to the work of William Julius Wilson, for example. What bothers her is that black-studies departments have come under the control of professors with a single point of view, pushing students to come to predetermined political conclusions. The views of conservative black scholars such as Shelby Steele and Thomas Sowell, for example, are rarely presented.

Of course, the de Russy affair is only the latest in a long line of incidents in which open critics of black studies programs are tarred with charges of racism. Readers will recall the dust-up at Harvard over President Lawrence Summers's criticisms of Cornel West, but the problem has a much longer history. Last year, there were the attacks on the offices of student papers that had published the David Horowitz ad opposing slave reparations.

And remember the attempts to silence Harvey Mansfield's campaign against grade inflation at Harvard, simply because he argued that affirmative action played a role in promoting the practice? A lesser-known incident was the assault last November on Professor Barry Shain of Colgate University. Like de Russy, Shain had expressed concerns about black-studies courses that focused more on politically tinged consciousness raising than on mastery of a body of knowledge. And like de Russy, Shain

was worried that such courses tempted students with easy grades for de facto group-therapy sessions. Seventy students, many of them black, occupied the Colgate admissions office and put their demands against Shain.

As with the de Russy flap, the real motive in the Shain affair was to destroy the one professor at Colgate who regularly shows the courage to criticize the plans and programs of a left-leaning faculty.

The list of such incidents and tactics can be extended indefinitely, going back to the origins of black-studies programs in the late sixties. At SUNY Stony Brook, for example, the black-studies program was instituted in 1968 after black students shut down the campus for days. The most famous incident of all was at Cornell in 1969, where black radicals armed with shotguns took over an administration building and threatened the lives of faculty who opposed their demands for, among other things, a program in black studies.

There can be no doubt that slavery and racism together constitute the most shameful chapter in American history. The study of that sad past, like the study of the struggles and positive

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achievements of black Americans, was unjustly neglected prior to the late sixties. But there is plenty of room for legitimate disagreement about the best way to integrate the study of minorities and

women into the academic curriculum. The legacy of slavery and racism is tragic, real and important. Yet in the last 35 years, another disturbing legacy has taken root in the United States. It is the legacy of intimidation launched against any who dare to demur at the demands of organized minorities. We shall know that racism has finally been defeated in the United States when the "demands" of America's minorities can be subject to the same sort of rough and tumble criticism as the views of anyone else. In the meantime, we must do what we can to defend the freedom and integrity of brave souls like Barry Shain and Candace de Russy.

President to propose changes to welfare

Paul Leavitt and Richard Benedetto
USA TODAY
February 26, 2002, Tuesday

EXCERPT
The Senate Judiciary Committee takes up two controversial judicial nominations this week.

The American Bar Association said D. Brooks Smith is qualified to be a judge on the 3rd U.S. Circuit Court of Appeals in Philadelphia, but opponents say he wrongfully made rulings in a case in which he and his wife had a financial interest. Smith oversaw for a month a fraud trial in 1997 involving Mid-State Bank, which was accused of complicity in fraud. Smith's wife, Karen, was a bank officer. He also listed $ 100,000 to $ 250,000 of the bank's stock on his financial disclosure form. Smith later took himself off the case, and the Justice Department cleared him of wrongdoing.

Later this week, the committee is scheduled to vote on Charles Pickering for a seat on the 5th Circuit Court of Appeals in New Orleans. Opponents say he is hostile to civil right issues. Supporters say he testified against the Ku Klux Klan in Mississippi and has worked at racial reconciliation in the state.

More Questions for Pickering With confirmation vote looming, senators have new queries for 5th Circuit nominee.

Johnathan Groner
Legal Times
February 25, 2002

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With a Senate Judiciary Committee vote on Charles Pickering Sr. slated for Feb. 28, the appeals court nominee appears to beheaded for a narrow party-line rejection, Senate observers say.

In their last chance to screen Pickering, several senators have submitted written questions for the district judge from Mississippito answer before the vote. Nothing in the questions seems likely to arouse hopes among Pickering's backers that a Democrat ortwo would cross party lines and support him.

At a Feb. 7 hearing, Democrats, who hold a 10-9 edge on the committee, queried Pickering intensively about his views onracial issues, his rulings as a trial judge, and his views on the Constitution and the right to privacy. The vast majority of the written
questions came from Democrats with serious reservations about Pickering's nomination. The queries track many of the issuesraised at the hearing, but some new allegations also emerged.

Sen. Herb Kohl of Wisconsin, the only Democrat who did not attend the Feb. 7 hearing, posed six questions that suggest Kohlshares many of his colleagues' concerns.

Kohl cited a Pickering voting rights decision from 1993 in which the judge expressed doubt about whether federal law requiresdrawing lines that divide towns and communities in order to equalize the population of voting districts. He concluded in Fairley v.Forrest Countythat he was "bound to follow the precedents established by prior controlling judicial decisions."

But he also wondered "if we are not giving the people more government than they want and more than is required in definingone-man, one-vote too precisely."

Commenting on this language, Kohl asked, "What could be more important in this country than an equal right to vote?"

Pickering, with the help of officials at the Justice Department's Office of Legal Policy, has sent in some written responses. ButMimi Devlin, a committee spokeswoman, says Chairman Patrick Leahy (D-Vt.) will not release the replies until all have been received.

Pickering declines comment. On his behalf, Justice Department Director of Public Affairs Barbara Comstock says, "JudgePickering takes the inquiries of the Senate Judiciary Committee very seriously and is working diligently to provide them with thorough and accurate responses as quickly as possible."

Both Kohl and Sen. Edward Kennedy (D-Mass.) asked about Pickering's support in 1974 of a resolution asking Congress to repeal the Occupational Safety and Health Act. Pickering was then a state senator in Mississippi.

According to Kohl and Kennedy, the resolution referred to OSHA as "ridiculous, outrageous, and wasteful" and assailed the act as unduly burdensome to business.

"Do you still hold those views about OSHA?" Kohl asked. "Do your views expressed toward OSHA demonstrate your thoughts generally about the role of the federal government in issues concerning worker safety?"

Though Pickering's written response was not available at press time, a Department of Justice official rejects the implication that Pickering is opposed to OSHA enforcement.

"Thirty years after OSHA was first passed, Judge Pickering believes that the federal government has an important role to play in ensuring the safety of America's workers," the official says. "As a practicing lawyer in the 1980s, Judge Pickering remembers
using OSHA regulations and standards to protect the rights of workers."

Adds the official: "It is the responsibility of federal judges to enforce statutory enactments. The judge did so as a district court judge and intends to do so as a circuit court judge, if given the opportunity."

Sen. Russ Feingold (D-Wis.), the lone Judiciary Committee Democrat to support the nomination of Attorney General John Ashcroft, questioned why Judge Pickering dismissed a number of pro se cases filed by federal prisoners as frivolous and
threatened to impose sanctions against the prisoners.

The senator pointed out that a 1996 law specified two types of sanctions against prisoners' frivolous claims. He queried why Pickering authorized other sanctions-such as ordering prison officials to restrict the inmate's prison privileges-without citing any
basis in federal law.

"On what specific legal authority were you relying when you threatened to impose these sanctions?" Feingold asked.

The only Republican to ask questions was Sen. Jeff Sessions of Alabama, whose queries were framed in broad terms, unlike the confrontational tone that many Democrats adopted.

"Please describe your views on the availability of habeas corpus relief to prisoners," Sessions asked.

While Pickering appears to lack support from any committee Democrats, some observers speculate that Leahy may agree to send the nomination to the Senate floor with a negative recommendation rather than bottle it up in committee.

Pickering has strong support from Minority Leader Trent Lott (R-Miss.), and at least two Democrats in the closely divided Senate-Ernest Hollings of South Carolina and Zell Miller of Georgia-have said that they would vote to confirm Pickering if his name reached the floor.

Members of Leahy's staff declined comment on whether Pickering's name would get out of committee if he is voted down. Ron Bonjean, Lott's press secretary, declines comment.

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Pickering Battles Face Decisions on Two Fronts

Paul Kane
Roll Call
February 25, 2002

With charges and countercharges flying from Mississippi to Capitol Hill, the father-son duo of U.S. District Judge Charles Pickering and Rep. Chip Pickering (R-Miss.) may face their respective political days of reckoning this week.

In decisions that will have ripple effects throughout all three branches of the federal government, the Pickerings are engaged in racially charged fights, with interest groups on both sides mounting furious campaigns.

Judge Pickering, seeking an elevation to the U.S. 5th Circuit Court of Appeals, has faced a nearly endless volley of charges that he has been racially insensitive as a state politician and on the federal bench. The Senate Judiciary Committee is tentatively slated to vote on Pickering Thursday, with his nomination desperately in need of support from one Democrat on the panel to gain a vote on the Senate floor. Rep. Pickering is facing a redistricting battle that will pit him against Rep. Ronnie Shows (D-Miss.) in the fall,
but a legal fight between state and federal courts has not yet resolved the precise shape of the new district. If the Justice Department does not sign off on a state-backed plan by today, a three-judge federal panel has said it will impose its own district - which is much more favorable to Chip Pickering because of its lower percentage of voting-age black residents - by tomorrow, in time for the March 1 filing deadline.

While the two cases are seemingly independent of each other, the cast of characters waging fights over the Pickerings' futures are virtually the same, and each side has made vague allegations against the other about linking the two battles for its own advantage.

Rep. Bennie Thompson (D-Miss.), who has been the most outspoken Congressional Black Caucus opponent of Judge Pickering's and the CBC leader in the redistricting fight, went to great lengths to note that the redistricting plan favoring Republicans was designed by three GOP-nominated judges. One of the three, U.S. District Judge Henry Wingate, wrote a letter to the Judiciary Committee in support of Judge Pickering's nomination, and another, District Judge David Bramlett, serves with Wingate and Pickering on the same federal court.

"And now they craft a plan that's more favorable to their colleague's son than the [state-backed plan] that's under review by the Justice Department," Thompson said, adding that it's not too far a stretch to say the judges are seeking retribution for Democratic
opposition to the judicial nomination. "It certainly could be made to [look] that way."

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Rep. Pickering, who has been the most outspoken supporter on behalf of his father's nomination, has argued just the opposite, that Congressional Democrats are holding up Judge Pickering's nomination as leverage in the redistricting battle.

The nomination fight has become a pivotal one in the Senate, with Minority Leader Trent Lott (R-Miss.) - a friend of Judge Pickering's for 30 years and former boss of Rep. Pickering - vowing retribution if Democrats defeat the judicial nomination. Some Senate Republicans have even talked of holding up all legislative matters through parliamentary tactics, freezing the Senate floor, if the Pickering nomination goes down, according to aides.

But interest groups from the People for the American Way to the NAACP have ratcheted up the pressure on Judiciary Democrats, arguing that Pickering's record as a state Senator and federal judge is replete with insensitivity to civil rights.

According to one aide to a Judiciary Democrat, the anti-Pickering coalition began a fax, phone and e-mail campaign Thursday, with form letters from across Texas, Louisiana and Mississippi accusing Pickering of "insensitive and extreme views."

Despite favorable stories in the national press about home-state support for Pickering among blacks, the coalition is arguing that those supporters only know Pickering as a person, not as a judge. "We're not looking into his heart, we're looking into his record," said Ralph Neas, president of People for the American Way.

Judiciary Chairman Patrick Leahy (D-Vt.) has scheduled a business meeting to vote on nominations Thursday, when it is "likely" Pickering's nomination will be handled, according to David Carle, Leahy's spokesman.

Aides and observers noted that a decision to hold a vote so quickly after the return from the Presidents' Day recess does not bode well for Pickering's chances. But, Carle stressed, "No final agenda [for the hearing] will be set until closer to Thursday."

By that time, Rep. Pickering's future may already be virtually certain. The Justice Department, under the Voting Rights Act, must approve any redistricting plan in Mississippi, and originally faced a deadline today for approving or rejecting the state-backed plan. But two weeks ago Justice's Civil Rights Division requested more information from Mississippi regarding its plan, which would leave a Pickering-Shows district with 37 percent of the voting-age population being African-American.

Justice thus created a new 60-day deadline for later in the spring, but the filing deadline for candidates continues to be March 1. The three-judge panel, however, has drawn up its own district - 30 percent African-American - and said that redistricting must be in place by the filing deadline, requiring the federal map to be imposed Tuesday if Justice does not clear the state-backed plan by today.

Thompson, Shows and Mississippi Democrats have accused Justice of intentionally delaying its

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decisions on the state plan to guarantee that the map more favorable to the GOP would be imposed by the federal court.

If the redistricting fight isn't connected to the judicial battle, it is, at a minimum, dirty politics, they contend. "I have never seen such blatant political manipulation. Instead of enforcing the Voting Rights Act, they are carrying the water of Chip Pickering," said Rob
McDuff, a Democratic attorney from Jackson, Miss.

Democrats fear that a district with only a 30 percent African-American voting population may not even be competitive for Shows, whose current district has a population of 43 percent black voters.

Republicans contend that the plan violates the civil rights laws because it was written up by a local judge, an African-American voted into office as an independent from an overwhelmingly Democratic region. Alocal judge should not be drawing up a statewide Congressional map, Republicans contend, an allegation Justice has been inclined to listen to so far. "That's something that has never been done before," said Dan Nelson, a department spokesman.

Nelson said the various political scenarios will not be a factor in the decision, but he couldn't guarantee a decision will come in time to avoid the federal judges' takeover of the redistricting process.

Judge Defends Ethics in Handling of Case

The Commercial Appeal (Memphis, TN)
February 27, 2002 Wednesday

A Pennsylvania judge who is up for a promotion told senators Tuesday he did nothing unethical by temporarily overseeing a fraud case involving a bank where his wife worked.

U.S. Dist. Judge D. Brooks Smith said during his confirmation hearing for the 3rd U.S. Circuit Court of Appeals in Philadelphia that he recused himself from the trial after a month because of the appearance of conflict of interest, even though he wasn't required to.

"I wish I had recused myself earlier, but I did it because it was the right thing to do," Smith said.

Democrats and liberal groups have questioned Smith's qualifications for the court, which covers Pennsylvania, New Jersey, Delaware and the Virgin Islands. Some senators are worried about his chances in front of the Democratic-controlled Senate Judiciary Committee.

"I'm just hoping they'll be fair when the time comes," said Sen. Jon Kyl (R-Ariz.).

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It was not immediately known when the committee will vote on Smith.

Democrats questioned Smith, 50, for overseeing for a month in 1997 a fraud trial involving Mid-State Bank.

Smith's wife, Karen Smith, was vice president of the lending department at Mid-State Bank at the time. The Smiths also held Mid-State stock.

Smith said there was nothing at the outset of the case that indicated that Mid-State Bank would be involved.

"I was still satisfied . . . there was no specific information that had been presented to me that was sufficient to suggest a basis for recusal," Smith said.

Judge wins Senate approval

The Denver Post
February 27, 2002 Wednesday

EXCERPT

The U.S. Senate on Tuesday voted 98-0 to approve Robert Blackburn's nomination to serve as a judge on the U.S. District Court in Colorado.

Blackburn, 51, of Las Animas was appointed as a state district judge in Bent County in 1988. He practiced law for 13 years before that. He earned his law degree at the University of Colorado.

He will be sworn in sometime in April, said Sean Conway, spokesman for Sen. Wayne Allard, R-Colo.

Enviros Criticize Third Judicial Nomination, Two others; Head to Senate

Brian Stempeck
Greenwire
February 27, 2002

As two controversial appeals court nominations head before the Senate Judiciary Committee this week, environmental groups are raising concerns about President Bush's nomination for the U.S. Court of Federal Claims. Bush's pick is an extremist when
it comes to decisions related to the Fifth Amendment's takings clause, according to the groups, though property rights advocates say the nominee actually holds moderate views.

In a letter to Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), 23 environmental groups, including Defenders of Wildlife, American Rivers and Friends of the Earth, expressed concerns about Lawrence Block, nominated to the Court of Federal Claims. The court is almost solely responsible for many takings decisions, said Glenn Sugameli, senior legislative counsel for the Earthjustice Legal Defense Fund, another of the groups involved in the letter. Property owners often argue a 'taking' occurs when a government regulation or seizure causes a major loss in revenue or development ability, though there is no set rule for what constitutes a taking. Conservation groups worry that changing definitions of takings would force state and federal governments to pay landowners for meeting environmental standards. "Mr. Block's record and his answers to the Senate Judiciary Committee Questionnaire for Judicial Nominees suggest... that he would apply an extreme approach to takings law that would conflict with unanimous Supreme Court rulings," the groups said in the letter. "An ultra-conservative interpretation of the Takings Clause could be extremely damaging, redefining property rights at the expense of neighboring property, public health, and the environment. Federal Claims Court rulings could require that taxpayers fund prohibitively expensive windfall payments to property owners who obey pollution-control and other laws. The cost of these payments would chill enforcement and implementation of a wide array of laws that protect the American people."

Sugameli called Block a "very strong, outspoken advocate of expansive private property takings provisions." As senior counsel to former Judiciary Committee Chairman Orrin Hatch (R-Utah), Block worked on a bill backed by the National Home Builders Association, said Sugameli. That bill "would have changed the standards and procedures for takings claims against local governments," he said, and if passed, would have been "a hammer to the head of local officials."

Sugameli said he fears Block would not follow precedents, based on strong opinions he has put forth in personal statements, during his time with Hatch, and in the nominees questionnaire. "The problem is he either is unable to tell what precedent is or unwilling to admit it," said Sugameli.

But conservative groups say Earthjustice and the others are exaggerating Block's record. Chuck Cushman, executive director of the American Land Rights Association, said he didn't think the Bush administration would nominate an extremist to any court. "They don't have a record of appointing extremists to anything," he said. Environmentalist claims accusing Block of extremism are "nonsense," said Cushman. "I don't have any sense of that at all."

Cushman said he had spoken to Block on a number of occasions when Block was with Hatch and called constituents. "I have a sense of his views on some of these things," said Cushman. "He sounds like a pretty moderate guy to me."

Other conservative groups similarly supported Block. "What I find shocking about those environmentalists who oppose property rights is how little they understand the issue," said Roger

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Pilan, vice president of legal affairs for the Cato Institute. "They don't seem to appreciate that environmentalism is rooted in property rights theory. The whole of nuisance law -- which is environmentalism writ small -- is about protecting the rights of some property owners from the abuses that might follow from the uses that other owners of their property. Property rights constitute the foundation of environmental protection," he added.

PICKERING, BROOKS GO BEFORE SENATE

Though Block will not go before the Senate Judiciary Committee for several weeks, two other controversial appeals court nominations are slated for review this week.

Judge Charles Pickering, the Bush administration's pick for the Fifth Circuit Court of Appeals, goes before the committee Thursday. Pickering has a history of denying citizens access to federal courts, according to Earthjustice, such as when he dismissed "claims filed by victims in toxic tort cases concerning an EPA Superfund site." The real conntroversy surrounding Pickering, however, is related to his civil rights record, which could prevent his passage. Sen. Dianne Feinstein (D-Calif.) said on NBC's "Meet the Press" that the 10 Democrats on the committee will oppose Pickering's nomination.

Environmental groups have also criticized Judge D. Brooks Smith, nominated to the Third Circuit Court of Appeals, saying he is lax on punishing polluters (Greenwire, Feb. 14).

But similar to Pickering's situation, other aspects of Smith's background may prevent his affirmation. In 1997, Smith presided over an investment fraud case for nearly a month,
without revealing that his wife and he had a financial interest in the case, as was reported in the Washington Postand other papers. Smith appeared before the committee yesterday and was questioned on the fraud case and his views opposing the Violence Against Women Act, according to David Carle, press secretary to Chairman Patrick Leahy (D-Vt.). A vote on Smith's confirmation has not yet been scheduled, he said.

Lott gains a delay on vote for Bush judicial nominee; Postponement gives GOP time to counter criticism

Michael Petrocelli
The Houston Chronicle
February 27, 2002, Wednesday

WASHINGTON - Scrambling to salvage President Bush's nominee to the 5th U.S. Circuit Court of Appeals, Senate Republican leader Trent Lott won a delay Tuesday on a critical vote by the Democrat-controlled Judiciary Committee.

The committee - which must clear all judicial nominations before they reach the full Senate - had been scheduled to vote Thursday on the nomination of Charles Pickering, but committee chairman Patrick Leahy, D-Vt., pushed the vote back to next week.

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David Carle, a spokesman for Leahy, said the chairman agreed to postpone the vote "as a courtesy" to Lott, a Mississippi Republican.

Pickering's nomination to fill a vacant seat on the 5th Circuit, which includes Texas, Louisiana and Mississippi, has been embroiled in questions about his record on race relations and abortion rights. The nomination of Pickering, 64, who currently is a federal judge in Mississippi, is the first of what is expected to be a number of tough confirmation fights for Bush judicial nominees.

A Pennsylvania judge who is up for another appeals court seat told senators Tuesday that he did nothing unethical while overseeing a fraud case involving a bank where his wife worked. Democrats and liberal groups have questioned U.S. District Judge D. Brooks Smith's qualifications for the 3rd U.S. Circuit Court of Appeals in Philadelphia.

Democrats questioned Smith, 50, about his waiting a month before stepping down from a 1997 fraud trial involving a bank at which his wife was vice president of the lending department. The judge and his wife also owned stock in the bank.

Tuesday's postponement of the vote on Pickering gives Lott and fellow Republicans another week to counter growing criticism of the nomination, but it may only delay an inevitable rejection by the Judiciary Committee or the Senate.

Sen. Dianne Feinstein, D-Calif., a member of the committee, predicted Sunday on NBC's Meet the Press that Pickering's nomination would not make it to the Senate floor.

"I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed. In other words he will not be voted out of the Judiciary Committee," she said.

Democrats hold a 10-9 advantage on the committee.

White House spokesman Ari Fleischer said Bush will fight to get Pickering confirmed. "The president continues to have every bit of confidence in Judge Pickering and will continue to support him and urge his passage," Fleischer said.

"I think what you're seeing is an unfortunate part of the politicization of the way judges, circuit court judges are picked in this country," he said.

A spokesman said Lott asked for the delay to give Pickering time to respond to questions submitted last week by Sen. Joseph Biden, D-Del., a member of the committee.

The announcement of the delay came on the same day a group of activists from Texas was making the rounds on Capitol Hill, urging Senators to reject Pickering.

The confirmation fight has revisited chapters from Mississippi's resistance to racial integration.

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Pickering's supporters have sought to portray him as a courageous proponent of civil rights, while his opponents have painted him as a barely-reconstructed segregationist.

The NAACP has challenged Pickering on an article he wrote in 1959 as a University of Mississippi law student, encouraging tougher laws against interracial marriage. He also has drawn criticism for his contacts with the Mississippi SovereigntyCommission, a state agency that was created to help maintain segregation.

During Judiciary Committee hearings into his nomination, Pickering acknowledged that in a case before his court in 1994, he opposed a mandatory five-year sentence for a man convicted of burning a cross on the lawn of an interracial couple. The judge also acknowledged contacting a Justice Department official urging prosecutors to agree to a lighter sentence than required by law.

Pickering's supporters have pointed to the fact that in 1967, as a county attorney in Laurel, Miss., he testified against a Ku Klux Klan leader on trial for the murder of a civil rights leader. Doing so cost him his re-election, they say, and put him in physical danger in a town with many people sympathetic to the Klan.

Edwards opposes Bush nominee

John Wagner
The News and Observer (Raleigh, NC)
February 27, 2002 Wednesday

Washington -- U.S. Sen. John Edwards on Tuesday formally outlined his objections to elevating a Mississippi judge to a federal appeals court, contending that President Bush's nominee would "put his own views above the law."

Edwards, a North Carolina Democrat, was among the most aggressive questioners earlier this month when Judge Charles Pickering appeared before the Senate Judiciary Committee for his confirmation hearing. Bush has nominated Pickering, a U.S. District Court judge, to a seat on the 5th U.S. Circuit Court of Appeals.

During the hearing, Edwards strongly implied that Pickering had acted inappropriately in a 1994 case that involved a cross-burning on the lawn of an interracial couple. Several days later, Edwards touted his tough posture during a political appearance in California that was designed to showcase him as a potential 2004 presidential candidate. Although Edwards' questioning of Pickering drew praise from Democratic leaders, his tactics were heavily criticized by Richard "Dickie" Scruggs, a well-known Democratic trial lawyer from Mississippi, who said Edwards badly distorted Pickering's record.

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Edwards also drew fire from conservatives, with The Wall Street Journal accusing him of "race-baiting to liberal crowds" in an editorial Tuesday. "This is a man who wants to be President," the editorial stated.

On Tuesday, Edwards released statements from three law school professors, all of whom concluded Pickering acted inappropriately in the 1994 case.

During his questioning at the hearing, Edwards implied that Pickering violated a judicial code of conduct, first by meeting privately with one side of the case and then by intervening at the U.S. Justice Department.

Pickering maintained that he was merely expressing frustration at a situation in which prosecutors had gone easy on the main culprit in exchange for a guilty plea but come down much harder on a lesser player.

The three law professors who backed up Edwards on Tuesday were Stephen Gillers of New York University, John Leubsdorf of Rutgers University and Stephen Lubet of Northwestern University.

In his statement Tuesday, Edwards also noted that Pickering's rulings in other cases have been reversed 15 times by the 5th U.S. Circuit Court of Appeals for his failure to follow "well-established principles of law."

Pickering's supporters maintain that such a figure is not unusual, given that he has issued thousands of opinions during his tenure.

The confirmation of Pickering has become a highly partisan fight between Senate Democrats and President Bush. Senate Minority Leader Trent Lott, a Mississippi Republican, is a staunch supporter of Pickering and has threatened to retaliate against Democrats if Pickering is not confirmed.

The Judiciary Committee had scheduled a vote on Pickering's nomination Thursday, but it now appears the vote will be put off at least until next week. Some Democrats on the committee have predicted that Pickering's nomination will not be cleared by the panel.

In his statement, Edwards also noted that he has voted to confirm all 38 other individuals nominated by President Bush for federal judgeships.

That total, however, does not include Judge Terrence Boyle of North Carolina, whom Bush has nominated to the 4th U.S. Circuit Court of Appeals. Edwards has blocked Boyle from receiving a confirmation hearing as part of a long-running feud with U.S. Sen. Jesse Helms over nominees from North Carolina.

Another confirmation fight is brewing, with Democrats expressing concern about a fraud case

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involving a bank where the nominee's wife worked.

Judge D. Brooks Smith, who temporarily oversaw the case, said he recused himself a month into the trial even though he didn't have to. Smith is up for a position on the 3rd U.S. Circuit Court of Appeals, which covers Pennsylvania, New Jersey, Delaware and the Virgin Islands.

Thornburgh Fails to Make Case Against Judge's Critics

Pittsburgh Post-Gazette
February 27, 2002 Wednesday

Lawyers know judges professionally better than anyone else. Yet if you're a reporter profiling a judge, and you go in search of lawyers who will make on-the-record comments, two things are bound to happen:

Those with positive things to say will be glad to say them for attribution, and those with critical opinions will either keep their mouths shut or speak only on condition that they not be identified, which means their quotes are unlikely to appear.

Newspapers, by and large, are loath to publish anonymous quotes, with good reason. It's too easy to take potshots for which one cannot be held accountable. But the lack of counterbalance has a tendency to skew judicial profiles in the judges' favor. If, for example, I were doing a piece on Allegheny County Common Pleas Judge Patrick McFalls, and I went out today in search of lawyers' input, I'd have no problem getting anecdotes about his good humor and great storytelling. But if I asked about judges getting drunk and taking off their pants in neighborhood bars, I'd be hard-pressed to get a single disapproval on the record.

This kind of reticence is a simple fact of self-preservation. No lawyers in their right minds are going to antagonize the very people who determine the fates of their cases, clients and careers.

Sucking up, on the other hand, never hurts.

Objection, your honor! No fair characterizing lawyers as suck-ups just because they happen to sincerely like a judge or truly believe that she or he is fair, honorable and upright.

OK, withdrawn. Such wholesale damnation is out of bounds.

By the same token, given that lawyers don't feel safe in going public with negative comments about a judicial nominee, it is every bit as out of bounds to dismiss all criticism from other organizations as the illegitimate ravings of "extreme interest groups."

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Yet that is what Dick Thornburgh did this week in his op-ed defense of D. Brooks Smith, the chief judge of U.S. District Court here whose nomination to the 3rd Circuit Court of Appeals is drawing some opposition fire.

Thornburgh, who entered politics as a moderate Republican and then grew increasingly conservative during his tenure as Ronald Reagan's and George Bush's attorney general, used the phrase "extreme interest groups" not once but three times in attacking Smith's critics.

How convenient for him that these groups -- extreme or not -- were the only ones in a position to publicly raise questions about Smith's propensity for luxury trips paid for by corporate sponsors, and his failure to immediately recuse himself from the John Gardner Black fraud case involving the bank where his wife was a vice president.

These are legitimate areas of inquiry. And given the array of accolades heaped upon Smith by Republicans and Democrats alike, you wouldn't think that a closer look would be seen as so outrageously partisan.

Because Thornburgh was a trustee of the defrauded school districts in the Black case, he was in a unique position to give his opinion of the judge's actions in that case. He should have stopped there. But the old pol just couldn't resist piling on.

Ah well, give him this much: At long last, the former attorney general has found a reason to come out against partisan critics of a president's judicial picks.

Too bad he didn't feel the need to speak up in defense of Democrats John Bingler and Lynette Norton. Both are highly regarded and highly qualified lawyers from Pittsburgh. Both were nominated -- twice -- to the federal bench by President Clinton. Both were blocked by Republican Sen. Rick Santorum in a bare-knuckle act of political aggression.

But while Little Ricky was crossing his arms and taunting the president with the equivalent of "Bil-ly, you've got some 'splainin' to do!" Thornburgh never wrote a single op-ed piece defending Bingler or Norton, or lamenting the undue harm that Santorum's partisanship was inflicting on the grossly understaffed district court in this region.

Now that the nominee is a Republican with longtime ties to Thornburgh, the ex-AG has suddenly gotten religion on this matter. But his criticism of Smith's opponents would carry a lot more weight if, when the chips were down for two well-regarded Democratic nominees, he'd stood up to Santorum, an extreme interest group of one.

Pittsburgh Post-Gazette
February 27, 2002 Wednesday
CORRECTION/CLARIFICATION

National. A Post-Gazette story last Wednesday may have left the wrong impression about two

aspects of U.S. District Judge D. Brooks Smith's handling of the John Gardner Black investment fraud case, a subject of Smith's confirmation hearing in the Senate yesterday.

The controversy has to do with whether Smith recused himself quickly enough after it became clear that Mid-State Bank, where his wife was an officer and where he and his wife had invested more than $100,000, might have helped Black hide losses from investments he managed for dozens of Pennsylvania school districts and a handful of municipalities. The Securities and Exchange Commission sued Black Sept. 26, 1997, and was granted a temporary restraining order freezing all assets in question. A month later, at the request of the SEC and court-appointed trustee Dick Thornburgh, Smith allowed investors access to half of their assets, pending a final resolution as to how much each district was owed.

In doing so, Smith continued to treat similarly those districts whose assets sat in a pooled account at Mid-State Bank, where most of the investment losses occurred, and those whose assets were placed elsewhere and had not incurred heavy losses. The Feb. 20 story described this as Smith "pooling" the assets of all districts but might more accurately have described it as continuing to pool their losses, just as the original freeze had done.

The story went on to point out that Smith's ruling did not stand, suggesting that U.S. District Judge Donetta Ambrose, who took over the case after Smith recused himself, found fault with Smith's October order. In fact, Ambrose approved his order in
December.

It was not until five months later, after receiving new information on remaining assets and a flurry of legal briefs, that Ambrose rearranged the case. She ruled that the districts whose assets had not been pooled at Mid-State be given access to all their holdings. Those who suffered losses in the pooled account at Mid-State would get 90 percent of their share of the assets that remained.

The 3rd U.S. Circuit Court of Appeals upheld her decision in December 1998 and said the non-pooled assets should not have been frozen. Therefore, while Smith's ruling did not ultimately stand, it was initially upheld and altered only after the case had progressed.

Altoona Judge Fails to Satisfy Biden's Concerns; Lack of Candidness Could Spur Filibuster

Ann McFeatters
Pittsburgh Post-Gazette
February 27, 2002 Wednesday

District Court Judge D. Brooks Smith of Altoona, fighting hard to win Senate confirmation as President Bush's nominee for the 3rd U.S. Circuit Court of Appeals, still faces a barrage of questions from Sen. Joseph Biden, who warned yesterday that he would filibuster against the

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judge on the Senate floor if Smith were not "candid" in his replies.

Time ran out at yesterday's hearing for Smith before the Senate Judiciary Committee, as several senators who said they still had questions for the nominee had to hasten to the floor for votes. Smith's hearing finally was adjourned when Biden, D-Del., was delayed, and Smith was told that he would get a batch of written questions next Tuesday. But the impact of answers to written questions is rarely as great as an open hearing's give-and-take between lawmakers and witnesses. Pennsylvania's two Republican senators, Arlen Specter and Rick Santorum, both spoke strongly on behalf of Smith, 50, whom President Ronald Reagan named to the District Court in 1988, when the nominee was 36. Santorum said Smith has "incredible support" from an "incredible array" of people," including 17 members of Congress. He said "national interest groups" -- representing environmental, civil rights and women's issues -- were "weighing in" to try to discredit the judge.

Smith was accompanied by a phalanx of supporters, including nearly a dozen lawyers. Among the group were Timothy Lewis, a former 3rd Circuit judge who returned to private practice in 1999, quitting the seat that Smith has been nominated to fill; Duquesne University law professor Ken Gormley; and Reps. Melissa Hart, R-Bradford Woods, and William Coyne, D-Oakland.

The concerns raised yesterday over Smith's nomination were from Democrats and focused on three areas: His legal seminar attendance at resorts, judicial philosophy and his delay in recusing himself in a controversial case.

Sen. Russell Feingold, D-Wis., characterized the 12 seminars at resorts around the country that Smith attended as intended to influence judges in cases affecting large corporations. Feingold said only four other federal judges have attended more such
seminars.

Smith responded that it is his job to hear "different points of view on a daily basis; it's what we're about. I can hear these points of view without being influenced."

When Feingold asked why Smith hadn't reported the seminars' value, which were estimated to be worth about $30,000, the judge said it was his understanding that he didn't have to. He said he had made "more than one phone call" to try to discover
the seminars' funding and learned that they came from 'dead men's [foundation] money.' "

When Feingold noted that Bethlehem Steel had been a sponsor of at least one and that Smith had presided in several cases involving that company, the judge said he hadn't been aware of that sponsorship. But Smith sought to assure the committee that in the future, "until I can be satisfied that funding is not a problem, I won't attend" such seminars.

Biden asked about a 1993 speech that Smith gave to the Pittsburgh Federalist Society, in which Smith raised constitutional questions about the Violence Against Women Act. The measure, which the senator had sponsored, gave women the right to seek federal court redress under civil rights laws. The Supreme Court later struck down part of the law.

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In his speech, Smith had laid out a view of federalism asserting that if the Constitution doesn't specifically grant a power to the federal government, Congress can't pass a law dealing with it. Some critics suggest that if such a view were to prevail on the federal bench, it would negate many civil rights and environmental laws.

Biden said he accepted Specter's word that Smith has the temperament and character for the appellate job, but he still had other questions for Smith. Biden said that if he felt Smith were not being candid or advanced the argument that he couldn't discuss issues that might come before him, "I'll filibuster on the floor of the Senate" to defeat Smith, even though he had "never taken that step in my life." Biden and Smith appeared to differ sharply in their view of states rights vs. federal rights.

Several senators asked Smith why he hadn't recused himself sooner in a case involving a U.S. Securities and Exchange Commission's suit against former Altoona investor J. Gardner Black, now serving 41 months in jail for defrauding 75 school districts through risky investments. Black's bank, Mid-State, which employed Smith's wife and in which the couple had at least $100,000 of stock, was involved in the case, though not a direct party. Still, the bank later had to pay a settlement of $51 million to the districts.

Because it was not a party to the suit, Smith said, he saw no sufficient reason to recuse himself under federal law until he saw a report by Dick Thornburgh, the case's trustee and a former Pennsylvania governor and U.S. attorney general. Thornburgh said the bank might be more involved in the case than it had seemed at first. Smith said he had issued rulings in the case for a month, some of which seemed to favor the bank, "with the belief that Mid-State Bank was nothing more than a depository."

Four days after receiving Thornburgh's report, he recused himself, citing his wife's employment but not his own financial interest. The law does not require judges to give a reason for stepping aside.

Later, Smith also presided for about five months in a criminal case the federal government brought against Black until the defendant himself requested that the judge recuse himself.

Smith's supporters maintain that he acted properly. But under continued Feingold questioning, Smith himself said, "With the benefit of hindsight, I wish I had recused earlier."

Specter noted that of 5,298 cases Smith has handled as a federal judge, only 526 were appealed and 53 reversed -- just about a 10 percent reversal rate. That, he said approvingly, is less than the 11.7 percent rate for the 3rd Circuit as a whole.

Judge Defends Role In Seminars, Bank; Senators Question Appellate Nominee

Edward Walsh
The Washington Post
February 27, 2002, Wednesday

U.S. District Judge D. Brooks Smith defended himself before the Senate Judiciary Committee yesterday as Democratic senators questioned his expense-paid attendance at legal seminars sponsored by conservative groups and his handling of a 1997 case that involved a bank where his wife worked and in which he had a substantial financial interest.

Smith, who has been nominated by President Bush for a seat on the 3rd U.S. Circuit Court of Appeals, said the seminars were "educational" but had not influenced his judicial views. "Judges are accustomed to hearing different points of view," he said. "It's what we do." Defending his decision to preside over the 1997 case for a month before he removed himself, Smith said he did not think at the outset of the proceeding that Mid-State Bank of Altoona, Pa., was anything more than the "depository" for funds that an investment adviser was accused of defrauding from several school districts in western Pennsylvania.

But after a while, Smith said, he "became uneasy" about the bank's role in the case and recused himself, citing his wife's job. He said he did not disclose his financial interest in the bank because he did not consider the bank to be financially liable in the case.

Smith's wife, Karen, was a vice president of Mid-State at the time. The couple jointly owned at least $ 100,000 in stock in a holding company that controlled the bank.

While most of the questions at yesterday's hearing concerned Smith's travels to the seminars and the 1997 fraud case, the most serious threat to his nomination was voiced by Sen. Joseph R. Biden Jr. (D-Del.).

Biden said he was most concerned about Smith's "judicial philosophy" and warned the judge that if he attempted to duck questions by saying that the issues might come before him on the circuit court, "I will do everything I can to defeat you," including resort to a filibuster.

But during the 10 minutes allotted to him, Biden asked only one question, then left the hearing room before Smith could answer and did not return for a second round of questioning.

Sen. Russell Feingold (D-Wis.) said that between 1992 and 2000, Smith attended 12 seminars sponsored by the Foundation for Research on Economics and the Environment and George Mason University's Law and Economics Center, which espouse conservative legal views and paid about $ 30,000 to cover Smith's expenses.

Smith said he would not attend such seminars again unless he were satisfied that funding for groups sponsoring them did not come from corporations or others who had issues before his court.

Smith, 50, chief judge of the U.S. District Court for Western Pennsylvania, has come under fire

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from several liberal groups that accused him of too often siding with "powerful interests" while neglecting "the rights and needs of ordinary Americans." The groups have cited a 1993 speech Smith gave to the Federalist Society of Pittsburgh that assailed the constitutionality of the Violence Against Women Act, a portion of which was later struck down by the Supreme Court. Smith said yesterday that he was "absolutely committed to adhering" to the portions of the law that were not struck down.

Republicans on the committee defended Smith throughout the questioning, which Sen. Orrin G. Hatch (R-Utah) said was inspired by "the usual liberal lobbyists and interest groups in Washington."

Meanwhile yesterday, the committee postponed for a week a vote on the nomination of U.S. District Judge Charles W. Pickering to the 5th U.S. Circuit Court of Appeals.

2nd judicial nominee hit in Senate; Democrats criticize Smith; GOP cries foul over 'pattern'

Audrey Hudson
The Washington Times
February 27, 2002, Wednesday

Senate Democrats yesterday broadened their criticisms of President Bush's judicial nominees to another circuit court candidate, in what Republicans said was a growing pattern of delay and character assassination.

District Judge D. Brooks Smith, chief judge of the Western District of Pennsylvania, faced tough questioning from Judiciary Committee Democrats, as a vote on another embattled nominee was delayed.

"It is absolutely a pattern," said Sen. Jeff Sessions, Alabama Republican and Judiciary Committee member.

"They are taking a series of insignificant and isolated events in a person's life and creating a caricature of that person. Then they ask the Senate to vote down the caricature, not the person," Mr. Sessions said. Led by People for the American Way, liberal groups oppose Judge Smith's views on states' rights, civil rights, the environment and consumer protection. The groups and Democrats also question the conservative nominee's judicial ethics and recusal from a fraud case.

Sen. Joseph R. Biden Jr. said he would maintain an open mind with regard to Judge Smith's nomination, but in the same breath threatened to defeat the nominee if he were not completely forthcoming to all questions from Democrats.

"I will do everything in my power to defeat you, including moving to the Senate floor to take

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action I've never taken in my life as a United States senator, a filibuster," Mr. Biden said.

In a 1993 speech to the Pittsburgh Federalist Society, Judge Smith criticized the Delaware Democrat and his efforts to pass the Violence Against Women Act, some portions of which were overturned by the U.S. Supreme Court.

Judge Smith maintains that states, not the federal government, have power over domestic-violence laws.

Mr. Biden recognized that Judge Smith's foresight was correct but said he was more interested in the nominee's future behavior.

"I care about your judicial philosophy. I don't care where you went; I care about where you are going," Mr. Biden said.

Senate Minority Leader Trent Lott, Mississippi Republican, agrees that a pattern is emerging with regard to circuit judge nominations that are delayed or not even considered by Democrats who control the Senate.

The Senate has approved 33 district judges and seven circuit judges, including two confirmed yesterday by a 98-0 vote: Robert Blackburn to the U.S. District of Colorado and Cindy K. Jorgenson to the U.S. District of Arizona. Still pending in committee are 22 circuit judges and 28 district judges.

"I'm not satisfied with the way the president's nominees for the federal judiciary are being treated," Mr. Lott said.

Mr. Lott requested that a committee vote tomorrow on District Judge Charles W. Pickering to a circuit post be postponed one week to allow him more time to answer additional written questions from Democratic senators.

"I do think that Judge Pickering has been treated very poorly," Mr. Lott said. Judge Pickering is one of five nominees who have had hearings but no committee votes.

In addition to two hearings and an intense examination of hundreds of Judge Pickering's written opinions, Mr. Lott said, one Democrat has submitted a list of 78 questions the Mississippi jurist is still answering.

"I think that at least Judge Pickering should have the opportunity to respond to the questions," Mr. Lott said.

Sen. Patrick J. Leahy, Vermont Democrat and Judiciary Committee chairman, said the process would move more quickly if the White House would work with home-state senators "to identify fair-minded, non-ideological, consensus nominees to fill these

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court vacancies."

"As we move forward, I have urged the White House to show greater inclusiveness and flexibility and to help make this a truly bipartisan enterprise," Mr. Leahy said.

Democrats peppered Judge Smith with numerous questions about the number of judicial seminars he had attended, a case in which he recused himself and the Federalist Society speech. A committee vote on the Smith nomination has not been scheduled.

"Anyone who has been reading the newspapers in the past few weeks knows that it would be impossible to comment on Judge Smith's credentials without mentioning the attack he has come under from the usual liberal lobbyist interest groups in Washington," said Sen. Orrin G. Hatch of Utah, the Judiciary Committee's ranking Republican.

"As President Reagan would say, 'There they go again,'" Mr. Hatch said.

Judge Smith took an untold number of trips to seminars totaling $30,000. Such trips are opposed by Sen. Russell D. Feingold, Wisconsin Democrat and a sponsor of legislation to ban such trips. Judge Smith told the committee he would not take any trips as a circuit court judge if they appeared improper or created a conflict of interest.

Judge Smith recused himself during a 1997 fraud case involving Mid-State Bank, where his wife, Karen, was vice president of lending. The Smiths also held $100,000 to $250,000 of Mid-State Bank stock and a 401(k) fund with the bank in the same amount.

The fraud charge was not leveled at the bank, but a client was accused of defrauding dozens of Pennsylvania school districts.

"At no time did I have an actual conflict of interest that required my automatic disqualification," Judge Smith said.

To avoid an appearance of a conflict of interest, Judge Smith said, he recused himself in the middle of the case, but the rulings he already had made were "neither illegal nor unethical."

"None of the parties, lawyers or judges nor the trustee has questioned my conduct," Judge Smith said.

Sen. John Edwards, North Carolina Democrat, asked numerous questions of state versus congressional authority, including whether Congress had the right to pass legislation making terrorist hoaxes illegal and to criminalize drug use.

"Absolutely," Judge Smith answered each time.

Mr. Sessions cited the American Bar Association's unanimous rating of Judge Smith as "well

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qualified" as a reason to support the judge.

"He will follow the law, even if he does not agree with it," Mr. Sessions said.

By opposing Pickering, Democrats deal blow to Lott

Ana Radelat
Gannett News Service
February 26, 2002, Tuesday

WASHINGTON -- Democrats may bury Judge Charles Pickering's nomination to the 5th U.S. Circuit Court of Appeals this week, dealing a blow to the White House and to the judge's chief champion on Capitol Hill -- Sen. Trent Lott, R-Miss.,

Lott, a 30-year friend and political ally of the Hattiesburg-based federal judge, promoted Pickering's candidacy at the White House and pressured the Democratic-controlled Senate to move on the nomination.

But Lott angered Senate Democrats -- especially Sen. Patrick Leahy, D-Vt., head of the Senate Judiciary Committee -- by accusing them of dragging their feet on consideration of nearly 100 other Bush judicial nominees. Lott also threatened to block legislation if Leahy's committee failed to schedule hearings on Bush nominees.

Democrats say they're processing Bush's candidates more quickly than Republicans handled President Clinton's judicial nominees when the GOP controlled the chamber. The fight over judicial nominations has left both sides bitter and may have strengthened Democratic resolve to oppose Pickering's candidacy. "In politics the cliche 'what goes around comes around' is truer than in any other field," said Martin Wiseman, head of the
Stennis Institute at Mississippi State University.

The Senate Judiciary Committee -- composed 10 Democrats and nine Republicans -- may vote Thursday on Pickering's nomination. Only two committee members say they'll vote "no" on the nomination -- Sens. Chuck Schumer, D-N.Y., and Dianne Feinstein, D-Calif.

But Feinstein said "there is virtually unanimous opinion on the Democratic side" of the panel that Pickering will not be confirmed.

"I think that people on our side believe that it would be a tremendous mistake to put someone as polarizing in this position now," Feinstein said during a Sunday "Meet the Press" interview.

Democrats on the Judiciary Committee -- some of the most liberal members of their party -- and dozens of special interest groups ranging from the National Association for the Advancement of

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Colored People to the American Association of University Women, are concerned Pickering would increase the 5th U.S. Circuit Court of Appeal's conservative tilt. Those opposed to his nomination hope it is buried by an unfavorable vote in the Judiciary Committee and the full Senate never has a chance to consider his candidacy.

But the fight over Pickering has other implications for the White House and for Lott, whose job as Senate minority leader is to promote Bush's judicial nominations.

Pickering's defeat would pave the way for the derailment of other controversial judicial candidates, including D. Brooks Smith, nominated for a seat on the 3rd U.S. Circuit Court of Appeals; Miguel Estrada, a nominee for the District of Columbia Circuit of the U.S. Court of Appeals; and Jeffrey Sutton, a nominee for the 6th U.S. Circuit Court of Appeals.

Wiseman said Pickering would not have had a problem if the Senate had not changed hands in the summer when Sen. Jim Jeffords, I-Vt., bolted from the GOP, throwing the majority to the Democrats. If the GOP had retained control of the Judiciary Committee, it's likely it would have swiftly approved the 64-year-old federal judge whom detractors have dubbed "Lott's judge."

There's some indication Lott thinks the partisan fight over the judgeship has a personal angle. He has accused Pickering's opponents of taking a "snooker shot" at him.

Lott spokesman Lee Youngblood hinted at retribution.

"I'm sure that if they don't confirm Pickering ... that Senator Lott will be fairly angry and will consider appropriate action," Youngblood said.

Wiseman said opposition to Pickering was an unusually tough challenge for Lott, who personally lobbied many Senate Judiciary Committee Democrats -- as well as the sole Republican on the panel who appears to have reservations about Pickering, Sen. Arlen Specter, R-Pa.

"As good as he is at behind the scene deal making, he's had problems with this one," Wiseman said. "And (Lott's) not been asleep at the wheel."

Meanwhile Democratic resolve to block Pickering seems to be hardening. The judge has received dozens of written questions from panel Democrats -- most about the same issues raised during a grueling Feb. 7 Judiciary Committee hearing on the confirmation. Pickering's written responses will not be released until later this week.

In addition, Sen. Russ Feingold, D-Wis., has circulated a letter from Stephen Gillers, a vice dean at New York University's School of Law, that said it was improper for Pickering to solicit letters in support of his nomination from lawyers who regularly
appear before him.

"Judge Pickering's conduct creates the appearance of impropriety, in part, because of the power

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federal judges, and particularly federal trial judges, have over matters that come before them," Gillers wrote.

Senate Confirms Robert E. Blackburn For Federal Bench in Denver

States News Service
February 26, 2002, Tuesday

The Senate officially confirmed State District Judge Robert E. Blackburn of Las Animas for a seat on the federal bench in Denver with a 98-0 vote on Tuesday morning.

Blackburn, 51, currently holds court in Crowley, Otero and Bent Counties. President Bush first nominated Blackburn for the position on Sept. 10 of this year.

The onetime Black Angus cattle rancher has practiced law as a private lawyer, a deputy district attorney, and state judge. Colorado Gov. Roy Romer, a Democrat, first named Blackburn to the state bench in 1988.

Blackburn is expected to be sworn in sometime this spring and for a spot with the U.S. District Court of Colorado in Denver that has been vacant since 1998.

Colorado's two Republican senators, Ben Nighthorse Campbell and Wayne Allard, first suggested Blackburn to the White House as a possible nominee to the federal bench following a recommendation from an independent judicial review committee formed by the two lawmakers.

Both Colorado Senators praised Blackburn following the final Senate confirmation vote.

"Tough, fair, and engaged in his work, Judge Blackburn is an asset to the judicial system," said Sen. Ben Nighthorse Campbell, R-Colo. "These professional qualities are important characteristics that have served him well and will continue to do so in his new endeavors."

Noting that the federal bench in Denver has been in need of new judges, Allard enthusiastically welcomed Blackburn's final confirmation.

"For too long the people of Colorado have gone without their full compliment of judges," Allard said. "Today's Senate confirmation of Judge Blackburn, along with it's earlier confirmation of U.S. Bankruptcy Judge Marcia Krieger, will help greatly in addressing the delays citizens have been experiencing due to those unfilled vacancies on Colorado's District Court."

Lott delays vote on judge Pickering

Ben Bryant
The Sun Herald

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February 28, 2002, Thursday

WASHINGTON _ At the request of Senate Minority Leader Trent Lott, R-Miss., the Senate Judiciary Committee has postponed a vote on the nomination of Judge Charles W. Pickering Sr. to the 5th U.S. Circuit Court of Appeals.

The vote, originally scheduled for Thursday, will take place "sometime next week," said Mimi Devlin, a spokesman for the committee's Democratic majority. Lott said he asked for the postponement to give Pickering more time to respond to written questions submitted to the judge by committee members three weeks ago. He said one senator, whom he did not identify, gave Pickering 78 questions. "I think that Judge Pickering has been treated very poorly," Lott said.

Meanwhile, four Pickering opponents from Mississippi took their case to Lott and Sen. Thad Cochran, R-Miss., in private meetings Tuesday. One of the judge's foes, Kathy Egland of Gulfport, Miss., said his confirmation would mean "retrogression" on civil rights issues.

Egland said the news media has distorted the level of support among Mississippi blacks for the judge, who has been endorsed by blacks in his hometown of Laurel and by Charles Evers, brother of slain civil rights leader Medgar Evers. But Pickering's home-state black proponents are more loud than numerous, said Egland, a veteran of the NAACP who is serving her second term on the organization's national board of directors.

"Charles Pickering would open a gateway of horror in our own back yards," she said, citing decisions Pickering issued against plaintiffs in employment discrimination cases. "I can't speak for anybody else, what's on their hearts." Pickering's nomination has been criticized by Democratic senators and interest groups that have called his legal record "insensitive and sometimes even hostile" to civil rights. They have also questioned whether he violated judicial ethics by intervening on behalf of a cross-burning suspect in 1995. Egland and the rest of the four-person delegation from Mississippi assailed the judge for calling the cross burning, which took place in Walthall County in 1993, a "drunken prank."

Pickering asked federal prosecutors to reduce the charges against one of the three suspects, whom he deemed less responsible for the crime than the others.

"That (Pickering) would call burning a cross 'a drunken prank,' I can't tell you how offensive that is to me," said Richard Glisson, president of Students Envisioning Equality through Diversity at the University of Mississippi. "In fact, I'll go far enough to say that Sen. Lott is racially insensitive for nominating him."

Glisson and Egland were joined by Jolivette Anderson and Betty Thompson, both of Jackson, for the meetings with Lott and Cochran, who both said they still support Pickering.

But staffers for the Democratic senators on the Senate Judiciary Committee predicted the vote would go against the judge and said the delay would make no difference in the vote.

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"We're pretty unified on this side," one said, echoing comments made Sunday by Sen. Dianne Feinstein, D-Calif., a committee member.

Judicial gridlock in Senate: same story, different setting

Noelle Straub
The Hill
February 27, 2002 Wednesday

Despite Republican accusations that Senate Democrats are moving too slowly on President Bush's judicial nominees, legal experts say the nominations are proceeding at a pace roughly on a par with previous congresses.

However, the same experts argue that the confirmation process still needs reforming, citing the fact that 95 of the 844 federal circuit and district court judgeships, or about 11 percent of the total, remain vacant.

For more than a decade, each party has blamed the other for holding up nominees on ideological grounds, a debate currently focused on Bush's controversial nomination of District Judge Charles Pickering of Mississippi to the 5th Circuit Court of Appeals, and likely to grow louder if Bush has the opportunity to fill any vacancies on the U.S. Supreme Court.

The GOP complaints echo those made by Democrats in the 1990s, when many of President Clinton's nominees were held up for months or even years or never given a hearing by a Republican Senate.

But legal experts say this is a case of the pot calling the kettle black, with both sides treating nominees roughly the same when in control of the Senate. Sarah Binder, a fellow at the Brookings Institution and political science professor at George Washington
University, said that much like previous years, the Senate is confirming district court nominees while nominees to higher-profile appellate courts get bogged down.

But Binder asserted that the parties do not hold up nominees solely for revenge. "My sense is that the Democrats aren't playing tit for tat. Both sides did it because they care deeply about the ideological makeup of the courts."

Michael Gerhardt, law professor at the College of William and Mary and author of The Federal Appointments Process, noted that the Senate Judiciary Committee faced an unprecedented situation in the past year. Democrats suddenly took control of the
Senate in June and Vermont's Patrick Leahy (D) replaced Utah's Orrin Hatch (R) as chairman, and the panel had to expedite antiterrorism legislation after Sept. 11.

Democrats also insisted on waiting for the American Bar Association (ABA) to provide ratings

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on nominees before acting on them. Last March, Bush ended the 50-year practice of sending the names of judicial nominees to the ABA before sending them to the Senate.

"I don't think we're off the chart with anything terribly unusual going on [in the Judiciary Committee]," Gerhardt said. "I don't think either side is without some blame. ... The pattern over the last decade has been that judicial selections have been relatively slow and filled with a lot of payback."

As of Monday, there were 50 Bush nominees for circuit and district court slots pending before the Judiciary Committee.

But the average number of days from nomination to confirmation for judicial nominees - a good indication of how quickly the panel is acting - has improved this session.

It took an average of 106 days for the process when Democrats controlled the Senate during President Reagan's last two years in the White House in 1987-88, according to Judiciary Committee statistics.

That number remained fairly steady during the next two Congresses - 106 days and 114 days - when Democrats still controlled the Senate and acted on the first President Bush's nominees.

The average dropped to 80 days during President Clinton's first two years in office but rose again after Republicans took back the Senate in 1994, peaking at 225 during 1997-98.

Since Democrats took control of the Senate last June, that number has again fallen, according to Sheldon Goldman, professor of political science at the University of Massachusetts at Amherst and author of Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan.

"The average number of days for those confirmed in 2001 is some 25 or 30 days less than what it took the Republicans during the previous Congress," he said.

Goldman stressed that, although Leahy and his staff are moving quickly on the noncontroversial nominees, the system needs an overhaul.

"That is so badly needed, because we've come to a crisis point where there is obstruction and delay instead of advise and consent on the part of a number of senators," he said. "It's not Senator Leahy who is obstructing and delaying, just as it was not Senator Hatch who was. But they cannot unilaterally change the rules."

With rising concern over the vacancy rate, both Leahy and Hatch, now the ranking member, cite different statistics to bolster their argument that they treated judicial nominees fairly.

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Leahy points out that from the day Democrats took control of the Senate through the end of 2001, the chamber had confirmed
28 of Bush's nominees. That increased to 37 by the start of the President's Day recess.

By contrast, the Senate confirmed 27 of President Clinton's nominees his first year in office, and 15 of former President Bush's nominees in his first year, 1989.

"In the six years that a Republican majority was considering President Clinton's judicial nominations, more than 50 nominees never received a hearing and a committee vote," Leahy told the Senate last month. "During those years, the Republican majority
in the Senate went entire sessions without confirming a single judge for the Courts of Appeals."

But Republicans point to nominees who have not yet been given hearings and to the 50 Bush circuit and district court nominees pending before the Judiciary Committee.

Charles Fried, solicitor general under the first President Bush, said that Leahy's refusal to schedule hearings on George W. Bush's judicial nominees is "disgraceful and unjustified."

He added, "Which isn't to say that the Republicans didn't do the same thing, but I don't think they did it as much."

Hatch defends his record vigorously. Soon after Democrats took control of the Senate in June, he told the Judiciary
Committee, "I would like to address some recent attempts to reinvent history by repeating the convenient myth that I, as chairman, blocked President Clinton's judicial nominees on the basis of political ideology."

Hatch cited the overall rate of confirmations under his watch. During Clinton's two administrations, the Senate confirmed 377 judicial nominees, only five short of the all-time record of 382 confirmed under President Reagan.

Goldman urged the Democratic and Republican leadership to change the ground rules for nominations, guaranteeing every
nominee a hearing and vote no matter who controls the Senate and White House.

But he predicted the process will only be changed if both sides accept fault for the current situation.

"Everyone plays the blame game," he said. "You can trace it back to the 1980s. But there's no question that in the 1990s the Republicans ratcheted up the stakes here. ... The Democrats very understandably don't want to do this unilaterally because that's not going to solve the problem."

The situation has reached a crisis point, according to Dick Carelli, spokesman for the Administrative Office of the U.S. Courts.

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"Vacancies now are at a level that is problematic for the federal courts," he said. "So is the lack of new judgeships. The Congress and the executive have not provided for a new judgeship bill since 1990. The caseload of the federal judiciary has mushroomed since 1990."

In the end, the controversy over the judicial nomination process comes down to specific seats that are left open for long periods of time because of controversial nominees.

"It's gotten to the point where we're jeopardized the ability of the judicial branch of government to do its job," Goldman said. "The process of obstruction and delay should end."

Mixed Signals in Senate Battle Over Appeals Court Nominee

Neil A. Lewis
The New York Times
February 28, 2002, Thursday

For a time, it appeared today that Senator Trent Lott, the Republican leader, was sending a classic Washington public hint to a friend.

Mr. Lott told reporters that Judge Charles W. Pickering Sr. would have to decide on his own whether to continue his efforts to be confirmed to the United States Court of Appeals for the Fifth Circuit, based in New Orleans. "I'm not advocating this, but he's got to decide whether he wants to go forward with a vote if the votes aren't there, whether he wants to terminate the process," said Mr. Lott, a Mississippi Republican.

The Senate Judiciary Committee postponed a vote scheduled for Thursday on the Pickering nomination at Mr. Lott's request as it appeared increasingly likely that the committee's Democrats, who hold a 10-to-9 majority, would band together and reject the nomination.

But this evening, Judge Pickering's son, Representative Charles W. Pickering Jr., said Senator Lott had assured him that he did not intend to nudge his father to withdraw. Aides to Mr. Lott said the same thing.

"My father has no intent of withdrawing," said Representative Pickering, Republican of Mississippi, "and we believe it's still a winnable fight and the right fight to have."

The Pickering nomination has turned into the Bush administration's first major judicial confirmation battle. Liberal groups have portrayed Judge Pickering, who has been a federal trial judge in Mississippi for 11 years, as hostile to civil rights plaintiffs. His supporters say that this is unfair and that Judge Pickering is a leading figure in racial reconciliation efforts.

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Judge Pickering's son signaled a possible strategy for getting his father confirmed when he said his father deserved a vote on the full Senate floor. That means that even if the Judiciary Committee votes against the nomination, Judge Pickering's supporters
would seek to have the nomination reported to the full Senate. The Democrats hold a one-vote majority there, but the Pickering forces would try to win one or more Democrats to their cause.

Bush Makes Plea for Pickering Vote

Mark Preston
Roll Call
February 28, 2002

With tempers flaring in the Senate over the controversial circuit court nomination of U.S. District Judge Charles Pickering, President Bush made a personal plea yesterday to Majority Leader Thomas Daschle (D-S.D.) to confirm the Mississippian.

The President's request for Pickering's quick confirmation came in the context of a larger conversation on the pace of judicial nominations in the Senate during a semiregular breakfast meeting with Congressional leaders at the White House.

"The President raised the subject and I expressed my concerns to Daschle, and the President joined in," said Senate Minority Leader Trent Lott (R-Miss.), who noted this is the first time Bush has weighed in on the Pickering nomination "on a personal basis."

"In the case of Charles Pickering, I expressed my disappointment and my hurt," Lott said of remarks he made to Daschle during the meeting. "This really has become an attack on my state, and it is a very unfair characterization of the judge."

But Daschle disputed Lott's claim that the President made a personal plea to confirm Pickering, who has been a lightning rod for controversy since he was nominated for the 5th Circuit Court of Appeals in September 2001.

"Senator Lott's and my recollection of the conversation is different," Daschle said. "The President didn't ask for a floor vote, he asked what the prospects were, and I said I didn't know.

"There wasn't any request of me to take it to the floor. He made his general views known about the need to move ahead on judges, and expressed the hope that we could confirm as many as possible."

A White House source supported Lott's account of what was discussed in the meeting.

"The President is very concerned about the way Charles Pickering is being treated," the source said. "He is a good man. He is worthy of confirmation and the President believes he should be confirmed."

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For now, Pickering's confirmation hearings have been put on hold at Lott's request, providing the Minority Leader with at least one more week to devise a strategy to move his friend's nomination to the floor. But Lott acknowledged that Pickering and Bush must mull their options, including the possibility of having the Mississippian voluntarily step aside to avoid defeat.

"I am not advocating this, but he has got to decide whether he wants to go forward with a vote if the votes aren't there," said Lott, who added that Bush must also assess "whether he wants to terminate the process or go to other people.

"You deal with the issues as they come to a head. Right now we are still hoping for and expecting a vote to report him out."

Even though the Senate confirmed two judges Tuesday, the Pickering battle has highlighted the deep ideological divide between Republicans and Democrats over judicial nominees. But a resolution on the Pickering nomination is unlikely to cool tempers in the chamber. In fact, earlier this week, Democrats and Republicans locked horns over
another nomination, that of U.S. District Court Judge D. Brooks Smith to the 3rd Circuit Court of Appeals.

While Lott said there is some progress being made on district court judges, he charged that the Democrat-controlled Judiciary Committee is purposely dragging its feet on circuit court nominees.

"They are trying their best to delay and not act on those circuit judges," Lott said. "In fact, a lot of those circuit judges were nominated last May and they have not even had a hearing."

A spokesman for Judiciary Chairman Patrick Leahy (D-Vt.) defended the pace, suggesting it had been going much quicker since a Democrat assumed the gavel last summer.

"Under Democratic leadership ... the Judiciary Committee has returned to regular hearings and has a solid record of bringing nominations to the Senate for confirmation," said David Carle, Leahy's spokesman.

So far the Senate has approved seven circuit court and 32 district court judges. There are currently 22 circuit court and 28 district court nominations pending in the Judiciary Committee.

As for his conversation with Bush about Pickering, Daschle said that they discussed the "history of the debate on judges over the years.

"But what I said was that that's a matter for the Judiciary Committee. If the Judiciary Committee doesn't vote the nomination, with or without recommendation, to the floor, then I would be hard-pressed to do anything on the floor. I respect the Judiciary Committee's decisions, and we have to accept those."

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While Daschle said he would not push for Pickering to get a hearing if the nominee is voted down in committee, the Majority Leader did reiterate his pledge to allow a vote by the full Senate on any Supreme Court nominee regardless of the Judiciary panel's recommendation.

"I'm reluctant to do that, but I think that matters of that [importance] oftentimes require that the full Senate have an opportunity to be heard," Daschle said. "But I can't extend that to all the nominees from the Judiciary Committee or you wouldn't have to have a Judiciary Committee; you'd just come to the floor with everything.

"And, of course, that's not a luxury that the Republicans afforded us when they were in the majority. But that's not the reason. The reason is it's just important for us to respect the jurisdiction and the responsibilities of the Judiciary Committee."

Op/Eds

The Next Dixiecrats

WALL STREET JOURNAL
February 26, 2002, Tuesday

ABSTRACT

Editorial criticizes US Senate 'borking' of appellate court nominee Charles Pickering Sr by alleging he has racist leanings, particularly 'liberals' who 'have history of turning judicial hearings into political bloodsport'; says the 'vicious' liberal attacks have made the Pickering battle a 'potential watershed'

Judge Pickering's Record on the Right to Choose

The Washington Post
February 26, 2002, Tuesday

Opposition to the nomination of Charles Pickering for the 5th Circuit Court of Appeals stems from his hostility to a woman's right to choose, a record he has never repudiated. Mr. Pickering helped lead the Republican Party to its antiabortion stance at the 1976 convention and has twice sought constitutional amendments to ban abortion.

The states of the 5th Circuit -- Mississippi, Louisiana and Texas -- are among the most active in restricting a woman's right to choose; indeed, Louisiana sought in 1991 to reenact a criminal ban on abortion. Today, these states are enacting laws that attempt to regulate clinics out of existence and encourage ruinous lawsuits against them. Mr. Pickering says he is bound to follow precedent, but nothing in his record or his judicial philosophy suggests that he would see these infringements as unconstitutional. Judges who hold Mr. Pickering's views pose a double threat to

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equality, for the laws being enacted in the 5th Circuit fall particularly heavily on poor women and women of color. The Senate Judiciary Committee should not countenance such views by confirming Charles Pickering.

KATE MICHELMAN

President, The National Abortion and Reproductive Rights Action League (NARAL)

His Words Convict Him

Los Angeles Times
February 27, 2002 Wednesday

In two days of testimony earlier this month, Judge Charles Pickering made clearer than ever why the Senate Judiciary Committee should block his elevation to the U.S. 5th Circuit Court of Appeals. One question remains. After poring over Pickering's record and grilling him during the hearing, will the senators who pronounced themselves "troubled" match their rhetoric with the "no" votes this nomination deserves? Responding to sometimes testy questions from committee members, Pickering tried but failed to justify two glaring ethical lapses: Why, as a judge, did he have a forbidden conversation with
prosecutors in 1994 to get a reduced sentence for a convicted cross burner, and why, in recent months, did he lean on lawyers who have appeared before him to write letters supporting his nomination?

Senators also took Pickering back over now-familiar ground: his court decisions that reveal his predisposition to disbelieve claims of racial discrimination, sexual harassment and voting rights violations, and his outspoken and unrelenting opposition as a
Mississippi state senator to abortion, except to save the pregnant woman's life.

Pickering's answers didn't help his case, and since the hearing some Democratic committee members have announced their intention to vote against his nomination, probably next month. Democrats hold a 10-9 majority on the committee. But as
opposition to Pickering mounts, so does the ire of Senate Minority Leader Trent Lott, who has vowed that his friend and fellow Mississippian will be confirmed "or else."

Lott insists that this confirmation fight is about churlish Democrats who, by imposing litmus tests on judicial nominees, seek to deny a Republican president his prerogative to make appointments. It's not. It's about a nominee whose past actions and judicial record amply show him to be at odds with the principles of fairness, independence and equal opportunity that guide our courts and our nation.

If Democrats sink Pickering's nomination in committee, Lott is reportedly considering asking the full Senate for a "motion to discharge" the nomination from the Judiciary Committee, clearing the way for a vote on the floor that he is likely to win. The use

of such a motion would be unprecedented in a judicial nomination fight, not to mention a baldfaced affront to the integrity of the Senate's committee structure.

If Republicans mean what they say about wanting to avoid a polarizing contest, President Bush should withdraw Pickering's nomination. If Lott's pigheadedness pushes the matter to a final battle on the floor, responsible senators must vote no.

It shouldn't come to that. The Constitution's drafters meant the Senate to be a check on the president, and the confirmation process a way to ensure that federal judgeship nominations are more than just payback for political favors. That means when a nominee isn't up to the job--and Pickering isn't--senators on the Judiciary Committee must reject him or her no matter the arm-twisting, no matter the menacing threats of retribution.

Substandard; Pickering's performance on the bench shows why he shouldn't be ratified for federal judge.

Newsday (New York, NY)
February 27, 2002 Wednesday

When Bill Clinton was in the White House, Senate Republicans often let his judicial nominations die without so much as a hearing. Yet lately, Republicans have had the gall to complain about the Senate's allegedly slow pace in dealing with President George W. Bush's choices for federal judgeships.

Not yesterday, though. Yesterday, Republican Minority Leader Trent Lott actually asked the Senate to postpone a decision on promoting a fellow Mississippian from a trial court to the appellate level, to give the nominee more time to answer a long list of questions. And no wonder. The nomination of U.S. District Court Judge Charles Pickering Sr. to the Fifth Circuit Court of Appeals is in serious trouble, as it deserves to be. His record on the bench has been undistinguished at best. In one cross-burning case involving guilty pleas by two out of three defendants, he lobbied the Justice Department vigorously to reduce the mandatory sentence of the third, who had been convicted on three charges. As a state legislator, he was more supportive of civil rights than many, but even there the evaluations are mixed; while many hometown blacks approve of his nomination, the state NAACP does not. To call his record "exemplary," as a Lott spokesman did yesterday, is to ignore too many inconvenient facts.

The Senate Judiciary Committee's obligation is to give Bush's judicial nominees due consideration and come to a decision on each. It is not to rubber-stamp them. A cabinet or White House appointee departs with the president, but a federal judge, once appointed, serves at his own pleasure or his maker's.

That said, a committee with a fragile 10-9 Democratic majority shouldn't try to block every judge nominated by a Republican president. It should embrace nominees who are clearly in the wide mainstream of American jurisprudence and have demonstrated the skills and temperament

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appropriate to the job. Judge Pickering's substandard performance on the bench offers scant cause for promotion.

Yet a White House spokesman said yesterday that Bush "believes in Judge Pickering and will fight for Judge Pickering." If so, it's a fight the president deserves to lose.

Who Is Charles Pickering?

Blackelectorate.com
Monday, February 25, 2002

Stacey Barney

This week the nomination of U.S. District Court Judge Charles Pickering, Sr. to the 5th Circuit Court of Appeals will be brought before the Senate Judiciary Committee for a deciding vote, and it is unlikely that the Pickering nomination will be confirmed. But the question as to why Pickering would not be the correct fit for the 5th circuit has become something of a media - flamed political spectacle, which should give any observer pause to wonder what is this really all about?

The NAACP would have us believe the blocking of the Pickering nomination is an honorable effort to maintain the integrity of civil rights legislation, while other groups such as the Alliance for Justice, People for the American Way, and the National Abortion and Reproductive Rights Action League (NARAL) point with worry lines etched
across their brows to Pickering's "consistently conservative record on employment, discrimination, voting rights, abortion, and criminal law (Jonathan Groner of Legal Times, 2002)."

However, Republicans who support Pickering tell a different story. Plainly they call the scrutiny of Charles Pickering and his judicial record character assassination. In fact, Sen. Mitch McConnell (R-Kent) says this about the judge: "The record of Charles Pickering can be expressed in two words: moral courage. When victims of racial injustice looked for justice, they found it in one man, Jones County Attorney Charles Pickering." Yet, still others daresay the grumblings blocking Pickering's judicial promotion is nothing more than a round of political payback for democrats who remember "three Clinton appointees who were denied [even] the courtesy of a hearing, much less a vote, when Republicans controlled the Senate (Philip Terzian of Pittsburgh Post Gazette, 2002)."

So who is to be believed? Is the Pickering nomination in fact the good fight to be fought and won in the name of civil rights or is it simply new political battleground ripe for partisan posturing? Well, the first question to ask really is who is Charles Pickering, anyway? Is he the champion of minority civil rights who braved the danger of testifying
against Ku Klux Klan members during the height of racially motivated slayings or is he the segregationist throwback, a bigot who has written in support of criminalizing interracial

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marriages? It's really hard to say, since his record tells us that Pickering is both these men.

To my mind this fact in and of itself necessitates if not demands the careful character scrutiny that Judge Pickering has been subjected to since his first Senate hearing on October 18th - the same scrutiny that some on Capitol Hill are calling regrettable character assassination.

In these hearings we have discovered that yes, Pickering has testified against Klan members. And yes, as Johnny Magee, an African American Laurel business man and member of city council defends, Pickering has even helped Laurel, Mississippi "civic leaders...develop after-school programs to keep Black males from coming into his court on criminal charges." But as Eugene Bryant, President of the NAACP Mississippi State Conference points out, Pickering (when a senator) has "also voted to support the Sovereignty Commission, a state - funded agency established to thwart desegregation efforts resulting from the landmark Brown v. Board of Education." Additionally, Pickering, according to Bryant, has also blocked "the implementation of the 1965 Voting Rights Act, keeping the Mississippi Legislative all white until" 1980. Furthermore, Bryant censures Pickering for referring to "the fundamental 'one-person, one-vote' principle as obtrusive" and "[criticizing] the creation of majority-black districts as 'affirmative segregation.'" While all this and more seems to be true of Charles Pickering, the final nail in his coffin was, ironically, a burning cross.

In 1994 Mickey Herbert Thomas (25), Daniel Swan (20), and a 17-year-old who was charged as a juvenile were suspected of burning a cross on the lawn of a Black homeowner in Pickering's jurisdiction. Thomas and the juvenile offender both reached plea agreements with sentences of supervised release without prison time. Swan, however, went to trial and was convicted. He faced 7 ½ years before Judge Pickering complained to the Department of Justice. Although, the Department of Justice declined to assist Pickering, prosecutors in the case did end up dropping one charge against Swan, and Pickering subsequently sentenced the young man to 27 months instead of the 7 and a half years initially sought by state prosecutors. Pickering defends his actions by pointing out what he believes was a disparity in sentencing among the three assailants. It was the juvenile defendant, Pickering claims, who was in fact the ringleader, and it disturbed Pickering that this defendant did not receive one day in jail. While I agree that the point regarding sentencing disparity is a good one - all should have received prison sentences, I am less sure that this disparity justifies Pickering granting a more lenient punishment to Daniel Swan, a not only culpable defendant (though perhaps arguable in degree), but a convicted defendant. The criminal system rarely treats African American youth with the same consideration.

But perhaps most troubling in regards to Pickering's court decisions in discrimination and civil rights cases aside from the fact that "[Pickering] has often ruled against civil rights claims (Jonathan Groner of Legal Times, 2002)," are the opinions rendered in these cases. Pickering's opponents suggest that often these opinions reflect the judge's personal biases and characterize the language Pickering chooses as harsh and insensitive to plaintiffs.

In Foxworth, et al. v. Merchants Co., a case involving two Blacks who jointly owned a grocery store, and sought damages under the civil rights laws against a supplier who stopped extending

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credit, Pickering wrote: "When an adverse action is taken affecting one covered by [civil rights] laws, there is a tendency on the part of the person affected to spontaneously react that discrimination caused the action. All of us have difficulty accepting the fact that we sometimes create our own problems."

In Seeley v. City of Hattiesburg, a case involving a Black firefighter who was terminated, and also sought damages under the protection of civil rights laws, Pickering wrote: "The fact that a Black employee is terminated does not automatically indicate discrimination...This case has all the hallmarks of a case that is filed simply because an
adverse employment decision was made in regard to a protected minority."

Elliot Mincberg, legal director of People for the American Way raises an eyebrow at such statements, and their presence in court opinions saying, "When [Pickering] writes that this case is an unwanted effect of the anti-discrimination laws, this reflects a hostile attitude and sends a message to future plaintiffs. That's very troubling to us."

With all this before us, it makes sense then that the NAACP, along with the Magnolia Bar Association (a predominately Black Mississippi bar group), and a host of other groups looking to protect the rights guaranteed by the constitution, would dare to question and block the nomination of this man, Charles Pickering. His record is one that tells two tales, and while the nuggets regarding Ku Klux Klan testimony and an after-school program for
African American youth sound nice, there are too many other aspects of his record that are just plain doubtful and troubling. In looking at Pickering's record it is all the more important to remember that racism did no die with Malcolm X or Martin Luther King Jr. In fact, racism is far more potent as it has become almost a seamless part of American society, especially within the context of our nation's governing bodies.

No, racism did not die. It simply became institutionalized. And it is this institutional racism that keeps Black youth in the penal system without rehabilitation efforts that address the phenomena of miseducation and poverty, which first put our youth in jails and on death row. If confirmed would Charles Pickering be an agent to combat this
reality of institutional racism or would he enable it? I'm not so sure. His record doesn't tell me he would be a combatant against racism. His record just makes me nervous.

The second significant question to be asked concerning the Pickering nomination is in regards to the real importance of the 5th Circuit seat, a seat with authority in Louisiana, Mississippi and Texas - densely populated Black territory. If Dianne Feinstein (D-Calif) is to be believed, "...this 5th Circuit seat is as important as a Supreme Court seat...The 5th Circuit once served as a trailblazer for the protection of individual rights - voting rights,
employment discrimination. So this becomes a pivotal position for people who have fought for these rights for decades." Pickering's record certainly does not strike me as that of a civil rights trailblazer. At best, perhaps he is a racial progressive, but yet not a fit for this "pivotal" 5th Circuit seat.

So, in the end, who is Charles Pickering? A segregationist racist or a man of moral courage who

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is an unfortunate political scapegoat? If these fundamental questions can't be answered with any sense of surety, then Pickering does not belong on the 5th Circuit bench.

Pickering's Fault is Temperament, Not Race

Thomas Oliphant
The Boston Globe
February 26, 2002, Tuesday

WASHINGTON - THE FIRST SERIOUS FEDERAL JUDGE FIGHT OF GEORGE W. BUSH'S PRESIDENCY IS TAKING A WELCOME TURN TOWARD THE UNUSUAL.
The nomination of US District Judge Charles Pickering of Mississippi to the US Court of Appeals for the Fifth Circuit in New Orleans (a simple piece of Trent Lott patronage) started out as a typical left-right tussle - a battle over characterization more than character, in this case unfairly involving race.

But as the Pickering nomination moves toward a vote in the Senate Judiciary Committee, it looks as though his fate will be determined by a standard capable of being applied to nominees regardless of ideology - temperament.

The nomination is in serious trouble. But not because Pickering is a conservative political and social issue activist. It's in trouble because a voluminous paper trail shows that Pickering took his political activism into the judiciary in a manner that is incompatible with his current job and dangerous in a potential appellate judge a rung below the Supreme Court. Almost from the moment Senate Republican leader Lott engineered Pickering's nomination, interest groups on the left mobilized against it,
focusing initially on race.

It was poorly thought through and unjust in its imputation of racism. Fortunately, an initial portrait of a garden-variety segregationist 40 years ago turned into a more nuanced picture of a man who not only changed but opposed racists and eventually became part of Mississippi's reconciliation process.

The same guy, however, was an early figure in post-segregation conservative activism and has spent the last dozen years on the bench venting at the laws and doctrines he gets paid to apply.

And he would bring not only a well-known opposition to abortion rights but a record of intense activity on behalf of ending those rights. Pickering was a visible figure in Mississippi's pivotal delegation to the 1976 convention that chose Gerald Ford over Ronald Reagan. As a platform subcommittee chairman at Kansas City, then state senator, Pickering was a leader of efforts to overturn Roe v. Wade by constitutional amendment and block support of the Equal Rights Amendment. He also was president of the Mississippi Baptist Convention when it opposed abortion rights even in cases of rape and incest.

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Pickering's confirmation hearing pledge to be impartial might have credibility if he didn't violate it continually as a district judge, well known locally for his compulsive commentary on law and precedent outside the boundaries of the cases before him. He's
done it on voting rights cases, privacy issues, employment discrimination matters, habeas corpus petitions, and a criminal case involving a cross-burning incident.

In documents made public as Pickering went before the Judiciary Committee a second time this month, it was revealed that he had leaned on both the prosecutors and the Justice Department to seek a lesser sentence for one of three men who burned a cross on the lawn of a mixed-race couple and then fired shots into their home, where a baby was asleep.

Upset at sentencing guidelines calling for seven years in jail, he leaned on the prosecutors in an out-of-court meeting to recommend a shorter sentence, then contacted their superiors. In the end, the offender got 27 months.

Every confirmation hearing has its "moment," and Pickering's came when Democratic Senator John Edwards of North Carolina led him through the command of judicial ethics that contact with one side in a case is a no-no. The judge was visibly stunned, and his claim not to remember threatening to order a new trial has no credibility.

Lott has no cause to bellyache about Pickering's treatment. His two hearings and an imminent vote stand in contrast to the treatment of President Clinton's nominees to the all-white Fifth Circuit (both Hispanics in an area that is almost half poor and nonwhite); each suffered death by delay and GOP inaction.

Nor should cries of victimization from the Republicans or Mississippi partisans be heeded, even on race. It was Pickering, after all, who got caught in a 1978 US Senate primary spreading the slander in the black community that his opponent, Thad Cochran, had been on the racist White Citizens Council. Cochran, Lott's senior colleague and a man of impeccable conservatism as well as integrity, trounced Pickering.

This is simply a bad nomination and will only be supported by moderate Republicans out of enforced loyalty to Lott, not by dedication to high standards for the federal appellate judiciary.

Wall Street Journal
Tuesday, February 26, 2002

"A fascinating thing has happened on the way to the Senate 'borking' of appellate court nominee Charles Pickering Sr. Taking orders from their interest groups, Beltway Democrats have tried to portray the Mississippian as a modern Lester Maddox. But the African-Americans back in the judge's hometown of Laurel have responded that nothing could be further from the truth. So whom to believe? The people who know Judge Pickering personally and have watched him in court and local politics for years? Or the national liberal lobbies that have a history of turning judicial hearings into political bloodsport?"

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Keep Pickering Off Appeals Court

Nora Cusack, Madison
Capital Times (Madison, WI)
February 26, 2002 Tuesday

Dear Editor: The process of confirming President Bush's judicial nominees should not be rushed. Their records need to be carefully examined. Judge Charles Pickering Sr., Bush's nominee to the 5th U.S. Circuit Court of Appeals, has a proven record of opposing civil and reproductive rights. The 5th Circuit is one of the most critical courts in the United States for women's reproductive rights.

As a conservative political activist, Pickering has demonstrated open hostility to a woman's right to choose. Twice he has sought constitutional amendments to ban abortion. This alone should disqualify him from sitting on the 5th Circuit Court of Appeals.

Federal judges serve for life. Both of our senators serve on the Senate Judiciary Committee, which will determine whether Pickering's nomination comes to a vote.

All committee members need to carefully consider Pickering's positions on basic constitutional freedoms, civil rights and reproductive rights.

I ask Sen. Herb Kohl and Sen. Russ Feingold to vote against Pickering's confirmation. All who support reproductive rights need to contact both our senators and urge them to vote against Pickering.

Judge's Views Make Him Unfit

Renae Sieling, Oregon
Capital Times (Madison, WI)
February 26, 2002 Tuesday

Dear Editor: In the past weeks, we have heard quite a bit about the need to speed the judicial nomination process. Missing from this discussion, however, is the fact that many of the Bush administration's judicial nominees hold radical views not shared by the American public. Judge Charles Pickering, judicial candidate for the 5th Circuit Court of Appeals, is just such a nominee. A fervent opponent of a woman's right to choose, he has voted to ban abortion, stop public funding of family planning clinics and against the Equal Rights Amendment. An adversary of civil rights, Pickering has criticized principles protecting civil rights, sought to limit their application and denigrated those who seek to invoke civil rights laws.

Judges with beliefs so out of line with the American public do not belong in a federal appellate

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court. With both of our senators sitting on the Senate Judiciary Committee, we in Wisconsin are in a unique position to use our voices to keep Pickering off the bench. Please contact Sens. Russ Feingold and Herb Kohl today and ask them to oppose the appointment of Charles Pickering.

Questions for Judge Smith

The Washington Post
February 26, 2002, Tuesday

THE SENATE Judiciary Committee today takes up the nomination of D. Brooks Smith to the 3rd Circuit Court of Appeals. Judge Smith, who currently serves on a federal district court in Pennsylvania, has not sparked the same hot controversy as President Bush's nominee to the 5th Circuit, Charles Pickering. But senators ought not let his nomination slip through without probing carefully certain aspects of Judge Smith's record. They might start with his opinion in United States v. Pennsylvania -- a case in which the federal government sued the state over allegedly substandard conditions in a home for the mentally retarded. Though care was, in Judge Smith's words, "frequently not optimal" -- maggots were found in one resident's ear, ants on others' bodies -- the judge found these to be "isolated incidents" redressed by the facility, and he concluded that there was no constitutional problem. Judge Smith's decisions have often been reversed by the court to which he has been nominated. In one case, for example, the 3rd Circuit wrote that he had "ignored both the letter and spirit of our mandate."

Senators should also ask him about a speech he gave in 1993 on federalism. During the Clinton administration, conservatives blasted appeals court nominee Richard Paez for a speech that, in passing, criticized a nascent ballot initiative in California repealing affirmative action. If intrusion into the political process is the issue, Judge Smith's remarks make those of Judge Paez seem tame. The Smith speech was an argument against the constitutionality of the Violence Against Women Act, then pending
in Congress. Portions of that law did have problems and were later struck down by the Supreme Court. But Judge Smith's speech is particularly disturbing for the remarkably constricted vision of federal power that he embraces. The power to regulate commerce -- a pillar of much federal civil rights law -- was intended by the Founders only "to permit the national government to eliminate trade barriers," he said. Judge Smith went on to lay out his own "brief principles for determining the scope of federal jurisdiction. First, ask whether the subject matter at issue is within the power of the national government by express delegation in the text of the Constitution, or impliedly through a historically honest reading of the necessary and proper clause. If not, stop!" Senators should ask him how such an understanding can be squared -- if it can -- with modern civil rights and
environmental statutes.

Finally, Judge Smith should be given an opportunity to clear the air about his decision to preside over a case involving a bank at which his wife was an officer and in whose parent company the two owned large amounts of stock. While the bank was not a party to the litigation, its financial interest in the case seems -- at least in retrospect -- obvious. Judge Smith, however, did not

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initially recuse himself, and some of his rulings before he finally did so seemed to be in the bank's interests.

Judge Smith and Pickering on their work; Choice of president's nominees should not be a political decision

Thomas L. Jipping
The Washington Times
February 26, 2002, Tuesday

A truly rare event occurs today in the U.S. Senate Judiciary Committee - a hearing on one of President Bush's appeals court nominees. Only three of even the first 11 nominees named last May have been so blessed.

On the other hand, a now-familiar pattern of abuse is emerging as the far left tries to smear another honorable man and distinguished nominee. This time it's D. Brooks Smith, chief U.S. district judge for the Western District of Pennsylvania and nominee to the U.S. Court of Appeals for the Third Circuit. Judge Smith has experience in private practice, as a prosecutor, an elected state court judge (receiving both Democratic and Republican nominations), and 14 years as a federal judge. He has served on criminal-procedure rules committees for both the state and federal judiciaries and on the board of directors of the
Federal Judges Association. He is a former board member of the Salvation Army and the county Legal Services Corp., Domestic Abuse Project and Society for Crippled Children and Adults. The liberal American Bar Association gave him its highest rating for appointment to the appeals court.

All of this, and the fact that the Constitution lets presidents appoint judges, is apparently not enough. The far left believes judges exist to impose a political agenda, to deliver the political goods. In their world, judges base decisions on political interests rather than the law; they are just supposed to rule the right (or, rather, the left) way in the end. That's why a nominee's personal opinions, values, beliefs and ideology are so important and why they believe only liberals are qualified to be federal judges.

Their attacks on Bush nominees aim to keep individuals not liberal enough off the bench today and to dissuade the president from nominating someone not liberal enough to the Supreme Court in the future. The truth alone, however, won't accomplish the goal. Hence the smear.

The liberal Washington Post's Sept. 17 editorial about appeals court nominee Charles Pickering (the Judiciary Committee votes on him Thursday) correctly described the elements of the smear campaign. It's an "ugly affair" in which the nominee's attackers focus "not on his qualifications, temperament, approach to judging or on the quality of his judicial work." Instead, they try to "paint him" a particular way they believe will make ordinary people recoil and senators vote no.

"To do so," The Post said, "they have plucked a number of unconnected incidents from a long

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career. None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate." It's actually worse than that. When examined closely, it's obvious the far left actually distorts and even makes up those unconnected and irrelevant incidents that form the fake caricature.

They accuse Judge Smith, for example, of failing to recuse himself soon enough in a 1997 lawsuit against an investment adviser who had defrauded school districts and municipalities. Some of the funds had been deposited in a bank employing Judge Smith's wife and in whose parent company the Smiths owned stock. Judge Smith did recuse himself a few weeks into the case. He did so on his own; neither party in the case asked him to. Nor was he required to because the bank was not a party in the case and his wife worked in an unrelated department. Yet Judge Smith's attackers know most normal folks don't know the vagaries and standards of judicial recusal decisions and won't be able to evaluate their false claims.

Judge Smith issued an order that half of the defendant's funds which had been frozen be distributed to the defrauded clients. His attackers' spin is that he maintained the freeze on the other half of the funds. Beyond being just a silly half-empty-or-half-full spin game, they never say that releasing the funds was not Judge Smith's idea at all. He approved the joint recommendation of the Securities and Exchange Commission and Richard Thornburgh, former Pennsylvania governor and U.S. attorney general, who had been appointed trustee and alone controlled the funds.

You'd think that, if anyone, the plaintiff would be most sensitive about Judge Smith's brief involvement in this case. Yet the plaintiffs' lawyer wrote in the Feb. 22 Pittsburgh Post-Gazette that "we are not aware of any impropriety, or even appearance of impropriety, on the part of Judge Smith."

This pattern is clear and disturbing. Some Washington-based group makes a distorted and misleading charge, and those in Western Pennsylvania who know the truth have to set the record straight. Writing in the Feb. 17 Post-Gazette, two Democratic members of the Western Pennsylvania bar wrote that other deceptive claims by Judge Smith's attackers "are misinformed at best" and part of a "dangerous political strategy." Writing in the Feb. 14 issue, the Women's Bar Association of Western Pennsylvania endorsed Judge Smith "without reservation" in response to a feminist group's false claim.

The Washington Post's observation about the Pickering nomination applies across the board: "The need on the part of liberal groups and Democratic senators to portray him as a Neanderthal - all the while denying they are doing so - in order to justify voting him down is the latest example of the degradation of the confirmation process." Today's hearing on Judge Smith and Thursday's vote on Judge Pickering are the chance to change course before it's too late.

Thomas L. Jipping is director of the Free Congress Foundation's Judicial Selection Monitoring Project.

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Pittsburgh Post-Gazette
February 28, 2002 Thursday

EXCERPT

A solid reputation We have been dismayed to read of the efforts of certain Washington-based lobbying groups that have mounted a campaign, largely on ideological grounds, against President Bush's recent nomination of U.S. District Judge D. Brooks Smith for a position on the 3rd U.S. Circuit Court of Appeals ("Appeals Court Nominee Targeted," Feb. 9). Rules of judicial ethics make it very difficult for Judge Smith to defend himself against such charges.

As registered Democrats, and as trial lawyers who have practiced before and have known Judge Smith for a number of years, we believe that these groups with political agendas are completely out of line. Throughout his career, Judge Smith has demonstrated that he is an honest and hard-working jurist who does not have a political agenda and is completely without bias. His reputation among lawyers in this community is superb. He is regarded as bright, compassionate, careful, fair, objective, knowledgeable about the law, decisive, thorough, independent and unfailingly courteous to counsel and parties who appear before him.

Judge Smith embodies everything that a federal judge should be; he would be an outstanding member of the court of appeals.

DANIEL I. BOOKER
Shadyside

Judge Smith Should Have Recognized This Conflict of Interest

Pittsburgh Post-Gazette
February 26, 2002 Tuesday

Richard A. Finberg's defense of a ruling by U.S. District Judge D. Brooks Smith in SEC vs. Black that advanced Mr. Finberg's clients' interests at the expense of other Pennsylvania school districts misses the point ("Judge Smith's Rulings in No Way Hint at Favoritism Toward Bank in Black Case," Feb. 22 letters).

In addition to the Oct. 27, 1997, partial distribution of assets discussed by Mr. Finberg, Judge Smith, on Oct. 30, denied motions by Penn Manor and other districts that were wise enough to stop John Gardner Black from depositing their money at Mid-State Bank. These districts demanded all their money back; Judge Smith gave them half, and only if they waived their right to challenge the freeze on the remaining money.

U.S. District Judge Donetta Ambrose, who took over the case in November 1997, ruled in May 1998 that the court had to release this non-Mid-State money. Denying an appeal brought by Mr.

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Finberg and others, the 3rd U.S. Circuit Court of Appeals agreed, calling the continued freeze on these assets "improper."

Judge Smith's denial of Penn Manor's motion advanced the interests of Mr. Finberg's clients, who lost their money at Mid-State and who were seeking to have non-Mid-State districts share their $70 million in losses. Mr. Finberg advocated that all districts share the losses "pro-rata," a ruling that would have reduced the Mid-State districts' losses to about $34 million. This, in turn, would have significantly reduced the bank's exposure to losses in suits brought by its clients, claims the bank ultimately settled for $51 million.

No one has alleged that Judge Smith intentionally ruled the way he did to protect his wife's job or his stock interest in the bank. He may never even have recognized that his order accrued to Mid-State's benefit.

But the fact remains that, long after Judge Smith should have recognized that Mid-State Bank was involved in the fraud at issue in SEC vs. Black, he ruled on a contested motion in a way that advanced the bank's interests. This exacerbates the already serious legal and ethical issues that stem from Judge Smith's decision to issue orders in two cases involving the fraud perpetuated at the bank.

DOUG KENDALL
Executive Director
Community Rights Counsel
Washington, D.C.

A Model of Fairness

Pittsburgh Post-Gazette
February 26, 2002 Tuesday

I recently received the commentary written by Ken Gormley and Frederick W. Thieman regarding the appointment of Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals ("A Case Without Merit," Feb. 17 Forum).

I am a lawyer practicing in Blair County, where I have maintained a practice since 1975. During the late 1970s, Judge Smith and I served together in the Blair County district attorney's office.

Shortly after, he was appointed to head that office and later was appointed to the bench to fill a vacancy. When he ran for the office, I was his opponent. During this time, I came to know his abilities, legal and ethical.

Judge Smith has always been regarded by the Blair County bar as a judge with superior legal knowledge and fairness. Even during the time we were campaigning against each other, I

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continued to practice before him, never concerned that our opposition in the political arena would ever, in any way, influence his decision in any case brought before him.

He continues to be a credit to his community, and we take great pride in his accomplishments. His appointment to the 3rd Circuit would only enhance the quality of the federal judiciary, and I applaud the sentiments of Mr. Gormley and Mr. Thieman.

I would just like to expand their statement that "Judge Smith will be a credit to all lawyers, judges and citizens of Western Pennsylvania" to include some very proud lawyers, judges and citizens of Blair County.

SUSAN P. REA
Hollidaysburg

Judging Judge Smith; He Owes the Senate An Apology of Black Cases

Pittsburgh Post-Gazette
February 26, 2002 Tuesday

Today the Judiciary Committee of the U.S. Senate is scheduled to hold a hearing on President Bush's nomination of D. Brooks Smith, the chief judge of the U.S. District Court here, to the 3rd U.S. Circuit Court of Appeals.

A few weeks ago it looked as if the hearing would be a mere formality, despite some overheated objections from liberal interest groups to the confirmation of Judge Smith, who has broad support in the local legal community.

That all changed when one of those interest groups publicized the fact that Judge Smith was bafflingly slow to remove himself from two cases in which a bank that employed his wife -- and in which the couple owned at least $100,000 worth of stock -- was a major player.

*

The two cases, one a civil case brought by the Securities and Exchange Commission, the other a criminal trial, grew out of a fraud perpetrated on dozens of Pennsylvania school districts by John Gardner Black, a financial adviser now in a federal penitentiary. According to federal regulators, Black misled his clients and invested their funds in chancy securities. Much of the money entrusted to Black by several school districts was deposited at the Mid-State Bank, a prominent financial institution in Altoona, Judge Smith's hometown. In September 1997, after performing an audit, the SEC began proceedings to suspend Black's securities license and to have a court take control of the assets of his clients. The complaint mentioned that Black used several accounts at Mid-State.

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Here is where the problem arises. Not only was Judge Smith's wife, Karen, a Mid-State officer, but also Judge Smith owned a significant amount of stock in the bank's holding company. Nevertheless, the judge did not immediately remove himself from the SEC case.

The Community Rights Counsel, a Washington-based public interest group that has criticized Judge Smith on other grounds, has constructed an elaborate explanation of how Judge Smith might have benefited financially from an order he issued maintaining a freeze on some school districts' assets not only in Mid-State but also in other banks. The group downplays the fact that the terms of Judge Smith's order were suggested by the SEC and former Gov. Dick Thornburgh, a trustee in the case.

But that's not the point. Under federal law, a judge must remove himself from a case in which he knows that he "has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding." A separate provision in federal law requires that a judge recuse -- that is, remove -- himself whenever his "impartiality might be reasonably questioned."

Judge Smith did just that in these two cases, but belatedly. In the civil case brought by the SEC in 1997, the judge issued more than a dozen orders before stepping down in favor of a colleague, but without citing his own financial interest in Mid-State Bank (which he did include in standard financial disclosure forms). In the 1999 criminal case against John Gardner Black, the judge complied with a request by Black's attorney that he recuse himself, but in doing so he again did not specify his financial interest in Mid-State.

Obviously, the Senate Judiciary Committee must question Judge Smith about his slowness to recuse himself. It may be that the judge was simply obtuse about appearances, or, convinced in his own mind that he would be impartial, he hesitated to turn
work over to colleagues on an understaffed bench. Such explanations don't alter the fact that his slowness to pull out of these matters violates the spirit if not the letter of federal law. We hope Judge Smith acknowledges as much in his testimony before the Judiciary Committee.

That committee and the full Senate have the responsibility not only to scrutinize Judge Smith's conduct in these matters but also to weigh his qualifications as a whole. As Stephen Gillers, a professor of legal ethics at New York University, told the
Post-Gazette: "The fact the judge has made a mistake of this kind is a fact the Senate should consider. But there are other factors that go on the scale."

*

Those other factors include the esteem in which Judge Smith is held by lawyers -- liberal and conservative, Republican and Democratic -- who have appeared before him. His legal philosophy is also a legitimate subject of inquiry, though the Judiciary Committee should be aware that lawyers in Pittsburgh dispute the depiction of Judge Smith as a onservative in the mold of Clarence Thomas or Antonin Scalia.

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While it may have been the suspicion that Judge Smith was an extremist that inspired the Community Rights Counsel and other critics to launch a fishing expedition into his record, the fact is that they landed a big one in his conduct in the John Gardner Black cases. A judge with significant financial interest in a bank -- a bank that employs his wife -- should not be sitting in a case in which that bank is even a peripheral actor.

Judge Smith needs to make it clear to the Senate that, in retrospect, he realizes he should have refused from the outset to touch these matters with a 10-foot pole.

Setting the Record Straight on Judge D. Brooks Smith

Pittsburgh Post-Gazette
February 26, 2002 Tuesday

Today the Senate Judiciary Committee will consider President Bush's nomination of Chief U.S. District Judge D. Brooks Smith for the 3rd U.S. Circuit Court of Appeals, headquartered in Philadelphia.

For 18 years, Judge Smith has served Pennsylvanians with distinction. Judge Smith boasts first-rate credentials in addition to his years of judicial experience, and the American Bar Association unanimously gave him its highest rating. Over 100 Democrats
and Republicans alike have signed letters of support to the Senate Judiciary Committee. These letters from judges, public officials and leaders of civil liberties, labor, and women's organizations all praise Judge Smith's fairness and impartiality. The Post-Gazette has detailed the campaign against Judge Smith by the Community Rights Counsel and other extreme interest groups. Just as night follows day, it seems the usual suspects are lining up for another effort to "Bork" a distinguished judge. Specifically, critics argue that Judge Smith should have immediately recused himself from a 1997 municipal fraud case involving an investment adviser later convicted of defrauding several Pennsylvania school districts. Critics say recusal was necessary as Judge Smith's wife worked at Mid-State Bank, where some of the defendants' assets were deposited, and the Smiths held stock in Mid-State's parent company.

Please allow me to set the record straight. I served as the trustee for the defrauded schools and bore a fiduciary duty to safeguard their funds. And I can say with front-row, firsthand knowledge that Judge Smith acted with absolute integrity, independence and honor.

First, Mid-State Bank was not a party to the case, and nothing at the outset suggested Mid-State was complicit in any fraudulent scheme. It was therefore unlikely that Judge Smith's wife, who worked in an unrelated part of the bank, would become a material witness. Since the complaint did not allege any wrongdoing by the bank holding the defendants' funds, any stock the Smiths owned in its parent company was immaterial. As trustee, I had sole possession of and control over the assets, and Judge Smith's initial order distributing 50 percent of frozen funds to

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defrauded school districts just approved an interim plan proposed jointly by me and the Securities and Exchange Commission while the case proceeded.

When Judge Smith later received information that Mid-State could, in the future, conceivably play a role in the litigation, out of an excess of caution he immediately recused himself sua sponte, without being asked by either party. The actions that Judge
Smith took prior to his recusal in the civil case did nothing to limit Mid-State's eventual liability exposure or impact the victims' rights of recovery.

In fact, the attacks by interest groups ignore the fact that no funds were even deposited at Mid-State at the time Judge Smith granted his last orders. As trustee, I had transferred the assets to another bank several days before this order. Nothing that occurred between this order and Judge Smith's recusal days later benefited Mid-State. Judge Donetta Ambrose, who obtained the case after Judge Smith's recusal, agreed. She wrote to the Senate Judiciary Committee to say, "There was never any suggestion by me or the Court of Appeals that Judge Smith acted inappropriately or unethically. Rather, he acted prudently and cautiously. . . . The allegations of unethical conduct in the context of this case are without foundation."

Partisan critics also improperly fault Judge Smith for temporarily handling a later criminal case against the investment adviser. Nobody involved in the case has alleged that Judge Smith issued any improper orders or took any inappropriate action. The
case was assigned to Judge Smith only after lawyers in the case agreed that it was unrelated to the SEC's civil case. Mid-State Bank was not a party. The U.S. attorney's office never sought recusal, and defense counsel did not seek recusal until four months later, when Judge Smith immediately recused himself.

As governor of Pennsylvania in 1984, I had the honor of originally nominating Brooks Smith to sit on the Court of Common Pleas in Blair County. In 1988, while attorney general of the United States, I had the honor of seeing the U.S. Senate unanimously confirm Brooks Smith as a federal judge. This year, I hope to see the same Senate set aside the recent attacks of extreme interest groups and honor Judge Smith's long record of judicial service with a swift and unanimous approval to the 3rd Circuit.

By any measure of judicial merit, Brooks Smith is qualified to serve. Like the president who nominated him, Brooks Smith has rallied a broad coalition of support. It would be wrong to allow extreme interest groups to delay his confirmation by even one day. However, I am optimistic that this will not occur. Judge Smith acquired his reputation for honesty, uprightness and professionalism the old-fashioned way -- he earned it. And it will see him through.

Dick Thornburgh, a former governor of Pennsylvania, served as U.S. attorney general under Presidents Ronald Reagan and George H.W. Bush.

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Judge Smith and Pickering on their work; Choice of president's nominees should not be a political decision

Thomas L. Jipping
The Washington Times
February 26, 2002, Tuesday

A truly rare event occurs today in the U.S. Senate Judiciary Committee - a hearing on one of President Bush's appeals court nominees. Only three of even the first 11 nominees named last May have been so blessed.

On the other hand, a now-familiar pattern of abuse is emerging as the far left tries to smear another honorable man and distinguished nominee. This time it's D. Brooks Smith, chief U.S. district judge for the Western District of Pennsylvania and nominee to the U.S. Court of Appeals for the Third Circuit. Judge Smith has experience in private practice, as a prosecutor, an elected state court judge (receiving both Democratic and Republican nominations), and 14 years as a federal judge. He has served on criminal-procedure rules committees for both the state and federal judiciaries and on the board of directors of the
Federal Judges Association. He is a former board member of the Salvation Army and the county Legal Services Corp., Domestic Abuse Project and Society for Crippled Children and Adults. The liberal American Bar Association gave him its highest rating for appointment to the appeals court.

All of this, and the fact that the Constitution lets presidents appoint judges, is apparently not enough. The far left believes judges exist to impose a political agenda, to deliver the political goods. In their world, judges base decisions on political interests rather than the law; they are just supposed to rule the right (or, rather, the left) way in the end. That's why a nominee's personal opinions, values, beliefs and ideology are so important and why they believe only liberals are qualified to be federal judges.

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The liberal Washington Post's Sept. 17 editorial about appeals court nominee Charles Pickering (the Judiciary Committee votes on him Thursday) correctly described the elements of the smear campaign. It's an "ugly affair" in which the nominee's attackers
focus "not on his qualifications, temperament, approach to judging or on the quality of his judicial work." Instead, they try to "paint him" a particular way they believe will make ordinary people recoil and senators vote no.

"To do so," The Post said, "they have plucked a number of unconnected incidents from a long career. None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously
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They accuse Judge Smith, for example, of failing to recuse himself soon enough in a 1997 lawsuit against an investment adviser who had defrauded school districts and municipalities. Some of the funds had been deposited in a bank employing Judge
Smith's wife and in whose parent company the Smiths owned stock. Judge Smith did recuse himself a few weeks into the case. He did so on his own; neither party in the case asked him to. Nor was he required to because the bank was not a party in the case and his wife worked in an unrelated department. Yet Judge Smith's attackers know most normal folks don't know the vagaries and standards of judicial recusal decisions and won't be able to evaluate their false claims.

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This pattern is clear and disturbing. Some Washington-based group makes a distorted and misleading charge, and those in Western Pennsylvania who know the truth have to set the record straight. Writing in the Feb. 17 Post-Gazette, two Democratic members of the Western Pennsylvania bar wrote that other deceptive claims by Judge Smith's attackers "are misinformed at best" and part of a "dangerous political strategy." Writing in the Feb. 14 issue, the Women's Bar Association of Western Pennsylvania endorsed Judge Smith "without reservation" in response to a feminist group's false claim.

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Thomas L. Jipping is director of the Free Congress Foundation's Judicial Selection Monitoring Project.

Egg on the Brain

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Nation (The)
March 04, 2002

Katha Pollitt weighs in on recent news issues relating to reproductive freedom and the religious right

It may look as if domestic politics no longer exists in the new America--the one in which there is no money for anything besides guns and prisons but we don't care because we are all bowling together against the Axis of Evil. But that's not true. As long as there is a fertilized egg somewhere in this great land of ours, there will be domestic politics. George Bush may not be able to bring about the Kingdom of Heaven on Earth for the religious right, who gave him one in four of his votes. He may even realize that a serious victory for religious conservatives--significantly restricting the legality of abortion, say--would hurt the Republican Party, because California has more people than Utah. But he is doing what he can to keep the fundamentalists happy. It must be frustrating for him--just when we're all supposed to pretend to love our differently faithed neighbor even if we know he's bound for hell, Christians keep saying weird things. First there was Jerry Falwell's remark that God let terrorists blow up the World Trade Center because he was fed up with "the pagans, and the abortionists, and the feminists, and the gays and the lesbians...[and] the ACLU" Falwell apologized, only to express the same thought a bit more obliquely on November 11 at a Florida church: "If the church had been awake and performing that duty"--proselytizing the ungodly--"I can tell you that we wouldn't be in the mess we're in today." God, says Falwell, "even loves the Taliban"--it's just liberals he can't stand.

And then there's Attorney General John Ashcroft, who burqaed the semi-nude statue of the Spirit of Justice because he felt upstaged by her perky breast at press conferences, and who thinks calico cats are emissaries of the devil, when everyone knows it's black cats. Ashcroft is in trouble with Arab-Americans for offering this proof of the superiority of Christianity to Islam as quoted by conservative columnist Cal Thomas on his radio show on November 9 (and belatedly denied by a Justice Department spokeswoman): "Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you." Not to get too wound up in theology here, but if the Christian God sent his own son to die doesn't that make him, according to Ashcroft's definition, a Muslim?

Fortunately, the fertilized egg can be rolled onstage to distract us from such knotty questions. In keeping with the strategy of rebranding antichoice as prochild, the Bush Administration plans to use the CHIP program for poor children to provide healthcare to children "from conception to age nineteen," a neat way of defining zygotes as kids. The women in whom these fine young people are temporarily ensconced will remain uninsured--perhaps they can apply for federal funds by redefining themselves as ambulances or seeing-eye dogs. After all, somebody has to get those fetuses to the doctor's office. As for the 8 million uninsured postbirth children, not to mention the 27 million uninsured adults, who told them to leave the womb?

But wait, there's more. In a highly unusual move, the Justice Department has weighed in on the side of Ohio's "partial-birth abortion" ban, which has been on ice thanks to a federal court ruling

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that found it did not make enough allowance for a woman's health, as required by the 2000 Supreme Court decision in Carhart v. Nebraska. The Ohio law would permit the operation only to save her life or avoid "serious risk of the substantial and irreversible impairment of a major bodily function." Gee, what about considerable risk of moderate and long-term impairment of a bodily function of only middling importance? Should the Ohio state legislature (seventy-five men, twenty-four women) decide how much damage a woman should suffer on behalf of a fetus? Shouldn't she have something to say about it?

To please fanatical antichoicer Representative Chris Smith of New Jersey, Bush is holding back $34 million from UN family planning programs. To return the favor, Congressional Republicans have revived the Child Custody Protection Act, which would bar anyone but a parent from taking a minor across state lines for an abortion. The parental-notification-and-consent laws of a pregnant teen's home state would follow her wherever she goes, like killer bees, or the Furies--and unlike any other law.

Bush is also stacking with social conservatives commissions that have nothing to do with abortion per se but raise issues of sex, gender and reproduction. The cloning commission, called the Council on Bioethics (fourteen men, four women), is headed by bioethicist Leon Kass, a former opponent of in vitro fertilization who's associated with the American Enterprise Institute. There's room around the table for antichoice columnist Charles Krauthammer antichoice law professor Mary Ann Glendon, the Vatican's representative at the UN conference on women, in Beijing and social theorist Francis Fukuyama, who wrote in a New York Times Op-Ed that the thirty-years-overdue introduction of the pill in Japan in 1999 spelled the downfall of the Japanese family, because now women will just run wild. But there are only four research scientists, and no advocates for patients with diseases that the cloning of stem cells might someday help cure. Similarly, the newly reconfigured AIDS commission is said to be stacked with religious conservatives and will be headed by former Representative Tom Coburn, whose claim to fame is his rejection of condoms, which sometimes fail, in favor of "monogamy," which never does.

Finally, there's the nomination of Charles Pickering for the Court of Appeals for the Fifth Circuit. Rated unqualified by the American Bar Association, Pickering, an ardent segregationist when it counted, opposed the ERA, has been a lifelong opponent of legal abortion and won't discuss his antichoice record in Senate hearings. The Fifth Circuit includes Texas, Louisiana and Mississippi, states where the right to abortion is already compromised by conservative legislatures in 1999 Texas tied with Michigan for most new antichoice laws enacted (seven). Traditionally the federal courts offer hope of redress for victims of state laws--in this case, some of the poorest women in the country. What are the chances that Pickering will champion their rights and their health?

My money's on the fertilized egg.

Judging personal beliefs

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Thomas L. Jipping
WorldNetDaily.com
February 28, 2002

Senate Democrats were to have continued their scorched-earth confirmation obstruction campaign today by defeating, on astraight party-line vote, the nomination of Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit. The final votehas been postponed until next week.

Appearing last Sunday on NBC's "Meet the Press," Sen. Dianne Feinstein, California Democrat and Judiciary Committee member, predicted Judge Pickering's demise. That will be odd since several members of the committee helped unanimously confirm him to the U.S. District Court in 1990. The liberal American Bar Association – considered by Democrats the "gold standard" for evaluating judicial nominees – upped its rating from "qualified" in 1990 to "well qualified" today.

While you can't help but step in some hypocrisy like that in Washington, it's actually Sen. Feinstein's reason for opposing Judge Pickering that's significant. She opposes him because he has "right-wing views, both politically and personally." That's a lotmore significant than it might sound.

If Judge Pickering were running again for the Mississippi State Senate, his political and personal views would obviously be relevant. A political candidate promises to translate those views into law. But why are political and personal views relevant to a judicial nominee? Like most liberals and some conservatives, Sen. Feinstein apparently sees no difference between judges and politicians. Political and personal views, rather than law, drive judicial decisions. Good judges have correct views and translate them into law.

Last year, though, Sen. Feinstein was among those lecturing John Ashcroft about putting aside the political and personal views he used as a legislator should he become attorney general. Those views, they said, are irrelevant in the executive branch, where he must enforce even laws with which he disagrees.

Political and personal views should be especially irrelevant to the judicial branch. As Chief Justice John Marshall wrote in Marbury vs. Madison, judges are there to say "what the law is," not what it should be. Judges don't make law, or even enforce it, so their political or personal views not only don't matter, they must not matter. Only then can the judiciary be, as America's founders intended and our liberty requires, the "weakest" and "least dangerous branch."

By saying what our laws mean, judges can say what our laws are. If anyone's political and personal views are to determine what our laws are, it's certainly not a small band of unelected judges. If "we the people" are to run the country and define the culture, judges must simply follow the law and leave the politics to us.

The controversy over Judge Pickering's nomination shows just what an "ugly affair" this can be. That's what the liberal Washington Post called it. Those "personal and political views" on which liberals base confirmation votes include religious views. The leftist People for the American Way's report on Judge Pickering focused on his Christian faith and church leadership. Translation: Conservative evangelical Christians hold incorrect views that disqualify them for judicial service. That's religious bigotry, and contrary to the Constitution's prohibition on a religious test for public office. But that type of intolerance and exclusion is inevitable when basing judicial selection decisions on a nominee's political and personal views.

Sen. Feinstein's criterion of political and personal views might sound familiar. Last year, Sen. Charles Schumer held hearings to promote his view that senators can base confirmation votes on a nominee's "ideology." Same thing. A judicial nominee's
ideology will predict his rulings as a judge. Not surprisingly, Sens. Feinstein and Schumer were the first two Judiciary Committee Democrats to announce opposition to Judge Pickering.

Perhaps there's still a chance for Judge Pickering. In March 1997, Sen. Joseph Biden said that "it is not ... appropriate not to ... bring [nominees] to the [Senate] floor" for a vote. Maybe, just maybe, he will apply this same principle to Republican nominees as well. Whatever the outcome, the far-left gloves have come off and the response by the Bush administration and Senate Republicans will chart the road ahead.

The way out of this political and personal swamp is to refuse to muck around in it at all. Instead, Republicans must offer the American people a different view altogether of judges and how to choose them. That view is what America's founders offered,
impartial judges who trust the people to make political decisions. Judges who do their job so we the people can do ours.

Thomas L. Jipping is vice president for Legal Policy at the Free Congress Research & Education Foundation in Washington, D.C.

Transcripts/Members of Congress

Kyl Lauds Confirmation of Tucsonan Cindy Jorgenson for Federal Judgeship, Senator Says Help is on the Way for Overworked Federal District Court.

Senator John Kyl
Congressional Press Releases
February 26, 2002, Tuesday

Kyl Lauds Confirmation Of Tucsonan Cindy Jorgenson For Federal Judgeship Senator Says Help Is On The Way For Overworked Federal District Court

WASHINGTON, D.C. - U.S. Senator Jon Kyl today commended the Senate for unanimously approving the nomination of Pima County Judge Cindy Jorgenson for a seat on the U.S. District

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Court for the District of Arizona.

"The good news for Arizona's overworked federal district court is that help is on the way," said Kyl today. "I am very pleased that the Senate has approved Judge Jorgenson's nomination to help ease the tremendous backlog of cases in Arizona, and look forward to filling the final vacancy on the court in the near future."

Judge Jorgenson is currently Presiding Judge for the family law bench at the Pima County Superior Court. Prior to her judgeship, she served as prosecutor in Tucson and became an Assistant United States Attorney in 1986. In 1995, Jorgenson received the Governor's Recognition Award for work on jury reform. She also was awarded the United States Department of Justice Special Achievement Award in 1987, 1989, 1991 and 1993. Judge Jorgenson is a graduate of the University of Arizona Law School.

Also today, the Senate Judiciary Committee held a hearing on Tucsonan David Bury to fill the remaining vacancy on the U.S. District Court. Mr. Bury is a founding partner and shareholder in the firm of Bury, Moeller, O'Meara & Gage P.C. of Tucson, Arizona. He has practiced as a trial lawyer for over 34 years.

Both Jorgenson and Bury were selected to fulfill vacancies that were deemed "judicial emergencies" by the administrative office of the courts.

FOX SPECIAL REPORT WITH BRIT HUME
February 26, 2002 Tuesday

EXCERPT
Brit Hume, James Rosen, Carl Cameron, Jim Angle, Bret Baier

HUME: The Justice Department issued a statement after the hearing expressing confidence in -- quote -- "the independence and absolute integrity of Deputy Attorney General Thompson" and said that ethics officials agreed that there is no basis to
remove him from the Enron investigation.

Another Bush judicial nominee has faced tough questions from Senate Democrats. Judge Brooks Smith is the currently the chief federal judge for western Pennsylvania. And the president has nominated him to the federal appellate bench in Philadelphia.

Opponents say Smith failed to recuse himself in a timely fashion in certain cases where he had a conflict of interest. But his supporters, including the American Bar Association, say he's served with integrity.

Chief political correspondent Carl Cameron has the story. All right, we have got a little audio problem there. But we'll try to get that package ready to go and come back to you after a break.

Still to come also, the Pentagon's propaganda effort ends before it ever got started. We'll explain that after a break.

(COMMERCIAL BREAK)

HUME: We're going to take another crack at showing you Carl Cameron's report on Federal Judge Brooks Smith, whose confirmation hearing was held today. He is under attack from the left. Here's that report, we hope with sound.

(BEGIN VIDEOTAPE)

CARL CAMERON, FOX NEWS CHIEF POLITICAL CORRESPONDENT (voice-over): U.S. District Judge D. Brooks Smith of Pennsylvania is the latest of President Bush's judicial nominees to face fierce opposition from liberal special interest groups. Legally, critics call him too conservative and pro-business. Democrat Joe Biden threaten to scuttle Smith's nomination to the Third Circuit Court of Appeals if he refused to answer any questions because he might someday have to rule on them.

SEN. JOSEPH BIDEN (D), DELAWARE: I will do everything in my power to defeat you, including moving to the Senate floor to take an action I've never taken in my life as a United States senator, a filibuster.

CAMERON: Biden's friction with Smith goes back to 1993 when Smith harshly criticized the senator's provision in the Violence Against Women Act that would have let the federal government decide which domestic violence laws states must enforce. Smith called it unconstitutional. And eventually, the Supreme Court agreed.

Biden said though that dispute is over, there are other concerns. Democrats cited a fraud case, involving the bank where Smith's wife was vice president and he had investments. He stepped aside when the conflict was discovered, but not soon enough for critics.

UNIDENTIFIED MALE: Would you like to explain why?

BROOKS SMITH, JUDICIAL NOMINEE: With the benefit of hindsight, I wish I had recused earlier. But I did recuse. And I did it because I knew it was the right thing to do.

CAMERON: Smith noted that parties to that case have never complained, only liberal outside groups opposed to his nomination. But Democrats zeroed in on the nominee's association with conservative outside groups and his acceptance of trips to their legal conferences. Smith called them educational seminars attended by most jurists and said they do not influence a judge's fairness.

SMITH: Federal judges are accustomed by training and by experience to hearing on a day-to-day basis different points of view. It's what we do. It's what we're about.

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CAMERON: Republican Orrin Hatch accused liberal special interest groups of election year partisanship and mocked their objections to Smith's attendance at conservative functions.

SEN. ORRIN HATCH (R), UTAH: It seems that the criticism is not so much that you've attended some seminars, at least the outside criticism, but rather that you attended the wrong seminars. It's a terrible thing to do that, I'm sure. Of course, I'm being sarcastic.

(END VIDEOTAPE)

CAMERON: It actually took a minute for some in the room to realize that Hatch was joking, perhaps an indication that that might be, in fact, what's going on. Republicans are confident that ultimately that they will be able to get Smith's nomination confirmed.

That is not the case, however, for District Judge Charles Pickering, who was supposed to face a vote in the Senate Judiciary Committee this Thursday. That's now been put off until next week. And Republicans are increasingly pessimistic about being able to get that through, Brit.

HUME: Carl, thanks very much.

Federal Document Clearing House Congressional Testimony
February 26, 2002, Tuesday

CAPITOL HILL HEARING TESTIMONY –Senator Patrick Leahy

Statement of Senator Patrick Leahy

Hearing on Judicial Nominations

February 26, 2002

I thank Senator Feingold for chairing this important hearing on judicial nominations.

The Judiciary Committee has continued to hold regular judicial nominations hearings throughout this session, as we have since the shift in majority last summer. We held the first January confirmation hearing in seven years on the second day of this session.

Today the Judiciary Committee holds its second February judicial confirmation hearing. In 1997, 1999 and 2001, the Republican majority held no confirmation hearings in either January or February. Today's hearing is the fourteenth hearing involving judicial nominations since the change in majority last summer. That is more hearings within the last seven months than the Republican majority ever held in any calendar year in which it was recently in the majority. Today's hearing follows the tradition of including a Court of Appeals nominee as well as a number of District Court nominees. Unfortunately, because the White House has been slow to send nominations to the many vacancies in the federal District Courts, the federal trial courts across the country, today's hearing includes a fewer number of District Court nominees than the

Committee was willing to consider. Indeed, the Committee is virtually out of District Court nominees to include at such confirmation hearings. After today, 35 of the 36 District Court nominees with ABA peer reviews will have participated in hearings. We are in the process of scheduling a hearing on the most controversial District Court nominee currently pending.

Of course more than two-thirds of the federal court vacancies continue to be on the District Courts and 35 are still without a nominee. The Administration has acted very slowly in making nominations to the vacancies on the federal trial courts. In the last
five months of last year, the Senate confirmed a higher percentage of the President's trial court nominees, 22 out of 36, than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President.

Last year the President did not make nominations to almost 80 percent of the trial court vacancies that existed at the beginning of this year. As we began this session, 55 out of 69 District Court vacancies were without a nominee. Finally, in late January the White House sent up names for some of those trial court vacancies. Unfortunately, none have completed the paperwork needed to be included in hearings and none has yet received an ABA peer review.

Because the White House last year unilaterally changed the practice of nine Republican and Democratic Presidents and will no longer allow the ABA to begin its peer reviews during the selection process, ABA peer reviews on these new nominations are not likely to become available for some time to come. In the interim, we have already reached the point where the lack of available nominations for District Courts vacancies is holding back the number of judicial nominees the Judiciary Committee and the Senate could be considering. We experienced the same problem when the majority shifted last summer and we did not have enough District Court nominations ready for hearings in July through September last year.

After the Committee receives the indication that a judicial nominee has the support of his or her home state Senators and after the Committee has received ABA peer reviews, the nomination will then be eligible to be considered for inclusion in Committee hearings. Because the White House shifted the time at which the ABA does its evaluation of nominees to the post-nomination period, this year's nominees are unlikely to have completed files ready for evaluation until after the Easter recess. Of course, even then, over two and one-half dozen of the current federal trial court vacancies, 35, may still be without nominees.

To make real progress will take the cooperation of the White House. That is what I have been urging since the shift in majority. That is what I, again, called for when I spoke to the Senate on January 25, 2001. That cooperation is still not forthcoming.

We will make the most progress, most quickly if the White House would begin working with home state Senators to identify fair- minded, nonideological, consensus nominees to fill these court vacancies. One of the reasons that the Committee was able to work as quickly as it did and Senate was able to confirm 39 judges, as it has in the last seven months, was because those nominations were strongly supported as consensus nominees by people from across the political and legal spectrums.

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I have heard of too many situations in too many states involving too many reasonable and moderate home state Senators in which the White House has demonstrated no willingness to work with home state Senators to fill judicial vacancies cooperatively. As we move forward, I have urged the White House to show greater inclusiveness and flexibility and to help make this a truly bipartisan enterprise. Logjams exist in a number of settings. To make real progress, repair the damage that has been done over previous years, and build bridges toward a more cooperative process, there is much that the White House could do to work more cooperatively with all home state Senators, including Democratic Senators.

In addition, as I have noted, the White House could help speed the Committee process if it would restore the ABA peer review participation to an earlier stage in the process. For more than 50 years the ABA was able to conduct its peer reviews simultaneously with the FBI background check procedures. This meant that when nominations were sent to the Senate, the FBI report and informal ABA peer review were completed and followed very quickly. Together with the endorsement of the nominee's home state Senators, the basic requirements of the nominations file were available to be reviewed by the Committee
much more quickly than they are now. This process allowed hearings to be scheduled soon after nominations were received in many instances. One of the consequences of the White House's unilateral decision last year to discontinue this longstanding bipartisan practice is that nominations are now not available to be considered or scheduled for hearings until many weeks have passed and these basic background materials can be assembled and submitted to the Committee. That is unfortunate and unnecessary.

There were occasions last year when we proceeded with hearings including fewer District Court nominees than I would have liked because recent nominees' files were not yet complete. I noted in my statement to begin this year that I feared that same circumstance being repeated this year. It already is. That is regrettable.

I have urged the White House to rethink its recent changes in traditional practices that were initially instituted by President Eisenhower and worked well for Presidents Kennedy, Johnson, Nixon, Ford, Carter, Reagan, (George Herbert Walker) Bush
and Clinton. I suggest that the White House reconsider the delays caused by the abandonment of the traditional practice and that this Administration consider returning to the tried and true practice of sharing information with the ABA earlier in the process so that it can begin and complete its peer reviews by the time the nomination is made to the Senate.

Just as no Senator is bound by the recommendations of the ABA, so, too, the White House can make clear that it is reinstituting the traditional practice not because it intends to be bound by the results of that peer review or even take it into account, but solely to remove an element of delay that its actions introduced into the confirmation process. The White House can expressly ask the ABA not even to send the results of its peer review to the Executive Office, but only transmit them to the Committee, if it chooses. Whether or not the White House considers the ABA peer reviews, they are considered by many
Senators. For example, a number of Republican Senators cited favorable peer reviews for

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judicial nominations as an indication that they merit the Senate's support. On the other hand, the fact that they are advisory and not binding on Senators is seen from the recent action confirming a nominee who received a "not qualified" rating from the ABA and the many nominees of this Administration who have been confirmed with mixed ratings.

As Chairman, I have sought to work with all Senators. In scheduling hearings for nominations, chairmen traditionally consider a number of factors, including the consensus of support for the nominee, the needs of the court to which the person is nominated, and the interests of the home state Senators. We have a number of nominees for whom individual Senators have expressed personal interest. I will continue to take that into account and seek to accommodate Senators in as orderly a process as possible.

Judicial nominations have never been scheduled for hearings based solely on the date of their nomination. Certainly there was no first-in-first-out rule during the six and one-half years that preceded my chairmanship, when it could take years to get a hearing and more than 50 judicial nominees never received a nominations hearing at all.

I hope to integrate a number of nominations received before I became Chairman into hearings throughout this session. I anticipate that not all those nominations will be regarded as consensus candidates. We can anticipate that the more controversial nominations will occasion more review and more Senators raising questions that concern them during the course of our hearings.

In our first full week in session we proceeded with a hearing on the nomination of Judge Charles Pickering to the 5th Circuit. Senator Lott is very supportive of this nomination and even though his was not among the first sent to the Senate by President Bush last spring, we have tried to move forward to consideration of the nomination in recognition of the strong interest of the Republican leader.

Similarly, I knew of Senator Specter's strong interest in the Committee scheduling a hearing as soon as possible on the nomination of Judge D. Brooks Smith to a vacancy on the 3rd Circuit. Judge Smith was not nominated until September 10 and the Committee did not receive his peer review from the ABA until October 31, 2001. Although there were 44 judicial nominees nominated before Judge Smith, of which several remain pending, I have sought to accommodate Senator Specter by including Judge Smith in our hearing today. Of course, the previous nominee for this vacancy was Judge Robert Cindrich, also a District Judge in the Western District of Pennsylvania. Although he was nominated in February 2000, received a well qualified peer review rating by the ABA and was pending for more than 10 months, he was never included in a confirmation hearing. His nomination was returned to the President without any action having been taken by the Senate.

Likewise, other Senators, Republicans and Democrats, have asked me to give priority to various nominees. Senator Enzi requested attention to the nomination of Terrence O'Brien to the 10th Circuit, for example, and I will be trying to accommodate him, as well. I tried to take those requests into account in the last seven months and expect to continue to do so. Such interest was a factor in the scheduling of hearings for Judge Prost to the Federal Circuit, Judge Gregory to the

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4th Circuit, Judge Clement to the 5th Circuit, Judge Riley to the 8th Circuit, Judge Harris to the 10th Circuit and Judge Melloy to the 8th Circuit.
It was considered in the cases of Judge Mills in Mississippi, Judge Wooten in South Carolina, Judge Robinson in Kansas, the four judges the Senate confirmed last year for Oklahoma, the three judges the Senate confirmed for Kentucky, the two judges the Senate confirmed for Montana, the two judges the Committee confirmed for Alabama, and in connection with many of the 44 judicial nominees on whom the Committee has been holding hearings in the last seven months.

I expect to continue to try to accommodate Senators from both sides of the aisle in this regard. In so doing, I have tried to be forthright with Senators if a nominee has generated concerns. Not all of the judicial nominations scheduled for hearings have been without detractors, many are proving to be controversial.

A general impression, heightened by the White House's refusal to work cooperatively with some home state Democratic Senators in spite of precedent in that regard and its disdain for suggestions to proceed to assemble recommendations through bipartisan commissions as has been the tradition is many States, such as mine, is that the White House and some in the Senate are intent on an ideological takeover of the courts. With the Circuits so evenly split in so many places, nominees to the Courts of Appeals may have a significant impact on the development of the law for decades to come. Some of us are concerned that the Administration not orchestrate a roll back in the protections of individual rights, civil rights, consumer rights and privacy rights through its judicial nominations.

In addition to Judge Smith of Pennsylvania, this hearing includes another nominee to a District Court vacancy in Arizona, the third included in a hearing since the shift in majority last summer, another nominee for a District Court vacancy in Texas after the confirmation of Judge Martinez earlier this year, and a nominee for a vacancy in Alaska whose file was not completed until this year. I give my thanks to all Senators who have worked with the Committee to schedule this confirmation hearing and especially to Senator Feingold for chairing today.

Interest Groups/Press Releases

Alliance For Justice Raises Serious Concerns About Judge D. Brooks Smith, His Nomination To U.S. Court Of Appeals For 3rd Circuit

Nan Aron
U.S. Newswire
February 26, 2002 Tuesday

Following is a statement by Nan Aron, president, Alliance for Justice:

Like many of President Bush's nominees to the federal judiciary, Pennsylvania district court

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Judge D. Brooks Smith's record raises troubling concerns across a wide spectrum of legal issues including those affecting workers, the disabled, and the environment. He is emblematic of President Bush's nominees who will turn back the clock on progress Americans cherish.

In order for the Senate to make a judgment on any federal judge, that nominee's record must be thoroughly reviewed. Judge Smith appears to have a large body of unpublished opinions. In his over 13 years on the bench, Judge Smith has been reversed 52 times, with published opinions in only six of those cases. This suggests strongly that he has issued a large number of unpublished opinions overall, the vast majority of which have been unavailable for review. And the rulings that are available for review show a disturbing pattern of bias in favor of powerful interests and disregard for the rights and protections of ordinary Americans.

Judge Smith also spoke out against the Violence Against Women Act (VAWA) in a speech to the Federalist Society in 1994. His views on the division of power between states and the federal government are antithetical to many of our country's civil rights and environmental protections and if he were to issue decisions as an appellate judge that reflected those views, the effect could be a further dismantling of critical laws passed by Congress to ensure these protections.

The U.S. Senate must insist on its constitutional, co-equal role and work to maintain a fair and independent judiciary. No nominee is presumptively entitled to a lifetime seat on the federal judiciary. It is the nominee's duty and obligation to prove that he or she is fit to serve this esteemed, lifetime judgeship. Their record must be an open-book so the Committee has the tools necessary to decide whether or not to confirm.

We need fair judges. We need compassionate judges. We need judges not afraid to publish an opinion because they know their reasons will stand up to scrutiny.

Alliance for Justice urges the Senate Judiciary Committee to undertake a thorough review of Judge Smith's record before voting on whether to confirm.

REV_00141160

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Sent: 2/28/2002 12:47:45 PM
Subject: : LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
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LRM ID: PTM85
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 28, 2002

LEGISLATIVE REFERRAL MEMORANDUM

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Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires
Database

DEADLINE: 5:00 p.m. Friday, March 8, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your comment, please find copies of a HUD draft bill text and sectional analysis regarding a New Hires Database.

Please provide your comments by 5:00 p.m., Friday 8 March 2002. If we do not receive your comments by that date, we will assume you have no objection to the bill as drafted.

If you experience difficulty with this LRM or its attachment, please contact us immediately. To ensure receipt by Agency addressees, the electronic version of the LRM will be followed by a duplicate copy via

facsimile.

Thank you.

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LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LS1R5003_WHO.TXT_2>

SEC. ___. HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES.

Section 453(j) of the Social Security Act is amended by adding the following new paragraph at the end:

"(7) INFORMATION COMPARISONS AND DISCLOSURE FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.--

"(A) FURNISHING OF INFORMATION BY HUD.--The Secretary of Housing and Urban Development shall furnish to the Secretary, on a daily basis or at less or more frequent intervals as may be determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain the information in such Directory with respect to individuals who are applying for or participating in any program under the United States Housing Act of 1937, section 202 of the Housing Act of 1959, sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, section 811 of the Cranston-Gonzalez National Affordable Housing Act, and section 101 of Housing and Urban Development Act of 1965.

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.--The

Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the income of individuals described in subparagraph (A).

"**(C) DUTIES OF THE SECRETARY.**--

"**(i) INFORMATION DISCLOSURE.**--The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Housing and Urban Development, and disclose information in that Directory to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

"**(ii) CONDITION ON DISCLOSURE.**--The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"**(D) USE OF INFORMATION BY HUD.**--The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only--

"(i) for the purpose of verifying the income of individuals described in subparagraph (A); and

"(ii) after removal of personal identifiers, to conduct analyses of the income reporting of individuals described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY HUD.--

"(i) DISCLOSURES PERMITTED.--The Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, a private owner, a management agent, a contract administrator, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A) and in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph may not be made available by the Secretary of Housing and Urban Development to any person under section 552 of title 5, United States Code.

"**(ii) PURPOSE OF DISCLOSURE.**--The Secretary of Housing and Urban Development may make a disclosure under clause (i) only for the purpose of verifying the income of individuals described in subparagraph (A).

"**(iii) RESTRICTION ON REDISCLOSURE.**--A person or entity to which information is disclosed under clause (i) may use or disclose such information only as needed for verifying the income of individuals described in subparagraph (A) and only in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m).

"**(F) REIMBURSEMENT OF HHS COSTS.**--The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the additional costs incurred by the Secretary in furnishing the information requested under this paragraph.

"**(G) CONSENT FORM.**--As a condition of applying for or participating in any program described in subparagraph (A), the Secretary of Housing and Urban Development may require an individual to sign a consent

form that authorizes all the information sharing on such individual that is provided for under this paragraph.".

2/26/02 {PRIVATE }

HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES

Summary

Section ___ would make an amendment to section 453(j) of the Social Security Act (42 U. S. C. 653(j)) to authorize HUD and its intermediaries (public housing agencies, owners, management agents, and contract administrators) to have controlled access to the information in the National Directory of New Hires (NDNH) database that is maintained by the Department of Health and Human Services (HHS) to facilitate accurate verification of the income of the applicants to and tenants in HUD's public and assisted housing programs.

HUD proposes to expand the information that is currently available to HUD and its intermediaries by comparing data provided by the intermediaries to data in the NDNH database, and then providing the results to HUD's intermediaries through HUD's secure information systems. HUD also proposes to use the data from the NDNH database to perform verification of incomes that were reported in the Tenant Rental Assistance Certification System (TRACS) and the Multifamily Tenant Characteristics System (MTCS) as an integral part of its ongoing quality control and monitoring programs. All access to the information in the NDNH database will adhere to strict confidentiality and security policies.

The proposal would also permit HUD to expand existing information consent form requirements for individuals applying for or participating in HUD's public and assisted housing programs by requiring such individuals to sign a consent form that would authorize the sharing of the individuals' income information from the NDNH.

Justification

Section ___ would address a top priority for the Department, which is the reduction of errors and overpayment of subsidy caused by incorrect income determination and rent calculation in public and assisted housing programs. A HUD study ("Quality Control for Rental Assistance Subsidies Determinations" issued by HUD's Office of Policy Development and Research in June 2001) found substantial errors and improper payments in HUD's housing assistance programs caused by improper income and rent determinations. These errors are the basis for multiple material weakness findings in HUD's financial statement audit ("U.S. Department of Housing and Urban Development, Audit of Fiscal Year 2000 Financial Statements" (2001-FO-0003) issued by the HUD IG on

March 1, 2000) and is a matter of further serious concern to the Congress and OMB as this is one of only 22 "high risk" areas designated by the General Accounting Office (GAO) ("High-Risk Series - An Update (GAO-01-263) Issued by GAO in January 2001). Both the GAO and HUD's Inspector General have recommended that Congress consider giving HUD access to the information in NDNH database as an important way of resolving these problems in HUD's rental assistance programs (GAO Report issued in September 2000: GAO/HEHS-00-119, "Benefit and Loan Programs, Improved Data Sharing Could Enhance Program Integrity".). The use of the NDNH database can have a substantial impact on reducing errors in tenants' incomes used to calculate rents and determine subsidy payments by facilitating the timely verification of the income of applicants to and tenants in HUD's public and assisted housing programs.

Currently, HUD verifies earned and unearned income data by matching against wage data from the Internal Revenue Service (IRS) in back-end verification. Federal tax information data provided by the IRS is much older than data in the NDNH database and thus less useful for determining tenant's current incomes. Access to information in the NDNH database will allow HUD and its intermediaries to correctly determine income and rents at the time of certification or recertification, rather than a year or two later through the IRS data.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: P. Thaddeus Messenger/OMB/EOP@EOP [OMB] <P. Thaddeus Messenger>
Sent: 2/28/2002 12:56:00 PM
Subject: : LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
Attachments: P_J62R5003_WHO.TXT_1.doc; P_J62R5003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-FEB-2002 17:56:00.00
SUBJECT:: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
TO:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
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White House Counsel has no objection.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 02/28/2002 05:55 PM ----------

Patrick J. Bumatay
02/28/2002 05:47:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 02/28/2002 05:47 PM ----------

From: P. Thaddeus Messenger on 02/28/2002 04:25:42 PM
Record Type: Record

To: lrm@hhs.gov , dol-sol-leg@dol.gov , justice.lrm@usdoj.gov , llr@do.treas.gov
cc: See the distribution list at the bottom of this message
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database

LRM ID: PTM85
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 28, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database

DEADLINE: 5:00 p.m. Friday, March 8, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your comment, please find copies of a HUD draft bill text and sectional analysis regarding a New Hires Database.

Please provide your comments by 5:00 p.m., Friday 8 March 2002. If we do not receive your comments by that date, we will assume you have no objection to the bill as drafted.

If you experience difficulty with this LRM or its attachment, please contact us immediately. To ensure receipt by Agency addressees, the electronic version of the LRM will be followed by a duplicate copy via facsimile.

Thank you.

DISTRIBUTION LIST

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061-JUSTICE - Daniel Bryant - (202) 514-2141
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James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger

LRM ID: PTM85 SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
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James F. Jordan/OMB/EOP@EOP
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Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_J62R5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_J62R5003_WHO.TXT_2>

SEC. ___. HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES.

Section 453(j) of the Social Security Act is amended by adding the following new paragraph at the end:

"(7) INFORMATION COMPARISONS AND DISCLOSURE FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.--

"(A) FURNISHING OF INFORMATION BY HUD.--The Secretary of Housing and Urban Development shall furnish to the Secretary, on a daily basis or at less or more frequent intervals as may be determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain the information in such Directory with respect to individuals who are applying for or participating in any program under the United States Housing Act of 1937, section 202 of the Housing Act of 1959, sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, section 811 of the Cranston-Gonzalez National Affordable Housing Act, and section 101 of Housing and Urban Development Act of 1965.

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.--The

Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the income of individuals described in subparagraph (A).

"**(C) DUTIES OF THE SECRETARY.**--

"**(i) INFORMATION DISCLOSURE.**--The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Housing and Urban Development, and disclose information in that Directory to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

"**(ii) CONDITION ON DISCLOSURE.**--The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"**(D) USE OF INFORMATION BY HUD.**--The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only--

"(i) for the purpose of verifying the income of individuals described in subparagraph (A); and

"(ii) after removal of personal identifiers, to conduct analyses of the income reporting of individuals described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY HUD.--

"(i) DISCLOSURES PERMITTED.--The Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, a private owner, a management agent, a contract administrator, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A) and in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph may not be made available by the Secretary of Housing and Urban Development to any person under section 552 of title 5, United States Code.

"**(ii) PURPOSE OF DISCLOSURE.**--The Secretary of Housing and Urban Development may make a disclosure under clause (i) only for the purpose of verifying the income of individuals described in subparagraph (A).

"**(iii) RESTRICTION ON REDISCLOSURE.**--A person or entity to which information is disclosed under clause (i) may use or disclose such information only as needed for verifying the income of individuals described in subparagraph (A) and only in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m).

"**(F) REIMBURSEMENT OF HHS COSTS.**--The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the additional costs incurred by the Secretary in furnishing the information requested under this paragraph.

"**(G) CONSENT FORM.**--As a condition of applying for or participating in any program described in subparagraph (A), the Secretary of Housing and Urban Development may require an individual to sign a consent

form that authorizes all the information sharing on such individual that is provided for under this paragraph.".

2/26/02 {PRIVATE }

HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES

Summary

Section ___ would make an amendment to section 453(j) of the Social Security Act (42 U. S. C. 653(j)) to authorize HUD and its intermediaries (public housing agencies, owners, management agents, and contract administrators) to have controlled access to the information in the National Directory of New Hires (NDNH) database that is maintained by the Department of Health and Human Services (HHS) to facilitate accurate verification of the income of the applicants to and tenants in HUD's public and assisted housing programs.

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The proposal would also permit HUD to expand existing information consent form requirements for individuals applying for or participating in HUD's public and assisted housing programs by requiring such individuals to sign a consent form that would authorize the sharing of the individuals' income information from the NDNH.

Justification

Section ___ would address a top priority for the Department, which is the reduction of errors and overpayment of subsidy caused by incorrect income determination and rent calculation in public and assisted housing programs. A HUD study ("Quality Control for Rental Assistance Subsidies Determinations" issued by HUD's Office of Policy Development and Research in June 2001) found substantial errors and improper payments in HUD's housing assistance programs caused by improper income and rent determinations. These errors are the basis for multiple material weakness findings in HUD's financial statement audit ("U.S. Department of Housing and Urban Development, Audit of Fiscal Year 2000 Financial Statements" (2001-FO-0003) issued by the HUD IG on

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Currently, HUD verifies earned and unearned income data by matching against wage data from the Internal Revenue Service (IRS) in back-end verification. Federal tax information data provided by the IRS is much older than data in the NDNH database and thus less useful for determining tenant's current incomes. Access to information in the NDNH database will allow HUD and its intermediaries to correctly determine income and rents at the time of certification or recertification, rather than a year or two later through the IRS data.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 2/28/2002 12:56:38 PM
Subject: : LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
Attachments: P_R72R5003_WHO.TXT_1.doc; P_R72R5003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-FEB-2002 17:56:38.00
SUBJECT:: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
02/28/2002 05:56 PM ----------

Brett M. Kavanaugh
02/28/2002 05:55:49 PM
Record Type: Record

To: P. Thaddeus Messenger/OMB/EOP@EOP
cc:
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on
New Hires Database

White House Counsel has no objection.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
02/28/2002 05:55 PM ----------

Patrick J. Bumatay
02/28/2002 05:47:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on
New Hires Database

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
02/28/2002 05:47 PM ----------

From: P. Thaddeus Messenger on 02/28/2002 04:25:42 PM
Record Type: Record

To: lrm@hhs.gov , dol-sol-leg@dol.gov , justice.lrm@usdoj.gov ,
llr@do.treas.gov
cc: See the distribution list at the bottom of this message
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on
New Hires Database

LRM ID: PTM85
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 28, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database

DEADLINE: 5:00 p.m. Friday, March 8, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your comment, please find copies of a HUD draft bill text and sectional analysis regarding a New Hires Database.

Please provide your comments by 5:00 p.m., Friday 8 March 2002. If we do not receive your comments by that date, we will assume you have no objection to the bill as drafted.

If you experience difficulty with this LRM or its attachment, please contact us immediately. To ensure receipt by Agency addressees, the electronic version of the LRM will be followed by a duplicate copy via facsimile.

Thank you.

DISTRIBUTION LIST

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LRM ID: PTM85 SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
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MEMORANDUM

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Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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File attachment <P_R72R5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_R72R5003_WHO.TXT_2>

SEC. ___. HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES.

Section 453(j) of the Social Security Act is amended by adding the following new paragraph at the end:

"(7) INFORMATION COMPARISONS AND DISCLOSURE FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.--

"(A) FURNISHING OF INFORMATION BY HUD.--The Secretary of Housing and Urban Development shall furnish to the Secretary, on a daily basis or at less or more frequent intervals as may be determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain the information in such Directory with respect to individuals who are applying for or participating in any program under the United States Housing Act of 1937, section 202 of the Housing Act of 1959, sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, section 811 of the Cranston-Gonzalez National Affordable Housing Act, and section 101 of Housing and Urban Development Act of 1965.

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.--The

Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the income of individuals described in subparagraph (A).

"**(C) DUTIES OF THE SECRETARY.**--

"**(i) INFORMATION DISCLOSURE.**--The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Housing and Urban Development, and disclose information in that Directory to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

"**(ii) CONDITION ON DISCLOSURE.**--The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"**(D) USE OF INFORMATION BY HUD.**--The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only--

"(i) for the purpose of verifying the income of individuals described in subparagraph (A); and

"(ii) after removal of personal identifiers, to conduct analyses of the income reporting of individuals described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY HUD.--

"(i) DISCLOSURES PERMITTED.--The Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, a private owner, a management agent, a contract administrator, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A) and in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph may not be made available by the Secretary of Housing and Urban Development to any person under section 552 of title 5, United States Code.

"**(ii) PURPOSE OF DISCLOSURE.**--The Secretary of Housing and Urban Development may make a disclosure under clause (i) only for the purpose of verifying the income of individuals described in subparagraph (A).

"**(iii) RESTRICTION ON REDISCLOSURE.**--A person or entity to which information is disclosed under clause (i) may use or disclose such information only as needed for verifying the income of individuals described in subparagraph (A) and only in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m).

"**(F) REIMBURSEMENT OF HHS COSTS.**--The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the additional costs incurred by the Secretary in furnishing the information requested under this paragraph.

"**(G) CONSENT FORM.**--As a condition of applying for or participating in any program described in subparagraph (A), the Secretary of Housing and Urban Development may require an individual to sign a consent

form that authorizes all the information sharing on such individual that is provided for under this paragraph.".

2/26/02 {PRIVATE }

HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES

Summary

Section ___ would make an amendment to section 453(j) of the Social Security Act (42 U. S. C. 653(j)) to authorize HUD and its intermediaries (public housing agencies, owners, management agents, and contract administrators) to have controlled access to the information in the National Directory of New Hires (NDNH) database that is maintained by the Department of Health and Human Services (HHS) to facilitate accurate verification of the income of the applicants to and tenants in HUD's public and assisted housing programs.

HUD proposes to expand the information that is currently available to HUD and its intermediaries by comparing data provided by the intermediaries to data in the NDNH database, and then providing the results to HUD's intermediaries through HUD's secure information systems. HUD also proposes to use the data from the NDNH database to perform verification of incomes that were reported in the Tenant Rental Assistance Certification System (TRACS) and the Multifamily Tenant Characteristics System (MTCS) as an integral part of its ongoing quality control and monitoring programs. All access to the information in the NDNH database will adhere to strict confidentiality and security policies.

The proposal would also permit HUD to expand existing information consent form requirements for individuals applying for or participating in HUD's public and assisted housing programs by requiring such individuals to sign a consent form that would authorize the sharing of the individuals' income information from the NDNH.

Justification

Section ___ would address a top priority for the Department, which is the reduction of errors and overpayment of subsidy caused by incorrect income determination and rent calculation in public and assisted housing programs. A HUD study ("Quality Control for Rental Assistance Subsidies Determinations" issued by HUD's Office of Policy Development and Research in June 2001) found substantial errors and improper payments in HUD's housing assistance programs caused by improper income and rent determinations. These errors are the basis for multiple material weakness findings in HUD's financial statement audit ("U.S. Department of Housing and Urban Development, Audit of Fiscal Year 2000 Financial Statements" (2001-FO-0003) issued by the HUD IG on

March 1, 2000) and is a matter of further serious concern to the Congress and OMB as this is one of only 22 "high risk" areas designated by the General Accounting Office (GAO) ("High-Risk Series - An Update (GAO-01-263) Issued by GAO in January 2001). Both the GAO and HUD's Inspector General have recommended that Congress consider giving HUD access to the information in NDNH database as an important way of resolving these problems in HUD's rental assistance programs (GAO Report issued in September 2000: GAO/HEHS-00-119, "Benefit and Loan Programs, Improved Data Sharing Could Enhance Program Integrity".). The use of the NDNH database can have a substantial impact on reducing errors in tenants' incomes used to calculate rents and determine subsidy payments by facilitating the timely verification of the income of applicants to and tenants in HUD's public and assisted housing programs.

Currently, HUD verifies earned and unearned income data by matching against wage data from the Internal Revenue Service (IRS) in back-end verification. Federal tax information data provided by the IRS is much older than data in the NDNH database and thus less useful for determining tenant's current incomes. Access to information in the NDNH database will allow HUD and its intermediaries to correctly determine income and rents at the time of certification or recertification, rather than a year or two later through the IRS data.

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Subject: : FW: Morgan Stanley analysis
Attachments: P_403R5003_WHO.TXT_1.pdf

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CREATOR:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:28-FEB-2002 18:15:50.00
SUBJECT:: FW: Morgan Stanley analysis
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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Thought this was pretty good, in case you haven't seen.

Marc, I think we need to have another call on this. I'd like to bring everyone up to date on our conversations with Schumer's office.

Also, what would the group think about my setting up a meeting with Bob Hunter of CFA to talk with him and try to share perspectives? His skepticism on this issue is hurting us with some of the key players on the Dem side. I think it would be helpful to have White House representation at
such a meeting.

Let me know.

Sheila

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Equity Research
North America

Industry

Financial Institutions

Alice Schroeder
Henry H. McVey
Gregory J. Whyte
Matthew Ostrower
Vinay Saqi
Robert Stevenson
Chris Winans

Industry Overview

February 27, 2002

Assessing Terror and Related Legislative Risks

- **Earnings and valuation risks are real**
  We assess potential impact on real estate, banking, brokerage and nonlife insurance sectors of another 9/11-size attack and the government response.
- **Current valuations don't seem to reflect attack risk**
  In all these sectors, we think current valuations do not reflect impact of another attack without a terrorism bill in place.
- **Insurance stocks most vulnerable to attacks with no bill**
  Insurers, lacking data, may be allowing exposures to expand with insufficient safeguards; reinsurers are managing exposures better.
- **REITs are caught in the middle**
  Lenders and insurers can impose higher rates, and REITs and landlords can pass along only some of the increased costs.
- **Capital markets-focused firms seem least exposed**
  Fallout on borrowers could ripple through mortgage-backed market; however, investment banks could come up with innovative products as alternatives.

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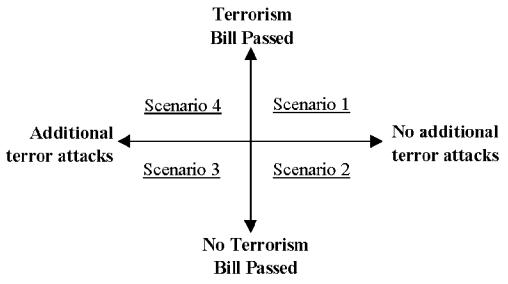
Assessing Terror and Related Legislative Risks

Summary
September 11 changed the world's perception of risk. Insurers and reinsurers were the first to react, moving to exclude losses from future terrorist attacks in policy language. Congress immediately began work on a bill to provide the coverage but failed to pass legislation before year-end. The issue is back before Congress but passage of a bill is uncertain. Whether another terrorist attack occurs with or without a bill in place has significant implications for the banking, brokerage, asset management, real estate and insurance industries' earnings and valuations.

Morgan Stanley's analysts who cover these sectors have produced this report to weigh the likely impact on these sectors of a federal terrorism insurance bill passing or not, depending on whether another World Trade Center-size attack occurs in the US. (For discussion purposes, we are ignoring the worst-case scenario of a major nuclear, chemical or bio-terrorism attack because of the enormous, unpredictable consequences on the economy and society. Only the government can address this risk, in our view.) We assume that if a bill were to pass, it would resemble some compromise between the current House bill and last year's failed Senate version (under which the federal government would pay as much as $90 billion of terror attack losses over a three-year period, with insurers paying the first $10 billion of losses). Our aim is to identify the degree to which stocks are discounting in terrorism and the winners and losers under the four possible scenarios (Exhibit 1):

Exhibit 1
The Terrorism Matrix



Source: Morgan Stanley Research

We are currently in Scenario 2. No bill has passed (and the likelihood of one passing this year remains uncertain without action from the Senate). No follow-up massive attack has occurred although some seem to have been averted (and investors — and even some businesses — seem to be assuming that none will occur any time soon). The government has indicated that terrorism remains a very real risk, and our aim is to provide investors with a framework for thinking about the implications of the four possible scenarios, without necessarily assigning probabilities to whether a bill will pass or another massive attack occurs.

The 9/11 event by itself showed that the terrorists are much more coordinated, capable and determined than was generally thought prior to the event. Since then, the government's stepped-up efforts to gather intelligence has turned up new evidence that the terrorists are determined to plan and execute additional attacks. Preventive efforts also have been ramped up and appear to have thwarted some attacks. The risk of terrorism should be reduced over time; however, in a recent speech, former CIA Director Robert Gates indicated it would be at least 5-10 years before the level of terrorism risk is economically insurable. Accordingly, we believe the message in all this new information is that the risk of massive losses from terrorism in the near future needs to be weighed in terms of its impact on property owners, lenders, insurers and their investors.

Investment conclusion. Our overall conclusion is that the stocks currently reflect the assumption that no terrorism insurance bill will pass, and no WTC-size loss will be repeated any time soon. Weighing the business and stock valuation impact of political behavior and terrorist attacks is tricky for the same reason we believe terrorism losses are uninsurable. It is practically impossible to assign a probability of recurrence to an unprecedented event of the magnitude of the September 11 attacks. One thing we now believe, however, is that such a massive attack *is* possible. In all our scenario analysis, we think a negative scenario — another attack occurring today without a terrorism bill in place — is the one investors need to think about most, because this is the one scenario we think is currently least priced into the market. Under this scenario, we believe:

- The property/casualty insurance companies (the first derivative in the financial sector chain of events) and their stocks would suffer the greatest blow, offset by further acceleration in insurance rate increases. We

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believe the primary insurers would likely take a significantly bigger hit than reinsurers, with the insurance brokers, as non-risk-bearing intermediaries, possibly gaining. Government intervention financially, however, would probably be swift and might reverse the valuation dynamics. The question is whether the government would restore capital as well as pay claims. We also do not think capital would rush into the industry as quickly as it did after 9/11, because the level of risk would be perceived as greater. The financial impact of a second event could be more severe than the impact of the WTC event for some companies, assuming a comparable amount of losses despite post-9/11 efforts to reduce exposures, because of the already weakened financial condition of certain insurer balance sheets.

- Real estate investment trusts (REITs), in addition to incurring the actual loss of property, could be hit by both lower liquidity and lower real estate values as well as by higher borrowing costs, higher security costs and higher insurance costs and reduced insurance availability for properties that most closely fit the profile of the terrorists' targets. Developers might find asset-backed financing harder to complete and be forced to move toward corporate debt issuance, which can be costlier.
- Lower down on the impact scale would be credit-sensitive financials, depending on whether another wave of attacks would negatively affect interest rates. We think interest rates could be vulnerable in the aftermath of another attack without a terrorism bill in place, depending on the size of the losses and the method the government would use to fund those losses under financial-crisis conditions. Offsetting this impact would be how the event could lead to stricter credit standards, higher loan interest rates and an acceleration of efforts to improve loan portfolios in terms of credit quality. Individual financial institutions that have excess concentrations in affected properties would suffer losses.
- Capital markets financials could be hurt by the impact on the collateralized mortgage backed securities market as well as any post-attack weakness in the equity markets akin to what happened after 9/11. At the same time, another attack might create the opportunity to generate innovative property financing alternatives created by the impacts on the real estate market and interest rates.

Exhibit 2

Escalating Terrorism

Date	Event	Fatalities
1985	Air India explosion	325
1987	Korean Airlines sabotage	115
1988	Pan Am Flight 103	270
1989	UTA flight crash	171
1993	Beirut truck bombing	241
1993	Bombay car bombing	300
1994	Algerian Eiffel Tower plot*	-
1995	Oklahoma City bombing	168
		1,590

** Plot to use hijacked aircraft as a weapon and massacre civilians was foiled*
Source: "How Did This Happen? Terrorism and the New War" Gregg Easterbrook; edited by James F. Hoge Jr. and Gideon Rose

Who holds the risk? Our view is that the bulk of the financial risk in a terrorist attack resides with those who finance and own commercial real estate, the companies that occupy the space, and those who insure real estate and the businesses and lives of the people who occupy those spaces. This would include central business district real estate, regional shopping malls, and large hotels. This does not mean, however, that the risk is non-existent for suburban offices, small hotels and shopping centers — only that the risk may be lower in those locations.

We are aware, for example, that insurers are not excluding terrorism coverage on properties and businesses that do not seem like obvious terrorist targets — a motel on a sparsely populated highway. On the other hand, we think it is a mistake to assume that only major cities like New York and trophy real estate like the World Trade Center constitute the *only* potential targets. As a recent Swiss Re report pointed out, a terrorist destroyed a major federal office building in Oklahoma City — not an especially high-profile property in a medium-sized city.

Exhibit 3 gives an indication of how much value is tied up in US commercial property and how much property-related financing was outstanding at year-end 2000. This represents the total value at risk — to varying but essentially unknowable degrees — in a terrorist attack. This does not cover residential real estate, but once again, that does not mean we think residences are immune to terrorist actions. For example, terrorists are known to have worked on launching attacks involving nuclear, biological and chemical weapons. Many insurers and reinsurers are specifically excluding losses from these types of attacks, but

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fire losses following a nuclear attack are not excluded, and fire following any act of terrorism is not excludable in 29 states, including the major industrial states such as California and New York. Nor can workers' compensation losses or group life be excluded. Nuclear, chemical, and biological terrorism may not be excluded from personal insurance. Life and disability covers all risks.

Exhibit 3

Commercial Real Estate Landscape of Risk *($, Billions)*

US office space under construction[1]	44.0
US office space[1]	573.8
Structure Replacement Costs	$5,532.9
Inventory	$1,403.9
Equipment & Software	$3,698.7
Real Estate	$7,091.5
Real Estate, Inventory and Equipment	$12,194.1
Leases Receivable	$170.9
Real Estate/Mortgage Loans[2]	$6,937.4
Industrial Loans	$1,082.7
Total assets	$12,194
Total debt[3]	$8,191

[1] *Square feet in millions (source: Cushman & Wakefield).*
[2] *Includes commercial and residential loans.*
[3] *Excludes commercial/industrial loans that may be secured by inventory and equipment*
Source: FDIC, Federal Reserve, Morgan Stanley research estimates

Exhibit 4 shows the extent to which some of the sectors referred to in this report are exposed to commercial real estate in terms of equity and debt ownership. Not surprisingly, the commercial banking sector has the largest exposure to commercial real estate loans, while corporations have the largest exposure to real estate owned.

Insurance covers only a fraction of value. Perhaps the most striking reality is the relatively small amount of net premiums US property/casualty insurers collect — $19.8 billion in 2000 — for commercial multiperil coverage, which includes insuring the $5.5 trillion replacement value of all US commercial structures plus another $5.1 trillion in inventory, equipment and software. This also compares to total property/casualty industry capital ("surplus") of about $282 billion at year-end 2001, which is the entire US property/casualty industry's capacity to pay claims of all types (including personal coverages). We estimate the capital of the commercial lines industry, for all types of coverages including casualty, is about $125 billion. The premiums collected for commercial multiperil are 13.4% of all commercial lines premiums. To put these numbers in context, for covering every dollar of commercial-structure replacement value and contents, property insurers collect about two tenths of a penny of premium and maintain surplus of approximately the same amount.

Exhibit 4

Commercial Real Estate Assets by Sector ($, Billions)

	Asset
Commercial Banks	
Financed lease receivables	$166.7
Non-farm real estate loans	$465.5
Industrial loans	$1,048.2
Subtotal	**$1.680.4**
Savings Institutions	
Financed lease receivables	$4.3
Industrial Loans	$34.4
Real estate loans	$59.7
Subtotal	**$98.4**
REITS	
Enterprise value for equity REITs	$260.0
Enterprise value for mortgage REITS	$17.0
Subtotal	**$277.0**
Brokers	
Collateralized mortgage backed securities	$63.0
Subtotal	**$63.0**
Non-Farm Corporations	
Inventory owned	$1.333.7
Equipment & software owned	$3.170.6
Real estate owned	$4.796.2
Subtotal	**$9.300.5**
Non-Corporations	
Inventory owned	$70.2
Equipment & software owned	$412.0
Real estate owned	$1.070.2
Subtotal	**$1.552.4**
Non-Profits	
Equipment & software owned	$116.1
Real estate owned	$1.225.1
Subtotal	**$1.341.2**
Commercial P-C Insurers	
Mortgage loans	$0.8
Real estate investments	$1.1
Real estate owned and occupied	$2.4
Subtotal	**$4.3**
Life Insurers	
Real estate owned for debt satisfaction	$1.6
Real estate owned and occupied	$6.2
Real estate investments	$15.8
Mortgage loans (includes residential)	$229.8
Subtotal	**$253.4**
Total	**$14.570.6**

Source: FDIC, Federal Reserve statutory data, Morgan Stanley research estimates

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While insurance performs an extremely important economic function, by design it covers a finite amount of risk that is, in the aggregate, somewhat predictable over time. Events that fall outside this definition of insurability due to their potential size and lack of predictability are not insurable because the economic cost to set aside capital to cover such a risk is too high for the economy to bear. This is the point at which the government steps in, and this is what the debate over terrorism is all about.

Terror bill background. The September 11 terrorist attacks brought to light a new level of risk that clearly had not been previously contemplated. Nearly every kind of insurance coverage was triggered — including personal and commercial property (with business interruption), aviation liability, workers' compensation, personal and commercial auto, commercial property, liability and others, along with life insurance and accident & health. It involved an unprecedented concentration of property loss, economic losses and loss of life — more than 3,000 lives, four commercial airliners, hundreds of companies and thousands of their employees who survived but were affected in various ways.

Reinsurers immediately began to notify clients they would renew expiring contracts with exclusions for claims from future similar terrorist attack losses. At the same time, however, reinsurers as well as insurers quietly started looking for ways to write the coverage in limited ways and away from locations they deemed to be obvious terrorist targets — high-profile urban trophy properties, power plants, airports, and major events. Publicity focused on the immediate threat of property owners and developers and commercial enterprises facing potential default notices from lenders citing the lack of terrorism coverage.

Starting in October, Congressional aides began to write legislation to provide a government guarantee to cover such losses, without which it was assumed banks would be unwilling to make any commercial and industrial real estate loans. At that time, no one seemed to question the assumption that the inability to get terrorism coverage would lead to an economic crisis triggered by lenders calling in property loans with covenants requiring the coverage. The bill that emerged would authorize the Treasury Department to pay as much as $90 billion of losses above the first $10 billion that the insurance industry would cover.

By the end of the year, the bill had stumbled. The two parties split over a provision for tort reform, which President Bush had set as a requirement for his signature. The inability to compromise on this point killed the bill. Once it was clear there would be no bill by year-end, a reinsurance renewal logjam, caused by the wait-and-see over the terror bill, broke open.

Bill's current status. The urgency to pass a bill diminished after year-end, partly because no obvious evidence emerged of a brewing economic crisis. Bank regulators and industry trade associations indicated that lenders were not wholesale calling in loans or turning away borrowers over terror insurance exclusions. Examples of deals derailed by lack of terror-cover availability were the exception rather than the rule. However, as of this writing, the House Financial Services Committee was reconvening hearings on a bill, including testimony from the Government Accounting Office pointing to the need for a federal backstop. Still, we think that the farther away we get from September 11 without another catastrophic event, the harder it gets to push a bill through Congress. Meanwhile, insurers, developers and lenders keep finding ways to do business — essentially by increasing their exposures and costs — without a backstop.

Why a bill is still needed. We believe, however, that such a bill is as necessary as ever. Repeated terrorist attacks of the WTC magnitude are essentially uninsurable risks. It is practically impossible to estimate the probability of recurrence. Politically motivated intentional criminal acts resist actuarial analysis. The lack of a bill puts property and business owners in the position of having to pay much higher insurance rates — 50-100% and greater for central business district real estate — for less coverage and self-funding the balance of the exposure under pressure from lenders.

If and when a catastrophic event occurs, these owners will absorb a far greater share of the loss than they did on 9/11. As a result, some businesses could fail, unless they tied up much more capital in advance to cover the risk — capital that normally would be available to finance normal operations and growth. Without a terror bill, we think lenders will be imposing stricter requirements on an increasing portion of their loan portfolios as those portfolios mature. Insurers, meanwhile, are still over-exposed, because they can exclude only as much terrorism coverage as state governments allow (which is not a lot) and can buy

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very little reinsurance affordably to limit their exposure. In effect, all these businesses collectively are gambling on either dodging the next massive attack or having the government step in after the fact and efficiently provide the capital.

Most important to recognize is that the 9/11 attack was not a fluke, nor was it entirely unforeseen. It was a second attempt on the same property perpetrated by sophisticated, well-funded terrorists. Since 1968, more than 10,000 acts of terrorism have been recorded, including 14 events with more than 100 fatalities. In 1999, the Hart-Rudman Commission on National Security in the 21st Century concluded "Americans will die on American soil, possibly in large numbers" as a result of terrorism. The National Commission on Terrorism in June 2001 said the "#1 priority" of the US should be to address loose affiliations of transnational terrorists seeking to inflict large numbers of casualties.

Yet the economy continues to absorb such exposure. In the end, we think it would be better for the federal government to establish a structure for covering uninsurable losses from the next major attack than to do nothing. Any after-the-fact response would probably involve emergency funding that could have inequitable outcomes. Congress has been widely criticized for bailing out the airlines just 10 days after 9/11, then not acting on other parts of the economy. Such disparate outcomes are avoidable.

Experts have noted that the historical roots of the current Islamist terrorism to some extent lie in the distant past. For example, Osama bin Laden refers to Western culture as "Crusaders."

Exhibit 5

Timeline of Mideast Turmoil

Date	Event
612 AD	Prophet Muhammed begins to preach in Mecca
632	Death of Muhammed
637	Muslims defeat Persia
638	Jerusalem falls under Muslim rule
641	Muslims defeat Byzantium; conquer Egypt, Palestine & Syria
1099	Jerusalem taken by Christians in First Crusade
1839-42	First Afghan War (Britain vs. Russia)
1878-81	Second Afghan War
1917	Third Afghan War
1948	Founding of Israel
1972	Biological Weapons Convention signed
1979	Soviet Union invades Afghanistan
1980s	Osama bin Laden fights in Afghan-Soviet war
1989	Biological Weapons Act passed in US
1990-91	bin Laden concludes US wants to dominate Middle East
April 1992	Taliban begins rule of Afghanistan
1992	Islamist activists send "Memorandum of Advice" to Saudi
1993	World Trade Center bombing
1994	bin Laden stripped of Saudi citizenship; moves to Sudan
November 1995	Car bombing of US military training mission in Riyadh. Numerous fatalities; perpetrator claims inspired by bin Laden
June 1996	Car bombing of Khobar Towers in Saudi Eastern Province
1996	bin Laden moves to Afghanistan
1996	US Anti-Terrorism Act passed
September 1996	bin Laden issues fatwa against "Crusader-Zionist Alliance"
February 1998	Unites with Sunni radicals in Egypt, Bangladesh & Pakistan
August 1998	Car bombing of US embassies in Kenya and Tanzania
1989-2000	Major TV networks close foreign bureaus, cut foreign news content by two-thirds
January 2000	"World affairs" ranks 20th in importance in presidential
October 2000	Bombing of destroyer USS Cole in Aden, Yemen
February 2001	CIA Director George Tenet testifies before US Senate Intelligence Committee that bin Laden's network is the most immediate and serious threat to US security
June 2001	Persian Gulf on high alert during joint US-Jordanian military exercises; cut short due to terrorism threat
September 11	Attack on America; more than 3,000 fatalities
October 7 2001	Second Khobar Tower bombing; two fatalities
October 2001	50 people infected by anthrax spores sent through US mail
December 23	Richard Reid prevented from blowing up American Flight 63
January 2002	President Bush discusses "Axis of Evil" in State of the Union

Source: "Holy War, Inc." Peter L. Bergen, "How Did This Happen? Terrorism and the New War" Gregg Easterbrook; edited by James F. Hoge Jr. and Gideon Rose, "Inside Terrorism" Bruce Hoffman, Morgan Stanley Research

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The Scenarios

Exhibit 6 shows the winners and losers in each scenario, reflecting our collaborative thinking and analysis of the earnings and valuation implications under each scenario for property/casualty insurers, REITs and mortgage lenders. Detailed summaries for each of these segments follow.

Exhibit 6

Winners and Losers Under Four Scenarios

	Terrorism Bill Passed		
	Scenario 4: **Winners:** Primary insurers and reinsurers; insurance brokers; brokers without equity market exposure; capital markets-focused firms (assuming no significant infrastructure damage). **Losers:** REITs; credit-sensitive firms.	**Scenario 1:** **Winners:** Insurers, reinsurers, insurance brokers; REITs (especially BXP, BPO, EOP, VNO, RSE, SPG); marginally positive for capital markets based firms, less so for credit-sensitive firms and banks; C, JPM. **Losers:** None	
Attacks Occur	**Scenario 3:** **Winners:** Capital markets-focused firms (assuming no significant infrastructure damage), asset managers with a fixed-income focus; reinsurers; insurance brokers. **Losers:** Primary insurers; REITs; credit-sensitive firms; asset managers with an equity focus.	**Scenario 2:** **Winners:** Insurers (although still assuming risk); reinsurers; insurance brokers; marginally positive for capital markets based firms, less so for credit-sensitive firms and banks; C, JPM. **Losers:** The weaker commercial insurers with lower financial strength ratings; REITs.	**No Attack Occurs**
	No Terrorism Bill Passed		

Source: Company data, Morgan Stanley Research

Real Estate Investment Trusts

The current lack of affordable terrorism insurance coverage for many types of real estate has already generated negative impacts for a variety of REITs. Significant uncertainty continues to surround the possibility of government intervention as well as the possibility of another terror attack. In order to help investors better navigate these uncertainties, we provide some initial conclusions about the prospects of the real estate industry (as well as various property sectors and REITs). (See *Terrorism and Insurance Risks: Assessing Sensitivities* by Gregory Whyte, Matthew Ostrower and Robert Stevenson being published simultaneously with this report.).

Initial conclusions. The terrorist attacks of September 11 and the enormous and tragic loss of human life and property that accompanied them led to significant new uncertainties in the real estate sector, which was already beginning to feel the brunt of a national economic downturn. Among these uncertainties was how real estate owners would continue to obtain insurance coverage for their assets, particularly those

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with high rise ("skyline") characteristics. This issue was exacerbated by: 1) the fact that most insurance policies (and the terrorism insurance that has traditionally been a part of them) expire on December 31 of each year, and 2) most secured loans (mortgages) would fall into technical default without some kind of ongoing terrorism insurance.

With no backstop legislation in place, the negative consequences of no terrorism coverage have begun to set in for real estate landlords, and, we believe, ultimately tenants as well. Certain real estate asset types and companies are clearly more affected than others are (Exhibit 7). However, we believe it is possible to draw some broad conclusions. We believe the current lack of terrorism legislation has, and will continue to have several negative effects:

1) Real estate borrowing will likely become more difficult and more expensive. We expect mortgage spreads to rise in response to increased insurance risk, the collateralized mortgage-backed securities (CMBS) market may continue to balk at single loans with trophy/skyline collateral, and REITs will likely increasingly resort more to the (generally) higher spread corporate market.

2) General insurance costs will likely continue to remain higher than pre-9/11 levels (we believe earthquake insurance is already up sharply, with meaningfully higher deductibles). We expect these costs to continue to rise, but to rise less dramatically if a terrorism insurance bill is eventually passed.

3) Building security costs will likely remain higher

Exhibit 7

Terrorism Issue Sensitivity Spectrum

More Sensitive

	Relevant Tickers
"Skyline" CBD Office	BPO, BXP, EOP, VNO
Lower-Profile CBD Office	CRE, RA, TZH
All Other CBD Real Estate	ASN, AVB, HOT, HMT
High Profile Regional Mall	RSE, SPG, TCO
Large Hotels	HMT, HOT
Suburban Office	
Low Profile Regional Mall	
Multifamily / Small Hotels	
Community Shopping Center	
Self Storage	

Less Sensitive

Source: Company data, Morgan Stanley Research

4) The absence of suitable insurance coverage will likely affect the general real estate lending market, which could impact real estate valuations, particularly for asset types seen as vulnerable to attack: central business district (CBD) office buildings, certain regional malls, and assets located near sites perceived as risky.

Issue Sensitivity Spectrum

In the event terrorism insurance legislation is ultimately passed, we believe the short-term impacts will be lower insurance and debt costs, providing the most relief to those companies and asset types that were most adversely affected by the current lack of coverage. Given the negative impacts on the real estate industry in just the past 8-10 weeks, we now believe that a bill is more likely today than it would have appeared even four weeks ago. We believe even the passage of a bill and no new attack will still see the real estate industry worse off than pre-9/11, but it is still the best case scenario. In an effort to assess the degree of negative impact, we have outlined the consequences of each of four different scenarios on the industry below. We believe companies in the most sensitive sectors (e.g. BXP, BPO, EOP, VNO, RSE, and SPG) will be the biggest winners in positive scenarios (such as Scenario 1) and the biggest losers in the negative scenarios (Scenario 3). *(Current prices: BXP $37, BPO $18, EOP $28, VNO $42, RSE $30, SPG $31.)*

Scenario Analysis: Real Estate and REITS

Scenario 1: A bill is in place, no attack occurs. As it pertains to the real estate industry, and with particular focus on the landlord (often time the public landlords are REITs), we believe:

- After rising to exorbitant rates post 9/11 (and becoming unavailable in many circumstances) market rates on new terrorism insurance policies begin to fall. Terrorism insurance again becomes widely available.
- The passage of a bill would eventually see the return of liquidity to mortgage and single asset CMBS markets, particularly those involving higher profile "trophy" assets (e.g. skyline CBD assets).
- Although some asset classes allow for occupancy costs to be billed back to tenants (e.g. commercial and retail), we believe higher insurance costs are effectively shared by landlords and tenants regardless of property type. For this reason, the somewhat lower costs that would likely accompany a terrorism bill would benefit both landlords and tenants.

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Potential winners/losers. We believe valuations of companies in the most sensitive sectors already reflect some of the negatives associated with the current lack of easily available terrorism insurance (though they do not appear to reflect any major discount as a result of potential exposure to another terrorist event). The passage of a terror bill would lead to more extensive insurance coverage, and potentially lower insurance and borrowing costs for companies such as BXP, BPO, EOP, VNO, RSE, SPG, etc. Less sensitive companies/sectors that are currently experiencing fewer impacts would benefit, but to a lesser extent.

Scenario 2: No bill is passed, no attack occurs. The absence of any passage of a terrorism bill, even without an additional terror attack, is clearly a negative for the REIT sector. We believe this scenario would lead to:

- A sharp rise in operating expenses to cover extremely high insurance and security costs. Landlords begin to question the ability of insurers to meet future terror claims.
- Some landlords may choose to forego expensive terrorism insurance, which would have ramifications on borrowing conditions:
  1) Borrowers may fall into technical default on secured loans, which could precipitate some adjustment to both terms and rate.
  2) Rating agencies might respond with cuts to credit ratings, making alternative, non-secured borrowing more costly and less accessible.
  3) Construction financing and takeout financing become landlord headaches.

- CMBS liquidity becomes more limited and may even dry up, particularly for those real estate assets perceived as more vulnerable. Initiating new single skyline asset CMBS transactions becomes impossible; rates on multi asset CMBS deals also go up, reflecting higher risks.
- Reduced liquidity in the real estate market negatively impacts real estate valuations, particularly for those assets typically financed with secured debt.
- Banks likely eventually begin originating secured loans, but increasingly seek cross-collateralization or recourse when high profile assets are involved.
- Rental rates slow further than they already have as tenants respond to rising occupancy costs.
- For the tenants, occupancy costs may rise up to or even exceed expense stops. Most affected assets will likely be office/high-rise, or other perceived-to-be-vulnerable properties (e.g. regional malls).

Potential winners/losers. The lack of a terrorism insurance bill (despite the lack of terror attack) would serve to raise operating and borrowing costs as well as cause the most exposed companies to take on more risk by self-insuring. We believe that the values of stocks in the most sensitive sectors only partially reflect these negatives, and could therefore face more multiple contraction if it becomes clear that no affordable terrorism insurance will become available. As in Scenario 1, the less sensitive sectors will also be negatively affected, but to a lesser extent.

Scenario 3: No bill is in place, an attack occurs. This represents the worst scenario for real estate owners. In assessing the impact on the industry (and on REITs specifically), we believe it is necessary to examine the *initial* and *longer term* impacts:

- Initial impacts:
  1) There will be a sharp rise in operating costs due to much higher insurance costs (expect tenants to experience higher occupancy costs up to the entire expense stop limitation).
  2) The CMBS market (both single- and multi-asset transactions) likely freezes for all asset types, but particularly for the skyline assets and the asset class targeted in the attack.
  3) Landlords assess the value of continuing with terrorism insurance coverage given the potential inability of insurers to meet future claims.
  4) Secured borrowing rates spike, limiting liquidity in this market.
  5) Non-secured corporate borrowing for REITs is the only remaining alternative, but higher perceived risk drive rates up sharply after rating agencies focus on ratings.
  6) Real estate values fall sharply due to limited insurability and dramatic drop in real estate debt liquidity.
- Longer-term impacts:
  1) Congress ultimately establishes some sort of federal backstop or "Pool Re" program.
  2) This will likely result in the return of some normalcy in the real estate markets, with values appreciating, but operating costs still higher than pre-9/11 levels.

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Potential winners/losers. We believe all REITs would experience significant negative short-term valuation impacts if a terror attack were to occur in the absence of any terrorism insurance legislation. Investor fears about further equity losses in the event of future attacks, potentially unavailable terrorism insurance, higher borrowing spreads and the limited availability of debt capital would cause significant multiple contraction. This phenomenon would likely occur most for the most sensitive property sectors. These negative effects would likely be greatly mitigated if the federal government were to quickly enact a terrorism insurance backstop/bailout following the second attack.

Scenario 4: A bill is passed, an attack occurs. Despite the passage of a terrorism bill, whereby there is a federally funded backstop, we believe overall costs of obtaining insurance after an attack will likely rise — particularly for the affected asset type(s). From the landlord's perspective, we believe the impact from this scenario includes:

- Higher property operating expenses
- Higher borrowing costs on debt renewal, as the asset class is seen to be riskier, both in the CMBS and corporate borrowing arena
- Security costs rise again.
- The secured lending market would probably become even more focused on adequate insurance coverage for loan collateral.

Potential winners/losers. The passage of a terrorism insurance bill (and the more extensive, affordable terrorism insurance and debt capital) likely would not prevent some negative valuation impact if another terror attack were to occur. In this case, we believe REITs with skyline and high profile assets would clearly be most impacted, while their lower profile peers would likely be spared. It is worth mentioning, however, that the more sensitive companies would likely be deemed winners in between the passage of the insurance bill and the actual attack.

Banks, Brokers and Asset Managers

Initial Conclusions. We think that investors may be too focused on credit issues (Enron, K-Mart and now Global Crossing) and off-balance sheet disclosures to think about the implications of the passage / non-passage of the terrorism bill. We do not fault them, but we do believe that the outcome of the terrorism bill legislation could have a significant impact on banking and brokerage stocks. A key issue, as we see it, is whether lenders will continue to lend to what are perceived to be high-risk properties if the real estate companies cannot secure adequate insurance protection. Also, if the commercial mortgage-backed market does slow, what does this mean for trading profits for the BIG fixed income players in this area?

In evaluating the possible impact on the stocks in our universe based on the four scenarios, our primary conclusion is that in all scenarios, capital markets based firms seem to fare slightly better than the credit sensitive firms (except if a major terrorist attack does irrevocable damage to the securities industry's infrastructure).

On the other hand, we do think that traditional lending companies face marginal risks if the bill is not passed and another attack occurs. Under this scenario, more properties would be damaged potentially limiting the repayment of those loans to some banks and the insurance industry may become increasingly fragile limiting the effectiveness of current insurance policies. Longer term, credit spreads against commercial real estate would also likely rise, although the positive impact to the income statement would be offset by a slower pace of real estate activity.

According to Betsy Daniels, who is working on picking up the regional banks, banks are thinking through how they want to approach lending in a world without terrorism coverage on property. There is no "one-size-fits-all" approach. The banks can take several paths, ranging from renewing the loan, changing the terms on the loan, asking the borrower to get a terrorism rider, asking the borrower to self-insure for terrorism, or pulling the loan. Banks are choosing what makes sense for them given their business mix and risk appetite and decisions are likely to be made on a loan-by-loan basis. The key point is that the banks are thinking about these issues and are trying to create a game-plan to limit their exposure to further terrorist property destruction.

These issues are more likely to impact the traditional lending companies than the capital markets companies. Construction and commercial real estate loans were 19.5% of total average loans at US commercial banks as of September 30, 2001. At JPM and Citigroup, though, these loans represent just a fraction of overall business. Indeed, based on our analysis, we think that around 0.99% of Citi's total loans are related to domestic real estate, while we believe that 2.27% of JPM's total loans are related to domestic real estate (at the end of 3Q01, latest available

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data). At the moment, we retain our Neutral rating on JPM and maintain our Outperform on Citigroup.

Within the brokerage sector, we think that Lehman Brothers (LEH, $56, Outperform-V, target $73) and Goldman Sachs (GS, $81, Outperform-V, target $92) are most levered to the commercial mortgage back industry (which would obviously slow if real estate companies were not able to obtain financing at will), ranking second and fourth, respectively, in U.S. public and Rule 144A CMBS (collateralized mortgage backed securities) offerings. However, Goldman is traditionally not a major player in this market (i.e., the company had some big trades at the end of the 2001 that boosted it in the rankings). Separately, Credit Suisse First Boston (a unit of Credit Suisse), ranked first in this CMBS market in 2001. All told, according to Thomson Financial Securities Data, $63.0 billion of CMBS were offered in 2001 (Exhibit 8).

Exhibit 8

U.S. Public and Rule 144A CMBS Offerings

	Proceeds ($ M)	Rank	Market share	No. of tranches
CSFB	9,366.1	1	14.9	146
Lehman Brothers	7,813.5	2	12.4	91
Morgan Stanley	7,720.4	3	12.3	107
Goldman Sachs & Co	7,257.2	4	11.5	130
Deutsche Bank AG	6,196.4	5	9.8	105
JP Morgan	6,171.7	6	9.8	86
Banc of America Sec.	4,126.1	7	6.6	42
Bear Stearns & Co Inc	4,116.4	8	6.5	49
Wachovia Corp	3,498.7	9	5.6	91
Citigroup/SSB	3,017.8	10	4.8	30
Merrill Lynch & Co Inc	2,186.8	11	3.5	55
Industry Total	62,990.8	-	100	749

Source: Thomson Financial Securities Data

Interest rate impact. Looking at the big picture, we also are intrigued by the possible impact of the passage of the terrorism bill on the treasury market. If the terrorism bill is passed, the Federal Government becomes the reinsurer of terrorism related risks. Would government bondholders demand a terrorism risk free premium? If yes, then would the long-term *benchmark* risk free rate rise significantly? An increase in the benchmark rate would increase lending costs for all borrowers, which could be a negative for companies with high leverage ratios. Also, if real estate companies (REITS) were not able to secure mortgage financing and had to use the capital markets via straight debt issuance, we actually think that this opportunity could be an interesting one for the capital markets that we cover, particularly firms with a strong presence in the investment grade market.

Scenario Analysis: Banks and Brokers

Scenario 1: A bill is in place, no attack occurs. We believe that the passage of the bill with no incidence of further terrorist attacks in the near future would be a marginal positive for the credit sensitive names like C and JPM. Key to our thinking is government protection would allow lenders to still allocate capital to real estate companies with little residual impact from "event risks" like the tragic events of September 11, 2001. Separately, we believe that this scenario would entail healthier economic growth and stronger equity markets (due to the absence of any external shocks) — a significant positive for the broker/dealers and equity focused asset managers in our universe. In addition, the factors favoring economic growth (lower costs of doing business — specifically, insurance and security costs) would also positively impact the expense lines for all the stocks we cover. However, we do expect a

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marginal increase in documentation costs for banks as lending agreements incorporate various terrorism related clauses, and a marginal increase in insurance rates for policyholders.

Potential winners/losers. We think that this scenario would be a marginal positive for all the stocks in our group for the reasons highlighted above. As such, under this scenario, we do feel comfortable reiterating our investment thesis: From a macro perspective, we continue to believe that capital markets firms outpace credit sensitive and fee-based companies. In diversified financials we continue to favor Citigroup (C, $44, Outperform, target $59) over JPMorgan Chase (JPM, $29, Neutral). In the small cap asset management arena, we remain bullish across the board: Affiliated Managers (AMG, $67, Outperform, target $73), BlackRock (BLK, $44, Outperform, target $48), Waddell & Reed (WDR, $30, Outperform, target $35), and Federated Investors (FII, $31, Strong Buy, target $35). Finally, we have a mixed bag on the Arms Dealers. Specifically, we like companies like Investment Technology Group (ITG, $45, Outperform, target $46) (play on cost, speed, globalization, and value-added), while we remain cautious on other names, including Instinet (INET, $7, not rated).

Scenario 2: No bill is passed, no attack occurs. Our second scenario would essentially entail continuation of the status quo (we don't have a terrorism bill and fortunately there have been no more terrorist attacks). As we think that investors in our stocks have not yet focused on these issues, we do not expect any major impact on stock prices. However, we expect companies to spend more on security especially since terrorism related insurance coverage would be more difficult to secure.

Lenders continue to expect insurance against terrorist acts on the credits they extend — either through insurance policy coverage or through borrower self-insurance. Some lenders may look to cash in some of their "bad chips" by charging higher rates or refusing to extend funds to some credits on the grounds that they are not willing to underwrite loans that do not have terrorism related coverage. We believe that lenders may selectively take this approach towards certain credits. We do not expect widespread application, as it would result in the lender self-selecting out of the real estate lending market. Targeted pruning could marginally improve asset quality at some lenders.

Another related development would be a slowdown in some sectors of the CMBS market — especially for securities backed by high profile assets like tall office buildings and big regional malls. As a result we expect real estate firms to borrow funds at the corporate level rather than accessing capital markets through asset backed securities leading to a 20 to 30 basis point increase in their cost of funds. We think that investment banks will look upon this development as an opportunity and would come up with innovative financial products to solve the financing needs of real estate firms.

Potential winners/losers. Given that this scenario entails continuation of the Status Quo and the additional risk of muted revenue growth for the credit sensitive names, we are sticking to our investment theme (as highlighted in scenario 1). However we do want to point out that as in scenario 1, credit sensitive firms with lower credit standards could display higher growth rates than peers who have tighter credit standards.

Scenario 3: No bill is in place, an attack occurs. Our third scenario, which is also our worst case scenario, evaluates the impact of a major terrorist attack in case the terrorism bill has not been passed. As in scenario 4, the development could be a significant negative for firms like GS, MER ($47), and LEH if it leads to another disruption in the nation's capital markets. For the credit sensitive names, we expect major credit losses as a direct result of the attack as most exposures would not be backed by insurance. In addition, the shock to the economy could lead to a deterioration in the overall credit situation, driving both provisions and credit costs materially higher. The shock to the equity markets could also depress earnings at capital markets based firms and equity focused asset managers. The occurrence of another attack would also lead to increased security expenses by businesses.

Potential winners/losers. We believe that credit sensitive names will come under the most pressure under such a scenario. Although we believe that the federal government would intervene to prevent a breakdown of the financial system, we believe that credit sensitive names could experience a "double whammy". Specifically, in addition to the direct credit losses they would experience as a result of the attack, the external shock to the nation's economy would increase credit costs going forward (even if the companies had no exposure to the areas/ businesses directly impacted by the attack). We would expect capital markets

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firms to outperform other financials, as the rebuilding effort would require a significant amount of capital to be raised. Within asset managers, we believe that fixed income focused firms would outperform their equity focused counterparts.

Scenario 4: A bill is passed, an attack occurs. Irrespective of whether a terrorism bill has been passed, we believe that the initial reaction of the market will be negative for most of the stocks in our coverage universe. The development could be a significant negative for capital markets based firms if it leads to another disruption in the nation's capital markets.

However we do not expect any major credit losses at the credit sensitive firms as a direct result of the attack as most exposures would be backed by insurance. That said the shock to the economy could lead to a deterioration in the overall credit situation, leading to higher credit costs at the firms we cover. In addition, the shock to the equity markets could depress earnings at capital markets based firms and equity focused asset managers. The occurrence of another attack would also lead to higher insurance rates for policyholders and increased security expenses by businesses.

Potential winners/losers. If the attack does not lead to a disruption in the nation's capital markets and equity markets rebound soon after the attack, we believe that capital markets firms will outperform credit sensitive and fee-based companies (as happened after 9/11). We also expect capital markets firms to outperform other financials, as the rebuilding effort would require a significant amount of capital to be raised. We think that the attack could amount to another external shock to the nation's economy, leading to a deterioration in credit that could raise credit costs at Citigroup and JPMorgan Chase. Within the credit sensitive names, we would expect firms with better credit management practices to significantly outperform their peers because of two reasons: 1) they would have pruned their uninsured terrorism risk exposure, and 2) they would also have lower credit costs if the economy were to head into a recession.

The Property/Casualty Sector

As noted in the February 22, 2002, issue of *P/C Insurance & Risk Briefing*, we believe the equity markets generally do not appear to be discounting in insurers' material risk from terrorism in the absence of a terrorism bill. Nevertheless, we believe many primary commercial lines insurers (and, to a lesser extent, personal lines insurers) retain considerable residual terrorism risk. Therefore, we believe that investors need to reconcile their willingness to accept terrorism risk, other offsetting factors they may find attractive in a stock, and their return requirement.

Initial conclusions. We believe that most primary insurers and some reinsurers cannot adequately measure their exposure aggregations from a hypothetical event. They are only just beginning to gather exposure information, such as employee locations for workers' compensation. Meantime, virtually all primary insurers talk about limiting exposure as much as they can, but they do not provide enough information to determine how a particular insurer would fare under a worst-case scenario. They do not, for example, provide a probable maximum loss estimate (PML) as they ordinarily do with other types of catastrophic risks. Nor are we aware of any insurer taking an across-the-board approach of simply non-renewing policies without terrorism losses excluded.

Insurers imposing exclusions using nonadmitted policy forms are assuming that the ban on exclusions in some states is trumped by their nonadmittance status. There is a slight risk, however, that policyholders and regulators might challenge that interpretation in an effort to broaden available coverage after the fact. We also believe insurers are assuming they can invoke the war exclusion in another attack; however, we assume that issue would ultimately be litigated. Additionally, we believe that the primary exclusions that have been approved may be insufficient to prevent insurer insolvency, especially for insurers that write workers' compensation, group life, and significant amounts of property insurance (Exhibits 9 and 10).

In short, we think investors cannot assess the risk of terrorism in a portfolio of insurance stocks any better than an insurer can assess the terrorism risk in its insurance portfolio. However, investors can control their exposure to risk, by limiting the amount they invest in such stocks to an amount within their risk tolerance from such an event. Accordingly, we are not averse to investing in terrorism-exposed insurance stocks, but we believe investors should not over-concentrate in these stocks. We also believe that investors should require a higher return in exchange for this additional, and unquantifiable, risk. Comparisons to historical valuations should take note of this higher level of risk. We would consider stocks with the same valuation as pre-9/11 as now more "expensive."

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This approach to investing is similar to one we would follow for cat-exposed insurers that do not buy earthquake or hurricane reinsurance, although with added uncertainties: 1) we do not know as much about the level of risk for individual insurers as we normally do for other types of catastrophic risks; 2) we know nothing about the overall frequency and severity of terrorism risk.

Exhibit 9

Top 20 Workers' Compensation Insurers Ranked by 2000 Net Premiums Written

Workers' Compensation Market	2000	
Company	Premiums	Mkt Share
Liberty Mutual	$2,313,115	8.2%
State Comp Ins Fund of CA	$1,789,807	6.4%
American International Group	$1,554,411	5.5%
CNA	$1,417,875	5.0%
Zurich/Farmers	$1,228,744	4.4%
Kemper	$1,081,883	3.9%
Travelers/Citigroup Companies	$1,065,492	3.8%
Hartford Financial	$1,023,565	3.6%
Fremont General	$965,611	3.4%
Royal & SunAlliance USA	$823,032	2.9%
St Paul Companies	$592,393	2.1%
Fairfax Financial (US)	$533,962	1.9%
CGU	$496,860	1.8%
Chubb	$413,702	1.5%
GE Capital	$393,322	1.4%
SAFECO	$388,117	1.4%
Allianz of America	$379,380	1.4%
FCCI	$342,370	1.2%
Zenith National	$314,157	1.1%
Texas Workers' Comp	$299,875	1.1%
Top 10 Total	$13,263,535	47.2%
Top 20 Total	$17,417,673	62.0%
Top 30 Total	$19,602,224	69.8%
Total WC Market	**$28,098,870**	

Source: Statutory financial statements and Morgan Stanley estimates

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Exhibit 10

Top 16 Global P-C Insurers

Top 16 Global P-C Insurers Ranked by 2000 Revenues

	Revenues		Earnings		Earnings/Revenues	
Company	**Millions**	**% Chg. from 1999**	**Millions**	**% Chg. from 1999**	**E/R**	**% Chg. from 1999**
Allianz	$71,022	-4%	$3,198	34%	5%	1%
State Farm	$47,863	7%	$408	-61%	1%	0%
AIG	$45,972	13%	$5,636	11%	12%	2%
Munich Re	$40,672	6%	$1,617	34%	4%	1%
Zurich Fincl. Services	$37,431	-6%	$2,328	-29%	6%	1%
Berkshire Hathaway	$33,976	41%	$3,328	114%	10%	2%
Allstate	$29,134	8%	$2,211	-19%	8%	2%
Royal & Sun Alliance	$25,570	-2%	($21)	-115%	0%	0%
Loews	$20,670	-1%	$1,877	417%	9%	3%
Swiss Re	$18,688	-5%	$1,757	-5%	9%	2%
Tokio Marine & Fire	$17,762	-3%	$378	22%	2%	1%
Liberty Mutual	$16,438	6%	$287	-43%	2%	1%
Groupama-Gan	$14,851	-16%	$37	35%	0%	0%
Nationwide	$14,762	9%	$411	-20%	3%	0%
Hartford Fincl. Services	$14,703	9%	$974	13%	7%	1%
Yasuda Fire & Marine	$12,166	-1%	$129	2%	1%	0%
Top 16 Total	**$449,514**		**$24,426**			

Source: Fortune

Scenario Analysis: Property/Casualty Insurers

Scenario 1: A bill is in place, no attack occurs. This is the second-best scenario for short-term earnings and the best case for valuation. Reinsurers and property insurers would have greater certainty about their exposures and could price accordingly.

While rates might not rise as sharply as without a bill, the existence of a federal backstop would remove a large balance sheet vulnerability. Under this scenario, we assume no WTC-size event occurs this year, presumably giving insurers that much time to rebuild surplus — including additional capital-raising. Brokers' earnings upside from commissions and fees might be slightly muted, taking their portion of rates that might not be as sharply higher as they would be without a terror bill. Valuations could probably be higher with a terror bill in place because of the perception of reduced shock-loss risk and volatility. However, since we believe the market is not discounting terrorism risk, the impact could be limited.

Potential Winners/Losers. Our current market-weight position on the brokers would stand. For the commercial primary insurers, this could be a positive, removing the uncertainty. Our position on the reinsurers would also shift toward the positive.

Scenario 2: No bill is passed, no attack occurs. This is the best-case scenario from an earnings perspective in the short term and the second-best scenario from a valuation perspective. It is also the current scenario, and our current market-weight position on the commercial insurance industry reflects this status quo. In our view, this is a

Please see the important disclosures at the end of this report.

positive for reinsurers and brokers and for property insurers on non-customized coverages. Insurers and reinsurers are charging steeper rates for more restricted coverage of an unpredictable risk that under this scenario does not recur this year.

The more prudent insurers are excluding the coverage altogether. Some are offering it as a steeply priced add-on with much tighter limits on what they perceive to be the most exposed properties. Terrorism is a negative for valuation, however, because the risk premium should be higher to cover the uncertainty of another costly attack occurring without a federal backstop in place. We would expect this premium to decline over time, as risk declines.

Potential winners/losers. We think that only the most disciplined commercial insurers and reinsurers with the strongest balance sheets, best ratings and compelling valuations are desirable amid the protracted uncertainty of no federal backstop and no guarantees that terrorists will never again strike with the ferocity of 9/11. We are skeptical that exclusions will remain as firm as they are currently.

Scenario 3: No bill is in place, an attack occurs. Rates likely would soar, we believe, along with demand, but capacity would likely shrink as losses mounted. Earnings, in our view, would be depressed for many large commercial insurers and reinsurers, and net investment income would come under pressure from the likely impact on capital markets in the wake of another attack. The government might step in with some form of emergency funding, with an uncertain and possibly inequitable impact. The capital markets might be reluctant after the second major attack to commit another round of funding. In a second attack, some of the stronger players, in our view, could have impaired balance sheets and have difficulty maintaining their financial strength and credit ratings. A capacity crisis could develop. The post-9/11 measures taken to limit exposures would probably have a minimal effect, because we think those measures would not have had a chance to permeate insurers entire books. The following legal questions could quickly arise under this scenario:

- Was the attack an act of war, and excludable?
- Might states try to force policies written on an excess & surplus lines basis to cover terrorism after the fact?
- Would anyone bear liability exposure?
- Would Congress be more inclined to grant liability relief from terrorism-related events?
- Would foreign insurers and reinsurers doing business in the US follow US laws and practices?

Potential winners/losers. We would expect reinsurance and insurance broker stocks to gain under this scenario and primary insurer stocks to lose. We think reinsurers, which are not subject to state regulation on terrorism coverage exclusions, have generally been reducing their exposures to terror risk faster than primary writers and writing new contracts that offer more limited coverages at high rates. Brokers, again as the intermediaries, would benefit from what we think would be another surge in rates, as well as demand. Primary insurers, in our view, would be much more vulnerable, having achieved limited success in excluding terrorist losses and in finding affordable, effective reinsurance.

Scenario 4: A bill is passed, an attack occurs. This could actually be one of the better scenarios for earnings, again depending on the shape of the bill passed, and third best for valuation. We view this scenario as a net positive. Underwriters would know exactly where their exposures begin and end, and could price and set deductibles, limits and exclusions more accurately. Yet the private market would still bear the insurable portion of the risk.

Potential winners/losers. We assume the impact on insurers and reinsurers would be far more predictable than without a bill—analogous to any other catastrophe (i.e., positive).

Please see the important disclosures at the end of this report.

V = More volatile. We estimate that this stock has more than a 25% chance of a price move (up or down) of more than 25% in a month, based on a quantitative assessment of historical data, or in the analyst's view, it is likely to become materially more volatile over the next 1-12 months compared with the past three years. Stocks with less than one year of trading history are automatically rated as more volatile (unless otherwise noted). We note that securities that we do not currently consider "volatile" can still perform in that manner.

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From: CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/1/2002 4:37:50 AM
Subject: : Re: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
Attachments: P_JZOR5003_WHO.TXT_1.doc; P_JZOR5003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 1-MAR-2002 09:37:50.00
SUBJECT:: Re: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks, Brett

PTM

Brett M. Kavanaugh
02/28/2002 05:55:49 PM
Record Type: Record

To: P. Thaddeus Messenger/OMB/EOP@EOP
cc:
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on
New Hires Database

White House Counsel has no objection.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
02/28/2002 05:55 PM ----------

Patrick J. Bumatay
02/28/2002 05:47:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on
New Hires Database

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02/28/2002 05:47 PM ----------

From: P. Thaddeus Messenger on 02/28/2002 04:25:42 PM
Record Type: Record

To: lrm@hhs.gov , dol-sol-leg@dol.gov , justice.lrm@usdoj.gov , llr@do.treas.gov
cc: See the distribution list at the bottom of this message
Subject: LRM PTM85 - - HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database

LRM ID: PTM85
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 28, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database

DEADLINE: 5:00 p.m. Friday, March 8, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your comment, please find copies of a HUD draft bill text and sectional analysis regarding a New Hires Database.

Please provide your comments by 5:00 p.m., Friday 8 March 2002. If we do not receive your comments by that date, we will assume you have no objection to the bill as drafted.

If you experience difficulty with this LRM or its attachment, please contact us immediately. To ensure receipt by Agency addressees, the electronic version of the LRM will be followed by a duplicate copy via facsimile.

Thank you.

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P. Thaddeus Messenger
LRM ID: PTM85 SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on New Hires Database
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JZOR5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JZOR5003_WHO.TXT_2>

SEC. ___. HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES.

Section 453(j) of the Social Security Act is amended by adding the following new paragraph at the end:

"(7) INFORMATION COMPARISONS AND DISCLOSURE FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.--

"(A) FURNISHING OF INFORMATION BY HUD.--The Secretary of Housing and Urban Development shall furnish to the Secretary, on a daily basis or at less or more frequent intervals as may be determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain the information in such Directory with respect to individuals who are applying for or participating in any program under the United States Housing Act of 1937, section 202 of the Housing Act of 1959, sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, section 811 of the Cranston-Gonzalez National Affordable Housing Act, and section 101 of Housing and Urban Development Act of 1965.

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.--The

Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the income of individuals described in subparagraph (A).

"**(C) DUTIES OF THE SECRETARY.**--

"**(i) INFORMATION DISCLOSURE.**--The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Housing and Urban Development, and disclose information in that Directory to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

"**(ii) CONDITION ON DISCLOSURE.**--The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"**(D) USE OF INFORMATION BY HUD.**--The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only--

"(i) for the purpose of verifying the income of individuals described in subparagraph (A); and

"(ii) after removal of personal identifiers, to conduct analyses of the income reporting of individuals described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY HUD.--

"(i) DISCLOSURES PERMITTED.--The Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, a private owner, a management agent, a contract administrator, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A) and in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph may not be made available by the Secretary of Housing and Urban Development to any person under section 552 of title 5, United States Code.

"**(ii) PURPOSE OF DISCLOSURE.**--The Secretary of Housing and Urban Development may make a disclosure under clause (i) only for the purpose of verifying the income of individuals described in subparagraph (A).

"**(iii) RESTRICTION ON REDISCLOSURE.**--A person or entity to which information is disclosed under clause (i) may use or disclose such information only as needed for verifying the income of individuals described in subparagraph (A) and only in accordance with data security and control policies established by the Secretary of Housing and Urban Development in accordance with safeguards established by the Secretary under subsection (m).

"**(F) REIMBURSEMENT OF HHS COSTS.**--The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the additional costs incurred by the Secretary in furnishing the information requested under this paragraph.

"**(G) CONSENT FORM.**--As a condition of applying for or participating in any program described in subparagraph (A), the Secretary of Housing and Urban Development may require an individual to sign a consent

form that authorizes all the information sharing on such individual that is provided for under this paragraph.".

2/26/02 {PRIVATE }

HUD ACCESS TO INFORMATION IN THE NATIONAL DIRECTORY OF NEW HIRES

Summary

Section ___ would make an amendment to section 453(j) of the Social Security Act (42 U. S. C. 653(j)) to authorize HUD and its intermediaries (public housing agencies, owners, management agents, and contract administrators) to have controlled access to the information in the National Directory of New Hires (NDNH) database that is maintained by the Department of Health and Human Services (HHS) to facilitate accurate verification of the income of the applicants to and tenants in HUD's public and assisted housing programs.

HUD proposes to expand the information that is currently available to HUD and its intermediaries by comparing data provided by the intermediaries to data in the NDNH database, and then providing the results to HUD's intermediaries through HUD's secure information systems. HUD also proposes to use the data from the NDNH database to perform verification of incomes that were reported in the Tenant Rental Assistance Certification System (TRACS) and the Multifamily Tenant Characteristics System (MTCS) as an integral part of its ongoing quality control and monitoring programs. All access to the information in the NDNH database will adhere to strict confidentiality and security policies.

The proposal would also permit HUD to expand existing information consent form requirements for individuals applying for or participating in HUD's public and assisted housing programs by requiring such individuals to sign a consent form that would authorize the sharing of the individuals' income information from the NDNH.

Justification

Section ___ would address a top priority for the Department, which is the reduction of errors and overpayment of subsidy caused by incorrect income determination and rent calculation in public and assisted housing programs. A HUD study ("Quality Control for Rental Assistance Subsidies Determinations" issued by HUD's Office of Policy Development and Research in June 2001) found substantial errors and improper payments in HUD's housing assistance programs caused by improper income and rent determinations. These errors are the basis for multiple material weakness findings in HUD's financial statement audit ("U.S. Department of Housing and Urban Development, Audit of Fiscal Year 2000 Financial Statements" (2001-FO-0003) issued by the HUD IG on

March 1, 2000) and is a matter of further serious concern to the Congress and OMB as this is one of only 22 "high risk" areas designated by the General Accounting Office (GAO) ("High-Risk Series - An Update (GAO-01-263) Issued by GAO in January 2001). Both the GAO and HUD's Inspector General have recommended that Congress consider giving HUD access to the information in NDNH database as an important way of resolving these problems in HUD's rental assistance programs (GAO Report issued in September 2000: GAO/HEHS-00-119, "Benefit and Loan Programs, Improved Data Sharing Could Enhance Program Integrity".). The use of the NDNH database can have a substantial impact on reducing errors in tenants' incomes used to calculate rents and determine subsidy payments by facilitating the timely verification of the income of applicants to and tenants in HUD's public and assisted housing programs.

Currently, HUD verifies earned and unearned income data by matching against wage data from the Internal Revenue Service (IRS) in back-end verification. Federal tax information data provided by the IRS is much older than data in the NDNH database and thus less useful for determining tenant's current incomes. Access to information in the NDNH database will allow HUD and its intermediaries to correctly determine income and rents at the time of certification or recertification, rather than a year or two later through the IRS data.

From: Badger, Doug <Doug.Badger@mail.house.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/1/2002 11:34:07 AM
Subject: : RE: Murray/Cantwell letter
Attachments: P_XGXR5003_WHO.TXT_1.html

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Badger, Doug" <Doug.Badger@mail.house.gov> ("Badger, Doug"
<Doug.Badger@mail.house.gov> [UNKNOWN])
CREATION DATE/TIME: 1-MAR-2002 16:34:07.00
SUBJECT:: RE: Murray/Cantwell letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just spoke with Jennifer. Here's what she would recommend as a rewording
in
the last few sentences. She's concerned that we "agree" with their
assertion that they should not be bound to the committee recommendations
since that undercuts our position of all last year. She just thinks it
needs a little massaging so it doesn't sound like we're totally giving them
that point (even though we are).

In a previous meeting you said that as a function of properly discharging
your responsibility as a Senator you needed to reserve the right to reject
any name recommended by such a commission. In that same meeting I said
that
for constitutional reasons the President must likewise reserve the right to
look beyond the names recommended by the commission. Thus, while we agree
to look to the commission as a source for names, I propose that neither you
nor the President be bound to support the Committee recommendations.

Thanks, Brett.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, March 01, 2002 1:57 PM
To: Badger, Doug
Cc: Elizabeth_N._Camp@who.eop.gov
Subject: Murray/Cantwell letter

Doug: As I had mentioned to you previously, attached is a draft of a
letter Judge Gonzales proposes to send to the two Senators. We were
interested
in the thoughts of Congresswoman Dunn and you before sending anything.
Please
let me know your thoughts. Thanks. We would like to send a letter no
later
than mid-day Monday.

(See attached file: murray and cantwell 2 28 02.doc)

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XGXR5003_WHO.TXT_1>

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Thanks, Brett.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, March 01, 2002 1:57 PM
To: Badger, Doug
Cc: Elizabeth_N._Camp@who.eop.gov
Subject: Murray/Cantwell letter

Doug: As I had mentioned to you previously, attached is a draft of a letter Judge Gonzales proposes to send to the two Senators.&nb sp; We were interested in the thoughts of Congresswoman Dunn and you before sending a nything. Please let me know your thoughts. Thanks. We would like t o send a letter no later than mid-day Monday.

(See attached file: murray and cantwell 2 28 02.doc)

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/4/2002 11:40:28 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-MAR-2002 16:40:28.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

knew that. fine.

Brett M. Kavanaugh
03/04/2002 04:13:02 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
Subject:

O'Brien may be up next on SJC's hearing list for circuit nominees. Some Hatch staffers may contact you.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 3/4/2002 9:40:19 AM
Subject: : OEOB 474 is reserved from 9:30am-12:00 N on Wedenesday for Pickering events

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-MAR-2002 14:40:19.00
SUBJECT:: OEOB 474 is reserved from 9:30am-12:00 N on Wedenesday for Pickering events
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brent- I may need you to make sure it is set up properly the day of.

Brett- I have requested 20 chairs, a podium and no tables. Let me know if
we need tables.

Thanks!
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;patrick j. bumatay/who /eop@eop [WHO] <patrick j. bumatay>;karen d. cruson/who/eop@eop [WHO] <karen d. cruson>
Sent: 3/4/2002 11:54:33 AM
Subject: : Re: Maguire Oil Company - correspondence in need of a response

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-MAR-2002 16:54:33.00
SUBJECT:: Re: Maguire Oil Company - correspondence in need of a response
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:patrick j. bumatay (CN=patrick j. bumatay/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:karen d. cruson (CN=karen d. cruson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I did not get this correspondence -- it must have gone to someone else. Since I am spelunking for the next three days, the only way I could help on this is if you were to fax it to me.

Elizabeth N. Camp
03/04/2002 04:40:45 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
cc: Patrick J. Bumatay/WHO/EOP@EOP, Karen D. Cruson/WHO/EOP@EOP
Subject: Maguire Oil Company - correspondence in need of a response

On Feb. 4 you were forwarded a peice of correspondence from Cary Maguire of Dallas. Please draft an appropriate response as soon as possible and send it to Patrick so that he can work with Karen in Harriet's shop to get this out.

Thanks!

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 03/04/2002 04:39 PM ----------

Karen D. Cruson
03/03/2002 07:34:38 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Maguire Oil Company

Do you know the status of reply for the letter from Cary M. Maguire, dated Januar 18, 2002 from the Maguire Oil Company? Thanks (forwarded from Harriet on February 4, 2002). --Karen

From: CN=Scott McClellan/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/5/2002 2:53:46 AM
Subject: : need guidance asap

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 07:53:46.00
SUBJECT:: need guidance asap
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

what can/should ari say about this? he will see the press corps at 9am this morning for gaggle.

US May Approve More Aid for Kin of Sept 11 Dead (NYTimes)
By DAVID BARSTOW
New York Times, March 5, 2002
After months of criticism from the families of those killed on Sept. 11, the Bush administration is close to a decision on several changes in the Victims Compensation Fund that could result in scores of families' receiving hundreds of thousands of dollars more than the fund's original rules would have allowed.
The new rules would also open the fund to hundreds of additional rescue workers and World Trade Center employees who were injured in the attack, including those who suffered disabling lung ailments.
Administration officials with knowledge of the discussions said several big changes were all but certain to be in the final rules. In the most significant financial adjustment, the amount to spouses and children for noneconomic damages like loss of companionship would go to $100,000 from $50,000.
Some officials in New York and New Jersey have also expressed cautious optimism that the $250,000 payments to cover the pain and suffering of those who died might also be increased, although the final rules do not yet include any such increase.
The new rules would also reduce various deductions that have the potential of cutting awards by hundreds of thousands of dollars. Social Security death benefits for widows would not be deducted under the revised rules, nor would most workers' compensation benefits to surviving spouses, victim advocates have been told by White House officials.
The draft version of the rules said that only civilians injured within 12 hours of the attack were eligible for the fund, but the final rules contemplated by Kenneth R. Feinberg, the fund's special master, would extend that to 72 hours for those who worked at the World Trade Center and would remove the time limit for the uniformed rescue workers who responded to the attack.
Combined, these changes could add hundreds of millions to the final cost of the fund, previously estimated at $6 billion.
The final rules, scheduled to be released this week, are still subject to last-minute change by the White House and by Mr. Feinberg, who was appointed to oversee the fund by Attorney General John Ashcroft.
In an interview yesterday, Mr. Feinberg refused to discuss many of the specifics of the new rules, emphasizing that several crucial details had yet to be decided. But he stressed that new fund rules, some of which were first reported in this week's edition of Newsweek, have been extensively revised or clarified to address as many criticisms as possible from families and their representatives in Congress.
"I want to make it as attractive as possible, and I hope I've done so," he said of the fund. "That is a formidable task when dealing with these families, but I'm trying to make it attractive. That is the goal."

Also under discussion are final rules that would include special protections for the families of illegal immigrants, including written assurances that immigration authorities would not try to penalize their families, according to New York officials who have been monitoring the rules. The original rules had required families to waive their right to sue before filing a claim, but the final rules would let families first obtain a "ballpark" estimate of their award from fund officials before having to make such a decision.

"These proposed modifications are designed primarily with the lower- and middle-income wage earner in mind," Mr. Feinberg said. "I am most concerned in this program with the families at the bottom end."

But the administration and Mr. Feinberg have also made changes to address complaints by powerful interests, from the Association of Trial Lawyers of America to New York politicians, including Gov. George E. Pataki, and the state attorney general, Eliot L. Spitzer.

Mr. Pataki and Mr. Spitzer objected to a proposed rule that would have given families only two hours to present their cases to Mr. Feinberg's hearing officers. That language has been struck, according to several people who have spoken to Mr. Feinberg. The new rules will give families whatever time they need.

Likewise, Leo V. Boyle, president of the trial lawyers group, expressed concerns that the draft rules improperly limited Mr. Feinberg's authority to make awards as he deemed appropriate. The new rules make clear Mr. Feinberg's discretion in several areas, Congressional staff members said.

"There has been a willing and open ear from both the administration and Feinberg to the concerns of both the victims and those who argue their case," said Senator Jon S. Corzine of New Jersey.

The Victims Compensation Fund was established in September as part of emergency legislation to bail out the airline industry. The fund covers families of those who died, and anyone physically injured by the attacks. Those who file claims with the fund are guaranteed payment for their economic and noneconomic losses within 120 days of their formal filing. But they must also waive their right to file lawsuits against the airlines and other potential defendants.

The law gave Mr. Feinberg enormous power over families affected by the disaster. There are no appeals from his awards, and he has broad authority to interpret the regulations. In December, when Mr. Feinberg announced draft rules for the fund, he estimated that, on average, families of those who died would receive awards of $1.6 million, although he cautioned that the law also required him to deduct life insurance and government benefits.

Families and the leaders of victims' groups heaped criticism on the proposed rules, and have since campaigned for dozens of changes by staging protest rallies, meeting with members of Congress and bombarding Mr. Feinberg and the Justice Department with proposed revisions. But by far, their most vehement objections have focused on a single provision: the proposed awards for noneconomic losses, which they have called insulting and degrading.

In meeting after meeting, Mr. Feinberg has steadfastly defended his proposed noneconomic awards, $250,000 per death with an additional $50,000 for each spouse and each dependent. He said he was open to compromise on a host of other fund rules, but he said that the noneconomic awards were unlikely to change.

But in discussions with victims' groups and leaders from New York and New Jersey, Mr. Feinberg and White House officials have signaled they are preparing to double the $50,000 payments. For a mother of two children, that change would increase her family's overall award for noneconomic losses by $150,000, to a total of $550,000.

Mr. Corzine said that based on his recent conversations with the White House he was hopeful that the proposed $250,000 award would be increased, perhaps substantially.

By some calculations, the combination of higher noneconomic awards and reduced deductions could result in average awards as much as $200,000 higher than those previously projected.

Yesterday afternoon, in a meeting with 50 or so victims and relatives, Mr. Feinberg described several revisions that would greatly expand the number of injured people eligible for awards.

Under the draft rules, a person had to have been injured within 12 hours

of the attacks and treated by a doctor within 24 hours. Rescue and recovery workers were covered if their injury was sustained within 96 hours of the attacks. In any event, victims had to have "contemporaneous" medical records documenting the injury.

But the final rules, Mr. Feinberg said, increase the limit for civilians to 72 hours from 12 hours. The 96- hour limit for rescue workers would be eliminated altogether. Even those rescue workers who waited weeks to seek medical care would be eligible, so long as their injury resulted in a disability. What's more, he said, the final rules would eliminate the requirement for contemporaneous medical records.

"If you didn't get a record right away, that's O.K. as long as you eventually got the record," he said. The audience applauded enthusiastically.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/5/2002 6:15:52 AM
Subject: : LRM LJM73 - - TREASURY Testimony on HR3717 Federal Deposit Insurance Reform Act of 2002
Attachments: P_5CVT5003_WHO.TXT_1.doc; P_5CVT5003_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 11:15:52.00
SUBJECT:: LRM LJM73 - - TREASURY Testimony on HR3717 Federal Deposit Insurance Reform Act of 2002
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/05/2002 11:15 AM ----------

From: Lisa J. Macecevic on 03/05/2002 11:14:33 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM LJM73 - - TREASURY Testimony on HR3717 Federal Deposit Insurance Reform Act of 2002

Attached is a letter from Treasury Secretary O'Neill to the House Financial Services Committee Chairman and Ranking Member on H.R. 3717. The bill will be marked up by the Financial Services Committee on Thursday, March 7th. The letter outlines the Administration priorities for deposit insurance reform and supports the provisions of H.R. 3717 that correspond with those priorities. Please respond with any comments by 4:00 PM TODAY. Thank you. (Also attached is the bill text of H.R. 3717 for your information.)

- oneill_lafalcexxx.doc

LRM ID: LJM73
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, March 5, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on HR3717 Federal Deposit Insurance Reform Act of 2002

DEADLINE: 4:00 P.M. TODAY Tuesday, March 5, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a letter from Treasury Secretary O'Neill to the House Financial Services Committee Chairman and Ranking Member on H.R. 3717. The bill will be marked up by the Financial Services Committee on Thursday, March 7th. The letter outlines the Administration priorities for deposit insurance reform and supports the provisions of H.R. 3717 that correspond with those priorities. Please respond with any comments by 4:00 PM TODAY. Thank you.

DISTRIBUTION LIST

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LRM ID: LJM73 SUBJECT: TREASURY Testimony on HR3717 Federal Deposit Insurance Reform Act of 2002
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5CVT5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5CVT5003_WHO.TXT_2>

The Honorable John J. LaFalce
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear John:

Thank you for your letter of February 28 regarding the Administration's views on deposit insurance reform.

The Administration applauds the House Financial Services Committee's efforts to move forward with this important issue. We support several provisions of H.R. 3717 that would accomplish objectives consistent with the recommendations that Assistant Secretary Bair outlined in testimony last year and as re-affirmed in the President's 2003 Budget. Merging the bank and thrift insurance funds would improve the system's capacity to diversify its risks. Allowing the insurance fund reserve ratio to fluctuate within a range and eliminating triggers that could cause sharp changes in premiums would reduce the pricing structure's pro-cyclical bias. Improving the FDIC's premium-setting authority should ensure that institutions with rapid insured deposit growth appropriately compensate the fund while taking into account the past contributions of many institutions to build insurance fund reserves.

However, the Administration continues to believe that the deposit insurance coverage level should remain unchanged. There is no evidence that an increase in the coverage level would promote competition or materially improve the ability of community banks to obtain funds. An increase in coverage would primarily benefit high net worth individuals and do little for the great majority of savers, who have deposit balances far below the current coverage limit. For those with substantial deposits, ample opportunities already exist to obtain FDIC coverage equal to several multiples of $100,000. Moreover, raising coverage could weaken market discipline and increase risk to the FDIC and, ultimately, taxpayers.

Thank you again for writing. We look forward to working with the Congress, the FDIC, and others in the coming year to achieve a stronger and fairer deposit insurance system.

Sincerely,

Paul H. O'Neill

cc: Mike Oxley

The Honorable Michael G. Oxley
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mike:

Enclosed is my response to a letter from John LaFalce asking for the Administration's views on deposit insurance reform, including higher coverage limits.

As we discussed at lunch recently, I applaud your efforts to move forward with deposit insurance reform. Several provisions of H.R. 3717 would advance objectives that we strongly support. Nonetheless, the Administration continues to believe that the deposit insurance coverage level should remain unchanged.

We look forward to working with you, the Committee, the Congress, and the FDIC to reach a consensus on a reform package that will make our deposit insurance system stronger and fairer.

Sincerely,

Paul H. O'Neill

Attachment

HR 3717 IH

107th CONGRESS

2d Session

H. R. 3717

To reform the Federal deposit insurance system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 12, 2002

Mr. BACHUS (for himself, Mr. OXLEY, Mr. GILLMOR, Mr. LEACH, Mrs. ROUKEMA, Mr. ROYCE, Mr. NEY, Mr. KING, Mr. WELDON of Florida, Mr. RILEY, Mr. JONES of North Carolina, Mr. MANZULLO, Mr. TIBERI, Mrs. BIGGERT, Mr. THUNE, and Ms. HART) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To reform the Federal deposit insurance system, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Federal Deposit Insurance Reform Act of 2002'.

SEC. 2. MERGING THE BIF AND SAIF.

(a) IN GENERAL-

(1) MERGER- The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

(2) DISPOSITION OF ASSETS AND LIABILITIES- All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

(3) NO SEPARATE EXISTENCE- The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

(b) REPEAL OF OUTDATED MERGER PROVISION- Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is repealed.

(c) EFFECTIVE DATE- This section shall take effect on the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 3. INCREASE IN DEPOSIT INSURANCE COVERAGE.

(a) IN GENERAL- Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended--

(1) by striking subparagraph (B) and inserting the following new subparagraph:

`(B) NET AMOUNT OF INSURED DEPOSIT- The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).'; and

(2) by adding at the end the following new subparagraphs:

`(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED- For purposes of this Act, the term `standard maximum deposit insurance amount' means--

`(i) until the end of the first calendar quarter that ends on or after the end of the 90-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2002, $100,000; and

`(ii) after the end of the calendar quarter referred to in clause (i), $130,000, adjusted as provided under subparagraph (F).

`(F) INFLATION ADJUSTMENT-

`(i) IN GENERAL- As of January 1, 2010, and the 1st day of each subsequent 10-year period, the standard maximum deposit insurance amount applicable to any depositor at an insured depository institution shall be increased by the product of--

`(I) the amount described in subparagraph (E)(ii); and

`(II) the cost of living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 at the beginning of each such 10-year period, in accordance with clause (ii).

`(ii) RULE OF APPLICATION- Section 1(f)(3)(B) of the Internal Revenue Code of 1986 shall be applied, for purposes of clause (i), by

substituting `calendar year 2002' for `calendar year 1992'.

`(iii) ROUNDING- If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded to the nearest $10,000 that is less than the amount so determined.

`(iv) PUBLICATION- Before the end of the 30-day period beginning on the date the Board of Directors determines under clause (i) that the standard maximum insurance amount applicable to any depositor has increased, the Board of Directors shall publish in the Federal Register the maximum net amount which may be due to any depositor at an insured depository institution as so determined.'.

(b) DOUBLING OF DEPOSIT INSURANCE FOR CERTAIN RETIREMENT ACCOUNTS- Section 11(a)(3)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1921(a)(3)(A)) is amended by striking `$100,000' and inserting `2 times the standard maximum deposit insurance amount (as determined under paragraph (1))'.

(c) INCREASED INSURANCE COVERAGE FOR MUNICIPAL DEPOSITS- Section 11(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)) is amended by adding at the end the following:

`(C) MUNICIPAL DEPOSITORS-

`(i) IN GENERAL- Notwithstanding subparagraph (A), the deposits of in-State municipal depositors at an insured depository institution shall be insured in an aggregate amount not to exceed the total equity capital of the institution.

`(ii) DEFINITIONS- In this subparagraph--

`(I) the term `in-State municipal depositor' means a municipal depositor that is located in the same State as the office or branch of the insured depository institution at which the deposits of that depositor are held; and

`(II) the term `municipal depositor' means a depositor described in any of clauses (i) through (v) of subparagraph (A).'.

(d) TECHNICAL AND CONFORMING AMENDMENT RELATING TO INSURANCE OF TRUST FUNDS- Paragraphs (1) and (3) of section 7(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) are each amended by striking `$100,000' and inserting `the standard maximum deposit insurance amount (as determined under section 11(a)(1))'.

(e) OTHER TECHNICAL AND CONFORMING AMENDMENTS-

(1) Section 11(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)) is

amended by striking `$100,000' the first place such term appears and all that follows through the period at the end and inserting `the standard maximum deposit insurance amount per account.'.

(2) Section 11(m)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(m)(6)) is amended by striking `$100,000' and inserting `an amount equal to the standard maximum deposit insurance amount'.

(3) Section 18(a)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)(1)(B)) is amended by striking `$100,000' and inserting `the standard maximum deposit insurance amount in effect at the time'.

(4) Section 43(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(d)) is amended by striking `$100,000' and inserting `an amount equal to the standard maximum deposit insurance amount'.

(5) Section 6 of the International Banking Act of 1978 (12 U.S.C. 3104(b)) is amended--

(A) by striking `$100,000' each place such term appears and inserting `an amount equal to the standard maximum deposit insurance amount'; and

(B) by adding at the end the following new subsection:

`(e) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED- For purposes of this section, the term `standard maximum deposit insurance amount' means the amount of the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act.'.

(f) CONFORMING CHANGE TO SHARE INSURANCE FUND-

(1) IN GENERAL- Section 207(k) of the Federal Credit Union Act (12 U.S.C. 1787(k)) is amended--

(A) in paragraph (1), by striking `$100,000.' and inserting `the standard maximum share insurance amount, as determined in accordance with paragraph (4).'; and

(B) by adding at the end the following new paragraphs:

`(4) STANDARD MAXIMUM SHARE INSURANCE AMOUNT DEFINED- For purposes of this Act, the term `standard maximum share insurance amount' means--

`(A) until the end of the first calendar quarter that ends on or after the end of the 90-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2002, $100,000; and

`(B) after the end of the calendar quarter referred to in clause (i), $130,000, adjusted as provided under paragraph (5).

`(5) INFLATION ADJUSTMENT-

`(A) IN GENERAL- As of January 1, 2010, and the 1st day of each subsequent 10-year period, the standard maximum share insurance amount applicable to any insured account shall be increased by the product of--

`(i) the amount described in subparagraph (4)(B); and

`(ii) the cost of living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 at the beginning of each such 10-year period, in accordance with subparagraph (B).

`(B) RULE OF APPLICATION- Section 1(f)(3)(B) of the Internal Revenue Code of 1986 shall be applied, for purposes of subparagraph (A), by substituting `calendar year 2002' for `calendar year 1992'.

`(C) ROUNDING- If the amount determined under subparagraph (B) for any period

is not a multiple of $10,000, the amount so determined shall be rounded to the nearest $10,000 that is
less than the amount so determined.

`(D) PUBLICATION- Not later than January 15 of the 1st year of each 10-year period referred to in clause (ii), the Board shall publish in the Federal Register the maximum net amount which may be due with respect to any insured account during such 10-year period.'.

(2) DOUBLING OF SHARE INSURANCE FOR CERTAIN RETIREMENT ACCOUNTS- Section 107(k)(3) of the Federal Credit Union Act (12 U.S.C. 1787(k)(3)) is amended by striking `$100,000' and inserting `2 times the standard maximum share insurance amount (as determined under paragraph (1))'.

(3) TECHNICAL AND CONFORMING AMENDMENT- Section 11(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1787(k)(2)(A)) is amended by striking `$100,000' and inserting `the standard maximum share insurance amount (as determined under paragraph (1))'.

SEC. 4. EXPANDED INVESTMENTS AUTHORIZED FOR DEPOSIT INSURANCE FUND.

Section 13(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1823(a)(1)) is amended by striking `shall be invested' and all that follows through the period and inserting `shall be invested. Such investments shall be limited to the following types of investments:

`(A) Obligations of the United States or any agency of the United States.

`(B) Obligations guaranteed as to principal and interest by the United States.

`(C) Such other comparable obligations as the Secretary of the Treasury specifically authorizes upon the Secretary's own initiative or at the request of the Chairperson of the Board of Directors.'.

SEC. 5. REPEAL OF SPECIAL RULE RELATING TO MINIMUM ASSESSMENTS.

Subsection (b)(2) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended--

(1) by striking subparagraphs (B), (E), and (F); and

(2) by redesignating subparagraphs (C), (G), and (H) as subparagraphs (B), (C), and (D), respectively.

SEC. 6. REPEAL OF FREE DEPOSIT INSURANCE.

Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended--

(1) by striking clauses (iii) and (v); and

(2) by redesignating clause (iv) as clause (iii).

SEC. 7. REPLACEMENT OF FIXED DESIGNATED RESERVE RATIO WITH RESERVE RANGE.

(a) IN GENERAL- Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) is amended to read as follows:

`(3) DESIGNATED RESERVE RATIO-

`(A) ESTABLISHMENT- Before the beginning of each calendar year, the Board of Directors shall designate, by regulation after opportunity for comment, the reserve ratio applicable for such year.

`(B) RANGE- The reserve ratio designated by the Board of Directors for any year--

`(i) may not exceed 1.5 percent of estimated insured deposits; and

`(ii) may not be less than 1.0 percent of estimated insured deposits.

`(C) FACTORS- In designating a reserve ratio for any year, the Board of Directors shall--

`(i) take into account the risk of losses to the deposit insurance fund in such year and future years, based on an analysis of historic experience and potential losses from identifiable insured depository institutions that are in a troubled condition (as defined by the Corporation);

`(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions;

`(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

`(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

`(D) PUBLICATION OF PROPOSED CHANGE IN RATIO- In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a detailed analysis of the data and projections on which the proposal is based.'.

(b) TECHNICAL AND CONFORMING AMENDMENTS-

(1) Paragraph (3) of section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) is amended to read as follows:

`(3) DESIGNATED RESERVE RATIO- The term `designated reserve ratio' means the reserve ratio designated by the Board of Directors for each year in accordance with section 7(b)(3).'.

(2) Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended by striking clause (iii) (as so redesignated by section 6 of this Act).

SEC. 8. REQUIREMENTS APPLICABLE TO THE RISK-BASED ASSESSMENT SYSTEM.

Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) is amended by adding at the end the following new subparagraphs:

`(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS-

`(i) SOURCES OF INFORMATION- For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information from appropriate sources, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), Secretary of the Treasury, Commodity Futures Trading Commission, Farm Credit Administration, Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic and business analysts.

`(ii) RULE OF CONSTRUCTION- No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

`(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT- In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2002, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.'.

SEC. 9. REFUNDS, REBATES, AND CREDITS FROM DEPOSIT INSURANCE FUND.

Subsection (e) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)) is amended to read as follows:

`(e) REFUNDS, REBATES, AND CREDITS-

`(1) REFUNDS OF OVERPAYMENTS- In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may--

`(A) refund the amount of the excess payment to the insured depository institution; or

`(B) credit such excess amount toward the payment of subsequent semiannual assessments until such credit is exhausted.

`(2) REBATES OF EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND-

`(A) FUND BALANCE IN EXCESS OF 1.5 PERCENT OF ESTIMATED INSURED DEPOSITS- Whenever the balance in the Deposit Insurance Fund equals or exceeds the amount equal to 1.5 percent of estimated insured deposits, the Corporation shall rebate the amount in the Fund in excess of the amount required to maintain a balance at the designated reserve ratio in effect at such time, to insured depository institutions in such manner and on such conditions as the Corporation shall prescribe by regulation, after notice and opportunity for comment.

`(B) FUND BALANCE IN EXCESS OF 1.4 PERCENT OF ESTIMATED INSURED DEPOSITS- Whenever the balance in the Deposit Insurance Fund is equal to or greater than the amount equal to 1.4 percent of estimated insured deposits and less than 1.5 percent of such deposits, the Corporation may credit or rebate the amount in excess of the amount required to maintain a balance at the designated reserve ratio in effect at such time, to insured depository institutions in such manner and on such conditions as the Corporation shall prescribe by regulation, after notice and opportunity for comment.

`(3) TRANSITIONAL CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS-

`(A) IN GENERAL- The individual transition credit amount (as determined under subparagraph (C)) for each eligible depository institution shall be available for credit by the Corporation against assessments under subsection (b) on the eligible depository institution which become due for semiannual assessment periods beginning after the effective date of the merger of the Bank Insurance Fund and Savings Association Insurance Fund into the Deposit Insurance Fund.

`(B) ELIGIBLE DEPOSITORY INSTITUTIONS DEFINED- For purposes of this paragraph, the term `eligible depository institution' means an insured depository institution that--

`(i) received, in the most recent examination of the institution before the effective date of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund, a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System, or an equivalent rating under a comparable rating system; and

`(ii) paid assessments (or any predecessor of which paid assessments) under this section for any semiannual assessment period beginning after December 31, 1989, and ending before January 1, 1997.

`(C) AMOUNT OF INDIVIDUAL TRANSITION CREDIT- The individual transition credit amount for each eligible depository institution shall be the amount that bears the same ratio to the total transition credit amount as the ratio of the market share of insured deposits of the eligible depository institution as of

December 31, 1996 (including all predecessors of such insured depository institution in existence on such date) bears to the market share of insured deposits of all depository institutions (as of such date) (including all predecessors of such institutions in existence on such date).

`(D) TOTAL TRANSITION CREDIT AMOUNT- For purposes of subparagraph (C), the term `total transition credit amount' means that portion of the balance in the Deposit Insurance Fund (as of the effective date of the merger of the Bank Insurance Fund and Savings Association Insurance Fund) that is equal to income earned by the Fund on premiums paid less expenses (as of the effective date of such merger).

`(E) PREDECESSOR DEFINED- For purposes of this paragraph, the term `predecessor', when used with respect to any insured depository institution, includes any other insured depository institution acquired by or merged with such insured depository institution.'.

SEC. 10. DEPOSIT INSURANCE FUND RESTORATION PLANS.

Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1917(b)(3)) (as amended by section 7(a) of this Act) is amended by adding at the end the following new subparagraph:

`(F) DIF RESTORATION PLANS-

`(i) IN GENERAL- Whenever--

`(I) the actual ratio of the balance in the Deposit Insurance Fund to the estimated insured deposits is less than 0.1 percent greater than the minimum amount permitted for the designated reserve ratio (or is projected to fall to a ratio that is less than 0.1 percent greater than such minimum designated reserve ratio) in any calendar year; and

`(II) the actual ratio of the balance in such Fund to estimated insured deposits has failed to meet or exceed the designated reserve ratio for the 2 preceding calendar years,

the Corporation shall immediately establish and implement a Deposit Insurance Fund Restoration Plan that will ensure that the Fund has, or will have within a reasonable period of time, adequate reserves for all projected contingencies and that the actual reserve ratio will be maintained at not less than minimum amount permitted for the designated reserve ratio, on such basis and after taking into account such factors as the Corporation determines to be appropriate.

`(ii) TRANSPARENCY- Not more than 90 days after the Corporation establishes and implements a restoration plan under clause (i), the

Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.'.

SEC. 11. STUDIES OF FDIC ADMINISTRATIVE STRUCTURE AND EXPENSES AND CERTAIN ACTIVITIES AND FURTHER POSSIBLE CHANGES TO DEPOSIT INSURANCE SYSTEM.

(a) STUDY BY COMPTROLLER GENERAL-

(1) STUDY REQUIRED- The Comptroller General shall conduct a study of the following issues concerning the Federal Deposit Insurance Corporation:

(A) The efficiency and effectiveness of the administration of the prompt corrective action program under section 38 of the Federal Deposit Insurance Act, including the degree of effectiveness of the Corporation in identifying troubled depository institutions and the degree of accuracy of the risk assessments made by the Corporation.

(B) The appropriateness of the administrative structure of the Federal Deposit Insurance Corporation for the mission of the Corporation, taking into account the current size and complexity of the business of insured depository institutions (as such term is defined in section 3 of the Federal Deposit Insurance Act).

(C) The extent to which the administrative structure contributes to or reduces administrative inefficiencies that increase administrative costs and the effectiveness of internal controls on administrative costs.

(2) REPORT TO THE CONGRESS- The Comptroller General shall submit a report to the Congress before the end of the 1-year period beginning on the date of the enactment of this Act containing the findings and conclusions of the Comptroller General with respect to the study required under paragraph (1) together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

(b) INTERNAL STUDY BY THE FDIC-

(1) STUDY REQUIRED- Concurrently with the study required to be conducted by the Comptroller General under subsection (a), the Federal Deposit Insurance Corporation shall conduct an internal study of the same conditions and factors included in the study under subsection (a).

(2) REPORT TO THE CONGRESS- The Federal Deposit Insurance Corporation shall submit a report to the Congress before the end of the 1-year period beginning on the date of the enactment of this Act containing the findings and conclusions of the Corporation with respect to the study required under paragraph (1) together with such recommendations for legislative or administrative action as the Board of Directors of

the Corporation may determine to be appropriate.

(c) STUDY OF FURTHER POSSIBLE CHANGES TO DEPOSIT INSURANCE SYSTEM-

(1) STUDY REQUIRED- The Board of Directors of the Federal Deposit Insurance Corporation and the National Credit Union Administration Board shall each conduct a study of the following:

(A) The feasibility of establishing a voluntary deposit insurance system for deposits in excess of the maximum amount of deposit insurance for any depositor and the potential benefits and the potential adverse consequences

that may result from the establishment of any such system.

(B) The feasibility of privatizing all deposit insurance at insured depository institutions and insured credit unions.

(2) REPORT- Before the end of the 1-year period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation and the National Credit Union Administration Board shall each submit a report to the Congress on the study required under paragraph (1) containing the findings and conclusions of the reporting agency together with such recommendations for legislative or administrative changes as the agency may determine to be appropriate.

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT RELATING TO THE MERGER OF THE BIF AND SAIF.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended--

(1) in section 3(a)(1) (12 U.S.C. 1813(a)(1)), by striking subparagraph (B) and inserting the following:

`(B) includes any former savings association.';

(2) in section 5(b)(5) (12 U.S.C. 1815(b)(5)), by striking `the Bank Insurance Fund or the Savings Association Insurance Fund;' and inserting `the Deposit Insurance Fund,';

(3) in section 5(c)(4), by striking `deposit insurance fund' and inserting `Deposit Insurance Fund';

(4) in section 5(d) (12 U.S.C. 1815(d)), by striking paragraphs (2) and (3);

(5) in section 5(d)(1) (12 U.S.C. 1815(d)(1))--

(A) in subparagraph (A), by striking `reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 7' and inserting `the reserve ratio of the Deposit Insurance Fund';

(B) by striking subparagraph (B) and inserting the following:

`(2) FEE CREDITED TO THE DEPOSIT INSURANCE FUND- The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.';

(C) by striking `(1) UNINSURED INSTITUTIONS- '; and

(D) by redesignating subparagraphs (A) and (C) as paragraphs (1) and (3), respectively, and moving the left margins 2 ems to the left;

(6) in section 5(e) (12 U.S.C. 1815(e))--

(A) in paragraph (5)(A), by striking `Bank Insurance Fund or the Savings Association Insurance Fund' and inserting `Deposit Insurance Fund';

(B) by striking paragraph (6); and

(C) by redesignating paragraphs (7), (8), and (9) as paragraphs (6), (7), and (8), respectively;

(7) in section 6(5) (12 U.S.C. 1816(5)), by striking `Bank Insurance Fund or the Savings Association Insurance Fund' and inserting `Deposit Insurance Fund';

(8) in section 7(b) (12 U.S.C. 1817(b))--

(A) in paragraph (1)(C), by striking `deposit insurance fund' each place that term appears and inserting `Deposit Insurance Fund';

(B) in paragraph (1)(D), by striking `each deposit insurance fund' and inserting `the Deposit Insurance Fund';

(C) in paragraph (2)(A)(i)(I), by striking `each deposit insurance fund' and inserting `the Deposit Insurance Fund'; and

(D) in paragraph (6)--

(i) by striking `any such assessment' and inserting `any such assessment is necessary';

(ii) by striking subparagraph (B);

(iii) in subparagraph (A)--

(I) by striking `(A) is necessary--';

(II) by striking `Bank Insurance Fund Members' and inserting `insured depository institutions'; and

(III) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and moving the margins 2 ems to the left; and

(iv) in subparagraph (C) (as redesignated)--

(I) by inserting `that' before `the Corporation'; and

(II) by striking `; and' and inserting a period;

(9) in section 7(j)(7)(F) (12 U.S.C. 1817(j)(7)(F)), by striking `Bank Insurance Fund or the Savings Association Insurance Fund' and inserting `Deposit Insurance Fund';

(10) in section 8(t)(2)(C) (12 U.S.C. 1818(t)(2)(C)), by striking `deposit insurance fund' and inserting `Deposit Insurance Fund';

(11) in section 11 (12 U.S.C. 1821), by striking `deposit insurance fund' each place that term appears and inserting `Deposit Insurance Fund';

(12) in section 11(f)(1) (12 U.S.C. 1821(f)(1)), by striking `, except that--' and all that follows through the end of the paragraph and inserting a period;

(13) in section 11(i)(3) (12 U.S.C. 1821(i)(3))--

(A) by striking subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (B); and

(C) in subparagraph (B) (as redesignated), by striking `subparagraphs (A) and (B)' and inserting `subparagraph (A)';

(14) in section 11(p)(2)(B) (12 U.S.C. 1821(p)(2)(B)), by striking `institution, any' and inserting `institution, the';

(15) in section 11A(a) (12 U.S.C. 1821a(a))--

(A) in paragraph (2), by striking `LIABILITIES- ' and all that follows through `Except' and inserting `LIABILITIES- Except';

(B) by striking paragraph (2)(B); and

(C) in paragraph (3), by striking `the Bank Insurance Fund, the Savings Association Insurance Fund,' and inserting `the Deposit Insurance Fund';

(16) in section 11A(b) (12 U.S.C. 1821a(b)), by striking paragraph (4);

(17) in section 11A(f) (12 U.S.C. 1821a(f)), by striking `Savings Association Insurance Fund' and inserting `Deposit Insurance Fund';

(18) in section 12(f)(4)(E)(iv) (12 U.S.C. 1822(f)(4)(E)(iv)), by striking `Federal deposit insurance funds' and inserting `the Deposit Insurance Fund';

(19) in section 13 (12 U.S.C. 1823)--

(A) by striking `deposit insurance fund' each place that term appears and inserting `Deposit Insurance Fund';

(B) in subsection (a)(1), by striking `Bank Insurance Fund, the Savings Association Insurance Fund,' and inserting `Deposit Insurance Fund';

(C) in subsection (c)(4)(E)--

(i) in the subparagraph heading, by striking `FUNDS' and inserting `FUND'; and

(ii) in clause (i), by striking `any insurance fund' and inserting `the Deposit Insurance Fund';

(D) in subsection (c)(4)(G)(ii)--

(i) by striking `appropriate insurance fund' and inserting `Deposit Insurance Fund';

(ii) by striking `the members of the insurance fund (of which such institution is a member)' and inserting `insured depository institutions';

(iii) by striking `each member's' and inserting `each insured depository institution's'; and

(iv) by striking `the member's' each place that term appears and inserting `the institution's';

(E) in subsection (c), by striking paragraph (11);

(F) in subsection (h), by striking `Bank Insurance Fund' and inserting `Deposit Insurance Fund';

(G) in subsection (k)(4)(B)(i), by striking `Savings Association Insurance Fund'

and inserting `savings association'; and

(H) in subsection (k)(5)(A), by striking `Savings Association Insurance Fund' and inserting `savings association';

(20) in section 14(a) (12 U.S.C. 1824(a)), in the 5th sentence--

(A) by striking `Bank Insurance Fund or the Savings Association Insurance Fund' and inserting `Deposit Insurance Fund'; and

(B) by striking `each such fund' and inserting `the Deposit Insurance Fund';

(21) in section 14(b) (12 U.S.C. 1824(b)), by striking `Bank Insurance Fund or Savings Association Insurance Fund' and inserting `Deposit Insurance Fund';

(22) in section 14(c) (12 U.S.C. 1824(c)), by striking paragraph (3);

(23) in section 14(d) (12 U.S.C. 1824(d))--

(A) by striking `Bank Insurance Fund member' each place that term appears and inserting `insured depository institution';

(B) by striking `Bank Insurance Fund members' each place that term appears and inserting `insured depository institutions';

(C) by striking `Bank Insurance Fund' each place that term appears (other than in connection with a reference to a Bank Insurance Fund member) and inserting `Deposit Insurance Fund';

(D) by striking the subsection heading and inserting the following:

`(d) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM INSURED DEPOSITORY INSTITUTIONS- ';

(E) in paragraph (3), in the paragraph heading, by striking `BIF' and inserting `THE DEPOSIT INSURANCE FUND'; and

(F) in paragraph (5), in the paragraph heading, by striking `BIF MEMBERS' and inserting `INSURED DEPOSITORY INSTITUTIONS';

(24) in section 14 (12 U.S.C. 1824) by adding at the end the following:

`(e) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM FEDERAL HOME LOAN BANKS-

`(1) IN GENERAL- The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the

Corporation considers necessary for the use of the Deposit Insurance Fund.

`(2) TERMS AND CONDITIONS- Any loan from any Federal home loan bank under paragraph (1) to the Deposit Insurance Fund shall--

`(A) bear a rate of interest of not less than the current marginal cost of funds to that bank, taking into account the maturities involved;

`(B) be adequately secured, as determined by the Federal Housing Finance Board;

`(C) be a direct liability of the Deposit Insurance Fund; and

`(D) be subject to the limitations of section 15(c).';

(25) in section 15(c)(5) (12 U.S.C. 1825(c)(5))--

(A) by striking `the Bank Insurance Fund or Savings Association Insurance Fund, respectively' each place that term appears and inserting `the Deposit Insurance Fund'; and

(B) in subparagraph (B), by striking `the Bank Insurance Fund or the Savings Association Insurance Fund, respectively' and inserting `the Deposit Insurance Fund';

(26) in section 17(a) (12 U.S.C. 1827(a))--

(A) in the subsection heading, by striking `BIF, SAIF,' and inserting `THE DEPOSIT INSURANCE FUND'; and

(B) in paragraph (1)--

(i) by striking `the Bank Insurance Fund, the Savings Association Insurance Fund,' each place that term appears and inserting `the Deposit Insurance Fund'; and

(ii) in subparagraph (D), by striking `each insurance fund' and inserting `each such fund';

(27) in section 17(d) (12 U.S.C. 1827(d)), by striking `, the Bank Insurance Fund, the Savings Association Insurance Fund,' each place that term appears and inserting `the Deposit Insurance Fund';

(28) in section 18(m)(3) (12 U.S.C. 1828(m)(3))--

(A) by striking `Savings Association Insurance Fund' each place that term appears and inserting `Deposit Insurance Fund'; and

(B) in subparagraph (C), by striking `or the Bank Insurance Fund';

(29) in section 18(o) (12 U.S.C. 1828(o)), by striking `deposit insurance funds' and `deposit insurance fund' each place those terms appear and inserting `Deposit Insurance Fund';

(30) in section 18(p) (12 U.S.C. 1828(p)), by striking `deposit insurance funds' and inserting `Deposit Insurance Fund';

(31) in section 24 (12 U.S.C. 1831a)--

(A) in subsections (a)(1) and (d)(1)(A), by striking `appropriate deposit insurance fund' each place that term appears and inserting `Deposit Insurance Fund';

(B) in subsection (e)(2)(A), by striking `risk to' and all that follows through the period and inserting `risk to the Deposit Insurance Fund.'; and

(C) in subsections (e)(2)(B)(ii) and (f)(6)(B), by striking `the insurance fund of which such bank is a member' each place that term appears and inserting `the Deposit Insurance Fund';

(32) in section 28 (12 U.S.C. 1831e), by striking `affected deposit insurance fund' each place that term appears and inserting `Deposit Insurance Fund';

(33) by striking section 31 (12 U.S.C. 1831h);

(34) in section 36(i)(3) (12 U.S.C. 1831m(i)(3)), by striking `affected deposit insurance fund' and inserting `Deposit Insurance Fund';

(35) in section 37(a)(1)(C) (12 U.S.C. 1831n(a)(1)(C)), by striking `insurance funds' and inserting `Deposit Insurance Fund';

(36) in section 38 (12 U.S.C. 1831o), by striking `the deposit insurance fund' each place that term appears and inserting `the Deposit Insurance Fund';

(37) in section 38(a) (12 U.S.C. 1831o(a)), in the subsection heading, by striking `FUNDS' and inserting `FUND';

(38) in section 38(k) (12 U.S.C. 1831o(k))--

(A) in paragraph (1), by striking `a deposit insurance fund' and inserting `the Deposit Insurance Fund';

(B) in paragraph (2), by striking `A deposit insurance fund' and inserting `The Deposit Insurance Fund'; and

(C) in paragraphs (2)(A) and (3)(B), by striking `the deposit insurance fund's outlays' each place that term appears and inserting `the outlays of the Deposit Insurance Fund'; and

(39) in section 38(o) (12 U.S.C. 1831o(o))--

(A) by striking `ASSOCIATIONS- ' and all that follows through `Subsections (e)(2)' and inserting `ASSOCIATIONS- Subsections (e)(2)';

(B) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively, and moving the margins 2 ems to the left; and

(C) in paragraph (1) (as so redesignated), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and moving the margins 2 ems to the left.

SEC. 13. OTHER TECHNICAL AND CONFORMING AMENDMENTS.

(a) SECTION 5136 OF THE REVISED STATUTES- The paragraph designated the `Eleventh' of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended in the 5th sentence, by striking `affected deposit insurance fund' and inserting `Deposit Insurance Fund'.

(b) INVESTMENTS PROMOTING PUBLIC WELFARE; LIMITATIONS ON AGGREGATE INVESTMENTS- The 23d undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended in the 4th sentence, by striking `affected deposit insurance fund' and inserting `Deposit Insurance Fund'.

(c) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS- Section 10B(b)(3)(A)(ii) of the Federal Reserve Act (12 U.S.C. 347b(b)(3)(A)(ii)) is amended by striking `any deposit insurance fund in' and inserting `the Deposit Insurance Fund of'.

(d) AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985- Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended--

(1) by striking `Bank Insurance Fund' and inserting `Deposit Insurance Fund'; and

(2) by striking `Federal Deposit Insurance Corporation, Savings Association Insurance Fund;'.

(e) AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT- The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended--

(1) in section 11(k) (12 U.S.C. 1431(k))--

(A) in the subsection heading, by striking `SAIF' and inserting `THE DEPOSIT INSURANCE FUND'; and

(B) by striking `Savings Association Insurance Fund' each place that term appears and inserting `Deposit Insurance Fund';

(2) in section 21 (12 U.S.C. 1441)--

(A) in subsection (f)(2), by striking `, except that' and all that follows through the end of the paragraph and inserting a period; and

(B) in subsection (k), by striking paragraph (4);

(3) in section 21A(b)(4)(B) (12 U.S.C. 1441a(b)(4)(B)), by striking `affected deposit insurance fund' and inserting `Deposit Insurance Fund';

(4) in section 21A(b)(6)(B) (12 U.S.C. 1441a(b)(6)(B))--

(A) in the subparagraph heading, by striking `SAIF-INSURED BANKS' and inserting `CHARTER CONVERSIONS'; and

(B) by striking `Savings Association Insurance Fund member' and inserting `savings association';

(5) in section 21A(b)(10)(A)(iv)(II) (12 U.S.C. 1441a(b)(10)(A)(iv)(II)), by striking `Savings Association Insurance Fund' and inserting `Deposit Insurance Fund';

(6) in section 21A(n)(6)(E)(iv) (12 U.S.C. 1441(n)(6)(E)(iv)) by striking `Federal deposit insurance funds' and inserting `The Deposit Insurance Fund';

(7) in section 21B(e) (12 U.S.C. 1441b(e))--

(A) in paragraph (5), by inserting `as of the date of funding' after `Savings Association Insurance Fund members' each place that term appears; and

(B) by striking paragraphs (7) and (8); and

(8) in section 21B(k) (12 U.S.C. 1441b(k))--

(A) by inserting before the colon `, the following definitions shall apply';

(B) by striking paragraph (8); and

(C) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

(f) AMENDMENTS TO THE HOME OWNERS' LOAN ACT- The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended--

(1) in section 5 (12 U.S.C. 1464)--

(A) in subsection (c)(5)(A), by striking `that is a member of the Bank Insurance Fund';

(B) in subsection (c)(6), by striking `As used in this subsection--' and inserting `For purposes of this subsection, the following definitions shall apply:';

(C) in subsection (o)(1), by striking `that is a Bank Insurance Fund member';

(D) in subsection (o)(2)(A), by striking `a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member' and inserting `insured by the Deposit Insurance Fund';

(E) in subsection (t)(5)(D)(iii)(II), by striking `affected deposit insurance fund' and inserting `Deposit Insurance Fund';

(F) in subsection (t)(7)(C)(i)(I), by striking `affected deposit insurance fund' and inserting `Deposit Insurance Fund'; and

(G) in subsection (v)(2)(A)(i), by striking `the Savings Association Insurance Fund' and inserting `or the Deposit Insurance Fund'; and

(2) in section 10 (12 U.S.C. 1467a)--

(A) in subsection (c)(6)(D), by striking `this title' and inserting `this Act';

(B) in subsection (e)(1)(B), by striking `Savings Association Insurance Fund or Bank Insurance Fund' and inserting `Deposit Insurance Fund';

(C) in subsection (e)(2), by striking `Savings Association Insurance Fund or the Bank Insurance Fund' and inserting `Deposit Insurance Fund';

(D) in subsection (e)(4)(B), by striking `subsection (1)' and inserting `subsection (l)';

(E) in subsection (g)(3)(A), by striking `(5) of this section' and inserting `(5) of this subsection';

(F) in subsection (i), by redesignating paragraph (5) as paragraph (4);

(G) in subsection (m)(3), by striking subparagraph (E), and by redesignating subparagraphs (F), (G), and (H) as subparagraphs (E), (F), and (G), respectively;

(H) in subsection (m)(7)(A), by striking `during period' and inserting `during the period'; and

(I) in subsection (o)(3)(D), by striking `sections 5(s) and (t) of this Act' and inserting `subsections (s) and (t) of section 5'.

(g) AMENDMENTS TO THE NATIONAL HOUSING ACT- The National Housing Act (12 U.S.C. 1701 et seq.) is amended--

(1) in section 317(b)(1)(B) (12 U.S.C. 1723i(b)(1)(B)), by striking `Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations' and inserting `Deposit Insurance Fund'; and

(2) in section 536(b)(1)(B)(ii) (12 U.S.C. 1735f-14(b)(1)(B)(ii)), by striking `Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations' and inserting `Deposit Insurance Fund'.

(h) AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989- The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note) is amended--

(1) in section 951(b)(3)(B) (12 U.S.C. 1833a(b)(3)(B)), by striking `Bank Insurance Fund, the Savings Association Insurance Fund,' and inserting `Deposit Insurance Fund'; and

(2) in section 1112(c)(1)(B) (12 U.S.C. 3341(c)(1)(B)), by striking `Bank Insurance Fund, the Savings Association Insurance Fund,' and inserting `Deposit Insurance Fund'.

(i) AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956- The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended--

(1) in section 2(j)(2) (12 U.S.C. 1841(j)(2)), by striking `Savings Association Insurance Fund' and inserting `Deposit Insurance Fund'; and

(2) in section 3(d)(1)(D)(iii) (12 U.S.C. 1842(d)(1)(D)(iii)), by striking `appropriate deposit insurance fund' and inserting `Deposit Insurance Fund'.

(j) AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT- Section 114 of the Gramm-Leach-Bliley Act (12 U.S.C. 1828a) is amended by striking `any Federal deposit insurance fund', in subsection (a)(1)(B), paragraphs (2)(B) and (4)(B) of subsection (b), and subsection (c)(1)(B), each place that term appears and inserting `the Deposit Insurance Fund'.

END

From: CN=Scott McClellan/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/5/2002 2:53:46 AM
Subject: : need guidance asap

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 07:53:46.00
SUBJECT:: need guidance asap
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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US May Approve More Aid for Kin of Sept 11 Dead (NYTimes)
By DAVID BARSTOW
New York Times, March 5, 2002
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The new rules would also open the fund to hundreds of additional rescue workers and World Trade Center employees who were injured in the attack, including those who suffered disabling lung ailments.
Administration officials with knowledge of the discussions said several big changes were all but certain to be in the final rules. In the most significant financial adjustment, the amount to spouses and children for noneconomic damages like loss of companionship would go to $100,000 from $50,000.
Some officials in New York and New Jersey have also expressed cautious optimism that the $250,000 payments to cover the pain and suffering of those who died might also be increased, although the final rules do not yet include any such increase.
The new rules would also reduce various deductions that have the potential of cutting awards by hundreds of thousands of dollars. Social Security death benefits for widows would not be deducted under the revised rules, nor would most workers' compensation benefits to surviving spouses, victim advocates have been told by White House officials.
The draft version of the rules said that only civilians injured within 12 hours of the attack were eligible for the fund, but the final rules contemplated by Kenneth R. Feinberg, the fund's special master, would extend that to 72 hours for those who worked at the World Trade Center and would remove the time limit for the uniformed rescue workers who responded to the attack.
Combined, these changes could add hundreds of millions to the final cost of the fund, previously estimated at $6 billion.
The final rules, scheduled to be released this week, are still subject to last-minute change by the White House and by Mr. Feinberg, who was appointed to oversee the fund by Attorney General John Ashcroft.
In an interview yesterday, Mr. Feinberg refused to discuss many of the specifics of the new rules, emphasizing that several crucial details had yet to be decided. But he stressed that new fund rules, some of which were first reported in this week's edition of Newsweek, have been extensively revised or clarified to address as many criticisms as possible from families and their representatives in Congress.
"I want to make it as attractive as possible, and I hope I've done so," he said of the fund. "That is a formidable task when dealing with these families, but I'm trying to make it attractive. That is the goal."

Also under discussion are final rules that would include special protections for the families of illegal immigrants, including written assurances that immigration authorities would not try to penalize their families, according to New York officials who have been monitoring the rules. The original rules had required families to waive their right to sue before filing a claim, but the final rules would let families first obtain a "ballpark" estimate of their award from fund officials before having to make such a decision.

"These proposed modifications are designed primarily with the lower- and middle-income wage earner in mind," Mr. Feinberg said. "I am most concerned in this program with the families at the bottom end."

But the administration and Mr. Feinberg have also made changes to address complaints by powerful interests, from the Association of Trial Lawyers of America to New York politicians, including Gov. George E. Pataki, and the state attorney general, Eliot L. Spitzer.

Mr. Pataki and Mr. Spitzer objected to a proposed rule that would have given families only two hours to present their cases to Mr. Feinberg's hearing officers. That language has been struck, according to several people who have spoken to Mr. Feinberg. The new rules will give families whatever time they need.

Likewise, Leo V. Boyle, president of the trial lawyers group, expressed concerns that the draft rules improperly limited Mr. Feinberg's authority to make awards as he deemed appropriate. The new rules make clear Mr. Feinberg's discretion in several areas, Congressional staff members said.

"There has been a willing and open ear from both the administration and Feinberg to the concerns of both the victims and those who argue their case," said Senator Jon S. Corzine of New Jersey.

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The law gave Mr. Feinberg enormous power over families affected by the disaster. There are no appeals from his awards, and he has broad authority to interpret the regulations. In December, when Mr. Feinberg announced draft rules for the fund, he estimated that, on average, families of those who died would receive awards of $1.6 million, although he cautioned that the law also required him to deduct life insurance and government benefits.

Families and the leaders of victims' groups heaped criticism on the proposed rules, and have since campaigned for dozens of changes by staging protest rallies, meeting with members of Congress and bombarding Mr. Feinberg and the Justice Department with proposed revisions. But by far, their most vehement objections have focused on a single provision: the proposed awards for noneconomic losses, which they have called insulting and degrading.

In meeting after meeting, Mr. Feinberg has steadfastly defended his proposed noneconomic awards, $250,000 per death with an additional $50,000 for each spouse and each dependent. He said he was open to compromise on a host of other fund rules, but he said that the noneconomic awards were unlikely to change.

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of the attacks and treated by a doctor within 24 hours. Rescue and recovery workers were covered if their injury was sustained within 96 hours of the attacks. In any event, victims had to have "contemporaneous" medical records documenting the injury.

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"If you didn't get a record right away, that's O.K. as long as you eventually got the record," he said. The audience applauded enthusiastically.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>
Sent: 3/5/2002 4:32:13 AM
Subject: : Re: need guidance asap

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 09:32:13.00
SUBJECT:: Re: need guidance asap
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I was over at our staff meeting until 9:00, but Jay has point
here.

Scott McClellan
03/05/2002 07:53:44 AM
Record Type: Record

To: Jay P. Lefkowitz/OPD/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: need guidance asap

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By DAVID BARSTOW
New York Times, March 5, 2002
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From: CN=Scott McClellan/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/5/2002 4:38:27 AM
Subject: : Re: need guidance asap

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 09:38:27.00
SUBJECT:: Re: need guidance asap
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks -- got it already.

Brett M. Kavanaugh
03/05/2002 09:32:10 AM
Record Type: Record

To: Scott McClellan/WHO/EOP@EOP
cc:
bcc:
Subject: Re: need guidance asap

I was over at our staff meeting until 9:00, but Jay has point
here.

Scott McClellan
03/05/2002 07:53:44 AM
Record Type: Record

To: Jay P. Lefkowitz/OPD/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 3/5/2002 4:39:28 AM
Subject: :
Attachments: P_OMPT5003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-MAR-2002 09:39:28.00
SUBJECT::
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OMPT5003_WHO.TXT_1>
```

Brett M. Kavanaugh

Experience

Office of Counsel to the President

Special Assistant and Associate Counsel to the President, January 2001-present.

Assist with respect to nomination and confirmation of federal judges, separation of powers and privilege issues related to Congress, certain litigation matters, legal aspects of various policy issues, legal questions related to political events, the Presidential Records Act, general ethics questions, and other issues.

Kirkland & Ellis, Washington, D.C.

Partner, 1997-98, 1999-2001.

Practice included appellate and constitutional issues in Supreme Court of the United States and in federal and state courts. Representative clients included America Online, Verizon, General Motors, Morgan Stanley Dean Witter, Governor Jeb Bush, Congressmen Steve Largent and J.C. Watts, Elian Gonzalez's American relatives, and Adat Shalom synagogue.

Office of Independent Counsel Kenneth W. Starr

Associate Counsel, 1994-97, 1998.

Investigated death of Vincent W. Foster, Jr., and possible obstruction of justice in handling of documents from his office. Investigated possible obstruction of justice in connection with *Jones v. Clinton* case. Conducted grand jury questioning and interviews of over 50 witnesses. Assisted in drafting Independent Counsel's 1997 report on the Foster matter. Assisted in drafting Independent Counsel's 1998 impeachment referral to Congress with respect to President Clinton. Assisting in preparing Independent Counsel's testimony to House Judiciary Committee in 1998 impeachment proceedings. Argued *Swidler & Berlin v. United States* in Supreme Court (case addressing scope of attorney-client privilege). Briefed government attorney-client privilege cases in Eighth and D.C. Circuits and argued case in D.C. Circuit. Argued executive privilege matter in United States District Court for the District of Columbia.

Justice Anthony M. Kennedy, Supreme Court of the United States

Law Clerk, 1993-94.

Office of Solicitor General, United States Department of Justice

Attorney, 1992-93.

Judge Alex Kozinski, United States Court of Appeals for the Ninth Circuit

Law Clerk, 1991-92.

Judge Walter K. Stapleton, United States Court of Appeals for the Third Circuit

Law Clerk, 1990-91.

Education

Yale Law School

J.D. 1990. Notes Editor, *Yale Law Journal*.

Yale College

B.A. 1987. *Cum laude* graduate in History. Tutor at Roberto Clemente Middle School. Reporter for *Yale Daily News*, 1983-84, 1986. Member of Junior Varsity Basketball team, 1983-85 (Captain, 1984-85). Member of Delta Kappa Epsilon and Truth and Courage.

Publications and Related Activities

The President and the Independent Counsel, 86 Georgetown Law Journal 2133 (1998).

Defense Presence and Participation: A Procedural Minimum for Batson v. Kentucky Hearings, 99 Yale Law Journal 187 (1989).

Authored articles published in *Wall Street Journal*, *Washington Post*, and *American Spectator* on issues of constitutional law, including equal protection, impeachment, and separation of powers.

Appeared on CNN *The World Today* with Wolf Blitzer, CNN *Burden of Proof*, ABC *20/20*, and MSNBC to discuss issues of constitutional law, including Establishment Clause, school choice, criminal procedure, equal protection, and separation of powers.

Appeared on panels sponsored by Yale Law School, Duke Law School, Georgetown University Law Center, the Federalist Society, the National Association of Attorneys General, and the American Bar Association on issues of constitutional law, independent counsel law, prosecutorial ethics, Internet open access policy, and sentencing law.

Guest-lectured at Yale Law School, Duke Law School, Georgetown University Law Center, Washington University Law School, and George Mason Law School.

Other Activities

Lawyers for Bush-Cheney

Regional Coordinator for 2000 Campaign (Maryland, D.C., Delaware, and Pennsylvania).

Federalist Society

Co-Chair, School Choice Subcommittee of Religious Liberties Practice Group, 1999-2001.

Maryland Commission on the Future of the Courts

Research Associate to Chair of Commission, 1996-97.

Georgetown Prep Alumni Association
Member of Alumni Association Board of Directors.

Blessed Sacrament School, Washington, D.C.
Coach, 5th-grade basketball, 1996-97.

References

The Honorable Alberto R. Gonzales
The Honorable Anthony M. Kennedy
The Honorable Alex Kozinski
The Honorable Walter K. Stapleton
The Honorable Kenneth W. Starr

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 3/5/2002 5:01:22 AM
Subject: : 9/11 victims comp program

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 10:01:22.00
SUBJECT:: 9/11 victims comp program
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

US May Approve More Aid for Kin of Sept 11 Dead (NYTimes)
By DAVID BARSTOW
New York Times, March 5, 2002
After months of criticism from the families of those killed on Sept. 11, the Bush administration is close to a decision on several changes in the Victims Compensation Fund that could result in scores of families' receiving hundreds of thousands of dollars more than the fund's original rules would have allowed.
The new rules would also open the fund to hundreds of additional rescue workers and World Trade Center employees who were injured in the attack, including those who suffered disabling lung ailments.
Administration officials with knowledge of the discussions said several big changes were all but certain to be in the final rules. In the most significant financial adjustment, the amount to spouses and children for noneconomic damages like loss of companionship would go to $100,000 from $50,000.
Some officials in New York and New Jersey have also expressed cautious optimism that the $250,000 payments to cover the pain and suffering of those who died might also be increased, although the final rules do not yet include any such increase.
The new rules would also reduce various deductions that have the potential of cutting awards by hundreds of thousands of dollars. Social Security death benefits for widows would not be deducted under the revised rules, nor would most workers' compensation benefits to surviving spouses, victim advocates have been told by White House officials.
The draft version of the rules said that only civilians injured within 12 hours of the attack were eligible for the fund, but the final rules contemplated by Kenneth R. Feinberg, the fund's special master, would extend that to 72 hours for those who worked at the World Trade Center and would remove the time limit for the uniformed rescue workers who responded to the attack.
Combined, these changes could add hundreds of millions to the final cost of the fund, previously estimated at $6 billion.
The final rules, scheduled to be released this week, are still subject to last-minute change by the White House and by Mr. Feinberg, who was appointed to oversee the fund by Attorney General John Ashcroft.
In an interview yesterday, Mr. Feinberg refused to discuss many of the specifics of the new rules, emphasizing that several crucial details had yet to be decided. But he stressed that new fund rules, some of which were first reported in this week's edition of Newsweek, have been extensively revised or clarified to address as many criticisms as possible from families and their representatives in Congress.
"I want to make it as attractive as possible, and I hope I've done so," he said of the fund. "That is a formidable task when dealing with these families, but I'm trying to make it attractive. That is the goal."

Also under discussion are final rules that would include special protections for the families of illegal immigrants, including written assurances that immigration authorities would not try to penalize their families, according to New York officials who have been monitoring the rules. The original rules had required families to waive their right to sue before filing a claim, but the final rules would let families first obtain a "ballpark" estimate of their award from fund officials before having to make such a decision.

"These proposed modifications are designed primarily with the lower- and middle-income wage earner in mind," Mr. Feinberg said. "I am most concerned in this program with the families at the bottom end."

But the administration and Mr. Feinberg have also made changes to address complaints by powerful interests, from the Association of Trial Lawyers of America to New York politicians, including Gov. George E. Pataki, and the state attorney general, Eliot L. Spitzer.

Mr. Pataki and Mr. Spitzer objected to a proposed rule that would have given families only two hours to present their cases to Mr. Feinberg's hearing officers. That language has been struck, according to several people who have spoken to Mr. Feinberg. The new rules will give families whatever time they need.

Likewise, Leo V. Boyle, president of the trial lawyers group, expressed concerns that the draft rules improperly limited Mr. Feinberg's authority to make awards as he deemed appropriate. The new rules make clear Mr. Feinberg's discretion in several areas, Congressional staff members said.

"There has been a willing and open ear from both the administration and Feinberg to the concerns of both the victims and those who argue their case," said Senator Jon S. Corzine of New Jersey.

The Victims Compensation Fund was established in September as part of emergency legislation to bail out the airline industry. The fund covers families of those who died, and anyone physically injured by the attacks. Those who file claims with the fund are guaranteed payment for their economic and noneconomic losses within 120 days of their formal filing. But they must also waive their right to file lawsuits against the airlines and other potential defendants.

The law gave Mr. Feinberg enormous power over families affected by the disaster. There are no appeals from his awards, and he has broad authority to interpret the regulations. In December, when Mr. Feinberg announced draft rules for the fund, he estimated that, on average, families of those who died would receive awards of $1.6 million, although he cautioned that the law also required him to deduct life insurance and government benefits.

Families and the leaders of victims' groups heaped criticism on the proposed rules, and have since campaigned for dozens of changes by staging protest rallies, meeting with members of Congress and bombarding Mr. Feinberg and the Justice Department with proposed revisions. But by far, their most vehement objections have focused on a single provision: the proposed awards for noneconomic losses, which they have called insulting and degrading.

In meeting after meeting, Mr. Feinberg has steadfastly defended his proposed noneconomic awards, $250,000 per death with an additional $50,000 for each spouse and each dependent. He said he was open to compromise on a host of other fund rules, but he said that the noneconomic awards were unlikely to change.

But in discussions with victims' groups and leaders from New York and New Jersey, Mr. Feinberg and White House officials have signaled they are preparing to double the $50,000 payments. For a mother of two children, that change would increase her family's overall award for noneconomic losses by $150,000, to a total of $550,000.

Mr. Corzine said that based on his recent conversations with the White House he was hopeful that the proposed $250,000 award would be increased, perhaps substantially.

By some calculations, the combination of higher noneconomic awards and reduced deductions could result in average awards as much as $200,000 higher than those previously projected.

Yesterday afternoon, in a meeting with 50 or so victims and relatives, Mr. Feinberg described several revisions that would greatly expand the number of injured people eligible for awards.

Under the draft rules, a person had to have been injured within 12 hours

of the attacks and treated by a doctor within 24 hours. Rescue and recovery workers were covered if their injury was sustained within 96 hours of the attacks. In any event, victims had to have "contemporaneous" medical records documenting the injury.

But the final rules, Mr. Feinberg said, increase the limit for civilians to 72 hours from 12 hours. The 96- hour limit for rescue workers would be eliminated altogether. Even those rescue workers who waited weeks to seek medical care would be eligible, so long as their injury resulted in a disability. What's more, he said, the final rules would eliminate the requirement for contemporaneous medical records.

"If you didn't get a record right away, that's O.K. as long as you eventually got the record," he said. The audience applauded enthusiastically.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>
BCC: elizabeth camp (elizabeth camp [WHO])
Sent: 3/5/2002 5:38:00 AM
Subject: : Re: 2:30 Travel Meeting

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-MAR-2002 10:38:00.00
SUBJECT:: Re: 2:30 Travel Meeting
TO:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:elizabeth camp ( elizabeth camp [ WHO ] )
READ:UNKNOWN
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Cathy: Our office has a POTUS meeting at 4 and Judge Gonzales has
now set our pre-meeting at 2:30. That means I cannot do the meeting with
Joe at 2:30 today. I could meet at 3:15. Apologies.
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/5/2002 5:58:51 AM
Subject: : LRM MJR118 - - General Services Administration Testimony on HR3832 Services Acquisition Reform Act
Attachments: P_UAUT5003_WHO.TXT_1.doc; P_UAUT5003_WHO.TXT_2.doc

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CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 10:58:51.00
SUBJECT:: LRM MJR118 - - General Services Administration Testimony on HR3832 Services Acquisition Reform Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/05/2002 10:58 AM ----------

From: Marshall J. Rodgers on 03/05/2002 10:53:48 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM MJR118 - - General Services Administration Testimony on HR3832 Services Acquisition Reform Act

Attached for your review is GSA testimony for a March 7th hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy. HR 3832 was introduced last night. Bill text is not yet available on the Thomas website (http://thomas.loc.gov). A BNA article and bill summary is attached for your information.

- 3.7.02 SARA HRG.doc

LRM ID: MJR118
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, March 5, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: General Services Administration Testimony on HR3832 Services Acquisition Reform Act

DEADLINE: 5:00 PM Tuesday, March 5, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review is GSA testimony for a March 7th hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy. HR 3832 was introduced last night. Bill text is not yet available on the Thomas website (http://thomas.loc.gov). A BNA article and bill summary is attached for your information.

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Kenneth L. Schwartz
LRM ID: MJR118 SUBJECT: General Services Administration Testimony on HR3832 Services Acquisition Reform Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Marshall J. Rodgers Phone: 395-7813 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

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_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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Augustine T. Smythe/OMB/EOP@EOP

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TESTIMONY OF THE HONORABLE STEPHEN A. PERRY

ADMINISTRATOR OF GENERAL SERVICES

BEFORE THE

HOUSE SUBCOMMITTEE ON TECHNOLOGY AND

PROCUREMENT

MARCH 7, 2002

REV_00141388

INTRODUCTION

CHAIRMAN DAVIS, MR. TURNER AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR INVITING ME TO APPEAR BEFORE YOU TODAY TO DISCUSS IDEAS ON HOW TO IMPROVE THE CURRENT FEDERAL ACQUISITION PROCESS.

CHAIRMAN DAIVS, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK YOU IN PARTICULAR FOR YOUR LEADERSHIP IN THIS AREA OVER THE YEARS, AND FOR BRINGING THE NEED FOR ADDITIONAL ACQUISITION REFORM TO THE ATTENTION OF CONGRESS.

AS YOU KNOW, EACH YEAR, THE FEDERAL GOVERNMENT SPENDS APPROXIMATELY $200 BILLION ON GOODS AND SERVICES IN ORDER TO MEET AGENCY REQUIREMENTS TO PROVIDE GOVERNMENT PROGRAMS AND SERVICES TO THE AMERICAN PUBLIC. THAT IS WHY IT IS SO IMPORTANT FOR THE GOVERNMENT'S ACQUISITION PROCESS AND REGULATIONS TO FOCUS ON EFFICIENCY, EFFECTIVENESS AND ACCOUNTABILITY. ADDITIONALLY, THE ACQUISITION PROCESS AND REGULATIONS SHOULD BE EASILY UNDERSTOOD BY ALL THE PARTIES INVOLVED IN THE PROCESS AND BE BASED ON COMMON SENSE. FINALLY, WHEN POSSIBLE, THE ACQUISITION PROCESS AND REGULATIONS, SHOULD RESEMBLE COMMERCIAL SECTOR BUYING PROCEDURES.

GSA'S ROLE IN IMPROVING THE OVERALL FEDERAL GOVERNMENT'S ACQUISITION PROCESS

AS YOU KNOW, GSA MANAGES A SIGNIFICANT PORTION OF THE OVERALL FEDERAL GOVERNMENT'S ACQUISITION PROCESS TO OFFER GOODS AND SERVICES, SUCH AS WORKSPACE, OFFICE EQUIPMENT, COMPUTERS, TELECOMMUNICATIONS, INFORMATION TECHNOLOGY, VEHICLES AND FURNITURE TO OUR CUSTOMER AGENCIES. THROUGH THE EFFICIENCY AND EFFECTIVENESS OF GSA'S PROCUREMENT AND PROPERTY MANAGEMENT SERVICES, WE HELP FEDERAL AGENCIES TO BETTER SERVE THE PUBLIC. AS ONE OF THE FEDERAL GOVERNMENT'S LEAD ACQUISITION AGENCIES WE RECOGNIZE THE NEED TO CONSTANTLY LOOK FOR WAYS TO IMPROVE THE FEDERAL GOVERNMENT-WIDE ACQUISITION PROCESS AND USE GSA'S EXPERTISE TO HELP PROVIDE BEST VALUE FOR ALL AGENCIES AND THE TAXPAYERS.

AT GSA WE RECOGNIZE THE NEED TO PURSUE THIS MORE AGGRESSIVELY BY INITIATIVES AT BOTH THE FEDERAL GOVERNMENT-WIDE LEVEL AND AT THE INDIVIDUAL AGENCY-LEVEL.

GSA'S CURRENT INITIATIVES FOR IMPROVING THE FEDERAL ACQUISITION PROCESS:

1. GSAADVANTAGE!

ONE EXAMPLE OF GSA'S EFFORT TO IMPROVE THE FEDERAL ACQUISITION PROCESS IS THE DEVELOPMENT OF AN ON-LINE ACQUISITION SYSTEM CALLED GSAADVANTAGE. THIS SYSTEM USES INTERNET TECHNOLOGY TO GIVE AGENCIES ELECTRONIC ON-LINE ACCESS TO THE GOODS AND SERVICES OF OVER 7,000 VENDORS. THE SYSTEM ALSO ALLOWS AGENCIES TO ISSUE ELECTRONIC REQUESTS FOR QUOTATIONS FOR PRODUCTS AND SERVICES. ADDITIONALLY, THE GSAADVANTAGE SYSTEM HAS THE ENHANCED SEARCH AND INQUIRY FUNCTIONALITY NECESSARY TO MAKE IT A VALUABLE RESEARCH TOOL FOR CONTRACTING OFFICERS LOOKING FOR COMPARATIVE INFORMATION REGARDING THE ITEMS THEY NEED TO BUY. THIS YEAR WE INTEND TO IMPROVE THIS ON-LINE ACQUISITION SYSTEM BY INTEGRATING OUR GSAADVANTAGE SYSTEM WITH OTHER AGENCIES' PROCUREMENT AND FINANCE SYSTEMS. THIS WILL MORE FULLY AUTOMATE THE PROCESS OF TRANSFERRING AGENCY PURCHASE ORDERS AND OTHER PROCUREMENT INFORMATION. IT WILL ALSO PROVIDE THE INFORMATION NEEDED FOR EACH AGENCY'S ACCOUNTING CONTROL PURPOSES.

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2. INTEGRATED ACQUISITION SYSTEM:

TO GO WELL BEYOND THE CURRENT GSAADVANTAGE ON-LINE ACQUISITION SYSTEM, WE ARE WORKING ON THE ADMINISTRATION'S E-GOVERNMENT INITIATIVE TO DEVELOP A GOVERNMENT-WIDE INTEGRATED ACQUISITION SYSTEM. THIS WILL ELIMINATE REDUNDANT SYSTEMS AND DATA COLLECTION.

WE CAN ACHIEVE THE ADMINISTRATION'S GOAL TO EXPAND THE USE OF ELECTRONIC GOVERNMENT AND INTERNET TECHNOLOGY WHILE AT THE SAME TIME ACHIEVE THIS COMMITTEE'S GOAL TO IMPROVE THE FEDERAL GOVERNMENT'S ACQUISITION PROCESS.

THIS E-GOVERNMENT INITIATIVE WILL SIGNIFICANTLY IMPROVE SERVICE AND PROVIDE BEST VALUE TO ALL FEDERAL DEPARTMENTS AND AGENCIES BY MAKING THE FEDERAL ACQUISITION PROCESS BETTER, FASTER AND CHEAPER.

SECTION 203 OF YOUR DRAFT BILL CALLS FOR A STUDY ON HORIZONTAL ACQUISITION THAT COULD RESULT IN RECOMMENDATIONS THAT WILL HELP US ACHIEVE THE INTENDED GOAL OF THE E-GOVERNMENT INITIATIVE FOR INTEGRATED ACQUISITION. THIS INTEGRATED ACQUISITION SYSTEM IS DESIGNED TO CONSOLIDATE THE CURRENT CONTRACTING VEHICLES AND CATALOGS

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INTO A COMMON ON-LINE SYSTEM THEREBY MAKING CURRENT GWACS (government wide acquisition contracts), AND CATALOGS FOR GOODS AND SERVICES MORE ACCESSIBLE TO ALL FEDERAL CUSTOMERS.

3. FEDBIZOPPS:

ANOTHER EXAMPLE OF GSA'S EFFORT TO IMPROVE THE FEDERAL ACQUISITION PROCESS THROUGH THE INCREASED USE OF E-GOVERNMENT AND INTERNET TECHNOLOGY IS THE RECENT DEVELOPMENT OF A WEB SITE FOR THE GOVERNMENT'S FEDERAL BUSINESS OPPORTUNITIES PROGRAM. THE WEB SITE CALLED, FEDBIZOPPS.GOV, IS THE SINGLE ELECTRONIC ENTRY POINT FOR AGENCIES TO POST THEIR ACQUISITION NEEDS AND FOR VENDORS TO LOCATE OPPORTUNITIES TO DO BUSINESS WITH THE GOVERNMENT.

4. INTEGRATED VENDOR PROFILE NETWORK:

FINALLY, GSA ***IS*** A MANAGING PARTNER IN A GOVERNMENT WIDE INTEGRATED ACQUISITION INITIATIVE. A COMPONENT OF THIS IS TO DEVELOP AN INTEGRATED VENDOR PROFILE NETWORK. THIS SYSTEM WILL PROVIDE A SINGLE POINT OF VENDOR REGISTRATION AND VALIDATION. THAT IS, VENDORS WILL BE ABLE TO PROVIDE THEIR BUSINESS INFORMATION IN ONE PLACE FOR ALL GOVERNMENT TRANSACTIONS. GOVERNMENT OFFICIALS WILL HAVE ACCESS TO THIS DATA TO SUPPORT ACQUISITION PROCESSES. THIS WILL REPLACE

MULTIPLE MANUAL, REDUNDANT, AND OFTEN INCONSISTENT VENDOR COLLECTION SYSTEMS WITHIN THE GOVERNMENT, AND PROVIDE A UNIFIED DATABASE OF VENDOR INFORMATION.

TRAINING

WE CERTAINLY AGREE WITH YOU THAT TRAINING THE FEDERAL ACQUISITION WORKFORCE ON A CONTINUAL BASIS IS AN ESSENTIAL PART OF IMPROVING THE FEDERAL ACQUISITION PROCESS AND CRITICAL TO EACH AGENCY'S PERFORMANCE SUCCESS. AT GSA WE RECOGNIZE THE NEED TO PURSUE THIS MORE AGGRESSIVELY.

THE UNIVERSITY OF MULTIPLE AWARD SCHEDULES (OR U-MAS)

ONE EXAMPLE OF OUR EFFORT TO DEVELOP THE SKILLED ACQUISITION WORKFORCE WE NEED IS GSA'S ON-LINE TRAINING PROGRAM FOR THE FEDERAL ACQUISITION WORKFORCE. THIS VIRTUAL CAMPUS, KNOWN AS THE UNIVERSITY OF MULTIPLE AWARD SCHEDULES (OR U-MAS) IS A SELF-PACED INTERNET TOOL TO TRAIN THE FEDERAL ACQUISITION WORKFORCE ON HOW TO USE THE GSA SCHEDULES PROGRAM. IT IS AVAILABLE ON-LINE, 7 DAYS A WEEK, 24 HOURS A DAY.

GSA HUMAN CAPITAL MANAGEMENT INITIATIVE:

AS PART OF OUR EFFORT TO DEVELOP THE SKILLED ACQUISITION WORKFORCE WE NEED AT GSA, WE ARE DEVELOPING COMPETENCY-

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BASED ASSESSMENTS TO DETERMINE THE SPECIFIC AREAS WHERE OUR TRAINING OF THE GSA ACQUISITION WORKFORCE TO-DATE HAS ACHIEVED THE NEEDED RESULTS AS WELL AS AREAS WHERE WE STILL HAVE DEFICIENCIES. WE ARE USING THIS INFORMATION REGARDING THE SKILL MIX OF THE GSA ACQUISITION WORKFORCE TO DEVELOP AND IMPLEMENT A SPECIFIC ACTION PLAN TAILORED TO THE IDENTIFIED THE TRAINING NEEDS OF OUR AGENCY.

WE BELIEVE ALL AGENCIES SHOULD BE DOING THIS KIND OF SELF-ASSESSMENT AND CORRECTION OF DEFICIENCIES AS PART OF THEIR HUMAN CAPITAL MANAGEMENT INITIATIVES.

THE SERVICES ACQUISITION REFORM ACT PROPOSAL TO REQUIRE GSA TO ESTABLISH A WORKFORCE FUND FOR INTERAGENCY TRAINING PURPOSES SHOWS A STRONG COMMITMENT TO IMPROVING THE KNOWLEDGE AND SKILLS OF THE ACQUISITION WORKFORCE IN PARTICULAR AND THE TOTAL FEDERAL WORKFORCE IN GENERAL. GSA IS CONCERNED THAT MANDATING SUCH A GOVERNMENT-WIDE FUND SYSTEM WOULD ELIMINATE INDIVIDUAL AGENCY ACCOUNTABILITY FOR ITS OWN TRAINING AND HUMAN CAPITAL MANAGEMENT RESPONSIBILITY IN THE ACQUISITION WORKFORCE AREA AS WELL AS IN THE AREAS OF OTHER MISSION CRITICAL POSITIONS. WHILE WE FULLY SUPPORT YOUR CONCEPT OF DEVELOPING A WELL-TRAINED

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ACQUISITION WORKFORCE, WE WOULD LIKE TO WORK WITH YOU TO DEVELOP AND ALTERNATIVE TO THE GOVERNMENT-WIDE WORKFORCE FUND APPROACH.

SERVICES ACQUISITION REFORM ACT PROVISIONS WILL HELP AGENCIES IMPROVE THEIR ACQUISITION WORKFORCE:

ONE EXAMPLE OF HOW CONGRESS CAN HELP AGENCIES IMPROVE THEIR FEDERAL WORKFORCE IS IN SECTION 102 OF YOUR PROPOSED BILL WHICH CALLS FOR A GOVERNMENT-INDUSTRY EXCHANGE PROGRAM TO PERMIT AGENCIES TO ARRANGE FOR THE DETAIL OF AN ELIGIBLE EMPLOYEE OF AN AGENCY TO WORK FOR A PRIVATE SECTOR ORGANIZATION OR AN ELIGIBLE EMPLOYEE *OF* A PRIVATE SECTOR ORGANIZATION TO WORK FOR AN AGENCY. THIS PROGRAM, IF PROPERLY IMPLEMENTED, COULD PROVIDE AGENCIES SUCH AS GSA WITH THE ABILITY TO OFFER INCREASED TRAINING OPPORTUNITIES TO ITS ACQUISITION WORKFORCE AND ENABLE THEM TO BECOME FAMILIAR WITH INDUSTRY BEST PRACTICES. LIKEWISE, THE PRIVATE SECTOR PARTICIPANTS WILL BENEFIT BY BEING INVOLVED IN THE IMPORTANT PROJECTS THE GOVERNMENT IS UNDERTAKING, SEEING FIRST HAND HOW THE GOVERNMENT WORKS AND TAKING A BETTER UNDERSTANDING OF FEDERAL GOVERNMENT BACK TO THEIR COMPANIES.

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ALSO, SECTION 105 OF THE BILL, WHICH CALLS FOR AN ACQUISITION WORKFORCE RECRUITMENT AND RETENTION PILOT PROGRAM, COULD HELP ALL AGENCIES INCLUDING GSA TO RECRUIT HIGHLY QUALIFIED ACQUISITION PERSONNEL IN A MORE TIMELY FASHION. THIS PROVISION WOULD ALLOW THE HEADS OF AGENCIES TO DETERMINE THAT CERTAIN FEDERAL ACQUISITION POSITIONS ARE "SHORTAGE CATEGORY" POSITIONS AND THEREFORE ALLOW AGENCIES TO SHORTEN THE TIME NEEDED TO HIRE HIGHLY QUALIFIED ACQUISITION PERSONNEL. I'M SURE YOU ARE FAMILIAR WITH THE FINDING THAT MORE THAN 50% OF THE FEDERAL WORKFORCE IS ELIGIBLE FOR RETIREMENT DURING THE NEXT 5 YEARS. WITH THIS IN MIND WE ARE CONCERNED ABOUT OUR ABILITY TO FILL POSITIONS, ESPECIALLY THOSE HELD BY SKILLED ACQUISITION PERSONNEL.

THE SECTIONS OF THE BILL I JUST CITED WILL HELP AGENCIES IMPROVE THEIR STRATEGIC HUMAN CAPITAL MANAGEMENT INITIATIVES.

TELECOMMUTING:

ANOTHER INITIATIVE WE BELIEVE ADDS TO OUR ABILITY TO RECRUIT AND RETAIN ASSOCIATES IS OUR TELECOMMUTING POLICY. WITH MOUNTING EVIDENCE THAT TELEWORK BENEFITS GOVERNMENT OPERATIONS, BENEFITS THE QUALITY OF WORKLIFE FOR PEOPLE AND BENEFITS THE ENVIRONMENT, GSA, ALONG WITH THE OFFICE OF

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PERSONNEL MANAGEMENT LAUNCHED AN INTERNET TELEWORK INFORMATION CLEARINGHOUSE FOR FEDERAL EMPLOYEES SO THEY CAN FIND OUT WHAT THE GOVERNMENT OFFERS. I WOULD LIKE TO COMMEND YOU MR. CHAIRMAN FOR YOUR LEADERSHIP IN THIS AREA AND SUPPORT YOUR EFFORTS TO PROVIDE INCENTIVES TO ENCOURAGE CONTRACTORS TO ALLOW THEIR EMPLOYEES TO TELECOMMUTE.

CHIEF ACQUISITION OFFICER:

IT IS IMPORTANT TO KEEP IN MIND THAT WITHOUT MANAGEMENT LEADERSHIP, INITIATIVES TO STREAMLINE THE CURRENT ACQUISITION PROCESS COULD END UP BECOMING JUST ANOTHER LAYER OF REGULATIONS. THAT IS WHY WE SUPPORT THE CONCEPT OF EACH AGENCY HAVING A CHIEF ACQUISITION OFFICER. WE HAVE SUCH A POSITION AT GSA AND WE BELIEVE THAT THE ABILITY OF THAT PERSON TO AID US IN DEVELOPING A STRONG ACQUISITION STRATEGY IS CRITICALLY IMPORTANT TO OUR SUCCESS. FOR THAT REASON, WE BELIEVE THAT SECTION 201 OF THE PROPOSED LEGISLATION REQUIRING AGENCY HEADS TO ESTABLISH A CHIEF ACQUISITION OFFICER POSITION IS AN INTERESTING PROPOSAL AND WOULD SIGNAL THE IMPORTANCE OF MAINTAINING A WELL-MANAGED, INTEGRATED, AGENCY-WIDE ACQUISITION PLAN.

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SUMMARY COMMENTS

THE SERVICE ACQUISITION REFORM ACT IS A VERY SWEEPING PROPOSAL OFFERING MANY BENEFICIAL PROGRAMS AND REFORMS. WE APPRECIATE YOUR LEADERSHIP ROLE, MR. CHAIRMAN, IN BRINGING THESE MATTERS BEFORE THIS SUBCOMMITTEE, THE CONGRESS AND THE ADMINISTRATION. AS YOU CAN SEE FROM OUR COMMENTS AND THE VARIOUS INITIATIVES WE'RE WORKING ON AT GSA, WE SHARE YOUR COMMITMENT TO MAKING NEEDED IMPROVEMENT TO THE FEDERAL ACQUISITION PROCESS AND THE FEDERAL ACQUISITION WORKFORCE. WITH THAT IN MIND WE ARE ANXIOUS TO CONTINUE TO WORK WITH THE SUBCOMMITTEE TO FIND WAYS TO MAKE SIGNIFICANT IMPROVEMENT IN THE CURRENT FEDERAL ACQUISITION PROCESS.

ONCE AGAIN, THANK YOU FOR INVITING ME TO DISCUSS THIS IMPORTANT ISSUE WITH YOU TODAY. I AM HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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Government Contracts

Davis Introduces Acquisition Reform, Drops Revisions to Service Contract Act

After months of discussions with stakeholders and a congressional hearing last November, Rep. Tom Davis (R-Va.) March 4 introduced his much-anticipated Services Acquisition Reform Act (H.R. 3832).

The goal of SARA is to ensure that the government can quickly and efficiently purchase goods and services from the commercial marketplace, according to Davis.

Clearly, the events of Sept. 11 make the goals of SARA even more vital for the federal government if it is to access the cutting edge technology available in the private sector to fight terrorism and protect the homeland, Davis said.

The bill was developed over the fall and winter and was expected to be introduced on several previous occasions.

It has taken the congressman significant time and effort to get a bill that all stakeholders can support, an aide to Davis told BNA.

When Davis unveiled the legislation last Nov. 1 at a hearing before the House Government Reform Subcommittee on Technology and Procurement Policy, the administration expressed strong opposition to key provisions of the bill.

Since that time, Davis, chairman of the subcommittee, has presented various revised versions of the bill to the administration. An administration official would not comment on whether the bill as introduced addresses the administration's concerns.

However, the administration's views on the revised bill will be made known March 7 during a hearing on SARA before Davis's subcommittee. Office of Federal Procurement Policy Administrator Angela Styles is scheduled to testify at the hearing.

The bill contains six titles. Provisions that would have raised the threshold for application of the Service Contract Act and Davis-Bacon Act have been omitted. These provisions were so controversial that they could have derailed the entire bill, observers have said.

Industry Concerned by Styles's Statements

Styles recently told a Senate Armed Services panel that she sees no need for major legislative changes in the acquisition area.

While she stopped short of outright opposing any modification to the current framework for buying commercial items, Styles Feb. 27 told the panel that "we must challenge ourselves to demonstrate that the tools which would serve as a surrogate for the safeguards provided today will adequately protect the public fisc."

Expressing concern regarding Styles's views, Professional Services Council President Stan Soloway told BNA that the current commercial services definitions would allow small, performance-based contracts to be treated as commercial items is an important next step, but remain too limiting.

Soloway believes the authority should be made permanent, so that vendors will be more inclined to make longer term investments in people and technology that can drive higher performance, rather than feel constrained by an authority that faces a sunset date, which will either take them out of the government marketplace or force them back into traditional contracting--which for many of these companies is not and never has been an option.

In addition, the $5 million ceiling, while intended as a first step, really does need to be increased since it takes out of play so many critical, very commercial-like requirements, Soloway noted.

Contract Types

Labor hour and time and materials contracting remains a best commercial practice in many industry sectors, Soloway said.

"PSC believes it is time to work through the concerns some have about this practice to arrive at a solution set that enables the government, where appropriate, to take advantage of this best commercial practice, just as we have done throughout the acquisition reform process," Soloway added.

Training Fund

Regarding the provision in SARA to establish a separate acquisition workforce training fund, Soloway said those funds "are among the first to drop off" in the resource allocation process, especially when overall resource competition is fierce and available resources are constrained.

Thus, having a separate training fund "makes eminent sense, is budget-neutral, and keeps this important initiative out of the annual resource battles in which it has historically not fared well," he said.

Section-by-Section Summary of Bill

TITLE I -- Acquisition Workforce Training.

Section 101 - *Definition of Acquisition*. The section would amend the Office of Federal Procurement Policy Act (41 U.S.C. 403) to provide a comprehensive governmentwide definition of the term "acquisition." The new definition would encompass the entire spectrum of acquisition starting with the development of an agency's requirements through contract administration.

Section 102 - *Acquisition Workforce Training Fund.* The section would amend section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433) to establish within the General Services Administration an acquisition workforce-training fund to be managed by the Federal Acquisition Institute. The fund is to be funded by depositing 5 percent of the fees collected by various executive agencies under their governmentwide contracts. The fund can only be used for sorely needed acquisition workforce training across the civilian Government agencies.

Section 103 - *Government-Industry Exchange Program.* The section would amend Subpart B of part III of title 5, United States Code by adding a new Chapter 37 establishing an acquisition professional exchange program to permit the temporary exchange of high-performing acquisition professionals between the federal government and participating private-sector concerns. Under the program detailed federal employees would retain their federal benefits and would be paid by the federal government to the extent the private-sector pay is less than the employee's federal pay. Private-sector employees would either be transferred and receive a temporary appointment or detailed to a federal agency. Transferred employees would be paid by the federal agency and deemed a federal employee for most purposes. Detailed employees would also be deemed a federal employee for most purposes but would be paid by the government only to the extent the pay for the government position exceeds the employee's private-sector pay.

Section 104 - *Reimbursement of Costs.* The section would provide that the Federal Acquisition Regulation be amended to allow for reimbursement of reasonable costs incurred in connection with an employee's participation in the professional exchange program as allowable education and training costs under government contracts.

Section 105 - *Conforming Amendments.* The section would provide conforming amendments to Title 5 U.S.C. and various other laws in connection with the new professional exchange program.

Section 106 - *Acquisition Workforce Recruitment and Retention Pilot Program.* The section would permit the head of an agency to determine, for purposes of sections 3304, 5333, and 5753 of Title 5 U.S.C., that certain civilian federal acquisition positions are "shortage category" positions in order to recruit and directly hire such employees with high qualifications. The actions under this section would be subject to Office of Personnel Management policies for direct recruitment. The administrator of the Office of Federal Procurement Policy would be required to submit a report to Congress prior to the pilot's

September 2006 expiration date concerning the efficacy of the program and recommending whether the authority should be extended.

Section 107 - *Authorization of Telecommuting for Federal Contractors.* The section would provide for an amendment to the FAR providing that solicitations for federal contracts should not contain any requirement or evaluation criteria that would render an offeror ineligible for award or would reduce the scoring of the offeror's proposal based upon the offeror's plan to allow its employees to telecommute unless the contracting officer first determines in writing that the needs of the agency, including security needs, could not be meet without the requirement. The General Accounting Office would report to Congress on the implementation one year after the FAR amendment is published.

Section 108 - *Architectural and Engineering Acquisition Workforce.* The section would provide that OFPP in consultation with the Secretary of Defense and OPM, develop and implement a plan to assure that the Federal Government maintains a core in-house architectural and engineering capability.

Business Acquisition Practices

TITLE II - Adaptation of Business Acquisition Practices.

Subtitle A - Adaptation of Business Management Practices.

Section 201 - *Chief Acquisition Officers.* The section would amend section 16 of the Office of Procurement Policy Act (41 U.S.C. 414) to provide for the appointment of a Chief Acquisition Officer for each executive agency. The CAO would provide advice and assistance to the agency head and other senior management to ensure, among other things, that full and open competition is increased in agency acquisitions, that clear lines of authority, accountability, and responsibility for acquisition decision making are established and that an acquisition career management program is developed and maintained. The CAO shall have acquisition as the official's primary duty and monitor the agency's acquisition activities and evaluate them based on applicable performance measurements. The CAO shall, as a part of the statutorily required annual strategic planning and performance process, assess agency requirements for agency personnel knowledge and skills in acquisition resources management and, if necessary, develop strategies and plan for hiring, training and professional development.

Section 202 - *Increased Role for Defense Contract Management Agency.* The section would provide for a review by the Under Secretary of Defense for Acquisition, Technology and Logistics of the feasibility of establishing the DCMA as the primary organization responsible for contract management on base operating services contracts in excess of $5 million.

Section 203 - *Study on Horizontal Acquisition.* The section would provide for a study by the administrator, OFPP of laws, executive orders, and regulations that hinder the cross-government performance of acquisition functions and impact the use of governmentwide contracts.

Section 204 - *Statutory and Regulatory Review.* The section would provide that the administrator, OFPP establish an advisory panel of at least nine experts in acquisition law and policy who represent diverse public and private sector experiences. The panel would review acquisition laws and regulations with a view toward ensuring the greater use of commercial practices and performance-based contracting and make recommendations for the repeal or amendment of laws or regulations that are not necessary for the establishment of buyer and seller relationships while retaining the financial and ethical integrity of the acquisition programs and ensuring that the government's best interest is protected. The report is to be completed within one year after the establishment of the panel and contain the findings and conclusions of the panel, and its proposed new codification of acquisition laws and regulations.

Subtitle B - Payment Terms.

Section 211 - *Payment Terms.* The section would provide that the FAR be revised to create a streamlined cost-effective commercial-like payment process for service contracts. The revised process would provide for the submission of biweekly or monthly payment invoices. Biweekly invoices would have to be submitted electronically. All electronic invoices would be accepted or rejected by the agency within five working days and all accepted invoices would be paid as soon as possible, but in no case later than

30 days after the invoice date. Either party may make appropriate corrections or adjustments after payment.

Subtitle C - Acquisitions Generally.

Section 221 - *Increase in Authorization Levels of Federal Purchase Cards.* The section would amend section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) to increase the threshold for the use of the streamlined "micropurchase" process, which is the basis for the federal purchase card program, from the current $2,500 to a more realistic $25,000.

Section 222 - *Reauthorization of Franchise Funds.* The section would amend section 403 (f) of the Federal Financial Management Act of 1994 (31 U.S.C. 501 note) to reauthorize the government's franchise funds until Oct. 1, 2005.

Section 223 - *Acquisition Protests.* The section would amend Chapter 137 of title 10, U.S.C. and the Federal Property and Administrative Services Act of 1949 to provide statutory authority for an agency-level acquisition protest process. It would provide for a "stay" of the award or of contract performance during the 10-working-day period an agency is given to decide the protest. The stay could be lifted by the head of the agency procuring activity upon a written finding that urgent and compelling circumstances do not permit waiting for the decision. The section would provide that filing an agency-level protest under this section would not affect the right of an interested party to file a protest with GAO or in the United States Court of Federal Claims. The section would also amend section 3553 (d) (4) of title 31, United States Code to provide that an interested party filing a protest with GAO within 5 days of the issuance of the agency protest decision would qualify for a stay of performance in connection with a protest filed with the GAO.

Section 224 - *Architectural and Engineering Services.* The section would amend section 901 of the Federal Property and Administrative Services Act of 1949 (Property Act) (40 U.S.C. 541) to clarify the terms "surveying and mapping" and "contract" as used in the definition of architectural and engineering services to ensure that the quality-based selection process in title IX of the Property Act is used for the full spectrum of surveying and mapping services. The FAR would also be amended to include the new definitions. Further, the section would amend section 2855 (b) of title 10, United States Code to raise from $85,000 to $300,000 the threshold under which architectural and engineering services acquisitions must be set aside for small business concerns and to conform section 2855 to the Property Act amendments. Finally, the section would provide that executive agencies shall not establish or carry out a program to offer or contract for professional engineering services unless the performance of the services are supervised by a licensed professional engineer and the contract for the services is awarded pursuant to the quality-base selection procedures in title IX of the Property Act or 2855 of title 10, Unites States Code.

Contract Incentives

TITLE III - Contract Incentives.

Section 301 - *Revisions to Share-in-Savings Initiatives.* The section would amend Chapter 137 of title 10 U.S.C. 137 and title III of the Federal Property and Administrative Services Act of 1949 to authorize the use of share-in-savings contracts governmentwide. These contracts represent an innovative approach to encourage industry to share creative technology and management solutions with the Government. Through these contracts, agencies can lower their costs and improve service delivery without large "up front" investments as the contractor provides the technology and is compensated by receiving a portion of savings achieved. The section would authorize agencies to enter into share-in-savings contracts for a term of up to 10 years, to pay contractors from the savings realized and to retain those savings that exceed the amount paid to the contractor. The section would permit agencies to use various options for funding cancellation or termination costs and would permit the cancellation or termination amount to be negotiated by the parties. The section would also require the Office of Management and Budget to identify potential opportunities for, and encourage the use of, share-in savings contracts through incentives and by permitting agencies to retain a portion of the savings achieved as future funds are appropriated. Further, the section would require that the FAR be revised to implement this section and require OMB to issue guidance on the use of share-in-savings contracts that provides for the use of

competitive procedures, maximizes regulatory flexibility to facilitate the use of such contracts, and assists agencies in determining baselines and saving share ratios. Finally, the section would require the OMB to report to Congress two years after enactment describing the number of share-in-savings contracts entered into and recommendations for changes in law needed to encourage their use.

Section 302 - *Incentives for Contract Efficiency.* The section would amend 10 U.S.C. 137 and title III of the Federal Property and Administrative Services Act of 1949 to authorize agencies to enter into services contracts for up to ten years if they are performance-based. The ten-year performance period would consist of multiple performance period extensions made by the agency based on exceptional contractor performance as measured by performance parameters set forth in the contract. The section would also authorize agencies to enter into a level-of-effort contracts that would provide for savings realized to be shared with the contractor in an amount that is sufficient to encourage contractor investment that is likely to reduce overall cost of performance.

Commercial Items

TITLE IV - Acquisitions of Commercial Items.

Section 401- *Preference for Performance Based Contracting.* The section would provide that in administering the preferences established in the Federal Acquisition Regulation (FAR) pursuant to section 821 (a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398: 114 Stat. 1654A-218), a performance-based service contract or task order may be treated as a contract for commercial items if it sets forth each task to be performed, defines it in measurable, mission related terms, identifies specific products or outputs and the source provides similar services to the public under similar terms to those offered the government. The special simplified procedures provided in the FAR for commercial items would not apply to these contracts or task orders. Such performance-based contracts or task orders may be awarded pursuant to the special simplified procedures provided in the FAR for commercial items if the contract or task order would be valued at $5 million, or less. The section would further provide that it would be in effect for three years after enactment and would provide for a GAO report on the implementation two years after enactment. Finally the section would require the OFPP to establish a center of excellence for service contracting to assist the acquisition community in identifying best practices in service contracting.

Section 402 - *Authorization of Additional Contract Types in FAR Part 12.* The section would provide that section 8002 (d) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355: 41 U.S.C. 264 note) be amended to provide that the FAR include a provision that time and material, labor-hour or similar contract types for services could in appropriate circumstances be used for the acquisition of commercial items.

Section 403 - *Clarification of Commercial Services Definition.* The section would amend section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (12)) to clarify the definition of commercial item to place services on the same level as supplies in federal acquisitions.

Section 404 - *Designation of Commercial Business Entities.* The section would amend section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) to further clarify the definition of commercial item to include products or services that are produced by a commercial entity whose primary customers are other than the Government. The section would provide that a commercial entity must have made 85% of its sales over the past three years to nongovernment entities or as commercial items under FAR Part 12.

Section 405 - *Continuation of Eligibility of Contractor for Award of Information Technology Contract After Providing Design and Engineering Services.* The section would provide that a contractor providing architectural design and engineering services for an information system would not, solely for that reason, be ineligible for award of a contract or subcontract for the acquisition of information technology under that program. The section would define architectural and design services as including such activities as business process reengineering, evaluation of test data, determination of specifications and developing work statements.

Section 406 - *Commercial Liability.* The section would amend the Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) to provide that the FAR shall require the inclusion in all solicitations for contracts and in all contracts a provision that bars the payment of consequential damages because of contractor liability and places a cap on direct damages for contractor liability that does not exceed the cost of the service not performed or product not delivered.

Access to Commercial Technology

TITLE V - Technology Access in a Commercial Environment.

Section 501 - *Trade Agreements Act of 1979 Exemption for Information Technology Commercial Items.* The section would provide that, in order to promote government access to commercial information technology, the Buy American Act (41 U.S.C. 10a) restriction on the acquisition of nondomestic products and the Trade Agreements Act of 1979 (Public Law 96-39; 19 U.S.C. 2512 (a)(1)) prohibition on noneligible foreign products would not apply to the acquisition of commercial information technology as defined in the Clinger-Cohen Act of 1996. The section would also amend section 5002 (3)(B) of the Clinger-Cohen Act of 1996 by including in the definition of information technology, imaging peripherals and certain devices necessary for security and surveillance.

Section 502 - *Authorization for Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules.* The section would amend section 201 (b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 (b)) to give the General Services Administration the authority to provide for the use by state or local governments of the Federal Supply Schedules for automated data processing equipment, software, support equipment and services, and other items contained in federal supply classification group 70. The section would further provide that participation by a FSS contractor in a sale to a state or local government would be voluntary. Not later than December 31, 2004, the GSA is to report on the implementation and effects of the new provision.

Section 503 - *Certain Research and Development by Civilian Agencies.* The section would amend title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) to authorize the head of a civilian executive agency, if authorized by OMB, to engage in basic, applied and advanced research, and development projects that are necessary to the responsibilities of the agency and may facilitate defense against, or recovery from, terrorism or nuclear, biological, chemical, radiological, or technological attack. This authority would be the same as that exercised by DOD under sections 2358 and 2317 of title 10, United States Code with certain exceptions.

Section 504 - *Authority for Carrying Out Certain Prototype Projects.* The section would provide that the head of an executive agency, authorized by OMB under the Federal Property and Administrative Services Act of 1949, as amended by section 503 above, may carry out prototype projects that meet the requirements of the amendment in section 503 above in accordance with the same requirements and conditions for prototype projects as are provided under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

Inflationary Adjustments

TITLE VI - Inflationary Adjustments.

Section 601 - *Simplified Acquisition Threshold Inflation Adjustment.* The section would provide that OFPP may adjust the simplified acquisition threshold as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (11)) every three years to account for inflation.

By Leroy H. Armes

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From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/5/2002 9:23:11 AM
Subject: : Re: Pickering event in OEOB 474 on Wednesday

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAR-2002 14:23:11.00
SUBJECT:: Re: Pickering event in OEOB 474 on Wednesday
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Did you clear in Viet? He just called.

Brett M. Kavanaugh
03/05/2002 01:33:20 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Pickering event in OEOB 474 on Wednesday

I have all of this fully taken care of (the Judge's remarks, the WAVES, and the room set-up), but obviously had not yet given Libby the details. Sorry for the confusion.

Heather Wingate
03/05/2002 01:29:58 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Pickering event in OEOB 474 on Wednesday

I provided some suggested talking points for Brett's review/edits. It's my understanding from DoJ OLP that the AG will not be available (which isn't a real problem from our standpoint).

We are waving in those coming to the meeting with the President, but are not handling the waves for the meeting with the Judge. Matt, I know you all are in contact with Todd at progress for america on the participants for the meeting with the Judge. Will you all handle those waves?

Let me know what you need from us! Thanks, Heather

Elizabeth N. Camp
03/05/2002 01:26:32 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP,
Ziad S. Ojakli/WHO/EOP@EOP
cc: Brent D. Greenfield/WHO/EOP@EOP, Lori L. Lorenzi/WHO/EOP@EOP,
Matthew E. Smith/WHO/EOP@EOP
Subject: Pickering event in OEOB 474 on Wednesday

The room is reserved for 9:30am-12:00 Noon but I have received no further instructions on what is going to happen at this meeting.

We have requested 20 chairs, a podium but no tables. If this needs to be modified to include more chairs, any audio/video equip, etc. let me know.

MATT- If political has people coming in for this event I assume you guys are handling the WAVES for all of the guests.

Also - if the Judge needs to be prepared to make remarks or if I need to do anything else please let me know asap.

Message Copied
To:_____
brett m. kavanaugh/who/eop@eop
ziad s. ojakli/who/eop@eop
brent d. greenfield/who/eop@eop
lori l. lorenzi/who/eop@eop
matthew e. smith/who/eop@eop
Alison Jones/WHO/EOP@EOP

Message Copied
To:_____
elizabeth n. camp/who/eop@eop
brett m. kavanaugh/who/eop@eop
ziad s. ojakli/who/eop@eop
brent d. greenfield/who/eop@eop
lori l. lorenzi/who/eop@eop
matthew e. smith/who/eop@eop
alison jones/who/eop@eop

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Allard, Leahy Gear for Fight over Colorado Court Nominee

By Bill McAllister
Denver Post
Sunday, March 3, 2002

Tensions are building here for another showdown between Sen. Wayne Allard, R-Colo., and Senate Judiciary Chairman Patrick Leahy, D-Vt.

The issue this time: Denver lawyer Tim Tymkovich, nominated by President Bush for a seat on the 10th U.S. Circuit Court of Appeals.

Tymkovich, who was the first Colorado judicial candidate selected by the White House, has yet to get a hearing before Leahy's committee, and that has begun to rile Allard. After all, two of Allard's other judicial nominees for District Court seats have sailed through the Senate in recent days while Tymkovich remains in limbo.

"The good news is that with Marcia Krieger and Robert Blackburn confirmed to the District Court, it now allows Sen. Allard to focus on Tymkovich," said Allard spokesman Sean Conway last week.

Both Conway and David Carle, a spokesman for Leahy, acknowledged that Senate Democrats have been far more cautious in their approach to Circuit Court nominees than they have in filling District Court vacancies.

What happens to Charles W. Pickering, Bush's nominee to the 5th Circuit who is under fire from many liberal groups, may determine how Tymkovich is treated by the Democrats, Conway said.

Both Pickering and Tymkovich were nominated on May 25 and were among Bush's first judicial nominees.

Tymkovich is a former Colorado solicitor general who turned down a chance to be the Interior

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Department's top lawyer.

Thus far, Conway said, the Allard staff has heard nothing that would suggest Tymkovich's nomination is in serious trouble. Allard is so concerned by the delay, however, that he will probably raise the issue with Leahy, urging that the Denver lawyer be given a prompt hearing, Conway said.

In October the two senators had a dust-up on the Senate floor after Allard urged speedy action on his three Colorado judicial nominees. Allard later accused Leahy of attempting to blackmail him because of because the votes he and Sen. Ben Nighthorse Campbell, R-Colo., had just cast on another bill.

Leahy won't discuss the incident, but Carle said the seating of the two District Court nominees shows that Leahy has nothing against Colorado. Even Conway had to agree that, compared to what other states are encountering with their judicial nominees, "two out of three ain't bad."

Dems Challenge Bush Judicial Nominees

By Jesse Holland
The Associated Press
Sunday, March 4, 2002

Less than a year ago, federal judges Charles Pickering of Mississippi and D. Brooks Smith of Pennsylvania looked like shoo-ins for elevation to the U.S. Court of Appeals. No longer.

Today, Smith's nomination to the 3rd U.S. Circuit Court of Appeals in Philadelphia is in trouble and Pickering's nomination for the 5th U.S. Circuit Court of Appeals in New Orleans could be all but dead in the Democratic-controlled Senate.

"This may be a warm-up for the next Supreme Court nomination," said one of Smith's patrons, Republican Sen. Arlen Specter of Pennsylvania. At stake could be the future direction - right or left - for a nearly equally divided Supreme Court as well as the entire federal judiciary.

The judges' patrons were powerful Republican senators - including the then-Senate majority leader - and neither judge was linked to anything particularly controversial.

When Democrats took over the Senate in June, they warned they would be tough on President Bush's judicial nominees they thought too conservative. Democrats said Republicans had thwarted or stalled many of former Democratic President Clinton's nominees with similar tactics when they controlled the Senate.

Also still fresh was the Supreme Court's 5-4 decision six months earlier cutting off ballot recounts in Florida and awarding the White House to Bush.

Republicans readied for battles over appellate nominees such as Miguel Estrada, Jeff Sutton,

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Michael McConnell and Terrance Boyle, who had connections to Bush or came with strong conservative credentials.

No one expected the furor over Pickering or Smith.

Pickering is a former Mississippi prosecutor and lawmaker who easily won Senate confirmation in 1990 for a lifetime appointment as a U.S. District Court judge. Smith was named a U.S. District Court judge in 1988 by former President Reagan.

Liberal groups started issuing news releases almost daily leading up to Smith's confirmation hearing last week. They attacked his handling of conflicts of interests and his interpretations of laws regarding the workplace, the disabled and the environment.

"He is emblematic of President Bush's nominees who will turn back the clock on progress Americans cherish," said Nan Aron, president of the liberal Alliance for Justice.

Democrats asked Smith why he did not remove himself earlier than he did from a case involving a bank where his wife is a vice president. They questioned trips he accepted from organizations pursuing softer environmental regulations.

The Justice Department cleared Smith of any wrongdoing in the fraud case, and he testified that his rulings as a judge "were neither illegal nor unethical."

Smith said the trips, some to resort locations, were purely educational, but promised not to accept any more that might pose an appearance problem. He said he was not aware at the outset of a fraud case that his wife's bank might be involved. When he determined that it was, he stepped aside, he testified.

Pickering faced the same pattern of criticism. Women's, civil rights and liberal groups attacked positions he took in the past. Democrats interrogated him about efforts to reduce the sentence of a man convicted of burning a cross on an interracial couple's lawn. They questioned the judge about votes against abortion and voting rights as a state senator.

"We think he is a right-wing ideologue," said Ralph Neas, president of People for the American Way.

Pickering's defenders said he has worked for racial harmony in Mississippi, including testifying against the Ku Klux Klan.

"In an effort to rally their troops for the next Supreme Court nomination, they've mounted a smear campaign that portrays Pickering as backward on voting rights, race relations and civil rights generally," said John Nowacki of the Free Congress Foundation's Judicial Selection Monitoring Project.

Unless there is a dramatic shift in positions, Pickering appears headed for defeat in the Senate

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Judiciary Committee this week.

"I believe that there is virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed," said Sen. Dianne Feinstein, D-Calif.

That Democrats have that power thanks to the defection from the GOP of Vermont Sen. Jim Jeffords last summer. Republicans lost control of the Senate and Democrats now hold a 10-9 majority on the committee.

"I'm not advocating this, but he's got to decide whether he wants to go forward with a vote if the votes aren't there, whether he wants to terminate the process," said Pickering's biggest sponsor, Senate Republican Leader Trent Lott of Mississippi.

Fight Over Bush Nominee Reflects Growing Partisanship Over Judiciary

By Scott Shepard
Cox News Service
Sunday, March 3, 2002

President Bush's efforts to elevate a conservative Southern judge to a federal appeals court that issued landmark civil rights rulings in the1960s and 70s appear headed for defeat in the Senate this week.

Barring a last-minute compromise, Bush's nomination of Charles Pickering to the 5th U.S. Circuit Court of Appeals is unlikely to survive a vote of the Senate Judiciary Committee, tentatively set for Thursday.

His defeat, especially if it is along party lines, as widely anticipated, will add to the growing bitterness on Capitol Hill over judicial nominations, an area that long ago was characterized by bipartisanship.

"It will probably contribute to a continuing deterioration of how we handle judicial nominations," Senate Minority Leader Trent Lott, R-Miss., said Sunday on NBC's "Meet The Press" TV program.

Lott charged that Pickering, a fellow Mississipian, has been "smeared" and "mischaracterized" by liberal and progressive organizations bent on building Democratic opposition to judges Bush may nominate later to the Supreme Court. It is a charge echoed at the Bush White House, which promised a new tone of civility in Washington.

Bush spokesman Ari Fleischer said the criticism of Pickering from organizations with close political ties to the Democratic Party is "an unfortunate part of the politicization of the way (federal) judges are picked in this country."

"It's an election year and we know the left-of-mainstream groups will not miss an opportunity to

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flex their muscle," said Sen. Orrin Hatch of Utah, the former chairman and current ranking Republican on the Senate Judiciary Committee.

Republicans trace the origin of this process back to the bruising and bitter defeat of Robert Bork, nominated to the Supreme Court in 1987 by then President Reagan. They even have a name for it: "Borking."

But Sen. Arlen Specter, a moderate Republican from Pennsylvania and a longtime member of the committee, blames his own party as much as the Democrats for the growing bitterness over judicial nominations.

On the Senate floor late last week, in pleading for support for Pickering's nomination, Specter said, "Regrettably, there is a great deal of partisan politics in the way judges are confirmed by the Senate. Regrettably, that is a practice regardless of which party is in control of the White House and which party has control of the Senate."

"It is time for a truce. It is time for an armistice," Specter added.

But none is likely to come, at least not over the nomination of Pickering, whose long public career in the often racially driven politics of Mississippi has given critics grounds for charges that the judge is insensitive to individual rights. Most often cited are:

- A law school article he wrote in 1959 critical of interracial marriage.

- His contacts, as a state senator in the 1970s, with the Mississippi Sovereign Commission, a notorious agency formed to resist court-ordered racial desegregation in the South.

- His efforts in 1994 to reduce the sentence required by law for a man convicted of burning a cross on the lawn of an interracial couple.

Specter said Pickering is "a different man in 2002" than he was during much of his political career in Mississippi, that "attitudes have evolved" and so have Pickering's.

But Ralph Neas, head of People for the American Way, the organization most vocal in its opposition to Pickering, notes that Pickering's past is important. But how he characterized it in 1990, during confirmation hearings to the federal judgeship to which he was nominated by Bush's father, former President George H.W. Bush, is just as important. In those hearings, Pickering said:

- His law school article on interracial marriage was merely a long-ago "academic exercise."

- His contacts with Sovereignty Commission were only "incidental" and that most of what he knew about the commission is "what I read in the newspapers."

- His actions in the cross burning case were the result of concern about the mandatory nature of

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the sentence in the cross burning case.

Background material assembled by Neas's organization and provided to senators and news organizations paint a very different picture, with charges that:

- Pickering's law school article included recommendations, later followed by the state legislature, to make interracial marriage a felony, punishable by up to 10 years in prison. "There is nothing 'academic' at all about these laws," said Neas.

- Unsealed Sovereignty Commission records show that Pickering and two other state legislators had "requested to be advised of developments" concerning union activities in Laurel, Pickering's hometown. "It appears that Pickering has been less than forthcoming . . . about this entire matter, and it is that, more than the incident itself that is so disturbing," said Neas.

- In the cross-burning case, Pickering tried to get the government to drop the charge that carried the mandatory sentence, including initiating an "ex parte" communication with the Justice Department to complain about prosecuting the case. Neas said Pickering's actions were "unusual and ethically questionable."

Republicans have responded by trying to portray Pickering as a civil rights crusader who has the support of black leaders in Mississippi, including James Charles Evers, brother of slain civil rights leader Medgar Evers. They also have pointed to his politically risky testimony against a Ku Klux Klan leader in 1967.

But NAACP Chairman Julian Bond accuses Pickering of "perpetuating voting discrimination against black voters," and warns senators, "A vote for Pickering is a vote against civil rights _ and a vote that will not be forgotten."

The 5th U.S. Circuit Court of Appeals is based in New Orleans. It has the largest minority population of any federal circuit - 42 percent. And in the 1960s and 1970s, it was considered a trailblazer in protecting individual rights. Critics complain that the appeals court is increasingly conservative and bent on limiting civil rights protections established in previous decades.

The Senate Judiciary Committee was supposed to vote on Pickering's nomination last Thursday, but delayed the vote at the request of Lott in order to give the judge time to answer his critics.

But by the end of the week, Pickering's supporters were lobbying to have the nomination come to the Senate floor for a vote by the full Senate membership, even if it did not win the committee's backing.

Senate Majority Leader Tom Daschle, D-S.D., has said he will allow any Supreme Court nomination to come to the floor, regardless of the Judiciary Committee action, but not nominations to any other lower federal courts.

Asked Sunday, on "Meet The Press," if Pickering's nomination is dead if the committee does not

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approve, Daschle replied, "It is." He pointed out that it is "unprecedented" for the full Senate, under the control of either party, to consider district and appeals court appointees whose nominations do not win committee backing.

The Senate Judiciary Committee has been controlled by Democrats, 10-9, since last June when Sen. Jim Jeffords of Vermont left the Republican Party to become an independent, turning over control of the entire Senate and all its committees to the Democrats for the first time since 1994.

Since then, Republicans have repeatedly charged that the Democrats are deliberately dragging their feet on Bush's judicial nominations in order to prevent political conservatives from sitting on the federal bench.

However, in the nine months since the Democrats took over, the Senate has confirmed 37 of Bush's nominees, nine more than the Democratic-controlled Senate approved for fellow Democrat Bill Clinton in 1993, his first year in office.

During the Clinton presidency, which included six years of GOP control, the Senate confirmed 377 judicial nominees, only five short of the all-time record of 382 confirmed during the Reagan administration.

But with Hatch, the conservative GOP senator from Utah, chairing the Judiciary Committee in the last six years of the Clinton presidency, 50 of Clinton's judicial nominees never even received a committee hearing or vote. And the average number of days between a nomination and a confirmation rose from 80 days to 225 days, the biggest delay ever and more than double the delay in the final two years of Reagan's presidency.

Hatch vigorously defends his tenure as Judiciary Committee chairman. After he was succeeded in the committee chairmanship by liberal Sen. Patrick Leahy, D-Vt., Hatch said it was "conventional myth" that he had blocked Clinton's judicial nominees on the basis of political ideology.

Tom Jipping, vice president of the Free Congress Foundation, which promotes conservative judicial nominees, complains that Democrats are deliberately delaying Bush nominees in order to "limit what this president can accomplish."

But Leahy maintained last week that the committee is "making progress" on Bush's judicial nominees, even with the Sept. 11 terrorist attacks on New York and Washington and the subsequent demands by Bush for new anti-terrorism laws.

And Neas, responding to charges that liberal interest groups are responsible for the increasing partisanship over judicial nominations, said, "The true degradation of the confirmation process has come from right-wing Republicans."

In fact, "everyone blames the blame game," said Sheldon Goldman, author of "Picking Federal Judges: Lower Court Selection From Roosevelt Through Reagan." The system needs a major

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overhaul, Goldman said, because it is at "a crisis point where there is obstruction and delay instead of advise and consent."

Nominee's Past Opens Old Wounds; Appeals Court Pick Raises Tempers, Divides Blacks

By Darryl Fears
The Washington Post
Sunday, March 3, 2002

It didn't matter to James Charles Evers that the leader of the Congressional Black Caucus called people like him a Judas. The respected former state NAACP leader attended a recent Senate Judiciary Committee hearing and defended Mississippi federal trial judge Charles W. Pickering Sr. against charges that he is a staunch segregationist.

"I don't give a damn what he was 20, 30, 40 years ago," said Evers, who took control of the Mississippi NAACP's field director's office after his brother, Medgar, was assassinated by a white supremacist in 1963. "What is he today? When the Klan killed my friend Vernon Dahmer, it was Pickering who fought to get them arrested in 1967. The NAACP and the Klan are the only two organizations that are against him down here right now." The war of words between distinguished black leaders is just one ugly highlight of what is being called the most contentious federal judicial nomination of the Bush administration. The Judiciary Committee has held two hearings on Pickering's nomination to the U.S. 5th Circuit Court of Appeals because of concerns raised about his record on civil and reproductive rights. A vote is tentatively scheduled for Thursday, a Judiciary Committee staff assistant said.

Sen. Trent Lott of Mississippi, leader of the Republican minority, has said his friend Pickering would be promoted "or else." But Judiciary Committee member Dianne Feinstein (D-Calif.) didn't flinch last Sunday when she said on "Meet the Press" that she would oppose Pickering. "I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed," Feinstein said.

Pickering, 64, has declined to talk to reporters. Women's groups such as the Democratic Women on Capitol Hill and the National Organization for Women oppose his conservative views on abortion. The liberal Alliance for Justice, the Leadership Conference on Civil Rights and every NAACP chapter in Mississippi are wary of Pickering's record on civil rights issues.

Manuel Jones, a City Council member in Laurel, Miss., remembered getting a call from Pickering during an NAACP protest in 1989. A quarter-century after the Civil Rights Act struck down segregation, white Jones County supervisors were refusing, for historical reasons, to remove fountains labeled "White" and "Colored" from the entrance to the courthouse in Ellisville.

"He asked me if we could have a cooling-off period," Jones recalled. The NAACP backed off for several weeks but restarted the protest to force a compromise after discussions failed. In the end, metal plaques were placed over the offending words.

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Although the fountains were no longer working and weren't intended to be used, black people "didn't feel they needed to be looking at that when they paid their taxes," Jones said. Pickering called Jones again recently to solicit support for his nomination, Jones said. Jones declined, but several other black City Council members did not.

"It's hard to go against a federal judge," he said.

State Chancery Court Judge Johnny Williams would agree with that, but for different reasons. He said he found it hard not to support Pickering, "because he's a good man."

"I think the man has evolved. At this day and at this time, where he is now, I certainly wouldn't call him a racist.

"If we go back in time, many of the people we know and we deal with on a day-to-day basis have racial views that they don't have now," Williams said.

Rep. Eddie Bernice Johnson (D-Tex.), who chairs the Congressional Black Caucus, predicted that "a few Judases" would support Pickering. She said the judge's views were the most convincing argument against confirming him.

As a law school student, he wrote an article in 1959 suggesting ways to strengthen state laws against interracial marriage. After leaving school, he formed a law partnership with former lieutenant governor Carroll Gartin, who promised in a gubernatorial campaign to uphold segregation by vetoing "any effort to weaken . . . our southern way of life."

Pickering also had connections to Mississippi's secretive and segregationist Sovereignty Commission, which spied on unions and civil rights organizations. On the federal bench, Pickering cavalierly dismissed discrimination claims brought by black workers, according to a position paper by the Alliance for Justice.

Civil rights activists said Pickering has spoken against the Voting Rights Act when his role as a federal judge is to impartially uphold the rule of law. But liberals and conservatives alike commended Pickering for testifying against Klan Imperial Wizard Sam Bowers in the Dahmer case in 1967.

But the Alliance for Justice said the act hardly rose to the level of moral courage claimed by the judge's supporters. "By the mid-'60s," the alliance wrote, "even whites in the South who supported segregation recognized that the Klan's violent activities were hurting whites and blacks."

"I have no doubt that Mr. Pickering is a nice individual, in his own way," said NAACP President Kweisi Mfume. "We have no qualms with him as a person. It's his record. We have reservations about his ability to handle the law with fair, impartial judgment."

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Michael Meyers, executive director of the New York Civil Rights Coalition, said Mfume's reaction to a Republican nominee was typical.

"I think the NAACP under Kweisi Mfume . . . is a satellite of the Democratic Party, if it's not an official chapter," said Meyers, a former NAACP executive who was dismissed from his job. "It's just reflexive, knee-jerk stuff. It's just racial rhetoric."

Gary Bauer of American Values said the liberal attack on Pickering "is in the worst traditions of Borking," referring to Judge Robert Bork, whose nomination to the Supreme Court by President Ronald Reagan was successfully opposed by Democrats in 1987. Since then, the confirmation of judicial nominees -- whether named by Republican or Democratic presidents -- has become increasingly contentious.

"There are over 100 judicial positions, federal district courts, circuit court judge positions, that are open in the country today," Sen. Sam Brownback (R-Kan.) said when he appeared with Feinstein on "Meet the Press." "We need to get some judges out there and confirmed in positions so we can deal with judicial issues coming forward."

Senator Edwards Leads Attacks on Pickering's Judicial Ethics

By Charles Hurt
The Charlotte Observer
Friday, March 1, 2002

A bitter and racially charged fight has erupted over the nomination of a Mississippi judge to the federal bench, sparked in large measure by Sen. John Edwards.

In attacking the judicial ethics of U.S. District Judge Charles Pickering during a Senate Judiciary hearing last week, Edwards angered a disparate group, including old allies, Mississippi civil rights leaders and conservatives.

Pickering's opponents paint him as hostile to civil rights, but some civil rights leaders near his hometown say he's fought for racial justice.

The quizzing by Edwards, D-N.C., focused on judicial ethics and helped turn Pickering into President Bush's most controversial judicial nominee. Democrats control the committee 10-9 and this may foreshadow nominations to come, especially for the Supreme Court. Shortly after Edwards' questioning, the Senate committee's vote on Pickering's nomination to the 5th U.S. Circuit Court of Appeals _ originally scheduled for Thursday _ was postponed until next week because Republican backers realized the judge was doomed and wanted another week to gather more support.

Edwards' performance is widely regarded as the most polarizing exchange of Pickering's nomination, drawing heated criticism from the judge's supporters and praise from his critics.

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Others have lauded Edwards for reducing Pickering to quiet mumbles and blank stares with the short, precise questions reminiscent of his time as a prominent N.C. trial lawyer.

"I went to the hearing with an open mind," Edwards said later. He also went with a carefully crafted line of questioning.

In the end, Edwards announced he would vote against the nominee, saying: "Judge Pickering's record as a judge clearly demonstrates that he is willing to put his own views above the law."

Pickering's opponents have painted him as an old South segregationist hostile to civil rights.

Ralph Neas of the liberal group People for the American Way noted Pickering's "hostility to basic civil rights."

NAACP Chairman Julian Bond accused Pickering of "perpetuating voting discrimination against black voters," and warned senators, "A vote for Pickering is a vote against civil rights _ and a vote that will not be forgotten."

Detractors say Pickering didn't act soon enough as a state senator to abolish the racist Mississippi Sovereignty Commission. They also point to a law review article he wrote in the 1950s on how to strengthen the state's ban on interracial marriages.

But civil rights leaders around Pickering's hometown of Laurel, Miss., say he's a progressive civil rights champion who fought courageously for racial justice.

"I have been saddened and appalled to read many of the allegations," wrote Charles Evers, brother of slain civil rights legend Medgar Evers. "These allegations are mostly made by groups with a Washington, D.C., address and a political agenda, not by anyone with real knowledge (of) Judge Pickering's long and distinguished record on civil rights."

Supporters point to Pickering's testimony in a 1967 murder trial against the Imperial Wizard of the Ku Klux Klan, accused of a firebombing.

"It is easy in Washington in 2002 to make a speech or sign a bill in favor of civil rights after decades of change in racial attitudes," Sen. Mitch McConnell, R-Ky., told fellow senators. "Who among us would have had the courage of Charles Pickering in Laurel, Mississippi, in 1967?"

Nevertheless, the racial rhetoric reached a boiling point during that hearing as senators grilled Pickering about his personal views on civil rights, voting rights and racial integration.

But Edwards was careful to avoid asking the judge any such questions and was careful to point out later in an interview that he has never questioned Pickering's racial attitudes.

"There are some who are raising questions about Judge Pickering's actions and behavior in the '50s and '60s," Edwards said in an interview. "Having grown up in the South myself, that should

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not be held against him. It's a complicated thing."

Yet Edwards has questioned the judge's ethical behavior only in racially tinged cases, such as a cross-burning case.

In one case, a man appeared before Pickering for burning a cross in the front yard of an interracial couple. Pickering became frustrated because federal prosecutors demanded that the man get seven years in prison while an accomplice _ who fired shots into the couple's home _ got only home confinement.

"You're familiar, are you not, Judge, with the code of judicial ethics that applies to you?" Edwards asked shortly into his examination.

"I am," Pickering replied.

Edwards then read a portion of the code of ethics barring judges from talking to either side of a case without the other side represented in the conversation.

"Did you make a phone call to a high-ranking Justice Department official on your own initiative?" Edwards asked.

"We had" Pickering began.

"Not 'we,'" Edwards interrupted. "You? Did you make such a phone call?"

Pickering acknowledged making the call.

Edwards continued, demanding that Pickering admit he'd violated the judicial code of ethics.

Shortly after the withering exchange, Pickering requested a 10-minute break.

Victoria Toensing, a former lawyer in the attorney general's office under President Reagan, said the "racially loaded" Pickering fight shows how bitter judicial appointments have become.

"What these people on the Hill do to judicial nominees is disgraceful," she said, referring to Republicans as well as Democrats. She said the smear campaigns lower the quality of judges willing to come forward for federal appointments.

"It's like the situation between the Palestinians and Israel," she said. "Everybody's trying to get back at the other for the last time.

"At some point, somebody's just got to stop."

Critics: Bush Mishandling Nominees

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By Jonathan Groner
Legal Times
Monday, March 4, 2002

With a fractious and drawn-out debate brewing over the nomination of Charles Pickering Sr., many players are criticizing the Bush administration as weak and ineffective in its efforts to shore up its embattled judicial nominee.

Members of both parties say that liberal groups and Democratic senators opposing Pickering have set the tone of the debate and that the administration has been repeatedly outflanked, endangering the Mississippian's chances of gaining confirmation to the U.S. Court of Appeals for the 5th Circuit.

The impact could go well beyond Pickering. Several other nominees are facing stiff opposition from Democrats -- from 3rd Circuit nominee D. Brooks Smith, grilled by Democrats at a hearing last week, to 6th Circuit nominee Jeffrey Sutton.

So far, Senate staffers and conservative judicial activists say they see little evidence of the hard-headed lobbying and vote-counting that they expect from the White House and the Department of Justice.

An administration official says the criticisms are being taken seriously.

"No one in the administration is satisfied with our performance on Pickering," this official says. "We are taking steps to try to improve the way we do things and to ensure that we can be as effective as possible, going forward."

On Pickering, the administration was, to a large extent, blindsided by a liberal onslaught.

At a Jan. 28 press conference, a broad liberal coalition announced its opposition to the elevation of the Mississippi district judge to the appeals court and kicked off a major lobbying campaign. They criticized Pickering for his alleged insensitivity on racial issues, for some alleged ethical improprieties, and for his record of reversals by the appeals court he would be joining. Many say the White House has been stuck in a passive mode ever since.

"I really don't think there has been engagement," says one D.C. lawyer close to the confirmation process. "The administration has been put into the position of reacting to whatever [Senate Judiciary Chairman Patrick] Leahy says. It's as if they open their mail every day to look for a notice of execution" of one of their bench nominees.

Says a Republican observer: "I think they were caught short by the ferocity of the opposition. The administration was not thinking strategically. They probably are now, in connection with other nominees. But I think the most likely outcome is that Pickering will be defeated."

Officials from President George W. Bush on down have repeatedly avowed their support for

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Pickering. But most of the ready responses to specific charges against the nominee have come not from administration sources, but from journalists at conservative outlets like The Weekly Standard and National Review.

Eleanor Acheson, who as an assistant attorney general spearheaded the Clinton administration's efforts on judicial nominees, attended the Feb. 7 hearing on Pickering and felt that the nominee was poorly prepared on some civil rights issues.

Acheson says one of Pickering's responses to a query from Sen. Edward Kennedy (D-Mass.) was particularly harmful. Asked about his strong language in rejecting individual claims of racial bias in the workplace, Pickering said that the Equal Employment Opportunity Commission screens job-bias cases and resolves the meritorious ones, so that many cases in district court lack merit. This response drew immediate flak from liberals.

"At the hearing, it just did not look as if he had gotten any kind of experienced help as to how to make whatever his best case is before the Senate," Acheson says.

The Judiciary Committee, with 10 Democrats and nine Republicans, is expected to vote later this week on the nominee. Last week, the vote was postponed from Feb. 28 at the request of Minority Leader Trent Lott of Mississippi, a long-standing friend and leading supporter of Pickering.

The Lott connection may be one of the reasons that the administration has not gone as far as it could go for Pickering.

"It's a pissing match with Trent Lott," says one conservative lawyer. "They agreed to [post this nomination] as a favor to Lott. But now the White House has told Lott it has other things to do. 'We agreed to nominate him, now you go get him confirmed,' they say. And Lott hasn't done that much either, considering his powerful position."

A Senate staffer agrees: "The White House views this as Lott's choice, not theirs. At age 64, he doesn't fit their view of the ideal candidate for the federal appeals court. And he is not an impressive candidate. So they feel they don't have to fight hard for him."

Working the Hill

The attorney close to the confirmation process says the problem is not so much the nominee's record or the link to Lott as it is the background of the people who are working the issue.

The Department of Justice's Office of Legal Policy (OLP), headed by Assistant Attorney General Viet Dinh, takes the lead for the Bush administration in confirmation battles on the Hill. This observer says that while Dinh is viewed as bright and hard-working, his past experience hasn't given him the political savvy he needs in the delicate task of winning over Democratic senators.

"It does not help that there's no commonality of experience between Viet Dinh and the Senate Democrats," says this observer, who notes that Dinh has limited Capitol Hill experience. "He

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also does not come across as a person with the gravitas that is needed, now that it has become clear that the Democratic Senate will fight on any nominee."

Dinh, 34, graduated from Harvard College and Harvard Law School and was a Georgetown University Law Center professor before joining the administration. He has Hill experience as associate counsel to the Senate Whitewater Committee and as impeachment counsel to Sen. Pete Domenici (R-N.M.).

Dinh declines to respond directly to the criticism. But an administration official says that Dinh and his OLP are not the only players on the stage.

"The confirmation process draws a response from the White House Legislative Affairs Office, the Justice Department's Legislative Affairs Office, the White House Public Liaison Office, and others, in addition to OLP and the White House Counsel's Office," this official says. "We will fight the worthy fight and leave the finger pointing to others.

"I think that the administration has stood in support of Pickering and has provided the support that he needs to rebut the unfair attacks," says this official.

Another official, however, says that while the administration's performance "has been good, it could be much better."

"We are currently trying to address deficiencies in our effectiveness," says this official. "It's receiving a lot of high-level attention. There's a widespread feeling that the attacks are unfair and also that we should have been more effective in beating them back."

This source declines to specify what steps the administration is considering to improve its response.

Says a senior DOJ official: "There is a recognition that there needs to be a coordinated effort on these things. We need to get out ahead on them."

Meanwhile, Lott has said that Pickering may have to consider withdrawing if the votes aren't there to confirm him, but administration officials and Pickering's son, Rep. Charles Pickering Jr. (R-Miss.), indicate such a move is unlikely.

The administration has been using the week-long delay in the committee vote as a chance to try to pick off any yet-undecided Democratic member. Assuming that the Republicans stay behind Pickering, just one Democratic switch on the committee would move the nomination to the floor, where the Republicans believe they can get a narrow vote for confirmation.

In the case of a party-line 10-9 vote against Pickering, which appears likely, the White House has a fallback strategy.

An administration official says that even if the committee rejects Pickering, the White House

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will argue that "at the very least, [the committee] should vote the nomination out and onto the floor without a recommendation or with a negative recommendation."

While there is precedent for such a move -- two Reagan-era circuit court nominations were sent to the floor without a recommendation -- Senate Majority Leader Tom Daschle has indicated he would not expect a nominee voted down in committee to make it to the floor.

Lee Youngblood, Lott's Mississippi press secretary, says the tide is turning in favor of Pickering. In Youngblood's view, "the left has been backtracking over the last two weeks," particularly because of reports indicating that Pickering enjoys strong support among African-Americans in his home state.

But Youngblood also says that Lott's office "is not coordinating this effort" to boost Pickering. "Senator Lott supports Pickering, but his record speaks for itself."

Two Nominated to Federal Bench for Central Pa

By Ruth Bryna Cohen
The Legal Intelligencer
Monday, March 4, 2002

In addition, Bush is expected to nominate the Lycoming County district attorney for U.S. Attorney in the Middle District of Pennsylvania, the same district in which the judicial nominees would serve.

LCB Chairman John E. Jones III, 46, and attorney Christopher C. Conner, who was elected vice president of the Pennsylvania Bar Association in May at age 43, still must be confirmed by the U.S. Senate before they can serve on the U.S. District Court. Thomas A. Marino has been the Lycoming district attorney since 1996.

Jones and Conner would fill vacancies left by Sylvia H. Rambo and James F. McClure Jr., who became senior judges last year.

Jones has served since 1995 as chairman of the LCB, which controls the sale of wine and spirits in the state. The board's sales top $1 billion a year.

Jones said he was "humbled and very honored" by the nomination, which he had been seeking for nearly a year.

Jones had been mentioned in Harrisburg last year as a possible Republican gubernatorial candidate, but he said he decided not to run because of family concerns.

Conner did not immediately return a telephone message left at his home last week.

Conner, who practices with Mette Evans & Woodside in Harrisburg, was to become president of

the bar association next year.

He has advocated merit selection of appellate judges over the current elective system.

From 1988 to 1996, Marino was an associate with the Williamsport law firm of McNemey Page Vanderlin & Hall. He received an associate degree from the Williamsport Area Community College, a bachelor's degree from Lycoming College, and his J.D. from the Dickinson School of Law.

The GOP's Post-Pickering Strategy

By Byron York
National Review Online
Friday, March 1, 2002

With the nomination of Charles Pickering to a place on the Fifth Circuit Court of Appeals nearly dead, Senate minority leader Trent Lott held a meeting Thursday afternoon with Republican members of the Senate Judiciary Committee to plan a post-Pickering strategy for judicial-confirmation battles. According to a source familiar with the proceedings, there were "a lot of angry feelings" in the room, not only about Democratic attacks on Pickering but about the general treatment of Bush-administration judicial nominees. "This has been a very sobering lesson," the source says.

But the meeting wasn't really about Pickering. "Actually, not much was said about him," says the source. "Most people are resigned to the fact that we are not going to get him." Instead, the focus of the meeting was what to do next. "We need to have a strategy to move forward," the source continues. "We need to be tougher, we need to have White House involvement, we need to find ways to counter the interest groups on the other side." As improbable as it might seem to veterans of confirmation wars, some in the GOP were surprised by the ferocity of Democratic attacks on Pickering. Some Republicans were apparently lulled into a sense of confidence by Pickering's lack of any obvious vulnerabilities; after all, Pickering had been unanimously confirmed to the U.S. District Court ten years before, with the votes of Democratic senators who now oppose him. Also, the American Bar Association, assessing his decade of work on the bench, gave Pickering its "well qualified" rating. And he had the support of many community leaders, both black and white, in his home state of Mississippi, as well as the support of both home-state senators.

Yet the Democratic attack came, and some Republicans were not ready for it. Now, as they consider what to do next, one of the issues they are grappling with is how involved President Bush should be in appeals-court nomination battles. Should the president enter the public fray on behalf of specific nominees for the federal courts of appeal? Or should the president save his words for the Supreme Court nominations that he might have to make at any time?

By most accounts, the White House has done little to support Pickering, who was nominated at the insistence of his friend Trent Lott. At a White House briefing Tuesday, spokesman Ari

Fleischer repeated an earlier assertion that "the president believes in Judge Pickering and will fight for Judge Pickering." But when a reporter asked what, precisely, the president had in mind, Fleischer answered, "I think he'll just make an assessment at the appropriate time about what that means, of what level of activity he will personally engage in. He'll just make that call as it gets closer."

That call apparently was made the next day, on Wednesday morning, when Bush brought the subject up during a White House meeting that included Lott and Senate Majority Leader Tom Daschle. One source familiar with that conversation says Bush made a flat statement that the Senate should confirm Pickering. "The president said Pickering deserves to be confirmed," the source says. "When he said that, Lott jumped in and said he was disappointed in how Pickering was being treated." Daschle, according to the source, was non-committal.

Afterwards, Daschle denied that Bush had made an appeal for Pickering's confirmation. "The president didn't ask for a floor vote," Daschle told reporters Wednesday afternoon. "He asked what the prospects were, and I said I didn't know. There wasn't any request of me to take it to the floor. He made his general views known about the need to move ahead on judges, and expressed the hope that we could confirm as many as possible." Daschle said he told Bush "that's a matter for the Judiciary Committee....I respect the Judiciary Committee's decisions, and we have to accept those."

Daschle's account appears implausible; it seems unlikely that Bush would bring up the Pickering nomination simply to ask what the prospects were, since the president surely knows they are dismal. It's more likely that Bush said just what other witnesses said he said - that Pickering should be confirmed. Republicans in Congress can take some comfort in that, since it is unusual for a president to make a personal appeal on behalf of a nominee to an appeals-court seat. On the other hand, Bush's pro-Pickering pitch was not terribly forceful - Daschle felt free to ignore it completely - and it came very, very late in the game.

Now, Republicans appear to have come to the conclusion that they must do much, much better the next time. Democrats are making no secret of their intention to oppose several of the president's more conservative nominees, and even some of the Senate's less-confrontational Republicans have realized that the Pickering fight was just the first of many to come.

Is Pickering Dead?

By Byron York
National Review Online
Monday, March 4, 2002

In a move that could restart a struggle that many observers - and some participants - thought was over, Republicans are planning a renewed battle this week over the nomination of Charles Pickering to a place on the Fifth Circuit Court of Appeals. There is even some discussion that President Bush will become personally involved in the fight, perhaps by making an appearance with Pickering or making a public statement on his behalf.

While it is not clear that the Pickering nomination can be saved at this very late date, there seems to be an awakened spirit among some in the GOP that a defeat would be seriously damaging for President Bush - not because Pickering is an indispensable man, but because a Democratic victory would embolden the president's enemies to press ever harder to defeat more judicial nominees, including those for the Supreme Court.

"We intend to fight specifically for Judge Pickering because we feel he is the best qualified man for that position, but there is also a higher principle involved," says a White House source. "Good nominees shouldn't have to go through the kind of character assassination that Judge Pickering has been through, and we should not let people who are opposed to one ideology or another dictate who sits on the federal judiciary." For the moment, however, the Pickering nomination is considered all but dead. One leading Democrat on the Senate Judiciary Committee has said that all ten Democrats on the committee intend to vote against Pickering. In addition, some Senate Republicans who have been deeply involved in past confirmation battles have stayed on the sidelines during this fight. And appearing on NBC Sunday, Senate Majority Leader Tom Daschle attempted to put an end to already-slim GOP hopes that the Pickering nomination might still receive a vote in the full Senate, even if it is rejected in the Judiciary Committee. When Meet the Press host Tim Russert asked, "If the committee votes 10 to 9 against [Pickering], is the nomination dead?" Daschle responded tersely, "It is."

Nevertheless, some Republicans believe there is still hope for Pickering. This is their scenario: The nomination will indeed be voted down in committee, with all ten Democrats voting against Pickering and all nine Republicans voting for him. At that point, Republicans will make a motion to send the nomination to the full Senate with no recommendation or with a negative recommendation. The committee would then take a vote on that motion. If Democrats stay together and vote the motion down, the nomination will be officially dead. But Republicans believe there might be hope of convincing - or pressuring or horse-trading with - one Democrat into voting to send the nomination to the floor. If that were to happen, Pickering would likely be confirmed, because at two Democrats have said they would support him in a floor vote.

While their chances of victory are not clear, some Republicans are promising a hard-fought, behind-the-scenes campaign to move Pickering to a full-Senate vote. "He's not going down," says one Hill Republican of Pickering. "There's going to be a fight."

But why now? If Republicans really wanted to win Pickering's confirmation, why weren't they better prepared when he faced intense Democratic attacks at his second confirmation hearing on February seventh? Why had they not responded more energetically to the charges against Pickering in the weeks leading up to that hearing? Why, after all that, make a last-second stand when it might be too late to win?

The answer appears to lie in a growing Republican perception that the fight for Pickering far transcends Pickering himself. Some Republicans were deeply struck on February 24, when Democratic Sen. Dianne Feinstein, a member of the Judiciary Committee, resurrected the Democratic contention that the narrowness of Bush's victory in the 2000 election disqualifies

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him from appointing conservatives to the bench. "President Bush did not have a large mandate," Feinstein said. "There is no mandate, in my view, to skew the courts to the right. And so I think you're going to see a Judiciary Committee that's really going to be looking for mainstream judges, and those judges that they find outside of the mainstream I do not believe will have Democratic support."

Feinstein's words were an across-the-board challenge to Republicans, and the White House in particular. Using the kind of rhetoric that has not been heard since the contentious days after the Supreme Court decided the case of Bush v. Gore, Feinstein made clear that Pickering will be just the first of many confirmation fights. Now, although it seems to have taken a few days to sink in, Feinstein's challenge has made a profound impression on Republicans. "The Constitution gives the president the mandate to choose judges," says a White House source. "If the Democrats see the need to change the Constitution, that's something they need to take up with the American people."

A Judge Gets Grilled

By Rob Christensen
The News and Observer
Sunday, March 3, 2002

Kate Michelman President, National Abortion Rights Action League

Washington, D.C.

Dear Kate,

Thanks for your telephone call of a couple of weeks ago. I'm sorry I was away from home when you rang. But I guess it doesn't matter because it was just a recorded message. Sorry, Kate. I never did call Sen. John Edwards and ask him to vote against U.S. District Court Judge Charles Pickering's Senate confirmation to the 5th Circuit Court of Appeals.

Not that there was much doubt about how John would vote. After all, John wants to win the Democratic nomination for president in 2004.

That is why John used his considerable courtroom ability to try to tear Pickering apart during a Senate Judiciary Committee confirmation hearing last month. He treated the judge like a doctor accused of malpractice. Then John went out to Los Angeles and boasted to the California Democratic convention about how hard-nosed he was.

All the liberal interest groups, including yours, Kate, want to hang Pickering out to dry. A Republican from Laurel, Miss., he is one of the first controversial judicial appointments by President George W. Bush. And judicial confirmation hearings have become just another form of political warfare.

John particularly went after Pickering's handling of a 1994 trial in which a man was convicted of burning a cross on the lawn of an interracial couple who had a 2-year-old child. Bad stuff that. Pickering sentenced the man to 27 months, even though the U.S. Justice Department had recommended seven and a half years.

Pickering said he gave the lighter sentence because the man's two accomplices got off much lighter, and one of them was let off with home confinement after he pleaded guilty. John also criticized Pickering for inappropriately contacting a Justice Department official about the case, which the senator said breached ethics. Pickering said he was just expressing his frustrations.

White Republican from Mississippi? Cross burning? Whoa boy, that is raw meat in liberal Washington circles.

There is just one problem. The New York Times sent a reporter down to Mississippi and talked to a lot of black people and they all said Pickering was a fine man, more like Atticus Finch than Ross Barnett.

Pickering was praised by black people for helping to set up after-school youth programs, and for directing federal money to medical clinics in low-income areas when he was a state senator. Black business leaders say he was influential in persuading white-owned banks to lend money to black entrepreneurs.

"I can't believe the man they're describing in Washington is the same one I've known for years," said Thaddeus Edmonson, a former local president of the NAACP who is now president of the Laurel City Council. "If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

But none of this fazed John, who announced last week that he would vote against the Pickering nomination. I guess, Kate, you can't get any cheers in L.A. by describing Pickering as a fair man.

Call again soon.

Love ya,

Rob

Pickering Foe Gets Broadside from Scruggs; Lawyer Claims Senator is Ignoring Him

By Ben Bryant
The Sun Herald
Saturday, March 2, 2002

Last month, Sen. John Edwards, D-N.C., took on Judge Charles W. Pickering Sr. Now, he has to deal with Richard "Dickie" Scruggs, too.

Scruggs, the Pascagoula lawyer who made national headlines by suing tobacco companies in the mid-1990s and winning millions, was angered by Edwards' harsh questioning of Pickering Feb. 7 during the Hattiesburg judge's second appearance before the Senate Judiciary Committee. The committee will vote next week on his nomination to the 5th U.S. Circuit Court of Appeals. If Edwards fulfills his pledge to vote against the nomination, Scruggs said he will marshal his influence to turn trial lawyers against the senator's future campaigns, which some speculate might include a run for the White House in 2004.

That could mean trouble for Edwards, himself a millionaire trial lawyer and a major recipient of campaign donations from his profession. Lawyers and law firms have given him $1.5 million since 1997, and his political action committee, New American Optimists, has gotten more than $650,000 from lawyers since November.

A sizable chunk, $167,000, of the latter figure came from Mississippi trial lawyers, their family members and employees of their firms. Federal Election Commission records show that Scruggs has not been among Edwards' direct financial backers, but he said he has urged other lawyers to support the senator.

But since Pickering's Feb. 7 hearing, Scruggs said he has re-evaluated his feelings toward Edwards. He said Edwards angered him by not returning calls he made in support of Pickering in the days leading up to the hearing, an account confirmed by an Edwards spokesman.

"He can call me when he wants to have a fund-raiser, but he can't call me back when I want to talk to him about Judge Pickering," said Scruggs, who has been a friend of Pickering for more than 20 years. "To me, that indicates a character flaw."

Scruggs said Edwards called him "a few days" after the hearing, during which the senator suggested that Pickering violated judicial ethics in 1995 by intervening at the Justice Department on behalf of a cross-burning suspect whose case he was hearing.

That charge added to and underscored some interest groups' contention that Pickering has been insensitive to civil rights since his Ole Miss law school days, when he wrote a law review article suggesting ways to strengthen the state's ban on interracial marriages.

The judge has also criticized elements of voting rights law and has routinely ruled against plaintiffs in employment discrimination cases in his current position as a U.S. District Court judge for the Southern District of Mississippi.

"Every allegation that Democrats on the committee are throwing at (Pickering) falls apart when it's examined closely or put in context," said Scruggs, a lifelong Democrat who has given thousands of dollars to state and national party causes. "There are a lot of liberals who are for Charles Pickering. I'm one of them."

Another Coast trial lawyer and Edwards donor, Paul Minor of Biloxi, said he asked the senator

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to give "favorable consideration" to Pickering before the hearing.

"I've represented a number of clients before him, most of whom have been African-American, and we have been treated with complete fairness," said Minor, who gave $5,000 to Edwards' PAC in December. Minor did not know that Edwards had announced his opposition to Pickering's nomination and planned to call him this week to ask him to reconsider.

Minor said he planned to try to get Scruggs and Edwards to reach a compromise on their positions. But Scruggs' threat to cut off support for Edwards may not be very potent even if it is effective, said Doug Weber, an analyst at the Center for Responsive Politics, a nonpartisan Washington organization that tracks campaign donations. Weber pointed out that Edwards' personal fortune gives him room to offend donors and potential donors.

"Self-financed candidates have a lot to fall back on," Weber said of Edwards, who has given himself more than $6 million since 1997, accounting for about 60 percent of individual donations to his war chest.

Still, Scruggs could cause a headache for Edwards, said W.C. "Cham" Trotter III, president of the Mississippi Bar Association.

"If I were Sen. Edwards, I wouldn't want to have Dickie Scruggs mad at me," Trotter said. "I think it's something he should definitely be concerned about."

Whitewashing a Mississippi Judge

By George Curry
BlackPressUSA.com
Monday, March 4, 2002

In an attempt to bolster the proposed appointment of U.S. District Judge Charles Pickering Sr. to the Fifth Circuit Court of Appeals, which is scheduled to be voted on this week by the Senate Judiciary Committee, his supporters are trying to soften his anti-Black image by depicting him as courageously standing up against the Ku Klux Klan in Mississippi.

That's only part of the story. The other part is that Pickering's opposition to the Klan, like that of many other powerful Whites in Laurel, Miss., was prompted by the KKK attacking members of the White establishment, not trampling on the rights of African-Americans.

Even the "Washington Post" praised Pickering in an editorial, saying "...he testified publicly against the Ku Klux Klan in the 1960s...as a young prosecutor, he aided the FBI's efforts against the Klan."

Significantly, it is Pickering, not his opponents, who keeps bringing up his decision to testify against the Klan. When Pickering was first considered for a federal judgeship in 1990, he cited that act to counter the NAACP's opposition to his nomination.

In the Judiciary Committee's first round of hearings last October to consider his elevation to the appeals level, Sen. Edward M. Kennedy (D-Mass.) questioned Pickering about affirmative action in higher education. Again, Pickering mentioned his anti-Klan testimony in an effort to portray himself as the equivalent of White Freedom Riders of that period who risked their lives by helping desegregate interstate travel in the Deep South.

Pickering served as County Attorney for Jones County in the mid-1960s. He had grown up in Laurel, Miss., the seat of Jones County and a hotbed of Klan activity. In fact, Sam Bowers, the head of the White Knights of the KKK, had his headquarters in Laurel.

Pickering and other members of the White establishment did not take on the Klan until they felt they were losing control of the city. The Klan had been implicated in a series of bombings, including the destruction of "Lauren Leader-Call" newspapers in May 1964, even though the paper supported racial segregation.

Most of the tensions at that time centered around the efforts of the Masonite Corp., a hardwood producer and the town's largest employer, to comply with the 1964 Civil Rights Act. As the company and the union became more diverse, there was a corresponding increase in attacks on the union and the plant. There were two strikes, in 1964 and 1967, dynamite explosions, beatings and shooting into homes and cars.

According to the book, "Clear Burning," written by Chet Dillard, who was the Laurel city attorney at he time, Pickering was serving as his Jones County counterpart, "...The violence had reached the proportion of a regular civil war, with the Masonite plant in a state of siege, because of the violence involved in striking and the Klanish activities."

It was Henry Bucklew, the mayor of Laurel and a top official in segregationist Alabama Gov. George Wallace's presidential campaign, who had rallied the White establishment to take on the Klan, mostly for safety and economic reasons. He was quoted in one 1966 news account: "I am a segregationist but I'm not a criminal. For that reason, I'm going to accept the law."

A group of law enforcement officials, including Jones County Attorney Pickering, issued a statement expressing the same sentiment. According to "Clear Burning," the statement read: "...While we believe in continuing our Southern way of life and realize that outside agitators have caused much turmoil and racial hatred, let there be no misunderstanding, we oppose such activities, but law and order must prevail."

The reference to the "Southern way of life" was unmistakable: Racial segregation should be maintained. White Southerners of that period always blamed "outside agitators" for stirring up racial tensions, not their White supremacy views.

In March 1968, Sam Bowers, the Klan leader from Laurel, went on trial for the murder of civil rights activist Vernon Dahmer (Bowers' first trial ended in a hung jury but he was later convicted). It was in that first trial that Pickering testified.

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Defense Counsel: Do you know of Sam Bowers' reputation in the community?
Pickering: Yes.
Defense Counsel: Is it good or bad?
Pickering: It's bad.
Defense Counsel: Do you know that Sam Bowers teaches Sunday School?
Pickering: Yes.
Defense Counsel: Thank you. That will be all.

And that's what we're supposed to applaud Pickering for?

A more accurate reflection of Pickering's views of the period was evidence of his support of the Sovereignty Commission, the state-funded agency that spied on civil rights leaders and compiled dossiers on activists. As a state senator, Pickering voted twice to appropriate state money to "defray the expenses" of the commission.

In 1990, Pickering testified at his Senate confirmation hearing, "…I never had any contact with the Sovereignty Commission." However, commission documents released subsequently, painted a different picture. A staff memo dated, Jan. 5, 1972, noted that Pickering and two other state senators were "very interested" in a commission investigation into union activity at a Laurel, Miss., company, presumably Masonite. It said the senators had "requested to be advised of developments" to infiltrate the union and sought information on the union's leader.

Regardless of how hard they may try, Pickering supporters can't whitewash his White supremacy record.

George E. Curry, editor-in-chief of the NNPA News Service and BlackPressUSA.com, is the former editor of "Emerge: Black America's Newsmagazine."

Letter: Judge not Unethical

By Ben Bryant
The Sun Herald
Thursday, February 28, 2002

Judge Charles W. Pickering Sr. did not breach judicial ethics by phoning the Justice Department in 1995 on behalf of a man convicted in his court of cross-burning, the former official who received the call has told the Senate committee considering Pickering's appeals court nomination.

In a Feb. 12 letter to the Senate Judiciary Committee, former Assistant Attorney General Frank Hunger endorsed Pickering as "a fair-minded judge who would never knowingly do anything improper or unethical."

Senate Republicans say the letter is significant because Democrats have cited Pickering's contact with Hunger as a reason for opposing the judge's nomination.

Mimi Devlin, a spokesman for committee Democrats, said Chairman Patrick Leahy, D-Vt., didn't receive the letter until Tuesday night. Hunger took issue with that, saying he had the letter hand-delivered to Leahy and Utah Sen. Orrin Hatch, the committee's ranking Republican, two weeks ago. A committee vote on Pickering's nomination to the 5th U.S. Circuit Court of Appeals is set for next week.

Pickering phoned Hunger, his friend for more than 30 years, in 1995 in search of a lighter sentence for Daniel Swan, who was convicted before Pickering in 1994 for burning a cross on the lawn of an interracial couple in Walthall County. Hunger said he took no action as a result of the call.

"I have little or no recollection of the call," Hunger wrote in his letter to the Judiciary Committee. "The significance of this to me is, had I felt at the time that there was anything inappropriate or improper about Judge Pickering's call, I would most assuredly remember it today."

Now a Washington attorney, Hunger is a Greenville native and brother-in-law to former Vice President Al Gore.

"(Pickering) has been a distinguished judge, and I think it most regrettable that his nomination has become controversial," Hunger wrote in his letter.

In a telephone interview Wednesday, Hunger termed the Judiciary Committee's treatment of Pickering "a tragedy." But Hunger's words had little effect on Sen. John Edwards, D-N.C., the committee member who questioned Pickering about the call at a Feb. 7 confirmation hearing, the judge's second.

"Sen. Edwards has solicited opinions from a number of legal experts from around the country, and they said the contact was improper and unethical," said Mike Briggs, a spokesman for Edwards.

But legal opinions solicited by Judiciary's Republican minority have rendered contrary views of the call, underscoring the intense division generated by Pickering's nomination.

Edwards and two other committee Democrats have said they will vote against sending the nomination to the full Senate for a vote, and the other Democrats are expected to join. Because Democrats hold a 10-9 majority on Judiciary, that means Pickering's nomination wouldn't make it to the floor, where he would likely be confirmed with the support of Democrats such as Ernest Hollings, D-S.C., and Zell Miller, D-Ga., who have both announced their support.

On Wednesday, Republican aides said a compromise may be brokered by moderate senators of both parties in which Pickering's nomination is reported to the floor, albeit with an unfavorable recommendation from the committee.

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"That may be a long shot, though," one of them said.

Op/Eds

A Nomination Worth Fighting For

By Terry Eastland
The Weekly Standard
Monday, March 4, 2002

Among the announcements White House press secretary Ari Fleischer made in his daily briefing on February15 was this: "The president believes in and will fight for the nomination of [Charles] Pickering." Pickering certainly could use the president's help. His nomination -- the first judicial confirmation battle of the Bush presidency -- is in trouble and may fail even with Bush's engagement. But Pickering's confirmation chances will improve if the president stands up for him. With the Senate returning this week and a Judiciary Committee vote looming, "will fight" must become "is fighting."

In case you're new to the story, Charles Pickering is a federal trial judge, a 1990 appointee of George Bush. Last year George W. Bush designated Pickering for elevation to the U.S. Court of Appeals for the Fifth Circuit. Democrats on the Senate Judiciary Committee, who hold a 10-to-9 edge, have been digging in their heels against Pickering. If Pickering were to be voted out of committee, he might be confirmed, since two Democrats -- Zell Miller of Georgia and Fritz Hollings of South Carolina -- have indicated their support. Thus the committee vote is crucial. In deciding to target Pickering first among Bush nominees, committee Democrats would seem to have made a peculiar choice. After all, a Democrat-controlled Senate unanimously confirmed Pickering to his district judgeship in 1990. A substantial majority of the American Bar Association's Standing Committee on the Judiciary has now rated him "well qualified," and the ABA, not a conservative body, is an organization Senate Democrats, if not this Republican White House, routinely salute. Consider, too, that Pickering is 64 -- old as appellate court nominees go. He's unlikely to serve long enough to make a substantial jurisprudential difference, even assuming he's the sort of lawyer apt to make that kind of difference, which administration officials in whispered asides say he's not. Instead, they say he's "Lott's guy."

Lott, as in Trent Lott, a close friend of Pickering. From the first days of the Bush presidency, Lott pushed Bush to nominate Pickering. Bush settled on Pickering the same week in May that James Jeffords left the GOP. Senate Democrats didn't exactly admire Lott when he was majority leader. Now in the majority themselves, they can exact some revenge by opposing Pickering. No other Bush nominee so qualifies as an anti-Lott target. This is petty, yes, but this is the Senate.

Pickering also affords Democrats a chance to raise a topic on which Republicans are easily put on the defensive -- race. Democrats have forced Pickering to voice regrets for some things he said and did decades ago that lent support to or failed to oppose the status quo of segregation. The nomination thus has allowed Democrats to strut their presumed moral superiority -- notwithstanding the fact that Democrat Robert Byrd of West Virginia was once a member of the

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Ku Klux Klan, while Pickering prosecuted it and testified against one of its imperial wizards.

With Pickering, the Democrats are pursuing what might be called a strategy of prevention. Because the Supreme Court takes so few cases, the nation's 13 appellate courts effectively function as mini-supreme courts. Bush wants to appoint judicial conservatives. His appointees could shift the balance of power in a conservative direction on more of these courts -- unless the Senate says no. The necessity for the Democrats is to challenge nominees they see as beatable at low political cost, which they think Pickering is. Absent the president's engagement in the battle, they are right.

Democrats believe the Fifth Circuit is too conservative already, and that Pickering would add to the imbalance. By defeating Pickering -- the first of four judges Bush has nominated to the Fifth Circuit, a court of 17 members when at full strength -- Democrats aim to tell Bush that he must cease and desist from nominating judicial conservatives to appellate courts and instead pick "mainstream" judges. And, for that matter, "mainstream" Supreme Court justices, should vacancies on the high court occur.

As for Pickering himself, the effort to portray him as "insensitive" on race (racist, if you know how to read these things) is unfair. Democrats have seized on this and that -- a law review article on Mississippi's anti-miscegenation statute that he wrote in 1959 as a law student; trivial contact in the early 1970s with the pro-segregationist Mississippi state Sovereignty Commission; and support as a state senator in the 1970s for an open primary bill that the Justice Department blocked on account of its negative impact on black voters. None of this amounts to much when the man is seen in full, for Pickering also stood against the Klan in Mississippi when that took courage and, over the past two decades, has led racial reconciliation efforts in the state. Blacks in Pickering's hometown of Laurel support him even as they wonder what the fuss in Washington is all about. Larry Thomas, owner of a pharmacy in Laurel, told the New York Times: "Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community. That's progressiveness that we need to see more of in this state." A black councilman offered this: "So many people are angry about the past. But if the judge has moved beyond his past, I think we should all try to do the same."

Notwithstanding that the ABA in its review of Pickering found nothing to object to in terms of ethics, committee Democrats have. Last fall, Pickering asked lawyers who had appeared in his court to write letters in support of his nomination. Russell Feingold worries whether this does not raise an "appearance" problem, and a legal ethics expert, consulted by Legal Times, has said the solicitation might amount to "unintentional coercion." Pickering's actions strike us as unwise, but not unethical. Another "ethics issue": During the sentencing phase of a cross-burning case in 1995, Pickering, frustrated with the Justice Department's handling of the case, had a phone conversation with the then head of the Civil Division, a friend from Mississippi, who had no line authority over the prosecutors involved and in any case took no action. John Edwards has seized on this phone call to charge Pickering with an "ex parte" communication in violation of the Code of Judicial Conduct. But on close inspection, the allegation falls apart. Ethics authorities disagree.

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As a judge, Pickering has at times gone off point, as it were, to offer his views about the law at hand or some public controversy. In a 1993 voting rights case, for example, he criticized the Supreme Court's "one man, one vote" principle. In another, he elaborated his views on federal pension law. Judges of all jurisprudential stripes have been known so to digress, and it's not a practice we'd hold up as ideal. Still, Pickering's record on the bench, taken whole, is not that of a judge who twists the law to reach decisions enforcing his own personal or political views.

Pickering has repeatedly tried to assure committee Democrats that as an appeals court judge he would read the law as it is, not rewrite it to suit his views. But Democrats see that Pickering is a conservative and that he is a judge, and they seem determined to believe that he would be a results-oriented judge. Abortion, as you might expect, is a huge Democratic concern. Pickering, who has never had to rule on an abortion case, disagrees with the Supreme Court's abortion jurisprudence. Long before becoming a judge, he supported a constitutional amendment that would have overturned Roe v. Wade. Queried on all of this, Pickering has insisted that as an appellate judge he would of course adhere to what the Supreme Court has said on the issue.

There's really nothing more that Pickering can say in his own behalf on that or anything else. Which of course is his problem, just as it was Robert Bork's problem 15 years ago. There's little a judicial nominee can do in his own behalf when the Judiciary Committee is preparing to vote no. Needed in these circumstances is an energetic executive, a president willing to argue publicly for his nominee -- in the present case, to challenge the inaccurate and unfair portrayals of Pickering and to expose the Democratic effort for what it is, an attempt to force the president to choose judges more to the liking of Al Gore. Let there be no mistake: Pickering is Bush's nominee, not Trent Lott's. This is a battle for the president to fight, for if Pickering loses, it will be the president's defeat.

Judging Judges

Connecticut Law Tribune
Monday, March 4, 2002

On the page opposite, the Law Tribune's Advisory Board this week opines on President George W. Bush's pending judicial nominations and on the legitimacy of those nominations. Although the Advisory Board is by no means constrained to hold the same views as this newspaper, we have not frequently publicly disagreed on a topic. However, on the subject of judicial nominations, our view is substantially different. At the beginning of this year, there were 94 vacancies in the federal judiciary, representing about 11 percent of all federal judgeships. That is the highest number of vacancies since 1994. Such a dearth is a serious impediment to the delivery of justice on the federal level. The holdup, of course, isn't that President Bush hasn't proffered enough nominations, it's that the Democrat-controlled Senate Judiciary Committee isn't moving very fast to vote on those picks.

Our colleagues would have us believe that the fault here lies primarily with the president. There is much wailing that he has nominated for judgeships people whose ideology he is in agreement with, followed by much moaning that he wants those nominations acted on quickly. And there is

the shallow argument that he owes the nation a duty to ignore his own principles in favor of his opponents' because of the nature of his election-as if presidents ever checked their margin of victory in choosing judicial nominees.

Far be it from us to suggest that such criticism is politically na**ve; let us say instead that it is politically one-sided. Indeed the structure of the argument itself-please put in our ideologues rather than your ideologues-directly undercuts the assertion that politics should take a back seat in this process.

These judicial posts need to be filled, and the president's call for swifter action is not isolated. Indeed, our colleagues ignore the fact that Chief Justice William Rehnquist is also pushing senators to speed up the judicial confirmation process, and has castigated the Senate on its lax attention to the needs of the federal judiciary.

Every president, Democrat or Republican, nominates jurists that he thinks will represent a certain philosophy. It is a feint to suggest that President Bush's picks are any more ideologically suspect than those of President Clinton-or Reagan, or Carter, or Kennedy.

To safeguard against extremism and incompetence is exactly why the president's nominations must be vetted by the Senate. And Bush's record so far actually demonstrates that he has not chosen ideological fanatics. The Senate in 2001 confirmed more of his choices than it did for the previous two presidents. Of Bush's 64 judicial nominations, 28 were confirmed in his first year in office, compared with 27 for President Clinton and 15 for the first Bush administration. One would hardly expect such success if the nominee pool were of such low quality.

Criticism of President Bush's choices, moreover, sometimes hovers on the politically ignorant. Our Advisory Board suggests that Bush take the opportunity to name "some well-qualified Democrats the bench." One has to wonder what Democrat Barrington Parker Jr., nominated by Bush and sworn in to the 2nd Circuit last month during ceremonies at Yale, will make of such a statement.

The Senate Judiciary Committee knows how to give nominees a grilling, and lately is having much fun with Charles Pickering's quest for the U.S. Court of Appeals for the 5th Circuit. Frankly, that's as it should be, albeit quicker. The Senate should look for qualified nominees, and either vote them up or down. Indeed, no one is suggesting that qualified candidates should be denied based solely on party affiliation. Well, almost no one.

Article on Pickering Missed Key Points

By Ralph Neas
Legal Times
Monday, March 4, 2002

Jonathan Groner's recent article ["Judge's Record: What Was Left Out," Feb. 4, 2002, Page 1] claimed that "liberal groups," including People for the American Way, have overlooked parts of

U.S. District Judge Charles W. Pickering's record in concluding that he should not be confirmed to the U.S. Court of Appeals for the 5th Circuit. In fact, it is Groner's article that has overlooked key aspects of Pickering's record demonstrating hostility to civil and constitutional rights.

It is not surprising that Groner could find individuals in Pickering's hometown who were willing to praise him to the media, particularly since Pickering will remain a sitting federal district judge even if he is not confirmed to the 5th Circuit. What is surprising is that Groner apparently did not bother to interview local individuals who courageously stepped forward as early as last October to oppose Pickering's confirmation, including officials with the Mississippi NAACP and the Magnolia Bar Association, a predominantly African-American bar group. Pickering's long public record, both before and after becoming a judge, is one of insensitivity and hostility toward key principles protecting the civil and constitutional rights of minorities, women, and all Americans. For example, both as a Mississippi State senator, and then as a federal judge, Pickering has sought to criticize or limit important remedies provided by the Voting Rights Act. As a federal judge, he has criticized the fundamental "one-person, one-vote" principle recognized by the Supreme Court under the 14th Amendment. Pickering called the principle "obtrusive" and suggested that large deviations from equality, which the Supreme Court has held presumptively unconstitutional, were "relatively minor" and "de minimis."

When he was a state senator, Pickering supported voting-related measures that helped perpetuate discrimination against African Americans, and voted to appropriate money to fund the Mississippi Sovereignty Commission, the notorious agency created by the state in 1956 to resist desegregation. As a law student, Pickering wrote an article advising the Mississippi legislature how to fix the state law making interracial marriage a felony punishable by up to 10 years in prison. A loophole had rendered the law unenforceable; Pickering's advice, which the legislature promptly took, enabled the law to be enforced. Pickering was specifically asked about this disturbing article at his district court confirmation hearing in 1990; rather than repudiate it, he sought to brush it aside as an "academic exercise." This past October, at his most recent confirmation hearing, Pickering continued to misrepresent his article.

As a judge, Pickering has gone out of his way to disparage plaintiffs in civil rights cases, even inserting the same disparaging dicta in more than one case. Our report does not attempt to evaluate Pickering's view of the evidence in each specific case, evidence to which neither Groner nor we were privy, but rather the disturbing hostility towards civil rights plaintiffs reflected by Pickering's repeated and gratuitous dicta. When a federal judge makes clear his hostility to civil rights laws and those protected by them, he creates a chilling effect on potential litigants and an impression that they will not receive a fair hearing in his court.

Our report also documents Pickering's long-standing opposition to women's reproductive freedom. Groner attempts to minimize these concerns by noting that Pickering has testified that he would consider it his duty as an appellate judge "to follow" Roe v. Wade. But even without overruling Roe v. Wade, the 5th Circuit has already found ways to limit women's reproductive freedom, making the addition of a judge like Pickering even more troubling.

In addition to these troubling aspects of Judge Pickering's record, there is clear reason to be

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concerned about his understanding of or willingness to follow clear precedent. Fifteen of the 26 times that he has been reversed by the 5th Circuit have been through unpublished decisions. According to 5th Circuit rules, unpublished decisions are used to decide "particular cases on the basis of well-settled principles of law." Eleven of those 15 cases in which Pickering violated "well-settled principles of law" involved constitutional, civil rights, criminal procedure, or labor issues. In contrast, Edith Brown Clement, who was also nominated by President Bush and was recently elevated to the 5th Circuit after serving as a district judge for a slightly shorter period than Pickering, was never reversed in an unpublished opinion by the 5th Circuit, according to the information that she provided to the Senate.

No federal judicial nominee is presumptively entitled to confirmation. Because federal judicial appointments are for life, nominees must demonstrate, as more than 200 law professors wrote the Senate Judiciary Committee last year, a "commitment to protecting the rights of ordinary Americans" and a "record of commitment to the progress made on civil rights, women's rights and individual liberties." Judge Pickering's record falls well short of the mark. The Senate Judiciary Committee should reject his confirmation.

Your readers can see our full report at www.pfaw.org.

Ralph G. Neas

President

People for the American Way Foundation

Washington, D.C.

Jonathan Groner responds:

My article was based on interviews with Pickering's supporters and critics in Washington and Mississippi, including county officials, civic activists, and attorneys who have appeared before him. It was also based on my reading of dozens of his opinions, both published and unpublished. Virtually every point that Mr. Neas raises was addressed either in my Feb. 4 article or in my earlier article about Pickering ("Going After the Bush Bench," Jan. 28, 2002, Page 1).

Despicable Tactics

The Pittsburgh Post-Gazette
Saturday, March 2, 2002

I am a liberal Democrat and a lawyer. I simply do not agree with the attacks on U.S. District Judge D. Brooks Smith by liberal groups, in connection with his nomination to the 3rd U.S. Circuit Court of Appeals. The evidence seems to indicate that he recused himself from the John Gardner Black case as soon as he realized he had an apparent conflict of interest. Also, the trips he took to privately sponsored seminars are apparently permissible under the ethical rules for

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district judges. Thus these issues provide no basis for the type of attacks that have occurred.

Judge Smith also has been attacked because he had a number of his decisions overturned by the 3rd Circuit. However, all judges have decisions overturned on appeal. An assessment of the importance of the reversals depends upon legal analysis of the reasons for the reversals. Such analysis is far more difficult than spreading rumors.

I have a suspicion that the attacks on Judge Smith are motivated by politics, i.e., the desire of some liberals and Democrats for vengeance for the Republicans' obstruction of Clinton administration judicial nominees and other nominees. I hated the rumor-mongering and inaccurate accusations when the Republicans used these tactics against Democratic nominees. I hate these tactics even more now that I see my own party using them. I do not care whether those attacking Judge Smith agree with his political philosophy. I only wish that those opposing the Smith nomination would be fair.

I am greatly tempted to change my registration to Independent simply because I do not wish to be associated with the tactics being used by my fellow liberals and Democrats. I have been a Democrat since 1972, the first year I was eligible to vote.

By the way, I am not involved in any cases that are before Judge Smith.

A Judiciary Worth Fighting For

By E.J. Dionne, Jr.
The Washington Post
Friday, March 1, 2002

There is a big problem in the appointment and confirmation of federal judges. It's not the one you're accustomed to reading about.

The conventional story is that Democrats and liberal interest groups are doing terrible things to stop certain judges appointed by President Bush. The first casualty of this campaign may be near. The Senate Judiciary Committee was supposed to vote yesterday on Bush's nomination of Charles Pickering Sr. for the 5th U.S. Circuit Court of Appeals. Senate Republican Leader Trent Lott, Pickering's main sponsor, asked for a delay because he knew the committee's Democratic majority was about to vote his man down. If Pickering is defeated, you will hear that he was done in by unfair accusations. The anti-Pickering campaign did get ugly. Liberal groups dug deep into Pickering's past to make charges about his racial attitudes. On this front, Pickering was defended by African Americans from his home town. But the Democrats ended up opposing him on other grounds. They questioned why he was so often reversed on appeal and whether his record showed respect for precedent.

And then there's the central issue. Liberals are angry that during the Clinton years, Senate Republicans blocked one presidential nominee after another. The idea was to keep lots of judgeships open in the hope that a Republican president would some day name conservatives to

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the empty jobs.

The strategy worked, and Bush has many slots to fill. But now a conventional wisdom pushed hard by conservative groups holds that Democrats, having denounced Republican obstruction, should avoid delaying tactics themselves.

This reasonable-sounding view ignores the obvious: If Democrats roll over, they will be rewarding past obstruction by allowing the conservative nominees to dominate the courts for decades. To say Democrats shouldn't oppose weaker Bush nominees such as Pickering and 3rd U.S. Circuit appointee D. Brooks Smith is to argue that Democrats have an obligation to let Bush pack the courts. If Democrats can't fight these guys, who can they fight?

"To a large extent, the White House has taken the position that the Senate's obligation is not advise and consent but advise and rubber-stamp," says Sen. Patrick Leahy, the Vermont Democrat who chairs the Judiciary Committee.

There is an alternative to confrontation. It would involve accepting that the federal courts are at close parity in ideological and partisan terms and that neither liberals nor conservatives want a judiciary in thrall of their opponents. An honest approach would avoid empty assertions that politics has nothing to do with selecting judges and acknowledge the ideological struggle for control over the judiciary that has raged since at least the '70s.

If the goal is to have good judges confirmed without ugly fights, the White House and Senate Democrats should sit down and agree on lists of nominees. The lists might include a balance of highly qualified liberals and conservatives. Or they might consist of well-respected moderates.

There is ample precedent for genuine consultation. Presidents of both parties have long conferred with senators, including those from the opposition party, before making appointments in their states or regions. The Clinton administration reached agreements with former Judiciary Committee chairman Orrin Hatch to bring about at least a partial break in the appointments logjam toward the end of Clinton's presidency.

Leahy notes that when senators from both parties agree on judges, approval is swift. Bush nominees from Nebraska, Montana and Iowa -- all states represented by a senator from each party -- breezed through, because both senators signed off on appointees who were, as Leahy put it, "non-ideologues."

Why worry about a judiciary that tilts too far toward one party? Consider Tuesday's move by a three-judge federal panel to impose by fiat a congressional redistricting plan on the state of Mississippi. All three judges were Republican appointees. Their plan just happened to favor Rep. Charles W. Pickering Jr., a Republican. Yes, he's the son of the aforementioned judicial nominee.

Supreme Court Justice Antonin Scalia, who handles cases from the 5th Circuit, which includes Mississippi, promptly rejected an appeal of the decision. Justice Scalia just happened to preside

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at the younger Pickering's first congressional swearing-in ceremony. No, no, this isn't the vast right-wing conspiracy at work, just an indication that the partisan leanings of judges sometimes seem to correlate with their decisions.

The president is free to nominate whomever he chooses. But his opponents have no obligation to acquiesce in his choices, and very good reasons to resist. The alternative is to seek balance, quality and moderation in our judges. Should a president who repeatedly assails partisan bickering have a problem with that?

Political Pinatas Judicial Nominees Get Bashed in Senate

The Daily Oklahoman
Friday, March 1, 2002

Two appeals court nominees, Charles Pickering of Mississippi and Brooks Smith of Pennsylvania, have been turned into political pinatas - part of a larger effort to block Bush's exercise of his constitutional privilege to fill vacancies on the federal bench with individuals whose philosophies, values and temperament are compatible with his own.

Unfortunately, Democrats on the Senate Judiciary Committee largely have succeeded in erecting caricatures of each man, which they have then opposed with a great degree of self-righteous table
thumping and tut-tutting. Pickering, nominated to the 5th U.S. Circuit Court of Appeals, looks dead in the water with a 10-9 committee vote along party lines shaping up against him early this month, all but dooming his nomination.

His record on civil rights has been purposefully distorted, thanks to the efforts of the liberal People For the American Way. Indeed, Charles Pickering has been rendered almost unrecognizable to the folks back home.

"I can't believe the man they're describing in Washington is the same one I've known for years," Thaddeus Edmonson, former president of the Laurel, Miss., NAACP chapter told the Wall Street Journal editorial page. "If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

Similarly, Smith, chief U.S. district judge for Pennsylvania's Western District who's been nominated to the 3rd U.S. Circuit Court of Appeals, is taking a battering.

He's accused of failing to recuse himself soon enough from a 1997 case involving defrauded school districts and municipalities in which some funds had been deposited in a bank that employed Smith's wife. It's not that the judge didn't withdraw from the ase; he didn't do it soon enough to satisfy critics looking for an excuse to block his elevation to the appeals court.

It's clear what's going on. Democrats, who control the Senate by one vote, think they're entitled

to demand that Bush appoint judges closer philosophically to Bill Clinton than to himself. Never mind that the Constitution grants the Senate only the role of "advice and consent." These people are in demand mode.

They also suffer from selective amnesia. When they were in the minority, Democrats believed each of Clinton's judicial nominees deserved a vote from the full Senate.

It was only a few years ago that Sen. Joe Biden, D-Del., said his reading of the Constitution made no mention of the Judiciary Committee. "We only in the Judiciary Committee have the right to give advice to the Senate, but it is the Senate that gives its advice and consent on judicial nominations," Biden said. "But it is not... appropriate not to have hearings on them (judicial nominees), not to bring them to the floor and not to allow a vote."

That was then, and this is now. With this kind of mean-spirited partisanship surrounding Bush's nominees to the district and appeals courts, we can only imagine what it will be like when it becomes his turn to name someone to the U.S. Supreme Court.

Experience Isn't Everything in Picking a Judge

Dale Minami
The Recorder
Friday, March 1, 2002

I read your editorial column on Feb. 22, 2002, ["Connolly for Judge Seat No. 10"] and wanted to offer my comments. I am an attorney who has practiced in the Bay Area for the past 30 years and has served on the Commission on Judicial Nominees Evaluation and Sen. Barbara Boxer's Judicial Evaluation Committee. As such, I have been involved in interviews and evaluations of literally hundreds of candidates for judicial office. While jury trial experience is a significant consideration, I believe many other qualities must be analyzed in the overall rating of judicial candidates. Integrity, compassion, an understanding of human nature, common sense, humility, connection to diverse communities, among others, should be considered.

While your editorial suggested that Ms. Lew "deliberately obfuscated" her jury trial experience, I can personally attest to her honesty and integrity as I have known and worked with her for many years. I also believe one personal interview conducted in a short period of time does not reflect the sum total of a candidate's qualifications and any conclusions drawn from such an artificial setting should not be conclusive about a person's character.

Attack Pack of Liberals Unleashed on Nominee

By Joseph Perkins
San Diego Union-Tribune
Friday, March 1, 2002

Not since the confirmation battles over Robert Bork and Clarence Thomas have liberal attack

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groups like the NAACP and People for the American Way waged as vicious a campaign against a judicial nominee as they have against Charles Pickering Sr.

"A vote for Pickering is a vote against civil rights," declared Julian Bond, the NAACP's national chairman. "Pickering poses a grave danger to Americans' rights and liberties," charged Ralph Neas, president of People for the American Way.

The Senate Judiciary Committee is expected to vote next week on Pickering's nomination to sit on the 5th U.S. Circuit Court of Appeals. At least one committee member, California Democrat Dianne Feinstein, flatly predicts: "He will not be confirmed." "This particular seat is as important to us as a Supreme Court seat," said Feinstein, who chaired the Judiciary Committee hearing at which Pickering was "Borked," given the Thomas treatment.

She noted that the 5th Circuit, covering Mississippi, Louisiana and Texas, led the way in years past on desegregation and voting rights. And she agreed with Bond and Neas that seating Pickering on that federal appellate court would set back those rights.

Pickering's foes all but declare him a racist, without going so far as to use the R-word. They thoroughly dissected his record going all the way back to his law school days to come up with ammunition to shoot down his nomination.

And, of course, they came up with a few items:

[] A 1959 law review article Pickering authored suggesting changes in Mississippi's anti-miscegenation law that would make it more effective.

[] His contacts as a state lawmaker in the 1970s with the state's so-called Sovereignty Commission, which, according to People for the American Way, was created to resist desegregation.

[] And, more recently, his criticism as a federal district court judge of redistricting based on race, and his handling of a cross-burning case.

To Pickering's critics, these and other selected incidents amount to prima facie evidence that the Mississippi jurist is, in Feinstein's words, "outside the mainstream."

But even the usually liberal Washington Post editorial page felt compelled to protest the ad hominem attack on Pickering.

"None of these incidents, when examined closely, amounts to much," the Post opined, "but opponents string them together, gloss over their complexities and self-righteously present a caricature of any unworthy candidate."

But it is absurd to suggest that Pickering's confirmation to the 5th Circuit would somehow turn back the clock on racial progress in America.

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That blacks would suddenly lose the right to vote. Or would be returned to the back of the bus. Or be denied service at lunch counters throughout the country.

Indeed, if Pickering represented such a threat, one would expect to hear it from the black folks who know him best -- those who hail from his hometown of Laurel, in southeast Mississippi.

Yet the appeals court nominee is held in high regard in Laurel's black community, as The New York Times recently reported.

According to the Times, Pickering was praised by Laurel city officials for helping to set up after-school youth programs there, and for steering federal money to medical clinics in low-income areas when he was a state senator.

Laurel's black business leaders say Pickering was influential in persuading white-owned banks to lend money to black entrepreneurs, which helped strengthen the city's black middle class.

"Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community," said Larry Thomas, owner of a local pharmacy.

"I can't believe the man they're describing in Washington is the same one I've known for years, said Thaddeus Edmonson, president of the seven-member Laurel City Council and one of its five black members.

"If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

But neither Feinstein nor her Democratic colleagues have troubled themselves to travel to Laurel to hear from Pickering's black supporters.

They have blindly accepted the dishonest portrait of Judge Pickering painted by the NAACP, People for the American Way and other liberal attack groups.

Senate Nomination Process

The Detroit News
Monday, March 4, 2002

The process by which the U.S. Senate approves presidential nominations to executive and judicial posts has been deteriorating for some time. The downward spiral has occurred under both the Republican and Democratic parties.

But the Democrats are in control of the Senate, and it is now their responsibility. The decline can be seen in two ways: the gratuitous vilification of nominees - and refusing to give them hearings.

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The vilification process can be seen in the nomination of U.S. District Judge Charles Pickering of Mississippi for the Fifth Circuit of the U.S. Court of Appeals, which sits in New Orleans. Judge Pickering has been attacked as racially insensitive by People for the American Way, a special interest group based in Washington, D.C., and abetted by Senate Democrats.

But in Mississippi, he has the support of the former head of the local National Association for the
Advancement of Colored People chapter, who told the Wall Street Journal that he "can't believe the the man they're describing in Washington is the same one I've known for years."

Similarly, D. Brooks Smith, a federal district judge nominated to the Philadelphia-based Third Circuit Court of Appeals, underwent an attack in the Senate described in the Journal by a colleague and former Third Circuit judge (and an African-American) as "character assassination." The colleague also wrote "I thought I had seen it all in the terms of the lengths people will go to destroy a nominee without any real justification."

Senate Democrats have the absolute constitutional right to oppose presidential nominations. But do they have to trash the nominees - in this case both U.S. district judges who have passed muster in the Senate once before? The Washington Post called the Pickering attacks "the latest example of the degradation of the confirmation process."

The Senate's Democratic majority is sullying itself with these tactics.

Even worse, of course, is its refusal to give some nominees a hearing. There are three Michigan nominees to the Cincinnati-based Sixth Circuit Court of Appeals: U.S. District Judge David McKeague, based in Laning; state Court of Appeals Judge Henry Saad, and Wayne Circuit Judge Susan Neilson. No hearings have been scheduled for any of these nominees.

U.S. Sen. Carl Levin of Michigan has instructed his Democratic colleague Patrick Leahy of Vermont, the chairman of the Judiciary Committee, to put a hold on all GOP nominations to the Sixth Circuit until two prior Democratic nominees, who didn't receive hearings when the GOP controlled the Senate, get named to appellate court seats.

The White House has gone to the extraordinary length of offering the Democratic candidates, whose nominations lapsed with the arrival of George W. Bush in the White House, seats on the federal district court in Detroit. But Sen. Levin is holding out for appellate court seats for the Clinton nominees.

This is an abdication of the Senate's responsibility to advise and consent. If the Senate doesn't want to approve a nominee, it should at least give him or her a hearing and a vote. Usually, the kind of intransigence and vilification currently practiced by the Senate Democrats is seen toward the end of an opposition party president's term. Bush has only been in office for a little over a year.

It's going to be a long four years if these tactics continue. The senators ought to behave better -

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or
prepare to endure yet more public disgust.

The Democratic Persecution of Judicial Nominee Pickering

The Tampa Tribune
Monday, March 4, 2002

The Senate Judiciary Committee's Democratic majority is quietly going about its business, arbitrarily and unjustly crucifying one of President Bush's nominees to a federal appeals court.

Theirs is a pure power play, and apparently a successful one.

The Democrats and special interests have so distorted the record of U.S. District Judge Charles Pickering of Mississippi, a nominee to the 5th Circuit Court of Appeals, that he is all but unrecognizable to friends and acquaintances back home. With particular relish, opposition groups like People for the American Way and senators like John Edwards of North Carolina have portrayed him as a racist and Neanderthal, although his defenders from Mississippi - of particular interest his black defenders - insist the man the committee describes is not the man they know.

Such senators as Diane Feinstein of California have fallen back on the old partisan line that Pickering is "well outside the mainstream." What she means is he doesn't veer to the left.

The Democrats appear to be making good on threats to refuse any conservative nominee a place on the federal bench - no matter how well qualified (Pickering was rated well qualified by the liberal American Bar Association).

The attempt to justify such a detestable tactic goes like this: Bush failed to win the popular vote so he has no mandate to pick conservative judges. So the committee is determined to steal the executive's prerogative.

We know gifted conservative lawyers and judges who would be a welcome addition to any appeals court but are having second thoughts about exposing themselves to Democratic tactics.

Ah, but perhaps that's the point the senators are trying to make: We'll arbitrarily label you conservative, distort your record and destroy you.

There are those who would suggest that the Democrats are acting no differently than their Republican predecessors. Well, we have two names that suggest otherwise: Ruth Bader Ginsburg and Stephen Breyer.

The Borking of Judge Charles Pickering; Character Assassins Are Out in Full Force

By Nat Hantoff

The Washington Times
Monday, March 4, 2002

I opposed the nomination of Robert Bork to the Supreme Court because I believe the Constitution is more of a living document than he does. But I was more opposed to the reckless and often factually inaccurate attacks on him by People for the American Way and various Hollywood celebrities impersonating constitutional scholars. The term, "Borking" a candidate, came from what happened to him. It's now happening again to Bush nominee Charles Pickering before the Senate Judiciary Committee.

For weeks, the NAACP and People for the American Way have led the attack on Judge Pickering - a federal district judge in Mississippi nominated for elevation to the Fifth Circuit Court of Appeals. They have, as David Firestone of the New York Times writes, depicted him "as the personification of white Mississippi's oppressive past." When Republicans are the majority of the Senate Judiciary Committee, they, too, have at times amended the Constitution to "advise and disgrace." As a journalist covering the civil rights movement in the 1950s and since, I greatly admired such civil rights leaders as A. Philip Randolph, Roy Wilkins, Fred Shuttleworth, Martin Luther King Jr. and Bayard Rustin, organizer of the 1963 March on Washington, who was a friend of mine.

In recent years, however, some current members of that leadership have dissipated the moral force of the movement. For example, Julian Bond, national chairman of the NAACP - who judiciously accused the president of choosing nominees from "the Taliban wing of the Republican Party" - now says that "a vote for Judge Pickering is a vote against civil rights." And Rep. Robert C. Scott of Virginia - one of the more thoughtful members of Congress - claims, along with other members of the Congressional Black Caucus, "it's hard to imagine a person more hostile to civil rights."

During his appearance before the Senate Judiciary Committee, Judge Pickering was treated by Democratic questioners as if he and they were back in Mississippi in the 1960s, and as if Charles Pickering is still there, fixed in time. This, not insignificantly, is the man who, in 1967, testified against Sam Bowers, a Ku Klux Klan leader, on trial for the firebombing death of a black civil-rights activist.

But the Democratic senators brushed by that fact, let alone his record in the years since that has made him - as Mr. Firestone wrote from Laurel, Judge Pickering's largely black hometown in Mississippi - "widely admired by blacks" who have known him all these years.

Mr. Firestone writes: "Black business leaders say he was influential in persuading white-owned banks to lend money to black entrepreneurs, helping to strengthen the city's black middle class."

Are these witnesses for Charles Pickering - many of whom have been in the civil rights trenches all of their lives - Uncle Toms? Or rather, as Mr. Firestone writes, does their witnessing "reflect the distance between national liberal groups and many Southern blacks in small towns" who place more importance on the person they know.

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Johnny Magee, a black councilman in Laurel, said, "So many people are still angry about the past. But if the judge has moved beyond his past, I think we should all try to do the same."

But even in 1967, when Judge Pickering was a county attorney - and was warned by the Klan not to testify against its leader - he, with two small children, felt impelled to speak up because the black man who was killed, Vernon Dahmers, "was doing nothing more," as Judge Pickering told the senators, "than helping African-Americans obtain their constitutional right to vote."

In its editorial, "The Pickering Nomination," The Washington Post said that Judge Pickering has, since 1990, "been a federal district judge of no particular distinction," and he "would not have been our choice to sit on a federal court of appeals . . . But opposing a nominee should not mean destroying him. And the attack on Judge Pickering has become an ugly affair."

I would not have voted for Judge Pickering because, as Sen. Russell Feingold has noted, Judge Pickering asked attorneys who currently practice before his court for letters of support for his nomination. A lawyer who refused to write such a letter could make him and his clients vulnerable. That's a failure of judicial ethics. But the distortion of Judge Pickering's actual history among black citizens in Laurel, Miss., has indeed been "a degradation of the judicial process." Will any of the Democratic senators on the committee say so?

Pickering Doesn't Polarize, the Process Does

By Diana West
Jewish World Review
Friday, March 1, 2002

IT'S not easy to decide which weapon wielded in the character assassination of Judge Charles W. Pickering Sr. has done more dishonor to our democracy: the lies and half-truths that have falsely caricatured an upstanding public servant, or the pedestal-ready self-righteousness with which these lies and half-truths have been told and left hanging. "Hopefully, this destructive political process will stop," Rep. Charles W. Pickering Jr., (R-Miss.) said last week, voicing a son's frustration over a father's ordeal. On this point, at least, the congressman has reason to be hopeful. The process will stop, all right. But not until after the Senate Judiciary Committee is expected to vote down Judge Pickering's elevation to the 5th Circuit Court of Appeals.

And while that vote will almost surely end the political process for the 64-year-old federal judge from Mississippi, abruptly releasing him from the Senate's pincer-like grip, the political destruction he has suffered at its hands has no conclusion. It remains a shameful testament to the grossly abusive, modern-day confirmation process.

Don't just take my word. "Opposing a nominee should not mean destroying him," said the Washington Post -- not exactly the conservative voice of empathy -- in editorializing on the Pickering nomination. "And the attack on Judge Pickering has become an ugly affair. ... The need on the part of liberal groups and Democratic senators to portray him as a Neanderthal -- all

the while denying they are doing so -- in order to justify voting him down is the latest example of the degradation of the confirmation process."

And so, a man whom James Charles Evers, brother of murdered civil rights activist Medgar Evers, praises for a racially "inclusive approach to politics" is transformed by the attack-jargon of the inflamed Left into a knuckle-dragging throwback who, as the National Women's Law Center's Marcia Greenberger puts it, lacks "commitment to protecting the rights of ordinary citizens."

Evers – no Republican -- writes of Pickering's "admirable record on civil rights issues," beginning with his 1967 testimony against a Ku Klux Klan leader accused of firebombing a civil rights activist's home (testimony that cost Pickering his re-election as local prosecutor), but Greenberger sees fit to denounce the man for an "antagonistic view of civil rights for minorities."

Then there's what People for the American Way calls Pickering's "disregard for the separation of church and state" demonstrated "by repeatedly using his position on the bench to promote involvement in religious programs."

Proof?

A typical example from the PFAW report concerns the sentencing of someone convicted of conspiracy to commit murder. Pickering spoke of the man's need to participate in "the study and consideration of effects and consequences of crime ... in a civilized society. This," he explained, "may be a program through your church or some other agency or organization so long as it is approved in advance by the probation service." As National Review's Byron York has noted, the PFAW report underscores the words "through your church or some other such agency" as evidence of theocratic impulses only an ayatollah could share.

Abortion rights activists also weigh in on the Pickering appointment. In some 4,000 cases on the federal bench, Pickering has never actually heard an abortion case. Still, as a political conservative, he's been tagged by National Abortion and Reproductive Rights Action League's Kate Michelman as "part of a continuing effort to hasten the reversal of (Roe v. Wade) and the end of legal abortion." Pickering's personal opposition to abortion may be clear from his record as a Mississippi state senator, but as a Legal Times analysis of Pickering's judicial career points out, he's testified that he would "consider it his 'duty as an appellate ... judge to follow'" Roe v. Wade. So much for hastening the landmark decision's reversal. The subtitle of the Legal Times article, by the way, is "You won't get the full story on Charles Pickering Sr. from liberals' portrayal of life and record."

That portrayal, however, has been gulped down as gospel by Senate Democrats eager for guidance on which to reject a conservative nominee to the appellate court who is not only ranked "well qualified" by the American Bar Association, but who, as a nominee to the federal bench in 1990, has been confirmed unanimously once before by the full Senate. Sen. Dianne Feinstein, California Democrat, repeatedly uses the word "polarizing" to explain the Democrats' expected rejection of the appointment. What is polarizing, however, is not Pickering, but the personal

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smear campaign against him. Senate Democrats may wash their hands of the matter by voting "nay" tomorrow, but that's not very likely to leave them clean.

Transcripts/Members of Congress

Fox Special Report with Brit Hume

Fox News
Monday, March 4, 2002

EXCERPT

HUME: After a long period of seeming inaction to save the nomination of Judge Charles Pickering of Mississippi to the federal appeals bench, the White House appears poised now to make a last ditch effort. It comes as Fox News learns extraordinary details of a political deal allegedly offered in exchange for the nomination's confirmation. Chief political correspondent Carl Cameron reports -- hi, Carl.

CARL CAMERON, FOX NEWS CHIEF POLITICAL CORRESPONDENT: Hi, Brit. Well, on this Thursday, the nomination of Judge Charles Pickering to the federal appellate judge is set for a vote in the Senate Judiciary Committee. And on the eve of that vote, Fox News has learned that the White House is planning an Oval Office meeting with Judge Pickering and the president in what is described as a bipartisan, biracial group of Mississippi Democrats who come to Washington specifically to say that Democratic criticism on Capitol Hill of Pickering's nomination is unfounded.

This follows what Fox News -- what has been described to us as an extraordinary, not to say unethical, series of political propositions.

(BEGIN VIDEOTAPE)

UNIDENTIFIED FEMALE: The whole truth, and nothing but the truth, so help you God?

CHARLES PICKERING, JUDICIAL NOMINEE: I do.

CAMERON (voice-over): When Charles Pickering testified at his Senate Judiciary Committee confirmation hearings, sources tell Fox News that a controversial offer was made to his son, three-term Mississippi Republican Congressman Chip Pickering. In short, sources say intermediaries told Congressman Pickering that if he accepted a congressional redistricting plan in his home state that heavily favored Democrats and would probably lead to his own defeat in this election year, he could save his father's nomination, which faces unanimous opposition from Democrats on the Senate Judiciary committee.

Democrats wanted a redistricting plan drawn up by a Mississippi state judge that combined Pickering's congressional district with another currently represented by Democrat Ronnie Shows.

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The new district would have been 37 percent African-American and would have heavily favored Democrats.

But Pickering fought it in federal court. And an alternative redistricting plan that was more favorable to him was drawn up with slightly different boundaries and an African-American population of 30 percent.

As Judge Pickering's confirmation hearings were underway, sources say his son the congressman was contacted by a lobbyist. His name is Prince Bolin (ph), a former aide to Mississippi Republican Senator Trent Lott. He was acting, sources say, as a go-between with another operative named Richard Buchman (ph), formerly a GOP consultant now working for Mississippi Democrats, including Ronnie Shows and Congressman Betty G. Thompson.

It's not clear if the proposed deal was concocted by lawmakers on Capitol Hill or the intermediaries themselves. But sources with direct knowledge of the talks say some Senate Democrats on the Judiciary Committee opposed to the Pickering nomination did discuss it with other members of the Senate who have privately expressed support.

(END VIDEOTAPE)

CAMERON: A number of House and Senate Republicans and Democrats have confirmed that they have heard about this. Democrats have a completely different take on it. They say it was actually initiated by Republicans. And the chairman of the Mississippi party said he was contacted personally.

On Friday of last week, the U.S. Supreme Court struck down the Mississippi plan and sided with Pickering in favor of his congressional district. No comment from any of the intermediaries, at least publicly, Brit.

HUME: So this thing would appear to be moot anyway because of the court decision, right?

CAMERON: At this point it is. The Pickerings aren't talking either.

HUME: All right, thanks, Carl.

Interview with Robert Weiss and Armstrong Williams

Fox Hannity & Colmes
Monday, March 4, 2002

COLMES: Welcome back to HANNITY & COLMES. I'm Alan Colmes.

Coming up: Are the College Republicans at Georgia State University a racist organization? Some students think so. And we'll tell you why.

First, this week, Senate Democrats on the Judiciary Committee are expected to defeat President Bush's nomination of Charles Pickering to the U.S. Court of Appeals by a vote of 10-9. Democrats have criticized the former Mississippi prosecutor and lawmaker for his conservative views on abortion and civil rights issues. But Fox News has learned that a controversial offer was made to Pickering's son, Mississippi Republican Congressman Chip Pickering, that might have helped his father's chances. Sources say intermediaries told Chip Pickering he would save his father's nomination if he accepted a congressional redistricting plan in his own state. He did not accept the offer.

Joining us from Washington is radio talk host Armstrong Williams. And here with us in New York: Democratic attorney Robert Weiss.

Good to see you both.

Robert, if that deal was offered, it is bad. It is wrong.

ROBERT WEISS, DEMOCRATIC ATTORNEY: It is.

COLMES: Do you agree?

WEISS: I agree with that.

COLMES: And, Armstrong, you would agree with that as well?

Can you hear me, Armstrong?

ARMSTRONG WILLIAMS, RADIO TALK SHOW HOST: Absolutely.

COLMES: We all agree that let's hope that deal, reportedly -- it was reported to Fox News it happened. Let's hope it didn't happen.

But here's my issue with Pickering. I don't believe he's a racist. I don't know that he's a racist. But shouldn't we ask some hard questions about whether or not he favored a law a number of years ago that banned interracial marriage, that he was a contributor to helped raise money for the Sovereignty Commission in Mississippi? That is a segregationist group.

Aren't these things we want to know about, Armstrong? Are these legitimate questions?

WILLIAMS: No, I think the best way for us to judge any candidate -- and I just think that this process has gotten, really, totally out of control.

COLMES: But are those legitimate questions?

WILLIAMS: It's the people who know him the best.

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I read in an editorial in "The Wall Street Journal" where Medgar Evers' brother wrote this stirring editorial supporting this man for the nomination.

COLMES: OK, so?

WILLIAMS: People in the community, who know him best, African- Americans, who you supposedly are protecting, support him and feel that he should be confirmed.

(CROSSTALK)

COLMES: Armstrong, just answer me. Are these legitimate questions I just said? Are those not legitimate questions that should be part of the discourse here to determine if he is qualified to be on the appeals court? Are those legitimate questions?

WILLIAMS: That's in the past. We're talking about where the man is right now.

COLMES: It's a yes-or-no answer.

WILLIAMS: The man is qualified to be a federal judge.

COLMES: These are the questions being raised. Are they legitimate?

WILLIAMS: This is a corrupt process, is what it is. I will not address that question because it is irrelevant.

(CROSSTALK)

COLMES: I think he is ignoring the question, but go ahead.

WEISS: These are very good questions. In 1959, he wrote a law review article on the interracial marriage. He was very closely associated with the Sovereignty Commission. It wasn't an issue when he was confirmed in 1990, but there were subsequent documents that came out after that. So there are very good questions. And I think this is a healthy debate. It's a good thing that we're debating this.

(CROSSTALK)

WILLIAMS: Wait a minute. 1959, we're going back to 1959, the year that I was born? Robert Byrd, who was a former...

HANNITY: Bingo.

WILLIAMS: ... grand dragon in the Ku Klux Klan.

HANNITY: Grand poobah.

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WILLIAMS: They don't seem to have a problem with him in the United States Senate.

WEISS: Robert Byrd is not before the full Senate for confirmation.

(CROSSTALK)

HANNITY: Armstrong, hang on.

Here is a legitimate issue. Robert Byrd was a member of the Ku Klux Klan.

WILLIAMS: Yes, a grand dragon.

HANNITY: Hang on. Hang on. Hang on. He votes on the qualifications of nominees like Pickering. He gets to sit in judgment of them.

WEISS: Because that's the way the Constitution was written, Sean.

HANNITY: Forget about that. Is that right?

WEISS: Forget about the Constitution?

HANNITY: No, no, no. I'm asking you, is that right?

WEISS: Yes, it is right.

HANNITY: And you feel comfortable having a former Klan member judge the moral qualifications?

WEISS: Let me explain to you --

(CROSSTALK)

HANNITY: Explain. I'm very interested in this. Do you support the Klan?

WEISS: I don't support the Klan.

But that information was there for the voters of, I think, West Virginia, where Robert Byrd was elected. He is elected. And in the event that he decided to become a federal judge...

HANNITY: You are embarrassed that he is a member of your party, aren't you?

WEISS: No, I'm not embarrassed, because he is somebody...

HANNITY: And you are embarrassed by some of the statements of Ernest Hollings earlier in his

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career about black Americans, aren't you? And you're embarrassed.

(CROSSTALK)

HANNITY: All these guys with this history of just pure, unadulterated racism are going to sit in judgment of a man who, in 1967, was a county prosecutor, who went and testified in a court proceeding at a time when it was dangerous to his own life against the Ku Klux Klan, because this is about politics for you guys. This is about Borking this man. This is about what you did to John Tower. This is about smearing and besmirching.

(CROSSTALK)

WEISS: This is partially about what was done to all the Democratic judicial nominees during the Clinton administration

(CROSSTALK)

HANNITY: Yeah, name one. Tower, Bork, Thomas, Bork, you guys have made blood sport out of this.

WEISS: The fact is, we have absolutely the right to look at these nominees. The Senate Judicial Subcommittee is in the hands of the Democrats. They have the right to vote their conscience. This is completely a legitimate issue.

HANNITY: Yes, a former Klansman.

Hey, Armstrong, I look at black Americans in Pickering's hometown, including some that you mentioned, plus his history of standing up to racism and the Ku Klux Klan in his lifetime...

(CROSSTALK)

HANNITY: Excuse me.

And then I look at somebody like Robert Byrd, voluntarily joined the Klan. He was a recruiter for them. He gets to vote on this.

WEISS: Robert Byrd is not before the Senate.

HANNITY: Excuse me. Is your name Armstrong?

What's wrong with that picture?

WILLIAMS: You know what? You talk about the racists, the racism in this. The racists are people like Hollings and Byrd and others who would participate in what is just a corrupt and ugly process.

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(CROSSTALK)

WEISS: The Congressional Black Caucus is opposed to this. The NAACP is opposed to this.

(CROSSTALK)

COLMES: We've got to go.

(CROSSTALK)

COLMES: All right, guys, we've got to ring a bell. We've got to go.

Armstrong, you are saying my party is more racist than your party.

Thank you both for being here.

WILLIAMS: They all have racism. They all have a past. Let's deal with the man as right now.

COLMES: Thank you, sir.

The McLaughlin Group

Friday, March 1, 2002

EXCERPT

MR. MCLAUGHLIN: Issue Four: Bickering Over Pickering

(Begin videotape.)

JUDGE CHARLES PICKERING (Bush Nominee To Court of Appeals): The charges that have been made against a me have been hurtful, and they have been painful. I have a record of standing up for equal protection, respecting the rule of the law."

SEN. DIANE FEINSTEIN (D-CA): I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed."

(End videotape.)

MR. MCLAUGHLIN: Judge Charles Pickering, President Bush's nominee to the 5th Circuit Court of Appeals in New Orleans, is in big trouble. Democrats oppose the Mississippi judge's record on abortion and civil rights. This Democratic congressional opposition to Pickering mystifies black officials on the Mississippi scene, notably Thaddeus Edmonson, the former president of the regional NAACP and now a councilman.

(Begin videotape.)

MR. EDMONSON: The portrayal of him as a racist is totally wrong. This gentleman cares about people. He has a Christian heart. And above all, he's part of the new Mississippi.

(End videotape.)

MR. MCLAUGHLIN: Editorialists are even more critical of the Democrats, lambasting them for foul play and worse, race baiting. Why are Pickering's opponents playing this kind of ugly racial politics, asks the Wall Street Journal? "First is to create a public misconception that the Bush administration's judicial nominees are right-wing extremists who want to turn back the clock on race, abortion and religion. Call this a dress rehearsal for the president's first Supreme Court nomination.

"Second is to scare Senate Democrats from the South into voting against Judge Pickering out of fear of losing crucial black support back home. This gives the unscrupulous every incentive to shout 'race' at every opportunity."

Lawrence O'Donnell, do you think the Wall Street Journal in this respect, that this is a dress rehearsal for the president's nomination to the United States Supreme Court?

MR. O'DONNELL: Yeah, that's more what it's about than anything else. I mean, even the New York Times, which is no fan of Pickering, says the in their editorial that accusations of racism on his part are just false.

MR. MCLAUGHLIN: Really?

MR. O'DONNELL: There's just no grounding to it.

MR. MCLAUGHLIN: Yeah.

MR. BARONE: Well, the Washington Post went farther and just lambasted People for the American Way and the other left-wing, special-interest groups that have engaged in a slimy, reprehensible, intellectually dishonest campaign to portray somebody with one of the worst labels that you can portray an American with: racist.

Charles Pickering went and testified against the grand wizard of the Klu (sic) Klux Klan in 1967 in Mississippi. I don't think that very many of the 10 members of the Democratic Party on the Judiciary Committee that are going to vote him out of a federal judgeship have shown the kind of courage that it would take to testify against the Klu (sic) Klux Klan of Mississippi in 1967. They were intellectually shabby and dishonest and scurrilous.

MS. CLIFT: This is all -- there is -- look, I -- Michael, there's another side to the story.

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MR. BARONE: Yeah, theirs was wrong.

MS. CLIFT: I don't think the man is racist, but he has, in his rulings --

MR. MCLAUGHLIN: What is that?

MS. CLIFT: -- he has in his rulings showed an insensitivity to civil rights and civil liberties concerns. But the question on Capitol Hill is, one, how conservative is too conservative? And do the Democrats have the votes to defeat this nomination? And the answer on both those questions is yes. And it's not only a dress rehearsal for the Supreme Court. There's a whole line of judges awaiting confirmation, and --

MR. MCLAUGHLIN: There could be --

MS. CLIFT: -- how far is Bush going to get to turn the court to the right?

MR. MCLAUGHLIN: There could be some breakaways from the Democratic line-up.

MS. CLIFT: We'll see.

MR. MCLAUGHLIN: And it would be a conscience vote, because they know that this man is worth.

(Cross talk.)

MR. MCLAUGHLIN: Let me hear from you, quickly.

MR. BLANKLEY: Michael is completely correct. Eleanor is half correct when she says that this is also about a long-term struggle to fill a lot of vacancies in the federal bench below the Supreme Court in which the Democrats judge as long as they've got the Senate, they've got the votes to force the White House to nominate moderates rather than conservatives.

MS. CLIFT: Right.

MR. BLANKLEY: And regretfully, they're going to prove that.

MR. MCLAUGHLIN: Why is Lott asking for a seven-day delay for the committee vote? He's got until the middle of next week.

MR. O'DONNELL: Maybe he's trying to turn this around.

MR. MCLAUGHLIN: Why? Does he want to try to, through backroom politicking, persuade them to vote his way? And why doesn't -- why doesn't the president lift up his -- lift up the phone and call his new-found friend, Teddy Kennedy, and say, "Why don't you be fair? Do me a favor on this one."

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MR. O'DONNELL: Well, for one thing, because this is not the president's -- (end PBS segment.)

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what are the facts?
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Sent: 3/7/2002 4:15:48 AM

Subject: : Judge's upcoming speeches

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FYI. If you have any questions or comments please let me know.

March 14th - 10:30 am American Tort Reform Assoc. - Four
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Season's in DC
March 18th - 11:00 am Hispanics Speak Out TV Interview - White House OEOB studio
March 21 - 8:15 am Young Hispanic Republican Assoc. - Occidental
April 4th - 7:30 pm Texas Assoc. of Defense Counsel - Cannon Office Building
April 5th - 7:30 pm TX General Counsel Group Conf. - San Antonio - Hill Country Hyatt
April 9th - 12:30 pm Inter-Agency Seminar Group-Brookings Institution - 1775 Mass. Ave.
May 3rd - 11:30 am Montgomery County, MD, Law Day lunch - Baltimore
May 3rd - 7:00 pm Council for National Policy - Tyson's Corner Ritz Carlton
May 7th - aftn-time TBD ABA Day in Washington (State/Local Leaders) Speech - Loews L'Enfant Plaza
May 10th - 6:00 pm Houston Hispanic Bar Association - Houston - Houstonian Hotel
May 11th - 6:00 pm Rice Distinguished Alumni Award - Houston - Houstonian
May 15th - 12: 45 pm Amer. Law Inst. Luncheon - DC - Mayflower
May 25th - 2:00 pm Catholic Univ. of Amer School of Law Comm. Speech - DC
June 5th - 12:00 pm Harvard Alumni Award - Boston - Harvard
June 7th - 7:00 pm TX Sup Court Justice Portrait Dedication Dinner - Austin - Four Season's

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

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TO:Abel Guerra ( CN=Abel Guerra/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI. If you have any questions or comments please let me know.

March 14th - 10:30 am American Tort Reform Assoc. - Four
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Season's in DC
March 18th - 11:00 am Hispanics Speak Out TV Interview - White House OEOB studio
March 21 - 8:15 am Young Hispanic Republican Assoc. - Occidental
April 4th - 7:30 pm Texas Assoc. of Defense Counsel - Cannon Office Building
April 5th - 7:30 pm TX General Counsel Group Conf. - San Antonio - Hill Country Hyatt
April 9th - 12:30 pm Inter-Agency Seminar Group-Brookings Institution - 1775 Mass. Ave.
May 3rd - 11:30 am Montgomery County, MD, Law Day lunch - Baltimore
May 3rd - 7:00 pm Council for National Policy - Tyson's Corner Ritz Carlton
May 7th - aftn-time TBD ABA Day in Washington (State/Local Leaders) Speech - Loews L'Enfant Plaza
May 10th - 6:00 pm Houston Hispanic Bar Association - Houston - Houstonian Hotel
May 11th - 6:00 pm Rice Distinguished Alumni Award - Houston - Houstonian
May 15th - 12: 45 pm Amer. Law Inst. Luncheon - DC - Mayflower
May 25th - 2:00 pm Catholic Univ. of Amer School of Law Comm. Speech - DC
June 5th - 12:00 pm Harvard Alumni Award - Boston - Harvard
June 7th - 7:00 pm TX Sup Court Justice Portrait Dedication Dinner - Austin - Four Season's

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 3/7/2002 11:09:00 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAR-2002 16:09:00.00
SUBJECT::
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Amy Goldstein (Post) called again. same drill. I did not and
will not return it.
```

From: Jason Baron <jason.baron@nara.gov>
To: Amy Krupsky <amy.krupsky@nara.gov>;GaryM Stern <garym.stern@nara.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Craig.Blackwell@usdoj.gov [UNKNOWN] <Craig.Blackwell@usdoj.gov>
Sent: 3/8/2002 6:38:52 AM
Subject: : Reagan records--following up
Attachments: P_8F3X5003_WHO.TXT_1.htm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jason Baron <jason.baron@nara.gov> (Jason Baron <jason.baron@nara.gov> [UNKNOWN])
CREATION DATE/TIME: 8-MAR-2002 11:38:52.00
SUBJECT:: Reagan records--following up
TO:Amy Krupsky <amy.krupsky@nara.gov> (Amy Krupsky <amy.krupsky@nara.gov> [UNKNOWN])
READ:UNKNOWN
TO:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Craig.Blackwell@usdoj.gov (Craig.Blackwell@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Mr. Kavanaugh,

We're in receipt of the letter from Judge Gonzales dated March 7 updating the status of your review of the remaining Reagan records previously sent. Would you be able to send us a listing of the 150 records remaining to be reviewed? I understand that the materials have been numbered making it relatively easy to create a list. With that in hand, staff at the Reagan Library will be able to expeditiously proceed with a further opening of all but the 150 pages still subject to review. (I'm also informed this morning from Craig Blackwell at DOJ Federal Programs that plaintiffs will be raising an issue in their filing today concerning the lack of forward progress in opening 59,000 pages; but the Reagan library staff will be able to do so once NARA has received your list specifically identifying the remaining pages.)
Gary Stern is off til Monday; please feel free to call Amy Krupsky or me today if you have any questions. Amy is at 301-713-6025 x230 and I'm at x232. Thanks, Jason

cc: Craig Blackwell, DOJ, Gary Stern & Amy Krupsky, NARA

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8F3X5003_WHO.TXT_1>

Mr. Kavanaugh,

We're in receipt of the letter from Judge Gonzales dated March 7 updating the status of your review of the remaining Reagan records previously sent. Would you be able to send us a listing of the 150 record s remaining to be reviewed? I understand that the materials have been numbered making it relatively easy to create a list. With that in hand, staff at the Reagan Library will be able to expeditiously proceed with a furthe r opening of all but the 150 pages still subject to review. (I'm also informed this morning from Craig Blackwell at DOJ Federal Programs that plaintiffs will be raising an issue in their filing today concerning the lack o f forward progress in opening 59,000 pages; but the Reagan library staff wil l be able to do so once NARA has received your list specifically identifying the remaining pages.)
Gary Stern is off til Monday; please feel free to call Amy Krupsky or me today if you have any questions. Amy is at 301-713-6025 x230 and I'm at x232. Thanks, Jason

cc: Craig Blackwell, DOJ, Gary Stern & Amy Krupsky, NARA
&n bsp;

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 3/8/2002 8:21:06 AM
Subject: : FYI

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAR-2002 13:21:06.00
SUBJECT:: FYI
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

After your inquiry, I again went back and double-checked my own files and then again with OLC on the application of Anti-Lobbying Act and related prohibitions to nominations/appointments. It does not apply.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
Sent: 3/9/2002 12:12:32 PM
Subject: : letter to Members
Attachments: P_G1WX5003_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAR-2002 17:12:32.00
SUBJECT:: letter to Members
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached is a draft letter for Judge to send to various Members.
It arises out of the dispute with Chairman Burton. The underlying package
is coming to you via Lori.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_G1WX5003_WHO.TXT_1>
```

March 11, 2002

Dear Senator Kerry, Senator Kennedy, Congressman Frank, Congressman Delahunt, Congressman Meehan, and Congressman Lynch:

I write in response to your letter to the President regarding his December 12, 2001, invocation of executive privilege. Your letter focuses on one of the four sets of documents subject to the President's claim of privilege: those related to possible corruption in the FBI in Boston. As you may know, the Administration and the House Committee on Government Reform have now reached an accommodation that has resolved this matter insofar as it related to those Boston documents.

Thank you for your interest in this issue.

Sincerely,

Alberto R. Gonzales
Counsel to the President

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>
CC: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>
Sent: 3/10/2002 2:45:17 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-MAR-2002 07:45:17.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Have not heard back from them yet. Will follow up Monday am.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

----- Original Message -----
From:Brett M. Kavanaugh/WHO/EOP
To:Noel J. Francisco/WHO/EOP@EOP
Cc:Jay P. Lefkowitz/OPD/EOP@EOP
Date: 03/09/2002 07:38:42 PM
Subject:

Noel: Any recent update on that FEMA matter that OLC has been
examining?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Courtney S. Elwood/WHO /EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 3/11/2002 4:20:38 AM
Subject: : reminder - Judge needs talking points for tort reform speech

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-MAR-2002 09:20:38.00
SUBJECT:: reminder - Judge needs talking points for tort reform speech
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If we can get a draft from you two sometime today that would be great.

Thanks!
```

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/11/2002 11:35:52 AM
Subject: : MEDIA ALERT
Attachments: P_VJUY5003_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:11-MAR-2002 16:35:52.00
SUBJECT:: MEDIA ALERT
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here's the proposed press notice, which we intend to put out tomorrow.
Please give me your comments asap.

- ReaganP5.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VJUY5003_WHO.TXT_1>
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MEDIA ALERT March 12, 2002

Additional Reagan Presidential Materials to be Released

WHAT: Approximately 59,850 pages of presidential records of Ronald Reagan's Presidency that were previously withheld under the Presidential Records Act restriction for confidential advice between White House officials. These records are the second segment of the approximately 68,000 pages of records that the National Archives and Records Administration proposed to release last year. In accordance with Executive Order 13233, representatives of former President Reagan and President Bush have reviewed these records and have chosen not to assert any constitutionally based privilege.

On January 3, 2001, the Reagan Library opened the first segment of these records, approximately 8,000 pages. Approximately 150 pages of records are still under review.

This opening consists of records from the staff member and office files, National Security Council files, and the alphabetically arranged Subject Files of the White House Office of Records Management (WHORM).

WHERE: The Research Room
The Ronald Reagan Library,
40 Presidential Drive
Simi Valley, CA 93065-0600
PHONE: 800-410-8354

WHEN: 9 A.M.
Friday, March 15, 2002

* * *

For press information, contact the National Archives Public Affairs Staff at 301-713-6000.

REV_00141640

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lisa J. Macecevic/OMB/EOP [OMB] <Lisa J. Macecevic>
Sent: 3/11/2002 11:58:01 AM
Subject: RECEIVED: DoJ suggested edit to Class Action SAP

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-MAR-2002 16:58:01.00
SUBJECT:RECEIVED: DoJ suggested edit to Class Action SAP
TO:Lisa J. Macecevic ( CN=Lisa J. Macecevic/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

RETURN RECEIPT

Your Document:
DoJ suggested edit to Class Action SAP
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
03/11/2002 04:56:53 PM
```

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO /EOP@EOP [WHO] <Heather Wingate>
CC: joschal@att.net @ inet [UNKNOWN] <joschal@att.net>
Sent: 3/11/2002 12:04:03 PM
Subject: : National Review

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-MAR-2002 17:04:03.00
SUBJECT:: National Review
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:joschal@att.net ( joschal@att.net @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Friends:

Byron York of National Review is writing on judges; he might phone some of
you very soon.

Warmly

tsg
```

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/11/2002 1:50:00 PM
Subject: : Re: OVP Comment on Class Action SAP
Attachments: P_V71Z5003_WHO.TXT_1.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic ( CN=Lisa J. Macecevic/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:11-MAR-2002 18:50:00.00
SUBJECT:: Re: OVP Comment on Class Action SAP
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V71Z5003_WHO.TXT_1>
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Union Calendar No.

107TH CONGRESS
2D SESSION

H. R. 2341

[Report No. 107–]

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2001

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. ARMEY, Mr. STENHOLM, Mr. HYDE, Mr. DOOLEY of California, Mr. BRYANT, Mr. HOLDEN, Mr. COX, Mr. CHABOT, Mr. CRAMER, Mr. OXLEY, Mr. SUNUNU, Mr. BACHUS, Mr. BARTLETT of Maryland, and Mr. GOSS) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH , 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 27, 2001]

A BILL

To amend the procedures that apply to consideration of

interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Class Action Fairness Act of 2002".

(b) REFERENCE.—Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; reference; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
Sec. 4. Federal district court jurisdiction of interstate class actions.
Sec. 5. Removal of interstate class actions to Federal district court.
Sec. 6. Appeals of class action certification orders.
Sec. 7. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have harmed class members with legitimate claims and defendants that have acted responsibly, and that have thereby undermined public respect for our judicial system.

(3) Class members have been harmed by a number of actions taken by plaintiffs' lawyers, which provide little or no benefit to class members as a whole, including—

(A) plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;

(B) unjustified rewards being made to certain plaintiffs at the expense of other class members; and

(C) the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—

(A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;

(B) less scrutiny may be given to the merits of the case; and

(C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.

(5) These abuses undermine our Federal system and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—

(A) handling interstate class actions that affect parties from many States;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.

(b) PURPOSES.—The purposes of this Act are—

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

"CHAPTER 114—CLASS ACTIONS

"Sec.
"1711. Judicial scrutiny of coupon and other noncash settlements.
"1712. Protection against loss by class members.
"1713. Protection against discrimination based on geographic location.

"1714. Prohibition on the payment of bounties.
"1715. Clearer and simpler settlement information.
"1716. Definitions.

"§ 1711. Judicial scrutiny of coupon and other noncash settlements

"The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

"§ 1712. Protection against loss by class members

"The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

"§ 1713. Protection against discrimination based on geographic location

"The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

"§ 1714. Prohibition on the payment of bounties

"(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

"(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

"§ 1715. Clearer and simpler settlement information

"(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

"(1) at the beginning of such notice, a statement in 18-point Times New Roman type or other functionally similar type, stating 'LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.';

"(2) a short summary written in plain, easily understood language, describing—

"(A) the subject matter of the class action;

"(B) the members of the class;

"(C) the legal consequences of being a member of the class;

"(D) if the notice is informing class members of a proposed settlement agreement—

"(i) the benefits that will accrue to the class due to the settlement;

"(ii) the rights that class members will lose or waive through the settlement;

"(iii) obligations that will be imposed on the defendants by the settlement;

"(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney's fee class counsel will be seeking; and

"(v) an explanation of how any attorney's fee will be calculated and funded; and

"(E) any other material matter.

"(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

"(1) be placed in a conspicuous and prominent location on the notice;

"(2) contain clear and concise headings for each item of information; and

"(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

"(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language—

"(1) describe the persons who may potentially become class members in the class action; and

"(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person's inclusion in the class action or settlement.

"§ 1716. Definitions

"In this chapter—

"(1) CLASS ACTION.—The term 'class action' means any civil action filed in a district court of the United States pursuant to rule 23 of the Federal

Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

"(2) CLASS COUNSEL.—The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

"(3) CLASS MEMBERS.—The term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

"(4) PLAINTIFF CLASS ACTION.—The term 'plaintiff class action' means a class action in which class members are plaintiffs.

"(5) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement that resolves claims in a class action, that is subject to court approval and that, if approved, would be binding on the class members.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

"114. Class Actions ..... 1711".

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d)(1) In this subsection—

"(A) the term 'class' means all of the class members in a class action;

"(B) the term 'class action' means any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons on behalf of a class;

"(C) the term 'class certification order' means an order issued by a court approving the treatment of a civil action as a class action; and

"(D) the term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

"(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy ex-

ceeds the sum or value of $2,000,000, exclusive of interest and costs, and is a class action in which—

"(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

"(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

"(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

"(3) Paragraph (2) shall not apply to any civil action in which—

"(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

"(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

"(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

"(C) the number of proposed plaintiff class members is less than 100.

"(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs.

"(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

"(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.

"(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

"(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The

limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

"(7) Paragraph (2) shall not apply to any class action brought by shareholders that solely involves a claim that relates to—

"(A) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

"(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

"(C) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

"(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed

to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

"(9) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) of this subsection shall nevertheless be deemed a class action if—

"(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

"(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

In any such case, the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members. The provisions of paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (A). The provisions of paragraph (6) of this subsection, and subsections (b)(2) and

(d) of section 1453 shall not apply to civil actions described under subparagraph (B).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting "(a) or (d)" after "1332".

(2) Section 1603(b)(3) is amended by striking "(d)" and inserting "(e)".

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

"§ 1453. Removal of class actions

"(a) DEFINITIONS.—In this section, the terms 'class', 'class action', 'class certification order', and 'class member' have the meanings given these terms in section 1332(d)(1).

"(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

"(1) by any defendant without the consent of all defendants; or

"(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

"(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action, except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.

"(d) PROCEDURE FOR REMOVAL.—The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.

"(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—The provisions of section 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.

"(f) EXCEPTION.—This section shall not apply to any class action brought by shareholders that solely involves—

"(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

"(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

"(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).".

(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting "(a)" after "section 1332".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

"1453. Removal of class actions.".

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) IN GENERAL.—Section 1292(a) is amended by inserting after paragraph (3) the following:

"(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.".

(b) DISCOVERY STAY.—All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ben Wittes <wittesb@washpost.com>
Sent: 3/11/2002 4:53:50 PM
Subject: : Re: update on Presidential Records Act stuff...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-MAR-2002 21:53:50.00
SUBJECT:: Re: update on Presidential Records Act stuff...
TO:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

67,850 have been processed and have been authorized for release without privilege claims . . . 8000 are now publicly available; NARA apparently will have the full 67,850 available at Reagan Library Friday; the last 150 pages, which concern deliberations about various appointments, are being reviewed still for privacy and other legal issues.

Ben Wittes <wittesb@washpost.com>
03/11/2002 02:23:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: update on Presidential Records Act stuff...

Curious about PRA stuff: At this point, how many of the 68,000 pages have been processed and, of those processed, how many have privilege issues so far? And how many have been released?

/b

Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ben Wittes <wittesb@washpost.com>
Sent: 3/12/2002 2:52:11 AM
Subject: : RE: update on Presidential Records Act stuff...

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAR-2002 07:52:11.00
SUBJECT:: RE: update on Presidential Records Act stuff...
TO:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

That is correct. Remember that we are applying the standard
outlined in the EO that absent "compelling circumstances," the current
President will defer to the decision of the former President NOT to assert
privilege. (As Judge Gonzales said at the time, the EO is quite good for
proponents of disclosure in this circumstance.) Keep in mind, however,
that there are hundreds of thousands/millions of other privileged pages
yet to be requested/processed, and we have no idea whether and to what
extent the former President may assert privilege over them.

Ben Wittes <wittesb@washpost.com>
03/11/2002 10:55:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, wittesb@washpost.com
cc:
Subject: RE: update on Presidential Records Act stuff...

So hang on--let me make sure I understand this.... Of all of the docs,
there are potential issues as to only 150 of them, and it isn't even clear
how many, if any, of those 150 will be withheld?

/b

------ Original Message ------

67,850 have been processed and have been authorized for release without
privilege claims . . . 8000 are now publicly available; NARA apparently
will
have the full 67,850 available at Reagan Library Friday; the last 150
pages,
which concern deliberations about various appointments, are being reviewed
still
for privacy and other legal issues.

(Embedded
image moved Ben Wittes <wittesb@washpost.com>
to file: 03/11/2002 02:23:10 PM
pic15739.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: update on Presidential Records Act stuff...

Curious about PRA stuff: At this point, how many of the 68,000 pages have been processed and, of those processed, how many have privilege issues so far? And how many have been released?

/b

_____
Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

From: GaryM Stern <garym.stern@nara.gov>
To: Craig.Blackwell@usdoj.gov [UNKNOWN] <Craig.Blackwell@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Amy Krupsky <amy.krupsky@nara.gov>
Sent: 3/12/2002 6:45:44 AM
Subject: : Media Notice
Attachments: P_OQIZ5003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:12-MAR-2002 11:45:44.00
SUBJECT:: Media Notice
TO:Craig.Blackwell@usdoj.gov ( Craig.Blackwell@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Amy Krupsky <amy.krupsky@nara.gov> ( Amy Krupsky <amy.krupsky@nara.gov> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here is the notice we plan to issue this afternoon on opening the records
on Friday.

- ReaganP5-2.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OQIZ5003_WHO.TXT_1>
```

MEDIA ALERT March 12, 2002

Additional Reagan Presidential Materials to be Released

WHAT: Approximately 59,850 pages of presidential records of Ronald Reagan's Presidency. These records are the second segment of the approximately 68,000 pages of records that were previously withheld under the Presidential Records Act's 12-year, post-Presidency protection for records reflecting confidential advice among White House officials. On January 3, 2002, the Reagan Library opened the first segment of these records, approximately 8,000 pages. Approximately 150 pages of records are still under review.

In accordance with the procedures established by Executive Order 13233, representatives of former President Reagan and President Bush have carefully reviewed the approximately 59,850 pages of records to determine whether to assert any applicable constitutionally based privilege. Both Presidents decided not to assert any constitutionally based privilege with respect to these records.

This opening consists of records from the staff member and office files, National Security Council files, and the alphabetically arranged Subject Files of the White House Office of Records Management (WHORM).

WHERE: The Research Room
The Ronald Reagan Library
40 Presidential Drive
Simi Valley, CA 93065-0600
PHONE: 800-410-8354

WHEN: 9 A.M.
Friday, March 15, 2002

* * *

For press information, contact the National Archives Public Affairs Staff at 301-713-6000.

REV_00141685

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/12/2002 9:29:06 AM
Subject: : Death of Judge Mansmann
Attachments: P_3MRZ5003_WHO.TXT_1.txt; P_3MRZ5003_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAR-2002 14:29:06.00
SUBJECT:: Death of Judge Mansmann
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Funeral is this Thursday. A memo from Judge Becker is attached below.
---------- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
03/12/2002 02:28 PM ----------

Judge_Eduardo_Robreno@paed.uscourts.gov
03/12/2002 09:47:06 AM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: Death of Judge Mansmann

F.Y.I.
----- Forwarded by Judge Eduardo Robreno/PAED/03/USCOURTS on 03/12/2002
09:43 AM -----

CE03db_3CE Circuit Executive's Office
Sent by: Susan Mangino
03/11/2002 09:54 AM

To: CA03ML_ALL CIRCUIT JUDGES, CE03ml_Backruptcy Judges,
CE03ml_District Court
Judges, CE03ml_Magistrate Judges
cc: Toby Slawsky/CA03/03/USCOURTS@USCOURTS, Marcia
Waldron/CA03/03/USCOURTS@USCOURTS, Susan
English/CA03/03/USCOURTS@USCOURTS, Robert Barth/PAWD/03/USCOURTS@USCOURTS,
Theodore Hopkins/PAWB/03/USCOURTS@USCOURTS, George
Gregory/PAWP/03/USCOURTS@USCOURTS, Wilma
McNeese/PAWPT/03/USCOURTS@USCOURTS, Linda
Schneider/CA03/03/USCOURTS@USCOURTS, CA03ml_Local Philadelphia Staff
Subject: Death of Judge Mansmann

Please see the attached.

- att1.htm
- mansmann-notice.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3MRZ5003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3MRZ5003_WHO.TXT_2>

F.Y.I.

----- Forwarded by Judge Eduar
do Robreno/PAED/03/USCOURTS on 03/12/2002 09:43 AM -----

<table width=100%>
<tr valign=top>
<td>
<td>CE03db_3CE Circuit Executive's Office

Sent by: Susan Mangino
<p>03/11/2002 09:54 AM

<td>

   To:
;   CA03ML_ALL CIRCUIT JUDGES, CE03ml_Backruptcy Judges, CE03ml_Dist
rict Court Judges, CE03ml_Magistrate Judges

   cc:
;   Toby Slawsky/CA03/03/USCOURTS@USCOURTS, Marcia Waldron/CA03/03/U
SCOURTS@USCOURTS, Susan English/CA03/03/USCOURTS@USCOURTS, Robert Barth/PAWD/03
/USCOURTS@USCOURTS, Theodore Hopkins/PAWB/03/USCOURTS@USCOURTS, George Gregory/
PAWP/03/USCOURTS@USCOURTS, Wilma McNeese/PAWPT/03/USCOURTS@USCOURTS, Linda Schn
eider/CA03/03/USCOURTS@USCOURTS, CA03ml_Local Philadelphia Staff

   Subject:
     Death of Judge Mansmann</table>

Please see the attached.

M E M O R A N D U M
(via e-Mail)

TO: All Judges in the Third Circuit Courts

FROM: Chief Judge Edward R. Becker

RE: **Death of Judge Mansmann**

DATE: March 11, 2002

It is with profound sorrow that I inform you of the death Saturday evening of our beloved colleague Carol Los Mansmann, after a long and valiant fight against breast cancer. I attach the obituary from this morning *Pittsburgh Post Gazette*.

The funeral will be held on Thursday, March 14, 2002 at St. James Church Roman Catholic Church, 200 Walnut Street, Sewickley, PA. It will be preceded by a closed casket viewing at the Church from 9:00 to 11:00 am. Additionally friends will be received from 2:00 to 4:00 pm and 7:00 to 9:00 pm tomorrow and Wednesday at the H. Samson Funeral Home, 537 N. Neville Street, Oakland.

The family invites everyone to a reception at the Allegheny County Club following the service. In lieu of flowers, the family asks that donations be made to The Carol Los Mansmann Fund c/o Duquesne University, 600 Forbes Avenue, Pittsburgh, PA 15219.

Chief Judge D. Brooks Smith has ordered that the flag at the Pittsburgh Courthouse fly at half mast.

cc: Toby D. Slaswsky, Circuit Executive
Marcia M. Waldron, Clerk, Court of Appeals
Susan English, Circuit Librarian
Robert V. Barth, Jr., District Court Clerk, Western District of PA
Theodore S. Hopkins, Bankruptcy Clerk , Western District of PA
George F. Gregory M. Chief U.S. Probation Officer, Western District of PA
Wilma McNeese,Chief Pretrial Services Officer, Western District of PA
Linda E. Schneider, Branch Librarian, Western District of PA

March 11, 2002 Monday REGION EDITION

SECTION: MISCELLANEOUS,

Pg.A-10

LENGTH: 1308 words

HEADLINE: RESPECTED JUDGE WITH LONG LIST OF CAREER FIRSTS

BYLINE: MARYLYNNE PITZ, POST-GAZETTE STAFF WRITER

BODY:

CAROL LOS MANSMANN

Carol Los Mansmann, the first woman appointed to the federal bench in Pittsburgh, won friends with her lively personality and the respect of judges and lawyers with thorough, well-reasoned opinions.

A judicial centrist who served three years in U.S. District Court before her elevation to a federal appeals court in 1985, Mrs. Mansmann, 59, of Sewickley, died Saturday at UPMC-Montefiore of breast cancer. In 1996, she underwent a bone marrow transplant.

After President Ronald Reagan appointed her to the U.S. District Court in 1982, the 39-year-old was sworn in by Supreme Court Justice Sandra Day O'Connor. She told well-wishers at the time that she had come a long way for a Polish girl from Dormont.

In September, O'Connor came to Duquesne University to receive the first Carol Los Mansmann Award for distinguished public service, where she described Mrs. Mansmann as one of "a distinguished class of jurists."

As a tireless trailblazer, Mrs. Mansmann put in long hours.

"She worked constantly. I could never figure out how she could accomplish so many things in one day," recalled Barbara M. Carlin, who was Mrs. Mansmann's first law clerk after she took the federal bench and one of her many proteges.

A 1996 opinion on an affirmative action case written by Mrs. Mansmann for the 3rd U.S. Circuit Court of Appeal drew national attention.

She held that the Piscataway, N.J., school board violated the 1964 Civil Rights Act by retaining a black high school teacher and laying off a white teacher of equal seniority and qualifications.

The judge wrote that "a nonremedial affirmative action plan, even with a laudable purpose, cannot pass muster."

Some affirmative action supporters were frightened by the judge's conclusion that racial "diversity" was not an objective of the Civil Rights Act. The case was headed to the U.S. Supreme Court before it was settled, and civil rights groups feared that the Supreme Court would use it to outlaw racial preferences in employment.

From the start of her career, Mrs. Mansmann excelled and enjoyed a succession of firsts.

She was one of only two women graduates in Duquesne law school's class of 1967. But only one local law firm granted her an interview and it did not hire her.

After Allegheny County District Attorney Robert Dugan gave her a job in 1968, she became the first female prosecutor in Allegheny County to try a murder case.

Chief U.S. Magistrate Judge Kenneth Benson recalled why Mrs. Mansmann took the challenge of prosecuting a homicide.

From 1968 to 1972, she worked in the appeals division of the district attorney's office, where she defended prosecutors' legal positions. In that job, she had the luxury of reading trial transcripts and began second-guessing her colleagues, asking them why they failed to raise objections or make certain requests of the trial judge.

The queries frustrated assistant district attorneys, who insisted to Mrs. Mansmann that she did not understand how difficult it was to always think clearly during the heat of a trial. So, she tried a case and won a first-degree murder conviction.

Afterward, Benson said, she conceded that her colleagues were right. From then on, he added, Mrs. Mansmann simply defended her fellow prosecutors while drafting appeal briefs.

That experience and her appellate expertise paved the way for her trip to the U.S. Supreme Court on April 27, 1970. On that date, she became the youngest woman to argue before the nation's highest court, and won a significant constitutional case that Benson still teaches his students today.

In its decision in the case, Chambers vs. Marone, the high court broadened the power of police to search automobiles once they had arrested a driver and passengers.

From 1974 to 1979, Mrs. Mansmann was employed as a special assistant attorney general. During that same period, she maintained a private practice with the now defunct law firm McVerry Baxter & Mansmann, that included her husband, attorney J. Jerome "Jerry" Mansmann.

Long before her elevation to the federal appeals court, Mrs. Mansmann encouraged women to pursue careers in the law. While finishing a bachelor's degree at Duquesne in 1964, she befriended a freshman named Donetta Wypiski, who planned to become a teacher. With Mrs. Mansmann's encouragement, Wypiski obtained a scholarship, earned a law degree, became a prosecutor and was elected to the state bench in Westmoreland County. In January 1994, Donetta Wypiski Ambrose rose to the federal bench in Pittsburgh.

Looking back on the early days of their friendship, Ambrose recalled why she looked up to Mrs. Mansmann.

"She was smart. She was nice. She was popular. She was friendly. She was Polish. I was Polish. It was a connection," Ambrose said.

Mrs. Mansmann took pride in her ethnic heritage and once began a speech to a Christian Mothers group at a Polish church by greeting them in Polish. The audience, Carlin said, went wild with approval.

Even as she maintained a law practice, Mrs. Mansmann also served as an associate professor at Duquesne's law school from 1974 to 1983. From 1987 to 1994, she was an adjunct professor of law.

In that academic post, she encouraged a whole generation of women to pursue legal careers.

U.S. Magistrate Judge Ila Jeanne Sensenich said she was indebted to Mrs. Mansmann, personally and professionally.

"I remember one evening we were returning together by plane from a meeting we had attended. I was exhausted and anxious to get home and relax," Sensenich said. "Judge Mansmann was leaving for another meeting early the next morning and her secretary was meeting her at her home that evening for a few hours work."

Carlin, now a prosecutor with the U.S. attorney's office in Pittsburgh, said the judge taught her some important lessons.

"The law doesn't have all the answers in black and white. You have to look at the situation. You have to look at the people involved and above all, to apply the law in a very fair manner," she said.

While on the district court bench, Mrs. Mansmann displayed a special knack for settling civil cases.

During conciliation conferences, Carlin said, "she listened very intently to both sides, never dismissing anyone's position as ridiculous, out of hand, or unwarranted. She treated all the parties with absolute dignity."

On one occasion, Carlin recalled, Mrs. Mansmann quickly granted a one-day recess in a trial so that a lawyer could take his disabled son to college.

"She never forgot that she had been a practicing lawyer and that there was a life outside the law. I think that was because she was so very family oriented. She came from a large family," Carlin said.

Mrs. Mansmann's death is a loss to the bench and bar as well as to the community, said U.S. District Judge Donald Ziegler.

"She was a teacher in every aspect of her life. She lived her life with truth, kindness and wisdom, as instructed in Proverbs. She is now counsel to the angels," he added.

Senior U.S. District Judge Maurice B. Cohill Jr. said Mrs. Mansmann was "an extremely bright and cheerful person. Even at times when I know that she was under stress, she never lost that pleasant way of hers."

Friends will be received from 2 to 4 and 7 to 9 p.m. tomorrow and Wednesday at the H. Samson funeral home, 537 N. Neville St., Oakland. There also will be visitation Thursday from 9 until the 11 a.m. Mass at St. James Church, 200 Walnut St., Sewickley.

In addition to her husband of 32 years, survivors include their children, Michael, Casey and Patrick Mansmann, all of Sewickley, and Megan Gallagher of Los Angeles; sisters Gloria Baytosh of Orange, Calif., Patricia Burke and Kathleen Los, both of Gulf Port, Fla., and Rosemary Lieberman of Lake Havasu, Ariz.; and brother Larry Los of Santa Maria, Calif.

LOAD-DATE: March 11, 2002

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>
CC: allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who /eop@eop [WHO] <bradford a. berenson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who /eop@eop [WHO] <noel j. francisco>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;ann l. loughlin/who/eop@eop [WHO] <ann l. loughlin>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;larry cote/who/eop@eop [WHO] <larry cote>;barrett aldemeyer/who /eop@eop [WHO] <barrett aldemeyer>;james w. carroll/who/eop@eop [WHO] <james w. carroll>;patrick j. bumatay/who/eop@eop [WHO] <patrick j. bumatay>
Sent: 3/12/2002 10:14:16 AM
Subject: : Re: Admin Mtg.

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-MAR-2002 15:14:16.00
SUBJECT:: Re: Admin Mtg.
TO:Lori L. Lorenzi ( CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:ann l. loughlin ( CN=ann l. loughlin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:larry cote ( CN=larry cote/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:barrett aldemeyer ( CN=barrett aldemeyer/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:james w. carroll ( CN=james w. carroll/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:patrick j. bumatay ( CN=patrick j. bumatay/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Just to clarify something Lori said: All children, regardless of age, are
welcome at the event and will receive a wooden egg. For the egg roll game
(where a child pushes an egg with a spoon), the planners are going to try
to limit it to children 6 and under, although this rule will not be
strictly enforced and no one will have to show proof of age.
```

Lori L. Lorenzi
03/12/2002 02:49:32 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Admin Mtg.

Easter Egg Roll: April 1
No tickets will be distributed to the agencies or Congress. An Admin Alert will go out regarding this event. Our website has the latest information regarding this event. Children under 6 will be the only ones who are able to participate in the roll. Only ticket holders will be allowed on the South Lawn (check website for location and times of ticket distribution). The Ellipse will be open for all to enjoy food and other festivities.

White House staff tours:
Just a reminder that if you plan on escorting 4 guests on the White House tour, you must submit your request at least 10 days prior to the tour date. Only picture hard pass holders (no interns or volunteers) are able to escort.
School tours: Your request must be in at least 30 days before the tour date.

WH Operator:
We were notified that EOP uses the information lines (411) about 2,000 times a month. Each call is about $1.40. Please use telephone directories as well as the internet. Some good sites to visit are www.switchboard.com or www.anywho.com.
We have more operators trying to handle the volume of calls. If you need an internal number please use your phone directory. It can also be found on the internet.

That's all folks.

Message Sent
To:_____
Allison L. Riepenhoff/WHO/EOP@EOP
Elizabeth N. Camp/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Ann L. Loughlin/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Larry Cote/WHO/EOP@EOP
Barrett Aldemeyer/WHO/EOP@EOP
James W. Carroll/WHO/EOP@EOP
Patrick J. Bumatay/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lisa J. Macecevic/OMB/EOP@EOP [OMB] <Lisa J. Macecevic>
Sent: 3/12/2002 10:30:16 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAR-2002 15:30:16.00
SUBJECT:: Re:
TO:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

thanks. What were OLC's comments?

From: Lisa J. Macecevic on 03/12/2002 03:27:48 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re:

sorry. he said he wanted to stick with his original suggested language
based on olc's comments.

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/12/2002 4:07:43 PM
Subject: : Byrd meeting yesterday here at the WH

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAR-2002 21:07:43.00
SUBJECT:: Byrd meeting yesterday here at the WH
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Judge and Tim (cc: Brett) --
Att'd below is a note about Nick's meeting w/ Sen. Byrd yesterday.
As Brett heard this a.m., Christine Ciccone also notes that Sec. Card was firm in his view that no Ass't to the President is going to be able to testify.
(FYI, it also appears there is a rumor that the Majority Leader may offer a non-binding resolution that the Governor should testify.)
Thanks -- Ed
---------- Forwarded by Edward McNally/WHO/EOP on 03/12/2002 06:32 PM ----------

Wendy J. Grubbs
03/12/2002 06:24:06 PM
Record Type: Record

To: Charles S. Abbot/OVP/EOP@EOP, Mark Holman/WHO/EOP@EOP, Richard Falkenrath/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP
cc:
Subject: Byrd meeting yesterday here at the WH

The meeting went well. Byrd did pull Card aside and express concern over Ridge's refusal to testify and he is anxious for the response. Nick is controlling the timing of the release right now, but I expect it to be in the next day or so. No longer.
Byrd also mentioned that he was concerned about our succession planning in the event something happened to Ridge.
And, last but not least, the latest bomb is that Daschle may offer a non-binding resolution on the Senate floor that Ridge should testify. We are tracking this down now....

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Mark Holman/WHO/EOP@EOP [WHO] <Mark Holman>
CC: wendy j. grubbs/who/eop@eop [WHO] <wendy j. grubbs>;charles s. abbot/ovp/eop@eop [OVP] <charles s. abbot>;Julie L. Nichols/WHO/EOP@EOP [WHO] <Julie L. Nichols>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 3/13/2002 4:49:46 AM
Subject: : New, add'l meeting w/ Byrd re: Gov. Ridge testimony request

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAR-2002 09:49:46.00
SUBJECT:: New, add'l meeting w/ Byrd re: Gov. Ridge testimony request
TO:Mark Holman (CN=Mark Holman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:wendy j. grubbs (CN=wendy j. grubbs/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:charles s. abbot (CN=charles s. abbot/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
CC:Julie L. Nichols (CN=Julie L. Nichols/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Mark, Wendy and Julie --
Judge Gonzales told me this a.m. that Nick's plan (or maybe it's just a WH plan) for the way ahead -- following Monday's meeting here with Sen. Byrd. Sec. Card and Nick -- was as follows:
That BEFORE the Calio letter to Byrd (turning down the request for Gov. Ridge to testify) goes out -- there will be ANOTHER meeting with Sen. Byrd.
It was not clear WHEN meeting No. 2 would be (I got the sense it was soon), WHERE it would be, or WHO from the WH (other than, presumably, Nick) would be participating.
Wendy or Julie -- can you illuminate the landscape here? I'm sure we've got a detail or a nuance missing -- please let us know what YOU know of the plan and the timetable going forward.
Many thanks --
-- Ed

Mark Holman
03/13/2002 08:21:35 AM
Record Type: Record

To: Wendy J. Grubbs/WHO/EOP@EOP
cc: charles s. abbot/ovp/eop@eop, richard falkenrath/who/eop@eop, edward mcnally/who/eop@eop
bcc:
Subject: Re: Byrd meeting yesterday here at the WH

wendy...what is your updated pre-letter ridge contact plan with byrd/stevens???

Wendy J. Grubbs
03/12/2002 06:24:06 PM

Record Type: Record

To: Charles S. Abbot/OVP/EOP@EOP, Mark Holman/WHO/EOP@EOP, Richard Falkenrath/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP
cc:
Subject: Byrd meeting yesterday here at the WH

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Byrd also mentioned that he was concerned about our succession planning in the event something happened to Ridge.
And, last but not least, the latest bomb is that Daschle may offer a non-binding resolution on the Senate floor that Ridge should testify. We are tracking this down now....

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: robert.j.delahunty@usdoj.gov (robert.j.delahunty@usdoj.gov [UNKNOWN]), Robert J. Delahunty (Robert J. Delahunty/WHO/EOP [WHO])
Sent: 3/13/2002 5:18:44 AM
Subject: : Update re: Gov. Ridge Testimony Request -- Potential meeting w/ Sen. Stevens

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAR-2002 10:18:44.00
SUBJECT:: Update re: Gov. Ridge Testimony Request -- Potential meeting w/ Sen. Stevens
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:robert.j.delahunty@usdoj.gov ( robert.j.delahunty@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
BCC:Robert J. Delahunty ( CN=Robert J. Delahunty/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This would be in addition to the 2nd meeting with Sen. Byrd that Nick
apparently raised this morning.
---------------------- Forwarded by Edward McNally/WHO/EOP on 03/13/2002
10:15 AM ---------------------------



Charles S. Abbot
03/13/2002 09:11:01 AM
Record Type: Record

To: Mark Holman/WHO/EOP@EOP, Marie Vachon/WHO/EOP@EOP
cc: wendy j. grubbs/who/eop@eop, charles s. abbot/ovp/eop@eop,
richard falkenrath/who/eop@eop, edward mcnally/who/eop@eop
bcc:
Subject: Re: Byrd meeting yesterday here at the WH

Marie, The Gov told me this morning it had been suggested to him by SEN
Lott that he and Lott call on Stevens together. Gov has asked to have
that scheduled. At the WH Senior Staff this morning, Nick Calio said a
meeting between TR and SEN Byrd was being considered. We will wait for
their guidance on moving ahead with that. WR, A.



Mark Holman
03/13/2002 08:21:35 AM
Record Type: Record

To: Wendy J. Grubbs/WHO/EOP@EOP
cc: charles s. abbot/ovp/eop@eop, richard falkenrath/who/eop@eop,
```

edward mcnally/who/eop@eop
bcc:
Subject: Re: Byrd meeting yesterday here at the WH

wendy...what is your updated pre-letter ridge contact plan with byrd/stevens???

Wendy J. Grubbs
03/12/2002 06:24:06 PM
Record Type: Record

To: Charles S. Abbot/OVP/EOP@EOP, Mark Holman/WHO/EOP@EOP, Richard Falkenrath/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP
cc:
Subject: Byrd meeting yesterday here at the WH

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Byrd also mentioned that he was concerned about our succession planning in the event something happened to Ridge.
And, last but not least, the latest bomb is that Daschle may offer a non-binding resolution on the Senate floor that Ridge should testify. We are tracking this down now....

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/13/2002 8:02:06 AM
Subject: : LRM PTM91 - - HUD Testimony on Community Development Block Grant Program
Attachments: P_BMQ06003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAR-2002 13:02:06.00
SUBJECT:: LRM PTM91 - - HUD Testimony on Community Development Block Grant Program
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
03/13/2002 01:02 PM ----------

From: P. Thaddeus Messenger on 03/13/2002 12:46:19 PM
Record Type: Record

To:
cc: See the distribution list at the bottom of this message
Subject: LRM PTM91 - - HUD Testimony on Community Development Block
Grant Program

LRM ID: PTM91
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, March 13, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Testimony on Community Development Block Grant Program

DEADLINE: 3:00 p.m. Wednesday, March 13, 2002
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts for purposes of the "Pay-As-You-Go" provisions
of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find a copy of HUD's draft
testimony for presentation tomorrow at a hearing before the House Housing
Subcommittee.

Please provide your comments by 3:00 p.m. TODAY, Wednesday 13 March.

Thank you.

DISTRIBUTION LIST

AGENCIES:

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Alan B. Rhinesmith
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Sheila Conley
Brian C. Conklin
Danielle M. Simonetta
Lauren C. Lobrano
OVP LRM
WHGC LRM
Rebecca A. Beynon
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM91 SUBJECT: HUD Testimony on Community Development Block Grant Program
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
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NEC LRM
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OVP LRM
WHGC LRM
Rebecca A. Beynon/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BMQ06003_WHO.TXT_1>

03/13/02 DRAFT

Statement of
Roy A. Bernardi
Assistant Secretary, Community Planning and Development
United States Department of Housing and Urban Development
before the
Committee on Financial Services
Subcommittee on Housing and Community Opportunity
United States House of Representatives

March 14, 2002

Chairwoman Roukema and Members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Roy Bernardi and I am the Assistant Secretary for Community Planning and Development at the Department of Housing and Urban Development. On behalf of Secretary Martinez I want to extend our commitment to work with you to improve the effectiveness of the Community Development Block Grant program and to assure that America's neediest communities receive adequate Federal resources to meet local development needs.

These communities have fewer local resources for addressing housing and community and economic development needs and are, consequently, in greater need of Federal financial assistance. The lowest income residents of these communities deserve to share in Congress' vision of viable urban communities that could be established and maintained through systematic and sustained action of Federal, state, and local governments.

The CDBG program, authorized by the Housing and Community Development Act of 1974, as amended, is one of the most successful government aid programs to have ever been

created. A testimony to this success is the longevity of the program and how it has adjusted over the years in response to changes in public policy over the nearly twenty-eight years since its inception. The CDBG program remains one of the most flexible local tools for revitalizing neighborhoods and encouraging economic development. Since its inception, the CDBG program has provided approximately $100 billion to our nation's cities, towns, counties and states to undertake a wide range of activities that are locally determined. The imprint of the CDBG program can be seen in nearly every jurisdiction of this great country. As a former mayor and municipal worker, I can attest to the significant impact that the CDBG program has had on communities large and small.

Immediately prior to accepting my current position at HUD, I served as mayor of Syracuse, New York. This provided me with first hand knowledge of the usefulness of the CDBG program as a tool to encourage revitalization and growth, especially in older, poorer cities. More than that, however, was the appreciation I developed for the devolution of this wonderful Federal program back to the community level and for the insight of the designers of this program in recognizing the basic truth that the people know what their needs are better than government officials. As a mayor, I often interacted with mayors and other officials on issues related to community development and the dwindling availability of resources. The CDBG program, however, has remained one of the most useful and dependable sources of funding for municipalities.

There are currently 865 cities and 158 counties "entitled" to receive CDBG funds directly from HUD; these are our entitlement communities. In addition, 49 states and the Commonwealth of Puerto Rico award more than 3,000 grants to smaller cities and counties from CDBG funds

REV_00141722

allocated to the states by HUD each year. HUD administers CDBG funds to Hawaii's three non-entitlement counties.

Within this vast number of grantees exists a wide variety of recipients, some quite wealthy, especially when compared with the poorest grantees. It is, therefore, quite understandable that calls would be made to re-evaluate the method of allocating the limited resources of the CDBG program. The continually increasing number of grant recipients has resulted in CDBG funds being stretched further and further with, in some localities, a lessening of the impact CDBG dollars can have on local housing, neighborhood development, public facilities, economic development and the provision of social services.

While the CDBG program may be heralded as the dependable grand dame of Federal financial resources, the Department clearly recognizes that current economic realities require at least some rethinking of how we do business. The Department supports targeting of CDBG funds to provide assistance to lower income persons to the greatest extent permissible under the Housing and Community Development Act of 1974 (the Act), as amended. The Department has proposed an adjustment to the method of allocating CDBG funds: a reduction in the level of funds provided to the wealthiest communities to provide more funds for distribution to the poorest communities.

Currently, CDBG funds are already targeted in two ways: first, by use of need-based formulas; and second, by requiring that 70% of a grantee's allocation benefit low- and moderate-income persons. In the first instance, CDBG program funds are allocated by use of one of two need-based formulas. The original formula is calculated by counting poverty, 50 percent;

REV_00141723

population, 25 percent; and overcrowded housing, 25 percent. The second formula is calculated by counting poverty at 30 percent; population growth lag from 1960 to 2000, at 20 percent; and age of housing stock (number of units constructed before 1940), at 50 percent. A locality's annual allocation is determined by the higher of the two formulas with slight pro rating to assure that the total amount of funds distributed does not exceed the total amount appropriated.

In addition to the use of two needs-based formulas to determine annual local allocations, the Act requires that not less than 70 percent of the CDBG funds provided to states and entitlement communities be used for the support of activities that benefit low- and moderate-income persons.

While the Act and our regulations require that CDBG funds primarily benefit low- and moderate-income persons, more can be done to further target these very funds to the neediest grantees. In a period of reduced budget authority such as we are experiencing now, it is apparent that a strong effort must be made to adjust allocations of our limited funds. Our wealthiest recipient communities would have their annual formula allocation reduced, but not eliminated, to provide for needier communities to receive more adequate levels of funding.

The Department is currently proposing a change in determining grantee eligibility that may better target our funds in just such a way. Our 2003 budget proposes reducing the annual CDBG allocation to the wealthiest one percent of eligible grantees, those with per capita income two times the national average ($14,277 in 1989), by 50 percent. Using the latest available data (from the 1990 census), an example of the effect of such a reduction, based upon FY 2002 data, would provide approximately $8.6 million that could be distributed, by formula, to all remaining grantees.

REV_00141724

This would also allow budget resources to be shifted to other efforts, such as the proposed Colonias Gateway Initiative that will serve some of the most distressed communities in the country.

The communities that would lose funding based upon the 1990 census data currently available are:

Community	Per Capita Income as a multiple of National Average	FY 2002 CDBG funds
Greenwich, CT.	3.2	$1,157,000
Newport Beach, CA	3.2	$ 490,000
Lower Marion, PA	2.9	$1,407,000
Naples, FL	2.9	$ 149,000
Palo Alto, CA	2.3	$ 808,000
Westchester County, NY	2.1	$7,004,000
Santa Monica, CA	2.0	$1,787,000
Brookline, MA	2.0	$1,872,000
Newton, MA	2.0	$2,663,000
TOTAL		**$17,337,000**

The following communities were inadvertently listed in the original 2003 budget summary: Colorado Springs, CO; Penn Hills, PA; Virginia Beach, VA; and Malden, MA.

By reallocating the funds from the wealthiest communities, the Department will be able to target CDBG funds to communities that have lesser local resources for housing, community and economic development needs. The nine communities (with a total CDBG allocation level of $17.3 million) were identified from 1990 census data as meeting the threshold of exceeding the per capita income by 200 percent. However, these communities may change once the 2000 census data is available. A final analysis of the actual communities to receive a reduction of a portion of their CDBG funds will not be possible until the new per capita income data is available in the fall of 2002.

REV_00141725

Revisions to our formulas will not be possible until the data used for each element of these formulas is available for use; the earliest possibility will be during calendar year 2003. In actuality, the Department and Congress will not have an opportunity to apply the data until fiscal year 2004. The proposed shift in allocations is an interim step to facilitate some change until the actual demographic data is available for our use.

Thank you very much. This ends my opening remarks.

REV_00141726

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/13/2002 8:33:48 AM
Subject: : LRM KCT125 - - VETERANS AFFAIRS Report on HR1957 Justice for Atomic Veterans Act
Attachments: P_L2S06003_WHO.TXT_1.wpd; P_L2S06003_WHO.TXT_2.txt

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAR-2002 13:33:48.00
SUBJECT:: LRM KCT125 - - VETERANS AFFAIRS Report on HR1957 Justice for Atomic Veterans Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/13/2002 01:33 PM ----------

From: Kathryn C. Thompson on 03/13/2002 01:24:37 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT125 - - VETERANS AFFAIRS Report on HR1957 Justice for Atomic Veterans Act

The following is LRM ID: KCT125 -- Veterans Affairs Report on H.R. 1957, Justice for Atomic Veterans Act. The VA report is attached below in Wordperfect format and it consists of three pages. The bill text of H.R. 1957 is attached in html format and it consists of two pages.

Please comment on the VA report by Noon, Tuesday, March 19th. If you do not respond by the deadline, I will assume that you have no objection to the VA report.

LRM ID: KCT125
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, March 13, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Report on HR1957 Justice for Atomic Veterans Act

DEADLINE: Noon Tuesday, March 19, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This report states VA's opposition to H.R. 1957, which would add

ten diseases to the list of diseases that are presumed to be service-connected for radiation-exposed veterans.

DISTRIBUTION LIST

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Marisa K. Medrano
Layton Skelly
Robert Marsh
WHGC LRM
OVP LRM
E. Holly Fitter
Ingrid M. Schroeder
James J. Jukes
LRM ID: KCT125 SUBJECT: VETERANS AFFAIRS Report on HR1957 Justice for Atomic Veterans Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
dodlrs@osdgc.osd.mil
energy.gc71@hq.doe.gov
lrm@hhs.gov
justice.lrm@usdoj.gov
dol-sol-leg@dol.gov

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Danny A. Ermann/OMB/EOP@EOP
Narahari Sastry/OMB/EOP@EOP
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Kelli A. Hagen/OMB/EOP@EOP
Arecia A. Grayton/OMB/EOP@EOP
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Mark Vinkenes/OMB/EOP@EOP
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Sarah S. Lee/OMB/EOP@EOP
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Lauren C. Lobrano/OMB/EOP@EOP
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Marisa K. Medrano/OPD/EOP@EOP
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Robert Marsh/WHO/EOP@EOP
WHGC LRM

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E. Holly Fitter/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_L2S06003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_L2S06003_WHO.TXT_2>

The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Evans:

This is in response to your request for the views of the Department of Veterans Affairs (VA) on H.R. 1957, 107th Congress, the "Justice for Atomic Veterans Act of 2001," a bill "to amend title 38, United States Code, to expand the list of diseases presumed to be service connected in the case of radiation-exposed veterans" and to expand the definition of "radiation-risk activity." VA opposes this bill.

Section 2 of the bill would amend 38 U.S.C. § 1112(c)(2) by adding ten diseases to the list of diseases that are presumed to be service connected for radiation-exposed veterans. H.R. 1957 would add to the existing list the following diseases: lung cancer, bone cancer, skin cancer, colon cancer, posterior subcapsular cataracts, non-malignant thyroid nodular disease, ovarian cancer, parathyroid adenoma, tumors of the brain and central nervous system, and rectal cancer.

As you know, VA recently amended 38 C.F.R. § 3.309(d)(2) by adding cancers of the bone, brain, colon, lung, and ovary to the list of diseases that may be presumptively service connected. VA therefore does not oppose amending 38 U.S.C. § 1112(c)(2) to add these five cancers. Our decision to amend section 3.309(d) was based upon our conclusion that public policy and equity dictate that veterans are entitled to the reduced burden of proof for these five cancers available to persons covered under the Radiation Exposure Compensation Act (RECA), Pub. L. No. 101-426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note), the RECA Amendments of 2000, Pub. L. No. 106-245, § 3, 114 Stat. 501, 502, and the Energy Employees Occupational Illness Compensation Program Act of 2000, Pub. L. No. 106-398, tit. XXXVI, 114 Stat. 1654A-1232. We also noted in our notice of proposed rulemaking that Congress has found that nuclear weapons testing involves "unique dangers, including . . . recurring exposures to radioactive substances that, even in small amounts, can cause medical harm." Pub. L. No. 106-398, § 3602(a)(1). We noted, in addition, that enactment of this recent legislation was a result of congressional findings that scientific data resulting from the enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Pub. L. 100-321, and obtained from the Committee on the Biological Effects of Ionizing Radiation and the President's Advisory Committee on Human Radiation Experiments, "provide medical validation for the extension of compensable radiogenic pathologies." RECA Amendments of 2000, § 2(4), 114 Stat. 501.

VA opposes creation of a presumption of service connection for the five

REV_00141731

other diseases listed in section 2 of H.R. 1957, because we are unaware of any scientific evidence concluding that these conditions are likely to have been caused by the levels of radiation to which veterans were exposed during atomic tests and at Hiroshima and Nagasaki. The extent of exposure to ionizing radiation experienced by atomic test participants and Hiroshima/Nagasaki occupation forces has been thoroughly studied and the results peer reviewed. The military services have documented that individual exposures were, for the most part, so low as to pose little health risk to most former members – as dose-responses are currently understood from decades of observations of exposed populations, primarily the Japanese atomic-bomb survivors. We are aware that these data are not without their critics, but if the doses were significantly higher than reported to VA or the health risks much greater from the reported doses, the effects would be observable when sizable populations of exposed veterans have been studied. Yet, studies such as the 1996 Institute of Medicine's "Mortality of Veteran Participants in the CROSSROADS Nuclear Test," which analyzed causes of death among 40,000 test participants, have not borne this out. The authors of that report determined that exposure to ionizing radiation did not contribute to increased mortality among this sizable study population.

Veterans who have skin cancer, posterior subcapsular cataracts, nonmalignant thyroid nodular disease, parathyroid adenoma, and rectal cancer can establish direct service connection for these conditions under 38 U.S.C. §§ 1110 or 1131, or the Veterans' Dioxin and Radiation Exposure and Radiation Exposure Compensation Standards Act, Pub. L. No. 98-542, 98 Stat. 2725 (1984). In addition, pursuant to 38 U.S.C. § 1710(a)(2)(F) and (e)(1)(B), veterans exposed to radiation are currently eligible to receive health-care services for their exposure-related disabilities from VA.

Section 3 of H.R. 1957 would amend 38 U.S.C. § 1112(c)(3)(B), which defines "radiation-risk activity," to include service at Amchitka Island, Alaska, involving performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests between October 23, 1965, and December 31, 1973. In our recent rulemaking, we revised the definition of "radiation-risk activity" in 38 C.F.R. § 3.309(d)(3)(ii) by adding service at Amchitka Island, Alaska, prior to January 1, 1974, if exposed to ionizing radiation in performance of duty related to certain underground nuclear tests. This was done to ensure that veterans exposed to radiation during military service receive the same consideration for the risks of radiation exposure as the employees of the Department of Energy (DOE), DOE contractors and subcontractors, and atomic energy employers with
whom they worked. We therefore have no objection to this amendment to section 1112(c)(3)(B). We also have no objection to amending section 1112(c)(3)(B) to specifically authorize the Secretary of Veterans Affairs to determine by regulation service that constitutes participation in a "radiation-risk activity."

H.R. 1957 is subject to the pay-as-you-go requirement of the Omnibus Budget

REV_00141732

Reconciliation Act of 1990 with regard to the five diseases currently not included in 38 C.F.R. § 3.309(d)(2). VA estimates that enactment of H.R. 1957 would result in benefits costs of $822,000 for one year and will exceed $23 million for five years. We estimate further that enactment of this bill would result in an administrative cost of $630,000 for one year and $2.9 million for five years.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Anthony J. Principi

REV_00141733

HR 1957 IH

107th CONGRESS

1st Session

H. R. 1957

To amend title 38, United States Code, to expand the list of disease s presumed to be service connected in the case of radiation-exposed veterans an d to expand the circumstances deemed have been radiation-risk activities for me mbers of the Armed Forces.

IN THE HOUSE OF REPRESENTATIVES

May 23, 2001

Mr. EVANS (for himself, Ms. BERKLEY, Mr. FILNER, Ms. BROWN of Florida, Mr. R ODRIGUEZ, Mr. UDALL of New Mexico, Ms. MCKINNEY, Mr. FALEOMAVAEGA, Mr. FROST, M s. PELOSI, Mr. SANDERS, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Veterans' Affairs

---

A BILL

To amend title 38, United States Code, to expand the list of disease s presumed to be service connected in the case of radiation-exposed veterans an d to expand the circumstances deemed have been radiation-risk activities for me mbers of the Armed Forces.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Justice for Atomic Veterans Act of 2001' .

SEC. 2. EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE CONNECTED F OR RADIATION-EXPOSED VETERANS.

Section 1112(c)(2) of title 38, United States Code, is amended by addi ng at the end the following new subparagraphs:

`(Q) Lung cancer.

`(R) Bone cancer.

`(S) Skin cancer.

`(T) Colon cancer.

`(U) Posterior subcapsular cataracts.

`(V) Nonmalignant thyroid nodular disease.

`(W) Ovarian cancer.

`(X) Parathyroid adenoma.

`(Y) Tumors of the brain and central nervous system.

`(Z) Rectal cancer.'.

SEC. 3. EXPANSION OF SERVICE CIRCUMSTANCES DEEMED TO BE RADIATION-RISK A CTIVITIES.

Section 1112(c)(3)(B) of title 38, United States Code, is amended by a dding at the end the following new clauses:

> `(iv) Service at Amchitka Island, Alaska, involving the perfor mance of duty related to the Long Shot, Milrow or Cannikin underground nuclear tests which were conducted on that island during the period beginning October 2 3, 1965, and ending December 31, 1973.
>
> `(v) Service at such other locations, during such periods of t ime, as the Secretary determines by regulation to be service that is comparable as a radiation-risk activity to the service specified in clauses (i) through (iv).'.

END

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who /eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who /eop@eop [WHO] <helgard c. walker>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;patrick j. bumatay/who /eop@eop [WHO] <patrick j. bumatay>
Sent: 3/13/2002 1:13:48 PM
Subject: : Re: Remarks and papers for tomorrow

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAR-2002 18:13:48.00
SUBJECT:: Re: Remarks and papers for tomorrow
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:patrick j. bumatay ( CN=patrick j. bumatay/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
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I'm around until at least 8, although I may grab a bite at some point in
there. Just let me know what you need, and maybe I'll munch as I review.




Elizabeth N. Camp
03/13/2002 05:51:50 PM
Record Type: Record
```

To: See the distribution list at the bottom of this message
cc: Patrick J. Bumatay/WHO/EOP@EOP
Subject: Remarks and papers for tomorrow

We need to have someone around a little later this evening to review red tags relating to meetings tomorrow. One will be re: Inter-American Bank (Rachel).

If you are planning to be here past 7pm tonight please let me know.

Lib

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 03/13/2002 05:43 PM ----------

Alberto R. Gonzales
03/13/2002 05:42:11 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Remarks and papers for tomorrow

---------- Forwarded by Alberto R. Gonzales/WHO/EOP on 03/13/2002 05:42 PM ----------

Harriet Miers
03/13/2002 05:11:00 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Remarks and papers for tomorrow

There are items that will need to be staffed this evening for meetings tomorrow. The response time will be short. I would appreciate your making arrangements in your offices to have someone available to handle these staffings. If you would let us know special arrangements, I would appreciate it. Thanks.

Message Sent
To:_____
Richard B. Cheney/OVP/EOP@EOP
Andrew H. Card/WHO/EOP@EOP
Bradley A. Blakeman/WHO/EOP@EOP
Joshua B. Bolten/WHO/EOP@EOP
Nicholas E. Calio/WHO/EOP@EOP
James Connaughton/CEQ/EOP@EOP
Mitchell Daniels/OMB/EOP@EOP
Lawrence A. Fleischer/WHO/EOP@EOP
Michael J. Gerson/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Joseph W. Hagin/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Glenn Hubbard/CEA/EOP@EOP
Karen Hughes/WHO/EOP@EOP
Hector F. Irastorza/WHO/EOP@EOP
Clay Johnson III/WHO/EOP@EOP
Lawrence B. Lindsey/OPD/EOP@EOP
Condoleezza Rice/NSC/EOP@EOP
Karl C. Rove/WHO/EOP@EOP
Margaret M. Spellings/OPD/EOP@EOP

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

From: CN=Lauren C. Lobrano/OU=OMB/O=EOP [OMB]
To: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/13/2002 9:29:46 AM
Subject: : Re: FINAL CLEARANCE - HR 2341 The Class Action Fairness Act
Attachments: P_1ZU06003_WHO.TXT_1

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lauren C. Lobrano ( CN=Lauren C. Lobrano/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:13-MAR-2002 14:29:46.00
SUBJECT:: Re: FINAL CLEARANCE - HR 2341 The Class Action Fairness Act
TO:Diana L. Schacht ( CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Transmitted to the Hill yesterday afternoon for the Rules Committee
Hearing.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1ZU06003_WHO.TXT_1>
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 12, 2002
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 2341 - Class Action Fairness Act of 2002

(Rep. Goodlatte (R) Virginia and 56 cosponsors)

The Administration strongly supports the enactment of H.R. 2341 as an important step in reforming class action litigation. Among the bill's many commonsense provisions, the Administration supports the proposal to establish a consumer class action bill of rights that would: (1) require notice of a lawsuit to class members in "plain English"; (2) require judicial review of settlements that give class members only "coupons" or other non-cash benefits; and (3) prohibit a court from approving a settlement that discriminates among plaintiffs on account of their geographical location or status as class representatives.

The bill also would make long-needed changes to the requirements for federal diversity jurisdiction over class action cases. The Administration strongly supports the proposal to permit removal to federal court of a class action if the aggregate amount in controversy exceeds $2 million and there is minimal diversity (at least one plaintiff representative and one defendant are from different States). Combined with existing federal rules for consolidation of related federal cases, this proposal would help avoid the inefficiency, waste, and unfairness that has too often resulted from multiple overlapping class action suits.

The Administration would support adding, at the appropriate point in the legislative process, a provision to Section 7 of the bill to make clear that the authority of the Supreme Court under Section 2072, 2074 or 2075 of Title 28 of the U.S. Code to issue certain rules that supersede conflicting laws cannot be used to supersede this legislation and amendments made by this legislation.

* * * * * *

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/13/2002 1:05:24 PM
Subject: : Re: edits/comments welcome!
Attachments: P_DU516003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAR-2002 18:05:24.00
SUBJECT:: Re: edits/comments welcome!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Very well done. My only comment (in addition to adding/quoting something about what the President said in today's press conference) would be that you might want to consider deleting the line that Kristen and Jay deleted from the SAP. But I don't feel strongly about that.

Brett M. Kavanaugh
03/13/2002 03:01:21 PM
Record Type: Record

To: Courtney S. Elwood/WHO/EOP@EOP
cc:
Subject: edits/comments welcome!

still rough (and late!)

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DU516003_WHO.TXT_1>

Speech to ATRA

March 14, 2002

[Acknowledgements]

Thank you all for inviting me here today. I would like to talk to you this morning about my job as Counsel to the President and also about the Administration's approach to civil justice reform issues. And then I would be happy to answer questions that you may have about any subject.

First of all, I could not help but notice that you have a panel later this morning that will discuss judicial elections. I will say definitively that I am very happy that I no longer have to run in judicial elections. Raising money is no fun. And without stealing any thunder, let me add my two cents to your panel: I personally oppose the election of judges.

I. Role of Counsel to the President

Of course, to me, running for elective office seems a part of the distant past. I have been President Bush's counsel in the White House for nearly 14 months. And a lot has happened. Thinking back over the last 14 months, what has really struck me is how important the integrity and honesty of the President are to the proper functioning of the Administration in general and the Counsel's office in particular. During the campaign, President Bush pledged repeatedly that he would uphold not just the laws of the land, but also the honor and dignity of the Presidency. And I think we all can be grateful that President Bush is as advertised: a man of integrity and of his word whom all Americans can respect and look to for principled leadership in times of peace and, as now, in times of war.

As Counsel to President Bush, much of my day-to-day job is necessarily reactive, responding to the crisis or issue at hand. But that said, standing here with the benefit of over a

year of service, I can say that two core principles guide me in serving the Presidency and this President.

The first is fidelity to the rule of law. Several prior Counsels to the President have been criticized -- or worse -- for disserving the Presidency: for subordinating the rule of law to the political and personal interests. Knowing this history, the lawyers on my staff and I fully understand that the first principle that must influence and determine everything we do is fidelity to the rule of law.

The second principle is preservation and defense of the constitutional prerogatives of the Presidency. Those prerogatives are constantly tested and challenged: Congressional requests for documents of internal policy debates, Senatorial demands regarding nomination of judges, congressional attempts to ensure that certain Executive Branch agencies, or at least certain Executive Branch officers, operate independently of the President. One of the most important jobs we have in the Counsel's office is to preserve the powers and prerogatives of the Presidency against inappropriate congressional incursions.

II. Civil Justice Reform

Another aspect of my job is to participate, in conjunction with the President's domestic policy advisors and the relevant departments and agencies, in the development of legal policy. Civil justice reform is one part of that. So let me turn to that subject.

A. Background

We cannot begin to achieve meaningful civil justice reform without first convincing the American people and the Congress that there is a problem that needs fixing. When the issue of civil justice reform is described -- as is often is -- as big business against consumer or big business against labor, we have seen that meaningful reform is not likely to get very far.

REV_00141780

So the first imperative continues to be educational -- to educate the Congress and the public on the problem and to show that proposals for reform will benefit consumers, labor, and shareholders.

The civil justice system must strongly protect consumers by ensuring that legitimate victims of corporate malfeasance can obtain justice and receive fair and just compensation. The issue is one of balance. We do not want a tort system that unduly sacrifices product development and innovation -- new drugs and new vaccines, for example. But we also do not want a legal system that unduly sacrifices safety -- allowing new drugs that have deadly side effects, for example. Finding the right balance so as to ensure appropriate standards of liability and appropriate damages awards is therefore a critical function of the tort system.

Apart from substance, we also want sensible and efficient litigation *procedures* to ensure that shareholders, employees, and plaintiffs are not penalized by waste and undue inefficiency in the litigation process.

On both substance and procedure, there is surely room for improvement. The existing tort regime is often characterized by excessive payouts, lottery-style awards, and an inequitable division of the spoils among claimants and counsel. It not only fails properly to deter unsafe conduct, but also often fails to compensate victims fully for their losses.

Escalating lawsuit abuse imposes enormous and varied costs on our economy. Consumers pay higher prices for fewer products. Shareholders lose value when stock prices drop as a result of a spurious lawsuit. Employees lose their jobs or receive reduced compensation as the companies for which they work are forced to cover excess litigation expense.

REV_00141781

America's civil justice system is the most expensive in the industrialized world. The overall cost of our system is conservatively estimated at nearly $180 billion annually, or about 2 percent of GDP. And costs have grown steadily over time, up from only 1.3% of GDP in 1970, and approximately 0.6% in 1950.

Americans understand that the current system is broken. The better they understand the inequities of the system, the more inclined they will be to view civil justice reform favorably.

Of course, when we talk about the civil justice "system" in the singular, we ignore one major issue -- federalism. Lawsuits to recover damages for injuries are traditionally governed by state substantive law. And many in my party are appropriately cautious about the federal government stepping in to override substantive state law. To justify federal tort reform measures that would alter state tort law, therefore, one must convincingly show the relationship and effect of state tort law on the national economy and interstate markets.

B. Administration's Approach to Congress

Let me turn to the Administration's views on the civil justice reform outlook in Congress. As with any matter requiring legislation, we work very closely with Congress and must be aware of the views of Congress. It appears that meaningful civil justice reform in Congress is most likely to be accomplished not through one massive tort reform bill covering a slew of often controversial issues, but rather through targeted measures on specific bills related to specific issues -- whether that be a class action bill, a terrorism insurance bill, a patients bill of rights, a vaccine liability bill.

With that in mind, I want to focus on two pieces of proposed legislation that the Administration strongly supports and that are now before the Congress.

REV_00141782

1. Class Action Legislation

The first relates to class action reform. As you know, one of today's major civil justice problems is class-action litigation. In many cases, defending on the merits is a bet-the-company strategy, as Judge Richard Posner noted some years ago. The threat of class certification inevitably leads to settlement because every good lawyer or savvy client knows that markets will respond to certification with a major drop in the stock price.

Right now, moreover, a handful of State courts, through their certification and settlement of large-scale class action lawsuits, are effectively making law and dictating corporate behavior for 49 other States. A class action lawsuit brought in State court may be removed to federal court only if there is *full* diversity among the defendants and the named plaintiffs. In addition, *each class member's* claim alone must exceed $75,000, even if the aggregate amount in controversy far exceeds this amount. These requirements make it easy for plaintiffs' lawyers to bring large class actions in favorable state forums, even where these lawsuits have significant interstate commerce implications and involve the residents and laws of multiple states.

The individual consumers on whose behalf these suits are brought often receive only a few dollars each from a class action settlement. Frequently, they do not even get cash, but instead receive a "coupon" for a noncash discount on one of the defendant's products. By contrast, the lawyers who bring the suits often negotiate very large fees.

To address these problems, the Administration strongly supports the Class Action Fairness Bill, H.R. 2341, currently before the House. The commonsense provisions in that bill include (1) notice of a lawsuit to class members in "plain English"; (2) judicial review of "coupon" settlements; and (3) prohibitions against court approval of proposed settlements providing for preferential payments to certain designated members of the class.

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In addition, this bill calls for modification of diversity requirements for federal jurisdiction over class actions, such that cases would be removable if the aggregate amount in controversy exceeds $2,000,000 and there is minimal diversity. Federal jurisdiction for major class actions of this kind would help protect out-of-state defendants, as well as out-of-State plaintiff class members, from local biases in cases that affect their substantial interests and therefore is consistent with and fulfills the Constitution's original design.

2. Procedures for mass tort terrorism cases.

I also want to talk briefly about one other important issue currently being debated in Congress -- the legal system's handing of mass terrorism incidents. Congress has been debating for months how the legal system and the insurance industry will cope with additional terrorist attacks.

As to insurance, the Administration and most in Congress agree that some level of government backstop is necessary so that the insurance industry can manage the risk of future terrorism incidents and continue to provide coverage for major building projects, stadiums, air carriers, and the like.

A sticking point in passing any bill has concerned the appropriate litigation procedures for mass tort terrorism incidents. The Administration has proposed that sensible litigation procedures for mass terrorism incidents be part of any terrorism insurance bill.

Sensible litigation procedures for mass tort *terrorism* incidents are necessary for several reasons.

First, sensible litigation procedures will help reduce the substantial uncertainty faced by the insurance industry in pricing terrorism risk. The largest piece of the terrorism risk to insurers is likely to be the liability component of property and casualty insurance.

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Second, absent sensible litigation procedures, the resources of liable defendants, including resources from their liability insurance policies, will not suffice to compensate the class of successful plaintiff-victims in mass tort terrorism incidents.

Third, the number and variety of cases, plaintiffs, defendants, causes of action, liability standards, and damages rules in mass tort terrorism cases will overwhelm the ordinary legal system and cause extraordinary delays.

The Administration advanced four proposals to respond to these issues.

First, tort cases arising out of a mass tort terrorism incident should be consolidated in a single federal court. This is a common procedure in mass tort cases and was a central feature of the legislation recently enacted by Congress for the tort cases arising out of the September 11 attacks.

Second, there should be no punitive damage awards in mass tort terrorism cases. In mass tort cases, only a limited pool of resources will be available to plaintiffs who prove liability (whether because of bankruptcy or settlement). Because of the limited pool of resources, it would be grossly inequitable and unfair to allow one plaintiff or class of plaintiffs to receive an excessive award -- including a punitive component entirely unrelated to the plaintiff's injuries and unnecessary to compensate the plaintiff -- that could greatly limit or outright preclude recovery by other plaintiffs.

Third, there should be no joint and several liability for non-economic damages in mass tort terrorism cases, but rather should be proportional fault for recovery of non-economic damages. Without such a provision, a court could hold any defendant "jointly and severally" liable for the full amount of the plaintiff's non-economic damages, *even for those damages attributable to the terrorists' acts* and unrelated to the defendant's actions.

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Fourth, the plaintiff's recovery in mass terrorism cases should be offset by the amount of first-party insurance received by the plaintiff. This will ensure that injured parties receive appropriate compensation, but also preserve the pool of defendant assets and thereby allow equitable recovery for all injured parties.

I am pleased to report that the House of Representatives agreed with the Administration's four proposals (and even added a fifth proposal to limit attorneys' fees) and passed a strong bill at the end of last year.

That leaves the Senate.

In negotiations with the Senate, we thought we had achieved a good bipartisan agreement. The Administration -- along with key members of the Banking Committee, Democrat Senators Sarbanes and Dodd and Republican Senators Gramm and Enzi -- agreed that some sensible litigation procedures should be part of any terrorism insurance bill. In particular, there was a bipartisan agreement for two provisions: consolidation of claims in a single court and the elimination of punitive damages.

But just when we thought there was agreement, Senator Daschle intervened at the 11th hour and overrode his Senators, Sarbanes and Dodd, and prevented the bill from coming to the Senate floor. The sole ground on which Senator Daschle took this action were the liability procedures, modest and limited as they are.

The Administration remains deeply disappointed that Senate leadership took this extraordinary step and prevented the Senate from considering a bill that had wide bipartisan agreement. We are continuing to support a terrorism insurance bill with sensible litigation management procedures. But what happened in the Senate shows us all that any civil justice reform, no matter how sensible the proposal in question, will be a real fight in the Senate.

REV_00141786

III. Conclusion

In closing, let me say how much we appreciate your efforts on behalf of reform. And please know that the Administration is committed to supporting sensible litigation procedures that will make our legal system as effective as possible. With that, I would be happy to answer questions.

REV_00141787

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 3/13/2002 1:15:35 PM
Subject: : Tort reform draft speech
Attachments: P_A9616003_WHO.TXT_1.doc

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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAR-2002 18:15:35.00
SUBJECT:: Tort reform draft speech
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_A9616003_WHO.TXT_1>
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Speech to ATRA

March 14, 2002

[Acknowledgements]

Thank you all for inviting me here today. I would like to talk to you this morning about my job as Counsel to the President and also about the Administration's approach to civil justice reform issues. And then I would be happy to answer questions that you may have about any subject.

First of all, I could not help but notice that you have a panel later this morning that will discuss judicial elections. I will say definitively that I am very happy that I no longer have to run in judicial elections. Raising money is no fun. And without stealing any thunder, let me add my two cents to your panel: I personally oppose the election of judges.

I. Role of Counsel to the President

Of course, to me, running for elective office seems a part of the distant past. I have been President Bush's counsel in the White House for nearly 14 months. And a lot has happened. Thinking back over the last 14 months, what has really struck me is how important the integrity and honesty of the President are to the proper functioning of the Administration in general and the Counsel's office in particular. During the campaign, President Bush pledged repeatedly that he would uphold not just the laws of the land, but also the honor and dignity of the Presidency. And I think we all can be grateful that President Bush is as advertised: a man of integrity and of his word whom all Americans can respect and look to for principled leadership in times of peace and, as now, in times of war.

As Counsel to President Bush, much of my day-to-day job is necessarily reactive, responding to the crisis or issue at hand. But that said, standing here with the benefit of over a

year of service, I can say that two core principles guide me in serving the Presidency and this President.

The first is fidelity to the rule of law. Several prior Counsels to the President have been criticized -- or worse -- for disserving the Presidency: for subordinating the rule of law to the political and personal interests. Knowing this history, the lawyers on my staff and I fully understand that the first principle that must influence and determine everything we do is fidelity to the rule of law.

The second principle is preservation and defense of the constitutional prerogatives of the Presidency. Those prerogatives are constantly tested and challenged: Congressional requests for documents of internal policy debates, Senatorial demands regarding nomination of judges, congressional attempts to ensure that certain Executive Branch agencies, or at least certain Executive Branch officers, operate independently of the President. One of the most important jobs we have in the Counsel's office is to preserve the powers and prerogatives of the Presidency against inappropriate congressional incursions.

II. Civil Justice Reform

Another aspect of my job is to participate, in conjunction with the President's domestic policy advisors and the relevant departments and agencies, in the development of legal policy. Civil justice reform is one part of that. So let me turn to that subject.

A. Background

We cannot begin to achieve meaningful civil justice reform without first convincing the American people and the Congress that there is a problem that needs fixing. When the issue of civil justice reform is described -- as is often is -- as big business against consumer or big business against labor, we have seen that meaningful reform is not likely to get very far.

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So the first imperative continues to be educational -- to educate the Congress and the public on the problem and to show that proposals for reform will benefit consumers, labor, and shareholders.

The civil justice system must strongly protect consumers by ensuring that legitimate victims of corporate malfeasance can obtain justice and receive fair and just compensation. The issue is one of balance. We do not want a tort system that unduly sacrifices product development and innovation -- new drugs and new vaccines, for example. But we also do not want a legal system that unduly sacrifices safety -- allowing new drugs that have deadly side effects, for example. Finding the right balance so as to ensure appropriate standards of liability and appropriate damages awards is therefore a critical function of the tort system.

Apart from substance, we also want sensible and efficient litigation *procedures* to ensure that shareholders, employees, and plaintiffs are not penalized by waste and undue inefficiency in the litigation process.

On both substance and procedure, there is surely room for improvement. The existing tort regime is often characterized by excessive payouts, lottery-style awards, and an inequitable division of the spoils among claimants and counsel. It not only fails properly to deter unsafe conduct, but also often fails to compensate victims fully for their losses.

Escalating lawsuit abuse imposes enormous and varied costs on our economy. Consumers pay higher prices for fewer products. Shareholders lose value when stock prices drop as a result of a spurious lawsuit. Employees lose their jobs or receive reduced compensation as the companies for which they work are forced to cover excess litigation expense.

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America's civil justice system is the most expensive in the industrialized world. The overall cost of our system is conservatively estimated at nearly $180 billion annually, or about 2 percent of GDP. And costs have grown steadily over time, up from only 1.3% of GDP in 1970, and approximately 0.6% in 1950.

Americans understand that the current system is broken. The better they understand the inequities of the system, the more inclined they will be to view civil justice reform favorably.

Of course, when we talk about the civil justice "system" in the singular, we ignore one major issue -- federalism. Lawsuits to recover damages for injuries are traditionally governed by state substantive law. And many in my party are appropriately cautious about the federal government stepping in to override substantive state law. To justify federal tort reform measures that would alter state tort law, therefore, one must convincingly show the relationship and effect of state tort law on the national economy and interstate markets.

B. Administration's Approach to Congress

Let me turn to the Administration's views on the civil justice reform outlook in Congress. The President spoke to this issue yesterday at his press conference and stated: "I am for reducing the number of lawsuits in our society. I think everybody will have their day in court, but I think a society that is so kind of litigious-oriented is one that is bad for jobs, bad for the creation of jobs. And . . . I will support reforms which reduce lawsuits and at the same time provide -- give people the opportunity to take their case to court."

On civil justice reform, as with any matter requiring legislation, we work very closely with Congress and must be aware of the views of Congress. It appears that meaningful civil justice reform in Congress is most likely to be accomplished not through one massive tort reform bill covering a slew of often controversial issues, but rather through targeted measures on

REV_00141792

specific bills related to specific issues -- whether that be a class action bill, a terrorism insurance bill, a patients bill of rights, a vaccine liability bill.

With that in mind, I want to focus on two pieces of proposed legislation that the Administration strongly supports and that are now before the Congress.

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The first relates to class action reform. As you know, one of today's major civil justice problems is class-action litigation. In many cases, defending on the merits is a bet-the-company strategy, as Judge Richard Posner noted some years ago. The threat of class certification inevitably leads to settlement because every good lawyer or savvy client knows that markets will respond to certification with a major drop in the stock price.

Right now, moreover, a handful of State courts, through their certification and settlement of large-scale class action lawsuits, are effectively making law and dictating corporate behavior for 49 other States. A class action lawsuit brought in State court may be removed to federal court only if there is *full* diversity among the defendants and the named plaintiffs. In addition, *each class member's* claim alone must exceed $75,000, even if the aggregate amount in controversy far exceeds this amount. These requirements make it easy for plaintiffs' lawyers to bring large class actions in favorable state forums, even where these lawsuits have significant interstate commerce implications and involve the residents and laws of multiple states.

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To address these problems, the Administration strongly supports the Class Action Fairness Bill, H.R. 2341, currently before the House. The commonsense provisions in that bill include (1) notice of a lawsuit to class members in "plain English"; (2) judicial review of "coupon" settlements; and (3) prohibitions against court approval of proposed settlements providing for preferential payments to certain designated members of the class.

In addition, this bill calls for modification of diversity requirements for federal jurisdiction over class actions, such that cases would be removable if the aggregate amount in controversy exceeds $2,000,000 and there is minimal diversity. Federal jurisdiction for major class actions of this kind would help protect out-of-state defendants, as well as out-of-State plaintiff class members, from local biases in cases that affect their substantial interests and therefore is consistent with and fulfills the Constitution's original design.

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A sticking point in passing any bill has concerned the appropriate litigation procedures for mass tort terrorism incidents. The Administration has proposed that sensible litigation procedures for mass terrorism incidents be part of any terrorism insurance bill.

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Sensible litigation procedures for mass tort *terrorism* incidents are necessary for several reasons.

First, sensible litigation procedures will help reduce the substantial uncertainty faced by the insurance industry in pricing terrorism risk. The largest piece of the terrorism risk to insurers is likely to be the liability component of property and casualty insurance.

Second, absent sensible litigation procedures, the resources of liable defendants, including resources from their liability insurance policies, will not suffice to compensate the class of successful plaintiff-victims in mass tort terrorism incidents.

Third, the number and variety of cases, plaintiffs, defendants, causes of action, liability standards, and damages rules in mass tort terrorism cases will overwhelm the ordinary legal system and cause extraordinary delays.

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Third, there should be no joint and several liability for non-economic damages in mass tort terrorism cases, but rather should be proportional fault for recovery of non-economic damages. Without such a provision, a court could hold any defendant "jointly and severally" liable for the full amount of the plaintiff's non-economic damages, *even for those damages attributable to the terrorists' acts* and unrelated to the defendant's actions.

Fourth, the plaintiff's recovery in mass terrorism cases should be offset by the amount of first-party insurance received by the plaintiff. This will ensure that injured parties receive appropriate compensation, but also preserve the pool of defendant assets and thereby allow equitable recovery for all injured parties.

I am pleased to report that the House of Representatives agreed with the Administration's four proposals (and even added a fifth proposal to limit attorneys' fees) and passed a strong bill at the end of last year.

That leaves the Senate.

In negotiations with the Senate, we thought we had achieved a good bipartisan agreement. The Administration -- along with key members of the Banking Committee, Democrat Senators Sarbanes and Dodd and Republican Senators Gramm and Enzi -- agreed that some sensible litigation procedures should be part of any terrorism insurance bill. In particular, there was a bipartisan agreement for two provisions: consolidation of claims in a single court and the elimination of punitive damages.

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REV_00141796

The Administration remains deeply disappointed that Senate leadership took this extraordinary step and prevented the Senate from considering a bill that had wide bipartisan agreement. We are continuing to support a terrorism insurance bill with sensible litigation management procedures. But what happened in the Senate shows us all that any civil justice reform, no matter how sensible the proposal in question, will be a real fight in the Senate.

III. Conclusion

In closing, let me say how much we appreciate your efforts on behalf of reform. And please know that the Administration is committed to supporting sensible litigation procedures that will make our legal system as effective as possible. With that, I would be happy to answer questions.

REV_00141797

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;rachel l. brand/who /eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who /eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;allison l. riepenhoff/who /eop@eop [WHO] <allison l. riepenhoff>;patrick j. bumatay/who/eop@eop [WHO] <patrick j. bumatay>
Sent: 3/13/2002 3:00:33 PM
Subject: : Re: Remarks and papers for tomorrow

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CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAR-2002 20:00:33.00
SUBJECT:: Re: Remarks and papers for tomorrow
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
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CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
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READ:UNKNOWN
###### End Original ARMS Header ######

I'm around til late also Lib -- pls. let me know if there's anything I can
do to help. -- McNally
```

Bradford A. Berenson

03/13/2002 06:13:39 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Remarks and papers for tomorrow

I'm around until at least 8, although I may grab a bite at some point in there. Just let me know what you need, and maybe I'll munch as I review.

Elizabeth N. Camp
03/13/2002 05:51:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Patrick J. Bumatay/WHO/EOP@EOP
Subject: Remarks and papers for tomorrow

We need to have someone around a little later this evening to review red tags relating to meetings tomorrow. One will be re: Inter-American Bank (Rachel).

If you are planning to be here past 7pm tonight please let me know.

Lib

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 03/13/2002 05:43 PM ----------

Alberto R. Gonzales
03/13/2002 05:42:11 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject: Remarks and papers for tomorrow

---------- Forwarded by Alberto R. Gonzales/WHO/EOP on 03/13/2002 05:42 PM ----------

Harriet Miers
03/13/2002 05:11:00 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Remarks and papers for tomorrow

There are items that will need to be staffed this evening for meetings tomorrow. The response time will be short. I would appreciate your making arrangements in your offices to have someone available to handle these staffings. If you would let us know special arrangements, I would appreciate it. Thanks.

Message Sent
To:_____
Richard B. Cheney/OVP/EOP@EOP
Andrew H. Card/WHO/EOP@EOP

Bradley A. Blakeman/WHO/EOP@EOP
Joshua B. Bolten/WHO/EOP@EOP
Nicholas E. Calio/WHO/EOP@EOP
James Connaughton/CEQ/EOP@EOP
Mitchell Daniels/OMB/EOP@EOP
Lawrence A. Fleischer/WHO/EOP@EOP
Michael J. Gerson/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Joseph W. Hagin/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Glenn Hubbard/CEA/EOP@EOP
Karen Hughes/WHO/EOP@EOP
Hector F. Irastorza/WHO/EOP@EOP
Clay Johnson III/WHO/EOP@EOP
Lawrence B. Lindsey/OPD/EOP@EOP
Condoleezza Rice/NSC/EOP@EOP
Karl C. Rove/WHO/EOP@EOP
Margaret M. Spellings/OPD/EOP@EOP

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP

Message Copied
To:_____
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
rachel l. brand/who/eop@eop
robert w. cobb/who/eop@eop
courtney s. elwood/who/eop@eop
timothy e. flanigan/who/eop@eop
noel j. francisco/who/eop@eop
brett m. kavanaugh/who/eop@eop
kyle sampson/who/eop@eop
helgard c. walker/who/eop@eop
edward mcnally/who/eop@eop
allison l. riepenhoff/who/eop@eop
patrick j. bumatay/who/eop@eop

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: H._Christopher_Bartolomucci@who.eop.gov [UNKNOWN] <H._Christopher_Bartolomucci@who.eop.gov>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/14/2002 2:07:53 PM
Subject: : My thoughts re draft memo
Attachments: P_0QA26003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-MAR-2002 19:07:53.00
SUBJECT:: My thoughts re draft memo
TO:H._Christopher_Bartolomucci@who.eop.gov ( H._Christopher_Bartolomucci@who.eop.gov [
UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0QA26003_WHO.TXT_1>
```

Draft: March __, 2002

MEMORANDUM FOR [SELECTED] PERSONNEL IN THE WHITE HOUSE OFFICE, THE NATIONAL SECURITY COUNCIL STAFF

FROM: TIMOTHY E. FLANIGAN
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: COOPERATION WITH DEPARTMENT OF JUSTICE
CRIMINAL INVESTIGATION

The White House is cooperating with, and fully supports, a criminal investigation being conducted by the United States Attorney for the Northern District of Illinois and the Federal Bureau of Investigation relating to the disclosure last year of confidential government information concerning the blocking and freezing of the assets of the Global Relief Foundation, the Benevolence International Foundation, and the Holy Land Foundation.

To assist the Justice Department's investigation, we ask that you are hereby directed to complete and return to the head of your office the Certification attached hereto no later than March 22, 2002.

You are also asked directed to produce all documents in your possession (including e-mails and internal memoranda) that:

(a) were created (or are dated) between September 11, 2001 and on or before September 30, 2001, and indicate that the Global Relief Foundation and/or the Benevolence International Foundation was being considered for inclusion on a list of organizations whose assets would by frozen by the United States government; or

(b) were created (or are dated) on or before December 4, 2001, and indicate that the Holy Land Foundation was being considered for inclusion on a list of suspected terrorist fund-raising organizations or would otherwise have its assets blocked or frozen by the United States government; or

(c) were created (or are dated) on or before December 14, 2001, and indicate that the Global Relief Foundation was to be searched or would have its assets frozen or blocked on or about December 14, 2001 or which discusses the expected date and time of any such action.

Please deliver all responsive documents to my office (2nd Floor, West Wing) no later than March 22, 2002.

If you have any questions, please call Brett Kavanaugh (6-7984) or Chris Bartolomucci (6-7963).

CERTIFICATION

I hereby certify, to the best of my knowledge, [reference to perjury?] that

_____ I had access

_____ I did not have access

(a) on or before September 30, 2001, to the information that the Global Relief Foundation and/or the Benevolence International Foundation was being considered for inclusion on a list of organizations whose assets would be frozen; or

(b) on or before December 3, 2001, to the information that a search would be conducted of (or that a blocking action would be taken against) the Holy Land Foundation on December 4, 2001; or

(c) on or before December 13, 2001, to the information that a blocking action would be taken against (or that a search would be conducted of) the Global Relief Foundation on December 14, 2001.

I further certify that

_____ I have produced to the ~~Counsel's~~ Office of the Counsel to the President ("Counsel's Office) all documents in my possession (including e-mails and internal memoranda) responsive to the document production directive in the March 15, 2002 memorandum to which this Certification was attached.

_____ I have conducted a search and determined that I have no such documents.

I understand that the information and documents I provide to the Counsel's Office are likely to be disclosed to the U.S. Department of Justice for use in its criminal investigation and that the Counsel's Office is not acting as my private attorney in this matter.

NAME (please print):

SIGNATURE:

DATE:

WHITE HOUSE OR EOP OFFICE:

PHONE NUMBER:

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/15/2002 5:13:04 AM
Subject: : LRM PTM92 - - HUD Draft Bill on Transfer of Emergency Food and Shelter Program from FEMA to HUD
Attachments: P_XDL26003_WHO.TXT_1.doc; P_XDL26003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAR-2002 10:13:04.00
SUBJECT:: LRM PTM92 - - HUD Draft Bill on Transfer of Emergency Food and Shelter Program from FEMA to HUD
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/15/2002 10:12 AM ----------

From: P. Thaddeus Messenger on 03/15/2002 10:06:44 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM92 - - HUD Draft Bill on Transfer of Emergency Food and Shelter Program from FEMA to HUD

LRM ID: PTM92
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, March 14, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Draft Bill on Transfer of Emergency Food and Shelter Program from FEMA to HUD

DEADLINE: 5:00 p.m. Wednesday, March 20, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find a copy of HUD's draft text and sectional analysis for a bill to transfer the administration of the Emergency Food and Shelter Program from FEMA to HUD. This is a provision of the President's Program.

Please provide your comments by 5:00 p.m., Wednesday, 20 March. If you experience difficulty with this LRM, or its attachments, please contact us immediately. To ensure receipt by agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile.

Thank you.

DISTRIBUTION LIST

AGENCIES:
052-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7773
039-Federal Emergency Management Agency - Michael D. Brown - (202) 646-4105
061-JUSTICE - Daniel Bryant - (202) 514-2141
025-COMMERCE - Michael A. Levitt - (202) 482-3151
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
076-National Economic Council - John Ackerly - (202) 690-7773

EOP:
Stephen S. McMillin
Alan B. Rhinesmith
Francis S. Redburn
Lauren E. Bloomquist
Aquiles F. Suarez
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Michael F. Crowley
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OVP LRM
WHGC LRM
NEC LRM
Matthew Kirk
Brian C. Conklin
Rebecca A. Beynon
Lauren C. Lobrano
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM92 SUBJECT: HUD Draft Bill on Transfer of Emergency Food and Shelter Program from FEMA to HUD
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
lrm@hhs.gov
legis@fema.gov
justice.lrm@usdoj.gov
CLRM@doc.gov
usdaocrleg@obpa.usda.gov

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
James Boden/OMB/EOP@EOP
Michael F. Crowley/OMB/EOP@EOP
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Jack A. Smalligan/OMB/EOP@EOP
Michele Ahern/OMB/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
OVP LRM
WHGC LRM
NEC LRM
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XDL26003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XDL26003_WHO.TXT_2>

TRANSFER OF EMERGENCY FOOD AND SHELTER PROGRAM FROM FEMA TO HUD.

SEC. ___. TRANSFER OF EMERGENCY FOOD AND SHELTER PROGRAM FROM FEMA TO HUD.

(a) TRANSFER.--Title III of the McKinney-Vento Homeless Assistance Act is amended--

(1) in the title heading, by striking "**FEDERAL**" and "**MANAGEMENT**";

(2) in section 301(a), by striking "Director of the Federal Emergency Management Agency" and inserting "Secretary of Housing and Urban Development";

(3) by revising the first and second sentences of section 301(b) to read as follows:

"The National Board shall consist of the Secretary and six members. The Secretary shall appoint members to vacancies on the National Board existing on, or occurring after, the effective date of this sentence.";

(4) in section 301(c), by striking "Director" and inserting "Secretary";

(5) by repealing section 301(e);

(6) in the heading for section 303, by striking "**FEDERAL EMERGENCY MANAGEMENT AGENCY**" and inserting "**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**";

(7) in section 303, by striking "Director" the two places it appears and inserting "Secretary";

(8) in section 303(b)(1), by striking "legal counsel and Inspector General of the Federal Emergency Management Agency" and inserting "General Counsel and Inspector General of the Department of Housing and Urban Development";

(9) in the heading for section 311, by striking "**DIRECTOR**" and inserting "**SECRETARY**";

(10) in section 311, by striking "Director" and inserting "Secretary";

(11) by revising section 321(1) to read as follows:

"(1) The term `Secretary' means the Secretary of Housing and Urban Development."; and

(12) in section 322, by striking "$180,000,000 for fiscal year 1993 and $187,560,000 for fiscal year 1994" and inserting "$153,000,000 for fiscal year 2003 and such sums as may be necessary for fiscal year 2004".

(b) EFFECTIVE DATE.--The amendments made by subsection (a) shall be effective on the later of the date of enactment of this Act or October 1, 2002.

March 2002 – DRAFT

TRANSFER OF EMERGENCY FOOD AND SHELTER PROGRAM FROM FEMA TO HUD

Currently, the Emergency Food and Shelter program is administered by FEMA and is implemented through a National Board consisting of the Director of FEMA as chairperson and six other members appointed by the Director from nominations submitted from six specified organizations. Section ___ would support the proposal in HUD's FY 2003 Budget to transfer the program from FEMA to HUD.

Under this proposal, the Secretary of HUD would replace the Director of FEMA as chairperson of the Board and the Secretary would appoint members to the Board when there are Board vacancies. In addition, this proposal would reauthorize the program through FY 2004. The transfer of this program to HUD would improve the coordination and delivery of homeless resources, given HUD's lead responsibility for housing and shelter.

From: CN=Nina DeLorenzo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>
Sent: 3/15/2002 6:16:39 AM
Subject: : Question

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nina DeLorenzo (CN=Nina DeLorenzo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAR-2002 11:16:39.00
SUBJECT:: Question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hi Brett. I work for Lezlee Westine in OPL; we have a quick question.

I have been invited by the American Council of Young Political Leaders (ACYPL) to "represent the US on an educational mission" to Egypt and Morocco (I am quoting their literature & invite letter). They needed an Arab American female Republican, and I fit the bill. :)

The trip consists of an 8-member delegation that meets with government & political officials, executives, and community leaders on a wide range of political, cultural, and economic issues. It is a highly regarded program, lots of congress people & other elected officials go on their trips. ACYPL is a 501(c)(3), and it's programs are funded by a State Dep't grant.

But we are wondering if I am allowed to go, because they pay for the whole deal. Can you let me know? I can fax you all the info if neccessary.

Thanks!
Nina DeLorenzo

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brian Bravo/WHO/EOP@EOP [WHO] <Brian Bravo>
CC: Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/15/2002 6:25:04 AM
Subject: : additional articles re: blocking of terrorist financing

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-MAR-2002 11:25:04.00
SUBJECT:: additional articles re: blocking of terrorist financing
TO:Brian Bravo ( CN=Brian Bravo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brian -

Thanks for the two emails containing articles on the above issue.

I noticed that these only go back to December of 2001.

It is very important that we go all the way back to September of 2001 and
check very carefully for any mention of the below organizations:

Organizations: "Global Relief Foundation", "Holy Land Foundation" and
"Benevolence International Foundation"
Publications: Washington Post, NY Times and USA Today

In addition to being time sensitive it is important that we get all of the
articles that reference the announcement of the actual organizations names
that will have a connection to the terrorist finance blocking actions.

Thanks!
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/15/2002 8:04:34 AM
Subject: : LRM MJR126 - - TREASURY Testimony on E-Government and Information Technology Initiatives
Attachments: P_2WT26003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAR-2002 13:04:34.00
SUBJECT:: LRM MJR126 - - TREASURY Testimony on E-Government and Information Technology Initiatives
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/15/2002 01:04 PM ----------

From: Marshall J. Rodgers on 03/15/2002 12:00:00 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM MJR126 - - TREASURY Testimony on E-Government and Information Technology Initiatives

Attached for your review is Treasury testimony for a March 21st hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy on e-government and information technology. OMB, HUD, DOL, NASA, OPM, SBA, and Treasury were invited to testify at this hearing.

- Canales.doc

LRM ID: MJR126
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, March 14, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on E-Government and Information Technology Initiatives

DEADLINE: 5:00 PM Monday, March 18, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review is Treasury testimony for a March 21st hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy on e-government and information

technology. OMB, HUD, DOL, NASA, OPM, SBA, and Treasury were invited to testify at this hearing.

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029-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
030-EDUCATION - Paul Riddle - (202) 401-8313007
032-ENERGY - Bob Rabben - (202) 586-6718
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107-Small Business Administration - Karen Hontz - (202) 205-6700
110-Social Security Administration - Judy Chesser - (202) 358-6030
114-STATE - Paul Rademacher - (202) 647-1963
117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
008-US Agency for International Development - Jan W. Miller - (202) 712-4174
129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666
082-Nuclear Regulatory Commission - Trip Rothschild - (301) 415-1611
076-National Economic Council - John Ackerly - (202) 456-2884

EOP:
Augustine T. Smythe
Mark A. Forman
Philip J. Perry
Rebecca A. Beynon
Danielle M. Simonetta
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Daniel J. Chenok
Jacqueline A. Zeiher
Mathew C. Blum
Mark J. Schwartz
Ursula S. Gillis
Francis S. Redburn
Maureen Walsh
James Boden
Janis A. Coughlin
WHGC LRM
Kirsten A. Chadwick
Lisa B. Fairhall
LRM Office of Science and Technology Policy
John M. Dempsey
Andrew R. McIlroy
David S. Trinkle
William McVay
Julie Basile
Jerry E. Williams
Richard E. Green
James J. Jukes
OHS LRM
LRM ID: MJR126 SUBJECT: TREASURY Testimony on E-Government and Information Technology Initiatives

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Marshall J. Rodgers Phone: 395-7813 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Augustine T. Smythe/OMB/EOP@EOP
Mark A. Forman/OMB/EOP@EOP
Philip J. Perry/OMB/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Daniel J. Chenok/OMB/EOP@EOP
Jacqueline A. Zeiher/OMB/EOP@EOP
Mathew C. Blum/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Ursula S. Gillis/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Maureen Walsh/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Janis A. Coughlin/OMB/EOP@EOP
WHGC LRM
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Lisa B. Fairhall/OMB/EOP@EOP

OSTP LRM
John M. Dempsey/NSC/EOP@EOP
Andrew R. McIlroy/OMB/EOP@EOP
David S. Trinkle/OMB/EOP@EOP
William McVay/OMB/EOP@EOP
Julie Basile/OMB/EOP@EOP
Jerry E. Williams/OMB/EOP@EOP
Richard E. Green/OMB/EOP
James J. Jukes/OMB/EOP@EOP
OHS LRM

Message Copied
To:_____
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
CLRM@doc.gov
dodlrs@osdgc.osd.mil
ogc_legislation@ed.gov
energy.gc71@hq.doe.gov
epalrm@epamail.epa.gov
legis@fema.gov
ca.legislation@gsa.gov
lrm@hhs.gov
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ocl@ios.doi.gov
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dol-sol-leg@dol.gov
NASA_LRM@hq.nasa.gov
lrm@nsf.gov
congress.affairs@nara.gov
ola@opm.gov
cla@sba.gov @ inet
ODCLCA.LRM.SSA@ssa.gov
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llo@nrc.gov
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2WT26003_WHO.TXT_1>

TEXT AS PREPARED FOR DELIVERY

March 21, 2002

TREASURY DEPUTY CHIEF INFORMATION OFFICER TESTIMONY

BEFORE THE

HOUSE SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT

POLICY

HOUSE COMMITTEE ON GOVERNMENT REFORM

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear today to discuss the progress of the Department of the Treasury in using information technology to retool its information management architecture with a goal of simplifying and unifying information for the enterprise. I would like to thank the Chairman and the other members of the Subcommittee for your continued support and interest in the improvement of information technology performance and accountability in the Federal Government.

I serve as the Deputy Chief Information Officer (CIO) for the Treasury Department. In this role I provide strategic direction, oversight and management of all information technology programs within the Treasury Department and its Bureaus. I also serve on the Federal CIO Council Executive Committee as the E-Government Coordinator. My Federal role is to promote E-government initiatives that focus on results oriented, citizen-centric government.

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How do you address enterprise-wide issues that have traditionally been dealt with bureau by bureau and/or department by department within your agency? How do you determine which information systems are suitable for cross cutting implementation enterprise-wide?

In the Treasury Department, forums such as the Treasury Chief Information Officers (CIO) Council, the Capital Investment Review Board (CIRB), and the newly formed Chief Officers (CXO) Council address the enterprise-wide issues facing the Department and its bureaus. I have provided a handout with my testimony of the structure within the Treasury Department to address enterprise decisions and strategic planning. The Treasury CIO Council provides the strategic technical direction and evaluates technical solutions considered on an enterprise basis. Business cases for enterprise solutions are evaluated and approved by the Capital Investment Review Board. The Chief Officers Council (CXO), a newly formed group, is designed to act as a Steering Group – adopting initiatives and developing high level Departmental benchmarks. Its membership is comprised of the highest-level executives of the following four disciplines: CIOs, Chief Financial Officers (CFOs), Human Resource Officers (HROs), and Procurement Executives (PEs). Our method for determining information systems that are suitable for implementation on an enterprise-wide basis boils down to requirements, economies of scale, and common sense. We hold periodic strategic planning sessions with the CIOs and other departmental officials to determine initiatives we can all benefit from, initiatives that are doable, areas where we already share common technology and issues

that we all need to address. Financing options are discussed. Leadership is assigned. Every enterprise initiative has a champion CIO within the Department or its bureaus.

The CXO Council approved a number of technology initiatives that will provide a baseline for many business initiatives within the Department and its bureaus, and is exploring implementation issues necessary to move forward. These initiatives include Portal technology; Self Service Travel; Public Key Infrastructure and Smart Cards; Electronic Records and Document Management; and the Wireless Program. A portal framework was ready on October 1st. The portal will support departmental directory services, communities of practice and the secure sharing of electronic information. The internal communities of practice under consideration include management, procurement, finance, human resources and legislative. We are in the process of evaluating proposals for an enterprise travel solution and hope to have a streamlined and cost effective solution in place within six months. We are providing this information to the Federal E-Gov Travel initiative. Discussions are underway for the provision of public key technology and smart cards for the Department. There is an immediate need to provide 2,000 certificates to the Treasury Inspector General for Tax Administration to support the transmission of confidential files via public mechanisms. The smart cards, we are exploring, would be used for building access and eventually as an employee identification and network access card. For the wireless program, we are working closely with local, state and federal entities to improve the public safety wireless network. Treasury has the leadership role for this effort in the Federal E-Gov initiatives. One of the first successful uses was at the 2002 winter Olympics.

The next logical step in the process will be to manage investments across agency silos to address citizen focused services such as health care, grants, licensing or taxes.

Discuss specific enterprise-wide infrastructure initiatives that are being implemented that will allow the federal government to harness the benefits of technology. How will your efforts support the work of the OMB Associate Director of IT and E-Government, Mark Forman, in implementing priority e-government and IT initiatives? How will your agency's initiatives benefit citizens? State and local governments? Other agencies?

The Department of the Treasury has more direct contact with the public than most Federal agencies. According to Media Metrics, the Treasury web properties are consistently among the top most frequently accessed sites. The majority of Treasury's E-government initiatives are directed at its customer base – citizens, businesses and other government agencies. This strategy maximizes Treasury's return on its investment, by reducing costs, leveling off its workforce and leveraging technology across all its business lines. I could spend the rest of the afternoon detailing the Department's E-government initiatives, but let me focus on some of the major enterprise initiatives underway at the Department.

Treasury is implementing an enterprise Human Resources system – HR Connect. We are currently spending $53 million a year to support more than 90 personnel and payroll

systems. The majority of these systems do not interoperate or "talk" to each other and were never designed for use with today's technology. The objectives of this effort are:

- Enable strategic management of the Treasury workforce
- Facilitate process improvements increasing productivity and achieve high performance
- Provide improved services to employees and managers at reduced costs
- Replace legacy systems with integrated state-of-the-art technology
- Improve the organization's ability to recruit, develop and retain high caliber individuals.

The first three bureaus that went live on HR Connect represented a major milestone. It was the first time that multiple Treasury bureaus were supported within a single line of code. At this time we are working to bring our 7th bureau on line with HR Connect. Total investment plus operational costs of $262 million over 10 years yields a cumulative net benefit of $195 million. The return on investment is $2.31 for every dollar invested. This system supports the internal efficiency and effectiveness goal set forth by OMB.

Our Treasury Communications System (TCS) is the largest private data network in the world. The Department is transitioning TCS into the Treasury Communications Enterprise (TCE). This is essentially a set of corporate utilities that take advantage of Treasury's volume to reduce costs plus managed services to integrate several Treasury telecommunications management programs into a single corporate telecommunications and information technology service. This system serves as a backbone for Treasury's E-

government initiatives and supports over 200,000 users worldwide. This system definitely supports the internal efficiency and effectiveness goal but will also provide the baseline for many of Treasury's E-Government initiatives supporting the areas of government to citizen (G2C), government to business (G2B) and government to government (G2G).

As is well known throughout the government and the IT world, Treasury and its bureaus have a number of modernization efforts in various stages of implementation. These modernization efforts address the most difficult issues by reengineering the business processes they support as well as reengineering the technology. The federal tax system, which produces close to $2 trillion in revenue each year, is dependent on a collection of obsolete computer systems developed by IRS over the last 35 years. The purpose of the IRS Business Systems Modernization effort is to raise all major IRS business systems to the level of best practice that exists in private and public sectors, while managing risks inherent in the process. This modernization effort will impact every component of IRS over time. Implementation work on the first approved modernization projects to facilitate call routing and electronic filing will begin in 2001-2002. The Business Systems Modernization Program has reorganized the IRS into business lines which will be supported by the technology. The business lines are: Wage and Investment; Large and Mid-sized Business; Small Business/Self Employed; and Tax Exempt. The IRS has three strategic, customer focused goals: service to each taxpayer, service to all taxpayers, productivity through a quality work environment. Congress has established the aggressive goal that 80 percent of all tax and information returns should be filed

electronically by 2007. The 2000 tax year was a banner year for the IRS with one out of every four individual taxpayers filing their tax returns electronically. The IRS E-file program provides faster refunds, an acknowledgement that the tax return has been accepted by the IRS, and nearly 100% accuracy, all of which translates into fewer contacts with the IRS. As of March 30, 2001, the IRS received about 69.9 million Form 1040 returns, down about .4% from last year at that time. This includes 32.6 million returns that were filed electronically, up about 11.2% from the same period last year. The IRS modernization effort addresses all four OMB priorities: internal efficiency and effectiveness, G2C, G2B, and G2G.

In the last decade, trade has grown 132%. U.S. Customs is currently using the Automated Commercial System (ACS), which is sixteen years old and taxed to its limits. To address this deficiency, Customs has designated its replacement, the Automated commercial Environment (ACE) under the overall Customs Modernization Program. Other government agencies, such as Agriculture, Food and Drug Administration, Transportation, Immigration and Naturalization Service, and the Bureau of the Census, rely on Customs systems to perform their internal operations. Currently, a single international shipment can require as many as 40 different government paper forms. Ninety percent of the information is redundant. ACE will significantly reduce the paperwork burden, provide functionality long sought by the trade, and respond to legislative requirements. This contract will put in place a system that not only replaces the current trade system, but in later stages or modules it will upgrade the investigative case management system and internal administrative systems – financial and human

resources. A cost-benefit analysis for ACE has determined that a $1 billion investment in ACE now will generate $3.3 billion in Government benefits through revenue recovery, labor cost avoidance, and productivity improvements. ACE is another example of a system hitting each of OMB's goals.

An example of the way that Treasury Bureaus are delivering new value to citizens, businesses, and government partners is FMS' Pay.gov. Pay.gov is an Internet portal and transaction engine that offers a package of electronic financial services to assist agencies. The services of Pay.gov rest on four cornerstones:

- Collections – enabling end-users to authorize collections over the Internet
- Forms submittals and bill presentment – accepting agency forms submitted over the Internet and presenting agency bills to end-users over the Internet
- Authentication – establishing the identity of Internet end-users
- Agency reporting – providing necessary information back to agencies about transactions.

The services of Pay.gov can help agencies meet their GPEA requirements to accept forms electronically by October 2003. The basic services of Pay.gov generally will be free for agencies and the public. FMS will price services that go beyond basic services using an "at-cost" basis.

Treasury's Bureau of Public Debt partnered with Treasury's Financial Management Service, Mellon Bank, MasterCard and IBM to build an Internet-based system to sell U.S. Savings Bonds directly to the public. The Savings Bond Connection allows citizens

to buy a savings bond on a 24 x 7 basis through the Internet using a credit card. The Bureau of Public Debt sells directly to the public instead of using its traditional network of over 40,000 commercial banks. Through the Savings Bond Connection, Public Debt reduced the delivery time for bonds by one-third. The system cost $350 thousand to develop and implement. Americans bought $292 million in bonds at the site in fiscal year 2001.

The Bureau of the Public Debt's Treasury Direct Electronic Services (TDES) allows individuals to directly manage their investments in the U.S. Treasury marketable securities using either the Internet or telephone. The system is an application that uses intelligent agents to automate various investor services, such as purchasing securities, reinvesting maturing securities, viewing account status, requesting account statements, as well as other similar services. TDES was implemented to promote self-sufficiency among Treasury Direct's 600,000 customers who hold some $77 billion in securities. The system facilitated Public Debt's consolidation of servicing sites from thirty-six Federal Reserve Banks to three. By using TDES, Public Debt has reduced the processing cost of a tender to $0.50 as opposed to $30.00 to process a paper tender in the past. Now, TDES accounts for 70 percent of all reinvestments and 40 percent of new sales. Investors purchased more than $8.7 billion in bills, notes and bonds in fiscal year 2001.

The Savings Bond Connection and the Treasury Direct Electronic Services are two highly secure E-Government applications that allow individual investors the option of

establishing their accounts on-line, completing transactions to include the payment process, and accessing all account information.

The U.S. Mint operates the Online Store, a highly successful electronic commerce web site with an online catalog shopping service. The site offers Internet catalog browsing with mail and phone order capability as well as secure credit card sales. The U.S. Mints; Online Store is recognized as one of the top 20 "e-tailers" in the nation, with total web sales of more that $256 million during a twelve-month period. The Mint receives orders from customers located world-wide to electronically buy Mint products. The Mint also receives coin orders electronically from the Federal Reserve Banks (FRB). E-mails and electronic spreadsheets are used quarterly by the FRB to order coins for individual banks by denomination and amount.

The Electronic Federal Tax Payment System (EFTPS) provides an electronic system for reporting and paying Federal taxes. EFTPS is the largest payment collections system in the world. The Financial Management Service (FMS) and the Internal Revenue Service (IRS), working with the private sector, have modernized the federal tax payment environment. They started with the federal tax deposit coupon system then expanded to other business and individual tax payments. By replacing the current paper-based system, EFTPS benefits taxpayers and the Federal Government by providing greater reporting efficiencies and by expediting the availability of funds and investment decision-making information to the Treasury Department. The primary objectives for EFTPS are to reduce the filing burden by providing flexible payment choices for taxpayers; to

increase the speed, efficiency, and accuracy of revenue collection and taxpayer account posting; and to expedite the availability of funds to the Government.

The Financial Management Service (FMS) Payment Application Modernization and Government-wide Accounting Modernization efforts include processes in the areas of payments, collections, government-wide accounting and debt management that, when made available in an electronic form, will provide individuals and other entitles that do business with FMS, the option to submit information or transact with FMS more efficiently and with improved customer service and satisfaction. Since the implementation of the electronic funds transfer (EFT) requirement of the Debt Collection improvement Act, the percentage of total Treasury disbursed payments made by EFT has risen to 73%. FMS Payment services touch the lives of over 100 million people. Literally tens of millions of Americans depend on FMS systems to meet lifeline needs every month. FMS makes almost 900 million payments annually on behalf of civilian agencies such as the Social Security Administration, Department of Veterans Affairs and the IRS. FMS also offsets certain payments against debt owed to the Federal Government. Payment modernization is one component of a multi-year effort to replace, streamline and reengineer the critical information systems that support core FMS business processes. The processes and systems used to account for and report on the execution of the President's Budget, and on the government's receipts, outlays and surplus or deficit, have not changed fundamentally for 30 years. However, there have been dramatic changes in the government's accounting environment. The Government-wide Accounting Modernization initiative will improve the reliability and timeliness of

the government's financial information by providing better tools for federal program agencies to check the status of their financial information held by Treasury and by streamlining reporting and reconciliation processes.

These are just a few of the success stories we have in the Department. The task at hand now is to continue the growth of E-Government and to manage the transformation as a team across government. The task of managing investments across departments will be difficult but we now have an internal advocate within OMB. Mark Forman is a key member of the OMB staff. For the first time, we have a dedicated person within OMB, appointed by the administration, whose purpose is to help us manage citizen-focused investments and work across agency silos.

How does the Department of Treasury view EA in the context of improving its information infrastructure? How has EA been used to modernize the Department of Treasury's IT environments? As the managing agency partner on a number of e-government initiatives, how is EA being integrated into those tasks? Please discuss specifically the Wireless Public Safety Interoperable Communications-Project SAFECOM.

At the Department of the Treasury, we are using Enterprise Architecture to create a unified approach to business solutions. We are leveraging EA to align technology to the business needs to allow sound business decisions, including anticipating and mitigating risks and making IT more accountable to business management. We believe that business objectives must be well defined before initiating information technology

solutions, and that total business value is the primary objective when making information technology decisions. We are focusing on interoperability of systems and integration of data requirements. The focus is on the commonality of customers, functions and business processes.

We have a Department Enterprise Architecture Working Group that reports directly to the CIO Council. Business processes and supporting "as-is" structures have been defines. The "to-be" architecture is developed. Consistent standards and products have been defined for common processes. New initiatives will adhere to the standards. The Enterprise Architecture working group continuously identifies opportunities for consolidating services, site licenses, and economies of scale for equipment and services.

Treasury has the lead on Project SAFECOM. The intent of Project SAFECOM is to accelerate the implementation of interoperable public safety wireless communications at all levels of government throughout the nation. The goals of the program are to save lives through immediate public safety communications and coordination. By addressing federal to federal, federal to state/local, and state to local interoperability we will be able to provide effective public safety and emergency support communications for not only emergency response situations, but also for daily operations and task force support for public safety agencies. We will use EA to identify interoperability requirements across all level of government, and to achieve interoperability solutions and cost savings through standardization, resource sharing, frequency spectrum management, and sharing of information between partners.

Treasury has a history of supporting the Federal EA effort and the Federal CIO Council. Treasury was a major contributor to several CIO Council EA documents. (Federal Enterprise Architecture Framework (FEAF), Version 1.1, September 1999; the Architecture Alignment and Assessment Guide (AAAG), October 2000; and A Practical Guide to Federal Enterprise Architecture, Chief Information Officer Council, Version 1.0, February, 2001). The last two documents are primarily based on the EA work that was done at Treasury's U.S. Customs bureau. Treasury will continue to support the E-government initiatives including the Federal CIO Council, OMB and Congressional efforts.

What recommendations can you make to the Subcommittee for future legislative initiatives that would facilitate cross-agency and inter-agency cooperation for simplifying and unifying redundant business architectures, particularly in support of e-government initiatives?

Any legislation considered should focus on improving the coordination and implementation of IT efforts across functional boundaries. Any legislation that would reduce the burden on citizens to provide information is a positive step. We must envision a government in an interconnected digital world. As a member of the Executive Committee of the Federal CIO Council I believe that many government programs that share common elements or information could be vastly improved with stronger authority to enforce interagency and intergovernmental cooperation. We need to tear down

stovepipes and obsolete hierarchical structures. We don't have an architecture to support our lines of business. We have 478 lines of business with multiple departments supporting the same lines. In the past, the client server based technology presented barriers to the provision of services across agency boundaries and to the sharing of information across functional areas. Today, the Internet knows no such structures or boundaries. Today, technology can facilitate the interoperability. Technology can support the path to a citizen-centered government.

How do current budgetary practices and the appropriations process affect your ability to implement enterprise-wide architectures and eliminate redundant IT investments?

The appropriations process, coupled with a variety of budgetary practices, have provided the framework for federal agencies to implement a variety of enterprise solutions. OMB's October 25, 1996 memorandum, "Funding Information Systems Investments" (also known as "Raines Rules") establishes eight decision criteria OMB uses to evaluate all major information system investments proposed in the President's budget. These rules initiated fundamental changes in the management of IT resources and provided the underpinning in the promotion of enterprise solutions.

Legislative guidelines, such as the Clinger Cohen Act, further underscore the importance for the effective management of IT resources. This particular legislation allows the CIO to maximize his role in establishing enterprise approaches to fully exploit the advantages of Information Technology. Treasury's CIO leveraged this as the chair of the Treasury's

CIO Council. The CIO council serves as the forum for recommending policies and standards for enterprise applications, products and services as well as promoting new technologies and IT opportunities. The council provides the voice of the customers across a range of IT management issues, including the evaluation of the effectiveness of bureau programs and the costs of services provided. The Capital Investment Review Board and the CXO Council provide the opportunity to regularly review investment plans to ensure the most cost effective solutions; emphasis is given to those utilizing enterprise solutions.

The next step is to take the capital planning process across agency boundaries and into citizen-centered investments. With the help of the Associate Director for IT and E-Government and the President's Management Council, we can do this. The key is teamwork not technology. The technology exists; the rest is up to us.

How is your agency identifying and implementing proper security and privacy policies for information systems, both overall and with respect to systems that will be used for E-government initiatives?

The Treasury CIO Council identified Security, Privacy and Critical Infrastructure Protection as a key initiative. With the onset of E-Government initiatives, the CIO Council felt that the Department must develop baseline requirements and policies. The Council established several committees with cross bureau representation to address security issues for the Department. Most of the committees are chaired by the Department's Director of Information Systems Security. Some committees have bureau

CIOs as chairs. Policies and practices are shared and implemented across the Department. Baselines are established for security and privacy with more extreme measures for the law enforcement and crime prevention entities. The committees have established enterprise performance metrics to ensure that effective security controls are developed for every major system or application within the Department. All major systems or applications are certified and accredited. We have also established a computer security incident response capability to coordinate Treasury efforts with appropriate external Computer Emergency Response Teams and to collect agency-wide information and disseminate relevant incident reports within Treasury. Periodic audits are performed by the Office of Information Security. The Treasury CIO Council approved and adopted the IRS's Security Assessment Framework as a standard for Treasury. The IRS framework has been recognized by the General Accounting Office as a best practice within the federal sector. Treasury has also developed a web-enabled and CD-ROM based agency-wide information security awareness course.

I would like to thank the subcommittee for the support it has given to E-Government. Without your support we would not have been able to achieve the national success we enjoy to date. Mr. Chairman, thank you for the opportunity to appear before you this morning. This concludes my formal remarks and I would be happy to respond to any questions.

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Sent: 3/15/2002 9:15:27 AM
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Attached for your review is Treasury testimony for a March 21st hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy on e-government and information technology. OMB, Education, HUD, DOL, NASA, OPM, SBA, and Treasury were invited to testify at this hearing.

- e-government testimony.doc

LRM ID: MJR127
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, March 15, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: Small Business Administration Testimony on E-Government and Information Technology Initiatives

DEADLINE: 5:00 PM Monday, March 18, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review is Treasury testimony for a March 21st hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy on e-government and information

technology. OMB, Education, HUD, DOL, NASA, OPM, SBA, and Treasury were invited to testify at this hearing.

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LRM ID: MJR127 SUBJECT: Small Business Administration Testimony
on E-Government and Information Technology Initiatives
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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Please include the LRM number shown above, and the subject shown below.

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STATEMENT OF

LLOYD A. BLANCHARD

CHIEF OPERATING OFFICER

U.S. SMALL BUSINESS ADMINISTRATION

ENTERPRISE ARCHITECTURE AND E-GOVERNMENT (BUSINESS COMPLIANCE ASSISTANCE ONE-STOP)

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY

COMMITTEE ON GOVERNMMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 21, 2002

REV_00141876

Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for inviting the U.S. Small Business Administration (SBA) to testify today about our role as a managing partner for creating the Business Compliance Assistance One Stop Initiative. I am prepared to discuss in general our views on the appropriate enterprise architecture to implement this effort and describe the basic goals and objectives of the initiative.

My name is Lloyd Blanchard and I am the Chief Operating Officer for SBA. Joining me is Larry Barrett, SBA's CIO, and Dr. Jim Van Wert, our Senior Advisor for Policy Planning and E-Gov and project manager for creating the Business Compliance Assistance One Stop. I joined SBA a little over two months ago with the express goal of implementing the President's Management Agenda at the SBA. One of the core elements of the Agenda is enhancing E-Government at the SBA.

The Administration's vision for E-Government coincides with ours at SBA; namely, "an order of magnitude improvement in customer service." E-Gov is all about improving citizen service and changing the way government and citizens interact. For SBA, it is primarily about changing how we do business and what we can offer our small business customers. In the case of the Business Compliance One Stop, it's about presenting a "single face of government" to businesses to help them reduce the burden of complying with laws and regulations.

E-Gov is also about creating partnerships with other government agencies and breaking down the silo mentality that currently pervades. Perhaps there is no more difficult task than collaborating across organizational boundaries to provide integrated services, breaking down the agency stovepipes, eliminating the culture of command and control and replacing it with collaboration. And as someone once said, "teaming" is the most unnatural human act known to mankind. Our challenge is to create appropriate incentives for all of us to "take off our agency hats" and put on a government-wide hat. E-Gov asks us to "unify and simplify" our processes to eliminate redundancy and re-engineer what we do, making government more accessible to its citizens.

Let me briefly describe how the right Enterprise Architecture can help us achieve our mission, describe the Business Compliance One Stop in more detail, and answer the questions contained in your letter dated March 7, 2002.

Enterprise Architecture

The IT architecture defines what data is collected and how it is processes. Roughly defined, the Enterprise Architecture (EA) is a framework that addresses how information is used. That is how we use it to achieve our mission of serving customers better, faster, and more cost effectively.

At the outset, I should say that we at SBA are only beginning to define our enterprise architecture to implement the goals of the Business Compliance One Stop.

At the core of all the E-Gov initiatives is cross-agency (and perhaps intergovernmental) service delivery. ***Collaboration among agencies with a vested interest in a particular federal segment, such as regulatory compliance or licensing and permitting, will result in increased efficiency and***

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economies of scale, not to mention reduced cost for the business customer, who can access government services more easily, cost effectively, anytime, anyplace.

It is critical to develop the right EA for this initiative. The use of an appropriate EA in a cross-agency initiative promotes development of shared common Federal processes, interoperability, and sharing of information across entities. The Business Compliance One Stop functions are government-wide and multi-agency in nature, as well as intergovernmental. Without uniform standards and structures, information and data formatting, technology, and delivery systems, we will not be able to build robust, open, interoperable, and scalable portals.

Business Compliance One-Stop Funding and Governance

The Business Compliance Assistance One Stop initiative is one of the 24 highest priority cross-agency Presidential E-Gov initiatives approved by the President's Management Council last October.

Small businesses tell us repeatedly that one of their major concerns is reducing the burden of laws and regulations. In 2000, SBA's Office of Advocacy estimated that complying with laws and regulations cost small firms nearly a half a trillion dollars, or $7,000 per employee for firms with less than 20 employees. While there are a myriad of laws and regulations that affect business at all levels of government, few compliance assistance tools and almost no capability of licensing and permitting online exists. The average business needs to apply for and receive approximately 10-15 licenses and permits, many of them from the state and local government level. With these needs in mind, we are building this Business Compliance Assistance One-Stop to make it easier for small businesses to find, understand, and comply with the laws and regulations at all levels of government.

Comment [MKB1]:

OMB has established a non-traditional budgeting and governance structure for these cross agency projects. Each managing partner is requesting funding for all elements of the project, whether it is part of the traditional core functions of that agency or not. This project is no exception.

Like other managing partners, SBA is asking for the funding to support program activities of the 8 participating agencies and other levels of government. For example, even though SBA does not normally fund compliance assistance tools, the Compliance One Stop will provide the resources and architecture for OSHA's development of a tool for businesses to learn how to evacuate a building in the event of a terrorist attack or disaster event. We will do the same for another 25 digital guides in the environment, workplace health and safety, employment and taxation areas, integrating each part into one portal.

This project will also support a prototype of a transaction engine that can be used by local, state, and federal agencies in providing certain licenses and permits. These are not traditional line items in an SBA budget, but clearly creating these tools support our statutory mission of helping small businesses succeed—by eliminating one of the most important impediments to their success. SBA is not a regulatory agency and does not traditionally include in its budget funds for creating easier access to laws and regulations, compliance assistance tools, and online licensing and permitting. Neither do we normally fund intergovernmental efforts. Yet, as managing partner for the Business Compliance effort, SBA represents the business customer, who wants a "single face of government" with whom to do business.

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Business Compliance Project Management and Oversight

Both SBA and OMB are taking extraordinary steps to manage and exercise oversight over this project to deliver within 24 months value-added service to American business owners.

SBA management and oversight structure. As you know, SBA hired me as Chief Operating Officer (COO) to manage and coordinate the work of the CFO, CIO, and the new office of E-Government. SBA agreed with OMB's recommendation and created the Office of E-Government, directed by an SES who reports directly to me with successful achievement of project deliverables as part of the position's performance criteria. The office will include two GS 15s as well as an "as needed" IT professional, a content and configuration manager, and an administrative staff. This office will not only manage the Business Compliance One Stop, but will develop SBA's E-Gov policy and coordinate SBA's participation in the other E-gov initiatives. These include Federal Asset Sales, E-loans, Disaster.gov, Integrated acquisition portal, Streamlined international trade, Electronic tax tools for business, Online eligibility assistance, and online rule making.

The project manager submits weekly activity status reports and meets regularly with me to describe project plans, identify milestones and deliverables, and report on progress as part of the Agency's performance monitoring and managing for results. The business case also calls for contracting for a management specialist to manage and oversee project plans and expenditures. The E-Gov office will also hire a validation and verification contractor and a content and configuration manager to ensure that the project is meeting its milestones and that there is full documentation of ongoing efforts.

OMB oversight governance structure. OMB's Associate Director for Information and Technology and E-Government (ADITEG), Mark Forman, has created a top-down governance structure that reports to the leadership of the President's Management Council, which holds him accountable for delivery of the President's E-Gov agenda. Cascading transparency and accountability downward, Mr. Forman is using portfolio managers, steering committees, and individual project managers to implement the 24 project managers in each of the managing partner agencies. He is requiring each project manager to build business cases with goals, objectives, milestones, and costs and a series of "checks and balances" to hold these managers accountable.

Procedurally, OMB reviews the progress of each project on a monthly basis and briefs the President's Management Council (PMC) quarterly on the status of all the efforts and requests PMC members assistance, when appropriate, to ensure the projects meet goals and objectives. Mr. Forman has stated he will also terminate or restructure individual projects when they do not achieve a reasonable return-on-investment.

To help Mr. Forman oversee the efforts, each customer segment has a portfolio manager who meets weekly with the project manager to guide, assist, and manage the individual project managers. The portfolio manager for the G2B segment is Tad Anderson. In addition to providing Mr. Forman a monthly status of the overall program achievement, cost, schedule and performance goals, Mr. Anderson will convene at least quarterly meetings with the individual project managers and OMB to discuss

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project status. The Portfolio manager is responsible for ensuring that the e-government program achieves, on average, at least 90 percent of the approved project cost, schedule and performance goals.

For still another level of oversight, OMB has established four Steering Committees (SC) composed of Chief Information Officers, Chief Financial Officers, Procurement Executives, Budget Officers Advisory, and Human Resources Councils, and with other advisors and users. Their goal is to meet monthly with the portfolio manager and project manager to advise and assist project teams in achieving the objectives expected within the budget limits.

Business Compliance One Stop Business Case

As stated earlier, OMB requires each project manager to develop a detailed business case that describes the value proposition (costs and benefits both to the clients and to the government), modular development approach, milestones and proposed deliverables, timeframes and costs (as required by the Clinger-Cohen Act). The business case also includes a description of the proposed enterprise architecture, which includes a discussion of the business needs and rules, information architecture, systems applications, data structure, and technology delivery systems. Our business case, summarized below, currently exceeds 40 pages and continues to be revised.

Problem. The cost of complying with laws and regulations is too burdensome for American businesses. SBA's Office of Advocacy estimates that the regulatory burden on citizens is more than $800 billion, with nearly $500 billion borne by small businesses in 2000. This translates to roughly $7000 per employee in firms with less than 20 employees. The volume of existing laws, expense of finding nearly inaccessible information, multi-jurisdictional systems, and lack of smart online tools contribute to this overwhelming cost.

Solution. Businesses need a single point of access – a "single face of government" -- to the applicable laws and regulations that affect them. They also need tools to help them know if they are in compliance with the law, and a one-stop that offers them an opportunity to conduct transactions. Because of the growing number of businesses with Internet access (67 percent of all firms with employees in early 2001), the Web is currently the most viable delivery channel for these services. A one-stop compliance site will significantly reduce the time needed to find, understand, and comply with the legal and regulatory burdens facing them. For these reasons, OMB selected the Business Compliance One-Stop as one of 24 approved Administration E-Gov projects.

Project Goal

- Make it easy for business to find, understand, and comply with pertinent laws and regulations at all levels of government.

Functionality

- Enable quick access to laws and regulations. Site users can access appropriate laws and regulations in three clicks or less.
- Provide Compliance Assessment Aids. Online tools can help businesses determine what laws and regulations apply to them and whether they are in compliance. More importantly, what to do and where to go to achieve compliance status.

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- Perform online transactions. Businesses will register online at the state level and apply and receive selected licenses and permitting at all three government levels.

Objectives

- Improve customer service by providing a *single access point* to business laws and regulations, licenses and permits, compliance assistance tools and hands-on help.
- Further establish results-driven government by building the site in less than two years.
- Create a market-based government by using public-private partnerships (e.g., lawyers from every state, laws schools, Martindale-Hubbell) to build the site, relying on industry best practices and solutions (e.g., UK Gateway, Washington and Illinois online transactions).
- Expand outreach to small businesses by helping up to 25 million businesses, plus countless individual citizens find, understand, and comply with laws and regulations.
- Build effective partnerships by building horizontally integrated tools across the federal level and vertically integrated tools to help individual business industries (sectors).
- Compile and employ best practices learned in the building of the recently launched *BusinessLaw.gov* and existing online compliance guides built by other agencies.

Results

- Save businesses time and money by reducing the legal and regulatory burden.
- Increase business compliance, thereby reducing costs for enforcement/compliance activities.
- Transform the way the federal government works by using technology to offer e-business solutions.
- Make the Federal government more accessible to its citizens.

Governance Structure/Participating Partners

- As the managing partner for this project, SBA will perform project management, develop the enterprise architecture, and find private sector consultants to develop modules for the project, (e.g., permitting, compliance guides, and interactive tools) and oversee the effort (e.g., Microsoft, Accenture, Consad Research)
- Participating partners include EPA, DOL, OSHA, GSA, IRS, DOT, DOE, DOI, INS, Trade Associations and selected State CIOs (e.g., Washington, Illinois, New Jersey Mississippi).

Approach. The initiative will incorporate best practices from the private sector to build this tool. We will build upon the experience gained in the construction of the gateway and transaction engine in the United Kingdom (e.g., cross-agency permitting). We will also use private sector best practices for knowledge management -- (i.e., individualized packaging of information to offer quick access to the right information for appropriate solutions). We will focus on improved navigation, personalization, expert tools, and interactive problem solving.

In particular, we will begin by targeting several industries, i.e., restaurants, truckers, convenience stores and gas and oil companies, across 4 functional areas, i.e., environment, workplace health and safety, employment and taxation. Through prototypes and pilots , we will enable a business in these sectors to register its business, get a tax id number, apply for a building permit, receive electronically an employer identification number, and get a permit to use federal lands.

While better portal capability and consolidation of information is needed, the one-stop compliance site needs to provide real solutions to business problems within a local context in a minimal

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amount of time. Rules-based software, XML and other Web-based technologies make it possible to create a site that is both horizontally and vertically integrated to meet these needs.

Short Term Deliverables

- Pilot Portal Maximizer (July 2002 -- $225,000). By purchasing this software, the project manager will have an automatic and intelligent information management capability to index, categorize, and universally link business users to both new and existing legal and regulatory content across all 50 states. In the next 30 days, we will pilot the software on BusinessLaw.gov (over 20,000 links to federal, state and local content); evaluate and user test over the next 60 days; and add new content, categorizing it by theme over the final 30 days.

- Legal and Regulatory Digital Guides (August 2002 -- $240,000). We will create and test for launching four digital guides that help reduce the burden of laws and regulations on business owners, which may include the following:

    - Working with INS, we will develop an expert tool to assist restaurant owners understand and comply with applicable employer-based immigration statutes and regulations.
    - Working with OSHA, we will also develop a record keeping and building evacuation expert tools.
    - Working with DOT Motor Carrier Safety Administration, we will create an expert tool for truckers to find, understand, and comply with transportation laws and regulations.
    - Working with Martindale-Hubbell (Lexis-Nexus), we will build tools to help small businesses identify legal issue that require expert help and where to go to find an attorney.

- Business Registry-state and Federal Licensing (August 2002 -- $275,000). Working with Washington State and IRS, we will build upon the proof of concept work done by GSA to prototype a single application that satisfies business licensing and tax id requirements (state licensing and IRS Internet EIN. Working with Illinois, we will create a prototype truckers' one-stop that incorporates federal and state DOT regulations and online licenses and permits.

Funding. SBA estimates it will cost $1,040,000 in FY 2002 and $5,000,000 in FY 2003 to develop this Business Compliance One-Stop. With the funding, SBA will build upon its legal and regulatory assistance site, *BusinessLaw.gov,* to create an intergovernmental portal that does three things: offer small firms access to governmental laws and regulations that impact them, provide compliance assistance digital tools, and offer online licensing and permitting. With funding in FY 2002, we will create a new office of E-Gov, build compliance assistance content, and buy software that registers existing content by theme and facilitates site content management. It will also permit us to prototype/buy a transaction engine to do the secure licensing and support work in several states working through the National Governor's Association.

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Projected Project Costs

Business Services/Products	FY 2002	FY 2003
General Management		
SBA Program Management Office (SBA funds)	$125,000	$200,000
Maintain BusinessLaw.gov (SBA funds)	$75,000	$150,000
Hire Content and Configuration Manager		$100,000
Work with NGA and 6 states (GSA funds)	$25,000	$150,000
Design portal look and feel		$150,000
Hire Project Mgmt Contractor	$50,000	$150,000
Document, Validate and Verify services		$300,000
Marketing plan and implementation		$100,000
Portal platform	$75,000	$300,000
Legal & Regulatory Information		
Do inventory/metatagging (agency costs)		$0
Pilot COTS Portal Maximizer	$225,000	$0
License software		$250,000
Build Profiler/self assessment tool		$150,000
Build guides and tutorials (agency costs)		$0
Build Personalized self service		$50,000
Test with focus groups (GSA funds)	$25,000	$60,000
Compliance Assistance Expert Tools		
Develop IT & ERP Architecture		$200,000
Develop metrics, measure success		$150,000
Data modeling/build 25 tools	$240,000	$1,200,000
Focus test expert tools		$90,000
Business Registration/Transactions		
Plan Registry Phase 2 including documentation Phase 1 (GSA funds)	$50,000	$0
Prototype City (Bellevue), State, Federal	$100,000	$0
Integrate 6 states and Fed EIN, Biz Name		$300,000
Develop Trucker One-Stop with Illinois/DOT	$50,000	$60,000
License ERP COTS Transaction Engine		$500,000
Conduct focus sessions and surveys		$90,000
Security issues and software		$300,000
Sum	**$1,040,000**	**$5,000,000**

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Mr. Chairman, I will now address the questions you included in your invitation to testify that deal with having the right enterprise architecture.

How SBA avoids redundant information systems

The SBA organizational structure does not have autonomous bureaus and departments, which greatly reduces the occurrence of traditional issues involved in standardization of systems for agency-wide functions (i.e., payroll, personnel, accounting, travel, etc.). SBA has centralized management of information resources in the Office of the Chief Information Officer (OCIO). OCIO, originally the Office of Information Resources Management, has proactively sought to standardize and minimize redundancy of technologies and systems since the advent of desktop computing. These efforts have included standardization of hardware and software for the desk tops, local area (LAN) and wide area (WAN) networks, e-mail, and system development tools including relational databases, programming languages and tools, security, and communications protocols.

SBA's Enterprise Architecture connects information use and needs to information provided by the IT infrastructure. Using these cross walks as a guide, information technology (IT) decision makers, including the IT investment council, can easily identify information systems that are candidates for enterprise-wide implementation.

Comment [MKB2]:

Comment [MKB3]:

SBA believes that its EA offers tangible benefits to the Agency and those responsible for evolving the enterprise. SBA has used the EA to:

- Improve communication among the business organizations and IT organizations within the enterprise through a standardized vocabulary
- Provide architectural views that help communicate the complexity of large systems and facilitate management of extensive, complex environments
- Focus on the strategic use of emerging technologies to better manage the enterprise's information and consistently insert those technologies into the enterprise
- Improve consistency, accuracy, timeliness, integrity, quality, availability, access and sharing of IT-managed information across the enterprise
- Support the IT investment process by providing a tool for assessment of benefits, impacts, and capital investment measurements and supporting analyses of alternatives, risks, and tradeoffs.

Under the aegis of the Business Compliance Assistance One Stop, the project team will follow the principles of unify and simplify, using industry best practices, reducing redundancy and re-engineering processes where appropriate. For instance, we will pilot the use of a COTS package that aggregates information across all 50 states, automating the content building function. We will also prototype the use of a transaction engine that permits the user to access modules for forms entry, validation and verification, and online transactions. Each state will be able to modify the business rules and still use the proposed software. For compliance assistance, we plan to use a variety of approaches including benchmarking, expert tools, tutorials, and online call centers to help the business comply with the pertinent laws and regulations. Although the rules, forms, and security requirements will differ from regulation to regulation, our approach will include XML-P to access information (in a variety of formats) across agencies to deliver a "single face of government" to the business user.

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SBA eliminates redundant IT investments

Unlike larger agencies, SBA does not have multiple bureaus with unique appropriations sources. This simplifies budget execution and makes SBA's IT expenditures more visible. Because there are few funding sources, opportunities for duplicate investments are reduced. For the cross agency Business Compliance One-Stop, SBA is requesting the entire funding in its budget, which will minimize the chances of redundant systems being developed by the participating agencies.

In accordance with the Clinger-Cohen Act and implementing guidance from OMB, all of SBA's major IT investments are subject to planning and review -- including acquisition reviews -- that should detect any potential duplicate investment before it can be implemented. SBA has been moving aggressively toward capturing 100 percent of its planned and actual IT expenditures during budget formulation and in accordance with published OMB guidance (Circulars A-11 and A-130). We believe that adhering to a regimen of solid IT capital planning will prevent the likelihood of duplicative investments among IT projects across the Agency.

SBA introduces strong security and privacy policies

Over the past two years, SBA has revised its IT security program. SBA uses IT security standards, policies, procedures, and guidelines developed by the National Institute of Standards and Technology (NIST) as the basis for the IT security program. We also use portions of the General Accounting Office Federal Information Security Controls Audit Manual (FISCAM) as a guide in developing information security controls. Finally, we rely on current industry best practices in the development of security policies and use of cutting edge technology.

Protection of business transactions conducted over the Internet has been a primary concern as SBA has introduced web enabled business transactions. To ensure data integrity of these business transactions, SBA requires high level encryption of all transactions and authentication of systems users to gain access to the web systems. SBA has also conducted penetration testing with an independent consultant to identify and correct potential weaknesses. The OCIO conducts periodic on site security reviews of SBA's offices and remote computing facilities as well. Ultimately, the Agency will be in compliance with the standards and guidelines developed by GSA under the cross-agency E-authentication effort.

SBA provides benefits through its enterprise-wide infrastructure initiatives

SBA has made significant strides in implementing an open systems technology environment, one which supports interoperability of technologies and systems both within SBA and with external entities. SBA has been a government leader in conducting business via the Internet. These activities include many web enabled business transactions such as registration in Pro-Net and HubZones, which will soon include an entirely electronic application and self-certification process. The technology we use includes relational databases, supporting easier data sharing and data access, industry accepted communications protocols that support interoperability between disparate computer platforms, and XML based file transfer formats.

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SBA's open systems environment, as with every federal agency, is an important part of the federal infrastructure necessary to support federal e-government initiatives. Technology environments that support interoperability between agencies and between the government and businesses will require minimal changes as e-government initiatives are implemented.

Prototyping a transaction engine that uses XML and offers modules that is based on forms-driven inquiries, validation and verification against a database, and secure transactions will expand the utility of the Business Compliance One Stop to all users. The software allows each piece of the system to use different forms and business rules at the user interface with a standardized set of processes for conducting the electronic licensing and permitting. Using this "off the shelf" approach and piloting the Portal Maximizer will provide significant savings to state and local governments reduce cost to businesses by permitting online transactions, and reduce compliance and enforcement costs for regulatory agencies who use the templates to build the digital compliance assistance guides.

The impact of the Internet can only grow among small businesses. This is reinforced by an August 2001 study by NFIB stating that 57 percent of all employers use the Internet for business-related activities. Of those using the Internet, 87 percent use it to gather business information. One third of those not presently using the Internet intend to begin using it within the next year. To the degree that businesses can inform themselves as a result of aggressive implementation of compliance assistance, taking advantage of the Internet to broadly distribute information, an agency can focus its scarce resources on addressing companies that disregard the value of community, employee health and safety, and environmental protection.

SBA is addressing enterprise architecture issues

SBA is confronted by a number of technical issues that need to be addressed to successfully implement the Business Compliance One Stop. One major issue is developing a cross-agency platform without having to dictate the databases and applications that Federal and state and local agencies use. This platform must be interoperable with existing technologies but also provide the web services infrastructure that minimizes system development. It must be open, secure, and provide maximum flexibility for participating agencies.

The Internet and its associated protocols such as HTTP (Hyper Text Transport Protocol) whether used openly, or through a Virtual Private Network, has become the fundamental underlying transport system for E-government. XML (Extended Markup Language) is a way of tagging data that can be transported over HTTP and is easily handled by applications. The data structure can change without having to change the consuming application. Key architecture design issues include linking to transaction sites versus containing a transaction engine, uploading and downloading data across platforms, creating common forms that have multiple uses, providing content, and "value network integration."

Using the portal model, organizations can provide aggregated and customized services as well as information to people in the subject areas that are of interest to them with technology that is available now. With this kind of a framework for E-government, organizations can build a secure, dynamic web presence with personalization, content management, analytics, and search capabilities for anytime, anywhere access. Additionally, the framework can assist other government agencies to reduce their operating costs and provide citizen and business services with rich transaction capabilities while at the

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same time providing government with data mining tools to understand salient citizen and business trends in demands and usage and measure key performance indicators.. Examples of this include on-line processing, not just forms, for change of address, wage and tax filings, and business registrations.

Another major issue is providing navigational tools to make it possible for the user to arrive at desired information or have problem-solving capability with as few clicks as possible. This means providing advanced search engines that can handle "affinities or fuzzy sets," intelligent FAQs, using an optional profiler to characterize the user and what he is looking for, and business rule driven wizards to aid in the search process. If possible, the software should simplify navigation with context dependent aids to prompt the user on where to proceed.

Conclusion

The overall goal of the Administration's E-Government initiative is to use technology as a driver for change. Using the Internet to deliver service from multiple agencies and various levels of government offers the business owner more accessibility, more timely and reliable information, more cost-effective and personalized service, and enables citizens to hold government accountable. The technology also permits the delivery of service across organizations, a key transformation from the "turf" consciousness of traditional government to strategic alliances in collaborative government. The technology also permits us to evaluate and learn from those leading this change, allowing rapid development and implementation of innovation and creativity. Unifying and simplifying our delivery of needed citizen service results in a more cost effective government that is citizen-centered, market-based, and results-driven. With leadership, resources, the right industry partners, and a little time, we can transform our public institutions. This is what the Congress asks, the President demands, the Citizen expects, and we intend to provide.

Thank you for the opportunity to appear before you here today. I will be happy to answer your questions.

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 3/15/2002 1:31:18 PM
Subject: : AP story on Reagan records

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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CREATION DATE/TIME:15-MAR-2002 18:31:18.00
SUBJECT:: AP story on Reagan records
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Reagan Presidential Records Released to Public

By Robert Jablon
Associated Press Writer
Friday, March 15, 2002; 5:17 PM

SIMI VALLEY, Calif.) Nearly 60,000 pages of documents of Ronald Reagan's presidential records, from cabinet meeting minutes to policy memos, were opened
to the public Friday.

Among papers, which had been withheld for years, is a Nov. 8, 1985, memo in which the administration expressed concerned about congressional criticism
for dragging its feet on anti-terrorism policies.

"I see real trouble brewing here," according to the memo from Ed Fox to Alan M. Kranowitz, a fellow member of the White House office of legislative affairs
and assistant to the president on House affairs.

The previous month, Palestinian terrorists had hijacked the Italian cruise ship
Achille Lauro, shot U.S. citizen Leon Klinghoffer in his wheelchair and threw his
body into the Mediterranean. Four of the hijackers were later captured when U.S.
warplanes intercepted an airline flight they were aboard and forced it to land
in Sicily "If the PLO nuts or anyone else retaliates for our intercept of their
buddies from Egypt, the President will be the target of attack by a bipartisan
Congress," the 1985 memo said. "As they seek to avoid responsibility they will ask why the Administration did not move to protect our sons and daughters
abroad who are risking their lives in the service of our country."

The memo apparently involved strengthening U.S. embassies and facilities abroad.

The 59,850 pages of documents had been kept closed by law for 12 years because they contain confidential internal advice and deliberations
among government officials.

The papers range from cabinet meeting minutes to memos on policies for issues such as air pollution and civil rights. They follow the opening earlier
this year of some 8,000 pages.

The documents released Friday often lack full references or context, and have yet to be assessed by researchers for importance in the history of the Reagan White House or relevance to subsequent administrations.

Just a few people were there when they were made available Friday in the research section of the Ronald Reagan Presidential Library.

"For the first time we are releasing confidential advice," said Duke Blackwood, the library director. "I think it gives the public another inside
look at how decision-making in the administration worked. And that is very important."

Still sealed are 150 pages of Reagan papers and tens of thousands of pages left behind by former Vice President George Bush. Those documents are under review by the White House or have not been scheduled for release.

, 2002 The Associated Press

From: CN=Robert J. Delahunty/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/15/2002 11:05:11 AM
Subject: :
Attachments: P_QD236003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert J. Delahunty (CN=Robert J. Delahunty/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAR-2002 16:05:11.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett: I drafted up a few talking points based on the discussion at the Judge's. Don't know if they fit the need or not, but I thought you might find something useful in them. Let me know how I can help. Robert

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QD236003_WHO.TXT_1>

TALKING POINTS ON REQUEST FOR GOVERNOR RIDGE TO TESTIFY

This is not a dispute about withholding information from Congress. The Administration has kept Congress extremely well informed about all aspects of homeland security. Administration witnesses, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on these matters, or given members of Congress full briefings.

Governor Ridge himself has been open to Congress and repeatedly spoken with both leadership and members about his mission. In fact he recently met with the Senate caucuses of both parties over lunch. He has met with members of Congress at the White House an elsewhere.

Attempts by the White House to negotiate a satisfactory resolution to this dispute have been rebuffed by Senator Byrd. Senator Byrd has simply refused to deal with the Administration.

The principle that the President's closest advisers cannot be forced to testify before Congress rests upon constitutional bedrock. It is an essential part of the Constitution's separation of powers. Administrations of both parties have held fast to this principle for fifty years. For example, Attorney General Reno advised President Clinton that one close presidential adviser, the Counsel to the President, could not be forced to testify before Congress about President Clinton's decision to pardon a group of sixteen convicted individuals.

[Accommodation: The Administration wants to cooperate with Congress without compromising an important constitutional principle. We are seeking ways to meet any legitimate Congressional need for information from Governor Ridge with the President's need to be able to receive confidential advice.]

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 3/15/2002 12:21:32 PM
Subject: :
Attachments: P_63636003_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-MAR-2002 17:21:32.00
SUBJECT::
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

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TALKING POINTS

- The long-standing position of Presidents of both parties -- a position long accepted by Congress out of respect for the Presidency -- is that members of the President's White House staff do not testify before congressional committees on policy matters.

    - This long-standing practice applies to close Presidential advisors such as the Chief of Staff, Counsel, National Security Advisor, and other immediate advisors such as Governor Ridge. [The exceptions that have occurred primarily involved congressional investigations of personal or other wrongdoing rather than congressional inquiry into Administration policy.]

    - For example, Attorney General Reno advised President Clinton that one close presidential adviser, the Counsel to the President, could not be forced to testify before Congress about President Clinton's decision to pardon 16 individuals.

- The long-standing Executive Branch position on testimony by White House advisors does not in any way prevent Congress from accessing the information it needs. Congress can obtain the relevant information through formal testimony by Cabinet officials or through informal briefings.

- On homeland security, the Administration has provided Congress an extraordinary amount of information to ensure that Congress has the information it needs to perform its constitutional functions.

    - Administration witnesses, including the Secretary of Defense, the Attorney General, the Director of the FBI, and the Director of FEMA, have repeatedly testified before Congress on these matters, or given members of Congress full briefings.

    - Governor Ridge himself has been open to Congress and repeatedly spoken to Members about his mission.

From:	CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	3/15/2002 12:47:18 PM
Subject:	: LRM IKK175 - - TREASURY Revised Draft Bill on Department of the Treasury Corrections Day Act of 2001
Attachments:	P_55736003_WHO.TXT_1.wpd; P_55736003_WHO.TXT_2.wpd; P_55736003_WHO.TXT_3.wpd

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAR-2002 17:47:18.00
SUBJECT:: LRM IKK175 - - TREASURY Revised Draft Bill on Department of the Treasury Corrections Day Act of 2001
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/15/2002 05:47 PM ----------

From: Irene Kho on 03/15/2002 05:46:03 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK175 - - TREASURY Revised Draft Bill on Department of the Treasury Corrections Day Act of 2001

Attached is a revised Treasury draft bill, which according to Treasury would make technical amendments to various laws that affect operations of the Treasury Department. Attached for your review are: (1) a transmittal letter; (2) draft legislation; and (3) a section-by-section analysis. The revised draft bill includes one new section (section 801 at the end), which would allow the Treasury to obtain silver for minting the American Eagle silver bullion dollar from any available source when the stockpiles established under the Strategic and Critical Minerals Stock Piling Act are depleted. However, the revised bill does not include a section on use of proceeds from certain investigations (section 104 in the previously circulated bill, see IKK133). Please review and provide comments by 12:00 PM, Monday, March 25th.

- treas0024dltr.wpd

- treas0024dbil.wpd

- treas0024dsec.wpd

LRM ID: IKK175
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, March 15, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Revised Draft Bill on Department of the Treasury Corrections Day Act of 2001

DEADLINE: 12:00 PM Monday, March 25, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a revised Treasury draft bill, which according to Treasury would make technical amendments to various laws that affect operations of the Treasury Department. Attached for your review are: (1) a transmittal letter; (2) draft legislation; and (3) a section-by-section analysis. The revised draft bill includes one new section (section 801 at the end), which would allow the Treasury to obtain silver for minting the American Eagle silver bullion dollar from any available source when the stockpiles established under the Strategic and Critical Minerals Stock Piling Act are depleted. However, the revised bill does not include a section on use of proceeds from certain investigations (section 104 in the previously circulated bill, see IKK133). Please review and provide comments by 12:00 PM, Monday, March 25th.

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LRM ID: IKK175 SUBJECT: TREASURY Revised Draft Bill on Department of the Treasury Corrections Day Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_55736003_WHO.TXT_3>

The Honorable Dave Camp
Chairman, Corrections Day Advisory Group
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Camp:

This responds to your letter of July 12, 2001, to the Secretary of the Treasury soliciting recommendations for the Corrections Day Calender. Please find enclosed a draft bill, the "Department of the Treasury Corrections Day Act of 2002."

The draft bill includes provisions that are designed to improve the Department's programs and operations involving law enforcement, government securities, financial management and debt collection, financial institutions, the District of Columbia retirement funds, and coinage. Other proposals in the draft bill would eliminate or streamline a wide range of reporting requirements currently required by law.

The Department believes that many of the proposals contained in the draft bill would be appropriate for consideration under the Corrections Day Calendar. The Department of the Treasury looks forward to working with the Advisory Group to enact these provisions.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of the draft bill to the Congress.

Sincerely,

Enclosures

A BILL

To improve the operations of the Department of the Treasury, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of the Treasury Corrections Day Act of 2002".

TITLE I – LAW ENFORCEMENT

SEC. 101. FLEXIBLE PENALTIES FOR VIOLATIONS OF THE GUN CONTROL ACT.

Section 923 of title 18, United States Code, is amended--

(1) in subsection (e)--

(A) by striking "prescribed by the Secretary";

(B) by inserting "suspend or" before "revoke" both places it appears;

(C) by inserting ", or may subject the licensee to a civil penalty of not more than $10,000 per violation," after "under this section";

(D) by inserting ", or assess a civil penalty of not more than $10,000 on," after "the license of"; and

(E) by inserting after the second sentence the following new sentence: "The Secretary may at any time compromise, mitigate, or remit the liability with respect to any willful violation of this chapter or any rule or regulation prescribed by the Secretary under

this chapter.";

(2) in subsection (f)(1)--

(A) by striking "is revoked" and inserting "is suspended or revoked, or who is assessed a civil penalty,";

(B) by striking "was revoked" and inserting "was suspended or revoked, or the civil penalty assessed"; and

(C) by inserting "suspension or" before "revocation" both places it appears;

(3) in subsection (f)(2)--

(A) by striking ", or revokes, a license" and inserting "suspends or revokes a license, or assesses a civil penalty";

(B) by striking "denial or revocation" and inserting "denial, suspension, revocation, or assessment";

(C) by striking "a revocation" and inserting "a suspension or revocation"; and

(D) by striking "the revocation" and inserting "the suspension or revocation"; and

(4) in subsection (f)(3)--

(A) by striking "or revoke a license" and inserting ", or suspend or revoke a license, or assess a civil penalty";

(B) by inserting "de novo" before "judicial review";

(C) by striking "denial or revocation" and inserting "denial, suspension, revocation, or assessment"; and

(D) by striking "or to revoke the license" and inserting ", or to suspend or revoke the license, or to assess the civil penalty".

SEC. 102. AMENDMENTS CONCERNING NONIMMIGRANT ALIEN PROHIBITIONS IN THE GUN CONTROL ACT.

(a) Section 922 of title 18, United States Code, is amended–

(1) in each of subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II), by striking "has been admitted to the United States under a non-immigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)))" and inserting "is in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))"; and

(2) in subsection (y) --

(A) by amending paragraph (1) to read as follows:

"(1) Definition.–In this subsection the term `alien` has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))."

(B) in paragraph (2), by striking "has been lawfully admitted to the United States under a nonimmigrant visa" and inserting "is in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15))"; and

(C) in paragraph (3)(A), by striking "has been admitted to the United States under a nonimmigrant visa" and inserting "is in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15))".

(b) Section 922(y)(2) of title 18, United States Code, is further amended–

(1) in subparagraph (C), by striking "or" at the end thereof;

(2) in subparagraph (D), by striking the period and inserting "; or"; and

(3) by inserting after subparagraph (D) the following new subparagraphs:

"(E) temporarily in the United States for a commercial firearms purpose that does not violate the alien's status (such as to attend a trade show, perform authorized work at a United States subsidiary of a foreign firearms manufacturer or importer, or enroll in gunsmithing school), and the shipping, transporting, possessing, or receiving of the firearm is in furtherance of that commercial purpose; or

"(F) a person having the power to direct or cause the direction of the management and policies of a foreign firearms or ammunition corporation, partnership, or association, and the shipping, transporting, possessing, or receiving of the firearms or ammunition is in furtherance of that power.".

SEC. 103. AMENDMENTS TO SEIZURE AND FORFEITURE AUTHORITY.

(a) Section 844(c)(1) of title 18, United States Code, is amended–

(1) by striking "involved" and inserting "and any property, real or personal, involved in";

(2) by striking the comma after "forfeiture" and all that follows and inserting a period; and

(3) by adding at the end the following: "In the case of explosives material or personal property, all provisions of section 983 of this title and, insofar as they are applicable and not inconsistent with the provisions of section 983, sections 602 through 621 of the Tariff Act of 1930, as amended (19 U.S.C. 1602 - 1621), shall extend to seizures and forfeitures under the provisions of this chapter. In the case of real property, all provisions of section 985 of this title and, insofar as they are applicable and not inconsistent with the provisions of section 985, sections 602 through 621 of the Tariff Act of 1930, as amended (19

U.S.C. 1602 - 1621), shall extend to seizures and forfeitures under the provisions of this chapter.".

(b) Section 924(d) of title 18, United States Code, is amended–

(1) in paragraph (1)--

(A) by striking "the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of" and inserting "section 983 of this title and, insofar as they are applicable and not inconsistent with the provisions of section 983, sections 602 through 621 of the Tariff Act of 1930, as amended (19 U.S.C. 1602 - 1621), and section 5872(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5872(b)) relating to the disposition of seized";

(B) by striking "shall, so far as applicable, extend" and inserting "shall extend"; and

(C) by striking the last sentence; and

(2) in paragraph (2), by striking subparagraphs (A) through (D).

(c) Section 2344(c) of title 18, United States Code, is amended by striking "the Internal Revenue Code of 1954" and all that follows through "applicable," and inserting "section 983 of this title and, insofar as they are applicable and not inconsistent with the provisions of section 983, sections 602 through 621 of the Tariff Act of 1930, as amended (19 U.S.C. 1602 - 1621), shall".

(d) Section 492 of title 18, United States Code, is amended by striking the third and fourth unnumbered paragraphs and inserting instead:

"All provisions of section 983 of this title and, insofar as they are applicable and non inconsistent with the provisions of section 983, sections 602 through 621 of the Tariff Act of 1930, as amended (19 U.S.C. 1602-1621), shall extend to seizures and forfeitures under the provisions of this chapter.".

SEC. 104. DELETED; FOLLOWING SECTIONS TO BE RENUMBERED.

SEC. 105. CLARIFICATION OF NATURE OF PAYMENTS TO INFORMANTS.

Section 619(a) of the Tariff Act of 1930, as amended (19 U.S.C.1619(a)), is amended by inserting "in the sole discretion of the Secretary," at the beginning of the flush material following paragraph (2)(B).

SEC. 106. TECHNICAL AMENDMENTS CONCERNING THE IMPORTA-TION OF TOBACCO PRODUCTS.

(a) Section 5761(c) of title 26, United States Code, is amended by striking "subsections (b) and (d)" and inserting "subsections (b), (c) and (d)".

(b) Section 5704(c) of title 26, United States Code, is amended by adding at the end the following new sentence: "Tobacco products and cigarette papers and tubes manufactured in the United States may be released under this subsection only in accordance with section 5754.".

(c) Section 5704(d) of title 26, United States Code, is amended by striking "item 804.00 of title I of the Tariff Act of 1930" and inserting "subheading 9801.00.80 of the Harmonized Tariff Schedule of the United States".

TITLE II – GOVERNMENT SECURITIES

SEC. 201. ELIMINATION OF CERTAIN PAPER INSTRUMENTS.

Section 201(d) of the Social Security Act of 1994 (42 U.S.C. 401(d)), as amended, is amended by striking the sixth sentence.

SEC. 202. ELIMINATION OF SINKING FUND FOR RETIRING AND CANCELING CERTAIN SECURITIES.

Section 3112 of title 31, United States Code, is hereby repealed.

SEC. 203. VALUE OF SECURITIES USED IN LIEU OF SURETY BONDS.

Section 9303(a)(2) of title 31, United States Code, is amended to read as follows:

"(2) as determined by the Secretary of the Treasury, have a market

value that is equal to or greater than the amount of the required surety bond; and".

TITLE III – FINANCIAL MANAGEMENT AND DEBT COLLECTION

SEC. 301. ESTABLISHMENT OF DEBT SERVICES ACCOUNT.

(a) Section 3711(g) of title 31, United States Code, is amended–

(1) in paragraph (7), by amending the second sentence to read as follows: "Any fee charged pursuant to this subsection shall be deposited into an account established on behalf of the debt collection center in the Treasury to be known as a `Debt Services Account` (hereinafter referred to in this section as the `Account`).";

(2) by striking paragraph (8) and redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively; and

(3) by amending paragraph (9), as redesignated, to read as follows:

"(9) To carry out the purposes of this subsection, including services provided under sections 3716 and 3720A, the Secretary of the Treasury may:

"(A) Prescribe such rules, regulations, and procedures as the Secretary considers necessary;

"(B) Transfer such funds from funds appropriated to the Department of the Treasury as may be necessary to meet liabilities and obligations incurred prior to the receipt of fees that result from debt collection; and

"(C) Reimburse any appropriation from which funds were transferred under paragraph (B) from fees collected pursuant to section 6331(h) of title 26, and sections 3711, 3716 and 3720A of title 31. Any reimbursement under this

subparagraph shall occur during the period of availability of the funds transferred under subparagraph (B) and shall be available to the same extent and for the same purposes as the funds originally transferred from an appropriation.".

(b) The Secretary of the Treasury may transfer balances in accounts established in accordance with 31 U.S.C. 3711(g)(7) before the effective date of this Act to the Debt Services Account established under section 301(a) of this title. All amounts transferred to the Debt Services Account under this section shall remain available until expended.

(c) Section 3720A(d) of title 31, United States Code, is amended by amending the last sentence to read as follows: "Amounts paid to the Secretary of the Treasury as fees under this section shall be deposited into the account of the Department of the Treasury described under section 3711(g) and shall be collected and accounted for in accordance with the provisions of that section.".

SEC. 302. STREAMLINING THE BENEFIT OFFSET PROCESS.

Section 3716(c)(3)(A)(ii) of title 31, United States Code, is amended by striking "In applying" and all that follows through subclause (II).

SEC 303. TECHNICAL AMENDMENTS TO THE DEBT COLLECTION IMPROVEMENT ACT.

(a) Section 3701(a)(4) of title 31, United States Code, is amended by inserting "or 'Federal agency'" after "'executive, judicial, or legislative agency'". (b) Section 3711(d)(2) of title 31, United States Code, is amended--

(1) by striking the comma after "Attorney General" and inserting instead "and"; and

(2) by inserting "jointly" after "prescribe".

(c) Section 3712(e)(2) of title 31, United States Code, is amended by striking "subsection (a)(1)" and inserting "subsection (e)(1)".

(d) Section 3716(c)(2)(B) of title 31, United States Code, is amended by striking "paragraph (8)" and inserting "paragraph (7)".

(e) Section 3716(c)(2) of title 31, United States Code, is amended--

(1) by inserting "(A)" before "Neither";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(3) adding at the end the following new subparagraph:

"(B) REVIEW OF OFFSETS. No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review an offset authorized by this subsection, except as required by the United States Constitution. No such offset shall be subject to review by the Secretary of the Treasury in an administrative proceeding. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency or State to which the amount of such offset was paid.".

(f) Section 3711(g)(5) of title 31, United States Code, is amended by inserting the following after the first sentence: "The Secretary of the Treasury may compromise a debt referred or transferred under this section in accordance with otherwise applicable statutory authorities.".

(g) Section 3720A of title 31, United States Code, is amended--

(1) in the first subsection (h)--

(A) by redesignating the second paragraph (1) as subparagraph (A);

(B) in subparagraph (A), as redesignated, by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(C) by redesignating the first paragraph (2) as subparagraph (B);

(D) in subparagraph (B), as redesignated, by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(E) redesignating paragraph (3) as subparagraph (C); and

(2) by striking "(h)(2) The term" and inserting "(2) The term".

(h) Section 3720D(c)(2) of title 31, United States Code, is amended by striking "subsection (a)(5)" and inserting "subsection (b)(5)".

(i) Section 7701(c)(2)(D) of title 31, United States Code, is amended by striking "and" and inserting "or".

SEC. 304. TECHNICAL CORRECTIONS TO THE SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT OF 2000.

The Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) is amended–

(1) in section 101(a)(1), by striking "Secretary of the Treasury" and inserting "Secretary of Agriculture";

(2) in section 101(a)(2), by striking "Secretary of the Treasury" and inserting "Secretary of the Interior";

(3) in section 101(b)--

(A) by striking "the Secretary of the Treasury shall adjust the full payment amount for the previous fiscal year for each eligible State and eligible county" and inserting "the full payment amount for the previous fiscal year for each eligible State shall be adjusted by the Secretary of Agriculture, and for each eligible county by the Secretary of the Interior,"; and

(B) by striking "consumer price index for rural areas", and inserting "consumer price index for urban areas"; and

(4) in section 102(b)(1), by inserting "of Agriculture" after "the Secretary".

SEC. 305. TECHNICAL AMENDMENT TO THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2001.

The District of Columbia Appropriations Act, 2001 (Pub. L. 106-522) is amended, in the second proviso in the item relating to the Federal Payment for Washington Interfaith Network, by striking "less than" and inserting "greater than".

SEC. 306. AMENDMENTS TO THE DEPARTMENT OF AGRICULTURE CUSHION OF CREDIT PAYMENTS PROGRAM.

Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940c) is amended--

(1) in paragraph (1)--

(A) in subparagraph (B)--

(i) by striking "(obtained from cushion of credit payments, loan payments, and other sources)" and inserting "obtained from cushion of credit payments"; and

(ii) by inserting ", to be credited on a monthly basis by the Secretary of the Treasury from moneys in the Treasury not otherwise appropriated" after "issued by the Fund"; and

(B) by striking subparagraph (C); and

(2) in paragraph (2)--

(A) in subparagraph (A), by striking "determined by" and all that follows through "on cushion of credit payments" and inserting "equal to the difference between the interest described in subsection (b)(1)(B) and the interest described in subsection (a)(2)"; and

(B) in subparagraph (B)--

(i) by striking "credited to this subaccount" and inserting "described in subsection (b)(2)(A)"; and

(ii) by striking "thereto" and inserting "to the subaccount".

TITLE IV – TAX ADMINISTRATION

SEC. 401. DISCLOSURE OF INFORMATION TO LOCAL AND TRIBAL LAW ENFORCEMENT AGENCIES IN CIRCUMSTANCES OF IMMINENT DANGER OF DEATH OR PHYSICAL INJURY.

Section 6103 of title 26, United States Code, is amended --

(1) in subsection (i)(3)(B)(i), by striking "Federal or State law enforcement agency" and inserting "Federal, State, local, or tribal law enforcement agency"; and

(2) in subsection (p)(4)--

(A) by inserting "or any Federal or State law enforcement agency described in subsection (i)(3)(B)(i)" after "the Congressional Budget Office"; and

(B) by striking "subsection (d), (i)(3)(B)(i)," and inserting "subsection (d)".

SEC 402. RATE OF PAY FOR THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.

Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Inspector General, Department of the Treasury, the following new item:

"Treasury Inspector General for Tax Administration, Department of the Treasury.".

TITLE V – FINANCIAL INSTITUTIONS

SEC. 501. CONFORMING REFERENCES TO SERVICE COMPANIES.

The Home Owners' Loan Act is amended–

(1) in the heading of section 5(c)(4)(B) (12 U.S.C. 1464(c)(4)(B)), by striking "CORPORATIONS" and inserting "COMPANIES";

(2) in section 5(c)(4)(B) (12 U.S.C. 1464(c)(4)(B))--

(A) by striking "corporation" and inserting "company"; and

(B) by striking "corporation's" and inserting "company's";

(3) in section 5(n)(1) (12 U.S.C. 1464(n)(1)), by striking "service corporations" and inserting "service companies";

(4) in each of subparagraphs (A), (B), and (C) of section 5(q)(1) (12 U.S.C. 1464(q)(1)), by striking "service corporation" and inserting "service company"; and

(5) in section 10(m)(4)(C)(iii)(II) (12 U.S.C. 1467a(m)(4)(C)(iii)(II)), by striking "service corporation" both places it appears and inserting "service company".

SEC. 502. CORRECTING INSURANCE CUSTOMER PROTECTIONS STATUTE.

Section 47(g)(2)(B)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1831x(g)(2)(B)(i)) is amended by inserting "the Director of the Office of Thrift Supervision," after "Comptroller of the Currency,".

SEC. 503. CORRECTING HOME OWNERS' LOAN ACT CAPTIONS.

(a) The caption for section 4(a) of the Home Owners' Loan Act (12 U.S.C. 1463(a)) is amended by striking "FEDERAL SAVINGS ASSOCIATIONS" and inserting "GENERAL RESPONSIBILITIES OF THE DIRECTOR".

(b) The caption for section 5 of such Act (12 U.S.C. 1464) is amended by striking "FEDERAL".

SEC. 504. CONFORMING AMENDMENT TO RESTATE THRIFT SMALL BUSINESS INVESTMENT AUTHORITY IN HOLA.

Section 5(c)(4)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)(D)) is amended to read as follows:

"(D) SMALL BUSINESS INVESTMENT COMPANIES.—Any

federal savings association may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.".

SEC. 505. INTERAGENCY DATA SHARING.

The Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) is amended by adding at the end the following new section:

"SEC. 49. AUTHORIZATION TO RELEASE REPORTS.

"A Federal banking agency, at its discretion, may furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined under any authority of the agency, to any Federal or State agency or authority with supervisory or regulatory authority over the examined entity, to any officer, director, or receiver of the examined entity, and to any other person that the Federal banking agency determines to be proper.".

SEC. 506. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended by adding at the end the following new subsection:

"(c) UNINSURED BANKS.--This section shall apply to an uninsured national or state member bank and an uninsured branch or agency of a foreign bank (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101)) as if the uninsured bank, branch, or agency were an insured depository institution, except any reference to the Corporation shall refer--

"(1) to the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency of a foreign bank; or

"(2) the Board of Governors of the Federal Reserve System in the case of an uninsured State member bank or uninsured State branch or agency of a foreign bank.".

SEC. 507. AUTHORITY OF THE COMPTROLLER OF THE CURRENCY IN REMOVAL ACTIONS.

Section 8(e)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4)) is amended by striking the fifth sentence.

SEC. 508. AMENDMENT TO BRANCH CAPITAL REQUIREMENTS.

Section 5155(c) of the Revised Statutes of the United States (12 U.S.C. 36(c)) is amended --

(1) in the second sentence, by striking ", without regard to the capital requirements of this section,"; and

(2) by striking the third sentence.

SEC. 509. TECHNICAL AMENDMENT TO THE NATIONAL BANK CONSOLIDATION AND MERGER ACT.

The National Bank Consolidation and Merger Act is amended--

(1) in the last sentence of section 2(a) (12 U.S.C. 215(a)), by inserting "or" after "waiver,"; and

(2) in the last sentence of section 3(a)(2) (12 U.S.C. 215a(a)(2)), by inserting "or" after "waiver,".

TITLE VI – ELIMINATING AND STREAMLINING REPORTING REQUIREMENTS

SEC. 601. ELIMINATING ANNUAL REPORT CONCERNING GOVERN-MENT SECURITIES BROKERS AND DEALERS.

Section 202(b)(2) of the Government Securities Act Amendments of 1993 (Public Law 103-202, 31 U.S.C. 3121 note) is amended to read as

follows:

"(2) EXCEPTION-- The Secretary of the Treasury may grant an exception to the application of paragraph (1) if --

"(A) the Secretary determines that any advantage, favorable treatment, or other benefit referred to in such paragraph is necessary and appropriate and in the public interest; and

"(B) the grant of the exception is designed to minimize any anticompetitive effect.".

SEC. 602. ELIMINATION OF REPORTS CONCERNING GOVERNMENT SECURITIES AUCTIONS.

(a) Section 202(d) of the Government Securities Act Amendments of 1993 (Public Law 103-202, 31 U.S.C. 3121 note) is hereby repealed.

(b) Section 203 of the Government Securities Act Amendments of 1993 (Public Law 103-202, 31 U.S.C. 3121 note) is hereby repealed.

SEC. 603. ELIMINATION OF ANNUAL RESOLUTION FUNDING CORPORATION REPORT.

Section 21B of the Federal Home Loan Bank Act (12 U.S.C. 1441b) is amended–

(1) by striking subsection (i); and

(2) by redesignating subsections (j) through (l) as subsections (i) through (k), respectively.

SEC. 604. ELIMINATION OF ANNUAL REPORT CONCERNING THE PUBLIC DEBT AND THE FEDERAL FINANCING BANK.

Section 3130 of title 31, United States Code, is amended–

(1) by striking subsection (a); and

(2) by redesignating subsections (b) through (e) as subsections (a) through (d), respectively.

SEC. 605. MODIFICATION OF ANNUAL REPORTS ON EXCISE TAX FUNDS.

Section 9602(a) of title 26, United States Code, is amended–

(1) by striking "to report to the Congress each year" and inserting

inserting "to make available to the public not less frequently than annually information"; and

(2) by striking the second sentence.

SEC. 606. MODIFICATION OF ANNUAL REPORT ON URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING TRUST FUND.

Section 1801(b)(1) of the Act of August 1, 1946 (42 U.S.C. 2297g(b)(1)) is amended by striking "annually report to the Congress" and insert "annually make available to the public information".

SEC. 607. MODIFICATION OF SEMIANNUAL REPORT ON UNFUNDED HIGHWAY AUTHORIZATIONS.

Section 9603(d)(6) of title 26, United States Code, is amended to read as follows:

"(6) Public Information

"Estimates under paragraph (1) and determinations under paragraph (2) shall be made available to the public promptly by the Secretary of the Treasury.".

SEC. 608. ELIMINATION OF REPORTS CONCERNING FOREIGN CURRENCY.

(a) Section 5315 of title 31, United States Code, is hereby repealed.

(b) The table of sections for chapter 53 of title 31, United States Code, is amended by amending the item relating to section 5315 to read as follows:

"5315. Repealed.".

SEC. 609. MODIFICATION OF SEMIANNUAL REPORT UNDER THE PRESIDENTIAL PROTECTION ASSISTANCE ACT.

Section 9 of the Presidential Protection Assistance Act (Public Law 94-524) is amended–

(1) by striking "semi-annual" and inserting "annual";

(2) by striking "six-month period immediately" and inserting "fiscal year"; and

(3) by striking "March 31 and September 30" and inserting "October 15".

SEC. 610. ELIMINATION OF ANNUAL REPORT OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES.

(a) Section 1701 of the International Financial Institutions Act, as amended (22 U.S.C. 262r), is amended–

(1) in the section heading, by striking "Annual Report by Chairman of";

(2) by striking subsections (a), (b), and (d); and

(3) by redesignating subsections (e) and (c) as subsections (a) and (b), respectively.

(b)Section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Public Law 105-277) is hereby repealed.

SEC. 611. ELIMINATION OF REPORTS ON POLICIES, OPERATIONS, AND MANAGEMENT OF INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) Subsections (a) and (b) of section 803 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (as enacted by Public Law 106-429) are hereby repealed.

(b) Notwithstanding Conference Report 106-997, no notifications or reports shall be required with respect to section 596 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (as enacted by Public Law 106-429).

(c) Section 49(c) of the Act of July 31, 1945 (22 U.S.C. 286gg(c)) is amended–

(1) in paragraph (1), by striking "(1)"; and

(2) by striking paragraph (2).

(d) Section 1705 of the International Financial Institutions Act (22 U.S.C. 262r-4) is amended–

(1) in the title of such section, by striking "ANNUAL REPORT AND";

(2) by striking subsection (a); and

(3) in subsection (b), by striking "(b) Testimony.--After submitting the report required by subsection (a) of this section but not" and inserting "Not".

(e) Section 545(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (as enacted by Public Law 106-429) is hereby repealed.

(f) Section 605(d) of the Foreign Operations Appropriations Act, 1999 (Public Law 105-277) is hereby repealed.

(g) Subsections (b) and (e) of section 504 of Appendix E of Public Law 106-113 (as enacted by section 1000(5) of such public law) are hereby repealed.

SEC. 612. ELIMINATION OF REPORTS ON FOREIGN SALES AND POSSESSIONS CORPORATIONS.

(a) Section 441(a) of the Tax Reform Act of 1984 (26 U.S.C. 936 note), as amended, is hereby repealed.

(b) Section 804(a) of the Tax Reform Act of 1984 (26 U.S.C. 921 note), as amended, is hereby repealed.

SEC. 613. MODIFICATION OF REPORTS UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.

Section 204(c) of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)) is amended by striking "six-month" and inserting "12-month".

SEC. 614. ELIMINATION OF REPORTS CONCERNING FOREIGN TRADE PROJECTIONS.

Section 163 of the Trade Act of 1974 (19 U.S.C. 2213) is amended–

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

TITLE VII – DISTRICT OF COLUMBIA RETIREMENT FUNDS

TECHNICAL AMENDMENTS

SEC. 701. ABOLISHMENT OF THE FEDERAL SUPPLEMENTAL DISTRICT OF COLUMBIA PENSION FUND AND TRANSFER OF

ITS ASSETS TO THE DISTRICT OF COLUMBIA FEDERAL PENSION LIABILITY TRUST FUND.

(a) Effective October 1, 2002, the Secretary of the Treasury shall transfer all assets of the Federal Supplemental Fund established by section 11051 of the Balanced Budget Act of 1997, as amended, to the District of Columbia Federal Pension Liability Trust Fund established by section 11031 of the Balanced Budget Act of 1997, as amended.

(b) Assets transferred to the District of Columbia Federal Pension Liability Trust Fund pursuant to subsection (a) need not be identified separately on the books of the Treasury.

(c) Sections 11051 through 11055 of the Balanced Budget Act of 1997, as amended, are repealed effective upon the transfer of all assets of the Federal Supplemental Fund pursuant to subsection (a).

(d) (1) Section 11031 of the Balanced Budget Act of 1997, as amended, is

further amended--

(A) by amending subsection (a) to read as follows:

"(a) Establishment.--There is established on the books of the Treasury the District of Columbia Federal Pension Liability Trust Fund, consisting of the assets transferred pursuant to section 11033, the assets transferred from the Federal Supplemental District of Columbia Pension Fund pursuant to section 701(a) of the Department of the Treasury Corrections Day Act of 2001, amounts deposited into the Fund under the provisions of subsection (b), any amounts otherwise appropriated to the Fund, and any income earned on the investment of the assets of the Fund pursuant to subsection (c).";

(B) by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection:

"(b) Determination of Annual Federal Payment into the Trust Fund.--

"(1) At the end of each fiscal year the Secretary shall promptly pay into the Trust Fund from the General Fund of the Treasury an amount equal to the annual amortization amount for the year (which may not be less than zero).

"(2) During each fiscal year beginning in fiscal year 2008, the Secretary shall pay into the Trust Fund from the General Fund of the Treasury amounts not to exceed--

"(A) the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under this subtitle in accordance with section 11032; and

"(B) the administrative expenses of the District Government during or after the period of interim administration as are deemed appropriate by the Secretary or the Trustee in accordance with section 11041(b).

"(3) For purposes of this section:

"(A) The term `original unfunded liability` means the difference between the present value of future Federal benefit payments as of the effective date of this Act and the assets of the Trust Fund as of the effective date of this Act.

"(B) The term `annual amortization amount` means the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized)--

"(i) the original unfunded liability over a 30-year period;

"(ii) a net experience gain or loss over a 10-year period; and

"(iii) any other changes in actuarial liability over a 20-year period.

"(4) The first applicable fiscal year under paragraph (1) is the first fiscal year that ends more than six months after the replacement plan adoption date.

"(5) The Secretary shall provide for the keeping of such records as are necessary for determining the actuarial status of the Trust Fund."; and

(C) by amending subsection (c), as redesignated, to read as follows:

"(c) Investment of Assets.--The Secretary of the Treasury shall invest such portion of the assets of the Trust Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Trust Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.".

(2) Section 11032(a) of the Balanced Budget Act of 1997, as amended, is further amended--

(A) by striking "and" at the end of paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3) the following new paragraph:

"(4) for the accumulation of funds in order to finance obligations of the Federal Government for future benefits; and".

(3) The amendments made by this subsection shall become effective upon the transfer of all assets of the Federal Supplemental Fund pursuant to subsection (a).

SEC. 702. CLERICAL AND CONFORMING AMENDMENTS.

(a) The Balanced Budget Act of 1997, as amended, is further amended--

(1) in section 11000(b), in the material relating to Subtitle A, Chapter 6--

(A) by striking "Financing Of Benefit Payments After Depletion Of Trust Fund" and inserting "Reserved"; and

(B) by striking the items relating to sections 11051 through 11055;

(2) in section 11003, by striking paragraph (8) and redesignating paragraphs (9) through (16) as paragraphs (8) through (15), respectively;

(3) in the heading to Chapter 6 of Subtitle A of Title XI, by striking "Financing Of Benefit Payments After Depletion Of Trust Fund" and inserting "Reserved";

(4) in section 11061--

(A) in subsection (a), by striking "and the Federal Supplemental Fund"; and

(B) in subsection (b)--

(i) in the heading, by striking "Funds" and inserting "Fund";

(ii) by striking "and the Federal Supplemental Fund" the first place it appears; and

(iii) by striking "report--" and all that follows through "section 11053" and inserting "report a determination of the annual payment to the Trust Fund under section 11031";

(5) in section 11062(a), by striking "and Federal Supplemental Fund are" and inserting "is";

(6) in section 11071(a)--

(A) in paragraph (1), by striking "or Federal Supplemental Fund"; and

(B) in paragraph (2)(B), by striking "or Federal Supplemental Fund"; and

(7) in section 11074, by striking "and the Federal Supplemental Fund".

(b) The amendments made by subsection (a) shall become effective upon the transfer of all assets of the Federal Supplemental Fund pursuant to section 701(a).

TITLE VIII – COINAGE TECHNICAL AMENDMENTS

SEC. 801. ACQUISITION OF SILVER.

Section 5116(b)(2) of title 31, United States Code, is amended by striking the period at the end of the second sentence and inserting the following: ", except that the Secretary may obtain such silver by purchase from any available source at such time as the stockpiles are depleted.".

Department of the Treasury Corrections Day Act of 2002

SECTION-BY-SECTION ANALYSIS

TITLE I – LAW ENFORCEMENT

SEC. 101. FLEXIBLE PENALTIES FOR VIOLATIONS OF THE GUN CONTROL ACT.

Under current law, the only available administrative remedies to deal with violations by firearms licensees are the extreme measures of denying license renewal applications and license revocation. Violations of the Gun Control Act such as the failure to timely record information in required records, that may not warrant license revocation or denial. This amendment provides new administrative sanctions, less severe than current administrative remedies, including license suspension, civil money penalties, and authority to accept offers in compromise of violations of the law and regulations. This amendment also clarifies that these administrative sanctions may be imposed for violation of any regulation issued under the Gun Control Act, including regulations issued by the Attorney General governing the National Instant Criminal Background Check System.

SEC. 102. AMENDMENTS CONCERNING NONIMMIGRANT ALIEN PROHIBITIONS IN THE GUN CONTROL ACT.

The Gun Control Act of 1968 (GCA) was amended in 1998 with the intent of prohibiting nonimmigrant aliens from shipping, transporting, receiving, or possessing firearms. As enacted, however, the prohibition applies only to aliens "who have been admitted to the United States under a nonimmigrant visa (as defined in section 101(a)(26) of the Immigration and Nationality Act)." This language is deficient because aliens with nonimmigrant visas are not admitted "under" the visa, which merely expedites admission to the United States by showing that the State Department found the individual to be admissible. Moreover, only about 50 percent of nonimmigrant aliens need a nonimmigrant visa to enter the United States; other nonimmigrant aliens fall within various categories that are statutorily exempt from needing a nonimmigrant visa.

Subsection (a) effectively fulfills the congressional intent of 1998 amendment by clarifying that, with the limited exceptions discussed below, all aliens admitted in a nonimmigrant classification are prohibited from shipping, transporting, receiving, or possessing firearms.

The current prohibition does not contain an exception for nonimmigrant aliens who temporarily enter the United States to engage in commercial firearms activities (such as attendance at trade shows, working for U.S. subsidiaries of foreign firearms manufacturers and importers, and enrollment in gunsmithing schools) within the scope of their nonimmigrant classification. Nor does the prohibition contain an exception for nonimmigrant aliens who are officers or directors of foreign firearms or ammunition corporations with operations in the United States. None of these activities has raised any law enforcement concerns.

Subsection (b) establishes limited exceptions from the prohibition for nonimmigrant aliens (1) who temporarily enter the United States to engage in commercial firearms activities within the scope of their nonimmigrant classification or (2) who are officers or directors of foreign firearms or ammunition corporations with operations in the United States.

SEC. 103. AMENDMENTS TO SEIZURE AND FORFEITURE AUTHORITY.

This section amends the Gun Control Act (GCA), the Contraband Cigarette Trafficking Act (CCTA) and the explosives laws to clarify that the procedural requirements of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) govern these forfeitures.

The forfeiture provisions of the GCA, CCTA, and the explosives laws currently contain obsolete references to the procedural provisions of the Internal Revenue Code (IRC). In 1992, Congress enacted the Treasury Forfeiture Fund Statute (31 U.S.C. 9703). Section 9703 (o) provides that "the provisions of law relating to . . . the seizure, summary and judicial forfeiture, and condemnation of property for violation of Customs laws . . . shall apply to seizures and forfeitures incurred . . . under any applicable law enforced or administered by the Bureau of Alcohol, Tobacco and Firearms." It has been the legal position of the United States that section 9703(o) repealed by implication the language in these three forfeiture statutes that incorporates the IRC, and that the Customs laws (19 U.S.C. 1602-1621), not the IRC, govern all procedural issues in ATF forfeitures.

The enactment of CAFRA was intended to harmonize the procedural requirements for all administrative and civil judicial forfeitures by the United States under title 18 of the U.S. Code. See 18 U.S.C. 983(i); 146 Cong.Rec. S1753-02 (March 27,2000). CAFRA, however, included no specific language that repealed the nonconforming and obsolete language in the GCA, CCTA, or explosives laws. Accordingly, this section clarifies that CAFRA governs the procedural requirements for forfeitures under these laws, repeals the GCA requirement that forfeiture actions be commenced within 120 days of seizure in favor of CAFRA's 60-day deadline, and repeals the GCA provisions concerning attorneys fees in favor of the attorney fee provisions enacted by CAFRA.

This section also makes it clear that the current restrictions on the sale of firearms forfeited pursuant to the GCA remain in place.

This section also amends the explosives laws to provide for the forfeiture of property used or intended to be used in violation of the explosives laws. Current authority allows for the forfeiture of explosives materials and real or personal property that constitutes (or is derived from) proceeds traceable to violations of 18 U.S.C. 842 and 844. This amendment permits the forfeiture of
bomb-making factories, the equipment used to manufacture illegal explosives, and items in the manufacturing stage that are substantially connected to a violation of section 842 or 844. This is consistent with the narcotics laws, which subject to forfeiture any property "used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of" violations of those laws.

This section also amends 18 U.S.C. 492 to conform to the CAFRA provision. Section 492 has provided for the civil forfeiture of counterfeiting paraphernalia since 1909 and was last amended in 1938. This amendment will bring section 492 up to date and in conformance with modern

civil forfeiture statutes by cross-referencing procedures pertaining to administrative forfeitures in the Customs laws and sections 981-987 of title 18, United States Code.

SEC. 104. DELETED; FOLLOWING SECTIONS TO BE RENUMBERED.

SEC. 105. CLARIFICATION OF NATURE OF PAYMENTS TO INFORMANTS.

This section makes a technical amendment to clarify that the authority of the Secretary of the Treasury under the Customs laws to make payments to informants is discretionary, and does not establish any right for a person to receive such payments that is legally enforceable.

SEC. 106. TECHNICAL AMENDMENTS CONCERNING THE IMPORTATION OF TOBACCO PRODUCTS.

This section makes two technical amendments to the Internal Revenue Code of 1986.

Subsection (a). The Internal Revenue Code of 1986 was recently amended to allow tobacco products, cigarette papers and tubes manufactured in the United States and labeled or shipped for exportation, to be imported or brought into the United States if, among other things, they are returned to the original manufacturer under section 5704(c). Through an oversight, the corresponding penalty provision in section 5761(c) was not amended to exempt from penalty importations permitted by section 5704(c). As a result, imported tobacco products returned to the original manufacturer authorized in section 5704(c) are technically subject to the penalties in section 5761(c). Subsection (a) corrects this anomaly.

Subsection (b) corrects an obsolete reference in section 5704(d) to tobacco products, cigarette papers and tubes "classifiable under item 804.00 of title I of the Tariff Act of 1930." The correct reference is to "subheading 9801.00.80 of the Harmonized Tariff Schedule of the United States."

TITLE II – GOVERNMENT SECURITIES

SEC. 201. ELIMINATION OF CERTAIN PAPER INSTRUMENTS.

This amendment repeals the provisions in the Social Security Independence Program Improvements Act of 1994 that require the Department of the Treasury to issue paper instruments to the OASDI Trust Funds to evidence investments in those funds, and issue paper checks for payments of interest or proceeds from the sale or redemption of investments.

These provisions serve no purpose and have increased the complexity and cost of administering the Funds with no corresponding benefit to either the Funds or their beneficiaries. In addition to the normal electronic investment and redemption operations of the two trust funds, Treasury's Bureua of the Public Debt must generate extra accounting reports that are used to create the paper instruments. The paper instruments then need to printed, authenticated, signed, kept in custody, and retired. The work associated with having to create and deal with these purely symbolic documents much in the same way we would deal with real securities is unnecessary in an age when securities are held in electronic accounts.

SEC. 202. ELIMINATION OF SINKING FUND FOR RETIRING AND CANCELING CERTAIN SECURITIES.

This section would repeal the Sinking Fund provisions codified at 31 U.S.C. 3112. The Sinking Fund, which is a permanent indefinite appropriation account created in 1919 for the purpose of aiding in the retirement of the public debt, is both conceptually and operationally obsolete. The Department of the Treasury does not use the Sinking Fund to "buy back" unmatured portions of the public debt, and instead relies on other statutory authority. Repealing section 3112 would bring greater clarity to the Government's financial statements by eliminating the reporting of a vestigial appropriation account.

This proposal is consistent with the views of the Comptroller General, who in 1956 and 1961 recommended that the Congress consider the desirability of revising the machinery for debt retirement on a more realistic basis.

SEC. 203. VALUE OF SECURITIES USED IN LIEU OF SURETY BONDS.

This section provides that securities pledged as surety for the performance of an obligation to the federal government shall have a market value, as determined by the Secretary of the Treasury, that is equal to or greater than the amount of the required surety bond. Current law provides that securities given instead of a surety bond have a par value equal to the amount of the required surety bond.

This amendment is needed because the requirement in current law that securities given instead of a surety bond have a par value equal to the amount of the surety bond is not sufficient to protect the interests of the government. A security valued at par could trade at a discount (such as a principal component of a Treasury security stripped of its interest components under the Treasury's STRIPS program) or have a reduced market value that is insufficient to protect or make whole the Government in the event of default. This section provides that securities pledged as surety for the performance of an obligation to the federal government shall, as determined by the Secretary of the Treasury, have a *market* value that is equal to or greater than the amount of the required surety bond. Current law provides that securities given instead of a surety bond be in an amount equal at its *par* value to the amount of the required surety bond.

TITLE III – FINANCIAL MANAGEMENT AND DEBT COLLECTION

SEC. 301. ESTABLISHMENT OF DEBT SERVICES ACCOUNT.

This section (1) establishes a new Debt Services Account to correct an unintended consequence created by the Debt Collection Improvement Act of 1996 (DCIA) that negatively affects the way Treasury's Financial Management Service (FMS) spends appropriated funds and (2) allows critically necessary flexibility for FMS funding and transfers between FMS accounts. Similar authority was included in H.R. 436, which was approved by the House of Representatives by a vote of 419-1 during the 106th Congress. As a temporary solution, transfer authority was included in both the FY 2001 and FY 2002 Treasury Postal Appropriations bills.

The DCIA mandates that Treasury collect debts owed the Federal government that are more than 180 days delinquent. However, the DCIA inadvertently created an accounting anomaly that diverts vital resources away from collecting delinquent debt. FMS incurs a substantial amount of contractual obligations for the debt program in the first quarter of a fiscal year, but revenue from fees associated with tax refund offsets are not booked until the second and third quarters. FMS therefore runs a substantial risk of running out of appropriated funds before receiving revenue from the Tax Refund Offset Program. This section allows FMS technically to "reimburse" its Salaries and Expenses account when it provides funds to the debt program prior to the debt program receiving fees from tax refund offsets. This section also changes the fee account from a 2-year to a no-year account, and requires fees from all FMS debt collection activities to be deposited into the new Debt Services Account.

SEC. 302. STREAMLINING THE BENEFIT OFFSET PROCESS.

This amendment would eliminate a complex and burdensome provision in the DCIA.

The DCIA mandates that FMS offset Social Security and certain other Federal benefit payments to collect delinquent debt owed to the Federal government. Offsets of benefit payments are subject to an annual $9,000 ($750 per month) exemption.

The amount of the exemption, however, is required to be reduced by the amount of any Federal benefit payments that are not subject to offset. Calculating the reduced exemption requires FMS to determine the type and amount of benefit payments received by each debtor who receives more than one type of benefit payment. The process, which would have to be repeated for every payment, requires FMS to match each payee's name and TIN with those of a debtor and then to analyze other Federal benefit payments received by each payee identified as a debtor. This is administratively complex and burdensome to implement because benefit payments are administered by several Government agencies, the payments are disbursed at various times throughout the month, and
the amount and type of benefits received by any payee may change on a monthly basis.

Moreover, FMS believes that repeal of the exemption reduction provision will not have a significant effect on debt collection revenues. (Note: FMS has discretionary authority to implement the DCIA in phases; although FMS is offsetting benefits payments, it has deferred implementing the provisions concerning reductions in exemptions for the reasons stated.)

SEC 303. TECHNICAL AMENDMENTS TO THE DEBT COLLECTION IMPROVEMENT ACT.

Subsections (a) through (d) and (g) through (i) are technical amendments that correct typographical and/or editorial errors in the DCIA.

Section (e) clarifies that the creditor agency, not the Department of the Treasury, is the proper entity from which an aggrieved debtor should seek legal redress in connection with offsets of non-tax payments. As has been established consistently in several court cases, the creditor agency, not Treasury, is responsible to the aggrieved party for erroneous or impermissible offsets. The provision is modeled on a similar provision in the Internal Revenue Code (26 U.S.C. 6402(f)) regarding Treasury's offset of tax refund payments.

Subsection (f) clarifies that the Department of the Treasury has the authority to compromise or

otherwise settle debts referred to Treasury for debt collection. Debts are transferred to Treasury after an agency has been unable to collect on the debt; the authority to compromise or settle such debts is an integral part of the collection process.

SEC. 304. TECHNICAL CORRECTIONS TO THE SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT OF 2000.

This section makes technical amendments to (1) correct the title of the economic index used to adjust payments to eligible States and counties under the Act, (2) clarify that eligible States should contact the Secretary of Agriculture, rather than the Secretary of Treasury, regarding their elections under the Act, and (3) transfer from the Department of the Treasury to the Departments of Agriculture and Interior certain administrative responsibilities with respect to which the latter agencies possess the necessary data and programmatic expertise.

The Departments of Agriculture and Interior concur in this proposal.

SEC. 305. TECHNICAL AMENDMENT TO THE DISTRICT OF COLUMBIA APPRO-PRIATIONS ACT, 2001

This technical amendment corrects a drafting error concerning the certification that the Inspector General of the District of Columbia must make to the Secretary of the Treasury before Federal matching funds can be paid to the Washington Interfaith Network (Network).

Public Law 106-522 authorizes the Secretary of the Treasury to make a payment to the Network to reimburse costs it incurred in carrying out preconstruction activities at the former Fort Dupont Dwellings and Additions. As enacted, the Inspector General of the District of Columbia must certify that "the costs incurred in carrying out the activities were equal to *or less than* the amount of the reimbursement requested" (emphasis added). While the law limits reimbursement of Federal matching funds to $1 million, it neither restricts the costs that the Network may incur nor limits the amount of funds that the Network may raise from private sources and loans. Accordingly, the Network may incur costs that exceed the amount of the Federal reimbursement and pay these costs from private sources and loans. The current provision may inadvertently preclude the Inspector General's ability to make the required certification because the Network could incur costs that exceed the maximum amount of the Federal reimbursement.

Accordingly, this section would amend the law to provide that the Inspector General certify that the Network's incurred costs are "equal to or greater than" the Federal reimbursement to the Network. (Note: The Federal matching funds may not be obligated or expended after December 31, 2001.)

SEC. 306. AMENDMENT TO THE DEPARTMENT OF AGRICULTURE CUSHION OF CREDIT PAYMENTS PROGRAM.

Under the Cushion of Credit Payments Program, borrowers may make voluntary deposits into "cushion of credit" subaccounts established within the Rural Electrification and Telephone Revolving Fund (the Fund) and use these deposits to make their scheduled payments on certain loans made or guaranteed by the Rural Utilities Service (RUS). The borrowers earn interest on these deposits at a rate of 5 percent. All cash balance amounts (obtained from the borrowers'

cushion of credit payments, loan payments, and other sources) held by the Fund bear interest to the Fund at a rate equal to the weighted average rate on outstanding Certificates of Beneficial Ownership (CBOs) issued by the Fund in direct loans that it held.

Treasury's Federal Financing Bank (FFB) purchased CBOs from the Fund and currently holds approximately $4.3 billion of these CBOs, the last of which will mature in 2021. The program's 1987 enabling legislation contains a provision that requires that the amount of interest earned on all of the cash balances held by the Fund be credited to the Fund as an offsetting reduction to the amount of interest paid by the Fund on its CBOs. As a result, the FFB receives lower interest payments on the CBOs that it holds than it contractually is entitled to receive.

To the greatest extent possible, the FFB has used, and continues to use, amounts derived from the 1/8th of 1 percent surcharge on its loans to cover the amount of interest foregone and thereby, to repay in full the loans that it received from the Treasury to finance its purchase of the CBOs. However, the shortfalls in interest received by the FFB as a result of this provision contributed nearly $1 billion to the development of a $3.3 billion FFB accumulated deficit, which was eliminated in 1998 by an appropriation made for that purpose at the Administration's request. Unless the interest reduction provision is repealed, the FFB again may be unable to repay its Treasury loans in full and could run a deficit that will require another appropriation to be eliminated.

The portion of the shortfall in interest received by the FFB equal to the interest earned by the Fund on the cushion of credit balances is used by the Fund to pay the interest due on the cushion of credit subaccounts and to finance grants and zero-interest loans to RUS borrowers to promote rural economic development and job creation projects. The remainder of the shortfall is retained as interest earnings by the Fund. This section would repeal the FFB interest reduction provision and would require that an appropriation be used to pay interest on the cushion of credit subaccounts to the Fund on a monthly basis and to finance the rural development grants and loans. In addition, the Fund would receive interest at the weighted average rate on the Fund's outstanding CBOs only on the cushion of credit balances, not on all cash balances, so that the amount of interest earned by the Fund would equal the amount of interest required to be used to pay interest on the cushion of credit subaccounts and to finance the rural economic development grants and loans. Consequently, there would be no longer be any interest earnings remaining for the Fund to retain. Since the Fund is only a liquidating account for loans that it made or guaranteed prior to enactment of the Federal Credit Reform Act of 1990, it should not retain any of the interest earned on its cash balances.

This Administration proposal has no budget scoring effect and preserves funding for the rural economic development program.

TITLE IV – TAX ADMINISTRATION

SEC. 401. DISCLOSURE OF INFORMATION TO LOCAL AND TRIBAL LAW ENFORCEMENT AGENCIES IN CIRCUMSTANCES OF IMMINENT DANGER OF DEATH OR PHYSICAL INJURY.

Section 6103(i)(3)(B)(i) of the Internal Revenue Code permits the disclosure of return information to Federal or State law enforcement agencies in order to prevent imminent danger or loss of life in cases involving suicide, explosions, bombings, and the like. This section, however,

does not extend to local or tribal law enforcement agencies (such as police and sheriff departments), which are most readily available and best equipped to respond in these circumstances.

The amendment made by this section would amend section 6103(i)(B)(3)(i) to permit the disclosure of this information to local and tribal law enforcement agencies. The following example illustrates the need for this amendment:

> The office of the Treasury Inspector General for Tax Administration (TIGTA) has been investigating an individual for a criminal violation of the tax laws. The subject of the investigation calls the TIGTA Special Agent and tells her that her investigation has led him to want to commit suicide. He tells her that he is calling her so that when his body is found, she will know that it was her investigation that led him to kill himself. Under current law, the Special Agent would not be able to disclose the suicide threat to the local police department that could intervene to help prevent the subject from killing himself. Current law would permit the Special Agent to call the State police, but they usually would not be in a position to intervene.

SEC 402. RATE OF PAY FOR THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.

This section would amend 5 U.S.C. 5315 to include the Treasury Inspector General for Tax Administration (TIGTA) within the list of positions compensated at level IV of the Executive Schedule. The 1998 law establishing the TIGTA position inadvertently omitted a provision governing compensation for the position. All department-level Inspectors General, including the Treasury Inspector General, are compensated at level IV of the Executive Schedule.

TITLE V – FINANCIAL INSTITUTIONS

SEC. 501. CONFORMING REFERENCES TO SERVICE COMPANIES.

This section updates obsolete references in the Home Owners' Loan Act (HOLA) to "service corporations." The Examination Parity and Year 2000 Readiness for Financial Institutions Act (Pub. L. No. 105-164 (1988)) used the term "service company" instead of "service corporation" when it added sections 5(d)(7) and (8) to HOLA. This section makes the conforming changes that were inadvertently not included in the 1998 Act.

SEC. 502. CORRECTING INSURANCE CUSTOMER PROTECTIONS STATUTE.

This section makes a technical correction to section 47(g) of the Federal Deposit Insurance Act, which was added by GLBA section 305. Section 47 requires the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision (OTS), and the Board of Governors of the Federal Reserve to publish insurance customer protection regulations. Through a drafting oversight, Treasury's OTS was omitted from the list of the federal banking agencies in section 47(g). The amendment made by this section corrects this oversight.

SEC. 503. CORRECTING HOME OWNERS' LOAN ACT CAPTIONS.

This section corrects the captions for sections 4(a) and 5 of HOLA.

Section 4 provides for OTS supervision of both Federal and State savings associations insured by the FDIC and imposes various limits on their activities. Subsection (a) requires the OTS Director to oversee these Federal and State savings associations, issue appropriate regulations, and encourage them to provide credit for housing safely and soundly. To eliminate confusion over its scope, this section amends the caption to read "General Responsibilities of the Director."

Section 5 establishes rules that apply only to Federal savings associations in some cases and to Federal and State savings associations in others. To eliminate confusion over its scope, this section amends the heading to read "Savings Associations."

SEC. 504. CONFORMING AMENDMENT TO RESTATE THRIFT SMALL BUSINESS INVESTMENT AUTHORITY IN HOLA.

This section amends section 5(c)(4)(D) of the HOLA to restate recently-enacted statutory authority for Federal savings associations to invest in small business investment companies (SBICs) and entities established to invest solely in SBICs. Savings associations are subject to an aggregate 5 percent of capital limit on such investments. The Consolidated Appropriations Act, 2001, gave savings associations this authority by enacting a new section 302(b)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 6882(b)(2)). Section 302(b)(2) overrides the existing section 5(c)(4)(D) which sets forth obsolete authority related to investments in SBICs. This amendment removes possible confusion by replacing the obsolete HOLA provision with a restatement of current law.

SEC. 505. INTERAGENCY DATA SHARING.

Section 727 of GLBA expressly authorized the Board of Governors of the Federal Reserve System to provide confidential supervisory information concerning an examined entity to another supervisory authority, an officer, director, or receiver of the examined entity, or any other person. Giving this express authority only to the Fed has raised issues about whether the other Federal banking agencies have the authority to share this information without a similar statute. This technical amendment resolves that ambiguity and provides the same authority for all of the Federal banking agencies.

SEC. 506. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

This section gives the Federal banking agencies the authority to prohibit a person convicted of a crime involving dishonesty or a breach of trust from participating in the affairs of an uninsured national or State member bank or uninsured branch, agency, or commercial lending company of a foreign bank. Under current law, the ability of the banking agencies to keep these "bad actors" out of depository institutions applies only to insured depository institutions. This amendment extends the prohibition authority to uninsured national and state member banks and uninsured offices of foreign banks. The amendment is necessary to provide for the safe and sound operations of these institutions.

SEC. 507. AUTHORITY OF THE COMPTROLLER OF THE CURRENCY IN REMOVAL ACTIONS.

Section 8(e)(4) of the Federal Deposit Insurance Act provides procedures for the removal of an

institution-affiliated party from office or participation in the affairs of an insured depository institution. Among other things, with respect to national banks, this paragraph requires the OCC to certify the findings and conclusions of an Administrative Law Judge to the Federal Reserve for its determination whether a removal order will be issued. This amendment would remove this certification and Fed approval process.

The present system stems from historical decisions made by Congress on circumstances that are no longer applicable. Originally, the role of the OCC in removal cases was to certify the facts of the case to the Federal Reserve. The Federal Reserve then made the decision to pursue the case and made the final agency decision. At that time, the Comptroller was a member of the Federal Reserve Board and therefore participated in the Board's final removal decision. However, Congress later removed the Comptroller from the Federal Reserve Board and gave the OCC the authority to issue suspensions and notices of intention to remove.

The Treasury, OCC, and the Federal Reserve strongly concur in this technical amendment, which removes an obsolete provision of law and vests the Comptroller with the same removal authority as the other Federal banking agencies.

SEC. 508. AMENDMENT TO BRANCH CAPITAL REQUIREMENTS.

Section 5155 of the Revised Statutes requires a national bank, in order to establish an intrastate branch in a State, to meet the capital requirements imposed by the State on State banks seeking to establish intrastate branches. This technical amendment would repeal this obsolete capital requirement, which is not necessary for safety and soundness. Branching restrictions are already imposed under other provisions of law to limit the operations of a bank if it is in troubled condition (*see* 12 U.S.C. 1831o(e)).

SEC. 509. TECHNICAL AMENDMENT TO THE NATIONAL BANK CONSOLIDATION AND MERGER ACT.

This section is a technical amendment to clarify that the requirement to publish a notice for shareholders in the case of a consolidation or merger of a national bank with another bank located within the same State may be waived by the Comptroller in the case of an emergency situation ***or*** by unanimous vote of the shareholders of the national or State bank. The current statute inadvertently omits the word "or" in describing the alternatives for waiving the shareholder notice publication requirement. This technical amendment clarifies the intent of the statute and removes any ambiguity as to its meaning.

TITLE VI – ELIMINATING AND STREAMLINING REPORTING REQUIREMENTS

SEC. 601. ELIMINATING ANNUAL REPORT CONCERNING GOVERNMENT SECURITIES BROKERS AND DEALERS.

This section eliminates an annual report to Congress under 31 U.S.C. 3121 *note* which requires the Secretary of the Treasury to report on exceptions granted to a government securities broker or dealer from the statutory prohibition on favored treatment under the government securities auction rules. Because the law provides that no broker or dealer is to receive favorable treatment not generally available to other government securities brokers or dealers unless the Secretary determines such treatment is necessary, appropriate, in the public interest, and designed to minimize anticompetitive effect, and the policy is to treat all auction participants fairly and evenhandedly, the report of exceptions granted is not necessary. There have been no exceptions granted since 1993 when this provision went into effect, and Treasury has consistently reported in the negative.

SEC. 602. ELIMINATION OF REPORTS CONCERNING GOVERNMENT SECURITIES AUCTIONS.

Subsection (a) This section eliminates an annual report by the Secretary of the Treasury concerning material violations or suspected material violations of regulations relating to Treasury auctions and other offerings of securities upon the issuance of such securities by Treasury. There have been no material violations of the auction rules since the enactment of this requirement. Treasury has taken numerous steps since this requirement was first put in place to assure compliance with auction rules, including on-site visits with auction participants combined with ongoing and extensive education and compliance training programs which remain effective in maintaining the integrity of the auction process.

Subsection (b) repeals the requirement that Treasury notify Congress at the time of implementing significant modifications to the government securities auction process. This section would eliminate the notice. There have been no significant modifications since 1993 when this provision went into effect that have been reported to Congress. Important modifications to auction procedures would be announced publicly and, if they involve an auction rule, would be the subject of a rulemaking published in the *Federal Register*.

SEC. 603. ELIMINATION OF ANNUAL RESOLUTION FUNDING CORPORATION REPORT.

This section eliminates an annual report to Congress required under 12 U.S.C. 1441b(i) on the operations, budget, receipts, and expenditures of the Resolution Funding Corporation (RFC). The information provided by the report is duplicated by the provision to Congress of similar financial information on the RFC required under the Chief Financial Officers Act (Public Law 101-576).

SEC. 604. ELIMINATION OF ANNUAL REPORT CONCERNING THE PUBLIC DEBT AND THE FEDERAL FINANCING BANK.

This section eliminates an annual report to Congress required under 31 U.S.C. 3130(a) on the levels, maturity structure, ownership, interest costs, and amortization schedule of the public debt and on receipts of the Federal Financing Bank. Some of the information duplicates information available in the President's budget, and elsewhere, while other information required to be

provided (for example, "net public debt" expressed on a "current services basis") does not correspond to standard terms used in the budget and elsewhere, and is therefore confusing.

SEC. 605. MODIFICATION OF ANNUAL REPORTS ON EXCISE TAX FUNDS.

This section eliminates the annual reporting requirements for several excise tax funds, including: Airport and Airway Trust Fund (26 U.S.C. 9602(a)); Aquatic Resources Trust Fund (26 U.S.C. 9602(a)); Black Lung Disability Trust Fund (26 U.S.C. 9602(a)); Harbor Maintenance Trust Fund (26 U.S.C. 9602(a)); Highway Trust Fund (26 U.S.C. 9602(a)); Inland Waterways Trust Fund (26 U.S.C. 9602(a)); Leaking Underground Storage Tank Trust Fund (26 U.S.C. 9602(a)); Hazardous Substance Trust Fund (26 U.S.C. 9602(a)); Oil Spill Liability Trust Fund (26 U.S.C. 9602(a)); and Vaccine Injury Compensation Trust Fund (26 U.S.C. 9602(a)). This reporting requirement is now satisfied by publishing the required reports in an issue of the quarterly Treasury Bulletin, which is sent to the President of the Senate and the Speaker of the House. Treasury no longer sends the separate reports on each excise tax fund to Congress. The Treasury Bulletin is also available to the public on the Financial Management Service's Internet site.

SEC. 606. MODIFICATION OF ANNUAL REPORT ON URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING TRUST FUND.

This section eliminates the annual reporting requirement on the Fund under 42 U.S.C. 2297g(b)(1)). This reporting requirement is now satisfied by publishing the required report in an issue of the quarterly Treasury Bulletin, which is sent to the President of the Senate and the Speaker of the House. Treasury no longer sends the separate report to Congress. The Treasury Bulletin is also available to the public on the Financial Management Service's Internet site.

SEC. 607. MODIFICATION OF SEMIANNUAL REPORT ON UNFUNDED HIGHWAY AUTHORIZATIONS.

This section eliminates the semiannual reporting requirement under 26 U.S.C. 9503(d)(6), for a report estimating the amount which would be the unfunded highway authorizations at the close of the next fiscal year, and net highway receipts for 24-month period beginning at close of such fiscal year. This reporting requirement is now satisfied by publishing the required semiannual report in two issues of the quarterly Treasury Bulletin, which is sent to the President of the Senate and the Speaker of the House. Treasury no longer sends the separate semiannual reports to Congress. The Treasury Bulletin is also available to the public on the Financial Management Service's Internet site.

SEC. 608. ELIMINATION OF REPORTS CONCERNING FOREIGN CURRENCY.

This section eliminates the quarterly reports required under 31 U.S.C. 5315 on foreign currency, based on weekly, monthly and quarterly surveys, covering foreign exchange holdings of large foreign exchange participants and some U.S.-based banks and non-bank financial entities and foreign banks' U.S. subsidiaries. Neither the Treasury's Market Room nor the Federal Reserve Board of New York's (FRBNY) Markets Group finds that the report contains useful market information. The currency coverage of the report is limited to the major currency pairs and does not capture currency positions in emerging markets. The reporting requirement is based on respondents' gross positions, and this does not ensure that the respondents with large net positions, with the greatest potential to move markets, will report at all. The reports are not globally comprehensive, as only U.S. institutions and U.S. branches of foreign institutions, are

covered. In addition, there is no means to guarantee consistency among different respondents' reports. Finally, there are costs involved for the Treasury, which taps a permanent indefinite appropriation to reimburse FRBNY for collecting the data, and for the respondents to prepare their report on a weekly, monthly, and quarterly basis.

SEC. 609. MODIFICATION OF SEMIANNUAL REPORT UNDER THE PRESIDENTIAL PROTECTION ASSISTANCE ACT.

Public Law 94-524 requires a seminannual report to the Congress on expenditures under the Presidential Protection Assistance Act. This section would change the frequency of the reporting requirement from semiannually to annually. The preparation of the report is very labor intensive, requiring that a large amount of data be collected, compiled, collated and presented. The objective of the mandated reporting could be more efficiently achieved by extending the reporting period to one year.

SEC. 610. ELIMINATION OF ANNUAL REPORT OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES.

This section eliminates the annual report to Congress on international financial institutions required by section 1701 of the International Financial Institutions Act (22 U.S.C. 262r) and section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Pub. L. 105-277). Much of the information in this annual report is available on the institutions' Internet sites or in materials such as the annual justification for appropriations for Treasury International Programs submitted to the Congress.

SEC. 611. ELIMINATION OF REPORTS ON POLICIES, OPERATIONS AND MANAGEMENT OF INTERNATIONAL FINANCIAL INSTITUTIONS.

This section eliminates several reports and a requirement to notify Congress:

Subsection (a) repeals subsections (a) and (b) of section 803 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Pub. Law 106-429). Section 803(a) requires an annual report by the General Accounting Office (GAO) on the sufficiency of audits of the financial operations of each multilateral development bank (MDB) conducted by persons or entities outside such bank. The GAO will submit a report in 2001, and a one-time report by the GAO is adequate. Annual GAO reporting would provide minimal added value.

Section 803(b) requires an annual report on actions taken by recipient countries of MDB assistance to strengthen governance and reduce the opportunity for bribery and corruption, and how certain MDB-financed projects contribute to the eventual graduation from reliance on concessionary terms and international development assistance. Much of the content of this report is publicly available on the Internet sites of the MDBs.

Subsection (b) nullifies a requirement contained in Conference Report 106-977 that the Congress be notified if certain loans, community financing, cost sharing, or cost recovery mechanisms involving user fees are approved by any MDB or the International Monetary Fund (IMF). The criteria for the notification request under the Conference Report have not materialized.

Subsection (c) repeals the report on trade conditionality in the banks and IMF codified at 22

U.S.C. 286gg(c)(2). This report is discretionary, based on a series of conditions being met, and requires a determination by the United States Trade Representative (USTR). The criteria for reporting under this section have not materialized.

Subsection (d) repeals the provision in the International Financial Institutions Act requiring an annual report on (1) the success of the U.S. Executive Director at the IMF in influencing the IMF to adopt internal reforms and to push for various reforms in borrowing countries and (2) the progress made by the IMF in adopting and implementing policies specified in section 803(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Pub. Law 106-429). Much of the content of this report can be found on the IMF's Internet site.

Subsection (e) repeals the provision in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Pub. Law 106-429) that requires an annual report on the efforts of the heads of each Federal agency and the U.S. Executive Directors of the international financial institutions on efforts to make full use of American resources, including commodities, products, and services for assistance provided under the referenced statute. Much of the information is already publicly available.

Subsection (f) repeals the provision in the Foreign Operations Appropriations Act, 1999, requiring quarterly reports on new IMF arrangements (and augmentations to existing arrangements) during the previous quarter, identifying separately those with certain terms. This information is already publicly available on the IMF's Internet site.

Subsection (g) repeals subsections (b) and (e) of section 504 of Public Law 106-113. Section 504(b) requires quarterly reports on the costs and benefits of U.S. participation in the IMF and the valuation of the gains or losses on the U.S. reserve position in the IMF. Several reports have already been submitted. Additional reports would be of limited value because U.S. financial engagement with the IMF is based on an exchange of assets. Therefore, the cost or benefit does not change significantly, and changes that do occur are primarily the result of fluctuations in the exchange rate.

Section 504(e) requires annual reports by the GAO on the extent to which the practices of the I MF are consistent with U.S. policies in Federal law concerning the IMF. In January 2001, the GAO stated in its first such report that "Treasury has instituted a systematic process for applying legislative mandates concerning the Fund to individual countries, based on their economic circumstances." This system remains in place and continued annual reports would provide little new information.

SEC. 612. ELIMINATION OF REPORTS ON FOREIGN SALES AND POSSESSIONS CORPORATIONS.

This section eliminates reports on foreign sales and possessions corporations, for which the underlying provisions of the Internal Revenue Code have been repealed.

SEC. 613. MODIFICATION OF REPORTS UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.

Treasury is responsible for preparing numerous separate semiannual Presidential reports under section 204(c) of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1703(c)), relating to actions taken in response to unusual and extraordinary threats, originating

in whole or in substantial part from outside the United States, to the national security, foreign policy or economy of the United States. This section would change the frequency of the reporting requirement under section 204(c) from semiannually to annually. Among the reports affected are: the Angola (UNITA) Emergency Report, the Western Balkans Emergency Report, the Burma Emergency Report, the Conflict Diamonds (Sierra Leone and Liberia) Report, the Iran Emergency Report I (1979), the Iran Emergency Report II (1995), the Iraq Emergency Report, the Libya Emergency Report, the
Columbian Narcotics Traffickers Emergency Report, the Highly Enriched Uranium Emergency Continuation Report, the Sudan Emergency Report, and Taliban (Afghan) Emergency Report, the Middle Eastern Terrorism Emergency Report, and the Yugoslavia Combined (Serbia and Montenegro/Kosovo/Milosevic) Emergency Report.

SEC. 614. ELIMINATION OF REPORTS CONCERNING FOREIGN TRADE PROJECTIONS.

This section amends section 163 of the Trade Act of 1974 (19 U.S.C. 2213) by repealing the requirement that the Secretary of the Treasury and the USTR jointly prepare an annual trade projection report. This report, prepared mainly by Treasury with a short section by the USTR, provides a brief review of global economic developments and their relevance for U.S. trade. The report should be eliminated because it duplicates the coverage of, but provides much less information than, the annual International Economic and Exchange Rate Reports, each of which is updated six months later.

TITLE VII – DISTRICT OF COLUMBIA RETIREMENT FUNDS TECHNICAL CORRECTIONS

SEC. 701. ABOLISHMENT OF THE FEDERAL SUPPLEMENTAL DISTRICT OF COLUMBIA PENSION FUND AND TRANSFER OF ITS ASSETS TO THE DISTRICT OF COLUMBIA FEDERAL PENSION LIABILITY TRUST FUND.

This section abolishes the Federal Supplemental District of Columbia Pension Fund (Supplemental Fund) and transfers its assets and functions to the existing District of Columbia Federal Pension Liability Trust Fund (Trust Fund).

Maintaining two separate funds with identical investment requirements for the purpose of making Federal benefit payments results in duplicative reporting requirements, and increased management and administrative expenses. For example, the existence of two funds means that both are subject to annual actuarial, audit, and financial reporting requirements, and both are presented in the budget as separate accounts when their purposes are identical. Maintaining one fund will streamline and improve the process for making Federal benefit payments and will provide a simpler and clearer presentation of the DC pension program in the Federal budget.

Both the Supplemental Fund and the Trust Fund were established by the Balanced Budget Act of

1997 when the Federal Government assumed responsibility for certain pension liabilities of the of the District of Columbia. Most assets of the District of Columbia Police Officers and Fire Fighters Retirement Fund and the District of Columbia Teachers Retirement Fund were transferred to the Trust Fund for the purpose of making federal benefit payments to District police officers, fire fighters, and teachers for service accrued on or before June 30, 1997. The assets transferred consisted of a wide variety of private and public securities, and could continue to be invested in private securities and any other form of investment deemed appropriate by the Secretary.

The Supplemental Fund was established to receive the annual payment required to be made by the Secretary from the General Fund of the Treasury to amortize the original unfunded liability assumed from the District of Columbia and annual gains and losses. Unlike the Trust Fund, the assets of the Supplemental Fund were required to be invested in public debt securities.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 required the Secretary to invest the assets of the Trust Fund in public debt securities notwithstanding the provisions of the BBA to the contrary. As a result, both funds are now required to be invested in the same type of assets. This statutory change eliminated the primary reason for creating separate funds, and the Trust Fund and the Supplemental Fund should have been combined at that time.

This section also amends the BBA and the District of Columbia Code to reflect the termination of the Supplemental Fund.

SEC. 702. CLERICAL AND CONFORMING AMENDMENTS.

This section makes nonsubstantive clerical and conforming amendments to reflect the termination of the Supplemental Fund.

TITLE VIII – COINAGE TECHNICAL AMENDMENTS

SEC. 801. ACQUISITION OF SILVER.

Section 5116(b)(2) of title 31, United States Code, requires the Secretary of the Treasury to obtain silver for minting the American Eagle silver bullion dollar coin authorized by 31 U.S.C. 5112(e) by purchase from stockpiles established under the Strategic and Critical Minerals Stock Piling Act 50 U.S.C. 98 *et seq.*). At the current rate of production of this coin the stockpiles are expected to be depleted before the end of calendar year 2002.

This section amends section 5116(b)(2) to authorize the Secretary to obtain such silver from any available source when the stockpiles are depleted. Without this amendment, the very successful American Eagle silver bullion coin program would be discontinued when the stockpiles are depleted.

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/16/2002 9:40:35 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:16-MAR-2002 14:40:35.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No problem. I think Tony ended up moving his off-site meeting to Monday for another reason. Just let us know when you're ready and we'll find a way to get hold of him. Once we talk, he'll send out a confirming e-mail with the search parameters and time estimates.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 3/18/2002 6:42:58 AM
Subject: : FW: Senator Schumer's Draft Terrorism Insurance Legislation

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-MAR-2002 11:42:58.00
SUBJECT:: FW: Senator Schumer's Draft Terrorism Insurance Legislation
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

?
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
03/18/2002 11:42 AM ----------

Kirk Blalock
03/18/2002 11:39:54 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FW: Senator Schumer's Draft Terrorism Insurance
Legislation

the plot thickens.....

-----Original Message-----
From: dbeck@rebny.com [mailto:dbeck@rebny.com]
Sent: Friday, March 15, 2002 3:54 PM
To: timothy.hanford@us.pwcglobal.com; Steve Renna; tedwards@nareit.com;
swechsler@nareit.com; lgoold@realtors.org;
kenneth.j.kies@us.pwcglobal.com;
cnriddle@nmhc.org; Jeff DeBoer; jarbury@nmhc.org; sgross@rhtax.com;
spector@naiop.org; raffaelli@naiop.org; dbeck@rebny.com
Subject: Senator Schumer's Draft Terrorism Insurance Legislation

Attached FYI and to get co sponsors. Comments welcome. D
New York's Senator
CHARLES E. SCHUMER

313 Hart Senate Office Building ? Washington, DC 20510
Phone: (202)224-7433 ? Fax: (202)228-1218

March 15, 2002

Dear Community Leader:

As you may know, the lack of a government backstop for terrorism
insurance is causing insurance rates to skyrocket and, even worse,
preventing new projects from going forward. Last year, we came close to a
legislative solution, but it foundered on the shoals of tort reform.

I have worked with Treasury Secretary O'Neill on a new approach that

should avoid these perils. The approach is a simple one. The federal government will pick up uninsured losses if there is another terrorist attack. I believe it can receive bipartisan support in both houses of Congress.

I am sending you a copy of this proposal. If you support it, please let
your senators and congressmen know. If you have any questions, please contact Kate Scheeler in my Washington office at 202-224-6542. And, as always, please let me know if I can be of help to you in any way.

Sincerely,

Charles Schumer
U.S. Senate
SCHUMER PROPOSAL

SECTION. 1. SHORT TITLE.
This Act may be cited as the "Terrorism Risk Insurance Act of 2002."

SEC. 2. TERRORISM RISK INSURANCE PROGRAM AUTHORIZED.--
The Secretary of the Treasury is authorized to establish a terrorism risk insurance program to compensate U.S. persons for up to $100,000,000,000 in aggregate economic losses of the type that are typically covered under property and casualty insurance policies, including business interruption coverage, resulting from any act of terrorism that occurs on or after the date of enactment of this Act through June 30, 2005. The Secretary shall compensate persons pursuant to this Act only if both the person and the appropriate State insurance commissioner certify that the person has not been able to obtain reasonably priced insurance coverage in the private sector for economic losses resulting from acts of terrorism. The Secretary has discretionary authority to assess premiums on those certified. Any determination of the Secretary as to whether or not to pay compensation, or as to the appropriate amount of any compensation, under this Act shall be final and shall not be subject to judicial review.

SEC. 3. ACT OF TERRORISM DEFINED.--
(a) CERTIFICATION.--The term Aact of terrorism@ means any act that is certified by the Secretary -- (1) to be a violent act or an act that is dangerous to human life, property, or infrastructure; (2) to have resulted in damage within the United States, or to an air carrier (as defined in section 40102 of title 49, United States Code) regardless of where the loss occurs; and (3) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
(b) LIMITATION.--No act or event shall be certified by the Secretary as an act of terrorism if (1) the act or event is committed in the course of a war
declared by the Congress; or (2) losses resulting from the act or event, in the aggregate, do not exceed $5,000,000.
(c) DETERMINATIONS FINAL.-- Any certification of, or determination not to certify, an act or event as an act of terrorism under this paragraph shall be final and shall not be subject to judicial review.

SEC. 4. PAYMENT AUTHORITY.-- This Act constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal
Government to pay up to $100,000,000,000 in compensation for economic losses
determined by the Secretary to be covered under this Act.

SEC. 5. GENERAL AUTHORITIES.--The Secretary shall have the powers and authorities necessary to implement this Act, including authority to

prescribe regulations and procedures. Such regulations and procedures may include, but not be limited to, guidelines for certification and for assessment of premiums. The United States shall have the right of subrogation with respect to any payment made by the United States under this
Act.

Explanation of Proposed Terrorism Risk Insurance Act of 2002

The proposed bill authorizes the Secretary of the Treasury to establish a temporary (3 year) terrorism risk insurance program to protect taxpayers and
reduce economic instability caused by the current lack of affordable commercial property and casualty insurance coverage for terrorism risk in the wake of the September 11 attacks on the World Trade Center and the Pentagon.

The proposed bill recognizes the federal government's interest in stabilizing the economy during this period of uncertainty about possible future terrorist attacks. It offers a simpler, yet effective, alternative to other terrorism insurance bills.

Specifically, the proposed terrorism risk insurance program would --

~ provide compensation to U.S. persons, up to an aggregate cap of $100 billion, for economic losses, of the type typically covered under property and casualty insurance for future acts of terrorism, subject to certification by that person or persons and by the appropriate state insurance commissioner, that the person or persons have been unable to obtain reasonably priced insurance coverage for losses resulting from acts of terrorism

~ limit federal government exposure by narrowly defining the term "act of terrorism," requiring federal certification by the Secretary of the Treasury that an act of terrorism has occurred, limiting the duration of the program and providing a federal right of subrogation with respect to any payment made under the Act

~ provide congressional payment authority for the program, and

~ authorize the Secretary of the Treasury to implement the Act and the program, including authority to prescribe regulations and procedures

Under the proposed bill, the terrorism risk insurance program would provide direct compensation for victims of future terrorist attacks who have been unable to secure private sector insurance coverage. The Secretary of the Treasury would have discretionary authority to charge a premium for such coverage. By providing direct, full compensation for economic losses, the proposed bill: 1) recognizes the responsibility of the federal government to
assure insurance protection against potential future attacks 2) avoids issues raised last year regarding the level and amount of private insurers' retention and 3) reflects what appeared to be the consensus reached last year that taxpayer dollars should not be used to compensate for non-economic
losses, such as punitive damage

Deborah B. Beck
Executive Vice President
Real Estate Board of New York
570 Lexington Avenue, 2nd Floor
New York, N.Y. 10022
Tel (212) 532-3129
Fax (212) 779-8774

Message Sent
To:_____
Matthew Kirk/WHO/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP

From: CN=Christine Ciccone/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward McNally/WHO /EOP@EOP [WHO] <Edward McNally>
CC: Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>
Sent: 3/18/2002 2:43:46 PM
Subject: : Re: Talking points - very rough attempt to add add'l points.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-MAR-2002 19:43:46.00
SUBJECT:: Re: Talking points - very rough attempt to add add'l points.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett M. Kavanaugh
03/18/2002 07:28:55 PM
Record Type: Record

To: Christine Ciccone/WHO/EOP@EOP
cc: gordon d. johndroe/who/eop@eop
bcc:
Subject: Re: Talking points - very rough attempt to add add'l points.

my suggested edits are incorporated in what is below; I have reordered some.

TALKING POINTS ON REQUEST FOR GOVERNOR RIDGE
TO TESTIFY

ú The Administration has taken extraordinary steps to ensure that Congress is extremely well informed about all aspects of homeland security.

- Administration officials with operational and budgetary authority, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on homeland security matters. They also have given members of Congress full briefings.

-- Governor Ridge, although he does not have operational authority, has nonetheless made himself available to meet with Members of Congress. He has repeatedly spoken with leadership and members. In fact he recently met with the Senate caucuses of both parties. He has committed to continue to meet with members of Congress as necessary.

ú The question whether Governor Ridge should testify does not involve Congress' access to or need for information; rather, the sole question is whether Congress -- contrary to decades of practice -- can require members of the President's immediate White House staff, rather than Administration officials with operational authority, to testify before Congress on policy matters.

ú The long-standing position of Presidents of both parties -- a position long accepted by Congress out of due respect for the Presidency -- is that members of the President,s immediate White House staff do not testify before congressional committees on policy matters. The principle

that the President,s closest advisers cannot be forced to testify before Congress is an essential part of the Constitution's separation of powers and protects both the legislative and executive branch of government.

-- This long-standing practice applies to close Presidential advisors. The National Security Advisor, who has a similar coordinating role as Governor Ridge does not testify, nor does The White House Chief of Staff.

-- Administrations of both parties have adhered to this principle for fifty years, except for instances involving substantial allegations of personal or official wrongdoing.

-- The President does not expect Senate staff members to testify or otherwise discuss the confidential advice provided to Members of Congress, nor should the Senate expect the President's staff members to testify before Congress.

ú There are Executive Office of the President officials who regularly testify before Congress. They include statutorily created offices that involve positions that require Senate confirmation such as the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisors, and the Director of the Office of National Drug Control Policy.

ú The Administration will continue to meet legitimate Congressional needs for information consistent with these principles.

From: CN=Christine Ciccone/OU=WHO/O=EOP [WHO]
To: Gordon D. Johndroe/WHO/EOP@EOP [WHO] <Gordon D. Johndroe>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/18/2002 2:08:19 PM
Subject: : Re: Talking points - very rough attempt to add add'l points.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-MAR-2002 19:08:19.00
SUBJECT:: Re: Talking points - very rough attempt to add add'l points.
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

TALKING POINTS ON REQUEST FOR GOVERNOR RIDGE
TO TESTIFY

ú This is not a dispute about withholding information from Congress. The Administration has kept Congress extremely well informed about all aspects of homeland security.

- Administration officials with operational and budgetary authority, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on these matters, or given members of Congress full briefings.

- Governor Ridge does not have operational authority. None-the-less, he has made himself available to meet with Members of Congress. He has repeatedly spoken with leadership and members about his mission. In fact he recently met with the Senate caucuses of both parties. He has met and will continue to meet with members of Congress at the White House and elsewhere.

ú The principle that the President,s closest advisers cannot be forced to testify before Congress is an essential part of the Constitution, s separation of powers and protects both the legislative and executive branch of government. Administrations of both parties have held fast to this principle for fifty years, except for instances involving allegations of personal wrongdoing.

- The National Security Advisor, who has a similar coordinating role as Governor Ridge does not testify, nor does The White House Chief of Staff.

- A similar analogy would be if the executive branch were to request that a Member of Congress, Chief of Staff testify before the executive branch. (Does that make sense? Is there a way to testify?)

ú There are White House officials that regularly testify before Congress. They include statutorily created offices that involve positions that require Senate confirmation such as the Director of the Office of Management and Budget, the Chairman of the Council on Environmental Quality, and the Director of the Office of National Drug Control Policy.

ú The Administration wants to cooperate with Congress without compromising an important constitutional principle. They are seeking ways to meet any legitimate Congressional need for information from Governor Ridge with the President,s need to be able to receive confidential advice.

From: George.Wolfe@do.treas.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/18/2002 4:56:07 PM
Subject: : RE: Political Activity Guidance

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:George.Wolfe@do.treas.gov (George.Wolfe@do.treas.gov [UNKNOWN])
CREATION DATE/TIME:18-MAR-2002 21:56:07.00
SUBJECT:: RE: Political Activity Guidance
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just checking on status, thanks.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, March 11, 2002 9:50 PM
To: George.Wolfe@do.treas.gov
Subject: Re: Political Activity Guidance

hope to circulate draft Wednesday; been a couple of hold ups; thanks
for
patience

(Embedded
image moved George.Wolfe@do.treas.gov
to file: 03/11/2002 01:20:38 PM
pic18728.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Political Activity Guidance

Just checking on status. We want to proceed at Treasury with distributing
guidance and doing briefings, but of course will need to see wh guidance
before we can proceed. I am sure that you are snowed under, but what's your
latest estimate on when your guidance will be distributed? Thanks.

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/19/2002 4:53:00 AM
Subject: : Re: E-mail search

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:19-MAR-2002 09:53:00.00
SUBJECT:: Re: E-mail search
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett--Just noticed your e-mail. Tony and I will head over to your office in a few minutes.

Brett M. Kavanaugh
03/19/2002 09:10:11 AM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc:
Subject: E-mail search

Can we meet at 10?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>
Sent: 3/19/2002 4:03:55 AM
Subject: : Re: extremely revised talking points - still in process
Attachments: P_MXK46003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-MAR-2002 09:03:55.00
SUBJECT:: Re: extremely revised talking points - still in process
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I just FAXed some suggested edits to you.

Christine Ciccone
03/18/2002 10:35:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP,
Wendy J. Grubbs/WHO/EOP@EOP
cc:
Subject: extremely revised talking points - still in process

we would love to add a statistic if you have any.

TALKING POINTS
REQUEST FOR GOVERNOR RIDGE TO TESTIFY

Governor Ridge has been asked to testify before Congress. The Administration believes strongly that the Governor) as one of the President,s closest advisors) should be held to the long-standing practice that precludes such advisors from testifying.

The Administration recognizes the needs of Congress to receive information to perform its constitutional responsibilities. Governor Ridge has offered and held numerous meetings and briefings with Members of Congress. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this long-standing practice (well-established).

Why the Director of Homeland Security should not testify
ú Presidents of both parties, for over 50 years, have taken the position that their closest advisers cannot be forced to testify before Congress on policy matters. This position, based on the Constitution's separation of powers, has long been accepted by the Congress.

ú Governor Ridge is the President,s chief advisor on homeland security issues. As an Assistant to the President, a non-confirmed position, he has no authority to hire or fire, except in his immediate office.

ú The Director of Homeland Security serves as a coordinator between various agencies and departments. The National Security Advisor, who has

a similar coordinating role between agencies does not testify, nor does the White House Chief of Staff.

ú Administrations of both parties have adhered to this position, except for instances involving substantial allegations of personal or official wrongdoing.

ú There are White House officials who regularly testify before Congress. These include statutorily created offices that involve positions requiring Senate confirmation, such as the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisors, and the Director of the Office of National Drug Control Policy.

Meeting Congress, Need for Information
The Administration and Governor Ridge have regularly met with Congress and provided extensive information on homeland security.

ú Administration officials with operational and budgetary authority, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on homeland security matters. They have also provided Members of Congress with periodic briefings.

ú Governor Ridge, although he does not have operational authority, has made himself available to meet with Members of Congress on an ongoing basis. He has repeatedly reached out to the bipartisan leadership of the Senate, and most recently met with the Senate caucuses of both parties.

Moving forward in the future.

ú The Administration and Governor Ridge recognize that the country faces significant issues regarding homeland security and that it will take the cooperation of both branches working together to solve them.

ú The Administration is committed to meeting Congressional needs for information consistent with constitutional principles, and will continue to meet with Members of Congress and brief committees on an ongoing basis.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MXK46003_WHO.TXT_1>

TALKING POINTS
REQUEST FOR GOVERNOR RIDGE TO TESTIFY

Governor Ridge has been asked to testify before Congress. The Administration believes strongly that the Governor – as one of the President's closest advisors – should be held to the long-standing practice that precludes such advisors from testifying.

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- There are White House officials who regularly testify before Congress. These include statutorily created offices that involve positions requiring Senate confirmation, such as the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisors, and the Director of the Office of National Drug Control Policy.

Meeting Congress' Need for Information

The Administration and Governor Ridge have regularly met with Congress and provided extensive information on homeland security.

- Administration officials with operational and budgetary authority, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on homeland security matters. They have also provided Members of Congress with periodic briefings.

- Governor Ridge, although he does not have operational authority, has made himself available to meet with Members of Congress on an ongoing basis. He has repeatedly

reached out to the bipartisan leadership of the Senate, and most recently met with the Senate caucuses of both parties.

Moving forward in the future.

- The Administration and Governor Ridge recognize that the country faces significant issues regarding homeland security and that it will take the cooperation of both branches working together to solve them.

- The Administration is committed to meeting Congressional needs for information consistent with constitutional principles, and will continue to meet with Members of Congress and brief committees on an ongoing basis.

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Wendy J. Grubbs/WHO /EOP@EOP [WHO] <Wendy J. Grubbs>
Sent: 3/19/2002 5:40:05 AM
Subject: :
Attachments: P_14R46003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-MAR-2002 10:40:05.00
SUBJECT::
TO:Christine Ciccone ( CN=Christine Ciccone/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Wendy J. Grubbs ( CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is basically Christine's version from 1/2 hour ago. I have
incorporated minor edits on p. 1, especially at the top, and some drawn
from Robert Delahunty's thoughts. In particular, please see the bullet
point which has been added at the bottom of page 2. Brett, Christine and
Wendy -- I leave it to your judgment whether this is the time to add this
point to the mix. How concerned are we that a subpoena could issue SOON?
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_14R46003_WHO.TXT_1>
```

TALKING POINTS
REQUEST FOR GOVERNOR RIDGE TO TESTIFY

Governor Ridge has been asked to testify before Congress. The Administration believes strongly that the Governor, as one of the President's closest policy advisors, should adhere to the long-standing practice under which such close Presidential advisors – based on the Constitution's separation of powers -- do not testify before Congress.

The Administration recognizes the needs of Congress to receive information to perform its constitutional responsibilities. Governor Ridge has offered and held numerous meetings and briefings with Members of Congress. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this long-standing practice.

Why the Director of Homeland Security should <u>not</u> testify:

- Presidents of both parties, for at least 50 years, have taken the position that their closest advisers cannot be forced to and ordinarily will not testify before Congress on policy matters. This shared respect for the Constitution's separation of powers provisions has long been accepted by the Congress.

- Governor Ridge is the President's chief policy advisor on homeland security issues. As an Assistant to the President, a non-confirmed position, he has no authority other than his role as a policy advisor who makes recommendations to the President. He has, for example, no authority to hire or fire, except in his immediate office.

- The Director of Homeland Security also serves as a coordinator between various agencies and departments. The National Security Advisor, who has a similar coordinating role between agencies, does not testify, nor do the White House Chief of Staff, the Counsel to the President, and other officials.

- Administrations of both parties have adhered to this position, except for instances involving substantial evidence of personal or official wrongdoing.

- The White House office is one component within the Executive Office of the President (EOP). Certain other EOP agencies regularly testify before Congress; these include statutorily created offices that involve positions requiring Senate confirmation, such as the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisors, and the Director of the Office of National Drug Control Policy.

Meeting Congress' Need for Information

- The Administration and Governor Ridge have regularly met with Congress and provided extensive information on homeland security.

- Governor Ridge took the oath of office on October 8, 2001. Since that time Governor Ridge and his staff have held over 100 meetings with Members of Congress and staff, and briefed various committees in the House and Senate. In addition, he has repeatedly reached out to the bipartisan leadership of the Senate, and most recently met with the Senate caucuses of both parties.

- During this short period of time, Governor Ridge has been working on important homeland security issues such as Border Reorganization, the Threat Alert System, bioterrorism, food safety, and helping to ensure security at home at events such as the Olympics and the Super Bowl.

- Governor Ridge does not have operational or budget authority over any federal agency except his own office within the White House. The Threat Alert System is an example of an initiative that the Governor coordinated with various agencies which was ultimately turned over to DOJ for a period of comment, and DOJ will handle the comments on and the actual operation of the program.

- Administration officials with operational and budgetary authority, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on homeland security matters. They have also provided Members of Congress with periodic briefings.

Moving forward in the future.

- The Administration and Governor Ridge recognize that the country faces significant issues regarding homeland security and that it will take the cooperation of both branches working together to solve them.

- The Administration is committed to meeting Congressional needs for information consistent with the principle of separation of powers.

- Governor Ridge looks forward to continuing to meet with Members of Congress, the __ committees with jurisdiction over homeland security, and brief committees on an ongoing basis.

- The Administration continues to seek to cooperate with Congress without compromising an important constitutional principle. It is actively seeking ways to meet any legitimate Congressional need for information from Governor Ridge while respecting the Constitutional protections which ensure the President's ability to receive confidential advice. Throughout modern history, disputes of this kind have generally been settled cooperatively between Congress and the White House, which remains the Administration's goal here. To issue a subpoena rather than to continue to share in these efforts to identify a cooperative resolution would be an unprecedented break with Congressional practice in similarly situated matters.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 3/19/2002 11:55:35 AM
Subject: : Re: question

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-MAR-2002 16:55:35.00
SUBJECT:: Re: question
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Some did -- for example, Beth Nolan (Counsel) and John Podesta both testified on the last-minute pardons. This was after the end of the Administration and it also involved hearings into alleged wrongdoing, which has been a sometime exception to the normal rule. Brett, do you know of others during the Clinton years? I think there were some, but again, always as part of scandal oversight.

Kristen Silverberg
03/19/2002 04:53:22 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: question

Did any Assts to the Pres testify before Congress during the Clinton Administration? I know that some were deposed, but did any appear in actual hearings?

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/19/2002 12:28:14 PM
Subject: : TIME SENSITIVE: Deadline - COB TODAY - LRM LJM81 - - TREASURY Testimony on Reforming Corporate Disclosure
Attachments: P_XLD56003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-MAR-2002 17:28:14.00
SUBJECT:: TIME SENSITIVE: Deadline - COB TODAY - LRM LJM81 - - TREASURY Testimony on Reforming Corporate Disclosure
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sorry for the delay in getting this, my email was down the whole day.
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/19/2002 05:28 PM ----------

From: Lisa J. Macecevic on 03/19/2002 03:03:27 PM
Record Type: Record

To: justice.lrm@usdoj.gov, CLRM@doc.gov, dol-sol-leg@dol.gov
cc: See the distribution list at the bottom of this message
Subject: TIME SENSITIVE: Deadline - COB TODAY - LRM LJM81 - - TREASURY Testimony on Reforming Corporate Disclosure

The attached testimony is for a hearing tomorrow at 2:00 P.M. before the House Financial Services Committee's Subcommittee on Capital Markets, Insurance, and GSEs. The testimony, while not endorsing a specific bill, endorses a "new, independent regulatory board for auditors, under the SEC, s supervision, to develop standards of professional conduct and competence" (pg. 2). Please return any comments by COB today - Tuesday, March 19th. Thank you.

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LRM ID: LJM81
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, March 19, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on Reforming Corporate Disclosure

DEADLINE: COB TODAY Tuesday, March 19, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached testimony is for a hearing tomorrow at 2:00 P.M.

before the House Financial Services Committee's Subcommittee on Capital Markets, Insurance, and GSEs. The testimony, while not endorsing a specific bill, endorses a "new, independent regulatory board for auditors, under the SEC,s supervision, to develop standards of professional conduct and competence" (pg. 2). Please return any comments by COB today - Tuesday, March 19th. Thank you.

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James J. Jukes
LRM ID: LJM81 SUBJECT: TREASURY Testimony on Reforming Corporate Disclosure
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget

Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

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_____ No Objection

_____ No Comment

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PRF 3/20 testimony before the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

Thank you, Chairman Baker, for the opportunity to testify before your committee on reforming corporate disclosure. The President and Secretary O'Neill are emphatic about the need for change.

Today I will try to answer two questions likely to be on your minds. What's the underlying problem that we need to fix? And how would President Bush's 10-point plan redress that problem?

The underlying problem

The United States enjoys the deepest, most liquid, and most transparent capital markets in the world. Over the past few months, however, we have learned once again not to take the performance of our capital markets for granted. For investors to price risk properly and to allocate capital to the most promising firms, they must have access to reliable information. Nothing could be more important for the long-run health of our economy and for investor protection. Yet the demise of Enron, other confidence-driven financial implosions, and the rash of earnings restatements have recently made us realize that our system of corporate disclosure is not working as well as it should.

The quality of corporate disclosures relative has been eroding for at least a decade relative to the complexity of corporate finance. While our capital markets have been racing along at 100 r.p.m., our accounting and corporate disclosure regime has been crawling along at 10 r.p.m. The gap has just kept widening. The result is misallocation of capital. Every so often, the markets notice a particularly egregious misallocation, and as we have recently witnessed, a financial implosion follows.

What is driving this erosion? One place many would like to point is the Financial Accounting Standards Board as the key formulator of generally accepted accounting principles (GAAP): too slow and too mired in details instead of enunciating broad principles. Those are fair claims but they fail to identify the true culprit: that an ethic in boardrooms and auditing firms too often equates GAAP compliance with adequate disclosure. This ethic sets the bar too low. It encourages corporate executives to prepare, and auditors to certify, financial statements that meet the technical requirements of GAAP but fail to provide investors with a realistic picture of the firm's risk and reward prospects.

The President's plan to restore corporate accountability

For our corporate disclosure regime to work, a company's CEO and its auditors must be made accountable for disclosing the information that a reasonable investor would find necessary to assess the company's value (excepting competitive secrets). The President's 10-point plan would hold corporate executives accountable to the highest standards of conduct.

The President's program is guided by three core principles: first, providing better information to investors; second, making corporate officers more accountable; and, third, developing a stronger, more independent accounting and auditing system.

As the President made clear, and as the Securities and Exchange Commission has recently re-affirmed, mere compliance with GAAP is not enough. Each investor should have access to a true and fair picture of the company, in plain English, and should be promptly informed of unquestionably significant events that affect the condition and prospects of the company. By forcing companies to stop hiding behind GAAP compliance and demanding additional disclosure – by re-defining what satisfies the law – the President's proposals would raise the bar for what constitutes adequate disclosure.

President Bush directed our attention to CEOs because "reform should start at the top." We believe that CEOs should personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures, including their financial statements. Today only the most responsible CEOs sign an attestation like this. The SEC should make sure all do. If a CEO or other corporate officer is guilty of misconduct, the SEC should force him or her to give back any compensation gained thereby. If corporate leaders abuse their power, the SEC should strip them of the right to serve as a director or officer of a public company. And corporate leaders should have to tell investors within two days whenever they buy or sell the company's stock for personal gain.

What about catching CEOs guilty of fraud? We all think existing legal standards and penalties are sufficient and well-honed for this task. Neither the President nor anyone else on his economic team thinks more private litigation would solve the problem of corporate disclosure. Instead, the President has urged the SEC to step up its enforcement against securities fraud.

Finally, the President believes that we need a stronger and more independent auditing and accounting system. To do this, we need a new, independent regulatory board for auditors, under the SEC's supervision, to develop standards of professional conduct and competence. In addition, the SEC needs to exercise more effective and broader oversight of the Financial Accounting Standards Board to ensure that accounting standards are issued more promptly and are more responsive to the needs of investors.

The President also favors two main reforms to bolster the independence of outside auditors. First is making audit committees more accountable. The SEC would issue new guidelines for audit committees to use in deciding whether a non-auditing service would compromise an auditor's integrity. Audit committees would also report their choice of auditor directly to the shareholders. Second, the left hand cannot check the right hand's work. The President would prohibit an outside auditor's providing internal audit services to the same client.

We do think that more extreme rigid rules would impose too high a cost, not on auditors, but on companies and their investors. One example is mandatory rotation of outside auditors. An outside auditor can get to know a client company's people, processes, and problems extremely well. Just understanding the intricacies of a client's business – like accounting for mortgage-backed securities trading – can take a long time. That deep knowledge is why companies often

hire auditors to deliver other services such as tax consulting. A rigid rotation rule would destroy that intellectual capital every so many years, no matter the circumstances. It would also guarantee a company that whenever an outside auditor had finally mastered the company's business, a freshly ignorant auditor would arrive. (The same would be true for mandatory rotation of auditors, a beguiling idea that would in reality often ensure auditor ignorance and impose huge financial burdens on companies.) For the same reasons, we would discourage rigid bans on audit firms providing any non-audit services to the same client. Instead of absolute bans, we would provide regulatory – or perhaps even statutory – guidelines that audit committees would have to apply in judging the independence of their firm's outside auditor.

The reform agenda I've just outlined focuses on government's role. Our focus on government action – what you and we can do – should not blind us to the limits of our role. We in government can raise the legal minimums that public companies' senior executives must meet. But in a society committed to democracy and freedom of choice, government should not be the only source for setting behavioral norms for CEOs. Legal minimums enforced by fines and penalties will only take us so far. Going beyond that – to ever-improving best practices, more efficient financial markets, stricter ethics for our corporate leaders – is a job for the business community itself.

Required legislation

As I canvass the major bills offered here in the House and in the Senate, I am heartened that we will find a number of spots of convergence. We all want to serve the same goals of better corporate disclosure and improved investor protection. And we all know that, even while we strive to improve it, our corporate disclosure regime is the best in the world.

The thoughtful bill that you and Chairman Oxley have offered is the clearest example of the common ground I see. You have called for a public regulatory organization to police the audit profession that closely resembles the President's proposal, as does your call for real-time disclosure of critical events and insider sales. You also would press for fuller disclosure beyond GAAP's limits, such as off-balance sheet items and related-party transactions.

I think we will find common ground on where we will need legislation and where new SEC regulations will suffice. The 1933 and 1934 Acts provide the SEC with tremendous power and flexibility to implement the President's reforms, especially given the substantial consensus between his proposals and the major bills in Congress. And we may find there are specific areas – the need for a self-regulating organization to police the auditing profession – where legislation may be a useful complement to regulatory action.

One area where the SEC will definitely need you to pass legislation is in barring wrongdoers from positions of corporate trust. Under current law, the SEC must first go to court to bar a director or officer guilty of misconduct from serving in such a position again in a public company. The President would urge you to empower the SEC to do so through administrative proceedings (preserving a right of appeal to the courts) – a power much like bank regulators have for bank executives.

I believe that we will resolve even on one of the seemingly most contentious issues – outside auditor's cross-selling other services. Your bill, which most closely parallels the President's plan, would go a little farther than the President would wish. Further inquiry may narrow the distance between us.

Thank you.

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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/19/2002 12:33:01 PM
Subject: : LRM MJR133 - - HOUSING & URBAN DEVELOPMENT Testimony on E-Government and Information Technology Initiatives
Attachments: P_TVD56003_WHO.TXT_1.doc

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From: Marshall J. Rodgers on 03/19/2002 05:21:33 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM MJR133 - - HOUSING & URBAN DEVELOPMENT Testimony on E-Government and Information Technology Initiatives

Attached for your review is HUD testimony for a March 21st hearing before the House Government Reform Committee's Subcommittee on Technology and Procurement Policy on e-government and information technology. OMB, Education, HUD, DOL, NASA, OPM, SBA, and Treasury were invited to testify at this hearing. Please comment by Noon, tomorrow (3/20).

- IT Testimony - 03.21.02.doc

LRM ID: MJR133
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, March 19, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Marshall J. Rodgers
PHONE: (202)395-7813 FAX: (202)395-3109
SUBJECT: HOUSING & URBAN DEVELOPMENT Testimony on E-Government and Information Technology Initiatives

DEADLINE: Noon Wednesday, March 20, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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LRM ID: MJR133 SUBJECT: HOUSING & URBAN DEVELOPMENT Testimony on E-Government and Information Technology Initiatives
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_____ Concur

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Statement of
Debra D. Stouffer
Program Manager, Federal Enterprise Architecture Program
and
Deputy Chief Information Officer for IT Reform,
U.S. Department of Housing and Urban Development

before the

Subcommittee on Government Management, Information, and Technology
Committee on Government Reform
House of Representatives

March 21, 2002

REV_00142098

Mr. Chairman and Members of the Subcommittee. On behalf of Secretary Mel Martinez, I thank you for the opportunity to discuss the Department of Housing and Urban Development's (HUD) ongoing initiative to improve the effectiveness and cost efficiency of Departmental programs through the development and deployment of an enterprise-wide architecture. I will limit my remarks to enterprise architecture at HUD, and the need for continued Congressional and OMB support for enterprise architecture development. I will leave it to Mark Forman, Associate Director for Information Technology and E-Government with the Office of Management and Budget, to discuss efforts to develop a Federal Enterprise Architecture.

I serve as HUD's Deputy Chief Information Officer (CIO) for Information Technology (IT) Reform, and I Co-chair the Federal CIO Council's Committee on Best Practices. In early February 2002, I accepted a temporary detail as Program Manager for the Federal Enterprise Architecture Program.

ENTERPRISE ARCHITECTURE AT HUD. Let me first discuss HUD's approach to enterprise architecture. At one time, HUD's IT environment consisted of more than 200 stovepipe systems and databases conceived and developed independent of each other. Many systems carried out redundant processes, relied on obsolete technology, contained incompatible data and were incapable of supporting enterprise-wide decision making. HUD completed initial development of an Enterprise Architecture Management Process, a baseline Architecture, and a strategic Target Architecture for Grants and Financial business functions in January 2001. Through the current leadership at HUD, the department continues the process set forth by previous administrations toward achieving a federal enterprise architecture.

The enterprise architecture development process began with a series of in-depth workshops with key program and IT officials. These sessions clarified HUD business functions and processes, and the applications and technologies in use across the enterprise. HUD also developed a dynamic, web-based tool to track and analyze the layers of its enterprise architecture, and the relationships between those layers. This Enterprise Architecture Management System (EAMS) now serves as the repository for the information that defines HUD's baseline architecture and is facilitating the development of a target architecture. The data in EAMS is helping to identify promising opportunities where collaboration, data sharing, and process simplification can lead to improved productivity, efficiency and effectiveness in service delivery. Because of HUD's success, EAMS is currently being used or evaluated by approximately ten other Federal organizations.

HUD's Enterprise Architecture is beginning to drive its IT Capital Planning and Investment Management Process. The selection of initiatives to be included in the Department's IT portfolio is based upon thorough business cases that include several architecture-related considerations, including:

- Is the proposed initiative an Enterprise Solution that moves us closer to our near-and long-term target environments?

- Is the proposed initiative designed to allow data to be shared across the organization?
- Will the initiative consolidate or eliminate redundant systems and infrastructure?
- Does the proposed initiative reuse existing components and infrastructure?
- Does the hardware and software to be used comply with existing and target agency standards?

As a result of HUD's enterprise-wide approach to IT investment management, the Department is now pursuing several cross-program, enterprise-wide, or cross-government initiatives. For example, Native EDGE is cross-government office and internet portal led by HUD, with 17 partnering agencies. It includes a call center and resource library for Native American small businesses and community development practitioners. The site also contains a publications clearinghouse, business partner links, and a technical assistance information center.

A second example is HUD's Empowerment Zone / Enterprise Community Software. This suite of software provides a full range of services to HUD business partners, communities, and the public from the program selection phase to post-award performance reporting. It permits application, selection and performance evaluation for the Empowerment Zone program on-line.

HUD AND E-GOVERNMENT. Let me now discuss HUD's leadership in the area of E-Government. HUD is a leader in the development of E-Government initiatives and continues to be recognized through government and industry's most prestigious awards.

Two examples of HUD E-Government success stories include FHA Connection and the capability to conduct on-line loan auctions. FHA Connection is the application developed by HUD to support electronic commerce between FHA and the community of approved FHA lenders and service providers. Using a single FHA assigned user-id, a business partner can submit official FHA business transactions to a variety of FHA automated systems. In the area of FHA single-family loan origination alone, more than 90 percent of the business transactions processed by HUD's underwriting system come from business partners using the FHA Connection. There are currently 9,000 lenders and 100,000 users of the system.

For HUD's third successful E-Government example, last April 2001, HUD conducted its first web-based loan sale. The $111 million auction was the largest Internet loan sale to date by the U.S. Government. The auctioned loans were originated under the Department's Section 312 Loan Program, which provided funds for the rehabilitation of homes in distressed neighborhoods at below-market rates. The marketing, investor due diligence, and bidding were all conducted on-line. By empowering bidders through an advanced loan trading system, HUD increased bidder interest in the sale, and maximized its sale proceeds.

Because of its leadership in the areas of enterprise architecture and E-Government, HUD is a partnering agency on 15 of the President's E-Government initiatives. In fact, HUD staff worked with OMB and representatives from across the Government to finalize the business cases for several of the 24 E-Government initiatives.

SECURITY. With regards to the security of its IT investments, HUD is also implementing a methodology to comprehensively assess the current HUD and security landscape through its enterprise architecture. With respect to security and privacy, HUD's methodology will make no distinction between those systems that will be used for E-Government initiatives and those that will not. The methodology will guide the Department in identifying sensitive information being collected, and in identifying current agency processes and policies for handling sensitive data throughout the lifecycle. HUD will also begin assessing security measures for applications and technology associated with most-sensitive personal information. In addition, HUD will provide a long-term strategic approach to ensure that the target architecture appropriately addresses security and privacy.

BUDGETARY ISSUES. Finally, let me comment on how the Federal budget process can support the continued development of enterprise architectures. It is true that agencies are making mixed progress in terms of enterprise architecture. Based on my experience at HUD and as Co-Chair of the Best Practices Committee, I believe that it is critical that OMB and Congress continue to place pressure on agencies to make progress in this area. It is also helpful that OMB includes, in agency passback language, specific allocations of funding for enterprise architecture development. Establishing an enterprise architecture requires participation from all agency organizations. Providing, verifying, updating and analyzing the enormous amount of information takes a significant amount of time and requires a widespread, multi-disciplined effort. Continued improvement requires perseverance and the continued support of critical oversight organizations such as Congress and OMB.

Mr. Chairman, thank you for the opportunity to share my thoughts with you today. I would be happy to answer any questions you may have.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/20/2002 4:27:51 AM
Subject: : DOJ investigation cerfitication

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAR-2002 09:27:51.00
SUBJECT:: DOJ investigation cerfitication
TO:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am still concerned that the 3-18-02 memo did not make it to everyone...please see below
---------- Forwarded by H. Christopher Bartolomucci/WHO/EOP on 03/20/2002 09:26 AM ----------

Elizabeth N. Camp
03/20/2002 09:20:18 AM
Record Type: Record

To: Hector F. Irastorza/WHO/EOP@EOP
cc: H. Christopher Bartolomucci/WHO/EOP@EOP
Subject: DOJ investigation cerfitication

Hector -

According to the below email it appears that some of the folks in the Press shop did not recieve this.

Can you make sure they all get one?

Thanks!

Libby
---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 03/20/2002 09:19 AM ----------

Vickie A. McQuade
03/20/2002 09:17:00 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc:
Subject:

As a follow-up to the Administrative Alert we got about the DoJ investigation, the alert mentioned that Ari would receive a memo that would instruct him to complete and sign a certification and produce relevant official documents. He hasn't gotten his, nor has Anne. But the people downstairs got theirs. Do you know the status?

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/20/2002 7:36:17 AM
Subject: : Re: Counsel Ruling re: Political Contributions

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAR-2002 12:36:17.00
SUBJECT:: Re: Counsel Ruling re: Political Contributions
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Tim asked about it at some point, and I gave the memo to him. That was it.

Brett M. Kavanaugh
03/20/2002 12:16:40 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Counsel Ruling re: Political Contributions

I thought you had taken this issue and were contacting state?

Robert W. Cobb
03/20/2002 11:33:22 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Counsel Ruling re: Political Contributions

I had something from state on hatch act requirements. Do you have this in connection with the response you will be giving to Susan?
---------- Forwarded by Robert W. Cobb/WHO/EOP on 03/20/2002 11:32 AM ----------

Susan B. Ralston
03/20/2002 10:56:15 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Counsel Ruling re: Political Contributions

Can you please give Karl a memo about the rules regarding political contributions from Ambassadors?

From:	CN=John Graham/OU=OMB/O=EOP [OMB]
To:	Dinh, Viet <Viet.Dinh@usdoj.gov>
CC:	Trent D. Duffy/OMB/EOP@EOP [OMB] <Trent D. Duffy>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;jay p. lefkowitz/opd/eop@eop [OPD] <jay p. lefkowitz>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;bruce m. lawlor/who/eop@eop [WHO] <bruce m. lawlor>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;philip j. perry/omb/eop@eop [OMB] <philip j. perry>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
BCC:	Donald R. Arbuckle (Donald R. Arbuckle/OMB/EOP [OMB])
Sent:	3/21/2002 8:05:15 AM
Subject:	: Re: Resend: Immigration Enforcement Measures
Attachments:	P_2H466003_WHO.TXT_1.doc; P_2H466003_WHO.TXT_2.doc; P_2H466003_WHO.TXT_3.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John Graham ( CN=John Graham/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:21-MAR-2002 13:05:15.00
SUBJECT:: Re: Resend: Immigration Enforcement Measures
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Trent D. Duffy ( CN=Trent D. Duffy/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jay p. lefkowitz ( CN=jay p. lefkowitz/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bruce m. lawlor ( CN=bruce m. lawlor/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:joel d. kaplan ( CN=joel d. kaplan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
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READ:UNKNOWN
CC:philip j. perry ( CN=philip j. perry/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
BCC:Donald R. Arbuckle ( CN=Donald R. Arbuckle/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Viet:

I can assure expedited OMB review of these rules. However, we request no
background briefings of the press until we have completed OMB review.




"Dinh, Viet" <Viet.Dinh@usdoj.gov>
03/21/2002 10:52:13 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Resend: Immigration Enforcement Measures
```

Dear All,

Commenting on the INS snafu last week, the President said, "So we've got to reform the INS and we've got to push hard to do so. This is an interesting wake-up call for those who run the INS. We are modernizing our system, John, and it needs to be modernized, so we know who's coming in and who's going out and why they're here."

Responding to the President's charge, the Department today is submitting for OMB clearance a number regulatory actions to enhance immigration enforcement. We ask for expedited reviews of these actions, prioritized and described as follows:

1. Interim Rule on Alien Flight Training. This interim rule, developed in consultation with FAA/DOT, implements section 113 of the Aviation Security Act, which requires a security check of aliens and other designated individuals who seek flight training in the U.S.

2. Proposed Rule on Tourist Visas. Currently, B visas are granted for a period of 3-12 months, with a default of 6 months. The proposed rule would change the period to 0-6 months, with 6-month extensions.

3. Interim Rule on Adjustment of Status. This is the Mohamed Atta Rule. Atta was permitted to remain in country and enroll in school while he adjusted his status from a visitor visa to a student visa. This rule would require that such adjustment of status be approved before the putative student may remain and enroll in school.

4. Final Rule on "Surrender of Aliens Ordered Removed from the United States" (INS 1847; RIN 1115-AE82). This rule would impose a legal obligation for aliens in removal proceedings to surrender to the INS when they are finally adjudicated and ordered to be removed. The rule, originally proposed in 1998, would cut down on the numder of abscondees from removal.

For your convenience, attached hereto are one-page summary sheets of each of the above actions. In our judgment, none of the above actions are controversial.

At the start of next week, we will be submitting two additional actions for OMB clearance, as follows:

1. Proposed Rule on SEVIS. This rule would establish the SEVIS system to track student visas, mandated by Congress in 1996. This is the centerpiece of the regulatory reform effort, and may be controversial among colleges and universities, which have previously opposed efforts to control or monitor student visas. However, their public sentiments have changed post-9/11, and the INS has consulted with their representatives in developing the rule.

2. Proposed Rule on In Absentia Removal. This rule would implement a statutory requirement that aliens have an obligation to provide a current address to the INS. The INS will use that address to effect legal notice of removal proceedingsand, if the information is not current or the alien does not appear, removal proceedings can be effected in absentia.

Thank you very much for your attention to this important matter.

Viet Dinh

- NATIONAL SECURITY MODIFICATIONS TO THE B VISA.doc
- PREVENTION OF ENROLLMENT.doc

- SCREENING OF ALIENS AND OTHER DESIGNATED INDIVIDUALS SEEKING FLIGHT TRAINING.doc

Message Sent
To:_____
Edward McNally/WHO/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bruce M. Lawlor/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Philip J. Perry/OMB/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
John Graham/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2H466003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2H466003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2H466003_WHO.TXT_3>

NATIONAL SECURITY MODIFICATIONS TO THE B VISA

Description of proposed regulations to be delivered to OMB

This regulation is a proposed rule promulgated under Sections 214(a) and 248 of the Immigration and Nationality Act (INA). This proposed rule shortens the admission period of B-1 temporary visitors for business and B-2 temporary visitors for pleasure. The proposed rule includes the following changes:

- Currently, the maximum admission period for all B visitors is one year. The proposed rule will reduce the maximum admission period to 6 months.

- Currently, there is a minimum admission period of 6 months for B-2 visitors. The proposed rule will eliminate the minimum admission period.

- Currently, the default period of admission for B visitors is 6 months. The proposed rule will establish a default admission period of 30 days. However, the Immigration and Naturalization Service (INS) will seek to set an admission period for each B visa that is fair and reasonable for the completion of the purpose of the visit.

- Currently, extensions of the period of stay for B visas are routinely granted for six months in most cases, and for one year in a limited set of cases. The proposed rule will set a six month maximum for all extensions and a will establish a presumption against granting extensions. However extensions necessitated by unforeseen circumstances, humanitarian considerations (e.g., medical care), and other situations defined in the proposed rule will escape this presumption.

This proposed rule will not prevent legitimate visitors to the United States from accomplishing the purposes of their visits. Approximately 95% of all B visitors currently depart the country in under 6 months. The intention of the proposed rule is to prevent aliens with ill intent from abusing the leniency of the current B visa rules. 18 of the 19 hijackers of September 11, 2001, entered the United States on B visas, and 9 spent more than 6 months in the country prior to the attack.

After OMB approval, the proposed rule will be published in the Federal Register and will be subject to a 30-day comment period. After public comments are evaluated and any changes are made, the final rule will be published and will become effective after 30 days.

PREVENTION OF ENROLLMENT WITHOUT APPROPRIATE STUDENT STATUS

Description of proposed regulations to be delivered to OMB

This regulation is an interim rule promulgated under Section 248 of the Immigration and Nationality Act (INA). This interim rule amends the Immigration and Naturalization Service (INS) regulations by eliminating the current provision allowing a B-1 (temporary visitor for business) or B-2 (temporary visitor for tourism) nonimmigrant alien for to begin attending school without first obtaining approval of a change of nonimmigrant status.

The terrorist attacks of September 11, 2001, highlighted the need of the INS to maintain greater control over the ability of an alien to change nonimmigrant status once the alien has been admitted to the United States. This interim rule will allow the INS to fully review any request from a B nonimmigrant to change nonimmigrant status to that of full-time student before allowing the alien to enroll in an approved school.

This interim rule will accommodate B-1 or B-2 visitors who have already begun taking classes but have not received approval to change to F or M nonimmigrant student status. The interim rule does not require these aliens to stop taking classes while the INS processes the change of nonimmigrant status request. However, a nonimmigrant admitted in B-1 or B-2 status after the effective date of this interim rule may not enroll in school unless and until the INS has notified the alien that the change of nonimmigrant status application has been approved.

SCREENING OF ALIENS AND OTHER DESIGNATED INDIVIDUALS SEEKING FLIGHT TRAINING

Description of proposed regulation to be delivered to OMB

This regulation is an interim rule to implement Section 113 of the Aviation and Transportation Security Act (ATSA), which was enacted by Congress on November 19, 2001.

This interim rule is intended to make it more difficult for terrorists to be trained as pilots. The rule covers all providers of aviation training who are subject to regulation by the Federal Aviation Administration (FAA), including flight schools, independent flight instructors, training centers, and certified carriers. They are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General.

The rule also establishes a process by which aviation training providers may furnish the required notification. The notification process will involve the completion of a very detailed application and the submission of fingerprints to the Attorney General. The Department of Justice will then conduct a security risk assessment of the flight training candidate. The Attorney General will have 45 days to determine whether the candidate presents a risk to aviation or national security; if the Attorney General does not indicate that the candidate will present such a risk, then the training provider may proceed to train the candidate. However, the Attorney General reserves the right to interrupt training if he later determines that the candidate poses a risk to aviation or national security.

In addition, the rule codifies procedures implemented in a previously published Federal Register Notice that allow aliens who already know how to fly to receive advance consent for their training. The Foreign Terrorist Tracking Task Force has determined that providing further aviation training to this particular group of aliens is not likely to pose an additional risk to aviation or national security.

This rule will be effective immediately upon publication.

From:	CN=John Graham/OU=OMB/O=EOP [OMB]
To:	Dinh, Viet <Viet.Dinh@usdoj.gov>
CC:	Trent D. Duffy/OMB/EOP@EOP [OMB] <Trent D. Duffy>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;jay p. lefkowitz/opd/eop@eop [OPD] <jay p. lefkowitz>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;bruce m. lawlor/who/eop@eop [WHO] <bruce m. lawlor>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;philip j. perry/omb/eop@eop [OMB] <philip j. perry>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
BCC:	Donald R. Arbuckle (Donald R. Arbuckle/OMB/EOP [OMB])
Sent:	3/21/2002 8:05:15 AM
Subject:	: Re: Resend: Immigration Enforcement Measures
Attachments:	P_2H466003_OPD.TXT_1.doc; P_2H466003_OPD.TXT_2.doc; P_2H466003_OPD.TXT_3.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John Graham ( CN=John Graham/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:21-MAR-2002 13:05:15.00
SUBJECT:: Re: Resend: Immigration Enforcement Measures
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Trent D. Duffy ( CN=Trent D. Duffy/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jay p. lefkowitz ( CN=jay p. lefkowitz/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bruce m. lawlor ( CN=bruce m. lawlor/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:joel d. kaplan ( CN=joel d. kaplan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:diana l. schacht ( CN=diana l. schacht/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:philip j. perry ( CN=philip j. perry/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
BCC:Donald R. Arbuckle ( CN=Donald R. Arbuckle/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Viet:

I can assure expedited OMB review of these rules. However, we request no
background briefings of the press until we have completed OMB review.




"Dinh, Viet" <Viet.Dinh@usdoj.gov>
03/21/2002 10:52:13 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Resend: Immigration Enforcement Measures
```

Dear All,

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Thank you very much for your attention to this important matter.

Viet Dinh

- NATIONAL SECURITY MODIFICATIONS TO THE B VISA.doc
- PREVENTION OF ENROLLMENT.doc

- SCREENING OF ALIENS AND OTHER DESIGNATED INDIVIDUALS SEEKING FLIGHT TRAINING.doc

Message Sent
To:_____
Edward McNally/WHO/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
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Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
John Graham/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2H466003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2H466003_OPD.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2H466003_OPD.TXT_3>

NATIONAL SECURITY MODIFICATIONS TO THE B VISA

Description of proposed regulations to be delivered to OMB

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SCREENING OF ALIENS AND OTHER DESIGNATED INDIVIDUALS SEEKING FLIGHT TRAINING

Description of proposed regulation to be delivered to OMB

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This interim rule is intended to make it more difficult for terrorists to be trained as pilots. The rule covers all providers of aviation training who are subject to regulation by the Federal Aviation Administration (FAA), including flight schools, independent flight instructors, training centers, and certified carriers. They are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General.

The rule also establishes a process by which aviation training providers may furnish the required notification. The notification process will involve the completion of a very detailed application and the submission of fingerprints to the Attorney General. The Department of Justice will then conduct a security risk assessment of the flight training candidate. The Attorney General will have 45 days to determine whether the candidate presents a risk to aviation or national security; if the Attorney General does not indicate that the candidate will present such a risk, then the training provider may proceed to train the candidate. However, the Attorney General reserves the right to interrupt training if he later determines that the candidate poses a risk to aviation or national security.

In addition, the rule codifies procedures implemented in a previously published Federal Register Notice that allow aliens who already know how to fly to receive advance consent for their training. The Foreign Terrorist Tracking Task Force has determined that providing further aviation training to this particular group of aliens is not likely to pose an additional risk to aviation or national security.

This rule will be effective immediately upon publication.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/21/2002 9:23:48 AM
Subject: : LRM IKK179 - - TREASURY Report on HR3717 Federal Deposit Insurance Reform Act of 2002
Attachments: P_L8866003_WHO.TXT_1.doc; P_L8866003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAR-2002 14:23:48.00
SUBJECT:: LRM IKK179 - - TREASURY Report on HR3717 Federal Deposit Insurance Reform Act of 2002
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/21/2002 02:23 PM ----------

From: Irene Kho on 03/21/2002 02:23:29 PM
Record Type: Record

To:
cc: See the distribution list at the bottom of this message
Subject: LRM IKK179 - - TREASURY Report on HR3717 Federal Deposit Insurance Reform Act of 2002

Attached is a letter from Treasury to the House Financial Services Committee Chairman and Ranking Member on H.R. 3717. The letter is a follow-up to the Treasury letter commenting on the deposit insurance coverage level, previously circulated under LJM73 on 3/5/02, which was sent to Congress on March 6th. Please respond with any comments by 4:00 PM, Tuesday, March 26th. Thank you.

For your convenience the letter sent on March 6th is also attached.

- treas0048b.doc

LRM ID: IKK179
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, March 21, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Report on HR3717 Federal Deposit Insurance

Reform Act of 2002

DEADLINE: 4:00 PM Tuesday, March 26, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a letter from Treasury to the House Financial Services Committee Chairman and Ranking Member on H.R. 3717. The letter is a follow-up to the Treasury letter commenting on the deposit insurance coverage level, previously circulated under LJM73 on 3/5/02, which was sent to Congress on March 6th. Please respond with any comments by 4:00 PM, Tuesday, March 26th. Thank you.

DISTRIBUTION LIST

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Jeffrey R. Brown
Richard E. Green
James J. Jukes
Lisa J. Macecevic
LRM ID: IKK179 SUBJECT: TREASURY Report on HR3717 Federal Deposit Insurance Reform Act of 2002
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Hitesh Vyas/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
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Jefferson B. Hill/OMB/EOP@EOP
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Rosemarie W. Dale/OMB/EOP@EOP
Rosalyn J. Rettman/OMB/EOP@EOP
WHGC LRM
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K. Philippa Malmgren/OPD/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Lawrence B. Lindsey/OPD/EOP@EOP
Edwina C. Rogers/OPD/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Randall S. Kroszner/CEA/EOP@EOP
Jeffrey R. Brown/CEA/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Lisa J. Macecevic/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_L8866003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_L8866003_WHO.TXT_2>

The Honorable John J. LaFalce
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. LaFalce:

Thank you for your letter of March 6 to Secretary O'Neill concerning whether a higher designated reserve ratio for the insurance fund should accompany an increase in the deposit insurance coverage limit.

It is important to underscore that increasing the coverage limit would raise the volume of reserves that is necessary just to meet the *existing* designated reserve ratio (i.e., the minimum required ratio of reserves to insured deposits, currently 1.25 percent). Recent FDIC estimates indicate that the provisions of H.R. 3717 raising the general coverage limit to $130,000 and retirement account coverage to $260,000 would immediately lower the combined fund reserve ratio by 4-5 basis points as currently uninsured deposits convert to insured status. Over time, as higher limits attract new deposits into the banking system, the reserve ratio could decline in total by 9-10 basis points. The proposed increase in the municipal deposit coverage limit would result in a further decline in the reserve ratio.

An increase in deposit insurance coverage may impose additional costs beyond the reserve dilution cost just described because of its potential to weaken market discipline and increase the level of risk to the FDIC. One way to help offset these costs would be an upward adjustment in the designated reserve ratio (or in the range for this ratio). This would provide greater protection for the insurance fund and taxpayers.

More importantly, though, we see no benefits from an increase in coverage that would justify risking the possibility of greater cost burdens on our banking system. Thus, as Secretary O'Neill confirmed in his recent letter to you on this subject, the Administration believes that the deposit insurance coverage limit should not be changed.

Thank you again for writing. Please let us know if we may be of additional assistance.

Sincerely,

Sheila C. Bair
Assistant Secretary for Financial Institutions

The Honorable John J. LaFalce
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. LaFalce:

Thank you for your recent letter regarding the Administration's views on deposit insurance reform.

The Administration applauds the House Financial Services Committee's efforts to move forward with this important issue. We support several provisions of H.R. 3717 that would accomplish objectives consistent with the recommendations that Assistant Secretary Bair outlined in testimony last year and as re-affirmed in the President's 2003 Budget. Merging the bank and thrift insurance funds would improve the system's capacity to diversify its risks. Allowing the insurance fund reserve ratio to fluctuate within a range and eliminating triggers that could cause sharp changes in premiums would reduce the pricing structure's pro-cyclical bias. Improving the FDIC's premium-setting authority should ensure that institutions with rapid insured deposit growth appropriately compensate the fund while taking into account the past contributions of many institutions to build insurance fund reserves.

However, the Administration continues to believe that the deposit insurance coverage level should remain unchanged. There is no evidence that an increase in the coverage level would promote competition or materially improve the ability of community banks to obtain funds. An increase in coverage would primarily benefit high net worth individuals and do little for the great majority of savers, who have deposit balances far below the current coverage limit. For those with substantial deposits, ample opportunities already exist to obtain FDIC coverage equal to several multiples of $100,000. Moreover, raising coverage could weaken market discipline and increase risk to the FDIC and, ultimately, taxpayers.

Thank you again for writing. We look forward to working with the Congress, the FDIC, and others in the coming year to resolve these and other concerns about proposed legislation and achieve a stronger and fairer deposit insurance system.

Sincerely,

Paul H. O'Neill

cc: The Honorable Michael G. Oxley

[Identical letters sent to the Honorable Spencer T. Bachus and the Honorable Richard H. Baker]

The Honorable Spencer T. Bachus
Chairman
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your recent letter regarding the Administration's views on deposit insurance reform.

The Administration applauds the House Financial Services Committee's efforts to move forward with this important issue. We support several provisions of H.R. 3717 that would accomplish objectives consistent with the recommendations that Assistant Secretary Bair outlined in testimony last year and as re-affirmed in the President's 2003 Budget. Merging the bank and thrift insurance funds would improve the system's capacity to diversify its risks. Allowing the insurance fund reserve ratio to fluctuate within a range and eliminating triggers that could cause sharp changes in premiums would reduce the pricing structure's pro-cyclical bias. Improving the FDIC's premium-setting authority should ensure that institutions with rapid insured deposit growth appropriately compensate the fund while taking into account the past contributions of many institutions to build insurance fund reserves.

However, the Administration continues to believe that the deposit insurance coverage level should remain unchanged. There is no evidence that an increase in the coverage level would promote competition or materially improve the ability of community banks to obtain funds. An increase in coverage would primarily benefit high net worth individuals and do little for the great majority of savers, who have deposit balances far below the current coverage limit. For those with substantial deposits, ample opportunities already exist to obtain FDIC coverage equal to several multiples of $100,000. Moreover, raising coverage could weaken market discipline and increase risk to the FDIC and, ultimately, taxpayers.

Thank you again for writing. We look forward to working with the Congress, the FDIC, and others in the coming year to resolve these and other concerns about proposed legislation and achieve a stronger and fairer deposit insurance system.

Sincerely,

Paul H. O'Neill

cc: The Honorable Michael G. Oxley

[Identical letters sent to the Honorable Richard H. Baker and the Honorable John J. LaFalce]

The Honorable Richard H. Baker
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Baker:

Thank you for your recent letter regarding the Administration's views on deposit insurance reform.

The Administration applauds the House Financial Services Committee's efforts to move forward with this important issue. We support several provisions of H.R. 3717 that would accomplish objectives consistent with the recommendations that Assistant Secretary Bair outlined in testimony last year and as re-affirmed in the President's 2003 Budget. Merging the bank and thrift insurance funds would improve the system's capacity to diversify its risks. Allowing the insurance fund reserve ratio to fluctuate within a range and eliminating triggers that could cause sharp changes in premiums would reduce the pricing structure's pro-cyclical bias. Improving the FDIC's premium-setting authority should ensure that institutions with rapid insured deposit growth appropriately compensate the fund while taking into account the past contributions of many institutions to build insurance fund reserves.

However, the Administration continues to believe that the deposit insurance coverage level should remain unchanged. There is no evidence that an increase in the coverage level would promote competition or materially improve the ability of community banks to obtain funds. An increase in coverage would primarily benefit high net worth individuals and do little for the great majority of savers, who have deposit balances far below the current coverage limit. For those with substantial deposits, ample opportunities already exist to obtain FDIC coverage equal to several multiples of $100,000. Moreover, raising coverage could weaken market discipline and increase risk to the FDIC and, ultimately, taxpayers.

Thank you again for writing. We look forward to working with the Congress, the FDIC, and others in the coming year to resolve these and other concerns about proposed legislation and achieve a stronger and fairer deposit insurance system.

Sincerely,

Paul H. O'Neill

cc: The Honorable Michael G. Oxley

[Identical letters sent to the Honorable Spencer T. Bachus and the Honorable John J. LaFalce]

From: Brett_M._Kavanaugh@who.eop.gov [UNKNOWN]
To: Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/21/2002 11:56:24 AM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett_M._Kavanaugh@who.eop.gov ( Brett_M._Kavanaugh@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:21-MAR-2002 16:56:24.00
SUBJECT:: Re:
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alicia W. Davis ( CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is not permissible.
```

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/21/2002 12:22:43 PM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-MAR-2002 17:22:43.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

where are you?
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/21/2002 1:00:11 PM
Subject: : LRM KCT130 - - VETERANS AFFAIRS Draft Bill on Leasing of Undeveloped Acreage and Unused and Underutilized Buildings of the National Cemetery Administration
Attachments: P_Q4J66003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAR-2002 18:00:11.00
SUBJECT:: LRM KCT130 - - VETERANS AFFAIRS Draft Bill on Leasing of Undeveloped Acreage and Unused and Underutilized Buildings of the National Cemetery Administration
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/21/2002 06:00 PM ----------

From: Kathryn C. Thompson on 03/21/2002 05:56:57 PM
Record Type: Record

To: usdaobpaleg@obpa.usda.gov , ca.legislation@gsa.gov, llr@do.treas.gov
cc: See the distribution list at the bottom of this message
Subject: LRM KCT130 - - VETERANS AFFAIRS Draft Bill on Leasing of Undeveloped Acreage and Unused and Underutilized Buildings of the National Cemetery Administration

The following is LRM ID: KCT130 -- Veterans Affairs Draft Bill on Leasing of Undeveloped Acreage and Unused and Underutilized Buildings of the National Cemetery Administration. The VA draft bill package is attached below in Word format and it consists of five pages.

Please comment on the VA proposal by Close of Business, Wednesday, March 27th. If you do not respond by the deadline, I will assume that you have no objection to the draft bill.

LRM ID: KCT130
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, March 21, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Draft Bill on Leasing of Undeveloped Acreage and Unused and Underutilized Buildings of the National Cemetery Administration

DEADLINE: COB Wednesday, March 27, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the

program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This draft bill would authorize VA to lease undeveloped acreage and unused and underutilized buildings of the National Cemetery Administration (NCA). It also would allow VA to retain the proceeds from NCA leases or agricultural licenses instead of depositing the receipts to the U.S. Treasury.

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Christine Ciccone
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Joel D. Kaplan
Kristen Silverberg
Ingrid M. Schroeder
James J. Jukes
LRM ID: KCT130 SUBJECT: VETERANS AFFAIRS Draft Bill on Leasing of Undeveloped Acreage and Unused and Underutilized Buildings of the National Cemetery Administration
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Kelli A. Hagen/OMB/EOP@EOP
Winifred Y. Chang/OMB/EOP@EOP
Danny A. Ermann/OMB/EOP@EOP
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Elizabeth S. Dougherty/OPD/EOP@EOP
Layton Skelly/OPD/EOP@EOP
Robert Marsh/WHO/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
WHGC LRM
OVP LRM
Joel D. Kaplan/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Q4J66003_WHO.TXT_1>

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, DC 20515

Dear Mr. Speaker:

There is transmitted herewith a draft bill to authorize the Secretary of Veterans Affairs to lease undeveloped acreage and unused and underutilized buildings of the National Cemetery Administration and to retain the proceeds from leases or agricultural licenses with the request that it be introduced and considered for enactment.

Land is the primary asset entrusted to the National Cemetery Administration (NCA), which currently comprises approximately 14,650 acres. Land for burial purposes is developed in ten-year increments using a "just-in-time" approach that carefully monitors depletion of gravesites, projected burial requirements and estimated timing for new construction activities. Additionally, certain sections of many national cemeteries are unsuitable for development into burial sections due to wetlands, rock outcroppings or sloped terrain. Acreage that is unsuitable for burial purposes and land not yet needed for development represents a sizeable asset.

Amending existing law to authorize NCA to enter into lease agreements would provide NCA with more flexibility in finding current uses for land that otherwise would remain idle until it was needed for development. It also would allow buildings that are currently not in use to be leased and by so doing, to be maintained by the lessee. This authority is similar to that of the Veterans Health Administration (VHA).

NCA has authority to execute limited-term agricultural licenses and has done so at certain national cemeteries. The license permits grazing, sod farming or planting rotational crops on unused acreage. These activities directly benefit the cemetery by keeping the land cleared, attractive and well maintained. However, receipts for the use of this land also must be deposited to the U.S. Treasury. Additionally, NCA has historic lodges and other buildings that could generate revenue for the cemetery if NCA were able to retain the proceeds from the lease.

The receipts retained by NCA would assist in maintaining national cemeteries. The money would be deposited in the National Cemetery Administration's Operations and Maintenance Account to be used for grounds maintenance, e.g., mowing, trimming, and fertilizing, as well as building maintenance.

We estimate that annual proceeds would approximate $100,000. These additional funds will help to maintain national cemeteries, as shrines dedicated to our Nation's history, nurturing patriotism and honoring the service and sacrifice veterans have made on behalf of the United States.

The Office of Management and Budget advises that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

Anthony J. Principi

107TH Congress
2nd Session

A BILL

To authorize the Secretary of Veterans Affairs to lease undeveloped acreage and unused and underutilized buildings of the National Cemetery Administration and to retain proceeds from leases or agricultural licenses.

Be it enacted by the Senate and House of Representatives of the United States of America assembled, that title 38, United States Code, is amended by adding the following new section 2412, Lease of land and buildings and to retain proceeds.

SEC. 2412 – LEASE OF LAND AND BUILDINGS AND TO RETAIN PROCEEDS –

Section 2412 of title 38, United States Code, is amended by adding a new section as follows:

The Secretary may lease for a term not exceeding 3 years undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration established by section 2400 of this title 38. Any lease made to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection or restoration by the lessee as a part or all of the consideration for the lease. Prior to execution of any such lease, the Secretary shall give appropriate public notice of the Secretary's intention to do so in the newspaper of the community in which the lands or buildings are located.

Sec. 2 Notwithstanding any other provision of law, proceeds from the lease of National Cemetery land or buildings and from agricultural licenses shall be deposited

to the National Cemetery Administration's Operations and Maintenance Account to assist cemetery operations and maintenance of cemetery property.

SECTION-BY-SECTION ANALYSIS OF DRAFT BILL

Section 1 of the draft bill would add a new section 2412 to title 38, United States Code, to authorize the Secretary of Veterans Affairs to lease for a term not to exceed 3 years undeveloped land and unused or underutilized buildings, or parts or parcels thereof, of the National Cemetery System. This authority would mirror the Secretary's authority in section 8122 of title 38, to lease land or buildings at a VA medical facility. A lease made to a public or nonprofit organization can be made without regard to the advertising requirements of section 5 of title 41, United States Code, and it can provide for the public or nonprofit to maintain, protect or restore the property in lieu of monetary consideration.

Section 2 would authorize the proceeds generated by the lease or the proceeds received from an agricultural license to be deposited to the National Cemetery Administration's Operations and Maintenance Account. The funds would be used for cemetery operations or maintenance.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 3/22/2002 7:13:21 AM
Subject: : I'm outta here!

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAR-2002 12:13:21.00
SUBJECT:: I'm outta here!
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If you need something please call Patrick or Allison.

See you next month!
```

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/22/2002 11:51:41 AM
Subject: : DOJ Investigation

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAR-2002 16:51:41.00
SUBJECT:: DOJ Investigation
TO:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Cathy:

We need to give to the Department of Justice a list of all former
employees of the WHO, NSC, and OPD who terminated employment since
September 11, 2001, along with any available contact information for
them. Can you generate a document with that information for us?

Thanks.
```

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/25/2002 6:46:56 AM
Subject: : 1994 Testimony by Clinton WH Aides WAS Re: Misconduct Allegations

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-MAR-2002 11:46:56.00
SUBJECT:: 1994 Testimony by Clinton WH Aides WAS Re: Misconduct Allegations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Edward McNally/WHO/EOP on 03/25/2002 11:54 AM ----------

From: Edward McNally on 03/25/2002 11:46:23 AM
Record Type: Record

To: Charles S. Abbot/OVP/EOP@EOP, Mark Holman/WHO/EOP@EOP, Susan K. Neely/WHO/EOP@EOP, "Delahunty, Robert J" <Robert.J.Delahunty@usdoj.gov>
cc: Wendy J. Grubbs/WHO/EOP@EOP, Gordon D. Johndroe/WHO/EOP@EOP, Julie L. Nichols/WHO/EOP@EOP
bcc: Records Management@EOP
Subject: 1994 Testimony by Clinton WH Aides WAS Re: Misconduct Allegations

Admiral, Mark and Susan -- As you will note below, regarding the question Sam Donaldson asked yesterday about the congressional testimony of specific Clinton White House aides, Robert's initial research appears to indicate that yes these witnesses ARE entirely distinguishable from the present case because -- as with virtually ALL such WH precedent -- the subject matter did indeed include allegations of improper conduct (in this case, attempting to influence the Whitewater investigation). We will provide you with add'l infomration as it is obtained.
Thanks --
-- Ed

"Delahunty, Robert J" <Robert.J.Delahunty@usdoj.gov>
03/25/2002 11:06:26 AM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc:
Subject: RE: excerpt from ABC

Ed: I left off for you a 1994 news report describing the Jily 28, 1994 hearing before the House Banking Committee that involved 10 presidential aides, including those Sam Donaldson identified. I also gave copies to Wendy and Gordon. The testimony apparently related to allegations of improper attempts to influence the Whitewater investigation. I've asked Paul Colborn to have an OLC paralegal obtain transcripts of any part of the hearing that may be relevant and/or confirm the news report, and fax them over to OHS. Once we've definitively confirmed that the hearing was aimed at misconduct, we can safely say that it is distinguishable from what Congress wants here. Robert

-----Original Message-----
From: Edward_McNally@who.eop.gov [mailto:Edward_McNally@who.eop.gov]
Sent: Monday, March 25, 2002 10:54 AM
To: Delahunty, Robert J
Subject: Re: excerpt from ABC

---------- Forwarded by Edward McNally/WHO/EOP on 03/25/2002
11:02
AM ----------

Gordon D. Johndroe
03/25/2002 10:51:16 AM

Record Type: Record

To: Susan K. Neely/WHO/EOP
cc: robert j. delahunty/who/eop@eop, edward mcnally/who/eop@eop, wendy j.
grubbs/who/eop@eop
bcc:
Subject: Re: excerpt from ABC (Document link: Edward McNally)

Just like all White House aides that have testified, it was for alleged
misconduct not policy or budget. Right?

Susan K. Neely
03/25/2002 09:49:00 AM

Record Type: Record

To: Robert J. Delahunty/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP

cc: Wendy J. Grubbs/WHO/EOP@EOP, Gordon D. Johndroe/WHO/EOP@EOP
Subject: excerpt from ABC

Robert:

As we discussed, it would be helpful if we could confirm what the Clinton
aides
cited by Sam Donaldson were testifying about.

DONALDSON: ... you were sitting on the Banking Committee in 1994, you had
no
problem in having Mr. Clinton's personal aides come up and testify before
you.
What's changed?
RIDGE: Well, we had--first of all, I'm not sure that's exactly correct. We
had
cabinet members from the banking, cabinet members dealing with housing
issues.
I think one of the critical distinctions here, Sam, is that the executive
order
that creates the position of the Office of Homeland Security basically
says my
job is to coordinate, coordinate, coordinate. And the fact that there are
$38
billion in the budget, and that I have been called to testify about those
$38

billion, is really inappropriate.
I do not have control of those dollars. I will not oversee the expenditure of
those dollars. Secretary Tommy Thompson will, the attorney general will, Joe
Allbaugh of the Federal Emergency Management Agency will. They have operational
control, operational responsibility. We had a discussion with them, made the
recommendation to the president. But they're going to oversee those dollars...
DONALDSON: But governor...
RIDGE: ... and they're going to spend those dollars.
DONALDSON: ... let's just see if we can agree on the record. I think it is correct that Mr. Ickes was called, Mark Guring (ph) was called, Thomas McLarty
was called before the committee, and they were personal aides to President Clinton. I think that's correct, governor.
RIDGE: Well, it depends on whether or not the--and I don't doubt your word about
that, Sam, thanks for refreshing my recollection. But I think it also goes to
President Bush's point. I think it is the prerogative of a president, and this
president, and I feel strongly that he's absolutely correct, seeks to maintain
that very important principle of separation of powers.
I have been on the Hill. I will continue to be available to members of both the
House and the Senate...
DONALDSON: Well, let's talk about...
RIDGE: ... to talk about...
DONALDSON: ... how you might be available, let's talk about how you might be
available. You said you've talked to...
RIDGE: OK.
DONALDSON: ... Senator Byrd. Would you agree to

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/25/2002 10:35:09 AM
Subject: : LRM KCT131 - - VETERANS AFFAIRS Draft Bill on Elimination of the Limitation on Certain Obligations for Advanced Planning for VA Authorized Construction Projects
Attachments: P_KTK96003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-MAR-2002 15:35:09.00
SUBJECT:: LRM KCT131 - - VETERANS AFFAIRS Draft Bill on Elimination of the Limitation on Certain Obligations for Advanced Planning for VA Authorized Construction Projects
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/25/2002 03:35 PM ----------

From: Kathryn C. Thompson on 03/25/2002 03:34:22 PM
Record Type: Record

To: ca.legislation@gsa.gov
cc: See the distribution list at the bottom of this message
Subject: LRM KCT131 - - VETERANS AFFAIRS Draft Bill on Elimination of the Limitation on Certain Obligations for Advanced Planning for VA Authorized Construction Projects

The following is LRM ID: KCT131 -- Veterans Affairs Draft Bill on the Elimination of the Limitation on Certain Obligations for Advanced Planning for VA Authorized Construction Projects. The draft bill is attached below in Wordperfect format and it consists of three pages.

Please comment on the VA draft bill package by 2 p.m., Thursday, March 28th. If you do not respond by the deadline, I will assume that you have no objection to the draft bill.

LRM ID: KCT131
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, March 25, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Draft Bill on Elimination of the Limitation on Certain Obligations for Advanced Planning for VA Authorized Construction Projects

DEADLINE: 2 p.m. Thursday, March 28, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect

direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Under current law, VA cannot obligate funds in excess of $500,000 from its Advanced Planning Fund until 30 days after Congress has received a VA report on the proposed obligation. The draft bill would eliminate that requirement for those construction projects that have already been authorized by Congress.

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Ingrid M. Schroeder
James J. Jukes
LRM ID: KCT131 SUBJECT: VETERANS AFFAIRS Draft Bill on Elimination of the Limitation on Certain Obligations for Advanced Planning for VA Authorized Construction Projects
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148

Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
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Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KTK96003_WHO.TXT_1>

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is transmitted herewith a draft bill, to eliminate the limitation on certain obligations for advanced planning for Fiscal Year 2002. It is requested that the bill be referred to the appropriate committee and that it is favorably considered for prompt enactment.

Title 38, U.S.C. § 8104(f) provides that the Secretary may not obligate funds on an amount in excess of $500,000 from the Advanced Planning Fund (APF) of the Department until the Secretary submits to the committees a report on the proposed obligation; and a period of 30 days has passed after the date the committees have received the report.

The reporting requirement was established to ensure that the VA Committees were knowledgeable of VA project development activities. At present, these Committees participate in authorization process and as a result are knowledgeable of the projects that have already been authorized by Congress. However, because the reporting requirement still applies to projects that have already been authorized by Congress, the Secretary is precluded from funding these projects until after a report is submitted to the Committees and the 30-day period has passed. The current limitation places a two to three month delay on those projects that have already been authorized by Congress.

The elimination of this limitation would remove the duplication of effort on the part of VA and Congress for those projects that have been authorized in accordance with Title 38 U.S.C. § 8104. This proposed legislation would eliminate the limitation only for those projects that have already been authorized by Congress in accordance with Title 38 U.S.C. § 8104(2).

The Office of Management and Budget advises that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

Anthony J. Principi

107th

2nd Session

A BILL

To Eliminate the Limitation on Obligations for Advanced Planning for Authorized Projects for the Department of Veterans Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 101 of title 38, United States Code, be amended as follows:

TITLE - CONSTRUCTION AND FACILITIES ISSUES

SEC. 101 – CONSTRUCTION AUTHORIZATION REQUIREMENTS

(a) LIMITATION ON OBLIGATIONS FOR ADVANCE PLANNING – Title 38 U.S.C. § 8104(f) is amended by adding subsection (g) as follows:

"(f) The Secretary may not obligate funds in an amount in excess of $500,000 from the Advanced Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A) until—

(1) the Secretary submits to the committees a report on the proposed obligation; and

(2) a period of 30 days has passed after the date on which the report is received by the committees.

(g) The limitation specified under Title 38 U.S.C. § 8104(f) shall not apply to projects that have already been specifically authorized by law.

Section by Section Analysis

Section 101 (a)

Section 101 (a) amends the existing language of Title 38 U.S.C. § 8104(f) by adding subsection (g). Subsection (g) eliminates the limitation on the obligation of funds from the Advanced Planning Fund for projects that have already been specifically authorized by law.

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/25/2002 2:39:51 PM
Subject: : Re: Event in NYC with Karl

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-MAR-2002 19:39:51.00
SUBJECT:: Re: Event in NYC with Karl
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The source for Karl's travel and expenses should be borne by 527(e) organizations; if that occurs, the gifts of travel and expenses are acceptable pursuant to the OGE conduct rules.

Brett M. Kavanaugh
03/25/2002 07:30:11 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Event in NYC with Karl

I think this is ok as political event so long as he does not expressly solicit (note that regs authorize employees to actually organize fundraisers, for example). But any thoughts?

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 03/25/2002 07:28 PM ----------

Katherine G. Marinis
03/25/2002 02:41:38 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Event in NYC with Karl

Karl has agreed to do a lunch in NYC on April 4th to help pre-sell the RNC Gala. Do you have any objections to them holding it at an office? They would like Henry Kravis of Kohlberg, kravis, and Roberts to host it.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/26/2002 6:19:03 AM
Subject: : LRM JAB191 -- OMB Request for Views on S1499 American Small Business Relief and Recovery Act (Senate-Passed Version)
Attachments: P_KZ8A6003_WHO.TXT_1.pdf; P_KZ8A6003_WHO.TXT_2.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-MAR-2002 11:19:03.00
SUBJECT:: LRM JAB191 -- OMB Request for Views on S1499 American Small Business Relief and Recovery Act (Senate-Passed Version)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/26/2002 11:18 AM ----------

James A. Brown
03/26/2002 11:17:47 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM JAB191 -- OMB Request for Views on S1499 American Small Business
Relief and Recovery Act (Senate-Passed Version)

Senate-passed version of S. 1499
Statements by sponsors of S. 1499
LRM ID: JAB191
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, March 26, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on S1499 American Small Business Relief and Recovery Act (Senate-Passed Version)

DEADLINE: 10:00 A.M. Monday, April 8, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: As passed by the Senate on March 22nd. A copy of statements made by Senators Bond and Kerry describing the Senate-passed version is also attached.

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Rebecca A. Beynon
Kristine Simmons
K. Philippa Malmgren
WHGC LRM
OVP LRM
David S. Addington
Diana E. Furchtgott-Roth
Stephen S. McMillin
LRM ID: JAB191 SUBJECT: OMB Request for Views on S1499 American
Small Business Relief and Recovery Act (Senate-Passed Version)

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no
comment), we prefer that you respond by e-mail or by faxing us this

response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
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S 1499 ES

107th CONGRESS

2d Session

S. 1499

AN ACT

To provide assistance to small business concerns adversely impacted by the terrorist attacks perpetrated against the United States on September 11, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `American Small Business Emergency Relief and Recovery Act'.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS- Congress finds that--

(1) the Nation's 25,000,000 small businesses employ more than 58 percent of the private workforce, and create 75 percent of all net new jobs;

(2) as a result of the terrorist attacks perpetrated against the United States on September 11, 2001, many small businesses nationwide suffered--

(A) directly because--

(i) they are, or were as of September 11, 2001, located in or near the World Trade Center or the Pentagon, or in a disaster area declared by the President or the Administrator of the Small Business Administration;

(ii) they were closed or their business was suspended for National security purposes at the mandate of the Federal Government; or

(iii) they are, or were as of September 11, 2001, located in an airport that has been closed; and

(B) indirectly because--

(i) they supplied or provided services to businesses that were located in or near the World Trade Center or the Pentagon;

(ii) they are, or were as of September 11, 2001, a supplier, service provider, or

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complementary industry to any business or industry adversely affected by the terrorist attacks perpetrated against the United States on September 11, 2001, in particular, the financial, hospitality, and travel industries; or

(iii) they are, or were as of September 11, 2001, integral to or dependent upon a business or business sector closed or suspended for national security purposes by mandate of the Federal Government; and

(3) small business owners adversely affected by the terrorist attacks are finding it difficult or impossible--

(A) to make loan payments on existing debts;

(B) to pay their employees;

(C) to pay their vendors;

(D) to purchase materials, supplies, or inventory;

(E) to pay their rent, mortgage, or other operating expenses; or

(F) to secure financing for their businesses.

(b) PURPOSE- The purpose of this Act is to strengthen the loan, investment, procurement assistance, and management education programs of the Small Business Administration, in order to help small businesses meet their existing obligations, finance their businesses, and maintain and create jobs, thereby providing stability to the national economy.

SEC. 3. DEFINITIONS RELATING TO TERRORIST ATTACKS.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

`(r) DEFINITIONS RELATING TO TERRORISM RELIEF- In this Act, the following definitions shall apply with respect to the provision of assistance under this Act in response to the terrorist attacks perpetrated against the United States on September 11, 2001, pursuant to the American Small Business Emergency Relief and Recovery Act:

`(1) DIRECTLY AFFECTED- A small business concern is directly affected by the terrorist attacks perpetrated against the United States on September 11, 2001, if it--

`(A) is, or was as of September 11, 2001, located in or near the World Trade Center or the Pentagon, or in a disaster area declared by the President or the Administrator related to those terrorist attacks;

`(B) was closed or its business was suspended for national security purposes at the mandate of the Federal Government; or

`(C) is, or was as of September 11, 2001, located in an airport that has been closed.

`(2) INDIRECTLY AFFECTED- A small business concern is indirectly affected by the

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terrorist attacks perpetrated against the United States on September 11, 2001, if it--

`(A) supplied or provided services to any business that was located in or near the World Trade Center or the Pentagon, or in a disaster area declared by the President or the Administrator related to those terrorist attacks;

`(B) is, or was as of September 11, 2001, a supplier, service provider, or complementary industry to any business or industry adversely affected by the terrorist acts perpetrated against the United States on September 11, 2001, in particular, the financial, hospitality, and travel industries; or

`(C) it is, or was as of September 11, 2001, integral to or dependent upon a business or business sector closed or suspended for national security purposes by mandate of the Federal Government.

`(3) ADVERSELY AFFECTED- The term `adversely affected' means having suffered economic harm to or disruption of the business operations of a small business concern as a direct or indirect result of the terrorist attacks perpetrated against the United States on September 11, 2001.

`(4) SUBSTANTIAL ECONOMIC INJURY- As used in section 7(b)(4), the term `substantial economic injury' means an economic harm to a small business concern that results in the inability of the small business concern--

`(A) to meet its obligations on an ongoing basis;

`(B) to pay its ordinary and necessary operating expenses; or

`(C) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the small business concern.'.

SEC. 4. DISASTER LOANS AFTER TERRORIST ATTACKS.

(a) IN GENERAL- Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by inserting immediately before the undesignated material following paragraph (3) the following:

`(4) DISASTER LOANS AFTER TERRORIST ATTACKS OF SEPTEMBER 11, 2001-

`(A) LOAN AUTHORITY- In addition to any other loan authorized by this section, the Administration may make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to a small business concern that has been directly affected and suffered substantial economic injury as the result of the terrorist attacks on September 11, 2001, including due to the closure or suspension of its business for national security purposes at the mandate of the Federal Government.

`(B) REFINANCING DISASTER LOANS-

`(i) IN GENERAL- Any loan made under this subsection that was outstanding as to principal or interest on September 11, 2001, may be refinanced by a small

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business concern that is also eligible to receive a loan under this paragraph, and the refinanced amount shall be considered to be part of the new loan for purposes of this clause.

`(ii) NO EFFECT ON ELIGIBILITY- A refinancing under clause (i) by a small business concern shall be in addition to any other loan eligibility for that small business concern under this Act.

`(C) REFINANCING BUSINESS DEBT-

`(i) IN GENERAL- Any business debt of a small business concern that was outstanding as to principal or interest on September 11, 2001, may be refinanced by the small business concern if it is also eligible to receive a loan under this paragraph. With respect to a refinancing under this clause, payments of principal shall be deferred, and interest may accrue notwithstanding clause (iii) of section 202 of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Public Law 107-117, 115 Stat. 2297), during the 1-year period following the date of refinancing.

`(ii) RESUMPTION OF PAYMENTS- At the end of the 1-year period described in clause (i), the payment of periodic installments of principal and interest shall be required with respect to such loan, in the same manner and subject to the same terms and conditions as would otherwise be applicable to any other loan made under this subsection.

`(iii) AUTHORIZATION CAP- Notwithstanding any other provision of law, the total amount authorized to be obligated by the Administration, under this subparagraph only, for purposes of refinancing business debt, may not exceed $225,000,000, notwithstanding any amount otherwise obligated by the Administration under this paragraph.

`(D) TERMS- A loan under this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2). Any reasonable doubt concerning the repayment ability of an applicant under this paragraph shall be resolved in favor of the applicant.

`(E) NO DISASTER DECLARATION REQUIRED- For purposes of assistance under this paragraph, no declaration of a disaster area is required for those small business concerns directly affected by the terrorist attacks on September 11, 2001.

`(F) SIZE STANDARD ADJUSTMENTS- Notwithstanding any other provision of law, for purposes of providing assistance under this paragraph to businesses located in areas of New York, Virginia, and the contiguous areas designated by the President or the Administrator as a disaster area following the terrorist attacks on September 11, 2001, a business shall be considered to be a `small business concern' if it meets otherwise applicable size regulations promulgated by the Administration, and, with respect to the applicable size standard, it is--

`(i) a restaurant having not more than $8,000,000 in annual receipts;

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`(ii) a law firm having not more than $8,000,000 in annual receipts;

`(iii) a certified public accounting business having not more than $8,000,000 in annual receipts;

`(iv) a performing arts business having not more than $8,000,000 in annual receipts;

`(v) a warehousing or storage business having not more than $25,000,000 in annual receipts;

`(vi) a contracting business having a size standard under the North American Industry Classification System, Subsector 235, and having not more than $15,000,000 in annual receipts;

`(vii) a food manufacturing business having not more than 1,000 employees;

`(viii) an apparel manufacturing business having not more than 1,000 employees; or

`(ix) a travel agency having not more than $3,000,000 in annual receipts.

`(5) AUTHORITY TO INCREASE OR WAIVE SIZE STANDARDS AND SIZE REGULATIONS-

`(A) IN GENERAL- At the discretion of the Administrator, the Administrator may increase or waive otherwise applicable size standards or size regulations with respect to businesses applying for assistance under this Act in response to the terrorist attacks on September 11, 2001.

`(B) EXEMPTION FROM ADMINISTRATIVE PROCEDURES- The provisions of subchapter II of chapter 5, of title 5, United States Code, shall not apply to any increase or waiver by the Administrator under subparagraph (A).

`(6) INCREASED LOAN CAPS-

`(A) AGGREGATE LOAN AMOUNTS- Except as provided in subparagraph (B), and in addition to amounts otherwise authorized by this Act, the loan amount outstanding and committed to a borrower may not exceed--

`(i) with respect to a small business concern located in the areas of New York, Virginia, or the contiguous areas designated by the President or the Administrator as a disaster area following the terrorist attacks on September 11, 2001--

`(I) $10,000,000 in total obligations under paragraph (1); and

`(II) $10,000,000 in total obligations under paragraph (4); and

`(ii) with respect to a small business concern that is not located in an area

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described in clause (i) and that is eligible for assistance under paragraph (4), $5,000,000 in total obligations under paragraph (4).

`(B) WAIVER AUTHORITY- The Administrator may, at the discretion of the Administrator, waive the aggregate loan amounts established under subparagraph (A).

`(7) EXTENDED APPLICATION PERIOD- Notwithstanding any other provision of law, the Administrator shall accept applications for assistance under paragraphs (1) and (4) until September 10, 2002, with respect to applicants for such assistance as a result of the terrorist attacks on September 11, 2001.

`(8) LIMITATION ON SALES OF LOANS- No loan under paragraph (1) or (4), made as a result of the terrorist attacks on September 11, 2001, shall be sold until 3 years after the date of the final loan disbursement.'.

(b) CLERICAL AMENDMENTS- Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended in the undesignated matter at the end--

(1) by striking `, (2), and (4)' and inserting `and (2)'; and

(2) by striking `, (2), or (4)' and inserting `(2)'.

SEC. 5. EMERGENCY RELIEF LOAN PROGRAM.

(a) LOAN PROGRAM- Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

`(31) TEMPORARY LOAN AUTHORITY FOLLOWING TERRORIST ATTACKS-

`(A) IN GENERAL- During the 9-month period beginning on the date of enactment of this paragraph, the Administration may make loans under this subsection to a small business concern that has been directly or indirectly adversely affected.

`(B) LOAN TERMS- With respect to a loan under this paragraph--

`(i) for purposes of paragraph (2)(A), participation by the Administration shall be equal to 85 percent of the balance of the financing outstanding at the time of disbursement of the loan;

`(ii) section 203 of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Public Law 107-117, 115 Stat. 2297), as it relates to annual fees, shall apply;

`(iii) the Administrator shall collect a guarantee fee in accordance with paragraph (18)(C), as amended by the American Small Business Emergency Relief and Recovery Act;

`(iv) the applicable rate of interest shall not exceed a rate that is 2 percentage points above the prime lending rate;

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`(v) no such loan shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower under this paragraph--

`(I) would exceed $1,000,000; or

`(II) at the discretion of the Administrator, and upon notice to the Congress, would exceed $2,000,000, as necessary to provide relief in high-cost areas or to high-cost industries that have been adversely affected; or

`(vi) no such loan shall be made if the gross amount of the loan would exceed $3,000,000;

`(vii) upon request of the borrower, repayment of principal due on a loan made under this paragraph may be deferred during the 1-year period beginning on the date of issuance of the loan; and

`(viii) any reasonable doubt concerning the repayment ability of an applicant for a loan under this paragraph shall be resolved in favor of the applicant.

`(C) APPLICABILITY- The loan terms described in subparagraph (B) shall apply to a loan under this paragraph notwithstanding any other provision of this subsection, and except as specifically provided in this paragraph, a loan under this paragraph shall otherwise be subject to the same terms and conditions as any other loan under this subsection.

`(D) TRAVEL AGENCIES- For purposes of loans made under this paragraph, the size standard for a travel agency shall be $3,000,000 in annual receipts.'.

(b) CONFORMING AMENDMENT- Section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)) is amended by inserting `other than a loan under paragraph (31),' after `this subsection,'.

SEC. 6. REDUCTION OF FEES.

(a) TEMPORARY REDUCTION OF SECTION 7(a) FEES-

(1) GUARANTEE FEES- Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended by adding at the end the following:

`(C) TEMPORARY REDUCTION IN FEES- With respect to loans approved during the period beginning on the date of enactment of the American Small Business Emergency Relief and Recovery Act and ending on September 30, 2004, the guarantee fee under subparagraph (A) shall be as follows:

`(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

`(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

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`(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.'.

(2) ANNUAL FEES- Section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)) is amended by adding at the end the following: `With respect to loans approved during the period beginning on the date of enactment of the American Small Business Emergency Relief and Recovery Act and ending on September 30, 2004, other than a loan under paragraph (31), the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.'.

(b) Reduction of Section 504 Fees- Section 503 of the Small Business Investment Act of 1958 (15 U.S.C. 697) is amended--

(1) in subsection (b)(7)(A)--

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and moving the margins 2 ems to the right;

(B) by striking `not exceed the lesser' and inserting `not exceed--

`(i) the lesser'; and

(C) by adding at the end the following:

`(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the period beginning on the date of enactment of the American Small Business Emergency Relief and Recovery Act and ending on September 30, 2004, for the life of the loan; and'; and

(2) by adding at the end the following new subsection:

`(i) TEMPORARY WAIVER OF FEES- The Administration may not assess or collect any up front guarantee fee with respect to loans made under this title during the period beginning on the date of enactment of the American Small Business Emergency Relief and Recovery Act and ending on September 30, 2004.'.

(c) BUDGETARY TREATMENT OF LOANS AND FINANCINGS- Assistance made available under any loan made or approved by the Small Business Administration under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or financings made under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), during the period beginning on the date of enactment of the American Small Business Emergency Relief and Recovery Act and ending on September 30, 2004, shall be treated as separate programs of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 only.

(d) USE OF FUNDS- The amendments made by this section to section 503 of the Small Business Investment Act of 1958, shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990) of such amendments.

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(e) CONFORMING REPEAL- Effective on the day before the date of enactment of this Act, section 6 of the Small Business Investment Company Amendments Act of 2001 (Public Law 107-100, 115 Stat. 970), and the amendments made by that section, are repealed.

SEC. 7. OTHER SPECIALIZED ASSISTANCE AND MONITORING AUTHORIZED.

(a) ADDITIONAL SBDC AUTHORITY-

(1) IN GENERAL- Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended--

(A) in subparagraph (S), by striking `and' at the end;

(B) in subparagraph (T), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(U) providing individualized assistance with respect to financing, refinancing of existing debt, and business counseling to small business concerns adversely affected, directly or indirectly, by the terrorist attacks on September 11, 2001.'.

(2) WAIVER OF MATCHING REQUIREMENTS- Section 21(a)(4)(A) of the Small Business Act (15 U.S.C. 648(a)(4)(A)) is amended by inserting before the period at the end the following: `, except that the matching requirements of this paragraph do not apply with respect to any assistance provided under subsection (c)(3)(U)'.

(b) ADDITIONAL SCORE AUTHORITY- Section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B) is amended--

(1) by inserting `(i)' after `(B)'; and

(2) by adding at the end the following:

`(ii) The functions of the Service Corps of Retired Executives (SCORE) shall include the provision of individualized assistance with respect to financing, refinancing of existing debt, and business counseling to small business concerns adversely affected by the terrorist attacks on September 11, 2001.'.

(c) ADDITIONAL MICROLOAN PROGRAM AUTHORITY- Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended by adding at the end the following:

`(14) ASSISTANCE AFTER TERRORIST ATTACKS OF SEPTEMBER 11, 2001- Amounts made available under this subsection may be used by intermediaries to provide individualized assistance with respect to financing, refinancing of existing debt, and business counseling to small business concerns adversely affected by the terrorist attacks on September 11, 2001.'.

(d) ADDITIONAL WOMEN'S BUSINESS DEVELOPMENT CENTER AUTHORITY- Section 29 of the Small Business Act (15 U.S.C. 656) is amended--

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(1) in subsection (b)--

(A) in paragraph (2), by striking `and' at the end;

(B) in paragraph (3), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(4) individualized assistance with respect to financing, refinancing of existing debt, and business counseling to small business concerns that were adversely affected by the terrorist attacks on September 11, 2001.'; and

(2) in subsection (c), by adding at the end the following:

`(5) WAIVER OF MATCHING REQUIREMENTS- A recipient organization shall not be subject to the non-Federal funding requirements of paragraph (1) with respect to assistance provided under subsection (b)(4).'.

(e) ADDITIONAL SBIC AUTHORITY- Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended by adding at the end the following:

`(k) AUTHORITY AFTER TERRORIST ATTACKS OF SEPTEMBER 11, 2001- Small business investment companies are authorized and encouraged to provide equity capital and to make loans to small business concerns pursuant to sections 304(a) and 305(a) of the Small Business Investment Act of 1958, respectively, for the purpose of providing assistance to small business concerns adversely affected by the terrorist attacks on September 11, 2001.'.

SEC. 8. STUDY AND REPORT ON EFFECTS ON SMALL BUSINESS CONCERNS.

(a) STUDY-

(1) IN GENERAL- The Office of Advocacy of the Small Business Administration shall conduct annual studies for a 5-year period on the impact of the terrorist attacks perpetrated against the United States on September 11, 2001, on small business concerns, and the effects of assistance provided under this Act on such small business concerns.

(2) CONTENTS- The study conducted under paragraph (1) shall include information regarding--

(A) bankruptcies and business failures that occurred as a result of the events of September 11, 2001, as compared to those that occurred in 1999 and 2000;

(B) the loss of jobs, revenue, and profits in small business concerns as a result of those events, as compared to those that occurred in 1999 and 2000;

(C) the impact of assistance provided under this Act to small business concerns adversely affected by those attacks, including information regarding whether--

(i) small business concerns that received such assistance would have remained in

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business without such assistance;

(ii) jobs were saved due to such assistance; and

(iii) small business concerns that remained in business had increases in employment and sales since receiving assistance.

(b) REPORT- The Office of Advocacy shall submit a report to Congress on the studies required by subsection (a)(1), specifically addressing the requirements of subsection (a)(2), in September of each of fiscal years 2002 through 2006.

(c) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this section, $500,000 for each of fiscal years 2002 through 2006.

SEC. 9. EMERGENCY EQUITABLE RELIEF FOR FEDERAL CONTRACTORS.

(a) GUIDANCE REQUIRED-

(1) IN GENERAL- Under guidance issued by the Administrator for Federal Procurement Policy in conjunction with the Administrator of the Small Business Administration, the head of a contracting agency of the United States may increase the price of a prime contract entered into by the agency prior to September 11, 2001 with a small business concern (as defined in section 3 of the Small Business Act) to the extent determined equitable under this section on the basis of loss resulting from security measures taken by the Federal Government at Federal facilities as a result of the terrorist attacks on September 11, 2001.

(2) EXPEDITED ISSUANCE- Guidance required by paragraph (1) shall be issued under expedited procedures, not later than 45 days after the date of enactment of this Act.

(b) EXPEDITED PROCEDURES-

(1) IN GENERAL- The Administrator for Federal Procurement Policy shall prescribe expedited procedures for considering whether to grant an equitable adjustment in the case of a contract of an agency under subsection (a).

(2) REQUIREMENTS- The procedures required by paragraph (1) shall provide for--

(A) an initial review of the merits of a contractor's request by the contracting officer concerned with the contract;

(B) a final determination of the merits of the contractor's request, including the value of any price adjustment, by the Head of the Contracting Agency, in consultation with the Administrator of the Small Business Administration, taking into consideration the initial review under subparagraph (A); and

(C) payment from the fund established under subsection (d) for the contract's price adjustment.

(3) TIMING- The procedures required by paragraph (1) shall require completion of action on a contractor's request for adjustment not later than 30 days after the date on which the contractor

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submits the request to the contracting officer concerned.

(c) AUTHORIZED REMEDIES- In addition to making a price adjustment under subsection (a), the time for performance of a contract may be extended under this section.

(d) PAYMENT OF ADJUSTED PRICE-

(1) FUND ESTABLISHED- The Secretary of the Treasury shall establish a fund for the payment of contract price adjustments under this section. Payments of amounts for price adjustments shall be made out of the fund.

(2) AVAILABILITY- Notwithstanding any other provision of law, amounts in the fund under this subsection shall remain available until expended.

(e) TERMINATION OF AUTHORITY-

(1) REQUESTS- No request for adjustment under this section may be accepted more than 330 days after the date of enactment of this Act.

(2) TERMINATION- The authority under this section shall terminate 1 year after the date of enactment of this Act.

(f) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to the Secretary of the Treasury, for deposit into the fund established under subsection (d), $50,000,000 to carry out this section, including funds for administrative expenses and costs. Any funds remaining in the fund established under subsection (d) 1 year after the date of enactment of this Act shall be transferred to the disaster loan account of the Small Business Administration.

SEC. 10. REPORTS TO CONGRESS.

(a) REPORTS REQUIRED- The Administrator of the Small Business Administration shall submit regular reports to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the implementation of this Act and the amendments made by this Act, including program delivery, staffing, and administrative expenses related to such implementation.

(b) FREQUENCY OF REPORTS- The reports required by subsection (a) shall be submitted 20 days after the date of enactment of this Act and monthly thereafter until 1 year after the date of enactment of this Act, at which time the reports shall be submitted on a quarterly basis through December 31, 2003.

SEC. 11. EXPEDITED ISSUANCE OF IMPLEMENTING GUIDELINES.

Not later than 20 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue interim final rules and guidelines to implement this Act and the amendments made by this Act.

SEC. 12. SPECIAL AUTHORIZATIONS OF APPROPRIATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the

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following:

`(j) SPECIAL AUTHORIZATIONS OF APPROPRIATIONS FOLLOWING TERRORIST ATTACKS- In addition to any other amounts authorized by this Act for any fiscal year, there are authorized to be appropriated to the Administration, to remain available until expended--

`(1) for each of fiscal years 2002 through 2004, such sums as may be necessary to carry out paragraph (4) of section 7(b), including necessary loan capital and funds for administrative expenses related to making and servicing loans pursuant to that paragraph;

`(2) for fiscal year 2002, $25,000,000, to be used for activities of small business development centers pursuant to section 21(c)(3)(U)--

`(A) $2,500,000 of which shall be used to assist small business concerns (as that term is defined for purposes of section 7(b)(4)) located in the areas of New York and the contiguous areas designated by the President as a disaster area following the terrorist attacks on September 11, 2001; and

`(B) $1,500,000 of which shall be used to assist small business concerns located in areas of Virginia and the contiguous areas designated by the President as a disaster area following those terrorist attacks;

`(3) for fiscal year 2002, $2,000,000, to be used under the Service Corps of Retired Executives program authorized by section 8(b)(1) for the activities described in section 8(b)(1)(B)(ii);

`(4) for fiscal year 2002, $5,000,000 for microloan technical assistance authorized under section 7(m)(14);

`(5) for fiscal year 2002, $2,000,000 to be used for activities of women's business centers authorized by section 29(b)(4);

`(6) for each of fiscal years 2002 through 2004, such sums as may be necessary to carry out paragraphs (18)(C) and (31) of section 7(a), including any funds necessary to offset fees and amounts waived or reduced under those provisions, necessary loan capital, and funds for administrative expenses; and

`(7) for each of fiscal years 2002 through 2004, such sums as may be necessary to carry out the temporary suspension of fees under subsections (b)(7)(A) and (i) of section 503 of the Small Business Investment Act of 1958, in response to the terrorist attacks on September 11, 2001, including any funds necessary to offset fees and amounts waived under those provisions and including funds for administrative expenses.'.

Passed the Senate March 22, 2002.

Attest:

Secretary.

107th CONGRESS

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2d Session

S. 1499

AN ACT

To provide assistance to small business concerns adversely impacted by the terrorist attacks perpetrated against the United States on September 11, 2001, and for other purposes.

END

REV_00142301

AMERICAN SMALL BUSINESS EMERGENCY RELIEF ACT OF 2001 -- (Senate - March 22, 2002)

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Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 186, S. 1499.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1499) to provide assistance to small business concerns adversely impacted by the terrorist attacks perpetrated against the United States on September 11, 2001, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3076

Mr. DODD. Mr. President, I understand Senators KERRY and BOND have a substitute amendment at the desk. I ask unanimous consent that the Senate proceed to its immediate consideration, that the amendment be agreed to, and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3076) was agreed to.

(The text of the amendment is printed in today's RECORD under ``Text of Amendments.'')

[Begin Insert]

Mr. KERRY. Mr. President, I would urge that there be no further delay, no further obstruction, and that the Senate act--a long last--to pass a bill that is very important to so many small businesses in this country crippled by the economic fall-out c September 11, including businesses that were already struggling before September 11 during the recession and are now fa with even more difficult prospects.

For months, tens of thousands of small businesses have been asking for help--an immediate helping hand--just to keep t businesses going--particularly working capital to meet payroll and pay the bills--but they have been forced to make ends m by using credit cards and depleting personal savings because small businesses doesn't have the same access as big

[Page: S2336] GPO's PDF

business--to credit or otherwise. Left in the lurch by congressional inaction and delay, these businesses and their employee paid the price.

Now it is time that the Senate delivers the relief the vast majority of us were prepared to deliver in the first weeks after September 11, urgent relief delayed by partisan gamesmanship.

My American Small Business Emergency Relief and Recovery Act has gotten a lot of attention over the past 5 months. It been blocked from even a meaningful debate on the Senate floor. What makes this week different?

What makes it different is that we have reached final agreement with the White House on a compromise, thanks to our la resort--hardball tactics of our own--and the bill has at long last been cleared to pass the Senate by unanimous consent.

I thank the 63 cosponsors of this bill. I thank the numerous small businesses and small business advocates who have wc so hard and used so much of their limited resources to free this bill for passage. This diverse coalition of business leaders . Democratic and Republican policy makers have stood by us from day one--their support should have been enough to guarantee passage way back then, but it wasn't enough to stop some from playing partisan games with even bipartisan legislation. Now, at long last, the good faith efforts of our supporters are being rewarded.

It is my hope that having worked out our differences with the White House, we have cleared the way for passage not just through the Senate but also through the House. Once this help is enacted, small businesses will finally be able to receive desperately needed economic relief.

I am pleased with the compromise. It preserves provisions that are really important for those small businesses that have needed help over the past few months but fell through the cracks in SBA's disaster loan program, or fell through the cracks the private sector where lenders have cut back on loans to small businesses over the past year.

It simply was not enough, not efficient, and not cost-effective to use only one of SBA's many lending programs to serve a small businesses throughout this country that were hurt by the terrorist attacks or that have been struggling with the credit crunch. All of the SBA's tools should be used to help the affected small businesses, and this bill does just that. Because thi was blocked from consideration, Senator Bond and I were forced to enact some of these provisions through a defense bill. very much thank Senators BYRD and HOLLINGS for including them. Specifically, we made it possible for small businesses to get working capital loans through the SBA's 7(a) loan program. SBA is calling these ``STAR loans,'' and compared to the economic injury disaster loans, borrowers are accessing capital faster. In just seven weeks, since the loans were made available, nearly $38 million has been loaned to 129 small

businesses. It reminds us that being able to go sit in the office of a lender in the same town is far more efficient and effec than requiring a small business in West Virginia or Puerto Rico to call a 1-800 number in Niagara Falls for emergency assistance.

One needs only to look at the record by comparison for economic injury disaster loans outside New York and Virginia to see the need for these STAR loans. After 22 weeks (nearly 6 months), only 2,600 loans have been approved, adding up to denial rate of almost 50 percent . That doesn't even include the small businesses that were turned away before they even f out an application because of outdated size standards. That has left a lot of small businesses across this country without assistance. A lot of small business owners turning are in their keys to the bank. As one small business advocate said today reference to the thousands of tour bus companies that went out of business, ``I understand the banks now own a wonderfu fleet of tour buses.''

Well, for those small tour bus owners who have been waiting for this bill to pass and still need a working capital loan to re back up in the upcoming tour season, the compromise preserves the refinancing of business debt under a disaster loan. Th need this so that they can restructure debt to survive this business slump. We fought very hard to keep this assistance in th

For the owners of travel agencies--the majority of which are small businesses--we have increased the size standards for industry so that more of your companies qualify for disaster loans and 7(a) emergency loans. Please spread the word to tra agencies that were turned away earlier in the year because they were considered too large. They might need working capit more than ever now that the airlines have completely eliminated commissions.

For small businesses that need access to credit and can't get it because of the credit crunch, Senator Bond and I were al make SBA's programs more affordable by reducing the fees borrowers pay through September 2004. In both the Senate ar the House, we have had hearing after hearing trying to get fairer fees for the borrowers who need capital and the lenders w make loans, but until now we haven't gotten any cooperation. This bill will make a difference. Whether you need working capital through SBA's 7(a) loan program or credit to buy a building or equipment through SBA's 504 loan program, it will no be less expensive. Stimulating lending and borrowing is good for the economy because it creates jobs and saves jobs. By l small businesses that borrower money through the SBA 504 loan program have to hire or retain on employee for each $35, borrowed. This is a win-win situation for our economy.

The overall purpose of this emergency legislation is to provide access to the full complement of SBA loans and business counseling in order to help small businesses hurt by the terrorist attacks of September 11th and their aftermath.

This legislation will help mitigate bankruptcies, business closures, and lay-offs and address the shrinking availability of cr However, small businesses doing business with the Federal Government have also felt the impact of the terrorist attacks.

Small business contractors, because of very real and legitimate security concerns, have experienced a dramatic increase costs for work in and around Federal Government facilities. We have heard reports of small businesses being denied acce their equipment on military bases, waiting for hours each day to enter government facilities and being limited in the hours th can work on their projects.

Let me cite the situation faced by Dave Krueger, President of AS Horner Construction, Inc. out of Albuquerque, NM. Dav was currently doing work on a Federal contract at an Air Force facility pouring concrete parking aprons. Immediately after tl attack, his company was locked out of the facility for nearly 2 weeks and currently has limited hours to access the construc site. Dave estimates that this will result in cost increases of at least 10 percent, meaning he will take a loss on this contract

Such situations cannot go unresolved. Small businesses are far too important, not just to our national economy, but to ou national defense as well. Small business is a vital component of our national supply chain and essential to our national sec interests. To address this, S. 1499 establishes an expedited procedure whereby Federal small business contractors can ap for an equitable adjustment to their contract if costs have been incurred due to security or other measures resulting from th terrorist attacks. In the interest of compromise, Senator Bond and I agreed to reduce the funding available for these provisi from $100 million to $50 million.

The Kerry-Bond approach has always been cost-effective--about five times cheaper than the administration's approach. CBO estimated that providing this assistance to small businesses would cost $860 million. The final compromise, based or CBO's estimates, is down from $860 million to $300 million.

This is a good compromise. It will help small businesses in every State. It is a reasonable approach that maximizes existi resources and private sector help. I strongly and respectfully urge my colleagues to let this legislation pass. Small business your State will thank you.

I ask that a list of supporters of S. 1499 be printed in the RECORD.

The list follows:

S. 1499 Supporters: Airport Ground Transportation Association; American Bus Asso-

[Page: S2337] GPO's PDF

ciation; American Subcontractors Association; Associated General Contractors of America; Association of Women's Busine Centers; CDC Small Business Finance; Chicago Association of Neighborhood Development Organizations; Citizens Financ Group, RI; Clovis Community Bank, CA; Coastal Enterprises, ME; County of San Diego; Delaware Community Reinvestme Act Council; Fairness in Rural Lending; Florida Atlantic University Small Business Development Center; Helicopter Association; HUBZone Contractors National Council; National Association of Government Guaranteed Lenders; National Community Reinvestment Coalition; National League of Cities; National Limousine Association; National Restaurant Association; National Small Business United; National Tour Association; New Jersey Citizen Action; Rural Housing Institute Rural Opportunities; Self Help Credit Union; Small Business Legislative Council; U.S. Conference of Mayors; United Motorcoach Association; United States Air Tour Association; United States Chamber of Commerce; United States Tour Operator Association; Women's Business Development Center.

[Begin Insert]

Mr. BOND. Mr. President, I urge my colleagues in the Senate to vote in favor of S. 1499, the American Small Business

Emergency Relief and Recovery Act. I thank my colleague from Massachusetts, Senator KERRY, for introducing the bill, ar I am pleased to be its principal cosponsor. Since S. 1499 was introduced on October 4, 2001, 62 of our Senate colleagues have joined us as cosponsors.

The measure before the Senate today is a comprehensive managers' substitute amendment to S. 1499, which incorporat significant changes that have been agreed to following lengthy negotiations with the staffs from the White House and the C of Management and Budget, OMB. In particular, I thank Andy Card, the President's Chief of Staff, Dr. Lawrence Lindsey, Director of the National Economic Advisors, and Steve McMillin, Assistant Director at OMB, for their personal involvement i the negotiations.

The managers' substitute amendment modifies S. 1499 to recognize changes in the disaster relief and credit programs a Small Business Administration, SBA, that were enacted on January 10, 2002, in section 203 of the Department of Defense Emergency Supplemental Appropriations for Recovery from and Response to Terrorists Attacks on the United States, P.L. 107-117 Emergency Disaster Supplemental.

Enactment of S. 1499, as amended, will insure that valuable credit and management assistance will flow to small busines that were harmed by the September 11 terrorist attacks on the World Trade Centers and the Pentagon. It is my understanc the House of Representatives is prepared to act quickly on the bill soon after the 2-week recess, so that it can be sent to President Bush for his signature in the near future. Fast action by Congress is critical. Small businesses from across the Ur States are continuing to struggle under the dual pressures from the economy and the aftermath of the terrorist attacks.

As the ranking member of the Committee on Small Business and Entrepreneurship, I have received pleas for help from s business in Missouri and across the nation: small restaurants that have lost much of their business due to the fall off in bus travel; local flight schools that have been grounded as a result of the recent terrorist attacks; and Main Street retailers who struggling to survive. The American Small Business Emergency Relief and Recovery Act contains sound initiatives to help nation's small businesses and their employees. We in Congress must act and act soon to help our Nation's small business

In response to the urgent calls for strong and effective Federal Government action to reverse the

decline in the economy and stimulate a business rebound, last October I introduced the Small Business Leads to Econor Recovery Act of 2001, S. 1493, which was designed to provide effective economic stimulus in three distinct but complementary ways: increasing access to capital for the nation's small enterprises; providing tax relief and investment incentives for our small firms and the self-employed; and directing one of the Nation's largest consumers--the Federal Government--to shop with small business in America.

Historically, when our economy slows or turns into a recession, the strength of the small business sector helps to right ou economic ship, with small businesses leading the Nation to economic recovery. Small businesses employ over one-half of t U.S. workforce and create 75 percent of the net new jobs. Clearly, we cannot afford to ignore America's small businesses a we consider measures to stimulate our economy.

S. 1499 goes to the heart of a major problem confronting thousands of small businesses today by taking on access to ca barriers. This bill is a bipartisan collaboration between Senator KERRY, and me and our staffs of the Committee on Small Business and Entrepreneurship. We have worked together to devise one-time modifications to the SBA Disaster Relief, 7(a and 504 Loan Programs because the traditional approach to disaster relief will not address the critical needs of thousands small businesses located at or around the World Trade Center, the Pentagon and in strategic locations throughout the Unit States.

In New York City, it could be a year and more before many of the small businesses destroyed or shut down by the terroris attacks can reopen their doors for business. Small firms near the Pentagon, such as those at the Reagan National Airport c Crystal City, VA, are also shut down or struggling. And there are small businesses throughout the United States that were s down for national security concerns and continue to struggle to regain lost customers.

Small enterprises located in the Presidentially declared disaster areas surrounding the World Trade Center and the Pent

are not the only businesses experiencing extreme hardship as a direct result of the terrorist attacks of September 11. Nationwide, thousands of small businesses are unable to conduct business or are operating at a bare-minimum level. Tens thousands of jobs are at risk of being lost as small businesses weather the fall out from the September 11 attacks.

Regular small business disaster loans fall short of providing effective disaster relief to help these small businesses. The Emergency Disaster Supplemental included a provision from S. 1499 as introduced that allows small businesses to defer fo to 2 years repayment of principal and interest on their SBA disaster relief loans. Interest that would otherwise accrue during deferment period would be forgiven. The thrust of this essential ingredient is to allow the small businesses to get back on th feet without jeopardizing their credit or driving them into bankruptcy. The managers' substitute amendment restates this key provision.

The managers' substitute amendment also retains the provision permitting small businesses located in the Presidentially declared disaster areas and those small businesses directly affected by the terrorist attack to refinance existing business d Repayment of principal shall be deferred for disaster loans to refinance existing business debt, however, interest would acc during the deferment period.

S. 1499 would provide a special financial tool to assist small businesses as they deal with these significant business disru Small businesses in need of working capital would be able to obtain SBA-guaranteed ``Emergency Relief Loans'' from their banks to help them during this period. Fees normally paid by the borrower to the SBA would be eliminated, and the SBA would guarantee 85 percent of the loan. A key feature of the bill is the authorization for banks to defer repayment of princip for up to one year. This section would remain in effect for 9 months after the date of enactment of the act.

My colleagues and I have heard from thousands of small businesses since the terrorist attacks that small businesses are experiencing significant hardship. The downturn in business activity, however, was clearly underway prior to September 11 The downturn was further exacerbated by the terrorist attacks.

S. 1499 would provide for changes in the SBA 7(a) Guaranteed Business Loan Program and the 504 Certified Developm Company Loan Program to

[Page: S2338] GPO's PDF

stimulate lending to small businesses that are most likely to grow and add new employees. The managers' substitute amen incorporates the provision from the emergency supplemental that reduces the annual fee paid by lenders from 50 basis poi 0.50 percent, to 25 basis points, 0.25 percent. In addition, the up front origination fee paid by small business borrowers wo be reduced. These enhancements to the SBA's 7(a) program, and comparable reductions in 504 loan program fees, are to continue through September 30, 2004. They are designed to make the programs operate more effectively and efficiently du the period when the economy is weak and banks have tightened their underwriting requirements for small business loans.

Specifically, when the economy is slowing, it is normal for banks to raise the bar for obtaining commercial loans. Howeve making it harder for small businesses to survive is the wrong reaction to a slowing economy. By making these adjustments the 7(a) and 504 loans to make them more affordable to borrowers and lenders, we will be working against history's rules governing a slowing economy, thereby adding a stimulus for small businesses. Essentially, we will be providing a counter-cyclical action in the face of a slow economy with the express purpose of accelerating the recovery.

The SBA has a very effective infrastructure for providing management assistance to small businesses located nationwide Small Business Development Center, SBDC, SCORE, Women's Business Center and Microloan programs provide much needed counseling to small businesses that are struggling or facing problems in their start-up phase. With the U.S. econon under unusual stress, many segments of the small business community are today unable to cope with daily management is

S. 1499 would authorize expansions in these programs so that the SBDCs, the SCORe chapters and the Women's Busir Centers are positioned to address the needs of a large influx of small businesses looking for help. Our bill would create spe authorization for each program to provide assistance tailored to the needs of small businesses following the September 11 terrorist attacks. In addition, the bill would increase the authorization levels by the following amounts: SBDC program, $25

million, SCORE $2 million, Women's Business Centers $2 million, and Microloan technical assistance, $5 million.

For small businesses that are doing business with the Federal Government section 9 of the managers' substitute amendr S. 1499 would authorize a fund of $50 million to compensate small businesses when Federal action as the result of the terr attacks, has caused the costs to increase for small businesses to meet the terms of their contracts. The fund would be administered by the Department of the Treasury. The Office of Federal Procurement Policy would establish guidelines for administering the program, and the contracting agencies would consult with the SBA when determining whether an award should be made.

The American Small Businesses Emergency Relief and Recovery Act is important legislation that is needed to help the m struggling small businesses. Swift passage will be very helpful to the long-term survival of many of American's small busine and I urge each of my colleagues to vote in favor of the bill.

Mr. DODD. Mr. President, I ask unanimous consent that the bill, as amended, be read the third time and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bil printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1499), as amended, was read the third time and passed.

[End Insert]

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/26/2002 10:22:29 AM
Subject: : Re: FYI

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-MAR-2002 15:22:29.00
SUBJECT:: Re: FYI
TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think this is a Brett/Politcal Affairs issue.

Robert W. Cobb
03/26/2002 09:27:51 AM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: FYI

I have not taken care of this; do you want this one to follow up on?

---------- Forwarded by Robert W. Cobb/WHO/EOP on 03/26/2002 09:27 AM ----------

Kirk Blalock
03/06/2002 03:50:20 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP, Ken Mehlman/WHO/EOP@EOP
cc:
Subject: FYI

We received a call from a Rich Fericy from New Jersey who called asking about a call he received yesterday to join the "Presidents High Level Business and Economic Council" to cut taxes. It was apparently a recorded message call. Im not sure of any of the additional details, but sounded suspicious to me. Rich Fericy can be reached at 732-846-2666.

From: CN=Douglas L. Hoelscher/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;adrian g. gray/who/eop@eop [WHO] <adrian g. gray>
Sent: 3/27/2002 4:04:28 AM
Subject: : Re: Two questions

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-MAR-2002 09:04:28.00
SUBJECT:: Re: Two questions
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:adrian g. gray (CN=adrian g. gray/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

some follow-up questions on campaign involvement question:
-Is it ok for an OPA staffer to e-mail the liaisons/schedule c's on this matter from our RNC computer?
-Is it ok for a political appointee to use their personal/vacation time for campaign purposes (i.e. use vacation time and travel to volunteer for a campaign)? Is it ok, to communicate that they can use vacation time on a voluntary basis to help out? (my concern is that they would not know they can do this and thus won't do it or won't have enough vacation time to do it?

Matthew A. Schlapp
03/27/2002 08:49:55 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Adrian G. Gray/WHO/EOP@EOP, Douglas L. Hoelscher/WHO/EOP
Subject: Two questions

Is there a heightened concern with our office have a role in the announcement of DOJ grants?

We want to send an email to the WH Liaisons and the sched c's to see if they want to be involved in any campaigns this year (some just for weekends others for more extended time). Is there a problem with that if we stress that they need to get the proper agency approvals for leave etc?

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/27/2002 9:48:43 AM
Subject: : JAB 192 -- OMB Request for Views on REVISED HR___ Small Business Advocacy Improvement Act
Attachments: P_RUJB6003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-MAR-2002 14:48:43.00
SUBJECT:: JAB 192 -- OMB Request for Views on REVISED HR___ Small Business Advocacy Improvement Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 03/27/2002 02:48 PM ----------

James A. Brown
03/27/2002 02:39:40 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: JAB 192 -- OMB Request for Views on REVISED HR___ Small Business Advocacy Improvement Act

LRM ID: JAB192
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, March 27, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on REVISED HR___ Small Business Advocacy Improvement Act

DEADLINE: 10:00 A.M. Wednesday, April 10, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Reportedly. Congressman Manzullo may introduce this bill shortly after Congress returns from recess. An earlier version of this draft bill was circulated on March 15, 2001 via LRM JAB 17.

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Kristine Simmons
K. Philippa Malmgren
Clay Johnson III
David S. Addington
LRM ID: JAB192 SUBJECT: OMB Request for Views on REVISED HR___
Small Business Advocacy Improvement Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Philip J. Perry/OMB/EOP@EOP
Rosalyn J. Rettman/OMB/EOP@EOP
NEC LRM
WHGC LRM
Lisa B. Fairhall/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
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David Rostker/OMB/EOP@EOP
Kristine Simmons/OPD/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Clay Johnson III/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
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epalrm@epamail.epa.gov
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ola@opm.gov
ca.legislation@gsa.gov
legteam@oge.gov
James J. Jukes/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_RUJB6003_WHO.TXT_1>

F:\M7\MANZUL\MANZUL.095 H.L.C.

[DISCUSSION DRAFT]

107TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. MANZULLO introduced the following bill; which was referred to the Committee on _____

A BILL

To improve small business advocacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Small Business Advocacy Improvement Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

REV_00142319

(1) Excessive regulations continue to burden the Nation's small businesses.

(2) Federal agencies continue to propose regulations that impose disproportionate burdens on small businesses.

(3) An independent office of small business advocacy will help to ensure that Federal agencies are responsive to small businesses and that those agencies comply with their statutory obligations with respect to small businesses.

(4) The independence of an office that acts as an advocate for small businesses is essential to ensure that it can serve as an effective advocate without being restricted by the views or policies of the Small Business Administration or any other Federal executive branch agency.

(5) To be effective an office that acts as an advocate for small businesses needs sufficient resources to conduct creditable economic studies and research which are necessary for the maintenance of small business databases and for the accurate assessment of the impact of regulations on small businesses, the role of small business in the Nation's economy, and the barriers to the growth of small businesses.

(6) The research, information, and expertise provided by an independent office of small business advocacy will be a valuable source of information and advice for Congress and Federal agencies with which the office will work on behalf of small businesses.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure that there exists an entity that has the statutory independence and adequate financial resources to effectively advocate for and on behalf of small business;

(2) to require that such an entity publish reports and make them available to the President, to the Chairmen and Ranking Members of the Committees on Small Business of the Senate and of the House of Representatives, and to the Administrator of the Small Business Administration, in order to keep them fully informed about current issues, economic conditions, and regulations affecting small businesses and the necessity for corrective action by Federal agencies or Congress;

(3) to provide a separate authorization for appropriations for such an entity; and

(4) to strengthen the role of the Small Business and Agriculture Regulatory Enforcement Ombuds-

man by ensuring greater cooperation between the Ombudsman and the Office of Advocacy of the Small Business Administration.

SEC. 3. APPOINTMENT OF CHIEF COUNSEL OF ADVOCACY.

Section 201 of Public Law 94–305 (15 U.S.C. 634a) is amended—

(1) by inserting "(a)" before "There is established";

(2) by striking the second sentence; and

(3) by adding at the end the following:

"(b) The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from the private sector by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of fitness to perform the duties of the office.

"(c) The Chief Counsel shall be paid at a rate not to exceed the rate of basic pay for level III of the Executive Schedule.

"(d) After the expiration of the term of a President, the Chief Counsel may continue to serve for a period of not to exceed one year until such date as a successor to the Chief Counsel is nominated.".

REV_00142322

SEC. 4. PRIMARY FUNCTIONS OF OFFICE OF ADVOCACY.

Section 202 of Public Law 94–305 (15 U.S.C. 634b) is amended—

(1) in paragraph (6) by striking "to minority enterprises" and inserting "to small business concerns owned and controlled by socially and economically disadvantaged individuals, to small business concerns owned and controlled by women, and to small business concerns owned and controlled by veterans";

(2) in paragraph (7) by striking "minority enterprises" and inserting "small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and small business concerns owned and controlled by veterans";

(3) in paragraph (8) by striking "minority and other small business enterprises" and inserting "small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, small business concerns owned and controlled by veterans, and other small businesses";

(4) in paragraph (9) by striking "complete" and inserting "compete";

(5) by striking paragraph (11);

REV_00142323

(6) by redesignating paragraph (12) as paragraph (11);

(7) in paragraph (11) (as so redesignated)—

(A) by striking "serviced-disabled" and inserting "service-disabled"; and

(B) by striking the period at the end and inserting "; and"; and

(8) by adding at the end the following:

"(12) make recommendations and submit reports to the President, to the Chairmen and Ranking Members of the Committees on Small Business of the Senate and of the House of Representatives, and to the Administrator of the Small Business Administration, with respect to issues and regulations affecting small businesses and the necessity for corrective action by any Federal agency or by Congress.".

SEC. 5. ADDITIONAL FUNCTIONS.

(a) IN GENERAL.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

(1) by inserting "(a)" before "The Office of Advocacy shall also perform"; and

(2) in subsection (a) (as so designated)—

(A) in paragraph (4) by striking "and" at the end;

(B) in paragraph (5) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(6) maintain economic and bundling databases and make the information contained therein available to the Administrator of the Small Business Administration;

"(7) carry out the responsibilities of the Chief Counsel under chapter 6 of title 5, United States Code, and, after notice and opportunity for comment, issue regulations governing compliance with such chapter by each Federal agency; and

"(8) [enter into a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy.]".

(b) APPROPRIATION REQUEST.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is further amended by adding at the end the following:

"(b)(1) For each fiscal year, the Chief Counsel shall concurrently transmit the Office of Advocacy's budget estimate and budget to the Office of Management and Budget and to Congress.

"(2) Each annual request for appropriations by the President shall include a line item for the Office of Advocacy.".

SEC. 6. STAFF AND POWERS.

(a) IN GENERAL.—Section 204 of Public Law 94–305 (15 U.S.C. 634d) is amended—

(1) by inserting "(a)" before "In carrying out";

(2) in subsection (a) (as so designated)—

(A) in paragraph (4) by striking "and" at the end;

(B) in paragraph (5) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(6) issue regulations necessary to carry out the duties of the Chief Counsel;

"(7) notwithstanding any other law, exercise the right to intervene in any adjudication or on the record rulemaking proceeding before any Federal agency (if the agency is not authorized to impose a fine or penalty in such adjudication or proceeding) and the right to inform the agency of the impact that any decision on the record may have on small businesses and other small entities (as defined in section 601(6) of title 5, United States Code); and

"(8) exercise the right to file comments whenever an agency publishes a notice requesting comment, regardless of whether the agency is required to file general notice of proposed rulemaking under section 553 of title 5, United States Code.".

(b) DEPUTY CHIEF COUNSELS; EFFECT OF CHIEF COUNSEL'S COMMENTS.—Section 204 of Public Law 94–305 (15 U.S.C. 634d) is further amended by adding at the end the following:

"(b)(1) The Chief Counsel may appoint an individual to serve as Principal Deputy Chief Counsel and 2 individuals to serve as Deputy Chief Counsels.

"(2) Notwithstanding any other provision of this section—

"(A) the pay rate for the Principal Deputy Chief Counsel may not exceed the rate of basic pay for level VI of the Senior Executive Service; and

"(B) the pay rate for each Deputy Chief Counsel may not exceed the rate of basic pay for level III of the Senior Executive Service.

"(3) Individuals appointed to positions under this subsection shall not be counted toward the limitation contained in subsection (a)(1) regarding the number of individuals who may be compensated at a rate in excess of the lowest rate for GS–15 of the General Schedule.

REV_00142327

"(c) Any department or agency that receives a comment from the Chief Counsel as authorized under subsection (a)(8) shall—

"(1) give substantial weight to the comment; and

"(2) publish the comment in the Federal Register before the rule to which the comment relates becomes final and state any reason that the agency disagrees with the comment.

[[Page 10]]

[[Page 11]]

[[Page 12]]

[[Page 13]]

[[Page 14]]

[[Page 15]]

[[Page 16]]

[[Page 17]]

[[Page 18]]

[[Page 19]]

[[Page 20]]

[[Page 21]]

[[Page 22]]

[[Page 23]]

[[Page 24]]

[[Page 25]]

[[Page 26]]

[[Page 27]]

[[Page 28]]

[[Page 29]]

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"(2) A report containing an evaluation of the efforts of each agency of the Federal Government to meet or exceed the contracting and subcontracting goals for participation in procurement by small businesses, as established annually by the President under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

"(3) The annual report on contract bundling required by section 15(p) of the Small Business Act (15 U.S.C. 644(p)).

"(4) An annual report on the state of small business and competition.

"(b) ADDITIONAL REPORTS.—In addition to the reports required by this title, the Chief Counsel may prepare and publish such other reports as the Chief Counsel determines appropriate.

"(c) PROHIBITION.—No report required or authorized by this section may be transmitted to the Office of Management and Budget, or to any other agency of the Federal Government, for any purpose before transmittal of the report to the President and to Congress.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 208 of Public Law 94–305 (15 U.S.C. 634g) is amended by striking "not to exceed $1,000,000" and inserting "such sums as may be necessary".

SEC. 9. CONFORMING AMENDMENTS.

(a) EXECUTIVE PAY SCHEDULE.—Title 5, United States Code, is amended—

(1) in section 5314 by adding at the end the following:

"Chief Counsel for Advocacy, Small Business Administration."; and

(2) in section 5315 by striking the following:

"Chief Counsel for Advocacy, Small Business Administration.".

(b) BUNDLED CONTRACTS DATABASE AND ANNUAL REPORT.—Section 15(p) of the Small Business Act (15 U.S.C 644(p)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) BUNDLED CONTRACT.—The term 'bundled contract' has the meaning given such term in section 3(o)(1).

"(B) CHIEF COUNSEL.—The term 'Chief Counsel' means the Chief Counsel for Advocacy appointed under 201 of Public Law 94–305 (15 U.S.C. 634a).";

(2) in paragraph (2)(A) by striking "Not later than 180 days after the date of the enactment of

this subsection, the Administrator of the Small Business Administration shall" and inserting "The Chief Counsel shall";

(3) in paragraph (4)(A) by striking "Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the Administration shall" and inserting "In March of each year, the Chief Counsel shall"; and

(4) in paragraph (5) by striking "Administration" each place it appears and inserting "Chief Counsel".

(c) RURAL TOURISM TRAINING PROGRAM.—Section 311 of the Small Business Administration Reauthorization and Amendments Act of 1990 (15 U.S.C. 653 note; 104 Stat. 2832) is amended by striking "Chief Counsel for Advocacy" and inserting "Administrator".

[(d) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN.—Section 30(b)(2) of the Small Business Act (15 U.S.C. 657(b)(2)) is amended—

[(1) in subparagraph (D), by striking "and" at the end;

[(2) in subparagraph (E), by striking the period and inserting "; and"; and

[(3) by adding at the end the following:

[“(F) enter into a memorandum of understanding with the Office of Advocacy regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy.”.]

REV_00142332

From: CN=Robert W. Cobb/OU=WHO/O=EOP [WHO]
To: Linda M. Gambatesa/WHO/EOP@EOP [WHO] <Linda M. Gambatesa>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/27/2002 12:19:24 PM
Subject: : Re: Cash donation question
Attachments: P_HWRB6003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-MAR-2002 17:19:24.00
SUBJECT:: Re: Cash donation question
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sorry, I responded to Shannon Burkhart's follow-on question without ccing you. So here is what I sent her.

---------- Forwarded by Robert W. Cobb/WHO/EOP on 03/27/2002 05:17 PM ----------

Robert W. Cobb
03/25/2002 06:46:47 PM
Record Type: Record

To: Shannon Burkhart/WHO/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: Cash donation question

No on the cash donations. The CFC (Combined Federal Campaign) is the only recognized charitable solicitation (of money) permissible in the Federal workplace. As far as the school chest ideas go, something can be worked out, although it should be coordinated with management of the buildings where the chests are used, e.g. GSA in the EEOB, and, I presume, the Park Service in connection with the White House; I'm a little unclear as to who to talk to in the WH proper. GSA building management is in the WH directory. In my view, this should all be handled very informally, and no coercive tactics should be used to get people to participate. Let me know what you think.

FYI, here my edits to a memo relating to Toys for Tots from last fall. It may give you the general idea.

Shannon Burkhart

03/25/2002 01:48:20 PM

Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: Cash donation question

Hi Moose,

Another question for you...

After the President's event last Wedensday, several people expressed interest in helping with the Red Cross school chests. Jim would like me to organize WH staff school chests asap. In thinking about how best to organize this (having the containers in a few designated drop spots w/lists of what each chest must include, still needs, etc) I thought that many busy people may find it easier to give a few dollars instead of hunting down the right type of chalkboard eraser.

If people donate money, am I allowed to purchase the needed supplies for the school chests?

Please let me know whenever you have chance. Thank you!!

-Shannon

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HWRB6003_WHO.TXT_1>

November 28, 2001

MEMO FOR MARGARET SPELLINGS

THROUGH: STEPHEN GARRISON

FROM: TIFFANY BARFIELD

SUBJECT: HOLIDAY TOY DRIVE WITH TOYS FOR TOTS

Summary

Consistent with administration encouragement of charitable activities of all Americans, we suggest that agencies and departments consider, informal support of *Toys for Tots* for their 2001 Toy Drive. Each holiday season the Toys for Tots organization hosts a national toy drive. In addition to gifts for children whose parents can not afford to purchase toys, *Toys for Tots* is reaching out to victims of the September 11 tragedy. Toys will be distributed to the children who lost parents in the World Trade Centers, Pentagon, and on the four flights. Also included will be children who lost parents in the rescue and recovery efforts and whose parents became unemployed due to the economic circumstances from September 11.

Interested agencies should call [insert name] at Toys for Tots at [insert phone number], or Tiffany Barfield at (202) 456-5594. We would expect that toys would be collected between December 5th through the 18th. Any person who is an agency contact for coordinating this toy drive should not have any outside relationship with *Toys for Tots*; such a relationship could raise ethical questions.

Background

Marine Reservists in Los Angeles, California founded Toys for Tots in 1947. In the following year, they expanded the program into a nationwide campaign for the United State Marine Corp Reserves. One of the Toys for Tots goals this year is to deliver a message of hope to the children whose lives have been forever changed by the September 11, 2001 terrorist attacks. Toys for Tots is hosting two events on Monday, December 3 at the Pentagon and Wednesday, December 5 in New York City. Last year over 125,700 toys where distributed in the DC, southern Maryland, and northern Virginia region.

Recommended Actions

1. Two week Toy Drive within the White House and Cabinet Agencies – On the daily Chief of Staffs conference call, the White House will encourage participation in the Holiday Toy Drive. This model was successfully implemented for a food drive earlier this year.

2. Collection and Distribution of Toys – Individuals at agencies and departments coordinating the collection of toys should consult with agency counsel on how support for Toys or Tots should be coordinated at their particular agency. (The Combined Federal Campaign (CFC) is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations. The collection of in-kind gifts, such as toys, however, is not inconsistent with CFC regulations, however. There are also General Services Administration regulations

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Staff of the White House and federal agencies in Washington DC will be asked to donate a new toy to the toy drive.

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concerning solicitations on Government property.) A Toys for Tots/Marine representative will pick up toys from each agency or the agency will deliver toys to specific location.

3. White House Event - On the specific day of collection there will be a photo op with the Toys for Tots Marine Reserves, local DC children, White House Staff, and available Senior Staff. Date will be coordinated by Toys for Tots and the White House.

The effort to raise *Toys for Tots* should not be to the exclusion of any other worthwhile charitable activities that may be permissibly conducted by agencies and departments.

Formatted

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;kyle sampson/who /eop@eop [WHO] <kyle sampson>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 3/27/2002 1:39:00 PM
Subject: : Re: Another Congressional Question on Volunteers

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-MAR-2002 18:39:00.00
SUBJECT:: Re: Another Congressional Question on Volunteers
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
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CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
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CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
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CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
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CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

The question only asks for numbers, and that's all I would provide. In providing the numbers, I would not make distinctions between staff and non-staff or anything else; I would interpret the question to mean how many volunteers work here. I would also hedge the response fully and carefully, noting for example that by its nature, volunteer work is often temporary or of short duration, that these numbers fluctuate literally day-by-day and that it's difficult to get an accurate count. One way to go about it might be to see if the Secret Service can do a computer run to figure out how many Volunteer passes they distribute on average per day.

Robert W. Cobb
03/27/2002 05:48:46 PM
Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Another Congressional Question on Volunteers

Any thoughts on a response to this? For background, Adam Greenstone has told me that there are two types of volunteers: those who are not considered to be WH staff and those who are. The former is not counted towards FTE caps while the latter are.

---------- Forwarded by Robert W. Cobb/WHO/EOP on 03/27/2002 05:35 PM ----------

Lauren McCord
03/27/2002 05:29:23 PM
Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc: Desiree T. Sayle/WHO/EOP@EOP
Subject: Another Congressional Question on Volunteers

Moose. Desiree asked me to pass this through you before responding to Liz with volunteer information. As you see below I've been asked again for numbers of volunteers for a Congressional office. The last time there was a request for numbers of volunteers that were paid by the White House. I always thought those terms were mutually exclusive.

The first part of this request also uses that term -- employed. We do not employ any volunteers. We do, however, have a roll of approximately 815 volunteers -- not all of which are being utilized. They are used in Correspondence's various departments, the First Lady's office, the Vice President and Mrs. Cheney's offices, Visitor's office, NEC, Scheduling, Photo office, Faith-based, Political Affairs, White House Fellows, PPO, Conference Center, Freedom Corps, AIDS Policy Office, Press Office, Records Mgmt, Public Liaison and others that I may not even know about. This information is due back to Liz by cob tomorrow. Would you mind recommending a response? I'd appreciate it.

Thanks.
Laurie
---------- Forwarded by Lauren McCord/WHO/EOP on 03/27/2002 05:18 PM ----------

Elizabeth Gelfer
03/27/2002 10:54:56 AM

Record Type: Record

To: Lauren McCord/WHO/EOP@EOP
cc: James F. Daniel/OA/EOP@EOP, Monique L. Dilworth/OA/EOP@EOP
Subject: Another Congressional Question on Volunteers

Laurie:
We received the following question for the record from Congressman Steny H. Hoyer as a result of an appropriations hearing held March 14 on the EOP's FY 2003 budget request:

How many volunteers are currently employed within the Executive Office of the President?

From the HRM database, I can retrieve the "Student Volunteer" numbers for all of EOP, but for those volunteers that fall outside of the HRM database, mainly White House Office volunteers, I need your assistance. For the record, can you provide the number and types of volunteers currently serving the White House Office as of March 15th? We will not

provide the types of jobs they have, but we may need that for later. None of this information will be released to the Congressman prior to White House Counsel approval. Please provide the volunteer numbers and types by close of business, Thursday, March 28. If you have any questions or concerns, please call or email me.

Thanks.
Liz Gelfer
5-7624

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

From: CN=Edmund A. Walsh/OU=WHO/O=EOP [WHO]
To: Anne E. Campbell/WHO/EOP@EOP [WHO] <Anne E. Campbell>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/28/2002 4:18:10 AM
Subject: : Judges

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edmund A. Walsh (CN=Edmund A. Walsh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-MAR-2002 09:18:10.00
SUBJECT:: Judges
TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The President rarely gets this partisan. This issue must have hit a chord:

There is no more fundamental issue than to making sure we have a judiciary of people that do not interpret the law from the bench; people who do not try to write law from the bench. (Applause.) People who interpret the law and not try to write it.

And I put up a good man from Mississippi the other day. And I don't remember the senior senator from Georgia defending this man's honor. And we're going to have more fights when it comes to the judiciary. And I'm going to put strict constructionists on the bench. And I expect people in the United States Senate from a great state like Georgia to do what Zell Miller did, and stood up and defended the honor and integrity of Judge Pickering. And that's what Saxby Chambliss is going to do. (Applause.)

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 3/28/2002 12:07:42 PM
Subject: : Indemnification of Contractor re: Decontamination of Brentwood Postal Facility

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-MAR-2002 17:07:42.00
SUBJECT:: Indemnification of Contractor re: Decontamination of Brentwood Postal Facility
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
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READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please let me know if you or someone else in WHC's office has been
involved in this issue. The Postmaster General has contacted Gov. Ridge
and Mitch Daniels about seeking help for indemnification of the
contractors.
```

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>
Sent: 3/28/2002 11:30:35 AM
Subject: : RE: Excerpt from the President's remarks at an event in Texas this afternoon

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-MAR-2002 16:30:35.00
SUBJECT:: RE: Excerpt from the President's remarks at an event in Texas thi s afternoon
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Colleagues:

The coalition groups are thrilled the POTUS is talking about judges; but
many of them want a POTUS speech or lengthy remarks.

Ginni Thomas, whose email is below, makes the point of much of what I am
hearing. Brett and I heard the same message over and over at the Norquist
meeting this week.

Warmly

tsg

Tim: - here's my personal feedback -- I'm glad he is mentioning that branch
in his remarks; however, he does not appear to be using the time to EDUCATE
on why the left so wants to take them over...what the Democrats are doing
wrong. Maybe polling shows this is the only way that works, but it misses
the edge that distinguishes his choices from Clinton's -- in my opinion.
But
certainly, it is great that he is going places and using it in the effort.

Virginia (Ginni) Thomas, Director
Executive Branch Relations, The Heritage Foundation
214 Mass. Ave, NE/Washington, D.C. 20002
phone: (202) 608-6240 or 546-4400
fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 3/28/2002 12:20:16 PM
Subject: : Sen. Thompson statement on Lieberman letter

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-MAR-2002 17:20:16.00
SUBJECT:: Sen. Thompson statement on Lieberman letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Sen. Thompson will be issuing a statement in the next hour on a limited
basis (i.e., only to those few news organizations that have asked)
relating to Lieberman's letter to Andy. It is a fairly lengthy and fairly
strong denunciation of the move, claiming among other things that
Lieberman is asking for some materials at the heart of executive privilege
(advice to the President on appointments matters) without an adequate
predicate in fact and through an overbroad request. Sen. Thompson wants
us to know that he will support us if we decide to resist but is not
counseling us or pressuring us to take any particular approach. I told
his staff that I thought the statement would be helpful regardless of what
approach we ultimately decided to take and thanked them for the heads-up.
They will fax the statement when it goes out, and I will circulate it.
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/29/2002 6:23:17 AM
Subject: : NR article on Lieberman letter

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-MAR-2002 11:23:17.00
SUBJECT:: NR article on Lieberman letter
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

York's piece (link below) shows the Dems somewhat on the defensive about
the letter to us. Thompson's statement seems to have done a decent job
putting a little heat on, which may make our job a bit easier down the
road.

http://www.nationalreview.com/york/york032902.asp
```

From:	CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC:	Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	4/1/2002 2:21:51 AM
Subject:	: FOIA requests on Air Missions

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-APR-2002 07:21:51.00
SUBJECT:: FOIA requests on Air Missions
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Michael Murphy called this morning on another matter and mentioned that he
was aware of a number of FOIA requests that have been received on special
air missions.

He indicated that he would be happy to help out on these if you wanted his
help. Just let him know.

Thanks!
```

From: Whelan, M Edward III <M.Edward.Whelan@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2002 7:51:59 AM
Subject: :

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> ("Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 1-APR-2002 12:51:59.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I assume you saw news of this, but in case you didn't:

OBITUARIES
Hugh D. Graham, 65; Scholar Challenged Bush on Records
By DENNIS McLELLAN, TIMES STAFF
WRITER

Hugh Davis Graham, a Vanderbilt University political historian who spearheaded a lawsuit to block President Bush's reinterpretation of a law on the release of White House records, has died. He was 65.

Graham, a highly regarded scholar of civil rights policy and a Pulitzer Prize-nominated author, died of cancer Tuesday at his home in Santa Barbara.

In November, he and a group of other historians and journalists asked a federal judge to strike down Bush's executive order that gives an incumbent president or a former president's representative the right to withhold the release of their presidential papers to the public. The order also extends to "vice presidential records." Immediately at issue were 68,000 pages of "confidential communications" from President Reagan's White House.

Graham and his fellow plaintiffs argued that Bush's executive order violated the 1978 Presidential Records Act, which was passed by Congress to make clear that a president's papers and files are the government's property.

The measure was enacted in the wake of Watergate and President Nixon's efforts to control access to his papers and secret White House tapes.

The law, which took effect in 1981, said most of a former president's papers would be available to the public 12 years after the chief executive left office.

A White House spokeswoman in November described Bush's executive order as "establishing an orderly process" for implementing the 1978 law.

"Bush's order is wrongheaded and dangerous on many

counts," Graham told an audience at the Lyndon Johnson Presidential Library in Austin, Texas, in November. "It attempts to change a public law not by persuading Congress to revise it, but by executive decree. It is disingenuous, turning the statute on its head, displacing a premise of eventual openness with a license for permanent closure."

In January, a year after they were scheduled to be made public, 8,000 pages of Reagan presidency documents were unveiled at the Ronald Reagan Presidential Library in Simi Valley, including memos from Chief of Staff James A. Baker III. An additional 60,000 pages that were to be released in January 2001 are expected to become available in early April.

Graham viewed the release of the Reagan papers as a mere public relations ploy to curb criticism over Bush's executive order.

"It's a gesture so that they can say, 'See, we're good guys, we're producing these documents and everyone can come look at them,'" Graham said in January. "They're trying to get the monkey off their back. But it's not going to get us off their backs."

The lawsuit, filed in Washington on behalf of the American Historical Assn., the Organization of American Historians, the National Security Archive and the Reporters Committee for Freedom of the Press, in addition to Graham and Stanley I. Kutler of the University of Wisconsin, is pending.

A native of Little Rock, Ark., Graham graduated magna cum laude from Yale University in 1958 and later received his master's and PhD from Stanford University.

After a two-year stint in the Marine Corps on Okinawa, Graham worked briefly as a reporter for the Tennessean in Nashville in 1960 then taught history at Foothill College in Los Altos Hills, Calif., and at San Jose State College (now University).

From 1964 to 1966, he worked in the Peace Corps in Washington, first in the Office of Public Affairs and then as director of the Western region. He later taught history at Stanford, Johns Hopkins University in Baltimore and the University of Maryland.

Graham began teaching at Vanderbilt in Nashville in 1991, but he moved to Santa Barbara early last year after his illness

rendered him unable to teach.

He continued to write, however, and finished his final book, "Collision Course: The Strange Convergence of Affirmative Action and Immigration Policy in America," which has just been published by Oxford University Press.

Graham wrote or edited 15 books, mostly dealing with U.S. policy issues in the second half of the 20th century.

He was a finalist for the Pulitzer Prize in history in 1991 for "The Civil Rights Era: Origins and Development of National Policy, 1960-1972."

This week, an academic conference on Reagan's presidency that Graham helped organize was held at UC Santa Barbara.

Graham is survived by his wife, Janet; two brothers, Court TV anchor Fred Graham of Washington and historian Otis L. Graham Jr. of Wilmington, N.C.; and his son, Holter Graham of Baltimore. Another son, Hugh Patterson Graham, died in 1977 at age 8.

A memorial service will be held later at Vanderbilt.

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>
Sent: 4/2/2002 5:55:14 AM
Subject: : CQ blurb on class action

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic ( CN=Lisa J. Macecevic/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME: 2-APR-2002 10:55:14.00
SUBJECT:: CQ blurb on class action
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Diana L. Schacht ( CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Stephen S. McMillin ( CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I try to send out articles to interested staff on possible movement of
legislation, hearings, markups, etc. Often, I see articles (like the
following) explaining positions of interest groups on legislation. Would
you be interested in seeing these types of articles? I usually stick to
articles that purely explain Congressional action or likely action, but if
it would be helpful to see articles like this, please let me know.
Thanks, Lisa

(references H.R. 2341; strongly support SAP sent to House Rules on 3/12)

The Conference of Chief Justices, which represents the interests of state
supreme courts, has come out against class action reform legislation
approved this month by the House, and pending before the Senate Judiciary
Committee. "Absent hard evidence of the inability of state judicial
systems to hear and decide fairly class actions brought in state courts,
we do not believe such a procedure is warranted," the CCJ said in a letter
sent last week to Senate Judiciary Chairman Leahy and ranking member Orrin
Hatch, R-Utah. "Our position on this issue is not new," they added.
Moreover, it is "consistent with the position of our counterparts in the
federal judicial system." Federalization of class actions "may not be the
best solution. Improving state protocols and federal state court
cooperative strategies may be a better solution consistent with principles
of federalism," the group wrote.
```

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 4/2/2002 3:59:21 AM
Subject: : Fourth Circuit DNA Case

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-APR-2002 08:59:21.00
SUBJECT:: Fourth Circuit DNA Case
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Having reviewed the opinions in this case, I must say that I find
Judge Luttig's opinion quite persuasive. On the merits, the case
addresses two basic issues. The first, whether this case properly states
a section 1983 claim under Heck v. Humphry or, instead, raises a claim
that must be raised through a federal habeas petition. On this issue, I
think Judge Luttig is plainly correct. (Arguably, Heck is no longer good
law, as in Spencer v. Kemna, Justice Ginsburg, who provided the fifth vote
in Heck, stated that she had "come to agree with Justice Souter's
reasoning" in his dissenting opinion in Heck; Heck has not, however, been
overruled, and so lower court judges remain bound by it). In Heck, the
Supreme Court, in a 5-4 opinion, stated:

"[W]hen a state prisoner seeks damages in a s. 1983 suit, the district
court must consider whether a judgment in favor of the plaintiff would
necessarily imply the invalidity of his conviction and sentence; if it
would, the complaint must be dismissed unless the plaintiff can
demonstrate that the conviction or sentence has already been invalidated.
But if the district court determines that the plaintiff's action, even if
```

successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit."

(Judges Wilkinson and Luttig both agree that the legal test is the same where, as here, the prisoner seeks injunctive relief instead of damages). Here, a judgment in plaintiff's favor plainly would not "necessarily imply the invalidity of his conviction and sentence." Indeed, the DNA evidence could very well confirm his guilt (and hence the validity of conviction and sentence). In any event, it is not at all clear that even if exculpatory, such evidence would "necessarily imply the invalidity of his conviction and sentence" -- unless one believes that the Constitution prohibits the conviction of innocent people, a question on which jurists have disagreed. In other words, it is possible that the Constitution permits the valid conviction and sentence of an innocent person -- after all, only proof beyond reasonable doubt, not all doubt, is required for a "valid" conviction. Actual innocence and a valid conviction are not necessarily inconsistent, then, the ultimate safeguard being executive clemency, as Judge Luttig explains.

The second issue in this case is whether a prisoner has a due process right to access to DNA evidence post-conviction. Although reasonable people can disagree on this issue, I believe that Judge Luttig makes a very compelling case. Indeed, absent the right articulated in Judge Luttig's opinion, the prosecutor in this case would have been free to destroy the DNA evidence -- forever preventing a possibly innocent person from ever even having access to the best evidence that could prove his innocence (or confirm his guilt). Rather than paraphrase it, I will quote from Judge Luttig's opinion:

"That the Constitution would recognize a limited right of access to previously-produced forensic evidence should be unsurprising. Even though the incarcerated individual has been deprived of his liberty through due process of law, he obviously still has a continuing interest in the pursuit of his freedom from the executive through mechanisms of pardon, commutation, and parole that have been established by the executive (if not also from the judiciary through its processes). At least in the circumstances where STR or related DNA testing of previously-provided forensic evidence could prove the individual's innocence beyond all doubt, this interest is sufficient to outweigh the government's comparatively insubstantial interest in the withholding of access to the evidence in question -- an interest which I submit is non-existent where further resort to the judicial process is, under law, no longer available. Were mere access to such evidence denied in circumstances where it is possible to prove the individual's innocence beyond all doubt, the incarcerated would be effectively foreclosed from recourse to the very executive processes that the Supreme Court has instructed are, collectively and appropriately, the safety net of our criminal justice system -- and in precisely the circumstances in which the Court itself has repeatedly said that such recourse should lie, namely, where the system has failed by convicting the truly innocent. See Herrera v. Collins, 506 U.S. at 411-12 (observing that "clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted" (footnotes omitted)); id. at 412 n.13 (noting that "clemency has provided the historic mechanism for obtaining relief" on claims of actual innocence made after conclusion of judicial proceedings); id. at 415 ("Executive clemency has provided the 'fail safe' in our criminal justice system.").

"It is one thing to say that further access to the apparatus of the criminal justice system must at some point be curtailed in the indusputable interest of finality. It is another altogether to say that, having curtailed that access to the courts, one will even be denied access to evidence in the government's hands that he could present to the executive in an effort to prevent a miscarriage of justice, after he has been told that it is the role of the executive, not the courts, to prevent miscarriages of justice which, because of finality, are no longer remediable through the judicial process. Not only would such be

fundamentally unfair; it would constitute, by definition, wholly arbitrary governmental conduct."

Finally, I must say that I strongly disagree with the argument that it was somehow injudicious for Judge Luttig to write his opinion. Indeed, under such reasoning, it would be injudicious for any judge to write an opinion concurring in the judgment only. Here, Judge Wilkinson's panel majority opinion, to which Judge Luttig's opinion is a response, is law of the circuit -- to my knowledge, Judge Wilkinson has not vacated his panel opinion as moot in light of the actions of the state court. Judge Luttig, therefore, was fully justified, and judicious, in registering his disagreement with that now-binding panel opinion in the context of this case -- precisely as would a judge on the panel who concurred in the judgment only. Indeed, this is arguably the only appropriate place, short of a full rehearing en banc, where Judge Luttig should register such views, for on all subsequent panels, he, like every other circuit and district court judge in the Fourth Circuit, will be bound to follow Judge Wilkinson's panel opinion. A panel dissenter, for example, may dissent the first time, but thereafter he is bound to follow the law of the circuit. (I will not comment, on the other hand, on whether it is injudicious for a judge to opine on his view of proper public policy notwithstanding his view of the law).

The only argument of which I can conceive against such a course is that it somehow mattered that Judge Luttig was not on the original panel. This, of course, would mean that all opinions concurring in the denial of rehearing en banc are injudicious, at least if they purport to opine on the substance of the underlying decision. More importantly, suppose Judge Luttig were to have written the exact same opinion, only in a dissent from denial of rehearing en banc. Surely this would not seem injudicious. Why is it any different where, as here, while he disagreed with the panel's reasoning, he did not believe rehearing en banc -- a decision as discretionary as granting certiorari -- appropriate? I must admit that I simply do not see any meaningful distinction.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/2/2002 12:19:02 PM
Subject: : LRM KCT140 - - VETERANS AFFAIRS Report on S1042 Filipino Veterans' Benefits Improvements Act
Attachments: P_MAOF6003_WHO.TXT_1.doc; P_MAOF6003_WHO.TXT_2.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-APR-2002 17:19:02.00
SUBJECT:: LRM KCT140 - - VETERANS AFFAIRS Report on S1042 Filipino Veterans' Benefits Improvements Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Go help those Filipinos!! Patrick
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/02/2002 05:18 PM ----------

From: Erin P. Hassing on 04/02/2002 05:16:47 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT140 - - VETERANS AFFAIRS Report on S1042 Filipino Veterans' Benefits Improvements Act

LRM ID: KCT140
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 2, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: VETERANS AFFAIRS Report on S1042 Filipino Veterans' Benefits Improvements Act

DEADLINE: COB Friday, April 5, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please review the attached letter on S. 1042 and provide any comments by COB, Friday, April 5th.

- March revision of views ltr.doc

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Lauren C. Lobrano
Philip J. Perry
Rosalyn J. Rettman
Erin P. Hassing
Ingrid M. Schroeder
James J. Jukes
LRM ID: KCT140 SUBJECT: VETERANS AFFAIRS Report on S1042 Filipino Veterans' Benefits Improvements Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MAOF6003_WHO.TXT_2>

The Honorable John D. Rockefeller
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested in connection with a hearing before your Committee on July 19, 2001, I am pleased to provide the views of the Department of Veterans Affairs (VA) on S. 1042, 107th Congress, the "Filipino Veterans' Benefits Improvements Act of 2001," a bill, "[t]o amend title 38, United States Code, to improve benefits for Filipino veterans of World War II." We support this bill, in part, and oppose this bill, in part, for the reasons discussed below. We plan to submit to Congress this session a legislative proposal that includes those Filipino veterans' benefits enhancements that the Administration supports.

Compensation and Dependency and Indemnity Compensation

Sections 2(b) and 3(a) of S. 1042 would, in the case of compensation and dependency and indemnity compensation (DIC) paid by reason of service in the New Philippine Scouts, and in the case of DIC paid by reason of service in the organized military forces of the Government of the Commonwealth of the Philippines, including organized guerilla units, remove the $0.50 on-the-dollar limitation if the individual to whom the benefits are payable resides in the United States and is either a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

Section 107(a) of title 38, United States Code, generally provides that service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, including organized guerilla units, may in some circumstances be a basis for entitlement to disability compensation, DIC, monetary burial benefits, and certain other benefits under title 38, United States Code, but that payment of such benefits will be at the rate of $0.50 for each dollar authorized. Similarly, section 107(b) of title 38, United States Code, generally provides that service in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945, i.e., service in the New Philippine Scouts, may be a basis for entitlement to disability compensation, DIC, and certain other benefits under title 38, United States Code, but that payment of such benefits will be at the rate of $0.50 for each dollar authorized.

These limitations on benefit payments to certain Filipino beneficiaries were intended to reflect the differing economic conditions in the Philippines and the United States. These limitations were not made contingent, in any respect, on the place of residence of the beneficiary, although, at the time the limitations were established, the great majority of affected individuals resided in the Philippines. Through the years, numerous Filipino veterans and their dependents and survivors have immigrated to this country, and many have become permanent residents or citizens. It became evident that the policy considerations underlying the restrictions on payment of compensation and DIC to the affected individuals are no longer relevant in the case of those who reside in the United States. VA realized that Filipino beneficiaries residing in the United States face living expenses comparable to United States veterans and imposition of limitations on the payment of these subsistence benefits to these individuals based on policy considerations applicable to Philippine residents was not only inequitable, but may result in undue hardships to this group of beneficiaries.

In 1998 and 1999, VA proposed elimination of the $0.50 on-the-dollar limitation in section 107 in the case of affected Filipino compensation and DIC beneficiaries who reside in the United States. Section 501(a) of Public Law 106-377, enacted in October 2000, added subsection (c) to section 107, providing that, in the case of disability compensation paid by reason of service in the organized military forces of the Government of the Commonwealth of the Philippines, including organized guerilla forces, the $0.50 on-the-dollar limitation would not apply if the individual to whom the benefits are payable resides in the United States and is either a citizen of the United States or an alien lawfully admitted for permanent residence. However, that statute left unchanged the $0.50 on-the-dollar limitation on the payment of DIC regardless of the recipient's place of residence.

VA continues to believe that in the case of those Filipino veterans and their dependents and survivors who reside in the United States and therefore face living expenses comparable to United States veterans and their dependents and survivors, imposition of limitations on the payment of subsistence benefits based on policy considerations applicable to Philippine residents is inequitable and may result in undue hardships to this group of beneficiaries. Thus, we believe a change in law such as that provided in Public Law 106-377 is justified in the case of compensation and DIC benefits payable to United States residents based on service in the New Philippine Scouts and DIC benefits payable to United States residents based on service in the Philippine Commonwealth Army. Thus, we support sections 2 and 3 of the draft bill.

We note that technical changes contemplated by section 2(a) of the draft bill have already been accomplished by Public Law 107-14, §8(a), enacted June 5, 2001.

Sections 2 and 3 of H.R. 1042 are subject to PAYGO limitations. VA projects that 120 former members of the New Philippine Scouts residing in the United States who have established service connection and currently receive compensation benefits at half-rates would become eligible for increased compensation benefits, under section 2 of the bill. VA estimates that the cost of section 2, if enacted, would be $568,000 in the first year of the program, and $2.5 million cumulatively for five years. VA also estimates that approximately 438 survivors of Filipino veterans reside in the United States and would become eligible for DIC benefits at full-dollar rates in FY 2002 pursuant to section 3. VA estimates that the cost of section 3, if enacted, would be $2.5 million in FY 2002, and $14.8 million in FYs 2002 through 2006.

Pension

Section 4 of S. 1042 would render service in both the organized military forces of the Government of the Commonwealth of the Philippines, including organized guerilla forces, and the New Philippine Scouts a basis for entitlement to pension under chapter 15 of title 38, United States Code. This section would allow for the payment of such benefits under chapter 15 to be made at the full-dollar rate authorized if the individual to whom the benefits are payable resides in the United States and is either a citizen of the United States or an alien lawfully admitted for permanent residence in the United States. This section would further provide for such benefits to be paid at the rate of $100 per month if the individual to whom the benefits are payable resides in the Republic of the Philippines.

The limitations on eligibility for United States veterans' benefits based on service in the Philippine military forces were established many years ago in a carefully considered determination of the United States and Philippine governments' respective responsibilities with regard to veterans of these forces. The current limitations on United States veterans' benefits for veterans of the Philippine forces stemmed from a comprehensive economic and political plan for allocating financial assistance to the Philippines. We understand that the array of benefits offered under current Philippine law for veterans of the Philippine armed forces is nearly as comprehensive as that authorized by United States law for veterans of service in our own Armed Forces. In our view, current law appropriately recognizes our two nations' shared responsibility for the well being of members of the Philippine forces, and the longstanding allocation of those responsibilities should not be disturbed.

We also note, with regard to section 4(b) of S. 1042, that VA's pension program is a needs-based program under which the amount of benefits awarded is based on the income of the recipient. The award of a flat pension rate to individuals who reside in the Republic of the Philippines would differ markedly from any award to which an individual who resides in the United States would be entitled. Under the proposed provision, an individual who resides in the Philippines could receive benefits, while an otherwise eligible resident of the United States subject to income limitations would receive none, even though the Philippine resident's income is equal to or greater than that of the United States resident. We can perceive of no basis for this inequitable treatment. Thus, VA opposes this provision.

Section 4 of S. 1042 is subject to PAYGO limitations. VA estimates that there are approximately 11,000 Filipino veterans residing in the United States, and approximately 34,000 Filipino veterans residing in the Philippines, who would become eligible for pension awards under section 4. VA estimates that total benefit costs of section 4, if enacted, would be $59.5 million in the first year of the program, and $251 million over five years, for Filipino veterans residing in the United States, and $40.7 million in the first year of the program, and $161.4 million over five years, in additional benefit costs for Filipino veterans residing in the Philippines.

Administrative Costs of Proposed Benefits Programs for Filipino Veterans

VA has determined that implementing the benefits programs for Filipino veterans proposed under section 2, 3 and 4 of H.R. 1042 would generate approximately 44,923 new claims, and would require 91 additional FTE. Administrative costs associated with these FTE would total $5.3 million.

Health Care in the United States

Section 5 of S. 1042 would broaden eligibility for VA health care within the United States for Filipino veterans who served in the Commonwealth Army and the New Philippine Scouts. Under current law, only Commonwealth Army veterans with compensable service-connected disabilities, who lawfully reside in the United States, can receive such comprehensive care. New Philippine Scouts can receive care only on a discretionary basis and only for a service-connected disability. Section 5 of the bill would make Commonwealth Army veterans and New Philippine Scouts eligible for hospital, nursing home and outpatient care, in VA facilities within the United States, in the same manner as United States veterans. Section 5 would, for the first time, allow VA to provide comprehensive care to veterans of the Commonwealth Army and New Philippine Scouts who have no service-connected disability. We note, however, that section 5, as drafted, would extend VA health benefits to Filipino veterans in the United States

regardless of immigration status. We urge that section 5 be amended to limit eligibility to Filipino veterans who are residing in the United States and are either citizens of, or aliens lawfully admitted for permanent residence in, the United States.

Section 5 of S. 1042 is subject to PAYGO limitations. VA estimates that there are approximately 11,000 nonservice-connected Filipino veterans residing in the United States and that extending eligibility as section 5 would do would result in approximately 2,300 new users of the health care system. VA estimates the cost of this use would be approximately $11.6 million in the first year and $52.6 million over five years.

Outpatient Health Care in the Philippines

Section 6 of the bill would require that VA provide comprehensive outpatient care at the Manila VA Outpatient Clinic to United States veterans of World War II, Commonwealth Army veterans, and New Philippine Scouts who reside in the Republic of the Philippines. However, section 6 would limit expenditures for such care to $500,000 per year. Section 6 also provides that the authority would be effective in any fiscal year only to the extent that appropriations are available. Section 6 would not change our current authority to furnish comprehensive outpatient care in the Manila Clinic to United States veterans with a service-connected disability, and the $500,000 cap would not apply to the existing authority.

VA opposes the expansion of authority contained in section 6. Last year Congress enacted legislation revising VA's authority to furnish care in the outpatient clinic in Manila, permitting the Department to furnish U.S. veterans and Old Philippine Scouts who have a service-connected disability with care for nonservice-connected disabilities. Old Philippine Scouts are considered to be U.S. veterans. Previously, the clinic was authorized to provide care only for the service-connected conditions of these veterans. Congress elected not to open the clinic to non-U.S. veterans. Congress made these changes because these veterans were already eligible for and receiving care for service-connected disabilities in a VA-operated clinic. It makes sense to treat all conditions of a patient when treating the patient for a service-connected disability. In all other foreign countries, VA is authorized only to provide reimbursement for the cost of care for veterans' service-connected disabilities.

The $500,000 per year limitation on VA's authority to provide care would necessitate that VA establish some basis for rationing the care in the clinic. The cost of caring for those who would be made eligible would far exceed that amount. Were VA to provide care on a first come first served basis, many veterans needing care would not receive it simply because they did not need the care soon enough.

S 1042 IS

107th CONGRESS

1st Session

S. 1042

To amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 14, 2001

Mr. INOUYE introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Filipino Veterans' Benefits Improvements Act of 2001'.

SEC. 2. RATE OF PAYMENT OF CERTAIN BENEFITS FOR NEW PHILIPPINE SCOUTS RESIDING IN THE UNITED STATES.

(a) REDESIGNATION OF PROVISIONS- Section 107 of title 38, United States Code, is amended--

(1) in the second sentence of subsection (a), by striking `subsection (c)' and inserting `subsections (c) and (d)';
and

(2) by designating subsection (c), as added by section 332(a)(2) of the Veterans Benefits and Health Care
Improvement Act of 2000 (Public Law 106-419; 114 Stat. 1856), as subsection (d).

(b) RATE OF PAYMENT- That section is further amended--

(1) in the second sentence of subsection (b), by striking `Payments' and inserting `Except as provided in
subsection (c), payments'; and

(2) in subsection (c), as added by section 501(a) of H.R. 5482 of the 106th Congress (as enacted by Public Law
106-377 (114 Stat. 1441A-55))--

(A) by inserting `or (b)' after `subsection (a)' the first place it appears; and

REV_00142423

(B) by striking `subsection (a)' the second place it appears and inserting `the applicable subsection'.

(c) EFFECTIVE DATE- The amendments made by subsection (b) shall take effect on the date of enactment of this Act,
and shall apply to benefits paid for months beginning on or after that date.

SEC. 3. RATE OF PAYMENT OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES OF CERTAIN FILIPINO VETERANS.

(a) RATE OF PAYMENT- Subsection (c) of section 107 of title 38, United States Code, as added by section 501(a)
of H.R. 5482 of the 106th Congress (as enacted by Public Law 106-377 (114 Stat. 1441A-55)) and amended by
section 2 of this Act, is further amended by inserting `, and under chapter 13 of this title,' after `chapter 11 of this title'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of enactment of this Act,
and shall apply to benefits paid for months beginning on or after that date.

SEC. 4. ELIGIBILITY OF CERTAIN FILIPINO VETERANS FOR DISABILITY PENSION.

(a) ELIGIBILITY- Section 107 of title 38, United States Code, as amended by this Act, is further amended--

(1) in subsection (a)--

(A) in paragraph (3) of the first sentence, by inserting `15,' before `23,'; and

(B) in the second sentence, by striking `subsections (c) and (d)' and inserting `subsections (c), (d), and (e)';
and

(2) in subsection (b)--

(A) by striking paragraph (2) of the first sentence and inserting the following new paragraph (2):

`(2) chapters 11, 13 (except section 1312(a)), and 15 of this title.'; and

(B) in the second sentence, by striking `subsection (c)' and inserting `subsections (c) and (e)'.

(b) RATE OF PAYMENT- That section is further amended by adding at the end the following new subsection:

`(e) In the case of benefits under chapter 15 of this title paid by reason of service described in subsection (a) or (b), if--

`(1) the benefits are paid to an individual residing in the United States who is a citizen of, or an alien lawfully
admitted for permanent residence in, the United States, the second sentence of the applicable subsection shall not
apply; and

`(2) the benefits are paid to an individual residing in the Republic of the Philippines, the benefits shall be paid
(notwithstanding any other provision of law) at the rate of $100 per month.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of enactment of this Act,
and shall apply to benefits for months beginning on or after that date.

SEC. 5. ELIGIBILITY OF FILIPINO VETERANS FOR HEALTH CARE IN THE UNITED STATES.

The text of section 1734 of title 38, United States Code, is amended to read as follows:

`The Secretary, within the limits of Department facilities, shall furnish hospital and nursing home care and medical
services to Commonwealth Army veterans and new Philippine Scouts in the same manner as provided for under section
1710 of this title.'.

SEC. 6. OUTPATIENT HEALTH CARE FOR VETERANS RESIDING IN THE PHILIPPINES.

(a) IN GENERAL- Subchapter IV of chapter 17 of title 38, United States Code, is amended--

(1) by redesignating section 1735 as section 1736; and

(2) by inserting after section 1734 the following new section 1735:

`Sec. 1735. Outpatient care and services for World War II veterans residing in the Philippines

`(a) OUTPATIENT HEALTH CARE- The Secretary shall furnish care and services to veterans of World War II,
Commonwealth Army veterans, and new Philippine Scouts for the treatment of the service-connected disabilities and
nonservice-connected disabilities of such veterans and scouts residing in the Republic of the Philippines on an outpatient
basis at the Manila VA Outpatient Clinic.

`(b) LIMITATIONS- (1) The amount expended by the Secretary for the purpose of subsection (a) in any fiscal year
may not exceed $500,000.

`(2) The authority of the Secretary to furnish care and services under subsection (a) is effective in any fiscal year only to
the extent that appropriations are available for that purpose.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 17 of such title is amended by
striking the item relating to section 1735 and inserting after the item relating to section 1734 the following new items:

`1735. Outpatient care and services for World War II veterans residing in the Philippines.

`1736. Definitions.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>
Sent: 4/2/2002 1:27:17 PM
Subject: : VMI

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CREATION DATE/TIME: 2-APR-2002 18:27:17.00
SUBJECT:: VMI
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
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yes, checking on general status and also checking on DOJ's
potential involvement just so that you are aware of that as well.
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From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 4/2/2002 1:50:09 PM
Subject: : Today's RICO Indictment of Gov. Ryan's (Illinois) Campaign (re: former DOT-WH Liaison)

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CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-APR-2002 18:50:09.00
SUBJECT:: Today's RICO Indictment of Gov. Ryan's (Illinois) Campaign (re: former DOT-WH
Liaison)
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Judge and Tim --
According to the Chicago Tribune, a Federal indictment was handed up in
Chicago today against the campaign committee of current Illinois Governor
George Ryan (Republican) and two Ryan campaign aides. It is believed to
be the first time a major party campaign has ever been charged
with RICO violations. The 85-page indictment also charges obstruction of
justice and mail fraud.

One of those charged is Illinois lawyer Rich Juliano, who until last week
was the White House liaison at the Dept. of Transportation.
According to the att'd Tribune report, Juliano resigned his post w/ the
Administration last week.
Juliano apparently served as Exec. Dir. of the Bush-Cheney campaign in
Illinois, and also worked in the Florida recounts. Governor Ryan, who was
not charged,
was Bush-Cheney Illinois state chairman.
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Feds indict former aides to Gov. Ryan

Tribune staff reports
Published April 2, 2002, 5:02 PM CST

Two of Gov. George Ryan,s former top aides, as well as the governor,s political campaign committee, were indicted today on federal charges they illegally used state workers for political purposes.

It was the biggest indictment to come out of the federal government,s four-year Operation Safe Road investigation, which began as a probe into the selling of
driver,s license for bribes when Ryan was secretary of state. The governor has not been charged with any wrongdoing.

"The indictment alleges that Citizens for Ryan ... for a number of years broke the law with considerable vigor," U.S. Atty. Patrick Fitzgerald said during a news conference at the Dirksen Federal Building in downtown Chicago. &Public funds were stolen and plundered for political benefit."

&The message sent today is that tax dollars are not free money ... to be used for
campaign purposes or for the personal benefit of those who work (for a campaign),8
Fitzgerald said.

Scott Fawell, Ryan,s chief of staff when he was secretary of state and manager of
Ryan,s successful 1998 campaign for governor, was charged with racketeering, mail
fraud and conspiracy to obstruct justice in a 10-count indictment. Fawell currently is
chief executive officer of the Metropolitan Pier and Exposition Authority, which runs
Navy Pier and McCormick Place in Chicago.

Also charged was Richard Juliano, a top campaign aide and later a staff member to
the governor before becoming the U.S. Transportation Department,s liaison to the
White House. Juliano resigned last week from the Department of Transportation, the
U.S. attorney,s office said.

Fitzgerald said Juliano is cooperating with the government,s investigation.

The indictment also seeks the forfeiture of more than $1 million in campaign funds
allegedly raised illegally by Citizens for Ryan during the scheme, which ran from 1992
to October 1999, according to prosecutors. The money ended up being used in Ryan,s
campaigns for secretary of state and governor, as well as in the 1996 presidential
primary and some state legislative races, Fitzgerald said.

Juliano and Fawell will be arraigned sometime in the future, the prosecutor said.

The indictment charges the two men were part of a racketeering enterprise that

involved Ryan,s campaign committee and the Illinois secretary of state,s office. It says the racketeering included 20 acts of mail fraud, bribery and obstruction of justice.

Prosecutors said the operation,s primary objectives were to illegally use secretary of state employees for campaign activities, to perform official acts as a way of helping the campaign and to conceal certain campaign activities from public exposure and possible prosecution.

Fawell and others caused the creation of false documents in the secretary of state,s office to justify pay raises and promotions for employees in return for the campaign work they performed, according to the indictment. Documents were destroyed, and perjury was committed, to cover up the activities, Fitzgerald said.

&More disturbingly, documents were destroyed at the Homewood (secretary of state) facility,8 he said.

Prosecutors previously have alleged that during Ryan,s tenure as secretary of state, managers at driver,s licensing facilities were pressured into raising tens of thousands of dollars in campaign contributions. That fueled a massive bribery scheme in which managers took payoffs in return for issuing driver,s licenses to hundreds of unqualified motorists, authorities have said.

About $170,000 in bribes ended up in Ryan,s campaign coffers, prosecutors have said.

Fitzgerald today said the indictment does not accuse Fawell or Juliano of being personally involved in issuing driver,s licenses in exchange for bribes. But the prosecutor added that Fawell is charged with cutting off an investigation into the alleged practice.

&Fawell took steps to end the investigation and to terminate the investigators,8 and gave false testimony in a subsequent grand jury probe, Fitzgerald said.

Operation Safe Road has resulted in the convictions of 42 people to date. Nearly half were former secretary of state,s employees.

Among those convicted was Dean Bauer, a former top Ryan aide and close friend who admitted to obstructing justice to try to protect Ryan from political embarrassment; and Larry Hall, a longtime friend of Fawell,s, who pleaded guilty to a bid-rigging and kickback scheme.

Fawell entered politics immediately after graduating from college, going to work in 1981 as administrator of Milton Township in DuPage

County. He joined the re-election campaign of then-U.S. Sen. Charles Percy (R-Ill.) in 1984 and later served in the secretary of state,s office and in Ryan,s office of lieutenant governor.

Fawell also worked in the political campaigns of Gov. James R. Thompson and George W. Bush, and was campaign manager for Ryan,s successful secretary of state bid in 1990.

Tribune staff reporters Ray Gibson, Matt O,Connor, Jill Blackman and Dave Ibata, and the Associated Press contributed to this story.

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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-APR-2002 18:27:17.00
SUBJECT:: VMI
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

yes, checking on general status and also checking on DOJ's
potential involvement just so that you are aware of that as well.
```

From: George.Wolfe@do.treas.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/2/2002 3:27:08 PM
Subject: : RE: Political Activity Guidance

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:George.Wolfe@do.treas.gov (George.Wolfe@do.treas.gov [UNKNOWN])
CREATION DATE/TIME: 2-APR-2002 20:27:08.00
SUBJECT:: RE: Political Activity Guidance
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Any update on status? Thanks.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, March 11, 2002 9:50 PM
To: George.Wolfe@do.treas.gov
Subject: Re: Political Activity Guidance

hope to circulate draft Wednesday; been a couple of hold ups; thanks
for
patience

(Embedded
image moved George.Wolfe@do.treas.gov
to file: 03/11/2002 01:20:38 PM
pic18728.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Political Activity Guidance

Just checking on status. We want to proceed at Treasury with distributing
guidance and doing briefings, but of course will need to see wh guidance
before we can proceed. I am sure that you are snowed under, but what's your
latest estimate on when your guidance will be distributed? Thanks.

From: Koebele, Steve <Steve.Koebele@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Willett, Don <Don.Willett@usdoj.gov>
Sent: 4/3/2002 7:11:45 AM
Subject: : RE: New version of Leahy Enron Letter

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Koebele, Steve" <Steve.Koebele@usdoj.gov> ("Koebele, Steve"
<Steve.Koebele@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 3-APR-2002 12:11:45.00
SUBJECT:: RE: New version of Leahy Enron Letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification Requested) ("Willett, Don"
<Don.Willett@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett --

1. Re ABA standards, the TX Code is the relevant cite. I was not able to immediately (time constraint with other matters) find a mirror provision -- remember, TX is in the minority on the elected judges system of judicial selection.

2. In TX, corporations are prohibited from giving and campaigns are prohibited from receiving corporate contributions. That is why you see the "employees" and "employee PAC" language.

3. Re duty of judges to sit: All judges have the duty to sit and decide matters brought before them, unless there is a basis for disqualification or recusal. Sun Oil Company v. Whitaker, 483 S.W.2d 808, 823-24 (Tex. 1972). (2) Texas Code of Judicial Conduct Canon 3(B)(1) provides "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate."

4. Re Mott quotation, the hard copy is not on the street. Please use the following: Texas Lawyer on-line, March 29, 2002.

5. See my earlier email comment to you regarding the $79,000.

6. Thank you very much. Steve

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, April 03, 2002 9:44 AM
To: Koebele, Steve
Cc: Willett, Don
Subject: New version of Leahy Enron Letter

Attached is a new version that reflects more internal edits. You will notice some factual questions in caps; if you could answer, that would be great.
Thanks.

(See attached file: letter to leahy re owen 4 03 02.doc)

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>

Sent: 4/3/2002 10:25:05 AM

Subject: : Reminder of JSC today at 4pm in the Roosevelt

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-APR-2002 15:25:05.00
SUBJECT:: Reminder of JSC today at 4pm in the Roosevelt
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 4/3/2002 10:25:31 AM
Subject: : JSC Prep starting now

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-APR-2002 15:25:31.00
SUBJECT:: JSC Prep starting now
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 4/3/2002 10:25:31 AM
Subject: : JSC Prep starting now

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-APR-2002 15:25:31.00
SUBJECT:: JSC Prep starting now
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/3/2002 12:07:51 PM
Subject: : Re: Web Site costs

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2002 17:07:51.00
SUBJECT:: Re: Web Site costs
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

this would be a question for Moose. He's out until Monday. Do you need an answer before then?

From: Barry S. Jackson on 04/03/2002 03:58:42 PM
Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Web Site costs

Would it be allowable to have the RNC pay for a user survey of the WH website? The company doing the survey would place a cookie in the WH site that would randomly select a predetermined number of users - those users would be asked if they'd like to participate in a survey on the usability, functionality and content of the WH site - if they say no, they go back to their original WH screen - if they say yes, they'll be transferred to another web site to complete the survey and then will be taken back to the WH site.

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2002 7:13:57 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-APR-2002 12:13:57.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Very interesting and very helpful. I've told Joel my general view re best practices, but that the functional approach has been employed and past OLCs must have signed off on it, so it's not out of bounds for consideration. I told him that if it
looks as if we start ttrending in that direction (right now, the rec is to do all of TSA), to let me know and we can gear up OLC. Thanks.

Brett M. Kavanaugh
04/04/2002 12:09:34 PM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc:
Subject: Re:

I have gone back and checked the draft aviation security EO we worked on with OLC in the fall. OLC edited the draft EO that had been prepared so that it would refer to some defined unit rather than to a class of employees defined by function. Claire Huntington worked on it at OLC. You should talk to her.

From: Anderson, Carl A <Carl.A.Anderson@usdoj.gov>
To: Anderson, Carl A <Carl.A.Anderson@usdoj.gov>;Schauder, Andrew <Andrew.Schauder2@usdoj.gov>;Newstead, Jennifer <Jennifer.Newstead@usdoj.gov>;Ciongoli, Adam <Adam.Ciongoli@usdoj.gov>;Bryant, Dan <Dan.Bryant@usdoj.gov>;Long, Linda E <Linda.E.Long@usdoj.gov>;Benedi, Lizette D <Lizette.D.Benedi@usdoj.gov>;McMahon, Lori <Lori.McMahon@usdoj.gov>;Day, Lori Sharpe <Lori.SharpeDay@usdoj.gov>;Suit, Neal <Neal.Suit@usdoj.gov>;Joy, Sheila <Sheila.Joy@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>;Comstock, Barbara <Barbara.Comstock@usdoj.gov>;Koebele, Steve <Steve.Koebele@usdoj.gov>;Ho, James <James.Ho@usdoj.gov>;Goodling, Monica <Monica.Goodling@usdoj.gov>;Willett, Don <Don.Willett@usdoj.gov>;Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;'Rena_Johnson@judiciary.senate.gov' <Rena_Johnson@judiciary.senate.gov>
Sent: 4/4/2002 10:05:59 AM
Subject: : judicial media review
Attachments: P_GGLH6003_WHO.TXT_1.wpd

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Anderson, Carl A" <Carl.A.Anderson@usdoj.gov> ( "Anderson, Carl A"
<Carl.A.Anderson@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 4-APR-2002 15:05:59.00
SUBJECT:: judicial media review
TO:"Anderson, Carl A" <Carl.A.Anderson@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Anderson, Carl A" <Carl.A.Anderson@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Schauder, Andrew" <Andrew.Schauder2@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Long, Linda E" <Linda.E.Long@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
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Strange Justice: The liberal coalition that killed the Pickering nomination

Byron York
National Review
Monday April 8, 2002

Late in the afternoon on Thursday, March 14, in a crowded hallway in the Dirksen Senate Office Building, Bruce Cohen, a top aide to Senate Judiciary Committee chairman Patrick Leahy, warmly greeted Elizabeth Cavendish, the legal director and general counsel of the National Abortion Rights Action League. "Thank you," said Cohen. "No, thank you!" said Cavendish, smiling and grasping Cohen's hand.

The cause of the smiling and thanking was the defeat, just minutes earlier, of the nomination of Charles Pickering to a place on the Fifth Circuit Court of Appeals. The committee's narrow Democratic majority, led by Leahy, killed the nomination on a 10-9 party-line vote. What made the exchange between Cohen and Cavendish noteworthy was that a good deal of the debate leading up to the vote had concerned the role that liberal groups such as NARAL, People for the American Way, NOW, the Alliance for Justice, and the Leadership Conference on Civil Rights were playing in the opposition to the Pickering nomination.

Republicans charged that the groups -- which have formed a coalition to oppose Bush nominees -- were working in close coordination with committee Democrats. "Judge Pickering has been viciously attacked by outside, left-wing, liberal groups," said Iowa Republican Charles Grassley, "and unfortunately, the Democratic party has been more than willing to do the bidding of these groups, here in the Senate, to oppose Judge Pickering." It's a charge Republicans have made for years, at least since the days of the Robert Bork and Clarence Thomas confirmation battles. But for all their anger -- and there was plenty in the room during the Pickering vote -- Republicans have never really offered much evidence to support their allegations. Yes, groups in the coalition are powerful and well funded -- People for the American Way's budget dwarfs those of the groups that tried to defend Pickering -- but do they really exercise inordinate influence on the Democratic senators who cast votes on the Judiciary Committee? It's a question that is impossible to answer definitively -- no senator would admit that he follows the coalition's lead -- but a close look at events during the Pickering battle suggests that the groups did indeed work in particularly close collaboration with Democrats. Coalition members, especially People for the American Way, did much of the groundwork for the case against Pickering, acting as the de facto research arm of the committee's Democratic majority. More important, Democrats seemed unusually responsive to the coalition's concerns; throughout the confirmation fight, Leahy's

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actions, along with those of many of his colleagues, closely tracked demands made by the coalition.

In one instance, Democrats announced plans to hold a rare second hearing for Pickering almost immediately after the coalition demanded that they do so (and at a time when there was no grassroots outcry to delay the nomination or to give it unusually close scrutiny). In another instance, Democrats abandoned tentative plans to move ahead on Pickering's confirmation after the groups demanded the nomination be delayed again to allow them more time to delve into Pickering's record. And in yet a third instance, Democrats, when questioning Pickering, appear to have relied extensively on documents gathered by People for the American Way rather than the committee's own researchers.

Together, the coalition and their Democratic allies mounted an extraordinarily effective campaign against Pickering. While that fight is now over, the groups are preparing for bigger battles to come. Taking a detailed look at the coalition's involvement in the Pickering nomination provides a preview of what will happen in the coming confirmation conflicts over some of President Bush's most anticipated appellate-court nominees -- as well as what is expected to be the biggest fight of all, the battle over the next justice named to the Supreme Court.

President Bush nominated Pickering on May 25, 2001, making him among the administration's earliest choices for the federal bench. Pickering, who had served eleven years on the U.S. District Court in Mississippi, quickly completed his Senate questionnaire and FBI background check, and by July 23, 2001, the American Bar Association finished its detailed evaluation of his time on the bench, giving him its highest rating: "well qualified." Republicans had hoped that Leahy would hold a confirmation hearing for Pickering before the August recess, but none was scheduled. After Congress returned to work, the events of September 11 led to more delays. Finally, a hearing was set for October 18.

The nomination received almost no media attention; the papers were filled with news of the war on terrorism and, in the days before the hearing, the anthrax scare on Capitol Hill. But away from the headlines, People for the American Way had begun a campaign against the nomination. On October 15, the group sent out an urgent e-mail to its "activist network" headlined "controversial hearing should be postponed or extended." The e-mail said that "serious questions have been raised about [Pickering's] record on civil rights and reproductive choice." It said Pickering had "hundreds of published and unpublished opinions that should be reviewed," and that a hearing on October 18 would "make it difficult to fully research Judge Pickering's complete record." The e-mail urged liberal activists to get in touch with committee senators to "demand that Judge Pickering's
hearing be postponed or extended to a second session."

Second hearings for judicial nominees are highly unusual, though not unprecedented. What was perhaps more unusual was for a group to suggest a second hearing before a first had been held. But the day after the People for the American Way e-mail, Leahy's staff laid the groundwork for

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a second session by asking Pickering to provide a list of all of his unpublished opinions as quickly as possible. The judge was astonished; his nomination had been announced nearly five months earlier, and Democrats had waited until two days before the confirmation hearing to make such a far-reaching request. Pickering responded that he had written opinions in about 1,100 cases -- of which only about 95 were published -- and could not possibly get them all together in two days.

The issue of unpublished opinions caught Republicans unaware. Judges decide when to publish their opinions; court guidelines suggest that judges like Pickering, whose cases do not often set legal precedents, limit the amount of opinions they publish to cases that either explore new legal ground or are particularly interesting in some way. That Pickering would publish 95 opinions in more than a decade on the bench seemed normal to his Republican supporters. The number was actually higher than that of some of President Clinton's nominees who had been confirmed to the U.S. circuit courts (one of them published 49 opinions in six years on the district court; another published 109 opinions in 14 years on the bench; a third published 76 cases in 16 years). Democrats had not raised objections then, but in Pickering's case Leahy wanted a list of everything. Pickering sent as much as he could to Leahy the next day, October 17.

On the 18th, the hearing was presided over by New York Democrat Charles Schumer, who had made news a few months earlier when he held a series of hearings designed to explore a new standard for evaluating judicial nominees on the basis of their ideology, regardless of their qualifications for the bench. The first issue Schumer brought up with Pickering was the unpublished opinions: "My opinion is 95 is a little too few to choose somebody for the court of appeals." Schumer told Pickering that he and Leahy had decided that there would be a second hearing, after a review of the unpublished opinions.

Republicans were dumbstruck. They had not seen the People for the American Way e-mail and did not know that Leahy and Schumer were even considering a second hearing, much less that they had agreed on one. Schumer's announcement was clearly an ominous development for Pickering, but at the time most Republicans did not believe Democrats intended to kill the nomination. "I just assumed that they were gonna beat him up a little bit for the outside groups," says one top aide.

After the first hearing, Democrats ratcheted up their requests for Pickering's unpublished opinions. First Leahy had asked for a list of all the opinions. Then, immediately after the hearing, he asked for the opinions themselves in cases involving abortion, the Voting Rights Act, the Fair Housing Act, equal protection, and a few other issues. Leahy later asked Pickering for unpublished opinions on cases involving the Violence Against Women Act, the Fourth Amendment, and the Eleventh Amendment. Finally, in a November 13 letter, Leahy asked for all of Pickering's unpublished opinions.

At that point, it would have been reasonable for Republicans to go into full emergency mode; but they still believed there was reason to remain cautiously confident that Pickering would be confirmed. During November and December, minority leader (and Pickering friend) Trent Lott spoke with Leahy on more than one occasion about the nomination, and, according to two key

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aides, Democrats gave Republican leaders reason to believe that Pickering would be approved before the Senate went home for its year-end recess.

But the coalition had other plans. On December 6, leaders of the Ms. Foundation for Women held a conference call with some other coalition leaders, including representatives from the Alliance for Justice, a close ally of People for the American Way. According to notes made of the call, an Alliance official told the group:

There will be a MAJOR fight in January over Charles Pickering . . . He has a troubling record on civil and reproductive rights. He wrote [the decision] to preserve the state senate as all-white. All integrated marriages are illegal. Wants to ban abortion. Has a record he wants to hide -- he does not have a lot of published opinions . . . We can win on that fight, but it will be nasty and contentious.

When one highly placed GOP staffer heard about the conference call, he phoned a Leahy aide to see what was going on. Something had changed; this time, there was no talk of confirmation. "At that point, alarm bells are going off," recalls the staffer. "They're talking about going to jihad, and they haven't read the opinions yet."

As the days ticked down to the Senate's adjournment, Republicans realized there would be no quick second hearing, and no vote on Pickering before Congress went home for the holidays. What the GOP did not know was that while Democrats on the Judiciary Committee focused on the unpublished opinions -- and found little to use against the judge -- researchers for People for the American Way were preparing to take the Pickering fight in a new direction.

Margaret Kinchen is the court reporter for the U.S. District Court for the Southern District of Mississippi, located in Hattiesburg. She handles requests for things like transcripts of trials, sentencing hearings, and other court proceedings. They are public documents, but anyone who wants to see them or get copies of them has to go through Kinchen to do it. She keeps records of who requests what.

On December 19, Judith Schaeffer, deputy legal director for People for the American Way, called Kinchen to request transcripts from two sentencing hearings in a celebrated Mississippi murder case tried in Pickering's courtroom. "She wanted them as fast as she could get them," recalls Kinchen, who e-mailed the documents to Schaeffer the same day.

When Kinchen returned to her office the day after New Year's, there was a message from Schaeffer wanting more transcripts. Then there were calls on January 7 and January 8: requests for still more transcripts, most of them involving sentencing hearings presided over by Pickering. On January 11, Schaeffer called again, wanting yet another transcript. Kinchen says the requests from People for the American Way were, up to that point, the only inquiries she received for Pickering-related documents -- "They were the only group that asked," she says. Although one might have expected committee Democrats to request documents, given the intensity of their interest in Pickering's record, Kinchen says she did not receive any inquiries from them.

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On January 24, People for the American Way president Ralph Neas held a press conference in Washington to release the group's report on Pickering's record. Although Neas had not earlier called for Pickering's defeat, at the news conference he launched an all-out attack on both Pickering and the Bush White House. "Achieving ideological domination of the federal judiciary is the top goal of right-wing activists inside and outside the Bush administration," Neas said, "and judges like Charles Pickering are the means to that end."

The report was a grab-bag of issues, all of which suggested that Pickering was an unreconstructed segregationist who was hostile to the rights of women, minorities, and the poor. The report criticized Pickering for a 1959 law-review note on Mississippi's interracial-marriage ban that Pickering wrote as a first-year law student; it accused Pickering of having had "contact" with Mississippi's racist Sovereignty Commission in the 1970s; it accused Pickering of being indifferent to equal voting rights; it said Pickering had a "troubling record of reversals in the Court of Appeals"; it said he was hostile to abortion rights; and it accused him of blurring the separation of church and state.

Republicans on the Judiciary Committee sent a staff member to the Neas press conference. But when the aide came back with a copy of the report, GOP aides simply did not take the charges very seriously. Most, if not all, of Neas's accusations seemed without merit, and many had been considered by the committee in 1990 when it unanimously approved Pickering's nomination to the district court. But what Republicans did not know was that the Neas report would have a profound effect on the Pickering battle, becoming, almost overnight, a blueprint for Democratic committee members' objections to the nomination.

Another thing Republicans did not know was that Neas's research project did not stop when the report was released. On January 29, Judith Schaeffer contacted Kinchen again to request transcripts from sentencing hearings in a case known as United States v. Swan. The case involved a cross burning in southern Mississippi in 1994, and although no one knew it at the time, Swan would ultimately become a critical issue in the Pickering fight. On January 30, one day after Schaeffer called Kinchen, Leahy wrote Pickering to inquire about the judge's actions "relating to the criminal case of United States v. Swan."

Pickering's second hearing was scheduled for February 7. When the judge appeared before the committee, Democratic questioning hewed closely to the lines established in the Neas report. The report had focused on Pickering's reversal rate; at the hearing, Democrat Charles Schumer focused on Pickering's reversal rate. The report focused on Pickering's decisions in employment-discrimination cases; Democrat Edward Kennedy covered that topic. The report focused on Pickering's "contact" with the Sovereignty Commission; Democrat Richard Durbin handled that. The report focused on Pickering's views on abortion; Democrats Dianne Feinstein and Maria Cantwell covered that. And the report focused on Pickering's views on habeas corpus; Leahy handled that. The only new ground covered in the hearing was the Swan case, which had not been in the Neas report (Schaeffer did not request the Swan transcripts until five days after the report was released, suggesting that People for the American Way did not know about the case before that time). At the hearing, North Carolina Democrat John Edwards interrogated Pickering about Swan, implying that Pickering had gone to unethical lengths to go easy on a

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white man convicted of burning a cross in the yard of a mixed-race couple.

A week after the hearing, on February 14, Democrat Joseph Biden sent Pickering a series of follow-up questions about Swan. The first question began, "According to court documents . . ." and went on to recount details about the case that were available only in the court documents that Margaret Kinchen had sent to People for the American Way. While it is not clear how Biden learned about the details of Swan, a source close to the senator says Biden's staff first heard of the case "around the time of the People for the American Way press conference" and later got documents on the case "from other committee staffers." On February 15, the day after Biden sent his questions and long after People for the American Way had already gotten the information, Leahy finally asked for a transcript of Swan. By then, the work had been done -- not by the committee, but by People for the American Way.

At each step of the way in the Pickering nomination, Republicans underestimated the nature of the threat that Pickering faced from committee Democrats and, perhaps just as important, from People for the American Way and the rest of the coalition. Unknown to GOP staffers, coalition researchers were far ahead of them -- and Democrats, for that matter -- as they dug into Pickering's record.

One of the reasons Republicans miscalculated the threat was that they knew little about the power and scope of People for the American Way. It is an extraordinarily rich and well-run organization -- two organizations, actually, both of them tax-exempt under Internal Revenue Service rules. One, People for the American Way, is a so-called 501(c)(4) organization -- named for the section of the IRS code that provides for such groups -- that is legally allowed to engage in partisan political activity. The other, the People for the American Way Foundation, is a 501(c)(3) organization, which is allowed to receive tax-deductible donations and which is prohibited by law from engaging in partisan political work. To qualify as a 501(c)(3), groups like the People for the American Way Foundation have to state on their tax forms that they will not engage in any activity "to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum."

Together, the two branches collect an impressive amount of money. According to tax records for the year 2000, People for the American Way took in $5,140,131 in contributions, while the People for the American Way Foundation took in $7,469,722 -- for a total of $12,609,853 in one year alone. Much of that money came in large chunks from wealthy donors. In its 2000 return, the foundation listed anonymous individual donations of $540,000, of $432,488, of $314,058, of $250,000, and many more in the six-figure range (the law requires the foundation to list the donations, but not the names of the donors).

Even though the foundation is forbidden to engage in political lobbying, there appears to be significant overlap between the two arms of People for the American Way. Neas's salary, for example, is paid by both the main group and the foundation. In 2000, he received $79,556 in salary from People for the American Way, the political arm, and $119,335 from the People for the American Way Foundation, the non-partisan arm. The salary of People for the American Way's number-two officer, Carol Blum, was also divided between the two parts of the

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organization. (Officials of People for the American Way told National Review they were too busy to be interviewed for this article.)

While People for the American Way has an impressive bankroll, it was just one part of the anti-Pickering coalition. To its $12.6 million budget must be added the budgets of groups such as NARAL, NOW, the Alliance for Justice, the Leadership Conference on Civil Rights, the NAACP, and others -- a total that might well approach $50 million.

The numbers point to a striking disparity in the ongoing battle over judicial nominations. On the pro-Republican side, there simply was no group fighting on behalf of Pickering that had anything approaching the coalition's resources. Yes, there are rich conservative organizations like the National Rifle Association and National Right to Life Committee (which also maintain tax-exempt 501(c)(3) arms), but none was deeply involved in the Pickering battle. Instead, there were a few small groups like the newly formed Coalition for a Fair Judiciary, which was created after the near defeat of the John Ashcroft nomination and which operates with one employee, working out of her home in suburban Virginia.

That imbalance virtually assures that the Pickering situation will play out again in the future, with Republicans significantly outgunned in the lobbying battle. Democrats have made no secret of their intention to defeat more of the president's judicial nominees, and People for the American Way and other coalition members are already at work on coming campaigns. The close coordination between committee Democrats and the coalition during the Pickering fight will no doubt be a model for future efforts. What worries many conservatives is that the meagerly funded, poorly organized effort on Pickering's behalf might become a model for the Republican side. If that is the case, it will not be long before Republicans are again left fuming after another bitter defeat.

GOP: Bush nominees treated unfairly

Audrey Hudson
The Washington Times
Wednesday, April 03, 2002

The confirmation process for President Bush's judicial nominees in the Democrat-controlled Senate has taken on a sense of "McCarthyism," a leading Senate Republican said yesterday.

"Are you now or have you ever been a conservative or a member of a conservative organization?" said Rick Santorum of Pennsylvania in an interview, mimicking Sen. Joseph McCarthy's standard line for hunting communists in government in the early 1950s. "That's it; you are disqualified. It's just a different C word." Republicans charge that Judge D. Brooks Smith of the U.S. District Court for the Western District of Pennsylvania, Mr. Bush's nominee for a federal 3rd Circuit Appeals Court seat, is the next target for defeat by Senate Democrats.

Sen. Joseph R. Biden, Jr., Delaware Democrat, said he is maintaining an open mind in regards to Judge Smith's confirmation. But Mr. Biden has vowed to kill the nomination if Judge Smith is

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not completely forthcoming in answers to questions from Senate Democrats during his confirmation process.

"I will do everything in my power to defeat you, including moving to the Senate floor to take action I've never taken in my life as a United States senator: a filibuster," Mr. Biden said during Judge Smith's confirmation hearing Feb. 26. In the 15 months he has been in the White House, Mr. Bush has nominated 29 circuit court judges, and seven have been confirmed. By comparison, in their first two years in office, President Clinton nominated 22 circuit judges with 19 confirmed, President George Bush nominated 23 circuit judges with 22 confirmed, and President Reagan nominated 20 circuit judges with 19 confirmed. Calls to the Judiciary Committee, headed by Sen. Patrick J. Leahy, Vermont Democrat, were not returned.

Before leaving for the Easter recess, Mr. Leahy defended the committee's record on the confirmation process. "We are moving forward as quickly as we can, and I will continue to do that," Mr. Leahy said. "No matter what is said on the other side, no matter how much things are taken out of context, no matter how much fiction we hear on the floor from that side, I will move them forward," Mr. Leahy said. The bruising confirmation process of failed Appeals Court nominee Judge Charles W. Pickering is a preview of what is in store for other conservative members of the bench, Republicans said. "They are on a witch hunt," Mr. Santorum said, referring to Democrats on the Senate Judiciary Committee. "I am sure that with every nominee who has any kind of conservative credentials, [Democrats] will make a big issue of it. The question is, how many Democrats on the committee will bite?" Mr. Santorum said.

A source close to the Smith confirmation proceedings said that despite the judge's popularity and widespread support in his home state of Pennsylvania, Democrats are intent on blocking or defeating the confirmation. "This is about George Bush and putting Republicans on the bench. It doesn't make any difference who you are; they are going to tailor these things to [hurt] each nominee," the source said.

Mr. Santorum said that in an environment "other than the Leahy jihad," Judge Smith would be approved. The pace of hearings and confirmation votes has angered many Republicans. The Senate has confirmed 42 nominees, and 56 nominations are still pending. Only two hearings have been held on the pending nominations, according to the Justice Department's office of legal policy.

"Almost a year has passed, and President Bush's first eight circuit court nominees have not even received the courtesy of a hearing," said Senate Minority Leader Trent Lott, Mississippi Republican. "All we are asking for is that the Senate Judiciary Committee provide fair treatment for these experienced and qualified individuals, and that clearly is not happening," Mr. Lott said.

Democrats are questioning Judge Smith's judicial ethics and recusal from a fraud case. People for the American Way, which led the effort to defeat Judge Pickering, have questioned Judge Smith's record on states' rights, civil rights, the environment and consumer protection.

Liberal groups that oppose conservative nominees became part of the debate over Judge Pickering, and Republicans say they will continue to highlight that influence in other nomination fights.

The Scarlet 'E'; Will 5th Circuit nominee be able to get out from under the Enron cloud?

John Council

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Texas Lawyer
Wednesday, April 3, 2002

As any Washington, D.C., insider will tell you, this is not the best time to be an elected official with connections to the sinking Enron Corp.

Texas Supreme Court Justice Priscilla Owen is finding that out. Owen is entering the political fray
as she seeks confirmation to the 5th U.S. Circuit Court of Appeals. She can expect a thorough audit of her background during a congressional nomination hearing, including questions about an opinion she wrote in 1996 that favored the controversial energy trading company. The spotlight likely won't be pleasant, as 5th Circuit nominee Charles Pickering recently discovered when he was targeted for his civil rights rulings.

Among the first of President George W. Bush's federal appellate bench nominees named on May 9, 2001, Owen has not received a hearing date from the Senate Judiciary Committee. The committee must vote to confirm Owen's nomination, followed by a confirmation vote by the full Senate, for her to take the federal appellate bench.

It's unclear if Owen will even receive a hearing this year. But concern over her nomination is so dire that Owen supporter Sen. Kay Bailey Hutchison, R-Texas, pleaded in a speech on the Senate floor March 20 that the Senate give Owen a hearing and confirm her.

"I just want to ask that we have a fair hearing on Justice Owen," Hutchison said.

Hutchison's remarks came after Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt., was quoted by Reuters as saying that Owen's past with Enron may put her nomination in jeopardy.

"I have heard from a lot of Republicans who are concerned about her Enron connections," said Leahy, who chairs the Democrat-controlled committee, two weeks ago.

David Carl, a spokesman for Leahy, says Owen will get a hearing -- but he can't say when.

Leahy's comment was that the Senate would have to examine Owen's Enron past as well as her record, Carl says. "He outlined the good faith the Democrats were taking to break the deadlock over the past five or six years. He named her as an example."

Meanwhile, activist groups have jumped all over Owen's nomination, harping about her conservative record.

Leading the activists' list of concerns is Owen's 1996 opinion in Enron Corp., et al. v. Spring Independent School District, which allowed the company to get a tax break. The groups point out that Owen also has accepted thousands in donations to her Texas Supreme Court campaign from Houston's Enron.

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But conservative groups say Owen is an outstanding candidate whose nomination is being blocked by Democrats on the contentious Judiciary Committee just because she will not toe their ideological line.

Texas appellate lawyers who know Owen say she's a judge who wears her conservative philosophy on her sleeve. But she also maintains the highest standard of ethics and doesn't deserve to be smeared with Enron mud, they say.

Even the plaintiff's lawyer who was on the losing side of Enron v. Spring ISD -- a complicated analysis of a Tax Code provision that dealt with what date the market value of inventory could be appraised -- says attempts to discredit Owen because of the ruling are "nonsense."

"This is a bunch of crap is what it is," says Robert Mott, a partner in Houston's Perdue, Brandon, Fielder, Collins & Mott who represented Spring ISD. "To suggest that Justice Owen would rule this
way based on a campaign contribution is just nonsense."

Mott says the ruling was reflective of the conservative nature of the court at the time.

Interestingly, the opinion, although written by Owen, was unanimous with all nine jurists -- even Democratic Justices Rose Spector and Raul Gonzalez -- joining in the decision.

Owen declines to comment for this article.

ACTIVISTS CONVERGE

Just as activists this year targeted 5th Circuit nominee Charles Pickering for his civil rights rulings, groups from Texas say they plan to protest against Owen as well.

The Judiciary Committee shot down Pickering's nomination in March in a party-line 10-9 vote. Civil rights activists opposed his nomination and pointed to a case in which Pickering, a U.S. district judge in Mississippi, sought a lighter sentence for a defendant tried on a cross-burning charge -- a case Republicans say was misinterpreted by Pickering's opponents.

There's no indication that Owen's confirmation hearing will be as contentious -- Pickering was called back by the committee for a second hearing so members could further research his rulings, which is rare.

But activists from consumer, environmental and abortion rights groups such as Texans for Public Justice, the Sierra Club and the Texas Abortion and Reproductive Rights Action League say they plan to converge on Washington this month to discuss Owen's record with members of the Senate Judiciary Committee.

Given Congress' obsession with Enron, questions about Owen's connection to the fallen energy trading giant will likely be a priority for Judiciary Committee members.

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Representatives from Texans for Public Justice, a consumer judicial watchdog group, will make sure of that.

"The connections to Enron and the judge's raising huge amounts of money from them will be troubling to some senators and will be raised," says Craig McDonald, director of Texans for Public
Justice. "That's my belief. I've given them materials and background."

Included in that material is the group's report on money Texas Supreme Court justices received from Enron. Since 1993, the company contributed $134,058 to the justices -- $8,600 of that went to Owen, who was elected to the high court in 1994.

But a leader of a Washington conservative think tank believes the smell of Enron won't stick to Owen once it's put in context.

"That contribution was in full compliance with the rules of ethics," says John Nowacki, director of
legal policy at the Free Congress Foundation. "I think she's shown on that issue that she's in the mainstream of Texas contribution laws."

Owen is falling victim to liberal interest groups who want to turn circuit court nomination hearings
into the raucous, ideological process that's normally reserved for nominees to the Supreme Court, Nowacki says.

"There's been a deliberate effort by the liberal interest groups to turn the circuit court nominations into something resembling the Supreme Court nomination process," Nowacki says. "It
all boils down to politics. The Democrats have made it very clear that they want judicial candidates that reflect their point of view."

Tactics such as those used against Pickering eventually will backfire as the public discovers there is little substance behind the activists' allegations, Nowacki says. He believes Owen eventually will be confirmed.

"I think if people start to realize that the only time [candidates] get defeated is when the Democrats are in control, they'll realize that it's plain politics," Nowacki says. "And Leahy will realize it looks plain bad."

Enron isn't the only issue that disturbs activists. Sarah Wheat, director of public affairs for the Texas Abortion and Reproductive Rights Action League, says her group plans to meet with senators this month.

Wheat's group is troubled by Owen's dissenting opinions in a series of rulings in early 2000 that

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interpreted Texas' abortion parental notification law. In a March 2000 opinion, In Re Jane Doe 3, Owen voted to reject a minor's request for a judicial bypass -- even though the girl claimed that informing her parents about her desire to get an abortion would lead to "emotional abuse." Owen wrote in a dissent that the girl had not proved that she would be subjected to abuse.

Notes Wheat, "She sends out red flags for a lot of us."

HOMEFRONT SUPPORT

Notably, the people who know Owen best and who've practiced in front of her are not the ones complaining about her reputation or her abilities as a judge.

Owen, who graduated at the top of her class from Baylor University School of Law in 1977, received a "well qualified" rating (the highest possible) by the American Bar Association's Standing Committee on the Judiciary on June 21, 2001.

"In terms of the intellectual firepower, she's got it," says Douglas Alexander, an appellate specialist and partner in Austin, Texas' Scott, Douglass & McConnico. "In terms of whether you agree with her conservative philosophy or bent, that's a completely different question and that's what's sparking a lot of the opposition."

But Alexander says there's no hint that Owen's decisions ever have been influenced by campaign donations.

"Any notion of Priscilla deciding a case based on a campaign contribution -- I don't attribute anything to that," Alexander says. "I don't doubt that things like that are going to be dragged out, but I don't think that's a legitimate concern."

David Keltner, a Fort Worth, Texas, appellate specialist and former 2nd Court of Appeals justice,
agrees.

"I'm a Democrat, and I sometimes disagree with her political philosophy, but she comes about it honestly," Keltner says.

Keltner says partisanship is once again affecting the administration of federal justice. He points to two other 5th Circuit nominees of former President Bill Clinton's -- Jorge Rangel of Corpus Christi and Enrique Moreno of El Paso, Texas -- who never got a hearing before the judiciary committee.

"We need to get these people heard and out. We need judges in federal courts desperately," Keltner says. "And the people that are withholding those votes are wrong. It's affecting the practice of law in Texas, and it's wrong."

As the Senate takes its time filling two vacant 5th Circuit spots, the judges on that court

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continue to struggle to keep up with a heavy caseload. The court had 8,616 appeals filed last year and as of June 30, 2001, the most recent figures available, the court had 4,533 appeals awaiting disposition.

More often than not, the 5th Circuit uses visiting judges on three-member panels when it issues decisions.

"The number of the visiting judges that sit on the 5th Circuit are indicative of a heavy workload," says Gregory Nussel, circuit executive of the 5th Circuit.

While Texas' two U.S. senators have great influence in helping select and confirm U.S. district judges assigned to Texas, they have little, if any, power in helping select circuit judges. The president has the sole responsibility to select circuit judges.

While Hutchison pleaded Owen's case on the Senate floor, U.S. Sen. Phil Gramm, R-Texas, has been silent on the matter, although he supports Owen's nomination, says Gramm spokesman Larry Neal.

Neal says Gramm would only speak out on behalf of Owen if he was asked to by Owen or Bush.

"To my knowledge, he had not been asked to make statements," Neal says. "And it's a good policy because sometimes your friends do more damage than good."

Op/Ed.

Jacksonian chutzpah

Rod Dreher
Scripps Howard News Service
April 4, 2002, Thursday

Nobody has ever erred by accusing Jesse Jackson of a surfeit of chutzpah, but many people won't grasp why his offer to mediate between the Palestinians and the Israelis is so outrageous as to beggar belief. It's like this: What if, during the Republican-Democrat battle royal in Florida, Alec Baldwin had presented himself as an honest broker able to bring both sides to mutual understanding? Jackson's offer makes as much sense.

Jesse's love affair with Yasser Arafat is well-documented by Kenneth Timmerman in "Shakedown," and will come as news to folks who think Jackson's only brush with Jew-bashing was his infamous "Hymietown" remark in 1984.

In August of 1979, Carter sacked Andrew Young, his ambassador to the United Nations, after the black former mayor of Atlanta met privately with the Palestinian Liberation Organization's

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man at the United Nations.. Jackson, a friend of Young's, publicly insinuated that Jews brought down Young, and complained that Jews were false friends of blacks. A month later, Jackson announced he would go to Beirut to meet with Arafat, who was living in exile there. Citing media reports at the time, Timmerman quotes Jackson as telling Arab-American supporters gathered at PUSH headquarters: "By Oct. 1, there will be no black leader left willing to come to the aid of the Palestinian cause if there is not an immediate infusion of funds into the black community from the Arab states."

Two weeks later, Jackson and his entourage took off for Israel on a junket paid for by Arab donors. When Israeli prime minister Menachem Begin failed to turn up at the airport, an insulted Jackson gave a news conference in which he intimated that racism might be behind the snub. Days later, Jackson visited Yad Vashem, the national memorial to Holocaust victims, where he equated the incineration of six million Jews to American slavery.

Newsweek quoted Jackson as saying that "a persecution complex ...almost invariably makes Jews overreact to their own suffering."

Then Jackson lit out to visit Palestinians in the fetid Dheisheh refugee camp. "I know this camp," he preached. "When I smell the stench of the open sewers, this is nothing new to me. This is where I grew up." (Actually, he grew up in relative comfort in North Carolina.)

Two American Jews who had helped arrange for Jackson's trip quit in disgust. One of them, publisher Philip Blazer, said Jackson was piggybacking on the plight of the Palestinians to raise money for his own interests. Even the Rev. Harold Schomer, a left-wing cleric who accompanied Jackson, noted in his private journal that the Arab states were trying to use the Jackson fact-finding trip to weaken U.S. backing of Israel, and to legitimize the PLO.

When Jackson finally met Arafat in Lebanon, he gave him a big kiss and declared the terrorist "my friend and the friend of justice and humanity." Two years later, Israeli forces invaded Lebanon in an attempt to drive out PLO terrorists mounting attacks on Israel from Lebanese soil. The Israelis, commanded by Gen. Ariel Sharon, drove Arafat into exile.

Jackson arrived home and was greeted by a hailstorm of criticism for having succored the Soviet-
proxy PLO, and endangered domestic relations between blacks and Jews. The indignant Jackson blamed - who else? - Jews in the media.

Happily for Jackson, his pro-Arafat sojourn opened the floodgates of Arab money into PUSH coffers. A $10,000 check from a Libyan diplomat nearly earned him an FBI subpoena. In 1981, a fat donation from the Arab League made up 80 percent of the funds Jackson raised for his group that year; Jackson said he didn't know a thing about it.

Jackson's most notorious anti-Semitic comment came in 1984, when he made what he assumed was an off-the-record comment to a black reporter in which he called Jews "Hymies" and New York "Hymietown." He publicly apologized and has been largely excused by the media, even as

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he insists that whites like the recently defeated Charles Pickering are unfit for government office because of racist views they might have held 40 years ago.

Still, the record of this man who offers himself as a peacemaker between the Israelis and the Palestinians bears remembering. All things considered, Alec Baldwin would stand a better chance.(Rod Dreher is a senior writer for National Review.)

JUDGES: Pickering and Choosing

National Review
Monday April 8, 2002

Republicans are in high dudgeon about the treatment of Judge Charles Pickering, whose nomination to an appeals court was defeated by ten Senate Democrats in a party-line vote of the Judiciary Committee. But Pickering was treated badly by both parties. Democrats made scurrilous attacks on him, and Republicans did not defend him until it was too late. The Democrats themselves seem to be somewhat embarrassed by their tactics, as witness their efforts to squirm away from them. Sens. Charles Schumer and Patrick Leahy insist that nobody ever insinuated that Pickering was a racist. Of course not: When Terry McAuliffe said that President Bush was trying to "disenfranchise" black voters in Mississippi by nominating Pickering, it was all in good fun. Liberal columnist E. J. Dionne Jr. admits that "the anti-Pickering campaign did get ugly," but his spin is that Democrats ended up opposing him on defensible grounds -- e.g., the fact that his decisions have been "so often reversed on appeal." Except that this fact is not a fact at all: Pickering's reversal rate is lower than the average in his circuit or in the nation. Late in the day, liberals -- notably Sen. Dianne Feinstein of California -- also made the argument that Bush had no mandate and therefore should not be allowed to stack the courts with conservatives. (She also took the curious view that Pickering would be able to overturn Roe v. Wade from a circuit court of appeals.) The pattern of attack is the same one exhibited in the confirmation hearings for attorney general John Ashcroft last year: First, a few scattered decisions are used to portray the nominee as anti-black; once the poison has been released into the atmosphere, its very existence is denied. The Democrats do not really believe that Pickering (or Ashcroft) is a racist, of course; in 1990, Pickering was unanimously approved for the district judgeship he now holds. But he was a target of convenience, being a white male Republican from Mississippi of a certain age, as Ashcroft was a target of convenience as a white male fundamentalist Christian. By voting down Pickering, Democrats handed the president (and Pickering's friend Trent Lott) a defeat; elicited donations for liberal interest groups; and sought to make the president think twice before nominating conservatives, or at least opponents of liberal orthodoxy on abortion, in the future. The Democratic onslaught caught Republicans napping. The White House viewed Pickering as Lott's concern and intervened too late. Senate Republicans were little better, becoming engaged only when it was fairly clear Pickering was going down. Byron York's reporting for National Review Online did more to counter Democratic distortions than any of them did. Even now, they are focusing on procedural rather than substantive issues. They are quite right to chastise the Democrats for not allowing a full Senate vote on Pickering. But the more important point is the need for constitutionalist judges. Bush should not bow to the

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Democrats' intimidation by refraining from nominating such judges. The Democrats' demand for "moderate" judges is in any case phony. The federal judiciary is still, on balance, an instrument of the Left. Moderate judges in the context of the liberal legal academy are those who overturn laws in favor of liberal whims only some of the time, and who allow previous acts of liberal usurpation from the bench to stand. The public is neither enamored of liberal judges nor afraid of conservative ones. If the Democrats want to keep blocking the latter, Bush should call their obstruction to the attention of voters in the Senate races this fall.

Virginia Thomas is using her husband's trials for advancement

Steven Lubet
Fulton County Daily Report
April 2, 2002 Tuesday

Virginia Thomas, the wife of Justice Clarence Thomas, recently published an op-ed in The Wall Street Journal that expressed sympathy for Judge Charles Pickering Sr., President Bush's now-defeated nominee to the 5th U.S. Circuit Court of Appeals. Drawing upon her experience during her husband's stormy confirmation hearings, Thomas urged Pickering not to take his rejection personally. "It helps," she wrote, "to find your faith and be reminded that you are not called to be popular, but rather to have integrity."

But Thomas did not limit herself to commiseration. Instead, her March 14 commentary launched a sharp attack on feminists, civil rights groups and "the hard left." Then, leaving no doubt where she stood, she lambasted Senate Democrats in highly ideological terms.

Thomas said that the Democrats on the Senate Judiciary Committee don't think of Pickering "as human right now." She said that "facts matter little" to Senate Democrats, who are "impervious to the truth." Their opposition to Pickering, she also noted, "doesn't hurt their fund-raising efforts." She claimed that the Democrats' strategy was to "influence votes, scare off conservatives from being nominated, being defended or even applying for such positions in public service." These are political thunderbolts of a sort we have never before seen hurled by the spouse of a sitting Supreme Court justice. Whether one agrees or disagrees with Thomas on the merits, it was surprising to see a Supreme Court spouse make such a pronounced entry into the political fray. Her essay was published on the morning that the Judiciary Committee was scheduled to vote on the Pickering nomination, which was understood to be headed toward defeat. Republicans felt that the nominee was being victimized by scorched-earth tactics, and no one was better suited to expose the smear than Thomas, who had lived through her own confirmation ordeal.

So what do we make of it that Virginia Thomas so very publicly weighed in on such an intensely political controversy?

Above the Fray

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In the wake of the Florida election fiasco, it is more important than ever to hold the Supreme Court scrupulously neutral in political disputes, both in fact and in appearance.

Critics claim that the five-vote majority in Bush v. Gore was motivated more by political affinity than by constitutional law, sometimes referring to a report that Justice Sandra Day O'Connor reacted with audible dismay when it first appeared that Al Gore would carry Florida and win the presidency. Defenders, of course, argue that the majority opinion was rigorously correct, unaffected by any motive other than the strict desire to follow the Constitution.

In any case, it should be obvious to all that the court's legitimacy depends greatly upon its perceived detachment. If the justices come to be regarded as political players, their opinions will be seen as instrumental rather than principled. Thus it is axiomatic that the court must remain painstakingly aloof from political combat.

But to what extent does that axiom apply to the spouses?

In one sense, of course, it does not pertain at all. Apart from some financial disclosure requirements, the ethical rules that constrain judges simply do not apply to their spouses. And any effort to impose a spousal gag rule surely would run afoul of the First Amendment.

Consequently, Virginia Thomas is legally entitled to write whatever she pleases. She is an exceptionally capable professional, with an important career completely independent of her husband's job. She has much to say on many issues, and it would be absolutely wrong to insist that she, or any other spouse, live a life of public silence.

Wiser Heads

But that does not end the discussion, since the public conduct of spouses does have the potential to compromise the court. Imagine the furor that would have followed if John O'Connor or Martin Ginsburg actively had campaigned for their preferred presidential candidates in the 2000 election. Although the First Amendment surely protects that activity, it would have been a disaster for the court-no doubt prompting demands that O'Connor and Ruth Bader Ginsburg recuse themselves in Bush v. Gore.

The Supreme Court is a fragile institution, dependent on its reputation, and often best served by the voluntary circumspection of those connected to it. A decent respect for the court's neutrality-in both reality and appearance-counsels self-restraint.

The spouses of most justices seem to recognize this. For example, Martin Ginsburg, a prominent tax attorney, divested himself of perfectly legitimate investments in order to avoid even an appearance of judicial partiality.

Which brings us to Virginia Thomas and her appearance on the op-ed page of The Wall Street Journal.

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Unique in the history of Supreme Court spouses, Thomas has been an active political player during her husband's entire tenure on the court. She served as senior policy coordinator for the House Republican Conference and later became a top adviser to Republican Majority Leader Richard K. Armey. She is currently director of executive branch relations for the conservative Heritage Foundation.

In each of those positions, Thomas wisely had refrained from open politicking. With her Wall Street Journal op-ed, however, she has broken another barrier, invoking her husband's name in what can be seen only as an effort to sway public opinion against Democrats and in favor of the Republican administration.

In a nutshell, Thomas showed dreadfully poor judgment in publishing that particular op-ed. It would have been a different matter if she merely had written a pro-Pickering essay or if she had written a piece about the travails of confirmation without resorting to partisan invective. Instead, she intentionally capitalized on Justice Thomas' position in order to score political points.

We do not know whether Virginia Thomas consulted anyone about her op-ed. We should assume, to be sure, that Justice Thomas had no part in it. But questions, at least in skeptical quarters, are unavoidable. Husbands and wives do tend to talk to each other about important matters. Is it out of place to wonder whether Virginia Thomas, about to take the seemingly unprecedented step of going public on a political controversy, might have asked her husband whether he had any concerns? Might she have mentioned the op-ed to him? Even without any input from the justice into the content, that possibility may create the appearance of his tacit approval.

Of course, the supposition could be completely wrong. Perhaps Justice Thomas was more surprised than anyone else to see his wife's byline in The Wall Street Journal. If so, both Thomases must have been shocked to see the column illustrated by a picture of Justice Thomas himself, presumably inserted by a Journal editor (likely unbeknownst to the writer) lest anyone miss the connection.

Using the Court

A federal statute prohibits a Supreme Court justice from sitting in any case in which his or her spouse has a nonfinancial "interest that could be substantially affected by the outcome of the proceeding." Until March 14, no one would have suggested that Virginia Thomas' political affiliations should disqualify Justice Thomas from participating in any case, even one that determined, say, the presidency of the United States. But after her recent foray into open partisan warfare, the situation may well have changed.

It is not likely that we ever again will see a Supreme Court spouse who doesn't lead an independent life in one realm or another. It would be unacceptable to place formal limits on their activities, but it is not too much to request some prudence.

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Yes, Virginia Thomas has the right to say whatever she chooses. It's just too bad that she didn't choose to keep the Supreme Court out of it.

Judge Pickering deserves position

The Myrtle Beach Sun-News
April 2, 2002 Tuesday

U.S. SENATE

On March 14, the Democrat-controlled Senate Judiciary Committee voted against the nomination of [U.S. District] Judge Charles Pickering [for the U.S. Court of Appeals].

This action was contrary to what the American Bar Association had to say, as well as leading blacks in Mississippi.

Sen. Edward Kennedy, D-Mass., stated that Pickering does not have "the temperament, the moderation or the commitment to core constitutional ... protections that is required for a life tenure position."

Kennedy, who is widely known for his excessive drinking and womanizing, should not be standing in our most sacred halls and calling [names].

[Neither] Kennedy nor any of the other Democratic senators can hold a candle to Pickering's morals and ethics.

Bruce D. Rutherford
Longs

The Reynolds recess appointment

The Washington Times
April 02, 2002, Tuesday

It had been more than six months since President Bush selected Gerald A. Reynolds to be assistant secretary of education for civil rights, but Mr. Reynolds, the former president of the Center for New Black Leadership (CNBL), still had not received a vote on his nomination in the Senate Committee on Health, Education, Labor and Pensions. In fact, the committee, which is chaired by Democratic Sen. Edward Kennedy, never managed to give Mr. Reynolds the consideration of a hearing until Feb. 26.

It should hardly be surprising, therefore, that Mr. Bush decided last week to elevate Mr. Reynolds in a recess appointment. Mr. Reynolds' official arrival at the Office of Civil Rights in

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the Department of Education cannot come a minute too soon. After all, his predecessor during the Clinton administration, Norma Cantu, was an overbearing activist who willfully disregarded court
rulings. It was particularly important for the president to act, given the highly politicized campaign that was being orchestrated against Mr. Reynolds. Once he was nominated, a slew of self-appointed guardians of civil-rights coalesced, determined to thwart the Senate's confirmation of a young conservative black attorney to the position that Supreme Court Justice Clarence Thomas once held. The usual suspects were involved, including the NAACP, People for the American Way, the Leadership Conference on Civil Rights, the National Organization for Women, etc. However, after it became apparent that Mr. Reynolds would be confirmed by the entire Senate, Mr. Kennedy angled to defeat the nomination in his committee, just as the Senate Judiciary Committee had used a party-line vote to derail the appeals court nomination of Judge Charles Pickering.

When Mr. Reynolds explained at the committee's hearing on Feb. 26 that he intended to enforce existing civil-rights laws, Mr. Kennedy bellowed, "Don't pander to me." Subsequently, Mr. Kennedy, whose expulsion from Harvard for cheating did not preclude him from becoming chairman of the Senate committee responsible for education, audaciously declared that he was
"struck by Mr. Reynolds' lack of policy experience and his longstanding hostility to basic civil-rights laws."

Mr. Kennedy's partisan assertions nothwithstanding, Mr. Reynolds knew what he was talking about. As CNBL president, he told the committee, he focused on "the significant achievement gap between white and black students," arguing that "we need to expand the concept of civil rights so that it includes improving the quality of education for America's disadvantaged children."

"To limit an individual's education," Mr. Reynolds persuasively argued at his hearing, "is to limit his freedom." And he added, "A sound education is the fastest, and sometimes the only, way out of poverty." Now is the time for him to pursue the CNBL's innovative ideas, which members of the old guard have spent their careers blocking in order to preserve the failures of the status quo.

Battle over federal seats ignores the middle ground

The Detroit Free Press
Tuesday April 2, 2002

Don't look for the fight over federal judges to simmer down any time soon. At least not based on the rhetoric coming from the White House.

"We're going to have more fights when it comes to the judiciary," President George W. Bush said last week, declaring he would send more "good, conservative judges" to the Senate for confirmation.

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Conservatives are his prerogative, but ideologues are not. The president seems to be looking for trouble from the Democrat-controlled Senate that rejected Mississippi Judge Charles Pickering.

Instead, Bush -- and Democrats -- should stake out more middle ground. The Senate has approved 41 of the 90 candidates Bush has submitted since July; Pickering was the only reject.

With advice and consent privileges, the Senate has a responsibility to ensure the nation's courts remain balanced and nominees don't have political agendas far out of the mainstream.

That does not mean Senate Democrats should engage in the delaying tactics Republicans used during the Clinton years. Only 35 percent of the former president's nominees got the courtesy of a
hearing; Michigan Appeals Court Judge Helene White and Detroit attorney Kathleen McCree Lewis were left on the sidelines.

Bush should aim to fill the depleted bench. That requires working with folks on both sides. The breezy confirmation of his nominees from Nebraska, Montana and Iowa should have shown him the way. Nominees succeeded with ease because both of each state's senators -- one from each party -- could sign off on solid, but not extreme, conservatives.

To fill the bench, the president should reach out to Democrats with an extended hand, not an angry
fist.

Transcripts/Members of Congress

Israeli Forces Occupy More of West Bank; Are Americans Rude?

CNN
SHOW: CNN INSIDE POLITICS
April 3, 2002 Wednesday

JUDY WOODRUFF, CNN ANCHOR: I'm Judy Woodruff in Washington. Israeli forces move into more areas of the West Bank as the pressure and the protests spread across the Middle East.

CANDY CROWLEY, CNN SR. POLITICAL CORRESPONDENT: I'm Candy Crowley, Some conservatives may find fault with the president, but at the end of the day, he's still their man. ... finance reform, amnesty for illegal immigrants, and steel tariffs: Those are issues that have divided President Bush and some conservative leaders recently. But does that translate into disaffection among rank-and-file conservative voters?

Our Candy Crowley has been looking into that question.

(BEGIN VIDEOTAPE)

NORTH: I'm Oliver North. This is Radio America.

CANDY CROWLEY, CNN SR. POLITICAL CORRESPONDENT (voice-over): Wonder what conservatives complain about now that Bill Clinton has left the scene? Answer: George Bush.

UNIDENTIFIED MALE: We are in 62 countries right now, Ollie. We need to get the hell out. We need to close our doors and be isolationists.

CROWLEY: Conservative talk radio is where the grassroots go to vent.

ELDER: KABC, Larry Elder here. And my guess is the president of the NRA, Charlton Heston, of course.

CROWLEY: And from D.C. to L.A., lately, conservatives have found a lot to vent about.

ELDER: The issue that I think bothers most conservatives is the president's inexplicable support of campaign finance reform.

NORTH: There is some concern ...

... credibility.

ELDER: It was a big mistake to apply tariffs on certain imported steel goods.

NORTH: The idea of amnesty for illegal aliens set people's temperature just off the charts.

CROWLEY: Not to mention an education bill conservatives thought looked more Ted Kennedy than George Bush, what some saw as a too-late, too-tepid defense of doomed judicial nominee Charles Pickering, and that new federal budget, with 9 percent more spending, including an increase in foreign aid.

What's up here? Some conservatives fear it's poll numbers.

STEVEN MOORE, CLUB FOR GROWTH: It's almost as if, ever since 9/11, Bush has become -- has sort of transcended party. He's not even a Republican anymore. He's the president of all the people. And he is trying to make this full 80 percent happy.

CROWLEY: Asked if he worries about complaints from conservatives, one top Bush politico said: "Every single day. It is something you have to monitor." And that job falls primarily to the president's chief political strategist.

MOORE: Karl Rove will rush in and talk to the conservative groups and say: "Look, George W.

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Bush feels your pain. He is going to be with you on these things."

CROWLEY: So far, so good: Dissent has not meant desertion.

CHARLTON HESTON, PRESIDENT, NRA: The conservatives will still turn out, because he is the only guy we've got. And I think -- by and large, I think he has been doing a good job.

CROWLEY: It is the half-a-loaf-is-better-than-none theory applied to politics. The head of the National Rifle Association has gone to court to overturn the campaign finance reform that George Bush signed into saw.

WAYNE LAPIERRE, NRA: I wished he'd vetoed it. Is that going to make Wayne cheer any less when I'm in a crowd and they introduce him? Probably not.

CROWLEY: The truth is, there are three primary things that give George Bush maneuvering room with conservatives: the war on terrorism; the tax cut he pushed through last year; and the fact that he is not Bill Clinton. And the greatest of these is the war.

LAPIERRE: The fact is, we are six months away from the worst terrorist attack in America's history. And I think he's done a fabulous job.

(END VIDEOTAPE)

CROWLEY: "Conservatives," said one of them, "will swallow hard on a lot of issues right now because of the war." But he warned the Bush administration not to downplay conservative grumblings. The source added there is a danger of arrogance that comes with high poll numbers. "We know," responded one Bush insider. "We hear them" -- Judy.

WOODRUFF: Candy, is there one issue out there, one thing that would really be a relationship breaker for conservatives and the president?

CROWLEY: What I really gather, from talking to a lot of conservatives over the past couple of days is, look, as long as the war seems to be going well, as long as the economy seems to be getting better, he's fine. If there's a double-dip ...

... It's like the overriding issue right now is the war and the economy. If that starts to fall apart, there's a problem.

WOODRUFF: As long as those two things continue, it is almost as if anything the president does, he'll survive, right?

CROWLEY: Well, and they know that this is calibrated very carefully. One conservative said to me: "We understand there's an election coming up. We understand he didn't want to spend a lot of political capital on campaign finance reform." So, yes, he's calibrating this carefully. I don't think he's going to go out and do something right in their face. But he's got some room there.

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WOODRUFF: OK, Candy Crowley, thank you. We appreciate it.

And checking the headlines in our "Campaign News Daily": The former stripper-turned-Colorado town mayor is out of a job. Voters in tiny Georgetown, Colorado recalled Mayor ...

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Strange Justice: The liberal coalition that killed the Pickering nomination

Byron York
National Review
Monday April 8, 2002

Late in the afternoon on Thursday, March 14, in a crowded hallway in the Dirksen Senate Office Building, Bruce Cohen, a top aide to Senate Judiciary Committee chairman Patrick Leahy, warmly greeted Elizabeth Cavendish, the legal director and general counsel of the National Abortion Rights Action League. "Thank you," said Cohen. "No, thank you!" said Cavendish, smiling and grasping Cohen's hand.

The cause of the smiling and thanking was the defeat, just minutes earlier, of the nomination of Charles Pickering to a place on the Fifth Circuit Court of Appeals. The committee's narrow Democratic majority, led by Leahy, killed the nomination on a 10-9 party-line vote. What made the exchange between Cohen and Cavendish noteworthy was that a good deal of the debate leading up to the vote had concerned the role that liberal groups such as NARAL, People for the American Way, NOW, the Alliance for Justice, and the Leadership Conference on Civil Rights were playing in the opposition to the Pickering nomination.

Republicans charged that the groups -- which have formed a coalition to oppose Bush nominees -- were working in close coordination with committee Democrats. "Judge Pickering has been viciously attacked by outside, left-wing, liberal groups," said Iowa Republican Charles Grassley, "and unfortunately, the Democratic party has been more than willing to do the bidding of these groups, here in the Senate, to oppose Judge Pickering." It's a charge Republicans have made for years, at least since the days of the Robert Bork and Clarence Thomas confirmation battles. But for all their anger -- and there was plenty in the room during the Pickering vote -- Republicans have never really offered much evidence to support their allegations. Yes, groups in the coalition are powerful and well funded -- People for the American Way's budget dwarfs those of the groups that tried to defend Pickering -- but do they really exercise inordinate influence on the Democratic senators who cast votes on the Judiciary Committee? It's a question that is impossible to answer definitively -- no senator would admit that he follows the coalition's lead -- but a close look at events during the Pickering battle suggests that the groups did indeed work in particularly close collaboration with Democrats. Coalition members, especially People for the American Way, did much of the groundwork for the case against Pickering, acting as the de facto research arm of the committee's Democratic majority. More important, Democrats seemed unusually responsive to the coalition's concerns; throughout the confirmation fight, Leahy's

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actions, along with those of many of his colleagues, closely tracked demands made by the coalition.

In one instance, Democrats announced plans to hold a rare second hearing for Pickering almost immediately after the coalition demanded that they do so (and at a time when there was no grassroots outcry to delay the nomination or to give it unusually close scrutiny). In another instance, Democrats abandoned tentative plans to move ahead on Pickering's confirmation after the groups demanded the nomination be delayed again to allow them more time to delve into Pickering's record. And in yet a third instance, Democrats, when questioning Pickering, appear to have relied extensively on documents gathered by People for the American Way rather than the committee's own researchers.

Together, the coalition and their Democratic allies mounted an extraordinarily effective campaign against Pickering. While that fight is now over, the groups are preparing for bigger battles to come. Taking a detailed look at the coalition's involvement in the Pickering nomination provides a preview of what will happen in the coming confirmation conflicts over some of President Bush's most anticipated appellate-court nominees -- as well as what is expected to be the biggest fight of all, the battle over the next justice named to the Supreme Court.

President Bush nominated Pickering on May 25, 2001, making him among the administration's earliest choices for the federal bench. Pickering, who had served eleven years on the U.S. District Court in Mississippi, quickly completed his Senate questionnaire and FBI background check, and by July 23, 2001, the American Bar Association finished its detailed evaluation of his time on the bench, giving him its highest rating: "well qualified." Republicans had hoped that Leahy would hold a confirmation hearing for Pickering before the August recess, but none was scheduled. After Congress returned to work, the events of September 11 led to more delays. Finally, a hearing was set for October 18.

The nomination received almost no media attention; the papers were filled with news of the war on terrorism and, in the days before the hearing, the anthrax scare on Capitol Hill. But away from the headlines, People for the American Way had begun a campaign against the nomination. On October 15, the group sent out an urgent e-mail to its "activist network" headlined "controversial hearing should be postponed or extended." The e-mail said that "serious questions have been raised about [Pickering's] record on civil rights and reproductive choice." It said Pickering had "hundreds of published and unpublished opinions that should be reviewed," and that a hearing on October 18 would "make it difficult to fully research Judge Pickering's complete record." The e-mail urged liberal activists to get in touch with committee senators to "demand that Judge Pickering's
hearing be postponed or extended to a second session."

Second hearings for judicial nominees are highly unusual, though not unprecedented. What was perhaps more unusual was for a group to suggest a second hearing before a first had been held. But the day after the People for the American Way e-mail, Leahy's staff laid the groundwork for

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a second session by asking Pickering to provide a list of all of his unpublished opinions as quickly as possible. The judge was astonished; his nomination had been announced nearly five months earlier, and Democrats had waited until two days before the confirmation hearing to make such a far-reaching request. Pickering responded that he had written opinions in about 1,100 cases -- of which only about 95 were published -- and could not possibly get them all together in two days.

The issue of unpublished opinions caught Republicans unaware. Judges decide when to publish their opinions; court guidelines suggest that judges like Pickering, whose cases do not often set legal precedents, limit the amount of opinions they publish to cases that either explore new legal ground or are particularly interesting in some way. That Pickering would publish 95 opinions in more than a decade on the bench seemed normal to his Republican supporters. The number was actually higher than that of some of President Clinton's nominees who had been confirmed to the U.S. circuit courts (one of them published 49 opinions in six years on the district court; another published 109 opinions in 14 years on the bench; a third published 76 cases in 16 years). Democrats had not raised objections then, but in Pickering's case Leahy wanted a list of everything. Pickering sent as much as he could to Leahy the next day, October 17.

On the 18th, the hearing was presided over by New York Democrat Charles Schumer, who had made news a few months earlier when he held a series of hearings designed to explore a new standard for evaluating judicial nominees on the basis of their ideology, regardless of their qualifications for the bench. The first issue Schumer brought up with Pickering was the unpublished opinions: "My opinion is 95 is a little too few to choose somebody for the court of appeals." Schumer told Pickering that he and Leahy had decided that there would be a second hearing, after a review of the unpublished opinions.

Republicans were dumbstruck. They had not seen the People for the American Way e-mail and did not know that Leahy and Schumer were even considering a second hearing, much less that they had agreed on one. Schumer's announcement was clearly an ominous development for Pickering, but at the time most Republicans did not believe Democrats intended to kill the nomination. "I just assumed that they were gonna beat him up a little bit for the outside groups," says one top aide.

After the first hearing, Democrats ratcheted up their requests for Pickering's unpublished opinions. First Leahy had asked for a list of all the opinions. Then, immediately after the hearing, he asked for the opinions themselves in cases involving abortion, the Voting Rights Act, the Fair Housing Act, equal protection, and a few other issues. Leahy later asked Pickering for unpublished opinions on cases involving the Violence Against Women Act, the Fourth Amendment, and the Eleventh Amendment. Finally, in a November 13 letter, Leahy asked for all of Pickering's unpublished opinions.

At that point, it would have been reasonable for Republicans to go into full emergency mode; but they still believed there was reason to remain cautiously confident that Pickering would be confirmed. During November and December, minority leader (and Pickering friend) Trent Lott spoke with Leahy on more than one occasion about the nomination, and, according to two key

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aides, Democrats gave Republican leaders reason to believe that Pickering would be approved before the Senate went home for its year-end recess.

But the coalition had other plans. On December 6, leaders of the Ms. Foundation for Women held a conference call with some other coalition leaders, including representatives from the Alliance for Justice, a close ally of People for the American Way. According to notes made of the call, an Alliance official told the group:

There will be a MAJOR fight in January over Charles Pickering . . . He has a troubling record on civil and reproductive rights. He wrote [the decision] to preserve the state senate as all-white. All integrated marriages are illegal. Wants to ban abortion. Has a record he wants to hide -- he does not have a lot of published opinions . . . We can win on that fight, but it will be nasty and contentious.

When one highly placed GOP staffer heard about the conference call, he phoned a Leahy aide to see what was going on. Something had changed; this time, there was no talk of confirmation. "At that point, alarm bells are going off," recalls the staffer. "They're talking about going to jihad, and they haven't read the opinions yet."

As the days ticked down to the Senate's adjournment, Republicans realized there would be no quick second hearing, and no vote on Pickering before Congress went home for the holidays. What the GOP did not know was that while Democrats on the Judiciary Committee focused on the unpublished opinions -- and found little to use against the judge -- researchers for People for the American Way were preparing to take the Pickering fight in a new direction.

Margaret Kinchen is the court reporter for the U.S. District Court for the Southern District of Mississippi, located in Hattiesburg. She handles requests for things like transcripts of trials, sentencing hearings, and other court proceedings. They are public documents, but anyone who wants to see them or get copies of them has to go through Kinchen to do it. She keeps records of who requests what.

On December 19, Judith Schaeffer, deputy legal director for People for the American Way, called Kinchen to request transcripts from two sentencing hearings in a celebrated Mississippi murder case tried in Pickering's courtroom. "She wanted them as fast as she could get them," recalls Kinchen, who e-mailed the documents to Schaeffer the same day.

When Kinchen returned to her office the day after New Year's, there was a message from Schaeffer wanting more transcripts. Then there were calls on January 7 and January 8: requests for still more transcripts, most of them involving sentencing hearings presided over by Pickering. On January 11, Schaeffer called again, wanting yet another transcript. Kinchen says the requests from People for the American Way were, up to that point, the only inquiries she received for Pickering-related documents -- "They were the only group that asked," she says. Although one might have expected committee Democrats to request documents, given the intensity of their interest in Pickering's record, Kinchen says she did not receive any inquiries from them.

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On January 24, People for the American Way president Ralph Neas held a press conference in Washington to release the group's report on Pickering's record. Although Neas had not earlier called for Pickering's defeat, at the news conference he launched an all-out attack on both Pickering and the Bush White House. "Achieving ideological domination of the federal judiciary is the top goal of right-wing activists inside and outside the Bush administration," Neas said, "and judges like Charles Pickering are the means to that end."

The report was a grab-bag of issues, all of which suggested that Pickering was an unreconstructed segregationist who was hostile to the rights of women, minorities, and the poor. The report criticized Pickering for a 1959 law-review note on Mississippi's interracial-marriage ban that Pickering wrote as a first-year law student; it accused Pickering of having had "contact" with Mississippi's racist Sovereignty Commission in the 1970s; it accused Pickering of being indifferent to equal voting rights; it said Pickering had a "troubling record of reversals in the Court of Appeals"; it said he was hostile to abortion rights; and it accused him of blurring the separation of church and state.

Republicans on the Judiciary Committee sent a staff member to the Neas press conference. But when the aide came back with a copy of the report, GOP aides simply did not take the charges very seriously. Most, if not all, of Neas's accusations seemed without merit, and many had been considered by the committee in 1990 when it unanimously approved Pickering's nomination to the district court. But what Republicans did not know was that the Neas report would have a profound effect on the Pickering battle, becoming, almost overnight, a blueprint for Democratic committee members' objections to the nomination.

Another thing Republicans did not know was that Neas's research project did not stop when the report was released. On January 29, Judith Schaeffer contacted Kinchen again to request transcripts from sentencing hearings in a case known as United States v. Swan. The case involved a cross burning in southern Mississippi in 1994, and although no one knew it at the time, Swan would ultimately become a critical issue in the Pickering fight. On January 30, one day after Schaeffer called Kinchen, Leahy wrote Pickering to inquire about the judge's actions "relating to the criminal case of United States v. Swan."

Pickering's second hearing was scheduled for February 7. When the judge appeared before the committee, Democratic questioning hewed closely to the lines established in the Neas report. The report had focused on Pickering's reversal rate; at the hearing, Democrat Charles Schumer focused on Pickering's reversal rate. The report focused on Pickering's decisions in employment-discrimination cases; Democrat Edward Kennedy covered that topic. The report focused on Pickering's "contact" with the Sovereignty Commission; Democrat Richard Durbin handled that. The report focused on Pickering's views on abortion; Democrats Dianne Feinstein and Maria Cantwell covered that. And the report focused on Pickering's views on habeas corpus; Leahy handled that. The only new ground covered in the hearing was the Swan case, which had not been in the Neas report (Schaeffer did not request the Swan transcripts until five days after the report was released, suggesting that People for the American Way did not know about the case before that time). At the hearing, North Carolina Democrat John Edwards interrogated Pickering about Swan, implying that Pickering had gone to unethical lengths to go easy on a

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white man convicted of burning a cross in the yard of a mixed-race couple.

A week after the hearing, on February 14, Democrat Joseph Biden sent Pickering a series of follow-up questions about Swan. The first question began, "According to court documents . . ." and went on to recount details about the case that were available only in the court documents that Margaret Kinchen had sent to People for the American Way. While it is not clear how Biden learned about the details of Swan, a source close to the senator says Biden's staff first heard of the case "around the time of the People for the American Way press conference" and later got documents on the case "from other committee staffers." On February 15, the day after Biden sent his questions and long after People for the American Way had already gotten the information, Leahy finally asked for a transcript of Swan. By then, the work had been done -- not by the committee, but by People for the American Way.

At each step of the way in the Pickering nomination, Republicans underestimated the nature of the threat that Pickering faced from committee Democrats and, perhaps just as important, from People for the American Way and the rest of the coalition. Unknown to GOP staffers, coalition researchers were far ahead of them -- and Democrats, for that matter -- as they dug into Pickering's record.

One of the reasons Republicans miscalculated the threat was that they knew little about the power and scope of People for the American Way. It is an extraordinarily rich and well-run organization -- two organizations, actually, both of them tax-exempt under Internal Revenue Service rules. One, People for the American Way, is a so-called 501(c)(4) organization -- named for the section of the IRS code that provides for such groups -- that is legally allowed to engage in partisan political activity. The other, the People for the American Way Foundation, is a 501(c)(3) organization, which is allowed to receive tax-deductible donations and which is prohibited by law from engaging in partisan political work. To qualify as a 501(c)(3), groups like the People for the American Way Foundation have to state on their tax forms that they will not engage in any activity "to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum."

Together, the two branches collect an impressive amount of money. According to tax records for the year 2000, People for the American Way took in $5,140,131 in contributions, while the People for the American Way Foundation took in $7,469,722 -- for a total of $12,609,853 in one year alone. Much of that money came in large chunks from wealthy donors. In its 2000 return, the foundation listed anonymous individual donations of $540,000, of $432,488, of $314,058, of $250,000, and many more in the six-figure range (the law requires the foundation to list the donations, but not the names of the donors).

Even though the foundation is forbidden to engage in political lobbying, there appears to be significant overlap between the two arms of People for the American Way. Neas's salary, for example, is paid by both the main group and the foundation. In 2000, he received $79,556 in salary from People for the American Way, the political arm, and $119,335 from the People for the American Way Foundation, the non-partisan arm. The salary of People for the American Way's number-two officer, Carol Blum, was also divided between the two parts of the

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organization. (Officials of People for the American Way told National Review they were too busy to be interviewed for this article.)

While People for the American Way has an impressive bankroll, it was just one part of the anti-Pickering coalition. To its $12.6 million budget must be added the budgets of groups such as NARAL, NOW, the Alliance for Justice, the Leadership Conference on Civil Rights, the NAACP, and others -- a total that might well approach $50 million.

The numbers point to a striking disparity in the ongoing battle over judicial nominations. On the pro-Republican side, there simply was no group fighting on behalf of Pickering that had anything approaching the coalition's resources. Yes, there are rich conservative organizations like the National Rifle Association and National Right to Life Committee (which also maintain tax-exempt 501(c)(3) arms), but none was deeply involved in the Pickering battle. Instead, there were a few small groups like the newly formed Coalition for a Fair Judiciary, which was created after the near defeat of the John Ashcroft nomination and which operates with one employee, working out of her home in suburban Virginia.

That imbalance virtually assures that the Pickering situation will play out again in the future, with Republicans significantly outgunned in the lobbying battle. Democrats have made no secret of their intention to defeat more of the president's judicial nominees, and People for the American Way and other coalition members are already at work on coming campaigns. The close coordination between committee Democrats and the coalition during the Pickering fight will no doubt be a model for future efforts. What worries many conservatives is that the meagerly funded, poorly organized effort on Pickering's behalf might become a model for the Republican side. If that is the case, it will not be long before Republicans are again left fuming after another bitter defeat.

GOP: Bush nominees treated unfairly

Audrey Hudson
The Washington Times
Wednesday, April 03, 2002

The confirmation process for President Bush's judicial nominees in the Democrat-controlled Senate has taken on a sense of "McCarthyism," a leading Senate Republican said yesterday.

"Are you now or have you ever been a conservative or a member of a conservative organization?" said Rick Santorum of Pennsylvania in an interview, mimicking Sen. Joseph McCarthy's standard line for hunting communists in government in the early 1950s. "That's it; you are disqualified. It's just a different C word." Republicans charge that Judge D. Brooks Smith of the U.S. District Court for the Western District of Pennsylvania, Mr. Bush's nominee for a federal 3rd Circuit Appeals Court seat, is the next target for defeat by Senate Democrats.

Sen. Joseph R. Biden, Jr., Delaware Democrat, said he is maintaining an open mind in regards to Judge Smith's confirmation. But Mr. Biden has vowed to kill the nomination if Judge Smith is

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not completely forthcoming in answers to questions from Senate Democrats during his confirmation process.

"I will do everything in my power to defeat you, including moving to the Senate floor to take action I've never taken in my life as a United States senator: a filibuster," Mr. Biden said during Judge Smith's confirmation hearing Feb. 26. In the 15 months he has been in the White House, Mr. Bush has nominated 29 circuit court judges, and seven have been confirmed. By comparison, in their first two years in office, President Clinton nominated 22 circuit judges with 19 confirmed, President George Bush nominated 23 circuit judges with 22 confirmed, and President Reagan nominated 20 circuit judges with 19 confirmed. Calls to the Judiciary Committee, headed by Sen. Patrick J. Leahy, Vermont Democrat, were not returned.

Before leaving for the Easter recess, Mr. Leahy defended the committee's record on the confirmation process. "We are moving forward as quickly as we can, and I will continue to do that," Mr. Leahy said. "No matter what is said on the other side, no matter how much things are taken out of context, no matter how much fiction we hear on the floor from that side, I will move them forward," Mr. Leahy said. The bruising confirmation process of failed Appeals Court nominee Judge Charles W. Pickering is a preview of what is in store for other conservative members of the bench, Republicans said. "They are on a witch hunt," Mr. Santorum said, referring to Democrats on the Senate Judiciary Committee. "I am sure that with every nominee who has any kind of conservative credentials, [Democrats] will make a big issue of it. The question is, how many Democrats on the committee will bite?" Mr. Santorum said.

A source close to the Smith confirmation proceedings said that despite the judge's popularity and widespread support in his home state of Pennsylvania, Democrats are intent on blocking or defeating the confirmation. "This is about George Bush and putting Republicans on the bench. It doesn't make any difference who you are; they are going to tailor these things to [hurt] each nominee," the source said.

Mr. Santorum said that in an environment "other than the Leahy jihad," Judge Smith would be approved. The pace of hearings and confirmation votes has angered many Republicans. The Senate has confirmed 42 nominees, and 56 nominations are still pending. Only two hearings have been held on the pending nominations, according to the Justice Department's office of legal policy.

"Almost a year has passed, and President Bush's first eight circuit court nominees have not even received the courtesy of a hearing," said Senate Minority Leader Trent Lott, Mississippi Republican. "All we are asking for is that the Senate Judiciary Committee provide fair treatment for these experienced and qualified individuals, and that clearly is not happening," Mr. Lott said.

Democrats are questioning Judge Smith's judicial ethics and recusal from a fraud case. People for the American Way, which led the effort to defeat Judge Pickering, have questioned Judge Smith's record on states' rights, civil rights, the environment and consumer protection.

Liberal groups that oppose conservative nominees became part of the debate over Judge Pickering, and Republicans say they will continue to highlight that influence in other nomination fights.

The Scarlet 'E'; Will 5th Circuit nominee be able to get out from under the Enron cloud?

John Council

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Texas Lawyer
Wednesday, April 3, 2002

As any Washington, D.C., insider will tell you, this is not the best time to be an elected official with connections to the sinking Enron Corp.

Texas Supreme Court Justice Priscilla Owen is finding that out. Owen is entering the political fray
as she seeks confirmation to the 5th U.S. Circuit Court of Appeals. She can expect a thorough audit of her background during a congressional nomination hearing, including questions about an opinion she wrote in 1996 that favored the controversial energy trading company. The spotlight likely won't be pleasant, as 5th Circuit nominee Charles Pickering recently discovered when he was targeted for his civil rights rulings.

Among the first of President George W. Bush's federal appellate bench nominees named on May 9, 2001, Owen has not received a hearing date from the Senate Judiciary Committee. The committee must vote to confirm Owen's nomination, followed by a confirmation vote by the full Senate, for her to take the federal appellate bench.

It's unclear if Owen will even receive a hearing this year. But concern over her nomination is so dire that Owen supporter Sen. Kay Bailey Hutchison, R-Texas, pleaded in a speech on the Senate floor March 20 that the Senate give Owen a hearing and confirm her.

"I just want to ask that we have a fair hearing on Justice Owen," Hutchison said.

Hutchison's remarks came after Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt., was quoted by Reuters as saying that Owen's past with Enron may put her nomination in jeopardy.

"I have heard from a lot of Republicans who are concerned about her Enron connections," said Leahy, who chairs the Democrat-controlled committee, two weeks ago.

David Carl, a spokesman for Leahy, says Owen will get a hearing -- but he can't say when.

Leahy's comment was that the Senate would have to examine Owen's Enron past as well as her record, Carl says. "He outlined the good faith the Democrats were taking to break the deadlock over the past five or six years. He named her as an example."

Meanwhile, activist groups have jumped all over Owen's nomination, harping about her conservative record.

Leading the activists' list of concerns is Owen's 1996 opinion in Enron Corp., et al. v. Spring Independent School District, which allowed the company to get a tax break. The groups point out that Owen also has accepted thousands in donations to her Texas Supreme Court campaign from Houston's Enron.

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But conservative groups say Owen is an outstanding candidate whose nomination is being blocked by Democrats on the contentious Judiciary Committee just because she will not toe their ideological line.

Texas appellate lawyers who know Owen say she's a judge who wears her conservative philosophy on her sleeve. But she also maintains the highest standard of ethics and doesn't deserve to be smeared with Enron mud, they say.

Even the plaintiff's lawyer who was on the losing side of Enron v. Spring ISD -- a complicated analysis of a Tax Code provision that dealt with what date the market value of inventory could be appraised -- says attempts to discredit Owen because of the ruling are "nonsense."

"This is a bunch of crap is what it is," says Robert Mott, a partner in Houston's Perdue, Brandon, Fielder, Collins & Mott who represented Spring ISD. "To suggest that Justice Owen would rule this
way based on a campaign contribution is just nonsense."

Mott says the ruling was reflective of the conservative nature of the court at the time.

Interestingly, the opinion, although written by Owen, was unanimous with all nine jurists -- even Democratic Justices Rose Spector and Raul Gonzalez -- joining in the decision.

Owen declines to comment for this article.

ACTIVISTS CONVERGE

Just as activists this year targeted 5th Circuit nominee Charles Pickering for his civil rights rulings, groups from Texas say they plan to protest against Owen as well.

The Judiciary Committee shot down Pickering's nomination in March in a party-line 10-9 vote. Civil rights activists opposed his nomination and pointed to a case in which Pickering, a U.S. district judge in Mississippi, sought a lighter sentence for a defendant tried on a cross-burning charge -- a case Republicans say was misinterpreted by Pickering's opponents.

There's no indication that Owen's confirmation hearing will be as contentious -- Pickering was called back by the committee for a second hearing so members could further research his rulings, which is rare.

But activists from consumer, environmental and abortion rights groups such as Texans for Public Justice, the Sierra Club and the Texas Abortion and Reproductive Rights Action League say they plan to converge on Washington this month to discuss Owen's record with members of the Senate Judiciary Committee.

Given Congress' obsession with Enron, questions about Owen's connection to the fallen energy trading giant will likely be a priority for Judiciary Committee members.

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Representatives from Texans for Public Justice, a consumer judicial watchdog group, will make sure of that.

"The connections to Enron and the judge's raising huge amounts of money from them will be troubling to some senators and will be raised," says Craig McDonald, director of Texans for Public
Justice. "That's my belief. I've given them materials and background."

Included in that material is the group's report on money Texas Supreme Court justices received from Enron. Since 1993, the company contributed $134,058 to the justices -- $8,600 of that went to Owen, who was elected to the high court in 1994.

But a leader of a Washington conservative think tank believes the smell of Enron won't stick to Owen once it's put in context.

"That contribution was in full compliance with the rules of ethics," says John Nowacki, director of
legal policy at the Free Congress Foundation. "I think she's shown on that issue that she's in the mainstream of Texas contribution laws."

Owen is falling victim to liberal interest groups who want to turn circuit court nomination hearings
into the raucous, ideological process that's normally reserved for nominees to the Supreme Court, Nowacki says.

"There's been a deliberate effort by the liberal interest groups to turn the circuit court nominations into something resembling the Supreme Court nomination process," Nowacki says. "It
all boils down to politics. The Democrats have made it very clear that they want judicial candidates that reflect their point of view."

Tactics such as those used against Pickering eventually will backfire as the public discovers there is little substance behind the activists' allegations, Nowacki says. He believes Owen eventually will be confirmed.

"I think if people start to realize that the only time [candidates] get defeated is when the Democrats are in control, they'll realize that it's plain politics," Nowacki says. "And Leahy will realize it looks plain bad."

Enron isn't the only issue that disturbs activists. Sarah Wheat, director of public affairs for the Texas Abortion and Reproductive Rights Action League, says her group plans to meet with senators this month.

Wheat's group is troubled by Owen's dissenting opinions in a series of rulings in early 2000 that

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interpreted Texas' abortion parental notification law. In a March 2000 opinion, In Re Jane Doe 3, Owen voted to reject a minor's request for a judicial bypass -- even though the girl claimed that informing her parents about her desire to get an abortion would lead to "emotional abuse." Owen wrote in a dissent that the girl had not proved that she would be subjected to abuse.

Notes Wheat, "She sends out red flags for a lot of us."

HOMEFRONT SUPPORT

Notably, the people who know Owen best and who've practiced in front of her are not the ones complaining about her reputation or her abilities as a judge.

Owen, who graduated at the top of her class from Baylor University School of Law in 1977, received a "well qualified" rating (the highest possible) by the American Bar Association's Standing Committee on the Judiciary on June 21, 2001.

"In terms of the intellectual firepower, she's got it," says Douglas Alexander, an appellate specialist and partner in Austin, Texas' Scott, Douglass & McConnico. "In terms of whether you agree with her conservative philosophy or bent, that's a completely different question and that's what's sparking a lot of the opposition."

But Alexander says there's no hint that Owen's decisions ever have been influenced by campaign donations.

"Any notion of Priscilla deciding a case based on a campaign contribution -- I don't attribute anything to that," Alexander says. "I don't doubt that things like that are going to be dragged out, but I don't think that's a legitimate concern."

David Keltner, a Fort Worth, Texas, appellate specialist and former 2nd Court of Appeals justice,
agrees.

"I'm a Democrat, and I sometimes disagree with her political philosophy, but she comes about it honestly," Keltner says.

Keltner says partisanship is once again affecting the administration of federal justice. He points to two other 5th Circuit nominees of former President Bill Clinton's -- Jorge Rangel of Corpus Christi and Enrique Moreno of El Paso, Texas -- who never got a hearing before the judiciary committee.

"We need to get these people heard and out. We need judges in federal courts desperately," Keltner says. "And the people that are withholding those votes are wrong. It's affecting the practice of law in Texas, and it's wrong."

As the Senate takes its time filling two vacant 5th Circuit spots, the judges on that court

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continue to struggle to keep up with a heavy caseload. The court had 8,616 appeals filed last year and as of June 30, 2001, the most recent figures available, the court had 4,533 appeals awaiting disposition.

More often than not, the 5th Circuit uses visiting judges on three-member panels when it issues decisions.

"The number of the visiting judges that sit on the 5th Circuit are indicative of a heavy workload," says Gregory Nussel, circuit executive of the 5th Circuit.

While Texas' two U.S. senators have great influence in helping select and confirm U.S. district judges assigned to Texas, they have little, if any, power in helping select circuit judges. The president has the sole responsibility to select circuit judges.

While Hutchison pleaded Owen's case on the Senate floor, U.S. Sen. Phil Gramm, R-Texas, has been silent on the matter, although he supports Owen's nomination, says Gramm spokesman Larry Neal.

Neal says Gramm would only speak out on behalf of Owen if he was asked to by Owen or Bush.

"To my knowledge, he had not been asked to make statements," Neal says. "And it's a good policy because sometimes your friends do more damage than good."

Op/Ed.

Jacksonian chutzpah

Rod Dreher
Scripps Howard News Service
April 4, 2002, Thursday

Nobody has ever erred by accusing Jesse Jackson of a surfeit of chutzpah, but many people won't grasp why his offer to mediate between the Palestinians and the Israelis is so outrageous as to beggar belief. It's like this: What if, during the Republican-Democrat battle royal in Florida, Alec Baldwin had presented himself as an honest broker able to bring both sides to mutual understanding? Jackson's offer makes as much sense.

Jesse's love affair with Yasser Arafat is well-documented by Kenneth Timmerman in "Shakedown," and will come as news to folks who think Jackson's only brush with Jew-bashing was his infamous "Hymietown" remark in 1984.

In August of 1979, Carter sacked Andrew Young, his ambassador to the United Nations, after the black former mayor of Atlanta met privately with the Palestinian Liberation Organization's

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man at the United Nations.. Jackson, a friend of Young's, publicly insinuated that Jews brought down Young, and complained that Jews were false friends of blacks. A month later, Jackson announced he would go to Beirut to meet with Arafat, who was living in exile there. Citing media reports at the time, Timmerman quotes Jackson as telling Arab-American supporters gathered at PUSH headquarters: "By Oct. 1, there will be no black leader left willing to come to the aid of the Palestinian cause if there is not an immediate infusion of funds into the black community from the Arab states."

Two weeks later, Jackson and his entourage took off for Israel on a junket paid for by Arab donors. When Israeli prime minister Menachem Begin failed to turn up at the airport, an insulted Jackson gave a news conference in which he intimated that racism might be behind the snub. Days later, Jackson visited Yad Vashem, the national memorial to Holocaust victims, where he equated the incineration of six million Jews to American slavery.

Newsweek quoted Jackson as saying that "a persecution complex ...almost invariably makes Jews overreact to their own suffering."

Then Jackson lit out to visit Palestinians in the fetid Dheisheh refugee camp. "I know this camp," he preached. "When I smell the stench of the open sewers, this is nothing new to me. This is where I grew up." (Actually, he grew up in relative comfort in North Carolina.)

Two American Jews who had helped arrange for Jackson's trip quit in disgust. One of them, publisher Philip Blazer, said Jackson was piggybacking on the plight of the Palestinians to raise money for his own interests. Even the Rev. Harold Schomer, a left-wing cleric who accompanied Jackson, noted in his private journal that the Arab states were trying to use the Jackson fact-finding trip to weaken U.S. backing of Israel, and to legitimize the PLO.

When Jackson finally met Arafat in Lebanon, he gave him a big kiss and declared the terrorist "my friend and the friend of justice and humanity." Two years later, Israeli forces invaded Lebanon in an attempt to drive out PLO terrorists mounting attacks on Israel from Lebanese soil. The Israelis, commanded by Gen. Ariel Sharon, drove Arafat into exile.

Jackson arrived home and was greeted by a hailstorm of criticism for having succored the Soviet-
proxy PLO, and endangered domestic relations between blacks and Jews. The indignant Jackson blamed - who else? - Jews in the media.

Happily for Jackson, his pro-Arafat sojourn opened the floodgates of Arab money into PUSH coffers. A $10,000 check from a Libyan diplomat nearly earned him an FBI subpoena. In 1981, a fat donation from the Arab League made up 80 percent of the funds Jackson raised for his group that year; Jackson said he didn't know a thing about it.

Jackson's most notorious anti-Semitic comment came in 1984, when he made what he assumed was an off-the-record comment to a black reporter in which he called Jews "Hymies" and New York "Hymietown." He publicly apologized and has been largely excused by the media, even as

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he insists that whites like the recently defeated Charles Pickering are unfit for government office because of racist views they might have held 40 years ago.

Still, the record of this man who offers himself as a peacemaker between the Israelis and the Palestinians bears remembering. All things considered, Alec Baldwin would stand a better chance.(Rod Dreher is a senior writer for National Review.)

JUDGES: Pickering and Choosing

National Review
Monday April 8, 2002

Republicans are in high dudgeon about the treatment of Judge Charles Pickering, whose nomination to an appeals court was defeated by ten Senate Democrats in a party-line vote of the Judiciary Committee. But Pickering was treated badly by both parties. Democrats made scurrilous attacks on him, and Republicans did not defend him until it was too late. The Democrats themselves seem to be somewhat embarrassed by their tactics, as witness their efforts to squirm away from them. Sens. Charles Schumer and Patrick Leahy insist that nobody ever insinuated that Pickering was a racist. Of course not: When Terry McAuliffe said that President Bush was trying to "disenfranchise" black voters in Mississippi by nominating Pickering, it was all in good fun. Liberal columnist E. J. Dionne Jr. admits that "the anti-Pickering campaign did get ugly," but his spin is that Democrats ended up opposing him on defensible grounds -- e.g., the fact that his decisions have been "so often reversed on appeal." Except that this fact is not a fact at all: Pickering's reversal rate is lower than the average in his circuit or in the nation. Late in the day, liberals -- notably Sen. Dianne Feinstein of California -- also made the argument that Bush had no mandate and therefore should not be allowed to stack the courts with conservatives. (She also took the curious view that Pickering would be able to overturn Roe v. Wade from a circuit court of appeals.) The pattern of attack is the same one exhibited in the confirmation hearings for attorney general John Ashcroft last year: First, a few scattered decisions are used to portray the nominee as anti-black; once the poison has been released into the atmosphere, its very existence is denied. The Democrats do not really believe that Pickering (or Ashcroft) is a racist, of course; in 1990, Pickering was unanimously approved for the district judgeship he now holds. But he was a target of convenience, being a white male Republican from Mississippi of a certain age, as Ashcroft was a target of convenience as a white male fundamentalist Christian. By voting down Pickering, Democrats handed the president (and Pickering's friend Trent Lott) a defeat; elicited donations for liberal interest groups; and sought to make the president think twice before nominating conservatives, or at least opponents of liberal orthodoxy on abortion, in the future. The Democratic onslaught caught Republicans napping. The White House viewed Pickering as Lott's concern and intervened too late. Senate Republicans were little better, becoming engaged only when it was fairly clear Pickering was going down. Byron York's reporting for National Review Online did more to counter Democratic distortions than any of them did. Even now, they are focusing on procedural rather than substantive issues. They are quite right to chastise the Democrats for not allowing a full Senate vote on Pickering. But the more important point is the need for constitutionalist judges. Bush should not bow to the

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Democrats' intimidation by refraining from nominating such judges. The Democrats' demand for "moderate" judges is in any case phony. The federal judiciary is still, on balance, an instrument of the Left. Moderate judges in the context of the liberal legal academy are those who overturn laws in favor of liberal whims only some of the time, and who allow previous acts of liberal usurpation from the bench to stand. The public is neither enamored of liberal judges nor afraid of conservative ones. If the Democrats want to keep blocking the latter, Bush should call their obstruction to the attention of voters in the Senate races this fall.

Virginia Thomas is using her husband's trials for advancement

Steven Lubet
Fulton County Daily Report
April 2, 2002 Tuesday

Virginia Thomas, the wife of Justice Clarence Thomas, recently published an op-ed in The Wall Street Journal that expressed sympathy for Judge Charles Pickering Sr., President Bush's now-defeated nominee to the 5th U.S. Circuit Court of Appeals. Drawing upon her experience during her husband's stormy confirmation hearings, Thomas urged Pickering not to take his rejection personally. "It helps," she wrote, "to find your faith and be reminded that you are not called to be popular, but rather to have integrity."

But Thomas did not limit herself to commiseration. Instead, her March 14 commentary launched a sharp attack on feminists, civil rights groups and "the hard left." Then, leaving no doubt where she stood, she lambasted Senate Democrats in highly ideological terms.

Thomas said that the Democrats on the Senate Judiciary Committee don't think of Pickering "as human right now." She said that "facts matter little" to Senate Democrats, who are "impervious to the truth." Their opposition to Pickering, she also noted, "doesn't hurt their fund-raising efforts." She claimed that the Democrats' strategy was to "influence votes, scare off conservatives from being nominated, being defended or even applying for such positions in public service." These are political thunderbolts of a sort we have never before seen hurled by the spouse of a sitting Supreme Court justice. Whether one agrees or disagrees with Thomas on the merits, it was surprising to see a Supreme Court spouse make such a pronounced entry into the political fray. Her essay was published on the morning that the Judiciary Committee was scheduled to vote on the Pickering nomination, which was understood to be headed toward defeat. Republicans felt that the nominee was being victimized by scorched-earth tactics, and no one was better suited to expose the smear than Thomas, who had lived through her own confirmation ordeal.

So what do we make of it that Virginia Thomas so very publicly weighed in on such an intensely political controversy?

Above the Fray

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In the wake of the Florida election fiasco, it is more important than ever to hold the Supreme Court scrupulously neutral in political disputes, both in fact and in appearance.

Critics claim that the five-vote majority in Bush v. Gore was motivated more by political affinity than by constitutional law, sometimes referring to a report that Justice Sandra Day O'Connor reacted with audible dismay when it first appeared that Al Gore would carry Florida and win the presidency. Defenders, of course, argue that the majority opinion was rigorously correct, unaffected by any motive other than the strict desire to follow the Constitution.

In any case, it should be obvious to all that the court's legitimacy depends greatly upon its perceived detachment. If the justices come to be regarded as political players, their opinions will be seen as instrumental rather than principled. Thus it is axiomatic that the court must remain painstakingly aloof from political combat.

But to what extent does that axiom apply to the spouses?

In one sense, of course, it does not pertain at all. Apart from some financial disclosure requirements, the ethical rules that constrain judges simply do not apply to their spouses. And any effort to impose a spousal gag rule surely would run afoul of the First Amendment.

Consequently, Virginia Thomas is legally entitled to write whatever she pleases. She is an exceptionally capable professional, with an important career completely independent of her husband's job. She has much to say on many issues, and it would be absolutely wrong to insist that she, or any other spouse, live a life of public silence.

Wiser Heads

But that does not end the discussion, since the public conduct of spouses does have the potential to compromise the court. Imagine the furor that would have followed if John O'Connor or Martin Ginsburg actively had campaigned for their preferred presidential candidates in the 2000 election. Although the First Amendment surely protects that activity, it would have been a disaster for the court-no doubt prompting demands that O'Connor and Ruth Bader Ginsburg recuse themselves in Bush v. Gore.

The Supreme Court is a fragile institution, dependent on its reputation, and often best served by the voluntary circumspection of those connected to it. A decent respect for the court's neutrality-in both reality and appearance-counsels self-restraint.

The spouses of most justices seem to recognize this. For example, Martin Ginsburg, a prominent tax attorney, divested himself of perfectly legitimate investments in order to avoid even an appearance of judicial partiality.

Which brings us to Virginia Thomas and her appearance on the op-ed page of The Wall Street Journal.

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Unique in the history of Supreme Court spouses, Thomas has been an active political player during her husband's entire tenure on the court. She served as senior policy coordinator for the House Republican Conference and later became a top adviser to Republican Majority Leader Richard K. Armey. She is currently director of executive branch relations for the conservative Heritage Foundation.

In each of those positions, Thomas wisely had refrained from open politicking. With her Wall Street Journal op-ed, however, she has broken another barrier, invoking her husband's name in what can be seen only as an effort to sway public opinion against Democrats and in favor of the Republican administration.

In a nutshell, Thomas showed dreadfully poor judgment in publishing that particular op-ed. It would have been a different matter if she merely had written a pro-Pickering essay or if she had written a piece about the travails of confirmation without resorting to partisan invective. Instead, she intentionally capitalized on Justice Thomas' position in order to score political points.

We do not know whether Virginia Thomas consulted anyone about her op-ed. We should assume, to be sure, that Justice Thomas had no part in it. But questions, at least in skeptical quarters, are unavoidable. Husbands and wives do tend to talk to each other about important matters. Is it out of place to wonder whether Virginia Thomas, about to take the seemingly unprecedented step of going public on a political controversy, might have asked her husband whether he had any concerns? Might she have mentioned the op-ed to him? Even without any input from the justice into the content, that possibility may create the appearance of his tacit approval.

Of course, the supposition could be completely wrong. Perhaps Justice Thomas was more surprised than anyone else to see his wife's byline in The Wall Street Journal. If so, both Thomases must have been shocked to see the column illustrated by a picture of Justice Thomas himself, presumably inserted by a Journal editor (likely unbeknownst to the writer) lest anyone miss the connection.

Using the Court

A federal statute prohibits a Supreme Court justice from sitting in any case in which his or her spouse has a nonfinancial "interest that could be substantially affected by the outcome of the proceeding." Until March 14, no one would have suggested that Virginia Thomas' political affiliations should disqualify Justice Thomas from participating in any case, even one that determined, say, the presidency of the United States. But after her recent foray into open partisan warfare, the situation may well have changed.

It is not likely that we ever again will see a Supreme Court spouse who doesn't lead an independent life in one realm or another. It would be unacceptable to place formal limits on their activities, but it is not too much to request some prudence.

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Yes, Virginia Thomas has the right to say whatever she chooses. It's just too bad that she didn't choose to keep the Supreme Court out of it.

Judge Pickering deserves position

The Myrtle Beach Sun-News
April 2, 2002 Tuesday

U.S. SENATE

On March 14, the Democrat-controlled Senate Judiciary Committee voted against the nomination of [U.S. District] Judge Charles Pickering [for the U.S. Court of Appeals].

This action was contrary to what the American Bar Association had to say, as well as leading blacks in Mississippi.

Sen. Edward Kennedy, D-Mass., stated that Pickering does not have "the temperament, the moderation or the commitment to core constitutional ... protections that is required for a life tenure position."

Kennedy, who is widely known for his excessive drinking and womanizing, should not be standing in our most sacred halls and calling [names].

[Neither] Kennedy nor any of the other Democratic senators can hold a candle to Pickering's morals and ethics.

Bruce D. Rutherford
Longs

The Reynolds recess appointment

The Washington Times
April 02, 2002, Tuesday

It had been more than six months since President Bush selected Gerald A. Reynolds to be assistant secretary of education for civil rights, but Mr. Reynolds, the former president of the Center for New Black Leadership (CNBL), still had not received a vote on his nomination in the Senate Committee on Health, Education, Labor and Pensions. In fact, the committee, which is chaired by Democratic Sen. Edward Kennedy, never managed to give Mr. Reynolds the consideration of a hearing until Feb. 26.

It should hardly be surprising, therefore, that Mr. Bush decided last week to elevate Mr. Reynolds in a recess appointment. Mr. Reynolds' official arrival at the Office of Civil Rights in

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the Department of Education cannot come a minute too soon. After all, his predecessor during the Clinton administration, Norma Cantu, was an overbearing activist who willfully disregarded court

rulings. It was particularly important for the president to act, given the highly politicized campaign that was being orchestrated against Mr. Reynolds. Once he was nominated, a slew of self-appointed guardians of civil-rights coalesced, determined to thwart the Senate's confirmation of a young conservative black attorney to the position that Supreme Court Justice Clarence Thomas once held. The usual suspects were involved, including the NAACP, People for the American Way, the Leadership Conference on Civil Rights, the National Organization for Women, etc. However, after it became apparent that Mr. Reynolds would be confirmed by the entire Senate, Mr. Kennedy angled to defeat the nomination in his committee, just as the Senate Judiciary Committee had used a party-line vote to derail the appeals court nomination of Judge Charles Pickering.

When Mr. Reynolds explained at the committee's hearing on Feb. 26 that he intended to enforce existing civil-rights laws, Mr. Kennedy bellowed, "Don't pander to me." Subsequently, Mr. Kennedy, whose expulsion from Harvard for cheating did not preclude him from becoming chairman of the Senate committee responsible for education, audaciously declared that he was

"struck by Mr. Reynolds' lack of policy experience and his longstanding hostility to basic civil-rights laws."

Mr. Kennedy's partisan assertions nothwithstanding, Mr. Reynolds knew what he was talking about. As CNBL president, he told the committee, he focused on "the significant achievement gap between white and black students," arguing that "we need to expand the concept of civil rights so that it includes improving the quality of education for America's disadvantaged children."

"To limit an individual's education," Mr. Reynolds persuasively argued at his hearing, "is to limit his freedom." And he added, "A sound education is the fastest, and sometimes the only, way out of poverty." Now is the time for him to pursue the CNBL's innovative ideas, which members of the old guard have spent their careers blocking in order to preserve the failures of the status quo.

Battle over federal seats ignores the middle ground

The Detroit Free Press
Tuesday April 2, 2002

Don't look for the fight over federal judges to simmer down any time soon. At least not based on the rhetoric coming from the White House.

"We're going to have more fights when it comes to the judiciary," President George W. Bush said last week, declaring he would send more "good, conservative judges" to the Senate for confirmation.

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Conservatives are his prerogative, but ideologues are not. The president seems to be looking for trouble from the Democrat-controlled Senate that rejected Mississippi Judge Charles Pickering.

Instead, Bush -- and Democrats -- should stake out more middle ground. The Senate has approved 41 of the 90 candidates Bush has submitted since July; Pickering was the only reject.

With advice and consent privileges, the Senate has a responsibility to ensure the nation's courts remain balanced and nominees don't have political agendas far out of the mainstream.

That does not mean Senate Democrats should engage in the delaying tactics Republicans used during the Clinton years. Only 35 percent of the former president's nominees got the courtesy of a
hearing; Michigan Appeals Court Judge Helene White and Detroit attorney Kathleen McCree Lewis were left on the sidelines.

Bush should aim to fill the depleted bench. That requires working with folks on both sides. The breezy confirmation of his nominees from Nebraska, Montana and Iowa should have shown him the way. Nominees succeeded with ease because both of each state's senators -- one from each party -- could sign off on solid, but not extreme, conservatives.

To fill the bench, the president should reach out to Democrats with an extended hand, not an angry
fist.

Transcripts/Members of Congress

Israeli Forces Occupy More of West Bank; Are Americans Rude?

CNN
SHOW: CNN INSIDE POLITICS
April 3, 2002 Wednesday

JUDY WOODRUFF, CNN ANCHOR: I'm Judy Woodruff in Washington. Israeli forces move into more areas of the West Bank as the pressure and the protests spread across the Middle East.

CANDY CROWLEY, CNN SR. POLITICAL CORRESPONDENT: I'm Candy Crowley, Some conservatives may find fault with the president, but at the end of the day, he's still their man. ... finance reform, amnesty for illegal immigrants, and steel tariffs: Those are issues that have divided President Bush and some conservative leaders recently. But does that translate into disaffection among rank-and-file conservative voters?

Our Candy Crowley has been looking into that question.

(BEGIN VIDEOTAPE)

NORTH: I'm Oliver North. This is Radio America.

CANDY CROWLEY, CNN SR. POLITICAL CORRESPONDENT (voice-over): Wonder what conservatives complain about now that Bill Clinton has left the scene? Answer: George Bush.

UNIDENTIFIED MALE: We are in 62 countries right now, Ollie. We need to get the hell out. We need to close our doors and be isolationists.

CROWLEY: Conservative talk radio is where the grassroots go to vent.

ELDER: KABC, Larry Elder here. And my guess is the president of the NRA, Charlton Heston, of course.

CROWLEY: And from D.C. to L.A., lately, conservatives have found a lot to vent about.

ELDER: The issue that I think bothers most conservatives is the president's inexplicable support of campaign finance reform.

NORTH: There is some concern ...

... credibility.

ELDER: It was a big mistake to apply tariffs on certain imported steel goods.

NORTH: The idea of amnesty for illegal aliens set people's temperature just off the charts.

CROWLEY: Not to mention an education bill conservatives thought looked more Ted Kennedy than George Bush, what some saw as a too-late, too-tepid defense of doomed judicial nominee Charles Pickering, and that new federal budget, with 9 percent more spending, including an increase in foreign aid.

What's up here? Some conservatives fear it's poll numbers.

STEVEN MOORE, CLUB FOR GROWTH: It's almost as if, ever since 9/11, Bush has become -- has sort of transcended party. He's not even a Republican anymore. He's the president of all the people. And he is trying to make this full 80 percent happy.

CROWLEY: Asked if he worries about complaints from conservatives, one top Bush politico said: "Every single day. It is something you have to monitor." And that job falls primarily to the president's chief political strategist.

MOORE: Karl Rove will rush in and talk to the conservative groups and say: "Look, George W.

REV_00142589

Bush feels your pain. He is going to be with you on these things."

CROWLEY: So far, so good: Dissent has not meant desertion.

CHARLTON HESTON, PRESIDENT, NRA: The conservatives will still turn out, because he is the only guy we've got. And I think -- by and large, I think he has been doing a good job.

CROWLEY: It is the half-a-loaf-is-better-than-none theory applied to politics. The head of the National Rifle Association has gone to court to overturn the campaign finance reform that George Bush signed into saw.

WAYNE LAPIERRE, NRA: I wished he'd vetoed it. Is that going to make Wayne cheer any less when I'm in a crowd and they introduce him? Probably not.

CROWLEY: The truth is, there are three primary things that give George Bush maneuvering room with conservatives: the war on terrorism; the tax cut he pushed through last year; and the fact that he is not Bill Clinton. And the greatest of these is the war.

LAPIERRE: The fact is, we are six months away from the worst terrorist attack in America's history. And I think he's done a fabulous job.

(END VIDEOTAPE)

CROWLEY: "Conservatives," said one of them, "will swallow hard on a lot of issues right now because of the war." But he warned the Bush administration not to downplay conservative grumblings. The source added there is a danger of arrogance that comes with high poll numbers. "We know," responded one Bush insider. "We hear them" -- Judy.

WOODRUFF: Candy, is there one issue out there, one thing that would really be a relationship breaker for conservatives and the president?

CROWLEY: What I really gather, from talking to a lot of conservatives over the past couple of days is, look, as long as the war seems to be going well, as long as the economy seems to be getting better, he's fine. If there's a double-dip ...

... It's like the overriding issue right now is the war and the economy. If that starts to fall apart, there's a problem.

WOODRUFF: As long as those two things continue, it is almost as if anything the president does, he'll survive, right?

CROWLEY: Well, and they know that this is calibrated very carefully. One conservative said to me: "We understand there's an election coming up. We understand he didn't want to spend a lot of political capital on campaign finance reform." So, yes, he's calibrating this carefully. I don't think he's going to go out and do something right in their face. But he's got some room there.

REV_00142590

WOODRUFF: OK, Candy Crowley, thank you. We appreciate it.

And checking the headlines in our "Campaign News Daily": The former stripper-turned-Colorado town mayor is out of a job. Voters in tiny Georgetown, Colorado recalled Mayor ...

REV_00142591

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 4/4/2002 10:17:10 AM
Subject: : List of WHO/NSC/OPD staff who haven't turned in forms

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-APR-2002 15:17:10.00
SUBJECT:: List of WHO/NSC/OPD staff who haven't turned in forms
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Aguirre, Gilbert-WHO
Amorsingh, Linus-WHO
Arcos, Cresencio-WHO
Atkiss, Steven-WHO
Badrina, Rachel-WHO
Bailey, Bo (Robert)-WHO
Baker, Jane-WHO
Barksdale, James-WHO
Becker, Kathleen-WHO
Becker, Kathy-WHO
Benson, Latoya-WHO
Blalock, Kirk-WHO
Blossman, Robert-WHO
Bolten, Joshua-WHO
Bolton Jr., Edward-NSC
Brooke, Mary-WHO
Buie, Emmerson-WHO
Bunting, J. (Chris)-NSC
Burch, Therese-WHO
Burkhart, Shannon-WHO
Byrne, Catherine-NSC
Caler, Marcia-NSC
Campbell, Anne-WHO
Campbell, Frances-WHO
Cassano, Lois-WHO
Cobb, Robert-WHO
Comte, Rachel-WHO
Conner, Chuck-OPD
Cooper, Colby-NSC
Crawford, Bernard-NSC
Crawford, Anthony-NSC
Davis, Michael-WHO
Day, Robert-WHO
Deitering, Randy-WHO
Deservi, Robert-WHO
Dickens, Reed-WHO
Digregorio, Elizabeth-WHO
Disston, Katherine-WHO
Draper, Eric-WHO
Droege, Philip-WHO
Dworken, Jonathan-NSC
Eberly, Don-WHO
Edwards, Jennifer-WHO
Estes, J.D.-WHO
Evans, Madalene-WHO
Fertakis, Katherine-NSC
Foley, Jennifer-WHO
Freeman, Myra-WHO
```

Friedman, Stephen-WHO
Galen, Reed-WHO
Gangsei, Theodore-WHO
Goss, Gregory-WHO
Green, Michael-NSC
Greenwood, Thomas-NSC
Gregory, Virginia-WHO
Grier, Judy-WHO
Gross, Taylor-WHO
Guerra, Abel-WHO
Hadley, Stephen-NSC
Harden, Alison-WHO
Hauser, Rita-WHO
Hayesbird, Jacquelyn-WHO
Healy, Erin-WHO
Heath, Mike-WHO
Heilgenstein, Anne-WHO
Hernandez, Israel-WHO
Hunt, Ray-WHO
Jablonka, Curtis-WHO
James, Theodoric-WHO
Jenkins, Gregory-WHO
Jeremiah, David-WHO
Jones, Crystal-WHO
Jones, Deborah-WHO
Kalka, Jean-Francois-NSC
Kanter, Arnold-WHO
King, Taeshonnda-WHO
Kozberg, Lindsey-WHO
Lambert, Mary-WHO
Langdon, James-WHO
Latimer, Mary-NSC
Leboeuf, Donni-WHO
Lerner, Alfred-WHO
Leverett, Flynt-NSC
Lezotte, Darin-WHO
Libby, Lewis-WHO
Lineberry, Laura (Liz)-NSC
Mallea, Jose-WHO
Mark, David-WHO
McArthur, David-WHO
McCulloch, Kendall-WHO
Merchant, Brian-NSC
Miller, James-WHO
Mobley, Helen-WHO
Mollman, Marcus-WHO
Montgomery, Brian-WHO
Moriarty, James-NSC
Morse, Paul-WHO
Nash, Charles-WHO
Newell, Paul-WHO
Nicholas, J. Paul-WHO
Olson, Tiffany-WHO
Parker, Doris-WHO
Petrosino, Nicole-WHO
Pfeifer, Sarah-WHO
Powell, Dina-WHO
Prendergast, Kathy-WHO
Purcell, Kristopher-WHO
Ralston, Susan-WHO
Randall, Gail-WHO
Reynolds, James (Mercer)-WHO
Rodriguez, Leonard-WHO
Rodriguez, Noelia-WHO
Rosenker, Mark-WHO
Roy, Roosevelt-WHO
Rust, Kathryn-WHO
Sailor, Angela-WHO

Samuels, Wendell-WHO
Scott, David-NSC
Scowcroft, Brent-WHO
Selva, Elizabeth-NSC
Shea, Robert-WHO
Shockley, Leslie-WHO
Shourds, Cynthia-WHO
Simpson, Wandra-WHO
Snee, Ashley-WHO
Snyder, Louella-WHO
Steele, Lynden-WHO
Streicker, John-WHO
Sulser, Jack-NSC
Sunbarger, Rachael-WHO
Taylor, Rhonda-WHO
Teague, R. Cornell-WHO
Terrell, Eric-WHO
Thomas, David-WHO
Thompson, Carol-WHO
Tucker, Phyllis-WHO
Vandenberg, Cynthia-NSC
Viedgar, Randall-WHO
Ware, Patricia-WHO
Welborn, Camille-WHO
Wendell, Matthew-WHO
Westray, Howard-WHO
Wiegmann, John (Brad)-NSC
Williams, Cindi-WHO
Wilson, Pete-WHO
Young, Patricia-WHO
Young, Reginald-WHO
Young, Tracy-WHO
Zelikow, Philip-WHO

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lauren K. Allgood/OMB/EOP@EOP [OMB] <Lauren K. Allgood>
CC: Nancy Dorn/OMB/EOP@EOP [OMB] <Nancy Dorn>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 4/4/2002 3:04:47 PM
Subject: : Re: Victims of Terrorism Fund Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-APR-2002 20:04:47.00
SUBJECT:: Re: Victims of Terrorism Fund Meeting
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Nancy Dorn (CN=Nancy Dorn/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

I will not be able to attend. That is the time for our weekly judicial selection meeting.

Lauren K. Allgood
04/04/2002 08:01:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Victims of Terrorism Fund Meeting

There will be a meeting Wednesday, April 10 at 4:00pm in 252 EEOB (Nancy Dorn's Office) to discuss the Victims of Terrorism fund. Please let me know if you will be able to attend and if others should be included.

Thanks,
Lauren
5-4742

Message Sent
To:_____
Philip J. Perry/OMB/EOP@EOP
Robin Cleveland/OMB/EOP@EOP
David W. Hobbs/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Daniel J. Keniry/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP

Message Copied
To:_____
Carla B. Stone/OMB/EOP@EOP
Karyn T. Carson/OMB/EOP@EOP
Lauren J. Vestewig/OPD/EOP@EOP

Bessie M. Weaver/OMB/EOP@EOP
Alison Jones/WHO/EOP@EOP

From: CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO]
To: Jack Howard/WHO/EOP@EOP [WHO] <Jack Howard>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2002 1:30:27 PM
Subject: : Govt Reform Hearing on Thursday the 11th

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirsten A. Chadwick ( CN=Kirsten A. Chadwick/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-APR-2002 18:30:27.00
SUBJECT:: Govt Reform Hearing on Thursday the 11th
TO:Jack Howard ( CN=Jack Howard/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nicholas E. Calio ( CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Burton is holding a hearing on Thursday afternoon with one panel on "lack
of access to Presidential Records"

Apparently there is some conference of historians in town next week - so
some of these folks will be witnesses to say how important access is for
research - they dont have a witness list yet.

kirsten
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 4/4/2002 1:54:52 PM
Subject: : Re: Holy Land Letter

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-APR-2002 18:54:52.00
SUBJECT:: Re: Holy Land Letter
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Are they 100% sure it is not the same entity? Or are we supposed
to research that?

Patrick J. Bumatay
04/04/2002 09:04:57 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Holy Land Letter

Hey Brett,

Correspondence is asking about that letter I sent you to the Holy Land
Foundation (Catholic, not Muslim). They want to know if it would alright
to send that letter since there is some controversy with the name of the
organization.

Patrick

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2002 2:04:50 PM
Subject: : Re:COG Meeting (I am on Leave (Automatic Reply))

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
)
CREATION DATE/TIME: 4-APR-2002 19:04:50.00
SUBJECT:: Re:COG Meeting (I am on Leave (Automatic Reply) )
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is an automatic reply. I will be out of the office on Friday, April
5. If you need assistance before I return, please contact Jason Baron by
email or at 301-713-6025, ext 232.
```

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2002 3:01:05 PM
Subject: : Re: Govt Reform Hearing on Thursday the 11th

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-APR-2002 20:01:05.00
SUBJECT:: Re: Govt Reform Hearing on Thursday the 11th
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

were we?
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>
Sent: 4/4/2002 3:06:19 PM
Subject: : Re: Victims of Terrorism Fund Meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-APR-2002 20:06:19.00
SUBJECT:: Re: Victims of Terrorism Fund Meeting
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI:
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/04/2002 08:06 PM ----------

Brett M. Kavanaugh
04/04/2002 08:03:52 PM
Record Type: Record

To: Lauren K. Allgood/OMB/EOP@EOP
cc: Nancy Dorn/OMB/EOP@EOP, Philip J. Perry/OMB/EOP@EOP
bcc: Records Management@EOP
Subject: Re: Victims of Terrorism Fund Meeting

I will not be able to attend. That is the time for our weekly judicial selection meeting.

Lauren K. Allgood
04/04/2002 08:01:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Victims of Terrorism Fund Meeting

There will be a meeting Wednesday, April 10 at 4:00pm in 252 EEOB (Nancy Dorn's Office) to discuss the Victims of Terrorism fund. Please let me know if you will be able to attend and if others should be included.

Thanks,
Lauren
5-4742

Message Sent
To:_____
Philip J. Perry/OMB/EOP@EOP
Robin Cleveland/OMB/EOP@EOP

David W. Hobbs/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Daniel J. Keniry/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP

Message Copied
To:_____
Carla B. Stone/OMB/EOP@EOP
Karyn T. Carson/OMB/EOP@EOP
Lauren J. Vestewig/OPD/EOP@EOP
Bessie M. Weaver/OMB/EOP@EOP
Alison Jones/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel_L._Brand@who.eop.gov [UNKNOWN] <Rachel_L._Brand@who.eop.gov>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;robert w. cobb/who/eop@eop [WHO] <robert w. cobb>;courtney s. elwood/who/eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;edward mcnally/who/eop@eop [WHO] <edward mcnally>
Sent: 4/5/2002 4:11:47 AM
Subject: : Re: ethics question

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-APR-2002 09:11:47.00
SUBJECT:: Re: ethics question
TO:Rachel_L._Brand@who.eop.gov ( Rachel_L._Brand@who.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert w. cobb ( CN=robert w. cobb/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The answer is yes.




Rachel_L._Brand@who.eop.gov
04/05/2002 09:08:02 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: ethics question



Since Moose is out, I've gotten a couple inquiries re whether people can
attend
the WH correspondents' dinner - specifically, whether this falls within the
widely-attended-gathering exception.
I seem to recall that this came up last year and that the answer was yes.
Does
```

anyone else remember?

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Robert W. Cobb/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP

From: CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO]

To: Office of Media Affairs [UNKNOWN] <Office of Media Affairs>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Lawrence A. Fleischer/WHO/EOP@EOP [WHO] <Lawrence A. Fleischer>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;mschlapp@georgewbush.com @ inet [WHO] <mschlapp@georgewbush.com>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>

CC: scastillo@rnchq.org @ inet [UNKNOWN] <scastillo@rnchq.org>;mtucker@rnchq.org @ inet [NSC] <mtucker@rnchq.org>;rfernandez@rnchq.org @ inet [UNKNOWN] <rfernandez@rnchq.org>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>

Sent: 4/5/2002 3:43:34 AM

Subject: : English and Spanish articles: EFE Spanish newswire interview with Judge Gonzales on Miguel Estrada 4/4

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Mercedes M. Viana ( CN=Mercedes M. Viana/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-APR-2002 08:43:34.00
SUBJECT:: English and Spanish articles: EFE Spanish newswire interview with Judge Gonzales
on Miguel Estrada 4/4
TO:Office of Media Affairs ( Office of Media Affairs [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lawrence A. Fleischer ( CN=Lawrence A. Fleischer/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Leonard B. Rodriguez ( CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Abel Guerra ( CN=Abel Guerra/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:mschlapp@georgewbush.com ( mschlapp@georgewbush.com @ inet [ WHO ] )
READ:UNKNOWN
TO:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:scastillo@rnchq.org ( scastillo@rnchq.org @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:mtucker@rnchq.org ( mtucker@rnchq.org @ inet [ NSC ] )
READ:UNKNOWN
CC:rfernandez@rnchq.org ( rfernandez@rnchq.org @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:Ruben S. Barrales ( CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

White House seeks Hispanic nominee's speedy confirmation
(followed by Spanish version)

Washington, Apr 4 (EFE).- White House Counsel Al Gonzales on attorney Miguel Estrada's "superb qualifications and great professional training" to result in the speedy confirmation of the first Hispanic nominated to the Circuit Court of Appeals for the District of Columbia.

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Lemus noted that LULAC supports Estrada's nomination "because there isn't enough Hispanic representation in the judicial system," adding, "regardless of his ideology," he is qualified to do the job. Estrada's nomination has also received the backing of the U.S. Hispanic Chamber of Commerce and the Hispanic National Bar Association.

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rl/rv/dc

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Seg£n Gonzales el "gran talento y las habilidades" de Estrada le merecieron el nombramiento del presidente George W. Bush, a la segunda corte m s importante del pa¡s, que es vista como la antesala a la Corte Suprema. "El nombramiento de Estrada demuestra la importancia que tiene la diversidad para el presidente y le env¡a un poderoso mensaje a la comunidad hispana", dijo Gonzales en una entrevista, en la que agreg¢ que Bush estuvo muy impresionado por la historia personal del nominado.

Gonzales agreg¢ que Estrada "comparte la filosof¡a" judicial del presidente Bush y que el Senado, encargado de ratificar este nombramiento, debe darle una "audiencia justa" y votar a favor o en contra del nominado. Estrada, un inmigrante hondure¤o que lleg¢ a EEUU en 1979, se doctor¢ en Leyes en la prestigiosa Universidad de Harvard, present¢ 15 casos ante la Corte Suprema en calidad de asistente del procurador general y trabaj¢ con el juez supremo Anthony Kennedy, uno de los m s conservadores de este tribunal.

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Agreg¢ que "le asusta" la posibilidad de tener un juez que piense de forma similar a la mayor¡a de la actual Corte Suprema, que decidi¢ la semana pasada limitar los derechos

laborales de los trabajadores indocumentados.

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Estrada tambi?n recibi¢ el respaldo de la C mara de Comercio Hispana y de la Asociaci¢n de Abogados Hispanos de EEUU, mientras que el Consejo Nacional de la Raza y el Fondo M?xicoamericano de Educaci¢n y Defensa Legal (MALDEF), no se han pronunciado al respecto.

"Lo m s importante es que le den su oportunidad ante el Senado y punto", concluy¢ Lemus. EFE
rl/rcf

MWM SIF SHI

SHA WSM

From: CN=Mercedes M. Viana/OU=WHO/O=EOP [WHO]

To: Office of Media Affairs [UNKNOWN] <Office of Media Affairs>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Lawrence A. Fleischer/WHO/EOP@EOP [WHO] <Lawrence A. Fleischer>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>;Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;mschlapp@georgewbush.com @ inet [WHO] <mschlapp@georgewbush.com>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>

CC: scastillo@rnchq.org @ inet [UNKNOWN] <scastillo@rnchq.org>;mtucker@rnchq.org @ inet [NSC] <mtucker@rnchq.org>;rfernandez@rnchq.org @ inet [UNKNOWN] <rfernandez@rnchq.org>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>

Sent: 4/5/2002 3:43:34 AM

Subject: : English and Spanish articles: EFE Spanish newswire interview with Judge Gonzales on Miguel Estrada 4/4

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CREATION DATE/TIME: 5-APR-2002 08:43:34.00
SUBJECT:: English and Spanish articles: EFE Spanish newswire interview with Judge Gonzales
on Miguel Estrada 4/4
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:mschlapp@georgewbush.com ( mschlapp@georgewbush.com @ inet [ WHO ] )
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TO:Israel Hernandez ( CN=Israel Hernandez/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:scastillo@rnchq.org ( scastillo@rnchq.org @ inet [ UNKNOWN ] )
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CC:mtucker@rnchq.org ( mtucker@rnchq.org @ inet [ NSC ] )
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READ:UNKNOWN
CC:Ruben S. Barrales ( CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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White House seeks Hispanic nominee's speedy confirmation
(followed by Spanish version)

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rl/rcf

MWM SIF SHI

SHA WSM

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/5/2002 5:43:37 AM
Subject: : ?!

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CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-APR-2002 10:43:37.00
SUBJECT:: ?!
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

http://news.bbc.co.uk/hi/english/entertainment/tv_and_radio/newsid_1911000/
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From: CN=Lauren K. Allgood/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/5/2002 8:47:45 AM
Subject: : Re: Victims of Terrorism Fund Meeting

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 5-APR-2002 13:47:45.00
SUBJECT:: Re: Victims of Terrorism Fund Meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, if we move the meeting to 4:30 or 5, could you attend?

Brett M. Kavanaugh
04/04/2002 08:03:52 PM
Record Type: Record

To: Lauren K. Allgood/OMB/EOP@EOP
cc: Nancy Dorn/OMB/EOP@EOP, Philip J. Perry/OMB/EOP@EOP
bcc:
Subject: Re: Victims of Terrorism Fund Meeting

I will not be able to attend. That is the time for our weekly judicial selection meeting.

Lauren K. Allgood
04/04/2002 08:01:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Victims of Terrorism Fund Meeting

There will be a meeting Wednesday, April 10 at 4:00pm in 252 EEOB (Nancy Dorn's Office) to discuss the Victims of Terrorism fund. Please let me know if you will be able to attend and if others should be included.

Thanks,
Lauren
5-4742

Message Sent
To:_____
Philip J. Perry/OMB/EOP@EOP
Robin Cleveland/OMB/EOP@EOP
David W. Hobbs/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Daniel J. Keniry/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

John B. Bellinger/NSC/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Rebecca A. Beynon/OMB/EOP@EOP

Message Copied
To:_____
Carla B. Stone/OMB/EOP@EOP
Karyn T. Carson/OMB/EOP@EOP
Lauren J. Vestewig/OPD/EOP@EOP
Bessie M. Weaver/OMB/EOP@EOP
Alison Jones/WHO/EOP@EOP

From: Jennifer Oschal <joschal@att.net>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/5/2002 10:07:59 AM
Subject: : please confirm
Attachments: P_P8KI6003_WHO.TXT_1.htm

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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

brett, will you confirm the numbers in this sentence? it is for an op-ed
we're trying to place by ron rotunda, of U of Illinois Law School. thanks.

"...when Clinton left office, there were 67 judgeships vacant, now there
are
95."

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Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (http://www.grisoft.com).
Version: 6.0.344 / Virus Database: 191 - Release Date: 4/2/2002
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_P8KI6003_WHO.TXT_1>
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"...when Clinton left office, there were 67 judgeships vacant, now there are 95."

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 4/8/2002 3:52:39 AM
Subject: : article

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CREATION DATE/TIME: 8-APR-2002 07:52:39.00
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READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
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More Battles Loom Over Bush's Nominees For Judgeships (NYT)
By NEIL A. LEWIS
The New York Times, April 08, 2002
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giving any quarter in their battle over what kind of judges should sit on
the federal bench, and officials on both sides say they expect more
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Some Democrats were blunt about what they hoped to accomplish. Senator Charles E. Schumer of New York said that in opposing the Pickering nomination they were sending a message to the White House that Mr. Bush should stop trying to stack the courts with conservatives.
"The bottom line is that the administration has made ideology a major factor in their selection of judges," Senator Schumer said in an interview. "I think it's fine that ideology is being debated more openly now."
But he added that the Judiciary Committee would not accept the administration's judicial nominees unless Mr. Bush broadened their ideological range.
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Mr. Bush has tried to use the issue against Senator Max Cleland of Georgia, who is running for re-election, and a Republican strategist said he expected the Pickering issue to play a role in several races in the South. One Republican Senate candidate, Lamar Alexander of Tennessee, has even broadcast a television advertisement arguing that the treatment of Judge Pickering was unfair to the South.
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Mr. Howard is considered a moderate and a relatively noncontroversial candidate, Democratic staff aides said. Others whom committee members consider less ideological, and who thus may get early consideration, include Julia Smith Gibbons and John M. Rogers, both nominated for seats on the United States Court of Appeals for the Sixth Circuit, in Cincinnati.
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In addition to objecting to her views on abortion rights, liberal advocacy groups have raised questions about the relationship of Justice Owen's opinions to donations she received from Texas corporations, including Enron, the Houston energy giant that filed for protection under Chapter 11 of the bankruptcy law.
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Mr. Leahy has promised hearings this year to Ms. Owen, Mr. Estrada and Prof. Michael W. McConnell of the University of Utah, nominated to a seat on the United States Court of Appeals for the 10th Circuit, in Denver. Professor McConnell is considered the least likely to engender opposition of the three because of support for him among academics across the ideological spectrum.

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To: Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2002 6:31:29 AM
Subject: : participant clarification

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Hey - one more thing.

I had the following people down as attending tomorrow's meeting - Lott, Kyl, McConnell, Nickles, Kyl.

Will change it to reflect:
Judge
Ashcroft
Hatch
McConnell
Lott

Seems like this will be a meeting in which the participants are forever changing. Please do keep me posted on participants so the Judge knows who to expect.

And one more question- who else from the WH will be going to these meetings? Any of our lawyers? What about Z and/or Heather?

Thanks!

Lib

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
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Sent: 4/8/2002 3:54:02 AM
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Senate Girds For Judicial Battle (Roll Call)
By Paul Kane
Roll Call, April 08, 2002
With an eye toward being fully prepared for a potential Supreme Court
vacancy, both sides in the battle over judicial nominations are girding
for more fights in the near future.
Republican aides say there could still be more to come in terms of payback
for the Judiciary Committee's party-line defeat of the appellate court
nomination of Judge Charles Pickering, a close friend of Senate Minority
Leader Trent Lott (R-Miss.). But their primary focus is going to be on
revamping the way Senate Republicans and the White House battle with
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Judiciary Democrats and liberal interest groups over the nominations. "We're going to have to be geared up for battle as much as possible," an administration official said. "Pickering has to be a wake-up call to every single Republican."

The first public step in their effort will come this week, when Senate Republicans expect to hold a press conference with Hispanic groups and Latino leaders urging the confirmation of Miguel Estrada, a lawyer nominated to the U.S. Circuit Court of Appeals for the District of Columbia.

Also, key figures on the GOP side of the judicial nomination fights, including Senate Republican leaders and White House Counsel Alberto Gonzales, plan to meet midweek. The meeting is part of a series of new strategy sessions in which they will talk face-to-face every other week. GOPstaffers plan to meet once a week exclusively to discuss judicial nominations, aides said.

Senate staffers met at the White House early last week to discuss how to better coordinate message and outreach with conservative interest groups. Senate and administration officials feel that they haven't been as aggressive as the liberal groups that led the attack on Pickering.

Estrada's nomination, first announced in May, is seen as a chance for Republicans to actively push a Latino for a high-level position and earn goodwill with the burgeoning number of Hispanic voters. At past events on judicial nominations, Republicans, usually led by Minority Whip Don Nickles (Okla.), haven't missed a chance to mention the up-from-his-bootstraps story of Estrada, a Honduras native who climbed into the Ivy League and the highest levels of the legal profession.

But the same liberal interest groups that helped defeat Pickering are also readying themselves for this fight, and they see Supreme Court ambitions driving the GOP push for Estrada. Ralph Neas, president of People for the American Way, noted that by August it will have been eight years since there has been a vacancy on the Supreme Court - the longest drought since the Monroe administration in the early 1820s.

The heavy betting among legal observers is that President Bush will want to make history by putting the first Hispanic on the Court, and Estrada is one of the names mentioned as a possibility.

"My guess is it would be a Latino Clarence Thomas,"Neas said, referring to the black Supreme Court justice who had served on the D.C. appellate court for a little more than a year before his nomination.

Another potential candidate is Gonzales, a longtime friend of Bush's who has played a lead role in selecting judicial nominees. Of the two, Estrada - a Federalist Society member who worked with Solicitor General Ted Olson at Gibson, Dunn & Crutcher LLC - is viewed as more reliably conservative.

Either Estrada or Gonzales would present a difficult political target for Democrats and their allies, who might be hesitant to attack a historic nomination from a key voting bloc. Besides two years on the Texas Supreme Court, Gonzales has never served as a judge, and Estrada has no experience on the bench, providing virtually no paper trail for groups like Neas' or the similarly aligned Alliance for Justice to pick apart as they did with Pickering.

"We don't know that much about him," Marcia Kuntz, the alliance's judicial expert, said of Estrada. While Neas and the Alliance for Justice haven't taken an official stand on Estrada, Kuntz said the groups are very concerned about his "judicial temperament" and what they call a "very rigid, right-wing approach to issues."

Timing could be key. None of the three oldest justices - John Paul Stevens, 81, Chief Justice William Rehnquist, 77, or Sandra Day O'Connor, 71 - has indicated an intention to retire, and legal observers say they have yet to hear the whispers that usually precede a retirement. Still, one observer noted that it will become clear some time next month, just before the Court's term ends in June, if one of the justices plans to retire.

If an opening occurs this summer, it would be difficult to envision Bush nominating Estrada, who may or may not have been confirmed to the appellate court by then. Republicans have accused Judiciary Democrats of stonewalling the Estrada nomination in an effort to hurt his chances of getting a Supreme Court nod, something Democrats say is ridiculous.

David Carle, spokesman for Judiciary Chairman Patrick Leahy (D-Vt.), noted that Leahy has promised that Estrada and other controversial nominees,

including Texas Supreme Court Justice Priscilla Owen, will get a hearing and eventually a vote, a different tactic than Republicans used against controversial Clinton administration nominees in the 1990s.

"Republicans blocked more than 50 judicial nominees from the federal bench just as surely as Judge Pickering wasn't promoted in this case," Carle said. "The difference is that Judge Pickering got a hearing and a vote, and so did the 42 judges who have been confirmed in the last eight months."

A Supreme Court nomination would instantly become a national political issue, particularly if it comes this summer with hearings in the fall. With so many key Court decisions coming on 5-4 margins, "it would be a highly dramatic, historic moment,"Neas said.

Even without a Supreme Court vacancy, Republicans feel that the Pickering vote has given them an opening in Senate races in the South. At a fundraiser for Rep. Saxby Chambliss (R-Ga.) on March 27, Bush attacked Chambliss' opponent, Sen. Max Cleland (D), for not publicly supporting the Pickering nomination - and Cleland isn't even on Judiciary.

Last week, with Vice President Cheney at his side in Arkansas, Sen. Tim Hutchinson (R-Ark.), one of the GOP's two most vulnerable incumbents, vowed to support "strict constructionist" nominees from the Bush administration.

Liberal groups, and privately some Democrats, say they will welcome this debate with open arms. "That's the kind of debate we would love to have. That's the kind of debate I would relish having," Neas said.

If the judicial nominees become a campaign issue, Neas said it will provide Democrats a chance to "have the debate that did not occur in 2000," one that deals with the consequences of conservative judges and what that means to abortion rights, civil rights, environmental law and other liberal causes.

"These are all issues that are at stake now," said Kuntz, the Alliance for Justice's director of the Judicial Selection Project.

Because of the Pickering defeat, Republicans say they have developed more respect for and fear of the liberal interest groups that fought him, particularly the NAACP and the National Abortion and Reproductive Rights Action League, which both represent constituencies of millions of voters that can be easily activated on social issues.

The GOP was able to activate its grassroots on the Pickering vote through talk radio and conservative Christian broadcasts just before the vote, but aides lament that they don't have groups that focus on these issues full-time the way liberal groups do.

The Republicans' most reliable, well-funded backers come from the business community, which almost never gets involved in the federal judicial process the way the NAACP and NARAL do. "That's their bread and butter, while we're better on tax issues," said one senior GOP aide.

And that's not going to change any time soon, according to a prominent GOP lobbyist and fundraiser. He said the business community is primarily concerned about "the immediate effect of legislation on their bottom line."

If asked to devote time or money toward judicial nomination fights, he said the business community would likely tell Republicans that they'd rather spend their resources on reinstating a GOP majority in the Senate, which could then do what it wants with the judiciary.

"The smarter money would be electing a Republican majority in the Senate," he said, "because it'll take care of all your problems."

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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
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Senate Girds For Judicial Battle (Roll Call)
By Paul Kane
Roll Call, April 08, 2002
With an eye toward being fully prepared for a potential Supreme Court
vacancy, both sides in the battle over judicial nominations are girding
for more fights in the near future.
Republican aides say there could still be more to come in terms of payback
for the Judiciary Committee's party-line defeat of the appellate court
nomination of Judge Charles Pickering, a close friend of Senate Minority
Leader Trent Lott (R-Miss.). But their primary focus is going to be on
revamping the way Senate Republicans and the White House battle with
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Judiciary Democrats and liberal interest groups over the nominations. "We're going to have to be geared up for battle as much as possible," an administration official said. "Pickering has to be a wake-up call to every single Republican."

The first public step in their effort will come this week, when Senate Republicans expect to hold a press conference with Hispanic groups and Latino leaders urging the confirmation of Miguel Estrada, a lawyer nominated to the U.S. Circuit Court of Appeals for the District of Columbia.

Also, key figures on the GOP side of the judicial nomination fights, including Senate Republican leaders and White House Counsel Alberto Gonzales, plan to meet midweek. The meeting is part of a series of new strategy sessions in which they will talk face-to-face every other week. GOPstaffers plan to meet once a week exclusively to discuss judicial nominations, aides said.

Senate staffers met at the White House early last week to discuss how to better coordinate message and outreach with conservative interest groups. Senate and administration officials feel that they haven't been as aggressive as the liberal groups that led the attack on Pickering.

Estrada's nomination, first announced in May, is seen as a chance for Republicans to actively push a Latino for a high-level position and earn goodwill with the burgeoning number of Hispanic voters. At past events on judicial nominations, Republicans, usually led by Minority Whip Don Nickles (Okla.), haven't missed a chance to mention the up-from-his-bootstraps story of Estrada, a Honduras native who climbed into the Ivy League and the highest levels of the legal profession.

But the same liberal interest groups that helped defeat Pickering are also readying themselves for this fight, and they see Supreme Court ambitions driving the GOP push for Estrada. Ralph Neas, president of People for the American Way, noted that by August it will have been eight years since there has been a vacancy on the Supreme Court - the longest drought since the Monroe administration in the early 1820s.

The heavy betting among legal observers is that President Bush will want to make history by putting the first Hispanic on the Court, and Estrada is one of the names mentioned as a possibility.

"My guess is it would be a Latino Clarence Thomas,"Neas said, referring to the black Supreme Court justice who had served on the D.C. appellate court for a little more than a year before his nomination.

Another potential candidate is Gonzales, a longtime friend of Bush's who has played a lead role in selecting judicial nominees. Of the two, Estrada - a Federalist Society member who worked with Solicitor General Ted Olson at Gibson, Dunn & Crutcher LLC - is viewed as more reliably conservative.

Either Estrada or Gonzales would present a difficult political target for Democrats and their allies, who might be hesitant to attack a historic nomination from a key voting bloc. Besides two years on the Texas Supreme Court, Gonzales has never served as a judge, and Estrada has no experience on the bench, providing virtually no paper trail for groups like Neas' or the similarly aligned Alliance for Justice to pick apart as they did with Pickering.

"We don't know that much about him," Marcia Kuntz, the alliance's judicial expert, said of Estrada. While Neas and the Alliance for Justice haven't taken an official stand on Estrada, Kuntz said the groups are very concerned about his "judicial temperament" and what they call a "very rigid, right-wing approach to issues."

Timing could be key. None of the three oldest justices - John Paul Stevens, 81, Chief Justice William Rehnquist, 77, or Sandra Day O'Connor, 71 - has indicated an intention to retire, and legal observers say they have yet to hear the whispers that usually precede a retirement. Still, one observer noted that it will become clear some time next month, just before the Court's term ends in June, if one of the justices plans to retire.

If an opening occurs this summer, it would be difficult to envision Bush nominating Estrada, who may or may not have been confirmed to the appellate court by then. Republicans have accused Judiciary Democrats of stonewalling the Estrada nomination in an effort to hurt his chances of getting a Supreme Court nod, something Democrats say is ridiculous.

David Carle, spokesman for Judiciary Chairman Patrick Leahy (D-Vt.), noted that Leahy has promised that Estrada and other controversial nominees,

including Texas Supreme Court Justice Priscilla Owen, will get a hearing and eventually a vote, a different tactic than Republicans used against controversial Clinton administration nominees in the 1990s.

"Republicans blocked more than 50 judicial nominees from the federal bench just as surely as Judge Pickering wasn't promoted in this case," Carle said. "The difference is that Judge Pickering got a hearing and a vote, and so did the 42 judges who have been confirmed in the last eight months."

A Supreme Court nomination would instantly become a national political issue, particularly if it comes this summer with hearings in the fall. With so many key Court decisions coming on 5-4 margins, "it would be a highly dramatic, historic moment,"Neas said.

Even without a Supreme Court vacancy, Republicans feel that the Pickering vote has given them an opening in Senate races in the South. At a fundraiser for Rep. Saxby Chambliss (R-Ga.) on March 27, Bush attacked Chambliss' opponent, Sen. Max Cleland (D), for not publicly supporting the Pickering nomination - and Cleland isn't even on Judiciary.

Last week, with Vice President Cheney at his side in Arkansas, Sen. Tim Hutchinson (R-Ark.), one of the GOP's two most vulnerable incumbents, vowed to support "strict constructionist" nominees from the Bush administration.

Liberal groups, and privately some Democrats, say they will welcome this debate with open arms. "That's the kind of debate we would love to have. That's the kind of debate I would relish having," Neas said.

If the judicial nominees become a campaign issue, Neas said it will provide Democrats a chance to "have the debate that did not occur in 2000," one that deals with the consequences of conservative judges and what that means to abortion rights, civil rights, environmental law and other liberal causes.

"These are all issues that are at stake now," said Kuntz, the Alliance for Justice's director of the Judicial Selection Project.

Because of the Pickering defeat, Republicans say they have developed more respect for and fear of the liberal interest groups that fought him, particularly the NAACP and the National Abortion and Reproductive Rights Action League, which both represent constituencies of millions of voters that can be easily activated on social issues.

The GOP was able to activate its grassroots on the Pickering vote through talk radio and conservative Christian broadcasts just before the vote, but aides lament that they don't have groups that focus on these issues full-time the way liberal groups do.

The Republicans' most reliable, well-funded backers come from the business community, which almost never gets involved in the federal judicial process the way the NAACP and NARAL do. "That's their bread and butter, while we're better on tax issues," said one senior GOP aide.

And that's not going to change any time soon, according to a prominent GOP lobbyist and fundraiser. He said the business community is primarily concerned about "the immediate effect of legislation on their bottom line."

If asked to devote time or money toward judicial nomination fights, he said the business community would likely tell Republicans that they'd rather spend their resources on reinstating a GOP majority in the Senate, which could then do what it wants with the judiciary.

"The smarter money would be electing a Republican majority in the Senate," he said, "because it'll take care of all your problems."

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2002 10:47:31 AM
Subject: : LRM EPH132 - - VETERANS AFFAIRS Testimony on HR 3253 and HR 3254
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Does WHGC have any comments on this testimony? I plan to give VA a passback this mornig.
Thanks.

---------- Forwarded by Erin P. Hassing/OMB/EOP on 04/03/2002 04:54 PM ----------

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LRM ID: EPH132
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, April 3, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: VETERANS AFFAIRS Testimony on HR 3253 and HR 3254

DEADLINE: 10AM Friday, April 5, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This testimony is for an April 10th hearing before the the House Veterans Affairs Subcommittee on health. The hearing will cover the pending legislation, HR 3253 and HR 3254. HHS and FEMA have also been invited to testify.

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MEMORANDUM

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You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
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STATEMENT OF DEPUTY SECRETARY

LEO S. MACKAY, Jr. PhD

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON HEALTH

APRIL 10, 2002

****

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to comment on two bills, H.R. 3254, the "Medical Education for National Defense in the 21st Century Act" and H.R. 3253, the "National Medical Emergency Preparedness Act of 2001." VA is the largest integrated national health care system with personnel and facilities in virtually every community across the U.S., a robust research program, affiliations with most of the Nation's medical schools, and proven expertise in emergency management. As a predeployed national asset, VA is uniquely positioned to positively contribute to Homeland Security. If enacted, these bills would each enhance VA's ability, chiefly through educational and research efforts, to assist both VA's health care providers and the Nation's medical community to recognize and promptly respond to national medical emergencies, particularly those involving chemical, biological, and radiological (CBR) warfare agents. In general terms, both bills would expand VA's current efforts to train VA and non-VA health

care providers in, and to sponsor sound research into, the prevention, containment, and treatment of injuries related to exposure to CBR agents.

Mr. Chairman, in opening remarks at his subcommittee's hearing on November 14, 2001, "Terror on the Homefront: Are We Medically Prepared?," Chairman Buyer asked whether the U.S. medical community was prepared for biological, chemical, and radiological acts of terrorism.

At that same hearing, we heard from Dr. Carlos Omenaca, a Specialist in Infectious Diseases and Critical Care Medicine in Miami, Florida, who was directly involved in the diagnosis and treatment of inhalation anthrax in one of the cases in Florida. It was his contention that the Nation's medical personnel lack the training needed to recognize illnesses that have not occurred in this country in decades, such as smallpox, anthrax, plague, Q fever, tularemia, brucellosis, and viral hemorrhagic fevers. Consequently, those diseases are not emphasized in the core curriculum in our health provider training programs. This situation is troubling given that such pathogens may be used as biological weapons.

The two proposals under discussion today address the issues raised in that hearing. Both proposals could help the U.S. medical community prepare for acts of terrorism.

We generally support both bills. However, I am concerned that carrying out the proposed activities without dedicated funding could unacceptably diminish VA's ability to fulfill its primary mission—providing health care and services to veterans and their families. Accordingly, we urge modification of the

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bills to make them effective only if Congress appropriates funds specifically for the proposed activities.

Today, I would like to briefly go over the main provisions of each bill and provide VA's views on those provisions.

H.R. 3254

Mr. Chairman, the first bill, H.R. 3254, would require the Secretaries of Veterans Affairs and Defense to develop jointly and distribute a series of model education and training programs on the preparedness needed by health professionals in dealing with terrorist activities and medical responses to the consequences of terrorist activities. The programs' content would emphasize education and training in the recognition of chemical, biological, and radiological agents that may be used in terrorist activities and identification of the potential symptoms related to use of those agents and how to prepare best for managing the clinical consequences of terrorist acts resulting in the exposure of victims to chemical, biological, and radiological agents. The education and training programs would also be required to address short-term and long-term health consequences, including psychological effects that may result from exposure to such agents and the appropriate treatment of those health consequences. In addition, the programs must identify measures to be taken by health care professionals to prevent them from suffering secondary contamination or infection while treating victims of a national medical emergency. H.R. 3254 would also require that the proposed joint education and training programs be

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designed for health professions students, graduate medical education trainees, and health practitioners in a variety of fields.

Under the legislation, initial funding for the programs would be authorized from funds made available under the Emergency Supplemental Appropriations Act (Public Law 107-38).

VA strongly supports H.R. 3254. The events of September 11, 2001, and the subsequent incidents involving anthrax are evidence of an increase in the use of unconventional weapons by terrorists. Such weapons include CBR agents that have the potential to inflict serious, widespread, and sustained injury to exposed populations. As you are aware, injuries associated with such unconventional weapons or agents may result not only in immediate physical trauma but also in long-term adverse health effects. Victims might also suffer from psychological trauma, such as post-traumatic stress disorder, which may not manifest itself until long after the infliction of the trauma.

Given the growing capability and desire of terrorists to use CBR warfare agents on military and civilian populations, it is imperative that VA and non-VA health care providers receive the education and training needed to become highly adept at recognizing and responding to both the immediate and potential long-term medical needs of individuals exposed to such unconventional warfare agents. If enacted, H.R. 3254 would serve as a significant means of reaching that end because VA and DoD are experienced in educating and training the Nation's health care professionals, and education and training in these specific subjects is part of the mission of both Departments.

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We particularly support the proposed requirement that the education and training programs be designed for a wide range of health care professionals at varying levels of expertise and training including medical students and residents. In the event of a national medical emergency, the Nation will require the expert services of not only physicians but also myriad other health care professionals. Today, VA sponsors the largest medical education and health professions training program in the United States, training about 85,000 health professionals last year in its medical facilities that are affiliated with almost 1,400 medical and other schools. It is also critical that the Nation's medical schools integrate recognition and response to these unconventional weapons into core curriculum for students and graduate medical education trainees. The proposed joint program could assist these efforts.

However, we recommend that the Committee consider inclusion of education and training programs for injuries caused by incendiaries, explosives, and basic trauma because the medical responses for those types of injuries are frequently highly specialized. We also recommend that the Committee consider placing DoD responsibility for the joint program in the Assistant Secretary of Defense (Health Affairs), which is the appropriate counterpart to the Under Secretary for Health. As drafted, the bill provides that DoD would carry out the joint program through the F. Edward Hebert School of Medicine of the Uniformed Services University of the Health Sciences.

I reiterate my concern that these programs and activities must not interfere or diminish our ability to provide care to veterans and their families. If enacted,

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the Department projects the first-year costs associated with H.R. 3254 to be $5,641,500, with ten-year costs estimated to be $55,065,000.

H.R. 3253

Mr. Chairman, I next turn to H.R. 3253. This bill would require the Secretary to establish four or more Emergency Medical Preparedness Centers within the Veterans Health Administration (VHA). Under the proposal, VA employees would staff the proposed Centers, and the VHA Headquarters official responsible for medical preparedness would be responsible for supervising and evaluating the Centers' operations. The Centers would have three specific missions. First, they would carry out research on and develop methods in detection, diagnosis, vaccination, protection, and treatment for CBR threats to the public health and safety. Second, they would provide education, training, and advice to VA and non-VA healthcare professionals. Third, the Centers would provide contingent rapid response laboratory assistance and other assistance to local health care authorities in the event of a national emergency.

H.R. 3253 would require that at least one of the proposed Centers focus on chemical threats, another concentrate on biological threats, and a third on radiological threats. Each Center would be required to conduct research on improved medical preparedness in that Center's particular area of expertise. To carry out this particular mandate, each Center would be authorized to seek funding from both public and private sources.

In addition, the bill would require the Secretary to ensure that the work of the Centers is conducted in close coordination with the Office of Homeland

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Security (OHS) and the Department of Defense (DoD), and that research products or other information produced by the Centers is coordinated and shared with the OHS and DoD. Work produced by the Centers would also have to be made available to the Nation's health care providers.

H.R. 3253 would also authorize the Secretary to assist Federal, State, and local civil and law enforcement authorities with investigations to protect the public safety and to prevent or obviate CBR-related threats. Although we have the expertise to support such activities, I am concerned that we should identify mechanisms to reimburse VA lest those activities detract from our primary mission of serving veterans.

Finally, the bill would authorize initial funding from the Emergency Supplemental Appropriations Act (Public Law 107-38). It would also authorize additional appropriations and require the Under Secretary for Health to allocate from funds appropriated for the Medical Care Account and the Medical and Prosthetics Research Accounts such amounts as the Under Secretary for Health determines appropriate to carry out the activities of the Centers.

We strongly support the goals of H.R. 3253 and believe that VA's expertise and infrastructure should be enlisted to help the Nation respond to the health consequences of terrorists' use, and potential use, of CBR agents and other similar unconventional weapons. However, as I have stated above, the bill's requirements to establish and conduct the Centers, as set forth in the legislation, and to carry out the other additional activities must be conditioned on Congress appropriating funds specifically and separately for those purposes.

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The training mission of the Centers is somewhat similar to the goals of H.R. 3254 addressed earlier. Again, we strongly support this role for VA and recommend that the Subcommittee work to integrate the similar training provisions of the two bills. To help address the concern that the expenses of these activities must not diminish VA's capacity to carry out its primary mission, we suggest that the authority to obtain private and public funding for research into improved medical preparedness, including reimbursement, be extended to the Centers for operation of their programs and activities. We further recommend modification of the bill to leave to the Secretary oversight responsibility over the Centers.

We also strongly support VA's having a role in the conduct of medical-preparedness research. Indeed, I would like to point out that VA has already initiated several research activities that, in our view, are consistent with the proposed activities of the Centers. For instance, VA's Office of Research and Development (ORD) recently issued two solicitations for research relating to bio-terrorism. VA Medical Research Service will fund and establish Research Enhancement Award Programs for scientifically meritorious program projects relating to the diagnosis, prevention, and treatment of potentially fatal airborne pathogens or toxins. The Health Services Research and Development Service will support research focused on improving the capacity of the VA system to prepare for and respond to terrorist attacks. In addition, ORD is providing grants to VA facilities to enhance the physical security of research laboratories and animal facilities. Overall, in FY 2003 VA will commit up to $2 million from

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research funds for these and similar initiatives. VA is proud of the success of its research programs, including our research efforts into war-related illnesses. We embrace our national role in addressing these concerns. As Secretary Principi pointed out in a recent interview, VA was involved in biological and chemical warfare research prior to Sept. 11, 2001. Our research extends beyond the smallpox vaccine to possible treatments for various biochemical threats. Our aim is to continue these dynamic and vital research efforts as part of the overall national effort.

VA also supports having a role in the provision of rapid response laboratory assistance in the event of national emergencies, as this bill would authorize.

We recommend that the Committee consider adding the Department of Health and Human Services (HHS) as the third organization with whom VA is to coordinate the conduct of the work of the Centers. As you are aware, HHS possesses great expertise in the specialized areas and activities to be pursued by the Centers.

If enacted, VA will limit expenditures to carry out the mandates of H.R. 3253 to the amounts authorized for appropriation.

This concludes my statement. I will be happy to answer any questions you may have.

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HR 3254 IH

107th CONGRESS

1st Session

H. R. 3254

To amend title 38, United States Code, to provide for a partnership between the Department of Veterans Affairs and the
Department of Defense to develop and disseminate education and training programs on the medical responses to the
consequences of terrorist activities.

IN THE HOUSE OF REPRESENTATIVES

November 8, 2001

Mr. BUYER (for himself, Mr. SMITH of New Jersey, Mr. BILIRAKIS, Mr. STEARNS, Mr. SNYDER, and Mr.
MCHUGH) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the
Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of
such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 38, United States Code, to provide for a partnership between the Department of Veterans Affairs and the
Department of Defense to develop and disseminate education and training programs on the medical responses to the
consequences of terrorist activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress
assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Medical Education for National Defense in the 21st Century Act'.

SEC. 2. ESTABLISHMENT OF EMERGENCY MEDICAL EDUCATION PROGRAM.

(a) IN GENERAL- (1) Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end
the following new section:

`Sec. 7323. Emergency medical education: joint program with Department of Defense

`(a) JOINT EDUCATION PROGRAM- The Secretary and the Secretary of Defense shall carry out a joint program to
develop and disseminate a series of model education and training programs on the medical responses to the
consequences of terrorist activities. The Secretaries shall enter into an agreement for a partnership to implement the joint
program.

`(b) IMPLEMENTING ENTITIES- Within the Department of Veterans Affairs, the joint program shall be carried out
through the Under Secretary for Health. Within the Department of Defense, the joint program shall be carried out
through the F. Edward Hebert School of Medicine of the Uniformed Services University of the Health Sciences.

`(c) CONTENT OF PROGRAMS- The education and training programs developed under the joint program shall be
based on programs established at the F. Edward Hebert School of Medicine and shall include, at a minimum, training for
health care professionals in the following:

`(1) Recognition of chemical, biological, and radiological agents that may be used in terrorist activities.

`(2) Identification of the potential symptoms of those agents.

`(3) Understanding of the potential long-term health consequences, including psychological effects, resulting from
exposure to those agents.

`(4) Emergency treatment for exposure to those agents.

`(5) An appropriate course of followup treatment, supportive care, and referral.

`(6) Actions that can be taken while providing care for exposure to those agents to protect against contamination.

`(7) Information on how to seek to consultative support and to report suspected or actual use of those agents.

`(d) POTENTIAL TRAINEES- In designing the education and training programs under this section, the Secretaries shall
ensure that different programs are designed for health-care professionals at various levels. The programs shall be
designed to be disseminated to health professions students, graduate medical education trainees, and health practitioners
in a variety of fields.

`(e) CONSULTATION- In establishing the joint medical education and training program under this section, the two
Secretaries shall consult with appropriate representatives of accrediting, certifying, and coordinating organizations in the
field of health professions education.'.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7322
the following new item:

`7323. Emergency medical education: joint program with Department of Defense.'.

(b) INITIAL FUNDING- Funds for fiscal year 2002 for the joint medical education and training program established
under section 7323 of title 38, United States Code, as added by subsection (a), shall be provided from funds made
available under Public Law 107-38.

(c) EFFECTIVE DATE- The Secretary of Veterans Affairs and the Secretary of Defense shall implement section 7323
of title 38, United States Code, as added by subsection (a), not later than the end of the 90-day period beginning on the
date of the enactment of this Act.

END

HR 3253 IH

107th CONGRESS

1st Session

H. R. 3253

To amend title 38, United States Code, to provide for the establishment of emergency medical preparedness centers in the
Department of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

November 8, 2001

Mr. SMITH of New Jersey (for himself, Mr. EVANS, Mr. BILIRAKIS, Mr. RODRIGUEZ, Mr. BUYER, and Mr.
STEARNS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for the establishment of emergency medical preparedness centers in the
Department of Veterans Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress
assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `National Medical Emergency Preparedness Act of 2001'.

SEC. 2. ESTABLISHMENT OF EMERGENCY MEDICAL PREPAREDNESS CENTERS.

(a) IN GENERAL- (1) Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end
the following new section:

`Sec. 7323. Medical emergency preparedness centers

REV_00142733

`(a) ESTABLISHMENT OF CENTERS- (1) The Secretary shall establish at least four medical emergency preparedness centers in accordance with this section. Each such center shall be established at a Department medical center and shall be staffed by Department employees.

`(2) The official within the central office of the Veterans Health Administration responsible for medical preparedness shall be responsible for supervising the operation of the centers established pursuant to this section and shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

`(b) MISSION- The mission of the centers shall be--

`(1) to carry out research on and develop methods of detection, diagnosis, vaccination, protection, and treatment for chemical, biological, and radiological threats to the public health and safety;

`(2) to provide education, training, and advice to health-care professionals, including health-care professionals outside the Veterans Health Administration; and

`(3) to provide contingent rapid response laboratory assistance and other assistance to local health care authorities in the event of a national emergency.

`(c) CENTER DIRECTORS- Each center shall have a Director with (1) expertise in managing organizations that deal with threats referred to in subsection (b), (2) expertise in providing care to populations exposed to toxic substances, or (3) significant research experience in those fields.

`(d) SELECTION OF CENTERS- (1) The Secretary shall select the sites for the centers on the basis of a competitive selection process and a finding under paragraph (2). The centers selected shall be located in different regions of the Nation, and any such center may be a consortium of efforts of more than one medical center. At least one of the centers shall be established to concentrate on chemical threats, at least one shall be established to concentrate on biological threats, and at least one shall be established to concentrate on radiological threats.

`(2) The finding referred to in paragraph (1) with respect to a proposal for designation of a site as a location of a center

under this section is a finding by the Secretary, upon the recommendation of the Under Secretary for Health, that the facility or facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

`(A) An arrangement with a qualifying medical school and a qualifying school of public health (or a consortium of such schools) under which physicians and other persons in the health field receive education and training through the participating Department medical centers so as to provide those persons with training in the diagnosis and treatment of illnesses induced by exposures to toxins, including chemical and biological substances and nuclear ionizing radiation.

`(B) An arrangement with an accredited graduate program of epidemiology under which students receive education and training in epidemiology through the participating Department facilities so as to provide such students with training in the epidemiology of contagious and infectious diseases and chemical and radiation poisoning in an exposed population.

`(C) An arrangement under which nursing, social work, counseling, or allied health personnel and students receive training and education in recognizing and caring for conditions associated with exposures to toxins through the participating Department facilities.

`(D) The ability to attract scientists who have made significant contributions to the development of innovative approaches to the detection, diagnosis, vaccination, protection, or treatment of persons exposed to chemical, biological, or radiological substances.

`(3) For purposes of paragraph (2)(A)--

`(A) a qualifying medical school is an accredited medical school that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated; and

`(B) a qualifying school of public health is an accredited school of public health that provides education and

training in toxicology and environmental health hazards and with which one or more of the participating
Department medical centers is affiliated.

`(e) FUNDING- (1) Amounts appropriated for the activities of the centers shall be appropriated separately from
amounts appropriated for the Department for medical care.

`(2) There are authorized to be appropriated for the centers under this section $20,000,000 for each of fiscal years
2002 through 2006.

`(3) In addition to funds appropriated for a fiscal year pursuant to the authorization of appropriations in paragraph (2),
the Under Secretary for Health shall allocate to such centers from other funds appropriated for that fiscal year generally
for the Department of Veterans Affairs medical care account and the Department of Veterans Affairs medical and
prosthetics research account such amounts as the Under Secretary for Health determines appropriate to carry out the
purposes of this section.

`(f) RESEARCH ACTIVITIES- Each center shall conduct research on improved medical preparedness to protect the
Nation from threats in the area of that center's expertise. Each center may seek research funds from public and private
sources for such purpose.

`(g) PEER REVIEW PANEL- (1) In order to provide advice to assist the Secretary and the Under Secretary for Health
to carry out their responsibilities under this section, the Under Secretary shall establish a peer review panel to assess the
scientific and clinical merit of proposals that are submitted to the Secretary for the designation of centers under this
section.

`(2) The peer review panel shall include experts in the fields of toxicological research, bio-hazards management
education and training, radiology, clinical care of patients exposed to such hazards, and other persons as determined
appropriate by the Secretary. Members of the panel shall serve as consultants to the Department.

`(3) The panel shall review each proposal submitted to the panel by the officials referred to in paragraph (1) and shall

submit to the Under Secretary for Health its views on the relative scientific and clinical merit of each such proposal. The
panel shall specifically determine with respect to each such proposal whether that proposal is among those proposals
which have met the highest competitive standards of scientific and clinical merit.

`(4) The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

`(h) RESEARCH PRODUCTS- (1) The Under Secretary for Health shall ensure that information produced by the
research, education and training, and clinical activities of centers established under this section is made available, as
appropriate, to health-care providers in the United States. Dissemination of such information shall be made through
publications, through programs of continuing medical and related education provided through regional medical education
centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical
education shall receive priority in the award of funding.

`(2) The Secretary shall ensure that the work of the centers is conducted in close coordination with the Office of
Homeland Security and the Department of Defense, and research products or other information of the centers shall be
coordinated and shared with that Office and the Department of Defense.

`(i) ASSISTANCE TO OTHER AGENCIES- The Secretary may provide assistance requested by appropriate
Federal, State, and local civil and criminal authorities in investigations, inquiries, and data analyses as necessary to
protect the public safety and prevent or obviate biological, chemical, or radiological threats.

`(j) DETAIL OF EMPLOYEES FROM OTHER AGENCIES- Upon approval by the Secretary, the Director of a
center may request the temporary assignment or detail to the center, on a nonreimbursable basis, of employees from
other Departments and agencies of the United States who have expertise that would further the mission of the center.
Any such employee may be so assigned or detailed on a nonreimbursable basis pursuant to such a request. The duration
of any such assignment or detail shall be subject to approval by the Office of Personnel Management.'.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7322
the following new item:

`7323. Medical emergency preparedness centers.'.

(b) INITIAL FUNDING- Funds for fiscal year 2002 for the medical emergency preparedness centers established under
section 7323 of title 38, United States Code, as added by subsection (a), shall be provided from funds made available
under Public Law 107-38.

END

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Monday, April 8, 2002

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General Judicial Articles

Senate Girds for Judicial Battle

Paul Kane
Roll Call
April 8, 2002, Monday

With an eye toward being fully prepared for a potential Supreme Court vacancy, both sides in the battle over judicial nominations are girding for more fights in the near future.

Republican aides say there could still be more to come in terms of payback for the Judiciary Committee's party-line defeat of the appellate court nomination of Judge Charles Pickering, a close friend of Senate Minority Leader Trent Lott (R-Miss.). But their primary focus is going to be on revamping the way Senate Republicans and the White House battle with Judiciary Democrats and liberal interest groups over the nominations.

"We're going to have to be geared up for battle as much as possible," an administration official said. "Pickering has to be a wake-up call to every single Republican."

The first public step in their effort will come this week, when Senate Republicans expect to hold a press conference with Hispanic groups and Latino leaders urging the confirmation of Miguel Estrada, a lawyer nominated to the U.S. Circuit Court of Appeals for the District of Columbia.

Also, key figures on the GOP side of the judicial nomination fights, including Senate Republican leaders and White House Counsel Alberto Gonzales, plan to meet midweek. The meeting is part of a series of new strategy sessions in which they will talk face-to-face every other week. GOPstaffers plan to meet once a week exclusively to discuss judicial nominations, aides said.

Senate staffers met at the White House early last week to discuss how to better coordinate message and outreach with conservative interest groups. Senate and administration officials feel that they haven't been as aggressive as the liberal groups that led the attack on Pickering.

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Estrada's nomination, first announced in May, is seen as a chance for Republicans to actively push a Latino for a high-level position and earn goodwill with the burgeoning number of Hispanic voters. At past events on judicial nominations, Republicans, usually led by Minority Whip Don Nickles (Okla.), haven't missed a chance to mention the up-from-his-bootstraps story of Estrada, a Honduras native who climbed into the Ivy League and the highest levels of the legal profession.

But the same liberal interest groups that helped defeat Pickering are also readying themselves for this fight, and they see Supreme Court ambitions driving the GOP push for Estrada. Ralph Neas, president of People for the American Way, noted that by August it will have been eight years since there has been a vacancy on the Supreme Court - the longest drought since the Monroe administration in the early 1820s.

The heavy betting among legal observers is that President Bush will want to make history by putting the first Hispanic on the Court, and Estrada is one of the names mentioned as a possibility.

"My guess is it would be a Latino Clarence Thomas,"Neas said, referring to the black Supreme Court justice who had served on the D.C. appellate court for a little more than a year before his nomination.

Another potential candidate is Gonzales, a longtime friend of Bush's who has played a lead role in selecting judicial nominees. Of the two, Estrada - a Federalist Society member who worked with Solicitor General Ted Olson at Gibson, Dunn & Crutcher LLC - is viewed as more reliably
conservative.

Either Estrada or Gonzales would present a difficult political target for Democrats and their allies, who might be hesitant to attack a historic nomination from a key voting bloc. Besides two years on the Texas Supreme Court, Gonzales has never served as a judge, and Estrada has
no experience on the bench, providing virtually no paper trail for groups like Neas' or the similarly aligned Alliance for Justice to pick apart as they did with Pickering.

"We don't know that much about him," Marcia Kuntz, the alliance's judicial expert, said of Estrada. While Neas and the Alliance for Justice haven't taken an official stand on Estrada, Kuntz said the groups are very concerned about his "judicial temperament" and what they call a "very
rigid, right-wing approach to issues."

Timing could be key. None of the three oldest justices - John Paul Stevens, 81, Chief Justice William Rehnquist, 77, or Sandra Day O'Connor, 71 - has indicated an intention to retire, and legal observers say they have yet to hear the whispers that usually precede a retirement.
Still, one observer noted that it will become clear some time next month, just before the Court's term ends in June, if one of the justices plans to retire.

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If an opening occurs this summer, it would be difficult to envision Bush nominating Estrada, who may or may not have been confirmed to the appellate court by then. Republicans have accused Judiciary Democrats of stonewalling the Estrada nomination in an effort to hurt his chances of getting a Supreme Court nod, something Democrats say is ridiculous.

David Carle, spokesman for Judiciary Chairman Patrick Leahy (D-Vt.), noted that Leahy has promised that Estrada and other controversial nominees, including Texas Supreme Court Justice Priscilla Owen, will get a hearing and eventually a vote, a different tactic than Republicans used against controversial Clinton administration nominees in the 1990s.

"Republicans blocked more than 50 judicial nominees from the federal bench just as surely as Judge Pickering wasn't promoted in this case,"Carle said. "The difference is that Judge Pickering got a hearing and a vote, and so did the 42 judges who have been confirmed in the last eight months."

A Supreme Court nomination would instantly become a national political issue, particularly if it comes this summer with hearings in the fall. With so many key Court decisions coming on 5-4 margins, "it would be a highly dramatic, historic moment,"Neas said.

Even without a Supreme Court vacancy, Republicans feel that the Pickering vote has given them an opening in Senate races in the South. At a fundraiser for Rep. Saxby Chambliss (R-Ga.) on March 27, Bush attacked Chambliss' opponent, Sen. Max Cleland (D), for not publicly supporting the Pickering nomination - and Cleland isn't even on Judiciary.

Last week, with Vice President Cheney at his side in Arkansas, Sen. Tim Hutchinson (R-Ark.), one of the GOP's two most vulnerable incumbents, vowed to support "strict constructionist" nominees from the Bush administration.

Liberal groups, and privately some Democrats, say they will welcome this debate with open arms. "That's the kind of debate we would love to have. That's the kind of debate I would relish having," Neas said.

If the judicial nominees become a campaign issue, Neas said it will provide Democrats a chance to "have the debate that did not occur in 2000," one that deals with the consequences of conservative judges and what that means to abortion rights, civil rights, environmental law and other liberal causes.

"These are all issues that are at stake now," said Kuntz, the Alliance for Justice's director of the Judicial Selection Project.

Because of the Pickering defeat, Republicans say they have developed more respect for and fear of the liberal interest groups that fought him, particularly the NAACP and the National Abortion and Reproductive Rights Action League, which both represent constituencies of millions of voters that can be easily activated on social issues.

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The GOP was able to activate its grassroots on the Pickering vote through talk radio and conservative Christian broadcasts just before the vote, but aides lament that they don't have groups that focus on these issues full-time the way liberal groups do.

The Republicans' most reliable, well-funded backers come from the business community, which almost never gets involved in the federal judicial process the way the NAACP and NARAL do. "That's their bread and butter, while we're better on tax issues," said one senior GOP aide.

And that's not going to change any time soon, according to a prominent GOP lobbyist and fundraiser. He said the business community is primarily concerned about "the immediate effect of legislation on their bottom line."

If asked to devote time or money toward judicial nomination fights, he said the business community would likely tell Republicans that they'd rather spend their resources on reinstating a GOP majority in the Senate, which could then do what it wants with the judiciary.

"The smarter money would be electing a Republican majority in the Senate," he said, "because it'll take care of all your problems."

The War Over the Courts Has Just Begun

Alexandra Starr
Business Week
April 8, 2002 Monday

When Democrats on the Senate Judiciary Committee scuttled the nomination of conservative jurist Charles W. Pickering, it was not only a slap in the face for Minority Leader Trent Lott, the judge's patron and top booster. It was also a rare setback for the man pushing Pickering from the shadows, Justice Dept. powerhouse Viet D. Dinh.

Dinh, 34, who earned his conservative stripes by working on the Senate Whitewater probe and on the impeachment of former President Bill Clinton, is the Justice Dept.'s point man in vetting and promoting Bush's judicial picks. That makes the little-known official one of the most important players in moving the judiciary rightward after eight years of Democratic nominees. "I firmly believe the proper role of a judge...is to follow the law rather than make the law," Dinh told BusinessWeek. The former Georgetown University law professor doesn't just weigh in on judges. He also signs off on all of Justice's anti-terrorism initiatives, from trying alleged militants in military tribunals to allowing jailers to eavesdrop on conversations between terror suspects and their lawyers. Another controversial Dinh move: prohibiting FBI agents from using a national gun-purchasing database to find out if suspected radicals have bought firearms.

While Dinh blends in ideologically at John Ashcroft's Justice Dept., his personal history sets

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him apart. Born in war-torn Saigon as the youngest of seven children, he spoke almost no English when he arrived in the U.S. as a 10-year-old refugee. To help support the family, Dinh and his siblings worked in a California sweatshop after school, sewing clothes until 11 p.m. Dinh still managed to win admission to Harvard, where he later earned a law degree with honors. He subsequently clerked for Supreme Court Justice Sandra Day O'Connor.

While no one questions Dinh's credentials, some Dems have criticized his ideology and operating style. Democratic Hill staffers say he withheld important documents on Pickering and was overly antagonistic in promoting him behind closed doors. "His abrasive approach sometimes hurts more than helps the Administration's agenda," says a Senate aide.

Team Bush realizes it needs to do something to avoid more Pickering-style debacles. While White House Counsel Alberto R. Gonzales says he's pleased with Dinh's work, he also plans to add a senior GOP operative to the White House staff to shepherd Bush's judicial picks full-time. "We're looking at someone who can coordinate between the White House and Justice Dept.," Gonzales says.

The fact that the White House is looking for reinforcements is a sign of how serious the judicial-selection wars have become. On the day of Pickering's defeat, Bush political guru Karl Rove told Christian activists that if Democrats thought they had successfully dissuaded the President from tapping conservatives for the bench, "they sent the wrong message to the wrong guy."

For Dinh and his allies, that means a war of attrition -- at least as long as Democrats control the Senate. Two fortysomething appellate court nominees already are in Democrats' crosshairs: Ohio State University law professor Jeffrey S. Sutton and former Assistant Solicitor General Miguel Estrada. Democrats worry that the very conservative Estrada, Bush's pick for the D.C. Circuit Court, is being groomed to be the first Hispanic Supreme Court justice.

Some judicial watchers speculate that Dinh himself could be named to the high court one day. Whether that lies within the realm of possibility will depend in large part on whether Dinh sees to it that, despite the Pickering setback, Team Bush succeeds in the struggle to shift the federal bench to the right.

More Battles Loom Over Bush's Nominees for Judgeships

Neil Lewis
The New York Times
April 7, 2002, Sunday

Neither the White House nor Senate Democrats are giving any quarter in their battle over what kind of judges should sit on the federal bench, and officials on both sides say they expect more confirmation fights in the months ahead.

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The first confrontation could be over any of several conservative nominees. One possibility, both sides say, is President Bush's declared choice of Priscilla Owen, a conservative justice on the Texas Supreme Court, for a federal appeals court post. Justice Owen is an opponent of abortion rights for minors without their parents' permission. The Democrats on the Senate Judiciary Committee banded together last month to defeat the nomination of Charles W. Pickering Sr. of Mississippi to a seat
on the federal appeals court based in New Orleans, provoking denunciations from Republicans.

Some Democrats were blunt about what they hoped to accomplish. Senator Charles E. Schumer of New York said that in opposing the Pickering nomination they were sending a message to the White House that Mr. Bush should stop trying to stack the courts with conservatives.

"The bottom line is that the administration has made ideology a major factor in their selection of judges," Senator Schumer said in an interview. "I think it's fine that ideology is being debated more openly now."

But he added that the Judiciary Committee would not accept the administration's judicial nominees unless Mr. Bush broadened their ideological range.

The chief lawyer in the White House, however, rejected the idea that Mr. Bush would change his approach to choosing judicial nominees.

"The president has made very clear he has definite ideas about the kind of people he wants to fill the judiciary," Alberto R. Gonzales, the White House counsel, said in an interview this week. "The intention here is to keep sending up people like the ones we have sent up who we believe are qualified and in the mainstream."

On a recent campaign swing through the South, President Bush said he wanted a Republican-controlled Senate so he could put conservatives on the bench.

Mr. Gonzales said the president was naming lawyers to the bench who are chosen for competence, character and a judicial philosophy that respects precedent and believes in judicial restraint.

But Mr. Bush's use of the word conservatives in his campaign appearances was unusually direct.

Republicans have generally shown themselves willing to take casualties in their efforts to shape the federal bench to their liking. Even though Mr. Bush suffered a defeat with the Pickering nomination, the Republican Party is trying to extract some political advantage from the experience.

Mr. Bush has tried to use the issue against Senator Max Cleland of Georgia, who is running for re-election, and a Republican strategist said he expected the Pickering issue to play a role in several races in the South. One Republican Senate candidate, Lamar Alexander of Tennessee, has even broadcast a television advertisement arguing that the treatment of Judge Pickering was

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unfair to the South.

Democrats on the Judiciary Committee, which holds hearings on all judicial nominees, have also tried to send their message by arranging the order in which they will consider Mr. Bush's nominees, delaying votes on those they consider most conservative. To that end, the Democrats, who control the committee, are generally planning to schedule hearings and votes on those Bush nominees they consider more acceptable, such as James Howard of New Hampshire, who has been nominated for a seat on the United States Court of Appeals for the First Circuit, in Boston.

Mr. Howard is considered a moderate and a relatively noncontroversial candidate, Democratic staff aides said. Others whom committee members consider less ideological, and who thus may get early consideration, include Julia Smith Gibbons and John M. Rogers, both nominated for seats on the United States Court of Appeals for the Sixth Circuit, in Cincinnati.

Eventually, the committee will run out of such candidates and will have to deal with some of the more outspokenly conservative nominees.

The committee may soon take up Mr. Bush's nomination of Justice Owen of the Texas Supreme Court to a seat on the United States Court of Appeals for the Fifth Circuit, in New Orleans, the same court to which Mr. Pickering was named. Justice Owen is generally viewed as a member of the conservative wing of a conservative State Supreme Court.

In addition to objecting to her views on abortion rights, liberal advocacy groups have raised questions about the relationship of Justice Owen's opinions to donations she received from Texas corporations, including Enron, the Houston energy giant that filed for protection under Chapter 11 of the bankruptcy law.

Justice Owen, who was elected in 1994 with the help of an $8,600 donation from Enron, later wrote a majority opinion that reversed a lower court order, saving the company about $225,000 in taxes.

Senator Patrick J. Leahy, the Vermont Democrat who is chairman of the Judiciary Committee, recently sent a series of questions to the White House asking for comment on the issue of any relationship between the donations and her rulings.

Mr. Gonzales said that he had examined the issue and found nothing improper on Justice Owen's part. He said he would soon write to Mr. Leahy outlining his position.

"Based on our review she's superbly qualified to serve on the Fifth Circuit," he said. "She's extremely bright, extraordinarily dedicated and very principled."

But opponents of Justice Owen are certain to recall a dispute that arose in 2000, when Mr. Gonzales was a fellow justice on the Texas court and Justice Owen was one of three court members who wrote dissents in a case involving a new Texas law regarding parental notification of abortions among minors. At the time, Mr. Gonzales suggested that the narrow reading of the

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law by the dissenters was "an unconscionable act of judicial activism."

Anne Womack, a spokesman for Mr. Gonzales, minimized the significance of the disagreement. "Judge Gonzales's opinion and Justice Owen's dissent reflect an honest and legitimate difference of how to interpret a difficult and vague statute," Ms. Womack said.

Justice Owen's nomination is likely to bring the abortion debate into play. Kate Michelman, the president of the National Abortion Rights Action League, said that abortion rights groups would strongly oppose her. "We regard her as someone who exemplifies the most extreme hostility to reproductive rights of any of the nominees that President Bush has named," Ms. Michelman said.

Other Bush nominees who could become the subject of sharp battles include Miguel Estrada, a strong conservative who has been nominated to the United States Court of Appeals for the District of Columbia Circuit, and D. Brooks Smith, nominated for the United States Court of Appeals for the Third Circuit, in Philadelphia.

Mr. Leahy has promised hearings this year to Ms. Owen, Mr. Estrada and Prof. Michael W. McConnell of the University of Utah, nominated to a seat on the United States Court of Appeals for the 10th Circuit, in Denver. Professor McConnell is considered the least likely to engender opposition of the three because of support for him among academics across the ideological spectrum.

Vice President Speaks at Pickering Benefit

Jason Straziuso
The Commercial Appeal (Memphis, TN)
April 6, 2002 Saturday

Vice President Cheney told a crowd of Rep. Chip Pickering's (R-Miss.) supporters Friday that the United States "must be prepared to go on offense" to ensure the security of the country.

Cheney, speaking at a $1,000-a-plate breakfast, praised Pickering for his commitment to Mississippi and said the 3rd District representative "is the kind of person we need more of in Congress."

"The President and I count on Chip Pickering, and we're counting on all of you to send him back for another term," Cheney said. About 180 people attended the event at a downtown Jackson hotel, where security was extremely tight. About 50 big donors and Pickering campaign workers met with Cheney privately before the speech.

In his 15-minute speech, the Vice President concentrated on the economy and the country's military response to Sept. 11.

Cheney said the country "is still at risk of serious harm" but noted that defenses - such as airport

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security and intelligence sharing - were on the rise.

"Wars are not won on the defensive," Cheney said. "For the long-term security of our people and our freedom, we must be prepared to go on offense. We must find the enemies of the United States and bring them to justice."

Cheney also told the crowd that the Pickering name brings admiration and respect in Washington, and said the congressman's father, U.S. Dist. Judge Charles Pickering, was treated unfairly by Democrats on the Judiciary Committee who in March voted down the judge's appellate nomination.

Sen. Thad Cochran and Rep. Roger Wicker (both R-Miss.) and state auditor Phil Bryant joined Pickering, Cheney and their two wives on stage.

In attendance were former governor Kirk Fordice, former Republican National Committee chairman Haley Barbour, WorldCom Inc. chief executive Bernie Ebbers and Chief Phillip Martin of the Mississippi Band of Choctaw Indians.

Cheney is on the last leg of a four-state road trip to help collect campaign cash for GOP House and Senate candidates.

His visit to Mississippi came two days after a $1,000-a-ticket private fund-raiser for Pickering on the Gulf Coast that featured House Speaker Dennis Hastert.

Chip Pickering praised Cheney and Bush for fostering energy, agricultural and other programs "that mean so much to Mississippians."

The congressman also lauded Cheney and Bush for creating an international coalition to protect Americans after Sept. 11.

Pickering said that next up in his congressional campaign against Rep. Ronnie Shows (D-Miss.) was "a lot of hand shaking door-to-door."

Pickering and Shows face off this year in what could be one of the nation's most closely watched congressional races.

The two ended up in the same district after Mississippi lost one of its five U.S. House seats because of slow population growth in the 1990s.

Federal bench pick's Enron links examined; Texas jurist handled dealings appropriately, Bush counsel says

Michelle Mittelstadt
The Dallas Morning News

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April 6, 2002, Saturday

WASHINGTON - The White House offered a spirited defense Friday of Texas Supreme Court Justice Priscilla Owen's record, hoping to answer Democratic concerns over her nomination to the 5th U.S. Circuit Court of Appeals.

Nominated by President Bush last May to the appellate court that covers Texas, Mississippi and Louisiana, the conservative jurist has drawn considerable scrutiny from Democrats for what critics charge is a pro-business tilt. Word that she received campaign contributions from Enron during her 1994 campaign for the state Supreme Court sparked a new round of attention. Two years after accepting $ 8,600 in Enron contributions, Justice Owen wrote an opinion in an arcane tax dispute that spared the Houston energy trader $ 225,000 in taxes. Critics suggest the contributions may have affected the ruling. Defenders reject that claim, noting the opinion was unanimous, consistent with other judicial rulings and affected interests other than Enron.

The Senate Judiciary Committee has yet to schedule a hearing for Justice Owen.

The Enron issue "has not been helpful for the nominee," Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., said recently. "In fact, I've heard some real concern by both Republican and Democratic senators because of that."

In a letter Friday to Mr. Leahy, White House counsel Al Gonzales said a review of her campaign contributions and decisions in cases involving Enron offered "no basis to question Justice Owen's fitness to serve on the Fifth Circuit."

"As you know, I served with Justice Owen and I am convinced from my work with her that she is a person of exceptional integrity, character and intellect," Mr. Gonzales, a former high court justice, wrote.

The Enron contributions represented less than 1 percent of the $ 1.2 million in contributions she took in during the 1994 campaign, he said, adding that it was "entirely proper" for her campaign to receive contributions and there was "nothing inappropriate" about the sources. Seven of the court's nine justices have taken Enron campaign contributions, he said.

And, Mr. Gonzales said, a White House review of the six cases involving Enron that have come before the court during Justice Owen's tenure found her position could be characterized as favorable to Enron in two cases and adverse in two cases. No position could be characterized in the fifth case, he said, and she did not participate in the sixth because it had been a matter at her former law firm.

"The decisions of the Texas Supreme Court since January 1995 in proceedings involving Enron have been ordinary and raise no questions whatsoever," Mr. Gonzales wrote. Referring specifically to the Enron tax case that has drawn scrutiny, he wrote: "In my judgment, this case raises no legitimate issue with respect to Justice Owen's confirmation."

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Leahy spokesman David Carle said the senator "appreciates Judge Gonzales' responsiveness in answering some questions that have been raised about this nomination in several news stories."

"The issue in this instance has not been the nominee's Enron-related contributions but the nominee's actions as a judge," Mr. Carle said. "Judge Gonzales' review of these cases will be a useful addition to the committee's record as it prepares to schedule a hearing on this nomination."

VP Cheney lends hand to GOP congressman in Mississippi

John Porretto
The Associated Press
April 5, 2002, Friday

Vice President Dick Cheney took his fund-raising efforts to Mississippi on Friday, speaking out on behalf of Republican Rep. Chip Pickering at a $1,000-a-plate breakfast.

Cheney praised Pickering for his diligence and commitment to Mississippi and said the 3rd District representative "is the kind of person we need more of in Congress."

"The president and I count on Chip Pickering, and we're counting on you to send him back for another term," Cheney said. Some 150 people attended the event at a downtown Jackson hotel, where security was extremely tight.

The gathering included the state's top Republican leaders, such as U.S. Sen. Thad Cochran and Rep. Roger Wicker of the 1st Congressional District, as well as former Republican National Committee Chairman Haley Barbour, who's considering a run for
governor in 2003.

Also showing their support for Pickering were former Gov. Kirk Fordice, Chief Phillip Martin of the Mississippi Band of Choctaw Indians and WorldCom Inc. chief executive Bernie Ebbers.

Cheney is on the last leg of a four-state road trip to help collect campaign cash for GOP House and Senate candidates.

His visit to Mississippi followed by two days a $1,000-a-ticket private fund raiser for Pickering on the Gulf Coast that featured House Speaker Dennis Hastert.

The vice president touted President Bush's massive tax cut last year and said improving consumer confidence was a clear sign of a recovering economy.

Cheney also had kind words for Pickering's father, U.S. District Judge Charles Pickering of Hattiesburg, whose presidential nomination to a federal appeals court was nixed by a Senate committee last month. Charles Pickering was turkey hunting and did not attend the breakfast but his wife, Margaret Ann, was there.

"Judge Pickering was treated unfairly by the Democrats in the U.S. Senate," the vice president said.

Chip Pickering praised Cheney and Bush for fostering energy, agricultural and other programs "that mean so much to Mississippians of every background and walk of life."

The congressman also lauded Cheney and Bush for creating an international coalition to protect Americans after Sept. 11.

Pickering said it has helped him and his wife, Leisha, reassure their five sons that America is stronger than ever.

"Because of Dick Cheney, because of George Bush, I can tell my children we're safe, we're secure, we're free," he said. "We're all blessed as a nation."

After his brief stop in Jackson, Cheney was heading west to throw out the first pitch at the Texas Rangers baseball home opener.

Pickering and Democratic incumbent Rep. Ronnie Shows face off this year in what could be one of the nation's most closely watched congressional races.

The two ended up in the same district after Mississippi lost one of its five U.S. House seats because of slow population growth in the 1990s.

Cheney plans to headline some three dozen fund-raisers this year.

The vice president's aides said they did not know how much this week's events will bring in for the candidates and the GOP.

US-Justice (Hispanics) White House Seeks Hispanic Nominee's Speedy Confirmation

Rebeca Logan
Global News Wire
April 5, 2002 Friday

EXCERPT

Washington, Apr 4 (EFE).- White House Counsel Al Gonzales on Thursday told EFE he expects attorney Miguel Estrada's "excellent qualities and great professional training" to result in the speedy confirmation of the first Hispanic nominated to sit on the Circuit Court of Appeals for the District of Columbia. According to Gonzales, President George W. Bush nominated Estrada to the country's second most important court because of his "great talent and abilities."

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"Estrada's nomination demonstrates the importance the president places on diversity, and he is sending a powerful message to the Hispanic community," Gonzales said in an interview with EFE.

The White House counsel argued that the Senate should give Estrada a "fair hearing" and bring his nomination up for a vote.

Estrada, who was nominated in May 2001 amid certain criticism, has not been granted a hearing by the Democratic-controlled Senate, a delay blasted by Republicans.

According to Democratic leaders, several Hispanic judges nominated by former President Bill Clinton, including Richard Paez, Jorge Rangel and Enrique Moreno, came up against obstacles and delays when Republicans controlled the Senate.

While Paez waited four years for his confirmation hearing, Moreno never received one.

Nonetheless, Gonzales said the Bush administration is not responsible for what happened in the past, adding that now is "the opportune time" for the Senate to act.

Gonzales attributed harsh criticism of Estrada's nomination to "misunderstandings" about his philosophy that judges have a limited role in the government and should simply apply the law, regardless of their personal opinions.

Former Deputy White House Chief of Staff Maria Echaveste, the highest-ranking Hispanic in the Clinton administration, told

DNC chairman speaks at Freedom Inc.'s 40th birthday celebration

Steve Kraske
The Kansas City Star
April 5, 2002 Friday

The head of the Democratic National Committee helped Freedom Inc. celebrate its 40th birthday Thursday with a blistering attack on President Bush.

In grand partisan style, National Committee Chairman Terry McAuliffe attacked the GOP on an array of issues, from Social Security to health care to public housing.

"The Bush budget is littered with broken promises to the African-American community," he said in prepared remarks to the local political club.

But the energetic McAuliffe was particularly harsh on the Bush team for what he termed "its outright hostility" on civil rights issues. Too many Republicans view racism as a "relic of the

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American past," he said. "But that's coming from folks who have no trouble getting a cab in a dark city on a rainy night," McAuliffe told the largely Democratic crowd of about 500 at the Hyatt Regency Crown Center hotel. "That's coming from folks who don't get pulled over simply for being behind the wheel of a Mercedes."

A constellation of Democratic stars was on hand to pay tribute to a club that began four decades ago to help black citizens get elected to political office.

Among the Democrats on hand Thursday were Gov. Bob Holden, Sen. Jean Carnahan, Auditor Claire McCaskill, Rep. Karen McCarthy and Mayor Kay Barnes. Many public officials in the crowd have come to depend on help from Freedom Inc. and the African-American community at election time.

McAuliffe's offensive came on the same day that Vice President Dick Cheney visited Kansas City to raise money for Rep. Sam Graves. Cheney didn't refer to the McAuliffe visit, but McAuliffe tagged Cheney for his refusal to release the names of a task force he appointed to help the administration form its energy policy.

"Stop stonewalling and come clean," McAuliffe said. "The American people have a right to know who was at the table when their energy policy was drafted. Avoiding political embarrassment is not an executive privilege."

McAuliffe, a friend of former President Clinton, was elected national committee chairman in February 2001. Regarded as a fund-raising wizard, he has served as finance director of both the national committee and the Democratic Congressional Campaign Committee.

McAuliffe praised Freedom Inc.'s founders, Leon Jordan and Bruce Watkins, for establishing an organization that paved the way for black leaders such as former Kansas City Mayor Emanuel Cleaver and former U.S. Rep. Alan Wheat of Kansas City.

He noted that no constituency has been more loyal to the Democratic Party than African-Americans. Responding to charges from some that the party sometimes takes that loyalty for granted, McAuliffe said the party's ties to the African-American community are more than a matter of convenience.

"It is a moral imperative," he said. "It is an extension of our values. It is part of our commitment to be the party of opportunity, inclusion, tolerance and diversity."

On civil rights issues, McAuliffe criticized Bush for appointing Gerald Reynolds of Kansas City, a one-time affirmative action opponent, to head the Education Department's Office of Civil Rights. Bush bypassed the Senate confirmation process and used a tactic known as a recess appointment to put Reynolds into office.

In doing so, Bush "made a mockery of the (Senate's) advice and consent principle," McAuliffe

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said, although Clinton on several occasions used the same maneuver during his presidency.

The chairman derided Republicans for supporting Judge Charles Pickering for the federal appeals court in Mississippi. Pickering had opposed interracial marriage, he said, and once secured a lenient sentence for a cross-burner.

In Washington, some viewed the defeat of Pickering as payback for the years when Republican senators blocked Clinton nominees.

"But the fight over these nominations isn't over," McAuliffe said. "Last week, President Bush vowed to appoint more hard-line conservatives to the federal bench. It's up to us to speak out and fight back."

NOW Fights Judge's Nomination; PA. Chapter Says He Belonged To Biased Gun Club for 11Years After Saying He Would Quit

Ann McFeatters
Pittsburgh Post-Gazette
April 5, 2002 Friday

The embattled nomination of U.S. District Judge D. Brooks Smith for the 3rd U.S. Circuit Court of Appeals gathered more opposition yesterday, as the Pennsylvania chapter of the National Organization for Women said he should not be confirmed.

Pennsylvania NOW President Kathy Miller said she was speaking on behalf of the group's 27,000 members in saying Smith was "unfit to serve as a federal appellate judge," in part because he continued to belong to a gun club that discriminated against women for 11 years after he promised the Senate that he would either change the club's policy barring women members or resign.

Smith, 50, of Altoona, said in a questionnaire last year that he had joined the men-only Spruce Creek Rod and Gun Club in 1982 largely out of sentiment because his grandfather had taught him to fish there when he was a child. The club, in Huntingdon County, is one of the most prestigious fishing clubs in Pennsylvania, boasting some of the state's best fly fishing, and has hosted presidents, including former President Jimmy Carter, who has written about it and made it his first vacation stop after leaving the White House. Smith described it to the Senate in 1988 as a "rather small and rather informal and non-business-related type of club."

But although Smith told the Senate in 1988 before he was confirmed as a district judge that the code of ethics for judges "would require my resignation from the club" if it did not change its policy against admitting women, he admitted last year that he had not resigned until 1999.

Miller said in an interview, "He violated the judicial code of ethics and turned a blind eye to equality and justice for women."

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The code of ethics for U.S. judges says that when a judge determines that an organization to which he belongs engages in "invidious discrimination," he or she may make an effort to have the organization discontinue such a practice. If the group fails to do that, within two years of the judge's first learning of the discriminatory practices, he or she "should resign immediately from the organization."

In a letter to Sen. Arlen Specter, R-Pa., a key sponsor of Smith for the Circuit Court, Miller wrote: "A significant barrier to the advancement of women in business and professional life is the discriminatory practices of private clubs, where business deals are often made and personal contacts valuable for business purposes, employment and professional advancement are formed. That is why the National Organization for Women has worked tirelessly for over 30 years to open up the memberships of such organizations."

She said her group also was upset that Smith had displayed "open hostility to the federal Violence Against Women Act," which he criticized in 1993 as federal encroachment on states' rights.

She said she hoped to meet with Specter to persuade him to reverse his endorsement of Smith. A Spector spokesman said he hadn't yet seen the letter. In a Senate Judiciary Committee hearing, Specter and Sen. Rick Santorum, R-Pa., were highly complimentary of Smith and brushed aside concerns expressed at that time by environmental and civil rights groups.

Since President Bush nominated Smith last September for the federal appellate court in Philadelphia, a number of Pittsburgh-area lawyers and judges have raced to his defense.

At the Senate Judiciary Committee hearing, a parade of lawyers called him a competent, fair-minded judge who has proved his credentials during 14 years on the federal bench.

A coalition of 27 environmental, civil rights and women's groups has charged that Smith has been too close to captains of industry, has issued a number of anti-environment rulings and has been reversed on appeal more times than is average for a federal judge.

Another criticism is that he twice failed to recuse himself fast enough in a case involving defrauded Pennsylvania school districts and a bank in which his wife was an officer and in which he had substantial funds.

The National Employment Lawyers Association said it opposes Smith's confirmation because he "has a disturbingly defense-oriented decisional record in many areas, including employment and civil rights cases, and interprets the law in ways that deny justice to individuals."

In accord with White House policy, judicial nominees do not discuss their nominations with reporters.

The Senate Judiciary Committee has not indicated when it will hold a vote on Smith. Most

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recently, the panel rejected by one vote the nomination of Mississippi District Judge Thomas J. Pickering for a seat on the 5th U.S. Circuit Court of Appeals on a strict party-line vote.

At a recent Dallas fund-raiser after Pickering's defeat, Bush vowed, "We've got to get good, conservative judges appointed to the bench and approved by the United States Senate."

WASHINGTON WIRE

WALL STREET JOURNAL
April 5, 2002, Friday

ABSTRACT:

Senate Democrats seeking to block Bush nominees question prospective US attorneys about connections to disgraced Enron Corp and Arthur Andersen LLP (S)

Op/Eds

Partisanship blocks Bush nominee

Sarasota Herald-Tribune
April 7, 2002 Sunday

Sen. Dianne Feinstein, D-Calif., according to a recent news report, stated that President Bush does not have a mandate to appoint conservative judges to the federal judiciary because of the circumstances surrounding his election. This statement was made with regard to the nomination of Charles Pickering, a highly qualified federal judge, for elevation to the U.S. Court of Appeals for the Fifth Circuit. The truth is that the president has the right to appoint anyone he chooses to the federal courts with the approval of the Senate. The problem is that the Democrats on the Senate Judiciary Committee will not vote to send the nomination to the Senate floor for a vote because they fear that it will be approved. This seems to me to be the height of obstructionism.

Senate Democrats appear to have no problem with the fact that their one vote majority, given to them by a renegade Republican, hardly represents a mandate to block a fair vote on a nominee.

Senate Majority Leader Tom Daschle has further decided that a guarantee of 60 votes is now required for approval of nominees or bills that he doesn't like before he will allow them to come to the floor of the Senate for a vote, even though the Constitution only requires a simple majority. He uses the excuse that these bills or confirmations might produce a filibuster and therefore he does not want to waste the Senate's time.

So much for the bipartisanship that the Democrats are always touting.

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Robert Capo
Sarasota

Pickering redux

Jennifer Harper
The Washington Times
April 05, 2002, Friday

The National Organization for Women has opened the liberal assault on U.S. District Judge D. Brooks Smith of Pennsylvania.

The feminist group yesterday in a letter to Republican Sen. Arlen Specter of Pennsylvania said that Judge Smith, nominated by President Bush for a spot on the 3rd U.S. Circuit Court of Appeals, is a member of an all-male private club.

According to the Associated Press, Judge Smith remained in the Spruce Creek Rod and Gun Club 11 years after acknowledging to senators in a 1988 confirmation hearing that the federal judge's code of conduct required resignation from all-male clubs.

Kathy Miller, president of Pennsylvania's NOW chapter, inferred sexism from this, telling AP that "it basically says that he's not concerned about discrimination against women."

Judge Smith "did make an active effort to make a change, but the organization was not responsive to his effort, but he did try to make that change more than once," said Tom Murphy, the club's immediate past president. Judge Smith resigned from the club in 1999.

The federal judges' code of conduct exempts clubs with purely social purpose and limited membership from the sex-membership rule, Justice Department officials said.

Judge Smith already has had a confirmation hearing, but no vote has been set by the Democrat-controlled Senate Judiciary Committee.

REV_00142764

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>
BCC: elizabeth camp (elizabeth camp [WHO])
Sent: 4/8/2002 3:42:16 PM
Subject: : Card letter
Attachments: P_K9LK6003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-APR-2002 19:42:16.00
SUBJECT:: Card letter
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:elizabeth camp (elizabeth camp [WHO])
READ:UNKNOWN
End Original ARMS Header

Hey, we just went back to reconstruct this to see if anything had slipped through the cracks. Here is what we found. After we received your comment below and comments from OHS (as well as comments to Judge from Nick, I believe) on Wed. the 20th, Judge Gonzales sent it to Secretary Card on the night of the 20th for his review. Secretary Card was leaving the morning of the 21st, and there was a strong desire to get it out before he left. Secretary Card reviewed it and signed the letter early on the morning of Thursday the 21st. It was then FAXed that morning. Copies of the final were delivered to Nick's office (to Jill Davie or Mike Conway, I believe), but the final version apparently may not have made its way to you.

I hope we did not cause any unintended confusion in this. But my apologies if we did.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/08/2002 07:17 PM ----------

Brett M. Kavanaugh
03/20/2002 05:20:57 PM
Record Type: Record

To: Christine Ciccone/WHO/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: Draft letter to Senators Byrd and Stevens

yes, agree with that thought.

Christine Ciccone
03/20/2002 05:09:36 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Draft letter to Senators Byrd and Stevens

thanks for the draft - good letter except we might want to make it a little softer -just to match Andy's personal style.

Brett M. Kavanaugh
03/20/2002 04:48:42 PM
Record Type: Record

To: Jill Davie/WHO/EOP@EOP, Michael J. Conway/WHO/EOP@EOP, Christine Ciccone/WHO/EOP@EOP
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: Draft letter to Senators Byrd and Stevens

Judge Gonzales asked me to forward the current draft to Nick and Christine.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K9LK6003_WHO.TXT_1>

DRAFT
March __, 2002

Dear Senator Stevens and Senator Byrd:

The President received your letter of March 15, 2002, and asked that I reply on his behalf.

The Administration respects the important role played by the Congress in evaluating and funding homeland security efforts, and we are committed to meeting Congress' legitimate need for information. For that reason, senior Administration officials, including members of the President's Cabinet and the Director of the Office of Management and Budget, have testified before Congress on these subjects. Governor Ridge and his staff have also provided numerous briefings to many members of Congress and their staffs on homeland security and budgetary matters. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. Just as significantly, each of the departments and agencies with operational and budget authority also will continue to work with and testify before the Congress.

As Nick Calio advised you in his letter of March 13, 2002, however, this Administration also will adhere to the same policy that Presidents of both parties have long followed and that Congress has long respected: The President's immediate White House advisers and staff, including officials with responsibilities closely analogous to those of Governor Ridge such as the National Security Adviser, ordinarily do not testify before Congress on policy matters. This is a fundamental principle of separation of powers that protects the confidentiality of the President's relationship with his White House advisors and the President's ability to employ advisors who can devote their attention to assisting and advising the President as he sees fit.

The rare historical exceptions to the rule against testimony by White House staff have generally been in circumstances, unlike those here, involving substantial evidence of personal or official misconduct. For example, your letter cites three World War II examples, but each of those situations involved allegations of personal or official wrongdoing. And even if there were isolated examples of close Presidential advisors testifying on policy matters, that would not alter our fundamental point: For many decades, Presidents of both parties -- and Congress -- have agreed that the President's White House advisors ordinarily do not testify before Congress on policy matters.

I appreciate your continued interest in homeland security issues, and I invite you to meet with me, Governor Ridge, Nick Calio, and Judge Gonzales to work out a satisfactory accommodation that will ensure, consistent with these principles, that you receive the information you need regarding homeland security matters.

Sincerely,

Andrew H. Card, Jr.
Chief of Staff

From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;mtucker@rnchq.org [NSC] <mtucker@rnchq.org>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>;Joseph W. Hagin/WHO/EOP@EOP [WHO] <Joseph W. Hagin>
Sent: 4/9/2002 6:38:51 AM
Subject: : Re: Fw: Guidance on political events
Attachments: P_AYWK6003_WHO.TXT_1.htm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-APR-2002 10:38:51.00
SUBJECT:: Re: Fw: Guidance on political events
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:mtucker@rnchq.org (mtucker@rnchq.org [NSC])
READ:UNKNOWN
CC:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We need to get together to develop an appropriate response to this. Joe Hagin, or his representative, should also be part of this. We should try to do sooner rather than later.

Anne Womack
04/09/2002 09:57:20 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Ken Mehlman/WHO/EOP@EOP
Subject: Fw: Guidance on political events

---------- Forwarded by Anne Womack/WHO/EOP on 04/09/2002 09:56 AM ----------

Ken Mehlman
04/08/2002 07:29:11 PM
Record Type: Record

To: Anne Womack/WHO/EOP@EOP
cc:
Subject: Fw: Guidance on political events

let's work on this together.
---------- Forwarded by Ken Mehlman/WHO/EOP on 04/08/2002 07:27 PM ----------

Ken Mehlman <kmehlman@georgewbush.com>
04/08/2002 07:23:02 PM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
Subject: Fw: Guidance on political events

Guidance on political events
----- Original Message -----
From: Jim Dyke - Communications
To: Ken Mehlman
Cc: Mindy Tucker - Communications
Sent: Monday, April 08, 2002 6:52 PM
Subject: Guidance on political events

we continue to get calls, the most recent from Bloomberg, on how much potus pays for political trips. how we calculate costs for air force one, how much the white house pays, who pays, etc. I would like to get a stock answer/process.

i would suggest the rnc say:
1) no taxpayer funds are used to pay for political activities.
2) the rnc receives a deposit for political events prior to the event from a campaign or other host.
3) the rnc refunds the excess amount.
4) the formula for these calculations has been used consistently dating back to president reagan.

all questions on cost of air force one, other details we would refer to the wh. travel or legal offices.

note: the amount of deposit will show up on our financial report, in the case of bloomberg inquiry for the march 1 trip to iowa, in two weeks. should we disclose the amount of deposit? or just, if pressed, tell them it will be on our financial disclosure form?

i assume wh legal and rnc legal will have to sign-off on this approach?

thanks.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AYWK6003_WHO.TXT_1>

----- Original Message -----
From: Jim Dyke - Communications
To: Ken Mehlman
Cc: Mind y Tucker - Communications
Sent: Monday, April 08, 2002 6:52 PM
Subject: Guidance on political events

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i assume wh legal and rnc legal will have to sign-of f on this approach?

thanks.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Mary M. Chuckerel/OMB/EOP@EOP [OMB] <Mary M. Chuckerel>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/9/2002 6:40:30 AM
Subject: : Re: OFHEO

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-APR-2002 10:40:30.00
SUBJECT:: Re: OFHEO
TO:Mary M. Chuckerel (CN=Mary M. Chuckerel/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Turns out I'm not as stupid as I thought. As so often happens, you got your Bretts and Brads confused: the lawyer in our office involved in this issue is Brett Kavanaugh. I'm copying him on this e-mail so he will know about the 2:00 p.m. in 462. Thanks.

Mary M. Chuckerel
04/09/2002 09:36:31 AM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
Subject: Re: OFHEO

I understand that you had asked John about the Corporate Governance part of the Office of Federal Housing Enterprise Oversight (OFHEO). See you this afternoon...

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP [WHO]
To: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;nicholas e. calio/who /eop@eop [WHO] <nicholas e. calio>;christine ciccone/who/eop@eop [WHO] <christine ciccone>;wendy j. grubbs/who/eop@eop [WHO] <wendy j. grubbs>;susan k. neely/who /eop@eop [WHO] <susan k. neely>;michael j. conway/who/eop@eop [WHO] <michael j. conway>;jill davie/who/eop@eop [WHO] <jill davie>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;charles s. abbot/ovp/eop@eop [OVP] <charles s. abbot>
Sent: 4/9/2002 11:08:54 AM
Subject: : Re: Draft OMB Testimony for Sen. Lieberman's Committee Thursday?
Attachments: P_6YAL6003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs ( CN=Wendy J. Grubbs/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-APR-2002 15:08:54.00
SUBJECT:: Re: Draft OMB Testimony for Sen. Lieberman's Committee Thursday?
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:nicholas e. calio ( CN=nicholas e. calio/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:christine ciccone ( CN=christine ciccone/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:wendy j. grubbs ( CN=wendy j. grubbs/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:susan k. neely ( CN=susan k. neely/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:michael j. conway ( CN=michael j. conway/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jill davie ( CN=jill davie/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:charles s. abbot ( CN=charles s. abbot/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Ed, Beth Rossman and Sally Canfield are working on the Driector's
testimony. Thanks.



From: Edward McNally on 04/09/2002 02:20:36 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Draft OMB Testimony for Sen. Lieberman's Committee
Thursday?

Christine or Brett -- Following on to the letter, and apparently as an
outcome of this morning's 11:00 meeting with the Chief of Staff, it is my
understanding that Mitch Daniels is expected to testify before the Senate
Gov't Affairs committee on Thursday to address the Administration's views
on Sen. Lieberman's proposal for a new Dept. of Nat'l Homeland Security.
Do you know WHEN a draft of the OMB testimony is expected, and WHO at OMB
is coordinating the initial draft? Many thanks -- McNally
```

Brett M. Kavanaugh
04/09/2002 12:54:24 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: STATUS: Draft letter from Nick Calio to Sen. Lieberman re Ridge testimony

Attached is the draft letter circulated yesterday. My understanding (from Judge Gonzales) is that Leg Affairs has some edits/comments/additions.

Message Sent
To:_____
Nicholas E. Calio/WHO/EOP@EOP
edward mcnally/who/eop@eop
christine ciccone/who/eop@eop
wendy j. grubbs/who/eop@eop
susan k. neely/who/eop@eop
Michael J. Conway/WHO/EOP@EOP
Jill Davie/WHO/EOP@EOP

Message Copied
To:_____
nicholas e. calio/who/eop@eop
christine ciccone/who/eop@eop
wendy j. grubbs/who/eop@eop
susan k. neely/who/eop@eop
michael j. conway/who/eop@eop
jill davie/who/eop@eop
elizabeth n. camp/who/eop@eop
Charles S. Abbot/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6YAL6003_WHO.TXT_1>

DRAFT
April 8, 2002

Dear Chairman Lieberman:

Thank you for your April 2 letter to Assistant to the President for Homeland Security Tom Ridge. The President and the Administration respect the important role played by the Congress with respect to homeland security, and appreciate your continued interest in and work on this vital issue.

The Administration is committed to meeting Congress' legitimate needs for information with respect to homeland security. For that reason, senior Administration officials, including members of the President's Cabinet and the Director of the Office of Management and Budget, have testified before Congress on these subjects. Governor Ridge and his staff also have provided numerous briefings to many members of Congress and their staffs on homeland security and budgetary matters. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. In addition, the departments and agencies with operational and budget authority will continue to work with and testify before the Congress.

Your letter asks for an Administration official to testify on "how to organize the federal government to promote homeland security" and proposed legislation to create a new Department of National Homeland Security. The Administration would be pleased to assist the Committee's consideration, and [name, title] is available to testify to the Administration's position on the proposed legislation.

Your letter specifically asks, in addition, for Governor Ridge to testify. Governor Ridge and his staff have already offered -- and remain available -- to brief you and the Committee on homeland security issues, including this organizational issue. As to formal testimony, however, as Chief of Staff Card and I have informed Senators Byrd and Stevens, this Administration will adhere to the same policy that Presidents of both parties have long followed and that Congress has long respected: The President's immediate White House advisers and staff, such as Governor Ridge, ordinarily do not testify before Congress on policy matters. This principle has long applied to Presidential advisors such as the Chief of Staff, the Counsel, the National Security Advisor, and other immediate advisors of the President such as Governor Ridge. This principle of separation of powers protects the confidentiality of the President's relationship with his White House advisors and the President's ability to employ advisors who can devote their attention to assisting and advising the President as the President sees fit.

Thank you again for your letter and your work on these important issues, and please do not hesitate to contact me with any questions.

Sincerely,

Nicholas E. Calio
Assistant to the President for Legislative Affairs

The Honorable Joseph I. Lieberman
Chairman
Committee on Governmental Affairs
United States Senate
Washington DC 20510-6250

From:	CN=Edward McNally/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	nicholas e. calio/who/eop@eop [WHO] <nicholas e. calio>;christine ciccone/who/eop@eop [WHO] <christine ciccone>;wendy j. grubbs/who/eop@eop [WHO] <wendy j. grubbs>;susan k. neely/who/eop@eop [WHO] <susan k. neely>;michael j. conway/who/eop@eop [WHO] <michael j. conway>;jill davie/who/eop@eop [WHO] <jill davie>;elizabeth n. camp/who /eop@eop [WHO] <elizabeth n. camp>;Charles S. Abbot/OVP/EOP@EOP [OVP] <Charles S. Abbot>
BCC:	robert.j.delahunty@usdoj.gov (robert.j.delahunty@usdoj.gov [UNKNOWN]), Magda E. Angulo (Magda E. Angulo/WHO/EOP [WHO])
Sent:	4/9/2002 10:20:33 AM
Subject:	: Draft OMB Testimony for Sen. Lieberman's Committee Thursday?
Attachments:	P_0O8L6003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-APR-2002 14:20:33.00
SUBJECT:: Draft OMB Testimony for Sen. Lieberman's Committee Thursday?
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:nicholas e. calio ( CN=nicholas e. calio/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:christine ciccone ( CN=christine ciccone/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:wendy j. grubbs ( CN=wendy j. grubbs/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:susan k. neely ( CN=susan k. neely/OU=who/O=eop@eop [ WHO ] )
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CC:michael j. conway ( CN=michael j. conway/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jill davie ( CN=jill davie/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:Charles S. Abbot ( CN=Charles S. Abbot/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
BCC:robert.j.delahunty@usdoj.gov ( robert.j.delahunty@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
BCC:Magda E. Angulo ( CN=Magda E. Angulo/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Christine or Brett -- Following on to the letter, and apparently as an
outcome of this morning's 11:00 meeting with the Chief of Staff, it is my
understanding that Mitch Daniels is expected to testify before the Senate
Gov't Affairs committee on Thursday to address the Administration's views
on Sen. Lieberman's proposal for a new Dept. of Nat'l Homeland Security.
Do you know WHEN a draft of the OMB testimony is expected, and WHO at OMB
is coordinating the initial draft? Many thanks -- McNally



Brett M. Kavanaugh
04/09/2002 12:54:24 PM
Record Type: Record
```

To: See the distribution list at the bottom of this message
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: STATUS: Draft letter from Nick Calio to Sen. Lieberman re Ridge testimony

Attached is the draft letter circulated yesterday. My understanding (from Judge Gonzales) is that Leg Affairs has some edits/comments/additions.

Message Sent
To:_____
Nicholas E. Calio/WHO/EOP@EOP
edward mcnally/who/eop@eop
christine ciccone/who/eop@eop
wendy j. grubbs/who/eop@eop
susan k. neely/who/eop@eop
Michael J. Conway/WHO/EOP@EOP
Jill Davie/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_008L6003_WHO.TXT_1>

DRAFT
April 8, 2002

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Sincerely,

Nicholas E. Calio
Assistant to the President for Legislative Affairs

The Honorable Joseph I. Lieberman
Chairman
Committee on Governmental Affairs
United States Senate
Washington DC 20510-6250

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/9/2002 12:36:05 PM
Subject: : PA Judge

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-APR-2002 16:36:05.00
SUBJECT:: PA Judge
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI
---------- Forwarded by H. Christopher Bartolomucci/WHO/EOP on 04/09/2002 04:36 PM ----------

Bradford A. Berenson
04/09/2002 04:23:44 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: PA Judge

---------- Forwarded by Bradford A. Berenson/WHO/EOP on 04/09/2002 04:23 PM ----------

Scott Stanzel

04/09/2002 04:20:56 PM

Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP, Anne Womack/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP, Kyle Sampson/WHO/EOP@EOP
cc:
Subject: PA Judge

From The Morning Call

Gardner tapped for federal judge
Specter reveals president will make nomination, ending year of speculation.
By Elliot Grossman
Of The Morning Call

April 9, 2002

President Bush will nominate Lehigh County Judge James Knoll Gardner to serve as a federal judge in Allentown, filling a void created more than three years ago, U.S. Sen. Arlen Specter said Monday.

Specter, R-Pa., made the disclosure to a reporter moments after appearing at an unrelated event in Allentown. He had invited Gardner to the event to inform him about his pending nomination.

U.S. senators rarely, if ever, announce presidential nominations before the president does. Specter said he made an exception with this one

because it has been pending for so long. Gardner's name has been in the pipeline more than a year.

''I think it's time the public was informed it's been resolved,'' Specter said. ''It's been a terrible strain on a lot of people, especially Judge Gardner.''

Specter said he had more trouble getting White House approval for Gardner than for almost any other nomination in his 21 years in the Senate. Specter then quoted Shakespeare, ''All's well that ends well.''

''I am extremely grateful, thrilled and excited to hear this news about this position I have sought for a decade,'' Gardner said.

Gardner had long been identified as the leading local candidate for the job. But the White House ''raised objections,'' Specter said, delaying a decision. Specter said a senior White House official told him Thursday evening that Gardner had gotten a green light.

To make room for Gardner, another judge will take senior status.

With Gardner standing beside him Monday, Specter declined to say what had delayed the nomination. Specter wouldn't even say whether it was a political problem or something about Gardner's background.

''I've gone over his background with a fine-tooth comb,'' Specter said. ''He's a good man.''

Gardner, a Republican, also declined to say what had delayed his nomination. ''There is nothing in my background, when fully investigated, that would work as a disqualification for me to be a federal judge,'' Gardner said.

A White House spokesman declined Monday to confirm that Gardner would be nominated to the lifetime job.

To get potential nominees, the White House seeks suggestions from the U.S. senators in the states where the judges will preside. Specter has been particularly influential in getting his favorites appointed to the U.S. District Court for Eastern Pennsylvania, which is based in Philadelphia, Specter's hometown.

Gardner, 61, of Upper Milford Township, said his sitting in Allentown would make federal court more convenient for local lawyers, litigants and witnesses. ''It's going to be great for the people of the Lehigh Valley,'' he said.

Since Judge Edward Cahn retired in December 1998, the $17 million federal courthouse in Allentown has been without a U.S. District judge. That's longer than any other federal courthouse in the country except for two, court officials believe.

Franklin Van Antwerpen of Easton is the only U.S. District judge in eastern Pennsylvania, except for those in Philadelphia. Because of a full caseload, Van Antwerpen cannot handle all of the cases from the northern part of the district, forcing people to travel to Philadelphia for federal justice.

''Needless to say, I am very pleased to hear we will finally be getting someone to sit in Allentown as a U.S. District judge, and I hope the confirmation process will not take too long,'' Van Antwerpen said.

Two weeks ago, Bush nominated a Philadelphia lawyer to the last remaining vacancy in eastern Pennsylvania, a setback to the Lehigh Valley * at least temporarily.

But U.S. District Judge Jan DuBois of Philadelphia said he wrote Monday to President Bush, saying next Monday he will be taking senior status, a

semi-retirement role. That means there will be a vacancy for an active judge in eastern Pennsylvania, to which Gardner will be nominated.

DuBois said he would be giving his wife a copy of the letter Monday night to celebrate her birthday. His senior status will free them to do more traveling, he said.

Judicial nominees are reviewed by the Senate Judiciary Committee and require confirmation by the full Senate. Specter is a senior member of the judicial panel.

Gardner, a former Lehigh County president judge, has been on the county bench for more than 20 years. Before that, he was in private practice and served as an assistant Lehigh County district attorney. He graduated from Yale University and Harvard Law School.

U.S. Rep. Pat Toomey, R-15th District, said he's thrilled another Lehigh Valley person will be handling federal cases. ''Someone who understands our culture, our traditions and our values is useful on the federal bench,'' Toomey said. ''He's one of us.''

Specter had asked Gardner to join him for a news conference outside the Allentown police station, where Specter, police officers and city and Lehigh County officials touted a program that has police and juvenile probation officers patrolling together.

From: Matthew Lamberti) (Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [UNKNOWN]
To: Benedi; Lizette D <Lizette.D.Benedi@usdoj.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Sutton; Jason <Jason.J.Sutton@usdoj.gov>;Clement; Paul D <Paul.D.Clement@usdoj.gov>;Ho; James <James.Ho@usdoj.gov>;Coughlin; Robert <Robert.Coughlin@usdoj.gov>;Martens; Matthew <Matthew.Martens@usdoj.gov>;'Stwist@viad.com' <Stwist@viad.com>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;'dshay@viad.com' <dshay@viad.com>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>
CC: Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>
Sent: 4/9/2002 5:12:31 PM
Subject: : Re:RE: VRA Conference Call with AAG Viet Dinh
Attachments: P_2HPL6003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) (
Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [UNKNOWN])
CREATION DATE/TIME: 9-APR-2002 21:12:31.00
SUBJECT:: Re:RE: VRA Conference Call with AAG Viet Dinh
TO:"Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov> ("Benedi; Lizette D"
<Lizette.D.Benedi@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN])
READ:UNKNOWN
TO:"Sutton; Jason" <Jason.J.Sutton@usdoj.gov> (IPM Return Requested) ("Sutton; Jason"
<Jason.J.Sutton@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Clement; Paul D" <Paul.D.Clement@usdoj.gov> (IPM Return Requested) ("Clement; Paul D"
<Paul.D.Clement@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Ho; James" <James.Ho@usdoj.gov> (IPM Return Requested) ("Ho; James"
<James.Ho@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Coughlin; Robert" <Robert.Coughlin@usdoj.gov> (IPM Return Requested) ("Coughlin;
Robert" <Robert.Coughlin@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Martens; Matthew" <Matthew.Martens@usdoj.gov> (IPM Return Requested) ("Martens;
Matthew" <Matthew.Martens@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"'Stwist@viad.com'" <Stwist@viad.com> (IPM Return Requested) ("'Stwist@viad.com'"
<Stwist@viad.com> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"'dshay@viad.com'" <dshay@viad.com> (IPM Return Requested) ("'dshay@viad.com'"
<dshay@viad.com> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Given that this is the Kyl-Feinstein amendment, I would prefer that we

handle
putting together drafts of what people agree to. I also think it makes
more
sense to put together a draft when the pending discussions are concluded.
Thanks.

_____Reply Separator_____
Subject: RE: VRA Conference Call with AAG Viet Dinh
Author: "Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov>
Date: 4/9/2002 5:51 PM

Attached is a new Draft which reflects the discussions we had earlier
today.
Any language that was previously redlined in Draft 15/DOJ Suggested
Revision,
but that was agreed to by all the parties today, is now in bold typeface.

In the places where we still have outstanding issues to discuss tomorrow,
I have
left the redline in and capitalized the phrases. Specifically, no
agreement has
been reached on: the language in section 2 pertaining to "decisions"; the
reprieve/pardon language in section 4; and the entirety of section 5 and
whether
the ratification language should be in the text of the amendment itself or
in
the joint resolution.

Feel free to give me a call (202-514-3824) if you have any questions.
Thanks!

-----Original Message-----
From: Sutton, Jason
Sent: Tuesday, April 09, 2002 5:12 PM
To: Clement, Paul D; Martens, Matthew; Benedi, Lizette D; Ho, James;
Coughlin,
Robert; 'Stwist@viad.com'; 'Stephen_Higgins@judiciary.senate.gov';
'Matthew_Lamberti@judiciary.senate.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'dshay@viad.com'; 'dschacht@opd.eop.gov'
Cc: 'cwilson@opd.eop.gov'
Subject: VRA Conference Call with AAG Viet Dinh
Importance: High

A VRA conference call has been scheduled for tomorrow (Wednesday) at 5:30
pm.
Please let me know if you will be able to participate. Call-in number and
passcode will be provided tomorrow. Thank you.

Jason Sutton
Special Assistant to the Assistant Attorney General
202.514.9148

Received: from mailsims1.senate.gov ([156.33.203.10]) by
IMAEXC2.senate.gov with
SMTP
(IMA Internet Exchange 3.13) id 0028BF07; Tue, 9 Apr 2002 17:52:01 -0400
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by mailsims1.senate.gov (Sun Internet Mail Server
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with SMTP id <0GUB00E2PM9T2L@mailsims1.senate.gov>; Tue,
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Date: Tue, 09 Apr 2002 17:51:34 -0400
From: "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov>
Subject: RE: VRA Conference Call with AAG Viet Dinh
To: "Sutton, Jason" <Jason.J.Sutton@usdoj.gov> (Receipt Notification
Requested)
(IPM Return Requested), "Clement, Paul D" <Paul.D.Clement@usdoj.gov>
(Receipt Notification Requested) (IPM Return Requested),
"Ho, James" <James.Ho@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested), "Coughlin, Robert" <Robert.Coughlin@usdoj.gov>
(Receipt Notification Requested) (IPM Return Requested),
"Martens, Matthew" <Matthew.Martens@usdoj.gov>
(Receipt Notification Requested) (IPM Return Requested),
"'Stwist@viad.com'" <Stwist@viad.com> (Receipt Notification Requested)
(IPM Return Requested), "'Stephen_Higgins@judiciary.senate.gov'"
<Stephen_Higgins@judiciary.senate.gov> (Receipt Notification Requested)
(IPM Return Requested),
Matthew_Lamberti@judiciary.senate.gov (Receipt Notification Requested)
(IPM Return Requested),
"'Brett_M._Kavanaugh@who.eop.gov'" <Brett_M._Kavanaugh@who.eop.gov>
(Receipt Notification Requested) (IPM Return Requested),
"'dshay@viad.com'" <dshay@viad.com> (Receipt Notification Requested)
(IPM Return Requested), "'dschacht@opd.eop.gov'" <dschacht@opd.eop.gov>
(Receipt Notification Requested) (IPM Return Requested),
"'Garry_Malphrus@opd.eop.gov'" <Garry_Malphrus@opd.eop.gov>
(Receipt Notification Requested) (IPM Return Requested)
Cc: "'cwilson@opd.eop.gov'" <cwilson@opd.eop.gov>
(Receipt Notification Requested) (IPM Return Requested)
Message-id: <"JMD0081-020409215133Z-258950*/PRMD=USDOJ-JCON/ADMD=
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Content-type: MULTIPART/MIXED;
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Importance: Normal
Original-encoded-information-types: IA5-Text
Priority: Normal
Precedence: first-class
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X-Priority: 3 (Normal)
- newlanguage_APRIL 19.doj edits.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2HPL6003_WHO.TXT_1>

15

* DOJ SUGGESTED REVISION*

9 April 2002

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States
to protect the rights of crime victims.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States ~~within seven years from the date of its submission by the Congress,~~ **and which shall take effect on the 180th day after ratification of this article:**

"ARTICLE —

"SECTION 1. The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those accused of victimizing them, are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article.

"SECTION 2. A victim of violent crime shall have the right to reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused; the rights not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, **reprieve**, and pardon proceedings; and the right to ~~adjudicative~~ decisions IN SUCH PUBLIC PROCEEDING that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity.

"SECTION 3. Nothing in this article shall be construed to provide grounds for a new trial or to authorize any claim for damages. Only the victim or the victim's lawful representative may assert the rights established by this article, and no person accused of the crime may obtain any form of relief hereunder.

"SECTION 4. Congress shall have power to enforce by appropriate legislation the provisions of this article.~~, except those pertaining to federal pardon and commutation proceedings."~~ NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT THE PRESIDENT'S AUTHORITY TO GRANT REPRIEVES OR PARDONS.

"SECTION 5. THIS ARTICLE SHALL BE INOPERATIVE UNLESS IT

SHALL HAVE BEEN RATIFIED AS AN AMENDMENT TO THE CONSTITUTION BY THE LEGISLATURES OF THREE-FOURTHS OF THE SEVERAL STATES WITHIN SEVEN YEARS FROM THE DATE OF ITS SUBMISSION TO THE STATES BY THE CONGRESS."

From: Matthew Lamberti) (Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [UNKNOWN]
To: Benedi; Lizette D <Lizette.D.Benedi@usdoj.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Sutton; Jason <Jason.J.Sutton@usdoj.gov>;Clement; Paul D <Paul.D.Clement@usdoj.gov>;Ho; James <James.Ho@usdoj.gov>;Coughlin; Robert <Robert.Coughlin@usdoj.gov>;Martens; Matthew <Matthew.Martens@usdoj.gov>;'Stwist@viad.com' <Stwist@viad.com>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;'dshay@viad.com' <dshay@viad.com>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>
CC: Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>
Sent: 4/9/2002 5:12:31 PM
Subject: : Re:RE: VRA Conference Call with AAG Viet Dinh
Attachments: P_2HPL6003_OPD.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) (
Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [UNKNOWN])
CREATION DATE/TIME: 9-APR-2002 21:12:31.00
SUBJECT:: Re:RE: VRA Conference Call with AAG Viet Dinh
TO:"Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov> ("Benedi; Lizette D"
<Lizette.D.Benedi@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN])
READ:UNKNOWN
TO:"Sutton; Jason" <Jason.J.Sutton@usdoj.gov> (IPM Return Requested) ("Sutton; Jason"
<Jason.J.Sutton@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
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Robert" <Robert.Coughlin@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Martens; Matthew" <Matthew.Martens@usdoj.gov> (IPM Return Requested) ("Martens;
Matthew" <Matthew.Martens@usdoj.gov> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"'Stwist@viad.com'" <Stwist@viad.com> (IPM Return Requested) ("'Stwist@viad.com'"
<Stwist@viad.com> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"'dshay@viad.com'" <dshay@viad.com> (IPM Return Requested) ("'dshay@viad.com'"
<dshay@viad.com> (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Given that this is the Kyl-Feinstein amendment, I would prefer that we
handle
putting together drafts of what people agree to. I also think it makes
more
sense to put together a draft when the pending discussions are concluded.
Thanks.

_____Reply Separator_____
Subject: RE: VRA Conference Call with AAG Viet Dinh
Author: "Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov>
Date: 4/9/2002 5:51 PM

Attached is a new Draft which reflects the discussions we had earlier today.
Any language that was previously redlined in Draft 15/DOJ Suggested Revision,
but that was agreed to by all the parties today, is now in bold typeface.

In the places where we still have outstanding issues to discuss tomorrow, I have
left the redline in and capitalized the phrases. Specifically, no agreement has
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the ratification language should be in the text of the amendment itself or in
the joint resolution.

Feel free to give me a call (202-514-3824) if you have any questions.
Thanks!

-----Original Message-----
From: Sutton, Jason
Sent: Tuesday, April 09, 2002 5:12 PM
To: Clement, Paul D; Martens, Matthew; Benedi, Lizette D; Ho, James; Coughlin,
Robert; 'Stwist@viad.com'; 'Stephen_Higgins@judiciary.senate.gov';
'Matthew_Lamberti@judiciary.senate.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'dshay@viad.com'; 'dschacht@opd.eop.gov'
Cc: 'cwilson@opd.eop.gov'
Subject: VRA Conference Call with AAG Viet Dinh
Importance: High

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Please let me know if you will be able to participate. Call-in number and passcode will be provided tomorrow. Thank you.

Jason Sutton
Special Assistant to the Assistant Attorney General
202.514.9148

Received: from mailsims1.senate.gov ([156.33.203.10]) by IMAEXC2.senate.gov with
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(IMA Internet Exchange 3.13) id 0028BF07; Tue, 9 Apr 2002 17:52:01 -0400
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with SMTP id <0GUB00E2PM9T2L@mailsims1.senate.gov>; Tue,
9 Apr 2002 17:56:18 -0400 (EDT)
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with ESMTP id GUBM2L01.PMF; Tue, 09 Apr 2002 17:51:57 -0400
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id RAA07798; Tue, 09 Apr 2002 17:51:56 -0400 (EDT)
Received: by TELEMAIL; Tue, 09 Apr 2002 17:51:33 -0400
Date: Tue, 09 Apr 2002 17:51:34 -0400
From: "Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov>

Subject: RE: VRA Conference Call with AAG Viet Dinh
To: "Sutton, Jason" <Jason.J.Sutton@usdoj.gov> (Receipt Notification
Requested)
(IPM Return Requested), "Clement, Paul D" <Paul.D.Clement@usdoj.gov>
(Receipt Notification Requested) (IPM Return Requested),
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"'Brett_M._Kavanaugh@who.eop.gov'" <Brett_M._Kavanaugh@who.eop.gov>
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"'Garry_Malphrus@opd.eop.gov'" <Garry_Malphrus@opd.eop.gov>
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Cc: "'cwilson@opd.eop.gov'" <cwilson@opd.eop.gov>
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Priority: Normal
Precedence: first-class
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X-Priority: 3 (Normal)
- newlanguage_APRIL 19.doj edits.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2HPL6003_OPD.TXT_1>

15

* DOJ SUGGESTED REVISION*

9 April 2002

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States
to protect the rights of crime victims.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States ~~within seven years from the date of its submission by the Congress,~~ **and which shall take effect on the 180th day after ratification of this article:**

"ARTICLE —

"SECTION 1. The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those accused of victimizing them, are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article.

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SHALL HAVE BEEN RATIFIED AS AN AMENDMENT TO THE CONSTITUTION BY THE LEGISLATURES OF THREE-FOURTHS OF THE SEVERAL STATES WITHIN SEVEN YEARS FROM THE DATE OF ITS SUBMISSION TO THE STATES BY THE CONGRESS."

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2002 4:51:00 AM
Subject: : LRM IKK184 - - Statement of Administration Policy on HR3991 Taxpayer Protection and IRS Accountability Act of 2002
Attachments: P_2KVL6003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2002 08:51:00.00
SUBJECT:: LRM IKK184 - - Statement of Administration Policy on HR3991 Taxpayer Protection and IRS Accountability Act of 2002
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

sorry for the delay in transmitting this.
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/10/2002 08:50 AM ----------

From: Irene Kho on 04/08/2002 06:15:16 PM
Record Type: Record

To: llr@do.treas.gov , justice.lrm@usdoj.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IKK184 - - Statement of Administration Policy on HR3991 Taxpayer Protection and IRS Accountability Act of 2002

Attached is a draft SAP on H.R. 3991. The bill is scheduled to be considered on the House floor on Wednesay, April 10th. Please review and provide comments by 11:00 AM, Tuesday, April 9th.

LRM ID: IKK184
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, April 8, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: Statement of Administration Policy on HR3991 Taxpayer Protection and IRS Accountability Act of 2002

DEADLINE: 11:00 AM Tuesday, April 9, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a draft SAP on H.R. 3991. The bill is scheduled to be considered on the House floor on Wednesay, April 10th. Please review and provide comments by 11:00 AM, Tuesday, April 9th.

DISTRIBUTION LIST

AGENCIES:
118-TREASURY - Thomas M. McGivern - (202) 622-2317
061-JUSTICE - Daniel Bryant - (202) 514-2141
018-Council of Economic Advisers - Liaison Officer - (202) 395-5084

EOP:
Amy C. Smith
Lauren C. Lobrano
Danielle M. Simonetta
Stephen S. McMillin
Kenneth L. Schwartz
Alan B. Rhinesmith
Mark J. Schwartz
Robert F. Mahaffie
Ursula S. Gillis
Douglas Pitkin
Joanne Chow
David J. Haun
NEC LRM
OVP LRM
WHGC LRM
Douglas J. Holtz-Eakin
Carlos E. Bonilla
John M. Ackerly
David W. Hobbs
Mary C. Barth
Karen M. Shaffer
Alexander T. Hunt
Jefferson B. Hill
Jonathan P. Womer
Daniel J. Chenok
OFBCI LRM
Jack A. Smalligan
Christina M. Lagdameo
Matthew D. McKearn
Cristal A. Thomas
John F. Morrall III
James J. Jukes
Richard E. Green
Diana L. Schacht
Garry Malphrus
Ruben S. Barrales
Sheila Conley
Philip J. Perry
Matthew J. Schneider
Jay P. Lefkowitz
David S. Addington
Helgard C. Walker
Joel D. Kaplan
Augustine T. Smythe
Eric C. Pelletier
LRM ID: IKK184 SUBJECT: Statement of Administration Policy on HR3991 Taxpayer Protection and IRS Accountability Act of 2002

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Amy C. Smith/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Stephen S. McMillin/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
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Joanne Chow/OMB/EOP@EOP
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Helgard C. Walker/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Augustine T. Smythe/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2KVL6003_WHO.TXT_1>

DRAFT -- NOT FOR RELEASE

April 9, 2002
(House)

H.R. 3991 - Taxpayer Protection and IRS Accountability Act of 2002
(Rep. Houghton (R) New York)

The Administration supports House passage of H.R. 3991. The Administration believes that the bill will improve tax fairness, strengthen taxpayers rights and protections, and improve the Internal Revenue Service's (IRS) ability to serve taxpayers. The Administration also supports provisions to strengthen the taxpayer privacy protections provided in the Code.

The Administration is particularly pleased that the bill includes proposals contained in the President's Fiscal Year 2003 Budget, most notably, the 15-day extension for electronically-filed returns and modification of Section 1203 of the IRS Restructuring and Reform Act of 1998 to improve the efficiency and effectiveness of the IRS' operations without compromising taxpayer protections. The Administration also supports the amendments to the interest and penalty provisions of the Code that are intended to make it easier for taxpayers to comply with the law and enhance the fairness of these provisions.

The Administration supports full, prompt, and constitutionally permissible disclosure of contributions and expenditures designed to influence the outcome of Federal elections, so voters will have complete and timely information on which to make informed decisions. The Administration recognizes that there are technical flaws in current law regarding coordination with the States, and there is widespread confusion and noncompliance with regard to its application at the State and local levels. This legislation seeks to address those concerns.

Pay-As-You-Go Scoring

Any law that would reduce receipts or increase direct spending is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, H.R. 3991, or any substitute amendment in lieu thereof that would reduce revenues or increase direct spending, will be subject to the pay-as-you-go requirement. OMB's scoring estimates are under development. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives.

* * * * * * *

From:	CN=Edward McNally/OU=WHO/O=EOP [WHO]
To:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent:	4/10/2002 7:39:34 AM
Subject:	: Re: Brett's comments on Addington text
Attachments:	P_706M6003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2002 11:39:34.00
SUBJECT:: Re: Brett's comments on Addington text
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Update re: status of Daniels testimony draft -- new draft which
incorporates your comments expected shortly.
---------- Forwarded by Edward McNally/WHO/EOP on 04/10/2002
11:46 AM ----------

Sally Canfield

04/10/2002 10:21:07 AM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc: carl buchholz/who/eop@eop
bcc:
Subject: Re: Brett's comments on Addington text

I've just spoken with Beth, who has come out of a productive meeting with
the Director regarding the testimony. She has David's suggested changes
and is also incorporating the Director's thoughts. She will send around
another draft when that task is completed.

SC

From: Edward McNally on 04/10/2002 09:42:57 AM
Record Type: Record

To: Sally Canfield/WHO/EOP@EOP
cc: Carl Buchholz/WHO/EOP@EOP, Elizabeth L. Rossman/OMB/EOP@EOP
Subject: Re: Brett's comments on Addington text

Sally -- This may be helpful to you and Beth in looking at David
Addington's suggestions.

---------------------- Forwarded by Edward McNally/WHO/EOP on 04/10/2002 09:48 AM ----------

Brett M. Kavanaugh
04/10/2002 09:10:12 AM
Record Type: Record

To: David S. Addington/OVP/EOP@EOP
cc: edward mcnally/who/eop@eop
bcc:
Subject: Re:

David's suggested approach to the testimony issue (deleting the paragraph with "honest difference" of opinion) makes sense to me. To respond to the expected questions, Mitch should be prepared, of course, to state the history and rationale for White House advisors not testifying.

David S. Addington
04/10/2002 09:03:58 AM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject:

Edf:

The changes I recommend are marked on the copy attached above.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_706M6003_WHO.TXT_1>

TESTIMONY OF
MITCHELL E. DANIELS, JR.
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
BEFORE
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

APRIL 11, 2002

Mr. Chairman, Mr. Thompson, Members of the Committee, I am pleased to be here this morning to discuss homeland security.

Introduction

Our nation learned a terrible lesson on September 11th. The characteristics of American society that we cherish -- our freedom, our openness, our great cities, our modern transportation systems -- make us vulnerable to terrorism of catastrophic proportions. This vulnerability will exist even after we bring justice to those responsible for the events of September 11th. Indeed, the threat of mass-destruction terrorism has become a reality of life in the 21st Century. It is, a permanent condition to which not just America, but the entire world must adjust.

The federal government ~~has an absolute obligation to secure~~ *must have as its top priority securing* the homeland from future terrorist attacks. This will involve major new programs and significant reforms by the federal government, several of which are described in the FY 2003 Budget. But it will also involve new or expanded efforts by state and local governments, private industry, non-governmental organizations, and ~~ordinary~~ *our* citizens. The higher priority we all now attach to homeland security has already begun to ripple through the land.

Homeland security is a challenge of monumental scale and complexity. It will not be cheap, easy, or quick. Achieving our homeland security objectives will require vast sums of money, strenuous labor, and many years. Our work has already begun, and it will continue. The American people should have no doubt that ultimately we will succeed in weaving a proper and permanent level of security into the fabric of America.

This President's FY 2003 budget reflects not just our absolute commitment to achieving a much more secure homeland, but also our determination to do so in a manner that preserves liberty and strengthens our economy.

September 11th and Our Immediate Response

The September 11th terrorist attacks on the World Trade Center and the Pentagon have presented an unprecedented challenge to our nation. The response has been, and must continue to be, equal to that challenge. In the immediate aftermath of the attacks, Congress swiftly appropriated $40 billion to compensate victims, aid reconstruction, wage war against terrorism,

REV_00142986

and strengthen our defenses at home. In the seven months since September 11th, the $40 billion dedicated to homeland security purposes has helped to:

- increase the number of sky marshals on our airlines;
- support the largest criminal investigation in U.S. history;
- acquire enough medicine to treat up to 10 million more people for anthrax or other bacterial infections;
- investigate the sources of terrorist funding, and then freeze the financial assets of more than150 individuals and organizations connected to international terrorism;
- deploy hundreds of Coast Guard cutters, aircraft, and small boats to patrol the approaches to our ports and protect them from internal or external threats;
- acquire equipment for certain major mail sorting facilities to find and destroy anthrax bacteria and other biological agents of terror; and,
- station 8,000 National Guards troops at baggage-screening checkpoints at 420 major airports.

It has also helped to strengthen our intelligence capabilities, with the objective of detecting terrorist threats before they materialize, so that we can prevent terrorist activities.

Homeland Security Strategy

The Administration is now taking the next step. When the President established a new Office of Homeland Security, under the leadership of Governor Tom Ridge, he directed the Office "to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks." *We have been building that strategy on many fronts, and it is our intention to prepare a document this summer that will summarize that strategy.*

This strategy will meet four key tests:

- The strategy for homeland security will be comprehensive and will integrate the full range of homeland security activities into a single, mutually supporting plan.
- The strategy will be a national strategy, not a federal government strategy as the threat posed by terrorism does not fall neatly within the jurisdiction of the federal government. To defeat terrorism, the federal government must work with states and localities and the private sector.
- The strategy will outline a long-term plan for the federal government to strengthen homeland security.
- Finally, the strategy will include measures by which we can evaluate progress and allocate resources. These objectives will set the goals for federal departments and agencies. They will also give guidance to state and local governments and the private sector.

At the same time as the Office of Homeland Security crafts a *document to summarize the* national strategy, the Administration will begin work immediately on four urgent and essential missions for the defense of our homeland: ensuring state and local first responders (firemen, police, and rescue workers) are prepared for terrorism; enhancing our defenses against biological attacks; securing our borders; and, sharing information and using information technology to secure the homeland.

REV_00142987

These four missions lead our homeland security agenda -- but they are not the whole of it. We must also finish the job of securing our airways. In 2003, the new Transportation Security Administration (TSA) will strive to meet the tight deadlines and rigorous aviation security requirements set by Congress. In addition, we also propose a robust expansion in domestic law enforcement work. The 2003 Budget requests enhancements to the capabilities of the FBI and other law enforcement/intelligence agencies. The President's Budget for 2003 includes total spending for homeland security that would rise to $38 billion in 2003 -- an $18 billion increase over the total appropriated in 2002, and a virtual doubling of the pre-September 11th levels.

On March 21st the President submitted a $27.1 billion supplemental budget request to Congress to address the War on Terrorism, Homeland Security and Economic Recovery. Funding for items included in this package meet the following criteria: they are true emergencies; they address an immediate and known requirement, and they cannot be met with existing funds. In most cases, the funds would be required to be obligated this fiscal year. Of this amount, $5.2 billion was provided for Homeland Security needs.

Office of Homeland Security

In developing the FY 2003 Budget, there was an unprecedented level of cooperation between OMB and OHS. OMB has dedicated staff and managers working with OHS, and many more are engaged on homeland security on an issue-by-issue basis. This arrangement has been very productive. OHS is focused *its review and advice* on building the capacities we need to fight terrorism in the most effective and efficient way. OMB adds its programmatic and budgetary knowledge to ensure that we are utilizing the right resources and tools to build that capacity. We expect that this arrangement will continue as OHS develops ~~its National Strategy~~ *the national strategy summary*, as the Administration works to develop the FY 2004 Budget, and beyond.

While the Office of Homeland Security coordinates ~~and~~ consults with *and provides advice to* OMB and agencies throughout the government, Governor Ridge does not have operational authority over any federal agency ~~except his own office within the White House~~. The roll-out of the Homeland Security Advisory System is illustrative of how the Governor coordinated with various agencies, but ultimately handed over the operational aspects of the final product to a Department – which, in this case, is the Justice Department.

The Administration recognizes and endorses the legitimate desire of Congress to have full access to the information it needs to ~~make decisions related~~ *legislative with regard* to the nation's homeland security. Through an extensive variety of means, the Administration will act to provide Congress with responsive answers to its information needs. Governor Ridge has regularly met with Members of Congress to provide extensive information on homeland security. In fact since October 8, Governor Ridge and his staff have held over 100 meetings with Members of Congress and their staff. And he has also offered to meet with the committees of jurisdictions in a non-testimonial format at their convenience.

REV_00142988

~~We have an honest difference of opinion about the propriety of those Presidential advisors without statutory office being compelled to testify before Congress. It is only this difference of principle, and not any disagreement about the need for Congress to inform itself, that separates our positions.~~

The President has said from the outset that the initial structure for organizing and overseeing homeland security may evolve over time as we all learn more and circumstances change. It is possible that the ~~National Strategy Review now underway~~ *the Administration* may recommend an arrangement different from the current one.

Conclusion

In the near term, the Administration is *working hard to ensure that all involved in homeland security, including the Congress, are kept fully informed* ~~open to all methods of conveying information that protect the confidentiality of Presidential advice~~. Longer term, we are pleased to discuss with Congress alternative ways of organizing for Homeland Security that effectively meet the needs of the American people and their legislative representatives.

The Nation faces new kinds of threats from new kinds of enemies. Defeating those threats will be the great challenge and the great achievement of this generation of Americans.

REV_00142989

From: CN=Elizabeth L. Rossman/OU=OMB/O=EOP [OMB]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>
Sent: 4/10/2002 8:10:46 AM
Subject: : FYI - Current version of Director's Senate testimony - please let me know if you have any comments. Fax is 5-3729. Thanks
Attachments: P_WS7M6003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth L. Rossman (CN=Elizabeth L. Rossman/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:10-APR-2002 12:10:46.00
SUBJECT:: FYI - Current version of Director's Senate testimony - please let me know if you have any comments. Fax is 5-3729. Thanks
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sally is getting OHS sign off on this.

Brett - this includes your new para (and, there were a few typos I caught in some other places).

Thanks for your help.

---------- Forwarded by Elizabeth L. Rossman/OMB/EOP on 04/10/2002 12:06 PM ----------

Elizabeth L. Rossman
04/10/2002 11:26:03 AM
Record Type: Record

To: Sally Canfield/WHO/EOP@EOP
cc:
Subject: I think your fax may be busy - here is electronic version for OHS clearance... thanks

I expect that Mitch will take another look at it when he gets back at 12:30. Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WS7M6003_WHO.TXT_1>

TESTIMONY OF
MITCHELL E. DANIELS, JR.
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
BEFORE
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

APRIL 11, 2002

Mr. Chairman, Mr. Thompson, Members of the Committee, I am pleased to be here this morning to discuss homeland security. The bills under review this morning are meant to improve the way the Federal government is structured regarding homeland security needs. Pursuant to the management responsibilities incumbent on me as the Director of the Office of Management and Budget, I am here to comment on the management issues involving a coordinated homeland security effort within the Administration and to ensure they are openly discussed between the Executive Branch and the Congress.

Introduction

Our nation learned a terrible lesson on September 11th. The characteristics of American society that we cherish -- our freedom, our openness, our great cities, our modern transportation systems -- make us vulnerable to terrorism of catastrophic proportions. This vulnerability will exist even after we bring justice to those responsible for the events of September 11th. Indeed, the threat of mass-destruction terrorism has become a reality of life in the 21st Century. It is a permanent condition to which not just America, but the entire world must adjust.

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September 11th and Our Immediate Response

REV_00142991

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- station 8,000 National Guards troops at baggage-screening checkpoints at 420 major airports; and,
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- The strategy for homeland security will be comprehensive and will integrate the full range of homeland security activities into a single, mutually supporting plan.
- The strategy will be a national strategy, not a federal government strategy as the threat posed by terrorism does not fall neatly within the jurisdiction of the federal government. To defeat terrorism, the federal government must work with states and localities and the private sector.
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At the same time as the Office of Homeland Security crafts a national strategy, the Administration will begin work immediately on four urgent and essential missions for the

REV_00142992

defense of our homeland: ensuring state and local first responders (firemen, police, and rescue workers) are prepared for terrorism; enhancing our defenses against biological attacks; securing our borders; and, sharing information and using information technology to secure the homeland.

These four missions lead our homeland security agenda -- but they are not the whole of it. We must also finish the job of securing our airways. In 2003, the new Transportation Security Administration (TSA) will strive to meet the tight deadlines and rigorous aviation security requirements set by Congress. In addition, we also propose a robust expansion in domestic law enforcement work. The 2003 Budget requests enhancements to the capabilities of the FBI and other law enforcement/intelligence agencies. The President's Budget for 2003 includes total spending for homeland security that would rise to $38 billion in 2003 -- an $18 billion increase over the total appropriated in 2002, and a virtual doubling of the pre-September 11th levels.

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While the Office of Homeland Security coordinates, consults with and provides advice to OMB and agencies throughout the government, Governor Ridge does not have operational authority over any federal agency. The roll-out of the Homeland Security Advisory System is illustrative of how the Governor coordinated with various agencies, but ultimately handed over the operational aspects of the final product to a Department – which, in this case, is the Justice Department.

The Administration recognizes and endorses the legitimate desire of Congress to have full access to the information it needs to make legislative decisions with regard to the nation's homeland security. Through an extensive variety of means, the Administration will act to provide Congress with responsive answers to its information needs. Governor Ridge has regularly met with Members of Congress to provide extensive information on homeland security. In fact since October 8, Governor Ridge and his staff have held over 100 meetings with Members of Congress and their staff. He has also offered to meet with the committees of jurisdiction in a non-testimonial format at their convenience and he has personally participated in

REV_00142993

over thirty-five meetings on Capitol Hill. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. In fact, during the next two weeks, he will be participating in a number of Congressional meetings, including one with the House Government Reform Committee and another with the Chairmen and Ranking Members of the House Appropriations Committee and its subcommittees.

As this record demonstrates, the Administration is committed to keeping Congress appropriately informed about homeland security issues. As to formal testimony, this Administration will adhere to the same policy that Presidents of both parties have long followed -- and that Congress has long respected. The President's immediate White House advisors and staff, such as Governor Ridge, ordinarily do not testify before Congress on policy matters. This principle of separation of powers protects the confidentiality of the President's relationship with his White House advisors and the President's ability to employ advisors who can devote their attention to assisting and advising the President as the President sees fit.

The President has said from the outset that the initial structure for organizing and overseeing homeland security may evolve over time as we all learn more and circumstances change. It is possible that the National Strategy Review now underway may recommend an arrangement different from the current one. One possibility might include a structure similar to the Office of National Drug Control Policy (ONDCP) in size and in scope of task. However, as you know, there could be problems with this approach in the context of homeland security. For instance, many believe the "drug czar" has too much operational authority.

On the other hand, if it is determined that the Director of Homeland Security should have more operational authority, the review could lead to an extensive restructuring proposal for homeland security functions. If the review should ultimately recommend to the President a different Homeland Security structure, there's a chance it may resemble your bill, Senator Lieberman, or any combination of legislation that has been proposed. However, if this is the case, a potential obstacle is the uncertainty that Congress would set aside its jurisdictional territoriality enough to embrace such a far-reaching proposal. As we move forward on options to strengthen homeland security, there is clearly a need to work across traditional jurisdictions, both in the Executive and the Legislative Branches. We appreciate the Committee's willingness to consider options that cut across existing boundaries. In dealing with a challenge of such scope and complexity, leadership will be needed, especially within the Congress, and across Government.

Conclusion

In the near term, the Administration is open to all methods of conveying information that protect the confidentiality of Presidential advice. Longer term, we are pleased to discuss with Congress alternative ways of organizing for Homeland Security that effectively meet the needs of the American people and their legislative representatives.

The Nation faces new kinds of threats from new kinds of enemies. Defeating those threats will be the great challenge and the great achievement of this generation of Americans.

REV_00142994

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>

Sent: 4/10/2002 8:38:45 AM

Subject: : Reminder - JSC today at 4pm in the Roosevelt

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CREATION DATE/TIME:10-APR-2002 12:38:45.00
SUBJECT:: Reminder - JSC today at 4pm in the Roosevelt
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From: CN=Elizabeth L. Rossman/OU=OMB/O=EOP [OMB]

To: sally canfield/who/eop@eop [WHO] <sally canfield>;richard falkenrath/who/eop@eop [WHO] <richard falkenrath>;carl buchholz/who/eop@eop [WHO] <carl buchholz>;david s. addington/ovp /eop@eop [OVP] <david s. addington>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;david j. haun/omb /eop@eop [OMB] <david j. haun>;andrew abrams/omb/eop@eop [OMB] <andrew abrams>;trent d. duffy/omb/eop@eop [OMB] <trent d. duffy>;amy l. call/omb/eop@eop [OMB] <amy l. call>;eric c. pelletier/omb/eop@eop [OMB] <eric c. pelletier>;christine c. mccarlie/omb /eop@eop [OMB] <christine c. mccarlie>;danielle m. simonetta/omb/eop@eop [OMB] <danielle m. simonetta>;shalini m. benson/omb/eop@eop [OMB] <shalini m. benson>;lauren c. lobrano/omb/eop@eop [OMB] <lauren c. lobrano>;john oxford/omb/eop@eop [OMB] <john oxford>;michelle a. enger/omb/eop@eop [OMB] <michelle a. enger>;Philip J. Perry/OMB /EOP@EOP [OMB] <Philip J. Perry>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>

Sent: 4/10/2002 4:14:08 PM

Subject: : OK - I know I've said it before... but here is the FINAL version of the testimony - we sent it up to the committee a few minutes ago....

Attachments: P_H9UM6003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
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CREATION DATE/TIME:10-APR-2002 20:14:08.00
SUBJECT:: OK - I know I've said it before... but here is the FINAL version of the testimony
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Thanks a lot for everyone's help and input!

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_H9UM6003_WHO.TXT_1>

TESTIMONY OF
MITCHELL E. DANIELS, JR.
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
BEFORE
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

APRIL 11, 2002

Mr. Chairman, Mr. Thompson, Members of the Committee, I am pleased to be here this morning to discuss homeland security. The bills under review this morning are meant to improve the way the Federal government is structured regarding homeland security needs. Pursuant to the management responsibilities inherent in my role as the Director of the Office of Management and Budget, I am here to comment on the organizational issues involving a coordinated homeland security effort within the Administration and to ensure they are openly discussed between the Executive Branch and the Congress.

Introduction

Our nation learned a terrible lesson on September 11th. The characteristics of American society that we cherish -- our freedom, our openness, our great cities, our modern transportation systems -- make us vulnerable to terrorism of catastrophic proportions. This vulnerability will exist even after we bring justice to those responsible for the events of September 11th. Indeed, the threat of mass-destruction terrorism has become a reality of life in the 21st Century. It is a permanent condition to which not just America, but the entire world must adjust.

The federal government must have as its top priority securing the homeland from future terrorist attacks. This will involve major new programs and significant reforms by the federal government, several of which are described in the FY 2003 Budget. But it will also involve new or expanded efforts by state and local governments, private industry, non-governmental organizations, and indeed all Americans. The higher priority we all now attach to homeland security has already begun to ripple through the land.

Homeland security is a challenge of monumental scale and complexity. It will not be cheap, easy, or quick. Achieving our homeland security objectives will require vast sums of money, strenuous labor, and many years. Our work has already begun, and it will continue. The American people should have no doubt that ultimately we will succeed in weaving a proper and permanent level of security into the fabric of America.

This President's FY 2003 budget reflects not just our absolute commitment to achieving a much more secure homeland, but also our determination to do so in a manner that preserves liberty and strengthens our economy.

September 11th and Our Immediate Response

The September 11th terrorist attacks on the World Trade Center and the Pentagon have presented an unprecedented challenge to our nation. The response has been, and must continue to

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be, equal to that challenge. In the immediate aftermath of the attacks, Congress swiftly appropriated $40 billion to compensate victims, aid reconstruction, wage war against terrorism, and strengthen our defenses at home. In the seven months since September 11th, funding provided for homeland security purposes has helped to:

- increase the number of air marshals on our airlines;
- support the largest criminal investigation in U.S. history;
- acquire enough medicine to treat up to 10 million more people for anthrax or other bacterial infections;
- investigate the sources of terrorist funding, and then freeze the financial assets of more than150 individuals and organizations connected to international terrorism;
- deploy hundreds of Coast Guard cutters, aircraft, and small boats to patrol the approaches to our ports and protect them from internal or external threats;
- acquire equipment for certain major mail sorting facilities to find and destroy anthrax bacteria and other biological agents of terror;
- station 8,000 National Guard troops at baggage-screening checkpoints at 420 major airports; and,
- strengthen our intelligence capabilities, with the objective of detecting terrorist threats before they materialize, so that we can prevent terrorist activities.

Homeland Security Strategy

The Administration is now taking the next step. When the President established a new Office of Homeland Security, under the leadership of Governor Tom Ridge, he directed the Office "to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks." We have been building that strategy on many fronts, and it is our intention to prepare a document this summer that will summarize that strategy in one place. This strategy will meet four key tests:

- The strategy for homeland security will be comprehensive and will integrate the full range of homeland security activities into a single, mutually supporting plan.
- The strategy will be a national strategy, not just a federal government strategy as the threat posed by terrorism does not fall solely within the jurisdiction of the federal government. To defeat terrorism, the federal government must work with states and localities and the private sector.
- The strategy will outline a long-term plan to strengthen homeland security.
- Finally, the strategy will include measures by which we can evaluate progress and allocate resources. These objectives will set the goals for federal departments and agencies. They will also give guidance to state and local governments and the private sector.

At the same time we craft a national strategy, the Administration will begin work immediately on four urgent and essential missions for the defense of our homeland: ensuring state and local first responders (firefighters, police, and rescue workers) are prepared for terrorism; enhancing our defenses against biological attacks; securing our borders; and, sharing information and using information technology to secure the homeland.

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These four missions lead our homeland security agenda -- but they are not the whole of it. We must also finish the job of securing our airways. In 2003, the new Transportation Security Administration (TSA) will strive to meet the tight deadlines and rigorous aviation security requirements set by Congress. In addition, we also propose a robust expansion in domestic law enforcement work. The 2003 Budget requests enhancements to the capabilities of the FBI and other law enforcement/intelligence agencies. The President's Budget for 2003 includes total spending for homeland security that would rise to $38 billion in 2003 -- an $18 billion increase over the total for 2002, and a virtual doubling of the pre-September 11th levels.

On March 21st the President submitted a $27.1 billion supplemental budget request to Congress to address the War on Terrorism, Homeland Security and Economic Recovery. Funding for items included in this package meet the following criteria: they are true emergencies; they address an immediate and known requirement, and they cannot be met with existing funds. In most cases, the funds would be required to be obligated this fiscal year. Of this amount, $5.2 billion was provided for additional homeland security needs.

Office of Homeland Security

In developing the FY 2003 Budget, there was an extraordinary level of cooperation between OMB and OHS. OMB has dedicated staff and managers working with OHS, and many more are engaged on homeland security on an issue-by-issue basis. This arrangement has been very productive. OHS is focusing its review and advice on building the capacities we need to fight terrorism in the most effective and efficient way. OMB adds its programmatic and budgetary knowledge to ensure that we are utilizing the right resources and tools to build that capacity. We expect that this arrangement will continue as we develop the national strategy summary, and as the Administration works to develop the FY 2004 Budget, and beyond.

While the Office of Homeland Security coordinates, consults with and provides advice to OMB and agencies throughout the government, Governor Ridge does not have operational authority over any federal agency. The roll-out of the Homeland Security Advisory System is illustrative of how the Governor coordinated with various agencies, but ultimately handed over the operational aspects of the final product to a Department – which, in this case, is the Justice Department.

The Administration recognizes and endorses the legitimate desire of Congress to have full access to the information it needs to make legislative decisions with regard to the nation's homeland security. Through an extensive variety of means, the Administration will act to provide Congress with responsive answers to its information needs. Governor Ridge has regularly met with Members of Congress to provide extensive information on homeland security. In fact, since October 8, Governor Ridge and his staff have held over 100 meetings with Members of Congress and their staff, and they plan to continue these meetings in the weeks ahead. He has also offered to meet with the committees of jurisdiction in a non-testimonial format at their convenience, and he has personally participated in over thirty-five meetings on Capitol Hill. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. During the next two weeks, he will be participating in a number of Congressional meetings, including one with the House Government Reform Committee and another with the Chairmen and Ranking Members of the House Appropriations Committee and its subcommittees.

REV_00143010

As this record demonstrates, the Administration is committed to keeping Congress appropriately informed about homeland security issues. As to formal testimony, this Administration will adhere to the same policy that Presidents of both parties have long followed -- and that Congress has long respected. As a matter of precedent, the President's immediate White House advisors, such as Governor Ridge, do not testify before Congress.

The President has said from the outset that the structure for organizing and overseeing homeland security may evolve over time as we all learn more and as circumstances change. It is possible that the National Strategy now underway may recommend continuation of the current arrangement; it is also possible that the National Strategy may recommend an arrangement different from the current one. One possibility might include a structure similar to the Office of National Drug Control Policy (ONDCP). It is already clear, however, that such a homeland office would be substantially larger in size and scope. Moreover, many believe the "drug czar" model is not well suited for operational authority.

If it is determined that the Director of Homeland Security should have operational authority, the review could lead to a proposal for extensive restructuring of homeland security functions. Should the review ultimately recommend to the President a different homeland security structure, there is a chance it may resemble Senator Lieberman's bill. A potential obstacle in this case is the uncertainty whether either Executive Branch agencies or the Congress would set aside jurisdictional territoriality enough to embrace such a far-reaching proposal. Our experience to date with minor transfers of responsibility illustrates the difficulty of this approach. Should the President opt for such a course, surely we would need leadership from you and your committee to ensure its success.

Conclusion

In conclusion, Mr. Chairman, the Administration is committed to securing the homeland and keeping Congress appropriately informed on homeland security matters. We are pleased to discuss with Congress alternative ways of organizing Homeland Security that effectively meet the needs of the American people and their legislative representatives.

The Nation faces new kinds of threats from new kinds of enemies. Defeating those threats will be the great challenge and the great achievement of this generation of Americans.

REV_00143011

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Mercedes M. Viana/WHO/EOP@EOP [WHO] <Mercedes M. Viana>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/10/2002 1:48:16 PM
Subject: : Re: fox news

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-APR-2002 17:48:16.00
SUBJECT:: Re: fox news
TO:Mercedes M. Viana ( CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
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Brett says no.
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/11/2002 12:38:34 PM
Subject: : List of those who received long questionnaire...

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CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-APR-2002 16:38:34.00
SUBJECT:: List of those who received long questionnaire...
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This represents the list of staff who HAD access:

Charles Abbott-OHS
Elliott Abrams-NSC
Regina Amos-NSC
Mary Andrews-NSC
Paul Ashin-NSC
Barbara Barclay-NSC
Dan Bartlett-WHO
Brooks Bash-NSC
John Bellinger-NSC
Brad Berenson-WHO
Stephen Biegun-NSC
Debra Bird-WHO
Claire Buchan-WHO
Elizabeth Camp-WHO
Andrew Card-WHO
Carolyn Cleveland-WHO
John Cloud-NSC
Kathleen Cooper-NSC
John Craig-NSC
Roger Cressey-PCIPB
Karen Cruson-WHO
Steven DeVine-NSC
Wayne Downing-NSC
Gary Edson-NSC
Courtney Elwood-WHO
Ari Fleischer-WHO
Michael Gerson-WHO
John Gibson-NSC
Alberto Gonzales-WHO
Wendy Gray-NSC
Karen Hughes-WHO
Joan Hunerwadel-NSC
Jeffrey Jones-NSC
Jay Lefkowitz-OPD
Karen Marmaud-NSC
Scott McClellan-WHO
Sean McCormack-NSC
William McRaven-NSC
Harriet Miers-WHO
Joseph Myers-NSC
Courtney Nemroff-NSC
Virginia Neumann-NSC
Gregory Passic-NSC
Howard Pittman-NSC

Novia Plummer-OHS
Nicholas Rasmussen-NSC
Jeannette Reilly
Condoleezza Rice-NSC
Tom Ridge-WHO
Krista Ritacco-WHO
Jonathan Scharfen-NSC
Gregory Schulte-NSC
Kristen Silverberg-NSC
Margaret Spellings-NSC
Sarah Urquidez-NSC
Edmund Walsh-WHO
Matthew Waxman-NSC

From: Matthew Lamberti) (Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [UNKNOWN]
To: Benedi; Lizette D <Lizette.D.Benedi@usdoj.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;Ho; James <James.Ho@usdoj.gov>;Sutton; Jason <Jason.J.Sutton@usdoj.gov>;Clement; Paul D <Paul.D.Clement@usdoj.gov>;Coughlin; Robert <Robert.Coughlin@usdoj.gov>;Dinh; Viet <Viet.Dinh@usdoj.gov>;Martens; Matthew <Matthew.Martens@usdoj.gov>;'Stwist (a)viad.com' <Stwist@viad.com>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David Hantman) (David_Hantman@judiciary.senate.gov (David Hantman) [UNKNOWN] <David_Hantman@judiciary.senate.gov>
CC: 'dshay@viad.com' <dshay@viad.com>
Sent: 4/11/2002 3:37:31 PM
Subject: : Victims' Rights Amendment draft
Attachments: P_PBWN6003_WHO.TXT_1.wpd

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CREATOR:Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) (
Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [ UNKNOWN ] )
CREATION DATE/TIME:11-APR-2002 19:37:31.00
SUBJECT:: Victims' Rights Amendment draft
TO:"Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov> ( "Benedi; Lizette D"
<Lizette.D.Benedi@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Ho; James" <James.Ho@usdoj.gov> (IPM Return Requested) ( "Ho; James"
<James.Ho@usdoj.gov> (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Sutton; Jason" <Jason.J.Sutton@usdoj.gov> (IPM Return Requested) ( "Sutton; Jason"
<Jason.J.Sutton@usdoj.gov> (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Clement; Paul D" <Paul.D.Clement@usdoj.gov> (IPM Return Requested) ( "Clement; Paul D"
<Paul.D.Clement@usdoj.gov> (IPM Return Requested) [ UNKNOWN ] )
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TO:"Coughlin; Robert" <Robert.Coughlin@usdoj.gov> (IPM Return Requested) ( "Coughlin;
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TO:"Dinh; Viet" <Viet.Dinh@usdoj.gov> (IPM Return Requested) ( "Dinh; Viet"
<Viet.Dinh@usdoj.gov> (IPM Return Requested) [ UNKNOWN ] )
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TO:"Martens; Matthew" <Matthew.Martens@usdoj.gov> (IPM Return Requested) ( "Martens;
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TO:"'Stwist (a)viad.com'" <Stwist@viad.com> (IPM Return Requested) ( "'Stwist (a)viad.com'"
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READ:UNKNOWN
TO:David_Hantman@judiciary.senate.gov (David Hantman) ( David_Hantman@judiciary.senate.gov
(David Hantman) [ UNKNOWN ] )
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CC:"'dshay@viad.com'" <dshay@viad.com> (IPM Return Requested) ( "'dshay@viad.com'"
<dshay@viad.com> (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
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Here is the latest (and hopefully final) draft. Changes are bolded. We
still
have concerns about some of the additional language but in the interest of
closure and to reach consensus, we will agree to it at the present time.

In addition, given the short amount of time available, we plan to
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circulate this
draft with the representation that it has been approved by both Ashcroft
and
Bush. Let me know if this presents any problems.

-Matt

- newlanguage_v15_bolded.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PBWN6003_WHO.TXT_1>

15

* Final Working Draft *

11 April 2002

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States
to protect the rights of crime victims.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States, and which shall take effect on the 180th day after ratification of this article:

"ARTICLE —

"SECTION 1. The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those accused of victimizing them, are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article.

"SECTION 2. A victim of violent crime shall have the right to reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused; the rights not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, **reprieve**, and pardon proceedings; and the right to decisions **in such public proceeding** that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity.

"SECTION 3. Nothing in this article shall be construed to provide grounds for a new trial or to authorize any claim for damages. Only the victim or the victim's lawful representative may assert the rights established by this article, and no person accused of the crime may obtain any form of relief hereunder.

"SECTION 4. Congress shall have power to enforce by appropriate legislation the provisions of this article. **Nothing in this article shall affect the President's authority to grant reprieves or pardons.**

"SECTION 5. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

From: CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: david s. addington/ovp/eop@eop [OVP] <david s. addington>;cathy alix/who/eop@eop [WHO] <cathy alix>;kimberly a. douglass/who/eop@eop [WHO] <kimberly a. douglass>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;a. merrill hughes/ovp/eop@eop [OVP] <a. merrill hughes>;claire m. o'donnell/ovp/eop@eop [OVP] <claire m. o'donnell>
Sent: 4/12/2002 4:04:18 AM
Subject: : Re: Airplane Memos

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-APR-2002 08:04:18.00
SUBJECT:: Re: Airplane Memos
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
CC:cathy alix (CN=cathy alix/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kimberly a. douglass (CN=kimberly a. douglass/OU=who/O=eop@eop [WHO])
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CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:a. merrill hughes (CN=a. merrill hughes/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
CC:claire m. o'donnell (CN=claire m. o'donnell/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
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Kim and Cathy contacted me because they want them to put in final form.
That's all I know.

Brett M. Kavanaugh
04/12/2002 12:20:20 AM
Record Type: Record

To: David S. Addington/OVP/EOP@EOP, Courtney S. Elwood/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: Airplane Memos

I think they are not the same. For Presidential travel, Airlift Ops should follow the procedures they have been following since last year. If there is some issue with those procedures, Cathy or Kim, please bring it to my attention. (I remain unsure of what has prompted this discussion other than someone inserting Courtney's name into some draft document, thereby prompting her understandable confusion.)

Sent from my BlackBerry Handheld.

Message Copied
To:_____
cathy alix/who/eop@eop
kimberly a. douglass/who/eop@eop
brett m. kavanaugh/who/eop@eop
a. merrill hughes/ovp/eop@eop
claire m. o'donnell/ovp/eop@eop

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>
CC: cesar conda/ovp/eop@eop [OVP] <cesar conda>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;jeffrey r. brown/cea/eop@eop [CEA] <jeffrey r. brown>;douglas j. holtz-eakin/cea/eop@eop [CEA] <douglas j. holtz-eakin>
Sent: 4/12/2002 10:57:58 AM
Subject: : Re:
Attachments: P_1TKO6003_WHO.TXT_1.doc

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CREATOR:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-APR-2002 14:57:58.00
SUBJECT:: Re:
TO:Carlos E. Bonilla ( CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:cesar conda ( CN=cesar conda/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jeffrey r. brown ( CN=jeffrey r. brown/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:douglas j. holtz-eakin ( CN=douglas j. holtz-eakin/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

do you think it makes sense to set up time monday to discuss?



Carlos E. Bonilla

04/12/2002 02:50:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

I'd like to circulate this document to principals if you all approve. I'd
welcome your comments.



Message Sent
To:_____
Kristen Silverberg/WHO/EOP@EOP
jane.molloy@mail.doc.gov
kathleen.cooper@esa.doc.gov
kirk.vantine@ost.dot.gov
Cesar Conda/OVP/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
Jeffrey R. Brown/CEA/EOP@EOP
Douglas J. Holtz-Eakin/CEA/EOP@EOP
mark.warshawsky@do.treas.gov
lucy.huffman@do.treas.gov
Ado A. Machida/OVP/EOP@EOP
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1TKO6003_WHO.TXT_1>

APRIL 12, 2002

TO: NEC PRINCIPALS

FROM: CARLOS BONILLA

RE: FEDERAL ROLE IN THE AVIATION TERRORISM INSURANCE MARKET

Background

Aviation Insurance provides three primary types of insurance, under a variety of different circumstances:

1) Insurance for the loss of the airplane, referred to as hull insurance.
2) Insurance for losses suffered by the passengers on that plane.
3) Insurance for losses caused to other people and property.

Broadly speaking, we can define this insurance as being provided under three circumstances:

1) For losses incurred during normal peacetime operations.
2) For losses incurred in times of war.
3) For losses incurred from acts of terrorism.

The private insurance market currently functions well for all three perils during both peace and war. Moreover, during war it imposes important discipline on the carriers by virtue of the fact that the coverage is cancelable on short notice. This allows the insurance to be appropriately re-priced to reflect the higher risk and provides the carriers a limited window during which they can remove their vulnerable assets from the war zone.

The insurance market even operates quite efficiently when the threat is terrorism. Although terrorism can pose a worldwide threat, making it impossible to relocate assets to a safe haven, the market has shown that it can price the risk for hull and passenger losses as these are known risks – maximum loss is limited to the value of the plane and the number of passengers it carries times the average compensation paid those passengers. The problem arises in liability for third party losses from acts of terrorism. The most notable such example is the loss of life in the World Trade Center attack.

Staff recommends that any action we take acknowledge that the insurance market has shown itself well capable of providing coverage for all other perils in all other circumstances and should be allowed to operate as it historically has. Thus, the only open issue is how to deal with third party losses resulting from an act of terrorism.

The policy question before the Administration is what role, if any, the federal government should continue to play in the market for aviation insurance against terrorist events.

Current State of the Market

Prior to the attacks of 9/11, airlines were paying approximately 5 cents a passenger to secure $1.5 billion of insurance coverage against all perils. That cost has since risen to $1.25 per passenger, with a limitation of $50 million in third party losses.

Immediately after the terrorist attacks of 9/11, private insurers invoked cancellation clauses in their policies, leaving airlines without coverage. The Air Transportation Safety and System Stabilization Act authorized the federal government to provide insurance coverage. The Act capped third party liability at $100 million, and the FAA agreed to provide coverage above the first $50 million of losses for a charge of $7.50 per takeoff, approximately 8 cents per passenger. While the liability cap expired on March 20, the Secretary of Transportation extended the FAA insurance element for 60 days.

A private insurance consortium, headed by AIG, has expressed strong interest in providing this insurance coverage to the airline industry. This would provide $1b in third party coverage. The price initially quoted was $1.85 per passenger, although market pressures may, over time, serve to attenuate that price. This offer of coverage, like the coverage which was offered prior to 9/11, would be cancelable at the discretion of the insurer, possibly forcing us to again revisit this issue in the future should another event occur.

At the same time, the airline industry is advancing a concept they refer to as Equitime. This would be a risk retention group that would provide insurance services to the industry. Starting this venture would require a medium term commitment to provide reinsurance through the federal government. Equitime is intended to provide coverage not just for the third party losses from terrorism but for all the industry's insurance needs.

It is important to note that neither the private insurance market nor the Equitime solution will cover all losses from a large event. Private aviation insurance from the 9/11 attack was approximately $6-8 billion. The Stabilization Act directly spent $40 billion in addition to establishing an open-ended Victim's Compensation Fund that could cost another $5-6 billion. A federal financial role will clearly exist in the wake of another incident.

Recommendation From Principals

A consensus was reached at the first Principals meeting that the appropriate solution was to limit third party liability from acts of terrorism. This was accompanied by the recognition that only legislative action could achieve this goal and that such action was unlikely in the current session of Congress. This requires that decisions be made on how to meet insurance needs of the industry in the medium term.

Decisions Required by Principals

1) Should we seek legislative action in the next Congress to limit third party liability from acts of terrorism?

Discussion: This decision may be premature and it may be desirable to await the conclusion of congressional action on the broader terrorism insurance bill. Note that the coverage limits in the bill under discussion in the Congress call for private insurance coverage of the first $10 billion of an event and that this far exceeds the coverage the airlines formerly carried or feel they could afford to carry today. Thus direct action on the aviation insurance question may still be necessary even with the passage of a broader terrorism bill.

2) On March 20th, The Department of Transportation extended for 60 days the third party liability insurance it offers through the FAA. Upon expiration of those 60 days should we:

- Exit market immediately and let airlines obtain private coverage.
- Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible."
- Keep existing FAA program in place "as is" for a period of time.
- Explicitly back the airline industry Equitime proposal.

Discussion: This is the most difficult and contentious issue. The arguments fall into three camps summarized below:
Costs of Terrorism are a social cost: If one subscribes to the view that the costs of terrorist acts should be borne by society as a whole then that goal can be met by continuing to provide the insurance through the FAA and providing it a below market rates while we attempt to limit liability.

Market Failure: If the goal is to ensure that insurance is available and one does not believe the private insurance market will or can properly price the product, then the case can be made for either advancing alternate vehicles (e.g., Equitime) or providing the insurance through the Federal Government and attempting to price it at the "appropriate" rate. A market failure position is also consistent with a continuation of the existing FAA insurance program with the cost of that insurance increased either in response to market conditions or in a pre-defined phased-in path to increase market performance.

Private Markets as the Optimal Solution: If the goal is to foster market participation then we should promptly announce our intention to exit the direct provision of insurance and make clear that we will not subsidize Equitime.

4) If an endorsement is made of the Equitime proposal should that endorsement, with its attendant federal role as a reinsurer, should that endorsement be:
   - As a reinsurer to the full Equitime proposal
   - Limited so as not to subsidize competition for that portion of the insurance market which is functioning properly—i.e., provide support only for third party losses from acts of terrorism.
   - Only provide reinsurance to Equitime if we provide reinsurance on these same terms to other private parties.

Discussion: Equitime is a very major intrusion into the operation of private insurance markets. It would provide one entity preferred status in the market by virtue of its federal support and it would provide federal subsidies for the replacement of a private market in those parts of the insurance market which are working well. The staff recommendation is that any Equitime endorsement be limited to the third party liability issue and be conditioned on providing comparable reinsurance to all parties seeking to compete against Equitime.

From:	CN=Jeffrey R. Brown/OU=CEA/O=EOP [CEA]
To:	Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>
CC:	kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;jane.molloy@mail.doc.gov [UNKNOWN] <jane.molloy@mail.doc.gov>;kathleen.cooper@esa.doc.gov [UNKNOWN] <kathleen.cooper@esa.doc.gov>;kirk.vantine@ost.dot.gov [UNKNOWN] <kirk.vantine@ost.dot.gov>;cesar conda/ovp/eop@eop [OVP] <cesar conda>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;amy c. smith/omb/eop@eop [OMB] <amy c. smith>;douglas j. holtz-eakin/cea/eop@eop [CEA] <douglas j. holtz-eakin>;mark.warshawsky@do.treas.gov [UNKNOWN] <mark.warshawsky@do.treas.gov>;lucy.huffman@do.treas.gov [UNKNOWN] <lucy.huffman@do.treas.gov>;ado a. machida/ovp/eop@eop [OVP] <ado a. machida>
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CC:douglas j. holtz-eakin ( CN=douglas j. holtz-eakin/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:mark.warshawsky@do.treas.gov ( mark.warshawsky@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:lucy.huffman@do.treas.gov ( lucy.huffman@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:ado a. machida ( CN=ado a. machida/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Carlos,
This memo is much improved. I do, however, have some suggested edits,
which are enclosed.
Jeff




Carlos E. Bonilla

04/12/2002 02:50:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
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cc:
Subject:

I'd like to circulate this document to principals if you all approve. I'd welcome your comments.

Message Sent
To:_____
Kristen Silverberg/WHO/EOP@EOP
jane.molloy@mail.doc.gov
kathleen.cooper@esa.doc.gov
kirk.vantine@ost.dot.gov
Cesar Conda/OVP/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
Jeffrey R. Brown/CEA/EOP@EOP
Douglas J. Holtz-Eakin/CEA/EOP@EOP
mark.warshawsky@do.treas.gov
lucy.huffman@do.treas.gov
Ado A. Machida/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_YFOO6003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_YFOO6003_OPD.TXT_2>

APRIL 12, 2002

TO: NEC PRINCIPALS

FROM: CARLOS BONILLA

RE: FEDERAL ROLE IN THE AVIATION TERRORISM INSURANCE MARKET

Background

Aviation Insurance provides three primary types of insurance, under a variety of different circumstances:

1) Insurance for the loss of the airplane, referred to as hull insurance.
2) Insurance for losses suffered by the passengers on that plane.
3) Insurance for losses caused to other people and property.

Broadly speaking, we can define this insurance as being provided under three circumstances:

1) For losses incurred during normal peacetime operations.
2) For losses incurred in times of war.
3) For losses incurred from acts of terrorism.

The private insurance market currently functions well for all three perils during both peace and war. Moreover, during war it imposes important discipline on the carriers by virtue of the fact that the coverage is cancelable on short notice. This allows the insurance to be appropriately re-priced to reflect the higher risk and provides the carriers a limited window during which they can remove their vulnerable assets from the war zone.

The insurance market even operates quite efficiently when the threat is terrorism. Although terrorism can pose a worldwide threat, making it impossible to relocate assets to a safe haven, the market has shown that it can price the risk for hull and passenger losses as these are known risks – maximum loss is limited to the value of the plane and the number of passengers it carries times the average compensation paid those passengers. The problem arises in liability for third party losses from acts of terrorism. The most notable such example is the loss of life in the World Trade Center attack.

Staff recommends that any action we take acknowledge that the insurance market has shown itself well capable of providing coverage for all other perils in all other circumstances and should be allowed to operate as it historically has. Thus, the only open issue is how to deal with third party losses resulting from an act of terrorism.

The policy question before the Administration is what role, if any, the federal government should continue to play in the market for aviation insurance against terrorist events.

Current State of the Market

Prior to the attacks of 9/11, airlines were paying approximately 5 cents a passenger to secure $1.5 billion of insurance coverage against all perils. That cost has since risen to $1.25 per passenger, with a limitation of $50 million in third party losses.

Immediately after the terrorist attacks of 9/11, private insurers invoked cancellation clauses in their policies, leaving airlines without coverage. The Air Transportation Safety and System Stabilization Act authorized the federal government to provide insurance coverage. The Act capped third party liability at $100 million, and the FAA agreed to provide coverage above the first $50 million of losses for a charge of $7.50 per takeoff, approximately 8 cents per passenger. While the liability cap expired on March 20, the Secretary of Transportation extended the FAA insurance element for 60 days.

A private insurance consortium, headed by AIG, has expressed strong interest in providing this insurance coverage to the airline industry. This would provide $1b in third party coverage. The price initially quoted was $1.85 per passenger, although market pressures may, over time, serve to attenuate that price. This offer of coverage, like the coverage which was offered prior to 9/11, would be cancelable at the discretion of the insurer, possibly forcing us to again revisit this issue in the future should another event occur.

At the same time, the airline industry is advancing a concept they refer to as Equitime. This would be a risk retention group that would provide insurance services to the industry. Starting this venture would require a medium term commitment to provide reinsurance through the federal government. Equitime is intended to provide coverage not just for the third party losses from terrorism but for all the industry's insurance needs.

It is important to note that neither the private insurance market nor the Equitime solution will cover all losses from a large event. Private aviation insurance from the 9/11 attack was approximately $6-8 billion. The Stabilization Act directly spent $40 billion in addition to establishing an open-ended Victim's Compensation Fund that could cost another $5-6 billion. A federal financial role will clearly exist in the wake of another incident.

Recommendation From Principals

A consensus was reached at the first Principals meeting that the appropriate solution was to limit third party liability from acts of terrorism. This was accompanied by the recognition that only legislative action could achieve this goal and that such action was unlikely in the current session of Congress. This requires that decisions be made on how to meet insurance needs of the industry in the medium term.

Decisions Required by Principals

1) Should we seek legislative action in the next Congress to limit third party liability from acts of terrorism?

Discussion: This decision may be premature and it may be desirable to await the conclusion of congressional action on the broader terrorism insurance bill. Note that the coverage limits in the bill under discussion in the Congress call for private insurance coverage of the first $10 billion of an event and that this far exceeds the coverage the airlines formerly carried or feel they could afford to carry today. Thus direct action on the aviation insurance question may still be necessary even with the passage of a broader terrorism bill.

2) On March 20th, The Department of Transportation extended for 60 days the third party liability insurance it offers through the FAA. Upon expiration of those 60 days should we:

- Exit market immediately and let airlines obtain private coverage.
- Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible."
- Keep existing FAA program in place "as is" for a period of time.
- Explicitly back the airline industry Equitime proposal.

Discussion: This is the most difficult and contentious issue. The arguments fall into three camps summarized below:
Costs of Terrorism are a social cost: If one subscribes to the view that the costs of terrorist acts should be borne by society as a whole then that goal can be met by continuing to provide the insurance through the FAA and providing it a below market rates while we attempt to limit liability.

Market Failure: If the goal is to ensure that insurance is available and one does not believe the private insurance market will or can properly price the product, then the case can be made for either advancing alternate vehicles (e.g., Equitime) or providing the insurance through the Federal Government and attempting to price it at the "appropriate" rate. A market failure position is also consistent with a continuation of the existing FAA insurance program with the cost of that insurance increased either in response to market conditions or in a pre-defined phased-in path to increase market performance.

Private Markets as the Optimal Solution: If the goal is to foster market participation then we should promptly announce our intention to exit the direct provision of insurance and make clear that we will not subsidize Equitime.

4) If an endorsement is made of the Equitime proposal should that endorsement, with its attendant federal role as a reinsurer, should that endorsement be:
   - As a reinsurer to the full Equitime proposal
   - Limited so as not to subsidize competition for that portion of the insurance market which is functioning properly—i.e., provide support only for third party losses from acts of terrorism.
   - Only provide reinsurance to Equitime if we provide reinsurance on these same terms to other private parties.

Discussion: Equitime is a very major intrusion into the operation of private insurance markets. It would provide one entity preferred status in the market by virtue of its federal support and it would provide federal subsidies for the replacement of a private market in those parts of the insurance market which are working well. The staff recommendation is that any Equitime endorsement be limited to the third party liability issue and be conditioned on providing comparable reinsurance to all parties seeking to compete against Equitime.

APRIL 12, 2002

TO: NEC PRINCIPALS

FROM: CARLOS BONILLA

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Background

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Staff recommends that any action we take acknowledge that the insurance market has shown itself well capable of providing coverage for all other perils in all other circumstances and should be allowed to operate as it historically has. Thus, the only open issue is how to deal with third party losses resulting from an act of terrorism.

The policy question before the Administration is what role, if any, the federal government should continue to play in the market for aviation insurance against terrorist events.

Current State of the Market

Prior to the attacks of 9/11, airlines were paying approximately 5 cents a passenger to secure $1.5 billion of insurance coverage against all perils. (This 5 cents number makes me nervous – this is Delta's estimate, right? Can we get any independent verification of pre 9/11 costs. My take is that TOTAL insurance costs rose 2-3 times, not 25-fold has this would imply). That cost has since risen to $1.25 per passenger, with a limitation of $50 million in third party losses.

Immediately after the terrorist attacks of 9/11, private insurers invoked cancellation clauses in their policies, leaving airlines without coverage. The Air Transportation Safety and System Stabilization Act authorized the federal government to provide insurance coverage. The Act capped third party liability at $100 million, and the FAA agreed to provide coverage above the first $50 million of losses for a charge of $7.50 per takeoff, approximately 8 cents per passenger. While the liability cap expired on March 20, the Secretary of Transportation extended the FAA insurance element for 60 days.

A private insurance consortium, headed by AIG, has expressed strong interest in providing this insurance coverage to the airline industry. This would provide $1b in third party coverage. The price initially quoted was $1.85 per passenger, although market pressures may, over time, serve to attenuate that price. This offer of coverage, like the coverage which was offered prior to 9/11, would be cancelable at the discretion of the insurer, possibly forcing us to again revisit this issue in the future should another event occur. It is important to note that it is difficult to assess the actual premium costs that would arise in a private market, as the presence of the FAA in this market has limited the ability of the private market to provide accurate price quotes. Based on international experience, however, it is reasonable to assume that AIG would be willing to provide third party coverage at a rate substantially less than $1.85. In the UK, AIG has agreed to provide such coverage for only 75 cents per passenger, subject to a maximum industry exposure of $2 billion.

At the same time, the airline industry is advancing a captive insurer concept they refer to as Equitime. This would be a risk retention group that would provide insurance services to the industry. The airlines believe that ~~S~~starting this venture would require a medium term commitment for the federal government to ~~to~~ provide excess-of-loss coverage~~reinsurance through the federal government~~. Equitime is intended to provide coverage not just for the third party losses from terrorism but for all the industry's insurance needs.

~~It is important to note that neither the private insurance market nor the Equitime solution will cover all losses from a large event. Private aviation insurance from the 9/11 attack was approximately $6-8 billion. The Stabilization Act directly spent $40 billion in addition to establishing an open-ended Victim's Compensation Fund that could cost another $5-6 billion. A federal financial role will clearly exist in the wake of another incident.~~ (This paragraph does not seem needed. It seems to confuse aviation versus other forms of insurance, etc.)

Recommendation From Principals
A consensus was reached at the first Principals meeting that the appropriate solution was to limit third party liability from acts of terrorism. This was accompanied by the recognition that only legislative action could achieve this goal and that such action was unlikely in the current session of Congress. This requires that decisions be made on how to meet insurance needs of the industry in the medium term.

Decisions Required by Principals

1) Should we seek legislative action in the next Congress to limit third party liability from acts of terrorism?

Discussion: This decision may be premature and it may be desirable to await the conclusion of congressional action on the broader terrorism insurance bill. Note that the coverage limits in the bill under discussion in the Congress cover all property and casualty losses (not just those for aviation) and call for private insurance coverage of the first $10 billion of an event. ~~and that t~~This far exceeds the coverage the airlines formerly carried or feel they could afford to carry today. It is an open question whether~~Thus~~ direct action on the aviation insurance question may still be necessary even with the passage of a broader terrorism bill.

2) On March 20th, The Department of Transportation extended for 60 days the third party liability insurance it offers through the FAA. Upon expiration of those 60 days should we:

- Exit market immediately and let airlines obtain private coverage.
- Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible."
- Keep existing FAA program in place "as is"~~ for a period of time~~while pursuing liability limitations.
- Explicitly back the airline industry Equitime proposal.

Discussion: This is the most difficult and contentious issue. The ~~arguments fall into three camps~~ are summarized below: (This discussion should be in the same order as the options listed above. And the "camps" should map to the four options. Currently, a government phase-out is linked to Equitime, but it could also be linked to phase to private markets.)

Immediate Private Market Solution: If the goal is to provide appropriate incentives for the private sector to mitigate the risk and cost of future terrorist attacks, then a well-functioning private insurance market is best able to do this. Thus, we should announce our intention to exit the direct provision of insurance and make clear that we will not subsidize Equitime.

Gradually phase to a private market solution: Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible." This approach seeks to strike a balance between the desire for private sector risk mitigation incentives, and the recognition that, in the short-run, private insurers may not be able to provide coverage above $1 billion.

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Costs of Terrorism are a social cost: If one subscribes to the view that the costs of terrorist acts should be borne by society as a whole then that goal can be met by continuing to provide the insurance through the FAA and providing it a below market rates while we attempt to limit liability.

Equitime: If the goal is to ensure that insurance is available, and one does not believe the private insurance market will or can properly price the product, then the case can be made for either advancing alternate vehicles such as Equitime.

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~~*Market Failure*: If the goal is to ensure that insurance is available and one does not believe the private insurance market will or can properly price the product, then the case can be made for either advancing alternate vehicles (e.g., Equitime) or providing the insurance through the Federal Government and attempting to price it at the "appropriate" rate. A market failure position is also consistent with a continuation of the existing FAA insurance program with the cost of that insurance increased either in response to market conditions or in a pre-defined phased-in path to increase market performance.~~

~~*Private Markets as the Optimal Solution*: If the goal is to foster market participation then we should promptly announce our intention to exit the direct provision of insurance and make clear that we will not subsidize Equitime.~~

4) If an endorsement is made of the Equitime proposal, ~~should that endorsement,~~ with its attendant federal role as a reinsurer, should that endorsement be:
   - As a reinsurer to the full Equitime proposal
   - Limited so as not to subsidize competition for that portion of the insurance market which is functioning properly—i.e., provide support only for third party losses from acts of terrorism.
   - Only provide reinsurance to Equitime if we provide reinsurance on these same terms to other private insurers~~parties~~.

Discussion: Equitime is a very major intrusion into the operation of private insurance markets. It would provide one entity preferred status in the market by virtue of its federal support and it would provide federal subsidies for the replacement of a private market in those parts of the insurance market which are working well. The staff recommendation is that any Equitime endorsement be limited to the third party liability issue and be conditioned on providing comparable reinsurance to all parties seeking to compete against Equitime.

From:	Matthew Lamberti) (Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [UNKNOWN]
To:	Dinh; Viet <Viet.Dinh@usdoj.gov>;David Hantman) (David_Hantman@judiciary.senate.gov (David Hantman) [UNKNOWN] <David_Hantman@judiciary.senate.gov>;Stephen Higgins) (Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [UNKNOWN] <Stephen_Higgins@judiciary.senate.gov>;'stwist@viad.com' <stwist@viad.com>
CC:	Ho; James <James.Ho@usdoj.gov>;Benedi; Lizette D <Lizette.D.Benedi@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>
Sent:	4/15/2002 6:35:16 AM
Subject:	: Re[2]: can we talk Sat morning?
Attachments:	P_H9FP6003_WHO.TXT_1.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) (
Matthew_Lamberti@judiciary.senate.gov (Matthew Lamberti) [ UNKNOWN ] )
CREATION DATE/TIME:15-APR-2002 10:35:16.00
SUBJECT:: Re[2]: can we talk Sat morning?
TO:"Dinh; Viet" <Viet.Dinh@usdoj.gov> ( "Dinh; Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:David_Hantman@judiciary.senate.gov (David Hantman) ( David_Hantman@judiciary.senate.gov
(David Hantman) [ UNKNOWN ] )
READ:UNKNOWN
TO:Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) (
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins) [ UNKNOWN ] )
READ:UNKNOWN
TO:"'stwist@viad.com'" <stwist@viad.com> ( "'stwist@viad.com'" <stwist@viad.com> [ UNKNOWN
] )
READ:UNKNOWN
CC:"Ho; James" <James.Ho@usdoj.gov> ( "Ho; James" <James.Ho@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov> ( "Benedi; Lizette D"
<Lizette.D.Benedi@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Garry Malphrus ( CN=Garry Malphrus/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
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Here is the proposed amendment Senators Feinstein and Kyl intend to
introduce
today.


- CUL02_119.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_H9FP6003_WHO.TXT_1>
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107TH CONGRESS
2D SESSION

S. J. RES. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following joint resolution; which was read twice and referred to the Committee on _____

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to protect the rights of crime victims.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States, and which shall take effect on the 180th day after ratification of this article:

"ARTICLE —

"SECTION 1. The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those accused of victimizing them, are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article.

"SECTION 2. A victim of violent crime shall have the right to reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused; the rights not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, reprieve, and pardon proceedings; and the right to adjudicative decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity.

"SECTION 3. Nothing in this article shall be construed to provide grounds for a new trial or to authorize any claim for damages. Only the victim or the victim's lawful representative may assert the rights established by

this article, and no person accused of the crime may obtain any form of relief hereunder.

"SECTION 4. Congress shall have power to enforce by appropriate legislation the provisions of this article. Nothing in this article shall affect the President's authority to grant reprieves or pardons.

"SECTION 5. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.".

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 4/15/2002 5:38:43 AM

Subject: : JSC prep on Wednesday will be held at 8:45 am instead of 3:30 pm.

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-APR-2002 09:38:43.00
SUBJECT:: JSC prep on Wednesday will be held at 8:45 am instead of 3:30 pm.
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

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SUBJECT:: JSC prep on Wednesday will be held at 8:45 am instead of 3:30 pm.
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
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READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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From:	CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To:	Jeffrey R. Brown/CEA/EOP@EOP [CEA] <Jeffrey R. Brown>
CC:	carlos e. bonilla/opd/eop@eop [OPD] <carlos e. bonilla>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;jane.molloy@mail.doc.gov [UNKNOWN] <jane.molloy@mail.doc.gov>;kathleen.cooper@esa.doc.gov [UNKNOWN] <kathleen.cooper@esa.doc.gov>;kirk.vantine@ost.dot.gov [UNKNOWN] <kirk.vantine@ost.dot.gov>;cesar conda/ovp/eop@eop [OVP] <cesar conda>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;amy c. smith/omb/eop@eop [OMB] <amy c. smith>;douglas j. holtz-eakin/cea/eop@eop [CEA] <douglas j. holtz-eakin>;mark.warshawsky@do.treas.gov [UNKNOWN] <mark.warshawsky@do.treas.gov>;lucy.huffman@do.treas.gov [UNKNOWN] <lucy.huffman@do.treas.gov>;ado a. machida/ovp/eop@eop [OVP] <ado a. machida>
Sent:	4/15/2002 9:01:53 AM
Subject:	: Re:
Attachments:	P_LONP6003_WHO.TXT_1.doc; P_LONP6003_WHO.TXT_2.doc; P_LONP6003_WHO.TXT_3.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-APR-2002 13:01:53.00
SUBJECT:: Re:
TO:Jeffrey R. Brown ( CN=Jeffrey R. Brown/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
CC:carlos e. bonilla ( CN=carlos e. bonilla/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jane.molloy@mail.doc.gov ( jane.molloy@mail.doc.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:kathleen.cooper@esa.doc.gov ( kathleen.cooper@esa.doc.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:kirk.vantine@ost.dot.gov ( kirk.vantine@ost.dot.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:cesar conda ( CN=cesar conda/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:amy c. smith ( CN=amy c. smith/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:douglas j. holtz-eakin ( CN=douglas j. holtz-eakin/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
CC:mark.warshawsky@do.treas.gov ( mark.warshawsky@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:lucy.huffman@do.treas.gov ( lucy.huffman@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:ado a. machida ( CN=ado a. machida/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I had a few questions; I added them to Jeff's draft.




Jeffrey R. Brown
04/12/2002 04:12:41 PM
Record Type: Record

To: Carlos E. Bonilla/OPD/EOP@EOP
```

cc: See the distribution list at the bottom of this message
bcc:
Subject: Re:

Carlos,
This memo is much improved. I do, however, have some suggested edits,
which are enclosed.
Jeff

Carlos E. Bonilla

04/12/2002 02:50:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject:

I'd like to circulate this document to principals if you all approve. I'd
welcome your comments.

Message Sent
To:_____
Kristen Silverberg/WHO/EOP@EOP
jane.molloy@mail.doc.gov
kathleen.cooper@esa.doc.gov
kirk.vantine@ost.dot.gov
Cesar Conda/OVP/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
Jeffrey R. Brown/CEA/EOP@EOP
Douglas J. Holtz-Eakin/CEA/EOP@EOP
mark.warshawsky@do.treas.gov
lucy.huffman@do.treas.gov
Ado A. Machida/OVP/EOP@EOP

Message Copied
To:_____
kristen silverberg/who/eop@eop
jane.molloy@mail.doc.gov
kathleen.cooper@esa.doc.gov
kirk.vantine@ost.dot.gov
cesar conda/ovp/eop@eop
brett m. kavanaugh/who/eop@eop
amy c. smith/omb/eop@eop
douglas j. holtz-eakin/cea/eop@eop
mark.warshawsky@do.treas.gov
lucy.huffman@do.treas.gov
ado a. machida/ovp/eop@eop

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LONP6003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LONP6003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LONP6003_WHO.TXT_3>

APRIL 12, 2002

TO: NEC PRINCIPALS

FROM: CARLOS BONILLA

RE: FEDERAL ROLE IN THE AVIATION TERRORISM INSURANCE MARKET

Background

Aviation Insurance provides three primary types of insurance, under a variety of different circumstances:

1) Insurance for the loss of the airplane, referred to as hull insurance.
2) Insurance for losses suffered by the passengers on that plane.
3) Insurance for losses caused to other people and property.

Broadly speaking, we can define this insurance as being provided under three circumstances:

1) For losses incurred during normal peacetime operations.
2) For losses incurred in times of war.
3) For losses incurred from acts of terrorism.

The private insurance market currently functions well for all three perils during both peace and war. Moreover, during war it imposes important discipline on the carriers by virtue of the fact that the coverage is cancelable on short notice. This allows the insurance to be appropriately re-priced to reflect the higher risk and provides the carriers a limited window during which they can remove their vulnerable assets from the war zone.

The insurance market even operates quite efficiently when the threat is terrorism. Although terrorism can pose a worldwide threat, making it impossible to relocate assets to a safe haven, the market has shown that it can price the risk for hull and passenger losses as these are known risks – maximum loss is limited to the value of the plane and the number of passengers it carries times the average compensation paid those passengers. The problem arises in liability for third party losses from acts of terrorism. The most notable such example is the loss of life in the World Trade Center attack.

Staff recommends that any action we take acknowledge that the insurance market has shown itself well capable of providing coverage for all other perils in all other circumstances and should be allowed to operate as it historically has. Thus, the only open issue is how to deal with third party losses resulting from an act of terrorism.

The policy question before the Administration is what role, if any, the federal government should continue to play in the market for aviation insurance against terrorist events.

Current State of the Market

Prior to the attacks of 9/11, airlines were paying approximately 5 cents a passenger to secure $1.5 billion of insurance coverage against all perils. (This 5 cents number makes me nervous – this is Delta's estimate, right? Can we get any independent verification of pre 9/11 costs. My take is that TOTAL insurance costs rose 2-3 times, not 25-fold has this would imply). That cost has since risen to $1.25 per passenger, with a limitation of $50 million in third party losses.

Immediately after the terrorist attacks of 9/11, private insurers invoked cancellation clauses in their policies, leaving airlines without coverage. The Air Transportation Safety and System Stabilization Act authorized the federal government to provide insurance coverage. The Act capped third party liability at $100 million, and the FAA agreed to provide coverage above the first $50 million of losses for a charge of $7.50 per takeoff, approximately 8 cents per passenger. While the liability cap expired on March 20, the Secretary of Transportation extended the FAA insurance element for 60 days.

A private insurance consortium, headed by AIG, has expressed strong interest in providing this insurance coverage to the airline industry. This would provide $1b in third party coverage. The price initially quoted was $1.85 per passenger, although market pressures may, over time, serve to attenuate that price. This offer of coverage, like the coverage which was offered prior to 9/11, would be cancelable at the discretion of the insurer, possibly forcing us to again revisit this issue in the future should another event occur. It is important to note that it is difficult to assess the actual premium costs that would arise in a private market, as the presence of the FAA in this market has limited the ability of the private market to provide accurate price quotes. Based on international experience, however, it is reasonable to assume that AIG would be willing to provide third party coverage at a rate substantially less than $1.85. In the UK, AIG has agreed to provide such coverage for only 75 cents per passenger, subject to a maximum industry exposure of $2 billion.

At the same time, the airline industry is advancing a captive insurer concept they refer to as Equitime. This would be a risk retention group that would provide insurance services to the industry. The airlines believe that starting this venture would require a medium term commitment for the federal government to provide excess-of-loss coverage. Equitime is intended to provide coverage not just for the third party losses from terrorism but for all the industry's insurance needs.

(This paragraph does not seem needed. It seems to confuse aviation versus other forms of insurance, etc.)

Recommendation From Principals

A consensus was reached at the first Principals meeting that the appropriate solution was to limit third party liability from acts of terrorism. This was accompanied by the recognition that only legislative action could achieve this goal and that such action was unlikely in the current session of Congress. This requires that decisions be made on how to meet insurance needs of the industry in the medium term.

Decisions Required by Principals

1) Should we seek legislative action in the next Congress to limit third party liability from acts of terrorism?

Discussion: This decision may be premature and it may be desirable to await the conclusion of congressional action on the broader terrorism insurance bill. Note that the coverage limits in the bill under discussion in the Congress cover all property and casualty losses (not just those for aviation) and call for private insurance coverage of the first $10 billion of an event. This far exceeds the coverage the airlines formerly carried or feel they could afford to carry today. It is an open question whether direct action on the aviation insurance question may still be necessary even with the passage of a broader terrorism bill.

2) On March 20th, The Department of Transportation extended for 60 days the third party liability insurance it offers through the FAA. Upon expiration of those 60 days should we:

- Exit market immediately and let airlines obtain private coverage.
- Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible."
- Keep existing FAA program in place "as is"while pursuing liability limitations.
- Explicitly back the airline industry Equitime proposal.

Discussion: This is the most difficult and contentious issue. The are summarized below: (This discussion should be in the same order as the options listed above. And the "camps" should map to the four options. Currently, a government phase-out is linked to Equitime, but it could also be linked to phase to private markets.)

Immediate Private Market Solution: If the goal is to provide appropriate incentives for the private sector to mitigate the risk and cost of future terrorist attacks, then a well-functioning private insurance market is best able to do this. Thus, we should announce our intention to exit the direct provision of insurance and make clear that we will not subsidize Equitime.

Gradually phase to a private market solution: Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible." This approach seeks to strike a balance between the desire for private sector risk mitigation incentives, and the recognition that, in the short-run, private insurers may not be able to provide coverage above $1 billion.

Costs of Terrorism are a social cost: If one subscribes to the view that the costs of terrorist acts should be borne by society as a whole then that goal can be met by continuing to provide the insurance through the FAA and providing it a below market rates while we attempt to limit liability.

Equitime: If the goal is to ensure that insurance is available, and one does not believe the private insurance market will or can properly price the product, then the case can be made for either advancing alternate vehicles such as Equitime.

4) If an endorsement is made of the Equitime proposal, with its attendant federal role as a reinsurer, should that endorsement be:
   - As a reinsurer to the full Equitime proposal
   - Limited so as not to subsidize competition for that portion of the insurance market which is functioning properly—i.e., provide support only for third party losses from acts of terrorism.
   - Only provide reinsurance to Equitime if we provide reinsurance on these same terms to other private insurers.

Discussion: Equitime is a very major intrusion into the operation of private insurance markets. It would provide one entity preferred status in the market by virtue of its federal support and it would provide federal subsidies for the replacement of a private market in those parts of the insurance market which are working well. The staff recommendation is that any Equitime endorsement be limited to the third party liability issue and be conditioned on providing comparable reinsurance to all parties seeking to compete against Equitime.

APRIL 12, 2002

TO: NEC PRINCIPALS

FROM: CARLOS BONILLA

RE: FEDERAL ROLE IN THE AVIATION TERRORISM INSURANCE MARKET

Background

Aviation Insurance provides three primary types of insurance, under a variety of different circumstances:

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Staff recommends that any action we take acknowledge that the insurance market has shown itself well capable of providing coverage for all other perils in all other circumstances and should be allowed to operate as it historically has. Thus, the only open issue is how to deal with third party losses resulting from an act of terrorism.

The policy question before the Administration is what role, if any, the federal government should continue to play in the market for aviation insurance against terrorist events.

Current State of the Market

Prior to the attacks of 9/11, airlines were paying approximately 5 cents a passenger to secure $1.5 billion of insurance coverage against all perils. That cost has since risen to $1.25 per passenger, with a limitation of $50 million in third party losses.

Immediately after the terrorist attacks of 9/11, private insurers invoked cancellation clauses in their policies, leaving airlines without coverage. The Air Transportation Safety and System Stabilization Act authorized the federal government to provide insurance coverage. The Act capped third party liability at $100 million, and the FAA agreed to provide coverage above the first $50 million of losses for a charge of $7.50 per takeoff, approximately 8 cents per passenger. While the liability cap expired on March 20, the Secretary of Transportation extended the FAA insurance element for 60 days.

A private insurance consortium, headed by AIG, has expressed strong interest in providing this insurance coverage to the airline industry. This would provide $1b in third party coverage. The price initially quoted was $1.85 per passenger, although market pressures may, over time, serve to attenuate that price. This offer of coverage, like the coverage which was offered prior to 9/11, would be cancelable at the discretion of the insurer, possibly forcing us to again revisit this issue in the future should another event occur.

At the same time, the airline industry is advancing a concept they refer to as Equitime. This would be a risk retention group that would provide insurance services to the industry. Starting this venture would require a medium term commitment to provide reinsurance through the federal government. Equitime is intended to provide coverage not just for the third party losses from terrorism but for all the industry's insurance needs.

It is important to note that neither the private insurance market nor the Equitime solution will cover all losses from a large event. Private aviation insurance from the 9/11 attack was approximately $6-8 billion. The Stabilization Act directly spent $40 billion in addition to establishing an open-ended Victim's Compensation Fund that could cost another $5-6 billion. A federal financial role will clearly exist in the wake of another incident.

Recommendation From Principals

A consensus was reached at the first Principals meeting that the appropriate solution was to limit third party liability from acts of terrorism. This was accompanied by the recognition that only legislative action could achieve this goal and that such action was unlikely in the current session of Congress. This requires that decisions be made on how to meet insurance needs of the industry in the medium term.

Decisions Required by Principals

1) Should we seek legislative action in the next Congress to limit third party liability from acts of terrorism?

Discussion: This decision may be premature and it may be desirable to await the conclusion of congressional action on the broader terrorism insurance bill. Note that the coverage limits in the bill under discussion in the Congress call for private insurance coverage of the first $10 billion of an event and that this far exceeds the coverage the airlines formerly carried or feel they could afford to carry today. Thus direct action on the aviation insurance question may still be necessary even with the passage of a broader terrorism bill.

2) On March 20th, The Department of Transportation extended for 60 days the third party liability insurance it offers through the FAA. Upon expiration of those 60 days should we:

- Exit market immediately and let airlines obtain private coverage.
- Keep existing FAA program in place but gradually transition out of the market by raising premiums and/or increasing the "deductible."
- Keep existing FAA program in place "as is" for a period of time.
- Explicitly back the airline industry Equitime proposal.

Discussion: This is the most difficult and contentious issue. The arguments fall into three camps summarized below:
Costs of Terrorism are a social cost: If one subscribes to the view that the costs of terrorist acts should be borne by society as a whole then that goal can be met by continuing to provide the insurance through the FAA and providing it a below market rates while we attempt to limit liability.

Market Failure: If the goal is to ensure that insurance is available and one does not believe the private insurance market will or can properly price the product, then the case can be made for either advancing alternate vehicles (e.g., Equitime) or providing the insurance through the Federal Government and attempting to price it at the "appropriate" rate. A market failure position is also consistent with a continuation of the existing FAA insurance program with the cost of that insurance increased either in response to market conditions or in a pre-defined phased-in path to increase market performance.

Private Markets as the Optimal Solution: If the goal is to foster market participation then we should promptly announce our intention to exit the direct provision of insurance and make clear that we will not subsidize Equitime.

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Broadly speaking, we can define this insurance as being provided under three circumstances:

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The private insurance market currently functions well for all three perils during both peace and war. Moreover, during war it imposes important discipline on the carriers by virtue of the fact that the coverage is cancelable on short notice. This allows the insurance to be appropriately re-priced to reflect the higher risk and provides the carriers a limited window during which they can remove their vulnerable assets from the war zone.

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Decisions Required by Principals

1) Should we seek legislative action in the next Congress to limit third party liability from acts of terrorism? [why is this question on the table? Can the principles make this decision now? Won't it depend on lots of intervening events like a) whether we get another event; b) whether we keep the House or win back the Senate; c) whether we get a risk insurance bill. KS]

Discussion: This decision may be premature and it may be desirable to await the conclusion of congressional action on the broader terrorism insurance bill. Note that the coverage limits in the bill under discussion in the Congress cover all property and casualty losses (not just those for aviation) and call for private insurance coverage of the first $10 billion of an event. ~~and that t~~This far exceeds the coverage the airlines formerly carried or feel they could afford to carry today. [I don't understand this pt. In the broader risk insurance bill, the $10b industry retention was for all P&C carriers. Airline insurers would be entitled to a pro rata payment depending on their share of the $10b. If the ratios of airline insurance losses to other industry losses was the same as for the WTC, the airline industry retention would be less than $2b. Am I missing something? KS]. It is an open question whether~~Thus~~ direct action on the aviation insurance question may still be necessary even with the passage of a broader terrorism bill.

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- Exit market immediately and let airlines obtain private coverage.
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From: Willett, Don <Don.Willett@usdoj.gov>
To: Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>
CC: Goodling, Monica <Monica.Goodling@usdoj.gov>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;'joshcal@att.net' <joshcal@att.net>
Sent: 4/15/2002 1:59:13 PM
Subject: : FW: Roll call vote is on Terrence O'Brien at 5:30 today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ( "Willett, Don" <Don.Willett@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME:15-APR-2002 17:59:13.00
SUBJECT:: FW: Roll call vote is on Terrence O'Brien at 5:30 today
TO:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"Goodling, Monica" <Monica.Goodling@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Goodling, Monica" <Monica.Goodling@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"'joshcal@att.net'" <joshcal@att.net> (Receipt Notification Requested) (IPM Return
Requested) ( "'joshcal@att.net'" <joshcal@att.net> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

-----Original Message-----
From: Scottfinan, Nancy
Sent: Monday, April 15, 2002 5:08 PM
To: Bryant, Dan; O'Brien, Pat; Dinh, Viet; Newstead, Jennifer;
Willett, Don; Joy, Sheila
Subject: Roll call vote is on Terrence O'Brian at 5:30 today
Importance: High
```

From:	CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To:	brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;john fenzel/ovp/eop@eop [OVP] <john fenzel>;pkind@ida.org @ inet [UNKNOWN] <pkind@ida.org>;leonard blevins/who/eop@eop [WHO] <leonard blevins>;lucy g. clark/who/eop@eop [WHO] <lucy g. clark>;Carl Buchholz/WHO/EOP@EOP [WHO] <Carl Buchholz>;Roberta Shea/WHO/EOP@EOP [WHO] <Roberta Shea>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>
CC:	alphonise r. artis/who/eop@eop [WHO] <alphonise r. artis>;jocelyne a. bodo/who/eop@eop [WHO] <jocelyne a. bodo>
Sent:	4/15/2002 2:24:53 PM
Subject:	: Meeting: Presidential Records Act tomorrow at 3pm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-APR-2002 18:24:53.00
SUBJECT:: Meeting: Presidential Records Act tomorrow at 3pm
TO:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:john fenzel (CN=john fenzel/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
TO:pkind@ida.org (pkind@ida.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:leonard blevins (CN=leonard blevins/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:lucy g. clark (CN=lucy g. clark/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Roberta Shea (CN=Roberta Shea/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alphonise r. artis (CN=alphonise r. artis/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jocelyne a. bodo (CN=jocelyne a. bodo/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Thank you all for your quick responses.

This meeting has been scheduled for tomorrow, Tuesday, April 16 at 3 p.m. in EEOB 113.

Carl - Thank you for hosting this meeting in your office.

If there are any conflicts with this or if you have any questions, please let me know.

Thanks,
Magda

Magda E. Angulo
04/15/2002 02:27:58 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Meeting: Presidential Records Act and OHS Nebraska Ave. Complex

Per Ed's request to set up a meeting re Presidential Records Act, please advise which one of the following days and time works better for you:

Tomorrow at 3pm or Wednesday, April 17 at 10:30 a.m.

The meeting will be held in the office of Carl Buchholz, EEOB 113.

Thanks.

Message Sent
To:_____
brett m. kavanaugh/who/eop@eop
john fenzel/ovp/eop@eop
pkind@ida.org @ inet
leonard blevins/who/eop@eop
lucy g. clark/who/eop@eop
Alphonise R. Artis/WHO/EOP@EOP
Jocelyne A. Bodo/WHO/EOP@EOP

From: CN=Brian D. Montgomery/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
CC: nicolle devenish/who/eop@eop [WHO] <nicolle devenish>;todd w. beyer/who/eop@eop [WHO] <todd w. beyer>;scott stanzel/who/eop@eop [WHO] <scott stanzel>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;karl c. rove/who/eop@eop [WHO] <karl c. rove>;staylor@georgewbush.com @ inet [WHO] <staylor@georgewbush.com>
Sent: 4/16/2002 4:44:24 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-APR-2002 08:44:24.00
SUBJECT:: Re:
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:nicolle devenish (CN=nicolle devenish/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:todd w. beyer (CN=todd w. beyer/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:scott stanzel (CN=scott stanzel/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:karl c. rove (CN=karl c. rove/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:staylor@georgewbush.com (staylor@georgewbush.com @ inet [WHO])
READ:UNKNOWN
End Original ARMS Header

Assuming the the solicitations are against a n existing GOP database, can they cross-reference names against the list when people show up to get tickets?
Or does this mean anyone can show up at the distribution site(s) and get tickets?

Ken Mehlman
04/15/2002 04:19:54 PM
Record Type: Record

To: Nicolle Devenish/WHO/EOP@EOP, Brian D. Montgomery/WHO/EOP@EOP, Todd W. Beyer/WHO/EOP@EOP, Scott Stanzel/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP, Karl C. Rove/WHO/EOP@EOP, kr@georgewbush.com @ inet, staylor@georgewbush.com @ inet
Subject:

John Thune is about to send out tickets for the SD rally and wants to send out a letter to state party supporters informing them of where to get tickets. This will help make sure that our people are getting the tickets. Are you ok with his sending this out, provided that it's ok with counsel? It makes clear that the rally is paid for by the SD GOP.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Dinh, Viet <Viet.Dinh@usdoj.gov>
Sent: 4/16/2002 9:52:58 AM
Subject: : RE:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-APR-2002 13:52:58.00
SUBJECT:: RE:
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

yes, I was anxious to see the results of Sat's call and was
pleasantly surprised.

"Dinh, Viet" <Viet.Dinh@usdoj.gov>
04/16/2002 01:48:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

Thank you, Brett. Did you see how we got "adjudciative" back in there?

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, April 16, 2002 1:27 PM
To: Dinh, Viet
Subject:

Great to work with you on victims rights. And good event today.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 4/16/2002 7:40:58 AM
Subject: : Ashcroft v. Free Speech Coalition

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-APR-2002 11:40:58.00
SUBJECT:: Ashcroft v. Free Speech Coalition
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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A head's up on some imminent action from DOJ. Justice Kennedy just handed down a 5-4 decision in this case striking down on First Amendment grounds, including overbreadth, several aspects of the federal child pornography statute. While analysis of the opinion is still ongoing, it appears to be the broadest of all the possible free speech outcomes that could have been anticipated. DOJ is scrambling to put together a legislative proposal to amend the statute in a constitutional manner in response to the holding, perhaps as soon as this afternoon.

From: Elizabeth_N._Camp@who.eop.gov [UNKNOWN]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>

Sent: 4/16/2002 1:46:14 PM

Subject: : JSC Mtg reminder and location change

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth_N._Camp@who.eop.gov ( Elizabeth_N._Camp@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:16-APR-2002 17:46:14.00
SUBJECT:: JSC Mtg reminder and location change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
```

TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Date: Wednesday, April 17th
Time: 4:00-5:00 pm
Location: Judge's Office (not the Roosevelt)

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/16/2002 11:09:54 AM
Subject: : Re: Arlington National Cemetery - Waivers

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:16-APR-2002 15:09:54.00
SUBJECT:: Re: Arlington National Cemetery - Waivers
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks

Brett M. Kavanaugh
04/16/2002 03:04:25 PM
Record Type: Record

To: Jay P. Lefkowitz/OPD/EOP@EOP
cc:
bcc:
Subject: Re: Arlington National Cemetery - Waivers

I will check with OLC on this; they may have some important insights.

Jay P. Lefkowitz
04/16/2002 02:50:45 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Robin Cleveland/OMB/EOP@EOP
cc:
Subject: Arlington National Cemetery - Waivers

any guidance?
---------- Forwarded by Jay P. Lefkowitz/OPD/EOP on 04/16/2002 02:50 PM ----------

From: Aquiles F. Suarez on 04/16/2002 02:37:50 PM
Record Type: Record

To: Jay P. Lefkowitz/OPD/EOP@EOP
cc: Daniel J. Keniry/WHO/EOP@EOP
Subject: Arlington National Cemetery - Waivers

Jay:

Last Thursday Dan Keniry from Leg Affairs and I met with staff from the House Armed Services Committee and Veterans Affairs Committee to talk about possible legislation involving burials at Arlington National Cemetery (ANC). I agreed to go since I am now the Veterans Affairs policy person, although I quickly discovered that ANC is the one military

cemetery actually administered by the Secretary of the Army and not Veterans Affairs.

You may recall that a few years ago President Clinton was criticized for granting waivers so that political supporters could be buried at ANC. The most egregious example was of the late ambassador Larry Lawrence, who it was discovered had lied about his military record (subsequently his remains were exhumed) . These waivers are granted by the Secretary of the Army and are waivers of regulations, not statutes. According to our discussion with Hill staff, the prevailing legal position (and practice) of the White House has always been that the President inherently has whatever waiver authority the Secretary of the Army has to grant waivers. The Congressional Research Service in a memorandum is of the opinon that the President does not have legal authority to grant these waivers -- only the Secretary of the Army does.

The issue is important because Armed Services and veterans Affairs Committee staff want some signal from the White House as to whether we would support legislation codifying this waiver process. Legislation sponsored by Chairman Stump passed in the House -- both in the 105th and 106th Congress -- doing just that, but it never made it out of Committee in the Senate (the legislation does not provide for burial of House Members or Senators unless they were veterans, and Ted Kennedy apparently wants to be buried at ANC with the other Kennedys --this according to Hill staff).

Rather than engage again in a futile exercise, Hill staff wanted to get from the White House some indication as to whether we would be supportive of this legislation, perhaps if they added some limited waiver authority for the President. Veterans groups of course would be supportive -- the only real opposition appears to be from Senators who woudl exercise holds.

The threshold issue I raised with Dan is the following: if through practice and precedent, the White House position is that the President does have the legal authority to grant waivers, then by supporting this legislation we would be limiting the current powers of the Office of the President. This is something that White House Counsel would need to look at very carefully before we agree to even vet the idea with Defense or VA, in my opinion. We left it with Committee staff that we were going to go back and run the traps on the issue and give them guidance. You may want to forward this e-mail to Tim Flanigan in White House Counsel's office to see what his reaction is -- he may want to begin staffing it out.

Let me know your thoughts on how we proceed.

AFS

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/16/2002 11:56:32 AM
Subject: :

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-APR-2002 15:56:32.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Scowcroft, Barksdale, et al. are listed because they are on the President's Foreign Intelligence Advisory Board. (Members of this group are not paid staff.)

Here is an updated list of staff who haven't responded, excluding members of the PFIAB:

Aguirre, Gilbert-WHO
Amorsingh, Linus-WHO
Atkiss, Steven-WHO
Bailey, Bo (Robert)-WHO
Baker, Jane-WHO
Becker, Kathleen-WHO
Becker, Kathy-WHO
Benson, Latoya-WHO
Blalock, Kirk-WHO
Blossman, Robert-WHO
Bolten, Joshua-WHO
Brooke, Mary-WHO
Buie, Emmerson-WHO
Bunting, J. (Chris)-NSC
Burch, Therese-WHO
Burkhart, Shannon-WHO
Byrne, Catherine-NSC
Caler, Marcia-NSC
Campbell, Anne-WHO
Campbell, Frances-WHO
Cassano, Lois-WHO
Cobb, Robert-WHO
Comte, Rachel-WHO
Conner, Chuck-OPD
Cooper, Colby-NSC
Crawford, Bernard-NSC
Crawford, Anthony-NSC
Davis, Michael-WHO
Deitering, Randy-WHO
Deservi, Robert-WHO
Dickens, Reed-WHO
Digregorio, Elizabeth-WHO
Disston, Katherine-WHO
Droege, Philip-WHO
Dworken, Jonathan-NSC
Eberly, Don-WHO
Edwards, Jennifer-WHO
Estes, J.D.-WHO
Evans, Madalene-WHO
Fertakis, Katherine-NSC
Foley, Jennifer-WHO
Freeman, Myra-WHO
Galen, Reed-WHO
Gangsei, Theodore-WHO

Goss, Gregory-WHO
Green, Michael-NSC
Greenwood, Thomas-NSC
Gregory, Virginia-WHO
Grier, Judy-WHO
Gross, Taylor-WHO
Guerra, Abel-WHO
Hadley, Stephen-NSC
Harden, Alison-WHO
Hayesbird, Jacquelyn-WHO
Healy, Erin-WHO
Heath, Mike-WHO
Heilgenstein, Anne-WHO
Hernandez, Israel-WHO
Jablonka, Curtis-WHO
James, Theodoric-WHO
Jenkins, Gregory-WHO
Jones, Crystal-WHO
Jones, Deborah-WHO
Kalka, Jean-Francois-NSC
King, Taeshonnda-WHO
Kozberg, Lindsey-WHO
Lambert, Mary-WHO
Latimer, Mary-NSC
Leboeuf, Donni-WHO
Leverett, Flynt-NSC
Lezotte, Darin-WHO
Libby, Lewis-WHO
Lineberry, Laura (Liz)-NSC
Mallea, Jose-WHO
Mark, David-WHO
McArthur, David-WHO
McCulloch, Kendall-WHO
Merchant, Brian-NSC
Miller, James-WHO
Mobley, Helen-WHO
Mollman, Marcus-WHO
Montgomery, Brian-WHO
Moriarty, James-NSC
Morse, Paul-WHO
Nash, Charles-WHO
Newell, Paul-WHO
Nicholas, J. Paul-WHO
Olson, Tiffany-WHO
Parker, Doris-WHO
Petrosino, Nicole-WHO
Pfeifer, Sarah-WHO
Powell, Dina-WHO
Prendergast, Kathy-WHO
Purcell, Kristopher-WHO
Ralston, Susan-WHO
Randall, Gail-WHO
Reynolds, James (Mercer)-WHO
Rodriguez, Leonard-WHO
Rodriguez, Noelia-WHO
Rosenker, Mark-WHO
Roy, Roosevelt-WHO
Rust, Kathryn-WHO
Sailor, Angela-WHO
Samuels, Wendell-WHO
Scott, David-NSC
Selva, Elizabeth-NSC
Shea, Robert-WHO
Shockley, Leslie-WHO
Shourds, Cynthia-WHO
Simpson, Wandra-WHO
Snee, Ashley-WHO
Snyder, Louella-WHO

Steele, Lynden-WHO
Sulser, Jack-NSC
Taylor, Rhonda-WHO
Teague, R. Cornell-WHO
Terrell, Eric-WHO
Thompson, Carol-WHO
Tucker, Phyllis-WHO
Vandenberg, Cynthia-NSC
Viedgar, Randall-WHO
Ware, Patricia-WHO
Welborn, Camille-WHO
Wendell, Matthew-WHO
Westray, Howard-WHO
Wiegmann, John (Brad)-NSC
Williams, Cindi-WHO
Young, Patricia-WHO
Young, Reginald-WHO
Young, Tracy-WHO

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>;Sarah K. Lockart@who.eop.gov [WHO] <Sarah K. Lockart@who.eop.gov>

Sent: 4/16/2002 1:41:46 PM

Subject: : JSC Mtg reminder and location change

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-APR-2002 17:41:46.00
SUBJECT:: JSC Mtg reminder and location change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
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TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
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TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
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TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
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TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
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TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
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TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Sarah K. Lockart@who.eop.gov (Sarah K. Lockart@who.eop.gov [WHO])
READ:UNKNOWN
End Original ARMS Header

Date: Wednesday, April 17th
Time: 4:00-5:00 pm
Location: Judge's Office (not the Roosevelt)

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>;Sarah K. Lockart@who.eop.gov [WHO] <Sarah K. Lockart@who.eop.gov>

Sent: 4/16/2002 1:41:46 PM

Subject: : JSC Mtg reminder and location change

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-APR-2002 17:41:46.00
SUBJECT:: JSC Mtg reminder and location change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
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TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
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TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
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TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
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TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
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TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:Lori L. Lorenzi (CN=Lori L. Lorenzi/OU=WHO/O=EOP@EOP [WHO])
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TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
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TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
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TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
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TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
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TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Sarah K. Lockart@who.eop.gov (Sarah K. Lockart@who.eop.gov [WHO])
READ:UNKNOWN
End Original ARMS Header

Date: Wednesday, April 17th
Time: 4:00-5:00 pm
Location: Judge's Office (not the Roosevelt)

From: Elizabeth_N._Camp@who.eop.gov [UNKNOWN]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>

Sent: 4/16/2002 1:46:14 PM

Subject: : JSC Mtg reminder and location change

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth_N._Camp@who.eop.gov ( Elizabeth_N._Camp@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:16-APR-2002 17:46:14.00
SUBJECT:: JSC Mtg reminder and location change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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Date: Wednesday, April 17th
Time: 4:00-5:00 pm
Location: Judge's Office (not the Roosevelt)

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>

Sent: 4/17/2002 3:59:01 AM

Subject: : reminder - JSC PREP...

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-APR-2002 07:59:01.00
SUBJECT:: reminder - JSC PREP...
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

will be held immediately after staff mtg (8:45-9:15ish)

Please come prepared.
```

From: Wray, Henry <Henry.Wray@mail.house.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/17/2002 11:04:24 AM
Subject: : RE:
Attachments: P_NG3S6003_WHO.TXT_1.html; P_NG3S6003_WHO.TXT_2.doc; P_NG3S6003_WHO.TXT_3.doc; P_NG3S6003_WHO.TXT_4.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Wray, Henry" <Henry.Wray@mail.house.gov> ("Wray, Henry" <Henry.Wray@mail.house.gov> [UNKNOWN])
CREATION DATE/TIME:17-APR-2002 15:04:24.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

Attached are the text of the bill as introduced (it's H.R. 4187) and Mr. Horn's floor statement. The introduction is referenced in the Congressional
Record for Thursday, April 11, at H1282. The floor statement appears in the
extension section of the Record for Friday, April 12, at E511. I'll give Todd a call about testifying.

Regards,

Henry

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, April 17, 2002 2:09 PM
To: Wray, Henry
Subject:

Thanks for your message. Can you please e-mail me the bill and floor statement. I will contact you about the appropriate witnesses we would suggest.

- att1.htm - bill summary.doc - floor statement.doc - PRAMEND_003.PDF
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NG3S6003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NG3S6003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NG3S6003_WHO.TXT_3>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NG3S6003_WHO.TXT_4>

Brett,

Attached are the text of the bill as introduced (it's H.R. 4187) and Mr. Horn's floor statement. The introduction is referenced in the C ongressional Record for Thursday, April 11, at H1282. The floor statement appears in the extension section of the Record for Friday, April 12, at E511.& nbsp; I'll give Todd a call about testifying.

Regards,

Henry

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, April 17, 2002 2:09 PM
To: Wray, Henry
Subject:

Thanks for your message. Can you please e-mail me the bill and floor statement. I will contact you about the appropriate witn esses we would suggest.

THE PRESIDENTIAL RECORDS ACT AMENDMENTS OF 2002
SUMMARY

The bill establishes statutory procedures to govern the assertion of executive privilege claims by a former or incumbent President over records covered by the Presidential Records Act. It preserves the constitutional right of a former or incumbent President to assert privilege claims, but in a way that complies with the framework and intent of the Presidential Records Act. It supersedes the procedures established in Executive Order 13233 and rescinds that Executive Order.

The bill requires the Archivist to provide advance notice of 20 working days to the former and incumbent Presidents before releasing any records that are restricted under the provisions of the Act. The Archivist would release the records upon the expiration of this 20-day period, except any records for which the former or incumbent President asserts a claim of privilege.

The Archivist could extend the 20-day period for an additional 20 days if the former or incumbent President demonstrated a need for additional time to review the records. Additional time should rarely if ever be needed. The former and incumbent Presidents have access to the records at any time and could conduct their reviews well before the time records are ready for public release. The Archivist also would have thoroughly categorized and screened the records before the notice is issued, which should greatly facilitate reviews by the former and incumbent Presidents.

The bill requires that any claim of privilege be in writing and signed by the former or incumbent President, specify the records to which it applies, and state the nature and grounds of the privilege claim. Notices of the proposed release of records, as well as any privilege claims, would be made public.

If the former President submitted a privilege claim, the Archivist would withhold release of the records covered by that claim for another 20 working days. This would permit the former President to seek judicial enforcement of his privilege claim, as already provided for in the Presidential Records Act. After expiration of this 20-day period, the Archivist would release the records unless a court ordered their continued withholding. This approach places the burden of establishing a privilege claim on the former President. Privilege claims should be extremely rare, given the protections already built into the Act and the age of the records. Any claims that are asserted probably would be based on novel or untested legal theories that a court should initially consider.

If the incumbent President submitted a privilege claim, the Archivist would withhold the records unless and until the incumbent President withdrew the claim or there was a final, non-appealable court order directing the Archivist to release the records. This approach recognizes the legal and practical reality that the Archivist must honor a privilege claim by an incumbent President.

The bill would apply similar procedures to requests for access to records by Congress and the courts. The time periods, however, would be modified to ensure compliance with deadlines imposed by subpoenas. Also, the bill does not specify an outcome if the incumbent President invoked privilege in response to a congressional or judicial access request. Disputes between the incumbent president and either the Congress or the courts would be left for resolution on a case-by-case-basis.

The bill makes several clarifying and conforming changes to existing provisions of the Presidential Records Act as follows:

It makes explicit that all the time lines and procedures under the Freedom of Information Act (FOIA) apply to public requests for access to records under the Presidential Records Act. This is consistent with the current language and intent of the Act, but is not entirely clear whether the Executive Branch agrees that FOIA time limits apply to requests for records under the Presidential Records Act.

It clarifies that authority to claim executive privilege is personal to a former or incumbent President and cannot be delegated to their representatives. This is consistent with the current legal theory and practice concerning executive privilege.

It clarifies that a former or incumbent Vice President cannot claim presidential privileges.

Finally, the draft bill explicitly rescinds Executive Order 13233.

REV_00143372

INTRODUCTION OF THE PRESIDENTIAL RECORDS ACT AMENDMENTS OF 2002

Mr. HORN. Mr. Speaker, today I am introducing the Presidential Records Act Amendments Act of 2002. Prompt enactment of this bill will fix a serious, but in my view readily solvable, problem that has developed in the implementation of the Presidential Records Act of 1978. I am pleased that a number of my colleagues from both sides of the aisle have joined me as co-sponsors of the bill.

The Presidential Records Act of 1978 was a landmark law. It declared for the first time that the official records of a former President belong to the American people. It gave custody of a former President's records to the Archivist of the United States and imposed upon the Archivist "an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act."

The Act built in safeguards over the disclosure of presidential records. It allowed former Presidents to restrict disclosure of certain confidential records for up to 12 years after they leave office. The authors of the Act considered this 12-year embargo sufficient to prevent a "chilling effect" on a President's ability to get candid and confidential advice. In this regard, they were mindful of the Supreme Court's observation in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), that the expectation of confidentiality in presidential communications "has always been limited and subject to erosion over time after an administration leaves office." The Act also permanently shielded from public release records containing military and diplomatic secrets or other categories of information whose disclosure would not be in the national interest.

The Act first applied to the records of former President Ronald Reagan. Therefore, records that former President Reagan restricted for 12 years should have become publicly available in February 2001. Unfortunately, it took one full year after the release date envisioned by the Act for just a relatively small portion of those records to be made public. One reason for this is that the records have undergone lengthy reviews to determine whether the former or incumbent President should attempt to prevent their release by claiming "executive privilege"

For much of last year, release of the Reagan records was delayed while the current Administration repeatedly extended the deadline for making executive privilege decisions under an Executive Order that President Reagan had issued before he left office. On November 1, 2001, President Bush issued a new, and much more restrictive, Executive Order to govern the review of a former President's records for possible executive privilege claims.

The new Executive Order No. 13233 starts with a "background" section that asserts an extremely expansive view of the scope of executive privilege. It requires the Archivist to notify both the former and incumbent Presidents of requests for access to presidential records. It then prohibits the Archivist from releasing the records "unless and until" both the former President and incumbent President agree to authorize access,

or unless the Archivist is directed to release the records by a final and non-appealable court order. The Executive Order makes any claim of executive privilege by either the former or incumbent President binding on the Archivist. Indeed, the Archivist must comply with a privilege claim by a former President even if the incumbent President does not believe the claim is well founded. The Order sets a target date of 90 days for the review of records. However, under the terms of the Order, the review periods available to the former and incumbent Presidents are essentially open-ended. A former or incumbent President can indefinitely postpone public disclosure of records simply by withholding approval for their release, without ever needing to claim executive privilege.

Last November, the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, which I chair, held a hearing on implementation of the Presidential Records Act. At that hearing, lawyers, historians, and other experts criticized the Executive Order on legal and policy grounds. Members of Congress from both sides of the aisle voiced similar criticisms. Following the hearing, a host of archivists, historians and others contacted me to express their concerns over the Executive Order. Finally, several groups have filed a lawsuit to overturn the Executive Order.

I agree that the Executive Order violates the letter and spirit of the Presidential Records Act. However, I do not think we should wait perhaps years for the lawsuit to run its course. We need to act now in order to get implementation of the Act back on track. I believe we can solve the problem in a way that protects the constitutional prerogatives of former and incumbent Presidents while preserving the Act's intent of publicly disclosing presidential records as promptly and completely as possible. That is what my bill seeks to do.

Like the Executive Order, my bill establishes a process for the consideration of executive privilege claims. Like the Executive Order, it requires advance notice to the former and incumbent Presidents before presidential records are released. This permits them to review the records in order to decide whether to claim privilege. Also like the Executive Order, my bill requires the Archivist to withhold records (or parts of records) for which the incumbent President claims privilege. In this event, a requester would have the burden of challenging a privilege claim in court.

However, my bill differs from the Executive Order in several ways. The bill does not attempt to define the scope of executive privilege. It leaves this to the courts. The bill limits the amount of time the former and incumbent President can take to review records and claim privilege. The basic review period is 20 working days, which is the same limit imposed on agencies under the Freedom of Information Act. This period may be extended for not more than another 20 working days if the Archivist determines that an extension is necessary to permit adequate review. If there is no claim of privilege within the applicable review period, the Archivist must release the records.

The other key difference between my bill and the Executive Order concerns what happens if a former President claims privilege. As noted previously, the Executive Order

REV_00143374

forces the Archivist to withhold records any time a former President claims privilege. The requester then has the burden of going to court to challenge the privilege claim. This is the feature of the Executive Order most clearly at odds with the Presidential Records Act. The bill reverses this burden. If a former President claims privilege, the Archivist will withhold the records for an additional 20 days in order to give the former President time to file suit to enforce his privilege claim. However, the Archivist will then release the records absent a court order to the contrary.

I believe this is a reasonable approach, and one that is consistent with the intent of the Presidential Records Act. The Act already provides for lawsuits by a former President to vindicate his rights and privileges. Furthermore, the Act already protects from disclosure those categories of information that would ordinarily be subject to executive privilege claims. Thus, any privilege claim a former President might assert probably would be based on novel and untested legal grounds that should be initially considered by a court.

The bill also includes several provisions that are not in the Executive Order. Most of these provisions are intended to ensure more transparency and public accountability with respect to possible executive privilege claims. For example, a claim of privilege would be in a written public document signed by the incumbent or former President, as the case may be. This is consistent with the settled principle that the right to claim executive privilege is personal to the incumbent or former President and cannot be delegated to their assistants, relatives, or descendants.

Mr. Speaker, I request that a summary of the Presidential Records Act Amendments of 2002 be placed in the CONGRESSIONAL RECORD.

REV_00143375

.....

(Original Signature of Member)

107TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HORN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Presidential Records Act Amendments of 2002".

SEC. 2. PROCEDURES FOR CONSIDERATION OF CLAIMS OF CONSTITUTIONALLY BASED PRIVILEGE AGAINST DISCLOSURE.

(a) IN GENERAL.—Chapter 22 of title 44, United States Code, is amended by adding at the end the following:

"§ 2208. Claims of constitutionally based privilege against disclosure

"(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist shall—

"(A) promptly provide notice of such determination to—

"(i) the former President during whose term of office the record was created; and

"(ii) the incumbent President; and

"(B) make the notice available to the public.

"(2) The notice under paragraph (1)—

"(A) shall be in writing; and

"(B) shall include such information as may be prescribed in regulations issued by the Archivist.

"(3)(A) Upon the expiration of 20 days (excepting Saturdays, Sundays, and legal public holidays) following provision of notice under paragraph (1)(A), the Archivist shall make available to the public the record covered by

the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President a claim of constitutionally based privilege against disclosure that meets the requirements of paragraph (4).

"(B) The Archivist may extend the 20-day period for not more than 20 additional days (excepting Saturdays, Sundays, and legal public holidays) if the Archivist determines, based on a showing by the former President or the incumbent President, that such an extension is necessary to allow an adequate review of the record.

"(4) A claim of constitutionally based privilege against disclosure meets the requirements of this paragraph if it—

"(A) is in writing;

"(B) specifies the record (or reasonably segregable portion of a record) to which the claim applies;

"(C) is signed by the former President or incumbent President making the claim; and

"(D) states the nature of the privilege and the specific grounds for the claim.

"(b) The Archivist shall provide a copy of each claim of constitutionally based privilege against disclosure of a Presidential record—

"(1) to the person seeking the record, if any;

"(2) to the chairman and ranking minority member of each of the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate; and

"(3) upon request, to any member of the public.

"(c)(1) The Archivist shall not release a Presidential record that is subject to a privilege claim submitted by a former President until the expiration of the 20-day period (excluding Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist receives the claim.

"(2) Upon the expiration of such period the Archivist shall make the record publicly available unless otherwise directed by a court order in an action initiated by the former President under section 2204(e).

"(d)(1) The Archivist shall not release a Presidential record that is subject to a privilege claim submitted by the incumbent President unless—

"(A) the incumbent President withdraws the privilege claim; or

"(B) the Archivist is otherwise directed by a final court order that is not subject to appeal.

"(2) This subsection shall not apply with respect to any Presidential record required to be made available under section 2205(2)(A) or (C).

"(e) The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply with the return date of any congressional subpena, judicial subpena, or judicial process.".

(b) CONFORMING AMENDMENTS.—(1) Section 2204(d) of title 44, United States Code, is amended by inserting ", except section 2208," after "chapter".

(2) Section 2207 of title 44, United States Code, is amended in the second sentence by inserting ", except section 2208," after "chapter".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 22 of title 44, United States Code, is amended by adding at the end the following:

"2208. Claims of constitutionally based privilege against disclosure.".

SEC. 3. EXECUTIVE ORDER OF NOVEMBER 1, 2001.

Executive Order number 13233, dated November 1, 2001 (66 Fed. Reg. 56025), shall have no force or effect.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/17/2002 8:10:51 AM
Subject: : LRM PTM101 - - OMB Request for Views on HR3995 Housing Affordability for America Act of 2002
Attachments: P_1UNR6003_WHO.TXT_1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-APR-2002 12:10:51.00
SUBJECT:: LRM PTM101 - - OMB Request for Views on HR3995 Housing Affordability for America Act of 2002
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/17/2002 10:06 AM ----------

From: P. Thaddeus Messenger on 04/17/2002 10:01:14 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM101 - - OMB Request for Views on HR3995 Housing Affordability for America Act of 2002

LRM ID: PTM101
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: OMB Request for Views on HR3995 Housing Affordability for America Act of 2002

DEADLINE: 5:00 p.m. Friday, April 19, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:

The House Financial Services Committee has scheduled hearings on HR 3995 for April 23 and 24. We expect to clear HD testmony (and possibly other agtency testimony) for these hearings.

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P. Thaddeus Messenger
Anna M. Briatico
LRM ID: PTM101 SUBJECT: OMB Request for Views on HR3995 Housing Affordability for America Act of 2002
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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107TH CONGRESS
2D SESSION

H. R. 3995

To amend and extend certain laws relating to housing and community opportunity, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2002

Mrs. ROUKEMA (for herself, Mr. GREEN of Wisconsin, Mr. OXLEY, Mr. ANDREWS, Mr. LUCAS of Kentucky, Mr. BEREUTER, Mr. BACHUS, Mr. KING, Mr. NEY, Mr. BARR of Georgia, Mrs. KELLY, Mr. RILEY, Mr. GARY G. MILLER of California, Mr. CANTOR, Mr. GRUCCI, Mr. ROGERS of Michigan, Mr. TIBERI, Mr. LEACH, Mr. SHAYS, Mr. LATOURETTE, Mr. JONES of North Carolina, Ms. HART, Mr. FERGUSON, and Mr. PICKERING) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend and extend certain laws relating to housing and community opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Housing Affordability for America Act of 2002".

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(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—HOME INVESTMENT PARTNERSHIPS PROGRAM

Sec. 101. Affordable housing production and preservation.
Sec. 102. Removal of fair market rents from rent level determinations.
Sec. 103. Median income for rent determinations.
Sec. 104. 3-year inspection cycle for tax credit projects.
Sec. 105. Repeal of limitations on program assistance as percentage of operating budget.
Sec. 106. Eligibility of room additions for use for grandparents and grandchildren.
Sec. 107. Program year for matching contributions.
Sec. 108. Membership of boards of eligible community housing development organizations.
Sec. 109. Monitoring of compliance.
Sec. 110. Funding eligibility for secular activities carried out by religious organizations.

TITLE II—FHA MORTGAGE INSURANCE

Subtitle A—Multifamily Housing and Health Care Facilities

Sec. 201. Indexing of multifamily mortgage limits.
Sec. 202. High-cost areas.
Sec. 203. Insurance for integrated service facilities mortgages.
Sec. 204. Insurance for mortgages for integrated service facilities owned in connection with hospitals.
Sec. 205. Insurance for mortgages for refinancing debt of existing integrated service facilities.
Sec. 206. Standards and need for health care facility mortgage insurance.

Subtitle B—Single Family Housing

Sec. 221. Downpayment simplification.
Sec. 222. Reduced downpayment requirements for loans for teachers and public safety officers.
Sec. 223. Community partners next door program.
Sec. 224. Public safety officer home ownership in high-crime areas.
Sec. 225. Servicing of HUD-owned mortgages.
Sec. 226. Risk-based capital levels for Mutual Mortgage Insurance Fund.
Sec. 227. Hybrid adjustable rate mortgages.
Sec. 228. Uniform national loan limit for home equity conversion mortgages.
Sec. 229. Prohibition of investor and nonprofit owners under rehabilitation loan program.
Sec. 230. Rehabilitation loan advances.
Sec. 231. Nonprofit purchasers under property disposition.
Sec. 232. Extension of holding period.
Sec. 233. Fraud in loan and credit applications.

TITLE III—SUPPORTIVE HOUSING FOR ELDERLY AND DISABLED FAMILIES

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Sec. 301. Modernization demonstration for section 236 elderly projects.
Sec. 302. Service coordinators for supportive housing for persons with disabilities.
Sec. 303. Eligibility of religious organizations as project owners.

TITLE IV—SECTION 8 RENTAL HOUSING ASSISTANCE PROGRAM

Sec. 401. Thrifty production vouchers.
Sec. 402. Monthly rental amount.
Sec. 403. Flexibility to assist hard-to-house families.
Sec. 404. Prohibition on re-screening of tenants.
Sec. 405. PHA administrative fees.
Sec. 406. Ensuring ability to use enhanced vouchers.
Sec. 407. Extension of manufactured housing demonstration program.
Sec. 408. Extension of project-based section 8 contract renewals.

TITLE V—PUBLIC HOUSING

Subtitle A—General Provisions

Sec. 501. Waiver of resident commissioner requirement.
Sec. 502. PHA joint ventures.
Sec. 503. Third-party public housing assessment system.
Sec. 504. Public housing agency plans for small public housing agencies.
Sec. 505. Development-based subsidies.

Subtitle B—HOPE VI Revitalization Program

Sec. 521. Selection criteria.
Sec. 522. Authorization of appropriations.
Sec. 523. Extension of program.

TITLE VI—HOMELESS HOUSING PROGRAMS

Sec. 601. Interagency Council on the Homeless.
Sec. 602. Federal Emergency Management Agency food and shelter program.
Sec. 603. Emergency shelter grants program.
Sec. 604. Supportive housing program.
Sec. 605. Section 8 assistance for single room occupancy dwellings.
Sec. 606. Shelter plus care.
Sec. 607. Amendments to table of contents.

TITLE VII—NATIVE AMERICAN HOUSING

Sec. 701. Reauthorization of Native American Housing and Self-Determination Act of 1996.

TITLE VIII—HOUSING IMPACT ANALYSIS

Sec. 801. Applicability.
Sec. 802. Exception for certain banking rules.
Sec. 803. Statement of proposed rulemaking.
Sec. 804. Initial housing impact analysis.
Sec. 805. Final housing impact analysis.
Sec. 806. Avoidance of duplicative or unnecessary analyses.
Sec. 807. Preparation of analyses.
Sec. 808. Effect on other law.
Sec. 809. Procedure for waiver or delay of completion.

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Sec. 810. Definitions.
Sec. 811. Development.
Sec. 812. Judicial review.

TITLE IX—OTHER HOUSING PROGRAMS

Sec. 901. GNMA guarantee fee.
Sec. 902. Housing counseling programs.
Sec. 903. Assistance for self-help housing providers.
Sec. 904. Housing opportunities for persons with AIDS.
Sec. 905. CDBG funding eligibility for secular activities carried out by religious organizations.
Sec. 906. Use of CDBG amounts for construction of tornado-safe shelter for manufactured housing parks.
Sec. 907. Use of CDBG amounts to administer renewal communities.
Sec. 908. Subsidy layering review.

TITLE I—HOME INVESTMENT PARTNERSHIPS PROGRAM

SEC. 101. AFFORDABLE HOUSING PRODUCTION AND PRESERVATION.

(a) PURPOSE.—The purpose of this section is to dramatically increase the production and preservation of mixed income rental housing affordable to extremely low-income and very low-income families.

(b) DEFINITION.—Section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704) is amended—

(1) by redesignating paragraph (25) as paragraph (26);

(2) by redesignating paragraph (24) (as added by Public Law 102–229; 105 Stat. 1709; relating to insular areas) as paragraph (25);

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(3) by redesignating paragraphs (9) through (21) as paragraphs (10) through (22), respectively; and

(4) by inserting after paragraph (8) the following new paragraph:

"(9) The term "extremely low-income families" means very low-income families whose incomes do not exceed 30 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.".

(c) ELIGIBLE USES.—Section 212(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742(a)) is amended—

(1) in paragraph (2), by adding at the end the following new sentence: "This paragraph shall not apply to any funds made available only for use under paragraph (4).."; and

(2) by inserting after paragraph (3) the following new paragraph:

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"(4) PRODUCTION AND PRESERVATION.—

"(A) IN GENERAL.—Funds made available for use under this paragraph shall be used by the participating jurisdiction only for the production of new, or the preservation of existing, rental housing for extremely low- and very low-income families that qualifies as affordable housing in accordance with section 215(c).

"(B) FORM OF ASSISTANCE.—Assistance provided by a participating jurisdiction pursuant to this paragraph may be provided in the form of grants or loans (including grants and loans made through State and local housing trust funds) and may only be used for acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing described in subparagraph (A).

"(C) INCOME TARGETING AND RENT.—

"(i) VERY LOW-INCOME FAMILIES.—All of the funds made available for use under this paragraph to a participating jurisdiction shall be used for providing dwelling units that may be occupied only by very low-income families.

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"(ii) EXTREMELY LOW-INCOME FAMILIES.—Not less than 50 percent of any funds made available for use under this paragraph to a participating jurisdiction shall be used for providing dwelling units that may be occupied only by extremely low-income families.

"(D) RENT.—Except as provided in subparagraph (G), each family occupying a dwelling unit provided using amounts made available for use under this paragraph shall pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 40 percent of the family's gross monthly income.

"(E) REUSE.—Any funds made available to a participating jurisdiction only for use under this paragraph shall be placed under binding commitment for use for production or preservation of affordable rental housing in accordance with this paragraph within 18 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund, except that the Secretary may extend such period by not more

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than 6 months pursuant to a request by the participating jurisdiction. Expiration of such period (including any such extension, if applicable) shall be considered, for purposes of section 218(g), to be expiration of the 24-month period referred to in such section, except that any funds made available for use under this paragraph shall be reallocated only for use under this paragraph.''.

''(F) QUALIFICATION AS AFFORDABLE HOUSING.—Subparagraphs (A), (B), and (C) of section 215(a)(1) shall not apply to housing that is assisted with amounts made available under this paragraph.

''(G) INCREASES IN TENANT INCOME.—Housing that is assisted with amounts made available under section 212(a)(4) shall qualify as affordable housing despite a temporary noncompliance with clause (i) or (ii) of subparagraph (C) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with subparagraph (C) until such noncompliance is corrected. Tenants who no

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longer qualify as very low-income families shall pay as rent the lesser of the amount payable by the tenant under State or local law or 40 percent of the family's gross monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986.''.

(d) ALLOCATION.—Section 217 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747) is amended—

(1) in subsection (a), by inserting after ''IN GENERAL.—'' the following: ''Except with respect to amounts subject to allocation under subsection (e)''; and

(2) by adding at the end the following new subsection:

''(e) ALLOCATION OF AMOUNTS FOR PRODUCTION AND PRESERVATION.—

''(1) IN GENERAL.—Funds made available for use only under section 212(a)(4) shall be allocated in accordance with the formula established under paragraph (2). Of such funds made available under

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the preceding sentence, the Secretary shall allocate 60 percent among units of general local government and 40 percent among States.

"(2) FORMULA.—The Secretary shall establish in regulation an allocation formula that reflects each jurisdiction's share of total need among participating jurisdictions for an increased supply of affordable housing for extremely low- and very low-income families, as identified by objective measures of inadequate housing supply, which shall include low vacancy rates, low turnover of units with rents below fair market rents established under section 8 of the United States Housing Act of 1937, a high proportion of substandard housing, the cost of producing housing, and other measures that the Secretary considers appropriate.

"(3) SOURCE OF DATA.—The data to be used for formula allocation of funds under this subsection within a fiscal year shall be data obtained from a standard source that are available to the Secretary 90 days before the beginning of that fiscal year.

"(4) CONSULTATION.—The Secretary shall develop the formula under paragraph (2) in ongoing consultation with (A) the Subcommittee on Housing and Community Opportunity of the Committee on

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Financial Services of the House of Representatives, (B) the Subcommittee on Housing and Transportation of the Committee on Banking, Housing, and Urban Affairs of the Senate, and (C) organizations representing States and units of general local government. Not less than 60 days before publishing a formula for comment, the Secretary shall submit a copy of the formula the Secretary intends to propose to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.''.

(e) MATCHING REQUIREMENTS.—Section 220 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12750) is amended by adding at the end the following new subsection:

''(e) PRODUCTION AND PRESERVATION.—In the case of affordable housing assisted under section 212(a)(4):

''(1) SUBGRANTEE CONTRIBUTIONS.—Any contributions to the housing made by subgrantees of the participating jurisdiction using amounts made available under this title for such housing shall be considered contributions made by the participating jurisdiction, for purposes of this section.

''(2) USE OF TAX CREDITS AND CDBG AMOUNTS.—In addition to contributions specified in

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subsection (c), contributions for such housing may be in the form of—

"(A) any tax credits under State or Federal law; and

"(B) notwithstanding subsection (c)(1), any funds from a grant made under section 106 of the Housing and Community Development Act of 1974.

"(3) WAIVER FOR POOR AND RURAL COMMUNITIES.—The Secretary may reduce or waive the matching requirement under subsection (a) with respect to any participating jurisdiction that—

"(A) is located in a rural area; or

"(B) has certified that it is in fiscal distress or severe fiscal distress for purposes of this section.".

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 205 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12724) is amended—

(1) by inserting "(a) IN GENERAL.—" before "There are authorized"; and

(2) by adding at the end the following new subsection:

"(b) PRODUCTION AND PRESERVATION OF AFFORDABLE HOUSING.—There are authorized to be appropriated

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for allocation under section 217(e) for use only for production and preservation of affordable rental housing under section 212(4) any unobligated balances from amounts appropriated for fiscal year 2004 or any fiscal year thereafter for assistance under section 8 of the United States Housing Act of 1937 and that are recaptured.''.

SEC. 102. REMOVAL OF FAIR MARKET RENTS FROM RENT LEVEL DETERMINATIONS.

(a) DEFINITIONS.—Section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704) is amended—

(1) in paragraph (9), by striking ''or fair market rents,''; and

(2) in paragraph (10), by striking ''or fair market rents,''.

(b) INCOME TARGETING.—Section 214(1)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12744(1)(A)) is amended by striking ''or fair market rent,''.

(c) QUALIFICATION AS AFFORDABLE HOUSING.—Section 215(a)(1)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(a)(1)(A)) is amended—

(1) by striking ''the lesser of (i) the existing fair market rent for comparable units in the area as

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established by the Secretary under section 8 of the United States Housing Act of 1937, or (ii) a rent that does not exceed'' and inserting ''the amount that is equal to''; and

(2) by striking ''or fair market rents,''.

SEC. 103. MEDIAN INCOME FOR RENT DETERMINATIONS.

Section 215(a)(1)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(a)(1)(A)) is amended—

(1) by inserting ''or State, whichever is greater'' before the second comma; and

(2) by inserting ''or State, whichever is greater,'' before ''on the basis''.

SEC. 104. 3-YEAR INSPECTION CYCLE FOR TAX CREDIT PROJECTS.

Subsection (b) of section 226 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12756) is amended to read as follows:

''(b) PERIODIC MONITORING.—

''(1) REQUIREMENT.—Each participating jurisdiction shall review the activities of owners of affordable housing for rental that is assisted under this title to assess compliance with the requirements of this title. Such review shall be conducted in compliance with the provisions of paragraph (2) (relating

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to frequency) and shall include on-site inspection to determine compliance with housing codes and other applicable regulations.

"(2) FREQUENCY.—The review required by paragraph (1) shall be conducted not less frequently than—

"(A) except as provided in subparagraph (B), annually; and

"(B) in the case of affordable housing for rental that has been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 and is not considered (under such regulations as the Secretary shall prescribe) to be high-risk housing, once every 3 years, or more often as may be required under the regulations issued pursuant to such section 42.

"(3) INCLUSION IN PERFORMANCE REPORT.—The results of each review of a participating jurisdiction shall be included in the performance report of the jurisdiction that is submitted under section 108(a) for the year in which the review is conducted and shall be made available to the public.".

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SEC. 105. REPEAL OF LIMITATIONS ON PROGRAM ASSISTANCE AS PERCENTAGE OF OPERATING BUDGET.

(a) HOUSING EDUCATION AND ORGANIZATIONAL SUPPORT.—Section 233(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(d)) is amended—

(1) by striking "may not—" and all that follows through "(1)" and inserting "may not"; and

(2) by striking "; or" at the end of paragraph (1) and all that follows through the end of paragraph (2) and inserting a period.

(b) OTHER SUPPORT FOR STATE AND LOCAL HOUSING STRATEGIES.—The first sentence of section 243(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12783(b)) is amended by striking "and shall provide not more than 20 percent of the operating budget of the contracting organization in any one year".

SEC. 106. ELIGIBILITY OF ROOM ADDITIONS FOR USE FOR GRANDPARENTS AND GRANDCHILDREN.

Section 104(8) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(8)) is amended by adding at the end the following new sentence: "Such term also includes an additional room in, or a cottage housing opportunity unit installed adjacent to, an existing 1- to 4-family dwelling, that is necessary to permit the

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habitation, with the low-income family occupying the dwelling, of an elderly person who is a relative of the family and to avoid placement of such relative in an institutionalized setting, foster care, or other out-of-home setting.''.

SEC. 107. PROGRAM YEAR FOR MATCHING CONTRIBUTIONS.

Section 220 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12750) is amended—

(1) in subsection (a)—

(A) by striking ''a fiscal year'' and inserting ''a program year of the jurisdiction''; and

(B) by striking ''such fiscal year'' and inserting ''such program year''; and

(2) in subsection (d)—

(A) in paragraph (1), by striking ''fiscal year'' and inserting ''program year of the jurisdiction'';

(B) in paragraph (3), by striking ''fiscal year'' each place such term appears and inserting ''program year''; and

(C) in paragraph (5), by striking ''fiscal year'' and inserting ''program year of the jurisdiction''.

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SEC. 108. MEMBERSHIP OF BOARDS OF ELIGIBLE COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS.

Section 104(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(6)) is amended by adding at the end the following: ''In establishing requirements for an organization to be considered a community housing development organization for purposes of this Act, the Secretary may not prohibit, limit, or restrict membership on the board by public employees who are not elected or appointed or who do not exercise policy-making or policy-determining functions.''.

SEC. 109. MONITORING OF COMPLIANCE.

(a) AUTHORITY AND AGREEMENTS.—Section 226 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12756) is amended—

(1) in the second sentence of subsection (a)—

(A) by striking ''and''; and

(B) by inserting before the period at the end the following: '', and (3) such fees as may be established by the participating jurisdiction pursuant to subsection (c)'';

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

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"(c) MONITORING FEES.—A participating jurisdiction may establish and charge fees to affordable housing projects assisted under this title for costs of monitoring compliance with the provisions of this title.".

(b) USE OF INVESTMENT.—Section 212 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742(c)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

"(h) MONITORING FEES.—Monitoring fees under section 226(c) for an affordable housing project may be paid for from amounts made available under this subtitle to the project, in accordance with an agreement pursuant to section 226(a).".

SEC. 110. FUNDING ELIGIBILITY FOR SECULAR ACTIVITIES CARRIED OUT BY RELIGIOUS ORGANIZATIONS.

Title II of the Cranston-Gonzalez National Affordable Housing Act is amended—

(1) in section 202(10) (42 U.S.C. 12721(10)), by inserting "religious organizations," after "trade unions,"; and

(2) in section 212 (42 U.S.C. 12742), as amended by the preceding provisions of this Act, by adding at the end the following new subsection:

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"(g) ELIGIBLE SUBRECIPIENTS.—Funds made available under this subtitle may be provided to religious organizations, or organizations having religious purposes, for carrying out secular activities that qualify under this section as eligible uses for such funds.".

TITLE II—FHA MORTGAGE INSURANCE

Subtitle A—Multifamily Housing and Health Care Facilities

SEC. 201. INDEXING OF MULTIFAMILY MORTGAGE LIMITS.

(a) SECTION 207 LIMITS.—Section 207(c)(3) of the National Housing Act (12 U.S.C. 1713(c)(3)) is amended—

(1) by striking "$11,250" and inserting "$17,460";

(2) by inserting before "; and except that" the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the

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Bureau of the Census of the Department of Commerce''; and

(3) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph)''.

(b) SECTION 213 LIMITS.—Section 213(b)(2) of the National Housing Act (12 U.S.C. 1715e(b)(2)) is amended—

(1) by striking ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', and ''$70,200'', and inserting ''$41,207'', ''$47,511'', ''$57,300'', ''$73,343'', and ''$81,708'', respectively;

(2) by striking ''$49,140'', ''$60,255'', ''$75,465'', and ''$85,328'', and inserting ''$49,710'', ''$60,446'', ''$78,197'', and ''$85,836'', respectively;

(3) by inserting after the colon at the end of the first proviso the following: ''*Provided further*, That the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month

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period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(4) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph)''.

(c) SECTION 220 LIMITS.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended—

(1) by inserting after ''foregoing dollar amount limitations contained in this clause'', the first place such phrase appears, the following: ''(as such limitations may have been previously adjusted pursuant to this clause)''.

(2) by inserting after ''*Provided*,'' the following: ''That the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Cen-

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sus of the Department of Commerce: *Provided further,*''; and

(3) by striking ''(as determined after the application of the preceding proviso)'' and inserting ''(as such limitations may have been previously adjusted pursuant to the preceding proviso and as determined after application of any percentage increase authorized in this clause relating to units with two, three, or four or more bedrooms)''.

(d) SECTION 221(d)(3) LIMITS.—Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(3)(ii)) is amended—

(1) by inserting before ''; and except that'' the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(2) by inserting after ''foregoing dollar amount limitations contained in this clause'' the following:

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"(as such limitations may have been previously adjusted pursuant to this clause)".

(e) SECTION 221(d)(4) LIMITS.—Section 221(d)(4)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(4)(ii)) is amended—

(1) by inserting before "; and except that" the following: "; except that the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce"; and

(2) by inserting after "foregoing dollar amount limitations contained in this clause" the following: "(as such limitations may have been previously adjusted pursuant to this clause)".

(f) SECTION 231 LIMITS.—Section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended—

(1) by inserting before "; and except that" the following: "; except that the Secretary shall adjust

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each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(2) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph)''.

(g) SECTION 234 LIMITS.—Section 234(e)(3) of the National Housing Act (12 U.S.C. 1715y(e)(3)) is amended—

(1) by inserting before ''; except that'' the second place such phrase appears the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this provision) effective January 1 of each year (beginning in 2003) in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the An-

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nual Construction Cost Index of the Bureau of the Census of the Department of Commerce";

(2) by inserting after "each of the foregoing dollar amounts" the following: "(as such amounts may have been previously adjusted pursuant to this paragraph)"; and

(3) by inserting after "foregoing dollar amount limitations contained in this paragraph" the following: "(as such limitations may have been previously adjusted pursuant to this paragraph and increased pursuant to the preceding clause)".

SEC. 202. HIGH-COST AREAS.

In the National Housing Act, sections 207(c)(3) (12 U.S.C. 1713(c)(3)), 213(b)(2) (12 U.S.C. 1715e(b)(2)), 220(d)(3)(B)(iii) (12 U.S.C. 1715k(d)(3)(B)(iii)), 221(d)(3)(ii) (12 U.S.C. 1715l(d)(3)(ii)), 221(d)(4)(ii) (12 U.S.C. 1715l(d)(4)(ii)), 231(c)(2) (12 U.S.C. 1715v(c)(2)), and 234(e)(3) (12 U.S.C. 1715y(e)(3)) are each amended—

(1) by striking "140 percent" and inserting "170 percent"; and

(2) by striking "110 percent" and inserting "140 percent".

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SEC. 203. INSURANCE FOR INTEGRATED SERVICE FACILITIES MORTGAGES.

Section 232 of the National Housing Act (12 U.S.C. 1715w) is amended—

(1) in subsection (a)(2)—

(A) by striking ''nevertheless''; and

(B) by inserting after paragraph (3) the following new paragraph:

''(4) The development of integrated service facilities for the care and treatment of the elderly and other persons in need of health care and related services, but who do not require hospital care, and the support of health care facilities which provide such health care and related services (including those that support hospitals (as defined in section 242(b))).'';

(2) in subsection (b)—

(A) in paragraph (6)—

(i) by striking subparagraph (A) and inserting the following new subparagraph:

''(A) meets all applicable licensing and regulatory requirements of the State, or if there is no State law providing for such licensing and regulation by the State, meets all applicable licensing and regulatory requirements of the municipality or other political subdivision in which

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the facility is located, or, in the absence of any such requirements, meets any underwriting requirements of the Secretary for such purposes;''; and

(ii) in subparagraph (C), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new paragraph:

''(8) the term 'integrated service facility' means a facility that—

''(A) provides integrated health care delivery services designed and operated to provide medical, convalescent, skilled and intermediate nursing, board and care services, assisted living, rehabilitation, custodial, personal care services, or any combination thereof, to sick, injured, disabled, elderly, or infirm persons, or provides services for the prevention of illness, or any combination thereof;

''(B) is designed, in whole or in part, to provide a continuum of care, as determined by the Secretary, for the sick, injured, disabled, elderly, or infirm;

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"(C) provides clinical services, outpatient services, including community health services and medical practice facilities and group practice facilities, to sick, injured, disabled, elderly, or infirm persons not in need of the services rendered in other facilities insurable under this title, or for the prevention of illness, or any combination thereof;

"(D)(i) is designed, in whole or in part to provide supportive or ancillary services to hospitals (as defined in section 242(b)), which services may include services provided by special use health care facilities, professional office buildings, laboratories, administrative offices, and other facilities supportive or ancillary to health care delivery by such hospitals; and

"(ii) meets standards acceptable to the Secretary, which may include standards governing licensure or State or local approval and regulation of a mortgagor; or

"(E) provides any combination of the services under subparagraphs (A) through (D).";

(3) in subsection (d)—

(A) in the matter preceding paragraph (1)—

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(i) by inserting "board and care home," after "rehabilitated nursing home,";

(ii) by inserting "integrated service facility," after "assisted living facility," the first two places such term appears;

(iii) by inserting "board and care home," after "existing nursing home,"; and

(iv) by striking "or a board and care home" and inserting ", board and care home, or integrated service facility";

(B) in paragraph (2)

(i) in the matter preceding subparagraph (A), by inserting before the last comma the following: "or a public body, public agency, or public corporation eligible under this section"; and

(ii) in subparagraph (B), by striking "energy conservation measures" and all that follows through "Public Law 95–619)" and inserting "energy conserving improvements (as defined in section 2(a))"; and

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(C) in paragraph (4)(C)(iii), by striking "the appropriate State" and inserting "any appropriate"; and

(4) in subsection (i)(1), by inserting "integrated service facilities," after "assisted living facilities,".

SEC. 204. INSURANCE FOR MORTGAGES FOR INTEGRATED SERVICE FACILITIES OWNED IN CONNECTION WITH HOSPITALS.

Section 242 of the National Housing Act (12 U.S.C. 1715z–7) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting "and" after the semicolon at the end;

(ii) by striking subparagraph (B); and

(iii) in subparagraph (C)—

(I) by striking "(C)" and inserting "(B)"; and

(II) by striking "and" at the end"; and

(B) by adding at the end the following new paragraph:

"(3) the term 'integrated service facility' has the meaning given the term in section 232(b).";

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(2) in subsection (c), by striking ''title VII'' and inserting ''title VI'';

(3) in subsection (d)—

(A) in the matter preceding paragraph (1), by inserting after ''operation'' the following: ''or that covers an integrated service facility owned or to be owned by an applicant or proposed mortgagor that also owns a hospital in the same market area, including equipment to be used in its operation,'';

(B) in paragraph (1)—

(i) in the first sentence, by inserting before the period the following: ''and who, in the case of a mortgage covering an integrated service facility, is also the owner of a hospital facility''; and

(ii) by adding at the end the following: ''A mortgage insured under this section covering an integrated service facility may only cover the real and personal property where the eligible facility will be located.''; and

(C) in paragraph (2)—

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(i) in subparagraph (A), by inserting "or integrated service facility" before the comma; and

(ii) in paragraph (2)(B), by striking "energy conservation measures" and all that follows through "Public Law 95–619)" and inserting "energy conserving improvements (as defined in section 2(a))"; and

(4) in subsection (f), by inserting "and public integrated service facilities" after "public hospitals".

SEC. 205. INSURANCE FOR MORTGAGES FOR REFINANCING DEBT OF EXISTING INTEGRATED SERVICE FACILITIES.

Section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) is amended—

(1) in paragraph (1), by inserting "existing integrated service facility," after "existing board and care home,"; and

(2) in paragraph (4)—

(A) by inserting "existing integrated service facility," after "board and care home," each place such term appears;

(B) in subparagraph (B), by inserting after "indebtedness" the following: ", pay any

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other costs including repairs, maintenance, minor improvements, or additional equipment that may be approved by the Secretary,''; and

(C) in subparagraph (D)—

(i) by inserting ''existing'' before ''intermediate care facility''; and

(ii) by inserting ''existing'' before ''board and care home''.

SEC. 206. STANDARDS AND NEED FOR HEALTH CARE FACILITY MORTGAGE INSURANCE.

(a) HOSPITALS.—Paragraph (4) of section 242(d) of the National Housing Act (12 U.S.C. 1715z–7) is amended to read as follows:

''(4)(A) The Secretary, in conjunction with the Secretary of Health and Human Services, shall require satisfactory evidence that the hospital will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for hospitals and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.

''(B) The Secretary shall establish the means for determining need and feasibility for the hospital. If the State has an official procedure for determining need for hospitals, the Secretary shall also

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require that such procedure be followed before the application for insurance is submitted, and the application shall document that need has also been established under that procedure.''.

(b) NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND COMBINED FACILITIES.—Section 232(d)(4) of the National Housing Act (12 U.S.C. 1715w(d)(4)) is amended by striking the paragraph designation and all that follows through the end of subparagraph (A) and inserting the following:

''(4)(A)(i) The Secretary, in conjunction with the Secretary of Health and Human Services, shall require satisfactory evidence that a nursing home, intermediate care facility, or combined nursing home and intermediate care facility will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for such homes, facilities, or combined homes and facilities. The Secretary shall also require satisfactory assurance that such standards will be applied and enforced with respect to the home, facility, or combined home or facility.

''(ii) The Secretary shall establish the means for determining need and feasibility for the home, facility, or combined home and facility. If the State

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has an official procedure for determining need for such homes, facilities, or combined homes and facilities, the Secretary shall also require that such procedure be followed before the application for insurance is submitted, and the application shall document that need has also been established under that procedure.''.

Subtitle B—Single Family Housing

SEC. 221. DOWNPAYMENT SIMPLIFICATION.

(a) IN GENERAL.—Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by realigning the matter that precedes clause (ii) an additional 2 ems from the left margin;

(B) in the matter that follows subparagraph (B)(iii)—

(i) by striking the seventh sentence of such matter (relating to the maximum amount of a principal obligation of a mortgage) and all that follows through the end of the penultimate undesignated paragraph; and

(ii) by striking the second and third sentences of such matter; and

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(C) by striking subparagraph (B);

(2) by transferring and inserting subparagraph (A) of paragraph (10) after subparagraph (A) of paragraph (2) and amending such subparagraph by striking all of the matter that precedes clause (i) and inserting the following:

"(B) not to exceed an amount equal to the sum of—";

(3) by transferring and inserting the last undesignated paragraph of paragraph (2) (relating to disclosure notice) after subsection (e), realigning such transferred paragraph so as to be flush with the left margin, and amending such transferred paragraph by inserting "(f) DISCLOSURE OF OTHER MORTGAGE PRODUCTS.—" before "In conjunction";

(4) by transferring and inserting the sentence that constitutes the text of paragraph (10)(B) after the period at the end of the first sentence that follows subparagraph (B) (relating to the definition of "area") and amending such transferred sentence by inserting "(2)" after "this paragraph"; and

(5) by striking paragraph (10) (as amended by the preceding provisions this section).

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(b) CONFORMING AMENDMENTS.—Section 245 of the National Housing Act (12 U.S.C. 1715z–10) is amended—

(1) in subsection (a), by striking ", or if the mortgagor" and all that follows through "case of veterans"; and

(2) in subsection (b)(3), by striking ", or, if the" and all that follows through "for veterans,".

SEC. 222. REDUCED DOWNPAYMENT REQUIREMENTS FOR LOANS FOR TEACHERS AND PUBLIC SAFETY OFFICERS.

(a) IN GENERAL.—Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) is amended by adding at the end the following new paragraph:

"(11) REDUCED DOWNPAYMENT REQUIREMENTS FOR TEACHERS AND PUBLIC SAFETY OFFICERS.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), in the case of a mortgage described in subparagraph (B)—

"(i) the mortgage shall involve a principal obligation in an amount that does not exceed the sum of 99 percent of the appraised value of the property and the total amount of initial service charges, ap-

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praisal, inspection, and other fees (as the Secretary shall approve) paid in connection with the mortgage;

"(ii) no other provision of this subsection limiting the principal obligation of the mortgage based upon a percentage of the appraised value of the property subject to the mortgage shall apply; and

"(iii) the matter in paragraph (9) that precedes the first proviso shall not apply and the mortgage shall be executed by a mortgagor who shall have paid on account of the property at least 1 percent of the cost of acquisition (as determined by the Secretary) in cash or its equivalent.

"(B) MORTGAGES COVERED.—A mortgage described in this subparagraph is a mortgage—

"(i) under which the mortgagor is an individual who—

"(I) is (aa) a teacher, or (bb) a public safety officer; and

"(II) has not, during the 12-month period ending upon the insurance of the mortgage, had any present ownership interest in a principal resi-

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dence located in the jurisdiction described in clause (ii); and

"(ii) made for a property that is located within the jurisdiction of—

"(I) in the case of a mortgage of a mortgagor described in clause (i)(I)(aa), the local educational agency for the school in which the mortgagor is employed (or, in the case of a mortgagor employed in a private school, the local educational agency having jurisdiction for the area in which the private school is located); or

"(II) in the case of a mortgage of a mortgagor described in clause (i)(I)(bb), the jurisdiction served by the public law enforcement agency, firefighting agency, or rescue or ambulance agency that employs the mortgagor.

"(C) PROGRAM INTEGRITY.—Notwithstanding any other provision of this paragraph and section 203(c)(3), the Secretary may suspend the applicability of this paragraph and such section for such period as the Secretary

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considers appropriate if the Secretary determines such suspension is necessary because of fraud or other issues regarding program integrity.''.

(b) DEFERRAL AND REDUCTION OF UP-FRONT PREMIUM.—Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)(2)) is amended—

(1) in paragraph (2), in the matter preceding subparagraph (A), by striking ''Notwithstanding'' and inserting ''Except as provided in paragraph (3) and notwithstanding''; and

(2) by adding at the end the following new paragraph:

''(3) DEFERRAL AND REDUCTION OF UP-FRONT PREMIUM.—In the case of any mortgage described in subsection (b)(11)(B):

''(A) Paragraph (2)(A) of this subsection (relating to collection of up-front premium payments) shall not apply.

''(B) If, at any time during the 5-year period beginning on the date of the insurance of the mortgage, the mortgagor ceases to be a teacher or public safety officer (as such terms are defined in section 201) or pays the principal obligation of the mortgage in full, the Secretary shall at such time collect

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a single premium payment in an amount equal to the amount of the single premium payment that, but for this paragraph, would have been required under paragraph (2)(A) of this subsection with respect to the mortgage, as reduced by 20 percent of such amount for each successive 12-month period completed during such 5-year period before such cessation or prepayment occurs.''.

(c) DEFINITIONS.—Section 201 of the National Housing Act (12 U.S.C. 1707) is amended—

(1) by redesignating subsections (a) through (f) as paragraphs (1) through (6), respectively;

(2) by realigning each paragraph 2 ems from the left margin; and

(3) by adding at the end the following new paragraphs:

''(7) The term 'public safety officer' has the meaning given such term in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b), except that such term shall not include any officer serving a public agency of the Federal Government.

''(8) The term 'teacher' means an individual who is employed on a part- or full-time basis as a teacher or administrator in a public or private school

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that provides elementary or secondary education, as determined under State law, except that elementary education shall include pre-Kindergarten education, and except that secondary education shall not include any education beyond grade 12.

"(9) The term 'local educational agency' has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)).".

(d) REGULATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations to implement the amendments made by this section.

SEC. 223. COMMUNITY PARTNERS NEXT DOOR PROGRAM.

(a) DISCOUNT AND DOWNPAYMENT ASSISTANCE FOR TEACHERS AND PUBLIC SAFETY OFFICERS.—Section 204(h) of the National Housing Act (12 U.S.C. 1710(h)) is amended—

(1) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11), respectively; and

(2) by inserting after paragraph (6) the following new paragraph:

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"(7) 50 PERCENT DISCOUNT FOR TEACHERS AND PUBLIC SAFETY OFFICERS PURCHASING PROPERTIES THAT ARE ELIGIBLE ASSETS.—

"(A) DISCOUNT.—A property that is an eligible asset and is sold, during fiscal years 2002 through 2006, to a teacher or public safety officer for use in accordance with subparagraph (B) shall be sold at a price that is equal to 50 percent of the appraised value of the eligible property (as determined in accordance with paragraph (6)(B)). In the case of a property eligible for both a discount under this paragraph and a discount under paragraph (6), the discount under paragraph (6) shall not apply.

"(B) PRIMARY RESIDENCE.—An eligible property sold pursuant to a discount under this paragraph shall be used, for not less than the 3-year period beginning upon such sale, as the primary residence of a teacher or public safety officer.

"(C) SALE METHODS.—The Secretary may sell an eligible property pursuant to a discount under this paragraph—

"(i) to a unit of general local government or nonprofit organization (pursuant

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to paragraph (4) or otherwise), for resale or transfer to a teacher or public safety officer; or

"(ii) directly to a purchaser who is a teacher or public safety officer.

"(D) RESALE.—In the case of any purchase by a unit of general local government or nonprofit organization of an eligible property sold at a discounted price under this paragraph, the sale agreement under paragraph (8) shall—

"(i) require the purchasing unit of general local government or nonprofit organization to provide the full benefit of the discount to the teacher or public safety officer obtaining the property; and

"(ii) in the case of a purchase involving multiple eligible assets, any of which is such an eligible property, designate the specific eligible property or properties to be subject to the requirements of subparagraph (B).

"(E) MORTGAGE DOWNPAYMENT ASSISTANCE.—If a teacher or public safety officer purchases an eligible property pursuant to a discounted sale price under this paragraph and fi-

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nances such purchase through a mortgage insured under this title, notwithstanding any provision of section 203 the downpayment on such mortgage shall be $100.

"(F) PREVENTION OF UNDUE PROFIT.—The Secretary shall issue regulations to prevent undue profit from the resale of eligible properties in violation of the requirement under subparagraph (B).

"(G) DEFINITIONS.—For the purposes of this paragraph, the following definitions shall apply:

"(i) The term 'eligible property' means an eligible asset described in paragraph (2)(A) of this subsection.

"(ii) The terms 'teacher' and 'public safety officer' have the meanings given such terms in section 201.

"(H) PROGRAM INTEGRITY.—Notwithstanding any other provision of this paragraph, the Secretary may suspend the applicability of this paragraph for such period as the Secretary considers appropriate if the Secretary determines such suspension is necessary because of

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fraud or other issues regarding program integrity.".

(b) CONFORMING AMENDMENTS.—Section 204(h) of the National Housing Act (12 U.S.C. 1710(h)) is amended—

(1) in paragraph (4)(B)(ii), by striking "paragraph (7)" and inserting "paragraph (8)";

(2) in paragraph (5)(B)(i), by striking "paragraph (7)" and inserting "paragraph (8)"; and

(3) in paragraph (6)(A), by striking "paragraph (8)" and inserting "paragraph (9)".

(c) REGULATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations to implement the amendments made by this section.

SEC. 224. PUBLIC SAFETY OFFICER HOME OWNERSHIP IN HIGH-CRIME AREAS.

(a) PROGRAM AUTHORITY.—The Secretary of Housing and Urban Development shall carry out a pilot program in accordance with this section to assist Federal, State, and local public safety officers purchasing homes in locally-designated high-crime areas.

(b) ELIGIBILITY.—To be eligible for assistance under this section, a public safety officer shall agree, in writing, to use the residence purchased with such assistance as the

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primary residence of the public safety officer for not less than 3 years after the date of purchase.

(c) MORTGAGE ASSISTANCE.—If a public safety officer purchases a home in locally-designated high-crime area and finances such purchase through a mortgage insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.), notwithstanding any provision of section 203 or any other provision of the National Housing Act, the following shall apply:

(1) DOWNPAYMENT.—

(A) IN GENERAL.—There shall be no downpayment required if the purchase price of the property is not more than the reasonable value of the property, as determined by the Secretary.

(B) PURCHASE PRICE EXCEEDS VALUE.—If the purchase price of the property exceeds the reasonable value of the property, as determined by the Secretary, the required downpayment shall be the difference between such reasonable value and the purchase price.

(2) CLOSING COSTS.—The closing costs and origination fee for such mortgage may be included in the loan amount.

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(3) INSURANCE PREMIUM PAYMENT.—There shall be one insurance premium payment due on the mortgage. Such insurance premium payment—

(A) shall be equal to 1 percent of the loan amount;

(B) shall be due and considered earned by the Secretary at the time of the loan closing; and

(C) may be included in the loan amount and paid from the loan proceeds.

(d) LOCAL DESIGNATION OF HIGH-CRIME AREAS.—

(1) CRITERIA.—Any unit of local government may request that the Secretary designate any area within the jurisdiction of that unit of local government as a locally-designated high-crime area for purposes of this section if the proposed area—

(A) has a crime rate that is significantly higher than the crime rate of the non-designated area that is within the jurisdiction of the unit of local government; and

(B) has a population that is not more than 25 percent of the total population of area within the jurisdiction of the unit of local government.

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(2) DEADLINE FOR CONSIDERATION OF REQUEST.—Not later than 60 days after receiving a request under paragraph (1), the Secretary shall approve or disapprove the request.

(e) PUBLIC SAFETY OFFICER.—For purposes of this section, the term "public safety officer" has the meaning given such term in section 201 of the National Housing Act (12 U.S.C. 1707) (as amended by section 222(c) of this Act), except that such term includes any officer serving a public agency of the Federal Government.

(f) PROGRAM INTEGRITY.—Notwithstanding any other provision of this section, the Secretary may suspend the applicability of this section for such period as the Secretary considers appropriate if the Secretary determines such suspension is necessary because of fraud or other issues regarding program integrity.

(g) REGULATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations to implement the provisions of this section.

(h) SUNSET.—The Secretary shall not approve any application for assistance under this section that is received by the Secretary after the expiration of the 3-year period beginning on the date that the Secretary first makes available assistance under the pilot program under this section.

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SEC. 225. SERVICING OF HUD-OWNED MORTGAGES.

(a) HUD REQUIREMENT.—Section 204 of the National Housing Act (12 U.S.C. 1710) is amended—

(1) in subsection (a), by redesignating paragraphs (5) through (9) as paragraphs (4) through (8), respectively; and

(2) by inserting after subsection (j) the following new subsection:

"(k) SERVICING FUNCTIONS.—

"(1) MERGER WITH RURAL HOUSING LOAN PROGRAM SERVICING.—To provide for the servicing of HUD-held single family mortgages with the same level of performance, effectiveness, and efficiency with which servicing is conducted for single family loans made under section 502 of the Housing Act of 1949 (42 U.S.C. 1472), the Secretary of Housing and Urban Development, in consultation and coordination with the Secretary of Agriculture, shall take such action as may be necessary to combine and coordinate the functions and personnel for servicing HUD-held single family mortgages with the functions and personnel for servicing loans made under such section 502.

"(2) HUD-HELD SINGLE FAMILY MORTGAGE.—For purposes of this subsection, the term 'HUD-held single family mortgage' means a mortgage that—

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"(A) is made with respect to housing designed for occupancy by one to four families; and

"(B) is held by the Secretary of Housing and Urban Development pursuant to payment of insurance benefits under the National Housing Act.".

(b) DEPARTMENT OF AGRICULTURE REQUIREMENT.—Section 501 of the Housing Act of 1949 (42 U.S.C. 1471) is amended by adding at the end the following new subsection:

"(k) SERVICING FUNCTIONS.—

"(1) MERGER WITH RURAL HOUSING LOAN PROGRAM SERVICING.—To provide for the servicing of HUD-held single family mortgages (as such term is defined in section 204(k)2) of the National Housing Act (12 U.S.C. 1710(k)(2)) with the same level of performance, effectiveness, and efficiency with which servicing is conducted for single family loans made under section 502 of this Act, the Secretary of Agriculture shall consult and coordinate with the Secretary of Housing and Urban Development, and shall take such other action, as may be necessary to combine and coordinate the functions and personnel for servicing HUD-held single family mortgages with

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the functions and personnel for servicing loans made under section 502.''.

SEC. 226. RISK-BASED CAPITAL LEVELS FOR MUTUAL MORTGAGE INSURANCE FUND.

(a) IN GENERAL.—Subsection (f) of section 205 of the National Housing Act (12 U.S.C. 1711(f)) is amended to read as follows:

''(f) MINIMUM ADEQUATE CAPITAL LEVEL FOR MMIF.—

''(1) IN GENERAL.—The Secretary shall ensure that, at all times, the Mutual Mortgage Insurance Fund maintains capital in an amount equal to or greater than the minimum adequate capital level, which shall be the amount equal to the sum of the minimum basic capital ratio under paragraph (2) and the minimum risk-based capital ratio under paragraph (3).

''(2) MINIMUM BASIC CAPITAL RATIO.—The minimum basic capital ratio under this paragraph is the amount that is equal to one percent of the unamortized insurance-in-force.

''(3) MINIMUM RISK-BASED CAPITAL RATIO.—

''(A) IN GENERAL.—The minimum risk-based capital ratio under this paragraph is the amount, established pursuant to subparagraph

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(B), that would permit the Mutual Mortgage Insurance Fund to withstand mortgage defaults and prepayments associated with a broad range of adverse economic circumstances, which shall include—

"(i) circumstances derived from historical regional and national experience in which mortgages insured under this Act experienced high rates of default and prepayment;

"(ii) events that may plausibly occur in the future, notwithstanding that such events may not have occurred in the past, and which could result in high rates of mortgage defaults or prepayments, or both;

"(iii) circumstances under which multiple such events occur simultaneously or in rapid succession.

"(B) CONSULTATION.—The Secretary, jointly with the Director of the Office of Management and Budget, and in consultation with the Director of the Congressional Budget Office and the Comptroller General of the United States, shall by regulation establish a formula

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for determining the minimum risk-based capital ratio.

"(C) REVIEW AND MODIFICATION.—Not less than once every 3 years, the Secretary shall review and modify the set of adverse economic circumstances used to establish the minimum risk-based capital ratio.

"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) CAPITAL.—The term 'capital' means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 538.

"(B) ECONOMIC NET WORTH.—The term 'economic net worth' means the current cash available to the Mutual Mortgage Insurance Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in such Fund.

"(C) UNAMORTIZED INSURANCE-IN-FORCE.—The term 'unamortized insurance-in-force' means the original insured amount of outstanding mortgages which are insured under the Mutual Mortgage Insurance Fund.".

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(b) APPLICABILITY.—The amendment made by this section is made on the date of the enactment of this Act, but shall apply beginning on October 1, 2004. The provisions of section 205(f) of the National Housing Act, as in effect immediately before the date of the enactment of this Act, shall continue to apply during the period beginning on such date of enactment and ending at the end of September 30, 2003.

(c) REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development, the Director of the Congressional Budget Office, and the Director of the Office of Management and Budget shall issue the regulations required under section 205(f)(3) of the National Housing Act (as amended by this section) establishing the formula for determining the minimum risk-based capital ratio.

SEC. 227. HYBRID ADJUSTABLE RATE MORTGAGES.

Section 251(d)(1)(C) of the National Housing Act (12 U.S.C. 1715z–16(d)(1)(C)) is amended by striking "five or fewer years" and inserting "three or fewer years".

SEC. 228. UNIFORM NATIONAL LOAN LIMIT FOR HOME EQUITY CONVERSION MORTGAGES.

Section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) is amended by striking "1-family residences in the area in which the dwelling subject to the

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mortgage under this section is located'' and inserting ''a 1-family residence''.

SEC. 229. PROHIBITION OF INVESTOR AND NONPROFIT OWNERS UNDER REHABILITATION LOAN PROGRAM.

Section 203(g)(2) of the National Housing Act (12 U.S.C. 1709(g)(2)) is amended—

(1) by striking subparagraph (E);

(2) in subparagraph (D), by inserting ''or'' after the semicolon; and

(3) by redesignating subparagraph (F) as subparagraph (E).

SEC. 230. REHABILITATION LOAN ADVANCES.

Section 203(k)(3) of the National Housing Act (12 U.S.C. 1709(k)(3)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following new paragraph:

''(C) involve a loan agreement containing such terms and conditions as the Secretary shall provide, including terms and conditions that provide that the mortgagee shall be responsible for choosing an inspector or consultant who shall be an agent of the

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mortgagee and shall be responsible for approving advances under the loan;''.

SEC. 231. NONPROFIT PURCHASERS UNDER PROPERTY DISPOSITION.

(a) IN GENERAL.—Section 204(g) of the National Housing Act (12 U.S.C. 1710(g)) is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following new paragraph:

''(2) The Secretary shall require, as a condition of eligibility of any nonprofit organization for participation in any program of the Secretary for disposition of 1- to 4-family properties acquired by the Secretary pursuant to this Act, the Secretary shall require that such organization—

''(A) has nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) or demonstrates that an application for such status is currently pending approval; and

''(B) provide the Secretary with a copy of the application for such status;

''(C) certify, on an annual basis, that the organization has been apprised of the applicable rules and guidelines of the Department of Housing and

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Urban Development and understands such rules and guidelines; and

"(D) comply with such other requirements as the Secretary may establish.".

(b) ASSETS IN REVITALIZATION AREAS.—Section 204(h)(8)(D) (12 U.S.C. 1710(h)(8)(D)) is amended—

(1) by striking clause (ii) and inserting the following new clause:

"(ii)(I) has nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) or demonstrates that an application for such status is currently pending approval; and

"(II) provides the Secretary with a copy of the application for such status;";

(2) in clause (iii), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new clause:

"(iv) certifies, on an annual basis, that the organization has been apprised of the applicable rules and guidelines of the Department of Housing and Urban Devel-

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opment and understands such rules and guidelines.''.

SEC. 232. EXTENSION OF HOLDING PERIOD.

(a) IN GENERAL.—Section 912(1) of the Housing and Urban Development Act of 1970 (12 U.S.C. 1709–2(1)) is amended by striking ''one year'' and inserting ''18 months''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only to defaults described in section 912(1) of the Housing and Urban Development Act of 1970 that occur after the date of the enactment of this Act.

SEC. 233. FRAUD IN LOAN AND CREDIT APPLICATIONS.

Section 1014 of title 18, United States Code, is amended by inserting ''the Department of Housing and Urban Development,'' after ''the Rural Development Administration or successor agency, ''.

TITLE III—SUPPORTIVE HOUSING FOR ELDERLY AND DISABLED FAMILIES

SEC. 301. MODERNIZATION DEMONSTRATION FOR SECTION 236 ELDERLY PROJECTS.

(a) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the ''Secretary'') shall carry out a program to demonstrate the

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effectiveness of providing financial assistance for projects for the elderly that are assisted under section 236 of the National Housing Act for meeting the modernization needs of such projects.

(b) ELIGIBLE PROJECTS.—Assistance provided under the demonstration program under this section may be provided only for a project that—

(1)(A) is assisted, insured, or held by the Secretary or a State or State agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(B) is held by the Secretary and formerly insured under the program referred to in paragraph (1); and

(2) is reserved primarily for occupancy by elderly or handicapped families.

(c) USE OF ASSISTANCE.—Assistance provided under the demonstration program under this section may be used only for repair, rehabilitation, and modernization needs of eligible projects under subsection (b), including—

(1) improvements necessary to comply with health and safety codes;

(2) improvements necessary to comply with the Fair Housing Act (42 U.S.C. 3601 et seq.); and

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(3) such other activities as the Secretary considers appropriate.

(d) APPLICATIONS AND SELECTION CRITERIA.—The Secretary shall provide for owners of eligible projects under subsection (b) to submit applications for assistance under the demonstration program under this section. The Secretary shall select applications for such assistance based upon need for such assistance, as determined according to selection criteria, which the Secretary shall establish.

(e) FUNDING.—Any amounts made available for a fiscal year for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) that remain unobligated as of September 30, 2002, shall be available for assistance under the demonstration program under this section.

(f) TERMINATION.—No assistance may be provided under this section after September 30, 2005.

SEC. 302. SERVICE COORDINATORS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES.

Section 683(2) of the Housing and Community Development Act of 1992 (42 U.S.C. 13641(2)) is amended—

(1) in subparagraph (F), by striking "and" at the end;

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(2) in subparagraph (G), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(H) "housing that is assisted under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).".

SEC. 303. ELIGIBILITY OF RELIGIOUS ORGANIZATIONS AS PROJECT OWNERS.

(a) SUPPORTIVE HOUSING FOR THE ELDERLY.—Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) is amended—

(1) in subsection (f), by inserting after and below paragraph (7) the following:

"The selection criteria used by the Secretary shall specifically provide that religious organizations and organizations having religious purposes that qualify under subsection (k)(4) as private nonprofit organizations, may own projects assisted under this section.";

(2) in subsection (j), by adding at the end the following new paragraph:

"(9) ELIGIBILITY OF RELIGIOUS ORGANIZATIONS AS PROJECT OWNERS.—The Secretary may not prohibit religious organizations or organizations having religious purposes that, under subsection

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(k)(4) qualify as private nonprofit organizations, from owning projects assisted under this section because of their status as such religious organizations.''; and

(3) in subsection (k)(4), by inserting after the period at the end the following: ''Such term also includes a religious organization or an organization having religious purposes, that meets the requirements of this paragraph, not including subparagraph (B)(i).''.

(b) SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES.—Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013) is amended—

(1) in subsection (f), by inserting after and below paragraph (7) the following:

''The selection criteria used by the Secretary shall specifically provide that religious organizations and organizations having religious purposes, that qualify under subsection (k)(6) as private nonprofit organizations may own projects assisted under this section.'';

(2) in subsection (j), by adding at the end the following new paragraph:

''(8) ELIGIBILITY OF RELIGIOUS ORGANIZATIONS AS PROJECT OWNERS.—The Secretary may

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not prohibit religious organizations or organizations having religious purposes that, under subsection (k)(6) qualify as private nonprofit organizations, from owning projects assisted under this section because of their status as such religious organizations.''; and

(3) in subsection (k)(6), by inserting after and below subparagraph (D) the following:

''Such term includes a religious organization or an organization having religious purposes, that meets the requirements of this paragraph, not including subparagraph (C).''.

TITLE IV—SECTION 8 RENTAL HOUSING ASSISTANCE PROGRAM

SEC. 401. THRIFTY PRODUCTION VOUCHERS.

Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) is amended by adding at the end the following new paragraph:

''(19) THRIFTY PRODUCTION VOUCHERS.—

''(A) IN GENERAL.—For the purpose of encouraging the production of housing affordable to extremely low-income families, a public housing agency may use amounts provided under an annual contributions contract under

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this subsection to enter into a housing assistance payment contract for thrifty production voucher assistance that is attached to a structure and complies with the requirements under this paragraph.

"(B) PROJECT-BASED ASSISTANCE.—A housing assistance payment contract under this paragraph shall be subject to the same limitations and requirements that such a contract under paragraph (13) is subject to under subparagraphs (A) through (K) of such paragraph, except for subparagraphs (H) and (I) of such paragraph and except as otherwise specified in this paragraph.

"(C) USE FOR NEW PRODUCTION AND SUBSTANTIAL REHABILITATION ONLY.—Assistance under this paragraph may only be attached to a structure that is newly constructed or a unit that is substantially rehabilitated.

"(D) LOCATION.—Subject to other requirements under applicable laws, a public housing agency may attach assistance under this paragraph to—

"(i) a structure located outside of a qualified census tract (as such term is de-

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fined in section 42(d) of the Internal Revenue Code of 1986 (26 U.S.C. 42(d))); or

"(ii) a structure located in a qualified census tract (as such term is defined in such section 42(d)), but only if the agency determines that the contract is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities or revitalizing a low-income community, or will prevent the displacement of extremely low-income families.

"(E) CIVIL RIGHTS AND FAIR HOUSING REQUIREMENTS.—Regardless of location, if the dwelling units proposed to be provided assistance under this paragraph are assisted with a grant or loan under a Federal program pursuant to which the Secretary (or a designee of the Secretary) has determined, in accordance with the regulations of the Secretary, that the site location meets applicable civil rights and fair housing requirements, the Secretary shall consider the attachment of assistance under this paragraph to the structure to comply with all applicable civil rights and fair housing requirements.

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"(F) INCOME MIXING.—Subparagraph (D) of paragraph (13) shall apply to a property located outside of a qualified census tract (as such term is defined in section 42(d) of the Internal Revenue Code of 1986. If a property is located in a qualified census tract (as such term is defined in such section 42(d)), no more than 25 percent of the dwelling units in the property may be assisted under this paragraph unless all the dwelling units so assisted are specifically made available only for households comprised of elderly families or disabled families or are in single family properties.

"(G) CONTRACT TERM AND EXTENSIONS.—A housing assistance payment contract pursuant to this paragraph between a public housing agency and the owner of a structure may have an initial term of up to 15 years, and shall require the owner and any successors in interest of the owner to accept any offered extension for up to a total of 40 years, subject to the same conditions specified in subparagraphs (F) and (G) of paragraph (13) with respect to contracts under such paragraph.

"(H) RENT CALCULATION.—

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"(i) IN GENERAL.—In the case of a housing assistance payment contract pursuant to this paragraph for a property in which not more than 25 percent of the dwelling units are assisted under this section, the contract shall establish the gross rent for each dwelling unit assisted in an amount equal to the sum of (I) the per unit operating cost for the property, and (II) any applicable utility allowances of the public housing agency for tenant-paid utilities.

"(ii) PER UNIT OPERATING COST.—For purposes of this subparagraph, the operating cost for a dwelling unit shall be the unit's allocable share of the ordinary and customary expenses incurred to operate the property, include applicable owner-paid utilities, contributions to replacement reserve, asset management fee, and a modest cash flow allowance equal to 15 percent of all other allocable operating costs. A public housing agency shall require an owner to demonstrate that the unit operating cost for units assisted under this paragraph

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does not exceed the operating cost of other units in the property of similar size that are not assisted under paragraph (13) and shall establish policies to ensure that expenses included in unit operating cost that are paid to the owner or a related entity are reasonable and consistent with prevailing costs in the community. The agency shall be responsible for determining whether an owner has sufficiently demonstrated such unit operating cost.

"(iii) ANNUAL ADJUSTMENT.—The public housing agency shall annually make an appropriate adjustment in contract rents, based on documented changes in unit operating costs.

"(iv) LIMITATIONS.—A public housing agency shall not approve a rent for a dwelling unit assisted under this paragraph that exceeds 75 percent of the agency's payment standard for a dwelling unit of the same size or the applicable fair market rental, whichever is higher. The Secretary may approve a higher cap if the permitted maximum rent could not otherwise support

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the reasonable operating cost of rental housing.

"(v) OTHER PROPERTIES.—For properties in which 25 percent or more of the dwelling units are assisted under this paragraph, the rent shall be determined based on a formula to be established by the Secretary.

"(I) TENANT SELECTION.—The provisions of subparagraph (J) of paragraph (13) applicable to housing assisted under such paragraph shall apply to a property assisted under this paragraph, except as follows:

"(i) EXTREMELY LOW-INCOME OCCUPANCY.—Tenants must qualify as extremely low-income families at the time of commencement of occupancy of dwelling units assisted under this paragraph.

"(ii) SEPARATE PHA WAITING LISTS.—A public housing agency may maintain a separate waiting list for assistance under this paragraph (or for each property assisted under this paragraph, if the agency provides such assistance to

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more than one property) subject to the following:

"(I) An agency that provides notice of the opening of the waiting list in the same manner required by the Secretary for the provision of notice of the opening of the waiting list for tenant-based assistance under this subsection need not provide individual notice to families on the agency's tenant-based waiting list of the opportunity to be placed on the waiting list for a dwelling unit assisted under this paragraph. Among families applying at the equivalent time and date with otherwise equivalent preference under the public housing agency plan for the agency approved under section 5A, the agency shall give preference for occupancy in dwelling units assisted under this paragraph to families on its tenant-based waiting list.

"(II) Each agency shall notify extremely low-income families requesting to apply for tenant-based assistance of

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the opportunity to be listed on any separate waiting lists for dwelling units assisted under this paragraph.

"(iii) OWNER WAITING LISTS.—

"(I) A public housing agency may, at the option of the agency, allow an owner of a property assisted under a contract under this paragraph to maintain the waiting list for such assisted units. The owner's waiting list shall be considered to be a waiting list maintained by the agency under this subsection for purposes of requirements applicable to the agency's waiting list.

"(II) Any family denied a dwelling unit by an owner that maintains the waiting list for units assisted under this paragraph shall have the same rights to informal review by the agency as a family denied tenant-based assistance by the agency. The agency shall perform such review expeditiously so as not to impede the timely rental of units. The owner's

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waiting list policy and any applicable preferences or selection criteria shall be included in the public housing agency plan for the agency approved under section 5A.

"(III) Each agency shall notify extremely low-income families requesting to apply for tenant-based assistance of the opportunity to be listed on the owner's waiting list, shall establish a mechanism to transmit applications submitted at its office to the owner for placement on the waiting list, and shall monitor at reasonable intervals the compliance by the owner with laws applicable to tenant selection and waiting lists, including civil rights laws and certifications required under such laws.

"(IV) The agency's contract with the owner shall require the owner to—

"(aa) provide notice of the opening of the waiting list and provide preference to families on

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the agency's tenant-based waiting list in the same manner required of the agency if the agency maintained the waiting list (unless the agency agrees to provide such notice for the owner);

"(bb) place on its waiting list families that apply at an office of the agency that accepts applications for tenant-based assistance;

"(cc) cooperate with the agency's requests for information concerning the waiting list and the owner's tenant selection decisions; and

"(dd) submit to the agency for approval written tenant selection policies and criteria and make the policies and criteria available to the public.

"(J) USE OF ASSISTANCE IN CONJUNCTION WITH PUBLIC HOUSING CAPITAL FUNDS.—Notwithstanding any other provision of this Act, a public housing agency may attach assistance

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under this paragraph to a unit that receives amounts allocated to the agency under the Capital Fund established by section 9(d) or under section 24. Any such unit receiving assistance under this paragraph shall not be eligible for assistance under the Operating Fund established by section 9(e).

"(K) RENEWAL OF ASSISTANCE.—The Secretary shall increase the adjusted allocation baseline for renewal of funding under subsection (d) for public housing agencies that attach assistance to a structure under this paragraph. The increase shall equal the number of additional families that an agency can assist as a result of the reduced payments permitted under this paragraph.

"(L) ALLOCATION OF INCREMENTAL ASSISTANCE FOR USE UNDER THIS SUBPARAGRAPH.—

"(i) USE OF HOME INVESTMENT PARTNERSHIPS PROGRAM FORMULA.—Incremental assistance appropriated for use under this paragraph shall be allocated in accordance with the formula established by the Secretary under section 217(b) of the

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Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747), and shall not be subject to allocation under section 213(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439).

"(ii) QUALIFIED PUBLIC HOUSING AGENCIES.—Subject to the allocation as provided in clause (i) and any additional criteria that the Secretary may establish, the Secretary shall award such incremental assistance only to public housing agencies that administer a program of tenant-based assistance under this subsection and that administer funds for the construction or substantial rehabilitation of rental housing other than public housing. A public housing agency may qualify to receive incremental assistance for use under this paragraph if the agency has an agreement with an agency that administers funds for the construction or substantial rehabilitation of rental housing that will enable a prospective developer of such housing to submit a single application for both types of funds.

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"(iii) TREATMENT OF PERCENTAGE LIMITATION.—Incremental assistance restricted for use under this paragraph shall not be considered in determining an agency's compliance with the limitation in subparagraph (B) of paragraph (13).

"(iv) INSUFFICIENT FUNDS FOR FORMULA ALLOCATION.—If the Secretary determines that the amounts appropriated for incremental assistance for use under this paragraph are not sufficient to allocate to each State or to each eligible jurisdiction in accordance with the formula referred to in clause (i), the Secretary may award such funds to qualified public housing agencies through a national competition.

"(M) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) EXTREMELY LOW-INCOME FAMILIES.—The term 'extremely low-income families' means families (as such term is defined in section 3(b)) whose incomes do not exceed the higher of—

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"(I) 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families and for unusually high or low family incomes; or

"(II) 30 percent of the national non-metropolitan median income.

"(ii) SUBSTANTIAL REHABILITATION.—The term 'substantial rehabilitation' means rehabilitation expenditures paid or incurred with respect to a dwelling unit, including its prorated share of work on common areas or systems, of $25,000 or more. The Secretary shall increase the dollar amount under this clause annually to reflect inflation, and shall cause notice of any such increase to be published in the Federal Register.".

SEC. 402. MONTHLY RENTAL AMOUNT.

Section 8(o)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(3)) is amended by striking "monthly adjusted income of the family" and inserting "gross income of the family without reduction for exclusion or deductions".

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SEC. 403. FLEXIBILITY TO ASSIST HARD-TO-HOUSE FAMILIES.

Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) is amended by adding at the end the following new paragraph:

"(19) FLEXIBILITY TO ASSIST HARD-TO-HOUSE FAMILIES.—In any program year, a public housing agency that is not designated as troubled pursuant to the section 8 management assessment program, or under such other program as may be used by the Secretary to evaluate performance of public housing agencies in administering rental assistance under this section, may use up to 5 percent of any amounts allocated to the agency for such year for purposes that directly support the agency's housing choice voucher program, including housing counseling, downpayment assistance under subsection (y), rental security deposits for families receiving voucher assistance, and other activities that assist eligible families in gaining and maintaining occupancy in suitable dwelling units.".

SEC. 404. PROHIBITION ON RE-SCREENING OF TENANTS.

Section 8(t)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

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(2) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) a family may not be required, as a condition of receiving such assistance, to requalify under the selection standards of a public housing agency.".

SEC. 405. PHA ADMINISTRATIVE FEES.

Section 8(q) of the United States Housing Act of 1937 (42 U.S.C. 1437f(q)) is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph:

"(4) PERFORMANCE INCENTIVE.—For fiscal year 2003 and fiscal years thereafter, the Secretary may pay an additional fee to any public housing agency that succeeds in achieving high or substantially improved performance on specified program requirements or program goals, as established under the management assessment program for the rental assistance program under this section, or any successor assessment program for such assistance, or by regulation issued by the Secretary after notice

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and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The Secretary shall establish limitations on the total amount of any such additional fees paid to agencies for a fiscal year and on the amount of any such fee paid to any single agency for a fiscal year.''.

SEC. 406. ENSURING ABILITY TO USE ENHANCED VOUCHERS.

(a) IN GENERAL.—Section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph:

''(4) RIGHT TO USE.—The owner of a multifamily housing project for which an eligibility event (as such term is defined in paragraph (2)) has occurred may not refuse—

''(A) to lease, to a family who is residing in project upon the occurrence of such eligibility event and who is provided enhanced voucher assistance under this subsection (including such assistance provided under the authorities speci-

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fied in paragraph (3)(B)), any available dwelling unit in the project a proximate cause of which is the status of such family as a recipient of such assistance; or

"(B) to enter into a housing assistance payments contract for such a unit.".

(b) TREATMENT OF OVERHOUSED ASSISTED FAMILIES.—Paragraph (6) of section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(6)) is amended by adding at the end the following new subparagraph:

"(D) RESIDENCY IN INAPPROPRIATELY SIZED UNITS.—

"(i) IN GENERAL.—If a public housing agency determines that a family assisted under this subsection is residing in a dwelling unit that, because of a reduction in family size after such assistance was initially provided for such family, has more bedrooms than is appropriate for a family of such size, the agency may not terminate the assistance for the family or require the family to move to another dwelling unit unless—

"(I) the agency provides the family with a dwelling unit that is located

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in the same building or project as the inappropriately sized dwelling unit and is available for occupancy; or

"(II) in the case of a family residing in a dwelling unit in a building or project that does not contain any available dwelling unit having a number of bedrooms that is appropriate for size of such family, the agency provides the family with a dwelling unit that is located within the same neighborhood as the building containing the inappropriately sized dwelling unit.

"(ii) DETERMINATION OF NEIGHBORHOOD.—For purposes of clause (i)(II), the term 'neighborhood' means the immediate geographic area in which a building is located, which—

"(I) is characterized by all locations within the area having a similar proximity to major roadways, mass transit facilities, and other means of transportation, schools, child care facilities, workplace centers, and grocery

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stores and other retail and commercial facilities; and

"(II) shall be determined by the public housing agency involved, in consultation with the appropriate resident advisory board established pursuant to section 5A(e).

"(iii) TREATMENT OF STUDENTS.—For purposes of clause (i), the absence of a child or adult from a dwelling because of temporary residence in another location for the purpose of attending school on a full- or part-time basis shall not be considered in determining family size.".

SEC. 407. EXTENSION OF MANUFACTURED HOUSING DEMONSTRATION PROGRAM.

Section 557 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276; 112 Stat. 2613) is amended—

(1) in subsection (a), by striking "1999, 2000, and 2001" and inserting "2002, 2003, and 2004"; and

(2) in subsection (c)—

(A) by striking "REPORT" and inserting "REPORTS";

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(B) by striking "a report" and inserting "an interim report";

(C) by striking "and evaluating" and inserting "the implementation and operation of"; and

(D) by adding at the end the following new sentence: "Not later than March 31, 2005, the Secretary shall submit a report to the Congress describing and evaluating the demonstration program under this section.".

SEC. 408. EXTENSION OF PROJECT-BASED SECTION 8 CONTRACT RENEWALS.

(a) RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 CONTRACTS.—Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

(1) in subsection (a)(4)(A)(iv)—

(A) in subclause (I), by inserting "or" after the semicolon;

(B) by striking subclause (II); and

(C) by redesignating subclause (III) as subclause (II); and

(2) by striking paragraph (3) of subsection (b).

(b) ADJUSTMENTS FOR COVERED PROJECTS.—

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(1) RENT DETERMINATION AT INITIAL RENEWAL AFTER ENACTMENT.—Upon the first request for renewal of project-based assistance pursuant to section 524 after the date of enactment of this Act by an owner of a covered housing project—

(A) the rent levels at which assistance will be provided pursuant to such renewal will be determined as if such renewal were the initial renewal of a contract for assistance under section 524, as amended by subsection (a) of this section; and

(B) solely for purposes of determining the rent levels at which assistance will be provided pursuant to such first renewal after the date of enactment of this Act, in the case of a project for which contract rents were reduced on a prior renewal of an expiring contract pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of enactment of this Act, the contract rent levels in effect immediately prior to such first renewal after the date of enactment of this Act shall be considered to be the deemed rent levels described in paragraph (3)(C).

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(2) RENT ADJUSTMENTS AFTER INITIAL RENEWAL AFTER ENACTMENT.—After the first renewal of a contract for assistance of a covered project after the date of enactment of this Act in accordance with paragraph (1) of this subsection, the Secretary shall adjust rents in accordance with section 524(c).

(3) DEFINITIONS.—In this subsection—

(A) references to "section 524" or any subdivision thereof are references to section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note);

(B) the term "covered housing project" means a project that receives project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) which was renewed prior to the date of enactment of this Act pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of enactment of this Act;

(C) the term "deemed rent levels" means the contract rent levels in effect immediately prior to the first renewal of assistance pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of enactment of this

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Act, upon which contract rent levels were reduced, as adjusted by the applicable operating cost adjustment factor established by the Secretary at the date of such renewal and at the date of any subsequent renewal pursuant to subsection (b)(3) of section 524 occurring before the date of enactment of this Act; and

(D) the term ''Secretary'' means the Secretary of Housing and Urban Development.

TITLE V—PUBLIC HOUSING

Subtitle A—General Provisions

SEC. 501. WAIVER OF RESIDENT COMMISSIONER REQUIREMENT.

Section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437(b)) is amended—

(1) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

(2) by adding at the end the following new paragraph:

''(4) WAIVER.—If the Secretary determines that reasonable efforts have been made (whether or not successful) or are being made to take such legislative or regulatory action necessary to provide for implementation of paragraph (1), the Secretary may waive the applicability of such paragraph with re-

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spect to all public housing agencies in such State until such action has taken effect.''.

SEC. 502. PHA JOINT VENTURES.

Section 13(b) of the United States Housing Act of 1937 (42 U.S.C. 1437k(b)) is amended by adding at the end the following new paragraph:

''(4) NON-FEDERAL FUNDS AND ACTIVITIES.—This subsection shall not apply to any subsidiary, joint venture, partnership, or business arrangement, or any activity conducted by such an entity, that does not involve holding or expending funds received from the Federal Government or proceeds or income derived from such funds.''.

SEC. 503. THIRD-PARTY PUBLIC HOUSING ASSESSMENT SYSTEM.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall provide for the development of a third-party assessment system for evaluating the performance of public housing agencies, in accordance with this section.

(b) PURPOSES.—The assessment system developed under this section shall—

(1) provide an objective assessment of the overall performance of public housing agencies in all major areas of management operations and in dis-

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charging their obligations under the United States Housing Act of 1937;

(2) identify quantifiable areas of the management and financial condition of public housing agencies; and

(3) determine the physical condition of public housing dwelling units to ensure that they are maintained in accordance with the requirements pursuant to the United States Housing Act of 1937.

(c) TESTING AND PROTOTYPE.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, to the extent amounts are made available to carry out this section, the Secretary of Housing and Urban Development shall enter into a contract with a public entity or a private for-profit or nonprofit entity to develop a system prototype for the third-party assessment system required under this section and to test such prototype. Such contract shall require such entity to submit the prototype assessment system to the Congress not later than the expiration of the 6-month period beginning upon execution of the contract and to complete such testing not later than the expiration of the 12-month period beginning upon execution of the contract.

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(2) CONSULTATION.—In carrying out the testing and prototype development under this subsection, the entity selected under this subsection shall consult with individuals and organizations experienced in managing public housing and their representatives, private real estate managers, representatives from State and local governments, residents of public housing, and the Secretary.

(d) REPORT.—Not later than the expiration of the 12-month period beginning upon execution of the contract referred to in subsection (c)(1), the Secretary of Housing and Urban Development shall submit to the Congress a report describing the results and recommendations regarding the testing of the prototype assessment system conducted pursuant to this subsection, which shall include any comments and recommendations of the persons and entities consulted with pursuant to subsection (c)(2) and any recommendations regarding the replacement of the public housing management assessment system established under section 6(j) of the United States Housing Act of 1937 (42 U.S.C. 1437d(j)).

(e) RULE OF CONSTRUCTION.—This section may not be construed to—

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(1) provide for or require the implementation of the third-party assessment system developed pursuant to this section; or

(2) alter, affect, suspend, terminate, or delay the effectiveness or applicability of the public housing assessment system under section 6(j) of the United States Housing Act of 1937 (42 U.S.C. 1437d(j)) or any regulations issued, or to be issued, pursuant to such section.

SEC. 504. PUBLIC HOUSING AGENCY PLANS FOR SMALL PUBLIC HOUSING AGENCIES.

(a) IN GENERAL.—Section 5A(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c–1(b)) is amended by adding at the end the following new paragraph:

"(3) SUSPENSION OF FILING REQUIREMENT FOR SMALL PHAS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of this Act—

"(i) the requirement under paragraph (1) shall not apply to any small public housing agency for fiscal years 2003, 2004, or 2005; and

"(ii) any reference in this section or any other provision of law to a 'public

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housing agency' shall not be considered to refer to any small public housing agency for such fiscal years, to the extent such reference applies to the requirement to submit a public housing agency plan under subsection (b).

"(B) DEFINITION.—For purposes of this paragraph, the term 'small public housing agency' means a public housing agency that—

"(i) administers 100 or fewer public housing dwelling units; and

"(ii) is not designated pursuant to section 6(j)(2) as a troubled public housing agency.".

(b) REPORT.—Not later than September 30, 2004, the Comptroller General of the United States shall submit a report to the Congress describing and analyzing the administrative, financial, and other burdens to small public housing agencies (as such term is defined in section 5A(b)(3) of the United States Housing Act of 1937, as amended by subsection (a) of this section) of complying with the requirements under section 5A(b)(1) of such Act.

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SEC. 505. DEVELOPMENT-BASED SUBSIDIES.

(a) IN GENERAL.—Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended by adding at the end the following new subsection:

"(o) DEVELOPMENT-BASED SUBSIDIES.—

"(1) IN GENERAL.—In order to facilitate the financing of capital needs and development-based financial management and accountability, the Secretary may approve, on a project-by-project basis, the conversion of a public housing project or a portion of a public housing project to project-based voucher assistance, which assistance may be on-site or off-site: *Provided*, That the number of public housing units converted under this subsection shall be equal to the number of units receiving project-based voucher assistance pursuant to this subsection, and that a commitment has first been obtained from an approved lender for a mortgage loan secured by the property to finance qualified necessary capital improvements under terms established by the Secretary.

"(2) FUNDING OF VOUCHERS.—The initial year of any contract for project-based voucher assistance under this subsection may be funded with amounts made available in an appropriations Act under the headings making amounts available for the purposes

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set forth in subsections (d) or (e) of this section, or with any other amounts appropriated for this purpose. Any renewal of such contracts shall be funded with amounts made available under the heading making amounts available for the renewal of assistance under section 8.

"(3) PROGRAM REQUIREMENTS.—Project-based voucher assistance provided pursuant to this subsection shall be administered under section 8(o)(13), except that—

"(A) subparagraphs (C)(ii) and (D) of such section shall not apply;

"(B)(i) any units converted to project-based voucher assistance under this subsection shall be maintained as assisted housing and provided project-based voucher assistance for the same length of time as the housing would have been required under subsection (d)(3) of this section to be operated and maintained as public housing absent such conversion, subject to the availability of sufficient appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts;

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"(ii) notwithstanding clause (i), when dwelling units which are receiving project-based voucher assistance pursuant to a conversion under this subsection and which are not located in developments or portions of developments which house only elderly persons or persons with disabilities, or both, become vacant, the public housing agency may rent up to one-third of such units to unassisted families (except that the Secretary may permit the agency under such special local circumstances as are determined by the Secretary to rent more than one-third of such units to unassisted families), and for each unit so rented for the duration of such rental may use the assistance otherwise associated with that unit to provide tenant-based voucher assistance under section 8; and

"(iii)(I) notwithstanding clause (i), if the Secretary determines that such action would further the purposes of this subsection, the Secretary may provide for termination of the restricted use period set forth in clause (i) in the event that any units converted to project-based voucher assistance under this subsection are foreclosed upon (or otherwise disposed of pursu-

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ant to an instrument in lieu of foreclosure), on the date the units are acquired by foreclosure (or instrument in lieu of foreclosure), unless—

"(aa) the Secretary determines that the foreclosure is part of an arrangement the purpose of which is to terminate the restricted use period; or

"(bb) a bona fide and reasonable contract acceptable to the Secretary to purchase such units is presented by a person who is willing to continue such use restrictions; and

"(II) if the Secretary provides for termination of the restricted use period pursuant to subclause (I), the Secretary shall provide enhanced voucher assistance under section 8(t) to any family occupying an assisted unit at the time of such termination;

"(C) any units converted to project-based voucher assistance under this subsection shall remain covered by and subject to the provisions in the public housing cooperation agreement entered into between the city and the public housing agency;

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"(D) any units converted to project-based voucher assistance under this subsection shall not be included as tenant-based assistance that is attached to a structure for the purposes of the 20 percent limitation set forth in section 8(o)(13)(B);

"(E) the Secretary may set the rent level for a unit converted to project-based voucher assistance under this subsection at a level lower than the level at which such rent would otherwise be set pursuant to section 8(o)(13)(H), provided such lower level is sufficient, in the determination of the Secretary, to cover debt service payments on obligations to finance the cost of any necessary rehabilitation, contributions to a capital reserve, amounts necessary for adequate debt service coverage, the cost of the subsequent operation of the housing as project-based voucher assistance, and any other necessary costs;

"(F) where units converted to project-based voucher assistance under this subsection are owned by the public housing agency or an entity controlled by such agency, the Secretary may administer or make alternative arrange-

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ments to administer the obligations otherwise required of the public housing agency under the annual contributions contract; and

"(G) the Secretary may waive or make alternative arrangements regarding any other provision of law or regulation that the Secretary finds to be inconsistent with accomplishing the purposes of this subsection.

"(4) TREATMENT OF CONVERSION.—The conversion of a public housing project to project-based voucher assistance under this subsection shall not be considered a disposition under section 18 of this Act as long as the public housing agency or an entity controlled by the agency retains ownership of the project.

"(5) LOAN LOSS RESERVE ACCOUNT.—

"(A) ESTABLISHMENT.—The Secretary may establish a common loan loss reserve account to which public housing agencies converting public housing units to project-based voucher assistance under this subsection may contribute a percentage of amounts available for such conversion, which percentage shall be specified by the Secretary. The Secretary may establish the terms and conditions applicable to

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this loan loss reserve account and any contributions to it, and may select an entity or entities on a competitive or noncompetitive basis to develop, maintain, and administer this account.

"(B) AVAILABILITY OF AMOUNTS.—Amounts contributed to the account established under this paragraph shall be available without fiscal year limitation to reimburse any mortgagor that provides financing to a public housing agency for necessary renovations to any project converted pursuant to this subsection if the public housing agency defaults on the repayment of such debt.".

(b) USE OF CAPITAL FUND AMOUNTS FOR CONVERSION.—Section 9(d)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(d)(1)) is amended—

(1) in subparagraph (I), by striking "and" at the end;

(2) in subparagraph (J), by striking the period and inserting "; and"; and

(3) by inserting at the end the following new subparagraph:

"(K) assistance in the financing for necessary renovations to, or other capital expenses for, any project receiving project-based voucher

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assistance pursuant to subsection (o) of this section, including the making of upfront capital contributions to such projects where needed to make financing feasible and the purchase or provision of letters of credit or other credit enhancements necessary to carry out such subsection, contributions to a common loan loss reserve account as established by subsection (o)(5) of this section, and any contributions that the Secretary may require for the initial administration of such subsection (o) with respect to such project.''.

Subtitle B—HOPE VI Revitalization Program

SEC. 521. SELECTION CRITERIA.

Section 24(e)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437v(e)(2)) is amended—

(1) in subparagraph (B), by striking ''large-scale redevelopment or modernization efforts'' and inserting ''redevelopment or modernization efforts that are large-scale in relation to the size of the agency'';

(2) in subparagraph (H), by striking ''and'' at the end;

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(3) by redesignating subparagraph (I) as subparagraph (J); and

(4) by inserting after subparagraph (H) the following new subparagraph:

"(I) the representativeness of the awards with regard to agency size and geographic location from year to year; and".

SEC. 522. AUTHORIZATION OF APPROPRIATIONS.

Paragraph (1) of section 24(m) of the United States Housing Act of 1937 (42 U.S.C. 1437v(m)(1)) is amended to read as follows:

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this section such sums as may be necessary for each of fiscal years 2003 and 2004.".

SEC. 523. EXTENSION OF PROGRAM.

Section 24(n) of the United States Housing Act of 1937 (42 U.S.C. 1437v(n)) is amended by striking "September 30, 2002" and inserting "September 30, 2004".

TITLE VI—HOMELESS HOUSING PROGRAMS

SEC. 601. INTERAGENCY COUNCIL ON THE HOMELESS.

Section 208 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11318) is amended to read as follows:

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"SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as may be necessary for each of fiscal years 2003 and 2004.".

SEC. 602. FEDERAL EMERGENCY MANAGEMENT AGENCY FOOD AND SHELTER PROGRAM.

Section 322 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11352) is amended to read as follows:

"SEC. 322. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as may be necessary for each of fiscal years 2003 and 2004.".

SEC. 603. EMERGENCY SHELTER GRANTS PROGRAM.

Section 417 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11377) is amended to read as follows:

"SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subtitle such sums as may be necessary for each of fiscal years 2003 and 2004.".

SEC. 604. SUPPORTIVE HOUSING PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (a) of section 429 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11389(a)) is amended to read as follows:

"(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subtitle

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(not including activities funded pursuant to subsection (d) of this section) such sums as may be necessary for each of fiscal years 2003 and 2004.".

(b) FUNDING OF RENEWALS THROUGH HOUSING CERTIFICATE FUND.—Section 429 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11389) is amended by adding at the end the following new subsection:

"(d) FUNDING OF RENEWALS.—

"(1) IN GENERAL.—For fiscal year 2003 and fiscal years thereafter, assistance under this subtitle may be funded using amounts appropriated for section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

"(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise made available for assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 and 2004 for the renewal of contracts for permanent housing activities under this subtitle. Any such renewals shall be made only for a term of one year.".

(c) SET-ASIDE.—Subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et

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seq.) is amended by adding at the end the following new section:

"SEC. 403. SET-ASIDE FOR PERMANENT HOUSING.

"Notwithstanding any other provision of this title, of the aggregate amount made available for assistance under this title for any fiscal year, not less than 30 percent shall be used only for permanent housing activities for homeless persons. Amounts made available under section 429(d) or 463(c) for renewals of contracts for permanent housing shall be disregarded for purposes of the preceding sentence.".

(d) ELIMINATION OF CAP ON CAPITAL EXPENSES.—Section 423(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11383(a)) is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking ", in an amount not to exceed $200,000,"; and

(B) by striking "; except that" and all that follows through "rehabilitation costs"; and

(2) in paragraph (2), by striking ", in an amount not to exceed $400,000,".

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SEC. 605. SECTION 8 ASSISTANCE FOR SINGLE ROOM OCCUPANCY DWELLINGS.

Subsection (a) of section 441 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11401(a)) is amended to read as follows:

"(a) INCREASE IN BUDGET AUTHORITY.—The budget authority available under section 5(c) of the United States Housing Act of 1937 for assistance under section 8(e)(2) of such Act (as in effect pursuant to section 289(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839(b)(2)) is authorized to be increased by such sums as may be necessary on or after each of October 1, 2002, and October 1, 2003.".

SEC. 606. SHELTER PLUS CARE.

(a) AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 463(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11403h(a)) is amended to read as follows: "For purposes of the housing programs under this subtitle, there are authorized to be appropriated to carry out this subtitle (not including activities funded pursuant to subsection (c) of this section) such sums as may be necessary for each of fiscal years 2003 and 2004.".

(b) FUNDING OF RENEWALS THROUGH HOUSING CERTIFICATE FUND.—Section 463 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11403h) is

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amended by adding at the end the following new subsection:

"(c) FUNDING OF RENEWALS.—

"(1) IN GENERAL.—For fiscal year 2003 and fiscal years thereafter, assistance under this subtitle may be funded using amounts appropriated for section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

"(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise made available for assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 and 2004 for the renewal of contracts under this subtitle. Any such renewals shall be made only for a term of one year.".

(c) CONDITIONS OF RENEWAL.—Section 456 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11403e) is amended—

(1) by inserting "(a) APPROVAL OF ASSISTANCE.—" before "The Secretary"; and

(2) by adding at the end the following new subsection:

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"(b) CONDITIONS OF RENEWAL.—The Secretary may not provide assistance under this subtitle for any housing previously assisted under this subtitle unless the unit of general local government in which such project is located certifies that the housing complies with such housing safety and quality standards, as the Secretary shall establish and the Secretary reviews and approves such certification.".

SEC. 607. AMENDMENTS TO TABLE OF CONTENTS.

The table of contents in section 101(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 note) is amended—

(1) by striking the item relating to subtitle A of title IV and inserting the following new item:

"Subtitle A—General Provisions";

(2) by inserting after the item relating to section 401 the following new items:

"Sec. 402. Discharge coordination policy.
"Sec. 403. Set-aside for permanent housing.
"Sec. 404. Management information systems.";

and

(3) by striking the item relating to section 443 and inserting the following new item:

"Sec. 443. Environmental review.".

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TITLE VII—NATIVE AMERICAN HOUSING

SEC. 701. REAUTHORIZATION OF NATIVE AMERICAN HOUSING AND SELF-DETERMINATION ACT OF 1996.

(a) BLOCK GRANT ASSISTANCE.—Section 108 of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4117) is amended to read as follows:

"SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for grants under this title such sums as may be necessary for each of fiscal years 2003, 2004, 2005, 2006, and 2007.".

(b) GUARANTEES FOR TRIBAL HOUSING ACTIVITIES LOANS.—

(1) AGGREGATE FISCAL YEAR LIMITATION.—Section 605(a) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4195(a)) is amended by striking "1997, 1998, 1999, 2000, and 2001" and inserting "2003, 2004, 2005, 2006, and 2007.".

(2) AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY.—Section 605(b) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4195(b)) is amended by striking "1997, 1998, 1999, 2000, and 2001" and inserting "2003, 2004, 2005, 2006, and 2007.".

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(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 703 of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4212) is amended by striking "1997, 1998, 1999, 2000, and 2001" and inserting "2003, 2004, 2005, 2006, and 2007.".

TITLE VIII—HOUSING IMPACT ANALYSIS

SEC. 801. APPLICABILITY.

Except as provided in section 802, the requirements of this title shall apply with respect to—

(1) any proposed rule, unless the agency promulgating the rule—

(A) has certified that the proposed rule will not, if given force or effect as a final rule, have a significant deleterious impact on housing affordability; and

(B) has caused such certification to be published in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule, together with a statement providing the factual basis for the certification; and

(2) any final rule, unless the agency promulgating the rule—

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(A) has certified that the rule will not, if given force or effect, have a significant deleterious impact on housing affordability; and

(B) has caused such certification to be published in the Federal Register at the time of publication of the final rule, together with a statement providing the factual basis for the certification.

Any agency making a certification under this section shall provide a copy of such certification and the statement providing the factual basis for the certification to the Secretary of Housing and Urban Development.

SEC. 802. EXCEPTION FOR CERTAIN BANKING RULES.

The requirements of this title shall not apply to any proposed or final rule relating to—

(1) the operations, safety, or soundness of—

(A) federally insured depository institutions or any affiliate of such an institution (as such term is defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k));

(B) credit unions;

(C) the Federal home loan banks;

(D) the enterprises (as such term is defined in section 1303 of the Housing and Com-

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munity Development Act of 1992 (12 U.S.C. 4502);

(E) a Farm Credit System institution; or

(F) foreign banks or their branches, agencies, commercial lending companies, or representative offices that operate in the United States, or any affiliate of a foreign bank (as such terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101); or

(2) the payments system or the protection of deposit insurance funds or the Farm Credit Insurance Fund.

SEC. 803. STATEMENT OF PROPOSED RULEMAKING.

Whenever an agency publishes general notice of proposed rulemaking for any proposed rule, unless the agency has made a certification under section 801, the agency shall—

(1) in the notice of proposed rulemaking—

(A) state with particularity the text of the proposed rule; and

(B) request any interested persons to submit to the agency any written analyses, data, views, and arguments, and any specific alternatives to the proposed rule;

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(2) provide an opportunity for interested persons to take the actions specified under paragraph (1)(B) before promulgation of the final rule; and

(3) prepare and make available for public comment an initial housing impact analysis in accordance with the requirements of section 804.

SEC. 804. INITIAL HOUSING IMPACT ANALYSIS.

(a) REQUIREMENTS.—Each initial housing impact analysis shall describe the impact of the proposed rule on housing affordability. The initial housing impact analysis or a summary shall be published in the Federal Register at the same time as, and together with, the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial housing impact analysis to the Secretary of Housing and Urban Development.

(b) CONTENTS.—Each initial housing impact analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the extent to which the proposed rule would

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increase the cost or reduce the supply of housing or land for residential development; and

(4) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

SEC. 805. FINAL HOUSING IMPACT ANALYSIS.

(a) REQUIREMENT.—Whenever an agency promulgates a final rule after publication of a general notice of proposed rulemaking, unless the agency has made the certification under section 801, the agency shall prepare a final housing impact analysis.

(b) CONTENTS.—Each final housing impact analysis shall contain—

(1) a succinct statement of the need for, and objectives of, the rule;

(2) a summary of the significant issues, analyses, and alternatives to the proposed rule raised during the public comment period in response to the proposed rule and initial housing impact analysis, a summary of the assessment of the agency of such issues, analyses, and alternatives, and a statement of any changes made in the proposed rule as a result of such comments; and

(3) a description of and an estimate of the extent to which the rule will impact housing afford-

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ability or an explanation of why no such estimate is available.

(c) AVAILABILITY.—The agency shall make copies of the final housing impact analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

SEC. 806. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES.

(a) DUPLICATION.—Any Federal agency may perform the analyses required by sections 804 and 805 in conjunction with or as a part of any other agenda or analysis required by any other law, executive order, directive, or rule if such other analysis satisfies the provisions of such sections.

(b) JOINDER.—In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 804 and 805.

SEC. 807. PREPARATION OF ANALYSES.

In complying with the provisions of sections 804 and 805, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

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SEC. 808. EFFECT ON OTHER LAW.

The requirements of sections 804 and 805 do not alter in any manner standards otherwise applicable by law to agency action.

SEC. 809. PROCEDURE FOR WAIVER OR DELAY OF COMPLETION.

(a) INITIAL HOUSING IMPACT ANALYSIS.—An agency head may waive or delay the completion of some or all of the requirements of section 804 by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 801 impracticable.

(b) FINAL HOUSING IMPACT ANALYSIS.—An agency head may not waive the requirements of section 805. An agency head may delay the completion of the requirements of section 805 for a period of not more than 180 days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 805 impracticable. If the agency has not prepared a final housing impact analysis pursuant to section 805 within 180 days from the date

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of publication of the final rule, such rule shall lapse and have no force or effect. Such rule shall not be repromulgated until a final housing impact analysis has been completed by the agency.

SEC. 810. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts-martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

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(H) functions conferred by—

(i) sections 1738, 1739, 1743, and 1744 of title 12, United States Code;

(ii) chapter 2 of title 41, United States Code;

(iii) subchapter II of chapter 471 of title 49, United States Code; or

(iv) sections 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix, United States Code.

(2) FAMILIES.—The term "families" has the meaning given such term in section 3 of the United States Housing Act of 1937.

(3) HOUSING AFFORDABILITY.—The term "housing affordability" means the quantity of housing that is affordable to families having incomes that do not exceed 150 percent of the median income of families in the area in which the housing is located, with adjustments for smaller and larger families. For purposes of this paragraph, area, median family income for an area, and adjustments for family size shall be determined in the same manner as such factors are determined for purposes of section 3(b)(2) of the United States Housing Act of 1937.

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(4) RULE.—The term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of title 5, United States Code, or any other law, including any rule of general applicability governing grants by an agency to State and local governments for which the agency provides an opportunity for notice and public comment; except that such term does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.

(5) SIGNIFICANT.—The term "significant" means increasing consumers' cost of housing by more than $100,000,000 per year.

SEC. 811. DEVELOPMENT.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall develop model initial and final housing impact analyses under this title and shall cause such model analyses to be published in the Federal Register. The model analyses shall define the primary elements of a housing

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impact analysis to instruct other agencies on how to carry out and develop the analyses required under sections 804 and 805

SEC. 812. JUDICIAL REVIEW.

(a) DETERMINATION BY AGENCY.—Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this title to any action of the agency shall not be subject to judicial review.

(b) OTHER ACTIONS BY AGENCY.—Any housing impact analysis prepared under section 804 or 805 and the compliance or noncompliance of the agency with the provisions of this title shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any housing impact analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

(c) EXCEPTION.—Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

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TITLE IX—OTHER HOUSING PROGRAMS

SEC. 901. GNMA GUARANTEE FEE.

Section 972 of the Higher Education Amendments of 1998 (Public Law 105–244; 112 Stat. 1837) is hereby repealed.

SEC. 902. HOUSING COUNSELING PROGRAMS.

(a) DESIGNATION OF OFFICE RESPONSIBLE FOR HOUSING COUNSELING FUNCTIONS.—Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall designate a single office of the Department in existence on the date of the enactment of the Housing Affordability for America Act of 2002 to establish, coordinate, and administrate all requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling, mortgage-related counseling, and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling pursuant to the provisions of law specified in paragraph (2). To the extent that the Secretary is authorized by law to provide housing counseling services, the Secretary, in such

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circumstances or under such programs as the Secretary considers appropriate, may authorize such office to provide such housing counseling services.

"(2) The provisions specified in this paragraph are as follows:

"(A) Section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 42 5305(a)(20)).

"(B) In the United States Housing Act of 1937—

"(i) section 9(e) (42 U.S.C. 1437g(e));

"(ii) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

"(iii) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

"(iv) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

"(v) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

"(vi) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

"(vii) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

REV_00143508

"(viii) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4)).

"(C) Section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note).

"(D) Sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b)).

"(E) Sections 101(e) and 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701w(e), 1701x).

"(F) Section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G)).

"(G) Sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6)).

"(H) Section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii)).

"(I) Sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)).

REV_00143509

"(J) In the National Housing Act—

"(i) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

"(ii) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2); and

"(iii) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20).

"(K) Section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B)).

"(L) Section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7).".

(b) REPORT.—Not later than September 30, 2003, the Secretary of Housing and Urban Development shall submit a report to the Congress that—

(1) identifies the programs administered by the Department of Housing and Urban Development under which housing counseling is required, assisted, or made available;

(2) describes the counseling offered or provided under each such program, including the provider of such counseling; and

REV_00143510

(3) specifies any amounts made available under law for technical assistance or similar functions which are used to provide housing counseling.

SEC. 903. ASSISTANCE FOR SELF-HELP HOUSING PROVIDERS.

(a) LIMITATION ON ELIGIBLE EXPENSES.—Section 11(d) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) is amended by adding at the end the following new paragraph:

"(3) LIMITATION ON ELIGIBLE EXPENSES.—The amount from grants under this section that is used for eligible expenses (as such term is defined under paragraph (2)) in connection with developing dwelling units described in paragraph (1) may not exceed an average of $15,000 per dwelling unit developed by the grantee organization or consortium, except that the Secretary may increase such $15,000 amount for any particular geographic region that the Secretary determines has elevated costs of land acquisition or infrastructure improvement.".

(b) EXTENSION OF PERIOD FOR USE OF GRANTS.—Section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) is amended—

(1) in subsection (i)(5), by inserting before the semicolon the following: ", and except that the Sec-

REV_00143511

retary may extend such period for any organization or consortia to not more than 48 months in any case in which the Secretary determines, in the sole discretion of the Secretary, that extraordinary circumstances (including a national emergency) warrant such extension''; and

(2) in subsection (j), by adding at the end the following: ''The Secretary may extend the period otherwise applicable under this subsection for any organization or consortia to not more than 48 months in any case in which the Secretary determines, in the sole discretion of the Secretary, that extraordinary circumstances (including a national emergency) warrant such extension.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 11(p) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) is amended by striking ''fiscal year 2001'' and inserting ''each of fiscal years 2003, 2004, 2005, 2006, and 2007''.

SEC. 904. HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS.

Section 863 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12912) is amended to read as follows:

REV_00143512

"SEC. 863. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for grants under sections 860 and 861 such sums as may be necessary for each of fiscal years 2003, 2004, 2005, 2006, and 2007.".

SEC. 905. CDBG FUNDING ELIGIBILITY FOR SECULAR ACTIVITIES CARRIED OUT BY RELIGIOUS ORGANIZATIONS.

Section 105 of the Housing and Community Development Act of 1974 (42 U.S.C. 5305) is amended by adding at the end the following new subsection:

"(i) ELIGIBLE SUBRECIPIENTS.—Grant amounts under this title may be provided to religious organizations, or organizations having religious purposes, for carrying out secular activities that are eligible under this section to be assisted under this title.".

SEC. 906. USE OF CDBG AMOUNTS FOR CONSTRUCTION OF TORNADO-SAFE SHELTER FOR MANUFACTURED HOUSING PARKS.

(a) IN GENERAL.—Section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) is amended—

(1) in paragraph (22), by striking "and" at the end;

(2) in paragraph (23), by striking the period at the end and inserting a semicolon; and

REV_00143513

(3) by inserting after paragraph (23) the following new paragraph:

"(24) the construction or improvement of tornado- or storm-safe shelters for manufactured housing parks and residents of other manufactured housing, the acquisition of real property for sites for such shelters, and the provision of assistance (including loans and grants) to nonprofit or for-profit entities (including owners of such parks) for such construction, improvement, or acquisition, except that a shelter assisted with amounts made available pursuant to this paragraph shall be located in a neighborhood consisting predominantly of persons of low and moderate income, except that a shelter assisted with amounts made available pursuant to this paragraph may not be made available exclusively for use of the residents of a particular manufactured housing park or of other manufactured housing, but shall generally serve the residents of the area in which it is located; and".

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise made available for grants under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), there are authorized to be appropriated such sums as may be necessary for fis-

REV_00143514

cal year 2002 for assistance only for activities pursuant to section 105(a)(24) of such Act.

SEC. 907. USE OF CDBG AMOUNTS TO ADMINISTER RENEWAL COMMUNITIES.

Section 105(a)(13) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(13)) is amended by inserting "and renewal communities" after "enterprise zones".

SEC. 908. SUBSIDY LAYERING REVIEW.

Section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note) is amended

(1) in subsection (a)—

(A) by striking "may" and inserting "shall"; and

(B) by striking ", submitted in accordance with" and all that follows through the end of the subsection and inserting the following: "that it has made the determination required by subsection (m)(2)(A) of such section 42 upon the first occasion that such determination was required and that it will make such determination upon such additional occasions as are required by law or regulation.";

(2) by striking subsections (b) and (c); and

REV_00143515

(3) by redesignating subsection (d) as subsection (b).

○

REV_00143516

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Daniel A. Barry/OA/EOP@EOP [OA] <Daniel A. Barry>
CC: james b. wright/oa/eop@eop [OA] <james b. wright>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/17/2002 1:07:56 PM
Subject: : Re: Printing the WHO search

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:17-APR-2002 17:07:56.00
SUBJECT:: Re: Printing the WHO search
TO:Daniel A. Barry (CN=Daniel A. Barry/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:james b. wright (CN=james b. wright/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks. Delivery should be to Brett's office in EEOB 156.

DANIEL A.
BARRY
04/17/2002 04:30:10 PM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: James B. Wright/OA/EOP@EOP
Subject: Printing the WHO search

Adam;

The print jobs are on the que and I will attempt to coordinate the
printing remotely tomorrow.

Later... Tony

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/17/2002 9:40:08 AM
Subject: : Re: NYT

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-APR-2002 13:40:08.00
SUBJECT:: Re: NYT
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

The Judge said he will do this interview if you want him to.

He is free between 9:00 and 10:30 am - please let me know what time works best.

Anne Womack
04/17/2002 01:23:43 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: alberto r. gonzales/who/eop@eop, elizabeth n. camp/who/eop@eop, allison l. riepenhoff/who/eop@eop
Subject: Re: NYT

that should work.

From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
BCC:	Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO])
Sent:	4/19/2002 5:21:44 AM
Subject:	: BB edits and committee feedback on Leiberman letter
Attachments:	P_1EQT6003_WHO.TXT_1.doc

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CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-APR-2002 09:21:44.00
SUBJECT:: BB edits and committee feedback on Leiberman letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
BCC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Apart from my preference for option 2 on the new paragraph (rather than
option 1, which appears in this draft), the few attached nits are my only
comments.

I consulted this morning with the Republican committee staff. They like
and approve of both the tone and content of the letter. They suggest that
we cc: Senator Thompson on it. They predict that the letter will anger
the committee staff (they advise that anger and outrage are the default
responses by the staff in any event) but that it will establish a good
foundation on which to base further discussions down the road with
Leiberman.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1EQT6003_WHO.TXT_1>
```

DRAFT
4/18
7:00 P.M.

April __, 2002

Dear Chairman Lieberman:

Thank you for your letter to Secretary Card and for subsequently discussing the letter with me. As we had discussed, members of my staff later met with members of your staff to review the Committee's letter request for information from the White House.

At the outset, I want to emphasize our respect for you and the Committee, as well as our appreciation for the congressional inquiries into the causes and consequences of the collapse of Enron. Please be assured that the President shares your concern about this matter, including the consequences for Enron employees and shareholders. Indeed, the President and the Administration have responded rapidly to the issue by proposing important policy changes to address the problems. In addition, the Department of Justice and other federal agencies are conducting intensive official investigations of Enron and related entities and individuals. In short, the Administration is committed to appropriate investigative, law enforcement, and policy actions relating to the Enron bankruptcy.

I also want to emphasize that, as the Committee seeks to investigate Enron-related issues, we intend to ensure to the extent possible that the Committee receives appropriate information critical to its inquiry. We understand that the Committee is conducting an extensive investigation of Enron, which may well continue for many more months, and we want to be as helpful as we can, consistent with both the Committee's legitimate needs and the Executive Branch's traditional responsibilities and prerogatives.

With respect specifically to the ~~your~~ letter request for information, we discussed with your staff two ~~expressed~~ concerns. First, at this point, the request appears overbroad and not well-defined. For example, the letter does not identify any particular regulatory matters or subject matters in which the Committee is interested. Nor does the letter identify~~ied~~ particular offices or individuals within the White House, or particular individuals affiliated with Enron, in whose communications the Committee is interested. Rather, the request on its face covers potential communications (about undefined subjects) between tens of thousands of individuals, the vast majority of whom are not known to us or you, such as all of Enron's "officers, directors, employees, and representatives, including anyone purporting to act on their behalf; and each of their affiliates, subsidiaries, partnerships, special purpose entities, joint ventures, trusts or any other entity in which [Enron] is or was a shareholder, partner, investor, trustee, or member."

~~T~~The letter also seeks certain information that appears somewhat removed from the purposes of the Committee's ~~legitimate~~ inquiry into the collapse of Enron. For example, the letter seeks information about the deliberations and communications of the National Energy Policy Development Group. It is not clear, however, how the activities of this group, and its report, have anything to do with what your letter identifies as the focus of the Committee's

investigation -- namely, "whether the various federal agencies charged with overseeing or regulating part of Enron's business could have done something to detect or prevent the problems that led to the company's downfall and the losses of thousands of jobs and billions of investors' and employees' dollars."

Moreover, as I am sure you can appreciate, our concern about the letter request is especially heightened with respect to certain specific areas where the request would intrude deeply into ~~sensitive areas involving~~ the President's core constitutional responsibilities: for example, the President's power of nomination and appointment. The power of nomination under the Constitution belongs solely to the President, and congressional oversight in this area, at least absent a compelling predicate, threatens important Executive Branch prerogatives, as well as important privacy interests of candidates and others involved in the process. The letter request does not indicate~~, however, which~~any particular appointments that are of interest to the Committee.

Second, and more broadly, the letter request ~~Committee respectfully appears to have~~ invert~~ed~~ the traditional process of congressional inquiry to the White House. The Committee is seeking information from the White House without first gathering and assessing information from other entities (including federal departments) that may indicate whether there is, indeed, any real predicate for seeking information from the White House. Your staff stated in our meeting that the Committee's investigation has not as yet proceeded as far as we had thought, and the Committee therefore has not developed information -- either from Enron, Enron officials or representatives, or federal departments and agencies -- that would establish a basis for seeking information from the White House. Given the sensitivity and separation of powers concerns that arise from congressional requests for information from the White House, ~~however,~~ congressional committees traditionally avail themselves of alternative means to obtain information before submitting an information request to the White House.

In that regard, we think Senator Thompson put it well when he explained why he did not join in this request. He explained that the Committee's initial "focus was going to be on the external controls and watchdogs, and the federal agencies and laws, and ask why in this case they couldn't better protect the thousands of employees and investors who have suffered from Enron's untimely and unnatural demise." Senator Thompson further explained that he would be willing to follow up with the White House if "any of our other subpoenas or requests for information to Enron, Arthur Andersen or the regulatory agencies produced evidence of White House involvement." We respectfully believe that Senator Thompson has correctly outlined the traditional and appropriate congressional approach to inquiries to the White House.

To be sure, we are aware that some congressional inquiries in the past have sought information directly from the White House before or at the same time ~~as seeking~~they sought information from other departments and entities. But in those instances, there generally was a specific allegation or evidence of wrongdoing by White House officials. In this instance, there is none.

For those reasons, we share the overall concern reflected in Senator Thompson's statement: "While I have supported several other requests for information in this matter, I cannot

support the chairman's letter. . . . There are obvious separation of powers issues here which are bound to lead to controversy, and I believe that before Congress intrudes upon the private communications of the President of the United States, the inquiry should be focused on an appropriate legislative purpose or there should be some indication of improper or illegal White House activity."

The concerns that we and Senator Thompson have identified about the predicate for, timing of, and scope of the letter request may well justify, at this juncture, resisting the Committee's inquiry until it actually gathered information from other entities demonstrating a specific need predicate for a request to the White House, and reasonably focused the request in light of that need~~any such predicate~~.

But we do not seek controversy or conflict with you or the Committee. We therefore intend to assist the Committee by taking substantial and reasonable steps now to gather certain information of interest to the Committee.

First, the Administration already has provided certain information to the House of Representatives relevant to your inquiry: letters from the Chief of Staff, Director of the National Economic Council, and Director of the Office of Management and Budget. We think this information is quite useful, and we have enclosed that documentation in order to assist the Committee. *Second*, we will take appropriate steps to gather substantial additional information from appropriate White House officials. *Third*, we will then ~~would intend to~~ provide to the Committee information about the results of our efforts. *Fourth*, we then would hope to meet with Committee staff to assess the results of our efforts in the overall context of the Committee's inquiry.

Thank you again for your letter. We hope to continue a cooperative relationship with the Committee, recognizing of course that the two Branches inevitably may have somewhat different perspectives on certain sensitive issues. That difference in perspective is, however, both healthy to our constitutional government and not at all inconsistent with the productive and cooperative relationship we have begun. Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Alberto R. Gonzales
Counsel to the President

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/19/2002 6:07:01 AM
Subject: : LRM EPH141 - - OMB Request for Views on HR3214 To amend the Charter of the AMVETS Organization
Attachments: P_WTST6003_WHO.TXT_1.txt

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-APR-2002 10:07:01.00
SUBJECT:: LRM EPH141 - - OMB Request for Views on HR3214 To amend the Charter of the AMVETS Organization
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/19/2002 10:06 AM ----------

From: Erin P. Hassing on 04/19/2002 10:05:32 AM
Record Type: Record

To: valrm@mail.va.gov , dodlrs@osdgc.osd.mil
cc: See the distribution list at the bottom of this message
Subject: LRM EPH141 - - OMB Request for Views on HR3214 To amend the Charter of the AMVETS Organization

LRM ID: EPH141
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, April 18, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: OMB Request for Views on HR3214 To amend the Charter of the AMVETS Organization

DEADLINE: COB Wednesday, April 24, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: On April 17th, the House Judicary Subcommittee on Immigration and Claims marked up HR 3214. The measure passed by voice vote and no amendments were offered. This bill would amend the charter of the AMVETS organization to make changes to the makeup of the governing body and to change the organization's place of business.

DISTRIBUTION LIST

AGENCIES:
129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666
029-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305

EOP:
WHGC LRM
OVP LRM
Toni S. Hustead
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Kelli A. Hagen
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Danielle M. Simonetta
Matthew J. Schneider
Robert Marsh
Ingrid M. Schroeder
LRM ID: EPH141 SUBJECT: OMB Request for Views on HR3214 To amend the Charter of the AMVETS Organization
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

REV_00143624

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
WHGC LRM
OVP LRM
Toni S. Hustead/OMB/EOP@EOP
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Cameron M. Leuthy/OMB/EOP@EOP
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Lauren C. Lobrano/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
Robert Marsh/WHO/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WTST6003_WHO.TXT_1>

HR 3214 IH

107th CONGRESS

1st Session

H. R. 3214

To amend the charter of the AMVETS organization.

IN THE HOUSE OF REPRESENTATIVES

November 1, 2001

Mr. BILIRAKIS (for himself and Mr. EVANS) introduced the following bill; whi ch was referred to the Committee on the Judiciary

---

A BILL

To amend the charter of the AMVETS organization.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. AMENDMENTS TO AMVETS CHARTER.

(a) NAME OF ORGANIZATION- (1) Sections 22701(a) and 22706 of title 36, United States Code, are amended by striking `AMVETS (American Veterans of Worl d War II, Korea, and Vietnam)' and inserting `AMVETS (American Veterans)'.

(2)(A) The heading of chapter 227 of such title is amended to read as follows:

`CHAPTER 227--AMVETS (AMERICAN VETERANS)'.

(B) The item relating to such chapter in the table of chapters at the beginning of subtitle II of such title is amended to read as follows:

22701'.

(b) GOVERNING BODY- Section 22704(c)(1) of such title is amended by st riking `seven national vice commanders' and all that follows through `a judge a dvocate,' and inserting `two national vice commanders, a finance officer, a jud ge advocate, a chaplain, six national district commanders,'.

(c) HEADQUARTERS AND PRINCIPAL PLACE OF BUSINESS- Section 22708 of suc h title is amended--

(1) by striking `the District of Columbia' in the first sentence a nd inserting `Maryland'; and

(2) by striking `the District of Columbia' in the second sentence and inserting `Maryland'.

END

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/19/2002 6:23:13 AM
Subject: : LRM EPH138 - - OMB Request for Views on HR3988 To amend title 36 USC to Clarify the Requirements for Eligibility in the American Legion
Attachments: P_2OTT6003_WHO.TXT_1.html; P_2OTT6003_WHO.TXT_2.txt

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-APR-2002 10:23:13.00
SUBJECT:: LRM EPH138 - - OMB Request for Views on HR3988 To amend title 36 USC to Clarify the Requirements for Eligibility in the American Legion
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/19/2002 10:23 AM ----------

From: Erin P. Hassing on 04/19/2002 10:20:24 AM
Record Type: Record

To: justice.lrm@usdoj.gov , valrm@mail.va.gov , dodlrs@osdgc.osd.mil
cc: See the distribution list at the bottom of this message
Subject: LRM EPH138 - - OMB Request for Views on HR3988 To amend title 36 USC to Clarify the Requirements for Eligibility in the American Legion

LRM ID: EPH138
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, April 18, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: OMB Request for Views on HR3988 To amend title 36 USC to Clarify the Requirements for Eligibility in the American Legion

DEADLINE: COB Wednesday, April 24, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: On April 17th, the House Judicary Subcommittee on Immigration and Claims marked up HR 3988. The measure passed by voice vote and no amendments were offered. I have attached both the bill text and corresponding US Code reference.

DISTRIBUTION LIST

AGENCIES:
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129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666
029-DEFENSE - Samuel T. Brick Jr. - (703) 697-130

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Sarah S. Lee
Aquiles F. Suarez
Lauren C. Lobrano
Danielle M. Simonetta
Robert Marsh
Ingrid M. Schroeder
James J. Jukes
LRM ID: EPH138 SUBJECT: OMB Request for Views on HR3988 To amend title 36 USC to Clarify the Requirements for Eligibility in the American Legion
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
WHGC LRM
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Toni S. Hustead/OMB/EOP@EOP
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Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2OTT6003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2OTT6003_WHO.TXT_2>

-CITE-

36 USC Sec. ***21703***

01/02/01

-EXPCITE-

TITLE 36 - PATRIOTIC AND NATIONAL OBSERVANCES, CEREMONIES, AND

ORGANIZATIONS

Subtitle II - Patriotic and National Organizations

Part B - Organizations

CHAPTER 217 - THE AMERICAN LEGION

-HEAD-

Sec. 21703. Membership

-STATUTE-

An individual is eligible for membership in the corporation only if the individual -

(1) has served in the Armed Forces of -

(A) the United States at any time during any period from -

(i) April 6, 1917, through November 11, 1918;

(ii) December 7, 1941, through December 31, 1946;

(iii) June 25, 1950, through January 31, 1955;

(iv) February 28, 1961, through May 7, 1975;

(v) August 24, 1982, through July 31, 1984;

(vi) December 20, 1989, through January 31, 1990; or

(vii) August 2, 1990, through the date of cessation of hostilities, as decided by the United States Government; or

(B) a government associated with the United States during a

period referred to in subclause (A) of this clause and was a

citizen of the United States when the individual entered that

service; and

(2) was honorably discharged or separated from that service or

continues to serve honorably after that period.

-SOURCE-

(Pub. L. 105-225, Aug. 12, 1998, 112 Stat. 1297; Pub. L. 105-354,

Sec. 1(6), Nov. 3, 1998, 112 Stat. 3244.)

-MISC1-

Historical and Revision Notes

Pub. L. 105-225

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
21703	36:45.	Sept. 16, 1919, ch. 59, Sec. 5, 41 Stat. 285; Oct. 29, 1942, ch. 633, Sec. 2, 56 Stat. 1012; July 9, 1946, ch. 546, 60 Stat. 524; Dec. 28, 1950, ch.

1177, 64 Stat.

1122; July 26,

1955, ch. 386, Sec.

2, 69 Stat. 380;

Sept. 1, 1966, Pub.

L. 89-550, Sec. 2,

80 Stat. 372; Dec.

27, 1974, Pub. L.

93-557, 88 Stat.

1792; Aug. 17,

1978, Pub. L. 95-

346, 92 Stat. 485;

Dec. 21, 1979, Pub.

L. 96-155, 93 Stat.

1165; Oct. 30,

1990, Pub. L. 101-

478, 104 Stat. 1157;

Dec. 2, 1991, Pub.

L. 102-179, 105

Stat. 1229.

In clause (1), the words ''armed forces'' are substituted for ''naval or military services'' and ''military or naval service'' for clarity. In subclause (A), the word ''through'' is substituted

for ''all dates inclusive'' for clarity. In subclause (B), the words ''a government associated with the United States during a period referred to in subclause (A) of this clause and was a citizen of the United States when the individual entered that service'' are substituted for ''who, being a citizen of the United States at the time of entry therein . . . of any governments associated with the United States during said wars or hostilities'' for clarity.

In clause (2), the words ''after that period'' are substituted for ''after any of the aforesaid terminal dates'' to eliminate unnecessary words.

REV_00143641

This amends section 21703(1)(A)(iv) of title 36 to reflect changes made by Public Law 105-110 (Nov. 20, 1997, 111 Stat. 2270).

AMENDMENTS

1998 - Par. (1)(A)(iv). Pub. L. 105-354 substituted ''February 28, 1961'' for ''December 22, 1961''.

Previous section Next section

Search USC, About Database, Download USC, Classification Tables, Codification

REV_00143642

HR 3988 IH

107th CONGRESS

2d Session

H. R. 3988

To amend title 36, United States Code, to clarify the requirements f or eligibility in the American Legion.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2002

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 36, United States Code, to clarify the requirements f or eligibility in the American Legion.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. CLARIFICATION OF REQUIREMENTS FOR ELIGIBILITY IN THE AMERICAN LEGION.

Section 21703(2) of title 36, United States Code, is amended by insert ing `during or' after `continues to serve honorably'.

END

REV_00143643

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/19/2002 10:26:13 AM
Subject: : LRM JAB 201- Request for Views on HR4231 Small Business Advocacy Improvement Act
Attachments: P_VC5U6003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-APR-2002 14:26:13.00
SUBJECT:: LRM JAB 201- Request for Views on HR4231 Small Business Advocacy Improvement Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/19/2002 02:25 PM ----------

James A. Brown
04/19/2002 02:25:12 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM JAB 201- Request for Views on HR4231 Small Business Advocacy Improvement Act

LRM ID: JAB201
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 19, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR4231 Small Business Advocacy Improvement Act

DEADLINE: 10:00 A.M. Wednesday, April 24, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This bill has been ordered reported by the House Small Business Committee, and could be considered by the full House as early as the week of April 29th. We therefore need to receive any comments you may hve by the deadline.

DISTRIBUTION LIST

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006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
061-JUSTICE - Daniel Bryant - (202) 514-2141
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107-Small Business Administration - Richard Spence - (202) 205-6700
029-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
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EOP:
Philip J. Perry
Matthew J. Schneider
Rosalyn J. Rettman
NEC LRM
WHGC LRM
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John Graham
Paul R. Noe
Veronica Vargas
James J. Jukes
Richard E. Green
Lisa B. Fairhall
Meredith G. Benson
LRM ID: JAB201 SUBJECT: OMB Request for Views on HR4231 Small Business Advocacy Improvement Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Philip J. Perry/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
Rosalyn J. Rettman/OMB/EOP@EOP
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Lisa B. Fairhall/OMB/EOP@EOP
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epalrm@epamail.epa.gov
ola@opm.gov
dodlrs@osdgc.osd.mil
ca.legislation@gsa.gov
legteam@oge.gov
ola@opm.gov

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VC5U6003_WHO.TXT_1>

I

107TH CONGRESS
2D SESSION

H. R. 4231

To improve small business advocacy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2002

Mr. MANZULLO (for himself and Ms. VELÁZQUEZ) introduced the following bill; which was referred to the Committee on Small Business

---

A BILL

To improve small business advocacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Advocacy Improvement Act of 2002".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Excessive regulations continue to burden the Nation's small businesses.

(2) Federal agencies continue to propose regulations that impose disproportionate burdens on small businesses.

REV_00143657

(3) An independent office of small business advocacy will help to ensure that Federal agencies are responsive to small businesses and that those agencies comply with their statutory obligations with respect to small businesses.

(4) The independence of an office that acts as an advocate for small businesses is essential to ensure that it can serve as an effective advocate without being restricted by the views or policies of the Small Business Administration or any other Federal executive branch agency.

(5) To be effective an office that acts as an advocate for small businesses needs sufficient resources to conduct creditable economic studies and research which are necessary for the maintenance of small business databases and for the accurate assessment of the impact of regulations on small businesses, the role of small business in the Nation's economy, and the barriers to the growth of small businesses.

(6) The research, information, and expertise provided by an independent office of small business advocacy will be a valuable source of information and advice for Congress and Federal agencies with which the office will work on behalf of small businesses.

REV_00143658

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure that there exists an entity that has the statutory independence and adequate financial resources to effectively advocate for and on behalf of small business;

(2) to require that such an entity report to the Chairmen and Ranking Members of the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, and to the Administrator of the Small Business Administration in order to keep them fully and currently informed about issues and regulations affecting small business concerns and the necessity for corrective action by the regulatory agency or Congress;

(3) to provide a separate authorization for appropriations for such an entity; and

(4) to strengthen the role of the Small Business and Agriculture Regulatory Enforcement Ombudsman by ensuring greater cooperation between the Ombudsman and the Office of Advocacy of the Small Business Administration.

SEC. 3. APPOINTMENT OF CHIEF COUNSEL OF ADVOCACY.

(a) IN GENERAL.—Section 201 of Public Law 94–305 (15 U.S.C. 634a) is amended—

REV_00143659

(1) by inserting "(a)" before "There is established";

(2) by striking the second sentence; and

(3) by adding at the end the following:

"(b) The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the ground of fitness to perform the duties of the office.

"(c) No individual may be appointed under subsection (b) if such individual has served as an officer or employee of the Small Business Administration during the 5-year period preceding the date of such individual's appointment.

"(d) Any Chief Counsel appointed after the date of the enactment of this subsection shall be paid at a rate not to exceed the rate of basic pay for level III of the Executive Schedule.

"(e) After the expiration of the term of a President, the Chief Counsel may continue to serve at the pleasure of the President for a period of not to exceed one year until such date as a successor to the Chief Counsel is nominated.".

REV_00143660

(b) INCUMBENT CHIEF COUNSEL FOR ADVOCACY.—The individual serving as the Chief Counsel for Advocacy of the Small Business Administration on the date of the enactment of this Act shall continue to serve in that position after such date in accordance with section 201 of Public Law 94–305 (15 U.S.C. 634a), as amended by this section.

SEC. 4. PRIMARY FUNCTIONS OF OFFICE OF ADVOCACY.

Section 202 of Public Law 94–305 (15 U.S.C. 634b) is amended—

(1) in paragraph (6) by striking "to minority enterprises" and inserting "to small business concerns owned and controlled by socially and economically disadvantaged individuals, to small business concerns owned and controlled by women, and to small business concerns owned and controlled by veterans";

(2) in paragraph (7) by striking "minority enterprises" and inserting "small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and small business concerns owned and controlled by veterans";

(3) in paragraph (8) by striking "minority and other small business enterprises" and inserting

REV_00143661

"small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, small business concerns owned and controlled by veterans, and other small businesses";

(4) in paragraph (9) by striking "complete" and inserting "compete";

(5) by striking paragraph (11);

(6) by redesignating paragraph (12) as paragraph (11);

(7) in paragraph (11) (as so redesignated)—

(A) by striking "serviced-disabled" and inserting "service-disabled"; and

(B) by striking the period at the end and inserting "; and"; and

(8) by adding at the end the following:

"(12) make recommendations and submit reports to the President, to the Chairmen and Ranking Members of the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, and to the Administrator of the Small Business Administration, with respect to issues and regulations affecting small businesses and the necessity for cor-

REV_00143662

rective action by any Federal agency or by Congress.".

SEC. 5. ADDITIONAL FUNCTIONS.

(a) IN GENERAL.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

(1) by inserting "(a)" before "The Office of Advocacy shall also perform"; and

(2) in subsection (a) (as so designated)—

(A) in paragraph (4) by striking "and" at the end;

(B) in paragraph (5) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(6) maintain economic databases and make the information contained therein available to the Administrator of the Small Business Administration and to Congress;

"(7) carry out the responsibilities of the Chief Counsel under chapter 6 of title 5, United States Code; and

"(8) enter into a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy and trans-

REV_00143663

mit a copy of such memorandum to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.".

(b) APPROPRIATION REQUEST.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is further amended by adding at the end the following:

"(b) On or before October 15 of the year preceding the beginning of each fiscal year, the Chief Counsel shall transmit to the President the estimated expenditures and proposed appropriations for the Office of Advocacy, which shall be included by the President in the Budget without revision.".

SEC. 6. DEPUTY CHIEF COUNSELS AND REGIONAL ADVOCATES.

Section 204 of Public Law 94–305 (15 U.S.C. 634d) is amended—

(1) by inserting "(a)" before "In carrying out"; and

(2) by adding at the end the following:

"(b)(1) The Chief Counsel may appoint 2 individuals to serve as Deputy Chief Counsels.

"(2) Notwithstanding any other provision of this section, the pay rate for each Deputy Chief Counsel may not

REV_00143664

exceed the rate of basic pay for level III of the Senior Executive Service.

"(3) Individuals appointed to positions under this subsection shall not be counted toward the limitation contained in subsection (a)(1) regarding the number of individuals who may be compensated at a rate in excess of the lowest rate for GS–15 of the General Schedule.

"(c) The Chief Counsel may appoint regional advocates within each Standard Federal Region as appropriate. Such regional advocates shall—

"(1) assist in examining the role of small business in the economy of the United States by identifying academic and other research institutions that focus on small business concerns and linking these research resources to research activities conducted by the Office of Advocacy;

"(2) assist in representing the views and interests of small business concerns before Federal agencies whose policies and activities may affect small business;

"(3) in coordination with the Small Business and Agriculture Regulatory Enforcement Ombudsman, assist the functioning of regional small business fairness boards;

REV_00143665

"(4) assist in enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government that are of benefit to small business concerns and the means by which small business concerns can participate in or make use of such programs and services; and

"(5) carry out such duties pursuant to the mission of the Office of Advocacy as the Chief Counsel may assign.".

SEC. 7. OVERHEAD AND ADMINISTRATIVE SUPPORT.

Section 205 of Public Law 94–305 (15 U.S.C. 634e) is amended by inserting before "Each department" the following:

"(a) The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations of the Administration, together with such equipment, office supplies, communications facilities, and personnel and maintenance services as may be necessary for the operation of such offices.

"(b)".

REV_00143666

SEC. 8. REPORTS.

Section 206 of Public Law 94–305 (15 U.S.C. 634f) is amended by striking "The Chief Counsel may" and all that follows through "on his activities." and inserting the following:

"(a) Not less than annually, the Chief Counsel shall submit to the President, the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Government Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives, and the Administrator of the Small Business Administration a report on agency compliance with chapter 6 of title 5, United States Code.

"(b) In addition to the reports required by this title, the Chief Counsel may prepare and publish such other reports as the Chief Counsel determines appropriate.

"(c)".

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Section 207 of Public Law 94–305 (15 U.S.C. 634g) is amended by striking "not to exceed $1,000,000" and inserting "$10,000,000 for fiscal year 2003, $12,000,000 for fiscal year 2004, and $14,000,000 for fiscal year 2005".

REV_00143667

SEC. 10. CONFORMING AMENDMENTS.

(a) EXECUTIVE PAY SCHEDULE.—Title 5, United States Code, is amended—

(1) in section 5314 by adding at the end the following:

"Chief Counsel for Advocacy, Small Business Administration."; and

(2) in section 5315 by striking the following:

"Chief Counsel for Advocacy, Small Business Administration.".

(b) RURAL TOURISM TRAINING PROGRAM.—Section 311 of the Small Business Administration Reauthorization and Amendments Act of 1990 (15 U.S.C. 653 note; 104 Stat. 2832) is amended by striking "Chief Counsel for Advocacy" and inserting "Administrator".

(c) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN.—Section 30(b)(2) of the Small Business Act (15 U.S.C. 657(b)(2)) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(F) enter into a memorandum of understanding with the Office of Advocacy regarding

REV_00143668

methods and procedures for cooperation between the Ombudsman and the Office of Advocacy.".

○

REV_00143669

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/19/2002 10:58:17 AM
Subject: : LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals
Attachments: P_DW6U6003_WHO.TXT_1.doc; P_DW6U6003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-APR-2002 14:58:17.00
SUBJECT:: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/19/2002 02:57 PM ----------

From: P. Thaddeus Messenger on 04/19/2002 02:53:59 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals

LRM ID: PTM102
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 19, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals

DEADLINE: 5:00 p.m. Friday, April 26, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find a copy of HUD's draft text and sectional analysis for five legislative proposals.

Please provide your comments by 5:00 p.m., Friday, 26 April. If you experience difficulty with this LRM, or its attachments, please contact us immediately. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile.

Thank you.

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Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM102 SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please

call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
justice.lrm@usdoj.gov
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To:_____
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Attia Little/OMB/EOP@EOP
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Joel D. Kaplan/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DW6U6003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DW6U6003_WHO.TXT_2>

APRIL 2002
Five Legislative Proposals – Bill Text

REDUCTION IN MINIMUM RENT; ELIMINATION OF HARDSHIP EXEMPTION FOR NON-ELDERLY, NON-DISABLED FAMILIES THAT WOULD BE EVICTED

SEC. ____. Section 3(a)(3) of the United States Housing Act of 1937 is amended—

(1) in subparagraph (A), by striking "50" and inserting "25"; and

(2) in subparagraph (B)(i), by inserting after "(II)" the following: "in the case of an elderly family or a disabled family,".

AMEND MODERATE REHABILITATION RENEWALS TEST TO DROP FAIR MARKET RENT RESTRICTION

SEC. ____. Section 524(b)(3) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

VOUCHER UTILIZATION: CHANGE LIMITATION ON FAMILY PAYMENTS OF RENT FROM 40 PERCENT OF ADJUSTED MONTHLY INCOME TO 40 PERCENT OF MONTHLY INCOME

SEC. ____. Section 8(o)(3) of the United States Housing Act of 1937 is amended by striking "adjusted".

INCREASED FLEXIBILITY FOR SALE OF PROPERTIES UNDER ASSET CONTROL AREA AGREEMENTS

SEC. ___. Section 204(h)(2) of the National Housing Act is amended—

(1) in subparagraph (A), by striking "Any" and inserting "Except as provided in subparagraph (D), any"; and

(2) by inserting after subparagraph (C) the following new subparagraph:

"**(D) INFEASIBLE REHABILITATION; OPEN SPACE.—** Regardless of whether or not a property was at any time considered an `eligible asset' under this subsection, if at any time the estimated cost of acquisition and rehabilitation for any property described in subparagraph (A) would exceed the estimated market value of the property after such rehabilitation or if the Secretary determines at any time that rehabilitation of a property described in subparagraph (A) is otherwise infeasible or that the best use of such property is as open space (including park land), the Secretary may exclude such property from disposition under this subsection. Properties excluded by the Secretary under this subparagraph shall not be considered `eligible assets' for purposes of this subsection.".

TECHNICAL CORRECTION TO NATIONAL HOUSING ACT AMENDMENT

SEC. ____. (a) TECHNICAL CORRECTION.--Section 207(a)(1) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 is amended to read as follows:

"(1) in paragraph (1)--

"(A) by striking `subsections (n) and (k)' and inserting `subsection (n)'; and

"(B) by striking `or (k)'; and".

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall be deemed to have taken effect on November 26, 2001.

April 2002
Five Legislative Proposals – Section-by-Section Analysis

REDUCTION IN MINIMUM RENT; ELIMINATION OF HARDSHIP EXEMPTION FOR NON-ELDERLY, NON-DISABLED FAMILIES THAT WOULD BE EVICTED

Section ____ would amend section 3(a)(3) of the United States Housing Act of 1937 to eliminate the eviction-related hardship exemption for those families that are not elderly families or disabled families, and also to lower the maximum minimum rent from $50 to $25.

AMEND MODERATE REHABILITATION RENEWALS TEST TO DROP FAIR MARKET RENT RESTRICTION

Section ____ would amend section 524(b)(3) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 to provide that renewal rents for moderate rehabilitation projects are set at the lesser of current rents plus an operating adjustment for inflation, or comparable market rents for the market area. Under current law, they are set at the lesser of current rents plus an operating adjustment for inflation, fair market rents, or comparable market rents for the market area.

VOUCHER UTILIZATION: CHANGE LIMITATION ON FAMILY PAYMENTS OF RENT FROM 40 PERCENT OF ADJUSTED MONTHLY INCOME TO 40 PERCENT OF MONTHLY INCOME

Section ____ would amend section 8(o)(3) of the United States Housing Act of 1937 to change the reference to "monthly adjusted income" to instead reference "monthly income" by striking the word "adjusted". The effect of this change would be to increase the total rent that a family initially receiving tenant-based section 8 assistance with respect to any dwelling unit may be allowed to pay from 40% of the monthly adjusted income of the family to 40% of the monthly income of the family.

A basic compromise in the 1998 merger of the voucher and certificate programs was that families could choose to pay more than 30% of adjusted income to rent better apartments, but could not pay more than 40% of adjusted income. This 40% cap helps to ensure that families entering the voucher program do not assume untenably high rent burdens that might undermine the stability of their housing. However, the limit has prevented some families from obtaining housing of their choice, and caused problems such as preventing a family previously in the voucher program and paying more than 40% of adjusted income from moving to a less expensive apartment that still costs more than 40% of adjusted income. This section would help to ease the potentially adverse effects of the limitation by raising the 40% of adjusted monthly income rent burden limitation to 40% of monthly income.

INCREASED FLEXIBILITY FOR SALE OF PROPERTIES UNDER ASSET CONTROL AREA AGREEMENTS

Section ____ would amend section 204(h)(2) of the National Housing Act to allow HUD to establish an exception to the definition of "eligible asset" for those properties for which rehabilitation is or becomes infeasible, or for which the best use is determined to be as open land or park space, effectively excluding those properties from the requirements of that section. Section 204(h) sets forth special procedures for FHA single family property disposition, and currently provides that HUD must dispose of all "eligible assets" in accordance with the terms of that section, including the terms of paragraph (5)(A)(iii) and paragraph (5)(B)(ii), which provide that properties acquired under an Asset Control Area ("ACA") agreement must be rehabilitated into livable homes. The changes made by this proposal would relieve the ACA partners from having to manage rehabilitation of properties where that use is not the best use and/or where rehabilitation is not feasible.

TECHNICAL CORRECTION TO NATIONAL HOUSING ACT AMENDMENT

Section 207 of HUD's FY 2002 appropriations Act amended section 203(c) of the National Housing Act to allow a change in premium for FHA single family programs insured under sections 203(k) and 234 of the National Housing Act. Section 207(a)(1) contained some technical drafting errors in its amendment to section 203(c)(1). Section ___ would amend section 207(a)(1) to correct these errors and would deem the amendment to be effective on November 26, 2001 (the date of enactment of HUD's FY 2002 appropriations Act).

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;daniel j. bartlett/who/eop@eop [WHO] <daniel j. bartlett>;matthew e. smith/who/eop@eop [WHO] <matthew e. smith>
Sent: 4/22/2002 4:51:15 AM
Subject: : Re: May 3 and May 9th on judges

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-APR-2002 08:51:15.00
SUBJECT:: Re: May 3 and May 9th on judges
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:daniel j. bartlett (CN=daniel j. bartlett/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:matthew e. smith (CN=matthew e. smith/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

H-

I spoke with Brett about this last week; he said the Judge is advocating a 3 May event with real folks and remarks.

Warmly

tsg

Heather Wingate
04/22/2002 08:49:12 AM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Daniel J. Bartlett/WHO/EOP@EOP
cc: Matthew E. Smith/WHO/EOP@EOP
Subject: Re: May 3 and May 9th on judges

That is exactly what I was seeking clarification on last week. We are submitting scheduling paper for a Members meeting on the 9th (not event). But it's very important that we have a judges message on law day if we're not doing so on the 9th. Dan, can you confirm the law day issue?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Vickie A. McQuade/WHO/EOP@EOP [WHO] <Vickie A. McQuade>
Sent: 4/22/2002 6:06:16 AM
Subject: : Re:Back to Ari's travel

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-APR-2002 10:06:16.00
SUBJECT:: Re:Back to Ari's travel
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

He should pay for the West Point to Burlington leg and for the
Burlington to DC leg.

Vickie A. McQuade
04/16/2002 09:04:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re:Back to Ari's travel

Since Ari is going to be the keynote speaker at the Westchester County Association's Spring Dinner Meeting -- I assume it's official, even though they have offered to pay. He will fly from White Plains to West Point to hook up with the President for the commencement. He will fly from West Point to Burlington, Vermont for his Middlebury class reunion. Does this help?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 4/22/2002 10:07:24 AM
Subject: : draft Kmiec letter on Presidential Records
Attachments: P_LJCV6003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-APR-2002 14:07:24.00
SUBJECT:: draft Kmiec letter on Presidential Records
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Doug Kmiec was head of OLC at the time of the Reagan order on Presidential Records. You will see that he argues that President Bush's order is constitutionally sound -- and makes more sense in terms of constitutional law and appropriate policy than the Reagan order he reviewed in 1988. This letter is a nice development.

In addition, Todd Gaziano of Heritage will testify at the hearing.

- presidential records.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LJCV6003_WHO.TXT_1>

Re: H.R. 4187

Dear Congressman Horn

Thank you for inviting me to participate in the hearing on H.R. 4187, the Presidential Records Act Amendments of 2002.

I regret that a prior commitment to participate in a program out of state makes it impossible for me to attend your deliberations on the 24th of April, but I wanted to share a few thoughts by letter in the event they are helpful.

First, I want to commend you and the committee for seeking the proper balance between the prerogatives of the Presidency and public disclosure. History depends upon an accurate accounting of public decision, and history can only be well written if the relevant materials are available. Of course, our nation does not only live in the past, it has an obligation to the present, so there is a corresponding duty to ensure that the office of the Presidency can function both in these times of war, as well as in times of peace.

While I believe your proposal is well-intended, in my judgment, it strikes an incorrect balance. The Presidential Records Act of 1978 was, in itself, a dramatic step toward the opening of public documents. Prior to the act, presidents owned their papers outright. This was something well accepted by our founders. It was Justice Storey, after all, who opined that George Washington owned his presidential papers and could bequeath them to his estate or grant a copyright in them to others.

In the wake of Watergate, and its unfortunate and inexcusable abuse of public power, Congress reset that balance. In doing so, Congress was careful not to undermine the constitutional responsibilities of the presidency, both by allowing the restriction of access to executive documents for up to 12 years, and by explicitly providing that "nothing in the Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former president."

Without those carefully stated words, the 1978 Act would have been open to serious constitutional doubt. While President Nixon's particular privilege claim was not sustained, *United States v. Nixon* recognized the unmistakable constitutional origin of executive privilege claims and that the need "to protect military, diplomatic, or sensitive national security secrets" might even trump the need for presidential materials in a criminal trial. More generally, the Court specified that "there is a legitimate governmental interest in the confidentiality of communications between high Government officials, e. g., those who advise the President, and that '(h)uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.' 418 U.S., at 705. Indeed, the opinion noted that Government confidentiality has been a concern from the time of the Constitutional Convention in 1787, the meetings of which were conducted in private, 1 M. Farrand, The Records of the

Federal Convention of 1787, pp. xi-xxv (1911), and the records of which were sealed for more than 30 years after the Convention. See 3 Stat. 475, 15th Cong., 1st Sess., Res. 8 (1818). See generally Charles Warren, *The Making of the Constitution* 134-139 (1937).

Subsequently the Court decided in *Nixon v. Administrator of General Services,* 433 U.S. 425 (1977), that executive privilege extends to both incumbent and former presidents. Unless the President can give his advisers some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends. Said the Court adopting the words of the Solicitor General; "The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure; the privilege is not for the benefit of the President as an individual, but for the benefit of the Republic. Therefore the privilege survives the individual President's tenure."

As Assistant Attorney General for the Office of Legal Counsel to President Reagan, it was my privilege to review for form and legality, Executive Order 12667. That executive order implemented the 1978 Act by directing the Archivist to fully honor an incumbent President's assertion of privilege, but left to the Archivist's discretion, subject to court order, whether or not to honor a claim of a former president. It was not clear to me why the White House in 1989 preferred this differentiation of incumbent and former president privilege claims, as it certainly was not mandated by the 1978 Act or judicial precedent, but it could be argued that so long the Archivist would not disclose documents for a time sufficient to allow the former president to litigate the privilege, no constitutional problem would arise.

A more prudent course would be to treat the privilege claims of incumbent and former presidents as equivalent. Such equivalency better recognizes that the privilege is not a personal one, but one intended within the constitutional design to protect the Office of the Presidency, especially as it relates to state secrets, open law enforcement files, and the deliberative process of the President, which of course, extends to communications with the Vice-President, the cabinet, and other high ranking advisors. This more prudent course was adopted by President George W. Bush in Executive Order 13233 signed on November 1, 2001. Under the Bush executive order, a claim of privilege by either the incumbent or a former president preserves the confidentiality of the material unless the parties seeking disclosure receive a final court order confirming some "demonstrated need" for the document's release.

While it is possible to construe the Bush executive order as more restrictive, in fact, it provides an incumbent concession that "absent compelling circumstances, the incumbent President will concur in the privilege decision of the former President." In essence, the Bush order can be reasonably read as creating a presumption of disclosure of former presidential documents, unless there is compelling reason – from the vantage point of the incumbent and the present exigencies of the Office – to withhold materials. This presumption of disclosure in the Bush order was not present in that signed by President Reagan. Perhaps, it is in exchange for this deference to public release, that when a former president does assert a privilege under the Bush order, "the incumbent President will support that privilege claim in any forum in which the privilege claim is challenged." This is constitutionally sensible, equitable, and responsive to the

needs of a presidency that at the moment faces unparalleled challenges to maintaining the safety and security of the Nation.

Regrettably, I do not find the same sense of constitutional prudence in H.R. 4187. First, it would seem that rather than striving for balance, the proposed amendment is designed to weaken the Presidential office without deference to the constitutional importance of maintaining the integrity of privileged material. For example, the proposal resurrects the unwarranted differentiation of privilege claims asserted by the former or incumbent president. In this regard, a former president is once again put in the awkward position of suing his successor, unless his successor incumbent concurs in the nonrelease. Even more troubling, the assertion of privilege claims by either an incumbent or former president is made subject to predicate requirements that require the identification of the specific record, the specific grounds of the claim, and the circulation of this information to members of Congress, the person seeking the record, and the general public. While it might be theoretically possible to write such claims obliquely without disclosing privileged material, in some cases, especially as they relate to military and law enforcement matters, that would be impossible. It would also appear that some of the time periods for review of material have been narrowed from the 1978 Act, and given the differential volume of some disclosure claims, this in itself would likely prove constitutionally troublesome. Finally, the above changes aggravate some of the lingering constitutional doubts related to the 1978 Act – specifically, the fact that the proposed amendment effectively denies the validity of a constitutionally based privilege, whether made by an incumbent or former president, when the information is sought pursuant to 44 U.S.C. 2205(2) (A) (criminal matters) or (C) (committee requests).

We know this is a delicate moment in our Nation's history. Our Constitution and its separation of powers has served us well. Respectfully, I do not believe the H.R. 4187 fully observes that important constitutional doctrine, and I would urge the committee not to pursue the changes it proposes.

Sincerely,

Douglas W. Kmiec
Dean & St. Thomas More Professor

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 4/22/2002 8:23:42 AM
Subject: : Re: NYT

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-APR-2002 12:23:42.00
SUBJECT:: Re: NYT
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think Jay Bybee (AAG) and Ed Whelan (Deputy AAG) in the Office of Legal Counsel at the Department of Justice may be useful. Another alternative is to have Tim Flanigan (as former head of OLC) speak on background on specific issues.

Anne Womack
04/22/2002 12:16:07 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NYT

last week you mentioned that there might be others that are more appropriate to talk to Allison Mitchell. I can't remember who they are now.

From: CN=Oscar Gonzalez/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew J. Schneider/OMB/EOP@EOP [OMB] <Matthew J. Schneider>;Randolph M. Lyon/OMB /EOP@EOP [OMB] <Randolph M. Lyon>;Beatrice A. Reaud/OMB/EOP@EOP [OMB] <Beatrice A. Reaud>
Sent: 4/22/2002 11:12:22 AM
Subject: : 4/24 hearing on Presidential Records Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Oscar Gonzalez (CN=Oscar Gonzalez/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:22-APR-2002 15:12:22.00
SUBJECT:: 4/24 hearing on Presidential Records Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew J. Schneider (CN=Matthew J. Schneider/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Randolph M. Lyon (CN=Randolph M. Lyon/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Beatrice A. Reaud (CN=Beatrice A. Reaud/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

FYI:
Presidential Records Access
House Government Reform Committee -
Subcommittee on Government Efficiency, Financial
Management and Intergovernmental Relations
Subcommittee Hearing
Agenda: HR 4187 - Presidential Records Act
Amendments of 2002
Date: April 24, 10:00 A.M., 2154 Rayburn Building

I'm trying to find out whether Administration witnesses have been asked to present testimony.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/22/2002 12:11:13 PM
Subject: : LRM IKK188 - - OMB Request for Views on HR3062 Business Retained Income During Growth and Expansion Act of 2001
Attachments: P_1CJV6003_WHO.TXT_1

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-APR-2002 16:11:13.00
SUBJECT:: LRM IKK188 - - OMB Request for Views on HR3062 Business Retained Income During Growth and Expansion Act of 2001
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/22/2002 04:11 PM ----------

From: Irene Kho on 04/22/2002 04:09:28 PM
Record Type: Record

To: llr@do.treas.gov , justice.lrm@usdoj.gov , cla@sba.gov @ inet, CLRM@doc.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IKK188 - - OMB Request for Views on HR3062 Business Retained Income During Growth and Expansion Act of 2001

We are seeking your comments on H.R. 3062, which would permit eligible businesses to defer a portion of their Federal income tax liabilities. Please submit comments by no later than 1:00 P.M. Wednesday, April 24th.

LRM ID: IKK188
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, April 22, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR3062 Business Retained Income During Growth and Expansion Act of 2001

DEADLINE: 1:00 PM Wednesday, April 24, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: We are seeking your comments on H.R. 3062, which would permit eligible businesses to defer a portion of their Federal income tax

liabilities. Please submit comments by no later than 1:00 P.M. Wednesday, April 24th.

DISTRIBUTION LIST

AGENCIES:
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061-JUSTICE - Daniel Bryant - (202) 514-2141
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Justine F. Rodriguez
Richard E. Green
James J. Jukes
LRM ID: IKK188 SUBJECT: OMB Request for Views on HR3062 Business Retained Income During Growth and Expansion Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Copied
To:_____
Amy C. Smith/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
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Justine F. Rodriguez/OMB/EOP@EOP
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James J. Jukes/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1CJV6003_WHO.TXT_1>

I

107TH CONGRESS
1ST SESSION

H. R. 3062

To amend the Internal Revenue Code of 1986 to allow certain small businesses to defer payment of tax.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2001

Mr. DEMINT (for himself, Mr. BAIRD, Mr. CRANE, Mr. MATSUI, Mr. MANZULLO, Ms. VELÁZQUEZ, Mr. TOOMEY, Mr. PASCRELL, Mr. LEWIS of Kentucky, and Ms. HART) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to allow certain small businesses to defer payment of tax.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Business Retained Income During Growth and Expansion Act of 2001" or the "BRIDGE Act of 2001".

REV_00143734

SEC. 2. DEFERRED PAYMENT OF TAX BY CERTAIN SMALL BUSINESSES.

(a) IN GENERAL.—Subchapter B of chapter 62 of the Internal Revenue Code of 1986 (relating to extensions of time for payment of tax) is amended by adding at the end the following new section:

"SEC. 6168. EXTENSION OF TIME FOR PAYMENT OF TAX FOR CERTAIN SMALL BUSINESSES.

"(a) IN GENERAL.—An eligible small business may elect to pay the tax imposed by chapter 1 in 4 equal installments.

"(b) LIMITATION.—The maximum amount of tax which may be paid in installments under this section for any taxable year shall not exceed whichever of the following is the least:

"(1) The tax imposed by chapter 1 for the taxable year.

"(2) The amount contributed by the taxpayer into a BRIDGE Account during such year.

"(3) The excess of $250,000 over the aggregate amount of tax for which an election under this section was made by the taxpayer (or any predecessor) for all prior taxable years.

"(c) ELIGIBLE SMALL BUSINESS.—For purposes of this section—

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"(1) IN GENERAL.—The term 'eligible small business' means, with respect to any taxable year, any person if—

"(A) such person meets the active business requirements of section 1202(e) throughout such taxable year,

"(B) the taxpayer has gross receipts of $10,000,000 or less for the taxable year,

"(C) the gross receipts of the taxpayer for such taxable year are at least 10 percent greater than the average annual gross receipts of the taxpayer (or any predecessor) for the 2 prior taxable years, and

"(D) the taxpayer uses an accrual method of accounting.

"(2) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of this subsection.

"(d) DATE FOR PAYMENT OF INSTALLMENTS; TIME FOR PAYMENT OF INTEREST.—

"(1) DATE FOR PAYMENT OF INSTALLMENTS.—

"(A) IN GENERAL.—If an election is made under this section for any taxable year, the first installment shall be paid on or before the due date for such installment and each succeeding

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installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

"(B) DUE DATE FOR FIRST INSTALLMENT.—The due date for the first installment for a taxable year shall be whichever of the following is the earliest:

"(i) The date selected by the taxpayer.

"(ii) The date which is 2 years after the date prescribed by section 6151(a) for payment of the tax for such taxable year.

"(2) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section—

"(A) INTEREST FOR PERIOD BEFORE DUE DATE OF FIRST INSTALLMENT.—Interest payable under section 6601 on any unpaid portion of such amount attributable to the period before the due date for the first installment shall be paid annually.

"(B) INTEREST DURING INSTALLMENT PERIOD.—Interest payable under section 6601 on any unpaid portion of such amount attributable

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to any period after such period shall be paid at the same time as, and as a part of, each installment payment of the tax.

"(C) INTEREST IN THE CASE OF CERTAIN DEFICIENCIES.—In the case of a deficiency to which subsection (e)(3) applies for a taxable year which is assessed after the due date for the first installment for such year, interest attributable to the period before such due date, and interest assigned under subparagraph (B) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

"(e) SPECIAL RULES.—

"(1) APPLICATION OF LIMITATION TO PARTNERS AND S CORPORATION SHAREHOLDERS.—

"(A) IN GENERAL.—In applying this section to a partnership which is an eligible small business—

"(i) the election under subsection (a) shall be made by the partnership,

"(ii) the amount referred to in subsection (b)(1) shall be the sum of each partner's tax which is attributable to items

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of the partnership and assuming the highest marginal rate under section 1, and

"(iii) the partnership shall be treated as the taxpayer referred to in paragraphs (2) and (3) of subsection (b).

"(B) OVERALL LIMITATION ALSO APPLIED AT PARTNER LEVEL.—In the case of a partner in a partnership, the limitation under subsection (b)(3) shall be applied at the partnership and partner levels.

"(C) SIMILAR RULES FOR S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (B) shall apply to shareholders in an S corporation.

"(2) ACCELERATION OF PAYMENT IN CERTAIN CASES.—

"(A) IN GENERAL.—If—

"(i) the taxpayer ceases to meet the requirement of subsection (c)(1)(A), or

"(ii) there is an ownership change with respect to the taxpayer,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid on or before the due

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date for filing the return of tax imposed by chapter 1 for the first taxable year following such cessation.

"(B) OWNERSHIP CHANGE.—For purposes of subparagraph, in the case of a corporation, the term 'ownership change' has the meaning given to such term by section 382. Rules similar to the rules applicable under the preceding sentence shall apply to a partnership.

"(3) PRORATION OF DEFICIENCY TO INSTALLMENTS.—Rules similar to the rules of section 6166(e) shall apply for purposes of this section.

"(f) BRIDGE ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'BRIDGE Account' means a trust created or organized in the United States for the exclusive benefit of an eligible small business, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deferral under subsection (b) for such year.

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"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(E) Amounts in the trust may be used only—

"(i) as security for a loan to the business or for repayment of such loan, or

"(ii) to pay the installments under this section.

"(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a BRIDGE Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accord-

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ance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(3) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a BRIDGE Account on the last day of a taxable year if such payment is made on account of such taxable year and is made within 3½ months after the close of such taxable year.

"(g) REPORTS.—The Secretary may require such reporting as the Secretary determines to be appropriate to carry out this section.

"(h) APPLICATION OF SECTION.—This section shall apply to taxes imposed for taxable years beginning after the date of the enactment of this section and before January 1, 2006."

(b) PRIORITY OF LENDER.—Subsection (b) of section 6323 of such Code is amended by adding at the end the following new paragraph:

"(11) LOANS SECURED BY BRIDGE ACCOUNTS.—With respect to a BRIDGE account (as defined in section 6168(f)) with any bank (as defined in section 408(n)), to the extent of any loan made by such bank without actual notice or knowl-

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edge of the existence of such lien, as against such bank, if such loan is secured by such account.''

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 of such Code is amended by adding at the end the following new item:

''Sec. 6168. Extension of time for payment of tax for certain small businesses.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(e) STUDY BY GENERAL ACCOUNTING OFFICE.—

(1) STUDY.—In consultation with the Secretary of the Treasury, the Comptroller General of the United States shall undertake a study to evaluate the applicability (including administrative aspects) and impact of the BRIDGE Act of 2001, including how it affects the capital funding needs of businesses under the Act and number of businesses benefiting.

(2) REPORT.—Not later than March 31, 2005, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the study conducted pursuant to this subsection, together with such recommendations for legislative or

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administrative changes as the Comptroller General determines are appropriate.

○

REV_00143744

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
BCC: Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO])
Sent: 4/22/2002 2:49:10 PM
Subject: : My edits to proposed questionnaire
Attachments: P_AUQV6003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-APR-2002 18:49:10.00
SUBJECT:: My edits to proposed questionnaire
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here's a redline showing my proposed edits. Some of these we may need to
discuss.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AUQV6003_WHO.TXT_1>
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Draft: April 22, 2002

April __, 2002

MEMORANDUM FOR ALL PERSONNEL IN [list WHO/EOP units]

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: SENATE GOVERNMENTAL AFFAIRS COMMITTEE
REQUEST REGARDING ENRON

As you may know, the Chairman of the Senate Committee on Governmental Affairs, Joseph Lieberman, has sent the White House a letter requesting certain information relating to Enron Corporation. The White House is cooperating with the Committee, and to the extent possible we intend to provide the Committee with appropriate information critical to its inquiry.

Accordingly, we ask that you complete the attached Questionnaire and return it to my office (West Wing, Second Floor) no later than May 17, 2002.

It is important that you read the Questionnaire carefully and make a good faith effort to answer each question to the best of your knowledge and recollection. If in answering any question it would help you to review notes, documents, or e-mail to which you have reasonable access, you are expected to do so. We are not asking you to provide copies of such materials to Counsel's Office at this time.

Please be aware that, although the Committee has not requested copies of your completed Questionnaires and we therefore do not intend to provide them to the Committee, the information in your answers may be provided to the Committee, and it is possible the Committee may request the Questionnaires themselves at a later date.

Please also be aware that the Counsel's Office represents the President and members of the White House staff in their official capacities, and cannot represent you with respect to any personal interests you might have that relate to this request.

If you have any questions, please call me (6-1918), Tim Flanigan (6-6627), Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

QUESTIONNAIRE

1. Between January 1, 1992, and December 2, 2001, did you have any official communications as a government employee with any person known by you to be an officer, director, employee, representative, or agent of Enron Corporation or any Enron-related entity relating to any law, regulation, policy, loan, loan guarantee, insurance, or financial assistance administered or enforced by any of the following: the U.S. Securities Exchange Commission; the U.S. Commodities Futures Trading Commission; the U.S. Federal Energy Regulatory Commission; the U.S. Department of Labor; the U.S. Department of Commerce; the U.S. Department of Energy; the Overseas Private Investment Corporation; the Export-Import Bank of the United States?

   If the answer is no, please so indicate below. If the answer is yes, please describe the nature (e.g., meeting, telephone call, letter), timing, parties to, and subject matter of all such communications below or in an attachment.

2. Between January 1, 1992 and December 2, 2001, did you have any communications with any official or employee of any federal department or agency relating to Enron Corporation or any Enron-related entity, which also related to any law, regulation, policy, loan, loan guarantee, insurance, or financial assistance administered or enforced by any of the following: the U.S. Securities Exchange Commission; the U.S. Commodities Futures Trading Commission; the U.S. Federal Energy Regulatory Commission; the U.S. Department of Labor; the U.S. Department of Commerce; the U.S. Department of Energy; the Overseas Private Investment Corporation; the Export-Import Bank of the United States?

   If the answer is no, please so indicate below. If the answer is yes, please describe the nature, timing, parties to, and subject matter of all such communications below or in an attachment.

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3. Between January 1, 1992 and December 2, 2001, did you have any communications with any person known by you to be an officer, director, employee, representative, or agent of Enron Corporation or any Enron-related entity in which such person sought to secure or prevent the nomination or appointment of a particular individual by the President to any of the following: the U.S. Securities Exchange Commission; the U.S. Commodities Futures Trading Commission; the U.S. Federal Energy Regulatory Commission; the U.S. Department of Labor; the U.S. Department of Commerce; the U.S. Department of Energy; the Overseas Private Investment Corporation; the Export-Import Bank of the United States?

   If the answer is no, please so indicate below. If the answer is yes, please describe in detail the nature, timing, parties to, and content of all such communications below or in an attachment.

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4. Between January 20, 2001, and [substitute date NEPDG went out of existence], did you have any communications with any person known by you to be an officer, director, employee, representative, or agent of Enron Corporation or any Enron-related entity relating to the development of the May 2001 Report of the National Energy Policy Development Group and one or more policies contained therein?

   If the answer is no, please so indicate below. If the answer is yes, please describe in detail the nature, timing, parties to, and subject matter of all such communications below or in an attachment.

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Deleted: and also relating to Enron's financial difficulties or bankruptcy

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5. Are there any e-mails sent or received by you to which you no longer have access on your own computer, and that you believe would be of substantial assistance to you in answering any of the foregoing questions if they could be retrieved?

   If the answer is no, please so indicate below. If the answer is yes, please explain below or in an attachment.

Deleted: that you have deleted from

Deleted: the White House e-mail system

I certify that I made a good faith effort, including review of appropriate documentation, to answer the foregoing questions to the best of my knowledge and recollection.

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I understand that the information in my answers may be provided to the Senate Governmental Affairs Committee.

I futher understand that the Office of the Counsel to the President is not acting as my private attorney in this matter.

NAME (please print):

SIGNATURE:

DATE:

WHITE HOUSE OR EOP OFFICE:

PHONE NUMBER:

REV_00143750

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 4/22/2002 5:50:59 PM
Subject: : draft Kmiec letter on Presidential Records
Attachments: P_K5TV6003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-APR-2002 21:50:59.00
SUBJECT:: draft Kmiec letter on Presidential Records
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

I thought you would be interested in this as well.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/22/2002 09:50 PM ----------

Brett M. Kavanaugh
04/22/2002 02:07:18 PM
Record Type: Record

To: Anne Womack/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@EOP
cc: Timothy E. Flanigan/WHO/EOP@EOP
Subject: draft Kmiec letter on Presidential Records

Doug Kmiec was head of OLC at the time of the Reagan order on Presidential Records. You will see that he argues that President Bush's order is constitutionally sound -- and makes more sense in terms of constitutional law and appropriate policy than the Reagan order he reviewed in 1988. This letter is a nice development.

In addition, Todd Gaziano of Heritage will testify at the hearing.

- presidential records.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K5TV6003_WHO.TXT_1>

Re: H.R. 4187

Dear Congressman Horn

Thank you for inviting me to participate in the hearing on H.R. 4187, the Presidential Records Act Amendments of 2002.

I regret that a prior commitment to participate in a program out of state makes it impossible for me to attend your deliberations on the 24th of April, but I wanted to share a few thoughts by letter in the event they are helpful.

First, I want to commend you and the committee for seeking the proper balance between the prerogatives of the Presidency and public disclosure. History depends upon an accurate accounting of public decision, and history can only be well written if the relevant materials are available. Of course, our nation does not only live in the past, it has an obligation to the present, so there is a corresponding duty to ensure that the office of the Presidency can function both in these times of war, as well as in times of peace.

While I believe your proposal is well-intended, in my judgment, it strikes an incorrect balance. The Presidential Records Act of 1978 was, in itself, a dramatic step toward the opening of public documents. Prior to the act, presidents owned their papers outright. This was something well accepted by our founders. It was Justice Storey, after all, who opined that George Washington owned his presidential papers and could bequeath them to his estate or grant a copyright in them to others.

In the wake of Watergate, and its unfortunate and inexcusable abuse of public power, Congress reset that balance. In doing so, Congress was careful not to undermine the constitutional responsibilities of the presidency, both by allowing the restriction of access to executive documents for up to 12 years, and by explicitly providing that "nothing in the Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former president."

Without those carefully stated words, the 1978 Act would have been open to serious constitutional doubt. While President Nixon's particular privilege claim was not sustained, *United States v. Nixon* recognized the unmistakable constitutional origin of executive privilege claims and that the need "to protect military, diplomatic, or sensitive national security secrets" might even trump the need for presidential materials in a criminal trial. More generally, the Court specified that "there is a legitimate governmental interest in the confidentiality of communications between high Government officials, e. g., those who advise the President, and that '(h)uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.' 418 U.S., at 705. Indeed, the opinion noted that Government confidentiality has been a concern from the time of the Constitutional Convention in 1787, the meetings of which were conducted in private, 1 M. Farrand, The Records of the

Federal Convention of 1787, pp. xi-xxv (1911), and the records of which were sealed for more than 30 years after the Convention. See 3 Stat. 475, 15th Cong., 1st Sess., Res. 8 (1818). See generally Charles Warren, *The Making of the Constitution* 134-139 (1937).

Subsequently the Court decided in *Nixon v. Administrator of General Services,* 433 U.S. 425 (1977), that executive privilege extends to both incumbent and former presidents. Unless the President can give his advisers some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends. Said the Court adopting the words of the Solicitor General; "The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure; the privilege is not for the benefit of the President as an individual, but for the benefit of the Republic. Therefore the privilege survives the individual President's tenure."

As Assistant Attorney General for the Office of Legal Counsel to President Reagan, it was my privilege to review for form and legality, Executive Order 12667. That executive order implemented the 1978 Act by directing the Archivist to fully honor an incumbent President's assertion of privilege, but left to the Archivist's discretion, subject to court order, whether or not to honor a claim of a former president. It was not clear to me why the White House in 1989 preferred this differentiation of incumbent and former president privilege claims, as it certainly was not mandated by the 1978 Act or judicial precedent, but it could be argued that so long the Archivist would not disclose documents for a time sufficient to allow the former president to litigate the privilege, no constitutional problem would arise.

A more prudent course would be to treat the privilege claims of incumbent and former presidents as equivalent. Such equivalency better recognizes that the privilege is not a personal one, but one intended within the constitutional design to protect the Office of the Presidency, especially as it relates to state secrets, open law enforcement files, and the deliberative process of the President, which of course, extends to communications with the Vice-President, the cabinet, and other high ranking advisors. This more prudent course was adopted by President George W. Bush in Executive Order 13233 signed on November 1, 2001. Under the Bush executive order, a claim of privilege by either the incumbent or a former president preserves the confidentiality of the material unless the parties seeking disclosure receive a final court order confirming some "demonstrated need" for the document's release.

While it is possible to construe the Bush executive order as more restrictive, in fact, it provides an incumbent concession that "absent compelling circumstances, the incumbent President will concur in the privilege decision of the former President." In essence, the Bush order can be reasonably read as creating a presumption of disclosure of former presidential documents, unless there is compelling reason – from the vantage point of the incumbent and the present exigencies of the Office – to withhold materials. This presumption of disclosure in the Bush order was not present in that signed by President Reagan. Perhaps, it is in exchange for this deference to public release, that when a former president does assert a privilege under the Bush order, "the incumbent President will support that privilege claim in any forum in which the privilege claim is challenged." This is constitutionally sensible, equitable, and responsive to the

needs of a presidency that at the moment faces unparalleled challenges to maintaining the safety and security of the Nation.

Regrettably, I do not find the same sense of constitutional prudence in H.R. 4187. First, it would seem that rather than striving for balance, the proposed amendment is designed to weaken the Presidential office without deference to the constitutional importance of maintaining the integrity of privileged material. For example, the proposal resurrects the unwarranted differentiation of privilege claims asserted by the former or incumbent president. In this regard, a former president is once again put in the awkward position of suing his successor, unless his successor incumbent concurs in the nonrelease. Even more troubling, the assertion of privilege claims by either an incumbent or former president is made subject to predicate requirements that require the identification of the specific record, the specific grounds of the claim, and the circulation of this information to members of Congress, the person seeking the record, and the general public. While it might be theoretically possible to write such claims obliquely without disclosing privileged material, in some cases, especially as they relate to military and law enforcement matters, that would be impossible. It would also appear that some of the time periods for review of material have been narrowed from the 1978 Act, and given the differential volume of some disclosure claims, this in itself would likely prove constitutionally troublesome. Finally, the above changes aggravate some of the lingering constitutional doubts related to the 1978 Act – specifically, the fact that the proposed amendment effectively denies the validity of a constitutionally based privilege, whether made by an incumbent or former president, when the information is sought pursuant to 44 U.S.C. 2205(2) (A) (criminal matters) or (C) (committee requests).

We know this is a delicate moment in our Nation's history. Our Constitution and its separation of powers has served us well. Respectfully, I do not believe the H.R. 4187 fully observes that important constitutional doctrine, and I would urge the committee not to pursue the changes it proposes.

Sincerely,

Douglas W. Kmiec
Dean & St. Thomas More Professor

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2002 3:57:15 AM
Subject: : Re: Law Day

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2002 07:57:15.00
SUBJECT:: Re: Law Day
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Is there anything we want the AG to do on Law Day itself? Any other support we need or would like from DOJ?

Brett M. Kavanaugh
04/22/2002 08:30:56 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Law Day

What I know:

He's doing an event/speech on May 3 in Room 450 that will be a Law Day event. (For what it is worth, the Montgomery County Law Day event is May 3, so we have some cover. I am sure there are others that do not occur on May 1 itself.) And to reference Law Day, he can just begin by noting that "This week, we have celebrated ___." But the speech will largely be about judges, as I understand it. John McConnell et al are apparently in charge of the drafting, as I understand it.

Also, he is having Senate Judiciary Committee Republicans to White House on May 9. There will be open press at top and he will make remarks on the 1-year anniversary.

Bradford A. Berenson
04/22/2002 08:25:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Law Day

I need the latest info on Law Day plans. I've been working on the Proclamation with DOJ but there is apparently confusion over scheduling and what, if anything, we want DOJ or the AG to do. May 1 is Law Day by statute, so if POTUS does an event May 3, it can't technically be a Law Day event. Please fill me in on where things are with this. There are a couple folks in OLP who really need guidance.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 4/23/2002 5:57:43 AM
Subject: : Re: Mtg. today will be 11:00-11:45 am in the Judge's Office

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2002 09:57:43.00
SUBJECT:: Re: Mtg. today will be 11:00-11:45 am in the Judge's Office
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:allison l. riepenhoff (CN=allison l. riepenhoff/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Can you do it at 11:30 or 12:00 ?

Bradford A. Berenson
04/23/2002 09:50:03 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop, timothy e. flanigan/who/eop@eop, allison l. riepenhoff/who/eop@eop
bcc:
Subject: Re: Mtg. today will be 11:00-11:45 am in the Judge's Office

I can't do an 11:00 a.m. I have a scheduled conference call with Chris Henick and Charlie Black. Is this the same meeting we were planning to do at 4:45 or is this different (in other words is 4:45 on or off)?

Elizabeth N. Camp
04/23/2002 09:48:24 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP, Timothy E.

Flanigan/WHO/EOP@EOP
cc: Allison L. Riepenhoff/WHO/EOP@EOP
Subject: Mtg. today will be 11:00-11:45 am in the Judge's Office

I believe the topic is the Lieberman investigation but I'm not sure.

Thanks!

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Daniel A. Barry/OA/EOP@EOP [OA] <Daniel A. Barry>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;james b. wright/oa/eop@eop [OA] <james b. wright>;bruce o'dell/oa/eop@eop [OA] <bruce o'dell>
Sent: 4/23/2002 9:31:42 AM
Subject: : Re: Search Delivery

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:23-APR-2002 13:31:42.00
SUBJECT:: Re: Search Delivery
TO:Daniel A. Barry (CN=Daniel A. Barry/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:james b. wright (CN=james b. wright/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
CC:bruce o'dell (CN=bruce o'dell/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
End Original ARMS Header

Somehow I'm not surprised that the printer needs repairs. What I'm wondering here is whether we have over 100 boxes of responsive material, or whether a computer "phenomenon" did something like translate certain attachments into a bunch of incomprehensible code that prints one character per page. Given the specificity of the search and the brief time period, I am surprised by this volume. Any idea?

DANIEL A.
BARRY
04/23/2002 12:02:26 PM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, james b. wright/oa/eop@eop, bruce o'dell/oa/eop@eop
bcc:
Subject: Re: Search Delivery

Adam;

It is very difficult to give an estimate that has any accuracy to it because the quantity of print depends on the formatting of each record and that is impossible to predict.

We currently have 95 boxes of paper in the EOPDC and the printing is probably 75% complete.

The printing is currently stopped because the printer is down for repairs.

I would like to start the delivery process

Later... Tony

Adam F. Greenstone
04/23/2002 10:46:49 AM

Record Type: Record

To: Daniel A. Barry/OA/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, james b. wright/oa/eop@eop, bruce o'dell/oa/eop@eop
bcc:
Subject: Re: Search Delivery

Any idea what happened here yet?

DANIEL A.
BARRY
04/23/2002 10:30:08 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Adam F. Greenstone/OA/EOP@EOP
cc: James B. Wright/OA/EOP@EOP, Bruce O'Dell/OA/EOP@EOP
Subject: Search Delivery

Brett, Adam;

Eventhough the search results are still printing, I would like to begin the delivery process. To where should the boxes be delivered ?

Later... Tony

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2002 5:47:38 AM
Subject: : LRM PTM103 - - HUD Testimony on HR3995 Housing Affordability for America Act of 2002
Attachments: P_AA1W6003_WHO.TXT_1.doc; P_AA1W6003_WHO.TXT_2.doc; P_AA1W6003_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2002 09:47:38.00
SUBJECT:: LRM PTM103 - - HUD Testimony on HR3995 Housing Affordability for America Act of 2002
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/23/2002 09:47 AM ----------

From: P. Thaddeus Messenger on 04/23/2002 09:43:42 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM103 - - HUD Testimony on HR3995 Housing Affordability for America Act of 2002

LRM ID: PTM103
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 23, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Testimony on HR3995 Housing Affordability for America Act of 2002

DEADLINE: 2:00 p.m. Tuesday, April 23, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find draft texts for three testimonies regarding H.R. 3995, to be delivered Wednesday 24 April before the House Financial Services Committee.

(1) (6 pp) TOPICS: HOME Investment Partnership Program
Homeless Assistance

Programs
Housing Opportunities
for People with AIDS
Community Development
Block Grants
Renewal Communities
Self-Help Homeownership
Opportunity Programs

(2) (6 pp) TOPICS: Section 8 Rental Housing Assistance
Public Housing
Reinvestment Initiative
Native American Housing

(3) (11 pp) TOPICS: FHA Single Family Insurance Programs
Public Safety Officer
and Teacher Opportunities
American Dream
Downpayment Fund
FHA Single Family REO
(Foreclosure Properties)
FHA Multifamily
Insurance Programs
FHA Insurance for
Nursing Homes and Hospitals
Programs for the Elderly
and Disabled
Housing Impact Analysis,
Section 902, Section 907

Please provide your comments by 2:00 p.m. TODAY, Tuesday, 23 April. If we do not receive your comments by that time, we will assume you have no objection to the testimony as drafted. To ensure receipt by Agency addressees, the electronic copy of the LRM will be followed by a duplicate copy via facsimile. Please contact us immediately if you experience difficulty with the LRM or its attachments.

Thank you.

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Ingrid M. Schroeder
P. Thaddeus Messenger
Anna M. Briatico
LRM ID: PTM103 SUBJECT: HUD Testimony on HR3995 Housing Affordability for America Act of 2002
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AA1W6003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AA1W6003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AA1W6003_WHO.TXT_3>

April 22, 2002 Draft

STATEMENT OF ROY A. BERNARDI

ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

April 24, 2002

REV_00143800

Thank you for the opportunity to testify on the Housing Affordability for America Act of 2002. Madame Chairwoman, the efforts you and others have made to bring the need for affordable housing to the attention of Congress through legislation such as HR 3995 are very much appreciated. I would like to thank you for your demonstrated leadership, resolute voice, and compassion for the less fortunate among us. Your contributions will be sorely missed when your career in Congress draws to a close.

HR 3995 proposes some significant changes to many programs in the Office of Community Planning and Development, and to the HOME Investments Partnerships program in particular. I will address those related to HOME first.

HOME Investment Partnerships Program

The HOME Program has a demonstrated record of success in developing "deep-targeted" affordable housing with over 40 percent of all HOME-assisted rental units produced serving extremely low-income families. We believe that reforms to the HOME Program should build on the notable success the program has already achieved. We are concerned that the proposed *Production and Preservation Program*, as currently structured, and the other significant changes proposed for the HOME Program itself, particularly in regard to rent level determinations, would not help to achieve the worthy objectives of HR 3995, that of providing affordable housing for extremely low-income families. We believe that some of the bill's provisions would have unintended consequences.

The creation of a new *Production and Preservation Program* within HOME that has different requirements in such areas as rent determination, tenant contribution to rent, match, income targeting, commitment of funds, and even in the definition of who is low- or very low-income, could create significant compatibility issues with the basic HOME program and with other Federal programs, resulting in serious implementation problems. Unless these conflicting requirements are reconciled, the implementation problems will remain and projects will be delayed or found infeasible if the new program is made part of HOME or potentially if it is developed as a separate, stand-alone program.

We would urge the Committee to reconsider its proposed changes to the way in which HOME Program rents are determined. The effort made in HR 3995 to remedy lagging housing development "in certain rural counties" is understandable. However, these changes - abandoning the Fair Market Rent (FMR) standard and adopting the greater of the State or area median income as a floor for determining rents – could actually increase rents generally across the country while not ensuring that those who are the targeted beneficiaries of the legislation, extremely low- and very low-income families, will be able to afford those higher rents. For example:

- 86% of the population of metro areas and 100% of all non-metropolitan areas will have rent increases;
- Average increase in rents will be 32% (or $200) for the country as a whole;

- 63% of the rent increases will be more than 20%;
- 37% of the rent increases will be more than 40%;
- The largest rent increases will be in areas with the **least** housing affordability needs if the current rent-to-income ratio is used as the measurement indicator;

Some specific local examples of rent increases are contained in the following table:

Metro Area/County	2-Bedrm FY2002 FMR	Current High HOME Rent (Monthly)	Proposed High HOME Rent (Monthly)	Monthly Rent Increase
Modoc County, CA	503	503	867	364
Gilpin County, CO	678	678	1,173	495
Stamford-Norwalk, CT	1,384	1,202	1,667	465
Cedar Rapids, IA	520	520	959	439
Adams County, IL	395	395	951	556
Decatur, IL	475	475	951	476
Duluth-Superior, MN-WI	487	487	921	434
Utica-Rome, NY	495	495	882	387
Kendall County, TX	473	473	911	438
Roanoke, VA	500	500	913	413
Washington, DC-MD-VA	943	943	1,316	373

At the other end of the spectrum, high HOME rents would fall in areas with exceptionally high rent-to-income ratios where FMRs are currently used to adjust the income limits used to calculate rents. For example, San Francisco's current high HOME rent of $1,467 would **decrease** by $230 under the proposed rent rules, making an already difficult environment even less attractive to developers in San Francisco.

Finally, abandoning the FMR standard would make it more difficult to use housing vouchers in HOME-assisted projects and would place many HOME units out of reach of voucher holders. At the same time, the HOME program could become less attractive to developers in areas with the most affordability problems (i.e., high rent to income ratio areas), and more attractive in areas with the least affordability problems (i.e., low rent to income ratio areas) and high vacancy rates. For the U.S. as a whole:

- Approximately 39 percent of the rental stock is located in markets where the FMR currently sets the maximum limit for HOME rents. Prevailing rents are quite low relative to income in these areas and the rental vacancy rate is 12 percent;
- In markets where rents are high relative to incomes and the FMR does not now act as a cap on HOME rents, the vacancy rate is 5 percent.

HUD is eager to work with this Committee to build on its efforts and those of the Millennial Housing Commission whose report is due out in May, to expand affordable housing opportunities. We are also confident that solutions to identified impediments to

affordable housing development in certain rural counties can be addressed with specific adjustments to the existing HOME Program rent structure.

Many changes have already been made over the ten years that the HOME Program has been in operation in an effort to streamline the program and improve its effectiveness. The production results and the ongoing feedback we receive from housing providers would indicate that this effort has been largely successful. Indeed, one of the hallmarks of this program and an important reason for its success has been the close and continuing communication between the administrators at HUD and recipients of HOME funds and their representatives and associations. We are receptive to further improvements to the program.

Homeless Assistance Programs

Madame Chairwoman, I'd now like to address the provisions of the bill dealing with HUD's McKinney-Vento Act homeless assistance programs. On an overall basis, the homeless assistance provisions of the bill are carefully crafted and correctly recognize both the important elements of current law that should be retained and the provisions that need modification.

Specifically, we support the reauthorization provisions for the Supportive Housing, Shelter Plus Care, Section 8 Moderate Rehabilitation SRO and the Emergency Shelter Grants programs. The Department will be proposing a consolidation of these programs into one that is needs-based and performance-driven. This consolidation will ensure community-level planning and decision-making. And, it will retain the fundamental components of our Continuum of Care strategy to address homelessness. We further support the provisions of the bill reauthorizing the Interagency Council on the Homeless and the Emergency Food and Shelter Program, currently housed at FEMA but proposed for transfer to HUD in the President's budget request.

The Department fully supports Section 604 of the bill that continues the current requirement that at least 30 percent of appropriated funds be targeted for permanent housing projects. Similarly, we support the removal of the unrealistic caps on the use of Supportive Housing Program funding for acquisition, rehabilitation and new construction. These caps have increasingly worked to restrain our grantees' ability to generate new and rehabilitated permanent housing units for homeless individuals and families.

The Department notes bill language proposing the transfer of the costs of renewing expiring Shelter Plus Care projects and projects funded under the Permanent Housing component of the Supportive Housing Program to the Housing Certificate Fund (HCF). The Department looked at these renewals in the 2003 budget process and determined that it is preferable to address them as part of consolidated homeless funding.

REV_00143803

Housing Opportunities for Persons with AIDS

HUD supports Section 904 of the Bill that would reauthorize the Housing Opportunities for Persons with AIDS (HOPWA) program. HOPWA is the only Federal program solely dedicated to providing housing assistance to persons with HIV/AIDS and their families. Housing provided under this program provides a basis for helping people at the lowest income levels access appropriate care and acts as a base to help maintain difficult therapies and medical regimens.

Community Development Block Grant

I would like to make several other comments on provisions of HR 3995 that would affect HUD's basic Community Development Block Grant (CDBG) program.

Section 902 on Housing Counseling programs would require the Secretary to designate a single office within the Department to "establish, coordinate, and administrate all requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership, counseling . . ." This section also specifies that the CDBG eligible activity under section 105(a)(20) of the HCD Act of 1974 be covered by this provision. Section 105(a)(20) of the HCD Act authorizes grantees to use CDBG funds to carry out housing services, such as housing counseling. Housing counseling is an important component of the Department's rental housing and homeownership programs. However, we would caution against adopting a "one size fits all" approach that would take away the local discretion of program design and implementation from CDBG grantees, which is the cornerstone of the CDBG program. Recently, FHA revised the standards and performance measures related to the 1400 HUD-approved housing counseling agencies participating in this program. We see no need for another office within the Department to repeat this process. As you know, the Administration has requested $35 million for a new categorical counseling program, nearly doubling the current level of funding and removing the program from the HOME block grant. We urge you to support that proposal, and we believe it will be easier and quicker to provide the funds to counseling agencies if we can operate the new program on the basis of the standards we have recently established.

Section 905 concerns the funding eligibility for secular activities carried out by religious organizations. HUD supports the involvement of faith-based organizations in our programs, consistent with Constitutional principles of Church and State.

Section 906 would add a new eligibility category to the CDBG program to authorize the construction of tornado or storm-safe shelters in manufactured housing parks. This addition would expand this otherwise eligible public facility to serve residents of private manufactured housing parks and HUD supports it. However, subparagraph (b) of Section 906 would authorize a set-aside from the CDBG program for fiscal year 2002 for this purpose. The Department does not support further set-asides within the CDBG appropriation.

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HUD supports Section 907 of the bill that would amend Section 105(a)(13) of the HCD Act to allow the use of CDBG funds to administer renewal communities. HUD believes that such support of the Renewal Communities program will foster needed job creation and revitalization in distressed communities.

Self-Help Homeownership Opportunities Program

HUD supports the reauthorization of the Self-Help Homeownership Opportunities Program (SHOP), which has been instrumental in helping many low-income families become homeowners. The President's request to triple funding to $65 million for SHOP in FY 2003 reflects this program's popularity and success.

Thank you again for this opportunity, and I would be happy to answer any questions that you may have.

REV_00143805

April 22, 2002 Draft

STATEMENT OF MICHAEL LIU

ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

April 24, 2002

REV_00143806

I am Michael Liu, Assistant Secretary for Public and Indian Housing at the U.S. Department of Housing and Urban Development. In that position I have responsibility for administration of the public housing, voucher and Native American housing programs. Accordingly, I will limit my testimony to Titles IV, V and VI of the bill, which concern those programs.

First, Congresswoman Roukema, thank you and your cosponsors for developing and introducing the Housing Affordability for America Act of 2002. The bill contains many proposals that will allow us to do our jobs better, of providing the most effective low-income housing assistance possible with the funds available. The reauthorizations for two of our critical programs, HOPE VI and Native American Block Grants, are critical measures in themselves. The bill contains several measures to achieve our common goal of assuring that the voucher funds Congress appropriates can be fully used. The bill also contains the Administration's Public Housing Reinvestment Initiative, which holds great promise as a means of improving the Nation's public housing communities.

Title IV, Section 8 Rental Housing Assistance Program

Section 401 of the bill proposes a new thrifty production voucher program. This program is patterned after the current project-based voucher program, but assumes that the capital for production will be found from other programs or sources and provides for a reduced subsidy designed to cover only operating costs.

HUD generally supports additional tools that may help public housing authorities (PHAs) meet their communities' housing needs, and in that context will work with the Committee to develop a means of offering vouchers that can be combined easily with capital subsidies. The current proposal seems rather complex and differs from the project-based voucher program in ways that may not be necessary, such as waiting list administration, development location requirements and several others. I look forward to further discussions on this matter.

The bill contains several initiatives designed directly or indirectly to increase the successful use of appropriated voucher program funds, including an increase in the amount families can expend as their share of rent when initially leasing any unit (section 402), authorization for PHAs to use up to five percent of program monthly assistance payment funds (as opposed to administrative fees) for efforts to help families obtain and remain in suitable housing (section 403) and an authorization to provide increased administrative fees for high-performing PHAs in the voucher program (section 405). These proposals would augment steps HUD and Congress already have taken or are taking to accomplish this goal, including increased flexibility for PHAs to set payment standards; increased fair market rents to the 50th percentile of rentals for units in satisfactory condition some areas; initiation of the Section 8 Management Assessment Program (SEMAP), a management report card with consequences; training of PHA staff; award of new incremental vouchers only to PHAs with high usage of current resources; and reallocation of vouchers from PHAs that have not been able to use them to PHAs that need and can use them.

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HUD supports the direction of these new proposals, but has suggestions. HUD supports the increase in allowable family rent to forty percent of gross income, but believes PHAs also need flexibility to address compelling situations—for example, where a family already in the program would like to move to a significantly less expensive unit, but cannot do so because the family still would be paying more than the limit.

HUD would allow the use of some program funds to help increase voucher utilization for PHAs that already are using their administrative fees solely for the Section 8 program, but believes that the authorization should be substantially narrower to address competing concerns regarding diversion of program funds. With respect to administrative fees, HUD recommends that it be given broader authority not just to provide a bonus for high performers, but also to restructure the fees to promote performance in general and the accomplishment of specific program priorities, such as families' movement to self-sufficiency and homeownership.

The bill contains several provisions regarding enhanced vouchers. HUD supports clarification of the obligation of owners to take enhanced vouchers in projects where tenants are eligible for them (section 406). With respect to the same section's protections for overhoused families, HUD recommends that such families be treated in the same manner as overhoused families are treated now in the voucher program (basically, the enhanced voucher families could choose to stay in the oversized unit, but would be subsidized at the level they would receive if they were in a unit of appropriate size at the property).

The bill also contains a provision to provide for higher contract rents upon the renewal of moderate rehabilitation contracts (section 408). HUD agrees that the current-law restriction of such rents to the lower of comparable rents, current rents plus an operating cost adjustment or fair market rents is unnecessarily restrictive. The bill's proposed solution, however, will pose administrative challenges for PHAs not accustomed to evaluating budget-based rents and may go further than is needed to preserve assisted units.

You asked me to discuss the future impact of Section 8 contract renewals on the HUD budget. Renewals for both tenant-based and project-based Section 8 rose from $14.3 billion in fiscal 2001 to a requested $16.9 billion for fiscal 2003, and are projected to increase to over $20 billion in several more years. This is a result of the program serving more families, some program changes that have increased per-unit costs, such as increases in fair market rents, and conversion over time of all contracts to one-year contracts, so that all contracts must have new budget authority each year.

Title V, Public Housing

I am excited that Title V contains the Administration's Public Housing Reinvestment Initiative (section 505), because that initiative can provide a new and effective means of improving public housing. Recent HUD studies indicate that the backlog of public

housing capital needs is in the $20 billion range and that new needs accrue at about two billion dollars annually. Strides have been made in recent years in public housing communities, but appropriations for the Capital Fund at two to three billion dollars annually will allow only slow progress. The Public Housing Reinvestment Initiative provides a means of addressing this problem sooner with the dollars available.

The Public Housing Reinvestment Initiative allows PHAs that choose to participate to trade their public housing subsidies for project-based vouchers on a property-by-property basis. PHAs then could borrow money for capital improvements on the same individual property basis now used for Section 8 developments and multifamily housing generally. In addition to leveraging private capital, this action is likely to lead to more accountable property and financial management because management must be done at the individual property level. Tenants generally would be protected in the same manner as in public housing. PHAs could use the project-based vouchers on current sites, or on replacement sites where appropriate.

The Public Housing Reinvestment Initiative can be a powerful tool for the prompt rehabilitation of housing that otherwise would languish for years. For example, a development's capital needs of four million dollars that otherwise would be impossible to address from available Capital Fund moneys can be addressed with debt service payments on a seven percent, thirty-year loan of about $335,000 per year. PHAs could undertake individual transactions as long as the monthly expenses for operations, debt service and a capital replacement reserve did not exceed the lower of market rents or the applicable Section 8 payment standard. If the approvable rent levels were too low to finance all the necessary capital work—for example, if the PHA only could raise $20,000 per unit at approvable rent levels but the development needed $30,000 per unit in capital work—the PHA could choose to supplement the project-based vouchers with an up-front contribution from the Capital Fund or other sources.

The bill contains a proposal to suspend the PHA Plan requirement for three years for the smallest PHAs up to 100 units (section 504). Current law requires annual PHA Plans with eighteen listed elements, but also allows HUD to streamline PHA Plans for small, high-performing and Section 8-only PHAs. The extent to which the PHA Plan requirement has resulted in useful strategic planning has varied greatly from locality to locality. In many localities, the Resident Advisory Board participation requirement has resulted in better access for public housing residents and Section 8 families to make their views known to PHA decision-makers.

The usefulness of the PHA Plan relative to the PHAs' ability to carry it out with limited staff resources, however, appears to drop dramatically for small PHAs. HUD has provided some streamling of PHA Plan requirements for these PHAs, but I believe we need to go further and HUD is developing a regulation that will accomplish this. The bill's proposal is certainly along these lines, although we may be able to accomplish the necessary streamlining through regulation without disturbing the current resident and public process to the same extent. I want to note Congressman Bereuter's leadership on this issue and thank him for that leadership.

While HUD has differentiated between small and larger PHAs in PHA Plan processing, it has not done this to enough of an extent in its other programs. Small PHAs with 250 or fewer units constitute 75 percent of all PHAs, but operate only fifteen percent of the units. From a risk management standpoint, it is unnecessary to impose the same regulatory burdens on these PHAs as on larger ones. The new regulation I have mentioned will recognize that in several program areas.

The bill would require HUD to develop and test a third-party system for public housing performance evaluation, through an outside contractor (section 503). This year, HUD has implemented a binding public housing management assessment that contains an independent inspection of physical conditions. However, experience with the Public Housing Assessment System (PHAS) during its extended advisory period raised so many questions regarding the adequacy of its physical inspection and finance components that HUD substantially simplified and in some respects had to pare back these components prior to implementation. HUD is committed to working with public housing groups toward how best to revise the system. It may be that a third-party system could accomplish the same tasks better and provide a broader assessment that would be more readily recognized and accepted as appropriate by all parties concerned. The work being done by others such as public housing industry groups and private companies to develop such systems is promising, and HUD may be able to take account of this work and the views of resident representatives and others to develop an improved and possibly third-party system expeditiously.

Section 501 of the bill would allow HUD to waive the requirement that PHAs have a resident on the board of commissioners in particular States, where reasonable efforts are being made to take the necessary legislative or regulatory action so that this can occur. Congress has recognized problems in the implementation of the resident on the board requirement in several States, has exempted housing authorities in three States from the requirement for fiscal 2002 and has required HUD to provide a report by May 30, 2002 regarding the impediments to its implementation and related matters. Thus, further legislative action seems appropriate. The proposed legislation, however, would allow for permanent waivers and would not result in having residents on boards of commissioners promptly in the affected States. A better solution may be to provide for appointment by the chief executive officer of the PHA's jurisdiction of an additional board member to fulfill the resident on the board requirement, for a temporary period such as three years. This would give the noncompliant States more time to complete any necessary actions so that residents could be appointed to PHA boards as federal law requires, but the relief would be temporary and promptly would result in residents serving on boards of commissioners.

The bill provides for a two-year reauthorization of HOPE VI and for measures to ensure that a broader group of communities in terms of size and location have a realistic possibility of receiving a HOPE VI award. HUD supports both reauthorization and the general effort to promote broad program participation. More discussion of concepts in

regard to reauthorization of HOPE VI will be constructive. A report on HOPE VI lessons learned is due to Congress on June 15, 2002.

Title VII, Native American Housing

Title VII reauthorizes both the Native American Block Grant Program and its related loan guarantee program. HUD believes that these programs continue to hold much promise and supports the reauthorization of both programs.

I look forward to working closely with the Committee as you continue to develop this important legislation for the improvement of the voucher, public housing and Native American housing programs. Please call on me and my staff for any assistance we can provide.

April 22, 2002 Draft

STATEMENT OF JOHN C. WEICHER

ASSISTANT SECRETARY FOR HOUSING/FHA COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

April 24, 2002

REV_00143812

Thank you for the opportunity to testify on behalf of the Department of Housing and Urban Development and the Office of Housing-Federal Housing Administration (FHA), concerning the "Housing Affordability for America Act of 2002". The bill covers a very wide range of programs and activities across the Department, including many different programs within the Office of Housing. We have carefully reviewed each provision contained in the bill, and I am grateful for this opportunity to provide you with our thoughts on the sections of this important piece of legislation. Because you have also addressed a number of specific questions about FHA programs in your letter of invitation, I will combine my answers to those questions with comments on the corresponding sections of the bill. I have organized my comments by program area.

FHA Single-Family Insurance Programs

To begin with FHA's basic Section 203(b) home mortgage insurance program and the Mutual Mortgage Insurance (MMI) Fund: as you know, the President and the Secretary have made promoting homeownership, especially for minority households, a cornerstone of domestic policy. We are very proud of FHA's success in promoting homeownership. About 80 percent of our home purchase mortgages serve first-time homebuyers and about 35 percent serve minority households. The national homeownership rate, and the minority homeownership rate, both set new records last year.

The MMI Fund was determined to have an economic value of $18.5 billion at the end of FY2001, with a capital ratio of 3.75%. FHA's volume of business this year is running substantially in excess of expectations. Indeed, through the first six months of the year we have insured over $81 billion of single-family mortgages. We are assessing the need to seek an increase in our current commitment limitation of $160 billion for the MMI Fund for the current fiscal year. Having been personally involved in developing the legislation that put FHA on an actuarially sound basis some 12 years ago – as was Chairwoman Roukema and ranking member Frank - I am very pleased to report this information to you.

Of course, the MMI Fund net worth, which estimates future receipts, liabilities, and cash on hand, has attracted a number of proposals to spend the reserves, for example to divert funds into a new "National Housing Trust Fund" for purposes well beyond the homeownership goals of the Mutual Mortgage Insurance Fund. We think these proposals are ill-advised, and they misconstrue the nature of the MMI Fund.

The creation of the MMI capital reserve was a fundamental goal of the Cranston - Gonzales National Affordable Housing Act of 1990 which was intended to forestall any taxpayer bailout of the FHA, as had just been required for the savings and loan industry. While all Federal credit programs are required to budget for anticipated losses, under the Credit Reform Act of 1990, the MMI Fund was specifically required to generate additional revenue to be held as a special reserve against potential losses. The Cranston-Gonzales legislation created a kind of "lock-box" for funds that would be available to

meet any contingency, so that general revenues in the Treasury would never be needed to meet FHA obligations. To generate the funds needed for this capital reserve, FHA suspended the payment of distributive shares to borrowers and raised insurance premiums substantially.

Since 1990, FHA has gradually built up its reserves year by year. This annual surplus has been counted in the overall Federal budget as an offsetting receipt, and has helped reduce the deficit. Because this revenue was previously counted as a receipt, any legislation that proposes to expend it will be counted as new spending, just as if funds were being appropriated directly out of the Treasury. There is no budgetary magic to raiding this "lock box"; instead there is a budgetary outlay. Moreover, using the MMI Fund reserves will vitiate FHA's ability to meet the basic goal of the Cranston-Gonzales Act of making the MMI Fund actuarially sound.

FHA was able to reduce single-family premiums substantially last year, and make homeownership more affordable for more families, in line with our fundamental public policy purpose. We have also been looking at the possibility of reinstituting the payment of distributive shares. However, it is clear that any such policy will be procedurally complex, and we are not proposing it at this time.

The Housing Affordability for Americans Act of 2002 contains several provisions that would improve FHA's ability to operate our core single-family home mortgage insurance programs. Section 221 would make permanent a pilot designed to streamline and simplify the FHA downpayment program. Secretary Martinez supported this proposal during his testimony before the House Appropriations Subcommittee last month. This downpayment simplification calculation has proven to be a successful program modification. The procedure reduces the number of steps involved in the calculation of the FHA single-family mortgage amounts, and thereby has eliminated the confusion experienced by many buyers, brokers, and lenders. Further, this existing statutory authority has reduced the costs associated with closing an FHA insured mortgage. Ultimately, the simplification has increased homeownership opportunities for low- and moderate-income families.

Similarly, Section 227 should facilitate the Department's ability to effectuate another legislative priority. During the FY2002 budget process, the Department requested and received authority to insure hybrid Adjustable Rate Mortgages (ARMs). Our work to implement that authority is continuing. The Department's position is that FHA's hybrid ARM should approximate the conventional hybrid ARM and its benefits as closely as possible subject to preserving sound underwriting policies and protections for FHA borrowers and the MMI Fund. Section 227 supports that end by allowing the Department greater flexibility in the design of regulations that will govern the initial rate adjustment at the end of the fixed rate period. The Department appreciates the efforts by Rep. Bob Ney and other Members of this Committee in supporting the permanent extension of this provision.

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Sections 229-231 are consistent with recent Department actions to strengthen our Section 203(k) rehabilitation mortgage insurance program and our nonprofit partnerships. In 1996, the Office of Housing issued Mortgagee Letter 96-59, placing a moratorium on investor participation in the 203(k) program. Investors have not been allowed to participate in the program since the issuance of this Mortgagee Letter. The moratorium still stands. We have no plans to modify the Letter and have no objection to Section 229.

Similarly, Section 230 regarding rehabilitation loan advances is also consistent with Departmental action. FHA Mortgagee Letter 00-25 states, "mortgagees are fully responsible for authorizing draw inspections, managing the rehabilitation escrow account, and approving the associated draws for the account." The Letter also requires consultants to be chosen from the FHA 203(k) Consultant Roster and permits consultants to perform the inspections on the mortgagee's behalf. The Department has a number of technical questions regarding this provision and looks forward to working with the Committee to ensure that mortgagees are held appropriately responsible.

Section 231 would require nonprofits to be approved 501(c)(3) organizations and certify annually to the Department its understanding of HUD guidelines. In January 2002, the Office of Housing issued Mortgagee Letter 02-01, establishing new requirements for nonprofits seeking FHA-approval. Nonprofits must now have, among other requirements, two years 501(c)(3) IRS tax-exempt status and a minimum of two consecutive years – within the last 5 years – of housing development experience. Approved nonprofits have until September 30, 2002 to demonstrate their compliance with the new requirements. The Office of Housing supports Section 231 to strengthen its existing guidance. It will help us prevent a recurrence of the 1998-1999 Section 203(k) fraud problem in New York City, where a number of nonprofits purchased small multi-unit buildings in Harlem and Brooklyn intending to have them rehabilitated for owner-occupancy. The knowledgeable and experienced Commissioner of New York City's Department of Housing Preservation and Development said that she had never heard of 25 of the nonprofits that bought these homes; she had only heard of two. This fraud will cost the taxpayers some $268 million, and will cost the citizens of New York City another $125 million.

Sections 222-224 contain proposals to provide special opportunities for teachers and public safety officers. Section 223 would give the Secretary authority to discount HUD-owned, single-family properties by 50% to qualified teachers and public safety officers. The Department certainly does not object to such a program; indeed, the Secretary already has this authority and has exercised it. The Department's Officer/Teacher Next Door Program currently allows teachers and police officers to purchase homes at a 50% discount in designated revitalization areas, subject to a three-year owner occupancy requirement. During a Fiscal Year 2001 audit of the program, the Office of the Inspector General uncovered a significant number of violations of the program rules by officer participants. In May 2001, the Department temporarily suspended sales under the program and instituted enhanced management controls. A recent IG audit of sales closed after the program resumed in August 2001 did not identify

any new program violations. The Department is currently working on a proposed rule to include these program controls.

Sections 222 and 224 both aim to reduce downpayment requirements for public safety officers, while Section 222 also includes teachers among those who will benefit. In regard to both provisions, it is important to note that the Office of Housing has recently made significant changes to its programs to reduce downpayment costs substantially for all buyers of FHA insured properties. These changes include the reduction of insurance premium rates by 33 percent, along with the Downpayment Simplification previously mentioned. One observation the Department would make with regard to these provisions is that a number of other occupational groups have expressed a similar interest in reduced downpayments.

In addition, it may be more appropriate to pursue these initiatives within the American Dream Downpayment Fund, as proposed by the President and funded by Congress last year. The American Dream Downpayment Fund will reduce the barrier that downpayments frequently pose to homeownership, for all low- and moderate-income families. On behalf of the Administration, I want to thank Rep. Mike Rogers and other Members of Congress for introducing H.R. 4446 to authorize this program.

I would also mention that the Department's Office of Policy Development and Research is in the process of studying the impact of this type of program, as required by Congress. We believe that it would be prudent to wait until the results of this study are available before making any commitment to such an initiative.

Section 228, which would establish a uniform national loan limit for Home Equity Conversion Mortgages (HECMs), also concerns an issue that is currently part of an internal analysis by the Office of Policy Development and Research. As mandated by the American Homeownership and Economic Opportunity Act of 2000, the Department is conducting an actuarial analysis on the impact of this provision. We will provide the Subcommittee with comments and recommendations when this study has been finalized.

FHA Single-Family REO

The bill also contains several provisions concerning FHA's single-family inventory of foreclosed homes, and the Committee has asked about our REO activities. Since the introduction of the Management and Marketing contracts in March of 1999, the Department has greatly improved its REO disposition. As of March 2002, the inventory of HUD-owned homes is at its lowest level since 1996 - 28,270, compared to a March 1999 inventory of 41,747. Moreover, the inventory has been stable during the recession, instead of rising as has been typical in the past. Currently, properties remain in inventory an average of 183 days, compared to 221 days in March 1999, and losses per claim have been reduced from 39 cents to 29 cents on the dollar. The loss rate is at its lowest point in at least 20 years.

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FHA sold 66,415 single-family homes during FY 2001. About 60 percent of these sales were to owner-occupants, helping serve FHA's basic purpose of promoting homeownership. Another 30 percent are sales to investors, and the remainder – slightly less than 10 percent - goes to local governments and nonprofit organizations.

FHA currently offers discounts to HUD-approved nonprofit organizations on the purchase of REO. Properties newly acquired by HUD are initially offered to nonprofit organizations on a limited competitive basis, which excludes investors and owner occupants, for up to 10 business days. FHA offers properties to nonprofits for an additional five days of limited competition that does include owner occupants but excludes investors. After these periods, FHA opens bids on properties to the general public, but nonprofit groups may bid and still receive sales discounts. These discounts are factored into a sale after the highest bids are calculated.

HUD properties are appraised and initially listed for sale on the Internet and through multiple listing services at the "as-is" value established by the appraiser. Properties sold to a nonprofit are discounted by 10%, unless the property is located in a FHA-designated "revitalization area".

FHA has two primary initiatives underway associated with its property disposition program. We have begun a major review of our Asset Control Area (ACA) program, following a report of program deficiencies by the HUD Office of Inspector General in a recent audit. We are planning to build stronger controls into the ACA program. During that review, which will take 4-6 months, we will let current ACA agreements expire. Our ACA partners can, however, continue to rehabilitate and sell the properties they have already acquired from HUD, and we believe that most if not all ACA partners have an inventory of properties that will not be exhausted during the review. This program, with proper controls in place, can provide an effective role for nonprofit groups, and local governments, in HUD's property disposition.

A second initiative is HUD's Accelerated Claims Demonstration Program. This program, announced in a Federal Register Notice on February 5th, utilizes current statutory authority for HUD to buy seriously defaulted loans that cannot be addressed through FHA's loss mitigation program, and sell these loans to the private sector for disposition. This program is expected to begin in the fourth quarter of this fiscal year. Considering both of these initiatives, it does not appear that additional statutory authority related to property disposition is required at this time.

Partly for these reasons, we see no need for Section 225 of this bill, which would require HUD to use the Department of Agriculture's Rural Housing Services Center as an additional resource for servicing single-family, HUD-held mortgages. We believe that this requirement is unnecessary and indeed would be counterproductive. Presently, HUD's National Servicing Center (NSC) in Oklahoma services four types of secretary-held loans, each with unique characteristics and servicing requirements. In particular, NSC services 963 reverse equity (HECM) loans. For this loan type, the Department makes monthly payments to the borrowers rather than receiving income from them. The daily payment process is complex and time sensitive. Additionally, NSC services second

mortgages generated through loss mitigation advances, and discounted sales to officers and teachers in HUD's Officer Next Door/Teacher Next Door programs. Because these mortgages carry no interest and require no monthly payments, servicing activity is generally limited to processing subordinations and payoffs. All of these mortgage types are unique to HUD. The Rural Housing Service has no similar programs and no experience in servicing such loans. NSC is doing an excellent job managing their unique mortgage servicing requirements. It is unclear that there is a benefit or need to outsource the servicing of these loans.

FHA Multifamily Insurance Programs

As the members of this Subcommittee know, FHA's basic multifamily insurance program is Section 221(d)(4). This program has required a credit subsidy since Credit Reform was enacted in 1990. Three times in the last eight years, the program was closed down because the available credit subsidy was exhausted. To prevent further closures and place the program on a break-even basis, the Department raised the premium from 50 basis points to 80 basis points for FY 2002. Many in the industry, and some Members of Congress, were concerned that the program would be hamstrung by this increase. That has not happened. In the first six months of the fiscal year, FHA has insured almost $1.5 billion worth of Section 221(d)(4) projects, compared to less than $1.1 billion during the same period a year ago. Moreover, with the 25 percent increase in mortgage limits that was proposed by the Secretary and enacted by Congress, we are seeing applications from high-cost metropolitan area that have not participated in the program in years – the Twin Cities, Philadelphia, Newark, Baltimore, here in Washington, and Austin.

In addition, we have conducted the first systematic re-analysis of the premium and credit subsidy since Credit Reform was enacted. We have concluded that Section 221(d)(4) can be operated on a break-even basis at a much lower premium – 57 basis points. The President's Budget contains an announcement of this premium reduction, effective in October, at the beginning of FY 2003. We are also reducing either the premium or the credit subsidy for nearly every other multifamily program.

This summary of FHA's multifamily mortgage insurance programs provides background for your consideration of Sections 201 and 202 in the legislation. They address the question of who should be served by the programs. FHA generally serves moderate-income renters. Most of the projects that FHA insures are affordable to families in the lower half of the income distribution, and almost half are in underserved areas. These are important markets; these families and these communities need FHA.

Section 201 proposes to index the FHA multifamily mortgage limits. As members of this Subcommittee certainly know, Congress approved indexing the mortgage limits in the Section 203(b) single-family mortgage insurance program several years ago. This provision has enabled FHA to keep pace with inflation and changing economic conditions as it serves young, first-time homebuyers. Indexing the multifamily limits should likewise prove to be more responsive to market conditions and to the needs

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of families seeking moderately priced rental housing. Clearly, annual adjustments provide a better way to compensate for increased costs than by providing periodic dollar increases. When Congress raised the limits last year by 25 percent, at the request of Secretary Martinez, this was the first increase since 1992, and represented a delayed catch-up for the inflation that occurred between 1992 and 2001; during those years, FHA was progressively less able to serve moderate-income renters.

Section 202 proposes to increase the maximum mortgage limits in areas with very high housing costs by 30 percent above the amounts allowed under current law. It also proposes to increase the amount by which the Secretary, on a case-by-case basis, may increase the maximum mortgage amount. The Department would prefer to analyze the data resulting from our experience with the new limits that Congress enacted last year and the future effects of the indexing contained in Section 201 before proceeding with any additional high housing cost authority beyond that which already exists.

FHA Insurance for Nursing Homes and Hospitals

The Housing Affordability for America Act of 2002 contains several provisions relating to FHA's insurance programs for nursing homes and hospitals. Section 206 seeks to provide a more flexible procedure with respect to the Certificate of Need (CON) for hospitals, which is somewhat similar to an Administration proposal that was not enacted last year. There is a technical problem with the language of Section 206 as drafted. The Section states that HUD should work "in conjunction with" the Department of Health and Human Services (HHS). HUD currently has a contractual agreement with HHS with respect to Section 242, the hospital mortgage insurance program. Under this agreement, both HHS salaries and expenses are paid from the FHA General Insurance Fund. This agreement has worked well for several years. Because of the agreement, the language should be modified to read "in consultation with," to avoid any contractual disputes between HUD and HHS in the future. There is no similar agreement between HUD and HHS with respect to the Section 232 nursing homes mortgage insurance program, and we do not believe that the language is necessary or desirable for that program. HUD operates the nursing home program effectively without formal participation by HHS.

Sections 203-205 amend the definition of the FHA health care and assisted living programs so as to take FHA into new lines of business. Sections 203 and 204 change the definitions in Section 232 and Section 242, respectively, to include community health centers, medical practice facilities, and group practice facilities, and Section 205 permits insurance to refinance these facilities. These provisions raise a number of questions and require additional analysis before the Department can provide a definitive position. The language creates an overlap between Section 232 and Section 242, as well as Title XI, so that these new lines of business can be insured under either program. The programs are now managed separately within the Office of Housing, and the overlap could possibly complicate our ability to run both programs. More fundamentally, these proposals would appear to require FHA to undertake new insurance activities on unfamiliar products,

beyond our current expertise and capacity. FHA primarily insures financing for housing. To expand our portfolio to include businesses that provide no shelter could have long-term consequences to the FHA GI Fund. We are now experiencing an increasing number of claims in the Section 232 nursing home program, and just last week had the first default in the Section 242 hospital program in three years. It is particularly relevant that the expansion of nursing homes into new business activities during the 1990s led to a significant number of defaults and bankruptcies.

Programs for the Elderly and Disabled

Section 301 addresses part of a well-known policy concern. It would authorize the use of uncommitted, unobligated Assisted Living Conversion Program funds in the Section 202 program for use in a modernization demonstration program for Section 236 elderly housing. The Section 236 elderly housing portfolio is a fraction of the Section 236 program - about 90,000 units, less than one-third of the units in the entire Section 236 portfolio of over 330,000 units nationwide. The elderly housing projects are generally in good physical condition; only 25 projects out of 556 have REAC physical inspection scores of less than 60, less than 5 percent of the inventory. No projects have REAC scores less than 30. We certainly recognize that there is some need for capital improvements among the entire older insured subsidized FHA multifamily portfolio. We have been working with the multifamily industry over the last two years, in an effort to modernize and restructure the Section 236 housing portfolio. The work is being conducted within the framework of preserving these projects for continued use within the affordable multifamily housing stock. The general restructuring technique involves a sale of the project to a new owner who physically modernizes the project and maintains its affordability for the term of the mortgage plus five years, generally a total of 15 years. In most cases, the financing technique utilizes new mortgages supported by the continuation of Section 8 rental assistance and the remaining Section 236 interest reduction payments. The owner's capital is provided through the Low Income Housing Tax Credit (LIHTC). To date, we have succeeded in restructuring over 100 of these projects. We do not believe that Section 301 is necessary for this effort. We also are concerned that the Section 202 Assisted Living Conversion program might be adversely affected. The program has not yet reached the scale envisioned in past appropriations, and the unexpended funds have been carried forward. But it is our experience that new programs do take time to get underway, and we do not believe it is prudent to anticipate that Section 202 Assisted Living Conversion funds would be available.

With regard to Section 303, as you know, the President and the Secretary are strongly committed to ensuring that religious organizations have the same opportunities as any other participant in the Section 202/811 programs, which are our largest programs in terms of participation by faith-based organizations. These organizations now can be sponsors of these projects, and certainly religious organizations have been very active in the Section 202 program since its creation in 1959. In recent years, they have accounted for approximately 40% of the funding that Congress appropriates for these programs. While we applaud the purpose of Section 303, the Department will need to thoroughly

REV_00143820

consider the issues relative to direct ownership of projects by religious organizations. Our practice for both religious and secular sponsors has been that ownership is vested in a single-purpose non-religious entity and established by the sponsor, not the sponsoring organization.

Other Provisions

The Housing Impact Analysis proposed in Title VIII was proposed by President Bush during the campaign two years ago. It is an effort to create a system to monitor the aggregate effects of all rules on the cost and availability of housing. We believe that it is in the interest of consumers, especially moderate-income families seeking to become homeowners or to find decent affordable rental housing, to ensure that regulations are demonstrably required to protect health and safety, and that the consequences of regulation for affordable housing are recognized and balanced against other important public purposes.

Section 902 establishes a single office within the Department to coordinate counseling activities. This sounds desirable, but may be counterproductive, in our judgment. It might undermine the ability of the various offices to establish requirements, standards, and performance measures that meet the unique needs of their programs and clients. HUD's various program areas each provide counseling, generally for different purposes and typically to different clienteles. Recently, FHA revised the standards and performance measures related to the 1400 HUD-approved housing counseling agencies participating in this program. We see no need for another office within the Department to repeat this process. As you know, the Administration has requested $35 million for a new categorical counseling program, nearly doubling the current level of funding and removing the program from the HOME block grant. We urge you to support that proposal, and we believe it will be easier and quicker to provide the funds to counseling agencies if we can operate the new program on the basis of the standards we have recently established.

Finally, the Administration supports Section 907 to simplify current law pertaining to subsidy layering. The provision permits housing credit agencies to certify to compliance with the Department's subsidy layering requirements concerning the combination of HUD and other governmental assistance with the Low Income Housing Tax Credit. The housing credit agency will simply certify that it has made the subsidy layering determination already required by Section 42 of the Tax Code. This provision is consistent with the Secretary's efforts to streamline the delivery of HUD's programs and support the production of affordable housing through the use of FHA mortgage insurance and the Low Income Housing Tax Credit Program.

REV_00143821

Conclusion

Thank you again for the opportunity to testify on The Housing Affordability for America Act of 2002. I would be happy to answer any questions that the Subcommittee may have.

REV_00143822

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Daniel A. Barry/OA/EOP@EOP [OA] <Daniel A. Barry>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;james b. wright/oa/eop@eop [OA] <james b. wright>;bruce o'dell/oa/eop@eop [OA] <bruce o'dell>
Sent: 4/23/2002 6:47:00 AM
Subject: : Re: Search Delivery

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CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:23-APR-2002 10:47:00.00
SUBJECT:: Re: Search Delivery
TO:Daniel A. Barry (CN=Daniel A. Barry/OU=OA/O=EOP@EOP [OA])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:james b. wright (CN=james b. wright/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
CC:bruce o'dell (CN=bruce o'dell/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
End Original ARMS Header

Any idea what happened here yet?

DANIEL A.
BARRY
04/23/2002 10:30:08 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Adam F. Greenstone/OA/EOP@EOP
cc: James B. Wright/OA/EOP@EOP, Bruce O'Dell/OA/EOP@EOP
Subject: Search Delivery

Brett, Adam;

Eventhough the search results are still printing, I would like to begin
the delivery process. To where should the boxes be delivered ?

Later... Tony

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 4/23/2002 6:53:45 AM
Subject: : Karen Hughes resigning as White House counselor

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-APR-2002 10:53:45.00
SUBJECT:: Karen Hughes resigning as White House counselor
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READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
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04/23/2002 - Updated 10:19 AM ET


Karen Hughes resigning as White House counselor

WASHINGTON (AP) * White House counselor Karen Hughes said
Tuesday
she's resigning from the White House to return to Texas,
but will continue
advising President Bush from afar.

Hughes has worked for Bush since his days as Texas
governor and is one of
his closest confidants.

"Later this summer, I'm going to be changing the way in
which I serve the
president. My husband and I have made a difficult but we
```

think right decision to
move our family home back to Texas," Hughes said in a
surprise announcement
in the White House briefing room

"Our roots are there," she said. "I guess we're a little
homesick."

Hughes and political aide Karl Rove were critical to
Bush's rise from a
two-term Texas governor to the presidency.

Hughes said she plans to advise the White House from
Texas on big-picture
communication strategies, but will likely leave the
federal payroll in the summer.

She made the decision now, Hughes said, because of a May
1 deadline to
decide whether her son, Robert, would remain in
Washington schools. She has
a daughter in Austin. Her son traveled with Hughes aboard
the campaign plane.

She said Bush was not surprised by the move. "He accepted
my decision and
respected it," she said.

"The is a family friendly White House," she said. "And
this is a family-friendly
decision."

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2002 7:37:45 AM
Subject: : LRM JAB205 OMB Request for Views on S_____ Native American Small Business
Attachments: P_668W6003_WHO.TXT_1.pdf

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CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2002 11:37:45.00
SUBJECT:: LRM JAB205 OMB Request for Views on S_____ Native American Small Business
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
04/23/2002 11:37 AM ----------

James A. Brown
04/23/2002 10:57:14 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM JAB205 OMB Request for Views on S_____ Native
American Small Business

LRM ID: JAB205
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 23, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on S_____ Native American Small
Business Development Program

DEADLINE: 10:00 A.M. Friday, April 26, 2002
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts for purposes of the "Pay-As-You-Go" provisions
of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Small Business Administration is scheduled to testify on
this legislation on April 30th.

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Pamula L. Simms
David Rostker
LRM ID: JAB205 SUBJECT: OMB Request for Views on S_____ Native American Small Business Development Program
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

REV_00143858

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
cla@sba.gov @ inet
CLRM@doc.gov
justice.lrm@usdoj.gov
ocl@ios.doi.gov
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Philip J. Perry/OMB/EOP@EOP
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K. Philippa Malmgren/OPD/EOP@EOP
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David Rostker/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_668W6003_WHO.TXT_1>

107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. JOHNSON (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Small Business Development Act".

SEC. 2. NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 36 as section 37; and

(2) by inserting after section 35 the following:

"SEC. 36. NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.

"(a) DEFINITIONS.—In this section—

"(1) the term 'Alaska Native' has the same meaning as the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b));

"(2) the term 'Alaska Native corporation' has the same meaning as the term 'Native Corporation' in section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m));

"(3) the term 'Assistant Administrator' means the Assistant Administrator of the Office of Native American Affairs established under subsection (b);

"(4) the terms 'center' and 'Native American business center' mean a center established under subsection (c);

"(5) the term 'joint project' means the combined resources and expertise of two or more distinct entities at a physical location dedicated to assisting the Native American community;

"(6) the term 'Native American business development center' means an entity providing business development assistance to federally recognized tribes and Native Americans under a grant from the Minority Business Development Agency of the Department of Commerce;

"(7) the term 'Native American small business concern' means a small business concern that is owned and controlled by—

"(A) a member of an Indian tribe or tribal government;

"(B) an Alaska Native or Alaska Native corporation; or

"(C) a Native Hawaiian or Native Hawaiian organization;

"(8) the term 'Native Hawaiian' has the same meaning as in section 625 of the Older Americans Act of 1965 (42 U.S.C. 3057k);

"(9) the term 'Native Hawaiian organization' has the same meaning as in section 8(a)(15) of this Act;

"(10) the term 'tribal college' has the same meaning as the term 'tribally controlled college or university' has in section 2(a)(4) of the Tribally

Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4));

"(11) the term 'tribal government' has the same meaning as the term 'Indian tribe' has in section 7501(a)(9) of title 31, United States Code; and

"(12) the term 'tribal lands' means—

"(A) all lands within the exterior boundaries of any Indian reservation; and

"(B) all dependent Indian communities.

"(b) OFFICE OF NATIVE AMERICAN AFFAIRS.—

"(1) ESTABLISHMENT.—There is established within the Administration the Office of Native American Affairs, which, under the direction of the Assistant Administrator, shall implement the Administration's programs for the development of business enterprises by Native Americans.

"(2) PURPOSE.—The purpose of the Office of Native American Affairs is to assist Native American entrepreneurs to—

"(A) start, operate, and grow small business concerns;

"(B) develop management and technical skills;

"(C) seek Federal procurement opportunities;

"(D) increase employment opportunities for Native Americans through the start and expansion of small business concerns; and

"(E) increase the access of Native Americans to capital markets.

"(3) ASSISTANT ADMINISTRATOR.—

"(A) APPOINTMENT.—The Administrator shall appoint a qualified individual to serve as Assistant Administrator of the Office of Native American Affairs in accordance with this paragraph.

"(B) QUALIFICATIONS.—The Assistant Administrator appointed under subparagraph (A) shall have—

"(i) knowledge of the Native American culture; and

"(ii) experience providing culturally-tailored small business development assistance to Native Americans.

"(C) EMPLOYMENT STATUS.—The Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5, United States Code, and shall serve as a noncareer appointee, as defined in section 3132(a)(7) of title 5, United States Code.

"(D) RESPONSIBILITIES AND DUTIES.—The Assistant Administrator shall—

"(i) administer and manage the Native American Small Business Development program established under this section;

"(ii) recommend the annual administrative and program budgets for the Office of Native American Affairs;

"(iii) establish appropriate funding levels;

"(iv) review the annual budgets submitted by each applicant for the Native American Small Business Development program;

"(v) select applicants to participate in the program under this section;

"(vi) implement this section; and

"(vii) maintain a clearinghouse to provide for the dissemination and exchange of information between Native American business centers.

"(E) CONSULTATION REQUIREMENTS.—In carrying out the responsibilities and duties described in this paragraph, the Assistant Admin-

istrator shall confer with and seek the advice of—

"(i) Administration officials working in areas served by Native American business centers and Native American business development centers;

"(ii) the Bureau of Indian Affairs of the Department of the Interior;

"(iii) tribal governments;

"(iv) tribal colleges;

"(v) Alaska Native Corporations; and

"(vi) Native Hawaiian Organizations.

"(c) NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.—

"(1) AUTHORIZATION.—

"(A) IN GENERAL.—The Administration, through the Office of Native American Affairs, shall provide financial assistance to tribal governments, tribal colleges, Native Hawaiian Organizations, and Alaska Native Corporations to create Native American business centers in accordance with this section.

"(B) RESOURCE ASSISTANCE.—The Administration may also provide in-kind resource assistance to Native American business centers

located on tribal lands. Such assistance may include—

"(i) personal computers;

"(ii) graphic workstations;

"(iii) CD-ROM technology and interactive videos;

"(iv) distance learning business-related training courses;

"(v) computer software; and

"(vi) reference materials.

"(C) USE OF FUNDS.—The financial and resource assistance provided under this subsection shall be used to overcome obstacles impeding the creation, development, and expansion of small business concerns, in accordance with this section, by—

"(i) reservation-based American Indians;

"(ii) Alaska Natives; and

"(iii) Native Hawaiians.

"(2) 5-YEAR PROJECTS.—

"(A) IN GENERAL.—Each Native American business center that receives assistance under paragraph (1)(A) shall conduct 5-year

projects that offer culturally-tailored business development assistance in the form of—

"(i) financial education, including training and counseling in—

"(I) applying for and securing business credit and investment capital;

"(II) preparing and presenting financial statements; and

"(III) managing cash flow and other financial operations of a business concern;

"(ii) management education, including training and counseling in planning, organizing, staffing, directing, and controlling each major activity and function of a small business concern; and

"(iii) marketing education, including training and counseling in—

"(I) identifying and segmenting domestic and international market opportunities;

"(II) preparing and executing marketing plans;

"(III) developing pricing strategies;

"(IV) locating contract opportunities;

"(V) negotiating contracts; and

"(VI) utilizing varying public relations and advertising techniques.

"(B) BUSINESS DEVELOPMENT ASSISTANCE RECIPIENTS.—The business development assistance under subparagraph (A) shall be offered to prospective and current owners of small business concerns that are owned by—

"(i) American Indians or tribal governments, and located on or near tribal lands;

"(ii) Alaska Natives or Alaska Native corporations; or

"(iii) Native Hawaiians or Native Hawaiian organizations.

"(3) FORM OF FEDERAL FINANCIAL ASSISTANCE.—

"(A) DOCUMENTATION.—

"(i) IN GENERAL.—The financial assistance to Native American business centers authorized under this subsection may

be made by grant, contract, or cooperative agreement.

"(ii) EXCEPTION.—Financial assistance under this subsection to Alaska Native corporations or Native Hawaiian organizations may only be made by grant.

"(B) PAYMENTS.—

"(i) TIMING.—Payments made under this subsection may be disbursed—

"(I) in a single lump sum or in periodic installments; and

"(II) in advance or after costs are incurred.

"(ii) ADVANCE.—The Administration may disburse not more than 25 percent of the annual amount of Federal financial assistance awarded to a Native American small business center after notice of the award has been issued.

"(iii) NO MATCHING REQUIREMENT.—The Administration shall not require a grant recipient to match grant funding received under this subsection with non-Federal resources as a condition of receiving the grant.

"(4) CONTRACT AND COOPERATIVE AGREEMENT AUTHORITY.—A Native American business center may enter into a contract or cooperative agreement with a Federal department or agency to provide specific assistance to Native American and other under-served small business concerns located on tribal lands, to the extent that such contract or cooperative agreement is consistent with the terms of any assistance received by the Native American business center from the Administration.

"(5) APPLICATION PROCESS.—

"(A) SUBMISSION OF A 5-YEAR PLAN.—Each applicant for assistance under paragraph (1) shall submit a 5-year plan to the Administration on proposed assistance and training activities.

"(B) CRITERIA.—

"(i) IN GENERAL.—The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance.

"(ii) PUBLIC NOTICE.—The criteria required by this paragraph and their relative importance shall be made publicly

available, within a reasonable time, and stated in each solicitation for applications made by the Administration .

"(iii) CONSIDERATIONS.—The criteria required by this paragraph shall include—

"(I) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of current or potential owners of Native American small business concerns;

"(II) the ability of the applicant to commence a project within a minimum amount of time;

"(III) the ability of the applicant to provide training and services to a representative number of Native Americans;

"(IV) previous assistance from the Small Business Administration to provide services on tribal lands; and

"(V) the proposed location for the Native American business center site, with priority given based on the proximity of the center to the popu-

lation being served and to achieve a broad geographic dispersion of the centers.

"(6) PROGRAM EXAMINATION.—

"(A) IN GENERAL.—Each Native American business center established pursuant to this subsection shall annually provide the Administration with an itemized cost breakdown of actual expenditures incurred during the preceding year.

"(B) ADMINISTRATION ACTION.—Based on information received under subparagraph (A), the Administration shall—

"(i) develop and implement an annual programmatic and financial examination of each Native American business center assisted pursuant to this subsection; and

"(ii) analyze the results of each examination conducted under clause (i) to determine the programmatic and financial viability of each Native American business center.

"(C) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to renew a grant, contract, or cooperative agreement with a Na-

tive American business center, the Administration—

"(i) shall consider the results of the most recent examination of the center under subparagraph (B), and, to a lesser extent, previous examinations; and

"(ii) may withhold such renewal, if the Administration determines that—

"(I) the center has failed to provide any information required to be provided under subparagraph (A), or the information provided by the center is inadequate;

"(II) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subparagraph (E); or

"(III) the information required to be provided by the center is incomplete.

"(D) CONTINUING CONTRACT AND COOPERATIVE AGREEMENT AUTHORITY.—

"(i) IN GENERAL.—The authority of the Administrator to enter into contracts

or cooperative agreements in accordance with this subsection shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.

"(ii) RENEWAL.—After the Administrator has entered into a contract or cooperative agreement with any Native American business center under this subsection, it shall not suspend, terminate, or fail to renew or extend any such contract or cooperative agreement unless the Administrator provides the center with written notification setting forth the reasons therefore and affords the center an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5, United States Code.

"(E) MANAGEMENT REPORT.—

"(i) IN GENERAL.—The Administration shall prepare and submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an annual report on the effec-

tiveness of all projects conducted by Native American business centers under this subsection and any pilot programs administered by the Office of Native American Affairs.

"(ii) CONTENTS.—Each report submitted under clause (i) shall include, with respect to each Native American business center receiving financial assistance under this subsection—

"(I) the number of individuals receiving assistance from the Native American business center;

"(II) the number of startup business concerns formed;

"(III) the gross receipts of assisted concerns;

"(IV) the employment increases or decreases of Native American small business concerns assisted by the center since receiving funding under this Act;

"(V) to the maximum extent practicable, increases or decreases in profits of Native American small busi-

ness concerns assisted by the center since receiving funding under this Act; and

"(VI) the most recent examination, as required under subparagraph (B), and the subsequent determination made by the Administration under that subparagraph.

"(7) ANNUAL REPORT.—Each entity receiving financial assistance under this subsection shall annually report to Administration on the services provided with such financial assistance, including—

"(A) the number of individuals assisted, categorized by ethnicity;

"(B) the number of hours spent providing counseling and training for those individuals;

"(C) the number of startup small business concerns formed, maintained, and lost;

"(D) the gross receipts of assisted small business concerns;

"(E) the number of jobs created, maintained, or lost at assisted small business concerns; and

"(F) the number of Native American jobs created, maintained, or lost at assisted small business concerns.

"(8) RECORD RETENTION.—

"(A) APPLICATIONS.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 10 years.

"(B) ANNUAL REPORTS.—The Administration shall maintain copies of the information collected under paragraph (6)(A) indefinitely.

"(d) NATIVE AMERICAN DEVELOPMENT GRANT PILOT PROGRAM.—

"(1) AUTHORIZATION.—

"(A) IN GENERAL.—There is established a 4-year pilot program under which the Administration is authorized to award Native American development grants to provide culturally-tailored business development training and related services to Native Americans and Native American small business concerns.

"(B) ELIGIBLE ORGANIZATIONS.—The grants authorized under subparagraph (A) may be awarded to—

"(i) any private nonprofit organization that has tribal government members, or their designees, comprising a majority of its board of directors; or

"(ii) any small business development center.

"(C) AMOUNTS.—The Administration shall not award a grant under this subsection in an amount which exceeds $100,000 for each year of the project.

"(D) GRANT DURATION.—Each grant under this subsection shall be awarded for not less than a 2-year period and not more than a 4-year period.

"(2) CONDITIONS FOR PARTICIPATION.—Each entity desiring a grant under this subsection shall submit an application to the Administration that contains—

"(A) a certification that the applicant—

"(i) is a private nonprofit organization, a Native American business development center, or small business development center;

"(ii) employs a full-time executive director or program manager to manage the facility; and

"(iii) agrees—

"(I) to a site visit as part of the final selection process;

"(II) to an annual programmatic and financial examination; and

"(III) to the maximum extent practicable, to remedy any problems identified pursuant to that site visit or examination;

"(B) information demonstrating that the applicant has the ability and resources to meet the needs, including cultural needs, of the Native Americans to be served by the grant;

"(C) information relating to proposed assistance that the grant will provide, including—

"(i) the number of individuals to be assisted; and

"(ii) the number of hours of counseling, training, and workshops to be provided;

"(D) information demonstrating the effective experience of the applicant in—

"(i) conducting financial, management, and marketing assistance programs designed to impart or upgrade the business skills of current or prospective Native American business owners;

"(ii) providing training and services to a representative number of Native Americans located on or off tribal lands;

"(iii) using resource partners of the Administration and other entities, including universities, tribal governments, or tribal colleges; and

"(iv) the prudent management of finances and staffing;

"(E) the location where the applicant will provide training and services to Native Americans; and

"(F) a multi-year plan, corresponding to the length of the grant, that describes—

"(i) the number of Native Americans and Native American small business concerns to be served by the grant; and

"(ii) the training and services to be provided to a representative number of Na-

tive Americans residing on or off tribal lands.

"(3) REVIEW OF APPLICATIONS.—The Administration shall—

"(A) evaluate and rank applicants under paragraph (2) in accordance with predetermined selection criteria that is stated in terms of relative importance;

"(B) include such criteria in each solicitation under this subsection and make such information available to the public; and

"(C) approve or disapprove each completed application submitted under this subsection not more than 60 days after submission.

"(4) ANNUAL REPORT.—Each recipient of a Native American development grant under this subsection shall annually report to the Administration on the impact of the grant funding, including—

"(A) the number of individuals assisted, categorized by ethnicity;

"(B) the number of hours spent providing counseling and training for those individuals;

"(C) the number of startup small business concerns formed, maintained, and lost;

"(D) the gross receipts of assisted small business concerns;

"(E) the number of jobs created, maintained, or lost at assisted small business concerns; and

"(F) the number of Native American jobs created, maintained, or lost at assisted small business concerns.

"(5) RECORD RETENTION.—

"(A) APPLICATIONS.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 10 years.

"(B) ANNUAL REPORTS.—The Administration shall maintain copies of the information collected under paragraph (4) indefinitely.

"(e) AMERICAN INDIAN TRIBAL ASSISTANCE CENTER GRANT PILOT PROGRAM.—

"(1) AUTHORIZATION.—

"(A) IN GENERAL.—There is established a 4-year pilot program, under which the Administration shall award not less than 3 American Indian Tribal Assistance Center grants to establish joint projects to provide culturally-tailored business development assistance to pro-

spective and current owners of small business concerns located on or near tribal lands.

"(B) ELIGIBLE ORGANIZATIONS.—

"(i) CLASS 1.—Not fewer than 1 grant shall be awarded to a joint project performed by a Native American business center, a Native American business development center, and a small business development center.

"(ii) CLASS 2.—Not fewer than 2 grants shall be awarded to joint projects performed by a Native American business center and a Native American business development center.

"(C) AMOUNTS.—The Administration shall not award a grant under this subsection in an amount which exceeds $200,000 for each year of the project.

"(D) GRANT DURATION.—Each grant under this subsection shall be awarded for a 3-year period.

"(2) CONDITIONS FOR PARTICIPATION.—Each entity desiring a grant under this subsection shall submit to the Administration a joint application that contains—

"(A) a certification that each participant of the joint application—

"(i) is either a Native American Business Center, a Native American Business Development Center, or a Small Business Development Center;

"(ii) employs a full-time executive director or program manager to manage the center; and

"(iii) as a condition of receiving the American Indian Tribal Assistance Center grant, agrees—

"(I) to an annual programmatic and financial examination; and

"(II) to the maximum extent practicable, to remedy any problems identified pursuant to that examination;

"(B) information demonstrating a historic commitment to providing assistance to Native Americans—

"(i) residing on or near tribal lands; or

"(ii) operating a small business concern on or near tribal lands;

"(C) information demonstrating that each participant of the joint application has the ability and resources to meet the needs, including the cultural needs of the Native Americans to be served by the grant;

"(D) information relating to proposed assistance that the grant will provide, including—

"(i) the number of individuals to be assisted; and

"(ii) the number of hours of counseling, training, and workshops to be provided;

"(E) information demonstrating the effective experience of each participant of the joint application in—

"(i) conducting financial, management, and marketing assistance programs, as described above, designed to impart or upgrade the business skills of current or prospective Native American business owners; and

"(ii) the prudent management of finances and staffing; and

"(F) a plan for the length of the grant, that describes—

"(i) the number of Native Americans and Native American small business concerns to be served by the grant; and

"(ii) the training and services to be provided.

"(3) REVIEW OF APPLICATIONS.—The Administration shall—

"(A) evaluate and rank applicants under paragraph (2) in accordance with predetermined selection criteria that is stated in terms of relative importance;

"(B) include such criteria in each solicitation under this subsection and make such information available to the public; and

"(C) approve or disapprove each application submitted under this subsection not more than 60 days after submission.

"(4) ANNUAL REPORT.—Each recipient of an American Indian tribal assistance center grant under this subsection shall annually report to the Administration on the impact of the grant funding received during the reporting year, and the cumulative impact of the grant funding received since the initiation of the grant, including—

"(A) the number of individuals assisted, categorized by ethnicity;

"(B) the number of hours of counseling and training provided and workshops conducted;

"(C) the number of startup business concerns formed, maintained, and lost;

"(D) the gross receipts of assisted small business concerns;

"(E) the number of jobs created, maintained, or lost at assisted small business concerns; and

"(F) the number of Native American jobs created, maintained, or lost at assisted small business concerns

"(5) RECORD RETENTION.—

"(A) APPLICATIONS.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 10 years.

"(B) ANNUAL REPORTS.—The Administration shall maintain copies of the information collected under paragraph (4) indefinitely.

"(f) AUTHORIZATION OF APPROPRIATIONS.—

"(1) There are authorized to be appropriated $5,000,000 for each of the fiscal years 2003 through 2007 to carry out subsection (c);

"(2) There are authorized to be appropriated $1,000,000 for each of the fiscal years 2003 through 2006 to carry out subsection (d); and

"(3) There are authorized to be appropriated $1,000,000 for each of the fiscal years 2003 through 2006 to carry out subsection (e).".

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2002 11:59:41 AM
Subject: : LRM PTM103 - - HUD Testimony on HR3995 Housing Affordability for America Act of 2002
Attachments: P_GFMW6003_WHO.TXT_1.doc; P_GFMW6003_WHO.TXT_2.doc; P_GFMW6003_WHO.TXT_3.doc

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Just a reminder, this was due at 2 pm
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Subject: LRM PTM103 - - HUD Testimony on HR3995 Housing Affordability for America Act of 2002

LRM ID: PTM103
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 23, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Testimony on HR3995 Housing Affordability for America Act of 2002

DEADLINE: 2:00 p.m. Tuesday, April 23, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find draft texts for three testimonies regarding H.R. 3995, to be delivered Wednesday 24 April before the House Financial Services Committee.

(1) (6 pp) TOPICS: HOME Investment Partnership Program
Homeless Assistance
Programs
Housing Opportunities
for People with AIDS
Community Development

Block Grants
Renewal Communities
Self-Help Homeownership
Opportunity Programs

(2) (6 pp) TOPICS: Section 8 Rental Housing Assistance
Public Housing
Reinvestment Initiative
Native American Housing

(3) (11 pp) TOPICS: FHA Single Family Insurance Programs
Public Safety Officer
and Teacher Opportunities
American Dream
Downpayment Fund
FHA Single Family REO
(Foreclosure Properties)
FHA Multifamily
Insurance Programs
FHA Insurance for
Nursing Homes and Hospitals
Programs for the Elderly
and Disabled
Housing Impact Analysis,
Section 902, Section 907

Please provide your comments by 2:00 p.m. TODAY, Tuesday, 23 April. If we do not receive your comments by that time, we will assume you have no objection to the testimony as drafted. To ensure receipt by Agency addressees, the electronic copy of the LRM will be followed by a duplicate copy via facsimile. Please contact us immediately if you experience difficulty with the LRM or its attachments.

Thank you.

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LRM ID: PTM103 SUBJECT: HUD Testimony on HR3995 Housing Affordability for America Act of 2002
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

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The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

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April 22, 2002 Draft

STATEMENT OF ROY A. BERNARDI

ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

April 24, 2002

REV_00143896

Thank you for the opportunity to testify on the Housing Affordability for America Act of 2002. Madame Chairwoman, the efforts you and others have made to bring the need for affordable housing to the attention of Congress through legislation such as HR 3995 are very much appreciated. I would like to thank you for your demonstrated leadership, resolute voice, and compassion for the less fortunate among us. Your contributions will be sorely missed when your career in Congress draws to a close.

HR 3995 proposes some significant changes to many programs in the Office of Community Planning and Development, and to the HOME Investments Partnerships program in particular. I will address those related to HOME first.

HOME Investment Partnerships Program

The HOME Program has a demonstrated record of success in developing "deep-targeted" affordable housing with over 40 percent of all HOME-assisted rental units produced serving extremely low-income families. We believe that reforms to the HOME Program should build on the notable success the program has already achieved. We are concerned that the proposed *Production and Preservation Program*, as currently structured, and the other significant changes proposed for the HOME Program itself, particularly in regard to rent level determinations, would not help to achieve the worthy objectives of HR 3995, that of providing affordable housing for extremely low-income families. We believe that some of the bill's provisions would have unintended consequences.

The creation of a new *Production and Preservation Program* within HOME that has different requirements in such areas as rent determination, tenant contribution to rent, match, income targeting, commitment of funds, and even in the definition of who is low- or very low-income, could create significant compatibility issues with the basic HOME program and with other Federal programs, resulting in serious implementation problems. Unless these conflicting requirements are reconciled, the implementation problems will remain and projects will be delayed or found infeasible if the new program is made part of HOME or potentially if it is developed as a separate, stand-alone program.

We would urge the Committee to reconsider its proposed changes to the way in which HOME Program rents are determined. The effort made in HR 3995 to remedy lagging housing development "in certain rural counties" is understandable. However, these changes - abandoning the Fair Market Rent (FMR) standard and adopting the greater of the State or area median income as a floor for determining rents – could actually increase rents generally across the country while not ensuring that those who are the targeted beneficiaries of the legislation, extremely low- and very low-income families, will be able to afford those higher rents. For example:

- 86% of the population of metro areas and 100% of all non-metropolitan areas will have rent increases;
- Average increase in rents will be 32% (or $200) for the country as a whole;

REV_00143897

- 63% of the rent increases will be more than 20%;
- 37% of the rent increases will be more than 40%;
- The largest rent increases will be in areas with the **least** housing affordability needs if the current rent-to-income ratio is used as the measurement indicator;

Some specific local examples of rent increases are contained in the following table:

Metro Area/County	2-Bedrm FY2002 FMR	Current High HOME Rent (Monthly)	Proposed High HOME Rent (Monthly)	Monthly Rent Increase
Modoc County, CA	503	503	867	364
Gilpin County, CO	678	678	1,173	495
Stamford-Norwalk, CT	1,384	1,202	1,667	465
Cedar Rapids, IA	520	520	959	439
Adams County, IL	395	395	951	556
Decatur, IL	475	475	951	476
Duluth-Superior, MN-WI	487	487	921	434
Utica-Rome, NY	495	495	882	387
Kendall County, TX	473	473	911	438
Roanoke, VA	500	500	913	413
Washington, DC-MD-VA	943	943	1,316	373

At the other end of the spectrum, high HOME rents would fall in areas with exceptionally high rent-to-income ratios where FMRs are currently used to adjust the income limits used to calculate rents. For example, San Francisco's current high HOME rent of $1,467 would **decrease** by $230 under the proposed rent rules, making an already difficult environment even less attractive to developers in San Francisco.

Finally, abandoning the FMR standard would make it more difficult to use housing vouchers in HOME-assisted projects and would place many HOME units out of reach of voucher holders. At the same time, the HOME program could become less attractive to developers in areas with the most affordability problems (i.e., high rent to income ratio areas), and more attractive in areas with the least affordability problems (i.e., low rent to income ratio areas) and high vacancy rates. For the U.S. as a whole:

- Approximately 39 percent of the rental stock is located in markets where the FMR currently sets the maximum limit for HOME rents. Prevailing rents are quite low relative to income in these areas and the rental vacancy rate is 12 percent;
- In markets where rents are high relative to incomes and the FMR does not now act as a cap on HOME rents, the vacancy rate is 5 percent.

HUD is eager to work with this Committee to build on its efforts and those of the Millennial Housing Commission whose report is due out in May, to expand affordable housing opportunities. We are also confident that solutions to identified impediments to

REV_00143898

affordable housing development in certain rural counties can be addressed with specific adjustments to the existing HOME Program rent structure.

Many changes have already been made over the ten years that the HOME Program has been in operation in an effort to streamline the program and improve its effectiveness. The production results and the ongoing feedback we receive from housing providers would indicate that this effort has been largely successful. Indeed, one of the hallmarks of this program and an important reason for its success has been the close and continuing communication between the administrators at HUD and recipients of HOME funds and their representatives and associations. We are receptive to further improvements to the program.

Homeless Assistance Programs

Madame Chairwoman, I'd now like to address the provisions of the bill dealing with HUD's McKinney-Vento Act homeless assistance programs. On an overall basis, the homeless assistance provisions of the bill are carefully crafted and correctly recognize both the important elements of current law that should be retained and the provisions that need modification.

Specifically, we support the reauthorization provisions for the Supportive Housing, Shelter Plus Care, Section 8 Moderate Rehabilitation SRO and the Emergency Shelter Grants programs. The Department will be proposing a consolidation of these programs into one that is needs-based and performance-driven. This consolidation will ensure community-level planning and decision-making. And, it will retain the fundamental components of our Continuum of Care strategy to address homelessness. We further support the provisions of the bill reauthorizing the Interagency Council on the Homeless and the Emergency Food and Shelter Program, currently housed at FEMA but proposed for transfer to HUD in the President's budget request.

The Department fully supports Section 604 of the bill that continues the current requirement that at least 30 percent of appropriated funds be targeted for permanent housing projects. Similarly, we support the removal of the unrealistic caps on the use of Supportive Housing Program funding for acquisition, rehabilitation and new construction. These caps have increasingly worked to restrain our grantees' ability to generate new and rehabilitated permanent housing units for homeless individuals and families.

The Department notes bill language proposing the transfer of the costs of renewing expiring Shelter Plus Care projects and projects funded under the Permanent Housing component of the Supportive Housing Program to the Housing Certificate Fund (HCF). The Department looked at these renewals in the 2003 budget process and determined that it is preferable to address them as part of consolidated homeless funding.

REV_00143899

Housing Opportunities for Persons with AIDS

HUD supports Section 904 of the Bill that would reauthorize the Housing Opportunities for Persons with AIDS (HOPWA) program. HOPWA is the only Federal program solely dedicated to providing housing assistance to persons with HIV/AIDS and their families. Housing provided under this program provides a basis for helping people at the lowest income levels access appropriate care and acts as a base to help maintain difficult therapies and medical regimens.

Community Development Block Grant

I would like to make several other comments on provisions of HR 3995 that would affect HUD's basic Community Development Block Grant (CDBG) program.

Section 902 on Housing Counseling programs would require the Secretary to designate a single office within the Department to "establish, coordinate, and administrate all requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership, counseling . . ." This section also specifies that the CDBG eligible activity under section 105(a)(20) of the HCD Act of 1974 be covered by this provision. Section 105(a)(20) of the HCD Act authorizes grantees to use CDBG funds to carry out housing services, such as housing counseling. Housing counseling is an important component of the Department's rental housing and homeownership programs. However, we would caution against adopting a "one size fits all" approach that would take away the local discretion of program design and implementation from CDBG grantees, which is the cornerstone of the CDBG program. Recently, FHA revised the standards and performance measures related to the 1400 HUD-approved housing counseling agencies participating in this program. We see no need for another office within the Department to repeat this process. As you know, the Administration has requested $35 million for a new categorical counseling program, nearly doubling the current level of funding and removing the program from the HOME block grant. We urge you to support that proposal, and we believe it will be easier and quicker to provide the funds to counseling agencies if we can operate the new program on the basis of the standards we have recently established.

Section 905 concerns the funding eligibility for secular activities carried out by religious organizations. HUD supports the involvement of faith-based organizations in our programs, consistent with Constitutional principles of Church and State.

Section 906 would add a new eligibility category to the CDBG program to authorize the construction of tornado or storm-safe shelters in manufactured housing parks. This addition would expand this otherwise eligible public facility to serve residents of private manufactured housing parks and HUD supports it. However, subparagraph (b) of Section 906 would authorize a set-aside from the CDBG program for fiscal year 2002 for this purpose. The Department does not support further set-asides within the CDBG appropriation.

HUD supports Section 907 of the bill that would amend Section 105(a)(13) of the HCD Act to allow the use of CDBG funds to administer renewal communities. HUD believes that such support of the Renewal Communities program will foster needed job creation and revitalization in distressed communities.

Self-Help Homeownership Opportunities Program

HUD supports the reauthorization of the Self-Help Homeownership Opportunities Program (SHOP), which has been instrumental in helping many low-income families become homeowners. The President's request to triple funding to $65 million for SHOP in FY 2003 reflects this program's popularity and success.

Thank you again for this opportunity, and I would be happy to answer any questions that you may have.

REV_00143901

April 22, 2002 Draft

STATEMENT OF MICHAEL LIU

ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

April 24, 2002

REV_00143902

I am Michael Liu, Assistant Secretary for Public and Indian Housing at the U.S. Department of Housing and Urban Development. In that position I have responsibility for administration of the public housing, voucher and Native American housing programs. Accordingly, I will limit my testimony to Titles IV, V and VI of the bill, which concern those programs.

First, Congresswoman Roukema, thank you and your cosponsors for developing and introducing the Housing Affordability for America Act of 2002. The bill contains many proposals that will allow us to do our jobs better, of providing the most effective low-income housing assistance possible with the funds available. The reauthorizations for two of our critical programs, HOPE VI and Native American Block Grants, are critical measures in themselves. The bill contains several measures to achieve our common goal of assuring that the voucher funds Congress appropriates can be fully used. The bill also contains the Administration's Public Housing Reinvestment Initiative, which holds great promise as a means of improving the Nation's public housing communities.

Title IV, Section 8 Rental Housing Assistance Program

Section 401 of the bill proposes a new thrifty production voucher program. This program is patterned after the current project-based voucher program, but assumes that the capital for production will be found from other programs or sources and provides for a reduced subsidy designed to cover only operating costs.

HUD generally supports additional tools that may help public housing authorities (PHAs) meet their communities' housing needs, and in that context will work with the Committee to develop a means of offering vouchers that can be combined easily with capital subsidies. The current proposal seems rather complex and differs from the project-based voucher program in ways that may not be necessary, such as waiting list administration, development location requirements and several others. I look forward to further discussions on this matter.

The bill contains several initiatives designed directly or indirectly to increase the successful use of appropriated voucher program funds, including an increase in the amount families can expend as their share of rent when initially leasing any unit (section 402), authorization for PHAs to use up to five percent of program monthly assistance payment funds (as opposed to administrative fees) for efforts to help families obtain and remain in suitable housing (section 403) and an authorization to provide increased administrative fees for high-performing PHAs in the voucher program (section 405). These proposals would augment steps HUD and Congress already have taken or are taking to accomplish this goal, including increased flexibility for PHAs to set payment standards; increased fair market rents to the 50th percentile of rentals for units in satisfactory condition some areas; initiation of the Section 8 Management Assessment Program (SEMAP), a management report card with consequences; training of PHA staff; award of new incremental vouchers only to PHAs with high usage of current resources; and reallocation of vouchers from PHAs that have not been able to use them to PHAs that need and can use them.

HUD supports the direction of these new proposals, but has suggestions. HUD supports the increase in allowable family rent to forty percent of gross income, but believes PHAs also need flexibility to address compelling situations—for example, where a family already in the program would like to move to a significantly less expensive unit, but cannot do so because the family still would be paying more than the limit.

HUD would allow the use of some program funds to help increase voucher utilization for PHAs that already are using their administrative fees solely for the Section 8 program, but believes that the authorization should be substantially narrower to address competing concerns regarding diversion of program funds. With respect to administrative fees, HUD recommends that it be given broader authority not just to provide a bonus for high performers, but also to restructure the fees to promote performance in general and the accomplishment of specific program priorities, such as families' movement to self-sufficiency and homeownership.

The bill contains several provisions regarding enhanced vouchers. HUD supports clarification of the obligation of owners to take enhanced vouchers in projects where tenants are eligible for them (section 406). With respect to the same section's protections for overhoused families, HUD recommends that such families be treated in the same manner as overhoused families are treated now in the voucher program (basically, the enhanced voucher families could choose to stay in the oversized unit, but would be subsidized at the level they would receive if they were in a unit of appropriate size at the property).

The bill also contains a provision to provide for higher contract rents upon the renewal of moderate rehabilitation contracts (section 408). HUD agrees that the current-law restriction of such rents to the lower of comparable rents, current rents plus an operating cost adjustment or fair market rents is unnecessarily restrictive. The bill's proposed solution, however, will pose administrative challenges for PHAs not accustomed to evaluating budget-based rents and may go further than is needed to preserve assisted units.

You asked me to discuss the future impact of Section 8 contract renewals on the HUD budget. Renewals for both tenant-based and project-based Section 8 rose from $14.3 billion in fiscal 2001 to a requested $16.9 billion for fiscal 2003, and are projected to increase to over $20 billion in several more years. This is a result of the program serving more families, some program changes that have increased per-unit costs, such as increases in fair market rents, and conversion over time of all contracts to one-year contracts, so that all contracts must have new budget authority each year.

Title V, Public Housing

I am excited that Title V contains the Administration's Public Housing Reinvestment Initiative (section 505), because that initiative can provide a new and effective means of improving public housing. Recent HUD studies indicate that the backlog of public

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housing capital needs is in the $20 billion range and that new needs accrue at about two billion dollars annually. Strides have been made in recent years in public housing communities, but appropriations for the Capital Fund at two to three billion dollars annually will allow only slow progress. The Public Housing Reinvestment Initiative provides a means of addressing this problem sooner with the dollars available.

The Public Housing Reinvestment Initiative allows PHAs that choose to participate to trade their public housing subsidies for project-based vouchers on a property-by-property basis. PHAs then could borrow money for capital improvements on the same individual property basis now used for Section 8 developments and multifamily housing generally. In addition to leveraging private capital, this action is likely to lead to more accountable property and financial management because management must be done at the individual property level. Tenants generally would be protected in the same manner as in public housing. PHAs could use the project-based vouchers on current sites, or on replacement sites where appropriate.

The Public Housing Reinvestment Initiative can be a powerful tool for the prompt rehabilitation of housing that otherwise would languish for years. For example, a development's capital needs of four million dollars that otherwise would be impossible to address from available Capital Fund moneys can be addressed with debt service payments on a seven percent, thirty-year loan of about $335,000 per year. PHAs could undertake individual transactions as long as the monthly expenses for operations, debt service and a capital replacement reserve did not exceed the lower of market rents or the applicable Section 8 payment standard. If the approvable rent levels were too low to finance all the necessary capital work—for example, if the PHA only could raise $20,000 per unit at approvable rent levels but the development needed $30,000 per unit in capital work—the PHA could choose to supplement the project-based vouchers with an up-front contribution from the Capital Fund or other sources.

The bill contains a proposal to suspend the PHA Plan requirement for three years for the smallest PHAs up to 100 units (section 504). Current law requires annual PHA Plans with eighteen listed elements, but also allows HUD to streamline PHA Plans for small, high-performing and Section 8-only PHAs. The extent to which the PHA Plan requirement has resulted in useful strategic planning has varied greatly from locality to locality. In many localities, the Resident Advisory Board participation requirement has resulted in better access for public housing residents and Section 8 families to make their views known to PHA decision-makers.

The usefulness of the PHA Plan relative to the PHAs' ability to carry it out with limited staff resources, however, appears to drop dramatically for small PHAs. HUD has provided some streamling of PHA Plan requirements for these PHAs, but I believe we need to go further and HUD is developing a regulation that will accomplish this. The bill's proposal is certainly along these lines, although we may be able to accomplish the necessary streamlining through regulation without disturbing the current resident and public process to the same extent. I want to note Congressman Bereuter's leadership on this issue and thank him for that leadership.

While HUD has differentiated between small and larger PHAs in PHA Plan processing, it has not done this to enough of an extent in its other programs. Small PHAs with 250 or fewer units constitute 75 percent of all PHAs, but operate only fifteen percent of the units. From a risk management standpoint, it is unnecessary to impose the same regulatory burdens on these PHAs as on larger ones. The new regulation I have mentioned will recognize that in several program areas.

The bill would require HUD to develop and test a third-party system for public housing performance evaluation, through an outside contractor (section 503). This year, HUD has implemented a binding public housing management assessment that contains an independent inspection of physical conditions. However, experience with the Public Housing Assessment System (PHAS) during its extended advisory period raised so many questions regarding the adequacy of its physical inspection and finance components that HUD substantially simplified and in some respects had to pare back these components prior to implementation. HUD is committed to working with public housing groups toward how best to revise the system. It may be that a third-party system could accomplish the same tasks better and provide a broader assessment that would be more readily recognized and accepted as appropriate by all parties concerned. The work being done by others such as public housing industry groups and private companies to develop such systems is promising, and HUD may be able to take account of this work and the views of resident representatives and others to develop an improved and possibly third-party system expeditiously.

Section 501 of the bill would allow HUD to waive the requirement that PHAs have a resident on the board of commissioners in particular States, where reasonable efforts are being made to take the necessary legislative or regulatory action so that this can occur. Congress has recognized problems in the implementation of the resident on the board requirement in several States, has exempted housing authorities in three States from the requirement for fiscal 2002 and has required HUD to provide a report by May 30, 2002 regarding the impediments to its implementation and related matters. Thus, further legislative action seems appropriate. The proposed legislation, however, would allow for permanent waivers and would not result in having residents on boards of commissioners promptly in the affected States. A better solution may be to provide for appointment by the chief executive officer of the PHA's jurisdiction of an additional board member to fulfill the resident on the board requirement, for a temporary period such as three years. This would give the noncompliant States more time to complete any necessary actions so that residents could be appointed to PHA boards as federal law requires, but the relief would be temporary and promptly would result in residents serving on boards of commissioners.

The bill provides for a two-year reauthorization of HOPE VI and for measures to ensure that a broader group of communities in terms of size and location have a realistic possibility of receiving a HOPE VI award. HUD supports both reauthorization and the general effort to promote broad program participation. More discussion of concepts in

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regard to reauthorization of HOPE VI will be constructive. A report on HOPE VI lessons learned is due to Congress on June 15, 2002.

Title VII, Native American Housing

Title VII reauthorizes both the Native American Block Grant Program and its related loan guarantee program. HUD believes that these programs continue to hold much promise and supports the reauthorization of both programs.

I look forward to working closely with the Committee as you continue to develop this important legislation for the improvement of the voucher, public housing and Native American housing programs. Please call on me and my staff for any assistance we can provide.

April 22, 2002 Draft

STATEMENT OF JOHN C. WEICHER

ASSISTANT SECRETARY FOR HOUSING/FHA COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

April 24, 2002

REV_00143908

Thank you for the opportunity to testify on behalf of the Department of Housing and Urban Development and the Office of Housing-Federal Housing Administration (FHA), concerning the "Housing Affordability for America Act of 2002". The bill covers a very wide range of programs and activities across the Department, including many different programs within the Office of Housing. We have carefully reviewed each provision contained in the bill, and I am grateful for this opportunity to provide you with our thoughts on the sections of this important piece of legislation. Because you have also addressed a number of specific questions about FHA programs in your letter of invitation, I will combine my answers to those questions with comments on the corresponding sections of the bill. I have organized my comments by program area.

FHA Single-Family Insurance Programs

To begin with FHA's basic Section 203(b) home mortgage insurance program and the Mutual Mortgage Insurance (MMI) Fund: as you know, the President and the Secretary have made promoting homeownership, especially for minority households, a cornerstone of domestic policy. We are very proud of FHA's success in promoting homeownership. About 80 percent of our home purchase mortgages serve first-time homebuyers and about 35 percent serve minority households. The national homeownership rate, and the minority homeownership rate, both set new records last year.

The MMI Fund was determined to have an economic value of $18.5 billion at the end of FY2001, with a capital ratio of 3.75%. FHA's volume of business this year is running substantially in excess of expectations. Indeed, through the first six months of the year we have insured over $81 billion of single-family mortgages. We are assessing the need to seek an increase in our current commitment limitation of $160 billion for the MMI Fund for the current fiscal year. Having been personally involved in developing the legislation that put FHA on an actuarially sound basis some 12 years ago – as was Chairwoman Roukema and ranking member Frank - I am very pleased to report this information to you.

Of course, the MMI Fund net worth, which estimates future receipts, liabilities, and cash on hand, has attracted a number of proposals to spend the reserves, for example to divert funds into a new "National Housing Trust Fund" for purposes well beyond the homeownership goals of the Mutual Mortgage Insurance Fund. We think these proposals are ill-advised, and they misconstrue the nature of the MMI Fund.

The creation of the MMI capital reserve was a fundamental goal of the Cranston - Gonzales National Affordable Housing Act of 1990 which was intended to forestall any taxpayer bailout of the FHA, as had just been required for the savings and loan industry. While all Federal credit programs are required to budget for anticipated losses, under the Credit Reform Act of 1990, the MMI Fund was specifically required to generate additional revenue to be held as a special reserve against potential losses. The Cranston-Gonzales legislation created a kind of "lock-box" for funds that would be available to

meet any contingency, so that general revenues in the Treasury would never be needed to meet FHA obligations. To generate the funds needed for this capital reserve, FHA suspended the payment of distributive shares to borrowers and raised insurance premiums substantially.

Since 1990, FHA has gradually built up its reserves year by year. This annual surplus has been counted in the overall Federal budget as an offsetting receipt, and has helped reduce the deficit. Because this revenue was previously counted as a receipt, any legislation that proposes to expend it will be counted as new spending, just as if funds were being appropriated directly out of the Treasury. There is no budgetary magic to raiding this "lock box"; instead there is a budgetary outlay. Moreover, using the MMI Fund reserves will vitiate FHA's ability to meet the basic goal of the Cranston-Gonzales Act of making the MMI Fund actuarially sound.

FHA was able to reduce single-family premiums substantially last year, and make homeownership more affordable for more families, in line with our fundamental public policy purpose. We have also been looking at the possibility of reinstituting the payment of distributive shares. However, it is clear that any such policy will be procedurally complex, and we are not proposing it at this time.

The Housing Affordability for Americans Act of 2002 contains several provisions that would improve FHA's ability to operate our core single-family home mortgage insurance programs. Section 221 would make permanent a pilot designed to streamline and simplify the FHA downpayment program. Secretary Martinez supported this proposal during his testimony before the House Appropriations Subcommittee last month. This downpayment simplification calculation has proven to be a successful program modification. The procedure reduces the number of steps involved in the calculation of the FHA single-family mortgage amounts, and thereby has eliminated the confusion experienced by many buyers, brokers, and lenders. Further, this existing statutory authority has reduced the costs associated with closing an FHA insured mortgage. Ultimately, the simplification has increased homeownership opportunities for low- and moderate-income families.

Similarly, Section 227 should facilitate the Department's ability to effectuate another legislative priority. During the FY2002 budget process, the Department requested and received authority to insure hybrid Adjustable Rate Mortgages (ARMs). Our work to implement that authority is continuing. The Department's position is that FHA's hybrid ARM should approximate the conventional hybrid ARM and its benefits as closely as possible subject to preserving sound underwriting policies and protections for FHA borrowers and the MMI Fund. Section 227 supports that end by allowing the Department greater flexibility in the design of regulations that will govern the initial rate adjustment at the end of the fixed rate period. The Department appreciates the efforts by Rep. Bob Ney and other Members of this Committee in supporting the permanent extension of this provision.

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Sections 229-231 are consistent with recent Department actions to strengthen our Section 203(k) rehabilitation mortgage insurance program and our nonprofit partnerships. In 1996, the Office of Housing issued Mortgagee Letter 96-59, placing a moratorium on investor participation in the 203(k) program. Investors have not been allowed to participate in the program since the issuance of this Mortgagee Letter. The moratorium still stands. We have no plans to modify the Letter and have no objection to Section 229.

Similarly, Section 230 regarding rehabilitation loan advances is also consistent with Departmental action. FHA Mortgagee Letter 00-25 states, "mortgagees are fully responsible for authorizing draw inspections, managing the rehabilitation escrow account, and approving the associated draws for the account." The Letter also requires consultants to be chosen from the FHA 203(k) Consultant Roster and permits consultants to perform the inspections on the mortgagee's behalf. The Department has a number of technical questions regarding this provision and looks forward to working with the Committee to ensure that mortgagees are held appropriately responsible.

Section 231 would require nonprofits to be approved 501(c)(3) organizations and certify annually to the Department its understanding of HUD guidelines. In January 2002, the Office of Housing issued Mortgagee Letter 02-01, establishing new requirements for nonprofits seeking FHA-approval. Nonprofits must now have, among other requirements, two years 501(c)(3) IRS tax-exempt status and a minimum of two consecutive years – within the last 5 years – of housing development experience. Approved nonprofits have until September 30, 2002 to demonstrate their compliance with the new requirements. The Office of Housing supports Section 231 to strengthen its existing guidance. It will help us prevent a recurrence of the 1998-1999 Section 203(k) fraud problem in New York City, where a number of nonprofits purchased small multi-unit buildings in Harlem and Brooklyn intending to have them rehabilitated for owner-occupancy. The knowledgeable and experienced Commissioner of New York City's Department of Housing Preservation and Development said that she had never heard of 25 of the nonprofits that bought these homes; she had only heard of two. This fraud will cost the taxpayers some $268 million, and will cost the citizens of New York City another $125 million.

Sections 222-224 contain proposals to provide special opportunities for teachers and public safety officers. Section 223 would give the Secretary authority to discount HUD-owned, single-family properties by 50% to qualified teachers and public safety officers. The Department certainly does not object to such a program; indeed, the Secretary already has this authority and has exercised it. The Department's Officer/Teacher Next Door Program currently allows teachers and police officers to purchase homes at a 50% discount in designated revitalization areas, subject to a three-year owner occupancy requirement. During a Fiscal Year 2001 audit of the program, the Office of the Inspector General uncovered a significant number of violations of the program rules by officer participants. In May 2001, the Department temporarily suspended sales under the program and instituted enhanced management controls. A recent IG audit of sales closed after the program resumed in August 2001 did not identify

any new program violations. The Department is currently working on a proposed rule to include these program controls.

Sections 222 and 224 both aim to reduce downpayment requirements for public safety officers, while Section 222 also includes teachers among those who will benefit. In regard to both provisions, it is important to note that the Office of Housing has recently made significant changes to its programs to reduce downpayment costs substantially for all buyers of FHA insured properties. These changes include the reduction of insurance premium rates by 33 percent, along with the Downpayment Simplification previously mentioned. One observation the Department would make with regard to these provisions is that a number of other occupational groups have expressed a similar interest in reduced downpayments.

In addition, it may be more appropriate to pursue these initiatives within the American Dream Downpayment Fund, as proposed by the President and funded by Congress last year. The American Dream Downpayment Fund will reduce the barrier that downpayments frequently pose to homeownership, for all low- and moderate-income families. On behalf of the Administration, I want to thank Rep. Mike Rogers and other Members of Congress for introducing H.R. 4446 to authorize this program.

I would also mention that the Department's Office of Policy Development and Research is in the process of studying the impact of this type of program, as required by Congress. We believe that it would be prudent to wait until the results of this study are available before making any commitment to such an initiative.

Section 228, which would establish a uniform national loan limit for Home Equity Conversion Mortgages (HECMs), also concerns an issue that is currently part of an internal analysis by the Office of Policy Development and Research. As mandated by the American Homeownership and Economic Opportunity Act of 2000, the Department is conducting an actuarial analysis on the impact of this provision. We will provide the Subcommittee with comments and recommendations when this study has been finalized.

FHA Single-Family REO

The bill also contains several provisions concerning FHA's single-family inventory of foreclosed homes, and the Committee has asked about our REO activities. Since the introduction of the Management and Marketing contracts in March of 1999, the Department has greatly improved its REO disposition. As of March 2002, the inventory of HUD-owned homes is at its lowest level since 1996 - 28,270, compared to a March 1999 inventory of 41,747. Moreover, the inventory has been stable during the recession, instead of rising as has been typical in the past. Currently, properties remain in inventory an average of 183 days, compared to 221 days in March 1999, and losses per claim have been reduced from 39 cents to 29 cents on the dollar. The loss rate is at its lowest point in at least 20 years.

FHA sold 66,415 single-family homes during FY 2001. About 60 percent of these sales were to owner-occupants, helping serve FHA's basic purpose of promoting homeownership. Another 30 percent are sales to investors, and the remainder – slightly less than 10 percent - goes to local governments and nonprofit organizations.

FHA currently offers discounts to HUD-approved nonprofit organizations on the purchase of REO. Properties newly acquired by HUD are initially offered to nonprofit organizations on a limited competitive basis, which excludes investors and owner occupants, for up to 10 business days. FHA offers properties to nonprofits for an additional five days of limited competition that does include owner occupants but excludes investors. After these periods, FHA opens bids on properties to the general public, but nonprofit groups may bid and still receive sales discounts. These discounts are factored into a sale after the highest bids are calculated.

HUD properties are appraised and initially listed for sale on the Internet and through multiple listing services at the "as-is" value established by the appraiser. Properties sold to a nonprofit are discounted by 10%, unless the property is located in a FHA-designated "revitalization area".

FHA has two primary initiatives underway associated with its property disposition program. We have begun a major review of our Asset Control Area (ACA) program, following a report of program deficiencies by the HUD Office of Inspector General in a recent audit. We are planning to build stronger controls into the ACA program. During that review, which will take 4-6 months, we will let current ACA agreements expire. Our ACA partners can, however, continue to rehabilitate and sell the properties they have already acquired from HUD, and we believe that most if not all ACA partners have an inventory of properties that will not be exhausted during the review. This program, with proper controls in place, can provide an effective role for nonprofit groups, and local governments, in HUD's property disposition.

A second initiative is HUD's Accelerated Claims Demonstration Program. This program, announced in a Federal Register Notice on February 5th, utilizes current statutory authority for HUD to buy seriously defaulted loans that cannot be addressed through FHA's loss mitigation program, and sell these loans to the private sector for disposition. This program is expected to begin in the fourth quarter of this fiscal year. Considering both of these initiatives, it does not appear that additional statutory authority related to property disposition is required at this time.

Partly for these reasons, we see no need for Section 225 of this bill, which would require HUD to use the Department of Agriculture's Rural Housing Services Center as an additional resource for servicing single-family, HUD-held mortgages. We believe that this requirement is unnecessary and indeed would be counterproductive. Presently, HUD's National Servicing Center (NSC) in Oklahoma services four types of secretary-held loans, each with unique characteristics and servicing requirements. In particular, NSC services 963 reverse equity (HECM) loans. For this loan type, the Department makes monthly payments to the borrowers rather than receiving income from them. The daily payment process is complex and time sensitive. Additionally, NSC services second

mortgages generated through loss mitigation advances, and discounted sales to officers and teachers in HUD's Officer Next Door/Teacher Next Door programs. Because these mortgages carry no interest and require no monthly payments, servicing activity is generally limited to processing subordinations and payoffs. All of these mortgage types are unique to HUD. The Rural Housing Service has no similar programs and no experience in servicing such loans. NSC is doing an excellent job managing their unique mortgage servicing requirements. It is unclear that there is a benefit or need to outsource the servicing of these loans.

FHA Multifamily Insurance Programs

As the members of this Subcommittee know, FHA's basic multifamily insurance program is Section 221(d)(4). This program has required a credit subsidy since Credit Reform was enacted in 1990. Three times in the last eight years, the program was closed down because the available credit subsidy was exhausted. To prevent further closures and place the program on a break-even basis, the Department raised the premium from 50 basis points to 80 basis points for FY 2002. Many in the industry, and some Members of Congress, were concerned that the program would be hamstrung by this increase. That has not happened. In the first six months of the fiscal year, FHA has insured almost $1.5 billion worth of Section 221(d)(4) projects, compared to less than $1.1 billion during the same period a year ago. Moreover, with the 25 percent increase in mortgage limits that was proposed by the Secretary and enacted by Congress, we are seeing applications from high-cost metropolitan area that have not participated in the program in years – the Twin Cities, Philadelphia, Newark, Baltimore, here in Washington, and Austin.

In addition, we have conducted the first systematic re-analysis of the premium and credit subsidy since Credit Reform was enacted. We have concluded that Section 221(d)(4) can be operated on a break-even basis at a much lower premium – 57 basis points. The President's Budget contains an announcement of this premium reduction, effective in October, at the beginning of FY 2003. We are also reducing either the premium or the credit subsidy for nearly every other multifamily program.

This summary of FHA's multifamily mortgage insurance programs provides background for your consideration of Sections 201 and 202 in the legislation. They address the question of who should be served by the programs. FHA generally serves moderate-income renters. Most of the projects that FHA insures are affordable to families in the lower half of the income distribution, and almost half are in underserved areas. These are important markets; these families and these communities need FHA.

Section 201 proposes to index the FHA multifamily mortgage limits. As members of this Subcommittee certainly know, Congress approved indexing the mortgage limits in the Section 203(b) single-family mortgage insurance program several years ago. This provision has enabled FHA to keep pace with inflation and changing economic conditions as it serves young, first-time homebuyers. Indexing the multifamily limits should likewise prove to be more responsive to market conditions and to the needs

of families seeking moderately priced rental housing. Clearly, annual adjustments provide a better way to compensate for increased costs than by providing periodic dollar increases. When Congress raised the limits last year by 25 percent, at the request of Secretary Martinez, this was the first increase since 1992, and represented a delayed catch-up for the inflation that occurred between 1992 and 2001; during those years, FHA was progressively less able to serve moderate-income renters.

Section 202 proposes to increase the maximum mortgage limits in areas with very high housing costs by 30 percent above the amounts allowed under current law. It also proposes to increase the amount by which the Secretary, on a case-by-case basis, may increase the maximum mortgage amount. The Department would prefer to analyze the data resulting from our experience with the new limits that Congress enacted last year and the future effects of the indexing contained in Section 201 before proceeding with any additional high housing cost authority beyond that which already exists.

FHA Insurance for Nursing Homes and Hospitals

The Housing Affordability for America Act of 2002 contains several provisions relating to FHA's insurance programs for nursing homes and hospitals. Section 206 seeks to provide a more flexible procedure with respect to the Certificate of Need (CON) for hospitals, which is somewhat similar to an Administration proposal that was not enacted last year. There is a technical problem with the language of Section 206 as drafted. The Section states that HUD should work "in conjunction with" the Department of Health and Human Services (HHS). HUD currently has a contractual agreement with HHS with respect to Section 242, the hospital mortgage insurance program. Under this agreement, both HHS salaries and expenses are paid from the FHA General Insurance Fund. This agreement has worked well for several years. Because of the agreement, the language should be modified to read "in consultation with," to avoid any contractual disputes between HUD and HHS in the future. There is no similar agreement between HUD and HHS with respect to the Section 232 nursing homes mortgage insurance program, and we do not believe that the language is necessary or desirable for that program. HUD operates the nursing home program effectively without formal participation by HHS.

Sections 203-205 amend the definition of the FHA health care and assisted living programs so as to take FHA into new lines of business. Sections 203 and 204 change the definitions in Section 232 and Section 242, respectively, to include community health centers, medical practice facilities, and group practice facilities, and Section 205 permits insurance to refinance these facilities. These provisions raise a number of questions and require additional analysis before the Department can provide a definitive position. The language creates an overlap between Section 232 and Section 242, as well as Title XI, so that these new lines of business can be insured under either program. The programs are now managed separately within the Office of Housing, and the overlap could possibly complicate our ability to run both programs. More fundamentally, these proposals would appear to require FHA to undertake new insurance activities on unfamiliar products,

beyond our current expertise and capacity. FHA primarily insures financing for housing. To expand our portfolio to include businesses that provide no shelter could have long-term consequences to the FHA GI Fund. We are now experiencing an increasing number of claims in the Section 232 nursing home program, and just last week had the first default in the Section 242 hospital program in three years. It is particularly relevant that the expansion of nursing homes into new business activities during the 1990s led to a significant number of defaults and bankruptcies.

Programs for the Elderly and Disabled

Section 301 addresses part of a well-known policy concern. It would authorize the use of uncommitted, unobligated Assisted Living Conversion Program funds in the Section 202 program for use in a modernization demonstration program for Section 236 elderly housing. The Section 236 elderly housing portfolio is a fraction of the Section 236 program - about 90,000 units, less than one-third of the units in the entire Section 236 portfolio of over 330,000 units nationwide. The elderly housing projects are generally in good physical condition; only 25 projects out of 556 have REAC physical inspection scores of less than 60, less than 5 percent of the inventory. No projects have REAC scores less than 30. We certainly recognize that there is some need for capital improvements among the entire older insured subsidized FHA multifamily portfolio. We have been working with the multifamily industry over the last two years, in an effort to modernize and restructure the Section 236 housing portfolio. The work is being conducted within the framework of preserving these projects for continued use within the affordable multifamily housing stock. The general restructuring technique involves a sale of the project to a new owner who physically modernizes the project and maintains its affordability for the term of the mortgage plus five years, generally a total of 15 years. In most cases, the financing technique utilizes new mortgages supported by the continuation of Section 8 rental assistance and the remaining Section 236 interest reduction payments. The owner's capital is provided through the Low Income Housing Tax Credit (LIHTC). To date, we have succeeded in restructuring over 100 of these projects. We do not believe that Section 301 is necessary for this effort. We also are concerned that the Section 202 Assisted Living Conversion program might be adversely affected. The program has not yet reached the scale envisioned in past appropriations, and the unexpended funds have been carried forward. But it is our experience that new programs do take time to get underway, and we do not believe it is prudent to anticipate that Section 202 Assisted Living Conversion funds would be available.

With regard to Section 303, as you know, the President and the Secretary are strongly committed to ensuring that religious organizations have the same opportunities as any other participant in the Section 202/811 programs, which are our largest programs in terms of participation by faith-based organizations. These organizations now can be sponsors of these projects, and certainly religious organizations have been very active in the Section 202 program since its creation in 1959. In recent years, they have accounted for approximately 40% of the funding that Congress appropriates for these programs. While we applaud the purpose of Section 303, the Department will need to thoroughly

consider the issues relative to direct ownership of projects by religious organizations. Our practice for both religious and secular sponsors has been that ownership is vested in a single-purpose non-religious entity and established by the sponsor, not the sponsoring organization.

Other Provisions

The Housing Impact Analysis proposed in Title VIII was proposed by President Bush during the campaign two years ago. It is an effort to create a system to monitor the aggregate effects of all rules on the cost and availability of housing. We believe that it is in the interest of consumers, especially moderate-income families seeking to become homeowners or to find decent affordable rental housing, to ensure that regulations are demonstrably required to protect health and safety, and that the consequences of regulation for affordable housing are recognized and balanced against other important public purposes.

Section 902 establishes a single office within the Department to coordinate counseling activities. This sounds desirable, but may be counterproductive, in our judgment. It might undermine the ability of the various offices to establish requirements, standards, and performance measures that meet the unique needs of their programs and clients. HUD's various program areas each provide counseling, generally for different purposes and typically to different clienteles. Recently, FHA revised the standards and performance measures related to the 1400 HUD-approved housing counseling agencies participating in this program. We see no need for another office within the Department to repeat this process. As you know, the Administration has requested $35 million for a new categorical counseling program, nearly doubling the current level of funding and removing the program from the HOME block grant. We urge you to support that proposal, and we believe it will be easier and quicker to provide the funds to counseling agencies if we can operate the new program on the basis of the standards we have recently established.

Finally, the Administration supports Section 907 to simplify current law pertaining to subsidy layering. The provision permits housing credit agencies to certify to compliance with the Department's subsidy layering requirements concerning the combination of HUD and other governmental assistance with the Low Income Housing Tax Credit. The housing credit agency will simply certify that it has made the subsidy layering determination already required by Section 42 of the Tax Code. This provision is consistent with the Secretary's efforts to streamline the delivery of HUD's programs and support the production of affordable housing through the use of FHA mortgage insurance and the Low Income Housing Tax Credit Program.

Conclusion

Thank you again for the opportunity to testify on The Housing Affordability for America Act of 2002. I would be happy to answer any questions that the Subcommittee may have.

REV_00143918

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2002 12:45:08 PM
Subject: : LRM JAB 208 --Small Business Administration Testimony on Native American Economic Development Activities
Attachments: P_12PW6003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2002 16:45:08.00
SUBJECT:: LRM JAB 208 --Small Business Administration Testimony on Native American Economic Development Activities
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/23/2002 04:45 PM ----------

James A. Brown
04/23/2002 04:43:55 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM JAB 208 --Small Business Administration Testimony on Native American Economic Development Activities

LRM ID: JAB208
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 23, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: Small Business Administration Testimony on Small Business Administration Draft Bill on Authorization for Native American Economic Development Activities

DEADLINE: 4:00 p.m. Wednesday, April 24, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: If we do not hear from you by the deadline, we will assume that you have no objection to clearance of this testimony.

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WHGC LRM
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Philip J. Perry
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Sarah S. Lee
Pamula L. Simms
David Rostker
LRM ID: JAB208 SUBJECT: Small Business Administration Testimony on Small Business Administration Draft Bill on Authorization for Native American Economic Development Activities
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on

the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
WHGC LRM
NEC LRM
Philip J. Perry/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
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K. Philippa Malmgren/OPD/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
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Ann Kendrall/OMB/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
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David Rostker/OMB/EOP@EOP
CLRM@doc.gov
ocl@ios.doi.gov
justice.lrm@usdoj.gov

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_12PW6003_WHO.TXT_1>

SENATE SMALL BUSINESS & ENTREPRENEURSHIP and INDIAN AFFAIRS COMMITTEES JOINT HEARING

NATIVE AMERICAN ECONOMIC DEVELOPMENT

Good morning Mr. Chairmen, Senators Bond and Campbell, and distinguished members of both committees. Thank you for convening this joint hearing to discuss the extremely important issue of Native American economic development. Administrator Barreto had a previous commitment and asked that I testify on behalf of the Agency. I am honored and delighted to have the opportunity to share with you the vision and commitment of the U.S. Small Business Administration (SBA).

The SBA is dedicated to ensuring that all Native Americans who seek to create, develop, and expand small businesses have full access to the necessary business development and expansion tools available through our Agency programs. As you know, the President's FY 2003 Budget for the SBA contains a $1 million request for an expanded Native American Economic Development Program. This program is a comprehensive initiative designed to meet specific cultural needs and, to result in small business job creation. It is intended to build upon the economic development activity of tribes and Native American community-based organizations seeking to improve the economic well being of their communities.

The 2003 initiative is an expansion of the current SBA Native American program based on an expressed and visible need. The current technical assistance program (TBICs) operates in only six states. Our expanded program will increase the geographic dispersion of SBA assistance and impact greater numbers of Native American small businesses by adding a small business component to the economic development activities already taking place in affected communities. The purpose of the expansion is to broaden our scope nationally and to have a greater impact on significantly more Native American businesses.

The intended grantees include community-based Native American Organizations and tribes who presently have multi-faceted economic development programs and can present a well-developed plan for increasing small business development in Native American communities. Interested and qualified parties will apply for the grants. The current TBICs will, of course, be eligible to apply for the grants.

In our continued efforts to create an essential foundation for economic growth and social stability in the Native American community, the SBA is also currently in the final interview stage for the National Director for Native American Outreach. The responsibility of the National Director will be to direct and coordinate an Agency-wide program designed to promote, expand, and enhance small business opportunities and services for Native Americans. Specifically, the National Director will be responsible for the development of polices designed to enhance the SBA's delivery of programs and services to the Native American business community. Furthermore, the individual will be expected to develop and maintain relationships with other Federal, state and local

governments, for-profit and non-profit organizations involved in the promotion of Native American business initiatives. It is our intent to have this position filled as soon as possible.

We have worked closely with Native American organizations in the search for the SBA's National Director of Native American Outreach. We have also collaborated with these organizations to design the expanded Native American Economic Development Program. From this collaboration, we learned that it is necessary to maintain a level of flexibility in the newly expanded program so that the National Director, an expert on Native American issues, will have the opportunity to customize the economic development program to ensure that the need is met.

Again, thank you to both Chairmen and distinguished members of the committees for providing me with the opportunity to share the SBA vision for Native American Economic Development. I believe that we all agree there is a definite need to be met. The appointment of a National Director for Native American Outreach and the FY2003 Native American Economic Development Program are essential steps for further economic development in the Native American community. I firmly believe that this SBA vision will succeed in providing the appropriate tools to promote self-sufficiency and job creation in our Native American community. I look forward to working together to achieve this goal and am happy to answer any of your questions.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/24/2002 3:59:15 AM
Subject: : Re: Enron Survey
Attachments: P_S11X6003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2002 07:59:15.00
SUBJECT:: Re: Enron Survey
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I think I agree this is a bit of an improvement. Unadorned "help" could get us some wacky responses.

Brett M. Kavanaugh
04/23/2002 07:18:54 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Enron Survey

I think question 1 may be a little too ambiguous. I might say something like: "Since you joined the White House staff, have you had communications with Enron in which Enron asked for federal government assistance with the company,s financial difficulties?"

Bradford A. Berenson
04/23/2002 06:55:34 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Enron Survey

Either way is fine with me. Just let me know what Judge and Tim want.

H. Christopher Bartolomucci

04/23/2002 06:52:18 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A.
Berenson/WHO/EOP@EOP
cc:
Subject: Enron Survey

I think this is ready for circulation to the Judge, Tim, and David.
Should we try to meet tonight or wait until tomorrow?

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_S11X6003_WHO.TXT_1>

Draft: April 23, 2002

April __, 2002

MEMORANDUM FOR ALL PERSONNEL IN [list WHO/EOP units]

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY

The Chairman of the Senate Committee on Governmental Affairs, Joseph Lieberman, has sent the White House a letter requesting certain information relating to Enron Corporation. The White House is cooperating with the Committee, and to the extent possible we will provide appropriate and responsive information.

Accordingly, we ask that you complete the attached survey and return it to my office (West Wing, Second Floor) no later than May 17, 2002.

You are expected to answer the survey to best of your knowledge and recollection. If it would help you to review any notes, documents, or e-mail you have, you should do so.

The survey question can be answered with a yes or a no, and we are not asking for further explanation at this time. Instead, depending on your answer, the Counsel's Office may contact you to obtain additional information.

The Committee has not requested copies of completed surveys, and therefore we do not intend to provide them to the Committee. Please be aware, however, that it is possible the Committee will seek completed surveys at a later date.

Please also be aware that the Counsel's Office represents the President and the White House and thus cannot act as your personal attorney in this matter.

If you have any questions, please call me (6-1918), Tim Flanigan (6-6627), Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

ENRON SURVEY

[OPTION ONE]

Since you joined the White House staff, has Enron ever asked you for help of any kind in connection with the company's financial difficulties?

YES _____ NO _____

Note that "Enron" means anyone you knew was working for, or on behalf of, Enron Corporation or a related business.

[OPTION TWO]

Since you joined the White House staff, have you had any communications with Enron relating to any issue or matter (other than presidential appointments) involving any of the following:

- The U.S. Securities Exchange Commission;
- The U.S. Commodities Futures Trading Commission;
- The U.S. Federal Energy Regulatory Commission;
- The U.S. Department of Labor;
- The U.S. Department of Commerce;
- The U.S. Department of Energy;
- The Overseas Private Investment Corporation;
- The Export-Import Bank of the United States; or
- The National Energy Policy Development Group

YES _____ NO _____

Note that "Enron" means anyone you knew was working for, or on behalf of, Enron Corporation or a related business.

NAME (please print):

SIGNATURE:

DATE:

WHITE HOUSE OR EOP OFFICE:

PHONE NUMBER:

From:	CN=James A. Brown/OU=OMB/O=EOP [OMB]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	patrick j. bumatay/who/eop@eop [WHO] <patrick j. bumatay>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent:	4/24/2002 8:20:38 AM
Subject:	: Re: LRM JAB 201- Request for Views on HR4231 Small Business Advocacy Improvement Act

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James A. Brown ( CN=James A. Brown/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:24-APR-2002 12:20:38.00
SUBJECT:: Re: LRM JAB 201- Request for Views on HR4231 Small Business Advocacy Improvement
Act
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:patrick j. bumatay ( CN=patrick j. bumatay/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

All three items (the Kerry bill, the SBA draft provision, and the SBA
testimony) have been referred to OLC . I will share their response with
all of you as soon as it is received.
```

From: CN=Amy L. Call/OU=OMB/O=EOP [OMB]
To: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2002 8:50:32 AM
Subject: : victims comp discussions

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Amy L. Call (CN=Amy L. Call/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:24-APR-2002 12:50:32.00
SUBJECT:: victims comp discussions
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

do either of you have any info on this? thanks
---------- Forwarded by Amy L. Call/OMB/EOP on 04/24/2002 12:49 PM ----------

Amy L. Call
04/24/2002 12:07:58 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: victims comp discussions

The National Journal is doing a story about how the federal government allocates scarce resources and how resources were allocated post-9-11. She is looking into the victims comp fund negotiations.

Sources she has talked to have told her that Senator Daschle said you can't put a value on a human life and Mitch said- yes I can and it is $37,850 She has also heard that Mitch was advocating for the collateral offset provision, and that there was a discussion about making this an appropriation as opposed to an entitlement.

She would like to know if this is a true accounting of these negotiations/discussions. She would also like to talk with Mitch or any staff involved in these discussions to get a more well-rounded version of events. Her deadline, of course, is today.

Message Sent
To:_____
Mitchell Daniels/OMB/EOP@EOP
Karen E. Keller/OMB/EOP
Trent D. Duffy/OMB/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Augustine T. Smythe/OMB/EOP
Rebecca A. Beynon/WHO/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP

From: CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2002 5:31:17 AM
Subject: : Re: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals
Attachments: P_N35X6003_WHO.TXT_1.doc; P_N35X6003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:24-APR-2002 09:31:17.00
SUBJECT:: Re: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thank you

-PTM

Brett M. Kavanaugh
04/23/2002 09:11:10 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@EOP, P. Thaddeus Messenger/OMB/EOP@EOP
cc:
bcc:
Subject: Re: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals

White House Counsel has no objection.

Patrick J. Bumatay
04/19/2002 02:58:14 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/19/2002 02:57 PM ----------

From: P. Thaddeus Messenger on 04/19/2002 02:53:59 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message

Subject: LRM PTM102 - - HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals

LRM ID: PTM102
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 19, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals

DEADLINE: 5:00 p.m. Friday, April 26, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find a copy of HUD's draft text and sectional analysis for five legislative proposals.

Please provide your comments by 5:00 p.m., Friday, 26 April. If you experience difficulty with this LRM, or its attachments, please contact us immediately. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile.

Thank you.

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006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666
059-INTERIOR - Jane Lyder - (202) 208-4371

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Justine F. Rodriguez
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Brian H. Jenn
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Philip J. Perry
Matthew J. Schneider
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Joel D. Kaplan
Kristen Silverberg
Matthew Kirk
Brian C. Conklin
Lauren C. Lobrano
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM102 SUBJECT: HOUSING & URBAN DEVELOPMENT Draft Bill on Five Legislative Proposals
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
justice.lrm@usdoj.gov
llr@do.treas.gov
lrm@hhs.gov
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
valrm@mail.va.gov
ocl@ios.doi.gov

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
James F. Jordan/OMB/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
Lauren Larson/OMB/EOP@EOP
Dustin S. Brown/OMB/EOP@EOP
Andrea E. Jacobson/OMB/EOP@EOP
Karyn Richman/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Jack A. Smalligan/OMB/EOP@EOP
Thomas Reilly/OMB/EOP@EOP
Adrienne C. Erbach/OMB/EOP@EOP
Winifred Y. Chang/OMB/EOP@EOP
Joanne DeMoss/OMB/EOP@EOP
Stuart R. Kasdin/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP
Douglas J. Holtz-Eakin/CEA/EOP@EOP
Brian H. Jenn/CEA/EOP@EOP
Robert J. Shea/OMB/EOP@EOP
OVP LRM
NEC LRM
WHGC LRM
Philip J. Perry/OMB/EOP@EOP
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Aquiles F. Suarez/OPD/EOP@EOP
Sheila Conley/OMB/EOP@EOP
John F. Morrall III/OMB/EOP@EOP
Joseph F. Lackey Jr./OMB/EOP@EOP
Courtney B. Timberlake/OMB/EOP@EOP
Adriel M. Harvey/OMB/EOP@EOP
Elizabeth A. Bernhard/OMB/EOP@EOP
Pamula L. Simms/OMB/EOP@EOP
Attia Little/OMB/EOP@EOP
Arthur W. Stigile/OMB/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP

Lauren C. Lobrano/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_N35X6003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_N35X6003_WHO.TXT_2>

APRIL 2002
Five Legislative Proposals – Bill Text

REDUCTION IN MINIMUM RENT; ELIMINATION OF HARDSHIP EXEMPTION FOR NON-ELDERLY, NON-DISABLED FAMILIES THAT WOULD BE EVICTED

SEC. ____. Section 3(a)(3) of the United States Housing Act of 1937 is amended—

(1) in subparagraph (A), by striking "50" and inserting "25"; and

(2) in subparagraph (B)(i), by inserting after "(II)" the following: "in the case of an elderly family or a disabled family,".

AMEND MODERATE REHABILITATION RENEWALS TEST TO DROP FAIR MARKET RENT RESTRICTION

SEC. ____. Section 524(b)(3) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

VOUCHER UTILIZATION: CHANGE LIMITATION ON FAMILY PAYMENTS OF RENT FROM 40 PERCENT OF ADJUSTED MONTHLY INCOME TO 40 PERCENT OF MONTHLY INCOME

SEC. ____. Section 8(o)(3) of the United States Housing Act of 1937 is amended by striking "adjusted".

INCREASED FLEXIBILITY FOR SALE OF PROPERTIES UNDER ASSET CONTROL AREA AGREEMENTS

SEC. ___. Section 204(h)(2) of the National Housing Act is amended—

(1) in subparagraph (A), by striking "Any" and inserting "Except as provided in subparagraph (D), any"; and

(2) by inserting after subparagraph (C) the following new subparagraph:

"**(D) INFEASIBLE REHABILITATION; OPEN SPACE.—** Regardless of whether or not a property was at any time considered an `eligible asset' under this subsection, if at any time the estimated cost of acquisition and rehabilitation for any property described in subparagraph (A) would exceed the estimated market value of the property after such rehabilitation or if the Secretary determines at any time that rehabilitation of a property described in subparagraph (A) is otherwise infeasible or that the best use of such property is as open space (including park land), the Secretary may exclude such property from disposition under this subsection. Properties excluded by the Secretary under this subparagraph shall not be considered `eligible assets' for purposes of this subsection.".

TECHNICAL CORRECTION TO NATIONAL HOUSING ACT AMENDMENT

SEC. ____. (a) TECHNICAL CORRECTION.--Section 207(a)(1) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 is amended to read as follows:

"(1) in paragraph (1)--

"(A) by striking `subsections (n) and (k)' and inserting `subsection (n)'; and

"(B) by striking `or (k)'; and".

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall be deemed to have taken effect on November 26, 2001.

April 2002
Five Legislative Proposals – Section-by-Section Analysis

REDUCTION IN MINIMUM RENT; ELIMINATION OF HARDSHIP EXEMPTION FOR NON-ELDERLY, NON-DISABLED FAMILIES THAT WOULD BE EVICTED

Section ____ would amend section 3(a)(3) of the United States Housing Act of 1937 to eliminate the eviction-related hardship exemption for those families that are not elderly families or disabled families, and also to lower the maximum minimum rent from $50 to $25.

AMEND MODERATE REHABILITATION RENEWALS TEST TO DROP FAIR MARKET RENT RESTRICTION

Section ____ would amend section 524(b)(3) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 to provide that renewal rents for moderate rehabilitation projects are set at the lesser of current rents plus an operating adjustment for inflation, or comparable market rents for the market area. Under current law, they are set at the lesser of current rents plus an operating adjustment for inflation, fair market rents, or comparable market rents for the market area.

VOUCHER UTILIZATION: CHANGE LIMITATION ON FAMILY PAYMENTS OF RENT FROM 40 PERCENT OF ADJUSTED MONTHLY INCOME TO 40 PERCENT OF MONTHLY INCOME

Section ____ would amend section 8(o)(3) of the United States Housing Act of 1937 to change the reference to "monthly adjusted income" to instead reference "monthly income" by striking the word "adjusted". The effect of this change would be to increase the total rent that a family initially receiving tenant-based section 8 assistance with respect to any dwelling unit may be allowed to pay from 40% of the monthly adjusted income of the family to 40% of the monthly income of the family.

A basic compromise in the 1998 merger of the voucher and certificate programs was that families could choose to pay more than 30% of adjusted income to rent better apartments, but could not pay more than 40% of adjusted income. This 40% cap helps to ensure that families entering the voucher program do not assume untenably high rent burdens that might undermine the stability of their housing. However, the limit has prevented some families from obtaining housing of their choice, and caused problems such as preventing a family previously in the voucher program and paying more than 40% of adjusted income from moving to a less expensive apartment that still costs more than 40% of adjusted income. This section would help to ease the potentially adverse effects of the limitation by raising the 40% of adjusted monthly income rent burden limitation to 40% of monthly income.

INCREASED FLEXIBILITY FOR SALE OF PROPERTIES UNDER ASSET CONTROL AREA AGREEMENTS

Section ____ would amend section 204(h)(2) of the National Housing Act to allow HUD to establish an exception to the definition of "eligible asset" for those properties for which rehabilitation is or becomes infeasible, or for which the best use is determined to be as open land or park space, effectively excluding those properties from the requirements of that section. Section 204(h) sets forth special procedures for FHA single family property disposition, and currently provides that HUD must dispose of all "eligible assets" in accordance with the terms of that section, including the terms of paragraph (5)(A)(iii) and paragraph (5)(B)(ii), which provide that properties acquired under an Asset Control Area ("ACA") agreement must be rehabilitated into livable homes. The changes made by this proposal would relieve the ACA partners from having to manage rehabilitation of properties where that use is not the best use and/or where rehabilitation is not feasible.

TECHNICAL CORRECTION TO NATIONAL HOUSING ACT AMENDMENT

Section 207 of HUD's FY 2002 appropriations Act amended section 203(c) of the National Housing Act to allow a change in premium for FHA single family programs insured under sections 203(k) and 234 of the National Housing Act. Section 207(a)(1) contained some technical drafting errors in its amendment to section 203(c)(1). Section ___ would amend section 207(a)(1) to correct these errors and would deem the amendment to be effective on November 26, 2001 (the date of enactment of HUD's FY 2002 appropriations Act).

From: CN=John F. Wood/OU=OMB/O=EOP [OMB]
To: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 4/24/2002 5:49:23 AM
Subject: : Victims Comp -- pensions for public safety officers

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:24-APR-2002 09:49:23.00
SUBJECT:: Victims Comp -- pensions for public safety officers
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Yesterday Feinberg,s office and PWC presented to DOJ and OMB their
proposed approach to pensions and other collateral offsets for NYC public
safety officers. These figures all assume that the decedent had a spouse
and two minor children, so they will go down or up substantially depending
up on the size of the family:

Pre-Collateral Offset
Post-Collateral Offset
Firefighter (age 25)
$3,251,686 $1,675,895
Firefighter (age 35)
$2,213,919 $890,950
Firefighter (age 45)
$1,326,628 $530,011
Lieutenant (age 35)
$2,831,770 $1,061,393
Lieutenant (age 45)
$1,622,838 $517,623
Captain (age 35)
$3,128,281 $1,148,465
Captain (age 45)
$1,761,083 $513,711
Batt. Chief(age 45)
$1,927,001 $596,453
Batt. Chief(age 50)
$1,584,071 $405,889
Police/Port(age 30)
$2,577,079 $1,137,494
Police/Port(age 40)
$2,066,258 $672,817
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Amy L. Call/OMB/EOP@EOP [OMB] <Amy L. Call>
CC: philip j. perry/omb/eop@eop [OMB] <philip j. perry>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>
Sent: 4/24/2002 9:13:57 AM
Subject: : Re: victims comp discussions

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2002 13:13:57.00
SUBJECT:: Re: victims comp discussions
TO:Amy L. Call (CN=Amy L. Call/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:philip j. perry (CN=philip j. perry/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I was in the room, as was Joel Kaplan. Mitch never said anything like that about putting a value on human life. That account is wrong.

The discussions that night largely were between (i) Delay and Nickles and (ii) Daschle and Gephardt.

Amy L. Call
04/24/2002 12:50:52 PM
Record Type: Record

To: Philip J. Perry/OMB/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: victims comp discussions

do either of you have any info on this? thanks
---------- Forwarded by Amy L. Call/OMB/EOP on 04/24/2002 12:49 PM ----------

Amy L. Call
04/24/2002 12:07:58 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: victims comp discussions

The National Journal is doing a story about how the federal government allocates scarce resources and how resources were allocated post-9-11. She is looking into the victims comp fund negotiations.

Sources she has talked to have told her that Senator Daschle said you can't put a value on a human life and Mitch said- yes I can and it is $37,850 She has also heard that Mitch was advocating for the collateral offset provision, and that there was a discussion about making this an appropriation as opposed to an entitlement.

She would like to know if this is a true accounting of these negotiations/discussions. She would also like to talk with Mitch or any staff involved in these discussions to get a more well-rounded version of events. Her deadline, of course, is today.

Message Sent
To:_____
Mitchell Daniels/OMB/EOP@EOP
Karen E. Keller/OMB/EOP
Trent D. Duffy/OMB/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Augustine T. Smythe/OMB/EOP
Rebecca A. Beynon/WHO/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP

From: CN=Amy L. Call/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Trent D. Duffy/OMB /EOP@EOP [OMB] <Trent D. Duffy>
CC: philip j. perry/omb/eop@eop [OMB] <philip j. perry>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>
Sent: 4/24/2002 12:31:04 PM
Subject: : Re: victims comp discussions

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Amy L. Call (CN=Amy L. Call/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:24-APR-2002 16:31:04.00
SUBJECT:: Re: victims comp discussions
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Trent D. Duffy (CN=Trent D. Duffy/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:philip j. perry (CN=philip j. perry/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:joel d. kaplan (CN=joel d. kaplan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Mitch just talked to Julie Kosterlitz, told her he had not made any statements about the value of a life. He was profuse about what an extraordinary effort it was to get this legislation together in such a short time and it was true bi-partisan compromise. He said that there were discussions on patterning the program after the police/fire benefits, which at the time were 250,000 or a multiple of that. Also that there was a very real time predicament in getting the airline system up and running again- and you had to deal with the liability issue to do that, and of course there were real economic, commerce and public confidence issues with getting the planes back in the air.

Julie is also interested in talking to staff about their version of events so I will pass your names on to her- (If you all call unsolicited it may look a little staged)

Brett M. Kavanaugh
04/24/2002 01:13:53 PM
Record Type: Record

To: Amy L. Call/OMB/EOP@EOP
cc: philip j. perry/omb/eop@eop, Joel D. Kaplan/WHO/EOP@EOP
bcc:
Subject: Re: victims comp discussions

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Amy L. Call

04/24/2002 12:50:52 PM
Record Type: Record

To: Philip J. Perry/OMB/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: victims comp discussions

do either of you have any info on this? thanks
---------- Forwarded by Amy L. Call/OMB/EOP on 04/24/2002 12:49 PM ----------

Amy L. Call
04/24/2002 12:07:58 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: victims comp discussions

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To:_____
Mitchell Daniels/OMB/EOP@EOP
Karen E. Keller/OMB/EOP
Trent D. Duffy/OMB/EOP@EOP
Jay P. Lefkowitz/OPD/EOP@EOP
Augustine T. Smythe/OMB/EOP
Rebecca A. Beynon/WHO/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP

From:	CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	4/24/2002 12:53:04 PM
Subject:	: Re: LRM KNB78 - - Request for Views on HR4070 Social Security Program Protection Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070
Attachments:	P_S6TX6003_WHO.TXT_1.txt; P_S6TX6003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2002 16:53:04.00
SUBJECT:: Re: LRM KNB78 - - Request for Views on HR4070 Social Security Program Protection Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/24/2002 04:53 PM ----------

From: Matthew J. Schneider on 04/24/2002 04:52:33 PM
Record Type: Record

To: Karen N. Blank/OMB/EOP@EOP
cc: WHGC LRM, philip j. perry/omb/eop@eop, justine f. rodriguez/omb/eop@eop, john f. wood/omb/eop@eop
bcc:
Subject: Re: LRM KNB78 - - Request for Views on HR4070 Social Security Program Protection Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070

Given the limited timing, OMB GC cannot assess all of these provisions before today's 4:45 deadline, but I will provide comments on Section 301, which would cap the assessment for SSA processing attorney fees at $100 or 6.3%, whichever is lower. We would be interested in finding out how the $100 / 6.3% figure was reached and whether the previous provision of 6.3% captured fees highly in excess of $100.

From: Karen N. Blank on 04/24/2002 04:14:56 PM
Record Type: Record

To: WHGC LRM, Philip J. Perry/OMB/EOP@EOP, Matthew J. Schneider/OMB/EOP@EOP, Justine F. Rodriguez/OMB/EOP@EOP
cc: John F. Wood/OMB/EOP@EOP
Subject: LRM KNB78 - - Request for Views on HR4070 Social Security Program Protection Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070

We are preparing to clear -- at 4:45pm today -- the attached SSA recommended positions on the provisions in HR 4070 (the bill is scheduled to be marked up tomorrow morning). If you have any objections/concerns with those positions, please let me know by that time. Thank you.
---------- Forwarded by Karen N. Blank/OMB/EOP on 04/24/2002 03:59 PM ----------

From: Karen N. Blank on 04/03/2002 04:28:55 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Ingrid M. Schroeder/OMB/EOP
Subject: LRM KNB78 - - Request for Views on HR4070 Social Security Program Protection Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070

Comments are due by 4:00 PM on Wednesday, April 10.

We are requesting views on HR 4070 (Shaw, R-FL) (bill text attached). IN ADDITION, we are requesting comments/clearance of SSA's recommended positions (table attached) on the proposals in HR 4070.
Note - A number of the proposals in HR 4070 were cleared previously by OMB and are identified accordingly in the SSA table.

Thank you.

- h.r.4070.doc

SSA advises that the House Ways and Means subcommittee on Social Security may mark-up HR 4070 as soon as the week of April 15.
---------- Forwarded by Karen N. Blank/OMB/EOP on 04/03/2002 04:22 PM ----------
LRM ID: KNB78
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, April 3, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Karen N. Blank
PHONE: (202)395-7363 FAX: (202)395-6148
SUBJECT: Request for Views on HR4070 Social Security Program Protection Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070

DEADLINE: 4:00 PM Wednesday, April 10, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Requesting views on HR 4070 (Shaw, R-FL) (bill text attached). IN ADDITION, requesting comments/clearance of SSA's recommended positions (table attached) on the proposals in HR 4070.
Note - A number of the proposals in HR 4070 were cleared previously by OMB and are identified accordingly in the SSA table.

SSA advises that the House Ways and Means subcommittee on Social Security may mark-up HR 4070 as soon as the week of April 15.

DISTRIBUTION LIST

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062-LABOR - Robert A. Shapiro - (202) 693-5500
061-JUSTICE - Daniel Bryant - (202) 514-2141
052-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7773

114-STATE - VACANT - (202) 647-4463

EOP:
James C. Capretta
Karen S. Dooley
Larry R. Matlack
Jack A. Smalligan
Diana L. Meredith
R. Varisa Patraporn
Jennifer Hanson-Kilbride
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Katrina A. McDonald
Mark J. Schwartz
Robert F. Mahaffie
James M. Kulikowski
NEC LRM
Charles P. Blahous
Ronald Haskins
Aquiles F. Suarez
Kathryn J. Hayes
Diana L. Schacht
Anne E. Phelps
Eleanor L. Gillmor
Philo D. Hall
Sheila Conley
Jerry E. Williams
Robert J. Shea
Karen M. Shaffer
George A. Rippey
Amy C. Smith
Justine F. Rodriguez
Pamula L. Simms
Attia Little
Gail S. Zimmerman
WHGC LRM
Philip J. Perry
Diana E. Furchtgott-Roth
Danielle M. Simonetta
Christine C. McCarlie
Lauren C. Lobrano
Kirsten A. Chadwick
Albert Hawkins
Edward Ingle
OVP LRM
Lauren Wittenberg
Brenda Aguilar
Brooke Dickson
Eva Kleederman
James J. Jukes
LRM ID: KNB78 SUBJECT: Request for Views on HR4070 Social Security Benefit Enhancements for Women Act of 2002 AND Clearance of Social Security Administration's Recommended Positions on Provisions in HR4070

RESPONSE TO
LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Karen N. Blank Phone: 395-7363 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
James C. Capretta/OMB/EOP@EOP
Karen S. Dooley/OMB/EOP@EOP
Larry R. Matlack/OMB/EOP@EOP
Jack A. Smalligan/OMB/EOP@EOP
Diana L. Meredith/OMB/EOP@EOP
R. Varisa Patraporn/OMB/EOP@EOP
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HR 4070 IH

107th CONGRESS

2d Session

H. R. 4070

To amend the Social Security Act and the Internal Revenue Code of 19 86 to provide additional safeguards for Social Security and Supplemental Securi ty Income beneficiaries with representative payees, to enhance program protecti ons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2002

Mr. SHAW (for himself, Mr. MATSUI, Mr. BECERRA, Mr. BRADY of Texas, Mr. HAYW ORTH, Mr. HERGER, Mr. LEWIS of Kentucky, Mr. POMEROY, and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Ways an d Means

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A BILL

To amend the Social Security Act and the Internal Revenue Code of 19 86 to provide additional safeguards for Social Security and Supplemental Securi ty Income beneficiaries with representative payees, to enhance program protecti ons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Social Security Program Protection Act of 2002'.

(b) TABLE OF CONTENTS- The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I--PROTECTION OF BENEFICIARIES

Subtitle A--Representative Payees

Sec. 101. Authority to reissue benefits misused by organizational re presentative payees.

Sec. 102. Oversight of representative payees.

Sec. 103. Disqualification from service as representative payee upon conviction of offenses resulting in imprisonment for more than 1 year and upon fugitive felon status.

Sec. 104. Fee forfeiture in case of benefit misuse by representative payees.

Sec. 105. Liability of representative payees for misused benefits.

Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.

Subtitle B--Enforcement

Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees.

TITLE II--PROGRAM PROTECTIONS

Sec. 201. Civil monetary penalty authority with respect to knowing w ithholding of material facts.

Sec. 202. Disqualification from eligibility for trial work period up on criminal, civil, or administrative finding of fraudulent concealment of work activity.

Sec. 203. Denial of title II benefits to fugitive felons and persons fleeing prosecution.

Sec. 204. Requirements relating to offers to provide for a fee a pro duct or service available without charge from the Social Security Administratio n.

Sec. 205. Refusal to recognize certain individuals as claimant repre sentatives.

Sec. 206. Penalty for corrupt or forcible interference with administ ration of Social Security Act.

TITLE III--ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

Sec. 301. Cap on attorney assessments.

Sec. 302. Extension of attorney fee payment system to title XVI clai ms.

Sec. 303. Effective date of title.

TITLE IV--MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A--Amendments Relating to the Ticket to Work and Work Incentive s Improvement Act of 1999

Sec. 401. Application of demonstration authority sunset date to new projects.

Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefi ts based on earnings.

Sec. 403. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings.

Sec. 404. Availability of Federal and State work incentive services to additional individuals.

Sec. 405. Technical amendment clarifying treatment for certain purpo ses of individual work plans under the Ticket to Work and Self-Sufficiency Prog ram.

Subtitle B--Miscellaneous Amendments

Sec. 411. Elimination of transcript requirement in remand cases full y favorable to the claimant.

Sec. 412. Nonpayment of benefits upon removal from the United States .

Sec. 413. Reinstatement of certain reporting requirements.

Sec. 414. Use of symbols, emblems, or names in reference to social s ecurity or medicare.

Sec. 415. Clarification of definitions regarding certain survivor be nefits.

Sec. 416. Optional methods for computing net earnings from self-empl oyment.

Sec. 417. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agre ement partner.

Subtitle C--Technical Amendments

Sec. 431. Technical correction relating to responsible agency head.< /ul>

Sec. 432. Technical correction relating to retirement benefits of mi nisters.

Sec. 433. Technical corrections relating to domestic employment.

Sec. 434. Technical corrections of outdated references.

Sec. 435. Technical correction respecting self-employment income in community property States.

TITLE I--PROTECTION OF BENEFICIARIES

Subtitle A--Representative Payees

SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRES ENTATIVE PAYEES.

(a) TITLE II AMENDMENTS-

(1) REISSUANCE OF BENEFITS- Section 205(j)(5) of the Social Securi ty Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence t he following new sentences: `In any case in which a representative payee--

`(i) that is not an individual (regardless of whether it is a `qua lified organization' within the meaning of paragraph (4)(B)); or

`(ii) is an individual who, for any month during a period when mis use occurs, serves 15 or more individuals who are beneficiaries under this titl e, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representati ve payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equ al to the amount of such benefit so misused. The provisions of this paragraph a re subject to the limitations of paragraph (7)(B).'.

(2) MISUSE OF BENEFITS DEFINED- Section 205(j) of such Act (42 U.S .C. 405(j)) is amended by adding at the end the following new paragraph:

`(8) For purposes of this subsection, misuse of benefits by a represen tative payee occurs in any case in which the representative payee receives paym ent under this title for the use and benefit of another person and converts suc h payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulat ion the meaning of the term `use and benefit' for purposes of this paragraph.'.

(b) TITLE VIII AMENDMENTS-

(1) REISSUANCE OF BENEFITS- Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended by inserting after the first sentence the fo llowing new sentences: `In any case in which a representative payee--

`(A) that is not an individual; or

`(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this t itle, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such represen tative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the am ount of such benefit so misused. The provisions of this paragraph are subject t o the limitations of subsection (l)(2).'.

(2) MISUSE OF BENEFITS DEFINED- Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following new subsection:

`(j) MISUSE OF BENEFITS- For purposes of this title, misuse of benefit s by a representative payee occurs in any case in which the representative paye e receives payment under this title for the use and benefit of another person a nd converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may presc ribe by regulation the meaning of the term `use and benefit' for purposes of th is subsection.'.

(3) TECHNICAL AMENDMENT- Section 807(a) of such Act (42 U.S.C. 100 7(a)) is amended, in the first sentence, by inserting `use and' before `benefit '.

(c) TITLE XVI AMENDMENTS-

(1) REISSUANCE OF BENEFITS- Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the foll owing new sentences: `In any case in which a representative payee--

`(i) that is not an individual (regardless of whether it is a `qua lified organization' within the meaning of subparagraph (D)(ii)); or

`(ii) is an individual who, for any month during a period when mis use occurs, serves 15 or more individuals who are beneficiaries under this titl e, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to the representativ e payee, the Commissioner of Social Security shall make payment to the benefici ary or the beneficiary's alternative representative payee of an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).'.

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES- Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended--

(A) in paragraph (12), by striking `and' at the end;

(B) in paragraph (13), by striking the period and inserting `; and'; and

(C) by inserting after paragraph (13) the following new paragr aph:

`(14) for the 9-month period beginning after the month in which re ceived, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) o r such other person under section 205(j), 807, or 1631(a)(2) has misused.'.

(3) MISUSE OF BENEFITS DEFINED- Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following new cla use:

`(iv) For purposes of this paragraph, misuse of benefits by a represen tative payee occurs in any case in which the representative payee receives paym ent under this title for the use and benefit of another person and converts suc h payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulat ion the meaning of the term `use and benefit' for purposes of this clause.'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNM ENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES-

(1) TITLE II AMENDMENTS- Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended--

(A) in paragraph (2)(C)(v), by striking `a community-based non profit social service agency licensed or bonded by the State' in subclause (I) and inserting `a certified community-based nonprofit social service agency (as defined in paragraph (9))';

(B) in paragraph (3)(F), by striking `community-based nonprofi t social service agencies' and inserting `certified community-based nonprofit s ocial service agencies (as defined in paragraph (9))';

(C) in paragraph (4)(B), by striking `any community-based nonp rofit social service agency which is bonded or licensed in each State in which it serves as a representative payee' and inserting `any certified community-bas ed nonprofit social service agency (as defined in paragraph (9))'; and

(D) by adding after paragraph (8) (as added by section 201(a)(2) of this Act) the following new paragraph:

`(9) For purposes of this subsection, the term `certified community-ba sed nonprofit social service agency' means a community based nonprofit social s ervice agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commi ssioner that it is bonded in accordance with requirements specified by the Comm issioner and that it is licensed in each State in which it serves as a represen tative payee (if licensing is available in such State) in accordance with requi rements specified by the Commissioner. Any such annual certification shall incl ude a copy of any independent audit on such agency which may have been performe d since the previous certification.'

(2) TITLE XVI AMENDMENTS- Section 1631(a)(2) of such Act (42 U.S.C . 1383(a)(2)) is amended--

(A) in subparagraph (B)(vii), by striking `a community-based n onprofit social service agency licensed or bonded by the State' in subclause (I ) and inserting `a certified community-based nonprofit social service agency (a s defined in subparagraph (I))';

(B) in subparagraph (D)(ii)--

(i) by striking `or any community-based' and all that foll ows through `in accordance' in subclause (II) and inserting `or any certified c ommunity-based nonprofit social service agency (as defined in subparagraph (I)) , if the agency, in accordance';

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margination accordingly); and

(iii) by striking `subclause (II)(bb)' and inserting `subc lause (II)'; and

(C) by adding at the end the following new subparagraph:
< /ul>

`(I) For purposes of this paragraph, the term `certified community-bas ed nonprofit social service agency' means a community based nonprofit social se rvice agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commis sioner that it is bonded in accordance with requirements specified by the Commi ssioner and that it is licensed in each State in which it serves as a represent ative payee (if licensing is available in the State) in accordance with require ments specified by the Commissioner. Any such annual certification shall includ e a copy of any independent audit on the agency which may have been performed s ince the previous certification.'.

(3) EFFECTIVE DATE- The amendments made by this subsection shall t ake effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(b) PERIODIC ONSITE REVIEW-

(1) TITLE II AMENDMENT- Section 205(j)(6) of such Act (42 U.S.C. 4 05(j)(6)) is amended to read as follows:

`(6)(A) The Commissioner of Social Security shall provide for the peri odic onsite review of any person or agency that receives the benefits payable u nder this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or sec tion 1631(a)(2) in any case in which--

`(i) the representative payee is a person who serves in that capac ity with respect to 15 or more such individuals;

`(ii) the representative payee is a certified community-based nonp rofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

`(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or m ore such individuals.

`(B) Within 120 days after the end of each fiscal year, the Commission er shall submit to the Committee on Ways and Means of the House of Representati ves and the Committee on Finance of the Senate a report on the results of perio dic onsite reviews conducted during the fiscal year pursuant to subparagraph (A). Each such report shall describe in detail all problems identified in such re views and any corrective action taken or planned to be taken to correct such pr oblems, and shall include--

`(i) the number of such reviews,

`(ii) the results of such reviews,

`(iii) the number of cases in which the representative payee was c hanged and why,

`(iv) the number of cases involving the exercise of expedited, tar geted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a simi lar irregularity,

`(v) the number of cases discovered in which there was a misuse of funds,

`(vi) how any such cases of misuse of funds were dealt with by the Commissioner,

`(vii) the final disposition of such cases of misuse of funds, inc luding any criminal penalties imposed, and

`(viii) such other information as the Commissioner deems appropria te.'.

(2) TITLE VIII AMENDMENT- Section 807 of such Act (as amended by s ection 101(b)(2) of this Act) is amended further by adding at the end the follo wing new subsection:

`(k)(1) PERIODIC ONSITE REVIEW- The Commissioner of Social Security ma y provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits pa yable under title II or title XVI) to another individual pursuant to the appoin tment of such person or

agency as a representative payee under this section, section 205(j), or sect ion 1631(a)(2) in any case in which--

`(A) the representative payee is a person who serves in that capac ity with respect to 15 or more such individuals; or

`(B) the representative payee is an agency that serves in that cap acity with respect to 50 or more such individuals.

`(2) Within 120 days after the end of each fiscal year, the Commission er shall submit to the Committee on Ways and Means of the House of Representati ves and the Committee on Finance of the Senate a report on the results of perio dic onsite reviews conducted during the fiscal year pursuant to paragraph (1). Each such report shall describe in detail all problems identified in such revie ws and any corrective action taken or planned to be taken to correct such probl ems, and shall include--

`(A) the number of such reviews,

`(B) the results of such reviews,

`(C) the number of cases in which the representative payee was cha nged and why,

`(D) the number of cases involving the exercise of expedited, targ eted oversight of the representative payee by the Commissioner conducted upon r eceipt of an allegation of misuse of funds, failure to pay a vendor, or a simil ar irregularity,

`(E) the number of cases discovered in which there was a misuse of funds,

`(F) how any such cases of misuse of funds were dealt with by the Commissioner,

`(G) the final disposition of such cases of misuse of funds, inclu ding any criminal penalties imposed, and

`(H) such other information as the Commissioner deems appropriate. '.

(3) TITLE XVI AMENDMENT- Section 1631(a)(2)(G) of such Act (42 U.S .C. 1383(a)(2)(G)) is amended to read as follows:

`(G)(i) The Commissioner of Social Security shall provide for the peri odic onsite review of any person or agency that receives the benefits payable u nder this title (alone or in combination with benefits payable under title II o r title VIII) to another individual pursuant to the appointment of the person o r agency as a representative payee under this paragraph, section 205(j), or sec tion 807 in any case in which--

`(I) the representative payee is a person who serves in that capac ity with respect to 15 or more such individuals;

`(II) the representative payee is a certified community-based nonp rofit social service agency (as defined in subparagraph (I) of this paragraph o r section 205(j)(9)); or

`(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 o r more such individuals.

`(ii) Within 120 days after the end of each fiscal year, the Commissio ner shall submit to the Committee on Ways and Means of the House of Representat ives and the Committee on Finance of the Senate a report on the results of peri odic onsite reviews conducted during the fiscal year pursuant to clause (i). Ea ch such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include--

`(I) the number of the reviews,

`(II) the results of such reviews,

`(III) the number of cases in which the representative payee was c hanged and why,

`(IV) the number of cases involving the exercise of expedited, tar geted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a simi lar irregularity,

`(V) the number of cases discovered in which there was a misuse of funds,

`(VI) how any such cases of misuse of funds were dealt with by the Commissioner,

`(VII) the final disposition of such cases of misuse of funds, inc luding any criminal penalties imposed, and

`(VIII) such other information as the Commissioner deems appropria te.'.

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE UPON CON VICTION OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR AND UPON FUG ITIVE FELON STATUS.

(a) TITLE II AMENDMENTS- Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended--

(1) in subparagraph (B)(i)--

(A) by striking `and' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subcl auses:

`(IV) obtain information concerning whether such person has been c onvicted of any other offense under Federal or State law which resulted in impr isonment for more than 1 year,

`(V) obtain information concerning whether such person is a fugiti ve felon as described in section 1611(e)(4), and'.

(2) in subparagraph (C)(i)(II), by striking `subparagraph (B)(i)(I V),,' and inserting `subparagraph (B)(i)(VI)' and striking `section 1631(a)(2)( B)(ii)(IV)' and inserting `section 1631(a)(2)(B)(ii)(VI)'; and

(3) in subparagraph (C)(i)--

(A) by striking `or' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and i nserting a comma; and

(C) by adding at the end the following new subclauses:

`(IV) such person has previously been convicted as described in su bparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwith standing such conviction, or

`(V) such person is in fugitive felon status as described in secti on 1611(e)(4).'.

(b) TITLE VIII AMENDMENTS- Section 807 of such Act (42 U.S.C. 1007) is amended--

(1) in subsection (b)(2)--

(A) by striking `and' at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following new subp aragraphs:

`(D) obtain information concerning whether such person has bee n convicted of any other offense under a law of the United States or of any Sta te of the United States which resulted in imprisonment for more than 1 year;

`(E) obtain information concerning whether such person is a fu gitive felon as described in section 1611(e)(4); and'; and

(2) in subsection (d)(1)--

(A) by striking `or' at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

`(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment wou ld be appropriate notwithstanding such conviction; or

`(E) such person is in fugitive felon status as described in s ection 1611(e)(4).'.

(c) TITLE XVI AMENDMENTS- Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended--

(1) in clause (ii)--

(A) by striking `and' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subcl auses:

`(IV) obtain information concerning whether the person has been co nvicted of any other offense under Federal or State law which resulted in impri sonment for more than 1 year;

`(V) obtain information concerning whether such person is a fugiti ve felon as described in section 1611(e)(4); and';

(2) in clause (iii)(II)--

(A) by striking `clause (ii)(IV)' and inserting `clause (ii)(V I)'; and

(B) by striking `section 205(j)(2)(B)(i)(IV)' and inserting `s ection 205(j)(2)(B)(i)(VI)'; and

(3) in clause (iii)--

(A) by striking `or' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and i nserting a semicolon; and

(C) by adding at the end the following new subclauses:

`(IV) if the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that t he payment would be appropriate notwithstanding the conviction; or

`(V) such person is in fugitive felon status as described in secti on 1611(e)(4).'.

(d) EFFECTIVE DATE- The amendments made by this section shall take eff ect on the first day of the thirteenth month beginning after the date of the en actment of this Act.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAY EES.

(a) TITLE II AMENDMENTS- Section 205(j)(4)(A)(i) of the Social Securit y Act (42 U.S.C. 405(j)(4)(A)(i)) is amended--

(1) in the first sentence, by striking `A' and inserting `Except a s provided in the next sentence, a'; and

(2) in the second sentence, by striking `The Secretary' and insert ing the following:

`A qualified organization may not collect a fee from an individual for a ny month with respect to which the Commissioner of Social Security or a court o f competent jurisdiction has determined that the organization misused all or pa rt of the individual's benefit, and any amount so collected by the qualified or ganization for such month shall be treated as a misused part of the individual' s benefit for purposes of paragraphs (5) and (6). The Commissioner'.

(b) TITLE XVI AMENDMENTS- Section 1631(a)(2)(D)(i) of such Act (42 U.S .C. 1383(a)(2)(D)(i)) is amended--

(1) in the first sentence, by striking `A' and inserting `Except a s provided in the next sentence, a'; and

(2) in the second sentence, by striking `The Commissioner' and ins erting the following: `A qualified organization may not collect a fee from an i ndividual for any month with respect to which the Commissioner of Social Securi ty or a court of competent jurisdiction has determined that the organization mi sused all or part of the individual's benefit, and any amount so collected by t he qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commiss ioner'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner makes the determination of misuse after Decem ber 31, 2002.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS- Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102 of this Act) is amended fur ther--

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking `para graph (9)' and inserting `paragraph (10)';

(3) in paragraph (6)(A)(ii), by striking `paragraph (9)' and inser ting `paragraph (10)'; and

(4) by inserting after paragraph (6) the following new paragraph:< /ul>

`(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, Sta te, or local government agency has misused all or part of an individual's benef it that was paid to such representative payee under this subsection, the repres entative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayme nt of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Sub ject to subparagraph (B), upon recovering all or any part of such amount, the C ommissioner shall certify an amount equal to the recovered amount for payment t o such individual or such individual's alternative representative payee.

`(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) of this paragraph and the amount certified for payment under paragraph (5) may no t exceed the total benefit amount misused by the representative payee with resp ect to such individual.'.

(b) TITLE VIII AMENDMENT- Section 807 of such Act (as amended by secti on 102(b)(2)) is amended further by adding at the end the following new subsect ion:

`(l) LIABILITY FOR MISUSED AMOUNTS-

`(1) IN GENERAL- If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an indiv idual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amoun t (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all p urposes of this Act and related laws pertaining to the recovery of such overpay ments. Subject to paragraph (2), upon recovering all or any part of such amount , the Commissioner shall make payment of an amount equal to the recovered amoun t to such individual or such individual's alternative representative payee.

`(2) LIMITATION- The total of the amount paid to such individual o r such individual's alternative representative payee under paragraph (1) of thi s subsection and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individ ual.'.

(c) TITLE XVI AMENDMENTS- Section 1631(a)(2) of such Act (42 U.S.C. 13 83(a)(2)) (as amended by section 102 of this Act) is amended further--

(1) in subparagraph (G)(i)(II), by striking `paragraph (9)' and in serting `paragraph (10)'; and

(2) by striking subparagraph (H) and inserting the following:

`(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, Sta te, or local government agency has misused all or part of an individual's benef it that was paid to the representative payee under this paragraph, the represen tative payee shall be liable for the amount misused, and the amount (to the ext ent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of th is Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissione r shall make payment of an amount equal to the recovered amount to such individ ual or such individual's alternative representative payee.

`(ii) The total of the amount paid to such individual or such individu al's alternative representative payee under clause (i) of this subparagraph and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.'.

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(d) EFFECTIVE DATE- The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner makes the determination of misuse after December 31, 2002.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPR ESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) TITLE II AMENDMENTS- Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) is amended--

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following new subparag raph:

`(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required b y the Commissioner of Social Security under subparagraph (A) or (D), the Commis sioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual re sides in order to receive such payments.'.

(b) TITLE VIII AMENDMENTS- Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended--

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:< /ul>

`(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REP RESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING- In any case in which th e person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissione r of Social Security under paragraph (1) or (2), the Commissioner may, after fu rnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by th e Social Security Administration as serving the area in which the qualified ind ividual resides in order to receive such benefit payments.'.

(c) TITLE XVI AMENDMENT- Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following new clause:

`(v) In any case in which the person described in clause (i) or (iv) r eceiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may , after furnishing notice to the person and the individual entitled to the paym ent, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in ord er to receive such payments.'.

(d) EFFECTIVE DATE- The amendments made by this section shall take eff ect 180 days after the date of the enactment of this Act.

Subtitle B--Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONV ERSIONS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL- Section 1129(a) of the Social Security Act (42 U.S.C. 1320a-8) is amended by adding at the end the following new paragraph:

`(3) Any person (including an organization, agency, or other entity) w ho, having received, while acting in the capacity of a representative payee pur suant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or a ny part thereof, to a use that such person knows or should know is other than f or the use and benefit of such other individual shall be subject to, in additio n to any other penalties that may be prescribed by law, a civil money penalty o f not more than $5,000 for each such conversion. Such person shall also be subj ect to an assessment, in lieu of damages sustained by the United States resulti ng from the conversion, of not more than twice the amount of any payments so co nverted.'.

(b) EFFECTIVE DATE- The amendments made by this section shall apply wi th respect to violations committed after the date of the enactment of this Act.

TITLE II--PROGRAM PROTECTIONS

SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO KNOWING WITHH OLDING OF MATERIAL FACTS.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS-

(1) CIVIL PENALTIES- Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a-8(a)(1)) is amended--

(A) by striking `who' in the first sentence and inserting `who --';

(B) by striking `makes' in the first sentence and all that fol lows through `shall be subject to' and inserting the following:

`(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misl eading,

`(B) makes such a statement or representation for such use with kn owing disregard for the truth, or

`(C) omits from a statement or representation for such use, or oth erwise withholds disclosure of, a fact which the individual knows or should kno w is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments un der title VIII or XVI, if the individual knows, or should know, that the statem ent or representation with such omission is false or misleading or that the wit hholding of such disclosure is misleading,

shall be subject to';

(C) by inserting `or each receipt of such benefits or payments while withholding disclosure of such fact' after `each such statement or repre sentation' in the first sentence;

(D) by inserting `or because of such withholding of disclosure of a material fact' after `because of such statement or representation' in the second sentence; and

(E) by inserting `or such a withholding of disclosure' after ` such a statement or representation' in the second sentence.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES- Section 1129A (a) of such Act (42 U.S.C. 1320a-8a(a)) is amended in the first sentence--

(A) by striking `who' and inserting `who--'; and

(B) by striking `makes' and all that follows through `shall be subject to,' and inserting the following:

`(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI that the person knows or should know is false or misle ading,

`(2) makes such a statement or representation for such use with kn owing disregard for the truth, or

`(3) omits from a statement or representation for such use, or oth erwise withholds disclosure of, a fact which the individual knows or should kno w is

material to the determination of any initial or continuing right to or the a mount of monthly insurance benefits under title II or benefits or payments unde r title VIII or XVI, if the individual knows, or should know, that the statemen t or representation with such omission is false or misleading or that the withh olding of such disclosure is misleading,

shall be subject to,'.

(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS- Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a-8(e)(2)(B)) is amended by striking `In the ca se of amounts recovered arising out of a determination relating to title VIII o r XVI,' and inserting `In the case of any other amounts recovered under this se ction,'.

(c) CONFORMING AMENDMENTS-

(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a-8(b)(3)(A)) is amended by striking `charging fraud or false statements'.

(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a-8(c)(1)) is am ended by striking `and representations' and inserting `, representations, or ac tions'.

(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a-8(e)(1)(A)) is amended by striking `statement or representation referred to in subsection (a) was made' and inserting `violation occurred'.

(d) EFFECTIVE DATES- The amendments made by this section shall apply w ith respect to violations committed after the date of the enactment of this Act .

SEC. 202. DISQUALIFICATION FROM ELIGIBILITY FOR TRIAL WORK PERIOD UPON C RIMINAL, CIVIL, OR ADMINISTRATIVE FINDING OF FRAUDULENT CONCEALMENT OF WORK ACT IVITY.

(a) IN GENERAL- Section 222(c) of the Social Security Act (42 U.S.C. 4 22(c)) is amended by adding at the end the following new paragraph:

`(5) Effective upon the date of any final determination (after any app licable notice and opportunity for hearing) by a Federal court or by a Federal agency (including any final determination in a proceeding to determine whether to impose a civil monetary penalty under this Act), that an individual has frau dulently concealed work activity from the Commissioner of Social Security--

`(A) any ongoing period of trial work for such individual under th is subsection shall end with the end of the preceding month,

`(B) such individual shall have no period of trial work thereafter in connection with any entitlement of such individual under section 223, 202(d), 202(e), or 202(f),

`(C) such individual shall not be eligible for any subsequent waiv er of adjustment of benefits or other form of recovery applicable in connection with any payment to such individual of more than the correct amount under sect ion 223, 202(d), 202(e), or 202(f) by reason of such concealment, and

`(D) amounts otherwise due under this title as restitution, penalt ies, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply wit h respect to work activity performed after the date of the enactment of this Ac t.

SEC. 203. DENIAL OF TITLE II BENEFITS TO FUGITIVE FELONS AND PERSONS FLE EING PROSECUTION.

(a) IN GENERAL- Section 202(x) of the Social Security Act (42 U.S.C. 4 02(x)) is amended--

(1) in the heading, by striking `Prisoners' and all that follows a nd inserting the following: `Prisoners, Certain Other Inmates of Publicly Funde d Institutions, and Fugitives';

(2) in paragraph (1)(A)(ii)(IV), by striking `or' at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end an d inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

`(iv) is fleeing to avoid prosecution, or custody or confinement a fter conviction, under the laws of the place from which the person flees, for a n offense punishable by imprisonment for more than 1 year under the laws of the place from which the person flees, or

`(v) is violating a condition of probation or parole imposed under Federal or State law.

In the case of an individual from whom such monthly benefits have been w ithheld pursuant to clause (iv), the Commissioner may, for good cause shown, pa y such withheld benefits to the individual.'; and

(5) in paragraph (3), by adding at the end the following new subpa ragraph:

`(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than sectio n 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), t he Commissioner shall furnish any Federal, State, or local law enforcement offi cer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this t itle, if the officer furnishes the Commissioner with the name of the beneficiar y, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissi oner that--

`(i) the beneficiary--

`(I) is described in clause (iv) or (v) of paragraph (1)(A); a nd

`(II) has information that is necessary for the officer to con duct the officer's official duties; and

`(ii) the location or apprehension of the beneficiary is within th e officer's official duties.'.

SEC. 204. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL- Section 1140 of the Social Security Act (42 U.S.C. 132 0b-10) is amended--

(1) in subsection (a), by adding at the end the following new para graph:

`(4)(A) No person shall offer, for a fee, to assist an individual to o btain a product or service that the person knows or should know is provided fre e of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that--

`(i) explains that the product or service is available free of cha rge from the Social Security Administration, and

`(ii) complies with standards prescribed by the Commissioner of So cial Security respecting content of such notice and its placement, visibility, and legibility.

`(B) Subparagraph (A) shall not apply to any offer--

`(i) to serve as a claimant representative in connection with a cl aim arising under title II, title VIII, or title XVI; or

`(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.'; and

(2) in the heading, by striking `PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE' and inserting `PROHIBITIONS RELATING TO REFERE NCES'.

(b) EFFECTIVE DATE- The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the

Commissioner o f Social Security promulgates final regulations prescribing the standards appli cable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within one year after the date of the enactment of this Act.

SEC. 205. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENT ATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: `Notwithstanding the preceding sentences, the Commissioner (A) may refuse to recognize as a repr esentative, and may disqualify a representative already recognized, any attorne y who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participa ting in or appearing before any Federal program or agency, and (B) may refuse t o recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she wa s previously admitted to practice. A representative who has been disqualified o r suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the am ount authorized shall be barred from appearing before the Social Security Admin istration as a representative until full restitution is made to the claimant an d, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.'.

SEC. 206. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATI ON OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1134 the following new section:

`ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

`SEC. 1135. CORRUPT OR FORCIBLE INTERFERENCE- whoever corruptly or by force or threats of force (including any threatening letter or communication) a ttempts to intimidate or impede any officer, employee, or contractor of the soc ial security administration (including any State employee of a disability deter mination service or any other individual designated by the commissioner of soci al security) acting in an official capacity to carry out a duty under this act, or in any other way corruptly or by force or threats of force (including any t hreatening letter or communication) obstructs or impedes, or attempts to obstru ct or impede, the due administration of this act, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense i s committed only by threats of force, the person shall be fined not more than $ 3,000, imprisoned not more than 1 year, or both. In this

subsection, the term ` threats of force' means threats of harm to the officer or employee of the Unite d States or to a member of the family of such an officer or employee.'.

TITLE III--ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended by inserting `, except that the maximum amount of the assessment may not exceed $100' after `subparagraph (B)'.

SEC. 302. EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.< /h3>

Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) i s amended--

(1) in the matter in subparagraph (A) preceding clause (i)--
< /ul>

(A) by striking `section 206(a)' and inserting `section 206';< /ul>

(B) by striking `(other than paragraph (4) thereof)' and inser ting `(other than subsections (a)(4) and (d) thereof); and

(C) by striking `paragraph (2) thereof' and inserting `such se ction';

(2) in subparagraph (A)(i), by striking `in subparagraphs (A)(ii)( I) and (C)(i),' and inserting `in subparagraphs (A)(ii) (I) and (D)(i) of subsec tion (a)(2)', and by striking `and' at the end;

(3) by striking subparagraph (A)(ii) and inserting the following:< /ul>

`(ii) by substituting, in subsections (a)(2)(B) and (b)(1) (B)(i), the phrase `section 1631(a)(7)(A) or the

requirements of due process of law' fo r the phrase `subsection (g) or (h) of section 223';

`(iii) by substituting, in subsection (a)(2)(C)(i), the phrase `un der title II' for the phrase `under title XVI';

`(iv) by substituting, in subsection (b)(1)(A), the phrase `pay th e amount of such fee' for the phrase `certify the amount of such fee for paymen t' and by striking, in subsection (b)(1)(A), the phrase `or certified for payme nt'; and

`(v) by substituting, in subsection (b)(1)(B)(ii), the phrase `dee med to be such amounts as determined before any applicable reduction under sect ion 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127 (a)' for the phrase `determined before any applicable reduction under section 1127(a))'.'; and

(4) by striking subparagraph (B) and inserting the following new s ubparagraphs:

`(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of s uch past-due benefits (as determined before any applicable reduction under sect ion 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past- due benefits (as so determined and so reduced).

`(C)(i) Whenever a fee for services is required to be paid to an attor ney from a claimant's past-due benefits pursuant to subparagraph (B), the Commi ssioner shall impose on the

attorney an assessment calculated in accordance wit h clause (ii).

`(ii)(I) The amount of an assessment under clause (i) shall be equal t o the product obtained by multiplying the amount of the representative's fee th at would be required to be paid by subparagraph (B) before the application of t his subparagraph, by the percentage specified in subclause (II), except that th e maximum amount of the assessment may not exceed $100.

`(II) The percentage specified in this subclause is such percentage ra te as the Commissioner determines is necessary in order to achieve full recover y of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

`(iii) The Commissioner may collect the assessment imposed on an attor ney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefit s.

`(iv) An attorney subject to an assessment under clause (i) may not, d irectly or indirectly, request or otherwise obtain reimbursement for such asses sment from the claimant whose claim gave rise to the assessment.

`(v) Assessments on attorneys collected under this subparagraph shall be deposited in the Treasury in a separate fund created for this purpose.

`(vi) The assessments authorized under this subparagraph shall be coll ected and available for obligation only to the extent and in the amount provide d in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out th is title and related laws.'.

SEC. 303. EFFECTIVE DATE OF TITLE.

The amendments made by this title shall apply with respect to fees for representation of claimants which are first required to be certified or paid u nder section 206 or 1631 (d)(2) of the Social Security Act after 180 days after the date of the enactment of this Act.

TITLE IV--MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A--Amendments Relating to the Ticket to Work and Work I ncentives Improvement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJ ECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended--

(1) in the first sentence of subsection (c), by striking `conducte d under subsection (a)' and inserting `initiated under subsection (a) on or bef ore December 17, 2004'; and

(2) in subsection (d)(2), by amending the first sentence to read a s follows: `The authority to initiate projects under the preceding provisions o f this section shall terminate on December 18, 2004.'.

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SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEM ONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS B ASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement A ct of 1999 (42 U.S.C. 434 note) is amended by striking `(42 U.S.C. 401 et seq.) ,' and inserting `(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b-19) as they relate to the program established unde r title II of such Act,'.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDED FOR REDUCTIONS IN D ISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement A ct of 1999 (42 U.S.C. 434 note) is amended to read as follows:

`(f) EXPENDITURES- Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or title XVIII of the Social Security Act, as appropriate. Benefits p ayable to or on behalf of individuals by reason of participation in projects un der this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appr opriate by the Commissioner of Social Security, and from the Federal Hospital I nsurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by

the Secretary of Health and Human Services, from funds available for benefits under such title II or title XVIII.'.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO A DDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM-

(1) IN GENERAL- Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b-20(c)(2)) is amended to read as follows:

`(2) DISABLED BENEFICIARY- the term `disabled beneficiary' means a n individual--

`(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

`(B) who is receiving a cash payment described in section 1616 (a) of this Act or a supplementary payment described in section 212(a)(3) of Pu blic Law 93-66 (without regard to whether such payment is paid by the Commissio ner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93-66);

`(C) who, pursuant to section 1619(b) of this Act, is consider ed to be receiving benefits under title XVI of this Act; or

`(D) who is entitled to benefits under part A of title XVIII o f this Act by reason of the penultimate sentence of section 226(b) of this Act. '.

(2) EFFECTIVE DATE- The amendment made by this subsection shall ap ply with respect to grants, cooperative agreements, or contracts entered into o n or after the date of the enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE-

(1) IN GENERAL- Section 1150(g)(2) of such Act (42 U.S.C. 1320b-21 (g)(2)) is amended to read as follows:

`(2) DISABLED BENEFICIARY- the term `disabled beneficiary' means a n individual--

`(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

`(B) who is receiving a cash payment described in section 1616 (a) of this Act or a supplementary payment described in section 212(a)(3) of Pu blic Law 93-66 (without regard to whether such payment is paid by the Commissio ner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93-66);

`(C) who, pursuant to section 1619(b) of this Act, is consider ed to be receiving benefits under title XVI of this Act; or

`(D) who is entitled to benefits under part A of title XVIII o f this Act by reason of the penultimate sentence of section 226(b) of this Act. '.

(2) EFFECTIVE DATE- The amendment made by this subsection shall ap ply with respect to

payments provided after the date of the enactment of this A ct.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL- Section 1148(g)(1) of the Social Security Act (42 U.S. C. 1320b-19) is amended by adding at the end, after and below subparagraph (E), the following new sentence:

`An individual work plan established pursuant to this subsection sha ll be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue C ode of 1986, as an individualized written plan for employment under a State pla n for vocational rehabilitation services approved under the Rehabilitation Act of 1973.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take ef fect as if included in section 505 of the Ticket to Work and Work Incentives Im provement Act of 1999 (Public Law 106-170; 113 Stat. 1921).

Subtitle B--Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FA VORABLE TO THE CLAIMANT.

(a) IN GENERAL- Section 205(g) of the Social Security Act (42 U.S.C. 4 05(g)) is amended in the sixth sentence by striking `and a transcript' and inse rting `and, in

any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply wit h respect to final determinations issued (upon remand) on or after the date of the enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL- Paragraphs (1) and (2) of section 202(n) of the Social Security Act (42 U.S.C. 402(n)(1), (2)) are each amended by striking `or (1)(E)'.

(b) EFFECTIVE DATE- The amendment made by this section to section 202(n)(1) of the Social Security Act shall apply to individuals with respect to who m the Commissioner of Social Security receives a removal notice from the Attorn ey General after the date of the enactment of this Act. The amendment made by t his section to section 202(n)(2) of the Social Security Act shall apply with re spect to removals occurring after the date of the enactment of this Act.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act o f 1995 (31 U.S.C. 1113 note) does not apply to any report required to be submit ted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401 (c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i (b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t (b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i) (3)).

(C) Section 103(d)(2) of the Senior Citizens' Right to Work Act of 1996 (42 U.S.C. 401 note).

SEC. 414. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECUR ITY OR MEDICARE.

(a) IN GENERAL- Section 1140(a)(1) of the Social Security Act (42 U.S. C. 1320b-10(a)(1)) is amended--

(1) in subparagraph (A), by inserting ` `Centers for Medicare & Me dicaid Services',' after ` `Health Care Financing Administration',', by strikin g `or `Medicaid', ' and inserting ` `Medicaid', `Death Benefits Update', `Feder al Benefit Information', `Funeral Expenses', or `Final Supplemental Plan',' and by inserting ` `CMS',' after ` `HCFA',';

(2) in subparagraph (B), by inserting `Centers for Medicare & Medi caid Services,' after `Health Care Financing Administration,' each place it app ears; and

(3) in the matter following subparagraph (B), by striking `the Hea lth Care Financing Administration,' each place it appears and inserting `the Ce nters for Medicare & Medicaid Services,'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to items sent after the sixth month ending after the Commissioner of Social Secur ity promulgates final regulations prescribing the standards applicable to the e xplicit statements required to be provided in connection with such items. The C ommissioner shall promulgate such final regulations within one year after the d ate of the enactment of this Act.

SEC. 415. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFI TS.

(a) WIDOWS- Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended--

(1) by redesignating subclauses (A) through (C) of clause (6) as s ubclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) throug h (F), respectively;

(3) in clause (E) (as redesignated), by inserting `except as provi ded in paragraph (2),' before `she was married';

(4) by inserting `(1)' after `(c)'; and

(5) by adding at the end the following new paragraph:

`(2) The requirements of paragraph (1)(E) in connection with the survi ving wife of an individual shall be treated as satisfied if--

`(A) the individual had been married prior to the individual's mar riage to the surviving wife,

`(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

`(C) during the period of the prior wife's institutionalization, t he individual would have divorced the prior wife and married the surviving wife , but the individual did not do so because such divorce would have been unlawfu l, by reason of the prior wife's institutionalization, under the laws of the St ate in which the individual was domiciled at the time (as determined based on e vidence satisfactory to the Commissioner of Social Security),

`(D) the prior wife continued to remain institutionalized up to th e time of her death, and

`(E) the individual married the surviving wife within 60 days afte r prior wife's death.'.

(b) WIDOWERS- Section 216(g) of such Act (42 U.S.C. 416(g)) is amended --

(1) by redesignating subclauses (A) through (C) of clause (6) as s ubclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) throug h (F), respectively;

(3) in clause (E) (as redesignated), by inserting `except as provi ded in paragraph (2),' before `he was married';

(4) by inserting `(1)' after `(g)'; and

(5) by adding at the end the following new paragraph:

`(2) The requirements of paragraph (1)(E) in connection with the survi ving husband of an individual shall be treated as satisfied if--

`(A) the individual had been married prior to the individual's mar riage to the surviving husband,

`(B) the prior husband was institutionalized during the individual 's marriage to the prior husband due to mental incompetence or similar incapaci ty,

`(C) during the period of the prior husband's institutionalization , the individual would have divorced the prior husband and married the survivin g husband, but the individual did not do so because such divorce would have bee n unlawful, by reason of the prior husband's institutionalization, under the la ws of the State in which the individual was domiciled at the time (as determine d based on evidence satisfactory to the Commissioner of Social Security),

**
**

`(D) the prior husband continued to remain institutionalized up to the time of his death, and

`(E) the individual married the surviving husband within 60 days a fter prior husband's death.'.

(b) EFFECTIVE DATE- The amendments made by this section shall be effec tive with respect to applications for benefits under title II of the Social Sec urity Act filed during months ending after the date of the enactment of this Ac t.

SEC. 416. OPTIONAL METHODS FOR COMPUTING NET EARNINGS FROM SELF-EMPLOYME NT.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986-

(1) IN GENERAL- Section 1402(h) of the Internal Revenue Code of 19 86 is amended to read as follows:

`(h) OPTIONAL METHOD FOR COMPUTING NET EARNINGS FROM SELF-EMPLOYMENT-< /ul>

`(1) INDIVIDUALS- In the case of any trade or business which is ca rried on by an individual--

`(A) if the gross income derived by the individual from such t rade or business is not more than the upper limit for the taxable year and the net earnings from self-employment derived by the individual from such trade or business (computed under

subsection (a) without regard to this sentence) are le ss than 66 2/3 percent of such gross income, the net earnings from self-employ ment derived by the individual from such trade or business may, at the individu al's option, be deemed to be 66 2/3 percent of such gross income, or

`(B) if the gross income derived by the individual from such t rade or business is more than the upper limit for the taxable year and the net earnings from self-employment derived by the individual from such trade or busi ness (computed under subsection (a) without regard to this sentence) are less t han the lower limit for the taxable year, the net earnings from self-employment derived by the individual from such trade or business may, at the individual's option, be deemed to be the lower limit for the taxable year.

`(2) MEMBER OF A PARTNERSHIP- In the case of a member of a partner ship carrying on any trade or business--

`(A) if the member's distributive share of the gross income of the partnership

derived from such trade or business (after such gross income h as been reduced by the sum of all payments to which section 707(c) applies) is not more than the upper limit for the taxable year and the member's distributiv e share (whether or not distributed) of income described in section 702(a)(8) d erived from such trade or business (computed under this subsection without rega rd to this sentence) is less than 66 2/3 percent of the member's distributive share of such gross income (after such gross income has been so reduced), the m ember's distributive share of income described in section 702(a)(8) derived fro m such trade or business may, at the member's option, be deemed to be an amount equal to 66 2/3 percent of the member's distributive share of such gross inco me (after such gross income has been so reduced), or

`(B) if the member's distributive share of the gross income of the partnership derived from such trade or business (after such gross income h as been reduced by the sum of all payments to which section 707(c) applies)

is more than the upper limit for the taxable year and the member's distributive sh are (whether or not distributed) of income described in section 702(a)(8) deriv ed from such trade or business (computed under this subsection without regard t o this sentence) is less than the lower limit for the taxable year, the member' s distributive share of income described in section 702(a)(8) derived from such trade or business may, at the

member's option, be deemed to be the lower limit for the taxable year.

`(3) UPPER AND LOWER LIMITS- For purposes of this subsection--

`(A) LOWER LIMIT- The lower limit for any taxable year is the sum of the amounts required under section 213(d) of the Social Security Act for a quarter of coverage in effect with respect to each calendar quarter ending w ith or within such taxable year.

`(B) UPPER LIMIT- The upper limit for any taxable year is the amount equal to 150 percent of the lower limit for such taxable year.

`(4) DETERMINATION OF GROSS INCOME- For purposes of this subsectio n, the term `gross income' means--

> **`(A) in the case of any trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property whic h was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of subsection (a), and**
>
> **`(B) in the case of any trade or business in which the income is computed under an accrual method, the gross income from such trade or busine ss, adjusted in accordance with the provisions of paragraphs (1) through (7) an d paragraph (9) of subsection (a).**

`(5) INCOME DERIVED FROM MORE THAN ONE TRADE OR BUSINESS- For purp oses of this subsection, if an individual (including a member of a partnership) derives gross income

from more than one such trade or business, such gross inc ome (including his distributive share of the gross income of any partnership de rived from any such trade or business) shall be deemed to have been derived fro m one trade or business.

`(6) ELECTION- The option under this subsection shall be allowed f or any taxable year only if elected on the first return filed for such taxable year'.

(2) CONFORMING AMENDMENT- Section 1402(a) of such Code is amended by striking all that follows the first sentence following paragraph (15) and in serting `For optional method of determining net earnings from self-employment, see subsection (h).'.

(b) AMENDMENTS TO THE SOCIAL SECURITY ACT-

(1) IN GENERAL- Section 211(g) of the Social Security Act (42 U.S. C. 411(g)) is amended to read as follows:

`Optional Method for Computing Net Earnings From Self-Employment

`(g)(1) In the case of any trade or business which is carried on by an individual--

`(A) if the gross income derived by the individual from such trade or business is not more than the upper limit for the taxable year and the net earnings from self-employment derived by the individual from such trade or busi ness (computed under subsection (a) without regard to this sentence) are less t han 66 2/3 percent of such gross income, the net earnings from self-employment derived by the individual from such trade or business may, at the individual's option, be deemed to be 66 2/3 percent of such gross income, or

`(B) if the gross income derived by the individual from such trade or business is more than the upper limit for the taxable year and the net earn ings from self-employment derived by the individual from such trade or business (computed under subsection (a) without regard to this sentence) are less than the lower limit for the taxable year, the net earnings from self-employment der ived by the individual from such trade or business may, at the individual's opt ion, be deemed to be the lower limit for the taxable year.

`(2) In the case of a member of a partnership carrying on any trade or business--

`(A) if the member's distributive share of the gross income of the partnership derived from such trade or business (after such gross income has b een reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is not more than the upper limit for the taxable year and the member's distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or busines s (computed under this subsection without regard to this sentence) is less than 66 2/3 percent of the member's distributive share of such gross income (after such gross income has been so reduced), the member's distributive share of inc ome described in section 702(a)(8) derived from such trade or business may, at the member's option, be deemed to be an amount equal to 66 2/3 percent of the member's distributive share of such gross income (after such gross income has b een so reduced), or

`(B) if the member's distributive share of the gross income of the partnership derived from such trade or business (after such gross income has b een reduced by the sum of all payments to which section 707(c) of such Code app lies) is more than the upper limit for the taxable year and the

member's distri butive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or business (computed under this subse ction without regard to this sentence) is less than the lower limit for the tax able year, the member's distributive share of income described in section 702(a)(8) of such Code derived from such trade or business may, at the member's opti on, be deemed to be the lower limit for the taxable year.

`(3) For purposes of this subsection--

`(A) The lower limit for any taxable year is the sum of the amount s required under section 213(d) for a quarter of coverage in effect with respec t to each calendar quarter ending with or within such taxable year.

`(B) The upper limit for any taxable year is the amount equal to 1 50 percent of the lower limit for such taxable year.

`(4) For purposes of this subsection, the term `gross income' means--< /ul>

`(A) in the case of any trade or business in which the income is c omputed under a cash receipts and disbursements method, the gross receipts from such trade or business

reduced by the cost or other basis of property which wa s purchased and sold in carrying on such trade or business, adjusted (after suc h reduction) in accordance with the provisions of paragraphs (1) through (6) an d paragraph (8) of subsection (a), and

`(B) in the case of any trade or business in which the income is c omputed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and pa ragraph (8) of subsection (a).

`(5) For purposes of this subsection, if an individual (including a me mber of a partnership) derives gross income from more than one such trade or bu siness, such gross income (including his distributive share of the gross income of any partnership derived from any such trade

or business) shall be deemed to have been derived from one trade or business .

`(6) The option under this subsection shall be allowed for any taxable year only if elected in

accordance with the provisions of section 1402(h) of t he Internal Revenue Code of 1986.'.

(2) CONFORMING AMENDMENTS-

(A) Section 211(a) of such Act (42 U.S.C. 411 (a)) is amended b y striking all that follows the first sentence following paragraph (15) and ins erting `For optional method of determining net earnings from self-employment, s ee subsection (g).'.

(B) Section 212 of such Act (42 U.S.C. 412) is amended--

< /ul>

(i) in subsection (b), by striking `For' and inserting `Ex cept as provided in subsection (c), for'; and

(ii) by adding at the end the following new subsection:

`(c) For the purpose of determining average indexed monthly earnings, average monthly wage, and quarters of coverage in the case of any individual wh o elects the option described in paragraph (1)(B) or (2)(B) of section 211(g) f or any taxable year that does not begin with or during a particular calendar ye ar and end with or during such year, the self-employment income of such individ ual deemed to be derived during such taxable year shall be allocated to the two calendar years, portions of which are included within such taxable year, in th e same proportion to the total of such deemed self-employment income as the sum of the amounts applicable under section 213(d) for the calendar quarters endin g with or within each such calendar year bears to the lower limit for such taxa ble year specified in section 211 (g)(3)(A).'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 417. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMEN T PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking `to taxes or contributions for similar purpo ses under' and inserting `exclusively to the laws applicable to'.

Subtitle C--Technical Amendments

SEC. 431. TECHNICAL CORRECTION

RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b-13) is amende d--

(1) by striking `Secretary' the first place it appears and inserti ng `Commissioner of Social Security'; and

(2) by striking `Secretary' each subsequent place it appears and i nserting `Commissioner'.

SEC. 432. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINIST ERS.

(a) IN GENERAL- Section 211(a)(7) of the Social Security Act (42 U.S.C . 411(a)(7)) is amended by inserting `, but shall not include in any such net e arnings

from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue C ode of 1986) provided after the individual retires, or any other retirement ben efit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires' before the semicolon.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 433. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) AMENDMENT TO INTERNAL REVENUE CODE- Section 3121(a) (7)(B) of the I nternal Revenue Code of 1986 is amended by striking `described in subsection

(g)(5)' and inserting `on a farm operated for profit'.

(b) AMENDMENT TO SOCIAL SECURITY ACT- Section 209(a)(6)(B) of the Soci al Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking `described in s ection 210(f)(5)' and inserting `on a farm operated for profit'.

(c) CONFORMING AMENDMENT- Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking `or is dome stic service in a private home of the employer'.

SEC. 434. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF TERMINOLOGY AND CITATIONS RESPECTING REMOVAL FROM TH E UNITED STATES- Section 202(n) of the Social Security Act (42

U.S.C. 402(n)) i s amended--

(1) by striking `deportation' each place it appears and inserting `removal';

(2) by striking `deported' each place it appears and inserting `re moved';

(3) in paragraph (1) (in the matter preceding subparagraph (A)), b y striking `under section 241(a) (other than under paragraph (1)(C) or (1)(E) t hereof)' and inserting `under section 237(a) (other than paragraph (1) (C) or (1)(E) thereof) or 212(a)(6) (A)';

(4) in paragraph (2), by striking `under any of the paragraphs of section 241(a) of the Immigration and Nationality Act (other than under paragra ph (1)(C)

or (1)(E) thereof)' and inserting `under any of the paragraphs of sec tion 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) or (1)(E) thereof) or under section 212(a) (6)(A) of such Act';

(5) in paragraph (3) --

(A) by striking `paragraph (19) of section 241(a)' and inserti ng `subparagraph (D) of section 237(a)(4)'; and

(B) by striking `paragraph (19)' and inserting `subparagraph (D)'; and

(6) in the heading, by striking `Deportation' and inserting `Remov al'.

(b) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HE ALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS- Section 211(a)(15) of such A ct (42 U.S.C. 411(a)(15)) is amended by striking `section 162(m)' and inserting `section 162(l)'.

(c) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST - Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking ` and the employee has not performed agricultural labor for the employer on 20 da ys or more in the calendar year for cash remuneration computed on a time basis' .

SEC. 435. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMM

UNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT- Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking `all of the gross income' and all that follows and inserting `the gross income and deductions att ributable to such trade or business shall be treated as the gross income and de ductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of eac h spouse on the basis of their respective distributive share of the gross incom e and deductions;'.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT- Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking `all of the gross inco me' and all

that follows and inserting `the gross income and deductions attribu table to such trade or business shall be treated as the gross income and deduct ions of the spouse carrying on such trade or business or, if such trade or busi ness is jointly operated, treated as the gross income and deductions of each sp ouse on the basis of their respective distributive share of the gross income an d deductions; and'.

END

April 2, 2002

Positions on Provisions in H.R. 4070, the "Social Security Program Protection Act of 2002"

PROVISION AND COSTS	RECOMMENDED POSITION
TITLE I—PROTECTION OF BENEFICIARIES	
Subtitle A—Representative Payees	
Sec. 101. Authority to reissue benefits misused by organizational representative payees--Would require the Commissioner of Social Security to re-issue benefits under Titles II, VIII, or XVI whenever an individual representative payee serving 15 or more beneficiaries, or an organizational representative payee, is found to have misused a beneficiary's funds. **(Costs included under section 102)**	Support (OMB cleared.)
Sec. 102. Oversight of representative payees--Would require non-governmental fee-for-service organizational representative payees to be both licensed and bonded, provided that licensing is available in the State. Also would require the Commissioner to provide for periodic onsite reviews for all nonprofit fee-for-service payees, organizational payees (both governmental and non-governmental) representing 50 or more beneficiaries, and individual payees representing 15 or more beneficiaries; also would require the Commissioner to report annually to Congress on the results of the onsite reviews. **5 Year Costs – Program: $+1m Admin: $+4m, 50 workyears (Includes costs for sects. 101, 104, 105 and 111)**	Do not oppose.
Sec. 103. Disqualification from service as representative payee upon conviction of offenses resulting in imprisonment for more than 1 year and upon fugitive felon status--Would disqualify an individual from serving as a representative payee if he or she has been convicted of an offense resulting in more than one year of imprisonment, unless the Commissioner of Social Security determines that such certification would be appropriate notwithstanding such conviction. Also, would disqualify a person who is a fugitive felon. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Sec. 104. Fee forfeiture in case of benefit misuse by representative payees--Would require representative payees to forfeit their fee from the beneficiary's benefits for the months during which the representative payee misused the funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction. **(Costs included under section 102)**	Support

REV_00144322

PROVISION AND COSTS	RECOMMENDED POSITION
Sec. 105. Liability of representative payees for misused benefits--Would provide that misused benefits by a nongovernmental representative payee shall be treated as overpayments to the representative payee, subject to current overpayment recovery authorities. Any recovered benefits not reissued to the beneficiary pursuant to section 201 of this legislation would be reissued under this provision to the beneficiary or their alternate representative payee, up to the total amount misused. **(Costs included under section 102)**	Support
Subtitle B—Enforcement	
Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting--Would provide SSA with the authority to redirect payments of Social Security, Title VIII, and SSI benefits to local Social Security field offices if a representative payee fails to provide an annual accounting of benefits report. The Commissioner would be required to provide proper notice prior to redirecting benefits. **5 Year Costs – Program: $-4m Admin: $+4m, 55 workyears**	Support
Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees--Would authorize SSA to impose a civil monetary penalty for offenses involving misuse of Social Security, Title VIII, or SSI benefits received by a representative payee on behalf of another individual. The penalty equals up to $5,000 for each violation. In addition, the representative payee shall be subject to an assessment of not more than twice the amount of the misused payments. **5 Year Costs – Program: Neg. Admin: (Costs included under section 102)**	Support
TITLE II—PROGRAM PROTECTIONS	
Sec. 201. Civil monetary penalty authority with respect to knowing withholding of material facts--Would authorize SSA to impose, in addition to any other penalties that apply, civil monetary penalties of up to $5,000 (and assessments) for the omission of a statement that the individual should have made to SSA in connection with determining eligibility for, or the amount of, benefits. **5 Year Costs – Program: $-1m Admin: Neg.**	Support
Sec. 202. Disqualification from eligibility for trial work period upon criminal, civil, or administrative finding of fraudulent concealment of work activity--Would prohibit the application of the trial work period to an individual who has been found by a Federal court or agency to have fraudulently concealed work activity from the Commissioner of Social Security and prohibits waiver of recovery in connection with any overpayment to such individual by reason of such concealment. **5 Year Costs – Program: $-1m Admin: Neg.**	Support

REV_00144323

PROVISION AND COSTS	RECOMMENDED POSITION
Sec. 203. Denial of title II benefits to fugitive felons and persons fleeing prosecution—Would amend the Social Security Act to deny Title II benefits to fugitive felons, and if not in violation of Federal or State law, the Commissioner will furnish law enforcement officers the current address, SSN and photograph (if applicable) if necessary for the officer to perform his duties with respect locating and apprehending the beneficiary. **5 Year Costs – Program: $-388m Admin: +3m, 40 workyears.** (Preceding are SSA costs. In 5/01 testimony, OIG estimated need for significant (180 FTEs) additional resources to carry out fugitive felon provisions.)	Support Recommend language be changed to conform to enacted Title XVI language in the Social Security Act (Sec. 1611(e)(4))
Sec. 204. Requirements relating to offers to provide for a fee a product or service available without charge from the Social Security Administration--Would amend Section 1140 by adding a mandatory requirement that persons or companies include in their solicitations a statement that services which they provide for a fee are available directly from SSA free of charge. The statements would be required to comply with standards promulgated by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Sec. 205. Refusal to recognize certain individuals as claimant representatives--Would provide that the Commissioner may, with notice and an opportunity to respond, disqualify or prohibit from further practice before the Commissioner an attorney or non-attorney representative who has been disbarred, debarred, prohibited, or suspended from any court or bar to which he or she was previously admitted to practice, or disbarred or suspended from representing individuals before any other Federal agency or any other court system authorized under the statutory authority of any other Federal agency, or convicted of any offense or held civilly liable in any matter involving the Social Security Act. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Sec. 206. Penalty for corrupt of forcible interference with administration of Social Security Act--Would penalize persons who attempt to intimidate or impede by force or threats of force any officer or employee of the United States acting in an official capacity under the Social Security Act or persons who in any other way obstruct or impede or attempt to obstruct or impede the administration of the Social Security Act. The maximum penalties would be $5,000 and/or 3 years imprisonment. If the offense were committed only by threats, the person would be fined no more than $3,000 and/or 1 year imprisonment. **5 Year Costs – Program: $0 Admin: Neg.**	Support

REV_00144324

PROVISION AND COSTS	RECOMMENDED POSITION
TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS	
Sec. 301. Cap on attorney assessments--Would cap the assessment for SSA processing attorney fees at $100 or 6.3 % of fee, whichever is lower. **1-Year Loss to Trust Fund: $+9m (verifying 5-Year cost with OB)**	Do not oppose.
Sec. 302. Extension of attorney fee payment system to title XVI claims--Would extend the direct payment of attorney fees to the SSI program. (Currently SSA authorizes but does not pay attorney fees from past-due SSI benefits.) **1-Year Admin: 300-400 workyears, depending on degree of automation.** NOTE: Systems estimates 6-9 months to implement manually and 18-24 months for automated system for withholding fees.	Support
Sec. 303. Effective date of title--Would be effective 180 days after date of enactment	Do not oppose.
TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS	
Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999	
Sec. 401. Application of demonstration authority sunset date to new projects--Would extend the authority to include projects *initiated* before the 5-year period ending December 17, 2004 expires. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared. Included in draft bill sent to Congress, 10/3/01)
Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings--Would provide the Commissioner with the authority to waive requirements of section 1148 of the Social Security Act for the mandated demonstration projects. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared. Included in draft bill sent to Congress, 10/3/01)
Sec. 403. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings--Would clarify that the cost of paying increased benefits will not be appropriated while the administrative costs associated with the demonstration projects will come normally from funds available for administration. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared. Included in draft bill sent to Congress, 10/3/01)
Sec. 404. Availability of Federal and State work incentive services to additional individuals-- Would allow BPAO services and P&A systems services to be provided to those beneficiaries in section 1619(b) status, those beneficiaries receiving only a State Supplement payment, and those beneficiaries in an extended period of Medicare eligibility under title XVIII after a period of disability under title II has ended. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared. Included in draft bill sent to Congress, 10/3/01)

PROVISION AND COSTS	RECOMMENDED POSITION
Sec. 405. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program—Would clarify that employers who hire individuals disabled under either Title II or Title XVI of the Social Security Act and who are participating in the Ticket to Work program are eligible for tax credits already available to businesses who hire individuals from targeted groups that have a particularly high unemployment rate or other special employment need. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Subtitle B—Miscellaneous Amendments	
Sec. 411. Elimination of transcript requirement in remand cases fully favorable to the claimant--Would provide that the Agency does not have to prepare and file a transcript with the district court after a court-ordered remand for further administrative proceedings results in a fully-favorable award of benefits. **5 Year Costs – Program: $0 Admin: Neg. savings**	Support
Sec. 412. Nonpayment of benefits upon removal from the United States—Would end the exemption from nonpayment of benefits for aliens removed from the United States for smuggling other aliens into the United States. **5 Year Costs – Program: Neg. Admin: Neg.**	Support
Sec. 413. Reinstatement of certain reporting requirements—Would continue the requirement for the Board of Trustees report on the OASDI, HI, and SMI trust funds, continuing disability reviews reports, and the disability preefectuation review report. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Sec. 414. Use of symbols, emblems, or names in reference to Social Security or Medicare—Would update section 1140 for HCFA's new name (Centers for Medicare and Medicaid Services). The section adds Death Benefits Update, Federal Benefits Information, Funeral Expenses, etc. as items prohibited from the use of symbols, emblems or names that may provide a false impression that the item is approved or endorsed by SSA, CMS or HHS. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Sec. 415. Clarification of definitions regarding certain survivor benefits—Would provide a limited exception to the 9-month duration-of-marriage requirement for widow(er)'s benefits. This exception would apply in cases in which the marriage was postponed by legal impediments to the marriage caused by State restrictions on divorce due to mental incompetence or similar incapacity. **5 Year Costs – Program: Neg. Admin: Neg.**	Support

REV_00144326

PROVISION AND COSTS	RECOMMENDED POSITION
Sec. 416. Optional methods for computing net earnings from self-employment--Would revise the optional method of computing self-employment income so that self-employed persons could receive credit for as many as four QCs in a year, instead of one, as under present law. **5 Year Costs – Program: $-49 Admin: Neg.**	Support (OMB cleared.)
Sec. 417. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner--Would provide clear legal authority to exempt a worker's earnings from U.S. Social Security tax in cases where their earnings were subject to a foreign country's laws in accordance with a U.S. totalization agreement, but the foreign country's law does not require compulsory contributions with respect to those earnings. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared.)
Subtitle C—Technical Amendments	
Sec. 431. Technical correction relating to responsible agency head--Would delete all references to the "Secretary of Health and Human Services" found in Section 1143 (which requires issuance of Social Security Statements) of the Social Security Act and replaces them with the "Commissioner of Social Security." **5 Year Costs – Program: $0 Admin: $0**	Support
Sec. 432. Technical correction relating to retirement benefits of ministers--Would provide a conforming change would be made to the Social Security Act to exclude certain benefits received by retired ministers and members of religious orders for Social Security benefit purposes as well as Social Security tax purposes. **5 Year Costs – Program: $0 Admin: Neg.**	Support
Sec. 433. Technical corrections relating to domestic employment--Would provide that references to domestic employment be removed from the provisions in the law that define agricultural employment, and the provisions that define domestic employment would specify that domestic employment includes domestic service performed on a farm. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared.)
Sec. 434. Technical corrections of outdated references-- would correct various outdated references in the Social Security Act and related laws. Over the years, provisions of the Social Security Act, the Internal Revenue Code, and other laws have been deleted, re-designated, or otherwise amended. **5 Year Costs – Program: $0 Admin: $0**	Support

PROVISION AND COSTS	RECOMMENDED POSITION
Sec. 435. Technical correction respecting self-employment income in community property States- would conform the provision in the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States--to provide that income from a trade or business that is not a partnership will be taxed and credited to the spouse who is carrying on the trade or business or to each spouse based on their distributive share of the gross earnings, if jointly operated. **5 Year Costs – Program: $0 Admin: Neg.**	Support (OMB cleared.)

REV_00144328

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2002 5:06:43 PM
Subject: : Re: Aviation Conference Call Tues. 4/16 @ 5 PM

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2002 21:06:43.00
SUBJECT:: Re: Aviation Conference Call Tues. 4/16 @ 5 PM
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think he's trying to get deputies sign off on a 60-day extension -- with higher premiums and less coverage -- to see whether we get the broader bill. You may think that this proposal sounds familiar --- because I RAISED IT A MONTH AGO!!!

Brett M. Kavanaugh
04/24/2002 08:53:07 PM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Aviation Conference Call Tues. 4/16 @ 5 PM

By the way, what's latest on this? I gather there is a meeting Friday at 10:00 from Marc's last e-mail.

Kristen Silverberg
04/16/2002 05:41:36 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Aviation Conference Call Tues. 4/16 @ 5 PM

Got this email. Sorry -- I didn't notice you weren't on.

---------- Forwarded by Kristen Silverberg/WHO/EOP on 04/16/2002 05:41 PM ----------

Caroline Boeckel 04/15/2002 05:27:19 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Leslie A. Mooney/OPD/EOP@EOP, Mary E. Jones/CEA/EOP@EOP
Subject: Aviation Conference Call Tues. 4/16 @ 5 PM

The call is at 5 PM tomorrow, not 4 PM. Sorry for any confusion.
Thanks,
Caroline
---------- Forwarded by Caroline Boeckel/OPD/EOP on 04/15/2002 05:26 PM ----------

Caroline Boeckel 04/15/2002 05:25:32 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Mary E. Jones/CEA/EOP@EOP, Leslie A. Mooney/OPD/EOP@EOP
Subject: Aviation Conference Call Tues. 4/16 @ 4 PM

There will be a conference call on Tuesday, April 16 at 5 PM to discuss Aviation Issues. The call in number is:
456-2561 and the code is 2371.

Thanks,
Caroline

Message Sent
To:_____
Carlos E. Bonilla/OPD/EOP@EOP
Ado A. Machida/OVP/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP

Message Sent
To:_____
Carlos E. Bonilla/OPD/EOP@EOP
Ado A. Machida/OVP/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Amy C. Smith/OMB/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP

From: CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2002 6:07:55 AM
Subject: : 4pm today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirsten A. Chadwick ( CN=Kirsten A. Chadwick/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-APR-2002 10:07:55.00
SUBJECT:: 4pm today
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

our 4pm on presidential records act briefing with leadership staff is
confirmed - we have

carl thorsen - delay
margaret peterlin - armey
ted vandermeid - speaker
bob schellhas - portman

i havent heard from leigh lamora - watts - yet

it's in H-107 of the capitol

can you give me a call and lets discuss 66620

thanks
```

From: CN=Claire E. Buchan/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>
Sent: 4/25/2002 4:54:02 AM
Subject: : Re: victims comp discussions

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-APR-2002 08:54:02.00
SUBJECT:: Re: victims comp discussions
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

since you have a clear recollection, i'd suggest you call her and give her
that account on background -- if being an "administration official who was
in the room" points too much to you, i'd suggest you speak as "a source
who was in the room/participated in the negotiations, etc...."

joel, i think you don't need to call since brett's remembers well.

cb
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 4/25/2002 8:55:38 AM
Subject: : need 10 tabbed packets with

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:25-APR-2002 12:55:38.00
SUBJECT:: need 10 tabbed packets with
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

1. Presidential Records Act [I have book]
2. President's executive order on records
3. clean copy of Judge Gonzales' Wash Post op-ed in December on records
4. Judge Gonzales' USA Today op-ed on records
5. Todd Gaziano's testimony yesterday [I have]
6. Doug Kmiec's letter testimony [I have]

need by 2:30
```

From: Jaso, Eric <Eric.Jaso@ed.gov>
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jaso, Eric <Eric.Jaso@ed.gov>
Sent: 4/25/2002 9:24:38 AM
Subject: : RE: Lunch
Attachments: P_HUJY6003_WHO.TXT_1.html

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Jaso, Eric" <Eric.Jaso@ed.gov> ("Jaso, Eric" <Eric.Jaso@ed.gov> [UNKNOWN])
CREATION DATE/TIME:25-APR-2002 13:24:38.00
SUBJECT:: RE: Lunch
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Jaso, Eric" <Eric.Jaso@ed.gov> ("Jaso, Eric" <Eric.Jaso@ed.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Got stuck in a meeting. Leaving now by cab. Sorry, see you shortly.

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov
[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Thursday, April 25, 2002 11:46 AM
To: Noel_J._Francisco@who.eop.gov
Cc: Brett_M._Kavanaugh@who.eop.gov; jaso, eric;
Noel_J._Francisco@who.eop.gov
Subject: RE: Lunch

Just a reminder about lunch today. See you at 1:15.

Noel J. Francisco
04/15/2002 09:21:53 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "jaso, eric" <eric.jaso@ed.gov>, noel j. francisco/who/eop@eop
bcc: Records Management@EOP
Subject: RE: Lunch (Document link: Noel J. Francisco)

We're all set for 1:15 pm on Thurs Apr. 25. Eric, would you forward me
your
birthday and social security number? I'll clear you into my office (EEOB
151),
and we can walk over to the Mess from there.

Brett M. Kavanaugh
04/12/2002 06:53:25 PM

Record Type: Record

To: "Jaso, Eric" <Eric.Jaso@ed.gov>
cc: noel j. francisco/who/eop@eop
bcc:
Subject: RE: Lunch (Document link: Noel J. Francisco)

perfect.

(Embedded
image moved "Jaso, Eric" <Eric.Jaso@ed.gov>
to file: 04/12/2002 04:44:10 PM
pic29993.pcx)

Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: Lunch

Sure!

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov
[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Friday, April 12, 2002 4:26 PM
To: Brett_M._Kavanaugh@who.eop.gov; eric.jaso@ed.gov
Subject: Lunch

I propose that the three of us have lunch Thurs, April 25 in the White
House
Mess, on Brett. Does that work for you two?

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HUJY6003_WHO.TXT_1>

Got stuck in a meeting. Leaving now by cab. Sorry, see you shortly.

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov
[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Thursday, April 25, 2002 11:46 AM
To: Noel_J._Francisco@who.eop.gov
Cc: Brett_M._Kavanaugh@who.eop.gov; jaso, eric;
Noel_J._Francisco@who.eop.gov
Subject: RE: Lunch

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Noel J. Francisco
04/15/2002 09:21:53 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "jaso, eric" <eric.jaso@ed.gov> ;, noel j. francisco/who/eop@eop
bcc: Records Management@EOP
Subject: RE: Lunch (Document link: Noel J. Francis co)

We're all set for 1:15 pm on Thurs Apr. 25. Eric, would y ou forward me your birthday and social security number? I'll clear you into my office (EEOB 151), and we can walk over to the Mess from there.

Brett M. Kavanaugh
04/12/2002 06:53:25 PM

Record Type: Record

To: "Jaso, Eric" <Eric.Jaso@ed.gov>
cc: noel j. francisco/who/eop@eop
bcc:
Subject: RE: Lunch (Document link: Noel J. Francis co)

perfect.

&nb sp; &nbs p; ; & nbsp;
(Embedded ; & nbsp; &n bsp;
image moved "Jaso, Eric" <Eric. Jaso@ed.gov> &nbs p;
to file: 04/12/2002 04:44: 10 PM &n bsp; &nb sp;
pic29993.pcx) & nbsp; &n bsp; &nb sp; &nbs p;
&n bsp; &nb sp; &nbs p; ;

Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP, Brett M. Kavanau gh/WHO/EOP@EOP

cc:
Subject: RE: Lunch

Sure!

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov
[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Friday, April 12, 2002 4:26 PM
To: Brett_M._Kavanaugh@who.eop.gov; eric.jaso@ed.gov
Subject: Lunch

I propose that the three of us have lunch Thurs, April 25 in th e White House
Mess, on Brett. Does that work for you two?

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2002 10:28:16 AM
Subject: : Re: terror ins.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-APR-2002 14:28:16.00
SUBJECT:: Re: terror ins.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

is it superfluous in a way that could be badly construed, do you think?

Brett M. Kavanaugh
04/25/2002 02:24:42 PM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP
cc:
bcc:
Subject: Re: terror ins.

I agree that (d) is superfluous. The choice of law matches up
with House bill except for part (b)(1) giving district court some
discretion to decide that another state's law applies.

Kristen Silverberg
04/25/2002 01:28:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: terror ins.

I looked at the base bill. Why do they need (d) "claims against
terrorists" if they don't have our punitives section? There isn't
anything that could be perceived as a limitation on any form of recovery.

also -- is the choice of law section right?

From: Jaso, Eric <Eric.Jaso@ed.gov>
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2002 2:38:28 PM
Subject: : RE: Lunch
Attachments: P_T6ZY6003_WHO.TXT_1.html

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Jaso, Eric" <Eric.Jaso@ed.gov> ("Jaso, Eric" <Eric.Jaso@ed.gov> [UNKNOWN])
CREATION DATE/TIME:25-APR-2002 18:38:28.00
SUBJECT:: RE: Lunch
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Guys, thanks again for a terrific lunch. Suffice it to say that I am deeply envious of your "perqs"! I hope to reciprocate once I get over to Mother Justice. Take care, EHJ

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov [mailto:Noel_J._Francisco@who.eop.gov]
Sent: Thursday, April 25, 2002 11:46 AM
To: Noel_J._Francisco@who.eop.gov
Cc: Brett_M._Kavanaugh@who.eop.gov; jaso, eric; Noel_J._Francisco@who.eop.gov
Subject: RE: Lunch

Just a reminder about lunch today. See you at 1:15.

Noel J. Francisco
04/15/2002 09:21:53 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "jaso, eric" <eric.jaso@ed.gov>, noel j. francisco/who/eop@eop
bcc: Records Management@EOP
Subject: RE: Lunch (Document link: Noel J. Francisco)

We're all set for 1:15 pm on Thurs Apr. 25. Eric, would you forward me your birthday and social security number? I'll clear you into my office (EEOB 151), and we can walk over to the Mess from there.

Brett M. Kavanaugh
04/12/2002 06:53:25 PM

Record Type: Record

To: "Jaso, Eric" <Eric.Jaso@ed.gov>
cc: noel j. francisco/who/eop@eop
bcc:
Subject: RE: Lunch (Document link: Noel J. Francisco)

perfect.

(Embedded
image moved "Jaso, Eric" <Eric.Jaso@ed.gov>
to file: 04/12/2002 04:44:10 PM
pic29993.pcx)

Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: Lunch

Sure!

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov
[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Friday, April 12, 2002 4:26 PM
To: Brett_M._Kavanaugh@who.eop.gov; eric.jaso@ed.gov
Subject: Lunch

I propose that the three of us have lunch Thurs, April 25 in the White
House
Mess, on Brett. Does that work for you two?

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_T6ZY6003_WHO.TXT_1>

Guys, thanks again for a terrific lunch. Suffice it to sa y that I am deeply envious of your "perqs"! I hope to reciproca te once I get over to Mother Justice. Take care, EHJ

-----Original Message-----
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[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Thursday, April 25, 2002 11:46 AM
To: Noel_J._Francisco@who.eop.gov
Cc: Brett_M._Kavanaugh@who.eop.gov; jaso, eric;
Noel_J._Francisco@who.eop.gov
Subject: RE: Lunch

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04/15/2002 09:21:53 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "jaso, eric" <eric.jaso@ed.gov> ;, noel j. francisco/who/eop@eop
bcc: Records Management@EOP
Subject: RE: Lunch (Document link: Noel J. Francis co)

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Brett M. Kavanaugh
04/12/2002 06:53:25 PM

Record Type: Record

To: "Jaso, Eric" <Eric.Jaso@ed.gov>
cc: noel j. francisco/who/eop@eop
bcc:
Subject: RE: Lunch (Document link: Noel J. Francis co)

perfect.

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(Embedded ; & nbsp; &n bsp;
image moved "Jaso, Eric" <Eric. Jaso@ed.gov> &nbs p;
to file: 04/12/2002 04:44: 10 PM &n bsp; &nb sp;
pic29993.pcx) & nbsp; &n bsp; &nb sp; &nbs p;
&n bsp; &nb sp; &nbs p; ;

Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP, Brett M. Kavanau gh/WHO/EOP@EOP

cc:
Subject: RE: Lunch

Sure!

-----Original Message-----
From: Noel_J._Francisco@who.eop.gov
[mailto:Noel_J._Francisco@who.eop.gov]
Sent: Friday, April 12, 2002 4:26 PM
To: Brett_M._Kavanaugh@who.eop.gov; eric.jaso@ed.gov
Subject: Lunch

I propose that the three of us have lunch Thurs, April 25 in th e White House
Mess, on Brett. Does that work for you two?

From: CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/26/2002 5:37:05 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-APR-2002 09:37:05.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I know didn't mean to suggest any dropped balls, just anxious with the weather turning nice

Brett M. Kavanaugh
04/26/2002 09:36:15 AM
Record Type: Record

To: Matthew A. Schlapp/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

yes, have been discussing that with OLC and OSC . . .

Matthew A. Schlapp
04/26/2002 09:29:10 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Just a follow up that we would like the written one pager on the best way to approach political appointees who want to ethically give time to political campaigns and its coordination from the RNC.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
Sent: 4/26/2002 5:36:21 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-APR-2002 09:36:21.00
SUBJECT:: Re:
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, have been discussing that with OLC and OSC . . .

Matthew A. Schlapp
04/26/2002 09:29:10 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Just a follow up that we would like the written one pager on the best way to approach political appointees who want to ethically give time to political campaigns and its coordination from the RNC.

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2002 1:10:06 PM
Subject: : Approval for Ohio's May 10 Fundraiser tickets?
Attachments: P_IP717003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-APR-2002 17:10:06.00
SUBJECT:: Approval for Ohio's May 10 Fundraiser tickets?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett:
Wanted to run this by you?
Attached is the ticket OH will send out asap - per your approval - to secured guests for the POTUS event on May 10 -

cj

---------- Forwarded by Collister W. Johnson/WHO/EOP on 04/29/2002 05:09 PM ----------

Mike Dew <mike.dew@governortaft.com>
04/29/2002 03:59:25 PM
Please respond to mike.dew@governortaft.com
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: May 10 tickets

Here are drafts of our tickets. Let me know what if anything we need to change.

Dew

- 4 Tickets Draft.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IP717003_WHO.TXT_1>

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE AND PROCEED TO THE FRANKLIN ROOM.

PRESIDENTIAL PHOTO OPPORTUNITY & LUNCHEON

11:00 A.M. PHOTO OPPORTUNITY
FRANKLIN ROOM, SECOND FLOOR

11:30 A.M. LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

ADMIT ONE
NON-TRANSFERABLE

Paid for by Taft-Bradley '02, Mark B. LaPlace, Treasurer,
64 East Broad Street, Columbus, Ohio 43215

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE AND PROCEED TO THE DELAWARE ROOM.

GOVERNOR'S PHOTO OPPORTUNITY, RECEPTION & LUNCHEON

11:00 A.M. PHOTO OPPORTUNITY & RECEPTION
DELAWARE ROOM, SECOND FLOOR

11:30 A.M. LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

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An Ohio Salute to President George W. Bush

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GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE AND PROCEED TO THE DELAWARE ROOM.

GOVERNOR'S RECEPTION & LUNCHEON

11:00 A.M. RECEPTION
DELAWARE ROOM, SECOND FLOOR

11:30 A.M. LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

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64 East Broad Street, Columbus, Ohio 43215

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE.

LUNCHEON

11:30 A.M.
LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

ADMIT ONE
NON-TRANSFERABLE

Paid for by Taft-Bradley '02, Mark B. LaPlace, Treasurer,
64 East Broad Street, Columbus, Ohio 43215

From:	CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD]
To:	Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>
CC:	stephen s. mcmillin/omb/eop@eop [OMB] <stephen s. mcmillin>;carlos e. bonilla/opd/eop@eop [OPD] <carlos e. bonilla>;kirk blalock/who/eop@eop [WHO] <kirk blalock>;joel d. kaplan/who /eop@eop [WHO] <joel d. kaplan>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent:	4/30/2002 7:09:51 AM
Subject:	: Re: FW: HR 3347 letter
Attachments:	P_LZR17003_OPD.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:30-APR-2002 11:09:51.00
SUBJECT:: Re: FW: HR 3347 letter
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:stephen s. mcmillin (CN=stephen s. mcmillin/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:carlos e. bonilla (CN=carlos e. bonilla/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:kirk blalock (CN=kirk blalock/OU=who/O=eop@eop [WHO])
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CC:joel d. kaplan (CN=joel d. kaplan/OU=who/O=eop@eop [WHO])
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CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
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CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

By the way, if I don't hear from you by 1:00 pm, I will assume you have no comment. Thanks!

Elizabeth S. Dougherty
04/30/2002 11:09:01 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FW: HR 3347 letter

Hi all! Wanted to make sure you all saw the letter Secretary Mineta is planning on sending to Don Young regarding the General Aviation Relief bill. Please let me know ASAP if you have any questions or comments on the letter. If there is someone else in your shop that ought to see the letter, please forward this email.

Thanks,
Liz

---------- Forwarded by Elizabeth S. Dougherty/OPD/EOP on 04/30/2002 11:05 AM ----------

"Nober, Roger" <Roger.Nober@ost.dot.gov>

04/30/2002 11:00:48 AM
Record Type: Record

To: Elizabeth S. Dougherty/OPD/EOP@EOP
cc:
Subject: FW: HR 3347 letter

-----Original Message-----
From: Herlihy, Tom
Sent: Tuesday, April 30, 2002 10:58 AM
To: Nober, Roger
Cc: Mclean, Donna; Scheinberg, Phyllis; Van Tine, Kirk
Subject: HR 3347 letter

<<hr3347views.doc>>

- hr3347views.DOC

Message Sent
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Carlos E. Bonilla/OPD/EOP@EOP
Kirk Blalock/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LZR17003_OPD.TXT_1>

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the--

General Aviation Industry Reparations Act of 2002.

H.R. 3347 would, with some significant changes, provide for the same program of Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided immediately following September 11, 2001, to commercial airlines and their agents. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and the U.S. economy benefits in significant measure from continued viability of this commercial sector and the travel services it provides to businesses nationwide. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn, and the enactment of H.R. 2926 at that time was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget

Request for fiscal year 2003. This combination of pro-growth Federal spending measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the economy.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. The staff resources at the Department are already strained implementing H.R. 2926, and enactment of H.R. 3347 would place a very substantial additional burden on them.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. Rather than enacting a new program, the Department believes that the House-passed general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although section 2(c) of the bill would provide that the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) would constitute emergency spending under budget rules, the spending would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

REV_00144504

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov @ inet [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>;Sarah K. Lockart@who.eop.gov [WHO] <Sarah K. Lockart@who.eop.gov>

Sent: 4/30/2002 5:32:32 AM

Subject: : JSC reminder and room change

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-APR-2002 09:32:32.00
SUBJECT:: JSC reminder and room change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
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TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
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TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov @ inet [UNKNOWN])
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TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
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TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
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TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
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TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
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TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
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TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Sarah K. Lockart@who.eop.gov (Sarah K. Lockart@who.eop.gov [WHO])
READ:UNKNOWN
End Original ARMS Header

JSC will be held on Wednesday, May 1 from 4:00 - 5:00 pm in the Judge's office (not the Roosevelt).

Thanks!

From: Elizabeth_N._Camp@who.eop.gov [UNKNOWN]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>

Sent: 4/30/2002 5:46:07 AM

Subject: : JSC reminder and room change

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###### Begin Original ARMS Header ######
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CREATOR:Elizabeth_N._Camp@who.eop.gov ( Elizabeth_N._Camp@who.eop.gov [ UNKNOWN ] )
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
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TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
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TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

JSC will be held on Wednesday, May 1 from 4:00 - 5:00 pm in the Judge's
office
(not the Roosevelt).

Thanks!

From: Elizabeth_N._Camp@who.eop.gov [UNKNOWN]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO /EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;adam.ciongoli@usdoj.gov [UNKNOWN] <adam.ciongoli@usdoj.gov>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Jennifer.Newstead@usdoj.gov [UNKNOWN] <Jennifer.Newstead@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Lori L. Lorenzi/WHO/EOP@EOP [WHO] <Lori L. Lorenzi>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>

Sent: 4/30/2002 5:46:07 AM

Subject: : JSC reminder and room change

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth_N._Camp@who.eop.gov ( Elizabeth_N._Camp@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:30-APR-2002 09:46:07.00
SUBJECT:: JSC reminder and room change
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
```

TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.ciongoli@usdoj.gov (adam.ciongoli@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jennifer.Newstead@usdoj.gov (Jennifer.Newstead@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
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TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
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TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

JSC will be held on Wednesday, May 1 from 4:00 - 5:00 pm in the Judge's
office
(not the Roosevelt).

Thanks!

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/30/2002 6:13:54 AM
Subject: : Re: Cooperation log
Attachments: P_NHO17003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 10:13:54.00
SUBJECT:: Re: Cooperation log
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I added the fact that, along with the Judge's 4-19 letter, we provided the Committee with copies of the Card, Lindsey, Johnson, and Daniels letters.

Bradford A. Berenson
04/30/2002 10:03:55 AM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Cooperation log

To be found on G: drive. Add at your pleasure.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NHO17003_WHO.TXT_1>

Log of Efforts to Cooperate with Senate Governmental Affairs Committee

Date	Event
3/27/02	Lieberman sends request letter to Andy Card seeking information concerning White House contacts with and about Enron.
4/11/02	Flanigan, Kavanaugh, Berenson, and Bartolomucci meet with Lieberman staff (Lesser, Rubinstein and others) in an effort to narrow request or identify priorities. Lieberman staff refuses and asks instead for a letter stating White House intentions with respect to compliance.
4/19/02	Judge Gonzales sends Lieberman letter articulating objections to request and promising cooperation.
4/24/02	Lieberman sends letter to Gonzales requesting further information concerning efforts being undertaken by the White House, time frames for compliance, and positions with respect to categories of information.
4/29/02	Gonzales distributes survey form to all commissioned officers plus representatives of CEA, OVP, CEQ, USTR, and OMB seeking information relating to contacts with or about Enron. Survey form is released to media Gonzales sends letter back to Lieberman responding to 4/24 inquiry and apprising him of steps taken and rough timetable for compliance (early to mid-June) Kavanaugh speaks with Joyce Rechstaffen to inform her of letter and Survey. Berenson informs minority staff.
4/30/02	Berenson and Bartolomucci meet with CEA (Furchtgott-Roth), CEQ (Boling), OVP (Addington), USTR (Freiberg), and OMB (Perry, Laragy) to discuss survey and provide instructions for circulation and response. Representatives are told to distribute to all those reasonably likely to have responsive information, to create a list of recipients and forward to WHCO, and to direct responses to be provided directly to WHCO.

From: CN=James A. Brown/OU=OMB/O=EOP [OMB]

To: Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>;Kenneth L. Schwartz/OMB /EOP@EOP [OMB] <Kenneth L. Schwartz>;Steven M. Mertens/OMB/EOP@EOP [OMB] <Steven M. Mertens>;Clare C. Doherty/OMB/EOP@EOP [OMB] <Clare C. Doherty>;Timothy A. Rosado/OMB/EOP@EOP [OMB] <Timothy A. Rosado>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>;OVP LRM [UNKNOWN] <OVP LRM>;NEC LRM [UNKNOWN] <NEC LRM>;WHGC LRM [UNKNOWN] <WHGC LRM>;John F. Wood/OMB /EOP@EOP [OMB] <John F. Wood>;Matthew J. Schneider/OMB/EOP@EOP [OMB] <Matthew J. Schneider>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Rosemarie W. Dale/OMB/EOP@EOP [OMB] <Rosemarie W. Dale>;Adriel M. Harvey/OMB/EOP@EOP [OMB] <Adriel M. Harvey>;Elizabeth A. Bernhard/OMB/EOP@EOP [OMB] <Elizabeth A. Bernhard>;Courtney B. Timberlake/OMB /EOP@EOP [OMB] <Courtney B. Timberlake>;Lauren C. Lobrano/OMB/EOP@EOP [OMB] <Lauren C. Lobrano>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Carlos E. Bonilla/OPD /EOP@EOP [OPD] <Carlos E. Bonilla>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Richard E. Green/OMB /EOP@EOP [OMB] <Richard E. Green>

Sent: 4/30/2002 10:17:25 AM

Subject: : TIME SENSITIVE -- LRM JAB 220 TRANSPORTATION Report on HR3347 General Aviation Industry Reparations Act of 2001

Attachments: P_5T227003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James A. Brown ( CN=James A. Brown/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:30-APR-2002 14:17:25.00
SUBJECT:: TIME SENSITIVE -- LRM JAB 220 TRANSPORTATION Report on HR3347 General Aviation
Industry Reparations Act of 2001
TO:Stephen S. McMillin ( CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Steven M. Mertens ( CN=Steven M. Mertens/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Clare C. Doherty ( CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Timothy A. Rosado ( CN=Timothy A. Rosado/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:OVP LRM ( OVP LRM [ UNKNOWN ] )
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TO:NEC LRM ( NEC LRM [ UNKNOWN ] )
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TO:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP@EOP [ OMB ] )
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TO:Matthew J. Schneider ( CN=Matthew J. Schneider/OU=OMB/O=EOP@EOP [ OMB ] )
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TO:Ellen J. Balis ( CN=Ellen J. Balis/OU=OMB/O=EOP@EOP [ OMB ] )
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TO:Elizabeth A. Bernhard ( CN=Elizabeth A. Bernhard/OU=OMB/O=EOP@EOP [ OMB ] )
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READ:UNKNOWN
TO:Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [OMB])
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TO:Danielle M. Simonetta (CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

This letter needs to be supplied to the House leadership today. If we do not hear from you by the deadline, we will therefore assume that you have no objection to clearance.

- hr3347views.DOC
LRM ID: JAB220
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 30, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: TRANSPORTATION Report on HR3347 General Aviation Industry Reparations Act of 2001

DEADLINE: 3:30 p.m. Today Tuesday, April 30, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This letter needs to be supplied to the House leadership today. If we do not hear from you by the deadline, we will therefore assume that you have no objection to clearance.

DISTRIBUTION LIST

AGENCIES:
-Executive Office of the President - EOP Review Only See Distribution -

EOP:

Stephen S. McMillin
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Danielle M. Simonetta
Robert Marsh
Carlos E. Bonilla
Elizabeth S. Dougherty
Kirk Blalock
Joel D. Kaplan
Brett M. Kavanaugh
Helgard C. Walker
James J. Jukes
Richard E. Green
LRM ID: JAB220 SUBJECT: TRANSPORTATION Report on HR3347 General Aviation Industry Reparations Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5T227003_WHO.TXT_1>

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the--

General Aviation Industry Reparations Act of 2002.

H.R. 3347 would, with some significant changes, provide for the same program of Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided immediately following September 11, 2001, to commercial airlines and their agents. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and the U.S. economy benefits in significant measure from continued viability of this commercial sector and the travel services it provides to businesses nationwide. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn, and the enactment of H.R. 2926 at that time was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget

Request for fiscal year 2003. This combination of pro-growth Federal spending measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the economy.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. The staff resources at the Department are already strained implementing H.R. 2926, and enactment of H.R. 3347 would place a very substantial additional burden on them.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. Rather than enacting a new program, the Department believes that the House-passed general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although section 2(c) of the bill would provide that the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) would constitute emergency spending under budget rules, the spending would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

REV_00144536

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>
Sent: 4/30/2002 10:44:50 AM
Subject: : Re: ARG remarks

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 14:44:50.00
SUBJECT:: Re: ARG remarks
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

A-

The Council on National Policy is a very old, very established conservative group headed by former OMB Director James Miller.

I assume Judge Gonzales is speaking about the judicial crisis; I am speaking about cloning and life issues. Both are closed to the press.

Their Washington meeting is later this week.

Warmly

tsg

Anne Womack
04/30/2002 02:32:51 PM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP
cc: Alberto R. Gonzales/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
Subject: ARG remarks

ABC NEWS is asking about the Judge's scheduled speech to the Council for National Policy (and about Tim's involvement with them). They would like to know at least what the topic of the Judge's remarks will be. Don't have much knowledge of the organization, but I have learned a little. What is appropriate to share?

From: CN=Jill Davie/OU=WHO/O=EOP [WHO]
To: Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jack Howard/WHO /EOP@EOP [WHO] <Jack Howard>
Sent: 4/30/2002 6:51:38 AM
Subject: : Re: Includes edits. Still rechecking whether DOD has scheduled testimony yet.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 10:51:38.00
SUBJECT:: Re: Includes edits. Still rechecking whether DOD has scheduled testimony yet.
TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Any word from DOD? Thanks Christine - Jill

Christine Ciccone
04/29/2002 12:08:42 PM
Record Type: Record

To: Jill Davie/WHO/EOP@EOP,
cc:
Subject: Includes edits. Still rechecking whether DOD has scheduled testimony yet.

I expect that Nick will still want to edit to make more personal to his style. This version includes more info on what the Administration is doing to support the Committee....

April 29, 2002

Dear Chairman Byrd and Senator Stevens:

Thank you for your April 17 letter to Assistant to the President for Homeland Security Tom Ridge renewing your previous invitations for him to testify before the Committee.

We look forward to working with you and the committee as deliberations begin on the fiscal year &028 supplemental, and fiscal year &038 appropriations bills. As you are aware, the Secretaries of Transportation, Agriculture, State, Treasury, Interior, Health & Human Services as well as the Attorney General and the Director of the Federal Emergency Management Agency are scheduled to testify before the Senate Appropriations Committee this week on the President,s funding requests for homeland security. We expect the Secretary of Defense will also testify subject to his travels to Central Asia.

Regarding your request, Governor Ridge and his staff remain fully prepared to meet with you and to provide appropriate briefings to you, the Committee, and Committee staff. Consistent with the policy long

maintained by the Executive Branch and long respected by the Congress, Presidential advisors such as Governor Ridge do not formally testify before Congress on policy matters.

Thank you again for your letter. We look forward to continuing to consult and work with you on homeland security issues.

Sincerely,

Nicholas E. Calio
Assistant to the President for Legislative Affairs

The Honorable Robert C. Byrd
The Honorable Ted Stevens
United States Senate
Washington, DC 20510

From:	CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD]
To:	Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>
CC:	stephen s. mcmillin/omb/eop@eop [OMB] <stephen s. mcmillin>;carlos e. bonilla/opd/eop@eop [OPD] <carlos e. bonilla>;kirk blalock/who/eop@eop [WHO] <kirk blalock>;joel d. kaplan/who /eop@eop [WHO] <joel d. kaplan>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent:	4/30/2002 7:09:51 AM
Subject:	: Re: FW: HR 3347 letter
Attachments:	P_LZR17003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:30-APR-2002 11:09:51.00
SUBJECT:: Re: FW: HR 3347 letter
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:stephen s. mcmillin (CN=stephen s. mcmillin/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:carlos e. bonilla (CN=carlos e. bonilla/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
CC:kirk blalock (CN=kirk blalock/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:joel d. kaplan (CN=joel d. kaplan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

By the way, if I don't hear from you by 1:00 pm, I will assume you have no comment. Thanks!

Elizabeth S. Dougherty
04/30/2002 11:09:01 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FW: HR 3347 letter

Hi all! Wanted to make sure you all saw the letter Secretary Mineta is planning on sending to Don Young regarding the General Aviation Relief bill. Please let me know ASAP if you have any questions or comments on the letter. If there is someone else in your shop that ought to see the letter, please forward this email.

Thanks,
Liz

---------- Forwarded by Elizabeth S. Dougherty/OPD/EOP on 04/30/2002 11:05 AM ----------

"Nober, Roger" <Roger.Nober@ost.dot.gov>

04/30/2002 11:00:48 AM
Record Type: Record

To: Elizabeth S. Dougherty/OPD/EOP@EOP
cc:
Subject: FW: HR 3347 letter

-----Original Message-----
From: Herlihy, Tom
Sent: Tuesday, April 30, 2002 10:58 AM
To: Nober, Roger
Cc: Mclean, Donna; Scheinberg, Phyllis; Van Tine, Kirk
Subject: HR 3347 letter

<<hr3347views.doc>>

- hr3347views.DOC

Message Sent
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Carlos E. Bonilla/OPD/EOP@EOP
Kirk Blalock/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LZR17003_WHO.TXT_1>

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the--

General Aviation Industry Reparations Act of 2002.

H.R. 3347 would, with some significant changes, provide for the same program of Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided immediately following September 11, 2001, to commercial airlines and their agents. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and the U.S. economy benefits in significant measure from continued viability of this commercial sector and the travel services it provides to businesses nationwide. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn, and the enactment of H.R. 2926 at that time was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget

Request for fiscal year 2003. This combination of pro-growth Federal spending measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the economy.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. The staff resources at the Department are already strained implementing H.R. 2926, and enactment of H.R. 3347 would place a very substantial additional burden on them.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. Rather than enacting a new program, the Department believes that the House-passed general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although section 2(c) of the bill would provide that the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) would constitute emergency spending under budget rules, the spending would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

REV_00144547

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 4/30/2002 11:50:03 AM
Subject: : Re: Approval for Ohio's May 10 Fundraiser tickets?
Attachments: P_KE827003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 15:50:03.00
SUBJECT:: Re: Approval for Ohio's May 10 Fundraiser tickets?
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Approved.

Collister W. Johnson
04/29/2002 05:10:03 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Approval for Ohio's May 10 Fundraiser tickets?

Brett:
Wanted to run this by you?
Attached is the ticket OH will send out asap - per your approval - to secured guests for the POTUS event on May 10 -

cj

---------- Forwarded by Collister W. Johnson/WHO/EOP on 04/29/2002 05:09 PM ----------

Mike Dew <mike.dew@governortaft.com>
04/29/2002 03:59:25 PM
Please respond to mike.dew@governortaft.com
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: May 10 tickets

Here are drafts of our tickets. Let me know what if anything we need to change.

Dew

- 4 Tickets Draft.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KE827003_WHO.TXT_1>

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE AND PROCEED TO THE FRANKLIN ROOM.

PRESIDENTIAL PHOTO OPPORTUNITY & LUNCHEON

11:00 A.M. PHOTO OPPORTUNITY
FRANKLIN ROOM, SECOND FLOOR

11:30 A.M. LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

ADMIT ONE
NON-TRANSFERABLE

Paid for by Taft-Bradley '02, Mark B. LaPlace, Treasurer,
64 East Broad Street, Columbus, Ohio 43215

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE AND PROCEED TO THE DELAWARE ROOM.

GOVERNOR'S PHOTO OPPORTUNITY, RECEPTION & LUNCHEON

11:00 A.M. PHOTO OPPORTUNITY & RECEPTION
DELAWARE ROOM, SECOND FLOOR

11:30 A.M. LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

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64 East Broad Street, Columbus, Ohio 43215

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE AND PROCEED TO THE DELAWARE ROOM.

GOVERNOR'S RECEPTION & LUNCHEON

11:00 A.M. RECEPTION
DELAWARE ROOM, SECOND FLOOR

11:30 A.M. LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

ADMIT ONE
NON-TRANSFERABLE

Paid for by Taft-Bradley '02, Mark B. LaPlace, Treasurer,
64 East Broad Street, Columbus, Ohio 43215

An Ohio Salute to President George W. Bush

HONORING
GOVERNOR BOB TAFT

FRIDAY, MAY 10, 2002
THE HYATT REGENCY COLUMBUS
350 NORTH HIGH STREET

PLEASE USE THE HOTEL'S MAIN ENTRANCE.

LUNCHEON

11:30 A.M.
LUNCHEON
REGENCY BALLROOM, THIRD FLOOR

PLEASE PLAN TO ARRIVE APPROXIMATELY THIRTY MINUTES PRIOR TO THE START OF THE EVENT TO ALLOW FOR SECURITY CLEARANCE.

TABLE

ADMIT ONE
NON-TRANSFERABLE

Paid for by Taft-Bradley '02, Mark B. LaPlace, Treasurer,
64 East Broad Street, Columbus, Ohio 43215

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>
Sent: 4/30/2002 9:41:53 AM
Subject: : Sovereign Immunity Bill
Attachments: P_IS027003_WHO.TXT_1.pdf; P_IS027003_WHO.TXT_2.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 13:41:53.00
SUBJECT:: Sovereign Immunity Bill
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

your bailiwick? I am happy to take the hand-off or leave to you.
Just keep me posted on what you want.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/30/2002 01:41 PM ----------

Ed_Haden@judiciary.senate.gov (Ed Haden)
04/30/2002 11:39:34 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Sovereign Immunity Bill

Brett:

Chairman Leahy and Senator Hatch have been asked by the technology
lobby to
pass some legislation to force States to waive their sovereign immunity
with
respect to intellectual property infringement. State infringement cases do
not
constitute a substantial percentage of the total infringement actions.
Nonetheless, the tech companies are worried that foreign governments (e.g.,
China) will not allow them to sue for infringement over there if foreign
companies are not allowed to sue U.S. State governments for similar
infringements over here.

The Leahy approach is to bar a State from being a plaintiff in an
intellectual property infringement case unless it waives sovereign immunity
defense as a defendant for all such actions. [Note: The Dems also want
to
pass something that would let them crow: "Even Republican Senators
rejected the
Rehnquist Court's sovereign immunity jurisprudence. It must be outside the
mainstream. " Of course, a waiver, as opposed to an abrogation, would not
be
wholly inconsistent with Florida Prepaid.]

When Leahy tried to force his bill through Committee, Senators Kyl,
Sessions, and McConnell opposed the Leahy bill with numerous amendments in
order
to force a negotiation. These Senators are concerned that the Leahy bill
is too

broad and tends to erode the sovereign immunity protection that States enjoy.
While the State colleges and universities share this concern, NAAG and NGA have
no position.

In an effort to provide some relief to the tech companies while retaining
sovereign immunity protection for the States, we have come up with a tentative
approach of allowing the Federal government to sue States for money damages
arising from infringement and allowing private persons to sue for injunctive
relief. These tactics come from footnote 9 in the Garrett case.

We would appreciate your thoughts on this approach and any other suggestions
that you may have.

Ed

- COE02_236.pdf
- Leahy.bill.COE02_227

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IS027003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IS027003_WHO.TXT_2>

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide for the investigation of allegations of infringement of certain intellectual property rights by States, the filing of civil actions by the Attorney General to protect those rights, and for other purposes.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2031

To restore Federal remedies for infringements of intellectual property by States, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. SESSIONS

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2002''.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) promote technological innovation and artistic creation in furtherance of the policies underlying Federal laws and international treaties relating to intellectual property; and

(2) reaffirm the availability of prospective relief against State officials who are violating or who threaten to violate Federal intellectual property laws.

SEC. 3. DEFINITION.

In this Act, the term ''intellectual property agency'' means—

(1) the Patent and Trademark Office of the Department of Commerce;

(2) the Copyright Office of the Library of Congress; and

(3) the Plant Variety Protection Office of the Department of Agriculture.

SEC. 4. INVESTIGATION OF ALLEGATIONS OF INTELLECTUAL PROPERTY INFRINGEMENT BY STATES.

(a) ALLEGATIONS.—Any person may file an allegation of an infringement by a State or any instrumentality of a State of an intellectual property right protected under Federal law with the appropriate intellectual property agency if—

(1) that person—

(A) is the holder of that right; and

(B) is not a State or instrumentality of a State; and

(2) that right is created on or after 180 days after the date of enactment of this Act.

(b) INVESTIGATION.—Each intellectual property agency may—

(1) investigate any allegation filed under subsection (a); and

(2) after the investigation of any such allegation, refer the allegation and all evidence from the investigation to the Department of Justice.

SEC. 5. DEPARTMENT OF JUSTICE CIVIL ACTIONS.

(a) IN GENERAL.—The Attorney General of the United States may file a civil action based on any allegation referred to the Department of Justice under section 3.

(b) CIVIL ACTIONS.—A civil action under this section—

(1) may be filed—

(A) in any United States district court of appropriate jurisdiction; or

(B) in any State court as provided under the law of that State; and

(2) shall be for, or on behalf of, the person making the allegation for monetary damages or any other available remedy.

SEC. 6. EQUITABLE REMEDIES AVAILABLE IN PRIVATE ACTION.

Any person who files an allegation under section 4 may file a civil action based on that allegation in any United States district court of appropriate jurisdiction to seek an injunction, as applicable, under—

(1) section 283 of title 35, United States Code;

(2) section 502 of title 17, United States Code;

(3) section 34 (a) or (b) of the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946); or

(4) section 123 of the Plant Variety Protection Act (7 U.S.C. 2563).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated in fiscal year 2003, and each fiscal year thereafter, such sums as may be necessary to carry out sections 4 and 5.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To restore Federal remedies for infringements of intellectual property by States, limit ownership of intellectual property by States that have not waived sovereign immunity relating to that property, and for other purposes.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2031

To restore Federal remedies for infringements of intellectual property by States, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LEAHY (for himself and Mr. HATCH)

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Intellectual Property Protection Restoration Act of 2002".

(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) help address the commercial advantage that States and their instrumentalities now hold in the Federal intellectual property system because of their ability to obtain protection under the United States patent, copyright, and trademark laws while retaining immunity from liability for infringing intellectual property rights;

(2) promote technological innovation and artistic creation in furtherance of the policies underlying Federal laws and international treaties relating to intellectual property;

(3) reaffirm the availability of prospective relief against State officials who are violating or who threaten to violate Federal intellectual property laws; and

(4) provide compensation for harm resulting from infringements of Federal intellectual property by States or their instrumentalities, officers, or employees in violation of the fifth and fourteenth amendments of the United States Constitution.

SEC. 3. OWNERSHIP BY STATES.

(a) AMENDMENTS TO PATENT LAW.—Section 102 of title 35, United States Code, is amended—

(1) by striking the period at the end and inserting ", or"; and

(2) by adding at the end the following:

"(h)(1) that person is a State or any of its instrumentalities; and

"(2) that State has not waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law.".

(b) AMENDMENT TO COPYRIGHT LAW.—

(1) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by inserting after section 105 the following:

"§ 105A. Subject matter of copyright: State works

"Copyright protection under this title is not available to any work of a State or any of its instrumentalities, unless the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 105 the following:

"105A. Subject matter of copyright: State works.".

(c) AMENDMENT TO TRADEMARK LAW.—Section 1 of the Trademark Act of 1946 (15 U.S.C. 1051) is amended by adding at the end the following:

"(f) The owner of a trademark may not apply to register that trademark under this Act if—

"(1) that owner is a State or any of its instrumentalities; and

"(2) that State has not waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for

any infringement of intellectual property protected under Federal law.''.

(d) AMENDMENT TO PLANT VARIETY PROTECTION LAWS.—Section 51 of the Plant Variety Protection Act (7 U.S.C. 2421) is amended by adding at the end the following:

''(c) An owner of a variety may not file an application for protection under this Act if—

''(1) that owner is a State or any of its instrumentalities; and

''(2) that State has not waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law.''.

(e) EFFECTIVE DATE.—This section shall take effect on January 1, 2003, and the amendments made by—

(1) subsections (a), (c), and (d) shall apply to filings on and after that date; and

(2) subsection (b) shall apply to works created on and after that date.

SEC. 4. INTELLECTUAL PROPERTY REMEDIES EQUALIZATION.

(a) AMENDMENT TO PATENT LAW.—Section 287 of title 35, United States Code, is amended by adding at the end the following:

"(d)(1) No remedies under section 283, 284, or 289 shall be awarded in any civil action brought under this title for infringement of a patent issued on or after January 1, 2003, if a State or State instrumentality is or was at any time the legal or beneficial owner of such patent, except upon proof that—

"(A) on or before the date the infringement commenced or January 1, 2005, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

"(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

"(2) The limitation on remedies under paragraph (1) shall not apply with respect to a patent if—

"(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2003; or

"(B) the party seeking remedies was a bona fide purchaser for value of the patent, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the patent.

"(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2005, the court may stay the proceeding for a reasonable time, but not later than January 1, 2005, to afford the State an opportunity to waive its immunity as provided in paragraph (1).".

(b) AMENDMENT TO COPYRIGHT LAW.—Section 504 of title 17, United States Code, is amended by adding at the end the following:

"(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

"(1) No remedies under this section or section 502 shall be awarded in any civil action brought under this title for infringement of an exclusive right in a work created on or after January 1, 2003, if

a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

"(A) on or before the date the infringement commenced or January 1, 2005, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

"(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

"(2) The limitation on remedies under paragraph (1) shall not apply with respect to an exclusive right if—

"(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2003; or

"(B) the party seeking remedies was a bona fide purchaser for value of the exclusive

right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

"(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2005, the court may stay the proceeding for a reasonable time, but not later than January 1, 2005, to afford the State an opportunity to waive its immunity as provided in paragraph (1).".

(c) AMENDMENT TO TRADEMARK LAW.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

"(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

"(1) No remedies under this section or section 34 (a) or (b) shall be awarded in any civil action arising under this Act for a violation of any right of the registrant of a mark registered in the Patent and Trademark Office on or after January 1, 2003, or any right of the owner of a mark first used in commerce on or after January 1, 2003, if a State or State instrumentality is or was at any time the

legal or beneficial owner of such right, except upon proof that—

"(A) on or before the date the violation commenced or January 1, 2005, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

"(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

"(2) The limitation on remedies under paragraph (1) shall not apply with respect to a right of the registrant or owner of a mark if—

"(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2003; or

"(B) the party seeking remedies was a bona fide purchaser for value of the right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a

State or State instrumentality was once the legal or beneficial owner of the right.

"(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2005, the court may stay the proceeding for a reasonable time, but not later than January 1, 2005, to afford the State an opportunity to waive its immunity as provided in paragraph (1).".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO PATENT LAW.—

(A) IN GENERAL.—Section 296 of title 35, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 29 of title 35, United States Code, is amended by striking the item relating to section 296.

(2) AMENDMENTS TO COPYRIGHT LAW.—

(A) IN GENERAL.—Section 511 of title 17, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 511.

(3) AMENDMENTS TO TRADEMARK LAW.—Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended—

(A) by striking subsection (b);

(B) in subsection (c), by striking "or (b)" after "subsection (a)"; and

(C) by redesignating subsection (c) as subsection (b).

SEC. 5. CLARIFICATION OF REMEDIES AVAILABLE FOR STATUTORY VIOLATIONS BY STATE OFFICERS AND EMPLOYEES.

In any action against an officer or employee of a State or State instrumentality for any violation of any of the provisions of title 17 or 35, United States Code, the Trademark Act of 1946, or the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), remedies shall be available against the officer or employee in the same manner and to the same extent as such remedies are available in an action against a private individual under like circumstances. Such remedies may include monetary damages assessed against the officer or employee, declaratory and injunctive relief, costs, attorney fees, and destruction of infringing articles, as provided under the applicable Federal statute.

SEC. 6. LIABILITY OF STATES FOR CONSTITUTIONAL VIOLATIONS INVOLVING INTELLECTUAL PROPERTY.

(a) DUE PROCESS VIOLATIONS.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that deprives any person of property in violation of the fourteenth amendment of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(b) TAKINGS VIOLATIONS.—

(1) IN GENERAL.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or

of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that takes property in violation of the fifth and fourteenth amendments of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(2) EFFECT ON OTHER RELIEF.—Nothing in this subsection shall prevent or affect the ability of a party to obtain declaratory or injunctive relief under section 5 of this Act or otherwise.

(c) COMPENSATION.—Compensation under subsection (a) or (b)—

(1) may include actual damages, profits, statutory damages, interest, costs, expert witness fees, and attorney fees, as set forth in the appropriate provisions of title 17 or 35, United States Code, the Trademark Act of 1946, and the Plant Variety Protection Act; and

(2) may not include an award of treble or enhanced damages under section 284 of title 35, United States Code, section 504(d) of title 17, United States Code, section 35(b) of the Trademark Act of 1946 (15 U.S.C. 1117 (b)), and section

124(b) of the Plant Variety Protection Act (7 U.S.C. 2564(b)).

(d) BURDEN OF PROOF.—In any action under subsection (a) or (b)—

(1) with respect to any matter that would have to be proved if the action were an action for infringement brought under the applicable Federal statute, the burden of proof shall be the same as if the action were brought under such statute; and

(2) with respect to all other matters, including whether the State provides an adequate remedy for any deprivation of property proved by the injured party under subsection (a), the burden of proof shall be upon the State or State instrumentality.

(e) EFFECTIVE DATE.—This section shall apply to violations that occur on or after the date of enactment of this Act.

SEC. 7. RULES OF CONSTRUCTION.

(a) JURISDICTION.—The district courts shall have original jurisdiction of any action arising under this Act under section 1338 of title 28, United States Code.

(b) BROAD CONSTRUCTION.—This Act shall be construed in favor of a broad protection of intellectual property, to the maximum extent permitted by the United States Constitution.

(c) SEVERABILITY.—If any provision of this Act or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected.

From: CN=James A. Brown/OU=OMB/O=EOP [OMB]

To: Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>;Kenneth L. Schwartz/OMB /EOP@EOP [OMB] <Kenneth L. Schwartz>;Steven M. Mertens/OMB/EOP@EOP [OMB] <Steven M. Mertens>;Clare C. Doherty/OMB/EOP@EOP [OMB] <Clare C. Doherty>;Timothy A. Rosado/OMB/EOP@EOP [OMB] <Timothy A. Rosado>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>;OVP LRM [UNKNOWN] <OVP LRM>;NEC LRM [UNKNOWN] <NEC LRM>;WHGC LRM [UNKNOWN] <WHGC LRM>;John F. Wood/OMB /EOP@EOP [OMB] <John F. Wood>;Matthew J. Schneider/OMB/EOP@EOP [OMB] <Matthew J. Schneider>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Rosemarie W. Dale/OMB/EOP@EOP [OMB] <Rosemarie W. Dale>;Adriel M. Harvey/OMB/EOP@EOP [OMB] <Adriel M. Harvey>;Elizabeth A. Bernhard/OMB/EOP@EOP [OMB] <Elizabeth A. Bernhard>;Courtney B. Timberlake/OMB /EOP@EOP [OMB] <Courtney B. Timberlake>;Lauren C. Lobrano/OMB/EOP@EOP [OMB] <Lauren C. Lobrano>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Carlos E. Bonilla/OPD /EOP@EOP [OPD] <Carlos E. Bonilla>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Richard E. Green/OMB /EOP@EOP [OMB] <Richard E. Green>

Sent: 4/30/2002 10:17:25 AM

Subject: : TIME SENSITIVE -- LRM JAB 220 TRANSPORTATION Report on HR3347 General Aviation Industry Reparations Act of 2001

Attachments: P_5T227003_OPD.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James A. Brown ( CN=James A. Brown/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:30-APR-2002 14:17:25.00
SUBJECT:: TIME SENSITIVE -- LRM JAB 220 TRANSPORTATION Report on HR3347 General Aviation
Industry Reparations Act of 2001
TO:Stephen S. McMillin ( CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Steven M. Mertens ( CN=Steven M. Mertens/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Clare C. Doherty ( CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Timothy A. Rosado ( CN=Timothy A. Rosado/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:OVP LRM ( OVP LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:NEC LRM ( NEC LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:WHGC LRM ( WHGC LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP@EOP [ OMB ] )
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READ:UNKNOWN
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READ:UNKNOWN
TO:Adriel M. Harvey ( CN=Adriel M. Harvey/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Elizabeth A. Bernhard ( CN=Elizabeth A. Bernhard/OU=OMB/O=EOP@EOP [ OMB ] )
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READ:UNKNOWN
TO:Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Danielle M. Simonetta (CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
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TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

This letter needs to be supplied to the House leadership today. If we do not hear from you by the deadline, we will therefore assume that you have no objection to clearance.

- hr3347views.DOC
LRM ID: JAB220
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 30, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: TRANSPORTATION Report on HR3347 General Aviation Industry Reparations Act of 2001

DEADLINE: 3:30 p.m. Today Tuesday, April 30, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This letter needs to be supplied to the House leadership today. If we do not hear from you by the deadline, we will therefore assume that you have no objection to clearance.

DISTRIBUTION LIST

AGENCIES:
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Richard E. Green
LRM ID: JAB220 SUBJECT: TRANSPORTATION Report on HR3347 General Aviation Industry Reparations Act of 2001
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5T227003_OPD.TXT_1>

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the--

General Aviation Industry Reparations Act of 2002.

H.R. 3347 would, with some significant changes, provide for the same program of Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided immediately following September 11, 2001, to commercial airlines and their agents. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and the U.S. economy benefits in significant measure from continued viability of this commercial sector and the travel services it provides to businesses nationwide. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn, and the enactment of H.R. 2926 at that time was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget

Request for fiscal year 2003. This combination of pro-growth Federal spending measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the economy.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. The staff resources at the Department are already strained implementing H.R. 2926, and enactment of H.R. 3347 would place a very substantial additional burden on them.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. Rather than enacting a new program, the Department believes that the House-passed general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although section 2(c) of the bill would provide that the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) would constitute emergency spending under budget rules, the spending would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jill Davie/WHO/EOP@EOP [WHO] <Jill Davie>
Sent: 4/30/2002 2:29:28 PM
Subject: : Re: Includes edits. Still rechecking whether DOD has scheduled testimony yet.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 18:29:28.00
SUBJECT:: Re: Includes edits. Still rechecking whether DOD has scheduled testimony yet.
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

can you FAX me copies to 6-5104

From: Jill Davie on 04/30/2002 06:21:38 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Includes edits. Still rechecking whether DOD has
scheduled testimony yet.

They were delivered today. Thanks.

Brett M. Kavanaugh
04/30/2002 03:23:34 PM
Record Type: Record

To: Jill Davie/WHO/EOP@EOP
cc: christine ciccone/who/eop@eop
bcc:
Subject: Re: Includes edits. Still rechecking whether DOD has
scheduled testimony yet.

Jill: just checking on status of this.

From: Jill Davie on 04/30/2002 10:51:35 AM
Record Type: Record

To: Christine Ciccone/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP, Jack Howard/WHO/EOP@EOP
bcc:
Subject: Re: Includes edits. Still rechecking whether DOD has
scheduled testimony yet.

Any word from DOD? Thanks Christine - Jill

Christine Ciccone
04/29/2002 12:08:42 PM
Record Type: Record

To: Jill Davie/WHO/EOP@EOP,
cc:
Subject: Includes edits. Still rechecking whether DOD has scheduled testimony yet.

I expect that Nick will still want to edit to make more personal to his style. This version includes more info on what the Administration is doing to support the Committee....

April 29, 2002

Dear Chairman Byrd and Senator Stevens:

Thank you for your April 17 letter to Assistant to the President for Homeland Security Tom Ridge renewing your previous invitations for him to testify before the Committee.

We look forward to working with you and the committee as deliberations begin on the fiscal year &028 supplemental, and fiscal year &038 appropriations bills. As you are aware, the Secretaries of Transportation, Agriculture, State, Treasury, Interior, Health & Human Services as well as the Attorney General and the Director of the Federal Emergency Management Agency are scheduled to testify before the Senate Appropriations Committee this week on the President,s funding requests for homeland security. We expect the Secretary of Defense will also testify subject to his travels to Central Asia.

Regarding your request, Governor Ridge and his staff remain fully prepared to meet with you and to provide appropriate briefings to you, the Committee, and Committee staff. Consistent with the policy long maintained by the Executive Branch and long respected by the Congress, Presidential advisors such as Governor Ridge do not formally testify before Congress on policy matters.

Thank you again for your letter. We look forward to continuing to consult and work with you on homeland security issues.

Sincerely,

Nicholas E. Calio
Assistant to the President for Legislative Affairs

The Honorable Robert C. Byrd
The Honorable Ted Stevens
United States Senate
Washington, DC 20510

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rachel_L._Brand@who.eop.gov [UNKNOWN] <Rachel_L._Brand@who.eop.gov>
CC: edward mcnally/who/eop@eop [WHO] <edward mcnally>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 4/30/2002 11:20:09 AM
Subject: : Re: PHSAC and Record keeping

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 15:20:09.00
SUBJECT:: Re: PHSAC and Record keeping
TO:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:edward mcnally (CN=edward mcnally/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

My understanding is that they would be PRA records. Ed?

Rachel_L._Brand@who.eop.gov
04/30/2002 11:41:02 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP
cc: Rachel L. Brand/WHO/EOP@EOP
Subject: PHSAC and Record keeping

Can we please have a brief meeting to discuss the record-keeping issues relating
to the PHSAC?

Ed, my discussion with GSA about the MOU this a.m. was not easy, because I haven't been privy to all the prior discussions he's had with NARA, you, Kim,
Frank, etc.

I need to know:

1) Will the records of the PHSAC and subcomponents be Presidential Records (Brett)?
2) Ed, would you rather be responsible for making legal determinations about
FOIA issues (specifically, whether FOIA execmptions take certain documents out
of the public disclosure requirement under FACA), or would you rather have GSA
shoulder that burden?
3) Has someone agreed that OHS, not GSA, would be responsible for making the
documents of the PHSAC contemporaneously available to the public? This could be
a major logistical burden and would be hard to do out of the OEOB if we have to
let people in to look at hard copies, but if the docs are presidential records,

or if we want to keep control over which docs are and aren't disclosed
under
FOIA, we may want to take on that responsibility.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/30/2002 5:32:35 PM
Subject: : VA testimony for 5/02 SVAC hearing
Attachments: P_YPI27003_WHO.TXT_1.doc; P_YPI27003_WHO.TXT_2.txt; P_YPI27003_WHO.TXT_3.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2002 21:32:35.00
SUBJECT:: VA testimony for 5/02 SVAC hearing
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 04/30/2002 09:32 PM ----------

From: Kathryn C. Thompson on 04/30/2002 08:02:02 PM
Record Type: Record

To: WHGC LRM, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: VA testimony for 5/02 SVAC hearing

VA has submitted testimony for clearance on a number of veterans' bills for a hearing before the Senate Veterans' Affairs Committee this Thursday (circulated under LRM ID: KCT151).

Please take a look at the excerpt of the VA testimony that discusses S. 2079, which is attached below. I want to make sure that WH Counsel concurs with VA's position on this legislation. Please provide me with your reaction by Noon, Tomorrow, Wednesday, May 1st. Thanks.

---------- Forwarded by Kathryn C. Thompson/OMB/EOP on 04/30/2002 08:00 PM ----------

From: Kathryn C. Thompson on 04/26/2002 08:01:52 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT151 - - VETERANS AFFAIRS Testimony on Pending Veterans' Legislation

The following is LRM ID: KCT151 -- Veterans Affairs Testimony on Pending Veterans' Legislation. The VA testimony is attached below and it consists of 31 pages.

Please comment on the VA testimony by 10 a.m., Tuesday, April 30th. If you do not respond by the deadline, I will assume that you have no objection to the testimony.

LRM ID: KCT151
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 26, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Testimony on Pending Veterans' Legislation

DEADLINE: 10 a.m. Tuesday, April 30, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This VA testimony was prepared for a Senate Veterans' Affairs Committee hearing on May 2nd. The testimony discusses a number of veterans' bills.

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LRM ID: KCT151 SUBJECT: VETERANS AFFAIRS Testimony on Pending Veterans' Legislation
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Kathryn C. Thompson Phone: 395-7596 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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File attachment <P_YPI27003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_YPI27003_WHO.TXT_3>

S. 2079

S. 2079 would effect four changes in current law. First, it would permit judicial review of amendments to VA's schedule of ratings for disabilities. Second, it would change the standard of review applied by the United States Court of Appeals for Veterans Claims (CAVC) in challenges to findings of fact made by VA in adjudicating claims for benefits. Third, it would expand the jurisdiction of the United States Court of Appeals for the Federal Circuit to permit review of CAVC decisions on rules of law not involving the validity or interpretation of a statute or regulation. Fourth, it would authorize the CAVC to award reasonable fees and expenses under the Equal Access to Justice Act to non-attorney practitioners.

Review of Rating Schedule

Section 1 of S. 2079 would permit judicial review of VA's actions in adopting or revising provisions of its Rating Schedule. Such review is currently prohibited by 38 U.S.C. §§ 502 and 7252(b). Under S. 2079, such review could be sought either through a rule-making challenge filed directly with the Federal Circuit or as part of an appeal from a VA decision on a benefit claim, which is presented first to the CAVC and may thereafter be appealed to the Federal Circuit. The bill would permit direct challenges in the Federal Circuit only with respect to a revision of the Rating Schedule occurring after the date of enactment of this bill. However, the bill would impose no similar limitation on challenges brought in connection with an appeal from a VA benefit decision. Accordingly,

all changes to VA's Rating Schedule made at any time in the past would apparently be subject to review in such appeals.

VA does not support this change. In the Veterans' Judicial Review Act, Congress prohibited judicial review of the Rating Schedule because of the disruptive effect such review may have on VA claims processing. This change unnecessarily revisits the issues that were resolved in the compromises that led to enactment of the VJRA. Those compromises were reached in recognition of the fact that empowering courts to review VA's rating schedule will result in additional time-consuming litigation concerning complex medical and vocational matters on which courts have no particular expertise or experience.

Pursuant to 38 U.S.C. § 1155, the disability ratings assigned in the Rating Schedule are based upon the "average impairments of earning capacity resulting from such injuries in civil occupations" and are to be revised by VA "in accordance with experience." As the statute contemplates, the provisions of VA's Rating Schedule are based on VA's judgment and accumulated experience in evaluating the medical, vocational, and economic factors relating to the effect of specific disabilities on earning capacity. Disputes concerning the content of the Rating Schedule would not involve the type of legal issues or case-specific fact issues that appellate courts are ordinarily called upon to decide. Rather, they would involve challenges to VA's informed judgment concerning the average economic effects of specific medical conditions.

REV_00144602

Appellate courts are ill-equipped to assess the many medical, social, economic, and experiential factors that inform VA's judgment on these issues, and the CAVC and Federal Circuit would be particularly hampered in this endeavor by the lack of any procedures for developing an evidentiary record for such review. Even if an appellate court could acquire sufficient information to permit judicial review of these discretionary judgments, the process would be extremely time-consuming and burdensome on VA and the courts alike.

Apart from the disruptive effects that would ensue if a reviewing court modifies or invalidates portions of the Rating Schedule, judicial review may limit VA's flexibility to adopt beneficial rating provisions based primarily on its experience and expertise. Although 38 U.S.C. § 1155 indicates that VA's experience will be the primary guide in adopting changes to the Rating Schedule, judicial review would necessarily result in increased formalization and a greater need for specific medical and vocational evidence to support each rating. Rather than benefiting veterans, in our view, the rigidity that would likely follow from judicial review may adversely affect the historically liberal nature of VA's Rating Schedule.

For these reasons, determinations concerning the average impairment of earning capacity due to specific conditions should continue to be committed to VA's informed discretion. The costs that may be associated with this provision

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cannot be predicted, but would depend on the number of challenges filed under this provision and the outcome of such challenges.

Standard of Review for Findings of Fact

Section 2 of S. 2079 would change the standard applied by the CAVC in reviewing findings of fact made by the Board of Veterans' Appeals. Currently, the CAVC is authorized to set aside any "clearly erroneous" finding of material fact. S. 2079 would direct the CAVC to set aside any finding of material fact that is "not reasonably supported by a preponderance of the evidence."

The "clearly erroneous" standard is a well-known standard of appellate review. *See* Fed. R. Civ. P. 52(a). In contrast, the "preponderance" standard is ordinarily used as a standard of proof describing a party's evidentiary burden before a fact-finding body such as the Board of Veterans' Appeals. As the Supreme Court has noted, standards of proof and standards of appellate review serve very different functions and are not interchangeable. *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622-23 (1993). Standards of proof describe the degree of evidence needed to convince the finder of fact in the first instance. Standards of appellate review, on the other hand, describe the degree of confidence an appellate court must have in the fact finder's decision, and ordinarily accord some deference to the fact finder's decision.

REV_00144604

There would be some incongruity in defining the CAVC's standard of review in terms of a standard of proof customarily employed only by initial fact finders. More troubling, however, is the fact that the "preponderance" standard would require the CAVC to decide claims without any deference to VA's findings of fact. Under the "benefit of the doubt" rule in section 5107(b) of title 38, United States Code, any findings of fact adverse to the veteran must be based on a preponderance of evidence. Section 2 of S. 2079 would direct the CAVC to independently decide whether a preponderance of evidence supports each factual finding, allowing no deference to the Board, which holds hearings, takes testimony, and seeks additional evidence as necessary.

This Committee's 1988 report on the Veterans' Judicial Review Act discussed the importance of according deference to the Board's "expertise as an arbiter of the specialized types of factual issues that arise in the context of claims for VA benefits." This approach comports with the ordinary practice of according deference to factual findings made by administrative agencies, in view of the agencies' expertise, familiarity with the types of evidence and evidentiary issues involved, and ability to evaluate the credibility of testimony and other forms of evidence. Under the Administrative Procedure Act, findings of fact by most agencies are reviewed under the deferential "substantial evidence" standard.

Even if the Committee believes that a standard less restrictive than the "clearly erroneous" standard is warranted, it should not take the drastic step of

REV_00144605

permitting *de novo* review of VA fact finding, as S. 2079 would. As this Committee noted in its report on the Veterans' Judicial Review Act, there are other intermediate review standards available, such as the "substantial evidence" standard. Permitting *de novo* review would derogate from the Board's primary expertise in weighing evidence, evaluating the credibility of evidence, and making factual determinations on complex medical issues. It may also be expected to increase the CAVC's responsibilities and caseload. Moreover, it would depart from established practice in American jurisprudence of tiered layers of judicial review and would uniquely deprive VA of the deference routinely accorded to factual findings of virtually all other agencies. The anomaly of a court performing precisely the same function as an agency and wielding the same fact-finding authority is both redundant and inconsistent with the traditional roles of the executive and judicial branches of government.

Finally, I want to make clear that the CAVC's current standard of review does not in any way deprive veterans of the benefit of the doubt accorded by law. Under current law, the CAVC routinely considers whether the Board has applied the "benefit of the doubt" standard, whether the Board has adequately explained the application of that standard to the facts of each case, and whether there is a plausible basis for the Board's conclusions under that standard. This review plainly ensures that the benefit of the doubt is accorded to veterans whenever applicable.

REV_00144606

We cannot predict the costs that may be associated with this provision, as they would depend largely upon the outcome of individual cases.

Federal Circuit Review of Issues of Law

Section 3 of S. 2079 would authorize the United States Court of Appeals for the Federal Circuit to review decisions of the CAVC on a rule of law. Currently, the Federal Circuit may review CAVC decisions with respect to the validity or interpretation of a statute or regulation or with respect to a constitutional question. S. 2079 would clarify that the Federal Circuit may decide legal questions that do not involve a statute, regulation, or constitutional provision. Proponents of this provision have suggested that it is needed to permit review of judicially-created legal rules, such as those involving equitable tolling of time limits or the so-called "treating physician" rule adopted by courts in Social Security benefit claims. VA does not agree with that view. We do not believe that purely legal issues are insulated from review by the current statute. Notably, the Federal Circuit has decided challenges concerning judicially-created legal principles under the existing statute, including issues pertaining to equitable tolling and the treating physician rule. *See Bailey v. West*, 160 F.3d 1360 (Fed. Cir. 1998) (en banc); *White v. Principi*, 243 F.3d 1378 (Fed. Cir. 2001).

Although we do not believe this provision is necessary, VA has no objection to it. Permitting judicial review of purely legal matters is consistent with

REV_00144607

the purpose of the Veterans' Judicial Review Act and, we believe, with the Federal Circuit's current practice.

We would, however, recommend one change to this provision. S. 2079 would amend section 7292(c) of title 38, United States Code, to state that the Federal Circuit may review CAVC decisions on a rule of law. This would ensure that the Federal Circuit would retain exclusive jurisdiction over review of decisions of the CAVC. We believe it would also be necessary to make this change in section 7292(a), the provision the Federal Circuit has identified as prescribing its jurisdiction in those cases. *See Forshey v. Principi*, No. 99-7064 (Fed. Cir. Apr. 1, 2002).

There would be no significant costs associated with this provision.

Fees for Non-Attorney Practitioners

Section 4 of S. 2079 would authorize the CAVC to award reasonable fees and expenses for the services of non-attorney practitioners admitted to practice under that court's rules. Specifically, the bill would state that the CAVC's authority to award fees and expenses of attorneys under 28 U.S.C. § 2412(b) shall include the authority to award fees and expenses of non-attorney practitioners "as if such non-attorney practitioners were attorneys admitted to practice before the Court."

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As an initial matter, we believe this bill should refer to subsection (d) of section 2412, rather than to subsection (b). The Federal Courts Administration Act of 1992 amended subsection (d) to give the CAVC authority to award reasonable fees and expenses of attorneys under that subsection. We are aware of no cases in which the CAVC has awarded fees and expenses under the separate authority of subsection (b) of section 2412.

VA has no objection to permitting payment of reasonable fees and expenses of non-attorney practitioners. We note that the CAVC currently has authority to award reasonable fees and expenses of non-attorney practitioners who are supervised by an attorney. This legislation would extend that authority to cases involving unsupervised non-attorney practitioners who have been admitted to practice under the CAVC's rules.

VA does not, however, support the language in section 4 providing for awards "as if [the] non-attorney practitioners were attorneys admitted to practice before the Court." This language may require that fees for non-attorney practitioners be commensurate with fees for attorneys. Although we recognize the valuable services provided by non-attorney practitioners before the CAVC, their services ordinarily are not compensated at the same level as services of a licensed attorney. The Equal Access to Justice Act contemplates that fees generally shall correspond to the market rates for the kind and quality of services

REV_00144609

furnished. Accordingly, the CAVC should retain the authority to pay fees for attorneys and non-attorneys at different rates.

There would be no significant costs associated with this provision.

S 2079 IS

107th CONGRESS

2d Session

S. 2079

To amend title 38, United States Code, to facilitate and enhance jud icial review of certain matters regarding veterans' benefits, and for other pur poses.

IN THE SENATE OF THE UNITED STATES

April 9, 2002

Mr. ROCKEFELLER introduced the following bill; which was read twice and refe rred to the Committee on Veterans Affairs

---

A BILL

To amend title 38, United States Code, to facilitate and enhance jud icial review of certain matters regarding veterans' benefits, and for other pur poses.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. JUDICIAL REVIEW OF ADOPTION OR REVISION OF SCHEDULE OF RATING S FOR DISABILITIES.

(a) RESTATEMENT OF CURRENT AUTHORITY WITH AUTHORITY FOR REVIEW- The te xt of section 502 of title 38, United States Code, is amended to read as follow s:

`(a) An action of the Secretary to which section 552(a)(1) or 553 of t itle 5, or both, refers is subject to judicial review.

`(b)(1) Except as provided in paragraph (2), review under subsection (a) shall be in accordance with chapter 7 of title 5, and may be sought only in the United States Court of Appeals for the Federal Circuit.

`(2) If review under subsection (a) is sought in connection with an ap peal brought under the provisions of chapter 72 of this title, the provisions o f that chapter shall apply rather than the provisions of chapter 7 of title 5.< /ul>

`(c) In reviewing under subsection (b)(1) an action relating to the ad option or revision of the schedule of ratings for disabilities adopted under se ction 1155 of this title, the United States Court of Appeals for the Federal Ci rcuit shall hold unlawful and set aside the action if the action is found by th e Court to be--

`(1) arbitrary, capricious, an abuse of discretion, or otherwise n ot in accordance with law; or

`(2) in excess of statutory jurisdiction, authority, or limitation s, or in violation of statutory right.'.

(b) APPLICABILITY- The amendment made by subsection (a) shall take eff ect on the date of the enactment of this Act. The review described by subsectio n (c) of section 502 of title 38, United States Code, as so amended, shall be a vailable only for a revision of the schedule of ratings of disabilities under s ection 1155 of that title that occurs on or after that date.

SEC. 2. STANDARD OF REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD OF REVERSAL- Paragraph (4) of subsection (a) of section 7 261 of title 38, United States Code, is amended by striking `if the finding is clearly erroneous' and inserting `if such finding is not reasonably supported b y a preponderance of the evidence'.

(b) SCOPE OF AUTHORITY- That subsection is further amended--

(1) in the matter preceding paragraph (1), by striking `this chapt er' and inserting `section 7252(a) of this title'; and

(2) in paragraph (4), as amended by subsection (a) of this section --

(A) by inserting `adverse to the claimant that is' after `mate rial fact'; and

(B) by inserting `or reverse' after `set aside'.

(c) MATTERS RELATING TO FINDINGS OF MATERIAL FACT- That section is fur ther amended--

(1) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

`(b)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall utilize the record of proceedings containing such finding, as established for purposes of sections 5107(b) and 7252(c) of t his title.

`(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination.'.

(d) APPLICABILITY- (1) Except as provided in paragraph (2), the amendm ents made by this section shall take effect on the date of the enactment of thi s Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Vetera ns Claims--

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a f inal decision has not been made under section 7291 of title 38, United States C ode, as of that date.

SEC. 3. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS OF VETERANS CLAIMS.

(a) REVIEW- Section 7292(c) of title 38, United States Code, is amende d in the first sentence by inserting after `the validity of' the following: `a decision of the Court of Veterans Appeals on a rule of law or of'.

(b) APPLICABILITY- The amendment made by subsection (a) shall take eff ect on the date of the enactment of this Act, and shall apply with respect to a ny appeal--

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federa l Circuit as of the date of the enactment of this Act in which a final decision has not been rendered as of that date.

SEC. 4. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claim s to award reasonable fees and expenses of attorneys under section 2412(b) of t itle 28, United States Code, shall include authority to award fees and expenses of individuals admitted to practice before the Court as non-attorney practitio ners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Proced ure of the United States Court of Appeals for Veterans Claims as if such non-at torney practitioners were attorneys admitted to practice before the Court.

END

STATEMENT OF

ANTHONY J. PRINCIPI

SECRETARY OF VETERANS AFFAIRS

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

MAY 2, 2002

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on a number of legislative items of interest to veterans.

S. 984

This bill would increase the beneficiary travel mileage rates to reimbursement rates (applicable to privately owned vehicles) established by the General Services Administration (GSA). It would also include a new group of veterans among those entitled to beneficiary travel benefits under 38 U.S.C. § 111, specifically veterans whose travel is in connection with treatment for a non-service connected disability at a non-VA facility, if the treatment is recommended by VA medical personnel at a facility that is not able to provide the recommended treatment.

VA does not support S. 984. While VA's reimbursement rates are less than those established by GSA, any increase would decrease funds available for direct medical care. It is estimated that an increase in beneficiary mileage reimbursement rates to GSA's level of 36.5 cents would cost approximately $97 million that would have to come from medical care funding. Even a modest increase of 5 cents per mile would cost approximately $20 million. We cannot support diminishing VA's capacity to provide direct patient care to provide an added benefit to the very limited groups of veterans eligible for travel reimbursement benefits.

S. 1113 and S. 2025

Both of these bills would enhance the special pension paid by VA to those who have been awarded the Congressional Medal of Honor, by increasing the monthly benefit to $1,000 (it is currently $600) and indexing the rate to annual increases in the cost of living. S. 2025 would, in addition, provide that the special-pension eligibility shall commence on the first day of the month beginning after the date of the act for which an individual is awarded the Medal of Honor. Currently, the period of eligibility does not begin until after the military service concerned certifies to VA that the Medal of Honor has been awarded and the recipient applies for the pension. Under S. 2025, all individuals in receipt of the special pension on the date of enactment would be entitled to lump-sum payments representing the additional amounts of pension that would have been payable had they been eligible from the first of the month following the acts for

which they received the medals. We note that as of March 2002, there were only 143 Medal of Honor recipients drawing the special pension.

Last October we notified the Committee that we favor an increase of the monthly payments to $1,000 and the indexing of the rate, as provided in S. 1113. We also support the earlier effective dates for the awards called for in S. 2025. We are aware of situations in which there have been lengthy delays – through no fault of the recipients -- in the awarding of Medals of Honor. The proposed effective-date amendment would be more equitable than current law, which bases periods of eligibility on when the Government acts to award Medals of Honor. We believe, however, there may be an internal inconsistency in the language of sections 2(a) and 2(c) of S. 2025 concerning the calculation of retroactive payments which we do not believe was intended by Congress. We would be pleased to work with the Committee staff to revise the bill to correct this technical problem. We would defer to the views of the Department of Justice regarding the merits of the criminal-law amendments in S. 2025.

We estimate the costs associated with enactment of the rate increases in either S. 1113 or S. 2025 to be $1.6 million for FY 2003, $7.4 million for the five-year period FY 2003 through FY 2007, and $13.3 million for the 10-year period FY 2003 through FY 2012. We have not yet estimated the costs of the effective-date amendment in S. 2025.

REV_00144616

S. 1408

This bill would increase the income threshold used to define the group of low-income veterans who are exempted from paying the outpatient pharmacy co-payment. The exempted group would be expanded to include veterans who, for purposes of receiving VA health care, are deemed unable to defray necessary expenses of care, *i.e.*, those with incomes below VA's "means-test" threshold. A provision of the bill would also prohibit the Secretary from increasing the pharmacy co-payment until VA begins collecting co-payments for outpatient care.

Currently, the low-income exemption applies only to those veterans whose incomes do not exceed the maximum annual rate of pension payable under 38 U.S.C. § 1521 were they eligible for such pension. This is a much smaller group composed of very low-income veterans. Although VA appreciates the desire to standardize the definition of "low-income" veteran for purposes of both health care eligibility and the pharmacy co-payment exemption, VA cannot support S.1408. The proposal would significantly reduce much needed revenue upon which the Department relies to continue providing services. We also recommend deletion of the provision deferring increases in the amount of the pharmacy co-payment. VA is already implementing new regulations pertaining to both the pharmacy co-payment and the outpatient co-payment.

S. 1517

S. 1517 would enhance certain aspects of the Montgomery GI Bill (MGIB). Specifically, the bill would amend the chapter 30 MGIB-Active Duty program by eliminating both the $1200 pay reduction currently required to participate in the chapter 30 MGIB program and the election required of those who choose not to participate. We defer to the Department of Defense (DOD) on these issues. S. 1517 would also add a new category of individuals under the chapter 30 program who would be entitled to transfer their entire entitlement or a portion of it to one or more of their dependents. Under this provision, individuals with not less than 15 years of active duty service would become eligible to transfer MGIB education benefits. VA would be responsible for funding the transferred benefits paid to dependents. Since this proposal does not support the readjustment goals of the MGIB, we do not concur in its enactment.

S. 1517 also would extend the time limitation for using an individual's chapter 30 MGIB entitlement from 10 years after the date of discharge or release from active duty to 20 years. In like manner, it would provide for a 20-year delimiting period for members of the MGIB-Selected Reserve as well. VA does not support these provisions. In our view, extending the 10-year period is not consistent with the stated purposes of the MGIB. We believe that 10 years is sufficient time for most individuals to make the readjustment from military to civilian life. We defer to the views of the DOD on the delimiting date extension for the MGIB Selected Reserve program.

Finally, S. 1517 would provide for increased MGIB education benefits for those members of the Selected Reserve who are called to active duty for more than one year for a contingency operation. VA defers to DOD's views on this matter.

S. 1561

This bill would authorize $2 million for fiscal year 2002 and such sums as may be needed for each subsequent fiscal year for VA to continue its efforts in responding to, and training of VA and other health-care professionals for, the medical consequences of bio-terrorism.

We support increasing VA's efforts in the area of emergency medical preparedness. However, we believe that the objectives of this legislation should be addressed in the context of other measures being considered that address VA's role in bio-terrorism preparedness.

S. 1576

S. 1576 would extend through December 31, 2011, VA's special authority to treat Gulf War veterans for any disability possibly related to their service in the Gulf, notwithstanding there is insufficient medical evidence to conclude that such disability may be associated with such service. That authority will expire after December 31, 2002. VA supports this proposal.

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S. 1680

S. 1680 would amend the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) to treat certain National Guard duty as military service under that Act. This legislation would enable National Guard members who are called to active service by their governor in support of Operation Enduring Freedom, or at the request of the President, to qualify for the protections afforded by the SSCRA. Examples of these protections are the six-percent interest rate limitation on pre-existing consumer debt, and stays of judicial proceedings in civil matters.

Because the protections provided under the SSCRA are afforded to individuals serving in military service, the Department of Defense, not VA, is the Federal agency with the primary interest in this Act. The only notable impact on VA would be in our loan guaranty programs. In these areas, VA itself would have to abide by the SSCRA's provisions. The impact of the proposed amendment in this regard would be minimal and the cost to VA would be insignificant. We therefore have no objection to this bill.

S. 1905

Mr. Chairman, thank you for introducing S. 1905 at our request. It contains a variety of needed enhancements to veterans' programs and the ability of the Department to administer them. Among its most significant provisions, it would:

- Confer new authority for VA to provide medical care for newborn children of enrolled women veterans;
- Authorize us to provide dental care to more former prisoners of war; and
- Eliminate certain VA-specific restrictions on numbers of non-career SES members and on who may serve as Deputy Assistant Secretaries.

I strongly urge its favorable consideration.

S. 2003

S. 2003 would amend VA's anti-assignment statute, 38 U.S.C. § 5301, by adding language to prohibit agreements, and collateral security arrangements, between persons receiving monetary VA benefits and third parties. Third parties use these agreements to acquire rights to receive monetary benefits paid to VA beneficiaries.

Let me first say that, because 38 U.S.C. § 5301 generally bars assignment of VA benefits, VA regional offices have not, and do not, honor such agreements. Nevertheless, once funds are paid to a beneficiary, except where the veteran has been found mentally incompetent, VA lacks the ability to oversee how those funds are used. While we would certainly counsel veterans, their dependents and survivors to very carefully consider the full ramifications of assigning their benefits, we believe they should be free to decide how best to manage their own personal finances. We do not, therefore, support enactment of S. 2003.

S. 2043

S. 2043 would extend by five years (through December 31, 2008) VA's authority to provide non-institutional extended care services as part of the medical benefits package furnished to veterans. The bill would also extend through December 31, 2008, mandatory eligibility for nursing home care for veterans with a service-connected disability rated 70% or greater. Finally, S. 2043 would extend by five years the date by which the Secretary must report to Congress on the operation of its long-term care programs established under the Millennium Act. VA supports S. 2043 and the continuation of the Millennium Act non-institutional long-term care provisions.

S. 2044

S. 2044 would amend section 116 of the Millennium Act to direct that we increase funding for specialized mental health services for veterans. The measure directs that we expend $25 million for these programs, but it is not clear whether it would require $25 million for each of three successive years, or over a three-year period. The additional $25 million must also be over and above the baseline amount now being expended for these programs. However, it is unclear if we must expend an additional $25 million over the baseline each year for three successive years, or only over a three-year period. Finally, the measure directs that we consider these funds to be special-purpose funds that we must allocate outside the VERA allocation system.

Although VA appreciates the need to ensure adequate funding for these highly valuable and essential health-care programs, we strongly oppose this bill. We do not believe these programs should be treated differently from other essential treatment programs for allocation of appropriated resources. We also believe it is inappropriate to direct that we allocate funds for programs like this outside of the VERA system.

S. 2060

This legislation would designate the building housing VA's Regional Office in St. Petersburg, Florida as the "Franklin D. Miller Department of Veterans Affairs Regional Office Building." It would also require the Secretary to provide for an appropriate ceremony for, and commemoration of, the new designation on the first Memorial Day that follows enactment of the bill. Finally, the bill would require the Secretary to permanently display a copy of Mr. Miller's Medal of Honor citation in the building's lobby. We respectfully defer to the views of Congress on the naming of Federal property.

S. 2073

This bill would provide retroactive entitlement to Medal of Honor special pension to Mr. Ed W. Freeman. As indicated above, VA supports enactment of S. 2025, which would "make whole" special pensioners for whom the awarding of the Medal of Honor was delayed. We would prefer that this issue be addressed

generally through enactment of S. 2025, rather than through special legislation such as S. 2073.

S. 2074 and S. 2229

Both S. 2074 and S. 2229 would increase the rates of compensation for service-disabled veterans and for dependency and indemnity compensation paid to survivors of veterans whose deaths were service-related, effective December 1, 2002. As provided in the President's FY 2003 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 1.8 percent. The proposed COLA is necessary to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this COLA would cost $279 million during FY 2003, $1.66 billion over the period FY 2003-2007 and $3.45 billion over the period FY 2003-2012.

S. 2229, which you were kind enough to introduce at our request, would also revise the statutory requirement that VA continue to provide extended-care services at 1998 levels. As you know, current law requires VA to maintain staffing and level of extended care services provided in VA facilities at the levels provided during FY 1998. We propose to amend the law to require that VA maintain the overall level of extended care it provided during FY 1998 (i.e., the

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aggregate of care in provided in VA facilities, care VA contracts for in community nursing homes, and care VA subsidizes in State homes). If VA were required to meet the current mandate regarding care in just VA facilities, it would need to divert to that program an estimated $161.2 million by the end of FY 2004 from other health-care purposes, including community nursing-home care and State nursing-home construction. This would greatly disserve veterans, who benefit from both choice and access to care closer to loved ones.

S. 2079

S. 2079 would effect four changes in current law. First, it would permit judicial review of amendments to VA's schedule of ratings for disabilities. Second, it would change the standard of review applied by the United States Court of Appeals for Veterans Claims (CAVC) in challenges to findings of fact made by VA in adjudicating claims for benefits. Third, it would expand the jurisdiction of the United States Court of Appeals for the Federal Circuit to permit review of CAVC decisions on rules of law not involving the validity or interpretation of a statute or regulation. Fourth, it would authorize the CAVC to award reasonable fees and expenses under the Equal Access to Justice Act to non-attorney practitioners.

Review of Rating Schedule

Section 1 of S. 2079 would permit judicial review of VA's actions in adopting or revising provisions of its Rating Schedule. Such review is currently

prohibited by 38 U.S.C. §§ 502 and 7252(b). Under S. 2079, such review could be sought either through a rule-making challenge filed directly with the Federal Circuit or as part of an appeal from a VA decision on a benefit claim, which is presented first to the CAVC and may thereafter be appealed to the Federal Circuit. The bill would permit direct challenges in the Federal Circuit only with respect to a revision of the Rating Schedule occurring after the date of enactment of this bill. However, the bill would impose no similar limitation on challenges brought in connection with an appeal from a VA benefit decision. Accordingly, all changes to VA's Rating Schedule made at any time in the past would apparently be subject to review in such appeals.

VA does not support this change. In the Veterans' Judicial Review Act, Congress prohibited judicial review of the Rating Schedule because of the disruptive effect such review may have on VA claims processing. This change unnecessarily revisits the issues that were resolved in the compromises that led to enactment of the VJRA. Those compromises were reached in recognition of the fact that empowering courts to review VA's rating schedule will result in additional time-consuming litigation concerning complex medical and vocational matters on which courts have no particular expertise or experience.

Pursuant to 38 U.S.C. § 1155, the disability ratings assigned in the Rating Schedule are based upon the "average impairments of earning capacity resulting from such injuries in civil occupations" and are to be revised by VA "in accordance with experience." As the statute contemplates, the provisions of

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VA's Rating Schedule are based on VA's judgment and accumulated experience in evaluating the medical, vocational, and economic factors relating to the effect of specific disabilities on earning capacity. Disputes concerning the content of the Rating Schedule would not involve the type of legal issues or case-specific fact issues that appellate courts are ordinarily called upon to decide. Rather, they would involve challenges to VA's informed judgment concerning the average economic effects of specific medical conditions.

Appellate courts are ill-equipped to assess the many medical, social, economic, and experiential factors that inform VA's judgment on these issues, and the CAVC and Federal Circuit would be particularly hampered in this endeavor by the lack of any procedures for developing an evidentiary record for such review. Even if an appellate court could acquire sufficient information to permit judicial review of these discretionary judgments, the process would be extremely time-consuming and burdensome on VA and the courts alike.

Apart from the disruptive effects that would ensue if a reviewing court modifies or invalidates portions of the Rating Schedule, judicial review may limit VA's flexibility to adopt beneficial rating provisions based primarily on its experience and expertise. Although 38 U.S.C. § 1155 indicates that VA's experience will be the primary guide in adopting changes to the Rating Schedule, judicial review would necessarily result in increased formalization and a greater need for specific medical and vocational evidence to support each rating. Rather

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than benefiting veterans, in our view, the rigidity that would likely follow from judicial review may adversely affect the historically liberal nature of VA's Rating Schedule.

For these reasons, determinations concerning the average impairment of earning capacity due to specific conditions should continue to be committed to VA's informed discretion. The costs that may be associated with this provision cannot be predicted, but would depend on the number of challenges filed under this provision and the outcome of such challenges.

Standard of Review for Findings of Fact

Section 2 of S. 2079 would change the standard applied by the CAVC in reviewing findings of fact made by the Board of Veterans' Appeals. Currently, the CAVC is authorized to set aside any "clearly erroneous" finding of material fact. S. 2079 would direct the CAVC to set aside any finding of material fact that is "not reasonably supported by a preponderance of the evidence."

The "clearly erroneous" standard is a well-known standard of appellate review. *See* Fed. R. Civ. P. 52(a). In contrast, the "preponderance" standard is ordinarily used as a standard of proof describing a party's evidentiary burden before a fact-finding body such as the Board of Veterans' Appeals. As the Supreme Court has noted, standards of proof and standards of appellate review serve very different functions and are not interchangeable. *Concrete Pipe and*

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Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622-23 (1993). Standards of proof describe the degree of evidence needed to convince the finder of fact in the first instance. Standards of appellate review, on the other hand, describe the degree of confidence an appellate court must have in the fact finder's decision, and ordinarily accord some deference to the fact finder's decision.

There would be some incongruity in defining the CAVC's standard of review in terms of a standard of proof customarily employed only by initial fact finders. More troubling, however, is the fact that the "preponderance" standard would require the CAVC to decide claims without any deference to VA's findings of fact. Under the "benefit of the doubt" rule in section 5107(b) of title 38, United States Code, any findings of fact adverse to the veteran must be based on a preponderance of evidence. Section 2 of S. 2079 would direct the CAVC to independently decide whether a preponderance of evidence supports each factual finding, allowing no deference to the Board, which holds hearings, takes testimony, and seeks additional evidence as necessary.

This Committee's 1988 report on the Veterans' Judicial Review Act discussed the importance of according deference to the Board's "expertise as an arbiter of the specialized types of factual issues that arise in the context of claims for VA benefits." This approach comports with the ordinary practice of according deference to factual findings made by administrative agencies, in view of the

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agencies' expertise, familiarity with the types of evidence and evidentiary issues involved, and ability to evaluate the credibility of testimony and other forms of evidence. Under the Administrative Procedure Act, findings of fact by most agencies are reviewed under the deferential "substantial evidence" standard.

Even if the Committee believes that a standard less restrictive than the "clearly erroneous" standard is warranted, it should not take the drastic step of permitting *de novo* review of VA fact finding, as S. 2079 would. As this Committee noted in its report on the Veterans' Judicial Review Act, there are other intermediate review standards available, such as the "substantial evidence" standard. Permitting *de novo* review would derogate from the Board's primary expertise in weighing evidence, evaluating the credibility of evidence, and making factual determinations on complex medical issues. It may also be expected to increase the CAVC's responsibilities and caseload. Moreover, it would depart from established practice in American jurisprudence of tiered layers of judicial review and would uniquely deprive VA of the deference routinely accorded to factual findings of virtually all other agencies. The anomaly of a court performing precisely the same function as an agency and wielding the same fact-finding authority is both redundant and inconsistent with the traditional roles of the executive and judicial branches of government.

Finally, I want to make clear that the CAVC's current standard of review does not in any way deprive veterans of the benefit of the doubt accorded by law.

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Under current law, the CAVC routinely considers whether the Board has applied the "benefit of the doubt" standard, whether the Board has adequately explained the application of that standard to the facts of each case, and whether there is a plausible basis for the Board's conclusions under that standard. This review plainly ensures that the benefit of the doubt is accorded to veterans whenever applicable.

We cannot predict the costs that may be associated with this provision, as they would depend largely upon the outcome of individual cases.

Federal Circuit Review of Issues of Law

Section 3 of S. 2079 would authorize the United States Court of Appeals for the Federal Circuit to review decisions of the CAVC on a rule of law. Currently, the Federal Circuit may review CAVC decisions with respect to the validity or interpretation of a statute or regulation or with respect to a constitutional question. S. 2079 would clarify that the Federal Circuit may decide legal questions that do not involve a statute, regulation, or constitutional provision. Proponents of this provision have suggested that it is needed to permit review of judicially-created legal rules, such as those involving equitable tolling of time limits or the so-called "treating physician" rule adopted by courts in Social Security benefit claims. VA does not agree with that view. We do not believe that purely legal issues are insulated from review by the current statute. Notably, the Federal Circuit has decided challenges concerning judicially-created

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legal principles under the existing statute, including issues pertaining to equitable tolling and the treating physician rule. *See Bailey v. West*, 160 F.3d 1360 (Fed. Cir. 1998) (en banc); *White v. Principi*, 243 F.3d 1378 (Fed. Cir. 2001).

Although we do not believe this provision is necessary, VA has no objection to it. Permitting judicial review of purely legal matters is consistent with the purpose of the Veterans' Judicial Review Act and, we believe, with the Federal Circuit's current practice.

We would, however, recommend one change to this provision. S. 2079 would amend section 7292(c) of title 38, United States Code, to state that the Federal Circuit may review CAVC decisions on a rule of law. This would ensure that the Federal Circuit would retain exclusive jurisdiction over review of decisions of the CAVC. We believe it would also be necessary to make this change in section 7292(a), the provision the Federal Circuit has identified as prescribing its jurisdiction in those cases. *See Forshey v. Principi*, No. 99-7064 (Fed. Cir. Apr. 1, 2002).

There would be no significant costs associated with this provision.

Fees for Non-Attorney Practitioners

Section 4 of S. 2079 would authorize the CAVC to award reasonable fees and expenses for the services of non-attorney practitioners admitted to practice

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under that court's rules. Specifically, the bill would state that the CAVC's authority to award fees and expenses of attorneys under 28 U.S.C. § 2412(b) shall include the authority to award fees and expenses of non-attorney practitioners "as if such non-attorney practitioners were attorneys admitted to practice before the Court."

As an initial matter, we believe this bill should refer to subsection (d) of section 2412, rather than to subsection (b). The Federal Courts Administration Act of 1992 amended subsection (d) to give the CAVC authority to award reasonable fees and expenses of attorneys under that subsection. We are aware of no cases in which the CAVC has awarded fees and expenses under the separate authority of subsection (b) of section 2412.

VA has no objection to permitting payment of reasonable fees and expenses of non-attorney practitioners. We note that the CAVC currently has authority to award reasonable fees and expenses of non-attorney practitioners who are supervised by an attorney. This legislation would extend that authority to cases involving unsupervised non-attorney practitioners who have been admitted to practice under the CAVC's rules.

VA does not, however, support the language in section 4 providing for awards "as if [the] non-attorney practitioners were attorneys admitted to practice before the Court." This language may require that fees for non-attorney

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practitioners be commensurate with fees for attorneys. Although we recognize the valuable services provided by non-attorney practitioners before the CAVC, their services ordinarily are not compensated at the same level as services of a licensed attorney. The Equal Access to Justice Act contemplates that fees generally shall correspond to the market rates for the kind and quality of services furnished. Accordingly, the CAVC should retain the authority to pay fees for attorneys and non-attorneys at different rates.

There would be no significant costs associated with this provision.

S. 2132

Section 1 of S. 2132 would require the Secretary to establish four Emergency Medical Preparedness Centers within the Veterans Health Administration (VHA). VA employees would staff the proposed Centers, and the Centers would be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

The Centers would have four specific purposes. First, they would carry out research and develop methods in detection, diagnosis, vaccination, protection, and treatment of injuries arising from the use of chemical, biological, radiological agents or incendiary or other explosive weapons or devices.

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Second, they would provide education, training, and advice on the medical consequences of the use of CBR agents or incendiary or other explosive weapons or devices. Third, the Centers would provide that same education, training, and advice to non-VA health-care professionals. These activities would be accomplished through either the National Disaster Medical System or interagency agreements. Fourth, in the event of a national emergency, they would provide laboratory, epidemiological, medical, or other assistance, as the Secretary considers appropriate, to Federal, State, and local health care agencies and personnel involved in, or responding to, the national emergency.

Each Center would be authorized to solicit and accept contributions of funds and other resources, including grants, to carry out their purposes and activities, subject to the Secretary's approval. Section 1 of this bill would also authorize to be appropriated $20 million for these Centers for each of fiscal years 2003 through 2007. By the bill's terms, such authorization is valid only for funds appropriated separately and solely for purposes of the Centers; otherwise, the authorization is null and void.

Section 1 of S. 2132 is similar to H.R. 3253 on which the Deputy Secretary testified on April 10, 2002, before the House Committee on Veterans' Affairs, Subcommittee on Health. However, it incorporates the recommendations VA suggested in its April testimony concerning H.R. 3253 and adds a number of improvements to the House version of the bill. We are grateful to this Committee

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for having incorporated our recommendations. We strongly support section 1 of S. 2132 and prefer it to H.R. 3253.

In addition, S. 2132 contains two provisions that would expand the purpose and operations of VA non-profit corporations. VA non-profit corporations function as flexible funding mechanisms that support VA research and education. VA non-profits receive and administer funds from outside sources, e.g., NIH grants and donations made by private sponsors, in support of approved VA research projects and education activities. However, the current statute expressly provides that VA may not transfer appropriated funds to the corporations. Section 2(a) of the bill would amend section 7362 of title 38 to permit the transfer of appropriated dollars from VA to a corporation pursuant to a contract or other agreement, including an agreement for actual research. In addition, section 2(b) of the bill would amend VA's sharing authority to treat VA non-profits like affiliated institutions for the purpose of sharing health-care resources related to research, education and training. These changes would broadly enable the corporations to sell services to the Department. The bill also provides that these arrangements would be outside the scope of Federal procurement law and, therefore, would not be subject to full and open competition.

VA objects to these proposals on the grounds that they would alter the fundamental nature of the relationship between VA and the non-profits, which is

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analogous to that created in a trust. Under current law the corporations exist as a flexible funding mechanism solely to support approved VA research and education. The amendments in section 2 of the bill would make the relationship between Department health-care facilities and VA non-profits more like that with outside contractors or university affiliates; more of an arms-length negotiation rather than one of incontrovertible fiduciary support. This change would also shift the emphasis of VA non-profits away from the primary focus of providing flexible funding support for VA research, education and training to conducting and selling these services to VA. This shift would present a troubling risk of ceding Department control of VA approved research or education to the non-profits.

Section 3 of the bill would amend the title 38 authorities related to VA non-profits by adding a new section 7364A to specifically state that corporation employees assigned to work on approved VA research or education and training shall be considered employees for purposes of Federal tort claim and medical malpractice coverage. VA strongly favors this provision. We note, however, that the phrase, "carried out with Department funds" in the proposed section 7364A(b)(2) might be interpreted to limit this coverage. Much of VA-approved research, or education and training is supported by external funds.

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S. 2186

Mr. Chairman, thank you for introducing S. 2186 at our request. This legislation would establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement and a new VA office of Operations Security and Preparedness. We believe this new office is essential if we are to meet our responsibilities of protecting veterans, employees, and visitors to our facilities.

S. 2187

S. 2187 would permit VA, on its own initiative, to care for those affected by a disaster or emergency and those responding to the emergency. The disaster or emergency must be either declared by the President or involve activation of the National Defense Medical System. Currently, in most cases, VA may provide care in such situations only if requested to do so under the Federal Response Plan administered by the Federal Emergency Management Administration. The bill would also require other Federal agencies to reimburse VA for care provided to their officers, employees, and active duty members at rates agreed upon by the agencies. VA would not be required to charge for care provided to other individuals. Finally, the bill would allow VA to provide care in response to disasters and emergency situations before caring for all other beneficiaries except service-connected veterans and active duty military members referred

during war or national emergency or who are responding or involved in a disaster or emergency.

VA supports this measure. It would permit VA to respond quickly and obtain reimbursement for care from other Federal entities. We note that the bill also proposes to amend 38 U.S.C. § 1711(b). That provision is now codified at 38 U.S.C. § 1784. We also note that the bill would conflict with an administrative provision that appears in VA's annual appropriation act that requires reimbursement of costs except in specified situations. For the provision to be effective that provision of the appropriations act will also need amendment.

S. 2227

S. 2227 would clarify the effective date of changes to the method of computing retirement annuities for certain VA health-care personnel. Last January the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 became law. That bill changed the way part-time service performed before April 7, 1986, by certain VA health-care personnel is credited for annuity purposes. Congress intended this change to apply prospectively to the annuities of both those retiring after the effective date of Public Law No.107-135, as well as those who retired before that date, i.e., that part-time service performed prior to April 7, 1986, would be credited as full-time. This is a technical clarification of

Congress' intent that the changes apply prospectively to both categories of employees. VA does not object to this proposal.

S. 2228

This bill would provide that the Secretary may establish not more than 15 Centers for Mental Illness Research, Education, and Clinical Activities under 38 U.S.C. § 7320. VA has no objection to this provision.

S. 2230

This legislation would revive VA's authority, contained in section 3707 of title 38, to guarantee adjustable rate mortgage loans (ARMs). The bill would also amend this section to authorize VA to guarantee "hybrid" ARMs.

In 1992 the Congress authorized a three-year test program for VA to guarantee ARMs. That authority had a sunset date of September 30, 1995. Due to concerns about the cost of that program, the Congress let the ARM authority lapse.

The interest rate on ARMs authorized by the 1992 statute, which would be reauthorized by the bill, is adjusted annually, based on a national interest-rate index approved by VA. Each annual increase or decrease is limited to one

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percentage point. In no event, however, may the interest rate be increased to more than five percentage points above the initial contract interest rate.

The interest rate on hybrid ARMs, which would also be authorized by S. 2230, is fixed for an initial period of not less than three years. Thereafter, the rate would increase or decrease annually by up to one percentage point. The maximum lifetime increase of five percentage points would also apply to hybrid ARMs.

VA supports S. 2230. The availability of ARMs would expand veterans' ability to qualify for home loans, as some veterans could qualify for the lower initial payments on an ARM who could not qualify for the payments on fixed rate loans for the same dollar amount. The availability of hybrid ARMs would give veterans the additional option of having a fixed monthly payment for a certain number of years before payment adjustment would be a possibility. VA believes veterans using their earned housing loan benefits should have the same options as borrowers using FHA and conventional loans.

VA has established detailed and prudent credit underwriting guidelines that are designed to increase the probability veterans will have the ability and inclination to make the required loan payments. Should veterans encounter financial difficulty and not be able to make the mortgage payments, VA will aggressively work with them in an effort to assist them in bringing their loans current. Should that effort fail, efforts are made to find alternatives to foreclosure

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that will reduce the adverse financial impact on both the veteran and the Government.

[***The following is a preliminary cost estimate which is being verified and is subject to change***] VA estimates that enactment of this bill would have a first-year cost of $17 million, and a 10-year cost of $211 million. This estimate assumes that the increased loan fees now set to expire September 30, 2011, will be extended at least one more year.

S. 2231

S. 2231 would increase educational assistance benefits under VA's Survivors' and Dependents' Educational Assistance program (chapter 35), limit the number of months for those benefits, and increase funding to State Approving Agencies (SAAs). Specifically, it would raise the chapter 35 educational assistance allowance to $900 per month for a full-time course for Fiscal Year (FY) 2003 and to $985 for months after FY 2003. It would also raise the amounts payable for Special Restorative Training to $900 for FY 2003 and to $985 for the months thereafter. The proposed legislation would also decrease the entitlement available to chapter 35 recipients from the current 45 months to 36 months, in the case of those who first file an educational assistance claim under chapter 35 after the date of enactment. Given the relatively short time to consider these important issues regarding chapter 35, we would like to provide

you our views at a later date, after we have had sufficient time to consider the matter.

The final provision of S. 2231 would increase the annual limit on funds available to compensate SAAs for work undertaken on behalf of VA, including approving educational institutions and programs for which veterans and other entitled participants receive VA-administered education benefits. On April 11, 2002, the Under Secretary for Benefits testified before the House Veterans' Affairs Subcommittee on Benefits in favor of H.R. 3731, a bill similar to this one. We, likewise, favor the increase to $18,000,000 contained in S. 1517. However, H.R. 3731 additionally would provide increases in SAA funding of 3 percent for FYs 2004 and 2005, with funding for 2006 and each succeeding fiscal year remaining fixed at the FY 2005 level.

Because of the cost-of-living pay increases mandated by State law, salaries for State employees have gone up since the last SAA funding increase in 1994. Additionally, over the last two years, the SAAs have been called upon to perform new and time-consuming duties as part of their mission. For example, Public Law 106-419, enacted on November 1, 2000, initiated the licensing and certification test payment program and allowed VA to delegate approval responsibility to SAAs even though it was not covered in their contracts.

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We prefer the House version of this provision because it would increase SAA funding for the outyears.

Other Bills

Mr. Chairman, we do not yet have cleared positions on three other bills on today's agenda:

- S. 2205, involving compensation for service-connected mastectomies and making permanent VA's authority to provide counseling and treatment for sexual trauma;
- S. 2209, which would establish a new insurance program for service-disabled veterans; and,
- S. 2237, involving enhanced compensation for veterans with hearing loss.

We will be presenting our views and estimates on these in writing once the necessary executive-branch coordination is completed.

Mr. Chairman that concludes my prepared testimony. I will be pleased to respond to any questions you or the members of the committee may have.

REV_00144644

From: CN=Kathryn C. Thompson/OU=OMB/O=EOP [OMB]
To: WHGC LRM [UNKNOWN] <WHGC LRM>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/30/2002 4:17:31 PM
Subject: : VA testimony for 5/02 SVAC hearing
Attachments: P_2QH27003_WHO.TXT_1.doc; P_2QH27003_WHO.TXT_2.doc; P_2QH27003_WHO.TXT_3.txt

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kathryn C. Thompson (CN=Kathryn C. Thompson/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:30-APR-2002 20:17:31.00
SUBJECT:: VA testimony for 5/02 SVAC hearing
TO:WHGC LRM (WHGC LRM [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

VA has submitted testimony for clearance on a number of veterans' bills for a hearing before the Senate Veterans' Affairs Committee this Thursday (circulated under LRM ID: KCT151).

Please take a look at the excerpt of the VA testimony that discusses S. 2079, which is attached below. I want to make sure that WH Counsel concurs with VA's position on this legislation. Please provide me with your reaction by Noon, Tomorrow, Wednesday, May 1st. Thanks.

---------- Forwarded by Kathryn C. Thompson/OMB/EOP on 04/30/2002 08:00 PM ----------

From: Kathryn C. Thompson on 04/26/2002 08:01:52 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT151 - - VETERANS AFFAIRS Testimony on Pending Veterans' Legislation

The following is LRM ID: KCT151 -- Veterans Affairs Testimony on Pending Veterans' Legislation. The VA testimony is attached below and it consists of 31 pages.

Please comment on the VA testimony by 10 a.m., Tuesday, April 30th. If you do not respond by the deadline, I will assume that you have no objection to the testimony.

LRM ID: KCT151
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 26, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference

OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Testimony on Pending Veterans' Legislation

DEADLINE: 10 a.m. Tuesday, April 30, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This VA testimony was prepared for a Senate Veterans' Affairs Committee hearing on May 2nd. The testimony discusses a number of veterans' bills.

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LRM ID: KCT151 SUBJECT: VETERANS AFFAIRS Testimony on Pending Veterans' Legislation
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

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STATEMENT OF

ANTHONY J. PRINCIPI

SECRETARY OF VETERANS AFFAIRS

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

MAY 2, 2002

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on a number of legislative items of interest to veterans.

S. 984

This bill would increase the beneficiary travel mileage rates to reimbursement rates (applicable to privately owned vehicles) established by the General Services Administration (GSA). It would also include a new group of veterans among those entitled to beneficiary travel benefits under 38 U.S.C. § 111, specifically veterans whose travel is in connection with treatment for a non-service connected disability at a non-VA facility, if the treatment is recommended by VA medical personnel at a facility that is not able to provide the recommended treatment.

VA does not support S. 984. While VA's reimbursement rates are less than those established by GSA, any increase would decrease funds available for direct medical care. It is estimated that an increase in beneficiary mileage reimbursement rates to GSA's level of 36.5 cents would cost approximately $97 million that would have to come from medical care funding. Even a modest increase of 5 cents per mile would cost approximately $20 million. We cannot support diminishing VA's capacity to provide direct patient care to provide an added benefit to the very limited groups of veterans eligible for travel reimbursement benefits.

S. 1113 and S. 2025

Both of these bills would enhance the special pension paid by VA to those who have been awarded the Congressional Medal of Honor, by increasing the monthly benefit to $1,000 (it is currently $600) and indexing the rate to annual increases in the cost of living. S. 2025 would, in addition, provide that the special-pension eligibility shall commence on the first day of the month beginning after the date of the act for which an individual is awarded the Medal of Honor. Currently, the period of eligibility does not begin until after the military service concerned certifies to VA that the Medal of Honor has been awarded and the recipient applies for the pension. Under S. 2025, all individuals in receipt of the special pension on the date of enactment would be entitled to lump-sum payments representing the additional amounts of pension that would have been payable had they been eligible from the first of the month following the acts for

which they received the medals. We note that as of March 2002, there were only 143 Medal of Honor recipients drawing the special pension.

Last October we notified the Committee that we favor an increase of the monthly payments to $1,000 and the indexing of the rate, as provided in S. 1113. We also support the earlier effective dates for the awards called for in S. 2025. We are aware of situations in which there have been lengthy delays – through no fault of the recipients -- in the awarding of Medals of Honor. The proposed effective-date amendment would be more equitable than current law, which bases periods of eligibility on when the Government acts to award Medals of Honor. We believe, however, there may be an internal inconsistency in the language of sections 2(a) and 2(c) of S. 2025 concerning the calculation of retroactive payments which we do not believe was intended by Congress. We would be pleased to work with the Committee staff to revise the bill to correct this technical problem. We would defer to the views of the Department of Justice regarding the merits of the criminal-law amendments in S. 2025.

We estimate the costs associated with enactment of the rate increases in either S. 1113 or S. 2025 to be $1.6 million for FY 2003, $7.4 million for the five-year period FY 2003 through FY 2007, and $13.3 million for the 10-year period FY 2003 through FY 2012. We have not yet estimated the costs of the effective-date amendment in S. 2025.

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S. 1408

This bill would increase the income threshold used to define the group of low-income veterans who are exempted from paying the outpatient pharmacy co-payment. The exempted group would be expanded to include veterans who, for purposes of receiving VA health care, are deemed unable to defray necessary expenses of care, *i.e.*, those with incomes below VA's "means-test" threshold. A provision of the bill would also prohibit the Secretary from increasing the pharmacy co-payment until VA begins collecting co-payments for outpatient care.

Currently, the low-income exemption applies only to those veterans whose incomes do not exceed the maximum annual rate of pension payable under 38 U.S.C. § 1521 were they eligible for such pension. This is a much smaller group composed of very low-income veterans. Although VA appreciates the desire to standardize the definition of "low-income" veteran for purposes of both health care eligibility and the pharmacy co-payment exemption, VA cannot support S.1408. The proposal would significantly reduce much needed revenue upon which the Department relies to continue providing services. We also recommend deletion of the provision deferring increases in the amount of the pharmacy co-payment. VA is already implementing new regulations pertaining to both the pharmacy co-payment and the outpatient co-payment.

S. 1517

S. 1517 would enhance certain aspects of the Montgomery GI Bill (MGIB). Specifically, the bill would amend the chapter 30 MGIB-Active Duty program by eliminating both the $1200 pay reduction currently required to participate in the chapter 30 MGIB program and the election required of those who choose not to participate. We defer to the Department of Defense (DOD) on these issues. S. 1517 would also add a new category of individuals under the chapter 30 program who would be entitled to transfer their entire entitlement or a portion of it to one or more of their dependents. Under this provision, individuals with not less than 15 years of active duty service would become eligible to transfer MGIB education benefits. VA would be responsible for funding the transferred benefits paid to dependents. Since this proposal does not support the readjustment goals of the MGIB, we do not concur in its enactment.

S. 1517 also would extend the time limitation for using an individual's chapter 30 MGIB entitlement from 10 years after the date of discharge or release from active duty to 20 years. In like manner, it would provide for a 20-year delimiting period for members of the MGIB-Selected Reserve as well. VA does not support these provisions. In our view, extending the 10-year period is not consistent with the stated purposes of the MGIB. We believe that 10 years is sufficient time for most individuals to make the readjustment from military to civilian life. We defer to the views of the DOD on the delimiting date extension for the MGIB Selected Reserve program.

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Finally, S. 1517 would provide for increased MGIB education benefits for those members of the Selected Reserve who are called to active duty for more than one year for a contingency operation. VA defers to DOD's views on this matter.

S. 1561

This bill would authorize $2 million for fiscal year 2002 and such sums as may be needed for each subsequent fiscal year for VA to continue its efforts in responding to, and training of VA and other health-care professionals for, the medical consequences of bio-terrorism.

We support increasing VA's efforts in the area of emergency medical preparedness. However, we believe that the objectives of this legislation should be addressed in the context of other measures being considered that address VA's role in bio-terrorism preparedness.

S. 1576

S. 1576 would extend through December 31, 2011, VA's special authority to treat Gulf War veterans for any disability possibly related to their service in the Gulf, notwithstanding there is insufficient medical evidence to conclude that such disability may be associated with such service. That authority will expire after December 31, 2002. VA supports this proposal.

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S. 1680

S. 1680 would amend the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) to treat certain National Guard duty as military service under that Act. This legislation would enable National Guard members who are called to active service by their governor in support of Operation Enduring Freedom, or at the request of the President, to qualify for the protections afforded by the SSCRA. Examples of these protections are the six-percent interest rate limitation on pre-existing consumer debt, and stays of judicial proceedings in civil matters.

Because the protections provided under the SSCRA are afforded to individuals serving in military service, the Department of Defense, not VA, is the Federal agency with the primary interest in this Act. The only notable impact on VA would be in our loan guaranty programs. In these areas, VA itself would have to abide by the SSCRA's provisions. The impact of the proposed amendment in this regard would be minimal and the cost to VA would be insignificant. We therefore have no objection to this bill.

S. 1905

Mr. Chairman, thank you for introducing S. 1905 at our request. It contains a variety of needed enhancements to veterans' programs and the ability of the Department to administer them. Among its most significant provisions, it would:

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- Confer new authority for VA to provide medical care for newborn children of enrolled women veterans;
- Authorize us to provide dental care to more former prisoners of war; and
- Eliminate certain VA-specific restrictions on numbers of non-career SES members and on who may serve as Deputy Assistant Secretaries.

I strongly urge its favorable consideration.

S. 2003

S. 2003 would amend VA's anti-assignment statute, 38 U.S.C. § 5301, by adding language to prohibit agreements, and collateral security arrangements, between persons receiving monetary VA benefits and third parties. Third parties use these agreements to acquire rights to receive monetary benefits paid to VA beneficiaries.

Let me first say that, because 38 U.S.C. § 5301 generally bars assignment of VA benefits, VA regional offices have not, and do not, honor such agreements. Nevertheless, once funds are paid to a beneficiary, except where the veteran has been found mentally incompetent, VA lacks the ability to oversee how those funds are used. While we would certainly counsel veterans, their dependents and survivors to very carefully consider the full ramifications of assigning their benefits, we believe they should be free to decide how best to manage their own personal finances. We do not, therefore, support enactment of S. 2003.

S. 2043

S. 2043 would extend by five years (through December 31, 2008) VA's authority to provide non-institutional extended care services as part of the medical benefits package furnished to veterans. The bill would also extend through December 31, 2008, mandatory eligibility for nursing home care for veterans with a service-connected disability rated 70% or greater. Finally, S. 2043 would extend by five years the date by which the Secretary must report to Congress on the operation of its long-term care programs established under the Millennium Act. VA supports S. 2043 and the continuation of the Millennium Act non-institutional long-term care provisions.

S. 2044

S. 2044 would amend section 116 of the Millennium Act to direct that we increase funding for specialized mental health services for veterans. The measure directs that we expend $25 million for these programs, but it is not clear whether it would require $25 million for each of three successive years, or over a three-year period. The additional $25 million must also be over and above the baseline amount now being expended for these programs. However, it is unclear if we must expend an additional $25 million over the baseline each year for three successive years, or only over a three-year period. Finally, the measure directs that we consider these funds to be special-purpose funds that we must allocate outside the VERA allocation system.

Although VA appreciates the need to ensure adequate funding for these highly valuable and essential health-care programs, we strongly oppose this bill. We do not believe these programs should be treated differently from other essential treatment programs for allocation of appropriated resources. We also believe it is inappropriate to direct that we allocate funds for programs like this outside of the VERA system.

S. 2060

This legislation would designate the building housing VA's Regional Office in St. Petersburg, Florida as the "Franklin D. Miller Department of Veterans Affairs Regional Office Building." It would also require the Secretary to provide for an appropriate ceremony for, and commemoration of, the new designation on the first Memorial Day that follows enactment of the bill. Finally, the bill would require the Secretary to permanently display a copy of Mr. Miller's Medal of Honor citation in the building's lobby. We respectfully defer to the views of Congress on the naming of Federal property.

S. 2073

This bill would provide retroactive entitlement to Medal of Honor special pension to Mr. Ed W. Freeman. As indicated above, VA supports enactment of S. 2025, which would "make whole" special pensioners for whom the awarding of the Medal of Honor was delayed. We would prefer that this issue be addressed

generally through enactment of S. 2025, rather than through special legislation such as S. 2073.

S. 2074 and S. 2229

Both S. 2074 and S. 2229 would increase the rates of compensation for service-disabled veterans and for dependency and indemnity compensation paid to survivors of veterans whose deaths were service-related, effective December 1, 2002. As provided in the President's FY 2003 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 1.8 percent. The proposed COLA is necessary to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this COLA would cost $279 million during FY 2003, $1.66 billion over the period FY 2003-2007 and $3.45 billion over the period FY 2003-2012.

S. 2229, which you were kind enough to introduce at our request, would also revise the statutory requirement that VA continue to provide extended-care services at 1998 levels. As you know, current law requires VA to maintain staffing and level of extended care services provided in VA facilities at the levels provided during FY 1998. We propose to amend the law to require that VA maintain the overall level of extended care it provided during FY 1998 (i.e., the

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aggregate of care in provided in VA facilities, care VA contracts for in community nursing homes, and care VA subsidizes in State homes). If VA were required to meet the current mandate regarding care in just VA facilities, it would need to divert to that program an estimated $161.2 million by the end of FY 2004 from other health-care purposes, including community nursing-home care and State nursing-home construction. This would greatly disserve veterans, who benefit from both choice and access to care closer to loved ones.

S. 2079

S. 2079 would effect four changes in current law. First, it would permit judicial review of amendments to VA's schedule of ratings for disabilities. Second, it would change the standard of review applied by the United States Court of Appeals for Veterans Claims (CAVC) in challenges to findings of fact made by VA in adjudicating claims for benefits. Third, it would expand the jurisdiction of the United States Court of Appeals for the Federal Circuit to permit review of CAVC decisions on rules of law not involving the validity or interpretation of a statute or regulation. Fourth, it would authorize the CAVC to award reasonable fees and expenses under the Equal Access to Justice Act to non-attorney practitioners.

Review of Rating Schedule

Section 1 of S. 2079 would permit judicial review of VA's actions in adopting or revising provisions of its Rating Schedule. Such review is currently

prohibited by 38 U.S.C. §§ 502 and 7252(b). Under S. 2079, such review could be sought either through a rule-making challenge filed directly with the Federal Circuit or as part of an appeal from a VA decision on a benefit claim, which is presented first to the CAVC and may thereafter be appealed to the Federal Circuit. The bill would permit direct challenges in the Federal Circuit only with respect to a revision of the Rating Schedule occurring after the date of enactment of this bill. However, the bill would impose no similar limitation on challenges brought in connection with an appeal from a VA benefit decision. Accordingly, all changes to VA's Rating Schedule made at any time in the past would apparently be subject to review in such appeals.

VA does not support this change. In the Veterans' Judicial Review Act, Congress prohibited judicial review of the Rating Schedule because of the disruptive effect such review may have on VA claims processing. This change unnecessarily revisits the issues that were resolved in the compromises that led to enactment of the VJRA. Those compromises were reached in recognition of the fact that empowering courts to review VA's rating schedule will result in additional time-consuming litigation concerning complex medical and vocational matters on which courts have no particular expertise or experience.

Pursuant to 38 U.S.C. § 1155, the disability ratings assigned in the Rating Schedule are based upon the "average impairments of earning capacity resulting from such injuries in civil occupations" and are to be revised by VA "in accordance with experience." As the statute contemplates, the provisions of

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VA's Rating Schedule are based on VA's judgment and accumulated experience in evaluating the medical, vocational, and economic factors relating to the effect of specific disabilities on earning capacity. Disputes concerning the content of the Rating Schedule would not involve the type of legal issues or case-specific fact issues that appellate courts are ordinarily called upon to decide. Rather, they would involve challenges to VA's informed judgment concerning the average economic effects of specific medical conditions.

Appellate courts are ill-equipped to assess the many medical, social, economic, and experiential factors that inform VA's judgment on these issues, and the CAVC and Federal Circuit would be particularly hampered in this endeavor by the lack of any procedures for developing an evidentiary record for such review. Even if an appellate court could acquire sufficient information to permit judicial review of these discretionary judgments, the process would be extremely time-consuming and burdensome on VA and the courts alike.

Apart from the disruptive effects that would ensue if a reviewing court modifies or invalidates portions of the Rating Schedule, judicial review may limit VA's flexibility to adopt beneficial rating provisions based primarily on its experience and expertise. Although 38 U.S.C. § 1155 indicates that VA's experience will be the primary guide in adopting changes to the Rating Schedule, judicial review would necessarily result in increased formalization and a greater need for specific medical and vocational evidence to support each rating. Rather

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than benefiting veterans, in our view, the rigidity that would likely follow from judicial review may adversely affect the historically liberal nature of VA's Rating Schedule.

For these reasons, determinations concerning the average impairment of earning capacity due to specific conditions should continue to be committed to VA's informed discretion. The costs that may be associated with this provision cannot be predicted, but would depend on the number of challenges filed under this provision and the outcome of such challenges.

Standard of Review for Findings of Fact

Section 2 of S. 2079 would change the standard applied by the CAVC in reviewing findings of fact made by the Board of Veterans' Appeals. Currently, the CAVC is authorized to set aside any "clearly erroneous" finding of material fact. S. 2079 would direct the CAVC to set aside any finding of material fact that is "not reasonably supported by a preponderance of the evidence."

The "clearly erroneous" standard is a well-known standard of appellate review. *See* Fed. R. Civ. P. 52(a). In contrast, the "preponderance" standard is ordinarily used as a standard of proof describing a party's evidentiary burden before a fact-finding body such as the Board of Veterans' Appeals. As the Supreme Court has noted, standards of proof and standards of appellate review serve very different functions and are not interchangeable. *Concrete Pipe and*

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Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622-23 (1993). Standards of proof describe the degree of evidence needed to convince the finder of fact in the first instance. Standards of appellate review, on the other hand, describe the degree of confidence an appellate court must have in the fact finder's decision, and ordinarily accord some deference to the fact finder's decision.

There would be some incongruity in defining the CAVC's standard of review in terms of a standard of proof customarily employed only by initial fact finders. More troubling, however, is the fact that the "preponderance" standard would require the CAVC to decide claims without any deference to VA's findings of fact. Under the "benefit of the doubt" rule in section 5107(b) of title 38, United States Code, any findings of fact adverse to the veteran must be based on a preponderance of evidence. Section 2 of S. 2079 would direct the CAVC to independently decide whether a preponderance of evidence supports each factual finding, allowing no deference to the Board, which holds hearings, takes testimony, and seeks additional evidence as necessary.

This Committee's 1988 report on the Veterans' Judicial Review Act discussed the importance of according deference to the Board's "expertise as an arbiter of the specialized types of factual issues that arise in the context of claims for VA benefits." This approach comports with the ordinary practice of according deference to factual findings made by administrative agencies, in view of the

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agencies' expertise, familiarity with the types of evidence and evidentiary issues involved, and ability to evaluate the credibility of testimony and other forms of evidence. Under the Administrative Procedure Act, findings of fact by most agencies are reviewed under the deferential "substantial evidence" standard.

Even if the Committee believes that a standard less restrictive than the "clearly erroneous" standard is warranted, it should not take the drastic step of permitting *de novo* review of VA fact finding, as S. 2079 would. As this Committee noted in its report on the Veterans' Judicial Review Act, there are other intermediate review standards available, such as the "substantial evidence" standard. Permitting *de novo* review would derogate from the Board's primary expertise in weighing evidence, evaluating the credibility of evidence, and making factual determinations on complex medical issues. It may also be expected to increase the CAVC's responsibilities and caseload. Moreover, it would depart from established practice in American jurisprudence of tiered layers of judicial review and would uniquely deprive VA of the deference routinely accorded to factual findings of virtually all other agencies. The anomaly of a court performing precisely the same function as an agency and wielding the same fact-finding authority is both redundant and inconsistent with the traditional roles of the executive and judicial branches of government.

Finally, I want to make clear that the CAVC's current standard of review does not in any way deprive veterans of the benefit of the doubt accorded by law.

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Under current law, the CAVC routinely considers whether the Board has applied the "benefit of the doubt" standard, whether the Board has adequately explained the application of that standard to the facts of each case, and whether there is a plausible basis for the Board's conclusions under that standard. This review plainly ensures that the benefit of the doubt is accorded to veterans whenever applicable.

We cannot predict the costs that may be associated with this provision, as they would depend largely upon the outcome of individual cases.

Federal Circuit Review of Issues of Law

Section 3 of S. 2079 would authorize the United States Court of Appeals for the Federal Circuit to review decisions of the CAVC on a rule of law. Currently, the Federal Circuit may review CAVC decisions with respect to the validity or interpretation of a statute or regulation or with respect to a constitutional question. S. 2079 would clarify that the Federal Circuit may decide legal questions that do not involve a statute, regulation, or constitutional provision. Proponents of this provision have suggested that it is needed to permit review of judicially-created legal rules, such as those involving equitable tolling of time limits or the so-called "treating physician" rule adopted by courts in Social Security benefit claims. VA does not agree with that view. We do not believe that purely legal issues are insulated from review by the current statute. Notably, the Federal Circuit has decided challenges concerning judicially-created

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legal principles under the existing statute, including issues pertaining to equitable tolling and the treating physician rule. *See Bailey v. West*, 160 F.3d 1360 (Fed. Cir. 1998) (en banc); *White v. Principi*, 243 F.3d 1378 (Fed. Cir. 2001).

Although we do not believe this provision is necessary, VA has no objection to it. Permitting judicial review of purely legal matters is consistent with the purpose of the Veterans' Judicial Review Act and, we believe, with the Federal Circuit's current practice.

We would, however, recommend one change to this provision. S. 2079 would amend section 7292(c) of title 38, United States Code, to state that the Federal Circuit may review CAVC decisions on a rule of law. This would ensure that the Federal Circuit would retain exclusive jurisdiction over review of decisions of the CAVC. We believe it would also be necessary to make this change in section 7292(a), the provision the Federal Circuit has identified as prescribing its jurisdiction in those cases. *See Forshey v. Principi*, No. 99-7064 (Fed. Cir. Apr. 1, 2002).

There would be no significant costs associated with this provision.

Fees for Non-Attorney Practitioners

Section 4 of S. 2079 would authorize the CAVC to award reasonable fees and expenses for the services of non-attorney practitioners admitted to practice

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under that court's rules. Specifically, the bill would state that the CAVC's authority to award fees and expenses of attorneys under 28 U.S.C. § 2412(b) shall include the authority to award fees and expenses of non-attorney practitioners "as if such non-attorney practitioners were attorneys admitted to practice before the Court."

As an initial matter, we believe this bill should refer to subsection (d) of section 2412, rather than to subsection (b). The Federal Courts Administration Act of 1992 amended subsection (d) to give the CAVC authority to award reasonable fees and expenses of attorneys under that subsection. We are aware of no cases in which the CAVC has awarded fees and expenses under the separate authority of subsection (b) of section 2412.

VA has no objection to permitting payment of reasonable fees and expenses of non-attorney practitioners. We note that the CAVC currently has authority to award reasonable fees and expenses of non-attorney practitioners who are supervised by an attorney. This legislation would extend that authority to cases involving unsupervised non-attorney practitioners who have been admitted to practice under the CAVC's rules.

VA does not, however, support the language in section 4 providing for awards "as if [the] non-attorney practitioners were attorneys admitted to practice before the Court." This language may require that fees for non-attorney

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practitioners be commensurate with fees for attorneys. Although we recognize the valuable services provided by non-attorney practitioners before the CAVC, their services ordinarily are not compensated at the same level as services of a licensed attorney. The Equal Access to Justice Act contemplates that fees generally shall correspond to the market rates for the kind and quality of services furnished. Accordingly, the CAVC should retain the authority to pay fees for attorneys and non-attorneys at different rates.

There would be no significant costs associated with this provision.

S. 2132

Section 1 of S. 2132 would require the Secretary to establish four Emergency Medical Preparedness Centers within the Veterans Health Administration (VHA). VA employees would staff the proposed Centers, and the Centers would be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

The Centers would have four specific purposes. First, they would carry out research and develop methods in detection, diagnosis, vaccination, protection, and treatment of injuries arising from the use of chemical, biological, radiological agents or incendiary or other explosive weapons or devices.

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Second, they would provide education, training, and advice on the medical consequences of the use of CBR agents or incendiary or other explosive weapons or devices. Third, the Centers would provide that same education, training, and advice to non-VA health-care professionals. These activities would be accomplished through either the National Disaster Medical System or interagency agreements. Fourth, in the event of a national emergency, they would provide laboratory, epidemiological, medical, or other assistance, as the Secretary considers appropriate, to Federal, State, and local health care agencies and personnel involved in, or responding to, the national emergency.

Each Center would be authorized to solicit and accept contributions of funds and other resources, including grants, to carry out their purposes and activities, subject to the Secretary's approval. Section 1 of this bill would also authorize to be appropriated $20 million for these Centers for each of fiscal years 2003 through 2007. By the bill's terms, such authorization is valid only for funds appropriated separately and solely for purposes of the Centers; otherwise, the authorization is null and void.

Section 1 of S. 2132 is similar to H.R. 3253 on which the Deputy Secretary testified on April 10, 2002, before the House Committee on Veterans' Affairs, Subcommittee on Health. However, it incorporates the recommendations VA suggested in its April testimony concerning H.R. 3253 and adds a number of improvements to the House version of the bill. We are grateful to this Committee

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for having incorporated our recommendations. We strongly support section 1 of S. 2132 and prefer it to H.R. 3253.

In addition, S. 2132 contains two provisions that would expand the purpose and operations of VA non-profit corporations. VA non-profit corporations function as flexible funding mechanisms that support VA research and education. VA non-profits receive and administer funds from outside sources, e.g., NIH grants and donations made by private sponsors, in support of approved VA research projects and education activities. However, the current statute expressly provides that VA may not transfer appropriated funds to the corporations. Section 2(a) of the bill would amend section 7362 of title 38 to permit the transfer of appropriated dollars from VA to a corporation pursuant to a contract or other agreement, including an agreement for actual research. In addition, section 2(b) of the bill would amend VA's sharing authority to treat VA non-profits like affiliated institutions for the purpose of sharing health-care resources related to research, education and training. These changes would broadly enable the corporations to sell services to the Department. The bill also provides that these arrangements would be outside the scope of Federal procurement law and, therefore, would not be subject to full and open competition.

VA objects to these proposals on the grounds that they would alter the fundamental nature of the relationship between VA and the non-profits, which is

REV_00144685

analogous to that created in a trust. Under current law the corporations exist as a flexible funding mechanism solely to support approved VA research and education. The amendments in section 2 of the bill would make the relationship between Department health-care facilities and VA non-profits more like that with outside contractors or university affiliates; more of an arms-length negotiation rather than one of incontrovertible fiduciary support. This change would also shift the emphasis of VA non-profits away from the primary focus of providing flexible funding support for VA research, education and training to conducting and selling these services to VA. This shift would present a troubling risk of ceding Department control of VA approved research or education to the non-profits.

Section 3 of the bill would amend the title 38 authorities related to VA non-profits by adding a new section 7364A to specifically state that corporation employees assigned to work on approved VA research or education and training shall be considered employees for purposes of Federal tort claim and medical malpractice coverage. VA strongly favors this provision. We note, however, that the phrase, "carried out with Department funds" in the proposed section 7364A(b)(2) might be interpreted to limit this coverage. Much of VA-approved research, or education and training is supported by external funds.

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S. 2186

Mr. Chairman, thank you for introducing S. 2186 at our request. This legislation would establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement and a new VA office of Operations Security and Preparedness. We believe this new office is essential if we are to meet our responsibilities of protecting veterans, employees, and visitors to our facilities.

S. 2187

S. 2187 would permit VA, on its own initiative, to care for those affected by a disaster or emergency and those responding to the emergency. The disaster or emergency must be either declared by the President or involve activation of the National Defense Medical System. Currently, in most cases, VA may provide care in such situations only if requested to do so under the Federal Response Plan administered by the Federal Emergency Management Administration. The bill would also require other Federal agencies to reimburse VA for care provided to their officers, employees, and active duty members at rates agreed upon by the agencies. VA would not be required to charge for care provided to other individuals. Finally, the bill would allow VA to provide care in response to disasters and emergency situations before caring for all other beneficiaries except service-connected veterans and active duty military members referred

during war or national emergency or who are responding or involved in a disaster or emergency.

VA supports this measure. It would permit VA to respond quickly and obtain reimbursement for care from other Federal entities. We note that the bill also proposes to amend 38 U.S.C. § 1711(b). That provision is now codified at 38 U.S.C. § 1784. We also note that the bill would conflict with an administrative provision that appears in VA's annual appropriation act that requires reimbursement of costs except in specified situations. For the provision to be effective that provision of the appropriations act will also need amendment.

S. 2227

S. 2227 would clarify the effective date of changes to the method of computing retirement annuities for certain VA health-care personnel. Last January the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 became law. That bill changed the way part-time service performed before April 7, 1986, by certain VA health-care personnel is credited for annuity purposes. Congress intended this change to apply prospectively to the annuities of both those retiring after the effective date of Public Law No.107-135, as well as those who retired before that date, i.e., that part-time service performed prior to April 7, 1986, would be credited as full-time. This is a technical clarification of

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Congress' intent that the changes apply prospectively to both categories of employees. VA does not object to this proposal.

S. 2228

This bill would provide that the Secretary may establish not more than 15 Centers for Mental Illness Research, Education, and Clinical Activities under 38 U.S.C. § 7320. VA has no objection to this provision.

S. 2230

This legislation would revive VA's authority, contained in section 3707 of title 38, to guarantee adjustable rate mortgage loans (ARMs). The bill would also amend this section to authorize VA to guarantee "hybrid" ARMs.

In 1992 the Congress authorized a three-year test program for VA to guarantee ARMs. That authority had a sunset date of September 30, 1995. Due to concerns about the cost of that program, the Congress let the ARM authority lapse.

The interest rate on ARMs authorized by the 1992 statute, which would be reauthorized by the bill, is adjusted annually, based on a national interest-rate index approved by VA. Each annual increase or decrease is limited to one

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percentage point. In no event, however, may the interest rate be increased to more than five percentage points above the initial contract interest rate.

The interest rate on hybrid ARMs, which would also be authorized by S. 2230, is fixed for an initial period of not less than three years. Thereafter, the rate would increase or decrease annually by up to one percentage point. The maximum lifetime increase of five percentage points would also apply to hybrid ARMs.

VA supports S. 2230. The availability of ARMs would expand veterans' ability to qualify for home loans, as some veterans could qualify for the lower initial payments on an ARM who could not qualify for the payments on fixed rate loans for the same dollar amount. The availability of hybrid ARMs would give veterans the additional option of having a fixed monthly payment for a certain number of years before payment adjustment would be a possibility. VA believes veterans using their earned housing loan benefits should have the same options as borrowers using FHA and conventional loans.

VA has established detailed and prudent credit underwriting guidelines that are designed to increase the probability veterans will have the ability and inclination to make the required loan payments. Should veterans encounter financial difficulty and not be able to make the mortgage payments, VA will aggressively work with them in an effort to assist them in bringing their loans current. Should that effort fail, efforts are made to find alternatives to foreclosure

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that will reduce the adverse financial impact on both the veteran and the Government.

[***The following is a preliminary cost estimate which is being verified and is subject to change***] VA estimates that enactment of this bill would have a first-year cost of $17 million, and a 10-year cost of $211 million. This estimate assumes that the increased loan fees now set to expire September 30, 2011, will be extended at least one more year.

S. 2231

S. 2231 would increase educational assistance benefits under VA's Survivors' and Dependents' Educational Assistance program (chapter 35), limit the number of months for those benefits, and increase funding to State Approving Agencies (SAAs). Specifically, it would raise the chapter 35 educational assistance allowance to $900 per month for a full-time course for Fiscal Year (FY) 2003 and to $985 for months after FY 2003. It would also raise the amounts payable for Special Restorative Training to $900 for FY 2003 and to $985 for the months thereafter. The proposed legislation would also decrease the entitlement available to chapter 35 recipients from the current 45 months to 36 months, in the case of those who first file an educational assistance claim under chapter 35 after the date of enactment. Given the relatively short time to consider these important issues regarding chapter 35, we would like to provide

you our views at a later date, after we have had sufficient time to consider the matter.

The final provision of S. 2231 would increase the annual limit on funds available to compensate SAAs for work undertaken on behalf of VA, including approving educational institutions and programs for which veterans and other entitled participants receive VA-administered education benefits. On April 11, 2002, the Under Secretary for Benefits testified before the House Veterans' Affairs Subcommittee on Benefits in favor of H.R. 3731, a bill similar to this one. We, likewise, favor the increase to $18,000,000 contained in S. 1517. However, H.R. 3731 additionally would provide increases in SAA funding of 3 percent for FYs 2004 and 2005, with funding for 2006 and each succeeding fiscal year remaining fixed at the FY 2005 level.

Because of the cost-of-living pay increases mandated by State law, salaries for State employees have gone up since the last SAA funding increase in 1994. Additionally, over the last two years, the SAAs have been called upon to perform new and time-consuming duties as part of their mission. For example, Public Law 106-419, enacted on November 1, 2000, initiated the licensing and certification test payment program and allowed VA to delegate approval responsibility to SAAs even though it was not covered in their contracts.

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We prefer the House version of this provision because it would increase SAA funding for the outyears.

Other Bills

Mr. Chairman, we do not yet have cleared positions on three other bills on today's agenda:

- S. 2205, involving compensation for service-connected mastectomies and making permanent VA's authority to provide counseling and treatment for sexual trauma;
- S. 2209, which would establish a new insurance program for service-disabled veterans; and,
- S. 2237, involving enhanced compensation for veterans with hearing loss.

We will be presenting our views and estimates on these in writing once the necessary executive-branch coordination is completed.

Mr. Chairman that concludes my prepared testimony. I will be pleased to respond to any questions you or the members of the committee may have.

REV_00144693

S. 2079

S. 2079 would effect four changes in current law. First, it would permit judicial review of amendments to VA's schedule of ratings for disabilities. Second, it would change the standard of review applied by the United States Court of Appeals for Veterans Claims (CAVC) in challenges to findings of fact made by VA in adjudicating claims for benefits. Third, it would expand the jurisdiction of the United States Court of Appeals for the Federal Circuit to permit review of CAVC decisions on rules of law not involving the validity or interpretation of a statute or regulation. Fourth, it would authorize the CAVC to award reasonable fees and expenses under the Equal Access to Justice Act to non-attorney practitioners.

Review of Rating Schedule

Section 1 of S. 2079 would permit judicial review of VA's actions in adopting or revising provisions of its Rating Schedule. Such review is currently prohibited by 38 U.S.C. §§ 502 and 7252(b). Under S. 2079, such review could be sought either through a rule-making challenge filed directly with the Federal Circuit or as part of an appeal from a VA decision on a benefit claim, which is presented first to the CAVC and may thereafter be appealed to the Federal Circuit. The bill would permit direct challenges in the Federal Circuit only with respect to a revision of the Rating Schedule occurring after the date of enactment of this bill. However, the bill would impose no similar limitation on challenges brought in connection with an appeal from a VA benefit decision. Accordingly,

all changes to VA's Rating Schedule made at any time in the past would apparently be subject to review in such appeals.

VA does not support this change. In the Veterans' Judicial Review Act, Congress prohibited judicial review of the Rating Schedule because of the disruptive effect such review may have on VA claims processing. This change unnecessarily revisits the issues that were resolved in the compromises that led to enactment of the VJRA. Those compromises were reached in recognition of the fact that empowering courts to review VA's rating schedule will result in additional time-consuming litigation concerning complex medical and vocational matters on which courts have no particular expertise or experience.

Pursuant to 38 U.S.C. § 1155, the disability ratings assigned in the Rating Schedule are based upon the "average impairments of earning capacity resulting from such injuries in civil occupations" and are to be revised by VA "in accordance with experience." As the statute contemplates, the provisions of VA's Rating Schedule are based on VA's judgment and accumulated experience in evaluating the medical, vocational, and economic factors relating to the effect of specific disabilities on earning capacity. Disputes concerning the content of the Rating Schedule would not involve the type of legal issues or case-specific fact issues that appellate courts are ordinarily called upon to decide. Rather, they would involve challenges to VA's informed judgment concerning the average economic effects of specific medical conditions.

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Appellate courts are ill-equipped to assess the many medical, social, economic, and experiential factors that inform VA's judgment on these issues, and the CAVC and Federal Circuit would be particularly hampered in this endeavor by the lack of any procedures for developing an evidentiary record for such review. Even if an appellate court could acquire sufficient information to permit judicial review of these discretionary judgments, the process would be extremely time-consuming and burdensome on VA and the courts alike.

Apart from the disruptive effects that would ensue if a reviewing court modifies or invalidates portions of the Rating Schedule, judicial review may limit VA's flexibility to adopt beneficial rating provisions based primarily on its experience and expertise. Although 38 U.S.C. § 1155 indicates that VA's experience will be the primary guide in adopting changes to the Rating Schedule, judicial review would necessarily result in increased formalization and a greater need for specific medical and vocational evidence to support each rating. Rather than benefiting veterans, in our view, the rigidity that would likely follow from judicial review may adversely affect the historically liberal nature of VA's Rating Schedule.

For these reasons, determinations concerning the average impairment of earning capacity due to specific conditions should continue to be committed to VA's informed discretion. The costs that may be associated with this provision

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cannot be predicted, but would depend on the number of challenges filed under this provision and the outcome of such challenges.

Standard of Review for Findings of Fact

Section 2 of S. 2079 would change the standard applied by the CAVC in reviewing findings of fact made by the Board of Veterans' Appeals. Currently, the CAVC is authorized to set aside any "clearly erroneous" finding of material fact. S. 2079 would direct the CAVC to set aside any finding of material fact that is "not reasonably supported by a preponderance of the evidence."

The "clearly erroneous" standard is a well-known standard of appellate review. *See* Fed. R. Civ. P. 52(a). In contrast, the "preponderance" standard is ordinarily used as a standard of proof describing a party's evidentiary burden before a fact-finding body such as the Board of Veterans' Appeals. As the Supreme Court has noted, standards of proof and standards of appellate review serve very different functions and are not interchangeable. *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622-23 (1993). Standards of proof describe the degree of evidence needed to convince the finder of fact in the first instance. Standards of appellate review, on the other hand, describe the degree of confidence an appellate court must have in the fact finder's decision, and ordinarily accord some deference to the fact finder's decision.

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There would be some incongruity in defining the CAVC's standard of review in terms of a standard of proof customarily employed only by initial fact finders. More troubling, however, is the fact that the "preponderance" standard would require the CAVC to decide claims without any deference to VA's findings of fact. Under the "benefit of the doubt" rule in section 5107(b) of title 38, United States Code, any findings of fact adverse to the veteran must be based on a preponderance of evidence. Section 2 of S. 2079 would direct the CAVC to independently decide whether a preponderance of evidence supports each factual finding, allowing no deference to the Board, which holds hearings, takes testimony, and seeks additional evidence as necessary.

This Committee's 1988 report on the Veterans' Judicial Review Act discussed the importance of according deference to the Board's "expertise as an arbiter of the specialized types of factual issues that arise in the context of claims for VA benefits." This approach comports with the ordinary practice of according deference to factual findings made by administrative agencies, in view of the agencies' expertise, familiarity with the types of evidence and evidentiary issues involved, and ability to evaluate the credibility of testimony and other forms of evidence. Under the Administrative Procedure Act, findings of fact by most agencies are reviewed under the deferential "substantial evidence" standard.

Even if the Committee believes that a standard less restrictive than the "clearly erroneous" standard is warranted, it should not take the drastic step of

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permitting *de novo* review of VA fact finding, as S. 2079 would. As this Committee noted in its report on the Veterans' Judicial Review Act, there are other intermediate review standards available, such as the "substantial evidence" standard. Permitting *de novo* review would derogate from the Board's primary expertise in weighing evidence, evaluating the credibility of evidence, and making factual determinations on complex medical issues. It may also be expected to increase the CAVC's responsibilities and caseload. Moreover, it would depart from established practice in American jurisprudence of tiered layers of judicial review and would uniquely deprive VA of the deference routinely accorded to factual findings of virtually all other agencies. The anomaly of a court performing precisely the same function as an agency and wielding the same fact-finding authority is both redundant and inconsistent with the traditional roles of the executive and judicial branches of government.

Finally, I want to make clear that the CAVC's current standard of review does not in any way deprive veterans of the benefit of the doubt accorded by law. Under current law, the CAVC routinely considers whether the Board has applied the "benefit of the doubt" standard, whether the Board has adequately explained the application of that standard to the facts of each case, and whether there is a plausible basis for the Board's conclusions under that standard. This review plainly ensures that the benefit of the doubt is accorded to veterans whenever applicable.

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We cannot predict the costs that may be associated with this provision, as they would depend largely upon the outcome of individual cases.

Federal Circuit Review of Issues of Law

Section 3 of S. 2079 would authorize the United States Court of Appeals for the Federal Circuit to review decisions of the CAVC on a rule of law. Currently, the Federal Circuit may review CAVC decisions with respect to the validity or interpretation of a statute or regulation or with respect to a constitutional question. S. 2079 would clarify that the Federal Circuit may decide legal questions that do not involve a statute, regulation, or constitutional provision. Proponents of this provision have suggested that it is needed to permit review of judicially-created legal rules, such as those involving equitable tolling of time limits or the so-called "treating physician" rule adopted by courts in Social Security benefit claims. VA does not agree with that view. We do not believe that purely legal issues are insulated from review by the current statute. Notably, the Federal Circuit has decided challenges concerning judicially-created legal principles under the existing statute, including issues pertaining to equitable tolling and the treating physician rule. *See Bailey v. West*, 160 F.3d 1360 (Fed. Cir. 1998) (en banc); *White v. Principi*, 243 F.3d 1378 (Fed. Cir. 2001).

Although we do not believe this provision is necessary, VA has no objection to it. Permitting judicial review of purely legal matters is consistent with

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the purpose of the Veterans' Judicial Review Act and, we believe, with the Federal Circuit's current practice.

We would, however, recommend one change to this provision. S. 2079 would amend section 7292(c) of title 38, United States Code, to state that the Federal Circuit may review CAVC decisions on a rule of law. This would ensure that the Federal Circuit would retain exclusive jurisdiction over review of decisions of the CAVC. We believe it would also be necessary to make this change in section 7292(a), the provision the Federal Circuit has identified as prescribing its jurisdiction in those cases. *See Forshey v. Principi*, No. 99-7064 (Fed. Cir. Apr. 1, 2002).

There would be no significant costs associated with this provision.

Fees for Non-Attorney Practitioners

Section 4 of S. 2079 would authorize the CAVC to award reasonable fees and expenses for the services of non-attorney practitioners admitted to practice under that court's rules. Specifically, the bill would state that the CAVC's authority to award fees and expenses of attorneys under 28 U.S.C. § 2412(b) shall include the authority to award fees and expenses of non-attorney practitioners "as if such non-attorney practitioners were attorneys admitted to practice before the Court."

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As an initial matter, we believe this bill should refer to subsection (d) of section 2412, rather than to subsection (b). The Federal Courts Administration Act of 1992 amended subsection (d) to give the CAVC authority to award reasonable fees and expenses of attorneys under that subsection. We are aware of no cases in which the CAVC has awarded fees and expenses under the separate authority of subsection (b) of section 2412.

VA has no objection to permitting payment of reasonable fees and expenses of non-attorney practitioners. We note that the CAVC currently has authority to award reasonable fees and expenses of non-attorney practitioners who are supervised by an attorney. This legislation would extend that authority to cases involving unsupervised non-attorney practitioners who have been admitted to practice under the CAVC's rules.

VA does not, however, support the language in section 4 providing for awards "as if [the] non-attorney practitioners were attorneys admitted to practice before the Court." This language may require that fees for non-attorney practitioners be commensurate with fees for attorneys. Although we recognize the valuable services provided by non-attorney practitioners before the CAVC, their services ordinarily are not compensated at the same level as services of a licensed attorney. The Equal Access to Justice Act contemplates that fees generally shall correspond to the market rates for the kind and quality of services

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furnished. Accordingly, the CAVC should retain the authority to pay fees for attorneys and non-attorneys at different rates.

There would be no significant costs associated with this provision.

S 2079 IS

107th CONGRESS

2d Session

S. 2079

To amend title 38, United States Code, to facilitate and enhance jud icial review of certain matters regarding veterans' benefits, and for other pur poses.

IN THE SENATE OF THE UNITED STATES

April 9, 2002

Mr. ROCKEFELLER introduced the following bill; which was read twice and refe rred to the Committee on Veterans Affairs

---

A BILL

To amend title 38, United States Code, to facilitate and enhance jud icial review of certain matters regarding veterans' benefits, and for other pur poses.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. JUDICIAL REVIEW OF ADOPTION OR REVISION OF SCHEDULE OF RATING S FOR DISABILITIES.

(a) RESTATEMENT OF CURRENT AUTHORITY WITH AUTHORITY FOR REVIEW- The te xt of section 502 of title 38, United States Code, is amended to read as follow s:

`(a) An action of the Secretary to which section 552(a)(1) or 553 of t itle 5, or both, refers is subject to judicial review.

`(b)(1) Except as provided in paragraph (2), review under subsection (a) shall be in accordance with chapter 7 of title 5, and may be sought only in the United States Court of Appeals for the Federal Circuit.

`(2) If review under subsection (a) is sought in connection with an ap peal brought under the provisions of chapter 72 of this title, the provisions o f that chapter shall apply rather than the provisions of chapter 7 of title 5.< /ul>

`(c) In reviewing under subsection (b)(1) an action relating to the ad option or revision of the schedule of ratings for disabilities adopted under se ction 1155 of this title, the United States Court of Appeals for the Federal Ci rcuit shall hold unlawful and set aside the action if the action is found by th e Court to be--

`(1) arbitrary, capricious, an abuse of discretion, or otherwise n ot in accordance with law; or

`(2) in excess of statutory jurisdiction, authority, or limitation s, or in violation of statutory right.'.

(b) APPLICABILITY- The amendment made by subsection (a) shall take eff ect on the date of the enactment of this Act. The review described by subsectio n (c) of section 502 of title 38, United States Code, as so amended, shall be a vailable only for a revision of the schedule of ratings of disabilities under s ection 1155 of that title that occurs on or after that date.

SEC. 2. STANDARD OF REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD OF REVERSAL- Paragraph (4) of subsection (a) of section 7 261 of title 38, United States Code, is amended by striking `if the finding is clearly erroneous' and inserting `if such finding is not reasonably supported b y a preponderance of the evidence'.

(b) SCOPE OF AUTHORITY- That subsection is further amended--

(1) in the matter preceding paragraph (1), by striking `this chapt er' and inserting `section 7252(a) of this title'; and

(2) in paragraph (4), as amended by subsection (a) of this section --

(A) by inserting `adverse to the claimant that is' after `mate rial fact'; and

(B) by inserting `or reverse' after `set aside'.

(c) MATTERS RELATING TO FINDINGS OF MATERIAL FACT- That section is fur ther amended--

(1) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

`(b)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall utilize the record of proceedings containing such finding, as established for purposes of sections 5107(b) and 7252(c) of t his title.

`(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination.'.

(d) APPLICABILITY- (1) Except as provided in paragraph (2), the amendm ents made by this section shall take effect on the date of the enactment of thi s Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Vetera ns Claims--

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a f inal decision has not been made under section 7291 of title 38, United States C ode, as of that date.

SEC. 3. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS OF VETERANS CLAIMS.

(a) REVIEW- Section 7292(c) of title 38, United States Code, is amende d in the first sentence by inserting after `the validity of' the following: `a decision of the Court of Veterans Appeals on a rule of law or of'.

(b) APPLICABILITY- The amendment made by subsection (a) shall take eff ect on the date of the enactment of this Act, and shall apply with respect to a ny appeal--

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federa l Circuit as of the date of the enactment of this Act in which a final decision has not been rendered as of that date.

SEC. 4. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claim s to award reasonable fees and expenses of attorneys under section 2412(b) of t itle 28, United States Code, shall include authority to award fees and expenses of individuals admitted to practice before the Court as non-attorney practitio ners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Proced ure of the United States Court of Appeals for Veterans Claims as if such non-at torney practitioners were attorneys admitted to practice before the Court.

END

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/30/2002 5:05:44 PM
Subject: : Re:

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:30-APR-2002 21:05:44.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Tks.
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From: CN=James A. Brown/OU=OMB/O=EOP [OMB]

To: Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>;Kenneth L. Schwartz/OMB /EOP@EOP [OMB] <Kenneth L. Schwartz>;Steven M. Mertens/OMB/EOP@EOP [OMB] <Steven M. Mertens>;Clare C. Doherty/OMB/EOP@EOP [OMB] <Clare C. Doherty>;Timothy A. Rosado/OMB/EOP@EOP [OMB] <Timothy A. Rosado>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>;OVP LRM [UNKNOWN] <OVP LRM>;NEC LRM [UNKNOWN] <NEC LRM>;WHGC LRM [UNKNOWN] <WHGC LRM>;John F. Wood/OMB /EOP@EOP [OMB] <John F. Wood>;Matthew J. Schneider/OMB/EOP@EOP [OMB] <Matthew J. Schneider>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Rosemarie W. Dale/OMB/EOP@EOP [OMB] <Rosemarie W. Dale>;Adriel M. Harvey/OMB/EOP@EOP [OMB] <Adriel M. Harvey>;Elizabeth A. Bernhard/OMB/EOP@EOP [OMB] <Elizabeth A. Bernhard>;Courtney B. Timberlake/OMB /EOP@EOP [OMB] <Courtney B. Timberlake>;Lauren C. Lobrano/OMB/EOP@EOP [OMB] <Lauren C. Lobrano>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Carlos E. Bonilla/OPD /EOP@EOP [OPD] <Carlos E. Bonilla>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Richard E. Green/OMB /EOP@EOP [OMB] <Richard E. Green>;Diana E. Furchtgott-Roth/CEA/EOP@EOP [CEA] <Diana E. Furchtgott-Roth>;Wallace P. Mullin/CEA/EOP@EOP [CEA] <Wallace P. Mullin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>

Sent: 5/1/2002 6:17:30 AM

Subject: : Signed Copy of DOT General Aviation Letter

Attachments: P_4PT27003_WHO.TXT_1.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James A. Brown ( CN=James A. Brown/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME: 1-MAY-2002 10:17:30.00
SUBJECT:: Signed Copy of DOT General Aviation Letter
TO:Stephen S. McMillin ( CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Steven M. Mertens ( CN=Steven M. Mertens/OU=OMB/O=EOP@EOP [ OMB ] )
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TO:Clare C. Doherty ( CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [ OMB ] )
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TO:WHGC LRM ( WHGC LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Matthew J. Schneider ( CN=Matthew J. Schneider/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Ellen J. Balis ( CN=Ellen J. Balis/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Rosemarie W. Dale ( CN=Rosemarie W. Dale/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Adriel M. Harvey ( CN=Adriel M. Harvey/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
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TO:Elizabeth A. Bernhard (CN=Elizabeth A. Bernhard/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Danielle M. Simonetta (CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Diana E. Furchtgott-Roth (CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Wallace P. Mullin (CN=Wallace P. Mullin/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear ~~Mr. Chairman~~ DON:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

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handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144713

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144714

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

April 30, 2002

The Honorable William O. Lipinski
Ranking Member, Subcommittee On Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Lipinski:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

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handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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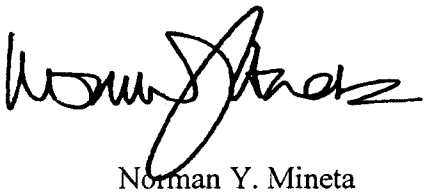
Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144716

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica

REV_00144717

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable John L. Mica
Chairman, Subcommittee on Aviation
Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the

REV_00144718

Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

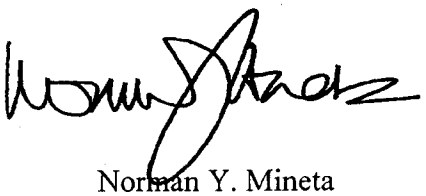
Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable William O. Lipinski

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the Nation.

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Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

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For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144723

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable Richard A. Gephardt
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Minority Leader:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

REV_00144724

handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144726

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable James L. Oberstar
Ranking Member, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Oberstar:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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REV_00144727

handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

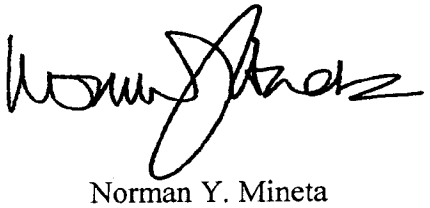
The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144728

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144729

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Kathryn C. Thompson/OMB /EOP@EOP [OMB] <Kathryn C. Thompson>
Sent:	5/1/2002 7:56:56 AM
Subject:	: Re: LRM KCT151 - - VETERANS AFFAIRS Testimony on Pending Veterans' Legislation
Attachments:	P_76037003_WHO.TXT_1.doc

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2002 11:56:56.00
SUBJECT:: Re: LRM KCT151 - - VETERANS AFFAIRS Testimony on Pending Veterans' Legislation
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kathryn C. Thompson (CN=Kathryn C. Thompson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
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No objection beyond what already noted.

Patrick J. Bumatay
04/30/2002 10:25:02 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM KCT151 - - VETERANS AFFAIRS Testimony on Pending
Veterans' Legislation

Just a reminder, this was due at 10 AM,

Thanks
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
04/30/2002 10:24 AM ----------

From: Kathryn C. Thompson on 04/26/2002 08:01:52 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM KCT151 - - VETERANS AFFAIRS Testimony on Pending
Veterans' Legislation

The following is LRM ID: KCT151 -- Veterans Affairs Testimony on Pending
Veterans' Legislation. The VA testimony is attached below and it consists
of 31 pages.

Please comment on the VA testimony by 10 a.m., Tuesday, April 30th. If
you do not respond by the deadline, I will assume that you have no
objection to the testimony.

LRM ID: KCT151
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, April 26, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Kathryn C. Thompson
PHONE: (202)395-7596 FAX: (202)395-6148

SUBJECT: VETERANS AFFAIRS Testimony on Pending Veterans' Legislation

DEADLINE: 10 a.m. Tuesday, April 30, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This VA testimony was prepared for a Senate Veterans' Affairs Committee hearing on May 2nd. The testimony discusses a number of veterans' bills.

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LRM ID: KCT151 SUBJECT: VETERANS AFFAIRS Testimony on Pending Veterans' Legislation
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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STATEMENT OF

ANTHONY J. PRINCIPI

SECRETARY OF VETERANS AFFAIRS

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

MAY 2, 2002

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on a number of legislative items of interest to veterans.

S. 984

This bill would increase the beneficiary travel mileage rates to reimbursement rates (applicable to privately owned vehicles) established by the General Services Administration (GSA). It would also include a new group of veterans among those entitled to beneficiary travel benefits under 38 U.S.C. § 111, specifically veterans whose travel is in connection with treatment for a non-service connected disability at a non-VA facility, if the treatment is recommended by VA medical personnel at a facility that is not able to provide the recommended treatment.

VA does not support S. 984. While VA's reimbursement rates are less than those established by GSA, any increase would decrease funds available for direct medical care. It is estimated that an increase in beneficiary mileage reimbursement rates to GSA's level of 36.5 cents would cost approximately $97 million that would have to come from medical care funding. Even a modest increase of 5 cents per mile would cost approximately $20 million. We cannot support diminishing VA's capacity to provide direct patient care to provide an added benefit to the very limited groups of veterans eligible for travel reimbursement benefits.

S. 1113 and S. 2025

Both of these bills would enhance the special pension paid by VA to those who have been awarded the Congressional Medal of Honor, by increasing the monthly benefit to $1,000 (it is currently $600) and indexing the rate to annual increases in the cost of living. S. 2025 would, in addition, provide that the special-pension eligibility shall commence on the first day of the month beginning after the date of the act for which an individual is awarded the Medal of Honor. Currently, the period of eligibility does not begin until after the military service concerned certifies to VA that the Medal of Honor has been awarded and the recipient applies for the pension. Under S. 2025, all individuals in receipt of the special pension on the date of enactment would be entitled to lump-sum payments representing the additional amounts of pension that would have been payable had they been eligible from the first of the month following the acts for

which they received the medals. We note that as of March 2002, there were only 143 Medal of Honor recipients drawing the special pension.

Last October we notified the Committee that we favor an increase of the monthly payments to $1,000 and the indexing of the rate, as provided in S. 1113. We also support the earlier effective dates for the awards called for in S. 2025. We are aware of situations in which there have been lengthy delays – through no fault of the recipients -- in the awarding of Medals of Honor. The proposed effective-date amendment would be more equitable than current law, which bases periods of eligibility on when the Government acts to award Medals of Honor. We believe, however, there may be an internal inconsistency in the language of sections 2(a) and 2(c) of S. 2025 concerning the calculation of retroactive payments which we do not believe was intended by Congress. We would be pleased to work with the Committee staff to revise the bill to correct this technical problem. We would defer to the views of the Department of Justice regarding the merits of the criminal-law amendments in S. 2025.

We estimate the costs associated with enactment of the rate increases in either S. 1113 or S. 2025 to be $1.6 million for FY 2003, $7.4 million for the five-year period FY 2003 through FY 2007, and $13.3 million for the 10-year period FY 2003 through FY 2012. We have not yet estimated the costs of the effective-date amendment in S. 2025.

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S. 1408

This bill would increase the income threshold used to define the group of low-income veterans who are exempted from paying the outpatient pharmacy co-payment. The exempted group would be expanded to include veterans who, for purposes of receiving VA health care, are deemed unable to defray necessary expenses of care, *i.e.*, those with incomes below VA's "means-test" threshold. A provision of the bill would also prohibit the Secretary from increasing the pharmacy co-payment until VA begins collecting co-payments for outpatient care.

Currently, the low-income exemption applies only to those veterans whose incomes do not exceed the maximum annual rate of pension payable under 38 U.S.C. § 1521 were they eligible for such pension. This is a much smaller group composed of very low-income veterans. Although VA appreciates the desire to standardize the definition of "low-income" veteran for purposes of both health care eligibility and the pharmacy co-payment exemption, VA cannot support S.1408. The proposal would significantly reduce much needed revenue upon which the Department relies to continue providing services. We also recommend deletion of the provision deferring increases in the amount of the pharmacy co-payment. VA is already implementing new regulations pertaining to both the pharmacy co-payment and the outpatient co-payment.

S. 1517

S. 1517 would enhance certain aspects of the Montgomery GI Bill (MGIB). Specifically, the bill would amend the chapter 30 MGIB-Active Duty program by eliminating both the $1200 pay reduction currently required to participate in the chapter 30 MGIB program and the election required of those who choose not to participate. We defer to the Department of Defense (DOD) on these issues. S. 1517 would also add a new category of individuals under the chapter 30 program who would be entitled to transfer their entire entitlement or a portion of it to one or more of their dependents. Under this provision, individuals with not less than 15 years of active duty service would become eligible to transfer MGIB education benefits. VA would be responsible for funding the transferred benefits paid to dependents. Since this proposal does not support the readjustment goals of the MGIB, we do not concur in its enactment.

S. 1517 also would extend the time limitation for using an individual's chapter 30 MGIB entitlement from 10 years after the date of discharge or release from active duty to 20 years. In like manner, it would provide for a 20-year delimiting period for members of the MGIB-Selected Reserve as well. VA does not support these provisions. In our view, extending the 10-year period is not consistent with the stated purposes of the MGIB. We believe that 10 years is sufficient time for most individuals to make the readjustment from military to civilian life. We defer to the views of the DOD on the delimiting date extension for the MGIB Selected Reserve program.

Finally, S. 1517 would provide for increased MGIB education benefits for those members of the Selected Reserve who are called to active duty for more than one year for a contingency operation. VA defers to DOD's views on this matter.

S. 1561

This bill would authorize $2 million for fiscal year 2002 and such sums as may be needed for each subsequent fiscal year for VA to continue its efforts in responding to, and training of VA and other health-care professionals for, the medical consequences of bio-terrorism.

We support increasing VA's efforts in the area of emergency medical preparedness. However, we believe that the objectives of this legislation should be addressed in the context of other measures being considered that address VA's role in bio-terrorism preparedness.

S. 1576

S. 1576 would extend through December 31, 2011, VA's special authority to treat Gulf War veterans for any disability possibly related to their service in the Gulf, notwithstanding there is insufficient medical evidence to conclude that such disability may be associated with such service. That authority will expire after December 31, 2002. VA supports this proposal.

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S. 1680

S. 1680 would amend the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) to treat certain National Guard duty as military service under that Act. This legislation would enable National Guard members who are called to active service by their governor in support of Operation Enduring Freedom, or at the request of the President, to qualify for the protections afforded by the SSCRA. Examples of these protections are the six-percent interest rate limitation on pre-existing consumer debt, and stays of judicial proceedings in civil matters.

Because the protections provided under the SSCRA are afforded to individuals serving in military service, the Department of Defense, not VA, is the Federal agency with the primary interest in this Act. The only notable impact on VA would be in our loan guaranty programs. In these areas, VA itself would have to abide by the SSCRA's provisions. The impact of the proposed amendment in this regard would be minimal and the cost to VA would be insignificant. We therefore have no objection to this bill.

S. 1905

Mr. Chairman, thank you for introducing S. 1905 at our request. It contains a variety of needed enhancements to veterans' programs and the ability of the Department to administer them. Among its most significant provisions, it would:

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- Confer new authority for VA to provide medical care for newborn children of enrolled women veterans;
- Authorize us to provide dental care to more former prisoners of war; and
- Eliminate certain VA-specific restrictions on numbers of non-career SES members and on who may serve as Deputy Assistant Secretaries.

I strongly urge its favorable consideration.

S. 2003

S. 2003 would amend VA's anti-assignment statute, 38 U.S.C. § 5301, by adding language to prohibit agreements, and collateral security arrangements, between persons receiving monetary VA benefits and third parties. Third parties use these agreements to acquire rights to receive monetary benefits paid to VA beneficiaries.

Let me first say that, because 38 U.S.C. § 5301 generally bars assignment of VA benefits, VA regional offices have not, and do not, honor such agreements. Nevertheless, once funds are paid to a beneficiary, except where the veteran has been found mentally incompetent, VA lacks the ability to oversee how those funds are used. While we would certainly counsel veterans, their dependents and survivors to very carefully consider the full ramifications of assigning their benefits, we believe they should be free to decide how best to manage their own personal finances. We do not, therefore, support enactment of S. 2003.

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S. 2043

S. 2043 would extend by five years (through December 31, 2008) VA's authority to provide non-institutional extended care services as part of the medical benefits package furnished to veterans. The bill would also extend through December 31, 2008, mandatory eligibility for nursing home care for veterans with a service-connected disability rated 70% or greater. Finally, S. 2043 would extend by five years the date by which the Secretary must report to Congress on the operation of its long-term care programs established under the Millennium Act. VA supports S. 2043 and the continuation of the Millennium Act non-institutional long-term care provisions.

S. 2044

S. 2044 would amend section 116 of the Millennium Act to direct that we increase funding for specialized mental health services for veterans. The measure directs that we expend $25 million for these programs, but it is not clear whether it would require $25 million for each of three successive years, or over a three-year period. The additional $25 million must also be over and above the baseline amount now being expended for these programs. However, it is unclear if we must expend an additional $25 million over the baseline each year for three successive years, or only over a three-year period. Finally, the measure directs that we consider these funds to be special-purpose funds that we must allocate outside the VERA allocation system.

Although VA appreciates the need to ensure adequate funding for these highly valuable and essential health-care programs, we strongly oppose this bill. We do not believe these programs should be treated differently from other essential treatment programs for allocation of appropriated resources. We also believe it is inappropriate to direct that we allocate funds for programs like this outside of the VERA system.

S. 2060

This legislation would designate the building housing VA's Regional Office in St. Petersburg, Florida as the "Franklin D. Miller Department of Veterans Affairs Regional Office Building." It would also require the Secretary to provide for an appropriate ceremony for, and commemoration of, the new designation on the first Memorial Day that follows enactment of the bill. Finally, the bill would require the Secretary to permanently display a copy of Mr. Miller's Medal of Honor citation in the building's lobby. We respectfully defer to the views of Congress on the naming of Federal property.

S. 2073

This bill would provide retroactive entitlement to Medal of Honor special pension to Mr. Ed W. Freeman. As indicated above, VA supports enactment of S. 2025, which would "make whole" special pensioners for whom the awarding of the Medal of Honor was delayed. We would prefer that this issue be addressed

generally through enactment of S. 2025, rather than through special legislation such as S. 2073.

S. 2074 and S. 2229

Both S. 2074 and S. 2229 would increase the rates of compensation for service-disabled veterans and for dependency and indemnity compensation paid to survivors of veterans whose deaths were service-related, effective December 1, 2002. As provided in the President's FY 2003 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 1.8 percent. The proposed COLA is necessary to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this COLA would cost $279 million during FY 2003, $1.66 billion over the period FY 2003-2007 and $3.45 billion over the period FY 2003-2012.

S. 2229, which you were kind enough to introduce at our request, would also revise the statutory requirement that VA continue to provide extended-care services at 1998 levels. As you know, current law requires VA to maintain staffing and level of extended care services provided in VA facilities at the levels provided during FY 1998. We propose to amend the law to require that VA maintain the overall level of extended care it provided during FY 1998 (i.e., the

REV_00144747

aggregate of care in provided in VA facilities, care VA contracts for in community nursing homes, and care VA subsidizes in State homes). If VA were required to meet the current mandate regarding care in just VA facilities, it would need to divert to that program an estimated $161.2 million by the end of FY 2004 from other health-care purposes, including community nursing-home care and State nursing-home construction. This would greatly disserve veterans, who benefit from both choice and access to care closer to loved ones.

S. 2079

S. 2079 would effect four changes in current law. First, it would permit judicial review of amendments to VA's schedule of ratings for disabilities. Second, it would change the standard of review applied by the United States Court of Appeals for Veterans Claims (CAVC) in challenges to findings of fact made by VA in adjudicating claims for benefits. Third, it would expand the jurisdiction of the United States Court of Appeals for the Federal Circuit to permit review of CAVC decisions on rules of law not involving the validity or interpretation of a statute or regulation. Fourth, it would authorize the CAVC to award reasonable fees and expenses under the Equal Access to Justice Act to non-attorney practitioners.

Review of Rating Schedule

Section 1 of S. 2079 would permit judicial review of VA's actions in adopting or revising provisions of its Rating Schedule. Such review is currently

prohibited by 38 U.S.C. §§ 502 and 7252(b). Under S. 2079, such review could be sought either through a rule-making challenge filed directly with the Federal Circuit or as part of an appeal from a VA decision on a benefit claim, which is presented first to the CAVC and may thereafter be appealed to the Federal Circuit. The bill would permit direct challenges in the Federal Circuit only with respect to a revision of the Rating Schedule occurring after the date of enactment of this bill. However, the bill would impose no similar limitation on challenges brought in connection with an appeal from a VA benefit decision. Accordingly, all changes to VA's Rating Schedule made at any time in the past would apparently be subject to review in such appeals.

VA does not support this change. In the Veterans' Judicial Review Act, Congress prohibited judicial review of the Rating Schedule because of the disruptive effect such review may have on VA claims processing. This change unnecessarily revisits the issues that were resolved in the compromises that led to enactment of the VJRA. Those compromises were reached in recognition of the fact that empowering courts to review VA's rating schedule will result in additional time-consuming litigation concerning complex medical and vocational matters on which courts have no particular expertise or experience.

Pursuant to 38 U.S.C. § 1155, the disability ratings assigned in the Rating Schedule are based upon the "average impairments of earning capacity resulting from such injuries in civil occupations" and are to be revised by VA "in accordance with experience." As the statute contemplates, the provisions of

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VA's Rating Schedule are based on VA's judgment and accumulated experience in evaluating the medical, vocational, and economic factors relating to the effect of specific disabilities on earning capacity. Disputes concerning the content of the Rating Schedule would not involve the type of legal issues or case-specific fact issues that appellate courts are ordinarily called upon to decide. Rather, they would involve challenges to VA's informed judgment concerning the average economic effects of specific medical conditions.

Appellate courts are ill-equipped to assess the many medical, social, economic, and experiential factors that inform VA's judgment on these issues, and the CAVC and Federal Circuit would be particularly hampered in this endeavor by the lack of any procedures for developing an evidentiary record for such review. Even if an appellate court could acquire sufficient information to permit judicial review of these discretionary judgments, the process would be extremely time-consuming and burdensome on VA and the courts alike.

Apart from the disruptive effects that would ensue if a reviewing court modifies or invalidates portions of the Rating Schedule, judicial review may limit VA's flexibility to adopt beneficial rating provisions based primarily on its experience and expertise. Although 38 U.S.C. § 1155 indicates that VA's experience will be the primary guide in adopting changes to the Rating Schedule, judicial review would necessarily result in increased formalization and a greater need for specific medical and vocational evidence to support each rating. Rather

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than benefiting veterans, in our view, the rigidity that would likely follow from judicial review may adversely affect the historically liberal nature of VA's Rating Schedule.

For these reasons, determinations concerning the average impairment of earning capacity due to specific conditions should continue to be committed to VA's informed discretion. The costs that may be associated with this provision cannot be predicted, but would depend on the number of challenges filed under this provision and the outcome of such challenges.

Standard of Review for Findings of Fact

Section 2 of S. 2079 would change the standard applied by the CAVC in reviewing findings of fact made by the Board of Veterans' Appeals. Currently, the CAVC is authorized to set aside any "clearly erroneous" finding of material fact. S. 2079 would direct the CAVC to set aside any finding of material fact that is "not reasonably supported by a preponderance of the evidence."

The "clearly erroneous" standard is a well-known standard of appellate review. *See* Fed. R. Civ. P. 52(a). In contrast, the "preponderance" standard is ordinarily used as a standard of proof describing a party's evidentiary burden before a fact-finding body such as the Board of Veterans' Appeals. As the Supreme Court has noted, standards of proof and standards of appellate review serve very different functions and are not interchangeable. *Concrete Pipe and*

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Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622-23 (1993). Standards of proof describe the degree of evidence needed to convince the finder of fact in the first instance. Standards of appellate review, on the other hand, describe the degree of confidence an appellate court must have in the fact finder's decision, and ordinarily accord some deference to the fact finder's decision.

There would be some incongruity in defining the CAVC's standard of review in terms of a standard of proof customarily employed only by initial fact finders. More troubling, however, is the fact that the "preponderance" standard would require the CAVC to decide claims without any deference to VA's findings of fact. Under the "benefit of the doubt" rule in section 5107(b) of title 38, United States Code, any findings of fact adverse to the veteran must be based on a preponderance of evidence. Section 2 of S. 2079 would direct the CAVC to independently decide whether a preponderance of evidence supports each factual finding, allowing no deference to the Board, which holds hearings, takes testimony, and seeks additional evidence as necessary.

This Committee's 1988 report on the Veterans' Judicial Review Act discussed the importance of according deference to the Board's "expertise as an arbiter of the specialized types of factual issues that arise in the context of claims for VA benefits." This approach comports with the ordinary practice of according deference to factual findings made by administrative agencies, in view of the

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agencies' expertise, familiarity with the types of evidence and evidentiary issues involved, and ability to evaluate the credibility of testimony and other forms of evidence. Under the Administrative Procedure Act, findings of fact by most agencies are reviewed under the deferential "substantial evidence" standard.

Even if the Committee believes that a standard less restrictive than the "clearly erroneous" standard is warranted, it should not take the drastic step of permitting *de novo* review of VA fact finding, as S. 2079 would. As this Committee noted in its report on the Veterans' Judicial Review Act, there are other intermediate review standards available, such as the "substantial evidence" standard. Permitting *de novo* review would derogate from the Board's primary expertise in weighing evidence, evaluating the credibility of evidence, and making factual determinations on complex medical issues. It may also be expected to increase the CAVC's responsibilities and caseload. Moreover, it would depart from established practice in American jurisprudence of tiered layers of judicial review and would uniquely deprive VA of the deference routinely accorded to factual findings of virtually all other agencies. The anomaly of a court performing precisely the same function as an agency and wielding the same fact-finding authority is both redundant and inconsistent with the traditional roles of the executive and judicial branches of government.

Finally, I want to make clear that the CAVC's current standard of review does not in any way deprive veterans of the benefit of the doubt accorded by law.

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Under current law, the CAVC routinely considers whether the Board has applied the "benefit of the doubt" standard, whether the Board has adequately explained the application of that standard to the facts of each case, and whether there is a plausible basis for the Board's conclusions under that standard. This review plainly ensures that the benefit of the doubt is accorded to veterans whenever applicable.

We cannot predict the costs that may be associated with this provision, as they would depend largely upon the outcome of individual cases.

Federal Circuit Review of Issues of Law

Section 3 of S. 2079 would authorize the United States Court of Appeals for the Federal Circuit to review decisions of the CAVC on a rule of law. Currently, the Federal Circuit may review CAVC decisions with respect to the validity or interpretation of a statute or regulation or with respect to a constitutional question. S. 2079 would clarify that the Federal Circuit may decide legal questions that do not involve a statute, regulation, or constitutional provision. Proponents of this provision have suggested that it is needed to permit review of judicially-created legal rules, such as those involving equitable tolling of time limits or the so-called "treating physician" rule adopted by courts in Social Security benefit claims. VA does not agree with that view. We do not believe that purely legal issues are insulated from review by the current statute. Notably, the Federal Circuit has decided challenges concerning judicially-created

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legal principles under the existing statute, including issues pertaining to equitable tolling and the treating physician rule. *See Bailey v. West*, 160 F.3d 1360 (Fed. Cir. 1998) (en banc); *White v. Principi*, 243 F.3d 1378 (Fed. Cir. 2001).

Although we do not believe this provision is necessary, VA has no objection to it. Permitting judicial review of purely legal matters is consistent with the purpose of the Veterans' Judicial Review Act and, we believe, with the Federal Circuit's current practice.

We would, however, recommend one change to this provision. S. 2079 would amend section 7292(c) of title 38, United States Code, to state that the Federal Circuit may review CAVC decisions on a rule of law. This would ensure that the Federal Circuit would retain exclusive jurisdiction over review of decisions of the CAVC. We believe it would also be necessary to make this change in section 7292(a), the provision the Federal Circuit has identified as prescribing its jurisdiction in those cases. *See Forshey v. Principi*, No. 99-7064 (Fed. Cir. Apr. 1, 2002).

There would be no significant costs associated with this provision.

Fees for Non-Attorney Practitioners

Section 4 of S. 2079 would authorize the CAVC to award reasonable fees and expenses for the services of non-attorney practitioners admitted to practice

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under that court's rules. Specifically, the bill would state that the CAVC's authority to award fees and expenses of attorneys under 28 U.S.C. § 2412(b) shall include the authority to award fees and expenses of non-attorney practitioners "as if such non-attorney practitioners were attorneys admitted to practice before the Court."

As an initial matter, we believe this bill should refer to subsection (d) of section 2412, rather than to subsection (b). The Federal Courts Administration Act of 1992 amended subsection (d) to give the CAVC authority to award reasonable fees and expenses of attorneys under that subsection. We are aware of no cases in which the CAVC has awarded fees and expenses under the separate authority of subsection (b) of section 2412.

VA has no objection to permitting payment of reasonable fees and expenses of non-attorney practitioners. We note that the CAVC currently has authority to award reasonable fees and expenses of non-attorney practitioners who are supervised by an attorney. This legislation would extend that authority to cases involving unsupervised non-attorney practitioners who have been admitted to practice under the CAVC's rules.

VA does not, however, support the language in section 4 providing for awards "as if [the] non-attorney practitioners were attorneys admitted to practice before the Court." This language may require that fees for non-attorney

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practitioners be commensurate with fees for attorneys. Although we recognize the valuable services provided by non-attorney practitioners before the CAVC, their services ordinarily are not compensated at the same level as services of a licensed attorney. The Equal Access to Justice Act contemplates that fees generally shall correspond to the market rates for the kind and quality of services furnished. Accordingly, the CAVC should retain the authority to pay fees for attorneys and non-attorneys at different rates.

There would be no significant costs associated with this provision.

S. 2132

Section 1 of S. 2132 would require the Secretary to establish four Emergency Medical Preparedness Centers within the Veterans Health Administration (VHA). VA employees would staff the proposed Centers, and the Centers would be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

The Centers would have four specific purposes. First, they would carry out research and develop methods in detection, diagnosis, vaccination, protection, and treatment of injuries arising from the use of chemical, biological, radiological agents or incendiary or other explosive weapons or devices.

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Second, they would provide education, training, and advice on the medical consequences of the use of CBR agents or incendiary or other explosive weapons or devices. Third, the Centers would provide that same education, training, and advice to non-VA health-care professionals. These activities would be accomplished through either the National Disaster Medical System or interagency agreements. Fourth, in the event of a national emergency, they would provide laboratory, epidemiological, medical, or other assistance, as the Secretary considers appropriate, to Federal, State, and local health care agencies and personnel involved in, or responding to, the national emergency.

Each Center would be authorized to solicit and accept contributions of funds and other resources, including grants, to carry out their purposes and activities, subject to the Secretary's approval. Section 1 of this bill would also authorize to be appropriated $20 million for these Centers for each of fiscal years 2003 through 2007. By the bill's terms, such authorization is valid only for funds appropriated separately and solely for purposes of the Centers; otherwise, the authorization is null and void.

Section 1 of S. 2132 is similar to H.R. 3253 on which the Deputy Secretary testified on April 10, 2002, before the House Committee on Veterans' Affairs, Subcommittee on Health. However, it incorporates the recommendations VA suggested in its April testimony concerning H.R. 3253 and adds a number of improvements to the House version of the bill. We are grateful to this Committee

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for having incorporated our recommendations. We strongly support section 1 of S. 2132 and prefer it to H.R. 3253.

In addition, S. 2132 contains two provisions that would expand the purpose and operations of VA non-profit corporations. VA non-profit corporations function as flexible funding mechanisms that support VA research and education. VA non-profits receive and administer funds from outside sources, e.g., NIH grants and donations made by private sponsors, in support of approved VA research projects and education activities. However, the current statute expressly provides that VA may not transfer appropriated funds to the corporations. Section 2(a) of the bill would amend section 7362 of title 38 to permit the transfer of appropriated dollars from VA to a corporation pursuant to a contract or other agreement, including an agreement for actual research. In addition, section 2(b) of the bill would amend VA's sharing authority to treat VA non-profits like affiliated institutions for the purpose of sharing health-care resources related to research, education and training. These changes would broadly enable the corporations to sell services to the Department. The bill also provides that these arrangements would be outside the scope of Federal procurement law and, therefore, would not be subject to full and open competition.

VA objects to these proposals on the grounds that they would alter the fundamental nature of the relationship between VA and the non-profits, which is

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analogous to that created in a trust. Under current law the corporations exist as a flexible funding mechanism solely to support approved VA research and education. The amendments in section 2 of the bill would make the relationship between Department health-care facilities and VA non-profits more like that with outside contractors or university affiliates; more of an arms-length negotiation rather than one of incontrovertible fiduciary support. This change would also shift the emphasis of VA non-profits away from the primary focus of providing flexible funding support for VA research, education and training to conducting and selling these services to VA. This shift would present a troubling risk of ceding Department control of VA approved research or education to the non-profits.

Section 3 of the bill would amend the title 38 authorities related to VA non-profits by adding a new section 7364A to specifically state that corporation employees assigned to work on approved VA research or education and training shall be considered employees for purposes of Federal tort claim and medical malpractice coverage. VA strongly favors this provision. We note, however, that the phrase, "carried out with Department funds" in the proposed section 7364A(b)(2) might be interpreted to limit this coverage. Much of VA-approved research, or education and training is supported by external funds.

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S. 2186

Mr. Chairman, thank you for introducing S. 2186 at our request. This legislation would establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement and a new VA office of Operations Security and Preparedness. We believe this new office is essential if we are to meet our responsibilities of protecting veterans, employees, and visitors to our facilities.

S. 2187

S. 2187 would permit VA, on its own initiative, to care for those affected by a disaster or emergency and those responding to the emergency. The disaster or emergency must be either declared by the President or involve activation of the National Defense Medical System. Currently, in most cases, VA may provide care in such situations only if requested to do so under the Federal Response Plan administered by the Federal Emergency Management Administration. The bill would also require other Federal agencies to reimburse VA for care provided to their officers, employees, and active duty members at rates agreed upon by the agencies. VA would not be required to charge for care provided to other individuals. Finally, the bill would allow VA to provide care in response to disasters and emergency situations before caring for all other beneficiaries except service-connected veterans and active duty military members referred

during war or national emergency or who are responding or involved in a disaster or emergency.

VA supports this measure. It would permit VA to respond quickly and obtain reimbursement for care from other Federal entities. We note that the bill also proposes to amend 38 U.S.C. § 1711(b). That provision is now codified at 38 U.S.C. § 1784. We also note that the bill would conflict with an administrative provision that appears in VA's annual appropriation act that requires reimbursement of costs except in specified situations. For the provision to be effective that provision of the appropriations act will also need amendment.

S. 2227

S. 2227 would clarify the effective date of changes to the method of computing retirement annuities for certain VA health-care personnel. Last January the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 became law. That bill changed the way part-time service performed before April 7, 1986, by certain VA health-care personnel is credited for annuity purposes. Congress intended this change to apply prospectively to the annuities of both those retiring after the effective date of Public Law No.107-135, as well as those who retired before that date, i.e., that part-time service performed prior to April 7, 1986, would be credited as full-time. This is a technical clarification of

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Congress' intent that the changes apply prospectively to both categories of employees. VA does not object to this proposal.

S. 2228

This bill would provide that the Secretary may establish not more than 15 Centers for Mental Illness Research, Education, and Clinical Activities under 38 U.S.C. § 7320. VA has no objection to this provision.

S. 2230

This legislation would revive VA's authority, contained in section 3707 of title 38, to guarantee adjustable rate mortgage loans (ARMs). The bill would also amend this section to authorize VA to guarantee "hybrid" ARMs.

In 1992 the Congress authorized a three-year test program for VA to guarantee ARMs. That authority had a sunset date of September 30, 1995. Due to concerns about the cost of that program, the Congress let the ARM authority lapse.

The interest rate on ARMs authorized by the 1992 statute, which would be reauthorized by the bill, is adjusted annually, based on a national interest-rate index approved by VA. Each annual increase or decrease is limited to one

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percentage point. In no event, however, may the interest rate be increased to more than five percentage points above the initial contract interest rate.

The interest rate on hybrid ARMs, which would also be authorized by S. 2230, is fixed for an initial period of not less than three years. Thereafter, the rate would increase or decrease annually by up to one percentage point. The maximum lifetime increase of five percentage points would also apply to hybrid ARMs.

VA supports S. 2230. The availability of ARMs would expand veterans' ability to qualify for home loans, as some veterans could qualify for the lower initial payments on an ARM who could not qualify for the payments on fixed rate loans for the same dollar amount. The availability of hybrid ARMs would give veterans the additional option of having a fixed monthly payment for a certain number of years before payment adjustment would be a possibility. VA believes veterans using their earned housing loan benefits should have the same options as borrowers using FHA and conventional loans.

VA has established detailed and prudent credit underwriting guidelines that are designed to increase the probability veterans will have the ability and inclination to make the required loan payments. Should veterans encounter financial difficulty and not be able to make the mortgage payments, VA will aggressively work with them in an effort to assist them in bringing their loans current. Should that effort fail, efforts are made to find alternatives to foreclosure

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that will reduce the adverse financial impact on both the veteran and the Government.

[***The following is a preliminary cost estimate which is being verified and is subject to change***] VA estimates that enactment of this bill would have a first-year cost of $17 million, and a 10-year cost of $211 million. This estimate assumes that the increased loan fees now set to expire September 30, 2011, will be extended at least one more year.

S. 2231

S. 2231 would increase educational assistance benefits under VA's Survivors' and Dependents' Educational Assistance program (chapter 35), limit the number of months for those benefits, and increase funding to State Approving Agencies (SAAs). Specifically, it would raise the chapter 35 educational assistance allowance to $900 per month for a full-time course for Fiscal Year (FY) 2003 and to $985 for months after FY 2003. It would also raise the amounts payable for Special Restorative Training to $900 for FY 2003 and to $985 for the months thereafter. The proposed legislation would also decrease the entitlement available to chapter 35 recipients from the current 45 months to 36 months, in the case of those who first file an educational assistance claim under chapter 35 after the date of enactment. Given the relatively short time to consider these important issues regarding chapter 35, we would like to provide

you our views at a later date, after we have had sufficient time to consider the matter.

The final provision of S. 2231 would increase the annual limit on funds available to compensate SAAs for work undertaken on behalf of VA, including approving educational institutions and programs for which veterans and other entitled participants receive VA-administered education benefits. On April 11, 2002, the Under Secretary for Benefits testified before the House Veterans' Affairs Subcommittee on Benefits in favor of H.R. 3731, a bill similar to this one. We, likewise, favor the increase to $18,000,000 contained in S. 1517. However, H.R. 3731 additionally would provide increases in SAA funding of 3 percent for FYs 2004 and 2005, with funding for 2006 and each succeeding fiscal year remaining fixed at the FY 2005 level.

Because of the cost-of-living pay increases mandated by State law, salaries for State employees have gone up since the last SAA funding increase in 1994. Additionally, over the last two years, the SAAs have been called upon to perform new and time-consuming duties as part of their mission. For example, Public Law 106-419, enacted on November 1, 2000, initiated the licensing and certification test payment program and allowed VA to delegate approval responsibility to SAAs even though it was not covered in their contracts.

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We prefer the House version of this provision because it would increase SAA funding for the outyears.

Other Bills

Mr. Chairman, we do not yet have cleared positions on three other bills on today's agenda:

- S. 2205, involving compensation for service-connected mastectomies and making permanent VA's authority to provide counseling and treatment for sexual trauma;
- S. 2209, which would establish a new insurance program for service-disabled veterans; and,
- S. 2237, involving enhanced compensation for veterans with hearing loss.

We will be presenting our views and estimates on these in writing once the necessary executive-branch coordination is completed.

Mr. Chairman that concludes my prepared testimony. I will be pleased to respond to any questions you or the members of the committee may have.

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Sent: 5/1/2002 6:17:30 AM

Subject: : Signed Copy of DOT General Aviation Letter

Attachments: P_4PT27003_OPD.TXT_1.pdf

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TO:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [ OMB ] )
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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear ~~Mr. Chairman~~ DON:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

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handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144773

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144774

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

April 30, 2002

The Honorable William O. Lipinski
Ranking Member, Subcommittee On Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Lipinski:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

REV_00144775

handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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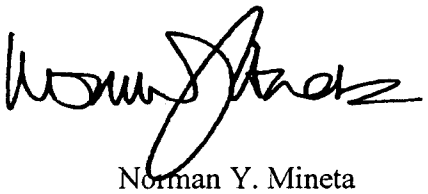
REV_00144776

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica

REV_00144777

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable John L. Mica
Chairman, Subcommittee on Aviation
Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the

REV_00144778

Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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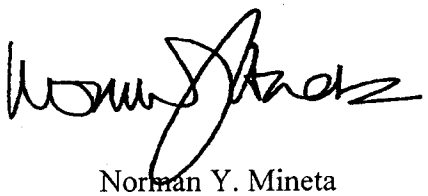
Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144779

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable William O. Lipinski

REV_00144780

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the Nation.

REV_00144781

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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REV_00144782

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144783

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable Richard A. Gephardt
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Minority Leader:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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REV_00144784

handed way, this approach seeks to lift the economic situation of industries across the Nation.

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REV_00144785

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144786

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable James L. Oberstar
Ranking Member, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Oberstar:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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REV_00144787

handed way, this approach seeks to lift the economic situation of industries across the Nation.

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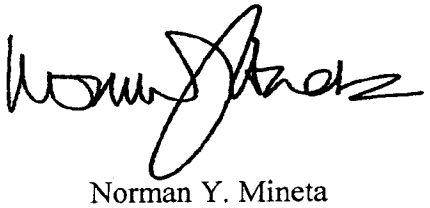
REV_00144788

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144789

From: CN=James A. Brown/OU=OMB/O=EOP [OMB]

To: Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>;Kenneth L. Schwartz/OMB /EOP@EOP [OMB] <Kenneth L. Schwartz>;Steven M. Mertens/OMB/EOP@EOP [OMB] <Steven M. Mertens>;Clare C. Doherty/OMB/EOP@EOP [OMB] <Clare C. Doherty>;Timothy A. Rosado/OMB/EOP@EOP [OMB] <Timothy A. Rosado>;David S. Addington/OVP /EOP@EOP [OVP] <David S. Addington>;OVP LRM [UNKNOWN] <OVP LRM>;NEC LRM [UNKNOWN] <NEC LRM>;WHGC LRM [UNKNOWN] <WHGC LRM>;John F. Wood/OMB /EOP@EOP [OMB] <John F. Wood>;Matthew J. Schneider/OMB/EOP@EOP [OMB] <Matthew J. Schneider>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Ellen J. Balis/OMB/EOP@EOP [OMB] <Ellen J. Balis>;Rosemarie W. Dale/OMB/EOP@EOP [OMB] <Rosemarie W. Dale>;Adriel M. Harvey/OMB/EOP@EOP [OMB] <Adriel M. Harvey>;Elizabeth A. Bernhard/OMB/EOP@EOP [OMB] <Elizabeth A. Bernhard>;Courtney B. Timberlake/OMB /EOP@EOP [OMB] <Courtney B. Timberlake>;Lauren C. Lobrano/OMB/EOP@EOP [OMB] <Lauren C. Lobrano>;Danielle M. Simonetta/OMB/EOP@EOP [OMB] <Danielle M. Simonetta>;Robert Marsh/WHO/EOP@EOP [WHO] <Robert Marsh>;Carlos E. Bonilla/OPD /EOP@EOP [OPD] <Carlos E. Bonilla>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Richard E. Green/OMB /EOP@EOP [OMB] <Richard E. Green>;Diana E. Furchtgott-Roth/CEA/EOP@EOP [CEA] <Diana E. Furchtgott-Roth>;Wallace P. Mullin/CEA/EOP@EOP [CEA] <Wallace P. Mullin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>

Sent: 5/1/2002 6:17:30 AM

Subject: : Signed Copy of DOT General Aviation Letter

Attachments: P_4PT27003_CEA.TXT_1.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:James A. Brown ( CN=James A. Brown/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME: 1-MAY-2002 10:17:30.00
SUBJECT:: Signed Copy of DOT General Aviation Letter
TO:Stephen S. McMillin ( CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kenneth L. Schwartz ( CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Steven M. Mertens ( CN=Steven M. Mertens/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Clare C. Doherty ( CN=Clare C. Doherty/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Timothy A. Rosado ( CN=Timothy A. Rosado/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:OVP LRM ( OVP LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:NEC LRM ( NEC LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:WHGC LRM ( WHGC LRM [ UNKNOWN ] )
READ:UNKNOWN
TO:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Matthew J. Schneider ( CN=Matthew J. Schneider/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Ellen J. Balis ( CN=Ellen J. Balis/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Rosemarie W. Dale ( CN=Rosemarie W. Dale/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Adriel M. Harvey ( CN=Adriel M. Harvey/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
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TO:Elizabeth A. Bernhard (CN=Elizabeth A. Bernhard/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Danielle M. Simonetta (CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Diana E. Furchtgott-Roth (CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Wallace P. Mullin (CN=Wallace P. Mullin/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear ~~Mr. Chairman~~ DON:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

REV_00144792

handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144793

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144794

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

April 30, 2002

The Honorable William O. Lipinski
Ranking Member, Subcommittee On Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Lipinski:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

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handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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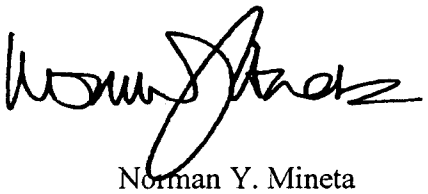
Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144796

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica

REV_00144797

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable John L. Mica
Chairman, Subcommittee on Aviation
Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the

REV_00144798

Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

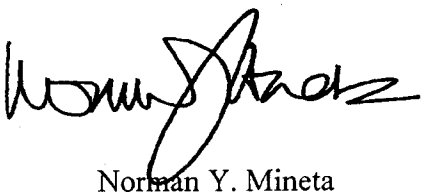
The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144799

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable William O. Lipinski

REV_00144800

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-handed way, this approach seeks to lift the economic situation of industries across the Nation.

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Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

REV_00144802

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144803

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable Richard A. Gephardt
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Minority Leader:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

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Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

REV_00144804

handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

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REV_00144805

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,

Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Don Young
The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144806

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 30, 2002

The Honorable James L. Oberstar
Ranking Member, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Oberstar:

I would like to take the opportunity to provide the views of the U.S. Department of Transportation on H.R. 3347, as reported from the Committee on Transportation and Infrastructure, the General Aviation Industry Reparations Act of 2002.

H.R. 3347 would provide the same Federal Government direct compensation payments and loan guarantees to the non-commercial aviation industry as were provided to commercial airlines immediately following September 11, 2001. While the Administration is aware of and deeply concerned about losses sustained by the general aviation industry and its employees in the aftermath of September 11, we do not believe that H.R. 3347 represents the best course of action to address the consequences of the attacks. The Administration opposes enactment of this bill.

The Administration supported the direct compensation and loan guarantee authority in H.R. 2926, the Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42 (Sept. 22, 2001)), for commercial air carriers for a number of reasons unique to that industry and time. Commercial airliners had been used as the instrument for the terrorist attacks, air travel had been totally disrupted and was newly feared by many travelers, and significant adverse effects on the U.S. economy were anticipated as a result. The President's call after September 11 for the Nation to counter terrorism in part by reengaging in daily economic activity was critical to the effort to avoid a significant economic downturn. The enactment of H.R. 2926 was a highly visible case of the Federal Government's decisiveness in meeting our common objective. Because the U.S.-flag air carriers are a symbol of the United States both at home and abroad--and subject to attack for that reason--the compensation payments for air carriers were also in the interests of our foreign policy objectives world-wide.

Overall, the Administration believes that the best, most even-handed approach to recovery from the attacks of September 11 for all industries is couched in the President's proposals for economic stimulus, recently acted on in part by Congress, and his Budget Request for fiscal year 2003. This combination of measures has, in our view, already had a beneficial effect on the economic outlook, and has gone far to revive the markets for the Nation's goods and services, including the non-commercial aviation sector. In an even-

REV_00144807

handed way, this approach seeks to lift the economic situation of industries across the Nation.

Our experience with implementation of H.R. 2926 also indicates that the provisions of H.R. 3347 contain a number of practical drawbacks. Most important, while the number of entities that might qualify in the commercial aviation industry for benefits may reach 600, the number of "general aviation entities and their employees" covered by H.R. 3347 may number in the many thousands. "[G]eneral aviation entities" is imprecise phraseology and could be argued to cover a wide range of businesses, everything from companies that make aviation charts to those that supply specialty items sold in aviation catalogs and shops featuring an aviation theme. Enactment of H.R. 3347 would place a very substantial additional burden on the Department.

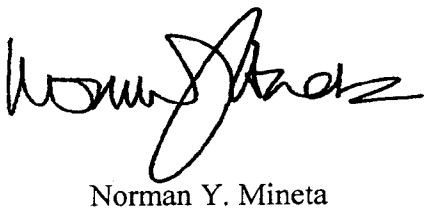
Another substantial difference between the two bills and a concern in the case of H.R. 3347 is that the objectively grounded formula for allocating limited funding among recipients in H.R. 2926 (proportion of "available seat miles" or "revenue ton miles") is, of necessity, omitted from H.R. 3347. We are not aware of objective data that would provide a defensible basis for allocation of the limited funding in H.R. 3347 among qualified recipients. To take a simple example, what basis would exist to balance claims about lost sales among aircraft manufacturers, their own employees, and suppliers to that industry? It is virtually certain that any rationale created by the Department, however carefully balanced and defended, to carry out the mandate to allocate funding would be subject to litigation.

The bill also contains provisions that range far from the goal of compensating September 11 losses. For example, the existing "war risk insurance" program (chapter 443 of title 49, United States Code), which has always applied only to commercial air carriers engaged in carrying out the foreign policy and other national interests of the United States, would be opened to all general aviation entities, whether or not their activities contribute to national interests. The commercial insurance industry has already objected to the continuation of the existing program on behalf of commercial air carriers. The Department believes that the general terrorism insurance legislation (H.R. 3210) now pending in Congress makes more sense for the Nation's industries.

Finally, although the bill would deem the $5.5 billion in spending under the bill (potentially offset in part by reduced spending under H.R. 2926) "emergency spending" under budget rules, it would nonetheless exacerbate the problem of budget deficits in the wake of September 11. We firmly believe that the President's proposals to reinvigorate the economy are the better means to address the finances of this and other industries.

For these reasons, we oppose passage of H.R. 3347. We do appreciate the opportunity to provide our views. The Office of Management and Budget advises that it has no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt
The Honorable Don Young
The Honorable John L. Mica
The Honorable William O. Lipinski

REV_00144809

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 5/1/2002 8:04:13 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-MAY-2002 12:04:13.00
SUBJECT::
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

what is total number of SUPREME COURT oral arguments of Estrada
(15), Roberts (37?), Sutton (9?), and McConnell (11?)
```

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2002 9:20:37 PM
Subject: : Adam F. Greenstone/OA/EOP is out of the office.

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone ( CN=Adam F. Greenstone/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME: 2-MAY-2002 01:20:37.00
SUBJECT:: Adam F. Greenstone/OA/EOP is out of the office.
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I will be out of the office from 05/02/2002 until 05/13/2002.

I will respond to your message when I return.
```

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2002 7:51:35 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 2-MAY-2002 11:51:35.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

You are welcome.
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 5/2/2002 8:13:29 AM
Subject: : SJC markup

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2002 12:13:29.00
SUBJECT:: SJC markup
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Courtney S. Elwood (CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Also from DOJ OLA:

P.S.---Senator Leahy talked about not getting his letters to the White House answered.

---------- Forwarded by Kyle Sampson/WHO/EOP on 05/02/2002 12:12 PM ----------

Kyle Sampson
05/02/2002 11:56:03 AM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: SJC markup

The below report of from DOJ OLA:

On May 2, the Senate Judiciary Committee approved the nomination of Julia Smith Gibbons, to be a Judge on the United States Court of Appeals for the Sixth Circuit, by a roll call vote of 19-0 and the nomination of Leonard E. Davis, to be a Judge on the United States District Court for the Eastern District of Texas, by a roll call vote of 19-0. The nominations

of Andrew S. Hanen, to be a Judge on the United States District Court for the Southern District of Texas; Samuel H. Mays, Jr., to be a Judge on the United States District Court for the Western District of Tennessee; Thomas M. Rose, to be a Judge on the United States District Court for the Southern District of Ohio; and Paul G. Cassell, to be a Judge on the United States District Court for the District of Utah; were approved en banc by voice vote with Senators Leahy, Feingold, Kennedy and Durbin being recorded as "no" votes on the Cassell nomination. The nomination of David Godbey, to be a Judge on the United States District Court for the Northern District of Texas, was held over and will not be put back on the agenda until Senators Hatch and Leahy have priviate meetings with members on their side, respectively. Senator Leahy stated that Julia Smith Gibbons was a consensus nominee who was taken out of order at the request of Senator Thompson. Senator Leahy also stated that he was working with Senator DeWine on his nominees, and Senator McConnell inquired about the Sixth Circuit nominee from Kentucky. The following U.S. Attorney nominees were approved en banc by voice vote: Steven M. Biskupic, Eastern District of Wisconsin; James E. McMahon, District of South Dakota; and Jan Paul Miller, Central District of Illinois. Lastly, the following U.S. Marshal nominees were approved en banc by voice vote: Walter R. Bradley, District of Kansas; Randy P. Ely, Northern District of Texas; William P. Kruziki, Eastern District of Wisconsin; Stepehn R. Monier, District of New Hampshire; and Gary E. Shovlin, Eastern District of Pennsylvania.

Message Copied
To:_____
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2002 7:41:00 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 2-MAY-2002 11:41:00.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

You are welcome.
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 5/2/2002 7:56:06 AM
Subject: : SJC markup

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 2-MAY-2002 11:56:06.00
SUBJECT:: SJC markup
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The below report of from DOJ OLA:

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Smith Gibbons, to be a Judge on the United States Court of Appeals for the
Sixth Circuit, by a roll call vote of 19-0 and the nomination of Leonard
E. Davis, to be a Judge on the United States District Court for the
Eastern District of Texas, by a roll call vote of 19-0. The nominations
of Andrew S. Hanen, to be a Judge on the United States District Court for
the Southern District of Texas; Samuel H. Mays, Jr., to be a Judge on the
United States District Court for the Western District of Tennessee; Thomas
M. Rose, to be a Judge on the United States District Court for the
Southern District of Ohio; and Paul G. Cassell, to be a Judge on the
United States District Court for the District of Utah; were approved en
banc by voice vote with Senators Leahy, Feingold, Kennedy and Durbin being
recorded as "no" votes on the Cassell nomination. The nomination of David
Godbey, to be a Judge on the United States District Court for the Northern
District of Texas, was held over and will not be put back on the agenda
until Senators Hatch and Leahy have priviate meetings with members on
their side, respectively. Senator Leahy stated that Julia Smith Gibbons
was a consensus nominee who was taken out of order at the request of
Senator Thompson. Senator Leahy also stated that he was working with
Senator DeWine on his nominees, and Senator McConnell inquired about the
Sixth Circuit nominee from Kentucky. The following U.S. Attorney
nominees were approved en banc by voice vote: Steven M. Biskupic, Eastern
District of Wisconsin; James E. McMahon, District of South Dakota; and Jan
Paul Miller, Central District of Illinois. Lastly, the following U.S.
Marshal nominees were approved en banc by voice vote: Walter R. Bradley,
```

District of Kansas; Randy P. Ely, Northern District of Texas; William P. Kruziki, Eastern District of Wisconsin; Stepehn R. Monier, District of New Hampshire; and Gary E. Shovlin, Eastern District of Pennsylvania.

From: CN=Daniel A. Barry/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;William H. Leary/NSC /EOP@EOP [NSC] <William H. Leary>
CC: James B. Wright/OA/EOP@EOP [OA] <James B. Wright>;Adam F. Greenstone/OA /EOP@EOP [OA] <Adam F. Greenstone>;Bruce O'Dell/OA/EOP@EOP [OA] <Bruce O'Dell>
Sent: 5/2/2002 8:39:56 AM
Subject: : Re: Latest on the WHO "Holy land,GRF"search

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Daniel A. Barry ( CN=Daniel A. Barry/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME: 2-MAY-2002 12:39:56.00
SUBJECT:: Re: Latest on the WHO "Holy land,GRF"search
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:William H. Leary ( CN=William H. Leary/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:James B. Wright ( CN=James B. Wright/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Adam F. Greenstone ( CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Bruce O'Dell ( CN=Bruce O'Dell/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI;

Per the instructions received from Brett and Bill, 38 boxes of printed
material have been delivered to OEOB room 397 (POC Vickey Darnes) This
morning.

This represents the results of the (GRF/Holy land...) ARMS search. The
following are the statistics:

Agency Month Records Box count
WHO 09 125 3
WHO 10 223 6
WHO 11 151 2
WHO 12 712 6
NSC 09 107 1
NSC 10 150 3
NSC 11 117 2
NSC 12 162 2
OPD 09 16 .25
OPD 10 35 2
OPD 11 11 1
OPD 12 42 1
Default 09 169 2
Default 10 223 3
Default 11 98 1
Default 12 238 2

The results are also available for electronic review at
http://cd.eop.gov/~search_res31/ (Username=SEARCH_RES31 and PW =
RES31) Both the Original and Culled versions of the results are
available at the URL.

Let me know if you have any questions.

Later... Tony
```

Brett M. Kavanaugh
05/02/2002 08:02:26 AM
Record Type: Record

To: Daniel A. Barry/OA/EOP@EOP
cc:
bcc:
Subject: Re: Latest on the WHO "Holy land,GRF"search

Please contact Bill Leary in NSC. He will give you the room number where the boxes should be delivered. Thanks.

DANIEL A.
BARRY
05/01/2002 08:26:06 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: adam f. greenstone/oa/eop@eop, zakia mull/oa/eop@eop, James B. Wright/OA/EOP@EOP, Bruce O'Dell/OA/EOP@EOP
bcc:
Subject: Re: Latest on the WHO "Holy land,GRF"search

Adam,Brett;

The new "culled" GRF/Holy land ARMS search started printing late afternoon yesterday. OPD has completed and WHO Sep and Oct have completed, we are now working on Nov WHO.
The following is the box count for the completed jobs

OPD 09 0.4 boxes
OPD 10 1.5 boxes
OPD 11 0.5 boxes To where and when do you want these delivered ?
OPD 12 0.5 boxes
WHO 09 3 boxes
WHO 10 6 boxes

The search results are also avaible at the following URL http://cd.eop.gov/~search_res31/ (Username=SEARCH_RES31 and PW = RES31) Both the Original and Culled versions of the results are available at the URL.

The printouts from the original results will be disposed of today.

To Where should we deliver the results ?

Let me know if you have any questions.

Later... Tony

Brett M. Kavanaugh
04/30/2002 07:20:36 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: daniel a. barry/oa/eop@eop, zakia mull/oa/eop@eop
bcc:
Subject: Re: Latest on the WHO "Holy land,GRF"search

So long as you are sure it is in electronic form (and it is in paper form as well), it is duplicate and thus discardable.

Adam F. Greenstone
04/30/2002 06:08:20 PM

Record Type: Record

To: Daniel A. Barry/OA/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP, Zakia Mull/OA/EOP@EOP
bcc:
Subject: Re: Latest on the WHO "Holy land,GRF"search

Tony--Please use all means to start printing now; you will be able to deliver the new boxes to Brett immediately since we have confirmed that this is the search he will use.

Brett--If you're certain that you will not need the printout for the first run, it would be great if you let Tony know so he can discard. Of course we will still have the data in electronic form if it is needed for any reason.

DANIEL A.
BARRY
04/30/2002 02:58:05 PM

Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: zakia mull/oa/eop@eop
Subject: Re: Latest on the WHO "Holy land,GRF"search

Adam;

Am I to assume that we want to dispose of the current 100+ boxes of print. I need to get them out of the DC before printing the new stuff.

Thanks.

Later... Tony

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Irene Kho/OMB /EOP@EOP [OMB] <Irene Kho>
Sent:	5/3/2002 6:52:43 AM
Subject:	: Re: LRM IKK196 - - Council of Economic Advisers (CEA) Oversight Testimony on Budget Scoring for Tax Proposals
Attachments:	P_15457003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2002 10:52:43.00
SUBJECT:: Re: LRM IKK196 - - Council of Economic Advisers (CEA) Oversight Testimony on Budget Scoring for Tax Proposals
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection.

Patrick J. Bumatay
05/02/2002 03:24:00 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM IKK196 - - Council of Economic Advisers (CEA) Oversight Testimony on Budget Scoring for Tax Proposals

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/02/2002 03:23 PM ----------

From: Irene Kho on 05/02/2002 03:22:44 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK196 - - Council of Economic Advisers (CEA) Oversight Testimony on Budget Scoring for Tax Proposals

Attached is CEA testimony on budget scoring for tax proposals for a hearing before the House Ways and Means Committee for Tuesday, May 7th. CEA informed us that they will use this same testimony for a hearing before the House Rules Committee on Thursday, May 9th. Please review and provide comments by 4:00 PM, tomorrow, Friday, May 3rd.

LRM ID: IKK196
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 2, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: Council of Economic Advisers (CEA) Oversight Testimony on Budget Scoring for Tax Proposals

DEADLINE: 4:00 PM Friday, May 3, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is CEA testimony on budget scoring for tax proposals for a hearing before the House Ways and Means Committee for Tuesday, May 7th. CEA informed us that they will use this same testimony for a hearing before the House Rules Committee on Thursday, May 9th. Please review and provide comments by 4:00 PM, tomorrow, Friday, May 3rd.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
107-Small Business Administration - Richard Spence - (202) 205-6700
061-JUSTICE - Daniel Bryant - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
118-TREASURY - Thomas M. McGivern - (202) 622-2317
025-COMMERCE - Michael A. Levitt - (202) 482-3151

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OVP LRM
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Rosemarie W. Dale
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Robert F. Mahaffie
Mark J. Schwartz
Alan B. Rhinesmith
Stephen S. McMillin
Philip J. Perry
John F. Wood
Matthew J. Schneider
Randolph M. Lyon

REV_00144943

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Joel D. Kaplan
Francis S. Redburn
Richard A. Mertens
Lori A. Krauss
Karen Y. Knutson
Robert C. McNally
Kathryn B. Stack
David Rowe
LRM ID: IKK196 SUBJECT: Council of Economic Advisers (CEA) Oversight Testimony on Budget Scoring for Tax Proposals
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
HUD_LRM@hud.gov
energy.gc71@hq.doe.gov
ogc_legislation@ed.gov
dot.legislation@ost.dot.gov
cla@sba.gov @ inet
justice.lrm@usdoj.gov
dol-sol-leg@dol.gov
llr@do.treas.gov
CLRM@doc.gov

Message Copied
To:_____
NEC LRM
OVP LRM
WHGC LRM
Amy C. Smith/OMB/EOP@EOP
Laurence R. Jacobson/OMB/EOP@EOP
D. Marcus Sumerlin/OPD/EOP@EOP
Mary C. Barth/OMB/EOP@EOP
Robert W. Kilpatrick/OMB/EOP@EOP
Susanne D. Lind/OMB/EOP@EOP
Philip R. Dame/OMB/EOP@EOP
Elizabeth M. Robinson/OMB/EOP@EOP
Richard P. Emery Jr./OMB/EOP@EOP
Neil Lobron/OMB/EOP@EOP
Rosemarie W. Dale/OMB/EOP@EOP
Attia Little/OMB/EOP@EOP
Robert F. Mahaffie/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Stephen S. McMillin/OMB/EOP@EOP
Philip J. Perry/OMB/EOP@EOP
John F. Wood/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
Neia L. George/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Maureen Walsh/OMB/EOP@EOP
Katrina A. McDonald/OMB/EOP@EOP
Janis A. Coughlin/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
David W. Hobbs/WHO/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Carlos E. Bonilla/OPD/EOP@EOP
Edward Ingle/WHO/EOP@EOP
Albert Hawkins/WHO/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Steven M. Mertens/OMB/EOP@EOP
Jennifer S. Kron/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP
Elizabeth L. Rossman/OMB/EOP@EOP
Eric C. Pelletier/OMB/EOP@EOP

Kristen Silverberg/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Richard A. Mertens/OMB/EOP@EOP
Lori A. Krauss/OMB/EOP@EOP
Karen Y. Knutson/OVP/EOP@EOP
Robert C. McNally/OPD/EOP@EOP
Kathryn B. Stack/OMB/EOP@EOP
David Rowe/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_15457003_WHO.TXT_1>

DRAFT
DATE

Testimony
of
R. Glenn Hubbard
Chairman, Council of Economic Advisers

before the
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives

Tuesday, May 7, 2002
2:00 P.M.

Chairman Houghton and members of the Subcommittee, it is a pleasure to appear before you today to discuss the important issue of budget scoring for tax proposals. Under current practice, the Joint Committee on Taxation (JCT) – the provider of revenue estimates to the U.S. Congress for tax legislation either enacted or under consideration – and the Department of the Treasury – which has a comparable role for the Administration – takes in to consideration a wide variety of behavioral microeconomic responses to the incentives resulting from tax policies. That is, for example, the JCT examines the impact on realizations of a change in capital gains tax rates, or the shift in consumption of gasoline in response to gasoline excise taxes.

The purpose of my remarks today is to discuss the notion of expanding the scope of revenue estimate to include in some way macroeconomic effects, sometimes called "dynamic scoring." Under a dynamic scoring approach, revenue estimates would explicitly incorporate not just individual or firm-level responses to tax-based incentives, but also changes in the overall scale of economic activity as a result of the tax policy. That is, revenue estimates for tax changes might incorporate current and future changes in the level of Gross Domestic Product and tax bases such as aggregate earned income, aggregate corporate profits, dividends, and so forth.

Five observations frame the debate over dynamic scoring. First, the idea of dynamic scoring is conceptually correct. The basic notion in revenue estimation is to calculate the yearly

revenue – from all relevant sources – over the appropriate budget window under current law. To do so requires evaluating the economic activity that would prevail using current tax rules, redoing the calculation using the tax code as modified by the proposal (which clearly requires knowing the economic activity – including all relevant tax bases – under the alternative tax rules), and comparing – on a year-by-year or other basis – the revenue in the latter to the revenue in the former. In doing so, changes in revenues from *all* sources would enter the revenue estimate without constraints such as a fixed macroeconomic baseline. So, for example, if one were to switch to a broad-based consumption tax, some estimates are that the capital stock would rise by 14 percent over the first eight years, with GDP rising by 4 percent. The increase in wage, dividend, interest, and other sources of income embodied in these macroeconomic changes would be one source of additional revenue. Of course, in practice these steps are fraught with difficulty. Still, these operational challenges, to which I will return below, should not disguise the basic objectives.

The second observation is that dynamic scoring does not make sense every tax proposal. For certain tax policy changes – substantial reductions in marginal tax rates, broad-based investment incentives, *etc.* – there are likely to be shifts in aggregate labor supply, saving, entrepreneurial ventures, composition of compensation, investment, and so forth substantial enough to alter both the path of the economy, and the level and time path of receipts. As an economist, I think of this in a benefit-cost framework. Dynamic scoring is harder, and thus more "costly" in some general sense. For this reason it should be restricted to those circumstances in which it informs our outlook for the macroeconomy. We should turn to dynamic scoring in those circumstances in which conventional scoring rules can reasonably be expected to give a misleading picture of both the overall revenue effects over the relevant budget window, and the growth or transition of revenues on a year-by-year basis.

The third observation is that dynamic scoring represents additional information into the tax policy process. As is well known to this audience, a cost of the tax system is that taxes distort incentives to undertake a wide range of economic activities – work, saving, investment, and so forth. One manifestation of these costs is that GDP is lower than it would be in the absence of the tax system, or at least lower than it would be in the presence of a more efficient

REV_00144948

tax system. Accordingly, a dynamic scoring process will reflect the reduction in deadweight loss (the economic activity foregone due to tax distortions) and increase in GDP as one part of the revenue consequences of the tax policy. For this reason, adding this information aids policymakers in making the right choices for the economy, and economic effects are more important than revenue effects.

More mechanically, it is straightforward to conduct a revenue estimate using existing methods *and* supplement these estimates with an "impact statement" that shows the additional revenue effects of the macroeconomic consequences.

The fourth observation builds on the previous two: because not every proposal merits a full-blown dynamic scoring, and because the macroeconomic consequences can be viewed as a supplement to (as opposed to a substitute for) current procedures, there is no need to embed dynamic scoring in the existing budget process. Instead, for those proposals that meet the two criteria discussed earlier, the conventional scoring can be supplemented with an impact statement. This will be useful in two ways: policies that merit an impact statement will stand out from other tax changes, and the impact statement will be useful in guiding priorities and decision-making.

The final observation is that dynamic scoring of tax proposals is difficult. The empirical tax and economic modeling capability necessary is quite demanding. To get a flavor of the challenge, consider dynamic scoring of a proposal to eliminate the double-taxation of dividend income. Specifically, suppose that the policy were to be enacted this year, but not effective for two years. And, suppose further that full implementation of the proposal was phased in over a period of several years.

A model suitable for dynamic scoring would necessarily need to permit the *announcement* of the policy to affect corporate financial policy and investment, household saving and portfolio decisions, and the resulting macroeconomic consequences for interest rates, equity prices, saving, investment, and GDP. Further, the model necessary would distinguish between the ultimate impact when the policy had been fully-phased-in, and the transition path as

REV_00144949

the policy is incrementally implemented. Economic projections informing the revenue consequences on a year-by-year basis should reflect households' and businesses' judgments regarding the timing of their activities in response to not only the tax incentives, but also the economic environment – which of course is in part influenced by their decisions. Obviously, this is a difficult task.

Given the inherent difficulties, one can anticipate that different modeling strategies will yield alternative estimates. Some view this as an insurmountable impediment to the entire notion. In contrast, I see no reason why multiple impact statements might not be produced using a variety of modeling techniques for any single tax proposal.

Revisiting the conventions used for evaluating tax proposals is a valuable exercise. I thank the committee for holding this hearing. More generally, I think it is important to recognize the history of efforts in this area by this committee, the Committee on Ways and Means, the Joint Committee on Taxation through its 1997 Symposium on Tax Modeling, and many others. The Administration looks forward to working with Congress on this issue.

Thank you, Ms. Chairman, and I look forward to discussing with you this important topic.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 5/4/2002 8:43:02 AM
Subject: : Re: Enron Blurb in Post

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-MAY-2002 12:43:02.00
SUBJECT:: Re: Enron Blurb in Post
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

oops, I originally had 4 options listed and did not change the number of my preferred option at the end of the e-mail. To be clear, I prefer OPTION 2 -- meeting with Judge and Lieberman. I definitely do NOT prefer option 3.

Bradford A. Berenson
05/04/2002 12:39:39 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, bradford a. berenson/who/eop@eop
bcc:
Subject: Re: Enron Blurb in Post

We are meeting with the Judge and Tim at 10:45 on Monday. Do you guys want to try to get together this weekend to talk this through? I could do it early this afternoon, Sunday morning, or Sunday night after 8:00 p.m. (We could even get together at my house if this would be more convenient for everyone.)

Alternatively, we could try to get to the office a half-hour early on Monday and meet from 7:30 to 8:00. I know that's early but it might be preferable to weekend time. Trying to do it during business hours Monday prior to our meeting with the Judge and Tim will be difficult. I'm crashing these days on a number of things.

I think this is a very important decision and there are serious arguments to make in favor of each option. On balance, I think I favor option 2, sending a letter to Lieberman asking for a meeting, principals only, to discuss his concerns, but I think we really need to talk a while.

Let me know.

Brett M. Kavanaugh

05/04/2002 12:08:51 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, bradford a.
berenson/who/eop@eop
cc:
bcc:
Subject: Re: Enron Blurb in Post

Judge wants us to put together a game plan over the weekend.
Seems to me we have 3 options (with lots of sub-options): (i) respond with
a letter that goes through the history, defends our approach, explains
that their complaints are premature, and explains that some of their
complaints -- e.g., e-mail etc. -- could be easily resolved if they
provided us some specificity; (ii) schedule a meeting between Judge and
Lieberman where they try to hash some things out; and (iii) back down. I
vote for option 3 as most likely to produce a good result and lower the
temperature.

H. Christopher Bartolomucci
05/04/2002 10:03:37 AM
Record Type: Record

To: AGonzale@who.eop.gov, Bradford A. Berenson/WHO/EOP@EOP, Brett
M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Enron Blurb in Post

The Washington Post has a very short piece today on Lieberman's letter of
yesterday. It states incorrectly that Lieberman is seeking information
from the White House with Thompson's consent.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 5/6/2002 4:39:08 AM
Subject: : JEC Study - Terrorism

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-MAY-2002 08:39:08.00
SUBJECT:: JEC Study - Terrorism
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The Joint Economic Committee released a study last week entitled "The
Economic Costs of Terrorism". In general, the study notes that there are
significant short-term and long-term costs associated with a terrorist
attack. The Committee's report recommends that the federal government put
in place a temporary and limited insurance backstop as a way to minimize
the economic disruption related to a terrorist attack.

http://www.house.gov/jec/terrorism/costs.pdf
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>
Sent: 5/6/2002 6:14:55 AM
Subject: :

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-MAY-2002 10:14:55.00
SUBJECT::
TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can you bring me some new toner when you get a chance? Thanks.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>
Sent: 5/6/2002 4:26:11 AM
Subject: : need help with a Fed Ex

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-MAY-2002 08:26:11.00
SUBJECT:: need help with a Fed Ex
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Allison_L._Riepenhoff@who.eop.gov [UNKNOWN] <Allison_L._Riepenhoff@who.eop.gov>
Sent: 5/6/2002 11:52:25 AM
Subject: : Re: Thursday May 9 meeting with POTUS

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2002 15:52:25.00
SUBJECT:: Re: Thursday May 9 meeting with POTUS
TO:Allison_L._Riepenhoff@who.eop.gov (Allison_L._Riepenhoff@who.eop.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I am all but sure we will need Roosevelt Room because we will have
such a large crowd of Associate Counsel at this meeting. You may want to
alert whoever in Scheduling to that fact now.

Allison_L._Riepenhoff@who.eop.gov
05/06/2002 03:27:10 PM
Record Type: Record

To:
cc: See the distribution list at the bottom of this message
Subject: Re: Thursday May 9 meeting with POTUS

Has again been moved. Now it is scheduled for 2:45 pm.

Allison L. Riepenhoff
05/06/2002 11:33:36 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Thursday May 9 meeting with POTUS

Has been moved to 3:20pm (I am not sure which of you needs to be there, so
I am
sending this to all of you). Thanks.

Message Sent
To:_____

Rachel_L._Brand@who.eop.gov @ inet
Noel_J._Francisco@who.eop.gov @ inet
jnewstea@who.eop.gov @ inet

Kyle_Sampson@who.eop.gov @ inet
Brett_M._Kavanaugh@who.eop.gov @ inet
Bradford A. Berenson/WHO/EOP@EOP
H._Christopher_Bartolomucci@who.eop.gov @ inet
Helgard C. Walker/WHO/EOP@EOP
Courtney_S._Elwood@who.eop.gov @ inet

Message Copied
To:_____
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 5/7/2002 4:25:39 AM
Subject: : please review asap
Attachments: P_JF877003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
CREATION DATE/TIME: 7-MAY-2002 08:25:39.00
SUBJECT:: please review asap
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Not sure what precipitated this, but thought you might want to review...
---------- Forwarded by Rachel L. Brand/WHO/EOP on 05/07/2002
08:19
AM ----------

Claire E. Buchan
05/07/2002 08:17:19 AM

Record Type: Record

To: Robert C. McNally/OPD/EOP@EOP, Rachel L. Brand/WHO/EOP@EOP

cc:
Subject: please review asap

ari briefs at 9:15 -- is this ok?

cb(See attached file: enron.california.doc)

- enron.california.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JF877003_WHO.TXT_1>

Enron – California Documents

- These documents have been released as part of an ongoing investigation and it would not be appropriate for us to comment.

- As a more general matter, the Administration supports tough enforcement of laws that protect consumers. Indeed, we have called on Congress to enact tougher penalties to prevent market manipulation and we are pleased that this is in the Senate bill. It is one more reason why the Congress needs to act quickly to enact comprehensive energy legislation.

- It is also important to prevent the opportunity for market manipulation by modernizing and expanding our electricity grid and encouraging investment in new, clean generation.

Didn't you downplay the possibility that Enron and others might be manipulating the market during the California energy crisis?

A. There were many factors that contributed to California's energy crisis, including a lack of generation, an inadequate transmission grid, and a flawed electricity restructuring model. The Administration sought to help California by expediting permitting for new energy facilities, freeing up the Path 15 Bottleneck, and improving conservation at federal facilities.

If market manipulation exacerbated the problems, this is a matter for FERC to investigate, determine and punish.

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
Sent: 5/7/2002 4:33:17 AM
Subject: : please review asap
Attachments: P_IP877003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov ( Rachel_L._Brand@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 7-MAY-2002 08:33:17.00
SUBJECT:: please review asap
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Not sure what precipitated this, but thought you might want to review...
---------------------- Forwarded by Rachel L. Brand/WHO/EOP on 05/07/2002
08:19
AM ---------------------------



Claire E. Buchan
05/07/2002 08:17:19 AM

Record Type: Record


To: Robert C. McNally/OPD/EOP@EOP, Rachel L. Brand/WHO/EOP@EOP

cc:
Subject: please review asap

ari briefs at 9:15 -- is this ok?

cb(See attached file: enron.california.doc)



- enron.california.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IP877003_WHO.TXT_1>
```

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If market manipulation exacerbated the problems, this is a matter for FERC to investigate, determine and punish.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Rachel_L._Brand@who.eop.gov [UNKNOWN] <Rachel_L._Brand@who.eop.gov>
CC: bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;courtney s. elwood/who /eop@eop [WHO] <courtney s. elwood>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;edward mcnally/who /eop@eop [WHO] <edward mcnally>;nanette everson/who/eop@eop [WHO] <nanette everson>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>
Sent: 5/7/2002 10:05:28 AM
Subject: : Re: judicial confirmation provision in Energy bill

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2002 14:05:28.00
SUBJECT:: Re: judicial confirmation provision in Energy bill
TO:Rachel_L._Brand@who.eop.gov ( Rachel_L._Brand@who.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:courtney s. elwood ( CN=courtney s. elwood/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:nanette everson ( CN=nanette everson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Makes sense to me that it is in the Energy Bill. The Senate Judiciary
Committee needs to be more energetic.




Rachel_L._Brand@who.eop.gov
05/07/2002 02:00:16 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: judicial confirmation provision in Energy bill
```

Interesting provision in the Senate energy bill:

Section 2701 (last section of enormous bill):

"Sec. 2701. Fair Treatment of Presidential Judicial Nominees.
It is the sense of the Senate that, in the interests of the administration
of
justice, the Senate Judiciary Committee should along with its other
legislative
and oversight responsibilities, continue to hold regular hearings on
judicial
nominees and should, in accordance with the precedents and practices of the
Committee, schedule hearings on the nominees submitted by the President on
May
9, 2001, expeditiously."

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Courtney S. Elwood/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
Nanette Everson/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Cathy Alix/WHO/EOP@EOP [WHO] <Cathy Alix>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2002 6:58:16 AM
Subject: : Reminder Re: Enron Survey
Attachments: P_8QG77003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2002 10:58:16.00
SUBJECT:: Reminder Re: Enron Survey
TO:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Cathy:

As a follow up to the attached e-mail and Enron survey that was circulated on April 29, we would like to send out a reminder that completed surveys are due this Friday.

This should be an e-mail from PostMaster to All Commissioned Officers Staff. The subject line should read: "Important Reminder: Enron Survey Deadline." The e-mail should be sent out tomorrow (Wednesday) morning.

The body of the e-mail should say the following:

* * *

All Commissioned Officers are reminded that their completed Enron surveys are due on Friday, May 10. Completed surveys must be returned to the Counsel's Office (West Wing, Second Floor) by close of business on that day.

Any Commissioned Officer who did not receive the Enron survey should contact the Counsel's Office immediately at 6-2632.

Thank you for your cooperation.

* * *

Thanks, Cathy.

---------- Forwarded by H. Christopher Bartolomucci/WHO/EOP on 05/07/2002 10:39 AM ----------

PostMaster
04/29/2002 08:16:21 PM
Record Type: Record

To: All Commissioned Officers Staff
cc:
Subject: Postmaster: Important Memo from White House Counsel's Office Attached

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8QG77003_WHO.TXT_1>

April 29, 2002

MEMORANDUM FOR ALL ASSISTANTS TO THE PRESIDENT
ALL DEPUTY ASSISTANTS TO THE PRESIDENT
ALL SPECIAL ASSISTANTS TO THE PRESIDENT
DESIGNATED ADDITIONAL PERSONNEL IN
THE OFFICE OF THE VICE PRESIDENT,
THE COUNCIL OF ECONOMIC ADVISORS,
THE COUNCIL ON ENVIRONMENTAL QUALITY,
THE OFFICE OF MANAGEMENT AND BUDGET, AND
THE OFFICE OF THE U.S. TRADE REPRESENTATIVE (AS DESIGNATED BY THE COUNSEL OR CHIEF OF STAFF IN SUCH OFFICES)

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY

The Chairman of the Senate Committee on Governmental Affairs has sent the White House a letter requesting certain information relating to Enron Corporation. The White House is cooperating with the Committee, and we intend to provide appropriate and responsive information.

Accordingly, we ask that you complete the attached survey and return it to my office (West Wing, Second Floor) no later than May 10, 2002.

The survey questions can be answered yes or no, and we are not asking for further explanation at this time. Instead, depending on your answers, the Counsel's Office may contact you to obtain additional information. If you are unsure whether to answer yes or no, you may check the third box, and we will contact you.

If you have any questions, please call Associate Counsels Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

ENRON SURVEY

Instructions:

You are expected to answer the following questions to the best of your knowledge and recollection.

If before answering, it would help you to review any records you may have, you should do so.

In all of the questions, "Enron" means anyone you knew was working for, or communicating on behalf of, Enron Corporation or one of its businesses.

Question One:

Between January 20, 2001, and December 2, 2001, did Enron ask you for help of any kind in connection with the company's financial difficulties?

YES _____ NO _____ I'D LIKE TO DISCUSS _____

Question Two:

Between January 20, 2001, and December 2, 2001, did you have any communications with Enron relating to any of the following:

- The U.S. Securities Exchange Commission
- The U.S. Commodities Futures Trading Commission
- The U.S. Federal Energy Regulatory Commission
- The U.S. Department of Labor
- The U.S. Department of Commerce
- The U.S. Department of Energy
- The Overseas Private Investment Corporation
- The Export-Import Bank of the United States

YES _____ NO _____ I'D LIKE TO DISCUSS _____

Question Three:

Between January 20, 2001, and December 2, 2001, did you have any communications relating to Enron with any official or employee of any of the following:

- The U.S. Securities Exchange Commission
- The U.S. Commodities Futures Trading Commission
- The U.S. Federal Energy Regulatory Commission
- The U.S. Department of Labor
- The U.S. Department of Commerce
- The U.S. Department of Energy
- The Overseas Private Investment Corporation
- The Export-Import Bank of the United States

YES _____ NO _____ I'D LIKE TO DISCUSS _____

NAME (please print):

OFFICE:

PHONE NUMBER:

SIGNATURE: _____ DATE: _____

REV_00145031

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>
Sent: 5/7/2002 8:41:15 AM
Subject: : call for Brad to make

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2002 12:41:15.00
SUBJECT:: call for Brad to make
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please call Jenny Loray with Senator Mikulski at 224-4654. She
left message to find out info about Thursday's meeting. I returned the
call and left a voice mail saying that Brad would call her.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 5/7/2002 10:43:27 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2002 14:43:27.00
SUBJECT:: Re:
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thursday the 9th, I assume?

Tim Goeglein
05/07/2002 02:38:37 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

B-

Excellent job today!

May we do one more, next Thursday, at 2:30 p.m. We had about 350 people on today; I would like to do a smaller one, with 50 or so folks, hosted by PFA.

Warmly

tsg

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2002 1:33:48 PM
Subject: : LRM PTM107 - - HUD Draft Bill on Four Legislative Proposals
Attachments: P_2I387003_WHO.TXT_1.doc; P_2I387003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2002 17:33:48.00
SUBJECT:: LRM PTM107 - - HUD Draft Bill on Four Legislative Proposals
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/07/2002 05:33 PM ----------

From: P. Thaddeus Messenger on 05/07/2002 05:30:06 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM107 - - HUD Draft Bill on Four Legislative Proposals

LRM ID: PTM107
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, May 7, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Draft Bill on Four Legislative Proposals

DEADLINE: 5:00 p.m. Tuesday, May 14, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find draft copies of bill text and sectional analyses for four housing proposals.

Please provide your comments by 5:00 p.m., Tuesday, May 14, 2002. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile. If you experience difficulty with this LRM, or its attachment, please contact us immediately.

Thank you.

DISTRIBUTION LIST

AGENCIES:
118-TREASURY - Thomas M. McGivern - (202) 622-2317
061-JUSTICE - Daniel Bryant - (202) 514-2141
059-INTERIOR - Jane Lyder - (202) 208-4371
007-AGRICULTURE - Geraldine Broadway - (202) 720-1272
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666
025-COMMERCE - Michael A. Levitt - (202) 482-3151
107-Small Business Administration - Richard Spence - (202) 205-6700

EOP:
Stephen S. McMillin
Alan B. Rhinesmith
Francis S. Redburn
Lauren Larson
Adam Hoffberg
James F. Jordan
Andrea E. Jacobson
Reid B Cramer
Lauren E. Bloomquist
Karyn Richman
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Virginia Kennamer
Mark J. Schwartz
David J. Haun
Robert S. Fairweather
Janet E. Irwin
Gary Ceccucci
Ann Kendrall
Adrienne C. Erbach
Jennifer Wagner Bell
Toni S. Hustead
Kelli A. Hagen
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James Boden
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Yvette M. Dennis
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Elizabeth A. Bernhard
Arthur W. Stigile
Pamula L. Simms
Attia Little
Kenneth S. Kelly
John F. Morrall III
Joseph F. Lackey Jr.
Sheila Conley
Robert J. Shea
Mathew C. Blum
Aquiles F. Suarez
NEC LRM
Diana E. Furchtgott-Roth
OVP LRM
WHGC LRM
Philip J. Perry
Matthew J. Schneider
John F. Wood
Kirsten A. Chadwick
Kristen Silverberg
Joel D. Kaplan
Lauren C. Lobrano
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger

John D. Burnim
Anna M. Briatico
LRM ID: PTM107 SUBJECT: HUD Draft Bill on Four Legislative Proposals
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
llr@do.treas.gov
justice.lrm@usdoj.gov
ocl@ios.doi.gov
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
valrm@mail.va.gov
CLRM@doc.gov
cla@sba.gov @ inet

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP

Francis S. Redburn/OMB/EOP@EOP
Lauren Larson/OMB/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
James F. Jordan/OMB/EOP@EOP
Andrea E. Jacobson/OMB/EOP@EOP
Reid B Cramer/OMB/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
Karyn Richman/OMB/EOP@EOP
Dustin S. Brown/OMB/EOP@EOP
Virginia Kennamer/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Robert S. Fairweather/OMB/EOP@EOP
Janet E. Irwin/OMB/EOP@EOP
Gary Ceccucci/OMB/EOP@EOP
Ann Kendrall/OMB/EOP@EOP
Adrienne C. Erbach/OMB/EOP@EOP
Jennifer Wagner Bell/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Kelli A. Hagen/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
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Yvette M. Dennis/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP
Laurence R. Jacobson/OMB/EOP@EOP
Courtney B. Timberlake/OMB/EOP@EOP
Adriel M. Harvey/OMB/EOP@EOP
Elizabeth A. Bernhard/OMB/EOP@EOP
Arthur W. Stigile/OMB/EOP@EOP
Pamula L. Simms/OMB/EOP@EOP
Attia Little/OMB/EOP@EOP
Kenneth S. Kelly/OMB/EOP@EOP
John F. Morrall III/OMB/EOP@EOP
Joseph F. Lackey Jr./OMB/EOP@EOP
Sheila Conley/OMB/EOP@EOP
Robert J. Shea/OMB/EOP@EOP
Mathew C. Blum/OMB/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
NEC LRM
Diana E. Furchtgott-Roth/CEA/EOP@EOP
OVP LRM
WHGC LRM
Philip J. Perry/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
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Kirsten A. Chadwick/WHO/EOP@EOP
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Lauren C. Lobrano/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
John D. Burnim/OMB/EOP@EOP
Anna M. Briatico/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2I387003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2I387003_WHO.TXT_2>

May 2002 - DRAFT{PRIVATE }
Four Legislative Proposals

Bill Text

SEC. ___. COMPREHENSIVE PLANNING UNDER THE INDIAN HOUSING BLOCK GRANT PROGRAM.

Section 101(h) of the Native American Housing Assistance and Self-Determination Act of 1996 is amended by inserting after "Act" the first place it appears the following: "for comprehensive housing and community development planning activities and".

SEC. ___. REAUTHORIZATION OF CERTAIN INDIAN HOUSING PROGRAMS.

(a) BLOCK GRANT ASSISTANCE.--Section 108 of the Native American Housing Assistance and Self-Determination Act of 1996 is amended by striking "such" and all that follows through "Act" and inserting "$644,600,000 for fiscal year 2003 and such sums as may be necessary for each of fiscal years 2004, 2005, 2006, and 2007".

(b) LOAN GUARANTEES.--Section 605 of such Act is amended--

(1) in subsection (a), by striking "1997, 1998, 1999, 2000, and 2001" and inserting "2003, 2004, 2005, 2006, and 2007"; and

(2) in subsection (b), by striking "such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001" and inserting "$2,000,000 for fiscal year 2003 and such sums as may be necessary for each of fiscal years 2004, 2005, 2006, and 2007".

SEC. ___. AUTHORITY FOR HUD TO CONDUCT FORECLOSURES UNDER THE SECTION 184 INDIAN LOAN GUARANTEE PROGRAM.

Section 184(h)(1)(B) of the Housing and Community Development Act of 1992 is amended by adding the following new sentence at the end:

"The prosecution and defense of any litigation under this paragraph shall be conducted, at the discretion of the Secretary, by--

"(i) the United States attorneys for the districts in which the litigation arises and any other attorney that the Attorney General may designate under law, under the supervision of the Attorney General;

"(ii) the General Counsel of the Department of Housing and Urban Development; or

"(iii) any other attorney with whom the Secretary enters into a contract after a determination by the Secretary that the attorney will provide competent, cost-effective, and timely representation for such Department.".

SEC. ___. HUD REPORTS TO CONGRESS.

(a) SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.--Section 203 of the National Housing Act is amended by striking the following sentence after subsection (u): "The report required under this

subsection shall include the report required under section 540(c) and the report required under section 205(g).".

(b) ACTIVITIES OF FNMA AND FHLMC.--Section 1328(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by striking "June 30" and inserting "September 30".

(c) CONTRACTS IN EXCESS OF $250,000.--Section 10001 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia, is repealed.

May 2002 - DRAFT
Four Legislative Proposals

Section-by-Section Analysis

COMPREHENSIVE PLANNING UNDER THE INDIAN HOUSING BLOCK GRANT PROGRAM

Section 101(h) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) authorizes Indian Housing Block Grant (IHBG) recipients to use a percentage of the grant amounts they receive for any reasonable administrative and planning expenses related to carrying out activities under NAHASDA, including costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with NAHASDA grants, and expenses of preparing an Indian housing plan. Through administrative means, HUD has currently set this percentage at 20 percent.

Section ____ would amend section 101(h) to allow IHBG recipients to use a portion of their grant funds, within the 20 percent cap, to engage in comprehensive housing and community development planning activities. Rational, comprehensive land-use planning, when used in conjunction with proper zoning, master plans and associated tools, results in decent, livable Native American communities. Tribes must ensure that the appropriate location of housing, commercial, industrial and tribal governmental projects and activities occurs carefully and thoughtfully. They often do not have funding sources to obtain services to accomplish these objectives. This amendment would authorize these activities as an eligible administrative expense under NAHASDA.

REAAUTHORIZATION OF CERTAIN INDIAN HOUSING PROGRAMS

The authorization of appropriations for the Indian Housing Block Grant program and the title VI housing loan gurarntee program under NAHSDA expired at the end of fiscal year 2001. Section ___ would amend sections 108 and 605 of NAHASDA to reauthorize both programs through 2007. The reauthorization of these programs would support HUD's FY 2003 Budget request to fund these successful programs.

AUTHORITY FOR HUD TO CONDUCT FORECLOSURES UNDER THE SECTION 184 INDIAN LOAN GUARANTEE PROGRAM

Section ___ would give HUD the authority to bring foreclosure actions under the Section 184 Indian Loan Guarantee program.

The Department of Justice (DOJ) is the Federal agency responsible for representing the Federal Government when foreclosures are necessary in this guaranteed loan program. To bring actions on tribal lands, attorneys must comply with any specific tribal bar admission requirements. It can be very difficult to find an available DOJ attorney who is well versed in HUD law and foreclosure procedures and is a member of a specific State or tribal bar. Bar admission requirements vary from tribe to tribe and State to State, from submitting a form to passing an exam, and even those that require just a form can take months to process. DOJ does not have many attorneys with the specialized background and training to do foreclosures in tribal courts, and HUD does not have the authority to carry out the foreclosures using its attorneys or the authority to contract with outside counsel.

Formatted

Given this situation, it is appropriate to give the proposed foreclosure authority to HUD under the Section 184 program, which is similar to the foreclosure authority that USDA has under its section 502 rural housing program (see section 510(d) of the Housing Act of 1949). By allowing HUD to handle a foreclosure in-house or to contract with outside counsel, generally a local private attorney, this proposal will ensure the most timely protection of the Federal Government's financial interests.

HUD REPORTS TO CONGRESS

Section ___ would make the following changes (mostly technical) to certain HUD reporting requirements to Congress.

Subsection (a) would separate the FHA annual report on single family mortgagor and loan characteristics (section 203(w)) of the National Housing Act (NHA)), the annual actuarial study (section 205(g) of the NHA), and the early default report (section 540(c) of the NHA) that were combined by section 1103(f) of the American Homeownership and Economic Opportunity Act of 2000. These reports are very different products that are more appropriate to handle separately.

Subsection (b) would amend the due date of HUD's annual report on activities of FNMA and FHLMC (section 1328 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) from June 30th to September 30th because the Home Mortgage Disclosure Act data that the Department relies on to prepare the report is not available to the Department until after June 30th.

Subsection (c) would repeal section 10001 of the 1997 Emergency Supplemental Appropriations Act, which requires HUD to submit a semiannual report to the appropriations committees that lists all new HUD contracts and task orders in excess of $250,000. This reporting requirement is not necessary since the information in the report is included in the Federal Procurement Data System and the information in such System is available to members of Congress upon request.

REV_00145065

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 5/7/2002 2:11:15 PM
Subject: : Re: first draft
Attachments: P_4I587003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2002 18:11:15.00
SUBJECT:: Re: first draft
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm sorry, but I don't like this approach. It seems weak; it seems defensive; and it doesn't seem like we're straightforwardly responding. I would do a letter that says something like the following:

Dear Senator Lieberman:

I received your letter of May 7 and look forward to our meeting. As I expressed in my previous letter, I believe a discussion between the two of us is the most productive way of clarifying the points raised in your letter of May 3 and of agreeing upon an approach that will satisfy the Committee's needs. Such a meeting will allow us to have a dialogue rather a continuing formal exchange of correspondence and will allow me to better explain the reasons for the approach we are taking and answer whatever questions you may have.

I have no objections, however, to responding to the questions at the end of your May 3 letter. Those answers are as follows:

1. A search of the White House Automated Records Management system; a search of the White House Visitors Entry System (WAVES); a search for potentially relevant hard files in the possession of the Office of Records Management; and preparation for additional information-gathering efforts following survey responses.

2. We expect the searches themselves to take place within the next several days; planning has been ongoing.

3. We distributed the survey as indicated on the cover memo accompanying the survey form itself, a copy of which we previously provided to you. Absent guidance from your staff on an appropriate and reasonable distribution of the survey, we identified the commissioned officers as the staff members most likely to have useful and responsive information, given their seniority and levels of responsibility. We also have identified those most likely to have useful and responsive information in the other EOP offices indicated on the cover memo accompanying the survey form. The President and Vice President are both already on record describing the relevant contacts each of them had. For your convenience, I am attaching copies and transcripts of their previous statements.

4. We are not seeking information from former employees, as they are no longer employed by the White House.

5. Yes, the survey and follow up steps may elicit information on this subject. I wish to discuss with you the Committee's interest in those matters for the reasons stated in my letter of April 19.

6. Yes, the survey and follow up steps may elicit information on this

subject. I wish to discuss with you the Committee's interest in those matters for the reasons stated in my letter of April 19.

I look forward to discussing these and other matters in greater depth when we meet.

Sincerely,

Brett M. Kavanaugh
05/07/2002 05:41:05 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: first draft

please review ASAP and then I will send around

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4I587003_WHO.TXT_1>

DRAFT
5/7
5:30 P.M.

May __, 2002

Dear Chairman Lieberman:

Thank you for your letter of May 7, 2002. I look forward to meeting with you this week, which should assist the Committee and the White House in settling on a mutually agreeable approach.

You asked that I inform you before the meeting about White House efforts to gather relevant information. As you know, we have distributed an initial survey to a large group of White House and other EOP officials who are likely to possess relevant information. The survey is designed to help us determine *who* had communications relevant to the Committee's inquiry. Then, we intend to gather more information from the individuals who had relevant communications. This seemed to us an entirely sensible approach that would allow us to efficiently gather relevant information and expeditiously and appropriately respond to the Committee's inquiry.

In light of your most recent letter, however, we have initiated a process for searching relevant e-mail and visitor entry records for *all* EOP employees. As you know, this procedure will require the page-by-page review of a tremendous amount of irrelevant information that necessarily will be gathered in an electronic search using general search terms. That said, we have undertaken this effort in order to cooperate with the Committee.

You also have asked specifically about former employees. We did not send the survey to former employees because they are no longer employed by the White House. You also ask about appointments and the NEPDG. The survey necessarily will elicit certain information that may be relevant to those subjects. That said, I wish to discuss with you the Committee's interest in those matters for reasons stated in my letter of April 19.

I look forward to meeting with you this week.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Joseph I. Lieberman
United States Senate
Washington, DC 20510

cc: The Honorable Fred Thompson

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 5/7/2002 2:40:34 PM
Subject: : please review
Attachments: P_3R687003_WHO.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-MAY-2002 18:40:34.00
SUBJECT:: please review
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3R687003_WHO.TXT_1>
```

DRAFT
5/7
7:00 P.M.

May __, 2002

Dear Chairman Lieberman:

Thank you for your letter of May 7, 2002, and for agreeing to meet with me this week to discuss the Committee's request. Our meeting should allow us to have an efficient dialogue, rather than a continuing exchange of correspondence, and thereby assist the Committee and the White House in settling on a mutually acceptable approach.

You asked that I inform you before the meeting about White House efforts to gather relevant information. As you know, we have distributed a survey to more than 200 White House and other EOP officials who are most likely to possess relevant information, including all Assistants to the President, Deputy Assistants to the President, and Special Assistants to the President. The survey will identify individuals who had communications relevant to the Committee's inquiry. At that point, we intend to gather relevant information from the identified individuals. This is an entirely sensible approach that will allow us to efficiently gather relevant information and expeditiously and appropriately respond to the Committee's inquiry.

You also asked certain specific questions. The answers are as follows:

1. We have now initiated additional steps that will include a search of the White House Automated Records Management system, a search of the White House Visitors Entry System (WAVES), and a search for potentially relevant documents in the possession of the Office of Records Management.

2. We expect the searches themselves to begin within the next several days.

3. We distributed the survey as indicated on the cover memo accompanying the survey form itself. We identified the commissioned officers as the staff members most likely to have relevant information, given their levels of responsibility. We also identified those most likely to have relevant information in the other EOP offices indicated on the cover memo accompanying the survey form. The President and Vice President have publicly described relevant communications they had.

4. We are not seeking information from former employees, as they are no longer employed by the White House.

5. The survey and follow-up steps may elicit information on this subject. That said, I wish to discuss with you the Committee's interest in this subject for the reasons stated in my letter of April 19.

6. The survey and follow-up steps may elicit information on this subject. That said, I wish to discuss with you the Committee's interest in this subject for the reasons stated in my letter of April 19.

I look forward to meeting with you this week.

Sincerely,

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Joseph I. Lieberman
United States Senate
Washington, DC 20510

cc: The Honorable Fred Thompson

From: Ben Wittes <wittesb@washpost.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2002 5:22:52 AM
Subject: : Re: interesting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
CREATION DATE/TIME: 8-MAY-2002 09:22:52.00
SUBJECT:: Re: interesting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fascinating. I'll take a look.

/b

_____
Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

Brett_M.
_Kavanaugh@who.eop. To:
wittesb@washpost.com
gov cc:
Subject: interesting
05/07/2002 09:44 PM

A few weeks ago, the Seventh Circuit ruled on the question whether the
government attorney-client privilege applies in federal criminal
proceedings.
In a 3-0 opinion by Judge Diane Wood and joined by Judges Posner and Flaum,
the
court expressly agreed with Eighth Circuit and D.C. Circuit decisions that
there
is no such privilege in federal criminal proceedings. The Seventh Circuit
case
involved a state lawyer for then-Secretary of State Ryan in Illinois; the
federal grand jury subpoenaed the lawyer regarding his discussions with
Ryan.
Ryan objected, but the Seventh Circuit ruled that the attorney must
testify.

The court's decision includes the same kind of very strong rhetoric
found
in the Eighth and D.C. Circuit decisions about the distinction between
government lawyers and corporate and private lawyers:

"While we recognize the need for full and frank communication between government officials, we are more persuaded by the serious arguments against extending the attorney-client privilege to protect communications between government lawyers and the public officials they serve when criminal proceedings are at issue. First, government lawyers have responsibilities and obligations different from those facing members of the private bar. While the latter are appropriately concerned first and foremost with protecting their clients--even those engaged in wrongdoing-- from criminal charges and public exposure, government lawyers have a higher, competing duty to act in the public interest. Lindsey, 158 F.3d at 1273; Comment to ABA Model Rule 1.13 (noting that government lawyers may have higher duty to rectify wrongful official acts despite general rule of confidentiality). They take an oath, separate from their bar oath, to uphold the United States Constitution and the laws of this nation (and usually the laws of the state they serve when, as was the case with Bickel, they are state employees). Their compensation comes not from a client whose interests they are sworn to protect from the power of the state, but from the state itself and the public fisc. It would be both unseemly and a misuse of public assets to permit a public official to use a taxpayer-provided attorney to conceal from the taxpayers themselves otherwise admissible evidence of financial wrongdoing, official misconduct, or abuse of power. Compare Nixon, 418 U.S. at 713 (qualified executive privilege applies in the face of a criminal investigation). Therefore, when another government lawyer requires information as part of a criminal investigation, the public lawyer is obligated not to protect his governmental client but to ensure its compliance with the law."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 5/8/2002 7:23:10 AM
Subject: : Re: Draft Letter
Attachments: P_Z3O87003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2002 11:23:10.00
SUBJECT:: Re: Draft Letter
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

please proof and then FAX to both numbers . . . thanks

Patrick J. Bumatay
05/08/2002 11:22:12 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: timothy e. flanigan/who/eop@eop, david s.
addington/ovp/eop@eop, bradford a. berenson/who/eop@eop, h. christopher
bartolomucci/who/eop@eop
bcc:
Subject: Re: Draft Letter

The Judge has seen and approved. I am printing up for final signature
now.

Patrick

Brett M. Kavanaugh
05/08/2002 07:50:18 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Patrick J. Bumatay/WHO/EOP@EOP
Subject: Draft Letter

I made no additional changes. I think it is ready to go.

Message Sent
To:_____
Timothy E. Flanigan/WHO/EOP@EOP
alberto r. gonzales/who/eop@eop
david s. addington/ovp/eop@eop
bradford a. berenson/who/eop@eop
h. christopher bartolomucci/who/eop@eop

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Z3087003_WHO.TXT_1>

DRAFT
5/8
7:45 A.M.

May __, 2002

Dear Chairman Lieberman:

Thank you for your letter of May 7, 2002, and for agreeing to meet with me this week to discuss the Committee's request. Our meeting should allow us to have ~~an~~ more efficient dialogue, ~~rather than a continuing exchange of correspondence,~~ and ~~thereby~~ permit us to settle on an approach that is mutually acceptable to the Committee and the White House.

You asked that I inform you before the meeting about White House efforts to gather relevant information. As you know, we have distributed a survey to more than 200 White House officials and others in the EOP who are most likely to possess relevant information, including all Assistants to the President, all Deputy Assistants to the President, and all Special Assistants to the President. The survey will identify individuals who had communications relevant to the Committee's inquiry. Then, we intend to gather additional information from the identified individuals. Respectfully, we believe that ~~T~~this is an entirely sensible approach that will allow us to efficiently gather relevant information and appropriately respond to the Committee's inquiry, without placing unreasonable burdens on the operations of the White House.

You also asked certain specific questions, and I am happy to answer them.

1. We have now initiated additional steps that will include a search of the e-mail in the White House Automated Records Management system, a search of the White House Worker and Visitors Entry System (WAVES), and a search for potentially relevant documents in the possession of the Office of Records Management.

2. We expect the searches ~~themselves~~ to begin within the next several days.

3. We identified the commissioned officers as the staff members most likely to have relevant information, given their levels of responsibility. We also identified those most likely to have relevant information in the other EOP offices indicated on the cover memo accompanying the survey form, and the Office of the Vice President. The President and Vice President have publicly described relevant communications they had.

4. We are not seeking information from former employees, as they are no longer employed by the White House. ~~The Committee is free, of course, to seek information from such individuals.~~

5. The survey and follow-up steps may elicit information on the subject of appointments. That said, I wish to discuss with you the Committee's legislative interest in this subject for the reasons stated in my letter of April 19.

6. The survey and follow-up steps may elicit information on the ~~NEPDG~~National Energy Policy Development Group. Again, however, I wish to discuss with you the Committee's interest in this matter for the reasons stated in my April 19 letter.

I look forward to meeting with you this week.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Joseph I. Lieberman
United States Senate
Washington, DC 20510

cc: The Honorable Fred Thompson

From: Ben Wittes <wittesb@washpost.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2002 5:22:51 AM
Subject: : Re: interesting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
CREATION DATE/TIME: 8-MAY-2002 09:22:51.00
SUBJECT:: Re: interesting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks for bringing it to my attention.

_____
Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

Brett_M.
_Kavanaugh@who.eop. To:
wittesb@washpost.com
gov cc:
Subject: interesting
05/07/2002 09:44 PM

A few weeks ago, the Seventh Circuit ruled on the question whether the government attorney-client privilege applies in federal criminal proceedings.
In a 3-0 opinion by Judge Diane Wood and joined by Judges Posner and Flaum, the court expressly agreed with Eighth Circuit and D.C. Circuit decisions that there is no such privilege in federal criminal proceedings. The Seventh Circuit case involved a state lawyer for then-Secretary of State Ryan in Illinois; the federal grand jury subpoenaed the lawyer regarding his discussions with Ryan.
Ryan objected, but the Seventh Circuit ruled that the attorney must testify.

The court's decision includes the same kind of very strong rhetoric found in the Eighth and D.C. Circuit decisions about the distinction between government lawyers and corporate and private lawyers:
"While we recognize the need for full and frank communication between government officials, we are more persuaded by the serious arguments against extending the attorney-client privilege to protect communications between government lawyers and the public officials they serve when criminal proceedings are at issue. First, government lawyers have responsibilities and

obligations
different from those facing members of the private bar. While the latter
are
appropriately concerned first and foremost with protecting their
clients--even
those engaged in wrongdoing-- from criminal charges and public exposure,
government lawyers have a higher, competing duty to act in the public
interest.
Lindsey, 158 F.3d at 1273; Comment to ABA Model Rule 1.13 (noting that
government lawyers may have higher duty to rectify wrongful official acts
despite general rule of confidentiality). They take an oath, separate from
their bar oath, to uphold the United States Constitution and the laws of
this
nation (and usually the laws of the state they serve when, as was the case
with
Bickel, they are state employees). Their compensation comes not from a
client
whose interests they are sworn to protect from the power of the state, but
from
the state itself and the public fisc. It would be both unseemly and a
misuse of
public assets to permit a public official to use a taxpayer-provided
attorney to
conceal from the taxpayers themselves otherwise admissible evidence of
financial
wrongdoing, official misconduct, or abuse of power. Compare Nixon, 418 U.S.
at
713 (qualified executive privilege applies in the face of a criminal
investigation). Therefore, when another government lawyer requires
information
as part of a criminal investigation, the public lawyer is obligated not to
protect his governmental client but to ensure its compliance with the law."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
CC: rachel_l._brand@who.eop.gov [UNKNOWN] <rachel_l._brand@who.eop.gov>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 5/8/2002 2:23:36 PM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2002 18:23:36.00
SUBJECT:: Re:
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:rachel_l._brand@who.eop.gov (rachel_l._brand@who.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

sorry I brought it up. talk to the
Judge!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Helgard C. Walker
05/08/2002 06:21:39 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: rachel_l._brand@who.eop.gov, helgard c. walker/who/eop@eop
bcc:
Subject: Re:

Well, it is a bit beside the point, as we're not allowed to go to this
one.

Brett M. Kavanaugh
05/08/2002 06:06:28 PM
Record Type: Record

To: Rachel_L._Brand@who.eop.gov
cc: helgard c. walker/who/eop@eop
bcc:
Subject: Re:

i know, i know, no good deed goes unpunished

Rachel_L._Brand@who.eop.gov
05/08/2002 06:03:47 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Helgard C. Walker/WHO/EOP@EOP
Subject: Re:

too little, too late, buddy

Brett M. Kavanaugh
05/08/2002 05:57:35 PM

Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP

cc:
Subject:

fyi that there is a POTUS judges event with Senators tomorrow but it
is in
Cabinet Room and only Judge is supposed to go from our staff.

From:	CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To:	Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>
CC:	brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;marty p. smith/opd/eop@eop [OPD] <marty p. smith>
Sent:	5/9/2002 5:31:53 AM
Subject:	: Re: Postmaster: Important Memo from White House Counsel's Office Attached
Attachments:	P_TYK97003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2002 09:31:53.00
SUBJECT:: Re: Postmaster: Important Memo from White House Counsel's Office Attached
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:marty p. smith (CN=marty p. smith/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
End Original ARMS Header

We have received it.. Thank you.

Charles P. Blahous
05/09/2002 09:16:23 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP, Marty P. Smith/OPD/EOP@EOP
cc:
Subject: Postmaster: Important Memo from White House Counsel's Office Attached

I just want to confirm that my previous response to this survey has been received. Thanks.
---------- Forwarded by Charles P. Blahous/OPD/EOP on 05/09/2002 09:15 AM ----------

PostMaster
05/09/2002 09:02:58 AM
Record Type: Record

To: All Commissioned Officers Staff
cc:
Subject: Postmaster: Important Memo from White House Counsel's Office Attached

Reminder: Surveys are due to White House Counsel's Office by Friday, May 10. If you have any questions, please call White House Counsel at x6-2632.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TYK97003_WHO.TXT_1>

April 29, 2002

MEMORANDUM FOR ALL ASSISTANTS TO THE PRESIDENT
ALL DEPUTY ASSISTANTS TO THE PRESIDENT
ALL SPECIAL ASSISTANTS TO THE PRESIDENT
DESIGNATED ADDITIONAL PERSONNEL IN
THE OFFICE OF THE VICE PRESIDENT,
THE COUNCIL OF ECONOMIC ADVISORS,
THE COUNCIL ON ENVIRONMENTAL QUALITY,
THE OFFICE OF MANAGEMENT AND BUDGET, AND
THE OFFICE OF THE U.S. TRADE REPRESENTATIVE (AS DESIGNATED BY THE COUNSEL OR CHIEF OF STAFF IN SUCH OFFICES)

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY

The Chairman of the Senate Committee on Governmental Affairs has sent the White House a letter requesting certain information relating to Enron Corporation. The White House is cooperating with the Committee, and we intend to provide appropriate and responsive information.

Accordingly, we ask that you complete the attached survey and return it to my office (West Wing, Second Floor) no later than May 10, 2002.

The survey questions can be answered yes or no, and we are not asking for further explanation at this time. Instead, depending on your answers, the Counsel's Office may contact you to obtain additional information. If you are unsure whether to answer yes or no, you may check the third box, and we will contact you.

If you have any questions, please call Associate Counsels Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

ENRON SURVEY

Instructions:

You are expected to answer the following questions to the best of your knowledge and recollection.

If before answering, it would help you to review any records you may have, you should do so.

In all of the questions, "Enron" means anyone you knew was working for, or communicating on behalf of, Enron Corporation or one of its businesses.

Question One:

Between January 20, 2001, and December 2, 2001, did Enron ask you for help of any kind in connection with the company's financial difficulties?

YES _____ NO _____ I'D LIKE TO DISCUSS _____

Question Two:

Between January 20, 2001, and December 2, 2001, did you have any communications with Enron relating to any of the following:

- The U.S. Securities Exchange Commission
- The U.S. Commodities Futures Trading Commission
- The U.S. Federal Energy Regulatory Commission
- The U.S. Department of Labor
- The U.S. Department of Commerce
- The U.S. Department of Energy
- The Overseas Private Investment Corporation
- The Export-Import Bank of the United States

YES _____ NO _____ I'D LIKE TO DISCUSS _____

Question Three:

Between January 20, 2001, and December 2, 2001, did you have any communications relating to Enron with any official or employee of any of the following:

- The U.S. Securities Exchange Commission
- The U.S. Commodities Futures Trading Commission
- The U.S. Federal Energy Regulatory Commission
- The U.S. Department of Labor
- The U.S. Department of Commerce
- The U.S. Department of Energy
- The Overseas Private Investment Corporation
- The Export-Import Bank of the United States

YES _____ NO _____ I'D LIKE TO DISCUSS _____

NAME (please print):

OFFICE:

PHONE NUMBER:

SIGNATURE: _____ DATE: _____

REV_00145121

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 5/9/2002 10:11:10 AM
Subject: : BNA Today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 9-MAY-2002 14:11:10.00
SUBJECT:: BNA Today
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Daily Report for Executives - Senate Argues Over Who Caused Delay
No. 90
Thursday May 9, 2002Page A-28
ISSN 1523-567X
Regulation, Law & Economics
Insurance
Senate Argues Over Who Caused Delay In Floor Action on Terrorism
Insurance

A struggle is under way in the Senate over who bears responsibility for a
delay
in bringing terrorism reinsurance legislation to the floor, congressional
and
industry sources told BNA May 8.
The legislation has been delayed since December, when a bipartisan
compromise
measure did not reach the Senate floor.
In recent weeks, Democrats have offered unanimous consent agreements to
bring
the legislation to the floor, but Republicans have rejected them, on the
basis
that base legislation did not contain strong enough provisions on tort
```

reform
and against punitive damages.
Democrats first offered seven hours of debate on the legislation with two amendments on each side, and then offered four amendments and no time limit.
Pressure has increased on Senate Republicans as time has passed, and they are
trying to shift the "blame" for the delay back to Democrats, an industry source
said.
Karl Rove, a top aide to President Bush, conveyed the message at a May 7 Republican policy luncheon that Bush would not thwart the Senate Republican
position that terrorism insurance legislation should contain provisions prohibiting punitive damages in claims arising from terrorist acts, an industry
source said.
"Rove went up there to say the president is not going to undercut them on punitive damages and to express the president's concern that terrorism insurance
get done," the industry source said.
With debate on judicial nominations and trade not expected to go well in the
coming days, there could be an opening on the floor for terrorism insurance.
However, the punitive damages issue appears to be gridlocked, with negotiator
Sen. Phil Gramm (R-Texas) supporting a cap on punitive damages associated with
terrorist acts during the duration of a federal terrorism insurance program, and
Democrats only stipulating that government funds could not be used to pay punitive damages.
Gramm also has expressed interest in raising the threshold for when a federal
backstop would kick in for terrorism insurance.
The House passed its version of a terrorism insurance bill (H.R. 3210) Nov. 29.
In general, the legislation would guarantee federal funds for catastrophic property and casualty losses caused by terrorist attacks on U.S. soil.
The compromise measure reached last year would consolidate lawsuits stemming
from terrorist acts in federal court, establish loss limits on a per-company
basis--depending upon company size and ability to absorb damages--and prohibit
government funds from being used to pay punitive damages.

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 5/9/2002 10:32:04 AM
Subject: : Lieberman
Attachments: P_SZ0A7003_WHO.TXT_1.doc

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CREATION DATE/TIME: 9-MAY-2002 14:32:04.00
SUBJECT:: Lieberman
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SZ0A7003_WHO.TXT_1>
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Meeting with Chairman Lieberman

- To begin with, I think you have somewhat underestimated our approach, which will sensibly gather information and allow us to focus our efforts on the people who actually possess relevant information. We also think your concerns are premature. We are gathering information. And we would like you to give us a chance to complete the process.

- As I read your May 3 letter, there are nine substantive issues you raise.

Issue 1. Survey sent only to officials of certain rank and to certain offices.

Response: We chose the people who were most likely to have relevant information. There are several thousand people who work in the EOP, most of whom could not conceivably have relevant information. It is far more sensible to focus on those with any likelihood of possessing relevant information. If you think people were erroneously left out, we can add them. We also can provide you with the list of individuals covered by the survey. The survey went to more than 200 EOP employees.

Issue 2. Information from President/Vice President.

Response: Both of them have made public statements about their communications. We see no basis to seek more information from them without a compelling predicate or reason to do so.

Issue 3. Former EOP staff.

Response: Our records searches will gather information related to former employees. As to the survey, however, we have no authority or role with respect to former employees. We do not represent or control them.

Issue 4. E-mail and WAVES.

Response: We have begun a search consistent with your request.

Issue 5. Complaint that our survey does not seek any details.

Response: As the survey indicates on its face, we intend to follow up with those who have relevant information. (Note: The manner of follow-up has yet to be determined depending on volume and the like.)

Issue 6. Survey does not ask about communications with Enron about policy issues when the communications do not mention the listed agencies.

Response: Your original request never asked simply for communications from Enron about specified subject matters, so we are surprised that this is now an issue. Indeed, the

survey essentially quoted from your second letter on April 24; your letter stated that "[t]he request seeks communications EOP staff had with or about a single company ***relating to eight federal agencies*** . . ." It also bears mention that our survey is in fact broader than your request in asking specifically whether Enron ever sought help with respect to its financial condition.

Issue 7. What about communications with other federal agencies related to the listed agencies?

Response: To be honest, we have never understood this aspect of the request. What exactly do you seek here?

Issue 8. Appointments.

Response: Our problem here is straightforward. First, Presidential appointments are at the core of his constitutional power. The confirmation process is, in effect, the Senate's oversight on that process. I think it is highly unusual for Congress to delve into this. Second, and more practically, the inquiry will not capture information in a way that is accurate. Suppose Enron weighed in on one appointment as did 50 other entities and individuals. Well, you only seek the Enron input. And then that person and the President get tarred because Enron had undue influence. That makes no sense to me. Ken Lay wrote me about Judge Lee Rosenthal in support of her elevation to the Fifth Circuit. Why do you want that? What does that prove?

All of that said, if there are certain individual appointments in which you are interested, we are willing to gather information and assess it.

Issue 9. NEPDG.

Response: We have the same kind of problem here. Without knowing all inputs into the NEPDG, it would be misleading to assess only the Enron inputs. And given that problem, and given that the NEPDG had nothing to do with Enron's collapse or financial problems, we have some problems with this request as well. What is more, the development of policy again goes to the core of the President's constitutional authority, as distinct from the exercise of regulatory authority by particular agencies. That said, our survey and searches will gather some information about the NEPDG, and we would propose that we wait and see what we gather.

From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;William S. Laragy/OMB /EOP@EOP [OMB] <William S. Laragy>
CC:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
BCC:	Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO])
Sent:	5/10/2002 6:22:18 AM
Subject:	: Work plan on Enron searches
Attachments:	F_36PA7003_NSC.TXT_1.doc

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CREATION DATE/TIME:10-MAY-2002 10:22:18.00
SUBJECT:: Work plan on Enron searches
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:William S. Laragy ( CN=William S. Laragy/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here is a summary of the additional steps we are now taking. John, we
need your office to commission the search of the NSC e-mail system using
these search terms; either your lawyers or ours can screen the results to
identify any material responsive to the Committee's request. Scott, note
that we have added some search terms to our e-mail search.

Thanks all. Feel free to call if you have any questions.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_36PA7003_NSC.TXT_1>
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Proposed Work Plan for First Round ARMS Search
DRAFT: 5/10/02

1. Perform a search of the ARMS system for all EOP and OVP users.

2. Search will cover January 20, 2001 through December 2, 2001.

3. Search will cover all fields, including recipients, addressees, subject, and text, but will exclude bulk e-mail distributed by the Press Office or sent by the general public to White House public comment e-mail addresses.

4. Terms to be searched:

   a. Enron
   b. "Ken Lay" or "Kenneth Lay" or "Kenneth L. Lay"
   c. Whalley
   d. Fastow
   e. Skilling
   f. "Clifford Baxter" or "Cliff Baxter"
   g. "Linda Robertson"

5. Identical search to be done in NSC system.

6. Identical search to be done of WAVES records.

7. Folder-level search to be done by Records Management for folders with any of the same terms in the title, or the terms "Energy" or "NEPDG."

From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;William S. Laragy/OMB /EOP@EOP [OMB] <William S. Laragy>
CC:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
BCC:	Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO])
Sent:	5/10/2002 6:22:18 AM
Subject:	: Work plan on Enron searches
Attachments:	P_36PA7003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
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CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:10-MAY-2002 10:22:18.00
SUBJECT:: Work plan on Enron searches
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:William S. Laragy ( CN=William S. Laragy/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

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need your office to commission the search of the NSC e-mail system using
these search terms; either your lawyers or ours can screen the results to
identify any material responsive to the Committee's request. Scott, note
that we have added some search terms to our e-mail search.

Thanks all. Feel free to call if you have any questions.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_36PA7003_WHO.TXT_1>
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Proposed Work Plan for First Round ARMS Search
DRAFT: 5/10/02

1. Perform a search of the ARMS system for all EOP and OVP users.

2. Search will cover January 20, 2001 through December 2, 2001.

3. Search will cover all fields, including recipients, addressees, subject, and text, but will exclude bulk e-mail distributed by the Press Office or sent by the general public to White House public comment e-mail addresses.

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   b. "Ken Lay" or "Kenneth Lay" or "Kenneth L. Lay"
   c. Whalley
   d. Fastow
   e. Skilling
   f. "Clifford Baxter" or "Cliff Baxter"
   g. "Linda Robertson"

5. Identical search to be done in NSC system.

6. Identical search to be done of WAVES records.

7. Folder-level search to be done by Records Management for folders with any of the same terms in the title, or the terms "Energy" or "NEPDG."

From: Burton, Faith <Faith.Burton@usdoj.gov>
To: DeFalaise, Lou <Louis.DeFalaise@usdoj.gov>;Colborn, Paul P <Paul.P.Colborn@usdoj.gov>;Hoffman, Richard <Richard.Hoffman2@usdoj.gov>;Farmer, James <James.Farmer@usdoj.gov>;Corallo, Mark <Mark.Corallo@usdoj.gov>;Chertoff, Michael <Mike.Chertoff@usdoj.gov>;'attyadv.opca@fbi.gov' <attyadv.opca@fbi.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Bryant, Dan <Dan.Bryant@usdoj.gov>;O'Brien, Pat <Pat.O'Brien@usdoj.gov>
Sent: 5/10/2002 11:29:50 AM
Subject: : Draft response to O'Sullivan's counsel, Hugh Scott, re use of 1979 memo at a later hearing
Attachments: P_L14B7003_WHO.TXT_1.wpd

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SUBJECT:: Draft response to O'Sullivan's counsel, Hugh Scott, re use of 1979 memo at a
later hearing
TO:"DeFalaise, Lou" <Louis.DeFalaise@usdoj.gov> (Receipt Notification Requested) (IPM
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TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification Requested) (IPM
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Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Hoffman, Richard" <Richard.Hoffman2@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "Hoffman, Richard" <Richard.Hoffman2@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Farmer, James" <James.Farmer@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Farmer, James" <James.Farmer@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Corallo, Mark" <Mark.Corallo@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Corallo, Mark" <Mark.Corallo@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
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TO:"Chertoff, Michael" <Mike.Chertoff@usdoj.gov> (Receipt Notification Requested) (IPM
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Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification Requested) (IPM
Return Requested) ( "'attyadv.opca@fbi.gov'" <attyadv.opca@fbi.gov> (Receipt Notification
Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:"Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Bryant, Dan" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Enclosed is a revised draft response to Scott's May 3rd request for
guidance, which we should probably send out today, in accordance with our
May 8th letter to the Committee. Any down side to that? Comments
welcome. FB
- burton.o'sullivan.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
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File attachment <P_L14B7003_WHO.TXT_1>

Draft May 7, 2002

A. Hugh Scott, Esquire
Choate, Hall & Stewart
53 State Street
Boston, Mass. 02109-2804

Dear Mr. Scott:

This responds to your letter, dated May 3, 2002, on behalf of your client, Jeremiah T. O'Sullivan, in connection with the House Committee on Government Reform hearing in Boston on Saturday, May 11. We understand that Mr. O'Sullivan was initially invited to testify at the hearing, entitled "Investigation of Allegations of Law Enforcement Misconduct in New England" but that his testimony has now been postponed. Since his testimony may occur at a later time, however, and would pertain to Mr. O'Sullivan's performance of his official duties as an Assistant United States Attorney (AUSA), I want to provide you with the guidance that we routinely provide to former AUSAs who are invited to testify before Congress. The decision on whether to testify at a later Committee hearing belongs entirely to Mr. O'Sullivan.

If he testifies, he should, of course, fully and candidly answer all questions involving facts within his personal knowledge. Since the subject of his testimony likely will involve information that came to him as a result of his past official position with the Justice Department, he should familiarize yourself with all applicable law and rules on disclosure of such information. There are, for instance, special rules concerning grand jury matters, tax information, Title III information, classified information or other matters the disclosure of which may be governed by statute, regulation, or court rule. An extended, but not exhaustive, list of such matters may be found in U.S.A.M. 1-6.340, DOJ Organizations and Functions Manual at 25[1] and in 28 C.F.R. 16.26. He should also consider any

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[1] The applicable part of this section is:

A. Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as Federal Rule of Criminal Procedure 6(e), pertaining to grand jury secrecy;
B. Disclosure would violate a specific regulation;
C. Disclosure would reveal classified information, unless appropriately declassified by the originating agency;
D. Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;
E. Disclosure would reveal investigatory records compiled for law enforcement purposes,

professional or ethical issues that may arise under his applicable bar regulations and duties of professional responsibility.

We have been advised that the Committee would like to question Mr. O'Sullivan about a memorandum he authored, dated January 29, 1979, recommending the prosecution of twenty-one individuals in a horse race fixing scheme. The memorandum was subject to the President's assertion of executive privilege last December in response to the Committee's subpoena for internal prosecution memoranda regarding several matters. In accordance with agreements subsequently negotiated, the memorandum has been made available for review by Committee staff on a confidential basis. In response to the Committee's request, the Department has agreed that this memorandum may be provided to Mr. O'Sullivan to review in advance of a later hearing and he may be questioned about it, although the memorandum will not be placed in the public record or otherwise publicly disclosed and it will be returned to the Department at the close of the hearing. During such a hearing, Mr. O'Sullivan will be authorized to respond to questions from the Committee about the memorandum in accordance with this agreement. The Department will determine whether to send a representative to any future hearing at a later time.

Requests to Mr. O'Sullivan for written or electronic Department records should be referred to the Office of Legislative Affairs. If you or Mr. O'Sullivan have questions about the rules of disclosure on any particular matter or the Department's agreement with the Committee regarding the use of the 1979 memorandum, please do not hesitate to contact me at 202/514-1023.

Sincerely,

EOUSA

cc: The Honorable Dan Burton
Chairman
Committee on Government Reform

The Honorable Henry Waxman
Ranking Minority Member
Committee on Government Reform

---

and would interfere with enforcement proceedings or disclose investigative techniques and procedures, the effectiveness of which would thereby be impaired; and

F. Disclosure would improperly reveal trade secrets without the owner's consent.

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 5/13/2002 6:45:27 AM
Subject: : April Fed Survey on Bank Lending - May not be good news on Terror Insurance

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CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAY-2002 10:45:27.00
SUBJECT:: April Fed Survey on Bank Lending - May not be good news on Terror Insurance
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
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TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
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TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
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Can NEC or CEA review? See questions 12-17 on Table 2 re: Terrorism
Insurance

April 2002

Senior Loan Officer Opinion Survey on
Bank Lending Practices

The April 2002 Senior Loan Officer Opinion Survey on Bank Lending
Practices focused on
changes in the supply of and demand for bank loans to businesses and
households over the past
three months. The survey also contained two sets of supplementary
questions. The first set
addressed changes in banks' lending policies with regard to commercial
paper backup lines of credit
over the past twelve months, and the second focused on the effect of
problems in the market for
terrorism insurance on commercial real estate lending. Loan officers
representing fiftyõsix large
domestic banks and twentyõone U.S. branches and agencies of foreign banks
participated in the
```

April survey.

Results of the survey indicate some further tightening of standards and terms for loans to both businesses and households. However, the number of domestic and foreign banking institutions that reported having tightened standards and terms on commercial and industrial (C&I) loans over the past three months moved down considerably from the January survey. The net fraction of domestic institutions that indicated that they had tightened standards for commercial real estate loans in the April survey also declined, though it remained relatively high. Banks continued to report a weakening of demand for C&I and commercial real estate loans, albeit at a lesser rate than in January. According to the domestic respondents, standards for residential mortgage loans were largely unchanged over the past three months, and demand for these loans was moderately stronger on net. As in January, a relatively small portion of domestic banks, on net, reported tightening standards for consumer loans. For the second consecutive survey, banks reported tightening terms on nonðcreditõcard loans to a greater extent than they have terms on credit card loans. Demand for consumer loans was roughly unchanged over the past three months.

Lending to Businesses
(Table 1, questions 1-17; Table 2, questions 1-17)

Commercial and industrial loans. Compared with the January survey, significantly smaller fractions of domestic banks and U.S. branches and agencies of foreign banks reported that they had tightened standards on C&I loans. The percentage of domestic banks that reported having tightened their standards on C&I loans to large and middleõmarket firms over the past three months moved down to 25 percent from 45 percent in the previous survey; the percentage tightening standards on business loans to small firms declined even more, from more than 40 percent in January to about 15 percent in April. Similarly, the fraction of U.S. branches and agencies of foreign banks that had tightened standards for customers seeking C&I loans or credit lines fell from 70 percent in January to about 40 percent in the current survey.

In April, smaller fractions of domestic banks reported tightening most of the lending terms listed in the survey for large and middleõmarket firms than in January. The largest change was in the net fraction of banks that had increased spreads of loan rates over their cost of funds, which fell from 40 percent in January to about 25 percent in the current survey. In addition, somewhat smaller net percentages of banks reported that they had tightened loan covenants and increased the cost of credit lines for these customers over the past three months. However, about 45 percent of domestic banks increased premiums charged on riskier loans to large and middleð market firms, about the same as in the January survey.

Changes in terms on C&I loans to small firms followed a similar though more pronounced pattern.

The net fraction of domestic banks that tightened covenants on loans to small firms fell from 40 percent in January to only 12 percent in the current survey; the net percentage of banks that increased spreads of loan rates over their cost of funds moved down from 37 percent to 13 percent over the same period. The net fraction of banks that reported increasing premiums charged on riskier loans to small firms over the past three months edged down from 40 percent in January to 34 percent in the current survey.

The fraction of U.S. branches and agencies of foreign banks that tightened terms on C&I loans generally declined but remained elevated. The percentage of foreign institutions that raised premiums on riskier loans decreased from 75 percent in January to 52 percent in the current survey, and the fraction of foreign banks that strengthened loan covenants declined from 52 percent to 43 percent over the same period. The one exception was the percentage of foreign institutions that increased the costs of credit lines, which moved up noticeably from 35 percent in the previous survey to 57 percent in April.

A significant percentage of banks that tightened standards or terms on C&I loans over the past three months pointed to a reduced tolerance for risk as a reason for doing so and continued to voice concerns about the economic outlook. In the current survey, threeð quarters of domestic and foreign respondents cited reduced tolerance for risk as a reason for tightening their lending policies, about the same fraction as in January. About 70 percent of domestic banks also indicated that a less favorable or more uncertain economic outlook was a reason for changing their standards and terms over the past three months. While still high, this fraction represents a marked decline from the January survey in which all but one domestic bank indicated that this was at least a somewhat important reason for tightening their lending policies. Furthermore, only 10 percent of domestic respondents in the current survey noted that a less favorable or more uncertain economic outlook was a &very important8 reason, down from 40 percent in the January survey.

About oneðthird of domestic banks, on net, reported weaker demand for C&I loans from both large and small firms over the past three months, down from roughly oneð half in the January survey. Every domestic bank that experienced weaker demand reported that a decline in customers needs for bank loans to finance capital expenditures was at least a somewhat important reason for the weakness in demand, and more than oneðthird of respondents indicated that this reason was &very important.8 As in the January survey, banks also reported weaker demand for loans to finance mergers and acquisitions, inventories, and accounts receivable. Out of eight banks that reported an increase in demand for C&I loans, six of them indicated that the increase was due to a shift in borrowing from other bank or nonbank credit sources that became less attractive, likely, at least in part, a reflection of the recent pressures in the market for commercial

paper. The same number of banks identified a decline in customers internally generated funds as a reason for higher C&I loan demand. The net percentage of foreign branches and agencies reporting weaker demand for C&I loans fell from nearly 50 percent in January to 14 percent in the current survey. The most frequently cited reason for weaker demand at foreign institutions was a decline in requests for merger and acquisition financing.

Commercial paper backup lines of credit. A series of special questions was aimed at changes in banks' policies with regard to commercial paper backup lines of credit over the past twelve months. Fortyõsix of the largest domestic banks and nineteen foreign institutions indicated that they provide these facilities on a regular basis.1 Domestic banks accounting for more than oneõthird of respondents' total lending facilities*defined as the sum of C&I loans and unused commitments*tightened standards on commercial paper backup lines of credit for nonfinancial firms with A1/P1 commercial paper ratings over the past year; domestic institutions accounting for about 60 percent of total lending facilities indicated doing so for firms with A2/P2 ratings. The (unweighted) fraction of foreign institutions that had tightened standards on commercial paper backup lines of credit for nonfinancial firms with an A1/P1 commercial paper rating over the past twelve months stood at 60 percent, while almost 90 percent reported doing so for lowerõrated borrowers.

Domestic banks accounting for more than 90 percent of total lending facilities indicated that they had increased fees and raised spreads associated with commercial paper backup lines of credit for commercial paper issuers with both A1/P1 and A2/P2 ratings. Virtually all of the banks pointed to heightened concerns about possible deterioration in issuers credit quality and a higher probability of lines being drawn because of less certain conditions in the commercial paper market as reasons for tightening standards and terms. Over the past twelve months, about 10 percent of domestic banks (weighted) and 10 percent of foreign institutions (unweighted), on net, reported stronger demand for commercial paper backup lines of credit from nonfinancial issuers with both A1/P1 and A2/P2 ratings.

Commercial real estate lending. The net fraction of domestic banks that reported tighter standards on commercial real estate loans over the past three months declined from 46 percent in January to 30 percent in the current survey. At branches and agencies of foreign banks, the net percentage reporting tighter standards on commercial real estate loans remained stable at about 20 percent. In the current survey, more than 30 percent of domestic respondents, on net, noted that demand for commercial real estate loans had weakened, down from 43 percent in January; among foreign institutions, 25 percent, on net, reported weaker demand for this type of loan over the past three months.

A set of special questions addressed how the lack of insurance against terrorism has affected commercial real estate lending. About 70 percent of domestic respondents indicated that less than 5 percent of the dollar volume of their commercial real estate loans outstanding*either held on their books or securitized*is backed by &high profile8 or &heavy traffic8 commercial real estate properties.2 For about oneðfifth of banks, loans financing such properties make up between 5 percent and 10 percent of their commercial real estate loan portfolio, while for the remainder, these loans account for between 10 percent and 20 percent of commercial real estate loans outstanding. At foreign institutions, loans backed by high profile properties account for somewhat larger shares of the respondents commercial real estate portfolios.

Almost three-quarters of domestic banks indicated that they require terrorism insurance on less than 10 percent of loans financing high profile or heavy traffic commercial real estate properties. Indeed, in their comments, a number of banks noted that their standard commercial real estate loan contracts*especially for smaller loans (less than $10 million)*generally do not require terrorism insurance. However, six domestic and six foreign respondents that answered these special questions reported that they require insurance against terrorism on more than 90 percent of loans financing such properties. As of the end of 2002:Q1, these six domestic banks accounted for about 8 percent of all commercial real estate loans in the United States, while the six foreign institutions accounted for less than 2 percent of all commercial real estate loans.

Domestic respondents indicated that if coverage was required and an existing borrower was unable to secure adequate insurance against terrorism for a high profile or heavy traffic commercial real estate property, their most likely response would be to ask for additional collateral and to modify the existing loan covenants to allow for partial coverage. The foreign institutions, by contrast, noted that their most likely course of action would be to increase fees or interest rates associated with the loan, and four foreign respondents indicated that they would be very likely to call the loan or refuse to roll it over when it comes due.

Among domestic banks that received applications for loans to finance high profile commercial real estate properties since the events of September 11, 90 percent indicated that their rejection rate on these loan applications has stayed about the same. Sixty percent of U.S. branches and agencies of foreign banks that received applications for loans to finance these types of properties reported their rejection rate as essentially unchanged. Almost 80 percent of domestic banks and more than 70 percent of foreign institutions indicated that they experienced little or no change in demand for loans to finance high profile and heavy traffic properties because potential borrowers were unable to secure affordable insurance against acts of terrorism. Seven domestic banks reported moderately weaker demand and four domestic and three foreign institutions

experienced substantially weaker
demand for loans to finance such properties because of issues related to
terrorism insurance.

Lending to Households
(Table 1, questions 18-25)

Domestic banks credit standards for approving residential mortgage loans
were largely unchanged
over the past three months, with only one bank reporting that it had
tightened lending standards
somewhat, the same as in the January survey. On net, about 6 percent of
domestic respondents
reported increased demand for residential mortgages, down from 30 percent
in January.

In the current survey, less than 10 percent of banks indicated that they
had tightened standards on
credit card loans over the past three months, a somewhat smaller
percentage than in January; terms
and conditions on existing credit card accounts were largely unchanged.
For other types of
consumer loans, oneõfifth of banks reported that they had tightened
standards over the past three
months, about the same percentage as in the January survey. Almost oneõ
quarter of domestic banks
raised the minimum required credit score on consumer loans other than
credit card loans, and 15
percent reduced the number of exceptions granted to customers not meeting
creditõscoring
thresholds. On net, banks reported demand for consumer loans as about
unchanged over the past
three months.

1. To account for the concentration of commercial paper backup lines
of credit among the
largestinstitutions, responses to this set of questions for domestic
banks were weighted by the sum
of C&I loans and unused commitments obtained from the 2001:Q4 Call
Report. These weights are
intended to proxy for banks participation in this line of business. Data
on unused loan commitments
are unavailable for U.S. branches and agencies of foreign banks.

2. For the purposes of the survey, high profile or heavy traffic
commercial real estate properties
were defined as landmark buildings and commercial properties in their
vicinity, stadiums and other
sports/entertainment venues, and large shopping malls.

The charts and tables for this report are available in
Acrobat (PDF) format. Obtaining the Acrobat Reader

Charts (11.8 KB PDF)
Measures of lending practices from current and previous surveys
Chart data (ASCII)
http://www.federalreserve.gov/BoardDocs/SnLoanSurvey/200205/webcharts.pdf

Table 1 (31.8 KB PDF)
Summary of responses from U.S. banks
http://www.federalreserve.gov/BoardDocs/SnLoanSurvey/200205/table1.pdf

REV_00145216

Table 2 (21.5 KB PDF)
Summary of responses from branches and agencies of foreign banks
http://www.federalreserve.gov/BoardDocs/SnLoanSurvey/200205/table2.pdf

Full report (159 KB PDF)
http://www.federalreserve.gov/BoardDocs/SnLoanSurvey/200205/fullreport.pdf

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/13/2002 9:07:05 AM
Subject: : LRM IKK201 - - TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of Worship Political Speech Protection Act
Attachments: P_8C4C7003_WHO.TXT_1.doc

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Brett,

They are still looking for sign off on this. It was originally due on Friday.
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Irene Kho
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Comments on this LRM was due on Friday at 5:00 PM, for those who have not responded, please respond by 11:00 AM, today.
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Subject: LRM IKK201 - - TREASURY Testimony on H.R. 2931 -
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H.R. 2357 - Houses of Worship Political Speech Protection Act

Attached is Treasury testimony on how IRS administers current law on tax exempt 501(c)(3) organizations for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 14th, at 2:00 PM.
Please review and provide comments by 5:00 PM, Friday, May 10th.

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LRM ID: IKK201
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 9, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on H.R. 2931 - Bright-Line Act and
H.R. 2357 - Houses of Worship Political Speech Protection Act

DEADLINE: 5:00 Friday, May 10, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on how IRS administers current law on tax exempt 501(c)(3) organizations for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 14th, at 2:00 PM.
Please review and provide comments by 5:00 PM, Friday, May 10th.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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LRM ID: IKK201 SUBJECT: TREASURY Testimony on H.R. 2931 -
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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
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The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

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Draft –5/8/02 3:30 PM

Thank you Mr. Chairman, for the opportunity to provide this Subcommittee with general background on the requirements for tax exemption, particularly as they relate to the prohibition on political activities. I will also discuss how these rules apply to churches, the Internal Revenue Service's experience with these issues, and the numerous challenges we confront in administering this law.

General Requirements for Tax Exemption

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income taxation of organizations organized and operated exclusively for religious, charitable, scientific, educational, and certain other purposes. Section 501(c)(3) imposes a number of conditions to exempt status:

> No part of the organization's net earnings may inure to the benefit of any private shareholder or individual.
>
> No substantial part of the organization's activities may be attempts to influence legislation (lobbying restriction).
>
> The organization may not intervene in any political campaign on behalf of or in opposition to any candidate for public office (political campaign prohibition).

Section 501(c)(3) does not specifically mention churches. They qualify as entities organized and operated for religious purposes. Thus, the above-referenced conditions apply to churches as well as all other section 501(c)(3) entities. In addition, there are special rules applicable to churches that I will outline in my testimony.

Restriction on lobbying

One condition of exemption under section 501(c)(3) is that no substantial part of an organization's activities can be carrying on propaganda, or otherwise attempting to influence legislation (commonly known as lobbying). Lobbying includes direct communications to members of a legislature, indirect communications through the

electorate or general public ("grass roots" lobbying), and advocating adoption or rejection of legislation on an issue, even if specific legislation is not pending. Whether a communication on an issue constitutes lobbying depends on the facts and circumstances of the communication.

Section 501(c)(3) restricts lobbying; it does not prohibit it. Churches are subject to the restriction, but unlike other section 501(c)(3) organizations, are not eligible to file the election provided under section 501(h) of the Code to have lobbying measured by expenditures. Although the "no substantial part" test is less precise – courts have generally rejected using a percentage test as the sole test of whether the activity is a substantial part of an organization's activities –it is fair to say that the IRS has not identified situations in which we received information showing, or even suggesting, that a church was engaged in lobbying as a substantial part of its activities.

Prohibition on Political Campaign Intervention

~~u~~Section 501(c)(3) does not prohibit all activity that might be described as "political" within the common meaning of that term. Rather, it prohibits an organization from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office violate the prohibition against political campaign intervention.

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The section 501(c)(3) limit on political campaign intervention is absolute. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

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Section 1.501(c)(3)-1(c)(3)(iii) of the Income Tax Regulations refines the prohibition on campaign intervention by defining "candidate for public office" as an "individual who offers himself or herself, or is proposed by others, as a contestant for elective public office". The regulation also provides that prohibited campaign intervention includes, but is not limited to, publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to such a candidate. Since a candidate must be a contestant for elective public office, section 501(c)(3) only prohibits organizations from participating or intervening in election campaigns only.

It has been argued that the prohibition on campaign intervention does not apply to churches. Courts have considered and rejected this argument. In *Branch Ministries, Inc. v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000), *aff'g* 40 F. Supp. 15 (D.D.C. 1999), the Court of Appeals upheld the IRS's revocation of the section 501(c)(3) exempt status of the Church at Pierce Creek. The District Court had granted summary judgment to the IRS on its claim the organization violated the statutory prohibition on political campaign intervention when it placed full-page advertisements in two newspapers. The content of the advertisement was in opposition to a candidate. The Court of Appeals rejected the church's claims that the revocation violated the church's right to free exercise of religion under the Constitution and the Religious Freedom Restoration Act, and that it was the victim of selective prosecution.

Rules Relating to Specific Issues in the Area of Political Intervention in Campaigns

~~Whether a particular~~ Certain activities~~y~~, ~~action,~~ or expenditures may or may not constitute campaign intervention ~~is considered~~.s For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner ~~may~~ do not constitute prohibited political campaign activity. ~~-~~On the other hand, voter education activities that show a bias for one candidate over another, which oppose a candidate in some manner, or have the effect of favoring a candidate or slate of candidates, will constitute prohibited participation or intervention. Two examples are described below in order to better explain the rules in this area and our administration.

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Voter guides

Like other 501(c)(3) organizations, some churches undertake voter education activities by publishing voter guides. Voter guides, in general, provide information on how candidates stand on various issues. These guides may be distributed with the stated purpose of educating voters. A careful review of the following may help determine whether or not a church's publication or distribution of voter guides constitutes prohibited political campaign activity: ~~**Publication of Legislators' Voter Records**~~

~~Like any other 501(c)(3) organization, a number of churches and religious organizations publish or distribute voting records of incumbent legislators.~~

Whether the guide provides information with respect to all candidates for an office;

Whether the guide contains editorial opinion or remarks, or otherwise indicates approval or disapproval of candidate or their records;

Whether the guide is disseminated in close proximity to an election;

Whether the guide covers a wide variety of issues; and

For a candidate questionnaire, whether the organization asks the same neutral questions of all candidates, or indicates a bias toward the organization's preferred responses.

"Get out the vote" activities

Questions are raised about the use of church assets or funds in "get out the vote" activities. In this regard, whether these activities violate the campaign prohibition depends on whether a church's activities favor or oppose a candidate for public office. Thus, the church's financial resources, facilities, or personnel may not be used in get out the vote activities that favor one candidate over another (as by only helping individuals get to the polls if they favor a particular candidate). Of course, this does not mean that church members may not conduct these activities independent of the church.

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Consequences of Political Campaign Intervention

Like any other exempt organization, a church not only jeopardizes its tax exempt status under section 501(c)(3) for participating in political campaign activities, it also becomes subject to an excise tax under section 4955 on its political expenditures. This excise tax may be imposed in addition to revocation, although in certain situations it may be imposed instead of revocation. Also, the church or religious organization must correct the violation to avoid the second-tier tax under section 4955.

~~T~~Section 4955 imposes an initial tax on an organization at the rate of 10 percent of the political expenditures. It also imposes a tax at the rate of 2.5 percent of the expenditures on the organization's managers (jointly and severally) whom, without reasonable cause, agreed to the expenditures knowing they were political expenditures. The tax on management may not exceed $5,000. In any case in which an initial tax is imposed against an organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against the organization's managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed $10,000 with respect to any one expenditure. Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures.

Special Rules Applicable to Churches under the Internal Revenue Code

~~In the early 1900's,~~ Congress has enacted special tax laws applicable to churches[1] - in recognition of their unique status in American society and of

[1] Not all religious organizations meet the definition of church. In analyzing whether a religious organization may properly be characterized as a church, the IRS considers whether the organization has the following characteristics: (a) a distinct legal existence, (b) a recognized creed and form of workshop, (c) a definite and distinct ecclesiastical government, (d) a formal code of doctrine and discipline, (e) a distinct religious history, (f) a membership not associated with any other church or denomination, (g) an organization of trained ministers, (h) ordained ministers selected after completing prescribed studies, (i) a literature of its own, (j) established places of worship, (k) regular congregations, (l) regular religious services, (m) Sunday schools for religious instruction of the young,

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rights guaranteed them under the First Amendment of the Constitution of the United States. The Internal Revenue Code includes several provisions relevant for a discussion of the treatment of churches by the Internal Revenue Service. These provisions generally serve the purpose of preventing needless entanglement between churches and the IRS. For example, unlike almost any other organization, a church need not apply for recognition from the IRS to obtain tax-exempt status. Nor do churches ordinarily have to file an annual information return (the Form 990) with the IRS. However, Congress recognized the need for the IRS to ensure that churches follow the requirements for tax exemption. In this regard, it enacted section 7611 of the Internal Revenue Code.

Section 7611 requires that the IRS follow several procedures when auditing an organization claiming to be a church. First, a church tax inquiry requires the approval of a high level official of the Internal Revenue Service (the Director of Examinations for Exempt Organizations); that is, the IRS may begin a church tax inquiry only when a high level official believes, on the basis of facts and circumstances recorded in writing, that the organization: may not qualify for tax exemption as a church; may be carrying on an unrelated trade or business; or may otherwise be engaged in an activity subject to tax.

Under section 7611, notice to the church is required before beginning an examination, and must include the following elements: an explanation of the concerns that give rise to the inquiry and the general subject matter of the inquiry in sufficient detail to allow the church to understand which specific activity is at issue; a general explanation of the Internal Revenue Code provision(s) that authorize the inquiry and that may otherwise be involved; and a general explanation of applicable administrative and constitutional provisions involved, including the right to a conference before examination. Other rights guaranteed under the statute and implementing regulations include an offer of pre-examination conference, completion of any audit tax liabilities within two years after the date on which the notice of examination is supplied to the church, limitations on the IRS's ability to revoke a church's tax-exempt status, limitations on the period of

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(n) schools for the preparation of its ministers, and (o) any other facts and circumstances that may bear upon the organization's claim for church status.

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assessment, limitations on additional inquiries and examinations, required coordination with IRS counsel at various stages, and remedies for IRS violation of the procedures.

Outreach Efforts to the Church Community by the Internal Revenue Service

The IRS takes the approach that an educated taxpayer is generally a compliant taxpayer. As a result, we have attempted to make the church community aware of the tax law rules to campaign intervention. The IRS has (1) disseminated to the church community and the public for comment, a draft publication (*Tax Guide For Churches and Other Religious Organizations* (Draft 7/26/94)); (2) periodically reminds churches (and all section 501(c)(3) organizations) of their responsibilities in the area of political campaign intervention (*see, e.g.*, News Release 2000-47 (July 5, 2000)); and (3) shared information with individual church leaders and persons who provide tax advice to churches.

In the coming weeks, we will release a revised version of the *Tax Guide for Churches and Other Religious Organizations.* It will have an expanded discussion of the rules relating to the political activities prohibition.

Administrative Issues and Internal Revenue Service Experience in this Area of Political Campaign Activity

The IRS is appreciative of the sensitive nature of this area. Our mission and our hope are to influence individuals to voluntarily comply with existing rules. Thus, we try to enhance voluntary compliance in as unobtrusive a manner as possible recognizing that the less entanglement the better between the religious community and the IRS. Such an approach is in the best interests of both parties and is in keeping with the competing Constitutional interests of this area. Unfortunately, from time to time, we find well-meaning individuals acting out of faith but not acting in conformance with the rules. As a result, when we find an issue in this area, we normally prefer to pursue correction rather than revocation, or even imposition of the excise tax. Correction means that the

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organization attempts to undo the error, and creates and adheres to procedural safeguards to prevent a recurrence of the noncompliant activity.

Our experience in this area indicates that this issue occurs infrequently in our examinations and does not often result in revocation of tax-exempt status. However, as indicated by the Branch Ministries case discussed above, the IRS will revoke the exempt status of an organization for political activities in appropriate circumstances. In addition, according to our information systems, over the last five years, two of seven church examinations under Section 7611 had political activities as an issue under review. Both cases were resolved without the need for revocation. We also had at least one other instance in which the IRS closed the case under section 7611 after the church responded to an inquiry letter relating to political campaign activity.

This is a challenging area for the IRS to administer. This is not the first time that Congress has reviewed our activities in this area. This was the subject of congressional review in the 1980's, and as recently as March of 2000, when the Joint Committee on Taxation reported on our handling of tax-exempt organization matters. In Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters (JCS-3-00), the staff looked at numerous cases, including certain church tax inquiries and examinations. The Joint Committee staff found no credible evidence of political motivation in the manner in which we carry out our responsibilities.

Our administration is made more challenging in part by reason of issues specific to churches. For example, at page 22 of the Joint Committee report, staff commented upon the church tax procedures:

> The Joint Committee staff found that the church audit procedures provide important safeguards against the IRS engaging in unnecessary examinations of churches. However, the procedures also have the effect of (1) making it more difficult for the IRS to initiate an examination of a church even where there is

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clear evidence of impermissible activity on the part of the church and (2) hampering IRS efforts to educate churches with respect to actions that are not permissible, such as what constitutes impermissible political campaign intervention.

Similarly, the lack of information available from churches (e.g., the fact that churches do not need to file for a determination letter and are not required to file an annual information return) has an impact on our ability to determine compliance with requirements for tax exemption. This in turn leads us to more frequent use of third-party referrals of information about potential non-compliance in the church area.

Other issues in this area exist not just for churches, but for all organizations prohibited from participating in political activity. First, we have the issue of attribution. Was an individual making a pronouncement in his or her individual capacity, or can the pronouncement be attributed to the tax-exempt organization? In the church area, the IRS is sometimes asked to consider whether campaign advocacy by a minister or other church official may be attributed to the church with which he or she is associated. The prohibition on political campaign activities applies only to section 501(c)(3) organizations, not to the activities of individuals acting in their private capacities. Accordingly, the prohibition does not prevent a church's minister from being involved in a political campaign, so long as the minister does not use the church's financial resources, facilities, or personnel, and clearly indicates that his or her actions or statements are his or her own, and not those of the organization.

A second difficult issue we face is whether a given pronouncement constitutes prohibited political campaign intervention. In this area specifically, the IRS is faced with reviewing both the content and circumstances surrounding the distribution of voter guides during worship services or on church property.

A third issue common to churches and other non-profits is that the sanction in this area is often misdirected. Candidates, political fundraisers or other outsiders sometimes request

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churches or other nonprofits to make their resources available for political purposes either because the outsider does not know the rules or simply does not care. The sanction for such action is on the church and its managers, not on the outsider.

Finally, the section 4955 excise tax that can be used in lieu of revocation may not be effective in certain instances. The tax is based on expenditures. Yet there are times when this excise tax does not correspond to the prohibited intervention. For example, what is the expenditure related to an endorsement of a candidate during a sermon from the pulpit?

The IRS takes all these considerations into account when it enforces or educates but taken together they do make the area more challenging to regulate. Thank you for your time and I am available for any questions.

REV_00145252

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 5/13/2002 2:20:52 PM
Subject: : 05-15-02 WHJSC meeting

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAY-2002 18:20:52.00
SUBJECT:: 05-15-02 WHJSC meeting
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
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Please let me know if you have any items for this week's agenda.

Thanks!
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From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Irene Kho/OMB /EOP@EOP [OMB] <Irene Kho>
Sent:	5/13/2002 10:30:47 AM
Subject:	: Re: LRM IKK201 - - TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of Worship Political Speech Protection Act
Attachments:	P_QV8C7003_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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CREATION DATE/TIME:13-MAY-2002 14:30:47.00
SUBJECT:: Re: LRM IKK201 - - TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of Worship Political Speech Protection Act
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
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The White House Counsel comments are in addition to OLC's comments, with which we concur.

Patrick J. Bumatay
05/13/2002 01:07:00 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM IKK201 - - TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of Worship Political Speech Protection Act

Brett,

They are still looking for sign off on this. It was originally due on Friday.
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/13/2002 01:06 PM ----------

Irene Kho
05/13/2002 12:26:29 PM
Record Type: Record

To: WHGC LRM
cc:
Subject: LRM IKK201 - - TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of Worship Political Speech Protection Act

Could I please have WHGC signoff on this. Thank you.
---------- Forwarded by Irene Kho/OMB/EOP on 05/13/2002 12:26 PM ----------

Irene Kho
05/13/2002 09:55:40 AM

Record Type: Record

To: justice.lrm@usdoj.gov @ inet, CLRM@doc.gov @ inet,
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cc: See the distribution list at the bottom of this message
Subject: LRM IKK201 - - TREASURY Testimony on H.R. 2931 -
Bright-Line Act and
H.R. 2357 - Houses of Worship Political Speech Protection Act

Comments on this LRM was due on Friday at 5:00 PM, for those who have not responded, please respond by 11:00 AM, today.
---------- Forwarded by Irene Kho/OMB/EOP on 05/13/2002 09:51 AM ----------

From: Irene Kho on 05/09/2002 02:53:19 PM
Record Type: Record

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cc: See the distribution list at the bottom of this message
Subject: LRM IKK201 - - TREASURY Testimony on H.R. 2931 -
Bright-Line Act and
H.R. 2357 - Houses of Worship Political Speech Protection Act

Attached is Treasury testimony on how IRS administers current law on tax exempt 501(c)(3) organizations for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 14th, at 2:00 PM.
Please review and provide comments by 5:00 PM, Friday, May 10th.

- tt0149a.doc

LRM ID: IKK201
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 9, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on H.R. 2931 - Bright-Line Act and
H.R. 2357 - Houses of Worship Political Speech Protection Act

DEADLINE: 5:00 Friday, May 10, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on how IRS administers current law on tax exempt 501(c)(3) organizations for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 14th, at 2:00 PM.
Please review and provide comments by 5:00 PM, Friday, May 10th.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and

have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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James J. Jukes
LRM ID: IKK201 SUBJECT: TREASURY Testimony on H.R. 2931 - Bright-Line Act and
H.R. 2357 - Houses of Worship Political Speech Protection Act

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget

Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QV8C7003_WHO.TXT_1>

Draft –5/8/02 3:30 PM

Thank you Mr. Chairman, for the opportunity to provide this Subcommittee with general background on the requirements for tax exemption, particularly as they relate to the prohibition on political activities. I will also discuss how these rules apply to churches, the Internal Revenue Service's experience with these issues, and the numerous challenges we confront in administering this law.

General Requirements for Tax Exemption

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income taxation of organizations organized and operated exclusively for religious, charitable, scientific, educational, and certain other purposes. Section 501(c)(3) imposes a number of conditions to exempt status:

> No part of the organization's net earnings may inure to the benefit of any private shareholder or individual.
>
> No substantial part of the organization's activities may be attempts to influence legislation (lobbying restriction).
>
> The organization may not intervene in any political campaign on behalf of or in opposition to any candidate for public office (political campaign prohibition).

Section 501(c)(3) does not specifically mention churches. They qualify as entities organized and operated for religious purposes. Thus, the above-referenced conditions apply to churches as well as all other section 501(c)(3) entities. In addition, there are special rules applicable to churches that I will outline in my testimony.

Restriction on lobbying

One condition of exemption under section 501(c)(3) is that no substantial part of an organization's activities can be carrying on propaganda, or otherwise attempting to influence legislation (commonly known as lobbying). Lobbying includes direct communications to members of a legislature, indirect communications through the

electorate or general public ("grass roots" lobbying), and advocating adoption or rejection of legislation on an issue, even if specific legislation is not pending. Whether a communication on an issue constitutes lobbying depends on the facts and circumstances of the communication.

Section 501(c)(3) restricts lobbying; it does not prohibit it. Churches are subject to the restriction, but unlike other section 501(c)(3) organizations, are not eligible to file the election provided under section 501(h) of the Code to have lobbying measured by expenditures. Although the "no substantial part" test is less precise – courts have generally rejected using a percentage test as the sole test of whether the activity is a substantial part of an organization's activities –it is fair to say that the IRS has not identified situations in which we received information showing, or even suggesting, that a church was engaged in lobbying as a substantial part of its activities.

Prohibition on Political Campaign Intervention

~~u~~Section 501(c)(3) does not prohibit all activity that might be described as "political" within the common meaning of that term. Rather, it prohibits an organization from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office violate the prohibition against political campaign intervention.

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The section 501(c)(3) limit on political campaign intervention is absolute. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

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Section 1.501(c)(3)-1(c)(3)(iii) of the Income Tax Regulations refines the prohibition on campaign intervention by defining "candidate for public office" as an "individual who offers himself or herself, or is proposed by others, as a contestant for elective public office". The regulation also provides that prohibited campaign intervention includes, but is not limited to, publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to such a candidate. Since a candidate must be a contestant for elective public office, section 501(c)(3) only prohibits organizations from participating or intervening in election campaigns only.

It has been argued that the prohibition on campaign intervention does not apply to churches. Courts have considered and rejected this argument. In *Branch Ministries, Inc. v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000), *aff'g* 40 F. Supp. 15 (D.D.C. 1999), the Court of Appeals upheld the IRS's revocation of the section 501(c)(3) exempt status of the Church at Pierce Creek. The District Court had granted summary judgment to the IRS on its claim the organization violated the statutory prohibition on political campaign intervention when it placed full-page advertisements in two newspapers. The content of the advertisement was in opposition to a candidate. The Court of Appeals rejected the church's claims that the revocation violated the church's right to free exercise of religion under the Constitution and the Religious Freedom Restoration Act, and that it was the victim of selective prosecution.

Rules Relating to Specific Issues in the Area of Political Intervention in Campaigns

~~Whether a particular~~ Certain activities~~y~~, ~~action,~~ or expenditures may or may not constitute campaign intervention ~~is considered~~.s For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner ~~may~~ do not constitute prohibited political campaign activity. ~~-~~On the other hand, voter education activities that show a bias for one candidate over another, which oppose a candidate in some manner, or have the effect of favoring a candidate or slate of candidates, will constitute prohibited participation or intervention. Two examples are described below in order to better explain the rules in this area and our administration.

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Voter guides

Like other 501(c)(3) organizations, some churches undertake voter education activities by publishing voter guides. Voter guides, in general, provide information on how candidates stand on various issues. These guides may be distributed with the stated purpose of educating voters. A careful review of the following may help determine whether or not a church's publication or distribution of voter guides constitutes prohibited political campaign activity: ~~**Publication of Legislators' Voter Records**~~

~~Like any other 501(c)(3) organization, a number of churches and religious organizations publish or distribute voting records of incumbent legislators.~~

Whether the guide provides information with respect to all candidates for an office;

Whether the guide contains editorial opinion or remarks, or otherwise indicates approval or disapproval of candidate or their records;

Whether the guide is disseminated in close proximity to an election;

Whether the guide covers a wide variety of issues; and

For a candidate questionnaire, whether the organization asks the same neutral questions of all candidates, or indicates a bias toward the organization's preferred responses.

"Get out the vote" activities

Questions are raised about the use of church assets or funds in "get out the vote" activities. In this regard, whether these activities violate the campaign prohibition depends on whether a church's activities favor or oppose a candidate for public office. Thus, the church's financial resources, facilities, or personnel may not be used in get out the vote activities that favor one candidate over another (as by only helping individuals get to the polls if they favor a particular candidate). Of course, this does not mean that church members may not conduct these activities independent of the church.

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Consequences of Political Campaign Intervention

Like any other exempt organization, a church not only jeopardizes its tax exempt status under section 501(c)(3) for participating in political campaign activities, it also becomes subject to an excise tax under section 4955 on its political expenditures. This excise tax may be imposed in addition to revocation, although in certain situations it may be imposed instead of revocation. Also, the church or religious organization must correct the violation to avoid the second-tier tax under section 4955.

~~T~~Section 4955 imposes an initial tax on an organization at the rate of 10 percent of the political expenditures. It also imposes a tax at the rate of 2.5 percent of the expenditures on the organization's managers (jointly and severally) whom, without reasonable cause, agreed to the expenditures knowing they were political expenditures. The tax on management may not exceed $5,000. In any case in which an initial tax is imposed against an organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against the organization's managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed $10,000 with respect to any one expenditure. Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures.

Special Rules Applicable to Churches under the Internal Revenue Code

~~In the early 1900's,~~ Congress has enacted special tax laws applicable to churches[1] - in recognition of their unique status in American society and of

[1] Not all religious organizations meet the definition of church. In analyzing whether a religious organization may properly be characterized as a church, the IRS considers whether the organization has the following characteristics: (a) a distinct legal existence, (b) a recognized creed and form of workshop, (c) a definite and distinct ecclesiastical government, (d) a formal code of doctrine and discipline, (e) a distinct religious history, (f) a membership not associated with any other church or denomination, (g) an organization of trained ministers, (h) ordained ministers selected after completing prescribed studies, (i) a literature of its own, (j) established places of worship, (k) regular congregations, (l) regular religious services, (m) Sunday schools for religious instruction of the young,

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rights guaranteed them under the First Amendment of the Constitution of the United States. The Internal Revenue Code includes several provisions relevant for a discussion of the treatment of churches by the Internal Revenue Service. These provisions generally serve the purpose of preventing needless entanglement between churches and the IRS. For example, unlike almost any other organization, a church need not apply for recognition from the IRS to obtain tax-exempt status. Nor do churches ordinarily have to file an annual information return (the Form 990) with the IRS. However, Congress recognized the need for the IRS to ensure that churches follow the requirements for tax exemption. In this regard, it enacted section 7611 of the Internal Revenue Code.

Section 7611 requires that the IRS follow several procedures when auditing an organization claiming to be a church. First, a church tax inquiry requires the approval of a high level official of the Internal Revenue Service (the Director of Examinations for Exempt Organizations); that is, the IRS may begin a church tax inquiry only when a high level official believes, on the basis of facts and circumstances recorded in writing, that the organization: may not qualify for tax exemption as a church; may be carrying on an unrelated trade or business; or may otherwise be engaged in an activity subject to tax.

Under section 7611, notice to the church is required before beginning an examination, and must include the following elements: an explanation of the concerns that give rise to the inquiry and the general subject matter of the inquiry in sufficient detail to allow the church to understand which specific activity is at issue; a general explanation of the Internal Revenue Code provision(s) that authorize the inquiry and that may otherwise be involved; and a general explanation of applicable administrative and constitutional provisions involved, including the right to a conference before examination. Other rights guaranteed under the statute and implementing regulations include an offer of pre-examination conference, completion of any audit tax liabilities within two years after the date on which the notice of examination is supplied to the church, limitations on the IRS's ability to revoke a church's tax-exempt status, limitations on the period of

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(n) schools for the preparation of its ministers, and (o) any other facts and circumstances that may bear upon the organization's claim for church status.

REV_00145291

assessment, limitations on additional inquiries and examinations, required coordination with IRS counsel at various stages, and remedies for IRS violation of the procedures.

Outreach Efforts to the Church Community by the Internal Revenue Service

The IRS takes the approach that an educated taxpayer is generally a compliant taxpayer. As a result, we have attempted to make the church community aware of the tax law rules to campaign intervention. The IRS has (1) disseminated to the church community and the public for comment, a draft publication (*Tax Guide For Churches and Other Religious Organizations* (Draft 7/26/94)); (2) periodically reminds churches (and all section 501(c)(3) organizations) of their responsibilities in the area of political campaign intervention (*see, e.g.*, News Release 2000-47 (July 5, 2000)); and (3) shared information with individual church leaders and persons who provide tax advice to churches.

In the coming weeks, we will release a revised version of the *Tax Guide for Churches and Other Religious Organizations.* It will have an expanded discussion of the rules relating to the political activities prohibition.

Administrative Issues and Internal Revenue Service Experience in this Area of Political Campaign Activity

The IRS is appreciative of the sensitive nature of this area. Our mission and our hope are to influence individuals to voluntarily comply with existing rules. Thus, we try to enhance voluntary compliance in as unobtrusive a manner as possible recognizing that the less entanglement the better between the religious community and the IRS. Such an approach is in the best interests of both parties and is in keeping with the competing Constitutional interests of this area. Unfortunately, from time to time, we find well-meaning individuals acting out of faith but not acting in conformance with the rules. As a result, when we find an issue in this area, we normally prefer to pursue correction rather than revocation, or even imposition of the excise tax. Correction means that the

REV_00145292

organization attempts to undo the error, and creates and adheres to procedural safeguards to prevent a recurrence of the noncompliant activity.

Our experience in this area indicates that this issue occurs infrequently in our examinations and does not often result in revocation of tax-exempt status. However, as indicated by the Branch Ministries case discussed above, the IRS will revoke the exempt status of an organization for political activities in appropriate circumstances. In addition, according to our information systems, over the last five years, two of seven church examinations under Section 7611 had political activities as an issue under review. Both cases were resolved without the need for revocation. We also had at least one other instance in which the IRS closed the case under section 7611 after the church responded to an inquiry letter relating to political campaign activity.

This is a challenging area for the IRS to administer. This is not the first time that Congress has reviewed our activities in this area. This was the subject of congressional review in the 1980's, and as recently as March of 2000, when the Joint Committee on Taxation reported on our handling of tax-exempt organization matters. In Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters (JCS-3-00), the staff looked at numerous cases, including certain church tax inquiries and examinations. The Joint Committee staff found no credible evidence of political motivation in the manner in which we carry out our responsibilities.

Our administration is made more challenging in part by reason of issues specific to churches. For example, at page 22 of the Joint Committee report, staff commented upon the church tax procedures:

> The Joint Committee staff found that the church audit procedures provide important safeguards against the IRS engaging in unnecessary examinations of churches. However, the procedures also have the effect of (1) making it more difficult for the IRS to initiate an examination of a church even where there is

REV_00145293

clear evidence of impermissible activity on the part of the church and (2) hampering IRS efforts to educate churches with respect to actions that are not permissible, such as what constitutes impermissible political campaign intervention.

Similarly, the lack of information available from churches (e.g., the fact that churches do not need to file for a determination letter and are not required to file an annual information return) has an impact on our ability to determine compliance with requirements for tax exemption. This in turn leads us to more frequent use of third-party referrals of information about potential non-compliance in the church area.

Other issues in this area exist not just for churches, but for all organizations prohibited from participating in political activity. First, we have the issue of attribution. Was an individual making a pronouncement in his or her individual capacity, or can the pronouncement be attributed to the tax-exempt organization? In the church area, the IRS is sometimes asked to consider whether campaign advocacy by a minister or other church official may be attributed to the church with which he or she is associated. The prohibition on political campaign activities applies only to section 501(c)(3) organizations, not to the activities of individuals acting in their private capacities. Accordingly, the prohibition does not prevent a church's minister from being involved in a political campaign, so long as the minister does not use the church's financial resources, facilities, or personnel, and clearly indicates that his or her actions or statements are his or her own, and not those of the organization.

A second difficult issue we face is whether a given pronouncement constitutes prohibited political campaign intervention. In this area specifically, the IRS is faced with reviewing both the content and circumstances surrounding the distribution of voter guides during worship services or on church property.

A third issue common to churches and other non-profits is that the sanction in this area is often misdirected. Candidates, political fundraisers or other outsiders sometimes request

REV_00145294

churches or other nonprofits to make their resources available for political purposes either because the outsider does not know the rules or simply does not care. The sanction for such action is on the church and its managers, not on the outsider.

Finally, the section 4955 excise tax that can be used in lieu of revocation may not be effective in certain instances. The tax is based on expenditures. Yet there are times when this excise tax does not correspond to the prohibited intervention. For example, what is the expenditure related to an endorsement of a candidate during a sermon from the pulpit?

The IRS takes all these considerations into account when it enforces or educates but taken together they do make the area more challenging to regulate. Thank you for your time and I am available for any questions.

REV_00145295

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Irene Kho/OMB/EOP [OMB] <Irene Kho>
Sent: 5/13/2002 11:00:59 AM
Subject: RECEIVED: FW: Draft TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of Worship Political Speech Protection...

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-MAY-2002 15:00:59.00
SUBJECT:RECEIVED: FW: Draft TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357
- Houses of Worship Political Speech Protection...
TO:Irene Kho ( CN=Irene Kho/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

RETURN RECEIPT

Your Document:
FW: Draft TREASURY Testimony on H.R. 2931 - Bright-Line Act and H.R. 2357 - Houses of
Worship Political Speech Protection...
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
05/13/2002 03:01:13 PM
```

From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
BCC:	Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO])
Sent:	5/13/2002 11:15:48 AM
Subject:	: Re: Draft Enron Survey II
Attachments:	P_HJBC7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAY-2002 15:15:48.00
SUBJECT:: Re: Draft Enron Survey II
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
BCC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Looks good to me, although I think we need a question mark instead of a
period at the end of the question.

Brett M. Kavanaugh
05/13/2002 03:06:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Draft Enron Survey II

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_HJBC7003_WHO.TXT_1>

May __, 2002

MEMORANDUM FOR

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY II

The Chairman of the Senate Committee on Governmental Affairs has requested that we ask you an additional question beyond the questions included in the survey you have already completed. Please complete the attached survey and return it to my office (West Wing, Second Floor) no later than May 16, 2002.

The survey question can be answered yes or no, and we are not asking for further explanation at this time. Instead, depending on your answer, the Counsel's Office may contact you to obtain additional information. If you are unsure whether to answer yes or no, you may check the third box, and we will contact you.

If you have any questions, please call Associate Counsels Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

ENRON SURVEY

Instructions:

You are expected to answer the following question to the best of your knowledge and recollection.

If before answering, it would help you to review any records you may have, you should do so.

"Enron" means anyone you knew was working for, or communicating on behalf of, Enron Corporation or one of its businesses.

Question One:

Between January 20, 2001, and December 2, 2001, did you have any communications with Enron relating to energy policy or other policy issues affecting Enron's business, including communications relating to the development of the May 2001 Report of the National Energy Policy Development Group.

YES _____ NO _____ I'D LIKE TO DISCUSS _____

NAME (please print):

OFFICE:

PHONE NUMBER:

SIGNATURE: _____ DATE: _____

From: CN=Larry E. Handeland/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/13/2002 11:36:28 AM
Subject: : Records Management

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Larry E. Handeland (CN=Larry E. Handeland/OU=OA/O=EOP [OA])
CREATION DATE/TIME:13-MAY-2002 15:36:28.00
SUBJECT:: Records Management
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Have you had an opportunity to look at this question?
---------- Forwarded by Larry E. Handeland/OA/EOP on 05/13/2002 03:36 PM ----------

Larry E. Handeland
05/03/2002 03:36:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Adam F. Greenstone/OA/EOP@EOP, Ellis Kitchen/OA/EOP@EOP, Timothy Campen/OA/EOP@EOP
Subject: Records Management

Background: I have been completing all the Homeland Security physical plant work at Nebraska Avenue. We have two new classified computer systems installed. We are using the same software modifications for the e-mail program that NSC uses. All sent and received e-mails are directed to a specific folder for capture. We are also installing tape backup for daily backups of all data to include all e-mails plus any data in folders on the server.

In all my contacts to date, I have been told that this meets the records management requirements. Tim Campen has asked me to verify with WH Counsel that we are in compliance with Records Management requirements and I was told by Courftney Elwood that you are the expert in this field. I wanted to make sure I haven't left anything out.

Question - does the use of software to ensure capture of all sent and received e-mails plus the tape backup meet the requirements for the classified computer system? Is there anything else we should be doing?

Thank you for your assistance.

From: CN=Larry E. Handeland/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/13/2002 11:36:28 AM
Subject: : Records Management

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Larry E. Handeland (CN=Larry E. Handeland/OU=OA/O=EOP [OA])
CREATION DATE/TIME:13-MAY-2002 15:36:28.00
SUBJECT:: Records Management
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Have you had an opportunity to look at this question?
---------- Forwarded by Larry E. Handeland/OA/EOP on 05/13/2002 03:36 PM ----------

Larry E. Handeland
05/03/2002 03:36:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Adam F. Greenstone/OA/EOP@EOP, Ellis Kitchen/OA/EOP@EOP, Timothy Campen/OA/EOP@EOP
Subject: Records Management

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Thank you for your assistance.

From: CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;alberto r. gonzales/who /eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 5/13/2002 11:44:57 AM
Subject: : Re: Draft Enron Survey II
Attachments: P_96DC7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAY-2002 15:44:57.00
SUBJECT:: Re: Draft Enron Survey II
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
End Original ARMS Header

Looks fine to me.

Bradford A. Berenson
05/13/2002 03:15:44 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: alberto r. gonzales/who/eop@eop, timothy e.
flanigan/who/eop@eop, h. christopher bartolomucci/who/eop@eop, david s.
addington/ovp/eop@eop
bcc:
Subject: Re: Draft Enron Survey II

Looks good to me, although I think we need a question mark instead of a
period at the end of the question.

Brett M. Kavanaugh
05/13/2002 03:06:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:

Subject: Draft Enron Survey II

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_96DC7003_WHO.TXT_1>

May __, 2002

MEMORANDUM FOR

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY II

The Chairman of the Senate Committee on Governmental Affairs has requested that we ask you an additional question beyond the questions included in the survey you have already completed. Please complete the attached survey and return it to my office (West Wing, Second Floor) no later than May 16, 2002.

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ENRON SURVEY

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Question One:

Between January 20, 2001, and December 2, 2001, did you have any communications with Enron relating to energy policy or other policy issues affecting Enron's business, including communications relating to the development of the May 2001 Report of the National Energy Policy Development Group.

YES _____ NO _____ I'D LIKE TO DISCUSS _____

NAME (please print):

OFFICE:

PHONE NUMBER:

SIGNATURE: _____ DATE: _____

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 5/13/2002 11:54:25 AM
Subject: : Re: Draft Enron Survey II
Attachments: P_2QDC7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAY-2002 15:54:25.00
SUBJECT:: Re: Draft Enron Survey II
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
End Original ARMS Header

Looks fine.

Brett M. Kavanaugh
05/13/2002 03:06:38 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Draft Enron Survey II

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2QDC7003_WHO.TXT_1>

May __, 2002

MEMORANDUM FOR

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY II

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ENRON SURVEY

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YES _____ NO _____ I'D LIKE TO DISCUSS _____

NAME (please print):

OFFICE:

PHONE NUMBER:

SIGNATURE: _____ DATE: _____

From: Clement, Paul D <Paul.D.Clement@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/13/2002 1:26:55 PM
Subject: : RE: Eureka

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Clement, Paul D" <Paul.D.Clement@usdoj.gov> ( "Clement, Paul D"
<Paul.D.Clement@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME:13-MAY-2002 17:26:55.00
SUBJECT:: RE: Eureka
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This message is a Read Receipt Notification

Your Message : RE: Eureka
Was Read By : Paul.D.Clement@usdoj.gov
On : Mon, 13 May 2002 17:22:40 -0400
```

From: Charles Spies - Legal <CSpies@rnchq.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Tom Josefiak - Legal <tomj@rnchq.org>
Sent: 5/14/2002 7:09:40 AM
Subject: : FW: Theimer AP Article

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charles Spies - Legal <CSpies@rnchq.org> (Charles Spies - Legal <CSpies@rnchq.org> [UNKNOWN])
CREATION DATE/TIME:14-MAY-2002 11:09:40.00
SUBJECT:: FW: Theimer AP Article
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Tom Josefiak - Legal <tomj@rnchq.org> (Tom Josefiak - Legal <tomj@rnchq.org> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett -

FYI re: our conversation this morning.

> -----Original Message-----
> From: Jim Dyke - Communications
> Sent: Tuesday, May 14, 2002 10:35 AM
> To: Charles Spies - Legal
> Subject: FW: theimer
>
> anyone who has an answer, even though it is not us would be very helpful.
> Copyright 2002 Associated Press
> AP Online
> May 14, 2002 Tuesday 1:25 AM Eastern Time
> SECTION: WASHINGTON DATELINE
>
> LENGTH: 787 words
>
> HEADLINE: 9-11 Bush Photo Offered to Donors
>
> BYLINE: SHARON THEIMER; Associated Press Writer
>
> DATELINE: WASHINGTON
>
> BODY:
> Capitalizing on President Bush's drawing power, the Republican National Committee aimed for a record $30 million fund-raising bonanza Tuesday while congressional Republicans sought to reward donors with a Sept. 11 photo of Bush aboard Air Force One.
>
> The photo of Bush calling Vice President Dick Cheney from the presidential plane just hours after the terror attacks is part of a three-picture set the National Republican Senatorial Campaign and its House counterpart promises to anyone who donates $150 or more to attend their joint fund-raising dinner next month.
>
> The photos depict "the defining moments of 'The First Year' of the George W. Bush presidency," a fund-raising mailing says.
>
> The pictures show "the gritty determination of our new president at his inauguration; a telephone call from Air Force One to Vice President Cheney the afternoon of Sept. 11, 2001; and President Bush's historic State of the Union speech before a joint session of Congress that united a nation and a world," it says. In an accompanying letter, Cheney tells prospective donors the dinner has special meaning this year.
>

> "It is an opportunity to honor President Bush for his courageous leadership during this historic time and to thank you for making that leadership possible through your steadfast support of President Bush and his agenda," Cheney wrote.
>
> Larry Noble, executive director of the Center for Responsive Politics, a campaign watchdog group, said use of a Sept. 11 photo and other pictures of Bush on the job, "though not as expensive," reminded him of then-Democratic President Clinton's use of overnight stays in the White House Lincoln Bedroom and other trappings of his office to reward donors.
>
> "They really came in saying they were going to clean up fund raising and politics and not be involved in the same kind of behavior the Clinton administration was involved in," Noble said of the Bush White House. "I think we saw from the first days in office they were doing all the same things."
>
> Cheney drew criticism from campaign watchdog groups a year ago for holding a reception for about 400 top Republican donors at the vice presidential mansion on the eve of the RNC gala.
>
> Bush political adviser Karl Rove was criticized in January by Democrats for telling the RNC that Republicans could campaign this year on their efforts to fight terrorism.
>
> A National Republican Congressional Committee spokesman defended the inclusion of a Sept. 11 photo in the donor package.
>
> "These pictures are of historic moments from the president's first year and are living testimony of his courage under fire, and leadership," the NRCC's Carl Forti said. "It is frankly offensive that anyone would suggest otherwise."
>
> White House spokeswoman Anne Womack did not immediately respond to messages left at her office Monday evening seeking comment.
>
> A Republican official said the photos were licensed and therefore not believed to be the work of an official White House photographer.
>
> The fund-raising solicitation for the June 19 Republican congressional dinner came as the RNC anticipated raising about $30 million at its black-tie presidential gala Tuesday night at the Washington Convention Center. That amount would shatter the previous single-night record set in 2000 by Clinton and then-Vice President Al Gore. >
>
> The estimated RNC total, provided by a Republican official on condition of anonymity, would easily exceed the $26.5 million Clinton and Gore raised at a Democratic National Committee barbecue.
>
> Bush and Cheney helped raise $24 million at the RNC's black-tie gala last year.
>
> Such fund-raising records would be difficult to break if a new law prohibiting unlimited campaign contributions from companies, unions and others to national party committees survives numerous legal challenges and takes effect after this fall's election.
>
> The RNC, in its lawsuit, contends the soft money ban unconstitutionally interferes with states' rights and the party's ability to take part in the political process. Party committees use soft money for overhead and party-building activities around the country such as get-out-the-vote drives.
>
> RNC gala organizers offered tables of 10 to individuals and political action committees for $15,000 and to corporate donors for $20,000.
>
> Those who committed to raising $500,000 or more were honored as dinner co-chairmen, while those who raised at least $250,000 were vice chairmen

of the event at the Washington Convention Center.
>
> Republican "Eagles" - those who donate at least $15,000 annually to the RNC - were invited to meetings with administration officials earlier Tuesday.
>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 5/14/2002 12:29:56 PM
Subject: : Re: Judge: need to clear Enron Survey II
Attachments: P_UESD7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-MAY-2002 16:29:56.00
SUBJECT:: Re: Judge: need to clear Enron Survey II
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

should go today. Can you call him and just read him the 2
questions and tell him everyone here has approved.

Elizabeth N. Camp
05/14/2002 04:12:48 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Judge: need to clear Enron Survey II

ARG is out for the rest of the day. I assume this can wait until tomorrow
- yes?

Brett M. Kavanaugh
05/14/2002 04:02:38 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Judge: need to clear Enron Survey II

Judge: Everyone has cleared on this. We'll shoot it around when
you approve.

Everyone else: We made the style consistent for the
parentheticals in questions 1 and 2.

Message Copied
To:_____
Elizabeth N. Camp/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

Timothy E. Flanigan/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UESD7003_WHO.TXT_1>

May 14, 2002

MEMORANDUM FOR ALL ASSISTANTS TO THE PRESIDENT
ALL DEPUTY ASSISTANTS TO THE PRESIDENT
ALL SPECIAL ASSISTANTS TO THE PRESIDENT
DESIGNATED ADDITIONAL PERSONNEL IN
THE OFFICE OF THE VICE PRESIDENT,
THE COUNCIL OF ECONOMIC ADVISORS,
THE COUNCIL ON ENVIRONMENTAL QUALITY,
THE OFFICE OF MANAGEMENT AND BUDGET, AND
THE OFFICE OF THE U.S. TRADE REPRESENTATIVE (AS DESIGNATED BY THE COUNSEL OR CHIEF OF STAFF IN SUCH OFFICES)

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SURVEY II

The Chairman of the Senate Committee on Governmental Affairs has requested that we ask you **two additional questions** beyond the questions included in the survey you have already completed. We apologize for the inconvenience, but please complete the attached survey and return it to my office (West Wing, Second Floor) **no later than this Friday, May 17, 2002.**

Please read the survey questions carefully. The questions can be answered yes or no, and we are not asking for further explanation at this time. Instead, depending on your answers, the Counsel's Office may contact you to obtain additional information. If you are unsure whether to answer yes or no, you may check the third box, and we will contact you.

If you have any questions, please call Associate Counsels Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

ENRON SURVEY

Instructions:

You are expected to answer the following questions to the best of your knowledge and recollection.

If before answering, it would help you to review any records you may have, you should do so.

"Enron" means anyone you knew was working for, or communicating on behalf of, Enron Corporation or one of its businesses.

Question One:

Between January 20, 2001, and December 2, 2001, did you have any communications with Enron relating to any energy regulation, policy, law, or other issue affecting Enron's business? (Note: This question includes communications relating to the development of the May 2001 Report of the National Energy Policy Development Group.)

YES _____ NO _____ I'D LIKE TO DISCUSS _____

Question Two:

Between January 20, 2001, and December 2, 2001, did you have any communications relating to Enron with any official or employee of any Executive Branch department or agency? (Note: The Executive Office of the President and the Office of the Vice President are not departments or agencies.)

YES _____ NO _____ I'D LIKE TO DISCUSS _____

NAME (please print):

OFFICE:

PHONE NUMBER:

SIGNATURE: _____ DATE: _____

From: John Abegg) (John_Abegg@mcconnell.senate.gov (John Abegg) [UNKNOWN]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Mashburn; John (Lott) <John_Mashburn@lott.senate.gov>
CC: lincoln oliphant) (lincoln_oliphant@rpc.senate.gov (lincoln oliphant) [UNKNOWN] <lincoln_oliphant@rpc.senate.gov>;gregg willhauck) (gregg_willhauck@kyl.senate.gov (gregg willhauck) [UNKNOWN] <gregg_willhauck@kyl.senate.gov>;rena_johnson@judiciary.senate.gov [UNKNOWN] <rena_johnson@judiciary.senate.gov>;ed_haden@judiciary.senate.gov [UNKNOWN] <ed_haden@judiciary.senate.gov>;stephen_higgins@judiciary.senate.gov [UNKNOWN] <stephen_higgins@judiciary.senate.gov>;katie_gumerson@aml.senate.gov [UNKNOWN] <katie_gumerson@aml.senate.gov>;makan_delrahim@judiciary.senate.gov [UNKNOWN] <makan_delrahim@judiciary.senate.gov>;eric_ueland@aml.senate.gov [UNKNOWN] <eric_ueland@aml.senate.gov>;hoppe; dave (lott) <dave_hoppe@lott.senate.gov>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>
Sent: 5/14/2002 8:47:12 AM
Subject: : From today's Congress Daily

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John_Abegg@mcconnell.senate.gov (John Abegg) ( John_Abegg@mcconnell.senate.gov
(John Abegg) [ UNKNOWN ] )
CREATION DATE/TIME:14-MAY-2002 12:47:12.00
SUBJECT:: From today's Congress Daily
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:"Mashburn; John (Lott)" <John_Mashburn@lott.senate.gov> ( "Mashburn; John (Lott)"
<John_Mashburn@lott.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:lincoln_oliphant@rpc.senate.gov (lincoln oliphant) ( lincoln_oliphant@rpc.senate.gov
(lincoln oliphant) [ UNKNOWN ] )
READ:UNKNOWN
CC:gregg_willhauck@kyl.senate.gov (gregg willhauck) ( gregg_willhauck@kyl.senate.gov (gregg
willhauck) [ UNKNOWN ] )
READ:UNKNOWN
CC:rena_johnson@judiciary.senate.gov ( rena_johnson@judiciary.senate.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:ed_haden@judiciary.senate.gov ( ed_haden@judiciary.senate.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:stephen_higgins@judiciary.senate.gov ( stephen_higgins@judiciary.senate.gov [ UNKNOWN ]
)
READ:UNKNOWN
CC:katie_gumerson@aml.senate.gov ( katie_gumerson@aml.senate.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:makan_delrahim@judiciary.senate.gov ( makan_delrahim@judiciary.senate.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:eric_ueland@aml.senate.gov ( eric_ueland@aml.senate.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:"hoppe; dave (lott)" <dave_hoppe@lott.senate.gov> ( "hoppe; dave (lott)"
<dave_hoppe@lott.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:viet.dinh@usdoj.gov ( viet.dinh@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Regarding Senator Daschle's requested nomination of Ellen Weintraub to the
FEC,
Senator McConnell said that "everything will be tied to everything else,"
```

including judges. We will continue to work on this.

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC:	hana f. brilliant/who/eop@eop [WHO] <hana f. brilliant>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent:	5/14/2002 9:37:36 AM
Subject:	: Re: Meeting schedule for Enron interviews
Attachments:	P_03JD7003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:14-MAY-2002 13:37:36.00
SUBJECT:: Re: Meeting schedule for Enron interviews
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:hana f. brilliant ( CN=hana f. brilliant/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I think Bart is Dan Bartlett.
```

```
Bradford A. Berenson
05/14/2002 01:34:42 PM
Record Type: Record

To: Hana F. Brilliant/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, brett m.
kavanaugh/who/eop@eop
bcc:
Subject: Re: Meeting schedule for Enron interviews

Hana, we must have gotten wires crossed, but I cannot do a 3:00 p.m.
tomorrow with Clay Johnson, and frankly the 1:30 with Dan Bartlett is
going to be very hard, although we can keep that one if Brett is pretty
sure it will be short. The paper should indicate that I am unavailable
tomorrow from noon through 5:30. Please reschedule Johnson and confirm
that Bartlett will be short -- I MUST leave his office not a minute later
than 1:50. If Brett thinks there's a danger we'll run over, we'll need to
move Bartlett too.
```

```
Hana F. Brilliant
05/14/2002 01:17:02 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Bradford A.
Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Meeting schedule for Enron interviews

Attached is the schedule set up so far for Enron interviews.
```

I am still waiting to hear back from:
Josh Bolton (COS)
Andy Card (COS)
John Fenzel (OHS)
John Howard (CEQ)
Elizabeth Stolpe (NEC)

* I can't find a Scooter Lindsey. Do you mean Lindsey Lewis in OVP?
* Karen Hughes is in Europe until the end of the month with the First Lady.
* John Howard is no longer with CEQ he is now on the White House Recycling Task Force. I have left a message for him.

I tried to set up the meetings so that you didn't have to run from one place to the other. I tried to keep them in the same buildings as much as possible during any signifcant block of meeting times. Please let me know about any changes that need to be made.

-Hana

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_03JD7003_WHO.TXT_1>

Wednesday, May 15, 2002

9:00am	Meet with Rachel Brand 149 EEOB
Interviewer:	Bartolomucci
Notetaker:	Berenson

10:00am	Meet with Ellen Athas CEQ 722 Jackson Place, 1st Floor 395-5750
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

1:30pm	Meet with Dan Bartlett (Comm.) WW, 2nd Floor 456-7910
Interviewer:	Bartolomucci
Notetaker:	Berenson

3:00pm	Meet with Clay Johnson (OPP) WW, 2nd Floor 456-7060
Interviewer:	Bartolomucci
Notetaker:	Berenson

Thursday, May 16, 2002

10:00am	Meet with Pippa Malmgren (NEC) 593 EEOB 456-5333 (Marty)
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

10:30am	Meet with Bob McNally (NEC) 592 EEOB 456-5386
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

11:30am	Meet with Carlos Bonilla (NEC) 590 EEOB 456-2831
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

Thursday, May 16, 2002 (cont'd)

4:00pm Meet with Karen Knutson (OVP)
289 EEOB
56-7409
Interviewer: Berenson
Notetaker: Kavanugh

- Addington to join meeting

Friday, May 17, 2002

10:15am Meet with Karl Rove (OSI)
WW, 2nd Floor
456-2369
Interviewer: Berenson
Notetaker: Kavanaugh

11:00am Meet with Steve Ruhlen (OVP)
285 EEOB
456-7937
Interviewer: Berenson
Notetaker: Kavanaugh

Monday, May 20, 2002

10:30am Meet with Judson Jaffe (CEA)
*** 155 EEOB
456-3142
Interviewer: Bartolomucci
Notetaker: Berenson
*** He shares an office with 5 people and doesn't have a private place to meet. He felt more comfortable meeting in the Counsel's Office.

3:30pm Meet with Larry Lindsey (NEC)
WW, 2nd Floor
456-2807
Interviewer: Kavanaugh
Notetaker: Bartolomucci

4:00pm Meet with Marc Summerlin (NEC)
WW, 2nd Floor
456-5804
Interviewer: Kavanaugh
Notetaker: Bartolomucci

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/14/2002 9:38:38 AM
Subject: : Re: Meeting schedule for Enron interviews
Attachments: P_Y4JD7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-MAY-2002 13:38:38.00
SUBJECT:: Re: Meeting schedule for Enron interviews
TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Actually, I am interviewing Dan Bartlett, and it will be a short interview. But it is OK with me if Dan and Clay Johnson are rescheduled. The only commitment I have tomorrow is a 5:00 meeting on Capitol Hill. So don't book me for anything between 4:00 and 6:00 tomorrow. Thanks.

Bradford A. Berenson
05/14/2002 01:34:42 PM
Record Type: Record

To: Hana F. Brilliant/WHO/EOP@EOP
cc: h. christopher bartolomucci/who/eop@eop, brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Meeting schedule for Enron interviews

Hana, we must have gotten wires crossed, but I cannot do a 3:00 p.m. tomorrow with Clay Johnson, and frankly the 1:30 with Dan Bartlett is going to be very hard, although we can keep that one if Brett is pretty sure it will be short. The paper should indicate that I am unavailable tomorrow from noon through 5:30. Please reschedule Johnson and confirm that Bartlett will be short -- I MUST leave his office not a minute later than 1:50. If Brett thinks there's a danger we'll run over, we'll need to move Bartlett too.

Hana F. Brilliant
05/14/2002 01:17:02 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Meeting schedule for Enron interviews

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I am still waiting to hear back from:
Josh Bolton (COS)
Andy Card (COS)
John Fenzel (OHS)
John Howard (CEQ)
Elizabeth Stolpe (NEC)

* I can't find a Scooter Lindsey. Do you mean Lindsey Lewis in OVP?
* Karen Hughes is in Europe until the end of the month with the First Lady.
* John Howard is no longer with CEQ he is now on the White House Recycling Task Force. I have left a message for him.

I tried to set up the meetings so that you didn't have to run from one place to the other. I tried to keep them in the same buildings as much as possible during any signifcant block of meeting times. Please let me know about any changes that need to be made.

-Hana

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Y4JD7003_WHO.TXT_1>

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Notetaker:	Berenson

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1:30pm	Meet with Dan Bartlett (Comm.) WW, 2nd Floor 456-7910
Interviewer:	Bartolomucci
Notetaker:	Berenson

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Interviewer:	Bartolomucci
Notetaker:	Berenson

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Interviewer:	Kavanaugh
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Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

11:30am	Meet with Carlos Bonilla (NEC) 590 EEOB 456-2831
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

Thursday, May 16, 2002 (cont'd)

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289 EEOB
56-7409
Interviewer: Berenson
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- Addington to join meeting

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WW, 2nd Floor
456-2369
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Notetaker: Kavanaugh

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456-7937
Interviewer: Berenson
Notetaker: Kavanaugh

Monday, May 20, 2002

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*** 155 EEOB
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Notetaker: Berenson
*** He shares an office with 5 people and doesn't have a private place to meet. He felt more comfortable meeting in the Counsel's Office.

3:30pm Meet with Larry Lindsey (NEC)
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456-2807
Interviewer: Kavanaugh
Notetaker: Bartolomucci

4:00pm Meet with Marc Summerlin (NEC)
WW, 2nd Floor
456-5804
Interviewer: Kavanaugh
Notetaker: Bartolomucci

From:	CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To:	Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>
CC:	bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent:	5/14/2002 5:06:02 PM
Subject:	: Re: Meeting schedule for Enron interviews
Attachments:	P_7KYD7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-MAY-2002 21:06:02.00
SUBJECT:: Re: Meeting schedule for Enron interviews
TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think you meant to send this to Bart, not me.
And I think you mean either Scooter Libby or Larry Lindsey.

Hana F. Brilliant
05/14/2002 05:33:27 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Kyle Sampson/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Meeting schedule for Enron interviews

Updated schedule.

I'm still waiting to hear back from Josh Bolten, Andy Card, John Fenzel
and Scooter Lindsey.
-Hana

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7KYD7003_WHO.TXT_1>

Wednesday, May 15, 2002

9:00am	Meet with Rachel Brand
	149 EEOB
Interviewer:	Bartolomucci
Notetaker:	Berenson

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	722 Jackson Place, 1st Floor
	395-5750
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

11:00am	Meet with Elizabeth Stolpe (CEQ)
	722 Jackson Place
	456-6546
Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

1:00pm	Meet with John Howard
	1724 F Street, 4th Floor
	564-1297
Interviewer:	Kavanugh
Notetaker:	Bartolomucci

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12:00pm Meet with Dan Bartlett (Comm.)
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456-7910
Interviewer: Bartolomucci
Notetaker: Berenson

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WW, 2nd Floor
456-2807

Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

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Interviewer:	Kavanaugh
Notetaker:	Bartolomucci

4:45pm	Meet with Clay Johnson (OPP) WW, 2nd Floor 456-7060
Interviewer:	Bartolomucci
Notetaker:	Berenson

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Robert W. Cobb/WHO/EOP@EOP [WHO] <Robert W. Cobb>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>
Sent: 5/14/2002 5:32:16 PM
Subject: : Re: Michigan preferences case

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:14-MAY-2002 21:32:16.00
SUBJECT:: Re: Michigan preferences case
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
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CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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READ:UNKNOWN
CC:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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I don't think it's at all a given that the DOJ will file an amicus brief
in this
case, given the DOJ's varied stances as the case has moved up through the
courts
during the Clinton Administration and this Administration.

Brett M. Kavanaugh
05/14/2002 06:34:01 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP, Timothy E. Flanigan/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message

Subject: Michigan preferences case

Needless to say, the Supreme Court likely will accept this case given the
circuit divergence (CA5, CA6, CA9) over meaning of Bakke and the critical
importance of the question whether the EP Clause bars racial
preferences/diversity in admissions (or at least bars the Michigan program at
issue here). The case affects this Office in two specific ways: (i) interest
groups and Senators no doubt will use the existence of the case in multiple ways
if there is a Supreme Court vacancy/nomination; and (ii) the Solicitor General
can be expected to file an amicus brief in the Supreme Court.

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To:_____

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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/15/2002 7:07:23 AM
Subject: : LRM JAB238 National Veterans Business Development Corporation Testimony on HR3263 (Exempt Recent Veterans From 7(a) Loan Guarantee Fees)
Attachments: P_OLFE7003_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAY-2002 11:07:23.00
SUBJECT:: LRM JAB238 National Veterans Business Development Corporation Testimony on HR3263 (Exempt Recent Veterans From 7(a) Loan Guarantee Fees)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/15/2002 11:06 AM ----------

James A. Brown
05/15/2002 11:02:29 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM JAB238 National Veterans Business Development Corporation Testimony on HR3263 (Exempt Recent Veterans From 7(a) Loan Guarantee Fees)

Much of this testimony consists of a description of the activities of the Corporation. The testimony endorses H.R. 3263 in its penultimate paragraph. H.R. 3263 would amend section 7(a) of the Small Business Act to exempt small business concerns owned and controlled by veterans whohave been discharged or released from military service for less than 5 years from otherwise guarantee fees for SBA-guaranteed loans under the program.

- Master CRH TESTIMONY2.doc
LRM ID: JAB238
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, May 15, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: National Veterans Business Development Corporation Testimony on HR3263 Exempt Small Business Concerns Owned and Controlled By Recent Veterans From 7(a) Loan Guarantee Fees

DEADLINE: 10:00 A.M. Friday, May 17, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect

direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Much of this testimony consists of a description of the activities of the Corporation. The testimony endorses H.R. 3263 in its penultimate paragraph. H.R. 3263 would amend section 7(a) of the Small Business Act to exempt small business concerns owned and controlled by veterans whohave been discharged or released from military service for less than 5 years from otherwise guarantee fees for SBA-guaranteed loans under the program.

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LRM ID: JAB238 SUBJECT: National Veterans Business Development Corporation Testimony on HR3263 Exempt Small Business Concerns Owned and Controlled By Recent Veterans From 7(a) Loan Guarantee Fees
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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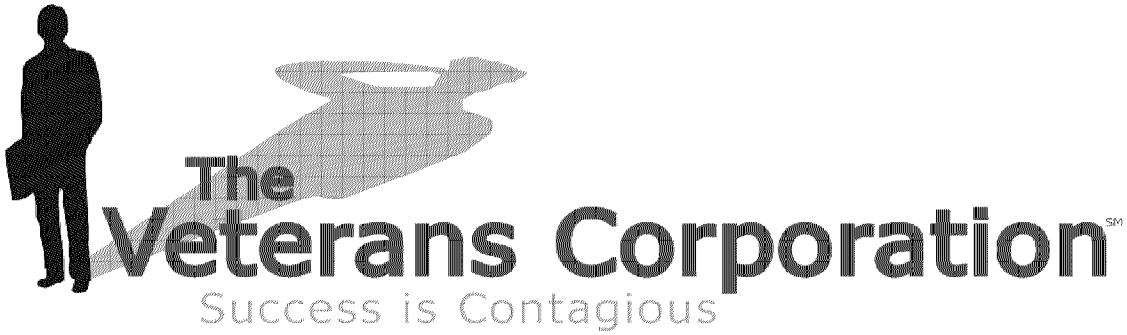

DRAFT

STATEMENT OF MAJOR GENERAL CHARLES R. HENRY (RET.)
PRESIDENT AND CEO
THE NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION
("THE VETERANS CORPORATION")

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT, AND GOVERNMENT
PROGRAMS OF THE COMMITTEE ON SMALL BUSINESS
U.S. HOURSE OF REPRESENTATIVES
21 MAY, 2002

Mr. Chairman and Distinguished Members of the Subcommittee:

Thank you for your invitation to testify today. This is my first appearance before your subcommittee and I am honored to have this opportunity. I'm also proud to tell you what we've accomplished in the 200 days since I took charge of this outstanding congressional initiative "The National Veterans Business Development Corporation," or as we call it "The Veterans Corporation."

Although the legislation that created The Veterans Corporation was enacted in August 1999, initial funding was not received until March of last year. Subsequently a search began for a permanent President and CEO that culminated with my selection in October 2001.

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Since then, we have launched several high-impact initiatives to fulfill the legislative mandates of the law. In this 200 days, we have met the requirement for $2 million dollars in matching funds for Fiscal Year 2002, established four strategic business units and launched a world-class website and begun work on a state of the art electronic Veteran Marketplace. We will provide Veterans access to training, access to markets and access to capital, all critical elements in helping Veterans and Service Disabled Veterans succeed in business. This solid foundation of programs will not only help Veterans but will also help meet your mandate to make this Corporation self-sufficient and assure its survival beyond the start-up funding provided in P.L 106-50.

One of our first requirements is to build our affinity group from the approximately 24 million Veterans and estimated 4 million Veteran business owners in this country. We are launching a multimedia awareness campaign to reach Veterans incorporating our web site and through traditional print and broadcast media and direct marketing. Over our first three years, our objective is to enlist more than 40,000 Veteran business owners and prospective business owners as our partners in this endeavor. We are, and will continue to actively market this affinity group to both the public and private sectors, providing revenue opportunities for Veterans and Service Disabled Veterans businessmen and women, and revenue for The Veterans Corporation.

As we reach out to Veterans we are also working to create a new "brand awareness" about Veteran businesspeople. We are highlighting the advanced leadership and management skills members of the military develop while on active duty, along with top quality technical training that makes our service members the world's preeminent fighting force.

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The law requires that we achieve five goals:

1. **Increase business opportunities for Veterans and Service-Disabled Veterans.**
2. **Raise matching funds.**
3. **Develop information centers.**
4. **Privatize**
5. **Create certification standards**

I'll briefly discuss each of these legislative mandates, our objectives and our progress, to date.

1. Increasing business opportunities for Veterans and service disabled Veterans This is a primary focus of the Strategic Business Units we have created. The Education and Training SBU is partnering with the Ewing Marion Kauffman Foundation, Kansas City, Kansas to make research and writings on what makes a successful entrepreneur available to Veteran and Service Disabled Veterans.

The Kauffman Foundation have permitted us to private label what is arguably the best entrepreneurial library on or off the Web www.EntreWorld.org. They will allow us to provide this material directly to Veterans from our website. In addition, we are currently designing a unique entrepreneurial training program for Veterans and Service Disabled Veterans anchored by several Kauffman products as well as strategic alliances with major computer and Internet provider corporations to provide Veterans with the tools they need for success in today's marketplace. The program will be offered to

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transitioning military personnel and Veterans at a very reasonable cost with our Fund Raising SBU raising the capital required to subsidize the program.

Access to capital is perhaps the single biggest roadblock for anyone wishing to start or expand a business. Our Business Development and Outreach SBU is working two initiatives to help Veterans get the funding required for success.

The first is the Veterans Venture Capital Fund. We have entered into a strategic partnership with an experienced venture capital management company, Equisource, Houston, Texas for the purpose of creating the Veterans Venture Capital Fund. The Fund will be established with capital raised from private corporations and pension plans. An application for Small Business Investment Company status is being prepared and will be submitted to SBA shortly. If approved, SBA will provide a two for one match of all private funds. Our objective is to raise up to $55 million in the private sector; if successful, the SBA match will create a $110 million investment fund. Once established and capitalized, the Fund will invest in mezzanine-level opportunities with Veteran owned businesses and businesses that support Veterans and Veteran owned businesses

We are also working to create a national network of banks that will join us in a joint marketing effort to identify qualifying Veterans and Service Disabled Veterans seeking commercial loans of $50,000 or less, what we refer to as our micro loan program. The first bank to team with us is Southern Financial Bank, licensed to do business in Maryland, Virginia, West Virginia and Washington, D.C. We are actively seeking additional banking partners to expand the reach of this program to all credit-worthy Veterans. We expect to be in a minimum of ten states by the end of this fiscal year, and nation-wide by the end of the next year.

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The Veterans Marketplace is a result of a strategic partnership between our IT & E-Commerce SBU and eScout, a Kansas City based provider of electronic marketplaces, internationally. A beta version of the Marketplace is currently accessible from our website. This version is being upgraded, and we expect the full commercial version to be ready this summer. This internet-based market will allow qualified Veteran and Service Disabled Veteran owned businesses to offer their goods and services to other Veterans, Government agencies and Corporate America. Veteran and Service Disabled Veteran owned businesses will be clearly identified on the Marketplace, eliminating the age-old excuse "I would buy from Veterans or Disabled Veterans, if I could find them".

The Business Development and Outreach SBU is also close to finalizing an Affinity Insurance and Financial Services arrangement where Veteran and Service Disabled Veteran owned businesses will be able to purchase business insurance and financial products at reduced rates, with better terms or conditions, or both. We will achieve this by combining the purchasing power of the Veterans who register with us, and through an internationally recognized broker negotiate group rates for our membership. This program will start out modestly, but will grow quickly as our membership grows and as their needs become apparent. Our thinking is that if AARP can market an affinity group made up of people over 50, The Veterans Corporation should be able to market an affinity group of Veteran business owners to corporate America in a way that benefits both them, and us.

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2. Raise matching funds

We are looking to corporate and individual donations as key sources of revenue until our other long-range initiatives mature and become profitable enough to sustain our operations.

Fund Raising – We have engaged and empowered a professional development team to lead a multi-year, multi-dimensional effort to raise funds. We have recently sent our first mailings for personal and corporate contributions and are making corporate visits to Fortune 500 firms and potentially large donors asking for them to help us support Veteran entrepreneurs through our MarketPlace. The focus of initial fund raising efforts is to raise money to help build infrastructure (e.g. our website and the Veterans Marketplace), and for the entrepreneurial training effort. While predicting the amounts that will be raised is a tenuous exercise at best, I think that we can raise $2 million or more in cash contributions by September 30, 2002.

In-Kind Contributions The Corporation has already received in-kind contributions in the form of extensive legal services from the law firm of Fried, Frank, Harris, Shriver and Jacobsen Washington, D.C. and technology services, educational products and services in valued excess of $1.5 million from the Kauffman Foundation and eScout. Combined cash and in-kind contributions should exceed $3.5 million during this fiscal year. Growth in both in-kind and cash contributions is expected in fiscal 2003, and we are confident that we will, more than satisfy the matching funds requirements of P.L. 106-50.

3. Develop information centers

Our ability to electronically reach veterans is the first step to providing them with needed support where they live and work. We are also carefully evaluating several other

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initiatives that can provide on-site training and assistance but are not yet committed to any single approach. We have met with groups representing New England and Texas for preliminary discussions on the possibility of opening local centers for the delivery of products and services. We also plan discussions with SBA and DOD representatives about strategic partnerships with Small Business Development Centers (SBDCs) and Procurement Technical Advisory Centers (PTACs). This will be a major focus of ours in fiscal year 2003.

4. Privatization

As provided by current law, our federal funding for fiscal years 2003 and 2004 will be half what it was in our first two years, and will cease altogether after 2004. Neither Congress nor our management team intends The Veterans Corporation to be a three and half year effort. Therefore, we are working to ensure that the businesses we are building, along with on-going fund raising efforts, will provide sufficient revenue to fund the continued growth and success of the Corporation.

Of the efforts begun to date, the Marketplace and the Affinity Marketing program have the potential to keep us growing in 2003 and 2004. Each transaction executed across the Marketplace results in a commission being paid by the seller to the Marketplace. We will share in nearly half those commissions. The Affinity Marketing program also generates revenues for the broker, paid by the companies the broker places insurance and other contracts with. The Veterans Corporation will share in that revenue. We believe these programs will produce sufficient revenues in fiscal 2003 to make up for the reduction in federal funding. We have worked hard to keep our fixed costs down. Our budgets for next year provide for spending at less than $200,000 per month. So the

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revenues raised from these programs alone can fund growth and expansion, including the costs needed to create the information centers discussed above.

In the long run, revenues from the Veterans Venture Capital Fund and our banking partnerships will help build a capital base that will provide a sound financial cushion and fund further growth in the years after federal funding disappears. I am confident that with the initiatives we've taken to date and those yet to come we will be able to generate the revenues necessary to meet the congressional mandate of privatization.

5. Create Certification Standards

The Professional Certification Advisory Board (PCAB) under the able chairmanship of Brigadier General Robert Cocroft, U.S. Army Reserve, is developing a strategic plan to work with the Department of Defense, Department of Labor and Veterans Affairs, as well as, with state, local and union officials to remove certification and licensure barriers that hinder service members from smoothly transferring their knowledge and skills to civilian sector employment. This is a highly complex area, however, initiatives like the U.S. Army's recent launch of a Credentialing Opportunities On-Line www.armyeducation.army.mil/COOL show that real progress can be made in simplifying the certification and licensure requirements for our transitioning service members.

On the Small Business Administration Veteran Program

We have a strong working relationship with the Associate Administrator and his staff in the Office of Veterans Business Development at SBA and with the Director and his staff at the Center for Veterans Enterprise at Veterans Affairs. We're confident that

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these relationships will ultimately promote the best balance of public/private service to our Veterans. We are pleased with the increases in staffing at the Center and at SBA's Office of Veteran Business Development and urge that the membership of the Advisory Committee on Veterans Business Affairs be selected quickly, as required by SEC. 203 of PL 106-50.

We recognize that the Federal Agencies have not met the 3% goal for Service Disabled Veterans and the 3% goal for Veterans required by PL 106-50 but strongly believe that the Veterans MarketPlace (www.Veteranscorp.org) can assist Government agencies and Corporate America in quickly identifying reputable businesses that are owned by Service Disabled-Veterans, Veterans and other diversity groups who will provide them excellent products, fast and at highly competitive prices. I am personally committed to working with senior federal procurement officials to help them succeed in reaching and surpassing these important goals.

On H.R. 3263

We certainly support any Veteran entitlement that assists Veterans financially to enter business although we are mindful that other interest groups may demand the same consideration. We believe that this should be provided by Congress as an entitlement resulting from honorable service to the Nation. (ed note see end page)

Conclusion

We are proud of our efforts and grateful for this opportunity to serve Service-Disabled Veteran and Veteran entrepreneurs while improving our Nation's economic well being. We believe that by assisting Veterans in starting and expanding businesses we will also go a long way toward reducing Veteran unemployment and solving the

REV_00145417

underemployment problem of the Veteran community. Again, thank you, Mr. Chairman, for inviting us to testify before your subcommittee.

Major General Charles R. Henry (USA. Ret.)
President and CEO
National Veterans Business Development Corporation
"The Veterans Corporation"
www.Veteranscorp.org
1800 Diagonal Road, Suite 230
Alexandria, Virginia 22314-2850
(703) 299 4390

From 1988 to 1992 General Henry was the Pentagon's top business general in overseeing billions of dollars of contract management activity. In 1990 he took command of the Defense Contract Management Command, which consolidated the contract management activities of the four branches of the military and streamlined procurement procedures, saving millions of dollars.

Recipient of the Defense Distinguished Service Medal, he is also a two time recipient of the Army Distinguished Service Medal and has also received the Defense Superior Service Medal, Legion of Merit and a Bronze Star. He is a Vietnam Veteran with 32 years of military service.

In private industry, General Henry has spent nine years in senior management positions. His most recent position was as Chairman and Chief Executive Officer of LFR Inc., a company specializing in environmental remediation. He has been a leading innovator in the private sector as well, serving as President, then Chairman and CEO, of LFR Group; President, Allied Research Corporation Services, and as a Senior Consultant to Science Applications International Corporation.

General Henry currently serves on the board of directors for the Procurement Roundtable, the Tennessee Apparel Corporation, Hunter Manufacturing Company, C.E. Gillman Company, and is Co-Chairman of the Department of Defense Clothing and Textile Board.

He is a graduate of the Army War College, the U.S. Army Command and General Staff College and Middle Tennessee State In addition to his distinguished military and business careers, he is the author of *A General's Insights into Leadership and Management*, published in 1996.

REV_00145418

Committee on Small Business

Witness Disclosure requirement – "Truth in Testimony"

Required by House Rule XI, Clause 2(g)

Your Name:		
1. Are you testifying on behalf of a Federal, State, or Local Government entity?	Yes	No
2. Are you testifying on behalf of an entity other than a Government entity?	Yes	No
3. Please list any Federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999:		
4. Other than yourself, please list what entity or entities you are representing:		
5. If your answer to question number 2 is yes, please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question number 4:		
6. If your answer to question number 2 is yes, do any of the entities disclosed in question number 4 have parent organizations, subsidiaries, or partnerships whom you are not representing?		
7. If the answer to question number 2 is yes, please list any Federal grants or contracts (including subgrants or subcontracts) which were received by the entities listed under question 4 since October 1, 1999, which exceed 10% of the entities revenue in the year received, including the source and amount of each grant or contract to be listed:		
Signature:_____ Date:_____		

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From:	CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To:	Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
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Charles Stevenson	Abbot	Deputy Assistant to the President and Deputy Director, Office of Homeland Security	10/29/2001
Andrea	Ball	Deputy Assistant to the President and Chief of Staff to the First Lady	1/20/2001
Ruben	Barrales	Deputy Assistant to the President and Director, Office of Intergovernmental Affairs	3/5/2001
Dan	Bartlett	Deputy Assistant to the President and Deputy to the Counselor, Communications	1/20/2001
Brad	Blakeman	Deputy Assistant to the President and Director of Scheduling	1/20/2001
Stuart	Bowen	Deputy Assistant to the President and Deputy Staff Secretary	7/16/2001
Wayne A.	Downing	Deputy Assistant to the President for Combating Terrorism [NSC]	9/28/2001
Gary	Edson	Deputy Assistant to the President for International Economic Affairs and Deputy National Security Advisor	2/26/2001
Tucker	Eskew	Deputy Assistant to the President and Director of Media Affairs	1/20/2001
Tim	Flanigan	Deputy Assistant to the President and Deputy Counsel to the President	1/20/2001
Linda	Gambatesa	Deputy Assistant to the President and Director, Oval Office Operations	1/20/2001
Mike	Gerson	Deputy Assistant to the President and Director of Speechwriting	1/20/2001
H. Chris	Henick	Deputy Assistant to the President and Deputy Senior Advisor	1/20/2001
David	Hobbs	Deputy Assistant to the President for Legislative Affairs (House)	1/20/2001
Mark Andrew	Holman	Deputy Assistant to the President for Office of Homeland Security	10/08/2001
John W.	Howard	Deputy Assistant to the President and	1/20/2001

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		Deputy Director of Legislative Affairs	
Edward	Ingle	Deputy Assistant to the President, Deputy Cabinet Secretary	1/20/2001
Hector F.	Irastorza, Jr.	Deputy Assistant to the President for Management and Administration	1/20/2001
Barry	Jackson	Deputy Assistant to the President and Director, Office of Strategic Initiatives	3/26/2001
Jay	Lefkowitz	Deputy Assistant to the President for Domestic Policy	2/11/2002
Scott	McClellan	Deputy Assistant to the President and Principal Deputy Press Secretary	1/20/2001
Ken	Mehlman	Deputy Assistant to the President and Director of Political Affairs	1/20/2001
Brian	Montgomery	Deputy Assistant to the President and Director of Advance	1/20/2001
Ziad	Ojakli	Deputy Assistant to the President for Legislative Affairs (Senate)	1/20/2001
Anna	Perez	Deputy Assistant to the President and Counselor to the National Security Advisor for Communications [NSC]	8/20/2001
Mark	Rosenker	Deputy Assistant to the President and Director of the White House Military Office	2/1/2001
D. Marc	Sumerlin	Deputy Assistant to the President for Economic Policy and Deputy Director, National Economic Council	1/20/2001
Harry James	Towey	Deputy Assistant to the President and Director, Office of Faith-Based and Community Initiatives	2/1/2002
Lezlee	Westine	Deputy Assistant to the President and Director of Public Liaison	1/20/2001

REV_00145432

Special Assistants to the President

First Name	*Last Name*	*Title*	*Effective Date*
Elliott	Abrams	Special Assistant to the President and Senior Director for Democracy, Human Rights and International Operations [NSC]	6/25/2001
Cathy	Alix	Special Assistant to the President for Management and Administration	1/17/2002
G. Michael	Andricos	Special Assistant to the President and Senior Director, Legislative Affairs [NSC]	2/26/2001
Jacqueline G.	Arends	Special Assistant to the President and Associate Director for Presidential Personnel	12/3/2001
Chris	Bartolomucci	Special Assistant to the President and Associate Counsel to the President	1/20/2001
John B.	Bellinger, III	Senior Associate Counsel to the President and NSC Legal Advisor [NSC]	2/12/2001
Rebecca	Beynon	Special Assistant to the President for Administrative Reforms	4/08/2002
Stephen E.	Biegun	Executive Secretary [NSC]	
Brad	Berenson	Associate Counsel to the President	1/20/2001
Charles	Blahous	Special Assistant to the President for Economic Policy [OPD]	2/26/2001
W. Kirk	Blalock	Special Assistant to the President and Deputy Director of Public Liaison for Presidential Personnel	2/12/2001
Carlos	Bonilla	Special Assistant to the President for Economic Policy [OPD]	1/23/2001
Rachel	Brand	Associate Counsel to the President	6/13/2001
Claire	Buchan	Special Assistant to the President and Deputy Press Secretary	1/20/2001
Carl	Buchholz	Special Assistant to the President and Executive Secretary for Office of Office of Homeland Security	10/08/2001
Katja	Bullock	Special Assistant to the President and	11/27/2001

REV_00145433

		Associate Director for Presidential Personnel	
Kirsten	Chadwick	Special Assistant to the President for Legislative Affairs (House)	1/20/2001
Barbara	Chaffee	Special Assistant to the President for Public Liaison, Office of Homeland Security	10/08/2001
Ronald	Christie	Special Assistant to the President and Director Of Policy Initiatives and Governmental Affairs [OPD]	2/24/2002
Christine	Ciccone	Special Assistant to the President for Legislative Affairs (Senate)	1/22/2001
Frank	Cilluffo	Special Assistant to the President for External Affairs, Office of Homeland Security	11/19/2001
Alicia	Clark	Special Assistant to the President and Deputy Director of Strategic Initiatives	1/20/2001
Richard A.	Clarke	Special Assistant to the President and National Coordinator, Transitional Threats [NSC]	Carry-Over
John A.	Cloud	Special Assistant to the President and Senior Director, International Economic Affairs [NSC]	4/30/2001
Brian	Conklin	Special Assistant to the President for Legislative Affairs (House)	1/20/2001
Charles F.	Connor	Special Assistant to the President and Senior Director for Agricultural Trade and Food Assistance	11/05/2001
Rebecca A.	Contreras	Special Assistant to the President and Associate Director for Presidential Personnel	11/27/2001
Steven	Cooper	Special Assistant to the President and Senior Director for Research and Development	03/06/2002
John B.	Craig	Special Assistant to the President for Combating Terrorism [NSC]	10/22/2001
Nicolle	Devenish	Special Assistant to the President and Deputy Director of Media Affairs	6/03/2001
Elizabeth S.	Dougherty	Special Assistant to the President for Domestic Policy [OPD]	5/21/2001
Courtney	Elwood	Associate Counsel to the President	1/20/2001

REV_00145434

Nanette	Everson	Associate Counsel to the President	4/15/2002
Cathy	Fenton	Special Assistant to the President and White House Social Secretary	1/20/2001
Noel	Francisco	Associate Counsel to the President	6/13/2001
Jendayi E.	Frazer	Special Assistant to the President and Senior Director, African Affairs [NSC]	1/20/2001
Daniel	Fried	Special Assistant to the President and Senior Director, European and Eurasian Affairs [NSC]	1/23/2001
Kelly	Gannon	Special Assistant to the President And Deputy Director of Advance for Press	8/6/2001
Stephen	Garrison	Special Assistant to the President and Director of Policy Development	2/7/2002
Dylan	Glenn	Special Assistant to the President for Economic Policy [OPD]	1/23/2001
Tim	Goeglein	Special Assistant to the President and Deputy Director of Public Liaison	1/20/2001
Israel	Hernandez	Special Assistant to the President and Assistant to the Senior Advisor	1/20/2001
Robert G.	Joseph	Special Assistant to the President and Senior Director, Proliferation Strategy, Counterproliferation and Homeland Defense [NSC]	1/23/2001
Joel	Kaplan	Special Assistant to the President Office of the Chief of Staff	1/22/2002
Brett	Kavanaugh	Associate Counsel to the President	1/20/2001
Daniel	Keniry	Special Assistant to the President for Legislative Affairs (House)	1/21/2001
Zalmay M.	Khalilizad	Special Assistant to the President and Senior Director for the Gulf, Southwest Asia and other Regional Issues [NSC]	5/7/2001
Matthew	Kirk	Special Assistant to the President for Legislative Affairs (Senate)	5/7/2001
David J	Kuo	Special Assistant to the President and Deputy Director	7/25/2001

REV_00145435

Phillip	Larsen	Special Assistant to the President and Director of Office of Administration	1/20/2001
Laura	Lawlor	Special Assistant to the President and Director of Cabinet Affairs	10/15/2001
Dirksen	Lehman	Special Assistant to the President for Legislative Affairs (Senate)	2/5/2001
Nelson	Litterst	Special Assistant to the President for Legislative Affairs (House)	1/20/2001
John F.	Maisto	Special Assistant to the President and Senior Director, Western Hemisphere Affairs [NSC]	1/23/2001
K. Philippa	Malmgren	Special Assistant to the President for Economic Policy	2/20/2001
Robert H.	Marsh	Special Assistant to the President for Legislative Affairs (House)	5/7/2001
Bob	McNally	Special Assistant to the President for Economic Policy [OPD]	1/20/2001
Edward	McNally	Senior Associate Counsel to the President and General Counsel, Office of Homeland Security	11/20/2001
Franklin C.	Miller	Special Assistant to the President and Senior Director, Defense Policy and Arms Control [NSC]	1/23/2001
Edmund	Moy	Special Assistant to the President and Associate Director for Presidential Personnel	1/31/2001
Susan Kae	Neely	Special Assistant to the President and Director of Communications for Office of Homeland Security	11/5/2001
Jennifer	Newstead	Associate Counsel to the President	5/1/2002
Anne	Phelps	Special Assistant to the President for Domestic Policy (Health) [OPD]	1/20/2001
Dina	Powell	Special Assistant to the President and Associate Director for Presidential Personnel	1/31/2001
D. Craig	Ray	Special Assistant to the President and Deputy Director of Advance for Event Coordination	6/6/2001
Kyle	Sampson	Associate Counsel to the President	10/1/2001

REV_00145436

Desiree	Sayle	Special Assistant to the President and Director of Presidential Correspondence	1/10/2002
Diana	Schacht	Special Assistant to the President for Justice Policy [OPD]	3/5/2001
Matt	Schlapp	Special Assistant to the President and Deputy Director of Politicial Affairs	1/20/2001
Matthew	Scully	Special Assistant to the President and Senior Speechwriter to the President	1/20/2001
Scott	Sforza	Special Assistant to the President and Deputy Director of Communications for Production	1/20/2001
Joseph	Shattan	Special Assistant to the President and Speechwriter	3/18/2002
Kristen	Silverberg	Special Assistant to the President Office of the Chief of Staff	1/22/2002
Deborah A.	Spagnoli	Special Assistant to the President for Intergovernmental Affairs	3/13/2001
Mary K.	Sturtevant	Special Assistant to the President and Senior Director, Intelligence Programs [NSC]	7/9/2001
Aquiles	Suarez	Special Assistant to the President for Domestic Policy [OPD]	5/7/2001
Helgi	Walker	Associate Counsel to the President	1/20/2001
Peter	Wehner	Special Assistant to the President and Deputy Director of Speechwriting	1/29/2001
James	Wilkinson	Special Assistant to the President and Deputy Director of Communications for Planning	1/20/2001
Heather	Wingate	Special Assistant to the President for Legislative Affairs	7/29/2001

White House Fellows

First Name	*Last Name*	*Title*
John	Fenzel	White House Fellow Office of Homeland Security

REV_00145437

Council for Environmental Quality

First Name	*Last Name*	*Title*
James L.	Connaughton	Chairman
Philip A.	Cooney	Chief Of Staff
David R.	Anderson	Associate Director
Ellen M.	Athas	Associate Director
Kameran L.	Bailey	Special Assistant
Dinah	Bear	General Counsel
Roberta L.	Conde	Executive Assistant To The Chairman
Horst G.	Greczmiel	Associate Director
John L.	Howard Jr,	Federal Environmental Executive
William L.	Leary	Associate Director
William J.	Perhach	Paralegal Specialist
Virginia G.	Stephens	Associate Director
Angela R.	Stewart	Administrative Officer
Elizabeth	Stolpe	Associate Director
Samuel	Thernstrom	Associate Director
Natalie Lane	Towcimak	Research Assistant
Alan	Hecht	Associate Director

REV_00145438

United States Trade Representative

First Name	*Last Name*	*Title*
Robert B.	Zoellick	Ambassador
Jon M.	Huntsman, Jr.	Ambassador, Deputy
Peter F.	Allgeier	Ambassador, Deputy
Linnet F.	Deily	Ambassador,
Allen	Johnson	Ambassador, Chief Agricultural Negotiator
M.B.	Oglesby, Jr.	Chief of Staff
Josette	Shiner	Associate USTR for Policy and Communications
Peter B.	Davidson	General Counsel

Council of Economic Advisors

First Name	*Last Name*	*Title*
Diana	Furchtgott-Roth	Chief of Staff
Douglas	Holtz-Eakin	Chief Economist
Judson	Jaffe	Staff Economist
Mark	McClellan	Member
Randall	Kroszner	Member
Robert G.	Hubbard	Chairman
Wallace	Mullin	Senior Economist

REV_00145439

Office of Management and Budget

First Name	*Last Name*	*Title*
Alan	Rhinesmith	Deputy Associate Director,
Angela	Styles	Administrator, Office of Federal Procurement Policy
Austin	Smythe	Executive Associate Director
Barry	Clendenin	Deputy Associate Director, Health
Eric	Pelletier	Associate Director, Legislative Affairs
James	Capretta	Associate Director, Human Resource Programs
Kathy	Peroff	Deputy Associate Director, National Security
Ken	Schwartz	Deputy Associate Director, Transportation, Commerce, Justice, & Services
Larry	Matlack	Deputy Associate Director, Education and Human Resources
Marcus	Peacock	Associate Director, Natural Resource Programs
Mark	Everson	Controller
Mark	Forman	Associate Director for Information Technology and E-Govt
Mark	Weatherly	Deputy Associate Director, Energy and Science
Mitchell E.	Daniels, Jr.	Director
Nancy	Dorn	Deputy Director
Richard	Emery	Assistant Director, Budget Review
Robert	Fairweather	Deputy Associate Director, Natural Resources
Robin	Cleveland	Associate Director, National Security Programs
Rodney	Bent	Deputy Associate Director, International Affairs
Steve	McMillin	Associate Director, General Government Programs
Trent	Duffy	Associate Director, Communications
John D.	Graham	Administrator, Office of Information & Regulatory Affairs

REV_00145440

Office of the Vice President

First Name	*Last Name*	*Title*
David S	Addington	General Counsel
Cecelia	Boyer	Director of Correspondence
Jonathan	Burks	Deputy Staff Secretary
Cesar	Conda	Assistant to the Vice President for Domestic Policy
Eric	Edelman	Principal Deputy Assistant to the Vice President for National Security
Jennifer	Field	Special Assistant
Debra	Heiden	Executive Assistant to the Vice President
Elizabeth	Kleppe	Deputy Assistant to the Vice President for Scheduling
Karen	Knutson	Deputy Executive Director of the National Energy Policy Development Group
Catherine	Martin	Deputy Assistant to the Vice President for Public Affairs
Jennifer	Mayfield	Executive Assistant
Brian	McCormack	Personal Aide to the Vice President
C. Dean	McGrath	Deputy Chief of Staff to the Vice President
Claire	O'Donnell	Deputy Assistant to the Vice President for Operations
Neil	Patel	Staff Secretary
Samantha	Ravich	Special Advisor, National Security
Nina	Rees	Deputy Assistant to the Vice President for Domestic Policy
Stephen	Ruhlen	Deputy Assistant to the Vice President for Legislative Affairs
Candida	Wolff	Assistant to the Vice President for Legislative Affairs
Stephen	Yates	Deputy Assistant to the Vice President for National Security Affairs

REV_00145441

National Security Council

First Name	*Last Name*	*Title*
Harry K	Thomas	Director, Asian Affairs
Laurent D.	Charbonnet	Director, Asian Affairs

REV_00145442

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John F. Wood/OMB/EOP@EOP [OMB] <John F. Wood>
Sent: 5/15/2002 4:21:31 PM
Subject: : Re: Revised Victims of Int'l Terror letter
Attachments: P_MN4F7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAY-2002 20:21:31.00
SUBJECT:: Re: Revised Victims of Int'l Terror letter
TO:John F. Wood (CN=John F. Wood/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

status?

John F. Wood
05/14/2002 09:35:18 AM
Record Type: Record

To: Nancy Dorn/OMB/EOP@EOP, Philip J. Perry/OMB/EOP@EOP, Kristen Silverberg/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Revised Victims of Int'l Terror letter

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MN4F7003_WHO.TXT_1>

Dear Congressman ____:

Section 616 of Public Law 107-77 directs the President to submit a legislative proposal to establish "a comprehensive program to ensure fair, equitable, and prompt compensation for all United States victims of international terrorism" that occurred on or after November 1, 1979. While Section 616 has no legal effect under Article II, Section 3 of the Constitution, I am writing to offer the Administration's comments on the bills pending in Congress that would provide compensation to victims of international terrorism.

There are several bills pending in Congress to provide relief for different categories of terrorism victims. Some of these proposals are modeled after the September 11th Victim Compensation Fund. The Administration has serious concerns with such an approach, which was based upon the unique circumstances of the September 11th terrorist attacks. The Administration believes that, at a minimum, the following principles should guide consideration of any proposal to compensate victims of international terrorism.

First, a program funded by the taxpayers should provide the same benefits to those with low incomes that it provides to victims of greater means. While plaintiffs in tort suits may receive differing awards based upon their lost income, the federal government generally should not draw such distinctions in a victims compensation program. Rather, such government compensation should be without regard to the victim's income status.

Second, victims should receive compensation as quickly as possible. We should not create a lengthy, individualized administrative process that will prevent victims from quickly receiving assistance and that will force victims to relive their tragedies. The need for a prompt process for compensating victims further weighs against providing different amounts to different victims based upon their individualized circumstances.

Third, a program funded by taxpayers should recognize the importance of private insurance and other private financial measures in protecting victims' families against financial loss. The government program should not be designed to be the primary means of compensating victims and victims' families for their losses. Families of Americans who die as a result of crimes and other tragedies ordinarily do not receive compensation from the federal government. The proposal to compensate victims of international terror is based upon the premise that international terrorism is different, in part because of the difficulty of recovering compensation from the wrongdoers. That should not, however, change the fact that life insurance, savings, and other private financial measures are the primary means by which Americans protect themselves against unexpected financial hardship. Any compensation amount should be set with that premise in mind.

Fourth, the government program for terrorism victims should provide compensation on par with that provided other victims for whom the government provides compensation. It would be difficult to justify giving more money to civilian victims of international terrorism than the government gives to police officers and firefighters killed in the line of duty. Therefore, a victims of international terror program should not exceed the federal government's no-fault, $250,000 benefit for public safety officers killed in the line of duty. See 42 U.S.C. 3796.

Fifth, the victims of international terrorism program should preserve the President's ability to conduct foreign policy. Therefore, the Administration opposes the use of blocked assets to fund such compensation. Funding for any proposal to compensate victims of international terror should instead come from the International Affairs 150 Account. We are not, however, opposed to allowing victims and their families to sue those responsible either for intentional acts or for other wrongful behavior that caused injury. If an individual actually receives compensation from the defendants in such a suit, the government should have a right of subrogation in order to avoid double recovery at the expense of taxpayers.

We look forward to working with the Congress on this issue.

Very truly yours,

From:	CN=Edward McNally/OU=WHO/O=EOP [WHO]
To:	John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Magda E. Angulo/WHO /EOP@EOP [WHO] <Magda E. Angulo>
CC:	brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lucy g. clark/who/eop@eop [WHO] <lucy g. clark>
Sent:	5/16/2002 5:18:42 AM
Subject:	: Re: PRA and CIA Computers at Nebraska Ave.

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-MAY-2002 09:18:42.00
SUBJECT:: Re: PRA and CIA Computers at Nebraska Ave.
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Magda E. Angulo ( CN=Magda E. Angulo/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:lucy g. clark ( CN=lucy g. clark/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Magda -- Pls. schedule a meeting, next week is fine, with Brett, John and
Lucy. Probably in Bellinger's office. Thanks -- Ed
```

```
John B. Bellinger
05/15/2002 09:43:53 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
Subject: Re: PRA and CIA Computers at Nebraska Ave.

This is a complicated issue that we have grappled with at the NSC for some
time, without clear resolution. We should get together and talk.
```

From: CN=Larry E. Handeland/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2002 4:48:30 AM
Subject: : Re: Records Management

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Larry E. Handeland ( CN=Larry E. Handeland/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME:16-MAY-2002 08:48:30.00
SUBJECT:: Re: Records Management
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thanks for your help.
```

84 Va. L. Rev. 1335, Virginia Law Review, October 1998:

COLLEGIALITY AND DECISION MAKING ON THE D.C. CIRCUIT

By Harry T. Edwards

* Chief Judge, United States Court of Appeals for the District of Columbia Circuit. My daily interactions with my colleagues on the United States Court of Appeals for the D.C. Circuit offered much food for thought as I prepared this Essay. I would like to acknowledge and offer special thanks to a few people who were singularly helpful to me in this project: Noah R. Feldman, A.B. Harvard University 1992, D.Phil. Oxford University 1994, J.D. Yale University 1997, worked tirelessly with me on the research and drafting of the Essay; Paras P. Mehta, A.B. Harvard University 1994, Ph.D. Candidate, Massachusetts Institute of Technology, gave invaluable assistance in critiquing the methodologies and data underlying the studies at issue in this Essay; Susan L. Bloch, a preeminent Professor of Law at Georgetown Law Center, who, in years past, has been a law clerk at both the D.C. Circuit and the United States Supreme Court, read and commented on drafts of the Essay; and Pamela E. Matthews, Dean of Business, Science, Mathematics, and Technology, Montgomery College, Germantown, Maryland, a long-time, distinguished mathematics professor and national consultant on mathematics education, lent an important perspective in reviewing and commenting on drafts of the Essay.

SUMMARY:
... This Essay responds to pieces recently published in the Virginia Law Review and Yale Law Journal, and it aims to debunk the myth that ideology is a principal determinant in decision making on the United States Court of Appeals for the D.C. Circuit. ... The one thing that is absolutely clear is that Revesz has no basis to generalize from his narrowly focused data to conclude that ideology significantly influences judicial decision making on the D.C. Circuit. ... This problem is most extreme in any sort of univariate analysis: such an analysis, as its name indicates, tests for only one variable, and therefore always allows the possibility that one or more of the multitude of other potentially relevant variables, because of its correlation with an included variable, explains the outcome better than does the variable tested. ... If the judge is likely to vote differently in the presence of one judge of the same presumed ideological predilections as he than he would in the presence of two such judges, says Revesz, deliberation is at work. ... Cross and Tiller used the same (problematic) measure of ideology used by Revesz: they reckoned a challenge to be "liberal" if brought by a non-governmental public interest organization, and "conservative" if brought by an industry group; and they assumed a judge's ideology matched the party of the President who appointed the judge. ...

TEXT:
[*1335]

Preface

This Essay responds to pieces recently published in the Virginia Law Review and Yale Law Journal, and it aims to debunk the myth that ideology is a principal determinant in decision making on the United States Court of Appeals for the D.C. Circuit. My purpose in writing is to refute the heedless observations of academic scholars who misconstrue and misunderstand the work of the judges of the D.C. Circuit. I will show that, even when one looks carefully at the so-called "empirical studies" that purport to analyze the work of my Circuit, it is clear that, in most cases, judicial decision making is a principled enterprise that is greatly facilitated by collegiality among judges.

Introduction

This law review recently published an article by Professor Richard Revesz, entitled Environmental Regulation, Ideology, and the D.C. [*1336] Circuit. 1 Reporting on this article for a legal community that regularly appears before the D.C. Circuit, the Legal Times offered a summary which closely paralleled the article's own introduction:

First, [Revesz] found that ideology "significantly influences" judicial decision making on the D.C. Circuit; second, that ideological voting is more prevalent in cases where purely procedural challenges are raised; and lastly, that a judge's vote is greatly affected by the party affiliation of the other judges sitting on the panel. (In the study, judges were assigned the party affiliation of the president who appointed them.) 2

In the contemporary climate of skepticism towards courts, it is unsurprising that Revesz's article was considered newsworthy. Indeed, the title of Revesz's article all but invites the casual reader to conclude that judges on the D.C. Circuit are driven by ideology. Closer examination of Revesz's article, however, calls into question the generalizing tone of the summary which reached the general public.

In my view, none of the three broadly-phrased conclusions of the study are borne out by the study's methodology and findings. Revesz's article presents some empirical data on a very narrow set of judicial dispositions in connection with review of a limited set of EPA actions in the D.C. Circuit. Because of the narrow focus of his study and the study's highly suspect methodology, the conclusions that Revesz offers are extremely questionable. His data surely do not convincingly show that "ideology" broadly influences decision making. Rather, as I will demonstrate, the Revesz data are consistent with the view that collegiality is alive and well in judicial decision making on the D.C. Circuit.

The Revesz article is so narrow in scope that it is relatively innocuous, at least once it is properly understood for what it does and does not show. The same cannot be said, however, about an even more recent essay, published in the Yale Law Journal by Professors Frank B. Cross and Emerson H. Tiller, and tantalizingly entitled Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing [*1337] on the Federal Courts of Appeals. 3 Cross and Tiller collected data on D.C. Circuit cases that, in the authors' view, raised the possibility of judicial deference to the statutory interpretations of administrative agencies under Chevron U.S.A. v. Natural Resources

Defense Council. 4 They claim their data prove that D.C. Circuit judges ideologically "disobey" the Chevron doctrine when they can do so without provoking dissent, but "obey" the doctrine in contravention of their ideological biases when there is a risk that a member of a judicial panel might "blow the whistle" on their disobedience by dissenting. This essay is rather astonishing, on at least two counts: first, the authors' so-called "whistle blower" hypothesis is the product of sheer speculation, and finds no convincing support in their data; second, the hypothesis is absurd and would be understood as such by anyone familiar with the judges and operation of the D.C. Circuit.

The Revesz article and Cross and Tiller essay have the potential to engender serious confusion over judicial decision making. Even worse, these pieces may mislead the unsuspecting (who rely on secondhand reports of an article's contents) into thinking that judges are lawless in their decision making, influenced more by personal ideology than legal principles. Where the authors might have one believe that judging is entirely political, I maintain, and always have maintained, that appellate judging is fundamentally a principled practice. As one of the judges whose work is the subject of discussion in the articles, I believe that I have some standing to respond to the authors' assessments of our decision-making processes. Furthermore, I feel compelled to reply, because I cannot leave unaddressed suggestions that the members of my court are faithless to the public trust implicit in our judicial assignments.

In my view, there are four important points to be made about the Revesz article and Cross and Tiller essay:

First, Revesz's study design, accumulated data, and resulting thesis are very narrowly focused; thus, his analysis yields results of little value in the overall assessment of judicial decision making.

Second, what little can be gleaned from the two studies should be encouraging, not disheartening, to anyone interested in enlightened [*1338] judicial decision making. The studies' findings are consistent with the hypothesis that judges on the D.C. Circuit listen to the views of one another and engage sincerely and open-mindedly in the discursive process of collegial deliberation. In part because of shared legal principles, and in part because of deliberation, we almost always reach agreement on the correct judgment in a case. The most powerful proof of our collegiality is that, regardless of panel composition, very few dissenting opinions are written by the judges on the D.C. Circuit. Indeed, over each of the last three years, there have been dissents in fewer than 3% of all dispositions. 5 Unless judges are suppressing their true convictions about the application of legal principles - a notion I find laughable, for reasons I will explain - this means that most of the time the judges on the court are taking account of the views of one another and reaching consensus on the correct judgment in cases involving straightforward legal questions.

Third, both pieces and their research methodology raise grave doubts about the viability of a type of inquiry into judicial decision making that has come to be called "law and positive political theory." 6 In my view, it is essential that researchers look very carefully at the assumptions that frame the questions they ask and profoundly influence their interpretation of data. I have no doubt that careful statistical analysis, cautiously interpreted, may conceivably shed some light on

judicial decision making. But serious scholars seeking to analyze the work of the courts cannot simply ignore the internal experiences of judges as irrelevant or disingenuously expressed. The qualitative impressions of those engaged in judging must be thoughtfully considered as part of the equation. 7 This is especially true where the data are subject to multiple interpretations. A researcher who assumes the existence of ideological bias or strategic behavior may "find" that these exist, while a researcher who considers alternative explanations may find that what exists is rather different. I think that the Revesz and the Cross and Tiller studies [*1339] are flawed in their quantitative and qualitative analyses, and also in their interpretation of data. These flaws cause the authors to offer highly questionable "findings."

At this late date, it should be unremarkable in the social sciences to argue that drawing hypotheses and interpreting data must account to some degree for the internal experiences of the persons who are the subjects of a study. When assumptions of ideological bias or strategic behavior infect the reasoning of a study on judicial decision making, the legal community may derive the false impression that the legal process is bankrupt. Good descriptive academic work should strive to understand judicial decision making not in the worst possible light nor in the best possible light, but in the fairest and most accurate light. Giving the public a distorted view of judges' work is bad for the judiciary and the rule of law.

Finally, both pieces seem terribly naive in their understanding of the judges on the D.C. Circuit and how we perform our work. I will aim to correct these misimpressions.

I. Revesz's Article

A. Findings

I begin by summarizing briefly Professor Revesz's claims with regard to ideology and decision making on the D.C. Circuit. Following this summary, I discuss the flawed methodology that infects the Revesz study.

In order to construct a comparative analysis of periods of time during which the composition of the D.C. Circuit was fixed, Revesz looked at ten different, overlapping periods of varying length between 1970 and 1994. 8 Each period began and ended with a change in the court's composition. Revesz began by performing a univariate analysis on data from these ten periods in which he looked at the relationship between the party of the President who appointed a judge and that judge's votes on cases involving review of EPA actions. The first four periods stretched from 1970 to the late seventies or early eighties. 9 (I will call the time frame covered by these slices of time the "first era.") In these periods, Revesz found no [*1340] statistically significant outcomes of any importance. 10 I will not devote any time to discussing the first era.

The latter six periods each begin in 1986 or 1987 and end in 1993 or 1994 (the "second era"). 11 Each and every one of these six periods of the second era overlaps almost entirely with each of the others. For three of these periods, Revesz claims that Republican-appointed judges were more likely to vote to grant petitions in cases brought by industry groups seeking review of EPA actions than were Democrat-appointed judges. For all six periods, he claims that Democrat-appointed judges were more likely to vote to grant petitions for review brought by

environmentalist groups than were Republican-appointed judges. However, when Revesz omitted en banc cases, he could claim statistically significant results for only two of the six periods. 12

Analyzing the same six periods in the second era by individual judge, Revesz found that, generally, Republican-appointed judges voted more often than did Democrat-appointed judges to grant petitions for review cases brought by industry groups, whereas Democrat-appointed judges generally voted more often than did Republican-appointed judges to grant petitions for review brought by environmentalist groups. 13 Revesz found that not all the differences between individual judges appointed by different parties were statistically significant; however, he thought enough differences were significant to support the conclusion that Democrat-appointed judges and Republican-appointed judges differed in their tendencies in EPA challenges depending upon the identity of the challenger. This meager evidence apparently provides the basis for Revesz's broad claim that "ideology significantly influences judicial decisionmaking on the D.C. Circuit." 14

Revesz went on to compare petitions to review EPA statutory interpretations with cases involving claims that EPA action was arbitrary and capricious for want of reasoned decision making. He found that in statutory cases brought by industry groups, Republican-appointed judges' and Democrat-appointed judges' votes were [*1341] almost indistinguishable. 15 In statutory cases brought by environmentalist groups, the differences were not statistically significant except in one period. 16 Revesz thus concluded that "ideology" did not drive decision making in statutory cases. This evidence provides part of the basis for Revesz's claim that "ideological voting is more prevalent in cases, such as those raising procedural challenges, that are less likely to be reviewed by the United States Supreme Court." 17

Revesz then looked at what he calls "procedural challenges." These so-called "procedural challenges" exclude all statutory claims brought by petitioners under Chevron. Rather, "procedural challenges" involve only claims that an EPA action is arbitrary and capricious for lack of reasoned decision making. He found that in "procedural challenges" brought by environmentalist groups, there were no statistically significant differences between the votes of judges appointed by Presidents of the two parties. 18 In the context of "procedural challenges" brought by industry groups, however, Republican-appointed judges were significantly more likely to vote to grant the petition for review than were Democrat-appointed judges. 19

Finally, Revesz analyzed panel composition. During three of the six periods in the second era, he found evidence that a Democrat-appointed judge was more likely to vote to grant a petition for review in industry challenges when there was only one Democrat-appointed judge on the panel than when there were two; 20 and that in five of the six periods, a Democrat-appointed judge was more likely to grant a petition for review in industry challenges when there was only one Democrat-appointed judge on the panel than when there were two or three. 21

In the context of petitions for review filed by industry groups, Revesz claims statistically significant evidence that during one of the six periods, Republican-appointed judges were more likely to [*1342] grant a petition when there were two Republican-appointed judges rather than one; 22 in two periods, that Republican-appointed judges were more likely to grant a petition

when there were three Republican-appointed judges rather than two; 23 and that in four periods Republican-appointed judges were more likely to grant a petition when there were two or three Republican-appointed judges rather than one. 24 On the basis of this evidence, Revesz drew the conclusion that "a judge's vote (not just the panel outcome) is greatly affected by the identity of the other judges sitting on the panel; in fact, the party affiliation of the other judges on the panel has a greater bearing on a judge's vote than his or her own affiliation." 25

In the final analytic section of his article, Revesz performed a multivariate analysis on the data to isolate further the effects of panel composition. He produced what he saw to be meaningful results only with regard to petitions for review brought by industry groups, and only for two of ten periods, one in the first era and one in the second era. 26 In the one period in the second era, the results were "consistent with those of the univariate analysis." 27 When the multivariate analysis was done according to judge, it revealed, in the later period, that in cases involving petitions for review brought by industry groups and based on "procedural challenges" to EPA actions, panel composition had a significant effect. When two Democrat-appointed judges sat with one Republican appointee, the probability of granting a petition for review ranged from 2% to 13%; when two Republican-appointed judges sat with one Democrat appointee, the probability of granting a petition for review ranged from 54% to 89%. 28 This underscored what Revesz claims as [*1343] "perhaps the central insight" of his article: that "the effects of panel composition are far greater than the effects of individual ideology." 29

B. Methodology

1. Appropriateness of Sample

A serious preliminary error of omission pervades the Revesz study, and the Cross and Tiller study as well. Both pieces assume that the only data relevant to the work of the D.C. Circuit are to be found in the published opinions of the court. As anyone familiar with the work of the court knows, literally hundreds of cases are decided each year without published opinion. For example, in 1997, the court issued 1298 lead-case dispositions, but only 259 of those dispositions resulted in published opinions. 30 Likewise, in 1996, there were 1247 dispositions, but only 288 opinions, 31 while in 1995 there were 1226 dispositions and only 276 opinions were issued. 32

The two studies take no account whatsoever of cases in which no published opinion was issued, even though such cases include many different panels of the court deciding the kinds of EPA and Chevron cases that the studies respectively claim to be studying. The results in cases with no published opinion almost always produce unanimous judgments; so, of course, the omitted data would not be helpful to the theses propounded by Revesz and by Cross and Tiller. The omission of cases of which the court disposes without opinions therefore materially skews the sample of the "population" under analysis. The failure to consider these cases is a glaring mistake. 33

A second, equally obvious flaw in Revesz's study derives from the relationship between the nature of the sample and the conclusions drawn. Revesz loosely generalizes from his study of EPA cases to draw conclusions about the court's character in all circumstances. When he summarizes his conclusions, he does not say that ideology influences the D.C. Circuit's decision making in certain environmental cases, but rather that "ideology significantly influ [*1344]

ences judicial decisionmaking." 34 Similarly, he phrases his conclusions about the prevalence of ideological voting in cases involving so-called "procedural challenges" and about panel composition in general terms, with no reference to the EPA sample. 35

It is obvious, or should be, that one cannot generalize from a skewed and limited sample of EPA cases to conclusions about how the court behaves the rest of the time. There is absolutely no reason to believe, nor does Revesz ever suggest, that his limited sample of environmental cases is representative of the D.C. Circuit's jurisprudence generally. I almost hesitate to make such a self-evident point, but, by the overly broad and heedless language of his "conclusions," Revesz leaves me no choice.

These initial observations cast doubt on the appropriateness of the sample, and therefore on the conclusions of Revesz's study. Even taking Revesz's study on its own terms, however, one finds many flaws in the study's methodology and data interpretation. I turn to those problems now.

2. Scope of Sample

The first observation to be made regarding Revesz's methodology is that Revesz found no statistically significant results in many of the time periods and circumstances studied. Where he reached this outcome, however, he was never deterred: instead, he turned to other configurations of data, apparently in the hopes of producing more interesting results. In other words, this was hardly an experimental methodology designed to discover and report whatever outcome emerged; instead, it represented a winnowing process in which progressively fewer and fewer of the data were considered as the author set his sights on finding some set of data that might produce notable consequences. By the final multivariate analysis of the second era, which he claims produced a significant result, Revesz was studying just one of the six slices of data that covered that period. Within that slice, he was analyzing only the petitions for review brought by industry groups, and within that slice, only so-called "procedural challenges" to EPA action, and not statutory claims.

[*1345] This data selection process is methodologically strange, at best. The result of this winnowing is that we must ask why allegedly significant results were found only for these comparatively narrow circumstances, and what significance, if any, we should give to the other findings that did not produce such significance. 36 Put another way, one must wonder if the narrow set of cases for which Revesz reaches conclusions represents a statistically significant sample of all the ways Revesz might have cut the data. The one thing that is absolutely clear is that Revesz has no basis to generalize from his narrowly focused data to conclude that ideology significantly influences judicial decision making on the D.C. Circuit. His data do not come close to supporting such a claim.

3. Coding

Then there is the question of the methodology Revesz used to code and classify the cases that provided the raw data for the study. In the technical terminology of agency review, a panel of the court may grant or deny a petition for review of agency action. When it grants a petition for review, the panel may vacate the action under review. Such a vacation may 37 or may not 38 be

accompanied by an express remand to the agency for further action or explanation. While remand often includes vacation of an order, it need not do so. The court may remand without vacating an order, thus leaving the order in place pending further explanation. 39 The court may even dismiss the petition for review but still remand. 40

In other words, there is considerable nuance in the options available to the reviewing court. Revesz ignores this range of nuances, [*1346] possibly because taking account of their subtlety would have made it more difficult for him to draw sweeping conclusions.

Revesz also makes a technical error that may skew his data: he simply treats all remands as "reversals" of agency action, 41 ignoring the possibility of remand without vacation of the order, under which remand is explicitly not accompanied by reversal. Such remands without vacation do occur; and they do not fit Revesz's metric. The existence of such remands without vacation underscores the complexity of the review process, which is in some ways a dialogue between the court and the agency. It is precisely this complexity and dialogic character that Revesz misses by referring to case outcomes as "affirmances" or "reversals."

The most crucial piece of information for Revesz's method of analysis, also derived from the coding process, is whether the petition for review was brought by an industry group or an environmental group. Revesz uses this measure as a proxy for the sympathies of judges. Revesz too easily assumes that no cases are brought by environmental groups who actually are sympathetic to industry interests, and that no industry groups (for example, clean-up industry groups) ever support tougher environmental protection. But more crucially, nowhere does Revesz explain how he made this determination of who brought the challenge. The question is not without significance: frequently, multiple parties challenge an EPA action as both under-protective and over-protective of the environment, and such petitions are typically consolidated for disposition by the court. We cannot know how often such situations arose in the data set, or what Revesz has done with these cases, because he does not tell us.

Finally, there is the important distinction Revesz makes between judicial review of "statutory" cases and "procedural challenges," the criteria of which he also leaves unstated. It is frequently the case that petitioners raise both types of challenges to EPA actions. In other words, petitioners often claim that an EPA action both violates a statutory command and is arbitrary and capricious. The court may grant or deny such a double-barreled petition on either or both grounds. Revesz nowhere explains how he has dealt with such combined challenges. A reader would want to know about this and the other barriers to easy coding in any case. In the Revesz [*1347] study, these matters seem especially important, because it appears that the coders knew what hypotheses were being put to the test. Without an explanation of the coding process, a reader is justified in wondering about bias entering the data sample.

4.

"Ideology"

As Revesz's title suggests, "ideology" is a major component of his study. Here choice of language matters tremendously. The loaded word "ideology" makes headlines and attracts

attention; it is therefore very striking that Revesz never bothers to proffer a definition of this all-important term. Rather, he explains that he will use as a proxy for ideology "the views generally held by the party of the appointing President." 42 This approach raises a number of serious problems.

The threshold problem is that Revesz does not provide an explanation of the usefulness of the proxy of the party of the appointing President as a basis for judicial ideology. He simply cites to a variety of a studies which he himself characterizes as methodologically "suspect." 43 Rather obviously, the categories "Democrat" and "Republican" do not necessarily match sympathy towards greater or lesser degrees of environmental protection. The policies of individual Presidents - to say nothing of judges - may diverge greatly on such a complex topic. Without providing some statistical measure of the significance of the asserted correlation between political party and environmental policy, it is suspect for Revesz to assume that his ideological proxy is meaningful.

Beyond his one self-undercutting citation, Revesz merely asserts, without providing any proof, that "given the D.C. Circuit's high political profile,...this proxy is likely to be fairly good." 44 His support for the alleged high political profile of the D.C. Circuit turns out to be that two judges who sat on the court in the 1980s and 1990s had served in Congress, and three others had served in appointed positions in the Justice Department. 45 Revesz makes no attempt to [*1348] compare the D.C. Circuit with other circuit courts, even anecdotally. Nor does he explain what is meant by a "high political profile."

But more importantly, Revesz never explains why the supposed high political profile of the D.C. Circuit, even if it were established fact, would ensure a close connection between the ideology of an appointing President and the ideology of an individual judge. The Supreme Court is often thought to have a "high political profile," despite the fact that none of the sitting Justices served in Congress and only two, Chief Justice Rehnquist and Justice Scalia, served in the Justice Department. 46 Yet, numerous Supreme Court Justices, past and present, have famously disappointed the parties of the Presidents who appointed them by their independence and unpredictability. This would seem to undermine the casual assertion that judges on high political profile courts vote or think in accordance with the preferences of the parties of the Presidents who appointed them.

Revesz adds to his abbreviated account of ideology the offhanded suggestion that D.C. Circuit judges might actually be more likely to vote in accordance with "ideology" than other appellate judges. That several sitting D.C. Circuit judges were nominated to the Supreme Court during the 1980s and 1990s, he suggests, might encourage D.C. Circuit judges to vote with "their party" to improve their chances of nomination. 47 This is a harsh indictment indeed, to suggest without good basis that judges ignore legal principles in favor of a "party line" in the hope of improving their chances for appointment to the Supreme Court.

Revesz's association of voting patterns with career advancement calls to mind the Admiral in H.M.S. Pinafore, himself an attorney elected to Parliament, who "always voted at [his] party's call, and...never thought of thinking for [himself] at all." 48 Gilbert and Sullivan's character did rather well for himself by this strategy. As the Admiral picturesquely put it: "[I] thought so little,

they rewarded me, by making me the ruler of the Queen's Navy." 49 But as the politicized confirmation battles of the last decade or so suggest, it is surely open to debate whether ideological voting [*1349] would today garner a judge the sort of support necessary for nomination and confirmation. A scholar who aspires to do social science research must do better than rely on armchair speculation, especially when the integrity of judges is being called into question and the cornerstone of his study is at stake.

The term "ideology" also requires scrutiny to the extent that it is typically thought to have negative connotations in the context of judging. It sounds like "ideology" to say that one person (or party) is pro-industry, and another pro-environment. But it may or may not be useful to employ the term "ideology" to capture a tendency for one person to look more skeptically than another on certain kinds of agency actions. Contrary to the popular perception - and to Revesz's terminology - the D.C. Circuit does not require certain agency outcomes or in any specific way set substantive agency policy. Instead, in cases challenging agency action as arbitrary and capricious (Revesz's so-called "procedural challenges"), the court serves only as a check on the reasonableness and procedural adequacy of agency action. When agency action in such cases is found to be unreasonable, the agency (not the court) reconsiders the disputed questions for ultimate resolution.

If one judge tends to be skeptical of policy that he believes disadvantages industry, and another skeptical of policy that she worries might harm the environment, the most either may do is vote to require the agency to take a second look at the reasoning by which it reached its decision. The judges cannot dictate a different policy outcome. Nor must they necessarily intend a different policy outcome when they vote to grant a petition for review. In other words, "ideology" conjures up an image of judges definitively deciding the course of future events by their decisions; but in the agency cases Revesz actually discusses, the policy determination always continues to rest with the agency. Accordingly, it is highly misleading for Revesz to speak uncritically of "ideology" as the variable he is studying.

In response to my criticism of his approach to the notion of ideology, Revesz might protest that the proof of his approach lies in the pudding: if he can show trends that differentiate between judges appointed by Democrats and those appointed by Republicans, he might argue, that should suffice to convince his readers that the ideology proxy with which he began is useful. But such a [*1350] response fails to take into account the potentially serious problems of incomplete specification that infect Revesz's approach.

5. Incomplete Specification of the Model

"Omitted variable bias" refers to the possibility that factors which are correlated with the variables studied, but are not included in a study's analytic framework, actually explain the data better than do the factors considered by the investigator. 50 A variable omitted from the study, which is itself related to one or more of the included variables, may explain the data better than the included variables. This problem is most extreme in any sort of univariate analysis: such an analysis, as its name indicates, tests for only one variable, and therefore always allows the possibility that one or more of the multitude of other potentially relevant variables, because of its

correlation with an included variable, explains the outcome better than does the variable tested. 51

Revesz acknowledges the danger of omitted variable bias in univariate analysis when it comes to studies performed by others. Indeed, he proclaims that his multivariate analysis "exposes an important methodological flaw in all prior work on judicial voting in multimember courts that sit on three-judge panels." 52 But this observation does not appear to affect Revesz's willingness to rely on his own univariate analysis as a basis for drawing definitive-sounding conclusions. Revesz performed his multivariate analysis on just one slice of the data for the second era, and only for industry challenges during that era. His broad conclusions, therefore, apparently, rest at least in some part on the univariate analysis, which he performed on all his data.

[*1351] The possibility of omitted variable bias clouds Revesz's univariate analysis, because there exists a meaningful possibility that omitted explanatory factors, correlated with but different from the party of the appointing President, produced the outcomes which Revesz found. Such factors might have included not just panel composition, which Revesz subsequently examined for one of the data slices, but also a panoply of others. A few obvious possibilities are the age of the judge, the judge's past job experience, and the judge's years of experience on the bench. Another factor could be the party of the President in office when the agency decision was made, hardly insignificant for a study that purports to address "ideological" bias along party lines. Any of these factors (and also the usual background demographic and socio-economic factors), individually or in interaction, might have explained the results of the univariate analysis more fully than the party of the President who appointed the judge. And of course we do not know whether panel composition affected the data, except for the one data slice in the second era on which Revesz ran the multivariate analysis.

A second type of incomplete specification also vexes Revesz's univariate analysis. Revesz failed to examine whether other variables, excluded from his analysis, but independent of the party of the appointing President, explain some significant portion of the variance in the judges' voting. 53 In other words, we do not know how powerful was the effect of the variable that Revesz studied, because we do not know whether other, independent variables were also at work. The possible alternative variables I mentioned above (job experience, years on the bench, etc.) might have no correlation to the party of the appointing President, but might still, on their own, explain a significant portion of variance. Univariate analysis never accounts for such independent excluded variables any more than it accounts for related omitted variables that might introduce bias.

The problem of omitted variable bias is similar for the multivariate analysis. A multivariate analysis is only as good as the variables it isolates and considers. Revesz did look at party, panel composition, and the basis for the petition for review in challenges [*1352] brought by industry groups in the lone period from the second era. He did not, however, consider any of the other possible variables mentioned above, nor did he attempt to consider a more refined version of his analysis of the types of arguments proffered (i.e., claims that the EPA failed to explain its reasoning, or failed to respond to comments, or provided a reason that was logically incoherent). Thus, any of these other variables might have explained the data better than the variables selected by Revesz.

Moreover, Revesz startlingly never explains why he selected only one slice of the second era data. Regardless of what the other slices of data reveal under multivariate analysis, normal scholarly procedure demands that the outcomes be reported. 54 By failing to provide the results of multivariate analysis for the rest of his data, Revesz calls into question his entire study. Revesz's silence about these data slices also means that his broad conclusion at the outset of the article must rest at least in part on the univariate analysis he performed on all the data. Because, as I have suggested, univariate analysis tells us little, it follows that Revesz's broad conclusions are unwarranted.

In short, the problems of incomplete specification, like other difficulties with Revesz's methodology, provide reason for great caution in considering Revesz's purported "findings." In the absence of a broader and more nuanced analysis on the basis of a greater number of variables, there is no legitimate way for Revesz to press the sweeping claims that he seeks to advance.

6. Deliberation and Dissent

As I mentioned earlier, Revesz claims that "perhaps the central insight" of his article is that panel composition has an effect "far greater" than that of "individual ideology." 55 Revesz proposes two possible hypotheses to explain this finding, which he calls the "deliberation hypothesis" and the "dissent hypothesis." The deliberation hypothesis, in his account, is the proposition that deliberation among panel members affects outcomes, so that the more judges [*1353] on the panel appointed by a President of one party, the more likely the panel is to reach the result consistent with that party's ideology. 56 The dissent hypothesis asserts that a judge sitting with two other judges appointed by a President of a different party from the President who appointed him "moderates his or her views in order to avoid having to write a dissent." 57

The way to distinguish these hypotheses, in Revesz's view, would be to determine whether a judge, sitting with one colleague appointed by a President of the same party as he, is likely to vote in the same way he would if both other panel members were appointed by a President of the same party as he. If the judge is likely to vote differently in the presence of one judge of the same presumed ideological predilections as he than he would in the presence of two such judges, says Revesz, deliberation is at work. If the judge is likely to vote the same way with one presumed like-minded colleague as with two, then judges are avoiding dissent. The reason Revesz gives is that under the dissent hypothesis, "the single judge of the one party is the only one to moderate his or her views." 58 Under the deliberation hypothesis, by contrast, the "majority" judges should be influenced by the "minority" judge. Revesz concludes that the data do not suffice to disentangle the two hypotheses. 59

Yet, it is worth noting in passing that the mechanism Revesz proposes for distinguishing the two hypotheses is uncertain at best. Revesz assumes that deliberation must operate in a linear fashion, so that the more judges who hold one view, the greater the effect of that view on the panel. But there is no reason to think that three judges who agree on an outcome should have an intensifying effect on one another as a result of deliberation. The three judges may share the same view that two of them would still share if the third panel member held a different view. If

this were so, then there would be no reason to expect that a judge sitting with one presumed like-minded colleague would vote differently than a judge sitting with two presumed like-minded colleagues.

[*1354] In other words, "deliberation" might easily include the tendency for two judges who see a case the same way to try to bring the third judge to see the case their way. The two judges might be less inclined to see the third judge's opinion as convincing. This would produce an effect in which deliberation led to more moderation of the views of a judge inclined to dissent than of a judge safely in the majority: but the effect would be an artifact of deliberation, not of fear of dissent. There would be no statistical difference between this kind of deliberation and what Revesz labels the "dissent hypothesis."

Revesz's odd assumption that "deliberation" must operate according to the abstract idea that every view influences a judge equally is of a piece with the rest of his analysis. By ignoring an obvious plausible explanation of decision-making behavior - that the view of the majority is more influential than that of the minority in the deliberative context - Revesz reveals his method of framing the most cynical hypothesis in pursuit of a significant-sounding formulation. Deliberation, as I will argue shortly, is indeed a regular feature of the D.C. Circuit's decision making. But it cannot easily be reduced to an abstract formula and it must be considered in its institutional framework. Before examining that framework, I turn to Cross and Tiller's study and its shortcomings.

II. Cross and Tiller's Essay

A. Findings

In their study, Professors Cross and Tiller examined panel composition in cases decided by the D.C. Circuit between 1991 and 1995 that cited Chevron U.S.A. v. Natural Resources Defense Council, 60 a landmark decision in the area of administrative law. Chevron holds that where Congress has explicitly or implicitly delegated authority to an agency to implement a statute, 61 the courts must defer to that agency's reasonable statutory interpretation. Cross and Tiller looked at all kinds of administrative cases, not only environmental cases; and their analysis was limited to statutory petitions for review, not the kind of Administrative Procedure Act "procedural challenges" on which Revesz focused. [*1355] Thus, the two studies are not precisely comparable. Cross and Tiller used the same (problematic) measure of ideology used by Revesz: they reckoned a challenge to be "liberal" if brought by a non-governmental public interest organization, and "conservative" if brought by an industry group; and they assumed a judge's ideology matched the party of the President who appointed the judge. 62

Cross and Tiller compared outcomes in cases where, on their definitions, two of the three judges had a presumed policy preference against deferring to the agency's statutory interpretation, with cases in which all three judges shared a presumed policy preference against deferring to the agency's statutory interpretation. They found that in the former case, the majority deferred 62% of the time, while in the latter case the majority deferred only 33% of the time. 63 In other words, Cross and Tiller concluded, the presence of a judge on the panel whose presumed

preference in favor of deference differed from the majority's presumed preference against deference led to a moderating effect.

It is important to note that this outcome is entirely consistent with the hypothesis that collegiality and deliberation, rather than the desire to avoid dissent, plays an important role in the possible moderating effects of panel composition. Cross and Tiller, however, did not conclude that a moderating collegial or deliberative effect existed. This was partly so because, when they examined the difference between panels where two judges had the assumed preference to defer with those where three judges had the presumed preference to defer, they found no statistically significant difference between them. 64 This led Cross and Tiller to conclude that the panels composed of two judges with a presumed preference not to defer were avoiding the "whistleblower effect" of dissent by the third judge with a presumed different preference. 65

B. Methodological Flaws

Cross and Tiller's study, like Revesz's analysis, suffers from the problem of omitted variable bias. 66 Any number of factors other [*1356] than the party of the appointing President and panel composition might account for some or all of their findings. This problem appears not to have troubled them at all.

The most glaring problem, however, with Cross and Tiller's study is that it fundamentally misunderstands the meaning of Chevron in a way that is fatal to the entire hypothesis. Cross and Tiller speak as if Chevron simply commands a court defer to an agency's statutory interpretation in all cases. They purport to acknowledge that Chevron "did not command mechanistic deference." 67 Yet, they go on to characterize the legal structure of Chevron as creating a "loophole" for courts seeking to avoid deference. 68 They refer throughout their article to deference as "obeying Chevron" and non-deference as "disobeying Chevron." This tell-tale formulation, around which their entire approach is based, makes it very clear that Cross and Tiller believe Chevron to require deference as a normative matter all of the time.

Of course, Chevron says no such thing. Where the terms of a statute are clear, a court must enforce the statute as written by Congress and not as otherwise construed by an agency. 69 Chevron only requires deference to an agency's interpretation of a statute where Congress has delegated authority 70 and the agency's interpretation is reasonable. 71 This is no "loophole," but the very logic of the doctrine itself. Thus, it is odd, if not bizarre, to argue as Cross and Tiller do that the majority of a panel "fears" that a dissent will somehow call attention to a violation of the doctrine. There is not, and can in principle never be, some a priori determination of whether deferring to or reversing agency interpretation under Chevron is "correct." It all depends on the specific agency interpretation. If agencies were to become more aggressive in statutory interpretation, more frequently going beyond the plain meaning of statutes or reasonableness, deference rates would presumably de [*1357] cline; if they were to become more cautious, deference rates might well rise.

Furthermore, the concept of "whistle blowing" makes little sense once one realizes that Chevron does not "command" any one outcome. There is nothing inherently troubling or problematic about a court's refusal to defer. The key point is that a court has no reason to hide its refusal to

defer, which is in any case by necessity explained in the opinion itself. And a petition to the D.C. Circuit for rehearing en banc or to the Supreme Court for certiorari would be certain to point to the lack of deference, dissent or no dissent.

Cross and Tiller's troubles do not end, however, with this embarrassingly basic legal error. Amazingly, they provide no account of why judges appointed by a President of a party different from the appointing party of the other two judges actually do dissent in Chevron cases. That is, they offer no explanation for the operation of the fear of dissent which supposedly motivates the majority to moderate its position in some cases. This failure to discuss dissents by minority-appointed judges in cases where the majority votes not to defer casts further doubt on the hypothesis.

Cross and Tiller might respond with the theoretical claim that such dissents are rare because the majority has successfully sought to avoid them. This potential response, which is not inherently illogical, still calls to my mind the New England eccentric who claims that by clapping his hands he can keep away the alligators. When his crusty Cape Cod neighbors ask him how he knows this technique works, he slyly responds: "Seen any alligators around here lately?" Of course, it could be true that the absence of dissent results from fear of dissent. But it is impossible to prove solely on the basis of the absence of dissent that fear of dissent motivates judges on the D.C. Circuit. There would have to be independent reasons to draw this conclusion. Given that Cross and Tiller provide no discussion of those cases where dissent actually does occur, and given the existence of good reasons to doubt that fear of dissent motivates suppression of dissent, it is difficult to take Cross and Tiller's argument seriously.

C. The Possibility of Collegiality

As I noted earlier, Cross and Tiller ignored the possibility of collegiality, apparently because they found no statistically signifi [*1358] cant difference between panels in which two or three judges had the preference to defer. However, this finding does not preclude the possibility of collegial deliberation.

In a Chevron case, once it has been established that Congress delegated authority and that the agency interpretation is not precluded by the statute's plain meaning, the agency's interpretation need only be reasonable to be upheld. So long as the agency has not done something egregious, there arises a kind of presumption in favor of the agency. In such a case, deference is the norm. And, indeed, Cross and Tiller found that deference was by far the most common result overall.

Thus, when Chevron deference is granted, the court need not spend as much time and energy explaining and justifying its conclusion as it must when it finds the agency's interpretation unreasonable. One would therefore expect that a judge with a presumed preference favoring non-deference (the unusual outcome) would not require as much convincing as would a judge whose presumed preference favored deference (the usual outcome). In other words, one would expect that the moderating effect of collegial deliberation in Chevron cases would manifest itself primarily (or only) where the minority judge would "prefer" to support deference. Sad to say, this explanation does not appear in Cross and Tiller's article. It would upset their own major

hypothesis, which is that panel majorities fear the "whistle blowing" of a spurned dissenting judge calling attention to their failure to "obey Chevron."

III. Collegiality

A. View from the Court

My own view is that if panel composition turns out to have a "moderating" effect on judges' voting behavior, this is a sign that panel members are behaving collegially: that is, they are discussing the case with each other and reaching a mutually acceptable judgment based on their shared sense of the proper outcome. In such a collegial deliberative process, we would expect to find that the presumed political views of different judges push the outcome towards the center of the spectrum (where there is a spectrum). The Revesz [*1359] and the Cross and Tiller studies are both consistent with the phenomenon of collegiality. 72

In explaining my view of collegiality I start with three observations drawn from many years of working and talking with my colleagues on the D.C. Circuit. First, judges on my court who are convinced that the law requires a certain result in a case do not decline to take a position simply to avoid registering a dissent. Second, judges who are in the majority and convinced that the law requires a certain result do not moderate their views because they fear that a dissent will somehow draw attention to flaws in the majority opinion. Finally, the judges on a panel usually agree on the correct result in a case. And when there is initially no clear view as to what the judgment should be in a particular case, we normally work hard in our deliberations to find the correct result.

The main reason I am astonished by the hypotheses advanced by scholars like Revesz and Cross and Tiller is that my colleagues and I dissent so rarely from the opinions of panels on which we sit. The statistics are stark: for the last three years (1995-1997), our overall dissent rate, covering all dispositions, has been between 2% and 3%. 73 In cases where the court published an opinion, the dissent rate was between 11% and 13%. 74 Of those dissents, between one-third and two-thirds involved cases in which the dissenter and the two judges in the majority were appointed by Presidents of different parties. 75 In aggregate, only 47 out of 94 dissents over the last three years followed presumed "party" lines. 76 Thus, even where there was dissent, the dissent only occurred along presumed "party" lines around half of the time. 77 This is, in my view, extremely strong prima facie evidence of consensus among judges about the correct judgment in a given case. It is very striking to me [*1360] that both Revesz and Cross and Tiller do not squarely confront this phenomenon, but instead seem determined to explain away this consistent pattern of consensus.

In Revesz's case, this evasive impulse leads to a strange contradiction. Revesz wants to maintain that the D.C. Circuit is ideologically driven. But at the very same time, he wants to explain away our consensus as the product of strategic thinking by observing that voting patterns seem to transcend what he calls ideology. This leaves him in the uncomfortable position of saying that the D.C. Circuit is both too ideological and somehow not ideological enough: at once impelled by dogmatic personal ideology and by strategic suppression of ideology in favor of avoiding dissent. We judges are damned if we do, damned if we don't. If we are individually consistent,

then we must be ideological. If we strive for consensus, we must be strategic. Cross and Tiller are not much better on this front. They claim that D.C. Circuit judges vote ideologically and also that D.C. Circuit judges strategically deviate from their ideological stance.

I am not sure how we judges could effectively hide our views, given our obligation to explain our reasons in a public way. More importantly, however, I can assert that we as judges have no desire at all to shield from the public the reasons for our published opinions. We are not afraid of open disagreement, as anyone who has ever attended one of our oral arguments could readily attest.

On the other hand, we do spend a great deal of time listening to each other's views and considering arguments each of us makes. This dynamic process of discussion and dialogue is what I have in mind when I speak of collegial deliberation. Deliberation is a necessary part of doing our jobs well. I take it that one reason we judge in randomly selected panels of three judges, rather than alone, is that the institution of the three-judge panel gives us a chance to consider our own initial positions in light of the considered views of other experienced judges. This opportunity for deliberation is particularly helpful, because the different areas of experience and expertise each judge brings to the table help the other judges as the panel encounters questions from the many areas of law we must consider.

It is inevitable and probably salutary that judges' different professional and life experiences have some bearing on how they initially [*1361] confront various problems that come before them. This natural variation, if I might call it that, provides a good justification for the constitutional practice of appointing judges by presidential nomination and Senate confirmation, as opposed to the selection of judges through more regularized bureaucratic means that is practiced in some other countries. A court composed of judges with a diversity of different professional experiences and perspectives makes for better-informed discussion. It provides for constant input from judges who have seen different kinds of problems in their pre-judicial careers, and indeed have sometimes seen the same problems from different angles. 78 We all take advantage of this diversity, not by deferring to one another inappropriately, but by listening to and taking seriously the views of our colleagues.

Let me add that collegiality may be necessary, but it is not automatic. There have been times, some of them well-publicized, during which the D.C. Circuit was not a model of collegiality and mutual respect. But together, we have consciously worked hard to remedy the occasional breaches in collegiality. By and large, I think we can say without boasting that we have done a pretty good job. We still disagree with one another, and on some issues we even disagree vociferously. This is entirely appropriate: collegiality does not mean universal consensus, nor should it. Collegiality means only that we discuss each other's views seriously and respectfully, and that we listen with open minds. That modest goal I think we achieve nearly all the time.

It follows from our practice of collegiality that our views are sometimes affected by our deliberations with the other judges. It should be obvious that this is a good thing, not a bad one. If we never affected one another, that would be a sign that our discourse was not productive, that we were not listening with open minds, or perhaps not listening to one another at all. This fact of collegiality, more than anything else, I think, explains that part of the evidence collected by

Revesz and by Cross and Tiller that shows what Revesz calls "panel composition effects." We judges often begin from different perspectives; we disagree, we deliberate, we listen, and sometimes we moderate or change our views. This should hardly [*1362] come as a surprise, but if it does surprise anyone, the surprise should be happy.

B.

"Procedural Challenges" in Administrative Cases Compared with More Traditional Legal Decisions

It is also worth noting that Revesz's article deals with a set of cases (i.e., the so-called "procedural challenges") where disagreement among judges differs in some important ways from disagreement on cases that raise issues relating to the meaning of statutory law. When the court reviews non-Chevron agency action under the Administrative Procedure Act (Revesz's so-called "procedural challenges"), we apply a statutorily mandated standard and we proceed by legal-style reasoning. But unlike what we do most of the time when we consider pure questions of law on appeal from the District Court or in agency Chevron cases, we do not try to figure out whether the agency has decided the question before it correctly in non-Chevron agency cases. Rather, our task consists of something less rule-bound: we usually must determine whether the agency explained its actions adequately, which is to say logically, clearly, and pursuant to prescribed procedures. This task inevitably requires us to make sense of policy matters that are often complex and on which reasonable minds can differ. After all, even where we find that an agency has acted unreasonably, we do not think that those who wrote the order were stupid or illogical people. We simply think their explanation to have been less than the law requires.

I say this by way of explaining that non-Chevron administrative review calls for more "judgment calls" than does review of questions of pure law. When we decide questions of law, we are tightly constrained by precedent and statutes and these constraints are far greater than the more limited analogical precedent we face in non-Chevron administrative contexts. These formal constraints are augmented by techniques of textual interpretation and legal reasoning that are broadly shared by the interpretive community of judges and legal practitioners. It is hardly surprising, therefore, that Revesz found that ideology did not drive decision making in statutory cases. Given this finding, Revesz was largely stuck with having to study only so-called "procedural challenges."

In administrative cases involving so-called "procedural challenges," the differing backgrounds and attitudes of judges are likely [*1363] to express themselves more than they would in the context of purely legal questions. This is true because, as I have suggested, understanding and parsing policy is, whether we like it or not, a task affected by one's experiences and ideas. In other words, the determination as to whether an agency's action is arbitrary and capricious does not always admit of any easy answer. The legal strictures defining "reasoned decision making," under seminal decisions such as Overton Park 79 and State Farm, 80 are more jurisprudential guide-posts than strict rules of law.

Thus, in cases involving so-called "procedural challenges," Supreme Court decisions dictate a method but rarely an outcome. And the large body of D.C. Circuit precedent in the area of

administrative law generally does not constrain and mandate a certain conclusion in "procedural challenges," but only points to analogies with the case under review. All this means that when we grapple with these so-called "procedural challenges," we are not operating under the same set of constraints that the legal system normally imposes on us. It follows that our experiences and our views will find more room for expression in this context than they do in the very constrained context of purely legal questions.

Furthermore, the relative influence of background and perspectives on cases involving "procedural challenges" is a good thing, not a bad one. When Congress gave the D.C. Circuit the special authority to review a huge fare of administrative cases under the Administrative Procedure Act, it knew full well that it was not creating jurisdiction for just another set of purely legal cases. Congress was assigning to the court a special review function, and thereby giving the court an integral role in the Administrative Procedure Act's dynamic structure of rule making. In this review function, the court needs to rely to some extent on its own commonsense understanding of the world. Because understandings and perspectives differ, it is valuable for these different perspectives to inform our assessment of the logic of agency decisions. If we judges were all identical and all carried the same experiences and views, we might unconsciously succumb to agency bias. Because we differ and because we discuss the perspectives that flow from our [*1364] differences, we can and do check one another. On the whole, our diversity of views enhances the sensibleness of our work product.

The lesson that one should draw from this discussion and from the studies, then, is simply this: judges behave collegially. In administrative cases involving "procedural challenges," where we must assess the logic of an agency's policy, it is hardly surprising that we sometimes begin from different starting points. We then talk about our views, deliberate and discuss, and reach judgments as a product of that collegial deliberation. This process enables us to do a better job than we would if we were all the same or if we sat on cases alone. However, even in cases involving "procedural challenges," when we are bound by legal principles emanating from the Administrative Procedure Act and relevant case law, we follow those principles, not personal ideology.

IV. Qualitative Analysis and the Interpretation of Data

I believe that judges' views on how they decide cases should be relevant to understanding how judges in fact decide cases. Indeed, I find it strange that I have to convince anyone of this proposition. Yet, apparently I must, because the practitioners of "law and positive political theory" seem to have adopted the position that a judge's qualitative input has no bearing on their undertaking. 81 If I understand them correctly, the word "positive" in their self-declared title is supposed to limit their inquiry to positivist description, to the exclusion of description from within the practice.

Both Revesz's article and Cross and Tiller's essay suggest that non-partisan, rule-based judging is a foolish idea, easily refuted by empirical analysis demonstrating pervasive bias among judges. It seems that I am among the fools who are the subject of ridicule, for I have written some articles explaining judicial decision making as a principled, constrained practice. In one I said that "members of the federal judiciary strive, most often successfully, to decide cases in accord with

the law rather than with their own ideological or partisan preferences." 82 In another I wrote that "it is the law - and not the personal politics of individual judges - that controls judicial [*1365] decision-making in most cases resolved by the court of appeals." 83 Other judges on my court have written in the same vein. 84 Revesz 85 and Cross and Tiller 86 are good enough to cite some of these statements as examples of a point of view that they do not bother to discuss at any length. They simply drop a footnote, shrug their shoulders in apparent disbelief, and move on to formulate their own hypotheses regarding the strategic and ideological character of judicial decision making.

Some judges might believe that the judiciary should not take a public stand on the processes of decision making, even to assure the public of their basic fairness. Obviously I do not share this opinion. I think it is useful for judges to explain judicial decision making. But I do not write articles about the nature of judicial decision making merely to add one more voice to the public discussion about politics and the judiciary. The public can hear the message that judges try to act in accordance with law from any number of sources. I have published these articles discussing judicial methodology for the specific reason that I believe the qualitative experience of the actual judges who decide actual cases matters profoundly for the understanding of judicial decision making.

So I must say that I find the positive political theorists' dismissal of such input puzzling. Ignoring the self-description of judges would be one thing if judging were a mechanical process, or one performed by people incapable of self-consciousness. But judging is a human activity, performed by human beings trained to think critically about their endeavor. To understand it fully requires considering the way those who perform the activity understand it.

Let me say a little bit about why the input of the judge should matter for anyone who wants to provide a convincing and useful account of how judging operates. The first step is to ask, what is the goal or purpose of articles purporting to explain judging? Are they designed as guides for lawyers or parties who appear before the court? As data for public policy recommendations? As contri [*1366] butions to the study of institutional behavior? If the answer is any of these - and I imagine it is some of each - then it will matter tremendously what the judges think they are doing. Judges' views of the process will provide guidance for lawyers and parties who want to convince courts of how to decide cases. Judges' views will help those engaged in public policy understand how to shape institutional arrangements in such a way as to maximize positive effects and minimize negative ones. Most importantly, judges' perceptions of their activities and decisional processes shed light on the institutional and decisional mechanisms of the court in ways that no other data can. Our perceptions tell the world a great deal about how we act, and why.

By their nature, our judicial deliberations take place privately. Under normal circumstances, it is difficult for a researcher to have access to the way we proceed in our analysis and deciding of cases. This means that our own descriptions of what we do, in interviews or in writing, are often the only basis for studies trying to explain our processes. This qualitative data source is especially crucial for research that intends to understand the processes by which we decide cases. A researcher who wants to study processes, but has limited access to the details of those processes, may choose to analyze case outcomes. Analysis of case outcomes, however, can

provide only a very limited picture of the internal processes by which we decide cases. This is so because outcome-based analysis always necessarily proceeds by the interpretive mode of projecting backwards from outcome to process.

The pitfall inherent in projecting processes from outcomes is obvious: a variety of different processes might all produce similar-looking results. In other words, when the researcher takes the crucial steps of formulating hypotheses and interpreting data, he or she will often be faced with several choices. It is at this point that the researcher's own biases can come glaringly to the fore. A researcher who wants to understand the process she or he is studying may, in the manner of enlightened social scientists, use the input of the subjects of a study to help form hypotheses and choose among various interpretations of the data. Or, alternatively, a researcher may take the route of ignoring the judges' self-description and relying upon purely game-theoretical assumptions about strategic action. The researcher who takes the latter position expresses a clear bias: [*1367] the researcher believes, on the basis of certain assumptions about the likelihood of certain behavior, that he or she knows better than do the judges themselves what is truly motivating judicial action.

One salutary example of a social scientist drawing upon qualitative data collected in extensive interviews to reach cautious conclusions about judicial decision making is H.W. Perry's book, Deciding to Decide: Agenda Setting in the United States Supreme Court. 87 Perry does not rely exclusively on qualitative or quantitative data in his analysis of the certiorari process. 88 Instead he brings the two to bear upon one another, and uses his own interview data in concert with empirical research. 89 Perry's work has been rightly praised for its methodological ecumenicism. 90 It contributes to the understanding of an important phenomenon, while largely avoiding reductionist formulations.

For examples of biased approaches one need look no further than the article of Revesz and the essay of Cross and Tiller. In hypothesis formation and in data interpretation, both consistently and repeatedly assume that judicial decision making has nothing to do with principle or internal coherence. This leads them to make some shockingly ill-reasoned statements. For example, consider Revesz's finding that there appeared to be no significant difference in the way judges appointed by Presidents of different parties decided statutory cases, whereas some effect was found in a narrowly limited sample of cases involving so-called "procedural challenges." One could easily conclude from this that statutory cases simply present less room for debate and difference than do "procedural challenges." As I have suggested above, this is a rather obvious conclusion in light of the structural differences between the two categories of cases. But Revesz, with no further data, draws a radically different conclusion: he argues that because the Supreme [*1368] Court reviews statutory cases more often than "procedural challenges" (a claim which, by the way, he never substantiates statistically), the judges of the D.C. Circuit strategically express their political preferences in procedural review cases, where they are unlikely to be overturned. 91

Professor Revesz is a fine law professor, so he has reason to know that this interpretation is tenuous at best. He himself admits that "an alternative explanation is that the legal standards for procedural challenges are more malleable than for statutory challenges, thus making it easier for judges to indulge their ideological preferences." 92 If one leaves out the incendiary language and

the entirely unjustified second clause, this is no more than a recognition that judges in statutory cases might be more constrained by legal strictures than in other administrative cases. Revesz rejects this possibility out of hand, though, by simply asserting that statutory cases might be just as "malleable." 93 Why this might be so, he does not say.

Recall that at the front of his article, Revesz lists as one of his conclusions that "ideological voting is more prevalent in cases, such as those raising procedural challenges, that are less likely to be reviewed by the United States Supreme Court." 94 This spurious parading of correlation as causation is highly questionable scholarship. 95 Revesz knows perfectly well he has not done anything at all to show that the likelihood of Supreme Court review accounts for the differential he has described. Input from judges suggests, at least, that there are alternative explanations which must be examined before conclusions are drawn. Ignoring this input allows the researcher to produce an exciting headline, but it does nothing to advance scholarship.

Revesz is not alone in this tendency to push the data into bogus interpretations. Cross and Tiller do much the same thing when they describe their finding as one of "whistle blowing." They postulate by this term the existence of a heretofore undiscussed phenomenon: the majority's "fear" of a dissent. As I showed above, their attempt to prove that their data support this conclusion is undercut [*1369] by the possibility of an alternative explanation: that the choice not to defer to an agency's statutory interpretation requires more discussion and deliberation than does the choice to defer. Cross and Tiller's failure to consider how in the world a majority could be "hiding" its decision not to defer is also emblematic of the tendency to aim for headlines at the expense of careful conclusions.

These examples merely draw attention to something which is, or should be, a commonplace in social scientific inquiry into institutional processes: that self-description is a relevant and significant source of data. 96 That does not mean that a social scientist must accept uncritically what judges say. But a researcher ignores it at his or her peril. We in the law and in the legal academy should by now be above the kind of self-confuting argumentation that postulates that judges are irresponsibly ideological and at the same time are somehow too affected by the views of other judges of opposite ideological bias. Both studies discussed here want to pillory judges on both fronts, to condemn judges as ideologically biased if they appear too consistent, and to characterize them as "strategic" and therefore inconsistent if they appear to be flexible.

I want to say a final word on the dangers of untidy arguments when it comes to drawing conclusions about judicial decision making. It matters what the legal community and the public think about the way judges do their job. Judging is part of the public business, and judges hold a public trust. I am not in favor of mythologizing or mystifying judges and judging: if our public votes shed light on how we do our jobs, then it is perfectly legitimate for academics to collate and discuss those votes. But we must never forget that when it comes to a public trust, perception is significant. If the public develops a false perception of our actions or our intentions, there will eventually be consequences for the legitimacy of our legal system.

The public today is constantly treated to rhetoric and innuendo about the purported politicization of the judiciary. Such rhetoric has become an all-too-familiar part of our political landscape. No one group has a monopoly on it. Scholars who seek the truth, however, and particularly scholars

who purport to positive description, really ought to be careful not to add to this rhetoric without a [*1370] convincing basis for doing so. It is no excuse to say that the public will always misinterpret one's scholarship. Even though this may be true, it is merely another reason for scholars to express their conclusions in measured terms and with a clear sense of what conclusions are and are not supported by data.

Conclusion

My message should be clear. The studies discussed here do not support most of the conclusions urged by their authors. They are, however, consistent with the view that the D.C. Circuit is today blessed by "the collegiality that is indispensable to judicial decisionmaking." 97 That is, we deliberate with one another, and are affected by that deliberation in valuable ways. The story, then, may well have a happy ending for anyone who values the idea that human judges can act in a principled fashion and produce reasonably fair judgments. The judge's voice may not be the only one raised in explaining how judicial decision making works. But judges should at least be allowed to join the choir and to affect the way the song is sung.

FOOTNOTES:

n1. Richard L. Revesz, Environmental Regulation, Ideology, and the D.C. Circuit, 83 Va. L. Rev. 1717 (1997).

n2. Robert Schmidt, Of Panels and Politics, Legal Times, Apr. 20, 1998, at 6. This language may be compared with Revesz, supra note 1, at 1719.

n3. Frank B. Cross & Emerson H. Tiller, Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals, 107 Yale L.J. 2155 (1998).

n4. 467 U.S. 837 (1984).

n5. See Statistics for 1995, 1996, 1997, compiled by the Clerk's Office, U.S. Court of Appeals for the D.C. Circuit [hereinafter Clerk's Office Statistics] (on file with the Virginia Law Review Association).

n6. For use of this term and for citations to the literature, see Cross & Tiller, supra note 3, at 2159 n.18. Although Professor Revesz does not identify with this movement, his article can be comfortably located within its norms and practices.

n7. On the value of qualitative data to shape quantitative inquiry, see Richard J. Light & David B. Pillemer, Summing Up: The Science of Reviewing Research 109-43 (1984).

n8. See Revesz, supra note 1, at 1726 tbl.1.

n9. See id.

n10. See id. at 1747.

n11. See id. at 1726 tbl.1.

n12. See id. at 1742 tbl.3, 1743.

n13. See id. at 1743-46.

n14. Id. at 1719.

n15. See id. at 1748.

n16. See id.

n17. Id. at 1719.

n18. See id. at 1749, 1750 tbl.8.

n19. See id.

n20. See id. at 1752.

n21. See id. at 1753.

n22. See id. at 1754.

n23. See id. at 1754-55.

n24. See id. at 1755.

n25. Id. at 1719.

n26. See id. at 1757. Revesz's exact words here should be noted. They are:

Unfortunately, as a result of the relatively small number of votes in the sample, for environmental challenges (where the evidence of ideological voting is weaker than for industry challenges) it was not possible to construct an estimation with much predictive power. Thus, the estimations presented here are limited to industry challenges. In addition, the discussion focuses on the two periods for which the estimations had the greatest predictive power ....

Id. (footnote omitted).

n27. Id. at 1760.

n28. See id. at 1763 & tbl.14.

n29. Id. at 1764.

n30. See Clerk's Office Statistics, supra note 5.

n31. See id.

n32. See id.

n33. For the need to specify an appropriate sample, see David C. Hoaglin et al., Data for Decisions: Information Strategies for Policymakers 88, 101-02, 104-05 (1982).

n34. Revesz, supra note 1, at 1719.

n35. See id.

n36. See Light & Pillemer, supra note 7, at 28-29 (citing "the well-known statistical caveat that if a single study examines dozens of separate relationships, each at the .05 level of significance, it is not surprising to see one in twenty of those relationships turn up significant, even though that finding is spurious").

n37. See, e.g., Columbia Falls Aluminum Co. v. EPA, 139 F.3d 914, 924 (D.C. Cir. 1998) (vacating and remanding).

n38. See, e.g., Mead Corp. v. Browner, 100 F.3d 152, 157 (D.C. Cir. 1996) (vacating without expressly remanding).

n39. See, e.g., MCI Telecomm. Corp. v. FCC, 143 F.2d 606, 609 (D.C. Cir. 1998) (remanding without vacating).

n40. See, e.g., Ciba-Geigy Corp. v. EPA, 46 F.3d 1208, 1210 (D.C. Cir. 1995) (dismissing petition and remanding).

n41. See Revesz, supra note 1, at 1727 n.29.

n42. Id. at 1718.

n43. Id. at 1718 n.6; for the "suspect" studies see id. at 1722 n.18.

n44. Id. at 1718 n.6 (citation omitted).

n45. See id. at 1720 n.11.

n46. See Article III Judges Div., Admin. Office of the U.S. Courts, Justices and Judges of the United States Courts, vol. A (1998).

n47. See Revesz, supra note 1, at 1720.

n48. W.S. Gilbert & Arthur Sullivan, When I was a lad, in H.M.S. Pinafore 46, 51 (1878).

n49. Id.

n50. For a brief exposition, see Hoaglin et al., supra note 33, at 70-73. A classic exposition is Hubert M. Blalock, Jr., Social Statistics 468-77 (2d ed. 1979). In Blalock's familiar example, he postulates a study finding that higher ice cream consumption is correlated with lower rates of juvenile delinquency. Although the correlation is real, the relationship is spurious, because income is the likely cause of the variance in both variables. See id. at 469.

n51. In other words, univariate analysis assumes a causal, straight-line relation between the two variables. See Lawrence Hamilton, Data Analysis for Social Scientists 331-32 (1996). Where a correlated, omitted variable better explains the data, the relationship between the omitted causal factor and the tested-for variable may be non-linear, see id. at 331, or may be linear without being causal, see id. at 332.

n52. Revesz, supra note 1, at 1766.

n53. For a simple statement of the need to understand the relative importance of different factors, see Fundamentals of Exploratory Analysis of Variance 20 (David C. Hoaglin et al. eds., 1991).

n54. Cf. Light & Pillemer, supra note 7, at 28-29 (noting that in the absence of comparison with other data samples, it is impossible to determine the significance of a particular relationship).

n55. Revesz, supra note 1, at 1764.

n56. See id. at 1732-33.

n57. Id. at 1733.

n58. Id. at 1734.

n59. See id. at 1768-69.

n60. 467 U.S. 837 (1984).

n61. For a clear exposition of Chevron in the EPA context, see Ethyl Corp. v. EPA, 51 F.3d 1053, 1060 (D.C. Cir. 1995).

n62. See Cross & Tiller, supra note 3, at 2168.

n63. See id. at 2172.

n64. See id. at 2172 n.68.

n65. See id. at 2173-74.

n66. See supra note 50 and accompanying text.

n67. Cross & Tiller, supra note 3, at 2163.

n68. Id. at 2164.

n69. See, e.g., Sierra Club v. EPA, 129 F.3d 137, 140 (D.C. Cir. 1997).

n70. See, e.g., Ethyl Corp. v. EPA, 51 F.3d 1053, 1060 (D.C. Cir. 1995); Railway Labor Executives' Ass'n v. National Mediation Bd., 29 F.3d 655, 671 (D.C. Cir. 1994) (conferring no deference where Congress has delegated no authority).

n71. See, e.g., Kutler v. Carlin, 139 F.3d 237, 246 (D.C. Cir. 1998) (conferring no deference where agency interpretation unreasonable).

n72. I do not intend to analyze the flawed data to try to make out a detailed argument in support of a hypothesis: the sample and data are too flawed for such an approach. I simply wish to advance my own qualitative view and to note that it is not inconsistent with the data collected by Revesz and by Cross and Tiller.

n73. See Clerk's Office Statistics, supra note 5.

n74. See id.

n75. See id.

n76. See id.

n77. For these three years, the court sat in mixed panels in 627 of the 823 cases it decided by opinion, or approximately three-fourths of the time. See id. Because panel selection is random, one would expect the rate of "mixed" panels to be comparable for all dispositions.

n78. See Ruth Bader Ginsburg, Reflections on Way Paving Jewish Justices and Jewish Women, 14 Touro L. Rev. 283, 284 (1998).

n79. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971).

n80. Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983).

n81. See supra note 6.

n82. Harry T. Edwards, The Judicial Function and the Elusive Goal of Principled Decisionmaking, 1991 Wis. L. Rev. 837, 838.

n83. Harry T. Edwards, Public Misperceptions Concerning the "Politics" of Judging: Dispelling Some Myths About the D.C. Circuit, 56 U. Colo. L. Rev. 619, 620 (1985).

n84. See, e.g., Patricia M. Wald, Regulation at Risk: Are Courts Part of the Solution or Most of the Problem?, 67 S. Cal. L. Rev. 621, 645 (1994).

n85. See Revesz, supra note 1, at 1718 n.4.

n86. See Cross & Tiller, supra note 3, at 2155 n.2.

n87. H.W. Perry, Jr., Deciding to Decide: Agenda Setting in the United States Supreme Court (1991).

n88. See id. at 7-11 for a discussion of design and methodology.

n89. See id. at 135-38, 180-83.

n90. See Sanford Levinson, Strategy, Jurisprudence, and Certiorari, 79 Va. L. Rev. 717, 723-24 (1993) (book review) (praising Perry's use and presentation of interview data); Stephen F. Williams, Court-Gazing, 91 Mich. L. Rev. 1158, 1162 (1993) (stating that "political scientists may benefit from Perry's openness to non-quantitative methods"). But see Book Note, The Uncertainty of Cert, 105 Harv. L. Rev. 1795, 1797 (1992) (criticizing Perry's methodology as insufficiently "systematic").

n91. See Revesz, supra note 1, at 1729-32, 1767.

n92. Id. at 1731.

n93. Id.

n94. Id. at 1719.

n95. For the fallacy of affirming the consequent, see Blalock, supra note 50, at 108-10.

n96. See Light & Pillemer, supra note 7, at 123-43.

n97. Bartlett ex rel. Neuman v. Bowen, 824 F.2d 1240, 1243 (D.C. Cir. 1987) (Edwards, J., concurring).

1991 Wis. L. Rev. 837, Wisconsin Law Review, September 1991/October 1991:

THE JUDICIAL FUNCTION AND THE ELUSIVE GOAL OF PRINCIPLED DECISIONMAKING

BY HARRY T. EDWARDS

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SUMMARY:
... I must admit that, when I first reflected on the role of a judge, I could not be sure whether my thesis mirrored the workings of the federal judiciary or merely expressed an operational goal; nonetheless, I was then, and remain even today, firm in my conviction that "principled decisionmaking" is essential to the credibility and success of the judicial function. ... Although I recognized in Public Misperceptions that there are some who doubt the applicability of principle in the legal process, I argued that the pursuit of principled decisionmaking is the essence of the judicial function. ... Indeed, in my view, most judges still share a belief that principled decisionmaking is the essence of the judicial function. ... On the other hand, I remain hopeful that by reaffirming the ideal of principled decisionmaking, the judiciary can contribute to the reclamation by the legal profession of a more "public-spirited" approach to its work. ... And if we continue on this course, we will destroy our grand vision of a judicial function premised on principled decisionmaking. ... When judges are otherwise angry with one another, it is easy to fall back to one's original "political" base and forget that principled decisionmaking is the essence of the judicial function. ... Even cases with obvious and significant political content are not "very hard" unless the applicable legal rules and materials provide no basis for choice between competing arguments. ... V. POSTSCRIPT: PRINCIPLED DECISIONMAKING AND THE LEGAL PROFESSION ...

TEXT:
[*837] I. INTRODUCTION

During my third year as a member of the United States Court of Appeals for the District of Columbia Circuit, I was invited to give a paper on "The Role of a Judge in Modern Society." Although it was much too early then for me to offer any conclusive views on the subject, I used the occasion to develop a thesis that appellate judging is for the most part a highly principled exercise, in which the personal ideologies of judges play a strictly limited role. .lnfootnotes {text-decoration:none; font-weight:bold; color:#0000FF; font-size:7pt} 1 In essence, I argued that appellate judges are, and feel themselves to be, meaningfully constrained in their decisionmaking. I must admit that, when I first reflected on the role of a judge, I could not be sure whether my thesis mirrored the workings of the federal judiciary or merely expressed an operational goal; nonetheless, I was then, and remain even today, firm in my conviction that "principled decisionmaking" is essential to the credibility and success of the judicial function.

Within two years after I wrote The Role of a Judge, I undertook a modest defense of my thesis of

principled decisionmaking. During my first five years on the bench, I had come to realize that many persons in our society shared what I considered to be a distorted view of the judiciary as a fundamentally political institution. To dispel the myth that appellate courts in general, and the D.C. Circuit in particular, are mostly engaged in partisan ideological struggles over policy issues, I wrote an article on "Public Misperceptions Concerning the 'Politics' of Judging." 2 In this second article, I detailed some of the constraints [*838] imposed on judicial decisionmaking, including legal precedent, the discipline of the judicial craft and the internal operating practices of the D.C. Circuit. I also pointed out that, "contrary to popular view, members of the D.C. Circuit rarely disagree[d] over the disposition of cases. Between July 1, 1983, and June 30, 1984, for example, the court decided a total of 1,146 cases . . . [and] more than 94% of these cases were decided without a dissent." 3 Based on this, and on other quantitative and qualitative measures of judicial performance, I concluded that members of the federal judiciary strive, most often successfully, to decide cases in accord with the law rather than with their own ideological or partisan preferences. Although I recognized in Public Misperceptions that there are some who doubt the applicability of principle in the legal process, I argued that the pursuit of principled decisionmaking is the essence of the judicial function. 4

Today, more than eleven years after becoming a judge, I am less sanguine in my views. I still believe in and subscribe to principled decisionmaking, but it is no longer entirely clear to me that partisan politics and ideological maneuvering have no meaningful influence on judicial decisionmaking. My current perspective is not a product of self-righteousness, nor is it intended to be accusatory. Indeed, in my view, most judges still share a belief that principled decisionmaking is the essence of the judicial function. What has changed, I think, is the nature of certain external pressures felt by judges; these pressures are both created and exacerbated by the continuing distortion of public perceptions, in which the judicial function is increasingly viewed as just one more "political" enterprise.

We all know that perceptions often far exceed reality. One consequence of this is that an accusation premised on a false perception can be as damaging as the alleged injury of which it complains. Even more troubling is when persons who make damning statements based on false perceptions do not even recognize the accusatory nature of their remarks. In either event, the false perception can create a new reality which is a horror to behold.

The more that judges are assessed in terms of "political" (result-oriented) decisionmaking, the more likely it is that this will become a self-fulfilling prophecy. Even if judges are able to resist the temptation to conform to the false perception, continued assessments of judicial performance in political terms will promote a "new reality," for most people will come to believe that the judicial function is nothing more than a political enterprise. No matter how good the intentions of its servants, the judiciary will be sharply devalued and incompetent to [*839] fulfill its role as mediator in a society with lofty but sometimes conflicting ambitions. This would be a horror to behold.

II. THE "WAR ON DRUGS": A STRUGGLE AGAINST UNPRINCIPLED DECISIONMAKING

The problems of which I speak are manifested in several different ways. Thus, result-oriented

decisionmaking may be prompted by partisan politics, ideology or personal whim. Such decisionmaking is unprincipled in the sense that it focuses on preferred results, rather than on permissible precepts of adjudication (such as a constitutional norm, a statutory provision or a case precedent). To my mind, there is no point in distinguishing between these various forms, for any purely result-oriented decisionmaking is unacceptable. Different forms of result-oriented decisionmaking may be curbed in different ways, but, in my view, all forms are equally bad.

An interesting, and troubling, example of what I mean is seen in connection with the recent course of the government's "War on Drugs." I am confident that every judge believes that the elimination of illegal drug trafficking should be a national priority. At the same time, however, there is every reason to be deeply troubled if, in pursuing this goal, the War on Drugs destroys the individual rights and liberties of American citizens. In other words, our legitimate desire to defend against the very real (and dangerous) threat of drug trafficking cannot overtake our commitment to more enduring values. We simply cannot sacrifice constitutional protections to the cause of a battle of less than constitutional magnitude.

I have discussed elsewhere my conviction that this trade of rights for results is both mistaken as a matter of policy and prohibited as a matter of law. 5 I raise the subject here not to reiterate these general concerns, but because the drug crisis and the "war" it has occasioned pose, I think, especially difficult challenges for the federal judiciary. To say that we should not trade rights for results does not make this an easy issue. Most judges will feel no sympathy for a drug dealer who has been found with a huge cache of illegal drugs -- not even when the drug dealer has been the victim of an illegal search. Too many people have died due to illegal drugs, and the lives of too many young people have been lost to drug addiction. So the pressure to uphold the conviction [*840] of one who has been found with illegal drugs often is very real in the mind of any judge. The pressure to uphold the constitutional principle prohibiting illegal searches should be no less significant in the mind of the judge, but -- in reality -- this consideration may seem less urgent to the judge (especially when the defendant has been caught with goods-in-hand). Judges are affected by normal human emotions, so a situation like this poses a dilemma of a sort for any decisionmaker. Nonetheless, in my view, the way in which judges face challenges such as these says a great deal about our capacity and our willingness to realize the ideal of principled adjudication.

A first step, it seems to me, is to place the current crisis in the proper temporal perspective. This requires that judges cultivate and maintain a long view, a sense of history and a feel for the future that transcends the passions and short-term interests of the moment. From this perspective, two things are clear: first, that the War on Drugs will, like societal wars before it, come to an end, and second, that when it does, we will regret deeply any constitutional sacrifices we have made on its behalf. The judicial long view is, at its best, informed by an understanding that departures from constitutional norms, however well-intentioned, often have serious and lasting effects on the development of legal doctrine and legal rights.

To amplify this point, I consider in Part III some historical instances in which claims of national emergency have led to the abridgement or even the abolition of fundamental civil liberties. My argument in this connection is that this kind of crisis-driven decisionmaking, in many ways the very antithesis of principled adjudication, has real and often unintended consequences. History

shows, I think, that constitutional principles, once abandoned, are not easily reclaimed.

The example of the drug crisis also affects my thinking about the current activities and practices of the D.C. Circuit, to which Part IV of this article is devoted. The War on Drugs is an example of an "external pressure" that may lead to result-oriented decisionmaking. Likewise, for members of the D.C. Circuit, the continuing distortion of public perceptions -- which tend to view and categorize the judicial function as an essentially political enterprise -- is equally dangerous. As I mentioned earlier, these public misperceptions may cause people to believe that the judicial function is nothing more than a political enterprise; or, even worse, these misperceptions may become self-fulfilling prophecies. Thus, now, more than ever, it is vital that the judiciary reject result-oriented decisionmaking and adhere strictly to the ideal of principled decisionmaking, both to defend constitutional liberties and to defend itself against an institutional devaluation in the eyes of the public.

The final section of the Article reflects very briefly on the relationship between the judiciary and the legal profession, and on the [*841] degree to which departure from or adherence to principle in one institution finds itself reflected in the attitudes of the other. Specifically, I fear that a certain professional amorality, over which I have elsewhere expressed my concern, 6 could ultimately encourage the development of a more result-oriented, instrumental form of appellate adjudication. On the other hand, I remain hopeful that by reaffirming the ideal of principled decisionmaking, the judiciary can contribute to the reclamation by the legal profession of a more "public-spirited" approach to its work.

III. THE PERSPECTIVE FROM HISTORY: CRISIS-DRIVEN DECISIONMAKING AND ITS EFFECTS

The proposition which I consider in this part of the Article may seem, stated in the abstract, somewhat unremarkable: that law made in response to particular crisis conditions, real or perceived, is not readily cabined. Once validated by the courts, emergency curtailments of constitutional rights take on legal lives of their own. As Justice Jackson warned in his dissenting opinion in Korematsu v. United States, "[a]ll who observe the work of courts are familiar with what Judge Cardozo described as 'the tendency of a principle to expand itself to the limits of its logic.'" 7 With this expansive tendency comes a very real danger that what is intended as a narrow or minor adjustment in constitutional law will have far-reaching and lasting impact on legal doctrine and on the way we think about our system of justice.

It is not my intention here to expand upon this thesis in theoretical terms. Instead, I would like to lend a more concrete dimension to the discussion by considering the actual effects of some historically notable departures from constitutional principle. My hope is that this kind of analysis can help to reveal the hidden costs of crisis-driven decisionmaking, as well as to emphasize its more evident shortcomings.

I begin with Korematsu v. United States, perhaps the most "justly infamous episode" 8 in which the judiciary permitted claims of national emergency to supersede basic notions of constitutional law and governance. After the Japanese bombing of Pearl Harbor in 1941, the President authorized, and Congress endorsed, a system of curfew, exclusion and internment for all persons

of Japanese ancestry on the West Coast, including American citizens whose loyalty was not and could [*842] not be questioned. 9 The Supreme Court upheld this mass deprivation of civil liberties in Korematsu, deferring to a "judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained," making group exclusion and internment a "military imperative." 10

With one stroke, the Supreme Court abandoned what had been a traditional constitutional commitment to the idea that guilt is personal, and punishment premised on individual action. Accepting in its stead a presumption of "racial guilt," 11 the Court subordinated both personal freedoms and national ideals to a dubious claim of military exigency. 12 The costs of that decision, I submit, have been extraordinarily high.

The most significant cost, of course, was born directly by the approximately 120,000 Japanese Americans incarcerated and dispossessed for the sole reason that they were of Japanese ancestry at the wrong time in American history. Reparations, long overdue, hardly begin to redress this wrong. 13 Korematsu is, without any doubt, a tragically poignant and bitter reminder of the real suffering that may follow in the wake of judicial default. 14

[*843] Other costs of the Korematsu decision, though less grievous in human terms, demand consideration. Difficult to quantify, but nonetheless compelling, is the price paid in terms of judical stature. From the day it was announced over the dissents of three Justices, at least two of which were unusually vehement, 15 Korematsu was roundly condemned by legal scholars and observers as a tragic miscarriage of justice. 16 Though lower federal courts have since vacated the convictions of individual Japanese Americans who violated curfew and internment orders during World War II, 17 the Supreme Court has yet to overrule or repudiate Korematsu. The case stays with us, "an evil blotch upon our national legal conscience and our law," 18 and each subsequent generation's perceptions of the judicial system, its competence and its integrity, are undoubtedly shaped accordingly.

Moreover, it should be noted that because Korematsu remains on the books as precedent, the case has quite tangible effects on the decisionmaking of lower courts. Bound themselves by the constraints of principle, the courts generally have rejected the idea that Korematsu, decided during war, may be minimized as precedent during peace. 19 [*844] Therefore, in cases dealing with issues as varied as pretrial preventive detention, 20 questioning of nonimmigrant aliens during times of international tension, 21 mass arrests of anti-war protestors, 22 conscription under the Selective Service Act 23 and warrantless searches during declared emergency, 24 the courts are required to address Korematsu, distinguishing it where possible and following it when necessary. On doctrine as well as on judicial status, Korematsu continues to exert its adverse influence.

Though it is perhaps the most graphic example of crisis-driven decisionmaking and its results, Korematsu does not stand alone. Like World War II, the Cold War claimed serious constitutional casualties on the domestic front. In a climate made almost hysterical by fear of communist infiltration, the Government engaged in battle against ideas, waging war against speech and associational activities seen as dangerously disloyal. That the judiciary did not act decisively to

protect First Amendment freedoms during this period also represents a failure of significant proportions. Its reverberations echoed for years, in the lives of those directly affected and in the distorted and disjointed development of First Amendment doctrine.

Two lines of Supreme Court decisions from the Cold War era provide examples of what I have in mind: freedom-of-speech cases involving convictions for subversive advocacy under the Smith Act, and freedom-of-association cases involving forced disclosure of Communist Party affiliations by the House Un-American Activities Committee, or "HUAC." My argument here is that the "communism exception" to the First Amendment, crafted in response to a temporal crisis of confidence, ultimately proved difficult to contain. Both in duration and in scope, the First Amendment exceptions carved during the Cold War displayed the expansive tendencies of all departures from constitutional principle.

[*845] The Court's Cold War experience with seditious speech, for instance, interrupted the development of free speech doctrine so thoroughly that recovery took close to twenty years. Until the Cold War, the trend in First Amendment law was steadily progressive. Restrictive World War I speech cases, upholding convictions for subversive advocacy under the Espionage Act of 1917, 25 were by the 1940s a thing of the past. In their stead, the Court gradually had adopted the "clear and present danger" test and applied it ever more protectively to shield subversive advocacy from prosecution. 26

This increasingly expansive reading of First Amendment free speech rights came to an abrupt end in 1951 with Dennis v. United States. 27 In a decision viewed by some as epitomizing the Court's abdication during the McCarthy period, 28 the Supreme Court affirmed the convictions of national Communist Party leaders under the Smith Act for conspiring to "teach" and "advocate" the overthrow of the government. In essence, the simple teaching of Marxist-Leninist doctrine, absent any evidence of incitement to violence, became a crime. To substantiate this outcome, the Court was required to take a kind of judicial notice of the perceived ultimate evil and hazard of the Communist Party itself. 29 And to accommodate this new line of analysis, the Court was required to modify the clear-and-present-danger standard, to wit: where the threatened danger is sufficiently grave, an invasion of free speech may be justified no matter how small the probability that the danger will actually come to pass. 30 In other words, a danger as "clear" as that posed by the Communist Party need not be "present," nor imminent nor even especially plausible, to warrant suppression.

[*846] I do not wish here to belabor the obvious point that Dennis and its departure from precedent and principle are explicable only by reference to the anti-communist political tenor of the moment. 31 Instead, I want to emphasize the extent to which Dennis set back the development of First Amendment doctrine and freedoms over time. It is by now well understood that Dennis was substantially undermined six years after its issuance by Yates v. United States, 32 in which the Court distinguished protected advocacy of doctrine from unprotected advocacy of action and reversed the Smith Act convictions of a number of Communist Party members. Yates, however, reached its result by "reinterpreting" rather than by overruling Dennis, 33 and so missed the chance to contain entirely the damage done to the First Amendment.

Yates did, it is true, effectively end Smith Act prosecutions of Communist Party members for

subversive advocacy. But it did not restore First Amendment doctrine to a fully speech-protective formulation. While identifying advocacy of abstract belief as a protected sphere of speech, the Yates Court conceded as unprotected the advocacy of revolutionary action, including action to be taken at some indefinite future date. 34 Thus, like Dennis, Yates allowed for restrictions on speech regardless of the likelihood or immediacy of the threatened harm. By itself, Yates did little to return the "present" component to the clear-and-present-danger test.

Indeed, it was not until 1969, in Brandenburg v. Ohio, 35 that the Supreme Court appeared to revitalize the clear-and-present-danger test. Reversing the conviction of a Ku Klux Klan leader under Ohio's criminal syndicalism statute, the Court held that speech could not be restricted under the clear-and-present-danger standard unless it was both directed at inciting imminent lawless action and likely to produce such action. 36 Eighteen years after Dennis, First Amendment jurisprudence [*847] finally returned to its pre-Cold War progressive course. The communism exception to free speech law had proved durable, however; it outlasted the Cold War that spawned it and initiated a detour of nearly two decades in the development of First Amendment doctrine.

Like the subversive advocacy cases, the legislative inquiry and compelled disclosure cases arising during the Cold War period represent something less than the judiciary's finest hour. Faced with the specter of a congressional committee calling individuals before it for the purpose of publicly exposing their alleged ties to a disfavored political group, a practice inimical to any system of free association, the Supreme Court again declined to take a strong stand for principle. Instead, it upheld HUAC's notorious activities against a First Amendment challenge in Barenblatt v. United States, 37 finding that Congress' interest in demanding disclosure of Communist Party affiliations outweighed any interest of an unwilling witness in withholding that information under the relevant First Amendment "balance."

The Court was not, to be sure, entirely comfortable with the position it announced in Barenblatt, and in other cases it sought to curb HUAC's reach by imposing various procedural limits on the Committee's investigatory powers. 38 These procedural hurdles, however, proved easy to overcome and offered little meaningful protection to HUAC's victims. Ultimately, the Court's efforts to extend some minimal but nonsubstantive aid to HUAC targets served only to produce yet another troubling legacy of Cold War decisionmaking: a confused and contradictory body of law on the limits of legislative inquiry. 39

The judiciary's abdication of its role as defender of individual rights and liberties also exacted an enormous human toll during this period. Unimpeded by constitutional constraints, HUAC applied itself to the task of ferreting out "subversives" with unmitigated zeal. Those unfortunate enough to catch the attention of the Committee often found themselves publicly exposed and humiliated, "blacklisted" by their professions and forced to "name names" of fellow sympathizers. It is by now a matter of public record that lives were destroyed. 40

[*848] The impact of the HUAC decisions on First Amendment doctrine is somewhat less clear than that of the Smith Act cases, in part because the Court's various pronouncements in the area combined to form such an obscure body of law. The legislative inquiry cases do, however, display the same expansive tendencies as their subversive advocacy counterparts. Again, the

"communism exception" to the First Amendment threatens to extend beyond its intended bounds; here, however, the threatened extension is not so much over time as it is across forms of political association.

Specifically, during roughly the same period that the First Amendment rights of suspected "subversives" were being subjugated to HUAC's purported needs, the Court faced a number of cases involving legislative inquiries into the membership of civil rights organizations, particularly the NAACP. Armed only with the minimally protective balancing test of Barenblatt, the Court worked mightily to defend the NAACP against legislative harassment. That it was, for the most part, successful is a tribute both to the clumsiness of state efforts to justify compelled disclosure 41 and to the willingness of the Court to create fine legal distinctions where none seemed readily apparent. 42 Thus, at some cost to the perceived integrity of its decisionmaking process, the Court has been able, thus far, to check the reach of its Barenblatt rule; whether it can continue to do so indefinitely remains, of course, to be seen. 43

As for the War on Drugs, it is yet too soon for a determinative appraisal of the judicial response. But even this brief history of crisis-driven decisionmaking provides, I think, a useful context for a discussion of contemporary appellate adjudication in the face of yet another national emergency. One point should emerge quite clearly from the preceding review: principled decisionmaking is not some luxury we [*849] can forgo in times of crisis without feeling the loss. On the contrary, our prior departures from constitutional principle, however persuasively justified or well-intentioned, seem always to exact real and lasting costs. When the war comes to an end, we inevitably regret the constitutional sacrifices we have made during the battle.

IV. THE PERSPECTIVE FROM THE BENCH: APPELLATE DECISIONMAKING ON THE D.C. CIRCUIT

With this historical perspective in mind, I turn now to a discussion of contemporary appellate decisiomaking on the D.C. Circuit. My discussion here is not intended to criticize or to rebuke; on the contrary, I find that much of the Circuit's work reflects a process that is faithful to the ideal of principled decisionmaking. Rather, may purpose here is to reflect on what I see as potential danger zones in the practice of appellate judging. By frankly acknowledging and examining these vulnerabilities, I hope to give support to the ongoing efforts of my colleagues and others to minimize the role of politics in appellate decisionmaking.

I begin my analysis with a look at popular perceptions of decisionmaking on the D.C. Circuit. Though I believe that current perceptions of ideological and result-oriented judging are often without basis in fact, they demand our attention, if only because such misperceptions can have very real negative consequences for the judicial process. In the second part of my discussion, I consider some of what I see as the realities of appellate decisionmaking. Though I am troubled -- more so today than I was eleven years ago -- by the potential for politicization of our decisionmaking, I remain confident that if we face these issues squarely, we can and will reaffirm the judicial commitment to the ideal of principled adjudication.

A. Perceptions of Appellate Decisionmaking on the D.C. Circuit

I said at the outset of this article that I am less sanguine in my views, because it is no longer clear to me that partisan politics and ideological maneuvering have no meaningful influence on judicial decisionmaking. In offering this observation, part of what I mean to say is that, as a member of the federal bench, I have felt damned by an increasingly common image of the judiciary, and particularly of the D.C. Circuit, as a fundamentally political body.

This vision of a politicized judiciary, in which cases are decided on ideological grounds and judges defined by their partisan affiliations, seems to grow more popular each year. By now, it is almost taken for granted by much of the media, and doubtlessly accepted as truth by [*850] significant portions of the bar and the public as well. This is a depressing reality, for, in my view, it is the worst indictment for judges to be labeled political partisans and to be seen as result-oriented in their decisionmaking. These are frightening accusations, for they suggest that there can be no "justice" in our judicial system. I continue to resist the indictment; but I remain astonished and frustrated by the persistence and force of the attack, which is, I think, born of a public perception that measures judges against a standard best suited for "political hacks."

In recent years, for instance, the media has focused on what it describes as the "increasing polarization" of the D.C. Circuit, attributing its attention to claims, like one seen in the Wall Street Journal, that "ideological differences in the appeals court for the District of Columbia could have an impact throughout the country." 44 This "impact" is never clearly defined, apart from the implicit suggestion that judicial decisionmaking and partisan politics go hand-in-hand. Thus, the public is led to believe that judges cast their votes on judicial decisions as if in Parliament, i.e., strictly along party lines.

Because the consuming public seems to hunger for mostly political portrayals of the court's work, and the press seems determined to satiate this hunger, individual decisions often are reported as partisan wins or losses, with an emphasis on the assumed party affiliation of participating judges. For example, a decision not to reconsider a panel ruling allowing Eastern Airlines to furlough thousands of employees is described as a win for "the Reagan appointees" and a defeat for "the liberals"; the same story, in an effort at a novel brand of nonpartisanship, is quick to point out that "the conservatives were the losers last October," when "[f]our Reagan appointees lost a bid to rehear a decision" involving attorneys' fees. 45 Such news reports are by no means unique; many of our decisions, with significant and complex effects on people's lives and on legal doctrine, and with no discernible ideological issue, are nonetheless reduced by the press and other commentators to simple political head-counts. 46

[*851] Similarly, the appointment of new judges to the D.C. Circuit has become the occasion for in-depth analysis of the court's perceived partisan composition, much as the election of new members of Congress prompts discussion of that body's political tenor. With only eleven judges sitting on the circuit in the fall of 1988, nominations for the empty twelfth seat were closely monitored. The Washington Post observed that, "[s]ince [Judge] Bork's retirement[,] . . . the influential court has been divided roughly 6 to 5 between conservatives and liberals, with conservatives in the majority." 47 The paper thus concluded that "the fate of the nomination is key to the philosophical future of the court." 48 For any who may have missed the import of this numerical analysis, a Senate aide is quoted as explaining that "[y]ou can't beat the arithmetic[;] . . . [the] seat is a very important seat . . . ." 49 It should come as no surprise, then, that the 1990

arrival of new judges Karen LeCraft Henderson and Raymond Randolph was greeted with discussion of the effect the two Bush appointees would have on the partisan makeup of the court. 50

Often, in discussing the courts of appeals and appointments to them, commentators fail to recognize that lower appellate judges cannot be equated with Justices of the Supreme Court. The ideological leanings of prospective appointees to the Supreme Court are seen by some as significant, in part because the Court considers so many "very hard" cases in which a Justice's ideology may be influential in decisionmaking. 51 The same is not true at the courts of appeals, however, because very few of our cases are "very hard" and a great many are "easy"; thus, ideology rarely should have any bearing on the work of a court of appeals judge. 52

[*852] This reality seems totally lost on many commentators. So entrenched is the political vision of the circuit court that commentators can find partisan overtones in even quite neutral court activities. When, for instance, Judge Wald stepped down as Chief Judge in the fall of 1990 and Judge Mikva, as the next most senior judge, took her place, press reports across the country gave wide circulation to rumors that the transition was made in order to prevent Judge Silberman, a Reagan appointee, from assuming the post of Chief Judge. 53 The press assertion that there was a "plot by Democratic judges to keep Republican Judge Laurence Silberman from ever assuming the reins" 54 was absolutely absurd, based on nothing but crass and ill-founded speculation. But the foolishness of the rumor did not deter its spread, thus giving further credence to public perception of partisan divisions on the D.C. Circuit.

Perhaps most telling is the fact that commentators are often moved to comment on an absence of ideological disharmony in contexts where the absence should be totally unremakable. Thus, for instance, it has become newsworthy that two judges appointed by the same President disagree over the constitutionality of a drug testing program; 55 of note that "[e]ven liberal judges on the ideologically divided [D.C. Circuit]" speak of Soliiitor General Starr with warmth; 56 and remarkable that concerns about the quality of appellate advocacy are shared by circuit judges "from both ends of the political spectrum." 57 It is both frivolous and demeaning for a court to be assessed in these terms on such matters.

What passing comments like these share with the more substantive reports previously noted is a core assumption that "beneath the surface" of the D.C. Circuit lurk "ideological frictions," 58 manifesting themselves in bouts of political decisionmaking. Both the existence and the consequences on decisionmaking of these alleged "ideological frictions" are accepted as articles of faith. Judges are perceived as creatures of their ideological preferences; their decisionmaking, as simply an expression of their partisan preferences.

I recognize that judges may lend fuel to misguided public perceptions when the press finds some credence to rumors of in-house bickering. 59 [*853] I also believe that persistent fractures in collegiality can lead to subtle problems in the disposition of some "hard" and "very hard" cases, for judges inadvertently may fall prey to partisan decisionmaking out of anger or vindictiveness. But an occasional failure in collegiality should not, I submit, be equated with unprincipled decisionmaking. The nature of the judicial enterprise is such that judges will at times disagree in very sharp terms. 60 Whether or not this is viewed as questionable in terms of collegiality, it

should not be seen as necessarily symptomatic of result-oriented decisionmaking. It is important for the public to understand that sharp disagreements among judicial "colleagues" do not invariably lead to partisan decisionmaking.

The point of the foregoing discussion is to suggest that our judicial system will be unable to tolerate public misperceptions beyond a certain point of distortion. Our tolerance level has not yet been surpassed, but I think that we are on a fast track heading in the wrong direction. And if we continue on this course, we will destroy our grand vision of a judicial function premised on principled decisionmaking.

In expressing this concern, I am aided by a New York Times article published in February of this year, discussing the image of the D.C. Circuit held by lawyers practicing regularly before it. 61 According to these attorneys, the identity of the three judges assigned to hear a given case is such a strong indication of the ultimate result that some litigants, faced with a panel that "isn't favorable to their side, . . . might be more inclined to settle." 62 In other words, many attorneys and litigants believe that appellate decisionmaking is so much a function of the personal politics and preferences of judges that outcomes are virtually predetermined by panel selection, without regard to the legal merits of a case. Indeed, the article, and most of the attorneys cited therein, fail even to distinguish between "easy," "hard" and "very hard" cases 63 -- thus, at bottom, the extraordinary premise of the article is that in all cases, even those involving simple and straightforward applications of legal doctrine, attorneys and their clients believe that judges will render decisions guided chiefly by their political or ideological leanings.

[*854] My first response to this vision of appellate decisionmaking is that it is dead wrong as a descriptive matter. There is simply no significant statistical support for its underlying premise -- i.e., that judicial results invariably flow from judges' politics, rather than from legal principles. 64 I will address this point more thoroughly in the following section, but it bears mention here, as well. In the rare instance when the court is confronted with a "very hard" case -- i.e., one in which there is no discernible "right answer" -- it may be true that a judge's views are influenced by his or her political or ideological beliefs. 65 It is absolutely false, however, that judges' politics routinely determine the outcomes of cases.

That it is without basis in fact, however, does not mean that this misperception of appellate decisionmaking is without consequences for the judicial process. Not all of those consequences, to be sure, are negative. To some extent, the false reality to which I refer may encourage litigants and lawyers with weak cases on the merits to withdraw before argument. Indeed, in the D.C. Circuit, the names of the judges who are assigned to hear an appeal are announced well in advance to encourage such settlements. By blaming their withdrawal on the composition of judicial panels, rather than on the merits of their cases, lawyers are able to save face while simultaneously freeing the court system of unnecessary burdens. If this provides a palatable excuse and thus increases settlements, then the false image of a politicized judiciary may have some salutary effect.

By and large, however, I would expect over the long term to see far more damaging consequences follow from this misperception. After all, what is at stake is no less than the popular understanding of the way our legal system works. And the understanding that is

beginning to emerge is a truly terrible one: individual judges and their politics govern outcomes, and justice and principle are relevant only secondarily, if at all. The toll exacted by this misperception is necessarily immense, in terms of the perceived integrity of the judicial system and the willingness of the public to accept its decisions as law. It is not at all clear to me that our country's confidence in its judiciary can survive infection by this poisonous idea.

The dangers posed by these misperceptions cannot be underestimated. This realization has hit home for me as I have noticed in recent years that more and more judges' law clerks commence work on the court with "fire in their eyes," as if readying for an ideological crusade. [*855] For example, not too long ago, after oral argument in the court of appeals, one of my colleague's law clerks told my law clerk that he disagreed with the premise underlying some of the questions that I had put to counsel during the oral argument. My law clerk explained to my colleague's clerk that my line of inquiry had been prompted by my concerns over a "split in the circuits" regarding the controlling legal principle. The complaining law clerk was unimpressed, however, and insisted that the three-judge panel could only decide the case as the clerk saw it. The clerk then added something to the effect of: "and if the panel dares to go any other way in its decision, we will rehear this case en banc and reverse the panel so fast that it will make your head spin!" The law clerk's use of "we" was intended to refer to the so-called "conservative" judges on my court; and his attempt at a threat obviously was founded on an assumption that there are camps of "conservatives" and "liberals" at war on the court. When I reported the incident to the judge for whom this law clerk worked, my colleague was both surprised and dismayed, and he assured me that he would deal with the matter promptly.

Some might be inclined to minimize the law clerk's remarks as attributable to an obnoxious personality, extraordinary arrogance or a rare case of immaturity and chutzpah. Unfortunately, the problem cannot be dismissed so easily, for it is not unusual these days to find instances of excess zeal among law clerks -- conservatives and liberals alike -- in support of preferred ideological positions. Thus, it would seem that the public perception of result-oriented decisionmaking has had an impact even in quarters where one might expect good sense to reject, or at least filter, the misperception.

Moreover, I think it would be a mistake to assume that judges themselves are immune from the effects of the widespread misperceptions regarding politics and the judicial function. Though it is not readily subject to empirical proof, we should at least consider the idea that judges, told often enough that their decisionmaking is crucially informed by their politics, will begin to believe what they hear and to respond accordingly. The more the D.C. Circuit is portrayed as divided into warring ideological camps, the more D.C. Circuit judges may see themselves as engaged in an ideological struggle and view every case in these terms. The chief advantage of granting life tenure to judges is that it leaves the judiciary one critical step removed from the political world. By inserting partisan politics into the judicial sphere, the misperception of a politicized judiciary may in the end become a self-fulfilling prophecy that does irreparable harm to our system of justice.

B. The Realities of Appellate Decisionmaking on the D.C. Circuit

Fortunately, the present reality of decisionmaking on the D.C. Circuit does not match the public

perception. There is no doubt that [*856] there are ideological differences among the judges and that these differences may have an impact in the disposition of certain "very hard" (and even "hard") cases. It is also true that the decisionmaking process probably has been more vulnerable to politicization in recent years, in part because of changing public perceptions (including the "fallout" from the Senate's rejection of Judge Bork's nomination to the Supreme Court 66). For the most part, however, the judges on the court are, and feel themselves to be, meaningfully constrained in their decisionmaking, and they adhere to the conviction that "principled decisionmaking" is essential to the credibility and success of the judicial function. Perhaps the most fundamental reality of D.C. Circuit decisionmaking is that, contrary to popular belief, circuit judges rarely disagree with one another over the disposition of particular cases. The vast majority of case dispositions involve unanimous decisions. In the court's 1983-84 year, for instance, dissents were filed in only 5.8% of the total cases decided; of those cases decided by full opinion, only 13% generated a dissent. 67 A statistical analysis of 1989-90 reveals that dissents were filed in only 2.6% of the total cases decided; of those cases decided by full opinion, only roughly 10% included a dissent. 68 Thus, the rate of dissents in 1989-90 actually dropped below the rate for 1983-84. Most notably, the dissent rate on what I call "mixed panels" -- panels with judges appointed by Presidents of different political affiliations -- did not exceed the general dissent rate in either year. 69 Clearly, the image of an ideologically divided circuit court on which judges heed some political call to action is far from the truth.

Not all cases, of course, are the same; some are more likely than others to generate unanimity among deciding judges, and some are more likely to generate dissent. The likelihood of dissent does not depend, however, on the composition or politics of the panel, but on the underlying merits of the case. In other words, dissent is not a symptom of politicized decisionmaking, but generally the result of an exceptionally difficult case that admits of no clear answer.

In my view, most cases are "easy," in that the pertinent legal rules are readily identified and applied to the facts at hand, revealing a single "right answer." I continue to find that roughly one-half of the cases I hear each year are "easy" and virtually all of these are disposed of [*857] without dissent. Very few such cases give rise to any discernable political concerns.

In a second category of cases, which I call "hard," each party is able to advance at least one plausible legal argument in its favor. Resolution of such disputes frequently requires judges to consider which among competing legal principles and precedents are most applicable, analyze the purposes of various statutory and constitutional provisions, evaluate complex agency records and perform other similarly sophisticated decisionmaking tasks. At the conclusion of such research and review, however, the arguments of one party to a "hard" case seem to me demonstrably stronger than those of the other, and the case is decided accordingly. I have estimated that approximately 35 to 45% of the cases before the court are "hard" in this sense. In my experience, judges hearing these cases generally feel themselves bound by their view of the law, and identify the sounder arguments without recourse to their own political opinions. Not surprisingly, therefore, there is substantial agreement among judges as to the proper disposition of "hard" cases.

That leaves from 5 to 15% of our cases in the "very hard" category, making it by far the smallest of the three. In this narrow set of cases, careful research and reflection fail to yield conclusive

answers. The relevant legal materials, thoroughly studied, show only that the competing arguments advanced by the parties are equally strong, and the judges who must decide are left in a state of equipoise. Disposition of this small number of cases, then, requires judges to exercise a measure of discretion, drawing to some degree on their own social and moral beliefs. That judges may find themselves in disagreement as to the outcome of these "very hard" cases is thus to be expected, and represents something quite different from stark political decisionmaking.

The important point, I think, is that so-called "very hard" cases are viewed as such not because they raise situations in which judges are inclined to engage in result-oriented decisionmaking, but, rather, because these cases admit of no clear answer. And when there is no discernible "right" answer to a case, it is more likely (although not inevitable) that decisionmaking may be influenced by political or ideological considerations.

This general formulation of the appellate decisionmaking process is the same one I advanced shortly after becoming a judge in 1983, and then again in 1985. 70 I continue to believe that my rough breakdown accurately reflects the way decisions are made on the D.C. Circuit, both in its emphasis on judicial adherence to legal norms and in its core [*858] assumption that principled decisionmaking is possible and in fact realized in every category of appellate case. At the same time, however, perhaps as a natural outgrowth of my continued experience, I have grown more concerned about the vulnerability of this decisionmaking process to politicization. Increasingly familiar with the practice of appellate adjudication, I become increasingly sensitive to the scope and the gravity of the threat posed by political decisionmaking.

"Easy" cases are, I think, more or less immune from this threat. Because "easy" cases so readily admit of single correct answers, judges deciding these cases feel themselves to be and are tightly bound by legal principles; little or no room remains for the insertion of ideological concerns. "Hard" cases, on the other hand, provide considerably more space for ideological maneuvering. In the choice of applicable principles and precedents, in the search for congressional intent, in the emphasis or deemphasis of individual facts in extensive agency records -- in all of these exercises, there is the potential for political decisionmaking and partisan mischief. It is still true, I believe, that this potential remains largely untapped, and that judges on our court generally do their best to decide these cases in accord with their understanding of the law. Nonetheless, the threat of politicization exists, and we must be on guard against it.

For example, most judges would agree that heightened collegiality eases the burden of decisionmaking. When judges respect one another and are amicalbe in their dealings, the decisionmaking process runs smoothly: the judges' post-hearing conference focuses on the applicable legal precedent and record facts, with each judge openly airing concerns about difficulties seen with the case; there are post-conference memoranda and discussions between chambers which are thoughtful and helpful in narrowing the issues before the panel and in pursuing the correct answer to the case; if and when the judge who is assigned to write the case runs into unexpected difficulties, these matters are discussed with judicial colleagues with an aim to reaching a mutually satisfactory accord; and, once a draft opinion is circulated, comments from judicial colleagues are given to improve the opinion, e.g., to correct record citations, to question applications of circuit precedent and to offer suggestions for language changes where the draft opinion is unclear. There is no enmity in this process; there are no hidden political

agendas at stake; there are no ideological leanings affecting the dialogue between the judges. Fortunately, this process predominates in connection with most dispositions of the court, even with so-called "mixed panels" of the court. 71

[*859] There can be snags, however, when there are breakdowns in collegiality. When judges are otherwise angry with one another, it is easy to fall back to one's original "political" base and forget that principled decisionmaking is the essence of the judicial function. If law clerks who are on an ideological crusade are given too much room to maneuver, either in opinion-drafting or in inter-chambers relations, ugly rumors and disagreements will adversely affect the court's decisionmaking process, even though the rumors and disagreements usually develop over matters that are (or should be) utterly irrelevant to case dispositions.

There is also the problem of judges' friends with political axes to grind. Some of these "friends" are prone to see the court as a politically divided institution. If the views of these friends are given credence, judges may begin to believe what they hear and respond accordingly. Judges on my court (from every political persuasion) have faced pressure -- from friends and family alike -- to avoid "straying" in their presumed ideological thinking. What is most amazing, however, is that even in the face of these pressures, most judges in most situations remain faithful to principled decisionmaking.

A related but separate threat to principled decisionmaking in "hard" cases is posed if judges begin to treat such cases as "very hard," so as to allow for the exercise of individual discretion where none is properly employed. It is crucial to my formulation of the decisionmaking process that cases do not become "very hard" simply by virtue of being ideologically charged. Even cases with obvious and significant political content are not "very hard" unless the applicable legal rules and materials provide no basis for choice between competing arguments. So long as one argument is legally stronger than another, the case must be disposed of accordingly, without recourse to discretion informed by political views.

An example of a case which was "hard," but not "very hard," is Brogsdale v. Barry, 72 a civil rights action in which prisoners injured in a riot and ensuing fire at the District of Columbia jail sought damages from the Mayor and other municipal officials. The District Court granted summary judgment to the plaintiffs, holding that the officials had violated the prisoners' rights through a policy of permitting overcrowded and unsafe conditions at the jail, and rejecting the officials' claim of qualified immunity.

Brogsdale was potentially a politically charged case, involving as it did the rights of prisoner-plaintiffs. It was also a "hard" case, as I have used that term, because the District Court employed a somewhat expansive standard in concluding that the prisoners' civil rights had been violated. Yet, the panel, despite being "mixed," 73 managed to [*860] reach a principled decision, vacating the judgment on the ground that the defendants were protected by qualified immunity because the constitutional norms with respect to prison overcrowding were not sufficiently clear at the time of the incident to permit the imposition of liability. Thus, a "hard" case was decided on the basis of the stronger legal argument, without resort to the individual politics or preferences of the panel members.

There are borderline situations, however, where judges may honestly disagree over whether a case is "hard" or "very hard." By way of illustration, I would point to Christian Knights of the Ku Klux Klan Invisible Empire v. District of Columbia, 74 a case heard in 1990 involving the Klan's proposed march from the Washington Monument to Capitol Hill. Citing a risk of violence and a lack of manpower to police the proposed route, the District issued a permit allowing the Klan to march a shorter distance. The District Court, without questioning the sincerity or accuracy of the District's determination that it could not ensure the safety of the marchers over the entire route, nonetheless ordered the District to allow the march over the full distance.

The Klan case was, by anybody's standards, very hard in the common sense in which the words are used. On one side were fundamental First Amendment values of free expression; on the other, a group whose general philosophy many find morally repugnant. A more ideologically loaded and personally taxing case is difficult to imagine.

Nonetheless, the Klan case was not, in my view, a "very hard" case in the sense I have in mind. Though each party could advance a viable legal argument in its favor, making the case "hard," the resolution of the dispute was, I thought, governed by established legal principles as applied to the record before the court. The District Court order was, in my view, insupportable in the absence of certain factual findings, among them a finding as to whether the threat of violence was real and uncontrollable, or only a subterfuge for impermissible discrimination. However I might have chosen to exercise my discretion had I been faced with a "very hard" case, I felt constrained in this instance by controlling law, and voted to return the matter to the District Court for further factual development.

What is interesting about the Klan case is that there was no unanimous opinion for the court. My colleague Judge Wald believed that the Klan march was fully protected by the First Amendment, and she would have affirmed the judgment of the District Court without reconsideration on remand; my colleague Judge Randolph, on the other hand, believed that the city had not infringed any constitutional rights in limiting the Klan's proposed march. Each of us, I think, was convinced [*861] that the case was "hard" but not "very hard"; and each of us issued a judgment premised solely on legal principles, not on a preferred result. We could not agree, however, on which of several competing legal principles controlled, so a case that each of us viewed as "hard" was rendered "very hard" by virtue of an honest disagreement over applicable legal precedent. The main point, I think, is that even though Klan was rendered "very hard," it was not a situation in which the judges reached out to make a case "very hard" in order to allow for unfettered discretion in judicial decisionmaking.

Of course, even if we resist the temptation to view "hard" cases as "very hard" in order to carve out space for discretionary decisionmaking, we are left with some small percentage of cases that are genuinely "very hard." And how we handle these cases, it seems to me, says a great deal about the strength of our commitment to principled decisionmaking. For "very hard" cases, though they do require us to exercise some degree of individual discretion, need not become the occasion for strictly partisan adjudication. Instead, such cases, precisely because they offer no clear answers, should provide an opportunity for us to reason and struggle toward principled bases for decision. That such decisionmaking will inevitably be informed by our private social and moral beliefs need not mean that it will be marred by our private partisan agendas.

An illustration of the kind of "very hard" decisionmaking I have in mind is provided by our 1984 en banc decision in Ollman v. Evans, 75 a defamation case pitting the individual interest in reputation against the press' First Amendment interest in free speech. By a vote of six to five, the circuit affirmed a District Court decision dismissing a suit by a Marxist political science professor against two syndicated columnists, based on an article which arguably suggested that the professor was a "political activist" who used the classroom to indoctrinate students. The opinion of the court ultimately concluded that the allegedly defamatory statements were not actionable because they would be understood, in context, as expressions of opinion. 76

What has always struck me as notable about Ollman is that it so clearly exhibits a decisionmaking process in which eleven judges, faced with a "very hard" case yielding no evident answers, struggle mightily to find some reasoned and principled basis for decision without regard to their presumed political affiliations. 77 Rather than producing a neat partisan split on the court, the decision generated opinions by seven [*862] different judges; so-called political alliances were so blurred that it was difficult to discern which positions should be considered "liberal" and which "conservative." Was, for instance, the concurring opinion of Judge Bork, considering the effects of defamation actions on press self-censorship and joined by Judges Ruth B. Ginsburg, Wilkey and MacKinnon, the "conservative" argument? 78 Or was the conservative stance that of Judge Wald, joined by Judge Scalia and myself, arguing in dissent that the contested language was a statement of fact and hence actionable under defamation law? 79 My intention here is not to answer that question, but simply to note that its very existence bespeaks the kind of principled decisionmaking we should strive for in "very hard" cases.

It may be instructive to compare with Ollman a facially similar en banc case decided in 1990, New York Times Co. v. NASA. 80 Again, the rights of the individual -- here, privacy rights -- were arrayed against the rights of the press. The galvanizing dispute in this case involved NASA's claim that it was entitled to withhold, under an exemption to the Freedom of Information Act ("FOIA"), a tape of voice communications made aboard the ill-fated Challenger space shuttle. Again in a six-to-five decision, the court concluded that the tape was covered by the relevant FOIA exemption as "information applying to a particular individual," and hence nondisclosable if release would intrude on privacy concerns.

In the New York Times case, however, the court found itself divided along more evidently political lines. The opinion for the court was ultimately joined by every circuit judge appointed by a Republican president; the dissenting opinion I filed was joined by every circuit judge appointed by a Democrat. I do not mean to suggest that the existence of what appears to be a clean partisan split on the court is proof of political decisionmaking; I, myself, sometimes wonder how the New York Times configuration came to be. But to the extent that such splits in "very hard" cases do suggest the exercise of discretion on an ideological basis, we have cause for concern. I worry that the search for principled bases for decision in "very hard" cases, difficult as it is, would be a likely and costly first casualty of politicized decisionmaking.

The same axiom, of course, applies in the reverse, so that the existence of what appears to be cross-partisan agreement in controversial cases suggests a reassuring absence of political decisionmaking. For the Legal Times, for instance, it is "strikingly odd" that judges of different

political affiliations should agree, and judges of similar political [*863] leanings disagree, on the constitutionality of various drug testing programs. 81 It thus becomes newsworthy that Judge Mikva, appointed by President Carter, should agree with Judge Silberman, appointed by President Reagan, that a particular testing program is justified under the Fourth Amendment. 82 For me, however, such agreement is no more startling than that exhibited in another drug testing case decided the same day, in which Judges Mikva, Silberman and I unanimously struck down another testing program as unconstitutional. 83 Indeed, I note this kind of apolitical alliance with pride as indicative of the way our circuit can, and does, decide cases: by searching for principles that quite naturally cut across so-called liberal-conservative lines.

It is fitting, perhaps, that I find myself returning to the subject of the drug crisis, so intimately connected to my reflections on appellate decisionmaking and principled adjudication. My earlier writings on appellate judging were possibly a little naive, in that they underestimated the vulnerability of our decisionmaking process to political infection, and the dangers that such infection could pose. Now, however, I have grown more sensitive to the ways in which our decisionmaking might be compromised. With the War on Drugs a real threat to basic civil liberties and the judiciary positioned as a last line of defense, it seems to me more critical than ever that we guard against any such compromise and work to reaffirm our commitment to principled decisionmaking.

V. POSTSCRIPT: PRINCIPLED DECISIONMAKING AND THE LEGAL PROFESSION

As a postscript to the foregoing reflections, it seems appropriate to offer a brief word on the relationship between the judiciary and the legal profession and academy. In my view, the issue of principled decisionmaking is best understood in the context in which it arises, as part of a larger legal order in which judges, lawyers and academics together shape the perceptions and realities of the system they inhabit.

The judiciary does not, of course, stand by itself, in isolation from the rest of the legal world. Judges obviously deal with lawyers on a [*864] regular basis and, in part because those lawyers (like judges' law clerks) are lawschool-trained, indirectly with the legal academy as well. The consequences of this interaction are, I think, quite significant for all parties involved. Though difficult to prove empirically, it seems highly likely as an intuitive matter that the attitudes of one group will have some effect on the others, and, specifically, that the emphasis placed on principle by one group will find itself reflected in the work of the others.

Under this hypothesis, a court's departures from principle may well have repercussions that extend beyond the judiciary to the legal system as a whole. It is only natural that legal professionals and academics should take their cues from judges, whom they are taught to accept as the ultimate arbiters of the law. The judiciary, therefore, bears a heavy institutional responsibility to nurture a conception of law and justice as principled ventures, distinct from politics and devoted to some larger conception of the public good. If the judiciary abdicates this responsibility, we should expect to see that abdication mirrored in the work and attitudes of lawyers, professors and even law students as they contemplate and interact with the legal system.

I have elsewhere noted my profound distress at the disjunction that seems to exist between the

current state of the legal profession and its traditional and highest ideals. 84 Specifically, I worry that too many attorneys have abandoned their positive duty to practice law with a "public spiritedness" that encompasses a meaningful commitment to the public good. For this traditional standard of "public spiritedness," I fear we have substituted a certain professional amorality that accepts and even demands a suspension of individual moral judgment. Many lawyers see themselves as engaged in the pursuit of results, rather than justice; most tellingly, many truly believe that they are acquitting themselves in accord with professional norms.

The causes of this departure from the standard of "public spiritedness" are, of course, many and complex. Among them must be included both the corporatization of the legal profession and a growing indifference within the legal academy to the way in which law is actually practiced and to the problems encountered by practicing lawyers. It is not, then, my contention that departures from principle by the judiciary are by themselves to blame for the professional amorality I have described. But it is my view that any such judicial departures from principle, real and perceived, may well contribute to the decline of "public spiritedness" within the profession. We cannot and should not expect practicing attorneys to achieve professional ideals that the judiciary appears to have abandoned.

[*865] The relationship I posit should, naturally, work both ways. The light in which the judicial system is perceived may, as I have mentioned above, exert a subtle influence on the decisionmaking process. If lawyers, in pursuit of billable hours, adopt an attitude that "winning is the only thing that matters," and winning is "whatever your client thinks it is in a particular case," 85 the courts will become nothing more than fora in which amoral "hired guns" appear to do battle. Lawyers will come to believe that a winning result, no matter how unprincipled, is what matters most. This win-at-all-costs mentality is seen in arguments before the court of appeals more often than I care to admit. In one recent case presented to the court, appellant's counsel concluded his argument with an impassioned claim that it would be a "miscarriage of justice" if his client's appeal was denied. In light of the patently frivolous nature of the case, this argument was quite astonishing to all who heard it. Following oral argument, during the judges' conference, one of my colleagues commented that the only "miscarriage of justice" was the attorney's decision to file suit in the first place. Of course, if the lawsuit was seen merely as a means to make a buck, or to take a "crap shoot" on a contingency fee, then it never may have occurred to counsel that pursuit of a frivolous claim can be damaging to our system of justice. For those cynics who believe that the final output of the judicial system can be no better than the input, it will come as no surprise if result-oriented lawyering of this sort breeds result-oriented decisionmaking.

The relationship between the judiciary and the legal profession and academy need not, of course, work to such grim effect. If departures from principle by one institution may be mirrored in the others, then adherence to principle by one institution should also find itself reflected in the work of the others. It is this intuition that leads me to approach the subject of principled decisionmaking with both urgency and a strong sense of optimism. For I am confident that reaffirmation by the judiciary of its commitment to principled decisionmaking can reverberate throughout the legal system, ultimately finding voice in the reclamation by the legal profession of its traditional "public spiritedness."

FOOTNOTES:

r1{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r1n1. Harry T. Edwards, The Role of a Judge in Modern Society: Some Reflections on Current Practice in Federal Appellate Adjudication, 32 CLEV. ST. L. REV. 385 (1983-84) [hereinafter Edwards, The Role of a Judge].

r2{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r2n2. Harry T. Edwards, Public Misperceptions Concerning the "Politics" of Judging: Dispelling Some Myths About the D.C. Circuit, 56 U. COLO. L. REV. 619 (1985) [hereinafter Edwards, Public Misperceptions].

r3{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r3n3. Id. at 629.

r4{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r4n4. Id. at 635.

r5{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r5n5. Hartness v. Bush, 919 F.2d 170, 174-81 (D.C. Cir. 1990) (Edwards, J., dissenting); United States v. Tavolacci, 895 F.2d 1423, 1430 (D.C. Cir. 1990) (Edwards, J., dissenting). Other judges have embraced this view. See, e.g., United States v. Hooper, 935 F.2d 484, 499 (2d Cir. 1991) (Pratt, J., dissenting) ("This case presents another example of the erosion of our constitutional protections resulting from this country's wasteful, ineffective, self-destructive efforts to stop drug trafficking.").

r6{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r6n6. Harry T. Edwards, A Lawyer's Duty to Serve the Public Good, 65 N.Y.U. L. 1148 (1990) [hereinafter Edwards, A Lawyer's Duty].

r7{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r7n7. 323 U.S. 214, 246 (1944) (Jackson, J., dissenting) (citation omitted).

r8{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r8n8. LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 1013 (1978).

r9{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r9n9. Executive Order No. 9066, authorizing the Secretary of War "to prescribe military areas from which any persons may be excluded" as protection against espionage and sabotage, was issued on February 19, 1942. Exec. Order No. 9066, 3 C.F.R. 1092 (1938-1943 Comp.). The following month, the President signed legislation criminalizing violations of these military restrictions. Pub. L. No. 77-503, 56 Stat. 173 (1942) (codified at 18 U.S.C. § 1383) (repealed 1976).

r10{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r10n10. 323 U.S. at 218-19; see also Yasui v. United States, 320 U.S. 115 (1943) (upholding West Coast curfew order extending to all persons of Japanese ancestry); Hirabayashi v. United States, 320 U.S. 81 (1943) (same).

r11{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r11n11. Korematsu, 323 U.S. at 235 (Murphy, J., dissenting).

r12{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r12n12. Later developments seriously weakened the already questionable claim of military urgency advanced by the government in Korematsu. The argument that time did not permit the making of individual loyalty determinations, critical to the Court's decision in Korematsu, was derived from an official report of the General charged with executing the exclusion and internment program. An original version of that report, however, deliberately withheld from the Supreme Court during its consideration of Korematsu and discovered only recently, makes clear that time was not of the essence in the General's thinking. Rather than relying on any purported military exigency, the original report rested on the blatantly racist understanding that "because of traits peculiar to citizens of Japanese ancestry it would be impossible to separate the loyal from the disloyal . . . ." Hirabayashi v. United States, 828 F.2d 591, 598 (9th Cir. 1987) (granting writ of coram nobis vacating conviction for violation of curfew order).

r13{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r13n13. In 1988, Congress authorized federal restitution payments of $ 20,000 to each Japanese American survivor of the World War II relocation and internment program. See 50 U.S.C. App. § 1989 (1988). Since that time, appropriation of sufficient funds for the restitution plan has proceeded slowly. See Another Insult to the Internees, N.Y. TIMES, Aug. 9, 1989, at A22 (commenting on failure of recent Administrations to commit adequate funding in proposed budgets).

r14{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r14n14. See, e.g., JAPANESE AMERICANS: FROM RELOCATION TO REDRESS (Roger Daniels et al. eds., 1986); PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (1982); M. WEGLYN, YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS (1976).

r15{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r15n15. See 323 U.S. at 242 (Murphy, J., dissenting) ("I s dissent . . . from this legalization of racism. [Racism] . . . is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States."); 323 U.S. at 246 (Jackson, J., dissenting) ("[O]nce a judicial opinion rationalizes [an order such as this one] . . . to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens.").

r16{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r16n16. For examples of early, almost instantaneous, legal criticism, see Dembitz, Racial Discrimination and the Military Judgment: The Supreme Court's Korematsu and Endo Decisions, 45 COLUM. L. REV. 175 (1945); Rostow, The Japanese-American Cases -- A Disaster, 54 YALE L.J. 489 (1945). For more recent commentary, see PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES (1983).

r17{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r17n17. See Hirabayashi v. United States, 828 F.2d 591 (9th Cir. 1987) (granting writ of coram nobis to vacate conviction for violation of curfew and exclusion orders); Yasui v. United States, 772 F.2d 1496 (9th Cir. 1985) (granting government motion to vacate curfew conviction and denying writ of coram nobis; appeal mooted by death of Mr. Yasui); Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984) (granting writ of coram nobis on grounds of government misconduct to vacate exclusion conviction).

r18{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r18n18. Arval A. Morris, Justice, War, and the Japanese-American Evacuation and Internment, 59 WASH. L. REV. 843, 843 (1984) (reviewing PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES (1983)).

r19{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r19n19. See Hohri v. United States, 793 F.2d 304 (D.C. Cir. 1986) (denying rehearing en banc). Hohri involved a takings claim by Japanese Americans based on their dispossession during World War II and, secondarily, the extent to which Korematsu remains viable legal precedent. A majority of circuit judges agreed with the panel that the takings claim was effectively barred by Korematsu, at least until both Congress and the executive branch acknowledged the error of the internment policy, thus tolling the applicable statute of limitations. "[L]itigants do not have the academic luxury . . . of insisting that the Supreme Court does not really mean what it says, or that a peacetime Court should not hesitate to repudiate a wartime Court for ignoring the Constitution's requirements." 793 F.2d at 314. In so doing, the majority squarely rejected an argument advanced by five dissenting judges who believed that "the fact that Hirabayashi and Korematsu were decided during the height of World War II . . . must certainly figure in calculating their weight as precedent . . . ." 793 F.2d at 306.

r20{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r20n20. United States v. Melendez-Carrion, 790 F.2d 984, 1004 (2d Cir. 1986) (distinguishing Korematsu to find that preventive pretrial detention of eight months violates due process rights of accused).

r21{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r21n21. Narenji v. Civiletti, 617 F.2d 745, 754 (D.C. Cir. 1979) (as amended Jan. 2, 1980) (upholding regulations requiring Iranian nonimmigrant alien students to provide information regarding residence and maintenance of nonimmigration status after takeover of American embassy), cert. denied, 446 U.S. 957 (1980).

r22{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r22n22. Sullivan v. Murphy, 478 F.2d 938, 959 (D.C. Cir. 1973) (distinguishing Korematsu to invalidate mass arrests and criminal actions against May Day protestors in Washington), cert. denied, 414 U.S. 880 (1973).

r23{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r23n23. Simmons v. United States, 406 F.2d 456, 459 (5th Cir. 1969) (citing Korematsu in deferring to

military judgment of executive and legislative branches and upholding constitutionality of draft), cert. denied, 395 U.S. 982 (1969).

r24{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r24n24. United States v. Chalk, 441 F.2d 1277, 1283 (4th Cir. 1971) (citing Korematsu to uphold warrantless searches and curfew imposed during state of emergency), cert. denied, 404 U.S. 943 (1971).

r25{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r25n25. See, e.g., Abrams v. United States, 250 U.S. 616 (1919) (upholding convictions for pamphleteering under 1918 amendment to Espionage Act making it a crime to urge curtailment of military production with intent to hinder war effort against Germany); Debs v. United States, 249 U.S. 211 (1919) (upholding Espionage Act conviction of Socialist Party leader for making antiwar speech); Schenck v. United States, 249 U.S. 47 (1919) (upholding conviction under Espionage Act for circulating among draftees pamphlets challenging constitutionality of conscription).

r26{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r26n26. See, e.g., Taylor v. Mississippi, 319 U.S. 583, 589-90 (1943) (distribution of literature condemning flag salute protected by First Amendment because it threatens no clear and present danger to governmental institutions); see also HARRY KALVEN, JR., A WORTHY TRADITION 180-87 (Jamie Kalven ed. 1988).

r27{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r27n27. 341 U.S. 494 (1951).

r28{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r28n28. See RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 148 (1977).

r29{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r29n29. See 341 U.S. at 510-11 (majority opinion of Vinson, C.J.), noting:

formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned;

see also TRIBE, supra note 8, at 613-14 (discussing application of clear-and-present-danger standard to Dennis facts).

r30{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r30n30. 341 U.S. at 508-11.

r31{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r31n31. See Dennis, 341 U.S. at 581 (Black, J., dissenting):

Public opinion being what it now is, few will protest the conviction of these Communist petitioners. There is hope, however, that in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong . . . .;

see also DAVID S. BOGEN, BULWARK OF LIBERTY: THE COURT AND THE FIRST AMENDMENT 37-38 (1984) (tying Dennis decision directly to prevailing political climate).

r32{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r32n32. 354 U.S. 298 (1957).

r33{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r33n33. See TRIBE, supra note 8, at 615.

r34{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r34n34. 354 U.S. at 320-25.

r35{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r35n35. 395 U.S. 444 (1969).

r36{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r36n36. Id. at 447. Subsequent applications of the clear-and-present-danger test have reaffirmed the importance of the immediacy requirement, some going so far as to suggest that the threatened lawless action must actually occur before advocacy can be held outside the scope of the First Amendment's protective ambit. See NAACP v. Claiborne Hardware Co., 458 U.S. 886, 928-29 (1982) ("An advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity and action in a common cause. When such appeals do not incite lawless action, they must be regarded as protected speech."); see also BOGEN, supra note 31, at 39-41.

r37{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r37n37. 360 U.S. 109, 125-34 (1959).

r38{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r38n38. See Sweezy v. New Hampshire, 354 U.S. 234 (1957) (reversing contempt conviction where legislative delegation of investigative authority to state attorney general was insufficiently precise); Watkins v. United States, 354 U.S. 178 (1957) (reversing contempt conviction for failure to inform witness of pertinence of questions to legislative mission).

r39{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r39n39. See TRIBE, supra note 8, at 708 n.49 (discussing contradictory results reached on "highly attenuated procedural theories"); KALVEN, supra note 26, at 506-31 (discussing complexities of law on legislative inquiry in chapter titled The Law Unable to Work Itself Pure).

r40{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r40n40. See Barenblatt, 360 U.S. at 153-60 (Black, J., dissenting) (detailing punitive methods of HUAC and severe effects on witnesses). See generally VICTOR S. NAVASKY, NAMING NAMES (1980)

(discussing impact of McCarthy hearings, especially on entertainment community).

r41{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r41n41. See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 464-65 (1958) (state interest in determining whether NAACP is conducting intrastate business in violation of foreign corporation registration statute not sufficiently substantial to compel disclosure of NAACP membership list, where NAACP has admitted presence and business activities in state and provided business records and total membership figures).

r42{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r42n42. See Gibson v. Florida Legis. Investigation Comm., 372 U.S. 539, 550-58 (1963) (committee investigating communist infiltration of NAACP may not compel disclosure of membership list without first laying evidentiary foundation showing existence of communist influence); id. at 578-80 (Harlan, J., dissenting) (noting majority's departure from precedent and criticizing notion that investigative agency must "prove in advance the very things it is trying to find out"); see also KALVEN, supra note 26, at 514 (discussing contrast between cases involving Communist Party and those involving NAACP; "the differences in decision are so pronounced that one cannot altogether quiet the suspicion that the true operating principle was: the Communists cannot win; the NAACP cannot lose.").

r43{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r43n43. To this day, Barenblatt remains good law, at least with respect to compelled disclosure of present affiliations with the Communist Party. The only constitutional limit placed on the scope of legislative inquiry into political associations came in 1966 with DeGregory v. Attorney General of New Hampshire, 383 U.S. 825, 828-30 (1966), which found the state interest in a witness' historical connections with the Communist Party, over a decade old, too conjectural to override the witness' First Amendment rights.

r44{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r44n44. Appeals Court Reverses Itself in 3 Cases, Spotlighting Partisan Splits Nationwide, WALL ST. J., Aug. 3, 1987, at 7.

r45{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r45n45. Eastern Case Stirs D.C. Circuit Discord, LEGAL TIMES, Jan. 16, 1989, at 12.

r46{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r46n46. See, e.g., Lost in Space, LEGAL TIMES, Dec. 17, 1990, at 7 (decision limiting release of tapes from Challenger explosion reported as case in which "[t]he court's Democratic appointees did vote in a block [and] lost . . . outnumbered by Republican appointees concerned about the privacy interests of the astronauts' families"); En Banc Furor, Liberal Fury, AM. LAW., June 1988, at 10 [hereinafter Liberal Fury] (decision reversing grant of en banc rehearing in three cases described as turning on political "break" by Reagan appointee: "With the Democrats in the minority on the bench, the key to stopping the Republicans was one of their own. . . . Instead of sticking with his Republican colleagues, [Judge] Silberman voted with the five Democratic-appointed D.C. Circuit judges . . . .").

r47{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r47n47. D.C. Lawyer's Nomination to Court of Appeals Appears Stalled, WASH. POST, Sept. 9, 1988, at C4.

r48{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r48n48. Id.

r49{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r49n49. Id.

r50{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r50n50. See New Judges Get No Rehearsals, LEGAL TIMES, Sept. 10, 1990, at 7 (discussing exceptional nature of panels dominated by Democrats and "more typical" nature of panels composed of three Republican appointees).

r51{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r51n51. It is not invariable, however, that the Supreme Court's consideration of "very hard" cases will result in partisan splits in decisionmaking. See, e.g., Kay v. Ehrler, 111 S. Ct. 1435 (1991) (unanimous decision holding that a pro se litigant who is also an attorney may not recover attorney's fees under 42 U.S.C. § 1988, despite acknowledging that "[n]either the text of the statute [n]or its legislative history provides a clear answer" to the question); Bob Jones Univ. v. United States, 461 U.S. 574 (1983) (8-1 decision holding that nonprofit private schools that practice racial discrimination do not qualify for tax-exempt status under the Internal Revenue Code); Griggs v. Duke Power Co., 401 U.S. 424 (1971) (unanimous decision holding that Title VII of the Civil Rights Act of 1964 bars employment practices that have a disproportionate adverse impact on minorities, even if that impact is unintended); Brown v. Board of Educ., 347 U.S. 483 (1954) (unanimous decision holding that racial segregation in public schools violates the equal protection clause of the Fourteenth Amendment).

r52{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r52n52. I have sought to define "easy," "hard" and "very hard" cases in Edwards, The Role of a Judge, supra note 1, at 395-403.

r53{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r53n53. See, e.g., Friendly Takeover, LEGAL TIMES, Nov. 26, 1990, at 3; Federal Judge Says She Will Yield Position, N.Y. TIMES, Nov. 20, 1990, at A16; WALL ST. J., Jan. 22, 1991, at B3.

r54{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r54n54. Friendly Takeover, supra note 53.

r55{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r55n55. See Drug Tests: Drawing Fine Lines, LEGAL TIMES, Dec. 3, 1990, at 7 (noting disagreement between Judges Mikva and Edwards, agreement between Judges Mikva and Silberman).

r56{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r56n56. See Solicitor General's Career Advances at Intersection of Law and Politics, N.Y. TIMES, June 1, 1990, at A16.

r57{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r57n57. See

They Don't Like What They Hear, LEGAL TIMES, Dec. 24, 1990, at 1.

r58{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r58n58. Liberal Fury, supra note 46.

r59{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r59n59. See, e.g., Silberman, Dogged by Story, Provides Details of Outburst, LEGAL TIMES, Mar. 11, 1991, at 7 (Judge Silberman's response to stories that, during a "quite spirited, indeed, heated, discussion," he said to Judge Mikva: "if you were ten years younger I would be tempted to punch you in the nose."); Neil A. Lewis, Presiding as Ideas Clash in Capital Appeals Court, N.Y. TIMES, Feb. 1, 1991, at B4.

r60{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r60n60. See, for example, Justice Scalia's concurring opinion in Webster v. Reproductive Health Services, 442 U.S. 490, 532-37 (1989), saying that Justice O'Connor's opinion "cannot be taken seriously," and rejecting that opinion as "incorrect[]," "irrational," and "[ir]responsible."

r61{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r61n61. Presiding as Ideas Clash in Capital Appeals Court, supra note 59.

r62{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r62n62. Id.

r63{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r63n63. See Edwards, The Role of a Judge, supra note 1, at 395-403.

r64{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r64n64. See Edwards, Public Misperceptions, supra note 2, at 642-43 (statistical breakdown of 1983-84 case load showing overall dissent rate of under 6% and dissent rate on "mixed panels" -- panels composed of judges appointed by Presidents of different parties -- of under 10%). A preliminary analysis of statistics for the year 1989-90 shows a substantially similar dissent rate, both generally and for mixed panels.

r65{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r65n65. See Edwards, The Role of a Judge, supra note 1, at 399-403.

r66{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r66n66. See generally ROBERT H. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW (1990); B. ETHAN BRONNER, BATTLE FOR JUSTICE: HOW THE BORK NOMINATION SHOOK AMERICA (1989); MICHAEL PERTSCHUK & WENDY SCHAETZEL, THE PEOPLE RISING: THE CAMPAIGN AGAINST THE BORK NOMINATION (1989).

r67{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r67n67. Edwards, Public Misperceptions, supra note 2, at 642-43.

r68{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r68n68. This

analysis is based on statistics compiled by the Clerk's Office of the D.C. Circuit.

r69{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r69n69. Id.; Edwards, Public Misperceptions, supra note 2, at 642-43.

r70{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r70n70. Indeed, my views on the issues discussed in this section were set forth fully in two earlier articles. See Edwards, Public Misperceptions, supra note 2; Edwards, The Role of a Judge, supra note 1.

r71{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r71n71. See, e.g., Keating v. FERC, 927 F.2d 616 (D.C. Cir. 1991) (Mikva, C.J., Edwards, Thomas, JJ.); Brogsdale v. Barry, 926 F.2d 1184 (D.C. Cir. 1991) (Edwards, Thomas, Randolph, JJ.); Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984) (Edwards, Scalia, Starr, JJ.).

r72{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r72n72. 926 F.2d 1184 (D.C. Cir. 1991).

r73{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r73n73. The panel consisted of Judge Thomas, Judge Randolph and myself.

r74{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r74n74. 919 F.2d 148 (D.C. Cir. 1990).

r75{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r75n75. 750 F.2d 970 (D.C. Cir. 1984) (en banc).

r76{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r76n76. See id. at 989-92 (opinion of Starr, J.).

r77{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r77n77. Indeed, I have referred to Ollman before in this context as an example of the court's struggle to pursue principled decisionmaking. See Edwards, Public Misperceptions, supra note 2, at 633-34.

r78{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r78n78. See Ollman, 750 F.2d at 993 (Bork, J., concurring).

r79{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r79n79. See id. at 1032 (Wald, J., dissenting in part).

r80{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r80n80. 920 F.2d 1002 (D.C. Cir. 1990) (en banc).

r81{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r81n81. Drug Tests: Drawing Fine Lines, supra note 55. Judging from recent cases, such disagreement, even among judges appointed by the same President, is hardly freakish. See Willner v. Thornburgh,

928 F.2d 1185 (D.C. Cir. 1991) (Henderson, J., dissenting from majority opinion of Randolph, J., upholding drug-testing of prospective employees at Department of Justice Antitrust Division); United States v. McCrory, 930 F.2d 63, 70 (D.C. Cir. 1991) (Silberman, J., concurring in part to majority opinion of Sentelle, J., affirming conviction and sentence of drug dealer, but finding the appellant's "Fourth Amendment claim . . . substantially more difficult than do my colleagues").

r82{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r82n82. See Hartness v. Bush, 919 F.2d 170 (D.C. Cir. 1990).

r83{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r83n83. See National Treas. Employees Union v. Yeutter, 918 F.2d 968 (D.C. Cir. 1990).

r84{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r84n84. See Edwards, A Lawyer's Duty, supra note 6; see also Harry T. Edwards, The Role of Legal Education in Shaping the Profession, 38 J. LEGAL EDUC. 285 (1988).

r85{PRIVATE "TYPE=PICT;ALT=Click here to return to the footnote reference."}r85n85. Mark A. Dombroff, Winning is Everything!, NAT'L L.J., Sept. 25, 1989, at 13.

Judge Edwards delivered the fourth Thomas E. Fairchild Lecture on October 18, 1991 in Madison, Wisconsin. This Article formed the basis of the lecture; however, the Article was no itself the lecture.

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To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2002 10:16:35 AM
Subject: : LRM LJM95 - - TREASURY Draft Bill on Air and Sea Passenger User Fees
Attachments: P_HUSF7003_WHO.TXT_1.wpd; P_HUSF7003_WHO.TXT_2.wpd

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Subject: LRM LJM95 - - TREASURY Draft Bill on Air and Sea Passenger
User Fees

Attached is draft legislation, which is part of the Administration's
legislative program needed to support the President's FY 2003 Budget.
Please provide any comments by Noon, Monday, May 20th. Thank you.

SPEAKER LETTER: - TREAS0047LTR.wpd
DRAFT BILL TEXT:

LRM ID: LJM95
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
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FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Draft Bill on Air and Sea Passenger User Fees

DEADLINE: Noon Monday, May 20, 2002
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts for purposes of the "Pay-As-You-Go" provisions
of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is draft legislation, which is part of the Administration's legislative program needed to support the President's FY 2003 Budget. Please provide any comments by 5:00 PM, Wednesday, May 22nd. Thank you.

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LRM ID: LJM95 SUBJECT: TREASURY Draft Bill on Air and Sea Passenger User Fees
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LEGISLATIVE REFERRAL
MEMORANDUM

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Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
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395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

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_____ Concur

_____ No Objection

_____ No Comment

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HUSF7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HUSF7003_WHO.TXT_2>

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
United States House of Representatives
Washington, D.C. 20515 [Identical Letter to the President of the Senate]

Dear Mr. Speaker:

I am pleased to transmit herewith a draft bill "To amend the Customs user fee statute, and for other purposes." Specifically, the bill would amend section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended, (19 U.S.C. 58c), to implement the President's FY 2003 Budget as it relates to COBRA.

The bill would increase air and sea passenger user fees. Excess fees, as determined by the Secretary of the Treasury, would be deposited in the Customs User Fee Account and would remain available until expended for reimbursement of Customs operations costs not otherwise reimbursed under COBRA, as available to the extent provided for in appropriations Acts.

It would be appreciated if you were to lay the draft bill before the House of Representatives. An identical draft bill has been transmitted to the President of the Senate.

The Office of Management and Budget has advised that the transmittal of this draft bill is in accord with the President's program.

Sincerely,

David D. Aufhauser

Enclosure

A BILL

T To amend the Customs user fee statute, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act, as amended, (19 U.S.C. 58c), is further amended --

(1) in subsection (a)(5)--

in subparagraph (A),

(A) by deleting "$5." and inserting in lieu thereof as follows:

"(1) $5 base fee, and

"(2) subject to subsection (f)(7), an additional fee of $6."; and

in subparagraph (B),

(B) by deleting "$1.75." and inserting in lieu thereof as follows:

"(1) $1.75 base fee, and

"(2) subject to subsection (f)(7), an additional fee of $0.25."; and

(2) in subsection (f)--

(A) in paragraph (1)(A), by striking "and";

(B) in paragraph (1)(B), by striking the period at the end and inserting instead ", and";

(C) by inserting at the end of paragraph (1) the following new subparagraph:

"(C) the portion of such fees that is determined by the Secretary to be increased amounts under paragraph (7)."

(D) in paragraph (3)(A), by striking "paragraph (5)" and inserting "paragraphs (5) and (7)"; and

(E) by adding at the end the following new paragraph:

"(7) any additional amounts from the increase in fees under subsection (a)(5) (A)(2) and (B)(2) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations acts.".

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer G. Newstead/WHO /EOP@EOP [WHO] <Jennifer G. Newstead>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 5/16/2002 8:19:51 AM
Subject: : FW: Judges

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CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-MAY-2002 12:19:51.00
SUBJECT:: FW: Judges
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
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05/16/2002 11:55:49 AM
Record Type: Record

To: See the distribution list at the bottom of this message
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Subject: FW: Judges

-----Original Message-----
From: Scottfinan, Nancy
Sent: Thursday, May 16, 2002 11:53 AM
To: Dinh, Viet; Willett, Don; Goodling, Monica; Joy, Sheila
Cc: Bryant, Dan; O'Brien, Pat
Subject: Judges

I know that this is not new news to some of you, however--
Brooks Smith--held over

all others approved by individual roll call votes of 19-0
Richard Clifton
Christopher Conner
Joy Conti
John E. Jones III

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
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"Jennifer Oschal (E-mail)" <joschal@att.net> (Receipt Notification Requested) (IPM Return Requested)

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2002 10:15:24 AM
Subject: : LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization
Attachments: P_QSSF7003_WHO.TXT_1.doc

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CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-MAY-2002 14:15:24.00
SUBJECT:: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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From: Irene Kho on 05/16/2002 12:03:49 PM
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To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

Attached is Treasury testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

- testimony draft 5.151.doc

LRM ID: IKK203
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

DEADLINE: 5:00 PM Friday, May 17, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on the Administration's tax

incentive programs for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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LRM ID: IKK203 SUBJECT: TREASURY Testimony on the
Administration's Tax Incentive Proposals for Community Revitalization

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

REV_00145538

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

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File attachment <P_QSSF7003_WHO.TXT_1>

For Release Upon Delivery
Expected at 2:00 p.m.
May 21, 2002

STATEMENT OF
ERIC SOLOMON
DEPUTY ASSISTANT SECRETARY (REGULATORY AFFAIRS)
DEPARTMENT OF THE TREASURY
BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS

Mr. Chairman, Mr. Coyne, and Members of the Subcommittee:

I appreciate the opportunity to discuss with you today the Administration's program of tax incentives designed to foster the revitalization of economically disadvantaged communities. I would like to start by thanking the Subcommittee for holding a hearing on this important issue.

The President is firmly committed to directing public funds toward developing economically distressed communities. However, the President also believes that there is a limit on what the Federal government can accomplish directly. Consequently, the President's Budget for FY 2003 contains initiatives to encourage further involvement by individuals, businesses, and faith-based and community-based organizations in working to eliminate pockets of economic distress wherever they exist in this country. In particular, the Administration proposes making the brownfields tax incentive permanent. Under current law, this incentive is scheduled to expire on December 31, 2003. The revenue cost of a permanent extension is estimated to be $1.1 billion over five years. The Administration also proposes the creation of a tax credit, similar in design to the low-income housing tax credit, for developers of affordable single-family housing. The credit would take effect in 2003 and cost $2.4 billion over 5 years.

Furthermore, thanks in large part to the leadership shown by the Ways and Means Committee, many of the Administration's tax proposals have been enacted or are included in legislation that the House passed last summer. Administration tax proposals benefiting low-income individuals or distressed communities that have already been enacted include the following: (1) extension of the work opportunity tax credit through 2003; (2) extension of the welfare to work credit through 2003; (3) extension of authority to issue qualified zone academy bonds through 2003; (4) providing tax-exempt private activity bonds to finance reconstruction in the area surrounding the World Trade Center in New York City devastated by the September 11, 2001 terrorist attacks; (5) creation of a new 10 percent income tax bracket; and (6) doubling of the child tax credit to $1000.

We look forward to working with this Subcommittee as it considers the remainder of the Administration's initiatives related to encouraging community renewal.

The remainder of my testimony will provide a more detailed discussion of current law and the Administration's budget proposals.

REV_00145541

INCENTIVES FOR DISTRESSED COMMUNITIES

Current law tax incentives for distressed communities

The Internal Revenue Code currently includes numerous incentives to encourage the development of economically distressed areas. They include tax incentives for businesses located in empowerment zones, enterprise communities and renewal communities, the new markets tax credit, qualified zone academy bonds, certain categories of tax-exempt bonds, special incentives for investment and employment on Indian reservations, the low-income housing tax credit, the work opportunity tax credit, and the deductibility of environmental remediation costs.

Empowerment Zones

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) authorized a demonstration project under which nine empowerment zones, six in urban areas and three in rural areas, were designated through a competitive application process. State and local governments nominated distressed geographic areas, which were selected on the strength of their strategic plans for economic and social revitalization. The urban areas were designated by the Secretary of the Department of Housing and Urban Development. The rural areas were designated by the Secretary of the Department of Agriculture. The Taxpayer Relief Act of 1997 added two urban Round I zones and authorized 20 Round II zones (15 urban and five rural). The Community Renewal Tax Relief Act of 2000 authorized nine Round III zones (seven urban and two rural). There are currently 30 urban zones and 10 rural zones. Designation of Round I, Round II or Round III status generally will apply until December 31, 2009.

Qualifying businesses in empowerment zones are eligible for certain tax benefits. These benefits include the following: (1) a 20-percent wage credit for qualifying wages; (2) additional expensing for qualified zone property; and (3) tax-exempt financing for certain qualifying zone facilities. In addition, taxpayers may elect to defer capital gains from certain sales and re-investments in qualified empowerment zone assets. Taxpayers may also exclude certain gain from the sale of qualifying empowerment zone stock that is held for more than five years.

The wage credit provides a 20 percent subsidy on the first $15,000 of annual wages paid to residents of empowerment zones by businesses located in these communities, if substantially all of the employee's services are performed within the zone. By lowering the cost of labor, the wage credit encourages new businesses to locate in zones, and encourages those businesses already there to expand, providing jobs and opportunities for self-sufficiency for zone residents.

Enterprise zone businesses are allowed to expense the cost of certain property up to an additional $35,000 above the amounts generally available under section 179 of the Internal Revenue Code. In addition, only 50 percent of the cost of such property counts toward the aggregate annual limit on section 179 expensing. This incentive is designed to increase investment in machines, computers and other tangible business property within empowerment zones by small businesses.

REV_00145542

Enterprise zone businesses are also permitted access to a special class of tax-exempt private activity bonds. Limits are placed on the amount of such financing available to each zone. Rural zones are allowed $60 million of such financing, urban zones with less than 100,000 residents are allowed $130 million of such financing and urban zones with at least 100,000 residents are allowed $230 million of such financing. These bonds are not subject to the State's volume cap on private activity bonds.

The Community Renewal Tax Relief Act of 2000 added two provisions to limit capital gains taxation on certain investments within empowerment zones to encourage greater private investment in the zones. Taxpayers are allowed to roll over the capital gain from the sale of qualified empowerment zone assets held more than one year, if a replacement qualified empowerment zone asset is purchased in the same zone as the asset sold. Qualified empowerment zone assets include certain stock and partnership interests in an enterprise zone business and certain tangible property used in an enterprise zone business. This provision applies to assets acquired after December 21, 2000.

In addition, taxpayers other than corporations are allowed to exclude 60 percent of the gain on the sale or trade of qualified small business stock held more than 5 years, if the business also qualifies as an enterprise zone business. Taxpayers are normally allowed to exclude 50 percent of the gain on the sale of qualified small business stock. This provision applies to stock acquired after December 21, 2000.

Enterprise Communities

In addition to Empowerment Zones, OBRA 93 provided for the designation of 95 Enterprise Communities, 65 in urban areas and 30 in rural areas. Qualified businesses in these communities are entitled to the same favorable tax-exempt financing benefits as those in empowerment zones. Many of these enterprise communities have subsequently been re-designated as part of an empowerment zone or a renewal community and are no longer designated as an enterprise community. Currently, 68 enterprise communities qualify for tax-exempt financing, 40 in urban areas and 28 in rural areas.

Renewal Communities

The Community Renewal Tax Relief Act of 2000 authorized 40 renewal communities, at least 12 of which must be in rural areas. The renewal communities were chosen through a competitive application process similar to that used for empowerment zones. The 40 communities were recently designated by the Department of Housing and Urban Development and that designation continues through 2009.

Taxpayers may utilize the renewal community tax benefits beginning this year. These benefits include the following: (1) a 15-percent wage credit for qualifying wages; (2) additional section 179 expensing for qualified renewal property; (3) a commercial revitalization deduction; and (4) an exclusion for capital gains on qualified community assets held more than 5 years.

REV_00145543

The wage credit and increased section 179 expensing operate in a similar fashion as in empowerment zones. The primary difference is that the wage credit is smaller, equal to 15 percent for the first $10,000 of wages.

The commercial revitalization deduction is designed to foster the development or rehabilitation of commercial real estate in renewal communities. This deduction is applicable to certain nonresidential real property or other property functionally related to nonresidential real property. A taxpayer may elect to either: (1) deduct one-half of any qualified revitalization expenditures that would otherwise be capitalized for any qualified revitalization building in the tax year the building is placed in service, or (2) amortize all such expenditures over a 120-month period beginning with the month the building is placed in service. A qualified revitalization building is any building and its structural components placed in service by the taxpayer in a renewal community. If the building is new, the original use of the building must begin with the taxpayer. If the building is not new, the taxpayer must substantially rehabilitate the building and then place it in service. The total amount of qualified revitalization expenditures for any building cannot be more than the smaller of $10 million or the amount allocated to the building by the commercial revitalization agency for the state in which the building is located. A $12 million dollar cap on allowed commercial revitalization expenditures is placed on each renewal community annually.

In order to help stimulate private investment in renewal communities, qualified capital gain earned on qualified community assets is excluded from gross income. A qualified community asset includes stock or a partnership interest in a qualified renewal community business and certain tangible property used in a renewal community business. To qualify for the capital gain exclusion, the asset must be purchased after December 31, 2001 and before January 1, 2010, and it must be held for at least five years.

District of Columbia Incentives

A special set of incentives was enacted in 1997 to help redevelop the District of Columbia. The Taxpayer Relief Act of 1997 included tax incentives for both residents and businesses to locate in the District of Columbia. A $5,000 income tax credit for first-time home purchasers was designed to attract new homeowners to the District. A second set of incentives, similar to those provided in empowerment zones, was intended to encourage the establishment of new businesses in the District as well as new investment in existing enterprises.

Subject to certain income restrictions, the $5,000 credit is available to first-time purchasers of a principal residence in the District of Columbia who have not owned houses in the District during the year preceding the purchase. Although the credit was initially available for property purchased through the end of 2000, subsequent legislation extended the incentive through the end of 2003.

Other tax incentives offer a range of economic inducements to businesses operating in the more economically disadvantaged parts of the District. With the exception of a provision related to the sale of capital assets, these incentives are available only to businesses located either within the boundaries of the D.C. Enterprise Community, or located in census tracts elsewhere in the

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District where the poverty rate exceeds 20 percent. These areas are collectively known as the DC Zone. With certain minor adjustments, businesses in the DC Zone may claim the same wage credit, expensing of certain capital investment, and tax exempt bond financing as businesses in an empowerment zone. In addition, as in renewal communities, capital gains realized from the sale of certain assets are excludable from the income of the seller. For the purposes of this provision alone, the DC Zone is expanded to include all census tracts in the District in which the poverty rate exceeds 10 percent.

New York Liberty Zone

While the area around the World Trade Center in New York City would not have been described as an economically distressed community prior to the extraordinary events of September 11, 2001, the incredible destruction of life and property in that area due to the terrorist attacks prompted both the Administration and the Congress to support tax incentives targeted to helping New York City recover economically. I commend you, Mr. Chairman, and other members of the Ways and Means Committee for the leadership you exhibited in helping to enact the Job Creation and Worker Assistance Act of 2002.

Some of the tax incentives provided in the New York Liberty Zone are similar to the tax incentives offered in empowerment zones, while others were designed to meet the unique challenges facing New York City in the aftermath of the September 11 terrorist attacks. As in empowerment zones, qualified businesses are allowed a wage credit, increased section 179 expensing, and access to tax-exempt financing. Provisions specific to the New York Liberty Zone include 30 percent expensing of certain property, accelerated depreciation of qualified leasehold improvement property, extension of the replacement period for certain property involuntarily converted, and an additional advance refunding of bonds for facilities located in New York City.

The wage credit is allowed for certain employees who work in New York City through an extension of the work opportunity tax credit (WOTC). The new targeted group for the WOTC includes employees of businesses located in the New York Liberty Zone if substantially all of the employee's services for the business are performed within the New York Liberty Zone. In addition, the new targeted group includes employees of businesses that relocated from the New York Liberty Zone due to the physical destruction or damage of their workplaces by the September 11, 2001 terrorist attacks to another location within New York City, provided that substantially all of the employee's services are performed within New York City. Only businesses with an average of 200 or less employees during the taxable year are eligible for the credit. The credit is effective for wages paid or incurred for work performed during calendar year 2002 or 2003.

An increase in section 179 expensing of $35,000 is allowed for property placed in service by taxpayers after September 10, 2001, and before January 1, 2007, if the original use of the property in the New York Liberty Zone commences with the taxpayer after September 10, 2001 and substantially all of the use of the property is in the New York Liberty Zone. As in empowerment zones and renewal communities, only 50 percent of the value of such property counts toward the aggregate annual limit on section 179 expensing.

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The Governor of New York State and the Mayor of New York City are each given an allowance to issue up to $4 billion of tax-exempt private activity bonds before January 1, 2005. The bonds may be used to finance construction and rehabilitation of nonresidential real property, residential rental real property, and public utility property in the New York Liberty Zone. The Governor and the Mayor may each designate up to $1 billion of such bond proceeds for the acquisition, construction, and rehabilitation of certain commercial real property located outside the New York Liberty Zone and within New York City. These bonds are not subject to the State's volume cap on private activity bonds.

A taxpayer is allowed an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified New York Liberty Zone property. In order to qualify for this partial expensing, the property must be (1) a property with a MACRS recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property, or (4) certain nonresidential real property and residential rental property. Nonresidential real property and residential rental property is eligible for the partial expensing only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. This provision applies neither to property that would otherwise qualify for 30 percent expensing under section 168(k), nor to qualified New York Liberty Zone leasehold improvement property. Furthermore, to qualify for the partial expensing, substantially all of the use of the property must be in the New York Liberty Zone and the original use of the property in the New York Liberty Zone must commence with the taxpayer after September 10, 2001 (except for certain leased property). Finally, qualified property must be purchased by the taxpayer after September 10, 2001, and placed in service before January 1, 2007, or for nonresidential property and residential rental property, January 1, 2009.

Qualified New York Liberty Zone leasehold improvement property placed in service after September 10, 2001 and before January 1, 2007 is treated as 5-year property for the purposes of section 168 depreciation rules, with deductions taken using the straight-line method. Under the alternative depreciation system (section 168(g)), such property has a class life of 9 years. Qualified New York Liberty Zone leasehold improvement property is qualified leasehold improvement property as defined in section 168(e)(6) that is placed in service in the New York Liberty Zone.

When property used in a trade or business is damaged or destroyed, the taxpayer may deduct any loss sustained to the extent that the loss is not compensated by insurance or otherwise. When insurance or other compensation results in a gain from the damage or destruction of property, then the taxpayer may elect to reduce the current recognition of gain by purchasing a replacement property within a specific time period which is similar or related in use to the damaged or destroyed property (section 1033(a)). For property in the New York Liberty Zone that was involuntarily converted as a result of the terrorist attacks on September 11, 2001, the replacement period is extended from 2 years to 5 years if substantially all of the use of the replacement property is in New York City.

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Finally, certain bonds for facilities located in New York City are given one additional advance refunding. There is an aggregate limit of $9 billion advance refunding bonds that may be issued before January 1, 2005.

New Markets Tax Credit

The new markets tax credit was created by the Community Renewal Tax Relief Act of 2000 to encourage capital investments in businesses that are located in low-income communities. The new markets tax credit provides a tax credit to investors who make "qualified equity investments" in privately-managed investment vehicles called "community development entities," or "CDEs." The CDEs are required to invest substantially all of the proceeds of the qualified equity investments in low-income communities. For example, CDEs may make loans or capital investments in companies that operate in low-income communities.[1]

Eligible investors in a CDE are entitled to claim tax credits over a seven-year period beginning on the date of the initial investment. The value of the credits to investors will be about 30 percent of the amount of the qualified equity investment on a present value basis.

In order for an entity to qualify as a CDE, it must meet three requirements. First, the primary mission of the entity must be to serve or provide investment capital for low-income communities or low-income persons. Second, the entity must maintain accountability to residents of low-income communities through their representation on the entity's governing or advisory board. Third, the entity must be certified as a CDE by the Treasury Department's Community Development Financial Institutions Fund (CDFI Fund).

In order for a CDE to issue qualified equity investments with respect to which new markets tax credits may be claimed, the CDE must apply for and receive from the CDFI Fund an allocation of credit authority for those investments.

A total of $15 billion of equity investments will be able to qualify for this authority on a phased-in basis between 2001 and 2007. The CDFI Fund will allocate this authority among CDEs based on a competitive application process. In making these allocations, the CDFI Fund is required to give priority to any entity (1) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or (2) which intends to invest substantially all of the proceeds of the qualified equity investments in one or more businesses in which persons unrelated to the entity hold the majority equity interest. [In the next couple of weeks, the CDFI Fund will issue a notice seeking applications from CDEs for allocation of credit authority.]

Qualified Zone Academy Bonds

State and local governments can issue qualified zone academy bonds (QZABs) to fund the improvement of certain eligible public schools. An eligible holder of a QZAB receives annual Federal income tax credits. These annual credits compensate the holder for lending money and, therefore, are treated like taxable interest payments for Federal tax purposes.

[1] For these purposes, "low-income community" is defined as any population census tract if (1) the poverty rate for the tract is at least 20 percent, or (2) the median family income for the tract does not exceed 80 percent of statewide median family income (or, in the case of metropolitan areas, metropolitan area median family income, if greater).

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Eligible holders are banks, insurance companies, and corporations actively engaged in the business of lending money. The credit rate for a QZAB is set on its day of sale by reference to credit rates established by the Department of the Treasury. The maximum term of a QZAB issued during any month is determined by reference to the adjusted applicable Federal rate (AFR) published by the Internal Revenue Service for the month in which the bond is issued.

This provision was enacted in the Taxpayer Relief Act of 1997, which established authority to issue $400 million of QZABs per year for 1998 and 1999. This authority was extended to 2000 and 2001 by the Ticket to Work and Work Incentives Improvement Act of 1999. The Administration proposed that this authority be extended through 2003, which was accomplished in the recently enacted Job Creation and Worker Assistance Act of 2002. The annual cap is allocated among the States in proportion to their respective populations of individuals with incomes below the poverty line. Unused authority to issue QZABs may be carried forward for two years (three years for authority arising in 1998 and 1999) after the year for which the authority was established.

A number of requirements must be met for a bond to be treated as a QZAB. First, the bond must be issued pursuant to an allocation of bond authority from the issuer's State educational agency. Second, at least 95 percent of the bond proceeds must be used for an eligible purpose at a qualified zone academy. Eligible purposes include rehabilitating school facilities, acquiring equipment, developing course materials, or training teachers. A qualified zone academy is a public school (or an academic program within a public school) that is designed in cooperation with business and is either (1) located in an empowerment zone or enterprise community, or (2) attended by students at least 35 percent of whom are estimated to be eligible for free or reduced-cost lunches under the National School Lunch Act. Third, private entities must have promised to contribute to the qualified zone academy certain property or services with a present value equal to at least 10 percent of the bond proceeds.

Mortgage Revenue Bonds

Mortgage revenue bonds ("MRBs") are bonds issued by or on behalf of a State or local government to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied homes located within the jurisdiction of the issuer of the bonds. Interest on MRBs is excluded from gross income for federal income tax purposes if they meet the requirements for "qualified mortgage bonds" or "qualified veterans' mortgage bonds." In addition, in some circumstances, "mortgage credit certificates" may be issued as an alternative to qualified mortgage bonds.

In general, qualified mortgage bonds must finance residences for first-time home buyers, the purchase price of the residence may not exceed certain amounts, and the purchaser must satisfy certain income limitations. In addition, certain special rules apply with respect to "targeted areas." A targeted area is defined as (1) a census tract in which 70 percent or more of the families have incomes that are 80 percent or less of the Statewide median family income, or (2) an area of chronic economic distress designated by the Secretary of the Treasury and the Secretary of Housing and Urban Development. At least 20 percent of the lendable proceeds of each qualified mortgage bond issue (but not more than 40 percent of the average mortgage

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activity in the targeted area) is required to be made available for owner-financing in targeted areas for a period of at least one year.

The volume of certain tax-exempt private activity bonds, including qualified mortgage bonds, that States and local governments may issue in each calendar year is limited by State-wide volume limits. The current annual volume limits are $50 per resident of the State or $150 million if greater. The current limits increase to $75 per resident of each State or $225 million, if greater, beginning in calendar year 2007. The increase is ratably phased in, beginning with $55 per capita or $165 million, if greater, in calendar year 2003.

Qualified governmental units may elect to exchange all or any portion of their private activity bond volume limitation for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home buyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. MCCs generally are subject to the same eligibility and targeted area requirements as qualified mortgage bonds.

Indian Employment Credit

Unfortunately, many residents of Native American communities continue to struggle economically. The Indian Employment Credit provides an incentive for job growth in these communities. Employers may claim an Indian Employment Credit on the qualified wages and employee health insurance costs paid to an enrolled member of an Indian tribe in compensation for services performed on or near a reservation. The credit amount is equal to 20 percent of the excess of the employer's current year qualified wages and employee health insurance costs over the sum of the corresponding amounts paid or incurred by the employer during calendar year 1993. The aggregate amount of qualified wages and health insurance costs may not exceed $20,000 per person per year. This incentive was due to expire at the end of 2003, but has been extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Depreciation of Property Used on Indian Reservations

Another tax incentive that encourages economic development on Indian reservations is the accelerated depreciation of qualified Indian reservation property. This accelerated depreciation is accomplished through the use of shorter recovery periods for certain property. In order to qualify for this provision, a property must (1) be used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not be used outside the Indian reservation on a regular basis, (3) not be acquired from a person related to the taxpayer, and (4) not be used for the purpose of certain gaming activities. In addition, property for which the alternative depreciation system is applied is not eligible for this provision. This provision was scheduled to expire for property placed in service after 2003, but was extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Low-income housing tax credit

Taxpayers who invest in qualified low-income rental units are eligible for the low-income housing tax credit (LIHTC). The LIHTC may be claimed over a 10-year period for a portion of

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the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed housing that is not federally subsidized is adjusted monthly by the Internal Revenue Service so that generally the 10 annual credit amounts have a present value of 70 percent of qualified basis. The credit percentage for new buildings that are federally subsidized and for existing buildings is calculated to have a present value of 30 percent of qualified basis. In general, the aggregate first-year credit authority allocated to each State is $1.75 per capita in 2002 and will be indexed for inflation in following years. Tax credits are allocated to particular projects by State or local housing agencies pursuant to publicly announced plans for allocation. Authority to allocate credits may be carried forward by agencies to the following calendar year. Unused credit allocations may be returned to an agency for reallocation. Credit allocations may revert to the agency if less than 10 percent of the taxpayer's reasonably expected qualifying basis is expended within 6 months after receiving the allocation. Authority not used in a timely manner reverts to a national pool for distribution to States requesting additional authority. Generally, a qualifying building must be placed in service in the year the credit is allocated unless at least 10 percent of the taxpayer's reasonably expected basis in the property is expended in the year of allocation or within 6 months after the allocation date. Rules are provided for the allocation of costs to individual units in multi-unit projects and to property that is part of a project but used for purposes other than rental housing. The tax credit period begins with the taxable year in which a qualified building is placed in service (or, in certain circumstances, the succeeding taxable year). Credits are recaptured if the required number of units is not rented to qualifying tenants for a period of 15 years.

Work Opportunity Tax Credit

Employers are generally entitled to the work opportunity tax credit (WOTC) for the first $6,000 of wages paid to several targeted groups of economically disadvantaged workers or workers with disabilities. For workers employed between 120 and 400 hours, the credit rate is 25 percent of qualified wages. For workers employed over 400 hours, the credit rate is 40 percent. Employers must reduce their deduction for wages paid by the amount of the credit claimed. Current WOTC target groups include qualified: (1) recipients of Temporary Assistance to Needy Families; (2) veterans; (3) ex-felons; (4) high-risk youth; (5) participants in State-sponsored vocational rehabilitation programs; (6) summer youth; (7) food stamp recipients; and (8) Supplemental Security Income recipients.

A qualified high-risk youth employee listed above is an individual at least 18 years old but less than 25, who lives within an empowerment zone, enterprise community, or renewal community. A qualified summer youth employee works for the employer between May 1 and September 15, is 16 or 17 years old, and resides within an empowerment zone, enterprise community, or renewal community. The limit on the wages of a summer youth employee that qualify for the credit is reduced to $3,000.

At the time the Administration proposed the FY 2003 budget, the WOTC was scheduled to expire at the end of 2001. The Administration proposed that the WOTC be extended through 2003. This was accomplished by the Job Creation and Worker Assistance Act of 2002.

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The House has just passed (is considering?) the Encouraging Work and Supporting Marriage Act of 2002. The bill would combine the WOTC and the welfare to work (WTW) credit by making persons eligible for WTW a WOTC target group with special rules. The WTW credit enables employers to claim a tax credit for eligible wages paid to certain long-term welfare recipients. The changes contained in the House bill will simplify the computation of the credit for employers that hire members of the economically disadvantaged targeted groups. We commend the proposed tax simplification.

Brownfields remediation costs

A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Because lenders, investors, and developers fear the high and uncertain costs of cleanup, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents. The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, and contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields remediation.

To encourage the cleanup of contaminated sites, the brownfields tax incentive permits the current deduction of certain environmental remediation costs. Environmental remediation costs qualify for current deduction if the expenditures would otherwise be capitalized (generally costs incurred to clean up land and groundwater that increase the value of the property) and are paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A qualified contaminated site generally is any property (1) that is held for use in a trade or business, for the production of income, or as inventory; (2) at or on which there has been a release, threat of release, or disposal of a hazardous substance; and (3) that is certified by the appropriate State environmental agency as to the release, threat of release, or disposal of a hazardous substance. Sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) do not qualify as qualified contaminated sites. The brownfields tax incentive applies to expenditures paid or incurred before January 1, 2004.

Administration budget proposals

The President's Budget for FY 2003 includes two proposals to improve upon these tax incentives and further encourage development in economically distressed communities.

Brownfields remediation costs

The Administration believes that encouraging environmental remediation is an important national goal. The brownfields provision encourages the cleanup of contaminated brownfields, thereby enabling them to be brought into productive use in the economy and mitigating potential harms to public health. The current-law incentive was made temporary to encourage faster cleanup of brownfields. Experience has shown, however, that many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of

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years. For that reason, the President's budget proposed a permanent extension of the brownfields tax incentive. Extending the special treatment accorded to brownfields on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures and would promote the goal of encouraging environmental remediation. The Administration's brownfields proposal was introduced by Mr. Coyne and Mr. Weller as H.R. 1439.

The revenue cost of the proposal is estimated to be $1.1 billion over FY 2003-2007. Treasury estimates that the proposal, at a $300 million annual cost, will leverage approximately $2 billion per year in private investment.

Single-family housing tax credit

The Administration believes that quality of life in distressed neighborhoods can be improved by increasing home ownership. Existing buildings in these neighborhoods often need extensive renovation before they can provide decent owner-occupied housing. Renovation may not occur because the costs involved exceed the prices at which the housing units could be sold. Similarly, the costs of new construction may exceed their market value. Properties will sit vacant and neighborhoods will remain blighted unless the gap between development costs and market prices can be filled. The Administration has proposed the creation of a single-family housing tax credit (SFHTC) to expand the possibility of home ownership for low-income families.

First-year credit authority of $1.75 per resident would be made available annually to States (including U.S. possessions) beginning in calendar year 2003. The per capita amount would be indexed for inflation beginning in 2004. Pursuant to a plan of allocation, State or local housing credit agencies would award first-year credits to housing units comprising a project for the development of single-family housing in census tracts with median incomes of 80 percent or less of area median income, based initially upon 2000 census data. Rules similar to the current law rules for the LIHTC would apply regarding carry forward and return of unused credits and a national pool for unused credits. Credits allocated to a project would revert to the agency unless expenditures equal to 10 percent or more of reasonably expected qualifying costs were made within 6 months after receipt of the allocation. Units in condominiums and cooperatives could qualify as single-family housing. Credits would be awarded as a fixed amount for individual units comprising a project. The present value of the credits with respect to a unit, as of the beginning of the credit period (described below), could not exceed 50 percent of the qualifying costs of the unit. For these purposes, present value would be determined based on the mid-term Applicable Federal Rate in effect for the date the agency allocated credits to the project. Rules similar to the current law rules for the LIHTC would apply to determine eligible costs of individual units. The Treasury Department would have the authority to promulgate necessary reporting requirements.

The taxpayer (developer or investor partnership) owning the housing unit immediately prior to the date of sale to a qualified buyer (or, if later, the date a certificate of occupancy was issued) would be eligible to claim SFHTCs over a 5-year period beginning on that date. No credits with respect to a housing unit would be available unless the unit was sold within a 1-year period beginning on the date a certificate of occupancy is issued with respect to that unit.

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Eligible homebuyers would have incomes at 80 percent (70 percent for families with less than 3 members) or less of applicable median family income. They would not have to be first-time homebuyers. Homebuyers would be subject to recapture provisions in certain circumstances. In particular, recapture rules would apply if the homebuyer (or a subsequent buyer) sold the property to a nonqualified buyer within 3 years after the date of initial sale of the unit. The recapture tax would equal the lesser of (1) 80 percent of the gain upon resale and (2) a recapture amount. The recapture amount would equal the value of the credits allocated to the housing unit being resold, reduced by 1/36th of that value for each month between the initial sale and the sale to a nonqualified buyer. No recapture provision would apply to taxpayers eligible to claim SFHTCs. If a housing unit for which any credit is claimed were converted to rental property by the initial homebuyer within the first 5 years following the purchase, no deductions for depreciation or property taxes could be claimed with respect to that unit during that time period.

The proposal would be effective beginning with first-year credit allocations for calendar year 2003. The revenue cost of this proposal is expected to be $2.4 billion over FY 2003-2007.

Administration spending proposals for distressed communities

In addition to the tax incentives just described, the Administration's FY 2003 Budget contains several initiatives on the spending side to revitalize economically disadvantaged communities. These initiatives include the following: (1) a $100 million increase for the HOME block grant, a flexible program that localities can tailor to their particular housing needs; (2) reforms to the Community Development Block Grant (CDBG) program so that more money will be targeted at communities with the greatest economic need, plus an increase of $95 million for the CDBG formula program; (3) a four-fold increase in the President's Down Payment Assistance Initiative from its 2002 level to $200 million to provide matching grants to state and local governments to provide down payment assistance to first-time homeowners; (4) a three-fold increase in funding to $65 million for the Self-Help Homeownership Opportunity program, which helps families realize homeownership through sweat equity; and (5) funding for four competitive grant programs targeted at faith- and community-based organizations that can provide innovative services, including $100 million for the Compassion Capital Fund to help charitable organizations start or expand, $25 million for mentoring children of prisoners, $20 million for promoting responsible fatherhood, and $10 million for maternity group homes.

CONCLUSION

I would like to thank Mr. Houghton, Mr. Coyne and the members of the Subcommittee for providing the chance today to discuss these important issues. I hope that, working together, we can ensure that all Americans share in our country's prosperity and have even greater opportunity in the future. While this concludes my prepared testimony. I would be pleased to respond to your questions.

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REV_00145554

From:	CN=Anne Womack/OU=WHO/O=EOP [WHO]
To:	H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC:	bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;heather wingate/who/eop@eop [WHO] <heather wingate>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>
Sent:	5/16/2002 1:38:50 PM
Subject:	: Re: Specter "Protocol"

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CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-MAY-2002 17:38:50.00
SUBJECT:: Re: Specter "Protocol"
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:heather wingate ( CN=heather wingate/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:don.willett@usdoj.gov ( don.willett@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

My understanding is that we were not going to get involved in such
proposals, but if I could just say that if we could reevaluate that
decision, it could be helpful. It would be a good positive thing to talk
about.
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From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>
Sent: 5/17/2002 7:56:15 AM
Subject: : Re: draft letter to Lieberman
Attachments: P_4ZLG7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-MAY-2002 11:56:15.00
SUBJECT:: Re: draft letter to Lieberman
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:elizabeth n. camp (CN=elizabeth n. camp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I have a couple thoughts, but they're substantive, so we should probably discuss before you take the trouble to try to incorporate any.

Brett M. Kavanaugh
05/17/2002 11:55:01 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Elizabeth N. Camp/WHO/EOP@EOP
Subject: draft letter to Lieberman

this is revised some, but not in substance. I have received no comments so far other than the general discussion at staff meeting. Do we want to send today? Wait until 4 to discuss?

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4ZLG7003_WHO.TXT_1>

DRAFT
5/17
11:30 A.M.

May __, 2002

Dear Chairman Lieberman:

We have received your letter of May 16 and were surprised and disappointed at its content and tone. We respectfully believe that you are acting precipitously -- and in a manner inconsistent with governing case law and the constitutional accommodation process -- by threatening a subpoena at this juncture in your inquiry.

As I wrote you yesterday, we are taking *numerous* steps to gather information requested by the Committee. We are gathering and reviewing documents. We are gathering and reviewing e-mails. We are gathering and reviewing visitor entry records. We are interviewing individuals with relevant information. We are preparing to respond soon to assist the Committee's inquiry. With all of that underway, the threat of a subpoena is misplaced.

You imply that our extensive efforts are too late because you sent your initial letter on March 27. With respect, that is unfair. First, with all respect, your March 27 letter was confusing in many respects. It frankly would have been far easier had the Committee simply asked -- in a straightforward manner -- for information about (i) communications with Enron relating to law, regulation, policy, or appointments affecting Enron's business and (ii) communications with non-EOP federal departments and agencies about Enron. The Committee's request instead was both confusing and ambiguous. We did not fully understand some aspects of the Committee's request until your April 24 letter, and it was not until our May 9 meeting that additional ambiguities were resolved. In addition, it bears mention that we lost one full week because your staffer in charge was on vacation the week of April 1, the week when we first contacted her to arrange a meeting.

Moreover, when we did meet with your staff on April 11, there was no suggestion that we would be threatened with a subpoena regardless whether we made reasonable efforts to gather information for the Committee. And your April 24 letter further confirmed for us that you expected reasonable efforts. We believe that our efforts have plainly met that standard.

All of that said, I want to look forward. Your letter states that you would not seek a subpoena next week if I can assure you:

> (1) [we] will promptly take steps to broaden the search along the lines discussed above and in the Committee's May 3 letter in order to obtain all information sought in the Committee's March 27 letter, and (2) [we] will provide the Committee all information sought in the Committee's March 27 letter by the end of May.

As to your first condition, we believe we can satisfy you by submitting the Enron surveys to all employees of the Executive Office of the President and the Office of the Vice President. We will do so promptly.

As to your second request, we think your demand premature. It would be irresponsible, in my judgment, for any Counsel to the President to commit in advance to provide information to Congress before he has reviewed it or even has an idea what the information will be. Let me emphasize that we have no intention of unnecessarily provoking a confrontation with the Committee. But we also believe it extraordinary for a congressional committee to threaten a subpoena simply because the President's counsel has not committed *in advance* to provide the Committee every shred of information it can gather -- no matter how sensitive to the Presidency, no matter how extraneous to the Committee's inquiry.

We respectfully believe the Committee's all-or-nothing, now-or-never approach to be inconsistent with governing case law. The D.C. Circuit has held -- contrary to the Committee's request and your most recent letter -- that Congress seldom needs a "precise reconstruction of past events" in order to legislate. Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc). And even when Congress has authority to inquire, it may not intrude unduly on presidential prerogatives or demand all information within the scope of a presidential privilege. Rather, a committee must establish that "the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's functions." Id. We have serious doubts whether the Committee's request meets those high standards.

But the case law recognizes that, as here, there may be inter-Branch disputes about whether Congress has a sufficient predicate and, if so, whether it is unduly intruding on Executive Branch prerogatives. The case law recognizes, in particular, that the respective interests of the two Branches may conflict when Congress seeks to oversee the Executive Branch -- especially when it seeks to inquire into activities of the Executive Office of the President and the Office of the Vice President. The case law thus dictates a process of compromise. As the D.C. Circuit has stated:

> The framers . . . expect[ed] that where conflicts in scope of authority arose between the coordinate branches, a spirit of *dynamic compromise* would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. . . . [E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. . . . The Constitution contemplates such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.

United States v. American Tel. & Tel. Co., 567 F.2d 121, 127, 130 (D.C. Cir. 1977) (emphasis added).

Consistent with this case law, we have taken extensive steps to accommodate the Committee's request notwithstanding our serious doubts whether the Committee's request is

within the proper scope of its legislative authority and our concerns that the Committee is seeking to intrude inappropriately into the deliberative processes of the President and his advisors, particularly with respect to Presidential appointments and development of policy. But we do not believe that the Committee has similarly engaged in the process of dynamic compromise and optimal accommodation required by the case law.

In sum, I respectfully suggest that a Committee subpoena at this time would be unnecessary and unwise and contrary to the governing case law. I ask that you reconsider and withdraw the threat of a subpoena until, at a minimum, you see what information we provide to the Committee.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Joseph I. Lieberman
United States Senate
Washington, DC 20510

cc: The Honorable Fred Thompson

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/17/2002 1:27:34 PM
Subject: : LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization
Attachments: P_K83H7003_WHO.TXT_1.doc

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Could I please have your signoff, if not by this this afternoon, by 10:00 AM, Monday morning. Thank you.
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Friendly Reminder: If you have not responded, comments are due at 5:00 PM, today.
---------- Forwarded by Irene Kho/OMB/EOP on 05/17/2002 04:50 PM ----------

From: Irene Kho on 05/16/2002 12:03:49 PM
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To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

Attached is Treasury testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways

and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

- testimony draft 5.151.doc

LRM ID: IKK203
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

DEADLINE: 5:00 PM Friday, May 17, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on the Administration's tax incentive programs for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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LRM ID: IKK203 SUBJECT: TREASURY Testimony on the
Administration's Tax Incentive Proposals for Community Revitalization

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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Branch-Wide Line (to reach legislative assistant):
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FROM: _____ (Date)

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The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

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_____ See proposed edits on pages _____

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_____ FAX RETURN of _____ pages, attached to this response sheet

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For Release Upon Delivery
Expected at 2:00 p.m.
May 21, 2002

STATEMENT OF
ERIC SOLOMON
DEPUTY ASSISTANT SECRETARY (REGULATORY AFFAIRS)
DEPARTMENT OF THE TREASURY
BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS

Mr. Chairman, Mr. Coyne, and Members of the Subcommittee:

I appreciate the opportunity to discuss with you today the Administration's program of tax incentives designed to foster the revitalization of economically disadvantaged communities. I would like to start by thanking the Subcommittee for holding a hearing on this important issue.

The President is firmly committed to directing public funds toward developing economically distressed communities. However, the President also believes that there is a limit on what the Federal government can accomplish directly. Consequently, the President's Budget for FY 2003 contains initiatives to encourage further involvement by individuals, businesses, and faith-based and community-based organizations in working to eliminate pockets of economic distress wherever they exist in this country. In particular, the Administration proposes making the brownfields tax incentive permanent. Under current law, this incentive is scheduled to expire on December 31, 2003. The revenue cost of a permanent extension is estimated to be $1.1 billion over five years. The Administration also proposes the creation of a tax credit, similar in design to the low-income housing tax credit, for developers of affordable single-family housing. The credit would take effect in 2003 and cost $2.4 billion over 5 years.

Furthermore, thanks in large part to the leadership shown by the Ways and Means Committee, many of the Administration's tax proposals have been enacted or are included in legislation that the House passed last summer. Administration tax proposals benefiting low-income individuals or distressed communities that have already been enacted include the following: (1) extension of the work opportunity tax credit through 2003; (2) extension of the welfare to work credit through 2003; (3) extension of authority to issue qualified zone academy bonds through 2003; (4) providing tax-exempt private activity bonds to finance reconstruction in the area surrounding the World Trade Center in New York City devastated by the September 11, 2001 terrorist attacks; (5) creation of a new 10 percent income tax bracket; and (6) doubling of the child tax credit to $1000.

We look forward to working with this Subcommittee as it considers the remainder of the Administration's initiatives related to encouraging community renewal.

The remainder of my testimony will provide a more detailed discussion of current law and the Administration's budget proposals.

REV_00145586

INCENTIVES FOR DISTRESSED COMMUNITIES

Current law tax incentives for distressed communities

The Internal Revenue Code currently includes numerous incentives to encourage the development of economically distressed areas. They include tax incentives for businesses located in empowerment zones, enterprise communities and renewal communities, the new markets tax credit, qualified zone academy bonds, certain categories of tax-exempt bonds, special incentives for investment and employment on Indian reservations, the low-income housing tax credit, the work opportunity tax credit, and the deductibility of environmental remediation costs.

Empowerment Zones

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) authorized a demonstration project under which nine empowerment zones, six in urban areas and three in rural areas, were designated through a competitive application process. State and local governments nominated distressed geographic areas, which were selected on the strength of their strategic plans for economic and social revitalization. The urban areas were designated by the Secretary of the Department of Housing and Urban Development. The rural areas were designated by the Secretary of the Department of Agriculture. The Taxpayer Relief Act of 1997 added two urban Round I zones and authorized 20 Round II zones (15 urban and five rural). The Community Renewal Tax Relief Act of 2000 authorized nine Round III zones (seven urban and two rural). There are currently 30 urban zones and 10 rural zones. Designation of Round I, Round II or Round III status generally will apply until December 31, 2009.

Qualifying businesses in empowerment zones are eligible for certain tax benefits. These benefits include the following: (1) a 20-percent wage credit for qualifying wages; (2) additional expensing for qualified zone property; and (3) tax-exempt financing for certain qualifying zone facilities. In addition, taxpayers may elect to defer capital gains from certain sales and re-investments in qualified empowerment zone assets. Taxpayers may also exclude certain gain from the sale of qualifying empowerment zone stock that is held for more than five years.

The wage credit provides a 20 percent subsidy on the first $15,000 of annual wages paid to residents of empowerment zones by businesses located in these communities, if substantially all of the employee's services are performed within the zone. By lowering the cost of labor, the wage credit encourages new businesses to locate in zones, and encourages those businesses already there to expand, providing jobs and opportunities for self-sufficiency for zone residents.

Enterprise zone businesses are allowed to expense the cost of certain property up to an additional $35,000 above the amounts generally available under section 179 of the Internal Revenue Code. In addition, only 50 percent of the cost of such property counts toward the aggregate annual limit on section 179 expensing. This incentive is designed to increase investment in machines, computers and other tangible business property within empowerment zones by small businesses.

REV_00145587

Enterprise zone businesses are also permitted access to a special class of tax-exempt private activity bonds. Limits are placed on the amount of such financing available to each zone. Rural zones are allowed $60 million of such financing, urban zones with less than 100,000 residents are allowed $130 million of such financing and urban zones with at least 100,000 residents are allowed $230 million of such financing. These bonds are not subject to the State's volume cap on private activity bonds.

The Community Renewal Tax Relief Act of 2000 added two provisions to limit capital gains taxation on certain investments within empowerment zones to encourage greater private investment in the zones. Taxpayers are allowed to roll over the capital gain from the sale of qualified empowerment zone assets held more than one year, if a replacement qualified empowerment zone asset is purchased in the same zone as the asset sold. Qualified empowerment zone assets include certain stock and partnership interests in an enterprise zone business and certain tangible property used in an enterprise zone business. This provision applies to assets acquired after December 21, 2000.

In addition, taxpayers other than corporations are allowed to exclude 60 percent of the gain on the sale or trade of qualified small business stock held more than 5 years, if the business also qualifies as an enterprise zone business. Taxpayers are normally allowed to exclude 50 percent of the gain on the sale of qualified small business stock. This provision applies to stock acquired after December 21, 2000.

Enterprise Communities

In addition to Empowerment Zones, OBRA 93 provided for the designation of 95 Enterprise Communities, 65 in urban areas and 30 in rural areas. Qualified businesses in these communities are entitled to the same favorable tax-exempt financing benefits as those in empowerment zones. Many of these enterprise communities have subsequently been re-designated as part of an empowerment zone or a renewal community and are no longer designated as an enterprise community. Currently, 68 enterprise communities qualify for tax-exempt financing, 40 in urban areas and 28 in rural areas.

Renewal Communities

The Community Renewal Tax Relief Act of 2000 authorized 40 renewal communities, at least 12 of which must be in rural areas. The renewal communities were chosen through a competitive application process similar to that used for empowerment zones. The 40 communities were recently designated by the Department of Housing and Urban Development and that designation continues through 2009.

Taxpayers may utilize the renewal community tax benefits beginning this year. These benefits include the following: (1) a 15-percent wage credit for qualifying wages; (2) additional section 179 expensing for qualified renewal property; (3) a commercial revitalization deduction; and (4) an exclusion for capital gains on qualified community assets held more than 5 years.

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The wage credit and increased section 179 expensing operate in a similar fashion as in empowerment zones. The primary difference is that the wage credit is smaller, equal to 15 percent for the first $10,000 of wages.

The commercial revitalization deduction is designed to foster the development or rehabilitation of commercial real estate in renewal communities. This deduction is applicable to certain nonresidential real property or other property functionally related to nonresidential real property. A taxpayer may elect to either: (1) deduct one-half of any qualified revitalization expenditures that would otherwise be capitalized for any qualified revitalization building in the tax year the building is placed in service, or (2) amortize all such expenditures over a 120-month period beginning with the month the building is placed in service. A qualified revitalization building is any building and its structural components placed in service by the taxpayer in a renewal community. If the building is new, the original use of the building must begin with the taxpayer. If the building is not new, the taxpayer must substantially rehabilitate the building and then place it in service. The total amount of qualified revitalization expenditures for any building cannot be more than the smaller of $10 million or the amount allocated to the building by the commercial revitalization agency for the state in which the building is located. A $12 million dollar cap on allowed commercial revitalization expenditures is placed on each renewal community annually.

In order to help stimulate private investment in renewal communities, qualified capital gain earned on qualified community assets is excluded from gross income. A qualified community asset includes stock or a partnership interest in a qualified renewal community business and certain tangible property used in a renewal community business. To qualify for the capital gain exclusion, the asset must be purchased after December 31, 2001 and before January 1, 2010, and it must be held for at least five years.

District of Columbia Incentives

A special set of incentives was enacted in 1997 to help redevelop the District of Columbia. The Taxpayer Relief Act of 1997 included tax incentives for both residents and businesses to locate in the District of Columbia. A $5,000 income tax credit for first-time home purchasers was designed to attract new homeowners to the District. A second set of incentives, similar to those provided in empowerment zones, was intended to encourage the establishment of new businesses in the District as well as new investment in existing enterprises.

Subject to certain income restrictions, the $5,000 credit is available to first-time purchasers of a principal residence in the District of Columbia who have not owned houses in the District during the year preceding the purchase. Although the credit was initially available for property purchased through the end of 2000, subsequent legislation extended the incentive through the end of 2003.

Other tax incentives offer a range of economic inducements to businesses operating in the more economically disadvantaged parts of the District. With the exception of a provision related to the sale of capital assets, these incentives are available only to businesses located either within the boundaries of the D.C. Enterprise Community, or located in census tracts elsewhere in the

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District where the poverty rate exceeds 20 percent. These areas are collectively known as the DC Zone. With certain minor adjustments, businesses in the DC Zone may claim the same wage credit, expensing of certain capital investment, and tax exempt bond financing as businesses in an empowerment zone. In addition, as in renewal communities, capital gains realized from the sale of certain assets are excludable from the income of the seller. For the purposes of this provision alone, the DC Zone is expanded to include all census tracts in the District in which the poverty rate exceeds 10 percent.

New York Liberty Zone

While the area around the World Trade Center in New York City would not have been described as an economically distressed community prior to the extraordinary events of September 11, 2001, the incredible destruction of life and property in that area due to the terrorist attacks prompted both the Administration and the Congress to support tax incentives targeted to helping New York City recover economically. I commend you, Mr. Chairman, and other members of the Ways and Means Committee for the leadership you exhibited in helping to enact the Job Creation and Worker Assistance Act of 2002.

Some of the tax incentives provided in the New York Liberty Zone are similar to the tax incentives offered in empowerment zones, while others were designed to meet the unique challenges facing New York City in the aftermath of the September 11 terrorist attacks. As in empowerment zones, qualified businesses are allowed a wage credit, increased section 179 expensing, and access to tax-exempt financing. Provisions specific to the New York Liberty Zone include 30 percent expensing of certain property, accelerated depreciation of qualified leasehold improvement property, extension of the replacement period for certain property involuntarily converted, and an additional advance refunding of bonds for facilities located in New York City.

The wage credit is allowed for certain employees who work in New York City through an extension of the work opportunity tax credit (WOTC). The new targeted group for the WOTC includes employees of businesses located in the New York Liberty Zone if substantially all of the employee's services for the business are performed within the New York Liberty Zone. In addition, the new targeted group includes employees of businesses that relocated from the New York Liberty Zone due to the physical destruction or damage of their workplaces by the September 11, 2001 terrorist attacks to another location within New York City, provided that substantially all of the employee's services are performed within New York City. Only businesses with an average of 200 or less employees during the taxable year are eligible for the credit. The credit is effective for wages paid or incurred for work performed during calendar year 2002 or 2003.

An increase in section 179 expensing of $35,000 is allowed for property placed in service by taxpayers after September 10, 2001, and before January 1, 2007, if the original use of the property in the New York Liberty Zone commences with the taxpayer after September 10, 2001 and substantially all of the use of the property is in the New York Liberty Zone. As in empowerment zones and renewal communities, only 50 percent of the value of such property counts toward the aggregate annual limit on section 179 expensing.

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The Governor of New York State and the Mayor of New York City are each given an allowance to issue up to $4 billion of tax-exempt private activity bonds before January 1, 2005. The bonds may be used to finance construction and rehabilitation of nonresidential real property, residential rental real property, and public utility property in the New York Liberty Zone. The Governor and the Mayor may each designate up to $1 billion of such bond proceeds for the acquisition, construction, and rehabilitation of certain commercial real property located outside the New York Liberty Zone and within New York City. These bonds are not subject to the State's volume cap on private activity bonds.

A taxpayer is allowed an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified New York Liberty Zone property. In order to qualify for this partial expensing, the property must be (1) a property with a MACRS recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property, or (4) certain nonresidential real property and residential rental property. Nonresidential real property and residential rental property is eligible for the partial expensing only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. This provision applies neither to property that would otherwise qualify for 30 percent expensing under section 168(k), nor to qualified New York Liberty Zone leasehold improvement property. Furthermore, to qualify for the partial expensing, substantially all of the use of the property must be in the New York Liberty Zone and the original use of the property in the New York Liberty Zone must commence with the taxpayer after September 10, 2001 (except for certain leased property). Finally, qualified property must be purchased by the taxpayer after September 10, 2001, and placed in service before January 1, 2007, or for nonresidential property and residential rental property, January 1, 2009.

Qualified New York Liberty Zone leasehold improvement property placed in service after September 10, 2001 and before January 1, 2007 is treated as 5-year property for the purposes of section 168 depreciation rules, with deductions taken using the straight-line method. Under the alternative depreciation system (section 168(g)), such property has a class life of 9 years. Qualified New York Liberty Zone leasehold improvement property is qualified leasehold improvement property as defined in section 168(e)(6) that is placed in service in the New York Liberty Zone.

When property used in a trade or business is damaged or destroyed, the taxpayer may deduct any loss sustained to the extent that the loss is not compensated by insurance or otherwise. When insurance or other compensation results in a gain from the damage or destruction of property, then the taxpayer may elect to reduce the current recognition of gain by purchasing a replacement property within a specific time period which is similar or related in use to the damaged or destroyed property (section 1033(a)). For property in the New York Liberty Zone that was involuntarily converted as a result of the terrorist attacks on September 11, 2001, the replacement period is extended from 2 years to 5 years if substantially all of the use of the replacement property is in New York City.

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Finally, certain bonds for facilities located in New York City are given one additional advance refunding. There is an aggregate limit of $9 billion advance refunding bonds that may be issued before January 1, 2005.

New Markets Tax Credit

The new markets tax credit was created by the Community Renewal Tax Relief Act of 2000 to encourage capital investments in businesses that are located in low-income communities. The new markets tax credit provides a tax credit to investors who make "qualified equity investments" in privately-managed investment vehicles called "community development entities," or "CDEs." The CDEs are required to invest substantially all of the proceeds of the qualified equity investments in low-income communities. For example, CDEs may make loans or capital investments in companies that operate in low-income communities.[1]

Eligible investors in a CDE are entitled to claim tax credits over a seven-year period beginning on the date of the initial investment. The value of the credits to investors will be about 30 percent of the amount of the qualified equity investment on a present value basis.

In order for an entity to qualify as a CDE, it must meet three requirements. First, the primary mission of the entity must be to serve or provide investment capital for low-income communities or low-income persons. Second, the entity must maintain accountability to residents of low-income communities through their representation on the entity's governing or advisory board. Third, the entity must be certified as a CDE by the Treasury Department's Community Development Financial Institutions Fund (CDFI Fund).

In order for a CDE to issue qualified equity investments with respect to which new markets tax credits may be claimed, the CDE must apply for and receive from the CDFI Fund an allocation of credit authority for those investments.

A total of $15 billion of equity investments will be able to qualify for this authority on a phased-in basis between 2001 and 2007. The CDFI Fund will allocate this authority among CDEs based on a competitive application process. In making these allocations, the CDFI Fund is required to give priority to any entity (1) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or (2) which intends to invest substantially all of the proceeds of the qualified equity investments in one or more businesses in which persons unrelated to the entity hold the majority equity interest. [In the next couple of weeks, the CDFI Fund will issue a notice seeking applications from CDEs for allocation of credit authority.]

Qualified Zone Academy Bonds

State and local governments can issue qualified zone academy bonds (QZABs) to fund the improvement of certain eligible public schools. An eligible holder of a QZAB receives annual Federal income tax credits. These annual credits compensate the holder for lending money and, therefore, are treated like taxable interest payments for Federal tax purposes.

[1] For these purposes, "low-income community" is defined as any population census tract if (1) the poverty rate for the tract is at least 20 percent, or (2) the median family income for the tract does not exceed 80 percent of statewide median family income (or, in the case of metropolitan areas, metropolitan area median family income, if greater).

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Eligible holders are banks, insurance companies, and corporations actively engaged in the business of lending money. The credit rate for a QZAB is set on its day of sale by reference to credit rates established by the Department of the Treasury. The maximum term of a QZAB issued during any month is determined by reference to the adjusted applicable Federal rate (AFR) published by the Internal Revenue Service for the month in which the bond is issued.

This provision was enacted in the Taxpayer Relief Act of 1997, which established authority to issue $400 million of QZABs per year for 1998 and 1999. This authority was extended to 2000 and 2001 by the Ticket to Work and Work Incentives Improvement Act of 1999. The Administration proposed that this authority be extended through 2003, which was accomplished in the recently enacted Job Creation and Worker Assistance Act of 2002. The annual cap is allocated among the States in proportion to their respective populations of individuals with incomes below the poverty line. Unused authority to issue QZABs may be carried forward for two years (three years for authority arising in 1998 and 1999) after the year for which the authority was established.

A number of requirements must be met for a bond to be treated as a QZAB. First, the bond must be issued pursuant to an allocation of bond authority from the issuer's State educational agency. Second, at least 95 percent of the bond proceeds must be used for an eligible purpose at a qualified zone academy. Eligible purposes include rehabilitating school facilities, acquiring equipment, developing course materials, or training teachers. A qualified zone academy is a public school (or an academic program within a public school) that is designed in cooperation with business and is either (1) located in an empowerment zone or enterprise community, or (2) attended by students at least 35 percent of whom are estimated to be eligible for free or reduced-cost lunches under the National School Lunch Act. Third, private entities must have promised to contribute to the qualified zone academy certain property or services with a present value equal to at least 10 percent of the bond proceeds.

Mortgage Revenue Bonds

Mortgage revenue bonds ("MRBs") are bonds issued by or on behalf of a State or local government to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied homes located within the jurisdiction of the issuer of the bonds. Interest on MRBs is excluded from gross income for federal income tax purposes if they meet the requirements for "qualified mortgage bonds" or "qualified veterans' mortgage bonds." In addition, in some circumstances, "mortgage credit certificates" may be issued as an alternative to qualified mortgage bonds.

In general, qualified mortgage bonds must finance residences for first-time home buyers, the purchase price of the residence may not exceed certain amounts, and the purchaser must satisfy certain income limitations. In addition, certain special rules apply with respect to "targeted areas." A targeted area is defined as (1) a census tract in which 70 percent or more of the families have incomes that are 80 percent or less of the Statewide median family income, or (2) an area of chronic economic distress designated by the Secretary of the Treasury and the Secretary of Housing and Urban Development. At least 20 percent of the lendable proceeds of each qualified mortgage bond issue (but not more than 40 percent of the average mortgage

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activity in the targeted area) is required to be made available for owner-financing in targeted areas for a period of at least one year.

The volume of certain tax-exempt private activity bonds, including qualified mortgage bonds, that States and local governments may issue in each calendar year is limited by State-wide volume limits. The current annual volume limits are $50 per resident of the State or $150 million if greater. The current limits increase to $75 per resident of each State or $225 million, if greater, beginning in calendar year 2007. The increase is ratably phased in, beginning with $55 per capita or $165 million, if greater, in calendar year 2003.

Qualified governmental units may elect to exchange all or any portion of their private activity bond volume limitation for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home buyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. MCCs generally are subject to the same eligibility and targeted area requirements as qualified mortgage bonds.

Indian Employment Credit

Unfortunately, many residents of Native American communities continue to struggle economically. The Indian Employment Credit provides an incentive for job growth in these communities. Employers may claim an Indian Employment Credit on the qualified wages and employee health insurance costs paid to an enrolled member of an Indian tribe in compensation for services performed on or near a reservation. The credit amount is equal to 20 percent of the excess of the employer's current year qualified wages and employee health insurance costs over the sum of the corresponding amounts paid or incurred by the employer during calendar year 1993. The aggregate amount of qualified wages and health insurance costs may not exceed $20,000 per person per year. This incentive was due to expire at the end of 2003, but has been extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Depreciation of Property Used on Indian Reservations

Another tax incentive that encourages economic development on Indian reservations is the accelerated depreciation of qualified Indian reservation property. This accelerated depreciation is accomplished through the use of shorter recovery periods for certain property. In order to qualify for this provision, a property must (1) be used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not be used outside the Indian reservation on a regular basis, (3) not be acquired from a person related to the taxpayer, and (4) not be used for the purpose of certain gaming activities. In addition, property for which the alternative depreciation system is applied is not eligible for this provision. This provision was scheduled to expire for property placed in service after 2003, but was extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Low-income housing tax credit

Taxpayers who invest in qualified low-income rental units are eligible for the low-income housing tax credit (LIHTC). The LIHTC may be claimed over a 10-year period for a portion of

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the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed housing that is not federally subsidized is adjusted monthly by the Internal Revenue Service so that generally the 10 annual credit amounts have a present value of 70 percent of qualified basis. The credit percentage for new buildings that are federally subsidized and for existing buildings is calculated to have a present value of 30 percent of qualified basis. In general, the aggregate first-year credit authority allocated to each State is $1.75 per capita in 2002 and will be indexed for inflation in following years. Tax credits are allocated to particular projects by State or local housing agencies pursuant to publicly announced plans for allocation. Authority to allocate credits may be carried forward by agencies to the following calendar year. Unused credit allocations may be returned to an agency for reallocation. Credit allocations may revert to the agency if less than 10 percent of the taxpayer's reasonably expected qualifying basis is expended within 6 months after receiving the allocation. Authority not used in a timely manner reverts to a national pool for distribution to States requesting additional authority. Generally, a qualifying building must be placed in service in the year the credit is allocated unless at least 10 percent of the taxpayer's reasonably expected basis in the property is expended in the year of allocation or within 6 months after the allocation date. Rules are provided for the allocation of costs to individual units in multi-unit projects and to property that is part of a project but used for purposes other than rental housing. The tax credit period begins with the taxable year in which a qualified building is placed in service (or, in certain circumstances, the succeeding taxable year). Credits are recaptured if the required number of units is not rented to qualifying tenants for a period of 15 years.

Work Opportunity Tax Credit

Employers are generally entitled to the work opportunity tax credit (WOTC) for the first $6,000 of wages paid to several targeted groups of economically disadvantaged workers or workers with disabilities. For workers employed between 120 and 400 hours, the credit rate is 25 percent of qualified wages. For workers employed over 400 hours, the credit rate is 40 percent. Employers must reduce their deduction for wages paid by the amount of the credit claimed. Current WOTC target groups include qualified: (1) recipients of Temporary Assistance to Needy Families; (2) veterans; (3) ex-felons; (4) high-risk youth; (5) participants in State-sponsored vocational rehabilitation programs; (6) summer youth; (7) food stamp recipients; and (8) Supplemental Security Income recipients.

A qualified high-risk youth employee listed above is an individual at least 18 years old but less than 25, who lives within an empowerment zone, enterprise community, or renewal community. A qualified summer youth employee works for the employer between May 1 and September 15, is 16 or 17 years old, and resides within an empowerment zone, enterprise community, or renewal community. The limit on the wages of a summer youth employee that qualify for the credit is reduced to $3,000.

At the time the Administration proposed the FY 2003 budget, the WOTC was scheduled to expire at the end of 2001. The Administration proposed that the WOTC be extended through 2003. This was accomplished by the Job Creation and Worker Assistance Act of 2002.

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The House has just passed (is considering?) the Encouraging Work and Supporting Marriage Act of 2002. The bill would combine the WOTC and the welfare to work (WTW) credit by making persons eligible for WTW a WOTC target group with special rules. The WTW credit enables employers to claim a tax credit for eligible wages paid to certain long-term welfare recipients. The changes contained in the House bill will simplify the computation of the credit for employers that hire members of the economically disadvantaged targeted groups. We commend the proposed tax simplification.

Brownfields remediation costs

A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Because lenders, investors, and developers fear the high and uncertain costs of cleanup, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents. The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, and contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields remediation.

To encourage the cleanup of contaminated sites, the brownfields tax incentive permits the current deduction of certain environmental remediation costs. Environmental remediation costs qualify for current deduction if the expenditures would otherwise be capitalized (generally costs incurred to clean up land and groundwater that increase the value of the property) and are paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A qualified contaminated site generally is any property (1) that is held for use in a trade or business, for the production of income, or as inventory; (2) at or on which there has been a release, threat of release, or disposal of a hazardous substance; and (3) that is certified by the appropriate State environmental agency as to the release, threat of release, or disposal of a hazardous substance. Sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) do not qualify as qualified contaminated sites. The brownfields tax incentive applies to expenditures paid or incurred before January 1, 2004.

Administration budget proposals

The President's Budget for FY 2003 includes two proposals to improve upon these tax incentives and further encourage development in economically distressed communities.

Brownfields remediation costs

The Administration believes that encouraging environmental remediation is an important national goal. The brownfields provision encourages the cleanup of contaminated brownfields, thereby enabling them to be brought into productive use in the economy and mitigating potential harms to public health. The current-law incentive was made temporary to encourage faster cleanup of brownfields. Experience has shown, however, that many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of

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years. For that reason, the President's budget proposed a permanent extension of the brownfields tax incentive. Extending the special treatment accorded to brownfields on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures and would promote the goal of encouraging environmental remediation. The Administration's brownfields proposal was introduced by Mr. Coyne and Mr. Weller as H.R. 1439.

The revenue cost of the proposal is estimated to be $1.1 billion over FY 2003-2007. Treasury estimates that the proposal, at a $300 million annual cost, will leverage approximately $2 billion per year in private investment.

Single-family housing tax credit

The Administration believes that quality of life in distressed neighborhoods can be improved by increasing home ownership. Existing buildings in these neighborhoods often need extensive renovation before they can provide decent owner-occupied housing. Renovation may not occur because the costs involved exceed the prices at which the housing units could be sold. Similarly, the costs of new construction may exceed their market value. Properties will sit vacant and neighborhoods will remain blighted unless the gap between development costs and market prices can be filled. The Administration has proposed the creation of a single-family housing tax credit (SFHTC) to expand the possibility of home ownership for low-income families.

First-year credit authority of $1.75 per resident would be made available annually to States (including U.S. possessions) beginning in calendar year 2003. The per capita amount would be indexed for inflation beginning in 2004. Pursuant to a plan of allocation, State or local housing credit agencies would award first-year credits to housing units comprising a project for the development of single-family housing in census tracts with median incomes of 80 percent or less of area median income, based initially upon 2000 census data. Rules similar to the current law rules for the LIHTC would apply regarding carry forward and return of unused credits and a national pool for unused credits. Credits allocated to a project would revert to the agency unless expenditures equal to 10 percent or more of reasonably expected qualifying costs were made within 6 months after receipt of the allocation. Units in condominiums and cooperatives could qualify as single-family housing. Credits would be awarded as a fixed amount for individual units comprising a project. The present value of the credits with respect to a unit, as of the beginning of the credit period (described below), could not exceed 50 percent of the qualifying costs of the unit. For these purposes, present value would be determined based on the mid-term Applicable Federal Rate in effect for the date the agency allocated credits to the project. Rules similar to the current law rules for the LIHTC would apply to determine eligible costs of individual units. The Treasury Department would have the authority to promulgate necessary reporting requirements.

The taxpayer (developer or investor partnership) owning the housing unit immediately prior to the date of sale to a qualified buyer (or, if later, the date a certificate of occupancy was issued) would be eligible to claim SFHTCs over a 5-year period beginning on that date. No credits with respect to a housing unit would be available unless the unit was sold within a 1-year period beginning on the date a certificate of occupancy is issued with respect to that unit.

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Eligible homebuyers would have incomes at 80 percent (70 percent for families with less than 3 members) or less of applicable median family income. They would not have to be first-time homebuyers. Homebuyers would be subject to recapture provisions in certain circumstances. In particular, recapture rules would apply if the homebuyer (or a subsequent buyer) sold the property to a nonqualified buyer within 3 years after the date of initial sale of the unit. The recapture tax would equal the lesser of (1) 80 percent of the gain upon resale and (2) a recapture amount. The recapture amount would equal the value of the credits allocated to the housing unit being resold, reduced by 1/36th of that value for each month between the initial sale and the sale to a nonqualified buyer. No recapture provision would apply to taxpayers eligible to claim SFHTCs. If a housing unit for which any credit is claimed were converted to rental property by the initial homebuyer within the first 5 years following the purchase, no deductions for depreciation or property taxes could be claimed with respect to that unit during that time period.

The proposal would be effective beginning with first-year credit allocations for calendar year 2003. The revenue cost of this proposal is expected to be $2.4 billion over FY 2003-2007.

Administration spending proposals for distressed communities

In addition to the tax incentives just described, the Administration's FY 2003 Budget contains several initiatives on the spending side to revitalize economically disadvantaged communities. These initiatives include the following: (1) a $100 million increase for the HOME block grant, a flexible program that localities can tailor to their particular housing needs; (2) reforms to the Community Development Block Grant (CDBG) program so that more money will be targeted at communities with the greatest economic need, plus an increase of $95 million for the CDBG formula program; (3) a four-fold increase in the President's Down Payment Assistance Initiative from its 2002 level to $200 million to provide matching grants to state and local governments to provide down payment assistance to first-time homeowners; (4) a three-fold increase in funding to $65 million for the Self-Help Homeownership Opportunity program, which helps families realize homeownership through sweat equity; and (5) funding for four competitive grant programs targeted at faith- and community-based organizations that can provide innovative services, including $100 million for the Compassion Capital Fund to help charitable organizations start or expand, $25 million for mentoring children of prisoners, $20 million for promoting responsible fatherhood, and $10 million for maternity group homes.

CONCLUSION

I would like to thank Mr. Houghton, Mr. Coyne and the members of the Subcommittee for providing the chance today to discuss these important issues. I hope that, working together, we can ensure that all Americans share in our country's prosperity and have even greater opportunity in the future. While this concludes my prepared testimony. I would be pleased to respond to your questions.

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From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>
Sent: 5/17/2002 1:47:08 PM
Subject: : Re: Monday's meeting schedule

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-MAY-2002 17:47:08.00
SUBJECT:: Re: Monday's meeting schedule
TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I also understand that Chris is supposed to talk to Karen Hughes. Chris, am I to take notes for that one? If so, what time is it scheduled for?

Hana F. Brilliant
05/17/2002 04:40:19 PM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: Monday's meeting schedule

Ban Bartlett. Josh Bolton and Marc Summerlin's meeting times have changed. The schedule is as follows:

Monday, May 20, 2002

10:30am Meet with Judson Jaffe (CEA)
*** 155 EEOB
456-3142
Interviewer: Bartolomucci
Notetaker: Berenson

11:30pm Meet with Dan Bartlett (Comm.)
WW, 2nd Floor
456-7910
Interviewer: Bartolomucci
Notetaker: Berenson

1:30pm Meet with Marc Summerlin (NEC)
WW, 2nd Floor
456-5804
Interviewer: Kavanaugh
Notetaker: Bartolomucci

2:00pm Meet with Andy Card
1 Fl/WW
456-7256
Interviewer: Berenson

Notetaker: Kavanaugh

2:30pm Meet with Josh Bolten
1Fl/WW
456-1612
Interviewer: Berenson
Notetaker: Kavanaugh

3:30pm Meet with Larry Lindsey (NEC)
WW, 2nd Floor
456-2807
Interviewer: Kavanaugh
Notetaker: Bartolomucci

4:45pm Meet with Clay Johnson (OPP)
WW, 2nd Floor
456-7060
Interviewer: Bartolomucci
Notetaker: Berenson

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2002 5:19:42 AM
Subject: : Re: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization
Attachments: P_MELH7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2002 09:19:42.00
SUBJECT:: Re: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just a reminder, this was due on Friday but they pushed the deadline to 10 AM today for you.

Thanks,
Patrick
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/20/2002 09:19 AM ----------

From: Matthew J. Schneider on 05/20/2002 09:15:20 AM
Record Type: Record

To: Irene Kho/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

I do not see any obvious legal problems, unless John feels differently, and WH Counsel should be consulted. On the policy side, we look to CEA / WH policy.

Augustine T. Smythe
05/19/2002 07:17:02 AM
Record Type: Record

To: Irene Kho/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

Irene:

Sorry for the late response. Testimony looks OK to me. I've cc'd Larry & Mary to make sure they don't see any problems.

Thannks.

- Austin

Irene Kho
05/17/2002 05:20:20 PM
Record Type: Record

To: WHGC LRM, Matthew J. Schneider/OMB/EOP@EOP, John F. Wood/OMB/EOP@EOP, Augustine T. Smythe/OMB/EOP@EOP
cc:
Subject: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

Could I please have your signoff, if not by this this afternoon, by 10:00 AM, Monday morning. Thank you.
---------- Forwarded by Irene Kho/OMB/EOP on 05/17/2002 05:19 PM ----------

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Friendly Reminder: If you have not responded, comments are due at 5:00 PM, today.
---------- Forwarded by Irene Kho/OMB/EOP on 05/17/2002 04:50 PM ----------

From: Irene Kho on 05/16/2002 12:03:49 PM
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Subject: LRM IKK203 - - TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

Attached is Treasury testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

- testimony draft 5.151.doc

LRM ID: IKK203
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

DEADLINE: 5:00 PM Friday, May 17, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on the Administration's tax incentive programs for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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LRM ID: IKK203 SUBJECT: TREASURY Testimony on the
Administration's Tax Incentive Proposals for Community Revitalization

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
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Branch-Wide Line (to reach legislative assistant):
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FROM: _____ (Date)

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_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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May 21, 2002

STATEMENT OF
ERIC SOLOMON
DEPUTY ASSISTANT SECRETARY (REGULATORY AFFAIRS)
DEPARTMENT OF THE TREASURY
BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS

Mr. Chairman, Mr. Coyne, and Members of the Subcommittee:

I appreciate the opportunity to discuss with you today the Administration's program of tax incentives designed to foster the revitalization of economically disadvantaged communities. I would like to start by thanking the Subcommittee for holding a hearing on this important issue.

The President is firmly committed to directing public funds toward developing economically distressed communities. However, the President also believes that there is a limit on what the Federal government can accomplish directly. Consequently, the President's Budget for FY 2003 contains initiatives to encourage further involvement by individuals, businesses, and faith-based and community-based organizations in working to eliminate pockets of economic distress wherever they exist in this country. In particular, the Administration proposes making the brownfields tax incentive permanent. Under current law, this incentive is scheduled to expire on December 31, 2003. The revenue cost of a permanent extension is estimated to be $1.1 billion over five years. The Administration also proposes the creation of a tax credit, similar in design to the low-income housing tax credit, for developers of affordable single-family housing. The credit would take effect in 2003 and cost $2.4 billion over 5 years.

Furthermore, thanks in large part to the leadership shown by the Ways and Means Committee, many of the Administration's tax proposals have been enacted or are included in legislation that the House passed last summer. Administration tax proposals benefiting low-income individuals or distressed communities that have already been enacted include the following: (1) extension of the work opportunity tax credit through 2003; (2) extension of the welfare to work credit through 2003; (3) extension of authority to issue qualified zone academy bonds through 2003; (4) providing tax-exempt private activity bonds to finance reconstruction in the area surrounding the World Trade Center in New York City devastated by the September 11, 2001 terrorist attacks; (5) creation of a new 10 percent income tax bracket; and (6) doubling of the child tax credit to $1000.

We look forward to working with this Subcommittee as it considers the remainder of the Administration's initiatives related to encouraging community renewal.

The remainder of my testimony will provide a more detailed discussion of current law and the Administration's budget proposals.

REV_00145613

INCENTIVES FOR DISTRESSED COMMUNITIES

Current law tax incentives for distressed communities

The Internal Revenue Code currently includes numerous incentives to encourage the development of economically distressed areas. They include tax incentives for businesses located in empowerment zones, enterprise communities and renewal communities, the new markets tax credit, qualified zone academy bonds, certain categories of tax-exempt bonds, special incentives for investment and employment on Indian reservations, the low-income housing tax credit, the work opportunity tax credit, and the deductibility of environmental remediation costs.

Empowerment Zones

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) authorized a demonstration project under which nine empowerment zones, six in urban areas and three in rural areas, were designated through a competitive application process. State and local governments nominated distressed geographic areas, which were selected on the strength of their strategic plans for economic and social revitalization. The urban areas were designated by the Secretary of the Department of Housing and Urban Development. The rural areas were designated by the Secretary of the Department of Agriculture. The Taxpayer Relief Act of 1997 added two urban Round I zones and authorized 20 Round II zones (15 urban and five rural). The Community Renewal Tax Relief Act of 2000 authorized nine Round III zones (seven urban and two rural). There are currently 30 urban zones and 10 rural zones. Designation of Round I, Round II or Round III status generally will apply until December 31, 2009.

Qualifying businesses in empowerment zones are eligible for certain tax benefits. These benefits include the following: (1) a 20-percent wage credit for qualifying wages; (2) additional expensing for qualified zone property; and (3) tax-exempt financing for certain qualifying zone facilities. In addition, taxpayers may elect to defer capital gains from certain sales and re-investments in qualified empowerment zone assets. Taxpayers may also exclude certain gain from the sale of qualifying empowerment zone stock that is held for more than five years.

The wage credit provides a 20 percent subsidy on the first $15,000 of annual wages paid to residents of empowerment zones by businesses located in these communities, if substantially all of the employee's services are performed within the zone. By lowering the cost of labor, the wage credit encourages new businesses to locate in zones, and encourages those businesses already there to expand, providing jobs and opportunities for self-sufficiency for zone residents.

Enterprise zone businesses are allowed to expense the cost of certain property up to an additional $35,000 above the amounts generally available under section 179 of the Internal Revenue Code. In addition, only 50 percent of the cost of such property counts toward the aggregate annual limit on section 179 expensing. This incentive is designed to increase investment in machines, computers and other tangible business property within empowerment zones by small businesses.

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Enterprise zone businesses are also permitted access to a special class of tax-exempt private activity bonds. Limits are placed on the amount of such financing available to each zone. Rural zones are allowed $60 million of such financing, urban zones with less than 100,000 residents are allowed $130 million of such financing and urban zones with at least 100,000 residents are allowed $230 million of such financing. These bonds are not subject to the State's volume cap on private activity bonds.

The Community Renewal Tax Relief Act of 2000 added two provisions to limit capital gains taxation on certain investments within empowerment zones to encourage greater private investment in the zones. Taxpayers are allowed to roll over the capital gain from the sale of qualified empowerment zone assets held more than one year, if a replacement qualified empowerment zone asset is purchased in the same zone as the asset sold. Qualified empowerment zone assets include certain stock and partnership interests in an enterprise zone business and certain tangible property used in an enterprise zone business. This provision applies to assets acquired after December 21, 2000.

In addition, taxpayers other than corporations are allowed to exclude 60 percent of the gain on the sale or trade of qualified small business stock held more than 5 years, if the business also qualifies as an enterprise zone business. Taxpayers are normally allowed to exclude 50 percent of the gain on the sale of qualified small business stock. This provision applies to stock acquired after December 21, 2000.

Enterprise Communities

In addition to Empowerment Zones, OBRA 93 provided for the designation of 95 Enterprise Communities, 65 in urban areas and 30 in rural areas. Qualified businesses in these communities are entitled to the same favorable tax-exempt financing benefits as those in empowerment zones. Many of these enterprise communities have subsequently been re-designated as part of an empowerment zone or a renewal community and are no longer designated as an enterprise community. Currently, 68 enterprise communities qualify for tax-exempt financing, 40 in urban areas and 28 in rural areas.

Renewal Communities

The Community Renewal Tax Relief Act of 2000 authorized 40 renewal communities, at least 12 of which must be in rural areas. The renewal communities were chosen through a competitive application process similar to that used for empowerment zones. The 40 communities were recently designated by the Department of Housing and Urban Development and that designation continues through 2009.

Taxpayers may utilize the renewal community tax benefits beginning this year. These benefits include the following: (1) a 15-percent wage credit for qualifying wages; (2) additional section 179 expensing for qualified renewal property; (3) a commercial revitalization deduction; and (4) an exclusion for capital gains on qualified community assets held more than 5 years.

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The wage credit and increased section 179 expensing operate in a similar fashion as in empowerment zones. The primary difference is that the wage credit is smaller, equal to 15 percent for the first $10,000 of wages.

The commercial revitalization deduction is designed to foster the development or rehabilitation of commercial real estate in renewal communities. This deduction is applicable to certain nonresidential real property or other property functionally related to nonresidential real property. A taxpayer may elect to either: (1) deduct one-half of any qualified revitalization expenditures that would otherwise be capitalized for any qualified revitalization building in the tax year the building is placed in service, or (2) amortize all such expenditures over a 120-month period beginning with the month the building is placed in service. A qualified revitalization building is any building and its structural components placed in service by the taxpayer in a renewal community. If the building is new, the original use of the building must begin with the taxpayer. If the building is not new, the taxpayer must substantially rehabilitate the building and then place it in service. The total amount of qualified revitalization expenditures for any building cannot be more than the smaller of $10 million or the amount allocated to the building by the commercial revitalization agency for the state in which the building is located. A $12 million dollar cap on allowed commercial revitalization expenditures is placed on each renewal community annually.

In order to help stimulate private investment in renewal communities, qualified capital gain earned on qualified community assets is excluded from gross income. A qualified community asset includes stock or a partnership interest in a qualified renewal community business and certain tangible property used in a renewal community business. To qualify for the capital gain exclusion, the asset must be purchased after December 31, 2001 and before January 1, 2010, and it must be held for at least five years.

District of Columbia Incentives

A special set of incentives was enacted in 1997 to help redevelop the District of Columbia. The Taxpayer Relief Act of 1997 included tax incentives for both residents and businesses to locate in the District of Columbia. A $5,000 income tax credit for first-time home purchasers was designed to attract new homeowners to the District. A second set of incentives, similar to those provided in empowerment zones, was intended to encourage the establishment of new businesses in the District as well as new investment in existing enterprises.

Subject to certain income restrictions, the $5,000 credit is available to first-time purchasers of a principal residence in the District of Columbia who have not owned houses in the District during the year preceding the purchase. Although the credit was initially available for property purchased through the end of 2000, subsequent legislation extended the incentive through the end of 2003.

Other tax incentives offer a range of economic inducements to businesses operating in the more economically disadvantaged parts of the District. With the exception of a provision related to the sale of capital assets, these incentives are available only to businesses located either within the boundaries of the D.C. Enterprise Community, or located in census tracts elsewhere in the

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District where the poverty rate exceeds 20 percent. These areas are collectively known as the DC Zone. With certain minor adjustments, businesses in the DC Zone may claim the same wage credit, expensing of certain capital investment, and tax exempt bond financing as businesses in an empowerment zone. In addition, as in renewal communities, capital gains realized from the sale of certain assets are excludable from the income of the seller. For the purposes of this provision alone, the DC Zone is expanded to include all census tracts in the District in which the poverty rate exceeds 10 percent.

New York Liberty Zone

While the area around the World Trade Center in New York City would not have been described as an economically distressed community prior to the extraordinary events of September 11, 2001, the incredible destruction of life and property in that area due to the terrorist attacks prompted both the Administration and the Congress to support tax incentives targeted to helping New York City recover economically. I commend you, Mr. Chairman, and other members of the Ways and Means Committee for the leadership you exhibited in helping to enact the Job Creation and Worker Assistance Act of 2002.

Some of the tax incentives provided in the New York Liberty Zone are similar to the tax incentives offered in empowerment zones, while others were designed to meet the unique challenges facing New York City in the aftermath of the September 11 terrorist attacks. As in empowerment zones, qualified businesses are allowed a wage credit, increased section 179 expensing, and access to tax-exempt financing. Provisions specific to the New York Liberty Zone include 30 percent expensing of certain property, accelerated depreciation of qualified leasehold improvement property, extension of the replacement period for certain property involuntarily converted, and an additional advance refunding of bonds for facilities located in New York City.

The wage credit is allowed for certain employees who work in New York City through an extension of the work opportunity tax credit (WOTC). The new targeted group for the WOTC includes employees of businesses located in the New York Liberty Zone if substantially all of the employee's services for the business are performed within the New York Liberty Zone. In addition, the new targeted group includes employees of businesses that relocated from the New York Liberty Zone due to the physical destruction or damage of their workplaces by the September 11, 2001 terrorist attacks to another location within New York City, provided that substantially all of the employee's services are performed within New York City. Only businesses with an average of 200 or less employees during the taxable year are eligible for the credit. The credit is effective for wages paid or incurred for work performed during calendar year 2002 or 2003.

An increase in section 179 expensing of $35,000 is allowed for property placed in service by taxpayers after September 10, 2001, and before January 1, 2007, if the original use of the property in the New York Liberty Zone commences with the taxpayer after September 10, 2001 and substantially all of the use of the property is in the New York Liberty Zone. As in empowerment zones and renewal communities, only 50 percent of the value of such property counts toward the aggregate annual limit on section 179 expensing.

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The Governor of New York State and the Mayor of New York City are each given an allowance to issue up to $4 billion of tax-exempt private activity bonds before January 1, 2005. The bonds may be used to finance construction and rehabilitation of nonresidential real property, residential rental real property, and public utility property in the New York Liberty Zone. The Governor and the Mayor may each designate up to $1 billion of such bond proceeds for the acquisition, construction, and rehabilitation of certain commercial real property located outside the New York Liberty Zone and within New York City. These bonds are not subject to the State's volume cap on private activity bonds.

A taxpayer is allowed an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified New York Liberty Zone property. In order to qualify for this partial expensing, the property must be (1) a property with a MACRS recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property, or (4) certain nonresidential real property and residential rental property. Nonresidential real property and residential rental property is eligible for the partial expensing only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. This provision applies neither to property that would otherwise qualify for 30 percent expensing under section 168(k), nor to qualified New York Liberty Zone leasehold improvement property. Furthermore, to qualify for the partial expensing, substantially all of the use of the property must be in the New York Liberty Zone and the original use of the property in the New York Liberty Zone must commence with the taxpayer after September 10, 2001 (except for certain leased property). Finally, qualified property must be purchased by the taxpayer after September 10, 2001, and placed in service before January 1, 2007, or for nonresidential property and residential rental property, January 1, 2009.

Qualified New York Liberty Zone leasehold improvement property placed in service after September 10, 2001 and before January 1, 2007 is treated as 5-year property for the purposes of section 168 depreciation rules, with deductions taken using the straight-line method. Under the alternative depreciation system (section 168(g)), such property has a class life of 9 years. Qualified New York Liberty Zone leasehold improvement property is qualified leasehold improvement property as defined in section 168(e)(6) that is placed in service in the New York Liberty Zone.

When property used in a trade or business is damaged or destroyed, the taxpayer may deduct any loss sustained to the extent that the loss is not compensated by insurance or otherwise. When insurance or other compensation results in a gain from the damage or destruction of property, then the taxpayer may elect to reduce the current recognition of gain by purchasing a replacement property within a specific time period which is similar or related in use to the damaged or destroyed property (section 1033(a)). For property in the New York Liberty Zone that was involuntarily converted as a result of the terrorist attacks on September 11, 2001, the replacement period is extended from 2 years to 5 years if substantially all of the use of the replacement property is in New York City.

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Finally, certain bonds for facilities located in New York City are given one additional advance refunding. There is an aggregate limit of $9 billion advance refunding bonds that may be issued before January 1, 2005.

New Markets Tax Credit

The new markets tax credit was created by the Community Renewal Tax Relief Act of 2000 to encourage capital investments in businesses that are located in low-income communities. The new markets tax credit provides a tax credit to investors who make "qualified equity investments" in privately-managed investment vehicles called "community development entities," or "CDEs." The CDEs are required to invest substantially all of the proceeds of the qualified equity investments in low-income communities. For example, CDEs may make loans or capital investments in companies that operate in low-income communities.[1]

Eligible investors in a CDE are entitled to claim tax credits over a seven-year period beginning on the date of the initial investment. The value of the credits to investors will be about 30 percent of the amount of the qualified equity investment on a present value basis.

In order for an entity to qualify as a CDE, it must meet three requirements. First, the primary mission of the entity must be to serve or provide investment capital for low-income communities or low-income persons. Second, the entity must maintain accountability to residents of low-income communities through their representation on the entity's governing or advisory board. Third, the entity must be certified as a CDE by the Treasury Department's Community Development Financial Institutions Fund (CDFI Fund).

In order for a CDE to issue qualified equity investments with respect to which new markets tax credits may be claimed, the CDE must apply for and receive from the CDFI Fund an allocation of credit authority for those investments.

A total of $15 billion of equity investments will be able to qualify for this authority on a phased-in basis between 2001 and 2007. The CDFI Fund will allocate this authority among CDEs based on a competitive application process. In making these allocations, the CDFI Fund is required to give priority to any entity (1) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or (2) which intends to invest substantially all of the proceeds of the qualified equity investments in one or more businesses in which persons unrelated to the entity hold the majority equity interest. [In the next couple of weeks, the CDFI Fund will issue a notice seeking applications from CDEs for allocation of credit authority.]

Qualified Zone Academy Bonds

State and local governments can issue qualified zone academy bonds (QZABs) to fund the improvement of certain eligible public schools. An eligible holder of a QZAB receives annual Federal income tax credits. These annual credits compensate the holder for lending money and, therefore, are treated like taxable interest payments for Federal tax purposes.

[1] For these purposes, "low-income community" is defined as any population census tract if (1) the poverty rate for the tract is at least 20 percent, or (2) the median family income for the tract does not exceed 80 percent of statewide median family income (or, in the case of metropolitan areas, metropolitan area median family income, if greater).

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Eligible holders are banks, insurance companies, and corporations actively engaged in the business of lending money. The credit rate for a QZAB is set on its day of sale by reference to credit rates established by the Department of the Treasury. The maximum term of a QZAB issued during any month is determined by reference to the adjusted applicable Federal rate (AFR) published by the Internal Revenue Service for the month in which the bond is issued.

This provision was enacted in the Taxpayer Relief Act of 1997, which established authority to issue $400 million of QZABs per year for 1998 and 1999. This authority was extended to 2000 and 2001 by the Ticket to Work and Work Incentives Improvement Act of 1999. The Administration proposed that this authority be extended through 2003, which was accomplished in the recently enacted Job Creation and Worker Assistance Act of 2002. The annual cap is allocated among the States in proportion to their respective populations of individuals with incomes below the poverty line. Unused authority to issue QZABs may be carried forward for two years (three years for authority arising in 1998 and 1999) after the year for which the authority was established.

A number of requirements must be met for a bond to be treated as a QZAB. First, the bond must be issued pursuant to an allocation of bond authority from the issuer's State educational agency. Second, at least 95 percent of the bond proceeds must be used for an eligible purpose at a qualified zone academy. Eligible purposes include rehabilitating school facilities, acquiring equipment, developing course materials, or training teachers. A qualified zone academy is a public school (or an academic program within a public school) that is designed in cooperation with business and is either (1) located in an empowerment zone or enterprise community, or (2) attended by students at least 35 percent of whom are estimated to be eligible for free or reduced-cost lunches under the National School Lunch Act. Third, private entities must have promised to contribute to the qualified zone academy certain property or services with a present value equal to at least 10 percent of the bond proceeds.

Mortgage Revenue Bonds

Mortgage revenue bonds ("MRBs") are bonds issued by or on behalf of a State or local government to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied homes located within the jurisdiction of the issuer of the bonds. Interest on MRBs is excluded from gross income for federal income tax purposes if they meet the requirements for "qualified mortgage bonds" or "qualified veterans' mortgage bonds." In addition, in some circumstances, "mortgage credit certificates" may be issued as an alternative to qualified mortgage bonds.

In general, qualified mortgage bonds must finance residences for first-time home buyers, the purchase price of the residence may not exceed certain amounts, and the purchaser must satisfy certain income limitations. In addition, certain special rules apply with respect to "targeted areas." A targeted area is defined as (1) a census tract in which 70 percent or more of the families have incomes that are 80 percent or less of the Statewide median family income, or (2) an area of chronic economic distress designated by the Secretary of the Treasury and the Secretary of Housing and Urban Development. At least 20 percent of the lendable proceeds of each qualified mortgage bond issue (but not more than 40 percent of the average mortgage

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activity in the targeted area) is required to be made available for owner-financing in targeted areas for a period of at least one year.

The volume of certain tax-exempt private activity bonds, including qualified mortgage bonds, that States and local governments may issue in each calendar year is limited by State-wide volume limits. The current annual volume limits are $50 per resident of the State or $150 million if greater. The current limits increase to $75 per resident of each State or $225 million, if greater, beginning in calendar year 2007. The increase is ratably phased in, beginning with $55 per capita or $165 million, if greater, in calendar year 2003.

Qualified governmental units may elect to exchange all or any portion of their private activity bond volume limitation for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home buyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. MCCs generally are subject to the same eligibility and targeted area requirements as qualified mortgage bonds.

Indian Employment Credit

Unfortunately, many residents of Native American communities continue to struggle economically. The Indian Employment Credit provides an incentive for job growth in these communities. Employers may claim an Indian Employment Credit on the qualified wages and employee health insurance costs paid to an enrolled member of an Indian tribe in compensation for services performed on or near a reservation. The credit amount is equal to 20 percent of the excess of the employer's current year qualified wages and employee health insurance costs over the sum of the corresponding amounts paid or incurred by the employer during calendar year 1993. The aggregate amount of qualified wages and health insurance costs may not exceed $20,000 per person per year. This incentive was due to expire at the end of 2003, but has been extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Depreciation of Property Used on Indian Reservations

Another tax incentive that encourages economic development on Indian reservations is the accelerated depreciation of qualified Indian reservation property. This accelerated depreciation is accomplished through the use of shorter recovery periods for certain property. In order to qualify for this provision, a property must (1) be used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not be used outside the Indian reservation on a regular basis, (3) not be acquired from a person related to the taxpayer, and (4) not be used for the purpose of certain gaming activities. In addition, property for which the alternative depreciation system is applied is not eligible for this provision. This provision was scheduled to expire for property placed in service after 2003, but was extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Low-income housing tax credit

Taxpayers who invest in qualified low-income rental units are eligible for the low-income housing tax credit (LIHTC). The LIHTC may be claimed over a 10-year period for a portion of

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the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed housing that is not federally subsidized is adjusted monthly by the Internal Revenue Service so that generally the 10 annual credit amounts have a present value of 70 percent of qualified basis. The credit percentage for new buildings that are federally subsidized and for existing buildings is calculated to have a present value of 30 percent of qualified basis. In general, the aggregate first-year credit authority allocated to each State is $1.75 per capita in 2002 and will be indexed for inflation in following years. Tax credits are allocated to particular projects by State or local housing agencies pursuant to publicly announced plans for allocation. Authority to allocate credits may be carried forward by agencies to the following calendar year. Unused credit allocations may be returned to an agency for reallocation. Credit allocations may revert to the agency if less than 10 percent of the taxpayer's reasonably expected qualifying basis is expended within 6 months after receiving the allocation. Authority not used in a timely manner reverts to a national pool for distribution to States requesting additional authority. Generally, a qualifying building must be placed in service in the year the credit is allocated unless at least 10 percent of the taxpayer's reasonably expected basis in the property is expended in the year of allocation or within 6 months after the allocation date. Rules are provided for the allocation of costs to individual units in multi-unit projects and to property that is part of a project but used for purposes other than rental housing. The tax credit period begins with the taxable year in which a qualified building is placed in service (or, in certain circumstances, the succeeding taxable year). Credits are recaptured if the required number of units is not rented to qualifying tenants for a period of 15 years.

Work Opportunity Tax Credit

Employers are generally entitled to the work opportunity tax credit (WOTC) for the first $6,000 of wages paid to several targeted groups of economically disadvantaged workers or workers with disabilities. For workers employed between 120 and 400 hours, the credit rate is 25 percent of qualified wages. For workers employed over 400 hours, the credit rate is 40 percent. Employers must reduce their deduction for wages paid by the amount of the credit claimed. Current WOTC target groups include qualified: (1) recipients of Temporary Assistance to Needy Families; (2) veterans; (3) ex-felons; (4) high-risk youth; (5) participants in State-sponsored vocational rehabilitation programs; (6) summer youth; (7) food stamp recipients; and (8) Supplemental Security Income recipients.

A qualified high-risk youth employee listed above is an individual at least 18 years old but less than 25, who lives within an empowerment zone, enterprise community, or renewal community. A qualified summer youth employee works for the employer between May 1 and September 15, is 16 or 17 years old, and resides within an empowerment zone, enterprise community, or renewal community. The limit on the wages of a summer youth employee that qualify for the credit is reduced to $3,000.

At the time the Administration proposed the FY 2003 budget, the WOTC was scheduled to expire at the end of 2001. The Administration proposed that the WOTC be extended through 2003. This was accomplished by the Job Creation and Worker Assistance Act of 2002.

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The House has just passed (is considering?) the Encouraging Work and Supporting Marriage Act of 2002. The bill would combine the WOTC and the welfare to work (WTW) credit by making persons eligible for WTW a WOTC target group with special rules. The WTW credit enables employers to claim a tax credit for eligible wages paid to certain long-term welfare recipients. The changes contained in the House bill will simplify the computation of the credit for employers that hire members of the economically disadvantaged targeted groups. We commend the proposed tax simplification.

Brownfields remediation costs

A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Because lenders, investors, and developers fear the high and uncertain costs of cleanup, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents. The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, and contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields remediation.

To encourage the cleanup of contaminated sites, the brownfields tax incentive permits the current deduction of certain environmental remediation costs. Environmental remediation costs qualify for current deduction if the expenditures would otherwise be capitalized (generally costs incurred to clean up land and groundwater that increase the value of the property) and are paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A qualified contaminated site generally is any property (1) that is held for use in a trade or business, for the production of income, or as inventory; (2) at or on which there has been a release, threat of release, or disposal of a hazardous substance; and (3) that is certified by the appropriate State environmental agency as to the release, threat of release, or disposal of a hazardous substance. Sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) do not qualify as qualified contaminated sites. The brownfields tax incentive applies to expenditures paid or incurred before January 1, 2004.

Administration budget proposals

The President's Budget for FY 2003 includes two proposals to improve upon these tax incentives and further encourage development in economically distressed communities.

Brownfields remediation costs

The Administration believes that encouraging environmental remediation is an important national goal. The brownfields provision encourages the cleanup of contaminated brownfields, thereby enabling them to be brought into productive use in the economy and mitigating potential harms to public health. The current-law incentive was made temporary to encourage faster cleanup of brownfields. Experience has shown, however, that many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of

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years. For that reason, the President's budget proposed a permanent extension of the brownfields tax incentive. Extending the special treatment accorded to brownfields on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures and would promote the goal of encouraging environmental remediation. The Administration's brownfields proposal was introduced by Mr. Coyne and Mr. Weller as H.R. 1439.

The revenue cost of the proposal is estimated to be $1.1 billion over FY 2003-2007. Treasury estimates that the proposal, at a $300 million annual cost, will leverage approximately $2 billion per year in private investment.

Single-family housing tax credit

The Administration believes that quality of life in distressed neighborhoods can be improved by increasing home ownership. Existing buildings in these neighborhoods often need extensive renovation before they can provide decent owner-occupied housing. Renovation may not occur because the costs involved exceed the prices at which the housing units could be sold. Similarly, the costs of new construction may exceed their market value. Properties will sit vacant and neighborhoods will remain blighted unless the gap between development costs and market prices can be filled. The Administration has proposed the creation of a single-family housing tax credit (SFHTC) to expand the possibility of home ownership for low-income families.

First-year credit authority of $1.75 per resident would be made available annually to States (including U.S. possessions) beginning in calendar year 2003. The per capita amount would be indexed for inflation beginning in 2004. Pursuant to a plan of allocation, State or local housing credit agencies would award first-year credits to housing units comprising a project for the development of single-family housing in census tracts with median incomes of 80 percent or less of area median income, based initially upon 2000 census data. Rules similar to the current law rules for the LIHTC would apply regarding carry forward and return of unused credits and a national pool for unused credits. Credits allocated to a project would revert to the agency unless expenditures equal to 10 percent or more of reasonably expected qualifying costs were made within 6 months after receipt of the allocation. Units in condominiums and cooperatives could qualify as single-family housing. Credits would be awarded as a fixed amount for individual units comprising a project. The present value of the credits with respect to a unit, as of the beginning of the credit period (described below), could not exceed 50 percent of the qualifying costs of the unit. For these purposes, present value would be determined based on the mid-term Applicable Federal Rate in effect for the date the agency allocated credits to the project. Rules similar to the current law rules for the LIHTC would apply to determine eligible costs of individual units. The Treasury Department would have the authority to promulgate necessary reporting requirements.

The taxpayer (developer or investor partnership) owning the housing unit immediately prior to the date of sale to a qualified buyer (or, if later, the date a certificate of occupancy was issued) would be eligible to claim SFHTCs over a 5-year period beginning on that date. No credits with respect to a housing unit would be available unless the unit was sold within a 1-year period beginning on the date a certificate of occupancy is issued with respect to that unit.

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Eligible homebuyers would have incomes at 80 percent (70 percent for families with less than 3 members) or less of applicable median family income. They would not have to be first-time homebuyers. Homebuyers would be subject to recapture provisions in certain circumstances. In particular, recapture rules would apply if the homebuyer (or a subsequent buyer) sold the property to a nonqualified buyer within 3 years after the date of initial sale of the unit. The recapture tax would equal the lesser of (1) 80 percent of the gain upon resale and (2) a recapture amount. The recapture amount would equal the value of the credits allocated to the housing unit being resold, reduced by 1/36th of that value for each month between the initial sale and the sale to a nonqualified buyer. No recapture provision would apply to taxpayers eligible to claim SFHTCs. If a housing unit for which any credit is claimed were converted to rental property by the initial homebuyer within the first 5 years following the purchase, no deductions for depreciation or property taxes could be claimed with respect to that unit during that time period.

The proposal would be effective beginning with first-year credit allocations for calendar year 2003. The revenue cost of this proposal is expected to be $2.4 billion over FY 2003-2007.

Administration spending proposals for distressed communities

In addition to the tax incentives just described, the Administration's FY 2003 Budget contains several initiatives on the spending side to revitalize economically disadvantaged communities. These initiatives include the following: (1) a $100 million increase for the HOME block grant, a flexible program that localities can tailor to their particular housing needs; (2) reforms to the Community Development Block Grant (CDBG) program so that more money will be targeted at communities with the greatest economic need, plus an increase of $95 million for the CDBG formula program; (3) a four-fold increase in the President's Down Payment Assistance Initiative from its 2002 level to $200 million to provide matching grants to state and local governments to provide down payment assistance to first-time homeowners; (4) a three-fold increase in funding to $65 million for the Self-Help Homeownership Opportunity program, which helps families realize homeownership through sweat equity; and (5) funding for four competitive grant programs targeted at faith- and community-based organizations that can provide innovative services, including $100 million for the Compassion Capital Fund to help charitable organizations start or expand, $25 million for mentoring children of prisoners, $20 million for promoting responsible fatherhood, and $10 million for maternity group homes.

CONCLUSION

I would like to thank Mr. Houghton, Mr. Coyne and the members of the Subcommittee for providing the chance today to discuss these important issues. I hope that, working together, we can ensure that all Americans share in our country's prosperity and have even greater opportunity in the future. While this concludes my prepared testimony. I would be pleased to respond to your questions.

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From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2002 5:09:00 AM
Subject: : Re: New Republic story about Judge

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2002 09:09:00.00
SUBJECT:: Re: New Republic story about Judge
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks for finding this!

Brett M. Kavanaugh
05/17/2002 07:03:09 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP, Anne Womack/WHO/EOP@EOP
cc:
Subject: New Republic story about Judge

ALBERTO GONZALES'S HIGH-WIRE ACT
Friend of the Court
by Ryan Lizza

One weekend in early May, Alberto Gonzales, President Bush's White House counsel and longtime confidant, found himself motoring out to a Ritz-Carlton in the Virginia suburbs to hang out with creationists and Christian reconstructionists. Gonzales spoke before some 500 members of the Council for National Policy (CNP), an umbrella group of social conservatives that includes major figures such as James Dobson and Gary Bauer, as well as some of the fringiest elements of the right--including Henry Morris, who has devoted his career to the proposition that evolution is a myth; and R.J. Rushdoony, a reconstructionist who advocates replacing the American legal system with the injunctions of the Old Testament. But several of the attendees say they were disappointed by Gonzales, who gave a humdrum speech about the daily life of the White House counsel and offered little ideological red meat. Even during the question-and-answer session, when he was peppered with questions about various social issues, Gonzales remained cautious, betraying little about his personal beliefs--and doing little to win over a skeptical audience. As one attendee put it: "It was not a conservative being cautious; it was a judicial liberal being cautious."

It's not hard to figure out why Gonzales shows up at these

conservative-themed
events. Everyone assumes he's on Bush's shortlist for the next vacancy on
the Supreme Court, and appearances like his speech before the CNP are
a way to build conservative support for his potential nomination. And
there's a
reason conservatives need convincing: Everything in Gonzales's record
prior to
his arrival in Washington suggests he is a moderate jurist uncomfortable
and
unfamiliar with the kind of conservative judicial activism identified with
Justices
Antonin Scalia and Clarence Thomas. And that worries Washington
conservatives
who fear a replay of 1990, when Bush pere nominated David Souter--another
state supreme court judge with an ambiguous record--to the high court,
only to
have him become a stalwart of its liberal minority.

But if "No More Souters!" has become a rallying cry among conservatives,
Democrats are equally determined not to allow another Scalia, an
Italian-American
right-winger who won confirmation in part because Democrats didn't want to
be seen as standing in the way of an ethnic milestone. And if Gonzales's
record
in Texas causes him problems on the right, his conservative stances as
White House counsel--on judicial picks, on terrorism, on administration
secrecy--raise
red flags for Senate Democrats and their allies on the left. Alberto
Gonzales,
in other words, has the misfortune to be a potential Supreme Court pick at
a time
when the window of political acceptability--between being too liberal to
be nominated
and too conservative to be confirmed--is narrower than ever before.
Michael Farris, a home-schooling advocate and influential social
conservative,
summarizes the dilemma: "Until Judge Gonzales starts saying some things
publicly like, `I believe the president is right both politically and
constitutionally on
abortion, and I'm happy to defend him,' he's not going to be
rehabilitated.
The problem is that if you start doing that you become unacceptable to the
left." No wonder Gonzales addressed the CNP. And no wonder he didn't win
them over.

As a justice for two years on the Texas Supreme Court, Gonzales has a
paper trail. And it suggests moderation and deference--a throwback to the
kind
of judicial restraint Republicans used to advocate before they fell in
love with
conservative judicial activism. David Keltner, a friend of Gonzales's from
Texas
(and a Democrat) argues: "The activist judges we have in the U.S.
are conservatives and have been for the last five to ten years. Al
Gonzales went on a court that had some ofthat, and he was not that way.
He truly did not legislate." Gonzales joined the court in January 1999 and
resigned
in December 2000 to prepare to move to Washington. During those two years
he
joined several other Bush appointees to form what the liberal group Texas
Watch dubbed the "New Guard"--a block of moderate justices who turned the
court away from the sharp conservative tilt that characterized it in the
late
1980s and early 1990s. In 2000 Texas Watch noted that, led by a justice
named
Deborah Hankinson, the "`New Guard' increasingly is challenging the
intellectual
leadership of conservative activist [Justice] Nathan Hecht and his

allies"--including
Priscilla Owen, a judge Bush recently nominated to the federal bench and
who
has been targeted for defeat by liberals. It's hardly surprising that
Gonzales
usually agreed with his fellow Bush appointees on the Texas court:
As the governor's general counsel from 1995 to 1997, he helped pick them.

Gonzales's writings during his two years on the court-- 14 majority
opinions,
five concurring opinions, and two dissents--display a fetish for
legislative intent
and a reverence for Supreme Court precedent, one reason social
conservatives fear
he would be too timid to vote to overturn Roe v. Wade. "He was a very
workmanlike judge who was not likely to rule on either extreme," says a
top legal conservative who has had conversations with Gonzales and is not
encouraged by his potential nomination to the high court. "The only
philosophy of
judging you can extract from his opinions is he's the quintessential judge
who goes in and tries to figure out the law and applies it."

The Texas supreme court has long been a bastion of pro-business
jurisprudence;
and Gonzales, who spent 13 years as a corporate lawyer in Houston, came to
Bush's staff with a reputation as a pro-business Republican. But here,
too, his record
on the court was centrist. In large part, the moderate trend on the Texas
court that
observers noted in the late '90s involved cases that pitted consumers
against
corporations. In such cases Gonzales voted with the majority in 47
decisions that
favored individuals over business defendants, while signing on to 38
majority opinions
that favored businesses over individuals. In one opinion he argued for the
majority
that a person exposed to asbestos who wins a claim against a company is
not
precluded from suing again if he develops a separate asbestos-related
disease.
In another case--in which Owen and two other conservatives on the court
dissented sharply--Gonzales's decision in favor of an injured motorist
suing the
Texas Department of Transportation created a whole new cause
of action for plaintiffs' lawyers.

As someone who arrived on the Texas bench amid speculation that it was
a stop on the way to the Supreme Court, Gonzales's opinions sometimes read
like those of a man who knows his words will be carefully scrutinized. In
a case
against General Motors, for example, he wrote an opinion finding the
company
negligent--but not grossly negligent, as a jury had. This cautious
centrism is also
present in one of the more significant opinions he wrote. In Osterberg v.
Peca the
Texas court wrestled with some of the same First Amendment issues likely
to arise out
of the McCain-Feingold campaign finance legislation recently signed by
Bush
(and challenged by the Republican National Committee). The case dealt with
the constitutionality of a state election law that required individuals to
disclose
expenditures made on behalf of a candidate; the court found that the
disclosure
requirement being challenged didn't violate the First Amendment. Gonzales
agreed

with the majority on that narrow issue but felt it necessary to add in a concurrence that he worried some "disclosure requirements can be so onerous that they violate the First Amendment"--a matter now at the heart of the McCain-Feingold law. In other words, Gonzales gave himself the wiggle room he'd need if the ruling came back to haunt him in a confirmation fight.

But the most well-known opinion Gonzales wrote on the court is the one that has most alienated him from conservatives. A new law signed by then-Governor Bush in 1999 prevented a minor from seeking an abortion without parental notification--unless a judge found her to be "mature and sufficiently well informed."
A series of these judicial-bypass requests began moving toward the Texas Supreme Court in 2000. In the first of them, known as Jane Doe 1, Gonzales joined the majority in overturning a lower court's ruling and allowing a 17-year-old, who told the court her parents did not "believe in abortion," to have the procedure without notifying her parents. The decision fractured the court six to three and precipitated an angry volley of opinions. "It was just incredibly tense around here," says one court official. Justice Owen wrote in a dissent that the majority's "actions raise disturbing questions about its commitment to the rule of law and to the process that is fundamental to the public's trust in the judicia ry." She further accused the court of "manufactur[ing] reasons to justify its action" and concluded her dissent by thundering that the majority "has acted irresponsibly in this case ... has disregarded the law and has trampled the process on which the legitimacy of our law depends." Justice Hecht added that Gonzales and his ideological brethren "adamantly refuse to listen to all reason" because they "have resolved to impair the Legislature's purposes in passing the Parental Notification Act, which were to reduce teenage abortions and increase parental involvement in their children's decisions."
He added that the court's ruling "trivializes the decision to have an abortion."

Gonzales's concurring opinion, by contrast, was a paean to legislative intent and--like so many of his other opinions--a careful effort to achieve a delicate political balance. Hinting that he may be pro-life, he wrote: "While the ramifications of such a law and the results of the Court's decision may be personally troubling to me as a parent, it is my obligation as a judge to impartially apply the laws of this state without imposing my moral view on the decisions of the Legislature." Owen's and Hecht's dissents, he said, were "unconscionable act[s] of judicial activism."

Gonzales's record on the Texas Supreme Court, in short, is not that of a Scalia-style conservative. And Gonzales's friends from the period confirm that the record honestly reflected his judicial philosophy. When he was leaving his position on the court to join Bush in Washington, Gonzales had a short, soul-searching conversation with a friend at the courthouse about his impending journey. Gonzales's friend was concerned about the rightward ideological turn the new Bush administration was taking. "When he was leaving, I was worried about the obligations this administration will pay to the right

wing," says the friend. But Gonzales, he says, reassured him by asserting, "I'm a moderate, and I believe the governor is a moderate."

But just as the moderate governorship of George W. Bush has metamorphosed into an extremely conservative presidency, so too has Gonzales's moderate judicial philosophy been replaced by an aggressive partisanship as White House counsel. Gonzales has stocked his office with former Scalia and Thomas clerks and veterans of the last decade's most contentious political fights--including Timothy Flanigan, a lawyer who helped write Bush's Supreme Court brief during the Florida recount; Brett Kavanaugh, who wrote part of the Starr report; and H. Christopher Bartolomucci, a Senate Whitewater investigation lawyer. Gonzales's early decision to no longer allow the American Bar Association to vet judicial nominees immediately won him cachet on the right, which has loathed the legal group ever since four members of its review board rated Robert Bork as "not qualified" in 1987. "It's the sort of bogeyman which one gets a lot of mileage for banishing," says one activist. "That act earned him a tremendous amount of support among conservatives."

In contrast with his record in Texas, Gonzales's new office has recommended the most conservative batch of jurists of any recent administration. One of the most telling picks is his old sparring partner on the Texas Court, Priscilla Owen, whom Bush nominated to the Fifth Circuit Court of Appeals one year ago. The administration had actually interviewed Deborah Hankinson--Gonzales's old ally and the leader of the Texas New Guard--for the job, but her nomination was scuttled. "She read the writing on the wall," says a person close to her. "She wasn't a right winger ... wasn't conservative enough. She felt the right wing has grabbed Bush and is off and running." Gonzales picked Owen for the spot instead.

Gonzales has also taken political ownership of a host of other conservative issues. He wrote and publicly defended Bush's executive order on military tribunals. He advised Bush not to grant prisoner-of-war status to Al Qaeda prisoners at Guantanamo Bay. His office has also led a multifront campaign to expand the authority of the executive branch and insulate the administration from records requests, whether they come from Congress, the General Accounting Office, or presidential scholars.

But establishing these conservative bona fides has come at a cost. Democrats on the Senate Judiciary Committee bitterly complain about Gonzales's unwillingness to consult with them over judges. They warn there will be payback if he's ever nominated to the Supreme Court and have already developed several potential lines of attack. Some Democrats argue that Gonzales is a lightweight being steamrolled by a right-wing staff. "Some think he's out of his league," says a top Judiciary Committee staffer, noting that Gonzales's deputy, Flanigan, was the lead White House negotiator

on the anti-terrorism bill. Others make essentially the opposite case: that Gonzales has not only played a critical role in Bush's most conservative and controversial policies, but also that he has been the key figure in shielding the decision-making process that produced them from public review.

Finally there is Enron, the Democratic gift that keeps on giving. Gonzales spent 13 years as a lawyer with Houston-based Vinson & Elkins (V & E), now best known as Enron's law firm. He worked in the business, real estate, energy section--known colloquially as "the deals group"--and one of his colleagues there was Joseph Dilg, for one decade the firm's chief liaison to Enron. Dilg is a main defendant in at least one massive Enron-related lawsuit charging that V & E conducted and participated in an illegal enterprise. National Journal has reported that Gonzales had an attorney-client relationship with Enron, but he has never explained exactly what it was. While at V & E, Gonzales also got to know Kenneth Lay: The two worked together on a 1990 economic summit in Houston and on the 1992 Republican convention. And when Gonzales ran for reelection to the Texas Supreme Court (Texas Supreme Court justices are initially appointed but must go before the voters to earn additional terms), he took $15,000 in campaign donations from the political action committees of Enron and V & E. Perhaps most questionable is that despite these connections, Gonzales has declined to recuse himself from the response to the various Enron-related inquiries and investigations currently embroiling the White House, including Senator Joseph Lieberman's widening probe.

Ultimately, though, much of the Democratic brief against Gonzales is weak. Gonzales left V & E in 1995--before the firm appears to have started most of its suspect work for Enron. And the conflicting nature of the other Democratic lines of attack--Gonzales the conservative mastermind, Gonzales the moderate dupe--is a pretty clear indication that neither characterization is a slam dunk.

The Republican case against Gonzales, however, is another matter. Many conservatives have not been reassured by his rightward lurch over the past year and half. Indeed, they often make their own version of the "moderate controlled by conservatives" argument--suggesting that in his current post Gonzales is simply hemmed in by the presence of so many conservative staffers and the expectation of loyalty to administration policies. "I think that Justice Gonzales was the real Al Gonzales, and White House Counsel Gonzales is the loyal Bush administration aide," says one prominent conservative. Adds another, "I have no reason to believe that he has changed his views from when he was on the court."

For many on the right, his opinion in Jane Doe 1 is all they know about Gonzales--and all they really need to know. "I've been told he voted the wrong way on a parental-notification bill on abortion," says Farris. "That would make him

absolutely unacceptable to the pro-life community." Other conservatives worry about Gonzales's views on affirmative action, an issue the Supreme Court is likely to tackle in the next few years. Gonzales has said, for example, that Bush is building an administration that "looks like America"--the same phrase famously used by Bill Clinton. Roger Clegg, an affirmative action opponent at the Center for Equal Opportunity, had a heated exchange with Gonzales on race at a Heritage Foundation event in Philadelphia not long ago. The administration is "not making appointments based strictly on the merits," says Clegg. "They are being driven by racial and ethnic decisions. That's wrong, and that's objectionable. To the extent he really believes that's an OK thing to do, that's troubling as a potential Supreme Court justice." Adds Ed Blum of the conservative American Civil Rights Institute, "We're all very nervous about Al Gonzales and how he sees the issue of race and public policy." Blum, who knows Gonzales from Texas, saw him speak recently at a monthly meeting of the Federalist Society held at Tony Cheng's Mongolian Restaurant in Washington. Gonzales, says Blum, believes "that a person's race or ethnicity does have a bearing on who that person is, and that is anathema to this movement. He has bought into the bedrock argument that the other side makes."

The irony, of course, is that Bush believes the same thing. Indeed, when Bush first appointed Gonzales to the Texas Supreme Court, a reporter asked the then-governor if race had played a role in his decision. "Of course it mattered what his ethnicity is," Bush replied. And more broadly, the question conservatives now pose about the "real" Alberto Gonzales--is he the moderate he was in Texas or the conservative he has been in Washington?--could well be asked about Bush himself. Bush, too, one might argue, has been surrounded since taking office by a permanent Beltway conservative establishment that has made his presidency more ideological than his governorship. Conservatives' assessment of what Gonzales would do if given the independence of a Supreme Court seat is, in some ways then, an assessment of what Bush himself might do--were conservatives not there to keep him in line.

And it's precisely because of those doubts that many on the right would prefer to see Bush choose someone like Miguel Estrada, the ideologically committed right-winger currently up for the D.C. Circuit. Estrada, they figure, could be confirmed for the same reason as Gonzales: Democrats wouldn't dare torpedo the first Hispanic nominee. And he'd be a reliable Thomas-Scalia ally on the Court.

But Estrada doesn't have Gonzales's close relationship to Bush--"more like a brother than a lawyer," says a friend of both men. And most close Bush-watchers assume that the president, if given his druthers, favors loyalty over ideological purity.

Unlike Gonzales, Estrada has yet to spend time on the bench--a lack of experience that could make confirmation more difficult. Moreover, Gonzales has one other advantage over Estrada and other potential rivals: As White House counsel, he'll be the one leading the search for a new justice when a
vacancy occurs. And the last time Bush put someone else in charge of this sort of hunt, Dick Cheney ended up picking himself.

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Attached is Treasury testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

- testimony draft 5.151.doc

LRM ID: IKK203
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Testimony on the Administration's Tax Incentive Proposals for Community Revitalization

DEADLINE: 5:00 PM Friday, May 17, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is Treasury testimony on the Administration's tax incentive programs for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 5:00 PM, tomorrow, Friday, May 17th.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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(2) sending us a memo or letter
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For Release Upon Delivery
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May 21, 2002

STATEMENT OF
ERIC SOLOMON
DEPUTY ASSISTANT SECRETARY (REGULATORY AFFAIRS)
DEPARTMENT OF THE TREASURY
BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS

Mr. Chairman, Mr. Coyne, and Members of the Subcommittee:

I appreciate the opportunity to discuss with you today the Administration's program of tax incentives designed to foster the revitalization of economically disadvantaged communities. I would like to start by thanking the Subcommittee for holding a hearing on this important issue.

The President is firmly committed to directing public funds toward developing economically distressed communities. However, the President also believes that there is a limit on what the Federal government can accomplish directly. Consequently, the President's Budget for FY 2003 contains initiatives to encourage further involvement by individuals, businesses, and faith-based and community-based organizations in working to eliminate pockets of economic distress wherever they exist in this country. In particular, the Administration proposes making the brownfields tax incentive permanent. Under current law, this incentive is scheduled to expire on December 31, 2003. The revenue cost of a permanent extension is estimated to be $1.1 billion over five years. The Administration also proposes the creation of a tax credit, similar in design to the low-income housing tax credit, for developers of affordable single-family housing. The credit would take effect in 2003 and cost $2.4 billion over 5 years.

Furthermore, thanks in large part to the leadership shown by the Ways and Means Committee, many of the Administration's tax proposals have been enacted or are included in legislation that the House passed last summer. Administration tax proposals benefiting low-income individuals or distressed communities that have already been enacted include the following: (1) extension of the work opportunity tax credit through 2003; (2) extension of the welfare to work credit through 2003; (3) extension of authority to issue qualified zone academy bonds through 2003; (4) providing tax-exempt private activity bonds to finance reconstruction in the area surrounding the World Trade Center in New York City devastated by the September 11, 2001 terrorist attacks; (5) creation of a new 10 percent income tax bracket; and (6) doubling of the child tax credit to $1000.

We look forward to working with this Subcommittee as it considers the remainder of the Administration's initiatives related to encouraging community renewal.

The remainder of my testimony will provide a more detailed discussion of current law and the Administration's budget proposals.

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INCENTIVES FOR DISTRESSED COMMUNITIES

Current law tax incentives for distressed communities

The Internal Revenue Code currently includes numerous incentives to encourage the development of economically distressed areas. They include tax incentives for businesses located in empowerment zones, enterprise communities and renewal communities, the new markets tax credit, qualified zone academy bonds, certain categories of tax-exempt bonds, special incentives for investment and employment on Indian reservations, the low-income housing tax credit, the work opportunity tax credit, and the deductibility of environmental remediation costs.

Empowerment Zones

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) authorized a demonstration project under which nine empowerment zones, six in urban areas and three in rural areas, were designated through a competitive application process. State and local governments nominated distressed geographic areas, which were selected on the strength of their strategic plans for economic and social revitalization. The urban areas were designated by the Secretary of the Department of Housing and Urban Development. The rural areas were designated by the Secretary of the Department of Agriculture. The Taxpayer Relief Act of 1997 added two urban Round I zones and authorized 20 Round II zones (15 urban and five rural). The Community Renewal Tax Relief Act of 2000 authorized nine Round III zones (seven urban and two rural). There are currently 30 urban zones and 10 rural zones. Designation of Round I, Round II or Round III status generally will apply until December 31, 2009.

Qualifying businesses in empowerment zones are eligible for certain tax benefits. These benefits include the following: (1) a 20-percent wage credit for qualifying wages; (2) additional expensing for qualified zone property; and (3) tax-exempt financing for certain qualifying zone facilities. In addition, taxpayers may elect to defer capital gains from certain sales and re-investments in qualified empowerment zone assets. Taxpayers may also exclude certain gain from the sale of qualifying empowerment zone stock that is held for more than five years.

The wage credit provides a 20 percent subsidy on the first $15,000 of annual wages paid to residents of empowerment zones by businesses located in these communities, if substantially all of the employee's services are performed within the zone. By lowering the cost of labor, the wage credit encourages new businesses to locate in zones, and encourages those businesses already there to expand, providing jobs and opportunities for self-sufficiency for zone residents.

Enterprise zone businesses are allowed to expense the cost of certain property up to an additional $35,000 above the amounts generally available under section 179 of the Internal Revenue Code. In addition, only 50 percent of the cost of such property counts toward the aggregate annual limit on section 179 expensing. This incentive is designed to increase investment in machines, computers and other tangible business property within empowerment zones by small businesses.

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Enterprise zone businesses are also permitted access to a special class of tax-exempt private activity bonds. Limits are placed on the amount of such financing available to each zone. Rural zones are allowed $60 million of such financing, urban zones with less than 100,000 residents are allowed $130 million of such financing and urban zones with at least 100,000 residents are allowed $230 million of such financing. These bonds are not subject to the State's volume cap on private activity bonds.

The Community Renewal Tax Relief Act of 2000 added two provisions to limit capital gains taxation on certain investments within empowerment zones to encourage greater private investment in the zones. Taxpayers are allowed to roll over the capital gain from the sale of qualified empowerment zone assets held more than one year, if a replacement qualified empowerment zone asset is purchased in the same zone as the asset sold. Qualified empowerment zone assets include certain stock and partnership interests in an enterprise zone business and certain tangible property used in an enterprise zone business. This provision applies to assets acquired after December 21, 2000.

In addition, taxpayers other than corporations are allowed to exclude 60 percent of the gain on the sale or trade of qualified small business stock held more than 5 years, if the business also qualifies as an enterprise zone business. Taxpayers are normally allowed to exclude 50 percent of the gain on the sale of qualified small business stock. This provision applies to stock acquired after December 21, 2000.

Enterprise Communities

In addition to Empowerment Zones, OBRA 93 provided for the designation of 95 Enterprise Communities, 65 in urban areas and 30 in rural areas. Qualified businesses in these communities are entitled to the same favorable tax-exempt financing benefits as those in empowerment zones. Many of these enterprise communities have subsequently been re-designated as part of an empowerment zone or a renewal community and are no longer designated as an enterprise community. Currently, 68 enterprise communities qualify for tax-exempt financing, 40 in urban areas and 28 in rural areas.

Renewal Communities

The Community Renewal Tax Relief Act of 2000 authorized 40 renewal communities, at least 12 of which must be in rural areas. The renewal communities were chosen through a competitive application process similar to that used for empowerment zones. The 40 communities were recently designated by the Department of Housing and Urban Development and that designation continues through 2009.

Taxpayers may utilize the renewal community tax benefits beginning this year. These benefits include the following: (1) a 15-percent wage credit for qualifying wages; (2) additional section 179 expensing for qualified renewal property; (3) a commercial revitalization deduction; and (4) an exclusion for capital gains on qualified community assets held more than 5 years.

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The wage credit and increased section 179 expensing operate in a similar fashion as in empowerment zones. The primary difference is that the wage credit is smaller, equal to 15 percent for the first $10,000 of wages.

The commercial revitalization deduction is designed to foster the development or rehabilitation of commercial real estate in renewal communities. This deduction is applicable to certain nonresidential real property or other property functionally related to nonresidential real property. A taxpayer may elect to either: (1) deduct one-half of any qualified revitalization expenditures that would otherwise be capitalized for any qualified revitalization building in the tax year the building is placed in service, or (2) amortize all such expenditures over a 120-month period beginning with the month the building is placed in service. A qualified revitalization building is any building and its structural components placed in service by the taxpayer in a renewal community. If the building is new, the original use of the building must begin with the taxpayer. If the building is not new, the taxpayer must substantially rehabilitate the building and then place it in service. The total amount of qualified revitalization expenditures for any building cannot be more than the smaller of $10 million or the amount allocated to the building by the commercial revitalization agency for the state in which the building is located. A $12 million dollar cap on allowed commercial revitalization expenditures is placed on each renewal community annually.

In order to help stimulate private investment in renewal communities, qualified capital gain earned on qualified community assets is excluded from gross income. A qualified community asset includes stock or a partnership interest in a qualified renewal community business and certain tangible property used in a renewal community business. To qualify for the capital gain exclusion, the asset must be purchased after December 31, 2001 and before January 1, 2010, and it must be held for at least five years.

District of Columbia Incentives

A special set of incentives was enacted in 1997 to help redevelop the District of Columbia. The Taxpayer Relief Act of 1997 included tax incentives for both residents and businesses to locate in the District of Columbia. A $5,000 income tax credit for first-time home purchasers was designed to attract new homeowners to the District. A second set of incentives, similar to those provided in empowerment zones, was intended to encourage the establishment of new businesses in the District as well as new investment in existing enterprises.

Subject to certain income restrictions, the $5,000 credit is available to first-time purchasers of a principal residence in the District of Columbia who have not owned houses in the District during the year preceding the purchase. Although the credit was initially available for property purchased through the end of 2000, subsequent legislation extended the incentive through the end of 2003.

Other tax incentives offer a range of economic inducements to businesses operating in the more economically disadvantaged parts of the District. With the exception of a provision related to the sale of capital assets, these incentives are available only to businesses located either within the boundaries of the D.C. Enterprise Community, or located in census tracts elsewhere in the

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District where the poverty rate exceeds 20 percent. These areas are collectively known as the DC Zone. With certain minor adjustments, businesses in the DC Zone may claim the same wage credit, expensing of certain capital investment, and tax exempt bond financing as businesses in an empowerment zone. In addition, as in renewal communities, capital gains realized from the sale of certain assets are excludable from the income of the seller. For the purposes of this provision alone, the DC Zone is expanded to include all census tracts in the District in which the poverty rate exceeds 10 percent.

New York Liberty Zone

While the area around the World Trade Center in New York City would not have been described as an economically distressed community prior to the extraordinary events of September 11, 2001, the incredible destruction of life and property in that area due to the terrorist attacks prompted both the Administration and the Congress to support tax incentives targeted to helping New York City recover economically. I commend you, Mr. Chairman, and other members of the Ways and Means Committee for the leadership you exhibited in helping to enact the Job Creation and Worker Assistance Act of 2002.

Some of the tax incentives provided in the New York Liberty Zone are similar to the tax incentives offered in empowerment zones, while others were designed to meet the unique challenges facing New York City in the aftermath of the September 11 terrorist attacks. As in empowerment zones, qualified businesses are allowed a wage credit, increased section 179 expensing, and access to tax-exempt financing. Provisions specific to the New York Liberty Zone include 30 percent expensing of certain property, accelerated depreciation of qualified leasehold improvement property, extension of the replacement period for certain property involuntarily converted, and an additional advance refunding of bonds for facilities located in New York City.

The wage credit is allowed for certain employees who work in New York City through an extension of the work opportunity tax credit (WOTC). The new targeted group for the WOTC includes employees of businesses located in the New York Liberty Zone if substantially all of the employee's services for the business are performed within the New York Liberty Zone. In addition, the new targeted group includes employees of businesses that relocated from the New York Liberty Zone due to the physical destruction or damage of their workplaces by the September 11, 2001 terrorist attacks to another location within New York City, provided that substantially all of the employee's services are performed within New York City. Only businesses with an average of 200 or less employees during the taxable year are eligible for the credit. The credit is effective for wages paid or incurred for work performed during calendar year 2002 or 2003.

An increase in section 179 expensing of $35,000 is allowed for property placed in service by taxpayers after September 10, 2001, and before January 1, 2007, if the original use of the property in the New York Liberty Zone commences with the taxpayer after September 10, 2001 and substantially all of the use of the property is in the New York Liberty Zone. As in empowerment zones and renewal communities, only 50 percent of the value of such property counts toward the aggregate annual limit on section 179 expensing.

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The Governor of New York State and the Mayor of New York City are each given an allowance to issue up to $4 billion of tax-exempt private activity bonds before January 1, 2005. The bonds may be used to finance construction and rehabilitation of nonresidential real property, residential rental real property, and public utility property in the New York Liberty Zone. The Governor and the Mayor may each designate up to $1 billion of such bond proceeds for the acquisition, construction, and rehabilitation of certain commercial real property located outside the New York Liberty Zone and within New York City. These bonds are not subject to the State's volume cap on private activity bonds.

A taxpayer is allowed an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified New York Liberty Zone property. In order to qualify for this partial expensing, the property must be (1) a property with a MACRS recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property, or (4) certain nonresidential real property and residential rental property. Nonresidential real property and residential rental property is eligible for the partial expensing only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. This provision applies neither to property that would otherwise qualify for 30 percent expensing under section 168(k), nor to qualified New York Liberty Zone leasehold improvement property. Furthermore, to qualify for the partial expensing, substantially all of the use of the property must be in the New York Liberty Zone and the original use of the property in the New York Liberty Zone must commence with the taxpayer after September 10, 2001 (except for certain leased property). Finally, qualified property must be purchased by the taxpayer after September 10, 2001, and placed in service before January 1, 2007, or for nonresidential property and residential rental property, January 1, 2009.

Qualified New York Liberty Zone leasehold improvement property placed in service after September 10, 2001 and before January 1, 2007 is treated as 5-year property for the purposes of section 168 depreciation rules, with deductions taken using the straight-line method. Under the alternative depreciation system (section 168(g)), such property has a class life of 9 years. Qualified New York Liberty Zone leasehold improvement property is qualified leasehold improvement property as defined in section 168(e)(6) that is placed in service in the New York Liberty Zone.

When property used in a trade or business is damaged or destroyed, the taxpayer may deduct any loss sustained to the extent that the loss is not compensated by insurance or otherwise. When insurance or other compensation results in a gain from the damage or destruction of property, then the taxpayer may elect to reduce the current recognition of gain by purchasing a replacement property within a specific time period which is similar or related in use to the damaged or destroyed property (section 1033(a)). For property in the New York Liberty Zone that was involuntarily converted as a result of the terrorist attacks on September 11, 2001, the replacement period is extended from 2 years to 5 years if substantially all of the use of the replacement property is in New York City.

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Finally, certain bonds for facilities located in New York City are given one additional advance refunding. There is an aggregate limit of $9 billion advance refunding bonds that may be issued before January 1, 2005.

New Markets Tax Credit

The new markets tax credit was created by the Community Renewal Tax Relief Act of 2000 to encourage capital investments in businesses that are located in low-income communities. The new markets tax credit provides a tax credit to investors who make "qualified equity investments" in privately-managed investment vehicles called "community development entities," or "CDEs." The CDEs are required to invest substantially all of the proceeds of the qualified equity investments in low-income communities. For example, CDEs may make loans or capital investments in companies that operate in low-income communities.[1]

Eligible investors in a CDE are entitled to claim tax credits over a seven-year period beginning on the date of the initial investment. The value of the credits to investors will be about 30 percent of the amount of the qualified equity investment on a present value basis.

In order for an entity to qualify as a CDE, it must meet three requirements. First, the primary mission of the entity must be to serve or provide investment capital for low-income communities or low-income persons. Second, the entity must maintain accountability to residents of low-income communities through their representation on the entity's governing or advisory board. Third, the entity must be certified as a CDE by the Treasury Department's Community Development Financial Institutions Fund (CDFI Fund).

In order for a CDE to issue qualified equity investments with respect to which new markets tax credits may be claimed, the CDE must apply for and receive from the CDFI Fund an allocation of credit authority for those investments.

A total of $15 billion of equity investments will be able to qualify for this authority on a phased-in basis between 2001 and 2007. The CDFI Fund will allocate this authority among CDEs based on a competitive application process. In making these allocations, the CDFI Fund is required to give priority to any entity (1) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or (2) which intends to invest substantially all of the proceeds of the qualified equity investments in one or more businesses in which persons unrelated to the entity hold the majority equity interest. [In the next couple of weeks, the CDFI Fund will issue a notice seeking applications from CDEs for allocation of credit authority.]

Qualified Zone Academy Bonds

State and local governments can issue qualified zone academy bonds (QZABs) to fund the improvement of certain eligible public schools. An eligible holder of a QZAB receives annual Federal income tax credits. These annual credits compensate the holder for lending money and, therefore, are treated like taxable interest payments for Federal tax purposes.

[1] For these purposes, "low-income community" is defined as any population census tract if (1) the poverty rate for the tract is at least 20 percent, or (2) the median family income for the tract does not exceed 80 percent of statewide median family income (or, in the case of metropolitan areas, metropolitan area median family income, if greater).

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Eligible holders are banks, insurance companies, and corporations actively engaged in the business of lending money. The credit rate for a QZAB is set on its day of sale by reference to credit rates established by the Department of the Treasury. The maximum term of a QZAB issued during any month is determined by reference to the adjusted applicable Federal rate (AFR) published by the Internal Revenue Service for the month in which the bond is issued.

This provision was enacted in the Taxpayer Relief Act of 1997, which established authority to issue $400 million of QZABs per year for 1998 and 1999. This authority was extended to 2000 and 2001 by the Ticket to Work and Work Incentives Improvement Act of 1999. The Administration proposed that this authority be extended through 2003, which was accomplished in the recently enacted Job Creation and Worker Assistance Act of 2002. The annual cap is allocated among the States in proportion to their respective populations of individuals with incomes below the poverty line. Unused authority to issue QZABs may be carried forward for two years (three years for authority arising in 1998 and 1999) after the year for which the authority was established.

A number of requirements must be met for a bond to be treated as a QZAB. First, the bond must be issued pursuant to an allocation of bond authority from the issuer's State educational agency. Second, at least 95 percent of the bond proceeds must be used for an eligible purpose at a qualified zone academy. Eligible purposes include rehabilitating school facilities, acquiring equipment, developing course materials, or training teachers. A qualified zone academy is a public school (or an academic program within a public school) that is designed in cooperation with business and is either (1) located in an empowerment zone or enterprise community, or (2) attended by students at least 35 percent of whom are estimated to be eligible for free or reduced-cost lunches under the National School Lunch Act. Third, private entities must have promised to contribute to the qualified zone academy certain property or services with a present value equal to at least 10 percent of the bond proceeds.

Mortgage Revenue Bonds

Mortgage revenue bonds ("MRBs") are bonds issued by or on behalf of a State or local government to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied homes located within the jurisdiction of the issuer of the bonds. Interest on MRBs is excluded from gross income for federal income tax purposes if they meet the requirements for "qualified mortgage bonds" or "qualified veterans' mortgage bonds." In addition, in some circumstances, "mortgage credit certificates" may be issued as an alternative to qualified mortgage bonds.

In general, qualified mortgage bonds must finance residences for first-time home buyers, the purchase price of the residence may not exceed certain amounts, and the purchaser must satisfy certain income limitations. In addition, certain special rules apply with respect to "targeted areas." A targeted area is defined as (1) a census tract in which 70 percent or more of the families have incomes that are 80 percent or less of the Statewide median family income, or (2) an area of chronic economic distress designated by the Secretary of the Treasury and the Secretary of Housing and Urban Development. At least 20 percent of the lendable proceeds of each qualified mortgage bond issue (but not more than 40 percent of the average mortgage

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activity in the targeted area) is required to be made available for owner-financing in targeted areas for a period of at least one year.

The volume of certain tax-exempt private activity bonds, including qualified mortgage bonds, that States and local governments may issue in each calendar year is limited by State-wide volume limits. The current annual volume limits are $50 per resident of the State or $150 million if greater. The current limits increase to $75 per resident of each State or $225 million, if greater, beginning in calendar year 2007. The increase is ratably phased in, beginning with $55 per capita or $165 million, if greater, in calendar year 2003.

Qualified governmental units may elect to exchange all or any portion of their private activity bond volume limitation for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home buyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. MCCs generally are subject to the same eligibility and targeted area requirements as qualified mortgage bonds.

Indian Employment Credit

Unfortunately, many residents of Native American communities continue to struggle economically. The Indian Employment Credit provides an incentive for job growth in these communities. Employers may claim an Indian Employment Credit on the qualified wages and employee health insurance costs paid to an enrolled member of an Indian tribe in compensation for services performed on or near a reservation. The credit amount is equal to 20 percent of the excess of the employer's current year qualified wages and employee health insurance costs over the sum of the corresponding amounts paid or incurred by the employer during calendar year 1993. The aggregate amount of qualified wages and health insurance costs may not exceed $20,000 per person per year. This incentive was due to expire at the end of 2003, but has been extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Depreciation of Property Used on Indian Reservations

Another tax incentive that encourages economic development on Indian reservations is the accelerated depreciation of qualified Indian reservation property. This accelerated depreciation is accomplished through the use of shorter recovery periods for certain property. In order to qualify for this provision, a property must (1) be used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not be used outside the Indian reservation on a regular basis, (3) not be acquired from a person related to the taxpayer, and (4) not be used for the purpose of certain gaming activities. In addition, property for which the alternative depreciation system is applied is not eligible for this provision. This provision was scheduled to expire for property placed in service after 2003, but was extended through 2004 by the recently enacted Job Creation and Worker Assistance Act of 2002.

Low-income housing tax credit

Taxpayers who invest in qualified low-income rental units are eligible for the low-income housing tax credit (LIHTC). The LIHTC may be claimed over a 10-year period for a portion of

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the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed housing that is not federally subsidized is adjusted monthly by the Internal Revenue Service so that generally the 10 annual credit amounts have a present value of 70 percent of qualified basis. The credit percentage for new buildings that are federally subsidized and for existing buildings is calculated to have a present value of 30 percent of qualified basis. In general, the aggregate first-year credit authority allocated to each State is $1.75 per capita in 2002 and will be indexed for inflation in following years. Tax credits are allocated to particular projects by State or local housing agencies pursuant to publicly announced plans for allocation. Authority to allocate credits may be carried forward by agencies to the following calendar year. Unused credit allocations may be returned to an agency for reallocation. Credit allocations may revert to the agency if less than 10 percent of the taxpayer's reasonably expected qualifying basis is expended within 6 months after receiving the allocation. Authority not used in a timely manner reverts to a national pool for distribution to States requesting additional authority. Generally, a qualifying building must be placed in service in the year the credit is allocated unless at least 10 percent of the taxpayer's reasonably expected basis in the property is expended in the year of allocation or within 6 months after the allocation date. Rules are provided for the allocation of costs to individual units in multi-unit projects and to property that is part of a project but used for purposes other than rental housing. The tax credit period begins with the taxable year in which a qualified building is placed in service (or, in certain circumstances, the succeeding taxable year). Credits are recaptured if the required number of units is not rented to qualifying tenants for a period of 15 years.

Work Opportunity Tax Credit

Employers are generally entitled to the work opportunity tax credit (WOTC) for the first $6,000 of wages paid to several targeted groups of economically disadvantaged workers or workers with disabilities. For workers employed between 120 and 400 hours, the credit rate is 25 percent of qualified wages. For workers employed over 400 hours, the credit rate is 40 percent. Employers must reduce their deduction for wages paid by the amount of the credit claimed. Current WOTC target groups include qualified: (1) recipients of Temporary Assistance to Needy Families; (2) veterans; (3) ex-felons; (4) high-risk youth; (5) participants in State-sponsored vocational rehabilitation programs; (6) summer youth; (7) food stamp recipients; and (8) Supplemental Security Income recipients.

A qualified high-risk youth employee listed above is an individual at least 18 years old but less than 25, who lives within an empowerment zone, enterprise community, or renewal community. A qualified summer youth employee works for the employer between May 1 and September 15, is 16 or 17 years old, and resides within an empowerment zone, enterprise community, or renewal community. The limit on the wages of a summer youth employee that qualify for the credit is reduced to $3,000.

At the time the Administration proposed the FY 2003 budget, the WOTC was scheduled to expire at the end of 2001. The Administration proposed that the WOTC be extended through 2003. This was accomplished by the Job Creation and Worker Assistance Act of 2002.

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The House has just passed (is considering?) the Encouraging Work and Supporting Marriage Act of 2002. The bill would combine the WOTC and the welfare to work (WTW) credit by making persons eligible for WTW a WOTC target group with special rules. The WTW credit enables employers to claim a tax credit for eligible wages paid to certain long-term welfare recipients. The changes contained in the House bill will simplify the computation of the credit for employers that hire members of the economically disadvantaged targeted groups. We commend the proposed tax simplification.

Brownfields remediation costs

A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Because lenders, investors, and developers fear the high and uncertain costs of cleanup, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents. The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, and contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields remediation.

To encourage the cleanup of contaminated sites, the brownfields tax incentive permits the current deduction of certain environmental remediation costs. Environmental remediation costs qualify for current deduction if the expenditures would otherwise be capitalized (generally costs incurred to clean up land and groundwater that increase the value of the property) and are paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A qualified contaminated site generally is any property (1) that is held for use in a trade or business, for the production of income, or as inventory; (2) at or on which there has been a release, threat of release, or disposal of a hazardous substance; and (3) that is certified by the appropriate State environmental agency as to the release, threat of release, or disposal of a hazardous substance. Sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) do not qualify as qualified contaminated sites. The brownfields tax incentive applies to expenditures paid or incurred before January 1, 2004.

Administration budget proposals

The President's Budget for FY 2003 includes two proposals to improve upon these tax incentives and further encourage development in economically distressed communities.

Brownfields remediation costs

The Administration believes that encouraging environmental remediation is an important national goal. The brownfields provision encourages the cleanup of contaminated brownfields, thereby enabling them to be brought into productive use in the economy and mitigating potential harms to public health. The current-law incentive was made temporary to encourage faster cleanup of brownfields. Experience has shown, however, that many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of

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years. For that reason, the President's budget proposed a permanent extension of the brownfields tax incentive. Extending the special treatment accorded to brownfields on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures and would promote the goal of encouraging environmental remediation. The Administration's brownfields proposal was introduced by Mr. Coyne and Mr. Weller as H.R. 1439.

The revenue cost of the proposal is estimated to be $1.1 billion over FY 2003-2007. Treasury estimates that the proposal, at a $300 million annual cost, will leverage approximately $2 billion per year in private investment.

Single-family housing tax credit

The Administration believes that quality of life in distressed neighborhoods can be improved by increasing home ownership. Existing buildings in these neighborhoods often need extensive renovation before they can provide decent owner-occupied housing. Renovation may not occur because the costs involved exceed the prices at which the housing units could be sold. Similarly, the costs of new construction may exceed their market value. Properties will sit vacant and neighborhoods will remain blighted unless the gap between development costs and market prices can be filled. The Administration has proposed the creation of a single-family housing tax credit (SFHTC) to expand the possibility of home ownership for low-income families.

First-year credit authority of $1.75 per resident would be made available annually to States (including U.S. possessions) beginning in calendar year 2003. The per capita amount would be indexed for inflation beginning in 2004. Pursuant to a plan of allocation, State or local housing credit agencies would award first-year credits to housing units comprising a project for the development of single-family housing in census tracts with median incomes of 80 percent or less of area median income, based initially upon 2000 census data. Rules similar to the current law rules for the LIHTC would apply regarding carry forward and return of unused credits and a national pool for unused credits. Credits allocated to a project would revert to the agency unless expenditures equal to 10 percent or more of reasonably expected qualifying costs were made within 6 months after receipt of the allocation. Units in condominiums and cooperatives could qualify as single-family housing. Credits would be awarded as a fixed amount for individual units comprising a project. The present value of the credits with respect to a unit, as of the beginning of the credit period (described below), could not exceed 50 percent of the qualifying costs of the unit. For these purposes, present value would be determined based on the mid-term Applicable Federal Rate in effect for the date the agency allocated credits to the project. Rules similar to the current law rules for the LIHTC would apply to determine eligible costs of individual units. The Treasury Department would have the authority to promulgate necessary reporting requirements.

The taxpayer (developer or investor partnership) owning the housing unit immediately prior to the date of sale to a qualified buyer (or, if later, the date a certificate of occupancy was issued) would be eligible to claim SFHTCs over a 5-year period beginning on that date. No credits with respect to a housing unit would be available unless the unit was sold within a 1-year period beginning on the date a certificate of occupancy is issued with respect to that unit.

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Eligible homebuyers would have incomes at 80 percent (70 percent for families with less than 3 members) or less of applicable median family income. They would not have to be first-time homebuyers. Homebuyers would be subject to recapture provisions in certain circumstances. In particular, recapture rules would apply if the homebuyer (or a subsequent buyer) sold the property to a nonqualified buyer within 3 years after the date of initial sale of the unit. The recapture tax would equal the lesser of (1) 80 percent of the gain upon resale and (2) a recapture amount. The recapture amount would equal the value of the credits allocated to the housing unit being resold, reduced by 1/36th of that value for each month between the initial sale and the sale to a nonqualified buyer. No recapture provision would apply to taxpayers eligible to claim SFHTCs. If a housing unit for which any credit is claimed were converted to rental property by the initial homebuyer within the first 5 years following the purchase, no deductions for depreciation or property taxes could be claimed with respect to that unit during that time period.

The proposal would be effective beginning with first-year credit allocations for calendar year 2003. The revenue cost of this proposal is expected to be $2.4 billion over FY 2003-2007.

Administration spending proposals for distressed communities

In addition to the tax incentives just described, the Administration's FY 2003 Budget contains several initiatives on the spending side to revitalize economically disadvantaged communities. These initiatives include the following: (1) a $100 million increase for the HOME block grant, a flexible program that localities can tailor to their particular housing needs; (2) reforms to the Community Development Block Grant (CDBG) program so that more money will be targeted at communities with the greatest economic need, plus an increase of $95 million for the CDBG formula program; (3) a four-fold increase in the President's Down Payment Assistance Initiative from its 2002 level to $200 million to provide matching grants to state and local governments to provide down payment assistance to first-time homeowners; (4) a three-fold increase in funding to $65 million for the Self-Help Homeownership Opportunity program, which helps families realize homeownership through sweat equity; and (5) funding for four competitive grant programs targeted at faith- and community-based organizations that can provide innovative services, including $100 million for the Compassion Capital Fund to help charitable organizations start or expand, $25 million for mentoring children of prisoners, $20 million for promoting responsible fatherhood, and $10 million for maternity group homes.

CONCLUSION

I would like to thank Mr. Houghton, Mr. Coyne and the members of the Subcommittee for providing the chance today to discuss these important issues. I hope that, working together, we can ensure that all Americans share in our country's prosperity and have even greater opportunity in the future. While this concludes my prepared testimony. I would be pleased to respond to your questions.

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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2002 6:54:00 AM
Subject: : LRM LJM95 - - TREASURY Draft Bill on Air and Sea Passenger User Fees
Attachments: P_Z0RH7003_WHO.TXT_1.wpd; P_Z0RH7003_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2002 10:54:00.00
SUBJECT:: LRM LJM95 - - TREASURY Draft Bill on Air and Sea Passenger User Fees
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Just a reminder, this is due at 12 pm.

thanks,
Patrick
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
05/20/2002 10:53 AM ----------

From: Lisa J. Macecevic on 05/16/2002 02:09:45 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: laffairs@ustr.gov , CLRM@doc.gov , statelrm@state.gov ,
justice.lrm@usdoj.gov
Subject: LRM LJM95 - - TREASURY Draft Bill on Air and Sea Passenger
User Fees

Attached is draft legislation, which is part of the Administration's
legislative program needed to support the President's FY 2003 Budget.
Please provide any comments by Noon, Monday, May 20th. Thank you.

SPEAKER LETTER: - TREAS0047LTR.wpd
DRAFT BILL TEXT:

LRM ID: LJM95
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Draft Bill on Air and Sea Passenger User Fees

DEADLINE: Noon Monday, May 20, 2002
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts for purposes of the "Pay-As-You-Go" provisions
of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is draft legislation, which is part of the Administration's legislative program needed to support the President's FY 2003 Budget. Please provide any comments by 5:00 PM, Wednesday, May 22nd. Thank you.

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LRM ID: LJM95 SUBJECT: TREASURY Draft Bill on Air and Sea Passenger User Fees
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109

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Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
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ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_Z0RH7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Z0RH7003_WHO.TXT_2>

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
United States House of Representatives
Washington, D.C. 20515 [Identical Letter to the President of the Senate]

Dear Mr. Speaker:

I am pleased to transmit herewith a draft bill "To amend the Customs user fee statute, and for other purposes." Specifically, the bill would amend section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended, (19 U.S.C. 58c), to implement the President's FY 2003 Budget as it relates to COBRA.

The bill would increase air and sea passenger user fees. Excess fees, as determined by the Secretary of the Treasury, would be deposited in the Customs User Fee Account and would remain available until expended for reimbursement of Customs operations costs not otherwise reimbursed under COBRA, as available to the extent provided for in appropriations Acts.

It would be appreciated if you were to lay the draft bill before the House of Representatives. An identical draft bill has been transmitted to the President of the Senate.

The Office of Management and Budget has advised that the transmittal of this draft bill is in accord with the President's program.

Sincerely,

David D. Aufhauser

Enclosure

A BILL

T To amend the Customs user fee statute, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act, as amended, (19 U.S.C. 58c), is further amended --

(1) in subsection (a)(5)--

in subparagraph (A),

(A) by deleting "$5." and inserting in lieu thereof as follows:

"(1) $5 base fee, and

"(2) subject to subsection (f)(7), an additional fee of $6."; and

in subparagraph (B),

(B) by deleting "$1.75." and inserting in lieu thereof as follows:

"(1) $1.75 base fee, and

"(2) subject to subsection (f)(7), an additional fee of $0.25."; and

(2) in subsection (f)--

(A) in paragraph (1)(A), by striking "and";

(B) in paragraph (1)(B), by striking the period at the end and inserting instead ", and";

(C) by inserting at the end of paragraph (1) the following new subparagraph:

"(C) the portion of such fees that is determined by the Secretary to be increased amounts under paragraph (7)."

(D) in paragraph (3)(A), by striking "paragraph (5)" and inserting "paragraphs (5) and (7)"; and

(E) by adding at the end the following new paragraph:

"(7) any additional amounts from the increase in fees under subsection (a)(5) (A)(2) and (B)(2) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations acts.".

From: CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lucy g. clark/who/eop@eop [WHO] <lucy g. clark>;Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>
Sent: 5/20/2002 11:38:23 AM
Subject: : Re: PRA and CIA Computers at Nebraska Ave.

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2002 15:38:23.00
SUBJECT:: Re: PRA and CIA Computers at Nebraska Ave.
TO:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:lucy g. clark (CN=lucy g. clark/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

Brett - Any idea of when you would be available?

Lucy is available on Mon. & Tues., I believe.
John Bellinger is available only on Thurs., I believe

Please let me know if we can still try to schedule sometime this week.
Thanks.

Magda E. Angulo
05/16/2002 05:38:06 PM
Record Type: Record

To: john b. bellinger/nsc/eop@eop, brett m. kavanaugh/who/eop@eop,
lucy g. clark/who/eop@eop
cc:
bcc: Records Management@EOP
Subject: Re: PRA and CIA Computers at Nebraska Ave.

All-

Ed's schedule is open on Monday, Tuesday and Thrusday of next week after 2
p.m.

Please let me know your day and time preference and I will coordinate the
meeting and confirm with everyone.

Thanks.

From: Edward McNally on 05/16/2002 09:18:24 AM
Record Type: Record

To: John B. Bellinger/NSC/EOP@EOP, Magda E. Angulo/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
bcc:
Subject: Re: PRA and CIA Computers at Nebraska Ave.

Magda -- Pls. schedule a meeting, next week is fine, with Brett, John and Lucy. Probably in Bellinger's office. Thanks -- Ed

John B. Bellinger
05/15/2002 09:43:53 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
Subject: Re: PRA and CIA Computers at Nebraska Ave.

This is a complicated issue that we have grappled with at the NSC for some time, without clear resolution. We should get together and talk.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2002 12:05:02 PM
Subject: : testimony
Attachments: P_0K7I7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2002 16:05:02.00
SUBJECT:: testimony
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/20/2002 04:02 PM ----------

Irene Kho
05/20/2002 04:01:36 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: testimony

We just received this HUD testimony for a hearing before the House Ways and Means Committee's Oversight Subcommittee on the Administration's tax incentive proposals for community revitalization Subcommittee on Tuesday, May 21st, at 2:00 PM. Please note that Treasury will also testify at this hearing. Treasury testimony was circulated for clearance last Thursday under IKK203. I will circulate this formally later, but I want to give you a little head start.

Tallman_Johnson@HUD.GOV
05/20/2002 02:26:56 PM
Record Type: Record

To: P. Thaddeus Messenger/OMB/EOP@EOP
cc:
Subject: testimony

(See attached file: RC Hearing 4-21-02.doc)

- RC Hearing 4-21-02.doc

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To:_____
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Reid B Cramer/OMB/EOP@EOP
Karyn Richman/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0K7I7003_WHO.TXT_1>

Good morning Chairman Houghton, Ranking Member Coyne, and distinguished members of the Subcommittee. My name is Roy Bernardi. I am the Assistant Secretary for Community Planning and Development in the Department of Housing and Urban Development.

The Department is pleased that this hearing is occurring in conjunction with the Community Renewal Implementation Conference. Over 400 people from Empowerment Zones and Renewal Communities have gathered to learn how Federal tax incentives and community partnerships can encourage economic development.

The Community Renewal Tax Relief Act of 2000 passed in December of 2000. It provided for 12 rural and 28 urban Renewal Communities (RC) and set forth 2 rural and 7 urban Round III Empowerment Zones (EZ). The new legislation provided for measures that included a $22 billion package of tax benefits.

In the Fall of 2001, HUD received over 100 Renewal Community applications from 35 states. Our eligibility and completeness review yielded 77 qualifying applications. The enthusiasm for this program is evidence that our neighbors from coast to coast are anxious to reduce poverty through tax incentives. In January, Secretary Martinez was able to announce 40 RCs with the most severe economic distress after 20 former Enterprise Communities exercised their designation preference. Unlike many grant competitions, Congress wisely mandated that the applications be judged strictly by objective criteria. All qualifying applications needed to have a set of continuous census tracts with at least 20% poverty and 9.4% average unemployment.

Unlike most Federal programs, which provide cash grants for narrowly defined projects, HUD requires Renewal Communities to adhere to four of six required goals to promote economic growth at the local level. Renewal Communities commit to a combination of reducing local taxes, improving local services, reducing crime, reducing local government requirements, involving community partners, and soliciting in-kind donations. In return, the U.S. Treasury agrees to reduce the Federal tax burden through the Renewal Community Employment Credit, Commercial Revitalization Deduction, Zero Percent Capital Gain,s and Increased Section 179 Deduction for Renewal Community Businesses. The tax incentives are the beginning of the strategic alliances that are being formed in our 40 Renewal Communities.

Presently, we are aware of the efforts being made by several Renewal Communities and Empowerment Zones and their potential business partners. In Eastern Kentucky, RC staff is going door to door with tax publications raising enthusiasm in the business communities. In Memphis, Tennessee, the mayor has brought together representatives from non-profit, for-profit and other levels of government to help target tax incentive outreach strategies. Nissan has expressed interest in the rural Mississippi RC because of the new tax incentives. A business in Burlington, Vermont is considering using the RC tax savings to have more full time, rather than part time employees. I will defer to other witnesses and let them share with the subcommittee their accomplishments in detail.

REV_00145679

New Empowerment Zones are also enthusiastic about tax incentives. Tucson, Arizona has launched an Empowerment Zone tax incentive website that has already received many hits. Finally, in my hometown of Syracuse, New York, developers will use the tax exempt EZ Facility Bond to help build Destiny, a 65 acre lakefront recreation, commercial and retail center that will include a replica of Erie Canal, rock climbing, hotels and a monorail link to the airport and convention center.

Thank you for this chance to testify and I would be pleased to respond to your questions.

LIKELY QUESTIONS AND ANSWERS

1. **Does HUD support S 1957, to amend the Internal Revenue Code of 1986 to provide for additional designations of renewal communities?**

HUD believes that the Renewal Community program holds considerable potential to promote economic development because it has an objective selection process based on economic indicators, requires local commitments to reduce regulatory and tax burdens. However, the Administration does not have a potion on legislation to increase the number of RCs.

2. **Does HUD support H. R. 3100, which would amend the Internal Revenue Code of 1986 to allow for the expansion of areas designated as renewal communities based on 2000 census data?**

Again, the Administration has not yet taken a position on this bill. We are aware several RCs expressed support for this bill.

3. **Does HUD support planning grants or other monies to support activities in the RCs or EZs?**

The Renewal Community program was never intended to include a grant component. Some communities are using their CDBG dollars to support activities in the RC. Several HUD programs grant a two point scoring preference in their applications for funding. At the end of the day, it will be innovative partnerships with the private sector, not another Federal grant that will make this program work. The administration believes that the private sector should be the engine of economic growth.

The Round III EZ also did not include a specific grant component. The President has not requested Round II EZ grants for FY 2003 in order to streamline grant programs and focus on tax incentive utilization.

4. **What is HUD doing to provide technical assistance to the RCs and EZs?**

HUD published a "Tax Incentive Guide for Businesses" and is currently working on a model marketing publication "Businesses Plus Tax Incentives Equals Jobs" to

REV_00145680

assist all EZs and the new RCs in promoting the use of tax incentives. The Department is conducting a major conference this week at the Ronald Reagan International Trade Center that is addressing economic and community issues and the intricacies of the numerous tax incentives offered as a result of the Community Renewal Tax Relief Act of 2000. Attendees are hearing from tax specialists on each of the five categories of incentives offered: Wage Credits, Deductions, Bond Financing, Capital Gains, New Market and Low Income Housing Tax Credits. Also at this conference, we will include several breakout sessions, one specifically dedicated to performance measurement, tax incentive utilization plans, and successful projects and activities. Next fiscal year we will have follow up regional workshops. Finally, our staff hosts an online forum, sends weekly flash faxes and conducts monthly conference calls to discuss implementation opportunities.

5. Why didn't my constituent win an RC or EZ designation last fall?

RCs were selected on the basis of objective criteria, which included 1990 census data and local crime data. EZs were evaluated on the basis of their strategic plan and quality of commitments. Our staff can provide debriefings to any of the applicants that were not selected.

REV_00145681

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2002 12:14:56 PM
Subject: : LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization
Attachments: P_T58I7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2002 16:14:56.00
SUBJECT:: LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/20/2002 04:14 PM ----------

From: Irene Kho on 05/20/2002 04:13:12 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization

Attached is HUD testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM. Please review and provide comments by 10:30 AM, tomorrow, Tuesday, May 21st.

Please note that this is the same hearing for whichTreasury testimony was circulated for clearance last week under IKK203

- RC Hearing 4-21-02.doc

LRM ID: IKK206
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 20, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization

DEADLINE: 10:30 AM Tuesday, May 21, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is HUD testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
Please review and provide comments by 10:30 AM, tomorrow, Tuesday, May 21st.

Please note that this is the same hearing for whichTreasury testimony was circulated for clearance last week under IKK203

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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Dustin S. Brown
LRM ID: IKK206 SUBJECT: HOUSING & URBAN DEVELOPMENT on
Administration's Tax Incentive Proposals for Community Revitalization

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no

comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_T58I7003_WHO.TXT_1>

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The Department is pleased that this hearing is occurring in conjunction with the Community Renewal Implementation Conference. Over 400 people from Empowerment Zones and Renewal Communities have gathered to learn how Federal tax incentives and community partnerships can encourage economic development.

The Community Renewal Tax Relief Act of 2000 passed in December of 2000. It provided for 12 rural and 28 urban Renewal Communities (RC) and set forth 2 rural and 7 urban Round III Empowerment Zones (EZ). The new legislation provided for measures that included a $22 billion package of tax benefits.

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REV_00145688

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Thank you for this chance to testify and I would be pleased to respond to your questions.

LIKELY QUESTIONS AND ANSWERS

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HUD believes that the Renewal Community program holds considerable potential to promote economic development because it has an objective selection process based on economic indicators, requires local commitments to reduce regulatory and tax burdens. However, the Administration does not have a potion on legislation to increase the number of RCs.

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Again, the Administration has not yet taken a position on this bill. We are aware several RCs expressed support for this bill.

3. **Does HUD support planning grants or other monies to support activities in the RCs or EZs?**

The Renewal Community program was never intended to include a grant component. Some communities are using their CDBG dollars to support activities in the RC. Several HUD programs grant a two point scoring preference in their applications for funding. At the end of the day, it will be innovative partnerships with the private sector, not another Federal grant that will make this program work. The administration believes that the private sector should be the engine of economic growth.

The Round III EZ also did not include a specific grant component. The President has not requested Round II EZ grants for FY 2003 in order to streamline grant programs and focus on tax incentive utilization.

4. **What is HUD doing to provide technical assistance to the RCs and EZs?**

HUD published a "Tax Incentive Guide for Businesses" and is currently working on a model marketing publication "Businesses Plus Tax Incentives Equals Jobs" to

REV_00145689

assist all EZs and the new RCs in promoting the use of tax incentives. The Department is conducting a major conference this week at the Ronald Reagan International Trade Center that is addressing economic and community issues and the intricacies of the numerous tax incentives offered as a result of the Community Renewal Tax Relief Act of 2000. Attendees are hearing from tax specialists on each of the five categories of incentives offered: Wage Credits, Deductions, Bond Financing, Capital Gains, New Market and Low Income Housing Tax Credits. Also at this conference, we will include several breakout sessions, one specifically dedicated to performance measurement, tax incentive utilization plans, and successful projects and activities. Next fiscal year we will have follow up regional workshops. Finally, our staff hosts an online forum, sends weekly flash faxes and conducts monthly conference calls to discuss implementation opportunities.

5. Why didn't my constituent win an RC or EZ designation last fall?

RCs were selected on the basis of objective criteria, which included 1990 census data and local crime data. EZs were evaluated on the basis of their strategic plan and quality of commitments. Our staff can provide debriefings to any of the applicants that were not selected.

REV_00145690

From: CN=John F. Wood/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Jay Lefkowitz [OPD] <Jay Lefkowitz>
CC: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 5/20/2002 3:04:06 PM
Subject: : Draft SAP re victims of international terrorism

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John F. Wood (CN=John F. Wood/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:20-MAY-2002 19:04:06.00
SUBJECT:: Draft SAP re victims of international terrorism
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jay Lefkowitz (Jay Lefkowitz [OPD])
READ:UNKNOWN
CC:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

H.R. 3375) The Embassy Employee Compensation Act
(Rep. Blunt (R) Missouri and 45 cosponsors)

The Administration opposes passage of H.R. 3375, the Embassy Employee Compensation Act. H.R. 3375 would provide compensation modeled after the September 11th Victim Compensation Fund to individuals (or relatives of deceased individuals) who were physically injured or killed as a result of the bombings of the United States embassies in East Africa on August 7, 1998. The Administration believes that this model is inappropriate, as the September 11th Victim Compensation Fund was based upon a unique circumstance and was part of a much larger piece of legislation -- the Air Transportation Safety and Stabilization Act -- that addressed issues that are inapplicable to other terrorist attacks. The Administration plans to send to Congress in the near future a set of principles for compensating victims of international terrorism and looks forward to working with the Congress on a proposal that will meet those principles.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Magda E. Angulo/WHO/EOP@EOP [WHO] <Magda E. Angulo>
Sent: 5/21/2002 3:57:39 AM
Subject: : Re: PRA and CIA Computers at Nebraska Ave. TENTATIVE FOR 5/23 at 3:30pm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2002 07:57:39.00
SUBJECT:: Re: PRA and CIA Computers at Nebraska Ave. TENTATIVE FOR 5/23 at 3:30pm
TO:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

good

Magda E. Angulo
05/20/2002 04:50:21 PM
Record Type: Record

To: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop, joan hunerwadel/nsc/eop@eop
cc:
bcc:
Subject: Re: PRA and CIA Computers at Nebraska Ave. TENTATIVE FOR 5/23 at 3:30pm

Brett, Lucy and Joan -

How does Thursday, 5/23 at 3:30pm in Bellinger's office sound?

Please confirm. Thanks for your efforts in helping me coordinate this meeting.

Magda E. Angulo
05/20/2002 03:38:20 PM
Record Type: Record

To: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop, Joan Hunerwadel/NSC/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: PRA and CIA Computers at Nebraska Ave.

Brett - Any idea of when you would be available?

Lucy is available on Mon. & Tues., I believe.
John Bellinger is available only on Thurs., I believe

Please let me know if we can still try to schedule sometime this week.
Thanks.

Magda E. Angulo
05/16/2002 05:38:06 PM
Record Type: Record

To: john b. bellinger/nsc/eop@eop, brett m. kavanaugh/who/eop@eop,
lucy g. clark/who/eop@eop
cc:
bcc: Records Management@EOP
Subject: Re: PRA and CIA Computers at Nebraska Ave.

All-

Ed's schedule is open on Monday, Tuesday and Thrusday of next week after 2
p.m.

Please let me know your day and time preference and I will coordinate the
meeting and confirm with everyone.

Thanks.

From: Edward McNally on 05/16/2002 09:18:24 AM
Record Type: Record

To: John B. Bellinger/NSC/EOP@EOP, Magda E. Angulo/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
bcc:
Subject: Re: PRA and CIA Computers at Nebraska Ave.

Magda -- Pls. schedule a meeting, next week is fine, with Brett, John and
Lucy. Probably in Bellinger's office. Thanks -- Ed

John B. Bellinger
05/15/2002 09:43:53 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
Subject: Re: PRA and CIA Computers at Nebraska Ave.

This is a complicated issue that we have grappled with at the NSC for some
time, without clear resolution. We should get together and talk.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2002 7:31:08 AM
Subject: : LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization
Attachments: P_QKXI7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2002 11:31:08.00
SUBJECT:: LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/21/2002 11:31 AM ----------

Irene Kho
05/21/2002 11:26:28 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization

Please provide you comments ASAP. Comments were due at 10:30 AM today.
The hearing is at 2:00 PM.
---------- Forwarded by Irene Kho/OMB/EOP on 05/21/2002 11:24 AM ----------

From: Irene Kho on 05/20/2002 04:13:12 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IKK206 - - HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization

Attached is HUD testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM. Please review and provide comments by 10:30 AM, tomorrow, Tuesday, May 21st.

Please note that this is the same hearing for whichTreasury testimony was circulated for clearance last week under IKK203

- RC Hearing 4-21-02.doc

LRM ID: IKK206
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 20, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: HOUSING & URBAN DEVELOPMENT on Administration's Tax Incentive Proposals for Community Revitalization

DEADLINE: 10:30 AM Tuesday, May 21, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is HUD testimony on the Administration's tax incentive proposals for community revitalization for a hearing before the House Ways and Means Committee's Oversight Subcommittee on Tuesday, May 21st, at 2:00 PM.
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We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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Dustin S. Brown
LRM ID: IKK206 SUBJECT: HOUSING & URBAN DEVELOPMENT on
Administration's Tax Incentive Proposals for Community Revitalization

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QKXI7003_WHO.TXT_1>

Good morning Chairman Houghton, Ranking Member Coyne, and distinguished members of the Subcommittee. My name is Roy Bernardi. I am the Assistant Secretary for Community Planning and Development in the Department of Housing and Urban Development.

The Department is pleased that this hearing is occurring in conjunction with the Community Renewal Implementation Conference. Over 400 people from Empowerment Zones and Renewal Communities have gathered to learn how Federal tax incentives and community partnerships can encourage economic development.

The Community Renewal Tax Relief Act of 2000 passed in December of 2000. It provided for 12 rural and 28 urban Renewal Communities (RC) and set forth 2 rural and 7 urban Round III Empowerment Zones (EZ). The new legislation provided for measures that included a $22 billion package of tax benefits.

In the Fall of 2001, HUD received over 100 Renewal Community applications from 35 states. Our eligibility and completeness review yielded 77 qualifying applications. The enthusiasm for this program is evidence that our neighbors from coast to coast are anxious to reduce poverty through tax incentives. In January, Secretary Martinez was able to announce 40 RCs with the most severe economic distress after 20 former Enterprise Communities exercised their designation preference. Unlike many grant competitions, Congress wisely mandated that the applications be judged strictly by objective criteria. All qualifying applications needed to have a set of continuous census tracts with at least 20% poverty and 9.4% average unemployment.

Unlike most Federal programs, which provide cash grants for narrowly defined projects, HUD requires Renewal Communities to adhere to four of six required goals to promote economic growth at the local level. Renewal Communities commit to a combination of reducing local taxes, improving local services, reducing crime, reducing local government requirements, involving community partners, and soliciting in-kind donations. In return, the U.S. Treasury agrees to reduce the Federal tax burden through the Renewal Community Employment Credit, Commercial Revitalization Deduction, Zero Percent Capital Gain,s and Increased Section 179 Deduction for Renewal Community Businesses. The tax incentives are the beginning of the strategic alliances that are being formed in our 40 Renewal Communities.

Presently, we are aware of the efforts being made by several Renewal Communities and Empowerment Zones and their potential business partners. In Eastern Kentucky, RC staff is going door to door with tax publications raising enthusiasm in the business communities. In Memphis, Tennessee, the mayor has brought together representatives from non-profit, for-profit and other levels of government to help target tax incentive outreach strategies. Nissan has expressed interest in the rural Mississippi RC because of the new tax incentives. A business in Burlington, Vermont is considering using the RC tax savings to have more full time, rather than part time employees. I will defer to other witnesses and let them share with the subcommittee their accomplishments in detail.

REV_00145722

New Empowerment Zones are also enthusiastic about tax incentives. Tucson, Arizona has launched an Empowerment Zone tax incentive website that has already received many hits. Finally, in my hometown of Syracuse, New York, developers will use the tax exempt EZ Facility Bond to help build Destiny, a 65 acre lakefront recreation, commercial and retail center that will include a replica of Erie Canal, rock climbing, hotels and a monorail link to the airport and convention center.

Thank you for this chance to testify and I would be pleased to respond to your questions.

LIKELY QUESTIONS AND ANSWERS

1. **Does HUD support S 1957, to amend the Internal Revenue Code of 1986 to provide for additional designations of renewal communities?**

HUD believes that the Renewal Community program holds considerable potential to promote economic development because it has an objective selection process based on economic indicators, requires local commitments to reduce regulatory and tax burdens. However, the Administration does not have a potion on legislation to increase the number of RCs.

2. **Does HUD support H. R. 3100, which would amend the Internal Revenue Code of 1986 to allow for the expansion of areas designated as renewal communities based on 2000 census data?**

Again, the Administration has not yet taken a position on this bill. We are aware several RCs expressed support for this bill.

3. **Does HUD support planning grants or other monies to support activities in the RCs or EZs?**

The Renewal Community program was never intended to include a grant component. Some communities are using their CDBG dollars to support activities in the RC. Several HUD programs grant a two point scoring preference in their applications for funding. At the end of the day, it will be innovative partnerships with the private sector, not another Federal grant that will make this program work. The administration believes that the private sector should be the engine of economic growth.

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4. **What is HUD doing to provide technical assistance to the RCs and EZs?**

HUD published a "Tax Incentive Guide for Businesses" and is currently working on a model marketing publication "Businesses Plus Tax Incentives Equals Jobs" to

REV_00145723

assist all EZs and the new RCs in promoting the use of tax incentives. The Department is conducting a major conference this week at the Ronald Reagan International Trade Center that is addressing economic and community issues and the intricacies of the numerous tax incentives offered as a result of the Community Renewal Tax Relief Act of 2000. Attendees are hearing from tax specialists on each of the five categories of incentives offered: Wage Credits, Deductions, Bond Financing, Capital Gains, New Market and Low Income Housing Tax Credits. Also at this conference, we will include several breakout sessions, one specifically dedicated to performance measurement, tax incentive utilization plans, and successful projects and activities. Next fiscal year we will have follow up regional workshops. Finally, our staff hosts an online forum, sends weekly flash faxes and conducts monthly conference calls to discuss implementation opportunities.

5. Why didn't my constituent win an RC or EZ designation last fall?

RCs were selected on the basis of objective criteria, which included 1990 census data and local crime data. EZs were evaluated on the basis of their strategic plan and quality of commitments. Our staff can provide debriefings to any of the applicants that were not selected.

REV_00145724

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Andrew W. McGarrity/WHO/EOP@EOP [WHO] <Andrew W. McGarrity>
Sent: 5/21/2002 8:18:34 AM
Subject: : Brett- your approval on POTUS quote for Capito?

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson ( CN=Collister W. Johnson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:21-MAY-2002 12:18:34.00
SUBJECT:: Brett- your approval on POTUS quote for Capito?
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Andrew W. McGarrity ( CN=Andrew W. McGarrity/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett -
Ken/Karl have signed off on the below to appear on Congresswoman Shelley
Moore Capito's website (just the quote, no picture or anything else).
Are you cool?

==========

"Congresswoman Shelley Moore Capito has my strong support for re-election
to U.S. Congress. Her leadership for West Virginia has been - and
continues to be - critical in passing our shared agenda of job creation, a
strong national defense, accountabilty in schools, prescription drug
coverage for seniors, and a balanced energy plan for our nation. I count
on Shelley as a trusted and independent voice in Congress, and I hope you
will too. Please join me in supporting Shelley Moore Capito."
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
CC: andrew w. mcgarrity/who/eop@eop [WHO] <andrew w. mcgarrity>
Sent: 5/21/2002 8:19:00 AM
Subject: : Re: Brett- your approval on POTUS quote for Capito?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2002 12:19:00.00
SUBJECT:: Re: Brett- your approval on POTUS quote for Capito?
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:andrew w. mcgarrity (CN=andrew w. mcgarrity/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Approved.

Collister W. Johnson
05/21/2002 12:18:30 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Andrew W. McGarrity/WHO/EOP@EOP
Subject: Brett- your approval on POTUS quote for Capito?

Brett -
Ken/Karl have signed off on the below to appear on Congresswoman Shelley Moore Capito's website (just the quote, no picture or anything else). Are you cool?

==========

"Congresswoman Shelley Moore Capito has my strong support for re-election to U.S. Congress. Her leadership for West Virginia has been - and continues to be - critical in passing our shared agenda of job creation, a strong national defense, accountabilty in schools, prescription drug coverage for seniors, and a balanced energy plan for our nation. I count on Shelley as a trusted and independent voice in Congress, and I hope you will too. Please join me in supporting Shelley Moore Capito."

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2002 11:30:22 AM
Subject: : LRM PTM107 - - HUD Draft Bill on Four Legislative Proposals
Attachments: P_JSAJ7003_WHO.TXT_1.doc; P_JSAJ7003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2002 15:30:22.00
SUBJECT:: LRM PTM107 - - HUD Draft Bill on Four Legislative Proposals
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just a reminder, this is due at 5 pm today.

Thanks
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/21/2002 03:30 PM ----------

From: P. Thaddeus Messenger on 05/07/2002 05:30:06 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM107 - - HUD Draft Bill on Four Legislative Proposals

LRM ID: PTM107
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, May 7, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Draft Bill on Four Legislative Proposals

DEADLINE: 5:00 p.m. Tuesday, May 14, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find draft copies of bill text and sectional analyses for four housing proposals.

Please provide your comments by 5:00 p.m., Tuesday, May 14, 2002. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile. If you experience difficulty with this LRM, or its attachment, please contact us immediately.

Thank you.

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Joel D. Kaplan
Lauren C. Lobrano

James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
John D. Burnim
Anna M. Briatico
LRM ID: PTM107 SUBJECT: HUD Draft Bill on Four Legislative Proposals
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
llr@do.treas.gov
justice.lrm@usdoj.gov
ocl@ios.doi.gov
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
valrm@mail.va.gov
CLRM@doc.gov
cla@sba.gov @ inet

Message Copied

To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Lauren Larson/OMB/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
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Anna M. Briatico/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JSAJ7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JSAJ7003_WHO.TXT_2>

May 2002 - DRAFT{PRIVATE }
Four Legislative Proposals

Bill Text

SEC. ___. COMPREHENSIVE PLANNING UNDER THE INDIAN HOUSING BLOCK GRANT PROGRAM.

Section 101(h) of the Native American Housing Assistance and Self-Determination Act of 1996 is amended by inserting after "Act" the first place it appears the following: "for comprehensive housing and community development planning activities and".

SEC. ___. REAUTHORIZATION OF CERTAIN INDIAN HOUSING PROGRAMS.

(a) BLOCK GRANT ASSISTANCE.--Section 108 of the Native American Housing Assistance and Self-Determination Act of 1996 is amended by striking "such" and all that follows through "Act" and inserting "$644,600,000 for fiscal year 2003 and such sums as may be necessary for each of fiscal years 2004, 2005, 2006, and 2007".

(b) LOAN GUARANTEES.--Section 605 of such Act is amended--

(1) in subsection (a), by striking "1997, 1998, 1999, 2000, and 2001" and inserting "2003, 2004, 2005, 2006, and 2007"; and

(2) in subsection (b), by striking "such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001" and inserting "$2,000,000 for fiscal year 2003 and such sums as may be necessary for each of fiscal years 2004, 2005, 2006, and 2007".

SEC. ___. AUTHORITY FOR HUD TO CONDUCT FORECLOSURES UNDER THE SECTION 184 INDIAN LOAN GUARANTEE PROGRAM.

Section 184(h)(1)(B) of the Housing and Community Development Act of 1992 is amended by adding the following new sentence at the end:

"The prosecution and defense of any litigation under this paragraph shall be conducted, at the discretion of the Secretary, by--

"(i) the United States attorneys for the districts in which the litigation arises and any other attorney that the Attorney General may designate under law, under the supervision of the Attorney General;

"(ii) the General Counsel of the Department of Housing and Urban Development; or

"(iii) any other attorney with whom the Secretary enters into a contract after a determination by the Secretary that the attorney will provide competent, cost-effective, and timely representation for such Department.".

SEC. ___. HUD REPORTS TO CONGRESS.

(a) SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.--Section 203 of the National Housing Act is amended by striking the following sentence after subsection (u): "The report required under this

subsection shall include the report required under section 540(c) and the report required under section 205(g).".

(b) ACTIVITIES OF FNMA AND FHLMC.--Section 1328(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by striking "June 30" and inserting "September 30".

(c) CONTRACTS IN EXCESS OF $250,000.--Section 10001 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia, is repealed.

May 2002 - DRAFT
Four Legislative Proposals

Section-by-Section Analysis

COMPREHENSIVE PLANNING UNDER THE INDIAN HOUSING BLOCK GRANT PROGRAM

Section 101(h) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) authorizes Indian Housing Block Grant (IHBG) recipients to use a percentage of the grant amounts they receive for any reasonable administrative and planning expenses related to carrying out activities under NAHASDA, including costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with NAHASDA grants, and expenses of preparing an Indian housing plan. Through administrative means, HUD has currently set this percentage at 20 percent.

Section ____ would amend section 101(h) to allow IHBG recipients to use a portion of their grant funds, within the 20 percent cap, to engage in comprehensive housing and community development planning activities. Rational, comprehensive land-use planning, when used in conjunction with proper zoning, master plans and associated tools, results in decent, livable Native American communities. Tribes must ensure that the appropriate location of housing, commercial, industrial and tribal governmental projects and activities occurs carefully and thoughtfully. They often do not have funding sources to obtain services to accomplish these objectives. This amendment would authorize these activities as an eligible administrative expense under NAHASDA.

REAAUTHORIZATION OF CERTAIN INDIAN HOUSING PROGRAMS

The authorization of appropriations for the Indian Housing Block Grant program and the title VI housing loan gurarntee program under NAHSDA expired at the end of fiscal year 2001. Section ___ would amend sections 108 and 605 of NAHASDA to reauthorize both programs through 2007. The reauthorization of these programs would support HUD's FY 2003 Budget request to fund these successful programs.

AUTHORITY FOR HUD TO CONDUCT FORECLOSURES UNDER THE SECTION 184 INDIAN LOAN GUARANTEE PROGRAM

Section ___ would give HUD the authority to bring foreclosure actions under the Section 184 Indian Loan Guarantee program.

The Department of Justice (DOJ) is the Federal agency responsible for representing the Federal Government when foreclosures are necessary in this guaranteed loan program. To bring actions on tribal lands, attorneys must comply with any specific tribal bar admission requirements. It can be very difficult to find an available DOJ attorney who is well versed in HUD law and foreclosure procedures and is a member of a specific State or tribal bar. Bar admission requirements vary from tribe to tribe and State to State, from submitting a form to passing an exam, and even those that require just a form can take months to process. DOJ does not have many attorneys with the specialized background and training to do foreclosures in tribal courts, and HUD does not have the authority to carry out the foreclosures using its attorneys or the authority to contract with outside counsel.

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Given this situation, it is appropriate to give the proposed foreclosure authority to HUD under the Section 184 program, which is similar to the foreclosure authority that USDA has under its section 502 rural housing program (see section 510(d) of the Housing Act of 1949). By allowing HUD to handle a foreclosure in-house or to contract with outside counsel, generally a local private attorney, this proposal will ensure the most timely protection of the Federal Government's financial interests.

HUD REPORTS TO CONGRESS

Section ___ would make the following changes (mostly technical) to certain HUD reporting requirements to Congress.

Subsection (a) would separate the FHA annual report on single family mortgagor and loan characteristics (section 203(w)) of the National Housing Act (NHA)), the annual actuarial study (section 205(g) of the NHA), and the early default report (section 540(c) of the NHA) that were combined by section 1103(f) of the American Homeownership and Economic Opportunity Act of 2000. These reports are very different products that are more appropriate to handle separately.

Subsection (b) would amend the due date of HUD's annual report on activities of FNMA and FHLMC (section 1328 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) from June 30th to September 30th because the Home Mortgage Disclosure Act data that the Department relies on to prepare the report is not available to the Department until after June 30th.

Subsection (c) would repeal section 10001 of the 1997 Emergency Supplemental Appropriations Act, which requires HUD to submit a semiannual report to the appropriations committees that lists all new HUD contracts and task orders in excess of $250,000. This reporting requirement is not necessary since the information in the report is included in the Federal Procurement Data System and the information in such System is available to members of Congress upon request.

REV_00145743

From: CN=Cathy Alix/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Kimberly A. Douglass/WHO/EOP@EOP [WHO] <Kimberly A. Douglass>;NKONKLE@whmo.mil [UNKNOWN] <NKONKLE@whmo.mil>
Sent: 5/21/2002 2:25:36 PM
Subject: : Re: billing memo
Attachments: P_UEKJ7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2002 18:25:36.00
SUBJECT:: Re: billing memo
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kimberly A. Douglass (CN=Kimberly A. Douglass/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:NKONKLE@whmo.mil (NKONKLE@whmo.mil [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

In briefing today, Nancy mentioned:

- that she would not be able to quote a 21-day advance coach rate because the rates are based on demand

- at present, helicopter use is considered an official security measure only for the DC to Andrews portion and she bills for other lifts. We, of course, can change this policy, but I did want to point out that this is a change.

- First Lady personal guests are presently being billed when the First Lady is traveling on official travel -- again, we can change the policy, but it would be a change.

I also still have a policy memo on Official Travel of the First Lady on Military Aircraft that Airlift Ops believes we need to re-issue to reflect this Administration's policy. Is this memo being worked or do I need to send a copy to you for review. Please advise.

Please let me know if you have any questions. I would like to get a finalized, signed memo as soon as possible. Thanks.

Brett M. Kavanaugh
05/20/2002 07:46:17 AM
Record Type: Record

To: Cathy Alix/WHO/EOP@EOP, Kimberly A. Douglass/WHO/EOP@EOP
cc:
Subject: billing memo

Attached is the billing memo. If you have any suggested clarifications, let me know. If not, I will circulate to you in inter-office if you approve. Thanks.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_UEKJ7003_WHO.TXT_1>

May 17, 2002

MEMORANDUM FOR CATHY ALIX

FROM: BRETT M. KAVANAUGH

SUBJECT: AIRCRAFT BILLING

As we discussed, this memorandum reiterates certain processes for billing costs associated with reimbursable travel.

After completion of the Presidential or First Lady travel on military aircraft, the White House Military Office should forward an after-action manifest to the Advance Office. This manifest should reflect the actual travelers for all legs of the trip. The Advance representative will review the manifest and determine which travelers should be billed for the cost of the airfare or other in-flight costs. After this review, the WHMO Airlift Operations representative should prepare the requisite bills for airfare or in-flight costs and forward these bills to the traveler or to the White House Office of Management and Administration as appropriate.

Unofficial travel aboard fixed-wing aircraft should be reimbursed at a 21-day advance coach rate (divided in half for each leg in keeping with the practice of billing per leg). Use of DOD helicopters by the President is considered an official security measure and is therefore not ordinarily reimbursable for travelers traveling with the President. Exceptions to this policy can occur in situations in which the helicopters are the sole source of transportation.

Family members of the President or First Lady travel on a non-reimbursable basis. Personal guests travel on a non-reimbursable basis when the President or First Lady is traveling on official travel.

These procedures are not intended to amend or affect other processes in place for the billing of costs associated with travel of the President, First Lady, or staff members.

The Counsel's Office is prepared to assist as necessary with these processes.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 5/21/2002 3:01:07 PM
Subject: : New Republic story about Judge

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2002 19:01:07.00
SUBJECT:: New Republic story about Judge
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ALBERTO GONZALES'S HIGH-WIRE ACT
Friend of the Court
by Ryan Lizza

One weekend in early May, Alberto Gonzales, President Bush's White House counsel and longtime confidant, found himself motoring out to a Ritz-Carlton in the Virginia suburbs to hang out with creationists and Christian reconstructionists.
Gonzales spoke before some 500 members of the Council for National Policy (CNP), an umbrella group of social conservatives that includes major figures such as James Dobson and Gary Bauer, as well as some of the fringiest elements of the right--including Henry Morris, who has devoted his career to the proposition that evolution is a myth; and R.J. Rushdoony, a reconstructionist who advocates replacing the American legal system with the injunctions of the Old Testament. But several of the attendees say they were disappointed by Gonzales, who gave a humdrum speech about the daily life of the White House counsel and offered little ideological red meat. Even during the question-and-answer session, when he was peppered with questions about various social issues, Gonzales remained cautious, betraying little about his personal beliefs--and doing little to win over a skeptical audience. As one attendee put it: "It was not a conservative being cautious; it was a judicial liberal being cautious."

It's not hard to figure out why Gonzales shows up at these conservative-themed events. Everyone assumes he's on Bush's shortlist for the next vacancy on the Supreme Court, and appearances like his speech before the CNP are a way to build conservative support for his potential nomination. And there's a reason conservatives need convincing: Everything in Gonzales's record prior to his arrival in Washington suggests he is a moderate jurist uncomfortable and unfamiliar with the kind of conservative judicial activism identified with Justices Antonin Scalia and Clarence Thomas. And that worries Washington conservatives who fear a replay of 1990, when Bush pere nominated David Souter--another state supreme court judge with an ambiguous record--to the high court, only to

have him become a stalwart of its liberal minority.

But if "No More Souters!" has become a rallying cry among conservatives, Democrats are equally determined not to allow another Scalia, an Italian-American right-winger who won confirmation in part because Democrats didn't want to be seen as standing in the way of an ethnic milestone. And if Gonzales's record in Texas causes him problems on the right, his conservative stances as White House counsel--on judicial picks, on terrorism, on administration secrecy--raise red flags for Senate Democrats and their allies on the left. Alberto Gonzales, in other words, has the misfortune to be a potential Supreme Court pick at a time when the window of political acceptability--between being too liberal to be nominated and too conservative to be confirmed--is narrower than ever before. Michael Farris, a home-schooling advocate and influential social conservative, summarizes the dilemma: "Until Judge Gonzales starts saying some things publicly like, `I believe the president is right both politically and constitutionally on abortion, and I'm happy to defend him,' he's not going to be rehabilitated. The problem is that if you start doing that you become unacceptable to the left." No wonder Gonzales addressed the CNP. And no wonder he didn't win them over.

As a justice for two years on the Texas Supreme Court, Gonzales has a paper trail. And it suggests moderation and deference--a throwback to the kind of judicial restraint Republicans used to advocate before they fell in love with conservative judicial activism. David Keltner, a friend of Gonzales's from Texas (and a Democrat) argues: "The activist judges we have in the U.S. are conservatives and have been for the last five to ten years. Al Gonzales went on a court that had some ofthat, and he was not that way. He truly did not legislate." Gonzales joined the court in January 1999 and resigned in December 2000 to prepare to move to Washington. During those two years he joined several other Bush appointees to form what the liberal group Texas Watch dubbed the "New Guard"--a block of moderate justices who turned the court away from the sharp conservative tilt that characterized it in the late 1980s and early 1990s. In 2000 Texas Watch noted that, led by a justice named Deborah Hankinson, the "`New Guard' increasingly is challenging the intellectual leadership of conservative activist [Justice] Nathan Hecht and his allies"--including Priscilla Owen, a judge Bush recently nominated to the federal bench and who has been targeted for defeat by liberals. It's hardly surprising that Gonzales usually agreed with his fellow Bush appointees on the Texas court: As the governor's general counsel from 1995 to 1997, he helped pick them.

Gonzales's writings during his two years on the court-- 14 majority opinions, five concurring opinions, and two dissents--display a fetish for legislative intent and a reverence for Supreme Court precedent, one reason social conservatives fear he would be too timid to vote to overturn Roe v. Wade. "He was a very workmanlike judge who was not likely to rule on either extreme," says a

top legal conservative who has had conversations with Gonzales and is not encouraged by his potential nomination to the high court. "The only philosophy of judging you can extract from his opinions is he's the quintessential judge who goes in and tries to figure out the law and applies it."

The Texas supreme court has long been a bastion of pro-business jurisprudence; and Gonzales, who spent 13 years as a corporate lawyer in Houston, came to Bush's staff with a reputation as a pro-business Republican. But here, too, his record on the court was centrist. In large part, the moderate trend on the Texas court that observers noted in the late '90s involved cases that pitted consumers against corporations. In such cases Gonzales voted with the majority in 47 decisions that favored individuals over business defendants, while signing on to 38 majority opinions that favored businesses over individuals. In one opinion he argued for the majority that a person exposed to asbestos who wins a claim against a company is not precluded from suing again if he develops a separate asbestos-related disease.
In another case--in which Owen and two other conservatives on the court dissented sharply--Gonzales's decision in favor of an injured motorist suing the Texas Department of Transportation created a whole new cause of action for plaintiffs' lawyers.

As someone who arrived on the Texas bench amid speculation that it was a stop on the way to the Supreme Court, Gonzales's opinions sometimes read like those of a man who knows his words will be carefully scrutinized. In a case against General Motors, for example, he wrote an opinion finding the company negligent--but not grossly negligent, as a jury had. This cautious centrism is also present in one of the more significant opinions he wrote. In Osterberg v. Peca the Texas court wrestled with some of the same First Amendment issues likely to arise out of the McCain-Feingold campaign finance legislation recently signed by Bush (and challenged by the Republican National Committee). The case dealt with the constitutionality of a state election law that required individuals to disclose expenditures made on behalf of a candidate; the court found that the disclosure requirement being challenged didn't violate the First Amendment. Gonzales agreed with the majority on that narrow issue but felt it necessary to add in a concurrence that he worried some "disclosure requirements can be so onerous that they violate the First Amendment"--a matter now at the heart of the McCain-Feingold law. In other words, Gonzales gave himself the wiggle room he'd need if the ruling came back to haunt him in a confirmation fight.

But the most well-known opinion Gonzales wrote on the court is the one that has most alienated him from conservatives. A new law signed by then-Governor Bush in 1999 prevented a minor from seeking an abortion without parental notification--unless a judge found her to be "mature and sufficiently well informed."
A series of these judicial-bypass requests began moving toward the Texas Supreme Court in 2000. In the first of them, known as Jane Doe 1, Gonzales

joined the majority in overturning a lower court's ruling and allowing a 17-year-old, who told the court her parents did not "believe in abortion," to have the procedure without notifying her parents. The decision fractured the court six to three and precipitated an angry volley of opinions. "It was just incredibly tense around here," says one court official. Justice Owen wrote in a dissent that the majority's "actions raise disturbing questions about its commitment to the rule of law and to the process that is fundamental to the public's trust in the judicia ry." She further accused the court of "manufactur[ing] reasons to justify its action" and concluded her dissent by thundering that the majority "has acted irresponsibly in this case ... has disregarded the law and has trampled the process on which the legitimacy of our law depends." Justice Hecht added that Gonzales and his ideological brethren "adamantly refuse to listen to all reason" because they "have resolved to impair the Legislature's purposes in passing the Parental Notification Act, which were to reduce teenage abortions and increase parental involvement in their children's decisions." He added that the court's ruling "trivializes the decision to have an abortion."

Gonzales's concurring opinion, by contrast, was a paean to legislative intent and--like so many of his other opinions--a careful effort to achieve a delicate political balance. Hinting that he may be pro-life, he wrote: "While the ramifications of such a law and the results of the Court's decision may be personally troubling to me as a parent, it is my obligation as a judge to impartially apply the laws of this state without imposing my moral view on the decisions of the Legislature." Owen's and Hecht's dissents, he said, were "unconscionable act[s] of judicial activism."

Gonzales's record on the Texas Supreme Court, in short, is not that of a Scalia-style conservative. And Gonzales's friends from the period confirm that the record honestly reflected his judicial philosophy. When he was leaving his position on the court to join Bush in Washington, Gonzales had a short, soul-searching conversation with a friend at the courthouse about his impending journey. Gonzales's friend was concerned about the rightward ideological turn the new Bush administration was taking. "When he was leaving, I was worried about the obligations this administration will pay to the right wing," says the friend. But Gonzales, he says, reassured him by asserting, "I'm a moderate, and I believe the governor is a moderate."

But just as the moderate governorship of George W. Bush has metamorphosed into an extremely conservative presidency, so too has Gonzales's moderate judicial philosophy been replaced by an aggressive partisanship as White House counsel. Gonzales has stocked his office with former Scalia and Thomas clerks and veterans of the last decade's most contentious political fights--including Timothy Flanigan, a lawyer who helped write Bush's Supreme Court brief during the Florida recount; Brett Kavanaugh, who wrote part of the Starr report; and H. Christopher Bartolomucci, a Senate Whitewater investigation lawyer. Gonzales's early decision to no longer allow the American Bar Association to vet judicial nominees immediately won him cachet on

the right, which has loathed the legal group ever since four members of its review board rated Robert Bork as "not qualified" in 1987. "It's the sort of bogeyman which one gets a lot of mileage for banishing," says one activist. "That act earned him a tremendous amount of support among conservatives."

In contrast with his record in Texas, Gonzales's new office has recommended the most conservative batch of jurists of any recent administration. One of the most telling picks is his old sparring partner on the Texas Court, Priscilla Owen, whom Bush nominated to the Fifth Circuit Court of Appeals one year ago. The administration had actually interviewed Deborah Hankinson--Gonzales's old ally and the leader of the Texas New Guard--for the job, but her nomination was scuttled. "She read the writing on the wall," says a person close to her. "She wasn't a right winger ... wasn't conservative enough. She felt the right wing has grabbed Bush and is off and running." Gonzales picked Owen for the spot instead.

Gonzales has also taken political ownership of a host of other conservative issues. He wrote and publicly defended Bush's executive order on military tribunals. He advised Bush not to grant prisoner-of-war status to Al Qaeda prisoners at Guantanamo Bay. His office has also led a multifront campaign to expand the authority of the executive branch and insulate the administration from records requests, whether they come from Congress, the General Accounting Office, or presidential scholars.

But establishing these conservative bona fides has come at a cost. Democrats on the Senate Judiciary Committee bitterly complain about Gonzales's unwillingness to consult with them over judges. They warn there will be payback if he's ever nominated to the Supreme Court and have already developed several potential lines of attack. Some Democrats argue that Gonzales is a lightweight being steamrolled by a right-wing staff. "Some think he's out of his league," says a top Judiciary Committee staffer, noting that Gonzales's deputy, Flanigan, was the lead White House negotiator on the anti-terrorism bill. Others make essentially the opposite case: that Gonzales has not only played a critical role in Bush's most conservative and controversial policies, but also that he has been the key figure in shielding the decision-making process that produced them from public review.

Finally there is Enron, the Democratic gift that keeps on giving. Gonzales spent 13 years as a lawyer with Houston-based Vinson & Elkins (V & E), now best known as Enron's law firm. He worked in the business, real estate, energy section--known colloquially as "the deals group"--and one of his colleagues there was Joseph

Dilg, for one decade the firm's chief liaison to Enron. Dilg is a main defendant in at least one massive Enron-related lawsuit charging that V & E conducted and participated in an illegal enterprise. National Journal has reported that Gonzales had an attorney-client relationship with Enron, but he has never explained exactly what it was. While at V & E, Gonzales also got to know Kenneth Lay: The two worked together on a 1990 economic summit in Houston and on the 1992 Republican convention. And when Gonzales ran for reelection to the Texas Supreme Court (Texas Supreme Court justices are initially appointed but must go before the voters to earn additional terms), he took $15,000 in campaign donations from the political action committees of Enron and V & E. Perhaps most questionable is that despite these connections, Gonzales has declined to recuse himself from the response to the various Enron-related inquiries and investigations currently embroiling the White House, including Senator Joseph Lieberman's widening probe.

Ultimately, though, much of the Democratic brief against Gonzales is weak. Gonzales left V & E in 1995--before the firm appears to have started most of its suspect work for Enron. And the conflicting nature of the other Democratic lines of attack--Gonzales the conservative mastermind, Gonzales the moderate dupe--is a pretty clear indication that neither characterization is a slam dunk.

The Republican case against Gonzales, however, is another matter. Many conservatives have not been reassured by his rightward lurch over the past year and half. Indeed, they often make their own version of the "moderate controlled by conservatives" argument--suggesting that in his current post Gonzales is simply hemmed in by the presence of so many conservative staffers and the expectation of loyalty to administration policies. "I think that Justice Gonzales was the real Al Gonzales, and White House Counsel Gonzales is the loyal Bush administration aide," says one prominent conservative. Adds another, "I have no reason to believe that he has changed his views from when he was on the court."

For many on the right, his opinion in Jane Doe 1 is all they know about Gonzales--and all they really need to know. "I've been told he voted the wrong way on a parental-notification bill on abortion," says Farris. "That would make him absolutely unacceptable to the pro-life community." Other conservatives worry about Gonzales's views on affirmative action, an issue the Supreme Court is likely to tackle in the next few years. Gonzales has said, for example, that Bush is building an administration that "looks like America"--the same phrase famously used by Bill Clinton. Roger Clegg, an affirmative action opponent at the Center for Equal Opportunity, had a heated exchange with Gonzales on race at a Heritage Foundation event in Philadelphia not long ago. The administration is "not making appointments based strictly on the merits," says Clegg. "They are being driven by racial and ethnic decisions. That's wrong, and that's

objectionable. To the extent he really believes that's an OK thing to do, that's troubling as a potential Supreme Court justice." Adds Ed Blum of the conservative American Civil Rights Institute, "We're all very nervous about Al Gonzales and how he sees the issue of race and public policy." Blum, who knows Gonzales from Texas, saw him speak recently at a monthly meeting of the Federalist Society held at Tony Cheng's Mongolian Restaurant in Washington. Gonzales, says Blum, believes "that a person's race or ethnicity does have a bearing on who that person is, and that is anathema to this movement. He has bought into the bedrock argument that the other side makes."

The irony, of course, is that Bush believes the same thing. Indeed, when Bush first appointed Gonzales to the Texas Supreme Court, a reporter asked the then-governor if race had played a role in his decision. "Of course it mattered what his ethnicity is," Bush replied. And more broadly, the question conservatives now pose about the "real" Alberto Gonzales--is he the moderate he was in Texas or the conservative he has been in Washington?--could well be asked about Bush himself. Bush, too, one might argue, has been surrounded since taking office by a permanent Beltway conservative establishment that has made his presidency more ideological than his governorship. Conservatives' assessment of what Gonzales would do if given the independence of a Supreme Court seat is, in some ways then, an assessment of what Bush himself might do--were conservatives not there to keep him in line.

And it's precisely because of those doubts that many on the right would prefer to see Bush choose someone like Miguel Estrada, the ideologically committed right-winger currently up for the D.C. Circuit. Estrada, they figure, could be confirmed for the same reason as Gonzales: Democrats wouldn't dare torpedo the first Hispanic nominee. And he'd be a reliable Thomas-Scalia ally on the Court.

But Estrada doesn't have Gonzales's close relationship to Bush--"more like a brother than a lawyer," says a friend of both men. And most close Bush-watchers assume that the president, if given his druthers, favors loyalty over ideological purity. Unlike Gonzales, Estrada has yet to spend time on the bench--a lack of experience that could make confirmation more difficult. Moreover, Gonzales has one other advantage over Estrada and other potential rivals: As White House counsel, he'll be the one leading the search for a new justice when a vacancy occurs. And the last time Bush put someone else in charge of this sort of hunt, Dick Cheney ended up picking himself.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;timothy e. flanigan/who /eop@eop [WHO] <timothy e. flanigan>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;anne womack/who/eop@eop [WHO] <anne womack>
Sent: 5/22/2002 11:49:19 AM
Subject: : Re: Lieberman chronology -- press release

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###### Begin Original ARMS Header ######
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CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAY-2002 15:49:19.00
SUBJECT:: Re: Lieberman chronology -- press release
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
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###### End Original ARMS Header ######

meeting with Lieberman was May 9 not May 8; all of the substantive
descriptions are one-sided, of course




Bradford A. Berenson
05/22/2002 03:43:06 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Lieberman chronology -- press release

Lieberman just issued the timeline below as a press release. If anyone
sees inaccuracies, we should probably point them out to Anne.

Governmental Affairs Committee Enron Investigation Timeline



January 2 Investigation announced into whether the various federal
agencies charged with overseeing or regulating Enron's
business could have done something to detect or prevent
the problems associated with the company or its downfall.

January 24 First hearing: "The Fall of Enron: How Could It have


Happened?"


February 5 Second hearing: "Retirement Insecurity: The 401(k) Crisis
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at Enron."

February 15 Committee sends letters to four agencies responsible for regulating or overseeing aspects of Enron's business seeking contacts, communications, investigations, complaints, etc. regarding Enron and/or Andersen (SEC, CFTC, FERC, Department of Labor). Committee also subpoenas Enron for its communications with CFTC, FERC, SEC and Department of Labor and Andersen for its communications regarding Enron with any federal agency. The letters and subpoenas seek information back to 1992.

February 27 Third hearing: "The Watchdogs Didn't Bark: Enron and the Wall Street Analysts."

March 20 Fourth hearing: "Rating the Raters: Enron and the Credit Rating Agencies."

March 25 Committee subpoenas Enron directors

March 27 Committee sends letters to the White House and the U.S. Archivist (on behalf of the first Bush Administration and the Clinton Administration). The Committee requests of the White House information about:
1. Communications between Executive Office of the President (EOP) and Enron regarding eight agencies charged with regulating or overseeing parts of Enron's business (SEC, FERC, CFTC, Labor, Energy, Commerce, OPIC, Exc-Im), and any appointments to those agencies.
2. Communications between EOP and any federal agency regarding those eight agencies and their oversight of Enron, and any appointments to those agencies.
3. Communications between Enron and the EOP or any member of the National Energy Task Force regarding National Energy Policy.
Committee requests of the Archivist documents (not just information) regarding these topics from the previous two adminsitrations.

April 11 Meeting between Committee staff and White House Counsel staff to discuss request. Committee anticipates next communication from White House would be proposed time frame for providing Committee with information.

April 19 White House Counsel Gonzales writes Chairman Lieberman, reiterating objections expressed by staff at April 11 meeting: argues that request is overbroad, seeks information removed from the Committee's inquiry, and intruded on Executive Branch prerogatives. Judge Gonzales offered information already provided to the House and indicated he would take unspecified "appropriate steps" to gather unspecified information to provide to the Committee at an unspecified time.

April 24 Chairman Lieberman writes White House Counsel expressing disappointment that the process has not moved farther along. He says his request is not overbroad and is relevant to Committee's inquiry.

April 29 White House Counsel writes to Chairman Lieberman and announces first concrete step to collect information in response to Committee request: three-question, yes/no survey to be distributed among senior EOP personnel. White House Counsel continues to object to providing information relating to the National Energy policy and

the appointments process. Survey does not ask about National Energy Policy contacts, among other things.

May 3 Chairman Lieberman writes White House Counsel expressing inadequacy of White House response: Survey appears designed to slow the process down, survey distribution list is too small, survey does not cover WAVE records, email, etc., survey does not cover former staff. Lieberman remarks on absence of White House attempt to search for National Energy Policy information, as well as contacts with other federal agencies.

May 6 White House Counsel seeks meeting with Chairman Lieberman.

May 7 White House Counsel writes to Chairman Lieberman and agrees to search WAVES and e-mail but says the President and Vice President have already described their relevant communications. White House Counsel says former employees will not be surveyed and says he wants to discuss Committee's interest in National Energy Policy.

May 8 Chairman Lieberman and Gonzales meet. They discuss the issues, but reach no resolution. Chairman Lieberman expects to hear back from White House Counsel early the next week with further decisions about how to respond to Committee request.

May 14 White House Counsel's office informs Committee staff it will add two additional questions to its survey. The first concerns communications regarding National Energy Policy and other policy issues. The second concerns communications between EOP and other federal agencies.

May 16 White House Counsel writes Chairman Lieberman reiterating steps his office has taken, attaches a transcript of a presidential press conference during which the President discusses whether he communicated with Ken Lay or other Enron officials in the six weeks preceding Dec. 28, 2001. The Counsel did not address whether the White House would reconsider its position and provide the information requested on all the issues, including National Energy Policy information, communications of the President, Vice President, former employees or the universe of EOP employees.

Chairman Lieberman responds to White House Counsel the same day. He
notes that more than seven weeks had passed since his request and the White House has provided no information, nor has it assured the Committee responsive information would be forthcoming. Lieberman expressed dismay that several outstanding issues were still not addressed such as the communications of the President, the Vice President, former employees, National Energy Policy. Chairman Lieberman informed Judge Gonzales that he would ask for the Committee to approve a subpoena unless the White House provided assurances that 1. EOP would search for all the information the Committee asked for and 2. EOP would provide the Committee with all responsive information unless it claimed it was privileged.

May 17 White House Counsel's office contacted Committee staff and agrees to survey all EOP employees if the subpoena threat is withdrawn. The Counsel's office made no assurances about other outstanding items, e.g. determining whether President, Vice President, or former employees had responsive communications with Enron.

Chairman Lieberman concluded he would not get all the information he requested and decided to proceed with the subpoena request.

May 21 White House Counsel writes to Chairman Lieberman saying the subpoena request is "precipitous." Chairman Lieberman calls White House Counsel to inform him of his decision to proceed with subpoena requests.

May 22 Governmental Affairs Committee voted 9-8 to subpoena the White House.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP
Anne Womack/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Patrick J. Bumatay/WHO /EOP@EOP [WHO] <Patrick J. Bumatay>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>

CC: Anne Womack [WHO] <Anne Womack>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>

Sent: 5/22/2002 10:04:40 AM

Subject: : more AP re: subpoena

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAY-2002 14:04:40.00
SUBJECT:: more AP re: subpoena
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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CC:Anne Womack (Anne Womack [WHO])
READ:UNKNOWN
CC:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Wed May 22, 2002 13:55 EDT

Senate panel subpoenas White House staff in Enron investigation%)

MARCY GORDON
AP Business Writer
WASHINGTON (AP) _ A Senate panel voted on party lines Wednesday to issue Congress' first subpoenas to the Bush White House, seeking information on staff contacts with Enron Corp. officials.

The vote was 9-8 to subpoena President Bush's executive office and the office of Vice President Dick Cheney to compel them to produce relevant documents by noon on June 3. The vote followed a two-hour debate that at times turned bitterly partisan. The material being sought also covers the Clinton administration, going back to January 1992.

The vote grew out of the Governmental Affairs Committee's investigation of Enron, which filed the biggest corporate bankruptcy in U.S. history last year. The Houston-based company has been among Bush's biggest campaign contributors.

Some Republican senators accused Sen. Joseph Lieberman, D-Conn., chairman of the committee, of being politically motivated in requesting the subpoenas and unfairly giving the impression that wrongdoing in the Enron affair had occurred in the White House.

Republicans noted that the White House had indicated it would deliver material to the panel on Wednesday and asked Lieberman to hold off the subpoenas.

``Are we doing this to attract the attention of the public?'' Sen. Thad Cochran, R-Miss., asked. ``It makes me very suspicious about the motivation of asking for a subpoena.''

Lieberman, chairman of the committee because Democrats control the Senate, told Cochran: ``Your suspicions are unwarranted.''

``The clear message I've gotten from the White House is that they're not going to give us what we want,'' Lieberman said. He noted he has been seeking the information since late March.

``I have finally concluded that we were being slow-walked ... at the least and stonewalled at worst,'' Lieberman said.

He stressed that he was not accusing anyone in the White House of wrongdoing but was seeking material needed in the committee's investigation.

The General Accounting Office, Congress' investigative arm, already has sued Cheney to force release of the names of Enron and other industry figures who met last year with his energy task force.

The Bush administration disclosed in January that former Enron chairman Kenneth Lay made a series of telephone calls to members of the Bush Cabinet, including Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans, as the company spiraled toward collapse last fall.

Lieberman, who was Al Gore's running mate in 2000 and is considering a run for president in 2004, had said Friday he would seek a subpoena unless the White House promised to provide all the material requested by the end of the month.

``I respectfully suggest that you reconsider and withdraw the threat of a subpoena until, at a minimum, you can review the information we intend to provide soon to the committee,'' White House counsel Alberto Gonzales told Lieberman in a letter Tuesday.

Lieberman spokeswoman Leslie Phillips said Gonzales' letter contained no new proposal to resolve the impasse.

Sen. Fred Thompson of Tennessee, the ranking Republican on the committee, said it was premature and needlessly confrontational to issue subpoenas, with no specific allegations of wrongdoing by the White House having been raised.

Some of the material the subpoenas are seeking may be ``at the core of the executive function,'' said Thompson. He said their issuance ``appears to be an effort to force the president to claim executive privilege'' and withhold the material.

The energy-trading company filed for bankruptcy court protection on Dec. 2. Investors nationwide were burned and thousands of Enron employees were stripped of nearly all their retirement assets as the company's stock plummeted. The Governmental Affairs Committee has been looking into why federal regulators did not raise warning flags about Enron's questionable business practices and intervene.

Gonzales said Tuesday the panel would be acting ``precipitously,'' and in a manner contrary to how Congress and the executive branch traditionally interact, if it issued a subpoena now.

In response to Lieberman's request, Gonzales on April 29 asked 204 White House staffers to fill out a questionnaire.

On Friday, Gonzales offered to give the questionnaire to all 2,000 or so executive office employees if Lieberman would withdraw his subpoena threat.

``We have yet to hear your response,'' Gonzales wrote.

``We already have taken numerous steps to gather information requested by the committee,'' he said. Gonzales said his staff was gathering and reviewing documents, e-mails and entry records of visitors to the White House, and was interviewing people with relevant information.

``We are preparing to respond soon to assist the committee's inquiry,'' he told Lieberman.
4th Ld-Writethru

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Patrick J. Bumatay/WHO /EOP@EOP [WHO] <Patrick J. Bumatay>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>

CC: Anne Womack [WHO] <Anne Womack>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>

Sent: 5/22/2002 10:04:40 AM

Subject: : more AP re: subpoena

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-MAY-2002 14:04:40.00
SUBJECT:: more AP re: subpoena
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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CC:Anne Womack (Anne Womack [WHO])
READ:UNKNOWN
CC:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Wed May 22, 2002 13:55 EDT

Senate panel subpoenas White House staff in Enron investigation%)

MARCY GORDON
AP Business Writer
WASHINGTON (AP) _ A Senate panel voted on party lines Wednesday to issue Congress' first subpoenas to the Bush White House, seeking information on staff contacts with Enron Corp. officials.

The vote was 9-8 to subpoena President Bush's executive office and the office of Vice President Dick Cheney to compel them to produce relevant documents by noon on June 3. The vote followed a two-hour debate that at times turned bitterly partisan. The material being sought also covers the Clinton administration, going back to January 1992.

The vote grew out of the Governmental Affairs Committee's investigation of Enron, which filed the biggest corporate bankruptcy in U.S. history last year. The Houston-based company has been among Bush's biggest campaign contributors.

Some Republican senators accused Sen. Joseph Lieberman, D-Conn., chairman of the committee, of being politically motivated in requesting the subpoenas and unfairly giving the impression that wrongdoing in the Enron affair had occurred in the White House.

Republicans noted that the White House had indicated it would deliver material to the panel on Wednesday and asked Lieberman to hold off the subpoenas.

``Are we doing this to attract the attention of the public?'' Sen. Thad Cochran, R-Miss., asked. ``It makes me very suspicious about the motivation of asking for a subpoena.''

Lieberman, chairman of the committee because Democrats control the Senate, told Cochran: ``Your suspicions are unwarranted.''

``The clear message I've gotten from the White House is that they're not going to give us what we want,'' Lieberman said. He noted he has been seeking the information since late March.

``I have finally concluded that we were being slow-walked ... at the least and stonewalled at worst,'' Lieberman said.

He stressed that he was not accusing anyone in the White House of wrongdoing but was seeking material needed in the committee's investigation.

The General Accounting Office, Congress' investigative arm, already has sued Cheney to force release of the names of Enron and other industry figures who met last year with his energy task force.

The Bush administration disclosed in January that former Enron chairman Kenneth Lay made a series of telephone calls to members of the Bush Cabinet, including Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans, as the company spiraled toward collapse last fall.

Lieberman, who was Al Gore's running mate in 2000 and is considering a run for president in 2004, had said Friday he would seek a subpoena unless the White House promised to provide all the material requested by the end of the month.

``I respectfully suggest that you reconsider and withdraw the threat of a subpoena until, at a minimum, you can review the information we intend to provide soon to the committee,'' White House counsel Alberto Gonzales told Lieberman in a letter Tuesday.

Lieberman spokeswoman Leslie Phillips said Gonzales' letter contained no new proposal to resolve the impasse.

Sen. Fred Thompson of Tennessee, the ranking Republican on the committee, said it was premature and needlessly confrontational to issue subpoenas, with no specific allegations of wrongdoing by the White House having been raised.

Some of the material the subpoenas are seeking may be ``at the core of the executive function,'' said Thompson. He said their issuance ``appears to be an effort to force the president to claim executive privilege'' and withhold the material.

The energy-trading company filed for bankruptcy court protection on Dec. 2. Investors nationwide were burned and thousands of Enron employees were stripped of nearly all their retirement assets as the company's stock plummeted. The Governmental Affairs Committee has been looking into why federal regulators did not raise warning flags about Enron's questionable business practices and intervene.

Gonzales said Tuesday the panel would be acting ``precipitously,'' and in a manner contrary to how Congress and the executive branch traditionally interact, if it issued a subpoena now.

In response to Lieberman's request, Gonzales on April 29 asked 204 White House staffers to fill out a questionnaire.

On Friday, Gonzales offered to give the questionnaire to all 2,000 or so executive office employees if Lieberman would withdraw his subpoena threat.

``We have yet to hear your response,'' Gonzales wrote.

``We already have taken numerous steps to gather information requested by the committee,'' he said. Gonzales said his staff was gathering and reviewing documents, e-mails and entry records of visitors to the White House, and was interviewing people with relevant information.

``We are preparing to respond soon to assist the committee's inquiry,'' he told Lieberman.
4th Ld-Writethru

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/22/2002 10:43:36 AM
Subject: : JAB244 -- OMB Request for Views on HR4231 Small Business Advocacy Improvement Act (As Passed By The House on 5/21)
Attachments: P_ADCK7003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-MAY-2002 14:43:36.00
SUBJECT:: JAB244 -- OMB Request for Views on HR4231 Small Business Advocacy Improvement Act (As Passed By The House on 5/21)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/22/2002 02:43 PM ----------

James A. Brown
05/22/2002 02:42:24 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: JAB244 -- OMB Request for Views on HR4231 Small Business Advocacy Improvement Act (As Passed By The House on 5/21)

LRM ID: JAB244
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, May 22, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR4231 Small Business Advocacy Improvement Act (As Passed By The House on 5/21)

DEADLINE: 10:00 A.M. Friday, May 31, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: As passed by the House on May 21st. The version which was passed was an amendment in the nature of a substitute which was designed to correct constitutional and other Administration concerns with previous versions of the bill.

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EOP:
Philip J. Perry
Matthew J. Schneider
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Richard E. Green
Lisa B. Fairhall
Meredith G. Benson
LRM ID: JAB244 SUBJECT: OMB Request for Views on HR4231 Small Business Advocacy Improvement Act (As Passed By The House on 5/21)

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

REV_00145788

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
Philip J. Perry/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
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dodlrs@osdgc.osd.mil
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legteam@oge.gov
ola@opm.gov

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ADCK7003_WHO.TXT_1>

107th CONGRESS

2d Session

H. R. 4231

AN ACT

To improve small business advocacy, and for other purposes.

HR 4231 EH

107th CONGRESS

2d Session

H. R. 4231

AN ACT

To improve small business advocacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Small Business Advocacy Improvement Act of 2002'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds the following:

(1) Excessive regulations continue to burden the Nation's small businesses.

(2) Federal agencies continue to propose regulations that impose disproportionate burdens on small businesses.

(3) An independent office of small business advocacy will help to ensure that Federal agencies are responsive to small businesses and that those agencies comply with their statutory obligations with respect to small businesses.

(4) The independence of an office that acts as an advocate for small businesses is essential to ensure that it can serve as an effective advocate without being restricted by the views or policies of the Small Business Administration or any other Federal executive branch agency.

(5) To be effective an office that acts as an advocate for small businesses needs sufficient resources to conduct creditable economic studies and research which are necessary for the maintenance of small business databases and for the accurate assessment of the impact of

REV_00145791

regulations on small businesses, the role of small business in the Nation's economy, and the barriers to the growth of small businesses.

(6) The research, information, and expertise provided by an independent office of small business advocacy will be a valuable source of information and advice for Congress and Federal agencies with which the office will work on behalf of small businesses.

(b) PURPOSES- The purposes of this Act are--

(1) to ensure that there exists an entity that has the statutory independence and adequate financial resources to effectively advocate for and on behalf of small business;

(2) to require that such an entity report to the Chairmen and Ranking Members of the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, and to the Administrator of the Small Business Administration in order to keep them fully and currently informed about issues and regulations affecting small business concerns and the necessity for corrective action by the regulatory agency or Congress;

(3) to provide a separate authorization for appropriations for such an entity; and

(4) to strengthen the role of the Small Business and Agriculture Regulatory Enforcement Ombudsman by ensuring greater cooperation between the Ombudsman and the Office of Advocacy of the Small Business Administration.

SEC. 3. APPOINTMENT OF CHIEF COUNSEL OF ADVOCACY.

(a) IN GENERAL- Section 201 of Public Law 94-305 (15 U.S.C. 634a) is amended--

(1) by inserting `(a)' before `There is established';

(2) by striking the second sentence; and

(3) by adding at the end the following:

`(b) The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who should be appointed without regard to political affiliation and on the basis of fitness to perform the duties of the office.

`(c) No individual may be appointed under subsection (b) if such individual has served as an officer or employee of the Small Business Administration during the 5-year period preceding the date of such individual's appointment.

`(d) Any Chief Counsel appointed after the date of the enactment of this subsection shall be paid at a rate not to exceed the rate of basic pay for level III of the Executive Schedule.

`(e) After the expiration of the term of a President, the Chief Counsel may continue to serve at the pleasure of the President for a period of not to exceed one year until such date as a successor to the Chief Counsel is nominated.'.

REV_00145792

(b) INCUMBENT CHIEF COUNSEL FOR ADVOCACY- The individual serving as the Chief Counsel for Advocacy of the Small Business Administration on the date of the enactment of this Act shall continue to serve in that position after such date in accordance with section 201 of Public Law 94-305 (15 U.S.C. 634a), as amended by this section.

SEC. 4. PRIMARY FUNCTIONS OF OFFICE OF ADVOCACY.

Section 202 of Public Law 94-305 (15 U.S.C. 634b) is amended--

(1) in paragraph (6) by striking `to minority enterprises' and inserting `to small business concerns owned and controlled by socially and economically disadvantaged individuals, to small business concerns owned and controlled by women, and to small business concerns owned and controlled by veterans';

(2) in paragraph (7) by striking `minority enterprises' and inserting `small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and small business concerns owned and controlled by veterans';

(3) in paragraph (8) by striking `minority and other small business enterprises' and inserting `small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, small business concerns owned and controlled by veterans, and other small businesses';

(4) in paragraph (9) by striking `complete' and inserting `compete';

(5) by striking paragraph (11);

(6) by redesignating paragraph (12) as paragraph (11);

(7) in paragraph (11) (as so redesignated)--

(A) by striking `serviced-disabled' and inserting `service-disabled'; and

(B) by striking the period at the end and inserting `; and'; and

(8) by adding at the end the following:

`(12) make such recommendations and submit such reports as the Chief Counsel determines appropriate to the President, to the Chairmen and Ranking Members of the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, and to the Administrator of the Small Business Administration, with respect to issues and regulations affecting small businesses and the necessity for corrective action by any Federal agency or by Congress.'.

SEC. 5. ADDITIONAL FUNCTIONS.

(a) IN GENERAL- Section 203 of Public Law 94-305 (15 U.S.C. 634c) is amended--

(1) by inserting `(a)' before `The Office of Advocacy shall also perform'; and

REV_00145793

(2) in subsection (a) (as so designated)--

(A) in paragraph (4) by striking `and' at the end;

(B) in paragraph (5) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

`(6) maintain economic databases and make the information contained therein available to the Administrator of the Small Business Administration and to Congress;

`(7) carry out the responsibilities of the Chief Counsel under chapter 6 of title 5, United States Code; and

`(8) enter into a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy and transmit a copy of such memorandum to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.'.

(b) APPROPRIATION REQUEST- Section 203 of Public Law 94-305 (15 U.S.C. 634c) is further amended by adding at the end the following:

`(b)(1) For each fiscal year, the Chief Counsel shall transmit the Office of Advocacy's appropriation estimate and request to the Office of Management and Budget, the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

`(2) Each budget of the United States Government submitted by the President shall include a separate statement of the amount of appropriations requested for the Office of Advocacy.'.

SEC. 6. DEPUTY CHIEF COUNSELS AND REGIONAL ADVOCATES.

Section 204 of Public Law 94-305 (15 U.S.C. 634d) is amended--

(1) by inserting `(a)' before `In carrying out'; and

(2) by adding at the end the following:

`(b)(1) The Chief Counsel may appoint 2 individuals to serve as Deputy Chief Counsels.

`(2) Notwithstanding any other provision of this section, the pay rate for each Deputy Chief Counsel may not exceed the rate of basic pay for level III of the Senior Executive Service.

`(3) Individuals appointed to positions under this subsection shall not be counted toward the limitation contained in subsection (a)(1) regarding the number of individuals who may be compensated at a rate in excess of the lowest rate for GS-15 of the General Schedule.

`(c) The Chief Counsel may appoint regional advocates within each Standard Federal Region as appropriate. Such regional advocates shall--

REV_00145794

`(1) assist in examining the role of small business in the economy of the United States by identifying academic and other research institutions that focus on small business concerns and linking these research resources to research activities conducted by the Office of Advocacy;

`(2) assist in representing the views and interests of small business concerns before Federal agencies whose policies and activities may affect small business;

`(3) in coordination with the Small Business and Agriculture Regulatory Enforcement Ombudsman, assist the functioning of regional small business fairness boards;

`(4) assist in enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government that are of benefit to small business concerns and the means by which small business concerns can participate in or make use of such programs and services; and

`(5) carry out such duties pursuant to the mission of the Office of Advocacy as the Chief Counsel may assign.'.

SEC. 7. OVERHEAD AND ADMINISTRATIVE SUPPORT.

Section 205 of Public Law 94-305 (15 U.S.C. 634e) is amended by inserting before `Each department' the following:

`(a) The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations of the Administration, together with such equipment, office supplies, communications facilities, and personnel and maintenance services as may be necessary for the operation of such offices.

`(b)'.

SEC. 8. REPORTS.

Section 206 of Public Law 94-305 (15 U.S.C. 634f) is amended by striking `The Chief Counsel may' and all that follows through `on his activities.' and inserting the following:

`(a) Not less than annually, the Chief Counsel shall submit to the President, the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Government Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives, and the Administrator of the Small Business Administration a report on agency compliance with chapter 6 of title 5, United States Code.

`(b) In addition to the reports required by this title, the Chief Counsel may prepare and publish such other reports as the Chief Counsel determines appropriate.

`(c)'.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Section 207 of Public Law 94-305 (15 U.S.C. 634g) is amended by striking `not to exceed

REV_00145795

$1,000,000' and inserting `$10,000,000 for fiscal year 2003, $12,000,000 for fiscal year 2004, and $14,000,000 for fiscal year 2005'.

SEC. 10. CONFORMING AMENDMENTS.

(a) EXECUTIVE PAY SCHEDULE- Title 5, United States Code, is amended--

(1) in section 5314 by adding at the end the following:

`Chief Counsel for Advocacy, Small Business Administration.'; and

(2) in section 5315 by striking the following:

`Chief Counsel for Advocacy, Small Business Administration.'.

(b) RURAL TOURISM TRAINING PROGRAM- Section 311 of the Small Business Administration Reauthorization and Amendments Act of 1990 (15 U.S.C. 653 note; 104 Stat. 2832) is amended by striking `Chief Counsel for Advocacy' and inserting `Administrator'.

(c) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN- Section 30(b)(2) of the Small Business Act (15 U.S.C. 657(b)(2)) is amended--

(1) in subparagraph (D), by striking `and' at the end;

(2) in subparagraph (E), by striking the period and inserting `; and'; and

(3) by adding at the end the following:

`(F) enter into a memorandum of understanding with the Office of Advocacy regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy.'.

Passed the House of Representatives May 21, 2002.

Attest:

Clerk.

END

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Magda E. Angulo/WHO/EOP@EOP [WHO] <Magda E. Angulo>
Sent: 5/23/2002 4:04:21 AM
Subject: : Re: PRA and CIA Computers at Nebraska Ave. CONFIRMED 5/23 at 3:30pm

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-MAY-2002 08:04:21.00
SUBJECT:: Re: PRA and CIA Computers at Nebraska Ave. CONFIRMED 5/23 at 3:30pm
TO:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hate to say this, but I now have to be on Hill this afternoon from 3 to 5. I thus could do this meeting at 1:00 or any time tomorrow until 1:00. Sorry, but the conflict is unavoidable.

Magda E. Angulo
05/21/2002 09:39:24 AM
Record Type: Record

To: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop, joan hunerwadel/nsc/eop@eop, Edward McNally/WHO/EOP@EOP
cc:
bcc:
Subject: PRA and CIA Computers at Nebraska Ave. CONFIRMED 5/23 at 3:30pm

This meeting is confirmed for Thursday, May 23 at 3:30 p.m. in EEOB 348 (Bellinger's office). Thanks again.

Magda E. Angulo
05/20/2002 04:50:21 PM
Record Type: Record

To: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop, joan hunerwadel/nsc/eop@eop
cc:
bcc: Records Management@EOP
Subject: Re: PRA and CIA Computers at Nebraska Ave. TENTATIVE FOR 5/23 at 3:30pm

Brett, Lucy and Joan -

How does Thursday, 5/23 at 3:30pm in Bellinger's office sound?

Please confirm. Thanks for your efforts in helping me coordinate this meeting.

Magda E. Angulo
05/20/2002 03:38:20 PM
Record Type: Record

To: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop, Joan Hunerwadel/NSC/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: PRA and CIA Computers at Nebraska Ave.

Brett - Any idea of when you would be available?

Lucy is available on Mon. & Tues., I believe.
John Bellinger is available only on Thurs., I believe

Please let me know if we can still try to schedule sometime this week.
Thanks.

Magda E. Angulo
05/16/2002 05:38:06 PM
Record Type: Record

To: john b. bellinger/nsc/eop@eop, brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
cc:
bcc: Records Management@EOP
Subject: Re: PRA and CIA Computers at Nebraska Ave.

All-

Ed's schedule is open on Monday, Tuesday and Thrusday of next week after 2 p.m.

Please let me know your day and time preference and I will coordinate the meeting and confirm with everyone.

Thanks.

From: Edward McNally on 05/16/2002 09:18:24 AM
Record Type: Record

To: John B. Bellinger/NSC/EOP@EOP, Magda E. Angulo/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
bcc:
Subject: Re: PRA and CIA Computers at Nebraska Ave.

Magda -- Pls. schedule a meeting, next week is fine, with Brett, John and Lucy. Probably in Bellinger's office. Thanks -- Ed

John B. Bellinger
05/15/2002 09:43:53 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop
Subject: Re: PRA and CIA Computers at Nebraska Ave.

This is a complicated issue that we have grappled with at the NSC for some

time, without clear resolution. We should get together and talk.

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 5/23/2002 5:09:31 AM
Subject: : Congress Daily AM

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAY-2002 09:09:31.00
SUBJECT:: Congress Daily AM
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FINANCE
Senate GOP Plans New Offer On Terrorism Insurance Bill
Senate Republicans leading the fight on terrorism reinsurance
legislation are
poised to make a new counteroffer this week to Senate Democratic leaders,
sources
said Wednesday.
The new offer, crafted by Senate Banking ranking member Phil
Gramm, R-Texas,
and Sen. Mitch McConnell, R-Ky., will address GOP concerns about both the
formula
for coverage and the bill's tort reform language. Sources said the GOP
members hope
to make their new offer to Senate Majority Leader Daschle before the
chamber breaks
for the Memorial Day recess.
Daschle said Wednesday he remains determined to bring the
reinsurance
"legislation to the floor, either as an amendment to another bill; or, if
I need to make a
motion to proceed to the legislation sometime in the not-too-distant
future, I intend to do
```

so."
Speaking at the National Press Club, Daschle said he still
wanted to reach a
unanimous consent agreement with Republicans. And he disagreed that "the
urgency"
for the legislation has been reduced.
"I think there is still great urgency to pass the bill. I think
there is a very important
level of exposure here that needs to be addressed," he said.

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 5/23/2002 7:02:03 AM
Subject: : Letter to the President mention in WSJ Today
Attachments: P_RH3L7003_WHO.TXT_1.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:23-MAY-2002 11:02:03.00
SUBJECT:: Letter to the President mention in WSJ Today
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

- Bush letter_t.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_RH3L7003_WHO.TXT_1>
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New York City Partnership and Chamber of Commerce
One Battery Park Plaza, New York, NY 10004-1479 | tel: 212.493.7400 | fax: 212.344.3344 | web: www.nycp.org

May 22, 2002

President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Bush:

As you know, New York City is at the forefront of America's adjustment to the realities of the post 9/11 world. As the city's leading business organization, the New York City Partnership is focusing on the economic consequences of terrorism. One such consequence is the unavailability of terrorism insurance for real estate, which emerged shortly after the attack as a major obstacle to economic recovery and future growth. Your efforts to help us deal with this issue are deeply appreciated.

We have recently learned of a new dimension to this problem: the fact that workers compensation insurance that covers acts of war and terrorism will not be available to companies that have large concentrations of employees in one location. This problem is coming to a head first in New York, but it will not end here. Every major employer in America will need to confront this issue.

Attached is a letter from a number of our city's largest employers, all of which are threatened by the impending unavailability of workers compensation coverage. The Federal government must assume responsibility for protecting America's workforce from the consequences of acts of war and terrorism, or our economy – our society – could be shattered. We trust that you will, once again, take the initiative to work with Congress on enacting appropriate measures to deal with this issue. Our members are prepared to help!

Sincerely,

Robert B. Catell
Chairman

Kathryn S. Wylde
President & CEO

cc: Governor George E. Pataki
Mayor Michael Bloomberg

Chairman
Robert B. Catell
KeySpan
President and Chief Executive Officer
Kathryn S. Wylde
New York City Partnership and Chamber of Commerce, Inc.

Directors

David Bell
The Interpublic Group of Companies, Inc.
Geoffrey C. Bible
Philip Morris Companies Inc.
Paul R. Charron
Liz Claiborne Inc.
Robert Lee Dunham
TCB Management Corporation
Peter L. Faber
McDermott, Will & Emery
Peter A. Flaherty
McKinsey & Company, Inc.
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Lehman Brothers
Victor F. Ganzi
The Hearst Corporation
Richard A. Grasso
New York Stock Exchange, Inc.
Jonathan N. Grayer
Kaplan, Inc.
William B. Harrison, Jr.
J.P. Morgan Chase & Co.
David W. Heleniak
Shearman & Sterling
Robert M. Johnson
Bowne & Co., Inc.
Kay Koplovitz
Koplovitz & Company, LLC
Henry R. Kravis
Kohlberg Kravis Roberts & Co.
Edward Lewis
Essence Communications Partners
Eugene R. McGrath
Consolidated Edison, Inc.
Harold McGraw III
The McGraw-Hill Companies
Henry A. McKinnell, Ph.D.
Pfizer Inc
Katsuto Momii
Mitsui & Co. (U.S.A.), Inc.
Richard D. Parsons
AOL Time Warner Inc.
Peter J. Powers
Powers Global Strategies, LLC
James D. Robinson, III
RRE Ventures
James J. Schiro
PricewaterhouseCoopers
Daniel S. Shapiro
Schulte Roth and Zabel LLP
James S. Simpson
Victory Worldwide Transportation, Inc.
Jerry I. Speyer
Tishman Speyer Properties
Sy Sternberg
New York Life Insurance Company
Preston Robert Tisch
Loews Corporation
Alair A. Townsend
Crain's New York Business
Sanford I. Weill
Citigroup Inc.
Christopher J. Williams
The Williams Capital Group, L.P.
Fred Wilpon
Sterling Equities
Deborah C. Wright
Carver Bancorp, Inc.
Tim Zagat
Zagat Survey, LLC

May 22, 2002

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

As major employers in New York City, we are writing to you about an urgent problem that confronts the welfare of our employees, as well as the future of New York City and any other city with large concentrations of employees.

A number of prominent private citizens and public officials have called attention to the fact that the United States remains vulnerable to the threats of war or biological, nuclear or chemical attack. As required by law, under the terms of all workers compensation programs, death or injury from these risks cannot be excluded. And yet, given the magnitude of the potential losses to thousands, if not millions, of employees, it is impossible for any large employer to absorb these losses or for an insurer to insure them. Some recent modeling puts these losses, under certain scenarios, in the tens of billions of dollars.

The U.S. Constitution makes clear that it is the responsibility of government to protect its citizens from attack. As such, we believe it is entirely appropriate for the Congress to pass legislation authorizing the Administration to provide full relief against losses incurred from war, or biological, nuclear or chemical attack for any employer and any insurer who writes workers compensation insurance. The need is clear and is not complicated by the debate over tort reform.

Without this kind of Federal backstop, workers compensation coverage will quickly become unavailable to large concentrations of employees. Should this acute situation remain un-addressed, our companies will have to make difficult

decisions about future employee locations. This will be inefficient for us but, more importantly, highly disadvantageous to the future recovery and growth of New York City.

We hope you will give this proposal immediate, favorable consideration.

Sincerely yours,

American International Group, Inc.
Maurice R. Greenberg
Chairman & CEO

Bank of New York Company, Inc.
Thomas A. Renyi
Chairman & CEO

Bear Stearns Companies Inc.
James E. Cayne
Chairman & CEO

Citigroup, Inc.
Sanford I. Weill
Chairman & CEO

Goldman Sachs & Co.
Henry M. Paulson, Jr.
Chairman & CEO

HSBC USA
Youssef A. Nasr
President & CEO

J.P. Morgan Chase & Co.
William B. Harrison, Jr.
Chairman & CEO

Lehman Brothers, Inc.
Richard S. Fuld, Jr.
Chairman & CEO

Merrill Lynch & Company, Inc.
David H. Komansky
Chairman & CEO

Morgan Stanley & Co.
Philip J. Purcell
Chairman & CEO

Shearman & Sterling
David Heleniak
Senior Partner

The Depository Trust and Clearing Corporation
Jill M. Considine
Chairman & CEO

Verizon
Ivan G. Seidenberg
President & CEO

Wachtell, Lipton, Rosen & Katz
Richard D. Katcher
Managing Partner

NEW YORK CITY'S CEO'S CALL ON PRESIDENT BUSH AND CONGRESS TO PROVIDE WORKERS COMPENSATION RELIEF IN THE EVENT OF FUTURE TERRORIST ATTACKS

NEW YORK, May 22, 2002 - The CEO's of 14 major New York City-based corporations urged President George W. Bush and members of Congress to enact legislation authorizing full workers compensation relief against losses that would be incurred as a result of a possible future war or biological, nuclear or chemical attack. The appeal was made in a letter sent today. According to the CEO's, whose participation was coordinated by the New York City Partnership & Chamber of Commerce, potential workers compensation payments for death or disability could, under certain worst-case scenarios, create financial losses in the billions or ten of billions of dollars for some large employers or their insurers. In the letter sent to President Bush, the group warned that workers compensation coverage will quickly become unavailable unless the Federal government agrees to make changes to reflect new threats, especially to major metropolitan cities.

"We have recently learned of a new dimension to new realities of the post 9/11 world," said New York City Partnership President and CEO Kathryn Wylde. "Workers compensation insurance that covers acts of war and terrorism will not be available to companies that have large concentrations of employees in one location. This problem is coming to a head first in New York, but it will not end here. Every major employer in America will need to confront this issue."

Current state workers compensation laws mandate coverage for all employees, and such coverage cannot be narrowed by either the employer or insurer. Unlike other forms of insurance, therefore, death or injury from acts of war or terrorism cannot be excluded. As a result, some insurers already are refusing to write workers compensation policies for large employers, and premiums for those that do are increasing significantly.

- more -

The letter, which was forwarded to all members of the Senate and the U.S. House of Representatives, asks Congress to assume responsibility for protecting America's workforce from the consequences of acts of war and terrorism. Should the situation not be addressed, the New York City business leaders warn, large companies will have to make difficult decisions about future employee locations.

"A number of prominent private citizens and public officials have called attention to the fact that the United States remains vulnerable to the threats of war or biological, nuclear or chemical attack," adds Ms. Wylde. "The U.S. Constitution makes clear that it is the responsibility of government to protect its citizens from attack. As such, we believe it is entirely appropriate for the Congress and the Administration to ensure full relief against losses incurred from war or attack."

The letter was signed by:

American International Group, Inc. Chairman & CEO Maurice R. Greenberg

Bank of New York Company, Inc. Chairman and CEO Thomas A. Renyi

Bear Stearns Companies Inc. Chairman and CEO James E. Cayne

Citigroup, Inc. Chairman and CEO Sanford I. Weill

Goldman Sachs & Co. Chairman and CEO Henry M. Paulson, Jr.

HSBC President and CEO Youssef A. Nasr

J.P. Morgan Chase & Co. Chairman and CEO William B. Harrison, Jr.

Lehman Brothers, Inc. Chairman and CEO Richard S. Fuld, Jr.

Merrill Lynch & Company, Inc. Chairman and CEO David H. Komansky

Morgan Stanley & Co. Chairman and CEO Philip J. Purcell

Shearman & Sterling Senior Partner David Heleniak

The Depository Trust and Clearing Corporation Chairman and CEO Jill M. Considine

Verizon President and CEO Ivan G. Seidenberg

Wachtell, Lipton, Rosen & Katz Managing Partner Richard D. Katcher

The New York City Partnership and Chamber of Commerce is the leading voice for New York City business. Its members include CEO's of the city's top corporate, investment and entrepreneurial firms. Working with the public sector, the Partnership mobilizes the resources of business to address issues that are central to the city's economy, such as rebuilding lower Manhattan, reform of the public education system and development of the infrastructure necessary to support emerging industries. In the wake of 9/11, the Partnership and its affiliate, the New York City Investment Fund, have leveraged the business community's assets to assess the economic impact of the terrorist attack and provide financial and strategic support to small businesses affected by the disaster.

###

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2002 2:07:01 PM
Subject: : LRM PTM110 - - HUD Draft Bill on Colonias Initiative
Attachments: P_DHOL7003_WHO.TXT_1.doc; P_DHOL7003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-MAY-2002 18:07:01.00
SUBJECT:: LRM PTM110 - - HUD Draft Bill on Colonias Initiative
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/23/2002 06:06 PM ----------

From: P. Thaddeus Messenger on 05/23/2002 06:06:03 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM110 - - HUD Draft Bill on Colonias Initiative

LRM ID: PTM110
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 23, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Draft Bill on Colonias Initiative

DEADLINE: 5:00 p.m. Friday, May 31, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached, please find draft versions of the bill text and the sectional analysis for HUD's Colonias Initiative. This is a provision of the President's Program.

Please provide your comments by 5:00 p.m. on Friday, May 31, 2002. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile. Please contact us immediately if you experience difficulty with the LRM or its attachments.

Thank you.

DISTRIBUTION LIST

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092-Office of Personnel Management - Harry Wolf - (202) 606-1424
019-Council on Environmental Quality - David Anderson - (202) 395-3113

EOP:
Stephen S. McMillin
Alan B. Rhinesmith
Francis S. Redburn
Dustin S. Brown
Jennifer Wagner Bell
James Boden
Mark J. Schwartz
David J. Haun
Randolph M. Lyon
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Matthew J. Schneider
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Rosalyn J. Rettman
Brian C. Conklin
Matthew Kirk
Lauren C. Lobrano
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM110 SUBJECT: HUD Draft Bill on Colonias Initiative

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
llr@do.treas.gov

REV_00145885

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cla@sba.gov @ inet
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lrm@hhs.gov
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usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
ola@opm.gov
CEQ LRM

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Dustin S. Brown/OMB/EOP@EOP
Jennifer Wagner Bell/OMB/EOP@EOP
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Thomas Reilly/OMB/EOP@EOP
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Steven M. Mertens/OMB/EOP@EOP
Lisa B. Fairhall/OMB/EOP@EOP
Tad S. Gallion/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
Joseph F. Lackey Jr./OMB/EOP@EOP
Sheila Conley/OMB/EOP@EOP
Courtney B. Timberlake/OMB/EOP@EOP
Elizabeth A. Bernhard/OMB/EOP@EOP
Kenneth S. Kelly/OMB/EOP@EOP
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Pamula L. Simms/OMB/EOP@EOP
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Arthur W. Stigile/OMB/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
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NEC LRM
Diana E. Furchtgott-Roth/CEA/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
WHGC LRM
Philip J. Perry/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
John F. Wood/OMB/EOP@EOP
Rosalyn J. Rettman/OMB/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DHOL7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DHOL7003_WHO.TXT_2>

SEC.__. COLONIAS GATEWAY INITIATIVE.

(a) IN GENERAL.—The Secretary may make grants to a regional organization, or to regional organizations, for the purpose of enhancing the availability of affordable housing, economic opportunity, and infrastructure in the colonias.

(b) SELECTION OF REGIONAL ORGANIZATIONS.—The Secretary shall competitively select a regional organization, or regional organizations, to carry out the activities of this section. The Secretary shall establish selection criteria that reflect the purposes of this section and that include a demonstration of the extent to which the applicant has the capacity to:

(1) enhance the availability of affordable housing, economic opportunity, and infrastructure in the colonias by carrying out the eligible activities set forth in subsection (e);

(2) provide assistance in each State in which the colonias are located;

(3) form partnerships with the public and private sectors and local and regional housing and economic development intermediaries to achieve the purposes of this section;

(4) ensure accountability to the residents of the colonias through active and ongoing outreach to, and consultation with, residents and local governments; and

(5) meet such other criteria as the Secretary may specify.

As part of any selection determination, the Secretary shall consider the applicant's proposed work plan.

(c) ADVISORY BOARD.

(1) MEMBERSHIP.—The Secretary shall appoint an Advisory Board that shall consist of nine members, including:

(A) one representative of each State with colonias;

(B) four members of non-profit or private sector organizations with substantial investments in the colonias, and with at least one such member representing the private sector; and

(C) one member who shall be a resident of, and represent the residents of, the colonias.

(2) CHAIRPERSON.—The Secretary shall designate a member of the Advisory Board as Chairperson.

(3) TERM.—Advisory Board members shall be appointed for two year terms that the Secretary may renew.

(4) COMPENSATION.—Advisory Board members shall serve without compensation, but the Secretary may provide for reimbursement of their travel and other expenses required by the performance of their duties herein.

(5) FUNCTIONS.—The Advisory Board shall perform the following functions:

(A) assist any selected regional organization in the development and implementation of its final work plan;

(B) review and approve all final work plans;

(C) assist the Secretary in monitoring and evaluating the performance of any regional organization in implementing its final work plan; and

(D) provide such other assistance as the Secretary may request.

(d) WORK PLANS.—Any regional organization applying for selection pursuant to subsection (b) shall, in its application, include a proposed work plan. Once having been competitively selected pursuant to subsection (b), any selected regional organization shall, annually thereafter, and subject to the Secretary's determination to continue to provide grant amounts to such regional organization, submit a proposed work plan to the Advisory Board and the Secretary for review and approval. In any fiscal year, including the fiscal year in which any regional organization is selected pursuant to subsection (b), prior to final determination and allocation of specific grant amounts, any selected regional organization shall, with the assistance of the Advisory Board, develop a final work plan that thoroughly describes how the regional organization will use specific grant amounts to carry out its functions under this section. A work plan shall address, in part, the effects its implementation would have on areas around colonias. A work plan or work plans (if more than one regional organization has been selected) for any fiscal year shall ensure that grant amounts are used in a manner that results in assistance and investments for colonias in each State containing colonias, and the Advisory Board and the Secretary may require a minimum level of such investment and assistance as a condition of the approval of the work plans. Until the Advisory Board and the Secretary approve a final work plan, which includes a specific grant amount, no regional organization shall receive any grant amounts pursuant to this section. To the extent that the Advisory Board or the Secretary does not approve a work plan, the Advisory Board or the Secretary shall, to the maximum extent practicable, assist the selected regional organization that submitted the plan to develop an approvable plan.

(e) ELIGIBLE ACTIVITIES.—Grant amounts under this section may be used to carry out the following eligible activities to benefit the colonias—

(1) coordination of public, private, and community-based resources;

(2) technical assistance and capacity building, including training, business planning and investment advice, and the development of marketing and strategic investment plans;

(3) sustainable investments in housing, community infrastructure, and economic development, and in replicable business models;

(4) development of comprehensive, regional, socio-economic and other data, and the establishment of a centralized information resource, to facilitate strategic planning and investments;

(5) housing counseling and financial education, including counseling and education about avoiding predatory lending;

(6) improving access to financial services;

(7) administrative and planning costs of any regional organization in carrying out this section, except that the Secretary may limit the amount of grant funds used for such costs; and

(8) such other activities as the Secretary deems appropriate to carry out this section.

(f) GRANT AGREEMENTS. –A grant under this section shall be made only pursuant to a grant agreement between the Secretary and any regional organization selected under this section.

(g) TERMINATION AND RECAPTURE.—If the Secretary determines that any regional organization awarded a grant under this section has not substantially fulfilled its obligations under its final work plan or grant agreement, the Secretary shall

terminate the regional organization's participation under this section, and shall recapture any unexpended grant amounts.

(h) DETAILS FROM OTHER AGENCIES.—Upon request of any selected regional organization that has an approved work plan, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to that regional organization to assist it in carrying out its duties under this section.

(i) ENVIRONMENTAL REVIEW.—For purposes of environmental review, projects assisted by grant amounts under this section shall be treated as special projects that are subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, and shall be subject to regulations issued by the Secretary to implement such section.

(j) AUTHORIZATION.—There are authorized to be appropriated $16,000,000 for fiscal year 2003, and such sums as may be necessary for each of fiscal years 2004 through 2009, to carry out this section.

(k) SUNSET.—No new grants may be provided under this section after September 30, 2009.

(l) DEFINITIONS.—For the purposes of this section:

(1) The term "colonia" means any identifiable community that--

(A) is in the State of Arizona, California, New Mexico, or Texas;

(B) is in the United States-Mexico border region, as defined in paragraph (4);

(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

(D) was in existence and generally recognized as a colonia before the date of the enactment of this section.

(2) The term "regional organization" means a nonprofit organization or a consortium of nonprofit organizations with the capacity to serve colonias.

(3) The term "Secretary" means the Secretary of Housing and Urban Development.

(4) The term "United States-Mexico border region" means the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000.

May 2002 DRAFT

COLONIAS GATEWAY INITIATIVE
Sectional-by-Section Analysis

Background

The Colonias Gateway Initiative (the Initiative) is designed to enhance the capacity of organizations working in the U.S.-Mexico border region to develop affordable housing and infrastructure and to foster economic opportunity in the colonias. The Initiative's role would be as a catalyst, helping businesses, nonprofit organizations, and State and local governments to make sustainable, long-term investments in the quality of life for colonias residents, investments that would continue after the Initiative's funding ends.

To that end, the HUD Secretary would select, through a competitive process, one or more regional organizations with the capacity to achieve these ends.

Section-by-Section

(a). IN GENERAL. This would authorize the Secretary to make annual grants to a regional organization, or regional organizations, to carry out the purposes of this Colonias Initiative.

(b). SELECTION OF REGIONAL ORGANIZATION. After enactment of this section, on a competitive basis, the Secretary would select one or more regional organizations that would be capable of carrying out the purposes of this section. It is HUD's intent that once a regional organization or organizations are selected, any such organization would continue to be funded under this section to the extent that the Secretary determines that continuing to fund the organization would further the purposes of this section, and to the extent that the organization continues to substantially fulfill its obligations under its final work plans and grant agreements. After the initial selection of a regional organization or organizations, however, the Secretary would have the authority, at any time, to conduct any additional competitions that the Secretary determines to be necessary or appropriate to further carry out the activities of this section.

Criteria for selection would include the extent to which the applicant has the capacity to: enhance the availability of affordable housing, economic opportunity and infrastructure in the colonias; provide assistance in each State with colonias; form partnerships with the public and private sectors and local and regional housing and economic development intermediaries to achieve the purposes of this section; and ensure accountability to the residents of the colonias.

The applicant's proposed work plan would be an essential component of selection. Proposed work plans submitted by applicants would provide HUD with valuable information with respect to the capacity of various applicants to use various grant amounts to carry out the purposes of this section.

(c). ADVISORY BOARD. The Advisory Board would have nine members appointed by the Secretary. It would include one representative for each of the four States with colonias (Texas, New Mexico, Arizona, and California), four members of nonprofit and private organizations that have substantial investments in the colonias, and one colonias resident representative. The Secretary would choose which member was chair. The members would serve two-year terms, renewable at the Secretary's discretion. Advisory Board members would serve without compensation except, at the Secretary's discretion, for travel and other expenses required by the performance of their Advisory Board duties.

The Advisory Board's functions would include assisting each selected regional organization to develop and implement its final work plan, reviewing and approving (or not approving) each final work plan, assisting the Secretary in evaluating each regional organization's performance in carrying out its final work plan, and other assistance as the Secretary may request.

(d). WORK PLAN. This subsection would require that each application include a proposed work plan. Again, a proposed work plan in each application would provide HUD with valuable information with respect to the capacity of various applicants to use various grant amounts to carry out the purposes of this section.

Once having been competitively selected, any selected regional organization, without further competition, would continue to receive grant amounts in subsequent fiscal years to the extent that the Secretary determines that such funding should continue. To enhance the prospects of successful leveraging and effective implementation of this Initiative in the colonias, HUD intends to select a regional organization or regional organizations and continue to fund any such organizations in subsequent fiscal years.

Any regional organization that is to continue to receive funding would, in any subsequent fiscal year, submit a proposed work plan to the Advisory Board and HUD for review and approval. In any fiscal year, including the fiscal year in which any regional organization is selected, prior to final determination and allocation of specific grant amounts, any selected regional organization would work with the Advisory Board to determine a specific grant amount and specific activities to be included in its final work plan. Both the Advisory Board and the Secretary would be required to approve the final work plan before any selected regional organization receives any grant amounts. To the extent that the Advisory Board or the Secretary does not approve a work plan, the Advisory Board or the Secretary would be required, to the maximum extent practicable, to assist the selected regional organization that submitted the plan to develop an approvable plan.

A work plan would be required to address, in part, the effects its implementation would have on areas around colonias. A work plan or work plans (if more than one regional organization has been selected) for any fiscal year would be required to ensure that grant amounts are used in a manner that results in assistance and investment for colonias in each State containing colonias, and the Advisory Board and the Secretary would have the authority to require a minimum level of such investment and assistance as a condition of approval of any work plan.

(e). ELIGIBLE ACTIVITIES. In listing forms of assistance that a work plan could include and a regional organization could use, this subsection would set the tone for their approaches. Important working principles would include the coordination of public, private, and community-based organizations and enterprises; the provision of technical assistance in how to make private business enterprises and investments work in the colonias; and the development of investments in housing, community infrastructure and economic development that would be sufficiently robust to continue on after financial support from the Initiative ended. The creation of replicable business models would be a way for the Initiative to extend the benefits of its investments beyond the immediate scope of its funding.

Another form of assistance would be helping colonias residents gain access to financial services, with an educational component to prevent them from becoming victims of predatory practices.

The bill would authorize the Secretary to limit the amount of Initiative funds spent on a regional organization's administrative and planning costs.

(f). GRANT AGREEMENT. The Secretary and each regional organization would have to execute a grant agreement after approval of the regional organization's final work plan.

(g). TERMINATION AND RECAPTURE. If the regional organization failed to fulfill its obligations under the final work plan or the grant agreement, the Secretary would be required to terminate its participation and recapture unexpended grant money.

(h). DETAILS FROM OTHER AGENCIES. Any Federal agency could supply personnel to help a selected regional organization with an approved work plan to carry out its Initiative duties, provided the Federal agency was reimbursed.

(i). ENVIRONMENTAL REVIEW. This provision would provide for the State or local government assumption of Federal environmental review responsibilities by making projects assisted by grant funds under this section subject to HUD's environmental assumption provisions and regulations.

(j). AUTHORIZATION. The Initiative would have a seven-year life. The first year's authorization would be $16 million. The subsequent authorizations would be for the amounts necessary for the Initiative's remaining six years.

(k). SUNSET. The Initiative would sunset in seven years by barring new grants after September 30, 2009.

(l). DEFINITIONS. This subsection would define these terms: colonia, regional organization, Secretary, and United States-Mexico border region.

From: CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;lucy g. clark/who/eop@eop [WHO] <lucy g. clark>;joan hunerwadel/nsc/eop@eop [NSC] <joan hunerwadel>
CC: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>
Sent: 5/24/2002 5:15:40 AM
Subject: : PRA and CIA Computers - NEXT WEEK

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Magda E. Angulo ( CN=Magda E. Angulo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2002 09:15:40.00
SUBJECT:: PRA and CIA Computers - NEXT WEEK
TO:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:lucy g. clark ( CN=lucy g. clark/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
TO:joan hunerwadel ( CN=joan hunerwadel/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This meeting will not take place today due to scheduling conflicts.

Is next week, Tuesday, May 28 at 1 p.m. a possibility?

Thanks for your patience and flexibility in getting this meeting
scheduled.
```

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Heather M. Lyster/OA/EOP@EOP [OA] <Heather M. Lyster>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/24/2002 7:05:45 AM
Subject: : Enron
Attachments: F_UH3M7003_OA.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2002 11:05:45.00
SUBJECT:: Enron
TO:Heather M. Lyster ( CN=Heather M. Lyster/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The memo has been slightly revised. Please use this version instead of
the one I sent you before. Thanks.

I am leaving to catch a plane. Brett Kavanaugh will take over for me from
here.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_UH3M7003_OA.TXT_1>
```

May 24, 2002

MEMORANDUM FOR ALL EOP EMPLOYEES

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SUBPOENA

On May 22, 2002, the Senate Governmental Affairs Committee issued the attached subpoena to the Executive Office of the President requesting documents pertaining to certain Enron-related communications occurring between January 1, 1992, and December 2, 2002. Please read the subpoena carefully.

You are directed to produce to Counsel's Office all official EOP documents in your possession (including any e-mails) responsive to the subpoena **no later than May 31, 2002**.

Please be advised that you are expected to perform a reasonable, diligent, and good faith search of all official documents in your possession for materials responsive to the subpoena.

You will have satisfied your responsibilities if you produce all of your official EOP documents relating to, referring to, or incorporating the following:

(a) Communications between Enron and any EOP employee occurring between January 1, 1992, and December 2, 2001

(Note: "Enron" means anyone you knew was working for, or communicating on behalf of, Enron Corporation or one of its businesses.); and

(b) Communications about Enron between any EOP employee and any employee of any Executive Branch department or agency occurring between January 1, 1992, and December 2, 2001

(Note: The Executive Office of the President and the Office of the Vice President are not departments or agencies. **Thus, category (b) does not include internal communications solely between or among EOP/OVP employees**.)

You are also directed to complete the attached Certification and return it **by May 31**. Note that you must complete the Certification whether or not you have responsive documents.

All documents and Certifications should be delivered to Hana Brilliant (6-5049) in EEOB 158.

If you have any questions, please call Associate Counsels Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

CERTIFICATION

Please check one of the following:

_____ I certify that I performed a reasonable, diligent, and good faith search of all the official EOP documents in my possession (including any e-mails I have) for materials responsive to the Senate Governmental Affairs Committees subpoena dated May 22, 2002, and have produced all such documents to the Office of the Counsel to the President.

_____ I certify that I performed a reasonable, diligent, and good faith search of all the official EOP documents in my possession (including any e-mails I have) for materials responsive to the Senate Governmental Affairs Committees subpoena dated May 22, 2002, and have no such documents.

NAME (please print):

SIGNATURE:

DATE:

OFFICE:

PHONE NUMBER:

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Heather M. Lyster/OA/EOP@EOP [OA] <Heather M. Lyster>
Sent: 5/24/2002 7:08:19 AM
Subject: : Enron

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-MAY-2002 11:08:19.00
SUBJECT:: Enron
TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather M. Lyster ( CN=Heather M. Lyster/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Hana:

I am leaving to catch a plane. Brett will take over for me from here.
Show him the e-subpoena when it is ready.

Brett:

TO DO LIST:

Send subpoena to Heather Lyster
Resolve OVP e-mail distro issue.
Give Womack & Bravo a heads up when the e-mail is about to go out to the
EOP.
Send out the memo/cert and e-subpoena to the EOP.

Thanks everyone.
```

From: CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/24/2002 10:45:18 AM
Subject: : Re: PRA and CIA Computers - NEXT WEEK

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-MAY-2002 14:45:18.00
SUBJECT:: Re: PRA and CIA Computers - NEXT WEEK
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

would you be available 11-12am?

Joan Hunerwadel
05/24/2002 02:24:25 PM
Record Type: Record

To: Magda E. Angulo/WHO/EOP@EOP
cc:
bcc:
Subject: Re: PRA and CIA Computers - NEXT WEEK

He has 11-12 and after 5 open.

Magda E. Angulo
05/24/2002 11:50:32 AM
Record Type: Record

To: Joan Hunerwadel/NSC/EOP@EOP
cc:
bcc:
Subject: Re: PRA and CIA Computers - NEXT WEEK

ok... any other options that day?

Joan Hunerwadel
05/24/2002 11:13:28 AM
Record Type: Record

To: Magda E. Angulo/WHO/EOP@EOP
cc:
bcc:
Subject: Re: PRA and CIA Computers - NEXT WEEK

May 28 at 1 does not work for John Bellinger

Magda E. Angulo
05/24/2002 09:15:33 AM
Record Type: Record

To: brett m. kavanaugh/who/eop@eop, lucy g. clark/who/eop@eop, joan hunerwadel/nsc/eop@eop
cc: Edward McNally/WHO/EOP@EOP, John B. Bellinger/NSC/EOP@EOP
bcc:
Subject: PRA and CIA Computers - NEXT WEEK

This meeting will not take place today due to scheduling conflicts.

Is next week, Tuesday, May 28 at 1 p.m. a possibility?

Thanks for your patience and flexibility in getting this meeting scheduled.

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/24/2002 2:08:19 PM
Subject: : Re: Inquiry from Library of Congress

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:24-MAY-2002 18:08:19.00
SUBJECT:: Re: Inquiry from Library of Congress
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Per my voice-mail. Adam, 5-1268
---------- Forwarded by Adam F. Greenstone/OA/EOP on 05/24/2002 06:08 PM ----------

Adam F. Greenstone
05/21/2002 04:58:54 PM

Record Type: Record

To: Phillip Larsen/OA/EOP@EOP
cc: James F. Daniel/OA/EOP@EOP
bcc: Records Management@EOP
Subject: Re: Inquiry from Library of Congress

Given the substance of this inquiry, I recommend that we coordinate with WH Counsel/Brett.

James F. Daniel
05/21/2002 02:57:05 PM
Record Type: Record

To: Phillip Larsen/OA/EOP@EOP
cc: adam f. greenstone/oa/eop@eop, andris kalnins/oa/eop@eop
bcc:
Subject: Re: Inquiry from Library of Congress

I am not sure... the phrase is new to me.

Phillip Larsen
05/21/2002 02:47:09 PM
Record Type: Record

To: James F. Daniel/OA/EOP@EOP
cc: adam f. greenstone/oa/eop@eop, andris kalnins/oa/eop@eop
bcc:
Subject: Re: Inquiry from Library of Congress

What is "Senior Offical Travel"?

James F. Daniel
05/21/2002 02:29:45 PM
Record Type: Record

To: Phillip Larsen/OA/EOP@EOP
cc: Adam F. Greenstone/OA/EOP@EOP, Andris Kalnins/OA/EOP@EOP
Subject: Inquiry from Library of Congress

Phil, please see attached and advise... thanks, jim
---------- Forwarded by James F. Daniel/OA/EOP on 05/21/2002 02:26 PM ----------

Judy R. Morgan
05/21/2002 12:46:18 PM
Record Type: Record

To: Andris Kalnins/OA/EOP@EOP
cc: James F. Daniel/OA/EOP@EOP
Subject: Inquiry from Library of Congress

Andris

I received a telephone call from Elaine Halchin. Elaine is with the Congressional Research Service, Library of Congress. Her telephone number is 202 707-0646. She is responsible for all requests for information realted to travel policy for the Federal government. She has had a request for information regarding Policy, Procedures, Guidelines, and Instructions related to Senior Official Travel and the expense calculations and accounting. Particularly as it relates to reimbursement of expenses to the government by travelers and how calculation of reimbursements distribution. RE: 1982 memo referenced in the Washington Post 5/21. I told her that I would need to make a few inquiries before I was able to respond to her. Mr. Danial has asked me to forward this information to you.

Thank-you

Judy

From: CN=Hana F. Brilliant/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/28/2002 4:34:55 AM
Subject: : meetings schedule
Attachments: P_9GZM7003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-MAY-2002 08:34:55.00
SUBJECT:: meetings schedule
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

John Cloud move his 1:30pm meeting today to tomorrow at 11am. He will not
be in today.
-Hana
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_9GZM7003_WHO.TXT_1>
```

Friday, May 24

11:30am Meet with Ambassador Robert Zoellick - USTR
Winder Building, 600 17th Street, Room 205
395-6890
Brett and Brad

4:00pm Telephone call with Director Mitch Daniels
Brad

Tuesday, May 28

9:00am Meet with Helgi Walker – Counsel
163 EEOB
67361
Brett and Chris

9:30am Meet with Laurent Charbonnet - NSC
493 EEOB
456-9251
Chris and Brad

10:00am Meet with Wally Mullin – CEA
97 EEOB
395-5614
Chris and Brad

10:30am Meet with R. Glenn Hubbard - CEA
94 EEOB
395-5042
Chris and Brad

11:00am Meet with John Maisto - NSC
361 EEOB
456-9131
Chris and Brad

11:30am Meet with Gary Edson - NSC
WW ground floor
456-9471
Brad and Brett

1:00pm Meet with Cathie Martin – OVP
272 EEOB
546-9033
Brad and Brett

REV_00145938

2:00pm Meet with Randy Kroszner – CEA
90 EEOB
395-5046
Chris and Brad

2:30pm Meet with Kirk Blalock – Public Liaison
188 EEOB
546-3771
Brett and Brad

3:00pm Meet with Alan Rhinesmith – OMB
9201 NEOB
395-4516
Brad and Brett

3:30pm Meet with Robert Fairweather – OMB
8001 NEOB
395-4586
Brad and Brett

5:00pm Meet with Ron Christie – was with OVP, now with Freedom Corp
736 Jackson Place
456-7358
Chris and Brad

5:30pm Meet with James Connaughton – CEQ
730 Jackson Place
456-6224
Brett and Chris

Wednesday, May 29

9:00am Meet with Mary Matalin – OVP
WW
456-9042
Brad and Brett

11:00am Meet with John Cloud - NSC
391 EEOB
456-9131
Chris and Brad

2:00pm Meet with Virginia Stephens – CEQ
722 Jackson Place
395-0801
Brett and Chris

Still waiting on…

- Claire Buchan – traveling with the President untill Wed.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/28/2002 10:55:59 AM
Subject: : Re: LRM AMB190 - - OMB Request for Views on HR4734 Alaska Federal Lands Management Demonstration Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-MAY-2002 14:55:59.00
SUBJECT:: Re: LRM AMB190 - - OMB Request for Views on HR4734 Alaska Federal Lands Management Demonstration Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

They are asking you to review the bill as introduced. Here it is from Thomas:

To amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans, and for other purposes.
(Introduced in House)
HR 3148 IH
107th CONGRESS
1st Session
H. R. 3148
To amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans, and for other purposes.
IN THE HOUSE OF REPRESENTATIVES
October 16, 2001
Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Resources

A BILL
To amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. ALASKA NATIVE VETERANS.
Section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g) is amended as follows:
(1) Paragraphs (1) and (2) of subsection (a) are amended to read as follows:
`(1) The period for filing allotments under this Act shall end on July 31, 2003. A person described in paragraph (1) or (2) or subsection (b) shall be eligible for an allotment of not more than two parcels of Federal land totaling 160 acres or less.
`(2) Allotments may be selected from--
`(A) vacant lands that are owned by the United States; or
`(B) lands that have been selected or conveyed to the State of Alaska or a Native Corporation if such entity voluntarily relinquishes or conveys to the United States the land for the allotment.'.
(2) Subsection (a)(3) is repealed.
(3) In subsection (b)(1), strike `A person' and insert `Except as provided in paragraph (3), a person'.
(4) Subsection (b)(1)(B) is amended to read as follows:
`(B) is a veteran who served during the period between August 5, 1964, and May 7, 1975, including such dates.'.
(5) Subsection (b)(2) is amended to read as follows:
`(2) If an individual who would otherwise have been eligible for an allotment dies before applying for the allotment, an heir on behalf of the estate of the deceased veteran may apply for and receive the allotment.'.
(6) In subsection (b)(3), insert before the period the following: `, except for an heir who applies and receives an allotment on behalf of the estate of a deceased veteran pursuant to paragraph (2)'.

(7) Subsection (e) is amended to read as follows:
`(e) REGULATIONS- All regulations in effect immediately before the enactment of subsection (f) that were promulgated under the authority of this section shall be repealed in accordance with section 552(a)(1)(E) of the Administrative Procedure Act (5 U.S.C. 552(a)(1)(E))'.
(8) Add at the end the following new subsection:
`(f) APPROVAL OF ALLOTMENTS- (1) Subject to valid existing rights, and except as otherwise provided in this subsection, not later than January 31, 2005, the Secretary shall approve an application for allotments filed in accordance with subsection (a) and issue a certificate of allotment which shall be subject to the same terms, conditions, restrictions, and protections provided for such allotments.
`(2) Upon receipt of an allotment application, but in any event not later than October 31, 2003, the Secretary shall notify any person or entity having an interest in land potentially adverse to the applicant of their right to initiate a private contest or file a protest under existing Federal regulations.
`(3) Not later than January 31, 2005, the Secretary shall--
`(A) if no contest or protest is timely filed, approve the application pursuant to paragraph (1); or
`(B) if a contest or protest is timely filed, stay the issuance of the certificate of allotment until the contest or protest has been decided.'.
SEC. 2. CODIFICATION.
Unless otherwise provided in an agreement to which the tribe or tribal organization is a party, (including a Tribal-State compact), section 2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter 372) shall not apply to the Indian tribe or tribal organization when the Indian tribe or tribal organization is carrying out a health care program pursuant to a self-determination contract, compact, annual funding agreement, grant, or cooperative agreement under the Indian Self Determination Act.
---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/28/2002 02:55 PM ----------

From: Anna M. Briatico on 05/28/2002 02:51:15 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@EOP
cc:
Subject: Re: LRM AMB190 - - OMB Request for Views on HR4734 Alaska Federal Lands Management Demonstration Act

The latter. We are asking folks to review the bills as introduced.

From: CN=Carlos E. Bonilla/OU=OPD/O=EOP [OPD]
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;jane.molloy@mail.doc.gov [UNKNOWN] <jane.molloy@mail.doc.gov>;kathleen.cooper@esa.doc.gov [UNKNOWN] <kathleen.cooper@esa.doc.gov>;kirk.vantine@ost.dot.gov [UNKNOWN] <kirk.vantine@ost.dot.gov>;Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;brown@nber.org [WHO] <brown@nber.org>;Douglas J. Holtz-Eakin/CEA/EOP@EOP [CEA] <Douglas J. Holtz-Eakin>;mark.warshawsky@do.treas.gov [UNKNOWN] <mark.warshawsky@do.treas.gov>;lucy.huffman@do.treas.gov [UNKNOWN] <lucy.huffman@do.treas.gov>;Ado A. Machida/OVP/EOP@EOP [OVP] <Ado A. Machida>
Sent: 5/28/2002 11:16:07 AM
Subject: : Thanks for your time Fri
Attachments: P_QXJN7003_WHO.TXT_1.pdf

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carlos E. Bonilla ( CN=Carlos E. Bonilla/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:28-MAY-2002 15:16:07.00
SUBJECT:: Thanks for your time Fri
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:jane.molloy@mail.doc.gov ( jane.molloy@mail.doc.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:kathleen.cooper@esa.doc.gov ( kathleen.cooper@esa.doc.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:kirk.vantine@ost.dot.gov ( kirk.vantine@ost.dot.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Cesar Conda ( CN=Cesar Conda/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:brown@nber.org ( brown@nber.org [ WHO ] )
READ:UNKNOWN
TO:Douglas J. Holtz-Eakin ( CN=Douglas J. Holtz-Eakin/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:mark.warshawsky@do.treas.gov ( mark.warshawsky@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:lucy.huffman@do.treas.gov ( lucy.huffman@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Ado A. Machida ( CN=Ado A. Machida/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I thought you all might be interested in the recent insurance pricing and
terms from Allianz


---------------------- Forwarded by Carlos E. Bonilla/OPD/EOP on
05/28/2002 03:13 PM ---------------------------



Charlotte Teklitz <charlotte_teklitz@amrcorp.com>
05/28/2002 11:36:59 AM
Record Type: Record

To: Carlos E. Bonilla/OPD/EOP@EOP
cc: Andy Blocker <Andy_Blocker@amrcorp.com>, Will Ris
<Will_Ris@amrcorp.com>
Subject: Thanks for your time Fri



Carlos,
```

Thanks for your time last Friday to talk about the adminstration's views on war risk insurance for airlines. As you asked, I've attached the marketing info we have received about the Allianz third party aviation war risk scheme, a competitor to the AIG syndicate. This information was relayed to us by AMR's insurance broker, Aon.

Best regards,
Charlotte Teklitz
Managing Director, Corporate Insurance and Risk Management
American Airlines
817-931-8904

Received: from mailhub1.amrcorp.com by aahdq01-gi1.aa.com; Thu, 02 May 2002 09:59:04 -0500
Received: from mailgate2.amrcorp.com (mailgate2.amrcorp.com [144.9.158.99]) by mailhub1.amrcorp.com (8.9.3/8.9.3) with ESMTP id KAA25127 for <charlotte.teklitz@aa.com>; Thu, 2 May 2002 10:00:43 -0500 (CDT)
Received: from smtp02.aon.com (smtp02.aon.com [165.125.1.32]) by mailgate2.amrcorp.com (8.9.3/8.9.3) with SMTP id JAA19836 for <charlotte.teklitz@aa.com>; Thu, 2 May 2002 09:57:28 -0500 (CDT)
Received: (qmail 24557 invoked from network); 2 May 2002 14:45:59 -0000
Received: from unknown (HELO usmtacst02.aon.com) (10.165.112.85) by 0 with SMTP; 2 May 2002 14:45:59 -0000
Received: by usmtacst02.aon.com(Lotus SMTP MTA v4.6.7 (934.1 12-30-1999)) id 86256BAD.0052306A ; Thu, 2 May 2002 09:57:39 -0500
Date: Thu, 2 May 2002 09:57:05 -0500
From: Vince_Catalli@ars.aon.com
Subject: ALLIANZ EXCESS AVN52D COVERAGE [Virus Checked]
To: vince_catalli@ars.aon.com
Message-id: <86256BAD.00522AA1.02@usmtacst02.aon.com>
MIME-version: 1.0
Content-type: multipart/mixed;
boundary="Boundary_(ID_QAyRqepc/hNsxKn3w/+1Cw)"
X-Lotus-FromDomain: AONNA

ATTACHED BELOW IS A COPY OF A PRESENTATION GIVEN BY ALLIANZ THIS MORNING IN
LONDON TO ANNOUNCE THIS SCHEME. FOR YOUR INFORMATION, NOTE THE FOLLOWING:

THIS IS NOT A RISKS ATTACHING SCHEME - ALLIANZ ARE "OPEN FOR BUSINESS" ON 8 MAY
2002 AND WHEN THE FIRST RISK ATTACHES, THE SCHEME WILL RUN FOR 12 MONTHS FROM
THAT DATE SO THAT ANY RISK INCEPTING AFTER THE FIRST RISK WILL BE FOR A PRO RATA
PERIOD - RISKS ATTACHING NEARER TO THE END OF 12 MONTHS WILL BE SUBJECT TO A
MINIMUM PREMIUM - THOSE ATTACHING NEARER TO THE START OF THE 12 MONTHS WILL
NOT.

THE RATING SHOWN IS NOT NEGOTIABLE - THERE ARE ADDITIONAL SUM INSURED BANDS WHICH WE WILL BE ADVISED OF ASAP - THE ONLY NEGOTIABLE FACTOR IS THE NO CLAIMS
BONUS FEATURE WHICH CAN BE UP TO 25% - THE NO CLAIMS BONUS IS A MASTER SLIP FEATURE AND WILL BE LOST TO ALL INSUREDS IF ONE HAS A CLAIM. THE AMOUNT OF NCB
WILL OF COURSE VARY AND ALLIANZ ARE "KEEN" FOR AIRLINES TO GET TOGETHER TO MAXIMISE THE NCB - THIS DILUTES THE AGGREGATE.

THE MASTER SLIP REFERS TO MASTER EVENTS WHICH APPLY TO INCIDENTS WHICH ARE ACTUALLY INSURED BY THE SCHEME AND ALLIANZ HAVE 45 DAYS IN WHICH TO

DECLARE A
MASTER EVENT.

THE MASTER SLIP CEASES AFTER 4 MASTER EVENTS OR EXHAUSTION OF THE MASTER
SCHEME
LIMIT.

WE ARE AWAITING SIGHT OF A POLICY DOCUMENT WHICH SHOULD BE AVAILABLE EARLY
NEXT
WEEK AS THERE ARE CERTAIN ISSUES WHICH WE NEED TO REVIEW.

FURTHER ADVICES TO FOLLOW.

BEST REGARDS

(See attached file: ell42000.PDF)

- ell42000.PDF

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QXJN7003_WHO.TXT_1>

Allianz
Marine & Aviation

Allianz

Aviation War TPLL - Excess Coverage

Market Introduction

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REV_00145973

Allianz
Marine & Aviation

Agenda of Broker Meeting May 2nd, 2002

1. Introduction

2. Presentation of Allianz Aviation War TPLL Excess Coverage

3. Discussion

4. Refreshments

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REV_00145974

Sums Insured

Allianz Aviation War TPLL Excess Coverage

Declaration Policy

- **Up to maximum USD 950 Mio per event excess of USD 50 Mio a.o. occurrence and in the annual aggregate**
- **limited to maximum USD 1,950,000,000 per policyholder (2 Master Events)**

Master Slip → **limited to maximum USD 3,900,000,000 for all policyholders (4 Master Events)**

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REV_00145975

Allianz Marine & Aviation

Main Features

Allianz Aviation War TPLL Excess Coverage

- **Non-cancellable by Insurers**
- **Automatic Termination - four Master Events**
  - or Exhaustion of Master Scheme Limit
- **Standard Automatic Termination - Five Great Powers War**
  - or Atomic War
- **No interlocking clause**
- **Step-Down Coverage**
- **English Law and Jurisdiction**

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REV_00145976

Class of Business

- **Not only Airlines**

  but also

  - **Large Service Providers**
  - **Airports**
  - **Manufacturers**

© Allianz Marine & Aviation 30.04.02

REV_00145977

Insurers

Allianz Globus MAT (Leading Insurer)	45.00 %
National Indemnity	55.00 %

REV_00145978

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Allianz
Marine & Aviation

Supporters

Allianz Aviation War TPLL Excess Coverage

Hannover Re
Converium
Partner Re
Montpellier Re
Tokio Marine & Fire
Generali
R+V Versicherung
Delvag

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REV_00145979

Premium

- **Principle: Each coverage to be quoted individually**
- **Airlines : Premiums per passenger and / or per aircraft**
- **Other risks: Flat premiums**
- **Premium payment quarterly in arrears**
- **No Claim Bonus to be agreed individually for each Insured (subject no claim under Master Slip)**
- **In case of an insured Master Event possible premium review not exceeding 225 % of original premium p.a./p.r.t. basis**

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REV_00145980

Allianz
Marine & Aviation

Schedule of Premium

Allianz Aviation War TPLL Excess Coverage

Airlines

Commercial Passenger Fleet

Limit a.o. event	Rate per passenger p.a.
USD 250,000,000	USD 0.50
USD 500,000,000	USD 0.75
USD 750,000,000	USD 1.05
USD 1,000,000,000	USD 1.27

All premiums subject to Master Slip NCB

REV_00145981

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Administration

- **Scheme is open to all brokers (max. brokerage 2.0 %)**
- **Quotations by Allianz Munich**
- **Electronic Application Forms available**
- **Policies shall be issued by brokers**
- **Brokers to pay each Insurer**
- **Claims Handling by Allianz in coordination with Primary Insurers**

© Allianz Marine & Aviation

REV_00145982

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>;Carol J. Thompson/WHO /EOP@EOP [WHO] <Carol J. Thompson>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Alison Jones/WHO/EOP@EOP [WHO] <Alison Jones>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Robert W. Cobb/WHO/EOP@EOP [UNKNOWN] <Robert W. Cobb>;Courtney S. Elwood/WHO/EOP@EOP [WHO] <Courtney S. Elwood>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Dee Dee Benkie/WHO/EOP@EOP [WHO] <Dee Dee Benkie>;andrew.beach@usdoj.gov [UNKNOWN] <andrew.beach@usdoj.gov>;amy.petersen@usdoj.gov [UNKNOWN] <amy.petersen@usdoj.gov>;Adam Ciongoli [UNKNOWN] <Adam Ciongoli>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;evelyn.v.long@usdoj.gov [UNKNOWN] <evelyn.v.long@usdoj.gov>;Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Jason.J.Sutton@usdoj.gov [UNKNOWN] <Jason.J.Sutton@usdoj.gov>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;David McMaster/WHO/EOP@EOP [WHO] <David McMaster>;Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;don.willett@usdoj.gov [UNKNOWN] <don.willett@usdoj.gov>;Albert.Brewster@usdoj.gov [UNKNOWN] <Albert.Brewster@usdoj.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>;Sarah K. Lockart@who.eop.gov [WHO] <Sarah K. Lockart@who.eop.gov>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>

Sent: 5/28/2002 1:48:47 PM

Subject: : No JSC Mtg. on Wed., May 29th

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-MAY-2002 17:48:47.00
SUBJECT:: No JSC Mtg. on Wed., May 29th
TO:Melissa S. Bennett ( CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alison Jones ( CN=Alison Jones/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert W. Cobb ( CN=Robert W. Cobb/OU=WHO/O=EOP@EOP [ UNKNOWN ] )
READ:UNKNOWN
TO:Courtney S. Elwood ( CN=Courtney S. Elwood/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
```

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dee Dee Benkie (CN=Dee Dee Benkie/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:andrew.beach@usdoj.gov (andrew.beach@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:amy.petersen@usdoj.gov (amy.petersen@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Adam Ciongoli (Adam Ciongoli [UNKNOWN])
READ:UNKNOWN
TO:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:evelyn.v.long@usdoj.gov (evelyn.v.long@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jason.J.Sutton@usdoj.gov (Jason.J.Sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Douglas L. Hoelscher (CN=Douglas L. Hoelscher/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:don.willett@usdoj.gov (don.willett@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Albert.Brewster@usdoj.gov (Albert.Brewster@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Sarah K. Lockart@who.eop.gov (Sarah K. Lockart@who.eop.gov [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There will not be a JSC Mtg. on Wed., May 29th.

Thanks!

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>
Sent: 5/29/2002 8:55:22 AM
Subject: : Re: Florida update

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:29-MAY-2002 12:55:22.00
SUBJECT:: Re: Florida update
TO:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FYI, we received no advance notice of this. I am calling to get the
letter now.




Patrick J. Bumatay
05/29/2002 12:47:40 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Florida update

FLORIDA FALLOUT: DoJ Reverses Course And Finds No Election Violations
One week "after reigniting the controversy" over the WH 2000 FL vote, the
DoJ told Congress 5/28 that "no Floridians were intentionally prevented
from voting and that problems at the polls caused only a few people to
leave without voting." In a letter to the Senate Jud. Cmte, DoJ Assistant
AG Ralph Boyd wrote, "While the Civil Rights Division discovered evidence
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of significant confusion and delay in the three counties (Orange, Osceloa, and Miami-Dade), there were relatively few voters who actually did not vote because of these problems." Boyd said after "looking into 11,000 complaints" about the election, the DoJ "found violations in the three counties - mostly because of language barriers - and this 'may have resulted in at least 26 voters choosing to leave the polls.'" Boyd said, "that number of voters 'doesn't reasonably cast any doubt on President Bush's several hundred vote margin of victory" in FL. The DoJ's "announcement was immediately greeted with partisan skepticism." Sen. Bill Nelson (D-FL): "This is a stretch for me to believe, out of 11,000 complaints with everything that we went through." Last week, Boyd "told members" of the Sen. Jud. Cmte that the civil rights division "was preparing to sue the three counties for election law violations relating" to WH 2000, "with an eye toward reaching quick settlements." Rob Labasky, an atty for FL's assn of election supervisors, said the DoJ's "new letter appeared to counterbalance Boyd's statements about the lawsuits last week" (Smith/Allison, St. Petersburg Times, 5/29). FL Dem Chair Bob Poe, on the DoJ letter: "The U.S. Department of Justice's determination that there is little evidence that Florida voters were intentionally denied their right to vote in the 2000 general election is a slap in the face to all Floridians" (release, 5/29).

Message Sent
To:_____
Helgard C. Walker/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
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Elizabeth N. Camp/WHO/EOP@EOP
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 5/29/2002 6:27:59 PM
Subject: : RE:
Attachments: P_PXYO7003_WHO.TXT_1.wpd; P_PXYO7003_WHO.TXT_2.wpd; P_PXYO7003_WHO.TXT_3.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-MAY-2002 22:27:59.00
SUBJECT:: RE:
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

strong

David S. Addington
05/23/2002 02:44:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

Brett:

Copies of GAO case motion to dismiss papers, per your request.
---------------------- Forwarded by David S. Addington/OVP/EOP on 05/23/2002 02:54 PM ----------------------------

"Salmons, David B" <David.B.Salmons@usdoj.gov>
05/21/2002 08:21:51 PM
Record Type: Record

To: David S. Addington/OVP/EOP@EOP
cc:
Subject: RE:

David,

The documents are attached.

-----Original Message-----
From: David_S._Addington@ovp.eop.gov
[mailto:David_S._Addington@ovp.eop.gov]
Sent: Tuesday, May 21, 2002 7:54 PM
To: Salmons, David B
Subject:

David:

Please send me by e-mail or fax (fax 202-456-9089) a copy of the Walker v. Cheney motion to dismiss, memo in support, and response to fact statement, as
filed.

- GAO Motion to Dismiss.wpd
- GAO Opening Brief.wpd
- GAO Response to Statement of Undisputed Facts.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PXYO7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PXYO7003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PXYO7003_WHO.TXT_3>

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID M. WALKER, Comptroller
General of the United States,
Plaintiff,

v. C.A. No.1:02cv340JDB

RICHARD B. CHENEY, Vice President
of the United States,
Defendant.

DEFENDANT'S MOTION TO DISMISS AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 12(b)(1) and (6), defendant moves to dismiss this case as non-justiciable and for failure to state a claim upon which relief can be granted. Defendant further opposes plaintiff's motion for summary judgment. In support of defendant's motion to dismiss and in opposition to plaintiff's motion for summary judgment, defendant respectfully refers the Court to the attached memorandum of points and authorities.

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Respectfully submitted,

May 21, 2002

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REV_00146032

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID M. WALKER, Comptroller
General of the United States,
Plaintiff,

v. C.A. No.1:02cv340JDB

RICHARD B. CHENEY, Vice President
of the United States,
Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Comptroller General David M. Walker seeks to place this Court in the middle of an asserted inter-branch dispute over access to executive branch documents. Specifically, he sought (and continues to seek), based on a request from two individual legislators, documents from the Vice President regarding the process by which the Vice President and top presidential advisers assisted the President in the development of the President's National Energy Policy. In response, the Vice President explained that the Comptroller General's request exceeded his statutory authority and sought unconstitutionally to interfere with the functioning of the presidency. The Comptroller General then filed this suit to enlist the courts in his effort to compel the Vice President to disclose documents. The Comptroller General's claim for judicial relief requires ignoring well-established limits on the judiciary and relies on a virtually boundless view of the Comptroller General's own authority. The Comptroller General's view would work a revolution in the separation of powers. Disputes between the executive and legislative branches that have been resolved without judicial involvement from the earliest days of the republic would be the subject of district court litigation, with the Comptroller General, a congressional agent, playing the central role. Fortunately, the Court can avoid this fundamental reworking of the constitutional scheme by deciding this case on narrower statutory grounds.

The Vice President moves to dismiss the suit principally on the grounds that: (1) the Comptroller General lacks standing; (2) the doctrines of justiciability and equitable discretion warrant dismissal of the case; (3) Section 716 of title 31, the asserted jurisdictional basis for this suit, only authorizes suits against the head of an agency, and the Vice President is not the head of an agency; (4) Sections 712 and 717 of title 31, the asserted bases for the Comptroller General's inquiry, do not provide statutory authority for this inquiry; (5) if these statutes did provide the authority that the Comptroller General claims, they would be unconstitutional as applied in this case; and (6) at a minimum, the statutes should be interpreted to avoid such a constitutionally doubtful reach. To survive this motion to dismiss, the Comptroller General must prevail on every one of these statutory and constitutional issues.

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If the Court dismisses the case on one of the narrower grounds for decision — that the Comptroller General lacks standing to sue, that the doctrines of justiciability or equitable discretion warrant dismissal, or that the Comptroller General cannot sue the Vice President under Section 716 of title 31 because he is not the head of an agency — the Court need not resolve the full reach of the Comptroller General's statutory authority or whether that authority is consistent with the constitutional separation of powers. If the Court goes beyond these narrow grounds, it should strive to interpret the Comptroller General's statutory authority to avoid constitutional difficulties. The Comptroller General asserts a virtually unlimited authority to investigate the Executive Branch. He claims the authority to investigate all expenditures of money, and he views time as money. He claims the authority to investigate program results, and interprets results to include the entire process by which the results were produced. The Comptroller General's interpretation of his authority is neither the only nor the most natural reading of the statutory text, and the most natural reading of the text gives the Comptroller General a still formidable statutory power that co-exists with the Constitution. If, however, this Court determines that Congress intended to aggrandize its agent at the expense of powers exclusively entrusted to the executive branch, then it should strike down the statute as unconstitutional.

The Vice President's Message to the House and Senate stated clearly why the Comptroller General's suit cannot stand as a matter of constitutional law:

> If the Comptroller General's misconstruction of the statutes * * * were to prevail, his conduct would unconstitutionally interfere with the functioning of the Executive Branch. For example, due regard for the constitutional separation of powers requires respecting the independence of the President, the Vice President and the President's other senior advisers as they execute the function of developing recommendations for policy and legislation — a core constitutional function of the Executive Branch. Also, preservation of the ability of the Executive Branch to function effectively requires respecting the confidentiality of communications among a President, a Vice President, the President's other senior advisers and others. A President and his senior advisers must be able to work in an atmosphere that respects confidentiality of communications if the President is to get the good, candid advice and other information upon which wise decisionmaking depends.

Compl. Ex. J at app. 2.

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For the reasons explained below, the Vice President asks the Court to deny Comptroller General Walker's motion for summary judgment and to grant the Vice President's motion to dismiss the case.

BACKGROUND AND STATEMENT OF FACTS

I. GAO's History and Statutory Basis

Congress created the office of the Comptroller General and the General Accounting Office (GAO) in the Budget and Accounting Act of 1921, 42 Stat. 20, 23 (1921). It established GAO as an agent of Congress, "independent of the executive departments," 31 U.S.C. § 702(a), and made the Comptroller General removable only by Congress through the impeachment process or by enactment of a joint resolution removing the Comptroller General for specified causes, 31 U.S.C. § 703(e)(1). See Bowsher v. Synar, 478 U.S. 714, 730-731 (1986) (describing Comptroller General as "an agent of Congress") (citation omitted).

Prior to the adoption of the 1921 Act, no centralized budget process existed. Rather, each department and agency submitted independent budget proposals to Congress, which Congress determined resulted in "extravagance, inefficiency, and duplication of service." H.R. Rep. No. 14, 67th Cong., 1st Sess. 4 (1921). The 1921 Act thus created both the Bureau of the Budget (now the Office of Management and Budget, 31 U.S.C. § 501), to centralize the budget process, and the General Accounting Office, to provide Congress with a mechanism for auditing certain activities of the other parts of government "to insure at all times a businesslike execution of the budget." H.R. Rep. No. 14, supra, at 7. As the House committee described it:

> The creation of [the General Accounting Office] will enable it to furnish information to Congress and to its committees regarding the expenditures of the Government. He could and would be expected to criticize extravagance, duplications, and inefficienc[ies] in executive departments.

Id. at 8 (emphasis added).

Accordingly, the 1921 Act authorized the Comptroller General to "investigate * * * all matters relating to the receipt, disbursement, and application of public funds." § 312, 42 Stat. 20, 25. That same authorization now exists in 31 U.S.C. § 712(1), which authorizes the Comptroller

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General to "investigate all matters related to the receipt, disbursement, and use of public money."[1] Then, as now, this authorization was intended to allow the Comptroller General to secure "necessary information concerning the financial transactions of the Government." The General Accounting Office: A Study of Its Functions and Operations, H.R. Rep. No. 81-1441 at 6 (1949) (emphasis added). Consistent with that limited financial purpose, "GAO's activities in the first several decades emphasized strict compliance with laws governing the federal spending process." See Staff of the Senate Comm. on Governmental Affairs, 103d Cong., 2d Sess., The Roles, Mission and Operation of the U.S. General Accounting Office, 2 (Comm. Print 1994) (National Academy of Public Admin.); Pl's. S. J. Mem. 10.

In 1967, Congress mandated that GAO undertake a more comprehensive review of specified economic opportunity programs to determine not only whether those programs were operating efficiently, but also whether their results were fulfilling the policy goals Congress had set for them. See Economic Opportunity Amendments of 1967, Pub. L. No. 90-222, 81 Stat. 672, 727. The Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1140, and the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, subsequently gave the Comptroller General a similar authority to evaluate the results of federal programs in general. As currently codified, that authority purports to allow the Comptroller General to "evaluate the results of a program or activity the Government carries out under existing law — (1) on the initiative of the Comptroller General; (2) when either House of Congress orders an evaluation; or (3) when a committee of Congress with jurisdiction over the program or activity requests the evaluation." 31 U.S.C. § 717(b).

GAO's authority to conduct program-results evaluations under § 717(b) remains limited to reviewing whether programs created and funded by congressional enactment are efficiently and effectively satisfying Congress's stated goals. See H.R. Rep No. 91-1215 at 17-18, reprinted

[1] During the 1982 codification of title 31, Congress replaced the term "application" with "use" in § 712, without intending any substantive effect. See H.R. Rep. No. 97-651, 97th Cong., 2d Sess. 1-3 (1982), reprinted in 1982 U.S.C.C.A.N. 1895, 1895-1897.

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in 1970 U.S.C.C.A.N. 4417, 4432-33 (House Report to the 1970 Act describing the new "extension[]" of GAO's work in a section entitled "Oversight and Program Analysis Assistance to the Congress," and stating that GAO's new non-audit responsibilities were intended to assist Congress in "determining whether existing programs are being administered in accordance with congressional intent" and in "exploring the advisability of modifying or even of abolishing such programs") (emphasis added). As then-Comptroller General Staats explained, § 717(b) clarifies GAO's "charter to review and evaluate Federal and federally assisted programs as to whether these programs are being carried out as intended by the Congress. In other words, [the statute allows GAO to determine] whether programs are achieving congressionally stated objectives in the most effective manner and at the lowest cost." Letter from Comptroller General Elmer B. Staats to Rep. B.F. Sisk (Oct. 31, 1969) (Pl's. S.J. Mem. Ex. 7) (emphases added).

Finally, in the General Accounting Office Act of 1980, 94 Stat. 311, 312, Congress added the current provisions of 31 U.S.C. § 716(b), which purport to provide a judicial-enforcement mechanism to assist the Comptroller General in his efforts to inspect agency records. Where "an agency record is not made available to the Comptroller General," he may make a written request to the head of the agency. § 716(b)(1). If the agency head does not provide the requested records within twenty days, the Comptroller General may report that fact to the President, the Director of the Office of Management and Budget, the Attorney General, the agency head, and Congress. Ibid. The Act provides that, after waiting twenty more days, the Comptroller General may initiate litigation "to require the head of the agency" to produce the records. § 716(b)(2) (emphasis added). No suit may be filed, however, if the records sought pertain to foreign intelligence or counterintelligence, if the records are exempt by statute from disclosure to the Comptroller General, or if the President or the OMB Director certifies within twenty days of the Comptroller General's report that the records would be exempt from disclosure under the Freedom of Information Act's exemptions for deliberative or confidential law enforcement

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records and that disclosure would "impair substantially the operations of the Government." § 716(d)(1).

Title 31 defines the term "agency" to mean "a department, agency, or instrumentality of the United States Government." 31 U.S.C. § 101. Nothing in either the text or legislative history of title 31 identifies the President, the Vice President, or close presidential advisers within the definition of "agency" subject to suit by the Comptroller General.

II. The Present Dispute

On January 29, 2001, the President created the NEPDG, composed of the Vice President, the Secretaries of Treasury, Interior, Agriculture, Commerce, Transportation and Energy, the Director of the Federal Emergency Management Agency, the Administrator of the Environmental Protection Agency, the Deputy Chief of Staff to the President for Policy, and the Assistants to the President for Economic Policy and Intergovernmental Affairs. Compl. Ex. A. Acting pursuant to the powers granted to the President by the Constitution, including the powers to obtain opinions from the principal officers in the Executive Branch and to recommend for the consideration of Congress such measures as the President judges "necessary and expedient," see U.S. CONST. art II, § 2, cl. 2; id. art. II § 3, the President charged the NEPDG to develop, under the Vice President's leadership, a national energy policy and "to gather information, deliberate, and * * * make recommendations to the President." Compl. Ex. A at 2. The NEPDG made its recommendations to the President in May 2001. Under the terms of the President's memorandum, the NEPDG ceased to exist by September 30, 2001. Id. at 3.

Even before the NEPDG completed its work, two individual congressmen, Rep. John D. Dingell, who happens to be the ranking minority member of the House Committee on Energy and Commerce, and Rep. Henry A. Waxman, who happens to be the ranking minority member of the House Committee on Government Operations, asked GAO to investigate the manner in which the NEPDG conducted its business. Compl. ¶ 21. Solely as a result of this request, GAO

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initiated an investigation. Id. at ¶¶ 21-22. See also id. at ¶ 14. GAO initially demanded access to a broad range of documents as well as interviews with members and staff. Id., Exh. C. Although it questioned GAO's legal authority to investigate the NEPDG, the Office of the Vice President did provide, as a matter of comity and reserving all authorities and privileges, information concerning the composition of the NEPDG staff, the nature of their activities, the number and dates of NEPDG meetings, and its expenditures. Id. at ¶ 26, 30.

GAO persisted in its sweeping requests for information about the NEPDG. Following informal attempts at an amicable resolution, the Comptroller General formally demanded a broad range of information under 31 U.S.C. § 716(b) on July 18, 2001. Among the categories of information he sought were the identities of all persons who attended NEPDG meetings, information regarding staff, the identity of all persons consulted by the Vice President and NEPDG staff, the contents of all discussions with such persons (including minutes and notes of such meetings), and the criteria used to determine with whom the Vice President and the staff met. Compl. ¶ 39, Ex. I. As alleged in the Complaint, the Comptroller General subsequently withdrew his initial requests for minutes and notes of meetings. Id. at ¶ 42. Nevertheless, as the Complaint and plaintiff's memorandum in support of his motion for summary judgment both make clear, the Comptroller General continues to insist that the Vice President must disclose, inter alia, every person with whom the Vice President met while he was serving as a close presidential adviser discharging express constitutional functions at the request of the President and the "purpose" and "agenda" of each of those meetings. He even demands information concerning what decision-making process the Vice President and his staff followed in "determin[ing] who would be invited to the meetings." Compl. Prayer for Relief ¶ (a); Pl's. S.J. Mem. 25-26,28,34.

The Vice President declined to comply with these sweeping, intrusive, and unprecedented requests because they exceeded the Comptroller General's statutory authority and would unconstitutionally have interfered with the functioning of the Executive Branch. Compl. ¶ 44.[2]

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Again invoking § 716, the Comptroller General reported the existence of the dispute to the President, the Vice President, Congress, the Attorney General, and the Director of the Office of Management and Budget on August 17, 2001. Id. at ¶ 47. On September 6, 2001, the Office of the Vice President provided certain additional information relating to the identities of the NEPDG staff, id. at ¶ 52, but again declined to provide the expansive range of documents demanded. The Comptroller General then filed this unprecedented action, initiating a lawsuit, purportedly under 31 U.S.C. § 716(b), for a judicial decree forcing the Vice President to comply with the Comptroller General's demands for information regarding the deliberations of the President's internal task force.

ARGUMENT

The Comptroller General alleges a right to documents concerning the discharge of the President's constitutional functions in the possession of the President's closest advisers, and indeed the President himself. That alleged right is completely inconsistent with the constitutional system of separation of powers. That doctrine limits the role of the judiciary to deciding only those cases where the plaintiff has a genuine stake in the outcome of the litigation. Where, as here, a plaintiff has not suffered any personal injury and attempts to assert only the general, institutional interests of Congress, he lacks standing. Moreover, even when parties have had standing, courts in comparable cases have relied on principles of separation of powers to decline to exercise jurisdiction, remitting such matters to the political branches for resolution. In addition, the Comptroller General lacks the statutory authority he claims, especially in light of separation-of-powers principles. A straightforward construction of the applicable statutes alone compels the conclusion that the Comptroller General's demands in this case are ultra vires. That

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[2] As the Complaint correctly notes, GAO also pursued similar inquiries with other agencies, whose heads were members of the NEPDG. Those agencies responded to GAO's requests, except to the extent that the requests overlapped with those directed to the Vice President for meetings held by the Vice President or NEPDG staff. Compl. ¶ 51.

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conclusion is only bolstered by the separation-of-powers implications of this case; the principle of constitutional avoidance clearly precludes the Comptroller General's overly expansive interpretation of his statutory authority. Finally, if the Comptroller General's sweeping construction of his statutory authority were correct, then his demands for documents from the Vice President would violate the separation of powers by directly interfering with the President's ability to discharge his express constitutional functions and by providing a legislative agent with an executive power to seek judicial enforcement of the law.

I. Plaintiff Lacks Standing to Maintain This Action

This Court need not reach the merits of this dispute because the Comptroller General lacks Article III standing to bring this suit. "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." Raines v. Byrd, 521 U.S. 811, 818 (1997) (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 37 (1976)). It is a bedrock of Article III's case-or-controversy requirement that a plaintiff must establish his personal standing to sue. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plaintiff bears burden of establishing standing); see also Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 471 (1982).

The Supreme Court has repeatedly emphasized that a core purpose of Article III's standing doctrine is to safeguard the proper separation of powers by preventing courts from wading into disputes that are better resolved by the political branches of government. "[T]he law of Article III standing is built on a single basic idea – the idea of separation of powers." Allen v. Wright, 468 U.S. 737, 752 (1984). These separation-of-powers concerns are heightened where the courts are asked to resolve a dispute between the coordinate political branches. The "standing inquiry [is] especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." Raines, 521 U.S. at 819-20 (citations omitted).

To satisfy his burden of establishing standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen, 468 U.S. at 751. Whether a plaintiff possesses standing "often turns on the nature and source of the claim asserted." Warth v. Seldin, 422 U.S. 490, 500 (1975). The Supreme Court has "consistently stressed that a plaintiff's complaint must establish that he has a 'personal stake' in the alleged dispute, and that the alleged injury suffered is particularized as to him." Raines, 521 U.S. at 819.

This "personal stake" requirement is of particular concern in a suit, such as this one, brought to vindicate congressional interests. See Raines, 521 U.S. at 818-20. Under those circumstances, an individual plaintiff must assert a personal, not institutional, interest to establish injury in fact. Id. at 820-21. Because plaintiff's Complaint does not allege any such personal stake in this case, it must be dismissed for lack of standing.

Indeed, this suit is far removed from an exercise of the "judicial Power" and the

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resolution of "Cases" and "Controversies" as the Framers understood those terms. As the Supreme Court has explained, "Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 774 (2000) (citation omitted). There certainly is no history or tradition that would support inter-branch lawsuits, much less inter-branch suits brought by a mere agent of Congress.

In Raines, the plaintiffs were members of Congress challenging the validity of the Line Item Veto Act, which they had opposed as legislators. They brought suit under a provision of the Act that purported to grant standing and authority to challenge the Act's constitutionality to "[a]ny member of Congress." 521 U.S. at 815 (citation omitted). The plaintiffs claimed that the Act injured them by altering the balance of powers between the executive and legislative branches and by changing the effectiveness of their votes on appropriations bills. At the outset, the Supreme Court warned that "[i]n the light of th[e] overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere, we must put aside the natural urge to proceed directly to the merits of this important dispute." Id. at 820. "Instead," the Court explained, "we must carefully inquire as to whether appellees have met their burden of establishing that their claimed injury is personal, particularized, concrete, and otherwise judicially cognizable." Ibid.

The Court in Raines found no such injury on the part of the individual members of Congress. At most, the Court ruled, the members had only alleged "institutional injury (the diminution of legislative power), which necessarily damages all Members of Congress and both Houses of Congress equally." 521 U.S. at 821. Because "the institutional injury they allege[d was] wholly abstract and widely dispersed," id. at 829, it was insufficient to confer standing on any individual member of Congress.[3]

The Raines Court also emphasized that history cut strongly against legislative standing. "It is evident from several episodes in our history that in analogous confrontations between one or both Houses of Congress and the Executive Branch, no suit was brought on the basis of claimed injury to official authority or power." 521 U.S. at 826. The Court recounted separation-of-powers disputes that arose over more than a century of the Nation's history and concluded that in each case, neither Congress nor the Executive sought judicial intervention. Id. at 826-828. While the Court acknowledged that "[t]here would be nothing irrational about a system that granted standing in these cases," it held that such a system "is obviously not the regime that has obtained under our Constitution to date." Id. at 828. Rather, "[o]ur regime contemplates a more restricted role for Article III courts." Ibid.

The Raines Court held that Congress cannot evade the Article III requirement of a particularized injury by authorizing an individual who lacks such an injury to bring suit. "It is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." 521 U.S. at 820 n.3. Accordingly, the Court found no Article III standing despite the Line Item Veto Act's express

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[3] The Supreme Court contrasted Raines with Powell v. McCormack, 395 U.S. 486 (1969), where it recognized the standing of an individual congressman to challenge his expulsion by the House because he had a personal interest in, inter alia, receiving a congressional salary.

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authorization of "[a]ny member of Congress" to bring an action for declaratory and injunctive relief challenging the Act's constitutionality.

The Supreme Court in Raines emphasized that Congress itself had taken no action to press the dispute and that individual congressmen had alternative remedies they could pursue:

> We attach some importance to the fact that appellees have not been authorized to represent their respective Houses of Congress in this action * * * . We also note that our conclusion neither deprives Members of Congress of an adequate remedy (since they may repeal the Act or exempt appropriations bills from its reach) * * * .

521 U.S. at 829 (footnote omitted). The Raines Court cited Bender v. Williamsport Area School Dist., 475 U.S. 534, 544 (1986), and United States v. Ballin, 144 U.S. 1, 7 (1892), for the proposition that legislative bodies must generally act collectively. 521 U.S. at 829. The absence of such collective action precludes the assertion of an institutional injury, even where Congress has initially authorized suits by certain individuals.

In two subsequent cases, the D.C. Circuit has applied this same rule to preclude challenges by individual members of Congress on standing grounds. In Chenoweth v. Clinton, 181 F.3d 112 (D.C. Cir. 1999), cert. denied, 529 U.S. 1012 (2000), the court held that individual members of Congress lacked standing to challenge an executive order on the protection of rivers on the ground that the order denied them the opportunity to vote on the order's subject matter. The court found such a claimed injury "identical" to that dismissed by the Supreme Court in Raines as insufficient. 181 F.3d at 117. And, in Campbell v. Clinton, 203 F.3d 19, 20-21 (D.C. Cir.), cert. denied, 531 U.S. 815 (2000), the court held that individual congressmen lacked standing to challenge the President's alleged noncompliance with either the War Powers Resolution, 50 U.S.C. § 1541 et seq., or the War Powers Clause of the Constitution. The court confirmed that individual members do not have standing to assert Congress's institutional interests in an inter-branch dispute because "political self-help [is] available to congressmen," in the form of power over appropriations or even "the possibility of impeachment." 203 F.3d at 23, 24. "Indeed," the court reasoned, "Raines explicitly rejected [the] argument that legislators should not be required to turn to politics instead of the courts for their remedy." Id. at 24.

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Raines, Chenoweth, and Campbell preclude the Comptroller General's standing in this case. Here, the Comptroller General, is simply acting as a surrogate for two individual members of Congress, purportedly to vindicate an institutional Legislative Branch interest in access to executive branch documents. The Comptroller General makes no claim of any individualized or personal injury to himself. To the contrary, he asserts that he instituted this action as an agent of Congress, acting at the behest of two individual members. Nor do the two congressmen assert a personal interest in the documents, and the only legitimate interest that could be asserted by congressmen qua congressmen would be for the use of the documents necessary for the legislative process. The Comptroller General lacks standing to vindicate that institutional interest, as Raines makes clear. This is particularly true where, as here, Congress has numerous potential political avenues for obtaining information it needs for legislative purposes, and Congress and the Executive Branch have traditionally used their political mechanisms to resolve disputes over documents. Indeed, as GAO has acknowledged, if it fails to obtain documents under § 716, "Congress could invoke its own authorities to attempt to gain access." Pl's. S. J. Mem. Ex. 6, at 14. The give and take of informal interactions between Congress and the Executive Branch, on occasion backed by more formal mechanisms of, e.g., congressional subpoenas — not judicial actions brought by congressional agents — is "the regime that has obtained under our Constitution to date." Raines, 521 U.S. at 828.[4]

Here, however, no House of Congress or congressional committee has invoked the traditional mechanisms to obtain information or has undertaken any effort to obtain any of the

[4] Notably, the Constitution provides for the political branches to address each other directly in the governance of the Nation in various ways, see, e.g., U.S. CONST. art. II, § 3 (President authorized to "give to the Congress Information of the State of the Union," and to "recommend to their Consideration such Measures as he shall judge necessary and expedient"); id. art. I, § 7, cl. 2. (Congress required to "present[]" bills for President's review, and if he disapproves he must return it "with his Objections"); id. art. I, §§ 2,3 (describing impeachment power), but provides no mechanism for invoking judicial resolution of inter-branch disputes.

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records plaintiff seeks. As in Raines, neither House of Congress has authorized any action on behalf of either the Senate or the House. Raines thus makes clear that individual Members of Congress cannot assert Congress's institutional interests.

Section 716's authorization for judicial actions does not suffice to give the Comptroller General standing. As Raines demonstrates, the "authorization" that is potentially relevant to the standing inquiry is an authorization by Congress acting collectively after a particular dispute has arisen, not some general statutory authorization to file suit made in advance of a particular dispute. See 521 U.S. at 820, 829. In sum, as was the case with the plaintiffs in Raines, the Comptroller General "ha[s] alleged no injury to [himself] as [an] individual[] (contra, Powell), the institutional injury [he] allege[s] is wholly abstract and widely dispersed (contra, Coleman), and [his] attempt to litigate this dispute at this time and in this form is contrary to historical experience." Id. at 829.

Indeed, plaintiff's claim presents an even more attenuated case for standing than the claims in Raines, Chenoweth, or Campbell because this suit is not brought by a member of Congress, but by a congressionally created stalking horse. The Comptroller General acts as Congress's agent, Bowsher, 478 U.S. at 732, and, as such, he necessarily seeks to vindicate Congress's institutional interests. And here, the Comptroller General is essentially acting to fulfill the curiosity of two individual members. While Raines left open the question of whether Congress itself could bring suit for institutional injuries through a majority vote of its members (or the members of one chamber), it makes clear that anything short of such collective action does not satisfy Article III. 521 U.S. at 827-30 & n.10. If Congress could not delegate to individual members the right to sue in Raines, 521 U.S. at 820 n.3, it, a fortiori, cannot delegate that right to a surrogate acting at the request of a few individual members. (Indeed, purporting to do so creates unique separation-of-powers problems.) Were it otherwise, the holding in Raines would be entirely ineffective and inexplicable. GAO, acting as an agent of Congress, but

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without the specific authorization of even one House of Congress, simply cannot satisfy the particularized, personal injury requirement of Article III.[5]

II. This Action Is Also Nonjusticiable under the Doctrine of Equitable Discretion

Even if plaintiff had standing, the D.C. Circuit has practiced restraint in cases of this type, in recognition of the same separation-of-powers concerns that underpinned the Supreme Court's holding in Raines. Disputes between the executive and legislative branches over access to documents date back to the Washington Administration. Judicial resolution of these inherently political disputes, however, is virtually unprecedented. Raines, 521 U.S. 826-828. That no court has ever examined GAO's statutory authority to sue the Executive Branch under § 716 is no mere coincidence. No Comptroller General has ever sued under those provisions (see Pl's. S.J. Mem. 17). That record presumably reflects that the courts, rather than enter this inherently political thicket, generally leave such political disputes for resolution by the political branches through the political process, and that the political process has proved capable of resolving such disputes in the past. Indeed, as demonstrated below, these concerns have led courts, even when faced with demands sanctioned by full committees or even full chambers of Congress, to decline to hear such cases. This lawsuit provides an even less compelling circumstance for departure from this longstanding tradition of judicial restraint, as no legislative

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[5] Indeed, even if a suit by the Comptroller General could somehow be treated the same as a suit brought by Congress as a whole (rather than by the two individual members who requested the investigation), plaintiff would still lack standing for the basic reasons articulated in Raines. This unprecedented GAO suit threatens core separation-of-powers values by injecting the courts into inter-branch disputes. Such judicial actions are not "the regime that has obtained under our Constitution to date," Raines, 521 U.S. at 828, and Article III standing principles prohibit this innovation. As explained below in Part IV, Congress has no right to information concerning the process by which the President exercises his constitutionally-assigned powers to call for the opinions of his top advisers and to recommend legislation to Congress that he judges necessary and expedient, and therefore it simply has not suffered any judicially congnizable injury sufficient to satisfy Article III. Moreover, as explained below in Part III.D, the Comptroller General has not followed the procedures for initiating suit set forth by Congress, and so this suit has not been "authorized" in any sense of the term.

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body has authorized either GAO's request for records or this litigation.

Even before the Supreme Court confirmed that Article III precludes suit by individual members of Congress to vindicate institutional interests, the D.C. Circuit accommodated the serious separation-of-powers concerns inherent in inter-branch disputes under the equitable or remedial discretion doctrine, which calls for courts to refrain from exercising jurisdiction over such litigation. The D.C. Circuit first expressly applied that doctrine in cases brought by legislators where the standing or political-question doctrines were thought to be insufficient means of articulating the separation-of-powers concerns presented by such cases. See Riegle v. Federal Open Market Comm., 656 F.2d 873, 880-81 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). Thus, the D.C. Circuit concluded, "[t]he most satisfactory means of translating our separation-of-powers concerns into principled decisionmaking is through a doctrine of circumscribed equitable discretion" to be applied in cases "[w]here a congressional plaintiff could obtain substantial relief from his fellow legislators * * * ." Id. at 881; see also Melcher v. Federal Open Market Comm., 836 F.2d 561 (D.C. Cir. 1987), cert. denied, 486 U.S. 1042 (1988); Moore v. United States House of Representatives, 733 F.2d 946 (D.C. Cir. 1984), cert. denied, 469 U.S. 1106 (1985). Accordingly, where individual members have sought judicial review of executive action in advance of any action by Congress itself, courts have repeatedly applied their remedial discretion to withhold relief. See, e.g., Crockett v. Reagan, 720 F.2d 1355 (D.C. Cir. 1983), cert. denied, 467 U.S. 1251 (1984); Lowry v. Reagan, 676 F. Supp. 333, 339 (D.D.C. 1987).

Those same concerns were presaged in earlier confrontations between the Executive and Congress over documents. In United States v. AT&T Co., 551 F.2d 384 (D.C. Cir. 1976), appeal after remand, 567 F.2d 121 (D.C. Cir. 1977), the Justice Department sought to block production of a telephone company's records of national security wiretaps to a congressional committee in response to a congressional subpoena. The court noted that the subject of the inquiry, wiretap

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legislation, was a "suitable area of federal legislation," 551 F.2d at 393, and that the House of Representatives, as a whole, had voted to intervene in the lawsuit, thereby negating "the possibility of a wayward committee acting contrary to the will of the House." Id. Acknowledging the interests of both branches and the difficulty inherent in any judicial effort to balance those interests, the court noted that "[t]he legislative and executive branches have a long history of settlement of disputes that seemed irreconcilable." Id. at 394. The AT&T case would have been a relatively easy case for judicial resolution because, unlike most disputes between the Legislative and Executive Branches over documents, the relevant records were in the hands of a non-governmental party. But despite its power to resolve the dispute, the court declined to do so, ordering instead that the parties seek a negotiated solution. In so doing, the court emphasized that a judicial resolution would not necessarily protect the interests of both branches and could forever alter the constitutional balance of powers:

> This dispute between the legislative and executive branches has at least some elements of the political-question doctrine. A court decision selects a victor, and tends thereafter to tilt the scales. A compromise worked out between the branches is most likely to meet their essential needs and the country's constitutional balance.

551 F.2d at 394; accord Leach v. Resolution Trust Corp., 860 F. Supp. 868, 874-876 (D.D.C. 1994) (dismissing suit filed by congressman).

Applying this same rule, the court in United States v. House of Representatives, 556 F. Supp. 150 (D.D.C. 1983), declined to entertain a declaratory judgment action by the Executive Branch concerning the rights of a House committee to subpoena documents over which the President asserted executive privilege:

> When constitutional disputes arise concerning the respective powers of the Legislative and Executive Branches, judicial intervention should be delayed until all possibilities for settlement have been exhausted. Judicial restraint is essential to maintain the delicate balance of powers among the branches established by the Constitution.

556 F. Supp. at 152 (citation omitted).

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Unlike AT&T or House of Representatives, the present action comes with no legislative endorsement by either House or even by a committee. No subpoena has been issued, no resolution has been passed, and no statute has been enacted in response to this dispute. This controversy thus lacks even the level of contention, urgency, or finality presented in those cases. Consequently, there is an even less compelling need for judicial intervention here.[6]

In a case strikingly similar to this one, this Court in Leach v. Resolution Trust Corp., 860 F. Supp. 868 (D.D.C. 1994), declined to give an expansive reading to a statutory provision allowing access for a ranking minority committee member to agency records otherwise exempt from disclosure under the FOIA. This Court noted that the ranking member had failed to persuade a majority of the committee to authorize his request for the documents sought in litigation and that many of the documents sought were, in fact, being produced to the committee. 860 F. Supp. at 874-76. In such circumstances, where a single member of Congress in the legislative minority sought to invoke judicial review, the Court noted that it was "extremely hesitant to interfere with the legislative process" and concluded "that the exercise of its remedial discretion to decline review * * * is the appropriate method of coping with the important separation-of-powers concerns implicated by this suit." 860 F. Supp. at 876.[7]

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[6] As this case amply demonstrates, the equitable jurisdiction doctrine is among "'the doctrines that cluster about Article III'" to "define[] with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded." Allen, 468 U.S. 750 (quoting Vander Jagt v. O'Neill, 699 F.2d 1166, 1178-1179 (D.C. Cir. 1982) (Bork, J. concurring)). Because those doctrines, which in addition to equitable discretion include standing, mootness, ripeness, and political question, often "overlap[]," the same concerns that should lead this court to apply the equitable discretion doctrine also raise concerns under the ripeness and political question doctrines.

[7] In Chenoweth, the court noted that the equitable discretion doctrine had developed, in part, as an alternative application of separation-of-powers concerns, after the D.C. Circuit (prior to Raines) had erroneously permitted individual members of Congress to sue the Executive Branch. The court held that Raines compelled dismissal of the claims in Chenoweth for lack of standing. 181 F.3d at 114-116. It noted, however, that the same result would apply under its remedial discretion, as plaintiffs could seek a political solution through legislation. 181 F.3d at 116.

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The same separation-of-powers concerns underlying those cases should lead this Court to dismiss this action. As plaintiff has conceded, the inquiry here originated with a request from two individual members of Congress and may now be supported by some individual Senators. See Pl's. S. J. Mem. 38-39. Neither request came with the authorization of a full House (or even a committee). Although neither Member has the authority to compel the production of any documents on his own, the Comptroller General purports to exercise his discretionary authority on their behalf.[8] The intervention of the Comptroller General, however, cannot change the fact that the two instigating Members lack the support of either a committee or chamber majority. Just as in Leach, neither ranking minority member has been able to persuade a sufficient number of his colleagues to support the request for information. Nor has any of the committees chaired by the interested Senators taken action here. Rather, in substance, the dispute here is still between the interested Members and their colleagues, not the Comptroller General and defendant, and it is precisely this type of dispute for which the equitable discretion doctrine was devised.

Congress is well-equipped under the Constitution to engage in disputes over documents with the Executive Branch, such as through the use of its subpoena power. Even if the House had done so, the same separation-of-powers concerns underlying the decisions in AT&T and House of Representatives, discussed above, would require judicial restraint. That it has not done so here is strong evidence that Congress, as a collective institution, has not deemed this matter of sufficient moment to precipitate the confrontation plaintiff now seeks. As Leach demonstrates, it makes no sense to precipitate constitutional confrontations by allowing a congressional agent ready access to federal court that circumvents the appropriately cumbersome process of getting a

[8] Enforcement of congressional subpoenas is normally preceded by a collective action of a full House, such as authorizing a referral to a U.S. Attorney for prosecution, Wilson v. United States, 369 F.2d 198 (D.C. Cir. 1966). In earlier times, Houses were known to conduct contempt proceedings before the full chamber. In re Chapman, 166 U.S. 661 (1897).

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full House to take action. Under the equitable discretion doctrine, judicial intervention in these circumstances is simply not warranted.

III. The Comptroller General Has No Statutory Authority to Bring This Lawsuit or to Review the Activities of the NEPDG

Even if the Comptroller General were assumed to have Article III standing to bring this lawsuit (which he does not), and even if the principles of justiciability and equitable discretion were assumed not to warrant its dismissal (which they do), the Comptroller General has failed to state a claim on which relief can be granted. A straightforward reading of the statutes on which he relies does not support the virtually limitless authority he asserts. Accordingly, this Court should dismiss the Complaint.

A. Section 716 does not authorize this lawsuit because the Vice President is not the head of an agency

The Comptroller General's claim to judicial review rests on a statutory provision that purports to allow him to "bring a civil action in the district court of the United States for the District of Columbia to require the head of the agency to produce a record." 31 U.S.C. § 716(b)(2). Plaintiff's extended treatment of his statutory authority under §§ 712 and 717 (see Pl's. S.J. Mem. 23-48) is therefore all for naught if he cannot establish a statutory right to bring a judicial-enforcement action under § 716(b). Yet, the sole defendant in this lawsuit, the Vice President, is not "the head of [an] agency," as § 716(b) requires. Cf. 31 U.S.C. § 716(a) (allowing Comptroller General to "inspect an agency record"). Accordingly, by its plain terms, § 716(b) does not authorize this action. As a result, regardless of whatever "right to access and examine any records of the executive branch" (Pl's. S.J. Mem. 12) the Comptroller General claims, this lawsuit must be dismissed because it is not an attempt to require "the head of [an] agency to produce a record."

In his summary judgment motion, plaintiff contends that "Congress used the term 'agency' in its broadest sense," and that "both the NEPDG and the [Office of the Vice

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President]" are agencies under § 716. Pl's. S.J. Mem. 49. But like so many of plaintiff's arguments, his so-called plain-meaning argument proves far too much. If taken seriously, it would actually empower the Comptroller General to seek records directly from the President, or from this Court concerning meetings with its law clerks.[9] Plaintiff's attempt to treat the Vice President as an agency head is no less an affront to our government of separated powers, but it is, in any event, clearly barred by established case law.

1. Congress has not expressly stated that the Vice President is an "agency" under title 31

Contrary to plaintiff's claims, neither the Vice President nor the Office of the Vice President (OVP) can reasonably be considered an "agency." Even if the Vice President or OVP might arguably fall within the nebulous phrase "instrumentality of the United States Government," 31 U.S.C. § 101 (defining "agency"), Congress's failure to state expressly any intent to reach the Vice President prevents this Court from concluding that he is an agency or head of an agency for purposes of title 31.

In Franklin v. Massachusetts, 505 U.S. 788 (1992), the Supreme Court considered whether the President is an "authority of the Government of the United States" and thus an "agency" under the Administrative Procedure Act. Id. at 800 (quoting 5 U.S.C. §§ 701(b)(1), 551(1)). Of course, the President is literally an "authority of the Government." Nevertheless, the Court concluded that, when the President is neither "explicitly excluded" nor "explicitly included,"

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[9] Plaintiff emphasizes that the chapter of title 31 dealing with GAO refines the definition of "agency" by excluding "the legislative branch" and "the Supreme Court." See 31 U.S.C. § 701(1). But under plaintiff's mechanical application of statutory-construction canons, that exclusion would suffice to demonstrate that this Court is an "agency," or at least an "instrumentality" or "office * * * of the Government." Pl's. S.J. Mem. 50. Moreover, under plaintiff's theory, the express exclusion of the Supreme Court would be superfluous if Article III courts were not already included in title 31's general definition of "agency"; and the exclusion of one court certainly implies that all other courts are included. Thus, under plaintiff's construction of title 31, this Court is an "agency" subject to the Comptroller General's judicial-enforcement authority.

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"textual silence is not enough" to make the President an "agency." Id. at 800-801 (emphasis added). Instead, it would "require an express statement by Congress" to establish otherwise. Id. at 801 (emphasis added). As the Court explained, this clear-statement requirement arose "[o]ut of respect for the separation of powers and the unique constitutional position of the President." Id. at 800.[10]

Two years later, the Court reconfirmed its holding that the President is not an "agency." See Dalton v. Specter, 511 U.S. 462, 470 (1994). Since then, courts in this Circuit have looked to Franklin's express-statement requirement in construing statutes other than the APA. See Association of Am. Physicians & Surgeons v. Clinton, 997 F.2d 898, 905 (D.C. Cir. 1993) (AAPS) ("Although [the anti-nepotism statute] defines agency as 'an executive agency,' we doubt that Congress intended to include the White House or the Executive Office of the President." (citing, inter alia, Franklin)); Tulare County v. Bush, 185 F. Supp. 2d 18, 28 (D.D.C. 2001) ("Because the President is not a federal agency within the meaning of the APA, presidential actions are not subject to review pursuant to the APA. Applying similar logic, the President is not a federal agency for the purposes of [the National Environmental Policy Act]." (internal citations omitted)).

Franklin's clear-statement requirement should apply equally to the Vice President. Like the

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[10] The Court's reference to "respect for the separation of powers," 505 U.S. at 800, does not change the fact that it required an "express statement," rather than merely invoking the canon of constitutional avoidance to construe a statutory term. Although they are sometimes both implicated in an individual case, the two principles are different. See, e.g., Vermont Agency v. United States ex rel. Stevens, 529 U.S. 765, 787 (2000) (explaining that the Court's construction of the word "person" in the qui tam statute was "buttressed by two other considerations," a clear-statement requirement and the constitutional-avoidance doctrine). In this case, the clear-statement requirement means that Congress must expressly mention the President or the Vice President in a statute (which it has not done in the case of title 31). The canon of constitutional avoidance, as discussed below in Part V, independently means that this Court should, in order to avoid the serious constitutional problems posed by plaintiff's broad readings of §§ 712, 716, and 717, adopt the straightforward constructions offered by the defendant — such as a construction of § 716 that excludes the Vice President from its scope.

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President, the Vice President has a "unique constitutional position." Franklin, 505 U.S. at 800. He alone, among senior executive-branch officials, is "totally protected from the President's removal power." Meyer v. Bush, 981 F.2d 1288, 1295 (D.C. Cir. 1993). He alone is designated by the Constitution to serve as Acting President (see U.S. CONST. amend. XXV), or to "become President" upon the death of the President elect (id., amend. XX, § 3), or upon the removal, death, or resignation of the President (see id., amend. XXV, § 1). In fact, he and the President are the only two public officials in the United States who are elected through a process involving every State. See id., art. II, § 1 & amend. XII. Similarly, the presidency and vice presidency are the only two offices that are defined in Article II of the Constitution, rather than by statute. Finally, the Vice President alone has legislative functions as the President of the Senate. See U.S. CONST. art. I, § 3, cl. 4. Given his unique constitutional status in the Executive Branch, the Vice President should enjoy the protection of Franklin's clear-statement requirement.

In fact, in a parallel context, Congress itself has already recognized that the President and the Vice President are like each other but unlike federal agencies. The general statutory framework that governs the preservation, handling, and disclosure of federal-government records creates two mutually exclusive categories. See Armstrong v. Executive Office of the President, 90 F.3d 553, 556 (D.C. Cir. 1996), cert. denied, 520 U.S. 1239 (1997). The first category, "agency" records, is covered by the Federal Records Act. See id.; 44 U.S.C. §§ 3101-3107, 3301-3314. The second category is covered by the Presidential Records Act. See Armstrong, 90 F.3d at 556; 44 U.S.C. §§ 2201-2207. Tellingly, Congress has classified the executive records of the Vice President and his staff as "Presidential records" rather than "agency" records. See 44 U.S.C. § 2207 ("Vice-Presidential records shall be subject to the provisions of [the Presidential Records Act] in the same manner as Presidential records."); Armstrong v. Bush, 924 F.2d 282, 286 n.2 (D.C. Cir. 1991) ("The President, the Office of Vice President, and the components of the [Executive Office of the President] whose sole responsibility is to advise the President are

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subject to the [Presidential Records Act] and create 'presidential records.' The components of the EOP that have statutory responsibility * * * are subject to the [Federal Records Act] and create 'federal records.'").[11]

In this case, there is simply no "express statement by Congress" that includes the President or Vice President within title 31's definitions of "agency." If anything, the General Accounting Office Act of 1980, which added the judicial-enforcement provisions to what is now § 716, indicates that the President and Vice President are excluded from the category of agency heads who are subject to judicial enforcement at the Comptroller General's behest. Section 102 of the Act, which added the judicial-enforcement provisions now codified in § 716, referred generically to the "records of any department or establishment." General Accounting Office Act of 1980, Pub. L. No. 96-226, § 102, 94 Stat. 311, 312 (emphasis added). By contrast, the preceding section of the Act (section 101), which expanded GAO's authority to audit certain confidential accounts, referred three times to agencies and the President using the disjunctive. Twice it referred to "the approval, authorization, or certificate of the President of the United States or an official of an executive agency." § 101, 94 Stat. 311. The third time it referred to "the President or the head of the agency concerned." Ibid.[12] These references show clearly that Congress, at

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[11] The Presidential Records Act is not the only statute that distinguishes between the Vice President and agencies. Another was invoked by the court in Haddon v. Walters, 43 F.3d 1488 (D.C. Cir. 1995). The D.C. Circuit determined that Congress did not consider the "Executive Residence" to be an "independent establishment" for purposes of Title VII of the Civil Rights Act of 1964. In doing so, the court looked to an unrelated statute, 3 U.S.C. § 112, which allows "[t]he head of any department, agency, or independent establishment" to detail employees to certain entities in the White House, including "the White House Office, the Executive Residence at the White House, [and] the Office of the Vice President." See 43 F.3d at 1490. If the Executive Residence is not an "independent establishment" because those terms are placed in separate lists in § 112, it must also follow that the Office of the Vice President is not an "agency."

[12] These references are currently codified, as amended, at 31 U.S.C. § 3524(a)(1) ("the approval, authorization, or certificate of the President or an official of an executive agency"), and 31 U.S.C. § 3524(a)(2) ("the President or head of the agency").

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the precise moment when it adopted the judicial-enforcement provision invoked by plaintiff, knew how to include the President within a provision otherwise applicable to agency heads. Congress's failure to do the same thing in § 716's judicial-enforcement provision demonstrates that Congress did not intend for the President or Vice President to be included in that provision. See Brown v. Gardner, 513 U.S. 115, 120 (1994) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)); accord Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438 (2002).

In the face of this evidence that Congress did not intend to treat the President or Vice President as the "head of [an] agency" under § 716 — or at best was silent on the question — plaintiff asserts that § 716's "structure" "indicates that Congress envisioned that the Comptroller General could * * * bring suit * * * for records under the control of high-level officials at the White House." Pl's. S.J. Mem. 51. He extrapolates that dubious proposition from the fact that some records may be exempted from the reach of judicial enforcement if they are related to activities designated by the President as foreign intelligence or counterintelligence activities, or if the President or Director of OMB certifies that they would fall within certain FOIA exemptions. See 31 U.S.C. § 716(d)(1)(A) and (C). But the fact that the President may prevent certain agency disclosures does not suggest a right to insist on disclosures directly from the Office of the President or the Vice President.[13]

Many traditional "agencies" have records related to foreign intelligence activities or records that fall within the relevant FOIA exemptions. Thus, § 716(d)(1)(C) shows only that Congress

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[13] Of course, this provision has its own constitutional problems. To the extent this statute is construed to authorize a congressional agent to seek documents from the Executive (with no expenditure of political capital by the Congress as a whole) and allow the Executive to resist only if the President expends the political capital inherent in an assertion of privilege, it represents an improper effort by Congress to aggrandize itself at the expense of the Executive.

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empowered the President or Director of OMB to stop an enforcement action by the Comptroller General against any agency for such records, not that the Office of the President or the Office of the Vice President was to be implicitly included among the agencies subject to the provision. In fact, as plaintiff has indicated, the certification procedure in § 716(d)(1)(C) was employed by the Clinton Administration in connection with the Comptroller General's attempt to obtain access to records of the Department of Defense and the Department of State. See Access to Executive Branch Records, GAO-01-440R (Mar. 6, 2001) (Pl's. S.J. Mem. Ex. 6).[14]

The only other evidence that plaintiff provides to demonstrate Congress's purported intent to reach the President or Vice President is contained in committee reports associated with the GAO Act of 1980. Of course, as an initial matter, those reports cannot satisfy Franklin's requirement of an "express statement." On its face, Franklin requires "an express statement by Congress." 505 U.S. at 801 (emphasis added). Needless to say, committee reports cannot satisfy this standard. See, e.g., FEC v. Rose, 806 F.2d 1081, 1090 (D.C. Cir. 1986) ("Congressmen typically vote on the language of a *bill* rather tha[n] on reports that accompany it" (emphasis in original, internal quotation marks omitted)). Moreover, abjuring reliance on committee reports is consistent with the manner in which the Supreme Court applies its clear-statement requirements. Unlike mere "interpretative presumption[s]," the Court's clear-statement requirements protect

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[14] This reasoning also explains why plaintiff over-reaches when he relies on the 1979 testimony of the Director of OMB. See Pl's. S.J. Mem. 54. Testifying on a version of the bill that did not yet include any exclusions in the judicial-enforcement provisions (i.e., no exclusion for records about foreign intelligence activities, nor any general exclusion for records exempted from disclosure to the Comptroller General by other statutes), the Director noted that the judicial-enforcement provisions "could potentially permit the Comptroller General to sue to compel the disclosure of the same documents which section 101 of H.R. 24 would deny him access to." General Accounting Office Act of 1979: Hearing Before a Subcomm. of the House Comm. on Gov't Operations, 96th Cong., 1st Sess. 89, 110 (1979). Because section 101 of H.R. 24 expressly exempted "certain authorities of the Director of Central Intelligence * * * for sensitive foreign intelligence and counter-intelligence activities," as the Director of OMB pointed out (id. at 87, 104), his caution about the potentially broader scope of section 102 was well-taken, even without assuming that section 102 would apply to suits against the President.

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"weighty and constant values," often constitutional ones. Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 108-109 (1991) (citations omitted). When such requirements apply, "the unequivocal expression" that the Court has "insist[ed] upon is an expression in statutory text. If clarity does not exist there, it cannot be supplied by a committee report." United States v. Nordic Village, Inc., 503 U.S. 30, 37 (1992) (emphases added, internal quotation marks omitted); see also EEOC v. Arabian Am. Oil Co., 499 U.S. 244, 262-63 (1991) (Marshall, J., dissenting) (noting that "[c]lear-statement rules," like the one adopted by the majority in that case, do not operate "to reveal actual congressional intent," rather they "foreclose inquiry into extrinsic guides to interpretation, and even compel courts to select less plausible candidates from within the range of permissible constructions" (emphasis added, internal citations omitted)). Thus, the statutory language is dispositive in demonstrating that plaintiff has not met his burden under Franklin of identifying an express statement by Congress.

Yet, even if — contrary to precedent — the committee reports are considered here, they contain no express statement indicating an intent to include the Vice President within the definition of an agency. Plaintiff relies upon a single sentence in the Senate Report, which refers to "enforcement actions at the Presidential level" and the President's ability to avoid a suit against himself or his close advisers by exercising the certification power now contained in § 716(d)(1)(C). S. Rep. No. 96-570, at 8, reprinted in 1980 U.S.C.C.A.N. 732, 739. That reference, however, which merely assumes without expressly stating that the President is subject to a § 716 suit, is too opaque to satisfy Franklin. More importantly, it is inconsistent with the statutory text. The Senate Report states that the bill allows the President or Director of OMB to "preclude a suit * * * for information which would not be available under the Freedom of Information Act." S. Rep. No. 96-570, supra, at 8, reprinted in 1980 U.S.C.C.A.N. 739. Thus, the report says that the President can prevent the disclosure of records "which would not be available under [FOIA]," or, in other words, that the Comptroller General's access does not extend beyond what is allowed under FOIA.

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The Senate Report's description of the President's certification authority is inconsistent with the terms of the statute. The certification authority in § 716(d)(1)(C) contains no broad carve-out or per se exclusion for presidential advisers co-extensive with FOIA, as the Senate Report implies. Instead, the statute requires a determination (by the President or Director of OMB) that one of two specific FOIA exemptions (out of nine) would apply to the records and that "disclosure reasonably could be expected to impair substantially the operations of the Government." 31 U.S.C. § 716(d)(1)(C). While not insubstantial, that certification power does not extend as far as the protections afforded by FOIA, and its exercise imposes a much higher administrative burden on the Executive than does FOIA. In 1980, as it does today, FOIA did not make available any documents from the President and his principal advisers and assistants; there was no need whatsoever to determine whether documents fell within individual exemptions, or how harmful disclosure might be. All of those records were simply off-limits under FOIA because presidential advisers were "not included within the term 'agency' under the FOIA." Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 156 (1980); see also Part III.A.2, below.[15] The Senate Report incorrectly suggests that the certification power prevents the judicial-enforcement power from being any broader than FOIA. That inconsistency with the statute renders the Senate Report especially unworthy of respect in attempting to establish an express congressional statement. See, e.g., Public Citizen v. Carlin, 184 F.3d 900, 904 (D.C. Cir. 1999), cert. denied, 529 U.S. 1003 (2000) ("Legislative history may show the meaning of the texts * * * but may not be used to show an 'intent' at variance with the meaning of the text." (quoting In re Sinclair, 870 F.2d 1340, 1344 (7th Cir.1989)). In other words, because the Senate Report mischaracterizes the President's certification power, its apparent assumption that there

[15] Kissinger was actually decided the week after the date of the Senate Report. But even before the release of the Kissinger opinion — which affirmed the district and appellate courts on this point — it was settled that presidential advisers were not considered agencies under FOIA. See, e.g., 1 KENNETH CULP DAVIS, ADMINISTRATIVE LAW TREATISE § 1.2, at 8 (2d ed. 1978).

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can be "enforcement actions at the presidential level" should be given no credence. (Moreover, even if that sentence in the Senate Report is taken seriously, the only way to give practical effect to its conclusion that the Comptroller General's access to presidential-level documents is co-extensive with FOIA is to exclude the President and Vice President from the definition of "agency."[16])

Plaintiff also attempts to locate congressional intent to allow judicial-enforcement against the President and Vice President in the fact that the House and Senate Reports both reprint (in an appendix) GAO's own list of the difficulties it claimed to have had in gaining access to executive branch documents, including two examples involving entities within the Executive Office of the President. See Pl's. S.J. Mem. 52-53. Of course, those appendices, prepared by GAO, are even less convincing as an "express statement by Congress" than the actual committee reports (which were at least prepared by congressional staffers). The Senate Report itself neither discusses any examples of prior access problems, nor does it specifically endorse all of the examples in GAO's list. Nowhere does it indicate that the new provisions would have prevented each of the problems cited by GAO. See S. Rep. No. 96-570, supra, at 5, reprinted in 1980 U.S.C.C.A.N. 736. The House Report is even less helpful to plaintiff. Although it reprints GAO's list in an appendix, the only examples of access problems that the Committee actually describes involved the Department of Defense and the Department of State, not the White House. See H.R. Rep. No. 96-425, at 5 (1979).

There is simply no clear statement of any congressional intent to include the President or Vice President among the agency heads to which § 716(b) applies. To the contrary, given the differences between sections 101 and 102 of the GAO Act of 1980, there are affirmative indications that Congress excluded them. The best that can be said for the Comptroller

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[16] This is also consistent with the statutory distinction, discussed above, between "agency records," which are subject to FOIA, and presidential and vice presidential records, which are not.

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General's case is that the President and Vice President are "not explicitly excluded" nor "explicitly included"; but such "textual silence" led the Supreme Court to conclude in Franklin that the President is not an "authority of the Government of the United States." 505 U.S. at 800. Under these circumstances, the Vice President cannot be considered an agency or an agency head subject to the judicial-enforcement provisions in § 716.

2. Entities whose "sole function is to advise and assist the President" are not "agencies"

The same conclusion also follows from well-established interpretations of the term "agency" in other statutes dealing with access to records. As mentioned above, even when the judicial-enforcement provisions were added in 1980, it was clear that the definitions of "agency" under the APA and FOIA did not include the President's close advisers or entities whose sole function was to advise and assist the President. The definition of "agency" in title 31 is no broader than those used in the APA and FOIA. Furthermore, as relevant here, the sole function of the Vice President is to advise and assist the President (and the same was true for the NEPDG while it existed). Accordingly, for this independent reason, neither the Vice President nor the NEPDG can be considered to be or to have been an "agency" under § 716.[17]

As the Supreme Court explained just one month before the GAO Act of 1980 became law, telephone notes made by Henry Kissinger while he was serving as Assistant to the President were not "agency records" under FOIA. Kissinger v. Reporters Comm. for Freedom of the Press,

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[17] Plaintiff purports to sue the Vice President in part as the Chairman of the NEPDG, but the Vice President is always a constitutional officer, regardless of the "capacity" in which he is alleged to have acted. This means that Franklin applies to him regardless of how he is characterized by plaintiff. Moreover, as a matter of law, the NEPDG ceased to exist by September 30, 2001, several months before this lawsuit was filed (see Compl. Ex. A at 3 (Memorandum from the President directing that "[t]he Energy Policy Development Group shall terminate no later than the end of the fiscal year 2001")), which would render moot any suit against the Vice President as Chairman of the NEPDG. Nevertheless, defendant discusses here why the NEPDG was not an "agency," and thus why the Vice President could not have been the head of an agency by virtue of being Chairman of the NEPDG.

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445 U.S. 136, 156 (1980).[18] The FOIA defines "agency," then and now, to include not only the APA's definition of "agency" (any "authority of the Government") but also "any * * * establishment in the executive branch of the Government (including the Executive Office of the President)." 5 U.S.C. §§ 551(1), 552(f)(1). In spite of that broad definition, the Court concluded that "the 'Executive Office' does not include the Office of the President," and therefore that "'the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President' are not included within the term 'agency' under the FOIA." Kissinger, 445 U.S. at 156 (quoting H.R. Conf. Rep. No. 93-1380, at 15 (1974)).

The D.C. Circuit has repeatedly applied this exception for presidential advisers to entities within the White House and the Executive Office of the President that advise and assist the President. For example, in Meyer v. Bush, 981 F.2d 1288 (D.C. Cir. 1993), the court considered an entity similar to the NEPDG. The plaintiff had brought a FOIA action against President Reagan's Task Force on Regulatory Relief, which was headed by then-Vice President Bush and included certain cabinet members as well as the President's Assistant for Policy Planning. Id. at 1289. The court concluded that the task force was not an "agency" by focusing on "three interrelated factors": "how close operationally the group is to the President, what the nature of its delegation from the President is, and whether it has a self-contained structure." Id. at 1293. Ultimately, the court concluded that the task force primarily advised the President; because it did not "exercise substantial independent authority," its members — including the cabinet officers — "were acting, in truth, just as would senior White House staffers." Id. at 1297.

In other cases, the D.C. Circuit has determined that the National Security Council and the Counsel to the President are not agencies under FOIA. See Armstrong, 90 F.3d at 565 (National

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[18] This portion of the Court's opinion — which appeared in Part III — was unanimous. See Kissinger, 445 U.S. at 161 (Brennan, J., concurring in part and dissenting in part) (dissenting from Part II of the Court's opinion); id. at 162 n.3 (Stevens, J., concurring in part and dissenting in part) ("I agree with Part III of the Court's opinion that the summaries of Dr. Kissinger's telephone conversations when he was a Presidential adviser were not 'agency records' * * * .").

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Security Council); National Sec. Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Counsel to the President). More recently, this Court has concluded that the logic that excludes the President and his staff from the definition of "agency" necessarily excludes the Vice President and his staff as well:

> Offices within the White House whose functions are limited to advising and assisting the President do not come within the definition of an 'agency' within the meaning of FOIA or the Privacy Act. This includes the Office of the President (and by analogy the Office of the Vice President) and undoubtedly the President and Vice President themselves.

Schwartz v. United States Dep't of Treasury, 131 F. Supp. 2d 142, 147 (D.D.C. 2000), aff'd, 2001 WL 674636 (D.C. Cir. 2001). Several other decisions have applied the presidential-adviser exception to the Government in the Sunshine Act or the Privacy Act, both of which borrow FOIA's definition of "agency."[19]

The term "agency" in § 716 (which does not expressly refer to "the Executive Office of the President") should, a fortiori, be read to incorporate the same exemption for presidential advisers. The GAO Act of 1980 referred to the "records of any department or establishment." Pub. L. No. 96-226, § 102, 94 Stat. 311, 312 (1980). The current version speaks simply of "agency," which is defined as "a department, agency, or instrumentality of the United States Government." 31 U.S.C. § 716(b); id. § 101. When applied within the Executive Branch, those references are, if anything, less inclusive than FOIA's definition of "agency," which includes any "authority of the Government" and "any executive department * * * or other establishment in the executive branch of the Government (including the Executive Office of the President)." 5 U.S.C.

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[19] See Rushforth v. Council of Econ. Advisers, 762 F.2d 1038, 1043 (D.C. Cir. 1985); Dale v. Executive Office of the President, 164 F. Supp. 2d 22, 25-26 (D.D.C. 2001); Tripp v. Executive Office of the President, 200 F.R.D. 140, 143-146 (D.D.C. 2001); Broaddrick v. Executive Office of the President, 139 F. Supp. 2d 55, 58-60 (D.D.C. 2001); Sculimbrene v. Reno, 158 F. Supp. 2d 26, 29-35 (D.D.C. 2001); Falwell v. Executive Office of the President, 113 F. Supp. 2d 967, 970 (W.D. Va. 2000); but see Alexander v. FBI, 971 F. Supp. 603, 606-607 (D.D.C. 1997).

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§§ 551(1), 552(f)(1).

In this case, the sole function of the Vice President and the NEPDG was to advise and assist the President. Of course, as Congress has recognized, that is the Vice President's general function (aside from his duties as President of the Senate). By statute, the Vice President is authorized to appoint and pay staff members in order to enable him "to provide assistance to the President in connection with the performance of functions specially assigned to the Vice President by the President in the discharge of executive duties and responsibilities." 3 U.S.C. § 106(a). There can be no doubt here that the Vice President was acting solely "to provide assistance to the President."

The three-part test set forth in Meyer makes clear that the Vice President and task force here, just like the Vice President and task force there, do not qualify as agencies. First, the NEPDG was "close operationally * * * to the President." 981 F.2d at 1293. Like the Task Force on Regulatory Relief in Meyer, the NEPDG included the Vice President, several cabinet members, and members of the President's personal staff. See 981 F.2d at 1289 (identifying task force members); Compl. Ex. A ¶ 1 at 1-2 (identifying NEPDG members). In addition, the NEPDG reported directly to the President. See Compl. Ex. A. ¶¶ 2-3 at 2.

Second, the President did not delegate "substantial independent authority" to the NEPDG. 981 F.2d at 1297. If anything, the NEPDG had even less independent authority than the task force in Meyer, which not only advised the President but also provided "'guidance' and 'direction' to the OMB Director" and possessed "authority to resolve disputes between agencies and OMB." 981 F.2d at 1294. By contrast, the NEPDG's only functions were to "develop a national energy policy" by "gather[ing] information, deliberat[ing], and * * * mak[ing] recommendations to the President." Compl. Ex. A ¶ 2 at 2.[20] As the D.C. Circuit has

[20] It is appropriate to evaluate the NEPDG's role on the basis of the presidential memorandum that established it. See Meyer, 981 F.2d at 1294 (calling the Executive Order that established the task force "the most important indication of the Task Force's role").

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subsequently explained, the "authority to make policy recommendations for approval by the President" is a "quintessentially advisory" function, and demonstrates a lack of substantial independent authority under the Meyer test. Armstrong, 90 F.3d at 561; see also Rushforth v. Council of Econ. Advisers, 762 F.2d 1038, 1041 (D.C. Cir. 1985) (contrasting the ability to "take direct action" with providing "advice and assistance").

Third, the NEPDG did not have a "self-contained structure." 981 F.2d at 1293. Like the task force in Meyer, it was akin to "a partial cabinet group," which "operated out of the Vice President's office * * * borrowing [staff]" from an agency. Id. at 1296; see Def's. Response to Pl's. Statement of Material Facts ¶ 5 (describing NEPDG staff). In addition, because the NEPDG included among its members the "Assistant to the President and Deputy Chief of Staff for Policy, [the] Assistant to the President for Economic Policy, and [the] Assistant to the President for Intergovernmental Affairs" (Compl. Ex. A. ¶ 1 at 1-2), it was obviously "intertwine[d] * * * with the President's immediate personal staff," rather than self-contained. Armstrong, 90 F.3d at 560.

* * *

Because the Vice President, the OVP, and NEPDG are neither agencies nor agency heads, § 716 is inapplicable here. Not only is there no legal obligation to provide access to records under § 716(a), but there is no cause of action granted by § 716(b). Without a cause of action, the Comptroller General has failed to state a claim upon which this Court can grant relief. Thus, under Rule 12(b)(6), this Court can — and should — dismiss the Complaint for that reason alone, without the need to reach any of the other statutory or constitutional arguments discussed below.

B. Section 712 does not apply because the Comptroller General is not investigating the use of public money

Plaintiff's self-aggrandizing method of interpreting his authorizing statute continues with respect to 31 U.S.C. § 712, which provides the first substantive ground for his asserted right to

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access NEPDG records. Under that section, the Comptroller General is given the power to "investigate all matters related to the receipt, disbursement, and use of public money." There were, of course, certain NEPDG activities that were related to the disbursement or use of public money (see Def's. Response to Pl's. Statement of Material Facts ¶ 7), and the Vice President has already, as a matter of comity, furnished the Comptroller General with documents pertaining to the NEPDG's costs. See id. at ¶¶ 16-17; Compl. ¶ 23.

Plaintiff, however, would turn § 712(1) into a "sweeping" clause of all-encompassing power. Pl's. S.J. Mem. 3. Few things even tangentially associated with the federal government would elude his jurisdictional mandate. No minute of any federal employee's day — from the President on down — would be beyond his searching gaze, because he literally equates time with money: He claims authority "to determine how time, and therefore money, was spent." Pl's. S.J. Mem. 26. He claims the need to know, and the authority to learn, everything about meetings and even the planning processes for them — not just who attended (id. at 25), but also what "subjects [were] discussed at the meetings held by the Vice President" (ibid.), "how many meetings were focused on one subject versus another" (id. at 26), and even how the Vice President and his staff decided who would be invited (id. at 25). All of those details are supposed to provide Congress with the information necessary to determine "whether the NEPDG spent public funds for meetings efficiently and effectively." Id. at 26. Of course, it strains the bounds of credibility to assert that the 1921 Congress, which adopted the predecessor to § 712(1) focused on the need to audit the federal spending process, contemplated any need, let alone authority, to so micromanage the Executive — or, for that matter, to treat the Judiciary the same way merely because it also "use[s] * * * public money."

Plaintiff's reading of § 712(1) is untenable for three principal reasons. First, it would render superfluous several subsequent grants of authority to the Comptroller General. If the power to investigate "all matters related to the * * * use of public money" were as unbounded as plaintiff contends, there would have been no need, for example, for Congress to have fifty years later added § 717(b) to grant the power plaintiff invokes to evaluate the results of federal

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programs. Indeed, in addition to rendering superfluous other sources of authority to investigate the government, plaintiff's reading would also render nugatory the procedural and substantive limits contained in those other sources, since § 712(1) could always be used to achieve what would not be permitted under another statutory provision. Plaintiff himself, moreover, describes the enactment of § 717(b) as an "expanded mandate" that required GAO to develop new areas of "expertise beyond auditing and accounting." Pl's. S.J. Mem. 12.

Second, the very breadth of plaintiff's view of his own authority would create obvious constitutional difficulties in many circumstances. Congress's powers to investigate are not limitless. Congress "cannot inquire into matters which are within the exclusive province of one of the other branches of the Government" (Barenblatt v. United States, 360 U.S. 109, 112 (1959); see also Part IV.A, below), and it is inconceivable that Congress could expand its power by delegating it to an agent. Yet it is difficult to conceive of a matter within the "exclusive province of one of the other branches of the Government" that would not be "related to the * * * use of public money" in the sense that plaintiff construes that phrase. 360 U.S. at 112.

Third, plaintiff's reading of § 712(1) ignores canons of statutory construction that would counsel in favor of a reading that would avoid the first two problems. The statute refers to "matters related to the receipt, disbursement, and use of public money." 31 U.S.C. § 712(1) (emphasis added). The three related terms "receipt, disbursement, and use" should be read together, and the apparently broad concluding term "use" should be read as limited to the class addressed by "receipt" and "disbursement." "Under the principle of ejusdem generis, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." Norfolk & Western R.R. v. Train Dispatchers, 499 U.S. 117, 129 (1991); see also Bazuaye v. United States, 83 F.3d 482, 484 (D.C. Cir. 1996) (following both the ejusdem generis and noscitur a sociis canons to limit the meaning of "any other law enforcement officer"). The word "use" must be read as coming from the same vein as the other two fiscal and accounting terms: "receipt" and "disbursement." This explains why, despite having had § 712(1) authority for decades, GAO's expertise before 1970

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was focused in "auditing and accounting" (Pl's. S.J. Mem. 12) and a 1949 congressional summary had emphasized GAO's role in securing "necessary information concerning the financial transactions of the Government," The General Accounting Office: A Study of Its Functions and Operations, H.R. Rep. No. 81-1441 at 6 (1949) (emphasis added).

In order to avoid creating severe statutory problems (by rendering nugatory GAO's other sources of authority to investigate the government), and constitutional problems (by expanding GAO's investigative powers beyond those available to Congress itself), this Court should reject plaintiff's untethered reading of § 712(1), and recognize that GAO's powers under that provision pertain only to financial transactions.

C. Section 717(b) does not apply because the Comptroller General is not evaluating the "results of a program or activity the Government carries out under existing law," and because the procedural prerequisites for a § 717(b) evaluation have not been met

As a general proposition, Congress has the power of inquiry only in aid in its exercise of its legislative power. See Barenblatt, 360 U.S. at 111-112. It has purported to delegate part of its power of inquiry by statute to the Comptroller General. As the Comptroller General acknowledges, his investigative powers were expanded when, in 1970 and 1974, Congress directed him to "evaluate the results of a program or activity the Government carries out under existing law." 31 U.S.C. § 717(b) (emphasis added). GAO's investigation in this case goes far beyond the limits of that statutory authorization because (1) a "program or activity * * * under existing law" refers only to programs authorized by Congress and does not include the Executive's exercise of constitutional functions; (2) GAO is attempting to investigate the process by which the NEPDG developed its recommendations rather than the "results" of that process; (3) the NEPDG is not included in § 717(b)'s reference to "Government" for the same reasons that it is not included within § 716's references to "agency"; and (4) GAO's inquiry was not requested by a committee or conducted on the initiative of the Comptroller General, as § 717(b) requires.

*1. The NEPDG did not engage in a "program or activity * * * under existing law"*

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The Comptroller General's authority to conduct evaluations under § 717 does not extend to any governmental program or activity, but only to those that are "carrie[d] out under existing law." 31 U.S.C. § 717(b). In the context of the statutory scheme, this is evidently part of Congress's attempt to determine whether the programs and activities it has established by statute are achieving Congress's goals. But the NEPDG was not created pursuant to any statutory program, and it did not attempt to achieve any results intended by Congress. Instead, it was established by the President, pursuant to his Article II powers, including his powers to obtain opinions from the principal officers in the Executive Branch and to recommend for the consideration of Congress such measures as he judges "necessary and expedient." U.S. CONST. art II, § 2, cl. 2; id. art. II § 3. Indeed, the NEPDG's mission of formulating policy recommendations to the President, including proposals for new legislation, is the antithesis of Congress's concern with measuring the success of existing programs or activities.

Taken in context, the phrase "under existing law" refers to statutory law. The limitation to statutory programs is implicit in the fact that evaluations done at the request of a congressional committee are limited to those instances where the committee has "jurisdiction over the program or activity." Id. § 717(b)(3). Moreover, the legislative history of § 717(b) unambiguously shows that the Comptroller General's authority to conduct program-results evaluations was limited to programs created by Congress, and GAO itself has repeatedly characterized its power in precisely that way.

The first general incarnation of § 717's program-results evaluations appeared in the Legislative Reorganization Act of 1970 (1970 Act),[21] which was largely directed at improving Congress's

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[21] As plaintiff notes, even before 1970, GAO had conducted program-results reviews when Congress had specifically authorized them by statute. As GAO's in-house history program has explained: "As a result of 1967 legislation, GAO began to evaluate government programs, specifically the poverty programs." Roger R. Trask, GAO History Program, GAO History, 1921-1991, GAO/OP-3-HP at 61 (Feb. 1991). "The poverty programs work between 1967 and 1969 * * * demonstrated GAO's qualifications to do program evaluation and was a dress rehearsal for the major thrust of GAO reporting in the 1970s." Id. at 63; see also id. at 90 ("with the effort on the poverty programs between 1967 and 1969, GAO moved into program evaluation"); Staff of

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ability to review executive branch implementation of congressionally-created programs. Thus, the House Report described the new "extension[]" of GAO's work in a section entitled "Oversight and Program Analysis Assistance to the Congress," and said GAO's new non-audit responsibilities were intended to assist Congress in "determining whether existing programs are being administered in accordance with congressional intent" and in "exploring the advisability of modifying or even of abolishing such programs." H.R. Rep No. 91-1215, supra, at 17-18, reprinted in 1970 U.S.C.C.A.N. 4417, 4432-4433 (emphases added). These goals underscore that GAO's reviews were to be limited to statutory programs, not constitutional provisions; Congress, of course, lacks authority to "modify[]" or "abolish[]" the President's constitutional functions, and thus would not need GAO's assistance in "overseeing" those functions.

The 1970 Act also expanded the responsibilities of congressional committees. In describing those new responsibilities (which were among those that GAO's new powers were supposed to aid), the House Report makes clear that references to "laws" meant only "statutory laws":

> [E]ach Senate standing committee shall review and study * * * the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee. The stated purposes of these reviews and studies is to assist the Senate in its analysis, appraisal, and evaluation of the application, administration, and execution, of the laws enacted by the Congress and in the formulation, consideration, and enactment by the Senate of such modifications of, or changes in, those laws, and of such additional legislation, as may be necessary or appropriate.

H.R. Rep No. 91-1215 at 72-73, reprinted in 1970 U.S.C.C.A.N. 4491 (emphases added); see also id. at 73-74, reprinted in 1970 U.S.C.C.A.N. 4492 (substantively identical discussion about House standing committees). Just as in the descriptions of congressional committees'

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the Senate Comm. on Governmental Affairs, 103d Cong., 2d Sess., The Roles, Mission and Operation of the U.S. General Accounting Office, 3 (Comm. Print 1994) (National Academy of Public Admin.) ("in the 1960's * * * GAO developed a new role in evaluating government programs, beginning with an 18-month evaluation of economic opportunity programs that Congress mandated in 1967"). Obviously, this precursor of § 717(b) authority was a review of previously enacted statutory laws.

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legislative-review functions, the reference in § 717(b)(3) to requests for GAO from committees "with jurisdiction over the program or activity" should be understood as referring only to programs carried out under the "laws enacted by the Congress."

Several of the Comptroller General's own contemporaneous descriptions of the potential new program-results authority evinced this same understanding, and stand in stark contrast to the virtually unbounded authority he now claims before this Court. Comptroller General Staats, for example, explained that § 717(b) would clarify GAO's "charter to review and evaluate Federal and federally assisted programs as to whether these programs are being carried out as intended by the Congress. In other words, [the statute would allow GAO to determine] whether programs are achieving congressionally stated objectives in the most effective manner and at the lowest cost." Letter from Comptroller General Elmer B. Staats to Rep. B.F. Sisk (Oct. 31, 1969) (Pl's. S.J. Mem. Ex. 7) (emphases added).[22]

Thus, the legislative history of § 717(b) and the contemporaneous statements of the

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[22] GAO repeated the express reference to congressional objectives in its in-house Comprehensive Audit Manual, which described the purpose of program-results reviews as to "evaluate whether desired results or benefits of agency programs and activities are being achieved and whether the objectives established by the Congress are being met." Quoted in FREDERICK C. MOSHER, THE GAO: THE QUEST FOR ACCOUNTABILITY IN AMERICAN GOVERNMENT 177 (1979) (emphasis added). Later, in 1975 congressional testimony, Comptroller General Staats explained that "program evaluation and analysis" determined "whether programs are achieving the results which the Congress envisioned in enacting legislation." Review of the Powers, Procedures, and Policies of the GAO: Hearing Before a Subcomm. of the House Comm. on Gov't Operations, 94th Cong., 1st Sess. 4 (1975) (emphasis added); see also id. at 28 ("we are trying to see if the objectives of the statutes have been carried out effectively, and if not, why not" (emphasis added)). Indeed, as plaintiff notes (Pl's. S.J. Mem. 36), even Comptroller General Staats's 1969 testimony described the first question posed by a review of program results as follows: "Is the program accomplishing the results intended as spelled out in the legislative objectives or through implementing directives of the executive branch agency and within the costs anticipated at the time the legislation was enacted?" Capability of GAO to Analyze and Audit Defense Expenditures: Hearings Before the Subcomm. of the Senate Comm. on Gov't Operations, 91st Cong., 1st Sess. 33 (1969) (GAO 1969 Hearing) (emphasis added). The reference to "implementing directives of the executive branch agency" obviously does not contemplate the Executive's constitutional functions.

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Comptroller General recognized that program-results evaluations were intended to measure programs against benchmarks established by Congress — and therefore could not be intended to apply to the Executive's formulation of new proposals or exercise of independent constitutional functions, which Congress cannot regulate.[23] That understanding, moreover, comports with the long-recognized distinction between the statutory and constitutional functions of the Executive. In Marbury v. Madison, for example, Chief Justice Marshall's opinion for the Court distinguished between "cases in which the executive possesses a constitutional * * * discretion" and those where "the legislature proceeds to impose on that officer other duties." 5 U.S. (1 Cranch) 137, 166 (1803); cf. Dalton v. Specter, 511 U.S. 462, 474 (1994) (explaining the "recognized" "distinction between claims that an official exceeded his statutory authority, on the one hand, and claims that he acted in violation of the Constitution, on the other").[24]

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[23] Plaintiff implausibly purports to find an unexpressed intent by Congress to extend program-results evaluations to the discharge of the Executive's constitutional functions in a two-paragraph summary of a single GAO study — a 1969 review of a 1963 National Security Action Memorandum establishing a National Communications System (NCS) — that was included in a 67-page appendix to a statement Comptroller General Staats provided a Senate subcommittee. See Pl's. S.J. Mem. 43-44 (citing GAO 1969 Hearing 81). Of course, that slight reference could not have worked such a dramatic transformation in the statute's scope, especially in light of the numerous contrary subsequent characterizations of § 717(b) by committee reports and by Comptroller General Staats himself. Moreover, GAO's limited study, whatever the propriety of GAO's conducting it under its authority at the time, merely evaluated whether the National Security Adviser's 1963 directives had been achieved; it did not evaluate the advisory efforts by three separate groups to develop those directives. See Pl's. S.J. Mem. Ex. 5 at 10-11 (describing Emergency Planning Committee, task group, and NSC subcommittee on communications). Therefore, that precedent cannot support GAO's attempt to evaluate the process by which the NEPDG developed its advisory recommendations. As its name clearly stated, the National Energy Policy Development Group existed to develop policy and advise the President, not to "carr[y] out" that policy.

[24] The evidence of congressional intent specific to § 717(b) defeats plaintiff's attempts to support his expansive interpretation of the term "existing laws." The fact that the term "law" often includes, for example, the common law (Pl's. S.J. Mem. 41 n.21) is unremarkable, since common law persists only to the extent that the legislature does not supplant it with legislation. Similarly, the fact that the Constitution is law under the Supremacy Clause or Rule 11 (id. at 41) is inapposite, since those provisions are not directed exclusively at areas over which Congress may inquire in aid of its legislative power.

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The NEPDG was not created pursuant to any statutory program, and it did not attempt to achieve any results intended by Congress. Instead, it was established by the President, pursuant to his Article II powers, including his powers to seek opinions from his principal officers and to recommend measures that he judges "necessary and expedient" for consideration by Congress. U.S. CONST. art II, § 2, cl. 2; id. art. II § 3. The NEPDG's sole mission was to make policy recommendations to the President, not to "carr[y] out" any "program or activity" authorized by statute. It thus falls clearly outside the scope of the authority granted by § 717(b) to conduct program-results evaluations.

There is simply no truth to plaintiff's claim that the NEPDG "necessarily carried out activities under a variety of statutes." Pl's. S.J. Mem. 45. Even if any of the NEPDG's recommendations related to the President's own duties under LIHEAP or other statutory programs, the recommendations still came in response to the President's constitutional authority to request them, and were therefore not subject to the usual statutory limitations on agency behavior. See, e.g., Alaska v. Carter, 462 F. Supp. 1155, 1160 (D. Alaska 1978) (invoking constitutional doubt doctrine to "hold[] that any recommendations by the Secretary of Interior on the exercise of the President's powers under the Antiquities Act, which recommendations have been requested by the President, do not come under the NEPA impact statement process [which would otherwise apply to Secretary of Interior]"). Nor is there any evidence that the NEPDG's report took the place of the Energy Secretary's annual report on the Strategic Petroleum Reserve

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Of course, plaintiff's attempt to define "existing law" in § 717 by reference to uses of that phrase in other contexts is fundamentally misguided. Needless to say, there are many instances in the United States Code where the phrase "existing law" patently means only statutory law. See, e.g., 36 U.S.C. § 2103(c) (excepting American Battle Monuments Commission from "the requirements of existing laws or regulations" for purposes of contracting); 40 U.S.C. § 806 (repealing "[a]ll existing laws or parts of laws inconsistent with the provisions of this chapter"); 31 U.S.C. § 1105(a)(16) (requiring budget to include "the level of tax expenditures under existing law in the tax expenditures budget * * * for the fiscal year for which the budget is submitted").

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(see Pl's. S.J. Mem. 46), or any other independent statutory obligation.

2. GAO is not evaluating the "results" of a program or activity

Even assuming that the NEPDG somehow carried out a program or activity under existing law (which it did not), § 717(b) only gives GAO authority to "evaluate the results of" that program or activity. 31 U.S.C. § 717(b) (emphasis added). In this case, however, GAO seeks to evaluate the process by which the NEPDG developed its recommendations rather than the results of that process.

The noun "result" means "the outcome of the deliberations of a council or assembly," or "[t]he effect, consequence, issue, or outcome of some action, process, design, etc." 13 OXFORD ENGLISH DICT. 761 (2d ed. 1989). It thus necessarily rests on the contrast between an outcome and the process by which it was produced. In this case, it is obvious that the "results" of the NEPDG's work were "the outcome of [its] deliberations" (i.e., its actual report). Indeed, plaintiff himself admits that an activity's "results" are its "consequences, effects, or conclusions." Pl's. S.J. Mem. 32 (internal quotation marks and alterations omitted). Yet, he attempts to deprive the term "results" of any function in § 717(b) by asserting that "an inquiry into the NEPDG's processes is necessary to any evaluation of the results of the NEPDG's activities." Pl's. S.J. Mem. 34.[25]

Plaintiff, however, would (plausibly) claim precisely the same power if the statute omitted any reference to results and instead read "[t]he Comptroller General shall evaluate a program or activity the Government carries out." This Court should refuse to adopt a construction that

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[25] Plaintiff's attempt to claim that a "result" includes the "process" that leads to or culminates in that result illogically and unnecessarily conflates two words that are defined — even in plaintiff's dictionary — in relation to each other. See WEBSTER'S THIRD NEW INT'L DICT. 1808 (1993) (defining "process" as a "progressively continuing operation that consists of a series of controlled actions or movements systematically directed toward a particular result or end" (emphasis added)); see also 12 OXFORD ENGLISH DICT. 546 (defining "process" as "[a] continuous and regular action or succession of actions, taking place or carried on in a definite manner, and leading to the accomplishment of some result" (emphasis added)).

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would render utterly superfluous the statutory phrase "the results of." See Duncan v. Walker, 533 U.S. 167, 174 (2001).

Moreover, contrary to plaintiff's assertion, a result or outcome can be evaluated independent of the process by which it was achieved. Proposals like the ones contained in the NEPDG's final report have their own value as policy ideas, and can be meaningfully evaluated on their own terms. Plaintiff's attempt to pretend otherwise is the equivalent of saying that a reviewer cannot comment on the merits of a book or a judicial opinion without being able to analyze the author's word-processing software, work schedule, and sources of inspiration — as well as all of the rough drafts that preceded the published product. GAO's own history belies that attempt.[26] The Comptroller General's conflation of results and process also creates needless friction between the Legislative and Executive Branches. Although the results of a deliberative process may reflect that process and lead to a claim of privilege, the legislative intrusion into the deliberative process itself inevitably creates the prospect of privilege assertions and inter-branch conflict. Notably, plaintiff's misguided attempt to treat "results" as if it meant "process" provides the alleged foundation for this lawsuit. The Comptroller General began his July 18, 2001 "statutory 'demand letter'" (Compl. ¶ 29) by saying that GAO was "reviewing the process by which the National Energy Policy was developed." Compl. Ex. I at 1 (emphasis added). Similarly, in his August 17, 2001 report purportedly made under § 716, the Comptroller General explained that he was seeking "records relat[ed] to the process by which the National Energy Policy was

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[26] As plaintiff points out (Pl's. S.J. Mem. 15-16), in 1993, GAO evaluated the recommendations of the National Performance Review (Vice President Gore's task force to reform government management). GAO's nearly-300-page interim report provided its "initial comments" on the National Performance Review's major recommendations. Although the report noted whether or not GAO agreed with each recommendation, it was "primarily based on [GAO's previously] issued reports and testimonies," rather than on any analysis of the processes pursued by the National Performance Review in developing its recommendations. Management Reform: GAO's Comments on the National Performance Review's Recommendations, GAO/OCG-94-1 at 1, 5-7 (Dec. 3, 1993).

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developed." Compl. Ex. K at 1 (emphasis added). Because that purpose for the investigation was not authorized by the plain statutory language of § 717(b), this suit must be dismissed.

3. As presidential advisers, the Vice President and the NEPDG should not be presumed to fall within § 717(b)'s generic reference to "Government"

As discussed above, in Part III.A.1, it is established that the President or Vice President should not be assumed to be an "authority of the Government" unless Congress expressly states otherwise. Franklin, 505 U.S. at 800. For the same reasons, the term "Government" in § 717(b) should not be read to encompass the President or Vice President absent an express statement by Congress to the contrary. No such express statement exists in § 717.[27]

Similarly, as described above, in Part III.A.2, when the term "agency" includes "any authority of the Government," it is construed so as not to apply to presidential advisers. Thus, the undefined term "Government" in § 717(b) should not be assumed to incorporate those entities within the White House whose sole function is to advise and assist the President, and § 717(b) should not be read to apply to the Vice President or the NEPDG, because they did nothing but give advice to the President.

4. The procedural prerequisites of § 717(b) have not been met because GAO's evaluation was not requested by a committee or conducted on the initiative of the Comptroller General

Under § 717, the Comptroller General may conduct a program-results evaluation only at the request or order of a "House" or "committee of Congress," or "on the initiative of the Comptroller General." 31 U.S.C. § 717(b)(1)-(3). Here, however, none of those preconditions has occurred.

As GAO's General Counsel explained in his June 1, 2001 letter to the Vice President's Counsel,

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[27] Even though Franklin's express-statement requirement is grounded in separation-of-powers concerns, it obviously applies to the exercise of statutory as well as constitutional functions by the President or Vice President. See 505 U.S. at 801 ("We would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed" as agency action (emphasis added)).

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GAO concluded that its "review of the development of the National Energy Policy is * * * required by law" because it was "requested by a congressional committee of jurisdiction." Compl. Ex. G at 1 (emphasis added). In other words, the Comptroller General did not decide to initiate this evaluation. Rather, GAO's Assistant Director for Natural Resources and Environment "supervised the opening of GAO's investigation into the NEPDG" pursuant to her understanding of GAO's Congressional Protocols. 04/08/02 Decl. of Margaret J. Reese ¶ 2 (Pl's. S.J. Mem. Ex. 1). But those protocols incorrectly declare that GAO "has a statutory obligation to fulfill requests" from "committee leaders," which it defines improperly as "those from the committee or subcommittee Chair, Ranking Minority Member (Ranking Member), * * * on a program or activity within the committee's jurisdiction." GAO's Congressional Protocols, GAO-01-145G at 4, 5 (Nov. 2000).

Treating ranking minority members as the equivalent of a "committee of Congress" misconstrues the statute and ignores the democratic foundations and practical realities of Congress. Belatedly recognizing that a request by ranking minority members does not in fact trigger a statutory obligation to conduct an evaluation, plaintiff now portrays GAO's Congressional Protocols as the means by which he had "channel[ed]" the discretion available to him under § 717(b)(1). Pl's. S.J. Mem. 39. Read properly, however, § 717(b)(1) requires at a minimum the Comptroller General to exercise his discretion in a particular instance to initiate an evaluation; it should not allow him simply to rely on a generic policy of treating all requests from ranking minority members as triggering a statutory obligation. Such a policy would contravene Congress's express decision to trigger an automatic investigation only at the request of a majority of a committee or House, and it would be inconsistent with the principles of standing and equitable discretion discussed above.[28]

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[28] Moreover, any attempt by the Comptroller General to institute such a suit on his own discretion, without any particular request or authorization from Congress, would only exacerbate those standing and equitable discretion problems.

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Where, as here, the Comptroller General asks the judiciary to intervene in a dispute between the two political branches, his failure to exercise his own discretion personally to initiate an investigation may not be dismissed as a kind of harmless error. As described above, in Part II, courts are particularly wary of intervening in such disputes before it is clear that they are truly intractable and that the issue is joined at the highest levels within each branch. For similar reasons, Congress imposed an exhaustion requirement on the Comptroller General when it gave him the power to initiate a civil suit under § 716(b). The drafters of § 716 recognized that any judicial-enforcement action should be taken only as a "remedy of last resort." General Accounting Office Act of 1979: Hearing Before a Subcomm. of the House Comm. on Gov't Operations, 96th Cong., 1st Sess. 96 (1979) (Rep. Horton); see also Pl's. S.J. Mem. 13 (recognizing that Comptroller General can pursue judicial enforcement "only after exhausting a set of detailed procedures").[29]

Thus, even assuming that Congress possesses the power to bring a lawsuit against the President or the Vice President and delegated that power to its agent, the Comptroller General (which is not the case), the courts should refrain from hearing such a dispute where, as here, Congress's designated agent has not even followed the minimal procedures that Congress contemplated. Here, a GAO staff member initiated an investigation under the erroneous impression that it was "required by law" under § 717(b)(3). There was thus no "decision" as such, but merely a check to see whether the request had come from ranking minority members on a committee of jurisdiction. Of course, once that action was taken, the Comptroller General's own discretion

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[29] This exhaustion requirement refutes plaintiff's attempt to assert that this question is "moot" now that four Senate Committee Chairman have expressed their support for "continu[ing] the ongoing investigation." Pl's. S.J. Mem. 39 n.20; Compl. Ex. P. The Comptroller General's "statutory 'demand letter'" (Compl. ¶ 29) was written on July 18, 2001. The purposes of the exhaustion requirement obviously could not be served if the investigation purportedly justifying the July 18, 2001 letter did not become legitimate until the Senate Chairmen wrote their letter on January 22, 2002.

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was permanently compromised. He was no longer able to exercise his independent judgment to determine whether to initiate an evaluation, because doing so would second-guess the automatic, but already public, "decision" his staff had made to investigate the NEPDG. Under the circumstances, it would defeat the purpose of the carefully calibrated exhaustion scheme in § 716 to allow this lawsuit to proceed on the basis of an investigation with such a tainted origin.

IV. The Statutory Provisions Plaintiff Invokes Would Be Unconstitutional If Applied to Authorize GAO's Investigation of the NEPDG and the Filing of This Lawsuit

Even assuming that § 712(1) or § 717(b) grants, as a matter of statutory construction, the broad investigative powers that the Comptroller General claims (which they do not), and that such an authority is judicially enforceable under § 716 (which it is not), the exercise of those powers against the Executive in the circumstances of this case would violate well-established separation-of-powers principles. The NEPDG functioned pursuant to the President's express Article II powers, including his powers to seek opinions from principal officers in executive departments (art. II, § 2, cl. 1) and to "recommend to [Congress's] Consideration such Measures as he shall judge necessary and expedient" (art. II, § 3). Therefore, Congress is barred from encroaching upon or interfering with the exercise of those functions through a non-textual and delegated investigatory authority. This result is true whether this Court analyzes the question under the per se test applicable to the exercise of express Article II powers, or under the balancing test that has been applied in the context of implied executive powers.[30]

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[30] In Association of Am. Physicians & Surgeons v. Clinton, 997 F.2d 898 (D.C. Cir. 1993) (AAPS), the D.C. Circuit considered constitutional concerns arising from interference with the President's ability to seek advice from his "closest advisers." Id. at 910. The court's ultimate holding was one of statutory construction, but it looked to constitutional concerns before it applied the canon of constitutional avoidance to its statutory analysis. The government

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A second constitutional problem would be created if § 716(b) were interpreted to provide the Comptroller General the authority to file this lawsuit against the Vice President: The Constitution does not countenance the spectacle of having a legislative agent exercise executive powers by filing a civil enforcement action against the Executive.

A. The NEPDG's information-gathering and policy-developing activities for the President are within his exclusive enumerated responsibilities under Article II and are beyond Congress's investigative and legislative powers

Article II, section 1 of the Constitution vests "[t]he executive Power" in the President of the United States. In order to fulfill his executive duties, the President must be able to deliberate with his advisers and to obtain information. Both the Opinion Clause and the Recommendations Clause reflect this need and provide textual foundations for the President's powers to gather information and develop policy — and both clauses also show that those executive powers are not subject to interference from Congress.

During the Constitutional Convention of 1787, the Framers considered several times whether to provide the President with some form of advisory council that included representatives of the Legislature or Judiciary. See JAMES MADISON, NOTES OF THE DEBATES IN THE FEDERAL CONVENTION OF 1787 at 487-488, 509-510, 569, 598-602 (W.W. Norton & Co. 1966) (debates of Aug. 20, 22, and 31 and Sept. 7, 1787). They rejected each of those proposals, and chose instead to enshrine in Article II the President's power to seek advice from those under his direct control. As Alexander Hamilton subsequently explained, the unity of the Executive would be destroyed if the President were "subject[ed] in whole or in part to the controul and

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urged a per se test based on the Recommendations Clause. In its inconclusive discussion of constitutional concerns, the court declared the government's focus on the Recommendations Clause to be "somewhat artificial," and instead found "more persuasive" the notion that constitutional concerns were raised by the "operational proximity to the President himself" of the Task Force on National Health Care Policy. Id. at 908-909. Thus, the court's discussion, rather than resting on a per se test, focused on a balancing test. Defendant discusses both forms of analysis below.

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co-operation of others, in the capacity of counsellors to him." THE FEDERALIST, No. 70 at 472-73 (Alexander Hamilton) (Jacob E. Cooke ed., Wesleyan Univ. Press 1961). The Opinion Clause thus provides the President with information-gathering powers within the unitary structure of the Executive, which in turn establishes that the power to receive opinions from executive officers is not subject to interference from the other branches. As one commentator has explained:

> The juxtaposition of the power the President was granted [in the Opinion Clause] and the restrictions on that power which were rejected suggests that the Framers expressly granted the President a discrete sphere of control over the process by which he gathers the information necessary to make a decision; a process that — within the context of the separation of powers — cannot be interfered with by the other two branches of government.

Neil Thomas Proto, The Opinion Clause and Presidential Decision-Making, 44 MO. L. REV. 185, 195 (1979) (emphases in original).

The Recommendations Clause (along with the State of the Union Clause) provides further textual evidence of the President's powers to gather information and develop and propose policy. Those clauses expressly contemplate that the President will, "from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient" — two functions that he may even accomplish by invoking his power "to convene both Houses [of Congress], or either of them." U.S. CONST., art. II, § 3. The President's duties to inform Congress and to recommend measures for its consideration both presuppose that the President "must possess more extensive sources of information * * * than can belong to [C]ongress." JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 807 (Ronald D. Rotunda & John E. Nowak eds., Carolina Acad. Press 1987) (1833). Of course, those duties also presuppose that the President will be able to cultivate his sources of information, and also to develop the "measures" that he will recommend, because the quality of his recommendations will be commensurate with his

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ability to inform himself and deliberate about them.[31] Most importantly, the Recommendations Clause expressly vests the exercise of those powers in the President's own discretion. Because the President's duty requires him to recommend only what "he shall judge necessary and expedient" (U.S. CONST., art. II, § 3 (emphasis added)), the Constitution indicates clearly that this exclusive power must remain free from interference.

Thus, the powers in both the Opinion and Recommendations Clauses are entrusted exclusively to the President — and are textually committed to his discretion. Congress cannot regulate or exercise its derivative power to investigate the exercise of those functions. As the Supreme Court explained in Barenblatt v. United States, 360 U.S. 109 (1959): "Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government." Id. at 111-112.[32] For this reason, the Supreme Court has consistently refused to tolerate legislative intrusions on the Executive's express powers and duties. See INS v. Chadha, 462 U.S. 919 (1983) (Presentment Clause); United States v. Klein, 80 U.S. (13 Wall.) 128, 148 (1871) ("[I]t is clear that the legislature cannot change the effect of * * * a pardon."); Public Citizen v. Dep't of Justice, 491 U.S. 440, 482 (1989) (Kennedy, J., concurring) (Congress cannot "encroach[] upon a power that the text of the Constitution commits in explicit terms to the President.").[33]

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[31] An earlier draft of the Recommendations Clause had referred to "Matters" rather than "Measures." "The greater presidential participation needed to submit 'measures' implicitly presumes that there exist presidential prerogatives of investigation, inquiry, and advocacy by which to formulate and articulate such proposed solutions." J. Gregory Sidak, The Recommendation Clause, 77 GEO. L.J. 2079, 2084 (1989).

[32] As plaintiff acknowledges (Pl's. S.J. Mem. 7), Congress's power to investigate is only implicit in its power to legislate, and thus it cannot extend beyond the function it is supposed to aid. See McGrain v. Daugherty, 273 U.S. 135, 175 (1927) ("the constitutional provisions which commit the legislative function to [Congress] are intended to include [the power of inquiry] to the end that the [legislative] function may be effectively exercised").

[33] In that case, the three concurring justices found that Congress could not provide a right of access to information about the Justice Department's consultations with the ABA in the

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Interference with the President's information-gathering activities is no less unconstitutional when it affects his exercise of his Recommendations or Opinion Clause authority than when it touches on his power to grant pardons, nominate judges, or have legislation presented for his approval or veto. Indeed, the interference with express constitutional functions is particularly grave because both of those clauses directly implicate the information-gathering and policy-development process itself. Although the Recommendations Clause contemplates the transfer of information to Congress, it expressly leaves to the President's judgment what it would be "necessary and expedient" to communicate. As Barenblatt shows, Congress simply lacks authority to inquire into the NEPDG's activities, because they are "matters * * * within the exclusive province" of the Executive. 360 U.S. at 111-112. Where the text of the Constitution explicitly commits a power to the President, the courts "refuse[] to tolerate any intrusion by the Legislative Branch." Public Citizen, 491 U.S. at 485 (concurring opinion) (emphasis in original); see also Schick v. Reed, 419 U.S. 256, 266 (1974) (pardon power "flows from the Constitution * * * and * * * cannot be modified, abridged, or diminished by the Congress"); cf. Plaut v. Spendthrift Farms, Inc., 514 U.S. 211, 227 (1995) (Congress cannot interfere with Judiciary's power to issue final judgments).

Allowing the Comptroller General to inquire into or compel disclosure about how the President carried out his constitutional functions with the NEPDG "would constitute a direct and real interference" with the President's core powers, including those granted by the Opinion Clause and Recommendations Clause. Public Citizen, 491 U.S. at 488 (Kennedy, J., concurring); see also Jay S. Bybee, Advising the President: Separation of Powers and the Federal

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process of nominating federal judges without unconstitutionally "interfer[ing] with the manner in which the President obtains information necessary to discharge his duty assigned under the Constitution." 491 U.S. at 488 (emphasis added). The rest of the Court in Public Citizen did not resolve this constitutional issue, because it chose to avoid "undeniabl[y]" "formidable constitutional difficulties" by construing the Federal Advisory Committee Act so as not to apply to the Justice Department's consultations with the ABA. Id. at 466 (majority opinion).

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Advisory Committee Act, 104 YALE L.J. 51, 105 (1994) ("Any restriction on the President's access to advice would impede not only his ability to recommend to Congress needed changes, but also his ability to carry out his remaining duties."). The Opinion and Recommendations Clauses expressly commit powers to a particular branch of the Government in the text of the Constitution, which makes any degree of congressional intrusion unconstitutional. Put simply, the "mere fact" that the statutory provisions on which the Comptroller General relies "would regulate so as to interfere with the manner in which the President obtains information necessary to discharge his duty assigned under the Constitution * * * is enough to invalidate the Act." Public Citizen, 491 U.S. at 488-89 (Kennedy, J., concurring) (emphasis added).

There can be no question that the virtually unlimited right of access that the Comptroller General asserts would significantly interfere with the process by which the Executive Branch obtains information and exercises its constitutional functions. As the D.C. Circuit has explained, the "mere presence" of legislative agents, even if they "remain completely silent," has significant "potential to influence" the decision-making process that they are observing. FEC v. NRA Political Victory Fund, 6 F.3d 821, 826 (D.C. Cir. 1993). The chilling effect recognized by the D.C. Circuit will be no different if the stages of the decision-making process are reviewed after the fact than if the observations occur while the decision-making process is still ongoing.

Indeed, plaintiff's own arguments contemplate the aggressive regulation of the President's information-gathering and policy-developing powers. He contends that Congress needs to know about the behind-the-scenes operation of the NEPDG to evaluate "the desirability of additional appropriations restrictions to control the use of public money for energy policy development in the future." Pl's. S.J. Mem. 3. Furthermore, he assumes that Congress could impose such restrictions on the Executive to prevent "establishment[s] within the White House" from being "responsib[le] for energy policy development." Id. at 34.

Contrary to plaintiff's suggestions, Congress cannot evade the constitutional limitations

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on its investigative and legislative powers by invoking its power of the purse. Any attempt by Congress to regulate the President's core textual powers through its power over appropriations would violate separation-of-powers principles. See United States v. Will, 449 U.S. 200, 226, 230 (1980) (holding that certain appropriations affecting judicial salaries violated Article III). Congress's spending power does not allow it to "impair the President's pardon power by denying him appropriations for pen and paper." OPM v. Richmond, 496 U.S. 414, 435 (1990) (White, J., concurring, joined by Blackmun, J.); see also Klein, 80 U.S. at 147 (holding that Congress could not use an appropriations rider to "impair[] the effect of a pardon, and thus infring[e] the constitutional power of the Executive"). Similarly, in this case, Congress cannot regulate — and, by regulating, attempt to forbid — the President's consultations with whomever he judges necessary to accomplish his constitutional functions under the Opinion and Recommendations Clauses. In sum, the per se test required by Barenblatt and the cases dealing with express constitutional functions applies in this case and clearly forecloses the powers asserted by the Comptroller General.

B. Even under a balancing approach, the President's information-gathering and confidentiality interests greatly outweigh any purported legislative interest here

Even if this Court balances the intrusion on executive power with the legislative interest at stake, rather than applying the per se test of Barenblatt, the Comptroller General's asserted authority would be just as unconstitutional. The threat to the President posed by this case is great because the intrusion is so extensive. On the other hand, the Legislature has no legitimate interest in the information the Comptroller General seeks, and has other means to pursue it in any event.

The D.C. Circuit addressed a somewhat less obvious separation-of-powers threat in AAPS. The plaintiff in that case sought to apply the Federal Advisory Committee Act to President Clinton's Task Force on National Health Care Reform. The court avoided a decision on the constitutional question by applying the doctrine of constitutional avoidance.

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Nevertheless, it recognized the serious constitutional concerns that would arise from any "statute interfering with a President's ability to seek advice" "from those closest to him, whether in or out of government." 997 F.2d at 910 (internal citation and quotation marks omitted). In dicta, the court indicated that, were it to reach the constitutional issue, it would apply a standard it extrapolated from Morrison v. Olson and find the statute to be unconstitutional as applied. It summarized that standard as follows: "Morrison tells us to balance how much the interference with the President's executive power prevents the President from accomplishing his constitutionally assigned functions against the overriding need to promote objectives within the constitutional authority of Congress." 997 F.2d at 910.

Under that approach, the Comptroller General's asserted authority to intrude into the President's methods of informing himself for the purpose of proposing policy initiatives "'impermissibly undermine[s]' the powers of the Executive Branch, * * * or 'disrupts the proper balance between the coordinate branches.'" Morrison v. Olson, 487 U.S. 654, 695 (1988). It is hard to imagine a more direct assault on the President's core executive powers than the asserted authority of a congressional agent to superintend the deliberative process by which the Vice President and others formulated policy recommendations for and on behalf of the President. The information that the Comptroller General seeks would expose information-gathering and policy-making activities (including deliberations) at the heart of the Executive Branch. Despite his protestations of restraint, the broad categories of information plaintiff requests in this lawsuit speak for themselves. He asks this Court to require disclosure of everyone that the Vice President met with while he was serving as a close presidential adviser discharging express constitutional functions at the request of the President, the "purpose" and "agenda" of each of those meetings, and even what decision-making process the Vice President and his staff followed in "determin[ing] who would be invited to the meetings." Compl. Prayer for Relief ¶ (a).[34]

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[34] Note that these requests belie the Comptroller General's claim in his August 18, 2001

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The Comptroller General's asserted authority strikes at the heart of the Executive's constitutional functions. At a minimum, it would intrude upon powers that are textually committed to the Executive — a result that, even taken alone, must weigh heavily in the balance (if it does not dispose of the need for the balancing, see supra). Moreover, just as in AAPS, plaintiff's action "implicates executive powers" because it would interfere with a group that has "operational proximity to the President." 997 F.2d at 898 (emphasis in original). In addition, plaintiff's claim would compromise executive branch deliberations by undercutting the President's well-recognized need for confidentiality. See, e.g., United States v. Nixon, 418 U.S. 683, 708 (1974) ("A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately."); In re Sealed Case, 121 F.3d 729, 750 (D.C. Cir. 1997) ("[T]he critical role that confidentiality plays in ensuring an adequate exploration of alternatives cannot be gainsaid. If presidential advisers must assume they will be held to account publicly for all approaches that were advanced, considered but ultimately rejected, they will almost inevitably be inclined to avoid serious consideration of novel or controversial approaches to presidential problems.").[35] As the court in AAPS explained, "[a] group directly reporting [to] and advising the President must have confidentiality in each stage in the formulation of advice to him." 997 F.2d at 910. But requiring "disclosure of the real information-gathering process" would "inevitably * * * compromise[]" the "confidentiality of the advice-giving function." Id. (emphasis added). The Comptroller General's claim in this case would compromise the

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statutory report that "we are not asking for any communications involving the President, the Vice President, or the President's senior advisers." Compl. Ex. K at 4. In any event, the constitutionality of these statutes must be evaluated on the basis of the authority they convey to the Comptroller General (which in his view is virtually limitless), not the authority he has, in fact, exercised in this test case.

[35] In In re Sealed Case, the D.C. Circuit also expressly held that the President's constitutionally protected interest in confidentiality extends to conversations among his immediate advisers for which the President is not present. See 121 F.3d at 750.

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confidentiality of advice within the Executive Branch because he asserts, after all, the authority to investigate not only the "results" of the NEPDG's deliberations, but also the deliberative "process" itself.

Against those great intrusions, plaintiff can offer no bona fide congressional interests. As an initial matter, Congress's legitimate interests are non-existent when it comes to investigating the discharge of functions within the exclusive province of another branch. See Barenblatt, 360 U.S. at 111-112. Congress's non-textual investigative authority is derivative of its legislative authority and Congress could not validly regulate the process by which the Vice President and President formulate presidential recommendations.

Notwithstanding that limitation, plaintiff has suggested several hypothetical reasons why Congress might be interested in the process by which the NEPDG developed its policy recommendations. By and large, those conjectural interests rely on untenable assumptions about Congress's powers — for example, that Congress needs to know whether the NEPDG consulted with a sufficient number of people so that it can determine whether it should exercise its purported power to "attach riders to appropriations laws that prohibit the executive branch from developing comprehensive energy policies through private task force meetings with only selected members of the public." Pl's. S.J. Mem. 27.

Even if plaintiff could identify some legitimate legislative interest in the information, that peripheral interest would clearly be insufficiently weighty to justify intrusion upon the President's exercise of his constitutional powers and his interest in confidential information-gathering and deliberations. Precedent shows that it takes especially heavy interests to outweigh even those interests of the Executive that are only implicitly protected by the Constitution. See, e.g., United States v. Nixon, 418 U.S. at 713 (allowing in camera review of executive communications only because of a "demonstrated, specific need for evidence in a pending criminal trial"). The D.C. Circuit has indicated just how substantial Congress's interests

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need to be to warrant disclosure of executive materials. In Senate Select Comm. on Presidential Campaign Activities v. Nixon, 498 F.2d 725 (D.C. Cir. 1974) (en banc), the D.C. Circuit, sitting en banc, refused to enforce a congressional subpoena for the Watergate tapes. In doing so, the court recognized the "great public interest in maintaining the confidentiality of conversations that take place in the President's performance of his official duties." Id. at 729. The court said that interest could "be defeated only by a strong showing of need by another institution of government — a showing that the responsibilities of that institution cannot responsibly be fulfilled without access to records of the President's deliberations." Id. at 730 (emphasis added). Applying that standard, the court concluded that a congressional committee's desire to satisfy its legislative responsibilities and its purported "oversight power," was insufficient to overcome the President's paramount interest. See id. at 732-733. Thus, Congress lost because it could not demonstrate that the subpoenaed evidence was "demonstrably critical to the responsible fulfillment" of its appropriate functions. Id. at 731.

Congress's needs for executive branch records are significantly less weighty in this case. Congress has already received the most important information it needs to accomplish its legislative functions: the President's actual policy proposals and initiatives, along with his judgment that those measures are necessary and expedient. Congress may use that information to reach its own independent conclusions about the recommendations. It can also obtain information to assist that process from its own sources, and does not need to know what sources were used in the development of the NEPDG's recommendations.[36] Even so, if Congress truly is

[36] Plaintiff suggests that the validity or desirability of the NEPDG's policy proposals turns in part on who the Vice President and others consulted while developing those proposals. As the Supreme Court has already recognized in the legislative context, the actions of democratically accountable officials stand on their own, regardless of who pressed for or opposed those actions. See Mazurek v. Armstrong, 520 U.S. 968, 973 (1997) ("the fact that an anti-abortion group drafted the Montana law * * * says nothing significant about the legislature's purpose in passing it").

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interested in further details about the President's proposals and initiatives, it may attempt to employ its own information-gathering powers (efforts that have been held to be prerequisites for judicial involvement, see supra Part II).

C. A civil enforcement action brought by a legislative agent against the Executive violates Article II's Take Care Clause

The judicial-enforcement provisions of § 716 also violate the separation of powers by impermissibly assigning an executive power to a legislative agent. Section 716(b) purports to delegate to the Comptroller General the power to enforce a statutorily created right to information. Because the power to bring an enforcement action to vindicate public interests is executive in nature, it is unconstitutional for Congress to retain it for its own agent.

In Bowsher v. Synar, 478 U.S. 714 (1986), the Supreme Court held that the Comptroller General is Congress's agent and "he may not be entrusted with executive powers." Id. at 732. That result is dictated by the nature of separation of powers: "The structure of the Constitution does not permit Congress to execute the laws; it follows that Congress cannot grant to an officer under its control what it does not possess." Id. at 726; see also Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252, 276 (1991) ("If the power is executive, the Constitution does not permit an agent of Congress to exercise it."); Buckley v. Valeo, 424 U.S. 1, 136 (1976) ("[T]he legislature cannot engraft executive duties upon a legislative office * * * ." (quoting Springer v. Philippine Islands, 277 U.S. 189, 202 (1928)).

In Buckley, the Supreme Court invalidated a statutory scheme that allowed the Federal Elections Commission to file enforcement actions, because, as the FEC was then constituted, several of its members had been appointed by Congress. The Court admitted that those legislative agents could act in aid of legislative action, but it denied them the authority to seek judicial relief:

> The Commission's enforcement power, exemplified by its discretionary power to seek judicial relief, is authority that cannot possibly be regarded as merely in aid

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> of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law, and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to "take Care that the Laws be faithfully executed."

424 U.S. at 138 (emphasis added).

The power to file a lawsuit on behalf of the government to vindicate public interests is a quintessentially executive power. Here, Congress has vested that core executive power in its own agent. The Supreme Court's separation-of-powers jurisprudence has consistently recognized the substantial difference between congressional initiatives that force the executive or judiciary to share power with others, and those that actually enlarge Congress's own powers. See, e.g., Morrison, 487 U.S. at 694 ("We observe first that this case does not involve an attempt by Congress to increase its own powers at the expense of the Executive Branch."); Commodity Futures Trading Comm'n v. Schor, 478 U. S. 833, 856-857 (1986) (contrasting Bowsher's "question of the aggrandizement of congressional power at the expense of a coordinate branch" with the less-serious question of undermining of "the role of the Judicial Branch" "without appreciable expansion of [Congress's] own power"); Buckley, 424 U.S. at 122 ("The Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.").

In other words, there is a salient difference between a statute that creates a so-called "private attorney general" and one that creates an additional public attorney general who is not subject to executive control. See, e.g., Atlantic States Legal Found., Inc. v. Buffalo Envelope, 823 F. Supp. 1065, 1073-1075 (W.D.N.Y. 1993) (upholding citizen-suit provision because "Congress may * * * determine who will vindicate [statutory] rights" and "[a] constitutional concern arises only where Congress has reserved unto itself the right to control or supervise the enforcement of the rights it created"); Delaware Valley Toxics Coalition v. Kurz-Hastings, Inc., 813 F. Supp. 1132, 1138 (E.D. Pa. 1993) (concluding that "citizen suits are not an unlawful

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delegation of executive power" because Congress has not granted executive power "to a person or persons under its control"); see also Morrison, 487 U.S. at 696 (explaining the Executive's powers to supervise and control the independent counsel; "[m]ost importantly, the Attorney General retains the power to remove the counsel for 'good cause' * * * .").

The aggrandizement in this case is especially egregious because it would allow a legislative agent to wield executive powers against the Executive — and also to invoke the powers of the Judiciary in the process. Because § 716(b), if interpreted to allow this action, would effect a congressional aggrandizement of executive power in flagrant disregard for the Constitution's separation of powers, this Court should refuse to employ it and dismiss the Complaint.

V. This Court Should Avoid Serious Constitutional Problems by Adopting Defendant's Reasonable Constructions of §§ 712, 716, and 717

This Court should adopt the statutory constructions advanced above, in Part III, based on traditional principles of statutory interpretation and governing case law. Yet, in light of the serious constitutional problems, described in Part IV, that would arise from construing the statutes to allow this lawsuit, this Court should, at the least, adopt the narrower view of these provisions urged by defendant under the well-established doctrine of constitutional avoidance. It is a "cardinal principle" that, where there is a "serious doubt of constitutionality" about a statute, a court should "ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Crowell v. Benson, 285 U.S. 22, 62 (1932). Thus, to the extent that this Court finds defendant's statutory-construction arguments to be even "fairly possible," it should adopt them and dismiss this case without directly addressing the difficult separation-of-powers questions that would otherwise be posed by the Comptroller General's unprecedented enforcement action.

As described above, in Public Citizen, the Supreme Court unanimously recognized that serious constitutional problems would be posed by a potential infringement on the President's

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Article II power to nominate judges. See 491 U.S. at 466 (application of the statute would "undeniabl[y]" "present formidable constitutional difficulties"); id. at 482 (Kennedy, J., concurring in judgment, joined by Rehnquist, C.J., and O'Connor, J.) (finding a "plain" constitutional violation). The opinion of the Court explained that the doctrine of constitutional avoidance is "especially" applicable to cases — such as this one — that "concern the relative powers of coordinate branches of government." Id. at 466. In light of that principle, it went so far as to reject what it called a "literalistic reading" of FACA. Id. at 463-464.

In AAPS, the D.C. Circuit described the Supreme Court's decision in Public Citizen as adopting "an extremely strained construction of the [statute] in order to avoid the constitutional question." 997 F.2d at 906.[37] And in AAPS itself, the D.C. Circuit applied the avoidance doctrine and concluded that FACA did not apply to President Clinton's Task Force on National Health Care Reform. It noted that any "statute interfering with a President's ability to seek advice * * * raises Article II concerns," and found those concerns would be especially great if a statute were to interfere with the President's attempt to "seek[] advice from those closest to him, whether in or out of government." Id. at 910. The court avoided "the difficult constitutional issue" that the case posed by concluding that the First Lady was "a 'full-time officer or employee' of the government." Id. at 910, 911.

Plaintiff's claim in this case presents at least as grave a constitutional problem as those avoided in Public Citizen and AAPS. The Comptroller General seeks to gain judicially compelled access to documents that record information-gathering and policy-development activities at the highest levels of the Executive. Just as in AAPS, constitutional "difficulties arise because of the [NEPDG's] operational proximity to the President himself — that is, because the [NEPDG] provide[d] advice and recommendations directly to the President." 997 F.2d at 909

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[37] In turn, an opinion from this Court has said that the decisions in both Public Citizen and AAPS resorted to "adroit semantics" in order to avoid separation-of-powers questions. Northwest Forest Res. Council v. Espy, 846 F. Supp. 1009, 1014 (D.D.C. 1994).

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(emphasis added). Construing the statutes to permit this lawsuit to proceed would clearly present "serious constitutional problems." Solid Waste Agency v. Army Corps of Eng'rs, 531 U.S. 159, 173 (2001).

As described in Part III, defendant's proposed constructions of §§ 712(1), 716(b), and 717(b) are reasonable as a matter of statutory construction. Defendant's readings would shield from congressional encroachment the President's ability to have his close advisers discharge constitutionally enumerated functions, but they would do so only by preventing the excesses of plaintiff's positions — not by leaving the Comptroller General powerless. Indeed, recognizing the limits inherent in the language of §§ 716 and 717 would not interfere with the Comptroller General's ability to seek records from traditional "agencies" (i.e., virtually the entire Executive Branch, excepting only the President, the Vice President, and the President's other close advisers whose sole function is to advise and assist the President). Nor would it prevent Congress — if it actually intends for the Comptroller General to seek judicial enforcement against the President or Vice President himself — from making the "express statement" required by Franklin. Similarly, to recognize the limits inherent in the language of §§ 712(1) and 717(b) would not interfere with the Comptroller General's ability to evaluate the results of federal programs authorized by statute (i.e., most of the activities of the Executive Branch, excepting only those that are conducted pursuant to the powers expressly enumerated in Article II). Nor would it prevent the Comptroller General from initiating such an evaluation on the basis of an honest judgment rather than an automatic response to a mistaken belief about the authority of ranking minority members to act for their committees.

Public Citizen and AAPS demonstrate that this Court should prefer any reasonable statutory construction to one that would interfere with the President's ability to seek advice in pursuance of his constitutional functions. Accordingly, this Court should adopt the reasonable constructions of §§ 712(1), 716(b), and 717(b) articulated above and dismiss the Complaint.[38]

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CONCLUSION

For the reasons set forth above, the Court should deny plaintiff's motion for summary judgment, and grant defendant's motion to dismiss.

Respectfully submitted,

May 21, 2002

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[38] Of course, the Court need not reach every one of the statutory questions in order to dismiss the Complaint. If the Vice President is not the head of an agency under § 716(b) — either because Congress has failed to make the express statement required by Franklin or because the NEPDG operated (like the task force in Meyer) only to advise and assist the President — that reason alone requires dismissal under Rule 12(b)(6).

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID M. WALKER, Comptroller
General of the United States,
Plaintiff,

v. C.A. No.1:02cv340JDB

RICHARD B. CHENEY, Vice President
of the United States,
Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S
STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 56.1, defendant submits his response to the numbered paragraphs of plaintiff's Statement of Material Facts:

1. Not disputed that President Bush established the National Energy Policy Development Group (NEPDG) by memorandum dated January 29, 2001, that a copy of that memorandum is attached as Exhibit A to the Complaint, and that plaintiff has accurately quoted portions of that memorandum in this paragraph. Defendant refers the Court to the memorandum for a full statement of its contents.

2. Not disputed.

3. Not disputed.

4. Not disputed that funding for the NEPDG was to be provided by the Department of Energy to the maximum extent permitted by law and that the Vice President or his designee was authorized to submit to the President a proposal to use appropriations available to the President to meet any funding needs which could not be met through DOE appropriations. Compl. Ex. A at 2-3.

5. Not disputed that the NEPDG was supported by five professionals employed at the DOE and a White House Fellow, and that plaintiff has accurately quoted a portion of Responses

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by Andrew Lundquist, Executive Director of the NEPDG, to Questions from the Ranking Minority Members of the House Committee on Government Reform and the House Committee on Energy and Commerce. Compl. Ex. E. Defendant refers the Court to those responses for a full statement of their contents.

6. Not disputed that individuals on the NEPDG support staff met with individuals who were not federal employees to gather information relevant to the NEPDG's work and that such meetings did not involve deliberations or efforts to achieve consensus, but were used as forums to collect individual views. Compl. Ex. E, attachments 1 at 2.

7. Not disputed that, to the extent there were costs for the activities of the NEPDG, including its meetings, public money defrayed those costs.

8. Not disputed that a letter was sent by Reps. Dingell and Waxman to plaintiff on April 19, 2001, that a copy of that letter is contained at Exhibit B to the Complaint, and that plaintiff has accurately quoted a portion of that letter. Defendant refers the Court to the letter for a full statement of its contents.

9. Not disputed.

10. Not disputed that Exhibit C to plaintiff's Complaint was provided by GAO staff to the Counsel to the Vice President on May 8, 2001. Defendant refers the Court to that exhibit for a full statement of its contents.

11. Not disputed that David S. Addington, Counsel to the Vice President, sent the letter contained at Exhibit D to the Complaint to Anthony A. Gamboa, GAO General Counsel, on May 16, 2001. Defendant refers the Court to that letter for a full statement of its contents.

12. As to the first sentence, not disputed that Mr. Addington included with the May 16 letter a copy of the Responses by Andrew Lundquist, Executive Director of the NEPDG, to Questions from the Ranking Minority Members of the House Committee on Government Reform and the House Committee on Energy and Commerce, referred to in ¶ 5, above. As to the second

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sentence, see response to ¶ 6, above. As to the third sentence, not disputed that the Vice President convened nine meetings of the NEPDG between January 29, 2001, and May 2, 2001. Defendant refers the Court to the Responses for a full statement of their contents.

13. Not disputed that the May 4 letter and attachment do not disclose such information. Disputed that information of this type has not been made available to GAO. See, e.g., Pl's. Statement ¶ 32; Letter of Margot H. Anderson, Deputy Director, DOE's Office of Policy, to Jim Wells, Director, GAO's Natural Resources and Environment, July 16, 2001 (attachment A, infra) (identifying, inter alia, DOE employees serving as NEPDG staff, DOE attendees at NEPDG meetings, dates, times, and places of meetings with non-federal employees by Secretary Abrams).

14. Not disputed that Mr. Gamboa sent the letter contained in Exhibit F to the Complaint to Mr. Addington on June 1, 2001. Defendant refers the Court to that letter for a full statement of its contents.

15. Not disputed that Mr. Addington sent the letter contained at Exhibit G to the Complaint to Mr. Gamboa on June 7, 2001. Defendant refers the Court to that letter for a full statement of its contents.

16. Not disputed that the Counsel to the Vice President sent to GAO as a matter of comity, under cover of a letter to the GAO General Counsel dated June 21, 2001 (Pl's. S.J. Mem. Ex. 2), 77 pages retrieved from files in the Office of the Vice President responsive to GAO's inquiry that it was "interested in obtaining the direct and indirect costs incurred by both the Vice President and the Group support staff." Defendant refers the Court to that letter for a full statement of its contents.

17. Not disputed that the letter dated June 21, 2001 forwarded 77 pages from the files of the Office of the Vice President and directed the GAO to the Department of Energy for more detailed information. See Pl's. S.J. Mem. Ex. 2.

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18. Not disputed that Mr. Gamboa sent the letter contained at Exhibit H to the Complaint to Mr. Addington on June 22, 2001. Defendant refers the Court to that letter for a full statement of its contents.

19. Not disputed.

20. Not disputed.

21. Not disputed.

22. Not disputed, except to clarify that both contacts occurred in July 2001, not 2002.

23. Not disputed that the Deputy White House Counsel and GAO's General Counsel were unable to reach a compromise.

24. Not disputed that the Comptroller General sent the letter contained in Exhibit I to the Complaint to the Vice President on July 18, 2001 and that plaintiff has accurately quoted a portion of that letter. Defendant refers the Court to that letter for a full statement of its contents.

25. See response to ¶ 24, above.

26. Not disputed that the Comptroller General unsuccessfully attempted to call the Vice President on July 30, 2001.

27. As to the first sentence, not disputed. As to the second sentence, not disputed that GAO has stated that it no longer seeks minutes or notes of the meetings, although defendant lacks sufficient basis to confirm or deny the particular statement to which plaintiff refers. See Pl's. Statement ¶ 30. The date on which GAO eliminated such materials from its requests is not material.

28. Not disputed that the Comptroller General received copies of the August 2, 2001, of the Messages from the Vice President of the United States to the Senate and the House of Representatives dated August 2, 2001, contained in Exhibit J to the Complaint. Defendant refers the Court to those letters for a full statement of their contents.

29. Not disputed.

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30. Not disputed that the Comptroller General sent, on August 17, 2001, to the President, the Vice President, the leaders of the Senate and House of Representatives, the Director of the Office of Management and Budget, and the Attorney General the letter at Exhibit K to the Complaint. Defendant refers the Court to that Exhibit for a full statement of its contents. As to the last sentence, see response to ¶ 27, above.

31. Not disputed.

32. Not disputed.

33. Not disputed.

34. Not disputed.

35. Not disputed that the listed senators sent to plaintiff the letter contained in Exhibit P to the Complaint on January 22, 2002, and that plaintiff has accurately quoted a portion of that letter. Defendant refers the Court to the letter for a full statement of its contents.

36. Not disputed that the Vice President and the Comptroller General spoke by telephone and that no compromise was reached.

37. Not disputed that plaintiff sent the letter contained in Exhibit R to the Complaint to the persons identified in this paragraph on January 30, 2002. Defendant refers the Court to that exhibit for a full statement of its contents.

Respectfully submitted,

May 21, 2002

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REV_00146102

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/30/2002 5:01:30 AM
Subject: : Re:

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-MAY-2002 09:01:30.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

aware of that.

we should talk about this.
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/30/2002 5:55:49 AM
Subject: : 2 things

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2002 09:55:49.00
SUBJECT:: 2 things
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

1. When you send me the additional paragraphs for the voluntary disclosure letter, would you please make sure to include whatever you found out about those remaining meetings indicated by the original set of WAVES records?

2. I think you're probably the right guy to try to get the Committee to agree to the confidentiality procedures, since you had been on the Senate side when the party lineup was reversed. Do you (or Brett) disagree? If not, we should probably initiate that contact right away.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/30/2002 5:57:32 AM
Subject: : Re: V.A. Stevens - today's meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2002 09:57:32.00
SUBJECT:: Re: V.A. Stevens - today's meeting
TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Can this happen later in the day? Say 1:30 or later?

Hana F. Brilliant
05/30/2002 09:20:51 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: V.A. Stevens - today's meeting

12:00pm Meet with Virginia Stephens) CEQ
722 Jackson Place
395-0801
Brett and Chris

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
CC: matthew e. smith/who/eop@eop [WHO] <matthew e. smith>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/30/2002 6:38:48 AM
Subject: : Re: udpate

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:30-MAY-2002 10:38:48.00
SUBJECT:: Re: udpate
TO:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:matthew e. smith ( CN=matthew e. smith/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

will do. I have infor from Brett, but haven't condensed.
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From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/30/2002 10:52:18 AM
Subject: : vacancies as of today...

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CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2002 14:52:18.00
SUBJECT:: vacancies as of today...
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Brent D. Greenfield
05/30/2002 02:51:40 PM
Record Type: Record

To: Anne Womack/WHO/EOP@EOP
cc:
Subject: vacancies as of today...

86 (including Amalya Kearse, who is retiring on June 11--we include her in the count b/c POTUS nominated someone (Reena Raggi) to fill this upcoming vacancy)

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/31/2002 5:33:36 AM
Subject: : LRM IKK211 - - TREASURY Report on Abusive Tax Avoidance Transactions and Treasury Enforcement Proposals
Attachments: P_S69Q7003_WHO.TXT_1.wpd

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAY-2002 09:33:36.00
SUBJECT:: LRM IKK211 - - TREASURY Report on Abusive Tax Avoidance Transactions and Treasury Enforcement Proposals
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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From: Irene Kho on 05/31/2002 09:29:20 AM
Record Type: Record

To: statelrm@state.gov , justice.lrm@usdoj.gov , cla@sba.gov @ inet, CLRM@doc.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IKK211 - - TREASURY Report on Abusive Tax Avoidance Transactions and Treasury Enforcement Proposals

Attached is a Treasury report on abusive tax avoidance transactions and Treasury enforcement proposals. Please note that page 9-12 of the report discusses Treasury Enforcement Proposals. Please review and provide comments by 12:00 PM, today, May 31st.

- treas0067a.wpd

LRM ID: IKK211
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 30, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: TREASURY Report on Abusive Tax Avoidance Transactions and Treasury Enforcement Proposals

DEADLINE: 12:00 PM Friday, May 31, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a Treasury report on abusive tax avoidance transactions and Treasury enforcement proposals. Please note that page 9-12 of the report discusses Treasury Enforcement Proposals. Please review and provide comments by 12:00 PM, tomorrow, Friday, May 31st.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_S69Q7003_WHO.TXT_1>

Draft: 5/30/02

REPORT BY B. JOHN WILLIAMS, JR.
CHIEF COUNSEL, INTERNAL REVENUE SERVICE
TO THE SENATE FINANCE COMMITTEE ON
ABUSIVE TAX AVOIDANCE TRANSACTIONS
MAY 31, 2002

I INTRODUCTION

The problem of abusive tax avoidance transactions is a high priority for the Office of Chief Counsel and for the Internal Revenue Service and the Department of Treasury. I appreciate the opportunity to report to the Senate Finance Committee on my views on abusive tax avoidance transactions and the approaches I am taking to address them in my capacity as Chief Counsel of the IRS.

The Finance Committee has taken an active role in examining the nature and scope of these transactions and in developing appropriate responses. The Committee is to be commended for its efforts over the past several years to determine what additional tools the IRS needs to address abusive tax avoidance transactions. As I testified before this Committee on March 21, 2002, I believe the best approach to the problem of abusive tax avoidance transactions involves early interdiction and public guidance, coupled with vigorous enforcement activities. In addition, as a general matter I believe that clearer tax rules that depart less frequently from economic reality will reduce opportunities for abuse. Accordingly, as described below, I believe the proposals made by the Treasury Department on March 20, 2002 (the "Treasury Enforcement Proposals") which are also incorporated in S. 2498, the "Tax Shelter Transparency Act", introduced by Chairman Baucus and Senator Grassley on May 9, 2002, are timely and critical to curbing the growth of these transactions.

As the Committee knows, the efforts of the IRS to detect abusive tax avoidance transactions and fashion appropriate responses is ongoing. Thus, I offer this report as part of an ongoing analysis of the problems the IRS faces and an ongoing evaluation of existing audit and enforcement tools and tools that might be enacted. I will continue to consider the appropriateness and effectiveness of existing tools and whether additional measures are needed. Where I identify deficiencies in our current enforcement tools I will identify them for the Committee promptly, so that the Committee may consider whether additional legislation is appropriate. The Committee's continuing support for the efforts of the IRS to ensure that all taxpayers pay their fair share of taxes will be

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fundamental to the success of the IRS in addressing the challenge to compliance presented by abusive tax avoidance transactions.

This report first outlines the problems of defining an abusive tax avoidance transaction and institutional obstacles to prompt identification and response. It then will outline some of the changes I have made, and intend to make, to curb the use of these transactions. These include: (1) improving early detection of questionable transactions; (2) improving prompt analysis of questionable transactions; (3) accelerating public notification and guidance on questionable transactions; and (4) vigorously enforcing tax rules to ensure the system works fairly for all taxpayers, including vigorously pursuing information relating to these transactions.

II NATURE, SIZE AND SCOPE OF PROBLEM

Before crafting solutions to the issue of abusive tax avoidance transactions, we must consider the nature of the problem and its size and scope. As the Committee knows, however, this task has proven difficult.

A. Determining what is "Abusive"

In analyzing the problem of abusive tax avoidance transactions the first question is whether an "abusive" transaction can be defined in a way that distinguishes it from legitimate tax planning. Drawing that distinction has proven extraordinarily difficult, however.[1] I offer some of my observations on the problems inherent in defining and addressing these transactions.

Some transactions are indisputably "abusive" - these tax shelters are based on misstatements of law or outright fraud. They are shams in fact, and the government's response to them requires no complex policy calls. As the Committee knows, and as the Commissioner has testified, the IRS and the Treasury Department have placed a high priority on addressing these "scams and schemes" because they present a

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[1] The Treasury Department and the Joint Committee on Taxation have released comprehensive studies on the tax shelter problem. Department of the Treasury, "The Problem of Corporate Tax Shelters: Discussion, Analysis and Legislative Proposals," July 1999 (Treasury Study); Joint Committee on Taxation, "Study of Present-Law Penalty and Interest Provisions as Required by Section 3801 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Including Provisions Relating to Corporate Tax Shelters)" (JCS-3-99), July 22, 1999; see also Joint Committee on Taxation, "Background and Present Law Relating to Tax Shelters (JCX-19-02), March 19, 2002. This report will not repeat the discussions in those studies.

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significant threat to tax compliance. They are not the focus of this report, however. This report addresses instead abusive tax avoidance transactions, which are more vexing from a policy standpoint. These are sophisticated transactions based on technical arguments, and it is less clear when they are truly "abusive." The complexity of the tax law, the diversity of the economy and the creativity of sophisticated advisors all work against a single definition of "abusive." Some of these transactions may be technically sound and therefore are not necessarily "abusive," even though the government may not like them. Shutting them down may require a change in law either by amending regulations or new legislation. Other transactions take advantage of complexity in the tax law. These transactions may seem to work on their face, but are based on unreasonable interpretations of the Internal Revenue Code or regulations, in light of the purposes of those provisions. These transactions also may not adhere to long-standing tax principles or lack economic reality. These latter transactions are "abusive."

Because of the variety and complexity of today's breed of abusive tax avoidance transactions, they are not amenable to a single rule that can resolve a range of issues, like the passive loss rule enacted in 1986 in response to the tax shelters of the early 1980s. The current breed includes complex transactions that combine complicated rules to achieve unintended results. Therefore, the facts and circumstances of specific transactions must be examined to distinguish technically sound transactions from abusive ones that do not work under current law. It would be extremely difficult to legislate a rule for either business purpose or economic substance that would address adequately the multitude of situations where these doctrines may be applicable. A statutory rule that is sufficiently flexible necessarily would be subjective and thus would not provide more certainty than these existing judicial doctrines. An inflexible, mechanical rule intended to stop these transactions on substantive grounds (like the passive loss rule) would run the risk of being both too broad and too narrow.

Instead, what is needed is a broad and concerted effort to identify questionable transactions that we then can analyze to determine if they are technically sound, are consistent with longstanding tax principles, and provide tax benefits within the scope of congressional intent. See Gregory v. Helvering, 293 U.S. 465, 469 (1935) ("But the question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended."). In the past, however, the IRS has not used technical arguments and has leaned too heavily on the economic substance doctrine and other "anti-abuse" rules. While there are times when the economic substance doctrine should be applied, I believe that it has been used too frequently and has been diluted and confused. An example of this is UPS v. Commissioner, 254 F.3d 1014 (11th Cir. 2001). In UPS, the Eleventh Circuit reversed the Tax Court's decision that UPS's use of an offshore reinsurance entity lacked economic substance and instead determined that the case was properly analyzed under section 482. In contrast to an economic substance analysis, which would not recognize the transactions at issue in the case, a section 482 analysis would respect the existence of the transactions but would determine whether the pricing in those transactions is appropriate.

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B. Identification of Tax Shelters

While not easy to define, transactions that are abusive can be recognized once they are disclosed or discovered. For this reason, the best tool we have in dealing with them is early identification. Identifying questionable transactions early will permit the IRS to gather information and issue guidance, in some cases even before transactions show up on tax returns. Notifying the public of the IRS's position with respect to current transactions coupled with a vigorous enforcement of the disclosure, registration and list maintenance requirements should discourage taxpayers from playing the audit lottery and participating in abusive transactions.

There are three ways the IRS finds out about questionable transactions. Traditionally, the IRS has identified questionable transactions through the examination process. In addition, taxpayers and promoters are required to disclose or register questionable transactions and maintain investor lists under sections 6011, 6111 and 6112. Occasionally, the IRS and the Treasury Department find out about transactions through anonymous tips.

Although early identification is critical to stemming the tide of abusive transactions, the IRS has had difficulties identifying and responding to abusive transactions in a timely manner through the traditional examination process. The IRS's lack of timeliness is caused by several factors. First, the typical examination function of the IRS is not positioned to scrutinize a transaction until several years after it has been marketed. Second, many abusive transactions are difficult to identify on a tax return, some intentionally. Third, even after transactions are identified, there has been no effective process in place to coordinate and oversee the handling of the transactions across organizational lines. I have found that although revenue agents and field counsel have achieved a much closer working relationship in the audit process, that same close relationship has not been cultivated between the field (agents and counsel) and technical counsel in the National Office.

Beginning in 1984, with enactment of section 6111, Congress required certain tax shelter promoters to register their promotions with the Internal Revenue Service. These registration requirements apply to the sale of investments which meet certain conditions. Under section 6111(c), a promoter must register investments which meet the two following conditions. First, the tax shelter ratio[2] at the end of any of the first five years after the investment is offered for sale must exceed two to one. Second, the investment must be (1) required to be registered under a Federal or state law regulating certain

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[2] The "tax shelter ratio" is defined as the aggregate amount of deductions and 350 percent of the credits represented to be potentially allowable for any year divided by the investment base. The "investment base" generally means the amount of money and adjusted basis of other property (reduced by liabilities to which the property is subject) contributed by the investor. Section 6111(c)(2), (3).

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types of securities, (2) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or state agency regulating the offering of sale of securities, or (3) a substantial investment. In 1997, the Congress added section 6111(d) which requires a tax shelter organizer[3] to register with the IRS any plan or arrangement that has a significant purpose of evasion or avoidance of Federal income tax, may generate fees for the promoter in excess of $100,000, and is offered for sale under conditions of confidentiality.

Also in 1984, Congress enacted section 6112 which imposed certain list maintenance requirements upon organizers and sellers of tax shelters required to be registered under section 6111 and plans or arrangements which the Secretary determines have "a potential for tax avoidance or evasion." Under these rules, promoters are required to maintain lists of investors and certain other information for seven years and make such information available to the IRS for inspection upon request.

In February 2000, the Treasury Department and the IRS issued temporary and proposed regulations, establishing new disclosure rules under section 6011 of the Code, and giving substance to the registration and list-maintenance requirements of sections 6111 and 6112. In the temporary and proposed regulations, Treasury and IRS required (1) in regulations issued under section 6011, the disclosure by corporate taxpayers of their participation in certain large transactions that have characteristics common to tax shelters; (2) in regulations issued under section 6111, the registration of confidential corporate tax shelters; and (3) in regulations issued under section 6112, the maintenance of lists of investors in certain potentially abusive transactions.

Simultaneous with the publication of the disclosure, registration and list-maintenance regulations in February of 2000, the IRS published Notice 2000-15 (2000-1 C.B. 826), notifying taxpayers that particular transactions described in previously issued guidance had been determined to be tax avoidance transactions and, as "listed transactions," were subject to the disclosure requirements, might be subject to the registration requirements, and were subject to the list maintenance requirements. Subsequent notices and rulings have added transactions to the category of "listed transactions" for which disclosure is expressly required.

The existing disclosure, registration and list maintenance regimes have brought additional transactions to the attention of the IRS but the rules have achieved only limited results. Most of the taxpayer disclosures have involved listed transactions. It is my belief that the lack of penalties for the failure to disclose, and the complicated definitions and exceptions in the current disclosure regulations have contributed to their limited results. In contrast to the obligations imposed on promoters, there is no requirement or incentive under current law for taxpayers to disclose questionable

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[3] In certain cases, persons other than the promoter are required to register the corporate tax shelter.

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transactions, outside the rules relating to filing of tax returns.

In particular, under section 6662, taxpayers may avoid imposition of the 20% substantial understatement penalty for transactions if they have substantial authority for their position or they have a reasonable basis for their position and they disclose the position. This exception does not apply to transactions with a significant purpose of tax avoidance or evasion. Instead, individuals can avoid the penalty if they have substantial authority and a reasonable belief that their position was more likely than not correct. This exception does not apply to corporations. Instead, corporations may avoid the 20% substantial understatement penalty only where they can establish reasonable cause and good faith for their position under section 6664(c). Regulations under that provision provide that corporations may establish reasonable case and good faith by showing they had substantial authority for their position and a reasonable belief that their position was more likely than not correct, although this minimum showing does not assure the defense will apply. Thus, for both corporations and for individuals there is no statutory incentive to disclose a transaction that has a significant purpose of tax avoidance. Indeed, taxpayers might assume that disclosure would be detrimental because they perceive the likelihood of challenge in the absence of disclosure is minimal and believe disclosure would only increase the likelihood of challenge.

Moreover, the promoter registrations under current section 6111 have not proven particularly helpful, in large part because the mechanical test used in section 6111(c), which was designed to address the "retail" tax shelters prevalent in the early 1980s, is not appropriate for the kinds of abusive transactions now prevalent, and because the limitation in section 6111(d) to confidential corporate tax shelters has proven easy to circumvent. In addition, promoters have parsed the language of the regulations to argue that they are not promoters and thus have no registration or list maintenance obligation. In addition, penalties for failure to maintain customer lists are not meaningful and promoters often have refused to provide requested information to the IRS.

Lastly, even where taxpayers and promoters submitted information as required under the disclosure and registration rules, or transactions have been uncovered during audit, until recently there was no central review or analysis of the information submitted. This has been addressed through the reorganization of the IRS and creation of the Office of Tax Shelter Analysis ("OTSA") under the Large and Midsize Business Division of the IRS ("LMSB"). Despite the efforts of OTSA, there is still too much delay from the time that OTSA identifies a transaction to the time the IRS issues guidance on that transaction.

The failures to identify abusive transactions and to act quickly to issue published guidance addressing such transactions once they are detected may lead to the proliferation of such transactions. First, the delay means that the IRS is always behind the marketplace. As time passes without challenges to these transactions taxpayers assume, incorrectly, that the IRS has tacitly approved the transaction. Moreover, other taxpayers begin to take the view that they "might as well" enter into aggressive

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transactions themselves. They perceive a competitive disadvantage if they do not enter into these aggressive transactions and little risk if they do. Indeed, when the IRS finally takes action to shut down the transaction, taxpayers and promoters move on to the next generation of the transaction because they know they have a low risk of detection and enforcement and could benefit from IRS delays in finding and addressing the next transaction.

Second, when the IRS is slow to issue published guidance, it must address more cases through audit and litigation. As I have stated to the Committee in responses to questions issued after the March 21, 2002 hearing, I intend to ensure that the IRS rigorously identifies, develops and litigates appropriate cases in all areas, including abusive tax avoidance transactions. Litigation will always remain an important facet of the IRS's effort to combat abusive tax avoidance transactions, but litigation cannot be the answer to the problem. Litigation is far too costly, time-consuming, and fact-specific to fully address abusive tax avoidance transactions. Spending 5 to 10 years, or more, to litigate a case to conclusion is no substitute for learning about transactions as they occur and moving quickly with published guidance or legislative changes to stop the transactions. Discovering and addressing transactions through audits and litigation is the least efficient way to influence taxpayer behavior, both because of the delay and because of the limited reach of such activities. Audits and litigation are best used as enforcement tools that reinforce published guidance (and longstanding tax principles) as applied to abusive transactions.

C. Size and Scope of Abusive Tax Avoidance Transactions

As noted above, the disclosure, registration and list-maintenance rules produced only limited results. In general, the regulations required corporations to disclose only those reportable transactions entered into after February 28, 2000. For transactions entered into on or before February 28, 2001, corporations had to disclose a transaction only if it was a listed transaction that had not affected its Federal income tax liability on any previously filed returns. Consequently, disclosure statements received in calendar year 2000 covered only listed transactions, and disclosure statements received in calendar year 2001 covered listed transactions and other reportable transactions (those filed after August 2, 2001 were covered by the current revised regulations). In calendar year 2000, twenty-one corporations disclosed 51 listed transactions. In calendar year 2001, ninety-nine corporations disclosed 272 transactions, of which 64 were listed transactions.

Complementing the corporate disclosures required under section 6011, the regulations issued in 2000 also required tax shelter organizers to register tax shelters with the IRS no later than the day on which the tax shelters are first offered for sale. To date, the vast majority of registrations have involved leasing transactions.

As part of its enforcement activities, LMSB implemented a disclosure initiative under Announcement 2002-2 to encourage taxpayers to voluntarily disclose their

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participation in tax avoidance transactions and other transactions that might be subject to the accuracy-related penalties. The disclosure initiative was designed to provide the IRS with information about questionable transactions and provide taxpayers an opportunity to disclose their participation in a tax avoidance transaction.

Complementing the disclosure initiative, LMSB provided guidelines to IRS examiners regarding the consideration of the accuracy-related penalty under section 6662 in examinations involving listed transactions and other potentially abusive tax avoidance transactions. Together with the disclosure initiative, the penalty guidelines were intended to create a compliance incentive by ensuring that in appropriate circumstances the IRS will consider and apply penalties consistently, impartially, and fairly among all taxpayers.

The disclosure initiative under Announcement 2002-2 had a 120-day life that expired on April 22, 2002. As of May 23, 2002, OTSA has processed 1341 disclosures from 990 taxpayers involving 1268 tax returns. At this time, disclosures are still being received and processed, and we will not be able to ascertain the magnitude until all of the disclosed items have been examined and resolved. (The disclosure initiative does not require a concession by a taxpayer that a disclosed transaction was improper, and therefore the disclosed deductions and losses may not necessarily result in adjustments.) We will examine the disclosed transactions to determine if they are improper and assess deficiencies as appropriate. **[need new numbers reflecting over 1600 disclosures.]**

The results from the disclosure initiative, in contrast to the results from the corporate disclosures under the section 6011 regulations, illustrate that these transactions are widespread but also that the threat of detection and penalties may be a powerful deterrent. It is my belief, however, that when the IRS makes public its position on a questionable transaction, the numbers of taxpayers willing to enter into such transactions drop significantly. Public identification of a particular transaction as abusive increases the risk of detection, particularly when combined with the rules requiring registration of listed transactions (reinforced by promoter enforcement activities). Public identification also creates a more transparent system -- both the IRS and taxpayers know that such transactions will be subject to challenge. When the IRS delays such published notification, however, more taxpayers are willing to engage in such transactions. The sheer volume of some of the abusive transactions can impose an added drain on IRS resources.

Moreover, vague disclosure rules without threat of enforcement or penalties are ineffective. In contrast, a disclosure regime that provides a real incentive to taxpayers to disclose (in this case, a waiver of penalties for disclosed transactions) and disincentive for failure to disclose (the penalty policy announced at the same time as the initiative) can be very effective, particularly when coupled with an increased likelihood of detection (through the increased focus on promoters discussed further below).

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Although the above numbers demonstrate that taxpayers have been willing to engage in potentially abusive transactions, I do not believe that the problem of abusive transactions is "measurable", for the simple reason that we cannot measure what we do not know. As part of its ongoing effort to identify and respond to questionable transactions and allocate its resources more efficiently to areas of higher noncompliance, the IRS should and will collect data on the types of transactions, numbers of taxpayers and revenue at issue in these transactions. However, these numbers only show us what we know is potentially at issue; they do not show what we do not know. The IRS is still analyzing the transactions that have been registered or disclosed. At this point we do not know whether the positions taken are correct and we must engage in a factual inquiry into particular transactions to determine the proper tax treatment of those transactions. Moreover, the disclosures and registrations often contain only sketchy descriptions of transactions and therefore the IRS is in the process of asking taxpayers and promoters for additional information regarding questionable transactions. In addition, I believe that revenue lost is ancillary to the fundamental concern that these transactions raise -- lack of fairness and respect for the tax system. The number of taxpayers participating in such transactions and the magnitude of such transactions is a symptom, and we must focus on guidance and fair administration and enforcement of the tax rules to reinforce taxpayer respect for the system.

III RESPONSES TO ABUSIVE TAX AVOIDANCE TRANSACTIONS

A. Early Identification of Questionable Transactions

Disclosure and registration are the best tools for the IRS to identify and address questionable transactions early. Becoming current with the market must be a top priority. The examination process does not allow for early identification of transactions, before they are widely marketed, however. Even in the best of circumstances, large corporate returns generally are not filed until nine months after the close of the tax year, and examination is not completed until several years after that. This means the IRS may not become aware of the transaction until several years after it has been marketed and taxpayers have entered into it.

The IRS is not always able to identify abusive transactions promptly through return examination and thus often must rely upon disclosure and registration to catch transactions. On March 21, 2002, the Finance Committee heard testimony about the problems with the current disclosure, registration and list maintenance provisions, and proposed solutions in the form of the Treasury Enforcement Proposals. The Tax Shelter Transparency Act, S. 2498, incorporates the Treasury Department's legislative proposals and gives the IRS tools to identify transactions early by encouraging disclosure by taxpayers and registration and maintenance of customer lists by promoters. In addition, the IRS and the Treasury Department currently are revising the disclosure, registration, and list maintenance regulations as described in the Treasury Enforcement Proposals to clarify and simplify the disclosure and registration regimes, cast a broader net over questionable transactions and require more taxpayers and other

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participants in questionable transactions to identify those transactions early. These changes also will integrate the disclosure registration and list maintenance rules with the penalty provisions in section 6662.

The Treasury Enforcement Proposals will improve the current disclosure, registration, and list maintenance rules in a number of ways. First, our proposals would broaden the range of persons who are required to register reportable transactions and maintain lists of investors. Promoters have not complied with these rules in the past because they have argued that they are not an organizer or seller of the tax shelter and thus do not have a reporting obligation. The proposals would also require individual taxpayers, partnerships and trusts, not just corporations, to disclose their participation in questionable transactions. Additionally, receipt of these disclosures would be centralized at one location, as are corporate disclosures, to provide for coordinated review by OTSA. These changes should cover a large number of promoters and taxpayers who have participated in reportable transactions, and it should expose a larger number of questionable transactions currently in the market.

The proposals also would amend the rules under sections 6011, 6111 and 6112 of the Internal Revenue Code to establish a consistent definition of a "reportable" transaction for disclosure, registration and list maintenance purposes and provide new or enhanced penalties for failure to comply with these rules. Because taxpayers and promoters are reading the exceptions in the current rules liberally and interpreting the requirements narrowly, a clear and consistent rule is needed. This would ensure that the IRS has multiple sources of information about a reportable transaction and would give the IRS the ability to move quickly between the various forms of information. For example, if a taxpayer fails to disclose a reportable transaction but the promoter registers the transaction, the IRS would be able to move quickly from the registration to an investor list in order to identify that taxpayer and other non-disclosing taxpayers. This creates a web of mutually reinforcing rules. For example, in one case, five taxpayers disclosed a questionable transaction under the 6011 disclosure rules. The IRS obtained a list from the promoter of that transaction that included seventeen taxpayers. The IRS is now pursuing the remaining twelve nondisclosing taxpayers. Thus, these proposals working together provide the certainty of detection that, coupled with the penalties for failure to disclosue, will encourage taxpayers to disclose questionable transactions or deter them from entering into such transactions where they believe their position is too uncertain.

The proposals would clarify the definition of "listed transaction." Taxpayers have applied the "substantially similar" standard narrowly to conclude that disclosure is not required. The regulations would be amended to provide that the term "substantially similar" includes any transaction expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. This change should prevent more taxpayers from avoiding disclosure. The proposals also would discourage taxpayers from participating in transactions based on the asserted invalidity of a regulation without disclosure. Reliance on opinions asserting

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that a regulation is invalid will not be a defense to the accuracy-related penalties unless proper disclosure is made. The administration's proposals would apply the accuracy-related penalties under section 6662 if a listed transaction is not disclosed and results in an underpayment, and eliminate the ability of taxpayers to rely on opinions to establish reasonable cause under section 6664(c), where a reportable transaction is not disclosed.

Finally, we are seeking legislation that would allow the government to seek injunctive relief against promoters who repeatedly disregard the registration and list maintenance requirements. Some promoters are blatantly ignoring the rules regardless of the penalties they face. An injunction would place a promoter in a public proceeding under court order to comply with the rules. Failure to comply in the future would place the promoter in contempt of court. The threat of such an injunction (and the associated publicity) should be enough to end noncompliance.

These changes should make compliance and enforcement easier by providing taxpayers strong incentives to disclose questionable transactions. The proposals will work together to ensure certainty of detection because the rules identify clearly, without exceptions and loopholes, which transactions must be disclosed and registered and which transactions require list maintenance. They create a broad web of taxpayers and other participants, including promoters, who must give the IRS information. Enforcement is more certain because the IRS will use this information to determine the proper tax treatment of the transactions. Finally, the proposals ensure certainty that penalties will be imposed in appropriate circumstances for failure to comply with the rules.

Our overarching goal and obligation to the tax system and to taxpayers is to ensure that each taxpayer pays his or her fair share of tax – no more and no less. We also need to ensure that each taxpayer believes that others likewise are complying with their obligations to pay. Therefore, we must balance our desire not to interfere with legitimate tax planning with our need to curb abusive tax practices under which taxpayers take advantage of complex tax laws to obtain unintended tax benefits. As former Assistant Secretary for Tax Policy Mark Weinberger put it, if a taxpayer feels comfortable entering into a transaction, if a promoter feels comfortable selling a transaction, and if an advisor feels comfortable recommending a transaction, they all should feel comfortable identifying and describing the transaction for the IRS.

The Tax Shelter Transparency Act, S. 2498, has incorporated key elements from the Treasury Enforcement Proposals, including authority to expand the range of persons required to disclose or register questionable transactions and maintain lists of investors, authority to provide a consistent definition of questionable transaction for purposes of the disclosure, registration and investor list maintenance rules, enhanced penalties for failure to disclose, and the power to use injunctions to address repeated failures to comply with the registration and list maintenance rules. As described below, the IRS already is using the tools at its disposal to pursue information. However, these

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additional tools will be applied to ensure that the IRS learns about transactions as quickly as possible. I intend to use these enhanced tools to ensure that the IRS has prompt access to the information it needs to fairly and vigorously enforce the Internal Revenue Code.

B. Prompt Analysis of Questionable Transactions

Early identification is only as valuable as the IRS response to the transactions identified. Therefore, one of my goals since my confirmation has been to coordinate the efforts of the IRS, the Office of Chief Counsel and the Treasury Department in responding as quickly as possible to questionable transactions when they are identified. Historically, there has been sequential examination and internal delays within the Office of Chief Counsel. In addition, there has been inadequate factual investigation of these transactions by IRS agents and field counsel.

To address the problem of internal delays, the Office of Chief Counsel and LMSB have implemented transaction-specific task forces. The task forces are formed for specific transactions or a group of transactions, and include attorneys from the appropriate operating divisions of Chief Counsel, attorneys from the technical divisions of Chief Counsel, the Department of Treasury, and OTSA. In addition, revenue agents may be assigned to each task force. Being dedicated to the task force reduces the distraction of other obligations.

The process starts with a review of disclosed and registered transactions by the OTSA working with Chief Counsel's LMSB Division. As new transactions are identified, a preliminary determination is made as to which transactions warrant referral to a task force. The referral to a task force ensures that technical expertise will be available from the start. The task force decides whether to recommend (1) factual investigation of the transaction, (2) further inquiry of the promoter, and/or (3) issuance of public guidance. Revenue agents who assist the task force conduct any factual investigation with assistance of division counsel. If further information is needed from the promoter (such as a list of investors or tax opinions), it is requested. Treasury attorneys are asked to join the task force if it is determined that public guidance should be considered.

Use of such task forces should allow us to distinguish between sound and problematic transactions, determine the kind of guidance necessary and permit both follow-up on the transaction and prompt issuance of public guidance. Decisions on whether to issue a Notice alerting taxpayers that the IRS will challenge a transaction are made early and jointly with the Treasury Department. Through the improved disclosure and registration regimes, we should become aware of these transactions even before they are reported on a tax return and be able to address them early in their promotion. The task forces will achieve consistency through the system, coordinating the efforts of the National Office, field counsel, the revenue agents and Appeals. Furthermore, cross-checking of issues identified in the field with disclosure and registration will become easier. This means a higher likelihood that taxpayers who have invested in

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questionable transactions will be identified and subject to examinations.

Two examples will serve to illustrate the problems these task forces are designed to address. Within weeks of my swearing in, I became aware of a transaction that the IRS had identified as potentially abusive more than a year earlier. Indeed the transaction had been registered by promoters, and was the subject of an article in Tax Notes in December, 2000.[4] There had been no concerted institutional effort to conclude the analysis of the questionable transaction despite the universally held view that it was abusive and, thus, there was no push to issue public guidance to make the government's position known. When I became aware of the transaction I organized a small group of lawyers to analyze the transaction. This led to a notice listing the transaction within weeks, Notice 2002-14, 2002-14 I.R.B. 730. Notice 2002-14 involves the purported assumption of a loan in exchange for assets that produces a claimed basis in the assets in excess of the assets' fair market value. (The assets then are sold and a tax loss is claimed.) For the reasons set out in Notice 2002-14, the transaction does not yield the result claimed under section 1012 of the Code, the regulations thereunder, and the applicable case law interpreting section 1012.

In another case, the IRS identified through OTSA review of promoter registrations and taxpayer disclosures an abusive transaction and brought it to the attention of my office in late March. A task force was formed immediately to analyze the transaction. Within six weeks the task force had produced a revenue ruling, Rev. Rul. 2002-30, 2002-21 I.R.B. ___, stating the IRS position on the transaction along with a notice listing the transaction as abusive, Notice 2002-35, 2002-21 I.R.B.____.[5] This experience has reinforced my view that we need a process for prompt analysis of questionable

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[4] Lee A. Sheppard, "The Synthetic Euro Borrowing Tax Shelter," 88 Tax Notes 1682 (December 25, 2000).

[5] In Rev. Rul. 2002-30, a taxpayer entered into a notional principal contract ("NPC") with a counterparty for a term of 18 months. Pursuant to the terms of the NPC, the taxpayer agreed to make quarterly payments to the counterparty based on three-month LIBOR multiplied by a notional principal amount of $100,000,000. In exchange, the counterparty agreed that upon the expiration of the NPC on March 31, 2004, the counterparty would pay to the taxpayer 6 percent per year multiplied by a notional principal amount of $92,000,000 (the fixed payment amount). In addition, the counterparty (or the taxpayer) will make a payment upon expiration equal to the percentage increase (or decrease) in the value of the S&P 500 stock index multiplied by a notional principal amount of $8,000,000. The Service ruled that the taxpayer and the counterparty must recognize the noncontingent component of the nonperiodic payment over the term of the NPC. Simultaneously with the issuance of Rev. Rul. 2002-30, the IRS and Treasury issued Notice 2002-35, pursuant to which taxpayers who entered into transactions substantially similar to the one described in Rev. Rul. 2002-30 were required to disclose such transactions with their tax returns and comply with certain other requirements.

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transactions as they are identified so that they do not proliferate in the marketplace. As this discussion illustrates, however, I believe that the analysis of the transactions is only part of the equation; it must be paired with published guidance.

In addition, the arguments used to attack abusive transactions are critical. As part of the analysis of transactions, the IRS can, and should, consider arguments based on the substantive provisions (the Code, regulations and other published guidance) first, and then consider application of the judicial doctrines, including the sham, step-transaction, substance-over-form, and economic substance doctrines. In some cases, the alleged compliance with the technical Code requirements may not withstand rigorous scrutiny. In addition, application of the judicial doctrines may be appropriate, depending on the particular facts of each case. In cases where there may be some ambiguity in the law that is perceived to allow the purported tax benefits of the transaction, the Treasury Department and the IRS must be ready to respond quickly to shut down abusive tax avoidance transactions through published guidance, including regulations. If a transaction is not susceptible to challenge under existing statutes and judicial doctrines, it is necessary to move quickly and propose legislative changes to shut the transaction down, where appropriate.

C. Published Guidance

The published guidance program is an important tool in the tax shelter area that can be used to increase disclosure and compliance. Because our federal tax system is based on self-assessment, the IRS has a responsibility to assist taxpayers in determining what works and what does not. The current level of published guidance is unacceptable to the Commissioner and to the public.

The IRS must respond to transactions more quickly. Our delays mean more taxpayers will enter into these transactions. While abusive transactions will be challenged upon audit even where they have not yet been addressed by public guidance, informing the public that we are aware of such transactions will discourage participation in abusive transactions. Showing that we are aware of transactions currently in the market, and of who has invested in them, should reduce taxpayers' incentive to play the audit lottery. Our commitment to serving the public demands that we announce early our views on new transactions that do not work, and our views on those that do.

Some transactions that raise concerns are technically sound under current law. Our willingness to issue guidance addressing the transactions that work should encourage promoters and taxpayers to come to us with transactions that they believe are technically sound. If promoters and taxpayers know that the IRS is not simply a nay-sayer, they should be more interested in talking to us about transactions and financial instruments currently being developed. As a result, the IRS would be better informed of current transactions and would be able to recommend necessary changes to the law, whether administrative or legislative, more quickly. A good example of this

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kind of ruling is Rev. Rul. 2002-31, 2002-__ I.R.B. ____, in which the IRS determined that contingent convertible notes work under current law. In a companion notice, Notice 2002-36, 2002-___I.R.B. ____, the IRS also indicated that it has some questions about the proper treatment of such transactions and asked for comment regarding possible changes to the regulations that permit these transactions. This published guidance allows taxpayers to understand the IRS position on transactions and thus reduces taxpayer cost in determining whether tax positions are proper.

As importantly, public guidance tells the field what transactions do not work and what transactions work and thus serves as an important tool to focus IRS audit and enforcement resources toward transactions that are questionable and away from transactions that work under current law. When a transaction is identified, agents will know what to look for and how to analyze it. When a transaction is determined to be sound, agents will know not to devote resources to challenging it.

Issuing guidance quickly on transactions that are abusive requires us to develop our principal position and announce it early rather than attempting to refine all the possible arguments that might apply. Too often published guidance is delayed while we attempt to formulate the perfect solution to all potential problems. We should focus instead on developing advice that covers the general issues; more specific problems can be addressed in later guidance.

The Treasury Office of Tax Policy and the Office of Chief Counsel are committed to early and joint policy review to increase the level of published guidance. Joint efforts should allow us to remain on top of current transactions. Regular joint policy briefings have helped speed guidance relating to a range of issues, including the first set of revisions to the tax shelter regulations that incorporate some of the Treasury Enforcement Proposals.

Finally, and perhaps most importantly, where possible I hope to propose clear rules that comport with economic reality and are not one-sided, and I look forward to working with the Treasury Department and the Congress on efforts to simplify the tax laws. One-sided rules that do not comport with economic reality often are intended to prohibit abuses and protect the fisc; however, with creative tax planning, they can become new loopholes. A recent article referred to these provisions as "attractive nuisances" -- an apt description.[6] The most-often cited example of such a one-sided rule is the regulation exploited in the contingent installment sale note transactions, like the one at issue in ACM Partnership v. Commissioner, 73 T.C.M. (CCH) 2189, aff'd in part, rev'd in part, 157 F.3d 231 (3d Cir. 1998), cert. denied, 526 U.S. 1017 (1999). That regulation, Temp. Treas. Reg. § 15a.453-1(c)(3)(i), required ratable basis recovery for installment sales where the maximum

[6] Lee A. Sheppard, "Tax Shelter Opponents Turn Practical," 95 Tax Notes 1111 (May 20, 2002).

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selling price was not known but the period over which payments were to be made was fixed. (The regulation also allowed the IRS to defer, but not to accelerate, basis recovery to respond to distortions; some have referred to this rule as not pro-government enough.) Thus, in ACM, the taxpayers accelerated payment of a large portion of the selling price but included a contingent element. Basis recovery was delayed relative to the economic cost recovery in the transaction. The mismatch between economic cost recovery and the cost recovery prescribed by the regulation permitted this shelter.

Other shelters have involved similar disconnects between the tax treatment of income or deductions and the economics of the transactions. For example, fast pay preferred stock involved accelerated basis recovery treated as taxable dividend income, and lease strips involved accelerated rental income, separated from the underlying property. The tax rules underlying these transactions accelerated income recognition, which is generally considered anti-taxpayer, and were known not to be economic. However, as is often the cases with one-sided rules that deviate from economics, creative tax planners found ways to use these rules to create unintended tax benefits. **[B John -- this was my point with these examples -- perhaps there are better ones.]** While there may be administrative reasons for deviating from economics of transactions, I will carefully scrutinize proposed rules to ensure that such deviations are necessary and appropriate. In addition to reducing the opportunities for abuse, clear simple rules also reduce the burden on taxpayers to comply with the rules and reduce the burden on the IRS for enforcing the rules.

D. Enforcement Activities

The changes to the disclosure, registration and list maintenance rules combined with focused task forces should result in broader identification, quicker public guidance, and better compliance. Enforcement is the final piece of the puzzle. My goal here is simple – I want to interdict the promotion of abusive tax avoidance transactions at the front end – that is as the transactions are being marketed and sold to taxpayers. To achieve this, we need to use the web of information from taxpayers and promoters and aggressively pursue the information to which we are entitled under the Code.

Because early detection is central to my goal of early interdiction, I believe that the promoters should be the first source of information and the first target of IRS enforcement efforts. Promoters have the first obligation to register transactions; therefore, their registrations provide the first opportunity to learn about questionable transactions. Moreover, their lists of investors will allow the IRS to identify how widespread transactions are and devise plans for audit and resolution even before the first tax returns are under examination in the normal course. Finally, focus on the promoters will reinforce to both taxpayers and promoters the certainty of detection of questionable transactions and certainty of examination of questionable transactions. Under this approach, promoters may continue to engage in tax planning and advise their investors on ways to minimize taxes, but they also will know that these strategies

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will come under scrutiny which should deter the most egregious and patently abusive transactions.

The IRS is exercising its authority under the Internal Revenue Code to determine whether promoters and taxpayers are in compliance with the registration and disclosure requirements. The IRS already has requested information (through "soft letters") from over 30 promoters to determine whether they have complied with the registration and list maintenance requirements. Where the IRS has obtained information from promoters, it is in the process of reviewing that information and is contacting the investors listed. Our attempts to remain current with the market, however, are hampered by the promoters' failure to cooperate. Many promoters were asked to provide information almost two years ago, and some promoters have yet to provide us with all of the information requested. Therefore, the IRS, with the support of Chief Counsel attorneys, has begun to issue summonses for the information we have requested. In addition, to ensure that the summonses are proper and enforceable, the IRS and the Office of Chief Counsel have established a pre-issuance clearance program with the Department of Justice. Under this program, summonses to promoters are cleared with DOJ lawyers before they are served on promoters.

As of May 23, the IRS had issued 110 summonses to 6 different promoters and had a number of summonses pending. **[need to update]** It is my understanding that prior to this year, no summonses had been issued requesting information under sections 6111 or 6112, with the exception of one summons issued in 2001. We have, and will, issue summonses to accounting firms, investment banks and law firms who may have been involved in the promotion of questionable transactions. More summonses will follow – some imminently. We also are in discussions with promoters to avoid issuing summonses that are pending.

Summonses to promoters can be particularly effective as we analyze transactions discovered through disclosure or other means. For example, in one case, we used our summons powers to obtain a tax opinion for a task force to analyze. The tax opinion was an important part of the analysis of the tax shelter task force, ensuring that the task force understood the transaction and did not overlook critical arguments.

We are considering summons enforcement actions to require promoters to comply with summonses where we believe that we are legally entitled to information that promoters have not produced. We are working closely with the Department of Justice as part of our summons enforcement actions to ensure that the IRS gains access to all of the information to which it is legally entitled. This includes tax opinions provided as part of a promotion of a questionable transaction. I value the attorney-client privilege and believe it is fundamental to our legal system. And Congress recently enacted the accountant-client privilege in section 7525. Nonetheless, I believe that the scope of this privilege is narrower than often claimed. I recently was made aware of promoters claiming that the privilege applies to investor lists, presentation charts, and even K-1s. I believe that these claims of privilege are improper.

The attorney-client privilege, and the tax advisor privilege in section 7525, which is based on the attorney-client privilege, are intended to protect client communications to obtain legal advice. While claims of privilege for tax advice given more closely hew to the traditional understanding of attorney-client privilege, the privilege is much narrower than is frequently claimed. First, it is unclear whether tax advice contained in opinions used to promote these transactions was given in the context of an attorney client relationship (or parallel relationship in the practitioner context). Second, the privilege may have been waived. Finally, as a general rule, the privilege does not protect the name of the investor who has received the tax advice. Where promoters intend to assert privilege they should be careful to apply the privilege properly and should be prepared to substantiate their privilege claim. I have personally met with representatives of one promoter as part of our enforcement activity to discuss my intent to pursue summons enforcement actions and challenge such privilege claims. In that case, the representatives decided to produce to the IRS the requested information. We currently have under consideration other summons enforcement actions relating to privilege claims, and I plan to pursue those actions vigorously if necessary. I also have spoken personally to representatives of the AICPA and the ABA to make my position clear to them.

I also am reviewing other rules that might apply to tax practitioners when they withhold information from the IRS on grounds that such information is privileged. In particular, I am reviewing Circular 230 to determine whether there are ethical violations when tax practitioners make baseless claims of privilege. In particular, section 10.20(a) of Circular 230 provides: "No attorney, certified public accountant, enrolled agent, or enrolled actuary shall neglect or refuse promptly to submit records or information in any matter before the Internal Revenue Service, upon proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, or shall interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service or its officers or employees to obtain any such record or information, unless he believes in good faith and on reasonable grounds that such record or information is privileged or that the request for, or effort to obtain, such record or information is of doubtful legality." It is my understanding that this office has not raised a violation of Circular 230 unless a summons enforcement action has commenced. I have asked that this practice be reconsidered. IRS requests for documents are set forth in "Information Document Requests" ("IDRs"). While informal, IDRs are requests by authorized agents for information, and unless privileged, the information must be produced. **[what about overbroad or irrelevant requests?]** Practitioners have an ethical duty to see that the information requested is produced to the IRS. I believe that failures of this ethical duty should be sanctioned.

Finally, we are considering the application of penalties to promoters who have failed to register transactions. We have uncovered transactions where promoters should have, but failed to, register transactions and we are considering the application of penalties in these cases. Penalties for these failures to register can be quite

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substantial (millions of dollars), because of the size and volume of the transactions. We believe that the risk of penalties will provide a strong incentive to promoters to comply with the registration and list maintenance rules. In addition, as noted above, we believe that injunctive relief will be an effective tool to cure repeated failures to comply with these rules.

In addition, the IRS will pursue taxpayers who engage in abusive transactions. I have said publicly that I do not believe that we should use litigation to establish new rules but instead should rely on published guidance. Nonetheless, the IRS will litigate cases when a taxpayer has manipulated the rules and regulations, including published guidance, to obtain unintended tax benefits. In addition, when justified by the facts, the IRS will challenge transactions based on the judicial doctrines, including the sham, step-transaction, substance-over-form, and economic substance doctrines.

The decision to litigate a case, however, must be a considered one. The process of designation is the means by which the Office of Chief Counsel selects cases for litigation. It does not mean that other cases will not go to court; rather it is used to target specific cases that we believe are strong enforcement vehicles and expedite those cases to court. My priority is to ensure that the right cases are designated for litigation, and that we exercise careful oversight over the positions that the government is taking in litigation. To achieve these goals, I have centralized the procedure for designating cases for litigation in my office. I will personally approve designations, and I intend to designate only those cases that are good enforcement vehicles – that is, cases where the law is clear (either there is published guidance or the application of the judicial doctrines is clear), and the facts have been fully developed by the Examination team.

Before designation, the taxpayer will be informed that the case is being considered so that the taxpayer can discuss with the IRS the merits of designation. We will not designate cases unless the IRS Industry Director, Division Counsel and I agree that designation is appropriate. In such cases, we will not issue "30 day" letters that will allow cases to go to Appeals but instead will issue statutory notices to the taxpayers. Designation will be issue-by-issue, and other issues in a case may go to Appeals. Finally, within 6 months of the statutory notice, I expect the government to be in a position to issue informal discovery requests (Branerton letters)[7], file first stipulations of documents and facts, and file proposals with the court for assignment to a judge and trial schedule. That is, I expect to designate cases that are already well developed. This is a very important element of my enforcement strategy not only for tax shelters but tax cases generally.

This is particularly important to our overall enforcement strategy for abusive tax

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[7] Branerton v. Commissioner,61 T.C. 691 (1974).

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avoidance transactions. It will ensure that we will litigate cases that present strong enforcement vehicles. It should accelerate the judicial resolution of IRS and taxpayer disputes, which should aid in developing resolution of cases on audit.

I also plan to pursue penalties against taxpayers where appropriate. In that regard, where a transaction is challenged and a taxpayer invokes the reasonable cause and good faith exception to the application of penalties, I plan to examine the validity of the tax opinions underlying the defense. Opinions are a critical element in the abusive tax avoidance transaction phenomenon. Their primary function often is penalty protection – that is, they are sought by taxpayers and promoters to establish reasonable belief that a tax position is correct for purposes of avoiding the substantial understatement penalty under section 6662. Yet we see opinions that ignore critical legal issues and are deficient in their factual and legal analysis. While the nature of the reasonable belief exception means that we should consider the sophistication of the taxpayer – that is, the consumer of the legal opinion – in determining whether the legal opinion can form the basis for a reasonable cause defense, I believe that we must take a closer look at these opinions to determine whether they should provide penalty protection. We owe it to the tax system to ensure that tax practitioners are upholding their obligations to their client and to the system itself by scrutinizing transactions carefully and thoroughly. Where an opinion is deficient, i.e., it omits material facts or analysis or assumes away critical issues, it may not provide penalty protection.

Finally, I am now working with the Large and Midsized Business Division and Small Business/Self Employed Division of the IRS to develop procedures for resolving cases under examination through means other than litigation. This includes developing settlement positions and procedures that take into account the range of taxpayers and transactions that are involved. This project will be critical to resolving abusive tax avoidance transactions fairly and consistently and in a manner that conserves IRS resources. I also am considering ways that the Office of Chief Counsel might better support the efforts of OTSA and the IRS in identifying and analyzing transactions and compliance efforts, including promoter enforcement activities, beyond the reallocation of resources to the task forces and summons enforcement activities.

E. Measurement of Success

Because it is so difficult to measure the size and scope of the abusive tax avoidance transaction phenomenon, it is very difficult to determine when the efforts to curb such abusive transactions will be successful. However, I believe that there are certain ways that the IRS, and the Congress, can measure the success of the efforts. First, the IRS and the Congress should consider the historical data on disclosure and registration of questionable transactions. In some respects, more disclosure of such transactions would be a measure of success. However, the Treasury Department and the IRS do not intend to place an undue burden on taxpayers and intend to adjust the disclosure and registration regimes to eliminate disclosure of transactions where there is no concern about abuse. Another appropriate measure of success will be the speed

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with which the IRS and the Treasury Department respond to questionable transactions. As I observed above, delay in addressing questionable transactions and the dearth of published guidance have a pernicious effect on the system. I will continue to seek ways to accelerate the issuance of published guidance and notification about questionable transactions. Third, the IRS, the Treasury Department, and Congress should be held accountable for the rules we promulgate and enact. Thus, we should consider ways to remove "attractive nuisances" from the Code and measure our success for simplifying the rules for taxpayers and for tax administration, based on ease of compliance and cost of compliance.

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From:	CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To:	H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jonathan R. Scharfen/NSC/EOP@EOP [NSC] <Jonathan R. Scharfen>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>
BCC:	Bradford A. Berenson (Bradford A. Berenson/WHO/EOP [WHO]), Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent:	5/31/2002 6:13:53 AM
Subject:	: Additional search terms

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-MAY-2002 10:13:53.00
SUBJECT:: Additional search terms
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jonathan R. Scharfen ( CN=Jonathan R. Scharfen/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Terry W. Good ( CN=Terry W. Good/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

We have developed an additional list of search terms. These terms should
be run through the ARMS system, which Chris will take care of, through the
WAVES records maintained by ORM from 1/20/01 through 12/2/01, through the
OCR and file label databases maintained by ORM, and through the NSC ORM
and classified e-mail systems:

"Rebecca McDonald" or "Becky McDonald"
"Carin Nersesian"
"Hap Boyd"
"Stephen Burns" or "Steve Burns"
"Christopher Long" or "Chris Long"

We need the ORM portion of this (WAVES and database hits) as soon as
possible today if that can be done.

Thank you very much for your assistance.
```

From: CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To: Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>;Lucy G. Clark/WHO/EOP@EOP [WHO] <Lucy G. Clark>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/31/2002 9:01:32 AM
Subject: : Possibilites for PRA & CIA Meeting

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Magda E. Angulo ( CN=Magda E. Angulo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-MAY-2002 13:01:32.00
SUBJECT:: Possibilites for PRA & CIA Meeting
TO:Joan Hunerwadel ( CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:Lucy G. Clark ( CN=Lucy G. Clark/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Any suggestions for a good day and time to schedule a meeting next week?
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/31/2002 9:22:31 AM
Subject: : LRM IMS16 - - OMB Request for Views on Senate Passed S1644 Veterans' Memorial Preservation and Recognition Act
Attachments: P_5DLQ7003_WHO.TXT_1.txt

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CREATION DATE/TIME:31-MAY-2002 13:22:31.00
SUBJECT:: LRM IMS16 - - OMB Request for Views on Senate Passed S1644 Veterans' Memorial Preservation and Recognition Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 05/31/2002 01:22 PM ----------

From: Ingrid M. Schroeder on 05/31/2002 01:14:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IMS16 - - OMB Request for Views on Senate Passed S1644 Veterans' Memorial Preservation and Recognition Act

Please send all comments to THAD MESSENGER (202) 395-7754; P._Thaddeus_Messenger@omb.eop.gov

LRM ID: IMS16
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, May 31, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: OMB Request for Views on S1644 Veterans' Memorial Preservation and Recognition Act

DEADLINE: COB Thursday, June 6, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is S. 1644 (an amendment in the nature of a substitute)

as passed by the Senate on May 22, 2002.

DISTRIBUTION LIST

AGENCIES:
029-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
061-JUSTICE - Daniel Bryant - (202) 514-2141
088-Office of Government Ethics - Jane Ley - (202) 208-8022
117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
118-TREASURY - Thomas M. McGivern - (202) 622-2317
129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666

EOP:
Robin Cleveland
Kathleen Peroff
Toni S. Hustead
Kelli A. Hagen
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Mark R. Seastrom
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Narahari Sastry
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Andrew D. Hire
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Sarah S. Lee
Shelly A. McAllister
Pamula L. Simms
Attia Little
Philip J. Perry
Matthew J. Schneider
John F. Wood
Christine C. McCarlie
Lauren C. Lobrano
Aquiles F. Suarez
Christine Ciccone
WHGC LRM
OVP LRM
Ingrid M. Schroeder
James J. Jukes
LRM ID: IMS16 SUBJECT: OMB Request for Views on S1644 Veterans' Memorial Preservation and Recognition Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax:
395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
dodlrs@osdgc.osd.mil
justice.lrm@usdoj.gov
legteam@oge.gov
dot.legislation@ost.dot.gov
llr@do.treas.gov
valrm@mail.va.gov

Message Copied
To:_____
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Kelli A. Hagen/OMB/EOP@EOP
Winifred Y. Chang/OMB/EOP@EOP
Mark R. Seastrom/OMB/EOP@EOP
Danny A. Ermann/OMB/EOP@EOP
Narahari Sastry/OMB/EOP@EOP
Lourdes M. Lamela/OMB/EOP@EOP
John J. Bartrum/OMB/EOP@EOP
Arecia A. Grayton/OMB/EOP@EOP
Mary Jo Siclari/OMB/EOP@EOP
Karyn T. Carson/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Andrew D. Hire/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Steven M. Mertens/OMB/EOP@EOP

Lisa B. Fairhall/OMB/EOP@EOP
Sarah S. Lee/OMB/EOP@EOP
Shelly A. McAllister/OMB/EOP@EOP
Pamula L. Simms/OMB/EOP@EOP
Attia Little/OMB/EOP@EOP
Philip J. Perry/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
John F. Wood/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
WHGC LRM
OVP LRM
Ingrid M. Schroeder/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5DLQ7003_WHO.TXT_1>

S 1644 ES

107th CONGRESS

2d Session

S. 1644

AN ACT

To further the protection and recognition of veterans' memorials, an d for other purposes.

Be it enacted by the Senate and House of Representatives of the Un ited States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Veterans' Memorial Preservation and Reco gnition Act of 2002'.

SEC. 2. CRIMINAL PENALTIES FOR DESTRUCTION OF VETERANS' MEMORIALS.

(a) IN GENERAL- Chapter 65 of title 18, United States Code, is amended by adding at the end the following:

`Sec. 1369. Destruction of veterans' memorials

`(a) Whoever, in a circumstance described in subsection (b), willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any p erson or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

`(b) A circumstance described in this subsection is that--

`(1) in committing the offense described in subsection (a), the de fendant travels or causes another to travel in interstate or foreign commerce, or uses the mail or an instrumentality of interstate or foreign commerce; or

`(2) the structure, plaque, statue, or other monument described in subsection (a) is located on property owned by, or under the jurisdiction of, the Federal Government.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chap ter 65 of title 18, United States Code, is amended by adding at the end the fol lowing:

`1369. Destruction of veterans' memorials.'.

SEC. 3. HIGHWAY SIGNS RELATING TO VETERANS CEMETERIES.

(a) IN GENERAL- Notwithstanding the terms of any agreement entered int o by the Secretary of Transportation and a State under section 109(d) or 402(a) of title 23, United States Code, a veterans

cemetery shall be treated as a sit e for which a supplemental guide sign may be placed on any Federal-aid highway.

(b) APPLICABILITY- Subsection (a) shall apply to an agreement entered into before, on, or after the date of the enactment of this Act.

Passed the Senate May 22, 2002.

Attest:

Secretary.

107th CONGRESS

2d Session

S. 1644

AN ACT

To further the protection and recognition of veterans' memorials, and for ot her purposes.

END

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;h. christopher bartolomucci/who /eop@eop [WHO] <h. christopher bartolomucci>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>
Sent: 5/31/2002 11:04:31 AM
Subject: : Re: FYI: lower court decision re Internet

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-MAY-2002 15:04:31.00
SUBJECT:: Re: FYI: lower court decision re Internet
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judge Becker wrote the opinion.




Brett M. Kavanaugh
05/31/2002 02:57:33 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FYI: lower court decision re Internet

Judges Strike Down Internet Porn Filters

By Robert O'Harrow Jr.
Washington Post Staff Writer
Friday, May 31, 2002; 1:43 PM

Government efforts to restrict access to online pornography received
another setback
today when a panel of federal judges struck down a law requiring public
libraries to
```

install Internet filters to block access to objectionable sites.

In a unanimous decision, the three judges of a special panel said the Children's Internet Protection Act is "invalid under the First Amendment" because it requires libraries to use technology that blocks access to legitimate sites on the World Wide Web, while still giving access to some porn sites.

The legislation known as CIPA, signed into law by President Clinton two years ago, required that public libraries use the electronic blocks, starting July 1, or lose millions of dollars in federal funding for computers and Internet access.

In a 195-page decision, the judges said "that it is currently impossible, given the Internet's size, rate of growth, rate of change, and architecture, and given the state of the art of automated classification systems, to develop a filter that neither underblocks nor overblocks a substantial amount of speech."

It was the third time in recent years that similar laws have been shot down for being overbroad or in violation of free speech protections.

Today's decision, which applies only to public libraries, was praised by the American Librarian Association and American Civil Liberties Union, the leaders of a host of librarians, patrons and online publishers who challenged the validity of the law last year.

"The court bans the government from turning librarians into thought police," said Ann Beeson, the litigation director for the ACLU's technology and liberty program. "The [filters] are inherently flawed and would prevent library patrons all over the country from accessing valuable sites on the Web."

A Justice Department official declined to comment, saying officials there were reviewing the decision. Any appeal would go to the Supreme Court, which has taken a skeptical view of Congress's methods of curbing the spread of online pornography.

In arguing the case, no one disputed the massive proliferation of smut on the Internet in recent years. The judges estimated there "are more than 100,000 pornographic Web sites that can be accessed for free and without providing any registration information, and tens of thousands of Web sites contain child pornography."

They said the Internet has spurred "the widespread dissemination of hardcore pornography within the easy reach not only of adults who have every right to access it (so long as it is not legally obscene or child pornography), but also of children and adolescents to whom it may be quite harmful."

But after two weeks of testimony in April, the judges agreed with the group of plaintiffs who argued the filters are a clumsy, inaccurate technology that violate

free-speech rights
by cutting off access to legitimate sites, such as those offering information about
sexuality, sexually transmitted disease and breast cancer.

While some libraries permitted patrons to request the filters be turned off, the
judges said such policies put the patrons in an awkward position of seeking permission
to access sensitive material. The judges called the filters "blunt instruments."

Officials at the American Library Association, the lead plaintiff, said the decision affirms
the notion that parents must protect their children by teaching them the right ways to
use the Internet. Libraries will still be allowed to use filters for young children if parents
choose, as many already do, but that will remain a local decision.

Emily Sheketoff, executive director of the association's District office, estimated that up
to $400 million in annual funding) through the federal E-rate program and Library
Services Technology Act grants) was at stake.

"The only way to protect children is to make sure they are educated so they can have
a safe responsible experience," said Emily Sheketoff, executive director of the association's
District office. "This technology is not protecting their children."

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: james f. daniel/oa/eop@eop [OA] <james f. daniel>;elizabeth gelfer/oa/eop@eop [OA] <elizabeth gelfer>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;phillip larsen/oa/eop@eop [OA] <phillip larsen>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/31/2002 11:06:12 AM
Subject: : Re: Paragraph on Reimbursement Process for White House Photos

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAY-2002 15:06:12.00
SUBJECT:: Re: Paragraph on Reimbursement Process for White House Photos
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:james f. daniel (CN=james f. daniel/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
CC:elizabeth gelfer (CN=elizabeth gelfer/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:phillip larsen (CN=phillip larsen/OU=oa/O=eop@eop [OA])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

looks good to me.

Brett M. Kavanaugh
05/31/2002 02:45:22 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: elizabeth gelfer/oa/eop@eop, phillip larsen/oa/eop@eop, james f. daniel/oa/eop@eop, noel j. francisco/who/eop@eop
bcc:
Subject: Re: Paragraph on Reimbursement Process for White House Photos

first sentence obviously should have said "obtaining reimbursements"

Brett M. Kavanaugh
05/31/2002 02:32:18 PM
Record Type: Record

To: Elizabeth Gelfer/OA/EOP@EOP
cc: phillip larsen/oa/eop@eop, james f. daniel/oa/eop@eop, noel j.

francisco/who/eop@eop
bcc: Records Management@EOP
Subject: Re: Paragraph on Reimbursement Process for White House Photos

How about this?

The procedures for changing reimbursements for photographs changed on October 1, 2000. The procedures now in place are designed to ensure that the government receives appropriate reimbursement for photopgraphs sought for non-official purposes. Records are kept of all such requests, and appropriate reimbursement is then sought. The system is currently up to date and all appropriate entities have been billed. Because the new procedure was not fully implemented by May 2002, however, the White House Military Office had not actually collected reimbursement for certain photographs as of the time of this inquiry (totaling about $15,000). But that has been rectified, bills have been sent, and the process is working and up to date.

Elizabeth Gelfer
05/31/2002 02:08:13 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Phillip Larsen/OA/EOP@EOP, James F. Daniel/OA/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP
Subject: Paragraph on Reimbursement Process for White House Photos

Brett,
Please email me the replacement paragraph as soon as possible. We are trying to get all the comments incorporated as soon as possible so that we can deliver the responses to the Hill this afternoon. Thanks for all your help. I will send you and Noel the "final" versions so that you can see your comments were incorporated.
Liz

From: NR Advance <advance@nationalreview.com>
To: NR Advance <advance@nationalreview.com>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/31/2002 12:09:09 PM
Subject: : The Clintonian FBI by Bryon York
Attachments: P_JTTQ7003_WHO.TXT_1.html

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:NR Advance <advance@nationalreview.com> ( NR Advance <advance@nationalreview.com> [
UNKNOWN ] )
CREATION DATE/TIME:31-MAY-2002 16:09:09.00
SUBJECT:: The Clintonian FBI by Bryon York
TO:NR Advance <advance@nationalreview.com> ( NR Advance <advance@nationalreview.com> [
UNKNOWN ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

A top FBI official delivered what appears to be intentionally deceptive
testimony to Congress about Zacarias Moussaoui.


http://www.nationalreview.com/york/york053102b.asp
<http://www.nationalreview.com/york/york053102b.asp>


- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_JTTQ7003_WHO.TXT_1>
```

A top FBI official delivered what appears to be intentionally deceptive testimony to Congress about Zacarias Moussaoui< /span>.

http://www.nationalreview.com/york/york053102b.asp

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 5/31/2002 12:28:04 PM
Subject: : Re: Enron Mtg. in ARG's ofc at 4:40 pm today

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:31-MAY-2002 16:28:04.00
SUBJECT:: Re: Enron Mtg. in ARG's ofc at 4:40 pm today
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ask Addington too; thanks
```

```
Elizabeth N. Camp
05/31/2002 04:27:41 PM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Bradford A.
Berenson/WHO/EOP@EOP, Brett_M._Kavanaugh@who.eop.gov, Timothy Flanigan
cc: Allison_L._Riepenhoff@who.eop.gov
Subject: Enron Mtg. in ARG's ofc at 4:40 pm today
```

From: CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD]
To: Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/1/2002 10:29:08 AM
Subject: : Another WAVES check

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:K. Philippa Malmgren ( CN=K. Philippa Malmgren/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 1-JUN-2002 14:29:08.00
SUBJECT:: Another WAVES check
TO:Marty P. Smith ( CN=Marty P. Smith/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Hi Marty, can you have WAVES check to see if we ever cleared Ken Raisler
in to see me. It would have been after the first of August 2001. He is
with Sullivan and Cromwell. If yes, can we confirm the time and date of
the actual meeting please because I have no recollection of meeting him.
It is possible that the events of 9/11 pushed it off the schedule. You
might check whether a request for a meeting was ever made as well. Thanks,
as always, Pippa
```

From: CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD]
To: Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/1/2002 10:29:08 AM
Subject: : Another WAVES check

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:K. Philippa Malmgren ( CN=K. Philippa Malmgren/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 1-JUN-2002 14:29:08.00
SUBJECT:: Another WAVES check
TO:Marty P. Smith ( CN=Marty P. Smith/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Hi Marty, can you have WAVES check to see if we ever cleared Ken Raisler
in to see me. It would have been after the first of August 2001. He is
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the actual meeting please because I have no recollection of meeting him.
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might check whether a request for a meeting was ever made as well. Thanks,
as always, Pippa
```

From: CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2002 10:11:04 AM
Subject: : Re: Postmaster: Important Documents from White House Counsel Regarding Enron Subpoena
Attachments: P_OA8R7003_OPD.TXT_1.doc; P_OA8R7003_OPD.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME: 2-JUN-2002 14:11:04.00
SUBJECT:: Re: Postmaster: Important Documents from White House Counsel Regarding Enron Subpoena
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks!!!

Brett M. Kavanaugh
06/02/2002 02:10:21 PM
Record Type: Record

To: K. Philippa Malmgren/OPD/EOP@EOP
cc:
Subject: Postmaster: Important Documents from White House Counsel Regarding Enron Subpoena

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/02/2002 02:10 PM ----------

PostMaster
05/24/2002 12:12:09 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Postmaster: Important Documents from White House Counsel Regarding Enron Subpoena

Message Sent
To:_____
All CEA Users
All CEQ Users
All OA Users
All NSC Users
All OMB Users
All ONDCP Users
All OPD Users
All OSTP Users
All PFIAB Users
All WHO Users

srobinson@whmo.mil @ inet

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OA8R7003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OA8R7003_OPD.TXT_2>

May 24, 2002

MEMORANDUM FOR ALL EOP EMPLOYEES

FROM: ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

SUBJECT: ENRON SUBPOENA

On May 22, 2002, the Senate Governmental Affairs Committee issued the attached subpoena to the Executive Office of the President requesting documents pertaining to certain Enron-related communications occurring between January 1, 1992, and December 2, 2002. Please read the subpoena carefully.

You are directed to produce to Counsel's Office all official EOP documents in your possession (including any e-mails) responsive to the subpoena **no later than May 31, 2002**.

Please be advised that you are expected to perform a reasonable, diligent, and good faith search of all official documents in your possession for materials responsive to the subpoena.

You will have satisfied your responsibilities if you produce all of your official EOP documents relating to, referring to, or incorporating the following:

(a) Communications between Enron and any EOP employee occurring between January 1, 1992, and December 2, 2001

(Note: "Enron" means anyone you knew was working for, or communicating on behalf of, Enron Corporation or one of its businesses.); and

(b) Communications about Enron between any EOP employee and any employee of any Executive Branch department or agency occurring between January 1, 1992, and December 2, 2001

(Note: The Executive Office of the President and the Office of the Vice President are not departments or agencies.)

You are also directed to complete the attached Certification and return it **by May 31**. Note that you must complete the Certification whether or not you have responsive documents.

All documents and Certifications should be delivered to Hana Brilliant (6-5049) in EEOB 158.

If you have any questions, please call Associate Counsels Brett Kavanaugh (6-7984), Brad Berenson (6-2318), or Chris Bartolomucci (6-7963).

CERTIFICATION

Please check one of the following:

_____ I certify that I performed a reasonable, diligent, and good faith search of all the official EOP documents in my possession (including any e-mails I have) for materials responsive to the Senate Governmental Affairs Committees subpoena dated May 22, 2002, and have produced all such documents to the Office of the Counsel to the President.

_____ I certify that I performed a reasonable, diligent, and good faith search of all the official EOP documents in my possession (including any e-mails I have) for materials responsive to the Senate Governmental Affairs Committees subpoena dated May 22, 2002, and have no such documents.

NAME (please print):

SIGNATURE:

DATE:

OFFICE:

PHONE NUMBER:

UNITED STATES OF AMERICA

Congress of the United States

SUBPOENA
000032

To Custodian of Records
Executive Office of the President
Washington, DC 20500
Greetings:

***Pursuant** to lawful authority, YOU ARE HEREBY COMMANDED to appear before the COMMITTEE ON GOVERNMENTAL AFFAIRS of the Senate of the United States, on* June 5, *2002, at* 10 *o'clock a.m., at its Committee Room,* 342 Dirksen Senate Office Building, Washington, D.C. 20510, *then and there to testify what you may know relative to the subject matters under consideration by the Committee, and to produce the materials described in the attachment hereto.*

A personal appearance will be unnecessary if the materials described in Attachment A are delivered, subject to the accompanying instructions, to the Committee by 12:00 noon on June 3, 2002.

***Hereof fail not,** as you will answer your default under the pains and penalties in such cases made and provided.*

To any Committee staff member or U.S. Marshal *to serve and return.*

Given under my hand, by authority vested in me by the Committee, on this 22d *day of* May, *2002.*

Chairman, Senate Committee on Governmental Affairs

INSTRUCTIONS

(1) The documents requested include all those that are in the custody, control or possession of the EOP, or within the right of custody, control or possession of the EOP, its officers, agents, employees, or representatives.

(2) Unless otherwise indicated, the documents requested are those dated, prepared or received during the period January 1, 1992 to December 2, 2001 or that refer to, relate to or incorporate communications that took place during that time period.

(3) You are under a continuing obligation to promptly provide additional documents responsive to this subpoena.

(4) Each document produced shall be produced in a form that renders the document susceptible of copying, shall include all attachments and shall not be redacted.

(5) Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this subpoena was served or shall otherwise be identified and dated.

(6) It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.

(7) If any of the subpoenaed information is available in machine-readable form, state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

(8) If the subpoena cannot be complied with in full, it shall be complied with to the extent possible, with an explanation of why full compliance is not possible.

(9) In the event that a document is withheld on the basis of privilege, provide with the responses to this subpoena the following information concerning any such document: (a) the date of the document, its author, his or her occupation, title and employer, all recipients, the occupation, title and employer of each recipient, (b) the subject matter of the document, (c) the privilege claimed and a brief explanation of the basis of the claim of privilege, (d) the type of document, and (e) the relationship of the author and recipient(s) to each other.

(10) If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which it ceased to be in your possession, custody, or control.

(11) If a date set forth in this subpoena referring to a communication, meeting or other event is inaccurate, but the actual date is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date were

correct.

(12) For each document produced, please indicate the paragraph and, where applicable, subparagraph of Attachment A to which it is responsive.

DEFINITIONS

(1) "Enron" means Enron Corp., Enron Capital Trust I, Enron Capital Trust II, and each of their affiliates, subsidiaries, partnerships, special purpose entities, joint ventures, trusts or any other entity in which Enron Corp., Enron Capital Trust I, or Enron Capital Trust II is or was a shareholder, partner, investor, trustee, or member. The term "Enron" includes, with respect to each entity described in the previous sentence, the entity's officers, directors, employees, and representatives, including any person or entity purporting to act on their behalf or known to you to be acting on their behalf.

(2) "Executive Office of the President" or "EOP" means the Executive Office of the President and all of its units including, but not limited to, the Office of Administration, the White House Office, the Office of the Vice President, the Office of Science and Technology Policy, the Office of Management and Budget, the Office of the Chief of Staff, the United States Trade Representative, the Office of Management and Administration, the Office of White House Counsel, the Office of Communications, the Office of Cabinet Affairs, the Office of the Staff Secretary, the Office of Speechwriting, the Office of Public Liaison, the Office of Correspondence, the Office of the Deputy Chief of Staff for Policy and Political Affairs, the Office of Information Programs, the Office of the Deputy Chief of Staff for White House Operations, the Domestic Policy Council, the Office of Federal Procurement Policy, the Office of Intergovernmental Affairs, the Office of Legislative Affairs, the Office of Media Affairs, the National Economic Council, the Office of Policy Development, the Office of Political Affairs, the Office of Strategic Initiatives, the White House Military Office, the Office of Presidential Personnel, the Office of the Press Secretary, the Office of Scheduling, the Office of Advance, the Council of Economic Advisors, the Council on Environmental Quality, the Executive Residence, the President's Foreign Intelligence Advisory Board, the National Security Council, the Office of Homeland Security, the Office of National Drug Control Policy, the Office of Faith-Based and Community Initiatives and the Office of Policy Development. The terms "Executive Office of the President" and "EOP" include, with respect to each entity described in the previous sentence, the entity's officials, employees and representatives and any person detailed to work for the entity. The terms also include the President and Vice President of the United States.

(3) "Document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda; reports; studies; reviews; analyses; presentations; working papers; records; notes; letters; notices; confirmations; telegrams; faxes, telexes, receipts; appraisals; interoffice and intraoffice communications; electronic mail (e-mail); computer or other

REV_00146336

electronic files; contracts; cables; notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; audio and video recordings, diaries; appointment books; returns; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; or correspondence. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

(4) "Communication" means any contact or attempted contact or any disclosure of information, regardless of the means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in meeting, by telephone, mail, telex, facsimile, computer, discussions, releases, delivery, or otherwise.

(5) The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The term "any" includes the term "all" and vice versa, and both terms shall be construed broadly to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes the plural number and vice versa.

REV_00146337

Executive Office of the President
Washington, DC 20500
Attention: Custodian of Records

ATTACHMENT A

(1) All documents relating to, referring to or incorporating communications between the EOP and Enron, including any documents produced as a result of the use of the White House Worker and Visitors Entry System or similar procedures, if such documents also meet the following specification:

They refer or relate in any manner to the following agencies, laws or policies administered or enforced by the following agencies, regulations or programs implemented by the following agencies, or officials, employees or representatives of the following agencies, including the appointment or selection of such officials, employees or representatives:

(a) U.S. Securities and Exchange Commission
(b) U.S. Commodity Futures Trading Commission
(c) U.S. Federal Energy Regulatory Commission
(d) U.S. Department of Labor, insofar as the communication also relates to the regulation and oversight of qualified savings plans covered by ERISA or to deferred compensation plans or other retirement, savings, or benefit plans, programs or funds
(e) the U.S. Department of Commerce
(f) the U.S. Department of Energy
(g) the Overseas Private Investment Corporation
(h) the Export-Import Bank of the United States.

(2) All documents relating to, referring to or incorporating communications between the EOP and any official, employee or representative of any federal department or agency that refer or relate to Enron, including any documents produced as a result of the use of the White House Worker and Visitors Entry System or similar procedures, if such documents also meet the following specification:

They refer or relate in any manner to the following agencies, laws or policies administered or enforced by the following agencies, regulations or programs implemented by the following agencies, or officials, employees or representatives of the following agencies, including the appointment or selection of such officials, employees or representatives:

(a) U.S. Securities and Exchange Commission
(b) U.S. Commodity Futures Trading Commission
(c) U.S. Federal Energy Regulatory Commission
(d) U.S. Department of Labor, insofar as the communication also relates to the regulation and oversight of qualified savings plans covered by ERISA or to deferred

REV_00146338

compensation plans or other retirement, savings, or benefit plans, programs or funds

(e) U.S. Department of Commerce
(f) U.S. Department of Energy
(g) Overseas Private Investment Corporation
(h) Export-Import Bank of the United States.

(3) All documents relating to, referring to or incorporating communications between the EOP or any member of the National Energy Policy Development Group or its staff and Enron if such documents also refer or relate to the development of the May 2001 Report of the National Energy Policy Development Group or to any of the issues discussed therein, regardless of when such communications occurred. Such documents should include any documents produced as a result of the use of the White House Worker and Visitors Entry System or similar procedures.

REV_00146339

May , 2002

I made service of the within subpoena by

_____ *to the within-named* ____

_____, **at** _____

_____ *at* _____

o'clock __ *.m., on the* _____ *day of* May _____, *2002*

Signed _____

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kirsten A. Chadwick/WHO/EOP@EOP [WHO] <Kirsten A. Chadwick>
Sent: 6/3/2002 3:37:08 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2002 07:37:08.00
SUBJECT:: Re:
TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes. I will let you know about that when we talk. There is no
mark-up scheduled this week, I assume?

Kirsten A. Chadwick
06/03/2002 07:35:48 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

working on something and have an 830 and a 9am so cant really talk until
930 - 10ish

have you talked to the judge about what we think we can offer up to make
this go away - i think that is out next step - then - presenting that to
shays and seeing if he can help sell burton

Brett M. Kavanaugh
06/03/2002 07:34:34 AM
Record Type: Record

To: Kirsten A. Chadwick/WHO/EOP@EOP
cc:
Subject:

checking in on PRA. please call at 6-7984.

From: CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2002 3:37:48 AM
Subject: : Re:

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2002 07:37:48.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

havent heard there is a mark up this week - i have an email and call in to them to double check

Brett M. Kavanaugh
06/03/2002 07:37:07 AM
Record Type: Record

To: Kirsten A. Chadwick/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

yes. I will let you know about that when we talk. There is no mark-up scheduled this week, I assume?

Kirsten A. Chadwick
06/03/2002 07:35:48 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

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have you talked to the judge about what we think we can offer up to make this go away - i think that is out next step - then - presenting that to shays and seeing if he can help sell burton

Brett M. Kavanaugh
06/03/2002 07:34:34 AM
Record Type: Record

To: Kirsten A. Chadwick/WHO/EOP@EOP
cc:
Subject:

checking in on PRA. please call at 6-7984.

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Randall S. Kroszner/CEA /EOP@EOP [CEA] <Randall S. Kroszner>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 6/3/2002 8:33:19 AM
Subject: : Hubbard Sees 3 Percent Growth for 2002,But Warns of Need for TPA, Insurance Relief

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JUN-2002 12:33:19.00
SUBJECT:: Hubbard Sees 3 Percent Growth for 2002,But Warns of Need for TPA, Insurance
Relief
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov @ inet ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Monday June 3, 2002 Page EE-5
ISSN 1523-567X
Economic News

Economic Outlook
Hubbard Sees 3 Percent Growth for 2002,
But Warns of Need for TPA, Insurance Relief
Glenn Hubbard, chairman of the president's Council of Economic Advisers, May 31 said the U.S. economy is unlikely to sustain the first quarter's 5.6 percent growth rate but growth around 3 percent sounds reasonable.

"I don't believe the balance of the year will look like the first quarter" but private forecasts "for 3ish percent growth for the rest of the year ... make a great deal of sense to me," the CEA chairman told the National Tax Association.

Hubbard said that, with the exception of the telecommunications sector, the capital overhang of the past two years "has largely been worked through" and so "by the middle-to-end of this year, an investment turnaround is in the cards."

Business Uncertainties Cited

But Hubbard said there are uncertainties in the economic outlook, worrisome to business people, that are policy-related. One "troubling source of uncertainty," he said, is related to the need to pass trade promotion authority, formerly known as fast-track, which is a priority for the Bush administration.
TPA has passed both the House and Senate but includes a controversial Senate amendment that could make the legislation subject to a veto if it survives in conference.

Hubbard also said the fact that terrorism insurance legislation has been delayed by debate on tort reform is another source of uncertainty for the business community. And, he said, business people are troubled by the "uncertainty of what might prevail in the corporate governance process." He cautioned against moves by some lawmakers to actually legislate accounting standards.

Hubbard again criticized those in Congress who hold to the view that budget surpluses are needed for economic growth.

"My skepeticism about running surpluses is they're dissipated quite quickly. One needs only to look back at the last 10 years of fiscal policy to understand that," he told reporters after his speech.

"You need some way that locks up surpluses. The only way I know of is something like Social Security personal accounts where you're actually dedicating money to citizens," Hubbard added.

By Diana I. Gregg

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Magda E. Angulo/WHO/EOP@EOP [WHO] <Magda E. Angulo>
Sent: 6/3/2002 4:59:04 AM
Subject: : Re: Brett: What time for PRA & CIA Meeting?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2002 08:59:04.00
SUBJECT:: Re: Brett: What time for PRA & CIA Meeting?
TO:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Friday at 4:00 is best.

Magda E. Angulo
06/03/2002 08:54:28 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Brett: What time for PRA & CIA Meeting?

Hi Brett - It's all up to you... please advise if any of the times listed are good for you. Thanks.

Lucy G. Clark
05/31/2002 07:05:43 PM
Record Type: Record

To: Magda E. Angulo/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: Possibilites for PRA & CIA Meeting

All are fine with me -- Thursday and Friday are somewhat preferable.
Thanks Magda.

Magda E. Angulo
05/31/2002 05:47:24 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Lucy G. Clark/WHO/EOP@EOP
cc:
Subject: Re: Possibilites for PRA & CIA Meeting

Brett / Lucy - Those times are ok for Ed... are any of those good for you? Please advise.

---------- Forwarded by Magda E. Angulo/WHO/EOP on 05/31/2002 05:54 PM ----------

Joan Hunerwadel
05/31/2002 05:43:14 PM
Record Type: Record

To: Magda E. Angulo/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Possibilites for PRA & CIA Meeting

Sorry to be so late getting back to you -- I was off yesterday and still playing catch-up. Right now the following times are available for next week.

Wed. 6/5 1 pm to 4:30 pm
Thurs. 6/6 11 am to 12 pm
Friday 6/7 1:30 pm to 4:30 pm

Magda E. Angulo
05/31/2002 01:01:25 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Joan Hunerwadel/NSC/EOP@EOP, Lucy G. Clark/WHO/EOP@EOP
cc:
Subject: Possibilites for PRA & CIA Meeting

Any suggestions for a good day and time to schedule a meeting next week?

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Randall S. Kroszner/CEA /EOP@EOP [CEA] <Randall S. Kroszner>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 6/3/2002 6:31:26 AM
Subject: : WSJ Today - Terrorism Insurance

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JUN-2002 10:31:26.00
SUBJECT:: WSJ Today - Terrorism Insurance
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov @ inet ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Moody's Real-Estate Review Puts
Terrorism Insurance in Spotlight

By PETER GRANT
Staff Reporter of THE WALL STREET JOURNAL

Moody's Investor Service Inc.'s review of $5 billion in real-estate securities will increase the pressure on Congress to deal with terrorism insurance when it returns from recess this week.

Citing concerns over terrorism coverage, Moody's on Friday said it was reviewing for possible downgrade 14 issues of commercial mortgage securities backed by such high-profile properties as Rockefeller Center, Citigroup Center and the Marriott Marquis hotel in Times Square. Eleven of the debt offerings were single-property and three were pools of

mortgages that include at least one high-profile property. All the properties in question are in New York City's Manhattan borough except two: Columbia Center in Seattle and Sun America Center in Los Angeles.

Since Sept. 11, terrorism insurance has been much more expensive and difficult to obtain for owners of so-called trophy properties. Moody's is worried that some properties haven't been able to obtain adequate coverage, resulting in additional risk for bondholders.

"We rated them solely based on their ability to withstand economic events," said Tad Philipp, a Moody's managing director. "The question was not whether you were going to have your collateral."

A Moody's downgrade would likely erode the value of the securities by tens of millions of dollars. Many of them have been trading at discounts to comparably rated debt for weeks in anticipation of Moody's action. Officials at other rating agencies couldn't be reached for comment.

The real-estate industry and other businesses have been lobbying Congress for months to create a federal program for backing up the insurance industry in case of a catastrophic loss from terrorism. While the House passed a program late last year, legislation in the Senate has become bogged down in the debate over tort reform. Republicans want to limit the ability of terrorism victims to sue for punitive damages, but Democrats are opposed to such restrictions.

"Moody's is going to be looking very carefully at what Congress may or may not do," said Steven Wechsler, spokesman for the Coalition to Insure Against Terrorism, which represents a wide range of business groups, from the U.S. Chamber of Commerce to the National Football League. "This basically puts the spotlight on the Senate."

The Bush administration also pointed to the possible downgrades as evidence that a federal backstop program is needed. "One of the reasons residential construction is not recovering that fast is terrorism insurance," said White House spokeswoman Claire Buchan.

The latest compromise effort on Capitol Hill so far has shown little promise. Just before the recess, Republican Sens. Mitch McConnell of Kentucky and Phil Gramm of Texas proposed new language on punitive damages. But on Friday, Ranit Schmeltzer, a spokeswoman for Senate Majority Leader Tom Daschle, called the proposal "not acceptable."

Developer Douglas Durst, who owns one of the properties Moody's is reviewing, the Conde Nast Building in Times Square, said it would cost $3 million a year -- more than one-third the building's entire operating budget -- to buy another $200 million in coverage. He is fighting a court battle with his bondholders over how much insurance the building should have. "This is

a problem that only
the federal government can solve," Mr. Durst said.

A spokesman for Rockefeller Center said the complex has adequate insurance
but declined to
comment further. Spokesmen for the owners of Citigroup Center, the
Marriott Marquis, Columbia
Center and Sun America Center either declined comment or couldn't be
reached.

From:	CN=John F. Wood/OU=OMB/O=EOP [OMB]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jay P. Lefkowitz/OPD/EOP [OPD] <Jay P. Lefkowitz>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Nancy Dorn/OMB/EOP@EOP [OMB] <Nancy Dorn>
CC:	Lauren K. Allgood/OMB/EOP@EOP [OMB] <Lauren K. Allgood>
Sent:	6/3/2002 7:54:03 AM
Subject:	: Revised State Dept. letter re Victims of Int'l Terrorism
Attachments:	P_OCOR7003_OPD.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME: 3-JUN-2002 11:54:03.00
SUBJECT:: Revised State Dept. letter re Victims of Int'l Terrorism
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )
READ:UNKNOWN
TO:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nancy Dorn ( CN=Nancy Dorn/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Lauren K. Allgood ( CN=Lauren K. Allgood/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached is a further revised version.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OCOR7003_OPD.TXT_1>
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Dear Senator ____:

I write to address the pending legislation proposing that certain categories of victims of international terrorism be added to the September 11th Victim Compensation Fund.

The Administration is committed to working with the Congress to ensure that victims of international terrorism receive appropriate assistance. Recognizing the many substantial concerns voiced by Americans to the structure of the September 11th program and the difficulties faced in implementing that program, the Administration believes that there is a more equitable and appropriate course for compensating other victims of international terrorism. The Administration believes that compensation for victims of international terrorism should, in large part, be modeled after the federal benefit provided to the families of public safety officers killed in the line of duty. See 42 U.S.C. 3796. Congress recently endorsed this general approach when it increased the benefit for police officers and fire fighters killed in the line of duty in the USA PATRIOT Act. The Administration's principles for compensating victims of international terrorism are as follows.

First, a victim compensation program should provide victims with lower incomes the same awards that it provides to victims with higher incomes. While wealthy plaintiffs in tort suits may receive greater awards than do victims with lower incomes, the federal government generally does provide greater benefits for the wealthy in victim compensation programs.

Second, ~~victims should receive compensation as quickly as possible.~~the claims process should be quick and streamlined, in order to help victims' families in their time of need. We should not create a lengthy administrative process that will prevent victims from quickly receiving assistance and that will force victims to relive their tragedies. The need for a prompt process for compensating victims further weighs against providing different amounts to different victims based upon their individual financial circumstances.

Third, the amount of compensation should be on par with that provided for public safety officers killed in the line of duty. See 42 U.S.C. 3796 (providing approximately $250,000, indexed for inflation, to the families of public safety officers). Like the Public Safety Officer Benefit, a program to compensate victims of international terrorism should recognize that there are other sources of compensation for victims. For example, awards under the program should not be offset by victims' insurance benefits and other collateral source compensation. Likewise, the Administration is not opposed to allowing victims to sue culpable parties, to the extent permitted under law. (However, if an individual actually receives compensation from the defendants in a lawsuit, the government should have a right of reimbursement.)

Finally, the victims of international terrorism program should preserve the President's ability to conduct foreign policy. Therefore, the Administration opposes the use of blocked assets to fund such compensation or to satisfy judgments. Using blocked assets would preclude their use to pressure regimes to improve their policies on terrorism, risk taxpayer liability for third party claims against the assets, eliminate their availability to satisfy current U.S. government claims (currently more than $2 billion), and put at risk diplomatic property. Funding

for any proposal to compensate victims of international terror should instead come from the International Affairs 150 Account.

We recognize the congressional interest in this matter, as reflected in Section 626 of Public Law 107-77, and we look forward to working with the Congress on a proposal that would meet those principles.

Very truly yours,

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;David_S._Addington@ovp.eop.gov [UNKNOWN] <David_S._Addington@ovp.eop.gov>
CC: Anne Womack/WHO/EOP [WHO] <Anne Womack>
Sent: 6/3/2002 3:10:39 PM
Subject: : AP Article

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2002 19:10:39.00
SUBJECT:: AP Article
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David_S._Addington@ovp.eop.gov (David_S._Addington@ovp.eop.gov [UNKNOWN])
READ:UNKNOWN
CC:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Anne - David and Judge said "good job!"

Mon June 3, 2002 18:59 EDT

White House provides Enron-related documents for review by Senate panel

MARCY GORDON
AP Business Writer
WASHINGTON (AP) _ Responding to subpoenas, the White House gave a Senate panel access Monday to more than 2,100 pages of documents related to contacts with Enron officials.

The White House's top lawyer and the office of Vice President Dick Cheney said it was a partial response to the twin subpoenas issued May 22 by the Senate Governmental Affairs Committee. The offices of President Bush and Cheney said they were still receiving documents from employees.

No instance has been found so far of Enron officials asking anyone in the White House for help before the company's bankruptcy last December, presidential counsel Alberto Gonzales said. The documents reviewed so far also show that White House officials' actions were ``responsible and consistent with the appropriate performance of their official duties,'' he said in a letter to Sen. Joseph Lieberman, D-Conn., the committee's chairman.

Houston-based Enron has been one of Bush's biggest campaign contributors.

Gonzales said the documents would not be turned over to the committee until an agreement is reached with the panel on ``procedures to safeguard the security and confidentiality of these documents.''

Rather, the documents _ 1,745 pages from Bush's office and 432 documents from Cheney's _ are being made available at the White House for inspection and review by the committee staff.

White House officials said the documents include sensitive information such as Social Security numbers, e-mail addresses of government officials, communications among government employees regarding policy and foreign relations, and confidential business information.

At the request of the panel's senior Republican, Sen. Fred Thompson of Tennessee, the committee extended by 24 hours the noon Monday deadline for turning over the documents.

``The committee is trying to work with the White House to provide all appropriate assurances that the documents it subpoenaed will be maintained in a secure manner, while still allowing the committee to conduct its important oversight work,'' Lieberman said in a statement. ``I hope the White
House will be in compliance by Tuesday noon.''

So far, no documents are being withheld on grounds of executive privilege, Gonzales told Lieberman.

The panel has been seeking the information from the White House since late March as part of its Enron investigation.

The General Accounting Office, Congress' investigative arm, sued Cheney in February to force release of the names of figures from Enron and other oil companies who met last year with the vice president's energy task force.

Hours after the Democratic-controlled Senate committee voted on party lines to issue the subpoenas, the White House provided summaries of dozens of contacts between Enron executives and Bush administration officials, including Cheney.

The Bush administration disclosed in January that then-Enron chairman Kenneth Lay made a series of telephone calls to members of the Bush Cabinet, including Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans, as the company sank toward collapse last fall.

The material being sought by the Senate committee goes back to January 1992, also covering the Clinton administration.

In a May 24 memo, Gonzales told White House staff to turn over all official documents, including e-mails, related to:

_Communications between anyone working for or representing Enron and any executive office employee from Jan. 1, 1992, through Dec. 2, 2001.

_Communications regarding Enron between any executive office employee and any employee of any federal department or agency during the same period.

___

On the Net: Senate Governmental Affairs Committee:
http://www.senate.gov/(tilde)gov_affairs/
1st Ld-Writethru

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2002 1:28:13 PM
Subject: : Reuters - White House seeks limit on release of Enron papers

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2002 17:28:13.00
SUBJECT:: Reuters - White House seeks limit on release of Enron papers
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Anne Womack/WHO/EOP on 06/03/2002 05:28 PM ----------

Brian Bravo
06/03/2002 04:38:54 PM
Record Type: Record

To:
cc:
Subject: Reuters - White House seeks limit on release of Enron papers

White House seeks limit on release of Enron papers
By Adam Entous
WASHINGTON, June 3 (Reuters) - The White House told Senate investigators on Monday they could look at 1,745 pages of documents detailing its contacts with now-bankrupt Enron Corp. ENRNQ.PK but refused to hand the material over until agreement was reached on restricting their public release.
The documents were subpoenaed by the Senate Governmental Affairs Committee, which is chaired by Sen. Joseph Lieberman, a Connecticut Democrat and a potential 2004 election challenger to Republican President George W. Bush. Enron, which filed for bankruptcy on Dec. 2 amid revelations of losses from off-the-books partnerships, was one of Bush's biggest campaign contributors.
The subpoenas, which were sent to the offices of Bush and Vice President Dick Cheney, ordered disclosure of the information by June 3. But Lieberman has given the White House an extra day -- until Tuesday noon -- to comply.
In a letter to Lieberman on Monday, White House counsel Alberto Gonzales said 1,745 pages of documents were "available for immediate inspection" by the committee's staff in the Eisenhower Executive Office Building, which is part of the White House complex.
But Gonzales refused to hand copies of the documents to Lieberman's staff until an agreement was reached on "procedures to safeguard the security and confidentiality of these documents, which are unredacted and include many sensitive categories of information."
He said sensitive information included social security numbers, e-mail addresses, confidential business information and possibly classified national security material.
White House officials said Gonzales was seeking an agreement under which the ranking Republican on the Government Affairs Committee, Sen. Fred Thompson of Tennessee, would have an effective veto over whether any documents are disclosed publicly. Gonzales also wants Lieberman to give the White House 24-hours notice before any of the material is released.
"While our review is not yet complete, the records we have examined thus far continue to reflect that Enron communicated policy views to the EOP (Executive Office of the President) but that none of those communications

was inappropriate or improper," Gonzales said in the two-page letter. "We still have identified no instance in which Enron approached any person in the EOP or the Office of the Vice President seeking help in connection with its financial difficulties prior to bankruptcy," he added.

STAFFERS GET FIRST LOOK

The White House said Democratic and Republican staffers from the Government Affairs Committee would get their first look at the documents later on Monday.

Lieberman, who extended the deadline for compliance with the subpoenas until Tuesday at the request of Thompson, said his committee was "trying to work with the White House to provide all appropriate assurances that the documents it subpoenaed will be maintained in a secure manner, while still allowing the committee to conduct its important oversight work."

In his letter, Gonzales complained that Lieberman had given the White House an "exceptionally" short period of time -- "only 12 days ... of which three were consumed by the Memorial Day weekend" -- to comply with the subpoenas.

Gonzales said the 1,745 pages of documents available on Monday was "only an initial production."

"We are working very hard to prepare additional documents for production, and we expect to make one or more additional productions to the committee in the near future," he said.

Last month, the White House disclosed numerous contacts between White House officials and former Enron Chairman Kenneth Lay, who was a major Bush campaign contributor and served on a transition committee that searched for people to fill energy-related positions in the administration.

The materials revealed that Lay recommended a total of 21 people for positions in the administration, three of whom ultimately won appointments.

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2002 2:06:25 PM
Subject: : AP - White House Provides Enron Documents

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2002 18:06:25.00
SUBJECT:: AP - White House Provides Enron Documents
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Anne Womack/WHO/EOP on 06/03/2002 06:06 PM ----------

Brian Bravo
06/03/2002 05:39:08 PM
Record Type: Record

To:
cc:
Subject: AP - White House Provides Enron Documents

White House Provides Enron Documents
MARCY GORDON
AP Business Writer
WASHINGTON (AP) _ Responding to a subpoena, the White House on Monday gave a Senate panel access to 1,745 pages of documents related to contacts with Enron officials.
The White House's top lawyer said it was a partial response to the subpoena issued May 22 by the Senate Governmental Affairs Committee.
Presidential counsel Alberto Gonzales said his office was still receiving documents from employees of President Bush's executive office.
No instance has been found so far of Enron officials asking anyone in the White House for help before the company's bankruptcy last December, Gonzales said. The documents reviewed so far also show that White House officials' actions were ``responsible and consistent with the appropriate performance of their official duties,'' he said in a letter to Sen. Joseph Lieberman, D-Conn., the committee's chairman.
Houston-based Enron has been one of Bush's biggest campaign contributors.
Gonzales said the documents would not be physically turned over to the committee until an agreement is reached with the panel on ``procedures to safeguard the security and confidentiality of these documents.''
Rather, they are being made available at the White House for inspection and review by the committee staff.
The documents include sensitive information such as Social Security numbers, e-mail addresses of government officials, communications among government employees regarding policy and foreign relations, and confidential business information, Gonzales said.
At the request of the panel's senior Republican, Sen. Fred Thompson of Tennessee, the committee extended by 24 hours the noon Monday deadline for turning over the documents.
``We're working with the White House to assure them that the documents they hand over will be maintained in a secure manner,'' said Lieberman spokeswoman Leslie Phillips.
So far, no documents are being withheld on grounds of executive privilege, Gonzales told Lieberman.
There was no immediate word from the office of Vice President Dick Cheney, which received a subpoena with the same deadline and had earlier said it planned to cooperate with the committee.

The panel has been seeking the information from the White House since late March as part of its Enron investigation.

A spokeswoman for Cheney didn't immediately return a telephone call Monday.

The General Accounting Office, Congress' investigative arm, sued Cheney in February to force release of the names of figures from Enron and other oil companies who met last year with the vice president's energy task force.

Hours after the Democratic-controlled Senate committee voted on party lines to issue the two subpoenas, the White House provided summaries of dozens of contacts between Bush administration officials, including Cheney, and Enron executives.

The Bush administration disclosed in January that then-Enron chairman Kenneth Lay made a series of telephone calls to members of the Bush Cabinet, including Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans, as the company sank toward collapse last fall.

The material being sought by the Senate committee goes back to January 1992, also covering the Clinton administration.

In a May 24 memo to White House staff, Gonzales said they must produce all official documents, including e-mails, related to:

_Communications between anyone working for or representing Enron and any executive office employee from Jan. 1, 1992, through Dec. 2, 2001.

_Communications regarding Enron between any executive office employee and any employee of any federal department or agency during the same period.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Laurie Rubenstein) (Laurie_Rubenstein@govt-aff.senate.gov (Laurie Rubenstein) [UNKNOWN] <Laurie_Rubenstein@govt-aff.senate.gov>
Sent: 6/3/2002 6:08:42 PM
Subject: : Re: Revised agreement

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 3-JUN-2002 22:08:42.00
SUBJECT:: Re: Revised agreement
TO:Laurie_Rubenstein@govt-aff.senate.gov (Laurie Rubenstein) ( Laurie_Rubenstein@govt-
aff.senate.gov (Laurie Rubenstein) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Yes

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Sent from my BlackBerry Handheld.
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From: CN=Heather Wingate/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2002 8:55:37 AM
Subject: : Re: meeting w/House Judiciary Committee

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2002 12:55:37.00
SUBJECT:: Re: meeting w/House Judiciary Committee
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

should we include someone from OLP? if so, do you think Don? or Viet?

Brett M. Kavanaugh
06/04/2002 12:49:58 PM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc: robert marsh/who/eop@eop, anne womack/who/eop@eop, ziad s. ojakli/who/eop@eop, bradford a. berenson/who/eop@eop
bcc:
Subject: Re: meeting w/House Judiciary Committee

I am available and happy to do it.

Heather Wingate
06/04/2002 12:12:09 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Robert Marsh/WHO/EOP@EOP, Anne Womack/WHO/EOP@EOP, Ziad S. Ojakli/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP
Subject: meeting w/House Judiciary Committee

Brett, could you do a meeting w/Chairman Sensenbrenner's folks tomorrow at 2pm to discuss possible themes for them to pursue on the judicial vacancy crisis? They are interested in doing a hearing on the vacancy crisis, but we need to provide them with some of our thoughts on the best themes (6th Circuit focus, May 9th focus, etc.).

Perhaps you, me and Anne ought to chat about this before the meeting in a quick call today or tomorrow as well.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]

To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Allison L. Riepenhoff/WHO /EOP@EOP [WHO] <Allison L. Riepenhoff>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Edward McNally/WHO /EOP@EOP [WHO] <Edward McNally>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Nanette Everson/WHO /EOP@EOP [WHO] <Nanette Everson>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>

Sent: 6/4/2002 9:49:56 AM

Subject: : Gonzales Transcript

Attachments: P_BH2T7003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2002 13:49:56.00
SUBJECT:: Gonzales Transcript
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Scott McClellan ( CN=Scott McClellan/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

From NPR this morning.
---------------------- Forwarded by Patrick J. Bumatay/WHO/EOP on
06/04/2002 01:47 PM ---------------------------



Taylor S. Gross
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06/04/2002 01:41:28 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@EOP
cc:
Subject: Gonzales Transcript

---------- Forwarded by Taylor S. Gross/WHO/EOP on 06/04/2002 01:51 PM ----------

Trey Bohn - Communications <TBohn@rnchq.org>
06/04/2002 12:45:04 PM
Record Type: Record

To: Taylor S. Gross/WHO/EOP@EOP
cc:
Subject: Gonzales Transcript

>
> > <<NPR Transcript.doc>>
>
> Brian P. Walton
> Assistant Press Secretary, Radio Services
> Republican National Committee
> 202.863.8891
>
>

- NPR Transcript.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BH2T7003_WHO.TXT_1>

Juan Williams: I just thought I'd start by asking, how do you like the job? You've been here since the start w/ the President and now you're coming up on 18 months. How do you like it?

Gonzales: It's a wonderful job. I often tell people, working for this President is probably the best job in the country. I have probably the most important client in the world, and a great staff, lawyers who are smart, tough loyal. And the issues that we work with are incredibly complex, often have enormous domestic and international consequences. And it more than satisfies my hopes and dreams I had as a young man to get a job where I could make a difference.

W: In fact, I read in your biographical notes, the President, when he appointed you to the Texas Supreme Court, said that your life is a dream come true.

G: I've been fortunate. A lot of the opportunities I owe to George W. Bush. In the past 7 years I've had 5 jobs, and he's been responsible for 4 of them. I've been fortunate.

W: And the idea that GWB is your friend, and someone that relies heavily on you, and someone that you've benefited from, does that create tension for you as his lawyer, as the lawyer here at the WH?

G: No, I don't think so. I've been asked that question before. How I can objectively provide advice, how can I say no to someone that many people believe we have a close relationship.

W: Do you believe that?

G: Well, it's kind of presumptuous for me, for anyone to say "Yeah, I'm a good friend of the President's". I mean, I think the President and I have a good relationship. We've had one for quite some time. I think he has confidence in me. I think that it's evidenced by the positions that he's appointed me to. But he's a wonderful client, he listens to his lawyer. And he's wonderful because he has a good moral compass. I think he's got good sense about what is proper, what is improper. What is ethical what is not ethical. We don't have a problem in this WH in terms of having a President who listens to his advisers, and when we say no, he should not do that, he listens to that. I think the fact that we have a close relationship actually helps us in that respect.

W: What do you lose sleep over in this position?

G: What do I lose sleep over? Well, there are a lot of issues that this office is responsible for, and rightly or wrongly people look at everything that occurs in the WH and magnify every mistake, and mistakes happen, we aren't perfect. We try to minimize those of course. And they magnify every disagreement, sometimes when there are no disagreements. There are stories that appear about disagreements in the WH, you try to minimize those. Ethics, we're responsible to see people comply with ethics, laws. Those are very complicated, and archaic in some cases. And those are the weapons of choice.

In the previous administration, if you want to go after the WH that is a good weapon to use, the ethics laws. I worry about that, b/c many people especially in this administration are from TX and to work in federal government these are all new to them. Obviously a big part of what we do is protecting the powers of the Presidency. We are in, I wouldn't call it a battle but I think we've had some disagreements, there is a little bit of tension between this WH and the Congress about the appropriate boundaries of the WH and the Congress. But it's not unique to this WH. It has occurred in every administration, I think in the early years there is always branches of govt. pulling, pushing, find out where the boundaries are going be for that WH.

J: The role that you also play as a dividing line between various agencies of government, so I was thinking about the ongoing fight now between the FBI, CIA there seems to be a lot of finger pointing back and forth. What does the President and what are you doing to try to quiet this back and forth in terms of…

G: I don't know if I agree with your characterization of finger pointing, obviously there is an effort now by various committees, particularly the intelligence committees to look to see to find out what happened on 9/11, and also there is some attempt to look what was the response or reaction by the various agencies to 9/11. We expect the committees to be forthcoming, but we're also sensitive to the fact that there are certain prerogatives that have to be protected. For example, to disclose information that is extremely sensitive for natl. security reasons that might expose or reveal a source that we need to keep conf. In order to continue to extract intelligence. From overseas. Obviously we are concerned w/ whether or not the kind of information is released or how it is released. So we try to coordinate and talk to the various agencies to get a sense of what guidelines they're using in assessing how to release information. And make sure they remain sensitive to the fact that certain kinds of information, for example if it is an internal memo to POTUS obviously we want to be kept apprise of whether or not they are going to release a memo to POTUS b/c we consider that highly sensitive and we want to be included in that decision.

W: The President doesn't have any reaction to all of these disclosures to what he should of known…

G: What the President is concerned about, like folks on the Hill, if we have problems in the way we currently operate between the various agencies that those problems have to be identified and we have to address those problems. So obviously he's very concerned about that.

W: So he is in touch with that issue, is he in touch w/ the idea of reforming the FBI?

G: I think, you know, he of course appointed, nominated Bob Mueller, and he has a great deal of confidence in Bob's abilities. That is a very tough job, assignment that he's been given. There's a culture in the FBI he's had to deal with, so he's had to make changes in a very difficult time. He has confidence that Bob M. knows that changes have to be made and that Bob is going to see that those necessary changes are implemented.

W: I want to talk about judgeships for a little bit. I know that there are a number of judgeships that you guys have tried to get through the Hill without much success. Where does that stand now?

G: Juan we still have a number of the President's nominees pending, before the Senate. We still have a number of vacancies existing around the country. Vacant federal judgeships, 10% of the district court. Benches are vacant, 20% of the circuit court benches are vacant. I think if you listen carefully to both sides, both sides can trot out sort of numbing statistics as to whether or not the Senate has done its job on confirming judges. I don't really want to focus on that. I think it is w/o question however that in a sense a branch of govt. is not operating the way should be because it doesn't have the personnel…

W: The judiciary.

G: The judiciary. That it needs to do its job. And so the President he made it very clear to me in the transition that federal judgeships would be important to him. B/c we had a number of vacancies at the very beginning of the presidency. So he has pushed me and my team to recommend to him and so he's nominated a record number of judges in the first 18 months, and he feels he's done his job and expects the Senate to do its job.

W: Do you think this is all about politics, about sort of a political base of both the Republicans and Democrats not give, not compromise on judgeships.

G: Well this is important stuff. I'm not sure this is an area where there should be a great deal of compromise on principle quite frankly because these are lifetime appointments. And decisions of judges can have significant impact on the lives of people. So this President, he believes that judges should be very respectful of policy decisions made by the Congress, that judges should believe in judicial restraint and not try to legislate from the bench, that judges understand they have a very limited role in our system of govt., a very important role but a limited role. And I think most of the Amer. people expect that of the judges, and that's why I'm surprised, why it is perplexing to me to hear some say that this President is nominating people who are out of the mainstream.

W: Earlier you said that we had one agency of govt. the judiciary that is really paralyzed by insufficient numbers, so many vacancies. So how does your concern over the judiciary's ability to function fit w/ the idea that you won't compromise with the Democrats in terms of appointing more judges, getting more judges into the system.

G: Regrettably, it may mean that we have to be patient and wait to see what happens in the Nov. elections. That may be viewed as a crass political assessment, but that is in fact true. I think virtually all of the people the President has nominated would be approved by a full Senate vote. What we need to do is, one way to get this thing moving, is to take back the Senate so we can at least get our judges onto the full Senate floor. All of the pending nominees have been rated "Well qualified" or qualified by the American Bar

Assoc., which as you know has been rated the gold standard by Sens. Leahy and Schumer, and if that's the case then why aren't they getting hearings.

W: Now on the Democrats side, I have some numbers here, the Democrats say they confirmed more judges in the first 10 months when they took control of the Senate then when the GOP did when the Republicans. Took control back in 94. So they're trying to say it is not their fault they're willing to compromise…

G: In terms of compromise I described for you earlier the kind of judges the President is looking for. I would ask, what is it the Democrats ask us to compromise. What do they want when they ask us to send up more moderate judges. Are they suggesting it is OK to put someone on the bench who sometimes do impose a personal agenda. I don't know what they're asking for when they say the President has to nominate more moderate judges. I don't know what that would look like.

W: Do you think from their perspective they're thinking there is a litmus test over here in terms of abortion, in terms of gun control or any issues?

G: I think they may believe that. I've said this repeatedly. We do not ask litmus type questions. We never ask about affirmative action, abortion, gun control, we don't ask those types of questions because quite frankly they're immaterial in my judgment. The decision on a particular issue is not important. What is important is the process a person uses in reaching a decision. So we delve into how they believe it is important for a judge to reach a decision.

W: Could it be that the Democrats. Fear that what we're really talking about is President Bush having the ability to appoint several people the US Sup Court. And they worry that if they allow more conservative judges on the lower courts that that will act as a precedent when the President supreme court nominees are announced.

G: Well, that very well could be. We're focusing on district court judges and circuit court judges, and the whole exercise of who to put on the US Sup Court is a whole different exercise. I think it is a very easy excuse to use, I'm not sure it's one I agree with. To say we need to scrutinize who the President nominates to district court judge in TX to say it's going to reflect on who the President nominates to the Supreme Court. I don't quite get that connection quite frankly

W: Earlier in the conversation we were talking about some of the things that might keep you up at night, and we talked about ethics. And you talked about a big fight going on over whether or not you would allow records or subpoenas to be granted on energy policy. I guess the ENRON subpoena that came from Lieberman's office. Do you feel as if there is a high level of secrecy which is what some outside the WH, critics might say this WH is bunkered down not letting information flow through.

G: I don't think so. I alluded to earlier that there has always been an effort, sometimes more sometimes less, in all WHs to protect the powers of the President. The point is is that there's always been give and take in administrations. About what kind of information to release and what kind of information should remain privileged for one reason or another. This President feels very strongly about leaving the office in a stronger position than he found it. And there is a legitimate reason sometimes to withhold information. From Congress. We surely understand congress has an oversight role, they have a responsibility and accountability to the way monies are spent, that are appropriated to various agencies and to this WH. But on the other hand there is a difference in oversight of the agencies and oversight of the WH. Oversight over the WH for no reason at all, just b/c they want to know what's going on here. Would be like this WH asking Sen. Lieberman to tell us who from Enron did he meet with. What telephone calls, emails exist between Enron and Enron lobbyists and his office. And we had no basis to believe that anything improper or illegal happened. So if there was evidence or allegations that the WH did anything improper or illegal than I think the arguments by the Congress to investigate that and to look into that would be much stronger, and we would be much more deferential in making information available, I think the interest of the Amer. People in knowing about that would be much stronger. But here there's been no allegation of any kind of wrong doing. The allegation has been the Enron had a lot of access to this WH, a lot of contacts w/ this WH. Well so did a lot of other companies, and non-profits, and citizens, much like they had access to members of Congress, much like they had access to previous administrations. I believe at the end of the day when these records come out people will see there were contacts between Enron and this WH, but nothing that was unusual and certainly nothing that was improper. At least, nothing based on what I know now of the records that we've looked at.

W: So when will the WH release the entirety of the record.

G: Well we are working now with Sen. Lieberman in making the documentation available to the community.

W: Have you set a date for the release?

G: Again we are working with his office to try to reach an accommodation as quickly as possible.

W: By the way, do you know are there any imminent Sup Court openings coming up?

G: Juan if I did I wouldn't tell you.

W: Gee whiz, that's not fair Judge Gonzales.

G: We're not aware of any imminent vacancy on the Supreme Court no.

W: What happens when such an announcement comes, what will you guys do what happens here?

G: Part of our responsibility is working w/ the Dept. of Justice in identifying good people to recommend to the President for nomination to the court.

W: You have any in mind now?

G: There are a lot of good people around the country that would make outstanding judges on the court.

W: But it would have to be someone that is a sitting judge?

G: No, not necessarily, not necessarily a sitting judge.

W: That would make history if you picked someone who wasn't.

G: Not necessarily there have been other people who have been nominated to the Supreme Court who were not sitting judges.

W: Not recently though.

G: Not recently, but there have been in the past.

W: And you're willing to open up that box of worms?

G: You know, we look for the best people, and that may or may not be sitting judges. Obviously someone who is a current sitting judge provides a trail, a record that makes it easier for us to look at. But it is possible there is someone out there who would make a good candidate who is not a current sitting judge. But I would view that as the exception and not the rule.

W: In fact that would open the box for critics then b/c there would be a paper trail so some Republicans. On the Hill have suggested maybe you want to make nominations of people who don't have such a long paper trail that can be picked apart by their opponents.

G: Obviously whether or not someone is confirmable is an important consideration. We also, what's a more important consideration, is to make sure the President nominates someone who will do a good job on the court, and the secondary consideration is whether or not it makes it more difficult or less difficult to have that person confirmed.

W: And I know this is going to make you uptight but I feel compelled to ask. What about you? You have a terrific life story, a lot of people admire you greatly, I think you would be a winning candidate for the Supreme Court.

G: There has been speculation about that. As I said in the beginning of this broadcast I think I have the best legal job in America working for the President as his lawyer. And

I'm focused on that, we have so much else to worry about, and that's my sole focus right now.
W: Thank you so much, I really appreciate it Judge Gonzalez.

G: Thank you.

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC:	Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent:	6/4/2002 10:07:50 AM
Subject:	:
Attachments:	P_OG3T7003_WHO.TXT_1.wpd; P_OG3T7003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2002 14:07:50.00
SUBJECT::
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
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TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Meet in Judge's office to discuss ASAP.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/04/2002 02:07 PM ----------

Laurie_Rubenstein@govt-aff.senate.gov (Laurie Rubenstein)
06/04/2002 01:57:43 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Cynthia_Lesser@govt-aff.senate.gov
(Cynthia Lesser), Joyce_Rechtschaffen@govt-aff.senate.gov (Joyce
Rechtschaffen)
cc: Richard_Hertling@govt-aff.senate.gov (Richard Hertling)
Subject: Re:Proposed Protocol

Brett: Per our conversatoin, attached is our revised protocol. As
mentioned, we
have used much of the new language you proposed below and believe that we
have
accommodated all of your security and privacy concerns. We even have
added some
protections you didn't ask for. You should feel free to make additional
suggestions on those fronts and we will be happy to consider them.
However,
absent any further agreement to change it, we will consider this protocol
to be
in effect as of 3:00 p.m. today and, given that the subpoena's return date
has

now passed, will view any further delay in production as out of compliance
with
the subpoena.

_____Reply Separator_____
Subject: Proposed Protocol
Author: Brett_M._Kavanaugh@who.eop.gov
Date: 6/4/2002 11:59 AM

Thank you for your phone call indicating the results of this morning's
meeting between the Chairman and Ranking Member. As you have suggested,
we are
now transmitting a proposed protocol although we continue to believe that
the
Committee's 1997 protocol was sensible and fair and should be employed
again
here.

You will note that Section 6 in the attached proposal requires joint
concurrence of the Chairman and Ranking Member before public release of
documents. If you were agreeable to the remainder of the attached
proposal, we
would accept changing the "and" to "or" and deleting "acting jointly" so
long as
the notice and consultation provisions were retained.

We provided you yesterday access to the initial production of
documents.
We are prepared to promptly transmit a copy of those documents to the
Committee
as soon as agreement is reached on a protocol. Please do not hesitate to
call
me at 456-7984 or 365-4120 with any questions. Thank you.

(See attached file: security protocols 6 4 02.doc)

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imaexch.senate.gov with
SMTP
(IMA Internet Exchange 3.13) id 00714895; Tue, 4 Jun 2002 12:00:50 -0400
Received: from eop2.eop.gov (eop253.eop.gov)
by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.2000.03.23.18.03.p10)
with SMTP id <0GX6007W7VDURF@mailsims1.senate.gov>; Tue,
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by EOP.GOV (PMDF V5.2-33 #41062) with ESMTP id
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Tue, 04 Jun 2002 11:59:41 -0400 (EDT)
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by mhub.eop.gov (PMDF V6.1-1 #41014)
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04 Jun 2002 11:59:21 -0400 (EDT)
Received: by sgeop01.eop.gov(Lotus SMTP MTA v4.6.7 (934.1 12-30-1999))
id 85256BCE.0057D106 ; Tue, 04 Jun 2002 11:59:11 -0400

Date: Tue, 04 Jun 2002 11:59:04 -0400
From: Brett_M._Kavanaugh@who.eop.gov
Subject: Proposed Protocol
To: joyce_rechtschaffen@govt-aff.senate.gov,
laurie_rubenstein@govt-aff.senate.gov, cynthia_lesser@govt-aff.senate.gov
Cc: richard_hertling@govt-aff.senate.gov
Message-id: <85256BCE.0057CFD0.00@sgeop01.eop.gov>
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File attachment <P_OG3T7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OG3T7003_WHO.TXT_2>

PROTOCOL
For Document Production By The Executive Office Of The President And
Office Of The Vice President
In Response To The May 22, 2002 Subpoenas
From The Senate Committee on Governmental Affairs

June 4, 2002

1. DEFINITIONS

(a) "Document" or "Documents" refers to any and all documents produced by the Executive Office of the President or the Office of the Vice President in response to the subpoenas dated May 22, 2002 from the Senate Committee on Governmental Affairs.

(b) "Committee" refers to the Senate Committee on Governmental Affairs.

(c) "Producing Party" refers to the Executive Office of the President or the Office of the Vice President.

(d) "Investigation" refers to the investigation by the Senate Committee on Governmental Affairs regarding Enron Corp.

(e) "Designated staff" are staff designated by the Governmental Affairs Committee Chairman or Ranking Member as having access to the Documents. Designated staff may include only Committee staff or staff for Committee Members and will be limited to staff the Chairman or Ranking Member determines are necessary to serve the purposes of the Investigation and staff Committee Members.

2. CLASSIFIED DOCUMENTS

Documents that are classified will be handled in accordance with existing Senate procedures.

3. ACCESS TO DOCUMENTS

(a) The Committee will maintain the Documents, and all copies thereof, in secure rooms (in which alarms will be installed as quickly as possible) in the Majority and Minority Committee offices at all times (except for depositions, witness interviews, other investigative purposes in furtherance of the Committee's work, or for review by Members). The specially designated secure document rooms will be subject to the following security protocols:

(i) Only Members and designated staff will have access to the Documents,

REV_00146467

and, with respect to staff, only after such staff have signed the certification pursuant to subsection 3(b) below.

(ii) The document rooms will be secured immediately and have alarms installed as quickly as possible. Only the Chief Clerk and up to 7 designated Majority staff and 7 designated Minority staff will have keys to the respective rooms.

(iii) Designated staff may copy Documents but must maintain those copies within the specially-designated secure rooms, except as provided in subsection 3(a)(v) below, and except that a copy machine that is contiguous to but outside of the specially-designated secure rooms may be used so long as the designated staff making the copies remains with the Documents being copied at all times, and all Documents and copies are returned promptly to the specially-designated document rooms.

(iv) The specially-designated secure rooms may contain computers, printers, and copiers, but will not contain fax machines.

(v) Only designated staff may transport Documents to depositions and witness interviews, or to the offices of Members for their personal review. When designated staff member removes Documents, the staff member will sign a log book and specify the date and time the Documents are being removed. After the removal of such Documents from the specially-designated document rooms, the Documents must be returned promptly to those areas.

(vi) No copies of the Documents will be made while they are removed from the specially-designated secure rooms (except as provided in subsection 3(a)(iii) above), no faxes of the Documents will be sent except as otherwise permitted by this Protocol, and no copies of Documents will be attached to deposition transcripts.

(vii) Only designated staff may remove staff work product, including computer disks, from the specially designated secure rooms. The confidentiality of any such work product must be maintained.

(b) Before being given access to the Documents, designated staff must sign a certification as set forth in the attachment hereto. Any staff member who violates the certification or any other procedures and protocols set forth herein shall be immediately subject to sanctions, including removal from employment. Such certification will be maintained by the Chief Clerk.

4. DOCUMENTS WITHHELD

In the event the Producing Party withholds responsive Documents from production, the Producing Party shall maintain a bates stamped copy set of all such Documents and shall comply with Instruction number 9 attached to the subpoenas. The Committee maintains that only Documents on which privilege is appropriately asserted may be withheld and does not hereby concede the validity of any such privilege claim.

5. PUBLIC DISCLOSURES OF DOCUMENTS

REV_00146468

(a) Documents received by the Committee will be made public only in the following circumstances:

(i) as a part of a Committee hearing;
(ii) as a part of a Committee report; or
(iii) based on a determination by the Chairman or Ranking Member that disclosure is appropriate to further the purposes of the Investigation, provided that whichever of the Chairman or Ranking Member makes such determination shall, prior to disclosing Documents, give notice of that determination to the other and to the Counsel to the President in writing twenty-four hours in advance (excluding Saturdays, Sundays and legal holidays) and the other and the Counsel to the President is afforded reasonable opportunity to consult with the Chairman or the Ranking Member (whichever has made the determination) prior to any release.

(b) The Producing Party may identify for the Committee any Document or portion thereof that, in the view of the Producing Party, would inappropriately compromise any individual's personal privacy if released to the public ("personal privacy information"). The Chairman or Ranking Member shall not release any Document containing personal privacy information unless he has evaluated the assertion of personal privacy and either redacted the personal privacy information or provided notice and an opportunity to consult of the type referenced in Subsection 5(a)(iii).

(c) If any Document produced pursuant to this Protocol is at any time, in whole or in part, released by the Producing Party, or if the Committee obtains the Document through alternative means, the terms of this Protocol shall no longer apply to such Document and such Document may be treated by the Committee as a public document.

6. PROCEDURES DURING HEARINGS

Starting 10 days prior to the beginning of public hearings and thereafter so long as the hearings continue, the following procedures will be in effect:

a. Committee staff work-product may be removed by anyone who has signed the certification referenced in 3(b) above;

b. Committee staff and staff for Committee Members may be provided Documents relevant to a hearing no earlier than forty-eight (48) hours prior to the scheduled hearing. The Chairman and Ranking Member may agree to make exceptions to this procedure; and

c. All Documents may be copied and transported by designated staff to the hearing room on the days that the Committee holds public hearings.

REV_00146469

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CERTIFICATION AGREEMENT

I have read and understand the Protocol For Document Production By The Executive Office Of The President And Office Of The Vice President In Response To The May 22, 2002, Subpoenas From The Senate Committee on Governmental Affairs, dated June 4, 2002. I will abide by the terms of the Protocol at all times. I understand that I will be subject to sanctions, including removal from employment, if I make any disclosures of information or documents covered by the Protocol except as authorized in accordance with the Protocol.

_____
Signature

_____
Name (Printed)

_____
Office or Committee

_____
Date

REV_00146470

SECURITY PROCEDURES AND OTHER PROTOCOLS
For Document Production by the Executive Office of the President
June __, 2002

1. DEFINITIONS

(a) "Document" or "Documents" refers to any and all documents produced by the Executive Office of the President to the Senate Committee on Governmental Affairs during the Committee's investigation regarding Enron Corp.

(b) "Committee" refers to the Senate Committee on Governmental Affairs.

(c) "Producing Party" refers to the Executive Office of the President.

(d) "Investigation" refers to the investigation by the Senate Committee on Governmental Affairs regarding Enron Corp.

2. CLASSIFIED DOCUMENTS

Documents produced to the Committee that are classified will be handled in accordance with existing Senate procedures.

3. SECURITY OF AND ACCESS TO DOCUMENTS

All Documents shall be treated as highly confidential. The Committee will maintain the Documents and all copies of Documents in secure and alarmed document rooms in the Majority and Minority Committee Offices at all times except during depositions, witness interviews, or review by the members of the Committee. The specially-designated secure documents rooms shall be subject to the following security protocols:

a. Only the Majority Committee staff designated by the Chairman and Minority Committee staff designated by the Ranking Member will have access to the specially-designated secure document rooms and to Documents only after such staff members have signed confidentiality agreements (as provided for in Paragraph 4).

b. The specially-designated secure document rooms for Documents may contain computers and printers, but will not contain copiers or FAX machines.

c. Only the staff designated in Paragraph 3.a can transport Documents to depositions and witness interviews, or to the offices of the members of the Committee for their personal review. When a designated staff member removes Documents, the staff member will sign a log book and specify the

date and time and Documents that are being removed. After the removal of any such Documents from the specially-designated document rooms, the Documents must be returned promptly to those areas. No copies of the Documents will be made or FAXes of the Documents sent while they are out of the specially-designated secure document rooms, and no copies of Documents will be attached to deposition transcripts.

d. Only the staff designated in Paragraph 3.a may remove committee staff work product, including computer disks, from the specially-designated secure document rooms. The confidentiality of any such work product must be maintained.

4. CONFIDENTIALITY AGREEMENTS

All documents produced to or made available for review by the Committee or its staff shall be considered to be within the confidential business of the Committee for purposes of Paragraph 5 of rule XXIX of the Standing Rules of the Senate. In addition, any staff member who has access to the Documents shall sign a confidentiality agreement, as set forth in the attachment hereto, agreeing to the procedures and protocols set forth hereto. Any staff member who violates the confidentiality agreement or any other procedures and protocols set forth herein, shall be in immediately subject to sanctions, including removal from employment.

5. DOCUMENTS WITHHELD BY A PRODUCING PARTY

In the event that the producing party withholds responsive documents from production, the producing party shall maintain a copy set of all such documents unless other procedures are agreed to with the Committee.

6. PUBLIC DISCLOSURE OF DOCUMENTS

All Documents received by the Committee may be made public only if the Documents are pertinent to the Committee's investigation and disclosures, in whole or to part, or by way of summary, are made as part of a Committee hearing or Committee report. Alternatively, disclosure of Documents, in whole or in part, or by way of summary, to the public may be made by the Chairman and Ranking Member, acting jointly, provided that the Counsel to the President is notified in writing forty-eight (48) hours in advance (excluding Saturdays, Sundays, and legal holidays) and the Counsel to the President is afforded reasonable opportunity to consult with the Chairman and the Ranking Member prior to any release. No member or staff of the Committee shall otherwise disclose, in whole or in part, or by way of summary, the Documents except in accordance with this paragraph 6. If any Document produced pursuant to this agreement also is released to the public by a producing party, the terms of this agreement shall not apply to the released Document and shall be treated by the Committee as a public Document.

REV_00146472

7. PROCEDURES DURING HEARINGS

Committee staff can be provided copies of deposition testimony transcripts and documents relevant to testimony no earlier than forty-eight (48) hours prior to the scheduled hearing appearance of a witness. The Chairman and Ranking Member may agree to make exceptions to this procedure. All documents may be copied and transported by designated staff to the hearing room on the days that the Committee holds public hearings.

REV_00146473

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CONFIDENTIALITY AGREEMENT

I have read and understand both Paragraph 5 of the Senate Rules XXIX and the Security Procedures and Other Protocols of the Senate Governmental Affairs Committee, dated June __, 2002. I will abide by those confidentiality requirements and other protocols, and maintain the confidentiality of all documents, and information obtained therefrom, of which I become aware, unless I am authorized to disclose such materials pursuant to the Security Procedures and Other Protocols, dated June _, 2002. I understand that I will be subject to sanctions, including removal from employment, if I disclose confidential information or documents of the Committee without such authorization.

_____
Signature

_____
Name (Printed)

_____
Office or Committee

_____
Date

REV_00146474

From: CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Diana L. Schacht/OPD /EOP@EOP [OPD] <Diana L. Schacht>
Sent: 6/4/2002 2:10:23 PM
Subject: : R AG Conference Call

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CREATOR:Deborah A. Spagnoli ( CN=Deborah A. Spagnoli/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2002 18:10:23.00
SUBJECT:: R AG Conference Call
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Diana L. Schacht ( CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Thanks so much for agreeing to participate in our monthly AG call,
tomorrow, 6/5 at 4:30 pm. The call in # is 800-377-5925, password is
Speaker.
```

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Shannon Royce <sroyce@erlc.org>
CC: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2002 10:50:59 AM
Subject: : Re: Email address

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2002 14:50:59.00
SUBJECT:: Re: Email address
TO:Shannon Royce <sroyce@erlc.org> (Shannon Royce <sroyce@erlc.org> [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It is in the CC: section of the e-mail.

Thanks for all the good work.

Matt

Shannon Royce <sroyce@erlc.org>
06/04/2002 02:41:37 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: Email address

I have a draft resolution which is now going through internal sources for feedback. After that, I would like to send it to Brett for his comments. Please advise of his email so I can be as efficient has possible.

SR

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: tflaniga@who.eop.gov [WHO] <tflaniga@who.eop.gov>;Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: daddingt@who.eop.gov [OVP] <daddingt@who.eop.gov>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 6/4/2002 12:44:17 PM
Subject: : CEDAW on Mother's Day

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2002 16:44:17.00
SUBJECT:: CEDAW on Mother's Day
TO:tflaniga@who.eop.gov ( tflaniga@who.eop.gov [ WHO ] )
READ:UNKNOWN
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:daddingt@who.eop.gov ( daddingt@who.eop.gov [ OVP ] )
READ:UNKNOWN
CC:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here is an excerpt from The Office of the High Commissioner for Human
Rights, Concluding Observations of the Committee on the Elimination of
Discrimination Against Women: Belarus, 31/01/2000:

"The Committee is concerned by the continuing prevalence of sex-role
stereotypes and by the reintroduction of such symbols as a Mother's Day
and Mother's Award, which it sees as encouraging women's traditional
roles."

Note that on May 9, 2002, the President issued a Presidential Proclamation
proclaiming May 12, 2002 to be Mother's Day, consistent with a joint
resolution approved by Congress.

This is not a joke.
```

From: Noel_J._Francisco@who.eop.gov [UNKNOWN]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Jay P. Lefkowitz/OPD /EOP@EOP [OPD] <Jay P. Lefkowitz>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Jennifer G. Newstead/WHO /EOP@EOP [WHO] <Jennifer G. Newstead>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 6/4/2002 12:46:19 PM
Subject: : CEDAW on Mother's Day

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel_J._Francisco@who.eop.gov ( Noel_J._Francisco@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 4-JUN-2002 16:46:19.00
SUBJECT:: CEDAW on Mother's Day
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
CC:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here is an excerpt from The Office of the High Commissioner for Human
Rights,
Concluding Observations of the Committee on the Elimination of
Discrimination
Against Women: Belarus, 31/01/2000:

"The Committee is concerned by the continuing prevalence of sex-role
stereotypes
and by the reintroduction of such symbols as a Mother's Day and Mother's
Award,
which it sees as encouraging women's traditional roles."

Note that on May 9, 2002, the President issued a Presidential Proclamation
proclaiming May 12, 2002 to be Mother's Day, consistent with a joint
resolution
approved by Congress.

This is not a joke.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 6/4/2002 1:53:44 PM
Subject: : Re[5]:Proposed Protocol
Attachments: P_QYGT7003_WHO.TXT_1.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2002 17:53:44.00
SUBJECT:: Re[5]:Proposed Protocol
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/04/2002 05:54 PM ----------

Laurie_Rubenstein@govt-aff.senate.gov (Laurie Rubenstein)
06/04/2002 04:41:48 PM
Record Type: Record

To: Richard_Hertling@govt-aff.senate.gov (Richard Hertling), Brett M. Kavanaugh/WHO/EOP@EOP, Cynthia_Lesser@govt-aff.senate.gov (Cynthia Lesser), Joyce_Rechtschaffen@govt-aff.senate.gov (Joyce Rechtschaffen)
cc:
Subject: Re[5]:Proposed Protocol

- whprotocol6-04-02.mem

Here is the final protocol. Only a couple of exceedingly minor changes from the
last one -- adding "a" in a couple places it was missing and making clear that
consultation requirement applies to whichever Counsel is appropriate (OVP v.
EOP).

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_QYGT7003_WHO.TXT_1>

PROTOCOL
For Document Production By The Executive Office Of The President And
Office Of The Vice President
In Response To The May 22, 2002 Subpoenas
From The Senate Committee on Governmental Affairs

June 4, 2002

1. DEFINITIONS

(a) "Document" or "Documents" refers to any and all documents produced by the Executive Office of the President or the Office of the Vice President (and all copies thereof) in response to the subpoenas dated May 22, 2002 from the Senate Committee on Governmental Affairs.

(b) "Committee" refers to the Senate Committee on Governmental Affairs.

(c) "Producing Party" refers to the Executive Office of the President or the Office of the Vice President.

(d) "Investigation" refers to the investigation by the Senate Committee on Governmental Affairs regarding Enron Corp.

(e) "Designated staff" are staff designated by the Governmental Affairs Committee Chairman or Ranking Member as having access to the Documents. Designated staff may include only Committee staff or staff for Committee Members and will be limited to staff the Chairman or Ranking Member determines are necessary to serve the purposes of the Investigation and to staff Committee Members.

2. CLASSIFIED DOCUMENTS

Documents that are classified will be handled in accordance with existing Senate procedures.

3. ACCESS TO DOCUMENTS

(a) The Committee will maintain the Documents, and all copies thereof, in secure rooms (in which alarms will be installed as quickly as possible) in the Majority and Minority Committee offices at all times (except for depositions, witness interviews, other investigative purposes in furtherance of the Committee's work, or for review by Members). Any removal of the Documents for "other investigative purposes in furtherance of the Committee's work" shall be approved in advance by either the Chairman or the Ranking Member. The specially designated secure document rooms will be subject to the following security protocols:

REV_00146494

(i) Only Members and designated staff will have access to the Documents, and, with respect to staff, only after such staff have signed the certification pursuant to subsection 3(b) below.

(ii) The document rooms will be secured immediately and have alarms installed as quickly as possible. Only the Chief Clerk and up to 7 designated Majority staff and 7 designated Minority staff will have keys to the respective rooms.

(iii) Designated staff may copy Documents but must maintain those copies within the specially-designated secure rooms, except as provided in subsection 3(a)(v) below, and except that a copy machine that is contiguous to but outside of the specially-designated secure rooms may be used so long as the designated staff making the copies remains with the Documents being copied at all times, and all Documents and copies are returned promptly to the specially-designated document rooms.

(iv) The specially-designated secure rooms may contain computers, printers, and copiers, but will not contain fax machines.

(v) Only designated staff may transport Documents to depositions and witness interviews, or to the offices of Members for their personal review. When a designated staff member removes Documents, the staff member will sign a log book and specify the date and time the Documents are being removed. Upon completion of the use for which the document was removed from the specially-designated document room, the document must be promptly returned to the specially-designated secured document room.

(vi) No copies of the Documents will be made while they are removed from the specially-designated secure rooms (except as provided in subsection 3(a)(iii) above), no faxes of the Documents will be sent except as otherwise permitted by this Protocol, and no copies of Documents will be attached to deposition transcripts.

(vii) Only designated staff may remove staff work product, including computer disks, from the specially designated secure rooms. The confidentiality of any such work product must be maintained.

(b) Before being given access to the Documents, designated staff must sign a certification as set forth in the attachment hereto. Any staff member who violates the certification or any other procedures and protocols set forth herein shall be immediately subject to sanctions, including removal from employment. Such certification will be maintained by the Chief Clerk.

4. DOCUMENTS WITHHELD

In the event the Producing Party withholds responsive Documents from production, the Producing Party shall maintain a bates stamped copy set of all such Documents and shall comply with Instruction number 9 attached to the subpoenas. The Committee maintains that only Documents on which privilege is appropriately asserted may be withheld and does not hereby concede the validity of any such privilege claim.

REV_00146495

5. PUBLIC DISCLOSURES OF DOCUMENTS

(a) Documents received by the Committee will be made public only in the following circumstances:

(i) as a part of a Committee hearing;
(ii) as a part of a Committee report; or
(iii) based on a determination by the Chairman or Ranking Member that disclosure is appropriate to further the purposes of the Investigation, provided that whichever of the Chairman or Ranking Member makes such determination shall, prior to disclosing Documents, give notice of that determination to the other and (for Executive Office of the President Documents) to the Counsel to the President or (for Office of the Vice President Documents) to the Counsel to the Vice President in writing twenty-
four hours in advance (excluding Saturdays, Sundays and legal holidays) and that the other and the relevant Counsel is afforded reasonable opportunity to consult with the Chairman or the Ranking Member (whichever has made the determination) prior to any release.

(b) The Producing Party may identify for the Committee any Document or portion thereof that, in the view of the Producing Party, would inappropriately compromise any individual's personal privacy if released to the public ("personal privacy information"). The Chairman or Ranking Member shall not release any Document containing personal privacy information unless he has evaluated the assertion of personal privacy and either redacted the personal privacy information or provided notice and an opportunity to consult of the type referenced in Subsection 5(a)(iii).

(c) If any Document produced pursuant to this Protocol is at any time, in whole or in part, released by the Producing Party, or if the Committee obtains the Document through alternative means, the terms of this Protocol shall no longer apply to such Document and such Document may be treated by the Committee as a public document.

6. PROCEDURES DURING HEARINGS

Starting 10 days prior to the beginning of public hearings and thereafter so long as the hearings continue, the following procedures will be in effect:

a. Committee staff work-product may be removed by anyone who has signed the certification referenced in 3(b) above;

b. Committee staff and staff for Committee Members may be provided Documents relevant to a hearing no earlier than forty-eight (48) hours prior to the scheduled hearing. The Chairman and Ranking Member may agree to make exceptions to this procedure;

REV_00146496

and

c. All Documents may be copied and transported by designated staff to the hearing room on the days that the Committee holds public hearings.

REV_00146497

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CERTIFICATION AGREEMENT

I have read and understand the Protocol For Document Production By The Executive Office Of The President And Office Of The Vice President In Response To The May 22, 2002, Subpoenas From The Senate Committee on Governmental Affairs, dated June 4, 2002. I will abide by the terms of the Protocol at all times. I understand that I will be subject to sanctions, including removal from employment, if I make any disclosures of information or documents covered by the Protocol except as authorized in accordance with the Protocol.

_____
Signature

_____
Name (Printed)

_____
Office or Committee

_____
Date

REV_00146498

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/4/2002 4:53:06 PM
Subject: : maldef speech

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2002 20:53:06.00
SUBJECT:: maldef speech
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

If it is appropriate and fits, might want to mention Estrada.
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 6/4/2002 5:42:30 PM
Subject: : sand

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 4-JUN-2002 21:42:30.00
SUBJECT:: sand
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Judicial Conference has asked for 10 additional circuit judges
(and 44 more district judges). Of most note, it asked for 2 new judges in
Sixth Circuit and 5 new judges in Ninth Circuit (2 permanent and 3
temporary). That means CA6 has only 8 judges when it needs 18 according
to Judicial Conference. And Ninth Circuit has only 23 when it needs 33
according to Judicial Conference.
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2002 4:45:24 AM
Subject: : Re: Judicial Conference tidbit

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2002 08:45:24.00
SUBJECT:: Re: Judicial Conference tidbit
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Will you come see me about this when you get a chance? Thanks.

Brett M. Kavanaugh
06/04/2002 09:44:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judicial Conference tidbit

Judicial Conference has asked for 10 additional circuit judges (and 44 more district judges). Of most note, it asked for 2 new judges in Sixth Circuit and 5 new judges in Ninth Circuit (2 permanent and 3 temporary). That means Sixth Circuit has only 8 judges when it needs 18 according to Judicial Conference. And Ninth Circuit has only 23 when it needs 33 according to Judicial Conference. I have passed info on to the communications folks to add to the talkers.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Lezlee J. Westine/WHO /EOP@EOP [WHO] <Lezlee J. Westine>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD /EOP@EOP [OPD] <D. Marcus Sumerlin>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 6/5/2002 6:17:18 AM
Subject: : Fitch - Terrorism Insurance

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 5-JUN-2002 10:17:18.00
SUBJECT:: Fitch - Terrorism Insurance
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov @ inet ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Fitch
Following Moody's rating action late last week, Fitch
announced this week it has placed classes from 13
single asset CMBS transactions on negative watch,
while also affirming ratings on 18 other single asset deals.
Fitch cited a concern that the lack of a federal terrorism
insurance program had not acted as an enabler for a
private insurance market to recover.
The classes put on watch currently have inadequate
insurance or policies that will expire within the next
couple of months. Fitch analyzed the ratings risk by:
1. Categorizing assets as being either high-risk or
not-high-risk. In classifying assets, Fitch will
consider the physical characteristics of the underlying
collateral, proximity to a major transportation hub,
height of the building and other often-cited risk
characteristics.
2. Identifying the credit risk associated with such
assessment. Fitch explained in its press release that
```

high-risk assets have a double-A risk of a terrorist act, while not-high-risk assets have a triple-A risk of loss (see Risk Events below for explanation), and 3. Determining the level of insurance necessary to mitigate such risk. The risk can be alleviated by terrorism insurance coverage in an aggregate amount sufficient to cover principal of the at-risk class. For example, high-risk assets with a double-A risk of loss need insurance to cover both the triple- and double-A portion of debt.

The watchlist classes will remain on watch until the earlier of (i) the agency receiving notice from the related servicer that adequate insurance has been put in place, or (ii) September 30, 2002, at which time the classes on watch will be downgraded.

From: CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD]
To: Brian.Roseboro@do.treas.gov @ inet [UNKNOWN] <Brian.Roseboro@do.treas.gov @ inet>;Peter.Fisher@do.treas.gov @ inet [UNKNOWN] <Peter.Fisher@do.treas.gov @ inet>
CC: Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2002 10:29:27 AM
Subject: : debt limit memo

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 5-JUN-2002 14:29:27.00
SUBJECT:: debt limit memo
TO:Brian.Roseboro@do.treas.gov @ inet ( Brian.Roseboro@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Peter.Fisher@do.treas.gov @ inet ( Peter.Fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett Kavanaugh of WH Counsel would like David Offhauser (sp) or another
Treas. lawyer to explain some the legal issues in the memo before Judge
Gonzales sings off.

Thanks,

Marc
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/5/2002 6:34:10 AM
Subject: : in case you missed -- WSJ

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2002 10:34:10.00
SUBJECT:: in case you missed -- WSJ
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Boxer Rebellion
It's time for President Bush to stand up to California's senators.

Wednesday, June 5, 2002 12:01 a.m.

President Bush took office promising to restore the "power and legitimate authority of the Oval Office." To that end, the White House has taken controversial steps to claim executive privilege for Enron-related documents from his energy task force, clashed with Rep. Dan Burton, a fellow Republican, in refusing to turn over files on an old FBI scandal in Boston, and ended the American Bar Association's special role in vetting judicial nominees.

But there is one glaring exception to the White House's firm line on protecting its executive branch turf. Last year, it allowed Gerald Parsky, its chief political operative in California, to take effective control of the process of reviewing and recommending nominees for the federal district courts in the largest state. Normally, in the absence of a senator from the president's party, judicial nominees for district courts are vetted by senior House members of the president's party. Instead, Mr. Parsky and the White House crafted a bizarre power-sharing arrangement in California whereby Sens. Barbara Boxer and Dianne Feinstein, both Democrats, would have virtual veto power over district-court nominations. The deal was to set up four commissions to select judges, one for each of the Golden State's judicial districts. Mr. Parsky and the White House selected three candidates to serve each commission; Sens. Boxer and Feinstein selected another three. Together the six members on each commission would interview prospective candidates and forward their names to the White House, which would pick from those names. Four out of the six commission members would have to agree for any name to be sent to the White House.

The commissions may have seemed a clever way to maneuver around increasingly partisan fights over judicial nominees. But they are constitutionally suspect, and they haven't delivered the political benefits the White House expected. Last month, White House Counsel Alberto Gonzales expressed what the Los Angeles Daily Journal, a newspaper for lawyers, called "strong dissatisfaction" with the judicial advisory committees. "In terms of how quickly the president was able to nominate judges to the bench, California is probably last," he told the American Law Institute. "And I think it was probably because of the commission structure." Mr. Gonzales went on to recognize that the commissions are "an encroachment upon the powers of the presidency, in terms of limiting who he can look to within the state to nominate to the federal bench."

That said, Mr. Gonzales acknowledged that the commission might be here to stay: "We'll see how it works down the road." But he was blunt in saying the only reason it existed is that "You've got two Democratic senators [in California], one [Ms. Feinstein] on the Judiciary Committee."

The argument for the commissions was that they would make Sens. Boxer and Feinstein more cooperative in allowing more important nominations--especially for the Ninth U.S. Circuit Court of Appeals--through. But that didn't happen. Ms. Boxer vowed to filibuster the possible nomination of Rep. Chris Cox, a respected judicial conservative. And she has blocked hearings for Carolyn Kuhl, a Los Angeles lawyer nominated for the Ninth Circuit. For her part, Ms. Feinstein voted to block Judge Charles Pickering, a nominee to another appeals court, from getting a vote by the full Senate. The Judiciary Committee killed the Pickering nomination by a party-line vote even though a majority of the Senate was prepared to confirm him.

When the commissions were created, Mr. Parsky pledged that they would be a way "to take ideology out of the process" and ensure confirmable nominees. But several legal scholars and former judges say the process is suffused with ideology. John Eastman, a professor at Chapman Law School, in Orange, Calif., says he knows of at least two people interviewed by the commissions who were asked for their views on specific issues by Democratic members, including whether they supported the Second Amendment and the Roe v. Wade decision. One candidate was even quizzed about his Catholicism, notwithstanding the Constitution's provision that "no religious test shall ever be required as a qualification to any office or public trust under the United States."

In addition, the White House understood the commissions were supposed to send a minimum of three names to Washington for consideration as district judges. In reality, the commissions have sent a maximum of three names, severely curbing the choices President Bush could make. The commission interviewed more than 25 candidates for one vacancy, but Democrats rejected most of them, including a lawyer who had made the mistake of working with the Bush legal team in Florida during the 2000 election controversy.

Beyond the internal problems of the commissions there are real problems of accountability. The commissions, filled with establishment pillars of the legal community, operate in secret. The White House is never informed of how many votes each nominee received or who voted for or against him. Most candidates are never even voted on, being discarded in an informal process of which no records are kept. A president is politically accountable for the judicial selections he makes. A senator who blocks a nominee in committee or on the floor may have to answer for his actions to voters or constituency groups. But the California commissions make their decisions in the shadows.

The growing judicial vacancy crisis--the Judicial Conference of the United States has declared 35 "judicial emergencies"--has finally convinced the White House that Senate Democrats aren't interested in allowing a vote on any identifiably conservative judicial nominee. California's jury-rigged commissions aren't working, and Senate Democrats see their existence as a sign of weakness. It's time for the president to dissolve them.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/5/2002 6:35:53 AM
Subject: : WSJ

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2002 10:35:53.00
SUBJECT:: WSJ
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/05/2002 10:36 AM ----------

Kyle Sampson
06/05/2002 10:34:06 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: in case you missed -- WSJ

Boxer Rebellion
It's time for President Bush to stand up to California's senators.

Wednesday, June 5, 2002 12:01 a.m.

President Bush took office promising to restore the "power and legitimate authority of the Oval Office." To that end, the White House has taken controversial steps to claim executive privilege for Enron-related documents from his energy task force, clashed with Rep. Dan Burton, a fellow Republican, in refusing to turn over files on an old FBI scandal in Boston, and ended the American Bar Association's special role in vetting judicial nominees.

But there is one glaring exception to the White House's firm line on protecting its executive branch turf. Last year, it allowed Gerald Parsky, its chief political operative in California, to take effective control of the process of reviewing and recommending nominees for the federal district courts in the largest state. Normally, in the absence of a senator from the president's party, judicial nominees for district courts are vetted by senior House members of the president's party. Instead, Mr. Parsky and the White House crafted a bizarre power-sharing arrangement in California whereby Sens. Barbara Boxer and Dianne Feinstein, both Democrats, would have virtual veto power over district-court nominations. The deal was to set up four commissions to select judges, one for each of the Golden State's judicial districts. Mr. Parsky and the White House selected three candidates to serve each commission; Sens. Boxer and Feinstein selected another three. Together the six members on each commission would interview prospective candidates and forward their names

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From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: adrien.silas@usdoj.gov [UNKNOWN] <adrien.silas@usdoj.gov>;gregory.m.jones@usdoj.gov [UNKNOWN] <gregory.m.jones@usdoj.gov>;velma.taylor@usdoj.gov [UNKNOWN] <velma.taylor@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2002 6:46:14 AM
Subject: : FW: Final Changes Needed For CDFI Testimony

Begin Original ARMS Header
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CREATION DATE/TIME: 5-JUN-2002 10:46:14.00
SUBJECT:: FW: Final Changes Needed For CDFI Testimony
TO:adrien.silas@usdoj.gov (adrien.silas@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:gregory.m.jones@usdoj.gov (gregory.m.jones@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:velma.taylor@usdoj.gov (velma.taylor@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett/Greg - Please advise if the following could be added to the CDFI testimony to address the issues raised by WH Counsel's Office and OLC. Thanks!!

(Adrien/Velma - I think Greg may be out this morning, so I'm sending this to you, too. Could one of you please follow up with OLC if Greg isn't around? We're trying to clear this testimony ASAP. THANKS!)
---------- Forwarded by Lisa J. Macecevic/OMB/EOP on 06/05/2002 10:42 AM ----------

Karen.Dorsey@do.treas.gov
06/05/2002 10:36:37 AM
Record Type: Record

To: Lisa J. Macecevic/OMB/EOP@EOP
cc:
Subject: FW: Final Changes Needed For CDFI Testimony

Lisa: Can you let us know whether incorporating something similar to the text of the footnote from the study addresses the constitutional concerns that were raised? If not, could you ask Justice to provide language that would satisfy their concerns? Thanks.

-----Original Message-----
From: Berg, Jeffrey [mailto:BergJ@cdfi.treas.gov]
Sent: Wednesday, June 05, 2002 10:31 AM
To: Dorsey,Karen
Subject: RE: Final Changes Needed For CDFI Testimony

Karen, I believe that we addressed the concerns relative to the inclusion of
Native Hawaiians in the study in footnote 6 (in the executive summary of

the
report), that reads as follows:

"For the purposes of the Study, the term "Native Hawaiian" is defined as "a person having origins in the original peoples of Hawaii", see 62 Fed. Reg. 58,781 (1997). "Native Hawaiian" is not a term that refers to a federally recognized Tribe. Inclusion of Native Hawaiians in the study does not confer or imply any specific, legally enforceable duties on the United States as trustee that apply under certain circumstances when it manages tribal or individual Indian property or resources. In addition, this study
does not support or create any right enforceable or cause of action by or against the United States, its agencies, officers or any person. The CDFI Fund's experience with CDFIs and prospective CDFIs in Hawaii has suggested that Native Hawaiians face many of the same issues and barriers as Native Americans and Alaska Natives in their attempts to access loans and investment capital. Accordingly, in 1999, the CDFI Fund proposed to Congress to expand the Study beyond the original Congressional mandate to include Native Hawaiians. The Senate Committee on Indian Affairs encouraged
and supported the proposed expansion."

This footnote was crafted with the approval of OMB and Main Treasury, during
the report's clearance process last summer/fall. Please let me know if the inclusion of this language in the proposed testimony will satisfy the concerns laid out below. Thanks.

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Lezlee J. Westine/WHO /EOP@EOP [WHO] <Lezlee J. Westine>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD /EOP@EOP [OPD] <D. Marcus Sumerlin>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 6/5/2002 7:53:52 AM
Subject: : Workman's Comp Needs a Terror Backstop - Washington Post Today
Attachments: P_BQ3U7003_OPD.TXT_1.htm

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CREATION DATE/TIME: 5-JUN-2002 11:53:52.00
SUBJECT:: Workman's Comp Needs a Terror Backstop - Washington Post Today
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov @ inet ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Another realted issue.....

Workers' Comp Needs a Terror Backstop


By M. R. Greenberg

Wednesday, June 5, 2002; Page A23

One tragic lesson we learned on Sept. 11 is that the working people of
the United States are at great risk from a terrorist attack. At the
World Trade Center and the Pentagon, thousands of working men and women
had their lives taken from them while they were beginning their workday
and providing for their families. We now know that large concentrations
of working people are prime targets for terrorists who want to destroy
American lives, our economy and our freedoms.

The first economic defense for the working family is the workers'
```

compensation system. Under the laws of each state, a working person who suffers injury or death on the job is guaranteed a payment that becomes a critical safety net for the employee and his or her family.

Even in normal times, workers' compensation costs and claims are significant. Costs for an injured employee can exceed $1 million. A catastrophic attack directed at a densely populated facility has the potential for losses that would be financially unbearable to both employers and insurers.

Insurers and self-insured employers will pay between $2 billion and $3 billion in workers' compensation claims following Sept. 11. Unfortunately, an even more tragic event is not outside the realm of the possible. An explosion leading to the release of deadly chemicals or the detonation of a nuclear device could result in losses 10 to 40 times that amount.

Workers' compensation statutes mandate that all risks -- even those resulting from war or a terrorist attack involving biological, chemical or radiation components -- must be covered, with no exclusions permitted for employers or insurers. But since Sept. 11, the risk profile for high concentrations of workers has changed. We now know the unthinkable is possible. As difficult as it may be to think in such terms, an incident at a single complex of 10,000 employees could result in a $50 billion loss. Just do the math if 100,000 employees are involved.

No employer or insurer could absorb such a loss. Without a federal backstop, employers in big cities such as New York are faced with a serious dilemma. Should they run the risk of being unable to meet their obligations to their employees in the event of war or nuclear attack? Or should they contemplate relocation and dispersal of their employee force? The problem is not confined to major metropolitan areas. Any location around the nation employing large numbers of workers could be hard hit -- bank credit card offices in South Dakota, telecommunications call centers in Florida, industrial installations in virtually any state.

The insurance industry is not capable of insuring against the risks of war, nuclear, chemical and biological attack on any mass basis. The private sector simply does not have the financial capacity to cope with such enormous losses. This can be done only by government. It is illusory to expect that private companies and their insurers will be able to bear the costs of an enormous act of war or terrorism. But without federal intervention, these losses must, under the laws of every state, be borne by employers and their insurers.

In order for our nation to be prepared for a threat of this magnitude, Congress must enact legislation to federalize or reinsure the risks to working people of injury or death in the event of war or an act of terror. After Sept. 11, I advocated, for similar reasons, a broad-based federal terrorism insurance backstop to cover losses resulting from all forms of terrorism.

Various approaches to sharing the burden between the private market and the government have been proposed and debated in both houses, but Congress has failed to act. The obstacle to enactment has been the opposing points of view in the Senate as to whether punitive damage awards should be permitted in connection with acts of terrorism. Congress must move quickly to resolve this issue.

When it comes to workers' compensation claims and coverage, punitive damages are not at issue. Therefore, Congress should be able to act decisively now to prevent the economic catastrophe that could result from another attack at the workplace. We owe the millions of Americans who courageously returned to their jobs following Sept. 11 nothing less.

The writer is chairman and chief executive officer of American International Group Inc.

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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BQ3U7003_OPD.TXT_1>

-----Original Message-----
From: Jeffrey Kurzweil [mailto:jkurz@bellatlantic.net]
Sent: Wednesday, June 05, 2002 10:22 AM
To: Jim Ryan; 'Charles Marshall'; MARTY DEPOY; Steve Wechsler; 'TONY EDWARDS'; Chip Rodgers; mgold@legstrat.com; David Crane; Tom Gallagher; William H. Edwards Jr.; dmikulin@corphq.hyatt.com; Jim Bayless; Bradley R. Wood ; 'Brenda Meister'; Burton, Richard ; Carolyn Handlon; Charlotte Sterling; Dan Lungren; Dave Little; Diefenderfer, Bill (Diefenderfer, Bill); Ed Bethune; Ellen.brunner@6C.com; Marc Grossman; Jeff's Venable E-Mail; Thomas Ladd (Thomas Ladd); Power, Steve; Ryan, Joe; Tom Donnelly; trodolakis@starlodge.com; 'Jeanne Morin'
Subject: workman's comp needs a terror backstop

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washingtonpost.com

Workers' Comp Needs a Terror Backstop

By M. R. Greenberg

Wednesday, June 5, 2002; Page A23

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The writer is chairman and chief executive officer of American International Group Inc.

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From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Nancy Smith <nancy.smith@nara.gov>
Sent: 6/5/2002 10:20:36 AM
Subject: : Agency Historian Access to PRA Records

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CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
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CREATION DATE/TIME: 5-JUN-2002 14:20:36.00
SUBJECT:: Agency Historian Access to PRA Records
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Nancy Smith <nancy.smith@nara.gov> ( Nancy Smith <nancy.smith@nara.gov> [ UNKNOWN ] )
READ:UNKNOWN
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We would like to meet with whichever or both of you is handling this
issue, along with Bill Leary from NSC, to try to get clarification on the
how such requests for access should be handled in general. There is a
long, but not necessarily consistent, practice in this area. Are you
available some time next week? Thanks.
```

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Nancy Smith <nancy.smith@nara.gov>
Sent: 6/5/2002 1:55:16 PM
Subject: : Re: Agency Historian Access to PRA Records

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CREATOR:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
CREATION DATE/TIME: 5-JUN-2002 17:55:16.00
SUBJECT:: Re: Agency Historian Access to PRA Records
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Nancy Smith <nancy.smith@nara.gov> (Nancy Smith <nancy.smith@nara.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

That time works for us. I'm cc'ing Bill Leary as well.

Also, we'd like some additional time at the end of the meeting to talk about giving notice on Reagan records that have gone through the declassification review.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/5/02 3:35:25 PM >>>
I am available. Timely as David Patterson at State History has been calling me about this. Anyway, how is Tuesday at 4 for everyone?

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 06/05/2002 02:16:46 PM
pic18976.pcx)

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc: Nancy Smith <nancy.smith@nara.gov>
Subject: Agency Historian Access to PRA Records

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week? Thanks.

From: Willett, Don <Don.Willett@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2002 5:20:21 AM
Subject: : RE:

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CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ("Willett, Don" <Don.Willett@usdoj.gov> [
UNKNOWN])
CREATION DATE/TIME: 6-JUN-2002 09:20:21.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

456-5104?

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 06, 2002 9:05 AM
To: Willett, Don; Dinh, Viet
Subject:

can you FAX me final Estrada letter as well as the original Leahy
letter to
DOJ.

From: Willett, Don <Don.Willett@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/6/2002 11:45:31 AM
Subject: : RE: FW: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir, retired 6/1/02

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ("Willett, Don" <Don.Willett@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 6-JUN-2002 15:45:31.00
SUBJECT:: RE: FW: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir, retired 6/1/02
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

not sure what prompted sheila to send us an e-mail about it today ...

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 06, 2002 3:30 PM
To: Willett, Don
Cc: Bradford_A._Berenson@who.eop.gov
Subject: Re: FW: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir, retired 6/1/02

yes, Senators Feinstein and Boxer had informed us of this a while ago.

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 06/06/2002 02:32:56 PM
pic06059.pcx)

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: FW: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir,
retired 6/1/02

just making sure you were looped in ...

-----Original Message-----
From: Joy, Sheila
Sent: Thursday, June 06, 2002 2:28 PM
To: Willett, Don; Keefer, Wendy J; Sales, Nathan; Benczkowski, Brian A
Subject: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir,

retired 6/1/02

Sheila C. Joy
Office of Legal Policy
USDOJ, Rm 4641
202 514-1607

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2002 7:46:12 AM
Subject: : vacancy question

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 6-JUN-2002 11:46:12.00
SUBJECT:: vacancy question
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Have either of you gotten word that Ferdinand Fernandez is retiring from
the Ninth Circuit (California)? (As of May 29, he is eligible to retire.)
```

From:	CN=Edward McNally/OU=WHO/O=EOP [WHO]
To:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
CC:	Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent:	6/6/2002 7:48:12 AM
Subject:	: Precedent for Gov. Ridge Testimony during the Creation of a New Dept.
Attachments:	P_AD9V7003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2002 11:48:12.00
SUBJECT:: Precedent for Gov. Ridge Testimony during the Creation of a New Dept.
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Congressional Testimony by James Schlesinger
While Serving As Assistant to the President
During the Development & Creation of the Dept. of Energy

ú Dr. James Schlesinger served as an Assistant to President Carter from January 20, 1977 to August 5, 1977. He was charged by the President with responsibility for drafting a plan to establish a Department of Energy and for preparing a national energy policy. On August 5, 1977, he became the Nation,s first Secretary of Energy, taking office one day after President Carter signed the legislation creating that department.

ú While serving as Assistant to the President, Dr. Schlesinger testified before Congress on at least five occasions. His earliest congressional testimony appears to have been in March, 1977, on the proposed &Department of Energy Organization Act.8 See Hearings Before a Subcomm. of the Comm. on Government Operations, House of Representatives, 95th Cong. 1st Sess. on H.R. 4263 (March 28, 29 and April 5, 6, 18 & 19, 1977). This testimony was delivered in anticipation of a presidential energy policy statement to be delivered on April 20, 1977, the broad outlines of which were previously known. Dr. Schlesinger stated that, &whatever the particular details of th[e President,s] plan, the structure we have proposed will encompass it.8 He then described at length the structure and functions of the proposed Energy Department (the proposal included the abolition of several existing federal agencies and the transfer of several energy-related programs to the new department). He said that &[b]y establishing this Department, we will be assured of having one Government body with sufficient scope and authority to effectively oversee the development of a national energy policy.8 He answered numerous and detailed questions from members of the subcommittee about the proposal and about energy policy generally, and provided written answers to other questions

ú Dr. Schlesinger testified later on May 3, 1977, before the Senate. See Hearing Before the Comm. on Energy and Natural Resources, United States Senate, 95th Cong. 1st Sess. on The Rationale for, and the Economic Impact of, the Energy Proposals Presented by President Carter to the 95th Congress (May 3, 1977). He referred to &the willingness of the Congress and the administration to work together8 on &what is a serious and potentially disastrous national problem.8 He described the proposals in the President,s National Energy Plan and responded to detailed questions from Members. He also testified as to matters on which the

Administration had not developed a position (a coal slurry pipeline), but which he personally favored.

ú Dr. Schlesinger also testified on three other occasions in May, 1977. On the first such occasion, he testified on the National Energy Act before the Ad Hoc Committee on Energy of the House of Representatives. Second, he testified on &Tax Aspects of President Carter,s Energy Program8 before the Committee on Ways and Means of the House of Representatives. (On this occasion, he described the &energy problem8 as &one of the most serious domestic problems this country will ever encounter,8 although it lacked a & clear and unequivocal signal such as Pearl Harbor8). Finally, he testified on the National Energy Act before the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce of the House of Representatives. On all these occasions he answered, at considerable length, detailed questions from Members.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AD9V7003_WHO.TXT_1>

Congressional Testimony by James Schlesinger
While Serving As Assistant to the President
During the Development & Creation of the Dept. of Energy

· Dr. James Schlesinger served as an Assistant to President Carter from January 20, 1977 to August 5, 1977. He was charged by the President with responsibility for drafting a plan to establish a Department of Energy and for preparing a national energy policy. On August 5, 1977, he became the Nation's first Secretary of Energy, taking office one day after President Carter signed the legislation creating that department.

· **While serving as Assistant to the President, Dr. Schlesinger testified before Congress on at least five occasions.** His **earliest congressional testimony appears to have been in March, 1977**, on the proposed "Department of Energy Organization Act." *See* Hearings Before a Subcomm. of the Comm. on Government Operations, House of Representatives, 95th Cong. 1st Sess. on H.R. 4263 (March 28, 29 and April 5, 6, 18 & 19, 1977). This testimony was delivered in anticipation of a presidential energy policy statement to be delivered on April 20, 1977, the broad outlines of which were previously known. Dr. Schlesinger stated that, "whatever the particular details of th[e President's] plan, the structure we have proposed will encompass it." He then described at length the structure and functions of the proposed Energy Department (the proposal included the abolition of several existing federal agencies and the transfer of several energy-related programs to the new department). He said that "[b]y establishing this Department, we will be assured of having one Government body with sufficient scope and authority to effectively oversee the development of a national energy policy." He answered numerous and detailed questions from members of the subcommittee about the proposal and about energy policy generally, and provided written answers to other questions

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· **Dr. Schlesinger also testified on three other occasions in May, 1977.** On the first such occasion, he testified on the National Energy Act before the Ad Hoc Committee on Energy of the House of Representatives. Second, he testified on "Tax Aspects of President Carter's Energy Program" before the Committee on Ways and Means of the House of Representatives. (On this occasion, he described the "energy problem" as "one of the most serious domestic problems this country will ever encounter," although it lacked a "clear and unequivocal signal such as Pearl Harbor"). Finally, he testified on the National Energy Act before the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce of the House of Representatives. On all these occasions he answered, at considerable length, detailed questions from Members.

From: Willett, Don <Don.Willett@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/6/2002 10:40:30 AM
Subject: : FW: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir, retired 6/1/02

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ("Willett, Don" <Don.Willett@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 6-JUN-2002 14:40:30.00
SUBJECT:: FW: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir, retired 6/1/02
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

just making sure you were looped in ...

-----Original Message-----
From: Joy, Sheila
Sent: Thursday, June 06, 2002 2:28 PM
To: Willett, Don; Keefer, Wendy J; Sales, Nathan; Benczkowski, Brian A
Subject: Just learned of another vacancy - Ferdinand Fernandez, 9th Cir, retired 6/1/02

Sheila C. Joy
Office of Legal Policy
USDOJ, Rm 4641
202 514-1607

From: CN=Jean M. Russell/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>
Sent: 6/6/2002 12:16:56 PM
Subject: : guidance please!

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME: 6-JUN-2002 16:16:56.00
SUBJECT:: guidance please!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

For the June 17th event Mallory Factor offered his house for Larry to stay at and the Political dinner is being held there as well. Do you all forsee anyt problems with this?I need to bring this up with Larry again to see if he would still like to stay at their place. also, please see Moose Cobb's email below.

jeannie
---------- Forwarded by Jean M. Russell/OPD/EOP on 06/06/2002 04:12 PM ----------

Jean M. Russell 04/11/2002 02:16:54 PM

Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: question

Moose--Larry is planning on going to New York for a RNC sponsered event. He has a friend in New York that invited him to stay at his house rather than get a hotel room (his private residence.) This friend that he would like to stay with is also having the RNC event at his house. Is that alright with you and counsel's office?

Jeannie

---------- Forwarded by Jean M. Russell/OPD/EOP on 06/06/2002 04:12 PM ----------

Robert W. Cobb
04/11/2002 02:19:43 PM
Record Type: Record

To: Jean M. Russell/OPD/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: question

I do not see a problem with this.

Jean M. Russell 04/11/2002 02:16:54 PM

Record Type: Record

To: Robert W. Cobb/WHO/EOP@EOP
cc:
Subject: question

Moose--Larry is planning on going to New York for a RNC sponsered event. He has a friend in New York that invited him to stay at his house rather than get a hotel room (his private residence.) This friend that he would like to stay with is also having the RNC event at his house. Is that alright with you and counsel's office?

Jeannie

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2002 12:42:45 PM
Subject: : Re: terrorism insurance

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2002 16:42:45.00
SUBJECT:: Re: terrorism insurance
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

4/18, bi-partisan

Brett M. Kavanaugh
06/06/2002 04:22:43 PM
Record Type: Record

To: Kirk Blalock/WHO/EOP@EOP
cc:
bcc:
Subject: Re: terrorism insurance

when did the Governors send? Was it mostly Republicans?

Kirk Blalock
06/06/2002 04:13:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: terrorism insurance

yes, govs already did one, signed by 20 something of them, led by Roland.
ags have not done so to my knowledge.

Brett M. Kavanaugh
06/06/2002 04:12:08 PM
Record Type: Record

To: Kirk Blalock/WHO/EOP@EOP, Kristen Silverberg/WHO/EOP@EOP,
Matthew Kirk/WHO/EOP@EOP
cc:
Subject: terrorism insurance

Would a letter to the Senate (Daschle?) from Governors and/or
state Attorneys General (Republican) be useful on terrorism insurance?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: GaryM Stern <garym.stern@nara.gov>
Sent: 6/6/2002 1:33:26 PM
Subject: : Re: Update on Notices

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2002 17:33:26.00
SUBJECT:: Re: Update on Notices
TO:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

that will be met for Reagan 23K and Bush VP and, we hope, also the
150.

GaryM Stern <garym.stern@nara.gov>
06/06/2002 05:10:46 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Update on Notices

Never heard back from you on this. I'm pushing because I believe Craig B.
promised Scott Nelson a response on the interrogatories by June 13 (next
Thursday), and I thought the idea was we would have opened (or resolved)
the Bush VP, if not also the 150, by then. So there is an upcoming
deadline. Just let me know when you can.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/5/02 2:53:01 PM >>>
Will call

Sent from my BlackBerry Handheld.

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/7/2002 6:38:09 AM
Subject: : Re: Update on Notices

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN]
)
CREATION DATE/TIME: 7-JUN-2002 10:38:09.00
SUBJECT:: Re: Update on Notices
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just keep me posted, and try to give us a little time to coordinate a
public message. Thanks.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/6/02 5:33:18 PM >>>
that will be met for Reagan 23K and Bush VP and, we hope, also the
150.

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 06/06/2002 05:10:46 PM
pic27844.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Re: Update on Notices

Never heard back from you on this. I'm pushing because I believe Craig B.
promised Scott Nelson a response on the interrogatories by June 13 (next
Thursday), and I thought the idea was we would have opened (or resolved)
the
Bush VP, if not also the 150, by then. So there is an upcoming deadline.
Just
let me know when you can.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/5/02 2:53:01 PM >>>
Will call

Sent from my BlackBerry Handheld.

From: CN=Jean M. Russell/OU=OPD/O=EOP [OPD]
To: Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;Michael J. Conway/WHO /EOP@EOP [WHO] <Michael J. Conway>;Alice H. Williams/CEA/EOP@EOP [CEA] <Alice H. Williams>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E. Keller>;anna.hart@do.treas.gov @ inet [UNKNOWN] <anna.hart@do.treas.gov @ inet>;Lewis Libby/OVP/EOP@EOP [OVP] <Lewis Libby>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Linda.Figura@do.treas.gov @ inet [UNKNOWN] <Linda.Figura@do.treas.gov @ inet>
Sent: 6/7/2002 6:22:20 AM
Subject: : Pre-Brief on Debt Ceiling--10:00am Monday

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jean M. Russell ( CN=Jean M. Russell/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME: 7-JUN-2002 10:22:20.00
SUBJECT:: Pre-Brief on Debt Ceiling--10:00am Monday
TO:Leslie A. Mooney ( CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alice H. Williams ( CN=Alice H. Williams/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Karen E. Keller ( CN=Karen E. Keller/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:anna.hart@do.treas.gov @ inet ( anna.hart@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Lewis Libby ( CN=Lewis Libby/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lois E. Altoft ( CN=Lois E. Altoft/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Linda.Figura@do.treas.gov @ inet ( Linda.Figura@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There will be a meeting in Larry Lindsey's office on Monday, June 10, 2002
at 10:00am. The meeting is to discuss debt ceiling and the meeting with
the President later in the day.

jeannie

attendees:
Secretary O'Neill
Larry Lindsey
David Aufhauser
Peter Fisher
Karl Rove
Mitch Daniels
Glenn Hubbard
Josh Bolten
Nick Calio
Brett Kavanaugh
Marc Sumerlin
Scooter Libby
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
Sent: 6/7/2002 1:35:07 PM
Subject: : Re: Assertion of privilege under the PRA

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2002 17:35:07.00
SUBJECT:: Re: Assertion of privilege under the PRA
TO:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ("Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

monday morning

"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov>
06/07/2002 05:01:44 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Assertion of privilege under the PRA

Brett, I've been working on a draft letter supporting a claim of
privilege, but of course we can't finish it until we review the
documents. When will you get the documents over to me?
-- Paul

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 6/7/2002 2:54:39 PM
Subject: : Re: Document production TODAY

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2002 18:54:39.00
SUBJECT:: Re: Document production TODAY
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Those docs were not produced today so no need.

Sent from my BlackBerry Handheld.

From: Thomas, Ginni <ginni.thomas@heritage.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Barry S. Jackson/WHO /EOP@EOP [WHO] <Barry S. Jackson>;Angela R. Sailor/WHO/EOP@EOP [WHO] <Angela R. Sailor>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Abel Guerra/WHO /EOP@EOP [WHO] <Abel Guerra>
Sent: 6/7/2002 11:17:07 AM
Subject: : Heritage: Recent Publications & Upcoming Events
Attachments: P_3ZQW7003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thomas, Ginni" <ginni.thomas@heritage.org> ( "Thomas, Ginni"
<ginni.thomas@heritage.org> [ UNKNOWN ] )
CREATION DATE/TIME: 7-JUN-2002 15:17:07.00
SUBJECT:: Heritage: Recent Publications & Upcoming Events
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Andrea G. Ball ( CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alicia P. Clark ( CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Barry S. Jackson ( CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Angela R. Sailor ( CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alicia W. Davis ( CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Abel Guerra ( CN=Abel Guerra/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Lots of new items here! Don't forget to RSVP and drop by the ABM/RIP event
on Wednesday, June 12. This reception will be in the Russell Caucus
Room/Senate building (Room 325) from 5:30 to 7:30 p.m. The theme of the
reception is ABM: RIP, A Cheerful Wake for a Flawed Treaty (invitation
attached).

Recent Publications:

Domestic Policy:

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Featuring: Dr. Sallie Baliunas, Harvard-Smithsonian Center for Astrophysics;
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Wednesday, June 19th, 11:45 a.m.-1:00 p.m.
Capitol Room, The Capitol Hill Club
Heritage will host a lunch briefing at the Capitol Hill Club on the India-Pakistan situation, featuring Larry Wortzel and Jim Phillips from the Heritage staff. Open to Hill staff and all Administration appointees. Space
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Virginia (Ginni) Thomas, Director
Executive Branch Relations, The Heritage Foundation
214 Mass. Ave, NE/Washington, D.C. 20002
phone: (202) 608-6240 or 546-4400
fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org

<<Invite.doc>>
- Invite.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_3ZQW7003_WHO.TXT_1>

The Heritage Foundation

Edwin J. Feulner
President of The Heritage Foundation

cordially invites you to a reception

ABM: RIP

A Cheerful Wake for a Flawed Treaty

featuring

The Honorable John Bolton
Under Secretary of State

Senator Trent Lott (R-MS)
Senator Don Nickles (R-OK)
Senator Jesse Helms (R-NC)
Senator Thad Cochran (R-MS)

Senator John Kyl (R-AZ)
Representative Curt Weldon (R-7-PA)
Representative Bob Schaffer (R-4-CO)
Representative David Vitter (R-1-LA)

Lt. General James A. Abrahamson
Ambassador Henry F. Cooper
The Honorable Frank Gaffney, Jr.

5:30–7:30 p.m.
Wednesday, June 12, 2002
Russell Caucus Room
United States Capitol

For 30 years, the Anti-Ballistic Missile Treaty has served to bolster the policy of mutually assured destruction (MAD) and impose crippling restrictions on the nation's missile defense programs. President Bush, recognizing the inappropriateness of MAD and the policy of vulnerability to missile attack, announced on December 13, 2001, that the United States is withdrawing from the treaty. This is a decision that will serve to bolster the national security by allowing the unfettered development and deployment of missile defenses for the protection of the American people, our allies, and troops deployed abroad. Please join us as we mark the occasion when the treaty will lapse. We hope that you will be willing to add your voice in support of this important step forward for the national interest.

Please RSVP by phone or facsimile no later than Friday, June 7, 2002.
(Invitation is non-transferable.)

REV_00146731

The Heritage Foundation

ABM: RIP

A Cheerful Wake for a Flawed Treaty

5:30–7:30 p.m.
Wednesday, June 12, 2002
Russell Caucus Room
United States Capitol

Reply Form

¨ **Yes**, I/We will be able to attend the reception.

¨ No, I/We will not be able to attend.

Name(s): _____

Name(s) for Nametag: _____

Organization: _____

Address: _____

_____

Phone/Fax: _____

E-mail: _____

(Invitation is non-transferable.)

Please RSVP by phone or facsimile no later than Friday, June 7, 2002, to:

Jeni Harms
Fax: 202-608-6085
E-mail: jeni.harms@heritage.org
Questions? Please call Jeni Harms at 202-675-1765.

From: Thomas, Ginni <ginni.thomas@heritage.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>;Andrea G. Ball/WHO/EOP@EOP [WHO] <Andrea G. Ball>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Barry S. Jackson/WHO /EOP@EOP [WHO] <Barry S. Jackson>;Angela R. Sailor/WHO/EOP@EOP [WHO] <Angela R. Sailor>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Abel Guerra/WHO /EOP@EOP [WHO] <Abel Guerra>
Sent: 6/7/2002 11:17:17 AM
Subject: : Heritage: Recent Publications & Upcoming Events
Attachments: P_EZQW7003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thomas, Ginni" <ginni.thomas@heritage.org> ( "Thomas, Ginni"
<ginni.thomas@heritage.org> [ UNKNOWN ] )
CREATION DATE/TIME: 7-JUN-2002 15:17:17.00
SUBJECT:: Heritage: Recent Publications & Upcoming Events
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Andrea G. Ball ( CN=Andrea G. Ball/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alicia P. Clark ( CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Barry S. Jackson ( CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Angela R. Sailor ( CN=Angela R. Sailor/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alicia W. Davis ( CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Abel Guerra ( CN=Abel Guerra/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Lots of new items here! Don't forget to RSVP and drop by the ABM/RIP event
on Wednesday, June 12. This reception will be in the Russell Caucus
Room/Senate building (Room 325) from 5:30 to 7:30 p.m. The theme of the
reception is ABM: RIP, A Cheerful Wake for a Flawed Treaty (invitation
attached).

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fax: (202) 608-6068 (fax)
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REV_00146736

The Heritage Foundation

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United States Capitol

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☐ **Yes**, I/We will be able to attend the reception.

☐ No, I/We will not be able to attend.

Name(s): _____

Name(s) for Nametag: _____

Organization: _____

Address: _____

_____

Phone/Fax: _____

E-mail: _____

(Invitation is non-transferable.)

Please RSVP by phone or facsimile no later than Friday, June 7, 2002, to:

Jeni Harms
Fax: 202-608-6085
E-mail: jeni.harms@heritage.org
Questions? Please call Jeni Harms at 202-675-1765.

From:	CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To:	Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Lawrence B. Lindsey/OPD/EOP@EOP [OPD] <Lawrence B. Lindsey>;Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>;Glenn Hubbard/CEA/EOP@EOP [CEA] <Glenn Hubbard>;Karl C. Rove/WHO /EOP@EOP [WHO] <Karl C. Rove>
CC:	Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Douglas J. Holtz-Eakin/CEA /EOP@EOP [CEA] <Douglas J. Holtz-Eakin>;Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E. Keller>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alice H. Williams/CEA/EOP@EOP [CEA] <Alice H. Williams>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>
Sent:	6/7/2002 1:24:04 PM
Subject:	: Terrorism Insurance Letter - Final - Electronic Form
Attachments:	P_DSXW7003_CEA.TXT_1.jpeg; P_DSXW7003_CEA.TXT_2.jpeg

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 7-JUN-2002 17:24:04.00
SUBJECT:: Terrorism Insurance Letter - Final - Electronic Form
TO:Nicholas E. Calio ( CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov @ inet ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Lawrence B. Lindsey ( CN=Lawrence B. Lindsey/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Mitchell Daniels ( CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Glenn Hubbard ( CN=Glenn Hubbard/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Susan B. Ralston ( CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Douglas J. Holtz-Eakin ( CN=Douglas J. Holtz-Eakin/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
CC:Jean M. Russell ( CN=Jean M. Russell/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Karen E. Keller ( CN=Karen E. Keller/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Alice H. Williams ( CN=Alice H. Williams/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
CC:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Do not forward this email or these documents, the letter will not be sent
to the Hill until, Monday, June 10th.



lott1.jpg is page 1
lott2.jpg is page 2
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File attachment <P_DSXW7003_CEA.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DSXW7003_CEA.TXT_2>
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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 10, 2002

The Honorable Trent Lott
Senate Republican Leader
United States Senate
Washington, DC 20510

Dear Senator Lott:

The War on Terrorism must be fought on many fronts. From an economic perspective, we must minimize the risks and consequences associated with potential acts of terror. No measure is more important to mitigating the economic effects of terrorist events than the passage of terrorism insurance legislation.

Last November 1, the Administration publicly agreed to bipartisan legislation negotiated with Chairman Sarbanes, Chairman Dodd, Senator Gramm and Senator Enzi. While the House of Representatives quickly responded to this urgent need by passing appropriate legislation, the Senate did not act and has not passed any form of terrorism legislation in the intervening seven months.

The absence of federal legislation is having a palpable and severe effect on our economy and is costing America's workers their jobs. In the first quarter of this year, commercial real estate construction was down 20 percent. The disruption of terrorism coverage makes it more difficult to operate, acquire, or refinance property, leading to diminished bank lending for new construction projects and lower asset values for existing properties. The Bond Market Association has said that more than $7 billion worth of commercial real estate activity has been suspended or cancelled due to the lack of such insurance. Last week, Moody's Investors Service announced that 14 commercial mortgage-backed transactions could be downgraded due to a lack of such insurance.

Without such insurance, the economic impact of another terrorist attack would be much larger, including major bankruptcies, layoffs and loan defaults. While we are doing everything we can to stop another attack, we should minimize the widespread economic damage to our economy should such an event occur.

One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable entities have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists.

To address this risk at least two important provisions are essential. First, provisions for an exclusive federal cause of action and consolidation of all cases arising out of terrorist attacks, like those included in the Air Transportation Safety and System Stabilization Act, are necessary to provide for reasonable and expeditious litigation.

REV_00146755

Second, the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal wrongdoing. Of course such sanctions are appropriate for terrorists. But American companies that are attacked by terrorists should not be subject to predatory lawsuits. The availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.

It is also clear that the potential for massive damages imposed on companies that suffer from acts of terror would endanger our economic recovery from a terrorist attack. Indeed, the added risks and legal uncertainty hanging over the economy as a result of last September 11th are major factors inhibiting a business willingness to invest and to create jobs. It makes little economic sense to pass a terrorism insurance bill that leaves our economy exposed to such inappropriate and needless legal uncertainty.

The bipartisan public agreement reached between the Administration and Chairman Sarbanes, Chairman Dodd, Senator Gramm and Senator Enzi last fall provided these minimum safeguards. We would recommend that the President not sign any legislation that leaves the American economy and victims of terrorist acts subject to predatory lawsuits and punitive damages.

The American people and our economy have waited seven months since our public agreement on legislation. The process must move forward. Prompt action by the Senate on this vitally important legislation is needed now.

Sincerely,

Paul H. O'Neill
Secretary of the Treasury

Lawrence Lindsey
Director,
National Economic Council

Mitchell E. Daniels
Director
Office of Management and Budget

R. Glenn Hubbard
Director
Council of Economic Advisors

cc: Senator Daschle

REV_00146756

From: Colborn, Paul P <Paul.P.Colborn@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/7/2002 2:38:54 PM
Subject: : Re: Assertion of privilege under the PRA

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> ( "Colborn, Paul P"
<Paul.P.Colborn@usdoj.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 7-JUN-2002 18:38:54.00
SUBJECT:: Re: Assertion of privilege under the PRA
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Ok
--- Sent from my BlackBerry.
```

From: CN=Kristen Silverberg/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2002 5:33:18 AM
Subject: : Re: NYT Lead Editorial Today

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUN-2002 09:33:18.00
SUBJECT:: Re: NYT Lead Editorial Today
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Guess we do need a draft. Should we just revise the letter to the Senate? I can take a crack at it or you can. Let me know.

---------- Forwarded by Kristen Silverberg/WHO/EOP on 06/10/2002 09:32 AM ----------

Kirk Blalock
06/10/2002 09:23:44 AM
Record Type: Record

To: Kristen Silverberg/WHO/EOP@EOP
cc: D. Marcus Sumerlin/OPD/EOP@EOP
bcc:
Subject: Re: NYT Lead Editorial Today

Yes, we should work on a response for LL to send today to NYT. Karl agrees.

Kristen Silverberg
06/09/2002 07:27:04 PM
Record Type: Record

To: Kirk Blalock/WHO/EOP@EOP
cc: karl c. rove/who/eop@eop, matthew kirk/who/eop@eop, d. marcus sumerlin/opd/eop@eop, Brett M. Kavanaugh/WHO/EOP@EOP
bcc:
Subject: Re: NYT Lead Editorial Today

Should we send a response (maybe from Larry) echoing the Times' endorsement of the bill but explaining why the tort procedures are essential? Brett and I could take a crack at it if you think it would be helpful.

Kirk Blalock
06/08/2002 09:34:27 PM
Record Type: Record

To: Karl C. Rove/WHO/EOP@EOP, Kristen Silverberg/WHO/EOP@EOP,

Matthew Kirk/WHO/EOP@EOP, D. Marcus Sumerlin/OPD/EOP@EOP
cc:
Subject: NYT Lead Editorial Today

Don't miss it!

.

From: CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2002 7:17:21 AM
Subject: : Re: NRSC birthday greeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUN-2002 11:17:21.00
SUBJECT:: Re: NRSC birthday greeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

POTUS

Brett M. Kavanaugh
06/10/2002 11:12:24 AM
Record Type: Record

To: Katherine G. Marinis/WHO/EOP@EOP
cc:
bcc:
Subject: Re: NRSC birthday greeting

Who would sign (auto-sign) the acknowledgement letter?

Katherine G. Marinis
06/10/2002 10:58:36 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NRSC birthday greeting

The NRSC is asking to post a page on their website where people can sign up and wish the President happy birthday. It will add their name to a card that they promise to send to the President. Karl is not in favor of this idea, so we will probably say no. KR says the only way he would be willing is if we can respond to the people who sign up. (send them an acknowledgement thanking them for the birthday wish). Is that permissible?

If not, then we will definitely turn down the request. thanks

From: CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2002 2:01:15 PM
Subject: : Brett: Need an answer please

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUN-2002 18:01:15.00
SUBJECT:: Brett: Need an answer please
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks!

---------- Forwarded by Magda E. Angulo/WHO/EOP on 06/10/2002 06:08 PM ----------

Magda E. Angulo
06/10/2002 11:05:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Brett: Are you available 6/11 at 3pm

See message below. Thanks.

---------- Forwarded by Magda E. Angulo/WHO/EOP on 06/10/2002 11:12 AM ----------

Lucy G. Clark
06/07/2002 07:13:48 PM
Record Type: Record

To: Magda E. Angulo/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Another Try for PRA & CIA Meeting- 6/11 at 3pm

yes

Magda E. Angulo
06/07/2002 06:00:40 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Lucy G. Clark/WHO/EOP@EOP
cc:
Subject: Another Try for PRA & CIA Meeting- 6/11 at 3pm

John Bellinger and Ed McNally are available on Tuesday, 6/11 from 3-4 p.m. Does this work for both of you?

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Lezlee J. Westine/WHO /EOP@EOP [WHO] <Lezlee J. Westine>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD /EOP@EOP [OPD] <D. Marcus Sumerlin>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 6/11/2002 5:16:39 AM
Subject: : Congress Daily AM Today

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUN-2002 09:16:39.00
SUBJECT:: Congress Daily AM Today
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:sheila.bair@do.treas.gov @ inet ( sheila.bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FINANCE
Dodd Sees Hope For Terrorism Insurance Talks
While predicting "there is much work to be done in the days and
weeks ahead," Sen.
Christopher Dodd, D-Conn., said Monday he was "hopeful" that Senate
Democrats could
work with the Bush administration and Senate Republicans to enact a
terrorism reinsurance
bill.
Dodd, a lead negotiator on the issue, also praised the White
House for weighing in on
the debate. Monday President Bush's top economic advisers sent a letter to
the Senate,
outlining the White House's stance on whether U.S. businesses that may
share culpability in
a terrorist incident should be liable for punitive damages.
Although the White House position on that question runs counter
to that of key leaders
of the Senate majority, the letter "hopefully indicates their renewed
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commitment to addressing
this critical economic issue in a timely and serious way," Dodd said.
Dodd was among a group of Democratic senators who introduced
new legislation
Friday designed to serve as the chamber's floor vehicle. The bill is
essentially identical to
reinsurance legislation crafted late last year by Democrats that never was
formally introduced.
The measure has been placed on the Senate calendar, and
Democrats hope to have
the new bill brought up for action before the July 4 recess, sources said.
Prior to the introduction of that bill, Dodd last week told
CongressDaily he thought
Democratic leadership ultimately would have to file cloture in order to
move the debate
forward. By Pamela Barnett

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/11/2002 4:00:47 AM
Subject: : Re: Preemption

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:11-JUN-2002 08:00:47.00
SUBJECT:: Re: Preemption
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Within week would be great.

.
```

From: CN=Magda E. Angulo/OU=WHO/O=EOP [WHO]
To: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Lucy G. Clark/WHO/EOP@EOP [WHO] <Lucy G. Clark>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
CC: Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>
Sent: 6/11/2002 5:08:28 AM
Subject: : CONFIRMED, PRA & CIA MEETING TODAY at 3pm

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Magda E. Angulo ( CN=Magda E. Angulo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUN-2002 09:08:28.00
SUBJECT:: CONFIRMED, PRA & CIA MEETING TODAY at 3pm
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lucy G. Clark ( CN=Lucy G. Clark/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
CC:Joan Hunerwadel ( CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This is to confirm that the PRA & CIA Computers Meeting is on schedule for
today at 3 p.m. in Bellinger's office, EEOB 348.

If there are any conflicts with this please let me know.

Thanks,
Magda
6-1195
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 6/11/2002 5:27:03 AM
Subject: : Re: NSC records

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUN-2002 09:27:03.00
SUBJECT:: Re: NSC records
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I don't think I can. I'll let you know if I see a break in the clouds.

H. Christopher Bartolomucci
06/11/2002 09:24:56 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NSC records

Can either of you review NSC records this afternoon?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;John F. Wood/OMB/EOP@EOP [OMB] <John F. Wood>
Sent: 6/11/2002 11:29:49 AM
Subject: : S. 2134, Harkin bill on Thursday's markup

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUN-2002 15:29:49.00
SUBJECT:: S. 2134, Harkin bill on Thursday's markup
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:John F. Wood (CN=John F. Wood/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

fyi
---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/11/2002 03:29 PM ----------

Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel)
06/11/2002 02:43:52 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: S. 2134, Harkin bill on Thursday's markup

you guys are aware this one is accessing frozen assets right?

From: CN=Jean M. Russell/OU=OPD/O=EOP [OPD]

To: Stephen M. Lineberry/CEA/EOP@EOP [CEA] <Stephen M. Lineberry>;Pam.Olson@do.treas.gov @ inet [UNKNOWN] <Pam.Olson@do.treas.gov @ inet>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>;Alice H. Williams/CEA/EOP@EOP [CEA] <Alice H. Williams>;Eleanor L. Gillmor/OPD /EOP@EOP [OPD] <Eleanor L. Gillmor>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Kreaves@doc.gov @ inet [UNKNOWN] <Kreaves@doc.gov @ inet>;Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Carlos E. Bonilla/OPD/EOP@EOP [OPD] <Carlos E. Bonilla>;Barbara.Lucas@ost.dot.gov @ inet [UNKNOWN] <Barbara.Lucas@ost.dot.gov @ inet>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E. Keller>;Jennifer H. Mayfield/OVP /EOP@EOP [OVP] <Jennifer H. Mayfield>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;bvosburgh@doc.gov @ inet [UNKNOWN] <bvosburgh@doc.gov @ inet>;Linda.Figura@do.treas.gov @ inet [UNKNOWN] <Linda.Figura@do.treas.gov @ inet>

Sent: 6/11/2002 12:31:15 PM

Subject: : unified savings account proposals

Attachments: P_NZDZ7003_WHO.TXT_1.doc; P_NZDZ7003_WHO.TXT_2.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jean M. Russell ( CN=Jean M. Russell/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:11-JUN-2002 16:31:15.00
SUBJECT:: unified savings account proposals
TO:Stephen M. Lineberry ( CN=Stephen M. Lineberry/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Pam.Olson@do.treas.gov @ inet ( Pam.Olson@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Caroline Boeckel ( CN=Caroline Boeckel/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lois E. Altoft ( CN=Lois E. Altoft/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Alice H. Williams ( CN=Alice H. Williams/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Eleanor L. Gillmor ( CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Carol J. Thompson ( CN=Carol J. Thompson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kreaves@doc.gov @ inet ( Kreaves@doc.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Leslie A. Mooney ( CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Mark McClellan ( CN=Mark McClellan/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Carlos E. Bonilla ( CN=Carlos E. Bonilla/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Barbara.Lucas@ost.dot.gov @ inet ( Barbara.Lucas@ost.dot.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Karen E. Keller ( CN=Karen E. Keller/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Jennifer H. Mayfield ( CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Michael J. Conway ( CN=Michael J. Conway/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:bvosburgh@doc.gov @ inet ( bvosburgh@doc.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Linda.Figura@do.treas.gov @ inet ( Linda.Figura@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The attached papers are for tomorrow's 9:45am
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- lifetime savings accounts proposal.doc
- LSA brief.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NZDZ7003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NZDZ7003_WHO.TXT_2>

SIMPLIFY AND CONSOLIDATE INDIVIDUAL SAVINGS ACCOUNTS

Current Law

Current law provides multiple tax-preferred individual savings accounts to encourage savings for retirement, education, and health expenses. The accounts have overlapping goals but are subject to different sets of rules regulating eligibility, contribution limits, tax treatment, and withdrawal restrictions. Individual Retirement Accounts (IRAs), including traditional, Roth, and nondeductible IRAs, are primarily intended to encourage retirement saving, but can also be used for certain education, medical, and other non-retirement expenses. Each of the three types of IRAs is subject to a different set of rules. Coverdell Education Savings Accounts (ESAs) and Section 529 Qualified Tuition Plans (QTPs) are both intended to encourage saving for education, but each is subject to different rules. Archer Medical Savings Accounts are intended to encourage saving for medical expenses.

Individual Retirement Accounts: Under current law, individuals under age 70½ may make contributions to a traditional IRA, subject to certain limits. The contributions are generally deductible; however, the deduction is phased out for workers with incomes above certain levels who are covered by an employer-sponsored retirement plan. Account earnings are not includible in gross income until distributed. Distributions (including account earnings) are includible in gross income.

To the extent a taxpayer cannot or does not make deductible contributions to a traditional IRA, a taxpayer under age 70½ may make nondeductible contributions. In this case, distributions representing a return of basis are not includible in gross income, while distributions representing account earnings are includible in gross income. There is no income limit for nondeductible contributions to a traditional IRA.

Individuals of any age may make contributions to a Roth IRA. Allowable contributions are phased out for workers with incomes above certain levels. Account earnings accumulate tax free, and qualified distributions (including account earnings) are not includible in gross income. The earnings portion of a nonqualified Roth IRA distribution is includible in gross income.

The annual aggregate limit on contributions to all of a taxpayer's IRAs (traditional, nondeductible, and Roth) is the lesser of compensation or $3,000 for 2002 through 2005 ($3,500 for individuals age 50 and over). The contribution limit is scheduled to increase to $5,000 ($6,000 for individuals age 50 and over) by 2008.

Taxpayers with AGI of $100,000 or less and who are not married filing separately can convert a traditional IRA to a Roth IRA. In general, the conversion amount is included in gross income (but not for the purposes of the $100,000 limit).

Early distributions from IRAs are generally subject to an additional 10 percent tax. The tax is imposed on the portion of an early distribution that is includible in gross income. It applies in addition to ordinary income taxes on the distribution. The additional tax does not apply to a rollover to an employer plan or IRA, or if the distribution is made in the cases of death or

disability, certain medical expenses, first-time homebuyer expenses, qualified higher-education expenses, health-insurance expenses of unemployed individuals, or as part of a series of substantially equal periodic payments. ~~[period]~~
~~Mention minimum required distribution rules in passing~~

Minimum distribution rules require that, beginning at the later of age 70½ or retirement, the entire amount of a traditional IRA be distributed over the life of the individual (or the joint lives of the individual and a designated beneficiary). These rules do not apply to Roth IRAs.

Coverdell Education Savings Accounts: Taxpayers may elect to contribute up to $2,000 per year to a Coverdell Education Savings Account (ESA) for beneficiaries under age 18. The contribution limit is phased out for taxpayers with incomes above certain levels. Contributions are not deductible, but earnings on contributions accumulate tax-free. Distributions are excludable from gross income to the extent they do not exceed qualified education expenses that are incurred during the year the distributions are made and that are not used to claim another tax benefit (such as an education tax credit or a tax-free distribution from a qualified tuition program). The earnings portion of a distribution not used to cover qualified education expenses is includible in the gross income of the beneficiary and is generally subject to an additional 10 percent tax.

Except in the case of a special needs beneficiary, when a beneficiary reaches age 30, the account balance is deemed to have been distributed for nonqualified purposes. However, prior to the beneficiary reaching age 30, tax-free (and penalty-free) rollovers of account balances may be made to an ESA benefiting another family member.

Section 529 Qualified Tuition Programs: Contributions to a QTP are not deductible from income for federal tax purposes, but earnings on contributions accumulate tax-free. Taxpayers may exclude from gross income amounts distributed from a QTP and used for qualified higher education expenses, so long as the distribution is not used for the same educational expenses for which another tax benefit (such as an education tax credit or a tax-free distribution from an ESA) is claimed. Nonqualified distributions are subject to an additional tax. A change in the designated beneficiary of an account is not treated as a distribution, and therefore is not subject to income tax, if the new beneficiary is a member of the family of the prior beneficiary. Neither contributors nor beneficiaries may direct the investment of the account.

There is no specific dollar cap on annual contributions to a QTP. In addition, there is no limit on contributions to a QTP account based on the contributor's income, contributions are allowed at any time during the beneficiary's lifetime, and the account can remain open after the beneficiary reaches age 30. However, a QTP must provide adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of amounts necessary to provide for the qualified higher education expenses of the beneficiary.

Archer Medical Savings Accounts: Self-employed individuals and individuals employed by small employers maintaining a high-deductible health plan are allowed to accumulate funds in an Archer Medical Savings Account (MSA) on a tax-preferred basis to pay for medical expenses. An individual is eligible to establish an MSA only if the employee (or the employee's spouse) is

covered by a high-deductible health plan (and no other health plan). Contributions to MSAs are deductible and qualified distributions are excluded from gross income. Nonqualified distributions are subject to an additional tax.

Reasons for Change

The plethora of individual savings accounts, each subject to different rules regarding eligibility, contributions, tax treatment, and withdrawal, creates complexity and redundancy in the Code. Taxpayers must determine their eligibility for each account separately and then must decide which plan or plans are best for them given their circumstances. Furthermore, as their circumstances change over time, taxpayers must continually re-evaluate their eligibility for each plan and which best meets their needs. In addition, the current list of non-retirement exceptions within IRAs weakens the focus on retirement saving. Consolidating the plans into accounts that taxpayers could use over their entire lifetime would simplify the decision-making process and eliminate redundancies in the Code while further encouraging savings.

Proposal

The proposal would consolidate individual tax-preferred savings accounts into a Lifetime Savings Account (LSA) that could be used for any type of saving, and a Retirement Savings Account (RSA) that could be used for retirement saving.

Consolidate Archer Medical Savings Accounts, Coverdell Education Savings Accounts, and Section 529 Qualified Tuition Plans into Lifetime Savings Accounts.

Individuals could contribute up to $5,000 per year to their Lifetime Savings Accounts (LSAs), regardless of wage income. No income limits would apply to LSA contributions. Contributions would have to be in cash. Contributions would be nondeductible, but earnings would accumulate tax-free, and all distributions would be excluded from gross income, regardless of the individual's age or use of the distribution. No minimum required distribution rules would apply to LSAs.

Contribution limits would apply to all accounts held in an individual's name, rather than to contributors. Thus, contributors could make annual contributions of up to $5,000 each to the accounts of other individuals, but the aggregate of all contributions to all accounts held in a given individual's name could not exceed $5,000. Accounts held in a minor's name would become the property of the named individual when the individual attained age 18. Individuals could roll amounts from LSAs over to a member of the individual's family, as defined in section 529(e)(2), subject to the normal gift tax rules. The LSA contribution limit would be indexed for inflation.

Existing MSA, ESA and QTP accounts would be renamed LSAs, and could be combined with other LSA accounts held by the same individual. New contributions would be subject to LSA limitations. States could continue to provide QTPs (renaming them LSAs), and could continue to allow contributions to be deductible against state income taxes.

REV_00146854

LSAs would become effective in 2003.

Consolidate IRAs into Retirement Savings Accounts.

Individuals could contribute up to $5,000 per year (or wage income, if less) to their Retirement Savings Account (RSA). No income limits would apply to RSA contributions. Contributions would have to be in cash. Contributions would be nondeductible, but earnings would accumulate tax-free, and qualified distributions would be excluded from gross income. The RSA contribution limit would be indexed to inflation.

Qualified distributions from the retirement account would be distributions made after age 58 or in the event of death or disability. Nonqualified distributions would be includible in income (to the extent they exceed basis), and subject to an additional tax. Distributions would be deemed to come from basis first. No minimum required distribution rules would apply to RSAs.

Existing Roth IRAs would be renamed RSAs and be made subject to the new rules for RSAs. Existing traditional and nondeductible IRAs could be converted into an RSA by taking the conversion amount into gross income, similar to a current-law Roth conversion. However, no income limit would apply to the ability to convert. Taxpayers who convert IRAs to RSAs could spread the included conversion amount over several years. Existing traditional or Roth IRAs that are not converted to RSAs could not accept any new contributions. New traditional IRAs could be created to accommodate rollovers from employer plans, but they could not accept any new individual contributions. Individuals wishing to roll an amount directly from an employer plan to an RSA could do so by taking the rollover amount (excluding basis) into gross income (i.e., "converting" the rollover, similar to a Roth conversion).

RSAs would become effective in 2003.

Discussion:

The proposal would significantly simplify participation in various individual savings accounts by consolidating them into accounts that could be used over the course of the taxpayer's lifetime. The proposal would further simplify participation by removing income phase-outs, required distributions, and restrictions on the use of distributions from LSAs.

The proposal would simplify saving for education, medical and other expenses by consolidating ESAs, QTPs, and MSAs into one account and removing income limits. Moreover, it would expand opportunities for tax-free savings and simplify participation by eliminating the requirement that distributions from LSAs be used for certain qualified purposes. Individuals could use LSAs to save on a tax-free basis for any purpose, including retirement. The proposal would simplify IRAs by consolidating three types of IRAs into one account and removing income limits and required minimum distributions.

The proposal effectively would extend consumption-tax-type treatment, on a limited basis, to savings for any purpose. This is because, like current-law traditional and Roth IRAs, ESAs and QTPs, the proposal would effectively exempt account earnings from federal income tax.

REV_00146855

The proposal would increase the savings incentive relative to current law by removing income limits, age limits, and required distributions, and allowing tax-free distributions from LSAs for any purpose (including retirement). Expansion of the ability to save for retirement outside of employer-sponsored plans could adversely affect participation in those plans. In addition, some individuals may value the traditional IRA's deductible contributions more than the RSA's excludable distributions, and so be less inclined to contribute. However, the overall incentive effect of the proposal on individuals would be to encourage additional savings.

The separate RSA account dedicated to retirement saving would be maintained to address concerns about excessive pre-retirement distributions from existing retirement accounts. The distinction would allow taxpayers to contribute to non-retirement goals on a tax-preferred basis without undermining retirement security by draining retirement funds for non-retirement expenses. In addition, recent research has found evidence that many individuals prefer to maintain separate "mental accounts" for different savings goals, and thus may prefer to have separate actual accounts for retirement and non-retirement purposes.

REV_00146856

BACKGROUND PAPER: SIMPLIFY AND CONSOLIDATE INDIVIDUAL SAVINGS ACCOUNTS

Revenue Effects

Assuming that EGTRRA is permanently extended, the proposal is estimated to increase revenues by about $0.1 billion over the ten-year period from 2003 to 2012 (see attachment).

Distribution /Winners and Losers

The removal of income limits clearly would benefit higher-income taxpayers more than lower-income taxpayers, especially since higher-income taxpayers tend to save more. However, the allowance of LSA withdrawals for any purpose would bring tax-free saving to many lower-income taxpayers who currently do not participate in tax-deferred accounts. Lower-income taxpayers may currently be less likely to participate in IRAs because they are reluctant to tie up scarce savings in a long-term commitment, or because they are misled or deterred by the complexity of IRA income limits or other informational barriers. The proposal would remove these barriers, and many lower-income taxpayers could use LSAs as their primary savings account. The LSA/RSA contribution limit is unlikely to be binding on lower-income taxpayers, and hence all or a large proportion of their savings would earn a tax-free return.

Effect on Marginal Tax Rates

Generally, the proposal would not have a significant effect on marginal tax rates for most taxpayers. Some taxpayers would be affected, however. For example, a taxpayer whose deductible IRA contributions currently keep them in a lower tax bracket would face higher marginal tax rates after transitioning to nondeductible LSA/RSA contributions. Also, taxpayers who converted traditional IRAs to RSAs by including the account balance in income could face higher marginal tax rates in the year of conversion, even if the income inclusion could be spread over several years. On the other hand, taxpayers whose deductible IRA contributions are partially phased out by the income limit would face lower effective marginal tax rates after transitioning to LSA/RSA contributions. Also, taxpayers currently participating in traditional IRAs who began to participate in RSAs instead could face lower marginal tax rates in retirement.

Effect on Savings

The consumption-tax treatment of LSAs and RSAs encourages taxpayers to save by equalizing the taxation of current and future consumption. Under income-tax treatment, a dollar saved for future consumption is taxed more heavily than a dollar consumed currently, introducing a tax incentive in favor of current consumption. Thus, relative to income-tax treatment, consumption-tax treatment encourages saving. The LSA/RSA proposal would expand the consumption-tax treatment currently available under IRAs by simplifying participation, removing income limits, and offering consumption-tax treatment to a limited amount of savings that can be used for any purpose. Based on these factors, the proposal would encourage further savings, relative to current law.

However, it is difficult to predict the actual magnitude of the effect on personal savings. In order to increase personal savings in an economic sense, participants must reduce their current consumption. But in some cases, participants who make LSA or RSA contributions would save at least some of those amounts even in the absence of the programs. In practice, this means they may offset other saving in response to their LSA or RSA contribution, and so current consumption would not decrease by the full amount of the contribution. As a result, not all LSA or RSA contributions would represent increased personal savings.

Nonetheless, it is clear that the proposal would bring consumption-tax treatment to a large proportion of the typical household's savings. For example, in 1998, over forty percent of households had total financial assets of less than $10,000 –1 the combined annual LSA/RSA contribution limit. Thus, under the proposal, forty percent of households could receive consumption-tax treatment on all of their savings in the first year of enactment. This proportion is 50 percent among households under the age of 45, and 70 percent among households with under $25,000 in annual income. Over time, an increasing share of households could receive consumption-tax treatment on all of their savings. For example, in 1998, 78 percent of all households had total financial assets of $100,000 or less. Thus, if the proposal had been enacted in 1988, 78 percent of all households could have received consumption-tax treatment on all of their savings by 1998.

Effect on Medical Savings

LSAs have the potential to significantly expand medical savings among working taxpayers. Currently, Archer Medical Savings Accounts (MSAs) are generally only available to self-employed individuals and small-business employees who are covered by a high-deductible health plan (and no other plan) – a small proportion of all working taxpayers. It is estimated that fewer than 150,000 individuals have MSAs. LSAs would allow all individuals to begin saving for medical expenses, regardless of income, insurance coverage, or type of employer.

Currently, some contributors to an Archer MSA are eligible to receive both a deduction for contributions and an exclusion for certain distributions – effectively better than LSA's consumption-tax treatment. The current MSA treatment is meant to mimic the treatment of employer-provided health insurance.

However, LSAs offer several advantages over MSAs. In addition to providing universal eligibility for medical savings, LSAs would be available for all types of withdrawals, whereas MSA distributions are available only for medical expenses allowable as an itemized deduction. Moreover, LSAs would be much simpler to use. MSAs are subject to extremely complicated rules regarding deduction limits, definitions of eligibility, allowable withdrawals, and limitations on the aggregate number of accounts. Thus, the benefits of the LSA proposal for medical savings are very likely to outweigh the difference in tax treatment for the few affected taxpayers.

Effect on Educational Savings

The LSA proposal would significantly simplify educational savings for many taxpayers. Unlike Coverdell Education Savings Accounts (ESAs), income and age limits would not apply to LSAs, and the LSA contribution limit is higher than the ESA limit. And unlike both ESAs and Section

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529 Qualified Tuition Plans (QTPs), all distributions from LSAs would be tax-free, regardless of use.

Currently, contributions to Section 529 QTPs are not explicitly limited in a given year, but rather subject to state-by-state limits meant to prevent the accumulation of balances in excess of qualified education expenses. Some taxpayers (and the states and plan sponsors) might feel constrained by the $5,000 LSA contribution limit.

However, the proposal would allow for adequate education savings. Assuming a 7% return, contributions of $5,000 per year for 17 years would result in a balance of about $165,000 by the time a child typically enters college. Assuming additional contributions and earnings throughout the college years, this would be enough to fund four years of expenses of $50,000 per year, or five years of expenses of $40,000 per year. Moreover, parents, as well as other relatives, friends, and the children themselves, could *each* maintain an LSA and use the savings for higher-education expenses. States could continue to provide the plans (renaming them LSAs), and could continue to allow contributions to be deductible against state income taxes.

Effect on Retirement Savings

The RSA proposal could significantly increase participation in individual-based retirement savings accounts. Unlike traditional and Roth IRAs, RSAs are not subject to income or age limits. Moreover, the RSA proposal would simplify participation by reducing the plethora of IRA choices and by repealing required minimum distributions. Separating retirement savings from non-retirement savings may help people better manage their savings and prevent non-retirement needs from undermining retirement security.

Repeal of income limits could encourage financial institutions to increase their marketing and promotional activities to encourage new retirement savings by all taxpayers, as was the case during the period of unrestricted IRA participation from 1981 to 1986. Indeed IRA participation among lower- and moderate-income taxpayers fell after income limits were imposed in 1986, even though such taxpayers were not directly affected by the limits.

The proposal significantly helps taxpayers not covered by an employer retirement plan – about half of all workers. Since both LSAs and RSAs could be used for retirement savings, individuals could effectively use LSAs and RSAs to save $10,000 per year for retirement, significantly more than is available to such taxpayers under current law. Finally, the proposal accelerates the increase in contribution limits that is gradually phased in under EGTRRA. While under EGTRRA the contribution limit does not reach $5,000 (indexed) until 2008, under the LSA/RSA proposal, the $5,000 contribution limit (indexed) is effective beginning in 2003.

Expansion of the ability to save for retirement outside of employer-sponsored plans could adversely affect participation in those plans. The ability to save $10,000 per year for retirement in LSAs and RSAs could create competition with 401(k) and other qualified plans. Small employers in particular may determine that the expanded individual saving opportunities under LSAs and RSAs justify not offering qualified plans to their employees. This could result in lower retirement savings for moderate-income and lower-income employees, who may not make the same level of contributions to LSAs and RSAs that they and their employers had made to

REV_00146859

their qualified plans. To the extent that moderate-income and lower-income employees remain covered by 401(k) plans but choose to contribute to LSAs and RSAs instead of 401(k) plans, it may be more difficult for the 401(k) plans to pass the nondiscrimination tests under current law. That raises the possibility that employers, even large employers, may object to LSAs and RSAs.

However, many employees are likely to still value 401(k) and other qualified plans, for several reasons. For example, employer plans offer additional opportunities to save on a consumption-tax basis. In addition, many employer plans offer employer contributions and the convenience of payroll deduction and economies of scale in account management. Finally, many employees may value the up-front exclusion from taxable income offered by employer plans. Thus, it is not certain to what extent there would be flight from employer plans. While some small employers may choose to drop (or, not to add) retirement plans because of the availability of RSAs and LSAs, this would be most likely in cases of a lack of demand from employees. (Surveys have indicated that many small employers do not offer retirement plans because the employees prefer compensation in the form of wages.)

Some taxpayers may value certain features of existing traditional IRAs greater than the RSA that replaces them. For example, some individuals may value the traditional IRA's deductible contributions more than the RSA's excludable distributions. This could be the case if they expected their tax rates to fall in retirement (even after taking into account their IRA retirement distributions), or if for some other reason they simply preferred receiving the tax benefit up front rather than in retirement. Such taxpayers may be less inclined to contribute to the RSA. However, such taxpayers who are covered by an employer plan could continue to receive the benefits of up-front exclusion from the employer plan.

Finally, taxpayers aged 50 and over currently enjoy higher IRA contribution limits than younger taxpayers (so-called "catch-up" contributions). When current law is phased in fully in 2008, the IRA contribution limit for taxpayers aged 50 and over will be $6,000, which is greater than the $5,000 RSA contribution limit.

The LSA/RSA proposal does not contain a catch-up provision because it is simpler to apply the same contribution limit to all taxpayers. However, relative to current law, the LSA/RSA proposal does not really offer lower contribution limits. Since LSA savings can also be used for retirement, taxpayers could effectively save $10,000 per year for retirement in their LSA/RSA accounts, significantly greater than the $6,000 IRA limit. Moreover, the current-law $6,000 IRA limit does not become law until 2008, while the LSA/RSA limits would be effective five years sooner, in 2003. Thus, even restricting the comparison to RSAs alone, there would be little difference in contribution limits by 2008 because of the indexation of the RSA limit. For example, annual indexation of the RSA limit at a rate of about three percent could result in an RSA limit of $6,000 by 2008. Finally, the effective RSA contribution limit is higher than the limit on traditional IRAs, because the RSA limit applies to after-tax dollars.

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Other Options Considered

Two alternatives to the LSA/RSA proposal were considered.

Under the first alternative, tax-free distributions from LSAs would be limited to those made before age 58 and used for qualified educational or medical expenses or a first home purchase, or in the event of death, disability or unemployment. Distributions from the LSA at or after age 58 would not be qualified distributions. However, at age 58 or after, taxpayers could roll up to a lifetime total of $100,000 from their LSA to their RSA. Qualified educational expenses would be those expenses defined as qualified expenses for ESAs under section 530(b)(2). Qualified medical expenses would be those expenses defined as Schedule A medical expenses under section 213 (but without regard to the 7.5% of AGI floor). This alternative would be more limited than the proposal but would still offer major simplification benefits relative to current law. This alternative was not chosen as the proposal because the benefits it achieved with regard to simplification and expanding savings choices were not as large as under the LSA/RSA proposal. However, it would likely reduce the problem of competition with employer plans discussed above.

The second alternative would repeal IRA income limits while coordinating IRA and 401(k) contribution limits. For all participants, the combined total of deductible and Roth IRA contributions and 401(k)-type contributions for the year could not exceed the limit on 401(k)-type contributions. Thus, an individual's allowable deductible or Roth IRA contributions would be reduced as 401(k) contributions approached their limit. When fully phased in, the coordinated IRA/401(k) limit under this option would be $15,000, with a maximum IRA contribution of $5,000. Thus, an individual could contribute $15,000 to a 401(k) plan and none to an IRA, or $5,000 to an IRA and up to $10,000 to a 401(k) plan.

This alternative was not chosen as the proposal because the benefits it achieved with regard to simplification and expanding savings choices were not as large as under the LSA/RSA proposal. However, it could be combined with the LSA/RSA proposal, and it would likely reduce the problem of competition with employer plans discussed above.

A Note on Rep. Gephardt's URSA Proposal

Rep. Gephardt introduced H.R. 4482, the Universal and Portable Pension Act of 2002, on April 18, 2002. The bill would create Universal Retirement Savings Accounts (URSAs), prohibit new contributions to IRAs, and expand the tax credit to individuals for retirement savings. The URSA proposal is substantially different from the LSA/RSA proposal, though they share some similar goals.

The LSA/RSA proposal would be significantly simpler and more comprehensive than URSAs. The URSA proposal essentially replaces IRAs with a new system of equal, if not greater, complexity. For example, the URSA proposal contains all of the complicating features of current IRAs, including income limits, age limits, and minimum required distributions.

REV_00146861

The URSA proposal also contains complicated and inconsistent tax treatments. While the LSA/RSA proposal would provide consumption-tax treatment consistently, the URSA tax treatment could resemble that of a traditional IRA, a Roth IRA, or something either better than or worse than these, depending on the income level of the taxpayer when contributing and the use of the distribution.

The URSA proposal also complicates non-retirement savings choices by offering "super" tax treatment for certain specific non-retirement expenses, while doing nothing to simplify existing redundant and confusing non-retirement savings account options.

Finally, the URSA proposal would impose a new mandate on employers, which would complicate their provision of retirement benefits. Imposing new mandates on employers could significantly upset the employer retirement-plan system, which has historically been voluntary. The mandate would require employers to either set up their own URSA as part of a qualified or 457 plan, or establish a system in which each affected employee could direct a portion of his or her pay to an URSA held in a separate financial institution. Either would impose new costs and burdens on employers. The mandate could discourage employers from offering a qualified retirement plan at all.

REV_00146862

Revenue Estimates

Lifetime Savings Accounts and Retirement Accounts

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2003-2007	2003-2012
	($'s in billions)											
Receipt effect	3.1	6.0	3.4	1.1	-1.2	-2.1	-2.1	-2.5	-2.8	-2.9	12.5	0.1

Department of the Treasury
Office of Tax Analysis

Note:
Effective for TYBA 12/31/2002. Estimates assume EGTRRA does not sunset.
Increase in contribution limit to $5,000 under EGTRRA assumed to be effective for TYBA 12/31/2002.
Indexing beginning in 2003 with $500 round-down rule
No catchup contributions assumed for the proposal for those aged 50+

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 6/12/2002 3:49:47 AM
Subject: : Fw: NORPAC mission

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:12-JUN-2002 07:49:47.00
SUBJECT:: Fw: NORPAC mission
TO:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Is this a problem?

Pls advise. Thx

.

----- Original Message -----
From:Lauren J. Vestewig/OPD/EOP
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:Jay P. Lefkowitz/OPD/EOP@EOP
Date: 06/11/2002 07:26:31 PM
Subject: NORPAC mission

NORPAC is a pro-Israel group that is in Washington for a day of lobbying. They wanted to talk to Jay about general policy issues, mostly domestic, but probably there will be some Israel too. They won't be lobbying Jay for anything. Any thoughts you have would be appreciated. Thanks.

From: CN=Matthew Kirk/OU=WHO/O=EOP [WHO]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>
Sent: 6/12/2002 4:12:22 PM
Subject: : McConnell Amendment
Attachments: P_0ZU08003_WHO.TXT_1.pdf; P_0ZU08003_WHO.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUN-2002 20:12:22.00
SUBJECT:: McConnell Amendment
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This could get offered as early as 10:30 am tomorrow. They obviously want our support. I'll update tomorrow morning on timing.
---------- Forwarded by Matthew Kirk/WHO/EOP on 06/12/2002 08:08 PM ----------

Charles_Marshall@mcconnell.senate.gov (Charles Marshall)
06/12/2002 08:01:16 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: John_Abegg@mcconnell.senate.gov (John Abegg), Kyle_Simmons@mcconnell.senate.gov (Kyle Simmons)
Subject: McConnell Amendment

Attached is the McConnell amendment to terrorism insurance, plus a brief one-pager. The talking points should be self-evident, but it is important to emphasize that these are not traditional suits between a sympathetic plaintiff v. big business defendant. These are victim v. victim lawsuits where we the Ds seek to punish American defendants for the actions of the terrorists. Plus, our criminal liability exception to the punitives ban answers all the Democrats' concerns that we should not let criminal-type conduct go unpunished.

Let me know if you have questions, and also let me know if your boss wants to make a brief floor statement in support. My direct is 4-8292 or I'll be on the floor.

-Charles

- AYO02_458.pdf
- newproposal.wpd

Message Sent
To:_____
Matthew Kirk/WHO/EOP@EOP
Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel)
John_Mashburn@lott.senate.gov
Keith_Hennessey@lott.senate.gov
Rita_Lari@judiciary.senate.gov
Ed_Haden@judiciary.senate.gov
Bob_Taylor@aml.senate.gov
brian_reardon@rpc.senate.gov

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File attachment <P_0ZU08003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0ZU08003_WHO.TXT_2>

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide for procedures for civil actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2600

To ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

On page 29, strike line 1 and all that follows through page 30, line 17, and insert the following:

SEC. 10. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of or resulting from an act of terrorism, which shall be the exclusive cause of action and remedy for such claims, except as provided in subsection (f).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for claims arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (f).

(b) GOVERNING LAW.—The substantive law for decision in an action described in subsection (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined under paragraph (1), is inconsistent with or otherwise preempted by Federal law.

(c) FEDERAL JURISDICTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 90 days after the date of the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall assign a single Federal district court to conduct pretrial and trial proceedings in all pending and future

civil actions for claims arising out of or resulting from that act of terrorism.

(2) SELECTION CRITERIA.—The Judicial Panel on Multidistrict Litigation shall select and assign the district court under paragraph (1) based on the convenience of the parties and the just and efficient conduct of the proceedings.

(3) JURISDICTION.—The district court assigned by the Judicial Panel on Multidistrict Litigation shall have original and exclusive jurisdiction over all actions under paragraph (1). For purposes of personal jurisdiction, the district court assigned by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(4) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a Federal district court other than the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1) shall be transferred to the Federal district court so assigned.

(5) REMOVAL OF CASES FILED IN STATE COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in

a State court shall be removable to the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1).

(d) APPROVAL OF SETTLEMENTS.—Any settlement between the parties of a civil action described in this section for claims arising out of or resulting from an act of terrorism shall be subject to prior approval by the Secretary after consultation by the Secretary with the Attorney General.

(e) LIMITATION ON DAMAGES.—

(1) IN GENERAL.—Punitive or exemplary damages shall not be available for any losses in any action described in subsection (a)(1), including any settlement described in subsection (d), except where—

(A) punitive or exemplary damages are permitted by applicable State law; and

(B) the harm to the plaintiff was caused by a criminal act or course of conduct for which the defendant was convicted under Federal or State criminal law, including a conviction based on a guilty pea or plea of nolo contendere.

(2) PROTECTION OF TAXPAYER FUNDS.—Any amounts awarded in, or granted in settlement of, an action described in subsection (a)(1) that are attrib-

utable to punitive or exemplary damages allowable under paragraph (1) of this subsection shall not count as insured losses for purposes of this Act.

(f) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(g) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including any applicable extension period.

Terrorism Reinsurance Litigation Provisions

Major Concepts of proposed liability provisions for underlying bill

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- **Jurisdiction and Venue**
  - Federal court jurisdiction for claims arising out of an act of terrorism.
  - Preemption of state causes of action.
  - Consolidation of cases in a federal district court designated by the Judicial Panel on Multidistrict Litigation/removal to federal court; removal of cases filed in state court.
- **Settlements** – Must be approved by the Secretary of Treasury after consultation with the Attorney General.
- **Punitive damages**
  - No punitive damages against the United States Treasury.
  - To the extent punitive damages are permitted by applicable State law, punitive damages may be recovered against a defendant in a civil action involving an act of terrorism only if the harm to the plaintiff arose out of a criminal act or course of conduct for which the defendant was convicted under Federal or State criminal law, including a conviction based on a guilty plea or plea of nolo contendere.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Charlotte L. Montiel/WHO/EOP@EOP [WHO] <Charlotte L. Montiel>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 6/13/2002 8:07:43 AM
Subject: :

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-JUN-2002 12:07:43.00
SUBJECT::
TO:Charlotte L. Montiel ( CN=Charlotte L. Montiel/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

fyi that I am out until 2:00 pm. Available on cell and blackberry.
```

From: CN=Lauren C. Lobrano/OU=OMB/O=EOP [OMB]
To: Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Kirk Blalock/WHO /EOP@EOP [WHO] <Kirk Blalock>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Sheila.Bair@do.treas.gov @ inet [UNKNOWN] <Sheila.Bair@do.treas.gov @ inet>;Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;Matthew Kirk/WHO /EOP@EOP [WHO] <Matthew Kirk>;Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>
Sent: 6/13/2002 9:04:07 AM
Subject: : SAP Release - S. 2600 - Terrorism Risk Insurance Act
Attachments: P_MYG18003_OPD.TXT_1

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CREATOR:Lauren C. Lobrano ( CN=Lauren C. Lobrano/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:13-JUN-2002 13:04:07.00
SUBJECT:: SAP Release - S. 2600 - Terrorism Risk Insurance Act
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Sheila.Bair@do.treas.gov @ inet ( Sheila.Bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Leslie A. Mooney ( CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Stephen S. McMillin ( CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [ OMB ] )
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ATT CREATION TIME/DATE: 0 00:00:00.00
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 13, 2002
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 2600 - Terrorism Risk Insurance Act of 2002

(Sen. Dodd (D) Connecticut and 4 cosponsors)

The Administration strongly supports the creation of a terrorism risk insurance program that will help provide much needed stability to our economy. The backstop insurance program that would be established by S. 2600 is an effective mechanism for ensuring the continued availability of insurance for terrorist-related acts. The program would aid the economy by ensuring that businesses and properties are able to spread risk efficiently by providing access to a well-functioning private insurance market. Increased availability of insurance would help many sectors of the economy. For example, it would facilitate the financing of new construction and avoid the risk of further ratings downgrades of securities that are collateralized by inadequately insured properties. It would also put in place a system for processing claims and establishing the scope of the Federal government's obligation in the payment of losses in the event of another attack, which would help mitigate adverse economic consequences resulting from a future attack.

However, the Administration cannot support enactment of any terrorism insurance bill that leaves the Nation's economy and victims of terrorist acts subject to predatory lawsuits and punitive damages. Any bill must, at a minimum, contain provisions for an exclusive Federal cause of action and a consolidation of all cases arising out of a terrorist event, and exclude punitive damages in such mass tort terrorism cases (except against a terrorist or aider or abettor). These reasonable litigation procedures, as included in the November 1st bipartisan agreement among Chairmen Sarbanes and Dodd and Senators Gramm and Enzi, are an essential element of any terrorism insurance bill. For many companies facing rising insurance, a significant part of the increased costs results from the risk of litigation, which introduces a significant degree of uncertainty to insurers' assessments of potential losses from a terrorist attack. Sensible litigation procedures will also ensure an orderly process that will help resolve claims more expeditiously and preserve the limited pool of defendant resources for claims by a potentially large number of injured parties, thereby benefitting plaintiffs and defendants alike.

Section 6(h) of S. 2600 relating to Comptroller General access to information would be construed in a manner consistent with constitutional provisions relating to the separation of powers. Section 10 of S. 2600 does not, and should not, affect existing U.S. law regarding the immunities of foreign sovereigns.

* * * * * *

From: Rachel_L._Brand@who.eop.gov [UNKNOWN]
To: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 6/13/2002 1:08:08 PM
Subject: : Eric Jaso

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel_L._Brand@who.eop.gov ( Rachel_L._Brand@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:13-JUN-2002 17:08:08.00
SUBJECT:: Eric Jaso
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

anybody know him?
```

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: Kyle Sampson (Kyle Sampson/WHO/EOP [WHO])
Sent: 6/13/2002 9:37:27 AM
Subject: : Sen. Leahy

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-JUN-2002 13:37:27.00
SUBJECT:: Sen. Leahy
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

At the SJC markup today, Sen. Leahy made the following statements:

Noted at the beginning that there were more Dem Senators present than GOP
Senators; commented on the irony that more Dem Senators there than GOP
Senators to help get President's nominees moved to the floor.
Said that after today's hearing, SJC will have given hearings to 75
judicial nominees in 11 months -- an all-time record he claimed.
Said that he has a publicly-listed phone number in case anyone from the
White House ever wants to talk to him about judicial confirmations.

Also, Godbey cleared by voice vote -- so no negative votes were recorded.
```

From: Sheila.Bair@do.treas.gov [UNKNOWN]

To: roberta.mcinerney@do.treas.gov [UNKNOWN] <roberta.mcinerney@do.treas.gov>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;pat.cave@do.treas.gov [UNKNOWN] <pat.cave@do.treas.gov>;mark.warshawsky@do.treas.gov [UNKNOWN] <mark.warshawsky@do.treas.gov>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;kent.smetters@do.treas.gov [UNKNOWN] <kent.smetters@do.treas.gov>;Jeffrey R. Brown/CEA/EOP@EOP [CEA] <Jeffrey R. Brown>;Martha.Ellett@do.treas.gov [UNKNOWN] <Martha.Ellett@do.treas.gov>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;richard.clarida@do.treas.gov [UNKNOWN] <richard.clarida@do.treas.gov>;peter.fisher@do.treas.gov [UNKNOWN] <peter.fisher@do.treas.gov>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;mario.ugoletti@do.treas.gov [UNKNOWN] <mario.ugoletti@do.treas.gov>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;john.duncan@do.treas.gov [UNKNOWN] <john.duncan@do.treas.gov>;gerry.hughes@do.treas.gov [UNKNOWN] <gerry.hughes@do.treas.gov>;edward.demarco@do.treas.gov [UNKNOWN] <edward.demarco@do.treas.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>

Sent: 6/13/2002 11:45:12 AM

Subject: : FW: NAIC/Terrorism Insurance

Attachments: P_0TP18003_OPD.TXT_1.doc; P_0TP18003_OPD.TXT_2.doc

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CREATOR:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:13-JUN-2002 15:45:12.00
SUBJECT:: FW: NAIC/Terrorism Insurance
TO:roberta.mcinerney@do.treas.gov ( roberta.mcinerney@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:pat.cave@do.treas.gov ( pat.cave@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:mark.warshawsky@do.treas.gov ( mark.warshawsky@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:kent.smetters@do.treas.gov ( kent.smetters@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Jeffrey R. Brown ( CN=Jeffrey R. Brown/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Martha.Ellett@do.treas.gov ( Martha.Ellett@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:richard.clarida@do.treas.gov ( richard.clarida@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:mario.ugoletti@do.treas.gov ( mario.ugoletti@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:john.duncan@do.treas.gov ( john.duncan@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:gerry.hughes@do.treas.gov ( gerry.hughes@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:edward.demarco@do.treas.gov ( edward.demarco@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

FYI. NAIC letters supporting legislation and expressing concerns about the Nelson amendment.

I assume we opposed Nelson. Treasury never received the text of the amendment. I have asked our legislative affairs operation to assist in tracking down possible amendments and getting us text. Matt -- I'm sure you
will welcome the help!

Sheila

- Daschle.Senate Debate.June 13.doc - Dodd.Nelson Amdt.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0TP18003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0TP18003_OPD.TXT_2>

NAIC

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

June 13, 2002

EXECUTIVE HEADQUARTERS

2301 McGee Street
Suite 800
Kansas City MO
64108-2604
voice 816-842-3600
fax 816-783-8175

FEDERAL AND INTERNATIONAL RELATIONS

Hall of the States
444 North Capitol St NW
Suite 701
Washington DC
20001-1512
voice 202-624-7790
fax 202-624-8579

SECURITIES VALUATION OFFICE

7 World Trade Center
19th Floor
New York NY
10048-1102
voice 212-285-0010
fax 212-285-0073

WORLD WIDE WEB

www.naic.org

The Honorable Tom Daschle
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Trent Lott
Minority Leader
United States Senate
Washington, DC 20510

Dear Leaders Daschle and Lott:

On behalf of the Nation's insurance regulators, I strongly urge the Senate to quickly pass legislation that will make terrorism insurance affordable and available to all American consumers and businesses. Since the attacks of September 11th, the state insurance commissioners and the NAIC have worked diligently to monitor the health and solvency of the insurance marketplace, instill confidence in our insurance institutions, and calm the concerns of the insurance buying public.

As we have indicated to you previously, much has transpired since September 11th to renew our confidence in the insurance markets. Regulators continue to believe that over time, the markets will be able to further adjust to the new realities of terrorism risk. To date, however, reinsurance is not readily available. Where it is available it is not always affordable.

We are seeing lingering problems in the marketplace that hold consequences for all insurance consumers. For the sake of company solvency, state regulators are providing exclusions in certain lines of commercial property and casualty insurance to mitigate insurer exposure to potentially unmanageable financial risks. The net effect of these exclusions is to shift the immediate financial burden from insurers to policyholders, large and small companies alike.

Without effective action by Congress, we foresee a continued period of market uncertainty the consequences of which will ~~impact insurance~~impact insurance consumers nationwide with workers' compensation being a prime concern. For instance, we are seeing a fundamental shift in insurance industry underwriting practices to limit risk exposure. Some insurers are non-renewing coverage for workers' compensation and other lines of commercial property/casualty insurance products essential to our nation's workforce and the smooth operation of our economy. These actions hold real consequences for the insurance buying public, even in communities untouched by terrorist attacks.

For these reasons, we continue to strongly believe federal terrorism insurance legislation is immediately needed. A narrowly tailored and time-limited federal law can bring certainty to the market and calm consumer fears. Please let us know if we can assist your work in any way.

Sincerely,

Terri Vaughan
Commissioner of Insurance, Iowa
President, NAIC

NAIC

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

EXECUTIVE HEADQUARTERS

2301 McGee Street
Suite 800
Kansas City MO
64108-2604
voice 816-842-3600
fax 816-783-8175

FEDERAL AND INTERNATIONAL RELATIONS

Hall of the States
444 North Capitol St NW
Suite 701
Washington DC
20001-1512
voice 202-624-7790
fax 202-624-8579

SECURITIES VALUATION OFFICE

7 World Trade Center
19th Floor
New York NY
10048-1102
voice 212-285-0010
fax 212-285-0073

WORLD WIDE WEB

www.naic.org

June 13, 2002

The Honorable Chris Dodd
US Senate
Washington, DC 20510

Dear Senator Dodd:

I am writing to respond to your request regarding the amendment offered by Senator Nelson of Florida regarding terrorism insurance rates.

While the National Association of Insurance Commissioners (NAIC) has not taken a formal position on the Nelson proposal, I do believe state regulators would have the following concerns:

- To our knowledge, the Treasury Department does not have the infrastructure needed to monitor insurance rates as the amendment proposes. -Putting such a monitoring mechanism in place could be cost prohibitive particularly when the underlying federal legislation is short-term in nature;
- The provisions on refunds of premiums would be very difficult to enforce. Given the uncertainty of risk and the lack of pricing experience, the revised rates could be attributable to a host of other factors related to past or prospective loss cost (the cost of reinsurance, or poor return on investments in recent months), not the potential or historical acts of terrorism, but rather to past and prospective loss costs;
- The separate accounting could cause reporting difficulties and added expense for insurers, insurance regulators, and presumably the Treasury Department. The marginal benefits and costs associated with collecting the information could outweigh the benefits that could be derived from the information. For instance, Section (b) requires a separate account for the "premium increases" and it cannot be used for anything but to pay for terrorism losses. There is no discussion about what happens to the funds after the law sunsets.
- At this time, state regulators already have the ability to address this issue, making additional federal oversight unnecessary.

I hope this responds to your concerns.

Sincerely,

Terri Vaughan
Commissioner of Insurance, Iowa
President, NAIC

REV_00147037

From: CN=Kimberly A. Douglass/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/13/2002 1:07:32 PM
Subject: : trip summaries

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kimberly A. Douglass ( CN=Kimberly A. Douglass/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:13-JUN-2002 17:07:32.00
SUBJECT:: trip summaries
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Do you have one of my purple folders with POTUS trip summaries? If so,
any chance I might be able to get that back soon. I goofed and told Jim
Daniel that they had those two summaries and now I have to make good on my
claim. Thanks!
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/13/2002 6:27:59 PM
Subject: :

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-JUN-2002 22:27:59.00
SUBJECT::
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No Burton Committee action on PRA/Horn bill next week.

---------- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/13/2002 10:27 PM ----------

Kirsten A. Chadwick
06/13/2002 06:25:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: presidential records not coming up next week because of homeland

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: GaryM Stern <garym.stern@nara.gov>
CC: jason baron <jason.baron@nara.gov>;craig.blackwell@usdoj.gov [UNKNOWN] <craig.blackwell@usdoj.gov>
Sent: 6/13/2002 3:10:57 PM
Subject: : Re: Bush VP

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-JUN-2002 19:10:57.00
SUBJECT:: Re: Bush VP
TO:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
READ:UNKNOWN
CC:jason baron <jason.baron@nara.gov> (jason baron <jason.baron@nara.gov> [UNKNOWN])
READ:UNKNOWN
CC:craig.blackwell@usdoj.gov (craig.blackwell@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I have talked to Craig. We intend to send a letter tomorrow to you indicating approval to release all of the Bush VP records that we have been provided except for the 40 pages that concern appointments. I'll be in touch with Jason tomorrow. We would prefer no NARA press release tomorrow. Thanks.

GaryM Stern <garym.stern@nara.gov>
06/13/2002 06:05:41 PM
Record Type: Record

To: Craig.Blackwell@usdoj.gov, Brett M. Kavanaugh/WHO/EOP@EOP
cc: Jason Baron <jason.baron@nara.gov>, Nancy Smith <nancy.smith@nara.gov>
Subject: Bush VP

Brett, once again, if you do decide to open the Bush VP stuff tomorrow, please let Jason and/or Nancy know. We have a revised media announcement ready, in the event that you plan to make a media announcement about it. If you don't plan to do so, then we would be inclined not to either, but then could send Scott Nelson a letter informing him about this in a way that answers all of his other questions as well. Thanks.

From:	CN=Karen N. Blank/OU=OMB/O=EOP [OMB]
To:	velma.taylor@usdoj.gov [UNKNOWN] <velma.taylor@usdoj.gov>;Edward H. Chase/OMB /EOP@EOP [OMB] <Edward H. Chase>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;Webster.P.Phillips@ssa.gov @ inet [UNKNOWN] <Webster.P.Phillips@ssa.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew J. Schneider/OMB/EOP@EOP [OMB] <Matthew J. Schneider>;Diana L. Meredith/OMB/EOP@EOP [OMB] <Diana L. Meredith>
CC:	Ingrid M. Schroeder/OMB/EOP [OMB] <Ingrid M. Schroeder>;Danielle M. Simonetta/OMB /EOP@EOP [OMB] <Danielle M. Simonetta>;William.Daly@ssa.gov [UNKNOWN] <William.Daly@ssa.gov>;Jennifer Hanson-Kilbride/OMB/EOP@EOP [OMB] <Jennifer Hanson-Kilbride>;Lauren C. Lobrano/OMB/EOP@EOP [OMB] <Lauren C. Lobrano>;Kenneth.E.Mannella@ssa.gov [UNKNOWN] <Kenneth.E.Mannella@ssa.gov>;R. Varisa Patraporn/OMB/EOP@EOP [OMB] <R. Varisa Patraporn>;Jack A. Smalligan/OMB /EOP@EOP [OMB] <Jack A. Smalligan>
Sent:	6/14/2002 6:51:15 AM
Subject:	: HR 4070 -- House floor action scheduled for Tuesday (6/18) -- guidance requested on whether to send SAP
Attachments:	P_DHC28003_WHO.TXT_1.pdf; P_DHC28003_WHO.TXT_2.doc; P_DHC28003_WHO.TXT_3.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Karen N. Blank ( CN=Karen N. Blank/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:14-JUN-2002 10:51:15.00
SUBJECT:: HR 4070 -- House floor action scheduled for Tuesday (6/18) -- guidance requested
on whether to send SAP
TO:velma.taylor@usdoj.gov ( velma.taylor@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Edward H. Chase ( CN=Edward H. Chase/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Charles P. Blahous ( CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Webster.P.Phillips@ssa.gov @ inet ( Webster.P.Phillips@ssa.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew J. Schneider ( CN=Matthew J. Schneider/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Diana L. Meredith ( CN=Diana L. Meredith/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Ingrid M. Schroeder ( CN=Ingrid M. Schroeder/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
CC:Danielle M. Simonetta ( CN=Danielle M. Simonetta/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:William.Daly@ssa.gov ( William.Daly@ssa.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:Jennifer Hanson-Kilbride ( CN=Jennifer Hanson-Kilbride/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Lauren C. Lobrano ( CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Kenneth.E.Mannella@ssa.gov ( Kenneth.E.Mannella@ssa.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:R. Varisa Patraporn ( CN=R. Varisa Patraporn/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
###### End Original ARMS Header ######

HR 4070, the "Social Security Program Protection Act of 2002" (Shaw), is
expected to be considered on Tuesday under suspension of the rules.

By 1:30 pm today, please provide your recommendation regarding whether or
not a SAP should be sent. Thank you.
```

Note: Although general support for the bill -- a Shaw amendment in the nature of a substitute to HR 4070 approved by the W&M s/c on Social Security on April 25 (attached) -- has been expressed, concerns were raised regarding: (1) section 201 (civil money penalty authority for knowing withholding of material facts); (2) section 206 (penalty for corrupt or forcible interference with administration of the Social Security Act); and (3) section 301 (cap on attorney assessments).

- SSPPA_SUB.PDF
(bill text - amendment in the nature of a substitute)

- hr4070.greensheet.doc
(summary of substantive changes reflected in the amendment in the nature of a substitute)

- hr4070.compiletechnical edits.doc
(technical edits reflected in the amendment in the nature of a substitute)
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File attachment <P_DHC28003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DHC28003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DHC28003_WHO.TXT_3>

[SUBCOMMITTEE PRINT]

APRIL 24, 2002

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4070 OFFERED BY MR. SHAW

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Social Security Program Protection Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

Sec. 101. Authority to reissue benefits misused by organizational representative payees.
Sec. 102. Oversight of representative payees.
Sec. 103. Disqualification from service as representative payee upon conviction of offenses resulting in imprisonment for more than 1 year and upon fugitive felon status.
Sec. 104. Fee forfeiture in case of benefit misuse by representative payees.
Sec. 105. Liability of representative payees for misused benefits.
Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.

Subtitle B—Enforcement

Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees.

TITLE II—PROGRAM PROTECTIONS

Sec. 201. Civil monetary penalty authority with respect to knowing withholding of material facts.

Sec. 202. Denial of title II benefits to fugitive felons and persons fleeing prosecution.
Sec. 203. Requirements relating to offers to provide for a fee a product or service available without charge from the Social Security Administration.
Sec. 204. Refusal to recognize certain individuals as claimant representatives.
Sec. 205. Penalty for corrupt or forcible interference with administration of Social Security Act.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

Sec. 301. Cap on attorney assessments.
Sec. 302. Extension of attorney fee payment system to title XVI claims.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

Sec. 401. Application of demonstration authority sunset date to new projects.
Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings.
Sec. 403. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings.
Sec. 404. Availability of Federal and State work incentive services to additional individuals.
Sec. 405. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program.

Subtitle B—Miscellaneous Amendments

Sec. 411. Elimination of transcript requirement in remand cases fully favorable to the claimant.
Sec. 412. Nonpayment of benefits upon removal from the United States.
Sec. 413. Reinstatement of certain reporting requirements.
Sec. 414. Use of symbols, emblems, or names in reference to social security or medicare.
Sec. 415. Clarification of definitions regarding certain survivor benefits.
Sec. 416. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner.

Subtitle C—Technical Amendments

Sec. 431. Technical correction relating to responsible agency head.
Sec. 432. Technical correction relating to retirement benefits of ministers.
Sec. 433. Technical corrections relating to domestic employment.
Sec. 434. Technical corrections of outdated references.
Sec. 435. Technical correction respecting self-employment income in community property States.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following new sentences: ''In any case in which a representative payee—

''(i) that is not an individual (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)); or

''(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following new paragraph:

"(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this paragraph.".

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended by inserting after the first sentence the following new sentences: "In any case in which a representative payee—

"(A) that is not an individual; or

"(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2).".

(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following new subsection:

"(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this subsection.".

(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking "for his or her benefit" and inserting "for his or her use and benefit".

(c) TITLE XVI AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following new sentences: "In any case in which a representative payee—

"(i) that is not an individual (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)); or

"(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's alternative representative payee of an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).".

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking "and" at the end;

(B) in paragraph (13), by striking the period and inserting "; and"; and

(C) by inserting after paragraph (13) the following new paragraph:

"(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.".

(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following new clause:

"(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation

the meaning of the term 'use and benefit' for purposes of this clause.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.—

(1) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in paragraph (9))'';

(B) in paragraph (3)(F), by striking ''community-based nonprofit social service agencies'' and inserting ''certified community-based nonprofit social service agencies (as defined in paragraph (9))'';

(C) in paragraph (4)(B), by striking "any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee" and inserting "any certified community-based nonprofit social service agency (as defined in paragraph (9))"; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following new paragraph:

"(9) For purposes of this subsection, the term 'certified community-based nonprofit social service agency' means a community based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in such State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on such agency which may have been performed since the previous certification."

(2) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'';

(B) in subparagraph (D)(ii)—

(i) by striking ''or any community-based'' and all that follows through ''in accordance'' in subclause (II) and inserting ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'';

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margination accordingly); and

(iii) by striking ''subclause (II)(bb)'' and inserting ''subclause (II)''; and

(C) by adding at the end the following new subparagraph:

"(I) For purposes of this paragraph, the term 'certified community-based nonprofit social service agency' means a community based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(b) PERIODIC ONSITE REVIEW.—

(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

"(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for

the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

"(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

"(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

"(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

"(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fis-

cal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

"(i) the number of such reviews,

"(ii) the results of such reviews,

"(iii) the number of cases in which the representative payee was changed and why,

"(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity,

"(v) the number of cases discovered in which there was a misuse of funds,

"(vi) how any such cases of misuse of funds were dealt with by the Commissioner,

"(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed, and

"(viii) such other information as the Commissioner deems appropriate.".

(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this

Act) is amended further by adding at the end the following new subsection:

"(k)(1) PERIODIC ONSITE REVIEW.—In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

"(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

"(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

"(2) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year

in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

"(A) the number of such reviews,

"(B) the results of such reviews,

"(C) the number of cases in which the representative payee was changed and why,

"(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity,

"(E) the number of cases discovered in which there was a misuse of funds,

"(F) how any such cases of misuse of funds were dealt with by the Commissioner,

"(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed, and

"(H) such other information as the Commissioner deems appropriate.".

(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42

U.S.C. 1383(a)(2)(G)) is amended to read as follows:

"(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

"(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

"(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

"(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

"(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on

Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

"(I) the number of the reviews,

"(II) the results of such reviews,

"(III) the number of cases in which the representative payee was changed and why,

"(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity,

"(V) the number of cases discovered in which there was a misuse of funds,

"(VI) how any such cases of misuse of funds were dealt with by the Commissioner,

"(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed, and

"(VIII) such other information as the Commissioner deems appropriate.".

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE UPON CONVICTION OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR AND UPON FUGITIVE FELON STATUS.

(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking "and" at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

"(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

"(V) obtain information concerning whether such person is a fugitive felon as described in section 1611(e)(4), and".

(2) in subparagraph (C)(i)(II), by striking ''subparagraph (B)(i)(IV),,'' and inserting ''subparagraph (B)(i)(VI)'' and striking ''section 1631(a)(2)(B)(ii)(IV)'' and inserting ''section 1631(a)(2)(B)(ii)(VI)''; and

(3) in subparagraph (C)(i)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following new subclauses:

''(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

''(V) such person is in fugitive felon status as described in section 1611(e)(4).''.

(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking ''and'' at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following new subparagraphs:

"(D) obtain information concerning whether such person has been convicted of any other offense under a law of the United States or of any State of the United States which resulted in imprisonment for more than 1 year;

"(E) obtain information concerning whether such person is a fugitive felon as described in section 1611(e)(4); and"; and

(2) in subsection (d)(1)—

(A) by striking "or" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

"(E) such person is in fugitive felon status as described in section 1611(e)(4).".

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

(A) by striking "and" at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

"(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

"(V) obtain information concerning whether such person is a fugitive felon as described in section 1611(e)(4); and";

(2) in clause (iii)(II)—

(A) by striking "clause (ii)(IV)" and inserting "clause (ii)(VI)"; and

(B) by striking "section 205(j)(2)(B)(i)(IV)" and inserting "section 205(j)(2)(B)(i)(VI)"; and

(3) in clause (iii)—

(A) by striking "or" at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

(C) by adding at the end the following new subclauses:

"(IV) if the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

"(V) such person is in fugitive felon status as described in section 1611(e)(4).".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(e) REPORT TO THE CONGRESS.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by represent-

ative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Secretary'' and inserting the following:

''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit

for purposes of paragraphs (5) and (6). The Commissioner".

(b) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking "A" and inserting "Except as provided in the next sentence, a"; and

(2) in the second sentence, by striking "The Commissioner" and inserting the following: "A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner makes the determination of misuse after December 31, 2002.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102 of this Act) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking ''paragraph (9)'' and inserting ''paragraph (10)'';

(3) in paragraph (6)(A)(ii), by striking ''paragraph (9)'' and inserting ''paragraph (10)''; and

(4) by inserting after paragraph (6) the following new paragraph:

''(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of

such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

"(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) of this paragraph and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.".

(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following new subsection:

"(l) LIABILITY FOR MISUSED AMOUNTS.—

"(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this

title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

"(2) LIMITATION.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) of this subsection and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.".

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102 of this Act) is amended further—

(1) in subparagraph (G)(i)(II), by striking "section 205(j)(9)" and inserting "section 205(j)(10)"; and

(2) by striking subparagraph (H) and inserting the following:

"(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local gov-

ernment agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

"(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) of this subparagraph and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner makes the determination of misuse after December 31, 2002.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) TITLE II AMENDMENTS.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.".

(b) TITLE VIII AMENDMENTS.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.".

(c) TITLE XVI AMENDMENT.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following new clause:

"(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security

Administration serving the area in which the individual resides in order to receive such payments.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following new paragraph:

"(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not

more than twice the amount of any payments so converted.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the date of the enactment of this Act.

TITLE II—PROGRAM PROTECTIONS

SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO KNOWING WITHHOLDING OF MATERIAL FACTS.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' in the first sentence and inserting ''who—'';

(B) by striking ''makes'' in the first sentence and all that follows through ''shall be subject to'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI,

that the person knows or should know is false or misleading,

"(B) makes such a statement or representation for such use with knowing disregard for the truth,

"(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

"(D) conceals or fails to disclose the occurrence of any event that the person knows, or should know, is material to the determination of any initial or continuing right to the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI,

shall be subject to";

(C) by inserting "or each receipt of such benefits or payments while withholding disclosure of such fact" after "each such statement or representation" in the first sentence;

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation'' in the second sentence; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation'' in the second sentence.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—Section 1129A(a) of such Act (42 U.S.C. 1320a–8a(a)) is amended in the first sentence—

(A) by striking ''who'' and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to,'' and inserting the following:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI that the person knows or should know is false or misleading,

''(2) makes such a statement or representation for such use with knowing disregard for the truth,

"(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, or

"(4) conceals or fails to disclose the occurrence of any event that the person knows, or should know, is material to the determination of any initial or continuing right to the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI,

shall be subject to,".

(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking "In the case of amounts recovered arising out of a determination relating to title VIII or XVI," and inserting "In the case of any other amounts recovered under this section,".

(c) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the later of—

(1) 180 days after the date of the enactment of this Act, or

(2) the date on which the Commissioner of Social Security implements the system for issuing the receipts, or other written acknowledgements, required under subsection (e) of this section.

(e) ISSUANCE BY COMMISSIONER OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN EARNING OR WORK STATUS.—Effective 180 days after the date of the enactment of this Act, the Commissioner

of Social Security shall issue a receipt, or other written acknowledgement, to a beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in the beneficiary's earning or work status.

SEC. 202. DENIAL OF TITLE II BENEFITS TO FUGITIVE FELONS AND PERSONS FLEEING PROSECUTION.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking ''Prisoners'' and all that follows and inserting the following: ''Prisoners, Certain Other Inmates of Publicly Funded Institutions, and Fugitives'';

(2) in paragraph (1)(A)(ii)(IV), by striking ''or'' at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

''(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jer-

sey, is a high misdemeanor under the laws of such State, or

"(v) is violating a condition of probation or parole imposed under Federal or State law.

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv), the Commissioner may, for good cause shown, pay such withheld benefits to the individual."; and

(5) in paragraph (3), by adding at the end the following new subparagraph:

"(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

"(i) the beneficiary—

"(I) is described in clause (iv) or (v) of paragraph (1)(A); and

"(II) has information that is necessary for the officer to conduct the officer's official duties; and

"(ii) the location or apprehension of the beneficiary is within the officer's official duties.".

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Social Security shall promulgate regulations governing payment by the Commissioner, for good cause shown, of withheld benefits, pursuant to the last sentence of section 202(x)(1)(A) of the Social Security Act (as amended by subsection (a)).

SEC. 203. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

"(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the

Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

"(i) explains that the product or service is available free of charge from the Social Security Administration, and

"(ii) complies with standards prescribed by the Commissioner of Social Security respecting content of such notice and its placement, visibility, and legibility.

"(B) Subparagraph (A) shall not apply to any offer—

"(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

"(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI."; and

(2) in the heading, by striking "PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE" and inserting "PROHIBITIONS RELATING TO REFERENCES".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the stand-

ards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within one year after the date of the enactment of this Act.

SEC. 204. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: ''Notwithstanding the preceding sentences, the Commissioner (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitu-

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tion is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.''.

SEC. 205. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1134 the following new section:

''ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

''SEC. 1135. CORRUPT OR FORCIBLE INTERFERENCE.—whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the social security administration (including any State employee of a disability determination service or any other individual designated by the commissioner of social security) acting in an official capacity to carry out a duty under this act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this act, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be

fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term 'threats of force' means threats of harm to the officer or employee of the United States or to a member of the family of such an officer or employee.''.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended by inserting '', except that the maximum amount of the assessment may not exceed $100'' after ''subparagraph (B)''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act.

SEC. 302. EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.

(a) IN GENERAL.—Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) is amended—

(1) in the matter in subparagraph (A) preceding clause (i)—

(A) by striking "section 206(a)" and inserting "section 206";

(B) by striking "(other than paragraph (4) thereof)" and inserting "(other than subsections (a)(4) and (d) thereof); and

(C) by striking "paragraph (2) thereof" and inserting "such section";

(2) in subparagraph (A)(i), by striking "in subparagraphs (A)(ii)(I) and (C)(i)," and inserting "in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)", and by striking "and" at the end;

(3) by striking subparagraph (A)(ii) and inserting the following:

"(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase 'section 1631(a)(7)(A) or the requirements of due process of law' for the phrase 'subsection (g) or (h) of section 223';

"(iii) by substituting, in subsection (a)(2)(C)(i), the phrase 'under title II' for the phrase 'under title XVI';

"(iv) by substituting, in subsection (b)(1)(A), the phrase 'pay the amount of such fee' for the phrase 'certify the amount of such fee for payment' and by striking, in subsection (b)(1)(A), the phrase 'or certified for payment'; and

"(v) by substituting, in subsection (b)(1)(B)(ii), the phrase 'deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)' for the phrase 'determined before any applicable reduction under section 1127(a))'."; and

(4) by striking subparagraph (B) and inserting the following new subparagraphs:

"(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

"(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

"(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

"(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

"(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $100.

"(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

"(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

"(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or other-

wise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

"(v) Assessments on attorneys collected under this subparagraph shall be deposited in the Treasury in a separate fund created for this purpose.

"(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 1631(d)(2) of the Social Security Act on or after the first day of the first month that begins after 270 days after the date of the enactment of this Act.

(c) REPORT TO THE CONGRESS.—The Commissioner of Social Security, after consulting with representatives of affected beneficiaries and other interested persons, shall prepare a report evaluating the feasibility of extending to non-attorney representatives the fee withholding procedures that apply under titles II and XVI of the Social Security Act for the payment of attorney fees. The Commis-

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sioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act, and the Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking ''conducted under subsection (a)'' and inserting ''initiated under subsection (a) on or before December 17, 2004''; and

(2) in subsection (d)(2), by amending the first sentence to read as follows: ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2004.''.

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking ''(42 U.S.C. 401 et seq.),'' and inserting ''(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,''.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDED FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or title XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance

Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or title XVIII.''.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—the term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under sec-

tion 1616(a) of this Act or under section 212(b) of Public Law 93–66);

"(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

"(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

"(2) DISABLED BENEFICIARY.—the term 'disabled beneficiary' means an individual—

"(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

"(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section

212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

"(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

"(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.".

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking "secure or regain" and inserting "secure, maintain, or regain".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of the enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19) is amended by adding at the end, after and below subparagraph (E), the following new sentence:

"An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170; 113 Stat. 1921).

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) IN GENERAL.—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sen-

tence by striking "and a transcript" and inserting "and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 202(n) of the Social Security Act (42 U.S.C. 402(n)(1), (2)) are each amended by striking "or (1)(E)".

(b) EFFECTIVE DATE.—The amendment made by this section to section 202(n)(1) of the Social Security Act shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice from the Attorney General after the date of the enactment of this Act. The amendment made by this section to section 202(n)(2) of the Social Security Act shall apply with respect to removals occurring after the date of the enactment of this Act.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note)

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does not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting " 'Centers for Medicare & Medicaid Services'," after " 'Health Care Financing Administration',", by striking "or 'Medicaid', " and inserting " 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan'," and by inserting " 'CMS'," after " 'HCFA',";

(2) in subparagraph (B), by inserting "Centers for Medicare & Medicaid Services," after "Health Care Financing Administration," each place it appears; and

(3) in the matter following subparagraph (B), by striking "the Health Care Financing Administration," each place it appears and inserting "the Centers for Medicare & Medicaid Services,".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items sent after 180 days after the date of the enactment of this Act.

SEC. 415. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting "except as provided in paragraph (2)," before "she was married";

(4) by inserting "(1)" after "(c)"; and

(5) by adding at the end the following new paragraph:

"(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

"(A) the individual had been married prior to the individual's marriage to the surviving wife,

"(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

"(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

"(D) the prior wife continued to remain institutionalized up to the time of her death, and

"(E) the individual married the surviving wife within 60 days after prior wife's death.".

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''he was married'';

(4) by inserting ''(1)'' after ''(g)''; and

(5) by adding at the end the following new paragraph:

''(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving husband,

''(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

''(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of

the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

"(D) the prior husband continued to remain institutionalized up to the time of his death, and

"(E) the individual married the surviving husband within 60 days after prior husband's death.".

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking "clause (5) of subsection (c) or clause (5) of subsection (g)" and inserting "clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of the enactment of this Act.

SEC. 416. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking

"to taxes or contributions for similar purposes under" and inserting "exclusively to the laws applicable to".

Subtitle C—Technical Amendments

SEC. 431. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking "Secretary" the first place it appears and inserting "Commissioner of Social Security"; and

(2) by striking "Secretary" each subsequent place it appears and inserting "Commissioner".

SEC. 432. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting ", but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires" before the semicolon.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 433. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking ''described in subsection (g)(5)'' and inserting ''on a farm operated for profit''.

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking ''described in section 210(f)(5)'' and inserting ''on a farm operated for profit''.

(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking ''or is domestic service in a private home of the employer''.

SEC. 434. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF TERMINOLOGY AND CITATIONS RESPECTING REMOVAL FROM THE UNITED STATES.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by section 412) is amended further—

(1) by striking ''deportation'' each place it appears and inserting ''removal'';

(2) by striking ''deported'' each place it appears and inserting ''removed'';

(3) in paragraph (1) (in the matter preceding subparagraph (A)), by striking ''under section 241(a) (other than under paragraph (1)(C) thereof)'' and inserting ''under section 237(a) (other than paragraph (1)(C) thereof) or 212(a)(6)(A)'';

(4) in paragraph (2), by striking ''under any of the paragraphs of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) thereof)'' and inserting ''under any of the paragraphs of section 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) thereof) or under section 212(a)(6)(A) of such Act'';

(5) in paragraph (3)—

(A) by striking ''paragraph (19) of section 241(a)'' and inserting ''subparagraph (D) of section 237(a)(4)''; and

(B) by striking ''paragraph (19)'' and inserting ''subparagraph (D)''; and

(6) in the heading, by striking ''Deportation'' and inserting ''Removal''.

(b) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of such Act (42 U.S.C. 411(a)(15)) is amended by striking ''section 162(m)'' and inserting ''section 162(l)''.

(c) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking ''and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis''.

SEC. 435. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis

of their respective distributive share of the gross income and deductions;''.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and''.

Summary of Changes Reflected in
Shaw Amendment in the Nature of a Substitute to H.R. 4070
Social Security Program Protection Act of 2002
April 24, 2002

Title I, Protection of Beneficiaries

Section 103, Disqualification from Service as Representative Payee upon Conviction of Offenses Resulting in Imprisonment for more than 1 year and upon Fugitive Felon Status. Adds that the Commissioner, in consultation with the Inspector General, shall submit to Congress a report evaluating the procedures and reviews for the qualification (and disqualification) of representative payees. (page 22, line 19 through page 23, line 7)

Title II, Program Protections

Section 201, Civil Monetary Penalty Authority with respect to Knowing Withholding of Material Facts. Adds a requirement that the Commissioner provide a receipt or other written acknowledgement to a beneficiary when he or she reports a change in work or earnings status. (page 36, line 22 through page 37, line 5) Adds clarifying language that a civil monetary penalty may be assessed against a person for failing to disclose to the Commissioner information that is material to a determination of the initial or continuing eligibility or amount of benefits. (page 33, lines 15-20 and page 35, lines 11-16).

Section 202, Disqualification from Eligibility for Trial Work Period upon Criminal, Civil, or Administrative Funding of Fraudulent Concealment of Work Activity. Deleted.

Title III, Attorney Fee Payment System Improvements

Section 302, Extension of attorney fee payment system to title XVI claims. Clarifies that the reimbursement of States for their "interim assistance" precedes the withholding of attorney fees from the past-due benefits. (page 45, lines 11-25) Adds that the Commissioner shall prepare and submit to Congress a report on the feasibility of extending the fee withholding process to the fees of non-attorney representatives. (page 47, line 19 through page 48, line 6)

Section 303, Effective Date of Title. Deleted. The effective date for Section 301 is moved to Section 301(b) and remains at 180 days. The effective date for Section 302 is moved to Section 302(b) and has been changed from 180 to 270 days. (page 43, lines 14-19, and page 47, lines 13-18)

Title IV, Miscellaneous and Technical Amendments

Section 416, Optional Methods for Computing Net Earnings from Self-Employment. Deleted.

In addition, technical amendments are made to several sections of the bill.

Compilation of HR 4070 Subcommittee "Chairman's Mark" Technical Edits That are Not in Green Sheet

Section 101	Page 5	Made technical amendment in (b)(3).
Section 102	Pages 11 and 14 Pages 11-12 Pages 12-13 and 14-15	Added in (6)(A) and (k)(1) a reference to other reviews that the Commissioner may conduct. Limited Title II onsite reviews to payees "located in the United States". Expanded the congressional report to include other reviews that the Commissioner may conduct.
Section 105	Page 27	Made technical correction in (c)(1) to cross referenced paragraph (9).
Section 201	Pages 33 and 35	Made conforming amendment in (C) and (3) to refer to "person" rather than "individual" to reflect existing Section 1129/1129A references.
Section 202 (was Section 203 in HR 4070 as introduced)	Page 37 Page 38/39	Replaced "(iv)" with the parallel felony-reference language from the existing Title XVI provision – Section 1611(e)(4). Added requirement that Commissioner issue regulations on the "good cause" exception to the fugitive felon bar on Title II benefits.

Section 404	Page 52	Added a (b)(2) amendment that expands Ticket advocacy payments under Section 1150(b)(2) to include action to "maintain" employment as well as "secure" and "regain" it.
Section 413 (was Section 414 in HR 4070 as introduced)	Pages 54-55	Deleted the "(C)" report from 1996 Seniors Right to Work Act, because this report was not subject to the 1995 Reports Elimination and Sunset Act, and thus does not need to be reinstated.
Section 414 (was Section 415 in HR 4070 as introduced)	Page 56	Corrected effective date.
Section 415 (was Section 416 in HR 4070 as introduced)	Page 59	Added "(c)" that is a conforming amendment.
Section 434(a)(5)	Page 61/62	Deleted "or (1)(E)" to reflect Section 412

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: John F. Wood/OMB/EOP@EOP [OMB] <John F. Wood>
CC: kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;philip j. perry/omb/eop@eop [OMB] <philip j. perry>;christine c. mccarlie/omb/eop@eop [OMB] <christine c. mccarlie>;heather wingate/who/eop@eop [WHO] <heather wingate>
Sent: 6/14/2002 5:29:21 AM
Subject: : Re: Compensation for Victims of International Terrorism

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-JUN-2002 09:29:21.00
SUBJECT:: Re: Compensation for Victims of International Terrorism
TO:John F. Wood (CN=John F. Wood/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:kristen silverberg (CN=kristen silverberg/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:philip j. perry (CN=philip j. perry/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:christine c. mccarlie (CN=christine c. mccarlie/OU=omb/O=eop@eop [OMB])
READ:UNKNOWN
CC:heather wingate (CN=heather wingate/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

yes, it is very important to keep in mind that there are 2 separate issues here (even though we discuss them together). The first issue is the proper program for compensating victims of terrorism (i.e., PSOB model or 9/11 model). The second issue is whether frozen assets should be available to satisfy judgments received by plaintiffs in cases against foreign states/entities.

John F. Wood
06/14/2002 09:26:08 AM
Record Type: Record

To: Heather Wingate/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, christine c. mccarlie/omb/eop@eop, kristen silverberg/who/eop@eop, philip j. perry/omb/eop@eop
bcc:
Subject: Re: Compensation for Victims of International Terrorism

Is the Allen amendment the same as the Harkin-Allen bill (S. 2134)? That proposal (at least as originally introduced) involved frozen assets and did not involve use of taxpayer funds to compensate victims.

Heather Wingate
06/14/2002 08:15:54 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, christine c.
mccarlie/omb/eop@eop
cc: Kristen Silverberg/WHO/EOP@EOP, John F. Wood/OMB/EOP@EOP,
Philip J. Perry/OMB/EOP@EOP
Subject: Re: Compensation for Victims of International Terrorism

It's going to pass in the sen this morning on terrorism insur. Allen
offered as an amendment last night

.

----- Original Message -----
From:Brett M. Kavanaugh/WHO/EOP
To:christine c. mccarlie/omb/eop@eop,
Heather Wingate/WHO/EOP@EOP
Cc:Kristen Silverberg/WHO/EOP@EOP,
John F. Wood/OMB/EOP@EOP,
Philip J. Perry/OMB/EOP@EOP
Date: 06/13/2002 10:15:39 PM
Subject: Compensation for Victims of International Terrorism

Any news from Hill? What happened Thursday in Committee hearing?
Anything we should be doing with Repub/Dem staffs? Thx.

From: CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD]
To: anna.hart@do.treas.gov @ inet [UNKNOWN] <anna.hart@do.treas.gov @ inet>;Lisa D. Branch/CEA/EOP@EOP [CEA] <Lisa D. Branch>;Peter.Fisher@do.treas.gov @ inet [UNKNOWN] <Peter.Fisher@do.treas.gov @ inet>;Kirk Blalock/WHO/EOP@EOP [WHO] <Kirk Blalock>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Betty.Ann.Hunt@do.treas.gov @ inet [UNKNOWN] <Betty.Ann.Hunt@do.treas.gov @ inet>;Rebecca E. Davis/OMB/EOP@EOP [OMB] <Rebecca E. Davis>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Sheila.Bair@do.treas.gov @ inet [UNKNOWN] <Sheila.Bair@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>
Sent: 6/14/2002 9:36:00 AM
Subject: : NOW ON MONDAY 6/17 Terrorism Insurance Call

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Leslie A. Mooney ( CN=Leslie A. Mooney/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:14-JUN-2002 13:36:00.00
SUBJECT:: NOW ON MONDAY 6/17 Terrorism Insurance Call
TO:anna.hart@do.treas.gov @ inet ( anna.hart@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Lisa D. Branch ( CN=Lisa D. Branch/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Peter.Fisher@do.treas.gov @ inet ( Peter.Fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Augustine T. Smythe ( CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Betty.Ann.Hunt@do.treas.gov @ inet ( Betty.Ann.Hunt@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Rebecca E. Davis ( CN=Rebecca E. Davis/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Sheila.Bair@do.treas.gov @ inet ( Sheila.Bair@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

This call had to be moved to Monday the 17th. The call will still be at
6:00 with the same call-in info.

Marc will be briefing the President on Tuesday, so he would like the call
before he goes to the President.

Thanks,
Leslie

---------------------- Forwarded by Leslie A. Mooney/OPD/EOP on 06/14/2002
01:33 PM ---------------------------



Leslie A. Mooney
```

06/14/2002 01:01:29 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: 6/18 Terrorism Insurance Call

There will be a Terrorism Insurance call next Tuesday (6/18) at 6:00 pm.

Call-in # 456-2561
Pass code is 1229

Thanks,
Leslie

Message Sent
To:_____
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Randall S. Kroszner/CEA/EOP@EOP
Augustine T. Smythe/OMB/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kirk Blalock/WHO/EOP@EOP
Sheila.Bair@do.treas.gov @ inet
Peter.Fisher@do.treas.gov @ inet
Kristen Silverberg/WHO/EOP@EOP
Lisa D. Branch/CEA/EOP@EOP
Rebecca E. Davis/OMB/EOP@EOP
anna.hart@do.treas.gov @ inet
Betty.Ann.Hunt@do.treas.gov @ inet

From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/14/2002 8:02:56 AM
Subject: : Re: WHCA A/V Support During Mixed Purpose Trips

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:14-JUN-2002 12:02:56.00
SUBJECT:: Re: WHCA A/V Support During Mixed Purpose Trips
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Fyi.
---------------------- Forwarded by Adam F. Greenstone/OA/EOP on 06/14/2002 11:59 AM ----------------------------

Adam F. Greenstone
06/14/2002 11:59:20 AM

Record Type: Record

To: James F. Daniel/OA/EOP@EOP
cc: phillip larsen/oa/eop@eop, cathy alix/who/eop@eop
bcc: Records Management@EOP
Subject: Re: WHCA A/V Support During Mixed Purpose Trips

Respectfully, I need to non-concur on this one. WHCA personnel only discharge functions which are official, whether they are telecommunications functions, or non-telecommunications functions reimbursed under P.L. 104-201, Sec. 912(b) (10 U.S.C. 111, note), which provides:

(b) Other Support.--Support services other than telecommunications support services described in subsection (a) may be provided by the Department of Defense for the President through the White House Communications Agency on a reimbursable basis.

As far as I am aware, the only cost allocation for political activities that takes place is for officials and staff who are allowed under Federal law to engage in political activities at work. A subset of these individuals are people--including the President--who need to travel on Government airplanes for any purpose, whether official or personal, for Government reasons. Since WHMO (including WHCA) staff are not engaged in political activities in conjunction with their work, there is no need to seek reimbursement from the political party of the President to prevent the appearance that the political party is being inappropriately enriched by their discharge of their duties. This also applies to the Secret Service, as well as OA staff who may be assigned to provide official support during Presidential trips. I have confirmed this position with WHMO Counsel, who coordinated with counsel for OSD.

James F. Daniel
06/12/2002 12:07:07 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP

cc: Phillip Larsen/OA/EOP@EOP, Cathy Alix/WHO/EOP@EOP
Subject: WHCA A/V Support During Mixed Purpose Trips

Adam, what we really need is a legal ruling on this issue so we can act.
thanks, jim
---------- Forwarded by James F. Daniel/OA/EOP on 06/12/2002
12:03 PM ----------

Eric D. Lanman
06/12/2002 11:24:11 AM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc: James F. Daniel/OA/EOP@EOP
Subject: WHCA A/V Support During Mixed Purpose Trips

Adam,

WHCA non-telco folks support all Presidential travel including mixed trips. All of their travel expenses for these trips are fully reimbursed from the WHO appropriation. It is our opinion that their expenses should be treated like any others incurred by WHO staff and split per the trip summary between official and political. In other words, for a trip that was deemed 50 percent official and 50 percent political, we would seek RNC reimbursement for half of the WHCA non-telco travel expenses that were incurred.

Please reply whether you concur with this opinion.

Thanks,
Eric

From: Brett_M._Kavanaugh@who.eop.gov [UNKNOWN]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO /EOP@EOP [WHO] <Helgard C. Walker>
Sent: 6/17/2002 6:44:07 AM
Subject: : Re: Red Tags coming your way now

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett_M._Kavanaugh@who.eop.gov (Brett_M._Kavanaugh@who.eop.gov [UNKNOWN])
CREATION DATE/TIME:17-JUN-2002 10:44:07.00
SUBJECT:: Re: Red Tags coming your way now
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I was told (by Kristen S) that I should look at carpenters union
remarks
because they may discuss something related to insurance (or she and I may
propose adding). I would be happy to swap with Helgi or do both red tags
as the
fitness run deal will not take much time. Thanks.

Elizabeth N. Camp
06/17/2002 10:16:07 AM

Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Helgard C.
Walker/WHO/EOP@EOP,
Brett_M._Kavanaugh@who.eop.gov

cc:
Subject: Red Tags coming your way now

Chris - yours is due by 11am (taping/scripts)
Helgi - yours is due by 1pm (carpenters union)
Brett - yours is due by 1m (fitness run)

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2002 7:15:52 AM
Subject: : Re: Red Tags coming your way now

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JUN-2002 11:15:52.00
SUBJECT:: Re: Red Tags coming your way now
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

If you would like to take both that wld actuall be great, as I don't know whether I can make that 1pm deadline.

Hope you had fun in tx

.

From: Elwood, John <John.Elwood@usdoj.gov>
To: 'Kelly M. Klaus Esq. (E-mail)' <KlausKM@mto.com>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;'Estrada, Miguel A.' <MEstrada@gibsondunn.com>
Sent: 6/17/2002 9:29:27 AM
Subject: : RE: The Chief is a Great American

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Elwood, John" <John.Elwood@usdoj.gov> ( "Elwood, John" <John.Elwood@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME:17-JUN-2002 13:29:27.00
SUBJECT:: RE: The Chief is a Great American
TO:"'Kelly M. Klaus Esq. (E-mail)'" <KlausKM@mto.com> ( "'Kelly M. Klaus Esq. (E-mail)'"
<KlausKM@mto.com> [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:"'Estrada, Miguel A.'" <MEstrada@gibsondunn.com> ( "'Estrada, Miguel A.'"
<MEstrada@gibsondunn.com> [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

What a sensible man. It's remarkable than no one else joined the
opinion. If an expert advisory group had come up with the ordinance, at
least he would have gotten Breyer.

-----Original Message-----
From: Estrada, Miguel A. [mailto:MEstrada@gibsondunn.com]
Sent: Monday, June 17, 2002 11:15 AM
To: Elwood, John; Kelly M. Klaus Esq. (E-mail); Brett M. Kavanaugh Esq.
(E-mail)
Subject: The Chief is a Great American


<<00-1737.url>>


http://a257.g.akamaitech.net/7/257/2422/17jun20021100/www.supremecourtus.go
v
/opinions/01pdf/00-1737.pdf

================================================================================
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This message may contain confidential and privileged information. If it
has been sent to you in error, please reply to advise the sender of the
error and then immediately delete this message.
"PLEASE NOTE: Our e-mail and web site address has changed to
gibsondunn.com"

================================================================================
===
```

From: Allison_L._Riepenhoff@who.eop.gov [UNKNOWN]
To: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>
Sent: 6/17/2002 1:32:24 PM
Subject: : Re: Lieberman

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison_L._Riepenhoff@who.eop.gov ( Allison_L._Riepenhoff@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:17-JUN-2002 17:32:24.00
SUBJECT:: Re: Lieberman
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Noel is taking this one, and Kyle is taking the Brown file.




Allison L. Riepenhoff
06/17/2002 05:16:50 PM

Record Type: Record



To:

cc: See the distribution list at the bottom of this message
Subject: Re: Lieberman (Document link: Allison L. Riepenhoff)

Who can take Brown's file tomorrow at 5:15pm?

Message Copied
To:_____

rachel_l._brand@who.eop.gov @ inet
noel_j._francisco@who.eop.gov @ inet
kyle_sampson@who.eop.gov @ inet
brett_m._kavanaugh@who.eop.gov @ inet
bradford a. berenson/who/eop@eop
```

h._christopher_bartolomucci@who.eop.gov @ inet
jennifer g. newstead/who/eop@eop

From: CN=Randall S. Kroszner/OU=CEA/O=EOP [CEA]
To: D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;matthew kirk/who/eop@eop [WHO] <matthew kirk>;sheila.bair@do.treas.gov [UNKNOWN] <sheila.bair@do.treas.gov>;brian c. conklin/who/eop@eop [WHO] <brian c. conklin>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;peter.fisher@do.treas.gov [UNKNOWN] <peter.fisher@do.treas.gov>
Sent: 6/18/2002 6:38:02 AM
Subject: : Re: good news!

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP [ CEA ] )
CREATION DATE/TIME:18-JUN-2002 10:38:02.00
SUBJECT:: Re: good news!
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:matthew kirk ( CN=matthew kirk/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:sheila.bair@do.treas.gov ( sheila.bair@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:brian c. conklin ( CN=brian c. conklin/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Great!
```

```
D. Marcus Sumerlin
06/18/2002 10:36:07 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: good news!

Senate voted for cloture on terrorism insurance, even with Lott and
Nickles objecting. Great job to Matt who helped worked the vote.



Message Sent
To:_____
Peter.Fisher@do.treas.gov
Randall S. Kroszner/CEA/EOP@EOP
Sheila.Bair@do.treas.gov
Kristen Silverberg/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@EOP
Brian C. Conklin/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/18/2002 6:46:52 AM
Subject: : Article III Nomination Stats

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUN-2002 10:46:52.00
SUBJECT:: Article III Nomination Stats
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I have a call in to CRS to get numbers for Carter and Nixon...

ARTICLE III NOMINATIONS THROUGH AUGUST 31 OF SECOND YEAR OF FIRST TERM

CLINTON:

2 SUPREME
20 CIRCUIT
103____DISTRICT

125 TOTAL

BUSH (41):

1 SUPREME
22 CIRCUIT
1 CT. OF INT'L. TRADE
48 ____DISTRICT

72 TOTAL

REAGAN:

1 SUPREME
18 CIRCUIT
61_____DISTRICT

80 TOTAL

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;jennifer g. newstead/who /eop@eop [WHO] <jennifer g. newstead>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 6/18/2002 10:50:05 AM
Subject: : Re: Interesting Luttig v. Wilkinson statistical tidbit

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUN-2002 14:50:05.00
SUBJECT:: Re: Interesting Luttig v. Wilkinson statistical tidbit
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jennifer g. newstead (CN=jennifer g. newstead/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Of course, because CA4 is so closely divided, a case will rarely go en banc in the first place unless Luttig and Wilkinson are in agreement.

H. Christopher Bartolomucci
06/18/2002 02:12:15 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Interesting Luttig v. Wilkinson statistical tidbit

Wilkinson voted "for the conservative position" in 89% of the 27 en banc cases in which he participated prior to 1999. Tracey George, Court Fixing , 43 Ariz. L. Rev. 9 n.122 (2001). Judge Luttig so voted in 90% of his en banc cases. Id. See also Robert Brown, Neutral Assignment of Judges at the Court of Appeals, 78 Tex. L. Rev. 1037, 1111 (2000) ("In the thirty en banc cases examined . . . Judge Wilkinson and . . . Luttig . . . voted together on every case.").

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

Helgard C. Walker/WHO/EOP@EOP

From: CN=Kimberley S. Luczynski/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/18/2002 12:31:18 PM
Subject: : Nixon Presidential Materials; Reproduction final rule
Attachments: P_I0G58003_WHO.TXT_1.htm; P_I0G58003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kimberley S. Luczynski (CN=Kimberley S. Luczynski/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:18-JUN-2002 16:31:18.00
SUBJECT:: Nixon Presidential Materials; Reproduction final rule
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett --
Phil asked me to run this by you ... I understand that your office has already looked at this rule once, but in case you wanted another review prior to final, could you let me know if you have any issue with it? Feel free to call me with questions.
Thanks.
Kimberley
(x5-7870)
---------- Forwarded by Kimberley S. Luczynski/OMB/EOP on 06/18/2002 04:28 PM ----------

Jacqueline A. Zeiher
06/17/2002 12:57:38 PM
Record Type: Record

To: Kimberley S. Luczynski/OMB/EOP@EOP
cc:
Subject: Nixon Presidential Materials; Reproduction final rule

Hi Kim,

Dan Chenok has asked me to run this one by you one more time just to make sure that White House Council doesn't wish a last review. They reviewed once and it is ready for OIRA clearance as a final rule unless I hear otherwise from you. The RMO has also reviewed and ok'd. Thanks. Please call if you would like to discuss.

Jacke Zeiher
OIRA IPT
202-395-4638

---------- Forwarded by Jacqueline A. Zeiher/OMB/EOP on 06/17/2002 12:55 PM ----------

Nancy Allard <nancy.allard@nara.gov>
05/23/2002 03:44:38 PM
Record Type: Record

To: Jacqueline A. Zeiher/OMB/EOP@EOP
cc:
Subject: Nixon Presidential Materials; Reproduction final rule

Jacke,

We are faxing the attached signed final rule to the OIRA Docket Library this afternoon for OMB review under EO 12866. There were no comments received on the proposed rule and the final rule is unchanged. We would appreciate an expedited review if at all possible so that we can publish the rule before the cutoff of our CFR volume July 1. (Ideally, we'd like to publish by next Friday, but that is not realistic.)

Thanks

Nancy

- att1.htm
- Nixon Final Rule.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_I0G58003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_I0G58003_WHO.TXT_2>

Jacke,

We are faxing the attached signed final rule to the OIRA Docket Library this afternoon for OMB review under EO 12866. There were n o comments received on the proposed rule and the final rule is unchanged. W e would appreciate an expedited review if at all possible so that we can publish the rule before the cutoff of our CFR volume July 1. (Ideally, we'd like to publish by next Friday, but that is not realistic.)

Thanks

Nancy

BILLING CODE 7515-01U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095-AB07

Nixon Presidential Materials; Reproduction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising the regulations for obtaining copies of the Nixon White House tape recordings, which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. This final rule will apply to the public.

EFFECTIVE DATE: [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301-837-2902, or fax number 301-837-0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the March 15, 2002, **Federal Register** (67 FR 11632) for a 60-day comment period. NARA did not receive any comments. This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the

REV_00147265

Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275 – PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

2. Amend §1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in §1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

REV_00147266

3. Amend §1275.66 by revising paragraph (a) to read as follows:

§1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in §1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

4. Amend Appendix A to Part 1275 -- Settlement Agreement, by revising the introductory paragraph to read as follows:

APPENDIX A TO PART 1275 -- SETTLEMENT AGREEMENT

Settlement Agreement filed April 12, 1996, in Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92-0662-NHJ (D.D.C.) (Johnson, J.). By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: May 23, 2002

John W. Carlin,

Archivist of the United States.

REV_00147267

From:	CN=Edward McNally/OU=WHO/O=EOP [WHO]
To:	Tony.Coppolino@usdoj.gov @ inet [UNKNOWN] <Tony.Coppolino@usdoj.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;anne.weismann@usdoj.gov @ inet [UNKNOWN] <anne.weismann@usdoj.gov @ inet>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
CC:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;robert.j.delahunty@usdoj.gov [UNKNOWN] <robert.j.delahunty@usdoj.gov>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
BCC:	Magda E. Angulo (Magda E. Angulo/WHO/EOP [WHO])
Sent:	6/18/2002 8:52:18 PM
Subject:	: Draft MOU re: Protection of WHO docs/OMS Transition Office for DHS
Attachments:	P_LDR58003_WHO.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-JUN-2002 00:52:18.00
SUBJECT:: Draft MOU re: Protection of WHO docs/OMS Transition Office for DHS
TO:Tony.Coppolino@usdoj.gov @ inet ( Tony.Coppolino@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:anne.weismann@usdoj.gov @ inet ( anne.weismann@usdoj.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:robert.j.delahunty@usdoj.gov ( robert.j.delahunty@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
BCC:Magda E. Angulo ( CN=Magda E. Angulo/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Phil, Brett, David, Tony and Anne --
Attached for your review, comments, edits and suggestions is an initial
draft MOU designed to help in the segregation and protection of WHO
records to the extent they are reviewed by employees working in the OMB
office established by executive order for DHS transition planning. It is
modeled on a similar MOU utilized during the Reagan Administration between
the WHO and OA, which, like OMB, is susceptible to certain FOIA
disclosures. I would ask that you transmit any comments you have directly
to OHS Deputy Counsel Robert Delahunty at the above e-mail address.
Many thanks -- Ed

---------------------- Forwarded by Edward McNally/WHO/EOP on 06/19/2002
12:53 AM --------------------------



"Delahunty, Robert J" <Robert.J.Delahunty@usdoj.gov>
06/18/2002 04:34:35 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP
cc:
Subject: Revised draft of MOU
```

Ed: At tab is a slightly revised draft of the MOU sent earlier, with a few tweaks suggested by Paul Colborn. They are highlighted. Robert

- mou2.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LDR58003_WHO.TXT_1>

MEMORANDUM OF UNDERSTANDING:
White House Documents, Records, Files and Similar Materials
Made Available to the Office of Transition Planning
For the Department of Homeland Security

This Memorandum of Understanding sets forth restrictions governing the possession, custody, access, use, ownership and control of any documents, records, files and similar materials (including information contained therein) that the White House Office (WHO) makes available to the Office of Transition Planning for the Department of Homeland Security (OTP) in connection with OTP's discharge of its missions under Executive Order [--] (June 18, 2002).

Because of the sensitivity and confidentiality of the materials that WHO makes available to OTP, WHO intends to exercise control over the materials and over copies of the materials, including materials or copies temporarily maintained in OPT files. Accordingly, the following conditions shall be observed:

I. Ownership

It is understood that WHO is and shall remain the exclusive owner of all White House materials and copies of such materials and that OTP shall not exercise any proprietary interest in White House materials or in copies thereof that is inconsistent with this exclusive ownership.

II. White House Materials to be Labeled

All White House materials made available to OTP by WHO shall be labeled "White House Material: Sensitive and Confidential."

III. Restrictions on Availability to and within OTP

White House materials shall be made available to OTP only to the extent necessary to enable it to execute its missions under Executive Order [] and for no other purposes.

White House materials shall be made available only to OTP employees who have been designated in writing by the Director of OTP. [The Director may further restrict certain unusually sensitive White House materials, or categories of White House materials, to particular designated OTP employees.] OTP employees having White House materials in their custody shall promptly return them to their point of origin in the WHO when the materials are no longer needed and in active use for authorized OTP functions.

IV. Files

In no case may any White House materials made available to OTP by the WHO, or copies of such materials, be retained in the files of OTP, other than on a temporary basis.

V. Restrictions on Availability to Third Parties

OTP shall not, without the express [written] consent of [the Director of OTP/the WHO], permit any person other than authorized OTP personnel or WHO employees to have access to, or to obtain possession, custody, or use of, any White House material, or copies of such material, or any information contained within such material.

VI. Restrictions on Copying of White House Materials

Employees of OTP may not copy White House materials [except for the internal use of OTP] without the approval and direction of [the Director of OTP/the WHO].

VII. Requests for Copies of or Access to White House Materials

In any case in which OTP receives a request for a copy of or access to White House materials, OTP shall inform the requester that the materials are under the control of the WHO and that the requester should make a written request to the WHO, attention [name/title/address], setting forth the reason for the request. If the requester has relied on the Freedom of Information Aact in making the request, OTP shall inform the requester that the materials are ~~report is~~ not ~~an~~ agency records for purposes of that Act.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
Sent: 6/19/2002 10:40:37 AM
Subject: : Re: dude - what's up with this

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-JUN-2002 14:40:37.00
SUBJECT:: Re: dude - what's up with this
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It means "for the case." Just say "juveniles."

Anne Womack
06/19/2002 02:34:56 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: dude - what's up with this

? He specialized in consumer defense and representation of
juveniles ad litem.

little help for the non-lawyer croud, please...

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2002 11:04:24 AM
Subject: : Re:

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:19-JUN-2002 15:04:24.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Go afterwards!

.
```

From: CN=John F. Wood/OU=OMB/O=EOP [OMB]
To: Jonathan R. Scharfen/NSC/EOP@EOP [NSC] <Jonathan R. Scharfen>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/20/2002 10:18:54 AM
Subject: : victims comp

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John F. Wood (CN=John F. Wood/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:20-JUN-2002 14:18:54.00
SUBJECT:: victims comp
TO:Jonathan R. Scharfen (CN=Jonathan R. Scharfen/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by John F. Wood/OMB/EOP on 06/20/2002 02:18 PM ----------

Christine C. McCarlie
06/20/2002 12:16:38 PM
Record Type: Record

To: Philip J. Perry/OMB/EOP@EOP, John F. Wood/OMB/EOP@EOP, Nancy Dorn/OMB/EOP@EOP, Eric C. Pelletier/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: victims comp

both bills in Judiciary were postponed.... :)

Message Copied
To:
Augustine T. Smythe/OMB/EOP@EOP
Richard P. Emery Jr./OMB/EOP@EOP
Elizabeth L. Rossman/OMB/EOP
Eric C. Pelletier/OMB/EOP
Danielle M. Simonetta/OMB/EOP@EOP
John Oxford/OMB/EOP@EOP
Penny G. Douglas/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP

From:	CN=John B. Wiegmann/OU=NSC/O=EOP [NSC]
To:	Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC:	John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent:	6/20/2002 6:55:43 AM
Subject:	: Post Letter
Attachments:	P_F5A78003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:John B. Wiegmann (CN=John B. Wiegmann/OU=NSC/O=EOP [NSC])
CREATION DATE/TIME:20-JUN-2002 10:55:43.00
SUBJECT:: Post Letter
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

Attached below for your review/comment is a short draft letter to the Washington Post correcting the record about Dick Clarke's briefing to the 9/11 committee. A similar letter could be sent to the NY Times (which we think ran a similar story referring to "testimony" by Clarke.)
---------- Forwarded by John B. Wiegmann/NSC/EOP on 06/20/2002 10:56 AM ----------

Regina F. Amos
06/20/2002 10:47:05 AM
Record Type: Record

To: John B. Wiegmann/NSC/EOP@EOP
cc:
Subject: Post Letter

Thanks for your patience!

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_F5A78003_WHO.TXT_1>

June 18, 2002

Dear Sirs:

Your June 12 story "'We Should Have Known,' Goss Says of 9/11," inaccurately reported that Richard A. Clarke, currently the Assistant to the President for Cyberspace Security and formerly a senior adviser to President Clinton on terrorism, "testified for several hours" as the "first outside witness" to the joint congressional committee examining the September 11 attacks.

Mr. Clarke provided an informal briefing to members of the joint committee, but he was not a witness and did not testify to the committee. It has been the longstanding practice of the Executive Branch to decline congressional requests for testimony by members of the President's personal staff with respect to performance of their official duties. As a matter of separation of powers, Congress may not compel the President or his senior advisors to testify before it on the performance of their duties.

Sincerely,

Alberto R. Gonzales
Counsel to the President

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Claire E. Buchan/WHO /EOP@EOP [WHO] <Claire E. Buchan>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew Kirk/WHO /EOP@EOP [WHO] <Matthew Kirk>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;sheila.bair@do.treas.gov @ inet [UNKNOWN] <sheila.bair@do.treas.gov @ inet>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 6/20/2002 9:25:43 AM
Subject: : Tort Terrorism (WSJ) Today - In case you missed it!

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:20-JUN-2002 13:25:43.00
SUBJECT:: Tort Terrorism (WSJ) Today - In case you missed it!
TO:Nicolle Devenish ( CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Tort Terrorism (WSJ)
Editorial
The Wall Street Journal, June 20, 2002
Either he's a good actor or Mitch McConnell was genuinely amazed by the
way the trial-lawyer
lobby dictated terms to Senate Democrats on this week's terrorism
insurance vote.
"I've been here 18 years and I can say with total confidence that there's
no special interest
that completely owns, lock stock, the Republican conference," the GOP
Senator told us
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yesterday. "But, by golly, I think the Democrats in the Senate are a wholly owned subsidiary
of ATLA [the Association of Trial Lawyers of America]. They ought to be embarrassed."
These ruminations on the increasingly weird captivity of the Daschle Democrats by the lawsuit
industry come after a party-line vote on an amendment to impose modest limits on trial
lawyers after a terrorist attack. Naturally, it was defeated thanks to manic arm-twisting by Majority
Leader Tom Daschle and Senator John Edwards (himself a trial lawyer with White House
aspirations).
Not a single Democrat broke ranks, not even those with strong insurance-industry ties
(Senators Chris Dodd and Joe Lieberman) or a record of griping publicly about their party's
beholdenness to the plaintiffs' bar (Senator Tom Carper).
The bill now faces reconciliation with a House version that includes strict lawsuit curbs.
Barring a miracle (or another terrorist attack), the Democrats won't let a law be enacted or
will send the President something to test his vow to veto any bill that would turn the next
terrorist attack into a trial-lawyer feeding frenzy. Either way, the Senate Democrats will have
lain themselves flat for their lawyer patrons in return for campaign dollars with which to fight
the battle for Senate control this fall.
So far the toll has been bearable, but unseen costs are being felt in the form of projects that
aren't getting done and property values depressed by the lack of insurance for "trophy" zones
where insurers fear to tread. Everyone knows that, by default, the taxpayer is on the hook for
another catastrophic attack. A bill would at this point merely provide certainty and
specificity -- and a welcome spur to confidence.
But for doing its duty, the government shouldn't open the Treasury to predatory lawyers.
Such lawsuits wouldn't target the terrorists but their victims, property owners and insurers, who
under our whacked-out system might be deemed liable for punitive damages because they
placed their buildings in the path of a hijacked jet.
What passes for reasoning on the Democratic side was blathered by Senator Pat Leahy of
Vermont, who said: "Without the threat of punitive damages, the corporation can decide it's
more cost-effective to continue cutting corners despite the risk to American lives." You'd think
on September 11 a consensus was born on who the real enemy is. But for 50 out of 50 Senate
Democrats it's apparently still the private sector.
Moody's is reviewing for possible downgrade bonds that back up such high-profile Big Apple
properties as Rockefeller Center, Citigroup Center and the Marriott hotel in Times Square. GMAC,
supervisor of a $100 billion portfolio of commercial mortgages, has sent out letters giving property
owners two weeks to come up with adequate terrorism coverage or risk being declared in default.
If this continues, the pain is going to be felt in the wallets of workers as new buildings don't get built
and downtowns empty out for lack of insurance. And all because Democrats see a higher
priority in keeping the lawyers happy than in meeting what all grown-ups realize is the government's

residual responsibility for terrorism disasters that the insurance industry simply doesn't have and can't raise the capital to cover.

The stakes here go beyond insurance to whether our two-party system is turning into the trial lawyers vs.everybody else. Mr. Bush owes the country a speech on tort reform anyway. He ought to connect the dots to homeland defense and the importance of adjusting the economy to live with the risks of an extended war against terrorism.

From: Willett, Don <Don.Willett@usdoj.gov>
To: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Dinh, Viet <Viet.Dinh@usdoj.gov>;Keefer, Wendy J <Wendy.J.Keefer@usdoj.gov>;Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>
Sent: 6/20/2002 2:27:35 PM
Subject: : RE: FW: Judge Dennis Shedd

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CREATION DATE/TIME:20-JUN-2002 18:27:35.00
SUBJECT:: RE: FW: Judge Dennis Shedd
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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CC:"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Keefer, Wendy J" <Wendy.J.Keefer@usdoj.gov> (Receipt Notification Requested) ("Keefer, Wendy J" <Wendy.J.Keefer@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
CC:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) ("Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Absolutely. Brian and Wendy are the primary Shedd Team and will shoot info. to you asap.

DRW

-----Original Message-----
From: Anne_Womack@who.eop.gov [mailto:Anne_Womack@who.eop.gov]
Sent: Thursday, June 20, 2002 6:09 PM
To: Willett, Don
Cc: Benczkowski, Brian A; Dinh, Viet; Keefer, Wendy J; Brett_M._Kavanaugh@who.eop.gov
Subject: RE: FW: Judge Dennis Shedd

can I bug you all for your Shedd info???

Thanks!

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Adam F. Greenstone/OA/EOP@EOP [OA] <Adam F. Greenstone>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO]), Timothy E. Flanigan (Timothy E. Flanigan/WHO/EOP [WHO])
Sent: 6/21/2002 2:04:49 PM
Subject: : Re: Threat Mile Investigation

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SUBJECT:: Re: Threat Mile Investigation
TO:Adam F. Greenstone ( CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
BCC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Adam:

I am NOT prepared to authorize a search of Vice Presidential communications based on a bunch of e-mails from folks I do not know. If someone at the Secret Service wishes to have me authorize such a search, I expect to receive a letter from the General Counsel of the Secret Service explaining (1) the need for the search, (2) the legal authority for the request, and (3) the requested parameters for the search. It is my desire to cooperate with all proper Secret Service investigations, but they must be properly requested and documented. Records searchs, particularly in connection with criminal investigations, are not matters to be handled informally.

From: CN=Tevi Troy/OU=OPD/O=EOP [OPD]
To: Azar, Alex (HHS/OS) <Alex.Azar@hhs.gov>
CC: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;jindal, bobby (hhs/os) <bobby.jindal@hhs.gov>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;urbanowicz, peter (hhs/os) <peter.urbanowicz@hhs.gov>;hoff, john (hhs/os) <john.hoff@hhs.gov>;mark mcclellan/cea/eop@eop [CEA] <mark mcclellan>
Sent: 6/24/2002 7:29:17 AM
Subject: : Re: Med Mal Reform

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CREATOR:Tevi Troy ( CN=Tevi Troy/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:24-JUN-2002 11:29:17.00
SUBJECT:: Re: Med Mal Reform
TO:"Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> ( "Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> [
UNKNOWN ] )
READ:UNKNOWN
CC:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:"jindal, bobby (hhs/os)" <bobby.jindal@hhs.gov> ( "jindal, bobby (hhs/os)"
<bobby.jindal@hhs.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:"urbanowicz, peter (hhs/os)" <peter.urbanowicz@hhs.gov> ( "urbanowicz, peter (hhs/os)"
<peter.urbanowicz@hhs.gov> [ UNKNOWN ] )
READ:UNKNOWN
CC:"hoff, john (hhs/os)" <john.hoff@hhs.gov> ( "hoff, john (hhs/os)" <john.hoff@hhs.gov> [
UNKNOWN ] )
READ:UNKNOWN
CC:mark mcclellan ( CN=mark mcclellan/OU=cea/O=eop@eop [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Attached please find an electronic version of the article Alex
recommended.

Tevi

Assigning Liability: Insurers' Missteps Helped Provoke Malpractice
`Crisis' --- Lawsuits Alone Didn't Cause
Premiums to Skyrocket; Earlier Price War a Factor --- Delivering Ms.
Kline's Baby
By Rachel Zimmerman and Christopher Oster

06/24/2002
The Wall Street Journal
A1
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As medical-malpractice premiums skyrocket in about a dozen states across
the country, obstetricians and
doctors in other risky specialties, such as neurosurgery, are moving,
quitting or retiring. Insurers and many doctors
blame the problem on rising jury awards in liability lawsuits.

"The real sickness is people sue at the drop of a hat, judgments are going
up and up and up, and the people getting
rich out of this are the plaintiffs' attorneys," says David Golden of the
National Association of Independent Insurers, a
trade group. The American Medical Association says Florida, Nevada, New
York, Pennsylvania and eight other
states face a "crisis" because "the legal system produces
multimillion-dollar jury awards on a regular basis."
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But while malpractice litigation has a big effect on premiums, insurers' pricing and accounting practices have played an equally important role. Following a cycle that recurs in many parts of the business, a price war that began in the early 1990s led insurers to sell malpractice coverage to obstetrician-gynecologists at rates that proved inadequate to cover claims.

Some of these carriers had rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was. A decade of short-sighted price slashing led to industry losses of nearly $3 billion last year.

"I don't like to hear insurance-company executives say it's the tort [injury-law] system -- it's self-inflicted," says Donald J. Zuk, chief executive of Scpie Holdings Inc., a leading malpractice insurer in California.

What's more, the litigation statistics most insurers trumpet are incomplete. The statistics come from Jury Verdict Research, a Horsham, Pa., information service, which reports that since 1994, jury awards for medical-malpractice cases have jumped 175%, to a median of $1 million in 2000. During that seven-year period, the median award for negligence in childbirth was $2,050,000 -- the highest for all types of medical-malpractice cases, Jury Verdict Research says. (In any group of figures, half fall above the median, and half fall below.)

But Jury Verdict Research says its 2,951-case malpractice database has large gaps. It collects award information unsystematically, and it can't say how many cases it misses. It says it can't calculate the percentage change in the median for childbirth-negligence cases. More important, the database excludes trial victories by doctors and hospitals -- verdicts that are worth zero dollars. That's a lot to ignore. Doctors and hospitals win about 62% of the time, Jury Verdict Research says. A separate database on settlements is less comprehensive.

A spokesman for Jury Verdict Research, Gary Bagin, confirms these and other holes in its statistics. He says the numbers nevertheless accurately reflect trends. The company, which sells its data to all comers, has reported jury information this way since 1961. "If we changed now, people looking back historically couldn't compare apples to apples," Mr. Bagin says.

Some doctors are beginning to acknowledge that the conventional focus on jury awards deflects attention from the insurance industry's behavior. The American College of Obstetricians and Gynecologists for the first time is conceding that carriers' business practices have contributed to the current problem, says Alice Kirkman, a spokeswoman for the professional group. "We are admitting it's a much more complex problem than we have previously talked about," she says.

The upshot is beyond dispute: Pregnant women across the country are scrambling for medical attention. Kimberly Maugaotega of Las Vegas is 13 weeks pregnant and hasn't seen an obstetrician. When she learned she was expecting, the 33-year-old mother of two called the doctor who delivered her second child but was told he wasn't taking any new pregnant patients. Dr. Shelby Wilbourn plans to leave Nevada because of soaring medical-malpractice insurance rates there. Ms. Maugaotega says she called

28 obstetricians but couldn't find one
who would take her.

Frustrated, she called the office of Nevada Gov. Kenny Guinn. A staff
member gave her yet another name. She made
an appointment to see that doctor today but says she is skeptical about
the quality of care she will receive.

In the Las Vegas area, doctors say some 90 obstetricians have stopped
accepting new patients since St. Paul
Cos., formerly the country's leading provider of malpractice coverage,
quit the business in December. St. Paul had
insured more than half of Nevada's 240 obstetricians. Carriers still
offering coverage in the state have raised rates by
100% to 400%, physicians say.

Dr. Wilbourn says his annual malpractice premium was due to jump to
$108,000 next month, from $33,000. The
41-year-old solo practitioner says the increase would come straight out of
his take-home pay of between $150,000
and $200,000 a year. In response, he is moving to Maine this summer.

Dr. Wilbourn mourns having "to pick up and leave the patients I cared for
and the practice I built up over 12 years."
But in Maine, he has found a $200,000-a-year position with an insurance
premium of only $9,800 for the first year,
although the rate rises significantly after that. Premiums in Maine are
relatively low because a dominant
doctor-owned insurance cooperative there hasn't pushed to maximize rates,
the heavily rural population isn't notably
litigious and its court system employs an expert panel to screen out some
suits, says Insurance Commissioner
Alessandro Iuppa.

Until the 1970s, few doctors faced big-dollar suits. Malpractice coverage
was a small specialty. As courts
expanded liability rules, malpractice suits became more common. Dozens of
doctor-owned insurance cooperatives,
or "bedpan mutuals," formed in response. Most stuck to their home states.

St. Paul, a mid-sized national carrier named for its base in Minnesota,
saw an opportunity. An insurer of Main Street
businesses, St. Paul became the leader in the malpractice field. By 1985,
it had a 20% share of the national
market. Overall, the company had revenue of $8.9 billion last year, with
about 10% of its premium dollars coming
from malpractice coverage.

The frequency and size of doctors' malpractice claims rose steadily in the
early 1980s, industry officials say. St.
Paul and its competitors raised rates sharply during the 1980s.

Expecting malpractice awards to continue rising rapidly, St. Paul
increased its reserves. But the company
miscalculated, says Kevin Rehnberg, a senior vice president. Claim
frequency and size leveled off in the late 1980s,
as more than 30 states enacted curbs on malpractice awards, Mr. Rehnberg
says. The combination of this
so-called tort reform and the industry's rate increases turned malpractice
insurance into a very lucrative specialty.

A standard industry accounting device used by St. Paul and, on a smaller
scale, by its rivals, made the field look
even more attractive. Realizing that it had set aside too much money for
malpractice claims, St. Paul "released"
$1.1 billion in reserves between 1992 and 1997. The money flowed through
its income statement and boosted its
bottom line.

St. Paul stated clearly in its annual reports that excess reserves had enlarged its net income. But that part of the message didn't get through to some insurers -- especially bedpan mutuals -- dazzled by St. Paul's bottom line, according to industry officials.

In the 1990s, some bedpan mutuals began competing for business beyond their original territories. New Jersey's Medical Inter-Insurance Exchange, California's Southern California Physicians Insurance Exchange (now known as Scpie Holdings), and Pennsylvania Hospital Insurance Co., or Phico, fanned out across the country. Some publicly traded insurers also jumped into the business.

With St. Paul seeming to offer a model for big, quick profits, "no one wanted to sit still in their own backyard," says Scpie's Mr. Zuk. "The boards of directors said, `We've got to grow.'" Scpie expanded into Connecticut, Florida and Texas, among other states, starting in 1997.

As they entered new areas, smaller carriers often tried to attract customers by undercutting St. Paul. The price slashing became contagious, and premiums fell in many states. The mutuals "went in and aggravated the situation by saying, `Look at all the money St. Paul is making,'" says Tom Gose, President of MAG Mutual Insurance Co., which operates mainly in Georgia. "They came in late to the dance and undercut everyone."

The newer competitors soon discovered, however, that "the so-called profitability of the '90s was the result of those years in the mid-80s when the actuaries were predicting the terrible trends," says Donald J. Fager, president of Medical Liability Mutual Insurance Co., a bedpan mutual started in 1975 in New York. Except for two mergers in the past two years, his company mostly has held to its original single-state focus.

The competition intensified, even though some insurers "knew rates were inadequate from 1995 to 2000" to cover malpractice claims, says Bob Sanders, an actuary with Milliman USA, a Seattle consultancy serving insurance companies.

In at least one case, aggressive pricing allegedly crossed the line into fraud. Pennsylvania regulators last year filed a civil suit in state court in Harrisburg against certain executives and board members of Phico. The state alleges the defendants misled the company's board on the adequacy of Phico's premium rates and funds set aside to pay claims. On the way to becoming the nation's seventh-largest malpractice insurer, the company had suffered mounting losses on policies for medical offices and nursing homes as far away as Miami.

Pennsylvania regulators took over Phico last August. The company filed for bankruptcy-court protection from its creditors in December. A trial date hasn't been set for the state fraud suit. Phico executives and directors have denied wrongdoing.

In the late 1990s, the size of payouts for malpractice awards increased, carriers say. By 2000, many companies were losing money on malpractice coverage. Industrywide, carriers paid out $1.36 in claims and expenses for every premium dollar they collected, says Mr. Golden, the trade-group official.

The losses were exacerbated by carriers' declining investment returns. Some insurers had come to expect that big gains in the 1990s from their bond and stock portfolios would continue, industry officials say. When the bull market stalled in 2000, investment gains that had patched over inadequate premium rates disappeared.

Some bedpan mutuals went home. Scpie stopped writing coverage in any state other than California. "We lost money, and we retreated," says the company's Mr. Zuk.

New Jersey's Medical Inter-Insurance Exchange, now known as MIIX, had expanded into 24 states by the time it had a loss of $164 million in the fourth quarter of 2001. The company says it is now refusing to renew policies for 7,000 physicians outside of New Jersey. It plans to reformulate as a new company operating only in that state.

St. Paul's malpractice business sank into the red. Last December, newly hired Chief Executive Jay Fishman, a former Citigroup Inc. executive, announced the company would drop the coverage line. St. Paul reported a $980 million loss on the business for 2001.

As carriers retrench, competition has slumped and prices in some states have shot up. Lauren Kline, 6 1/2 months pregnant, changed obstetricians when her long-time Philadelphia doctor moved out of state because of rate increases. Now, her new doctor, Robert Friedman, may have to give up delivering babies at his suburban Philadelphia practice. His insurance expires at the end of the month, and he says he is having difficulty finding a carrier that will sell him a policy at any price.

Last year, Dr. Friedman says he paid $50,000 for coverage. If he gets a policy for next year, it will cost $90,000, he predicts, based on his broker's estimate. "I can't pass a single bit of that off to my patients," because managed-care companies don't allow it, he says.

Dr. Friedman says he is considering dropping the obstetrics part of his practice. Generally, delivering babies is seen as posing greater risks than most gynecological treatment. As a result, insurers offer less-expensive policies to doctors who don't do deliveries.

Mr. Golden of the insurers' association argues that whatever role industry practices may play, the current turmoil stems from lawsuits. The association says that from 1995 through 2000, total industry payouts to cover losses and legal expenses jumped 52%, to $6.9 billion. "That says there are more really huge verdicts," Mr. Golden says. Even in the majority of cases in which doctors and hospitals win -- the zero-dollar verdicts -- there are still legal expenses that insurers have to pick up, he adds.

Industry critics point to different sets of statistics. Bob Hunter, director for insurance at Consumer Federation of America, an advocacy group in Washington, prefers numbers generated by A.M. Best Co. The insurance-rating agency estimates that once all malpractice claims from 1991 through 2000 are resolved -- which will take until about 2010 -- the average payout per claim will have risen 47%, to $42,473. That projection includes legal expenses and suits in which doctors or hospitals prevail.

While the statistical debate rages, pregnant women adjust to new limits and inconveniences. Kelly Biesecker, 35,

spent many extra hours on the highway this spring, driving from her home in Villanova, Pa., to Delran, N.J., so she could continue to use her obstetrician. Dr. Richard Krauss says he moved the obstetrics part of his practice from Philadelphia because malpractice rates had skyrocketed in Pennsylvania. Ms. Biesecker, who gave birth to a healthy boy on June 5, says Dr. Krauss was the doctor she trusted to guard her health and the health of her baby: "You stick with that guy no matter what the distance."

Dr. Krauss, 53, left Philadelphia last year only after his malpractice premium rose to $54,000, from $38,000, and then was cancelled by a carrier getting out of the business, he says. After getting quotes of about $80,000 on a new policy, he moved. New Jersey hasn't been a panacea, however. His policy there expires July 1, and the carrier refuses to renew it. The doctor says he hopes to go to work for a hospital that will pay for his coverage.

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"Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov>
06/24/2002 09:55:32 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Med Mal Reform

Be sure to check out the med mal article on the front page of today's Wall Street Journal.

_____
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Message Sent
To:_____
Mark McClellan/CEA/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Tevi Troy/OPD/EOP@EOP
"Hoff, John (HHS/OS)" <John.Hoff@hhs.gov>
"Jindal, Bobby (HHS/OS)" <Bobby.Jindal@hhs.gov>
"Urbanowicz, Peter (HHS/OS)" <Peter.Urbanowicz@hhs.gov>

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO /EOP@EOP [WHO] <Rachel L. Brand>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2002 5:32:55 AM
Subject: : reminder

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CREATOR:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-JUN-2002 09:32:55.00
SUBJECT:: reminder
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

For Wednesday's tentative nominees, I'll need final TP's and media
contacts. Thanks!

Linda Reade: IA-ND
Daniel Hovland: ND-D
James Kinkeade: TX-ND
Thomas Phillips: TN-ED
```

From: CN=Matthew Kirk/OU=WHO/O=EOP [WHO]
To: Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2002 5:45:22 AM
Subject: : Terrorism Insurance

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:24-JUN-2002 09:45:22.00
SUBJECT:: Terrorism Insurance
TO:Jean M. Russell ( CN=Jean M. Russell/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Senator Gramm requested a meeting with the WH/Treasury team on terrorism
insurance this week. Is Larry available to do a meeting. I think we
should include Peter Fisher and Pat Cave from Treasury, along with Brett
Kavanaugh. He will want to talk about the per company cap primarily. The
contact for Gramm is Carrie Hale at 224-2934. thanks, Matt
```

From: Peter.Fisher@do.treas.gov [UNKNOWN]
To: Peter.Fisher@do.treas.gov [UNKNOWN] <Peter.Fisher@do.treas.gov>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>
CC: Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>
Sent: 6/24/2002 9:49:19 AM
Subject: : RE: debt ceiling letters

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Peter.Fisher@do.treas.gov ( Peter.Fisher@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:24-JUN-2002 13:49:19.00
SUBJECT:: RE: debt ceiling letters
TO:Peter.Fisher@do.treas.gov ( Peter.Fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jean M. Russell ( CN=Jean M. Russell/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Augustine T. Smythe ( CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

It's fine with me and looks great.
onward.
Peter F.



-----Original Message-----
From: Kristen_Silverberg@who.eop.gov
[mailto:Kristen_Silverberg@who.eop.gov]
Sent: Monday, June 24, 2002 1:28 PM
To: Peter.Fisher@do.treas.gov
Cc: David_W._Hobbs@who.eop.gov; Augustine_T._Smythe@omb.eop.gov;
Daniel_J._Bartlett@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Claire_E._Buchan@who.eop.gov; Jean_M._Russell@opd.eop.gov
Subject: debt ceiling letters


Here are revised drafts for your review. After I hear back from you David
will
clear the final version w/ the Speaker's office. We'll send them to the
President tonight or tomorrow morning for release early tomorrow.

(See attached file: Debt ceiling letters.doc)
```

From: Sheila.Bair@do.treas.gov [UNKNOWN]

To: richard.clarida@do.treas.gov [UNKNOWN]
<richard.clarida@do.treas.gov>;peter.fisher@do.treas.gov [UNKNOWN]
<peter.fisher@do.treas.gov>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew
Kirk>;mario.ugoletti@do.treas.gov [UNKNOWN] <mario.ugoletti@do.treas.gov>;Kristen
Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;john.duncan@do.treas.gov [
UNKNOWN] <john.duncan@do.treas.gov>;gerry.hughes@do.treas.gov [UNKNOWN]
<gerry.hughes@do.treas.gov>;edward.demarco@do.treas.gov [UNKNOWN]
<edward.demarco@do.treas.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M.
Kavanaugh>;tmuris@ftc.gov [UNKNOWN]
<tmuris@ftc.gov>;Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV [UNKNOWN]
<Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV>;thomas.delaney@shawpitt.com.treas.gov [
UNKNOWN] <thomas.delaney@shawpitt.com.treas.gov>;tom.ferguson@bep.treas.gov [
UNKNOWN] <tom.ferguson@bep.treas.gov>;terri.vaughan@iid.state.ia.us [UNKNOWN]
<terri.vaughan@iid.state.ia.us>;susan.binns@cec.eu.int [UNKNOWN]
<susan.binns@cec.eu.int>;susan.ervin@dechert.com [UNKNOWN]
<susan.ervin@dechert.com>;kandarian.steven@pbgc.gov [UNKNOWN]
<kandarian.steven@pbgc.gov>;Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S.
McMillin>;stash.jarocki@morganstanley.com [UNKNOWN]
<stash.jarocki@morganstanley.com>;scottrichardson@sunflower.com [UNKNOWN]
<scottrichardson@sunflower.com>;roberta.mcinerney@do.treas.gov [UNKNOWN]
<roberta.mcinerney@do.treas.gov>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S.
Kroszner>;pat.cave@do.treas.gov [UNKNOWN]
<pat.cave@do.treas.gov>;mark.warshawsky@do.treas.gov [UNKNOWN]
<mark.warshawsky@do.treas.gov>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus
Sumerlin>;kent.smetters@do.treas.gov [UNKNOWN]
<kent.smetters@do.treas.gov>;jeffrey_r._brown@cea.eop.gov [UNKNOWN]
<jeffrey_r._brown@cea.eop.gov>;Martha.Ellett@do.treas.gov [UNKNOWN]
<Martha.Ellett@do.treas.gov>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C.
Conklin>;brownt@cdfi.treas.gov [UNKNOWN]
<brownt@cdfi.treas.gov>;Tim.Adams@do.treas.gov [UNKNOWN]
<Tim.Adams@do.treas.gov>;thomas.falvey@ost.dot.gov [UNKNOWN]
<thomas.falvey@ost.dot.gov>;thomas_donilon@fanniemae.com [UNKNOWN]
<thomas_donilon@fanniemae.com>;tkassinger@doc.gov [UNKNOWN]
<tkassinger@doc.gov>;Teresa.Ressel@do.treas.gov [UNKNOWN]
<Teresa.Ressel@do.treas.gov>;Susan.Hart@do.treas.gov [UNKNOWN]
<Susan.Hart@do.treas.gov>;steve_harris@banking.senate.gov [UNKNOWN]
<steve_harris@banking.senate.gov>;sbartlett@fsround.org [UNKNOWN]
<sbartlett@fsround.org>;steve.malphrus@frb.gov [UNKNOWN]
<steve.malphrus@frb.gov>;Shaunnecy.Coleman@do.treas.gov [UNKNOWN]
<Shaunnecy.Coleman@do.treas.gov>;sgvarna@sandia.gov [UNKNOWN]
<sgvarna@sandia.gov>

Sent: 6/24/2002 7:02:49 AM

Subject: : New Contact Information - Sheila C. Bair

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:24-JUN-2002 11:02:49.00
SUBJECT:: New Contact Information - Sheila C. Bair
TO:richard.clarida@do.treas.gov ( richard.clarida@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:mario.ugoletti@do.treas.gov ( mario.ugoletti@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:john.duncan@do.treas.gov (john.duncan@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:gerry.hughes@do.treas.gov (gerry.hughes@do.treas.gov [UNKNOWN])
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TO:edward.demarco@do.treas.gov (edward.demarco@do.treas.gov [UNKNOWN])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:tmuris@ftc.gov (tmuris@ftc.gov [UNKNOWN])
READ:UNKNOWN
TO:Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV (Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV [UNKNOWN])
READ:UNKNOWN
TO:thomas.delaney@shawpitt.com.treas.gov (thomas.delaney@shawpitt.com.treas.gov [UNKNOWN
])
READ:UNKNOWN
TO:tom.ferguson@bep.treas.gov (tom.ferguson@bep.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:terri.vaughan@iid.state.ia.us (terri.vaughan@iid.state.ia.us [UNKNOWN])
READ:UNKNOWN
TO:susan.binns@cec.eu.int (susan.binns@cec.eu.int [UNKNOWN])
READ:UNKNOWN
TO:susan.ervin@dechert.com (susan.ervin@dechert.com [UNKNOWN])
READ:UNKNOWN
TO:kandarian.steven@pbgc.gov (kandarian.steven@pbgc.gov [UNKNOWN])
READ:UNKNOWN
TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:stash.jarocki@morganstanley.com (stash.jarocki@morganstanley.com [UNKNOWN])
READ:UNKNOWN
TO:scottrichardson@sunflower.com (scottrichardson@sunflower.com [UNKNOWN])
READ:UNKNOWN
TO:roberta.mcinerney@do.treas.gov (roberta.mcinerney@do.treas.gov [UNKNOWN])
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TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
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TO:pat.cave@do.treas.gov (pat.cave@do.treas.gov [UNKNOWN])
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TO:mark.warshawsky@do.treas.gov (mark.warshawsky@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
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TO:kent.smetters@do.treas.gov (kent.smetters@do.treas.gov [UNKNOWN])
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TO:jeffrey_r._brown@cea.eop.gov (jeffrey_r._brown@cea.eop.gov [UNKNOWN])
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TO:Martha.Ellett@do.treas.gov (Martha.Ellett@do.treas.gov [UNKNOWN])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
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TO:brownt@cdfi.treas.gov (brownt@cdfi.treas.gov [UNKNOWN])
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TO:Tim.Adams@do.treas.gov (Tim.Adams@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:thomas.falvey@ost.dot.gov (thomas.falvey@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:thomas_donilon@fanniemae.com (thomas_donilon@fanniemae.com [UNKNOWN])
READ:UNKNOWN
TO:tkassinger@doc.gov (tkassinger@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Teresa.Ressel@do.treas.gov (Teresa.Ressel@do.treas.gov [UNKNOWN])
READ:UNKNOWN

TO:Susan.Hart@do.treas.gov (Susan.Hart@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:steve_harris@banking.senate.gov (steve_harris@banking.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:sbartlett@fsround.org (sbartlett@fsround.org [UNKNOWN])
READ:UNKNOWN
TO:steve.malphrus@frb.gov (steve.malphrus@frb.gov [UNKNOWN])
READ:UNKNOWN
TO:Shaunnecy.Coleman@do.treas.gov (Shaunnecy.Coleman@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:sgvarna@sandia.gov (sgvarna@sandia.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

My last day at the Treasury Department was Friday, June 21. Effective September 1, you will be able to reach me at:

Center for Public Policy and Administration (CPPA)
University of Massachusetts
Thompson Hall
Amherst, MA 01003
413-545-3940, #5
sbair@pubpol.umass.edu

If you would like to contact me before September 1, you can leave a message on my voice mail at the above number. I will be checking it periodically.

Thanks,

Sheila C. Bair

From: Sheila.Bair@do.treas.gov [UNKNOWN]

To: richard.clarida@do.treas.gov [UNKNOWN] <richard.clarida@do.treas.gov>;peter.fisher@do.treas.gov [UNKNOWN] <peter.fisher@do.treas.gov>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;mario.ugoletti@do.treas.gov [UNKNOWN] <mario.ugoletti@do.treas.gov>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;john.duncan@do.treas.gov [UNKNOWN] <john.duncan@do.treas.gov>;gerry.hughes@do.treas.gov [UNKNOWN] <gerry.hughes@do.treas.gov>;edward.demarco@do.treas.gov [UNKNOWN] <edward.demarco@do.treas.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;tmuris@ftc.gov [UNKNOWN] <tmuris@ftc.gov>;Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV [UNKNOWN] <Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV>;thomas.delaney@shawpitt.com.treas.gov [UNKNOWN] <thomas.delaney@shawpitt.com.treas.gov>;tom.ferguson@bep.treas.gov [UNKNOWN] <tom.ferguson@bep.treas.gov>;terri.vaughan@iid.state.ia.us [UNKNOWN] <terri.vaughan@iid.state.ia.us>;susan.binns@cec.eu.int [UNKNOWN] <susan.binns@cec.eu.int>;susan.ervin@dechert.com [UNKNOWN] <susan.ervin@dechert.com>;kandarian.steven@pbgc.gov [UNKNOWN] <kandarian.steven@pbgc.gov>;Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>;stash.jarocki@morganstanley.com [UNKNOWN] <stash.jarocki@morganstanley.com>;scottrichardson@sunflower.com [UNKNOWN] <scottrichardson@sunflower.com>;roberta.mcinerney@do.treas.gov [UNKNOWN] <roberta.mcinerney@do.treas.gov>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;pat.cave@do.treas.gov [UNKNOWN] <pat.cave@do.treas.gov>;mark.warshawsky@do.treas.gov [UNKNOWN] <mark.warshawsky@do.treas.gov>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;kent.smetters@do.treas.gov [UNKNOWN] <kent.smetters@do.treas.gov>;jeffrey_r._brown@cea.eop.gov [UNKNOWN] <jeffrey_r._brown@cea.eop.gov>;Martha.Ellett@do.treas.gov [UNKNOWN] <Martha.Ellett@do.treas.gov>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;brownt@cdfi.treas.gov [UNKNOWN] <brownt@cdfi.treas.gov>;Tim.Adams@do.treas.gov [UNKNOWN] <Tim.Adams@do.treas.gov>;thomas.falvey@ost.dot.gov [UNKNOWN] <thomas.falvey@ost.dot.gov>;thomas_donilon@fanniemae.com [UNKNOWN] <thomas_donilon@fanniemae.com>;tkassinger@doc.gov [UNKNOWN] <tkassinger@doc.gov>;Teresa.Ressel@do.treas.gov [UNKNOWN] <Teresa.Ressel@do.treas.gov>;Susan.Hart@do.treas.gov [UNKNOWN] <Susan.Hart@do.treas.gov>;steve_harris@banking.senate.gov [UNKNOWN] <steve_harris@banking.senate.gov>;sbartlett@fsround.org [UNKNOWN] <sbartlett@fsround.org>;steve.malphrus@frb.gov [UNKNOWN] <steve.malphrus@frb.gov>;Shaunnecy.Coleman@do.treas.gov [UNKNOWN] <Shaunnecy.Coleman@do.treas.gov>;sgvarna@sandia.gov [UNKNOWN] <sgvarna@sandia.gov>

Sent: 6/24/2002 7:04:32 AM

Subject: : New Contact Information - Sheila C. Bair

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sheila.Bair@do.treas.gov ( Sheila.Bair@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:24-JUN-2002 11:04:32.00
SUBJECT:: New Contact Information - Sheila C. Bair
TO:richard.clarida@do.treas.gov ( richard.clarida@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov ( peter.fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:mario.ugoletti@do.treas.gov ( mario.ugoletti@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:john.duncan@do.treas.gov ( john.duncan@do.treas.gov [ UNKNOWN ] )
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READ:UNKNOWN
TO:gerry.hughes@do.treas.gov (gerry.hughes@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:edward.demarco@do.treas.gov (edward.demarco@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:tmuris@ftc.gov (tmuris@ftc.gov [UNKNOWN])
READ:UNKNOWN
TO:Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV (Thomas.J.Russo@IRSCOUNSEL.TREAS.GOV [UNKNOWN])
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TO:tom.ferguson@bep.treas.gov (tom.ferguson@bep.treas.gov [UNKNOWN])
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TO:terri.vaughan@iid.state.ia.us (terri.vaughan@iid.state.ia.us [UNKNOWN])
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TO:susan.binns@cec.eu.int (susan.binns@cec.eu.int [UNKNOWN])
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TO:stash.jarocki@morganstanley.com (stash.jarocki@morganstanley.com [UNKNOWN])
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TO:scottrichardson@sunflower.com (scottrichardson@sunflower.com [UNKNOWN])
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TO:roberta.mcinerney@do.treas.gov (roberta.mcinerney@do.treas.gov [UNKNOWN])
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TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:kent.smetters@do.treas.gov (kent.smetters@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:jeffrey_r._brown@cea.eop.gov (jeffrey_r._brown@cea.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Martha.Ellett@do.treas.gov (Martha.Ellett@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:brownt@cdfi.treas.gov (brownt@cdfi.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Tim.Adams@do.treas.gov (Tim.Adams@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:thomas.falvey@ost.dot.gov (thomas.falvey@ost.dot.gov [UNKNOWN])
READ:UNKNOWN
TO:thomas_donilon@fanniemae.com (thomas_donilon@fanniemae.com [UNKNOWN])
READ:UNKNOWN
TO:tkassinger@doc.gov (tkassinger@doc.gov [UNKNOWN])
READ:UNKNOWN
TO:Teresa.Ressel@do.treas.gov (Teresa.Ressel@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Susan.Hart@do.treas.gov (Susan.Hart@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:steve_harris@banking.senate.gov (steve_harris@banking.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:sbartlett@fsround.org (sbartlett@fsround.org [UNKNOWN])
READ:UNKNOWN
TO:steve.malphrus@frb.gov (steve.malphrus@frb.gov [UNKNOWN])
READ:UNKNOWN

TO:Shaunnecy.Coleman@do.treas.gov (Shaunnecy.Coleman@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:sgvarna@sandia.gov (sgvarna@sandia.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

My last day at the Treasury Department was Friday, June 21. Effective September 1, you will be able to reach me at:

Center for Public Policy and Administration (CPPA)
University of Massachusetts
Thompson Hall
Amherst, MA 01003
413-545-3940, #5
sbair@pubpol.umass.edu

If you would like to contact me before September 1, you can leave a message on my voice mail at the above number. I will be checking it periodically.

Thanks,

Sheila C. Bair

From: Thomas, Ginni <ginni.thomas@heritage.org>
To: Government Relations <GovernmentRelations@heritage.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/24/2002 12:51:42 PM
Subject: : Upcoming Heritage events and recent papers

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thomas, Ginni" <ginni.thomas@heritage.org> ( "Thomas, Ginni"
<ginni.thomas@heritage.org> [ UNKNOWN ] )
CREATION DATE/TIME:24-JUN-2002 16:51:42.00
SUBJECT:: Upcoming Heritage events and recent papers
TO:Government Relations <GovernmentRelations@heritage.org> ( Government Relations
<GovernmentRelations@heritage.org> [ UNKNOWN ] )
READ:UNKNOWN
BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

There are several papers in the queue for this week (postponement based on
emerging issues is always possible though). They include: Homeland
Security 9 month assessment paper; an Americorps paper, a paper on a HUD
funded smart growth guidebook which could undermine homeownership; a paper
recommending increased use of the veto pen; an economic portrait of the
Nordic and Baltic countries and a Federal Budget chart book showing trends,
by President, on spending, revenue and vetos. There will be some new web
memos put up shortly on the health tax credits and trade; a better option
for Medicare reform and a new web product on regulation oversight. Please
join our homeland security event Tuesday at 10:00 a.m. at Heritage -- live
or by web. Warmly, Ginni

Recent Publications:

Congress Should Call Amtrak's Bluff by Wendell Cox
http://www.heritage.org/shorts/20020624amtrak.html

How Trade Promotion Authority Would Bolster the Manufacturing Industry by
Aaron Schavey
http://www.heritage.org/library/backgrounder/bg1561.html

A Report on Missile Defense Tests
http://www.heritage.org/shorts/20020620bmd.html

Narco-Terror: The International Connection Between Drugs and Terror by Hon.
Asa Hutchinson
http://www.heritage.org/library/lecture/hl751.html


Upcoming Events
For event details and RSVP, link to: http://www.heritage.org/events/

Federal Homeland Security Policy: A Nine-Month Assessment
Featuring: Hon. Edwin Meese, Ambassador L. Paul Bremer, and former
Virginia
Governor James Gilmore
Tuesday, June 25, 10:00 AM

Bankrupting Terrorism: U.S. Government Efforts to Freeze Terrorists' Assets
Featuring: Hon. Jimmy Gurul?, Under Secretary for Enforcement, U.S.
Department of Treasury
Wednesday, June 26, 12:00 PM

A Conservative Labor Department: A Contradiction in Terms?
Featuring: D. Cameron Findlay, Deputy Secretary of Labor
Tuesday, July 23, 12:00 p.m.
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Young Leadership Network social for conservative professionals (ages 25-40)
Featuring: Tucker Carlson, co-host of CNN's Crossfire
Location: Valis Associates, 1700 Pennsylvania Avenue, NW, Suite 950
Thursday, June 27, 6:00 p.m.
To RSVP, please call (202) 675-1765

Complimentary Publications

Mark your calendars! General Piotrowski's "Strategic Synchronization: The Relationship Between Strategic Offense and Strategic Defense" will be available in mid-summer.

Issues 2002: A biannual guide to crucial election-year issues facing America and its leaders.
To request a FREE copy of this publication, please link to:
http://www.heritage.org/bookstore/2002/issues/request.html

God, Government and the Good Samaritan: The Promise and Peril of the President's Faith-Based Agenda by Joseph Loconte
To request a FREE copy of this publication, please link to:
http://www.heritage.org/bookstore/2001/samaritan/request.html

The Founders' Almanac by Matthew Spalding
To request a FREE copy of the Almanac, please link to:
http://www.heritage.org/bookstore/2001/almanac/request.html

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From: CN=Adam F. Greenstone/OU=OA/O=EOP [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2002 3:05:11 PM
Subject: : Re: Threat Mile Investigation

Begin Original ARMS Header
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP [OA])
CREATION DATE/TIME:24-JUN-2002 19:05:11.00
SUBJECT:: Re: Threat Mile Investigation
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Adam F. Greenstone/OA/EOP on
06/24/2002 07:03 PM ----------

David S. Addington
06/21/2002 06:03:34 PM
Record Type: Record

To: Adam F. Greenstone/OA/EOP@EOP
cc:
Subject: Re: Threat Mile Investigation

Adam:

I am NOT prepared to authorize a search of Vice Presidential communications based on a bunch of e-mails from folks I do not know. If someone at the Secret Service wishes to have me authorize such a search, I expect to receive a letter from the General Counsel of the Secret Service explaining (1) the need for the search, (2) the legal authority for the request, and (3) the requested parameters for the search. It is my desire to cooperate with all proper Secret Service investigations, but they must be properly requested and documented. Records searchs, particularly in connection with criminal investigations, are not matters to be handled informally.

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Rachel_L._Brand@who.eop.gov [UNKNOWN] <Rachel_L._Brand@who.eop.gov>
Sent: 6/25/2002 5:19:14 AM
Subject: : Re: call sheets

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-JUN-2002 09:19:14.00
SUBJECT:: Re: call sheets
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rachel_L._Brand@who.eop.gov (Rachel_L._Brand@who.eop.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Not anymore. They're not accepting them for circuit judges either.

Rachel_L._Brand@who.eop.gov
06/25/2002 09:11:48 AM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: call sheets

Are we doing call sheets for district judges anymore?

From: Pat.Cave@do.treas.gov [UNKNOWN]
To: Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Peter.Fisher@do.treas.gov [UNKNOWN] <Peter.Fisher@do.treas.gov>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 6/25/2002 6:29:25 AM
Subject: : Terrorism Risk Insurance
Attachments: P_DPTA8003_OPD.TXT_1.html; P_DPTA8003_OPD.TXT_2.doc; P_DPTA8003_OPD.TXT_3.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Pat.Cave@do.treas.gov ( Pat.Cave@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:25-JUN-2002 10:29:25.00
SUBJECT:: Terrorism Risk Insurance
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Peter.Fisher@do.treas.gov ( Peter.Fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please find attached the documents we passed out last week when we met on
terrorism risk insurance. If you have follow up comments to the documents,
please let me know.

Pat



<<Billcomparisonamend8.doc>> <<conference compromise options-0617.doc>>
- att1.htm - Billcomparisonamend8.doc - conference compromise options-0617.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DPTA8003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DPTA8003_OPD.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DPTA8003_OPD.TXT_3>
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Please find attached the documents we p assed out last week when we met on terrorism risk insurance. If you have follow up com ments to the documents, please let me know.

Pat

<<Billcomparison amend8.doc>> <<co nference compromise options-0617.doc>>

TERRORISM RISK INSURANCE COMPARISON

Issue	Senate Bill (S. 2600)	House-Passed Bill
Loss Sharing Program	One-year Federal loss sharing program administered by the Secretary of the Treasury (Secretary), with one-year extension at the Secretary's discretion, in which government pays financial assistance to participating commercial P&C primary insurers subject to a deductible. Per Company Deductible: Each participating insurer has a deductible defined as its market share of direct written premiums multiplied by $10 billion. Once the company has paid insured losses equal to its deductible, the Government pays 80% of additional losses incurred by that company and the company pays the remaining 20 percent. Once aggregate losses have reached $10 billion, the loss sharing converts to 90/10. If aggregate losses exceed $10 billion, the Secretary determines each company's pro rata share of the government's loss-sharing payments. In-Force Reinsurance Agreements: For policies covered by reinsurance contracts in force on the date of enactment, until the reinsurance contract is renewed, amended, or	One-year Federal loss sharing program administered by Secretary of the Treasury (Secretary) in which government provides financial assistance to commercial P&C insurers based on one of two "triggering events." (1) Industry-wide trigger: In an "industry-wide triggering event," the Secretary determines that industry-wide commercial P&C losses from one or more acts of terrorism exceed $1 billion. Each insurer receives financial assistance equal to the difference between 90% of the insurer's net losses (net of reinsured losses) and $5 million. (2) Individual insurer trigger: In an "individual insurer triggering event," the Secretary determines that industry-wide losses exceed $100 million and losses for any single insurer exceed 10% of its capital surplus and 10% of its commercial P&C net premiums. Each insurer eligible to receive financial assistance under the triggering determination receives financial assistance equal to the difference between 90% of its insured losses and 10% of its net P&C premiums in force at the time of the insured losses. • If the Secretary subsequently determines that an industry-wide trigger has occurred, the 10% of premium deductible is refunded, and the deductible under the industry-wide trigger is applied. Coverage under the individual insurer trigger applies only to those commercial insurers who were providing commercial P&C coverage prior to 9/11.

Issue	Senate Bill (S. 2600)	House-Passed Bill
	reaches its 1-year anniversary date, the	No provision on In-Force Reinsurance Agreements.
Loss Sharing Program (cont'd)	Federal share of compensation is shared (1) with all reinsurers to which the participating insurer has ceded some share of the insured loss, and (2) in a manner that distributes the Federal share between the participating insurer and the reinsurers in the same proportion as if the program did not exist.	
Sunset Provisions	The program sunsets on December 31, 2002. Secretary may extend to a second year based on findings of a mandated report. If extended, the loss-sharing is the same as in the first year but the per-company allocation is based on market share multiplied by $15 billion.	The program sunsets on January 1, 2003. Secretary may extend the program by not more than 2 years.
Triggering Event	Coverage commences when an individual participating insurance company's insured losses exceed its deductible.	Secretary determines that an "industry-wide" or "individual insurer" triggering event has occurred, as described above.

REV_00147431

Coverage Requirements	Participating insurer must offer terrorism coverage in all its commercial P&C policies (in all its participating lines) and may, within 21 days, opt-in to participate with respect to its personal lines. Terrorism coverage must not differ materially from its other P&C coverage. Policyholder must file claim with participating insurer, which processes the claim and submits it to the Secretary along with (1) verification of the claim and payments made to policyholder and (2) certification of compliance with the program.	None
Cap on Coverage	$100 billion annual losses, after which Congress decides the procedures for and source of any excess payments. Industry not liable over $100 billion.	Total amount of Federal financial assistance may not exceed an aggregate amount of $100 billion. Sense of Congress that acts of terrorism resulting in insured losses greater than $100 billion would necessitate further Congressional action.
Budget Authority	Provides budget authority for the Federal Government to provide its share of compensation for insured losses under the program.	Designates the amount of new budget authority and outlays as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act. Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

REV_00147432

Recoupment of Federal Payments	No provision.	All Federal financial assistance must be repaid from assessments and surcharges imposed on all commercial P&C insurers and deposited into the general fund of the Treasury. Aggregate Assessments: Financial assistance up to the first $20 billion is repaid from a combination of an "industry obligation assessment" and, if necessary, one or more "financing assessments." • Both types of assessments are imposed on all commercial P&C insurers based on the ratio of the firm's net premiums to the industry's aggregate premiums for commercial P&C coverage. (1) Industry obligation assessment: Capped at $5 billion per event per year ($10 billion in Years 2 and 3 if extended). (2) Financing assessment: • Applies only if financial assistance exceeds the industry obligation cap. • Deferred if any assessment has been made in the previous 12 months. • Individual insurer's portion of annual assessments may not exceed 3% of its net P&C premiums during any 12 month period (amounts exceeding the cap are paid over multiple years). • Secretary may defer payments to avoid insolvency. Surcharges: Financial assistance exceeding $20 billion is repaid from surcharges. • Surcharges are based on a percentage of commercial P&C net premiums and may extend over multiple years to recoup full federal payment.

REV_00147433

		The Secretary determines the amount and duration of the surcharge after weighing various factors including
Recoupment of Federal Payments (cont'd)		cost to taxpayers of not establishing a surcharge, economic conditions, affordability for small and medium-sized businesses, etc. • Individual insurer's portion of surcharges may not exceed 3% of its annual written premiums. <u>General</u>: • Secretary may defer payment of assessments and surcharges to avoid insolvency. • Secretary may impose civil penalties and/or charge interest for overdue assessments. Secretary must prescribe manner and method, including amounts, of carrying out assessments and surcharges, taking into consideration various factors including impact on small businesses, cross-subsidization, and the various exposures of different lines of commercial P&C coverage.
Persons and Entities Covered	Defines "person" to mean individuals, businesses, nonprofits, trusts or estates, and state and local governments.	"Person" not defined.

Lines Covered	Commercial P&C, including business interruption but not life or health. Excludes federal crop insurance and private mortgage insurance. P&C companies have 21 days after enactment to notify the Secretary if they want to have their personal P&C lines included in the program. "Business interruption" covers temporary relocation expenses and ongoing expenses, including ordinary wages, where: (1) there is physical damage to point that business can't open; (2) physical damage occurring to other property but preventing customers or employees from gaining physical access to business; or (3) Government shuts down area because of physical or environmental damage, thereby preventing physical access to the business premises. Business interruption does not include lost profits unless entity is a small business under Small Business Act.	Commercial P&C, including loss of income or extra expense incurred because of losses or damage to property (i.e., business interruption). Excluded from coverage are: life and health insurance, insurance for professional liability, and insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and any other insurance for personal, family, or household needs.

Participating Insurers	Defined as any insurance company, including any subsidiary or affiliate, that is (1) licensed primary insurer or (2) unlicensed "eligible surplus line carrier" listed by the NAIC (3) that received direct premiums for any type of commercial P&C coverage or that, within 21 days, opts-in with respect to personal P&C lines.	Defined as any commercial P&C insurer, including affiliates, and expressly includes reinsurers and retrocessional insurers. Secretary of Treasury must ensure that Act applies to any offshore or non-admitted entities that provide commercial P&C insurance.
Program Administrator and Authority	Secretary of Treasury, who may: (1) investigate and audit claims; and (2) prescribe regulations and procedures; (3) employ persons or contract for services; (4) assess civil money penalties for violations of the Act or regulations or orders; and (5) prescribe criteria for participating insurance companies.	Secretary of Treasury, who: (1) must consult with state insurance regulators and NAIC; (2) may prescribe regulations and procedures; (3) may require insurers to report net premiums for each commercial P&C line; (4) may investigate and audit claims and require verification of premiums or losses; (5) may assess civil money penalties or interest for nonpayment of assessments and surcharges; (6) must prescribe manner and method of assessments and surcharges.
Self-Insurance Arrangements	The Secretary may, in consultation with NAIC, establish procedures allowing municipalities and other governmental or quasi-governmental entities operating through self-insurance arrangements to participate in the Program.	Secretary of the Treasury, in consultation with the NAIC, may apply Act to self-insurance arrangements by municipalities and other entities. This must be determined before the occurrence of a triggering event. All the provisions of the Act must be uniformly applied to these entities.

REV_00147436

Definition of "Act of Terrorism"	Act certified by the Secretary, in concurrence with Secretary of State and Attorney General, that is • Violent or dangerous to human life, property, or infrastructure within U.S. (or outside U.S. for an air carrier or U.S. flag vessel); • is committed by an individual or group acting on behalf of any foreign person or foreign interest; and • is intended to coerce civilian population or influence policy or affect the conduct of the U.S. Government by coercion. Excludes acts of war declared by Congress. Excludes losses under $5 million. Determinations are final and not subject to judicial review.	Act certified by the Secretary, who must consult with Attorney General and Secretary of State in determining whether (1) an occurrence was caused by an act of terrorism, and (2) an act of terrorism occurred during the covered period. A terrorist act is: • Unlawful; • causes harm in the U.S. to person, property, or entity, or in the case of a domestic U.S. air carrier or U.S. flag vessel, in or outside the U.S.; • is committed by a person or group of persons recognized by the State Department or the Secretary of the Treasury as a terrorist group or conspirator either before or after such act; and • is intended to destabilize a sovereign government or affect conduct of the U.S. government by coercion. Excludes acts of war except with respect to workers compensation coverage. Certifications not subject to judicial review. Secretary may refine the requirements for "act of terrorism" in consultation with the NAIC.
Who Certifies that Loss was Caused by Act of Terrorism?	Secretary of the Treasury	Secretary of the Treasury in consultation with Attorney General and Secretary of State.

REV_00147437

Preemption / Coordination with State Regulators	Preempts (1) state definitions of "act of terrorism" and (2) state rules requiring pre-approval of premiums or waiting periods for adopting premiums. (States may invalidate terrorism rates as excessive, inadequate, or unfairly discriminatory.) Provides that books and records of participating insurance companies shall be provided to the Secretary upon his request, notwithstanding state laws. No preemption unless specifically provided.	Preempts (1) state definitions of "act of terrorism;" (2) state rate laws to extent necessary to cover assessments and approval or other conditions to policy or rate effectiveness; and (3) any action other than filing of rates and policies with State insurance regulator to the extent that such law requires additional actions for terrorism insurance coverage. Does not limit implied preemption. Sense of Congress that NAIC and states should adopt: • Consistent federal and state definitions of acts of terrorism; • Within 6 months, appropriate guidelines for reserves subject to Secretary of the Treasury adoption of national guidelines; and • Disclosure guidelines subject to Secretary of the Treasury's adoption of national guidelines.
Legal Procedures	Creates exclusive federal cause of action for covered terrorism acts. District court determines applicable law, based on choice of law principles. Judicial Panel on Multidistrict Litigation assigns jurisdiction for all claims to a single Federal District Court, which has original and exclusive jurisdiction. Cases filed in other federal or state courts are transferred/removed to the designated District Court. No offset provision.	Federal cause of action same as Senate bill, except based on law of state where act occurred. Judicial Panel on Multidistrict Litigation assigns jurisdiction for all claims to one or more Federal District Courts. Offsets plaintiff's recovery by any Federal disaster relief received.

REV_00147438

Legal Procedures (cont'd)	Amounts awarded in civil action that are attributable to punitive damages will not be included within the insured losses.	Disallows punitive damages by or against an insured (applies only to extent of insurance coverage under a triggering determination).
	No proportional liability provision.	Requires proportional liability for non-economic damages by or against an insured (applies only to extent of insurance coverage under a triggering determination).
	Provides U.S. right of subrogation for any payment made by U.S. through program.	Provides U.S. right of subrogation for claims U.S. pays.
	No statute of limitations provision	No statute of limitations provision.
	No limited damages provision.	Damages limited to insured party.
	Provisions apply only while program is effective.	Provisions apply only with respect to triggering determinations and do not in any way limit actions against terrorists or their conspirators.
	No settlement provision	No settlement provision.
	No judgment satisfaction provision.	Makes terrorist assets seized or frozen by U.S. liable to satisfy judgments for acts of terrorism. President may waive this requirement.
	No protective order provision.	Authorizes U.S. or Secretary of the Treasury to seek protective orders for classified information.
	No arbitration provision.	Preserves contractual arbitration rights.

REV_00147439

	No attorney fees provision	The Court will decide on reasonable attorneys fees so that the fees will not exceed 20 %of total damages.
Disclosure to policyholders	At time of offer, purchase, or renewal of each policy, insurance company must disclose to the policyholder the premium charged for losses covered by the program and the Federal share of compensation under the program. For in-force contracts, disclosure required within 90 days.	Sense of Congress that states should require disclosure of the price of any P&C insurance for acts of terrorism, including costs of terrorism related assessments or surcharges. If states do not enact disclosure guidelines, the Secretary of the Treasury and the NAIC should adopt guidelines requiring the disclosure.
Ability to sue terrorist or terrorist's country	Act does not limit ability of any plaintiff to recover from any person, government, or other entity that participated in or aided and abetted any act of terrorism.	Act does not limit ability of any plaintiff to recover from any person that participated in or aided and abetted any act of terrorism.
Insurance Industry Build-Up	Sense of Congress that insurance industry should build up its capacity to provide affordable coverage for terrorism risk.	No provision.
Tax Provision	No provision.	Secretary shall issue a study within 4 months on issues relating to permitting P&C companies to establish tax-deductible reserves against future acts of terrorism.
Participating Insurer's Reports	Every 6 months participating insurance companies must report to the NAIC the premium rates charged for insured losses, including an explanation of and justification for those rates. The NAIC must forward copies of those reports to	Each insurer may be required by the Secretary to submit to the Secretary or the NAIC a statement specifying the net premium amount of coverage written under each line of commercial P&C sold by the insurer during a specified period.

REV_00147440

	the Secretary, the Commerce Secretary, the FTC, and GAO.	

Reports to Congress	Secretary must report to Congress within 9 months the availability of life insurance and other lines of insurance coverage.	Presidentially appointed commission must report to Congress on life insurance within 120 days.
	No report on railroad and trucking insurance	Secretary must report to Congress on railroad and trucking insurance for acts of terrorism within 120 days.
	Secretary must report to Congress promptly on reasons for any extension of the program.	Reporting on extensions same as Senate bill.
	No report on pooling.	Secretary of Treasury, Federal Reserve Board, and GAO must report to Congress within 6 months of enactment on (1) the advisability of establishing a reinsurance pool for acts of terrorism to replace the Act's financial assistance program, and (2) the potential effects of the Internal Revenue Code amendments and any further changes to federal law that might be appropriate to encourage pooling.
	The Secretary, the Secretary of Commerce, and the FTC shall submit joint reports to Congress and GAO summarizing and evaluating the reports received every 6 months on premium rates (see row above). These reports are due after 9 months and then 12 months later. The GAO shall evaluate these reports for Congress.	No report on premium rates.
	The Secretary shall report to Congress in 9 months on availability of insurance	No report on availability of terrorism insurance.

REV_00147442

	coverage for acts of terrorism.	

REV_00147444

Terrorism Risk Insurance –
Preferred Conference Compromise Options on Key Issues

Participating Insurance Companies

- Participation would be mandatory for commercial property and casualty insurers and only available for the types of commercial property and casualty insurance described in the House bill (definitions) with the following changes: group life insurance would be included; insured loss from debt or default (i.e., credit guarantee) would not be included; insured losses covered by other government programs would be excluded (e.g., crop insurance and to the extent U.S. flag carriers are covered); and the Senate version of business interruption would be substituted.

  Senate bill requires mandatory participation for commercial lines, but permits optional participation for personal lines. House bill does not have mandatory participation. Senate version provides discretion to the Secretary to determine covered commercial lines. House version provides more certainty, which could be useful in setting up the program. If necessary, could provide the Secretary limited discretion to exclude certain lines.

- Only primary insurance companies would be allowed to participate.

  House bill permits full participation by reinsurers. Senate bill is mostly tied to primary insurers, but does have a provision that provides reinsurers with a legal claim on government loss sharing payments provided to the primary insurance company that is in proportion to losses under in-force reinsurance existing contracts. In-force reinsurance provision was necessary when there were a number of existing reinsurance contracts that were entered into prior to September 11. However, with most of those contracts now or soon to be expiring, and with some reinsurance capacity now available to reinsure per-company deductibles, such a provision is no longer necessary.

Loss Sharing Program

- One-year program (effectively 18 months as first year would run through December 31, 2003) that is extendable by the Secretary for two-year intervals based on a finding that insurance for terrorism risk is not readily available. The Secretary would also have the discretion to increase deductibles and reduce government loss sharing if the program is extended.

  House bill sunsets on January 1, 2003, and the Secretary may extend the program by not more than 2 years. Senate bill sunsets on December 31, 2002, and could be extended for an additional year.

  [Here are two options for dealing with the per company deductible. Specifying a specific deductible in legislation based on gross premiums is the best approach for the following reasons:

- It in conjunction with the above definition of covered lines provides insurers immediate certainty as to their deductible (they do not have to wait for a regulation).
- Doing a regulation specifying a deductible based on market shares might have made some sense with optional coverage, but with that gone it is no longer needed.
- The 7.5 percent approximates the $10 billion loss approach in the Senate, whether gross or net premiums are used. Specifying the deductible in legislation provides certainty and speeds up the process.
- Gross is preferable because net reflects a ceding of reinsurance premiums that presumably will not happen for terrorism risk.]

- Preferred Option: Participating insurance company deductible equal to 7.5 percent of gross premiums in year one, with an increase to 10 percent in year two of the program.

  The 7.5 percent of gross premiums approximates what the deductible would be under the Senate bill and a $10 billion loss (although under the Senate bill it could be higher or lower depending on the level of participation). It is less stringent than the deductible under the House bill's individual insurer triggering mechanism, and more stringent than deductible under the House bill's industry-wide trigger. Gross premiums would be favored because net premiums are based on an active reinsurance market that has yet to fully return. Specifying a clear percentage in legislation provides immediate certainty to insurance companies regarding their deductible. Double triggering mechanism under the House bill would be eliminated.

- Fallback Option: Participating insurance company deductible would be set to equal to the dollar amount equal to the participating insurance company's market share of net domestic property and casualty premiums as determined by the Secretary multiplied by $10 billion in year one and $15 billion in year 2.

  Follows the Senate bill with a specific link to $10 billion and $15 billion, but picks up the House bill's use of net premiums. Expected per company deductible would be approximately 7.5 percent of premiums with no personal line coverage in year one.

- Government loss sharing above the deductible would be set on a 90/10 basis.

  House bill has 90/10 loss sharing above a deductible, while the Senate bill has 90/10 loss sharing above the deductible if aggregate losses are less than $10 billion, and 80/20 if aggregate losses are greater than $10 billion. Because there is going to be some recoupment mechanism for a portion of government payments, the two-tiered loss sharing mechanism in the Senate bill would be eliminated.

Recoupment of Federal Payments

- For any government payments to insurance companies of up to $10 billion dollars during a calendar year, all commercial policyholders with covered lines would be required to pay a surcharge of up to 3 percent of premiums per year until government payments are recouped.

REV_00147446

Surcharges would be made as soon as practical at the end of the calendar year, and at annual intervals until government payments were fully recouped.

House bill requires assessments for government payments up to $20 billion and has a complicated procedure for implementing such assessments. Senate bill does not have any recoupment mechanism. Surcharges are favored over assessments because of greater transparency regarding ultimate costs to policyholders for government recoupment and a broader spreading of the costs.

- For any government payments to insurance companies of over $10 billion dollars during a calendar year, no government assessment or surcharge would be collected.

House bill authorizes surcharges on policyholders for government payments over $20 billion. Senate bill does not have any recoupment mechanism. Federal recoupment would be limited to $10 billion to avoid any adverse impact on the economy.

REV_00147447

From: Pat.Cave@do.treas.gov [UNKNOWN]
To: Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Peter.Fisher@do.treas.gov [UNKNOWN] <Peter.Fisher@do.treas.gov>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
Sent: 6/25/2002 6:14:09 AM
Subject: : Terrorism Risk Insurance
Attachments: P_MMSA8003_WHO.TXT_1.html; P_MMSA8003_WHO.TXT_2.doc; P_MMSA8003_WHO.TXT_3.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Pat.Cave@do.treas.gov ( Pat.Cave@do.treas.gov [ UNKNOWN ] )
CREATION DATE/TIME:25-JUN-2002 10:14:09.00
SUBJECT:: Terrorism Risk Insurance
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Peter.Fisher@do.treas.gov ( Peter.Fisher@do.treas.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please find attached the documents we passed out last week when we met on
terrorism risk insurance. If you have follow up comments to the documents,
please let me know.

Pat



<<Billcomparisonamend8.doc>> <<conference compromise options-0617.doc>>
- att1.htm - Billcomparisonamend8.doc - conference compromise options-0617.doc
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File attachment <P_MMSA8003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MMSA8003_WHO.TXT_3>
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Please find attached the documents we p assed out last week when we met on terrorism risk insurance. If you have follow up com ments to the documents, please let me know.

Pat

<<Billcomparison amend8.doc>> <<co nference compromise options-0617.doc>>

TERRORISM RISK INSURANCE COMPARISON

Issue	Senate Bill (S. 2600)	House-Passed Bill
Loss Sharing Program	One-year Federal loss sharing program administered by the Secretary of the Treasury (Secretary), with one-year extension at the Secretary's discretion, in which government pays financial assistance to participating commercial P&C primary insurers subject to a deductible. Per Company Deductible: Each participating insurer has a deductible defined as its market share of direct written premiums multiplied by $10 billion. Once the company has paid insured losses equal to its deductible, the Government pays 80% of additional losses incurred by that company and the company pays the remaining 20 percent. Once aggregate losses have reached $10 billion, the loss sharing converts to 90/10. If aggregate losses exceed $10 billion, the Secretary determines each company's pro rata share of the government's loss-sharing payments. In-Force Reinsurance Agreements: For policies covered by reinsurance contracts in force on the date of enactment, until the reinsurance contract is renewed, amended, or	One-year Federal loss sharing program administered by Secretary of the Treasury (Secretary) in which government provides financial assistance to commercial P&C insurers based on one of two "triggering events." (1) Industry-wide trigger: In an "industry-wide triggering event," the Secretary determines that industry-wide commercial P&C losses from one or more acts of terrorism exceed $1 billion. Each insurer receives financial assistance equal to the difference between 90% of the insurer's net losses (net of reinsured losses) and $5 million. (2) Individual insurer trigger: In an "individual insurer triggering event," the Secretary determines that industry-wide losses exceed $100 million and losses for any single insurer exceed 10% of its capital surplus and 10% of its commercial P&C net premiums. Each insurer eligible to receive financial assistance under the triggering determination receives financial assistance equal to the difference between 90% of its insured losses and 10% of its net P&C premiums in force at the time of the insured losses. • If the Secretary subsequently determines that an industry-wide trigger has occurred, the 10% of premium deductible is refunded, and the deductible under the industry-wide trigger is applied. Coverage under the individual insurer trigger applies only to those commercial insurers who were providing commercial P&C coverage prior to 9/11.

REV_00147479

Issue	Senate Bill (S. 2600)	House-Passed Bill
	reaches its 1-year anniversary date, the	No provision on In-Force Reinsurance Agreements.
Loss Sharing Program (cont'd)	Federal share of compensation is shared (1) with all reinsurers to which the participating insurer has ceded some share of the insured loss, and (2) in a manner that distributes the Federal share between the participating insurer and the reinsurers in the same proportion as if the program did not exist.	
Sunset Provisions	The program sunsets on December 31, 2002. Secretary may extend to a second year based on findings of a mandated report. If extended, the loss-sharing is the same as in the first year but the per-company allocation is based on market share multiplied by $15 billion.	The program sunsets on January 1, 2003. Secretary may extend the program by not more than 2 years.
Triggering Event	Coverage commences when an individual participating insurance company's insured losses exceed its deductible.	Secretary determines that an "industry-wide" or "individual insurer" triggering event has occurred, as described above.

REV_00147480

Coverage Requirements	Participating insurer must offer terrorism coverage in all its commercial P&C policies (in all its participating lines) and may, within 21 days, opt-in to participate with respect to its personal lines. Terrorism coverage must not differ materially from its other P&C coverage. Policyholder must file claim with participating insurer, which processes the claim and submits it to the Secretary along with (1) verification of the claim and payments made to policyholder and (2) certification of compliance with the program.	None
Cap on Coverage	$100 billion annual losses, after which Congress decides the procedures for and source of any excess payments. Industry not liable over $100 billion.	Total amount of Federal financial assistance may not exceed an aggregate amount of $100 billion. Sense of Congress that acts of terrorism resulting in insured losses greater than $100 billion would necessitate further Congressional action.
Budget Authority	Provides budget authority for the Federal Government to provide its share of compensation for insured losses under the program.	Designates the amount of new budget authority and outlays as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act. Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

REV_00147481

Recoupment of Federal Payments	No provision.	All Federal financial assistance must be repaid from assessments and surcharges imposed on all commercial P&C insurers and deposited into the general fund of the Treasury. Aggregate Assessments: Financial assistance up to the first $20 billion is repaid from a combination of an "industry obligation assessment" and, if necessary, one or more "financing assessments." • Both types of assessments are imposed on all commercial P&C insurers based on the ratio of the firm's net premiums to the industry's aggregate premiums for commercial P&C coverage. (1) Industry obligation assessment: Capped at $5 billion per event per year ($10 billion in Years 2 and 3 if extended). (2) Financing assessment: • Applies only if financial assistance exceeds the industry obligation cap. • Deferred if any assessment has been made in the previous 12 months. • Individual insurer's portion of annual assessments may not exceed 3% of its net P&C premiums during any 12 month period (amounts exceeding the cap are paid over multiple years). • Secretary may defer payments to avoid insolvency. Surcharges: Financial assistance exceeding $20 billion is repaid from surcharges. • Surcharges are based on a percentage of commercial P&C net premiums and may extend over multiple years to recoup full federal payment.

REV_00147482

		The Secretary determines the amount and duration of the surcharge after weighing various factors including
Recoupment of Federal Payments (cont'd)		cost to taxpayers of not establishing a surcharge, economic conditions, affordability for small and medium-sized businesses, etc. • Individual insurer's portion of surcharges may not exceed 3% of its annual written premiums. General: • Secretary may defer payment of assessments and surcharges to avoid insolvency. • Secretary may impose civil penalties and/or charge interest for overdue assessments. Secretary must prescribe manner and method, including amounts, of carrying out assessments and surcharges, taking into consideration various factors including impact on small businesses, cross-subsidization, and the various exposures of different lines of commercial P&C coverage.
Persons and Entities Covered	Defines "person" to mean individuals, businesses, nonprofits, trusts or estates, and state and local governments.	"Person" not defined.

Lines Covered	Commercial P&C, including business interruption but not life or health. Excludes federal crop insurance and private mortgage insurance. P&C companies have 21 days after enactment to notify the Secretary if they want to have their personal P&C lines included in the program. "Business interruption" covers temporary relocation expenses and ongoing expenses, including ordinary wages, where: (1) there is physical damage to point that business can't open; (2) physical damage occurring to other property but preventing customers or employees from gaining physical access to business; or (3) Government shuts down area because of physical or environmental damage, thereby preventing physical access to the business premises. Business interruption does not include lost profits unless entity is a small business under Small Business Act.	Commercial P&C, including loss of income or extra expense incurred because of losses or damage to property (i.e., business interruption). Excluded from coverage are: life and health insurance, insurance for professional liability, and insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and any other insurance for personal, family, or household needs.

REV_00147484

Participating Insurers	Defined as any insurance company, including any subsidiary or affiliate, that is (1) licensed primary insurer or (2) unlicensed "eligible surplus line carrier" listed by the NAIC (3) that received direct premiums for any type of commercial P&C coverage or that, within 21 days, opts-in with respect to personal P&C lines.	Defined as any commercial P&C insurer, including affiliates, and expressly includes reinsurers and retrocessional insurers. Secretary of Treasury must ensure that Act applies to any offshore or non-admitted entities that provide commercial P&C insurance.
Program Administrator and Authority	Secretary of Treasury, who may: (1) investigate and audit claims; and (2) prescribe regulations and procedures; (3) employ persons or contract for services; (4) assess civil money penalties for violations of the Act or regulations or orders; and (5) prescribe criteria for participating insurance companies.	Secretary of Treasury, who: (1) must consult with state insurance regulators and NAIC; (2) may prescribe regulations and procedures; (3) may require insurers to report net premiums for each commercial P&C line; (4) may investigate and audit claims and require verification of premiums or losses; (5) may assess civil money penalties or interest for nonpayment of assessments and surcharges; (6) must prescribe manner and method of assessments and surcharges.
Self-Insurance Arrangements	The Secretary may, in consultation with NAIC, establish procedures allowing municipalities and other governmental or quasi-governmental entities operating through self-insurance arrangements to participate in the Program.	Secretary of the Treasury, in consultation with the NAIC, may apply Act to self-insurance arrangements by municipalities and other entities. This must be determined before the occurrence of a triggering event. All the provisions of the Act must be uniformly applied to these entities.

REV_00147485

Definition of "Act of Terrorism"	Act certified by the Secretary, in concurrence with Secretary of State and Attorney General, that is • Violent or dangerous to human life, property, or infrastructure within U.S. (or outside U.S. for an air carrier or U.S. flag vessel); • is committed by an individual or group acting on behalf of any foreign person or foreign interest; and • is intended to coerce civilian population or influence policy or affect the conduct of the U.S. Government by coercion. Excludes acts of war declared by Congress. Excludes losses under $5 million. Determinations are final and not subject to judicial review.	Act certified by the Secretary, who must consult with Attorney General and Secretary of State in determining whether (1) an occurrence was caused by an act of terrorism, and (2) an act of terrorism occurred during the covered period. A terrorist act is: • Unlawful; • causes harm in the U.S. to person, property, or entity, or in the case of a domestic U.S. air carrier or U.S. flag vessel, in or outside the U.S.; • is committed by a person or group of persons recognized by the State Department or the Secretary of the Treasury as a terrorist group or conspirator either before or after such act; and • is intended to destabilize a sovereign government or affect conduct of the U.S. government by coercion. Excludes acts of war except with respect to workers compensation coverage. Certifications not subject to judicial review. Secretary may refine the requirements for "act of terrorism" in consultation with the NAIC.
Who Certifies that Loss was Caused by Act of Terrorism?	Secretary of the Treasury	Secretary of the Treasury in consultation with Attorney General and Secretary of State.

REV_00147486

Preemption / Coordination with State Regulators	Preempts (1) state definitions of "act of terrorism" and (2) state rules requiring pre-approval of premiums or waiting periods for adopting premiums. (States may invalidate terrorism rates as excessive, inadequate, or unfairly discriminatory.) Provides that books and records of participating insurance companies shall be provided to the Secretary upon his request, notwithstanding state laws. No preemption unless specifically provided.	Preempts (1) state definitions of "act of terrorism;" (2) state rate laws to extent necessary to cover assessments and approval or other conditions to policy or rate effectiveness; and (3) any action other than filing of rates and policies with State insurance regulator to the extent that such law requires additional actions for terrorism insurance coverage. Does not limit implied preemption. Sense of Congress that NAIC and states should adopt: • Consistent federal and state definitions of acts of terrorism; • Within 6 months, appropriate guidelines for reserves subject to Secretary of the Treasury adoption of national guidelines; and • Disclosure guidelines subject to Secretary of the Treasury's adoption of national guidelines.
Legal Procedures	Creates exclusive federal cause of action for covered terrorism acts. District court determines applicable law, based on choice of law principles. Judicial Panel on Multidistrict Litigation assigns jurisdiction for all claims to a single Federal District Court, which has original and exclusive jurisdiction. Cases filed in other federal or state courts are transferred/removed to the designated District Court. No offset provision.	Federal cause of action same as Senate bill, except based on law of state where act occurred. Judicial Panel on Multidistrict Litigation assigns jurisdiction for all claims to one or more Federal District Courts. Offsets plaintiff's recovery by any Federal disaster relief received.

REV_00147487

Legal Procedures (cont'd)	Amounts awarded in civil action that are attributable to punitive damages will not be included within the insured losses.	Disallows punitive damages by or against an insured (applies only to extent of insurance coverage under a triggering determination).
	No proportional liability provision.	Requires proportional liability for non-economic damages by or against an insured (applies only to extent of insurance coverage under a triggering determination).
	Provides U.S. right of subrogation for any payment made by U.S. through program.	Provides U.S. right of subrogation for claims U.S. pays.
	No statute of limitations provision	No statute of limitations provision.
	No limited damages provision.	Damages limited to insured party.
	Provisions apply only while program is effective.	Provisions apply only with respect to triggering determinations and do not in any way limit actions against terrorists or their conspirators.
	No settlement provision	No settlement provision.
	No judgment satisfaction provision.	Makes terrorist assets seized or frozen by U.S. liable to satisfy judgments for acts of terrorism. President may waive this requirement.
	No protective order provision.	Authorizes U.S. or Secretary of the Treasury to seek protective orders for classified information.
	No arbitration provision.	Preserves contractual arbitration rights.

REV_00147488

	No attorney fees provision	The Court will decide on reasonable attorneys fees so that the fees will not exceed 20 %of total damages.
Disclosure to policyholders	At time of offer, purchase, or renewal of each policy, insurance company must disclose to the policyholder the premium charged for losses covered by the program and the Federal share of compensation under the program. For in-force contracts, disclosure required within 90 days.	Sense of Congress that states should require disclosure of the price of any P&C insurance for acts of terrorism, including costs of terrorism related assessments or surcharges. If states do not enact disclosure guidelines, the Secretary of the Treasury and the NAIC should adopt guidelines requiring the disclosure.
Ability to sue terrorist or terrorist's country	Act does not limit ability of any plaintiff to recover from any person, government, or other entity that participated in or aided and abetted any act of terrorism.	Act does not limit ability of any plaintiff to recover from any person that participated in or aided and abetted any act of terrorism.
Insurance Industry Build-Up	Sense of Congress that insurance industry should build up its capacity to provide affordable coverage for terrorism risk.	No provision.
Tax Provision	No provision.	Secretary shall issue a study within 4 months on issues relating to permitting P&C companies to establish tax-deductible reserves against future acts of terrorism.
Participating Insurer's Reports	Every 6 months participating insurance companies must report to the NAIC the premium rates charged for insured losses, including an explanation of and justification for those rates. The NAIC must forward copies of those reports to	Each insurer may be required by the Secretary to submit to the Secretary or the NAIC a statement specifying the net premium amount of coverage written under each line of commercial P&C sold by the insurer during a specified period.

REV_00147489

	the Secretary, the Commerce Secretary, the FTC, and GAO.	

Reports to Congress	Secretary must report to Congress within 9 months the availability of life insurance and other lines of insurance coverage.	Presidentially appointed commission must report to Congress on life insurance within 120 days.
	No report on railroad and trucking insurance	Secretary must report to Congress on railroad and trucking insurance for acts of terrorism within 120 days.
	Secretary must report to Congress promptly on reasons for any extension of the program.	Reporting on extensions same as Senate bill.
	No report on pooling.	Secretary of Treasury, Federal Reserve Board, and GAO must report to Congress within 6 months of enactment on (1) the advisability of establishing a reinsurance pool for acts of terrorism to replace the Act's financial assistance program, and (2) the potential effects of the Internal Revenue Code amendments and any further changes to federal law that might be appropriate to encourage pooling.
	The Secretary, the Secretary of Commerce, and the FTC shall submit joint reports to Congress and GAO summarizing and evaluating the reports received every 6 months on premium rates (see row above). These reports are due after 9 months and then 12 months later. The GAO shall evaluate these reports for Congress.	No report on premium rates.
	The Secretary shall report to Congress in 9 months on availability of insurance	No report on availability of terrorism insurance.

REV_00147491

	coverage for acts of terrorism.	

REV_00147493

Terrorism Risk Insurance –
Preferred Conference Compromise Options on Key Issues

Participating Insurance Companies

- Participation would be mandatory for commercial property and casualty insurers and only available for the types of commercial property and casualty insurance described in the House bill (definitions) with the following changes: group life insurance would be included; insured loss from debt or default (i.e., credit guarantee) would not be included; insured losses covered by other government programs would be excluded (e.g., crop insurance and to the extent U.S. flag carriers are covered); and the Senate version of business interruption would be substituted.

  Senate bill requires mandatory participation for commercial lines, but permits optional participation for personal lines. House bill does not have mandatory participation. Senate version provides discretion to the Secretary to determine covered commercial lines. House version provides more certainty, which could be useful in setting up the program. If necessary, could provide the Secretary limited discretion to exclude certain lines.

- Only primary insurance companies would be allowed to participate.

  House bill permits full participation by reinsurers. Senate bill is mostly tied to primary insurers, but does have a provision that provides reinsurers with a legal claim on government loss sharing payments provided to the primary insurance company that is in proportion to losses under in-force reinsurance existing contracts. In-force reinsurance provision was necessary when there were a number of existing reinsurance contracts that were entered into prior to September 11. However, with most of those contracts now or soon to be expiring, and with some reinsurance capacity now available to reinsure per-company deductibles, such a provision is no longer necessary.

Loss Sharing Program

- One-year program (effectively 18 months as first year would run through December 31, 2003) that is extendable by the Secretary for two-year intervals based on a finding that insurance for terrorism risk is not readily available. The Secretary would also have the discretion to increase deductibles and reduce government loss sharing if the program is extended.

  House bill sunsets on January 1, 2003, and the Secretary may extend the program by not more than 2 years. Senate bill sunsets on December 31, 2002, and could be extended for an additional year.

  [Here are two options for dealing with the per company deductible. Specifying a specific deductible in legislation based on gross premiums is the best approach for the following reasons:

- It in conjunction with the above definition of covered lines provides insurers immediate certainty as to their deductible (they do not have to wait for a regulation).
- Doing a regulation specifying a deductible based on market shares might have made some sense with optional coverage, but with that gone it is no longer needed.
- The 7.5 percent approximates the $10 billion loss approach in the Senate, whether gross or net premiums are used. Specifying the deductible in legislation provides certainty and speeds up the process.
- Gross is preferable because net reflects a ceding of reinsurance premiums that presumably will not happen for terrorism risk.]

- Preferred Option: Participating insurance company deductible equal to 7.5 percent of gross premiums in year one, with an increase to 10 percent in year two of the program.

  The 7.5 percent of gross premiums approximates what the deductible would be under the Senate bill and a $10 billion loss (although under the Senate bill it could be higher or lower depending on the level of participation). It is less stringent than the deductible under the House bill's individual insurer triggering mechanism, and more stringent than deductible under the House bill's industry-wide trigger. Gross premiums would be favored because net premiums are based on an active reinsurance market that has yet to fully return. Specifying a clear percentage in legislation provides immediate certainty to insurance companies regarding their deductible. Double triggering mechanism under the House bill would be eliminated.

- Fallback Option: Participating insurance company deductible would be set to equal to the dollar amount equal to the participating insurance company's market share of net domestic property and casualty premiums as determined by the Secretary multiplied by $10 billion in year one and $15 billion in year 2.

  Follows the Senate bill with a specific link to $10 billion and $15 billion, but picks up the House bill's use of net premiums. Expected per company deductible would be approximately 7.5 percent of premiums with no personal line coverage in year one.

- Government loss sharing above the deductible would be set on a 90/10 basis.

  House bill has 90/10 loss sharing above a deductible, while the Senate bill has 90/10 loss sharing above the deductible if aggregate losses are less than $10 billion, and 80/20 if aggregate losses are greater than $10 billion. Because there is going to be some recoupment mechanism for a portion of government payments, the two-tiered loss sharing mechanism in the Senate bill would be eliminated.

Recoupment of Federal Payments

- For any government payments to insurance companies of up to $10 billion dollars during a calendar year, all commercial policyholders with covered lines would be required to pay a surcharge of up to 3 percent of premiums per year until government payments are recouped.

REV_00147495

Surcharges would be made as soon as practical at the end of the calendar year, and at annual intervals until government payments were fully recouped.

House bill requires assessments for government payments up to $20 billion and has a complicated procedure for implementing such assessments. Senate bill does not have any recoupment mechanism. Surcharges are favored over assessments because of greater transparency regarding ultimate costs to policyholders for government recoupment and a broader spreading of the costs.

- For any government payments to insurance companies of over $10 billion dollars during a calendar year, no government assessment or surcharge would be collected.

House bill authorizes surcharges on policyholders for government payments over $20 billion. Senate bill does not have any recoupment mechanism. Federal recoupment would be limited to $10 billion to avoid any adverse impact on the economy.

REV_00147496

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/25/2002 6:32:04 AM
Subject: : stats
Attachments: P_FVTA8003_WHO.TXT_1.doc

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CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:25-JUN-2002 10:32:04.00
SUBJECT:: stats
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

REAGAN (1981-1982):

TOTAL:
Nominated: 89
Confirmed: 88
CONFIRMATION RATE: 98.8%

BREAKDOWN:

Supreme Court:
Nominated: 1
Confirmed: 1
CONFIRMATION RATE: 100%

Circuit Courts:
Nominated: 20
Confirmed: 19
CONFIRMATION RATE: 95%

District Courts (Article III):
Nominated: 68
Confirmed: 68
CONFIRMATION RATE: 100%

BUSH (1989-1990):

TOTAL:
Nominated: 75*
Confirmed: 71
CONFIRMATION RATE: 94.6%

BREAKDOWN:

Supreme Court:
Nominated: 1
Confirmed: 1
CONFIRMATION RATE: 100%

Circuit Courts:
Nominated: 23
Confirmed: 22
CONFIRMATION RATE: 95.6%

District Courts (Article III):
Nominated: 51*
Confirmed: 48
CONFIRMATION RATE: 94.1%

*Vaughn Walker (CA-ND) was submitted twice (confirmed on the second

nomination)

CLINTON (1993-1994):

TOTAL:
Nominated: 142
Confirmed: 128
CONFIRMATION RATE: 90.1%

BREAKDOWN:

Supreme Court:
Nominated: 2
Confirmed: 2
CONFIRMATION RATE: 100%

Circuit Courts:
Nominated: 22
Confirmed: 19
CONFIRMATION RATE: 86.3%

District Courts (Article III):
Nominated: 118
Confirmed: 107
CONFIRMATION RATE: 90.6%

BUSH (2001-present):

TOTAL:
Nominated: 103
Confirmed: 57
CONFIRMATION RATE: 55.3%

BREAKDOWN:

Circuit Courts:
Nominated: 31
Confirmed: 9
CONFIRMATION RATE: 29%

District Courts:
Nominated: 71
Confirmed: 48
CONFIRMATION RATE: 67.6%

Court of Int'l. Trade:
Nominated: 1
Confirmed: 0
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File attachment <P_FVTA8003_WHO.TXT_1>

As of 9:00 am, June 24, 2002

President	Congress	District Court Nominations Submitted	District Court Nominations Confirmed	District % Confirmed	Circuit Court Nominations Submitted	Circuit Court Nominations Confirmed	Circuit % Confirmed	Total Submitted	Total Confirmed	Total % Confirmed
Bush 2001-2002[1]	107th	71	48	67.6%	31	9	29%	102	57	55.8%
Clinton 1993-1994[2]	103rd	80	60	75%	17	11	64.7%	97	71	73.1%
Bush 1989-1990[3]	101st	42[5]	31	73.8%	20	13	65%	62	44	70.9%
Reagan 1981-1982[4]	97th	52	51	98%	14	14	100%	66	65	98.4%

Number of vacancies on 1/21/01: 82
Number of vacancies on 5/9/01: 101
Number of vacancies as of 06/24/02: 88[6]

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[1] President Bush sent his first judicial nominations to the Senate on May 9, 2001.
[2] President Clinton made one Supreme Court nomination on June 22, 1993. His first circuit and district court appointments were sent to the Senate on August 6, 1993.
[3] President George H.W. Bush renominated five judicial candidates that had originally nominated by President Reagan on February 28, 1989. His first original nominations were sent to the Senate on August 4, 1989.
[5]
[4] President Reagan nominated one district judge on July 1, 1981 and 4 district judges on July 9, 1981.
[6]

[1] President Bush sent his first judicial nominations to the Senate on May 9, 2001.
[2] President Clinton made one Supreme Court nomination on June 22, 1993. His first circuit and district court appointments were sent to the Senate on August 6, 1993.
[3] President George H.W. Bush renominated five judicial candidates that had originally nominated by President Reagan on February 28, 1989. His first original nominations were sent to the Senate on August 4, 1989.
[4] President Reagan nominated one district judge on July 1, 1981 and 4 district judges on July 9, 1981.
[5] Vaughn Walker (CA-ND) was submitted twice. (Walker's first nomination was returned, and his second nomination was confirmed)
[6] Includes one Article III vacancy on the U.S. Court of International Trade.

(Source: Congressional Research Service)

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/25/2002 7:45:09 AM
Subject: : please call me

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CREATION DATE/TIME:25-JUN-2002 11:45:09.00
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>;Mary J. Matalin/OVP/EOP@EOP [OVP] <Mary J. Matalin>;Chris Henick/WHO/EOP@EOP [WHO] <Chris Henick>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>;Nicholas E. Calio/WHO/EOP@EOP [WHO] <Nicholas E. Calio>
Sent: 6/25/2002 12:24:27 PM
Subject: :

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CREATION DATE/TIME:25-JUN-2002 16:24:27.00
SUBJECT::
TO:David W. Hobbs ( CN=David W. Hobbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Mary J. Matalin ( CN=Mary J. Matalin/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Chris Henick ( CN=Chris Henick/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Alicia W. Davis ( CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nicholas E. Calio ( CN=Nicholas E. Calio/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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NY Redistricting has just been pre-cleared by DOJ. All of the parties
know and are pleased.
```

From: Willett, Don <Don.Willett@usdoj.gov>
To: Washington, Tracy T <Tracy.T.Washington@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/26/2002 7:29:48 AM
Subject: : TT, pls. e-mail Brett the joint SG letter in PDF format

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ( "Willett, Don" <Don.Willett@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME:26-JUN-2002 11:29:48.00
SUBJECT:: TT, pls. e-mail Brett the joint SG letter in PDF format
TO:"Washington, Tracy T" <Tracy.T.Washington@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Washington, Tracy T" <Tracy.T.Washington@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I've tried twice but the "postmaster" has bounced it back to me both times.

Brett, let us know if it still doesn't arrive.

Thanks.

DRW
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>
Sent: 6/26/2002 1:13:54 PM
Subject: : Re: Daschle

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:26-JUN-2002 17:13:54.00
SUBJECT:: Re: Daschle
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jennifer g. newstead (CN=jennifer g. newstead/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Wisely covering his behind. We still ought to try to stick the Senate Dems with responsibility for this decision through their blocking of the President's circuit judges. The public will readily understand that no Bush judge would ever have gone along with such an activist decision.

Brett M. Kavanaugh
06/26/2002 04:47:37 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Daschle

According to CNN, Daschle is introducing a resolution denouncing Ninth Circuit opinion.

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP

Helgard C. Walker/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>
Sent: 6/26/2002 10:45:26 AM
Subject: : Re: Ninth Circuit strikes again

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:26-JUN-2002 14:45:26.00
SUBJECT:: Re: Ninth Circuit strikes again
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:alberto r. gonzales ( CN=alberto r. gonzales/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

The plaintiff in this case, Dr. Michael Newdow, is the same person who
sued the President claiming that Rev. Franklin Graham's Invocation at the
Presidential Inauguration violated the Establishment Clause. Although the
district court dismissed the Inaugural prayer case, Newdow can appeal to
the Ninth Circuit.




Brett M. Kavanaugh
06/26/2002 02:32:41 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Ninth Circuit strikes again

. . . court just ruled that schoolteacher's recitation of Pledge
of Allegiance with class was unconstitutional because of addition of words
"under God" in 1954. Goodwin and Reinhardt in majority and Fernandez in
dissent.
```

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
David S. Addington/OVP/EOP@EOP

From: CN=Rachel L. Brand/OU=WHO/O=EOP [WHO]
To: h._christopher_bartolomucci@who.eop.gov@EOP [UNKNOWN] <h._christopher_bartolomucci@who.eop.gov@EOP>
CC: helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;jennifer g. newstead/who /eop@eop [WHO] <jennifer g. newstead>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;kyle sampson/who /eop@eop [WHO] <kyle sampson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>;alberto r. gonzales/who/eop@eop [WHO] <alberto r. gonzales>
Sent: 6/27/2002 6:29:05 AM
Subject: : WATCH FOX NOW

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-JUN-2002 10:29:05.00
SUBJECT:: WATCH FOX NOW
TO:h._christopher_bartolomucci@who.eop.gov@EOP (
h._christopher_bartolomucci@who.eop.gov@EOP [UNKNOWN])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:jennifer g. newstead (CN=jennifer g. newstead/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:bradford a. berenson (CN=bradford a. berenson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

H. Christopher Bartolomucci
06/27/2002 10:27:55 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: S. Ct. upholds vouchers

Message Sent
To:_____
Alberto R. Gonzales/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Hana F. Brilliant/WHO /EOP@EOP [WHO] <Hana F. Brilliant>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>

Sent: 6/27/2002 6:16:12 AM

Subject: : Supreme Court stuff (source AP)

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2002 10:16:12.00
SUBJECT:: Supreme Court stuff (source AP)
TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Nothing yet on school vouchers.

Thu June 27, 2002 10:03 EDT
```

WASHINGTON _ Supreme Court approves broader student drug testing.

Thu June 27, 2002 10:06 EDT
WASHINGTON _ The Supreme Court overturns speech limits on judicial candidates.

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Margaret M. Spellings/OPD/EOP@EOP [OPD] <Margaret M. Spellings>
Sent: 6/27/2002 10:57:02 AM
Subject: : school choice summary

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:27-JUN-2002 14:57:02.00
SUBJECT:: school choice summary
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

Zelman v. Simmons-Harris
United States Supreme Court
June 27, 2002

The Supreme Court has announced a major constitutional decision upholding the State of Ohio,s Pilot Project Scholarship Program. The Pilot Scholarship Program enables Cleveland students from mostly lower-income families to attend religiously-affiliated and non-religiously-affiliated private schools with substantial assistance from State-funded scholarships. The Court rejected a challenge to the program contending that it constituted an impermissible Establishment of religion. The opinion for the 5-4 majority was written by Chief Justice Rehnquist and joined by Justices O,Connor, Scalia, Kennedy, and Thomas.

The Court,s analysis begins by noting that the Establishment Clause forbids States from &enacting laws that have the +purpose, or +effect, of advancing or inhibiting religion.8 Slip Op. at 7. Quickly recognizing the Pilot Scholarship Program,s secular purpose of &providing educational assistance to poor children in a demonstrably failing public school system,8 id. the Court moved on to assess whether the program had any impermissible &effects.8 Id.

The Court,s &effects8 analysis places the Pilot Scholarship Program squarely in context of earlier cases described by the Court as involving & government aid8 that reaches &religious schools only as a result of genuine and independent choices of private individuals.8 Slip. Op. at 7. These previous decisions, which involved tax credits for parochial schools (Mueller v. Allen), tuition reimbursements for a blind seminarian (Witters v. Washington Department of Services for the Blind) and state-provided sign-language interpretation services for deaf students (Zobrest v. Catalina Hills School District), all uniformly upheld the challenged government aid programs. Slip Op. at 7-9.

These earlier cases, the Court made clear, establishes a general guideline that &a government aid program8 is not &readily subject to challenge under the Establishment Clause8 if it is (1) &neutral with respect to religion;8 and (2) &provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools;8 such that (3) religious schools benefit, if at all, &wholly as a result8 of the individuals, &own genuine and independent private choice.8 Slip Op. at 10.

The Court concluded that the Pilot Scholarship Program meets this test for neutrality, individualized benefits and genuine private choice. The Court reasoned that the Pilot Scholarship Program provides assistance &to a broad class of citizens defined without reference to religion8 and permits

the participation of all schools within the district, religious or non-religious. Slip Op. at 11. It then found that Ohio,s program &in fact creates financial disincentives for religious schools8 by providing greater amounts of state funding for necessarily secular educational alternatives such as community (charter) schools, public magnet schools, and traditional public schools and by requiring tuition co-payments by parents of private school students, but not by parents of students educated in these necessarily secular settings. Slip Op. at 12.

The Court also concluded, using analysis favored by Justice O,Connor, that &no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of independent decisions of private individuals, carries with it the imprimatur of government endorsement.8 Slip Op. at 13.

The Court next rejected arguments contending that dispositive constitutional significance should be attributed to the fact that 96 percent of Pilot Scholarship Program students attend religiously-affiliated schools. The Court noted the geographic variations in religious schools, market share (both in Ohio and across the nation) and concluded that to attribute constitutional significance to these figures &would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, such as Columbus, where a lower percentage of private schools are religious8 but ¬ in inner-city Cleveland, where Ohio has deemed such programs most sorely needed.8 Slip Op. at 15-16. The Court then repeated its statement from an earlier case emphasizing that such focus on statistics &would scarcely provide the certainty that this field stands in need of, nor can we perceive principled standards by which such statistical evidence might be evaluated.8 Slip Op. at 17.

The Court closed its opinion by rejecting arguments that Cleveland,s program should be invalidated based on its thirty-year-old decision striking down a New York program of aid to religious schools. The Court emphasized that this older decision (Committee for Public Education and Religious Liberty v. Nyquist) was intended &unmistakably8 to provide & financial support8 for §arian institutions8 and expressly reserved judgment on programs neutrally providing &generally available8 &public assistance.8 Slip Op. at 19-20. The Court held squarely that Nyquist & does not govern neutral educational assistance programs that, like the program here, offer aid directly to a broad class of individual recipients defined without regard to religion.8 Slip Op. at 19-20.

The Court,s majority decision is supported by two concurrences. Justice O, Connor wrote separately to emphasize similarities between the Pilot Scholarship Program and other programs through which government money reaches religious institutions, as well as to refute claims in Justice Souter,s dissenting opinion that Ohio,s program fails to provide for &true private choice.8 Justice Thomas wrote eloquently, quoting Frederick Douglass and citing the Supreme Court,s decision in Brown v. Board of Education. He also emphasized constitutional reasons why States should enjoy greater freedom in matters touching on religion than the federal government.

From: CN=Krista L. Ritacco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/27/2002 7:06:25 AM
Subject: : KPH Meeting tomorrow at 3:30 pm in our office

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-JUN-2002 11:06:25.00
SUBJECT:: KPH Meeting tomorrow at 3:30 pm in our office
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thought someone from Counsel's office should be here too.... could you make it?
---------- Forwarded by Krista L. Ritacco/WHO/EOP on 06/27/2002 11:05 AM ----------

Krista L. Ritacco
06/27/2002 10:48:04 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: KPH Meeting tomorrow at 3:30 pm in our office

Karen Hughes would like to meet with the following group to discuss the recent pledge of alliegance ruling and how it relates to our faith-based initiative, judicial nominees, etc.

3:30 pm in our office. Please let me know if you can attend.

Karen Hughes
Karl Rove
Jim Toowey
Jim Wilkinson
Ken Mehlman
Dan Bartlett
Anne Womack

Message Sent
To:_____
Susan B. Ralston/WHO/EOP@EOP
Catharine A. Ryun/WHO/EOP@EOP
Shannon Burkhart/WHO/EOP@EOP
Katherine G. Marinis/WHO/EOP@EOP
Christina D. Roberts/WHO/EOP@EOP
Anne Womack/WHO/EOP@EOP

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;Margaret M. Spellings/OPD /EOP@EOP [OPD] <Margaret M. Spellings>
Sent: 6/27/2002 11:08:42 AM
Subject: : school choice summary

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-JUN-2002 15:08:42.00
SUBJECT:: school choice summary
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

This looks good. If this is for further distribution, then I have one small suggestion. Right after the second to last sentence ("Justice Thomas wrote eloquently, quoting Frederick Douglass and citing the Supreme Court,s decision in Brown v. Board of Education.), insert: "If society cannot end racial discrimination," he wrote, "at least it can arm minorities with the education to defend themselves from some of discrimination's effects." Slip Op. at 9.
---------- Forwarded by Noel J. Francisco/WHO/EOP on 06/27/2002 02:58 PM ----------

Jay P. Lefkowitz
06/27/2002 02:56:56 PM
Record Type: Record

To: Margaret M. Spellings/OPD/EOP@EOP, Noel J. Francisco/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: school choice summary

Zelman v. Simmons-Harris
United States Supreme Court
June 27, 2002

The Supreme Court has announced a major constitutional decision upholding the State of Ohio,s Pilot Project Scholarship Program. The Pilot Scholarship Program enables Cleveland students from mostly lower-income families to attend religiously-affiliated and non-religiously-affiliated private schools with substantial assistance from State-funded scholarships. The Court rejected a challenge to the program contending that it constituted an impermissible Establishment of religion. The opinion for the 5-4 majority was written by Chief Justice Rehnquist and joined by Justices O,Connor, Scalia, Kennedy, and Thomas.

The Court,s analysis begins by noting that the Establishment Clause forbids States from &enacting laws that have the +purpose, or +effect, of advancing or inhibiting religion.8 Slip Op. at 7. Quickly recognizing the Pilot Scholarship Program,s secular purpose of &providing educational assistance to poor children in a demonstrably failing public school system,8 id. the Court moved on to assess whether the program had any impermissible &effects.8 Id.

The Court,s &effects8 analysis places the Pilot Scholarship Program

squarely in context of earlier cases described by the Court as involving &government aid8 that reaches &religious schools only as a result of genuine and independent choices of private individuals.8 Slip. Op. at 7. These previous decisions, which involved tax credits for parochial schools (Mueller v. Allen), tuition reimbursements for a blind seminarian (Witters v. Washington Department of Services for the Blind) and state-provided sign-language interpretation services for deaf students (Zobrest v. Catalina Hills School District), all uniformly upheld the challenged government aid programs. Slip Op. at 7-9.

These earlier cases, the Court made clear, establishes a general guideline that &a government aid program8 is not &readily subject to challenge under the Establishment Clause8 if it is (1) &neutral with respect to religion;8 and (2) &provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools;8 such that (3) religious schools benefit, if at all, &wholly as a result8 of the individuals, &own genuine and independent private choice.8 Slip Op. at 10.

The Court concluded that the Pilot Scholarship Program meets this test for neutrality, individualized benefits and genuine private choice. The Court reasoned that the Pilot Scholarship Program provides assistance &to a broad class of citizens defined without reference to religion8 and permits the participation of all schools within the district, religious or non-religious. Slip Op. at 11. It then found that Ohio,s program &in fact creates financial disincentives for religious schools8 by providing greater amounts of state funding for necessarily secular educational alternatives such as community (charter) schools, public magnet schools, and traditional public schools and by requiring tuition co-payments by parents of private school students, but not by parents of students educated in these necessarily secular settings. Slip Op. at 12.

The Court also concluded, using analysis favored by Justice O,Connor, that &no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of independent decisions of private individuals, carries with it the imprimatur of government endorsement.8 Slip Op. at 13.

The Court next rejected arguments contending that dispositive constitutional significance should be attributed to the fact that 96 percent of Pilot Scholarship Program students attend religiously-affiliated schools. The Court noted the geographic variations in religious schools, market share (both in Ohio and across the nation) and concluded that to attribute constitutional significance to these figures &would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, such as Columbus, where a lower percentage of private schools are religious8 but ¬ in inner-city Cleveland, where Ohio has deemed such programs most sorely needed.8 Slip Op. at 15-16. The Court then repeated its statement from an earlier case emphasizing that such focus on statistics &would scarcely provide the certainty that this field stands in need of, nor can we perceive principled standards by which such statistical evidence might be evaluated.8 Slip Op. at 17.

The Court closed its opinion by rejecting arguments that Cleveland,s program should be invalidated based on its thirty-year-old decision striking down a New York program of aid to religious schools. The Court emphasized that this older decision (Committee for Public Education and Religious Liberty v. Nyquist) was intended &unmistakably8 to provide &financial support8 for §arian institutions8 and expressly reserved judgment on programs neutrally providing &generally available8 &public assistance.8 Slip Op. at 19-20. The Court held squarely that Nyquist &does not govern neutral educational assistance programs that, like the program here, offer aid directly to a broad class of individual recipients defined without regard to religion.8 Slip Op. at 19-20.

The Court,s majority decision is supported by two concurrences. Justice O,Connor wrote separately to emphasize similarities between the Pilot Scholarship Program and other programs through which government money

reaches religious institutions, as well as to refute claims in Justice Souter,s dissenting opinion that Ohio,s program fails to provide for &true private choice.8 Justice Thomas wrote eloquently, quoting Frederick Douglass and citing the Supreme Court,s decision in Brown v. Board of Education. He also emphasized constitutional reasons why States should enjoy greater freedom in matters touching on religion than the federal government.

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Hana F. Brilliant/WHO /EOP@EOP [WHO] <Hana F. Brilliant>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>

Sent: 6/27/2002 1:59:25 PM

Subject: : July 4 Weekend Contact Info.

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2002 17:59:25.00
SUBJECT:: July 4 Weekend Contact Info.
TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Please email me all of your contact info for July 4 holiday/weekend.
Please include all contact phone/fax numbers as well as date/time of
travel plans. If you are planning on staying in the DC area and will be
```

reachable via all of your normal numbers the entire weekend please let me know that as well.

FYI - lots of people are taking Friday off but we are officially open for business from 8am-5pm. As of right now that Friday morning staff meeting on July 5 is TBD but I bet $ it is canceled.

Thanks!

Lib

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>
CC: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/27/2002 10:48:31 AM
Subject: : CA9 pledge of allegiance case

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2002 14:48:31.00
SUBJECT:: CA9 pledge of allegiance case
TO:Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Adam C. called to give us a heads-up that, later this afternoon, DOJ will
announce they are filing a motion for rehearing en banc in the CA9 case.
```

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Hana F. Brilliant/WHO /EOP@EOP [WHO] <Hana F. Brilliant>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;AGonzale@who.eop.gov [WHO] <AGonzale@who.eop.gov>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>

Sent: 6/27/2002 12:34:28 PM

Subject: : News Alert re: pledge

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:27-JUN-2002 16:34:28.00
SUBJECT:: News Alert re: pledge
TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:AGonzale@who.eop.gov ( AGonzale@who.eop.gov [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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Thu June 27, 2002 16:25 EDT
SAN FRANCISCO _ Federal appeals court judge put his Pledge of Allegiance ruling on hold.

Thu June 27, 2002 16:19 EDT
SAN FRANCISCO _ A day after he shocked nation by declaring Pledge of Allegiance unconstitutional, federal appeals court judge blocks his own ruling from being enforced.

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Craig.Blackwell@usdoj.gov [UNKNOWN] <Craig.Blackwell@usdoj.gov>
Sent: 6/28/2002 10:27:33 AM
Subject: : Revised Letter
Attachments: P_MWPE8003_WHO.TXT_1.doc; P_MWPE8003_WHO.TXT_2.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> ( GaryM Stern <garym.stern@nara.gov> [ UNKNOWN ]
)
CREATION DATE/TIME:28-JUN-2002 14:27:33.00
SUBJECT:: Revised Letter
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Craig.Blackwell@usdoj.gov ( Craig.Blackwell@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Here are the revisions, in a clean and redlined version. Let me know if
this is good to go.

- nelson16.doc - nelson 1600 letter3 redline.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MWPE8003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MWPE8003_WHO.TXT_2>
```

National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

June 28, 2002

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009-1001

By Fax (202-588-7795) and First Class Mail

Dear Scott:

I am writing to respond to certain questions you have raised about the reference to the "approximately 1500 pages" of records in my letter of November 14, 2001, to Ms. Joanne Drake.

Beginning in 2000, NARA staff reviewed all of the records at the Reagan Library that had been withheld from disclosure under the Presidential Records Act restrictions (44 U.S.C. § 2204(a)), whether in response to FOIA requests or as a result of systematic review, during the twelve years following the end of the Reagan presidency, in order to determine which records would be subject to disclosure upon the expiration of the PRA restrictions on January 20, 2001. Records initially withheld under the Presidential restriction categories, particularly those records withheld under P5, might no longer require protection upon re-review, and therefore could be proposed for opening. Conversely, records initially withheld only under P5 might, upon re-review, also warrant protection under an applicable FOIA exemption (e.g., (b)(1) or (b)(6)), or might be determined to be personal records, as defined in 44 U.S.C. § 2201(3).

In the fall of 2000, after NARA staff made an initial determination on records that could be proposed for opening, NARA engaged in informal consultations with the representatives of former President Reagan to inform them of our re-review in hopes of facilitating the first opening of Presidential records no longer covered by the PRA restrictive categories. Following those consultations, NARA agreed to re-review and further discuss with the Reagan representatives the status of what we then thought were approximately 1500 pages of records for which questions were raised as to whether FOIA exemptions might apply and/or whether they might constitute personal records. NARA determined to have these discussions and make its final decisions on these documents following the completion of the notification and review process of the remaining approximately 68,000 pages of Reagan records for which no questions were raised by the Reagan representatives.

In May and June of 2002, as the notification and review process on the "68,000" pages was largely complete, NARA met with the Reagan representatives to discuss the so-called "1500" pages, and on June 27, 2002, provided notice to the former and incumbent Presidents for the proposed opening of what turned out to be approximately 1654 pages (approximately 246 pages were withdrawn under FOIA exemptions or as personal records).

REV_00147623

NARA will treat your FOIA request of May 7, 2002, as applying to all 1654 pages of records that are covered by the notice, and will respond once the notice process under Executive Order 13233 is completed.

In addition, NARA has provided notice for the opening of other Reagan Presidential records. On June 14, 2002, NARA opened approximately 23,653 pages of records and 43 minutes of audio tape in response to numerous pending FOIA requests (notice was provided on May 9, 2002, and no privilege was asserted); and on June 10 and June 28, 2002, NARA provided notice for the proposed opening of approximately 16,784 pages and twelve audiotapes of Reagan records. NARA will continue to provide notice on proposed openings on an ongoing basis.

I hope this is responsive to your questions.

Sincerely,

GARY M. STERN
General Counsel

REV_00147624

National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

June 28, 2002

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009-1001

By Fax (202-588-7795) and First Class Mail

Dear Scott:

I am writing to respond to certain questions you have raised about the reference to the "approximately 1500 pages" of records in my letter of November 14, 2001, to Ms. Joanne Drake.

Beginning in 2000, NARA staff reviewed all of the records at the Reagan Library that had been withheld from disclosure under the Presidential Records Act restrictions (44 U.S.C. § 2204(a)), whether in response to FOIA requests or as a result of systematic review, during the twelve years following the end of the Reagan presidency, in order to determine which records would be subject to disclosure upon the expiration of the PRA restrictions on January 20, 2001. Records initially withheld under the Presidential restriction categories, particularly those records withheld under P5, might no longer require protection upon re-review, and therefore could be proposed for opening. Conversely, records initially withheld only under P5 might, upon re-review, also warrant protection under an applicable FOIA exemption (e.g., (b)(1) or (b)(6)), or might be determined to be personal records, as defined in 44 U.S.C. § 2201(3).

In the fall of 2000, after NARA staff made an initial determination on records that could be proposed for opening, NARA engaged in informal consultations with the representatives of former President Reagan to inform them of our re-review in hopes of facilitating the first opening of Presidential records no longer covered by the PRA restrictive categories. Following those consultations, NARA agreed to re-review and further discuss with the Reagan representatives the status of what we then thought were approximately 1500 pages of records for which questions were raised as to whether FOIA exemptions might apply and/or whether they might constitute personal records. NARA determined to have these discussions and make its final decisions on these documents following the completion of the notification and review process of the remaining approximately 68,000 pages of Reagan records for which no questions were raised by the Reagan representatives.

In May and June of 2002, as the notification and review process on the "68,000" pages was largely complete, NARA met with the Reagan representatives to discuss the so-called "1500" pages, and on June 27, 2002, provided notice to the former and incumbent Presidents for the proposed opening of what turned out to be approximately 1654 pages (approximately 246 pages were withdrawn under FOIA exemptions or as personal records).

REV_00147625

NARA will treat your FOIA request of May 7, 2002, as applying to all 1654 pages of records that are covered by the notice, and will respond once the notice process under Executive Order 13233 is completed.

In addition, NARA has provided notice for the opening of other Reagan Presidential records. On June 14, 2002, NARA opened approximately 23,653 pages of records and 43 minutes of audio tape in response to numerous pending FOIA requests (notice was provided on May 9, 2002, and no privilege was asserted); and on June 10 and June 28, 2002, NARA provided notice for the proposed opening of approximately 16,784 pages and twelve audiotapes of Reagan records. NARA will continue to provide notice on proposed openings on an ongoing basis.

I hope this is responsive to your questions.

Sincerely,

GARY M. STERN
General Counsel

REV_00147626

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/28/2002 11:13:00 AM
Subject: : call me.

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:28-JUN-2002 15:13:00.00
SUBJECT:: call me.
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
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From:	CN=James F. Daniel/OU=OA/O=EOP [OA]
To:	Adam F. Greenstone/OA/EOP@EOP [OA] <Adam F. Greenstone>;Eric W. Terrell/WHO /EOP@EOP [WHO] <Eric W. Terrell>;Daniel K. Wilmot/OVP/EOP@EOP [OVP] <Daniel K. Wilmot>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Cathy Alix/WHO /EOP@EOP [WHO] <Cathy Alix>;Kimberly A. Douglass/WHO/EOP@EOP [WHO] <Kimberly A. Douglass>;Kelly M. Kotch/OVP/EOP@EOP [OVP] <Kelly M. Kotch>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Claire M. O'Donnell/OVP /EOP@EOP [OVP] <Claire M. O'Donnell>;Phillip Larsen/OA/EOP@EOP [OA] <Phillip Larsen>
CC:	Guhan Kalambur/OA/EOP@EOP [OA] <Guhan Kalambur>;William J. Wilde/OA/EOP@EOP [OA] <William J. Wilde>;Olga H. Kasaskeris/OA/EOP@EOP [OA] <Olga H. Kasaskeris>;Jacque J. Hightower/OA/EOP@EOP [OA] <Jacque J. Hightower>;Marie B. Petrosino-Woolverton/OA/EOP@EOP [OA] <Marie B. Petrosino-Woolverton>;Judy R. Morgan/OA/EOP@EOP [OA] <Judy R. Morgan>;Mayra N. Segovia/OA/EOP@EOP [OA] <Mayra N. Segovia>;Andris Kalnins/OA/EOP@EOP [OA] <Andris Kalnins>;Eric D. Lanman/OA /EOP@EOP [OA] <Eric D. Lanman>;Elizabeth Gelfer/OA/EOP@EOP [OA] <Elizabeth Gelfer>
Sent:	6/28/2002 2:11:09 PM
Subject:	: Financial Guidelines for Travel in Support of the President and Vice President
Attachments:	F_2D1F8003_OA.TXT_1.doc

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:James F. Daniel ( CN=James F. Daniel/OU=OA/O=EOP [ OA ] )
CREATION DATE/TIME:28-JUN-2002 18:11:09.00
SUBJECT:: Financial Guidelines for Travel in Support of the President and Vice President
TO:Adam F. Greenstone ( CN=Adam F. Greenstone/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
TO:Eric W. Terrell ( CN=Eric W. Terrell/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel K. Wilmot ( CN=Daniel K. Wilmot/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:David S. Addington ( CN=David S. Addington/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Cathy Alix ( CN=Cathy Alix/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kimberly A. Douglass ( CN=Kimberly A. Douglass/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kelly M. Kotch ( CN=Kelly M. Kotch/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Claire M. O'Donnell ( CN=Claire M. O'Donnell/OU=OVP/O=EOP@EOP [ OVP ] )
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TO:Phillip Larsen ( CN=Phillip Larsen/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
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CC:William J. Wilde ( CN=William J. Wilde/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Olga H. Kasaskeris ( CN=Olga H. Kasaskeris/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Jacque J. Hightower ( CN=Jacque J. Hightower/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Marie B. Petrosino-Woolverton ( CN=Marie B. Petrosino-Woolverton/OU=OA/O=EOP@EOP [ OA ]
)
READ:UNKNOWN
CC:Judy R. Morgan ( CN=Judy R. Morgan/OU=OA/O=EOP@EOP [ OA ] )
READ:UNKNOWN
CC:Mayra N. Segovia ( CN=Mayra N. Segovia/OU=OA/O=EOP@EOP [ OA ] )
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CC:Andris Kalnins ( CN=Andris Kalnins/OU=OA/O=EOP@EOP [ OA ] )
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To all,

Attached are draft EOP guidelines and procedures for travel in support of the President and Vice President, and the related transmittal memorandum.

These guidelines are intended to provide supplemental guidance to the Federal Travel Regulations, and other legislation pertinent to federal travel. These supplemental procedures are needed to accommodate the unique requirements and circumstances associated with Presidential and Vice Presidential travel.

The transmittal memorandum details the purpose for developing these procedures and background on the history of Presidential and Vice Presidential travel support. It will also serve as the starting point for our effort to develop and institutionalize Presidential and Vice Presidential travel which will serve the presidency and withstand the scrutiny of a public audit.

We are asking all of you who work in support of the President's and Vice President's travel to review this attachment and provide any comments in writing to the CFO's office (e-mail Kristin Savercool or myself) no later than Monday, July 8, 2002. It is really important for you to present alternative recommendations and complete rationale for all significant comments and issues.

We will incorporate your suggestions and present the final recommended package for final coordination. After final coordination, we will present the package for final approval and immediate implementation.

We look forward to working with you all to finalize these procedures, and believe that they will provide a solid basis for sound financial practices and accounting for Presidential and Vice Presidential travel.

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DRAFT

DATE

MEMORANDUM FOR EOP CERTIFYING OFFICIALS

THROUGH: PHILLIP D. LARSEN
SPECIAL ASSISTANT TO THE PRESIDENT AND
DIRECTOR, OFFICE OF ADMINISTRATION

FROM: JAMES F. DANIEL
CHIEF FINANCIAL OFFICER

SUBJECT: EOP SUPPLEMENTALTRAVEL PROCEDURES FOR
PRESIDENTIAL AND VICE PRESIDENTIAL TRAVEL

1. Purpose. This memorandum transmits for your review, comprehensive supplemental travel guidelines relating to the procurement and payment of travel services in conjunction with Presidential and Vice Presidential travel. The three main purposes of these guidelines are: (1) to ensure quality travel services are available to support the travel requirements of the President and Vice President; (2) to interpret statutory, Federal Travel Regulation, and other policy requirements in a manner that ensures full compliance with all applicable federal laws and regulations; and (3) to ensure full disclosure of all financial activities in the official accounting system.

These guidelines also highlight governing laws, regulations and policies relating to travel in the federal government. The guidelines clarify the roles and responsibilities of the White House Office (WHO), Office of the Vice President (OVP), Chief Financial Officer's (CFO) Travel Services Branch, and the Executive Office of the President's Travel Management Center (TMC). They detail the process by which travel services are ordered and paid for, and highlight the importance of the CFO providing timely and accurate financial information. For instance, the guidelines provide timeframes for submission of trip summaries which are critically important for accurate division of travel expenses between the government and political entities, and for timely payment of vendors and travelers within Prompt Payment requirements.

2. Background. For many years, travel support for the President and Vice President has presented a tremendous challenge in the EOP that has resulted in numerous General Accounting Office (GAO) audits, Congressional inquiries, and management reorganizations. These actions have resulted in millions of dollars in government spending to manage an annual travel budget of less than $1.5 million. More significantly,

the current process has required each administration to divert limited human resources from the WHO and OVP to respond to travel related issues.

Each administration has attempted to develop procedures for the WHO and the OVP travel support. These procedures, drafted largely by the administrations' legal counsels, focus on legal requirements and not on generally accepted accounting standards and principles. While, this may have served the needs then, it is not sufficient to meet our current challenges. These travel guidelines are designed to serve our EOP customers and meet our legal compliance and disclosure requirements, while favorably withstanding scrutiny from professional external auditors and accountants.

During the past several years, federal and corporate business processes have evolved significantly, bringing many changes. Changes such as the Travel and Transportation Reform Act, the Prompt Payment Act, use of government credit cards, e-ticketing and the elimination of cash advances, coupled with the requirement to manage and administer political costs in close proximity to official costs, have required the EOP to radically alter its travel support processes and procedures. In addition, the EOP's inclusion in the provisions of the Chief Financial Officers' Act requires us to expand the scope of our travel procedures beyond legal considerations to include sound auditable financial practices.

In addition to the many process changes outlined above, the EOP faces some unique reporting and disclosure challenges not shared by other government agencies. While the Office of Management and Budget only requires recording and reporting of travel related cost at a summary level, the EOP is required to track costs in much greater detail. Congress requires extensive disclosure of Presidential and Vice Presidential travel information in connection with the annual appropriations process. We are required to track the travel of the four principals, i.e., the President, the Vice President, the First Lady, and the spouse of the Vice President, independently of one another. We must track and report the dates, locations and costs for each component such as airlines, lodging, rental cars, meals, et cetera, for each individual trip. We must identify each trip as to the nature of its purpose (i.e., 100% official, mixed official/political, or 100% political) and properly allocate costs accordingly. We must also track costs for Presidential and Vice Presidential trips sponsored by other federal agencies and collect and accurately record reimbursements from these sponsoring agencies.

3. The Current Process. A review of our current travel support process in the EOP found that we are meeting the first requirement criterion, the provision of travel support services as required by WHO and OVP staff in accompaniment of the President and Vice President. However, we found serious internal weaknesses in the historical travel process with regard to both legal compliance, and meeting financial accounting standards for accurate information and timely disclosure.

First, the current travel process provides travel services without proper authorization and documentation from the appropriate agency approving official. Invoices and vouchers often are received which do not have the required authorization approved and recorded in

the financial system. This process results in delayed payments to vendors, significant difficulty reconciling bills, and errors in posting to the accounting system. Resolutions under these circumstances are difficult and time consuming for the travel services staff as well as agency staff.

Second, our current process presents a significant challenge to meeting the legal requirements of the Travel and Transportation Reform Act and the Prompt Payment Act in paying travel vouchers and vendor invoices. These laws require payment of proper travel vouchers and vendor invoices within thirty (30) days of receipt.

Third, the current process is not standardized or uniform for travel financial elements such as trip summaries, travel costs, and political reimbursements. This has resulted in confusion and uncertainty as to final resolution of bills associated with a trip. The impact is even greater for mixed trips with official and political components.

4. Political Travel. We recognize that the co-mingling of political and official elements is inherent to travel in accompaniment of the President and Vice President. These guidelines define the process for allocating non-severable (airfare, lodging, rental cars, and meals) costs between government and political entities. They provide standard procedures for authorizing, paying, and collecting reimbursement cost for non-severable activities, and prohibit the treatment of severable political travel services as official in any way. The government rate will not be used nor will any official government credit card be used for severable political travel services.

Travel requirements for non-severable (mixed) travel services will be authorized and paid to vendors as official. The rationale for treating these trips as official is based on the requirement to have the traveler on an official travel authorization, the cost is non-severable, and the government authorized the travel and entered into the agreement with the vendors. Also, since the travel is performed on an official travel authorization, the government rate will apply to all travel services and the government travel credit cards will be used to make payments to travel vendors. Costs incurred will be thoroughly documented, and the political entity will be charged for its share of the costs.

Laws and regulations are mostly silent when it comes to the allocation of travel costs for trips with a mixed official and political nature. The hard-time formula, which divides costs according to a pro-rata share of the principals' time spent at either political or official functions, has been the method used by previous administrations to allocate costs between political or official functions. The formula is documented within a trip summary, and this trip summary then becomes the basis by which all *non-severable* costs will be allocated.

5. Political Reimbursements. These guidelines make every effort to balance the many federal statutes governing appropriations and reimbursements. While the hard-time formula meets the requirement to not use government resources for non-official activities, if not applied correctly, it could violate the government's prohibition on appropriation augmentation. A direct application of the hard-time formula would result in the political

entity reimbursing the government agency appropriation for each element *(airline fares, lodging, rental cars, and meal)*. This principle states that the government may not charge another entity for costs incurred, unless those costs represent an incremental increase to official business costs. However, in the case of air fare, there is no incremental cost to the government. The round trip airfare for an employee travelling to Chicago would be the same, without regard to duration, whether the trip is 100% official, or 60% official and 40% political. Nonetheless, in order that the political entity not benefit from the government, the political entity would be required to reimburse the government for 40% of the round-trip airfare incurred by the government. To avoid augmentation, non-incremental reimbursements for airfare should be deposited to the Treasury miscellaneous general receipts account.

Currently there are several different procedures in use for managing, processing, collecting and paying political reimbursements at the EOP. Each of the elements providing support such as the Executive Residence, the Residence of the Vice President, the White House Office, the Office of the Vice President, the Office of Administration, the White House Airlift Operations, and the White House Communications Agency are administering different procedures. The varying procedures and practices were developed for various reasons over the years such as public law, congressional inquiries, leadership preferences, news articles, legal interpretations, et cetera. We believe the ideal model to collect political reimbursements at the EOP is the one currently authorized and in use by the Executive Residence. The Residence maintains a deposit (specifically authorized by congress) from the political entity, sufficient to cover losses should they be realized. Therefore, the government can fully fund costs of a mixed or political nature and collect reimbursement from the political entity in arrears, without risk to the government.

We strongly recommend the administration petition for the Congressional approval required to make this reimbursement process standard for all EOP agencies. This method would virtually eliminate risk to the government, would significantly reduce administrative costs related to political reimbursements, and would provide a uniform process for handling reimbursements at the EOP. All of these goals are emphasized in the CFO Act and the President's Management Agenda.

6. Conclusion. These guidelines will significantly enhance our ability to meet the service requirements of the WHO and OVP, will fully comply with all applicable laws and regulation, and disclose accurate and timely financial information. We believe that these procedures will correct long-standing weaknesses inherent in the EOP travel process.

We welcome review and comment from the White House Office and Office of the Vice President travel staff, administrative staff and counsel. We look forward to working with these offices to further refine these travel procedures and develop a finished product that will significantly enhance the travel support to the President and Vice President.

Attachment

DRAFT

Financial Guidelines and Procedures for Travel in Accompaniment of the President and Vice President

I. PURPOSE

This document provides guidelines and procedures for the Executive Office of the President (EOP) regarding travel in accompaniment of the President and Vice President.

II. REQUIREMENT

These procedures are written to satisfy the following three criteria:

1. To provide complete travel services to the staff accompanying the President and Vice President, including air travel, lodging, vehicle rental and meals and incidentals.
2. To provide these services in full compliance with all applicable federal laws and regulations, including the Travel and Transportation Reform Act of 1998, the Prompt Payment Act of 1983, the Federal Travel Regulations, Federal Appropriations Law, and generally accepted accounting standards and principles.
3. To provide accurate accounting information on travel obligations and expenditures and timely disclosure of this information, both to the White House Office (WHO) and Office of the Vice President (OVP) as well as disclosure in auditable financial statements. This latter criterion is critical, as the EOP is now included within the guidelines of the Chief Financial Officer's Act, and will be audited at the end of fiscal year 2003.

III. APPLICABILITY

These guidelines apply to all agencies within the EOP who participate in travel in accompaniment of the President and Vice President

IV. LEGAL REFERENCES

31 U.S.C. § 3528
Prompt Payment Act of 1983
Chief Financial Officers Act of 1990
Public Law 106-58 § 638
Travel and Transportation Act of 1998
Federal Travel Regulations
Federal Appropriations Law

V. DEFINITIONS

Certifying Official (WHO/OVP) - Agency official responsible and liable for the legality of proposed payments and for the amount of illegal or improper payments resulting from their certification.

Travel Management Center (TMC) - The contracted agent for procurement of travel related services such as airline tickets, lodging reservations, and vehicle rentals while in travel status.

CFO's Travel Services Branch - Group assigned to manage the business aspects of Presidential and Vice Presidential travel, to include financial and procurement services.

Disbursing Officer (CFO's Office) - An officer or employee of a federal department or agency, civilian or military, designated to disburse monies and render accounts in accordance with laws and regulations governing the disbursement of public funds.

Government Purchase Card - Government credit card used for the payment of non-travel related goods and services (i.e. staging, pipe and drape, banners, etc.), in support of events during Presidential travel.

Government Travel Card - Government credit card used for the payment of travel related services (lodging, airfare, vehicle rentals, etc.) in support of Presidential travel.

Hard-time Formula - Financial formula used to determine the official and political allocations for mixed trips. This formula is based on the pro-rata share of minutes spent at official and political functions on a given trip. This formula is applied to the expenses of Presidential travel and allocated appropriately to the official and political entity for payment of the expenses. (e.g., Official – 60%, Political – 40%)

Mixed Travel - Travel involving official and political duties associated with a trip in advance or in accompaniment of the President or Vice President.

Political Travel - Travel involving political duties associated with a trip in advance or in accompaniment of the President or Vice President.

Presidential and Vice Presidential Travel - Travel involving official duties associated with a trip in advance or in accompaniment of the President, Vice President, First Lady or the spouse of the Vice President, which is under an official travel authorization.

Severable Costs - Costs able to be divided into independent obligations of official and political entities.

V. RESPONSIBILITIES

Official Traveler - Participates in all aspects of official and/or mixed travel in support of the President or Vice President including air travel, lodging, vehicle rental, and vouchered expenses, having obtained an approved travel authorization from his or her agency's certifying official.

Certifying Official (WHO/OVP) - Reviews and approves all requests for travel services, including travel authorizations, lodging reservations, vehicle rental reservations, and travel vouchers, to ensure no travel services are procured for travelers who are not properly authorized. Approves and certifies for payment all invoices and vouchers resulting from authorizations.

Travel Management Center (TMC) - In adherence to the terms of its contract with the Office of Administration, provides travel services to properly authorized travelers in conjunction with official travel of the President and Vice President.

CFO's Travel Services Branch - Reviews all travel related expenditures, reconciles travel payments for each trip, and breaks out cost allocations for travel with mixed official/political purpose based on trip summaries provided by WHO/OVP.

Disbursing Officer (CFO's Office) – Ensures payments are in proper form, including all supporting documentation, before authorizing disbursement by the Department of the Treasury.

VI. POLICY

A. Travel Authorization. A travel authorization (TA) is mandatory for all travel. It must be approved and recorded for all participating individuals, in accordance with the Federal Travel Regulations (FTR), § 301-2.1.

1. All TAs will designate type of travel (i.e. 100% official, mixed or 100% political).

2. All TAs must be approved by the Agency Head or a person with delegated authority.

3. If a TA is deemed 100% political, none of the following costs can be charged to the government credit card: airfare, vehicle rental, or lodging.

B. Trip Summaries. For all Presidential and Vice Presidential trips, a standardized trip summary will be completed.

The standardized trip summary will include itinerary, hard time cost breakouts for complete swings (trips beginning when Principal departs DC area and completed when Principal returns to DC area) and will identify all accompanying personnel as 100% official, 100% political or mixed.

The hard time formula will be used to determine official and political allocation for mixed trips. This formula is based on the pro-rata share of minutes spent at official and political functions on a given trip.

Trip summaries are required to be submitted to the CFO's travel services center no later than 7 calendar days following the completion of the trip.

C. Reservation and Payment for travel related services. The following outlines the policy for making reservations and payments for travel related services.

1. 100% official and mixed trips

a. Presidential travel with a mixed agenda (political and official events) will be treated as official travel for purposes of authorization and payment.
b. Government travel cards will be used for the reservation and immediate payment of travel services, to include airfare, lodging and rental vehicles for official and mixed travel in accordance with the Travel and Transportation Reform Act of 1998.
c. Government purchase cards will be used for immediate payment of official expenses other than the categories listed above (airfare, lodging and rental vehicles).
d. Travel services (airline tickets, lodging, and vehicle rental) for travelers on official and mixed trips will be procured paid at the government rate. The official component of the travel warrants the use of the government rate for mixed trip.
e. Incremental severable costs (hotel, car rentals and vouchers) will be reimbursed to the agency appropriation that incurred the cost. Non-incremental costs (airfare) will be deposited to the Treasury general receipts fund.
f. The official portion of the travelers' travel vouchers will be paid upon receipt by official funds as required by the Travel and Transportation Act of 1998. The vouchers will be forwarded to the political party if travel is mixed. The political party will send the political reimbursement portion directly to the travelers' home addresses.
g. Travel bills (airfare, lodging, and vehicle rental) will be grouped by trip and presented monthly for review and certification by the agencies certifying officials for 100% official trips.
h. Travel bills for mixed and political trips, will be grouped by trip and presented monthly to the White House or Vice President's office to forward to the political party.

2. 100% political trips

a. Travel services (airfare, lodging and car rental) for official travelers will be arranged and paid separately from 100% political travelers. The government travel credit card may not be used for any cost, which is 100% political and severable.

b. All bills (airfare, hotels, car rental, and vouchers) will be forwarded to the Travel Services Branch. All invoices will be logged in by the Travel Services Branch and forwarded to the WHO or the OVP. They will then forward all invoices to the correct political party.

c. The use of the contracted Travel Management Center (TMC) will be available for the purchase of travel services and will be secured by a non-government credit card.

VII. PROCEDURES

A. Authorizations for Travel Accommodations

When a trip is announced, the advance office will assign a trip number. This number will be indicated on the travel authorizations, and all associated requests for travel services.

1. Airline Tickets

a. The Travel Management Center (TMC) will make all reservations for travelers on official, mixed and political trips. The TMC may make reservations and procure travel for personal and political travel.

b. All travelers must have an approved travel authorization (indicating the trip number) before tickets are purchased.

In rare instances when tickets must be issued, or reservations made without an approved written travel authorization, a verbal approval will be substituted by designated agency officials. A list of authorized certifying officials will be maintained by the TMC, and updated as necessary by the White House Office and Office of the Vice President.

c. For official and mixed trips, the government rate will be used and pre-payment will be made using the WHO or OVP corporate travel accounts.

d. For 100% political trips, payment will be made with a non-government credit card at the commercial rate.

In the event costs related to a 100% political trip are charged to the government in error, the political entity will reimburse the government for the commercial rate of the airline tickets. The difference between the commercial and government rates will be deposited in the U.S. Treasury Miscellaneous Receipts account

2. Lodging

a. When trip is announced, WHO and/or OVP advance offices will notify the White House Hotel Program Manager, and request lodging arrangements.

b. Each component office with traveling staff must provide a lodging request form to the WH Hotel Program Manager, which includes:

1. trip number
2. number of rooms requested,

2. names of travelers (if known and appropriate),
3. point of contact name and phone number for each component

Components may not make room reservations for anyone who does not have or will not have an approved travel authorization for the trip in question.

c. The WH Hotel Program Manager will coordinate with all non-WH, non-OVP traveling staff to obtain their credit card information for reservation and payment of those components lodging arrangements.
d. The WH Hotel Program Manager will issue a hotel letter reflecting all information requested above and instructing the hotel to bill each component individually, only for the rooms requested on the hotel letter.
e. Each component may change, add or delete travelers. They must contact the hotel directly to make the changes. The TAs for all approved travelers should be faxed to the hotel, prior to the use of the rooms, and hotels instructed to bill only for approved travelers. The hotel contact name and number will be listed on the hotel letter, which will be e-mailed to each component.
f. For official and mixed trips, the government contract rate will be used and pre-payment will be made using the WHO or OVP corporate travel accounts.
g. For 100% political trips, the hotel letter will provide a non-government credit card number, and contact information for pre-payment. The commercial rate should be charged, including tax.

In the event costs related to a 100% political trip are charged to the government in error, the political entity will reimburse the government for the commercial rate of the lodging costs. The difference between the commercial and government rates will be paid to the lodging provider.

3. Vehicle Rentals

a. When trip is announced, the WHO advance office, OVP advance office, or press office will complete a vehicle requisition form. Each form will include:

1. Travelers' names
2. Travelers' travel authorization numbers
3. Purpose of trip
4. Vehicle type
4. Pick up and drop off location and date
5. Name of requesting office
6. Point of contact name and phone number
7. Name and phone number of staff lead
8. Date of request
9. Trip number

b. The vehicle requisition form must be signed by a designated certifying official in the WHO, OVP, or press office.
c. Once approved, the form is submitted to the TMC. For 100% official and mixed trips the TMC will make reservations and pay the vehicle rental with the WHO, OVP, or press office corporate travel credit cards.
d. For 100% political trips, the vehicle requisition form will provide a non-government credit card number, and contact information for payment. The commercial rate should be charged, including tax.

In the event costs related to a 100% political trip are charged to the government in error, the political entity will reimburse the government for the commercial rate of the vehicle rental costs. The difference between the commercial and government rates will be paid to the rental company.

B. Vendor Payment Reconciliation and Payment to Credit Card Company

1. All official and mixed payments for airfare, hotels, and vehicle rental will be made with the White House Office or Vice President's Office official corporate travel credit accounts. These government issued credit accounts are for expenses related to official travel only.

Government credit accounts cannot be used for 100 percent political costs. Traveler must provide credit account for use by TMC when trips are 100% political.

a. At the conclusion of each trip, the TMC will reconcile each airfare, lodging, or vehicle rental bill, ensuring that proper payments have been made for authorized WHO and OVP travelers.
b. On a monthly basis, the TMC will reconcile the monthly credit account bill against the individual trip bills, breaking out and identifying all charges by TA number and trip number. The TMC will forward the reconciled bills to the CFO's travel services center for payment.
c. WHO or OVP will forward trip summaries to the CFO's travel services center no later than *7 calendar days* following completion of a Presidential or Vice Presidential trip. One trip summary will be provided per Presidential or Vice Presidential swing. The trip summary will include each trip site, the number of official/political minutes at each trip site, and the percentage political/official time. The summaries will also provide an overall political/official percentage split, if warranted, based on the entire swing. This will be the basis for cost allocations for the traveling staff. The summaries must also clearly identify travelers who were designated to be 100% official or 100% political at all times.
d. Based on the trip summary, the CFO's office will allocate the political versus official costs of the reconciled trip costs. A financial tracking report will be created for each trip listing a detailed breakout of airfare, hotel, vehicle rental, voucher and site costs (see attached example).

e. On a monthly basis, the CFO's travel services center will provide the WHO and OVP the financial tracking reports for trips completed in the prior month, and the accompanying documentation, for approval and signature by the WHO/OVP certifying officials.

These financial tracking reports will report all costs for each individual trip. They will be used for approval and payment to the credit card company of airfare, lodging, and vehicle rental costs that have been paid by government credit accounts.

f. The WHO and OVP will review and approve the allocation of costs, certify the official portion for payment, and forward the political financial tracking report with accompanying back-up to the appropriate political entity for payment of the political portion.

g. When approved, the government will pay the credit card company for the official portion only of the monthly reconciled bill, based on the certified financial tracking reports.

h. The political entity will send a check to the credit card company for the amount of the political share of the trip costs. They will also provide WHO/OVP with a copy of the check as confirmation of payment.

C. Vouchers

1. When a trip is announced, WHO and OVP staffs will complete and approve travel authorization forms for all travelling staff.
2. Staff will use their personal resources to purchase meals and incidentals while on travel status.
3. Within five days after completion of the trip, travelers will submit completed travel vouchers and accompanying receipts for reimbursement of meals and incidental costs incurred on travel status to their certifying officer for approval and certification.
4. The WHO/OVP certifying officers will forward vouchers to CFO's office for processing and payment.
5. If trip is 100% political WHO/OVP will forward vouchers to political entity for payment in full.
6. If trip is 100% official, the Government will reimburse traveler in full.
7. If trip is mixed, the Government will reimburse traveler for official portion only. The CFO's travel services center will break out official and political costs based on trip summaries provided by the WHO/OVP. The travel services center will forward copies of the vouchers to the WHO/OVP certifying officials, who will then forward them to the political entity. The political entity will issue checks to the travelers, sent to their home addresses, for the political share of their vouchered costs. Following payment, the political entity will provide confirmation of the voucher payments to the WHO/OVP certifying officers.

D. Authorization and Payment of Site Expenses

1. Authorization

a. The CFO's travel services center will contact the advance staff lead to identify the type of visit (i.e., Tier I, II, or III event), to obtain an initial estimate of expenses for the event, to exchange contact numbers, and to identify the event funding sponsor.

b. The travel services center will contact the financial point of contact for the sponsoring event host(s) to establish the total host budget. A Funds Commitment letter will be prepared and faxed to the host point(s) of contact for review and signature. This letter will provide confirmation of the host's intent to support the Presidential trip and the total budget amount. If the White House is the sponsoring host, the CFO's accounting office will provide the total budget.

c. The CFO's travel services center will inform the staff and press leads of the approved budget for the official and press segments of the visit.

d. The CFO's travel services center will authorize the lead to contact vendors to arrange for services. The leads will be instructed that they are not authorized to obligate the government for services. Once suitable vendors have been identified, the trip leads will forward vendor names to the CFO's travel services center, or request that the vendor contact the CFO's travel services center directly.

e. The CFO's office will enter into a contract or agreement with the vendor and will provide billing instructions.

f. Upon receipt of the vendor information, the travel services center will contact each vendor to explain the billing procedures, provide point of contact numbers, and obtain written estimates of the goods/services to initiate the proper procurement procedures.

g. The travel services center will record the initial estimates in the CFO financial tracking report.

h. The travel services center will coordinate with the staff leads to ensure the written estimates accurately reflect the goods and services requested.

6. Payment

a. Upon conclusion of the event, final invoices are faxed to the CFO's travel services center. Each invoice will be reconciled by the travel services center and verified by the advance staff lead prior to processing for payment.

b. Upon completion of the reconciliation and verification process, the invoice will be forwarded to the WHO/OVP certifying officer for approval and certification.

c. Once the invoices have been approved for payment, the CFO's office will pay the vendor invoice with appropriate payment method (e.g., credit card, IMPAC check, U.S. Treasury Check) and update the CFO financial tracking report with final site costs.

VIII. SAMPLE FORMS AND MEMORANDA (Will be provided at briefing)

A. Draft memoranda to TMC on Issuance and Payment of Airline Tickets
B. Airfare reconciliation worksheet
C. Draft memoranda requesting lodging reservations
D. Draft hotel letter detailing travelers by component and detailed payment instructions
E. Sample hotel reconciliation worksheet
A. Draft memoranda to TMC on issuance of vehicle rental reservations and payment
G. Sample staff vehicle requisition form
H. Sample press vehicle requisition form
I. Sample vehicle rental reconciliation worksheet
J. Payment package with reconciled financial tracking summaries per trip, which will be sent monthly to WHO/OVP. Package includes:
    1. Draft memorandum to WHO/OVP transmitting trip financial tracking report/s and supporting documentation
    2. Sample trip financial tracking report, highlighting official share
    3. Draft memorandum to WHO/OVP transmitting trip financial tracking report/s and supporting documentation to political entity
    4. Sample trip financial tracking report, highlighting political share
    5. Sample trip summary
    6. Trip status listing
K. Draft transmittal memorandum requesting travel voucher certification
L. Sample travel authorization/travel voucher reconciliation form
M. Office of Presidential Advance event designation
N. Sample host letter of financial commitment for site costs
O. Sample site cost reconciliation

From: CN=PostMaster/O=EOP [OA]

To: Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Daniel K. Wilmot/OVP/EOP [OVP] <Daniel K. Wilmot>;James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Jocelyn White/WHF/EOP [OPM] <Jocelyn White>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;John P. Walters/ONDCP/EOP [ONDCP] <John P. Walters>;Helgard C. Walker/WHO/EOP [WHO] <Helgard C. Walker>;Jim Towey/WHO/EOP [WHO] <Jim Towey>;Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>;D. Marcus Sumerlin/OPD/EOP [OPD] <D. Marcus Sumerlin>;Jose G. Suarez/WHO/EOP [WHO] <Jose G. Suarez>;Aquiles F. Suarez/OPD/EOP [OPD] <Aquiles F. Suarez>;Angela B. Styles/OMB/EOP [OMB] <Angela B. Styles>;Mary K. Sturtevant/NSC/EOP [NSC] <Mary K. Sturtevant>;Margaret M. Spellings/OPD/EOP [OPD] <Margaret M. Spellings>;Deborah A. Spagnoli/WHO/EOP [WHO] <Deborah A. Spagnoli>;Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph J. Shattan/WHO/EOP [WHO] <Joseph J. Shattan>;Thomas J. Sharpy/OVP/EOP [OVP] <Thomas J. Sharpy>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Matthew O. Scully/WHO/EOP [UNKNOWN] <Matthew O. Scully>;Howard A. Schmidt/NSC/EOP [NSC] <Howard A. Schmidt>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Daniel Schecter/ONDCP/EOP [ONDCP] <Daniel Schecter>;Diana L. Schacht/OPD/EOP [OPD] <Diana L. Schacht>;Desiree T. Sayle/WHO/EOP [WHO] <Desiree T. Sayle>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Stephen S. Ruhlen/OVP/EOP [OVP] <Stephen S. Ruhlen>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Mark V. Rosenker/WHO/EOP [WHO] <Mark V. Rosenker>;Thomas J. Ridge/WHO/EOP [WHO] <Thomas J. Ridge>;Condoleezza Rice/NSC/EOP [NSC] <Condoleezza Rice>;Nina Rees/OVP/EOP [OVP] <Nina Rees>;Craig Ray/WHO/EOP [WHO] <Craig Ray>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Anne E. Phelps/OPD/EOP [OPD] <Anne E. Phelps>;Philip J. Perry/OMB/EOP [OMB] <Philip J. Perry>;Anna M. Perez/NSC/EOP [NSC] <Anna M. Perez>;Eric C. Pelletier/OMB/EOP [OMB] <Eric C. Pelletier>;Marcus Peacock/OMB/EOP [OMB] <Marcus Peacock>;Neil S. Patel/OVP/EOP [OVP] <Neil S. Patel>;Sean C. O'Keefe/OMB/EOP [OMB] <Sean C. O'Keefe>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Claire M. O'Donnell/OVP/EOP [OVP] <Claire M. O'Donnell>;Jennifer G. Newstead/WHO/EOP [WHO] <Jennifer G. Newstead>;Susan K. Neely/WHO/EOP [WHO] <Susan K. Neely>;Edmund C. Moy/WHO/EOP [WHO] <Edmund C. Moy>;James F. Moriarty/NSC/EOP [NSC] <James F. Moriarty>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Michael H. Miller/WHO/EOP [WHO] <Michael H. Miller>;Franklin C. Miller/NSC/EOP [NSC] <Franklin C. Miller>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Ken Mehlman/WHO/EOP [WHO] <Ken Mehlman>;Edward McNally/WHO/EOP [WHO] <Edward McNally>;Robert C. McNally/OPD/EOP [OPD] <Robert C. McNally>;Stephen S. McMillin/OMB/EOP [OMB] <Stephen S. McMillin>;Brian V. McCormack/OVP/EOP [OVP] <Brian V. McCormack>;John P. McConnell/OVP/EOP [OVP] <John P. McConnell>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Mark McClellan/CEA/EOP [CEA] <Mark McClellan>;Mary J. Matalin/OVP/EOP [OVP] <Mary J. Matalin>;Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>;Robert Marsh/WHO/EOP [WHO] <Robert Marsh>;John H. Marburger/OSTP/EOP [OSTP] <John H. Marburger>;K. Philippa Malmgren/OPD/EOP [OPD] <K. Philippa Malmgren>;John F. Maisto/NSC/EOP [NSC] <John F. Maisto>;Robin A. MacLean/WHO/EOP [WHO] <Robin A. MacLean>;Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>;Andrew D. Lundquist/OVP/EOP [OVP] <Andrew D. Lundquist>;Deborah A. Loewer/NSC/EOP [NSC] <Deborah A. Loewer>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Lawrence B. Lindsey/OPD/EOP [OPD] <Lawrence B. Lindsey>;Lewis Libby/OVP/EOP [OVP] <Lewis Libby>;Dirksen Lehman/WHO/EOP [WHO] <Dirksen Lehman>;Jay P. Lefkowitz/OPD/EOP [OPD] <Jay P. Lefkowitz>;Laura S. Lawlor/WHO/EOP [WHO] <Laura S. Lawlor>;Bruce M. Lawlor/WHO/EOP [WHO] <Bruce M. Lawlor>;Phillip Larsen/OA/EOP [OA] <Phillip Larsen>;David Kuo/WHO/EOP [WHO] <David Kuo>;Randall S. Kroszner/CEA/EOP [CEA] <Randall S. Kroszner>;Karen Y. Knutson/OVP/EOP [OVP] <Karen Y. Knutson>;Frank G. Klotz/NSC/EOP [NSC] <Frank G. Klotz>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Ellis Kitchen/OA/EOP [OA] <Ellis Kitchen>;Matthew Kirk/WHO/EOP [WHO] <Matthew Kirk>;Zalmay M. Khalilzad/NSC/EOP [NSC] <Zalmay M. Khalilzad>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Charles D. McGrath Jr/OVP/EOP [OVP] <Charles D. McGrath Jr>;Robert G. Joseph/NSC/EOP [NSC] <Robert G. Joseph>;Barry S. Jackson/WHO/EOP [WHO] <Barry S. Jackson>;Hector F.

Irastorza/WHO/EOP [WHO] <Hector F. Irastorza>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;Clay Johnson III/WHO/EOP [WHO] <Clay Johnson III>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Glenn Hubbard/CEA/EOP [CEA] <Glenn Hubbard>;Jack Howard/WHO/EOP [WHO] <Jack Howard>;Mark Holman/WHO/EOP [WHO] <Mark Holman>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Debra Heiden/OVP/EOP [OVP] <Debra Heiden>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;John P. Hannah/OVP/EOP [OVP] <John P. Hannah>;John F. Haley/OVP/EOP [OVP] <John F. Haley>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Stephen J. Hadley/NSC/EOP [NSC] <Stephen J. Hadley>;Ann Gray/WHO/EOP [WHO] <Ann Gray>;John Graham/OMB/EOP [OMB] <John Graham>;Alberto R. Gonzales/WHO/EOP [WHO] <Alberto R. Gonzales>;Stephen Goldsmith/WHO/EOP [WHO] <Stephen Goldsmith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Dylan C. Glenn/OPD/EOP [OPD] <Dylan C. Glenn>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Stephen M. Garrison/WHO/EOP [WHO] <Stephen M. Garrison>;Kelley Gannon/WHO/EOP [WHO] <Kelley Gannon>;Linda M. Gambatesa/WHO/EOP [WHO] <Linda M. Gambatesa>;Diana E. Furchtgott-Roth/CEA/EOP [CEA] <Diana E. Furchtgott-Roth>;Daniel Fried/NSC/EOP [NSC] <Daniel Fried>;Jendayi E. Frazer/NSC/EOP [NSC] <Jendayi E. Frazer>;Noel J. Francisco/WHO/EOP [WHO] <Noel J. Francisco>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Catherine S. Fenton/WHO/EOP [WHO] <Catherine S. Fenton>;Richard Falkenrath/WHO/EOP [WHO] <Richard Falkenrath>;Nanette Everson/WHO/EOP [WHO] <Nanette Everson>;Mark Everson/OMB/EOP [OMB] <Mark Everson>;Ashley Estes/WHO/EOP [WHO] <Ashley Estes>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Gary R. Edson/NSC/EOP [NSC] <Gary R. Edson>;Eric S. Edelman/OVP/EOP [OVP] <Eric S. Edelman>;Wayne A. Downing/NSC/EOP [NSC] <Wayne A. Downing>;Elizabeth S. Dougherty/OPD/EOP [OPD] <Elizabeth S. Dougherty>;Nancy P. Dorn/WHO/EOP [UNKNOWN] <Nancy P. Dorn>;Diana C. Donnelly/WHO/EOP [WHO] <Diana C. Donnelly>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Mitchell Daniels/OMB/EOP [OMB] <Mitchell Daniels>;James F. Daniel/OA/EOP [OA] <James F. Daniel>;Stacia L. Cropper/OA/EOP [OA] <Stacia L. Cropper>;John B. Craig/NSC/EOP [NSC] <John B. Craig>;Steven Cooper/WHO/EOP [WHO] <Steven Cooper>;Phil Cooney/CEQ/EOP [CEQ] <Phil Cooney>;Rebecca Contreras/WHO/EOP [WHO] <Rebecca Contreras>;Charles Conner/OPD/EOP [OPD] <Charles Conner>;James Connaughton/CEQ/EOP [CEQ] <James Connaughton>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Cesar Conda/OVP/EOP [OVP] <Cesar Conda>;Douglas F. Cochrane/OVP/EOP [OVP] <Douglas F. Cochrane>;Robert W. Cobb/WHO/EOP [UNKNOWN] <Robert W. Cobb>;John A. Cloud/NSC/EOP [NSC] <John A. Cloud>;Robin Cleveland/OMB/EOP [OMB] <Robin Cleveland>;Richard A. Clarke/NSC/EOP [NSC] <Richard A. Clarke>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;Frank Cilluffo/WHO/EOP [WHO] <Frank Cilluffo>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Ronald I. Christie/OVP/EOP [UNKNOWN] <Ronald I. Christie>;Barbara C. Chaffee/WHO/EOP [WHO] <Barbara C. Chaffee>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Laura F. Chadwick/OVP/EOP [OVP] <Laura F. Chadwick>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;James C. Capretta/OMB/EOP [OMB] <James C. Capretta>;Timothy Campen/OA/EOP [OA] <Timothy Campen>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;Katja Bullock/WHO/EOP [WHO] <Katja Bullock>;Carl Buchholz/WHO/EOP [WHO] <Carl Buchholz>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;John M. Bridgeland/OPD/EOP [OPD] <John M. Bridgeland>;Rachel L. Brand/WHO/EOP [WHO] <Rachel L. Brand>;Stuart W. Bowen/WHO/EOP [WHO] <Stuart W. Bowen>;Carlos E. Bonilla/OPD/EOP [OPD] <Carlos E. Bonilla>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Lloyd A. Blanchard/OMB/EOP [UNKNOWN] <Lloyd A. Blanchard>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Bradley A. Blakeman/WHO/EOP [WHO] <Bradley A. Blakeman>;Charles P. Blahous/OPD/EOP [OPD] <Charles P. Blahous>;Stephen E. Biegun/NSC/EOP [NSC] <Stephen E. Biegun>;Rebecca A. Beynon/WHO/EOP [WHO] <Rebecca A. Beynon>;Janet L. Berman/OVP/EOP [OVP] <Janet L. Berman>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;John B. Bellinger/NSC/EOP [NSC] <John B. Bellinger>;H. Christopher Bartolomucci/WHO/EOP [WHO] <H. Christopher Bartolomucci>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Ruben S. Barrales/WHO/EOP [WHO] <Ruben S. Barrales>;Andrea G. Ball/WHO/EOP [WHO] <Andrea G. Ball>;Jackie Arends/WHO/EOP [WHO] <Jackie Arends>;George M. Andricos/NSC/EOP [NSC] <George M. Andricos>;Cathy Alix/WHO/EOP [WHO] <Cathy Alix>;Penrose C. Albright/OSTP/EOP [OSTP] <Penrose C. Albright>;David S. Addington/OVP/EOP [OVP] <David S. Addington>;Elliott Abrams/NSC/EOP [NSC] <Elliott Abrams>;Charles S.

Abbot/OVP/EOP [OVP] <Charles S. Abbot>;Christina H. Yarmchuk/NSC/EOP [NSC] <Christina H. Yarmchuk>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Alexian T. Wines/NSC/EOP [NSC] <Alexian T. Wines>;Patricia Williams/WHO/EOP [WHO] <Patricia Williams>;Matthew C. Waxman/NSC/EOP [NSC] <Matthew C. Waxman>;Janet P. Walker/OPD/EOP [OPD] <Janet P. Walker>;Lauren J. Vestewig/OPD/EOP [OPD] <Lauren J. Vestewig>;Sibyl M. Turner/WHO/EOP [WHO] <Sibyl M. Turner>;Terrill G. Tucker/NSC/EOP [NSC] <Terrill G. Tucker>;Anne Trenolone/WHO/EOP [WHO] <Anne Trenolone>;Carol J. Thompson/WHO/EOP [WHO] <Carol J. Thompson>;Julieanne H. Thomas/WHO/EOP [WHO] <Julieanne H. Thomas>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Susan L. Sterner/WHO/EOP [WHO] <Susan L. Sterner>;Ashley Snee/WHO/EOP [WHO] <Ashley Snee>;Pamela J. Seward/WHO/EOP [WHO] <Pamela J. Seward>;Elizabeth A. Selva/NSC/EOP [NSC] <Elizabeth A. Selva>;Robert E. Schubert/NSC/EOP [NSC] <Robert E. Schubert>;Deborah Sandler/NSC/EOP [NSC] <Deborah Sandler>;Jean M. Russell/OPD/EOP [OPD] <Jean M. Russell>;Peter M. Rowan/WHO/EOP [UNKNOWN] <Peter M. Rowan>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Josephine B. Robinson/WHO/EOP [WHO] <Josephine B. Robinson>;Maurice C. Robinson/NSC/EOP [NSC] <Maurice C. Robinson>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Robert J. Riley/NSC/EOP [NSC] <Robert J. Riley>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Tim Reynolds/WHO/EOP [WHO] <Tim Reynolds>;David Reyes/NSC/EOP [NSC] <David Reyes>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Leslie E. Radcliff/NSC/EOP [NSC] <Leslie E. Radcliff>;Clare Pritchett/WHO/EOP [WHO] <Clare Pritchett>;Suzanne Primoff/WHO/EOP [WHO] <Suzanne Primoff>;John I. Pray/NSC/EOP [NSC] <John I. Pray>;Sarah Penny/WHO/EOP [WHO] <Sarah Penny>;Raymond H. Payne/NSC/EOP [NSC] <Raymond H. Payne>;Carrie C. Pauska/WHO/EOP [UNKNOWN] <Carrie C. Pauska>;Richard S. Paulus/WHO/EOP [WHO] <Richard S. Paulus>;Edward J. Padinske/NSC/EOP [NSC] <Edward J. Padinske>;Eric H. Otto/OPD/EOP [OPD] <Eric H. Otto>;Lorraine Nisbet/WHO/EOP [UNKNOWN] <Lorraine Nisbet>;Virginia R. Neumann/NSC/EOP [NSC] <Virginia R. Neumann>;Lee B. Mynatt/NSC/EOP [NSC] <Lee B. Mynatt>;Steven Myers/NSC/EOP [NSC] <Steven Myers>;Sarah M. Moss/WHO/EOP [WHO] <Sarah M. Moss>;Paul L. Morse/WHO/EOP [WHO] <Paul L. Morse>;Leslie A. Mooney/OPD/EOP [OPD] <Leslie A. Mooney>;Marcus J. Mollmann/WHO/EOP [UNKNOWN] <Marcus J. Mollmann>;Cathy L. Millison/NSC/EOP [NSC] <Cathy L. Millison>;Holly M. Miller/WHO/EOP [WHO] <Holly M. Miller>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Sonya E. Medina/WHO/EOP [WHO] <Sonya E. Medina>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Sara B. McIntosh/WHO/EOP [WHO] <Sara B. McIntosh>;Jenny McGee/NSC/EOP [NSC] <Jenny McGee>;Peter A. McCauley/NSC/EOP [NSC] <Peter A. McCauley>;Daniel M. McCarthy/WHO/EOP [WHO] <Daniel M. McCarthy>;William D. Mathews/NSC/EOP [NSC] <William D. Mathews>;Thomas S. Marsh/NSC/EOP [NSC] <Thomas S. Marsh>;Clark R. Lystra/NSC/EOP [NSC] <Clark R. Lystra>;Heather M. Lyster/OA/EOP [OA] <Heather M. Lyster>;Colleen Litkenhaus/WHO/EOP [WHO] <Colleen Litkenhaus>;Lindsey M. Lineweaver/WHO/EOP [WHO] <Lindsey M. Lineweaver>;Laura E. Lineberry/NSC/EOP [NSC] <Laura E. Lineberry>;Adam L. Levine/WHO/EOP [WHO] <Adam L. Levine>;Sang W. Lee/NSC/EOP [NSC] <Sang W. Lee>;Andrew M. Kaver/NSC/EOP [UNKNOWN] <Andrew M. Kaver>;Dora Kale/NSC/EOP [NSC] <Dora Kale>;Alexander S. Joves/NSC/EOP [NSC] <Alexander S. Joves>;M. Kay Joshi/NSC/EOP [NSC] <M. Kay Joshi>;Angela A. Jones/WHO/EOP [UNKNOWN] <Angela A. Jones>;Alison Jones/WHO/EOP [WHO] <Alison Jones>;Megan R. Johnston/WHO/EOP [WHO] <Megan R. Johnston>;Sydney R. Johnson/WHO/EOP [WHO] <Sydney R. Johnson>;Clarence C. Johnson/NSC/EOP [NSC] <Clarence C. Johnson>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Melanie A. Jackson/WHO/EOP [WHO] <Melanie A. Jackson>;Marilyn R. Jacanin/WHO/EOP [WHO] <Marilyn R. Jacanin>;A. Merrill Hughes/WHO/EOP [UNKNOWN] <A. Merrill Hughes>;Jeffrey P. Houle/NSC/EOP [NSC] <Jeffrey P. Houle>;Ashley Holbrook/WHO/EOP [WHO] <Ashley Holbrook>;Josephine L. Hirsch/WHO/EOP [WHO] <Josephine L. Hirsch>;Anne Heiligenstein/WHO/EOP [WHO] <Anne Heiligenstein>;Robert C. Hargis/NSC/EOP [NSC] <Robert C. Hargis>;Alison M. Harden/WHO/EOP [WHO] <Alison M. Harden>;Mary Ann Hanusa/WHO/EOP [WHO] <Mary Ann Hanusa>;Thomas A. Hall/NSC/EOP [NSC] <Thomas A. Hall>;Mary A. Haines/NSC/EOP [NSC] <Mary A. Haines>;Katharina M. Hager/WHO/EOP [WHO] <Katharina M. Hager>;Ginger G. Loper/WHO/EOP [WHO] <Ginger G. Loper>;Andrew W. Green/NSC/EOP [NSC] <Andrew W. Green>;Emily S. Gray/WHO/EOP [WHO] <Emily S. Gray>;Wendy E. Gray/NSC/EOP [NSC] <Wendy E. Gray>;Britt Grant/OPD/EOP [OPD] <Britt Grant>;Blake Gottesman/WHO/EOP [WHO] <Blake Gottesman>;Travis C. Good/NSC/EOP [

NSC] <Travis C. Good>;Georgia D. Godfrey/WHO/EOP [WHO] <Georgia D. Godfrey>;Eleanor L. Gillmor/OPD/EOP [OPD] <Eleanor L. Gillmor>;Dorothy C. Garvin/WHO/EOP [WHO] <Dorothy C. Garvin>;Joachim D. Fuchs/NSC/EOP [NSC] <Joachim D. Fuchs>;Barbara J. Finn/OA/EOP [OA] <Barbara J. Finn>;Kara G. Figg/WHO/EOP [WHO] <Kara G. Figg>;Jeanie L. Figg/WHO/EOP [WHO] <Jeanie L. Figg>;Jennifer D. Field/OVP/EOP [OVP] <Jennifer D. Field>;Charlene E. Fern/WHO/EOP [WHO] <Charlene E. Fern>;Douglas M. Erdahl/NSC/EOP [NSC] <Douglas M. Erdahl>;Ruth E. Elliott/NSC/EOP [NSC] <Ruth E. Elliott>;Kady Dunlap/WHO/EOP [WHO] <Kady Dunlap>;Eric A. Draper/WHO/EOP [WHO] <Eric A. Draper>;Joan R. Doty/WHO/EOP [WHO] <Joan R. Doty>;Katherine L. Disston/WHO/EOP [WHO] <Katherine L. Disston>;Reed Dickens/WHO/EOP [WHO] <Reed Dickens>;Josh Deckard/WHO/EOP [WHO] <Josh Deckard>;Ashley E. Davis/WHO/EOP [WHO] <Ashley E. Davis>;Jill Davie/WHO/EOP [WHO] <Jill Davie>;Karen D. Cruson/WHO/EOP [WHO] <Karen D. Cruson>;Quincy Crawford/WHO/EOP [UNKNOWN] <Quincy Crawford>;Lynn A. Crable/WHO/EOP [WHO] <Lynn A. Crable>;Colby J. Cooper/NSC/EOP [NSC] <Colby J. Cooper>;Michael J. Conway/WHO/EOP [WHO] <Michael J. Conway>;Rachel V. Comte/WHO/EOP [UNKNOWN] <Rachel V. Comte>;Carolyn E. Cleveland/WHO/EOP [WHO] <Carolyn E. Cleveland>;Shane P. Chambers/WHO/EOP [WHO] <Shane P. Chambers>;Lois A. Cassano/WHO/EOP [WHO] <Lois A. Cassano>;Pamela R. Casey/WHO/EOP [WHO] <Pamela R. Casey>;Anne E. Campbell/WHO/EOP [WHO] <Anne E. Campbell>;Elizabeth N. Camp/WHO/EOP [WHO] <Elizabeth N. Camp>;Marcia J. Caler/NSC/EOP [UNKNOWN] <Marcia J. Caler>;Johnathan C. Bunting/NSC/EOP [NSC] <Johnathan C. Bunting>;Patrick J. Bumatay/WHO/EOP [WHO] <Patrick J. Bumatay>;Bonnie S. Broadwick/NSC/EOP [NSC] <Bonnie S. Broadwick>;Gary E. Bresnahan/NSC/EOP [NSC] <Gary E. Bresnahan>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Jay P. Bonds/NSC/EOP [NSC] <Jay P. Bonds>;David R. Bohrer/OVP/EOP [OVP] <David R. Bohrer>;John M. Blackburn/NSC/EOP [NSC] <John M. Blackburn>;Debra D. Bird/WHO/EOP [WHO] <Debra D. Bird>;Melissa S. Bennett/WHO/EOP [WHO] <Melissa S. Bennett>;Brooks L. Bash/NSC/EOP [NSC] <Brooks L. Bash>;Amy Barrera/WHO/EOP [UNKNOWN] <Amy Barrera>;Cheryl E. Barnett/NSC/EOP [NSC] <Cheryl E. Barnett>;Tiffany L. Barfield/WHO/EOP [WHO] <Tiffany L. Barfield>;Mitchell P. Backfield/NSC/EOP [NSC] <Mitchell P. Backfield>;Jill L. Angelo/WHO/EOP [UNKNOWN] <Jill L. Angelo>;Ashleigh A. Adams/WHO/EOP [UNKNOWN] <Ashleigh A. Adams>

Sent: 7/1/2002 12:28:34 PM

Subject: : Postmaster: White House Mess Hours - July 4th Weekend

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:PostMaster ( CN=PostMaster/O=EOP [ OA ] )
CREATION DATE/TIME: 1-JUL-2002 16:28:34.00
SUBJECT:: Postmaster: White House Mess Hours - July 4th Weekend
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP [ OVP ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel K. Wilmot ( CN=Daniel K. Wilmot/OU=OVP/O=EOP [ OVP ] )
READ:UNKNOWN
TO:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Jocelyn White ( CN=Jocelyn White/OU=WHF/O=EOP [ OPM ] )
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TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP [ WHO ] )
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TO:Peter H. Wehner ( CN=Peter H. Wehner/OU=WHO/O=EOP [ WHO ] )
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TO:John P. Walters ( CN=John P. Walters/OU=ONDCP/O=EOP [ ONDCP ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Jim Towey ( CN=Jim Towey/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Catherine W. Tobias ( CN=Catherine W. Tobias/OU=OVP/O=EOP [ OVP ] )
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TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP [ OPD ] )
READ:UNKNOWN
TO:Jose G. Suarez ( CN=Jose G. Suarez/OU=WHO/O=EOP [ WHO ] )
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READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP [OPD])
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TO:Angela B. Styles (CN=Angela B. Styles/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP [OPD])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joseph J. Shattan (CN=Joseph J. Shattan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas J. Sharpy (CN=Thomas J. Sharpy/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Howard A. Schmidt (CN=Howard A. Schmidt/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel Schecter (CN=Daniel Schecter/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas J. Ridge (CN=Thomas J. Ridge/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Condoleezza Rice (CN=Condoleezza Rice/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Sean C. O'Keefe (CN=Sean C. O'Keefe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP [OVP])

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TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO])
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TO:Susan K. Neely (CN=Susan K. Neely/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP [WHO])
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TO:James F. Moriarty (CN=James F. Moriarty/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP [WHO])
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TO:Michael H. Miller (CN=Michael H. Miller/OU=WHO/O=EOP [WHO])
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TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP [WHO])
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TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
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TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
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TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP [OMB])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP [OVP])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP [CEA])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP [WHO])
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TO:John H. Marburger (CN=John H. Marburger/OU=OSTP/O=EOP [OSTP])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Robin A. MacLean (CN=Robin A. MacLean/OU=WHO/O=EOP [WHO])
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TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Andrew D. Lundquist (CN=Andrew D. Lundquist/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP [NSC])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
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TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP [WHO])
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TO:Bruce M. Lawlor (CN=Bruce M. Lawlor/OU=WHO/O=EOP [WHO])
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TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP [OA])

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TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP [CEA])
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TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
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TO:Zalmay M. Khalilzad (CN=Zalmay M. Khalilzad/OU=NSC/O=EOP [NSC])
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TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP [WHO])
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TO:Robert G. Joseph (CN=Robert G. Joseph/OU=NSC/O=EOP [NSC])
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TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP [WHO])
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TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP [WHO])
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TO:John Graham (CN=John Graham/OU=OMB/O=EOP [OMB])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP [WHO])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Diana E. Furchtgott-Roth (CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP [CEA])
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TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
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TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
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TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
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TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Wayne A. Downing (CN=Wayne A. Downing/OU=NSC/O=EOP [NSC])
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TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [UNKNOWN])
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TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP [WHO])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James F. Daniel (CN=James F. Daniel/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:John B. Craig (CN=John B. Craig/OU=NSC/O=EOP [NSC])
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TO:Steven Cooper (CN=Steven Cooper/OU=WHO/O=EOP [WHO])
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TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP [CEQ])
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TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP [WHO])
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TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP [OPD])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP [CEQ])

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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Douglas F. Cochrane (CN=Douglas F. Cochrane/OU=OVP/O=EOP [OVP])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [UNKNOWN])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
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TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP [NSC])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
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TO:Frank Cilluffo (CN=Frank Cilluffo/OU=WHO/O=EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [UNKNOWN])
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TO:Barbara C. Chaffee (CN=Barbara C. Chaffee/OU=WHO/O=EOP [WHO])
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TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Laura F. Chadwick (CN=Laura F. Chadwick/OU=OVP/O=EOP [OVP])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Timothy Campen (CN=Timothy Campen/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP [WHO])
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TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
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TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP [OPD])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP [WHO])
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TO:Lloyd A. Blanchard (CN=Lloyd A. Blanchard/OU=OMB/O=EOP [UNKNOWN])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP [WHO])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
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TO:Stephen E. Biegun (CN=Stephen E. Biegun/OU=NSC/O=EOP [NSC])
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TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP [WHO])
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TO:Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP [NSC])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP [WHO])
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TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP [NSC])
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TO:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP [WHO])
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TO:Penrose C. Albright (CN=Penrose C. Albright/OU=OSTP/O=EOP [OSTP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
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TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
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TO:Christina H. Yarmchuk (CN=Christina H. Yarmchuk/OU=NSC/O=EOP [NSC])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Patricia Williams (CN=Patricia Williams/OU=WHO/O=EOP [WHO])
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TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP [OPD])
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TO:Sibyl M. Turner (CN=Sibyl M. Turner/OU=WHO/O=EOP [WHO])
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TO:Terrill G. Tucker (CN=Terrill G. Tucker/OU=NSC/O=EOP [NSC])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
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TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP [WHO])
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TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP [WHO])
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TO:Pamela J. Seward (CN=Pamela J. Seward/OU=WHO/O=EOP [WHO])
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TO:Elizabeth A. Selva (CN=Elizabeth A. Selva/OU=NSC/O=EOP [NSC])
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TO:Robert E. Schubert (CN=Robert E. Schubert/OU=NSC/O=EOP [NSC])
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TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP [OPD])
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TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [UNKNOWN])

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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
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TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP [WHO])
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TO:John I. Pray (CN=John I. Pray/OU=NSC/O=EOP [NSC])
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TO:Sarah Penny (CN=Sarah Penny/OU=WHO/O=EOP [WHO])
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TO:Carrie C. Pauska (CN=Carrie C. Pauska/OU=WHO/O=EOP [UNKNOWN])
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TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP [WHO])
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TO:Lorraine Nisbet (CN=Lorraine Nisbet/OU=WHO/O=EOP [UNKNOWN])
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TO:Virginia R. Neumann (CN=Virginia R. Neumann/OU=NSC/O=EOP [NSC])
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TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP [NSC])
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TO:Steven Myers (CN=Steven Myers/OU=NSC/O=EOP [NSC])
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TO:Sarah M. Moss (CN=Sarah M. Moss/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Cathy L. Millison (CN=Cathy L. Millison/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Holly M. Miller (CN=Holly M. Miller/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Jenny McGee (CN=Jenny McGee/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Peter A. McCauley (CN=Peter A. McCauley/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Daniel M. McCarthy (CN=Daniel M. McCarthy/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William D. Mathews (CN=William D. Mathews/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Thomas S. Marsh (CN=Thomas S. Marsh/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Clark R. Lystra (CN=Clark R. Lystra/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Heather M. Lyster (CN=Heather M. Lyster/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lindsey M. Lineweaver (CN=Lindsey M. Lineweaver/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Adam L. Levine (CN=Adam L. Levine/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Andrew M. Kaver (CN=Andrew M. Kaver/OU=NSC/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Dora Kale (CN=Dora Kale/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Alexander S. Joves (CN=Alexander S. Joves/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:M. Kay Joshi (CN=M. Kay Joshi/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Angela A. Jones (CN=Angela A. Jones/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Megan R. Johnston (CN=Megan R. Johnston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Clarence C. Johnson (CN=Clarence C. Johnson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:A. Merrill Hughes (CN=A. Merrill Hughes/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Jeffrey P. Houle (CN=Jeffrey P. Houle/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Josephine L. Hirsch (CN=Josephine L. Hirsch/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert C. Hargis (CN=Robert C. Hargis/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas A. Hall (CN=Thomas A. Hall/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Mary A. Haines (CN=Mary A. Haines/OU=NSC/O=EOP [NSC])

READ:UNKNOWN
TO:Katharina M. Hager (CN=Katharina M. Hager/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Andrew W. Green (CN=Andrew W. Green/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Emily S. Gray (CN=Emily S. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Travis C. Good (CN=Travis C. Good/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Georgia D. Godfrey (CN=Georgia D. Godfrey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Dorothy C. Garvin (CN=Dorothy C. Garvin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joachim D. Fuchs (CN=Joachim D. Fuchs/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Barbara J. Finn (CN=Barbara J. Finn/OU=OA/O=EOP [OA])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Charlene E. Fern (CN=Charlene E. Fern/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Kady Dunlap (CN=Kady Dunlap/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine L. Disston (CN=Katherine L. Disston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Josh Deckard (CN=Josh Deckard/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley E. Davis (CN=Ashley E. Davis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karen D. Cruson (CN=Karen D. Cruson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Quincy Crawford (CN=Quincy Crawford/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Lynn A. Crable (CN=Lynn A. Crable/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Rachel V. Comte (CN=Rachel V. Comte/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lois A. Cassano (CN=Lois A. Cassano/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Pamela R. Casey (CN=Pamela R. Casey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Marcia J. Caler (CN=Marcia J. Caler/OU=NSC/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Johnathan C. Bunting (CN=Johnathan C. Bunting/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bonnie S. Broadwick (CN=Bonnie S. Broadwick/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Gary E. Bresnahan (CN=Gary E. Bresnahan/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jay P. Bonds (CN=Jay P. Bonds/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John M. Blackburn (CN=John M. Blackburn/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brooks L. Bash (CN=Brooks L. Bash/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Amy Barrera (CN=Amy Barrera/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Cheryl E. Barnett (CN=Cheryl E. Barnett/OU=NSC/O=EOP [NSC])
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TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mitchell P. Backfield (CN=Mitchell P. Backfield/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

White House Mess Hours - July 4th Weekend

In observance of the holiday, the White House Mess will be closed on Thursday, July 4th, and also on Saturday, July 6, 2002. The Mess will be open Friday, July 5th, but will close early at 6 PM. In the event it is deemed necessary to change these arrangements, all Mess members will be notified. We apologize for any inconvenience this may cause.

From: CN=Anne Womack/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/1/2002 9:10:20 AM
Subject: : please call

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 1-JUL-2002 13:10:20.00
SUBJECT:: please call
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

From: CN=Philip J. Perry/OU=OMB/O=EOP [OMB]
To: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>
CC: Mark Everson/OMB/EOP@EOP [OMB] <Mark Everson>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/1/2002 3:07:30 PM
Subject: : Re: OTP

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 1-JUL-2002 19:07:30.00
SUBJECT:: Re: OTP
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

don't have it. Mark does.

From: Edward McNally on 07/01/2002 06:40:33 PM
Record Type: Record

To: Philip J. Perry/OMB/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: OTP

Phil -- can you shoot both of us a copy of whatever the current version is of Mark's doc -- it used to be called Proposed Transition Plan and is the one with a kind of structural/org chart at p. 5 -- probably the current version is the one that was used for today's 4:45 transition meeting w/ Sec. Card, Gov. Ridge, etc.? Thanks -- E.

Philip J. Perry
07/01/2002 12:43:52 PM
Record Type: Record

To: Edward McNally/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: OTP

The following is the current plan:

In the coming weeks, we will set up a 15-36 person OTP transition operation w/in OMB. At a minimum , it will have folks dedicated to the logistics of transition (including HR, systems, management, personnel, legal.) It will be designed to conduct diligence and to produce written deliverables for the future Secretary. These deliverables should a include a step by step strategy for transferring component agencies to the new Department. OTP will be separate from whatever policy apparatus is utilized to advise the President on Homeland matters.

The rules for document sharing/use will need to be simple and clear.

From: CN=PostMaster/O=EOP [OA]

To: Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Daniel K. Wilmot/OVP/EOP [OVP] <Daniel K. Wilmot>;James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Jocelyn White/WHF/EOP [OPM] <Jocelyn White>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;John P. Walters/ONDCP/EOP [ONDCP] <John P. Walters>;Helgard C. Walker/WHO/EOP [WHO] <Helgard C. Walker>;Jim Towey/WHO/EOP [WHO] <Jim Towey>;Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>;D. Marcus Sumerlin/OPD/EOP [OPD] <D. Marcus Sumerlin>;Jose G. Suarez/WHO/EOP [WHO] <Jose G. Suarez>;Aquiles F. Suarez/OPD/EOP [OPD] <Aquiles F. Suarez>;Angela B. Styles/OMB/EOP [OMB] <Angela B. Styles>;Mary K. Sturtevant/NSC/EOP [NSC] <Mary K. Sturtevant>;Margaret M. Spellings/OPD/EOP [OPD] <Margaret M. Spellings>;Deborah A. Spagnoli/WHO/EOP [WHO] <Deborah A. Spagnoli>;Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph J. Shattan/WHO/EOP [WHO] <Joseph J. Shattan>;Thomas J. Sharpy/OVP/EOP [OVP] <Thomas J. Sharpy>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Matthew O. Scully/WHO/EOP [UNKNOWN] <Matthew O. Scully>;Howard A. Schmidt/NSC/EOP [NSC] <Howard A. Schmidt>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Daniel Schecter/ONDCP/EOP [ONDCP] <Daniel Schecter>;Diana L. Schacht/OPD/EOP [OPD] <Diana L. Schacht>;Desiree T. Sayle/WHO/EOP [WHO] <Desiree T. Sayle>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Stephen S. Ruhlen/OVP/EOP [OVP] <Stephen S. Ruhlen>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Mark V. Rosenker/WHO/EOP [WHO] <Mark V. Rosenker>;Thomas J. Ridge/WHO/EOP [WHO] <Thomas J. Ridge>;Condoleezza Rice/NSC/EOP [NSC] <Condoleezza Rice>;Nina Rees/OVP/EOP [OVP] <Nina Rees>;Craig Ray/WHO/EOP [WHO] <Craig Ray>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Anne E. Phelps/OPD/EOP [OPD] <Anne E. Phelps>;Philip J. Perry/OMB/EOP [OMB] <Philip J. Perry>;Anna M. Perez/NSC/EOP [NSC] <Anna M. Perez>;Eric C. Pelletier/OMB/EOP [OMB] <Eric C. Pelletier>;Marcus Peacock/OMB/EOP [OMB] <Marcus Peacock>;Neil S. Patel/OVP/EOP [OVP] <Neil S. Patel>;Sean C. O'Keefe/OMB/EOP [OMB] <Sean C. O'Keefe>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Claire M. O'Donnell/OVP/EOP [OVP] <Claire M. O'Donnell>;Jennifer G. Newstead/WHO/EOP [WHO] <Jennifer G. Newstead>;Susan K. Neely/WHO/EOP [WHO] <Susan K. Neely>;Edmund C. Moy/WHO/EOP [WHO] <Edmund C. Moy>;James F. Moriarty/NSC/EOP [NSC] <James F. Moriarty>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Michael H. Miller/WHO/EOP [WHO] <Michael H. Miller>;Franklin C. Miller/NSC/EOP [NSC] <Franklin C. Miller>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Ken Mehlman/WHO/EOP [WHO] <Ken Mehlman>;Edward McNally/WHO/EOP [WHO] <Edward McNally>;Robert C. McNally/OPD/EOP [OPD] <Robert C. McNally>;Stephen S. McMillin/OMB/EOP [OMB] <Stephen S. McMillin>;Brian V. McCormack/OVP/EOP [OVP] <Brian V. McCormack>;John P. McConnell/OVP/EOP [OVP] <John P. McConnell>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Mark McClellan/CEA/EOP [CEA] <Mark McClellan>;Mary J. Matalin/OVP/EOP [OVP] <Mary J. Matalin>;Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>;Robert Marsh/WHO/EOP [WHO] <Robert Marsh>;John H. Marburger/OSTP/EOP [OSTP] <John H. Marburger>;K. Philippa Malmgren/OPD/EOP [OPD] <K. Philippa Malmgren>;John F. Maisto/NSC/EOP [NSC] <John F. Maisto>;Robin A. MacLean/WHO/EOP [WHO] <Robin A. MacLean>;Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>;Andrew D. Lundquist/OVP/EOP [OVP] <Andrew D. Lundquist>;Deborah A. Loewer/NSC/EOP [NSC] <Deborah A. Loewer>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Lawrence B. Lindsey/OPD/EOP [OPD] <Lawrence B. Lindsey>;Lewis Libby/OVP/EOP [OVP] <Lewis Libby>;Dirksen Lehman/WHO/EOP [WHO] <Dirksen Lehman>;Jay P. Lefkowitz/OPD/EOP [OPD] <Jay P. Lefkowitz>;Laura S. Lawlor/WHO/EOP [WHO] <Laura S. Lawlor>;Bruce M. Lawlor/WHO/EOP [WHO] <Bruce M. Lawlor>;Phillip Larsen/OA/EOP [OA] <Phillip Larsen>;David Kuo/WHO/EOP [WHO] <David Kuo>;Randall S. Kroszner/CEA/EOP [CEA] <Randall S. Kroszner>;Karen Y. Knutson/OVP/EOP [OVP] <Karen Y. Knutson>;Frank G. Klotz/NSC/EOP [NSC] <Frank G. Klotz>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Ellis Kitchen/OA/EOP [OA] <Ellis Kitchen>;Matthew Kirk/WHO/EOP [WHO] <Matthew Kirk>;Zalmay M. Khalilzad/NSC/EOP [NSC] <Zalmay M. Khalilzad>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Charles D. McGrath Jr/OVP/EOP [OVP] <Charles D. McGrath Jr>;Robert G. Joseph/NSC/EOP [NSC] <Robert G. Joseph>;Barry S. Jackson/WHO/EOP [WHO] <Barry S. Jackson>;Hector F.

Irastorza/WHO/EOP [WHO] <Hector F. Irastorza>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;Clay Johnson III/WHO/EOP [WHO] <Clay Johnson III>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Glenn Hubbard/CEA/EOP [CEA] <Glenn Hubbard>;Jack Howard/WHO/EOP [WHO] <Jack Howard>;Mark Holman/WHO/EOP [WHO] <Mark Holman>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Debra Heiden/OVP/EOP [OVP] <Debra Heiden>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;John P. Hannah/OVP/EOP [OVP] <John P. Hannah>;John F. Haley/OVP/EOP [OVP] <John F. Haley>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Stephen J. Hadley/NSC/EOP [NSC] <Stephen J. Hadley>;Ann Gray/WHO/EOP [WHO] <Ann Gray>;John Graham/OMB/EOP [OMB] <John Graham>;Alberto R. Gonzales/WHO/EOP [WHO] <Alberto R. Gonzales>;Stephen Goldsmith/WHO/EOP [WHO] <Stephen Goldsmith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Dylan C. Glenn/OPD/EOP [OPD] <Dylan C. Glenn>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Stephen M. Garrison/WHO/EOP [WHO] <Stephen M. Garrison>;Kelley Gannon/WHO/EOP [WHO] <Kelley Gannon>;Linda M. Gambatesa/WHO/EOP [WHO] <Linda M. Gambatesa>;Diana E. Furchtgott-Roth/CEA/EOP [CEA] <Diana E. Furchtgott-Roth>;Daniel Fried/NSC/EOP [NSC] <Daniel Fried>;Jendayi E. Frazer/NSC/EOP [NSC] <Jendayi E. Frazer>;Noel J. Francisco/WHO/EOP [WHO] <Noel J. Francisco>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Catherine S. Fenton/WHO/EOP [WHO] <Catherine S. Fenton>;Richard Falkenrath/WHO/EOP [WHO] <Richard Falkenrath>;Nanette Everson/WHO/EOP [WHO] <Nanette Everson>;Mark Everson/OMB/EOP [OMB] <Mark Everson>;Ashley Estes/WHO/EOP [WHO] <Ashley Estes>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Gary R. Edson/NSC/EOP [NSC] <Gary R. Edson>;Eric S. Edelman/OVP/EOP [OVP] <Eric S. Edelman>;Wayne A. Downing/NSC/EOP [NSC] <Wayne A. Downing>;Elizabeth S. Dougherty/OPD/EOP [OPD] <Elizabeth S. Dougherty>;Nancy P. Dorn/WHO/EOP [UNKNOWN] <Nancy P. Dorn>;Diana C. Donnelly/WHO/EOP [WHO] <Diana C. Donnelly>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Mitchell Daniels/OMB/EOP [OMB] <Mitchell Daniels>;James F. Daniel/OA/EOP [OA] <James F. Daniel>;Stacia L. Cropper/OA/EOP [OA] <Stacia L. Cropper>;John B. Craig/NSC/EOP [NSC] <John B. Craig>;Steven Cooper/WHO/EOP [WHO] <Steven Cooper>;Phil Cooney/CEQ/EOP [CEQ] <Phil Cooney>;Rebecca Contreras/WHO/EOP [WHO] <Rebecca Contreras>;Charles Conner/OPD/EOP [OPD] <Charles Conner>;James Connaughton/CEQ/EOP [CEQ] <James Connaughton>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Cesar Conda/OVP/EOP [OVP] <Cesar Conda>;Douglas F. Cochrane/OVP/EOP [OVP] <Douglas F. Cochrane>;Robert W. Cobb/WHO/EOP [UNKNOWN] <Robert W. Cobb>;John A. Cloud/NSC/EOP [NSC] <John A. Cloud>;Robin Cleveland/OMB/EOP [OMB] <Robin Cleveland>;Richard A. Clarke/NSC/EOP [NSC] <Richard A. Clarke>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;Frank Cilluffo/WHO/EOP [WHO] <Frank Cilluffo>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Ronald I. Christie/OVP/EOP [UNKNOWN] <Ronald I. Christie>;Barbara C. Chaffee/WHO/EOP [WHO] <Barbara C. Chaffee>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Laura F. Chadwick/OVP/EOP [OVP] <Laura F. Chadwick>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;James C. Capretta/OMB/EOP [OMB] <James C. Capretta>;Timothy Campen/OA/EOP [OA] <Timothy Campen>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;Katja Bullock/WHO/EOP [WHO] <Katja Bullock>;Carl Buchholz/WHO/EOP [WHO] <Carl Buchholz>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;John M. Bridgeland/OPD/EOP [OPD] <John M. Bridgeland>;Rachel L. Brand/WHO/EOP [WHO] <Rachel L. Brand>;Stuart W. Bowen/WHO/EOP [WHO] <Stuart W. Bowen>;Carlos E. Bonilla/OPD/EOP [OPD] <Carlos E. Bonilla>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Lloyd A. Blanchard/OMB/EOP [UNKNOWN] <Lloyd A. Blanchard>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Bradley A. Blakeman/WHO/EOP [WHO] <Bradley A. Blakeman>;Charles P. Blahous/OPD/EOP [OPD] <Charles P. Blahous>;Stephen E. Biegun/NSC/EOP [NSC] <Stephen E. Biegun>;Rebecca A. Beynon/WHO/EOP [WHO] <Rebecca A. Beynon>;Janet L. Berman/OVP/EOP [OVP] <Janet L. Berman>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;John B. Bellinger/NSC/EOP [NSC] <John B. Bellinger>;H. Christopher Bartolomucci/WHO/EOP [WHO] <H. Christopher Bartolomucci>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Ruben S. Barrales/WHO/EOP [WHO] <Ruben S. Barrales>;Andrea G. Ball/WHO/EOP [WHO] <Andrea G. Ball>;Jackie Arends/WHO/EOP [WHO] <Jackie Arends>;George M. Andricos/NSC/EOP [NSC] <George M. Andricos>;Cathy Alix/WHO/EOP [WHO] <Cathy Alix>;Penrose C. Albright/OSTP/EOP [OSTP] <Penrose C. Albright>;David S. Addington/OVP/EOP [OVP] <David S. Addington>;Elliott Abrams/NSC/EOP [NSC] <Elliott Abrams>;Charles S.

Abbot/OVP/EOP [OVP] <Charles S. Abbot>;Christina H. Yarmchuk/NSC/EOP [NSC] <Christina H. Yarmchuk>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Alexian T. Wines/NSC/EOP [NSC] <Alexian T. Wines>;Patricia Williams/WHO/EOP [WHO] <Patricia Williams>;Matthew C. Waxman/NSC/EOP [NSC] <Matthew C. Waxman>;Janet P. Walker/OPD/EOP [OPD] <Janet P. Walker>;Lauren J. Vestewig/OPD/EOP [OPD] <Lauren J. Vestewig>;Sibyl M. Turner/WHO/EOP [WHO] <Sibyl M. Turner>;Terrill G. Tucker/NSC/EOP [NSC] <Terrill G. Tucker>;Anne Trenolone/WHO/EOP [WHO] <Anne Trenolone>;Carol J. Thompson/WHO/EOP [WHO] <Carol J. Thompson>;Julieanne H. Thomas/WHO/EOP [WHO] <Julieanne H. Thomas>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Susan L. Sterner/WHO/EOP [WHO] <Susan L. Sterner>;Ashley Snee/WHO/EOP [WHO] <Ashley Snee>;Pamela J. Seward/WHO/EOP [WHO] <Pamela J. Seward>;Elizabeth A. Selva/NSC/EOP [NSC] <Elizabeth A. Selva>;Robert E. Schubert/NSC/EOP [NSC] <Robert E. Schubert>;Deborah Sandler/NSC/EOP [NSC] <Deborah Sandler>;Jean M. Russell/OPD/EOP [OPD] <Jean M. Russell>;Peter M. Rowan/WHO/EOP [UNKNOWN] <Peter M. Rowan>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Josephine B. Robinson/WHO/EOP [WHO] <Josephine B. Robinson>;Maurice C. Robinson/NSC/EOP [NSC] <Maurice C. Robinson>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Robert J. Riley/NSC/EOP [NSC] <Robert J. Riley>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Tim Reynolds/WHO/EOP [WHO] <Tim Reynolds>;David Reyes/NSC/EOP [NSC] <David Reyes>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Leslie E. Radcliff/NSC/EOP [NSC] <Leslie E. Radcliff>;Clare Pritchett/WHO/EOP [WHO] <Clare Pritchett>;Suzanne Primoff/WHO/EOP [WHO] <Suzanne Primoff>;John I. Pray/NSC/EOP [NSC] <John I. Pray>;Sarah Penny/WHO/EOP [WHO] <Sarah Penny>;Raymond H. Payne/NSC/EOP [NSC] <Raymond H. Payne>;Carrie C. Pauska/WHO/EOP [UNKNOWN] <Carrie C. Pauska>;Richard S. Paulus/WHO/EOP [WHO] <Richard S. Paulus>;Edward J. Padinske/NSC/EOP [NSC] <Edward J. Padinske>;Eric H. Otto/OPD/EOP [OPD] <Eric H. Otto>;Lorraine Nisbet/WHO/EOP [UNKNOWN] <Lorraine Nisbet>;Virginia R. Neumann/NSC/EOP [NSC] <Virginia R. Neumann>;Lee B. Mynatt/NSC/EOP [NSC] <Lee B. Mynatt>;Steven Myers/NSC/EOP [NSC] <Steven Myers>;Sarah M. Moss/WHO/EOP [WHO] <Sarah M. Moss>;Paul L. Morse/WHO/EOP [WHO] <Paul L. Morse>;Leslie A. Mooney/OPD/EOP [OPD] <Leslie A. Mooney>;Marcus J. Mollmann/WHO/EOP [UNKNOWN] <Marcus J. Mollmann>;Cathy L. Millison/NSC/EOP [NSC] <Cathy L. Millison>;Holly M. Miller/WHO/EOP [WHO] <Holly M. Miller>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Sonya E. Medina/WHO/EOP [WHO] <Sonya E. Medina>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Sara B. McIntosh/WHO/EOP [WHO] <Sara B. McIntosh>;Jenny McGee/NSC/EOP [NSC] <Jenny McGee>;Peter A. McCauley/NSC/EOP [NSC] <Peter A. McCauley>;Daniel M. McCarthy/WHO/EOP [WHO] <Daniel M. McCarthy>;William D. Mathews/NSC/EOP [NSC] <William D. Mathews>;Thomas S. Marsh/NSC/EOP [NSC] <Thomas S. Marsh>;Clark R. Lystra/NSC/EOP [NSC] <Clark R. Lystra>;Heather M. Lyster/OA/EOP [OA] <Heather M. Lyster>;Colleen Litkenhaus/WHO/EOP [WHO] <Colleen Litkenhaus>;Lindsey M. Lineweaver/WHO/EOP [WHO] <Lindsey M. Lineweaver>;Laura E. Lineberry/NSC/EOP [NSC] <Laura E. Lineberry>;Adam L. Levine/WHO/EOP [WHO] <Adam L. Levine>;Sang W. Lee/NSC/EOP [NSC] <Sang W. Lee>;Andrew M. Kaver/NSC/EOP [UNKNOWN] <Andrew M. Kaver>;Dora Kale/NSC/EOP [NSC] <Dora Kale>;Alexander S. Joves/NSC/EOP [NSC] <Alexander S. Joves>;M. Kay Joshi/NSC/EOP [NSC] <M. Kay Joshi>;Angela A. Jones/WHO/EOP [UNKNOWN] <Angela A. Jones>;Alison Jones/WHO/EOP [WHO] <Alison Jones>;Megan R. Johnston/WHO/EOP [WHO] <Megan R. Johnston>;Sydney R. Johnson/WHO/EOP [WHO] <Sydney R. Johnson>;Clarence C. Johnson/NSC/EOP [NSC] <Clarence C. Johnson>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Melanie A. Jackson/WHO/EOP [WHO] <Melanie A. Jackson>;Marilyn R. Jacanin/WHO/EOP [WHO] <Marilyn R. Jacanin>;A. Merrill Hughes/WHO/EOP [UNKNOWN] <A. Merrill Hughes>;Jeffrey P. Houle/NSC/EOP [NSC] <Jeffrey P. Houle>;Ashley Holbrook/WHO/EOP [WHO] <Ashley Holbrook>;Josephine L. Hirsch/WHO/EOP [WHO] <Josephine L. Hirsch>;Anne Heiligenstein/WHO/EOP [WHO] <Anne Heiligenstein>;Robert C. Hargis/NSC/EOP [NSC] <Robert C. Hargis>;Alison M. Harden/WHO/EOP [WHO] <Alison M. Harden>;Mary Ann Hanusa/WHO/EOP [WHO] <Mary Ann Hanusa>;Thomas A. Hall/NSC/EOP [NSC] <Thomas A. Hall>;Mary A. Haines/NSC/EOP [NSC] <Mary A. Haines>;Katharina M. Hager/WHO/EOP [WHO] <Katharina M. Hager>;Ginger G. Loper/WHO/EOP [WHO] <Ginger G. Loper>;Andrew W. Green/NSC/EOP [NSC] <Andrew W. Green>;Emily S. Gray/WHO/EOP [WHO] <Emily S. Gray>;Wendy E. Gray/NSC/EOP [NSC] <Wendy E. Gray>;Britt Grant/OPD/EOP [OPD] <Britt Grant>;Blake Gottesman/WHO/EOP [WHO] <Blake Gottesman>;Travis C. Good/NSC/EOP [

NSC] <Travis C. Good>;Georgia D. Godfrey/WHO/EOP [WHO] <Georgia D. Godfrey>;Eleanor L. Gillmor/OPD/EOP [OPD] <Eleanor L. Gillmor>;Dorothy C. Garvin/WHO/EOP [WHO] <Dorothy C. Garvin>;Joachim D. Fuchs/NSC/EOP [NSC] <Joachim D. Fuchs>;Barbara J. Finn/OA/EOP [OA] <Barbara J. Finn>;Kara G. Figg/WHO/EOP [WHO] <Kara G. Figg>;Jeanie L. Figg/WHO/EOP [WHO] <Jeanie L. Figg>;Jennifer D. Field/OVP/EOP [OVP] <Jennifer D. Field>;Charlene E. Fern/WHO/EOP [WHO] <Charlene E. Fern>;Douglas M. Erdahl/NSC/EOP [NSC] <Douglas M. Erdahl>;Ruth E. Elliott/NSC/EOP [NSC] <Ruth E. Elliott>;Kady Dunlap/WHO/EOP [WHO] <Kady Dunlap>;Eric A. Draper/WHO/EOP [WHO] <Eric A. Draper>;Joan R. Doty/WHO/EOP [WHO] <Joan R. Doty>;Katherine L. Disston/WHO/EOP [WHO] <Katherine L. Disston>;Reed Dickens/WHO/EOP [WHO] <Reed Dickens>;Josh Deckard/WHO/EOP [WHO] <Josh Deckard>;Ashley E. Davis/WHO/EOP [WHO] <Ashley E. Davis>;Jill Davie/WHO/EOP [WHO] <Jill Davie>;Karen D. Cruson/WHO/EOP [WHO] <Karen D. Cruson>;Quincy Crawford/WHO/EOP [UNKNOWN] <Quincy Crawford>;Lynn A. Crable/WHO/EOP [WHO] <Lynn A. Crable>;Colby J. Cooper/NSC/EOP [NSC] <Colby J. Cooper>;Michael J. Conway/WHO/EOP [WHO] <Michael J. Conway>;Rachel V. Comte/WHO/EOP [UNKNOWN] <Rachel V. Comte>;Carolyn E. Cleveland/WHO/EOP [WHO] <Carolyn E. Cleveland>;Shane P. Chambers/WHO/EOP [WHO] <Shane P. Chambers>;Lois A. Cassano/WHO/EOP [WHO] <Lois A. Cassano>;Pamela R. Casey/WHO/EOP [WHO] <Pamela R. Casey>;Anne E. Campbell/WHO/EOP [WHO] <Anne E. Campbell>;Elizabeth N. Camp/WHO/EOP [WHO] <Elizabeth N. Camp>;Marcia J. Caler/NSC/EOP [UNKNOWN] <Marcia J. Caler>;Johnathan C. Bunting/NSC/EOP [NSC] <Johnathan C. Bunting>;Patrick J. Bumatay/WHO/EOP [WHO] <Patrick J. Bumatay>;Bonnie S. Broadwick/NSC/EOP [NSC] <Bonnie S. Broadwick>;Gary E. Bresnahan/NSC/EOP [NSC] <Gary E. Bresnahan>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Jay P. Bonds/NSC/EOP [NSC] <Jay P. Bonds>;David R. Bohrer/OVP/EOP [OVP] <David R. Bohrer>;John M. Blackburn/NSC/EOP [NSC] <John M. Blackburn>;Debra D. Bird/WHO/EOP [WHO] <Debra D. Bird>;Melissa S. Bennett/WHO/EOP [WHO] <Melissa S. Bennett>;Brooks L. Bash/NSC/EOP [NSC] <Brooks L. Bash>;Amy Barrera/WHO/EOP [UNKNOWN] <Amy Barrera>;Cheryl E. Barnett/NSC/EOP [NSC] <Cheryl E. Barnett>;Tiffany L. Barfield/WHO/EOP [WHO] <Tiffany L. Barfield>;Mitchell P. Backfield/NSC/EOP [NSC] <Mitchell P. Backfield>;Jill L. Angelo/WHO/EOP [UNKNOWN] <Jill L. Angelo>;Ashleigh A. Adams/WHO/EOP [UNKNOWN] <Ashleigh A. Adams>

Sent: 7/1/2002 12:28:34 PM

Subject: : Postmaster: White House Mess Hours - July 4th Weekend

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###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:PostMaster ( CN=PostMaster/O=EOP [ OA ] )
CREATION DATE/TIME: 1-JUL-2002 16:28:34.00
SUBJECT:: Postmaster: White House Mess Hours - July 4th Weekend
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP [ OVP ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel K. Wilmot ( CN=Daniel K. Wilmot/OU=OVP/O=EOP [ OVP ] )
READ:UNKNOWN
TO:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Jocelyn White ( CN=Jocelyn White/OU=WHF/O=EOP [ OPM ] )
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TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP [ WHO ] )
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TO:Peter H. Wehner ( CN=Peter H. Wehner/OU=WHO/O=EOP [ WHO ] )
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TO:Jim Towey ( CN=Jim Towey/OU=WHO/O=EOP [ WHO ] )
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TO:Catherine W. Tobias ( CN=Catherine W. Tobias/OU=OVP/O=EOP [ OVP ] )
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TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP [ OPD ] )
READ:UNKNOWN
TO:Jose G. Suarez ( CN=Jose G. Suarez/OU=WHO/O=EOP [ WHO ] )
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READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP [OPD])
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TO:Angela B. Styles (CN=Angela B. Styles/OU=OMB/O=EOP [OMB])
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TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP [NSC])
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TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joseph J. Shattan (CN=Joseph J. Shattan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas J. Sharpy (CN=Thomas J. Sharpy/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Howard A. Schmidt (CN=Howard A. Schmidt/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel Schecter (CN=Daniel Schecter/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas J. Ridge (CN=Thomas J. Ridge/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Condoleezza Rice (CN=Condoleezza Rice/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Sean C. O'Keefe (CN=Sean C. O'Keefe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP [OVP])

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TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO])
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TO:Susan K. Neely (CN=Susan K. Neely/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP [WHO])
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TO:James F. Moriarty (CN=James F. Moriarty/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP [WHO])
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TO:Michael H. Miller (CN=Michael H. Miller/OU=WHO/O=EOP [WHO])
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TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP [WHO])
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TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
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TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
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TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP [OMB])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP [OVP])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP [CEA])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP [WHO])
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TO:John H. Marburger (CN=John H. Marburger/OU=OSTP/O=EOP [OSTP])
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TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Robin A. MacLean (CN=Robin A. MacLean/OU=WHO/O=EOP [WHO])
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TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Andrew D. Lundquist (CN=Andrew D. Lundquist/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP [NSC])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
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TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP [WHO])
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TO:Bruce M. Lawlor (CN=Bruce M. Lawlor/OU=WHO/O=EOP [WHO])
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TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP [OA])

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TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP [CEA])
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TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
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TO:Zalmay M. Khalilzad (CN=Zalmay M. Khalilzad/OU=NSC/O=EOP [NSC])
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TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP [WHO])
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TO:Robert G. Joseph (CN=Robert G. Joseph/OU=NSC/O=EOP [NSC])
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TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP [WHO])
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TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP [WHO])
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TO:John Graham (CN=John Graham/OU=OMB/O=EOP [OMB])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP [WHO])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Diana E. Furchtgott-Roth (CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP [CEA])
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TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
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TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
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TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
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TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Wayne A. Downing (CN=Wayne A. Downing/OU=NSC/O=EOP [NSC])
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TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [UNKNOWN])
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TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP [WHO])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James F. Daniel (CN=James F. Daniel/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:John B. Craig (CN=John B. Craig/OU=NSC/O=EOP [NSC])
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TO:Steven Cooper (CN=Steven Cooper/OU=WHO/O=EOP [WHO])
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TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP [CEQ])
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TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP [WHO])
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TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP [OPD])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP [CEQ])

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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Douglas F. Cochrane (CN=Douglas F. Cochrane/OU=OVP/O=EOP [OVP])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [UNKNOWN])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
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TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP [NSC])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
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TO:Frank Cilluffo (CN=Frank Cilluffo/OU=WHO/O=EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [UNKNOWN])
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TO:Barbara C. Chaffee (CN=Barbara C. Chaffee/OU=WHO/O=EOP [WHO])
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TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Laura F. Chadwick (CN=Laura F. Chadwick/OU=OVP/O=EOP [OVP])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Timothy Campen (CN=Timothy Campen/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP [WHO])
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TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
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TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
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TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP [OPD])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP [WHO])
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TO:Lloyd A. Blanchard (CN=Lloyd A. Blanchard/OU=OMB/O=EOP [UNKNOWN])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP [WHO])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
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TO:Stephen E. Biegun (CN=Stephen E. Biegun/OU=NSC/O=EOP [NSC])
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TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP [WHO])
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TO:Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP [NSC])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP [WHO])
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TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP [NSC])
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TO:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP [WHO])
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TO:Penrose C. Albright (CN=Penrose C. Albright/OU=OSTP/O=EOP [OSTP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
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TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
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TO:Christina H. Yarmchuk (CN=Christina H. Yarmchuk/OU=NSC/O=EOP [NSC])
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TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Patricia Williams (CN=Patricia Williams/OU=WHO/O=EOP [WHO])
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TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP [OPD])
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TO:Sibyl M. Turner (CN=Sibyl M. Turner/OU=WHO/O=EOP [WHO])
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TO:Terrill G. Tucker (CN=Terrill G. Tucker/OU=NSC/O=EOP [NSC])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
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TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP [WHO])
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TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP [WHO])
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TO:Pamela J. Seward (CN=Pamela J. Seward/OU=WHO/O=EOP [WHO])
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TO:Elizabeth A. Selva (CN=Elizabeth A. Selva/OU=NSC/O=EOP [NSC])
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TO:Robert E. Schubert (CN=Robert E. Schubert/OU=NSC/O=EOP [NSC])
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TO:Jean M. Russell (CN=Jean M. Russell/OU=OPD/O=EOP [OPD])
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TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [UNKNOWN])

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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
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TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP [WHO])
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TO:John I. Pray (CN=John I. Pray/OU=NSC/O=EOP [NSC])
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TO:Sarah Penny (CN=Sarah Penny/OU=WHO/O=EOP [WHO])
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TO:Carrie C. Pauska (CN=Carrie C. Pauska/OU=WHO/O=EOP [UNKNOWN])
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TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP [WHO])
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TO:Lorraine Nisbet (CN=Lorraine Nisbet/OU=WHO/O=EOP [UNKNOWN])
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TO:Virginia R. Neumann (CN=Virginia R. Neumann/OU=NSC/O=EOP [NSC])
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TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP [NSC])
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TO:Steven Myers (CN=Steven Myers/OU=NSC/O=EOP [NSC])
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TO:Sarah M. Moss (CN=Sarah M. Moss/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Marcus J. Mollmann (CN=Marcus J. Mollmann/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Cathy L. Millison (CN=Cathy L. Millison/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Holly M. Miller (CN=Holly M. Miller/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Cynthia R. Mendl (CN=Cynthia R. Mendl/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Jenny McGee (CN=Jenny McGee/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Peter A. McCauley (CN=Peter A. McCauley/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Daniel M. McCarthy (CN=Daniel M. McCarthy/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:William D. Mathews (CN=William D. Mathews/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Thomas S. Marsh (CN=Thomas S. Marsh/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Clark R. Lystra (CN=Clark R. Lystra/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Heather M. Lyster (CN=Heather M. Lyster/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lindsey M. Lineweaver (CN=Lindsey M. Lineweaver/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Adam L. Levine (CN=Adam L. Levine/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Andrew M. Kaver (CN=Andrew M. Kaver/OU=NSC/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Dora Kale (CN=Dora Kale/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Alexander S. Joves (CN=Alexander S. Joves/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:M. Kay Joshi (CN=M. Kay Joshi/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Angela A. Jones (CN=Angela A. Jones/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Megan R. Johnston (CN=Megan R. Johnston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Clarence C. Johnson (CN=Clarence C. Johnson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Gordon D. Johndroe (CN=Gordon D. Johndroe/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:A. Merrill Hughes (CN=A. Merrill Hughes/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Jeffrey P. Houle (CN=Jeffrey P. Houle/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Josephine L. Hirsch (CN=Josephine L. Hirsch/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Robert C. Hargis (CN=Robert C. Hargis/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Alison M. Harden (CN=Alison M. Harden/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas A. Hall (CN=Thomas A. Hall/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Mary A. Haines (CN=Mary A. Haines/OU=NSC/O=EOP [NSC])

READ:UNKNOWN
TO:Katharina M. Hager (CN=Katharina M. Hager/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Andrew W. Green (CN=Andrew W. Green/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Emily S. Gray (CN=Emily S. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Travis C. Good (CN=Travis C. Good/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Georgia D. Godfrey (CN=Georgia D. Godfrey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Dorothy C. Garvin (CN=Dorothy C. Garvin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joachim D. Fuchs (CN=Joachim D. Fuchs/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Barbara J. Finn (CN=Barbara J. Finn/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Charlene E. Fern (CN=Charlene E. Fern/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Kady Dunlap (CN=Kady Dunlap/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katherine L. Disston (CN=Katherine L. Disston/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Josh Deckard (CN=Josh Deckard/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley E. Davis (CN=Ashley E. Davis/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jill Davie (CN=Jill Davie/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karen D. Cruson (CN=Karen D. Cruson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Quincy Crawford (CN=Quincy Crawford/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Lynn A. Crable (CN=Lynn A. Crable/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Michael J. Conway (CN=Michael J. Conway/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Rachel V. Comte (CN=Rachel V. Comte/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lois A. Cassano (CN=Lois A. Cassano/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Pamela R. Casey (CN=Pamela R. Casey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Marcia J. Caler (CN=Marcia J. Caler/OU=NSC/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Johnathan C. Bunting (CN=Johnathan C. Bunting/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bonnie S. Broadwick (CN=Bonnie S. Broadwick/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Gary E. Bresnahan (CN=Gary E. Bresnahan/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jay P. Bonds (CN=Jay P. Bonds/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John M. Blackburn (CN=John M. Blackburn/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Brooks L. Bash (CN=Brooks L. Bash/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Amy Barrera (CN=Amy Barrera/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Cheryl E. Barnett (CN=Cheryl E. Barnett/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mitchell P. Backfield (CN=Mitchell P. Backfield/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jill L. Angelo (CN=Jill L. Angelo/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

White House Mess Hours - July 4th Weekend

In observance of the holiday, the White House Mess will be closed on Thursday, July 4th, and also on Saturday, July 6, 2002. The Mess will be open Friday, July 5th, but will close early at 6 PM. In the event it is deemed necessary to change these arrangements, all Mess members will be notified. We apologize for any inconvenience this may cause.

From: CN=PostMaster/O=EOP [OA]

To: Candida P. Wolff/OVP/EOP [OVP] <Candida P. Wolff>;Heather Wingate/WHO/EOP [WHO] <Heather Wingate>;Daniel K. Wilmot/OVP/EOP [OVP] <Daniel K. Wilmot>;James R. Wilkinson/WHO/EOP [WHO] <James R. Wilkinson>;Jocelyn White/WHF/EOP [OPM] <Jocelyn White>;Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>;Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>;John P. Walters/ONDCP/EOP [ONDCP] <John P. Walters>;Helgard C. Walker/WHO/EOP [WHO] <Helgard C. Walker>;Jim Towey/WHO/EOP [WHO] <Jim Towey>;Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>;D. Marcus Sumerlin/OPD/EOP [OPD] <D. Marcus Sumerlin>;Jose G. Suarez/WHO/EOP [WHO] <Jose G. Suarez>;Aquiles F. Suarez/OPD/EOP [OPD] <Aquiles F. Suarez>;Angela B. Styles/OMB/EOP [OMB] <Angela B. Styles>;Mary K. Sturtevant/NSC/EOP [NSC] <Mary K. Sturtevant>;Margaret M. Spellings/OPD/EOP [OPD] <Margaret M. Spellings>;Deborah A. Spagnoli/WHO/EOP [WHO] <Deborah A. Spagnoli>;Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>;Kristen Silverberg/WHO/EOP [WHO] <Kristen Silverberg>;Joseph J. Shattan/WHO/EOP [WHO] <Joseph J. Shattan>;Thomas J. Sharpy/OVP/EOP [OVP] <Thomas J. Sharpy>;Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>;Matthew O. Scully/WHO/EOP [UNKNOWN] <Matthew O. Scully>;Howard A. Schmidt/NSC/EOP [NSC] <Howard A. Schmidt>;Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>;Daniel Schecter/ONDCP/EOP [ONDCP] <Daniel Schecter>;Diana L. Schacht/OPD/EOP [OPD] <Diana L. Schacht>;Desiree T. Sayle/WHO/EOP [WHO] <Desiree T. Sayle>;Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>;Stephen S. Ruhlen/OVP/EOP [OVP] <Stephen S. Ruhlen>;Karl C. Rove/WHO/EOP [WHO] <Karl C. Rove>;Mark V. Rosenker/WHO/EOP [WHO] <Mark V. Rosenker>;Thomas J. Ridge/WHO/EOP [WHO] <Thomas J. Ridge>;Condoleezza Rice/NSC/EOP [NSC] <Condoleezza Rice>;Nina Rees/OVP/EOP [OVP] <Nina Rees>;Craig Ray/WHO/EOP [WHO] <Craig Ray>;Dina Powell/WHO/EOP [WHO] <Dina Powell>;Anne E. Phelps/OPD/EOP [OPD] <Anne E. Phelps>;Philip J. Perry/OMB/EOP [OMB] <Philip J. Perry>;Anna M. Perez/NSC/EOP [NSC] <Anna M. Perez>;Eric C. Pelletier/OMB/EOP [OMB] <Eric C. Pelletier>;Marcus Peacock/OMB/EOP [OMB] <Marcus Peacock>;Neil S. Patel/OVP/EOP [OVP] <Neil S. Patel>;Sean C. O'Keefe/OMB/EOP [OMB] <Sean C. O'Keefe>;Ziad S. Ojakli/WHO/EOP [WHO] <Ziad S. Ojakli>;Claire M. O'Donnell/OVP/EOP [OVP] <Claire M. O'Donnell>;Jennifer G. Newstead/WHO/EOP [WHO] <Jennifer G. Newstead>;Susan K. Neely/WHO/EOP [WHO] <Susan K. Neely>;Edmund C. Moy/WHO/EOP [WHO] <Edmund C. Moy>;James F. Moriarty/NSC/EOP [NSC] <James F. Moriarty>;Brian D. Montgomery/WHO/EOP [WHO] <Brian D. Montgomery>;Michael H. Miller/WHO/EOP [WHO] <Michael H. Miller>;Franklin C. Miller/NSC/EOP [NSC] <Franklin C. Miller>;Harriet Miers/WHO/EOP [WHO] <Harriet Miers>;Ken Mehlman/WHO/EOP [WHO] <Ken Mehlman>;Edward McNally/WHO/EOP [WHO] <Edward McNally>;Robert C. McNally/OPD/EOP [OPD] <Robert C. McNally>;Stephen S. McMillin/OMB/EOP [OMB] <Stephen S. McMillin>;Brian V. McCormack/OVP/EOP [OVP] <Brian V. McCormack>;John P. McConnell/OVP/EOP [OVP] <John P. McConnell>;Scott McClellan/WHO/EOP [WHO] <Scott McClellan>;Mark McClellan/CEA/EOP [CEA] <Mark McClellan>;Mary J. Matalin/OVP/EOP [OVP] <Mary J. Matalin>;Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>;Robert Marsh/WHO/EOP [WHO] <Robert Marsh>;John H. Marburger/OSTP/EOP [OSTP] <John H. Marburger>;K. Philippa Malmgren/OPD/EOP [OPD] <K. Philippa Malmgren>;John F. Maisto/NSC/EOP [NSC] <John F. Maisto>;Robin A. MacLean/WHO/EOP [WHO] <Robin A. MacLean>;Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>;Andrew D. Lundquist/OVP/EOP [OVP] <Andrew D. Lundquist>;Deborah A. Loewer/NSC/EOP [NSC] <Deborah A. Loewer>;Roland N. Litterst/WHO/EOP [WHO] <Roland N. Litterst>;Lawrence B. Lindsey/OPD/EOP [OPD] <Lawrence B. Lindsey>;Lewis Libby/OVP/EOP [OVP] <Lewis Libby>;Dirksen Lehman/WHO/EOP [WHO] <Dirksen Lehman>;Jay P. Lefkowitz/OPD/EOP [OPD] <Jay P. Lefkowitz>;Laura S. Lawlor/WHO/EOP [WHO] <Laura S. Lawlor>;Bruce M. Lawlor/WHO/EOP [WHO] <Bruce M. Lawlor>;Phillip Larsen/OA/EOP [OA] <Phillip Larsen>;David Kuo/WHO/EOP [WHO] <David Kuo>;Randall S. Kroszner/CEA/EOP [CEA] <Randall S. Kroszner>;Karen Y. Knutson/OVP/EOP [OVP] <Karen Y. Knutson>;Frank G. Klotz/NSC/EOP [NSC] <Frank G. Klotz>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Ellis Kitchen/OA/EOP [OA] <Ellis Kitchen>;Matthew Kirk/WHO/EOP [WHO] <Matthew Kirk>;Zalmay M. Khalilzad/NSC/EOP [NSC] <Zalmay M. Khalilzad>;Daniel J. Keniry/WHO/EOP [WHO] <Daniel J. Keniry>;Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Joel D. Kaplan/WHO/EOP [WHO] <Joel D. Kaplan>;Charles D. McGrath

Jr/OVP/EOP [OVP] <Charles D. McGrath Jr>;Robert G. Joseph/NSC/EOP [NSC] <Robert G. Joseph>;Barry S. Jackson/WHO/EOP [WHO] <Barry S. Jackson>;Hector F. Irastorza/WHO/EOP [WHO] <Hector F. Irastorza>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;Clay Johnson III/WHO/EOP [WHO] <Clay Johnson III>;Karen Hughes/WHO/EOP [WHO] <Karen Hughes>;Glenn Hubbard/CEA/EOP [CEA] <Glenn Hubbard>;Jack Howard/WHO/EOP [WHO] <Jack Howard>;Mark Holman/WHO/EOP [WHO] <Mark Holman>;David W. Hobbs/WHO/EOP [WHO] <David W. Hobbs>;Israel Hernandez/WHO/EOP [WHO] <Israel Hernandez>;Chris Henick/WHO/EOP [WHO] <Chris Henick>;Debra Heiden/OVP/EOP [OVP] <Debra Heiden>;Albert Hawkins/WHO/EOP [WHO] <Albert Hawkins>;John P. Hannah/OVP/EOP [OVP] <John P. Hannah>;John F. Haley/OVP/EOP [OVP] <John F. Haley>;Joseph W. Hagin/WHO/EOP [WHO] <Joseph W. Hagin>;Stephen J. Hadley/NSC/EOP [NSC] <Stephen J. Hadley>;Ann Gray/WHO/EOP [WHO] <Ann Gray>;John Graham/OMB/EOP [OMB] <John Graham>;Alberto R. Gonzales/WHO/EOP [WHO] <Alberto R. Gonzales>;Stephen Goldsmith/WHO/EOP [WHO] <Stephen Goldsmith>;Tim Goeglein/WHO/EOP [WHO] <Tim Goeglein>;Dylan C. Glenn/OPD/EOP [OPD] <Dylan C. Glenn>;Michael J. Gerson/WHO/EOP [WHO] <Michael J. Gerson>;Stephen M. Garrison/WHO/EOP [WHO] <Stephen M. Garrison>;Kelley Gannon/WHO/EOP [WHO] <Kelley Gannon>;Linda M. Gambatesa/WHO/EOP [WHO] <Linda M. Gambatesa>;Diana E. Furchtgott-Roth/CEA/EOP [CEA] <Diana E. Furchtgott-Roth>;Daniel Fried/NSC/EOP [NSC] <Daniel Fried>;Jendayi E. Frazer/NSC/EOP [NSC] <Jendayi E. Frazer>;Noel J. Francisco/WHO/EOP [WHO] <Noel J. Francisco>;Lawrence A. Fleischer/WHO/EOP [WHO] <Lawrence A. Fleischer>;Timothy E. Flanigan/WHO/EOP [WHO] <Timothy E. Flanigan>;Catherine S. Fenton/WHO/EOP [WHO] <Catherine S. Fenton>;Richard Falkenrath/WHO/EOP [WHO] <Richard Falkenrath>;Nanette Everson/WHO/EOP [WHO] <Nanette Everson>;Mark Everson/OMB/EOP [OMB] <Mark Everson>;Ashley Estes/WHO/EOP [WHO] <Ashley Estes>;Tucker A. Eskew/WHO/EOP [WHO] <Tucker A. Eskew>;Gary R. Edson/NSC/EOP [NSC] <Gary R. Edson>;Eric S. Edelman/OVP/EOP [OVP] <Eric S. Edelman>;Wayne A. Downing/NSC/EOP [NSC] <Wayne A. Downing>;Elizabeth S. Dougherty/OPD/EOP [OPD] <Elizabeth S. Dougherty>;Nancy P. Dorn/WHO/EOP [UNKNOWN] <Nancy P. Dorn>;Diana C. Donnelly/WHO/EOP [WHO] <Diana C. Donnelly>;Nicolle Devenish/WHO/EOP [WHO] <Nicolle Devenish>;Mitchell Daniels/OMB/EOP [OMB] <Mitchell Daniels>;James F. Daniel/OA/EOP [OA] <James F. Daniel>;Stacia L. Cropper/OA/EOP [OA] <Stacia L. Cropper>;John B. Craig/NSC/EOP [NSC] <John B. Craig>;Steven Cooper/WHO/EOP [WHO] <Steven Cooper>;Phil Cooney/CEQ/EOP [CEQ] <Phil Cooney>;Rebecca Contreras/WHO/EOP [WHO] <Rebecca Contreras>;Charles Conner/OPD/EOP [OPD] <Charles Conner>;James Connaughton/CEQ/EOP [CEQ] <James Connaughton>;Brian C. Conklin/WHO/EOP [WHO] <Brian C. Conklin>;Cesar Conda/OVP/EOP [OVP] <Cesar Conda>;Douglas F. Cochrane/OVP/EOP [OVP] <Douglas F. Cochrane>;Robert W. Cobb/WHO/EOP [UNKNOWN] <Robert W. Cobb>;John A. Cloud/NSC/EOP [NSC] <John A. Cloud>;Robin Cleveland/OMB/EOP [OMB] <Robin Cleveland>;Richard A. Clarke/NSC/EOP [NSC] <Richard A. Clarke>;Alicia P. Clark/WHO/EOP [WHO] <Alicia P. Clark>;Frank Cilluffo/WHO/EOP [WHO] <Frank Cilluffo>;Christine Ciccone/WHO/EOP [WHO] <Christine Ciccone>;Ronald I. Christie/OVP/EOP [UNKNOWN] <Ronald I. Christie>;Barbara C. Chaffee/WHO/EOP [WHO] <Barbara C. Chaffee>;Kirsten A. Chadwick/WHO/EOP [WHO] <Kirsten A. Chadwick>;Laura F. Chadwick/OVP/EOP [OVP] <Laura F. Chadwick>;Andrew H. Card/WHO/EOP [WHO] <Andrew H. Card>;James C. Capretta/OMB/EOP [OMB] <James C. Capretta>;Timothy Campen/OA/EOP [OA] <Timothy Campen>;Nicholas E. Calio/WHO/EOP [WHO] <Nicholas E. Calio>;Katja Bullock/WHO/EOP [WHO] <Katja Bullock>;Carl Buchholz/WHO/EOP [WHO] <Carl Buchholz>;Claire E. Buchan/WHO/EOP [WHO] <Claire E. Buchan>;John M. Bridgeland/OPD/EOP [OPD] <John M. Bridgeland>;Rachel L. Brand/WHO/EOP [WHO] <Rachel L. Brand>;Stuart W. Bowen/WHO/EOP [WHO] <Stuart W. Bowen>;Carlos E. Bonilla/OPD/EOP [OPD] <Carlos E. Bonilla>;Joshua B. Bolten/WHO/EOP [WHO] <Joshua B. Bolten>;Lloyd A. Blanchard/OMB/EOP [UNKNOWN] <Lloyd A. Blanchard>;Kirk Blalock/WHO/EOP [WHO] <Kirk Blalock>;Bradley A. Blakeman/WHO/EOP [WHO] <Bradley A. Blakeman>;Charles P. Blahous/OPD/EOP [OPD] <Charles P. Blahous>;Stephen E. Biegun/NSC/EOP [NSC] <Stephen E. Biegun>;Rebecca A. Beynon/WHO/EOP [WHO] <Rebecca A. Beynon>;Janet L. Berman/OVP/EOP [OVP] <Janet L. Berman>;Bradford A. Berenson/WHO/EOP [WHO] <Bradford A. Berenson>;John B. Bellinger/NSC/EOP [NSC] <John B. Bellinger>;H. Christopher Bartolomucci/WHO/EOP [WHO] <H. Christopher Bartolomucci>;Daniel J. Bartlett/WHO/EOP [WHO] <Daniel J. Bartlett>;Ruben S.

Barrales/WHO/EOP [WHO] <Ruben S. Barrales>;Andrea G. Ball/WHO/EOP [WHO] <Andrea G. Ball>;Jackie Arends/WHO/EOP [WHO] <Jackie Arends>;George M. Andricos/NSC/EOP [NSC] <George M. Andricos>;Cathy Alix/WHO/EOP [WHO] <Cathy Alix>;Penrose C. Albright/OSTP/EOP [OSTP] <Penrose C. Albright>;David S. Addington/OVP/EOP [OVP] <David S. Addington>;Elliott Abrams/NSC/EOP [NSC] <Elliott Abrams>;Charles S. Abbot/OVP/EOP [OVP] <Charles S. Abbot>;Christina H. Yarmchuk/NSC/EOP [NSC] <Christina H. Yarmchuk>;Anne Womack/WHO/EOP [WHO] <Anne Womack>;Harry W. Wolff/WHO/EOP [WHO] <Harry W. Wolff>;Alexian T. Wines/NSC/EOP [NSC] <Alexian T. Wines>;Patricia Williams/WHO/EOP [WHO] <Patricia Williams>;Matthew C. Waxman/NSC/EOP [NSC] <Matthew C. Waxman>;Janet P. Walker/OPD/EOP [OPD] <Janet P. Walker>;Lauren J. Vestewig/OPD/EOP [OPD] <Lauren J. Vestewig>;Sibyl M. Turner/WHO/EOP [WHO] <Sibyl M. Turner>;Terrill G. Tucker/NSC/EOP [NSC] <Terrill G. Tucker>;Anne Trenolone/WHO/EOP [WHO] <Anne Trenolone>;Carol J. Thompson/WHO/EOP [WHO] <Carol J. Thompson>;Julieanne H. Thomas/WHO/EOP [WHO] <Julieanne H. Thomas>;Rachael L. Sunbarger/WHO/EOP [WHO] <Rachael L. Sunbarger>;Susan L. Sterner/WHO/EOP [WHO] <Susan L. Sterner>;Ashley Snee/WHO/EOP [WHO] <Ashley Snee>;Pamela J. Seward/WHO/EOP [WHO] <Pamela J. Seward>;Elizabeth A. Selva/NSC/EOP [NSC] <Elizabeth A. Selva>;Robert E. Schubert/NSC/EOP [NSC] <Robert E. Schubert>;Deborah Sandler/NSC/EOP [NSC] <Deborah Sandler>;Jean M. Russell/OPD/EOP [OPD] <Jean M. Russell>;Peter M. Rowan/WHO/EOP [UNKNOWN] <Peter M. Rowan>;Noelia Rodriguez/WHO/EOP [WHO] <Noelia Rodriguez>;Josephine B. Robinson/WHO/EOP [WHO] <Josephine B. Robinson>;Maurice C. Robinson/NSC/EOP [NSC] <Maurice C. Robinson>;Christina D. Roberts/WHO/EOP [WHO] <Christina D. Roberts>;Krista L. Ritacco/WHO/EOP [WHO] <Krista L. Ritacco>;Robert J. Riley/NSC/EOP [NSC] <Robert J. Riley>;Allison L. Riepenhoff/WHO/EOP [WHO] <Allison L. Riepenhoff>;Tim Reynolds/WHO/EOP [WHO] <Tim Reynolds>;David Reyes/NSC/EOP [NSC] <David Reyes>;Susan B. Ralston/WHO/EOP [WHO] <Susan B. Ralston>;Leslie E. Radcliff/NSC/EOP [NSC] <Leslie E. Radcliff>;Clare Pritchett/WHO/EOP [WHO] <Clare Pritchett>;Suzanne Primoff/WHO/EOP [WHO] <Suzanne Primoff>;John I. Pray/NSC/EOP [NSC] <John I. Pray>;Sarah Penny/WHO/EOP [WHO] <Sarah Penny>;Raymond H. Payne/NSC/EOP [NSC] <Raymond H. Payne>;Carrie C. Pauska/WHO/EOP [UNKNOWN] <Carrie C. Pauska>;Richard S. Paulus/WHO/EOP [WHO] <Richard S. Paulus>;Edward J. Padinske/NSC/EOP [NSC] <Edward J. Padinske>;Eric H. Otto/OPD/EOP [OPD] <Eric H. Otto>;Lorraine Nisbet/WHO/EOP [UNKNOWN] <Lorraine Nisbet>;Virginia R. Neumann/NSC/EOP [NSC] <Virginia R. Neumann>;Lee B. Mynatt/NSC/EOP [NSC] <Lee B. Mynatt>;Steven Myers/NSC/EOP [NSC] <Steven Myers>;Sarah M. Moss/WHO/EOP [WHO] <Sarah M. Moss>;Paul L. Morse/WHO/EOP [WHO] <Paul L. Morse>;Leslie A. Mooney/OPD/EOP [OPD] <Leslie A. Mooney>;Marcus J. Mollmann/WHO/EOP [UNKNOWN] <Marcus J. Mollmann>;Cathy L. Millison/NSC/EOP [NSC] <Cathy L. Millison>;Holly M. Miller/WHO/EOP [WHO] <Holly M. Miller>;Cynthia R. Mendl/WHO/EOP [WHO] <Cynthia R. Mendl>;Sonya E. Medina/WHO/EOP [WHO] <Sonya E. Medina>;Vickie A. McQuade/WHO/EOP [WHO] <Vickie A. McQuade>;Sara B. McIntosh/WHO/EOP [WHO] <Sara B. McIntosh>;Jenny McGee/NSC/EOP [NSC] <Jenny McGee>;Peter A. McCauley/NSC/EOP [NSC] <Peter A. McCauley>;Daniel M. McCarthy/WHO/EOP [WHO] <Daniel M. McCarthy>;William D. Mathews/NSC/EOP [NSC] <William D. Mathews>;Thomas S. Marsh/NSC/EOP [NSC] <Thomas S. Marsh>;Clark R. Lystra/NSC/EOP [NSC] <Clark R. Lystra>;Heather M. Lyster/OA/EOP [OA] <Heather M. Lyster>;Colleen Litkenhaus/WHO/EOP [WHO] <Colleen Litkenhaus>;Lindsey M. Lineweaver/WHO/EOP [WHO] <Lindsey M. Lineweaver>;Laura E. Lineberry/NSC/EOP [NSC] <Laura E. Lineberry>;Adam L. Levine/WHO/EOP [WHO] <Adam L. Levine>;Sang W. Lee/NSC/EOP [NSC] <Sang W. Lee>;Andrew M. Kaver/NSC/EOP [UNKNOWN] <Andrew M. Kaver>;Dora Kale/NSC/EOP [NSC] <Dora Kale>;Alexander S. Joves/NSC/EOP [NSC] <Alexander S. Joves>;M. Kay Joshi/NSC/EOP [NSC] <M. Kay Joshi>;Angela A. Jones/WHO/EOP [UNKNOWN] <Angela A. Jones>;Alison Jones/WHO/EOP [WHO] <Alison Jones>;Megan R. Johnston/WHO/EOP [WHO] <Megan R. Johnston>;Sydney R. Johnson/WHO/EOP [WHO] <Sydney R. Johnson>;Clarence C. Johnson/NSC/EOP [NSC] <Clarence C. Johnson>;Gordon D. Johndroe/WHO/EOP [WHO] <Gordon D. Johndroe>;Melanie A. Jackson/WHO/EOP [WHO] <Melanie A. Jackson>;Marilyn R. Jacanin/WHO/EOP [WHO] <Marilyn R. Jacanin>;A. Merrill Hughes/WHO/EOP [UNKNOWN] <A. Merrill Hughes>;Jeffrey P. Houle/NSC/EOP [NSC] <Jeffrey P. Houle>;Ashley Holbrook/WHO/EOP [WHO] <Ashley Holbrook>;Josephine L. Hirsch/WHO/EOP [WHO] <Josephine L. Hirsch>;Anne

Heiligenstein/WHO/EOP [WHO] <Anne Heiligenstein>;Robert C. Hargis/NSC/EOP [NSC] <Robert C. Hargis>;Alison M. Harden/WHO/EOP [WHO] <Alison M. Harden>;Mary Ann Hanusa/WHO/EOP [WHO] <Mary Ann Hanusa>;Thomas A. Hall/NSC/EOP [NSC] <Thomas A. Hall>;Mary A. Haines/NSC/EOP [NSC] <Mary A. Haines>;Katharina M. Hager/WHO/EOP [WHO] <Katharina M. Hager>;Ginger G. Loper/WHO/EOP [WHO] <Ginger G. Loper>;Andrew W. Green/NSC/EOP [NSC] <Andrew W. Green>;Emily S. Gray/WHO/EOP [WHO] <Emily S. Gray>;Wendy E. Gray/NSC/EOP [NSC] <Wendy E. Gray>;Britt Grant/OPD/EOP [OPD] <Britt Grant>;Blake Gottesman/WHO/EOP [WHO] <Blake Gottesman>;Travis C. Good/NSC/EOP [NSC] <Travis C. Good>;Georgia D. Godfrey/WHO/EOP [WHO] <Georgia D. Godfrey>;Eleanor L. Gillmor/OPD/EOP [OPD] <Eleanor L. Gillmor>;Dorothy C. Garvin/WHO/EOP [WHO] <Dorothy C. Garvin>;Joachim D. Fuchs/NSC/EOP [NSC] <Joachim D. Fuchs>;Barbara J. Finn/OA/EOP [OA] <Barbara J. Finn>;Kara G. Figg/WHO/EOP [WHO] <Kara G. Figg>;Jeanie L. Figg/WHO/EOP [WHO] <Jeanie L. Figg>;Jennifer D. Field/OVP/EOP [OVP] <Jennifer D. Field>;Charlene E. Fern/WHO/EOP [WHO] <Charlene E. Fern>;Douglas M. Erdahl/NSC/EOP [NSC] <Douglas M. Erdahl>;Ruth E. Elliott/NSC/EOP [NSC] <Ruth E. Elliott>;Kady Dunlap/WHO/EOP [WHO] <Kady Dunlap>;Eric A. Draper/WHO/EOP [WHO] <Eric A. Draper>;Joan R. Doty/WHO/EOP [WHO] <Joan R. Doty>;Katherine L. Disston/WHO/EOP [WHO] <Katherine L. Disston>;Reed Dickens/WHO/EOP [WHO] <Reed Dickens>;Josh Deckard/WHO/EOP [WHO] <Josh Deckard>;Ashley E. Davis/WHO/EOP [WHO] <Ashley E. Davis>;Jill Davie/WHO/EOP [WHO] <Jill Davie>;Karen D. Cruson/WHO/EOP [WHO] <Karen D. Cruson>;Quincy Crawford/WHO/EOP [UNKNOWN] <Quincy Crawford>;Lynn A. Crable/WHO/EOP [WHO] <Lynn A. Crable>;Colby J. Cooper/NSC/EOP [NSC] <Colby J. Cooper>;Michael J. Conway/WHO/EOP [WHO] <Michael J. Conway>;Rachel V. Comte/WHO/EOP [UNKNOWN] <Rachel V. Comte>;Carolyn E. Cleveland/WHO/EOP [WHO] <Carolyn E. Cleveland>;Shane P. Chambers/WHO/EOP [WHO] <Shane P. Chambers>;Lois A. Cassano/WHO/EOP [WHO] <Lois A. Cassano>;Pamela R. Casey/WHO/EOP [WHO] <Pamela R. Casey>;Anne E. Campbell/WHO/EOP [WHO] <Anne E. Campbell>;Elizabeth N. Camp/WHO/EOP [WHO] <Elizabeth N. Camp>;Marcia J. Caler/NSC/EOP [UNKNOWN] <Marcia J. Caler>;Johnathan C. Bunting/NSC/EOP [NSC] <Johnathan C. Bunting>;Patrick J. Bumatay/WHO/EOP [WHO] <Patrick J. Bumatay>;Bonnie S. Broadwick/NSC/EOP [NSC] <Bonnie S. Broadwick>;Gary E. Bresnahan/NSC/EOP [NSC] <Gary E. Bresnahan>;Brian Bravo/WHO/EOP [WHO] <Brian Bravo>;Jay P. Bonds/NSC/EOP [NSC] <Jay P. Bonds>;David R. Bohrer/OVP/EOP [OVP] <David R. Bohrer>;John M. Blackburn/NSC/EOP [NSC] <John M. Blackburn>;Debra D. Bird/WHO/EOP [WHO] <Debra D. Bird>;Melissa S. Bennett/WHO/EOP [WHO] <Melissa S. Bennett>;Brooks L. Bash/NSC/EOP [NSC] <Brooks L. Bash>;Amy Barrera/WHO/EOP [UNKNOWN] <Amy Barrera>;Cheryl E. Barnett/NSC/EOP [NSC] <Cheryl E. Barnett>;Tiffany L. Barfield/WHO/EOP [WHO] <Tiffany L. Barfield>;Mitchell P. Backfield/NSC/EOP [NSC] <Mitchell P. Backfield>;Jill L. Angelo/WHO/EOP [UNKNOWN] <Jill L. Angelo>;Ashleigh A. Adams/WHO/EOP [UNKNOWN] <Ashleigh A. Adams>

Sent: 7/1/2002 12:28:34 PM

Subject: : Postmaster: White House Mess Hours - July 4th Weekend

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:PostMaster ( CN=PostMaster/O=EOP [ OA ] )
CREATION DATE/TIME: 1-JUL-2002 16:28:34.00
SUBJECT:: Postmaster: White House Mess Hours - July 4th Weekend
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP [ OVP ] )
READ:UNKNOWN
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel K. Wilmot ( CN=Daniel K. Wilmot/OU=OVP/O=EOP [ OVP ] )
READ:UNKNOWN
TO:James R. Wilkinson ( CN=James R. Wilkinson/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
TO:Jocelyn White ( CN=Jocelyn White/OU=WHF/O=EOP [ OPM ] )
READ:UNKNOWN
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
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TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John P. Walters (CN=John P. Walters/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Catherine W. Tobias (CN=Catherine W. Tobias/OU=OVP/O=EOP [OVP])
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TO:D. Marcus Sumerlin (CN=D. Marcus Sumerlin/OU=OPD/O=EOP [OPD])
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TO:Jose G. Suarez (CN=Jose G. Suarez/OU=WHO/O=EOP [WHO])
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TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Angela B. Styles (CN=Angela B. Styles/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
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TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Joseph J. Shattan (CN=Joseph J. Shattan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas J. Sharpy (CN=Thomas J. Sharpy/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Matthew O. Scully (CN=Matthew O. Scully/OU=WHO/O=EOP [UNKNOWN])
READ:UNKNOWN
TO:Howard A. Schmidt (CN=Howard A. Schmidt/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Daniel Schecter (CN=Daniel Schecter/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stephen S. Ruhlen (CN=Stephen S. Ruhlen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark V. Rosenker (CN=Mark V. Rosenker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Thomas J. Ridge (CN=Thomas J. Ridge/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Condoleezza Rice (CN=Condoleezza Rice/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Nina Rees (CN=Nina Rees/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Craig Ray (CN=Craig Ray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Anne E. Phelps (CN=Anne E. Phelps/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anna M. Perez (CN=Anna M. Perez/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Sean C. O'Keefe (CN=Sean C. O'Keefe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan K. Neely (CN=Susan K. Neely/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:James F. Moriarty (CN=James F. Moriarty/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Michael H. Miller (CN=Michael H. Miller/OU=WHO/O=EOP [WHO])
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TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
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TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP [OPD])
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TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP [OMB])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP [OVP])
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TO:John P. McConnell (CN=John P. McConnell/OU=OVP/O=EOP [OVP])
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TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP [WHO])
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TO:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP [CEA])
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TO:Mary J. Matalin (CN=Mary J. Matalin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John H. Marburger (CN=John H. Marburger/OU=OSTP/O=EOP [OSTP])
READ:UNKNOWN
TO:K. Philippa Malmgren (CN=K. Philippa Malmgren/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John F. Maisto (CN=John F. Maisto/OU=NSC/O=EOP [NSC])
READ:UNKNOWN

TO:Robin A. MacLean (CN=Robin A. MacLean/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Andrew D. Lundquist (CN=Andrew D. Lundquist/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Deborah A. Loewer (CN=Deborah A. Loewer/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Roland N. Litterst (CN=Roland N. Litterst/OU=WHO/O=EOP [WHO])
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TO:Lawrence B. Lindsey (CN=Lawrence B. Lindsey/OU=OPD/O=EOP [OPD])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP [OVP])
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TO:Dirksen Lehman (CN=Dirksen Lehman/OU=WHO/O=EOP [WHO])
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TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP [OPD])
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TO:Laura S. Lawlor (CN=Laura S. Lawlor/OU=WHO/O=EOP [WHO])
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TO:Bruce M. Lawlor (CN=Bruce M. Lawlor/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Phillip Larsen (CN=Phillip Larsen/OU=OA/O=EOP [OA])
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TO:David Kuo (CN=David Kuo/OU=WHO/O=EOP [WHO])
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TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP [CEA])
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TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
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TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP [WHO])
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TO:Zalmay M. Khalilzad (CN=Zalmay M. Khalilzad/OU=NSC/O=EOP [NSC])
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TO:Daniel J. Keniry (CN=Daniel J. Keniry/OU=WHO/O=EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP [OVP])
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READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
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TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP [WHO])
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TO:Karen Hughes (CN=Karen Hughes/OU=WHO/O=EOP [WHO])
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TO:Jack Howard (CN=Jack Howard/OU=WHO/O=EOP [WHO])

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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP [WHO])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP [WHO])
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TO:Diana E. Furchtgott-Roth (CN=Diana E. Furchtgott-Roth/OU=CEA/O=EOP [CEA])
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TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
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TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
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TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP [WHO])
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TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
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TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Wayne A. Downing (CN=Wayne A. Downing/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Nancy P. Dorn (CN=Nancy P. Dorn/OU=WHO/O=EOP [UNKNOWN])
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TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP [WHO])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James F. Daniel (CN=James F. Daniel/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:John B. Craig (CN=John B. Craig/OU=NSC/O=EOP [NSC])
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TO:Steven Cooper (CN=Steven Cooper/OU=WHO/O=EOP [WHO])
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TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP [CEQ])
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TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP [WHO])
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TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP [OPD])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP [CEQ])
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TO:Brian C. Conklin (CN=Brian C. Conklin/OU=WHO/O=EOP [WHO])
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TO:Douglas F. Cochrane (CN=Douglas F. Cochrane/OU=OVP/O=EOP [OVP])
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TO:Robert W. Cobb (CN=Robert W. Cobb/OU=WHO/O=EOP [UNKNOWN])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
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TO:Richard A. Clarke (CN=Richard A. Clarke/OU=NSC/O=EOP [NSC])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
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TO:Frank Cilluffo (CN=Frank Cilluffo/OU=WHO/O=EOP [WHO])
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TO:Christine Ciccone (CN=Christine Ciccone/OU=WHO/O=EOP [WHO])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OVP/O=EOP [UNKNOWN])
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TO:Barbara C. Chaffee (CN=Barbara C. Chaffee/OU=WHO/O=EOP [WHO])
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TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Laura F. Chadwick (CN=Laura F. Chadwick/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Timothy Campen (CN=Timothy Campen/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Nicholas E. Calio (CN=Nicholas E. Calio/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Carl Buchholz (CN=Carl Buchholz/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Rachel L. Brand (CN=Rachel L. Brand/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
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TO:Carlos E. Bonilla (CN=Carlos E. Bonilla/OU=OPD/O=EOP [OPD])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP [WHO])
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TO:Lloyd A. Blanchard (CN=Lloyd A. Blanchard/OU=OMB/O=EOP [UNKNOWN])
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TO:Kirk Blalock (CN=Kirk Blalock/OU=WHO/O=EOP [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP [WHO])
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TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP [OPD])
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TO:Stephen E. Biegun (CN=Stephen E. Biegun/OU=NSC/O=EOP [NSC])
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TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP [WHO])
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TO:Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP])
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TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP [NSC])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
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TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP [NSC])
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TO:Cathy Alix (CN=Cathy Alix/OU=WHO/O=EOP [WHO])
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TO:Penrose C. Albright (CN=Penrose C. Albright/OU=OSTP/O=EOP [OSTP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
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TO:Elliott Abrams (CN=Elliott Abrams/OU=NSC/O=EOP [NSC])
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TO:Charles S. Abbot (CN=Charles S. Abbot/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Christina H. Yarmchuk (CN=Christina H. Yarmchuk/OU=NSC/O=EOP [NSC])
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TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Harry W. Wolff (CN=Harry W. Wolff/OU=WHO/O=EOP [WHO])
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TO:Alexian T. Wines (CN=Alexian T. Wines/OU=NSC/O=EOP [NSC])
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TO:Patricia Williams (CN=Patricia Williams/OU=WHO/O=EOP [WHO])
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TO:Janet P. Walker (CN=Janet P. Walker/OU=OPD/O=EOP [OPD])
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TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP [OPD])
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TO:Sibyl M. Turner (CN=Sibyl M. Turner/OU=WHO/O=EOP [WHO])
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TO:Terrill G. Tucker (CN=Terrill G. Tucker/OU=NSC/O=EOP [NSC])
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TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP [WHO])
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TO:Carol J. Thompson (CN=Carol J. Thompson/OU=WHO/O=EOP [WHO])
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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
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TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP [WHO])
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TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP [WHO])
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TO:Pamela J. Seward (CN=Pamela J. Seward/OU=WHO/O=EOP [WHO])
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TO:Robert E. Schubert (CN=Robert E. Schubert/OU=NSC/O=EOP [NSC])
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TO:Peter M. Rowan (CN=Peter M. Rowan/OU=WHO/O=EOP [UNKNOWN])
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TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP [WHO])
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TO:Josephine B. Robinson (CN=Josephine B. Robinson/OU=WHO/O=EOP [WHO])
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TO:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
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TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP [WHO])
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TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP [WHO])
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TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP [WHO])

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TO:Leslie E. Radcliff (CN=Leslie E. Radcliff/OU=NSC/O=EOP [NSC])
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TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP [WHO])
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TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP [WHO])
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TO:John I. Pray (CN=John I. Pray/OU=NSC/O=EOP [NSC])
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TO:Sarah Penny (CN=Sarah Penny/OU=WHO/O=EOP [WHO])
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TO:Raymond H. Payne (CN=Raymond H. Payne/OU=NSC/O=EOP [NSC])
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TO:Carrie C. Pauska (CN=Carrie C. Pauska/OU=WHO/O=EOP [UNKNOWN])
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TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP [WHO])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP [OPD])
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TO:Virginia R. Neumann (CN=Virginia R. Neumann/OU=NSC/O=EOP [NSC])
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TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP [NSC])
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TO:Steven Myers (CN=Steven Myers/OU=NSC/O=EOP [NSC])
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TO:Sarah M. Moss (CN=Sarah M. Moss/OU=WHO/O=EOP [WHO])
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TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP [WHO])
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TO:Ashleigh A. Adams (CN=Ashleigh A. Adams/OU=WHO/O=EOP [UNKNOWN])
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End Original ARMS Header

White House Mess Hours - July 4th Weekend

In observance of the holiday, the White House Mess will be closed on Thursday, July 4th, and also on Saturday, July 6, 2002. The Mess will be open Friday, July 5th, but will close early at 6 PM. In the event it is deemed necessary to change these arrangements, all Mess members will be notified. We apologize for any inconvenience this may cause.

From: Allison_L._Riepenhoff@who.eop.gov [UNKNOWN]
CC: Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;Patrick J. Bumatay/WHO /EOP@EOP [WHO] <Patrick J. Bumatay>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Charlotte L. Montiel/WHO/EOP@EOP [WHO] <Charlotte L. Montiel>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>
Sent: 7/1/2002 12:45:49 PM
Subject: : Interns

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Allison_L._Riepenhoff@who.eop.gov ( Allison_L._Riepenhoff@who.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME: 1-JUL-2002 16:45:49.00
SUBJECT:: Interns
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READ:UNKNOWN
CC:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
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###### End Original ARMS Header ######

All of the Interns (Benji McMurry, Eric Eisnaugle, and Damara Griffith)
are now
here, and are in Room 158. They are all law students, but are aware that
they
will be utilized for everything from filing, copying etc... to legal
research,
```

drafting memos, and whatever else you need them to do.

Thanks,

Allison

From: CN=John B. Bellinger/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/2/2002 4:47:43 AM
Subject: : Holyland

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CREATOR:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP [ NSC ] )
CREATION DATE/TIME: 2-JUL-2002 08:47:43.00
SUBJECT:: Holyland
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Per discussion, pls send me a copy of the certification as soon as
posible. Hadley would like to sign before he leaves at 2:00 today.
```

From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Timothy E. Flanigan/WHO /EOP@EOP [WHO] <Timothy E. Flanigan>
Sent: 7/2/2002 12:37:31 PM
Subject: : Revised Draft

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READ:UNKNOWN
CC:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Phil -- Thanks for jumping in, especially on a busy pre-departure day.
Please send me a copy of this afternoon's draft of the transition org
chart, which I understand has been revised along the lines we (and you and
Tim) discussed. Please also cc: Tim and Brett if you haven't already.
Thanks -- E.
```

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/3/2002 6:15:47 AM
Subject: : LRM IMS22 - - TREASURY Testimony on Importation of Pharmaceutical Products
Attachments: P_92XH8003_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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CREATION DATE/TIME: 3-JUL-2002 10:15:47.00
SUBJECT:: LRM IMS22 - - TREASURY Testimony on Importation of Pharmaceutical Products
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
07/03/2002 10:15 AM ----------

From: Ingrid M. Schroeder on 07/03/2002 10:14:50 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM IMS22 - - TREASURY Testimony on Importation of
Pharmaceutical Products

Please provide comments to Bob Pellicci at rpellicc@omb.eop.gov.

- Hearing on aging -July 2002.doc

LRM ID: IMS22
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, July 3, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: Robert J. Pellicci
PHONE: (202)395-4871 FAX: (202)395-6148
SUBJECT: TREASURY Testimony on Importation of Pharmaceutical
Products

DEADLINE: 10am Monday, July 8, 2002
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts for purposes of the "Pay-As-You-Go" provisions
of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: FDA will also be testifying at this hearing on July 9th before
the Senate Special Committee on Aging.

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095-Office of Science and Technology Policy - Anthony Gibson - (202) 456-6098
089-Office of National Drug Control Policy - David Rivait - (202) 395-5505

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Daniel LaPlaca
Ronald L. Silberman
Ronald E. Jones
Philip J. Perry
John F. Wood
Matthew J. Schneider
Ingrid M. Schroeder
James J. Jukes
Robert J. Pellicci
LRM ID: IMS22 SUBJECT: TREASURY Testimony on Importation of Pharmaceutical Products
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Robert J. Pellicci Phone: 395-4871 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
lrm@hhs.gov
CLRM@doc.gov
justice.lrm@usdoj.gov
statelrm@state.gov
laffairs@ustr.gov
OSTP LRM
ONDCP LRM

Message Copied
To:_____
James C. Capretta/OMB/EOP@EOP
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Mark McClellan/CEA/EOP@EOP
Philo D. Hall/OPD/EOP@EOP
Alan Gilbert/OPD/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP
Dirksen Lehman/WHO/EOP@EOP
Robert Marsh/WHO/EOP@EOP
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Stuart Shapiro/OMB/EOP@EOP
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John F. Wood/OMB/EOP@EOP
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Robert J. Pellicci/OMB/EOP@EOP
Erin P. Hassing/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_92XH8003_WHO.TXT_1>

STATEMENT OF ELIZABETH G. DURANT
SENATE SPECIAL COMMITTEE ON AGING
HEARINGS ON THE IMPORTATION OF PHARMACEUTICAL PRODUCTS
JULY 9, 2002

Mr. Chairman, members of the Committee, thank you for this opportunity to testify. I am Elizabeth Durant, Executive Director of Trade Programs at the U.S. Customs Service. Today I would like to discuss with you U.S. Customs' efforts to address the ever-increasing trend of personal and bulk importation of pharmaceutical products into the United States.

As you know, the top priority of the Customs Service following the events of September 11 is to help protect the United States from terrorist attacks. This is a formidable task given the number of passengers, vehicles, and goods that pass through our nation's borders each year. Customs is responsible for processing 470 million people, 129 million cars, and nearly 20 million trucks, railcars, and sea containers that arrive into the United States every year.

In our role as America's frontline, the Customs Service also enforces over 400 requirements for more than 40 other federal agencies at U.S. borders. These include the laws that prohibit the importation of illegal or unapproved pharmaceuticals that fall under the jurisdiction of the Food and Drug Administration, or FDA.

The challenge facing Customs today on this front is enormous. Although our main focus has shifted to anti-terrorism, we are committed to fulfilling all aspects of our mission. This includes enforcing FDA requirements on imported pharmaceuticals to help ensure the safety and well being of the American public. We are concerned about three particular ways that pharmaceuticals are imported: those that are purchased over the Internet and shipped through our international mail or express courier facilities; those carried into the United States by individuals transiting our land borders; and bulk shipments of adulterated or counterfeit pharmaceuticals.

REV_00147736

Millions of packages come through mail and express courier facilities every year. Thousands of packages, particularly in the mail, are found to contain illegal and unapproved pharmaceuticals. We also estimate that 10 million people cross the land border annually carrying the same unapproved products. A disturbing trend is the increase in bulk shipments through the mail indicating that these products could be making their way to pharmacy shelves.

The growth of the Internet has spawned a wave of pharmaceutical purchases on-line. These purchases are commonly sent through international mail. We have Customs Inspectors stationed at fourteen international mail facilities across the United States to contend with these shipments. Customs is also located in or near twenty-nine strategically located express courier facilities throughout the country.

Detecting prohibited pharmaceuticals among the tens of millions of parcels passing through Customs each year presents a massive challenge. Our limited resources require a risk management approach, with which we utilize advance intelligence, records of past seizures, and other factors to locate packages that present the most significant threat.

A key difference between the mail and express environments is the level of automation. Customs receives virtually no advance information on mail shipments, making it impossible to target shipments for closer inspection or referral to another agency. Express couriers are required to provide advance manifests, making targeting easier. We have found, however, that many express packages containing pharmaceuticals are manifested as documents.

Customs laboratories also play a critical part in our investigations. Their expertise in analyzing everything from textiles, to foreign oil, to food products to determine point of origin and composition is world-renowned. We maintain fully equipped labs at seven locations around the country and we have three mobile labs to deploy as needed.

REV_00147737

We are confident in the forensic capability of our labs to find discrepancies in shipments of bulk and finished pharmaceuticals. But where we do require assistance, specifically from the FDA, is in the establishment of effective national standards for the interdiction of pharmaceuticals subject to FDA laws.

The development of such standards is critical to Customs. To that end, we have been working closely with FDA to develop the needed guidelines. We began by forming a task force to examine pharmaceutical purchases shipped by U.S. mail. The task force set up a thirty-day pilot program at the Los Angeles mail facility in 2001. During the program, FDA detailed four full-time employees who observed first-hand the daunting volume of packages screened by Customs every day.

Over a period of twenty-four workdays, the FDA detained a total of 721 parcels. 677 parcels, or just over 93 percent of this amount, were denied entry and 44, or six percent, were released for delivery by the Postal Service. It is important to note that without the presence of FDA inspectors, U.S. Customs would have had to detain some 3,000 packages per week, or about 15,000 packages over an equal time span, under the existing guidelines provided to our personnel.

At that time, 102 parcels underwent detailed laboratory analysis to determine whether the pills and capsules contained the claimed active ingredient and/or contained a scheduled substance. The results of these analyses found 9 instances in which the imported pharmaceutical did not contain an active pharmaceutical ingredient, but were merely found to contain substances such as starch or sugar.

Customs also initiated a multi-faceted counterfeit pharmaceutical interdiction program called "Operation Safeguard". The first phase of Operation Safeguard was carried out between September and October of 2000 at the International Mail Branches at Dulles Airport and Oakland, California. This operation was intended to give Customs a snapshot of the types of pharmaceutical products entering the United States. That snapshot revealed that a vast percentage - - perhaps as much as eighty to ninety percent - - of the pharmaceuticals that enter the U.S. via the mail do so in a manner that violates present FDA or other requirements.

REV_00147738

Counterfeit pharmaceuticals enter in both wholesale and retail quantities. Additional problems include expired materials, products that have not been approved by the FDA for usage, products made in facilities not under proper regulation and products not having the proper usage instructions. To offer an example, one seizure included a three thousand-tablet shipment of a counterfeit drug with an expiration date of 1980 on it.

Additionally, it was found that many parcels contained different types of pharmaceuticals that, if taken simultaneously, could cause dangerous interactions. Individuals not under the direct supervision of a physician could easily purchase these products. Thus, we cannot assume that these products would be used properly. It is important to note that after three weeks of this phase of Operation Safeguard, the quantity of illegal and defective pharmaceutical shipments slowed significantly.

During a recent phase of Operation Safeguard that took place at two International Mail Branches, ____ parcels containing questionable pharmaceuticals underwent intensive chemical analysis. The analyses of these products showed that _____ of the so-called pharmaceuticals contained no active ingredient. Additionally, during this phase of the operation it was found that large parcels of fake or gray market pharmaceuticals are being split into different mail shipments but arrive at the same address. Accordingly, there is a possibility that state side pharmaceutical distributors could be using these products as a source of supply.

In light of these results and the volume of imports, it is clear that this remains an overwhelming problem and Customs needs help from FDA to develop a more practical and workable approach. Customs would like to see clear direction, either through legislation or policy from FDA that would allow for the immediate return of all imported pharmaceuticals. The FDA has proposed to the Secretary of Health and Human Services a regulatory change that would authorize this but it has not been approved.

REV_00147739

Travelers who attempt to import pharmaceuticals upon their return to the U.S. are also a source of concern. Again, we are seeking the guidance of the FDA on this front. Recently, Customs proposed a plan that more sharply defines the current broad discretion given to Customs inspectors to decide whether or not an importation is for a "legitimate personal medical use". That plan is currently under review by both agencies.

In addition to Operation Safeguard, our Office of Investigations is continuing to work with the FDA to combat the sale of prohibited pharmaceuticals via the Internet. Customs' Cybersmuggling Center is playing a leading role in these cases. Our efforts to date have included a successful investigation with authorities in Thailand that closed down seven on-line pharmacy sites operating in that country. As a result, we saw a marked decrease in subsequent pharmaceutical seizures from Thailand.

From an overall perspective, a spiraling volume of goods at our borders has put immense pressure on our ability to enforce the nation's laws while facilitating international trade. We have taken many steps to address anticipated challenges, including refinement of our targeting approach and development of a resource allocation model to project future staffing needs across the country. But we still face a daunting workload, which has been exacerbated by the need to secure the borders against the threat of terrorism.

I want to thank you and the members of the committee for considering the Customs Service in your review of the importation of personal and bulk pharmaceuticals. This is an issue that speaks directly to our mission. We will continue to make every effort possible to work with the Congress and our fellow inspection agencies to address the health and safety concerns of the American people.

REV_00147740

From: CN=Claire E. Buchan/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/8/2002 10:22:29 AM
Subject: : Re:

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CREATOR:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME: 8-JUL-2002 14:22:29.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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No. Travling with president to minnesota.

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>
CC: Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 7/8/2002 11:54:26 AM
Subject: : Nation article on Owen

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Karl Rove's Legal Tricks, The Nation
by JOHN NICHOLS

When Texas Supreme Court Justice Priscilla Owen comes before the Senate Judiciary Committee for the hearing on her nomination to the Court of Appeals for the Fifth Circuit, she will face an unprecedented level of criticism from individuals and organizations familiar with her record of extreme right-wing judicial activism. The noisiest of these complaints is unlikely, however, to rival the loud critique offered by one of her fellow justices on the state court.

In 2000, when the Texas high court rejected one of many attempts by Owen to prevent a young woman from obtaining an abortion without parental consent, one of the justices who formed the majority felt it was necessary to explicitly condemn Owen's effort to thwart the clear intent of the law. To follow Owen's lead, the justice declared, "would be an unconscionable act of judicial activism."

The Texas justice who identified Owen as a radical jurist because of her willingness to rewrite laws in order to achieve results never intended by legislators, no longer serves on the state court. He has a new job--as President George W. Bush's in-house lawyer. That means that as the Senate Judiciary Committee prepares for a high-stakes hearing on Owen's nomination to a place on the second-highest rung of the federal judiciary, White House counsel Alberto Gonzales finds himself in the uncomfortable position of having to sing the praises of a woman he knows from personal experience to be a right-wing radical.

How did Gonzales, who as White House counsel heads the Bush Administration's screening committee on judicial appointments, wind up on the cheerleading squad for an appeals court nominee whose extremism he scored barely two years ago? That's easy. Gonzales is not in charge on this one. "Owen," explains Craig McDonald, director of the nonpartisan group Texans for Public Justice, "is a Karl Rove special."

Rove, the political Svengali who ran George W. Bush's presidential campaign and parlayed that experience into a taxpayer-funded job as White House senior adviser, has orchestrated Owen's

rapid rise ever since he plucked her from a gig as an undistinguished hired gun for Transcontinental Gas Pipe Line and other energy firms to make her his pet judicial candidate. Back in 1994 the man whom Lone Star pols still refer to as "Bush's brain" wanted to make the state's top court politically friendly for the man he was about to make governor. Owen seemed suitably pliable, and with Rove guiding her campaign, the political unknown who in sixteen years as a corporate lawyer was the sole counsel on only four cases that were tried to a verdict was suddenly a Texas Supreme Court justice. Now Rove is determined to place his prot?g?e on one of the most influential appeals court benches in the land. This confirmation crusade is not about Owen, who has never been anything more than a political pawn for the nation's premier GOP operative. It's not even about Rove's desire to exact revenge for the Senate Judiciary Committee's rejection of Mississippi Judge Charles Pickering's nomination to serve on the Fifth Circuit. Rather, Rove is working to win the fight to confirm Owen in order to send a powerful signal to movement conservatives about this Administration's determination to pack the courts with judicial activists who are willing to challenge antidiscrimination laws, upset basic protections for workers and consumers, and, above all, build a judicial infrastructure that will eventually overturn abortion rights. "Clearly," says McDonald, "Rove picked her as a favor to the right wing because she is the darling of the right wing."

Satisfying the far right--especially the fundamentalist right, for whom banning abortion remains priority number one--is Rove's special mission. Speaking in March to what he thought was a closed-door meeting of the Family Research Council, now the most influential Christian conservative activist group in the land, Rove preached about how the Administration and Republicans in Congress are "creating a culture of life" with legislation such as the House-passed Born-Alive Infants Protection Act. But, Rove said, the fundamental fight is for control of the courts. "We need to find ways to win the war," he told 300 of the nation's most determined abortion foes. "This is a gigantic war with a whole series of battles that need to be fought."

The next battle is likely to be carried out on behalf of Owen, who "exemplifies the most extreme hostility to reproductive rights of any of the nominees that President Bush has named," according to Kate Michelman, president of the National Abortion and Reproductive Rights Action League. Placing Owen on an appeals court that is already one of the most conservative in the land, Michelman argues, could have a devastating impact on the right to choose in Southern states, where that right is already under assault. Antiabortion activists effectively share Michelman's views: In an action alert urging members to make calls on Owen's behalf to Pennsylvania Republican Senator Arlen Specter, a supporter of abortion rights who sits on the Judiciary Committee, the Pennsylvania Pro-Life Federation said of her: "At least one of [Bush's] appointments has already faced the abortion issue as a judge and ruled for the pro-life side."

For the Bush team, which always worries about its right flank, the coming fight over Owen's nomination offers an opportunity to energize right-wing troops for the US Supreme Court nomination wars--where the Administration will seek to upset the Court's prochoice majority--which are as close as Chief Justice William Rehnquist's next visit to his back doctor; for the 2002 Senate races that will determine the partisan balance in Washington; and for the 2004 re-election campaign, which is the continual obsession of the Bush team. Essential to all of Rove's calculations is a plan to energize the religious right. Within Republican circles, Rove quietly expresses frustration with the fact that 4 million Americans who identify themselves as Christian

fundamentalists, evangelicals or Pentecostals did not vote in 2000. "We may have failed to motivate them," grumbles Rove. He has heard the message of conservative activists like Gary Bauer and Focus on the Family's James Dobson, who say that the battle to shape federal courts willing to overturn the 1973 Roe v. Wade decision legalizing abortion is what their constituents care about.

Ever since Bush's election, religious right activists have been busy developing their capacity to wage judicial confirmation fights, preparing for what Dobson refers to as the "critical moment" when a Supreme Court opening occurs. Asserting that the battles over nominations are bringing on a "watershed moment in American History," the Christian Coalition is stepping up activism on judicial selection issues. The Free Congress Foundation is developing files on Senate Democrats with an eye toward using their own statements about GOP delays in filling judicial vacancies during the Clinton years against them. Concerned Women for America, a 500,000-member social policy powerhouse, recently made Tom Jipping--the right's ablest analyst of confirmation fights--its "senior fellow in legal studies." And Jipping's spin is now regularly echoed, often down to the exact phrasing, on the Wall Street Journal editorial page, in the pages of conservative publications such as National Review and Human Events, and on radio personality Rush Limbaugh's nationally syndicated program.

Conscious of the religious right's intense interest in the shape of the federal judiciary, Rove has for some time been willing to clear his calendar--easily one of the most packed in Washington--in order to attend meetings of the White House judicial selection task force. His presence is just one indication of the Bush Administration's willingness to politicize the judicial selection process to a greater extent than any previous administration. Dispensing with long-established bipartisan approaches, the White House ended the practice of having the American Bar Association screen potential nominees, began withholding documents from the Senate Judiciary Committee and transformed the White House into a command center for plotting to turn nomination fights into political dynamite. At GOP fundraising events, President Bush now repeats the mantra, "We've got to get good, conservative judges appointed to the bench and approved by the United States Senate."

To that end, Rove has begun holding regular nomination and confirmation strategy sessions with key senators, GOP operatives from around the country and conservative interest groups. Party activists and campaign contributors have been asked to join the White House in ramping up efforts to defeat Democratic senators who oppose Bush's judicial nominees. After Rove and Vice President Dick Cheney went to Capitol Hill for a closed-door meeting with Senate Republicans, a key Judiciary Committee member, Jeff Sessions, said, "The White House, I'm convinced, is confident and bullish and determined to push this issue, as we are in the Senate."

On Capitol Hill, Rove is working not just with senators but also with members of the House of Representatives. He helped coordinate a May press conference at which two dozen Republican senators--including supposed moderates such as Maine's Susan Collins, who showed up wearing a "Remember Pickering" sticker--took turns accusing Democrats of politicizing the confirmation process. Rove has also forged an alliance with US Representative Thomas Davis of Virginia, the chair of the National Republican Congressional Committee, to get GOP members of the House to build home-state pressure on Judiciary Committee Democrats and to use the concerns about confirmation fights to gin up grassroots activism on behalf of Republican candidates. While polls show Americans in general rate judicial

confirmation fights low on their list of concerns, GOP pollster Whit Ayres says, "It's potentially a very significant campaign issue, particularly in generating intensity among Republican voters." That may be even more true now that a June decision by the Ninth Circuit Court of Appeals to prohibit required recitation of the Pledge of Allegiance--because of the "one nation under God" line--is being spun by GOP pols as a new reason to "take back the courts."

Rove's most serious work is with the conservative faithful, who he believes can be a counterweight to the coalition of progressive groups that scored a surprising win in their push to prevent the confirmation of Pickering, an old-school Southern conservative. On the very day that the Judiciary Committee rejected Pickering for a place on the court of last resort for most federal cases coming out of Mississippi, Louisiana and Texas, Rove mourned Pickering's defeat as a "judicial lynching" before a Family Research Council gathering and promised revenge. And what sweeter revenge could there be than placing Owen--who is even more conservative than Pickering and, at age 47, able to make much more of a lifetime appointment than the 65-year-old Mississippian--on the Fifth Circuit bench?

On one of the nation's most conservative state courts, Owen is part of a militant minority that argues that the court has not veered far enough right. She has written or joined eighty-seven dissents from court decisions she deemed insufficiently activist in scope and character. Her judicial advocacy has taken many forms--from active support for curtailing access to public records, to backing moves to undermine the role and authority of civil juries, to her persistent efforts to ease restrictions on business. On a court with an exceptionally well documented pro-business bias--a poll conducted by the court itself found that 83 percent of the Texas public, 79 percent of Texas lawyers and 48 percent of Texas judges believe campaign contributions play a significant role in determining the court's stance on issues of interest to donors--Owen has distinguished herself as a slavish defender of corporations. "Mention her name and people say, 'Oh, Judge Enron,'" notes Nan Aron, who heads the Washington-based Alliance for Justice. "If you were looking for a judge whose record illustrates the hold that Enron established over state courts, she would be a leading contender."

The recipient of $8,600 in campaign contributions from Enron's political action committee and key executives, including a $1,000 check from Enron CEO Ken Lay, Owen wrote a 1996 Texas Supreme Court decision that allowed Enron to avoid paying $224,989 in school taxes. It may be unfair to suggest that Owen gave Enron special treatment, however, since she sided with her corporate donors in more than 80 percent of the cases in which she participated--a notably higher ratio than the court as a whole. Owen is a "business can do no wrong" judge--even if that means twisting the law in absurd directions. When the court majority, in a relatively rare affront to a land developer, overturned a state law written specifically to exempt a single developer--who happened to be an Owen political contributor--from Austin's water quality standards, she objected so vociferously that the majority opinion concluded: "Most of Justice Owen's dissent is nothing more than inflammatory rhetoric and thus merits no response."

Perhaps the most troubling characteristic of Owen's pro-business record is the determination with which she has led fights to erect barriers that prevent injured consumers from recovering damages from corporations, that restrict the ability of civil juries to side with plaintiffs who sue corporations and that undermine antidiscrimination protections--particularly for women. Owen dissented from a ruling that upheld a jury verdict awarding a woman

$160,000 in damages from a vacuum-cleaner sales company after she was raped by one of the firm's door-to-door salesmen; Owen argued that it was unreasonable to have expected the corporation to do the background check that would have revealed the man's previous arrest for indecency with a child.

After Owen was nominated for the Fifth Circuit bench, groups including the Texas AFL-CIO, the Texas Civil Rights Project, the Women's Health and Family Planning Association of Texas and the National Council of Jewish Women sent a letter to President Bush that stated in part: "Justice Owen's activism betrays a judicial philosophy at odds with your own stated goal of nominating judges who will interpret rather than write the law." In a letter to Senate Judiciary Committee chair Patrick Leahy, a prominent Houston attorney who is board certified in civil appellate law wrote: "Justice Owen is the type of judge who can ignore facts--when it helps corporations to do so--yet rail against the failure of her fellow Texas Supreme Court justices to pay more attention to the facts when she wants the court to stop a minor from getting an abortion."

Again and again, the conversation about Owen circles back to abortion. It is on this issue, above all others, that she has distanced herself even from fellow conservatives. In every decision she has written on this issue, she has argued against a woman's right to choose. In a dozen "Jane Doe" cases in which the court was asked to allow a pregnant teenager to bypass the state's parental notification requirements and receive an abortion, Owen voted every time to deny the bypass. When lawyers for a college-bound teenager who was in her fifteenth week of pregnancy--and who had already endured more than a month of legal delays--asked that the high court expedite action on the high school senior's request for permission to bypass the parental notification requirement, the court majority quickly granted the bypass. Owen wrote a dissent that asked: "Why then the rush to judgment?"

"We're going to hear people complaining that Justice Owen is being attacked unfairly by individuals and groups that raise questions about her approach to abortion issues," says Sarah Wheat of the Texas Abortion and Reproductive Rights Action League. "But Justice Owen is the one who has made abortion an issue." Noting the nominee's activist record, Wheat adds, "Senators have a responsibility to determine whether federal court nominees can be trusted to uphold the law."

When the Judiciary Committee holds its hearing on Owen, perhaps as early as this month, some Democratic senators are certain to raise concerns. But committee members are already feeling intense pressure from Bush supporters. The Vermont Republican Party is attacking Leahy for creating a "judicial crisis" with his failure to advance the Owen nomination, while the Traditional Values Coalition is attacking him nationally as "an out-of-control chairman leading an out-of-control committee in a time of war." Some Judiciary Committee members, such as New York Democrat Chuck Schumer--who has complained about the Administration's attempt to "stack the nation's bench with right-wing ideologues"--have sent clear signals that they are willing to reject nominees who are not "mainstream" jurists. But there are no guarantees that the committee's Democratic majority will follow Schumer's standard. Some prochoice Democrats, such as Wisconsin Democrat Russ Feingold and North Carolina's John Edwards, have expressed reservations about rejecting nominees on ideological grounds.

Veteran observers of nomination fights say that the Judiciary Committee vote on Owen's nomination could set the parameters

not just for future appeals court nominations and confirmations but for the Supreme Court nomination clashes. With the rejection of Pickering, Democrats on the committee signaled that they were willing to block the nomination of a judge with a troubling record of racial insensitivity. Now the question is whether the committee will take into account other forms of extremism--on issues such as workplace discrimination, corporate responsibility and, above all, the right to choose.

Texan Craig McDonald sees it as a worthy battle. "You hear talk about whether this judicial nomination or that judicial nomination deserves to be more controversial," he says. "I would just say that as far as those of us who have watched Priscilla Owen and Karl Rove and George W. Bush for a lot of years are concerned, this is the one that deserves to be controversial."
McDonald adds that "the Owen nomination is not a Texas fight or a Fifth Circuit fight. This is really a struggle to determine whether a political operative, Karl Rove, and his crew are going to determine the makeup of our federal courts."

From: CN=Helgard C. Walker/OU=WHO/O=EOP [WHO]
To: Jan E. Williams/WHO/EOP@EOP [WHO] <Jan E. Williams>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>
Sent: 7/9/2002 7:41:12 AM
Subject: : Re: In town Judges

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TO:Jan E. Williams ( CN=Jan E. Williams/OU=WHO/O=EOP@EOP [ WHO ] )
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CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
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Dick Leon comes to mind.




Jan E. Williams

07/09/2002 11:35:15 AM

Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: In town Judges

Who is a confirmed Bush 43 Judge (that sits in DC) who would be interested
in speaking at a SES swearing in this week?
```

From: CN=Jan E. Williams/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;jan e. williams/who/eop@eop [WHO] <jan e. williams>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
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Subject: : Re: In town Judges

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y'all are so good. thanks!!

H. Christopher Bartolomucci
07/09/2002 11:42:57 AM
Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP
cc: jan e. williams/who/eop@eop, rachel l. brand/who/eop@eop, brett m. kavanaugh/who/eop@eop
bcc:
Subject: Re: In town Judges

Another good guy is Maurice Ross of the Superior Court. He's ex-DOJ.

Helgard C. Walker
07/09/2002 11:41:09 AM
Record Type: Record

To: Jan E. Williams/WHO/EOP@EOP
cc: rachel l. brand/who/eop@eop, brett m. kavanaugh/who/eop@eop, h. christopher bartolomucci/who/eop@eop
bcc:
Subject: Re: In town Judges

Dick Leon comes to mind.

Jan E. Williams

07/09/2002 11:35:15 AM

Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: In town Judges

Who is a confirmed Bush 43 Judge (that sits in DC) who would be interested in speaking at a SES swearing in this week?

From:	CN=Garry Malphrus/OU=OPD/O=EOP [OPD]
To:	viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov @ inet>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Diana L. Schacht/OPD /EOP@EOP [OPD] <Diana L. Schacht>;alex.accosta@usdoj.gov @ inet [UNKNOWN] <alex.accosta@usdoj.gov @ inet>;Troy Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>
CC:	Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>;Lauren J. Vestewig/OPD/EOP@EOP [OPD] <Lauren J. Vestewig>;Margaret M. Spellings/OPD/EOP@EOP [OPD] <Margaret M. Spellings>
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CC:Emily Winland ( CN=Emily Winland/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Eleanor L. Gillmor ( CN=Eleanor L. Gillmor/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Lauren J. Vestewig ( CN=Lauren J. Vestewig/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
CC:Margaret M. Spellings ( CN=Margaret M. Spellings/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
###### End Original ARMS Header ######

DPC has scheduled a meeting for Wednesday (July 10) at 3:15 pm in Margaret
Spellings' office in the West Wing to discuss issues that could arise out
of recent Supreme Court decisions interpreting the Americans with
Disabilities Act (ADA). Attached below is a list of cases since 1998 with
commentary prepared by the National Council on Disability. The other
document (ADA Cases) is two very recent cases Troy in DPC added to the
list. If you have any questions or a scheduling conflict, please let me
know. Thank you.
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SUPREME COURT DECISIONS INTERPRETING THE AMERICANS WITH DISABILITIES ACT

CASE	DATE RENDERED	QUESTION PRESENTED	HOLDING	IMPLICATION OF DECISION
Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206 (1998)	June 15, 1998	Whether Title II of the ADA covers state prisons and prisoners.	Title II of the ADA unambiguously extends to state prison inmates.	Demonstrates that the ADA covers some categories of enterprises not expressly mentioned in the Act. Demonstrates breadth and broad coverage of the ADA.
Bragdon v. Abbott, 524 U.S. 624 (1998)	June 25, 1998	1) Whether asymptomatic HIV is a disability under the ADA. 2) When deciding whether a private health care provider must perform invasive procedures on an infectious patient in his office, should courts defer to the provider's professional judgment, as long as it is reasonable in light of then current medical knowledge?	1) Asymptomatic HIV infection is a physical impairment under the ADA. 2) Reproduction is a major life activity under the ADA, which HIV infection substantially limits within the meaning of the ADA. 3) The existence of a significant health risk from treatment or accommodation of person who is disabled must be determined from the standpoint of the person refusing treatment or accommodation, but the risk assessment must be based on medical or other objective evidence, and not simply on that person's good-faith belief that a significant risk exists.	The list of major life activities in the ADA regulations is not exhaustive. This ruling should be very helpful to most persons with HIV trying to establish they have a disability under the ADA. Major life activities under the ADA are not limited to activities that have a public, economic, or daily character.
Wright v. Universal Maritime Service Corp., 525 U.S. 70 (1998)	November 16, 1998	Whether a general arbitration clause in a collective bargaining agreement requires an employee to use the arbitration procedure to address an alleged violation of the ADA.	There is "a presumption of arbitratability" in collective bargaining agreements, but the presumption extends only to interpreting or applying the terms of the collective bargaining agreement. Any union-negotiated waiver of employees' statutory right to a judicial forum for claims of employment discrimination, if valid at all, must be "clear and unmistakable."	The Court did not reach the question whether a waiver would be enforceable if it was, in fact, clear and unmistakable.

CASE	DATE RENDERED	QUESTION PRESENTED	HOLDING	IMPLICATION OF DECISION
Cleveland v. Policy Management Systems Corp., 526 U.S. 795 (1999)	May 24, 1999	The extent to which application for and receipt of disability benefits precludes a person with a disability from bringing an ADA claim.	The Court identified five rationales for claimants making legitimate representations of total disability while pursuing ADA claims. A negative judicial presumption of direct conflict between the two claims should not be applied.	Interrupted a large body of lower court decisions that had prevented individuals who had filed for or were awarded Social Security disability benefits from pursuing ADA employment discrimination claims.
Sutton v. United Airlines, 527 U.S. 471 (1999)	June 22, 1999	Whether corrective and mitigating measures should be considered in determining whether an individual is disabled under the ADA.	Determinations of disability under the ADA must take corrective (mitigating) measures into account.	If a disability is corrected by medication or an assistive device, ADA protections are not available unless the condition still substantially limits or the person is regarded as still substantially limited in a major life activity. If regarded as substantially limited in the major life activity of working, plaintiff must show that employer believed the limitation affected a range of jobs in various classes or a class of jobs, not just a single, particular job. Has the illogical result of permitting employers to terminate a person from a job because of a physical or mental condition and then to argue the condition is not serious enough to constitute a disability.
Murphy v. United Parcel Service, 527 U.S. 516 (1999)	June 22, 1999	1) Whether conditions that are improved with medication should be considered in the medicated or non-medicated state for purposes of determining disability. 2) What does the "regarded as" prong mean under the ADA.	1) Medication is considered a mitigating measure for purposes of determining whether someone has a disability. 2) The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. 3) Likewise, being regarded as unable to perform a single, particular job does not constitute discrimination under the ADA "third prong."	Same principles as Sutton.

REV_00147798

CASE	DATE RENDERED	QUESTION PRESENTED	HOLDING	IMPLICATION OF DECISION
Albertson's, Inc. v. Kirkingburg, 527 U.S. 555 (1999)	June 22, 1999	1) Whether having monocular vision constitutes *per se* disability under the ADA. 2) Whether an employer who requires as a job qualification that an employee meet an otherwise applicable federal safety regulation must justify enforcing the regulation solely because its standard may be waived in an individual case.	1) A showing of significant restriction is required in order to establish substantial limitation. Mitigating measures can include the body's own systems (sometimes subconscious), not just medication and devices. An individual must offer evidence that in their own personal situation, the extent of the limitation is substantial (case by case basis). 2) An employer does not need to justify enforcing a waivable regulation.	*Per se* disability status could be appropriate in some circumstances. People with monocular vision would not have an "onerous burden" in showing they have a disability. However, a mere difference in an individual's manner of performing an activity does not necessarily constitute a substantial limitation.
Olmstead v. L.C., 527 U.S. 581 (1999)	June 22, 1999	Whether the ADA requires a state to place persons with mental disabilities in community settings rather than in institutions when the state's treatment professionals have determined that community placement is appropriate, and what standard is to be applied in assessing a state's assertion of a fundamental alteration defense to the obligation to afford such community placement.	Undue institutionalization qualifies as discrimination by reason of disability. States are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. States can resist program modifications that would fundamentally alter the nature of the services or programs.	This decision has become the new impetus for a national effort to increase community-based alternatives and eliminate unjustified institutional placements. The Court indicated that the fundamental alteration defense may be upheld when 1) the cost of community-based care is equitable in view of resources available for the range of services a State provides to others with disabilities; and 2) the State's waiting list for transferring people out of institutions moves at a reasonable pace.

REV_00147799

CASE	DATE RENDERED	QUESTION PRESENTED	HOLDING	IMPLICATION OF DECISION
Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001)	February 21, 2001	Whether the 11th Amendment bars employees of a state from recovering monetary damages from the state for violations of Title I of the ADA.	Suits by employees of a state to recover money damages from the state for violations of Title I of the ADA are barred by the 11th Amendment.	It is possible that analytical standards applied here will be applied also to bar private suits for monetary damages against states under Title II. However, in footnote 9 of the opinion, the Court indicated that Title I of the ADA is still applicable to the states, and can be enforced by the United States in actions for money damages.
PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001)	May 29, 2001	Whether Title III of the ADA protects qualified entrants with disabilities participating in professional golf tournaments, and whether allowing a golfer with a disability to use a golf cart when all other competitors must walk would "fundamentally alter the nature" of the tournaments.	The concept of public accommodations should be construed liberally to afford people with disabilities equal access to a wide variety of establishments available to people without disabilities. Title III specifically identifies golf courses as a type of public accommodation. PGA Tour's golf tours and their qualifying rounds are covered by Title III of the ADA. The walking rule in golf is not an essential attribute of the game and waiving it will not, therefore, fundamentally alter the nature of the game.	Significant in guiding the application of the reasonable modification requirement in future cases. Professional sports and participants in them are covered by the ADA.

CASE	DATE RENDERED	QUESTION PRESENTED	HOLDING	IMPLICATION OF DECISION
Buckhannon Board and Care Home, Inc. v. W.Va. Dep't of Health and Human Resources, 532 U.S. 598 (2001)	May 29, 2001	Whether federal statutes that allow courts to award attorney's fees and costs to the "prevailing party" authorize awards of fees to parties whose lawsuits brought about voluntary changes in the defendants' conduct but did not result in judgments on the merits or court ordered consent decrees.	A judgment, consent decree, or settlement in a party's favor is required before attorney's fees will be awarded.	Significant turnaround from prevailing view and practices. Defendants will be able to moot an action before a judgment in an effort to avoid an award of attorney's fees, and plaintiffs with meritorious but expensive cases will be deterred from bringing suit.
Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 122 S.Ct. 681 (2002)	January 8, 2002	What is the proper standard for determining whether an individual is substantially limited in performing manual tasks.	The proper standard for demonstrating "a substantial limitation in the major life activity of performing manual tasks" is whether or not the impairment prevents or restricts performing manual tasks that are "of central importance to most people's daily lives" and has "permanent or long-term" impact. Being limited in performing a "class of manual activities," (i.e., activities affecting the ability to perform specific manual tasks at work) is an insufficient standard for meeting the definition of a qualified individual with a disability under ADA.	Suggests that Congress intended to create a demanding standard for meeting the definition of "disabled" and suggests that people must be visibly and functionally unable to perform in certain specific, socially expected ways before they are entitled to the protection of the ADA.
EEOC v. Waffle House, Inc., 122 S.Ct. 754 (2002)	January 15, 2002	Whether an agreement between an employer and an employee to arbitrate employment-related disputes bars the EEOC from pursuing victim-specific judicial relief under the ADA.	An arbitration agreement does not bar EEOC from pursuing victim-specific judicial relief on behalf of an employee.	Limits an employer's ability to keep disputes out of courts and partially reverses last year's ruling in which the Court said that an employee's signature on an employment contract containing an arbitration agreement waives an employee's right to go to court on their own behalf. Affirms EEOC's ability to assist people with disabilities in asserting their civil rights protections in the workplace.

REV_00147801

From: Mashburn, John (Lott) <John_Mashburn@lott.senate.gov>
To: Stephen Higgins (E-mail) <IMCEACCMAIL-Stephen+20Higgins+20at+20JUDICIARY"@routing.senate.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alex Dahl (E-mail) <IMCEACCMAIL-Alex+20Dahl+20at+20JUDICIARY"@routing.senate.gov>;Bob Taylor (E-mail) <Bob_Taylor@aml.senate.gov>;John Abegg (E-mail) <John_Abegg@mcconnell.senate.gov>;Greg Willhauck (E-mail) <IMCEACCMAIL-Gregg+20Willhauck+20at+20KYL-DC"@routing.senate.gov>;Heather Wingate (E-mail) <IMCEACCMAIL-Heather+5FWingate+40who+2Eeop+2Egov+20at+20Internet"@routing.senate.gov>;Manuel Miranda (E-mail) <IMCEACCMAIL-Manuel+20Miranda+20at+20JUDICIARY"@routing.senate.gov>;Katie Gummerson (E-mail) <IMCEACCMAIL-Katie+20Gumerson+20at+20Assistant-Majority-Leader"@routing.senate.gov>;Ed Haden (E-mail) <IMCEACCMAIL-Ed+20Haden+20at+20JUDICIARY"@routing.senate.gov>
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Sent: Tuesday, July 09, 2002 12:58 PM
To: Mashburn, John (Lott)
Subject: Fwd[2]:One Nation Under God by Newt Gingrich

JOHN: after your visit, I found this on my computer. I thought it had appeared
in print, but maybe not. It looks like the source is Newt's website or something.

Lincoln

_____Forward Header_____
Subject: One Nation Under God by Newt Gingrich
Author: "Newt.org" <Newt_org.ue.617753.110802579@ixs1.net>
Date: 7/3/2002 1:21 AM

Happy Independence Day

One Nation Under God
By NEWT GINGRICH

July 3, 2002
COMMENTARY

In the fight to save the Pledge of Allegiance from judicial extremism, let's put the 99 Senators and the publicly pledging House members to the test. Let them vote to remove the two ninth circuit court judges and settle the issue of "one nation under God" once and for all.

It is time for the Congress to follow the advice of Alexander Hamilton and educate the judiciary by removing judges who are assaulting American society. Hamilton writes in Federalist 81 "the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There can never be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption by degrading them from their stations. "[The Federalist papers).

Make no mistake, the decision that having children say the Pledge of Allegiance was unconstitutional because of the phrase "under God" was one more step in a direct assault on American civic culture.

For forty years there has been an ongoing assault by a judicial elite against God being recognized in civil society. From school prayer to religious symbols (including the ten commandments) to now the Pledge of Allegiance elitist lawyers have used the power of the judiciary to reinterpret American civil society.

The plaintiff, Andrew Newdow, has made clear that he is an atheist committed to driving God out of public life. He asserts that he was motivated by reading, "In God we Trust" on a dollar bill while waiting in line in the grocery store. This is merely the first success in an assault against the last remnants of God's recognition in our civil society.

The dissenting Judge, Ferdinand Fernandez, asserted "My reading of the stelliscript suggests that upon Newdow's theory of our Constitution, accepted by my colleagues today, we will soon find ourselves prohibited from using our album of patriotic songs in many public settings. ' God Bless America' and 'America the Beautiful will be

gone for sure, and while use of the first and second stanzas of the Star Spangled Banner will still be permissible, we will be precluded from straying into the third. And currency beware."

Judge Fernandez is right and the time to ACT is now. Ninety-nine senators voting for a resolution is symbolic, so too was the rush to the Capital steps by Members of the House recite the Pledge of Allegiance but this fight runs too deep to be won by symbolic gestures. Congress must follow up its gestures with meaningful action and they possess the power to act.

Under the Constitution the legislative branch can remove the two judges who voted the unconstitutionality of the Pledge of Allegiance. The Congress can assert that the country was founded with a Declaration of Independence, which proclaims, "we are endowed by our Creator." The Congress can note that recognition of a Supreme Being has been central to our existence and from Washington's Farewell Address to Lincoln's second inaugural, the leaders of this nation have asserted again and again that a belief in God and an effort to understand and obey God is at the heart of the American civic experience.

Given that understanding of America it is clear that any judge who would drive recognition of God from the public arena so profoundly misunderstands the nature of America that they should not be allowed to stay on the bench. Therefore, these two judges should be removed preferably before the August recess.

Protectors and defenders of the judicial elite will complain that this power to impeach is inappropriate. They will assert that impeachment for anything but criminal behavior is wrong. They will be defending the rights of lawyers to rewrite the Constitution and destroy American civil society while the rest of the society must be defenseless.

This narrow interpretation of impeachment is explicitly wrong. After all, lawyers are not the only people who define America. Every American and the elected representatives of every American have a right to join in that process of definition.

Newt Gingrich, a former speaker of the House of Representatives, is a senior fellow at the American Enterprise Institute.

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By NEWT GINGRICH

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COMMENTARY

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-0400
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by mailsims1.senate.gov (Sun Internet Mail Server
sims.3.5.2000.03.23.18.03.p10)
with SMTP id <0GYN00M8CQUFHZ@mailsims1.senate.gov> for
gerry_fritz@rpc.senate.gov; Wed, 3 Jul 2002 01:20:48 -0400 (EDT)

Date: Wed, 03 Jul 2002 01:21:41 -0400
From: "Newt.org" <Newt_org.ue.617753.110802579@ixs1.net>
Subject: One Nation Under God by Newt Gingrich
To: "gerry_fritz@rpc.senate.gov" <gerry_fritz@rpc.senate.gov>
Errors-to: Newt_org.ue.617753.110802579@ixs1.net
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- Forward.txt
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_58HL8003_WHO.TXT_1>

---------- Forwarded with Changes ----------

From: Gerry Fritz
Date: 7/3/02 9:55AM
To: Lincoln Oliphant
Subject: Fwd:One Nation Under God by Newt Gingrich

From: Mashburn, John (Lott) <John_Mashburn@lott.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;\"Bob Taylor (E-mail)\ <Bob_Taylor@aml.senate.gov>;Ed Haden at JUDICIARY <IMCEACCMAIL-Ed+20Haden+20at+20JUDICIARY"@routing.senate.gov>;Alex Dahl at JUDICIARY <IMCEACCMAIL-Alex+20Dahl+20at+20JUDICIARY"@routing.senate.gov>;Stephen Higgins at JUDICIARY <IMCEACCMAIL-Stephen+20Higgins+20at+20JUDICIARY"@routing.senate.gov>;Manuel Miranda at JUDICIARY <IMCEACCMAIL-Manuel+20Miranda+20at+20JUDICIARY"@routing.senate.gov>;\"John Abegg (E-mail)\ <John_Abegg@mcconnell.senate.gov>;Katie Gumerson at ASSISTANT-MAJORITY-LEADER <IMCEACCMAIL-Katie+20Gumerson+20at+20ASSISTANT-MAJORITY-LEADER"@routing.senate.gov>;Gregg Willhauck at Kyl-DC <IMCEACCMAIL-Gregg+20Willhauck+20at+20Kyl-DC"@routing.senate.gov>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
Sent: 7/9/2002 10:13:37 AM
Subject: : FYI -- Impeachment and Newt
Attachments: P_SMHL8003_WHO.TXT_1.txt

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CREATOR:"Mashburn, John (Lott)" <John_Mashburn@lott.senate.gov> ( "Mashburn, John (Lott)"
<John_Mashburn@lott.senate.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 9-JUL-2002 14:13:37.00
SUBJECT:: FYI -- Impeachment and Newt
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READ:UNKNOWN
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-----Original Message-----
From: Lincoln Oliphant at RPC
Sent: Tuesday, July 09, 2002 12:58 PM
To: Mashburn, John (Lott)
```

Subject: Fwd[2]:One Nation Under God by Newt Gingrich

JOHN: after your visit, I found this on my computer. I thought it had appeared
in print, but maybe not. It looks like the source is Newt's website or something.

Lincoln

_____Forward Header_____
Subject: One Nation Under God by Newt Gingrich
Author: "Newt.org" <Newt_org.ue.617753.110802579@ixs1.net>
Date: 7/3/2002 1:21 AM

Happy Independence Day

One Nation Under God
By NEWT GINGRICH

July 3, 2002
COMMENTARY

In the fight to save the Pledge of Allegiance from judicial extremism, let's put the 99 Senators and the publicly pledging House members to the test. Let them vote to remove the two ninth circuit court judges and settle the issue of "one nation under God" once and for all.

It is time for the Congress to follow the advice of Alexander Hamilton and educate the judiciary by removing judges who are assaulting American society. Hamilton writes in Federalist 81 "the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There can never be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption by degrading them from their stations. "[The Federalist papers).

Make no mistake, the decision that having children say the Pledge of Allegiance was unconstitutional because of the phrase "under God" was one more step in a direct assault on American civic culture.

For forty years there has been an ongoing assault by a judicial elite against God being recognized in civil society. From school prayer to religious symbols (including the ten commandments) to now the Pledge of Allegiance elitist lawyers have used the power of the judiciary to reinterpret American civil society.

The plaintiff, Andrew Newdow, has made clear that he is an atheist committed to driving God out of public life. He asserts that he was motivated by reading, "In God we Trust" on a dollar bill while waiting in line in the grocery store. This is merely the first success in an assault against the last remnants of God's recognition in our civil society.

The dissenting Judge, Ferdinand Fernandez, asserted "My reading of the stelliscript suggests that upon Newdow's theory of our Constitution, accepted by my colleagues today, we will soon find ourselves prohibited from using our album of patriotic songs in many public settings. ' God Bless America' and 'America the Beautiful will be gone for sure, and while use of the first and second stanzas of the Star Spangled Banner will still be permissible, we will be precluded from straying into the third. And currency beware."

Judge Fernandez is right and the time to ACT is now. Ninety-nine senators voting for a resolution is symbolic, so too was the rush to the Capital steps by Members of the House recite the Pledge of Allegiance but this fight runs too deep to be won by symbolic gestures. Congress must follow up its gestures with meaningful action and they possess the power to act.

Under the Constitution the legislative branch can remove the two judges who voted the unconstitutionality of the Pledge of Allegiance. The Congress can assert that the country was founded with a Declaration of Independence, which proclaims, "we are endowed by our Creator." The Congress can note that recognition of a Supreme Being has been central to our existence and from Washington's Farewell Address to Lincoln's second inaugural, the leaders of this nation have asserted again and again that a belief in God and an effort to understand and obey God is at the heart of the American civic experience.

Given that understanding of America it is clear that any judge who would drive recognition of God from the public arena so profoundly misunderstands the nature of America that they should not be allowed to stay on the bench. Therefore, these two judges should be removed preferably before the August recess.

Protectors and defenders of the judicial elite will complain that this power to impeach is inappropriate. They will assert that impeachment for anything but criminal behavior is wrong. They will be defending the rights of lawyers to rewrite the Constitution and destroy American civil society while the rest of the society must be defenseless.

This narrow interpretation of impeachment is explicitly wrong. After all, lawyers are not the only people who define America. Every American and the elected representatives of every American have a right to join in that process of definition.

Newt Gingrich, a former speaker of the House of Representatives, is a senior fellow at the American Enterprise Institute.

VISIT NEWT.ORG
http://link.ixs1.net/s/link/click?rc=al&rti=484304&si=l10802579

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If you can't click on the links in this message, copy the entire link and paste into the Location:/Address: field of your browser.

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<p><FONT face="Arial,Helvetica,Verdana" size="3"
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Independence Day
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<font face="Verdana, Arial, Helvetica, sans-serif" size="2"
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By NEWT GINGRICH

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COMMENTARY

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let's put
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Let them
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authority
of the legislature, would hazard the united resentment of the body
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Newt Gingrich, a former speaker of the House of Representatives, is a senior
fellow at the American Enterprise Institute.

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ISIT
NEWT.ORG
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Thanks for reading. Please share with your email friends by forwarding
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You
can also unsubscribe by clicking here.
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mailexch.senate.gov
with SMTP
(IMA Internet Exchange 3.13) id 003E5FF9; Wed, 3 Jul 2002 01:21:26
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Received: from pumpkin.ixs1.net (usny45.ixs1.net)
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with SMTP id <0GYN00M8CQUFHZ@mailsims1.senate.gov> for
gerry_fritz@rpc.senate.gov; Wed, 3 Jul 2002 01:20:48 -0400 (EDT)
Date: Wed, 03 Jul 2002 01:21:41 -0400
From: "Newt.org" <Newt_org.ue.617753.l10802579@ixs1.net>
Subject: One Nation Under God by Newt Gingrich
To: "gerry_fritz@rpc.senate.gov" <gerry_fritz@rpc.senate.gov>

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File attachment <P_SMHL8003_WHO.TXT_1>

---------- Forwarded with Changes ----------

From: Gerry Fritz
Date: 7/3/02 9:55AM
To: Lincoln Oliphant
Subject: Fwd:One Nation Under God by Newt Gingrich

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: William W. McCathran/WHO/EOP@EOP [WHO] <William W. McCathran>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/10/2002 7:31:17 AM
Subject: : Judicial Nomination for Tomorrow

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUL-2002 11:31:17.00
SUBJECT:: Judicial Nomination for Tomorrow
TO:William W. McCathran (CN=William W. McCathran/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Anne Womack (CN=Anne Womack/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Assuming they are in session, tomorrow (July 11th) we are planning on sending the President's 108th Article III judicial nomination to the Senate:

Alia M. Ludlum, of Texas, to be United States District Judge for the Western District of Texas, vice Harry L. Hudspeth, retired.

Materials will be forthcoming this afternoon.

Thanks!

From: CN=Christine C. McCarlie/OU=OMB/O=EOP [OMB]
To: John F. Wood/OMB/EOP@EOP [OMB] <John F. Wood>
CC: Eric C. Pelletier/OMB/EOP [OMB] <Eric C. Pelletier>;kristen silverberg/who/eop@eop [WHO] <kristen silverberg>;jay p. lefkowitz/opd/eop@eop [OPD] <jay p. lefkowitz>;nancy dorn/omb/eop@eop [OMB] <nancy dorn>;heather wingate/who/eop@eop [WHO] <heather wingate>;philip j. perry/omb/eop@eop [OMB] <philip j. perry>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 7/10/2002 10:17:26 AM
Subject: : Victims

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christine C. McCarlie ( CN=Christine C. McCarlie/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:10-JUL-2002 14:17:26.00
SUBJECT:: Victims
TO:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
CC:Eric C. Pelletier ( CN=Eric C. Pelletier/OU=OMB/O=EOP [ OMB ] )
READ:UNKNOWN
CC:kristen silverberg ( CN=kristen silverberg/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jay p. lefkowitz ( CN=jay p. lefkowitz/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:nancy dorn ( CN=nancy dorn/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:heather wingate ( CN=heather wingate/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:philip j. perry ( CN=philip j. perry/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Hatch's staff just informed us that Schumer is planning on modifying his
amendment to include:
Adding the 5 groups ('93 WTC, Anthrax, USS Cole, OK City, and Embassy
bombings) to the 9-11 fund, AND include the "Hatch alternative to apply
retrospectively and prospectively.
We assume they will draft it so that a person could not recover from
both....
I think this is probably good... because it put the "alternative" out
there for us (Hatch was wavering as to whether he would offer....).
Although we will need to determine how we feel about the alternative being
retrospective.....
Regardless, we still won't like what they reprot out b/c we disagree with
the 5 groups being lumped together and put in the 9-11 fund.




John F. Wood
07/09/2002 07:16:17 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Victims of int'l terror

I don't know. That approach would mean giving up on the idea of Hatch
cutting any deals w/ the Dems, and he would clearly lose b/c we would lose
```

all of the Dems and Specter.

Brett M. Kavanaugh
07/09/2002 06:28:21 PM
Record Type: Record

To: John F. Wood/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Victims of int'l terror

Would Sessions, Grassley, and McConnell be ok with proposing that the 250K PSOB-like program apply both retrospectively and prospectively, consistent with the Administration's position, and therefore that no additional groups be added to 9/11 fund? If so, how many Republicans on Committee would agree?

John F. Wood
07/09/2002 06:24:50 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Victims of int'l terror

The markup has been moved back one day from tomorrow to Thursday. Hatch's office says that Sessions, McConnell, and Grassley have serious concerns about putting Hatch's approach in place prospectively b/c it would establish the principle that victims should receive compensation from the federal government. Thus, those three are leaning toward the view that it is better to let a few groups get added to the 9/11 Fund and not put anything in place prospectively. Thus, Hatch's office is not sure whether they will proceed w/ their proposal. Rebecca will call once she talks w/ Macon re this.

Message Sent
To:_____
Nancy Dorn/OMB/EOP@EOP
Philip J. Perry/OMB/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Jay Lefkowitz
Heather Wingate/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Christine C. McCarlie/OMB/EOP@EOP

Message Copied
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philip j. perry/omb/eop@eop
Jay P. Lefkowitz/OPD/EOP@EOP
heather wingate/who/eop@eop
kristen silverberg/who/eop@eop
christine c. mccarlie/omb/eop@eop

Message Copied
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jay p. lefkowitz/opd/eop@eop
heather wingate/who/eop@eop
kristen silverberg/who/eop@eop
christine c. mccarlie/omb/eop@eop

From: Azar, Alex (HHS/OS) <Alex.Azar@hhs.gov>
To: Hoff, John (HHS/OS) <John.Hoff@hhs.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Urbanowicz, Peter (HHS/OS) <Peter.Urbanowicz@hhs.gov>
Sent: 7/10/2002 1:52:53 PM
Subject: : Health Act

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> ("Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> [UNKNOWN])
CREATION DATE/TIME:10-JUL-2002 17:52:53.00
SUBJECT:: Health Act
TO:"Hoff, John (HHS/OS)" <John.Hoff@hhs.gov> ("Hoff, John (HHS/OS)" <John.Hoff@hhs.gov> [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Urbanowicz, Peter (HHS/OS)" <Peter.Urbanowicz@hhs.gov> ("Urbanowicz, Peter (HHS/OS)" <Peter.Urbanowicz@hhs.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Am I reading the Health Act correctly to provide that the caps on damages
Do
Not apply if a state has or does set any statutory limit on the amount of compensatory or punitive damages or the total amount of damages, whether greater or lesser than the amounts set forth in the Act? Section 11(c). That gives the states quite a way to get around it.

_____
This message is intended for the exclusive use of the recipient(s) named above. It may contain information that is PROTECTED and/or PRIVILEGED, and it should not be disseminated, distributed, or copied to persons not authorized to receive such information. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately.
_____

From: CN=Christine C. McCarlie/OU=OMB/O=EOP [OMB]
To: Christine C. McCarlie/OMB/EOP@EOP [OMB] <Christine C. McCarlie>;John F. Wood/OMB /EOP@EOP [OMB] <John F. Wood>;Rebecca Seidel) (Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel) [UNKNOWN] <Rebecca_Seidel@judiciary.senate.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/10/2002 7:03:02 PM
Subject: : Re: Fwd:another amend to HR 3375

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christine C. McCarlie ( CN=Christine C. McCarlie/OU=OMB/O=EOP [ OMB ] )
CREATION DATE/TIME:10-JUL-2002 23:03:02.00
SUBJECT:: Re: Fwd:another amend to HR 3375
TO:Christine C. McCarlie ( CN=Christine C. McCarlie/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:John F. Wood ( CN=John F. Wood/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel) (
Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Excellent!

.
```

From: Rebecca Seidel) (Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel) [UNKNOWN]
To: John F. Wood/OMB/EOP@EOP [OMB] <John F. Wood>;Christine C. McCarlie/OMB /EOP@EOP [OMB] <Christine C. McCarlie>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/10/2002 6:43:57 PM
Subject: : Fwd:another amend to HR 3375

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel) (
Rebecca_Seidel@judiciary.senate.gov (Rebecca Seidel) [UNKNOWN])
CREATION DATE/TIME:10-JUL-2002 22:43:57.00
SUBJECT:: Fwd:another amend to HR 3375
TO:John F. Wood (CN=John F. Wood/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Christine C. McCarlie (CN=Christine C. McCarlie/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

_____Forward Header_____
Subject: another amend to HR 3375
Author: William Smith
Date: 7/10/2002 10:31 PM

Senator Sessions may offer the following or a similar amendment to HR 3375.

Add at the end the following:
Attorney Fees - No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 12% of any judgment or award made pursuant
to this Act or pursuant to the September 11th Victim Compensation Fund of 2001."

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
CC: anne womack/who/eop@eop [WHO] <anne womack>;matthew e. smith/who/eop@eop [WHO] <matthew e. smith>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;J. Oscar Mitson/WHO/EOP@EOP [WHO] <J. Oscar Mitson>;tim goeglein/who/eop@eop [WHO] <tim goeglein>
Sent: 7/11/2002 7:41:57 AM
Subject: : Re: action items on Owen

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUL-2002 11:41:57.00
SUBJECT:: Re: action items on Owen
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:anne womack ( CN=anne womack/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:matthew e. smith ( CN=matthew e. smith/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:J. Oscar Mitson ( CN=J. Oscar Mitson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:tim goeglein ( CN=tim goeglein/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Friends

Ozzie Mitson of my office will set up a conference call for 130

Warmly

tsg




Heather Wingate
07/11/2002 11:31:51 AM
Record Type: Record

To: Anne Womack/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc: tim goeglein/who/eop@eop, matthew e. smith/who/eop@eop, brett
m. kavanaugh/who/eop@eop, anne womack/who/eop@eop
Subject: Re: action items on Owen

I'm game... I just won't be at a phone with conference capabilities.

.

----- Original Message -----
From:Anne Womack/WHO/EOP
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:heather wingate/who/eop@eop,
tim goeglein/who/eop@eop,
matthew e. smith/who/eop@eop,
brett m. kavanaugh/who/eop@eop,
anne womack/who/eop@eop
Date: 07/11/2002 10:44:46 AM
Subject: Re: action items on Owen
```

so are we doing a call at 1:30?

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]

To: James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Hana F. Brilliant/WHO /EOP@EOP [WHO] <Hana F. Brilliant>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Charlotte L. Montiel/WHO/EOP@EOP [WHO] <Charlotte L. Montiel>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brent D. Greenfield/WHO/EOP@EOP [WHO] <Brent D. Greenfield>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;John B. Bellinger/NSC /EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>

CC: Ann Gray/WHO/EOP@EOP [WHO] <Ann Gray>;Melissa S. Bennett/WHO/EOP [WHO] <Melissa S. Bennett>;Magda E. Angulo/WHO/EOP@EOP [WHO] <Magda E. Angulo>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>

Sent: 7/11/2002 2:55:10 PM

Subject: : Friday

```
###### Begin Original ARMS Header ######
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:11-JUL-2002 18:55:10.00
SUBJECT:: Friday
TO:James W. Carroll ( CN=James W. Carroll/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Hana F. Brilliant ( CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward McNally ( CN=Edward McNally/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Charlotte L. Montiel ( CN=Charlotte L. Montiel/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Nanette Everson ( CN=Nanette Everson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brent D. Greenfield ( CN=Brent D. Greenfield/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:John B. Bellinger ( CN=John B. Bellinger/OU=NSC/O=EOP@EOP [ NSC ] )
READ:UNKNOWN
```

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
CC:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
CC:Magda E. Angulo (CN=Magda E. Angulo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will be out of the office all day Friday, July 12. If you need anything
please call Patrick Bumatay at 456-2632.

Thanks!

From: CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/12/2002 9:16:41 AM
Subject: : Re: REMARKS BY THE PRESIDENT AT COLEMAN/KLINE/MINNESOTA REPUBLICAN PARTY VICTORY 2002 DINNER

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Rachael L. Sunbarger (CN=Rachael L. Sunbarger/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUL-2002 13:16:41.00
SUBJECT:: Re: REMARKS BY THE PRESIDENT AT COLEMAN/KLINE/MINNESOTA REPUBLICAN PARTY VICTORY 2002 DINNER
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sorry, I just talked to the stenos and they don't have them. They don't usually do stuff other than potus unless they have to.

-

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Timothy E. Flanigan/WHO/EOP@EOP [WHO] <Timothy E. Flanigan>;Alberto R. Gonzales/WHO /EOP@EOP [WHO] <Alberto R. Gonzales>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/12/2002 6:00:03 AM
Subject: : Possible Suspension Bill

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-JUL-2002 10:00:03.00
SUBJECT:: Possible Suspension Bill
TO:Timothy E. Flanigan (CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 07/12/2002 09:59 AM ----------

From: Lisa J. Macecevic on 07/12/2002 09:56:37 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Oscar Gonzalez/OMB/EOP@EOP, Richard E. Green/OMB/EOP@EOP
Subject: Possible Suspension Bill

From preliminary reports, H.R. 3892 - Judicial Improvements Act of 2002 (JUD - Coble) - is likely going to be voted on in the House under suspension of the rules this coming Monday, July 15th.

Please advise if you think a SAP should be issued on this bill. (If so, who should draft.)

H.R. 3892 would establish a new chapter in the federal judicial code regarding complaints against judges and disciplinary procedures. The bill was reported amended on May 14th by the House Judiciary Committee and placed on the calendar. (Report #107-459).

Here is the bill text, FYI:

HR 3892 RH

Union Calendar No. 274

107th CONGRESS

2d Session

H. R. 3892

[Report No. 107-459]
To amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 7, 2002
Mr. COBLE (for himself and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

May 14, 2002
Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 7, 2002]

A BILL
To amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Judicial Improvements Act of 2002'.

SEC. 2. JUDICIAL DISCIPLINE PROCEDURES.

(a) IN GENERAL- Part I of title 28, United States Code, is amended by inserting after chapter 15 the following new chapter:

`CHAPTER 16--COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE
`Sec.

`351. Complaints; judge defined.

`352. Review of complaint by chief judge.

`353. Special committees.

`354. Action by judicial council.

`355. Action by Judicial Conference.

`356. Subpoena power.

`357. Review of orders and actions.

`358. Rules.

`359. Restrictions.

`360. Disclosure of information.

`361. Reimbursement of expenses.

`362. Other provisions and rules not affected.

`363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit.

`364. Effect of felony conviction.

`Sec. 351. Complaints; judge defined

`(a) FILING OF COMPLAINT BY ANY PERSON- Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

`(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE- In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

`(c) TRANSMITTAL OF COMPLAINT- Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term `chief judge'). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

`(d) DEFINITIONS- In this chapter--

`(1) the term `judge' means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and

`(2) the term `complainant' means the person filing a complaint under subsection (a) of this section.

`Sec. 352. Review of complaint by chief judge

`(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY- The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining--

`(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

`(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

`(b) ACTION BY CHIEF JUDGE FOLLOWING REVIEW- After expeditiously reviewing a complaint under
subsection (a), the chief judge, by written order stating his or her reasons, may--

`(1) dismiss the complaint--

`(A) if the chief judge finds the complaint to be--

`(i) not in conformity with section 351(a);

`(ii) directly related to the merits of a decision or procedural ruling; or

`(iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or

`(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

`(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

`(c) REVIEW OF ORDERS OF CHIEF JUDGE- A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

`(d) REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL- Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.

`Sec. 353. Special committees

`(a) APPOINTMENT- If the chief judge does not enter an order under section 352(b), the chief judge shall promptly--

`(1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

`(2) certify the complaint and any other documents pertaining thereto to each member of such committee; and

`(3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

`(b) CHANGE IN STATUS OR DEATH OF JUDGES- A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

`(c) INVESTIGATION BY SPECIAL COMMITTEE- Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

`Sec. 354. Action by judicial council

`(a) ACTIONS UPON RECEIPT OF REPORT-

`(1) ACTIONS- The judicial council of a circuit, upon receipt of a report filed under section 353(c)--

`(A) may conduct any additional investigation which it considers to be necessary;

`(B) may dismiss the complaint; and

`(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

`(2) DESCRIPTION OF POSSIBLE ACTIONS IF COMPLAINT NOT DISMISSED-

`(A) IN GENERAL- Action by the judicial council under paragraph (1)(C) may include--

`(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

`(ii) censuring or reprimanding such judge by means of private communication; and

`(iii) censuring or reprimanding such judge by means of public announcement.

`(B) FOR ARTICLE III JUDGES- If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include--

`(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

`(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

`(C) FOR MAGISTRATE JUDGES- If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.

`(3) LIMITATIONS ON JUDICIAL COUNCIL REGARDING REMOVALS-

`(A) ARTICLE III JUDGES- Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

`(B) MAGISTRATE AND BANKRUPTCY JUDGES- Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

`(4) NOTICE OF ACTION TO JUDGE- The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

`(b) REFERRAL TO JUDICIAL CONFERENCE-

`(1) IN GENERAL- In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings

and its recommendations for appropriate action, to the Judicial Conference of the United States.

`(2) SPECIAL CIRCUMSTANCES- In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct--

`(A) which might constitute one or more grounds for impeachment under article II of the Constitution, or

`(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

`(3) NOTICE TO COMPLAINANT AND JUDGE- A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

`Sec. 355. Action by Judicial Conference

`(a) IN GENERAL- Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

`(b) IF IMPEACHMENT WARRANTED-

`(1) IN GENERAL- If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

`(2) IN CASE OF FELONY CONVICTION- If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

`Sec. 356. Subpoena power

`(a) JUDICIAL COUNCILS AND SPECIAL COMMITTEES- In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

`(b) JUDICIAL CONFERENCE AND STANDING COMMITTEES- In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

`Sec. 357. Review of orders and actions

`(a) REVIEW OF ACTION OF JUDICIAL COUNCIL- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

`(b) ACTION OF JUDICIAL CONFERENCE- The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

`(c) NO JUDICIAL REVIEW- Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

`Sec. 358. Rules

`(a) IN GENERAL- Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

`(b) REQUIRED PROVISIONS- Rules prescribed under subsection (a) shall contain provisions requiring that--

`(1) adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

`(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

`(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

`(c) PROCEDURES- Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

`Sec. 359. Restrictions

`(a) RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION- No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

`(b) AMICUS CURIAE- No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

`Sec. 360. Disclosure of information

`(a) CONFIDENTIALITY OF PROCEEDINGS- Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that--

`(1) the judicial council of the circuit in its discretion releases a copy

of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

`(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

`(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

`(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS- Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

`Sec. 361. Reimbursement of expenses

`Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.

`Sec. 362. Other provisions and rules not affected

`Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

`Sec. 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit

`The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

`Sec. 364. Effect of felony conviction

`In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, that judge shall not hear cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.'.

(b) CONFORMING AMENDMENT- The table of chapters for part I of title 28, United States Code, is amended by inserting after the item relating to chapter 15 the following new item:
--351'.

SEC. 3. TECHNICAL AMENDMENTS.

(a) RETIREMENT FOR DISABILITY- (1) Section 372 of title 28, United States Code, is amended--

(A) in the section caption by striking `; judicial discipline'; and

(B) by striking subsection (c).

(2) The item relating to section 372 in the table of sections for chapter 17 of title 28, United States Code, is amended by striking `; judicial discipline'.

(b) JUDICIAL CONFERENCE- Section 331 of title 28, United States Code, is amended in the fourth undesignated paragraph by striking `section 372(c)' each place it appears and inserting `chapter 16'.

(c) JUDICIAL COUNCILS- Section 332 of title 28, United States Code, is amended--

(1) in subsection (d)(2)--

(A) by striking `section 372(c) of this title' and inserting `chapter 16 of this title'; and

(B) by striking `372(c)(4)' and inserting `353'; and

(2) by striking the second subsection designated as subsection (h).

(d) RECALL OF BANKRUPTCY JUDGES AND MAGISTRATE JUDGES- Section 375(d) of title 28, United States Code, is amended by striking `section 372(c)' and inserting `chapter 16'.

(e) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS- Section 604 of title 28, United States Code, is amended--

(1) in subsection (a)(20)--

(A) in subparagraph (B), by striking `372(c)(11)' and inserting `358'; and

(B) in subparagraph (C), by striking `372(c)(15)' and inserting `360(b)'; and

(2) in subsection (h)--

(A) in paragraph (1), by striking `section 372' each place it appears and inserting `chapter 16'; and

(B) in paragraph (2), by striking `section 372(c)' and inserting `chapter 16'.

(f) COURT OF APPEALS FOR VETERANS CLAIMS- Section 7253(g) of title 38, United States Code, is amended--

(1) in paragraph (1)--

(A) by striking `section 372(c)' and inserting `chapter 16'; and

(B) by striking `such section' and inserting `such chapter';

(2) in paragraph (2)--

(A) in the first sentence, by striking `paragraphs (7) through (15) of section 372(c)' and inserting `sections 354(b) through 360'; and

(B) in the second sentence, by striking `paragraph (7) or (8) of section

372(c)' and inserting `section 354(b) or 355'; and

(3) in paragraph (3)(B), by striking `372(c)(16)' and inserting `361'.
Union Calendar No. 274

107th CONGRESS

2d Session

H. R. 3892

[Report No. 107-459]

A BILL
To amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

May 14, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed
END

Message Sent
To:_____
justice.lrm@usdoj.gov
David J. Haun/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
Stephen S. McMillin/OMB/EOP@EOP
WHGC LRM
Philip J. Perry/OMB/EOP@EOP
John F. Wood/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
Sent: 7/12/2002 12:21:31 PM
Subject: : Re: MAYFLOWER GROUP

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:12-JUL-2002 16:21:31.00
SUBJECT:: Re: MAYFLOWER GROUP
TO:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Meeting with potus is now 1:oo ontuesday

-----------------
Sent from my BlackBerry Handheld.
```

From: Todd Olsen <TO@od-s.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/12/2002 9:48:54 AM
Subject: : Re: proposed CONFERENCE CALL SATURDAY NOON Eastern time re Texasgroup activities

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Todd Olsen <TO@od-s.com> ( Todd Olsen <TO@od-s.com> [ UNKNOWN ] )
CREATION DATE/TIME:12-JUL-2002 13:48:54.00
SUBJECT:: Re: proposed CONFERENCE CALL SATURDAY NOON Eastern time re Texas group activities
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

yes, that would be great.
--



Todd T. Olsen
Olsen, Delisi & Shuvalov
voice (512) 479-6602 ext. 115
fax (512) 479-8031
1609 Shoal Creek Boulevard, Suite 203
Austin, Texas 78701
to@od-s.com

> From: Brett_M._Kavanaugh@who.eop.gov
> Date: Fri, 12 Jul 2002 13:25:32 -0400
> To: Barbara Ledeen at Republican-Conf
> <IMCEACCMAIL-Barbara+20Ledeen+20at+20Republican-Conf@routing.senate.gov>,
> Tim_Goeglein@who.eop.gov, Heather_Wingate@who.eop.gov, TO@od-s.com,
> joschal@att.net, Anne_Womack@who.eop.gov
> Subject: proposed CONFERENCE CALL SATURDAY NOON Eastern time re Texas
group
> activities
>
> Could the seven of us participate in a 15-minute conference call at noon
> eastern time Saturday to discuss:
> (i) who from Texas is definitely coming (and potentially coming)
> (ii) itinerary of those who are coming
> (iii) schedule of activities while they are here
> (iv) what can be done by the Texas supporters who cannot come to DC
> (v) good of the order
> If so, I will arrange a call-in number and e-mail it back to everyone
this
> afternoon.
>
>
>
```

From: Todd Olsen <TO@od-s.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/12/2002 12:12:47 PM
Subject: : Re: NEW PROPOSED TIME for conference call re Texas groupactivities

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Todd Olsen <TO@od-s.com> ( Todd Olsen <TO@od-s.com> [ UNKNOWN ] )
CREATION DATE/TIME:12-JUL-2002 16:12:47.00
SUBJECT:: Re: NEW PROPOSED TIME for conference call re Texas group activities
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

ok
--
```


Todd T. Olsen
Olsen, Delisi & Shuvalov
voice (512) 479-6602 ext. 115
fax (512) 479-8031
1609 Shoal Creek Boulevard, Suite 203
Austin, Texas 78701
to@od-s.com


```
> From: Brett_M._Kavanaugh@who.eop.gov
> Date: Fri, 12 Jul 2002 13:35:36 -0400
> To: Tim_Goeglein@who.eop.gov, Heather_Wingate@who.eop.gov, to@od-s.com,
> joschal@att.net, Anne_Womack@who.eop.gov
> Subject: NEW PROPOSED TIME for conference call re Texas group activities
>
> How about 6:30 p.m. Eastern time tonight? Same subjects. Please let me
> know. (I will call Barb Ledeen.)
>
>
>
```

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
Sent: 7/15/2002 4:03:54 AM
Subject: : Re: revised time for Tuesday Owen event in Oval w/ POTUS

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JUL-2002 08:03:54.00
SUBJECT:: Re: revised time for Tuesday Owen event in Oval w/ POTUS
TO:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I think Calio should be part of the pre-brief and the event as
well?

Elizabeth N. Camp
07/15/2002 08:03:04 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Anne Womack
Subject: revised time for Tuesday Owen event in Oval w/ POTUS

This time change may have occured on Friday but I wanted to make sure
everyone was up to speed.

1:05 pm is the pre-brief (Gonzales/Rove)
1:15 pm is the actual event

Message Sent
To:_____
Brett_M._Kavanaugh@who.eop.gov
AGonzale@who.eop.gov
Timothy Flanigan
Brent Greenfield
Allison_L._Riepenhoff@who.eop.gov

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>
Sent: 7/15/2002 6:01:30 AM
Subject: : Re: Current plan for tomorrow

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JUL-2002 10:01:30.00
SUBJECT:: Re: Current plan for tomorrow
TO:Heather Wingate (CN=Heather Wingate/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I had suggested that, but Libby told me he would be on Hill with
Ridge?

Heather Wingate
07/15/2002 09:56:52 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Current plan for tomorrow

Thanks! Let me know what you need from me. Do you have nick down for the
potus meeting?

.

----- Original Message -----
From:Brett M. Kavanaugh/WHO/EOP
To:Heather Wingate/WHO/EOP@EOP,
tim goeglein/who/eop@eop,
matthew e. smith/who/eop@eop
Cc:Elizabeth N. Camp/WHO/EOP@EOP,
Susan B. Ralston/WHO/EOP@EOP
Date: 07/15/2002 09:52:50 AM
Subject: Current plan for tomorrow

12:30 to 1:00 -- Karl and Judge meet with Texas group in Roosevelt Room
[Kavanaugh to prepare talking points for Karl and Judge and bios
of Texas group]

1:05 -- Karl and Judge pre-brief President
[Counsel to submit briefing memo, talking points, and bios of
Texas group]

1:10 -- Senators, Justice Owen, and Texas group enter Oval and POOL
enters at end of Oval meeting

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
CC: heather wingate/who/eop@eop [WHO] <heather wingate>;anne womack/who/eop@eop [WHO] <anne womack>;joschal@att.net [UNKNOWN] <joschal@att.net>
Sent: 7/15/2002 7:47:18 AM
Subject: : Re: WH events

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-JUL-2002 11:47:18.00
SUBJECT:: Re: WH events
TO:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:heather wingate ( CN=heather wingate/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:anne womack ( CN=anne womack/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:joschal@att.net ( joschal@att.net [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

NOTE: It is likely that only a sub-group of the Roosevelt Room
group will be brought into the Oval Office.




Tim Goeglein
07/15/2002 10:45:48 AM
Record Type: Record

To: joschal@att.net
cc: Brett M. Kavanaugh/WHO/EOP@EOP, Heather Wingate/WHO/EOP@EOP,
Anne Womack/WHO/EOP@EOP
bcc:
Subject: Re: WH events

J -

Brett and I just tried to phone you. Can you call Brett asap? I am off
to the Press Club in about 10 minutes for the coalitions news conference
at 11 a.m.

Brett will give you the complete rundown of what we are planning for
tomorrow.

In sum:

x JO invites all Texans to WH and to POTUS meeting

x Texans arrive at Northwest gate at 12Noon; JO is their escort (*
I need you to email me full names, socials and dates of birth with excel
file, please, for waves purposes)

x Yours truly TSG meets them at the gate, and walks them to West
Lobby

x Brett Kavanaugh BK and Heather Wingate HW are in West Lobby at
1210; BK and HW and I small talk with them till

x 1230 pm - KRove and the Judge meet with them in the Roosevelt
```

Room; BK and TSG and HW and JO join the meeting, till

x 105 pm - KR and the Judge walk them across to the Oval to meet with POTUS/ press present /

x addendum: BK's shop is preparing a small packet for the group, to be given them when they arrive in the Roosevelt Room

x addendum: in addition to Oval press, Anne, do we want the group to stop at the stix outside the WW post the POTUS meeting??

Warmly

tsg

From: CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO]
To: Barbara A. Barclay/WHO/EOP@EOP [WHO] <Barbara A. Barclay>;Karen D. Cruson/WHO /EOP@EOP [WHO] <Karen D. Cruson>;Harriet Miers/WHO/EOP@EOP [WHO] <Harriet Miers>
CC: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/15/2002 12:06:49 PM
Subject: : Final Owen Mtg. Briefing Memo
Attachments: P_MFWQ8003_WHO.TXT_1.doc; P_MFWQ8003_WHO.TXT_2.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stuart W. Bowen (CN=Stuart W. Bowen/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JUL-2002 16:06:49.00
SUBJECT:: Final Owen Mtg. Briefing Memo
TO:Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karen D. Cruson (CN=Karen D. Cruson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Stuart W. Bowen/WHO/EOP on 07/15/2002 04:06 PM ----------

Elizabeth N. Camp
07/15/2002 11:29:16 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Brett_M._Kavanaugh@who.eop.gov, Heather Wingate
Subject: Final Owen Mtg. Briefing Memo

Message Sent
To:_____
Debra D. Bird/WHO/EOP@EOP
Barbara A. Barclay/WHO/EOP@EOP
Carolyn E. Cleveland/WHO/EOP@EOP
Harriet Miers/WHO/EOP@EOP
Stuart W. Bowen/WHO/EOP@EOP
Karen D. Cruson/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MFWQ8003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MFWQ8003_WHO.TXT_2>

MEETING WITH JUSTICE PRICILLA OWEN
Tuesday, July 16, 2002
1:15 p.m.-1:35 p.m.
Oval Office
Alberto R. Gonzales

I. PURPOSE

Meet with Justice Priscilla Owen, Senator Phil Gramm, Senator Kay Bailey Hutchison, former Members of the Texas Supreme Court, and leaders of the Texas Bar to express support for Justice Owen's nomination and to call on the Senate Judiciary Committee to give her a fair hearing on Thursday, July 18, 2002.

II. BACKGROUND

Justice Owen was nominated on May 9, 2001, to the U.S. Court of Appeals for the Fifth Circuit. A hearing on her nomination has now been scheduled for Thursday, July 18, 2002. A variety of interest groups have publicly opposed Justice Owen's nomination. We anticipate that the Senate proceedings will be contentious.

III. PARTICIPANTS

Andrew Card, Chief of Staff
Judge Alberto R. Gonzales, Counsel to the President
Karl Rove, Senior Advisor to the President
Nicholas Calio, Assistant to the President for Legislative Affairs
[Texas group to be determined]

IV. PRESS PLAN

Pool at bottom

V. ATTACHMENTS

Talking points for pool portion of meeting
Biographies of Texas supporters

MEETING WITH JUSTICE PRICILLA OWEN
Tuesday, July 16, 2002
1:15 p.m.-1:35 p.m.
Oval Office
Alberto R. Gonzales

I. PURPOSE

To ~~M~~meet with Justice Priscilla Owen, Senator Phil Gramm, Senator Kay Bailey Hutchison, former Members of the Texas Supreme Court, and leaders of the Texas Bar to express support for Justice Owen's nomination to the United States Court of Appeals, Fifth Circuit, -and to call on the Senate Judiciary Committee to give her a fair hearing on Thursday, July 18, 2002.

II. BACKGROUND

Justice Owen was nominated on May 9, 2001, to the fill a vacancy on the ~~U.S. Court of Appeals for the~~ Fifth Circuit. A hearing on her nomination has now been scheduled for Thursday, July 18, 2002, over 14 months after the nomination. A variety of interest groups have publicly opposed Justice Owen's nomination. We anticipate that the Senate proceedings will be contentious.

III. PARTICIPANTS

Texas representatives (tbd)

Andrew Card, Chief of Staff
~~Judge~~ Alberto ~~R.~~ Gonzales, Counsel to the President
Karl Rove, Senior Advisor ~~to the President~~
Nicholas Calio, Assistant to the President for Legislative Affairs
~~[Texas group to be determined]~~

IV. PRESS PLAN

Pool at bottom

V. ATTACHMENTS

Talking points for pool portion of meeting
Biographies of Texas supporters

From: CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/15/2002 8:25:09 AM
Subject: : Re: POTUS meeting

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth N. Camp (CN=Elizabeth N. Camp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JUL-2002 12:25:09.00
SUBJECT:: Re: POTUS meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you still think we need to cancel this?

Brett M. Kavanaugh
07/12/2002 12:52:54 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc: Allison L. Riepenhoff/WHO/EOP@EOP, Elizabeth N. Camp/WHO/EOP@EOP, Patrick J. Bumatay/WHO/EOP@EOP
bcc:
Subject: Re: POTUS meeting

I talked to Judge. Since we have at most 2 possible judges and no USA's until at oleast another week passes, we should not request the meeting just yet.

Brent D. Greenfield
07/12/2002 09:05:02 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: POTUS meeting

Please let me know if you have anything to present at the meeting being requested for next week.

Thanks!

Message Sent
To:_____
H. Christopher Bartolomucci/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 7/15/2002 12:34:49 PM
Subject: : New Fannie Mae DUS Guidelines - affects policy toward terror,mold cover
Attachments: P_1KYQ8003_CEA.TXT_1.doc

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:15-JUL-2002 16:34:49.00
SUBJECT:: New Fannie Mae DUS Guidelines - affects policy toward terror,mold cover
TO:K. Philippa Malmgren ( CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Note new Fannie Mae interim policy in DUS guidelines released Friday
requiring terror cover on DUS loans over $50 million and, on a
case-by-case basis, on $20-$50 million loans. Note also permitted
exclusions for chemical and biological incidents and nuclear hazard.

This new policy underscores the continuing need for a federal backstop.
Given current costs for terror cover, as policies renew and new
multifamily loans are originated, these new coverage requirements may
impact on apartment firms' operating costs and rents paid by consumers.


A summary of the new guidance is attached.

Jay Harris
National Mulit-Housing Council


Guidelines for Mold and Terrorism

Terrorism and mold exclusions on insurance policies continue to be
areas of particular concern. In the past, terrorist acts and mold were
not routinely excluded from "All Risk" policies. Since the
beginning of this year, these exclusions have become more prevalent. We
are currently in the process of performing an intensive risk analysis
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and exploring potential risk mitigation strategies in both areas. We expect to issue additional requirements prior to year-end. In the meantime, interim guidelines and requirements in these two areas are as follows:

Mold: Mold is currently an acceptable exclusion in an "All Risk" policy. Fannie Mae reserves the right, in its sole discretion, to require coverage once it becomes commercially available at reasonable rates. However, a proactive approach on mold should be the first line of defense. You should ensure that the borrower has an effective preventative maintenance program in place and a process for remediation in the event mold is detected on a property.

We recently held a rapid consensus workshop with lenders and industry experts on underwriting standards of care related to mold. The status will be reported at the Multifamily Conference in July. We expect to have a more definitive mold policy by the fourth quarter.

Terrorism Insurance: Although we strongly encourage obtaining terrorism insurance coverage for all properties, it is temporarily an acceptable exclusion for loans under $20 million, and therefore does not require a waiver. The Lender is to notify Fannie Mae Asset Management or their Large Loan Representative of any loan of $20 million or more that does not have terrorism coverage. Fannie Mae will evaluate the need for terrorism insurance coverage on a case-by-case basis for these loans. For loans equal to or greater than $50 million, however, we generally will require terrorism coverage and expect all reasonable efforts is taken to obtain it. In evaluating the terms of coverage, or possible waivers, Fannie Mae will review:

q Geographic location
q Property configuration and building height
q LTV and Tier Level
q Effect of premium costs on debt service coverage
q Relative land value
q Other relevant factors as appropriate

We expect to update these interim guidelines in the next six to twelve months.

Acceptable Exclusions for "All Risk" Policies

The following additional exclusions from "All Risk" insurance polices are generally acceptable:

q War or Military action
q Nuclear Hazard
q Volcanic eruptions
q Fraudulent or dishonest acts committed by the insured
q Dispersal, release or escape of contaminants, or pollution (biological and chemical agents)

Windstorm, earthquake and flood exclusions also are acceptable, provided a separate policy is obtained for these exclusions. Refer to DUS Guide Part III Chapter 8 for specific requirements for these exclusions. Fannie Mae reserves the right, at its sole discretion, to revise its insurance requirements once excluded coverages become generally available in the marketplace.

- Lender Memo Insurance 02-16.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1KYQ8003_CEA.TXT_1>

FannieMae

Risk Management

Insurance

Transmittal 02-16

Date: July 12, 2002

Subject: DUS Guide Update 02-16, dated July 12, 2002, Regarding Insurance Guidelines

Highlights

- Summary of revised DUS Guide Part III Chapter 8 – Property and Liability Insurance
- Insurance compliance requirements
- Waiver review and approval centralized
- Guidelines for Seismic, Terrorism and Mold risks
- Acceptable exclusions for "All Risk" policies
- ~~Insurance training.~~

Formatted: Bullets and Numbering

This memo supercedes Lender Memo 02-01 dated January 4, 2002 in its entirety. ~~Fannie Mae has completed its~~The revisions represent a substantial modification of Part III, Chapter 8 of the DUS Guide and apply to DUS loans only. ~~will become~~ Please refer to the 3Max and Negotiated Transaction Guides for insurance requirements for those programs. Revisions to those Guides are currently under consideration.

Overview

The Need for New Guidance: Disruptions in the insurance market over the past few years have made the cost-effective management of insurable risks very challenging. Insurance premiums and deductibles for property and casualty risks and catastrophic risks, such as windstorm and earthquake, continue to increase at a rapid rate. The events of September 11th have further exacerbated issues around insurance cost, availability and adequacy of coverage. These events have caused us to re-evaluate our insurance requirements to bring them more in line with today's market.

The Process of Developing the New Guidance: The update of Chapter 8 represents a substantial cross-functional effort of Fannie Mae consulting extensively with insurance risk management experts and our DUS Lender partners. Although the Guide revisions on insurance are extensive, additional guidance will be issued once current analyses involving catastrophic risks, including terrorism and mold, are completed.

Implementation of New Guidelines/Requirements: The Guide changes are effective immediately for all insurance policies on new loans and on the renewal date for insurance policies on existing loans with the exception of the seismic requirement which goes into

effect on August 1, 2002. Because of the growing complexity of insurance matters, all related waiver requests will be forwarded to Asset Management in Washington, DC, with a copy to your National Account Manager, Borrower Account Manager or Large Loan Representative, as appropriate, to ensure consistency of responses.

In addition, Fannie Mae is taking the following steps to assist in answering any questions you might have regarding the new requirements:

1. We are attaching a matrix summarizing the insurance changes.
2. We will explain further the new insurance requirements on the next Chief Underwriter's call.
3. We will schedule a national conference call in the next few weeks to address any insurance questions from other DUS Lender staff.
4. We also have scheduled an insurance panel on the latest industry developments for the Multifamily Conference in July.
5. We will make available to lenders a seminar on insurance matters before year-end, at no cost. Top experts in the insurance field will be on hand to discuss the latest industry trends and insurance risk management strategies.

Summary of Revised DUS Guide Part III Chapter 8

The ~~major~~ most significant Guide changes are in the ~~affect the~~ following areas:

1. Deductibles - *applies to new and renewal policies*

- *Property* - Increased to $25,000 per occurrence for portfolio and/or single asset loans on properties with less than $100~~MM~~ million in total replacement values; $100,000 per occurrence for single asset loans and/or portfolios on properties with greater than $100~~MM~~ million;
- *Blanket Policies* - up to 1% of the replacement cost, but no more than $250,000~~M~~;
- *Commercial General Liability* - $5,000~~M~~ per occurrence deductible;

2. Windstorm Coverage

- When windstorm coverage is in a separate policy from the "All Risk" policy the deductible should be no more than 5% of the total insured value and should include coverage for business interruption/rent loss for at least 12 months.

- If windstorm coverage is only available through a state insurance program, which excludes business interruption/rent loss coverage, you should consult with your NAM before proceeding with the loan.

3. New coverages - *required for all newly originated loans*

- Commercial Automobile Liability Insurance;

- Professional Liability Insurance – Should be included in the commercial general liability policy for assisted living and seniors projects when some level of healthcare is provided;
- Directors and Officers Liability Insurance – Co-op projects only;
- 90 day extended period of Indemnity for large loans ($20 million or greater).

4. Liability Insurance - *applies to new and renewal policies*

- Umbrella liability insurance coverage above the primary level is tiered to reflect different levels of risk and at a minimum should be:

  - ~~Umbrella Liability Insurance (above the primary)~~1 - 3 stories $ 1 million
  - 4 -10 stories $ 5 million
  - 11 - 20 stories $10 million
  - Greater than 20 stories $25 million

5. Carrier Ratings - *applies to new and renewal policies*

- AM Best rating has increased from B, VI to B+, VI;
- Demotech no longer will be used.

6. Blanket Policies - *applies to new and renewal policies*

- Blanket policies are acceptable, so long as ~~provided~~ the policy provides the same overall level, or better, insurance coverage as a single property insurance policy; and

- The property is listed and identifiable in the policy and or associated schedules.

7. Evidence of Insurance - *applies to new and renewal policies*

- If a certificate of insurance cannot be obtained, the Borrower must provide a letter signed by the insurance broker attesting to the fact that the coverage, deductibles and exclusions in the policy meet Fannie Mae's requirements.
- Within 90 days after the date of a new or renewing policy – the original or a certified copy of the policy must be reviewed and placed in the mortgage-servicing file.
- You must notify Fannie Mae Asset Management in writing if the policy does not meet Fannie Mae's insurance requirements.

We appreciate the current difficulty in obtaining insurance policies in a timely manner, given the current turmoil in the insurance market. To assist you in managing this process, we are giving you temporary authority to grant a waiver allowing a short period of additional time for the borrower to obtain the insurance policy. The temporary authority expires on January 1, 2003. Waivers for this requirement should be documented, including the reason, and placed in the servicing file.

8. Flood Insurance and Flood Determination - *applies to new and renewal policies*

- The Lender must obtain from its flood determination company "life of loan" monitoring and coverage.
- The coverage should be fully transferable to a new servicer.

Insurance Compliance Requirements

Unless otherwise noted, the revised requirements apply both to insurance policies for newly originated loans and insurance policy renewals for existing loans. If borrowers have policies not currently in compliance with the new standards, policies should be brought into compliance at the next renewal date. As part of the Lender Assessment process, we will review randomly selected samples of insurance documents in the servicing files for compliance.

If a borrower later obtains an insurance policy that does not comply with Fannie Mae guidelines, and does not obtain a written waiver of the requirement from Fannie Mae, ~~without first obtaining our written approval, the~~ the DUS Lender should issue a letter to the borrower informing them that their loan is in default.

Waiver/Approval Process

In order to provide consistent and timely responses to insurance requests, we have centralized all insurance waiver requests. Effective immediately, all requests for insurance waivers should be sent to Richard Mason (202-752-1225~~-----~~; email: richard_l_mason@fanniemae.com) at the following address for review and approval:

Attn: Richard Mason
Fannie Mae
3900 Wisconsin Ave, NW
Washington, DC 20016

A copy of the request should be sent simultaneously to the National Account Manager, Borrower Account Manager or Large Loan Representative, as appropriate.

Seismic Risk Guidelines

Underwriting loans secured by properties located in seismically active areas (seismic zones 3 and 4) requires careful consideration. A Level I, Seismic Risk Assessment (Probable Maximum Loss - PML study) will be required for the following:

- All loans greater than $20 million and
- Loans that have one or more property specific risk factors as outlined in Part III, Chapter 8, Section 805.3 of the Guide.

Not obtaining a PML in these situations will require a waiver. Properties with the following risk factors are not acceptable under the DUS program:

- Unreinforced masonry buildings
- Buildings constructed on hillsides with slope exceeding a 30 degree angle
- Properties which have a PML greater than 40%

Properties located in seismic zones 3 or 4 that have a PML greater than 20% will require a waiver. The Underwriter's Narrative should identify significant seismic risks and the relevant mitigation strategy. The seismic guidelines are effective August 1, 2002 for newly originated loans only.

Guidelines for Mold and Terrorism

Terrorism and mold exclusions on insurance policies continue to be areas of particular concern. In the past, terrorist acts and mold were not routinely excluded from "All Risk" policies. Since the beginning of this year, these exclusions have become more prevalent. We are currently in the process of performing an intensive risk analysis and exploring potential risk mitigation strategies in both areas. We expect to issue additional requirements prior to year-end. In the meantime, interim guidelines and requirements in these two areas are as follows:

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If you have any questions regarding this memo or the revised insurance requirements, please contact Renata Harrison at (202) 752-7406.

Attachments:
Part III Chapter 8
Exhibit III-11
Summary of Guideline Changes

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
CC: ken mehlman/who/eop@eop [WHO] <ken mehlman>
Sent: 7/15/2002 9:42:45 AM
Subject: : Re: POTUS picture is up on on campaign webiste: quick legal question

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SUBJECT:: Re: POTUS picture is up on on campaign webiste: quick legal question
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
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CC:ken mehlman (CN=ken mehlman/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Use of pictures of candidates with President is legally fine.

Collister W. Johnson
07/15/2002 01:41:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Ken Mehlman/WHO/EOP@EOP
Subject: POTUS picture is up on on campaign webiste: quick legal question

Brett:
Please check real quick for us the line www.jaywolfe.net
it is the site of the GOP candidate for US Senate in WV (running v. Rockefeller)
he posted his picture with POTUS from the recent July 4 trip to WV - the caption merely reads "Jay Wolfe greets President Bush on July 4 in WV."
We did not know about this until know - but Politically we are okay with it -
legally are you?
c

From: CN=Katherine L. Disston/OU=WHO/O=EOP [WHO]

To: Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>;thomas.dawson@ed.gov @ inet [UNKNOWN] <thomas.dawson@ed.gov @ inet>;Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;Brian R. Besanceney/OPD/EOP@EOP [OPD] <Brian R. Besanceney>;Eleanor L. Gillmor/OPD/EOP@EOP [OPD] <Eleanor L. Gillmor>;Ruth E. Elliott/NSC/EOP@EOP [NSC] <Ruth E. Elliott>;Stephen M. Lineberry/CEA/EOP@EOP [CEA] <Stephen M. Lineberry>;David R. Bohrer/OVP/EOP@EOP [OVP] <David R. Bohrer>;A. Merrill Hughes/OVP/EOP@EOP [OVP] <A. Merrill Hughes>;Jennifer Millerwise/OVP/EOP@EOP [OVP] <Jennifer Millerwise>;Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>;Stephen M. Garrison/WHO/EOP@EOP [WHO] <Stephen M. Garrison>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Neil H. Zimmerman/WHO/EOP@EOP [WHO] <Neil H. Zimmerman>;Israel Hernandez/WHO/EOP@EOP [WHO] <Israel Hernandez>;Justin A. Grove/WHO/EOP@EOP [WHO] <Justin A. Grove>;Georgia D. Godfrey/WHO/EOP@EOP [WHO] <Georgia D. Godfrey>;Josh Deckard/WHO/EOP@EOP [WHO] <Josh Deckard>;Reed Dickens/WHO /EOP@EOP [WHO] <Reed Dickens>;Scott McClellan/WHO/EOP@EOP [WHO] <Scott McClellan>;Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Brian Bravo/WHO /EOP@EOP [WHO] <Brian Bravo>;Katharina M. Hager/WHO/EOP@EOP [WHO] <Katharina M. Hager>;Paul L. Morse/WHO/EOP@EOP [WHO] <Paul L. Morse>;Rachel Badrina/WHO /EOP@EOP [WHO] <Rachel Badrina>;Scott Sechser/WHO/EOP@EOP [WHO] <Scott Sechser>;Heather M. Lyster/OA/EOP@EOP [OA] <Heather M. Lyster>;Jill Davie/WHO /EOP@EOP [WHO] <Jill Davie>;Gordon D. Johndroe/WHO/EOP@EOP [WHO] <Gordon D. Johndroe>;A. Morgan Middlemas/WHO/EOP@EOP [WHO] <A. Morgan Middlemas>;William T. Griffin/WHO/EOP@EOP [WHO] <William T. Griffin>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>;Shannon Burkhart/WHO/EOP@EOP [WHO] <Shannon Burkhart>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Laura S. Lawlor/WHO/EOP@EOP [WHO] <Laura S. Lawlor>;Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>;Blake Gottesman/WHO/EOP@EOP [WHO] <Blake Gottesman>;Jose Mallea/WHO/EOP@EOP [WHO] <Jose Mallea>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Carol J. Thompson/WHO/EOP@EOP [WHO] <Carol J. Thompson>;Eric H. Otto/OPD/EOP@EOP [OPD] <Eric H. Otto>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;Jean M. Russell/OPD/EOP@EOP [OPD] <Jean M. Russell>;Lauren J. Vestewig/OPD /EOP@EOP [OPD] <Lauren J. Vestewig>;Sean I. McCormack/NSC/EOP@EOP [NSC] <Sean I. McCormack>;Matthew C. Waxman/NSC/EOP@EOP [NSC] <Matthew C. Waxman>;Laura E. Lineberry/NSC/EOP@EOP [NSC] <Laura E. Lineberry>;Jessica L. Emond/OVP/EOP@EOP [OVP] <Jessica L. Emond>;John P. McConnell/OVP/EOP@EOP [OVP] <John P. McConnell>;Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>;Julieanne H. Thomas/WHO/EOP@EOP [WHO] <Julieanne H. Thomas>;Sarah M. Garrison/WHO /EOP@EOP [WHO] <Sarah M. Garrison>;Britt Grant/OPD/EOP@EOP [OPD] <Britt Grant>;Douglas L. Hoelscher/WHO/EOP@EOP [WHO] <Douglas L. Hoelscher>;Katherine G. Marinis/WHO/EOP@EOP [WHO] <Katherine G. Marinis>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>;Kara G. Figg/WHO/EOP@EOP [WHO] <Kara G. Figg>;Lois A. Cassano/WHO/EOP@EOP [WHO] <Lois A. Cassano>;Rachael L. Sunbarger/WHO/EOP@EOP [WHO] <Rachael L. Sunbarger>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Adam L. Levine/WHO/EOP@EOP [WHO] <Adam L. Levine>;Harry W. Wolff/WHO/EOP@EOP [WHO] <Harry W. Wolff>;Dorothy C. Garvin/WHO/EOP@EOP [WHO] <Dorothy C. Garvin>;Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>;Eric A. Draper/WHO/EOP@EOP [WHO] <Eric A. Draper>;Kendall McCulloch/WHO/EOP@EOP [WHO] <Kendall McCulloch>;Chad Babin/WHO/EOP@EOP [WHO] <Chad Babin>;Michael J. Conway/WHO/EOP@EOP [WHO] <Michael J. Conway>;Ginger G. Loper/WHO/EOP@EOP [WHO] <Ginger G. Loper>;Timothy C. Stout/WHO/EOP@EOP [WHO] <Timothy C. Stout>;Ashley E. Davis/WHO/EOP@EOP [WHO] <Ashley E. Davis>;Mercedes M. Viana/WHO/EOP@EOP [WHO] <Mercedes M. Viana>;Anne E. Campbell/WHO/EOP@EOP [WHO] <Anne E. Campbell>;Erin E. Healy/WHO /EOP@EOP [WHO] <Erin E. Healy>;James R. Wilkinson/WHO/EOP@EOP [WHO] <James R. Wilkinson>;Krista L. Ritacco/WHO/EOP@EOP [WHO] <Krista L. Ritacco>;Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Patrick J. Bumatay/WHO

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BCC: Christina D. Roberts (Christina D. Roberts/WHO/EOP [WHO])

Sent: 7/15/2002 9:46:00 AM

Subject: : Christina's Good Bye

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TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:Christina D. Roberts (CN=Christina D. Roberts/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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Please join us to bid one more staffer good-bye -

Christina Roberts is heading to greener pastures in Texas,
and a last hurrah at A & M.

We will be celebrating her time here with us at
The Occidental Grill 1475 Penna Ave
Friday July 19th at 6:30 pm
or whenever you've made your way outside the gates....

pass the word to anyone we've missed!

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Kyle Sampson/WHO /EOP@EOP [WHO] <Kyle Sampson>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
Sent: 7/15/2002 11:09:22 AM
Subject: : 07-17-02 WHJSC meeting

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CREATION DATE/TIME:15-JUL-2002 15:09:22.00
SUBJECT:: 07-17-02 WHJSC meeting
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
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###### End Original ARMS Header ######

Please let me know if you have anything for this week.

Thanks!
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From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Susan B. Ralston/WHO/EOP@EOP [WHO] <Susan B. Ralston>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/15/2002 11:55:56 AM
Subject: : Re: Ari wants to attend the pre-brief and mtg. tomorrow w/Justice Owen, et al. Is that okay?

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CREATION DATE/TIME:15-JUL-2002 15:55:56.00
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TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@EOP [WHO])
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CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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S-

It is fine with me; I might defer to Brett Kavanaugh on this one, too.

Warmly

tsg

Susan B. Ralston
07/15/2002 03:35:43 PM
Record Type: Record

To: Israel Hernandez/WHO/EOP@EOP, Henry C. Hager/WHO/EOP@EOP, Tim Goeglein/WHO/EOP@EOP
cc:
Subject: Ari wants to attend the pre-brief and mtg. tomorrow w/Justice Owen, et al. Is that okay?

---------- Forwarded by Susan B. Ralston/WHO/EOP on 07/15/2002 03:35 PM ----------

Vickie A. McQuade
07/15/2002 03:07:34 PM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP, Susan B. Ralston/WHO/EOP@EOP
cc:
Subject: Ari wants to attend the pre-brief and mtg. tomorrow w/Justice Owen, et al. Is that okay?

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: K. Philippa Malmgren/OPD/EOP@EOP [OPD] <K. Philippa Malmgren>;Brian C. Conklin/WHO /EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 7/15/2002 12:34:49 PM
Subject: : New Fannie Mae DUS Guidelines - affects policy toward terror,mold cover
Attachments: P_1KYQ8003_OPD.TXT_1.doc

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CREATION DATE/TIME:15-JUL-2002 16:34:49.00
SUBJECT:: New Fannie Mae DUS Guidelines - affects policy toward terror,mold cover
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TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
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Note new Fannie Mae interim policy in DUS guidelines released Friday
requiring terror cover on DUS loans over $50 million and, on a
case-by-case basis, on $20-$50 million loans. Note also permitted
exclusions for chemical and biological incidents and nuclear hazard.

This new policy underscores the continuing need for a federal backstop.
Given current costs for terror cover, as policies renew and new
multifamily loans are originated, these new coverage requirements may
impact on apartment firms' operating costs and rents paid by consumers.


A summary of the new guidance is attached.

Jay Harris
National Mulit-Housing Council


Guidelines for Mold and Terrorism

Terrorism and mold exclusions on insurance policies continue to be
areas of particular concern. In the past, terrorist acts and mold were
not routinely excluded from "All Risk" policies. Since the
beginning of this year, these exclusions have become more prevalent. We
are currently in the process of performing an intensive risk analysis
```

and exploring potential risk mitigation strategies in both areas. We expect to issue additional requirements prior to year-end. In the meantime, interim guidelines and requirements in these two areas are as follows:

Mold: Mold is currently an acceptable exclusion in an "All Risk" policy. Fannie Mae reserves the right, in its sole discretion, to require coverage once it becomes commercially available at reasonable rates. However, a proactive approach on mold should be the first line of defense. You should ensure that the borrower has an effective preventative maintenance program in place and a process for remediation in the event mold is detected on a property.

We recently held a rapid consensus workshop with lenders and industry experts on underwriting standards of care related to mold. The status will be reported at the Multifamily Conference in July. We expect to have a more definitive mold policy by the fourth quarter.

Terrorism Insurance: Although we strongly encourage obtaining terrorism insurance coverage for all properties, it is temporarily an acceptable exclusion for loans under $20 million, and therefore does not require a waiver. The Lender is to notify Fannie Mae Asset Management or their Large Loan Representative of any loan of $20 million or more that does not have terrorism coverage. Fannie Mae will evaluate the need for terrorism insurance coverage on a case-by-case basis for these loans. For loans equal to or greater than $50 million, however, we generally will require terrorism coverage and expect all reasonable efforts is taken to obtain it. In evaluating the terms of coverage, or possible waivers, Fannie Mae will review:

q Geographic location
q Property configuration and building height
q LTV and Tier Level
q Effect of premium costs on debt service coverage
q Relative land value
q Other relevant factors as appropriate

We expect to update these interim guidelines in the next six to twelve months.

Acceptable Exclusions for "All Risk" Policies

The following additional exclusions from "All Risk" insurance polices are generally acceptable:

q War or Military action
q Nuclear Hazard
q Volcanic eruptions
q Fraudulent or dishonest acts committed by the insured
q Dispersal, release or escape of contaminants, or pollution (biological and chemical agents)

Windstorm, earthquake and flood exclusions also are acceptable, provided a separate policy is obtained for these exclusions. Refer to DUS Guide Part III Chapter 8 for specific requirements for these exclusions. Fannie Mae reserves the right, at its sole discretion, to revise its insurance requirements once excluded coverages become generally available in the marketplace.

- Lender Memo Insurance 02-16.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1KYQ8003_OPD.TXT_1>

FannieMae

Risk Management

Insurance

Transmittal 02-16

Date: July 12, 2002

Subject: DUS Guide Update 02-16, dated July 12, 2002, Regarding Insurance Guidelines

Highlights

- Summary of revised DUS Guide Part III Chapter 8 – Property and Liability Insurance
- Insurance compliance requirements
- Waiver review and approval centralized
- Guidelines for Seismic, Terrorism and Mold risks
- Acceptable exclusions for "All Risk" policies
- ~~Insurance training.~~

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This memo supercedes Lender Memo 02-01 dated January 4, 2002 in its entirety. ~~Fannie Mae has completed its~~The revisions represent a substantial modification of Part III, Chapter 8 of the DUS Guide and apply to DUS loans only. ~~will become~~ Please refer to the 3Max and Negotiated Transaction Guides for insurance requirements for those programs. Revisions to those Guides are currently under consideration.

Overview

The Need for New Guidance: Disruptions in the insurance market over the past few years have made the cost-effective management of insurable risks very challenging. Insurance premiums and deductibles for property and casualty risks and catastrophic risks, such as windstorm and earthquake, continue to increase at a rapid rate. The events of September 11th have further exacerbated issues around insurance cost, availability and adequacy of coverage. These events have caused us to re-evaluate our insurance requirements to bring them more in line with today's market.

The Process of Developing the New Guidance: The update of Chapter 8 represents a substantial cross-functional effort of Fannie Mae consulting extensively with insurance risk management experts and our DUS Lender partners. Although the Guide revisions on insurance are extensive, additional guidance will be issued once current analyses involving catastrophic risks, including terrorism and mold, are completed.

Implementation of New Guidelines/Requirements: The Guide changes are effective immediately for all insurance policies on new loans and on the renewal date for insurance policies on existing loans with the exception of the seismic requirement which goes into

effect on August 1, 2002. Because of the growing complexity of insurance matters, all related waiver requests will be forwarded to Asset Management in Washington, DC, with a copy to your National Account Manager, Borrower Account Manager or Large Loan Representative, as appropriate, to ensure consistency of responses.

In addition, Fannie Mae is taking the following steps to assist in answering any questions you might have regarding the new requirements:

1. We are attaching a matrix summarizing the insurance changes.
2. We will explain further the new insurance requirements on the next Chief Underwriter's call.
3. We will schedule a national conference call in the next few weeks to address any insurance questions from other DUS Lender staff.
4. We also have scheduled an insurance panel on the latest industry developments for the Multifamily Conference in July.
5. We will make available to lenders a seminar on insurance matters before year-end, at no cost. Top experts in the insurance field will be on hand to discuss the latest industry trends and insurance risk management strategies.

Summary of Revised DUS Guide Part III Chapter 8

The ~~major~~ most significant Guide changes are in the ~~affect the~~ following areas:

1. Deductibles - *applies to new and renewal policies*

- *Property* - Increased to $25,000 per occurrence for portfolio and/or single asset loans on properties with less than $100~~MM~~ million in total replacement values; $100,000 per occurrence for single asset loans and/or portfolios on properties with greater than $100~~MM~~ million;
- *Blanket Policies* - up to 1% of the replacement cost, but no more than $250,000~~M~~;
- *Commercial General Liability* - $5,000~~M~~ per occurrence deductible;

2. Windstorm Coverage

- When windstorm coverage is in a separate policy from the "All Risk" policy the deductible should be no more than 5% of the total insured value and should include coverage for business interruption/rent loss for at least 12 months.

- If windstorm coverage is only available through a state insurance program, which excludes business interruption/rent loss coverage, you should consult with your NAM before proceeding with the loan.

3. New coverages - *required for all newly originated loans*

- Commercial Automobile Liability Insurance;

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- Professional Liability Insurance – Should be included in the commercial general liability policy for assisted living and seniors projects when some level of healthcare is provided;
- Directors and Officers Liability Insurance – Co-op projects only;
- 90 day extended period of Indemnity for large loans ($20 million or greater).

4. Liability Insurance - *applies to new and renewal policies*

- Umbrella liability insurance coverage above the primary level is tiered to reflect different levels of risk and at a minimum should be:

  - ~~Umbrella Liability Insurance (above the primary)~~1 - 3 stories $ 1 million
  - 4 -10 stories $ 5 million
  - 11 - 20 stories $10 million
  - Greater than 20 stories $25 million

5. Carrier Ratings - *applies to new and renewal policies*

- AM Best rating has increased from B, VI to B+, VI;
- Demotech no longer will be used.

6. Blanket Policies - *applies to new and renewal policies*

- Blanket policies are acceptable, so long as ~~provided~~ the policy provides the same overall level, or better, insurance coverage as a single property insurance policy; and

- The property is listed and identifiable in the policy and or associated schedules.

7. Evidence of Insurance - *applies to new and renewal policies*

- If a certificate of insurance cannot be obtained, the Borrower must provide a letter signed by the insurance broker attesting to the fact that the coverage, deductibles and exclusions in the policy meet Fannie Mae's requirements.
- Within 90 days after the date of a new or renewing policy – the original or a certified copy of the policy must be reviewed and placed in the mortgage-servicing file.
- You must notify Fannie Mae Asset Management in writing if the policy does not meet Fannie Mae's insurance requirements.

We appreciate the current difficulty in obtaining insurance policies in a timely manner, given the current turmoil in the insurance market. To assist you in managing this process, we are giving you temporary authority to grant a waiver allowing a short period of additional time for the borrower to obtain the insurance policy. The temporary authority expires on January 1, 2003. Waivers for this requirement should be documented, including the reason, and placed in the servicing file.

8. Flood Insurance and Flood Determination - *applies to new and renewal policies*

- The Lender must obtain from its flood determination company "life of loan" monitoring and coverage.
- The coverage should be fully transferable to a new servicer.

Insurance Compliance Requirements

Unless otherwise noted, the revised requirements apply both to insurance policies for newly originated loans and insurance policy renewals for existing loans. If borrowers have policies not currently in compliance with the new standards, policies should be brought into compliance at the next renewal date. As part of the Lender Assessment process, we will review randomly selected samples of insurance documents in the servicing files for compliance.

If a borrower later obtains an insurance policy that does not comply with Fannie Mae guidelines, and does not obtain a written waiver of the requirement from Fannie Mae, ~~without first obtaining our written approval, the~~ the DUS Lender should issue a letter to the borrower informing them that their loan is in default.

Waiver/Approval Process

In order to provide consistent and timely responses to insurance requests, we have centralized all insurance waiver requests. Effective immediately, all requests for insurance waivers should be sent to Richard Mason (202-752-1225~~-----~~; email: richard_l_mason@fanniemae.com) at the following address for review and approval:

Attn: Richard Mason
Fannie Mae
3900 Wisconsin Ave, NW
Washington, DC 20016

A copy of the request should be sent simultaneously to the National Account Manager, Borrower Account Manager or Large Loan Representative, as appropriate.

Seismic Risk Guidelines

Underwriting loans secured by properties located in seismically active areas (seismic zones 3 and 4) requires careful consideration. A Level I, Seismic Risk Assessment (Probable Maximum Loss - PML study) will be required for the following:

- All loans greater than $20 million and
- Loans that have one or more property specific risk factors as outlined in Part III, Chapter 8, Section 805.3 of the Guide.

Not obtaining a PML in these situations will require a waiver. Properties with the following risk factors are not acceptable under the DUS program:

- Unreinforced masonry buildings
- Buildings constructed on hillsides with slope exceeding a 30 degree angle
- Properties which have a PML greater than 40%

Properties located in seismic zones 3 or 4 that have a PML greater than 20% will require a waiver. The Underwriter's Narrative should identify significant seismic risks and the relevant mitigation strategy. The seismic guidelines are effective August 1, 2002 for newly originated loans only.

Guidelines for Mold and Terrorism

Terrorism and mold exclusions on insurance policies continue to be areas of particular concern. In the past, terrorist acts and mold were not routinely excluded from "All Risk" policies. Since the beginning of this year, these exclusions have become more prevalent. We are currently in the process of performing an intensive risk analysis and exploring potential risk mitigation strategies in both areas. We expect to issue additional requirements prior to year-end. In the meantime, interim guidelines and requirements in these two areas are as follows:

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- Volcanic eruptions
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- Dispersal, release or escape of contaminants, or pollution (biological and chemical agents)

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If you have any questions regarding this memo or the revised insurance requirements, please contact Renata Harrison at (202) 752-7406.

Attachments:
Part III Chapter 8
Exhibit III-11
Summary of Guideline Changes

REV_00148043

From: Willett, Don <Don.Willett@usdoj.gov>
To: Remington, Kristi L <Kristi.L.Remington@usdoj.gov>;Koebele, Steve <Steve.Koebele@usdoj.gov>;Sales, Nathan <Nathan.Sales@usdoj.gov>
CC: Anne Womack/WHO/EOP@EOP [WHO] <Anne Womack>;Heather Wingate/WHO/EOP@EOP [WHO] <Heather Wingate>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/15/2002 12:46:17 PM
Subject: : WH press if getting some inquiries re. the Searcy/quadraplegic case (Ford Motor Co. v. Miles)

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ( "Willett, Don" <Don.Willett@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME:15-JUL-2002 16:46:17.00
SUBJECT:: WH press if getting some inquiries re. the Searcy/quadraplegic case (Ford Motor
Co. v. Miles)
TO:"Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Heather Wingate ( CN=Heather Wingate/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Can someone pls. e-mail the relevant TPs and other materials re. that case
to Anne Womack and Heather Wingate (w/ a "cc" to Kavanaugh)?

Nathan, I know your TPJ rebuttal doc. has a couple of paragraphs re. this
case, too.

Thanks.

DRW
```

From: CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/15/2002 2:25:19 PM
Subject: : Re: NEED PARAGRAPHS on those two ASAP

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brent D. Greenfield (CN=Brent D. Greenfield/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-JUL-2002 18:25:19.00
SUBJECT:: Re: NEED PARAGRAPHS on those two ASAP
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, I cannot independently confirm the section on Mizell re: bar polls and awards received. Everything else checked out.

Colleen McHugh is a partner at Bracewell & Patterson in Corpus Christi, Texas. A member of the American Bar Association since 1984, McHugh also served as President of the State Bar of Texas from 1996-1997. Since 2001, McHugh has served as Chairman of the Texas Public Safety Commission. In addition, McHugh has served on the Board of Trustees of the Texas Supreme Court Historical Society since 1997 and the Texas Bar Foundation from 1994-1996. She graduated with a B.A. from Southern Methodist University and received her J.D. from St. Mary,s University School of Law.

Patrick W. Mizell was a state district judge in Harris County, Texas, from 1995 to 2002. He was appointed to the bench in 1995 by then Governor Bush, and was elected in 1996 and 2000. While on the bench, he was consistently rated at the top of the Houston Bar Association bar polls. In 2001, he was selected the outstanding young lawyer in Houston by the Houston Young Lawyers Association, and in 1999, he was selected the best civil judge by the Houston Press. He graduated from SMU in Dallas with a B.A. in political science, and graduated from the University of Houston Law Center with a J.D.

He is currently in private practice as a partner at Vinson & Elkins in Houston. He is married to Shannon, and they have four children.

Brett M. Kavanaugh
07/15/2002 06:13:55 PM
Record Type: Record

To: Brent D. Greenfield/WHO/EOP@EOP
cc:
Subject: NEED PARAGRAPHS on those two ASAP

From: CN=Kirk Blalock/OU=WHO/O=EOP [WHO]
To: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;K. Philippa Malmgren/OPD /EOP@EOP [OPD] <K. Philippa Malmgren>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Daniel J. Bartlett/WHO/EOP@EOP [WHO] <Daniel J. Bartlett>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;peter.fisher@do.treas.gov @ inet [UNKNOWN] <peter.fisher@do.treas.gov @ inet>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Karl C. Rove/WHO/EOP@EOP [WHO] <Karl C. Rove>
Sent: 7/16/2002 5:12:34 AM
Subject: : Congress Daily AM - Terrorism Insurance

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock ( CN=Kirk Blalock/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-JUL-2002 09:12:34.00
SUBJECT:: Congress Daily AM - Terrorism Insurance
TO:Lezlee J. Westine ( CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:K. Philippa Malmgren ( CN=K. Philippa Malmgren/OU=OPD/O=EOP@EOP [ OPD ] )
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TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Kristen Silverberg ( CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
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TO:Ken Mehlman ( CN=Ken Mehlman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Daniel J. Bartlett ( CN=Daniel J. Bartlett/OU=WHO/O=EOP@EOP [ WHO ] )
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TO:Randall S. Kroszner ( CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:peter.fisher@do.treas.gov @ inet ( peter.fisher@do.treas.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karl C. Rove ( CN=Karl C. Rove/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

FINANCE
Bush Urges Congress To Send Terrorism Reinsurance Measure
President Bush urged Congress Monday to send a terrorism
reinsurance bill "to my desk
quickly," noting in an economic speech delivered in Alabama that doing so
would "show good
judgment and a way to help our economy recover."
However, Bush added, the legislation "must keep in mind the
workers of America and not
open up our government and/or employers to unnecessary and frivolous and
junk lawsuits."
The House and Senate have approved separate versions of the
reinsurance legislation
but have yet to appoint conferees. Sources suggested this week that the
Senate, which has been
hindered from naming conferees because of an objection by Sen. Phil Gramm,
R-Texas, might
be cleared to appoint them soon.
Meanwhile, a lack of affordable terrorism insurance for
commercial properties has killed an
```

estimated $3.7 billion in deals so far this year and delayed or changed the pricing on another $4.5
billion, according to the Mortgage Bankers Association of America.

From: Thomas, Ginni <ginni.thomas@heritage.org>
To: Government Relations <GovernmentRelations@heritage.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 7/16/2002 11:45:07 AM
Subject: : Recent Heritage Papers and Upcoming Events

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Thomas, Ginni" <ginni.thomas@heritage.org> ("Thomas, Ginni"
<ginni.thomas@heritage.org> [UNKNOWN])
CREATION DATE/TIME:16-JUL-2002 15:45:07.00
SUBJECT:: Recent Heritage Papers and Upcoming Events
TO:Government Relations <GovernmentRelations@heritage.org> (Government Relations
<GovernmentRelations@heritage.org> [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please note that we have issued a couple new papers on corporate responsibility or accounting scandals, that the OIRA event has been cancelled and a couple new events have been scheduled. Have a great week!
Ginni

Recent Publications:

Domestic Policy:

Accounting Scandals: The Bottom Line by David John
http://www.heritage.org/views/2002/ed071202.html

Congress Should Follow Sound Principles in Reforming Accounting Industry Practices by David John
http://www.heritage.org/library/backgrounder/bg1567.html

Time to Ink the Veto Pen by Ron Utt and Chris Summers
http://www.heritage.org/library/backgrounder/bg1566.html

Myths and Facts: Why Successful Welfare Reform Must Strengthen Work Requirements by Brian Riedl & Robert Rector
http://www.heritage.org/library/backgrounder/bg1568.html

Welfare Reform: More Work to be Done
http://www.heritage.org/shorts/20020711welfare.html

Welfare Quotes: They Said It
http://www.heritage.org/shorts/20020710welfare.html

Next Steps for the President's Faith-Based Initiative by Jim Towey
http://www.heritage.org/library/lecture/hl752.html

Foreign/Defense Policy:

Congress Must Reform Its Committee Structure to Meet Homeland Security Needs
by Mike Scardaville
http://www.heritage.org/library/execmemo/em823.html

Why the Department of Homeland Security Should Control Visas by John Tkacik
Backgrounder: http://www.heritage.org/library/backgrounder/bg1569.html
Testimony: http://www.heritage.org/library/testimony/test071502.html

Conferees' Guide to Ensuring Real Trade Promotion Authority by Sara Fitzgerald, Nina Owcharenko, & Aaron Schavey

http://www.heritage.org/library/backgrounder/bg1570.html

The Millennium Challenge Account: An Opportunity to Advance Development in Poor Nations by Brett Schaefer
http://www.heritage.org/library/lecture/hl753.html

Breaking the ICC Impasse by John Hulsman & Brett Schaefer
http://www.heritage.org/views/2002/ed071102.html

Upcoming Events:
For event details and RSVP, link to: http://www.heritage.org/events/

A Conservative Labor Department: A Contradiction in Terms?
Featuring: D. Cameron Findlay, Deputy Secretary of Labor
Tuesday, July 23, 12:00 p.m.

POSTPONED: Reining in Redtape: The Past and Future of Regulatory Review
Featuring: Former OIRA Administrators Sally Katzen & Jim MacRae, and James Miller
originally scheduled for Thursday, July 18, 12:00 p.m., new date tba

Virginia (Ginni) Thomas, Director
Executive Branch Relations, The Heritage Foundation
214 Mass. Ave, NE/Washington, D.C. 20002
phone: (202) 608-6240 or 546-4400
fax: (202) 608-6068 (fax)
e-mail: ginni.thomas@heritage.org
www.heritage.org

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views or opinions presented in this email are solely those of ginni.thomas@heritage.org and do not necessarily represent those of The Heritage Foundation.

From:	CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To:	Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>;Noel J. Francisco/WHO /EOP@EOP [WHO] <Noel J. Francisco>;Rachel L. Brand/WHO/EOP@EOP [WHO] <Rachel L. Brand>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer G. Newstead/WHO /EOP@EOP [WHO] <Jennifer G. Newstead>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC:	Allison L. Riepenhoff/WHO/EOP@EOP [WHO] <Allison L. Riepenhoff>;Elizabeth N. Camp/WHO /EOP@EOP [WHO] <Elizabeth N. Camp>
Sent:	7/16/2002 12:26:26 PM
Subject:	: Counsel Assignments
Attachments:	P_SP8S8003_WHO.TXT_1.xlw; P_SP8S8003_WHO.TXT_2.doc

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CREATOR:Patrick J. Bumatay ( CN=Patrick J. Bumatay/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:16-JUL-2002 16:26:26.00
SUBJECT:: Counsel Assignments
TO:Helgard C. Walker ( CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Noel J. Francisco ( CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Rachel L. Brand ( CN=Rachel L. Brand/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Jennifer G. Newstead ( CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Allison L. Riepenhoff ( CN=Allison L. Riepenhoff/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
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Attached are the updated Counsel assignment sheets. This goes into effect
on Monday, July 22nd.

Thanks,
Patrick
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SP8S8003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SP8S8003_WHO.TXT_2>
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Document Produced Natively

District Court Vacancy Assignments by State
Revised: 7/15/02

Ben
Alaska
Alabama
Iowa
Minnesota
Wisconsin
Kentucky
Oklahoma

Bart
Arkansas
Florida
Maine
New Hampshire
New Mexico
Texas
Virgin Islands

Helgi
Georgia
Hawaii
North Carolina
South Carolina
Virginia
West Virginia
Wyoming
Guam

Brett
Arizona
Washington
Idaho
Maryland
Illinois
Pennsylvania
Puerto Rico

Brad
California
Connecticut
Massachusetts
Michigan
Montana

Jennifer
Kansas
Missouri
Nebraska
New York
New Jersey

Noel
Colorado
Ohio
Louisiana
Mississippi
North Dakota
Rhode Island
South Dakota

Kyle
Indiana
Oregon
Tennessee
Vermont
Delaware
Utah
Nevada

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;brett m. kavanaugh/who /eop@eop [WHO] <brett m. kavanaugh>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;noel j. francisco/who /eop@eop [WHO] <noel j. francisco>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>
Sent: 7/16/2002 1:06:36 PM
Subject: : Re: Ted Cruz phone number at FTC

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-JUL-2002 17:06:36.00
SUBJECT:: Re: Ted Cruz phone number at FTC
TO:Bradford A. Berenson (CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:jennifer g. newstead (CN=jennifer g. newstead/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:rachel l. brand (CN=rachel l. brand/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:timothy e. flanigan (CN=timothy e. flanigan/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:noel j. francisco (CN=noel j. francisco/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:helgard c. walker (CN=helgard c. walker/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

I got it from Noel. No need to respond.

Bradford A. Berenson
07/16/2002 05:02:29 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Ted Cruz phone number at FTC

anyone have it?

Message Sent
To:_____
Helgard C. Walker/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP

From: CN=Irene Kho/OU=OMB/O=EOP [OMB]
To: Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>
Sent: 7/16/2002 4:18:42 PM
Subject: : SJRes35, Crime Victims Rts - Const'l Amdt - OJP OVC Tstmny
Attachments: P_59IS8003_OPD.TXT_1.wpd; P_59IS8003_OPD.TXT_2.wpd

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:16-JUL-2002 20:18:42.00
SUBJECT:: SJRes35, Crime Victims Rts - Const'l Amdt - OJP OVC Tstmny
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

Electronic version that we just faxed to you.
- gillisvra71702.wpd

---------- Forwarded by Irene Kho/OMB/EOP on 07/16/2002 08:17 PM ----------

"Silas, Adrien" <Adrien.Silas@usdoj.gov>
07/16/2002 08:13:20 PM
Record Type: Record

To: Irene Kho/OMB/EOP
cc:
Subject: SJRes35, Crime Victims Rts - Const'l Amdt - OJP OVC Tstmny

Electronic version of the testimony I faxed.

-----Original Message-----
From: Glenda Kendrick
Sent: Tuesday, July 16, 2002 8:08 PM
To: Silas, Adrien
Subject: test

This is the attachment test

- gillisvra71702.wpd

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File attachment <P_59IS8003_OPD.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_59IS8003_OPD.TXT_2>

Department of Justice

STATEMENT

OF

THE HONORABLE JOHN W. GILLIS
DIRECTOR
OFFICE FOR VICTIMS OF CRIME

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

THE PROPOSED VICTIMS' RIGHTS AMENDMENT
TO THE UNITED STATES CONSTITUTION

ON

WEDNESDAY, JULY 17, 2002
WASHINGTON, DC

REV_00148112

Good morning, Chairman Feingold, Senator Thurmond, and distinguished members of the subcommittee. Thank you for the opportunity to present the views of the administration on the proposed amendment to the Constitution of the United States to establish basic rights for victims of violent crime.

The administration strongly supports S.J. Res 35, the Victims' Rights Amendment. There is broad-based support for the Amendment across the country. Democratic and Republican leaders, liberal and conservative scholars, and Americans of every persuasion have rallied in support of this important cause. Crime victims encourage your support in our struggle for human dignity and fair treatment.

As a crime victim, a retired law enforcement officer, a former chair of the California Board of Prison Terms, and a citizen who works to uphold justice and advocates for victims' rights and services, I am honored by the confidence placed in me by President Bush and Attorney General Ashcroft to ensure that victims' rights and needs are addressed at the national and state levels as the Director of the Justice Department's Office for Victims of Crime. The Office for Victims of Crime (or OVC) is committed to enhancing the Nation's capacity to assist crime victims and to providing leadership in an ongoing effort to change attitudes, policies, and practices and with a determination to promote justice and healing for all victims of crime. OVC administers the Crime Victims Fund, which is the Justice Department's sole source of funding for services to crime victims. Through the Crime Victims Fund, OVC provides training and technical assistance for victim advocates and allied professionals, supports demonstration projects in communities, and disseminates information about victim issues.

I know firsthand the personal, financial, and emotional devastation that violent crime exacts on its victims. As a survivor of a homicide victim, I testify before you today with the unique advantage of understanding the plight that victims and their families face in the criminal

REV_00148113

justice system. I know the players and their responsibilities, and my experience has given me the ability to work within the system. More typically, however, when a person is victimized by crime, he or she is thrust into a whole new world in which the state's or the government's needs take priority. In 1982, when the Task Force on Victims of Crime, commissioned by President Reagan, examined the plight of crime victims in America by surveying victims, victim advocates, and criminal justice professionals around the country, one victim lamented:

> "They explained the defendant's constitutional rights to the *nth* degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me, I haven't got any."[1]

Chairman Feingold, as you know, on April 16, President Bush announced his support for the Feinstein-Kyl amendment to the United States Constitution to protect the rights of crime victims. As the President so eloquently stated:

> "Too often, our system fails to inform victims about proceedings involving bail and pleas and sentencing and even about the trials themselves. Too often, the process fails to take the safety of victims into account when deciding whether to release dangerous offenders. Too often, the financial losses of victims are ignored. And too often, victims are not allowed to address the court at sentencing and explain their suffering, or even to be present in the courtroom where their victimizers are being tried. When our criminal justice system treats victims as irrelevant bystanders, they are victimized for a second time."

Although more than 27,000 victims' rights laws have been enacted, victims' bill of rights have been passed in every state, and 32 states have passed constitutional amendments protecting victims' rights, victims still struggle to assert basic rights to be notified, present, and heard. As one victim stated:

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[1] President's Task Force on Victims of Crime, Final Report,1982

REV_00148114

"We were thrown into the criminal justice system. We didn't do anything wrong, but we felt over and over again that it wasn't focused on Shannon being killed, but technical procedures–things that we really didn't care about.... We have to fight those urges and those feelings of trying to take justice in our hands and turn it over and let the criminal justice system do what they are supposed to do, and then we sit there and we feel victimized over and over again."[2]

Eighteen states lack constitutional victims' rights amendments. The 32 existing state victims' rights amendments, and other statutory protections, differ considerably across the country. While we respect the work done by the states on victims' rights issues – and many have gone beyond what is proposed in S.J. Res 35 – the only way to provide a basic level of consistent and uniform victims' rights across the country is to amend the Constitution through the passage of the Victims' Rights Amendment.

Further, there is no uniformity in the implementation of victims' rights laws in these states. A recent study funded by the National Institute of Justice[3] found that, even in states with strong victims' rights laws, only about half of all victims surveyed were notified of plea negotiations and sentencing hearings--notice that is critical if they are to exercise their rights to seek restitution and to inform the court of the impact of the crime on them.

The right to notification of an assailant's release can be a matter of life and death. John and Pat Byron of Kentucky are a vivid reminder of the importance of, not only having rights of notification established, but also implemented. Their daughter Mary was murdered in 1993 by a former boyfriend on her 21st birthday–a few days after he posted bail on a charge of raping her. He had also stalked and intimidated her in the past. Fearing for her life, Mary had asked

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[2] Interview with a victim for the Council of State Governments survey of Crime Issues in the Northeast.

[3] "Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims," funded by the National Institute of Justice and prepared by the National Center for Victims of Crime.

REV_00148115

authorities to notify her of his impending release. The notification never came. Mary was killed before she had the opportunity to take precautions she had planned.

Even in states with strong victims' rights laws or ratified victims' rights constitutional amendments, a victim's ability to assert his or her rights may be nullified by judicial decisions. State victims' rights laws lack the force of federal constitutional law and thus may be given short shrift. Federal law, however, directly covers only certain violent crimes, leaving non-federal crimes to state prosecutions and state law. Roberta Roper's case demonstrates how victims are often excluded from attending court proceedings in Maryland.

In April 1982, 22-year-old Stephanie Roper was kidnaped, brutally raped, tortured, and murdered by two men. Her parents, Roberta and Vincent Roper, wanted to be involved in every aspect of the judicial proceedings, not wanting to read about what was taking place in the newspapers. During the testimony in the death penalty phase, Roberta's right to provide a victim impact statement was denied. Under a year-old Maryland law, the court could (but did not have to) allow victim impact evidence at the time of sentencing. The State's Attorney put Roberta on the stand to talk about her daughter's life and the impact of her death on the family. But the defense attorney objected, arguing that the testimony would be unfairly prejudicial to the defense. The judge agreed and told Roberta to step down, ruling that the impact of the murder on her family was "irrelevant." Roberta listened as the defendants were able to provide a host of witnesses, including family members, to testify on behalf of the man who had kidnaped, brutally raped, tortured, and murdered her daughter.

In the Oklahoma City bombing case, a U.S. district court judge presented victims with the choice to either attend the trial or speak at sentencing, despite federal law which provides victims a right to be present at "all public court proceedings related to the offense...." The victims and several national organizations filed an appeal to reverse the judge's ruling. However, the U.S. Court of Appeals for the 10th Circuit affirmed the judge's ruling, which

REV_00148116

effectively barred from the courtroom victims who intended to speak at sentencing. Congress thereafter intervened, passing legislation[4] prohibiting the U.S. district judge from ordering victims excluded from the trials of the defendants because the victim may testify or make a statement during the sentencing about the effect of the offense on the victim and the victim's family. [18 U.S.C. § 3593].

In 1980, Wisconsin was the first state to enact a victims' bill of rights. However, legislators and policymakers soon realized that the mere passage of statutory rights for victims did not yield the full force of the law that they had intended. In 1993, with 84% ratification by the voters, the Wisconsin legislature acted to correct this problem by passing a victims' rights amendment to the state constitution. In 1991, the state created a Victim Resource Center, where officials intervene on behalf of victims and present the victim's concerns and their findings to the agency in question. However, Victim Resource Center officials had no authority to prescribe remedies for violations of a victims' statutory or constitutional rights. In response, the legislature in 1997 created a Crime Victim Rights Board to enforce victims' rights. The result is that the Board has the authority to impose sanctions for violations of victims' rights, though it cannot guarantee victims' rights will not be abridged. Despite the elaborate mechanisms to protect the rights of crime victims in Wisconsin, the State Attorney General and other victim advocates recognize the need to support those efforts with a federal amendment to the Constitution.

Even with the progression of efforts to secure fundamental rights for crime victims in Wisconsin, victims' rights are not uniformly observed. Sadly, Wisconsin is not unique in its experience to make victims' rights meaningful. Similarly, other states have experienced challenges in fully implementing victims' rights laws.

A federal constitutional amendment is the only legal measure strong enough to rectify the

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[4] See Victims' Rights Clarification Act of 1997 (Public Law 105-6)

REV_00148117

current imbalance and inconsistencies among victims' rights laws and can establish a uniform national floor for victims' rights. A federal amendment to the United States Constitution will be the vehicle by which compliance with victims' rights laws can be enforced. The passage of a federal constitutional amendment will provide the means to make victims' rights a reality.

The Constitution of the United States should never be amended for transient reasons. There is compelling reason, however, to amend the Nation's basic charter to protect the rights of crime victims. Specifically, the amendment would provide victims the right to:

- reasonable and timely notice of any public proceeding involving the crime or the release or escape of the accused;
- not be excluded from these public proceedings;
- reasonably be heard at public release, plea, sentencing, reprieve and pardon proceedings, and
- decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender.

In short, the amendment would ensure that the views of crime victims are considered and that crime victims are treated fairly throughout the process. It would also ensure speedy resolution of their cases, promote victims' safety, and safeguard victims' claims for restitution.

And, the amendment would not abridge the rights of defendants or offenders or otherwise disrupt the delicate balance of our Constitution. Victims' rights will never fundamentally become a reality unless we change the *culture.* James Madison recognized that the Constitution is the only document that can command influence over the culture of the country. The Constitution's commanding influence that President Madison acknowledged is best exemplified in the cultural shift that followed passage of the 13th and 19th Amendments to the Constitution–respectively, abolishing slavery and granting women the right to vote. Truly, the Constitution remains an enduring beacon of hope in our pursuit of "a more perfect Union." An amendment to the Constitution is the only vehicle that will exert the necessary influence to affect a shift in our national culture towards a renewed respect for the rights of victims of violent crime.

The proposed amendment makes some basic pledges to Americans. Our legal system properly protects the rights of the accused in the Constitution. But it does not provide similar protection for the rights of victims, and that must change. We must guarantee these constitutional rights for all victims of violent crime in America.

The protection of victims' rights is one of those rare instances when amending the Constitution is the right thing to do. With bipartisan support, we can balance the scales for victims of violent crime by establishing in the U.S. Constitution our basic rights.

It is important to note that the current version of S.J. Res. 35 contains a technical but significant drafting error, which should be corrected before Congress approves the resolution and proposes the amendment to the states. As currently drafted, the proposing clause of S.J. Res. 35 states that the proposed constitutional amendment to protect crime victims "shall take effect on

REV_00148118

the 180th day after ratification." Placement of the effective date provision within the proposing clause, and outside the text of the proposed amendment, violates Article V of the Constitution because nothing in Article V authorizes Congress to set the effective date of an amendment once it has been ratified. Quite the contrary, Article V itself establishes the effective date of an amendment, when it states that a proposed amendment shall become valid "when ratified," and not at some future date to be determined by Congress. The Constitution does not prevent Congress, however, from giving states the opportunity to ratify a proposed amendment whose text includes an effective date provision, as Congress did with the Eighteenth and Twentieth Amendments. Such a provision, if ratified, would become part of the Constitution itself. Accordingly, we recommend that the effective date provision currently located in the proposing clause be moved into the text of the proposed amendment.

This concludes my statement, Mr. Chairman. I would welcome the opportunity to answer any questions you or members of the subcommittee may have.

REV_00148119

Department of Justice

STATEMENT

OF

THE HONORABLE JOHN W. GILLIS
DIRECTOR
OFFICE FOR VICTIMS OF CRIME

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

THE PROPOSED VICTIMS' RIGHTS AMENDMENT
TO THE UNITED STATES CONSTITUTION

ON

WEDNESDAY, JULY 17, 2002
WASHINGTON, DC

REV_00148120

Good morning, Chairman Feingold, Senator Thurmond, and distinguished members of the subcommittee. Thank you for the opportunity to present the views of the administration on the proposed amendment to the Constitution of the United States to establish basic rights for victims of violent crime.

The administration strongly supports S.J. Res 35, the Victims' Rights Amendment. There is broad-based support for the Amendment across the country. Democratic and Republican leaders, liberal and conservative scholars, and Americans of every persuasion have rallied in support of this important cause. Crime victims encourage your support in our struggle for human dignity and fair treatment.

As a crime victim, a retired law enforcement officer, a former chair of the California Board of Prison Terms, and a citizen who works to uphold justice and advocates for victims' rights and services, I am honored by the confidence placed in me by President Bush and Attorney General Ashcroft to ensure that victims' rights and needs are addressed at the national and state levels as the Director of the Justice Department's Office for Victims of Crime. The Office for Victims of Crime (or OVC) is committed to enhancing the Nation's capacity to assist crime victims and to providing leadership in an ongoing effort to change attitudes, policies, and practices and with a determination to promote justice and healing for all victims of crime. OVC administers the Crime Victims Fund, which is the Justice Department's sole source of funding for services to crime victims. Through the Crime Victims Fund, OVC provides training and technical assistance for victim advocates and allied professionals, supports demonstration projects in communities, and disseminates information about victim issues.

I know firsthand the personal, financial, and emotional devastation that violent crime exacts on its victims. As a survivor of a homicide victim, I testify before you today with the unique advantage of understanding the plight that victims and their families face in the criminal

REV_00148121

justice system. I know the players and their responsibilities, and my experience has given me the ability to work within the system. More typically, however, when a person is victimized by crime, he or she is thrust into a whole new world in which the state's or the government's needs take priority. In 1982, when the Task Force on Victims of Crime, commissioned by President Reagan, examined the plight of crime victims in America by surveying victims, victim advocates, and criminal justice professionals around the country, one victim lamented:

> "They explained the defendant's constitutional rights to the *nth* degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me, I haven't got any."[1]

Chairman Feingold, as you know, on April 16, President Bush announced his support for the Feinstein-Kyl amendment to the United States Constitution to protect the rights of crime victims. As the President so eloquently stated:

> "Too often, our system fails to inform victims about proceedings involving bail and pleas and sentencing and even about the trials themselves. Too often, the process fails to take the safety of victims into account when deciding whether to release dangerous offenders. Too often, the financial losses of victims are ignored. And too often, victims are not allowed to address the court at sentencing and explain their suffering, or even to be present in the courtroom where their victimizers are being tried. When our criminal justice system treats victims as irrelevant bystanders, they are victimized for a second time."

Although more than 27,000 victims' rights laws have been enacted, victims' bill of rights have been passed in every state, and 32 states have passed constitutional amendments protecting victims' rights, victims still struggle to assert basic rights to be notified, present, and heard. As one victim stated:

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[1] President's Task Force on Victims of Crime, Final Report,1982

REV_00148122

"We were thrown into the criminal justice system. We didn't do anything wrong, but we felt over and over again that it wasn't focused on Shannon being killed, but technical procedures–things that we really didn't care about.... We have to fight those urges and those feelings of trying to take justice in our hands and turn it over and let the criminal justice system do what they are supposed to do, and then we sit there and we feel victimized over and over again."[2]

Eighteen states lack constitutional victims' rights amendments. The 32 existing state victims' rights amendments, and other statutory protections, differ considerably across the country. While we respect the work done by the states on victims' rights issues – and many have gone beyond what is proposed in S.J. Res 35 – the only way to provide a basic level of consistent and uniform victims' rights across the country is to amend the Constitution through the passage of the Victims' Rights Amendment.

Further, there is no uniformity in the implementation of victims' rights laws in these states. A recent study funded by the National Institute of Justice[3] found that, even in states with strong victims' rights laws, only about half of all victims surveyed were notified of plea negotiations and sentencing hearings--notice that is critical if they are to exercise their rights to seek restitution and to inform the court of the impact of the crime on them.

The right to notification of an assailant's release can be a matter of life and death. John and Pat Byron of Kentucky are a vivid reminder of the importance of, not only having rights of notification established, but also implemented. Their daughter Mary was murdered in 1993 by a former boyfriend on her 21st birthday–a few days after he posted bail on a charge of raping her. He had also stalked and intimidated her in the past. Fearing for her life, Mary had asked

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[2] Interview with a victim for the Council of State Governments survey of Crime Issues in the Northeast.

[3] "Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims," funded by the National Institute of Justice and prepared by the National Center for Victims of Crime.

REV_00148123

authorities to notify her of his impending release. The notification never came. Mary was killed before she had the opportunity to take precautions she had planned.

Even in states with strong victims' rights laws or ratified victims' rights constitutional amendments, a victim's ability to assert his or her rights may be nullified by judicial decisions. State victims' rights laws lack the force of federal constitutional law and thus may be given short shrift. Federal law, however, directly covers only certain violent crimes, leaving non-federal crimes to state prosecutions and state law. Roberta Roper's case demonstrates how victims are often excluded from attending court proceedings in Maryland.

In April 1982, 22-year-old Stephanie Roper was kidnaped, brutally raped, tortured, and murdered by two men. Her parents, Roberta and Vincent Roper, wanted to be involved in every aspect of the judicial proceedings, not wanting to read about what was taking place in the newspapers. During the testimony in the death penalty phase, Roberta's right to provide a victim impact statement was denied. Under a year-old Maryland law, the court could (but did not have to) allow victim impact evidence at the time of sentencing. The State's Attorney put Roberta on the stand to talk about her daughter's life and the impact of her death on the family. But the defense attorney objected, arguing that the testimony would be unfairly prejudicial to the defense. The judge agreed and told Roberta to step down, ruling that the impact of the murder on her family was "irrelevant." Roberta listened as the defendants were able to provide a host of witnesses, including family members, to testify on behalf of the man who had kidnaped, brutally raped, tortured, and murdered her daughter.

In the Oklahoma City bombing case, a U.S. district court judge presented victims with the choice to either attend the trial or speak at sentencing, despite federal law which provides victims a right to be present at "all public court proceedings related to the offense...." The victims and several national organizations filed an appeal to reverse the judge's ruling. However, the U.S. Court of Appeals for the 10th Circuit affirmed the judge's ruling, which

REV_00148124

effectively barred from the courtroom victims who intended to speak at sentencing. Congress thereafter intervened, passing legislation[4] prohibiting the U.S. district judge from ordering victims excluded from the trials of the defendants because the victim may testify or make a statement during the sentencing about the effect of the offense on the victim and the victim's family. [18 U.S.C. § 3593].

In 1980, Wisconsin was the first state to enact a victims' bill of rights. However, legislators and policymakers soon realized that the mere passage of statutory rights for victims did not yield the full force of the law that they had intended. In 1993, with 84% ratification by the voters, the Wisconsin legislature acted to correct this problem by passing a victims' rights amendment to the state constitution. In 1991, the state created a Victim Resource Center, where officials intervene on behalf of victims and present the victim's concerns and their findings to the agency in question. However, Victim Resource Center officials had no authority to prescribe remedies for violations of a victims' statutory or constitutional rights. In response, the legislature in 1997 created a Crime Victim Rights Board to enforce victims' rights. The result is that the Board has the authority to impose sanctions for violations of victims' rights, though it cannot guarantee victims' rights will not be abridged. Despite the elaborate mechanisms to protect the rights of crime victims in Wisconsin, the State Attorney General and other victim advocates recognize the need to support those efforts with a federal amendment to the Constitution.

Even with the progression of efforts to secure fundamental rights for crime victims in Wisconsin, victims' rights are not uniformly observed. Sadly, Wisconsin is not unique in its experience to make victims' rights meaningful. Similarly, other states have experienced challenges in fully implementing victims' rights laws.

A federal constitutional amendment is the only legal measure strong enough to rectify the

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[4] See Victims' Rights Clarification Act of 1997 (Public Law 105-6)

REV_00148125

current imbalance and inconsistencies among victims' rights laws and can establish a uniform national floor for victims' rights. A federal amendment to the United States Constitution will be the vehicle by which compliance with victims' rights laws can be enforced. The passage of a federal constitutional amendment will provide the means to make victims' rights a reality.

The Constitution of the United States should never be amended for transient reasons. There is compelling reason, however, to amend the Nation's basic charter to protect the rights of crime victims. Specifically, the amendment would provide victims the right to:

- reasonable and timely notice of any public proceeding involving the crime or the release or escape of the accused;
- not be excluded from these public proceedings;
- reasonably be heard at public release, plea, sentencing, reprieve and pardon proceedings, and
- decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender.

In short, the amendment would ensure that the views of crime victims are considered and that crime victims are treated fairly throughout the process. It would also ensure speedy resolution of their cases, promote victims' safety, and safeguard victims' claims for restitution.

And, the amendment would not abridge the rights of defendants or offenders or otherwise disrupt the delicate balance of our Constitution. Victims' rights will never fundamentally become a reality unless we change the *culture.* James Madison recognized that the Constitution is the only document that can command influence over the culture of the country. The Constitution's commanding influence that President Madison acknowledged is best exemplified in the cultural shift that followed passage of the 13th and 19th Amendments to the Constitution–respectively, abolishing slavery and granting women the right to vote. Truly, the Constitution remains an enduring beacon of hope in our pursuit of "a more perfect Union." An amendment to the Constitution is the only vehicle that will exert the necessary influence to affect a shift in our national culture towards a renewed respect for the rights of victims of violent crime.

The proposed amendment makes some basic pledges to Americans. Our legal system properly protects the rights of the accused in the Constitution. But it does not provide similar protection for the rights of victims, and that must change. We must guarantee these constitutional rights for all victims of violent crime in America.

The protection of victims' rights is one of those rare instances when amending the Constitution is the right thing to do. With bipartisan support, we can balance the scales for victims of violent crime by establishing in the U.S. Constitution our basic rights.

It is important to note that the current version of S.J. Res. 35 contains a technical but significant drafting error, which should be corrected before Congress approves the resolution and proposes the amendment to the states. As currently drafted, the proposing clause of S.J. Res. 35 states that the proposed constitutional amendment to protect crime victims "shall take effect on

REV_00148126

the 180th day after ratification." Placement of the effective date provision within the proposing clause, and outside the text of the proposed amendment, violates Article V of the Constitution because nothing in Article V authorizes Congress to set the effective date of an amendment once it has been ratified. Quite the contrary, Article V itself establishes the effective date of an amendment, when it states that a proposed amendment shall become valid "when ratified," and not at some future date to be determined by Congress. The Constitution does not prevent Congress, however, from giving states the opportunity to ratify a proposed amendment whose text includes an effective date provision, as Congress did with the Eighteenth and Twentieth Amendments. Such a provision, if ratified, would become part of the Constitution itself. Accordingly, we recommend that the effective date provision currently located in the proposing clause be moved into the text of the proposed amendment.

This concludes my statement, Mr. Chairman. I would welcome the opportunity to answer any questions you or members of the subcommittee may have.

REV_00148127

From: Stephen_M._Lineberry@cea.eop.gov [UNKNOWN]

To: Mary.Mantho@hhs.gov [UNKNOWN] <Mary.Mantho@hhs.gov>;Alex.Azar@hhs.gov [UNKNOWN] <Alex.Azar@hhs.gov>;John.Hoff@hhs.gov [UNKNOWN] <John.Hoff@hhs.gov>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Anne E. Phelps/OPD/EOP@EOP [OPD] <Anne E. Phelps>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Wendy.J.Keefer@usdoj.gov [UNKNOWN] <Wendy.J.Keefer@usdoj.gov>;D. Marcus Sumerlin/OPD/EOP@EOP [OPD] <D. Marcus Sumerlin>;Diana L. Schacht/OPD /EOP@EOP [OPD] <Diana L. Schacht>;Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>;Thomas C. DeLeire/CEA/EOP@EOP [CEA] <Thomas C. DeLeire>;Dirksen Lehman/WHO/EOP@EOP [WHO] <Dirksen Lehman>;Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>;claude.allen@hhs.gov [UNKNOWN] <claude.allen@hhs.gov>;Brian C. Conklin/WHO/EOP@EOP [WHO] <Brian C. Conklin>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>;Kristen Silverberg/WHO /EOP@EOP [WHO] <Kristen Silverberg>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Bobby.Jindal@hhs.gov [UNKNOWN] <Bobby.Jindal@hhs.gov>

CC: Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>;pamela.roller@hhs.gov [UNKNOWN] <pamela.roller@hhs.gov>;Layton Skelly/OPD/EOP@EOP [OPD] <Layton Skelly>;Leslie A. Mooney/OPD/EOP@EOP [OPD] <Leslie A. Mooney>;jason.j.sutton@usdoj.gov [UNKNOWN] <jason.j.sutton@usdoj.gov>;Mark McClellan/CEA/EOP@EOP [CEA] <Mark McClellan>;Damaris.kendall@hhs.gov [UNKNOWN] <Damaris.kendall@hhs.gov>;Tracy.T.Washington@usdoj.gov [UNKNOWN] <Tracy.T.Washington@usdoj.gov>;ebony.brice@hhs.gov [UNKNOWN] <ebony.brice@hhs.gov>;Lauren J. Vestewig/OPD/EOP@EOP [OPD] <Lauren J. Vestewig>

Sent: 7/17/2002 1:53:37 PM

Subject: : Medical Malpractice mtg. this Friday at 10am in 48a of the EEOB

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Stephen_M._Lineberry@cea.eop.gov ( Stephen_M._Lineberry@cea.eop.gov [ UNKNOWN ] )
CREATION DATE/TIME:17-JUL-2002 17:53:37.00
SUBJECT:: Medical Malpractice mtg. this Friday at 10am in 48a of the EEOB
TO:Mary.Mantho@hhs.gov ( Mary.Mantho@hhs.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Alex.Azar@hhs.gov ( Alex.Azar@hhs.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:John.Hoff@hhs.gov ( John.Hoff@hhs.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Matthew Kirk ( CN=Matthew Kirk/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Anne E. Phelps ( CN=Anne E. Phelps/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Kevin Warsh ( CN=Kevin Warsh/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Wendy.J.Keefer@usdoj.gov ( Wendy.J.Keefer@usdoj.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:D. Marcus Sumerlin ( CN=D. Marcus Sumerlin/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Diana L. Schacht ( CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Thomas C. DeLeire ( CN=Thomas C. DeLeire/OU=CEA/O=EOP@EOP [ CEA ] )
READ:UNKNOWN
TO:Dirksen Lehman ( CN=Dirksen Lehman/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Alan Gilbert ( CN=Alan Gilbert/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:claude.allen@hhs.gov ( claude.allen@hhs.gov [ UNKNOWN ] )
READ:UNKNOWN
TO:Brian C. Conklin ( CN=Brian C. Conklin/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
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READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Bobby.Jindal@hhs.gov (Bobby.Jindal@hhs.gov [UNKNOWN])
READ:UNKNOWN
CC:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:pamela.roller@hhs.gov (pamela.roller@hhs.gov [UNKNOWN])
READ:UNKNOWN
CC:Layton Skelly (CN=Layton Skelly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Leslie A. Mooney (CN=Leslie A. Mooney/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:jason.j.sutton@usdoj.gov (jason.j.sutton@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:Mark McClellan (CN=Mark McClellan/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
CC:Damaris.kendall@hhs.gov (Damaris.kendall@hhs.gov [UNKNOWN])
READ:UNKNOWN
CC:Tracy.T.Washington@usdoj.gov (Tracy.T.Washington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
CC:ebony.brice@hhs.gov (ebony.brice@hhs.gov [UNKNOWN])
READ:UNKNOWN
CC:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

There will be a Medical Malpractice meeting this Friday at 10am in room
48a of
the EEOB. Please let me know if you require clearance into the building.
Thanks.

Steve
395-5036

From:	CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To:	P. Thaddeus Messenger/OMB/EOP@EOP [OMB] <P. Thaddeus Messenger>;Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent:	7/17/2002 11:20:54 AM
Subject:	: Re: LRM PTM137 - - HUD Draft Bill to Change the Name of the Interagency Council on Homelessness
Attachments:	P_8SDT8003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JUL-2002 15:20:54.00
SUBJECT:: Re: LRM PTM137 - - HUD Draft Bill to Change the Name of the Interagency Council on Homelessness
TO:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection.

Patrick J. Bumatay
07/17/2002 02:21:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM PTM137 - - HUD Draft Bill to Change the Name of the Interagency Council on Homelessness

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 07/17/2002 02:20 PM ----------

From: P. Thaddeus Messenger on 07/17/2002 02:05:47 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM PTM137 - - HUD Draft Bill to Change the Name of the Interagency Council on Homelessness

LRM ID: PTM137
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, July 17, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148

SUBJECT: HUD Draft Bill to Change the Name of the Interagency Council on Homelessness

DEADLINE: 3:00 p.m. Friday, July 19, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached for your review, please find a copy of the draft bill and analysis (one page total) to change the name of the Interagency Council on Homelessness to the United States Interagency Council on Homelessness.

Please provide your comments by 3:00 p.m. Friday, July 19th. Please contact us immediately if you experience difficulty with this LRM or its attachment. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile.

Thank you.

DISTRIBUTION LIST

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061-JUSTICE - Daniel Bryant - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666

EOP:
Stephen S. McMillin
Alan B. Rhinesmith
Francis S. Redburn
Lauren E. Bloomquist
Adrienne C. Erbach
Jennifer Wagner Bell
Thomas Reilly
Crystal J. Roach
David J. Haun
Douglas Pitkin
Maureen Walsh
Katrina A. McDonald
Alison Perkins-Cohen
Alejandra O. Ceja
Toni S. Hustead
Winifred Y. Chang
Sarah S. Lee
Aquiles F. Suarez
OVP LRM
WHGC LRM
Philip J. Perry
John F. Wood
Matthew J. Schneider
Kristen Silverberg
Joel D. Kaplan
Lauren C. Lobrano
James J. Jukes
Ingrid M. Schroeder
P. Thaddeus Messenger
LRM ID: PTM137 SUBJECT: HUD Draft Bill to Change the Name of the Interagency Council on Homelessness
RESPONSE TO
LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
usdaobpaleg@obpa.usda.gov
lrm@hhs.gov
justice.lrm@usdoj.gov
dol-sol-leg@dol.gov
valrm@mail.va.gov

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
Adrienne C. Erbach/OMB/EOP@EOP
Jennifer Wagner Bell/OMB/EOP@EOP
Thomas Reilly/OMB/EOP@EOP
Crystal J. Roach/OMB/EOP@EOP
David J. Haun/OMB/EOP@EOP
Douglas Pitkin/OMB/EOP@EOP
Maureen Walsh/OMB/EOP@EOP

Katrina A. McDonald/OMB/EOP@EOP
Alison Perkins-Cohen/OMB/EOP@EOP
Alejandra O. Ceja/OMB/EOP@EOP
Toni S. Hustead/OMB/EOP@EOP
Winifred Y. Chang/OMB/EOP@EOP
Sarah S. Lee/OMB/EOP@EOP
Aquiles F. Suarez/OPD/EOP@EOP
OVP LRM
WHGC LRM
Philip J. Perry/OMB/EOP@EOP
John F. Wood/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
Kristen Silverberg/WHO/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
P. Thaddeus Messenger/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8SDT8003_WHO.TXT_1>

JULY 2002 DRAFT

{PRIVATE }

Homeless Council Name Change
Bill Text and Sectional

SEC. ___. The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) is amended--

(1) in section 101(b), by striking "INTERAGENCY COUNCIL ON THE HOMELESS" and inserting "UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS";

(2) in section 102(b)(1), by striking “an Interagency Council on the Homeless” and inserting “the United States Interagency Council on Homelessness”;

(3) in the heading for title II, by striking "**INTERAGENCY COUNCIL ON THE HOMELESS**" and inserting "**UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS**"; and

(4) in sections 201, 207(1), 501(c)(2)(A), and 501(d)(3), by striking "Interagency Council on the Homeless" and inserting "United States Interagency Council on Homelessness".

* * *

Section ___ would change the name of the Interagency Council on the Homeless to the United States Interagency Council on Homelessness. The addition of "United States" would avoid confusion with the many State interagency councils that have been established since the Federal statute was enacted. In addition, the term "homelessness" is a more appropriate description of the situation that the Council has been tasked to address.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Anne Womack/WHO /EOP@EOP [WHO] <Anne Womack>
Sent: 7/17/2002 12:26:21 PM
Subject: : Re: New Orleans Times Picayune Ed Board

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jeanie S. Mamo ( CN=Jeanie S. Mamo/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:17-JUL-2002 16:26:21.00
SUBJECT:: Re: New Orleans Times Picayune Ed Board
TO:Elizabeth N. Camp ( CN=Elizabeth N. Camp/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

1 p.m. tomorrow (call will last about 15 min.) The Editorial Page Editor
for the New Orleans Times-Picayune is Ms. Terri Troncale. I will call her
in the morning to make sure that she is the board member who will be on
the call. She said there was a chance another board member would conduct
the interview.
```

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
CC: james w. carroll/who/eop@eop [WHO] <james w. carroll>;hana f. brilliant/who/eop@eop [WHO] <hana f. brilliant>;patrick j. bumatay/who/eop@eop [WHO] <patrick j. bumatay>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;david s. addington/ovp/eop@eop [OVP] <david s. addington>;charlotte l. montiel/who/eop@eop [WHO] <charlotte l. montiel>;nanette everson/who/eop@eop [WHO] <nanette everson>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;elizabeth n. camp/who/eop@eop [WHO] <elizabeth n. camp>
Sent: 7/18/2002 5:01:38 AM
Subject: : Re: Kyle is Famous

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-JUL-2002 09:01:38.00
SUBJECT:: Re: Kyle is Famous
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:james w. carroll ( CN=james w. carroll/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:hana f. brilliant ( CN=hana f. brilliant/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:patrick j. bumatay ( CN=patrick j. bumatay/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:allison l. riepenhoff ( CN=allison l. riepenhoff/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:edward mcnally ( CN=edward mcnally/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:rachel l. brand ( CN=rachel l. brand/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:john b. bellinger ( CN=john b. bellinger/OU=nsc/O=eop@eop [ NSC ] )
READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:charlotte l. montiel ( CN=charlotte l. montiel/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:nanette everson ( CN=nanette everson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:jennifer g. newstead ( CN=jennifer g. newstead/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brent d. greenfield ( CN=brent d. greenfield/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:helgard c. walker ( CN=helgard c. walker/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:noel j. francisco ( CN=noel j. francisco/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:timothy e. flanigan ( CN=timothy e. flanigan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:kyle sampson ( CN=kyle sampson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:h. christopher bartolomucci ( CN=h. christopher bartolomucci/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:elizabeth n. camp ( CN=elizabeth n. camp/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######
```

Let me guess: it was "taken out of context" . . .

Kyle Sampson
07/18/2002 08:59:04 AM
Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle is Famous

Not any more, after that misquote.

Bradford A. Berenson
07/18/2002 08:56:43 AM
Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Kyle is Famous

Too bad Kyle's wife doesn't respect him . . .

Elizabeth N. Camp
07/18/2002 08:46:42 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Kyle is Famous

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 07/18/2002 08:44 AM ----------

Patrick J. Bumatay
07/18/2002 08:38:10 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Kyle is Famous

Copyright 2002 The Deseret News Publishing Co.
The Deseret News (Salt Lake City, UT)
July 17, 2002, Wednesday
SECTION: LOCAL; Pg. B03

LENGTH: 717 words

HEADLINE: West Wing suits Utahn

BYLINE: By Sharon HaddockDeseret News staff writer

BODY:
ALPINE -- Jay Leno's stream of jokes about President George W. Bush's intellect aren't deserved, according to a White House insider with Utah ties.

He isn't indecisive. And he isn't slow-witted, says Kyle Sampson, a former Utah County man who's currently one of six associate legal counselors to the president.

"All day he sits in the Oval Office and makes the tough decisions," he said. "You know they're the tough ones or they wouldn't make it to the Oval Office. He listens. He cuts to the heart of the matter and he makes a decision. He is amazingly astute." Sampson said White House staffers bristle when the president is publicly attacked -- but Bush takes it well.

"I know up close he's really trying to do the right things for the right reasons," he said. "He doesn't deserve the ridicule or the pundits."

Bush doesn't hand over the reins to Vice President Dick Cheney either, Sampson said. "The president is the president and no one knows that more than the vice president," he said.

Sampson has been working in the West Wing for 18 months, brought on board as a special assistant to the president after he'd worked for U.S. Sen. Orrin Hatch, R-Utah, and with Cheney's daughter, Elizabeth, helping select lawyers to fill the slots in various governmental agencies.

He'd put together lists of potential candidates, pare it to a short list and then present the candidates to the president. Bush would then announce the name and Sampson would help see the process through. He helped pick a deputy attorney general, an FBI director, a drug czar and a solicitor general.

"I quickly found that the secret was to first decide what you want and then find the person who fit that bill. You had to have that determined first because you'd get a flood of referrals from every senator and every politician out there."

Sampson divides his time between overseeing the ongoing and potential litigation involving the environmental portfolio, seeing that gifts or solicitations to the president are legally acceptable and continuing to help with judicial selection.

There's also a lot of additional assignments that are handed out at the discretion of Al Gonzales, Sampson's boss.

"It's interesting because a lot of what I do involves negotiating that is challenging because you're working with egos, special interests and a variety of perspectives."

Typically, Sampson starts his day with a 5 a.m. jog and a session with the Washington Post. He's in staff meeting in the West Wing by 8 a.m. and taking care of business by 8:45.

"It's all very difficult and very important and the answers are needed just like that," he said, snapping his fingers.

When he meets with President Bush he's usually taking in a binder full of carefully researched information. "He's got these little half-glasses and he'll drop them, look over them at you and question you if there's a problem. It's very much a back- and-forth dialogue."

Sampson, who grew up in American Fork and graduated from Brigham Young University in 1993, never really aspired to the White House, but he's enjoying his ride.

"I've been told the average tenure for a White House staff member is 18 months. I've had 18 months and I love it," he said. "It's intense. I'm on call all of the time but it's a once-in-a-lifetime thing. I love the job."

Sampson was part of Bush's second meeting on the president's first work day on Jan. 21, 2000. He also was in the White House Sept. 11 and remembers that day as frightening, chaotic and emotionally draining.

"It also gave new purpose to my work. I think the whole country looked at everything differently and wanted to help. I was lucky enough to be a position to do so."

He says the pace of the job is very similar to that portrayed on the popular television show "The West Wing" except that he and other staff members don't walk around as much.

"We just shoot off an e-mail," Sampson said.

He's aware that people are fairly impressed when he tells them what he does and who he works with during the day, but he doesn't dwell on it or count on any permanence.

"I get respect from my family and friends and colleagues, from everyone but my wife," he said. "And I've been told most guys in this job burn out, get fired or accept a better offer."

E-mail: jeffh@desnews.com

Message Sent
To:_____
Elizabeth N. Camp/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Rachel L. Brand/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Helgard C. Walker/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Brent D. Greenfield/WHO/EOP@EOP
Patrick J. Bumatay/WHO/EOP@EOP

Jennifer G. Newstead/WHO/EOP@EOP
Hana F. Brilliant/WHO/EOP@EOP
Nanette Everson/WHO/EOP@EOP
James W. Carroll/WHO/EOP@EOP
Charlotte L. Montiel/WHO/EOP@EOP

Message Copied
To:_____
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
kyle sampson/who/eop@eop
rachel l. brand/who/eop@eop
timothy e. flanigan/who/eop@eop
edward mcnally/who/eop@eop
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jennifer g. newstead/who/eop@eop
hana f. brilliant/who/eop@eop
nanette everson/who/eop@eop
james w. carroll/who/eop@eop
charlotte l. montiel/who/eop@eop

Message Copied
To:_____
elizabeth n. camp/who/eop@eop
david s. addington/ovp/eop@eop
h. christopher bartolomucci/who/eop@eop
john b. bellinger/nsc/eop@eop
kyle sampson/who/eop@eop
rachel l. brand/who/eop@eop
timothy e. flanigan/who/eop@eop
edward mcnally/who/eop@eop
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brett m. kavanaugh/who/eop@eop
helgard c. walker/who/eop@eop
allison l. riepenhoff/who/eop@eop
brent d. greenfield/who/eop@eop
patrick j. bumatay/who/eop@eop
jennifer g. newstead/who/eop@eop
hana f. brilliant/who/eop@eop
nanette everson/who/eop@eop
james w. carroll/who/eop@eop
charlotte l. montiel/who/eop@eop

From: CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/18/2002 4:08:05 AM
Subject: : Re: question

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine G. Marinis (CN=Katherine G. Marinis/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUL-2002 08:08:05.00
SUBJECT:: Re: question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

July 25th- FR for Elizabeth Dole/NC GOP in Greensboro, NC (Senate)
July 29th- FR for Mark Sanford/SC GOP in Charleston, SC (Governor)
August 3rd- FR for Susan Collins in Kennebunkport, ME (Senate)
August 5th- FR for Mike Fisher in Pittsburgh, PA (Governor)
August 7th- FR for Chip Pickering in Jackson, MS (House)
August 14th- FR for Scott McCallum in Milwaukee, WI (Governor)
August 14th- FR for IA GOP/Doug Gross in Des Moines, IA (Governor)
August 16th- Event with the Bush Pioneers in Crawford, TX
*August 22nd- FR for Gordon Smith in Portland, OR (Senate)
*August 23rd- FR for Bill Simon in Stockton, CA (Governor)
*August 23rd- FR for Bill Simon in San Diego, CA (Governor)
*August 24th- FR for Bill Simon in Thousand Oaks, CA (Governor)
*August 24th- FR for Steve Pearce/John Sanchez in Las Cruces, NM (House/Governor)
* I heard that these are not confirmed yesterday.

August 29th- FR for Steve Largent/James Inhofe in TBD, OK- (Governor/Senate)
August 29th- FR for Tim Hutchinson in Little Rock, AR (Senate)

September is not approved yet, and I have a feeling the western swing is shaky.

Brett M. Kavanaugh
07/17/2002 05:16:11 PM
Record Type: Record

To: Katherine G. Marinis/WHO/EOP@EOP, Ken Mehlman/WHO/EOP@EOP
cc:
Subject: question

can you all give me a list of likely Presidential political speeches over next 8 weeks (if you have such a list). want to use it for possible judge-mention planning. thanks.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/18/2002 4:51:37 AM
Subject: : LRM JAB303 - - OMB Request for Views on S2734 Small Business Drought Relief Act
Attachments: P_ORYT8003_WHO.TXT_1.pdf

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUL-2002 08:51:37.00
SUBJECT:: LRM JAB303 - - OMB Request for Views on S2734 Small Business Drought Relief Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on
07/18/2002 08:48 AM ----------

From: James A. Brown on 07/18/2002 08:45:10 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM JAB303 - - OMB Request for Views on S2734 Small
Business Drought Relief Act

LRM ID: JAB303
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, July 18, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on S2734 Small Business Drought
Relief Act

DEADLINE: 12:00 Noon Friday, July 19, 2002
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts for purposes of the "Pay-As-You-Go" provisions
of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: We understand that the Senate Small Business Committee plans to
mark this bill up on Wednesday, July 24th. We have included a copy of the
bill and a one page statement on the bill by Senator Kerry.

DISTRIBUTION LIST

AGENCIES:

107-Small Business Administration - Richard Spence - (202) 205-6700
118-TREASURY - Thomas M. McGivern - (202) 622-2317
007-AGRICULTURE - Jacquelyn Chandler - (202) 720-1272
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
039-Federal Emergency Management Agency - Mark D. Wallace - (202) 646-4105

EOP:
Stephen S. McMillin
Alan B. Rhinesmith
James Boden
Erin P. McCartney
Yvette M. Dennis
Philip J. Perry
John F. Wood
Matthew J. Schneider
David S. Addington
WHGC LRM
Courtney B. Timberlake
Elizabeth A. Bernhard
Adriel M. Harvey
Pamula L. Simms
Edward M. Rea
Lauren C. Lobrano
Danielle M. Simonetta
Roland N. Litterst
Robert Marsh
James J. Jukes
Richard E. Green
Joseph Crilley
K. Philippa Malmgren
NEC LRM
Diana E. Furchtgott-Roth
Meaghan K. Muldoon
Karyn Richman
LRM ID: JAB303 SUBJECT: OMB Request for Views on S2734 Small Business Drought Relief Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
cla@sba.gov @ inet
llr@do.treas.gov
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
legis@fema.gov

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
Alan B. Rhinesmith/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Erin P. McCartney/OMB/EOP@EOP
Yvette M. Dennis/OMB/EOP@EOP
Philip J. Perry/OMB/EOP@EOP
John F. Wood/OMB/EOP@EOP
Matthew J. Schneider/OMB/EOP@EOP
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Pamula L. Simms/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Danielle M. Simonetta/OMB/EOP@EOP
Roland N. Litterst/WHO/EOP@EOP
Robert Marsh/WHO/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
Joseph Crilley/OMB/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
NEC LRM
Diana E. Furchtgott-Roth/CEA/EOP@EOP
Meaghan K. Muldoon/OMB/EOP@EOP
Karyn Richman/OMB/EOP@EOP
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ORYT8003_WHO.TXT_1>

S. 2734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LOANS TO SMALL BUSINESS CONCERNS DAMAGED BY DROUGHT.

(a) **SHORT TITLE.**--This Act may be cited as the ``Small Business Drought Relief Act".

(b) **FINDINGS.**--Congress finds that--

(1) as of July 2002, more than 36 States (including Massachusetts, South Carolina, and Louisiana) have suffered from continuing drought conditions;

(2) droughts have a negative effect on State and regional economies;

(3) many small businesses in the United States sell, distribute, market, or otherwise engage in commerce related to water and water sources, such as lakes and streams;

(4) many small businesses in the United States suffer economic injury from drought conditions, leading to revenue losses, job layoffs, and bankruptcies;

(5) these small businesses need access to low-interest loans for business-related purposes, including paying their bills and making payroll until business returns to normal;

(6) absent a legislative change, only agriculture-related businesses are eligible for Federal disaster loan assistance as a result of drought conditions; and

(7) it is necessary to amend the Small Business Act to allow non-farm small businesses that have suffered economic injury from drought to receive financial assistance through Small Business Administration Economic Injury Disaster Loans.

(c) **EXPANSION OF DISASTER DEFINITION.**--Section 3(k) of the Small Business Act (15 U.S.C. 632(k)) is amended by inserting ``drought," after ``windstorms,".

By Mr. KERRY (for himself, Mr. **HOLLINGS**, Ms. **LANDRIEU**, Mr. **BAUCUS**, Mr. **BINGAMAN**, Mr. **DASCHLE**, and Mr. **JOHNSON**):

S. 2734. A bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, today I rise to introduce emergency legislation to help small non-farm businesses across this Nation that are in dire straits because of drought conditions in their State. They need assistance, particularly access to working capital to pay the bills and meet payroll, but they can't get it because they are falling through the cracks of Federal disaster loan programs.

Why? Well, this is hard to believe, but it is because a drought is not considered a disaster under the Small Business Administration's disaster loan program, and under the Department of Agriculture's disaster program, which does consider a drought a disaster, only agriculture-related businesses are eligible for disaster assistance.

This assistance is critical to the survival of thousands of small businesses that make their living in tourism and recreation industries, as well as other industries dependent on water. Droughts are a cruel phenomenon of nature. They are out of the control of a small business owner, and it isn't fair that they aren't eligible for Federal disaster assistance but the victims of floods, fires, and hurricanes are.

With a very small change, we can make all the difference to affected small businesses. Specifically, I propose amending the Small Business Act in order to make a drought a disaster.

More than 30 States are struggling with drought right now, according to the National Drought Mitigation at the University of Nebraska, and far more than agricultural, forestry and livestock businesses are hurt. If you talk to the governors of your States, I am sure they will tell you how bad the situation is. In northern Massachusetts, we have been in a drought since last fall. In South Carolina, the conditions are so bad that small businesses dependent upon lake and river tourism have seen revenues drop anywhere from 17 to 80 percent. The victims range from fish and tackle shops to rafting businesses, from restaurants to motels, from marinas to gas stations. For those who are listening and discount the serious impact of drought on small businesses, ask the rafting businesses that went bankrupt in Texas in 1996. The rivers were so low that these established businesses lost everything.

I thank my colleagues who are cosponsors, Senators *Hollings, Landrieu, Baucus, Bingaman, Daschle*, and *Johnson*. I invite my other colleagues with droughts in their States to cosponsor this bill and call on the Administration to work with our Committee in passing this emergency legislation before we go home for the break in August. These small businesses cannot wait.

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Elizabeth N. Camp/WHO/EOP@EOP [WHO] <Elizabeth N. Camp>
CC: charlotte l. montiel/who/eop@eop [WHO] <charlotte l. montiel>;nanette everson/who/eop@eop [WHO] <nanette everson>;jennifer g. newstead/who/eop@eop [WHO] <jennifer g. newstead>;brent d. greenfield/who/eop@eop [WHO] <brent d. greenfield>;helgard c. walker/who/eop@eop [WHO] <helgard c. walker>;noel j. francisco/who/eop@eop [WHO] <noel j. francisco>;timothy e. flanigan/who/eop@eop [WHO] <timothy e. flanigan>;kyle sampson/who/eop@eop [WHO] <kyle sampson>;h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;james w. carroll/who/eop@eop [WHO] <james w. carroll>;hana f. brilliant/who/eop@eop [WHO] <hana f. brilliant>;patrick j. bumatay/who /eop@eop [WHO] <patrick j. bumatay>;allison l. riepenhoff/who/eop@eop [WHO] <allison l. riepenhoff>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;edward mcnally/who/eop@eop [WHO] <edward mcnally>;rachel l. brand/who/eop@eop [WHO] <rachel l. brand>;john b. bellinger/nsc/eop@eop [NSC] <john b. bellinger>;david s. addington/ovp/eop@eop [OVP] <david s. addington>
Sent: 7/18/2002 4:56:48 AM
Subject: : Re: Kyle is Famous

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CREATION DATE/TIME:18-JUL-2002 08:56:48.00
SUBJECT:: Re: Kyle is Famous
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READ:UNKNOWN
CC:charlotte l. montiel ( CN=charlotte l. montiel/OU=who/O=eop@eop [ WHO ] )
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READ:UNKNOWN
CC:david s. addington ( CN=david s. addington/OU=ovp/O=eop@eop [ OVP ] )
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Too bad Kyle's wife doesn't respect him . . .
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Elizabeth N. Camp
07/18/2002 08:46:42 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Kyle is Famous

---------- Forwarded by Elizabeth N. Camp/WHO/EOP on 07/18/2002 08:44 AM ----------

Patrick J. Bumatay
07/18/2002 08:38:10 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Kyle is Famous

Copyright 2002 The Deseret News Publishing Co.
The Deseret News (Salt Lake City, UT)
July 17, 2002, Wednesday
SECTION: LOCAL; Pg. B03

LENGTH: 717 words

HEADLINE: West Wing suits Utahn

BYLINE: By Sharon HaddockDeseret News staff writer

BODY:
ALPINE -- Jay Leno's stream of jokes about President George W. Bush's intellect aren't deserved, according to a White House insider with Utah ties.

He isn't indecisive. And he isn't slow-witted, says Kyle Sampson, a former Utah County man who's currently one of six associate legal counselors to the president.

"All day he sits in the Oval Office and makes the tough decisions," he said. "You know they're the tough ones or they wouldn't make it to the Oval Office. He listens. He cuts to the heart of the matter and he makes a decision. He is amazingly astute." Sampson said White House staffers bristle when the president is publicly attacked -- but Bush takes it well.

"I know up close he's really trying to do the right things for the right reasons," he said. "He doesn't deserve the ridicule or the pundits."

Bush doesn't hand over the reins to Vice President Dick Cheney either, Sampson said. "The president is the president and no one knows that more than the vice president," he said.

Sampson has been working in the West Wing for 18 months, brought on board as a special assistant to the president after he'd worked for U.S. Sen. Orrin Hatch, R-Utah, and with Cheney's daughter, Elizabeth, helping select lawyers to fill the slots in various governmental agencies.

He'd put together lists of potential candidates, pare it to a short list and then present the candidates to the president. Bush would then announce

the name and Sampson would help see the process through. He helped pick a deputy attorney general, an FBI director, a drug czar and a solicitor general.

"I quickly found that the secret was to first decide what you want and then find the person who fit that bill. You had to have that determined first because you'd get a flood of referrals from every senator and every politician out there."

Sampson divides his time between overseeing the ongoing and potential litigation involving the environmental portfolio, seeing that gifts or solicitations to the president are legally acceptable and continuing to help with judicial selection.

There's also a lot of additional assignments that are handed out at the discretion of Al Gonzales, Sampson's boss.

"It's interesting because a lot of what I do involves negotiating that is challenging because you're working with egos, special interests and a variety of perspectives."

Typically, Sampson starts his day with a 5 a.m. jog and a session with the Washington Post. He's in staff meeting in the West Wing by 8 a.m. and taking care of business by 8:45.

"It's all very difficult and very important and the answers are needed just like that," he said, snapping his fingers.

When he meets with President Bush he's usually taking in a binder full of carefully researched information. "He's got these little half-glasses and he'll drop them, look over them at you and question you if there's a problem. It's very much a back- and-forth dialogue."

Sampson, who grew up in American Fork and graduated from Brigham Young University in 1993, never really aspired to the White House, but he's enjoying his ride.

"I've been told the average tenure for a White House staff member is 18 months. I've had 18 months and I love it," he said. "It's intense. I'm on call all of the time but it's a once-in-a-lifetime thing. I love the job."

Sampson was part of Bush's second meeting on the president's first work day on Jan. 21, 2000. He also was in the White House Sept. 11 and remembers that day as frightening, chaotic and emotionally draining.

"It also gave new purpose to my work. I think the whole country looked at everything differently and wanted to help. I was lucky enough to be a position to do so."

He says the pace of the job is very similar to that portrayed on the popular television show "The West Wing" except that he and other staff members don't walk around as much.

"We just shoot off an e-mail," Sampson said.

He's aware that people are fairly impressed when he tells them what he does and who he works with during the day, but he doesn't dwell on it or count on any permanence.

"I get respect from my family and friends and colleagues, from everyone but my wife," he said. "And I've been told most guys in this job burn out, get fired or accept a better offer."

E-mail: jeffh@desnews.com

Message Sent
To:_____
Elizabeth N. Camp/WHO/EOP@EOP
Allison L. Riepenhoff/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP

Message Sent
To:_____
David S. Addington/OVP/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
John B. Bellinger/NSC/EOP@EOP
Bradford A. Berenson/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
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Hana F. Brilliant/WHO/EOP@EOP
Nanette Everson/WHO/EOP@EOP
James W. Carroll/WHO/EOP@EOP
Charlotte L. Montiel/WHO/EOP@EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: James A. Brown/OMB/EOP@EOP [OMB] <James A. Brown>;Patrick J. Bumatay/WHO /EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 7/18/2002 5:28:09 AM
Subject: : Re: LRM JAB303 - - OMB Request for Views on S2734 Small Business Drought Relief Act
Attachments: P_O21U8003_WHO.TXT_1.pdf

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUL-2002 09:28:09.00
SUBJECT:: Re: LRM JAB303 - - OMB Request for Views on S2734 Small Business Drought Relief Act
TO:James A. Brown (CN=James A. Brown/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

White House Counsel has no objection.

Patrick J. Bumatay
07/18/2002 08:51:31 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: LRM JAB303 - - OMB Request for Views on S2734 Small Business Drought Relief Act

---------- Forwarded by Patrick J. Bumatay/WHO/EOP on 07/18/2002 08:48 AM ----------

From: James A. Brown on 07/18/2002 08:45:10 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: LRM JAB303 - - OMB Request for Views on S2734 Small Business Drought Relief Act

LRM ID: JAB303
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, July 18, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: OMB Request for Views on S2734 Small Business Drought Relief Act

DEADLINE: 12:00 Noon Friday, July 19, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: We understand that the Senate Small Business Committee plans to mark this bill up on Wednesday, July 24th. We have included a copy of the bill and a one page statement on the bill by Senator Kerry.

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Joseph Crilley
K. Philippa Malmgren
NEC LRM
Diana E. Furchtgott-Roth
Meaghan K. Muldoon
Karyn Richman
LRM ID: JAB303 SUBJECT: OMB Request for Views on S2734 Small Business Drought Relief Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant):
395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent
To:_____
cla@sba.gov @ inet
llr@do.treas.gov
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
legis@fema.gov

Message Copied
To:_____
Stephen S. McMillin/OMB/EOP@EOP
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James Boden/OMB/EOP@EOP
Erin P. McCartney/OMB/EOP@EOP
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Diana E. Furchtgott-Roth/CEA/EOP@EOP

Meaghan K. Muldoon/OMB/EOP@EOP
Karyn Richman/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_O21U8003_WHO.TXT_1>

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REV_00148225

From:	CN=Edward Ingle/OU=WHO/O=EOP [WHO]
To:	Karen_Knutson@Vp.Senate.gov @ inet [UNKNOWN] <Karen_Knutson@Vp.Senate.gov @ inet>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Ziad S. Ojakli/WHO /EOP@EOP [WHO] <Ziad S. Ojakli>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC:	Matthew Koch/WHO/EOP@EOP [WHO] <Matthew Koch>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>
Sent:	7/18/2002 7:08:00 AM
Subject:	: heads up on DOE Enron documents
Attachments:	P_IG7U8003_OPD.TXT_1.html

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CREATOR:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-JUL-2002 11:08:00.00
SUBJECT:: heads up on DOE Enron documents
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READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert C. McNally ( CN=Robert C. McNally/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Matthew Koch ( CN=Matthew Koch/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

did we know about this particular document delivery to the Senate?

---------------------- Forwarded by Edward Ingle/WHO/EOP on 07/18/2002
11:05 AM ---------------------------



Matthew Koch
07/18/2002 10:57:37 AM
Record Type: Record

To: Edward Ingle/WHO/EOP@EOP, Albert Hawkins/WHO/EOP@EOP
cc:
Subject: FWI: Enron documents
```

---------------------- Forwarded by Matthew Koch/WHO/EOP on 07/18/2002 10:55 AM ----------------------------

"McMonigle, Joe" <Joe.McMonigle@hq.doe.gov>
07/18/2002 10:44:34 AM
Record Type: Record

To: Matthew Koch/WHO/EOP@EOP
cc:
Subject: FW: Enron documents

FYI
> -----Original Message-----
> From: Hill, David R. (GC)
> Sent: Thursday, July 18, 2002 10:22 AM
> To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne
> Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila
> Subject: Enron documents
>
> FYI, later today we are planning to make a first delivery of documents to
> Sen. Lieberman and Sen. Thompson in response to the requests we received
> from them in early June for Enron-related documents and information. We
> also are planning to provide the same documents to the 19 or so
> people/organizations who have submitted FOIA requests for Enron-related
> documents. The letters to the Hill will be under cover of a letter from
> Lee that she has reviewed and approved. The letters to the FOIA
> requesters will be transmitted with a letter, signed by Abel Lopez or
> someone else in his office, that we in GC have edited and approved.
> Please let me know if you have any questions. drh

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IG7U8003_OPD.TXT_1>

FYI

-----Original Me ssage-----

From: Hill, David R. (GC)

Sent: Thursday, July 18, 2002 10:22 AM

To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne

Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila

Subject: **& nbsp;** Enron documents

FYI, later today we are planning to make a first d elivery of documents to Sen. Lieberman and Sen. Thompson in response to the req uests we received from them in early June for Enron-related documents and infor mation. We also are planning to provide the same documents to the 19 or s o people/organizations who have submitted FOIA requests for Enron-related docum ents. The letters to the Hill will be under cover of a letter from Lee th at she has reviewed and approved. The letters to the FOIA requesters will be transmitted with a letter, signed by Abel Lopez or someone else in his offi ce, that we in GC have edited and approved. Please let me know if you hav e any questions. drh

From: CN=Edward Ingle/OU=WHO/O=EOP [WHO]
To: Karen_Knutson@Vp.Senate.gov @ inet [UNKNOWN] <Karen_Knutson@Vp.Senate.gov @ inet>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Ziad S. Ojakli/WHO /EOP@EOP [WHO] <Ziad S. Ojakli>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Christine Ciccone/WHO/EOP@EOP [WHO] <Christine Ciccone>;Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>
CC: Matthew Koch/WHO/EOP@EOP [WHO] <Matthew Koch>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>
Sent: 7/18/2002 7:08:00 AM
Subject: : heads up on DOE Enron documents
Attachments: P_IG7U8003_WHO.TXT_1.html

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-JUL-2002 11:08:00.00
SUBJECT:: heads up on DOE Enron documents
TO:Karen_Knutson@Vp.Senate.gov @ inet ( Karen_Knutson@Vp.Senate.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Marcus Peacock ( CN=Marcus Peacock/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karen Y. Knutson ( CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Christine Ciccone ( CN=Christine Ciccone/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert C. McNally ( CN=Robert C. McNally/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Matthew Koch ( CN=Matthew Koch/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

did we know about this particular document delivery to the Senate?

---------------------- Forwarded by Edward Ingle/WHO/EOP on 07/18/2002
11:05 AM ---------------------------



Matthew Koch
07/18/2002 10:57:37 AM
Record Type: Record

To: Edward Ingle/WHO/EOP@EOP, Albert Hawkins/WHO/EOP@EOP
cc:
Subject: FWI: Enron documents
```

---------------------- Forwarded by Matthew Koch/WHO/EOP on 07/18/2002 10:55 AM ----------------------------

"McMonigle, Joe" <Joe.McMonigle@hq.doe.gov>
07/18/2002 10:44:34 AM
Record Type: Record

To: Matthew Koch/WHO/EOP@EOP
cc:
Subject: FW: Enron documents

FYI
> -----Original Message-----
> From: Hill, David R. (GC)
> Sent: Thursday, July 18, 2002 10:22 AM
> To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne
> Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila
> Subject: Enron documents
>
> FYI, later today we are planning to make a first delivery of documents to
> Sen. Lieberman and Sen. Thompson in response to the requests we received
> from them in early June for Enron-related documents and information. We
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> people/organizations who have submitted FOIA requests for Enron-related
> documents. The letters to the Hill will be under cover of a letter from
> Lee that she has reviewed and approved. The letters to the FOIA
> requesters will be transmitted with a letter, signed by Abel Lopez or
> someone else in his office, that we in GC have edited and approved.
> Please let me know if you have any questions. drh

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IG7U8003_WHO.TXT_1>

FYI

-----Original Me ssage-----

From: Hill, David R. (GC)

Sent: Thursday, July 18, 2002 10:22 AM

To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne

Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila

Subject: **& nbsp;** Enron documents

FYI, later today we are planning to make a first d elivery of documents to Sen. Lieberman and Sen. Thompson in response to the req uests we received from them in early June for Enron-related documents and infor mation. We also are planning to provide the same documents to the 19 or s o people/organizations who have submitted FOIA requests for Enron-related docum ents. The letters to the Hill will be under cover of a letter from Lee th at she has reviewed and approved. The letters to the FOIA requesters will be transmitted with a letter, signed by Abel Lopez or someone else in his offi ce, that we in GC have edited and approved. Please let me know if you hav e any questions. drh

From: CN=Robert C. McNally/OU=OPD/O=EOP [OPD]
To: Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>
CC: matthew koch/who/eop@eop [WHO] <matthew koch>;candida p. wolff/ovp/eop@eop [OVP] <candida p. wolff>;claire e. buchan/who/eop@eop [WHO] <claire e. buchan>;christine ciccone/who/eop@eop [WHO] <christine ciccone>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;albert hawkins/who/eop@eop [WHO] <albert hawkins>;karen_knutson@vp.senate.gov @ inet [UNKNOWN] <karen_knutson@vp.senate.gov @ inet>;marcus peacock/omb/eop@eop [OMB] <marcus peacock>;ziad s. ojakli/who/eop@eop [WHO] <ziad s. ojakli>;karen y. knutson/ovp/eop@eop [OVP] <karen y. knutson>;bradford a. berenson/who/eop@eop [WHO] <bradford a. berenson>
Sent: 7/18/2002 7:20:41 AM
Subject: : Re: heads up on DOE Enron documents
Attachments: P_LB8U8003_OPD.TXT_1.html

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert C. McNally ( CN=Robert C. McNally/OU=OPD/O=EOP [ OPD ] )
CREATION DATE/TIME:18-JUL-2002 11:20:41.00
SUBJECT:: Re: heads up on DOE Enron documents
TO:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:matthew koch ( CN=matthew koch/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:candida p. wolff ( CN=candida p. wolff/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:claire e. buchan ( CN=claire e. buchan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:christine ciccone ( CN=christine ciccone/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:joel d. kaplan ( CN=joel d. kaplan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:albert hawkins ( CN=albert hawkins/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:karen_knutson@vp.senate.gov @ inet ( karen_knutson@vp.senate.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:marcus peacock ( CN=marcus peacock/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:ziad s. ojakli ( CN=ziad s. ojakli/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:karen y. knutson ( CN=karen y. knutson/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:bradford a. berenson ( CN=bradford a. berenson/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

first I've heard of it



From: Edward Ingle on 07/18/2002 11:07:56 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Albert Hawkins/WHO/EOP@EOP, Matthew Koch/WHO/EOP@EOP
Subject: heads up on DOE Enron documents

did we know about this particular document delivery to the Senate?

---------------------- Forwarded by Edward Ingle/WHO/EOP on 07/18/2002
11:05 AM ---------------------------
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Matthew Koch
07/18/2002 10:57:37 AM
Record Type: Record

To: Edward Ingle/WHO/EOP@EOP, Albert Hawkins/WHO/EOP@EOP
cc:
Subject: FWI: Enron documents

---------- Forwarded by Matthew Koch/WHO/EOP on 07/18/2002 10:55 AM ----------

"McMonigle, Joe" <Joe.McMonigle@hq.doe.gov>
07/18/2002 10:44:34 AM
Record Type: Record

To: Matthew Koch/WHO/EOP@EOP
cc:
Subject: FW: Enron documents

FYI
> -----Original Message-----
> From: Hill, David R. (GC)
> Sent: Thursday, July 18, 2002 10:22 AM
> To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne
> Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila
> Subject: Enron documents
>
> FYI, later today we are planning to make a first delivery of documents to
> Sen. Lieberman and Sen. Thompson in response to the requests we received
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> people/organizations who have submitted FOIA requests for Enron-related
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> Lee that she has reviewed and approved. The letters to the FOIA
> requesters will be transmitted with a letter, signed by Abel Lopez or
> someone else in his office, that we in GC have edited and approved.
> Please let me know if you have any questions. drh

- att1.htm

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Robert C. McNally/OPD/EOP@EOP
Karen Y. Knutson/OVP/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
Marcus Peacock/OMB/EOP@EOP

Claire E. Buchan/WHO/EOP@EOP
Karen_Knutson@Vp.Senate.gov @ inet
Candida P. Wolff/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LB8U8003_OPD.TXT_1>

FYI

-----Original Me ssage-----

From: Hill, David R. (GC)

Sent: Thursday, July 18, 2002 10:22 AM

To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne

Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila

Subject: **& nbsp;** Enron documents

FYI, later today we are planning to make a first d elivery of documents to Sen. Lieberman and Sen. Thompson in response to the req uests we received from them in early June for Enron-related documents and infor mation. We also are planning to provide the same documents to the 19 or s o people/organizations who have submitted FOIA requests for Enron-related docum ents. The letters to the Hill will be under cover of a letter from Lee th at she has reviewed and approved. The letters to the FOIA requesters will be transmitted with a letter, signed by Abel Lopez or someone else in his offi ce, that we in GC have edited and approved. Please let me know if you hav e any questions. drh

From: CN=Bradford A. Berenson/OU=WHO/O=EOP [WHO]
To: Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>
CC: matthew koch/who/eop@eop [WHO] <matthew koch>;candida p. wolff/ovp/eop@eop [OVP] <candida p. wolff>;claire e. buchan/who/eop@eop [WHO] <claire e. buchan>;christine ciccone/who/eop@eop [WHO] <christine ciccone>;joel d. kaplan/who/eop@eop [WHO] <joel d. kaplan>;robert c. mcnally/opd/eop@eop [OPD] <robert c. mcnally>;albert hawkins/who /eop@eop [WHO] <albert hawkins>;karen_knutson@vp.senate.gov @ inet [UNKNOWN] <karen_knutson@vp.senate.gov @ inet>;marcus peacock/omb/eop@eop [OMB] <marcus peacock>;ziad s. ojakli/who/eop@eop [WHO] <ziad s. ojakli>;karen y. knutson/ovp/eop@eop [OVP] <karen y. knutson>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 7/18/2002 7:22:26 AM
Subject: : Re: heads up on DOE Enron documents
Attachments: P_LG8U8003_OPD.TXT_1.html

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-JUL-2002 11:22:26.00
SUBJECT:: Re: heads up on DOE Enron documents
TO:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:matthew koch ( CN=matthew koch/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:candida p. wolff ( CN=candida p. wolff/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:claire e. buchan ( CN=claire e. buchan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:christine ciccone ( CN=christine ciccone/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:joel d. kaplan ( CN=joel d. kaplan/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:robert c. mcnally ( CN=robert c. mcnally/OU=opd/O=eop@eop [ OPD ] )
READ:UNKNOWN
CC:albert hawkins ( CN=albert hawkins/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:karen_knutson@vp.senate.gov @ inet ( karen_knutson@vp.senate.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
CC:marcus peacock ( CN=marcus peacock/OU=omb/O=eop@eop [ OMB ] )
READ:UNKNOWN
CC:ziad s. ojakli ( CN=ziad s. ojakli/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
CC:karen y. knutson ( CN=karen y. knutson/OU=ovp/O=eop@eop [ OVP ] )
READ:UNKNOWN
CC:brett m. kavanaugh ( CN=brett m. kavanaugh/OU=who/O=eop@eop [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

I did not, and if no one else did, then there is a real problem here.



From: Edward Ingle on 07/18/2002 11:07:56 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Albert Hawkins/WHO/EOP@EOP, Matthew Koch/WHO/EOP@EOP
Subject: heads up on DOE Enron documents

did we know about this particular document delivery to the Senate?

---------------------- Forwarded by Edward Ingle/WHO/EOP on 07/18/2002
11:05 AM ---------------------------
```

Matthew Koch
07/18/2002 10:57:37 AM
Record Type: Record

To: Edward Ingle/WHO/EOP@EOP, Albert Hawkins/WHO/EOP@EOP
cc:
Subject: FWI: Enron documents

---------- Forwarded by Matthew Koch/WHO/EOP on 07/18/2002 10:55 AM ----------

"McMonigle, Joe" <Joe.McMonigle@hq.doe.gov>
07/18/2002 10:44:34 AM
Record Type: Record

To: Matthew Koch/WHO/EOP@EOP
cc:
Subject: FW: Enron documents

FYI
> -----Original Message-----
> From: Hill, David R. (GC)
> Sent: Thursday, July 18, 2002 10:22 AM
> To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne
> Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila
> Subject: Enron documents
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> FYI, later today we are planning to make a first delivery of documents to
> Sen. Lieberman and Sen. Thompson in response to the requests we received
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> Lee that she has reviewed and approved. The letters to the FOIA
> requesters will be transmitted with a letter, signed by Abel Lopez or
> someone else in his office, that we in GC have edited and approved.
> Please let me know if you have any questions. drh

- att1.htm

Message Sent
To:_____
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Robert C. McNally/OPD/EOP@EOP
Karen Y. Knutson/OVP/EOP@EOP
Joel D. Kaplan/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP
Christine Ciccone/WHO/EOP@EOP
Marcus Peacock/OMB/EOP@EOP

Claire E. Buchan/WHO/EOP@EOP
Karen_Knutson@Vp.Senate.gov @ inet
Candida P. Wolff/OVP/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LG8U8003_OPD.TXT_1>

FYI

-----Original Me ssage-----

From: Hill, David R. (GC)

Sent: Thursday, July 18, 2002 10:22 AM

To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne

Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila

Subject: **& nbsp;** Enron documents

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From: CN=Christine Ciccone/OU=WHO/O=EOP [WHO]
To: Karen_Knutson@Vp.Senate.gov @ inet [UNKNOWN] <Karen_Knutson@Vp.Senate.gov @ inet>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Joel D. Kaplan/WHO /EOP@EOP [WHO] <Joel D. Kaplan>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Bradford A. Berenson/WHO/EOP@EOP [WHO] <Bradford A. Berenson>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Claire E. Buchan/WHO/EOP@EOP [WHO] <Claire E. Buchan>;Ziad S. Ojakli/WHO/EOP@EOP [WHO] <Ziad S. Ojakli>;Karen Y. Knutson/OVP/EOP@EOP [OVP] <Karen Y. Knutson>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>
CC: Matthew Koch/WHO/EOP@EOP [WHO] <Matthew Koch>;heather_wingate@who.eop.gov [UNKNOWN] <heather_wingate@who.eop.gov>;Albert Hawkins/WHO/EOP@EOP [WHO] <Albert Hawkins>
Sent: 7/18/2002 7:34:12 AM
Subject: : Re: heads up on DOE Enron documents

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###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christine Ciccone ( CN=Christine Ciccone/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:18-JUL-2002 11:34:12.00
SUBJECT:: Re: heads up on DOE Enron documents
TO:Karen_Knutson@Vp.Senate.gov @ inet ( Karen_Knutson@Vp.Senate.gov @ inet [ UNKNOWN ] )
READ:UNKNOWN
TO:Marcus Peacock ( CN=Marcus Peacock/OU=OMB/O=EOP@EOP [ OMB ] )
READ:UNKNOWN
TO:Joel D. Kaplan ( CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Robert C. McNally ( CN=Robert C. McNally/OU=OPD/O=EOP@EOP [ OPD ] )
READ:UNKNOWN
TO:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Candida P. Wolff ( CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Claire E. Buchan ( CN=Claire E. Buchan/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Ziad S. Ojakli ( CN=Ziad S. Ojakli/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Karen Y. Knutson ( CN=Karen Y. Knutson/OU=OVP/O=EOP@EOP [ OVP ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Edward Ingle ( CN=Edward Ingle/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Matthew Koch ( CN=Matthew Koch/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:heather_wingate@who.eop.gov ( heather_wingate@who.eop.gov [ UNKNOWN ] )
READ:UNKNOWN
CC:Albert Hawkins ( CN=Albert Hawkins/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

First I have heard

.

----- Original Message -----
From:Edward Ingle/WHO/EOP
To:Bradford A. Berenson/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP,
Robert C. McNally/OPD/EOP@EOP,
Karen Y. Knutson/OVP/EOP@EOP,
Joel D. Kaplan/WHO/EOP@EOP,
Ziad S. Ojakli/WHO/EOP@EOP,
Christine Ciccone/WHO/EOP@EOP,
Marcus Peacock/OMB/EOP@EOP,
```

Claire E. Buchan/WHO/EOP@EOP,
Karen_Knutson@Vp.Senate.gov @ inet,
Candida P. Wolff/OVP/EOP@EOP
Cc:Albert Hawkins/WHO/EOP@EOP,
Matthew Koch/WHO/EOP@EOP
Date: 07/18/2002 11:07:56 AM
Subject: heads up on DOE Enron documents

did we know about this particular document delivery to the Senate?

---------- Forwarded by Edward Ingle/WHO/EOP on 07/18/2002
11:05 AM ----------

Matthew Koch
07/18/2002 10:57:37 AM
Record Type: Record

To: Edward Ingle/WHO/EOP@EOP, Albert Hawkins/WHO/EOP@EOP
cc:
Subject: FWI: Enron documents

---------- Forwarded by Matthew Koch/WHO/EOP on 07/18/2002
10:55 AM ----------

"McMonigle, Joe" <Joe.McMonigle@hq.doe.gov>
07/18/2002 10:44:34 AM
Record Type: Record

To: Matthew Koch/WHO/EOP@EOP
cc:
Subject: FW: Enron documents

FYI
> -----Original Message-----
> From: Hill, David R. (GC)
> Sent: Thursday, July 18, 2002 10:22 AM
> To: McSlarrow, Kyle; McMonigle, Joe; Lopatto, Jeanne
> Cc: Whatley, Michael; Lopez, Abel; Jeter, Sheila
> Subject: Enron documents
>
> FYI, later today we are planning to make a first delivery of documents
to
> Sen. Lieberman and Sen. Thompson in response to the requests we received
> from them in early June for Enron-related documents and information. We
> also are planning to provide the same documents to the 19 or so
> people/organizations who have submitted FOIA requests for Enron-related
> documents. The letters to the Hill will be under cover of a letter from
> Lee that she has reviewed and approved. The letters to the FOIA
> requesters will be transmitted with a letter, signed by Abel Lopez or
> someone else in his office, that we in GC have edited and approved.
> Please let me know if you have any questions. drh

- att1.htm

From: Ben Wittes <wittesb@washpost.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/19/2002 8:42:27 AM
Subject: : Re: >Check_Subject
Attachments: P_VEJV8003_WHO.TXT_1.doc

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ben Wittes <wittesb@washpost.com> (Ben Wittes <wittesb@washpost.com> [UNKNOWN])
CREATION DATE/TIME:19-JUL-2002 12:42:27.00
SUBJECT:: Re: >Check_Subject
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Interesting. And quite striking. Of course, both Clinton and Reagan had Senates of the same party, so the realistic comparison in with Bush I, right? Moreover, my impression is that ya'll have made dramatically more nominations than the previous Bush administration did in its first two years. Is that correct?

/b

Benjamin Wittes
Editorial Writer
The Washington Post
1150 15th Street, NW
Washington DC 20071
phone: 202-334-4134
fax: 202-334-5269

Brett_M.
_Kavanaugh@who.eop. To:
wittesb@washpost.com
gov cc:
Subject: >Check_Subject
07/19/2002 11:22 AM

(See attached file: judges chart 7 19 02.doc)

(See attached file: judges chart 7 19 02.doc)

- judges chart 7 19 02.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VEJV8003_WHO.TXT_1>

Judicial Appointments
Historical Comparison: First Two Years of a Presidency

President	Nominations Submitted	Nominees Confirmed	Percentage Of Nominees Confirmed	Circuit Court Nominations Submitted	Circuit Court Nominees Confirmed	Circuit Court Percentage of Nominees Confirmed
G.W. Bush (as of July 19, 2002)	113	59	**52%**	32	11	**34%**
Clinton	140	126	**90%**	22	19	**86%**
George H.W. Bush	74	70	**95%**	23	22	**96%**
Reagan	88	87	**99%**	20	19	**95%**

Date: July 19, 2002

From: Willett, Don <Don.Willett@usdoj.gov>
To: Remington, Kristi L <Kristi.L.Remington@usdoj.gov>;Koebele, Steve <Steve.Koebele@usdoj.gov>;Sales, Nathan <Nathan.Sales@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>;Charnes, Adam <Adam.Charnes@usdoj.gov>
Sent: 7/19/2002 1:59:33 PM
Subject: : RE: PN

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Willett, Don" <Don.Willett@usdoj.gov> ( "Willett, Don" <Don.Willett@usdoj.gov> [
UNKNOWN ] )
CREATION DATE/TIME:19-JUL-2002 17:59:33.00
SUBJECT:: RE: PN
TO:"Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) ( "Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
TO:"Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
CC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )
READ:UNKNOWN
CC:"Charnes, Adam" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM Return
Requested) ( "Charnes, Adam" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) [ UNKNOWN ] )
READ:UNKNOWN
###### End Original ARMS Header ######

fine w/ me -- thanks, nathan!

you okay, brett and adam?

DRW

-----Original Message-----
From: Sales, Nathan
Sent: Friday, July 19, 2002 5:26 PM
To: Willett, Don; Remington, Kristi L; Koebele, Steve
Subject: PN

All, here are the scrubbed PN talkers (both a 2-page overview, and a
one-pager for each case). They're ready to be included in the Dems binder.

<< File: Owen notification talkers (for Dems).doc >>
```

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: David.Javdan@sba.gov [UNKNOWN] <David.Javdan@sba.gov>
CC: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/22/2002 5:23:48 AM
Subject: : Re: Thanks
Attachments: P_S1KW8003_WHO.TXT_1.html

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-JUL-2002 09:23:48.00
SUBJECT:: Re: Thanks
TO:David.Javdan@sba.gov (David.Javdan@sba.gov [UNKNOWN])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It was nice meeting you as well. The person in our office who handles most SBA issues is Brett Kavanaugh, who I have copied on this e-mail. (Brett -- David is the new SBA general counsel).

David.Javdan@sba.gov
07/19/2002 10:53:01 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: Thanks

Noel,

It was great to meet you in person and I am looking forward to working with you as part of the team. Please, feel free to call on me anytime.

As discussed, I would like to sit down with whomever in your office handles SBA-related issues generally to make sure that we are all in the same page and would appreciate your help setting that up.

Again, many thanks and I am looking forward having some fun with all of this.

Best,

Dave

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_S1KW8003_WHO.TXT_1>

Noel,

It was great to meet you in person and I am looking forward to working with you as part of the team. Please, feel free to call on me anytime.

As discussed, I would like to sit down with whomever in your office handles SBA-related issues generally to make sure that we are all in the same page and would appreciate your help setting that up.

Again, many thanks and I am looking forward having some fun with all of this.

Best,

Dave

From:	CN=David Aidekman/OU=WHO/O=EOP [WHO]
To:	Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC:	Lucy G. Clark/WHO/EOP@EOP [WHO] <Lucy G. Clark>;Bradford A. Berenson/WHO /EOP@EOP [WHO] <Bradford A. Berenson>
Sent:	7/22/2002 5:37:12 AM
Subject:	: Provisions on liability in Department of Homeland Security legislation
Attachments:	P_5XKW8003_WHO.TXT_1.pdf

```
###### Begin Original ARMS Header ######
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David Aidekman ( CN=David Aidekman/OU=WHO/O=EOP [ WHO ] )
CREATION DATE/TIME:22-JUL-2002 09:37:12.00
SUBJECT:: Provisions on liability in Department of Homeland Security legislation
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Lucy G. Clark ( CN=Lucy G. Clark/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
CC:Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
###### End Original ARMS Header ######

Brett, I understand from Brad that you were interested in looking at the
provisions in the House DHS legislation on liability. They are located in
Sections 773-774 in the Armey chairman's mark (attached below). This was
not actually an amendment.


ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5XKW8003_WHO.TXT_1>
```

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5005 OFFERED BY MR. ARMEY

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeland Security Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
Sec. 202. Functions transferred.
Sec. 203. Access to information.
Sec. 204. Procedures for sharing information.
Sec. 205. Privacy officer.
Sec. 206. Federal cybersecurity program.

Subtitle B—Intelligence Analysis Center

Sec. 211. Intelligence Analysis Center
Sec. 212. Mission of the Intelligence Analysis Center.

TITLE III—UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Functions transferred.
Sec. 303. Conduct of certain public health-related activities.
Sec. 304. Federally funded research and development center.
Sec. 305. Miscellaneous provisions.
Sec. 306. Homeland Security Science and Technology Coordination Council.
Sec. 307. Conduct of research, development, demonstration, testing and evaluation.
Sec. 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Functions transferred.
Sec. 403. Visa issuance.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Functions of Administrator of General Services.
Sec. 406. Functions of Transportation Security Administration.
Sec. 407. Preservation of Transportation Security Administration as a distinct entity.
Sec. 408. Annual assessment of terrorist-related threats to public transportation.
Sec. 409. Explosive detection systems; minimum number of screeners.
Sec. 410. Transportation security.

Subtitle B—Immigration and Nationality Functions

Chapter 1—Immigration Enforcement

Sec. 411. Transfer of functions to under Secretary for Border and Transportation Security.
Sec. 412. Establishment of Bureau of Immigration Enforcement.
Sec. 413. Professional responsibility and quality review.
Sec. 414. Employee discipline.
Sec. 415. Report on improving enforcement functions.
Sec. 416. Report on interior checkpoints.

Chapter 2—Citizenship And Immigration Services

subchapter a—transfers of functions

Sec. 421. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 422. Citizenship and Immigration Services Ombudsman.
Sec. 423. Professional responsibility and quality review.
Sec. 424. Employee discipline.
Sec. 425. Office of Immigration Statistics within Bureau of Justice Statistics.
Sec. 426. Preservation of Attorney General's authority.
Sec. 427. Effective date.
Sec. 428. Transition.

SUBCHAPTER B—OTHER PROVISIONS

Sec. 431. Funding for citizenship and immigration services.
Sec. 432. Backlog elimination.
Sec. 433. Report on improving immigration services.
Sec. 434. Report on responding to fluctuating needs.
Sec. 435. Application of Internet-based technologies.
Sec. 436. Children's affairs.

CHAPTER 3—GENERAL PROVISIONS

Sec. 441. Abolishment of INS.
Sec. 442. Voluntary separation incentive payments.
Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 444. Sense of Congress.
Sec. 445. Reports and implementation plans.

Subtitle C—United States Customs Service

Sec. 451. Establishment; Commissioner of Customs.
Sec. 452. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 453. Establishment and implementation of cost accounting system; reports.
Sec. 454. Preservation of Customs funds.
Sec. 455. Separate budget request for Customs.
Sec. 456. Payment of duties and fees.
Sec. 457. Definition.
Sec. 458. GAO report to Congress.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.
Sec. 504. Definition.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.

TITLE VII—MISCELANEOUS

Subtitle A—Inspector General

Sec. 701. Authority of the Secretary.

Subtitle B—United States Secret Service

Sec. 711. Functions transferred.

Subtitle C—Critical Infrastructure Information

Sec. 721. Short title.
Sec. 722. Definitions.
Sec. 723. Designation of critical infrastructure protection program.
Sec. 724. Protection of voluntarily shared critical infrastructure information.

Sec. 725. No private right of action.

Subtitle D—Acquisitions

Sec. 731. Research and development projects.
Sec. 732. Personal services.
Sec. 733. Special streamlined acquisition authority.

Subtitle E—Property

Sec. 741. Real property management.
Sec. 742. Criteria for using authorities.
Sec. 743. Outleases.
Sec. 744. Review and revision of transactions by Administrator.
Sec. 745. Transactional reports.

Subtitle F—Other Provisions

Sec. 752. Advisory committees.
Sec. 753. Reorganization; transfer of appropriations.
Sec. 754. Miscellaneous provisions.
Sec. 755. Military activities.
Sec. 756. Regulatory authority.
Sec. 757. Provisions regarding transfers from department of energy.
Sec. 758. Counternarcotics officer.
Sec. 759. Office of international affairs.
Sec. 760. Prohibition of the terrorism information and prevention system.

Subtitle G—Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)

Sec. 771. Short title.
Sec. 772. Administration.
Sec. 773. Litigation management.
Sec. 774. Risk management.
Sec. 775. Definitions.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

Sec. 801. Definitions.
Sec. 802. Reorganization plan.

Subtitle B—Transitional Provisions

Sec. 811. Transitional authorities.
Sec. 812. Savings provisions.
Sec. 813. Terminations.
Sec. 814. Incidental transfers.
Sec. 815. National identification system not authorized.
Sec. 816. Continuity of Inspector General oversight.
Sec. 817. Reference.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act of 1978.
Sec. 902. Executive Schedule.
Sec. 903. United States Secret Service.

Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Biological agent registration; Public Health Service Act.
Sec. 907. Transfer of certain security and law enforcement functions and authorities.
Sec. 908. Transportation security regulations.

TITLE X—TRANSFERS TO THE DEPARTMENT OF JUSTICE

Sec. 1001. Transfer of the Federal Law Enforcement Training Center.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms ''American homeland'' and ''homeland'' means the United States.

(2) The term ''appropriate congressional committee'' means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term ''Department'' means the Department of Homeland Security.

(6) The term ''emergency response providers'' includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(7) The term ''executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term ''key resources'' means means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term ''personnel'' means officers and employees.

(13) The term ''Secretary'' means the Secretary of Homeland Security.

(14) The term ''terrorism'' means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(15) The term ''United States'', when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States; and

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—(1) There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as

may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—The Secretary shall coordinate (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

(4) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than eight Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Financial Officer.

(5) A Chief Information Officer.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall be responsible for the following:

(1) Conducting analysis of information, including foreign intelligence and open source information, lawfully collected by Federal, State and local law enforcement agencies and by elements of the intelligence community with respect to threats of terrorist acts against the United States.

(2) Integrating information, intelligence, and intelligence analyses to produce and disseminate infrastructure vulnerability assessments with respect to such threats.

(3) Identifying priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities.

(4) Reviewing, analyzing, and recommending improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments.

(5) Under the direction of the Secretary, developing a comprehensive national plan to provide for the security of key resources and critical infrastructures.

(6) Coordinating with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan.

(7) Supporting the intelligence and information requirements of the Department.

(8) Performing such other functions as the Secretary may direct.

(9) Administering the Homeland Security Advisory System, exercising primary responsibility for

public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

SEC. 202. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Energy Security and Assurance Program of the Department of Energy, including the

National Infrastructure Simulation and Analysis Center and the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

SEC. 203. ACCESS TO INFORMATION.

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such

material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(B) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(C) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(D) such other material as the President may further provide;

(3) the Secretary shall have full access and input with respect to information from any national

collaborative information analysis capability (as referred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1199)) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

(4) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

SEC. 204. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 205. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of information technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules on the privacy of personal informa-

tion, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 206. FEDERAL CYBERSECURITY PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall establish and manage a program to improve the security of Federal critical information systems, including carrying out responsibilities under paragraphs (1) and (2) of section 201 that relate to such systems.

(b) DUTIES.—The duties of the Secretary under subsection (a) are—

(1) to evaluate the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of cryptography;

(2) to provide assistance to civilian executive agencies in protecting the security of Federal critical

information systems, including identification of significant risks to such systems; and

(3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) FEDERAL INFORMATION SYSTEM SECURITY TEAM.—

(1) IN GENERAL.—In carrying out subsection (b)(2), the Secretary shall establish, manage, and support a Federal information system security team whose purpose is to provide technical expertise to civilian executive agencies to assist such agencies in securing Federal critical information systems by conducting information security audits of such systems, including conducting tests of the effectiveness of information security control techniques and performing logical access control tests of interconnected computer systems and networks, and related vulnerability assessment techniques.

(2) TEAM MEMBERS.—The Secretary shall ensure that the team under paragraph (1) includes technical experts and auditors, computer scientists, and computer forensics analysts whose technical

competence enables the team to conduct audits under such paragraph.

(3) AGENCY AGREEMENTS REGARDING AUDITS.—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph of the Federal critical information systems of the agency. Such agreement shall establish the terms of the audit and shall include provisions to minimize the extent to which the audit disrupts the operations of the agency.

(4) REPORTS.—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team under such paragraph shall prepare a report summarizing the findings of the audit and making recommendations for corrective action. Such report shall be submitted to the Secretary, the head of such agency, and the Inspector General of the agency (if any), and upon request of any congressional committee with jurisdiction over such agency, to such committee.

(d) DEFINITION.—For purposes of this section, the term ''Federal critical information system'' means an ''information system'' as defined in section 3502 of title 44, United States Code, that—

(1) is, or is a component of, a key resource or critical infrastructure;

(2) is used or operated by a civilian executive agency or by a contractor of such an agency; and

(3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

Subtitle B—Intelligence Analysis Center

SEC. 211. INTELLIGENCE ANALYSIS CENTER

(a) ESTABLISHMENT; NFIP AGENCY.—(1) There is established within the Department the Intelligence Analysis Center. The Under Secretary for Information Analysis and Infrastructure Protection shall be the head of the Intelligence Analysis Center.

(2) The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(b) FUNCTIONS.—The Under Secretary for Information Analysis and Infrastructure Protection, through the Intelligence Analysis Center, shall carry out the duties specified in paragraphs (1), (2), (3), (6), and (7) of section 201(b).

(c) DETAIL OF CERTAIN PERSONNEL.—

(1) IN GENERAL.—The Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Secretary of State, or the head of another agency or department as the case may be, shall enter into cooperative arrangements to provide for an appropriate number of individuals to be detailed to the Under Secretary to perform analytical functions and duties with respect to the mission of the Department from the following agencies:

(A) The Central Intelligence Agency.

(B) The Federal Bureau of Investigation.

(C) The National Security Agency.

(D) The National Imagery and Mapping Agency.

(E) The Department of State.

(F) The Defense Intelligence Agency.

(G) Any other agency or department that the President determines appropriate.

(2) TERMS OF DETAIL.—Any officer or employee of the United States or a member of the Armed Forces who is detailed to the Under Secretary under paragraph (1) shall be detailed on a reimbursable basis for a period of less than two years

for the performance of temporary functions as required by the Under Secretary.

(d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) by striking ''and'' at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

''(J) the Intelligence Analysis Center of the Department of Homeland Security; and''.

SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.

(a) IN GENERAL.—The mission of the Intelligence Analysis Center is as follows:

(1) ANALYSIS AND PRODUCTION.—

(A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.

(B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the ter-

rorist threat and infrastructure vulnerabilities of the United States.

(C) Providing approporiate dissemination of such assessments.

(D) Improving the lines of communication with respect to homeland security between the Federal Government and State and local public safety agencies and the private sector through the timely dissemination of information pertaining to threats of acts of terrorism against the United States.

(2) COORDINATION OF INFORMATION.—Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

(3) ADDITIONAL DUTIES.—Performing such other functions as the Secretary may direct.

(b) STRATEGIC AND TACTICAL MISSIONS OF THE INTELLIGENCE ANALYSIS CENTER.—The Under Secretary shall conduct strategic and tactical assessments and warnings through the Intelligence Analysis Center, including research, analysis, and the production of assessments on the following as they relate to the mission of the Department:

(1) Domestic terrorism.

(2) International terrorism.

(3) Counterintelligence.

(4) Transnational crime.

(5) Proliferation of weapons of mass destruction.

(6) Illicit financing of terrorist activities.

(7) Cybersecurity and cybercrime.

(8) Key resources and critical infrastructures.

(c) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.—

(1) FUNCTIONS TRANSFERRED.—In accordance with title VIII, for purposes of carrying out this title, there is transferred to the Under Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(B) The Critical Infrastructure Assurance Office of the Department of Commerce.

(C) The Computer Security Division of the National Institute of Standards and Technology.

(D) The Federal Computer Incident Response Center of the General Services Administration.

(E) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(F) The National Communications System of the Department of Defense.

(G) The intelligence element of the Coast Guard.

(H) The intelligence element of the United States Customs Service.

(I) The intelligence element of the Immigration and Naturalization Service.

(J) The intelligence element of the Transportation Security Administration.

(K) The intelligence element of the Federal Protective Service.

(L) The El Paso Intelligence Center of the Drug Enforcement Administration.

(2) STRUCTURE.—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic approach of the Information Dominance Center of the

Department of the Army to the maximum extent feasible and appropriate.

TITLE III—UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have responsibility for—

(1) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(2) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs; provided that such responsibility does not extend to human health-related research and development activities;

(3) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(4) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs;

(5) in consultation with other appropriate executive agencies, developing a national policy and strategic plan for, identifying priorities for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, andother emerging terrorist threats;

(6) establishing Federal priorities for research, development, demonstration, testing, and, as appropriate, procurement and transitional operation of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, and nuclear weapons and related materials;

(B) for detecting, preventing, and protecting against terrorist attacks that involve such weapons or related materials; and

(C) for interoperability of communications systems for emergency response providers;

(7) ensuring that the research, development, demonstration, testing, and evaluation activities of

the Department are aligned with the Department's procurement needs;

(8) facilitating the deployment of technology that will serve to enhance homeland security, including through the establishment of a centralized Federal repository for information relating to technologies described in subparagraphs (A), (B), and (C) of paragraph (6) for dissemination to Federal, State, and local government and private sector entities, and for information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would contribute to homeland security;

(9) providing guidance, recommendations, and technical assistance as appropriate to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in subparagraphs (A), (B), and (C) of paragraph (6); and

(10) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 302. FUNCTIONS TRANSFERRED.

In accordance with Title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The program under section 351A of the Public Health Service Act, and functions thereof, including the functions of the Secretary of Health and Human Services relating thereto, subject to the amendments made by section 906(3), except that such transfer shall not occur unless the program under section 212 of the Agricultural Bioterrorism Protection Act of 2002 (subtitle B of title II of Public Law 107–188), and functions thereof, including the functions of the Secretary of Agriculture relating thereto, subject to the amendments made by section 907, is transferred to the Department.

(2) Programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States), as follows:

(A) the programs and activities relating to chemical and biological national security, and supporting programs and activities directly related to homeland security, of the non-prolifera-

tion and verification research and development program;

(B) the programs and activities relating to nuclear smuggling, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program;

(C) those aspects of the nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program that are directly related to homeland security;

(D) such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department and that are directly related to homeland security;

(E) the Environmental Measurements Laboratory; and

(F) the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory; and

(3) the homeland security projects within the Chemical Biological Defense Program of the Department of Defense known as the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program.

SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities for such activities in collaboration with the Secretary of the Department of Homeland Security.

SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with one or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act.

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SEC. 305. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 302(2)(D) of this Act, the President shall notify the Congress of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 306. HOMELAND SECURITY SCIENCE AND TECHNOLOGY COORDINATION COUNCIL.

(a) ESTABLISHMENT AND COMPOSITION.—There is established within the Department a Homeland Security Science and Technology Coordination Council (in this section referred to as the ''Coordination Council''). The Coordination Council shall be composed of all the Under Secretaries of the Department and any other Department officials designated by the Secretary, and shall be chaired by the Undersecretary for Science and Technology. The Coordination Council shall meet at the call of the chair.

(b) RESPONSIBILITIES.—The Coordination Council shall—

(1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;

(2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and

(3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 301(3).

SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry

out the responsibilities under section 301(2) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—(1) The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes and companies (and consortia thereof) from as many areas of the United States as practicable participate; and

(B) distribute funds through grants, cooperative agreements and contracts through competitions that are as open as possible.

(2) In carrying out the duties under section 301, the Secretary, acting through the Under Secretary for Science and Technology, may establish university centers of excellence to perform research in support of the mission of the Department. Such centers may be consortia, which may include one or more colleges or universities, private research institutes, or companies.

(c) INTRAMURAL PROGRAMS.—(1) In carrying out the duties under section 301, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Fed-

eral government, whether operated by a contractor or the Government.

(2) The Secretary, acting through the Under Secretary for Science ant Technology, may establish a headquarters laboratory for the Department at any national laboratory and may establish additional laboratory units at other national laboratories.

(3) If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate national laboratories against the criteria.

(D) Select a national laboratory on the basis of the criteria.

(E) Report to the appropriate committees of the Congress on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) TRANSFER REQUIRED.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 411 takes effect.

(4) Establishing and administering rules, in accordance with section 403, governing the granting of visas or other forms of permission, including parole,

to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Except as provided in subtitle C, administering the customs laws of the United States.

(6) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 404.

(7) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 402. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The United States Customs Service, except as provided in subtitle C.

(2) The Coast Guard of the Department of Transportation, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of Transportation relating thereto.

(3) The Transportation Security Administration of the Department of Transportation, including the

functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto.

(4) The Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(5) The Office of National Preparedness of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(6) The Office for Domestic Preparedness of the Office of Justice Program of the Department of Justice, including the functions of the Attorney General relating thereto.

(7) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.'

SEC. 403. VISA ISSUANCE.

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer,

and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in

the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(C) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act.

(D) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(E) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(F) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

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(G) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(H) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(I) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553).

(J) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(K) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(3) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be

construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to any diplomatic and consular posts abroad to perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to individual visa applications or classes of applications.

(B) Review any or all such applications prior to their adjudication, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland

Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, fraud detection techniques, and other skills required by such employees, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) The Secretary shall promulgate regulations within 60 days of the enactment of this Act establishing foreign language proficiency requirements for employees of the Department

performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

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(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(f) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening, interview waiver, or other non-interview visa issuance programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication. All visa applicants in Saudi Arabia shall be interviewed unless on-site personnel of the Department of Homeland Security determine, in writing and pursuant to written guidelines issued by the Secretary of Homeland Security, that the

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alien is unlikely to present a risk to homeland security. The Secretary of Homeland Security shall promulgate such guidelines not later than 30 days after the date of the enactment of this Act.

SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or

procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out

the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and

2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary of Homeland Security under this subsection may not exceed the proportion of the costs incurred by the Secretary of Homeland Security to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following new subsection:

''(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or au-

thorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 402(4), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect, rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 210(f) of the Federal Property and Ad-

ministrative Services Act of 1949 (40 U.S.C. 490(f)).

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Admnistration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply two years after the date of enactment of this Act.

SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED THREATS TO PUBLIC TRANSPORTATION.

On an annual basis, the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, shall conduct an assessment of terrorist-related threats to all forms of public transportation, including public gathering areas related to public transportation.

SEC. 409. EXPLOSIVE DETECTION SYSTEMS; MINIMUM NUMBER OF SCREENERS.

(a) INSTALLATION OF SYSTEMS.—Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

"(2) MODIFICATION OF AIRPORT TERMINAL BUILDINGS TO ACCOMMODATE EXPLOSIVE DETECTION SYSTEMS.—

"(A) NOTIFICATION OF AIRPORTS.—Not later than October 1, 2002, the Under Secretary shall notify the owner or operator of each United States airport described in section 44903(c) of the number and type of explosive detection systems that will be required to be deployed at the airport in order to screen all checked baggage by explosive detection systems without imposing unreasonable delays on the passengers using the airport.

"(B) ASSESSMENTS OF AIRPORT TERMINAL BUILDINGS.—If the owner or operator of a United States airport described in section 44903(c) determines that the airport will not be able to make the modifications to the airport's terminal buildings that are necessary to accommodate the explosive detection systems required under subparagraph (A) in a cost-effective manner on or before December 31, 2002, the owner or operator shall provide notice of that determination to the Under Secretary not later than November 1, 2002.

"(C) PLANS FOR MAKING MODIFICATIONS TO AIRPORT TERMINAL BUILDINGS.—

"(i) IN GENERAL.—If the owner or operator of an airport provides notice to the Under Secretary under subparagraph (B), the Under Secretary and the owner or operator, acting jointly, shall develop, not later than December 1, 2002, a plan for making necessary modifications to the airport's terminal buildings so as to deploy and fully utilize explosive detection systems to screen all checked baggage.

"(ii) DEADLINE.—A plan developed under this subparagraph shall include a date for completing the plan. All such plans shall be completed as expeditiously as practicable.

"(iii) TRANSMISSION OF PLANS TO CONGRESS.—On the date of completion of a plan under this subparagraph, the Under Secretary shall transmit a copy of the plan to Congress. For security purposes, information contained in the plan shall not be disclosed to the public.

"(D) REQUIREMENTS FOR PLANS.—A plan developed and published under subparagraph (C), shall provide for, to the maximum extent practicable—

"(i) the deployment of explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building; and

"(ii) the deployment of state of the art explosive detection systems that have high throughput, low false alarm rates, and high reliability without reducing detection rates.

"(E) USE OF SCREENING METHODS OTHER THAN EDS.—Notwithstanding the deadline in paragraph (1)(A), after December 31, 2002, if explosive detection systems are not screening all checked baggage at a United States airport described in section 44903(c), such baggage shall be screened by the methods described in subsection (e) until such time as all checked baggage is screened by explosive detection systems at the airport.

"(3) PURCHASE OF EXPLOSIVE DETECTION SYSTEMS.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.

"(4) EXPLOSIVE DETECTION SYSTEM DEFINED.—In this subsection, the term 'explosive detection system' means a device, or combination of devices, that can detect different types of explosives.".

(b) NEW AVIATION SECURITY TECHNOLOGIES.—

(1) REPORT TO CONGRESS.—Not later than January 31, 2003, the Under Secretary shall transmit to Congress a report on the plans of the Under Secretary for implementation of new aviation security technologies.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the Under Secretary should expand testing of new aviation security technologies by increasing the number of airports at which such testing is conducted.

(c) CORRECTION OF REFERENCE.—Section 44901(e) of title 49, United States Code, is amended by striking "(b)(1)(A)" and inserting "(d)(1)(A)".

(d) MINIMUM NUMBER OF SCREENERS.—Section 110(c) of the Aviation and Transportation Security Act (115 Stat. 616) is amended by adding at the end the following:

"(3) MINIMUM NUMBER OF SCREENERS.—

"(A) IN GENERAL.—After November 19, 2002, the number of screeners deployed at an airport described in paragraph (1) shall not be less than the total number of screeners deployed at that airport on September 11, 2001, or on the date of enactment of this paragraph, whichever is greater.

"(B) ACTION OF UNDER SECRETARY.—If on November 20, 2002, the number of Federal employees screening passengers and carry-on baggage at an airport described in paragraph

(1) is less than the number required by this paragraph, the Under Secretary shall—

"(i) continue to contract with private screening companies to supplement the Federal screeners at that airport in order to comply with this paragraph; or

"(ii) not later December 20, 2002, publish a notice in the Federal Register certifying that the fewer number of Federal screeners will not result in additional or unreasonable delays for passengers at that airport.".

SEC. 410. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

"(A) The Secretary of Homeland Security, or the Secretary's designee.".

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

"(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).".

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title VIII, there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 412. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Homeland Security a bureau to be

known as the "Bureau of Immigration Enforcement".

(2) DIRECTOR.—The head of the Bureau of Immigration Enforcement shall be the Director of the Bureau of Immigration Enforcement, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Director of the Bureau of Immigration Enforcement—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 411 and delegated to the Director by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Director by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Immigration Enforcement that may affect the Bureau of Citizenship and Immigration Services of the Department of Justice established under chapter 2, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Director of the Bureau of Immigration Enforcement shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 411 takes effect, the Director of the Bureau of Immigration En-

forcement shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 411 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—In consultation with Bureau of Immigration Enforcement personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration enforcement policies and priorities;

(B) performing policy research and analysis on immigration enforcement issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2), and the Assistant Attorney General for Citizenship and Immigration Services, as appropriate.

(c) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Director of the Bureau of Immigration Enforcement. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Immigration Enforcement with respect to legal matters affecting the Bureau of Immigration Enforcement; and

(B) representing the Bureau of Immigration Enforcement in all exclusion, deportation, or removal proceedings before the Executive Office for Immigration Review, including in proceedings to adjudicate relief from exclusion, deportation, or removal, and in other legal or administrative proceedings involving immigration enforcement issues.

(d) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Immigration Enforcement;

(ii) financial management of the Bureau of Immigration Enforcement; and

(iii) collecting all payments, fines, and other debts for the Bureau of Immigration Enforcement.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget

Officer for the Bureau of Immigration Enforcement shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration enforcement to the Congress, including information on specific cases relating to immigration enforcement;

(B) serving as a liaison with other Federal agencies on immigration enforcement issues; and

(C) responding to inquiries from the media and the general public on immigration enforcement issues.

(f) CITIZENSHIP AND IMMIGRATION SERVICES LIAISON.—

(1) IN GENERAL.—There shall be a position of Citizenship and Immigration Services Liaison for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—The Citizenship and Immigration Services Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2) and the Bureau of Immigration Enforcement, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Immigration Enforcement that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Immigration Enforcement and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Immigration Enforcement.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Immigration Enforcement, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 414. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Immigration Enforcement who willfully deceives the Congress or agency leadership on any matter.

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SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Immigration Enforcement, after the transfer of functions specified under section 411 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Assistant Attorney General for Citizenship and Immigration Services, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 416. REPORT ON INTERIOR CHECKPOINTS.

Not later than 6 months after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on whether all permanent interior

checkpoints operated by the Immigration and Naturalization Service ought to be closed, and the funds that otherwise would be expended for the operation of such checkpoints ought to be reallocated for protecting and maintaining the integrity of the borders of the United States and increasing enforcement at other points of entry into the United States.

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

Subchapter A—Transfers of Functions

SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) ASSISTANT ATTORNEY GENERAL.—The head of the Bureau of Citizenship and Immigration Services shall be the Assistant Attorney General for Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Attorney General; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government bene-

fits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Assistant Attorney General for Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Assistant Attorney General by this section or this Act or otherwise vested in the Assistant Attorney General by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Immigration Enforcement of the Department of Homeland Security, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman described in section 422 to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 427, the Attorney General shall submit a report to the

Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Assistant Attorney General for Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 427:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 427.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration services policies and priorities;

(B) performing policy research and analysis on immigration services issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Immigration Enforcement of the Department of Homeland Security.

(d) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Assistant Attorney General for Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;

(B) serving as a liaison with other Federal agencies on immigration services issues; and

(C) responding to inquiries from the media and the general public on immigration services issues.

(g) IMMIGRATION ENFORCEMENT LIAISON.—

(1) IN GENERAL.—There shall be a position of Immigration Enforcement Liaison for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Immigration Enforcement Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Immigration Enforcement of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

(h) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Attorney General. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving

services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as

may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Deputy Attorney General, Assistant Attorney General for Citizenship and Immigration Services, or any other officer or employee of the Department of Justice or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Assistant Attorney General for Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department of Justice and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Assistant Attorney General for Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Department of Justice Office of the Inspector General;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 424. EMPLOYEE DISCIPLINE.

The Assistant Attorney General for Citizenship and Immigration Enforcement may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizen-

ship and Immigration Services who willfully deceives the Congress or agency leadership on any matter.

SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following:

"OFFICE OF IMMIGRATION STATISTICS

"SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

"(b) The Director of the Office shall be responsible for the following:

"(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled 'Statistical Yearbook of the Immigration and Naturalization Service' prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective

date specified in section 427 of the Homeland Security Act of 2002), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.

"(2) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

"(c) The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.".

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Plan-

ning of the Immigration and Naturalization Service with respect to the following:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service.

(c) CONFORMING AMENDMENTS.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking ''and'' at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting ''; and''; and

(3) by adding at the end the following:

''(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.''.

SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.

(a) IN GENERAL.—Any function for which this subchapter vests responsibility in an official other than the Attorney General, or which is transferred by this subchapter to such an official, may, notwithstanding any provision of this subchapter, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(b) REFERENCES.—In a case in which the Attorney General performs a function described in subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

SEC. 427. EFFECTIVE DATE.

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

SEC. 428. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, the Assistant Attorney General for Citizenship and Immigration Services, any reference in any other Federal law, Execu-

tive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Assistant Attorney General for Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subchapter may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this subchapter in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a pe-

riod of 2 years after the effective date specified in section 427.

(4) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subchapter. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter.

Subchapter B—Other Provisions

SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of simi-

lar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

(b) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this subsection shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

SEC. 432. BACKLOG ELIMINATION.

Section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)) is amended by striking ''October 17, 2000;'' and inserting ''1 year after the date of the enactment of the Homeland Security Act of 2002;''.

SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Attorney General, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the

transfer of functions specified in subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Director of the Bureau of Immigration Enforcement of the Department of Homeland Security, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 421(b) and related processes.

SEC. 434. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in subchapter 1 takes effect, the Bureau of Citizenship and Immigration Services, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 435. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in

this section referred to as the "Technology Advisory Committee") to assist the Attorney General in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 436. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Com-

missioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Justice, and the Director of the Bureau of Immigration Enforcement of the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section

412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations,

allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CHAPTER 3—GENERAL PROVISIONS

SEC. 441. ABOLISHMENT OF INS.

The Immigration and Naturalization Service of the Department of Justice is abolished.

SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term ''covered entity'' means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Immigration Enforcement of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Justice; and

(3) the term ''transfer date'' means the date on which the transfer of functions specified under section 411 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the "appropriate committees of Congress" are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates

(whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury

of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this para-

graph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term ''final basic pay'' means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Attorney General (for

transfer to the appropriate component of the Department of Justice, if necessary) or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or pro-

cedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) thereof).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially review-

able action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstra-

tion project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term "covered entity" has the meaning given such term in section 442(a)(2).

SEC. 444. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the missions of the Bureau of Immigration Enforcement of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 445. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States

House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(b) DIVISION OF PERSONNEL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services

and the Bureau of Immigration Enforcement, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by chapters 1 and 2 have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 411 takes effect, the

Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

Subtitle C—United States Customs Service

SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions set forth in section 457(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

"Commissioner of Customs, Department of the Treasury"

and inserting

"Commissioner of Customs, Department of Homeland Security.".

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding sections 401(6), 402(1), and 803(e)(2), authority that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Sec-